

# OMBUDS CLOSING REPORT

POLICY AND PROCEDURES REPORT  
AND RECOMMENDATIONS



OFFICE OF THE  
POLICE OMBUDS  
INDEPENDENT CIVILIAN OVERSIGHT

This report was authored by Bart Logue, Police Ombuds, and co-authored by Luvimae Omana, Deputy Police Ombuds. The Office of the Police Ombuds (OPO) presented this report to the Office of the Police Ombuds Commission on January 21, 2025.

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**Table of Contents**

**Staff Information** ..... 3

**Mission, Authority, and Purpose** ..... 5

**Required Disclosures** ..... 6

**Summary**..... 7

    Procedural History..... 7

    OPO Summary of Facts ..... 7

        Incident ..... 7

        Video footage of use of force ..... 9

        On scene interview of the subject ..... 10

        Use of Force Review Board deliberation ..... 11

        Supervisor review ..... 13

    Disputed Facts..... 17

**Policy Recommendations** ..... 19

    Recommendations to Policy, Procedure, and/or Training..... 19

        Update the use of force review process ..... 19

        Culture..... 21

        Supervisor responsibility..... 22

        Purpose of the review board ..... 22

        Use of force review versus investigation ..... 23

        SPD’s review board membership and training ..... 24

        Timeliness of reviews..... 25

        Training on conducting use of force ..... 27

        De-escalation ..... 30

        Use of the “Training Failure” disposition ..... 31

**Summary of Recommendations**..... 34

## Staff Information

### **Bart Logue, Police Ombuds**

Bart Logue began serving in this capacity in September 2016, after serving as the Interim Police Ombuds. 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 Ombuds**

Luvimae Omana joined the Office of the Police Ombuds in 2015 and has served as an Assistant to the Ombuds, Administrative Analyst, and Deputy Police Ombuds. She 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 Ombuds 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 Office of the Police Ombuds 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 (2023-2026).

## Mission, Authority, and Purpose

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

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 on 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 2023-2026 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 Ombuds 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) 7.07.070 and are considered confidential. 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.<sup>1</sup>

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

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<sup>1</sup> 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.

## Summary

### Procedural History

This incident occurred on March 4, 2024. The incident was reviewed by SPD as a use of force. The subject sustained a broken elbow injury after Officer A used an exceptional technique take down of the subject. Officer I was the final reviewer and made the final determination on August 23, 2024. The case was reviewed by the Use of Force Review Board (UOFRB) on November 12, 2024.<sup>2</sup>

The OPO's summary of facts are based upon a careful review of reports, BWC footage, the chain of command review, and participation in the UOFRB. This closing report provides an analysis of issues identified through the chain of command review and review board processes, which allow for a policy and procedures report.

### OPO Summary of Facts

#### Incident

Officer A was driving on 6<sup>th</sup> Avenue approaching Oak Street at approximately 3:30pm. They slowed their patrol car because they observed the subject walking in the roadway. Officer A stopped their car to speak with the subject. As Officer A's BWC begins, they told the subject that they were on the roadway, told them to take their bag off, and motioned the subject to stand in a particular place. The subject replied, "No, sir," and Officer A responded, "Oh, we're not gonna play that game."<sup>3</sup> The subject said Officer A had no reason to detain them. At that point, Officer A had not told the subject they were detained or they were under arrest. However, Officer A took hold of the subject's left wrist by grabbing the subject by their jacket cuff. At the same time, the subject transferred their cell phone from the hand the officer took hold of to their free hand. Officer A said, "Do not touch me."<sup>4</sup> The subject repeated that the officer had no reason to detain them. Officer A then said twice but gets cut off, "if you touch me..." Officer A was speaking to dispatch when the subject screamed out, "I know my rights" and began attempting to wriggle their wrist from Officer A's grip. Officer A discontinued speaking to dispatch and brought their attention back to the subject telling them to stop, all while the subject continued to say that they knew their rights.

At about 0:27 of the BWC video, Officer A began to use both hands to try and restrain the subject. They maintained control of the subject's left wrist with their left hand and began to use their right hand on the subject's upper left arm. At the 0:30 mark, Officer A began pulling the subject toward the front of their police car that was parked in the middle of the road. Officer A pushed

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<sup>2</sup> Under 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.

<sup>3</sup> Officer A's BWC at 0:03.

<sup>4</sup> *Id.* at 0:06.



the subject's upper body onto the hood of the car, folding the subject's upper body on top of the car. From 0:33 to 0:48, the only thing that can be seen on BWC is the movement of clothes. At this point, the subject was faced away from the officer and their hands were not visible. The subject continued to object to the officer detaining them. The officer responded by telling the subject to stop and they exchanged similar statements several more times. Officer A later described everything that followed to Officer C as a tug of war between the two for the subject's arms.<sup>5</sup> At 0:39, Officer A asked to see the subject's hand in a calm tone while the subject declined, their voice sounded more escalated when they said the detention was illegal and asked to speak with a sergeant. At 0:48, the subject asked why they were being detained and Officer A responded sounding surprised, "Really? I told you; you were in the roadway." The subject said this is not illegal and they were going around children.<sup>6</sup> At 0:58, Officer A says, "I'm trying to avoid putting you on the ground. If you do not put your hands behind your back, I'm going to put you on the ground." The subject continued to say the officer was not allowed to detain them and asked to see the law that applied. The officer asked for the subject's hands again but the subject refused. At 1:08, the BWC view is obstructed again by rustling clothes. At 1:19, the subject can be heard screaming for several seconds. At 1:21, the subject is seen on the ground face down with the officer hovering over them. The officer then forced the subject's hands out from under them and was able to handcuff the subject at 1:59.

It was only through the video the neighbor provided where the use of force can be seen. The neighbor recorded the incident from inside their home looking out the front window when they noticed the incident occurring outside. The video captured Officer A and the subject pushed up against front of Officer A's car. Officer A had control of the subject's left hand behind their back. Then, the officer picked up the subject by their waist, lifted them off the ground, and slammed them. The impact caused the subject's head to bounce off the ground as well as break their cell phone.

Officer B arrived on scene to assist. As Officer B lifted the subject up off the ground, they complained of pain in their elbow. When Officer B asked if they hurt their elbow, the subject said, "well, [Officer A] just slammed me on it."<sup>7</sup> The subject turned their face to speak to Officer B and a mixture of dirt and blood from a scratch can be seen on the right side of the subject's face.<sup>8</sup> The subject explained to Officer B about walking around children on the sidewalk. Officer A then told the subject they were being detained for obstruction.

When Officer C arrived on scene, Officer A provided them a synopsis of what had occurred. Officer A said, "[they're] just walking down the middle of the road...you can't do that...[they] didn't wanna stop for me and uh, basically tried to take off after [them] and it was on from there. I tried to do my best not to have to slam [them], but I had to."<sup>9</sup>

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<sup>5</sup> *Id.* at 14:46.

<sup>6</sup> *Id.* at 0:49.

<sup>7</sup> *Id.* at 3:33.

<sup>8</sup> Officer B's BWC at 1:11.

<sup>9</sup> *Id.* at 6:04.

Officers showed care and concern for the subject's well-being after they were handcuffed. At 7:21, Officer A even offers the subject a cigarette, retrieves it for them, lights it, and places it in their mouth for them to smoke.

The paramedics arrived and conducted an evaluation of the subject. The paramedic said the subject did not want to go to the hospital and it would be up to the police officers to make the decision. The subject had full range of motion but the subject had obvious bruising, deformity, or swelling on their arm and a mark. When deciding how to proceed with the subject, Officer A said they would much rather have the subject checked out.

While the paramedic discussed their evaluation with Officer C, a corporal arrived to take photos of the subject's injuries. A few moments later, the subject's partner showed up. Officers tried to get the partner to tell them the subject's name and the partner asked what happened. The subject said nothing happened so the partner asked why the subject was under arrest if nothing happened. Officer B said the subject was under arrest for obstruction but did not know the original charge. At this point, the partner started getting upset saying, "No, this is fucking bullshit. I'm calling [the subject] a fucking attorney."<sup>10</sup> The paramedic suggested the boyfriend speak with them further down the street. The partner continued to try and communicate with officers and their partner as they walked away. Once Officer C learned the partner's relationship to the subject they went over to speak with the partner.

