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INTERNAL INVESTIGATIONS SECTION

Captain Thomas A. Johns, Commander

Case Number: #08031 Date Assigned: 1/28/08

INVESTIGATOR: Sergeant Mark Burns

Reviewed By: Lt Ranville **Date:** 2-20-08

Approved By: Captain Thomas A. Johns **Date:** 2-20-08

Submitted To the Police Chief on: 2/28 **by**

Vincent M. Demasi

Lt. Colonel Vincent Demasi
Administration Bureau Commander

CINCINNATI POLICE DEPARTMENT
INTERNAL INVESTIGATIONS SECTION
CASE # 08031

Introduction:

Internal Investigations Section (IIS) has completed an administrative review of a Use of TASER by Police Officer Andrew Mitchell, Badge: P894, District Three. On January 22, 2008, at 1934 hours, at 5555 Glenway Avenue, Officer Mitchell deployed his TASER on Mr. Christopher Bauer Jr. while responding to a holdup alarm.

The investigating supervisor, Sergeant Michael Barge, Badge: S9, District Three, found Officer Mitchell's deployment of the TASER did not conform with Department policies, procedures, or training.

Interviews:

Mr. Christopher Bauer Jr., White/Male/19, 3235 Brater Avenue, Cincinnati, Ohio 45238, Telephone: (513) 602-0891

Mr. Bauer declined to be interviewed by IIS. Mr. Bauer retained legal counsel and referred all questioning to his attorney, Mr. John Helbling. IIS contacted Mr. Helbling on February 1, 2008. Mr. Helbling stated he wanted to confer with Mr. Bauer prior to being interviewed and he would contact IIS. When IIS did not hear from Mr. Helbling, numerous voicemail messages were left for Mr. Helbling in an attempt to follow-up. Mr. Helbling did not respond.

Sergeant Michael Whitis, Badge: S21, District Three

On January 22, 2008, at 1934 hours, Sergeant Whitis was on-duty in uniform working the Second Shift in District Three. Sergeant Whitis heard a radio broadcast for a holdup alarm at Jersey Mike's restaurant, 5032 Glencrossing Way. Moments later, Officer Mitchell transmitted, via police radio, he had a TASER deployment at 5555 Glenway Avenue.

Sergeant Whitis responded to conduct the Use of TASER investigation. When Sergeant Whitis arrived on the scene, Mr. Bauer was laying face down on the sidewalk. Officer Mitchell was standing next to Mr. Bauer with his TASER to his side while Officer McMenama placed Mr. Bauer into handcuffs. As additional officers arrived on the scene, Sergeant Whitis directed them to respond to Jersey Mike's restaurant to determine the status of the alarm. Sergeant Whitis was advised the alarm was false.

Sergeant Whitis began his investigation into Officer Mitchell's TASER deployment. Sergeant Whitis conducted separate preliminary interviews of Officers McMenama and Mitchell.

Below is a synopsis of the statements given to Sergeant Whitis by Officers McMenama and Mitchell:

Officer McMenama and his partner, Officer Mitchell, responded to the parking lot of Jersey Mike's restaurant for a holdup alarm. Officer McMenama noticed the Jersey Mike's sign was not lit and the lighting inside of the restaurant appeared dim. Officer McMenama believed this was suspicious due to the time of evening and his belief the restaurant was open for business.

Officer McMenama saw Mr. Bauer walk from the vicinity of Jersey Mike's, through the parking lot, toward Panera Bread, 5555 Glenway Avenue. Officer Mitchell drove the police vehicle behind Mr. Bauer. Officer McMenama exited the vehicle and followed behind Mr. Bauer on foot. Officers McMenama and Mitchell attempted to get Mr. Bauer's attention by shouting numerous verbal commands for Mr. Bauer to stop. Mr. Bauer never acknowledged the officers' presence and continued walking.

After Mr. Bauer failed to comply with or acknowledge numerous commands issued by Officers McMenama and Mitchell, Officer Mitchell drew his TASER. Officer Mitchell then transitioned the TASER from his right hand to his left hand and deployed it through the open window of the police vehicle, striking Mr. Bauer in the back of the neck and arm. Mr. Bauer was immediately immobilized and fell face down to the pavement.

When Mr. Bauer fell to the ground, his hands were underneath his torso. Officers McMenama and Mitchell issued additional verbal commands to Mr. Bauer to place his hands behind his back. When Mr. Bauer did not comply, Officer Mitchell cycled the TASER a second time. When the second cycle ended, Officer McMenama handcuffed Mr. Bauer without further incident. Officer Mitchell deployed his TASER because Mr. Bauer failed to acknowledge Officers' Mitchell's and McMenama's presence and verbal commands to stop.

