



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 2, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0765

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	8.300- POL 2– Use of Force – TASER / Conducted Electrical Weapons 4. Officers May Use TASERS in the Following Circumstances	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 Complainants alleged that the Named Employee engaged in an out of policy Taser deployment.

SUMMARY OF INVESTIGATION:

On December 2, 2020, officers, including Named Employee #1 (NE#1) and Witness Officer #1 (WO#1), were dispatched to a call of a male, potentially in crisis, who was swinging and throwing a large hand axe. Approximately 20 minutes earlier, similar conduct was reported and broadcasted, but the male was not located at that time.

When the officers arrived at the location, they were flagged down by Seattle Fire Department personnel who pointed out a male who matched the description – referred to here as the Subject – and who was still holding the hand axe. The Subject was jaywalking and yelling while swinging the axe. Pedestrians and vehicles were in close proximity to him at the time.

The officers remained in their patrol vehicle and proceeded behind the Subject. They activated the patrol vehicle's emergency lights and gave orders to the Subject to drop the hand axe; however, he did not initially do so. At the time, the officers observed two sheaths on the Subject's person, and it was unclear to them whether they contained additional weapons. After providing further orders to the Subject to drop the hand axe and to get on the ground, he dropped the axe but continued walking. The Subject continued to walk south down 9th Avenue NE. NE#1 went over the radio and called for more SPD units.

The officers continued to tell the Subject to get on the ground; however, he did not do so. Instead, he yelled at them and waved his arms in the air. NE#1 and WO#1 discussed their concerns with the Complainant's conduct and discussed a contact plan. NE#1 went over the radio and requested that other SPD units try to contain the Subject in a less populated area. Eventually, the Subject walked to a large parking lot on 9th Avenue NE, approximately 200 feet from 45th Street, a major intersection.



The officers, who had exited the patrol vehicle, continued to try to gain the Subject's voluntary compliance but were unsuccessful. NE#1 drew his Taser and told the Subject that, if he did not stop and get on the ground, he would be tased. NE#1 pointed his Taser at the Subject and sparked it to demonstrate what would occur. The Subject started running away from the officers through the parking lot. NE#1 followed behind the Subject but did not tase him at that time. The Subject ran towards the eastside entrance of Huckleberry Forest Preschool. At that point, NE#1 deployed his Taser, striking the Subject in the small of his back. This Taser application was ineffective and did not result in neuro-muscular incapacitation. The Subject continued running away. Approximately one second later, NE#1 tased the Subject a second time, again in the small of his back. This second Taser application was also ineffective.

The officers continued to pursue the Subject on foot. Eventually, they were able to catch up with him and stop him. No further force was used. The Subject was placed under arrest. At that time, he did not appear to have any injuries and did not require medical attention. When the Subject was searched incident to arrest, no additional weapons were found on his person.

NE#1 later documented his belief that the Subject could be armed with additional edged weapons. He noted that he could not tell whether any such weapons were in the sheaths or, for that matter, secreted elsewhere on the Subject's person. He wrote that he attempted de-escalation by providing multiple orders to the Subject. He further called for backing units and worked to develop a plan to divert the Subject to a less populated area. Only when these de-escalation attempts did not work did NE#1 decide that force was needed.

With respect to his decision to use the Taser, NE#1 provided the following reasoning:

I did not want to go hands on with [the Subject] as I feared he had edged weapons. [The Subject] gave me no reason to believe he would be compliant with Officers if we attempted to go hands on with him. I felt if we tried, he would assault Officers, causing injury to Officers and [the Subject]. I felt the safest way to take [the Subject] into custody would be a successful taser deployment. [The Subject] needed to be taken into custody as he was a danger to the public.

NE#1 did not deploy his Taser when the Subject initially started running due to the fact that the Subject was on pavement and, if he fell, could suffer significant injury. NE#1 chose to tase the Subject as he neared the school given NE#1's concern that he could come into contact with unsuspecting community members.

NE#1's use of force was later reviewed by his chain of command. The precinct administrative lieutenant felt that the force could potentially be contrary to policy as the Subject had nothing in his hands as he was running away and when the Taser was deployed. The administrative lieutenant made an OPA referral and this investigation ensued.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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



SPD Policy 8.300-POL-5 governs the use of a Taser. The policy provides the following circumstances under which the use of a Taser is appropriate: (A) “When a subject causes an immediate threat of harm to any person; or (B) “When public safety interests dictate that a subject needs to be taken into custody and the level of resistance presented by the subject is: (1) likely to cause injury to the officer; or (2) if hands-on control tactics or other force options would be likely to cause greater injury to the subject than the use of Taser.”

OPA appreciates the critical review conducted by the administrative lieutenant, but OPA ultimately disagrees that the force was contrary to policy. To the contrary, OPA finds that it was appropriate based on the circumstances of this case.

While the administrative lieutenant may arguably have been correct that NE#1 had insufficient evidence to establish that the Subject presented an “immediate” threat to anyone while he was running away, OPA finds that NE#1 articulated a sufficient factual basis to meet the second prong of the policy. Specifically, OPA concludes that, at the time of the tasing, public safety interests necessitated the Subject being taken into custody, that the Subject’s continued resistance and fleeing posed a threat to NE#1 and others and that going hands on would likely result in more harm than the use of the Taser.

In reaching this conclusion, several facts are relevant. First, the Subject had been swinging an axe around prior to the incident and both NE#1 and WO#1 believed it possible that he could have other weapons. This was a reasonable conclusion due to the presence of sheaths on the Subject’s person and the officers’ inability to see everything that he might be carrying or secreting. Moreover, this is not undermined by the fact that the Subject was ultimately deemed to be unarmed. The relevant consideration is what NE#1 believed at the time and whether it was reasonable. OPA answers this question in the affirmative.

Second, the Subject did not respond to the officers’ multiple attempts to de-escalate and, instead, chose to flee the scene. This suggested that he would continue to resist the officers if they went hands-on with him, which could cause injury to both the officers and the Subject. OPA deems the Subject’s fleeing and overall resistance to have been inherently dangerous.

Third, the Subject was in the vicinity of 45th Street, a major thoroughfare, prior to running towards a school, causing an elevation of the risk to community members.

All of these facts convince OPA that the Taser deployments were appropriate to quickly and safely take the Subject into custody. This determination does not change because the deployments were ultimately unsuccessful.

In addition, OPA notes that NE#1 was deliberate concerning when he deployed the Taser. He was careful not to do so while the Subject was running on pavement and waited for a moment where it was less likely that the Subject would suffer significant injury if he fell to the ground after experiencing neuro-muscular incapacitation.

For all of the reasons, OPA finds that NE#1’s Taser deployments were consistent with policy. Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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