

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	February 19, 2018
Time of Incident:	5:10 a.m.
Location of Incident:	██
Date of COPA Notification:	February 23, 2018
Time of COPA Notification:	2:36 p.m.

During the early morning hours of February 19, 2018, Complainant ██████████ repeatedly attempted to contact his wife ██████████ despite an order of protection which prohibited him from doing so. At 5:00 a.m. ██████████ called 911 and requested officers respond to her house at ██████████ ██████████ was on scene in front of ██████████ house when Officers Thomas Barnes and Denise Robinson arrived. Officer Robinson spoke with ██████████ on the porch while Officer Barnes stayed on the sidewalk and in the street with ██████████ Once Officer Robinson verified that there was a valid order of protection against him, ██████████ began to walk away from the scene. Officer Barnes followed ██████████ and ordered him to put his hands up. ██████████ turned around to face Officer Barnes and raised his hands above his head. Officer Barnes then deployed his Taser at ██████████ twice. Due to ██████████ heavy winter clothing, the Taser probes did not make contact with his skin.

II. INVOLVED PARTIES

Involved Officer #1:	Thomas Barnes Star #8426 / Employee ID # ██████████ Date of Appointment: May 26, 1998 Police Officer / Unit 022 Date of Birth: ██████████ 1969 Male / Black
Subject #1:	██ Date of Birth: ██████████ 1975 Male, Black

III. ALLEGATIONS

Officer	Allegation	Finding
Officer Thomas Barnes	1. It is alleged that Officer Barnes deployed a Taser at ██████████ without justification, in violation of Rules 6 and 8.	Sustained

IV. APPLICABLE RULES AND LAWS

Rules

1. Rule 6: Disobedience of an order or directive, whether written or oral.
 2. Rule 8: Disrespect to or maltreatment of any person, while on or off duty.
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General Orders

1. G-03-02-02: Force Options
2. G-03-02-04: Taser Use Incidents

V. INVESTIGATION¹

a. Interviews

In his April 13, 2018 **statement to COPA**,² **Complainant** ██████████ stated that early on February 19, 2018 he tried to contact his wife ██████████ so he could retrieve his clothes and identification cards from her house. ██████████ had an order of protection against him at that time. ██████████ went to the house, rang the bell without success, left, and continued to call her. ██████████ eventually went back to the house and then Officers Barnes and Robinson arrived. ██████████ said that Officer Barnes was immediately aggressive with him. Officer Barnes repeatedly told him to put his hands behind his back, but ██████████ asked him why. ██████████ thought that this was not the right way to approach someone, so he started to leave. ██████████ said he was trying to get away from Officer Barnes when Officer Barnes first shot his Taser. ██████████ said he had his hands up before ██████████ shot the Taser. The Taser barbs struck ██████████ on his rib cage and ██████████ immediately snatched them away from his body. Officer Barnes shot the Taser again. ██████████ said he did not remember feeling any pain. Officers Barnes and Robinson and ██████████ then got into a struggle on the lawn. Both officers had their batons extended. During the struggle they all fell in the snow. More officers arrived, placed ██████████ in handcuffs and took him to the station.

In her March 8, 2018 **statement to COPA**,³ **Witness** ██████████ stated that on February 19, 2018 she called the police because of a domestic incident with her husband, ██████████. She stated that he was not combative towards the police, but he was not cooperative, either. She described his interaction with the police as ██████████ talking a lot. She did not see Officer Barnes deploy his Taser at ██████████ because it was too dark. Once she heard ██████████ say, "Why'd you tase me?", she went back inside and closed the front door.

In his April 25, 2018 **statement to COPA**,⁴ **Accused Officer Thomas Barnes** stated that on February 19, 2018 he was on patrol with his partner, Officer Denise Robinson, when they

