

FORCE ANALYSIS

Name of Victim: Drew Edwards

Department involved: Maquoketa IA Police Dept./ Jackson County Sheriff's Dept.

Date of incident: June 15, 2019

Time of incident: Approx. 7:00 am

Location: 107 W. Apple Street, Maquoketa IA



William M. Harmening

02/25/2020

STATEMENT OF QUALIFICATION

My qualifications for providing expert witness testimony in the area of police practices and use of force derive from two sources, one occupational, and the other academic. I have been a law enforcement officer for approximately 36 years, both in a patrol and investigative capacity. I am a graduate of the Illinois State Police Academy (1982), and from 2001 to my retirement in September 2018, served in the capacity of Chief Special Agent for the Illinois Securities Department. I am a former police academy instructor in Illinois, and was responsible for all behavioral science instruction to Illinois police cadets completing their initial basic training. This instruction included the psychology of force, especially deadly force. Additionally, I was a member of the Central Illinois Critical Debriefing Team, and became a member after my own officer-involved shooting.

Over the course of my law enforcement career I have attended many different types of training, including investigative methods, violent and property crimes investigation, and crime scene processing and analysis. My investigative methods training included techniques related to trajectory analysis, blood stain analysis, and crime scene analysis, among others. I later became a police academy instructor in crime scene processing and analysis. I was also one of the first fifteen officers in the State of Illinois to receive C.I.T. training ("crisis intervention team"). Those of us who received this training were trained as trainers. Additionally, I have qualified annually with my duty weapon, and have periodically attended law updates on the use of force. I have also participated in many different types of police training as an instructor or co-instructor, and routinely teach in an academic setting on the subject of force, particularly the psychology of force. This instruction is evidence-based using peer-reviewed research.

In terms of academic qualifications, until my retirement from teaching in Spring '19, I served as the program coordinator of the Forensic Psychology certificate program at Washington University in St. Louis, one of the Nation's top research universities. In this capacity I also served as lead instructor for the following courses:

- Introduction to Forensic Psychology (includes a comprehensive treatment of the use of force by the police)
- Crisis Intervention (includes a comprehensive treatment of the use of force by the police).
- Criminology
- Correctional Psychology
- Investigative Psychology

Two of these courses, Introduction to Forensic Psychology and Crisis Intervention, deal extensively with the subject of police use of force. Additionally, I have authored four peer-reviewed textbooks, as follows:

- Forensic Psychology (2015, Pearson Publishing). This widely used textbook includes an extensive treatment of the subject of force using the most current research.
- Crisis Intervention: The Criminal Justice Response to Mayhem, Chaos, and Disorder (2014, Prentice Hall). Also includes an extensive treatment of the subject of force.
- Serial Killers: The Psychosocial Development of Humanity's Worst Offenders (2014, Charles C. Thomas).
- The Criminal Triad: Psychosocial Development of the Criminal Personality Type (2010, Charles C. Thomas).

I have reviewed and/or investigated approximately 100 police use-of-force cases, and have testified in the following depositions and trials:

- Deposition (04/17) – Estate of Dontre Hamilton v. City of Milwaukee, Federal District Court, Eastern Division of Wisconsin, 16-CV-507.
- Deposition (8/17) – Estate of Darren Billy Wilson v. Bartow County GA, Federal District Court, Northern District of Georgia, 4:17-CV-00018.
- Deposition (12/17) – Estate of Nicholas Dyksma v. Harris County GA, Federal District Court, Southern District of Georgia.

- Deposition (05/18) – Estate of Javier Gaona v. City of Santa Maria CA, Federal District Court, Central District of California, no. 217-CV-01983.
- Deposition (5/18) – Estate of Rafael Cruz v. City of Chicago IL, Circuit Court of Cook County, no. 16 L 00823.
- Deposition (7/18) – Estate of Nicholas Thomas v. City of Smyrna GA, Federal District Court, Northern District of GA, 1:17-CV-01036.
- Deposition (7/18) – Estate of Destry Meikle v. City of Republic MO, Federal District Court, Western District of Missouri, 6:17-CV-3194-DPR.
- Deposition (7/18) – Estate of Jason Fanning v. City of St. Joseph MO, Federal District Court, Western District of Missouri, 17-06073-CV-SJ-SWH.
- Deposition (8/18) – Estate of Jason Alderman v. City of Bakersfield CA, Federal District Court, Eastern District of California, 1:16-CV-00994-DAD-JLT.
- Deposition (09/18) – Estate of Miguel Gonzales v. Bernalillo County NM, Federal District Court, District of New Mexico, 18-CV-00125-KG-LF.
- Deposition (09/18) – Gerald Cole v. City of Indianapolis, Federal District Court, Southern District of Indiana, 1:16-cv-03081-WTL-MJD.
- Deposition (10/18) – Matthew Schantz v. Appling County GA, Federal District Court, Southern District of Georgia, 2:17-cv-157.
- Deposition (10/18) – Estate of Aaron Siler v. City of Kenosha WI, Federal District Court, Eastern District of Wisconsin, 2:17-CV-01324-DEJ.
- Deposition (11/18) – Estate of Donte Johnson v. City of Dolton IL, Federal District Court, Northern District of Illinois, 17-CV-2888.
- Deposition (12/18) – Estate of Lori Knowles v. Henry County GA, Federal District Court, Northern District of Georgia, 1:18-CV-01394-TWT.
- Deposition (01/19) – Antwon Golatte v. City of Chicago IL, Federal District Court, Northern District of Illinois, 17-CV-00929.
- Deposition (01/19) – Estate of Andre Green v. City of Indianapolis IN, Federal District Court, Southern District of Indiana, 1:17-CV-02673-JPH-TAB.

