

OFFICER INVOLVED SHOOTING REVIEW
DAVID M. NOVAK
INCIDENT DATE: JANUARY 7, 2019
SPD OFFICER BRANDON RANKIN
TO: SCSO DETECTIVE DARIN STALEY
FROM: LARRY HASKELL
DATE: August 21st, 2019,

PERTINENT FACTS

At approximately 10:24 pm on January 7th, 2019, members of Spokane Police (SPD) were dispatched to the area of 620 W. Montgomery (near N. Wall St.), in the City of Spokane, State of Washington, on a report of a male shooting at the complainant's house from across the street. While enroute, Police Dispatch continued to provide officers with updates based on information provided by the complainants. The complainant described the person shooting at their house as a white male, 25 years old, wearing a hat, gray sweater and blue jeans. The subject was reported to still be outside the house. The complainants had armed themselves and were told by officers to shelter inside their residence.

One of the first officers on scene was SPD Officer Trevor Walker. Walker arrived on scene at 10:27 pm and parked just south of the intersection of N. Wall and W. Montgomery. As he stepped out of his vehicle, Walker heard what he believed to be a distinct gunshot that sounded to have come from just northeast of 627 W. Montgomery. The sound was "muffled" and he believed it to have come from a shotgun. Walker reported the gunshot over police radio. Another of the responding officers also heard the complainants from 620 W. Montgomery yelling, "He's shooting at us! He's shooting at us!", upon his arrival in the area.

Soon thereafter, numerous additional officers had responded and were taking up positions both to the south of Wall and Montgomery and to the east of the scene at N. Howard and W. Montgomery. Two other officers (Walker and Brandon Rankin) reported hearing at least one additional gunshot shortly after arriving in the area. Rankin wrote in his report that he

had heard 3 gunshots and that, based on his training and experience, the gunshots “sounded like those of a semi-automatic pistol.”

While SPD Officers Buchmann and Gorman carefully approached from the east, most of the remaining responding officers were positioned in the area of the intersection of N. Wall and W. Montgomery, which is just south of the scene. Due to the darkness and general lack of ambient lighting in the area, it was difficult for most of the officers to see the subject (later identified as David M. Novak) clearly or to determine exactly what Novak was armed with.

Based on a summary of officers’ reports: Novak was initially observed at the north end of the driveway at 623 W. Montgomery, facing north to his neighbor’s house at 620 W. Montgomery. Novak was posturing as if confronting the neighbors to the north and was also yelling in the neighbor’s direction. He sounded enraged. It appeared that Novak was holding “a long skinny object, visually consistent with a rifle or shotgun.” From another report: “In one of his hands, he was holding what appeared to be a long gun of some kind.” Officers also reported a haze or smoke in the air near Novak, “all consistent with a gun being recently fired.”

Several officers issued numerous commands to Novak including, “Spokane Police!” “Drop it. Drop the gun.” And, “Get on the ground!” In response to police commands, Officer Taylor Johnson wrote that Novak “looked at us with his head and held his arms out slightly to his side as though in a shrugging manner.” “He simultaneously turned south toward 623 W. Montgomery Ave. and began walking to the porch of the residence.” Johnson noted that, at that time, he was unaware if Novak lived at the residence or if there were any other individuals inside that could be in danger.

Officer Walker wrote that he believed that Novak heard him “because the suspect moved and faced my direction, keeping his hands down at his sides.” Walker reported that Novak’s hands and everything below waist level was now unknown to him (Walker) due to his obstructed view from the fence line. Walker reported that he was in fear that Novak had a firearm down at his side and that Novak “intended to shoot Walker or any of the police officers that were with

him. Walker, who by this time had his rifle pointed at Novak, further wrote that Novak turned away and walked towards the residence, while ignoring police commands, and had only raised one arm above his torso and showed no intention that he would obey commands.

Officer Rankin wrote that Novak briefly raised his right hand to armpit level and continued to walk from around the truck in the driveway, then west towards Walker and Rankin, and then veer left towards the porch at 623 W. Montgomery. Rankin wrote of his concern that he could not see what Novak might have in his left hand as Rankin heard another officer issue a command to “drop the gun.” Rankin wrote of his concern for the tactical advantage Novak had gained by walking up the steps to the front porch and also of his concern for anyone potentially in harm’s way that may be inside the house. Finally, Rankin wrote that Novak’s unzipped sweatshirt gave him easy access to a potential weapon in his waistband area and that he (Rankin) observed Novak move his right hand towards his waistline. Rankin believed that Novak was reaching for the semi-automatic pistol he had heard him fire previously. Rankin wrote that he feared for his life, the lives of other officers on scene, and anyone that might be inside the residence who could be in imminent danger or taken as hostages.

By the time Novak had reached the porch of the house, several officers had their rifles pointed at Novak, each of which expressed their fear for the safety of officers and civilians in the area and inside the house. As a result, Rankin fired one round which struck Novak in his right side. Novak re-entered the house and collapsed just inside the door. Once officer safety was assured, officers moved in to render aid and medics were also called in. Novak was declared deceased at the scene.

Subsequent investigation determined that Novak was not armed with a firearm during the incident. There was a black baseball bat located in the driveway at 623 W. Montgomery just a few feet from the driver’s door of the white Dodge pickup truck that had been backed into the driveway. The investigation determined that the loud bangs heard by all reporting witnesses, including the police, were likely caused by Novak hitting the truck with the baseball bat. There

was evidence in the form of paint chips found in the driveway that corroborated that fact. The truck was registered to Novak and he was also found to be the homeowner. No one else was located inside the house. Toxicological testing on Novak's blood determined he had a blood alcohol level of .27 at the time of the incident.

OFFICER STATEMENTS

SPD Officer Trevor Walker

On 01/07/19 at approximately 10:25 pm, I was on graveyard patrol driving north on N. Monroe St. at Northwest Blvd., when I was dispatched to a call of a shooting at 620 W. Montgomery Ave. While driving to the location, dispatch relayed that the complainant was calling to report that their neighbor was shooting at them. When the call was finished being broadcasted, I was in the area at or around N. Monroe St. and W. Carlisle Ave. and immediately checked unit status of other units in proximity to the call. I took a route to set up to the south of the address for a quicker multiple officer response, knowing the closest next units were arriving from the south.

Upon arrival, I parked just south of W. Montgomery Ave. and N. Wall St, while hearing that my next unit was not far from arriving along with me. I arrived on scene at 2227 hours, and as I began to step out of my vehicle near 2212 N. Wall St., I heard what I believed to be a distinct gunshot. I believed this gunshot had come from just northeast of 627 W. Montgomery Ave., as if it was just around the house and in the street. The shot sounded muffled and I believed it to be a shotgun from previous personal and law enforcement related training and experience surrounding that firearm. I relayed this information over the radio for the safety of responding officers.

Due to the circumstances surrounding an unknown threat, with no knowledge of what the suspect was equipped with, I deployed my service rifle. I believed my service rifle was the most

appropriate tool due to its increased accuracy and range in comparison to my issued handgun. Furthermore, given the nature of the call and my hearing a gunshot upon arrival, I knew that quick and effective use of force may be needed to protect the lives of the citizens in the area. I began walking up on where I had heard the shot, adjusting my rifle sling and turning my rifle optics on (Aimpoint). As I was walking, I then heard a male voice shout something that sounded like, "Bitch!" The male's voice sounded agitated and extremely upset.

I approached knowing I had at least one other officer with me. I moved along a short three to four-foot chain link fence that surrounded a front yard of 627 W. Montgomery Ave. As I began to see beyond the residence towards the east, I slowed down and took a crouched position. I could just barely see around the house on the southeast corner of the intersection. I had an obstructed view from the cyclone fence in front of me, another cyclone fence across the yard and a white front porch. Just to the east of the second fence, the area was very difficult to see due to extremely low light.

I continued to move slowly to see around the corner of the residence, looking just beyond the yard towards the next residence and street. I then heard what I believed to be another loud gunshot, directly in front of me and in the area I was looking at. I stopped moving, and directed my service rifle towards the noise while using my weapon mounted light to light up the area.

I could then see a male wearing a grey shirt standing in the front driveway of the next house over (623 W. Montgomery Ave.). His description matched that which the complainant provided, and I believed the individual was the suspect in the shooting incident. The male's body was directed towards the north, facing the houses across the street where the complainant's residence was. I could see what I believed to be a light haze of smoke just in front of the male, which was consistent with the recent discharge of a firearm.

For the following reasons, I then intentionally pointed my service rifle at the suspect: I believed he had committed the following crimes: First Degree Assault; Reckless Endangerment, Aiming or Discharging Firearms, Dangerous Weapons, and Disorderly Conduct.

The suspect was believed to be armed, and actively shooting at the victim/complainant's residence. I heard a gunshot as I exited my patrol vehicle when arriving on scene, which substantiated the complainant's call to 911. The suspect's identity was unknown, giving no indication on previous violent history or weapons offenses, and there was no information on what kind of firearm they were using.

I was, what I believed to be, about 25 yards from the suspect. The time of night was dark, with little light making visibility low. The location was in a neighborhood which provides substantially less amount of light than compared to main arterial with surrounding businesses. I was across the front yard of the southeast residence, looking just beyond a chain link fence. I had no use of hard cover to hide behind or protect myself. The suspect had several points of tactical advantage, having vehicles for cover, and an avenue of escape towards the east if he were to choose to run. I had no knowledge there were any officers covering this area of the neighborhood. I had believed that the suspect's residence was just behind him. I hadn't known who was inside, or if they would be turned into potential victims.

From where I was in relation to him, I could not see his hands, what he was equipped with, and if there were any other suspects with him. I observed a light haze of smoke in front of him and I had heard a loud gunshot just seconds before seeing him. Since the complainant's call to 911, I heard what was believed to be another shot as I arrived on scene, believing there was still an active shooter and an ongoing threat to the community.

