

Closing Report and Recommendations

C21-052/C21-051/C22-016

OFFICE OF THE POLICE OMBUDSMAN



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Mission Statement

The Office of Police Ombudsman exists to promote public confidence in the professionalism and accountability of the members of the Spokane Police Department by providing independent review of police actions, thoughtful policy recommendations, and ongoing community outreach.

Staff Information

Bart Logue, *Police Ombudsman*

Bart Logue began serving in this capacity in September 2016, after serving as the Interim Police Ombudsman. Bart also serves as a Commissioner on the Washington State Criminal Justice Training Commission. Bart is a Certified Practitioner of Oversight through the National Association for Civilian Oversight of Law Enforcement (NACOLE). Bart has a Master of Forensic Sciences from National University and a Master of National Security Affairs from the Naval Postgraduate School. Bart is a graduate of the Federal Bureau of Investigation National Academy, Session 239, and is also a certified Advanced Force Science Specialist.

Luvimae Omana, *Deputy Police Ombudsman*

Luvimae Omana has dual degrees in Business Administration and Political Science from the University of California, Riverside and a Juris Doctorate from Gonzaga University School of Law. Luvimae is licensed to practice law in Washington. Luvimae is a Certified Practitioner of Oversight through NACOLE. Luvimae is also a certified Advanced Force Science Specialist.

Christina Coty, *Administrative Specialist*

Christina began working at the City of Spokane in 2015 for the ITSD department in contract procurement and joined the Office of the Police Ombudsman in 2018. Christina is a Certified Practitioner of Oversight through NACOLE. Prior to her work at the City of Spokane she worked for Sony Electronics as a Regional Sales Manager managing the retail store operations in Southern California.

Tim Szambelan, *OPO Attorney*

Tim works in the Civil Division of the City Attorney's Office and currently represents the Ombudsman Office and other departments within the City of Spokane. Tim is licensed to practice law in Washington and Arizona.

This document was reviewed by the City Attorney's Office as to form prior to submission for review by the Spokane Police Guild pursuant to the requirements provided in Article 27 of the Agreement between the City of Spokane and the Spokane Police Guild (2017-2021).

Authority and Purpose

The mission of the Office of the Police Ombudsman (OPO) is to promote confidence and accountability in the members of the Spokane Police Department (SPD). The OPO does so through providing independent and thorough oversight of matters that impact the community and the department. We desire to help bridge the gap between the community and the SPD by writing closing reports in cases that are of public concern to increase accountability and transparency into the matter as well as closing reports that may lead to recommendations for improving police policies or practices. By insisting on transparency, our goal is to help eliminate similar incidents in the future and ensure that the practices contained herein are limited and/or never happen again. It is also our intent to highlight effective police practices to give the community a better understanding as to why those practices were utilized, although this is limited by provisions within the 2017-2021 Collective Bargaining Agreement (CBA).

Spokane Municipal Code (SMC) §04.32.030 and the CBA provide authority for the OPO to publish closing reports on a case once it has been certified by the Police Ombudsman and the Chief of Police has made a final determination in the matter. The OPO can also publish policy and procedure reports regarding cases the OPO reviews during a review board process. The OPO's recommendations will not concern discipline in specific cases or officers and shall not be used in disciplinary proceedings of bargaining unit employees. Reports are solely meant to further discussion on aspects of incidents that may be improved upon.

Reports also provide opportunities for policy and procedure recommendations that can result in improved police performance through their eventual implementation. Writing a report allows us to provide a more thorough review of what occurred in an incident to offer recommendations for improving the quality of police investigations and practices, including the Internal Affairs (IA) investigative process, policies, and training or any other related matter.

The OPO may also recommend mediation to the Chief of Police at any time prior to certifying a case. Should all parties agree and the officer(s) participate in good faith, the OPO may publish a report following a mediation including any agreements reached between parties. Mediations are governed by the Revised Code of Washington (RCW) 7.07. The content of the mediation may not be used by the City or any other party in any criminal or disciplinary process.

Required Disclosures

Under Article 27 of the current CBA between the City of Spokane and the Spokane Police Guild, this report must provide the following disclosures:

1. Any closing report from an IA investigation shall clearly state the information expressed within the report is the perspective of the OPO, that the OPO does not speak for the City on the matter, and the report is not an official determination of what occurred;
2. The report will include the current policy practice, policy, and/or training as applicable and shall expressly state the policy recommendations that follow reflects the OPO's opinion on modifications that may assist the department in reducing the likelihood of

harm in the future; they do not reflect an opinion on individual job performance under the current policy, practice, or training;