Officer C offered to answer the partner's questions and identified themselves. Officer C said the subject was detained for pedestrian interference. The partner asked what that meant and Officer C said it meant the subject was in the middle of the roadway and was impeding the flow of traffic. The partner asked, "And then isn't that just a ticketable offense?" Officer C responded, "It would absolutely have been a ticketable offense if [the subject] didn't try to pull away..." The partner interrupted, "Why is [the subject's] face all black?" Officer C responded, "because [they] tried fighting with [Officer A]," and the partner said, "[they] did not, that [person] doesn't fight."<sup>11</sup> The paramedic and Officer C attempted to get the subject's name from the partner again and they said they were not going to tell them anything. Officer C told the partner they were fine with them present at the scene as long as they were not going to interfere and the partner walked away and said they were not doing anything.

The subject refused to give their name for most of the on-scene interaction. Several officers on scene explained they would be booked into jail under a standard John/Jane Doe if they did not provide their name. Officer A attempted to get the subject's name one last time before transporting the subject saying that if they provided their name, their stay in jail could be much shorter. Eventually, the subject provided Officer A their name. Officer A ran the subject's name through dispatch and learned the subject had a felony warrant for trafficking.

#### Video footage of use of force

Officer B knocked on a neighbor's house who may have had footage of the incident because officers observed a doorbell camera. When Officer B spoke with the neighbor, the neighbor

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<sup>10</sup> See supra note 8 at 20:42.

<sup>11</sup> Officer C BWC at 10:02.

confirmed they witnessed part of the incident. The neighbor said, “I saw [Officer A] approach [the subject] on the sidewalk...I’m sure [Officer A] tried to peacefully speak to [the subject]. Then, [Officer A] grabbed [the subject].” The neighbor said they had footage on their phone and began to search their phone to show the officer the footage.<sup>12</sup> As Officer B watched the video captured by the neighbor, they said, “that’s not very nice,” and the neighbor agreed.<sup>13</sup> The neighbor described what they saw as, “[Officer A] did pick [the subject] up and body slam [them].”<sup>14</sup>

### On scene interview of the subject

Below is a summary of the questions asked by Officer C and the responses the subject provided:

- Tell me your version of events.

“I went around the children that were on the sidewalk because I was smoking a cigarette.”<sup>15</sup> The subject further explained they saw four or five children coming out of a car with their mom and they had just started smoking, so they left the sidewalk and went onto the street to go around them.

- Where were you walking out of the sidewalk?

I was walking as close to the parked cars as possible and not in the middle of the road.

- You weren’t walking in the middle of the road?

I was never in the middle of the street and insisted they watch video footage of the incident.<sup>16</sup>

- What happened when the officer tried to contact you? Did you listen to what the officer was telling you or asking you?

I did not understand why I was being contacted. I asked the officer why I was being detained and they did not tell me why but that I just was. Then the officer said it was because I was in conflict with them but they had already detained me beforehand. So there was no reason to detain me at all. When Officer A asked me why I was in the middle of the street, I said it was to go around the children.

- What happened during your interaction with the officer?

I did not understand why there was an interaction. I was frustrated and asked what law I had broken and Officer A threw me on the ground.

- Did Officer A tell you that you were detained at any point?

Officer A did inform me but they did not explain why I was detained.

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<sup>12</sup> *Id.* at 7:05.

<sup>13</sup> *Id.* at 7:51.

<sup>14</sup> *Id.* at 8:07.

<sup>15</sup> *Id.* at 3:59.

<sup>16</sup> *Id.* at 5:20.

- Did Officer A tell you to put your hands behind your back and stop resisting?

No.

- Were you actively struggling with Officer A to get away?

Officer A grabbed me and I did not understand why I was being grabbed. There was no reason for it.

- Did you know Officer A was a police officer?

I thought we were still talking about things and explained why I went around. "And then he attacked, like I felt attacked honestly. And like he was doing it for no reason."<sup>17</sup>

Officer C circled back and asked if the subject knew Officer A was an officer given their uniform and police car. The subject acknowledged they were aware Officer A was a police officer.

- Officer A told me they were investigating pedestrian interference.

The subject asked for clarification on what that was. After Officer C explained, the subject said Officer A was lying.<sup>18</sup>

- How did you get dirty?

Officer A threw me on the ground.

- Did you hit your elbow on the ground?

Yes.

#### Use of Force Review Board deliberation

Initially, no member of the review board took issue with the use of force. Officer D was a member of the UOFRB and was also a Defensive Tactics trainer and the subject matter expert (SME) consulted by Officer C when they were writing their evaluation of Officer A's use of force. When this case was presented at the UOFRB, Officer D was the first to speak up. They discussed their disagreement and distaste for the administration's decision on this case as the final determination was Out of Policy. Officer D said that Officer A perfectly executed a take down technique and the only reason the administration decided the way they did was because of how the take down looked.

They stated that, essentially, the administration made a results-based determination on the use of force. One other member of the board seemed to be in support of Officer D's position, actively nodding their head at each point Officer D made and saying, "yup!" as they nodded along. Officer D went on to say this was the reason they want to abolish the Defensive Tactics Manual. They said following the manual can still result in serious injury and that as a trainer, they knew the

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<sup>17</sup> *Id.* at 6:09.

<sup>18</sup> *Id.* at 6:56.

Washington State Criminal Justice Training Commission (WSCJTC) was moving away from having manuals. Instead, they were moving toward philosophies where officers are now being taught to destabilize a subject's footing. Officer D emphasized that was exactly what Officer A did in this case. Officer D reemphasized that if they have legal justification to use force, then they'll do it.

This prompted further conversation on de-escalation. The board members said this could have been done better in an optimal situation but the subject decides where force is used, not the police; take downs aren't pretty, if we are concerned about looking pretty to the community, then we need to remove take downs; and there were no other force tools available, which the OPO maintains is a disputed fact.

A representative from the OPO viewed the situation differently and told the board that they found this incident absolutely shocking. They raised various issues including a discrepancy in how the report of this incident did not align with what video footage showed. For instance, Officer A described their use of force as "guided to the ground," but the video footage showed more like a wrestling move where the subject was picked up and then slammed on the ground. Another discrepancy noted was that Officer F described the scene as a hotspot for their precinct and near the center of an urban environment with lots of cars and foot traffic. Officer F was concerned about pedestrian fatalities as part of their justification for the governmental intrusion. The OPO representative was surprised to see the incident was in a residential neighborhood, with very few people walking by or cars driving by the street at the time of the incident creating questions regarding the necessity for the original stop.<sup>19</sup>

The OPO representative raised concerns on the lack of analysis provided as required for exceptional techniques, the governmental interest in a traffic infraction, and alternative means the officer could have considered in detaining the subject considering the urgency in the situation, or the lack thereof. A member responded, it's a slippery slope telling officers not to enforce crimes. One member of the board admitted that the SME did a better job justifying Officer A's force than the officer. A member familiar with collisions said that the area where the incident took place is a high collision area between pedestrians and vehicles so the department has a strong governmental interest in contacting individuals for pedestrian interference at that location and that Officer A did not attempt to detain the subject just for their own safety.

After the discussion that was primarily between Officer D and the OPO representative, one board member said they were surprised by what they saw on video and another member said that the level of force should be modified based on who is applying it and receiving it. In this case, the subject was a petite individual.

Another issue raised by a board member was the training Officer A had received from SPD. Officer D became Officer A's direct supervisor and was responsible for providing them training resulting from the review. However, Officer D made it abundantly clear they were in support of Officer A's use of force so the board member was curious how the training went. Officer D said

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<sup>19</sup> The street is next to the freeway and several residents in the area that police officers spoke with during this incident indicated heavy foot traffic, packages were being stolen from porches, and houseless individuals were building a shelter nearby.

they explained to Officer A the policy and the department's expectation, but did not elaborate further.