At the time, I believed that the suspect was armed with a deadly weapon and actively discharging it as an active shooter. Given the imminent nature of the threat that the suspect posed, I determined there was no reasonable alternative to effectively and immediately ending the suspect's ability to inflict great bodily injury or death to the innocent parties involved, other than the immediate capability of deploying lethal force.

Slowing the pace of the incident, and delaying contact with the suspect was not an option. The suspect posed an active threat to the community, and based on the information known to

me at the time, he was both capable and intending on inflicting harm to members of the public. Additionally, hearing two gunshots upon my arrival made me fear that there was a victim potentially already injured. If that was the case, the suspect would need to be detained quickly so that life-saving efforts for the victim(s) could be expedited.

While directing my service rifle at the suspect, I continued to use my weapon mounted light to provide a view of his next movements. Upon seeing his body, I made an immediate and very loud announcement of, "Spokane Police, get on the ground!" I believe that the suspect heard me, because the suspect then moved and faced my direction, keeping his hands down at his sides. His hands and everything below waist level was unknown to me due to my obstructed view from the fence line. I was in fear that the suspect had a firearm down at his side, and now that he was directed towards me, I was in fear that he intended to shoot me or any of the police officers who were with me, with the firearm that he had.

He then turned away from me, walking towards the residence and ignoring my lawful police commands. The suspect walking towards the residence gave me additional concern. At the time I did not know if it was his house, or the residence of potential innocent victims which he was going to gain entry to and take hostages or cause harm immediately. If the residence was his, the potential for the suspect to have additional weapons and better tactical positioning was also of concern. He looked towards the ground and showed no intention that he would obey commands. He raised only one arm above his torso towards the sky and I could not see what was in either hand. Being directed at center mass, I could not tell which hand it was. As he walked, he moved out of my line of sight.

At the same time, I was aligning my position, moving down the fence line to better see him. I made another loud announcement of, "Get down on the ground," and he continued to ignore myself and other officers making commands. I then heard a gunshot to my left, which I believed to be another officer. I had not seen where the shot had landed, and believed that the suspect made it inside of the residence. I could hear an officer verbally indicate they had fired

their weapon. Following the suspect's movements southbound, I ran to the back of 627 W. Montgomery Ave, setting up a south containment in case his next intentions were to exit the backyard of the residence. At this time, I believed there was now a barricaded suspect who was armed with a deadly weapon inside of the blue-colored residence.

I continued to hold the southwest corner of the residence until other officers had announced over the radio that the suspect was being contacted. They then announced that the residence had been cleared. I moved to where I had heard the officer's gunshot and located a spent shell casing on the other side of the cyclone fencing from near I was knelt behind. I placed a crime victim card over the casing to mark its position.

SPD Officer Brandon Rankin

On 01/07/2019 at approximately 10:24 pm I was working as a patrol officer for the Spokane Police Department. I was wearing the uniform of the day which consisted of a black jumpsuit with colored Spokane Police Department patches on both left and right shoulders, a silver metallic Spokane Police Department badge located on the left breast of the uniform, a duty belt with associated patrol equipment, and a baseball-style hat with Spokane Police Department insignia.

While I was speaking with Sgt. Rich Meyer at the Spokane Arena, I heard dispatch take the air and assign three patrol officers to a shooting call in the vicinity of 623 W. Montgomery Ave. I observed that this was a "Priority 1" call. Patrol officers are dispatched to calls for service based upon the incident's nature and severity. Priority 3 calls are typically "cold" where the suspect is gone or unknown - one officer can respond to investigate and document the incident. Priority 2 calls typically involve a crime in progress - two or more officers respond to make the scene safe and investigate the complaint. Priority 1 calls are typically dynamically evolving situations involving the imminent threat of harm to citizens - multiple officers typically respond to ensure the scene is rendered safe as is reasonably possible.

I heard dispatch relay that a complainant was reporting their neighbor was actively shooting a firearm at them. I heard Officer Walker announce that he was in the vicinity of the incident. I then heard dispatch restrict the channel due to the seriousness of the complaint. I heard Officer Hayward report that he was in the northeast portion of the Spokane city limits, several minutes away from Walker. I looked at the map on my patrol terminal and observed that I was the closest officer to Walker. I informed Meyer that I was headed towards Walker's location. I heard dispatch report that the suspect was still outside of the complainant's home.

While enroute, I heard Walker announce that he was going to standby to the south - I assumed until additional patrol officers arrived on scene. I informed dispatch that I was at W. Indiana Ave. and N. Post St. to let them and Walker know I was enroute to his location. Dispatch then assigned me to the incident.

Dispatch then reported that the complainant described the suspect as a white male, approximately twenty-five years old, wearing a hat, gray sweater and blue jeans. I actively ran the description through my head several times in an attempt to keep the description as fresh as possible in my memory.

I then heard Walker report over the radio that he had not heard anything yet - I assumed that he was referring to gunshots. I again checked the map on my patrol terminal and observed Walker traveling eastbound on W. Mansfield Ave., just to the west of N. Wall St. I noted that Walker was approximately a block ahead of my location.

I looked at the narrative portion of the incident log and noted that the suspect's address had not been specified. I did not know the suspect's location, the complainant's location, or in which direction the suspect was firing his weapon.

I traveled eastbound on W. Mansfield Ave. and then turned north onto N. Wall St., parking to the south of the intersection of N. Wall St. and W. Montgomery Ave. I then heard Walker report on the radio that he had "just heard a gunshot." Walker then augmented his report and

stated that it sounded like a "pump shotgun." I felt a wave of fear through my body and a pit in my stomach as Walker had verified the complainant's initial report of the suspect firing a weapon. I felt my chest tighten, my heart rate noticeably increased, and my respiration rate increased as my body responded to the stress of the situation.

Due to the report of the suspect shooting a firearm at the complainant and Walker's report of hearing gunshots, I unlocked my patrol rifle from its vehicle-mounted cage. I then loaded a round into the chamber and activated the red-dot sight mounted to the rifle. As I exited my patrol vehicle, I heard a loud, angry scream from a male. The scream sounded as if it came from where the original complaint had originated - to the northeast of my location, mid-block, on W. Montgomery Ave. The scream was unintelligible, but I noted that the male sounded as if he was enraged. From my position I estimated that the male was approximately 75 to 100 feet to the east of my location - possibly on the northern end of the avenue.

I observed Walker begin walking northbound on the eastern sidewalk of N. Wall St. This sidewalk was adjacent to the residence (which I later identified through open source map) at 627 W. Montgomery Ave. I approached his position so we could move forward as a two-officer team.

I then heard what I believed to be a single gunshot followed by two more gunshots in quick succession - "bang ... bang, bang." The shots seemed to come from the same location from which I heard the screaming from the enraged male. All three shots occurred within a span of two seconds. I noted that the gunshots did not sound like those of a shotgun or rifle. The sound of the gunshots sounded like those of a semi-automatic pistol from my training and experience. Again, the gunshots appeared to be coming from approximately 100 feet away, mid-block on W. Montgomery Ave., to the northeast of my location. I felt another wave of fear as I realized the suspect could have multiple firearms in his possession based upon Walker's previous report of hearing a shotgun. Hearing that the suspect was actively firing with law enforcement now on scene produced a similar stress response throughout my body. I thought to

myself, "this isn't a fireworks call. This is real, those are gunshots." I heard other officers arrive on-scene. It sounded like they positioned themselves to the northwest of my location.

I began following Walker northbound on the sidewalk as I looked east at an attempt to gain sight of the suspect. As we slowly looked eastbound around the corner of 627 W. Montgomery Ave., I noted that the southern side of W. Montgomery Ave. was lined with vehicles parked alongside the east-west running sidewalk. This made it difficult to see down the street in the direction from which I heard the suspect screaming and the gunshots. I noted that there was a large white truck with an attached flatbed trailer directly behind Walker and I, along the sidewalk. I was about to inform Walker that we should reposition to the western side of the truck to gain a line of sight eastbound down W. Montgomery Ave. when I heard Walker begin giving commands to a person I could not observe from my current position.

I was standing slightly behind and to the right of Walker, so I adjusted to Walker's left shoulder so I could observe the individual he was giving commands to. I observed a white male, approximately forty years old, 5' 10" tall, heavy build, wearing blue jeans, a gray hooded-sweatshirt (unzipped at the front), at-shirt, and blue baseball hat walk around the eastern side of a vehicle parked in front of (what I later identified through an open source map as) 623 W. Montgomery Ave.

I heard other officers announce, "Spokane Police" and "get on the ground!" I then heard one of the officers yell at the suspect to "drop the gun!"

I observed the suspect on the south-eastern end of a vehicle parked in the front driveway of 623 W. Montgomery Ave. I observed the suspect walking to the south, coming around the southern end of the vehicle. The suspect then began walking westbound around, and past, the vehicle.

The suspect ignored officer's lawful commands and continued to walk around the vehicle, walking directly at Walker and me. The suspect walked in a deliberate, confident manner. I did not observe any indication that the suspect was nervous, nor did I observe any indication that

the suspect was preparing to flee from the area. The suspect was walking at a brisk pace, covering approximately ten feet in the short time (approximately two seconds) I had to observe him. The suspect's head was held high so he could scan the environment and I did not observe any staggering or imbalance to his movements. The suspect's deliberate walk toward Walker and I made me feel that the male knew what he was doing and was set to execute a specific action.

The suspect briefly raised his right hand to armpit level when an officer demanded to see his hands. I could not see the suspect's left hand as he approached Walker and me. I could not determine whether the suspect was holding a shotgun in his left hand - this concerned me after I heard an officer command him to "drop the gun." The suspect then dropped his right hand down to his side in a flippant manner as he continued to walk towards Walker and me. The male's actions made me worried as he continued to push the pace of the incident and appeared unconcerned with law enforcement's commands.