When Officers McMenama and Mitchell assisted Mr. Bauer to his feet, both officers saw a portable audio device with stereo earphones attached laying on the pavement. Officer McMenama did not know if Mr. Bauer was wearing the earphones at the time of the TASER deployment. Officer Mitchell did not believe Mr. Bauer was wearing earphones at the time of the TASER deployment.

Sergeant Whitis believed Officer Mitchell was seated and operating the police vehicle at the time of the TASER deployment because it would not have been practical for Officer Mitchell to deploy the TASER with his non-gun hand and through the window had he exited the police vehicle. In Sergeant Whitis' opinion, the TASER deployment should not have occurred despite the officer's belief that Mr. Bauer had a legal duty to respond to their inquiries.

Sergeant Whitis immediately telephoned Lieutenant Bridget Bardua, Badge: L18, District Three, and relayed the information as told by Officers McMenama and Mitchell. Lieutenant Bardua directed Sergeant Whitis to interview Officers McMenama and Mitchell a second time. Sergeant Whitis asked Officers McMenama and Mitchell if he missed any information or if they had other details to provide. Both Officers McMenama and Mitchell stated there was no additional information.

Sergeant Whitis attempted to interview Mr. Bauer; however, Mr. Bauer was incoherent and did not recall anything regarding the incident. Lieutenant Bardua responded and assumed command of the scene. Lieutenant Bardua spoke to Officers McMenama and Mitchell; however, Sergeant Whitis did not hear the content of their conversation. Mr. Bauer's father, Mr. Christopher Bauer Sr., responded and insisted he transport Mr. Bauer for medical evaluation and treatment.

Sergeant Michael Barge, Badge: S9, District Three

On January 22, 2008, Sergeant Barge was the on-duty supervisor for the early Power Shift in District Three. Sergeant Barge responded to 5555 Glenway Avenue to assist Sergeant Whitis with a Use of TASER investigation involving Officers McMenama and Mitchell. Sergeant Barge arrived on the scene approximately thirty minutes after Officer Mitchell's deployment of the TASER. Upon Sergeant Barge's arrival, he was briefed by Sergeant Whitis.

Sergeant Barge asked Officers McMenama and Mitchell what occurred. Officers McMenama's and Mitchell's statements to Sergeant Barge were consistent with the statements given to Sergeant Whitis. Officer McMenama did not know whether Mr. Bauer was wearing earphones at the time of the TASER deployment. Officer Mitchell was certain Mr. Bauer was not wearing earphones prior to his deployment of the TASER.

Officer Mitchell stated when Mr. Bauer failed to acknowledge the officers' presence, Officer Mitchell drew his TASER with his right hand, transitioned it to his left hand, and deployed the TASER from the open window of his police vehicle. Sergeant Barge believed Officer Mitchell deployed the TASER while he was seated in the driver's seat and still operating the police vehicle. Sergeant Barge did not believe deploying the TASER under the circumstances as conveyed by Officers McMenama and Mitchell was appropriate.

Sergeant Barge attempted to interview Mr. Bauer, but Mr. Bauer was incoherent and unable to remember what transpired. Sergeant Barge obtained Mr. Bauer Sr.'s telephone number and notified him of the incident. During their telephone conversation, Mr. Bauer Sr. advised Sergeant Barge his son had undergone hernia surgery one week ago and was taking pain medication as a result. Mr. Bauer Sr. further told Sergeant Barge that Mr. Bauer always wore earphones.

Sergeant Whitis notified Lieutenant Bardua who responded and assumed command of the scene.

Lieutenant Bridget Bardua, Badge: L18, District Three

On January 22, 2008, Lieutenant Bardua was the on-duty Second Shift Commander for District Three. Lieutenant Bardua heard the holdup alarm at Jersey Mike's restaurant and the subsequent radio transmission by Officer Mitchell requesting a supervisor respond for a TASER deployment.

Sergeant Whitis telephoned Lieutenant Bardua informing her he believed Officer Mitchell's TASER deployment was inappropriate. Sergeant Whitis told Lieutenant Bardua that Officers Mitchell and McMenama stated they observed Mr. Bauer walking from the vicinity of Jersey Mike's restaurant following the holdup alarm. When Mr. Bauer did not acknowledge their verbal commands to stop, Officer Mitchell deployed his TASER. Neither Officer Mitchell nor McMenama provided any further information.