### Supervisor review

Officer C noted the following in arriving at their recommended finding of "In Compliance with Policy:"

- Officer A stopped their patrol car to contact the subject in reference to Pedestrian in the Roadway (RCW 46.61.250).
- The subject refused to comply and attempted to get away from Officer A.
- The subject was advised several times they were being detained but refused to comply.
- The subject pulled their arm away from Officer A and into their body area of their waist line several times. Knowing suspects commonly keep weapons in their waist band area, Officer A feared the subject was attempting to retrieve a weapon.
- Based on the subject's continued resistance and possibility they were attempting to retrieve a weapon, Officer A took the subject to the ground.
- The take down was successful and the subject was placed into handcuffs.
- The only reason for the BlueTeam is because the subject injured their elbow when they were taken to the ground.
- Officer A used a take down technique they were previously taught in two police agencies in the Los Angeles area for 10 years.
- The take down used is called the rear body lock take down. Officer A provided a course outline but it does not list the steps for a take down.
- Regarding Officer C's interview of the subject, they said the subject said Officer A had no legal right to detain them, their rights were violated, and they should not have been detained.
- Officer C consulted with two Defensive Tactics SMEs and noted the following:
  - Officer D
    - Subject was contacted for pedestrian interference, they were not cooperative, and immediately questioned the officer.
    - The officer informed the subject they were being detained for walking on the roadway, which constitutes pedestrian interference. The subject admitted to doing this.
    - Officer A gave the subject multiple warnings.
    - Officer A's de-escalation tactics were met with the subject further questioning their authority to detain them and the subject turning into Officer A.
    - Officer A gave the subject ample opportunity to comply.
    - In the video provided by the neighbor, you can see the entirety of the take down. Officer A initially attempts to gain compliance by talking to the subject, but they actively resist by turning toward the officer. The officer holds the subject in place while continuing to talk to them, takes a bladed stance behind them, picks them up enough to remove their balance, and

- then put them on the ground. The subject's feet leave the ground but Officer A has a hold on them the entire take down, guiding them to their stomach.
- While an exceptional technique, I believe it to be reasonable. The Defensive Tactics Manual introduction specifically states that techniques used should disrupt balance, posture, and structure of the individual while maintaining control.
  - Officer A performed a take down technique they learned from a previous agency in the California Post. This take down relied on the size difference between the officer and the subject, allowing them to pick up the subject high enough that they lost connection to the ground, negating their balance and posture, and then the officer guided the subject to the ground. Officer A maintained control on the descent. This placed the subject in a prone position, making handcuffing an easy transition.
  - "While SPD does not teach this particular take down, I believe it is reasonable under the circumstances. The [subject] landed on the roadway, which is what caused the injury. The mechanics of the take down technique did not cause the injury."
- Officer H
    - Provided Officer C with an explanation of the use of exceptional techniques.
    - SPD's Defensive Tactics Manual contain techniques that have met the threshold in that they are legally, tactically, and medically reasonable.
    - The manual cannot possibly contain all techniques that meet the threshold, so the same techniques that meet the standard of reasonableness are considered exceptional.
    - When lateral officers receive training beyond the Spokane Police Department, and they use a technique that is exceptional, the evaluation should include if the application of the technique was consistent with the SPD resistance threshold guidelines, whether the technique established control, and whether the technique was a reasonable response to the suspect's actions.
    - The cornerstone of use of force techniques is control of a subject's balance, posture, and structure, with the ultimate goal of control. Officer A disrupted the subject's balance, posture and structure, and ultimately established control. The officer positioned the suspect in a way that allowed them to place their hands and arms forward to protect themselves from the fall, which is similar to a straight arm bar take down, which would be an appropriate response to the suspect's actions.
  - "The subject landed in the roadway which is what caused the injury. The technique of the take down did not cause the injury."<sup>20</sup>

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<sup>20</sup> Officer C's Use of Force Supervisor Review, case 20204-20041171 at 3-4 (March 4, 2024).

- Both DT SMEs consulted agreed that although the technique was not in the Defensive Tactics Manual, it was reasonable and within policy given the active resistance of the subject.
- When the subject was resisting, Officer A did not advise the subject they were under arrest even though they had probable cause for pedestrian in the roadway. It is unknown if Officer A advised the subject they were under arrest prior to activating BWC.
- Officer A would benefit from additional training on take down techniques in the Defensive Tactics Manual.

Officer E noted the following in arriving at their recommended finding of “In Compliance with Policy:”

- With information from the defensive tactics SMEs Officers D & H, Officer E concurs with Officer C’s recommendations.

Officer F noted the following in arriving at their recommended finding of “Training Failure:”

- Officer F noted they were deviating from the Chain of Command’s review recommendations.
- Officer A had a high governmental interest. While the governmental interest in pedestrian interference may seem “super low,” traffic fatalities near the downtown core are significant and often involve pedestrians that are struck by vehicles.
- Officer A made contact at a time and place that is considered “mission area” by SPD’s South Precinct because of the high volume of crime that occurs in the area.
- A “rear body lock” technique is performed by standing behind a person to disrupt the balance and posture of the detained and places them on the ground. This technique is rooted in Judo and Brazilian Jujitsu (BJJ). Officer F cited to <https://originfighter.com/bjj-positions/>.<sup>21</sup>
- Judo and BJJ are martial arts ‘sports’ that are conducted in controlled environments with similarly trained participants and referee judges.
- The techniques employed had a high likelihood of success in overcoming the subject’s resistance because of the subject’s smaller stature with an inferior postural base. However, the technique also has the apparent potential of causing injury on concrete or other unforgiving surface. The subject, regardless of physical ability, would have a lessened ability to protect their head or skeleton from injury from the downward motion toward the ground.
- Officer F is skeptical of the SME’s statement that “The mechanics of the take down technique did not cause injury.” The decision to use a technique should be balanced with environmental factors.
- The neighbor’s video is telling of the subject’s mindset and actions and the restraint and professionalism of the officer. “[Officer A] conducted [themselves] very professionally

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<sup>21</sup> The OPO visited this site on January 5, 2025 on multiple devices and the website would not load on some devices. The website only came up on one device and it was a Chinese website unrelated to udo or jujitsu.



and demonstrate[d] de-escalation attempts as well as compassion toward the injured at all times.”<sup>22</sup>

- Follow up for the Defensive Tactics program:
  - The program must be evaluating their entry program to ensure that incoming officers are preparing themselves to not use techniques learned from previous departments.
  - Officers with outside exposure to martial arts is not new and should be encouraged. However, the program must have a mechanism for educating officers to ensure the techniques are appropriate for the circumstances. This is a “cultural inoculation” for officers to acclimate to SPD values.
- Officer F noted that Risk Management was notified of the incident.

Officer G noted the following in arriving at their initial recommended finding of “In Compliance with Policy:”

- While not specifically listed in the SPD Defensive Tactics Manual, it was reasonable as an exceptional technique. It is similar to other take down techniques listed in the manual that are appropriate for use with actively resisting suspects, which the subject was.
- Officer A did not tell the subject that they were detained or arrested during the incident and had a late BWC activation.
- Officer F disagreed with Officer C’s characterization that the use of force technique did not cause the injury, the roadway where the subject landed caused the injury. “This violates common sense.”<sup>23</sup>
- While the technique was justified, the take down also clearly led to the resulting minor injury.

After communication with Officer I and further review, Officer G noted the following in arriving at their ultimate recommended finding of “Out of Policy:”

- Officer G noted they did not watch the video provided by the neighbor in their initial review of this case. After watching the video and reviewing other investigative information, Officer G no longer believed the take down technique used by Officer A was reasonable.
- Officer G agreed with Officer F’s governmental interest analysis.
- While this technique bears similarities to approved SPD take down techniques, its use is far more likely to cause injury when applied on hard surfaces.
- The video demonstrates the body weight force applied with this technique which understandably led to injury.
- All laterals that come to SPD with previous defensive tactics training need to understand that techniques approved by other agencies do not necessarily meet SPD guidelines.