I did not hear the male verbally respond to officers on scene. From my training and experience, I know that it is difficult for individuals to verbally communicate while simultaneously developing tactical plans through thought. This fact concerned me when considered together with the manner in which the suspect was covering ground. Of note, the street lights of W. Montgomery Ave. and the porch lights of the surrounding residences provided some ambient lighting to the environment. However, it was difficult to see the suspect's entire person in clarity due to it being approximately 10:30 pm. I observed Walker illuminate the suspect briefly with his rifle-mounted light, but the light did not remain on longer than several brief moments. I did not have a weapon-mounted light on my rifle. The vehicles parked in front of 623 and 627 W. Montgomery Ave., as well as the three-foot high chain link fence on the western end of 627 W. Montgomery Ave., also made it difficult to keep a clear view of the suspect.

The suspect then changed his direct path towards Walker and I, as he veered slightly to his left and walked up several steps to the front porch of (what I later identified as) 623 W. Montgomery Ave. The suspect maintained his pace of travel and continued to face Walker and I as he walked onto the porch. Of note, the porch provided the male a tactical advantage as it was elevated from my current position on the sidewalk. There were also several vertical beams and an approximate three-foot-high wall that helped enclose the porch and provided the suspect with cover and concealment locations. Of note, the distance between the porch of 623 W. Montgomery Ave. and my position was approximately twenty-five yards; well within the effective ranges of a shotgun or pistol.

Seeing that the suspect was not attempting to stop or show his hands to the officers on scene I loudly commanded the male to "get on the ground!" The suspect did not stop or go to the ground.

I repeated, "get on the ground!" Again, however, the male did not comply with the lawful demand. The male was still walking with deliberate pace. The suspect's sweatshirt was unzipped at the front which provided easy access to weapons potentially concealed around his waistband. I then observed the suspect move his right hand towards his waistline in an attempt to, from what I perceived, draw a weapon from his clothing or control the shotgun with both hands. I was in fear that my life, Walker's life, and the lives of the other officers on scene were in imminent danger. I was also fearful that innocent citizens inside of 623 W. Montgomery Ave. were in imminent danger if the suspect was allowed to continue, enter the residence, and potentially take hostages.

For the following reasons I decided to use deadly force:

Crimes:

Assault in the 1st Degree (WA RCW 9A.36.011)

Reckless Endangerment (WA RCW 9A.36.050)

Threat:

- The suspect had reportedly repeatedly fired a weapon at the complainant. This caused two different people to call 911 seeking law enforcement help.
- According to reports, after initially shooting at the complainant the suspect did not retreat, but remained outside of the complainant's home.
- Walker described hearing a shotgun blast shortly after arriving on-scene.
- The suspect was screaming in an enraged manner as he walked around the neighborhood.
- I believed that the suspect discharged three rounds from a semi-automatic pistol shortly after my arrival on-scene.
- During this portion of the incident, we did not know the suspect's identity. We could not run his name through local, state, or federal databases to see if he had any other violent history.
- The suspect purposefully walked towards Walker and me. The suspect continued to push the pace of the incident by continuing to walk towards us after seeing that law enforcement was on scene. The suspect walked confidently and deliberately, without signs of nervousness or hesitation. It did not appear that the suspect intended to flee.
- The suspect acknowledged law enforcement presence by briefly raising his right hand to his armpit before dropping it back to his side. The suspect's flippant demeanor indicated he was unconcerned with our presence.
- The suspect was wearing blue jeans, a t-shirt, and a hooded sweatshirt that was unzipped at the front. The unzipped sweatshirt gave the suspect access to the front, left, and right sides of his waistband where pistols can easily be concealed. The suspect's shirt was covering his waistband, and I could not observe if a weapon was concealed. I could not observe the suspect's left hand to see if he was still holding a shotgun or pistol.
- The suspect walked up onto the porch of 623 W Montgomery Ave. This position gave the suspect a tactical advantage as it elevated his position above the officers on scene, while

the vertical beams and three-foot wall enclosing the porch provided the male with cover and concealment.

- The suspect refused to follow verbal commands in an attempt to deescalate the situation. The male then reached his right hand towards his waistline. From my training and experience, I know that individuals conceal firearms in the waistband of their clothing. At this moment I was afraid that the suspect was reaching for a weapon and was going to continue the violent encounter.

- I was afraid that the suspect was going to either retrieve the semi-automatic pistol that I had heard him firing previously, or place both hands on a shotgun. I was in fear that the male would attempt to shoot and kill me, Walker, and/or the other officers on scene. I was also unsure whose residence he was approaching and I was in fear that he could enter the home and take any occupants hostage, severely injure, or kill the original complainant or anyone else inside of the residence.

- The neighborhood surrounding 623 W. Montgomery Ave. is populated with 'single-family' residences. With the time of night (approximately 10:30 pm), I recognized that many of these residences would be occupied with innocent citizens who could potentially be struck by stray gunfire from the suspect. Based upon earlier reports and my own observations, the suspect had already showed a willingness to discharge a firearm in a crowded neighborhood, potentially causing severe harm or death to innocent citizens in the area.

Resistance:

- The suspect walked towards Walker and I, and did not stop when verbally challenged.

- The suspect acknowledged law enforcement presence by raising his right hand to armpit level briefly, but then dropped his hand to his side as he continued walking towards Walker and me.

- The suspect refused to acknowledge or comply with lawful commands to "drop the gun" from other officers on scene.

- The suspect walked towards Walker and I confidently and deliberately. It was evident to me that the suspect did not intend to flee and did not intend to surrender peacefully.

- The suspect then walked onto the front porch of 623 W. Montgomery Ave. This positioning bettered his tactical situation as the vertical beams and three-foot wall enclosing the porch provided him cover and concealment. The suspect's actions also gave him immediate access to any occupants inside of the residence.

- The suspect refused to follow my lawful command to "get on the ground."

As the suspect moved his right hand towards his waistline, I was in fear that he was reaching for the semi-automatic pistol that I had heard him fire previously, or was about to take control of a shotgun with two hands. I was in fear that he intended to shoot Walker or I, which could kill either of us. I was in fear that the other officers on scene could also be severely hurt or killed by gunshots from the suspect. I was also in great fear that he was accessing a weapon to potentially enter the residence and shoot the occupants inside. I was unable to give a verbal warning of the potential use of force due to the pace at which the suspect acted.

At this moment I made the decision to shoot the suspect, who I felt was a threat upon my life, Walker's life, the other officers' lives, and the lives of any occupants of 623 W. Montgomery Ave. I discharged one round from my patrol rifle. Due to the confined nature of the porch structure (beams and walls), I was unable to see if the round was effective. I did not see if the suspect fell immediately or continued walking on the porch. I could not see the suspect from my current position.

I heard other officers on scene announce over the radio "shots fired." I informed other officers on scene, verbally, that I had fired at the suspect. Walker and I then moved to the south to find cover. We did a verbal check of officers on scene to ensure that everyone was unharmed.

I heard Walker announce: That the suspect "walked inside of the house. Not sure if he dropped it. Couldn't see. He fired a shot, for sure. I saw smoke by the house."

Walker and I repositioned to the southwest of 627 W. Montgomery Ave., which gave us a view of the southwest corner of 623 W. Montgomery Ave. I repositioned a nearby patrol vehicle to the location to provide additional lighting and cover for Walker and me.

I then observed a female looking through the western window of 627 W. Montgomery Ave. I made contact with her through the western window and informed her that shots had been fired in the neighborhood and asked her if she could evacuate. The female informed me she was a caregiver at the location for a schizophrenic patient. She did not believe that she would be able to get her client out of the residence safely. She also informed me one additional person was in the home with her and the client. I asked her to shelter-in-place in the western portion of the home's basement. She informed me that she could safely shelter-in-place.

I remained at my southwest perimeter location as other officers arrived on scene to surround 623 W. Montgomery Ave. and ensure the suspect did not escape. I heard a tactical vehicle approach the front of the house and heard officers make announcements over loudspeakers for the suspect to show himself and come out for medical aid.

I was then relieved by Sgt. Meyer, who assigned Officer S. Anderson to take me to the Spokane County Public Safety Building (PSB). I made my patrol rifle safe by removing the magazine and clearing the chamber of the chambered round. I gave both the rifle magazine and un-chambered round to Anderson, who I observed place the items into a brown paper bag as an evidence preservation measure.

SPD Officer Christopher Benesch

On 1/7/2019, I was working uniformed patrol for the Spokane Police Department in Spokane, WA. At approximately 10:25 pm, officers were dispatched to 620 W. Montgomery to the report of shooting. The complainant called 911 stating his neighbor was shooting at him. Another person called from the same location stating the neighbor across the street was shooting at her. She was inside her residence and the neighbor was still outside the house.

She described her neighbor as a white male, approximately 25 years old, wearing a hat, a grey sweater, and blue jeans. She advised she was inside 620 W. Montgomery and the suspect was outside. I added myself to the call and responded immediately. Officer Walker advised via radio he was in the area, less than a minute after being dispatched. He was standing by to the south when he advised he heard a shot. He believed it sounded like a shotgun.

Upon arrival in the area, I approached from the south on Wall St. I turned all my vehicle lights off as I got closer to Montgomery Ave. I saw Officer Walker's vehicle parked approx. ½ block south of Montgomery Ave on Wall St. I parked my vehicle on the west side of street near his vehicle. As I exited, I removed my department-issued patrol rifle from my vehicle. At this point, two citizens and an officer advised shots were being fired, from the male suspect. The female complainant advised she was inside 620 W. Montgomery and the suspect was outside her house. I believed 620 would be further west on Montgomery in the 600 block and closer to Wall St. I believed the suspect would be close to where we were approaching on foot and he was armed with a firearm, possibly a shotgun, which he had already fired multiple times.

