

Issued Date: JANUARY 4, 2024

From: Director Gino Betts, Office of Police Accountability



Case Number: 2023OPA-0313

Allegations of Misconduct & Director's Findings

Named Employee #1

1. **Allegation #1:** 6.180 – Searches-General, 6.180-POL-2 Consent Searches, 3. Third-Party Consents Are Valid Under Certain Conditions

- a. **Finding:** Sustained

- **Imposed Discipline:** Oral Reprimand
-

Named Employee #2

1. **Allegation #1:** 6.180 – Searches-General, 6.180-POL-2 Consent Searches, 3. Third-Party Consents Are Valid Under Certain Conditions

- a. **Finding:** Sustained

- **Imposed Discipline:** Oral Reprimand
-

Named Employee #3

1. **Allegation #1:** 6.180 – Searches-General, 6.180-POL-2 Consent Searches, 3. Third-Party Consents Are Valid Under Certain Conditions

- a. **Finding:** Sustained

- **Imposed Discipline:** Oral Reprimand
-

Named Employee #4

1. **Allegation #1:** 6.180 – Searches-General, 6.180-POL-2 Consent Searches, 3. Third-Party Consents Are Valid Under Certain Conditions
 - a. **Finding:** Sustained
 2. **Allegation #2:** 8.200 – Using Force, 1. Use of Force: When Authorized (Effective April 24, 2023)
 - a. **Finding:** Not Sustained - Lawful and Proper
- **Imposed Discipline:** Oral Reprimand

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:

Named Employees #1, #2, #3, and #4 (NE#1, NE#2, NE#3, and NE#4) responded to a domestic violence (DV) call involving the Complainant and his mother (Community Member #1 or CM#1), who lived together. CM#1 consented to the named employees entering the house, but the Complainant objected. It was alleged that the named employees unlawfully entered the house. It was also alleged that NE#4 used unauthorized force by Tasing the Complainant multiple times.

Administrative Note:

On November 20, 2023, the Office of Inspector General certified OPA's investigation as thorough, timely, and objective.

Summary of the Investigation:

OPA investigated the complaint, reviewing the computer-aided dispatch (CAD) call report, body-worn video (BWV), incident and supplement reports, and use of force reports. OPA also interviewed the named employees. OPA could not reach the Complainant for an interview.

A. OPA Complaint

On July 18, 2023, a lieutenant submitted an OPA complaint on the Complainant's behalf. The lieutenant wrote that officers responded to a DV assault call, established probable cause to arrest the Complainant, and obtained CM#1's consent to enter the house, although the Complainant objected. The lieutenant wrote that officers entered the house, violating the Complainant's Fourth Amendment rights. The lieutenant wrote that the Complainant lunged at NE#2, prompting NE#4 to Tase the Complainant four times. The lieutenant wrote that the Complainant was face down with his arms buried under his chest when NE#4 Tased him a fourth time. The lieutenant wrote that the

Complainant passively resisted while officers arrested him. The lieutenant wrote that the Complainant alleged that officers assaulted him.

B. Computer-Aided Dispatch (CAD) Call Report

On June 24, 2023, at 4:13 PM, CAD call remarks noted, "ADULT SON IS [INTOXICATED] AND ELBOWED [REPORTING PARTY] IN BACK OF HEAD. REPORTING PARTY CURRENTLY IN DRIVEWAY IN [VEHICLE]. [SUSPECT] INSIDE HOUSE. NECK HURTING-[SEATTLE FIRE DEPARTMENT] SCREENING. NO [WEAPONS]."

