



## CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 5, 2018

CASE NUMBER: 2017OPA-0884

### 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)

**Named Employee #3**

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

**Named Employee #4**

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

**Named Employee #5**

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 alleged that the Named Employees used excessive force on him, which included two Taser applications.



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**ANALYSIS AND CONCLUSIONS:**

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

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

The Named Employees responded to a call concerning an ongoing domestic violence disturbance. Officers were dispatched to the scene after a caller informed 911 about a male yelling “put your hands behind your back.” The caller stated that a woman made a muffled response and it sounded like her mouth was being covered or that she was being strangled. The caller further informed 911 that he had heard the same female yelling at a man to get out of her house since earlier that afternoon.

Officers went to the residence and knocked on the door. No one answered, even though the officers could hear “faint yelling” coming from the backyard. The officers went around the north side of the house, remaining on the public street, where they could see the second-floor balcony. The door to the balcony was open and a man “was yelling loudly inside.” Officers asked the occupants of the house to come outside onto the balcony.

The Complainant came outside. He was “shirtless” and “sweating profusely.” He seemed, in the officers’ perception to be agitated. Named Employee #1 (NE#1) recounted that the Complainant “yelled that he had to help with the torture of his girlfriend.” NE#1 reported that this comment “greatly alarmed” him. The officers asked where the Complainant’s girlfriend was and she came outside onto the balcony. She appeared to be frightened. Every time she would try to speak to the officers, the Complainant would yell at her. He then walked towards his girlfriend and she walked back inside the house where the officers could not see her. As they were afraid for her safety, the officers asked the Complainant to come back onto the balcony and he complied. He continually talked about “demons” and engaged in other incomprehensible rantings.

Additional backing units arrived and the officers went to the front door to convince the Complainant to exit the house. While he opened the door, he initially prevented his girlfriend from exiting. Once more officers arrived, the Complainant exited the home and officers were able to speak to his girlfriend. She was shaking and appeared to be afraid. After speaking with the girlfriend, the officers developed probable cause to believe that the Complainant had committed a domestic violence assault.

The officers approached the Complainant to place him under arrest. He repeatedly placed his hands in his pockets even though he was instructed not to do so. The officers told him to put his hands behind his back, but he refused to. He continued to yell at the officers. The officers approached him in order to handcuff him and the Complainant physically resisted them. This included gripping the hand of Named Employee #4 (NE#4), causing him pain. At that time, Named Employee #5 (NE#5) made the decision to use his Taser on the Complainant. Even though it appeared to NE#5 that the Taser application caused the Complainant pain, the Complainant continued to physically resist the officers and he prevented them from pulling his arms out from underneath his body. As such, and given the ongoing threat of harm, as well as the Complainant’s resistance and refusal to comply with lawful orders, NE#5 used the Taser once more in drive stun mode. This was successful and the officers were able to handcuff and secure the Complainant. No further force was used.

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



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be balanced against “the rights of the subject, in light of the circumstances surrounding the event.” (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.*)

The force used in this case is separated into two general categories: first, the largely de minimis force used by NE#1, Named Employee #2 (NE#2), Named Employee #3 (NE#3), and NE#4; and, second, the two Taser applications by NE#5. The first category of force is discussed here, while the second category is discussed below.

I find that the largely de minimis force used by NE#1, NE#2, NE#3, and NE#4 to handcuff the Complainant and control his person was reasonable. Notably, the officers had abundant probable cause to place the Complainant under arrest for a crime of violence, he was apparently in crisis, and he continually physically resisted the officers. As such, the force was reasonable to carry out the arrest and to prevent the ongoing threat that the Complainant presented. Moreover, the force was necessary to effectuate the officers’ lawful purposes and I find that the officers had a rational belief that there was no reasonable alternative to using such force. Lastly, I find that the force used by these officers was proportional to the threat posed by the Complainant. He had already engaged in domestic violence towards his girlfriend, had physically resisted the officers, and had harmed NE#4 and another officer (who suffered a cut to his arm).

For these reasons, I find that the force used by NE#1, NE#2, NE#3, and NE#4 was consistent with policy and, as such, I recommend that this allegation be Not Sustained – Lawful and Proper as against these officers.

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)**

**Named Employee #3 - 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 #4 - 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)**

**Named Employee #5 – Allegation #1**

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

As discussed above, NE#5 used force against the Complainant when he applied his Taser twice; first in probe mode and, second, in drive stun mode. When evaluating the use of a Taser, each application must be reasonable, necessary, and proportional in order to be consistent with policy.

In determining whether the use of a Taser is reasonable, SPD Policy 8.300-POL-3 applies. This policy specifically delineates two scenarios in which Taser use is appropriate: first, “when a subject causes an immediate threat of harm to the officer or others”; or second, “when public safety interests dictate that a subject needs to be taken into custody and the level of resistance 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.) I find that NE#5’s Taser applications were reasonable under both prongs of this policy. First, at the time the Taser was applied, the Complainant presented an immediate threat of harm to the officers and was, in fact, causing pain to NE#4. Second, public safety needs dictated taking the subject into custody as he had just committed a domestic violence assault. Moreover, he was actively resisting the officers and had caused injury to at least one and would have likely injured others unless the Taser was used. I find that this threat did not subside after the first application and, as such, the second Taser application was also reasonable.

I additionally conclude that the force was necessary to effectuate NE#5’s lawful purpose and I find that NE#5 had a rational belief that there was no reasonable alternative to using such force. Lastly, I find that the force used by NE#5 was proportional to the threat posed by the Complainant. He had already engaged in domestic violence towards his girlfriend, had physically resisted the officers, and had harmed NE#4 and another officer. The force was purposed to prevent further violent physical resistance and was successful in doing so.

For these reasons, I find that NE#5’s Taser applications were consistent with policy. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #5 – Allegation #2**

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

As discussed more fully above (see Named Employee #5, Allegation #1), I find that NE#5’s Taser applications were objectively reasonable under both prongs of this policy. For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.



**Seattle**  
Office of Police  
Accountability

## ***CLOSE CASE SUMMARY***

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