

Issued Date: JULY 14, 2023

From: Director Gino Betts, Office of Police Accountability



Case Number: 2023OPA-0047

Allegations of Misconduct & Director's Findings

Named Employee #1

1. **Allegation #1:** 8.300 - Use of Force Tools 4. Officers May Use TASERs in the Following Circumstances
 - a. **Finding:** Not Sustained - Management Action
2. **Allegation #2:** 5.001 Standards and Duties 10. Employees Will Strive to be Professional
 - a. **Finding:** Not Sustained - Inconclusive
3. **Allegation #3:** 8.100 - 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
 - a. **Finding:** Not Sustained - Inconclusive

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 alleged that the Named Employee (NE) failed to use de-escalation tactics and unjustifiably TASED him.

Administrative Note:

On June 9, 2023, the Office of Inspector General (OIG) certified OPA's investigation as thorough, timely, and objective.

Summary of the Investigation:

On January 15, 2023, at 10:42 PM, a 9-1-1 caller reported that an unknown male refused to leave the caller's private property. The caller described the subject as white, in his 30s, medium build,

orange beard, black jacket, black pants, brown Ugg boots, confrontational, and high on marijuana. At 10:50 PM, NE arrived at the incident location alone. NE radioed that the subject—later identified as the Complainant— was hiding in bushes eating leaves. Witness Employee #1 (WE#1) was dispatched for backup. At 10:57 PM, aid was requested for a TASER discharge. Witness Employee #2 (WE#2) wrote the incident report. WE#2 wrote that the 9-1-1 caller Community Member #1 (CM#1)—saw the Complainant on her balcony smoking marijuana. CM#1 said she confronted the Complainant, who grew agitated and said CM#1 could not tell him what to do. CM#1 then called 9-1-1. From her Ring camera, CM#1 reportedly saw the Complainant in bushes eating leaves. CM#1 said that when NE arrived, she heard him speaking with the Complainant, who escalated and yelled insults at NE.

NE wrote a use-of-force statement. NE wrote that upon his arrival, he saw the Complainant matching the description, appearing to eat leaves off limbs. NE stated he sat in his patrol car talking to CM#1 on the phone. NE opened his driver's side door to exit. NE wrote that CM#1 aggressively approached NE's cruiser, aiming a phone at him as if he were recording, and repeatedly called NE "nigger." NE stated he was "pinned in between my open door and [the Complainant]." NE wrote that he extended his left hand to create space, touching the Complainant's chest. NE stated he told the Complainant not to return to CM#1's property, but the Complainant was argumentative and questioned NE's authority to issue that order. NE wrote that he had a baton but opted to switch to a TASER since going hands-on alone or using a baton would likely result in injury to himself and the Complainant. NE explained:

"I was giving the arc warning command since the male kept getting closer, and while trying to manipulate the arc switch with my left thumb, my right index finger hit the trigger deploying the probes toward the subject. One of the probes struck the left shoulder of the subject. The second probe struck the ground and did not make any contact with the subject."

NE's TASER data showed that the trigger was pressed for about four seconds.

The Seattle Fire Department (SFD) arrived to provide medical aid. SFD noted its impression was that the Complainant experienced a "behavioral/psychiatric episode." SFD further stated that the Complainant refused to answer questions or let them take vitals.

NE's records showed he was crisis intervention training (CIT) certified.

BWV showed that NE was on the phone when he arrived—presumably with CM#1. In the background, the Complainant was captured, asking NE why he was there. NE replied, "We got a call about you." NE stood at his cruiser's open driver's side door as the Complainant approached, aiming a phone at him.



NE said, "Don't come that close to me again. Back up. Back up." Holding a baton, NE touched the Complainant's chest and told him he was too close.



This exchange followed:

- The Complainant: "You gonna use that thing nigger?"
- NE: "What did you call me?"
- The Complainant: "Nigger"

- NE “Oh, okay.”
- The Complainant: “Are you going to hit me with that nigger?”

NE told the Complainant not to return to CM#1’s property. The Complainant replied, “Hey man, you don’t tell me what the fuck to do.” NE reentered his cruiser and warned the Complainant not to approach him. The Complainant approached NE, who was inside the cruiser with the driver’s door open. The Complainant said, “What am I doing wrong? Are you scared you should be a cop?” NE aimed a TASER at the Complainant.



NE told the Complainant, “This is a taser, you come near me, this is what...” As the Complainant stepped back, NE’s TASER deployed. NE said, “You come up, this is what happens.” A TASER prong struck the Complainant’s left shoulder. The arrow points to NE’s extended arm.

About ten minutes later, Witness Employee #3 (WE#3)—a sergeant—arrived to screen the incident. NE told WE#3 that the Complainant kept approaching, so he retrieved his TASER to issue an ARC warning, but his finger accidentally hit the trigger.

Analysis and Conclusions:

Named Employee #1 - Allegation #1

8.300 - Use of Force Tools 4. Officers May Use TASERs in the Following Circumstances

It was alleged that NE unjustifiably TASED the Complainant.

Officers may not use less-lethal weapons as punishment or for retaliation. SPD Policy 8.300-POL-4.

Here, NE claimed to TASE the Complainant inadvertently. Specifically, while attempting a TASER ARC warning, NE claimed his finger slipped to the trigger. Preceding the TASER discharge, the Complainant repeatedly encroached NE and called NE—a Black officer—nigger, suggesting possible retaliation. While only NE knows his intent, OPA notes that the ARC button and trigger are close on department-issued TASERs. OPA also notes other cases involving officers claiming to attempt an ARC warning but accidentally deploying their TASER.

Accordingly, OPA recommends this allegation be Not Sustained – Management Action.

- Management Action: Please review the related management action recommendation (MAR).

Recommended Finding: **Not Sustained - Management Action**

Named Employee #1 - Allegation #2

5.001 Standards and Duties 10. Employees Will Strive to be Professional

It was alleged that NE was unprofessional by unjustifiably TASING the Complainant.

Regardless of duty status, employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers. Employees will avoid unnecessary escalation of events. SPD Policy 5.001-POL-10.

For the reasons at Named Employee #1 – Allegation #3, OPA recommends this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained – Inconclusive**

Named Employee #1 - Allegation #3

8.100 - 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 that NE failed to exhaust de-escalation tactics with the Complainant.

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 must assess threats to avoid unnecessary, unreasonable, or disproportionate force. Id. The department encourages team approaches to de-escalation. Id. The totality of the circumstances will guide de-

escalation options, with voluntary compliance as the goal. Id. Communication, time, distance, and shielding are encouraged de-escalation options. Id.

Here, the Complainant initiated contact with NE. NE was at his police cruiser while his backup was en route. NE was pinned between his opened cruiser door and an aggressively approaching Complainant. Commands were ineffective on the Complainant. NE switched from a baton to a TASER, a less-lethal force, to avoid significant damage should force be required. Before the TASER deployment, NE warned the Complainant several times to back up. NE even extended his left arm, touching the Complainant's chest, to create space. Nevertheless, the Complainant persisted. OPA agrees that a TASER ARC warning should have preceded a deployment, but there is insufficient evidence that the deployment was intentional rather than unintentional, as NE claimed.

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

Recommended Finding: **Not Sustained - Inconclusive**