




CLOSED CASE SUMMARY

ISSUED DATE: JUNE 9, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0055

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	8.300 – Use of Force Tools 8.300-POL-2 Use of Force – TASER / Conducted Electrical Weapons 4. Officer May Use TASERs in the Following Circumstances	Not Sustained - Lawful and Proper
# 2	8.200 - Using Force (1) Use of Force: When Authorized	Not Sustained - Lawful and Proper
# 3	De-Escalation, 8.100 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics to Reduce the Need for Force	Sustained
# 4	15.180, Primary Investigations, 15.180-POL-5 Officers Shall Document all Primary Investigations on a Report	Not Sustained - Unfounded

Imposed Discipline

Oral Reprimand

Named Employee #2

Allegation(s):		Director's Findings
# 1	6.180 - Searches-General 1. Officers May Only Make Searches Under a Search Warrant Unless a Specific Exception Applies	Not Sustained - Training Referral
# 2	5.100 - Operations Bureau Individual Responsibilities III. Patrol Sergeant A. Responsibilities 1. Direct supervision of police officers	Sustained

Imposed Discipline

Oral Reprimand

Named Employee #3

Allegation(s):		Director's Findings
# 1	8.200 - Using Force (1) Use of Force: When Authorized	Not Sustained - Lawful and Proper
# 2	De-Escalation, 8.100 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics to Reduce the Need for Force	Not Sustained - Training Referral

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.



EXECUTIVE SUMMARY:

The Complainant—a lieutenant and watch commander—flagged several policy violations during the named employees’ response to a disturbance call involving Community Member #1 (CM#1) reportedly throwing burning items from her third-floor balcony.

ADMINISTRATIVE NOTE:

The Office of Inspector General reviewed OPA’s investigation and certified it as thorough, timely, and objective.

During its intake investigation, OPA noted that Named Employee #1 (NE#1) may have failed to operate his police vehicle safely. GPS data showed NE#1 drove up to 54 miles per hour, overtaking other responding units. Although NE#1 drove in response to an emergency call, his driving was likely unreasonable and appeared to violate SPD Policy 13.030-POL-5 (“Officers are responsible for the safe operation of their police vehicle.”). OPA returned that allegation to the chain of command for Supervisor Action.¹

SUMMARY OF INVESTIGATION:

Several SPD officers—including NE#1 and Named Employee #3 (NE#3)—responded to a call reporting CM#1 threw burning items from her third-floor balcony. Named Employee #2 (NE#2), a sergeant, also responded. The officers arrived and entered CM#1’s apartment. CM#1 was inside a bathroom with the door partially closed. For about four-and-a-half minutes, CM#1 spoke with officers, threw items, and swung a belt through the partial door opening. As CM#1 leaned through the doorway, NE#1 deployed his TASER and entered the bathroom. NE#1, NE#3, and other officers removed CM#1 from the bathroom, handcuffed her, and took her into custody. CM#1 had several injuries, including a TASER prong in her right chest, a bloody elbow, and minor scrapes and redness on her chest, forehead, and back.

The Complainant reviewed the force used against CM#1.² The Complainant emailed OPA with multiple concerns, including whether the officers lawfully entered CM#1’s home, the TASER application, other uses of force, and the lack of de-escalation and supervision.

OPA opened an investigation. During its investigation, OPA reviewed the OPA complaint, computer-aided dispatch (CAD) call report, incident, and supplemental reports, Type II Use of Force documents and reviews, GPS records, and body-worn videos (BWV). OPA also interviewed NE#1, NE#2, and NE#3.

a. Body-Worn Video

OPA reviewed several BWVs related to this incident. In summary, they showed:

¹ A supervisor action generally involves a minor policy violation or performance issue that the employee's supervisor best addresses through training, communication, or coaching. OPA’s Internal Operations and Training Manual 5.4(B)(ii).

² SPD policy categorizes uses of force by “type.” The lowest type is *de minimis* force, and Type III is the most severe use of force. A Type II Use of Force is force that “causes or is reasonably expected to cause physical injury greater than transitory pain but less than great or substantial bodily harm.” See SPD Policy 8.400-POL-1. TASER deployments are reviewed as at least a Type II Use of Force. See *id.*



NE#1 and two other officers arrived on the scene. Outside CM#1's apartment building, NE#1 and other officers saw CM#1 throwing burning items from her balcony. NE#1 said he saw CM#1 "lighting stuff on fire."



