

# CONFIDENTIAL

## SPOKANE POLICE DEPARTMENT INTERNAL INQUIRY

On 16 March 2009 I was asked by Assistant Chief Nicks to conduct an inquiry into certain aspects of the [REDACTED] trial. On 13 March 2009 a jury had returned with a not guilty verdict on all criminal counts. Almost immediately after the conclusion of the trial concerns began to be expressed regarding the lack of 911 tape(s) that were provided as evidence, whether or not the Prosecutor's Office had been properly advised of the content of the testimony that was to be provided by Marvin Tucker and finally questions had arisen over the veracity of that same testimony. These concerns were originated both internally and externally from a variety of sources. In addition, Assistant Chief Nicks had requested that the inquiry include a review of the management of evidence and witness statements by Spokane Police Department personnel in order to identify any possible training or policy failures. This review would also be used to determine if any policy violations had occurred.

### Background

In brief: On 26 February 2007 [REDACTED] an off duty Spokane Police Officer drove himself to Dempsey's bar in downtown Spokane. [REDACTED] entered the bar carrying his personally owned loaded handgun and proceeded to consume alcohol. [REDACTED] had been at the bar with [REDACTED] and in the early morning hours the two of them left the bar and went to [REDACTED] car which was parked directly behind [REDACTED] truck. According to [REDACTED] she took [REDACTED] truck key from him while he slept in the front seat of her car, and then started [REDACTED] truck so that it would be warmed up and ready for him to drive when she successfully got him out of her car. Both [REDACTED] claimed that [REDACTED] then entered [REDACTED] truck and drove off with it. [REDACTED] and [REDACTED] say that they chased [REDACTED] until he pulled over and ran off. [REDACTED] claims he tried to capture [REDACTED] but he lost him. A short time later while [REDACTED] was driving [REDACTED] in his own truck, [REDACTED] spotted [REDACTED] hiding and began chasing him again. [REDACTED] chased [REDACTED] over a guard rail at the top of Riverside Avenue and both men proceeded to run north down a steep embankment. [REDACTED] claimed that [REDACTED] turned on him in a motion that he felt was threatening so he fired his weapon at him. [REDACTED] fired multiple rounds, one of which struck [REDACTED] in the side of the head causing him to bleed profusely. [REDACTED] eventually made his way to the home of [REDACTED] and [REDACTED] where he sought help for his injuries. Once there, [REDACTED] and [REDACTED] called 911 for assistance. [REDACTED] stated that he spoke with 911 and then handed the phone to [REDACTED] both stated that they were close enough to hear what [REDACTED] was saying to whomever he was speaking on the telephone. [REDACTED] was treated by medics and later transported to a local hospital and treated for his wound.

██████ never called 911 for police assistance or to inform anyone of authority of what had transpired. He was eventually located and contacted by responding officers. ██████ was transported to the Public Safety Building where detectives attempted to interview him. ██████ exercised his constitutional rights and refused to answer any questions on the night of the incident.

██████ was charged with the theft of ██████ truck. At his trial he argued that he had never been in ██████ truck and that he had never taken it. ██████ explained that he had merely asked ██████ for a ride and that both men exchanged angry words which resulted in ██████ chasing ██████ in his truck. At his trial, no evidence was presented that indicated ██████ was ever in ██████ truck. ██████ testified that ██████ shot him without provocation. ██████ was found not guilty of taking ██████ truck at the conclusion of a jury trial.

██████ was charged with first degree assault and reckless endangerment. At his trial he repeated his previous story that he had pursued ██████ after he had stolen his truck and that he had shot him after ██████ turned on him in a threatening manner. During ██████ trial dispatch supervisor Marvin Tucker testified on his behalf. Tucker testified that he had spoken to individual who had been shot on the night in question and that he had received an admission that this person had taken the truck. Tucker's testimony had not been available to prosecutors during ██████ criminal trial and was not made available to investigating officers until well after the completion of ██████ trial. Tucker's testimony was not corroborated by any audio recordings even though the line that the alleged conversation took place on is a recorded line. It was also reported that Tucker's testimony was a "wild card" in the trial and it was inferred that the prosecuting attorney was caught off guard by it. At the completion of ██████ criminal trial he was found not guilty of the assault and reckless endangerment charges.

This brief overview is not intended to be an accounting of the incident in its entirety, rather it is provided to highlight the issues pertinent to this inquiry. Those issues include:

- Were 911 tapes requested?
- Why was the tape containing Tucker's conversation not produced at either trial?
- Was the tape "erased"? If so by whom and for what reason?
- Was the Prosecuting Attorney given enough information to be adequately prepared for trial?
- Was Marvin Tucker's testimony truthful?

## The 911/Dispatch Tapes

### Fact Pattern:

I began this inquiry looking at the questions surrounding the 911/Dispatch tapes. In reviewing the official reports I noted that [REDACTED] had made the original requests for 911 and dispatch information. Upon reviewing the requests I found that [REDACTED] had made two requests. The first was on 5 March 2007 in which he requested "all 911 and related calls." [REDACTED] made a second request on 24 April 2007; this request was for "all radio dispatch related to this call" and provided information identifying the call to which he was referring.

