

# Policy and Procedures Report and Recommendations

F20-028

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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 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 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. 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 in order 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 in order 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 this report allows us to provide a more thorough review of what occurred in this incident in order 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 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 must 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 follows reflect 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](#).

## Summary

### Procedural History

This case was first reviewed by the chain of command as a use of force review as F20-028 following Level 1 and Level 2 Lateral Neck Restraints (LNR) and multiple TASER applications, which are reviewable uses of force under SPD Policy Manual 301.14.1. Under SPD Policy Manual 302 and following the chain of command review and finding, the Use of Force Review Board (UOFRB) reviewed this case in December 2020. The UOFRB reviews applications of non-deadly force after disciplinary decisions are final in order to evaluate training, equipment needs, and policy and standard operating procedures in place or practiced department-wide.

The OPO's opinions are based upon a careful review of the IA investigation summary and accompanying interviews, reports, and BWC footage; the chain of command review; Spokane Police Training Unit's Training Documentation; the Use of Force Review Board minutes; and first-hand knowledge from OPO participation during the UOFRB. This closing report provides an analysis of issues identified through a use of force review process, which allows for a policy and procedures report.

### OPO Summary of Facts

On July 5, 2020, an officer was dispatched to a storage facility after being dispatched to a call requesting a police response for a suspicious person. An employee from a business advised there was a red van in the parking lot that had appeared overnight and that it also appeared people were living inside the van with the curtains drawn over the window. The officer arrived as a single unit and contacted two individuals inside of the van and asked for their names to enter them as trespassers. The officer notes in the incident report that they have responded to similar calls in the area and the business has wanted

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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.

people trespassed in the past. One of the individuals, the suspect, did not provide their correct name despite multiple attempts by the officer to clarify their identity. After multiple requests about the name, date of birth, and ID, the suspect took off running and the officer pursued on foot.

The officer yelled if the suspect did not stop they would be “tased”. The officer caught up to the suspect attempting to climb over a fence and pushed them against the fence using body weight. The suspect continued to struggle with the officer. Because of this, the officer applied a Level 1<sup>2</sup> Lateral Neck Restraint (LNR)<sup>3</sup> and unsuccessfully tried to apply a Level 2 LNR. In the officer’s analysis for whether the LNR 1 was reasonable, the officer wrote the suspect’s resistance was “running from the police and lying about [their] identity during an investigation.”

According to the officer’s report, the subject continued to struggle and hit the officer in the mouth with an elbow. The officer was able to momentarily gain control and attempted another Level 1 LNR. Before it could be successfully applied, the suspect bit the officer on the forearm. No reaction to these assaults can be heard on BWC as the officer continued to calmly give commands. The suspect also called to their partner requesting help as they approached the struggle. According to the officer’s report, the officer saw the suspect’s partner approaching and heard the suspect asking the partner for help. As such, the officer anticipated a two-on-one fight. The suspect then broke free and jumped over the fence. During this struggle, the officer requested the suspect to stop and warned multiple times that a TASER would be applied.

When the suspect jumped the fence, the officer immediately deployed their TASER in dart mode. The probes made contact with the suspect’s lower right back causing the suspect to fall forward onto the ground. During the BWC, the TASER is heard activating multiple times as the officer approached the suspect. However, the suspect was able to get up and attempted to run again. The officer activated the TASER again but it was ineffective. The suspect continued to run as the officer was getting within reach.

While in foot pursuit, the officer attempted a drive stun.<sup>4</sup> The TASER made contact with the suspect’s back and was effective at getting the suspect on the ground. The officer kept one hand on the suspect to keep pushing them onto the ground while giving commands. The suspect was no longer actively physically resisting the officer but showed no attempt to comply with multiple commands. The officer applied three more drive stuns in the middle of the back and left thigh before the suspect finally complied and placed their hands behind their back. The officer then radioed for a supervisor to come to the scene before handcuffing the suspect.

