

Policy and Procedures Report and Recommendations

F20-045

OFFICE OF THE POLICE OMBUDSMAN



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Table of Contents

Mission Statement	2
Staff Information.....	2
Authority and Purpose	4
Required Disclosures.....	4
Summary	5
Procedural History	5
OPO Summary of Facts	6
Investigation and Department Findings Summary	7
Pertinent policies	7
Chain of command review	8
Policy Recommendations.....	10
Applicable Current Policy Practice, Policy, and/or Training.....	10
Recommendations to Policy and/or Training	11
Summary of Recommendations.....	13

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.¹

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 of F20-045 following a Level II Tactic² and multiple TASER applications including one probe, one probe³ then drive stun,⁴ and another drive stun 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 March 2021. 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, 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.

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

² These techniques are utilized in closed quarter combat situations in order to close space, create space or to help facilitate a control technique.

³ A probe deployment shoots out fish hook like darts from the TASER and can cause neuro-muscular incapacitation. See TASER 7 User Course (last modified August 10, 2020).

⁴ 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 their 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 July 27, 2021).

OPO Summary of Facts

On October 8, 2020, Officer A and trainee Officer B responded to numerous calls made to 911 in the Cedar and 2nd Ave area around 4pm. The calls reported a disorderly suspect committing malicious mischief by hitting cars with their bicycle and punching them with their fist. When the suspect was confronted by one of the victims, the suspect threatened them with having a gun and stated they were going to kill people. The officers parked their vehicle at the 0:55 mark in Officer A's BWC. When they arrived on scene, they located a person matching the suspect's description walking out of Railroad Alley at Madison.

Officer B located the suspect on the other side of the bridge and began to verbally engage as they were approaching on foot. Officer A jumped in to direct the suspect to have a seat twice and that they were being detained in a firm but still respectful voice (1:18). Moments later, Officer A increased volume to a more commanding tone when they said "Sit down, now! We do not want to use force. Sit down. You are being detained" (1:23-1:28). The suspect backed up against a cement retaining wall and faced Officer B. Immediately following the verbal commands Officer A gave the suspect, they went hands on with the suspect (1:28). While Officers A and B tried to gain physical control of the suspect, Officer C arrived on scene to assist. The suspect became elevated responded, "Dude, sir. Get off me please. Get the fuck off me, I did nothing! I did nothing! Get the fuck off me! You guys aren't listening. Let me go!" (1:28-1:39). The suspect remained elevated for the duration of the incident.

The suspect was taken to the ground by the officers and Officer A disengaged from trying to control the suspect and delivered knee strikes to the suspect in the abdomen/groin area. The exact location is difficult to view on BWC as at least one BWC fell off of an officer's uniform during the struggle. It is not visible on Officer A's BWC, but only on Officer C's BWC at the 4:16-4:20 mark.

Officer A pulled out their TASER (1:40 on Officer A's BWC) and while the suspect was indicating they were going to follow Officer A's directions to sit down, they were still actively resisting. Officer A applied their TASER at 1:44. A second TASER deployment is heard at the 1:48 mark. The suspect was still resistant despite the TASER applications and squirmed with their feet in kicking motions. Despite this resistance, officers were able to flip the suspect onto their stomach (1:53). The suspect was still yelling, screaming, and tensed up which is indicated by officers directing them to relax their arm several times. Officer A is the only officer with BWC of this portion of the incident and their BWC does not have a clear view of the suspect's feet. Based on what is visible, Officer B controlled the suspect's legs by sitting on top of them. Officer C was by the suspect's head and shoulder area and assisted Officer B in attempting to apply handcuffs.

Officer A's TASER fell onto the ground and landed in front of the suspect as the officers struggled to apply handcuffs (1:58). Officer A retrieved the TASER at the 2:13 mark. The officers continued struggling to get the suspect's hands close enough together to apply handcuffs when Officer A applied the TASER a final time in drive stun mode (2:27). Officers were finally able to apply handcuffs at the 2:32 mark. Once the suspect was secured in handcuffs, Officer A directed the other officers to place the suspect on their side in the recovery position to allow for better air and breathing and then called for medics.

