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June 23, 2020

DEPARTMENTAL ORDER OF DISCIPLINARY ACTION

Case No. IC2018-0071

James Martinez (P00065)
Officer in the Classified Service
Denver Police Department

This is before the Executive Director of the Department of Safety to approve, disapprove or modify the Chief of Police's Written Command ordering disciplinary action against Officer James Martinez. The Written Command determined that Officer Martinez violated RR-306, Inappropriate Force, when he deployed a Taser on a suspect exhibiting only defensive resistance. The Written Command imposed a penalty of ten (10) days (80 hours) suspension for this Conduct Category D violation.

In early September 2018, Sergeant Randall Steinke of the Denver Police Department Internal Affairs Division (IAD) responded to the home of a juvenile male (JM) who was arrested by Denver Police Department (DPD) officers on the morning of August 22, 2018. He interviewed the JM for this administrative investigation (IC2018-0071). The JM candidly told Sergeant Steinke he had taken LSD for the first time on the morning of the incident. He described the dose as being "not safe for beginners." The drug made him feel hot and gave him an "urge to speak [his] mind". He went outside his home and began talking loudly about "God" and the power possessed by humanity, beginning at Ruby Hill Park in Denver.

Five calls came in for the neighborhoods of Ruby Hill and South Platte between 1047 and 1108 hours on August 22, 2018. Four of them surrounded the JM's activities: he was described as a black male, tall and slender, being "high" or having "something wrong", screaming profanities, "dancing in the street", stopping traffic, and declaring he was "God". No caller reported seeing the JM use or carry weapons. Dispatch aired a description of the man dancing in the street at "Evans and Navajo": "A black male, six foot, thin build, short hair, black-[unintelligible] shorts and T-shirt."¹

One call concerned a black male who was allegedly breaking into businesses near 2255 South Kalamath Street in Denver. This male was being chased by another male, either white or Hispanic,

¹ Dispatch Audio at 08:52

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who had a gun. The black male here was described as wearing a red shirt and a black hat. The dispatcher aired this description twice.² No one reported shots being fired.

DPD officers caught up with the JM in the 2200 block of South Jason Street at approximately 1112 hours. Officer James Martinez confronted him on the corner of Warren Avenue and Jason Street. He was wearing a black T-shirt, black shorts, and no hat. The JM refused to stop for Officer Martinez and ran south on Jason Street.

Hearing other officers had contacted the JM, Sergeant Joseph Rodarte approached the scene from the south, stopping in front of Loris and Eddie's Auto Repair, 2240 South Jason Street. He saw the JM and realized something was wrong with his behavior. Based on this knowledge and prior contact with a business owner who did not want to press charges, Sergeant Rodarte aired there were no criminal charges against the JM.³

After having run from Officer Martinez, the JM stopped in front of Sergeant Rodarte's car. Sergeant Rodarte exited his patrol car and began to "fan" his Orcutt Police Nunchaku (OPN), to persuade the JM to surrender.⁴ The JM began to walk away from him. Sergeant Rodarte went around the back of his patrol car, believing the JM may have been trying to escape around the passenger side.

Officer Martinez had caught up to the JM by this time, who had stopped briefly, facing Sergeant Rodarte's patrol car.⁵ Officer Martinez tried to put the JM on the pavement by kicking him in the back.⁶ The JM did not fall. Instead, he ran east, into the front lot of Loris and Eddie's Auto Repair and into the garage. Officer Martinez, Sergeant Rodarte, and Officers Isaac Ocampo and James Watson followed.

Officer Martinez took a position in front of the garage, Taser drawn. Sergeant Rodarte was to the west of Officer Martinez, approximately 15 feet behind him. The JM ran west, out of the garage, seconds after he ran in. Officer Martinez stuck his foot out, tripping him. The JM pitched forward, off balance for a few steps, before finally falling and rolling into a somersault. He rolled in front of Sergeant Rodarte. The JM was rolling out of the somersault on his backside with his feet pointing west, when Sergeant Rodarte, having drawn his Rapid Containment Baton ("RCB" or "baton"), swung at him. Apparently intending to strike the JM in the legs, Sergeant Rodarte

² *Dispatch Audio* at 11:18, 11:36.