¹ COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

² Attachment 33

³ Attachment 24

⁴ Attachment 41

received a dispatch for a domestic incident at [REDACTED] house. When the officers arrived at [REDACTED] house, [REDACTED] approached their car. He told the officers that he was at [REDACTED] house to get some personal items and check on his wife. Officer Robinson spoke with [REDACTED] on her porch to confirm the order of protection's validity. Once this was confirmed,⁵ Officer Robinson notified Officer Barnes, who then attempted to place [REDACTED] in custody. [REDACTED] indicated that he was not going to be locked up. Officer Barnes then deployed his Taser at [REDACTED] twice. Officer Barnes stated that he deployed his Taser at [REDACTED] because he believed [REDACTED] was under arrest, [REDACTED] indicated he was not going to be arrested, and Officer Barnes "didn't want to fight with him ([REDACTED])" Officer Barnes explained his understanding of CPD's Use of Force Policy regarding Tasers by stating that he can deploy his Taser at active resisters and assailants. He stated that at the time he deployed his Taser, [REDACTED] was "in between" a passive and active resister. Officer Barnes initially did not recall the verbal commands he gave [REDACTED] prior to deploying his Taser. After he reviewed his body worn camera footage, Officer Barnes conceded that the only verbal command he gave [REDACTED] was to put his hands up. He also conceded that [REDACTED] put his hands up prior to Officer Barnes deploying his Taser. Officer Barnes also said that he would normally tell a subject to stop and notify them that they were under arrest, but he was not sure why he failed to do so in this instance. He added that he had recently taken a Taser re-certification course, but was still confused about the appropriate time to deploy his Taser, especially in light of CPD's new Use of Force Policy.⁶

In her April 25, 2018 **statement to COPA**,⁷ **Witness Officer Denise Robinson** provided essentially the same account as Officer Barnes. She added that [REDACTED] refused to comply with the officers' commands throughout their encounter.

b. Digital Evidence

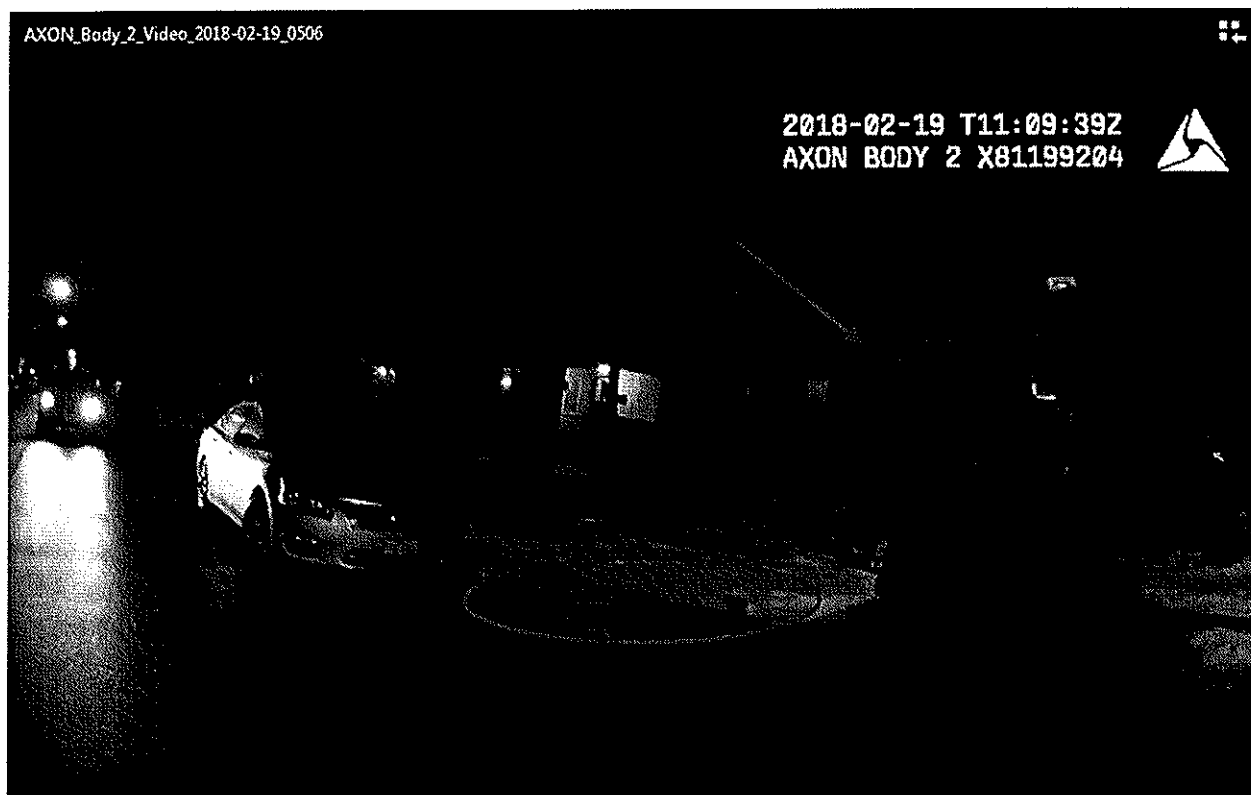
Body worn camera footage⁸ from Officers Barnes and Robinson depicts the encounter between the officers and [REDACTED]. At the 3:33 mark of Officer Barnes' footage, [REDACTED] begins to walk away from the scene. Officer Barnes follows him and says, "Hey, hey, hey" repeatedly, followed by, "So, this is what I'm asking you do. I'm asking you to put your hands up." [REDACTED] responds by saying, "I'm not putting my hands up. Shoot me then! Shoot me! I ain't got no gun." Officer Barnes then raises his Taser and points it at [REDACTED] while [REDACTED] stops, turns around to face Officer Barnes, and raises his hands above his head. It is only after [REDACTED] raises his hands that Officer Barnes deploys his Taser at him, twice. The moment when [REDACTED] raises his arms prior to Officer Barnes' Taser deployment, at the 3:49 mark, is depicted below:

