

Chief Matthew Murray's Office

200 S 3rd Street | Yakima, WA 98901
Telephone: (509) 575-6211



October 1, 2020

Dear Yakima Community,

As your Chief of Police, I am continually trying to advance the relationship between the police department and the community. As in any relationship, open and honest communication is the hallmark of the trust the community bestows upon its police. I am writing this letter to explain a recent use of force incident that garnered significant public interest.

In the interest of transparency, I believe it is my duty to fully explain the details of the incident, the actions taken by the suspect and our police officer. This letter will explain the actions taken by me to investigate this incident and report back to you, the community. This letter is the second in a practice I intend to continue in my effort to communicate with the community.

Facts

- On July 7, 2020 at approximately 8:22 p.m., a Washington State Patrol (WSP) trooper, attempted to stop a pickup truck on Eastbound Hwy 12 near mile post 198 (Suntides).
- The trooper followed the truck with his emergency lights activated for a short distance and then activated his emergency siren.
- The trooper advised the WSP dispatcher that the vehicle he was attempting to stop was failing to yield to his emergency lights and siren.
- With the trooper still behind him, lights and siren activated, the suspect exited Hwy 12 at the 40th Ave exit.
- The suspect turned south onto 40th Ave and then west into the Fred Meyer parking lot, still failing to yield to the trooper's emergency lights and siren. The suspect continued to drive quickly through the parking lot and around to the west side of Fred Meyer, the driver looked back at the trooper several times as he circled near the garden center, where suddenly the vehicle came to an abrupt stop.
- The suspect, 54-year-old Jose Luis B. Zaragoza, exited the truck and was met by the trooper who gave him commands to lay on the ground. Mr. Zaragoza responded, with an expletive, and walked away. The trooper followed and Mr.

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Zaragoza began to run. The trooper chased him through the parking lot giving him orders to get on the ground. Mr. Zaragoza responded by saying, “kill me.” Mr. Zaragoza began to make his way back towards his vehicle, but the trooper cut him off. The trooper attempted to control one of Mr. Zaragoza’s arms, but Mr. Zaragoza pulled it away on two different attempts.

- After the failed attempts to arrest Mr. Zaragoza, he began to walk towards the entrance of Fred Meyer. The trooper was concerned for the many community members in the area because of Mr. Zaragoza’s erratic behavior. The trooper was also concerned about his ability to continue to communicate with his portable radio if he was forced to pursue Mr. Zaragoza into the Fred Meyer store. The trooper decided to approach Mr. Zaragoza from behind and force him to the ground.
- Once on the ground Mr. Zaragoza continued to resist. Two community members came to the aid of the trooper and helped hold Mr. Zaragoza on the ground.
- K9 Officer Brad Althauser responded to the trooper’s location after being advised of the pursuit by Yakima Police Sergeant Agledal.
- When Officer Althauser arrived, he found the trooper and two community members struggling to control Mr. Zaragoza who was attempting to push himself up off the ground. Mr. Zaragoza was not handcuffed and was not responding to lawful commands to put his hands behind his back.
- Officer Althauser retrieved his canine partner Zorro from his patrol vehicle. Officer Althauser maintained positive control of Zorro as he approached Mr. Zaragoza. Officer Althauser and the trooper warned Mr. Zaragoza at least five times that he would be bit by a dog if he did not stop resisting and comply.
- Officer Althauser directed canine Zorro to bite Mr. Zaragoza’s right leg in order to safely gain compliance by Mr. Zaragoza. Mr. Zaragoza immediately complied and was successfully handcuffed moments later. Once Mr. Zaragoza was handcuffed, Officer Althauser removed canine Zorro from the bite and put him back in his patrol car. Leaving a canine on a bite until the suspect is safely handcuffed is an industry practice. This keeps a canine from having to re-bite if the suspect begins to resist again, thus causing further injury.
- Medical aid was summoned for Mr. Zaragoza and the trooper continued his criminal investigation.