Lieutenant Bardua instructed Sergeant Whitis to conduct a second inquiry into Officer Mitchell's TASER deployment. Lieutenant Bardua also contacted Sergeant Barge and directed him to respond and assist Sergeant Whitis with the investigation. When Lieutenant Bardua arrived on the scene, Sergeants Whitis and Barge stated Officers Mitchell and McMenama did not provide any additional information.

Mr. Bauer Sr. was also on the scene and refused to allow Cincinnati Fire Department personnel to transport Mr. Bauer Jr. for medical treatment. Mr. Bauer Sr. insisted he transport Mr. Bauer Jr. to his residence.

Lieutenant Bardua then notified Captain Kimberly Frey, Badge: C7, District Three Commander. Captain Frey directed Lieutenant Bardua to separate the officers pending a determination regarding the direction of the investigation. Captain Frey notified Lieutenant Colonel James Whalen, Badge: LTC5, Patrol Bureau Commander.

At District Three headquarters, Lieutenant Bardua asked Officers Mitchell and McMenama certain details of their encounter with Mr. Bauer. Neither officer provided any new information regarding the incident. Lieutenant Bardua completed a Form 17, Interdepartmental Correspondence Sheet, documenting the incident.

Police Officer Dewayne McMenama, Badge: P892, District Three

On January 22, 2008, at 1930 hours, Officer McMenama was on-duty working uniform patrol in a marked police vehicle with his partner, Officer Mitchell. Officer Mitchell was operating the vehicle and Officer McMenama was in the passenger seat. Officers McMenama and Mitchell responded to a holdup alarm at Jersey Mike's restaurant, 5032 Glencrossing Way.

As Officers McMenama and Mitchell approached in their police vehicle, they observed Mr. Bauer walking on the sidewalk and then in the parking lot from the vicinity of Jersey Mike's restaurant toward the side of the Panera Bread store, 5555 Glenway Avenue. Officers McMenama and Mitchell were across the street in the parking lot of the Target store located at 5045 Glencrossing Way, when they first observed Mr. Bauer.

Officer McMenama saw the lighted sign for Jersey Mike's restaurant was out and the restaurant's interior lights appeared dim. Officer McMenama saw no other pedestrian traffic in the area. Mr. Bauer was slightly hunched over with his hands in his coat pockets and walking at a quick pace. Officer Mitchell drove the police vehicle behind Mr. Bauer as Mr. Bauer walked through the parking lot. Officer McMenama exited the police vehicle and continued toward Mr. Bauer on foot. Officer McMenama shouted several times, "Sir, stop. I need to talk you." Mr. Bauer did not acknowledge Officer McMenama and continued walking.

Mr. Bauer turned the corner at the Panera Bread building. Because of the alarm and Mr. Bauer's noncompliance, Officer McMenama drew his firearm and with his finger outside of the trigger guard, held it at the low ready position as he continued to approach Mr. Bauer. As Officer McMenama approached Mr. Bauer, Officer Mitchell positioned the police vehicle at the corner of the building and behind Mr. Bauer. Officer McMenama heard Officer Mitchell deploy his TASER. Mr. Bauer was immediately immobilized and fell face down to the sidewalk.

Once on the sidewalk, Mr. Bauer's hands were under his torso. Officers McMenama and Mitchell ordered Mr. Bauer to show them his hands. When Mr. Bauer did not comply, Officer Mitchell cycled his TASER again for a five second cycle. When the second cycle ended, Officers McMenama and Mitchell each grasped one of Mr. Bauer's arms, placed Mr. Bauer's arms behind his back, and handcuffed him without further incident. Officer McMenama saw a portable audio device with earphones attached laying on the sidewalk near where Mr. Bauer fell. Officer McMenama did not know whether Mr. Bauer was wearing the audio device at the time of the TASER deployment.

As Mr. Bauer was handcuffed, Police Officers Toni Savard, Badge: P463, and Stephanie Glueck, Badge: P53, District Three, arrived on the scene. Officer McMenama requested Officers Savard and Glueck respond to Jersey Mike's restaurant to check on the status of the alarm. Moments later, Officer Glueck advised, via radio, the alarm was false.

Officer McMenama gave Sergeants Whitis and Barge a general account of what transpired. Officer McMenama did not give a detailed account of what led Officer Mitchell to deploy his TASER. Officer McMenama believed he would have a chance to give a more detailed statement at District Three.

