

TACOMA POLICE DEPARTMENT

Intra-Departmental Memorandum



TO: Avery L. Moore
Chief of Police

DATE: January 2, 2024

FROM: Assistant Chief Tammy Floyd *TF*
Operations Bureau Commander

SUBJECT: COMPLAINT FINDINGS AND RECOMMENDATIONS
INTERNAL AFFAIRS CASE 21COM-0061
OFFICER CHRISTOPHER "SHANE" BURBANK

SYNOPSIS

On Tuesday, March 3, 2020, at approximately 2322 hours (11:22 p.m.), Tacoma Police Department Officer Matthew Collins and Officer Chris (Shane) Burbank were on duty in a marked Tacoma Police vehicle and patrolling as a two-person car. At the intersection of South 96th Street and Ainsworth Avenue, they encountered Manuel Ellis, a pedestrian, after they observed Manuel Ellis attempt to enter a vehicle that was in the intersection. During the contact, a struggle between the officers and Manuel Ellis occurred while the officers attempted to take Manuel Ellis into custody.

Numerous officers responded to the scene from various agencies, including Tacoma Police Department (TPD) Officer Masyih Ford and Officer Timothy Rankine. Manuel Ellis was handcuffed behind the back and eventually a hobble restraint was used on his legs and attached to the handcuffs that had already been placed on Manuel Ellis. A spit hood was placed on Manuel Ellis by Officer Armando Farinas after one was requested due to Manuel Ellis spitting.

Per the Computer Aided Dispatch (CAD), at 23:25:44, Tacoma Fire/EMS were called to the scene by Sergeant Michael Lim. Officer Rankine kept control of and managed Manuel Ellis' condition on the ground while waiting for Tacoma Fire/EMS. Tacoma Fire/EMS arrived at 23:34:06. Manuel Ellis went into respiratory arrest and at approximately 23:41:11, his condition deteriorated into cardiac arrest. Despite resuscitative efforts, Manuel Ellis died at the scene. Tacoma Fire/EMS noted the confirmation of his time of death as 00:12:30.

TPD Command Staff and Internal Affairs were notified by scene commander Lieutenant Jennifer Mueller of the incident. TPD initiated the callout of the Pierce County Sheriff's Department's Independent Investigation Team (IIT) who responded and took over the investigation. The involved officers were transported from the scene to Sheriff Department offices where they were processed, and some were interviewed by IIT investigators. Other officers gave statements to the IIT on later dates.

In late May 2020, the Pierce County Medical Examiner released his findings. The Medical Examiner's report indicated Manuel Ellis' cause of death was "hypoxia due to physical restraint." Other significant conditions noted in the Medical Examiner's report were methamphetamine intoxication and dilated cardiomyopathy. The manner of death was classified as Homicide by Dr. Thomas Clark III, the Pierce County Medical Examiner.

At the time the incident occurred, the case was investigated by the IIT. As their investigation developed, it was determined that members of the Pierce County Sheriff's Department (PCSD) were actively

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involved in the encounter with Manuel Ellis, and on June 17, 2020, Governor Jay Inslee requested the Washington State Patrol (WSP) take over the independent investigation.

The State Attorney General's Office was involved in the investigation, and on May 27, 2021, criminal charges were filed against Officers Collins, Burbank, and Rankine regarding the death of Manuel Ellis.

There are two other Internal Affairs investigations related to this investigation – TPD IA #21COM-0069 regarding the actions of Officer Ford, and #21COM-0071 regarding the actions of Officer Farinas.

This investigation (21COM-0061) is specific to the allegations against Officer Burbank, Officer Collins, and Officer Rankine.

ALLEGATION

Officer Burbank has been accused of violating the Department Policies that were in effect in 2020: Conformance to Laws P1.1.6.A.02, Use of Force Policy P3.1, and Courtesy P1.1.6.A.17.

INVESTIGATION

As part of the investigation, Internal Affairs (IA) gathered material from a number of outside agencies. These agencies include the Pierce County Sheriff's Department, Washington State Patrol, Washington State Attorney General's Office, and the Medical Examiner's Office. The material includes, but is not limited to, incident reports, transcripts of interviews, audio/video evidence, photographs, and various reports. Internal Affairs either interviewed or reviewed interviews of a number of witnesses, including TPD officers, Tacoma Fire Department (TFD) personnel, and community members.

When asked if he believed he violated the Department's Use of Force Policy during the incident with Mr. Ellis, Officer Burbank replied, *"No, I don't."*

When asked if he believed he violated the Department's Courtesy Policy during this incident, Officer Burbank replied, *"Not at all."*

When asked if he observed anything at the scene that he believed violated Department Policy, Officer Burbank replied, *"No. Not that I witnessed no."*

I have reviewed the material and have summarized the relevant portions of the investigation below.

Criminal Investigatory Interview of Officer Christopher "Shane" Burbank

Officer Burbank was partnered with Officer Collins when the incident with Mr. Ellis occurred. Officer Burbank confirmed he was sitting in the front passenger seat of a marked TPD patrol SUV, and his partner, Officer Collins, was driving. Officer Burbank confirmed their call sign was Henry-317.

Officer Burbank stated he and Officer Collins were at South 96th Street stopped for the light at Ainsworth (facing westbound). Officer Burbank stated they had just completed a traffic stop at 96th and A Street.

Officer Burbank was asked what initiated the incident involving Mr. Ellis. He described seeing a male (Mr. Ellis) in the intersection and a vehicle traveling northbound on Ainsworth attempting to make a westbound turn onto South 96th Street. While the vehicle was traveling through the intersection, Officer Burbank observed Mr. Ellis block the vehicle and attempted to open the front passenger door once it stopped. Officer Burbank believed Mr. Ellis was trying to enter the vehicle. Officer Burbank was not sure what he was seeing, possibly a carjacking or some other type of disturbance. Officer Burbank said Mr. Ellis was not able to enter the vehicle, which sped off westbound on 96th Street.

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Officer Burbank described Mr. Ellis as a black male, 6 feet, 200 pounds, wearing a windbreaker, pants, and a jacket. Officer Burbank said Mr. Ellis was carrying a jug of water in one hand and an unknown item in the other. Officer Burbank did not recognize Mr. Ellis from any previous contacts.

After the vehicle drove off westbound, Officer Burbank said Officer Collins rolled down his front driver's side window and started asking Mr. Ellis what he was doing in the road. Officer Burbank noticed Mr. Ellis was extremely sweaty and seemed to be displaying hypervigilant behavior. Officer Burbank described Mr. Ellis' speech as quick and making remarks about needing help, having a bad day, and having warrants.

Officer Burbank said Officer Collins verbally directed Mr. Ellis to the sidewalk. Officer Collins told Mr. Ellis that they would help him out and to walk over to the sidewalk.

Officer Burbank described what happened after Mr. Ellis had been directed to the sidewalk, *"I remember the suspect, he started to walk around the front of our vehicle, which was still facin' westbound at the, the stop light intersection. And instead of going to the sidewalk, he started to come directly to the passenger door where I was sittin'. I started to put the window down and I told the, to tell the suspect, hey, can you just go over to the sidewalk, we'll pull over, get out of traffic and talk to you. He, at that point he kind of seemed agitated. The window was probably about halfway down. And he just like still speakin' very quickly, he just, he said something to the effect that I just, I'm really hot, I'm havin', I just need some help. And I just gotta sit down for a couple days. I need to cool down. And the window was being halfway down, and about that time I, I don't know exactly why, he just looked at me from the, I was still seated in the passenger seat. He said something to the effect that, instead I might just punch you in the fuckin' face. And that's when I, I believe that's when he dropped whatever was in his hands. As soon as he said that, I immediately started trying to roll the window up, 'cause I thought he was actually gonna punch me through the window. I rolled the window up. As soon as the window was up, the suspect just reared back and struck the window with a closed fist, probably two, maybe three times as hard, it seemed like as hard as he could, like he was trying to break the window. Once he did that, I noticed he was about to try to reach for the door handle, and he actually started to reach for the door handle, and I reached as fast as I could and locked the door. 'Cause if he would have got, I assumed he was trying to assault me at that point. And I knew that I could not defend myself from a seated position in the passenger seat."*

Officer Burbank continued, *"As soon as that happened, I recall Officer Collins getting out of the vehicle and going around the front of the vehicle and approaching the suspect. As he approached the suspect, I don't know exactly, I heard him say something to him, I'm not sure what he'd actually said to him, and the suspect kind of left it, left, I guess focused attention on me, and he turned towards Officer Collins, kind of in a fighting stance with, with clenched fists, and kind of squared up to him like he was about to fight him. As soon as I realized that he had focused on Col, Officer Collins and was probably about to attack him or start fighting him, I used my door to actually door check him and hit him with the door to draw his attention away from Officer Collins and kind of divert him away from that."* Officer Burbank confirmed that Dispatch had not been notified that they were at 96th and Ainsworth with Mr. Ellis at this point in the contact.

Officer Burbank exited the patrol car, locked the doors, and witnessed Officer Collins and Mr. Ellis in a fight on the ground in front of the right fender by the front right tire. It appeared to Officer Burbank that Officer Collins was trying to pin Mr. Ellis to the ground and hold him. According to Officer Burbank, Mr. Ellis was swinging both left and right fists as hard as he could, wildly, at Officer Collins. Mr. Ellis was kicking Officer Collins and trying to throw him off of him and strike him at the same time. It appeared to him that Officer Collins was trying to wrap Mr. Ellis up in a clinch hold and pin him to the ground.