Officer A memorialized this incident as follows in a police report:

Officer B told the suspect they were not free to leave because they matched a description of a suspect the officers were looking for. Officer A told the suspect to sit down on the ground multiple times based on the report they were armed and threatened to kill people. Officer A "increased the tone of their voice and assertiveness to ensure the suspect heard Officer A's directions." However, the suspect was

agitated and would not cooperate. The suspect placed their arms up on the wall with hands facing the officers, but when Officer A got closer, the suspect crossed their arms and continued to be defiant. In Officer A's report they say, "I tried to de-escalate [them] by telling [them] we didn't want to use force on [them] but [they] didn't show any indication of complying." Officer A expressed concern for the safety of others nearby including pedestrians at the shelter in the direction the suspect was headed when the officers contacted them. Upon viewing Officer A's body worn camera (BWC), there are no civilians within view from the incident. Officer A adds that with the additional information that the suspect was armed, they didn't have enough time to use other de-escalation techniques and used arm control on the suspect.

The suspect immediately began to resist and balled up their fists like they were trying to punch one of the officers. The suspect then pulled an arm away from Officer A's control. The suspect became assaultive by pushing away Officer A as they tried to regain control of the suspect. Officer C arrived on scene and tried to control the resisting suspect along with Officer B. The suspect continued to resist officers so Officer A delivered two knee strikes to the suspect's leg area. Officer A could still not gain control of the suspect.

Officer A drew their TASER and announced using it. The suspect continued to struggle with Officers B and C, so officer A moved to a position where they could see the suspect's side. Officer A deployed the TASER for the first time on the suspect's lower right side. The suspect was still able to move, signaling to Officer A the probes did not make good contact. The suspect tensed up and started to go to the ground but then the TASER appeared to become ineffective. The suspect was swiping at the probes and they started to come out. Officer A reported seeing the suspect continue to resist and ball up their fists as if they were getting ready to fight. That's when Officer A deployed the TASER for a second time. The probes attached but were only a few inches apart so Officer A pressed the contacts on the TASER to the suspect's upper torso to make better connection. The suspect reportedly continued to resist and kick Officer B as they were trying to restrain the suspect's feet. However, this is not visible on BWC. The suspect continued to resist as Officer A tried to apply handcuffs.

Investigation and Department Findings Summary

Pertinent policies

1. SPD Policy Manual 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.

2. Level II Strike Techniques (Active Counter Measures) – Assaultive⁵

- These techniques are utilized to cause a momentary disruption in the mental and physical process allowing the user to transition to less intrusive and more effective control techniques.
- Gaining compliance from applied Level II techniques rarely occurs and should not be the primary goal. It is used as a transition tool for more effective control techniques. The application of any Level II technique is used because it reasonably appears necessary in this particular situation, with limited information and in any circumstances that are tense, uncertain and rapidly evolving. The application of any impact weapon is to establish control and gain compliance of the subject.

⁵ Spokane Police Department Defensive Tactics Policy Manual (p.62-72). Version updated November 2019.

The Uses of Force reviewed included:

- Level II Tactic
- TASER Probe
- TASER Probe then Drive
- TASER Drive

Chain of command review

The officer's supervisor recommended a finding of In Policy for all uses of force. The supervisor's analysis under "Sergeant Findings," only discussed body cameras and provided no analysis on force.

The lieutenant agreed with the supervisor in recommending a finding of In Policy for all uses of force. The lieutenant noted the following details in their analysis:

- Tactical issues in the approach and contact - Officer A was acting as Officer B's Field Training Officer (FTO) and specifically working on teaching assertiveness, which is why Officer A allowed Officer B to contact the subject, which led to Officer A having to contact the subject and establish control. This is a common practice with FTOs and has no bearing on the appropriateness of the use of force.
- Department and case law outline that officers perception must be objectively reasonable based on the officers' training experience, facts, and circumstances presented to the officer at that moment without the benefit of hindsight.
 - Officers A & B arrived on scene and located the suspect very quickly.
 - The suspect was immediately defiant toward officers, balled their hands in to a fist, communicated intent to assault the officers, and fought with them.
 - Officers were not able to determine if the suspect had a firearm as claimed.
 - Officers articulated the suspect's resistance would modulate between being an active resistor to being assaultive, active, and then assaultive again.
 - Officers' perceptions are corroborated by BWC.
 - Applying the Graham standard of objective reasonableness includes the officer's experience both from their career but also the last 20 seconds.
 - The reasonable question for the officer is, if the suspect had just exhibited a behavior that has shown itself to repeat in a cyclic pattern in a compressed timeframe is it reasonable to believe, based on [their] training and experience, that more likely than not the behavior would continue if not interrupted? Add to the equation that the suspect had claimed to be armed, and that the longer physical altercation continues higher the likelihood that the officers or suspect could be injured.
 - After Officer A deployed the TASER, the suspect is taken to the ground, and officers attempt to place handcuffs on the suspect. Officer A's report says they observed the suspect exhibit behavior toward Officer B which was not visible on BWC. This prompts Officer A to reach for the TASER and deploy in drive stun. The suspect's position and physiology on the BWC do not show assaultive behavior at the moment that Officer A deploys the TASER. It is reasonable that the officer could still view the suspect's intent to assault based on the prior behavior, which causes the suspect to release their hand and be handcuffed.
 - There is a pause between the assault and deployment of the TASER in the BWC, but when the officer's processing of the assault is factored in, the application of force is relative to the assaultive behavior.