Mr. Bauer received an abrasion on the right side of his face and a chipped tooth from falling to the sidewalk. Mr. Bauer was neither charged nor arrested. Cincinnati Fire Department, Engine 35, responded; however, Mr. Bauer Sr. arrived and insisted Mr. Bauer not be transported by Cincinnati Fire Department personnel.

Police Officer Andrew Mitchell, Badge: P894, District Three

On January 22, 2008, at 1930 hours, Officer Mitchell was on-duty working uniform patrol operating a marked police vehicle with his partner, Officer McMenama. Officers Mitchell and McMenama responded to Jersey Mike's restaurant, 5032 Glencrossing Way, for a holdup alarm. As Officers Mitchell and McMenama approached the parking lot of Jersey Mike's restaurant, Officer Mitchell noticed the Jersey Mike's restaurant sign was not lit and the interior of the restaurant was dark. Officer Mitchell knew the restaurant was normally open for business during this time and his suspicion that a criminal offense occurred was heightened.

Officer Mitchell saw Mr. Bauer initially walking on the sidewalk from the vicinity in front of Jersey Mike's restaurant and then in the parking lot toward the side of Panera Bread, 5555 Glenway Avenue. As Officer Mitchell drove the police vehicle into the parking lot, he believed Mr. Bauer looked in their direction and saw the approach of the police vehicle. Officer Mitchell proceeded to within fifteen to twenty feet behind Mr. Bauer who was walking with his hands in his coat pockets and his head down.

Officer McMenama exited the police vehicle and shouted for Mr. Bauer to stop. From the police vehicle, Officer Mitchell shouted verbal commands for Mr. Bauer to stop. Officers McMenama and Mitchell were approximately twenty feet away when they initially issued verbal commands for Mr. Bauer to stop. Mr. Bauer never acknowledged the officers' presence. Mr. Bauer continued walking with his hands in his coat pockets and his head down. Officer Mitchell believed Mr. Bauer intentionally ignored the officers' presence.

As Mr. Bauer approached the corner of the Panera Bread building, he bumped into a steel guide post protruding from the parking lot and turned the corner. Officer Mitchell believed this was a precursor to flight because there were no objects interfering with Mr. Bauer's direction of travel. Officer Mitchell's suspicion was raised regarding the possibility of an armed robbery at Jersey Mike's restaurant involving Mr. Bauer.

Officer Mitchell positioned his police vehicle at the corner of the building and behind Mr. Bauer. Officer Mitchell drew his TASER, and as he stepped from the vehicle, deployed the TASER from approximately fifteen feet away. Officer Mitchell did not warn Mr. Bauer of the impending TASER deployment due to Mr. Bauer's noncompliance and failure to acknowledge the officers.

As the TASER cycled, Officer Mitchell realized the vehicle was moving forward and shouted, "Car," to warn Officer McMenama who ran in front of the vehicle to stop Mr. Bauer. Officer Mitchell transitioned the TASER from his right hand to his left and depressed the brake pedal with his right foot while his left foot remained outside of the vehicle. Officer Mitchell placed the vehicle in park. Officer Mitchell did not deploy the TASER through the open window of the vehicle while operating the vehicle.

Mr. Bauer was immediately immobilized and fell face down onto the sidewalk. Mr. Bauer's hands were under his torso and Officers McMenama and Mitchell ordered Mr. Bauer to show them his hands. When Mr. Bauer did not comply, Officer Mitchell cycled his TASER for a second five second cycle. When the second cycle ended, Officers McMenama and Mitchell each grasped one of Mr. Bauer's arms, placed Mr. Bauer's arms behind his back, and handcuffed him without further incident.

When Sergeant Whitis arrived on the scene and asked Officer Mitchell what happened, Officer Mitchell gave Sergeant Whitis a brief thumbnail sketch of what transpired. Officer Mitchell did not fully articulate his actions because he believed he would have the opportunity to give a detailed account of his actions after the scene was stabilized.

At the time, because of the combination of the holdup alarm, Mr. Bauer's failure to acknowledge the officers' presence, the manner in which Mr. Bauer turned the corner, and Mr. Bauer was about to enter the front of the main business area of the plaza, Officer Mitchell believed his decision to deploy the TASER was appropriate and consistent with training.

Additional Information:

IIS obtained a recording of the dispatch from Police Communications Section. The dispatcher initiated an all county broadcast stating there was a holdup alarm on the cash register at the Jersey Mike's restaurant. There was no additional information given nor requested prior to Officer McMenama's TASER deployment.