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Officer Burbank attempted to assist Officer Collins, *"I, I tried to actually grab a hold of the suspect and kind of get a hold of him, but he was also kicking very wildly, flailing, and just swinging as hard as he could, it appeared like, with both fists, and striking Officer Collins."*

Officer Burbank was asked where Mr. Ellis was striking Officer Collins, *"It looked like just kind of everywhere. It didn't look like very well aimed shots. He was just wildly flailing. Just hitting wherever he, any target he could actually hit."* *"And it didn't look like Officer Collins was actually able to defend himself. He was just kind of trying to wrap him up and pin him at that point still."*

Officer Burbank said he was trying to control Mr. Ellis' legs and delivering blows and strikes to his body, while trying to avoid the wild punches Mr. Ellis was throwing. Officer Burbank said, *"It's, when I was able to start delivering strikes to his body, it kind of appeared that he, well his focus on Officer Collins, and then focused in on me. The, this guy was, and it was odd 'cause he seemed very, very strong. Like he was basically able to actually push Officer Collins off of him, which is, Officer Collins is significantly large than me. He's probably got me by, I don't know, I'm about 165. He's probably approximately 215 pounds. And this guy's just kind of screaming and growling. There's no verbal anything from the suspect at all at this point."*

Officer Burbank stated his strikes had zero impact on Mr. Ellis. Officer Burbank believed Mr. Ellis was not feeling any of the pain compliance tactics. Officer Burbank's perception of using these tactics only resulted in diverting Mr. Ellis' attention from Officer Collins to him. Officer Burbank said, *"At that point it looked like he had kind of lost that focus on Officer Collins and then focused in on me. And actually started to stand up and kind of just throw Officer Collins off of him. At that point I decided I needed to probably try to disengage and op, you know, open some distance between us, so I could look at my next elective. 'Cause like I said, it didn't look like any type of pain compliance was workin' on him with the strikes. And he just felt like he was stronger than what I, what I would imagine someone would be."*

Officer Burbank watched Mr. Ellis get to his feet, at which time Officer Burbank turned and ran 10 to 15 feet into the intersection (westbound) in an attempt to create some distance between himself and Mr. Ellis. Officer Burbank realized he needed to re-evaluate his options because the strikes did not work. Officer Burbank stated that before he could choose another option of engagement, Mr. Ellis was coming at him. Officer Burbank said, *"As soon as I got that distance, I turned and the suspect was actually sprinting at me and was almost on top of me. And I realized he was actually coming at me to attack me. He wasn't trying to evade me or evade us. He was coming directly at me. Still screaming, still growling."*

Officer Burbank described what happened next. He said, *"When I turned around and kind of realized what was going, he was actually kind of in a jumping motion right on top of me. Like he was trying to maybe knee or kick me, but also flailing both fists at me. Just kind of, like, like earlier, like just wild strikes, directly on top of me. As soon as I saw this, I, I kind of tried to square up and also started swinging back, just kind of wild strikes, and I was trying to defend myself. The suspect actually contacted me. He kind of, I wouldn't know, I wouldn't really call it a tackle, 'cause he never, I don't feel like he actually ever wrapped me up, but he just kind of collided with me and we both went to the ground. When he was doing that jumping, kind of swinging motion, just kind of collided with me."*

Officer Burbank said Mr. Ellis hit him once in the mouth and both went to the ground. Officer Burbank got back up on his feet and saw Mr. Ellis on his back with Officer Collins pinning his upper body down. Officer Burbank saw Officer Collins delivering strikes to Mr. Ellis' face. He was not sure if they were elbow strikes or strikes with his fist based on the angle he was at. Officer Burbank tried to assist in pinning Mr. Ellis down by grabbing his legs and holding him in place, but he was not able to due to Mr. Ellis trying to kick him off. Officer Burbank recalled hearing someone scream at them from behind their patrol car at this point.

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Officer Burbank described Officer Collins' Lateral Vascular Neck Restraint (LVNR) application.

Officer Burbank noticed Officer Collins had somehow managed to get in behind Mr. Ellis and was trying to apply the LVNR. Officer Burbank was not able to determine if Officer Collins was successful in the application of the LVNR due to it appearing to have no effect on Mr. Ellis. Officer Burbank stated Mr. Ellis continued swinging back at Officer Collins (who was still on Mr. Ellis' backside) as well as trying to roll and buck him off.

At this point, Officer Burbank decided to transition to his Taser (Model X-26). Officer Burbank said that up to this point, none of the tactics and techniques he or Officer Collins used were effective in stopping Mr. Ellis' assault.

Officer Burbank confirmed it was still just the two of them with Mr. Ellis, and he was not even sure if Radio knew what was happening. Officer Burbank described how he backed away from Mr. Ellis hoping to get a good probe spread that would result in neuromuscular incapacitation (NMI). Officer Burbank also mentioned his concern of striking Officer Collins with the Taser because Officer Collins was still holding Mr. Ellis.

Based on information downloaded from Officer Burbank's Taser, the Taser was deployed three times during the incident. The time stamp from the download for the first deployment was 23:22:03. Officer Burbank detailed his first Taser deployment.

At the moment of his first deployment, Officer Burbank believed he was 2 to 3 feet in front of Mr. Ellis. He aimed at the area of Mr. Ellis' bellybutton and deployed his Taser. The first deployment was effective in stopping the assault because it appeared Mr. Ellis had NMI (neuromuscular incapacitation) lock up¹. He described the 5-second cycle as stopping Mr. Ellis' assault, but when the 5-second cycle was over, the assault started again, and it appeared Mr. Ellis was starting to get to his feet. It looked to Officer Burbank that Officer Collins may have lost his grip at this point, and Mr. Ellis' strength had returned.

Officer Burbank made the decision to deploy his Taser for a second time when he saw Mr. Ellis starting to stand up. The time stamp on the second deployment was 23:22:26. Officer Burbank said, *"As the suspect's startin' to stand up, I delivered a second taser, five second cycle of the taser, the same cartridge. Which again was effective in stopping him and locking him up. And Officer Collins kind of was able to put him back on the ground for a third time on, into like a, onto the suspect's stomach. And I would say that they, Officer Collins and the suspect, they probably fell maybe 2, anywhere between 2 to 5 feet, a little bit further southwest from where we, that second confrontation was on the ground, where he started to stand up."*

Officer Burbank described Ellis' position as lying on his stomach with his arms locked underneath him. Officer Burbank stated, *"With Officer Collins trying to control and take control of his left arm, and I'm on, controlling, trying to take control of the right arm. And I'm trying to also, at the same time trap the suspect's legs with my legs, 'cause he's still trying to stand up and kick and flail his legs. The suspect again, that, the strength that I'd earlier mentioned, seemed like it was still there. Every time we, Officer Collins was trying to pull his left arm out, I have only my left arm to use at this point, 'cause I've still got my taser in my right hand. And the suspect almost feels like he's doing, almost doing pushups with us on his back. And he's still, at this point still growling, still yelling. There's been no change in that at all."*

¹ Per TPD ECT PowerPoint presentation given on 08/29/2019, neuromuscular incapacitation (NMI) causes uncontrollable muscle contractions and reduced ability to perform voluntary movements, accomplished by delivering electrical pulses around two electrodes to over-stimulate the motor nerves. Subject may maintain muscle control, particularly in the arms and legs. ECTs may not always achieve NMI.

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Officer Burbank was finally able to get on the radio and yell out their location but only after the second deployment of his Taser.

Officer Burbank said they were still unable to get Mr. Ellis' arms out from under his body, so they were still unable to handcuff him. This was when Officer Burbank decided to deploy his Taser for the third and final time. The time stamp on the third deployment was 23:22:51.

Officer Burbank delivered another 5-second cycle, which again he described as effective in stopping Mr. Ellis' power and strength because the deployment created NMI lock-up again. However, Officer Burbank was still unable to get control of Mr. Ellis' right arm, which was underneath his body, because Officer Burbank only had his left hand available due to his Taser still being in his right hand. Officer Burbank went to deliver a fourth Taser deployment, which he believed he did, but the Taser download did not show a fourth deployment. At this point, Officer Burbank set his Taser down, out of the way of Mr. Ellis but still close enough so he could access it again if he needed to.

It was at this point Officer Burbank said they were able to pull Mr. Ellis' arms behind his back into a handcuffing position. It appeared to Officer Burbank that Mr. Ellis had kind of given up. Mr. Ellis was still yelling incoherently, growling, rocking his body around, and trying to kick his feet. Officer Burbank said he and Officer Collins were finally able to handcuff Mr. Ellis.

Officer Burbank said he was exhausted at this point. He was just kind of lying on top of Mr. Ellis, trying to pin him down as Mr. Ellis continued flailing and kicking around. Officer Burbank could hear the emergency sirens in the distance and knew help was coming.

The first person Officer Burbank recalled seeing was Sergeant Michael Lim. Officer Burbank believed Sergeant Lim thought they were still struggling to get Ellis into handcuffs and believes Sergeant Lim grabbed Ellis' right arm. This individual turned out to not be Sergeant Lim but PCSD Detective Sergeant Gary Sanders.

