

Investigation Report No. 20150096

May 14, 2015

Investigative Predicate

On Monday, February 23, 2015, a Florida Highway Patrol (FHP) Complaint Intake and Inquiry Form was completed regarding a use of force incident involving Trooper Eloy Arias. It is alleged on Saturday, February 14, 2015, Arias used excessive force while taking a subject into custody.

On Tuesday, February 24, 2015, the complaint was forwarded to the Department of Highway Safety and Motor Vehicles (DHSMV) Office of Inspector General (OIG) and assigned to Inspector Christopher Chappell for investigation.

Investigative Narrative

An administrative investigation was initiated to determine if Arias violated Department policies. While investigating the allegations, consideration was given to the following DHSMV and FHP policies:

- DHSMV Management Policy 3.06 – Disciplinary Process
- FHP Policy 10.01 – Use of Control/Response to Resistance
- FHP Policy 10.05 – Conducted Electrical Weapon

The standard for analyzing claims of excessive force was established by the Supreme Court in *Graham v. Connor*, 490 U.S. 386, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989). *Graham* instructs that such claims are to be evaluated under the Fourth Amendment's reasonableness standard: "The question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *Id.* at 397 (citation omitted). The Court cautioned that reasonableness must be assessed from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight, and allow for the fact that "police officers are often forced to make split-second judgments -- in circumstances that are tense, uncertain, and rapidly evolving -- about the amount of force that is necessary in a particular situation." *Id.* The Court further held that relevant factors in the reasonableness inquiry include "[1] the severity of the crime at issue, [2] whether the suspect poses an immediate threat to the safety of the officers or others, and [3] whether he is actively resisting arrest or attempting to evade arrest by flight." *Id.* at 396.

Policy Statements

FHP Policy 10.01 states in pertinent parts, "Members of the Florida Highway Patrol shall in every instance seek to employ the minimum amount of control required to

successfully overcome physical resistance, prevent escapes, and effect arrests. Members' actions must be objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent of motivation...When danger threatens or when resistance is encountered, members should initiate action that is reasonable and necessary, but expect to be held accountable if excessive force is utilized."

FHP Policy 10.05 defines the following:

CONDUCTED ELECTRICAL WEAPON (CEW)¹ – A device designed to disrupt a subject's motor and sensory nervous system by deploying battery-powered electrical energy sufficient to cause Neuro-Muscular Incapacitation (NMI) and override voluntary motor responses. The TASER X-26 System is the Conducted Electrical Weapon authorized for use by the Florida Highway Patrol.

DRIVE STUN MODE – A manner in which the CEW is deployed without the propulsion of the probes.

PASSIVE RESISTANCE – A subject's verbal and/or physical refusal to comply with a member's lawful direction causing the member to use physical techniques to establish control. Examples include the subject refuses to move at the member's direction; the subject peacefully protests at a political event in a public location; and the subject refuses to take his hands out of his pockets or from behind his back.

ACTIVE RESISTANCE – A subject's use of physically evasive movements directed toward the member. Examples include bracing, tensing, pushing, or pulling, to prevent the member from establishing control over the subject.

FHP Policy 10.05 states in pertinent parts, "In accordance with Section 943.1717(1), Florida Statutes, a member's decision to deploy the CEW shall involve an arrest or custodial situation during which the person who is **the subject of the arrest or custody escalates resistance to the member from passive physical resistance to active physical resistance, and the person: Has the apparent ability to physically threaten the member or others; or, is preparing or attempting to flee or escape.**² **Fleeing cannot be the sole reason for deployment of the CEW.** The CEW is considered an intermediate control device, and the decision to utilize it involves the same basic justifications as with the use of the ASR³. Unless exigent circumstances exist, members shall not use the device in the following situation: (b) On a handcuffed or secured prisoner..."

¹ The CEW is commonly referred to as a Taser

² Bold and italics added for emphasis

³ ASR (Aerosol Subject Restraint) is commonly known as Pepper Spray

"There may be incidents in which the use of a CEW conflicts with (b) In those cases, the use of the CEW must be based on justifiable facts and are subject to "Use of Control" supervisory review."

"The CEW may also be used in certain circumstances in a drive stun mode. It is important to remember that when the device is used in this manner, it is primarily a pain compliance tool due to a lack of probe spread and subject to the same deployment (use) guidelines and restrictions as those of the CEW in cartridge deployments."

The OIG reviewed the FHP Complaint Intake and Inquiry Form and Supervisory Use of Control Report (**Exhibit 1**) completed by FHP Sergeant Pedro Reinoso. Reinoso alleged Arias used excessive force by using his CEW while taking a subject into custody. The Supervisory Use of Control Report was incomplete and missing the narrative portion, which documents the actions taken by the supervisor in reviewing the incident. In the report, Reinoso showed the most serious resistance offered by the subject as "passive physical." The report was signed by Reinoso, but missing signatures for the rest of the supervisory chain of command.

Offense Incident Reports

The OIG reviewed the Offense Incident Reports completed by Arias and the three back-up officers (**Exhibit 2**).

