



**PROPOSED RESOLUTION REPORT
MNCO D2020-002**

I. Allegations of Misconduct

Against Officer-1

1. Excessive Use of Force
2. Adherence to Policy: Taser deployment

Against Officer-2

1. Excessive Use of Force
2. Adherence to Policy: Taser testing
3. Adherence to Policy: Taser deployment

II. Summary of Complaint Allegations

On July 6, 2020, [REDACTED] ("Complainant") spoke with an MNCO Investigator regarding an incident that occurred on May 13, 2020 at the Complainant's home, alleging excessive use of force against two MNPd employees. On that date, Officer [REDACTED] ("Officer-1") and Officer [REDACTED] ("Officer-2") came to the Complainant's residence due to a domestic assault call with weapons drawn, both fired Tasers, and Officer-2 shot Complainant in the leg.

III. Policy Violation

MNPd Manual 11.10.010 Use of Force

It is the policy of the Metropolitan Nashville Police Department that authorized employees shall use only that force that is reasonably necessary to effect lawful objectives. Therefore, intentional misuse of the authority granted under this policy is grounds for disciplinary action up to and including those outlined in category A of established policy for Discipline and Corrective Action.

MNPd Manual 11.10.120 Use of Deadly Force in Self Defense

Authorized employees may use deadly force when they have a reasonable belief that the action is immediately necessary to prevent imminent death or serious bodily injury of a human being, including the employee.

MNPd Manual 4.20.040 (A) Adherence to Policy & Rules

Employees shall adhere to all policies, procedures, rules, regulations, ethical codes, and administrative or executive orders as established by the department or Metropolitan Government (*Category varies by corresponding violation, but generally classified as a Category D unless otherwise stated*).

MNPd Manual 11.10.070 Taser Inspection & Storage

If a Taser is individually assigned, the employee will perform a spark test at the beginning of each shift to ensure that the device is charge and properly functioning and/or other such inspection as recommended by the manufacturer.

MNPd Manual 11.10.080 Taser Deployment

B. When deploying the Taser, probes or stun, at or upon an individual or animal that is within the parameters for the use of non-deadly force, the authorized employee shall: 1. Whenever possible, give the verbal warning of "Taser!" to alert other personnel that the Taser is about to be used so they can create a safe distance between themselves and the target.

IV. Executive Director Review

Executive Director Fitchard received the Investigative file, and it contained the following information, which was carefully reviewed:

1. Investigative Summary
2. Photographs of Scene
3. Photographs of Complainant
4. Photographs of MNPD Officers
5. MNCO Complaint
6. Incident Report
7. Use of Force Report
8. Arrest Report
9. CAD Report
10. OPA Report
11. Arrest Affidavit
12. MNPD Manual Policies
13. Recorded Interview of Complainant
14. Recorded Interviews of MNPD Officers
15. Recorded interviews of Witnesses
16. Disciplinary Files for Officers

V. Findings of Fact

1. Complainant and Complainant's wife had a verbal altercation wherein Complainant's minor son believed he saw his mother get pushed to the ground. The Complainant's son called 911 stating that his mom had been pushed by the Complainant, and Officer-1 and Officer-2 were dispatched.
2. Complainant reports driving to get help for his wife, who has multiple sclerosis, after she fell and, upon returning home, getting out of his vehicle with his hands up as the two Officers pointed guns at him. Complainant states he told them, "Why don't you put the guns away so we can talk?"
3. The Complainant reports that the Officers did not immediately holster their weapons, but they did back away initially.
4. Officers report that they do not know what the Complainant was saying but that he was yelling, gesticulating wildly with his hands, and was taking quick steps in their direction throughout while they gave commands to stop and grab his attention to talk to them.
5. The Complainant reports that he walked toward the middle of the street so that they "could see he was not trying to be a threat." He believed going toward his house would be perceived by the officers as "sketchy." As he walked into the street, the Complainant gets Tasered for the first time by Officer-2.
6. Officer-1 reports that as Complainant continued to yell, gesticulate and walk toward them ignoring their commands to stop and talk to them, Officer-1 backpedals and tells Officer-2 to "switch to less lethal, which meant to drop to her Taser in an attempt to subdue the subject."
7. The second time Officer-1 tells Officer-2 to go "less lethal," he sees the Complainant turn his attention toward Officer-2, and that's when Officer-2 deploys her Taser.
8. Officer-2 states that she had difficulty getting her Taser out of her holster. Before taking her eyes away from what was in front of her, the Complainant was not walking in her direction. "I had to look down