C. Body-Worn Video (BWV) and Incident and Supplement Reports

The named employees responded to the house with their BWV activated. BWV captured the following:

CM#1 exited her car. NE#2 asked CM#1 whether the Complainant was armed. CM#1 said no and walked off with NE#3. CM#1 told NE#3 that the Complainant, while elevated and intoxicated, intentionally elbowed the back of her head. CM#1 wanted the Complainant removed from the house and permitted the named employees to enter. NE#1, NE#2, and NE#4 approached the house's front door. NE#4 unholstered her Taser. NE#2 knocked and asked the Complainant to come to the door. The Complainant opened the door. NE#2 said they needed to talk outside. The Complainant repeatedly shouted, "I want to press charges!" NE#2 repeatedly asked the Complainant to step out, but the Complainant refused and said he was assaulted. NE#4 aimed her Taser at the Complainant and said, "Calm down and come outside, or you're going to get Tased." The Complainant pointed at NE#4 and repeatedly shouted, "Get this stupid bitch out of here!" NE#4 stepped away, and NE#1 replaced NE#4's position at the front door. NE#3 told the other named employees that the Complainant and CM#1 lived at the house, CM#1 consented to their entry, and there was probable cause for DV assault.

The named employees entered the house as the Complainant repeatedly shouted, "Get the fuck out of here!" NE#2 told the Complainant to sit down. NE#4 aimed her Taser at the Complainant, saying, "Sit down, or you're gonna get Tased," and deployed a Taser "arc" warning. The Complainant said, "I want to press charges," and stepped toward NE#2 with his arms raised before NE#4 deployed her Taser twice in "probe" mode. The Complainant fell onto a couch and repeatedly shouted, "I have been assaulted!" NE#2 and NE#3 rolled the Complainant onto his stomach. NE#2 said, "Stop resisting, or you're going to get Tased." NE#4 deployed her Taser using the "arc" switch. NE#2 and NE#3 maneuvered the Complainant to the ground. The Complainant bent over and turtled his arms under his body while NE#2 and NE#3 attempted to pull them out. The Complainant attempted to stand, but NE#2 held him down and told him to stop resisting. NE#4 pressed her Taser against the Complainant's lower back and deployed it again using the "arc" switch. The Complainant said, "Ow!" NE#2 and NE#3 pulled the Complainant's arms out, and NE#2 handcuffed him. NE#1, NE#2, and NE#3 sat the Complainant on the couch.

The Complainant repeatedly shouted, “I have been assaulted! I want to press charges!” The Complainant’s mouth was bloody.

Seattle Fire Department employees arrived and treated the Complainant. NE#4 *Mirandized* the Complainant. American Medical Response employees transported the Complainant to the King County Jail.

NE#2 wrote an incident report consistent with the events captured on BWV. NE#1, NE#3, and NE#4 wrote supplement reports consistent with the events captured on BWV. NE#4 wrote, “[The Complainant] lunged at [NE#2] while screaming, balling his fists up, and swinging at [NE#2] in a way that I interpreted as him beginning to assault [NE#2]. I deployed my taser to stop [the Complainant] from assaulting [NE#2]. This deployment appeared to have been effective.” NE#4 also wrote, “I believe [the Complainant] would have punched [NE#2] and probably would have fought with all of us prior to being brought under control if I had not tased him.”

D. Use of Force Reports

1. Named Employees

NE#1, NE#2, and NE#3 wrote Type II use of force statements consistent with the abovementioned evidence. Type II is force that causes, or is reasonably expected to cause, physical injury greater than transitory pain but less than great or substantial bodily harm. SPD Interim Policy 8.050 (effective April 24, 2023). Type II force includes a Taser deployment. SPD Interim Policy 8.400-POL-1 (effective April 24, 2023).

NE#4 wrote a Type II use of force statement consistent with the abovementioned evidence. NE#4 wrote that she completed a Taser X2 certification course in June 2020 and Taser X2 recertification courses in 2021 through 2023. NE#4 wrote that she responded to over a hundred DV-related incidents and, in the past three years, deployed her Taser once. NE#4 wrote that, before responding, she saw a significant history of DV assaults at the Complainant’s address. NE#4 wrote that the space was confined after the named employees entered the house since the living room was filled with furniture and household items. NE#4 wrote that, due to the clutter, a hands-on approach to arrest the Complainant was not feasible. NE#4 wrote that there were glass bottles on a nearby table that the Complainant could use as improvised weapons. NE#4 wrote that the Complainant was verbally aggressive, intoxicated, threatening, and waving his arms, increasing the likelihood that the Complainant would become assaultive or resistive. NE#4 wrote that the Complainant ignored their orders to sit. NE#4 wrote that she was prepared to deploy her Taser should the Complainant ignore further orders, reach for a glass bottle, or advance toward the named employees. NE#4 wrote that the Complainant “lunged” at NE#2, causing NE#4 to believe he posed a threat.