BWV captured CM#1, telling officers, "You're mind control," and demanding they bring her "...some fucking wine." NE#1 encountered the 9-1-1 caller, who let the officers inside the building and confirmed CM#1's unit number.

NE#1 and two other officers entered the building, and a fourth SPD officer joined them in the elevator. In the elevator, NE#1 said he saw "the silhouette of flames" inside CM#1's apartment. The officers discussed setting up a contact team, and NE#1 agreed to be "TASER," and another officer agreed to be "lethal."⁴

The officers arrived at CM#1's unit, and NE#1 communicated with CM#1 through the closed door. NE#1 told CM#1 he had the items she requested, like "wine" and "toilet paper." NE#2 joined the other officers outside CM#1's apartment door. NE#2 asked if there was a fire. NE#1 responded affirmatively. Other officers told NE#2 that CM#1 was "throwing it off the balcony," and flames were seen inside her unit. NE#2 said, "Well, let's go then." Officers tried the doorknob and found it was locked, so NE#1 kicked it open.

The officers entered and saw CM#1 throwing items out of a partially open bathroom door. She also swung a belt through that opening. NE#1 cleared clutter—including a large box chest—from the bathroom door as CM#1 swung a belt through the cracked door.

³ Burning items thrown from CM#1's balcony are circled in red.

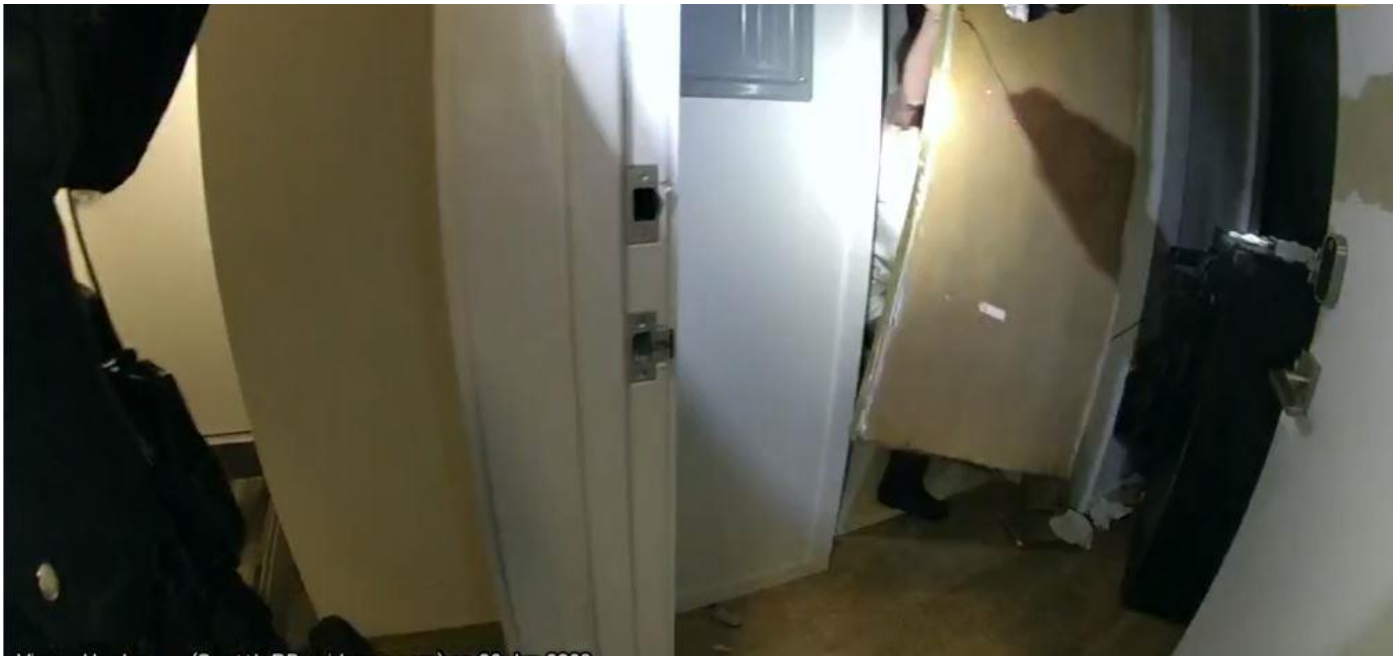
⁴ SPD officers are trained to form a "contact team" and to designate officer roles based on the level of resistance presented. Typical roles include "verbal," "hands," "less lethal" (such as TASER), and "lethal."



