



## NYE Shooting

Officers initiated a traffic stop of a vehicle on New Year's Eve 2018. The driver (Subject) exited the car and ran across Aurora Avenue; six officers pursued him on foot. When they caught up to him, he and the officers went down to the ground. While the Subject was on his hands and knees, body-worn video (BWV) indicated he was in possession of a firearm. Officers gave him numerous commands, including orders to "stop reaching" for the firearm. The Named Employee (NE) then fired one shot that killed the Subject. BWV audio captured the Subject saying, "nope, not reaching" as the shot was fired virtually simultaneously.

OPA subsequently [initiated an investigation](#) and classified three policies for review: use of force, use of deadly force, and de-escalation. The first two were purposed to determine whether the force used was reasonable, necessary, and proportional based on the facts and circumstances available at the time. The third was purposed to determine whether it was safe and feasible to use any of the options set forth in policy prior to pursuing the Subject/using force and if there was any reasonable alternative to using force that would not have compromised legitimate law enforcement priorities.

[OPA found](#) that, at the time deadly force was used, the NE and other officers perceived the Subject to present a deadly threat. The officers were aware there was a handgun on the ground and they observed the Subject grip it. They gave the Subject multiple orders to stop resisting and to stop reaching for the handgun, but he was non-compliant. Even had the NE heard the Subject state "nope, not reaching," which the NE denied, it would have been nearly impossible for him to change his perception that the Subject presented a threat and diametrically shift his approach and not fire a shot—all within 0.64 seconds. The entire incident lasted 22 seconds and, during virtually the whole time, the Subject gave no indication that he had ceased posing an imminent threat. OPA also found that, when the NE used a contact shot in this situation, he acted consistent with his training.

Regarding de-escalation, OPA concluded that the officers attempted to de-escalate at the time of the traffic stop by calling for backing units and providing clear directions to the Subject. However, when the Subject fled, no further de-escalation was safe or feasible. Once the officers and the Subject were struggling on the ground and the Subject had immediate access to a handgun, de-escalation remained not safe and feasible. Accordingly, OPA found that the NE complied with SPD policy.

Lastly, [OPA recommended](#) that the Department consider training officers on how to use neck or carotid restraints in deadly force situations. OPA noted that, based on its investigation, the use

of such a tactic would not have been appropriate in this case. However, it could affect the outcome of a future case and would give officers options other than a contact shot.

OPA issued a [press release](#) on October 16, 2019, outlining the above findings.

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## Search Allegation

The Complainant, a juvenile female, alleged that the NE used excessive force when he grabbed her arm and painfully handcuffed her. It was further alleged that the NE may have facilitated an illegal search when he gave the Complainant's purse to her mother, who searched the purse.

OPA found that the NE used force consistent with policy when he grabbed the Complainant's arm, pulled her out of her mother's home, and placed her into handcuffs. At the time, the NE believed that the Complainant may have assaulted her mother by pushing past her into the home. The Complainant was non-compliant and, as such, the NE was permitted to use appropriate force to control and temporarily detain her to investigate a potential DV assault.

[OPA found](#) the search to be within policy, and therefore deemed the allegation unfounded based on the following facts:

- (1) The NE did not ask the mother to conduct the search;
- (2) The NE did not, himself, search the purse or articulate the desire to do so;
- (3) The NE took no steps to make the mother an agent of the police; and
- (4) The mother intended to search the purse independent of any action taken by the NE.

This finding was consistent with case law, specifically *U.S. v. Mazzearella*. In *Mazzearella*, the Ninth Circuit found that the Fourth Amendment's warrant requirement applies to a search by a private individual when "the government knew of or acquiesced in the intrusive conduct" and "the party performing the search intended to assist law enforcement efforts [rather than] further his or her own ends."

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