³ *Dispatch Audio* at 13:53; *See also*, Transcript Sergeant Rodarte IAD Interview (hereafter, *Rodarte*) II. 147-172.

⁴ *Rodarte* II. 384-412. Sergeant Rodarte is an OPN instructor. In his interview for this case, he described fanning as an effective technique to persuade suspects to surrender

⁵ Video file *Camera 2_20180822110956* at time stamp 11:16:54 AM, counter 06:58 (Video from security camera two at Loris and Eddie's Auto Repair.)

⁶ Video file *Camera 1_20180822111042* at time stamp 11:16:54 AM, counter 06:12 (Video from security camera one at Loris and Eddie's Auto Repair.)

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appeared to be late with his swing and struck the JM in the face above his right eye, which began bleeding.⁷

Sergeant Rodarte took a second swing at the JM, possibly striking him in the back.⁸ Sergeant Rodarte landed two more strikes on the JM's upper and lower right leg.⁹

The JM then fell to his side, lying still on the pavement. Seeing the JM was bleeding, Officer Ocampo put on latex gloves. Sergeant Rodarte said, "Glove up, guys", yet neither Officer Watson nor Officer Martinez did. Officer Ocampo was the only officer to go hands-on with the JM.

Officer Ocampo then began trying to handcuff the JM. Officer Ocampo's attempt to place the JM's right arm behind his back caused the JM to start yelling and struggling. Apparently using Officer Ocampo's handhold as leverage, the JM, who had been seated, rose to his feet. As he did so, Sergeant Rodarte struck him two more times on his left leg.¹⁰

Officer Ocampo maintained his hold on the JM and appears to have pulled him back down to the pavement. The bones in JM's lower right leg, however, gave out, causing the JM to fall. The bones can be heard snapping, both on Officer Watson's BWC video and on Officer Martinez's BWC video.¹¹ When Officer Watson's BWC video is paused at 01:41, the JM's lower leg can be seen, bent at an odd angle.¹²

Officer Ocampo let go of the JM, and Officer Martinez, after having requested and received permission from Sergeant Rodarte, deployed his Taser. Officer Martinez said, "I missed," and asked if anyone else had a Taser.¹³ The JM sat up briefly. He then went back down on his left side while Officer Ocampo once again attempted to handcuff him.

The JM continued to resist. Sergeant Rodarte placed a foot on his right thigh while radioing for an ambulance. Officer Watson asked Sergeant Rodarte if he wanted him to tase the JM. Sergeant

⁷ Video file *Camera 2_20180822110956*, from time stamps 11:17:05 AM to 11:17:06 AM (video counter from 07:09 to 07:10). See also, the still image #1, taken from Sergeant Rodarte's body-worn camera (BWC) video and BWC video files *James Martinez BWC* at 01:34, *Rodarte BWC 1* at 00:50, and *Watson BWC 1* at 01:18.

⁸ *Camera 1_20180822111042* at 11:17:08 AM (video counter 06:26); *Camera 2_20180822110956*, same time index, video counter 07:12; *James Martinez BWC* at 01:37; *Rodarte BWC 1* at 00:52; *Watson BWC 1* at 01:20; *Ocampo BWC 1* at 00:38. See also still image #2 from Sergeant Rodarte's BWC. Sergeant Rodarte explained the JM was trying to get to his feet, so he was aiming for the JM's triceps. *Rodarte II*, 830-860. Sergeant Rodarte believed this strike missed the JM. *Id.*, ll. 868-876 ("That - that strike at his triceps actually missed him I didn't realize that until watching the video later and preparing for ... (t)he proceedings").

⁹ Still images #3 and #4; *Camera 1_20180822111042* at 06:27; *Camera 2_20180822110956* at 07:13; *James Martinez BWC* at 01:38; *Rodarte BWC 1* at 00:54; *Watson BWC 1* at 01:21; *Ocampo BWC 1* at 00:39.