Timeline:

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8:22:05 PM	The WSP trooper activated his emergency lights to stop Mr. Zaragoza.
8:25:33 PM	Mr. Zaragoza stopped his vehicle over 2.5 miles from the initial attempted stop in the parking lot of Fred Meyer.
8:27:28 PM	The trooper tackled Mr. Zaragoza after Mr. Zaragoza refused to submit to arrest. Two civilians assist the trooper.
8:28:31 PM	Officer Althausen arrived on scene and observed the trooper and the two civilians struggling to control Mr. Zaragoza on the ground.
8:28:55 PM	Officer Althausen directed Canine Zorro to bite Mr. Zaragoza's leg after several warnings.
8:29:19 PM	Officer Althausen removed Canine Zorro from the bite and took him back to the patrol car.

The timeline indicates that Mr. Zaragoza had six minutes and fifty seconds to stop and submit to a lawful arrest. Officer Althausen had twenty-four seconds to observe what was taking place and make the decision to deploy his canine partner.

Applicable laws and policiesⁱⁱ:

After The Trooper's investigation was completed, Mr. Zaragoza was booked into the Yakima County Department of Corrections for:

[RCW 46.61.024](#) – Attempting to Elude Police Vehicle

[RCW 46.61.502](#) – Driving Under the Influence

[RCW 9A.76.040](#) – Resisting Arrest

[RCW 9A.76.020](#) – Obstructing a Law Enforcement Officer

The following is Washington's State Law Governing Use of Force:

[RCW 9A.16.020](#) - Use of Force – When Lawful

Applicable Yakima Police Policy:

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[Yakima Police Department Policy 300 Use of Force](#)

[Yakima Police Department Policy 302 Use of Force Review Boards](#)

[Yakima Police Department Policy 319 Canines](#)

Incident Review:

Upon learning of this incident from my command staff, seeing the public interest it gained via social media and from formal complaints, I directed a use of force review board to convene per Yakima Police Department [Policy #302](#).

The board was tasked with reviewing Officer Althausers' actions against Yakima Police policy, the deployment of his canine partner during this incident, and to make a recommendation whether or not his actions were within department policy.

The review board met on July 29, 2020. The board consisted of Yakima Police Lieutenant C. Stephens (Chairman), Yakima Police Officers J. Yates (Former Canine Handler & Trainer), M. Sutton (De-escalation Trainer & Peer Officer), C. Taylor (Firearms Trainer & Peer Officer), M. Imbery (Use of Force Trainer) and Spokane Police Officer Paul Gorman. Officer Gorman is a use of force instructor, current canine handler, and current Certified Washington State Police Canine Association (WSPCA) trainer. The review board's recommendation indicated the actions taken by Officer Althausers were within department policy.

The review board's analysis of this incident found that Officer Althausers responded to assist the WSP trooper with a vehicle that was eluding him, this is a felony crime. Once stopped, the suspect, Mr. Zaragoza, failed to obey the trooper's lawful commands. Mr. Zaragoza resisted the trooper's efforts to physically arrest him, thus committing a gross misdemeanor and misdemeanor crime. Upon reviewing Officer Althausers' actions, it was apparent Officer Althausers recognized the gravity of the situation. He observed the suspect still resisting the trooper and two community members who came to the aid of the trooper. Even with the help of two adult men, the trooper was unable to overcome the resistance offered by Mr. Zaragoza to secure him in handcuffs.

Based on Mr. Zaragoza's erratic behavior, unwillingness to cooperate with the trooper and demands for the trooper to kill him, Officer Althausers recognized the urgency of quickly gaining control of Mr. Zaragoza.

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If Mr. Zaragoza were to free himself, his proximity to the open Fred Meyer store would pose a risk to the numerous shoppers inside. Officer Althausen did not know the level of experience the two community members had in dealing with combative people. Officer Althausen did not know how they would react to other less lethal options like a Taser or pepper spray and did not know if these options would negatively affect the two civilians. Officer Althausen also did not know the level of fatigue that the two community members and the trooper had as the physical struggle took place. Failure to quickly secure Mr. Zaragoza could lead to the injury of one or both of the community members, the trooper and could lead to higher force having to be used against Mr. Zaragoza.