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<sup>22</sup> Officer F’s Use of Force Supervisor Review, case 20204-20041171 at 2 (May 1, 2024).

<sup>23</sup> Officer G’s BlueTeam notes (May 10, 2024).

Officer I agreed with Officer G’s findings and analysis and made a final determination of “Out of Policy.”

## Disputed Facts

### *Whether the subject was walking in the middle of the roadway*

Officer A said the subject was walking in the middle of the street.<sup>24</sup> Officer A was late to activate their BWC. When their BWC video began, they were already out of the car and had contacted the subject. From the BWC view, the subject was standing on the street but only a few feet from the sidewalk. Officer A said they observed the sidewalk was not obstructed and was easily accessible.<sup>25</sup> Officer A believed the subject heard their car approaching so they moved closer to the sidewalk but stayed on the street in violation of the pedestrian on the roadway law, RCW 46.61.250.<sup>26</sup> Officer B interviewed the neighbor closest to the incident to ask if they saw what happened. Then neighbor said, “I saw [Officer A] approach [the subject] on the sidewalk.”<sup>27</sup>

The subject maintained the same story throughout the incident. They said they were not in the middle of the road.<sup>28</sup> They were smoking a cigarette, encountered children, and walked around some vehicles to avoid the children.<sup>29</sup> They also consistently asked to see the video of the incident to prove or disprove statements made.<sup>30</sup> When Officer C interviewed the subject, they said, “I went around the children that were on the sidewalk because I was smoking a cigarette.”<sup>31</sup> The subject further explained they saw four or five children coming out of a car with their mom and they had just started smoking, so they left the sidewalk and went onto the street to go around them. Officer C asked where the subject was walking on the road. The subject said they were never in the middle of the street and insisted that Officer C watch video footage of the incident.<sup>32</sup> The subject said they were walking as close to the parked cars as possible and not in the middle of the road.

### *Whether the descriptions of the incident were accurate*

#### *1. The charge against the subject*

In Officer A’s report, the reason they stopped the subject was for Pedestrian in the Roadway, a traffic infraction under RCW 46.61, Rules of the Road. However, on scene, Officer A described, in

<sup>24</sup> Officer A’s Field Case Report, case 20204-20041171 at 2 (March 4, 2024).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> See *supra* note 8 at 7:00.

<sup>28</sup> Officer A’s BWC at 23:54 (an officer on scene saying the subject was in the middle of the road when they should not be and the subject strongly disagreed saying they were not in the middle of the road).

<sup>29</sup> See Officer B’s BWC at 1:06 (quoting the subject, “No, I’m just upset. This is not legal. There’s no law saying I can’t go around children that are on the sidewalk.”); Officer C’s BWC at 0:15 (Recounting the subject’s statements to Officer C, Officer A mentioned how the subject explained there were children on the sidewalk so she walked around).

<sup>30</sup> See Officer A’s BWC at 23:54 (Explaining that when the subject was told the whole incident was on video, the subject enthusiastically agreed the video should be reviewed)

<sup>31</sup> See *supra* note 11 at 3:59.

<sup>32</sup> *Id.* at 5:20.

two separate conversations with Officer C and the paramedic, that they stopped the subject for pedestrian interference.<sup>33</sup> In Officer C's review they said Officer A did not advise the subject they were under arrest or that the officer had probable cause to arrest the subject for being on the roadway.<sup>34</sup>

Officer D on the other hand said, "[Officer A] informed [the subject] that [they] were detaining [them] for walking in the roadway, which constitutes pedestrian interference."<sup>35</sup> However, those are two different types of laws. Pedestrian or vehicular interference is a crime under a local ordinance.<sup>36</sup> Again, the former being a traffic infraction. To further distinguish the difference between the traffic infraction of walking in the roadway and the crime of pedestrian interference, the ordinance defines to "obstruct vehicular traffic" as:

*To solicit from occupants of any vehicle **and** be physically present within or subsequently enter a prohibited roadway; or to **intentionally engage in any conduct that would obstruct or impede the free flow of traffic** on any public roadways or in a driveway located in the public right-of-way (emphasis added).<sup>37</sup>*

The focus the supervisor review and review board were justifying the force because of the crime of pedestrian interference. However, Officer A never articulated that the subject obstructed vehicular traffic. In fact, Officer A only listed the traffic infraction of walking in the roadway as the reason for the stop and subsequent detention, use of force, and additional charges for obstruction.

## *2. The use of force technique application*

Officer A told Officer C they slammed the subject on the ground, "And ultimately I let go of [them]. I picked [them] up by [their] waistband and slammed [them] on the ground. And then, [they] immediately gave up."<sup>38</sup> In their report, they describe the use of force as:<sup>39</sup>

*With one final attempt [they] pulled away from me and [their] right hand ended up extremely close to the front of [their] waistband. Fearing [they] were retrieving a weapon, I let go of [their] wrists and wrapped my arms around [their] waist. I lifted [them] off the ground and rotated [their] body so [they] [were] facing the ground in midair. I fell on top as [they] hit the ground. I immediately felt [their] body go limp as [they] screamed.*

Officer D described the use of force technique as, "This takedown relied upon the size difference between the officer and the suspect, allowing [the officer] to pick [the subject] up high enough

<sup>33</sup> See *supra* note 3 at 14:04 and 18:32.

<sup>34</sup> See *supra* note 20 at 4.

<sup>35</sup> Officer D's IA Additional, case 20204-20041171 at 1 (April 28, 2024).

<sup>36</sup> See Spokane Municipal Code 10.60.010. Pedestrian or Vehicular Interference

<sup>37</sup> *Id.* at SMC 10.60.010(B)(5)(a)&(b)

<sup>38</sup> See *supra* note 3 at 15:45.

<sup>39</sup> See *supra* note 24 at 2.

that [they] lost [their] connection to the ground, negating [their] balance and posture, and then [the officer] guided [the subject] to the ground. [The officer] maintained control on the de[s]cent.”<sup>40</sup> The OPO representative described the technique as appearing like a wrestling move without the benefit of a mat.

Officer H described Officer’s A technique as beneficial to the subject, “The officer positioned the suspect that allowed them to place their hands and arms forward to protect themselves from the fall, which is very similar to a straight arm bar take down, which would be an appropriate response to the suspect’s actions.”<sup>41</sup> However, Officer F had concerns about the technique, “The subject involved[,] regardless of physical ability[,] would have a [lessened] ability to protect their head or skeleton from injury as a result of the motion towards the ground.”<sup>42</sup>

### *3. The location where the incident took place*

In describing Officer A’s governmental interest, Officer F painted the picture that the incident occurred in a busy urban core. Officer F said it was as a hotspot for their precinct and due to the number of cars and foot traffic, they were concerned about pedestrian fatalities. The BWC of the incident showed the location to be a residential neighborhood, with very few people walking by or cars driving by the street at the time of the incident.

## **Policy Recommendations**

### **Recommendations to Policy, Procedure, and/or Training**

#### Update the use of force review process

Applicable policies:

- 1. SPD Policy 302.2 Use of Force Review Board Purpose and Scope. Use of force incidents are investigated and reviewed by the involved officer’s chain of command. The Assistant Chief, or his or her designee, makes the final determination if the officer’s actions were within policy. After the final determination, the incident is evaluated and debriefed by the UOFRB to evaluate training, equipment needs, and policy and standard operating procedures (SOPs) in place or practiced department wide. The UOFRB will not be utilized to recommend discipline or conduct investigations in unresolved use of force incidents.**

**A review and analysis of all use of force incidents will be conducted each year and presented to the Chief of Police. This analysis will include trends, policies, personnel issues, and training issues identified in the review process.**

- 2. SPD Policy 302.3 UOFRB Process. After a use of force incident receives a final determination, the Office of Professional Accountability will forward the use of force**

<sup>40</sup> See *supra* note 35 at 1.