Multiple officers approached on foot heading north on the east side curb of Wall St. I saw a large white truck parked on the s/e corner of Wall St and Montgomery Ave, facing n/b. I ran to the front of the truck, utilizing the engine block as cover. As I got behind the truck, I looked east on Montgomery and could see the suspect. He was standing near a white older single cab pickup truck in front of the second house in on the s/e corner, later identified as 623 W. Montgomery Ave. In one of his hands, he was holding what appeared to be a long gun of some kind. I believed it to be a shotgun due to the thickness of the barrel and the magazine tube running to the end. It appeared to be lighter in color, but was hard to see due to the lack of light where he was standing. It appeared he was holding it by the stock, with some of the end of the butt stock extending above his hand towards his elbow.

Other officers nearby gave the suspect verbal commands to include "Spokane Police." I yelled at him "Police! Drop it! Drop the gun!" Another Officer said "drop it now!" I was in fear for

my safety, the safety of other officers, the victims who had been shot at, and any innocent bystanders in the area. I immediately raised my duty issued rifle and pointed it at the suspect for the following reasons:

Crime: Based on the facts and circumstances, I believed the suspect had committed the crime of at least 2 counts of Assault with a firearm, which are listed as Crimes of Violence under 9.41.010 of the Revised Code of Washington. Two separate people called in advising the suspect was shooting at them. Officer Walker, while first on scene, advised he heard what he believed to be a gunshot and he thought it was a shotgun.

Threat: I believed the suspect had committed multiple violent felony crimes, showing his propensity for violence. It appeared the suspect was currently armed with what I believed to be a shotgun. We were approx. 30+ yards away from him. Based on my training and experience, I know a shotgun can be extremely accurate and lethal at this distance. I was worried if he started firing at us, he could kill or seriously injure one or more of us. He had fired multiple rounds into the residence across the street, 620 W. Montgomery Ave. Shooting into an occupied residence shows his intent of inflicting death or serious bodily injury to those inside the residence. He was standing in an extremely dark front yard, near multiple points of cover. I knew other Officers and myself on scene would more than likely be approaching the scene on foot. There were a few vehicles parked on the street and a couple of trees, but cover was limited at this point.

It was unknown if the suspect did live at this residence, 623 W. Montgomery Ave. I was worried if he did live there, it would give him a huge advantage. Knowing the layout of the house allows him to know points of cover, where windows are and where they look out at, where any weapons or possible improvised weapons would be at, any locations he could possibly barricade in, and the best avenues of escape, as we didn't have the location locked down at this point. I was worried that if he didn't live there, he could break into the residence

and possibly hold innocent people as hostages and kill or seriously injure them. He had not been patted down, making it unknown if he had any other weapons on his person.

He was given multiple commands by other Officers and I. We identified ourselves as "Spokane Police," and he was advised to "drop the gun." The suspect then turned towards the residence, 623 W. Montgomery, and it appeared he was heading towards the door. I yelled at him "stop right there! Stop right there!" but he continued moving.

The suspect was in a residential neighborhood, and merely blocks away from North Central High School, Garfield Elementary, Havermale Alternative Schools, and several churches. If he was able to avoid capture, it would have been extremely dangerous for the surrounding community and any passerby's, as well as all LE.

Resistance: The suspect was standing in the front yard of 623 W. Montgomery, near a white truck. He was armed with what appeared to be a long gun of some kind, which I believed to be a shotgun. It was unknown at the time if he lived at this address or not. Other officers and I contacted him from approx. 30+ yards away, identifying ourselves as "Spokane Police." He was told to "drop the gun." He started making his way towards the residence, and was told multiple times to "stop right there," but he did not listen. It appeared he was attempting to gain entry into the residence, avoiding capture by LE. He was near multiple vehicles, which he could have used to flee the scene and evade capture as well. The suspect fleeing not only meant him avoiding capture, but that a violent person who, according to the information I had at the time, was firing a gun at neighbors in the area. A subject engaged in that type of behavior is an imminent threat to the safety of members of the public in that area, and being unable to apprehend him immediately would unduly jeopardize public safety.

At this point, I noticed movement in my peripherals coming from my right. Officer Walker and Officer Rankin were moving northbound on the curb right in front of where I was looking. I was worried they would walk in front of me and where my rifle was pointed, possibly causing a Blue on Blue incident. I took a few steps laterally to my left, but lost sight of the suspect at this

point, and was moving into an area with no cover. Shortly after, I heard a shot fired in front of me. I was unsure if it was the suspect shooting or if it was another officer, due to how quiet it was. I told other officers to find cover and asked if that was us. I heard another officer (Rankin) say, "that was me. That was me." I advised over the air "shots fired." It should be noted from the time I got out of my vehicle to the time a shot had been fired, was approximately only 30 seconds. It was a tense, uncertain, rapidly evolving situation and the pace of this altercation was quick.

After the shot was fired, from my position, I was not able to see where the suspect was. The set of stairs leading up to the porch were on the east side of the house and I was unable to see them. I did not know if he was outside or inside the residence, or if he had been shot. I asked for a unit with a patrol car to come to Montgomery Ave/Wall St and light up the front of 623 W. Montgomery. Corporal Rogan arrived shortly after and did this.

The Bearcat, an armored vehicle, arrived quickly to the scene and parked directly in front of the front door at 623 W. Montgomery. I could hear multiple announcements being made over the P.A. system saying things similar to "come out with your hands up. This is the Spokane Police Department. We want to make sure you are okay. Make sure there is nothing in your hands."

Eventually, the Bearcat moved closer and a team of officers moved up near the front door. Due to crossfire issues, I moved around to Cpl. Rogan's car and then to the Bearcat. It appeared officers on scene were providing medical aid to the suspect, who was now on the ground, near the stairs leading up the front porch. I then heard an officer say to move the suspect behind the Bearcat, giving them cover while they provide aid.

I helped other officers clear the residence to make sure no one else was injured inside. No one else was found. I helped other officers look for the spent shell casing fired by Officer Rankin. Officer Walker located it in the yard of 627 W. Montgomery very close to the fence. He placed a Crime Victim Card next to it to mark its location. I advised Cpl. Rogan of its location.

SPD Officer Taylor Johnson:

On January 7th, 2019 at about 10:26 pm, I was dispatched to 620 W. Montgomery Ave. in reference to a shooting call. The complainant reported that the neighbor across the street had been shooting at him. While I was enroute I heard on the radio that Officer Walker had checked on-scene standing by to the south of the incident. While awaiting more units to arrive, Walker reported that he had heard a gunshot at the location. He described the sound as a pump shotgun. I activated my body-worn camera while enroute.

I arrived on scene with Officer Benesch to the south of Montgomery Ave. on N. Wall St. As I exited my patrol vehicle, I equipped myself with my patrol rifle and moved forward to the incident location. Being as there were reports of a firearm, we knew that we needed to take tactical precautions.

We moved to a position of cover behind a parked truck on the southeast corner of N. Wall St. and W. Montgomery Ave. to prepare in the event of being fired at. While moving into this position, I could hear yelling from who I believed were the occupants of 620 W. Montgomery screaming, "He's shooting at us! He's shooting at us!" and other things to that effect.

As I got into our position I heard officers yelling "Spokane Police! Get on the ground!" I concurrently saw a male standing in the front yard of 623 W. Montgomery Ave. He was facing northbound to 620 W. Montgomery Ave. He stood in a wide stance as though trying to seem confrontational with the residents across the street. It looked like he was giving them a thousand-yard stare. From my training and experience this is consistent with someone wanting to intimidate and provoke a confrontation. A similar stance can be used to fire a long firearm.

The male held a long object in one of his hands. It appeared to be 2-3 feet long and was pointing downward. The shape was consistent with a short-barreled shotgun without a shoulder stock based on its shape. He held it at what I believed was the barrel of the weapon which is the proper hand placement for firing a long firearm. Based on the circumstances, reports of

gunfire, and the shape of the object that the suspect was holding, I believed that the item was a short-barreled shotgun. I feared for my safety and did not want to be shot by this male. To ensure I was safe, I wanted to stay behind cover which was a vehicle parked nearby.

Once I reached the parked truck on the southeast corner of the intersection I stabilized my rifle on the bed of the truck in the low-ready position. I visually located the suspect briefly. From my position behind the truck I did not have a clear visual of him for a long enough time to aim my rifle at the suspect. I felt he was extreme threat to the public and community. With an armed individual, who had already fired rounds, I did not want this male to fire on any neighbors or officers.

To my left was Officer Benesch who yelled out, "Police! Drop it! Drop the gun!" I yelled to the male to "Drop it now! Get on the ground!" Benesch yelled out, "Stop right there!" Benesch was giving the male commands to drop the gun in his hand. He did not comply.

While these commands were being given, I saw the male obviously respond as he looked at us with his head. He held his arms out slightly to his side as though in a shrugging manner. In no way did his body movements indicate any kind of compliance or surrender to us. He simultaneously turned south toward 623 W. Montgomery Ave. and began walking to the porch of the residence. At this time, I was unaware if the male lived at the residence or if there were any other individuals inside who could be in danger.

At about that time Officers Walker and Rankin maneuvered north along the sidewalk on the east side of Wall St., positioning themselves between myself and the suspect. I attempted to maneuver to the north of their position and around Benesch to maintain visual contact with the male.

Crime

At the time of our arrival on scene, we were given multiple reports that the suspect had committed multiple felony assaults (151 degree RCW 9A.36.011) by firing a firearm at a neighbor's residence. While he was on scene Officer Walker had advised over the radio that he

heard a gunshot being fired from what he believed to be a pump-shotgun. A neighbor across the street was yelling at us that "He's shooting at us! He's shooting at us!"

