
Issued Date: FEBRUARY 9, 2024**From:** Director Gino Betts, Office of Police Accountability**Case Number:** 2023OPA-0376

Allegations of Misconduct & Director's Findings

Named Employee #1

1. **Allegation #1:** Interim Policy 8.200 - Using Force, 8.200-POL-1 Use of Force: When Authorized (eff. date 4/24/2023). The allegations against Named Employee #1 listed the former policy numeration for the use of force (SPD Policy 8.200(1)) and Tasers (SPD Policy 8.300-POL-2(4)). This memorandum evaluates the alleged conduct under the interim policies that were in effect on the date of this incident.
 - a. **Finding:** Sustained
2. **Allegation #1:** Interim Policy 8.300 – Use of Force Tools, 8.300-POL-3 Taser 4. Officers May Use Tasers in the Following Circumstances: (eff. date 4/24/2023)
 - a. **Finding:** Sustained

- **Imposed Discipline:** Written 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:

It was alleged that Named Employee #1 (NE#1) used unauthorized force and Taser deployment to detain Community Member #1 (CM#1).

Administrative Note:

On January 3, 2024, the Office of Inspector General certified OPA's investigation as thorough, timely, and objective.

Summary of the Investigation:

On August 21, 2023, an administrative lieutenant (admin lieutenant) submitted an unsubstantiated misconduct screening (UMS) request to OPA. OPA reviewed the matter and directed its formal submission to OPA. See OPA Internal Operations and Training Manual § 8.1 – Unsubstantiated Misconduct Screening. "Allegations of misconduct that are clearly refuted by evidence can be

investigated and documented by the chain of command and then screened with OPA via email.” *Id.* OPA reviews the information and determines whether the “allegation is disproved by the evidence or whether it is necessary for the supervisor to formally submit the allegation of potential misconduct to OPA.” *Id.* This process is audited by OIG on a quarterly basis.

OPA opened an investigation, reviewing the OPA complaint, computer-aided dispatch (CAD) call report, incident report and supplements, use of force documentation, body-worn video (BWV), email correspondence, training materials, and a prior use of force case. OPA also interviewed NE#1 and two witness officers [Witness Officer #1 (WO#1) and Witness Officer #2 (WO#2)].

1. OPA Complaint

The OPA complaint largely mirrored the UMS request. The admin lieutenant wrote that NE#1, WO#1, and WO#2 contacted CM#1, a possible strongarm robbery suspect. It stated that NE#1 ordered CM#1 to move toward the front of NE#1’s patrol car, but CM#1 refused. It stated that NE#1 then told CM#1 to sit on a curb, and when CM#1 refused, NE#1 threatened to Tase CM#1 while performing a “spark test.” A “spark test” or “arc display” cycles the Taser without firing probes. It displays an audible and visual spark. It is not a reportable use of force. See SPD Interim Policy 8.300-POL-3(7) (eff. date 4/24/2023). The admin lieutenant wrote that CM#1 refused to comply, and NE#1 deployed his Taser. The admin lieutenant indicated that after consulting with his precinct captain and an SPD Taser coordinator, he concluded “that this use of a Taser is not within department policy.”

CAD Call Report and BWV

The CAD call report showed a 10:01 pm on August 5, 2023, 9-1-1 call reporting a robbery. The listed incident location was a drugstore. The CAD notes stated that, five minutes earlier, a customer asked the 9-1-1 caller for money, then attempted to shoplift, and punched the 9-1-1 caller’s leg. The 9-1-1 caller reported that no weapons were involved and described the offender as a Black male in his forties, five feet five inches tall, thin, wearing a light blue tee shirt with a tag attached and black pants. The CAD call report indicated that officers contacted the suspect around 10:06 pm, and a Taser was deployed at 10:07 pm.

NE#1’s BWV captured his interaction with CM#1, depicting the following:

NE#1 exited his SPD patrol vehicle. CM#1 stood near a bus shelter. NE#1 identified himself as an SPD officer, stated his BWV was activated, and asked CM#1, “Can you come over here?” while pointing toward the patrol car’s front bumper. CM#1’s arrest report listed him as “Black or African American / Not Hispanic or Latino,” approximately thirty years old, male, about five feet seven inches tall, and about one hundred forty-five pounds. BWV shows CM#1 wearing a blue tee shirt, light-colored baseball hat, and light-colored athletic shorts. CM#1 remained still and nodded to indicate no while looking toward NE#1.



[10:07:37 PM] The red arrow points to NE#1's hand, motioning CM#1 towards his front bumper. The blue arrow points to CM#1.