3. A report shall not comment on discipline of an officer(s). This prohibition includes a prohibition on writing in a report whether the OPO or OPOC agrees with or differs from the Chief's findings, whether the officer acted properly, whether the officer's actions were acceptable, or whether the officer's actions were in compliance with training or policy. Additionally, no report will criticize an officer or witness or include a statement on the OPO or OPOC's opinion on the veracity or credibility of an officer or witness.
4. The OPO's closing report shall not be used by the City as a basis to open or re-open complaints against any bargaining unit employees, or to reconsider any decision(s) previously made concerning discipline.
5. The report may not be used in disciplinary proceedings or other tangible adverse employment actions against bargaining unit employees, but not limited to decisions regarding defense and indemnification of an officer; and
6. The names of officers or witnesses may not be disclosed.¹

Additional information and records regarding this matter are available through the City Clerk's Office by [Public Records Requests](#).

Summary

Procedural History

The incident occurred on June 27, 2021. On July 28, 2021, SPD Employee A, reviewed the K9 use of force portion of the incident and filed an internal use of force complaint on SPD Employee B.

In early August 2021, Internal Affairs (IA) sent this case for investigation with the Spokane County Sheriff's Office (SCSO). The case was assigned to a detective. They were provided six still photos, SPD reports from SPD Employees B and C, a timeline of IA/OPO involvement, and a thumb drive. On September 23, 2021, IA contacted Edward Baker, a certified forensic video expert (the consultant), from Video Consultants Northwest for a potential review. On October 7, 2021, SCSO returned the case to SPD IA concluding that there was insufficient evidence to determine whether SPD Employee B struck or punched the subject.²

On October 8, 2021, the case was assigned to an IA investigator. Upon review of the SCSO report, IA contracted with the consultant on October 14, 2021 to forensically evaluate the BWC footage. The consultant provided his findings in a report to IA on November 26, 2021. SPD Employee B resigned in February 2022, the day after their IA interview. The investigation was completed on April 15, 2022 and sent to the Police Ombudsman for review the same day. On April 27, 2022, the case was certified by the OPO. The next day, the case was routed to the Administrative Review Panel (ARP) for a chain of command review. Additional allegations were made against SPD Employee G during the IA and ARP review process, including making a false or misleading

¹ In addition to not mentioning officer or witness names, every effort was made to remove identifying pronouns throughout this report. The same standard was used for the complainant and involved persons.

² SCSO Detective, SCSO Report 2021-10129846 (September 29, 2021).

statement (C22-016). These additional complaints were reviewed by the Chain of Command. The ARP completed its review in a memorandum sent it to IA on June 7, 2022. The IA Lieutenant forwarded the ARP's findings to the Chief on June 9, 2022 and the Chief made findings on the allegations on June 10, 2022.³ The Chief also made findings on C21-051 and C22-016 on May 5, 2022. On May 3, 2022, the City Administrator issued his determination on the complaints against SPD Employee G.

The OPO's summary of facts are based upon a careful review of reports, BWC footage, the chain of command review, and the ARP findings. This closing report provides an analysis of issues identified through a use of force review process and certification of an internal complaint, which allows for a policy and procedures report.

OPO Summary of Facts Incident

On June 27, 2021, officers responded to a domestic violence no-contact order violation call at 811 W. Grace. Officers established probable cause that the subject had violated the no-contact order. When officers went to arrest the subject, they had barricaded themselves in a room. Multiple commands were given for the subject to surrender prior to a plan for entry being made. While the subject was momentarily distracted as they were attempting to push an air conditioning unit out the window, officers breached the door. SPD Employee C was able to send their K9 through the door. SPD Employee C was the first one through the door, followed by SPD Employee B and other officers. While there were five witness officers identified by the IA investigation, the statements from SPD Employees C, D, and E were pertinent to the use of force allegation and only they were interviewed by IA. The remaining officers were not able to witness the alleged use of force as it occurred or hear complaints of being punched.

When SPD Employee C and B entered the room, the subject can be seen sitting or leaning up against the foot of the bed. A large chest of drawers appears to have been pushed up against the door, barricading it. The subject's hands can be seen behind their right knee on BWC video. One of the officers instructs the subject to show their hands at least twice as officers enter the room. The subject screamed when the K9 made contact and bit the subject. The subject then fell to the ground with their right shoulder up against the foot of the bed. The K9 can be seen contacting the subject's left shoulder. At that point, the subject's right hand disappeared underneath the bed.

