

2015-C-0104

CRC Appeal referred to City Council

# Taser Policy-Executive Order

- Directive 1051.00 – Electronic Control Weapon System
- Active Aggression: is a threat or overt act of an assault (through physical or verbal means), coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent.

# Directive 1051.00 (2.2)

- When reasonable under the circumstances, members are authorized to use an ECW in the following situations:
  - 2.2.1 In response to active aggression
  - 2.2.3 In drive stun mode in the event of insufficient probe spread or a dislodged probe, or in close quarters to protect a member, create a safe distance between a member and a subject, or to avoid the use of a higher level of force.

# 1051.00 – (3.2)

- Members will not use an ECW on a handcuffed or otherwise restrained subject (for example a subject being held to the ground by multiple officers), unless the subject is actively engaged in behavior that creates a substantial risk of injury to the subject, member or others, and no other reasonable force options are available.

# Reasonableness Standard - CRC

- City Code 5.03 (8)
- The Committee may find the outcome of an administrative investigation **unreasonable** if the committee finds the **findings** are not supported by the evidence, whether or not it agrees with the findings.



Full Video (Actual Speed)

# Background to call

- Sergeant A was on patrol and saw a disturbance in the middle of the street near 12th and Johnson. Sergeant A further stated he saw a woman crying in a car assisted by citizens, and the woman stated, “...that a bicyclist had just punched at her or punched her and was hitting on her car and circling her car in anger, and she was obviously, I could tell, very shaken up by the event. And she then looked down the street to the east and she said that’s the bicyclist in the orange shirt, and I could see a bicyclist with an orange shirt that was traveling eastbound on Johnson.”

# Officer B Statement

- *Sgt. A was getting yelled at by CO, in a direct, focused and aggressive manner.*
- *CO's hands, were waving rapidly and his shoulders were rolled forward.*
- *Through my observations I believed that CO was about to engage Sgt. A in a physical altercation.*

# Officer B Statement (cont)

- *“as I approached, I notated (sic) that CO was intensely focused on Sgt. A, was continuously yelling at him, and CO, again, thrust his hands into his front pockets of his shorts and stepped around his bicycle towards Sgt. A, lowering his head, tucking his chin towards his chest, and I note that he had a motivated gait moving towards Sgt. A...from my training and experience, this is behavior that indicates a person’s initiating an engagement of physical altercation with an officer.”*



Clip 1 (Actual Speed)

# Officer B Statement (cont)

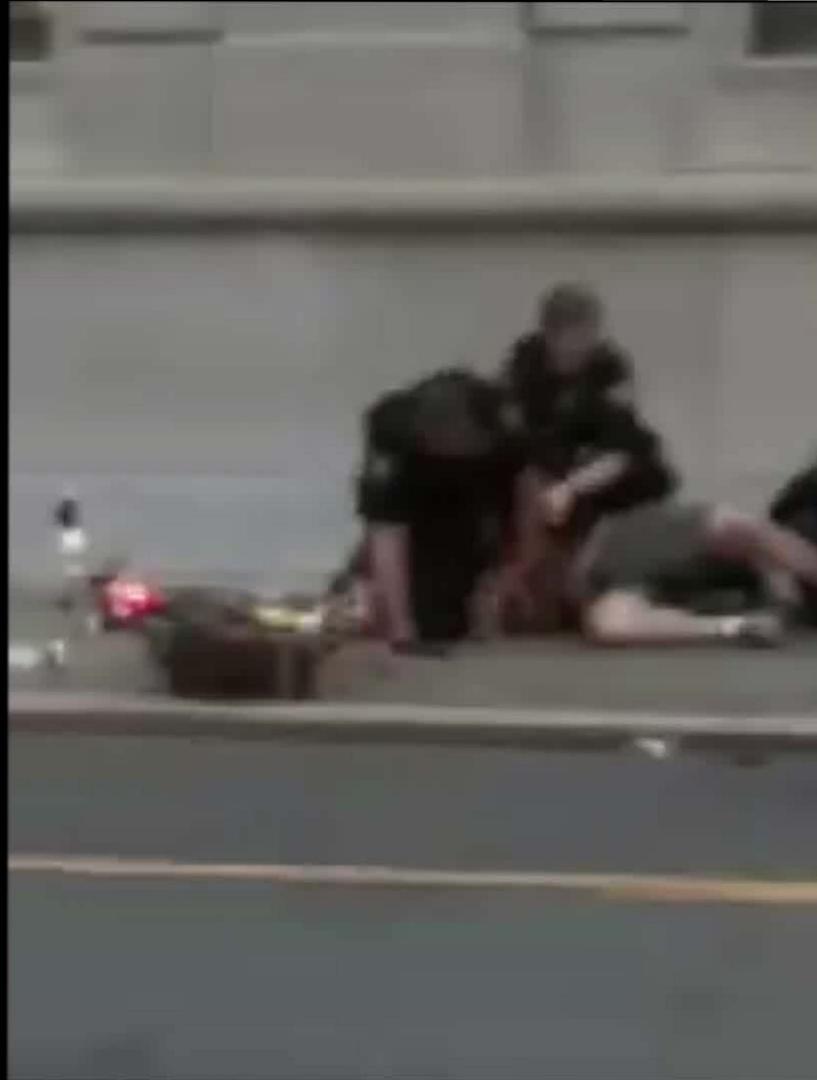
- *Sgt. A was struggling to control CO.*
- *I observed CO attempting to turn towards Sgt. A and his right hand was clenched into a fist when he removed it from his pocket.*
- *CO was arching his back and pushing against Sgt. A.*
- *I thought at this time he was going to try and punch Sgt. A.*
- *I told him to stop fighting or I'd use my Taser.*