- The balance between the level of intrusion on the suspect and the governmental interest in capture and arrest is very minor, and coupled with the physical behavior rhythms the suspect consistently demonstrated would lead the lieutenant (author of these comments) to believe the application of force was objectively reasonable.
- Although the use of force was objectively reasonable, the Level II techniques and TASER applications were not at the level where it should be for a senior officer and FTO.

The captain agreed with the lieutenant in recommending a finding of In Policy for all uses of force and was in agreement in recommending defensive tactics training. The captain noted the following details in their analysis:

- It was reasonable for the officer to view the suspect as an assaultive threat during the encounter.
- The nature of the crime being investigated, the information regarding the firearm, and the demonstrated hostile and angry reaction by the suspect justifies a reasonable officer to believe the suspect posed a threat to assault officers.
- Concern over the final use of the TASER - Officer A indicated they perceived the suspect was attempting to kick at the officer near the suspect's feet. The captain did not see this on BWC, "but my evaluation is based upon a determination of whether or not the officer's perception was reasonable and that their level of force applied was in compliance with policy based upon that perception. Based on the totality of the circumstances, I do find that Officer [A] could reasonably perceive the suspect to be a threat to assault officers at the time of the final TASER activation."
- The captain recommends the defensive tactics instructor discuss other options that may have been available to use when trying to handcuff the suspect that would be considered a less intrusive level of force.

The major in the chain of command review agreed with the lieutenant and captain in recommending a finding of In Policy for all uses of force. However, the major noted the following concerns in their analysis:

- There was little de-escalation that occurred.
- Officers opted not to use the available cover and quickly closed distance.
- The officers were concerned the suspect could be armed and an immediate threat to surrounding citizens and other officers. However, when the officers made contact with the suspect, there was a great backdrop.
- All the officers left cover and approached the suspect who was reportedly armed with a gun without using cover.
- Officers did not give commands to control the suspect's hands. Officer A did not give an "index" warning prior to deploying the TASER.
- Officer A placed their TASER on the suspect's back while attempting to handcuff them. The TASER then fell to the ground while the suspect was not yet handcuffed.
- The major recommended the responding officers also receive de-escalation training.

The Assistant Chief in the chain of command noted the following details in their analysis:⁶

- The Assistant Chief agreed with additional defensive tactics training.
- When officers encountered the suspect, they reportedly damaged passing vehicles, made threats to others, and claimed to be armed with a gun.
- The suspect did not comply with officer commands.
- Officers elected to close space and attempt to quickly detain the suspect who was non-complaint.
- The Assistant Chief would like the UOFRB to review the approach tactics used by the officers to identify any safety or de-escalation lessons to incorporate into future department training.

UOFRB

The OPO was present at the UOFRB and noted a broad interpretation of “de-escalation” while reviewing cases in the last few months. Issues identified with the board include:

- Officer safety concern with officers immediately approaching the suspect;
- The board did not observe officers assessing the situation prior to engaging with the suspect; and
- Concern over officers immediately using physical force by going hands on with the suspect.

While members on the board admitted it was not our best day for use of force or de-escalation, they stated that the department had learned from it.⁷ A board member identified that follow up training on overall tactics and defensive tactics (multiple TASER applications), position and approach tactics will be covered at In-Service.