I interviewed [REDACTED] on 24 March 2009. [REDACTED] advised me that he had been assigned to assist [REDACTED] of the Spokane County Sheriff's Office in the criminal investigation of both [REDACTED] and [REDACTED]. During the course of the investigation [REDACTED] agreed to obtain the dispatch tapes for [REDACTED]. [REDACTED] explained that he made the request to the 911 center and when the tapes were ready, [REDACTED] picked them up himself. [REDACTED] stated that this was the request that he made on 5 March 2007. [REDACTED] told me that [REDACTED] contacted him later and told him that the only information contained on the tapes was that of the 911 center. [REDACTED] then called a 911 supervisor and asked why he had not received all the information that he anticipated getting. The 911 supervisor explained that if a request is made for 911 information, that is all that will be provided. The 911 supervisor advised [REDACTED] that he would have to make a second request to the SPD dispatch center if he wanted to get dispatch information. [REDACTED] made a second request on 24 April 2007. This request was made to the SPD dispatch center and the request was for "all radio dispatch related to this call." [REDACTED] explained that he felt this request was sufficient to obtain all the information that was available from the dispatch center. When the tapes were ready, [REDACTED] picked them up and delivered them to [REDACTED]. [REDACTED] did not review the tapes before giving them to [REDACTED].

[REDACTED] was interviewed on 24 March 2009. [REDACTED] was assigned as the lead investigator in the [REDACTED] incident. [REDACTED] obtained the first tapes that he had received through [REDACTED] request. Upon reviewing them he found that the only information contained on the tapes was limited exclusively to 911 information. [REDACTED] reported this to [REDACTED] who then made a second request for dispatch information. [REDACTED] reviewed the information obtained from the second request and found that it contained SPD dispatch information. [REDACTED] reviewed this information, included it in his case file and when the case was completed he forwarded the entire case file to the prosecutor's office. [REDACTED] case file was used by the prosecutor to pursue criminal charges against [REDACTED]. [REDACTED] was acquitted at the termination of his criminal trial.

On 25 November 2008 [REDACTED] was contacted by [REDACTED] of the Cossey Law Office. [REDACTED] advised [REDACTED] that SPD dispatch supervisor Marvin Tucker had told

him that he had had a conversation with [REDACTED] in which [REDACTED] admitted being in [REDACTED] truck prior to being shot. [REDACTED] provided [REDACTED] a phone number with which to contact Tucker and made a comment similar to "I'll bet you wish you had had this information sooner." [REDACTED] contacted Marvin Tucker, who told him he had spoken with [REDACTED] and that [REDACTED] admitted to him that he had been inside the truck before he had been shot.

[REDACTED] detailed in his report that he did not receive copies of a recording between Marvin Tucker and [REDACTED]. He also noted there was no notation in the CAD history that documented the conversation between [REDACTED] and Tucker. Tucker explained that the conversation that he had with [REDACTED] was on a recorded line however, given the wording of the request that the detectives had made, they would not have received that particular piece of information. Tucker did not offer an explanation of why he had not entered a notation into the CAD history.

[REDACTED] spoke with Lt. Winkey, who was the dispatch commander at the time of the incident. When asked why tapes of the alleged conversation between Tucker and [REDACTED] were not provided, [REDACTED] indicated in his report that Lt. Winkey stated that detectives "may not have asked the right question to get the right information." [REDACTED] was dismayed that this information had not been provided to him in a timely manner.

#### Findings:

In examining this portion of the inquiry I spoke with a variety of individuals including detectives, detective supervisors and Dispatch personnel.

I spoke with Marvin Tucker and the current Dispatch Manager Marisa Kurtz as well as former Commander Lt. Winkey about the manner in which tapes are requested and obtained. I learned that 911 and Dispatch operations are completely separate functions. On the night of [REDACTED] shooting the initial call came into the 911 center. The 911 operator took the original call, determined that the call was occurring in the City of Spokane and transferred the call to SPD Dispatch. As the on-duty supervisor, Marvin Tucker received the call.

SPD Dispatchers and 911 call takers are non-commissioned employees of the City of Spokane and of Spokane County respectively. For the sake of clarity it is important to note that these individuals are not commissioned law enforcement officers. Mr. Tucker, Ms. Kurtz and Lt. Winkey all provided the same explanation in regards to the requests that were made by [REDACTED]. When he asked for all 911 and related calls [REDACTED] directed this request to the 911 call center. He received and delivered to [REDACTED] the tapes that he received. [REDACTED] received just the 911 portion of the incident because that is all that 911 could actually provide. Once the call was transferred to SPD dispatch, 911 no longer had the capability to record any of the continuing going call. Under the circumstances, the 911 call center did precisely what it should and provided a tape of everything that it had in reference to the [REDACTED].

incident. Upon [REDACTED] direction, [REDACTED] made a second request and submitted this one to the SPD Dispatch center. This request was for all radio dispatch traffic related to the call. Dispatch personnel advised that this request would only yield the actual dispatch traffic, which was provided to [REDACTED] and subsequently to [REDACTED]. In order to obtain peripheral information such as hang-up calls, calls-in or transfer calls a specific notation had to be included in the request or that information would not be provided. In looking at the request sent by [REDACTED] no specific request was made for the inclusion of that type of information and therefore it was not included in the tapes of dispatch information that were submitted as evidence to the investigators. I was advised that the current recording system saves information for a 90 day period and that after that time, if the information has not been transferred to a separate media it will be automatically recorded over.