IIS reviewed the digital video recording from Officers' McMenama's and Mitchell's police vehicle (equipment #04320). The Mobile Video Recorder captured the video, but not the audio of the encounter with Mr. Bauer. The video showed Officers' McMenama's and Mitchell's approach to Mr. Bauer in the police vehicle. Mr. Bauer never acknowledged the officers' presence.

Mr. Bauer's walking pace appears normal. Mr. Bauer never broke stride nor appeared to attempt to elude the officers. Approximately twelve seconds elapsed from the officers' entry into the parking lot to the apparent deployment of the TASER by Officer Mitchell. The actual TASER deployment was not captured by the Digital Video Recorder due to the positioning of the vehicle.

The digital video recording showed the police vehicle came to an abrupt stop, then rolled forward, and suddenly dipped. IIS was unable to determine Officer Mitchell's position when he deployed his TASER. Additionally, IIS was unable to determine whether Mr. Bauer was wearing stereo earphones at the time of the attempted stop by Officers Mitchell and McMenama.

A review of the Form 18TBFP, Use of TASER, stated Mr. Bauer suffered an abrasion to the right side of his face and a chipped tooth from striking the pavement as a result of the TASER deployment. Cincinnati Fire Department, Engine Company 35, responded and evaluated Mr. Bauer. Mr. Christopher Bauer Sr. insisted he transport Mr. Bauer for treatment. Because IIS was unable to interview Mr. Bauer, IIS was unable to obtain the physician's diagnosis of Mr. Bauer's injuries. Additionally, it was not learned until later that evening that Mr. Bauer Sr. transported Mr. Bauer to Mercy West Hospital; therefore, a Form 652, Release of Medical Record Information, was not obtained.

Conclusion:

On January 22, 2008, at approximately 1930 hours, Police Officers Andrew Mitchell and Dewayne McMenama responded to a holdup alarm of a business at 5032 Glencrossing Way. Officers Mitchell and McMenama saw Mr. Bauer walking from the vicinity of the alarm.

From approximately twenty feet away, Officers McMenama and Mitchell issued numerous verbal commands for Mr. Bauer to stop as they approached him from behind. Officers Mitchell and McMenama were unable to get Mr. Bauer's attention as he walked with his back to them. Believing Mr. Bauer was purposely ignoring a legal order to stop, Officer Mitchell deployed his TASER from approximately fifteen feet, immobilizing Mr. Bauer and causing injuries.

While on the scene conducting a preliminary investigation, Sergeant Michael Whitis recognized Officer Mitchell's actions did not meet Department standards, procedures, or training. Sergeant Whitis conferred with Sergeant Michael Barge and Lieutenant Bridget Bardua who concurred with Sergeant Whitis' findings. During her command review, Captain Frey found Officer Mitchell's actions were not in conformance with Department standards.

Upon responding to the holdup alarm, Officer Mitchell did not verify the status of the alarm, whether an offense occurred, nor a suspect description. As Officers McMenama and Mitchell approached, Mr. Bauer showed no signs he knew the officers were there nor displayed any signs of aggression or resistance. Additionally, Officer Mitchell did not give a verbal warning prior to deploying his TASER.

Officer Mitchell's actions are in violation of Rules 1.01D and 1.23B of the Manual of Rules and Regulations and Disciplinary Process for the Cincinnati Police Department, which states:

1.01 Members shall not commit any acts or omit any acts, which constitute a violation of any of the rules, regulations, procedures, directives, or orders of the Department.

D. A negligent violation which leads to physical injury to another or financial loss to the City. To wit:

Procedure 12.545, Use of Force *(In Part)*

Policy:

The suspect should be allowed to submit to arrest before force is used unless this causes unnecessary danger to the officer or others.

The officer must choose the necessary response based on law, department policy, training, and experience. The officer must exercise proper use of force decision making, which means the use of reasonable force, including proper tactics, and de-escalation techniques.

Procedure:

A. Use of the X26 TASER

1. Use the X26 TASER to control actively resisting subjects, aggressive non-compliant subjects, or violent or potentially violent subjects. When possible, give the subject a verbal warning that the TASER will be deployed unless exigent circumstances exist that would make it imprudent to do so.

And

1.23 B. Members shall not use more force in any situation than is reasonably necessary under the circumstances. Members shall use force in accordance with law and Department procedure.