As additional units arrived, Mr. Ellis continued to yell and growl. Officer Burbank heard someone in the group of officers, who were now with them, ask about a hobble to restrain Mr. Ellis' feet. Officer Burbank knew their patrol vehicle was closest and knew they had a hobble in the car, so he got up to retrieve it. Officer Burbank returned with the hobble, wrapped Mr. Ellis' ankles with it, and secured the device to the handcuffs that were behind his back.

Officer Burbank described the hobble as a nylon strap he guessed was around 18 inches in length with a metal clip that makes a loop so you can "lock" it down. He further described it as having a small D-ring for securing it to a fixed object.

After the hobble was applied, Officer Burbank backed away to catch his breath. Again he emphasized how exhausted he was and estimated the fight lasted 2 to 3 minutes.

Officer Burbank observed several officers still restraining Ellis. Officer Burbank did not know who placed the spit sock on Mr. Ellis; however, he confirmed it was a Department-issued spit sock. Officer Burbank then recalled retrieving his handgun magazines from the ground (they had dislodged from his vest carrier during the fight with Mr. Ellis). Officer Burbank said an unknown officer(s) rolled Mr. Ellis onto his right side. Shortly after Mr. Ellis was placed on his side, Fire arrived and requested the hobble and handcuffs be removed so they could start medical treatment. Officer Burbank confirmed he assisted in removing the hobble and placed it back in the glove box of their patrol car. At that time, he just sat in the patrol vehicle and remained there for the rest of the time he was on scene.

Officer Burbank said he noticed that once Mr. Ellis was rolled over onto his side, he appeared calm. He said Mr. Ellis was just lying there, blinking his eyes, staring off. He did not recall if Mr. Ellis was making

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any sounds at this point. Officer Burbank was not sure how long Mr. Ellis was on his stomach. Officer Burbank confirmed he observed officers and TFD performing CPR on Mr. Ellis.

Officer Burbank said he ended up with abrasions and had pain to his left knee as well as having pain in his left elbow. Officer Burbank was asked if he observed any injuries to Mr. Ellis, *"I recall when he was rolled to his side, with that spit mask on, I do, I recall seeing some type of blood on his face. I'm not sure where. Or the actual cause of it at all."*

Officer Burbank's Taser was secured by PCSD. Officer Burbank did not remove the probes from Mr. Ellis and did not know what happened with the Taser probes and wires.

Officer Burbank denied striking Mr. Ellis with his knees, nor did he direct any kicks at him during the incident.

Officer Burbank was asked if he had given any commands to Mr. Ellis. He confirmed he did, *"I, I recall we repeatedly said get on the ground, stay on the ground, just stuff like that. That's all I recall saying to..."* Officer Burbank added that he believed Mr. Ellis was not resisting; he was assaulting them, and they were trying to get him under control while defending themselves at the same time.

Internal Affairs Interview of Officer Christopher "Shane" Burbank

The interview conducted by Internal Affairs (IA) was conducted on August 31, 2021. Information was gathered during Officer Burbank's IA interview that was consistent with the interview he gave to PCSD on March 6, 2020, shortly after the incident summarized above. However, during the IA interview, he was asked to elaborate/clarify some actions and was asked about the policies he was accused of violating.

When asked to describe the events that led up to the encounter with Mr. Ellis, Officer Burbank's answers were consistent to his answers he gave earlier, except he could not recall if Officer Collins called Mr. Ellis over to their patrol car or if he said anything to Mr. Ellis while he was in the middle of the intersection. Officer Burbank said, *"I don't remember if he did or not. I can't recall if he did."*

Officer Burbank recalled that Mr. Ellis quickly approached the driver's door of the patrol car, and he was carrying a bag and a jug of water. Officer Burbank remembered Mr. Ellis being hyperaware and extremely sweaty. He said Mr. Ellis mentioned something about having warrants and needed help.

IA asked Officer Burbank what he felt his enforcement options were at that point with Mr. Ellis, and he said community caretaking because he did not know if Mr. Ellis had warrants. He was more concerned with his behavior, such as trying to stop a car in an intersection, sweating profusely on a cold night, and appearing hyperaware.

Officer Burbank confirmed he heard Officer Collins direct Mr. Ellis to the sidewalk, but Mr. Ellis never made it. Officer Burbank's statement to IA about what happened next was consistent with his statement to PCSD.

- Note: Later in the interview, Officer Burbank commented on Forensic images he was shown of the patrol vehicle's passenger side window from the scene and asked to specifically address the unknown white substance and other markings on the window. Officer Burbank advised the interviewers that after his physical encounter with Mr. Ellis was over and other officers were at the scene keeping Mr. Ellis detained, Officer Burbank went back to the patrol vehicle and sat in the passenger seat to recover with the door closed. Officer Burbank stated that while he sat in the patrol vehicle, several officers came to the patrol vehicle's passenger door and asked him how he was doing. Officer Burbank said he rolled the window up and down several times to converse with the officers. Officer Burbank rolling the window up and down to speak with other officers

at the scene more than likely altered the way the window appeared immediately after it was struck by Mr. Ellis.

At this point in the interview, Officer Burbank was asked if his enforcement options pertaining to Mr. Ellis had changed since Mr. Ellis punched the window and threatened him. Officer Burbank stated, "...yes. Then he was attempting to assault me at that point and needed to be detained." Officer Burbank further elaborated that he believed he now had probable cause to arrest Mr. Ellis for threatening to assault him and actively attempting to assault him when he started punching the window and trying to open his car door.

Officer Burbank was asked if he felt Mr. Ellis was a threat to him if Mr. Ellis could get the door open. Officer Burbank stated, "*Oh yes. A hundred percent because I was seated in the patrol car with a seatbelt on, I'm right-handed, um, and I can't defend myself sitting in the patrol car with my left hand.*"

When asked if he saw any of the initial physical contact between Mr. Ellis and Officer Collins, Officer Burbank said, "*No. Not at all.*" Later in the interview, Officer Burbank confirmed there was a moment of time when he was exiting and locking the patrol vehicle that he was not observing Mr. Ellis and Officer Collins. Officer Burbank added in part, "*I did not see their initial first contact with each other. I don't know how that happened. I just know that it happened after I had struck Ellis with the car.*"

- Officer Burbank was later asked specifically if he observed what Officer Collins referenced in his interviews regarding Officer Collins' initial physical encounter with Mr. Ellis, that Mr. Ellis picked him (Officer Collins) up and slammed him to the street. Officer Burbank said, "*No, if that happened, that happened when I was back, I guess probably locking the door or something. I, if that was the initial contact with him, that's what I didn't see.*" It was clarified with Officer Burbank that he was not saying Officer Collins' description of that portion of the encounter did not occur, rather Officer Burbank was not in a position to observe it.

Officer Burbank was asked to elaborate from his PCSD interview the statement regarding hitting Mr. Ellis with the passenger door. Officer Burbank explained he saw Mr. Ellis shift his focus to Officer Collins as Officer Collins was coming around the front of the patrol car. When Mr. Ellis shifted his focus, Officer Burbank noticed Mr. Ellis kind of "square up" like he was ready to fight Officer Collins. Officer Burbank knew he needed to get out of the vehicle, so he pushed the door open, striking Mr. Ellis. When asked to further explain the term "square up," Officer Burbank said it meant that someone is about to fight you, like square up their chest and clench their fists. At this point of the encounter, Officer Burbank put Mr. Ellis at "*assaultive behavior*" based on TPD's force continuum from 2020.

Officer Burbank said Mr. Ellis did not go to the ground after being hit with the passenger door. He said it just kind of bumped off him, but he was able to get out of the patrol car in that moment. Officer Burbank quickly locked the patrol car because of the rifles in the car, and he did not want to take the chance of Mr. Ellis getting access to them. After locking the door, he noticed Officer Collins and Mr. Ellis in physical contact at the front of the patrol car.

Officer Burbank was asked to clarify a statement he made during his interview with PCSD, specifically, "*Once I'm able to get the door locked and exit, I'm not exactly sure, I don't recall if Officer Collins and the suspect were already on the ground, or I know they were in some type of contact with each other. Kind of wrestling around and I'm not, I don't recall if they were still up on their feet, but they were already on the ground.*" Officer Burbank was asked to clarify if Officer Collins and Mr. Ellis were on their feet or on the ground. He said, "*I don't recall, it was such a tangled mess, ag-, it was just like they were in physical contact with each other. It was, I don't recall them being clean on the ground but I don't recall them being on their feet at the same time. It was just like them together in front of the ve-, like at the, the corner of the vehicle.*"

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Officer Burbank went on to describe the same physical assault on Officer Collins that he described in his statement to PCSD. Officer Burbank said he tried to pull Mr. Ellis off of Officer Collins. Officer Burbank stated he started striking Mr. Ellis with closed fists anywhere he could at that point. He said Mr. Ellis was throwing wild punches, and he was trying not to get hit. Officer Burbank believed it was his strikes that caused Mr. Ellis to shift focus again, this time off of Officer Collins and back to him. Officer Burbank realized his strikes were not being effective, and Mr. Ellis seemed very strong.