When SPD Employee B approached the subject, their right hand was in a closed fist and is seen on BWC quickly moving downward in front of the subject's face and chest, then back up. On SPD Employee B's BWC, it appears they strike the subject twice. Their BWC jerks in a similar fashion when they strike the subject. Using the consultant's picture in picture video of both SPD Employee B and C's synchronized videos, only the second strike is seen on SPD Employee C's BWC. The following frames are obstructed by SPD Employee C's arm and are not clearly

³ Per the agreement between the City and the Police Guild in the current CBA, the OPO is prohibited from mentioning whether the officer(s) acted properly, whether the officer's actions were acceptable, or whether or not the officer's actions were in compliance with training or policy. As such, the final determination by the chain of command cannot be mentioned.

visible in SPD Employee B's BWC. As SPD Employee C removed the K9, SPD Employee B's right hand can be seen grabbing the subject's left wrist. The portion of this incident in dispute is approximately five seconds where SPD Employee B claims to be trying to gain control of the subject and none of the other officers interviewed witness SPD Employee B strike the subject. The BWC footage is blurry, and it is hard to decipher exact actions. However, the audio captures a change in the subject. They go from just screaming when the K9 contacted them to saying things like, "God damn, bro," "come on, man," and repeatedly asking why they got punched. The subject continued to resist and additional officers arrived to assist in handcuffing the subject. Officers tell the subject that no one punched them. The subject complains numerous times after they are handcuffed all the way to the hospital that they were punched. At the hospital, SPD Employee C spoke with SPD Employee G about the subject's complaint of being punched in the face.

Review of K9 use of force

Officers who responded to this incident used a K9 application to help apprehend the barricaded subject resulting in dog bites, which generated a K9 use of force. The K9 supervisor, SPD Employee A, noticed the subject complained about being struck in the face by an officer during the arrest process while reviewing the BWC videos for the K9 use of force. SPD Employee A noted the alleged use of force was not documented in SPD Employee B's report, who the strike apparently came from, nor was it reported to supervisors.

SPD Employee A stated that the alleged use of force (strike) was not documented in the incident report, the alleged use of force was not reported, and an allegation of a use of force was not reported to a supervisor.⁴

Internal Affairs review and additional internal complaints

There were two additional internal complaints filed on this incident. The first additional complaint was generated by the IA Lieutenant, C21-051, for Supervisor Reporting. In the process of reviewing the initial internal complaint, the IA Lieutenant noticed SPD Employee G could have been or should have been aware that the subject was complaining of a use of force. SPD Employee G did not interview the subject or forward a use of force review. The second internal complaint, C22-016, was filed by a member of the ARP alleging SPD Employee G made false or misleading statements.

After the subject was handcuffed and placed in a police vehicle, all the way to the hospital, they complained of being punched. SPD Employee H was within earshot of the subject both when the subject was placed inside a police vehicle and in the hospital.⁵ SPD Employee H did not activate their BWC at the hospital and reviewers used other officers' BWC to determine what occurred.

At the hospital, SPD Employee C called SPD Employee D into the subject's room after the subject complained of being punched in the face/eye area.⁶ SPD Employee G and H were in the

⁴ SPD Employee A, C21-052 IA Additional (July 29, 2021).

⁵ IA Investigator, C21-051 IA Additional, at 3 (February 16, 2022).

⁶ See SPD Employee G's BWC 2021-20105935 at 43:36-44:00 (Jun 27, 2021).

area outside of the subject's room. SPD Employee H's BWC captured them saying to SPD Employee G, "He said somebody punched him."⁷ SPD Employee G responds, "One of us?" and SPD Employee H responds, "He's saying one of us punched him in the face, but..."⁸ SPD Employee G responds non-verbally with a disapproving look and shaking their head no.⁹ SPD Employee H adds, "[The subject] has a mark on [their] face, but..."¹⁰ SPD Employee G whispers something in response but it is not decipherable, and they start smiling and laugh.¹¹ In SPD Employee G's IA interview, they denied hearing any allegations of force directly from the subject and also denied being made aware of the allegation in any way.¹²

Disputed Facts

1. Whether SPD Employee B or other officers struck the subject.
2. Whether the video footage is reliable.
3. Whether a use of force report was required, and a supervisor should have been notified.
4. Whether SPD Employee G was notified of the use of force.
5. Whether SPD Employee B made false or misleading statements.

1. Whether SPD Employee B or other officers struck the subject

The applicable policy is SPD Policy Manual Ethical Standard 2.1 on excessive force.¹³ It provides, officers of the Spokane Police Department shall be aware of their lawful authority to use that force reasonably necessary in securing compliance with their law enforcement duties.

The use of force investigation focused on SPD Employee B. A review of BWC footage shows that only SPD Employee B had contact with and was proximately located to the subject when the alleged use of force occurred. Further, SPD Employee A's summary provides, "specifically, [the subject] turns to [SPD Employee B] and stated that [SPD Employee B] 'punched my face' right after [they] were finally handcuffed."¹⁴

Reviewers reached differing conclusions on whether SPD Employee B struck or punched the subject. SPD Employee B, SCSO, and the consultant focused their analysis on determining whether the subject was struck. SPD Employee B maintained they did not strike the subject, the ARP and the SCSO report found the evidence inconclusive, while the video forensics expert found three possible strikes. Only the ARP focused on whether the strikes constituted excessive force.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² SPD Employee G, IA interview transcript of SPD IA Investigation C21-051 at 3, in Spokane, Wash (February 15, 2022).