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NE#2 asked whether there was an active fire. An officer replied that he did not see a fire. NE#1 asked, "Do you smell that?" CM#1 then threw a large mirror at NE#1.

⁵ View from NE#1's BWV of the bathroom door upon entering the apartment. A mirror is on the bathroom floor in the doorway.



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After throwing the mirror, CM#1 retreated into the bathroom and partially shut the door. NE#1 kicked the bathroom door but did not enter. NE#2 instructed NE#1 to step back, and NE#1 complied. Witness Officer #1 (WO#1) said, "I just want to make sure that there's no fire." NE#1 responded, "Okay, well, we need to deal with her before...." NE#2 told WO#1 to speak with CM#1. CM#1 twice swung a belt through the partially open door at NE#1 but did not strike NE#1.



⁶ View from NE#1's BWV of CM#1 throwing a mirror at NE#1.

⁷ View from NE#1's BWV of CM#1 swinging a belt. The swinging belt is circled in red. NE#1 is holding a TASER.



WO#2 spoke with CM#1 for over three-and-a-half minutes, trying to convince her to exit the bathroom. CM#1 periodically poked her head out of the bathroom and said, "Fifty-six billion people are watching in America," she was "Vladimir Putin and KGB's concubine." She also repeatedly demanded wine, tobacco, marijuana, toilet paper, and dish soap, said she was a "concubine and burlesque artist," claimed "international aid" and "INTERPOL" were on their way, and said there was a "monopoly in the media and the entire world is watching." NE#1 told NE#2 that the stove/hotplates inside the apartment were on, that items were on it, and "might catch on fire later." CM#1 interjected, "No, it won't. It's out." CM#1 also accused NE#1 of "trespass" on "Russian property." NE#2 left to retrieve a ballistic shield from his police vehicle. NE#2 returned about two minutes later with a ballistic shield and asked the officers, "Who wants this?" No one appeared to respond.

CM#1 poked her head out of the bathroom door, NE#1 said, "Stay back," while aiming his TASER at CM#1. About two seconds later, NE#1 ordered CM#1 to "Step out, please." About five seconds later, CM#1 opened the door partially, demanded "wine," and pointed her right index finger at NE#1 while holding a belt.



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CM#1 leaned out of the door, exposing her head and part of the left side of her body. NE#1 deployed his TASER.

⁸ CM#1 pointing her right index finger while holding a belt. The belt's buckle is visible below CM#1's pinkie finger. The red dots on the wall are from NE#1's TASER.



After NE#1 deployed his TASER, CM#1 reentered the bathroom, and NE#1 followed. CM#1 turned from NE#1, crouched down, and laid on her back. NE#1 stood over CM#1 and grabbed her hands. WO#1 and another officer stood behind NE#1. NE#3 entered the bathroom, partially closing the bathroom door behind him. CM#1 repeatedly said “Ow” and that she was “gentle” and “not resisting.”

An unknown officer asked, “What do you want to do?” An unidentified officer responded, “We’re going to open the door.” NE#3 opened the bathroom door and grabbed CM#1’s wrists, one in each hand. With CM#1 still on her back, NE#3 pulled CM#1 out of the bathroom. As CM#1’s body exited the bathroom, NE#3 yelled at CM#1, “On your stomach! On your stomach! On your stomach! Roll over!” NE#3 and other officers rolled CM#1 onto her stomach, put her hands behind her back, and handcuffed her.

The Seattle Fire Department (SFD) entered the apartment to ensure there were no active fires. CM#1 was escorted into the hallway, where she was placed in a seated position. A TASER probe was captured on her upper right chest. BWV also showed redness on CM#1’s forehead and back and a bleeding cut on her elbow. SFD treated CM#1 at the scene.

b. OPA Interview – Named Employee #1

OPA interviewed NE#1. NE#1 said he has worked at SPD since September 2020.

⁹ CM#1 leaning out the door before NE#1 TASED her. The red dot is one of two targeting dots from NE#1’s TASER.