Officer Burbank decided he needed to transition from strikes to his Taser but needed to get some distance between himself and Mr. Ellis. Officer Burbank started backing into the intersection believing he could actually draw the Taser and get a successful deployment with about 10 to 15 feet of distance. However, Officer Burbank said he did not have time to deploy his Taser at that moment because Mr. Ellis was not only focused on him but was chasing him in the street. Officer Burbank said Mr. Ellis was right on top of him and hit him, knocking Officer Burbank to the ground. Officer Burbank tried to clarify where Mr. Ellis was striking him and he said, *"Anywhere he could."* He said Mr. Ellis was swinging wildly and did strike him in the mouth area at one point. Officer Burbank said Mr. Ellis did not get on top of him.

The next sections of Officer Burbank's interview with IA covering Officer Collins mounting Mr. Ellis, striking him, getting behind Mr. Ellis and attempting to apply the LVNR was consistent with what he told PCSD in that interview. Officer Burbank's statements to IA about his Taser deployments were also consistent with his statements made in the PCSD interview.

When asked if there was ever opportunity for Mr. Ellis to flee during the encounter, Officer Burbank said, *"Multiple times. Yes."*

Officer Burbank confirmed that Mr. Ellis was still on his stomach when additional officers arrived. Officer Burbank was asked about the application of the hobble device and what led up to the use of that. Officer Burbank stated, *"Um, he was, after being handcuffed, um, he was still violently kicking, uh, flailing around, kicking his legs, um, I think there was an officer, maybe two officers, I'm not sure who, I was actually still trying to control his legs at that point from kicking, um, someone had asked about a hobble. I'm not sure who. And I remember someone ran up and said they didn't have hobbles, someone had been looking for hobbles, they didn't have 'em, and I knew that we had hobbles in our car, so I went and got the hobbles out of our glove box and brought 'em back."*

Officer Burbank's description of applying the hobble was consistent with the description provided during his PCSD interview. Although he did not recall the exact position of Mr. Ellis' legs, Officer Burbank estimated once the hobble was applied, Mr. Ellis' legs were bent at a *"90-degree angle."*

When asked if the hobble used was Department-issued, Officer Burbank said, *"I believe it is, um, I just recall me and Officer Collins had been partners for several years, three maybe going on four years at this point and I remember that hobble being in his first issued patrol car of seven forty. Um, I always assumed it was a issued piece of equipment."*

Officer Burbank said he has used the hobble device on other subjects in the past. He said he has not received any Department or outside training on the application of the hobble.

Officer Burbank was asked to explain a statement from his interview with the PCSD regarding Mr. Ellis spitting at officers. Officer Burbank said, *"Yeah, I remember he was still on his stomach, and he was looking backwards trying to spit at officer that were around him. Like I said, there were several officers at that point, um, all ov-, all around and he was just trying to spit on officers."*

- Officer Burbank did not recall seeing any blood around Mr. Ellis' mouth at that point.

- Officer Burbank was asked if he knew who asked for a spit hood. Officer Burbank said, *"No I don't recall. I re-, I do recall someone mentioned the spit hood and I went to our car to see if we had one, I looked through our car and we didn't have any."*
- At the time the spit hood was applied, Officer Burbank did not know who applied it.
- When asked if he knew Mr. Ellis' position when the spit hood was applied, Officer Burbank said, *"Not when it was put on him, when it was put on him I wasn't present, um, after, after he was restrained with the hobbles, I was, there was so many officers, I was so smoked from that, uh, altercation with him I was kind of away from him for the majority of that time."* Officer Burbank was later asked what he meant by the term "smoked." Officer Burbank stated, *"I was extremely just I was out of breath, I was out strength, that, that fight I estimate it last, I probably two to four minutes from start to finish and I was, I had nothing left in me to f-, I couldn't fight somebody else like that again right there, if that makes sense."*
- When asked if the spit hood application seemed appropriate, Officer Burbank said, *"It, yes, it seemed appropriate, um, he was spitting at officers."*

Officer Burbank was asked to clarify a statement from his interview with PCSD regarding his use of the term "restraining" when describing other officers with Mr. Ellis. Officer Burbank said, *"Um, maybe the wording 'restraining,' they were just more with him, I don't think no one would be pinning him down, more just kind of controlling any movement he had. I don't, I think restraining might not be the best word for that."*

Officer Burbank said he had no idea how long Mr. Ellis was on his stomach after being handcuffed and hobbled before he was placed in a recovery position.

Officer Burbank was asked if during his contact with Mr. Ellis he ever heard Mr. Ellis state, "I can't breathe," or anything similar. Officer Burbank said, *"No, I did not."*

Officer Burbank did confirm he assisted in removing the restraints from Mr. Ellis, but he did not recall Mr. Ellis' condition at that time.

There was one injury Officer Burbank suffered that he did not mention in his interview with PCSD but brought it up in the IA interview. That injury was to the area of his mouth because he recalled tasting blood but was not sure where in his mouth it was.

Officer Burbank was shown a series of Forensic images. Officer Burbank was asked about the box of doughnuts and the water bottle seen in the images. Regarding the water bottle, Officer Burbank said in part, *"It looks like a water bottle, but can't say specifically that's the one he had in his hand that night."* Regarding the box of doughnuts, Officer Burbank recalled Ellis, *"having some kind of like doughnuts or something, possibly the, like the doughnut box or somethin'."* Officer Burbank did not recall if he could have stepped on the box of doughnuts or not. Regarding the images of the passenger side window, Officer Burbank did not know what the substance was on the window or how it got there. He remembered Ellis striking the window with his fist several times. Officer Burbank confirmed he sat in the car after the encounter and rolled the window up and down to speak with officers who checked in on him.

Regarding the Cell Phone Video from Ms. McDowell, 1 of 2. Officer Burbank confirmed that as the video starts, Officer Collins is the officer with his back to the camera.

Officer Burbank said, *"Okay, yeah, so that's gotta be Collins. That's me, that's right as I, um, Ellis had kinda chased me down and made contact with me. And this is me falling out of, kind of I guess, camera view."* Officer Burbank confirmed he is the officer holding the Taser in that video.

Officer Burbank was asked what occurred in the contact with Mr. Ellis prior to the beginning of the video. Officer Burbank stated, *"So this is after, um, this is after Ellis had started punching the window, 'To create a safe and secure environment in which to live, work, and visit by working together with the community, enforcing the law in a fair and impartial manner, preserving the peace and order in our neighborhoods, and safeguarding our constitutional guarantees.'"*

this is after he had tried to open my door, this is after he and Collins were in that physical confrontation towards the right front of the car, um, this is after I had attempted to pull him off of Collins and that's, this is right where, this is kinda where Ellis had chased me away from the car and made contact with me."

Regarding the Cell Phone Video from Ms. McDowell, 2 of 2. Officer Burbank confirmed he is the officer with the Taser displayed. Officer Burbank was asked if Mr. Ellis was being controlled at that point. Officer Burbank said, *"No, this is before he was in handcuffs. This was while trying to handcuff him."* When asked if this was between his second and third Taser application, Officer Burbank said, *"I, I don't recall exactly the, the length of time between those applications, um, I just know that it took several applications before we could actually get him in handcuffs. I can't recall the exact...timeframe."* Officer Burbank was asked who was giving the verbal commands to Mr. Ellis, and he stated, *"I think it was both of us. If you play it again, I believe it l-, may have been both of us."* Officer Burbank confirmed that he gave the warning to Mr. Ellis, telling Mr. Ellis to comply or he would deploy the Taser again.

Regarding the Cell Phone Video from Mr. Cowden, during the portion where Officer Collins is attempting the LVNR, Officer Burbank said he was *"just waiting for an actual open target to en-, deploy the taser."* Officer Burbank confirmed the video did not show Mr. Ellis ever fully controlled or handcuffed.

Regarding the Vivint Doorbell All Merged Video, Officer Burbank was given a copy of the audio transcription to review. Officer Burbank confirmed it was him responding to Shad Hayes that they did not need help, that backup was coming. He confirmed hearing someone yelling from behind their patrol vehicle. He said he never knew who it was from, (Sara McDowell and Keyon Lowery). Regarding someone growling and saying, "Try again," Officer Burbank was not aware who said it. He did not recall saying it and said it did not sound like Officer Collins. Officer Burbank said it was the *"first time"* he had heard that being said. When asked if it could have been Mr. Ellis saying that, Officer Burbank said, *"I, I can't say yes or no either way... But it doesn't sound like me at all and it doesn't sound like Collins."* After playing the video several times, Officer Burbank was asked if he ever heard Mr. Ellis saying, "I can't breathe," or anything similar to that during the encounter. Officer Burbank said, *"No, I don't recall hearing him say that...during that fight, no."*

Regarding the Courtesy allegation and an officer heard saying, "Shut the fuck up man." Officer Burbank was asked if he said it. Officer Burbank stated, *"I don't recall ever saying that, no."* When asked if he recalled hearing it at the scene, Officer Burbank stated, *"I don't recall hearing it, no."*

Officer Burbank was asked if there was a time during this encounter with Mr. Ellis where he became fearful. Officer Burbank stated, *"Well, yes, um, this might sound crazy but me and, me and Collins had been partners, like I said, for three or four years. I knew Collins has a strong, uh, background in wrestling, uh, like a Jujitsu thing, um, I've never seen anybody able, and we've been in a lot of altercations together. I've never seen anyone able to overpower Collins, ever, in all the altr-, altercations we've been in. To see him struggling with Ellis initially when I was able to get out of the vehicle and lock it and Ellis is overpowering and striking him, that scared me. 'Cause if, if Matt's losing a fight, I'm gonna lose that fight, um, and I think I became the most fearful is when he broke away from Collins and I was trying to create that distance, instead of him fleeing, he came after me. I've never had that happen. Ten years at that time in law enforcement, I've never had anyone physically chase me down. That's not, that's not someone trying to evade, that's someone trying to hurt me, and that was very scary."*

When asked if he believed he violated the Department's Use of Force Policy during the incident with Mr. Ellis, Officer Burbank replied, *"No, I don't."*

When asked if he believed he violated the Department's Courtesy Policy during this incident, Officer Burbank replied, *"Not at all."*

When asked if he observed anything at the scene that he believed violated Department Policy, Officer Burbank replied, *"No. Not that I witnessed no."*

Criminal Investigatory Interview of Officer Masyih Ford

When he and Officer Rankine arrived at 96th and Ainsworth, Officer Ford saw Officers Burbank and Collins fighting with a subject, Mr. Ellis. Officer Burbank was on Mr. Ellis' back, and Officer Collins had his legs. Mr. Ellis was pushing both officers off him, so Officer Ford immediately took control of one of his (Mr. Ellis') feet and pulled it toward him so he would not be kicked in the face. Once he had control of one of Mr. Ellis' legs, he saw that Mr. Ellis was handcuffed. Officer Ford said that the way Mr. Ellis overpowered Officers Burbank and Collins, whom he considered physically strong officers, was "weird."