- Deposition (01/19) – Estate of Casimero Casillas v. City of Fresno CA, Federal District Court, Eastern District of California, 1:16-CV-1042-AWI-SAB.
- TRIAL (03/19) Estate of Casimero Casillas v. City of Fresno CA, Federal District Court, Eastern District of California, 1:16-CV-1042-AWI-SAB.
- Deposition (3/19) – Estate of Tommy Le v. King county WA Sheriff’s Dept., Federal District Court, Western District of Washington, 2:18-CV-00055-TSZ.
- Deposition (4/19) – Estate of Donnie Robertson v. Corporal C.J. Deitz, Federal District Court, Western Division of Virginia, 5:18-CV-00067-EKD.
- TRIAL (05/19) - Estate of Dontre Johnson v. City of Dolton IL, Federal District Court, Northern District of Illinois, 17-CV-2888.
- Deposition (07/19) – Wuenschel et al. v. Columbus GA, Federal District Court, Middle District of Georgia, 4:18-CV-220-CDL.
- Deposition (07/19) – Estate of Jacai Colsen v. Prince George’s County MD, Circuit Court of Prince George’s county, CAL-18-19598.
- Deposition (09/19) – Estate of Donald Sneed v. Jackson County MO, Circuit Court of Jackson County, 1816-CV-25106.
- Deposition (09/19) – Estate of Hector Arreola v. City of Columbus GA, Federal District Court, Middle District of Georgia, 4:19-CV-00005-CDL.
- Deposition (10/19) – Deliah Hampton v. San Joaquin County CA, Federal District Court, Eastern Division of California, 2:16-CV-01816-MCE-AC.
- Deposition (10/19) – Tina Boyer v. Pulaski county KY, Federal District Court, Eastern District of Kentucky, 6:18-CV-00090-DLB-HLI.
- Deposition (10/19) – Estate of Anthony Soderberg v. Los Angeles CA, Federal District court, Central District of California, CV18-03861 FMO (JPRx).
- Deposition (11/19) – Jason Sears v. Pulaski County KY, Federal District Court, Eastern District of KY, 6:18-CV-00234-REW-HAI.
- Deposition (12/19) – Kristine Hendrix v. City of St. Louis MO, Missouri Circuit Court, 1722-CC01430.

- Deposition (12/19) – Demontel Hendricks v. City of Griffith IN, Federal District Court, Northern District of Indiana, 1:17-CV-412-RL-JEM.
- Deposition (12/19) – Estate of Mario Guevara v. City of Colton CA, Federal District Court, Central District of California, 5:18-CV-02386-RGK (SPx).

The report that follows was completed using the following:

Owen body cam (3 segments)

DCI interviews of officers involved and witnesses

Autopsy report

Old and New MPD police manual

Officer training records

Arrest reports for Drew Edwards' past arrests

Video of four past encounters with Drew Edwards

Taser pulse graphs

Jackson County call for service

Taser event log

FEES – I charge \$150 an hour for completing my analysis and report, and \$200 an hour for deposition of trial testimony.

INTRODUCTION

On June 15, 2019, at approximately 7:00 am, Officer Mike Owen of the Maquoketa Police Department and Chief Deputy Steve Schroeder of the Jackson County Sheriff's Department were dispatched to a domestic disturbance call at 107 West Apple Street in Maquoketa. Upon arrival, Owen found three people standing in the front of the apartment building with personal belongings strewn about the yard. The three individuals were Drew Edwards, Mike Van Amburg, and a female identified only as Abby. There was no physical altercation taking place when Owens arrived, with Schroeder arriving immediately after. Van Amburg and Abby (his girlfriend) advised Owen that Drew Edwards, Van Amburg's "brother," had moved in with them the day before, and that after going fishing the night before, arrived back at the apartment under the influence of some type of drug. They stated that an altercation occurred between Edwards and Van Amburg, and that Edwards was told to leave with his belongings.

Following some limited discussion with Van Amburg and Abby, Owens made the decision to arrest Edwards for misdemeanor assault. After Edwards refused to get on the ground, while remaining calm and demonstrating no threatening behavior, Owen deployed his Taser and struck Edward in his abdomen area. Edwards is heard yelling in pain and goes to the ground. The first set of Taser prongs clearly hit Edwards and inflicted an electrical charge into him. Edwards then got up and took off running with the two officers following and Owen continuing to administer Taser charges, including a second set of probes to Edwards' back. The second set of Taser prongs hit Edwards and also inflicted an electrical charge into him. Once on the ground, the two officers attempted to handcuff Edwards but were able to get only one wrist secured. They continued to hold Edwards on the ground until Asst. Chief Zeimet arrived to assist. Once they got the second handcuff secured, they eventually rolled Edwards over and found him to be unresponsive and aspirating. He was later pronounced dead.