The total time that elapsed from the moment the suspect ran until handcuffs were applied was 3 minutes and 17 seconds. The supervisor was called for at 2 minutes 45 seconds after the pursuit began. The officer was able to advise dispatch that the suspect was running as the pursuit began. The suspect

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<sup>2</sup> There are two types of LNRs distinguished by officer intent. Level 1 LNR means the officer does not intend to render the subject unconscious. While a Level 2 LNR means the officer intends to render the subject unconscious. See Spokane Police Department Defensive Tactics Manual, p. 148 (Version updated November 2019).

<sup>3</sup> As of June 18, 2021, SPD has prohibited the use of any lateral neck restraint techniques following the passage of HB 1054.

<sup>4</sup> A Drive Stun is when a TASER is applied without darts and requires the TASER’s electrodes to be in direct contact with the subject or pushed against the suspect’s clothing. Drive Stun mode is not designed to cause incapacitation and primarily becomes a pain compliance option. <https://my.axon.com/s/article/Drive-Stun-Backup> (Accessed 7/27/2021).

was transported to a medical facility for evaluation per policy after TASER applications greater than 15 seconds. According to the officer's report, the TASER was attempted or deployed a total of 7 times in either dart or stun mode.

## Investigation and Department Findings Summary

### Pertinent policies

1. Policy 308.3.2 Lateral Neck Restraint
  - The proper application of a Level I or a Level II LNR hold may be effective in restraining an individual. The neck restraint may only be used as outlined in the Defensive Tactics Manual.
2. Policy 308.8.7 – Multiple Applications of the TASER device
  - Officers should apply the TASER device for only one standard cycle and then evaluate the situation before applying any subsequent cycles. Total exposure to the TASER device should not exceed 15 seconds. If exposure exceeds 15 seconds, the subject shall be transported to a medical facility for examination prior to booking.

The Uses of Force reviewed included:

- LNR I
- LNR II
- TASER dart deployment
- TASER dart deployment
- TASER drive-stun
- TASER drive-stun
- TASER drive-stun
- TASER drive-stun

### Chain of command review<sup>5</sup>

The officer's supervisor noted the following details when recommending a finding of In Policy for all uses of force:

- The officer caught the suspect as the suspect was attempting to climb a fence and applied a level 1 LNR. The suspect was able to break the officer's grip and spin to face the officer. When they were face to face, the suspect hit the officer in the mouth with an elbow strike. The officer was again able to gain control and attempted another level 1 LNR. Before it could be applied the suspect dropped their chin and bit the officer's right forearm.
- The suspect was then able to break free and get over the fence. The officer was able to access their TASER and deploy a cartridge. The probes made contact in the suspect's lower right back causing the suspect to fall forward. As the officer was attempting to get over the fence and close the distance, the suspect got back up and attempted to run again. The officer then deployed a second set of probes that struck the suspect in the right hip area. The second deployment was also effective in disabling the suspect and the officer was able to get over the

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<sup>5</sup> Per the agreement between the City and the Police Guild in the current CBA, the OPO is prohibited from mentioning whether or not 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.



fence. As the officer was closing distance the suspect again tried to get to their feet and run. The officer activated their TASER again but the wires to the probes had broken while climbing the fence so it was ineffective.

- The suspect again jumped up and began running as the officer was getting within reach of them. The officer attempted a drive stun while in foot pursuit and made contact with the suspect's lower back at the end of the 5 second cycle. This was effective in getting the suspect back on the ground. The officer then used 1 hand to keep pushing the suspect back to the ground as the suspect continued to struggle to stand. During this stage the officer was giving multiple commands in a clear and calm voice considering the physical exhaustion. The officer gave the suspect 3 more drive stuns to the middle of the back and left thigh until the suspect finally complied and could be handcuffed.

The lieutenant did not note any details when recommending a finding of In Policy for all uses of force. However, the lieutenant noted the following topics for training considerations:

- Advising suspects they are under arrest,
- Over-reliance on the TASER,
- Transitioning to alternative techniques, and
- Ensuring the suspect is in custody prior to requesting a supervisor over the radio.