Since he did not know what had transpired before his arrival, Officer Ford told Mr. Ellis to "just relax" and "just breathe" since he was screaming incoherently. Officer Ford said Mr. Ellis was "thrashing around," and he had to hold onto his feet "for dear life" to ensure he did not break free. He said Officer Collins requested leg restraints, but he and Officer Rankine did not have one. Officer Ford said TPD Sergeant Lim and multiple other units arrived on the scene, and while he was holding Mr. Ellis' leg down, the leg restraint was applied to Mr. Ellis shortly afterward.

Once the leg restraint was on Mr. Ellis, Officer Ford released his grip from his leg and held his foot while telling Mr. Ellis to "relax" and reassuring him that he would be okay.

Officer Ford was aware that Sergeant Lim had requested TFD, and he continued to tell Mr. Ellis to remain calm as Mr. Ellis continued to scream. Officer Ford said he could not recall what he was trying to say, but he did hear Mr. Ellis say, "I can't breathe." Officer Ford said the "remarkably calm fashion" in which Mr. Ellis made the statement did not sound like someone unable to breathe. However, once Mr. Ellis said he could not breathe, he was rolled over from his stomach to his side in a recovery position, and Officer Ford could see Mr. Ellis' face.

As Officer Ford continued to talk to Mr. Ellis, he asked Officer Rankine how warm Mr. Ellis was. When Officer Rankine told him that "he's burnin' up" and his pulse was low, Officer Ford suspected that Mr. Ellis was suffering from excited delirium.

When TFD arrived, Officer Ford said he ran up to them and advised that Mr. Ellis was unresponsive and possibly suffering from excited delirium. When TFD requested the restraints be removed from Mr. Ellis, Officer Ford warned them that Mr. Ellis had just fought with officers, was "incredibly strong," and to be cautious when the restraints are removed. Officer Ford said the restraints were then removed.

Officer Ford said Mr. Ellis was still breathing since he could see his chest moving, but he was unresponsive when TFD arrived. He believes TFD started CPR on Mr. Ellis within a few minutes of their arrival.

Criminal Investigatory Interview of Officer Matthew Collins

Officer Collins was working a two-officer marked patrol car with Officer Burbank and was the driver of the marked TPD patrol vehicle at South 96th Street and Ainsworth when he verbally contacted Mr. Ellis. Mr. Ellis jogged up to the driver's side front door and was directed to the curb by Officer Collins. Instead of walking over to the curb, Mr. Ellis saw Officer Burbank and approached his window. There was a dialog between the two, part of which consisted of Mr. Ellis threatening to punch Officer Burbank in the face. Mr. Ellis suddenly started punching Officer Burbank's window and tried to open his door.

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Officer Collins exited the patrol car and went to stop Mr. Ellis' aggressive and threatening behavior. Mr. Ellis saw Officer Collins, ran at him, picked him up off the ground, and threw him backwards. Officer Burbank engaged Mr. Ellis and both officers were then in a physical fight trying to arrest Mr. Ellis. Officer Collins mounted Mr. Ellis and threw 3 to 5 elbow strikes to Mr. Ellis' head. These strikes appeared to be ineffective, and Mr. Ellis "bucks" Officer Collins off of him. Officer Collins maneuvered behind Mr. Ellis and was setting up to apply the LVNR when he saw Officer Burbank with his Taser out. Officer Collins never applied the LVNR, instead he changed his position as Officer Burbank deployed his Taser. After multiple Taser deployments, the officers were able to get Mr. Ellis into handcuffs. The first backing officers arrived at this time – Officer Ford and Officer Rankine.

A hobble was requested, and Officer Burbank retrieved a leg restraint from his vehicle and applied it to Mr. Ellis' feet to keep him from kicking. Mr. Ellis was rolled on his side, and his restraints were removed when TFD arrived and made the request. Mr. Ellis was given repeated commands, and Officer Collins described Mr. Ellis as assaultive and being incredibly strong.

Criminal Investigatory Interview of Officer Timothy Rankine

Officer Rankine said when he arrived at 96th and Ainsworth, Mr. Ellis was on the ground with Officer Burbank on his back, and Officer Collins was trying to secure his legs. The two officers were trying to hold Mr. Ellis down, but he was throwing them around like "rag dolls."

Officer Rankine assisted Officer Burbank with Mr. Ellis' upper body, while Officer Ford and Officer Collins were trying to hold his legs. Officer Rankine said Mr. Ellis was kicking "pretty violently," and Officer Ford and Officer Collins were trying to avoid being kicked in the face.

Officer Rankine said Officer Collins asked for a leg restraint. Officer Rankine said Mr. Ellis was making "animal, grunting noises" and violently thrashing around. Officer Rankine told Mr. Ellis to stop struggling and to calm down. Mr. Ellis then said, "I can't breathe" in a "very calm, normal voice." After the leg restraint had been applied, Mr. Ellis felt really warm and was sweating profusely. Mr. Ellis was rolled over on his right side in a recovery position, and his pulse was checked. Mr. Ellis' heart rate was 80 beats per minute, and he was breathing since Officer Rankine was watching Mr. Ellis' chest rise and fall. Officer Rankine said all four officers held him down, and he was only "slightly more compliant" once the hobble was applied.

Criminal Investigatory Interview of TPD Sergeant Mike Lim

Tacoma Police Department Sergeant Mike Lim said that when he arrived on the scene, he saw Officers Burbank, Collins, Rankine, and Ford trying to hold Mr. Ellis down. Mr. Ellis was handcuffed and attempting to kick his legs around. Sergeant Lim said Mr. Ellis nearly got on his knees while the officers were trying to hold him down and appeared to have extraordinary strength. Sergeant Lim saw an officer retrieve a leg restraint and place it on Mr. Ellis' legs. Sergeant Lim said Mr. Ellis was sweating profusely and possibly suffering from excited delirium. Sergeant Lim requested medical aid to respond. Sergeant Lim checked on Officer Burbank, and when CPR started on Mr. Ellis, Sergeant Lim made the command decision to treat the scene with the same protocol as an Officer-Involved Shooting.

Criminal Investigatory Interview of PCSD Lieutenant Anthony Messineo

Pierce County Sheriff's Department Lieutenant Anthony Messineo responded to 96th and Ainsworth to assist officers and arrived on the scene less than one minute after Officer Ford and Officer Rankine. Lieutenant Messineo reported that Mr. Ellis was face down on the ground and was fighting, kicking, and making animalistic noises. Lieutenant Messineo said Mr. Ellis was "thrashing around," "moving," and "struggling," and he appeared to be "obviously on some type of drug." Lieutenant Messineo heard the request for a leg restraint and saw a TPD officer run to his vehicle to get one. He said there were five

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officers with Mr. Ellis, and one of the officers had control of Mr. Ellis' feet, pushing them toward his back in preparation to be restrained. Lieutenant Messineo saw PCSD Detective Sergeant Sanders assist the officers in detaining Mr. Ellis by holding Mr. Ellis' feet. Lieutenant Messineo heard officers giving Mr. Ellis commands such as "Give me your hands" and "Stop fighting."

After Mr. Ellis' legs had been restrained, he made animalistic noises while lying on his stomach. One of the officers stated that Mr. Ellis' temperature was "super-hot." Lieutenant Messineo said he "immediately" recognized that Mr. Ellis was experiencing excited delirium. He made this determination based on Mr. Ellis' agonal breathing, how he fought with officers, and his training and experience. Mr. Ellis was moved to a recovery position as medical aid was being requested.

Lieutenant Messineo never went "hands-on" with Mr. Ellis, nor did he observe any strikes of Mr. Ellis by the officers on the scene. Lieutenant Messineo said that once Mr. Ellis was placed in leg restraints, everyone went "hands-off." Lieutenant Messineo also heard an officer caution TFD personnel that Mr. Ellis would likely start kicking if the restraints were removed, but they were removed anyway.