Policy Recommendations

Applicable Current Policy Practice, Policy, and/or Training

1. **Spokane Police Department Policy Manual 302.2 – Use of Force Review Board Purpose and Scope.** After [the Assistant Chief or designee makes] the final determination, the incident is evaluated and debriefed by the UOFRB to evaluate training, equipment needs, and policy and standard operating procedures in place or practiced department-wide.
2. **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.”
3. **SPD Policy 300.2 – De-escalation definition.** De-escalation tactics and techniques are actions used by officers, when safe to do so, that seek to minimize the likelihood of the need to use force or reduce the level of necessary force during an incident and increase the likelihood of voluntary compliance. Mitigating the immediacy of a threat gives officers time to utilize extra resources and increases time available to call more officers or specialty units.

⁶ 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.

⁷ March 2021 Use of Force Review Board minutes

4. **SPD Policy 300.3 De-escalation.** When encountering a non-compliant subject, officers shall, when safe and feasible, exhaust all available and appropriate de-escalation tactics prior to using any physical force. De-escalation tactics are used in an effort to reduce the need for, or degree of, force necessary to safely resolve a situation. Every situation is unique and fact specific, not all tactics are appropriate for every situation. The subject's actions, type of weapon(s), presence of hostages, and overall risk to the general public and the involved officers will be important considerations in determining which tactics are appropriate in a particular scenario.
5. **SPD Policy 300.3(B)(1)(a) – Tactical repositioning.** When possible, exhaust available and appropriate de-escalation tactics prior to using any physical force, such as creating physical distance by employing tactical repositioning and repositioning as often as necessary to maintain the benefit of time, distance, and cover.
6. **SPD Policy 300.3(B)(1)(D) – Additional resources.** When possible, exhaust available and appropriate de-escalation tactics prior to using any physical force, such as calling for back-up officers when encountering resistance.
7. **SPD Policy 300.3(C) – De-escalation tactics**
 - a. Allowing subjects the opportunity to submit to arrest before force is used.
 - b. When safe and feasible to do so, make advantageous use of:
 - i. positioning, distance, concealment, and cover by isolating and containing a subject;
 - ii. Continuously evaluating the officer's positioning, subject's actions, and available force options;
 - iii. Placing barriers between an uncooperative subject and an officer.
 - c. Create time and distance from the subject by creating a buffer zone (reactionary gap) and utilize cover to avoid creating an imminent threat that may require the use of force.
 - d. 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.

Recommendations to Policy and/or Training

This case provides a robust example of a tactical analysis which was conducted by the chain of command, and later, the UOFRB. The OPO has been advocating in several previous recommendations that the department go beyond a recommendation of in or out of policy and break down incidents in depth to see if there may have been other options that an officer could have used in order to increase the likelihood that other options may be applied in the future which will keep the officers safe as well as community members.

The assistant chief asked the UOFRB to specifically review tactics. Specifically, the approach tactics used by the officers to identify any safety or de-escalation lessons to incorporate into future department training. As discussed above, the board identified that follow up training on overall tactics and defensive position and approach tactics will be covered at In-Service. However, the tactical analysis was conducted in an informal process, only memorialized in the UOFRB minutes and individual officer training records. The analysis was recorded in the UOFRB minutes and disseminated to those who attended the meeting. It was not clear whether the Assistant Chief ever received a formal response to his request or how the Chief and Assistant Chief get feedback from the board. When asked, a board member confirmed they send all minutes to the Executive Staff, which includes the Chief and Assistant Chief.

SPD still stands to benefit from a previous OPO recommendation, Recommendation #2 from the C19-040 closing report where, *"I RECOMMEND SPD EITHER UPDATE THE FUNCTION OF THEIR REVIEW BOARDS TO CRITICALLY ANALYZE THE OFFICER'S TACTICAL CONDUCT AND MAKE FINDINGS SIMILAR TO LVMPD AND/OR ENHANCE THE CHAIN OF COMMAND REVIEW FUNCTION OF CATEGORICAL USES OF FORCE SIMILAR TO LAPD THAT EXAMINE AN OFFICER'S TACTICS AND USES OF FORCE THAT RESULT IN SPECIFIC FINDINGS. (SEE APPENDIX A FOR A SAMPLE CATEGORICAL USE OF FORCE REVIEW AND FINDINGS)."*