¹³ Version updated June 4, 2021.

¹⁴ See *supra* note 4 at 1.

First, SCSO's investigation found that the detective could not conclusively determine that SPD Employee B struck the complainant.¹⁵ The detective cited the following in arriving at their determination:

- SPD Employee B's denied striking the subject in their statement to the detective.
- The detective could not observe injuries in still photographs taken of the subject after the incident where the BWC indicates the injury would have occurred. They zoomed in 400%, the maximum allowable by Evidence.com, and was neither able to observe injury to the left side of the subject's face nor observe an injury consistent with a closed fist strike to the head.
- The BWC did not provide clear information. Upon initial review, it appears that SPD Employee B approached the subject in preparation of applying a strike. However, upon review of different BWC videos, including a frame-by-frame analysis and adjustment for brightness, the detective believed that SPD Employee B pulled their punch prior to striking the subject.

Second, the consultant's report concluded SPD Employee B deployed physical force by using three potential strikes.¹⁶ Two are visible and a third which can only be heard audibly in the recordings. They used a frame-by-frame analysis, compared the subject's injuries to possible causation of injuries, and discussed potential issues from the reliability of the videos during playback and the audio information from each BWC video. The consultant cited the following in arriving at his determination:

- All strikes deployed by the officer occurred as the subject was taken into custody (prior to the handcuffing process).
- The two visible strikes by SPD Employee B appear to have occurred with the officer's closed right hand but with different downward motions (i.e. a closed fist "hammer" strikes and a different direct forward "punch" using a closed fist).
- The two visible strikes by SPD Employee B occurred in two locations on the subject; (i.e., left shoulder and upper torso area/clavicle area, which may have overlapped into the jaw/chin area of the subject). The third possible strike to the left side of the face/chin area can only be heard due to compression and encoding quality of the video format.
- There does exist the possibility that additional strikes to the left side occurred. However, there is no supporting audio or video that would indicate additional strikes occurred.
- The injuries photographed on the subject could not be specifically linked to a strike and was instead attributed to the general scuffle while trying to handcuff the subject.

Third, in SPD Employee B's IA interview, they maintain they did not strike the subject.¹⁷ Their Guild representatives were present during the interview and their related statements are included below. SPD Employee B refuted the consultant's findings and provided a different

¹⁵ See *supra* note 2 at 10.

¹⁶ Edward L. Baker, Video Consultants Northwest Forensic Report (November 26, 2021) at 4.

¹⁷ SPD Employee B, IA interview transcript for SPD IA Investigation C21-052 at 3-4, in Spokane, Wash (February 1, 2022).

analysis from each strike supporting their position. SPD Employee B and their representatives noted the following:

- SPD Employee B reiterated part of their statement to the SCSO detective. They said “As I reached for [the subject] my sole intent was to gain compliance of [their] arms to prevent [them] from reaching under the bed and place [them] in handcuffs. I did not strike [the subject] at any time. I don’t recall any contact with [their] head. If there was any contact with [their] head, it was accidentally, unintentional and minimal and the direct result of [their] active resistance to arrest, erratic body movement, and the confined area where the arrest occurred.”¹⁸
- First strike
 - The Guild representatives raised credibility issues and asked whether the consultant was an expert since the strike is not seen and only heard.¹⁹
- Second strike
 - SPD Employee B said their hand cocked up and it was visible where their hand dropped down toward the subject’s shoulder toward the back of their head. SPD Employee B said they did this intentionally to try and prevent the service dog from potentially biting the back of the subject’s head.²⁰ They went on to say they cocked their hand to insert it between the subject’s body and left hand to gain control of the wrist and pry the arm away from the center of the subject’s body.²¹ Their intent was to gain compliance without exposing their fingers in fear the K9 might bite their fingers.²² They added they could use a closed hand to try and rotate the subject and do a face down prone cuffing position.²³
 - The consultant claimed this is a turned wrist hammer strike using the back of the knuckles. SPD Employee B says the strike described is likely to cause injury and that is not any kind of strike they would try to perform in that instance.²⁴
- Third strike
 - SPD Employee said you can see their hand is completely flat with their palm and they are using the big part of their meaty palm to try and rotate the subject around and there is no wind up or cocking at all.²⁵ If there was, it was a “one inch punch” where they are trying to literally rotate the subject over.²⁶

Lastly, the ARP’s analysis on SPD Employee B striking the complainant focused mainly on whether the alleged strikes constituted excessive force. Regarding strikes, they determined it was inconclusive from the video and the photos if and where SPD Employee B contacted the subject.²⁷ They determined that the allegation of excessive force was not applicable since a

¹⁸ *Id.*

¹⁹ IA Investigator, C21-052 IA Additional, at 6-7 (April 13, 2022).