to see what the problem was and so while we were walking, I was trying to keep my proximity with [the Complainant] and [Officer-1] because they were already walking away from me. And I did look down for a second to see why my button wasn't releasing my Taser, and then I look up and [the Complainant] is now walking in my direction."

9. It is at this point that Officer-2 reports deploying her Taser on the Complainant, striking him in the chest with both prongs.
10. All parties state that the Taser does not appear to have any immobilizing effect, and the Complainant pulls the prongs out of his chest. It should be noted, the taser cartridge used to subdue the complainant was expired by over a year.
11. After Officer-2 Taser the Complainant, Officer-1 slips and falls on some loose gravel at the bottom of the driveway. Both Officer-1 and Complainant state that Officer-1 fell on his own through no fault of the Complainant. Officer-2 states that she did not see how Officer-1 came to be on the ground.
12. Complainant takes the wires from the Taser and throws them at Officer-1's feet while Officer-1 is still on his back on the ground.
13. Officer-1 reports maneuvering on the ground, keeping his legs between himself and the Complainant. After about 30 seconds of this, Officer-1 holsters his weapon and pulls out his own Taser. Officer-1 states that he did not believe himself to be in imminent threat of death or serious bodily injury. "At this point, we had been engaged in some kind of altercation for about 30 seconds and he had not produced a weapon. I felt at this time it was reasonable to holster my firearm and attempt a different force method."
14. Officer-1 describes the Complainant's actions prior to being shot as: "[Complainant] had straightened up for a second and taken about a step back. His attention was still on me. It appeared to me that he was kind of reassessing his plan of attack. I deployed my Taser. At about the same time, I heard a gunshot. And I looked over to my right and I saw [Officer-2] with her service pistol out. I remember [Officer-2] putting out on the radio that shots had been fired."
15. Complainant says that prior to being shot, no one gave any commands or warnings. Officer-2 couldn't remember if she did or not. Officer-1 stated he didn't remember any specific commands that Officer-2 issued.
16. Officer-1 states that Complainant was stationary when he was shot and was about 1-2 yards away from him.
17. Officer-2 states she believed the Complainant was walking toward Officer-1. She states she believed Officer-1 to be in imminent risk of serious bodily injury and shooting the Complainant to be immediately necessary to stop the threat.
18. Meanwhile, Officer-1 did not believe himself to be in imminent risk, but for his own legs being up in the air between himself and the Complainant. Officer-1 says of Officer-2's actions: *"I'm not her. I didn't see what she saw. I didn't feel what she felt. But you know, my conjecture is that she saw me on the ground and, based on her reaction to seeing me, seeing that I was okay after the altercation seems to me that she thought I was seriously injured and that she had already deployed a less lethal force option. We don't carry extra taser cartridges though I wish we did. She's much smaller than him. I don't think she would have won a hand-to-hand fight or a baton fight. You know, if she pulled out her baton, she would have run a substantial risk that he would simply disarm her of that. So, I think the firearm was the last force option she had."* Officer-2 reports being 5'3" or 5'4" and approximately 148 lbs.
19. Officer-2 states she did not give any commands or warnings to the Complainant, did not receive any requests for help from Officer-1, and did not check in verbally with Officer-1 before shooting because she did not believe she had time to do so.