An autopsy was completed on June 18, 2019 by Dr. Kelly Kruse of the Iowa Office of the State Medical Examiner. The cause of death was determined to be "sudden cardiac arrest during

restraint in the setting of acute drug (methamphetamine) intoxication. As discussed below, it does not appear that Dr. Kruse was given correct information by the investigating agency regarding the use of the Taser. This information would have been important given the number of times the Taser was deployed. It is important to note that the information Dr. Kruse was provided indicated far less Taser use than what actually happened.

The purpose for the analysis and report to follow is to reach an informed opinion about the appropriateness of Owen and Schroeder's decision to arrest Edwards and their use of force to effect that arrest, specifically, the use of the Taser and physical restraint. The incident was captured in its entirety on Owen's personal recording device ("body cam") and was later investigated by the Iowa Division of Criminal Investigation.

THE ARREST

The appropriateness of Edwards' arrest is an important question because if the arrest was unlawful, then all force used except that amount that was necessary to protect themselves or others was necessarily excessive. The officers made a probable cause arrest for assault. Probable cause, as all police officers know, requires some amount of evidence. Mere suspicion is insufficient to meet that burden of proof. At the time of the arrest, the following information should have been pertinent to their decision:

- Drew Edwards was Michael Van Amburg's uncle, however they considered themselves brothers. This relationship was known to Officer Owen, as demonstrated by his comments overheard on the body cam video as he was attempting to convince Van Amburg to file a complaint—"I get where you're out, he's your brother, whatever..." (at 9:27 in the video).

- Part of Van Amburg's complaint was that Edwards had forced himself into the apartment, however he also admitted that Edwards was living at the apartment and had brought his belongings there the day before the incident.¹
- Both Edwards and Van Amburg appeared to have signs of a physical altercation. Owen acknowledged that Edwards had blood on him. There was no clear description of this altercation provided by either individual.
- When Owen arrived at the scene, both individuals were outside on the sidewalk and non-combative.
- Both individuals had just gotten out of jail.
- Neither Owen nor Schroeder inspected the apartment prior to deciding to arrest Edwards to confirm the complainant's story or to look for evidence that a crime had been committed.
- At least twice during Van Amburg's exchange with Owen he stated his desire only to have Edwards removed from the scene. At 6:58 Van Amburg stated, *"just get him the fuck out of here,"* and at 8:04 he repeated that same comment. During this time Owen repeatedly made comments obviously intended to convince Van Amburg to sign a complaint. At 7:02 Owen stated, *"It's your call Mike. Personally, I'd rather see the fucker go back to jail."*
- The policies of the Maquoketa Police Department (Policy 409) allow MPD officers to issue a citation to a misdemeanor offender without making a custodial arrest. In this case, not only did both officers personally know Edwards, a consideration in making this decision, but he was also calm and non-combative in his exchange with the officers.

Analysis

¹ There is no indication in the case file that either Van Amburg or his girlfriend Abby were interviewed following the incident. No explanation is given for why, and in fact, Abby is never even properly identified.

There are two questions here. First, did the officers have sufficient probable cause for an arrest; and second, was a custodial arrest the proper course of action to follow. To the first question, while it is up to a jury to decide if probable cause actually existed for the arrest of Edwards, we can address the issue from the perspective of police training and standards of practice. In that regard, the answer is no. The officers had not properly investigated the complaint prior to their decision to make a custodial arrest. They had not inspected the apartment;² they had not gotten an actual description of the physical altercation; they had not gotten Edwards' side of the story, at least to the extent that he could remember what happened; and they had not properly inspected either Edwards or Van Amburg for injuries or wounds.³

In terms of police training and practices, the officers had cause to conduct an investigation, and even to detain Edwards while doing so, but they did not yet have probable cause for an arrest. Officers are trained that when detaining an individual pursuant to *Terry v. Ohio*,⁴ the person cannot be handcuffed unless there is some articulable threat to the officers or others. Fear alone is not sufficient. During the exchange between Edwards and the officers there was no threat. He was calm and non-combative, and appeared to be preoccupied with collecting his belongings from the ground. No explanation was given by Van Amburg or his girlfriend how Edwards' belongings became strewn across the yard. Van Amburg can be overheard denying that he or his girlfriend scattered the belongings (03:10), and Owen failed to follow-up with questions to get to the truth of that matter.

While not intended to be a legal conclusion, in the context of police training and standards of practice, Owen and Schroeder lacked probable cause to arrest Edwards for assault, and further

² In the second Owen body cam video, during which he enters the apartment after Edwards has been transported to the hospital, the door is clearly visible. There is NO damage to the door. Further, it would appear that inside the apartment there is NO damage. The only evidence of an altercation is a kitchen rug that has been pushed against the wall and some pictures that were on the floor in one room but not broken. The lack of damage to the door and inside the apartment is inconsistent with Van Amburg's statement.

³ Also, on Owen's second body cam video, Chief Koranda is seen photographing Van Amburg's wound. It is obvious that it is so minor he has difficulty finding it.

⁴ *Terry v. Ohio*, 392 U.S. 1 (1968).

lacked a sufficient threat to necessitate the use of handcuffs while they completed an investigation pursuant to *Terry v. Ohio*. Furthermore, even if the officers did have probable cause to arrest Edwards, the proper course of action would have been to simply issue a citation without a custodial arrest. The reasons for this will be discussed below.