The captain noted the following details when recommending a finding of In Policy for all uses of force:

- The officer initiated contact with the individuals without a cover unit.
- The officer requested backup after realizing the suspect was non-compliant. However the decision to engage alone led to a one-on-one confrontation with a combative suspect.
- In such situations the danger to the officer is significantly greater and such situations often require a greater use of force by the officer to gain control than when multiple officers are attempting to restrain a suspect.
- Both attempted uses of the LNR 1 and LNR2 were reasonable and in compliance with policy. The suspect actively resisted and when the officer attempted to gain control by LNR, the suspect assaulted the officer.
- The use of the TASER probe use was also in compliance since the suspect assaulted the officer. The suspect demonstrated they would assault the officer if the officer attempted to go hands on with any control technique.
- The use of the TASER stun gun is reasonable despite it is generally not recommended and is not as effective as probe mode. The officer was alone, fatigued, and at a size disadvantage. The officer was also not able to reload the TASER to use probe mode.
- It is not ideal for an officer to use the TASER multiple times as was done in this case, but the situation was extremely dangerous to the officer.
- The suspect was actively resisting and still posed a threat to assault the officer at any moment.

The major in the chain of command review noted the following details when recommending a finding of In Policy for all uses of force:

- The officer decided to approach unknown occupants in a parked vehicle for a trespassing complaint without backup. This decision led the officer to face alone the dangerous task of

apprehending a fleeing subject who became assaultive. The situation became more dangerous as the officer was assaulted and became fatigued.

- Despite SPD Policy 308.8.7 that discourages TASER cumulative exposure over 15 seconds, the officer considered other options such as OC but could not access it at the time. The officer was limited in the ability to use hands on tactics by the time they resorted to multiple drive stuns because the officer was fatigued and disadvantaged in body mass compared to the subject.
- Based on the totality of the circumstances, the major found the officer's actions reasonable and within policy.

## Policy Recommendations

### Applicable Current Policy Practice, Policy, and/or Training

1. **SPD Policy 301.8 – Assessing Level of Force** provides, “Officers shall continually assess situations to determine if de-escalation is feasible and if force is necessary. Officers will continually reassess their force in relation to the amount of continued resistance offered by the subject and adjust their level of force appropriately.”
2. **Practice – considerations added in review board minutes.** After the OPO recommended tactical review to SPD in 2020, Director MacConnell implemented changes to the review board minutes by adding considerations including tactics, training, equipment, and policy/SOP.

## Recommendations to Policy and/or Training

### Citations for administrative detentions

The call was for a suspicious person that the officer was investigating for a possible trespass based on their experiences for similar calls in the area. The call moved from a *Terry* stop and reasonable suspicion to probable cause for arrest because of obstruction<sup>6</sup> – the suspect lied to the officer when asked for their name. Obstruction is a charge that relies on officer discretion. In weighing the governmental interest versus the person's right to privacy, the department can avoid unnecessary harm to officers by avoiding intrusion into a person's privacy for administrative issues.

SPD has recently changed its practice in regards to trespassing an individual. On June 22, 2021, officers were directed not to issue trespass or exclusionary notices but only enforce the law when a copy of that order issued by the business or private party has been previously presented. Officers no longer issue trespass paperwork for a business as that is considered a civil matter between the business and the involved person. Officers will now only respond to individuals that have previously been trespassed by the business and are now in violation of that trespass order.

Further, after the passage of police accountability laws in the Washington State legislature that took effect on July 25, 2021, officers will be required to alter their response to incidents similar to this case. For example, HB 1310 impacts *Terry* stops and use of force. Under the new laws, officers must consider

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<sup>6</sup> See RCW 9A.76.020, Obstructing a law enforcement officer. A person is guilty of obstructing a law enforcement officer if the person willfully hinders, delays, or obstructs any law enforcement officer in the discharge of his or her official powers or duties. Obstructing a law enforcement officer is a gross misdemeanor.

the governmental intrusion on citizens and may not use force if they do not have probable cause for a crime. According to the SPD training director in a recently conducted training on 2021 Legislative Changes:<sup>7</sup>

- If the subject does not pose an imminent threat but is uncooperative, officers must walk away.
- When using force, officers must exhaust all available and appropriate de-escalation tactics available prior to using force.
- Officers may use physical force when necessary when officers have probable cause. Officers must use the least amount of physical force necessary to overcome resistance.