¹⁰ *James Martinez BWC*, beginning 01:50.

¹¹ *Watson BWC 1* at 01:41; *James Martinez BWC* at 01:58.

¹² See also image file *IC2018-0071-Still-Watson BWC 1 -Leg Breaking*, which was taken from Officer Watson's BWC video.

¹³ *James Martinez BWC* at 01:59. In Officer Michelle Boren's BWC video, three laser probes can be seen in the JM's back. Video file *Boren BWC* at 03:47. The two in his left shoulder were from Officer Watson's deployment. The third, below his right rib cage, was from Officer Martinez. This partial contact explains, at least in part, why his Taser had no effect on the JM.

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Rodarte said yes. Officer Watson deployed his Taser, striking the JM in the left shoulder.¹⁴ The Taser did not immobilize the JM, who continued to thrash on the pavement, yelling that he was "God." Officer Ocampo resumed his efforts to handcuff the JM, assisted by Sergeant Rodarte, who used his OPN device as a restraint on the JM's leg to force him to lie on his stomach. Officer Ocampo was then able to handcuff the JM.

The ambulance arrived shortly afterward. Sergeant Rodarte ordered a neighborhood survey. Several witness statements were taken, from bystanders and occupants of the surrounding buildings.

In his IAD interview with Sergeant Steinke, Officer Ocampo remembered he was the only one who placed his hands on the JM to handcuff him. He did not remember any other officer going hands-on to help him.

Officer Ocampo said he was unsure of what the JM's intentions were when he first got to his feet. When Sergeant Steinke asked, "Did he ever try to assault you?" Officer Ocampo said, "No[,] sir."¹⁵ In addition, Officer Ocampo never perceived the JM was trying to bite him.¹⁶

When Sergeant Steinke asked what the JM's intentions were-to fight or to escape-Officer Ocampo said, "I think he was trying to get away."¹⁷ When asked what level of resistance the JM was mounting, Officer Ocampo said, "At that point I think he was defensive resistance."¹⁸ He said the JM was on the ground for both officers' Taser deployments, not "giv[ing] up any of his arms."¹⁹

In his IAD interview, Officer Watson said he did not see the JM carrying a weapon, and he could see the JM's hands as he ran west, out of the garage.²⁰ He also had no concerns about a weapon, because he had not heard anyone mention one.²¹ Having said that, however, Officer Watson described the JM's running out of the garage toward Sergeant Rodarte as "active aggression".²² Later, he said he saw that the JM "fell or tripped or something" and did "kind of a roll" when he was running toward Sergeant Rodarte.²³

Officer Watson did not go hands on with the JM to assist Officer Ocampo. He said this was because the JM was bleeding, and he did not have gloves with him. Because of this incident, said Officer Watson, he now always carries a pair of universal-precaution gloves in his pocket.²⁴ Referring again to the JM's arrest, he told Sergeant Steinke, "I knew - I knew all the guys were gloving up -

¹⁴ James Martinez BWC, beginning 02:05.

¹⁵ Transcript, Officer Ocampo IAD interview (hereafter, *Ocampo*), ll. 673-675.

¹⁶ *Ocampo*, ll. 677-726 (certain speech hesitations and descriptions with hand gestures removed).

¹⁷ *Id.*, l. 763.

¹⁸ *Id.* l. 789. Sergeant Steinke uses the term "level of aggression" throughout the interviews. This Order uses the term "level(s) of resistance", as "resistance" is the word used in OMS 105.01.

¹⁹ *Id.*, ll. 932-933

²⁰ *Id.*, ll. 287-293.

²¹ *Id.*, ll. 156-163, 324.

²² *Id.*, ll. 331-336.

²³ *Id.*, ll. 706-711.

²⁴ *Id.*, ll. 362-380.

