

OFFICE OF PROFESSIONAL ACCOUNTABILITY MEMORANDUM

TO: Captain Mike Washburn
Southwest Precinct Commander

DATE: December 9, 2015

FROM: Captain Dick Reed 
Office of Professional Accountability (OPA)

SUBJECT: Director's Certification Memo 2015OPA-1149

INFORMATION FOR REVIEWER:

This Director's Certification Memo (DCM) represents the opinion of the OPA Director regarding the misconduct alleged. The DCM, while based upon the evidence and information contained in the case file, should not be considered part of the investigative process. It should be viewed as an aid to your evaluation of the Director's findings. *Please review the case file in Blue Team if you have questions or further information is desired.*

The Director's recommended finding for an allegation contained in this investigation is sustained; a discipline meeting will be scheduled.

CASE IDENTIFICATION:

OPA Case Number:	2015OPA-1149
Incident Date:	12/31/2014
Date Reported:	07/29/2015 (Date Complaint forwarded from FRB)
180-Day Expiration Date (SPOG):	01/25/2016
Named Employee #1:	Anthony Belgarde – Officer #6972
Named Employee #2:	Christopher Brown – Officer #7776
Named Employee #3:	Michelle Sieg – Officer #7434
Complainant:	Force Review Board
Other Evidence:	Force Review Board Documentation; OPA Interviews.

ALLEGATIONS OF MISCONDUCT AND THE DIRECTOR'S FINDINGS:

Named Employee #1	Anthony Belgarde – Officer #6972
Allegation #1:	Using Force: Use of Deadly Force 8.100 (5) Effective January 1, 2014
Director's Finding:	Sustained

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Named Employee #2
Allegation #1:

Director's Finding:

Christopher Brown – Officer #7776
Using Force: Use of Deadly Force 8.100 (5)
Effective January 1, 2014
Sustained

Named Employee #3
Allegation #1:

Director's Finding:

Michelle Sieg – Officer #7434
Using Force: Use of Deadly Force 8.100 (5)
Effective January 1, 2014
Sustained

EXECUTIVE SUMMARY:

On Dec 31, 2014 at about 2156 hours, Officers Jason Lee, Anthony Belgarde, Chris Brown and Michelle Sieg responded to the 4200 block of South Eddy Street to investigate a domestic violence (DV) disturbance. The call read that the complainant's boyfriend was kicking the front door. Officer Lee and Officer Sieg were operating single-officer cars. Officer Belgarde was a Field Training Officer (FTO) with Student Officer Brown. It was Brown's first day on FTO. Belgarde was driving with Brown in the passenger seat.

Sieg, Belgarde and Brown arrived together and saw the male (identified as Robert Taylor) at the front door. Lee arrived as the three other officers contacted Taylor. Lee parked in front of the house, with his in-car video (ICV) angled towards the front yard. Belgarde and Brown brought Taylor to the front of Lee's patrol car. Sieg and Lee went into the house to investigate the DV disturbance. Sieg spoke with the complainant (Keosha Coker) then asked Lee to stand by with Coker while she went out to interview Taylor. Sieg left the residence and walked toward the front of Lee's patrol car where Taylor was sitting on the front bumper.

As Sieg walked towards Taylor, multiple gunshots came from the east. Officers reported that they heard bullets whizzing past their heads. Belgarde and Brown pulled Taylor to the ground. All three officers took cover/concealment behind the patrol car by going to either a kneeling or prone position. While the shots were coming towards the officers, a vehicle drove west on South Eddy, approached Lee's patrol car, and then stopped.

Belgarde, Brown and Sieg fired at this vehicle. The driver of the vehicle (identified as Cornielous Morris) exited his car and yelled that there was a car behind him shooting at him. Officers ceased fire. Belgarde informed Dispatch of Morris' statement that a different vehicle was firing the shots. Morris was not hit by officers, but his driver-side door was struck multiple times.

Lee did not fire any shots. He exited the house after the first couple of shots, took cover behind a parked SUV, and then approached the other officers. In his Force Investigation Team (FIT) witness statement, he said that headlights were blinding him and he did not know what the other officers were shooting at.

Reviewers should be aware of additional information identified by Named Employees and documented by investigators that inform what patrol officers working in this Seattle neighborhood were thinking about on New Year's Eve, 2014:

- There had been reports of a vehicle firing shots in this neighborhood a few nights prior to this event.
- At the beginning of this evening's work shift there had been a fatal drive-by shooting in the area and that suspect was still outstanding at the time of this event.
- Although later discredited, there were active discussions on social media at the time describing December 31st, 2014 as "Kill a PIG Night"

ANALYSIS AND CONCLUSIONS

SPD Policy 8.100 (5) says, "Deadly force may only be used in circumstances where threat of death or serious physical injury to the officer or others is imminent." For circumstances to be considered imminent, the policy imposes a three-pronged test: the suspect must (1) be acting or threatening to cause death or serious physical injury, (2) have the means or instrumentalities to do so, and (3) have the opportunity and ability necessary to cause death or serious physical injury. 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. They heard gunshots and experienced the sensation of bullets passing close by. Under such circumstances, each officer was authorized under this policy to use deadly force against the person or persons who posed the threat and met the three-pronged test articulated in policy and summarized above.