NE#4 wrote, “My lawful purpose in the taser deployment was the following: to protect another officer [NE#2] from a threat of immediate harm in the form of an assault by [the Complainant] with

personal weapons (fists), to bring [the Complainant] under control to place him into custody based on a finding of Probable Cause for DV Assault.” NE#4 described her four Taser deployments. NE#4 wrote that she deployed the first cartridge at the Complainant’s upper body but could not see where the probes connected, so she deployed the second cartridge at the Complainant’s lower body. NE#4 wrote that she deployed two consecutive cartridges due to the Complainant’s baggy and bunched-up clothes, which could cause the probes to deflect. NE#4 wrote that the Complainant continued advancing on NE#2 despite her first Taser deployment, which appeared only partially effective. NE#4 wrote that the Complainant continued shouting and moving despite her second Taser deployment, which seemed only partially effective. NE#4 wrote that she deployed her Taser a third time, using the arc switch, when the Complainant was on the ground, wedged in a tight space between the couch and table, kicking and turtling his arms underneath his body, preventing the named employees from controlling his arms. NE#4 wrote that this deployment lasted only a second because she realized it did not contribute to the named employees controlling the Complainant’s arms. NE#4 wrote that she deployed her Taser a fourth time, using drive stun, on the Complainant’s lower back because he resisted and prevented the named employees from controlling his arms. NE#4 wrote that this deployment was successful because the Complainant untucked his arms, allowing the named employees to handcuff him.

2. Chain of Command

An acting sergeant wrote a Type II use of force report consistent with the abovementioned evidence.

An administrative lieutenant wrote a Type II use of force report consistent with the abovementioned evidence. The administrative lieutenant concluded that the named employees had no legal authority to enter the house. The administrative lieutenant wrote that the named employees determined that the Complainant and CM#1 lived at the house. However, “[o]ne subject gave Officers consent to enter, and one subject denied them entry. Officer’s entry into the residence under consent at this point had been lost.” The administrative lieutenant wrote that no exigent circumstances permitted the named employees’ entry, noting no in-progress assault or present danger.

A watch lieutenant wrote a Type II use of force report consistent with the abovementioned evidence. The watch lieutenant wrote, “I approve of the force used by the [named employees] during this incident.” The watch lieutenant approved NE#4’s Taser deployment, writing, “[NE#4] used type 2 force when she deployed her taser on the suspect. At the time of application, the suspect was ignoring officer commands, and an assault on an officer appeared to be imminent when the suspect raised his closed fists and stepped towards an officer in a closed space. [NE#4] fired the Taser twice to obtain [a] good cross-body connection, then applied a drive stun when the suspect continued to resist being placed into handcuffs. This application of the Taser was effective to gain physical control of the suspect.”

A captain wrote a Type II use of force report consistent with the abovementioned evidence. The captain concluded that the named employees had no legal authority to enter the house. The captain wrote, “[The administrative lieutenant] was correct in evaluating the incident and determined that the Officers entered the Subject’s house without the Subject’s consent.” The captain approved NE#4’s first three Taser deployments but wrote that the “last and fourth Taser application, a drive stun, appeared to be excessive force.” Ultimately, the captain deferred the use of force findings to OPA.