RECOMMENDATION R21-15: *I RECOMMEND SPD REQUIRE THE UOFRB FORMALIZE ITS TACTICAL ANALYSIS AS PREVIOUSLY RECOMMENDED IN THE C19-040 CLOSING REPORT, RECOMMENDATION #2. THE UOFRB SHOULD ALSO RESPOND FORMALLY TO ANY REQUEST MADE TO CONDUCT A REVIEW. THIS MEMORIALIZES THE ANALYSIS THE BOARD CONDUCTS AND CLOSING THE LOOP WITH THE DEPARTMENT LEADERS ON OUTCOMES ON REQUESTS THEY MAKE TO EVALUATE CRITICAL CASES.*

Summary of Recommendations

Recommendation R21-15: I recommend SPD require the UOFRB formalize its tactical analysis as previously recommended in the C19-040 Closing Report, Recommendation #2. The UOFRB should also respond formally to any request made to conduct a review. This memorializes the analysis the board conducts and closes the loop with the department leaders on outcomes on requests they make to evaluate critical cases.

APPENDIX A

ABRIDGED SUMMARY OF CATEGORICAL USE OF FORCE INCIDENT AND FINDINGS BY THE LOS ANGELES BOARD OF POLICE COMMISSIONERS

K-9 CONTACT REQUIRING HOSPITALIZATION – 012-18

<u>Division</u>	<u>Date</u>	<u>Duty-On (X) Off ()</u>	<u>Uniform-Yes (X) No ()</u>
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77 th Street	2/25/18		
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<u>Officer(s) Involved in Use of Force</u>	<u>Length of Service</u>
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Officer D	26 years, 3 months
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Reason for Police Contact

Officers were conducting a K-9 search to locate the Subject, who was hiding in the backyard of a residence, and a K-9 contact requiring hospitalization occurred.

<u>Subject(s)</u>	<u>Deceased ()</u>	<u>Wounded (X)</u>	<u>Non-Hit ()</u>
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Subject: Male, 27 years of age.

Board of Police Commissioners' Review

This is a brief summary designed only to enumerate salient points regarding this Categorical Use of Force incident and does not reflect the entirety of the extensive investigation by the Los Angeles Police Department (Department) or the deliberations by the Board of Police Commissioners (BOPC). In evaluating this matter, the BOPC considered the following: the complete Force Investigation Division investigation (including all of the transcribed statements of witnesses, pertinent Subject criminal history, and addenda items); the relevant Training Evaluation and Management System materials of the involved officers; the Use of Force Review Board recommendations; the report and recommendations of the Chief of Police; and the report and recommendations of the Inspector General. The Department Command staff presented the matter to the BOPC and made itself available for any inquiries by the BOPC.

Because the Department is currently legally prohibited from divulging the identity of police officers in public reports, for ease of reference, the masculine pronouns (he, his, and him) will be used in this report to refer to male or female employees.

The following incident was adjudicated by the BOPC on January 29, 2019.

Incident Summary

Uniformed Police Officers A, B, and C, were in a marked black and white hybrid vehicle, equipped with Digital In-Car Video System (DICVS) and ballistic door panels. The officers were conducting crime suppression in the area, when they observed a vehicle by driven by the Subject. The officers observed that the vehicle did not display any plates, in violation of 5200(a) Vehicle Code (VC), and had tinted windows, in violation of 26708 (A) (1) VC.

Officer A activated his forward facing red light and conducted a vehicle stop. The officers opened their doors and exited their vehicle. Officer A instructed the driver to lower all the windows, due to the limited visibility from the tinted windows. As the windows were beginning to lower, the vehicle suddenly sped away at a high rate of speed. The officers entered their vehicle and followed.

The officers had a brief discussion and, based on their observations, determined there was a likelihood the vehicle was stolen. They premised their belief on the fact that the vehicle was a high-end vehicle, possessed paper plates, and the driver engaged in an overt action to flee. Officer C broadcast that they were in pursuit of a possible stolen vehicle and requested a backup unit and a police helicopter to respond. The pursuit culminated when the Subject was involved in a traffic collision and fled on foot. The officers were advised by residents, who had exited their homes, that the Subject had fled in between the residential homes.

A check of the Subject's vehicle determined that there were no other occupants inside. Meanwhile, Officer A provided an updated radio broadcast and began to establish a perimeter. Air Support Division (ASD) and several additional officers assisted. Witnesses identified a possible backyard where the Subject was hiding. Meanwhile, Officer A conducted an article search of the Subject's vehicle and located a loaded .45 caliber semiautomatic pistol on the driver's side floorboard. Officer A broadcast this information. Sergeant A arrived and assumed the role of Incident Commander (IC). Sergeant B set up the command post (CP). Sergeant A was briefed by the primary officers and believed the Subject was contained in the perimeter.