Based on the IIS administrative review, Captain Frey's command review, the Mobile Video Recording, and the interviews, IIS recommends this case be closed, **SUSTAINED.**

Approved

MEB

Employee Profile Information

Police Officer Andrew Mitchell, Badge P894, District Three

The following is a summary of sustained charges for the 36-month period: 1/22/05 t0 1/22/08

Date	IIS Case #	Violation	Rule Violation	Penalty

SECTION FIFTEEN - DISCIPLINARY TABLE

A Any Corrective Measure Outline in Rule 9 26, Section A
B Written Reprimand
C Hearing (1-5 days suspension)
D Hearing (5-7 days suspension)
E Hearing (7-11 days suspension)
F Hearing (11 days suspension or more, demotion, or dismissal)
G Hearing (dismissal)
H Hearing (suspension without pay)

All time lengths for repeated conduct are based on a 36-month period unless otherwise stated

Failure of Good Behavior	1st	2nd	3rd	4th
1.01a	A	A	B	C
1.01b	A	B	C	D
1.01c	B	C	D	E
1.01d	C	D	E	F
1.01e	D	E	F	G
1.01f	E	F	G	
1.01g	F	G		
1.02a (three years)	A/B	B	C	D
1.02b (three years) 3rd/4th degree	C	D	F	G
1.02b (three years) 1st/2nd degree	D	E	F	G
1.02b (three years) theft offense per 2913.01 ORC	F	G		
1.02c (three years) felony	F	G		
1.02c felony-violation of 124.34 ORC	G			
1.02d felony traffic/criminal law indictment	H			
1.03	B	C	D	F
1.04	A	A/B	B	C
1.05 (negligent circumstances)	A	B	C	D
1.05 (intentional circumstances)	D	F	G	
1.06a	A	A	B	C
1.06b	A	B	C	D
1.06c	B	C	D	F
1.06d	D	E	F	
1.07	B	F	G	
1.08	B	D	F	G
1.09	A	B	C	D
1.10a	A	B	C	D
1.10b	B	C	D	F
1.10c	B	D	F	G
1.10d	B	D	F	G
1.11	A	B	C	D
1.12	A	B	C	D
1.13	B	C	D	F
1.13a	F	G		
1.14	B	C	D	F
1.15a	A	B	C	D
1.15b	B	C	D	F
1.16a	B	D	F	G
1.16b	B	C	D	F
1.16c	B	C	D	F
1.16d	A	B	C	D
1.17a	C	D	F	G
1.17b	B	C	D	F
1.18	A	B	C	D
1.19	E	F	G	
20a	A	A	B	C
20b	A	A	B	C
21	B	C	D	F
22a (verbal abuse)	A	B	C	D
22b (physical abuse)	C	D	F	G
23a	E	F	G	
23b	E	F	G	
23c	D	E	G	
24	C	D	F	G
25a	B	C	D	F
25b	A	B	C	D

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1.26	A	A	B	
1.27	A	A	B	
1.28	B	C	D	
1.29	A/B	B	C	
1.30	C	D	F	
1.31	B	C	D	
1.32	C	D	F	
1.33	A	B	C	
Section Two - Neglect of Duty	1st	2nd	3rd	4
2.01	A	B	C	I
2.02	A	B	C	I
2.03	A	B	C	I
2.04	A/B	B	C	I
2.05	A	B	C	I
2.06	A	B	C	D
2.07	B	C	D	F
2.08	A/B	B	C	D
2.09	A/B	B	C	D
2.10	A/B	B	C	D
2.11	A/B	B	C	D
2.12	B	C	D	F
2.13	B	C	D	F
2.14	A/B	B	C	D
2.15	A/B	B	C	D
2.16	A/B	B	C	D
2.17	A/B	B	C	D
2.26a	F	G		
2.26b	F	G		
Section Three - Attendance	1st	2nd	3rd	4th
3.01a	A	A/B	B	C
3.01b	A	A/B	B	C
3.01c	A	A/B	B	C
3.01d	A	A/B	B	C
3.01e	A	A/B	B	C
3.02	B	C	D	F
3.03	A/B	B	C	D
3.04 (one year)	A	A	B	C
Section Four - Insubordination	1st	2nd	3rd	4th
4.01 (non-serious)	A/B	B	C	D
4.01 (serious)	C	D	F	G
4.02	A	B	C	D
4.03	A/B	B	C	D
4.04	A	A	B	C
4.05	F	G		
4.06	F	G		
Section Five - Dishonesty	1st	2nd	3rd	4th
5.01	G			
5.02	B	C	D	F
Section Six -Substance Abuse	1st	2nd	3rd	4th
6.01	C	D	F	G
6.02	F	G		
6.03	B	C	F	G
6.04	B	C	D	F
Section Seven - Care of Department	1st	2nd	3rd	4th
7.01	A/B	B	C	D
7.02 (category 1 accidents)	per	curre	gui	
7.02 (category 2 accidents)	per	curre	gui	
7.03	A	A/B	B	C
7.04	A	B	C	D
7.05	A	A/B	B	C
7.06	B	C	D	F
7.07	B	C	D	E
Section Eight - Uniforms and Grooming	1st	2nd	3rd	4th
8.01	A	A/B	B	C
8.02a	A	A/B	B	C
8.02b	A	A/B	B	C
8.03	A	A/B	B	C
8.04a	A	A/B	B	C
8.04b	A	A/B	B	C