[REDACTED] and [REDACTED] explained that when the first request was made for the 911 information it was their collective expectation that they would be given all the dispatch, radio traffic and telephone information associated with the call. It wasn't until [REDACTED] reviewed the information obtained from the first request that [REDACTED] had submitted that both men realized that a large part of the information was not present. It was at this time that [REDACTED] learned he had to make a secondary request for information. [REDACTED] believed that his second request to SPD dispatch was specific enough to ensure that he obtained all the information that the dispatch center possessed. [REDACTED] further believed that he had provided all the existing information to [REDACTED] and to the best of their knowledge at that time, both detectives believed this to be true.

[REDACTED] had made his requests for information in March and April of 2007. This was well within the 90 day period in which that information was still retrievable. In November of 2008, when [REDACTED] learned of Marvin Tucker's conversation with [REDACTED] from [REDACTED] he asked the dispatch center if it were still possible to capture that information. [REDACTED] was advised that it was no longer possible to retrieve that information as it been recorded over months before.

It is readily apparent that there was a general breakdown in communication between the Dispatch center and the investigating detectives. This communication break was compounded by what appears to a lack of understanding of how each unit works in relation to the other. The Dispatch staff believed that there was a clear understanding of how they classify the information that they capture and that the detectives knew precisely what information they have and how to ask for it. It is equally clear that detectives believed that by making a simple request for "all radio dispatch traffic related to the call" that they would receive "everything" associated with that particular call. Dispatch assumed that the detectives would ask for additional information if they desired it, and detectives operated under the assumption that they had everything that existed. Detectives had no way of knowing that they were missing a critical piece of evidence in this case.

It is equally apparent that the tape capturing the conversation was not purposely or intentionally erased or destroyed. It is extremely unfortunate that the conversation that Mr. Tucker described was not obtained during the 90 day period in which it could have been captured. Had the tape been preserved it certainly would have been beneficial to produce it at both [REDACTED] trials. Its exclusion in the [REDACTED] trial is explained by the fact that the investigating detective and the prosecutor did not know of its existence. The production of a tape that could corroborate or debunk Mr. Tucker's testimony at the [REDACTED] trial was also not possible because it had been automatically taped over at the dispatch center months before its existence came to light.

As stated in the paragraph above there is absolutely no information or evidence to indicate that anyone associated with the Spokane Police Department or the Spokane County Sheriff's Office caused, condoned or had knowledge that a critical piece of information had not been retained. Rather it appears that a series of assumptions led to mistakes that resulted in the loss of this critical piece of information.

Mr. Tucker's individual role in this incident will be expounded upon later in this document.

**Recommendations:**

It appears that one of the primary sources of difficulty in properly obtaining the desired evidence was the manner in which it was requested. The request form at that time was obviously not sufficient to meet the needs of investigating detectives and led to confusion on the parts of both the requestor and the unit receiving the request. This should be remedied immediately. Lt. McGovern of the Spokane Police Department's Major Crimes Unit has been given the task of working with Dispatch Manager Ms. Kurtz to develop a request form that will resolve this issue. Lt. McGovern will also coordinate with SCSO investigators to ensure that the request form complies with the requirements of the new Officer Involved Shooting Protocol that is being utilized.

In addition, in past Officer Involved Shooting situations radio dispatchers and supervisors have neither been required to write incident reports documenting their specific actions nor have they been interviewed by investigators. In future critical incidents involving officers dispatch personnel should be required to write reports, be interviewed by investigators or both. This change to investigative practice should prevent information from falling through the cracks in the future.

## Information Forwarded to Prosecutor's Office

### Fact Pattern:

The question explored in this portion of the Inquiry was to determine whether or not the Prosecutor's Office was provided all the information investigators possessed and if the delivery of the information was done in an appropriate time frame.

This portion of the inquiry was prompted by concerns that the lead prosecutor in the [REDACTED] case had not been adequately prepared to address Mr. Marvin Tucker's testimony. Mr. Tucker's testimony had been described as a "wild card" by local media and the inference was that it came as a surprise to both the Prosecutor and to the investigators. [REDACTED] the lead investigator was interviewed on 24 March 2009 and as indicated in the preceding section of this inquiry explained that he had learned of the conversation between Tucker and [REDACTED] from [REDACTED] on 25 November 2008. [REDACTED] interviewed Marvin Tucker at the Public Safety Building on 26 November 2008. [REDACTED] wrote a report detailing Mr. Tucker's statement and then promptly provided that information to the prosecutor's office for inclusion in his case file.