According to Arias' Offense Incident Report, on February 14, 2015, at approximately 4:44 PM, he was directing traffic due to a serious traffic crash that occurred at the 117 mile marker on US Highway 1 in Miami-Dade County. Miami-Dade Police Officer Christian Huete arrived on scene with Arias to assist with traffic control. Arias noticed a van following Huete as he pulled up.

Huete told Arias he directed the van to follow him to Arias' location. Arias approached the van on the driver side and noticed the driver was seated on the center console. The driver, who became known as Marc Freedman, took the keys out of the ignition and began screaming that he was calling 9-1-1. Arias and Huete gave Freedman loud verbal commands to open the vehicle's door and to roll down the window, but he refused.

After multiple attempts to get Freedman out of the vehicle, Arias broke out the driver side window. Arias drew his CEW and told Freedman if he did not exit the vehicle he would be tased. Arias unlocked the doors to the vehicle, allowing Huete to open the passenger side door. Huete secured Freedman's right arm and gave him a verbal command to lie down. Freedman physically resisted and attempted to break free from Huete's grip. Arias thought Freedman was attempting to run into southbound traffic so



he deployed his CEW, striking Freedman in the center and lower back. Freedman fell to the ground as Arias gave loud verbal commands to stop resisting.

Huete handcuffed Freedman and they escorted him to Arias' patrol car. Arias called for EMS and an FHP supervisor to respond to the scene. Once rescue personnel arrived, Arias removed the CEW probes from Freedman. Arias attempted to place Freedman inside his patrol car and he began twisting and physically resisting. Freedman attempted to break loose from his grip. Arias gave him a loud verbal command to stop resisting or he would be tased. Freedman tensed up to avoid going into the patrol car, prompting Arias to tase Freedman in the drive stun mode to gain compliance.

Freedman threw himself to the ground and threw a kick, prompting Arias to drive stun him again. Freedman then stopped resisting and complied with Arias' verbal commands. Freedman was taken into custody under the Baker Act and transported to Marathon Crisis Center.

According to Huete's Offense Incident Report, he responded to the crash scene to assist with directing traffic. He was directed to respond to Arias' location to relieve him. While enroute to Arias, Huete encountered Freedman parked on the side of the road. Huete told Freedman to follow him and to stop behind his patrol car once they were at Arias' location, so that he could be re-directed.

Once Huete arrived at Arias' location, Freedman began to drive around Huete's patrol car and Arias yelled at Freedman to stop. Arias and Huete approached Freedman's vehicle and told him to roll his window down. Freedman was given at least 20 loud verbal commands to lower his window and open his door, but he refused. Arias broke the window of Freedman's vehicle and unlocked the doors.

As Freedman came out of the vehicle, Huete grabbed his right arm and attempted to take him into custody. Freedman pushed Huete off and attempted to run. Arias then deployed his CEW with both probes striking Freedman's back. Freedman was then taken into custody without further incident.

According to Monroe County Deputy Edward Askins' Offense Incident Report, he responded to the scene of the CEW deployment for an emergency back-up request by FHP. Upon Askins' arrival, Arias and Huete already had Freedman detained and he assisted with prisoner security until EMS arrived.

Freedman had verbal and physical outbursts while EMS checked his vital signs. Askins and Arias attempted to place Freedman in the back of Arias' patrol car. Freedman began physically resisting by pushing off the patrol car and trying to pull away. Arias deployed his CEW in the drive stun mode to gain compliance.

According to Monroe County Deputy Jacques Rozek's Offense Incident Report, he responded to the scene to assist FHP with a CEW deployment. Upon arrival, he assisted by placing the CEW cartridge and probes into a biohazard bag and assisted the tow company remove glass from the roadway.

Video Recordings

The OIG reviewed Arias' Mobile Video Recorder (MVR) (**Exhibit 3**), and a citizen video recording of the initial CEW deployment (**Exhibit 4**). The following is a timeline of pertinent events that occurred during the incident:

- 16:59:38 Arias' MVR starts. Arias and Huete are standing at Freedman's driver window but there is no audio
- 17:00:10 Huete moved his patrol car out of camera view and Arias' activated his MVR with audio⁴
- 17:01:34 Arias tells Freedman 28 times to open the door
- 17:03:41 Arias breaks out the driver side window, draws his CEW and tells Freedman to come out of the car. Freedman says "I am being threatened with death, I am getting threatened with getting stunned"
- 17:04:00 Arias opens the driver door and tells Freedman to come out of the car or he will tase him. Freedman says he will come out of the car and to record it
- 17:04:15 Huete opens the passenger side door and Freedman comes out with his hands raised. Arias and Huete tell him to get on the ground. Arias runs around from the driver side to the passenger side. Huete takes a hold of Freedman's right arm but Freedman attempts to pull away from him.
- 17:04:20 Arias yells to Huete "let him go" and Huete says "tase him"
- 17:04:22 Arias deploys his CEW on Freedman. Freedman screams and falls to the ground. Arias gives Huete his handcuffs and Huete secures Freedman's hands behind his back with the handcuffs.
- 17:04:40 Arias notifies dispatch to send a supervisor reference to a CEW deployment and to have fire rescue enroute.