Threat

Based on the circumstances known at the time we believed the suspect had demonstrated extremely violent behavior with disregard for the safety of citizens in the area. He was believed to have fired a firearm, later described as sounding like a shotgun by another officer. Neighbors across the street reported the suspect had fired at them. Based on this information it was believed that the suspect had demonstrated intent to kill or seriously harm his neighbors. A neighbor screamed at us on scene saying the suspect was shooting at them. I visually observed the suspect holding an object that appeared to be a short-barreled shotgun.

Being as the suspect was armed with a shotgun and had reportedly shot at people already officers had to expect to be faced with a lethal threat. All positions that officers could take to address the suspect were within lethal range of a firearm. Lighting conditions were poor as it was about 2230 hours and illumination was very low. Officers had to approach on foot with few positions of cover from rounds fired from a firearm.

It was unknown at the time whether or not the suspect lived at 623 W. Montgomery Ave. Once confronted by officers, the suspect turned and made his way into the residence. If he lived at that location, he would have an extreme advantage over officers. It was unknown if he had additional weapons stored inside the residence. The suspect would have knowledge of the multiple positions of cover and improved angles to fire a firearm from within the house. If the suspect was not a resident at the home, then any other possible occupants would be in extreme danger. He had already shown the capability of using lethal force against neighbors. Based on my training and experience I know that an individual making entry into an occupied residence while evading police is likely to escalate the situation by taking hostages.

It is an essential consideration to take into account the other citizens and gatherings in the area. The location was a densely-populated residential area. It was early enough in the

evening for many people to be out in public (about 2230 hours). The location was close to multiple schools, churches, businesses/restaurants, and citizens/drivers in public. Multiple law enforcement officers were enroute to the location. If the suspect were to escape from the scene many lives would be put at extreme risk. He also stood in a position where there were avenues of escape via the multiple vehicles in his vicinity. It was unknown if the suspect had additional weapons on his person. He had not been frisked and was not cooperative with police on scene.

Resistance

The suspect was armed with what was believed to be a long-gun (rifle or shotgun). He had been given abundant verbal commands by police on scene. I was wearing the uniform of the day (patrol jumpsuit with badge on left chest and SPD patches on shoulder). I had told the suspect "Get on the ground! Police!" While referring to the object in his hand, I yelled at him to "Drop it!" Other uniformed officers had also given commands identifying themselves as police and ordering him to drop his weapon and get on the ground. The suspect made it appear as though he had heard our commands by turning his head toward us and looking at us. He shrugged his arms out to the side demonstrating a non-compliant attitude.

He consciously refused to follow commands by turning and walking toward 623 W. Montgomery Ave. It appeared that he was attempting to flee by entering the residence and avoid capture, refusing to surrender. He stood next to at least one vehicle on the property which could have been used as a mode of transportation to escape the scene.

With considerations to proper equipment and tactics used, I had deployed my patrol rifle as my primary weapon. Given that we were faced with a lethal threat (shotgun or long-gun), I knew that non-lethal options would not be ideal in this situation. I was equipped with a TASER ECW and pepper-spray, neither of which would be my initial choice in equipment. Based on my training and experience I knew that using non-lethal tools while faced with a lethal threat would likely result in death or great bodily harm to others or myself. I was also equipped with my

service-pistol Glock 17 9mm. I chose my patrol rifle AR-15 as my primary option because it requires fewer manipulations than a handgun and is more effective at longer distances.

With all known factors and circumstances at the time, I believed lethal force was necessary to contain the threat presented to us. I was prepared to deploy lethal force utilizing my patrol rifle. While in the process of attaining the suspect as a target with my rifle I had selected the safety off on my rifle. I was prepared to fire my rifle at the suspect to prevent the highly-likely event of death or great bodily harm to others or myself. I believed that that the suspect had committed multiple felony assaults by assaulting his neighbors with the use of the firearm, which would produce great bodily harm or death. If the opportunity had presented itself, I would have fired at the suspect.

I was unable to acquire the suspect as a target with my rifle due to Officers Rankin and Walker positioning themselves in front of me. I did not fire my rifle at the suspect. As I repositioned myself around the truck, I heard the sound of a suppressed rifle discharging. I believed that the rifle was either Officer Walker's or Rankin's. After the gunshot I observed the male continue to walk into the residence and out of my sight. At that point, I was unsure if the suspect had been injured by the gunfire. I was unsure if the male had made entry into the residence. My visual was obscured by the officers in front of me as well as the angles of my position.

Once it was confirmed that an officer had fired the round Benesch broadcasted over the air that a shot had been fired. I maintained a position of cover and kept over-watch on the northwest corner of the residence from what I could see. I remained in this position as other officers arrived on scene.

The time between my arrival and the unfolding of these events was approximately 30-40 seconds.

Neighbors and citizens in the area were exiting their residences to see what was happening. Benesch and I consistently told all of them to remain inside and out of the area.

Corporal G. Rogan arrived on scene and parked his patrol vehicle in a security position in the intersection of Montgomery and Wall St. to the northwest of the house. I maintained a position of cover and over-watch on the residence from his patrol vehicle.

More officers and resources arrived on scene. Once the SWAT Bearcat, an armored vehicle arrived on scene I assisted other officers in sweeping the residence. The suspect was located in the front doorway of the residence and appeared to be unconscious. After other officers had pulled him behind the bearcat for medics to begin treatment I assisted in the sweep of the residence for any other injured subjects. (There were none.)

During this time, I was equipped with a ballistic shield. My body camera de-activated and re-activated multiple times as a result of the positioning of the shield.

SPD Officer Christopher Johnson:

On 01/07/19, I was at the West Central cop shop at 1901 W. Boone Ave after just having finished my dinner and had begun to write my reports from an arrest before dinner. I heard units being dispatched to the area of 623 W. Montgomery Ave. reference a suspect shooting at the complainant. The complainant said the neighbor was shooting at her. Officer Walker advised he was on scene.

I immediately grabbed my computer and sprinted to my patrol car. By the time I got my patrol car started all my teammates had already left. I quickly attempted to catch up to them while driving with my fully marked patrol car with emergency lights and sirens activated. I was trying to plan what our response would be when we got on scene. I also unlocked my rifle as I got closer to the scene.

Upon arrival, I quickly jumped out of my patrol car as Walker said he had heard a shot fired. I initially began to run to the alley to prevent the shooter from moving behind us. I then heard officers yelling commands to the effect of, "drop the gun!" I sprinted to their position. It should be noted I still had not activated my camera. As I peeked east around the corner house I

saw a white male at the target location turn to the front door. I could not see his hands from my location. I then heard an officer fire a single round and the suspect was then inside the home.

I then ran to the alley with Officer Matt to contain the home. As we moved into a yard directly south east of the target location we observed we could see in most of the home via the living room and kitchen area. I then went to different locations giving fields of fire and directing manpower. I assisted with moving the suspect behind the bearcat for medics to work on him. I then assisted with clearing the home of any other injured subjects. (There were none.)

SPD Officer Paul Buchmann

On 01-07-19 at about 2225 hours, I responded to 623 W. Montgomery reference a shooting call. A caller was on the phone with 911, advising that their neighbor was actively shooting a gun at them.

I was close-by and arrived in the area at 2227 hours and parked on Howard, just north of Montgomery. Just as I was pulling up, Officer Trevor Walker advised that he heard a shot being fired at the location. Officer Gorman also arrived at the same time and location as me. Officers Walker and Rankin were approaching the location to the southwest. I deployed with my patrol rifle due to the nature of the call. I also activated my body camera as I arrived.

As I came around the corner of the house at the northwest corner of Howard and Montgomery, I could see a subject near the street on the south side of Montgomery in front of 623 W. Montgomery. I could see the male was holding a long and skinny object, visually consistent with a rifle or shotgun. I could also see a smoke or haze in the air near that male, all consistent with a gun being recently fired.

The officers and suspect were directly in line with me, placing me in a crossfire, so I held up for a brief moment at the corner of the house. I heard officers yelling commands and identifying themselves and heard a gunshot as the male ran towards the front door of 623 W.

Montgomery. Officers advised that they had fired a shot at the subject. I saw the subject go into the house through the front door. The door was still standing open after he entered.

Officer Gorman and I approached on the north side of Montgomery and maintained cover of the northeast corner of the house. Additional officers arrived and I directed them to go to the back of the house for containment. Multiple subjects were in the front of 620 W. Montgomery and advised that he had been shooting at them. One male advised that he had armed himself. We directed them to secure their weapon and go inside. I maintained cover of the front of 623 W. Montgomery and never saw any movement or changes after the subject ran inside. I attempted to get a better view of the location from neighboring houses, but was not able to do so.

The Bearcat had arrived and officers were eventually able to see the subject laying just inside the home. Officers were able to move up and pull the subject out of the house. I went to the front of the house to assist. Officers moved the subject behind the Bearcat as I was accessing the medical pack from the Bearcat.

At that time, I was able to see that the subject was a heavysset white male wearing a white t-shirt and blue jeans. I could see blood near the male's right shoulder or chest. We removed his shirt to check for injuries. I located a single gunshot wound below his right arm in his torso. I placed a chest seal on the wound and continued a rapid assessment for other injuries. I did not observe any other injuries to him. As I was working on the male, I could hear Sgt. Meyer and Sgt. Wheeler coordinating medics to come up to render aid. The male was not responsive to any stimulus and I checked him for vital signs. I was not able to get a carotid or radial pulse and felt no respirations. His pupils were fixed and not responsive to direct bright lights.

Medics arrived and I advised them of my actions and observations. They took over medical care at that time. After extensive attempts to revive the male, he was pronounced deceased at 2311 hours. I observed as medics retrieved their equipment and cleared the scene.