Criminal Investigatory Interview of PCSD Detective Sergeant Gary Sanders

Pierce County Sheriff's Department Detective Sergeant Gary Sanders arrived around the same time as Lieutenant Messineo. Detective Sergeant Sanders saw four officers struggling to get Mr. Ellis handcuffed. After handcuffs were applied, an officer asked for a leg restraint. He saw an officer trying to use the leg restraint, so he grabbed one of Mr. Ellis' feet and pulled it toward Mr. Ellis' waist. Detective Sergeant Sanders said it took two officers to handcuff Mr. Ellis and two officers to try and pin his legs. Due to Mr. Ellis' kicking, Detective Sergeant Sanders said he assisted and took control of Mr. Ellis' foot.

Detective Sergeant Sanders said that Mr. Ellis was then on his stomach, struggling against the restraints, making a grunting or animal noise. He and Lieutenant Messineo thought Mr. Ellis was suffering from excited delirium and told officers on the scene their belief. Once the leg restraint went on, Mr. Ellis made several loud grunts and growls, and then he became quiet. Detective Sergeant Sanders said a mask (spit hood) had been placed on Mr. Ellis because he had been spitting, but he could see his eyes and "he just had the stare."

Detective Sergeant Sanders did not observe any officers striking Mr. Ellis or doing anything inappropriate. When Mr. Ellis stopped struggling against the restraints, he was put on his side. Detective Sergeant Sanders described Mr. Ellis as "pretty built" and a "bigger guy." He estimated the elapsed time from his arrival to when the leg restraint was applied was about 2 minutes. Detective Sergeant Sanders never heard Mr. Ellis say an intelligible word, just growls and grunts. Officers were giving Mr. Ellis commands like "stop resisting" and "put your hands behind your back." Detective Sergeant Sanders did not know if Mr. Ellis was breathing but did comment that one of the officers was doing a good job checking on Mr. Ellis, ensuring he was calm, monitoring his pulse, and telling him to focus on his breathing.

Criminal Investigatory Interviews of Tacoma Fire Department Personnel

The first aid vehicle that arrived was TFD Engine 10, staffed by Nicholas Wilson, Jeffrey Polo, and Marlon Ridgeway. Nicholas Wilson said that when he arrived, he observed superficial scratches and abrasions on Mr. Ellis, and officers were holding Mr. Ellis down so he would not get up and be a threat to them. When asked if Mr. Ellis was still breathing, Wilson said that Mr. Ellis had a "deteriorating respiratory drive" when he arrived. Wilson added that Mr. Ellis had agonal respirations and was not breathing normally. Wilson said Mr. Ellis had a slowing pulse and needed "aggressive airway management."

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Jeffrey Polo said that when he arrived, Mr. Ellis was handcuffed and had a spit hood over his head. Mr. Ellis was saying muffled, garbled words, and his breathing was slow, with respiratory effort. Polo said Mr. Ellis had adequate respiratory drive when they arrived that deteriorated into labored, then ceased breathing. Polo said the spit hood was removed from Mr. Ellis when all other restraints were removed. Polo said he believed Mr. Ellis' condition was already on a downward trajectory, and his change in breathing was not related to the removal of his spit hood. Polo said that after approximately 3 to 5 minutes on scene, Mr. Ellis' heart rate went from 80 bpm to zero, and then CPR was started.

Marlon Ridgeway said Mr. Ellis was restrained and had a spit hood on when he arrived. Ridgeway described Mr. Ellis' breathing as shallow and said he was still breathing when the spit hood was removed. Ridgeway said Mr. Ellis did not appear to have trouble breathing with the spit hood on, and although his breathing was shallow, it did not change once the spit hood was removed. Ridgeway said the restraints and spit hood were removed when requested.

Other officers on the scene from several different agencies said Mr. Ellis was non-compliant, combative, breathing heavily, shouting, extremely agitated, fighting against the restraints, growling like a dog, and did not appear in physical distress.

Citizen Witness Interview of Shad Hayes by the Pierce County Sheriff's Department

The interview of Shad Hayes occurred on March 5, 2020. Shad Hayes was staying at 1433 South 96th Street, three houses east of the intersection of South 96th and Ainsworth, on the north side of 96th Street.

Mr. Hayes was asked what he heard when the incident occurred. Mr. Hayes was in his bedroom watching TV when he heard some yelling outside and observed flashing lights sometime after 11:00 pm. Mr. Hayes went outside and noticed a patrol car at the traffic light (96th and Ainsworth) with its lights on. Mr. Hayes saw two officers trying to subdue an individual in the middle of the intersection and confirmed the patrol car was facing west.

Mr. Hayes stated, *"I saw two Officers tryin' to subdue this individual and they were havin' problems subduing him because he was, I don't know if he was drunk or high on drugs or whatever, but he was, but he was throwin' 'em around pretty good. And I yelled at 'em and asked if they need help and they said no, they think we've got it. But while they were tryin' to subdue him there was traffic and stuff goin' by so I stood right down here and directed traffic until I heard the back, 'til I heard their backup comin' and they came from that direction on Pacific Avenue. And then I came back in and just after that watched TV."*

Mr. Hayes observed the incident, *"One was on the ground tryin' to get his hands behind his back and the other one was kinda bending over trying to subdue him from the top. Plus they were havin' problems 'cause he was tryin' to get up and move around and stuff."* *"Yeah. He was just standing trying to bend over him. Like one was towards the top of his body, one was towards the bottom of his body or the middle more."*

Mr. Hayes confirmed the individual the officers were trying to subdue was lying face down on the ground, adding he was not complying with the officers. Mr. Hayes was asked what the subject was doing, *"Tryin' to get up and fightin' with 'em and stuff. Not, I, I didn't see any punches swung but you could tell just by he wasn't complying. He wasn't givin' his arms and they were tryin' to get him to subdue him."* Mr. Hayes believed the subject was trying to get away from the officers. Mr. Hayes stated, *"Yeah. There was, the, the one Officer towards the end of his feet was trying to get his arms behind his back to put the handcuffs on him, it looked to me like. I, I wasn't really up close to 'em 'cause I didn't want them to freak out and think I was, so I stayed back towards my gate. But it looked like the one Officer was tryin' to get his hands behind his back and, and the other Officer was tryin' to hold him from the front down, so the other Officer could get his hands on, um put his handcuffs on him."*

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Mr. Hayes said he was at the end of his driveway when he observed the incident, adding the incident occurred in front of the patrol car. Mr. Hayes believed he heard one of the officers say "comply."

Mr. Hayes was asked if the officers were successful in placing the subject into custody. He confirmed they were. Mr. Hayes was asked if he observed anything other than wrestling, *"No, I didn't. It didn't look to me like at anytime he got up and any blows or anything exchanged. It didn't look like that, it looked to me like from what I saw most of the time they had him on the ground but he wasn't complying with their orders to put his hands behind his back so they could subdue him."*

Citizen Witness Interview of Aiyana White by the Pierce County Sheriff's Department

The interview occurred on June 7, 2020. Mrs. White lives at 1438 96th Street South.

Mrs. White was asked what occurred, *"Yes. So I was laying down in bed, going to sleep, and I heard some noises outside. Not unusual for where I live. So I looked outside the window and I saw the police were talking to Manuel, and I saw him attempting to get away from them, and I saw him being shoved down to the ground. At that point I heard someone in the cars behind yelling at the officers, mostly just things like stop and what are you doing. At that point I stopped looking out the window and woke up my spouse who was sleeping. From that point I couldn't see much, other than him on the ground. I saw some struggling to get away. From that I couldn't see much more from just him on the ground with the police on top."* Mrs. White said that soon after, numerous police cars showed up, and her view became obstructed. Mrs. White stated she was recording the incident at this point and still has those recordings.

Mrs. White was asked if she could hear what the officer and/or Mr. Ellis was saying. Mrs. White believes she heard Mr. Ellis say something about "can't breathe" three or four times. Later in the interview, Mrs. White said she heard two different sets of "I can't breathe, I can't breathe," adding the different sets both occurred within a 3- to 4-minute span, both while Mr. Ellis was on the ground. Mrs. White confirmed she exited the residence to observe what was occurring.

Mrs. White was asked if she observed any of the officers on the ground, if the officers tried to hit or punch Mr. Ellis, she confirmed she did, *"I saw some punches being thrown by the officer. I, most I saw from Manuel was a, attempting to get free. I didn't see him try and attempt to punch the police officer or hit them. So I don't, like, just the twisting movements."*

Mrs. White was asked if she saw anyone trying to tackle another person, she confirmed she did, *"The, they jumped on top of Mr. Ellis."* Mrs. White was asked where Mr. Ellis was when the officers jumped on top of him, *"He was laying on the ground."*

Mrs. White confirmed an officer contacted her the night the incident occurred. Mrs. White was asked if she remembered what she told the officer, she stated, *"Yes. I said that I did not see exactly what happened."* Mrs. White confirmed she did not see what led up to the officers fighting with Mr. Ellis. Mrs. White was asked if she remembered any of the officers using a Taser, and she believed it went off five to six times.

Citizen Witness Interview of Kennett Ashford-White by the Pierce County Sheriff's Department

The interview occurred on June 8, 2020. Mr. Ashford-White lives at 1438 96th Street South. Mr. Ashford-White confirmed he was aware of an incident involving the Tacoma Police Department on March 3, 2020.