City of Cincinnati

Interdepartmental
Correspondence Sheet

Date 04/30/08

To Colonel Thomas H. Streicher Jr., Police Chief

From Captain Stephen G. Luebbe, Planning Section Commander

Copies to

Subject **PRE-DISCIPLINARY HEARING – Police Officer Andrew Mitchell**

On Thursday April 10, 2008, at 1105 hours, at 310 Ezzard Charles Drive, Cincinnati, Ohio, Captain Stephen G. Luebbe conducted a pre-disciplinary hearing involving Police Officer Andrew Mitchell, badge P894, District Three.

5/12 TO 115 FHA D

Attendance:

The following persons were present at the hearing:

- Captain Stephen G. Luebbe, Police Department Hearing Officer.
- Police Officer Andrew Mitchell, District One.
- Lieutenant Russ Neville, Internal Investigations Section.
- Sergeant Michael Hudepohl, Internal Investigations Section, recorder.
- Sergeant Jeffery Scholl, Internal Investigations Section, observer.
- Police Specialist Kathy Harrell, Fraternal Order of Police Representative.

5/12 5.V FHA

CHARGE(S): Procedure Violation

SPECIFICATION(S): Violation of Rules 1.01D and 1.23B of the Manual of Rules and Regulations and Disciplinary Process for the Cincinnati Police Department.

SPECIFICATION I:

On January 22, 2008, at 1934 hours, at 5555 Glenway Avenue, you deployed your TASER on Mr. Christopher Bauer, Jr., while responding to a hold up alarm. You did not verify the status of the alarm, whether an offense occurred, nor obtain a suspect description. As you approached Mr. Bauer, he showed no signs he was aware you were there, nor displayed any signs of aggression or resistance. You did not give a verbal warning prior to deploying your TASER. Your TASER deployment was not in conformance with Department Standards.

Officer Mitchell's actions are in violation of Rules 1.01D and 1.23B of the Manual of Rules and Regulations and Disciplinary Process for the Cincinnati Police Department, which states:

1.01 Members shall not commit any acts or omit any acts, which constitute a violation of any of the rules, regulations, procedures, directives, or orders of the Department.

D. A negligent violation which leads to physical injury to another or financial loss to the city.

To Wit:

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Procedure:

A. Use of the X26 TASER

1. Use the X26 TASER to control actively resisting subjects, aggressive non-compliant subjects, or violent or potentially violent subjects. When possible, give the subject a verbal warning that the TASER will be deployed unless exigent circumstances exist that would make it imprudent to do so.

And

1.23.1 B. Members shall not use more force in any situation than is reasonably necessary under the circumstances. Members shall use force in accordance with law and Department procedure.

STATEMENT FROM THE INTERNAL INVESTIGATIONS SECTION SUPERVISOR:

Lieutenant Neville presented a copy of the Internal Investigations Section Case Report # 08031, and summarized his investigation.

STATEMENT FROM POLICE OFFICER Andrew Mitchell:

Police Officer Andrew: Officer Mitchell stated that he and his partner, Police Officer Dewayne McMenama, responded to a hold up alarm at Jersey Mike's restaurant located at 5032 Glencrossing Way on January 22, 2008, at 19:31 hours.

Officer Mitchell made his approach from Target's driveway located across the street from Jersey Mike's Restaurant. He observed that the restaurant's sign was turned off and the interior lights were dimmed. Officer Mitchell stated this was unusual and aroused his suspicion because Jersey Mike's restaurant is usually open until 21:00 hours and that he had never heard this alarm go off in the past. Officer Mitchell also observed a male white individual (later identified as Christopher Bauer Jr.) walking from the direction of Jersey Mike's toward the rear of Panera Bread Store located at 5555 Glenway Avenue. Mr. Bauer was walking away from the officers with his hands in his pockets and his head angled down. Officer Mitchell stated that if the hold up alarm was in fact a "good alarm" this person would be a likely suspect or witness. Officer Mitchell felt it imperative to stop this person and identify him in case the alarm turned out to be a real robbery.