²⁰ *See supra* note 17 at 13.

²¹ *Id.* at 13-14.

²² *Id.* at 14 and 16.

²³ *Id.* at 16.

²⁴ *Id.* at 14.

²⁵ *Id.* at 16.

²⁶ *Id.*

²⁷ Administrative Review Panel Memorandum, at 2-3 (June 7, 2022).

Level 2 strike would have been reasonable given the facts of this case. The ARP cited the following in making their determination:

- As SPD Employee B approached the subject, a still shot [of SPD Employee C's BWC] shows [their] face tensed and teeth [clenched], while [their] right fist was cocked back appearing ready to throw a punch.²⁸
- SPD Employee B's wrist curled and started toward the subject's face area with a downward motion.²⁹
- Immediately after the punching motion, the subject, while still being contacted by a canine, claimed they were hit in the face.³⁰
- Photos taken at the hospital and obvious marks or injuries cannot be seen at that time.³¹
- The subject had their hand under the bed and as SPD Employee B approached them, you can see the subject raise their hands and ball their fists, which would justify a Level 2 strike given the totality of the circumstances.³²
- The first alleged strike to the subject's leg was not reasonable [to have occurred] based on SPD Employee B's distance to the subject.³³
- The second alleged strike was confirmed by the subject immediately asking why they were hit.³⁴ Furthermore, the subject never complained about the use of a K9, but repeatedly complained about being punched in the face.
- The alleged third strike was inconclusive and it appears that SPD Employee B was trying to gain arm control rather than apply a Level 2 strike.³⁵

2. Whether the BWC footage of the incident is reliable

All the reviewers noted some issue with the BWC. First, the SCSO detective said that due to lighting conditions, shadowing and body position, the video did not show conclusive evidence that SPD Employee struck the subject.³⁶ They even used a different media player to adjust the settings for hue, brightness, saturation, and contrast and viewed the video frame-by-frame, but the evidence was still inconclusive. The ARP pointed out that the first alleged strike to the subject's leg identified by the consultant was unlikely to have occurred based on SPD Employee B's distance to the subject.³⁷

²⁸ *Id.* at 2.

²⁹ *Id.* at 3.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *See supra* note 2 at 7.

³⁷ *See supra* note 27 at 3 (explaining the alleged strike was not seen but may have occurred by the sound of skin-to-skin contact).

The consultant identified four potential issues that the BWC videos presented.³⁸ First, technical considerations must be made regarding, “the video’s format, encoding algorithm, compression scheme, GOP length and structure, frame rates, pixel display (resolution) and audio recordings during playback.”³⁹ These factors are important to determine whether there is sufficient audio and video information to make observations or opine. Here, the BWC video images bleed into other areas of the picture which is caused by the encoding algorithm used to create the video’s format used to calculate and store the recorded information for playback. This creates the risk that an untrained person may make erroneous observations when viewing the BWC during playback.

Second, the videos provided to the consultant were recorded in slightly different frames per second. SPD Employee B’s BWC recorded at a constant frame of 29.970 frames per second, while SPD Employee C’s BWC recorded at a variable frame of 30 frames per second. While these are similar frame rates, an event could take place between frames and the camera samples and not be recorded.

Third, the videos included embedded audio streams that might be dropped during playback for the video player to keep the audio stream in sync with the visual events in the video. A person viewing the video during playback may not realize frames were dropped. The consultant solved this potential issue by extracting the video independent from the audio and assigning a sequential frame.

Lastly, the consultant cautioned the perspective from the video camera is not the same as the visual perspective of the officer. Focus on the video may not provide the viewer with causation or reason for the action as perceived by the officer. Frame-by-frame analysis will provide a greater understanding of SPD Employee B’s responses to any perceived action by the subject since it can look backwards and forwards to compare the changes that occur. SPD Employee B’s Guild representative raise a similar issue in SPD Employee B’s IA interview. They claim SPD Employee B’s fist is distorted in one of the frames and that there is a depth and distortion issue with the video.⁴⁰ A Guild representative also raised the issue that when BWCs were instituted, the Guild was assured BWC would not be dispositive in determining whether something occurred or not.⁴¹

3. Whether a use of force report was required, and a supervisor should have been notified

The allegations reference the following SPD policies:

1. **Policy 301.12(A): Fail to Report** – Unless otherwise provided in policy, all force used by an officer shall be promptly completed and accurately documented in an incident report. The officer shall articulate the factors which made the use of force objectively reasonable, based on the Use of Force Policy. The ARP recommended this allegation be sustained.