Mr. Steinmetz was interviewed on 30 March 2009. Mr. Steinmetz was the prosecuting attorney in the [REDACTED] trial. He explained that he had been made fully aware of the testimony that Tucker was going to provide and that he had not been caught by surprise by it. Mr. Steinmetz explained that he had been prepared for the testimony that Tucker was to provide by [REDACTED]. He further explained that although he was not surprised by Marvin Tucker's testimony at [REDACTED] trial, he was somewhat surprised that that piece of testimony was not available for the [REDACTED] trial.

### Findings:

In exploring the question of whether or not Mr. Steinmetz had been given the information he needed to adequately prepare for the prosecution of [REDACTED] the answer is yes. [REDACTED] provided all the information he had at his disposal to Mr. Steinmetz in a very timely manner. Despite inferences to the contrary, it is apparent that Mr. Steinmetz was advised of the testimony that Tucker was to provide and that he was prepared for it.

Mr. Steinmetz expressed well placed concern in regards to the unavailability of Tucker's testimony for the [REDACTED] trial. This information was not provided to the prosecuting attorneys because investigators were not aware of its existence either prior to or during the [REDACTED] trial. It is reasonable to believe that had investigators had this information it would have been provided to Mr. Steinmetz with the same promptness as the information he did receive. Investigators did forward every piece of information that they had collected in the case and made that information fully available to the prosecutor's office. At the time of the [REDACTED] trial, investigators had no reason to believe that they had not done so.

### Recommendations:

There are no specific recommendations in this section of the inquiry. Investigators diligently forwarded all the information they had knowledge of promptly to the prosecutor's office. This is true in reference to both the [REDACTED] cases.

### Testimony of Marvin Tucker

#### Fact Pattern:

On 25 November 2008 [REDACTED] was contacted by [REDACTED] the Cossey Law Office. [REDACTED] was part of the defense team representing [REDACTED] told [REDACTED] that he had spoken to Marvin Tucker and that Tucker told him that [REDACTED] had admitted to him that he was in [REDACTED] truck prior to being shot. [REDACTED] asked [REDACTED] how he had learned of this information and he was told by [REDACTED] that it was common knowledge that this conversation had occurred. [REDACTED] did not press [REDACTED] for additional information, but immediately contacted Mr. Tucker and arranged to interview him.

During the interview of Mr. Tucker by [REDACTED] Tucker stated that on the night of the incident he had been the on-duty supervisor. Tucker took a 911 transfer call and initially spoke with the homeowner, [REDACTED]. Tucker then asked to speak with the person who had been shot and he had a conversation with a person later identified as [REDACTED]. Tucker said that [REDACTED] admission that he had taken the truck came during this brief conversation. When asked why he had not come forward with this information sooner, Mr. Tucker told [REDACTED] that he assumed that investigators would contact him if they needed any information from him. Mr. Tucker and [REDACTED] then had a conversation about the requests that had been made for 911 and dispatch tapes. The explanations given by Mr. Tucker are documented in the first section of this inquiry. However, of significant note is the fact that Mr. Tucker explained to [REDACTED] that the requests as made would not have resulted in the capture of his conversation with [REDACTED] and had he been the dispatch employee who had received the request he would have known to include the 911 transfer call. [REDACTED] pointed to a section on the request form that showed employee "552" had filled the request and asked Tucker which dispatch employee that was. Tucker admitted that he was employee number "552" and that he must have inadvertently failed to copy that particular recording. Mr. Tucker also told [REDACTED] that he had not documented his conversation with [REDACTED] in either the CAD history or in a written report.

On 20 March 2009 I spoke with [REDACTED] who had been the homeowner that had called 911 on [REDACTED] behalf on the night that he had been shot. [REDACTED] was advised that I was calling to discuss statements that he had made to a local reporter casting doubt on Mr. Tucker's trial testimony. [REDACTED] began by calling Marvin Tucker a liar. [REDACTED] said that [REDACTED] had appeared on his door step bleeding from a wound to

his head and saying that he had been shot. [REDACTED] pulled [REDACTED] into his Peaceful Valley home fearing that the person who had shot [REDACTED] was still at large. [REDACTED] was told by [REDACTED] that he had asked a guy for a ride and that the guy pulled out a gun. [REDACTED] told [REDACTED] that he ran away from the guy and that he was then shot by him. [REDACTED] called 911 to report what he had been told by [REDACTED] and to summon help. [REDACTED] said that he reported what [REDACTED] had told him and was asked to put [REDACTED] on the telephone. [REDACTED] handed the phone to [REDACTED] and was standing at about arms length from [REDACTED] as he spoke on the phone. [REDACTED] could not hear what was being said to [REDACTED] but he could clearly hear [REDACTED] side of the conversation. [REDACTED] remembered hearing [REDACTED] give his name, age and address. [REDACTED] could not remember everything that [REDACTED] did say, however he said that he had a very clear memory of what was not said. [REDACTED] never heard [REDACTED] say anything about being in a vehicle. He clearly remembers [REDACTED] explaining that he was just looking for a lift up north. [REDACTED] was certain that if [REDACTED] had said anything about being in a vehicle he would remember that and he would have given that information to the responding officers. [REDACTED] thought that [REDACTED] phone conversation lasted no more than one to two minutes.