⁴ The MVR records 30 seconds of footage prior to activation



- 17:06:10 Arias and Huete walk Freedman to the back of Arias' patrol car and conducts a pat down. Arias tells Freedman to stop resisting or he will be tased again.
- 17:12:40 Askins arrives on scene
- 17:18:06 Freedman tells EMS "I have a form of Tourette's"⁵
- 17:20:02 Arias tells Freedman he is going to take the CEW probes out of his back. Freedman begins to scream "help me, help me" and Arias tells him to stop resisting or he will tase him. The probes are then removed.
- 17:21:55 Arias says "I don't know if they are going to let me transport him or not. EMT Sommers says "he's got a medical condition; he's got Tourette's that's why he's acting like this, that's why he is shaking. It's his own medical condition, it's not anything you caused"
- 17:22:46 FHP Sergeant Mike Lane arrives on scene.
- 17:22:45 Askins tells Freedman to have a seat in Arias' patrol car. Arias tells him to give him a second so he can clear out the backseat. Arias walks over to the other side of the car to clear out the seat.
- 17:23:01 Freedman begins yelling "wait a minute, why do I have to go inside the car?" Askins tells him to relax.
- 17:23:10 Arias walks back over to the rear passenger side of Arias' car where Freedman, Askins, and Huete are located. Arias grabs Freedman and pushes him against the car, and says "one more time, stop resisting or you're gonna get tased," as he drive stuns him.
- 17:23:23 Freedman is placed on the ground. Arias tells Freedman to stop resisting and is then drive stunned again. Freedman stops screaming and says "OK, I'll stop, Please don't, sir"
- 17:23:47 Freedman is placed into the backseat of Arias' patrol car
- 17:29:35 FHP Sergeant Reinoso arrives on scene
- 18:46:10 Arias leaves the scene with Freedman

⁵ Tourette's Syndrome is a disorder characterized by multiple physical (motor) tics

On February 26, 2015, the OIG met with Attorney Johnette Hardiman with the Miami-Dade State Attorney's Office Special Prosecutions Section. After reviewing the officers' incident reports and the video recordings of the incident, she said there was insufficient evidence to open a criminal investigation and recommended it be handled administratively by FHP.

According to the TASER download data (**Exhibit 5**), Arias' assigned TASER X-26 CEW (serial number X00-543120) was downloaded on February 21, 2015, at 11:39 AM, by Trooper Javier Gottardi. The data showed Arias deployed his TASER X-26 CEW 4 times on February 14, 2015. The first deployment was a spark test conducted at 03:06:49 for 1 second.⁶ The second deployment was at 5:17:23 PM for 5 seconds (cartridge deployment.) The third deployment was at 5:36:12 for 4 seconds (drive stun) and the fourth deployment was at 5:36:21 PM for 5 seconds (drive stun). The CEW data times are approximately 13 minutes ahead of the actual time.

According to FHP training records (**Exhibit 6**), Arias attended CEW refresher training on May 9, 2014. The training was 4 hours long and taught by Trooper Rafael Lola and Trooper Javier Gottardi. According to Troop E Training Coordinator Lieutenant Julio Pajon, Taser lesson plan Version 19 was used.⁷

Interview of Witness

Christian Huete, Officer, Miami-Dade Police Department

On March 4, 2015, a sworn, recorded interview was conducted with Huete at the Troop K FHP station, located in Miami. The following is a synopsis of his statement, which contains paraphrasing:

On the day of the incident, Huete was dispatched to assist FHP with traffic control regarding a traffic crash at the 117 mile marker on US Highway 1. Upon his arrival he was directed by an FHP Sergeant to go further south to relieve Arias, who was directing traffic. On his way to Arias, he encountered Freedman's minivan parked on the shoulder of the road. Huete said he directed Freedman to follow him to Arias' location and to stop behind his patrol car and they would assist him merging back into traffic.

Once they arrived at Arias' location, Freedman drove past Huete's patrol car and approached Arias. Arias yelled at Freedman to stop and asked what he was doing. Freedman rolled the windows up, took the keys out of the ignition, and told them he was

⁶ Spark test is a CEW activation without the cartridge installed to ensure it is operational. Troopers are required to conduct a spark test at the beginning of each shift.

⁷ The most current and approved Taser user lesson plan is Version 19

not coming out of the vehicle. Arias told Huete to move his patrol car so his MVR could record the incident.

Arias repeatedly told Freedman to roll down his window and Freedman told him no. Arias warned Freedman that he would break the window to get him out if he did not roll the window down, but he still refused. Huete moved to the passenger side of Freedman's vehicle as Arias broke out the driver side window. Arias unlocked the doors on Freedman's vehicle, which allowed Huete to open the passenger side door.

Freedman came out of the vehicle and Huete grabbed ahold of him, attempting to take him into custody. Arias gave Freedman verbal commands to get on the ground, but Freedman pulled away from Huete. Huete thought he was trying to run away from him. Arias told Huete to let go of Freedman and then Arias deployed his CEW, striking Freedman. Freedman fell to the ground and Huete handcuffed him. He and Arias walked Freedman back to Arias' patrol car. As Arias was trying to search Freedman, he began shaking and trying to pull away. EMS arrived on scene and Arias removed the CEW probes from Freedman's back.