# Officer B - Observations

- *CO was egregiously violent, volatile and continued to escalate.*
- *The Taser was initially effective in deterring his aggressive behavior.*
- *CO dropped to his knees and began kicking his feet.*
- *I got kicked multiple times by CO. It caused me to fall to the ground and I ended up down near his knees and he was face down at this point and still struggling.*

# Taser Deployment

- The last video shows the active aggression by CO and the first 5 seconds of the Taser.
- The button of the Taser was pushed three times in drive mode: 3sec, 1sec, 1sec.



Clip 2 (Actual Speed)

# Taser Deployment

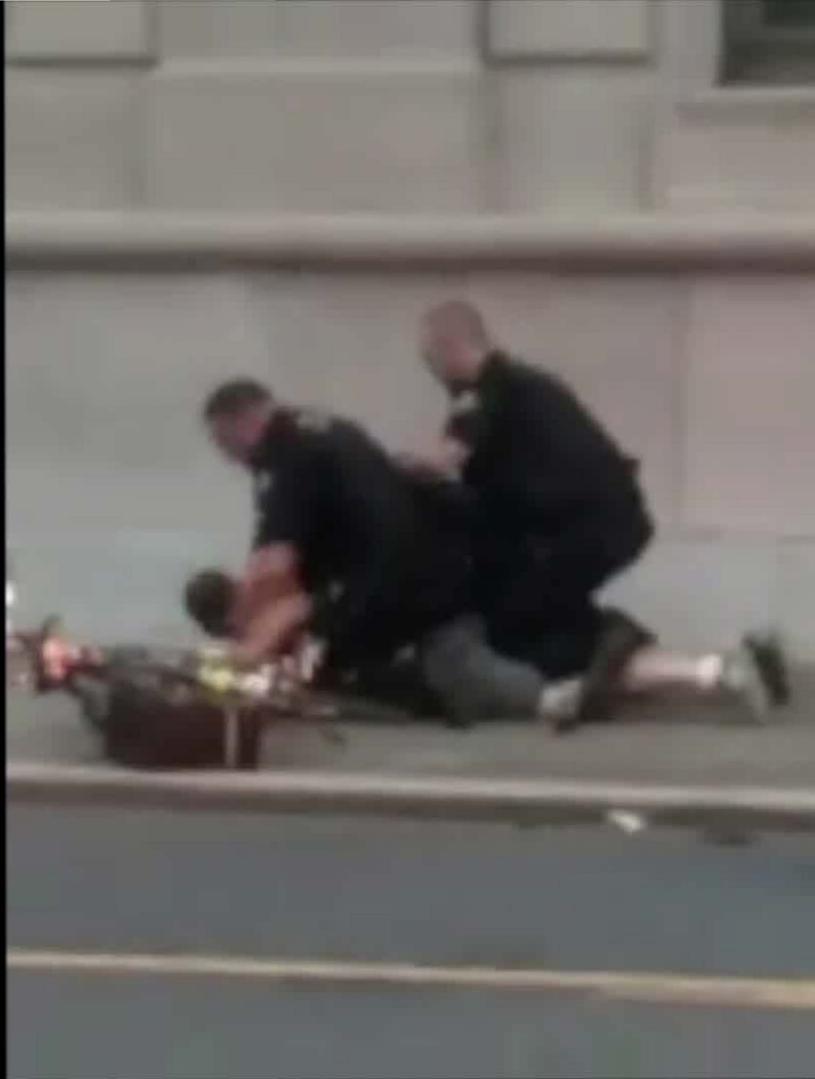
- This video shows Officer B getting up after being kicked over and deploying the Taser in drive stun mode for 3 seconds.
- CO is continuing to kick and struggle.
- All are trying to take CO into custody during the Taser cycle but are unable to gain control.