On 20 March 2009 I spoke with [REDACTED] who lived with [REDACTED] in Peaceful Valley in February of 2007 and currently resides with him in Port Townsend, Washington. [REDACTED] clearly remembered the night that [REDACTED] came to their home. She remembers hearing what she believed to be gunshots and that a short time later [REDACTED] was frantically knocking on their door seeking help. [REDACTED] saw that [REDACTED] was bleeding from a head injury and [REDACTED] asked she and [REDACTED] to call the police because he had been shot. [REDACTED] and [REDACTED] pulled [REDACTED] into their house. She said that someone called 911 and that she believed that [REDACTED] made the original call and then handed the phone to [REDACTED] was a little farther away than arm's length while [REDACTED] spoke on the phone with 911. She described [REDACTED] conversation as lasting no more than one to two minutes and that she heard him giving his name and age, and when asked for an address, she gave them her address so that the police would know where to find him. [REDACTED] could hear [REDACTED] speaking on the phone and heard him say that he just wanted a ride home at that some guy shot him. [REDACTED] heard [REDACTED] saying that he walked up to a truck to ask for a ride and the guy pulled a gun on him. [REDACTED] then heard [REDACTED] say that he ran away and the man shot at him. [REDACTED] did not hear [REDACTED] say anything about being in someone's vehicle. [REDACTED] described being close to [REDACTED] while he was on the phone and that she retrieved a towel and was either pressing it against his wound or encouraging him to do it. [REDACTED] allowed [REDACTED] to use their phone to call [REDACTED] and she was close enough to hear his conversation with her. [REDACTED] heard [REDACTED] tell [REDACTED] that he was trying to get a ride when someone shot him. [REDACTED] said that [REDACTED] did not say anything to his wife about stealing a truck.

[REDACTED] objected to what she described as [REDACTED] being treated as a suspect and stated that she was very concerned that the police denied him medical treatment for 45 minutes. (It is well documented in the CAD history that the time delay was actually only 5 to 10 minutes at the most.)

As documented previously in this inquiry, on 24 March 2009 I interviewed [REDACTED]. In addition to the information already detailed in this inquiry, I asked [REDACTED] for his opinion of the testimony that Mr. Tucker provided. [REDACTED] believed that Tucker was being truthful in his testimony however; he felt that Mr. Tucker's memory of the events of that night may not be entirely accurate. [REDACTED] explained that the CAD history indicated that [REDACTED] stated "suspects in a truck shot at him." [REDACTED] speculated that after a gap of nearly two years that Mr. Tucker may have mistaken that comment by [REDACTED] as an admission that he had been the suspect in the truck. [REDACTED] reiterated that he believed that Tucker was truthfully relaying what he remembered, but felt that he may have just been mistaken. I asked [REDACTED] if he was able to gauge the impact that Mr. Tucker's testimony may have had on the jury verdict, and he explained that at the conclusion of the trial he had polled the jury to determine why they had come to the conclusion that they had. [REDACTED] was told that the jury believed the testimony provided by [REDACTED] but they did not believe the testimony of [REDACTED]. [REDACTED] was told that the jury also believed [REDACTED] explanation of why he was reluctant to contact responding officers due to the fact that [REDACTED]. The jurors explained to [REDACTED] that had the prosecutor produced witnesses to counter [REDACTED] assertion that [REDACTED] was unknown by his peers they may not have placed as much importance on that part of the testimony as they did. In reference to Marvin Tucker's testimony, [REDACTED] was told that the jury discounted his testimony and it had little or no impact on the verdict. When asked to explain, [REDACTED] was told that the jury focused primarily on the critical 5 to 10 seconds that immediately preceded the shooting, and that under the circumstances as produced in trial they felt that [REDACTED] had acted in self defense.

In my 30 March 2009 interview with Mr. Steinmetz I had asked him for his opinion of Marvin Tucker's testimony. Mr. Steinmetz felt that Marvin Tucker did not lie during his testimony, but he was uncomfortable with the fact that there was no corroborating evidence supporting Tucker's testimonial evidence. Mr. Steinmetz expressed some concern that a dispatcher would challenge a caller's version of what had happened and he thought it was an odd practice if it actually did. I explained to Mr. Steinmetz that it was not an unusual practice for a dispatcher to challenge a caller if they believed that the information they were being given was not accurate and may place responding officers in peril. In reference to Tucker's testimony that he had challenged [REDACTED] to tell him what really happened, I expressed to Mr. Steinmetz that this would have been a fairly frequent practice with many dispatchers, especially the supervisors.

On 31 March 2009 I interviewed [REDACTED] an attorney with the Cossey law office. I asked [REDACTED] how he learned that Marvin Tucker had allegedly had a conversation with [REDACTED] on the night of the shooting. [REDACTED] explained that he had heard of the conversation after being approached by SPD officers who had relayed the information to him. [REDACTED] I asked if he would identify the officers that he had spoken to and [REDACTED] respectfully refused to do so. [REDACTED] did admit that it had only been one officer who had spoken to him and told him that he should speak with Mr. Tucker. [REDACTED] explained that he contacted Mr. Tucker and asked him to submit to an interview. [REDACTED] said that Tucker told him that he wanted to speak

with his supervisor before giving [REDACTED] a decision. [REDACTED] was able to interview Mr. Tucker and Tucker told him of his conversation with [REDACTED] on the night of the shooting. I asked [REDACTED] if he was able to develop an impression of Tucker's veracity. [REDACTED] explained that during his years as an investigator he had been trained in interviewing skills and that he had a well developed sense for when people were being untruthful or were fabricating statements. [REDACTED] believed that Tucker was being completely truthful with the information that he was providing. [REDACTED] based his opinion not only on his training and experience, but stressed that the flow and cadence in the manner in which Tucker answered led him to believe that Tucker was speaking directly from direct memory and that he was not fabricating the information. [REDACTED] impression was that Tucker was a credible and truthful witness.