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I think - and - and James Martinez had already tried to tase him, so I thought, well, I don't have gloves so I - I figured I'd get my [T]aser out."²⁵

Officer Watson never saw the JM attempt to assault the other officers. He said the JM was on the ground "rolling around" when Officer Martinez deployed his Taser. He added, "[A]t that point ... it looked more like he was just trying to get up and - and run."²⁶

Officer Watson asked Sergeant Rodarte if he (Officer Watson) should tase the JM. He remembers Sergeant Rodarte indicating yes, he should.²⁷ When asked what the JM's level of resistance was, at that time, Officer Watson said, "defensive".²⁸ When asked if the JM was trying to fight or flee, Officer Watson said,

it started off him fleeing, ... [and when he was running out of the garage], I mean it's not like he took a swing at anybody, but he was running more or less at Sergeant[,] ... [y]ou know, but after that point, I - I cannot honestly say he was trying to fight. It looked to me like he was trying to get up and- and get away.²⁹

When Sergeant Steinke asked him to elaborate on "running more or less at Sergeant"- specifically, if he saw the JM "do a somersault"- Officer Watson said he remembered the JM tripping and doing "kind of a roll" toward Sergeant Rodarte.³⁰

In his IAD interview, Sergeant Steinke asked Sergeant Rodarte why he and the other officers did not grab the JM and assist Officer Ocampo with trying to handcuff him. Sergeant Rodarte said,

[W]e're kind of spoiled by having officers like Isaac Ocampo. He's normally, when we have a chance to set a plan like, 'You're not lethal cover,' 'You're lethal cover,' 'You're hands on,' well, Isaac Ocampo's always hands on He's a big, strong, athletic individual who normally is able to get people in custody quickly, and the way we would take that party into custody is not while seated, from a prone position, and I think that was Isaac's intention to do so I did tell the other officers as he went hands on, Isaac Ocampo went hands on, to glove up because we had a blood biohazard now ... across the individual's face. Isaac was already getting his gloves on. He - he does that pretty religiously - something we talk about in roll call a lot.³¹

In addition, Sergeant Rodarte strongly implied he did not go hands-on, because he did not want to be immobilized by the Taser deployments.³² Later in the interview, he speculated about the

²⁵ *Id.*, II. 394-396.

²⁶ *Id.*, II. 462-475.

²⁷ *Id.*, II. 482-488.

²⁸ *Id.*, II. 620-625.

²⁹ *Id.*, II. 681-689.

³⁰ *Id.*, II. 706-715.

³¹ *Rodarte*, II. 1028-1044.

³² *Id.*, II.1055-1066.

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possibility of the "blood biohazard" being a factor.³³ Finally, he said he injured his back after the first baton strike, so "there was only so far [he] could bend down because [he] was in pain."³⁴

Sergeant Rodarte confirmed Officer Martinez said, "Let me tase him", and he (Sergeant Rodarte) replied, "Tase him."³⁵ When asked why, Sergeant Rodarte said, "To - to stop him from rolling and possibly accessing a weapon and to get him into custody." He added he was also concerned the JM might have had a psychotic episode, and he desired to avoid a related in-custody death.³⁶ When asked what level of resistance the JM was exhibiting when he ordered Officer Martinez to deploy his Taser, Sergeant Rodarte said, "active aggression." He offered "imperviousness to pain", "super human strength" (as the JM was attempting to get back on his feet), and that the JM "definitely [had] the ability to complete an assault at [that] point" in support of his active-aggression assessment.³⁷ Sergeant Rodarte also asserted the JM tried to bite Officer Ocampo. This was just before the JM got to his feet, as Officer Ocampo had control of one of his arms.³⁸ Though he said both he and Officer Ocampo were facing the JM, he could see the JM's face. Officer Ocampo could not, he said.³⁹

In his IAD interview with Sergeant Steinke, Officer Martinez said when the JM ran into the garage, he was concerned whether the JM had a weapon. Sergeant Steinke asked him, if so, why did he have his Taser drawn as the JM began to run back, out of the garage. Officer Martinez admitted that was a tactical error. Had the JM been armed with a gun, he "would have [had] the drop on [Officer Martinez]".⁴⁰