³⁸ See *supra* note 16 at 6-7.

³⁹ *Id.* at 6.

⁴⁰ See *supra* note 17 at 28.

⁴¹ *Id.*

2. **Policy 301.12(H): Policy Violation**⁴² – Notification to supervisors, any application of an impact weapon whether personal, issued, or improvised to subject, including Level 2 strikes. The ARP recommended this allegation be sustained.
3. **Policy 301.12(J): Policy Violation**⁴³ – Notification to supervisors, when a subject alleges any of the above has occurred. The ARP recommended this allegation be sustained.

SPD Employee B claimed there was no specific allegation made against them and they denied using any force and thus, there was no requirement to report. SPD Employee B said they notified supervisors of the K9 use of force but not of a use of force striking the subject because they did not strike the subject.⁴⁴ They went on to say that since the use of a K9 was a reviewable use of force, any uses of force stemming from this incident would be reported by the K9 officer and reviewed by a supervisor.⁴⁵ The other officers interviewed did not witness a use of force. SPD Employee E documented in their report that they heard the subject complained of injury. They said they didn't believe it happened, but they knew there would be a review, so they documented it.⁴⁶

Furthermore, SPD Employee B debriefed supervisors on scene after the incident and reported property damage. SPD Employee F specifically asked if there was any other use of force and SPD Employee B responded, "I don't know, but I'll find out."⁴⁷ SPD Employee B said could not recall whether they circled back and provided SPD Employee F an answer.⁴⁸

During the IA investigation, SPD Employee B was given the opportunity to review the consultant's findings and attachments provided to SPD. They were asked if they changed their mind after reading the forensic report, watching BWC video, and looking through the slides. SPD Employee B said, "No. No, if anything the...the slide actually helped explain exactly what was going on during the arrest process."⁴⁹

The subject complained of being punched, which would normally be a reportable use of force. However, SPD Employee B did not believe the allegations were specific to them or were attributable to contact from the dresser used to barricade the door. SPD Employee B recalled, "[The subject] [did] make an allegation that I specifically punched or pushed in the face. At that point, we can all clearly hear. I can tell you that in the moment of that, I don't recall that being...[them] making an allegation that I specifically punched or pushed [them] in the face, even though I responded that...that nobody pushed you in the face in response to that dresser being pushed back into the room."⁵⁰ The ARP noted this portion of SPD Employee B's IA interview. They found that while SPD Employee B denied using force against the subject, they

⁴² In the SPD Policy Manual version when the incident occurred, updated June 4, 2021, the corresponding policy is 301.13(I).

⁴³ In the SPD Policy Manual version when the incident occurred, updated June 4, 2021, the corresponding policy is 301.13(K).

⁴⁴ See *supra* note 17 at 20.

⁴⁵ *Id.*

⁴⁶ See *supra* note 19 at 5.

⁴⁷ See *supra* note 17 at 18.

⁴⁸ *Id.*

⁴⁹ See *supra* note 19 at 6.

⁵⁰ See *supra* note 17 at 17.

acknowledge hearing the subject say they were punched.⁵¹ SPD Employee B's BWC picks up the audio of the subject saying, "you punched me, bro," while looking directly at SPD Employee B. By contrast, the ARP found, "There should have been no confusion as to what the suspect was claiming and who [they] [were] claiming punched [them]."⁵²

4. Whether SPD Employee G was notified of the use of force

The applicable SPD policies are:

- 1. Policy 301.15.1: Supervisor Reporting and Policy.⁵³ When a supervisor becomes aware of an incident in which there has been a reviewable application of force, the supervisor shall complete a Use of Force Report in a timely manner. In the event a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still required to complete a Use of Force report. Use of Force reports are required under the circumstances described in Section 301.13.1, Notification to Supervisors.**
- 2. SPD Policy 340.3.5(z): Making a False or Misleading Statement. Making a false or misleading statement to a supervisor or other person in a position of authority in connection with any investigation or employment related matter. The ARP recommended this allegation be sustained.**

Here, SPD Employee G denied learning the subject was complaining of being punched in the face on-scene and at the hospital. However, BWC of other officers show that SPD Employee G was within earshot of the subject complaining on-scene and in the hospital. At the hospital, SPD Employee H told SPD Employee G directly that the subject claimed to be punched in the face and had a mark on their face.

3. Whether SPD Employee B made false or misleading statements

The applicable SPD policy is Policy 340.3.5(Z): Making a False or Misleading Statement. Making a false or misleading statement to a supervisor or other person in a position of authority in connection with any investigation or employment related matter. The ARP recommended this allegation be sustained.