TASER DEPLOYMENTS

The Taser is a weapon of intermediate force that is used by the police for self-defense and defense of others. It is designated as an intermediate force weapon due to the risk it poses of injury. It is not to be used merely to force compliance. The weapon is uncomplicated. When the trigger is pulled, a gas cartridge propels two darts outwards as much as 25-feet. At the same time, the weapon's battery pack sends an electrical charge to the end of the weapon. If the darts hit their target and complete a circuit, meaning there is a path of conductivity between them, then the charge will leave the weapon and travel down the wires to the darts. The Taser delivers as much as 50,000 volts of electrical charge, however because the amperage is so low, it is designed to avoid any lasting damage. The Taser is effective when there is sufficient spread between the probes to have its effect on a large muscle mass. When that happens, neuromuscular incapacitation ("NMI") is achieved and the person contracts uncontrollably. If the probe spread is minimal, NMI will not be successful. The Taser can also be used in "drive stun" mode by simply pressing the end of the weapon into the suspect's body and pulling the trigger. Because the electrodes at the end of the weapon are only a few inches apart, there is little chance of achieving NMI. Police officers are instructed to use caution when using a Taser in drive stun mode because it will not incapacitate the subject, and because they will immediately repel away from it. There is no failsafe mechanism that prevents an officer from delivering too much of a charge to a suspect through repeated trigger pulls. The charge will continue until the battery is depleted.

The Taser model being used by Owen was the Axon X2. It is a newer model Taser that includes a cartridge with two sets of probes. It is designed to provide the officer a second set of probes if the first set misses their mark. In this case, Owen deployed both sets of probes. Like all Tasers,

before an officer can carry the X2 on duty, he or she must complete training. This training is provided by Axon using police officers who are certified by them to provide such training.

The discovery provided by the Defense includes a series of pulse graphs purportedly reflecting Owen's deployment of his Taser. These pulse graphs were also provided to the Medical Examiner. The graphs are incorrectly dated and are entirely inconsistent with what is clearly seen on the body cam video. Additionally, the graphs are inconsistent with the Taser's event log.⁵ The graphs reflect 5 trigger pulls and 7 arc button deployments. In reviewing the duration and timing of these deployments, as noted above, it was found that the graphs provided are not consistent with the deployments that are clearly seen and heard in the body cam video. For example, the graphs show an initial trigger pull of 5 seconds, followed by a 4.5 second arc deployment. Following these two deployments (9.5 seconds), the graphs show a second trigger pull which deployed the second cartridge. In reality, as is clearly seen and heard in the body cam video, the initial trigger pull delivered a continuous 18-second charge. There was no arc button deployment at this time. The graphs also do not show the final two deployments following a 92 second pause. The event log from the Taser used by Owen reflects the following deployments.

- Deployment no. 1: Owen pulls the trigger at 07:54:09 and deploys cartridge no. 1 to Edwards' front torso. He maintains the trigger pull for 18 seconds.
- Deployment no. 2: Owen pulls the trigger at 07:54:28 and deploys cartridge no. 2 to Edwards' back. Both sets of probes are now charged. He maintains the trigger pull for 6 seconds. Edwards has now received a continuous 24-second charge.
- Deployment no. 3: Without pausing, Owen pulls the trigger at 07:54:34 and delivers a 5-second charge.
- Deployment no. 4: After a 4-second pause, Owen delivers another 5-second charge at 07:54:43.
- Deployment no. 5: Immediately following the previous deployment, Owen pulls the trigger at 07:54:49 and maintains the trigger pull for 5 seconds.

⁵ The event log was not provided to the Medical Examiner, only the inaccurate pulse graphs.

- Deployment no. 6: After a pause of 20 seconds, Owen pulls the trigger at 07:55:14 and delivers a 5-second charge.
- Deployment no. 7: After a pause of 34 seconds, Owen pulls the trigger at 07:55:53 and delivers a 5-second charge.
- Deployment no. 8: After a pause of 92 seconds, Owen pulls the trigger at 07:57:30 and delivers a 5-second charge.
- Deployment no. 9: At 07:57:40, after a pause of 5 seconds, Owen depresses the arc button and delivers a 1-second charge.⁶

Each of the above trigger pulls, as well as the single deployment using the arc button, are clearly visible and audible in Owen's own body cam video. In total, Owen delivered 55 seconds of electrical charge. Neuromuscular incapacitation ("NMI") was not achieved by the Taser deployments, however Edwards' reaction throughout indicated that he was receiving a painful charge. The probes that were deployed to Edwards' back are visible throughout the struggle on the ground. They appear to be properly connected with sufficient spread.

Analysis

There are two questions relating to the use of the Taser. First is whether its use was appropriate at all; and second, whether it should have been used to the extent it was (55 seconds, as confirmed by the event log). To the first question, if in fact there was no probable cause to make the arrest for assault, and since Edwards was not demonstrating a threat to the officers at the time the Taser was deployed, then its use must be viewed as inappropriate and excessive. If there was probable cause, then its use was still inappropriate by the standards that have been established by the MPD specifically, and the law enforcement community in general.

