



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 14, 2017

CASE NUMBER: 2017OPA-0609

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.300 - Use of Force Tools POL-3 3. Officers Who Have Been Trained and Certified to Carry a CEW and Have Been Issued One Must Carry It During Their Shift	Sustained

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, a Department Captain, alleged that Named Employee #1 (NE#1), who has been trained and certified to carry a CEW/Conducted Electrical Weapon (Taser) and has been issued one, may have violated policy when he was not carrying it during his shift on the date of the incident.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.300 - Use of Force Tools POL 3, 3. Officers Who Have Been Trained and Certified to Carry a CEW and Have Been Issued One Must Carry It During Their Shift

On June 18, 2017, Named Employee #1 (NE#1) was dispatched to a report of a burglary in Northeast Seattle. NE#1 was joined by another SPD officer. During their response to this call, the officers were involved in a shooting that resulted in the death of an African-American woman.

As with all officer-involved shootings, the Department’s Force Investigation Team (FIT) responded to the scene and conducted an investigation into the incident. As part of that investigation, FIT interviewed both NE#1 and the other involved officer. FIT also reviewed In-Car Video (ICV) of the incident, which captured the audio of the interaction between the officers and the decedent prior to the shooting, as well as the officers’ conversations with each other before, during, and after the incident. During its review of the ICV, FIT identified that, before shots were fired, the other involved officer yelled “Taser” to NE#1. NE#1 responded that he did not have a Taser and no Taser was ultimately utilized.

At his FIT interview, the other involved officer stated that he yelled “Taser” to NE#1 because he believed that NE#1 had carried a Taser in the past. (Officer FIT Interview #1, at p. 11.) He further noted that, even though he knew “it’s not within policy to Tase somebody when you’ve only got two officers,” he “was just looking for any last ditch effort to slow [the decedent] down.” (*Id.*)



NE#1 recounted that when the other involved officer yelled “Taser,” NE#1 replied that he did not have a Taser. (NE#1 FIT Interview #1, at p. 5.) NE#1 was asked by FIT whether he was “a Taser officer.” (*Id.* at p. 15.) NE#1 stated that he was Taser trained, but did not directly answer FIT’s question. (*Id.* at pp. 15-16.) NE#1 added that he did not carry a Taser at the time of the incident. (*Id.* at p. 16.) When asked how long he had not carried a Taser, NE#1 guessed that it had been between 1 ½ and 2 weeks. (*Id.*) NE#1 stated that he had not turned the Taser into the Training Unit, but had instead replaced it on his vest with OC Spray and a baton. (*Id.*) NE#1 indicated that he stopped carrying his Taser because the battery died and confirmed that he had not yet contacted the Training Unit to obtain a replacement battery. (*Id.*) NE#1 stated that he had told his squad mates that he was not carrying a Taser any more, but it was unclear from NE#1’s FIT interviews whether the other involved officer was among those that he told. (*Id.*) NE#1 apparently did not tell anyone else, including the Taser Coordinator or the Quartermaster. (NE#1 FIT Interview #3, at p. 9.)

NE#1 asserted, similarly to the other involved officer, that a Taser would not have been appropriate under the circumstances facing him during the incident. NE#1 specifically stated the following: “I didn’t feel [the Taser] would have been an appropriate uh tool to have out at the time based on the, the knife that she just tried to stab me with.” (NE#1 FIT Interview #1, at p. 5.) NE#1 further explained that “a Taser is not an appropriate tool for a lethal force encounter,” and stated that, in his opinion, “if you did have a Taser in your hand and you’re encountered with a lethal force encounter, you’re train[ed] to, get rid of your Taser and go to your firearm.” (*Id.* at p. 17.)

As a result of its investigation and the officers’ FIT interviews, FIT referred NE#1’s failure to carry his Taser to OPA as potential misconduct. OPA initiated this investigation, which included gathering NE#1’s training records, reviewing Department Taser training and policy, interviewing NE#1 and the other involved officer, and interviewing SPD’s Taser coordinator.

At his OPA interview, in response to virtually every question asked concerning his Taser training, NE#1 stated that he did not recall. (*See, e.g.*, NE#1 OPA Interview, at pp. 6-7, 9.) NE#1 told OPA that he did not have his Taser on his person during the incident and that he left it in his locker. (*Id.* at p. 11.) NE#1 affirmed that the Taser was left in his locker for multiple shifts prior to the incident. (*Id.* at pp. 11-12.) NE#1 was asked whether he ever informed the other involved officer that he was no longer carrying his Taser and NE#1 responded that he did not recall. (*Id.* at pp. 14-15.) He affirmed that he did not tell anyone else aside from general squad mates that he was not carrying a Taser, including his sergeant and the Taser coordinator. (*Id.* at pp. 15-17.) When asked why he did not do so, NE#1 indicated his belief that by carrying an alternate less lethal device, instead of his Taser, he was in compliance with policy. (*Id.*) As explained below, this belief is incorrect and is contrary to Department policy and training.

NE#1’s training records indicated that received Taser operator training in October 2015, and that he was re-certified in September of 2016. (*See* NE#1 Training Records.) The Training Unit, through the SPD Taser coordinator, affirmed that the requirement that Taser-trained officers carry their Tasers during every shift was highlighted during the 2015 Taser training. (SPD Taser coordinator OPA Interview, at pp. 10-11.) As such, NE#1, who attended this training, knew or should have known of this requirement. The Taser coordinator further indicated that officers were trained in 2015 that when their Tasers malfunctioned, they were to: “leave their Taser in their locker,...notify their supervisor, ensure that they’re carrying pepper spray or batons,...and then to contact [the Taser coordinator] immediately.” (*Id.* at p. 20.) Lastly, the Taser coordinator stated that officers were trained in 2015 to contact him personally concerning any malfunction with a Taser and/or if the Taser’s battery needed to be replaced, as well as to notify him when



officers decided to no longer carry Taser. (*Id.* at pp. 21-23, 27, 38-39.) NE#1 thus knew or should have known of these requirements as well.

SPD Policy 8.300-POL-3(3) states that “officers who have been trained and certified to carry a CEW [Taser] and have been issued one must carry it during their shift.” Here, it is undisputed that NE#1 was trained and certified to carry a Taser and was issued one on the date in question. As such, NE#1 was required to carry that Taser during his shift and his failure to do so on the date in question was in violation of policy. While NE#1 contended that his Taser was not operational, and while that very well may have been the case, he was then required to immediately notify his supervisor and the Taser coordinator that his Taser was not working, that he would not be using it, and that he would be replacing his Taser with other less lethal tools. He did not do so. Moreover, the policy does not provide a trained and certified Taser officer with the unilateral authority and discretion to abandon the Taser for other less lethal devices. Officers are trained that before doing so they must notify the Taser coordinator and a supervisor. Again, NE#1 did not do so.

In reaching this conclusion, it is unnecessary for me to determine whether the use of a Taser would have ultimately been appropriate and feasible under the circumstances. Both NE#1 and the officer contended that it would not have been and whether their collective belief is correct or misplaced is not relevant to my disposition on the specific allegation at issue in this case.

Ultimately, I find that, based on the clear and undisputed record, when he made the decision to not carry his Taser on the date in question without notifying a supervisor or the Taser coordinator, NE#1 failed to comply with Department policy and training. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**