Arias told Freedman he needed to get into the back of his patrol car which caused Freedman to begin shaking and pulling away. Huete saw Arias drive stun Freedman once, but could not recall what type of resistance Freedman offered. Huete did not see Freedman attempt to kick anyone during drive stun incident. Huete said Arias spoke loudly to Freedman, but did not think he was angry or out of control. Huete thought there were enough officers on scene to control Freedman.

Edward Askins, Deputy, Monroe County Sheriff's Office

On March 5, 2015, a sworn, recorded interview was conducted with Askins at the Murray Nelson Government Building located in Key Largo. The following is a synopsis of his statement, which contains paraphrasing:

On the day of the incident, Askins responded as a backup officer to Arias' location. Upon his arrival, Askins saw Arias holding his CEW with the prongs still attached to Freedman and Huete standing next to him. Askins walked over and held Freedman's arm and tried to calm him down while they waited for EMS to arrive.

Freedman remained calm until Arias grabbed his other arm and told him to get into the back of his patrol car. Freedman then began to passively resist by arching his back at which point Arias took his CEW out. Askins did not know why Arias took his CEW out because there were three officers there.

Askins said, "I had a firm grip on his arm, he wasn't going anywhere. I don't recall him trying to pull away from me. He was trying to pull away from the car like you know he's



doing the...putting the brakes on like he doesn't want to go in but he wasn't trying to cause anybody, you know physical harm or anything."

After Arias drive stunned Freedman, Askins helped Freedman to the ground, because Freedman started losing his balance. Askins told Freedman to stop moving or he was going to get something worse than a taser. Askins did not remember how many times Arias drive stunned Freedman; he may have stunned him again as he was helping Freedman to the ground.

Once on the ground, Askins said Freedman was not resisting, only squirming from being drive stunned. Askins never saw Freedman throw a kick while he was on the ground. Askins did not feel Freedman had a chance to get away from the officers, since there were 3 of them there on scene. Askins said "I don't know...kinda felt like this was a lot of unnecessary drama here for nothing."

Askins described Arias as being "amped up" but not angry. Askins said Freedman made a lot of statements that did not make sense, but did not think he was a threat to himself or others. Askins thought the officers could have successfully put Freedman in the vehicle without the use of the drive stun.

Jacques Rozek, Deputy, Monroe County Sheriff's Office

On March 5, 2015, a sworn, recorded interview was conducted with Rozek at the Murray Nelson Government Building located in Key Largo. The following is a synopsis of his statement, which contains paraphrasing:

Rozek responded to the 112 mile marker on US Highway 1, as a back-up officer regarding the CEW deployment by Arias. Upon his arrival, Rozek saw Freedman standing up against a patrol car in handcuffs with Arias and Askins standing next to him. Freedman had two CEW probes protruding from his back with the CEW cartridge on the ground. Rozek put on gloves and picked up the CEW cartridge while Arias removed the probes from the subject's back. Rozek then walked away to secure the cartridge.

Rozek said he did not see it, but heard them trying to get Freedman in the car. He said he heard Freedman yelling loudly and said "I believe he pulled away from one of the deputies." He said Arias gave Freedman verbal commands to comply and then drive stunned him. Freedman went to the ground with Askins and Arias standing over him.

Rozek saw them pick Freedman back up off of the ground and place him into the patrol car. Freedman was then compliant.

James M. Lane, Sergeant, Florida Highway Patrol

On March 2, 2015, a sworn, recorded interview was conducted with Lane at 7795 West Flagler Street located in Miami. The following is a synopsis of his statement, which contains paraphrasing:

Lane is a supervisor for the south-end of the Troop E Miami District. On February 14, 2015, he was on scene of a serious traffic crash on US Highway 1 at the 117 mile marker in Miami. Northbound traffic was being diverted at the 112 mile marker (Miami-Dade/Monroe county line) by Arias. Assistance for traffic control was requested to the Miami-Dade Police Department to relieve Arias at his traffic post. Once the assistance arrived, Lane directed the officer (Huete) to Arias' location.

Several minutes later Lane heard Arias say on the radio he needed Monroe County Sheriff's Office to respond because he was dealing with a mentally ill person. Several minutes after that, Arias requested a supervisor to respond to his location in reference to a CEW deployment.

Lane responded to Arias' location and was told by Miami Regional Communications Center (MRCC) that Reinoso was the on call supervisor for Monroe County and was also enroute. Upon his arrival to the scene, Lane saw Freedman handcuffed, standing at the rear of Arias' patrol car as they were trying to remove the CEW probes from his back.

Lane described Freedman as angry, agitated, and fidgety, as if he did not know what the officers were trying to do to him. He heard them explain to Freedman that they were attempting to remove the CEW probes from his back. When the officers tried to put Freedman inside the patrol car, he began resisting. Arias warned Freedman several times that if he did not comply he was going to tase him. Lane described the resistance as standing up and pushing back as they tried to put him in the car. Arias then drive stunned Freedman, causing him to go down to the ground.

Freedman continued to yell and scream while on the ground, but Lane did not see him physically resist. The officers repeatedly told him to comply or he would be tased again. Freedman eventually complied with the officer's instructions and they were able to put him in the patrol car. Lane described Arias as using a commanding voice, but not angry or out of control. In Lane's opinion, Arias did not use excessive force in the incident.