⁶ The arc button is simply another way to deliver the charge without deploying the probes. It is how officers test their Tasers prior to a duty shift. It also allows them to send a charge to the first deployed probes without automatically deploying the second set, which occurs with a consecutive trigger pull.

Since 2011 the principles guiding the law enforcement community's use of Tasers have been those established jointly by the U.S. Dept. of Justice and the Police Executive Research Forum ("PERF").⁷ Regarding the level of threat necessary in order to deploy a Taser, the guidelines include the following:

- ECWs should only be used against subjects who are exhibiting active aggression or who are actively resisting in a manner that, in the officer's judgment, is likely to result in injuries to themselves or others. ECWs should not be used against a passive subject (guideline no. 25).
- Fleeing should not be the sole justification for using an ECW against a subject. Personnel should consider the severity of the offense, the subject's threat level to others, and the risk of serious injury to the subject before deciding to use an ECW on a fleeing subject (guideline no. 26).

Clearly, Edwards was only passively resisting by refusing to get on the ground. All police training identifies this behavior as passive resistance when there is no active or implied threat to the officers. Edwards was not being combative, nor was he even threatening to be. He was not even challenging the officers with his actions. Notwithstanding the issue of probable cause, by the standards identified above, it was not appropriate for Owen to deploy his Taser when he did. Furthermore, when Owen deployed his second cartridge, Edwards was running away. He still had not actively resisted or demonstrated any threat toward the officers or anyone else. Again, the second cartridge deployment violated these standards.

Essentially all police training on the use of Taser devices has incorporated the DOJ/PERF guidelines. Further, such training, like all police training, is informed by relevant case law. The Courts have ruled that the use of a Taser represents an intermediate level of force. Most often

⁷ Electronic Control Weapon Guidelines (March, 2011), a joint publication of the U.S. Department of Justice (COPS) and the Police Executive Research Forum.

cited is *Armstrong v. Village of Pinehurst*,⁸ which established that “Taser use is unreasonable force in response to resistance that does not raise a risk of immediate danger.” Similarly, in *Bryan v. McPherson et al.*,⁹ the Court held that “Tasers are an intermediate, significant level of force that must be justified by a strong government interest that compels the employment of such force, and that this government interest is best described as the suspect [posing] an immediate threat to the officer or some other person.” While it is beyond the scope of this report to offer legal analysis, it is important to point out the cases that have informed the law enforcement community’s understanding of the level of force a Taser represents.

The second issue relating to the Taser, again, notwithstanding the fact that the arrest may have been unlawful to begin with, is the duration of Owen’s multiple deployments. The same DOJ/PERF guidelines discussed above includes the following:

- Personnel should use an ECW for one standard cycle (five seconds) and then evaluate the situation to determine if subsequent cycles are necessary. Personnel should consider that exposure to the ECW for longer than 15 seconds (whether due to multiple applications or continuous cycling) may increase the risk of death or serious injury. Any subsequent applications should be independently justifiable, and the risks should be weighed against other force options (guideline no. 21).

In the model policy of the International Association of Chiefs of Police (“IACP”), this warning is repeated. In their concepts and issues paper that accompanies their policy, it states the following:

- Limiting the number of energy cycles, the use of continuous cycling of more than 15 seconds, and instances of multiple officer deployments against the same person can help to prevent tetany (muscular spasms) or exhaustion of muscles of respiration and the development of acidosis. Such respiratory impairments, as noted in the previously cited

⁸ *Armstrong v. Village of Pinehurst*, 810 F.3d 892 (4th Cir. 2016)

⁹ *Bryan v. McPherson et al.*, 590 F.3d 767 (9th Cir. 2009).

research from British Columbia, becomes crucial when the [ECW] weapon is used, or restraint is applied during or at the end of a prolonged physical struggle (page 11).

This guideline is repeated in Axon's annual training module (figure no. 1).

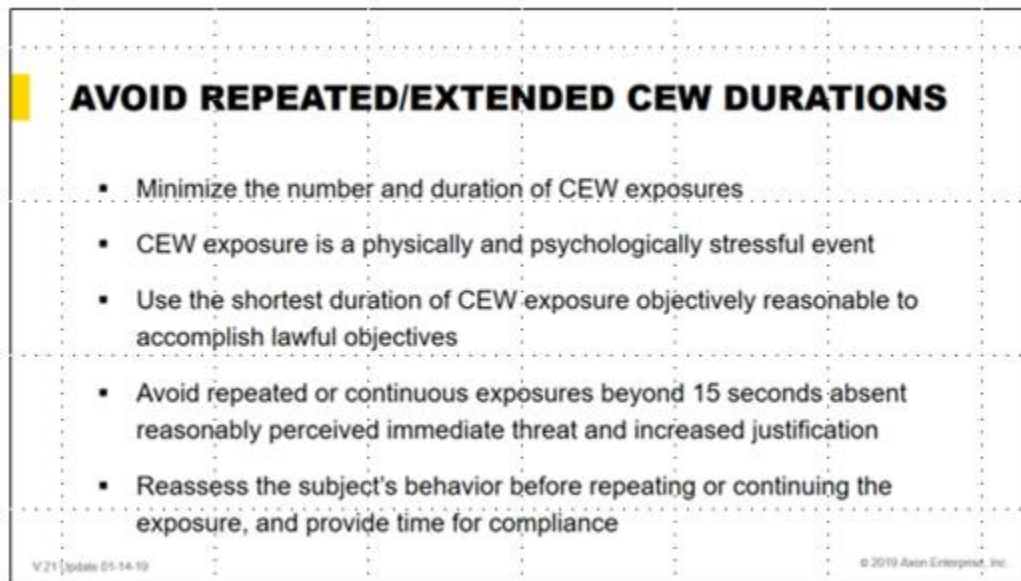


Figure 1: PowerPoint slide from Axon's annual re-certification training (v. 21, 2019).