I remained at the front of the house with the subject until relieved by Officer Burnworth. As I was leaving, I walked east on the south sidewalk of Montgomery. I observed what appeared to be drops of blood on the sidewalk, extending from the front of 623 W. Montgomery to the front of 619 W. Montgomery. I had not seen the suspect male in that area when I arrived on scene.

SPD Officer Paul Gorman

On 010719 at approx. 2225hrs, I responded to the area of 600 W Montgomery to a report of a male firing a gun. The complainant, who lived in and was calling from 620 W Montgomery, was reporting a w/m, 25 years old wearing a grey sweater and blue jeans shooting a firearm at her house. The incident was happening as she was calling 911.

Just before I arrived, I heard other officers arrive and park to the south of the incident. I arrived at the same time as Officer Buchmann, we parked to the northeast of the incident on Howard. While getting out of my vehicle and getting my rifle, I thought I heard what sounded like a gunshot. The other officers on scene advised they heard a shot as well, and even described it as a 'pump shotgun'.

Officer Buchmann and I slowly approached Montgomery from Howard on foot. As we came into visual range of where the incident was, I started to hear the other officers verbally challenge the male. From where we were standing, I could only see shadows of the male, in the front yard of 623 W Montgomery. He was on the other side of a full size truck and was only illuminated by other officers' flashlights, so I was unable to see him clearly. The other officers were positioned to the west of the male.

I heard numerous verbal commands being given to the male, then I heard what sounded like one gun shot. I saw the shadow of the male run into the open front door of his residence. Officer Buchmann and I approached closer, but due to a crossfire situation we were unable to get close enough to see the male or inside the front door.

Once sufficient officers and equipment arrived, I observed other officers remove the male from inside the front door of the residence. I moved up with a team to join other officers search the residence for other potential victims. After assisting with the house clear, I stood by just in case Medics needed assistance. When they cleared, I left the scene.

SPD Officer Joseph Matt

On 1/7/2019 at approximately 10:26 pm, I heard dispatch air a call about a male shooting at a neighbor. The neighbor was inside her home and the male was outside his house around the 600 block of W. Montgomery Ave. The male was described as a white male with a gray sweater and blue jeans.

I begin enroute from the West Central area. I arrived on scene on Wall St. to the south of the address along with other officers. Just before I parked, I heard Officer Walker advised they just heard a gunshot which sounded like a shotgun.

I exited my patrol vehicle and deployed my patrol rifle. I was conversing with Officer Christopher Johnson about where to set up tactically. I heard officers giving commands to the subject, something to the effect of, Spokane Police, show me your hands and to drop the gun.

I ran up to a white pickup with a long car trailer attached, which was parked on Wall St. facing north. As I got to the bed of the truck, I heard one gunshot. I wasn't in a position to see the male at the front of the residence of 623 W. Montgomery. I heard Officer Rankin advised he was the Officer who fired his weapon.

Afterwards, I ran towards the alley and took position covering the southwest side of 623 W. Montgomery Ave. with Officers Trevor Walker, Rankin, and C. Johnson. Officer C. Johnson and I went to the alley and took position covering the Southeast side of the house. I remained in that position until the male was located and the home was secured. Officer Thompson and Hayward continued covering the back of the house. I was wearing my department issued body camera and it was activated during this incident.

SPD Reserve Officer Carrie Christiansen

On 01/07/19 at 21024 pm, I was working with Officer Thompson when dispatched to a shooting call at 623 W. Montgomery St. Dispatch advised a male was shooting at a neighbor's house. While enroute, dispatched advised there were still shots being fired. We arrived on scene at 2228 hours. After arriving, I heard what sounded like a single gunshot. There were already a number of officers on scene. I heard one officer yell "shot's fired" and advised the suspect had retreated into his residence.

Officer Thompson and I positioned ourselves in the alley to the south of the residence. There was a single window on the south side of residence facing the alley. I positioned myself behind cover until I was directed to move a patrol car into the alley to light up the south side of the house. I advised the neighbors to the south to shelter in place.

When other units on scene advised the suspect was detained. I assisted in putting up crime scene tape on the south side of the residence. I cleared the scene at that time. My BWC was activated throughout.

LAY WITNESS STATEMENTS

(Not all witnesses contacted by police are listed in this review. The statements below are representative of the statements collected and are summarized. The police reports contain the exhaustive list of witnesses and complete statements.)

Jolyn Maze

(Mr. Maze was interviewed by SPD Officer Nathanael Gobble)

Maze lives at 620 W. Montgomery Ave. with his wife. They were both home tonight and they had two young male guests at the house with them. Maze stated he, his wife, and two male guests were planning on watching a movie together. Maze and the two boys went outside

and sat down on the front porch to smoke. They were sitting there smoking when he saw his neighbor from across the street approach them. He did not know his neighbor by name but exchanges pleasantries with him almost every morning when he leaves for work. Maze told me he leaves for work at 0500 every morning and sometimes his neighbor's truck is parked in front of his driveway. His neighbor is always quick to move his vehicle out of the way and they often wave to each other and say good morning. Maze has never had any problems with the male. Maze has always been on good terms with the male before tonight.

Note from Officer Gobble: The neighbor Maze was referring to was believed to be David Novak. Maze did not know his name. While I was speaking with Maze, he pointed to male who medics were giving aid to and indicated he was the same male he had a confrontation with.

Maze confirmed that Novak lives at 623 W. Montgomery and he pointed to a white truck parked on the SE corner of Wall/Montgomery and said the truck belonged to Novak. Gobble later checked the vehicle registration on the truck (WA #C65808M) through DOL and it showed to be registered to David Novak. The male also had "Novak" tattooed on his back.

Maze stated that while he was sitting on his porch smoking, he saw Novak walk their way from his truck, which was parked on the SE corner of Montgomery/Wall. Novak walked from his truck, across the street and into Maze's front yard. Novak asked them if they wanted some marijuana. Maze said yes and Novak gave him a small amount of marijuana. Maze was thankful and took the marijuana straight inside the house and walked back outside. Novak was clearly intoxicated, he was swaying back forth while standing still and his speech was slurred. When asked if Novak was intoxicated on alcohol or high on drugs, Maze said, "He was fucked up" on alcohol.

They were making small talk with Novak and Maze asked Novak if he needed a drink. Maze and the two males with him were also drinking from a "pint" and Maze offered Novak some. Out of nowhere, Novak stated, "I'm with the KKK, nigga." Novak referred to Maze as, "Nigga" twice and the two other boys started to get upset. Novak is a Caucasian male and Maze

and the boys are African American. Maze said he, "Knew where this was gonna go" and he told the boys to go in the house. Novak had never even come across the street before and Maze couldn't believe what he was saying. Maze did not want any violence and told the boys to go inside so he could talk to his neighbor. He tried to talk to Novak but Novak again referred to being part of the KKK and said something similar to, "They butt-fucked me." Novak stated, "Me and my friends ... " and Maze said, "What about you and your friends?"

Maze told Novak to go home and to get off his property. He told Novak he would talk to him tomorrow when he was sober. Novak reached out to touch Maze and Maze hit his hand away. Maze stated, "He went to touch me and I didn't trust that. I pushed his hand back, I didn't know what he was going to do after he said what he said." Maze stated that when he pushed Novak's hand away, he (Maze) clenched his fist and told Novak, "Boy, I could ... " and then told him to go home. He told Novak to get off his property and Novak started walking toward his house across the street. When Novak got to the middle of the street, he yelled "I'm gonna kill you niggas." Novak kept walking toward his house and Maze turned around to go inside. He opened his front door and had one foot inside when he heard two gunshots in quick succession.

Directly after the gunshots, Maze heard a metallic sound as if the bullets had struck something metal. He thought they may have hit his mailbox. Maze immediately ducked and ran upstairs. He yelled at everyone in the house to get upstairs and stay down. Maze retrieved his rifle from his closet and went back downstairs. When speaking to dispatch, Maze told the operator: "That man shot at us at least five, six, seven times...He hit my mailbox...It went through my house."

Maze stated that he went to his front door which was still open. He looked outside and saw Novak in the middle of the street. (Gobble asked Maze if he saw a gun in Novak's hands and Maze said, "I seen it. I seen it. It wasn't no rifle ... it was a handgun.") Maze said, "I could have hit him right there but I didn't want to. I didn't want to hurt him." Maze went to his kitchen and

crouched down where he could see both his front door and his back door. He told himself he would only shoot Novak if he tried to come into his (Maze's) house. Maze heard 4-5 more single gunshots. In between the shots he could hear Novak yelling, "Nigga!". Maze believed, based on what he heard, that the gun was either a .40 or 9mm handgun. Maze's intent on retrieving his firearm was to protect his house and his family. He did not want to have to use it. He repeated several times that, if he had wanted to inflict violence on Novak, he could have several times. He did not want to hurt him because they had always been on good terms in the past.

Maze stated that he stayed in his kitchen until he heard officers yelling outside. He could hear them yelling, "Get down, get down" and then "Police." Maze heard additional gunshots and he started to go outside. Maze was ordered to go back inside by officers on scene and he complied. He later came back out and was contacted by officers there. Maze never fired his rifle and never left his property. He volunteered to allow officers to check his firearm and take it with them.

(Gobble later re-contacted Maze and asked him if he had seen Novak have any conflicts with any other neighbors. Maze said he had not and his only contact with Novak that day was this incident. Gobble asked him if he saw Novak hitting the truck parked in his driveway with a bat and Maze said no. Gobble checked around the front of Maze's house and did not see any bullet holes or damage of any kind.)

Tyler Hammer (Gertsbrein)

(On 01/10/19 at 9:16 am, Tyler Hammer was reached by phone. The interview was audio recorded. Hammer explained that Hammer is his legal name but he goes by Gerstbrein which he will soon be legally changing his name to. Hammer had called law enforcement on 01/08/18 and left a voicemail for Sgt. Rosenthal stating he was a witness to the incident and to call him

with any questions. Sgt. Rosenthal forwarded an e-mail to investigators containing that voicemail. The following is a synopsis of the interview.)