E. OPA Interviews

OPA interviewed NE#1 on October 12, 2023. NE#1’s statements were consistent with the evidence summarized above. NE#1 believed CM#1 had sole authority to consent to entry since CM#1 was the homeowner and the Complainant merely lived with her. NE#1 said once the sole owner consented, the named employees could enter common areas rather than bedrooms. NE#1 said the Complainant did not have a reasonable expectation of privacy in common areas, such as the living room, but had a reasonable expectation of privacy in his bedroom. NE#1 said the named employees did not discuss acquiring the Complainant’s consent.

OPA interviewed NE#2 on October 12, 2023. NE#2’s statements were consistent with NE#1’s statements concerning consent entry. However, NE#2 stated that his understanding of the issue had changed. NE#2 stated that, at the time of the incident, he believed that CM#1 could consent to the named employees entering the living room but not the Complainant’s room. NE#2 said his current understanding of SPD Policy 6.180-POL-2 concerning consent searches is that the named employees needed the Complainant’s and CM#1’s permission to enter the house.

OPA interviewed NE#3 on October 26, 2023. NE#3’s statements were consistent with NE#1’s statements concerning consent entry. NE#3 did not believe she needed the Complainant’s consent to enter. NE#3 thought she could also enter based on a “crime of violence” exigent circumstance.

OPA interviewed NE#4 on October 30, 2023. NE#4’s statements were consistent with the evidence summarized above. NE#4 believed the Complainant lacked authority to consent to enter and did not have co-equal rights as CM#1 had because they were not spouses or adult roommates cohabiting in the house. NE#4 did not believe the Complainant was a co-owner of the house. NE#4 explained her Taser deployments, consistent with her Type II use of force statement. NE#4 said she deployed her Taser to prevent the Complainant from assaulting NE#2. NE#4 said her first deployment appeared unsuccessful in immobilizing the Complainant, so she deployed her Taser again, which was more effective because the Complainant fell to the ground. NE#4 said her third and fourth Taser deployments were a drive stun to the Complainant’s lower back, which did not cause neuromuscular incapacitation. OPA noted a minor inconsistency. NE#4 wrote in her Type II use of force statement that her third Taser deployment was an arc switch, not a drive stun. NE#4 believed she complied with the policy, saying that the Complainant was a threat to the named employees, attempted to assault NE#2, and actively resisted arrest. NE#4 said she modulated her force in response to the Complainant’s behavior.

Analysis and Conclusions:

Named Employee #1 – Allegation #1

6.180 – Searches-General, 6.180-POL-2 Consent Searches, 3. Third-Party Consents Are Valid Under Certain Conditions

The Complainant alleged the named employees unlawfully entered the house. Present cohabitants of a residence must affirmatively consent to a search. SPD Policy 6.180-POL-2(3). There is no consent to search when a cohabitant objects, even if another cohabitant consents. *See id.*

Here, the named employees obtained CM#1's consent to enter the house. Before entering, the named employees knew the Complainant also lived there. Collectively, the named employees advanced three legal theories that they believed allowed them to enter based solely on CM#1's consent. First, it was claimed CM#1 was the homeowner while her son, the Complainant, lived there with her permission, which meant that the Complainant did not have the authority to grant consent and did not have the same rights as CM#1 because they were not spouses or adult roommates. Second, it was claimed the Complainant had no reasonable expectation of privacy in common areas, like the living room, but had a reasonable expectation of privacy in his bedroom. Third, it was claimed NE#3 believed the named employees could enter based on a "crime of violence" exigent circumstance. However, those explanations are inconsistent with SPD Policy 6.180-POL-2(3).

SPD policy requires officers to obtain the consent of "[a]ll cohabitants" before entry and defines "cohabitants" as "roommates." *See* SPD Policy 6.180-POL-2(3) ("All cohabitants (roommates) or business partners who are present must affirmatively provide their consent prior to the search"). This policy does not exempt a situation where a parent allows her adult son to live at her house. In a parent-child relationship, policy permits officers to search a *minor's* living area based solely on the parent's consent. *See id.* ("Parents and legal guardians may consent to search a minor's living area if they have routine access to the area and the minor is not paying rent"). However, the Complainant is not a minor. Because the Complainant and CM#1 are cohabitants or roommates under SPD Policy 6.180-POL-2(3), the named employees were required to obtain the Complainant's consent before entry. The policy states that there is no consent to search if one cohabitant objects to the search, even if another cohabitant gives consent. The Complainant unambiguously objected, repeatedly shouting, "Get the fuck out of here!"