NE#1 said he was a backing officer during the response in question. NE#1 described seeing the “glow” of flames inside CM#1’s apartment upon his arrival and being concerned about the “people living in that apartment building, which was quite large, multiple units, multiple floors.” NE#1 heard CM#1 making “nonsensical statements” and him unsuccessfully trying to build a rapport with her. NE#1 described a “hasty plan” with other officers in the elevator to form a “contact team,” where he was designated the TASER operator.

NE#1 said when NE#2 arrived, the officers determined there was an exigency to force entry to the apartment. NE#1 said he kicked the door open after establishing it was locked.

NE#1 said CM#1 retreated into a bathroom when the officers entered. NE#1 said, “[CM#1] assaulted me by throwing a large mirror at me as well as attempting to strike myself and other officers with a belt that had metal in it.” NE#1 said CM#1’s behavior created danger and urgency, as he did not know whether CM#1 had access to other weapons or combustibles or whether there were active fires inside the apartment. NE#1 “felt that [the officers] had to take her into custody in a quick manner.”

NE#1 kicked the bathroom door before NE#2 ordered him to move. NE#1 repositioned to cover the door with his TASER while WO#1 spoke with CM#1. NE#1 said WO#1 could not establish a rapport with CM#1, who made nonsensical statements. NE#1 said CM#1 “present[ed] more of her body out the door, and still had the belt in her hand,” so NE#1 deployed his TASER at her.

NE#1 said his TASER struck CM#1 but did not incapacitate her. NE#1 said the TASER sufficiently startled CM#1, allowing him to enter the bathroom. NE#1 said he controlled CM#1’s hands as other officers entered the bathroom. NE#1 said the bathroom was “quite small,” and the door prevented other officers from assisting him with handcuffing CM#1. NE#1 said he directed the bathroom door to be opened for CM#1 to be escorted out. NE#1 said NE#3 grabbed CM#1’s hands and took her into the hallway, “more of an open area,” where CM#1 was handcuffed.

c. OPA Interview – Named Employee #2

OPA interviewed NE#2, who said he has worked at SPD since 2014 and was promoted to sergeant in May 2022.

NE#2 described responding to the incident when other officers and SFD were present. NE#2 recounted smelling smoke as he approached CM#1’s apartment. NE#2 said NE#1 breached the apartment door, and CM#1 “assaulted the contact team as they attempted to make their way in to effect an arrest on [CM#1] under exigent circumstances.” Specifically, NE#2 said CM#1 threw a large mirror and “whipped at officers with a studded belt.”

NE#2 said he attempted to “slow the situation down and de-escalate” by assigning officer roles, including WO#1, to negotiate with CM#1. NE#2 planned to use a ballistic shield to approach and arrest CM#1 safely. However, NE#2 said NE#1 deployed his TASER shortly after NE#2 arrived with the ballistic shield when NE#2 directed officers to arrest CM#1.



d. OPA Interview – Named Employee #3

OPA interviewed NE#3, who said he worked at SPD for three years.

NE#3 described arriving at the scene, entering the building, and approaching CM#1's apartment. NE#3 said he stood in the hallway behind NE#1 and WO#1, who engaged CM#1. NE#3 said he formed a separate contact team with other officers "in case something happened where we had to go in and go hands-on and take her into custody."

NE#3 said after NE#1 deployed his TASER, "Four other officers went into the bathroom." NE#3 described the bathroom as about "...four feet by three feet. It's very small." NE#3 said he was the fifth officer to enter the bathroom and that NE#1 was the only officer physically controlling CM#1. NE#3 said he grabbed CM#1's hands to give NE#1 a "break so he could kind of collect himself." NE#3 was concerned about a struggle inside the bathroom, so he "found it best to remove her... to the threshold of the door, which is where I began to take her into custody."

NE#3 said he "...yelled verbal commands such as 'roll on your stomach' and 'give me your hands.'" NE#3 also said officers outside the bathroom assisted with handcuffing CM#1. NE#3 said he used *de minimis* force on CM#1, but she sustained "some markings and abrasions" on her back and elbow.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.300 – Use of Force Tools 8.300-POL-2 Use of Force – TASER / Conducted Electrical Weapons 4. Officer May Use TASERS in the Following Circumstances

It was alleged NE#1 was unauthorized to deploy his TASER.