And finally, the MPD's own policies and procedures mandate that any individual who receives more than 15 seconds of Taser charge will be transported to a hospital for medical evaluation regardless of their outward condition (MPD policy 303.7). The MPD policies also mandate that if the first Taser cycle is ineffective, the officer should consider certain factors before applying additional charges. One of those factors is whether the need to control the individual outweighs the potential danger of multiple Taser deployments (MPD policy no. 303.5.4).

It is important to note that Officer Owen was well aware of what was going to happen when he deployed the Taser. At 08:46 in Owen's body cam video he is heard saying "you can Tase him a hundred times and it doesn't fucking stop him." At 11:18, just before the officers approach Edwards to place him under arrest, Owen says to Schroeder, "it's gonna be a fight...you ready?" Both officers had a history with Edwards, and both knew that Tasing him was not going to accomplish the goal of getting him under physical control. Edwards had no history of actively

resisting arrest. His history was entirely consistent with what he did in this instance—freeze up and refuse to cooperate without in any way being combative with the officers. There's no evidence in the discovery materials, including body cam videos from two previous arrests¹⁰ in which Tasers were used, that Edwards had ever been assaultive toward the officers arresting him, only non-compliant. This prior history should have been a consideration in Owen's decision to deploy his Taser.

There were three reasons why the use of the Taser by Owen was inappropriate:

1. There was insufficient probable cause for an arrest, and thus any force used to effect that arrest was inappropriate and necessarily excessive. While it is acceptable even during a questionable arrest for an officer to use force for purposes of self-defense and defense of others, in this case, Edwards was not demonstrating a threat at any point before the Taser deployment, and his history, as demonstrated in the above-described videos, did not include assaultive behavior toward the arresting officers.
2. Edwards was only passively resisting by not following orders to get on the ground, and thus the use of the Taser was inappropriate at the time it was deployed. Fear alone does not justify the use of force at an elevated level. Given his history, they could certainly anticipate that he would run, but his history, at least as recorded in the body Cam videos from the two previous arrests, justified no reason to anticipate that Edwards would attack the officers.
3. The officers had the ability to issue a citation without making a custodial arrest. Given that they knew they likely could not physically subdue Edwards by themselves, and that the Taser would only cause him to passively resist, they clearly had a compelling reason—Edwards' safety as well as their own—to avoid a physical encounter. This was

¹⁰ Although Edwards' previous arrests are not the focus of this report, the body cam and courtroom videos show some of the most excessive Taser use I personally have ever witnessed. It is my understanding that after these two other arrests Edwards was admitted to the hospital for treatment.

especially true given that Edwards was accused only of a minor offense. As discussed above, MPD policy allows for the issuance of a citation for this very reason and others.

One additional consideration in evaluating their decision to use the Taser is the fact that the officers chose not to call for additional officers to assist. Notwithstanding the problems noted with arresting Edwards without first completing a proper investigation, the fact is, they had plenty of time to call for help. The officers were at the scene for 28 minutes before Owen deployed his Taser. As in all such cases, less manpower means more force being used against the individual being arrested. Even when Edwards ran after the first Taser deployment, neither officer asked for assistance. It was almost 2 minutes into the struggle before Owen finally requested backup. It is clear from the body cam video that Owen's deployment of the Taser was motivated more by his impatience and anger toward Edwards than by proper tactical judgement.

PHYSICAL RESTRAINT

Once the two officers had Edwards on the ground, they attempted to handcuff him. During this process, Edwards' left ulna (wrist bone) was fractured. This likely occurred around 29:10 in the video when Chief Deputy Schroeder jerked hard on his left wrist to get it behind his back after one handcuff had already been applied. The manner in which he did it, using the handcuffs as leverage to force his arm backwards, is well known in law enforcement as a technique capable of snapping wrist bones. Police officers are trained to be cognizant of this danger when handcuffing a suspect. Also, police officers are trained to know that an individual being Tased may have difficulty submitting to handcuffing due to the effects of the Taser, even when full NMI is not achieved. Schroeder did not appear to consider this when performing the action that likely caused the broken wrist. It was inappropriate to continue to force his arm behind his back by the single handcuff at the same time Owen was repeatedly deploying the Taser. The two actions were counterproductive.