As discussed above regarding whether the subject complained of being punched, SPD Employee B acknowledged hearing the complainant allege injury. The ARP found, "There should have been no confusion as to what the suspect was claiming and who [they] [were] claiming punched

⁵¹ See *supra* note 27 at 4.

⁵² *Id.*

⁵³ In the SPD Policy Manual version when the incident occurred, updated June 4, 2021, the corresponding policy is 301.14.1.

[them]. SPD Employee B gave misleading statements about not knowing which officer [the subject] was referring to.⁵⁴

OPO Analysis

Applicable Current Policy Practice, Policy, and/or Training⁵⁵

Proper supervision

A significant portion of SPD Employee I's comments pertained to SPD Employee G's supervisory skills. SPD Employee I is the reviewing supervisor for SPD Employee G. In the chain of command review for C21-051, SPD Employee I could not determine if SPD Employee G heard the allegations of force. However, SPD Employee G should have picked up on the activity in the hospital and the conversations related to the subject being punched.⁵⁶ SPD Employee I observed SPD Employee G to be "practicing what I would call passive supervision."⁵⁷ SPD Employee G was in the background of the incident from the time they arrived on scene, "[they] were a wallflower and did not actively seek to talk to the involved officers, the suspects, or get a complete understanding of what happened. [They] assumed there was a K9 contact and then spent most of [their] time talking to officers."⁵⁸ At the hospital, SPD Employee G was present but not engaged as the on-scene supervisor. They did not ask any questions and was not interested in what was happening in the hospital room.⁵⁹ When they were told pertinent information to a use of force, they were passive again. "Although [SPD Employee I] did not hear the claim of assault at the scene or the hospital, [they] should have been aware of the claim and inquired further about the alleged assault."⁶⁰

SPD Employee I goes on to further explain how they have been supervising SPD Employee G for approximately seven weeks and noted previous deficiencies like what occurred in this incident. SPD Employee I said, "SPD Employee G tends to be more passive and let the incident or the officers dictate [their] actions versus taking control when [they] arrive on scene. By not engaging upon arrival, [they] do not get the initial information that is necessary to making sound decisions and choosing the correct course of actions...[SPD Employee G] operates like a patrol officer and not a supervisor. [They] have been too involved in calls where [they] interview a witness or takes an officer['s] job rather than stay in [their] supervisory role."

Previously the OPO recommended the ARP conduct critical reviews. Here, a member of the ARP identified an issue with SPD Employee G's conduct and sent it back to IA for investigation. The additional complaints made against SPD Employee G were taken seriously by SPD. In SPD Employee G's follow up IA interview, they said they were still a relatively young sergeant at the

⁵⁴ See *supra* note 27 at 4.

⁵⁵ Current policies must be listed under the CBA to make a policy recommendation.

⁵⁶ SPD Employee I, C21-051 Chain of Command IA Additional, at 2 (February 28, 2022).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

time.⁶¹ SPD Employee G said they had only been a sergeant for six months at the time of the incident, but the sergeant academy was eight months prior to them being promoted.⁶² In SPD Employee G's *Loudermill* hearing, they said this was one of their first use of force incidents they responded to as a supervisor.⁶³ They struggled as a supervisor and have encountered several challenges.⁶⁴ They said they were not prepared for the transition from officer to sergeant and relied heavily on other supervisors' assistance to make decisions.⁶⁵

SPD Employee I determined it was a priority for SPD Employee G needed to improve their command presence, active leadership, and decision making. They assigned two other sergeants to mentor SPD Employee G to improve command presence, leadership, tactical abilities, and general responsibilities as the on-scene supervisor. They also arranged for SPD Employee G to attend three SWAT training and K9 training. SPD Employee I was also working on having SPD Employee G attend a TAC team training to improve knowledge and experience with tactical calls.

Critical evaluation of UOF

SPD Policy 301.3, All Force Must be in Accordance with Washington Law and SPD Policy, "The use of force has long been analyzed under the constitutional lens of *Graham v. Connor*, 490 U.S. 386 (1989), which holds that all use of force must be objectively reasonable. Under *Graham*, force is adjudged by balancing of the "nature and quality of the intrusion," on an individual's "Fourth Amendment interests," considering the severity of the crime at issue; whether the suspect poses an immediate threat to the safety of the officers or others; whether he is actively resisting arrest or attempting to evade arrest by flight; and the totality of the circumstances."

SPD Defensive Tactics Manual, Hard to Soft/Soft to Hard Principle.⁶⁶ An officer using a "soft" striking technique should apply the technique to a "hard" target, inversely when an officer is using a "hard" striking technique they should apply the technique to a "soft" target. Hard striking techniques are areas of the body that are very boney, such as a closed fist, an elbow, or a knee. Soft striking techniques are areas of the body without much surface bones, such as the palm of the hand.