On 31 March 2009 I interviewed [REDACTED] of the Spokane Police Department's Special Investigative Unit. [REDACTED] had contacted Sgt. Griffiths of the Internal Affairs Office and had told him that he had some information that he felt was pertinent to this inquiry. Sgt. Griffiths referred [REDACTED] to me. I contacted [REDACTED] and he told me that he and another detective, [REDACTED] had been conducting a search warrant and during some down time the topic of the [REDACTED] trial came up. [REDACTED] mentioned Marvin Tucker's testimony which prompted [REDACTED] to share a conversation that he had at the police academy. After sharing this event with [REDACTED] [REDACTED] felt that he should share the information with Internal Affairs. [REDACTED] told me that he had not followed the [REDACTED] trial closely but he had heard comments about Tucker's testimony. [REDACTED] stated that he had been at an in-service shortly after the original event. He remembered being in the lunch room with several people, one of whom was Marvin Tucker. [REDACTED] was not part of the group that Tucker was speaking to, but he was close enough to hear what was being said. [REDACTED] remembers hearing Tucker telling the group that he had spoken to [REDACTED] after 911 transferred the call to SPD dispatch. [REDACTED] then heard Tucker describing how [REDACTED] had said that he was walking down the street when he was chased and shot at. [REDACTED] said that Tucker continued by saying that he told [REDACTED] that his story didn't make sense and told him to tell him what really happened. [REDACTED] heard Tucker saying that [REDACTED] then admitted that he had taken the truck and then had been shot. [REDACTED] stated that he clearly remembers the conversation, but does not recall who was in the lunch room at the time. [REDACTED] also expressed that he assumed at that time that Tucker must have shared that information with investigators because of the casual manner in which he was discussing it. [REDACTED] described it as a fairly public setting and that Tucker was not trying to be discrete in the way he was telling what happened. [REDACTED] believes that this conversation he overheard at the academy took place within a couple of weeks of when [REDACTED] had shot [REDACTED]

I asked [REDACTED] to describe his relationship with Marvin Tucker and he said that he has spoken with him on the phone on occasion and that they had met a couple of times. [REDACTED] said that he and Tucker are not friends and that they have never socialized outside of the workplace.

On 1 April 2009 I interviewed [REDACTED] had been the presiding juror during the [REDACTED] trial. I explained the purpose for my call and asked if he would be willing to speak with me. [REDACTED] asked me if this inquiry would be given to the media. I told him that my intent was to provide the completed inquiry to the Chief of Police, but if a public records request was made, the department would have to provide documents as dictated by law. [REDACTED] stated that the jury had agreed not to discuss the matter with media and because of this agreement he felt bound to respectfully decline to discuss the case with me.

On 8 April 2009 I interviewed [REDACTED] is a dispatch operator at the Communication Center. She is employed by the Spokane Police Department, but is not a commissioned officer. I explained to [REDACTED] that I believed she may have information pertinent to the inquiry I was conducting and explained to her the nature of the inquiry.

[REDACTED] stated that she had been working on the night that [REDACTED] had shot [REDACTED] [REDACTED] had been the primary south side dispatch operator on that night and recalled that Marvin Tucker had been the supervisor on that shift. [REDACTED] remembered the 911 transfer call coming in and said that this call was received by Marvin Tucker. [REDACTED] said that when the call was initially received there was a lot of chaos. She said that she and the other dispatch staff could not discern what had happened and that there was a great deal of concern for [REDACTED] who was unaccounted for. [REDACTED] said that she was close enough to hear Tucker as he was speaking on the phone. She said that she could clearly hear Tucker's side of the conversation, but that she could not hear what was being said to him. [REDACTED] assumed that Tucker was speaking to the homeowner at first, because she heard him ask to speak with the victim. [REDACTED] recalls hearing Mr. Tucker say something to the effect, "You were just walking down the street when someone in a truck shot you?" She then heard tucker say "That's not the way things normally happen. What really happened?" [REDACTED] said that Tucker can sometimes be sarcastic when speaking with people and that that was his tone of voice while questioning this victim. [REDACTED] could not directly hear what was said in response to this query, but Tucker did tell her and others in the room that [REDACTED] had been in the truck and that he had later been shot. I asked [REDACTED] whose responsibility it would have been to enter that information into the CAD history. [REDACTED] said that it would have been Tucker's responsibility and added that he was notoriously bad about entering information into CAD. [REDACTED] added that on this call there was a lot of confusion and that Mr. Tucker was extremely busy managing and coordinating information, the police response and answering in coming calls. [REDACTED] also remembered that Mr. Tucker relayed that [REDACTED] indicated the truck had been left at the top of the stairs that lead down to Peaceful Valley from Riverside Avenue. [REDACTED] remembers directing officers into that area to attempt to locate both the truck and [REDACTED] I asked [REDACTED] how certain she was of the information that she was giving me and without hesitation she responded that she was very certain. [REDACTED] said that Tucker provided the information regarding [REDACTED] while the incident was occurring and that she specifically remembers it.

