



City of Seattle

Seattle Police Department

April 8, 2016

Mayor Ed Murray
Seattle City Hall
600 4th Avenue
Seattle, WA 98124-4769

Council President Bruce A. Harrell
Seattle City Hall
600 4th Avenue
Seattle, WA 98124-4769

RE: OPA 15-1149

Dear Mayor Murray and Council President Harrell:

I am writing to report on the findings in 2015-OPA-1149. The underlying incident in this case involves an officer-involved shooting – the most serious action that any law enforcement officer can take. All officer-involved shootings are of significant concern to the community and the Seattle Police Department, and critical and careful review of these incidents is among the highest of the Department's responsibilities to the community, is vital to the Department's mission, and is an obligation I, and the Department, take extremely seriously. OPA plays a crucial role in that review process, and here, fairly and fully gathered information and assessed the facts of this case. After its considerable work, OPA found that the officers' actions violated the Department's policy on the use of deadly force. I have reviewed the record in this case thoroughly, including the Force Investigation Team's analysis, the Force Review Board's report, OPA's investigation, officer and witness statements, and available video. I have also taken into consideration the statements made during the *Loudermill* meeting, and my own experience as a law enforcement officer. Based on my analysis, explained below, I do not agree with OPA's application of the facts of this case to Department policy. I find that, under the totality of the circumstances they confronted that night, the officers' conduct was lawful, proper, and did not violate Department policy. I am therefore changing the recommended Sustained finding for violation of the Department's Use of Force policy to Unsustained.

Factual Summary

Late on December 31, 2014, four officers were investigating a potential domestic violence disturbance at a private residence in South Seattle. In the course of this investigation, two officers were interviewing one party to the dispute outside by a patrol car, while another officer was inside the house. As a fourth officer was moving from the house to the patrol car, multiple gun shots were fired in the direction of the officers from the east (behind the parked



patrol car). All three of the officers who were outside of the house, with the individual they were interviewing, reported that they heard gunshots and heard bullets “whiz” by their heads.

The officers observed a single vehicle coming towards them. All three officers stated that this car was the only thing they saw moving, and that it was coming from the direction they believed the bullets were coming from. They could identify no other potential source of the shots fired in their direction. All three officers were also aware that there were active discussions on social media describing December 31, 2014 as “Kill the PIG [a reference to police] Night.” They knew that a fatal drive-by shooting had occurred in the area earlier that same night, that the suspect in that shooting was still at-large, and they knew of reports of shots fired from a vehicle in the same neighborhood a few days prior. All three officers believed they were being ambushed by the occupants of the car that was headed towards them, and all three officers returned fire towards the vehicle. Commendably, before firing, one officer at the patrol car took care to ensure that the civilian being interviewed was shielded by the patrol car and as out of harm’s way as possible. The officers stopped firing as the vehicle stopped abruptly and the driver opened the door, shouting that he was being shot at by a different vehicle. Although officers’ shots struck the driver’s side door, thankfully no one was injured.

The time between the shots fired in the officers’ direction and their return of fire was approximately six seconds. In total, the three officers fired ten times.

Department Policy on the Use of Force (at the time of the incident, policy 8.100(5))

Under the Department’s use of deadly force policy, “Deadly force may only be used in circumstances where threat of death or serious physical injury to the officer or others is imminent.” A fundamental principle of the Department’s policy, as with controlling case law, is that a review of force must be considered from the perspective of a reasonable officer on the scene, not in 20/20 hindsight. (Department Manual policy 8.000(1), previously policy section 8.100); *see also Graham v. Connor*, 490 U.S. 385 (1989)).

OPA found, and the Department chain of command agreed, that “the evidence and testimony reviewed and collected in this investigation leave little doubt that all three named employees were reasonable in believing they and others were under imminent threat of death or serious physical injury.” Each officer was therefore authorized to use deadly force against the person or persons who posed the threat and met the criteria for what is “imminent.” Disagreement between OPA and the chain of command lies solely in whether these officers had a sufficient basis to believe that it was the vehicle and its occupants that posed the threat they reasonably discerned.



Policy requires reasonable belief under the circumstances present at the time, including reasonable inferences from those circumstances. At the time the officers heard and felt gun shots pass near their heads, they observed a single vehicle moving towards them from the same direction as the shots. They could ascertain no other viable source of the shots. The second vehicle, which had in fact been shooting at the subject vehicle (a fact not known to the officers at the time), was not in view.

A civilian witness to the incident also reported a belief that the shots were coming from the vehicle headed towards the officers.

Findings

Here, viewing the incident as would a reasonable officer at the scene, based on the totality of the record developed in the OPA investigation, but without the benefit of hindsight or the additional information that was learned only after the incident, I conclude that the officers' actions were reasonable and consistent with Department policy. I believe that under the totality of the circumstances – including the fact that it was dark, that officers knew there was a threat of assault on officers on this particular night that had been publicized on social media, that there had been other recent violent crimes in the area, that they felt and heard shots go by their heads, and had no other identifiable source from which to conclude the shots were being fired (a point confirmed by the civilian witness) – a reasonable officer would have responded exactly as these officers did. Indeed, based on my experience as a law enforcement officer, I have no reason to believe that I would have acted any differently had I been in that situation; the Department's Deputy Chief, the Assistant Chief of Patrol Operations, and other Department leaders have likewise stated the same.

A decision to discharge one's duty weapon is the most serious decision an officer may be called upon to make. As police officers, we have the power, authority, and responsibility to make decisions that can alter the lives and safety of others – and unfortunately, we are often forced to make those decisions in a matter of seconds. We have the highest obligation to ensure that decisions are made in a manner consistent with our policies, training, and skilled observations. Through the lens of hindsight, with the benefit of information that is later learned during the course of an investigation, it is often the case that one can find points to criticize; indeed, it is in part the purpose of the Department's Force Review Board to parse these incidents in just that manner to find opportunities for improvements to policy or training (as the Force Review Board did here in recommending additional training). But it is not – and cannot be – the case that an analysis as to whether the officers' actions were within policy can turn on the same post hoc analysis.

For these reasons, there is no question in my mind, after full and careful analysis, that the three officers involved in this shooting acted reasonably based on the information available to them at the time they were called upon to make an instantaneous decision to protect not



City of Seattle

Seattle Police Department

only their lives but the life of the civilian they were interviewing at the time. With full respect and appreciation to OPA and its thorough, fair investigation, but because I disagree with the application of that investigation to Department policy, I am changing the recommended Sustained finding for violation of the Department's Use of Force policy to Unsustained (Lawful and Proper). I conclude that the officers' actions were consistent with Department policy and their public safety obligations.

Sincerely,

A handwritten signature in blue ink that reads "Kathleen O'Toole".

Kathleen O'Toole, Chief of Police
Chief of Police

cc: Peter Holmes, Seattle City Attorney
Pierce Murphy, Director Office of Professional Accountability
Sally Bagshaw, Councilmember
Tim Burgess, Councilmember
Lisa Herbold, Councilmember
Lorena Gonzalez, Councilmember
Rob Johnson, Councilmember
Debora Juarez, Councilmember
Mike O'Brien, Councilmember
Kshama Sawant, Councilmember
File