ASD communicated to the CP that the Metropolitan Division K-9 Unit had been notified and that they were responding. Uniformed Metropolitan Division K-9 Sergeant C responded to the incident, in addition to Metropolitan Division Police K-9 Officer D.

Sergeant C and Officer D were briefed by Sergeant A and the primary officers of the pursuit. Officer D was briefed that the primary officers attempted a vehicle stop, which resulted in a vehicle pursuit of a possible stolen vehicle. The Subject's vehicle collided, and the driver fled into the residential neighborhood. A firearm was discovered on the driver's side floorboard of the Subject's vehicle. The description of the Subject was provided. Officer D was additionally advised of two prowler complaint radio calls at residential homes and of a heat source located by the police helicopter at one of these locations.

Sergeant C determined that an outstanding felony suspect was possibly contained inside the perimeter and authorized the use of a K-9 dog to search. Officer D developed a systematic search plan of the perimeter. Sergeants A and C were advised of and approved the K-9 search plan. K-9 personnel conducted the mandated K-9 announcements and obtained confirmation that they were heard on various points of the perimeter.

Officers A, B, and E, were assigned to join K-9 Officer D's search team, along with K-9 Officer F. Officer D deployed his service dog to search for the Subject. Officer F provided Officers A, B, and E with a tactical briefing and advised them of their roles and responsibilities. Officer F would be the point officer, while Officers A, B, and E would be rear guards, and they would be responsible for issuing commands and handcuffing the Subject. Officers A, B, D, and E unholstered their service pistols, while Officer F deployed his Police Rifle. Officers A, B, and E donned their ballistic helmets.

Officer D can be heard on Officer G's Body Worn Video (BWV), advising of his intent to commence the search. Officer D facilitated initiating the search at the locations he was advised the Subject was potentially hidden. ASD directed Officer D to the location of a heat source. Officer D's team moved to search the property, which consisted of a single-family residence with a detached garage. The driveway ran along one side of the residence, from the street to the garage. There was a cemented area between the house and garage that connected an access way from the driveway to the rear yard, referred to as the middle yard.

Officer D's search team entered the property, and the K-9 dog cleared the driveway without any alerts. The search team moved forward and stopped at the middle yard. Officer D stated he directed his K-9 dog to the rear yard. Officer F remained as the point officer, while Officers A, B, and E remained in modified flanking positions behind him. According to Officer D, he observed his K-9 dog walk from the middle yard into the rear yard, in between the house and detached garage. The dog continued and then turned along the rear of the yard.

As the K-9 dog reached the bushes near the corner of the rear yard, Officer D advised he observed the Subject bolting out of the brush and falling onto the open grass. Officer D heard the Subject scream and observed his K-9 dog had a bite hold on him. Officer D advised that the rear yard was dark, and the lights along the side of the house, which illuminated toward Officer D's direction, made it difficult to properly view the contact the dog had with the Subject. The Subject had dark colored clothes that made it difficult to identify him in the dark. Officer D advised the search team to move forward and take cover.

According to Officer D, his K-9 dog did not bark or show any indication of locating the Subject. Officer D opined that the Subject was attempting to escape as he ran out of the bushes, causing his K-9 dog to go into apprehension mode.

Officer A's BWV established that the team moved forward together into the middle yard area. Officer F moved forward and took a position of cover at the corner of the detached garage. As the team moved, Officers B and E took positions to the right and behind of Officer F, while Officer A took a position to the left of Officer F in preparation to give the Subject commands.

Officer A's BWV depicted the Subject on his back, moving side to side, struggling with the K-9 dog, who had a bite hold on his left arm.

Due to Officer A, B, and E's positions, their BWV cameras did not depict the initial K-9 contact between the K-9 dog and the Subject.

Officer D made repeated commands to recall his K-9. Officer D believed the dog did not initially respond because his K-9 was engaged with the Subject and could not hear over the ambient noise caused by the Air Unit. Officer D believed he re-enforced his verbal commands with the use of the shock collar. Officer A's BWV captured the Subject yelling, "I'm Down!" The K-9 dog released his bite hold and returned to Officer D. Officer D holstered his firearm, leashed his K-9, and backed out of the immediate area.