TASER usage must be objectively reasonable, necessary, and proportional. See SPD Policy 8.300-POL-2(4). Additionally, an officer may only use a TASER when (1) a subject "causes an immediate threat of harm to any person" or (2) when public safety interests require the subject to be taken into custody and the level of resistance presented by the subject is likely to cause injury to the officer or subject and hands-on control tactics or other force options would likely cause greater injury to the subject than the use of the TASER. *Id.*

Here, NE#1's TASER application was a close call. In their force reviews, the Complainant—NE#1 watch commander—and NE#1's precinct commander disagreed about whether it was objectively reasonable, necessary, and proportional. The Complainant thought it was not, citing, among other things, the opportunity for further dialogue and CM#1's slight stature. However, NE#1's precinct commander thought the force was necessary to apprehend CM#1 after she barricaded herself, set fires, and used a large mirror as a weapon. NE#1's precinct commander also argued the officers were unaware of CM#1's size or whether she had other weapons or combustibles. While de-escalation tactics may have prevented the use of force,¹⁰ NE#1's use of force was within policy.

Considering "the fact that police officers are often forced to make split-second decisions—in circumstances that are tense, uncertain, dynamic, and rapidly evolving—about the amount of force necessary," NE#1's TASER deployment was objectively reasonable. The suspected crimes were serious and dangerous, and CM#1's resistance was

¹⁰ De-escalation tactics are addressed at Named Employee #1 - Allegations #3.



appreciable—she threw a large mirror and swung a belt repeatedly at the officers. NE#1 had a limited opportunity to act once CM#1 partially exited the bathroom. Moreover, WO#1’s unsuccessful attempts to build a rapport with CM#1 lasted over three-and-a-half minutes.

Further, as noted by NE#1’s precinct commander, the force was necessary to apprehend CM#1, given the danger posed by her setting fires. There was no indication CM#1 could be taken into custody peacefully or that she would surrender. While additional rapport efforts could have possibly brought a peaceful resolution, it was just as plausible that CM#1 would fully barricade herself in the bathroom and set more fires.

NE#1’s force was also proportional since CM#1 used weapons to defeat apprehension. Shortly before NE#1 deployed his TASER, CM#1 still held the belt she swung earlier. CM#1 appeared agitated. NE#1 used Type II force, similar to the resistance CM#1 presented. See SPD Policy 8.050 (“Proportional force does not require officers to use the same type or amount of force as the subject.”). Further, NE#1 was not required to wait until CM#1 threw another item or swung her belt again for his TASER usage to be proportional.

In addition to being objectively reasonable, necessary, and proportional, SPD policy additionally requires one of two circumstances before a TASER is used: (1) a subject “causes an immediate threat of harm to any person,” or (2) when public safety interests require the subject to be taken into custody, and the level of resistance presented by the subject is both likely to cause injury to the officer or subject and hands-on control tactics or other force options would likely cause greater injury to the subject than the use of the TASER. Again, while a close call, both circumstances were present here.

Before NE#1 TASED CM#1, she resisted apprehension by throwing a mirror at NE#1 and swinging a belt when NE#1 approached. CM#1’s right hand—which was seen holding the belt seconds earlier—was obscured while CM#1’s left pointer finger was pointed towards NE#1 while CM#1 demanded “wine.” CM#1 was within four feet from NE#1, and her demeanor appeared unchanged. CM#1 demonstrated the means and motivation to harm NE#1 immediately. Alternatively, public safety interests required that CM#1 be taken into custody: minutes earlier, CM#1 had lit fires inside her apartment. There was no way to confirm no more active fires inside CM#1’s apartment without entering. Nor would it have been reasonable to assume CM#1 would stop lighting fires if the police and SFD personnel left the scene. Moreover, since CM#1 was barricaded and using improvised weapons, hands-on control tactics or OC spray may have caused greater injury to CM#1 than the TASER.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper**

Named Employee #1 - Allegation #2

8.200 - Using Force (1) Use of Force: When Authorized

It was alleged NE#1 used excessive force by deploying his TASER on CM#1.

Force used by officers must be reasonable, necessary, and proportional. SPD Policy 8.200(1). Officers shall only use “objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective.” *Id.* Whether force is reasonable depends “on the totality of the circumstances” known to the officers at the time of the force and must be balanced against “the rights of the subject, in light of the



circumstances surrounding the event.” SPD Policy 8.050. Reasonableness must consider that officers are often forced to make “split-second decisions” in tense, dynamic circumstances. *Id.* The policy also lists several factors that should be weighed when evaluating reasonableness. *See id.* Force is necessary where “no reasonably effective alternative to the use of force appeared to exist” and “the amount of force used was reasonable to effect the lawful purpose intended.” *Id.* Lastly, the force used must be proportional to the threat posed to the officer. *Id.*

For the reasons at Named Employee #1 - Allegation #1, OPA recommends this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper**

Named Employee #1 - Allegation #3

De-Escalation, 8.100 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics to Reduce the Need for Force

It was alleged NE#1 failed to de-escalate by not retreating or warning CM#1 that he would use his TASER.

