

# Policy & Procedures Report and Recommendations

F20-049/A20-042/P20-014

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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 reviewed by the chain of command and then by the CPRB and UOFRB due to a reportable vehicle pursuit (P20-014), forcible stop and intervention (A20-042), and use of force (F20-049). The OPO's opinions are based upon a careful review of incident reports; the BWC footage; the chain of command reviews; the Use of Force Review Board (UOFRB) and Collision and Pursuit Review Board (CPRB) minutes; and first-hand knowledge from the OPO's participation in those review boards. This closing report provides an analysis of issues identified through the use of force, collision, and pursuit review processes, which allow for a policy and procedures report.

### OPO Summary of Facts

On October 31, 2020, patrol units responded to a report of an argument. It should be noted this incident occurred on Halloween and there were families out on foot "trick or treating." Units determined the argument was a domestic violence incident involving a couple and had probable cause to determine a crime had occurred. The suspect fled the scene on foot. A short foot pursuit ensued but the suspect was able to double back to where the pursuit began. The suspect stole an unlocked police vehicle that was running and contained an AR-15 patrol rifle and fled in the vehicle. Responding units spotted the suspect in the vehicle and maneuvered to arrest them. A responding unit chased the suspect down an alley for a short distance and rammed the stolen patrol vehicle with their vehicle in an attempt to disable it. The officer's vehicle made contact with the front of the suspect's vehicle. The suspect then backed up rapidly and collided with a wooden fence, steel gate post, and numerous trash cans in the alley while trying to evade capture. The officer continued to follow the suspect down the alley at speeds estimated below 20 miles per hour. The suspect appeared to be trying to turn in the

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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.

alley but was momentarily stationary. The officer used this opportunity to pin the suspect's vehicle with the front of the officer's patrol vehicle. Because of this, the officer was face to face with the suspect when the officer exited the vehicle. The officer then intentionally pointed their firearm in at the suspect while providing verbal directives. The suspect was taken into custody without further incident. A 2017 police SUV incurred substantial damage to the rear, front, and sides and a 2020 police SUV incurred substantial damage to the front and sides.

## Pertinent Policies

1. **SPD Policy 314.2.1 – When to Initiate a Pursuit** states, It is the policy of the Spokane Police Department that pursuits are permissible only when the necessity for immediate apprehension outweighs the danger created by the pursuit itself. Officers may only initiate pursuits for the following reasons:
  - Homicide
  - Drive by Shooting
  - Assault 1st and 2nd Degree
  - Burglary 1st Degree
  - Arson 1st and 2nd Degree
  - Rape 1st and 2nd Degree
  - Robbery 1st and 2nd Degree
  - Kidnapping 1st and 2nd Degree
  - or warrant (non DOC) for the above crimes
2. **SPD Policy 314.7 – Pursuit Intervention/Forcible Stops** provides, Forcible stops are an attempt to terminate the ability of a suspect to flee in a motor vehicle through tactical application of technology, road spikes, blocking, boxing, PIT (Pursuit Intervention Technique), ramming or roadblock procedures.
3. **SPD Policy 314.7.2 – Ramming definition** provides, the deliberate act of impacting a violator's vehicle with another vehicle to functionally damage or otherwise force the violator's vehicle to stop. This technique may be considered a use of deadly force.
4. **Spokane Police Department Defensive Tactics Manual<sup>2</sup> - exceptional technique**  
Any use of force techniques and fundamentals that are applied or deployed by an officer of the Spokane Police Department which is not described in this manual will be deemed as exceptional techniques. The reasonableness of exceptional techniques will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain and rapidly evolving.

All exceptional techniques must be documented in great detail due to the fact that they cannot be referred to in this manual.