Officer Mitchell states he drove the police vehicle across the street and into the rear parking lot of the Panera Bread store and followed behind Christopher Bauer Jr. Officer Mitchell stated he ordered Mr. Bauer to stop several times. Officer Mitchell said that the subject glanced back over his shoulder in Officer Mitchell's direction, and Officer Mitchell thought Mr. Bauer saw them. Mr. Bauer did not acknowledge the commands to stop and continued walking away rounding the rear corner of Panera Bread Store and continued toward the front of the building. Officer Mitchell decided that tactically it was best to stop Mr. Bauer here at the rear of the building away from other pedestrians and before he got to the front of the business and became part of the shopping crowd.

Officer Mitchell further stated that if the hold up alarm was "good," in his experience, he thought the suspect would most likely be armed with a weapon, probably a handgun. Officer Mitchell stated that he decided to use the Taser to stop Mr. Bauer without warning him because Bauer might be armed and might try to avoid apprehension. Officer Mitchell also stated that he wanted to stop Mr. Bauer before he reached a position in the parking lot that might endanger the lives of other civilian pedestrians.

Officer Mitchell stated he stopped the police vehicle and Officer McMenama exited the passenger side of the vehicle. Officer Mitchell, without putting the vehicle in park, exited the vehicle and after receiving no response from Christopher Bauer deployed his Taser into the back of Mr. Bauer. Just as he was deploying the Taser the police vehicle began to move forward causing Officer Mitchell to reenter the vehicle to stop it and shift it into park. This occurred simultaneously to Officer McMenama walking in front of the police vehicle toward Mr. Bauer with his firearm out and pointed in the direction of Mr. Bauer. Mr. Bauer was immediately incapacitated and fell face first to the ground. Both officers ordered Mr. Bauer to put his hands behind his back. Mr. Bauer did not comply so Officer Mitchell cycled the Taser a second time. At the completion of the second cycle both officers handcuffed Mr. Bauer. As the officers handcuffed Mr. Bauer other officers arrived on the scene and were directed by Officer Mitchell to check on the status of the alarm; the alarm was false.

Officers McMenama and Mitchell assisted Mr. Bauer to his feet and noticed an IPOD lying on the ground near where Mr. Bauer's hands and waist had been. Officer Mitchell stated that the earphones were loosely wrapped around the device and only a short portion of the wire was unwrapped. In his opinion the IPOD was in Mr. Bauer's pocket and fell out when the officers pulled Mr. Bauer's hands out of the pockets to apply handcuffs. Officer Mitchell stated he did not see the earphones in Mr. Bauer's ears and that it was unlikely the earphone cord was unwrapped to a sufficient length to allow Mr. Bauer to listen to the IPOD.

STATEMENT FROM FRATERNAL ORDER OF POLICE REPRESENTATIVE:

Police Specialist Kathy Harrell: Specialist Harrell stated Officer Mitchell has received numerous positive ESLs regarding many impressive arrests. She further cites several positive comments made by supervisors regarding his annual evaluations. Specialist Harrell then calls into question the decision made by on scene supervisors to release Christopher Bauer, stating it should have been left up to the court system to determine whether Officer Mitchell had probable cause to make the arrest.

FINDING:

Based on the review of the Internal Investigations Section Report and testimony during the pre-disciplinary hearing there is a **SUSTAINED** finding for Specification I.

Police Officer Andrew Mitchell used more force that was reasonably necessary to stop and detain Christopher Bauer Jr. Whether or not Mr. Bauer was wearing earphones and listening to an IPOD is not important to this hearing. Officer Mitchell was not justified in the use of force to stop anyone. There was no confirmed crime to investigate. Officer Mitchell's primary responsibility, as first car on the scene, was to respond directly to Jersey Mike's Restaurant to investigate and determine the validity of the alarm. In doing so he would have discovered the alarm was false and no other action was necessary. Had the alarm been "good" as Officer Mitchell feared, he would have been in a position to render aid to victims, obtain and broadcast a description of the suspect, protect the crime scene, and collect evidence.

PRIOR DISCIPLINE:

Review of Personnel records and Internal Investigations Employee Profile both show there have been no previous violations or investigations brought against Officer Mitchell.

Recommendation:

40 Hour Suspension form duty.

SGL

Approved