“When safe, feasible, and without compromising law enforcement priorities, officers will use de-escalation tactics to reduce the need for force.” SPD Policy 8.100-POL-1. Officers are also encouraged to use team approaches to consider whether any officer has successfully established rapport with the subject. *Id.* The selection of de-escalation options is to be guided by the “totality of the circumstances.” The policy gives several examples of de-escalation, emphasizing communication, time, distance, and shielding to minimize the need for force. *Id.*

Although OPA finds NE#1’s TASER deployment within the policy as a force application, NE#1 did not comply with SPD’s de-escalation policy. Had NE#1 done so, the immediacy of his actions would have been removed to “promote a thoughtful resolution” to the situation and “reduce the likelihood of harm to all persons involved.” SPD Policy 8.100. In his Use of Force Review, the Complainant discussed de-escalation through the lens of scene management. OPA shares the Complainant’s concerns, addressed at Named Employee #2 - Allegation #2. Separately, OPA finds NE#1 violated SPD’s de-escalation policy in two ways.

First, even though it was safe and feasible, NE#1 failed to shield himself from CM#1’s actions. A decisive aspect of OPA’s force analysis was based on NE#1’s proximity to CM#1, within striking distance of the specific, immediate threats she posed—throwing objects and swinging her belt. NE#1 was not required to maintain that position, nor was it prudent for him to do so. After NE#1 stepped back to avoid being hit by the mirror CM#1 threw, NE#1 kicked the bathroom door before NE#2 told him to step back. NE#1 remained inside the apartment doorway, exposed to the threats posed by CM#1, even as CM#1 swung her belt out of the bathroom doorway. Instead, NE#1 could have kept the apartment door open while backing into the hallway. This would have allowed him to maintain a visual inside the apartment and towards the bathroom door while shielding and distancing himself from the immediate threats posed by CM#1. It also would have allowed the officers to continue rapport-building efforts or time to use the ballistic shield.

Second, NE#1’s communication concerning his TASER did not comport with SPD’s de-escalation policy. NE#1 did not, in a “calm and explanatory manner,” “warn [CM#1] before a TASER application.” SPD Policy 8.100(1). Although NE#1 said a warning was unfeasible immediately before his TASER deployment, he never issued a warning at any point during the approximately four-and-a-half minutes between breaching the apartment door and deploying his TASER, despite verbally engaging with CM#1 during this time. Moreover, NE#1’s orders were unclear. He told CM#1 to “stay



back” and “step out” within two seconds. Considering CM#1’s disposition and/or “fear or anxiety,” NE#1’s unclear communication reduced her chance of avoiding the use of force. Also, as noted in the Complainant’s Use of Force review, when CM#1 did look out the bathroom door to speak with WO#1, NE#1’s TASER was up, which may have negatively affected the chances of a peaceful resolution. Similarly, NE#1 failed to warn other officers before using his TASER, despite such a warning being explicitly required by the policy when feasible. See SPD Policy 8.300(9). This lack of communication eliminated the possibility of a planned team approach after deploying the TASER.

Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #4

15.180, Primary Investigations, 15.180-POL-5 Officers Shall Document all Primary Investigations on a Report

It was alleged NE#1 did not completely, thoroughly, and accurately document the threat posed by CM#1 when reporting on his TASER deployment.

Officers document all primary investigations in a report. SPD Policy 15.180-POL-5. All reports must be complete, thorough, and accurate. See *id.*

This allegation was based on NE#1’s alleged failure to thoroughly and accurately describe his justification for a TASER deployment. The allegation concerned CM#1, throwing the mirror and swinging her belt. This allegation is unfounded.

In his Type II Use of Force statement, NE#1 wrote the following statements:

- “She began swinging a metal studded leather belt out of the door, attempting to strike me with it.”
- “She then picked up a large mirror and attempted to throw it at me, but it fell short and shattered. This mirror could have struck me, and the glass could have shattered in a way that struck and injured me or other officers.”