## Investigation and Department Findings Summary

The chain of command reviews included the following cases:

- Vehicle Pursuit (P20-014)
- Forcible Vehicle Stop-Ramming (A20-042)

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<sup>2</sup> Version last updated November 2019

- Intentionally Pointing a Firearm (F20-049)

### Chain of Command Review<sup>3</sup>

The supervisor in the chain of command noted the following details in recommending a finding of In Policy:

- The suspect had demonstrated their willingness to be violent, as demonstrated by their assault of their partner. At no point did their actions demonstrate a willingness to de-escalate and become compliant. Rather their erratic and escalating behavior demonstrated a resolve to go to any measure to avoid apprehension.
- Pursuit
  - The officer was technically in a vehicle pursuit, albeit extremely short in duration.
  - “While the pursuit was not within the strict interpretation of SPD policy, when judged with the totality of the circumstance and contrasted with the priorities of life, I believe the pursuit was justified.”
- Collision
  - The officer took the only clear and lawfully appropriate actions given the circumstance.
  - Many young families in the area were out trick-or-treating for Halloween.
  - Failure to apprehend the suspect would only lead to increased risk to innocent civilians and officers.
  - While the officer used a “ramming” technique, the speed was low enough that the impact would not equate with “deadly force.”
- Use of Force
  - Once the patrol vehicle was immobilized, the officer and other responding officers began issuing verbal directives to the suspect to gain compliance.
  - The officer drew a service sidearm and intentionally pointed in on the suspect who was in the stolen police vehicle with full access to the police rifle.
  - The suspect’s hands were not completely visible and compliance with directions waived, increasing the chance of officers having to use deadly force.

The captain in the chain of command review noted the following details in recommending a finding of In Policy:

- Pursuit
  - The officer made an immediate decision to attempt legal intervention to prevent the suspect from fleeing with the stolen patrol vehicle and patrol rifle. SPD policy does not permit officers to engage in vehicle pursuits for property crimes.
  - “I view [the officer’s] actions of ‘pursuing’ the stolen patrol vehicle in order to attempt legal intervention as an exceptional technique.”
  - The pursuit is justified under the totality of the circumstances and considering the stolen rifle in the suspect’s possession, and the suspect’s violent and resistive behavior.

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<sup>3</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.



- Collision
  - The officer used a very low impact speed “ramming” technique to immobilize the fleeing suspect that would not equate “deadly force.”
- Use of Force
  - Intentional pointing of a firearm was reasonable in that situation and based on the totality of the circumstances.
  - The officer remained pointed in with a firearm, even with the obvious threat, was not consistent with SPD’s current training of the depressed muzzle theory.<sup>4</sup>
  - The captain assigned training for the officer in depressed muzzle theory but still recommended a finding of in compliance with policy.
  - The captain further noted that this use of force was not in strict compliance with policy but was reasonable and justifiable under the circumstances.

The major in the chain of command review noted the following details used in arriving at a recommended finding of In Policy:

- Pursuit
  - The pursuit was for a short distance down an alley at a maximum speed of 15MPH.
  - The officer’s actions were reasonable and appropriate when weighing the risk associated with the pursuit against the threat to the community if the suspect were to escape.
- Collision
  - The ramming technique was applied with a speed of approximately 20MPH at an opportune time resulting in its immobilization.
  - The suspect was clearly trying to get away, but their low speeds of travel and very short duration would qualify as a vehicle follow until the time the officer employed a ramming technique to immobilize the fleeing vehicle.
  - The stolen patrol vehicle had an AR-15 rifle under the suspect’s control which presented a substantial risk to the community.
- Use of Force
  - The officer perceived a lethal threat. Intentionally pointing a firearm is consistent with training as the officer was prepared to deliver deadly force.

## Policy Recommendations

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

#### **Spokane Police Department Defensive Tactics Manual - exceptional technique**

Any use of force techniques and fundamentals that are applied or deployed by an officer of the Spokane Police Department which is not described in this manual will be deemed as exceptional techniques. The reasonableness of exceptional techniques will be judged from the perspective of a reasonable officer on

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<sup>4</sup> Depressed muzzle theory is when a firearm is pointed down with the index finger off the trigger to help reduce sympathetic reflexive reactions that may unintentionally discharge a firearm. See <https://www.police1.com/police-products/firearms/articles/rifle-sling-positions-low-ready-retention-and-high-ready-dVDiQJleutqXVf8J/> (accessed on 7/28/21); Bill Lewinski, *Can You Really Prevent Unintentional Discharges? Force Science News Readers Get Pre-Publication Look at New Findings*. Force Science News Transmission #3 (2004); Roger M. Enoka, *Involuntary Muscle Contractions and the Unintentional Discharge of a Firearm* (2003).

the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain and rapidly evolving.