20. Officer-2 also claims to have intentionally aimed for the Complainant's leg, despite her training to aim for center mass, as both a way to stop the threat and protect against the potential risk that the Complainant would be killed. Officer-2 acknowledges that aiming for the legs is not consistent with her training.
21. During her interview with the MNCO Investigator, when asked how close the Complainant was to Officer-1 when Officer-2 took the shot, Officer-2 replied, *"I didn't let him get that close. As soon as he lost focus from my direction to walk to [Officer-1], I just shot. I couldn't tell you how far he was from him. All I know is as soon as he turned to walk toward him, I took my shot."*

Officer-2 also said to the MNCO Investigator, *"My reasoning for pulling out my weapon was because my partner was still on the ground and [the Complainant] was still acting erratic and was focused back on [Officer-1]."*

22. During her interview with the OPA Investigator, Officer-2 said the following:

"I, in that situation, in that moment, [the Complainant] was like a monster to me. I just saw this big, angry man. I can tell you what his face looked like, how he scrunched up, how his eyes was [sic] just piercing. I can tell you all of that. I couldn't tell you the exact weight. I couldn't tell you the exact height. All I know is at that point, I was like this and he was like this to me. That's -- that's how small I felt in comparison to him, and it made me feel smaller when I knew that my partner was down because now it was just me and this angry man.

And in my head, I was like he is going to stop at nothing. Why I decided that using my pistol would going [sic] to be the best for everybody at that point. And the kids are behind me, they are watching all of this going on with their dad. Mom is somewhere because she was in the car. I never laid eyes on mom, but I didn't want him to try to take a shot at me or hurt me. I didn't know what he had on him at the time. I didn't want him running up on me trying to gain control. Again, my partner's on the ground. I didn't want him to try to take anybody out and then go finish off whatever he was already doing to his wife and kids. You know?"

23. After being shot, the Complainant was handcuffed, and first aid was rendered.
24. Officer-2's Taser had not been activated (i.e., tested) prior to its use on May 13 since February 19, 2020, although MNPDP policy is for it to be tested at the beginning of every shift.
25. Upon review, it was discovered that the Taser cartridge expired on January 1, 2019.
26. Neither Officer-1 nor Officer-2 announced "Taser!" prior to deploying it on the Complainant.

VI. Discussion/Analysis

There is no dispute that police were called to the scene due to a 911 call alleging a domestic assault. Officer-1, Complainant and other witnesses interviewed say that both Officers get out of their vehicles with their firearms pointed at the Complainant. Officer-2 reports not having her firearm out initially. Officer-1 holsters his firearm when he is on his back on the ground, after slipping. Officer-2 holsters her firearm and gets out her Taser, deploying it, before getting her firearm back out and shooting the Complainant.

Immediately prior to being shot, Officer-2 did not issue any commands, did not check-in with her partner, and her partner did not ask her to shoot the Complainant. Officer-1 did not feel himself to be in imminent threat of death or serious bodily injury, and he deployed a Taser at the same time roughly that Officer-2 shoots the Complainant. According to Officer-1, the Complainant was stationary and about one to two yards away when he was shot by Officer-2.

Officer-2 did not see how Officer-1 came to be on his back on the ground and may have made assumptions that the Complainant had done something physically against Officer-1. Her justification for shooting the Complainant was that Complainant had been acting “aggressively” and “erratically” and she did not know what the Complainant was about to do toward Officer-1, and she did not believe she had time to consider any less lethal options, so she shot to protect Officer-1.

Per the MNPD Manual 11.10.010, “It is the policy of the MNPD that authorized employees shall only use that force that is reasonably necessary to effect lawful objectives,” and MNPD Manual 11.10.120, “Authorized employees may use deadly force when they have a reasonable belief that the action is immediately necessary to prevent imminent death or serious bodily injury of a human being, including the employee.”

Here, Officer-2 did not have a reasonable belief that shooting the Complainant was immediately necessary to prevent imminent death or serious bodily injury of Officer-1. Rather, she had a generalized and speculative belief that Officer-1 was in some risk of harm, which is not consistent with policy regarding use of deadly force under these circumstances.