Officer Martinez did not go hands-on with the JM to assist Officer Ocampo, because the JM was bleeding and "a biohazard risk". Officer Martinez did not have his gloves with him. As Officer Ocampo had his gloves, and as Officer Ocampo is "a pretty big guy", Officer Martinez believed he had the JM under control and did not assist.⁴¹

When asked why he tased the JM while he was on the ground, Officer Martinez gave a long answer focusing on his perception of the difficulty they were having getting the JM on the ground and the fact that the JM got back to his feet briefly while Officer Ocampo had hold of one of his arms. "I wanted to get him into custody, subdue him. A [T]aser is something we haven't tried yet, and to prevent his escape, I-I decided a new option, to tase him," Officer Martinez said.⁴² He admitted the JM was on the ground when he tased him, and that he was exhibiting "resistance", when describing his level of resistance.⁴³ He contrasted "resistance" immediately afterward with a hypothetical

³³ *Id.*, l. 1480.

³⁴ *Id.*, l. 1526.

³⁵ *Id.*, ll. 1125-1135.

³⁶ *Id.*, ll. 1140-1148.

³⁷ *Id.*, ll. 1200-1202.

³⁸ *Id.*, ll. 1214-1222.

³⁹ *Id.*, ll. 1231-1251.

⁴⁰ *Id.*, ll. 254-269.

⁴¹ *Id.*, ll. 393-399.

⁴² *Id.*, ll. 414-428.

⁴³ *Id.*, ll. 434-436.

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example of what he defined as "active aggression": "somebody ... blades off to you and says they're going to kick your ass or even if it looks like they're going to fight you, you can tase them - no questions asked."⁴⁴ He then offered the following to justify his decision: "but something like this where it's potential and just how everything unfolded super[-]fast and very - he's being way out of control - I believe I was in the right to try and tase him or anybody else. That's what my mindset was."⁴⁵ He admitted later he never saw the JM try to assault anyone. He admitted his perception was that the JM was trying to flee.⁴⁶ He maintained his concern that something "not good" might have happened if the JM escaped.⁴⁷

Sergeant Steinke asked Officer Martinez if the JM "was trying to flee[.] Was he just trying to get away?" Officer Martinez said, "It-it-it appeared that way."⁴⁸ Officer Martinez was never in fear of the JM.⁴⁹ He never saw the JM with a weapon, and he had no heightened concern the JM was carrying one.⁵⁰

RR-306 Inappropriate Force

Officers shall not use inappropriate force in making an arrest or in dealing with a prisoner or any other person.

Relevant policy: OMS 105.00 Use of Force Policy⁵¹

OMS 105.01(1)(a) Policy

(1) POLICY:

a [A]n officer shall use only that degree of force necessary and reasonable under the circumstances ...

...

OMS 105.01(4)(b)(4), (5) Pertinent Concepts and Definitions

...

b. Types of Resistance

...

4. Defensive Resistance – Physical actions that attempt to prevent

⁴⁴ *Id.*, ll. 445-447.

⁴⁵ *Id.*, ll. 456-458.

⁴⁶ *Id.*, ll. 590-594.

⁴⁷ *Id.*, ll. 473-495.

⁴⁸ *Id.*, ll. 478-480.

⁴⁹ *Id.*, ll. 573-575.

⁵⁰ *Id.*, ll. 577-588.

⁵¹ This is the version of OMS 105.00, Use of Force Policy, that was in effect in August 2018 (revised and renamed OMS 105.00, Force Related Policies, Jan. 27, 2019).

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officer's control including flight or attempt to flee, but do not involve attempts to harm the officer.

5. Active Aggression – A threat or overt act of an assault, coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent.

...
OMS 105.03(4)d.6. Less lethal ERD/TASER Deployment

...
b. Acceptable uses of the ERD/TASER include:

1. To incapacitate a combative or physically resistive person; whose conduct rises at least to the level of Active Aggression. The purpose is to neutralize the person to the point they can be safely controlled and taken into custody. This use of force option becomes necessary when other force options would be inappropriate or ineffective under the circumstances ..., OR
2. In situations when its use is likely to prevent an officer or a third person from serious bodily injury[.]