<sup>41</sup> See *supra* note 11 at 3 (quoting Officer H).

<sup>42</sup> See *supra* note 22 at 2.

report to the members of the UOFRB for review. The UOFRB will convene once per month.

The Training Director will serve as the UOFRB Chairperson. The Chairperson will determine the members of the UOFRB. Members may include, but not be limited to the following:

- a. Training Unit members
  - b. Defensive Tactics instructors
  - c. Department subject matter experts in the applicable fields of applied force, verbal de-escalation, patrol procedures, Office of Professional Accountability, and other related needs.
3. SPD Policy Manual 302.4: UOFRB Review. While reviewing use of force incidents, the UOFRB will consider the totality of the circumstances which may include the following:
- a. Officers involved and their current assignments during use of force incidents
  - b. The training, experience and ability of the involved officers
  - c. The physical ability and potential impairment of the subject
  - d. Incident threat factors
  - e. Level of resistance by the subject
  - f. Any attempt by the subject to evade detention by flight
  - g. Severity of the crime or community caretaking situation
  - h. Tense, uncertain, rapidly evolving situations
  - i. Split-second decision making
  - j. Involved weapons and proximity to potential weapons
  - k. Environmental considerations
  - l. The time of day that incidents took place and geographic locations of incidents
  - m. The considered and/or chosen tactics of the involved officers and the results of the considered and/or chosen tactics
  - n. Injuries to officers and/or involved subjects
  - o. Number of officers and subjects present during the incident
  - p. Availability of other force options during the incident, etc.
  - q. Prior knowledge and/or contacts with the subject
  - r. Quality of supervision
  - s. Early Intervention System (EIS) alerts
  - t. Training considerations
  - u. Police radio considerations
  - v. Tactical considerations
  - w. Patrol procedures considerations
  - x. Equipment considerations
  - y. Documentation considerations
  - z. Policy considerations
  - aa. Other relevant observations and recommendations
4. SPD Policy Manual 302.5: UOFRB Outcomes. The recommendations of the UOFRB, if any, will be compiled and reported through the chain of command by the UOFRB

Chairperson, the Training Director. The Training Director will coordinate any approved training recommendations for individual officers recommended by the UOFRB for implementation. The Training Director will be responsible for coordinating departmental recommendations, such as those involving in-service training. The Office of Professional Accountability will document any recommendations and action taken involving individual officers.

The recommendations resulting from the UOFRB will be submitted in a monthly report to the Chief of Police following each meeting. The Training Director will provide a copy of the report to the Office of Police Accountability for further distribution.

5. **SPD Policy 301.14.3 Referral to Internal Affairs.** The supervisor shall complete a Use of Force Report through BlueTeam. The supervisor shall forward the Use of Force Report through BlueTeam to the Internal Affairs Group and copy each member of the chain of command to include the appropriate Major.

If upon review of an application of force by an officer(s), the supervisor believes that the application of force could rise to the level of misconduct, or the supervisor sees conduct that could rise to the level of misconduct, the supervisor shall initiate an Internal Affairs complaint in BlueTeam. If the subject of the use of force makes a complaint about the use of force or demeanor of the officer(s) involved in the incident, an Internal Affairs Complaint will be generated in BlueTeam. The supervisor shall forward the Internal Affairs Complaint and the Use of Force report through BlueTeam to the Internal Affairs Group and copy each member of the chain of command to include the Chief of Police in the routing.

Upon initiating an Internal Affairs Complaint for the reasons above, the DSO will be promptly notified through the Chain of Command.

### Culture

The OPO has noted numerous times over the years that there seems to be a general reluctance for supervisors to say something is outside of policy. Every member of the chain of command review found Officer A's use of force within policy up through the rank of Assistant Chief. Officer C consulted with two separate Defensive Tactics SMEs, which is an unusual practice. Officer C's supervisor, Officer E relied exclusively on the SMEs' opinions and provided no analysis. Then, Officer F felt the need to distinguish their analysis but ended up with findings that shift the failure in training completely onto the Defensive Tactics cadre. When asked about this general reluctance, the Chief said no one wants to be the bad guy and they just wait for a senior person to be the bad guy.

### Supervisor responsibility

Supervisor responsibility reinforces the accountability mechanism on supervisors. In Portland, all supervisors in the chain of command are held accountable for inadequate reports and analysis.<sup>43</sup> In Seattle, the Force Review Board requires board members to determine whether the chain of command appropriately identified and took appropriate actions to correct any deficiencies in how the incident was handled.<sup>44</sup> All supervisors are subject to corrective action or discipline for the accuracy and completeness of reports completed by other supervisors under their command. Corrective action may include training, demotion, and/or removal from a supervisory position, based on repeated deficient report reviews at any level of command.

Supervisors currently can make any determination they see fit and the department has no mechanism to provide formal feedback when a senior officer disagrees with their assessment. The Director of Strategic Initiatives has said in past review boards that officers can read an email that goes out to the chain of command to pass down to the officer with the findings once the case is complete. However, this seems to be an ineffective and passive method of communication. It does not prioritize communicating with, teaching, and mentoring supervisors. The OPO has recommended several times that supervisors should receive formal feedback after an incident review is complete so they know whether their decision-making is in line with the department's guidance. In this case, many supervisors stated that laterals need to be trained to departmental philosophies. But this case demonstrated that the same need for supervisors, Defensive Tactics instructors, and review board members.

**Recommendation 25-1: SPD should implement standards for supervisory responsibility. At the same time, to ensure the likelihood of supervisor success, SPD should continuously provide training on proper evaluations of policies and should mandate formal follow up when a senior officer disagrees with a subordinate's analysis.**

### Purpose of the review board

At the Use of Force Summit in December 2024, a session on review boards provided the practical purpose of review boards as two-fold. The first purpose is to be an accountability tool to ensure supervisors are fully and fairly conducting force reviews and investigations. Secondly, it provides an ability to continually evaluate the policies, training, tactics, and equipment of the department.

<sup>43</sup>See Portland Pol. Bureau Policy PPB-09100.00(6.7) Force After Action Reports, available at <https://www.portland.gov/policies/police-directives/report-writing-0900/091000-use-force-reporting-review-and-investigation>.

<sup>44</sup> See Seattle Pol. Dept. Policy 8.500-POL-4(1) The FRB will Review All Type III Use of Force Investigations and Type II Use of Force Reports Referred by the FRU, available at <https://public.powerdms.com/Sea4550/documents/2042948>.

SPD's current Policy 302.2 only provides the function of the review board. It does not provide a purpose. When officers are given vague standards, they will not know how to perform their function. When board members are reviewing use of force incidents, their deliberation should go beyond legal justification. The members should examine the incidents with a lens that includes community caretaking, individual and departmental liability, consideration for dignity and respect of community members, a commitment to reducing force, and any other factor that may diminish SPD's reputation for fair and impartial policing.

**Recommendation 25-2:** SPD should update the purpose of Policy 302.2 so that review boards are an oversight mechanism for maintaining the integrity of the department's force policy. It should also serve as an accountability tool that ensures supervisors are fully and fairly conducting force reviews and investigations as well as evaluating policies, training, tactics, and equipment of the department.

#### Use of force review versus investigation

First and foremost, SPD's current use of force review process is not an investigation. Despite SPD Policy 302.2 conflating an investigation and review. Typically, a supervisor begins an investigation by conducting interviews at the scene of the incident. However, the interviews are typically used for providing context to a use of force and to aid in writing the supervisor's summary. For instance, in this case, Officer C conducted an on-scene interview of the subject. The subject provided their side of the story which did not line up with the officer's version of events.