At 28:55 in the video Owen attempts to restrain Edwards by placing his right knee on his head and neck. This can be seen in the video.¹¹ At 30:09, following the sixth trigger pull of the Taser, Edwards' breathing becomes noticeably labored and continues to get worse from that point. At 32:14 in the video it becomes clear from the sound of Edwards' muffled voice that his face is being forced into the ground. This was later corroborated by an indentation that is visible in the ground where his face was pressed against it. At 34:06 Edwards attempts to force his way up. While his head and neck cannot be seen on the video, it is clear they are being held to the ground by Owen with his knee. Both of Owen's hands are visible holding Edwards' arms. At 38:08, after Officer Zeimet arrives and assists in getting the second handcuff on Edwards (Zeimet arrives at 37:49), Owen continues to hold his head and neck to the ground, and at 39:28 Zeimet can be seen placing his right knee on Edwards' shoulder. They now had his entire body compressed to the ground. At 39:57 Chief Koranda arrives. At 41:20, while the officers maintain their pressure on him, Edwards appears to become unresponsive with sporadic breathing. Owen is even heard saying *"Drew, take some breaths. Relax man, relax."* At 41:29 it appears that Owen finally removes his knee from Edwards' head and neck. As Owen moves backward, the body cam shows Edwards' face pushed into the ground. At 41:43 the officers finally roll Edwards onto his side. By this point his complexion is blue and there is mucus coming out of his mouth.

With three, and then four officers at the scene, it still took nearly 4 minutes to roll Edwards into a recovery position after the handcuffs were applied. Edwards' breathing was clearly labored, he was non-communicative, the handcuffs were on, and still three officers compressed his entire body to the ground while Chief Koranda stood by and watched.

Analysis

Owen kept his knee(s) on Edwards' head and neck for over 12 minutes. This is a violation of police training and accepted standards of practice. All police officers are trained on the dangers of *positional or compressional asphyxia*. Additionally, officers receive training in the dangers of

¹¹ In his post-incident interview Owen admitted to using both knees on or around Edwards' head to restrain him.

sudden death when using a Taser in combination with physical restraint. In the above-discussed DOJ/Perf standards, which have guided all Taser training, there is a guideline that states, *“Personnel should be aware that there is a higher risk of sudden death in subjects under the influence of drugs and/or exhibiting symptoms associated with excited delirium”* (guideline no. 34).

The International Association of Chiefs of Police has weighed in on this subject in their model policy for the use of a Taser. The policy includes the following:

“Limited the number of energy cycles, the use of continuous cycling of more than 15 seconds, and instances of multiple officer deployments against the same person can help to prevent tetany (muscular spasms) or exhaustion of muscles of respiration and the development of acidosis. Such respiratory impairment. As noted in the previously cited research from British Columbia, “becomes crucial when the [ECW] weapon is used or restraint is applied during or at the end of a prolonged physical struggle.”

The inability of some subjects to regain free breathing is critical “as the body tries to return to homeostasis and compensate for increased levels of CO₂.” According to the report, the state of hypoventilation means the subject can still breathe, just not at the level their body requires to return to equilibrium. Police may be misled by the fact the subject can still speak, indicating a clear airway, which does not necessarily mean they can breathe at an adequate rate.”¹²

Regarding body positioning, the law enforcement community has long been aware of the dangers of applying weight to an individual’s neck or back while they are lying face down on the ground. One police training entity defined *compressional asphyxiation* as follows:

¹² IACP Model Policy on Electronic Control Weapons, dated August 1, 2005. The research cited can be found in the British Columbia Office of the Police Complaint Commissioner’s Taser technology review report. It can be accessed online at http://www.llbc.leg.bc.ca/public/pubdocs/bcdocs/376654/taser_finalrpt.pdf.

“Compressional asphyxia is a preventable danger. With sufficient time and weight on the upper body, the suspect’s ability to breathe is so limited that suffocation is possible. Like an anaconda snake killing its prey; every time the suspect breathes out, the body weight of the officers prevents the suspect from reinflating his lungs fully—eventually the lung capacity is so limited it cannot support life. If enough weight is kept on the upper torso, oxygen levels become critical and the body dies.”¹³

There is NO police training that instructs officers that it is appropriate to apply significant weight to a suspect’s back, head, or neck during and after the handcuffing process, whether with their knee or their hand. As early as 1996, the FBI was alerting police trainers to the dangers of compressional/ positional asphyxia, and providing direction for the proper instruction of police officers:

“Instructors must stress vigilance in monitoring the subject’s condition. The process of hypoxia is insidious, and subjects might not exhibit any clear symptoms before they simply stop breathing. Generally, it takes several minutes for significant hypoxia to occur, but it can happen more quickly if the subject has been violently active and is already out of breath. If the subject experiences extreme difficulty breathing or stops breathing altogether, officers must take steps to resuscitate the subject and obtain medical care immediately.”¹⁴

Compression of one or both sides of neck may trigger *bradycardia* or *asystole*. The former is a slowing of the heartrate and the latter is a complete absence of ventricular contraction. Additionally, *Vagus nerve* stimulation will slow the heart rate.¹⁵ This information too is provided

¹³ Williams, G.T. (2013). *A new idea in safely restraining the prone handcuffed prisoner*. Cutting Edge Training. Accessed at <http://www.cuttingedgetraining.org/?tag=/positional+asphyxia>.

¹⁴ Reay, D.T, MD (1996). *Suspect restraint and sudden death*, FBI Law Enforcement Bulletin, May 1996.