...
Officer Martinez violated this departmental rule when he deployed his Taser on a suspect exhibiting only defensive resistance.

Officer Martinez admitted he tased the JM while he was on the ground. His reasoning was his desire to get the JM into custody. The JM got to his feet only briefly while Officer Ocampo had hold of him, an “[a] taser [was] something [they had not] tried yet, and to prevent his escape, I – I decided a new option, to tase him,” he said. After the JM fell again, Officer Martinez deployed his Taser. He described the JM’s behavior at the time as “resistance”, which he contrasted with someone threatening assault, which he defined as “active aggression.” When asked if the suspect was fleeing or trying to “get away,” Officer Martinez said, “It – it – it appeared that way.”

OMS 105.03(4)d.6.b. clearly directs that Tasers are only to be deployed on suspects exhibiting active aggression, defined as “[a] threat or overt act of an assault, coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent.” The JM, by Officer Martinez’s admission, was exhibiting only defensive resistance. He was trying to flee, not trying to fight. He was on the ground and under Officer Ocampo’s partial control. In addition, none of the officers spoke of any elevated concern that the JM was carrying a weapon, including Officer Martinez. Officer Martinez said he was never in fear of the JM.

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The same subsection of OMS 105.03 contains a provision that a Taser can be deployed "[i]n situations when its use is likely to prevent an officer or a third person from serious bodily injury[.]" An unarmed suspect attempting to flee, in circumstances such as those confronting Officer Martinez, is not such a situation. Officer Martinez's use of the Taser was not appropriate under the totality of the circumstances present in this incident.

The problem with this arrest was tactical. The only officer prepared with universal precaution gloves to handcuff a bleeding suspect was Officer Ocampo. No other officer was carrying these gloves which resulted in no other officer being able or willing to gain control of the JM's other arm. Officer Martinez used his Taser instead of the gloves he should have been carrying, and he deployed the Taser on a person who had fallen to the ground while attempting to get away from the officers. It is neither reasonable nor necessary to use a Taser on an unarmed, non-combative suspect on the ground, under another officer's partial control. Officer Martinez's decision to utilize his Taser was outside of permissible policy. There is a preponderance of evidence that Officer Martinez violated RR-306, Inappropriate Force, and this rule violation is sustained.

A violation of RR-306 appears in Conduct Categories D through F of the Discipline Matrix. Conduct Category D violations include conduct "substantially contrary to the values of the Department of that substantially interferes with its ... professional image, or that involves a demonstrable serious risk to ... public safety."

By deploying a Taser on a suspect who was only exhibiting defensive resistance and was partially under another officer's control, Officer Martinez's misconduct was substantially contrary to the Department value of Service; substantially interfered with the professional image of the Department; and involved a serious risk to public safety. Therefore, this misconduct is properly characterized as a Conduct Category D violation.

Officer Martinez has no prior Conduct Category D or higher, violations within the specified time-frame of seven (7) years that would mandatorily increase the penalty level for this violation. Pursuant to the disciplinary matrix for a discipline level of five (5), the mitigated penalty is a four (4) to six (6) day suspension; the presumptive penalty is a ten (10) day suspension; and the aggravated penalty is a fourteen (14) to sixteen (16) day suspension.

After an examination of the circumstances of this case, nature of the misconduct and Officer Martinez's record with the Department, there are no significant mitigating or aggravating circumstances that are applicable to this specification.

Accordingly, the Written Command is hereby approved and the presumptive penalty of ten (10) days suspension is imposed. This ten (10) day period of suspension will begin on July 12, 2020 and continue through and including July 21, 2020.

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Pursuant to Denver City Charter § 9.4.15(A), Officer Martinez has ten (10) days from receipt of this Order to file an appeal with the Civil Service Commission.

BY ORDER:



Deputy Director of Safety

6/23/2020

Date

OFFICER'S RETURN

I hereby certify that I received the within Departmental Order of Disciplinary Action and have delivered a true copy thereof to the within-named James Martinez this 24 day of June 2020.



Signature

J. CASIAS 98026

Printed Name