NE#1 approached and faced CM#1. NE#1 ordered CM#1 to sit on the curb. CM#1's left hand was at his waistband, and the right held a pair of shoes. CM#1 shook his head from side to side in response to NE#1's order. NE#1 repeated his instruction to sit on the curb. CM#1 continued shaking his head no. CM#1 did not sit on the curb.



[10:07:45 PM] NE#1 ordering CM#1 to sit on the curb.

As NE#1 ordered CM#1 to sit on the curb—emphasizing, “Do it now,”—CM#1 verbally responded, but the words were unclear. NE#1 replied, “Okay, cool.” NE#1 repeated, “Do it now. Get on the curb.” CM#1 responded with what sounded like, “Why?” WO#1 stated, “You’re being detained.” NE#1 drew his Taser.

[10:07:59 PM] NE#1 drawing his Taser.



NE#1 told CM#1 he was not free to leave. NE#1 threatened to Tase CM#1 if he did not get on the ground. NE#1 conducted a spark test, telling CM#1 it would sound like this and that getting Tased is “pretty uncomfortable.” CM#1 continued shaking his head.



[10:08:07 PM]

NE#1 ordered, "Get on the ground. Do it now." CM#1 continued refusing. NE#1 stated, "Okay, cool." NE#1 deployed his Taser, saying, "Taser, Taser, Taser." The Taser's laser targeting dots indicated that a probe was aimed at the right side of CM#1's stomach and the other at his upper right thigh.



[10:08:17 PM] NE#1 aiming the Taser at CM#1, just before firing.

CM#1 stumbled backward before lying on the sidewalk. WO#1 and WO#2 moved toward CM#1. CM#1 did not comply with the witness officers' orders to lie down and put his hands behind his back. As CM#1 struggled with WO#1 and WO#2, NE#1 threatened to Tase CM#1 again if he did not follow orders. WO#1 and WO#2 then handcuffed CM#1.

WO#1 and WO#2's BWVs were also activated when NE#1 Tased CM#1.

2. Use of Force Documentation

A sergeant investigated NE#1's Taser deployment as a Type II use of force. See SPD Interim Policy 8.400. NE#1's admin lieutenant, watch commander, and precinct captain reviewed that investigation.

In his use of force statement, NE#1 claimed reasonable suspicion for CM#1's detention since CM#1 was about two hundred feet from the reported robbery and matched the offender's race,

approximate age, body type, and shirt descriptions. NE#1 suggested that CM#1 “postured with his left hand grabbing his pants while his right hand was holding a pair of shoes by the shoelaces.” NE#1 described CM#1 as slowly swinging the shoes with his feet “planted slightly further than shoulder-width apart in a bladed stance.” NE#1 considered those actions “pre-attack indicators.” NE#1 indicated that CM#1 spit as NE#1 exited his vehicle. NE#1 described CM#1 as failing to comply with his orders, even after displaying his Taser, performing an arc test, and giving verbal Taser warnings. NE#1 stated that further de-escalation was unfeasible since “[CM#1] was likely to attempt to assault Officers if they attempted to take him into custody.” In his threat assessment, NE#1 noted that the robbery suspect had recently assaulted the 9-1-1 caller. NE#1 also suggested that CM#1 “could easily swing the shoes at Officers as a weapon, and his baggy clothing and position of his left hand could be concealing additional weapons.” NE#1 wrote that CM#1 “looked to his left and right, which appeared to be evaluating his position to resist Officers.” NE#1 described CM#1 as noncompliant, generally non-communicative, taking a “rigid” posture and “fighting stance,” and looking for ways to escape or resist.

The admin lieutenant noted his OPA referral but did not assess whether the Taser deployment was within policy.

The watch commander found NE#1’s use of force objectively reasonable, necessary, and proportional based on CM#1’s threatening behavior and non-compliance. The watch commander noted CM#1’s posture and “improvised weapon,” as well as CM#1’s suspected recent violence during the robbery. The watch commander opined that the Taser deployment made further injury less likely.

The precinct captain noted that further planning was “preferable,” flagging NE#1, WO#1, and WO#2’s lack of communication concerning a tactical plan or assigned roles. The precinct captain also noted that NE#1’s “quick action” left the witness officers in a position where they had to react. The precinct captain noted missed opportunities to use time and shielding, concluding “[NE#1’s] solo tactics were not best practices.” Concerning the Taser application, the precinct captain noted CM#1’s non-cooperation and passive resistance, as well as the officers’ belief he was “unpredictable and possibly carrying weapons,” deferred to NE#1’s assessment that the Taser was the least forceful method for apprehending CM#1. The precinct captain ultimately approved of NE#1’s use of force.