On the night in question he and Heather were asleep when they were awakened by what sounded like a gun shot. Hammer said they got up and he heard the sound again and thought then it sounded more like someone was banging on a can or "beating up" a car.

Hammer looked out his living room window and saw a male, 2 houses to the east of his, screaming and yelling and hitting a truck with something that he assumed was a bat. Hammer went downstairs and about that time the male hit the truck again and it was really loud. About this same time, Hammer saw officers pulling up on Wall next to his house. When the male struck the truck as officers pulled up, Hammer suspected the police thought it was a gun shot. Hammer emphasized that it was really loud.

Hammer said officers approached and "turned on the spotlight and told the male to freeze. He didn't freeze. He did, however, look very confused. He dropped whatever was in his hand (which Hammer assumed was the bat) and then put his hands up and started to walk away from them after police told him to stop moving. And, then at that point Hammer couldn't see him anymore. The male had just gone out of sight around the corner and "the shot happened". Hammer said the male had gone out of view because the neighbor house obstructed Hammer's vision. Hammer said he couldn't see what the male did after he went out of his view.

Hammer said he did see the male hitting his truck with something and heard him screaming. Hammer said he couldn't make out what the male was saying. Hammer said it was more "non-sense really". When asked, Hammer said he couldn't tell if the screaming was directed at anyone.

When asked about past contact between the Hammers and the male who lived there, Hammer said when they first moved in 4.5 years ago the male welcomed them to the

neighborhood. Since, other than greeting him in his yard when they walked by, they haven't spoken to him.

Hammer said he didn't immediately know it was a bat the male had but assumed it was based on the sound it was making as he hit the truck. Hammer said his suspicion (that it was a bat) was confirmed when the police shined their "spotlight" at him. When asked about the "spotlight", Hammer said it wasn't a spot light per se but was actually a bright flashlight(s). Hammer's house is on the SW corner of Wall and Montgomery. Hammer said he witnessed everything from his living room and was essentially looking over the officer's shoulders. The officers were directly between Hammer and the male with the bat.

Hammer said from the beginning of the incident until it was over he heard 4-5 bangs coming from the male with the bat. Hammer thought the male was about to strike his truck again when the police shined lights at him.

When asked what he heard the officers saying to the suspect, Hammer said, "Spokane Police Department. Put down the weapons. Don't move". When asked if that was when the male dropped the bat, Hammer said, "Shortly after that. It took a second, and, like I said, why he was shocked and, you know, kinda looking over at them he slowly dropped the bat. You know, kind of like, (ah OK), you know, and dropped it and then put his hands up, but started to walk away". Hammer said the shot happened "real quick" after the male went out of his view; maybe 3-5 seconds.

At 1:23 pm, Tyler and Heather Hammer were contacted at their residence. Tyler Hammer went over the story again. Hammer demonstrated how Novak put his hands "up" by holding his arms out to the side, hands about even with his shoulders/chest. Hammer demonstrated that, as he recalled, Novak held the bat in his left hand (house side) as he faced the officers. Hammer said Novak appeared to simply open his hand and the bat tumbled to the ground before turning and walking towards the house out of his view. Hammer described Novak as being confused or looking drunk.

(Noting that there had been blood found along the side of the truck, Hammer was asked if it was possible Novak was shot while he was still at the truck rather than by the house.) Hammer said he didn't believe so.

(Gobble later went back and looked at the photos and talked to Detective Melville who had been at the autopsy. Melville showed Gobble photos of cuts Novak had on his hand. A couple of those cuts appeared to be fairly deep. Gobble then realized it was more likely that the blood on the truck occurred as a result of those cuts. Novak likely cut himself prior to police arriving, and as he hit the truck with the bat he was casting off blood from those injuries along the side of his truck.)

Cassandra Wright

(Ms. Wright was interviewed by SPD Officer Randy Burnworth.)

Wright said had been inside 627 W. Montgomery Ave. when at approximately 9:00 pm when she heard the male neighbor living at 623 W. Montgomery Ave. come outside and scream " Get over here Nigger" while he was hitting his truck and the cement with a baseball bat.

The male neighbor was wearing a gray hoodie and dark pants. He sounded like he had a growly voice and appeared to possibly be intoxicated. Wright stated that she heard approximately 20 "bangs" that appeared to be coming from a metal bat striking the truck and cement. The male then went inside the house at the 623 address for about 5-10 minutes. The male then came back outside and began striking the truck and the cement again. Wright estimated to hear the "bang" noise approximately 30 more times when he came out the second time. The noise sounded like it was metal on metal or a big drum going off. At one point she thought she heard what sounded like glass breaking.

The last "bang" that Wright heard sounded like it came from the East side of the house she was in and it may have been a gunshot.

LE arrived on scene and began giving the male commands to drop any weapons that he may have and to come out of the house. Wright got told to go back inside the 627 residence and she did so. While she was inside Wright heard law enforcement saying "we have aid", "crawl out to us if you need to", and " we can help you" because he (the male neighbor) was probably injured.

David Parker

(Mr. Parker was interviewed by SPD Officer Jordan Brown)

Parker stated that he heard arguing coming from outside. He stated that a neighbor "Ray" was over at Dave's (Novak's) house. Parker heard what sounded something like a sledge hammer hitting something, possibly a truck. He heard one of the males say something along the lines of "lay it down." Parker walked outside to his porch while this was going on. He did not see anything, only heard.

John Townsley

(Mr. Townsley was interviewed by SPD Officer Jordan Brown.)

Townsley stated at approximately 10:30 pm he heard a series of loud banging noises. To him it sounded like something metal was being slammed against a car. He stated that these sounds did not sound like gunshots to him. Townsley also stated that he heard some voices yelling but could not make out what was actually being said.

Rolin Hamlet

(Mr. Hamlet was interviewed by SPD Officer Mark Brownell.)

Hamlet said he had left his house and was walking EB on Montgomery. He heard the male (Novak) in the blue house with white trim yelling at neighbors across the street. He heard

this male saying something like, "Fuck you niggers, I'll fuck you up." Hamlet said this male was antagonizing the neighbors across the street from him.

Hamlet said he heard a loud bang and believed it was a gun shot. When asked how sure he was, Hamlet replied "about 85%" sure. Hamlet then heard 4-5 more loud bangs and then heard something hit the ground. Hamlet said he thought by the sound of the object hitting the ground, he thought this object was something metal. Hamlet said he heard the neighbors across the street from the agitated male say they were going to go inside and call the cops

Jennifer Bleasedell

(Ms. Bleasedell was interviewed by WSP Detectives Larry McGill and Ryan Spangler on 1/14/19.)

On the night of the incident, she had been sitting on her porch and speaking on the phone. She heard some loud yelling down the block. She could not make out the words spoken but could tell that they were loud and angry.

A few minutes later, she heard three gunshots. One, then about a two second pause, then two quick ones right together. They sounded as to have be fired from the same gun as they all sounded the same. Then the police showed up. She had not seen them there prior to the gunshots. Bleasedell went inside her house after the gunshots but came back out after the police had arrived. There were no further shots fired after the police arrived. Bleasedell was confident these were gunshots and not some other sound.

Cord Newman

(Mr. Newman was interviewed by WSP Detectives Larry McGill and Ryan Spangler on 1/14/19.)

On the night of the incident, he heard loud banging sounds coming from outside. Newman went outside to investigate what was going on. He was concerned regarding whether any of his neighbors' cars were being beat up or if there was some property destruction going

on. He also heard loud screaming and a couple of racial epithets. At that point, Newman was instructed by law enforcement to go back inside his home and he did so.

While inside, Newman could hear officers yelling at the individual. Shortly afterward, he heard a gunshot. Shortly after that, Newman was approached by a police officer on his back porch who asked permission to put some sharpshooters inside. Newman agreed and they came in and went upstairs. They left shortly afterwards.

Newman had heard at least 3 bangs while he was inside. They were incredibly loud. He could see how someone could mistake them for gunshots. Newman did not think they were (gunshots) because he had heard several by then. Newman stated they sounded like someone was banging a metal object like a garbage can or something, or a hood of a vehicle, perhaps. The bangs were incredibly loud and Newman could understand how someone would think they were gunshots.

Newman also heard racial remarks yelled out. At least one use of the “N” word. Newman did not hear anything mentioned regarding the “KKK”.

After Newman was directed inside by police, he definitely heard a gunshot that sounded like it came from a handgun. Newman stated he has had a lot of experience with firearms having grown up on a ranch.

Newman also heard, from inside the house, when orders were yelled out by police. He heard the police yell to “put the weapon down.”

LEGAL ANALYSIS

Review of Relevant Facts

The legal analysis in this case begins with a close look at the information Officer Rankin was provided with both prior to and after his arrival. There was information broadcast by dispatch and there was also information learned by and shared only among officers on the scene due, in part, to the

compressed timing of events in a very rapidly evolving, tense situation. The total time from the initial 9-1-1 call to an officer firing a single shot was just under 4 minutes. In addition, it is important to point out that, at the time of the incident, officers did not know the name of the shooter, where the shooter resided, nor what type of firearm the shooter had.

The initial dispatch, reported by two different complainants, in separate calls, from 620 W. Montgomery, was that their neighbor was shooting at them; that the neighbor was still outside, and that the complainants were inside their house. One of the complainants reported that she had guns in the house. Multiple SPD units responded to the location as, based on the information provided, the safety of citizens was at stake at the hands of an active shooter. The complainants provided a description of the shooter as a white male, approximately 25 years old, wearing a hat, gray sweater, and blue jeans. Officer Walker arrived on the scene first and soon reported that he heard a gunshot that sounded like a shotgun. Walker's report was also broadcast by dispatch to other responding officers. Available information, at that time, indicated that both the complainants and at least one law enforcement officer had heard gunshots.