Officer Althausen decided to deploy his canine partner in a very direct and controlled manner. This is consistent with training provided by the WSPCA. Officer Althausen took his canine partner, Zorro, out of his patrol car and moved him under his direct control to Mr. Zaragoza's right leg. While this was taking place, Mr. Zaragoza was warned several times that he would be bit. Mr. Zaragoza acknowledged the presence of the police canine, but continued to struggle despite the warnings he was given. Officer Althausen directed Canine Zorro to bite Mr. Zaragoza's leg and kept him on the bite until Mr. Zaragoza was secured in handcuffs, approximately twenty-one (21) to twenty-four (24) seconds. Once Mr. Zaragoza was handcuffed, Canine Zorro was removed from the bite and placed back in Officer Althausen's patrol car.

Medical aid was immediately summoned for Mr. Zaragoza. His injuries were minor and he was treated then transported to the hospital for further examination. He was later booked into the Yakima County Jail.

The assertions made at the scene by bystanders that Mr. Zaragoza was unable to understand the commands being given to him by the trooper, Officer Althausen and the two community members do not have merit. Mr. Zaragoza responded to the trooper in English on several occasions during the interaction. Also, Mr. Zaragoza's previous history with law enforcement interaction would lend itself that Mr. Zaragoza knew full well what was expected of him during this interaction. Although he may prefer to speak Spanish, his ability to understand directions and warnings given in English by the trooper and Officer Althausen should have led him to voluntarily comply.

Chief's Analysis

Upon reviewing the facts, findings of the review board, and Yakima Police policy, I find that Officer Althausen's actions:

- Were within policy and state law.

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- Were appropriate to legally take Mr. Zaragoza into custodyⁱⁱⁱ.
- Were reasonable and the best “less lethal” force option available.
- Were necessary to effect a legal arrest.
- Were proportional to the circumstances and to overcome the level of resistance being offered against the legal action being taken.

As such, I will not take any disciplinary action against Officer Althausser.

I believe it is also important to point out that once the canine was deployed Mr. Zaragoza quickly complied and was taken into custody with minimal injury. Hindsight can be a tricky lens to view actions through. There may be times when a situation ends well but I find that an officer's actions were out of policy, inappropriate, not reasonable, or disproportional to the circumstances. Likewise, a situation may end tragically but the officer's actions may be deemed legal, necessary, reasonable, appropriate, and proportional. Each incident is dependent on the unique facts it presents.

I also believe that reasonable people would agree that there is a “universal” understanding of the need to comply when a uniformed police officer pulls you over and yells at you. The vast majority of people would immediately and passively do so in similar circumstances whether in Finland, Zambia, Syria, Laos, or any other country with a language barrier.

My responsibility is to be a fair arbiter of the facts, to hold police employees accountable when necessary, and to defend actions when appropriate. I will not condone bad behavior, nor will I condemn employees when they take a reasonable, necessary, appropriate, and proportional action that is within policy and law.

Procedural or policy changes:

The Yakima Police Department will continually look for opportunities to improve. As such, we looked at the circumstances of this incident and made some changes.

Moving forward:

Yakima Police canine handlers will give a verbal warning containing the following information:

1. The area or building is going to be searched by a police canine or a police canine is going to be deployed.
2. When the canine contacts the person they will bite.

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3. An order to immediately comply or surrender to avoid being harmed.^{iv}

*If time permits, this warning should be given in **English and Spanish** if there is reason to believe the suspect might be a monolingual Spanish speaker only. Canine handlers should receive training on how to give canine warnings in Spanish, however the use of a bilingual officer is preferred.*

Conclusion

I recognize that some will agree with my assessment and others will not. I welcome both points of view and encourage people to communicate your thoughts to me. We work for you and your voice is relevant to how we operate in our shared community.

Warmest regards,

A handwritten signature in black ink that reads "Matt Murray".

Chief Matthew Murray
Yakima Police Department

ⁱ Times were determined by reviewing Washington State Patrol Dash Cam (COBAN) video

ⁱⁱ Laws and policies may be accessed via hyperlink (click the blue text)

ⁱⁱⁱ [RCW 9A.16.020](#) Use of Force – When Lawful

^{iv} The non-italics portion already occurs, the italics is new to procedure

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