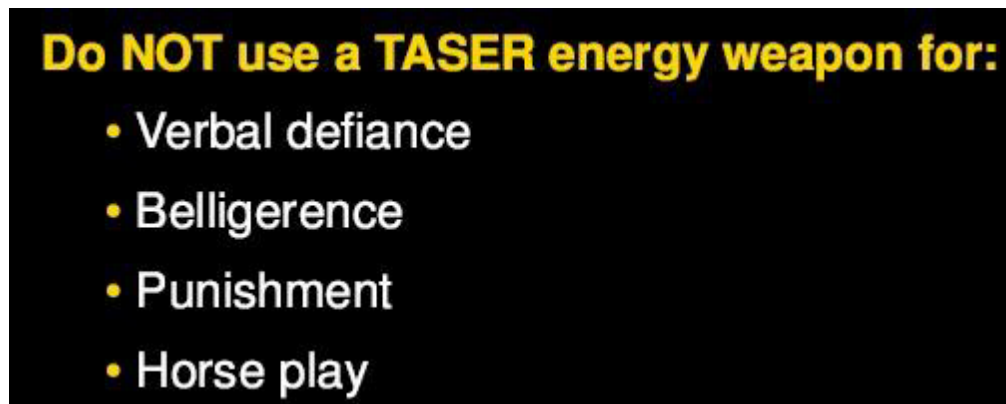
3. Email Correspondence & Training Materials

The admin lieutenant’s OPA referral referenced him screening the incident with SPD’s taser coordinator. OPA reviewed an email exchange between the admin lieutenant and the taser coordinator. In it, the two discuss the relevant Taser policy. The taser coordinator indicated that he reviewed NE#1’s BWV and determined:

At this time, I am in full agreement with your conclusions. I did not observe any actions or threats of violence from the subject he was talking with. I do not believe the [Taser]

deployment was within our department's policy. Refusal to cooperate in a non-violent manner, in itself, is not a justification for a [Taser] application.

The taser coordinator also referenced a slide from a PowerPoint Taser recertification training:



OPA reviewed the Taser recertification and new user training. Another slide instructed: “TASER energy weapons should NOT be used on individuals who are: . . . Passively resisting AND are not an immediate threat or flight risk.”

4. OPA Interviews – WO#1 and WO#2

OPA interviewed WO#1 and WO#2.

WO#1 described CM#1 as “postured up” and flexing his arms at his sides. WO#1 also stated CM#1 ignored several orders and warnings and had recently committed a strongarm robbery. WO#1 also described CM#1 as making a fist. WO#1 opined that CM#1 would have fought the officers if they had gone hands-on, potentially injuring CM#1 and them. WO#1 suggested that officers were taught to use Tasers against suspects who appear prepared to fight.

WO#2 stated that two other officers had already contacted CM#1 when he arrived. WO#2 said he watched as another officer gave commands, which CM#1 refused to obey. WO#2 described NE#1 as issuing warnings and a spark test before Tasing CM#1. Like WO#1, WO#2 noted that the Taser is a less-lethal tool and could prevent a situation from escalating to uses of force that risk more significant injury to the suspect and officers.

5. OPA Interview – NE#1

NE#1 said he worked at SPD for four years.

NE#1’s description of the incident was consistent with BWV and his use of force report. Concerning his threat assessment, NE#1 said that shoes are not generally used as improvised weapons, but if swung hard enough, they could cause pain and—because he wears glasses—could knock his glasses off. NE#1 believed CM#1 considered hitting someone with the shoes, noting CM#1 had just committed a violent felony.

NE#1 said he planned to use the lowest necessary force to control the situation. He said he could not think of an option less forceful than the Taser.

NE#1 also described another use force incident that occurred before this incident that affected his decision-making. NE#1 described that incident as a burglary call where officers attempted to talk to the suspect for a period, but the suspect fought the officers, injuring several. NE#1 said that after that incident, he was coached to use his Taser after exhausting all other avenues. NE#1 indicated that the prior incident made him think to use his Taser against CM#1, as going hands-on with a suspect who is prepared to fight can be more dangerous. OPA located an incident involving NE#1 that matched his description. That incident occurred on May 26, 2023, but had significantly different facts. The chain of command raised issues concerning allowing a suspect to remain unhandcuffed for a significant period, allowing the suspect to re-enter a vehicle, and an almost eight-minute interaction with the suspect before using force.

Analysis and Conclusions:

Named Employee #1 - Allegation #1

Interim Policy 8.200 - Using Force, 8.200-POL-1 Use of Force: When Authorized (eff. date 4/24/2023)

It was alleged that NE#1 used unauthorized force when he deployed his Taser to detain CM#1.