I asked [REDACTED] to describe her relationship with Mr. Tucker. She stated that she and Tucker are friendly at work and that they and their respective families had socialized outside of work hours on a couple of occasions. [REDACTED] does not believe that this has happened more recently than approximately two years ago.

I also asked [REDACTED] to describe her relationship with [REDACTED] [REDACTED] said that she did not really know [REDACTED] except through communicating with him during the course of business. [REDACTED] stated that [REDACTED] was not a favorite officer of the dispatch personnel. [REDACTED] explained that [REDACTED] was not a very active officer, that he rarely volunteered to take a call for service and when assigned to one he would act as if he were being inconvenienced.

On 30 March 2009, I interviewed Mr. Marvin Tucker. Mr. Tucker stated that he had been the on-duty dispatch supervisor on the night of the [REDACTED] incident. Tucker described receiving the 911 transfer call and stated that he was originally speaking with the homeowner. Tucker said that he asked to speak with the victim if the person was capable of talking. I asked Tucker if he had asked [REDACTED] to identify himself when he spoke with him. At this point Tucker asked to go off tape and explained that when he testified in court he had said that he knew he was talking to the shooting victim, but that he didn't know it was [REDACTED]. He said that he later looked at the CAD history and saw that he had indeed asked for [REDACTED] name and date of birth. Tucker just wanted me to be clear with what had actually happened. I advised him to explain what had happened when we went back on tape, which he did. Mr. Tucker described how [REDACTED] had told him that he was just walking down the street when someone shot him. Tucker said that even though things like that do happen, he felt that in this case it may not have, so he challenged [REDACTED] to tell him the story. Tucker said that he asked [REDACTED] "is that what really happened?" At this point Tucker was told by [REDACTED] that he had been inside somebody's vehicle or had taken that person's vehicle. Tucker said that after [REDACTED] made this admission, he shared the information with the other dispatchers in the room and specifically with [REDACTED]. Mr. Tucker could not remember the other dispatchers that were working that night, but he remembers speaking with [REDACTED] as she was sitting next to him. Tucker believes that he told people who were coming in and out of the room what [REDACTED] had told him, but he does not recall specifically with whom he spoke. He recalled being told by some of the people that he would probably end up being called into court to testify.

I asked Mr. Tucker to describe what was going on once he received the transfer call and he described that he was very busy completing a large number of tasks. I asked if he believed that he was overwhelmed during this call and he stated that, "that initially he probably was." I asked Tucker if on the night in question, he realized the importance of [REDACTED] statement. Tucker replied that at that time he did not. Tucker explained that it was his responsibility to enter that information into the CAD history. Tucker said that he realized that he made a mistake in not immediately entering that information into the CAD record. Tucker offered no excuses for why he failed to enter this information.

I asked Mr. Tucker if it was common practice to have dispatchers write reports detailing their activities in a call of this nature. Mr. Tucker said that dispatchers have never been

required to write such reports. I asked if it were common practice for investigators to interview dispatchers after an incident involving an officer and again Mr. Tucker replied that investigators had never done so before and did not do so on this incident. I asked Tucker if he was ever contacted prior to or during the [REDACTED] trial by an investigator and he said no. I asked him if he thought this was odd and he said that he didn't. Tucker explained that he felt that his recording spoke for itself and he assumed that he did not need to be involved in any way.

I asked Mr. Tucker to explain the process for obtaining tapes for evidence. Tucker explained the process as documented previously in this inquiry. I asked Tucker if he had been the one to fill the request for SPD radio traffic and he stated that he had. Tucker explained that he looked at the request and saw that it was for radio traffic so he supplied specifically what he thought they wanted. Tucker said that in order for detectives to have got the recording with his and [REDACTED] conversation on it they would have had to ask specifically for "phone conversations". Tucker said that requests come in all the time and that when he saw this one he filled it immediately and noted that it was for radio traffic, so that's what he provided. Mr. Tucker said that he listened to portions of what he had recorded and recognized it as the [REDACTED] incident, but since the request was specifically for radio traffic that was what he provided. He admitted that he may have assumed that they (investigators) may have had the phone recording already. Mr. Tucker acknowledged that this was a "prime integral piece of information" and that somehow it had fallen through the cracks. Tucker stated that the recording of his conversation was still in the system when [REDACTED] made his requests, but that by the time of [REDACTED] trial it had been purged from the system and was unrecoverable. Tucker explained that the tapes are automatically recorded over every 90 days unless they are captured and transferred to another media such as a CD. Tucker described how he has beaten himself up over this part of the incident and expressed regret that the information had not been retained. I asked Mr. Tucker if the exclusion of that portion of the tape had been an intentional act and he immediately said no, it was not.