Named Employee #1: Anthony Belgarde – Officer #6972

Allegation #1: Using Force: Use of Deadly Force 8.100 (5) *Effective January 1, 2014*

Named employee #1 testified that he perceived that the vehicle stopping behind the police car was the source of the shots being fired at him and the other officers. He stated that he fired at the driver's side of the vehicle with the intention of striking its driver. Further, named employee #1 stated he could neither see the driver, nor any weapons in or associated with the vehicle, nor did he report seeing muzzle flashes or other signs that the person or person firing at him were inside the vehicle. The OPA investigation did not produce any evidence known to named employee #1 at the time to support the conclusion that the driver or any of the other occupants of the vehicle were acting or threatening to cause death or serious physical injury, nor that they had the means or instrumentalities to do so. Based on the preponderance of the evidence, the Director concluded that named employee #1 used deadly force on the occupants of the vehicle and that, given the totality of the circumstances known to him at the time he did not have a reasonable basis to believe that any of those persons posed an imminent threat of death or serious physical injury.

Recommended Finding: Sustained

Named Employee #2: Christopher Brown – Officer #7776

Allegation #1: Using Force: Use of Deadly Force 8.100 (5) *Effective January 1, 2014*

Named employee #2 testified that he perceived the sound of bullets "whistling next to [his] ears." Believing that he, his fellow officers and the civilian with them were being shot at, named employee #2 pushed the civilian down behind the police car's front bumper to protect him. While down there, named employee #2 heard the sound of gunfire close to him and concluded that the officer with him was firing his gun. Named employee #2 looked over the hood of the police car and in the direction from which he believed the bullets fired at him had come. Named employee #2 testified that he saw a vehicle driving towards him and concluded that the people inside that vehicle had been the source of the earlier gunfire directed at him and that they were attempting to "ambush" him and his fellow officers. He believed that, if the vehicle was not immediately stopped, it would drive right up to the officers and place them in danger of being shot or killed. Named employee #2 stated that he fired his gun at the driver of the vehicle in order to strike the driver and prevent the car from coming any closer. Named employee #2's association of the gunfire he heard with the vehicle he saw approaching when he looked back up was not reasonable, even in light of earlier news

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reports known to him about anonymous threats to kill police officers somewhere in the country that evening. The only correlation known to named employee #2 at the time between the gunfire and the car was temporal and spatial proximity. He saw the car after hearing the sound of the shots and observed that the car was coming from the same direction as the shots. Other than this, named employee #2 had insufficient factual basis to conclude that the driver or other occupants of the vehicle were acting or threatening to cause death or serious physical injury, or that they had the means or instrumentalities to do so. Based on the preponderance of the evidence, the Director concluded that named employee #2 used deadly force on the occupants of the vehicle and that, given the totality of the circumstances known to him at the time he did not have a reasonable basis to believe that any of those persons posed an imminent threat of death or serious physical injury.

Recommended Finding: Sustained

Named Employee #3: Michelle Sieg – Officer #7434

Allegation #1: Using Force: Use of Deadly Force 8.100 (5) Effective January 1, 2014

Named employee #3 stated that she was walking towards the police car where the other two officers and the civilian were located when she heard the sound of gunfire and bullets “whizzing” over her head. She dropped to the ground. Named employee #3 testified that she looked up and saw another car stopped in the street directly behind the police car. The headlights from both the police car and the car behind it were shining right at named employee #3. She said she saw that the driver’s window of other car was down and that the driver’s hand was out the window. She noted that it was a very cold night and it made no sense to her that the driver would have the window down and his hand outside the car. At first, named employee #3 told OPA that she did not see anything in the driver’s hand. Later in the same interview she indicated she could not see if anything was in the driver’s hand due to the headlights shining at her in the darkness. She told OPA she knew based on her training and experience that drive-by shooters typically stick a gun out a car window to shoot, rather than firing from inside the car. She told OPA, “I saw a hand, I think gun, and that’s why I shot”. Because she had just been shot at and the driver’s hand was out the window on a very cold night, named employee #3 concluded that the driver of that vehicle had just shot at her and the other officers. She then fired two shots, aiming at the driver’s window and the driver attached to the hand. It should be noted that approximately five seconds passed between the sound of the last shot heard by named employee #3 and when she fired her gun at the driver of the car. She did not report seeing any muzzle flash coming from the car, nor did she observe the driver shooting or holding a gun in his hand. Based on the totality of the circumstances known to named employee #3 at the time, she had insufficient factual basis to conclude that the driver or other occupants of the vehicle were acting or threatening to cause death or serious physical injury, or that they had the means or instrumentalities to do so. Based on the preponderance of the evidence, the Director concluded that named employee #3 used deadly force on the occupants of the vehicle and that, given the totality of the circumstances known to her at the time she did not have a reasonable basis to believe that any of those persons posed an imminent threat of death of serious physical injury.

Recommended Finding: Sustained