An officer's use of force must be "objectively reasonable, necessary, and proportional 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-POL-1. Reasonableness depends "on the totality of the circumstances" known to the officers when the force is applied and must be balanced against "the rights of the subject, considering the circumstances surrounding the event." SPD Interim Policy 8.050. Reasonableness must be judged from the perspective of a reasonable officer at the scene, *id.*, and consider that officers are often forced to make "split-second decisions" under tense, dynamic circumstances. SPD Interim Policy 8.200-POL-1. The policy also lists several factors to weigh for evaluating reasonableness. See *id.* Force is necessary when "no reasonably effective alternative to the use of force appeared to exist" and "the type and amount" of force used was reasonable and proportional to achieve the lawful purpose intended or to protect against the threat. *Id.* Last, the force must be proportional, reflecting the totality of the circumstances, including the nature and immediacy of any threats. *Id.*

OPA finds that NE#1's use of force was not objectively reasonable, necessary, or proportional.

It was not objectively reasonable for NE#1 to deploy a Taser at a suspect who, at most, passively resisted commands. On one side, the suspected offense—strongarm robbery—was serious and violent. NE#1's belief that CM#1 took a "fighting stance" was somewhat reasonable, given his demeanor, posture, noncommunication, and noncooperation. Similarly, NE#1's belief that CM#1 considered fleeing or physical resistance was not beyond reason. Accordingly, NE#1 had a legitimate governmental interest in CM#1's detention. However, CM#1's limited resistance did not

justify the force used against him. CM#1 posed no immediate threat to the officers or the community. There was no indication that a weapon was used in the reported robbery, and the shoes CM#1 held would not have been an effective improvised weapon due to his distance from the officers. OPA observed no nearby community members. Also, despite NE#1's plausible belief that CM#1 intended to flee or fight, CM#1 made no such attempt, nor did he threaten to do so. NE#1 had time to engage CM#1 further, rather than quickly, resulting in force. CM#1 stood still, with a building behind him and flanked by three uniformed police officers. Additionally, other officers were at the nearby crime scene and could have quickly responded. Instead, NE#1 engaged CM#1 for about forty seconds before deploying his Taser. During that brief exchange, NE#1 mostly issued orders and warnings as CM#1 stood in place.

NE#1's use of force was also unnecessary. First, despite CM#1's non-compliance, there was ample opportunity for further communication. None of the officers explained the reason for the stop or responded, even after CM#1 asked "why" he was being detained. An explanation—where no apparent safety concern prevented it—would have provided an additional opportunity to build rapport and gain voluntary compliance. It also would have provided time to plan, designate role assignments, and request backup. Overall, the type and level of force used were not objectively reasonable (as discussed above) or proportional to CM#1's limited resistance or NE#1's perceived threat (as discussed below).

NE#1's use of force was not proportional under the totality of the circumstances, including the nature and immediacy of the danger posed to the officers and others. CM#1 did not flee or pose an imminent threat that time, distance, shielding, and teamwork would not have potentially cured. Although proportional force does not require officers to mirror the force or resistance used by a subject, Type II force to overcome verbal noncompliance and passive resistance was unjustified.

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

Interim Policy 8.300 – Use of Force Tools, 8.300-POL-3 Taser 4. Officers May Use Tasers in the Following Circumstances: (eff. date 4/24/2023)

It was alleged that NE#1's Taser deployment violated policy.

As with all uses of force, Taser deployments must be objectively reasonable, necessary, and proportional. SPD Interim Policy 8.300-POL-3(4). 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 both likely to cause injury to the officer or subject and hands-on control tactics or other force options would likely cause more significant injury to the subject than the use of the Taser. *Id.*

As stated in Named Employee #1 - Allegation #1, NE#1's Taser use was not objectively reasonable, necessary, or proportional. That alone is sufficient to find that NE#1 violated this policy.

Moreover, NE#1's Taser deployment did not meet the additional requirements in SPD Interim Policy 8.300-POL-3(4). As stated in Named Employee #1 - Allegation #1, CM#1 did not pose an "immediate threat of harm to any person." Despite CM#1's demeanor or body language, he did not present an "immediate" threat of harm. CM#1 stood still and defied orders to get on the ground. His only observed "weapon" was shoes held in his right hand. While NE#1 had lawful authority to detain CM#1, CM#1's "level of resistance" before he was Tased was passive verbal defiance, unlikely to injure anyone. Further, SPD's Taser training notes explicitly instruct that a Taser is inappropriate for "verbal defiance," "belligerence," or on those who are "passively resisting and are not an immediate threat or flight risk."

Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**