Had this been a full investigation, there would have been follow up questions to try and reconcile the disputed facts. Additionally, there were individuals involved in this case who would normally be interviewed in an investigation as a witness to further explain what they saw or actions they took. For example, Officer F still had questions of fact in their review that would have easily been answered in an interview of Officer A, "It is unknown if Officer A advised the subject they were under arrest prior to activating BWC." Instead, the chain of command relied on the summary Officer A and C wrote for the entire basis of their analysis.

SPD could benefit from expanding the role of Internal Affairs in force investigations and community impact cases. SPD currently collects information into a case file and sends the file up the chain of command to begin a review without any investigation. SPD only requires IA investigation when there is an indication of a policy violation found during the review. IA's role could be expanded to include a review of cases to designate whether a full administrative investigation is warranted prior to the chain of command review.



**Recommendation 25-3:** Internal Affairs should play a more significant role in evaluating all reviewable use of force cases to determine if further investigation is necessary so that all the investigative questions are answered before the chain of command conducts its review. Internal Affairs should open full investigations on all cases that involve potential policy violations.

### SPD's review board membership and training

Currently, the board is comprised of all SPD employees and an OPO representative. The board gets involved after the disciplinary process. This means every disciplinary decision is completed prior to the board reviewing the case. The discussion of each case involves a one to two sentence synopsis of the facts that are read to the board and then the board members are allowed an opportunity to provide input. If no one volunteers to speak, the board moves on to the next case.

Should SPD continue with the post-disciplinary review board model, changes should be implemented to increase the effectiveness of the board and its usefulness to the department. First, the board should formalize the proceedings of review boards. Each case should be completely reviewed; its own facts, applicable considerations of policies, standards, training, and any other applicable material that was used in consideration of the case, much like the format of this report. This will ensure that the board members can review every aspect of the case, not just what a board member may bring up.

Second, members of review boards should receive annual training for review board membership to properly fulfill their role on the board. The UOFRB does not currently receive any formal training or onboarding for new members. Seattle PD requires eight hours of training for each board member every year on legal updates on force, use of force investigations, and curriculum on use of force and de-escalation. SPD's UOFRB members could greatly benefit from a similar training program as well as training on issues of department liability, risk management, as well as being familiar with the WSCJTC's Applied Training Skills Use of Force Program philosophies.

Third, supervisors should be invited to present each case they were responsible for reviewing. This provides an effective method of accountability for both the supervisors and the UOFRB. This will provide a first-hand learning process for the supervisor in hearing how the board deliberates.

Lastly, the board is almost exclusively made up of police. This can lead to an overwhelmingly similar perspective. The Portland Police Bureau's and Olympia PD's review boards include a community member. This would offer a different perspective than anyone else in the room and could help provide meaningful feedback to the department from a crucially important perspective.

**Recommendation 25-4:** SPD should consider restructuring its review boards to increase their effectiveness in evaluating the department. Under the post-disciplinary model, the OPO recommends SPD consider changes that formalize the review board proceedings, require members complete annual review board training, have involved officers' supervisors brief the board and include a community member for a diverse perspective.

**Recommendation 25-5:** SPD should require members complete annual review board training. Topics should include legal updates on force, use of force investigations, de-escalation, department liability, risk management, as well as being familiar with the WSCJTC's Applied Training Skills Use of Force Program philosophies.

### Timeliness of reviews

Feedback the board has received from officers and supervisors is that it takes so long to hear back on a case that by the time they receive feedback, the facts of the case are difficult to recall. Any potential training issued is simply not as effective. Further, the delay can allow problematic tactics to be repeated and inadvertently reinforced. Review of SPD Policy 302 does not appear to place limits on the time it takes to conduct a review of force. Below is a timeline of the review of this case.

- March 4, 2024 – incident occurred
- March 5, 2024 – incident entered
- March 26, 2024 – Officer C sent case to IA for review
- April 1, 2024 – IA Pro assigned, IA sent case to Officer E for review and finding
- April 18, 2024 – Officer E sent the case to Officer C and said they will meet this week to go over this case.
- April 29, 2024
  - Officer C sent the case back to Officer E for review.
  - Officer E made their recommended finding and sent the case to Officer F for review.
- May 3, 2024
  - Officer F made their recommended finding and sent the case to Officer G for review.
  - Officer F noted that they copied Officer E so they could read the IA Additional.
- May 10, 2024
  - Officer G made their recommended finding and sent the case to Officer I for review.
- June 10, 2024
  - Officer I said, “per our discussion.”
- July 23, 2024

- Officer G said they did not watch the attached citizen video in their initial evaluation. After the additional information provided in the video, they changed their recommended finding to out of compliance with policy.
- Officer G sent the case to Officer I for review.
- August 23, 2024 – Officer I made a final determination of out of policy.
- August 28, 2024 – IA sent case to Officer E for follow up.
- August 29, 2024 – Officer E sent the case to the Training Academy to provide training/findings for each involved officer.
- September 4, 2024 – The Training Academy sent training topics to Officer D for Officer A
- September 21, 2024
  - Officer D completed Officer A’s training and sent the case back to the Training Academy.
  - The training requested was documented as completed.
- November 12, 2024 – discussed by the UOFRB

Of note in the timeline:

- 131 days total from when the incident occurred to when training was completed after the Officer I’s determination.
- 28 days total from when IA sent the case for review and Officer G made their first recommended finding.
- 15 days from when the incident was entered into IAPro and when it was sent to IA.<sup>45</sup>
- 20 days from when Officer G made their recommended finding to when the Officer I responded but without a determination.
- 29 days before Officer G changed their recommended finding and sent to the Officer I for determination.
- 23 days before the Officer I made a determination.
- 12 days to conduct training.
- 173 days before the UOFRB reviewed the case.

While this investigation’s 131 days falls within the 180-day limit of an IA investigation; generally, full IA investigations do not take the entire allotted time. Here, it appears there were several points during the review where the case sat inactive. However, the most significant delays were in between Officer G’s review and the Officer I’s final determination. Given the feedback received on the turnaround on use of force cases, points of efficiency should be identified and implemented to ensure cases that are only reviewed and not investigated be completed in as expedient a fashion as practicable.

**Recommendation 25-6: SPD should place a maximum number of days to conduct a use of force review to ensure cases are reviewed in as expedient a fashion as practicable.**

<sup>45</sup> Business days were used in computing the number of days.

### Training on conducting use of force

Applicable policy:

1. **Defensive Tactics Manual<sup>46</sup>**
  - a. **Introduction**
  - b. **All techniques, whether in this manual or not, should be described in detail in the officer's report to allow for objective evaluation, to document the incident and to educate. Referring to any technique solely by name can lead to misunderstandings as all techniques are applied differently due to environmental factors and suspect actions, despite having the basic movements in common. Officers will use the Graham factors format within their departmental reports, individualizing each section as it pertains to the particular incident of which they are writing. Officers will not use boilerplate language.**

The OPO has recommended in the past that any potential misconduct be sent to IA for investigation. However, when the chain of command does not adequately acknowledge potential issues, cases will not be sent to IA for investigation per existing policy. For instance, the SMEs consulted in this case found the use of force reasonable and the gave opinions like, "The officer positioned the [subject] that allowed them to place their hands and arms forward to protect themselves from the fall, which is very similar to a straight arm bar take down, which would be an appropriate response to the [subject's] actions." This SME also suggested that by the officer grabbing the subject by their waist before lifting them off the ground and slamming them at a downward angle onto the ground was helpful to the subject. Then the other SME said, "The suspect landed on the roadway, which is what caused the injury. The mechanics of the take down did not cause the injury." The same SME also insisted at the UOFRB that the officer had legal justification to perform a take down, so they did. They said the WSCJTC was moving toward a philosophy where they are teaching to disrupt balance rather than having a prescriptive Defensive Tactics Manual. By officer A lifting the subject off the ground, they successfully disrupted their balance and perfectly executed the tactic in compliance with WSCJTC guidelines.

Here, there was an absence of analysis by supervisors and the SMEs on the necessity of force. Once the legal threshold to use force was met and force was authorized, their analysis stopped. Specifically, a SME did not entertain any alternatives to Officer A's use physical force.