SPD Defensive Tactics Manual, Closed Fist and Hammer Fist Techniques – Assaultive.⁶⁷ Movement and Control. (Closed Fist Techniques) The hand should be clinched into a fist, utilizing the first two knuckles of your index and middle finger as your impact tool. Every effort should be made to avoid hard skeletal targets. (Hammer Fist Techniques) The hand

⁶¹ SPD Employee G, Interview Transcript of SPD IA Investigation C21-051 follow up at 6, in Spokane, Wash (March 22, 2022).

⁶² *Id.* at 10.

⁶³ SPD Employee G, *Loudermill* hearing audio recording C21-051 at 2:00 in Spokane, Wash. (April 28, 2022).

⁶⁴ *Id.* at 1:39.

⁶⁵ *Id.* at 1:51.

⁶⁶ SPD Defensive Tactics Manual at 63 (revised November 2019).

⁶⁷ *Id.* at 66.

should be clinched into a fist utilizing the pad of the pinky finger side of the hand as your impact tool. Hard skeletal targets may be targeted with this technique.

SPD Policy 1020.8.2(G) Administrative Review Panel. Panel members should also include in their analysis any tactics, decision-making processes, or policy violations outside uses of force as appropriate. Any dissenting opinions should also be memorialized in a separate memo included in the ARP findings and attached to the BlueTeam.

The ARP did not document their evaluation under *Graham v. Connor* of the alleged strikes. IA went so far as to consult a video expert because the SCSO report was inconclusive. The ARP immediately deemed one of the strikes as unreasonable (unlikely to have occurred) without providing much explanation. The ARP found that the other Level 2 strikes were reasonable but neither cited *Graham* nor did any analysis of each use of force.

The alleged strikes were from a hard-to-hard surface and a hard-to-soft surface. The consultant described the potential strikes as closed fist strike(s) and a hammer strike. At least one of these strikes were to the subject's face area, which is where the subject complained of being punched. The Defensive Tactics Manual says, "every effort should be made to avoid hard skeletal targets." Under the hammer strike, the manual permits targeting hard skeletal targets.

Here, there was no analysis on defensive tactics, simply a judgment rendered of reasonable force because the subject's hand was not clearly in view of the BWC. They also did not evaluate why the strikes were necessary in addition to the K9 application which was already occurring. Further, there was no evaluation as to any reason why the force may have been excessive. In their interview, SPD Employee B did not articulate whether they saw the subject's hand or not. Rather, they denied striking the subject. The ARP justified force based on a factor that the officer did not articulate a concern about. What is captured on BWC is not necessarily the view the officer sees as the BWC is positioned on their chest.

Lastly, since SPD Employee B denied striking the subject, this case was investigated more for failure to report and making false and misleading statements. Even the strikes that the ARP agreed occurred have not been tracked as a use of force. Level 2 strikes are a reviewable use of force that should be assigned a case number for reviewing, reporting, and tracking purposes. Currently, the Level 2 strikes are not documented in SPD's use of force statistics.

RECOMMENDATION R23-01: *WHEN A USE OF FORCE IS DISCOVERED AS UNDOCUMENTED, ENTER THE CASE INTO BLUETEAM FOR PROPER ROUTING, TRACKING, REPORTING, AND EVALUATION PURPOSES IN ADDITION TO FILING AN INTERNAL COMPLAINT FOR THE POLICY VIOLATION.*

RECOMMENDATION R23-02: *I RECOMMEND THE ARP ALWAYS INCLUDE IN THEIR MEMO THE APPLICABLE POLICIES AND DOCUMENT THEIR ANALYSIS OF AN OFFICER'S TACTICAL CONDUCT PRIOR TO PROVIDING FINDINGS. THE ARP SHOULD BASE THEIR ANALYSIS ON WHAT THE OFFICER KNEW AT THE TIME. WHEN THERE ARE SIMULTANEOUS OR CONSECUTIVE USES OF FORCE, THE ARP SHOULD CLOSELY EVALUATE AND DOCUMENT THE NECESSITY OF EACH ADDITIONAL USE OF FORCE.*

Summary of Recommendations

Recommendation R23-01: When a use of force is discovered as undocumented, enter the case into BlueTeam for proper routing, tracking, reporting, and evaluation purposes in addition to filing an internal complaint for the policy violation.

Recommendation R23-02: I recommend the ARP always include in their memo the applicable policies and document their analysis of an officer's tactical conduct prior to providing findings. The ARP should base their analysis on what the officer knew at the time. When there are simultaneous or consecutive uses of force, the ARP should closely evaluate and document the necessity of each additional use of force.