Clip 3 (Actual Speed)

# Taser Probe Deployment

- CO continues to struggle, his head comes up, legs kick and he attempts to pull his arms away from the Officers.
- Officer C does not have control of his right arm. “He (CO) was physically overpowering my attempts to control his arm.”



Clip 4 (Actual Speed)

# Taser with Probe Deployment

- Immediately prior to the 3<sup>rd</sup> Taser, CO was still engaged in active aggression against Sgt. A, Ofc. B and Ofc. C. Ofc. B believed that CO was starting to overpower Sgt. A and Ofc. C. CO's resistance was creating a risk of injury to both CO and the Officers. This Taser application was a continuation of the level of force previously used against CO, and likely prevented the escalation of force.

# Taser Facts

- The first drive stun Taser deployment is due to CO actively fighting with Sgt. A and attempting to punch him. 3 sec, 1 sec, 1 sec
- The second Taser deployment is after CO has kicked Officer B causing him to fall backward to the ground. 3 sec
- The Taser is then deployed with probes after CO continues to fight Sgt. A, Officer C, kicking and attempting to get off the ground.

# After handcuffing

- *Sgt. A – "Once CO was in handcuffs, he still became – he still was very upset, yelling and screaming, thrashing and kicking around."*
- *Even after CO was handcuffed, he continued to be aggressive and kick at officers.*

# CRC Concern #1

- Officer B's use of the Taser was unreasonable because his usage was not in response to active aggression.
- PPB Response:
  - CO attempted to punch Sgt. A, kicked Officer A causing him to fall to the ground.

# CRC Concern #2

- Members deemed CO to be restrained since he was held down on the ground by officers during the Taser application.

## PPB Response:

- CO continued to fight and kick at officers attempting to push them off of him. Officer B was already kicked multiple times and kicked to the ground. When the video ends CO is still not fully restrained or handcuffed by the officers.

# CRC Concern #3

- One member did not believe the last discharge of the Taser was supported by the directive.
- PPB Response:
  - Although the Taser recorded the last discharge it is not precise enough to tell the length of the discharge or if it even delivered electricity to CO.
  - CO does not describe feeling the last Taser discharge.
  - Based on the video and the investigation CO was still fighting during the last application of the Taser. When the video ends CO had still not been fully restrained or handcuffed.

# PPB Findings

- Immediately prior to the 2<sup>nd</sup> Taser, CO was still engaged in active aggression against Sgt. A, Ofc. B and Ofc. C. This Taser application was a continuation of the level of force previously used against CO, and likely prevented the escalation of force.
- Immediately prior to the 3<sup>rd</sup> Taser, CO was still engaged in active aggression against Sgt. A, Ofc. B and Ofc. C. Ofc. B believed that CO was starting to overpower Sgt. A and Ofc. C. CO's resistance was creating a risk of injury to both CO and the Officers. This Taser application was a continuation of the level of force previously used against CO, and likely prevented the escalation of force.

# PPB Findings (cont)

- Last recorded application of the Taser was unknown by CO or Officer B. The investigation does not contain evidence of the effect of this last recorded application.
- The Taser does not have the ability to provide evidence of the length or effectiveness of the last recorded use.