Mr. Ashford-White was asked what he heard, *"So there was a, a female in a brown car that was yelling don't punch, or don't punch him, just arrest him. And then there was a man in another vehicle behind her just saying go around."* Mr. Ashford-White confirmed he could not hear the officers and/or the

person on the ground. Mr. Ashford-White also confirmed he could not see the incident due to a telephone pole that was between him and where the incident occurred.

Initially Mr. Ashford-White checked his Vivint doorbell camera video to see if he could see what was going on. Mr. Ashford-White said the camera did not record what initially occurred; however, it did start recording once the two people out front made enough movement. Mr. Ashford-White decided to push the curtain aside and look out through the door.

Mr. Ashford-White was asked what he observed. He said he saw a slight altercation of trying to get Mr. Ellis from his knees to the ground and then fighting on the ground. Mr. Ashford-White believes he heard the Taser deploy 3 to 4 times. He believes the first two deployments were close together and the last one or two were further apart.

Mr. Ashford-White was asked about the subject on his knees, and he said there was some kneeling and being pushed down to the ground from the kneeling position. He confirmed the altercation occurred in front of the patrol car, 4 to 5 feet in front of it. Mr. Ashford-White believed the officers at least had Mr. Ellis' arms and forced him to the ground.

Mr. Ashford-White was asked if it looked like the police were fighting with Mr. Ellis, *"There was resistance."* When asked to explain, Mr. Ashford-White stated, *"Like so, the second time I had been able to pull, pull the curtain around after looking at the panel, I saw that the police officers were trying to handcuff him and restrain him. And I could physically see two officers being able to be manhandled by the man underneath them. So being able to lift up to, to fully get at officers. I personally, from the Marine Corp, I know that kit's not a light thing to carry around, so (unintelligible) or anything."* *"So being able to lift two people that had body armor on..."*

Mr. Ashford-White confirmed Mr. Ellis was lying facedown when the resistance occurred. He confirmed one officer was on the left-hand side, and the other was behind him just trying to hold Mr. Ellis down. Mr. Ashford-White stated he could not see Mr. Ellis' arms or tell if he was being restrained. He could only see his legs and part of Mr. Ellis' head. Mr. Ashford-White believed Mr. Ellis appeared to be moving, trying to get up, and the officers were essentially on his back.

Mr. Ashford-White did not see any fists or elbows thrown by the officers. He also confirmed he did not see Mr. Ellis strike, punch, or kick the officers.

Mr. Ashford-White confirmed that an officer contacted them that night, and he told the officer about the video. The officer took down their information.

Mr. Ashford-White was asked if he could hear Ellis say anything, he confirmed he did, *"Um, there was at one point, he said I could not breathe..."* Mr. Ashford-White was asked when, during the incident, he heard Ellis make the statement, *"I think that's probably right after the first two squad cars that arrived afterward, or arrived for backup, the first two."*

Mr. Ashford-White confirmed he observed the police officers performing CPR around the time Fire arrived.

Citizen Witness Interview of Sara McDowell by Washington State Patrol

This interview was conducted on October 5, 2020, and present during the interview was James Bible, the attorney representing Manuel Ellis' estate/family.

Ms. McDowell stated she was driving to her sister's house (westbound on South 96th) and was being followed by the father of her children (Keyon Lowery). She pulled up behind a police car at the intersection of 96th and Ainsworth and observed Mr. Ellis walking on the sidewalk. Ms. McDowell

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believed Mr. Ellis and the officers were having a normal conversation that lasted 10 to 15 seconds. She stated that when Mr. Ellis turned around from the front passenger door, he was knocked to his knees by the door swinging open. According to Ms. McDowell, the passenger officer exited the patrol car, grabbed Mr. Ellis, and *"just started pounding him, his face."*

Ms. McDowell confirmed she does not know any of the involved officers and did not hear any of the dialog between Mr. Ellis and the officers because her music was up in the car. Ms. McDowell was asked if she observed anything in Mr. Ellis' hands, and she said *"No."* Ms. McDowell was asked if she observed Mr. Ellis strike the patrol car, and she did not.

Ms. McDowell said the driver officer turned the lights on and went around the front of the patrol car. That officer grabbed Mr. Ellis, and they ended up flipping him to the ground. She added the driver officer held Mr. Ellis on the ground while the passenger officer used his Taser on Mr. Ellis. Ms. McDowell was asked if her belief on the Taser being used was based on Ellis' reaction or if she heard a sound, *"Yeah, just, no I didn't hear anything. I didn't hear anything."*

Ms. McDowell was asked about the position of the officers around Mr. Ellis. She said one officer was on top of Mr. Ellis, and the other officer was either kneeling down on top of him or to his side.

Ms. McDowell was asked about the positioning of the officer's knee. It was described as being all over Ellis' back, Ellis' body or Ellis' shoulder area. Ms. McDowell was asked what part of the officer was on Ellis' back, and she stated the officer's whole body.

Ms. McDowell believed there was a 10- to 20-second break between the end of the first and beginning of the second video.

Ms. McDowell was asked what she observed/heard as she was driving around Mr. Ellis and the officers, referring to her second cell phone video. She said she saw the police telling Mr. Ellis to put his hands behind his back before *"they"* do it again. Ms. McDowell said that to her this meant the Taser, and one of the officers was standing there with the Taser in his hand.

After leaving the area to drop her kids off at the Aero Apartment, Ms. McDowell returned to the area and observed around eight officers surrounding Mr. Ellis. The Tacoma Fire Department was then on scene.

Citizen Witness Interview of Keyon Lowery by Washington State Patrol

The interview was conducted on October 28, 2020, and present during the interview was James Bible, the attorney representing the Manuel Ellis estate/family.

Mr. Lowery was in a vehicle following Ms. McDowell. Mr. Lowery was on South 96th Street when he observed a police car stopped at a red light. The light turned green, and the patrol car did not move. It appeared Mr. Ellis had been called over to the police car and was having a conversation with the officers. Mr. Lowery observed Mr. Ellis walking toward the sidewalk, then walked eastbound toward him.

Mr. Lowery said that when Mr. Ellis turned his back to the cop car, the passenger door swung open and knocked him to the ground. The officer driving the car exited about 10 seconds later, and he went around the front of the police car and got on top of Mr. Ellis.

Mr. Lowery said he exited his vehicle and yelled, *"Hey, y'all in the wrong right now."*

Mr. Lowery described seeing the officers *"whaling"* on Mr. Ellis. Mr. Lowery was asked if he heard anything said between the officers and Mr. Ellis, he stated, *"No. Heard Nothing."* Mr. Lowery was asked if the police car had any lights on. He confirmed they did, flashing yellow lights then blue lights when one of the officers exited the police car. Mr. Lowery was asked how long the conversation was between

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Mr. Ellis and the officers before the door opened and struck Ellis, *"45 seconds, not very long. It was quick."*

Mr. Lowery said he could clearly see Mr. Ellis and the officers as there were streetlights in the area, and he never observed Mr. Ellis touch the police car. Mr. Lowery was asked if he observed Mr. Ellis carrying anything, he stated, *"No. I feel like he was on his way to the store."*

Mr. Lowery confirmed there were only two officers on scene while he was there, and no aid vehicles. Mr. Lowery described seeing two people on top of another as he drove around the incident. Mr. Lowery confirmed he saw one of the officers had a Taser in his hand, adding he did not see it deployed. Mr. Lowery said he never saw Mr. Ellis fighting back.

Citizen Witness Interview of Samuel Cowden by Washington State Patrol

The interview was conducted on September 22, 2020, and present during the interview was James Bible, the attorney representing the Manuel Ellis estate/family.

Mr. Cowden was asked what drew his attention to the incident involving Mr. Ellis. He said he was approaching the intersection of South 96th and Ainsworth to make a right turn back toward the Domino's store when he observed a police car sitting at the intersection.

Mr. Cowden said he saw the front passenger door of the cop car suddenly open, and Mr. Ellis fell in front of the car. He saw the officer in the driver seat exit the car, and this is when Mr. Cowden started recording the incident on his phone. He said once the officers were out of the cop car, a brawl ensued.

Mr. Cowden was asked if he heard what was occurring between Mr. Ellis and the officers. Mr. Cowden said he only heard screaming because he had his music going. He said it was Mr. Ellis who was screaming while on the ground. Mr. Cowden observed Mr. Ellis going to the ground but was not sure how Mr. Ellis got to the ground. Mr. Cowden observed an officer behind Mr. Ellis, bringing Mr. Ellis to the ground with his hands behind his head, describing it as a "full nelson."

Mr. Cowden said he observed an officer deploy his Taser, but he was not sure how many times. Mr. Cowden said he could see the Taser wires, and he could hear Mr. Ellis screaming. Mr. Cowden was asked what it looked like Mr. Ellis was doing; was he trying to comply, get up, get away, or did it look like he was fighting, and Mr. Cowden stated, *"Well yeah, at first he was seemed like he was just trying to keep his hands up but it seemed like they were kind of forcing him to go in different positions. Like his hands behind his back, and then hands behind his head, but no one else, no one could figure it out. Um I, it doesn't seem like he was fighting all to me."*

Mr. Cowden said he saw one officer throwing punches at Mr. Ellis and believes Mr. Ellis was actually choked unconscious at one point due to being put into a "full nelson." Mr. Cowden confirmed there were only two officers on scene when he left the area.

FINDINGS

Officer Christopher Burbank has been accused of violating the following department policies:

PI.1.6.A.02 Conformance to Laws

Members shall obey all laws of the United States and of any state and local jurisdiction in which the members are present.