Officers are prohibited from searching common areas when a present co-occupant objects to the search, even when another present co-occupant consents. *See Georgia v. Randolph*, 547 U.S. 103 (2006). Accordingly, the Complainant's objection vetoed CM#1's consent. Therefore, the named employees had no valid consent to enter the house.

NE#3 cited a “crime of violence” exigent circumstance as a legal basis for warrantless entry. Washington State law recognizes an exigent circumstance involving a danger to the arresting officer or the public. Washington Pattern Instructions 342.07. To determine whether exigent circumstances justified a warrantless entry, the following six factors should be considered: (1) whether a grave offense was involved; (2) whether the suspect was reasonably believed to be armed; (3) whether information about the suspect’s guilt was trustworthy; (4) whether there was a strong reason to believe the suspect was on the premises; (5) whether the suspect was likely to escape if not swiftly apprehended; and (6) whether entry could be made peaceably. *Id.* In this case, most of these factors indicate a lack of exigency. DV assault in the fourth degree, the alleged crime under investigation, is a gross misdemeanor. CM#1— who was not in danger since she was separated from the house—told the named employees that the Complainant had no weapons. The Complainant was unlikely to flee because he was drunk at home. As noted in NE#4’s use of force statement, there was no in-progress assault, no broken property, no one fleeing, and no community member in any danger. Based on these facts, NE#3 could not justify a warrantless entry under exigent circumstances.

Absent another justification or a warrant, the named employees needed the Complainant’s consent to enter. Because the named employees entered the house over the Complainant’s objection, they violated SPD Policy 6.180-POL-2(3).

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 – Allegation #1

6.180 – Searches-General, 6.180-POL-2 Consent Searches, 3. Third-Party Consents Are Valid Under Certain Conditions

For the reasons at Named Employee #1 – Allegation #1, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #3 – Allegation #1

6.180 – Searches-General, 6.180-POL-2 Consent Searches, 3. Third-Party Consents Are Valid Under Certain Conditions

For the reasons at Named Employee #1 – Allegation #1, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #4 – Allegation #1

6.180 – Searches-General, 6.180-POL-2 Consent Searches, 3. Third-Party Consents Are Valid Under Certain Conditions

For the reasons at Named Employee #1 – Allegation #1, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #4 – Allegation #2

8.200 – Using Force, 1. Use of Force: When Authorized (Effective April 24, 2023)

The Complainant alleged NE#4 used excessive force when she Tased him four times.

Officers will only use objectively reasonable, necessary, and proportional force to the threat or urgency of the situation to achieve a law enforcement objective while protecting the life and safety of all persons. SPD Interim Policy 8.200(1) (effective April 24, 2023). Reasonability must consider that officers are often forced to make split-second decisions about the force necessary in a particular situation in tense, uncertain, dynamic, and rapidly evolving circumstances. *Id.* The question is whether the officers' actions were objectively reasonable considering the facts and circumstances confronting them, without regard to their underlying intent or motivation. *Id.* The policy also lists several factors that should be weighed when evaluating reasonableness. *See id.* Force is necessary under the totality of the circumstances where "a reasonably effective alternative to the use of physical force or deadly force does not appear to exist, and the type and amount of physical force or deadly force used is a reasonable and proportional response to [e]ffect the legal purpose intended or to protect against the threat posed to the officer or others." SPD Interim Policy 8.050 (effective April 24, 2023). A proportional use of force must "reflect the totality of circumstances surrounding the situation at hand, including the nature and immediacy of any threats posed to officers and others. Officers must rely on training, experience, and assessment of the situation to decide an appropriate level of force to be applied." *Id.*

Here, NE#4 Tased the Complainant four times. There is no dispute that the first two Taser deployments were objectively reasonable, necessary, and proportional to prevent the Complainant from assaulting NE#2. BWV captured the Complainant advancing toward NE#2 with his arms raised, indicating an imminent assault. Additionally, OPA concludes that NE#4's third and fourth Taser deployments were objectively reasonable, necessary, and proportional for the following reasons.