Although neither the mirror nor the belt caused NE#1 any injuries, OPA finds more likely than not that these statements thoroughly and accurately recorded CM#1’s actions as well as reasonable inferences NE#1 made about CM#1’s intent.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #2 - Allegation #1

6.180 - Searches-General 1. Officers May Only Make Searches Pursuant to a Search Warrant Unless a Specific Exception Applies

It was alleged NE#2 and officers under his command remained inside CM#1’s residence after the exigency ended.



SPD Policy forbids officers from making warrantless searches unless a specific exception applies. See SPD Policy 6.180(1). SPD policy provides exceptions for community caretaking, see SPD Policy 6.180-POL-1, and for exigent circumstances. See SPD Policy 6.180-POL-3.

The Complainant alleged that officers established no active fire inside the apartment shortly after breaching the apartment door. The Complainant alleged NE#2 should have ordered the officers to leave the apartment unit at that point at retreat “to a vantage point for negotiations with [CM#1] to surrender.”

However, the officers had not established that there were no active fires inside the apartment. Shortly after breaching the apartment door, WO#1 said she could “already see there was no active fire,” but seconds later, WO#2 pushed the apartment door open further and said, “I just want to make sure that there’s no fire.” The officers appeared uncertain whether a fire still burned inside the apartment.

Separately, as a matter of policy, there was no need for an active fire for officers to remain lawfully inside the apartment. Instead, officers were authorized to stay inside the apartment until CM#1 was in custody, under the exceptions of community caretaking or exigent circumstances. Concerning community caretaking, (1) the officers believed CM#1 would continue to set fires unless she was apprehended, (2) a reasonable person in the officer’s situation would believe that the officers needed to act to prevent CM#1 from continuing to light fires inside a large, multi-unit apartment building; (3) the officers went no further inside the apartment than necessary to apprehend CM#1 and determine that no active fires were burning; (4) if CM#1 were left alone inside the apartment unit, there would be an imminent threat or both injury to persons and substantial property damage; and (5) CM#1 and other building residents needed immediate help to prevent CM#1 from continuing to light fires. Viewed from the lens of an exigent circumstance, (1) the crimes involved, reckless burning¹¹ and reckless endangerment,¹² both create serious risks of damage to property or injury to people; (2) the officers had reason to believe that CM#1 was armed not only with improvised weapons such as the belt but also had the means inside her apartment to continue setting fires; (3) CM#1 was the only person the officers encountered inside the apartment, and they had a reasonable basis to believe she committed the crime; (4) the officers saw CM#1 inside her apartment; and (5) the officers identified themselves and gave CM#1 a chance to surrender before entry.

OPA agrees with the suggestion from NE#2’s precinct commander that the best course of action was to exit the apartment and observe the interior through the open apartment door after CM#1 barricaded herself in the bathroom. This would have been feasible and the best course of action from a de-escalation standpoint. Moreover, it would have been the most prudent course of action—though not required—in the context of the warrantless entry. Although OPA does not find that NE#2 violated SPD Policy 6.180, when OPA asked NE#2 why he did not order his officers to exit the apartment and observe through the open door, NE#2 responded that he “didn’t think [of] that.”

Accordingly, OPA issues a training referral for this allegation. OPA knows that NE#2 described debriefs he conducted following this incident and appreciates his candor during his OPA interview, that this had been a “big learning experience” for him.” To that end, OPA directs NE#2’s chain of command to review this situation with NE#2 and

¹¹ “A person is guilty of reckless burning if he intentionally causes a fire or explosion and thereby recklessly places a building of another in danger of destruction or damage.” SMC 12A.08.030.

¹² “A person is guilty of reckless endangerment when he recklessly engages in conduct which creates a substantial risk of death or serious bodily injury to another person.” SMC 12A.06.050.



conduct whatever additional training and counseling it deems appropriate in consultation with the Training Unit or other specialized units of the Department.

- **Training Referral:** NE#2's chain of command should discuss OPA's findings with NE#2, review SPD Policies 6.180(1), 6.180-POL-1, and 6.180-POL-3 with NE#2, and provide any further retraining and counseling that it deems appropriate. The retraining and counseling may include consultations with the Training Unit or other specialized units within the discretion of the chain of command. Retraining and counseling must be documented and maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**

Named Employee #2 - Allegation #2

5.100 - Operations Bureau Individual Responsibilities III. Patrol Sergeant A. Responsibilities 1. Direct supervision of police officers

It was alleged NE#2 failed to adequately supervise officers under his command, resulting in a lack of de-escalation and tactical planning.