All exceptional techniques must be documented in great detail due to the fact that they cannot be referred to in this manual.

### Recommendations to Policy and/or Training

In the chain of command review of this incident, there were several mentions of how the pursuit and the use of force were not in strict compliance with policy. As mentioned above, the maximum speed in this pursuit was less than 20 miles per hour and the officer intentionally pointed their firearm in at the suspect. SPD trains officers to keep their firearms pointed in the low-ready or depressed muzzle position. The chain of command considered the totality of the circumstances including various circumstances such as a rapidly evolving incident, young families out on the nearby streets trick or treating for Halloween, the suspect having potential ready access to an AR15, and the priorities of life in making their recommended findings that the pursuit and subsequent use of force were exceptional techniques<sup>5</sup>.

First, by definition an exceptional technique is virtually anything that is not clearly covered in policy. In SPD's policy, exceptional techniques apply to force techniques and principles. The policy manual and defensive tactics manual are silent on whether this can be applied as justification for pursuits. Rather, SPD Policy 314.2.1 is very specific in regards to when a pursuit may be initiated as it states pursuits may only be initiated in response to a limited number of crimes. When a pursuit is initiated outside of those very specific circumstances, approving that as an exceptional technique creates ambiguity for officers for when a pursuit is permissible.

**RECOMMENDATION R21-11:** *I RECOMMEND THAT SPD REEVALUATE THE CIRCUMSTANCES IN WHICH A PURSUIT MAY BE AUTHORIZED TO ELIMINATE AMBIGUITY FOR OFFICERS AND ENSURE STRICT COMPLIANCE WITH THE PROVISIONS OF HB 1054. SPD SHOULD ALSO ENSURE AN EVALUATION OF THE FACTORS LEADING UP TO THE PURSUIT TO DETERMINE IF A PURSUIT MAY HAVE BEEN AVOIDABLE SIMILAR TO A USE OF FORCE.*

Second, the OPO previously cautioned SPD on the OPO's perception regarding the permissive use of exceptional techniques in the closing report for C19-040. In that report, the OPO's Recommendation #8 was that SPD consider reducing or removing exceptional techniques and follow a similar trajectory as the Seattle Police Department in listing the allowable tools for force in policy and that anything outside of the listed tools are out of policy except in truly exceptional situations. This is a safeguard for liability

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<sup>5</sup> The tactic of remaining pointed in, even with the obvious threat, was not consistent with (SPD's) current training regarding the depressed muzzle theory.

the department may face. The Chief responded to this recommendation by saying it was partially implemented and partially not implemented.<sup>6</sup>

**RECOMMENDATION R21-12:** *AS PREVIOUSLY RECOMMENDED IN CLOSING REPORT C19-040  
RECOMMENDATION #8, I RECOMMEND SPD CONSIDER REDUCING OR REMOVING EXCEPTIONAL TECHNIQUES  
FROM ITS POLICIES, MANUALS, GUIDELINES, AND OTHER GUIDING DOCUMENTS AND TRAINING TO REDUCE  
DEPARTMENT LIABILITY. SPD SHOULD ALSO CONSIDER LISTING EVERY TACTIC OR DEVICE THAT AN OFFICER  
CAN USE IN UTILIZING FORCE THAT THE DEPARTMENT EXPLICITLY APPROVES.*

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<sup>6</sup> Letter from Chief Craig Meidl to Bart Logue (February 12, 2021).

## Summary of Recommendations

**Recommendation R21-11:** I recommend that SPD reevaluate the circumstances in which a pursuit may be authorized to eliminate ambiguity for officers and ensure strict compliance with the provisions of HB 1054. SPD should also ensure an evaluation of the factors leading up to the pursuit to determine if a pursuit may have been avoidable similar to a use of force.

**Recommendation R21-12:** As previously recommended in Closing Report C19-040, recommendation #8, I recommend SPD consider reducing or removing exceptional techniques from its policies, manuals, guidelines, and other guiding documents and training to reduce department liability. SPD should also consider listing every tactic or device that an officer can use in utilizing force that the Department explicitly approves.