Members shall promptly report in writing, through the chain of command to the Chief of Police, when they are the subjects of:

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- *An arrest or citation for a crime, including felonies, gross misdemeanors, or misdemeanors. Noncriminal infractions need not be reported*
- *Any arrest or administrative action, which results in the revocation or suspension of the member's driving privileges*
- *The exercise of police authority while not working in an official law enforcement capacity or off-duty employment, unless same is clearly indicated in Tacoma Police Department reports relating to the incident*
- *The filing of civil litigation either by or against the member in connection with their City employment or official duties*

Members shall promptly report to the Chief's Office when requested to pick up legal documents serviced to Tacoma Police Department as the employer of the member. A conviction of the violation of any law shall be prima facie evidence of a violation of this section.

On May 27, 2021, the Washington State Attorney General's Office filed a Declaration for Determination of Probable Cause, charging Officer Burbank with Murder in the Second Degree and Manslaughter in the First Degree. The criminal trial involving Officer Burbank commenced on September 18, 2023. On December 21, 2023, a jury returned a verdict of "Not Guilty" to both charges – Murder in the Second Degree and Manslaughter in the First Degree.

I find this allegation to be **Unfounded**.

P1.1.6.A.17 Courtesy

Members shall be courteous to the public. Members shall be tactful in the performance of their duties, shall control their tempers, and exercise the utmost patience and discretion, and shall not engage in argumentative discussions even in the face of extreme provocation. In the performance of their duties, members shall not use coarse, violent, profane, or insolent language or gestures, and shall not express any prejudice concerning race, religion, politics, national origin, lifestyle, or similar personal characteristics.

The Courtesy allegation is related to a comment that was recorded on a surveillance video. During the investigation, the Vivint surveillance videos were reviewed. During one of the videos, at 23:23:45, Manuel Ellis stated, "Can't breathe sir." A voice responded by telling Manuel Ellis, "Shut the fuck up man." There were only two officers on scene when this occurred – Officer Burbank and Officer Collins. During his Internal Affairs interview, Officer Burbank denied stating, "Shut the fuck up man." During his Internal Affairs interview, Officer Collins reported he did not recall stating, "Shut the fuck up man," adding he did not think he has ever heard Officer Burbank say the "F" word and that if anyone said it, it was probably him (Officer Collins).

I find this allegation to be **Unfounded**.

P3.1 Use of Force

Officers of the Tacoma Police Department may use force when necessary and shall use only that force which is reasonable.

On March 3, 2020, Officer Burbank was partnered with Officer Collins when the incident with Mr. Ellis occurred. Officer Burbank confirmed he was sitting in the front passenger seat of a marked TPD patrol SUV, and Officer Collins was driving. Officer Burbank confirmed their call sign was Henry-317.

Officer Burbank was asked what initiated the incident involving Mr. Ellis. He described seeing a male (Mr. Ellis) in the intersection and a vehicle traveling northbound on Ainsworth attempting to make a westbound turn onto South 96th e. While the vehicle was traveling through the intersection, Officer Burbank observed Mr. Ellis block the vehicle and attempted to open the front passenger door once it

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stopped. Officer Burbank believed Mr. Ellis was trying to enter the vehicle. Officer Burbank was not sure what he was seeing, possibly a carjacking or some other type of disturbance. Officer Burbank said Mr. Ellis was not able to enter the vehicle, which sped off westbound on 96th Street.

After the vehicle drove off westbound, Officer Burbank said Officer Collins rolled down his front driver's side window and started asking Mr. Ellis what he was doing in the road. Officer Burbank noticed Mr. Ellis was extremely sweaty and seemed to be displaying hypervigilant behavior. Officer Burbank described Mr. Ellis' speech as quick and making remarks about needing help, having a bad day, and having warrants. Officer Burbank noticed Mr. Ellis was holding a water jug and another item (unknown what it was at the time).

Instead of going over to sit on the curb, Mr. Ellis refocused his attention on Officer Burbank. Mr. Ellis approached the front passenger side window and had a dialog with Officer Burbank. At one point, Mr. Ellis told Officer Burbank, *"I'm gonna punch you in your face."* Mr. Ellis began to punch Officer Burbank's window as he was rolling it up. Officer Collins exited the patrol car because he stated he needed to stop the actions of Mr. Ellis who had then threatened his partner and was punching the window. Officer Collins ran around the front of the patrol car as it appeared Mr. Ellis was trying to open Officer Burbank's door. Mr. Ellis saw Officer Collins, changed his focus, and ran at Officer Collins who was then standing by the front passenger corner of the patrol car.

Officer Burbank exited the patrol car, locked the doors, and witnessed Officer Collins and Mr. Ellis in a fight on the ground in front of the right fender by the front right tire. It appeared to Officer Burbank that Officer Collins was trying to pin Mr. Ellis to the ground and hold him. According to Officer Burbank, Mr. Ellis was swinging both left and right fists as hard as he could, wildly, at Officer Collins. Officer Burbank stated Mr. Ellis was kicking Officer Collins and trying to throw him off of him and strike him at the same time. Officer Burbank said it appeared to him that Officer Collins was trying to wrap Mr. Ellis up in a clinch hold and pin him to the ground.

Officer Burbank engaged Mr. Ellis in an attempt to stop the attack on Officer Collins. Officer Burbank threw several strikes with his fist at Mr. Ellis while at the same time trying not to get hit from the wild punches Mr. Ellis was throwing. Officer Burbank stated his strikes had zero impact on Mr. Ellis. Officer Burbank believed Mr. Ellis was not feeling any of the pain compliance tactics. Officer Burbank's perception of using these tactics only resulted in diverting Mr. Ellis' attention from Officer Collins to him.

Mr. Ellis disengaged with Officer Collins and got to his feet, at which time, Officer Burbank turned and ran 10 to 15 feet into the intersection (westbound) in an attempt to create some distance between himself and Mr. Ellis. Officer Burbank realized he needed to re-evaluate his options because the strikes did not work. Officer Burbank stated that before he could choose another option of engagement, Mr. Ellis was coming at him.

Officer Burbank said Mr. Ellis hit him once in the mouth, and both went to the ground. Officer Burbank got back up on his feet and saw Mr. Ellis on his back, with Officer Collins pinning his upper body down. Officer Burbank saw Officer Collins delivering strikes to Mr. Ellis' face. Officer Burbank tried to assist in pinning Mr. Ellis down by grabbing his legs and holding him in place, but he was not able to due to Mr. Ellis trying to kick him off.

Officer Collins got in behind Mr. Ellis and attempted to use the LVNR. Officer Burbank used the moment to unholster his Taser, back up a few feet, and when he saw a clear opening of the chest area of Mr. Ellis, he deployed his Taser for the first time. Officer Burbank ended up deploying his Taser three times at time markers 23:22:03, 23:22:26, and 23:22:51. The Taser was effective each time but only during the 5-second cycles; however, the deployments allowed for the officers to make progress toward getting Mr. Ellis handcuffed (which they did after the third deployment).

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Officer Burbank later applied the hobble device they kept in their patrol car due to Mr. Ellis constantly kicking and flailing around. Officer Burbank's description of applying the hobble is found in his PCSD interview. Although he did not recall the exact position of Mr. Ellis' legs, Officer Burbank estimated once the hobble was applied, Mr. Ellis' legs were bent at a "90-degree angle."

When asked if the hobble used was Department-issued, Officer Burbank said, *"I believe it is, um, I just recall me and Officer Collins had been partners for several years, three maybe going on four years at this point and I remember that hobble being in his first issued patrol car of seven forty. Um, I always assumed it was a issued piece of equipment."*

Officer Burbank said he has used the hobble device on other subjects in the past. He said he has not received any Department or outside source training on the application of the hobble².

There were no more strikes thrown by Officer Burbank. Officer Burbank engaged and disengaged more than once. Officer Burbank said Mr. Ellis could have run away but instead he stayed and engaged the officers in a physical, assaultive confrontation. The level of strength and resistance demonstrated by Mr. Ellis required multiple officers to get under control.

Given the circumstances and the facts known to Officer Burbank at the time, I find his actions reasonable and necessary under the Department's Use of Force model in effect at the time of this incident to take Mr. Ellis into custody. Officer Burbank used compliance techniques and defensive tactics to counter the active resistant and assaultive behavior of Mr. Ellis.

This investigation showed Officer Burbank was up to date on his Department Taser training, having recently completed the 2019 Fall ECT Recertification.

Under former Tacoma Police Department Use of Force Policy 3.1, which was in effect at the time of this incident, I find this allegation to be **Exonerated**.

RECOMMENDATION

I recommend the investigation be closed as **Unfounded** in regard to ***P1.1.6.A.02 Conformance to Laws***

I recommend the investigation be closed as **Exonerated** in regard to ***P3.1 Use of Force***

I recommend the investigation be closed as **Unfounded** in regard to ***P1.1.6.A.17 Courtesy***

TF:man

cc: Officer Christopher "Shane" Burbank
Tacoma Police Union, Local 6

² At the time of this incident, a leg restraint was not specifically mentioned in the Department's Use of Force Policy of 2020. There was also no Department training on the application of such a device. The only reference to a hobble/leg restraint in the Department's Policies and/or Procedures is within Transportation – Detainee D.2, which states in part, "Arrestees will not be transported in a 'hog-tied' position or face down."

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