Given these directives, absent probable cause or businesses presenting trespass notices previously issued to individuals, officers face additional challenges if they respond to incidents similar to this case after July 25, 2021. In this case, officers would only be left with probable cause for obstruction, since the suspect provided a false name, to justify using force. However, officers will have to consider whether the governmental interest for that obstruction outweighs the intrusion which was the result of a suspicious person in a car. The OPO recognizes the vast change in policies and practices SPD is undertaking to meet the requirements under the new police accountability laws. Prior to making any formal recommendations, the OPO will continue monitoring the policy and procedure changes SPD is making and will reevaluate potential recommendations in the future. The OPO informally recommends that SPD use this case as a training tool, studying it in depth, to assist officers with potentially different responses under the current laws.

#### Tactical considerations leading to force

The department should look beyond the exact moment force was used and “go upstream” to see whether officers are missing opportunities to de-escalate incidents in order to prevent them from ever reaching the point where force is ever required or justified.<sup>8</sup> In this case, the officer’s actions were evaluated by supervisors at the moment force was used. The chain of command review and the Use of Force Review Board did not offer alternative considerations that could have prevented the encounter in the first place, like whether pursuing a suspect without backup for providing a false name on an administrative detention was worth the governmental intrusion. In the end, the suspect was never trespassed. The department has implemented a previous OPO recommendation to start using tactical analysis as part of a use of force review board by adding Headers to the review board’s minutes. However, they are rarely, if ever, used. Policies are only effective if the department takes steps to integrate them into practice and culture.

**RECOMMENDATION R21-9:** *AS PREVIOUSLY RECOMMENDED IN CLOSING REPORT C19-040, RECOMMENDATION #2, I RECOMMEND SPD EITHER UPDATE THE FUNCTION OF THEIR REVIEW BOARDS TO CRITICALLY ANALYZE OFFICER’S TACTICAL CONDUCT AND MAKE FINDINGS OR ENHANCE THE CHAIN OF COMMAND REVIEW FUNCTION OF CATEGORICAL USES OF FORCE THAT EXAMINE AN OFFICER’S TACTICS AND USES OF FORCE THAT RESULT IN SPECIFIC FINDINGS.*

<sup>7</sup> Lieutenant Steve Wohl, 2021 Legislative Changes (2021).

<sup>8</sup> <https://www.policeforum.org/assets/30%20guiding%20principles.pdf> (accessed July 28, 2021).

### Use of force analysis

SPD policy requires officers to constantly assess the levels of force used. It follows that supervisors will include an analysis of whether the force was reasonable in each stage of the incident in his or her assessment of force an officer used. In this case, the supervisor included the uses of force in the incident synopsis. The lieutenant did not provide a written analysis on the uses of force that could be reviewed by the OPO. Instead, the review focused on training and the photo logs of the suspect's injuries. The captain conducted a thorough written review of the uses of force. However, the analysis was grouped according to the type of force used, e.g. TASER probe mode and TASER drive-stun mode instead of each instance in which force was applied. Probe mode was used twice and drive-stun mode was used four to five times, depending on the reviewer. A standardized review format would ensure proper scrutiny for each application of force which was applied.

**RECOMMENDATION R21-10:** *AS PREVIOUSLY RECOMMENDED IN CLOSING REPORT C19-040  
RECOMMENDATION #10, I RECOMMEND SPD CREATE A STANDARD FORMAT AND PROCEDURES FOR  
SUPERVISORS TO UTILIZE WHEN CONDUCTING CHAIN OF COMMAND REVIEWS.*

## Summary of Recommendations

**Recommendation R21-9:** As previously recommended in Closing Report C19-040, recommendation #2, I recommend SPD either update the function of their review boards to critically analyze officer's tactical conduct and make findings or enhance the chain of command review function of categorical uses of force that examine an officer's tactics and uses of force that result in specific findings.

**Recommendation R21-10:** As previously recommended in Closing Report C19-040 recommendation #10, I recommend SPD create a standard format and procedures for supervisors to utilize when conducting chain of command reviews.