



## CLOSED CASE SUMMARY

ISSUED DATE: MARCH 16, 2018

CASE NUMBER: 2017OPA-1053

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

**Named Employee #2**

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	8.300-POL-3 Use of Force - CEW/CONDUCTED ELECTRICAL WEAPONS (TASER) 4. Officers Shall Only Deploy CEW When Objectively Reasonable.	Not Sustained (Lawful and Proper)

***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 Department Administrative Lieutenant, reported that the subject alleged that the Named Employees subjected him to excessive force when they used a Taser and other force to take him into custody.

**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegation #1**

***8.200 - Using Force 1. Use of Force: When Authorized***

Named Employee #1 (NE#1) was dispatched to a theft call and was advised that it was the same suspect who had committed a robbery the day prior. While on his way to respond to the call, another theft call was broadcasted and NE#1 diverted to this call because he believed it to be the same suspect. NE#1 requested that Named Employee #2 (NE#2) back him. The Named Employees located the suspect and the stolen items. The Named Employees advised the suspect that he was being arrested and attempted to take control of his arms. The suspect resisted and tried to assault the Named Employees. During that time the subject threatened to bite the officers and attempted to do so. The suspect began to overpower the Named Employees and was able to free himself and flee.

The suspect attempted to gain entry onto a Metro Bus but was unable to do so and continued to flee. When the Named Employees caught up to him, they noticed that there were several open businesses in the vicinity that they were concerned the subject would enter. NE#2 ordered the suspect to get on the ground and told him that he would be Tased if he did not do so. NE#2 also demonstrated an “arc test” (which is basically a warning shot where the front of the Taser sparks but the prongs are not fired) to the suspect to get him to comply. NE#2 repeated the command to get on the ground a second time and performed a second arc test. When the suspect did not comply, he was



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Tased. After the suspect went down to the ground, NE#1 rolled the suspect onto his chest and handcuffed him. NE#1 placed his left knee in the small of the suspect's back to control him.

The subject was interviewed by a sergeant after the force application. The subject stated that he was running down the street attempting to bite people and that he tried to bite the officers. The subject alleged that the officers bruised his back and pushed his head onto the ground. He further claimed that he hit his chin on the ground after he was Tased. I note that both Named Employees denied pushing the subject's head into the ground or viewing an injury to his chin consistent with it hitting the ground after he was Tased.

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary, and proportional. 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 8.200(1).) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where "no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose." (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

Here, I find that the force used to arrest the subject and to take him into custody was reasonable, necessary, and proportional. First, at the time the force was used, the officers had probable cause to arrest the subject. When he resisted arrest, struggled with the officers, attempted to bite them, fled the scene, and then refused the officers' commands to get on the ground, it was reasonable to use force to take him into custody. The force used – a Taser application and de minimis force to hold the subject onto the ground and handcuff him – was reasonable under the totality of the circumstances. Second, I find that the officers rationally believed that there was no reasonable alternative to using force and that the force was, thus, necessary to achieve their lawful purposes. Lastly, I find that the force used was proportional to the demonstrated threat facing the officers, as well as the threat facing other civilians. Notably, the subject admitted trying to bite civilians and the officers noted that, at the time they used force, there were a number of open businesses in that location and the officers were concerned that the subject could enter one and harm innocent people.

While the Taser application by NE#2 is discussed more fully below, I find that the force used by the Named Employees was consistent with policy and, as such, I recommend that this allegation be Not Sustained – Lawful and Proper as against them.

Recommended Finding: **Not Sustained (Lawful and Proper)**

**Named Employee #2 - Allegation #1**

***8.200 - Using Force 1. Use of Force: When Authorized***

For the same reasons as stated above (*see* Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**



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**Named Employee #2 - Allegation #2**

***8.300-POL-3 Use of Force - CEW/CONDUCTED ELECTRICAL WEAPONS (TASER) 4. Officers Shall Only Deploy CEW When Objectively Reasonable***

SPD Policy 8.300-POL-3 directs that officers may only deploy Tasers when objectively reasonable under the totality of the circumstances. It further set forth two scenarios in which officers may use Tasers: (1) “When a subject causes an immediate threat of harm to the officer or others”; and (2) “When public safety interests dictate that a subject needs to be taken into custody and the level of resistance presented by the subject is likely to cause injury to the officer or to the subject if hands-on control tactics are used.” (SPD Policy 8.300-POL-3.)

Here, I find that NE#2’s use of a Taser was objectively reasonable under both scenarios. First, the subject was an immediate threat to the officers as he had physically resisted them, tried to bite them, and then fled from them. He had also presented a prior immediate threat to civilians and, in the officers’ opinion, presented an immediate threat to the civilians in the vicinity of where he was Tased. Second, the subject’s arrest was in the interest of public safety and, based on his demonstrated behavior and attempts to assault the officers and others, it was reasonable for the officers to believe that injury would be caused to them or to the subject if further hands-on control tactics were used. Moreover, these tactics had previously been unsuccessful.

For these reasons, the Taser application by NE#2 was objectively reasonable and consistent with policy. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**