Almost immediately after Officer Rankin arrived on scene, Rankin reported hearing an angry scream from what sounded like an enraged male that seemed to originate from the area on W. Montgomery from which the initial call had come from; mid-block on West Montgomery. That was followed by what Rankin believed to be three successive gunshots, coming from the same area, that sounded like they had come from a semi-automatic pistol, based on his training and experience. These can be heard on Officer Walker's body camera. At this point, Rankin is concerned that the shooter is armed with "multiple firearms."

Other officers on scene had also described a male standing in the area of 623 W. Montgomery that appeared to have a weapon in hand, variously described as: "He was holding what appeared to be a long gun of some kind. I believed it to be a shotgun due to the thickness of the barrel and the magazine tube running to the end. It appeared to be lighter in color, but was hard to see due to the lack of light where he was standing. It appeared he was holding it by the stock, with some of the end of the butt stock extending above his hand towards his elbow" by Officer Benesch.

Officer Taylor Johnson described: "The male held a long object in one of his hands. It appeared to be 2-3 feet long and was pointing downward. The shape was consistent with a short-barreled shotgun without a shoulder stock based on its shape. He held it at what I believed was the barrel of the weapon which is the proper hand placement for firing a long firearm. Based on the circumstances, reports of gunfire, and the shape of the object that the suspect was holding, I believed that the item was a short-barreled shotgun".

In addition, Officer Paul Buchmann stated: "I could see a subject near the street on the south side of Montgomery in front of 623 W. Montgomery. I could see the male was holding a long and skinny object, visually consistent with a rifle or shotgun. I could also see a smoke or haze in the air near that male, all consistent with a gun being recently fired."

Finally, though he did not see Novak with a firearm, Walker reported "what I believed to be a light haze of smoke just in front of the male, which was consistent with the recent discharge of a firearm."

Walker and Rankin, who were essentially in trail of one another and eventually side-by-side as they approached the corner of N. Wall and W. Montgomery, made visual contact with a male that matched the description of the shooter, as provided by the complainants. Multiple officers began to give Novak commands to drop the gun and to get on the ground. Novak did not go to the ground and officers were not able to observe whether he had dropped the object that had been in his hands. Instead, Novak continued to walk through the driveway towards the house and began to climb the steps to the porch.

By this point, several officers on scene, most of whom had weapons pointed at Novak, expressed fear for their own lives and those of other officers, as well as any potential persons inside the house. They also feared that Novak would go through the house, exit through the back door, and put the lives of others in danger. (See each of their statements as stated above.) Rankin described the reasons he applied deadly force in his statement which is quoted in its entirety above.

Law In Effect at the Time of This Incident

For the period between December 6, 2018 and February 4, 2019, the law in effect to address the justifiable use of deadly force by law enforcement was contained in RCW 9A.16.040, but included the provisions of I-940.

The incident described in this report and analysis, having occurred on January 7th, 2019, is therefore, governed by the requirements of I-940. Under the terms of I-940, the facts of this incident are required to be analyzed under RCW 9A.16.040. Jury instruction 16.01 embodies the statutory language (as modified by I-940 requirements) below:

RCW 9A.16.040(1) Homicide or the use of deadly force is justified in the following cases:

(c) When necessarily used by a peace officer meeting the good faith standard of this section:

(i) To arrest or apprehend a person who the officer reasonably believes has committed, has attempted to commit, committing, or is attempting to commit a felony.

(2) In considering whether to use deadly force under subsection (1)(c) of this section, to arrest or apprehend any person for the commission of any crime, the peace officer must have probable cause to believe that the suspect, if not apprehended, poses a threat of serious physical harm to the officer or a threat of serious physical harm to others. Among the circumstances which may be considered by peace officers as a "threat of serious physical harm" are the following:

(b) There is probable cause to believe that the suspect has committed any crime involving the infliction or threatened infliction of serious physical harm.

Under these circumstances deadly force may also be used if necessary to prevent escape from the officer, where, if feasible, some warning is given, provided the officer meets the good faith standard of this section.

(4) A law enforcement officer shall not be held criminally liable for using deadly force if such officer meets the good faith standard adopted in this section.

(5) The following good faith standard is adopted for law enforcement officer use of deadly force:

(a) The good faith standard is met only if both the objective good faith test in (b) of this subsection and the subjective good faith test in (c) of this subsection are met.

(b) The objective good faith test is met if a reasonable officer, in light of all the facts and circumstances known to the officer at the time, would have believed that the use of

deadly force was necessary to prevent death or serious physical harm to the officer or another individual.

(c) The subjective good faith test is met if the officer intended to use deadly force for a lawful purpose and sincerely and in good faith believed that the use of deadly force was warranted in the circumstance.

Under (c)(i), homicide or use of deadly force is justified if used to arrest or apprehend a person who the officer “reasonably believes” has committed a felony. Reasonable belief means a belief that would be held by an ordinary and prudent person in the same circumstances as the actor. “Reasonably believes” does not mean that the officer must be correct about the facts. It means that, at the time the deadly force is applied, the officer relied upon facts from such sources and under such circumstances that it would be reasonable for the officer to believe in their accuracy.

Here, Officer Rankin reasonably believed that Novak had committed a felony. Two people called 9-1-1 to report that their neighbor was shooting at their house. Upon his arrival, a fellow officer heard a gunshot from the same area as the complainant’s address which reasonably corroborated that the information was accurate. Also, Rankin heard what he believed to be gunshots from a semi-automatic handgun himself. Novak was located in the driveway of 623 W. Montgomery; a location that officers had heard yelling and apparent gunshots. It is a felony to shoot at another human being or their residence.

Under (2), in considering whether to use deadly force to arrest or apprehend any person for the commission of any crime, an officer must have probable cause to believe that the suspect, if not apprehended, poses a threat of serious physical harm to the officer or others. Probable cause to support an arrest requires a showing that the facts and circumstances within the arresting officer's knowledge and of which the officer has reasonably trustworthy information are sufficient to warrant a person of reasonable caution in a belief that an offense has been committed.

Section (2)(b) lists an example: That there is probable cause to believe that the suspect has committed any crime involving the threatened infliction of serious physical harm. The fact that Rankin was aware of the complainants' report that their neighbor was shooting at their house, along with the other corroborating evidence listed in this review, constituted probable cause sufficient to satisfy (2)(b). Firing a gun at someone or their house, constitutes a threat of serious physical harm.

The final consideration for justification of the use of deadly force under the statute is the satisfaction of both prongs of good faith: Objective and subjective.

Under (5)(b), the objective good faith test is met if a reasonable officer, in light of all the facts and circumstances known to the officer at the time, would have believed that the use of deadly force was necessary to prevent death or serious physical harm to the officer or another individual. The objective test is met here. The facts and circumstances of which Officer Rankin was aware, at the time deadly force was applied, made it reasonable for him to deem the use of deadly force as necessary to prevent death or serious physical harm to an officer or another individual. The officers' statements support this conclusion and are reproduced in this review.

Under (5)(c), the subjective good faith test is met if the officer intended to use deadly force for a lawful purpose and sincerely and in good faith believed that the use of deadly force was warranted in the circumstance. Under these facts, there is no evidence that Officer Rankin used deadly force for other than a statutorily lawful purpose.

Critical information on which Officer Rankin reasonably believed include the following:

- 1) 9-1-1 Calls advising of active shooters are seldom received but are known to be serious, life-threatening situations; Spokane Police responded Priority One with multiple officers.

- 2) Upon arrival, Rankin heard Walker's report of a gunshot that sounded like a shotgun coming from the area northeast of 627 W. Montgomery which 'verified' the initial report of a suspect firing a gun.
- 3) Rankin heard 3 shots that sounded like they came from a semi-automatic that sounded like they came from mid-block on Montgomery, approximately 100 feet from him.
- 4) Rankin believed the subject had multiple firearms.
- 5) Rankin believed the suspect was still actively firing, even with law enforcement on the scene.
- 6) Rankin heard an enraged scream from a male in the area reported in the complaint.
- 7) Rankin saw a subject that appeared to match the description broadcast by dispatch.
- 8) Rankin heard other officers issue multiple commands to Novak, including: Spokane Police. get on the ground. Drop the gun. These commands were repeated several times.
- 9) Rankin observed Novak to ignore officer commands and continue to walk around the vehicle in the driveway and head towards the house.
- 10) Rankin did not hear Novak verbally respond to officers on scene.
- 11) Rankin could not see Novak's left hand and did not know what might be in it.
- 12) Rankin observed Novak move his right hand to his waistband area.
- 13) Rankin knows from training and experience that this is an area from which a firearm can be easily accessed (and especially with the sweatshirt unzipped at the front).
- 14) Rankin believed that Novak was reaching for the semi-auto pistol that he had heard him fire previously.

16) At all relevant times, Rankin still believed the male to be armed.

17) Rankin was concerned for officer safety and the safety of anyone inside the house that could be taken as a hostage.

CONCLUSION

Spokane Police Officer Brandon Rankin was justified in his use of deadly force in this instance. Novak ignored multiple commands to go to the ground and to drop the gun. Officer Rankin had a reasonable belief that Novak was still armed and, therefore, posed a continuing danger to officers and the community, if he successfully evaded police. The law allows for mistake of fact. Under the facts reasonably relied upon at the time, Novak created an immediate and lethal threat to officers and, potentially, to others. The statutory requirements in effect at the time are met. The requirement of "reasonable belief" was met. Probable cause was met. The evidence demonstrates Rankin acted with a good faith belief that his actions were justified under the statute and were intended for a lawful purpose. Under such circumstances, RCW 9A.16.040 precludes criminal liability for his actions.