Officer F confirmed that Officer D controlled his K-9 dog prior to instructing Officer A to begin issuing commands to the Subject. Officer A, at the direction of Officer F, ordered the Subject to roll onto his stomach, place his arms out to his sides, and to face away from the officers' direction. Officer F instructed the arrest team, consisting of Officers A and B, to move forward toward the Subject. Officer F instructed the Subject not to move. Officer B holstered his firearm and handcuffed the Subject. Officer B conducted a search of the Subject with negative results. According to Officers A and B, they each recognized the Subject to be the driver of the vehicle involved in the pursuit.

Officer D broadcast a request for the response of a Rescue Ambulance (RA) to treat the injury sustained by the Subject. The RA arrived and provided medical attention. The Subject was subsequently transported to a nearby hospital, treated in the emergency room for a K-9 contact bite to his left forearm, and then admitted to the hospital.

Los Angeles Board of Police Commissioners' Findings

The BOPC reviews each Categorical Use of Force incident based upon the totality of the circumstances, namely all of the facts, evidence, statements and all other pertinent material relating to the particular incident. In every case, the BOPC makes specific findings in three areas: Tactics of the involved officer(s); Drawing/Exhibiting of a firearm by any involved officer(s); and the Use of Force by any involved officer(s). Based on the BOPC's review of the instant case, the BOPC made the following findings:

A. Deployment of K-9

The BOPC found that the deployment of the K-9 was consistent with established criteria.

B. Contact of K-9

The BOPC found that the K-9 contact was consistent with established criteria.

C. Post K-9 Contact Procedures

The BOPC found that post K-9 contact procedures were consistent with established criteria.

Basis for Findings

In making its decision in this matter, the Commission is mindful that every “use of force by members of law enforcement is a matter of critical concern both to the public and the law enforcement community. It is recognized that some individuals will not comply with the law or submit to control unless compelled to do so by the use of force; therefore, law enforcement officers are sometimes called upon to use force in the performance of their duties. It is also recognized that members of law enforcement derive their authority from the public and therefore must be ever mindful that they are not only the guardians, but also the servants of the public. The Department's guiding value when using force shall be reverence for human life. Officers shall attempt to control an incident by using time, distance, communications, and available resources in an effort to de-escalate the situation, whenever it is safe and reasonable to do so. When warranted, Department personnel may objectively use reasonable force to carry out their duties. Officers who use unreasonable force degrade the confidence of the community we serve, expose the Department and fellow officers to legal and physical hazards, and violate the rights of individuals upon whom unreasonable force is used. Conversely, officers who fail to use force when warranted may endanger themselves, the community and fellow officers.” (Use of Force Policy, Los Angeles Police Department Manual.)

The Commission is cognizant of the legal framework that exists in evaluating use of force cases, including the United States Supreme Court decision in Graham v. Connor, 490 U.S. 386 (1989), that:

“The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain and rapidly evolving – about the amount of force that is necessary in a particular situation.”

The Commission is further mindful that it must evaluate the actions in this case in accordance with existing Department policies. Relevant to our review are Department policies that relate to the use of force:

Law enforcement officers are authorized to use deadly force to:

- Protect themselves or others from what is reasonably believed to be an imminent threat of death or serious bodily injury; or
- Prevent a crime where the subject's actions place person(s) in imminent jeopardy of death or serious bodily injury; or
- Prevent the escape of a violent fleeing felon when there is probable cause to believe the escape will pose a significant threat of death or serious bodily injury to the officer or others if apprehension is delayed. In this circumstance, officers shall to the extent practical, avoid using deadly force that might subject innocent bystanders or hostages to possible death or injury.

The reasonableness of an Officer's use of deadly force includes consideration of the officer's tactical conduct and decisions leading up to the use of deadly force. (Use of Force Policy, Los Angeles Police Department Manual.)

An officer's decision to draw or exhibit a firearm should be based on the tactical situation and the officer's reasonable belief that there is a substantial risk that the situation may escalate to the point where deadly force may be justified. (Los Angeles Police Department Manual.)

Tactical de-escalation involves the use of techniques to reduce the intensity of an encounter with a suspect and enable an officer to have additional options to gain voluntary compliance or mitigate the need to use a higher level of force while maintaining control of the situation. Tactical de-escalation does not require that an officer compromise his or her safety or increase the risk of physical harm to the public. De-escalation techniques should only be used when it is safe and prudent to do so. (Tactical De-Escalation Techniques, October 2016.)