Alternatives to force could have included: determining not to engage the subject due to a lack of exigency, the nature of the crime, and the officer was alone; issuing a warning and asking the subject to get on the sidewalk; providing clear communication of the detention and providing ample opportunities to comply; using de-escalation tactics such as the use of time and distance. Instead, Officer gave an order and then grabbed the subject.

The OPO spoke with the WSCJTC's Applied Skills Training Division Use of Force Program Manager to inquire whether Officer D's representation of WSCJTC's philosophy was accurate. The Program Manager disagreed with Officer D's interpretation and said the WSCJTC curriculum does not

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<sup>46</sup> The OPO relied on the version updated December 2023. It was the version applicable at the time of the incident.

involve lifting individuals up off the ground. The curriculum includes some disruption in weight and some pulling the subject backwards. However, officers need to also consider the necessity for the arrest. Single officer arrests should be avoided, if possible, for officer safety concerns. The Program Manager also emphasized necessity and governmental interest stating there are numerous times officers should choose to walk away and not engage. The Program Manager had a demonstration performed of a take down involving shifting balance and guiding the subject to the ground stressing how this technique is designed to avoid injury.

SPD's lead Defensive Tactics Instructor began remedying this discrepancy through creating a Use of Force Review Guidance document prior to the drafting of this report. It provides how supervisors should respond to use of force investigations. It directs a supervisor to look beyond the *Graham v. Connor* standard and consider all de-escalation tactics that are available and appropriate before using physical force and use the least amount of physical force necessary to overcome resistance. The guidance also provides definitions supervisors should consider from RCW 10.120.010 such as de-escalation tactics, necessary, and totality of the circumstances.

**Recommendation 25-7: Extensive and repetitive training should be conducted with all supervisors tasked with supervisory reviews. SPD's lead defensive tactics instructor's guidance on how supervisors should respond to use of force investigations should be refined, formalized, and widely disseminated to all supervisors.**

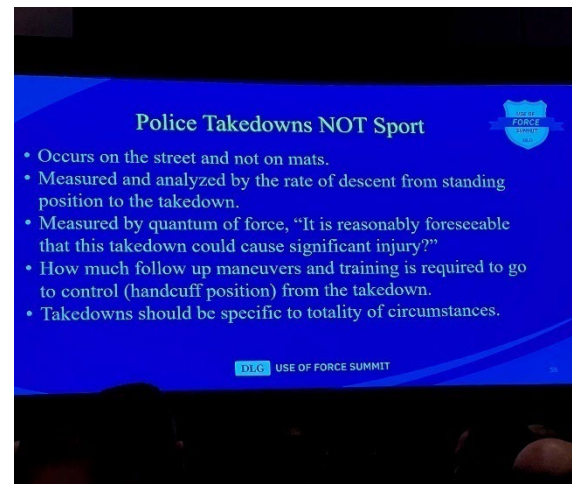
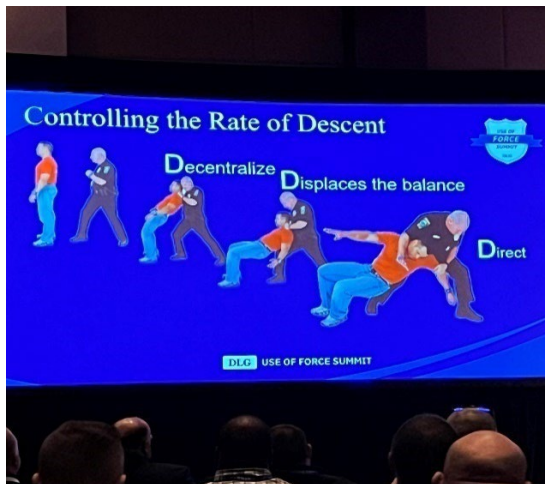
In general, improvements on every level in this use of force case could be made. First, photos from the scene were not included in the file. There was a corporal who reported to the scene to take photos and they are in the background of other officers' BWC taking photos of the subject's injuries.

Second, a use of a technique, whether listed in the Defensive Tactics Manual or not, should be described in detail by the officer who used the force in their report. Officer A provided a course outline from their previous agency but it did not provide the steps of the technique. The outline referenced is not part of the case file. A member of the review board said that Officer D did a better job of justifying Officer A's force than Officer A did. The only reviewer who attempted to reference the steps of the tactic was Officer F, but the website they relied on no longer exists. Supervisors should limit their analysis to what the officer wrote and refrain from writing the analysis of the officer's force as only the officer can explain why they chose to use force. If a report is insufficient, the report should be sent back to the officer, so they can be trained and mentored on how to correct the report, and then resubmitted to their supervisor until it is satisfactory.

Third, formal reviews such as this use of force chain of command review should cite academic journals, official government agency issued documents, or professional organizations that are recognized experts in the field since those sources are more likely to be peer reviewed. Reviewers should refrain from citing commercial websites. The veracity and reliability of commercial

websites can bring undue scrutiny to a reviewer's analysis. Officer F cited in their analysis to <https://originfighter.com/bjj-positions/>, an unrelated Chinese website to judo and Brazilian jiu-jitsu techniques. Presumably, this is no longer the same domain owner when Officer F cited the website in May 2024. If a reviewer cites an outside source, the reviewer should include a PDF of the source material to preserve the material. Including a PDF will make the material impervious to changes to the website that are outside of the citer's control.

At the recent Use of Force Summit, Kevin F. Dillon, a defensive tactics expert who has developed the L.E.A.D.S. curriculum which has been approved by the USDOJ, showed a take down demonstration which required an officer to use their knee to roll a subject over to the ground. If properly executed, take downs should not result in injury. If the subject is injured in the head or shoulder, Mr. Dillon stated the take down was executed incorrectly. The photos below are from Mr. Dillon's lecture:



Mr. Dillon also distinguished between the use of tactics in sport versus in policing. Officer F said officers having outside exposure to martial arts is not anything new in policing, and should be encouraged, but the Defensive Tactics program should have a mechanism to educate officers to ensure techniques they learned outside of SPD are acceptable for the circumstances. Even though SPD has removed the term exceptional techniques from its Defensive Tactics Manual, SPD should consider forbidding techniques that fall outside of SPD's approved philosophy, except in exceptional circumstances.

**Recommendation 25-8:** For consistency, SPD should only allow tactics listed in the Defensive Tactics Manual. This sets clear boundaries of what is permissible under SPD policy.

## De-escalation

Applicable policies:

1. **SPD Policy Manual 300.2 De-escalation: "De-escalation tactics" refer to actions used by a peace officer that are intended to minimize the likelihood of the need to use force during an incident. Depending on the circumstances, "de-escalation tactics" may include, but are not limited to: Using clear instructions and verbal persuasion; attempting to slow down or stabilize the situation so that more time, options, and resources are available to resolve the incident; creating physical distance by employing tactical repositioning to maintain the benefit of time, distance, and cover; when there are multiple officers, designating one officer to communicate in order to avoid competing commands; requesting and using available support and resources, such as a crisis intervention team, a designated crisis responder or other behavioral health professional, or back-up officers. (RCW 10.120.010.)**
2. **SPD Policy Manual 300.3(B). The following are considered de-escalation tactics (some items listed were omitted):**
  - a. **Allow the subject the opportunity to submit to arrest before force is used.**
  - b. **Using time a tactic:**
    - i. **Permit the de-escalation of the subject's behavior and create a window of opportunity to use a lower level of force to resolve the situation.**
    - ii. **Allow for continued communication with the subject and the adjustment of the verbal control techniques employed by members.**
  - c. **Communication from a safe position intended to gain the subject's compliance using:**
    - i. **Verbal persuasion**
    - ii. **Advisements**
    - iii. **Warnings**
  - d. **Avoidance of physical confrontation, unless necessary.**

In Officer F and Officer D's discussion on de-escalation, they both discuss how the officer demonstrated de-escalation attempts. While Officer H said that Officer A gave the subject ample opportunity to comply. It took six seconds from when Officer A contacted the subject to when the officer took hold of the subject's wrist. It took one minute and twenty seconds from initial contact to when the officer slammed the subject on the ground. Officer A only gave the subject commands. Officer A demonstrated concern for the subject only after they were detained, even telling the paramedic they would prefer the subject get their head checked out rather than be taken to jail. Officer F said, "[Officer A] conducted [themselves] very professionally and demonstrate[d] de-escalation attempts<sup>47</sup> as well as a compassion toward the injured at all times." Officer D felt that Officer A met the requirement to de-escalate, "by [the subject] further questioning [the officer's] authority to detain [them] and [the subject] turning into [the officer]."