A follow-up interview with Lane was conducted on April 23, 2015, at the Troop E FHP station located in Miami. The following is a synopsis of his statement, which contains paraphrasing:



Lane was positioned on the opposite side of Arias' patrol car when the first drive stun took place, and did not have a clear vantage point of Freedman. Freedman was tensing up because he didn't want to go into the patrol car. Lane said Freedman was handcuffed and did not have the apparent ability to physically threaten Arias or the other officers. Freedman was not attempting to flee, he just did not want to get into the patrol car.

During the second drive stun, Lane could not see Freedman because Freedman was on the ground, but Lane could hear him. Lane said Freedman was handcuffed and did not have the apparent ability to physically harm Arias or the other officers and he did not see Freedman attempt to get up to run away while on the ground.

Pedro Reinoso, Sergeant, Florida Highway Patrol

On March 9, 2015, a sworn, recorded interview was conducted with Reinoso at the Troop E FHP station, in Miami. The following is a synopsis of his statement, which contains paraphrasing:

Reinoso was the on call supervisor for Monroe County and responded to the scene of Arias' Taser deployment to conduct the Use of Control investigation. Upon arrival, Reinoso spoke with the other officers on scene to determine what occurred and he said their stories all coincided.

Reinoso attempted to interview Freedman, but he was acting irrational and was difficult to speak with. Reinoso made the decision to have Freedman Baker Acted, rather than arrested and taken to jail and Arias was in agreement with the decision.

Reinoso thinks Arias did a poor job of de-escalating the incident with Freedman initially. Because of the age of Freedman and the amount of officers present, Reinoso said he would have handled it differently.

Because Arias drive stunned Freedman while he was handcuffed, Reinoso expressed his concerns of excessive use of force to Lieutenant Kathleen McKinney and Captain Waxler Bright. The decision to write it up on a Complaint Intake and Inquiry Form was made by Major Sammie Thomas, after the citizen cellular phone video was released. Reinoso said that the most serious resistance offered by Freedman was active physical resistance, but mostly passive. Reinoso thought Arias and the other officers could have put Freedman in the patrol car without drive stunning him.

Reinoso said he thought Arias maintained an "excited state" after the initial CEW deployment and never de-escalated.



Tess Marra, Emergency Medical Technician, Key Largo Emergency Medical Service

On March 5, 2015, a sworn, recorded interview was conducted with Marra at 102265 Overseas Highway in Key Largo. The following is a synopsis of her statement, which contains paraphrasing:

Marra was dispatched to the 112 mile marker on US Highway 1 for an assistance call. Upon arrival, Marra saw Freedman handcuffed and leaning across the hood of the patrol car. She saw one of the officers pulling the CEW probes out of Freedman's back as Freedman was screaming "watch this, watch this, they are trying to inject me." After the officer pulled the probes out, Marra put two band aids over the wounds. Marra walked back to the EMS truck to get supplies to bandage up the officer's hand that was bleeding.

While Marra was walking back to the EMS truck she saw the officer tase Freedman's leg while they were attempting to put him in the patrol car. Marra never saw Freedman pull away from officers, but she said she was pretty far away. After the tase Marra saw the officers successfully put Freedman into the patrol car and shut the door. Marra's partner, Paramedic Charles Sommers had a brief conversation with Freedman while on scene. Freedman told him that he suffered from a disease similar to Turrets syndrome, which causes outbursts.

Charles Sommers, Paramedic, Key Largo Emergency Medical Service

The OIG attempted to contact Key Largo EMS Paramedic Charles Sommers for a sworn interview; however, all attempts were unsuccessful.

Belarmino Martinez, Sergeant, Florida Highway Patrol

On March 9, 2015, a sworn, recorded interview was conducted with Martinez at the FHP Training Academy in Havana. The following is a synopsis of his statement, which contains paraphrasing:

Martinez is a training sergeant at the FHP Training Academy and routinely reviews use of control incidents. Based upon reviewing the videos and Offense Incident Reports associated with Arias' use of control incident, Martinez did not think Arias' use of force was excessive. Regarding the initial CEW deployment, Martinez thinks Freedman's resistance was active physical.

It was Martinez's opinion that Arias' subsequent drive stuns to Freedman were not excessive. He based his opinion on the audio from the MVR of the incident and the officers' reports. According to Martinez, Freedman was still at active physical resistance

by bracing, tensing, pushing, kicking and would not allow the officers to put him in the car. He thinks Arias used the least amount of force necessary to gain compliance.

It was also Martinez's opinion that there were exigent circumstances in this case, because Freedman was not compliant, the officers had to get him into the patrol car, and he was active physically resisting. The fact that Freedman was handcuffed did not eliminate his resistance and non-compliance; therefore, created an exigent circumstance.