⁵ [REDACTED] was served with an Order of Protection in case number [REDACTED] in open court on 2/16/18 by Judge [REDACTED].

⁶ CPD's latest Use of Force Policy (General Order G-03-02) took effect on October 17, 2017.

⁷ Attachment 43

⁸ Attachment 21



Note that [REDACTED] arms are raised, as reflected by his hands in the air and his shadow in the snow. It is also clear that Officer Barnes has his Taser pointed at [REDACTED]

c. Documentary Evidence

An **Initiation Report**⁹ from Lt. Frederick Melean notes that Officer Barnes deployed his Taser at a subject when the subject was not an active resister or assailant.

Officer Barnes' **Tactical Response Report**¹⁰ indicates that [REDACTED] did not follow verbal direction and pulled away from Officer Barnes. Officer Barnes utilized member presence, verbal direction, tactical positioning, an escort hold, and emergency handcuffing, in addition to deploying his Taser. The report also reveals that Lt. Melean noted that Officer Barnes violated CPD General Order G-03-02-04 by deploying his Taser at a subject who was not an active resister or assailant.

The remaining **related CPD reports**¹¹ provide essentially the same account of the events as the officers' statements.

A **Taser Download Report**¹² shows that Officer Barnes deployed his Taser at 5:09:45 a.m. and 5:09:51 a.m.

⁹ Attachment 4

¹⁰ Attachment 10

¹¹ Attachments 5, 6, 8, 9, and 11.

¹² Attachment 12

VI. ANALYSIS

COPA recommends a finding of **SUSTAINED** for Allegation #1, that Officer Barnes deployed his Taser at [REDACTED] without justification.

CPD Policy dictates that an officer may deploy a Taser against active resisters and assailants.¹³ CPD defines an active resister as, “a person who attempts to create distance between himself or herself and the member’s reach with the intent to avoid physical control and/or defeat the arrest”¹⁴, while assailants are defined as, “a subject who is using or imminently threatening the use of force against another person.”¹⁵ Additionally, CPD’s Taser Use Incident Policy specifies that officers should de-escalate by stating, “Members will use de-escalation techniques to prevent or reduce the need for force when it is safe and feasible to do so based on the totality of the circumstances. This includes *continually assessing the situation and modifying the use of force as circumstances change* and in ways that are consistent with officer safety.”¹⁶ (emphasis added)

Here, [REDACTED] was neither an active resister nor an assailant when Officer Barnes deployed his Taser. The body worn camera footage reveals that [REDACTED] was a cooperating subject at the time of Officer Barnes’ Taser deployment. Officer Barnes’ only command to [REDACTED] was, “put your hands up”, with which [REDACTED] complied. CPD’s Taser Use Incident Policy also requires members to, “continually assess the situation and modify...the use of force as circumstances change.”¹⁷ Undeniably, the circumstances surrounding [REDACTED] behavior and overall compliance changed rapidly, however, this does not change the fact that Officer Barnes ordered [REDACTED] to raise his hands, and only deployed his Taser after [REDACTED] complied with that order. This was not a permissible use of force under CPD Policy, and as such, Allegation #1 against Officer Barnes is **SUSTAINED**.

VII. CONCLUSION

Based on the analysis set forth above, COPA makes the following findings:

Officer	Allegation	Finding
Officer Thomas Barnes	1. It is alleged that Officer Barnes deployed a Taser at [REDACTED] without justification, in violation of Rules 6 and 8.	Sustained

Approved: [REDACTED]

Erica Sangster
Acting Deputy Chief Administrator – Chief Investigator

Date

7/3/2018

¹³ General Order G-03-02-IV-B-2-c-4 and General Order G-03-02-04-II-C

¹⁴ General Order G-03-02-IV-B-2

¹⁵ General Order G-03-02-IV-C

¹⁶ General Order G-03-02-04-II-B

¹⁷ Id.

Appendix A

Assigned Investigative Staff

Squad:	9
Investigator:	Jessica Ciacco
Supervising Investigator:	Shannon Hayes
Acting Deputy Chief Administrator:	Erica Sangster