First, NE#4's Taser deployments were objectively reasonable. Before arriving at the house, NE#4 knew that any interaction with the Complainant could be violent because he allegedly assaulted

CM#1 and was intoxicated. NE#4 also became aware that the Complainant had a “significant recent history of DV assault and DV disturbances.” Upon contact, the Complainant “immediately [began] screaming at us at the top of his lungs” and “tensing up his entire body as he screamed.” NE#4 expressed concern that the Complainant “was going to completely lose control and become assaultive.” After the named employees entered the house, the Complainant remained escalated despite the named employees speaking calmly to him and NE#4 deploying a Taser warning—neither of which altered his agitated state of mind. NE#4 noted that the living room was “severely constrained” because it was packed with furniture and household items that she likened to a hoarder-type house. NE#4 also saw empty glass bottles on a nearby table that the Complainant could have used as improvised weapons. A hands-on struggle with the Complainant in such a cluttered and constrained location would likely cause injury to anyone. Despite these obstacles, the named employees were faced with a mandatory arrest. See RCW 10.31.100(2)(d) (requiring a mandatory arrest if an officer has probable cause to believe a DV offense occurred).

NE#4’s first two Taser deployments caused the Complainant to fall onto a nearby couch, but he actively resisted and repeatedly shouted, “I have been assaulted!” NE#4 wrote that, based on her personal experience of being Tased, “it is extremely difficult to talk if [neuromuscular incapacitation] is achieved, and free movement is basically impossible during the five-second pulse cycle. [The Complainant’s] continued movement and speech further led me to believe that the deployment was partially effective.” After NE#4’s second Taser deployment, NE#2 and NE#3 maneuvered the Complainant to the ground. Still, he was wedged in a tight space on the floor between the couch and table, resisted arrest, turtled his arms underneath his body, and, according to NE#4, “started kicking his legs.” The named employees could not adequately control the Complainant, prompting NE#4 to deploy her Taser a third time briefly. The named employees ordered the Complainant to stop resisting, but he refused to comply and attempted to stand up. NE#4 pressed her Taser against the Complainant’s lower back and deployed it. After NE#4’s fourth Taser deployment, the Complainant untucked his arms, allowing the named employees to handcuff him. NE#4’s third and fourth Taser deployments were objectively reasonable considering that everyone was in a potentially dangerous location, NE#4 was not wholly successful in causing neuromuscular incapacitation, and the Complainant continued to resist, refused to comply with commands, had just attempted to assault NE#2, and remained belligerent.

Second, NE#4’s Taser deployments were necessary because there was no reasonably effective alternative to NE#4’s use of force. The Complainant was unwilling to surrender voluntarily. The Complainant actively resisted in a cluttered and confined location. NE#4’s Taser deployments appeared ineffective because the Complainant resisted. NE#4 was required to deploy her Taser a fourth time to gain the Complainant’s compliance. The force used was also reasonable and proportional to effect the arrest and protect against the continued threat posed to the named employees. The Complainant attempted to assault NE#2, turtled his arms to prevent his arrest after being Tased, and attempted to stand up despite NE#2 holding him down. The named employees successfully handcuffed the Complainant after NE#4’s fourth Taser deployment. NE#2’s third and fourth Taser deployments were necessary under these circumstances.

Third, NE#4's Taser deployments were proportional. The Complainant attempted to assault NE#2, refused to comply with the named employees' commands, and actively resisted. NE#2 employed a more direct intervention tactic to end the struggle. NE#2's third and fourth Taser deployments were proportional under these circumstances.

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

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