Martinez stated that, "the exigent circumstance is that he was not compliant, they had to get him into the car and he was at least at active, physical resistance which is what the policy requires without being handcuffed, but being handcuffed still doesn't eliminate any resistance and non-compliance, so I believe based on what we train at the academy and what the policy requires that there are still times when the least amount of force necessary may be a drive stun which according to the policy at times is not a practice that should be done... "His other options were to pepper spray which would not have resulted in anything different possibly or to take the subject to the ground which at that point from the location could have caused injuries and based on my experience would have caused injuries, especially on a handcuffed individual which he was at the time. So the drive stun was the least amount and it did get the subject to comply and get into the car which is what the primary goal is or was at that particular point."

When asked if there were any control techniques that could have been used with three officers present that would have gained compliance with less force than a drive stun, Martinez responded, "I believe that if I were in that situation that I probably could have come up with something else," such as "bent wrist, pressure points or something like that." Martinez stated that "it possibly is a training issue," but in his opinion Arias was "within his right."

Javier Gottardi, Trooper, Florida Highway Patrol

On April 22, 2015, a sworn, recorded interview was conducted with Gottardi at the Troop K FHP station in Miami. The following is a synopsis of his statement, which contains paraphrasing:

Gottardi has been a certified Taser instructor in Troop E since 2008 or 2009. On May 9, 2014, Gottardi and Trooper Rafael Lola instructed a 4 hour Taser refresher course for Troop E personnel. The instruction consisted of a Powerpoint presentation provided by Taser International, FHP policy review, holstering and unholstering drills, and 2 training cartridge deployment drills.

The FHP CEW policy was reviewed verbatim and questions were fielded from class participants. The latest version of the Taser Powperpoint presentation was obtained by Lieutenant Julio Pajon, prior to the training. The presentation contained product information as well as recent case law.

Marc Freedman, Witness

The OIG attempted to contact Marc Freedman for a sworn interview; however, all attempts were unsuccessful.

Interview of Subject

Eloy Arias, Trooper, Florida Highway Patrol

On March 11, 2015, a sworn, recorded interview was conducted with Arias at the Troop K FHP station, located in Miami. Arias was represented by his attorney, Michael Braverman, PA. The following is a synopsis of his statement, which contains paraphrasing:

On Saturday, February 14, 2015, Arias was dispatched for traffic control at the 112.5 mile marker on US Highway 1, just south of the Miami-Dade, Monroe county line. Arias was redirecting northbound traffic to prevent them from continuing into Miami-Dade county. Arias requested assistance because of the heavy traffic. A Miami-Dade Police officer (Huete) arrived on scene and Arias noticed a vehicle following behind. Huete told Arias he told the vehicle to stop behind him.

Arias saw the vehicle start to drive around Huete's vehicle so he approached the vehicle and gave the driver (Marc Freedman) a loud verbal command to stop. Arias intended to speak to Freedman to tell him where and when to go. Freedman closed his window, locked the car, took the keys out of the ignition, and jumped out of the driver's seat. Arias tried for several minutes to get him to open the door or the window, but he would not comply. Arias activated his MVR and told Huete to move his patrol car so it would not block the view of the camera.

Arias moved away from the driver side door and let Huete talk to Freedman on the passenger side, in an attempt to de-escalate the situation. After Huete's failed attempts to get Freedman to come out of the car, Arias tried again several times. Arias then broke out the window with his pocket knife. His hand went through the window and when he pulled his hand back out, the glass cut him. Arias saw blood on his hand and did not know how bad it was.

Arias unlocked the vehicle and Huete attempted to secure Freedman. As Arias walked over to the passenger side, he held the CEW in his hand because he did not know how

bad he was injured.⁸ Arias thought he would not be able to use both of his hands to secure Freedman because he was bleeding and did not want to expose himself. As Arias came around to the front of the vehicle, he saw Huete struggling with Freedman and did not think Huete could control him.

Arias knew he had to do something to help secure Freedman, because they were close to the open traffic lane. Arias wanted to prevent Freedman from running into oncoming traffic so he deployed his CEW. Arias thought the CEW would be the least force used toward Freedman because he did not know if Freedman had any diseases in case of a blood exposure.

Arias said in the cellular phone recording of the CEW deployment, you can see Freedman pulling away from Huete and after Arias said let him go Freedman froze and put his hands up. Arias said Freedman was not "giving up", that was the moment he was getting tased. Freedman was putting his hands up while he was pulling away from Huete.

After the CEW deployment, Arias gave Huete his handcuffs to secure Freedman and gave Freedman time to compose himself. Arias and Huete then walked Freedman to the back of Arias' patrol car. Arias kept the CEW in his hand because he was unsure how big the cut on his hand was.

EMS arrived and bandaged Arias' wounds. He put on latex gloves to remove the CEW probes from Freedman's back. Arias secured Freedman with his left hand as they tried getting him into the backseat of the patrol car. He did not use his right hand because of the injury. Freedman began to active physically resist by tensing up and pushing himself toward Arias. Arias did not want to forcibly put Freedman in the car because of the risk of injury to him or other officers.

Arias told Freedman to stop resisting. Arias took his CEW from his holster and attempted to tase Freedman in the drive stun mode. The CEW touched Freedman on his thigh, but because he was pulling away it had no effect on him. One of the deputies secured Freedman's right arm and directed him to the ground. While Freedman was on the ground, he continued to resist by trying to stand up and would not listen. Arias "drive stunned" Freedman again and he stopped resisting. They were then able to get Freedman into the back of the patrol car. Arias said he used the least amount of force to accomplish the task. When asked about the "kick" he says Freedman threw in his Offense Report, Arias said "I guess it was when he was in motion, on his way to the ground."