VII. Mediation

Mediation was not offered in this case based on the nature of the complaint.

VIII. Conclusion

Although the MNPD’s use of force policy has changed since the timing of this incident, here, Officer-2 shot an unarmed person and did so in a manner not consistent with her training. Both Officers failed to follow the MNPD’s policy governing the use of Tasers, specifically by failing to shout “Taser” prior to its use.

It is the policy of the Metropolitan Nashville Police Department that authorized employees shall use only that force that is reasonably necessary to effect lawful objectives. Authorized employees may use deadly force when they have a reasonable belief that the action is immediately necessary to prevent imminent death or serious bodily injury of a human being, including the employee.

Here, the Executive Director concludes that Officer-2 did not have a reasonable belief that her use of deadly force was immediately necessary to prevent either imminent death nor serious bodily injury of herself, Officer-1 or anyone else. While she may have sincerely and subjectively believed that shooting the Complainant was justified, it simply wasn’t reasonable under the circumstances and based on the evidence reviewed. The Complainant and Officer-1 had been engaged in a roughly 30-second altercation without a

weapon being used nor any other justification to reasonably believe serious bodily injury was imminent and other non-lethal options couldn't be attempted. Officer-2 did not use her radio to call for backup, nor did she check-in verbally with Officer-1 to better ascertain the threat and risk level.

The MNPD Manual requires Tasers to be tested at the beginning of each shift, and records show that Officer-2's Taser was last tested February 19, 2020, nearly 3 months prior. Additionally, the Taser cartridge discharged by Officer-2 expired on January 1, 2019. The Executive Director notes that 1 in 12 fatal police shootings are related to Taser failures. Even when tested and unexpired, according to an NPR article about the same model Taser that the MNPD uses, the Tasers are only effective between 25 and 50% of the time¹.

The Executive Director finds by a preponderance of the evidence that Officer-1 did not violate Excessive Use of Force, and that allegation against him is: *not sustained*. However, Officer-1's failure to announce his intended use of the Taser, which might have led to Officer-2 being better informed, is a violation of MNPD Manual 11.10.080 related to Taser deployment, and a violation for MNPD Manual 4.20.040 (A) Adherence to Policy & Rules is: *sustained*.

The Executive Director finds by a preponderance of the evidence that Officer-2 violated Excessive Use of Force and two Adherence to Policy violations by way of violating MNPD Manual 11.10.070 related to Taser testing and 11.10.80 related to Taser deployment, and all three violations are: *sustained*.

IX. Recommended Action

The OPA completed a use of force review into this matter and concluded that Officer-2 was exonerated from any policy violation.

Excessive Use of Force includes up to a Category A offense. A first offense is generally disciplined with a 20-day suspension up to dismissal and/or demotion. Adherence to Rules is a Category D offense, a first offense of which is generally a 1-4 day suspension per the disciplinary grid.

Officer 1's disciplinary record contains no relevant disciplinary history and no disciplinary history at the time of this offense.

Officer-2's disciplinary record contains no relevant disciplinary history. She has two category E offenses in 2018 and 2019 for miscare of government property related to two separate single vehicle accidents, for which she received an oral reprimand and 1-day suspension.

Against Officer-1, I recommend a 1-day suspension and training specifically related to de-escalation and less lethal uses of force, including Taser policy regarding deployment and testing.

Against Officer-2, I recommend a 20-day suspension and training specifically related to de-escalation, and less lethal uses of force, including Taser policy regarding deployment and testing.

¹ <https://www.npr.org/2019/06/27/729922975/despite-widespread-use-police-rate-tasers-as-less-effective-than-believed>

Submitted to the Community Oversight Board for Approval on Wednesday, January 26, 2022.

Jill Fitchard
Executive Director

Date

Board Recommendations:

_____ Accept/Send to MNP Chief of Police

_____ Accept, but Modify

_____ Reject

_____ Return to MNCO Staff

BOARD RECOMMENDED MODIFICATION:

Andrés Martínez, Chair

Date