- In its analysis of this incident, the BOPC identified the following tactical considerations:

1. Tactical Communication

The investigation revealed that some miscommunication occurred between officers on the perimeter, ASD, and the CP regarding the exact location a citizen observed the Subject in the backyard. This miscommunication resulted in Officer D not being aware that the location of the undetermined heat source was the same location in which the citizen had observed the Subject. It is preferred that all pertinent information be relayed during an ongoing tactical situation to effectively plan and approach each incident in a safe manner. Furthermore, effective communication will allow a sound tactical plan to be implemented, which will minimize exposure to the officers and therefore enhance officer safety.

2. Utilization of K-9 electronic collar

The investigation revealed that Officer D believed he may have activated the K-9's electronic collar during the process of recalling his K-9 from contact with the Subject. The investigation was unable to determine if the electronic collar was activated. It is preferred that officers ensure consistent and appropriate utilization of the electronic collar.

The above issues were to be discussed during the Tactical Debrief.

- The BOPC also considered the following:

Ballistic Helmet – The investigation revealed that Officer D and F did not don their ballistic helmets during the K-9 search. Officers are reminded of the importance of donning their ballistic helmets while involved in a tactical situation involving a possibly armed Subject. This was brought to the attention of Captain A, who addressed the issue with divisional training.

Body Worn Video (BWV) Activation – The investigation revealed that Officers B, C, and E did not activate their BWV until the Subject was located. Captain B was notified and addressed the issue with divisional training. Captain B advised that he would ensure audits would be completed on the involved officers for a 60-day period to ensure the officers' BWV's were being properly activated.

A. Deployment of K-9

- The Subject was believed to have been driving a stolen vehicle and had fled from officers, resulting in a vehicle pursuit. At the termination of the vehicle pursuit, the Subject fled on foot and was believed to be contained inside the perimeter boundaries. A loaded handgun was then located inside of the Subject's vehicle. Due to the Subject being wanted for a felony crime, Officer D met with Sergeants A and C and confirmed that the situation met the criteria for K-9 deployment. Sergeant A authorized the K-9 search to assist in locating and apprehending the Subject.

Officer D formulated a search plan that was reviewed and approved by Sergeants A and C. The search plan consisted of two K-9 search teams working in coordination with each other. Officer D was designated to lead one search team with his K-9 dog. Prior to initiating the K-9 search, a pre-recorded K-9 search announcement was played in both English and Spanish via the PA system of a police vehicle from multiple locations.

Additionally, an Air Unit utilized its PA system to broadcast the K-9 announcement in English over the search location. Confirmation of the announcement was obtained from officers on the perimeter that they heard the K-9 announcements. The Subject failed to respond to the K-9 search announcements and remained hidden, refusing to surrender to officers.

Based on the totality of the circumstances, the BOPC determined that the deployment of the K-9 resources was consistent with established criteria.

B. Contact of K-9

- Multiple K-9 announcements were made via the PA systems; however, the Subject failed to respond to the K-9 announcements. The Subject remained hidden from sight and continued to evade detection and apprehension by officers.

According to Officer D, his K-9 dog proceeded to the wall of the property and then west toward the bushes where the Air Unit had an unknown heat signature. As the K-9 dog entered the brush, Officer D observed what he believed to be a person bolting out of the brush. Officer D heard a scream and advised the search team that he believed the Subject had been located.

According to Officer D, he directed the search team to move forward and take cover. Officer D illuminated the backyard with his flashlight and observed the Subject fall into the open yard with his K-9 dog engaged in a bite hold on the Subject's left arm. After Officer D ensured that the officers on the search team had cover and observed that Subject's hands were free of any weapons, he recalled his K-9 dog.

According to Officer D, he gave several commands for his K-9 to release, and believed he activated the K-9 dog's shock collar to reinforce his commands. The K-9 dog released his hold and returned to Officer D, where he was placed on a leash.

Based on the totality of the circumstances, the BOPC determined that the K-9 Contact was consistent with established criteria.

C. Post K-9 Contact Procedures

- After the Subject was taken into custody, Officer D broadcast, without delay, for an RA to respond to treat the Subject for the dog bite. LAFD personnel responded and transported Subject to a nearby hospital, where he was treated for a dog bite wound to his left forearm. The Subject was then admitted into the hospital for his injuries.

Based on the totality of the circumstances, the BOPC determined that the post contact procedures were consistent with established criteria.