Regarding FHP's policy of not tasing a handcuffed subject unless there are exigent circumstances or justifiable facts, Arias said the exigent circumstances were that he

⁸ Arias reported to the hospital for treatment of his hand after delivering Freedman to the Crisis Center.

was injured and the other officers were not able to control Freedman. Arias was not able to use pressure points because of his injured hand. Freedman was susceptible to more injury if he had been forcibly put into the car so the drive stun was the least amount force necessary to overcome the resistance and prevent further injury.

Reinoso and Arias decided Freedman should be involuntarily committed under the Baker Act because of his behavior and state of mind.

Conclusion

On Saturday, February 14, 2015, Florida Highway Patrol (FHP) investigated a serious traffic crash on US Highway 1 (US 1) at the 117 mile marker in Miami-Dade County. Trooper Eloy Arias responded to assist with traffic control at the 112 mile marker, by redirecting northbound traffic on US 1 to the southbound lanes.

Miami-Dade Police Officer Christian Huete responded to assist Arias. As Huete drove to Arias' location from the crash scene, he encountered Mark Freedman, parked in his mini-van, on the shoulder of the road. Huete instructed Freedman to follow him to Arias' location so they could direct him out of the closed portion of the road.

As they approached Arias' location, Huete stopped his patrol car and Freedman drove around Huete. Arias instructed Freedman to stop and roll his window down, attempting to give him instructions on where to go. Freedman rolled the window up, took the keys out of the ignition, and began screaming he was calling 9-1-1. Arias and Huete told Freedman numerous times to open the door, but he refused. Arias warned Freedman if he did not open the window, he would break it out and get him out of the vehicle.

After 4 minutes of Arias ordering Freedman to open the door, Arias broke the driver side window out, causing injury to his right hand (strong side). Arias told Freedman to come out of the vehicle or he would be tased. Arias unlocked the doors, allowing Huete to open the passenger side door. Freedman came out of the vehicle with his hands raised. Huete took ahold of his right arm and told him to get onto the ground as Arias came over from the driver side with his TASER X-26 Conducted Electrical Weapon (CEW) in hand. Freedman began pulling away from Huete and Arias yelled "let him go, let him go." Huete released Freedman from his grasp and Arias deployed his CEW, striking Freedman in the center and lower back. Freedman fell to the ground and was handcuffed by Huete, then escorted to the rear of Arias' patrol car without incident.

Monroe County Sheriff's Deputy Edward Askins, FHP supervisor, Sergeant James Lane, and Key Largo Emergency Medical Service (EMS) arrived on scene at the request of Arias.

Paramedic Charles Sommers told Arias "he [Freedman] got a medical condition; he's got Tourette's [Syndrome] that's why he's acting like this, that's why he is shaking." Freedman was told to have a seat in the back of Arias' patrol car, but then told to wait a minute while Arias moved items from his backseat. Freedman began yelling "No, I don't want to, wait a minute, why do I have to go inside the car." Askins told him to relax as Arias walked back from the other side of the car. Arias grabbed ahold of Freedman, pushed him against the car and said "one more time, stop resisting or you're gonna get tased" as he delivered a drive stun to Freedman's leg for 4 seconds. Freedman was never given any verbal commands to do anything prior to getting drive stunned. He was only told to stop resisting during the drive stun and immediately after.

Freedman began to fall, so Askins guided him to the ground. Freedman yelled "don't let this happen", while Arias continued to yell "stop resisting". Arias tased Freedman again in the back for 5 seconds in the drive stun mode. Freedman said, "OK, I'll stop." and was put into the backseat of Arias' patrol car without further incident. Freedman was committed to the Marathon Crisis Center in lieu of being charged with a crime.

According to FHP policy, Members of FHP shall in every instance seek to employ the minimum amount of control required to successfully overcome physical resistance. A member's decision to deploy the CEW shall involve an arrest or custodial situation during which the person who is the subject of the arrest or custody escalates resistance to the member from passive physical resistance to active physical resistance, and has the apparent ability to physically threaten the member, or is preparing to flee or escape.

Examples of active physical resistance include bracing, tensing, pushing, or pulling, to prevent the member from establishing control over the subject. Unless exigent circumstances exist, members shall not use the CEW on a handcuffed or secured prisoner. In those cases, the use of the CEW must be based on justifiable facts and are subject to "Use of Control" supervisory review.

Sergeant Pedro Reinoso, who was the on call supervisor for Monroe County, and responded to Arias' Taser deployment to conduct a use of control investigation stated he thought Arias did a poor job of de-escalating the incident with Freedman initially. Because Arias drive stunned Freedman while he was handcuffed, Reinoso expressed his concerns of excessive use of force to Lieutenant Kathleen McKinney and Captain Waxler Bright. The decision to document the concerns on a Complaint Intake and Inquiry Form was made by Major Sammie Thomas, after a citizen video of the incident appeared in the media.