¹⁵ Handbook of Forensic Medicine (2014). Madea Burkhard (ed.). Wiley Publishing, pg. 531.

in police training, particularly in the context of choke holds. It is also discussed in the context of handcuffing and physical restraint. Any use of force that includes the head or neck is generally considered deadly force given the dangers associated with it. The foregoing is not intended as a medical opinion, which is beyond the scope of this report. It is provided only to illustrate the content of police training on these medical issues.

SUMMARY AND CONCLUSIONS

Officer Owen made the decision to arrest Drew Edwards without first completing even a minimal investigation to determine if probable cause existed for the arrest. Chief Deputy Schroeder inappropriately went along with this decision. They never first inspected the apartment, the condition of which turned out to be inconsistent with Van Amburg's account of what happened, as well as his girlfriend's.¹⁶ They never waited for Van Amburg to complete a written statement,¹⁷ nor did they even obtain a true verbal description of what happened. Van Amburg was vague in his description, as was his girlfriend. Van Amburg also provided no account of how Edwards' belongings became strewn across the front yard, nor did Owen ask. And, it was actually Edwards who was bleeding.

Owen and Schroeder's haste in deciding to arrest Edwards seemed motivated more by his past history with Edwards than by the current situation. It was clear that Van Amburg did not wish to pursue charges until Owen essentially convinced him to do so. After Van Amburg decided that he just wanted Edwards removed from the premises without charges, it was Owen who is overheard on his own body cam video saying, *"I'd rather see the fucker go back to jail."* It was enough to convince Van Amburg with a wave of his hand to agree to file a complaint.

¹⁶ As stated above, there is no indication that Van Amburg or his girlfriend were interviewed following the incident.

¹⁷ While a written statement was completed after the incident, the content and character of that statement could easily have been influenced by Van Amburg's knowledge of Edward's medical crisis. Also, that written statement has not been provided as of the date of this report.

Once Van Amburg made his decision, both Owen and Schroeder knew it was going to be a battle, and Owen knew he would have to use his Taser. He knew he would have to deploy it multiple times; that there would be a physical struggle to secure Edwards in handcuffs; and that he and Schroeder alone would likely be unable to get him secured. He also knew that on two prior occasions after officers had used their Tasers on Edwards he had to be admitted to a local hospital with cardiac irregularities. In short, both Owen and Schroeder knew their actions could potentially initiate a dangerous situation for themselves as well as for Edwards. Notwithstanding the question of probable cause, Owen and Schroeder had three options; a custodial arrest; the issuance of a citation without taking Edwards to jail; or simply removing Edwards from the premises and seeking a misdemeanor arrest warrant after a proper investigation. Owen and Schroeder unnecessarily chose the most dangerous option, and recklessly put themselves and Edwards at risk of personal injury.

It was obvious that Owen's decision to deploy his Taser was based on Edwards' past behavior rather than in response to an immediate threat. At the time he fired, Edwards was calm and threatening no one. In fact, that was his demeanor the entire time the officers were at the location prior to the arrest. Even after Owen fired, Edwards was never assaultive toward the officers. He only attempted to run away while Owen continued to deploy his Taser multiple times. The combination of Edwards' drug use, the multiple deployments of the Taser, the extended period of physical restraint—including Owen applying his weight to Edwards' head and neck—and the failure to timely provide first aid, all created a perfect storm for Edwards' sudden death (as discussed in the training that all police officers receive), an outcome made even more likely by Edwards' history of heart problems. Sadly, it was an outcome that was easily avoidable and unnecessary.

In the context of accepted police training and standards of practice, my opinions in this matter are as follows:

- 1. Owen and Schroeder arrested Edwards without first conducting a proper investigation to determine if probable cause existed for the arrest. At the time of the arrest, they had**

not yet inspected the apartment; had not yet obtained a written statement; had not yet obtained a coherent description of what happened; and had not yet determined with any certainty who was victim and who was aggressor.

2. Owen and Schroeder made the decision to effect a custodial arrest of Edwards for a minor offense when their training, experience, and department policy demanded that they either issue a non-custodial citation and remove Edwards from the premises, or remove Edwards from the premises and later seek a misdemeanor arrest warrant once a proper investigation was completed. Their decision was reckless and violated their duty of care by unnecessarily creating a dangerous situation with a predictable outcome, particularly for Edwards.
3. Owen improperly deployed his Taser, a weapon of intermediate force used for self-defense and defense of others against an assaultive or actively resistant subject, at a time when Edwards was calm, only passively resisting, and threatening no one. The use of the Taser at the time it was deployed was excessive under the circumstances.
4. Owen's nearly continuous use of the Taser for 55 seconds (8 trigger pulls) violated every set of standards guiding the law enforcement community's use of CEWs and was thus reckless and excessive under the circumstances.
5. Owen improperly applied his weight to Edwards' head and neck in an effort to restrain him, and then maintained that pressure for over 12 minutes, letting up only after Edwards had become unresponsive and was noticeably aspirating. His use of physical force was excessive under the circumstances.
6. Owen, Schroeder, and Zimet all played a role in the restraint of Edwards, and all failed to follow their training and correct procedure by providing first aid as soon as possible once it became obvious that Edwards was in distress.

I reserve the right to amend or make changes to these opinions if additional information and evidence is made available.