SPD Policy states that patrol sergeants are responsible for the direct supervision of their subordinate police officers. See SPD Policy 5.100(III)(A)(1).

As an initial matter, OPA does not find that NE#1 abdicated his responsibility to supervise his officers. After arriving, NE#2 apprised himself of the situation, assigned roles to officers, directed NE#1 to back away from the bathroom door, directed WO#1 to speak with CM#1, and talked to WO#1 about the utility of having a ballistic shield for the situation. However, for the reasons noted by the Complainant and precinct commander in their Type II Use of Force reviews, NE#2's scene management fell below standards. Specifically, (1) NE#2 did not provide clear roles or instructions to the approximately thirteen officers in the hallway, (2) many officers and SFD personnel were in tactically poor positions, (3) NE#2 did not provide clear directions after NE#1 deployed his TASER, and (4) NE#2 left the scene to retrieve a ballistic shield, a task he should have delegated to another officer.

Ultimately, the above concerns were principally tactical and have already been debriefed with NE#2. OPA also recognizes that NE#2 stated he was promoted to sergeant in May 2022, and this incident occurred about six months later in November. OPA also considered NE#2's interview comments that he received conflicting feedback concerning whether he should have provided more guidance to NE#1, NE#3, and WO#1 during this incident or if it was more appropriate to allow them the discretion to judge the situation from their closer vantage point. However, OPA finds that, at a minimum, NE#2 should have recognized the de-escalatory need to direct NE#1 further back, fully outside the apartment unit, where he could take advantage of additional distance and shielding. Instead, he allowed NE#1 to remain in position, exposed to the threat from CM#1, and in a position that increased the potential need for force. Just as there was sufficient time for NE#1 to feasibly recognize the need to step back from his position, NE#2 similarly had time to recognize the need and order NE#1 to back further away.

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**



Named Employee #3 - Allegation #1

8.200 - Using Force (1) Use of Force: When Authorized

It was alleged NE#3 used excessive force when he grabbed CM#1 and pulled her from her bathroom.

NE#3's use of force—grabbing CM#1 by both wrists and pulling her out of the bathroom—was objectively reasonable, necessary, and proportional. After NE#1 deployed his TASER, the need to secure CM#1 in handcuffs was high so that CM#1 could be medically treated, the apartment safely searched for fire, and the scene cleared. However, the bathroom was small, and the officers had inadequate space to work together to place CM#1 into handcuffs. Moreover, NE#3 stated in his interview—and BWV corroborated—that CM#1 was passively resisting the officers by not complying with officers and allowing herself to be handcuffed. Under these circumstances, NE#3 used *de minimis* force to pull CM#1 out of the bathroom by her wrists. This was objectively reasonable, necessary to effect his lawful purpose of placing CM#1 into handcuffs, and proportional to the resistance offered by CM#1. Although it is possible CM#1 suffered some scratching or cuts from being pulled out of the bathroom, OPA cannot find by a preponderance of the evidence that those injuries were attributable to NE#3, and—moreover—it is likely CM#1 would have suffered similar or greater injuries had officers continued to struggle with her in a crowded bathroom.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper**

Named Employee #3 - Allegation #2

De-Escalation, 8.100 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics to Reduce the Need for Force

It was alleged NE#3 did not use de-escalation, including aggressively yelling at CM#1 while working to handcuff her.

NE#3 yelled at CM#1, “On your stomach! On your stomach! On your stomach! Roll over!” before he and other officers used *de minimis* force to roll CM#1 onto her stomach and place her in handcuffs. The volume and tone of these instructions were unnecessary, needlessly aggressive, and not in line with “verbal techniques, such as Listen and Explain with Equity and Dignity (LEED) to calm an agitated subject and promote rational decision making.” Under the circumstances, while this behavior possibly violated the Department’s de-escalation policy, OPA finds that any violation was minor and did not rise to the level of serious misconduct.

Accordingly, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#3's chain of command should discuss OPA's findings with NE#3, review SPD Policy 8.100(1) with NE#3, and provide any further retraining and appropriate counseling. The retraining and counseling must be documented, and this documentation should be maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**