During Huete's sworn statement, he said Freedman pulled away from him as he attempted to take him into custody. Huete thought Freedman was trying to run away from him. During the drive stun CEW deployment, Huete said Freedman began shaking

and pulling away when the officers tried to get him into Arias' patrol car. Huete said there were an ample amount of officers to control Freedman.

During Lane's sworn statement, he said when the officers tried to put Freedman inside the patrol car, he began resisting. Lane described the resistance as standing up and pushing back. He said Arias warned Freedman several times that if he did not comply he was going to tase him; however, the video contradicts this. The officers were not trying to get Freedman in the car at the time of the drive stun and Arias never gave Freedman commands prior to the drive stun. After the first drive stun Lane said Freedman continued to yell and scream while on the ground, but Lane did not see him physically resist. Lane described Arias as using a commanding voice, but not angry or out of control. Lane said Freedman did not have the apparent physical ability to harm Arias or the officers because he was handcuffed and was not trying to flee.

In Askins' sworn statement, he said when told to get into the back of Arias' patrol car, Freedman began passively resisting and did not want to get into the car. Askins said he had a firm grip on Freedman's arm and said Freedman "wasn't going anywhere." Arias' response to the resistance was to drive stun Freedman. Askins did not know why Arias took his CEW out because there were three officers present. Freedman began to lose his balance, so Askins helped him to the ground. Once on the ground, Askins said Freedman was not resisting, only squirming from being drive stunned. Askins never saw Freedman throw a kick while he was on the ground, as reported by Arias in his offense report. Askins described Arias as being "amped up" but not angry. Askins thought the officers could have successfully put Freedman in the vehicle without the use of the CEW.

The OIG consulted with FHP Training Academy Instructor Sergeant Belarmino Martinez, who is a CEW instructor for FHP. In his sworn statement he said in the initial CEW deployment, Freedman's resistance was active physical which justified a CEW deployment. It was Martinez's opinion, based on the MVR of the incident, and the officer's reports, that the subsequent drive stuns to Freedman were not excessive. His opinion was based upon the MVR audio of the incident and the officers' reports, since the resistance could not be seen on the MVR recording.

He thought Arias' use of the drive stun was justified because of the exigent circumstances; however said he would have probably used the bent wrist technique or pressure points. Martinez described the exigent circumstances in this situation as "he was not compliant, they had to get him into the car and he was at least at active physical resistance."

During Arias' sworn statement he said after he broke Freedman's window he saw blood on his hand and did not know how bad his wound was. As Arias walked over to the passenger side, he kept the CEW in his hand because of the injury. Arias thought he

would not be able to use both of his hands to secure Freedman because he was bleeding and did not want to expose himself to potential bloodborne pathogens. Arias saw Huete struggling with Freedman and wanted to prevent Freedman from running into oncoming traffic so he deployed his CEW. Arias thought the CEW would be the least force necessary to gain compliance over Freedman.

As Arias tried to get Freedman in the backseat of his patrol car, he said Freedman began to actively resist by tensing up and pushing himself toward Arias. Arias did not want to forcibly put Freedman in the car because of the risk of injury to him or other officers. Arias told Freedman to stop resisting and attempted to drive stun him. The CEW touched Freedman on his thigh, but because he was pulling away it had no effect on him. While Freedman was on the ground, Arias said he continued to resist by attempting to stand back up, and would not listen. After the second drive stun, Freedman stopped resisting. Arias said he thinks he used the least amount of force to accomplish the task.

In Arias' Offense Report, he says once on the ground, Freedman threw a kick. None of the other officers interviewed saw him kick. In Arias' sworn statement he said it might have occurred while Freedman was on his way to the ground. Based on witness testimony and the MVR, the OIG found no evidence that Freedman tried to kick at anyone.

FHP policy states that in order to deploy the CEW, regardless of whether it's a cartridge deployment or in the drive stun mode, the subject's resistance must escalate from passive physical resistance to active physical resistance, and the person has to have the apparent ability to physically threaten the member or others; or, is preparing or attempting to flee or escape.

In the initial CEW deployment, after being physically removed from the vehicle, Freedman was pulling away from Huete. Freedman was not handcuffed yet, which gave him the ability to physically harm Arias or Huete, and the ability to flee; therefore the use of the CEW was justified.

However, in the subsequent first drive stun, Freedman did not have the apparent ability to harm the officers. Freedman was handcuffed behind his back with Askins holding onto his arm. Huete was a few feet away with two other officers nearby. Askins told Freedman to calm down, but there were no other commands given to him before he was tased by Arias. Arias told Freedman to stop resisting, but only as he was tasing him.

In the second drive stun, Freedman was on the ground and handcuffed behind his back. Askins and Lane said Freedman was not physically resisting. Arias said he thought Freedman was trying to get up; however, he never gave any verbal commands to



Freedman other than to stop resisting. Freedman did not have the apparent ability to physically threaten Arias or the other officers and did not have the ability to flee; therefore, the use of the taser was an excessive use of force.

Based on all available evidence and statements associated with this investigation, the allegation that Trooper Eloy Arias used excessive force is classified as **SUSTAINED**.

Statement of Accordance

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Approved by:


Julie M. Leftheris, Inspector General