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<sup>47</sup> The de-escalation attempts referenced were not defined in any way.

Officer A was quick to going hands on with the subject and was not articulate in their commands to the subject or even in their authority to detain or make an arrest. However, this was described as de-escalation by some reviewers of this case. The De-Escalation policy calls for employing tactics that reduce the likelihood of using force. It appears that these officers interpreted de-escalation to mean any verbal warning given to the subject, which deviates from the De-Escalation policy. This case illustrates a further need to reinforce what de-escalation is to officers.

**Recommendation 25-9: Supervisors should define and analyze de-escalation attempts in their reviews.**

Use of the “Training Failure” disposition

Applicable policies:

1. **SPD Policy 302.2 USE OF FORCE REVIEW BOARD PURPOSE AND SCOPE.** Use of force incidents are investigated and reviewed by the involved officer’s chain of command. The Assistant Chief, or his or her designee, makes the final determination if the officer’s actions were within policy. After the final determination, the incident is evaluated and debriefed by the UOFRB to evaluate training, equipment needs, and policy and standard operating procedures (SOPs) in place or practiced department-wide. The UOFRB will not be utilized to recommend discipline or conduct investigations in unresolved use of force incidents.

A review and analysis of all use of force incidents will be conducted each year and presented to the Chief of Police. This analysis will include trends, policies, personnel issues, and training issues identified in the review process.

2. **SPD Policy 1020.7 DISPOSITION OF PERSONNEL COMPLAINTS.** Each allegation shall be classified with one of the following dispositions:
  - a. **Unfounded** – When the investigation discloses that the alleged act(s) did not occur or did not involve department personnel.
  - b. **Exonerated** – When the investigation discloses that the alleged act occurred, but that the act was justified, lawful, and/or proper.
  - c. **Not Sustained** – When the investigation discloses that there is insufficient evidence to sustain the complain or fully exonerate the employee.
  - d. **Sustained** – When the investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.
    - i. **Possible discipline outcomes:**
      1. **Documentation of Counseling (DOC)**  
Supervisors will use the department approved DOC form. DOCs may be used for progressive discipline and may be used for minor policy violations. Supervisors may address at a shift level, when appropriate, minor violations (driving, demeanor, response times)



with employees by issuing a DOC. All DOCs will be provided to Internal Affairs for record keeping.

**2. Letter of Reprimand (LOR)**

LORs may be used as a result of progressive discipline (where a DOC was previously issued), but do not require that a DOC was previously issued. LORs will not be given at the shift level and is an option, when appropriate, for discipline as a result of an Internal Investigation.

**3. Suspension**

**4. Demotion**

**5. Termination**

- e. **Training Failure - A training failure is identified when the chain of command identifies behavior that shows the officer did not understand current policy, procedures, or case law and it is a minor policy violation; or the process, activity or function was not sufficiently trained and requires department or unit training.**
- f. **Closed Due to Mediation - Is an alternative to the investigation, adjudication and disciplinary process.**

“Training Failure” is a disposition located in personnel complaints. It’s applicability in use of force dispositions is not listed in policy. SPD Policy 302.2 only says, “The Assistant Chief, or his or her designee, makes the final determination if the officer’s actions were within policy.”

Reviewers’ conclusions should be limited to “within policy or training.” If an officer and/or their report is used in court for any reason, the officer’s statements go to the facts of the case. Any statements such as “justified” or “within state law” are conclusions of law which are reserved for the judge alone. An officer’s report could possibly be impeached by opposing counsel for making legal conclusions without the requisite legal expertise.<sup>48</sup>

Since Officer F’s suggested finding was a Training Failure, it is worth discussing SPD’s definition of it. In Recommendation 23-12, the OPO previously recommended “SPD clearly define the limits of a training failure. When SPD identifies a series of training failures, then it must take the appropriate steps to ensure it is investing the time to properly train its officers. Alternatively, if it is the individual officer struggling, SPD must identify what steps are required to help an officer understand the training.” SPD’s response was, “A training failure is identified when the chain of command identifies behavior that shows the officer did not understand current policy, procedures, or case law and it is a minor policy violation.”

There is a difference between the department’s failure to train and the officer not complying with policy due to not unlearning training from previous experiences. SPD’s definition conflates the two. Training Failure is defined as “when the chain of command identifies behavior that shows the officer did not understand current policy, procedures, or case law and it is a minor

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<sup>48</sup> In citing the applicable policies for this section, SPD’s definition of “Exonerated” in Policy 1020.7 includes “justified, lawful, and/or proper.”

policy violation; or the process, activity, or function was not sufficiently trained and requires department or unit training.” Additionally, there could be performance deficiencies not rising to the level of misconduct. In Portland, when this scenario arises, the supervisor determines whether additional training or counseling is warranted.

**Recommendation 25-10: SPD should ensure conclusions made in the use of force review process and any conclusionary findings made in general should be limited to “within policy or training” or “outside policy or training” only. Additionally, SPD should review and update its policy for the same limitations.**

## Summary of Recommendations

1. **Recommendation 25-1:** SPD should implement standards for supervisory responsibility. At the same time, to ensure the likelihood of supervisor success, SPD should continuously provide training on proper evaluations of policies and should mandate formal follow up when a senior officer disagrees with a subordinate's analysis.
2. **Recommendation 25-2:** SPD should update the purpose of Policy 302.2 so that review boards are an oversight mechanism for maintaining the integrity of the department's force policy. It should also serve as an accountability tool that ensures supervisors are fully and fairly conducting force reviews and investigations as well as evaluating policies, training, tactics, and equipment of the department.
3. **Recommendation 25-3:** Internal Affairs should play a more significant role in evaluating all reviewable use of force cases to determine if further investigation is necessary so that all the investigative questions are answered before the chain of command conducts its review. Internal Affairs should open full investigations on all cases that involve potential policy violations.
4. **Recommendation 25-4:** SPD should consider restructuring its review boards to increase their effectiveness in evaluating the department. Under the post-disciplinary model, the OPO recommends SPD consider changes that formalize the review board proceedings, require members complete annual review board training, have involved officers' supervisors brief the board and include a community member for a diverse perspective.
5. **Recommendation 25-5:** SPD should require members complete annual review board training. Topics should include legal updates on force, use of force investigations, de-escalation, department liability, risk management, as well as being familiar with the WSCJTC's Applied Training Skills Use of Force Program philosophies.
6. **Recommendation 25-6:** SPD should place a maximum number of days to conduct a use of force review to ensure cases are reviewed in as expedient a fashion as practicable.
7. **Recommendation 25-7:** Extensive and repetitive training should be conducted with all supervisors tasked with supervisory reviews. SPD's lead defensive tactics instructor's guidance on how supervisors should respond to use of force investigations should be refined, formalized, and widely disseminated to all supervisors.
8. **Recommendation 25-8:** For consistency, SPD should only allow tactics listed in the Defensive Tactics Manual. This sets clear boundaries of what is permissible under SPD policy.
9. **Recommendation 25-9:** Supervisors should define and analyze de-escalation attempts in their reviews.
10. **Recommendation 25-10:** SPD should ensure conclusions made in the use of force review process and any conclusionary findings made in general should be limited to "within policy or training" or "outside policy or training" only. Additionally, SPD should review and update its policy for the same limitations.