Tucker had mentioned earlier in the interview that he may have assumed that investigators already had the phone recording. I asked him when he learned that this was not the case. Tucker stated that he received a call from [REDACTED] November 25<sup>th</sup> of 2008. Tucker thought it was odd that [REDACTED] was contacting him and at first he did not know whether [REDACTED] was representing the prosecution or the defense. Tucker said that [REDACTED] told him that he had heard a rumor that he had spoken with [REDACTED] Tucker advised [REDACTED] that this was 100% accurate. Tucker remembers saying to [REDACTED] that this conversation should be on the recordings. [REDACTED] then told Tucker that there were no recordings of that conversation. Tucker told me that this was the first time he knew that investigators had not received the phone recording of his conversation with [REDACTED] Tucker stated he couldn't believe it and wondered where the recording was at. Mr. Tucker was interviewed by Mr. [REDACTED] and then was contacted by [REDACTED] who also interviewed him. I asked Mr. Tucker if he had truthfully provided information to [REDACTED] and he replied, "Absolutely." I asked Mr. Tucker if he had testified truthfully during [REDACTED] trial, and again he responded, "Absolutely." Tucker readily admitted that he had made some mistakes in his handling of this incident and that he was willing to own up to them.

### Findings:

There are two items of primary issue addressed in this section of the inquiry. The first and most important is an attempt to determine if Marvin Tucker actually had a conversation with [REDACTED] on the night in question. Additionally at question, is if Tucker had this conversation with [REDACTED] did he record it, and was that information made available to investigators in a timely manner.

I interviewed multiple people in an attempt to answer this first question. In exploring this particular aspect of the inquiry starting with Marvin Tucker seems to be the most logical. Marvin Tucker stated unequivocally that he had spoken with [REDACTED] on the night of his shooting. Tucker spoke to others on the night of the incident, most notably [REDACTED] and shared with her the admission that [REDACTED] had made. According to [REDACTED] Marvin Tucker was speaking of his conversation with [REDACTED] in an open setting at the police academy lunch room and that this occurred within a couple of weeks of the original incident. When questioned by [REDACTED] Tucker relayed the content of his conversation with him. When questioned by [REDACTED] Tucker again relayed the same story. Tucker then testified to this information in court under oath. In examining Mr. Tucker's conversation with [REDACTED] the story is the same as told to [REDACTED] as remembered by [REDACTED] as told to [REDACTED] and to the court. There is a time span of almost two years from the time Tucker had his conversation with [REDACTED] until the time he testified in court. Yet, despite the time gap, Mr. Tucker's version of that conversation has remained consistent. Mr. Steinmetz, [REDACTED] and [REDACTED] all believed that Tucker was telling the truth in the statements he provided. [REDACTED] felt that Tucker may have been mistaken in his memory of portions of the incident. As stated previously, Mr. Steinmetz expressed concern over what appeared to be a lack of any corroborating evidence supporting Tucker's testimony that [REDACTED] had actually stolen the truck. It is important to note that there is corroborating information supporting Mr. Tucker's assertion that [REDACTED] took [REDACTED] contained within the CAD history. On the second page of the CAD history, there is an indication from unit B486 at 0357 hours that the "suspect stole [REDACTED] truck." The CAD history was begun at 0343 hours and this notation was entered into the record approximately 14 minutes later. This information was not entered into the CAD by Mr. Tucker and appears to corroborate his contention that information was obtained that indicated [REDACTED] had taken [REDACTED] truck.

For [REDACTED] and [REDACTED] there were no questions of truthfulness. [REDACTED] recalls Tucker describing what he was told on the night of the incident as it happened. [REDACTED] also recalled being told to look for [REDACTED] and his truck at the top of the stairs leading from Riverside down to peaceful valley. [REDACTED] said that this information came from Tucker who heard it from [REDACTED] and then passed it to her. [REDACTED] heard Tucker openly discussing the incident in a manner that made it appear to be a matter of fact.

On the other side of the scale is the information provided by [REDACTED] and [REDACTED]. Both [REDACTED] insist that they were in close proximity to [REDACTED] as he spoke with Mr. Tucker. [REDACTED] were adamant that [REDACTED] never made any admission to having been in or taking someone's vehicle. According to [REDACTED] he heard [REDACTED] say something about asking a guy for a ride when the guy pulled out a gun. [REDACTED] says he heard [REDACTED] say that he then ran from the guy and that he was shot by him. [REDACTED] stated that he did not recall everything that [REDACTED] said, but he remembered clearly what was not said. [REDACTED] gave virtually the same statement as [REDACTED]. [REDACTED] expressed that he believed Mr. Tucker to be a liar.

It is important to note that the descriptions of what [REDACTED] said according to [REDACTED] and [REDACTED] are not that dissimilar to what Tucker stated was the initial information that [REDACTED] gave him. Tucker says he challenged this information from [REDACTED] and that [REDACTED] then told him that he had been in or had taken a truck. It is interesting that [REDACTED] and [REDACTED] clearly remember [REDACTED] explanation of how the incident transpired, but neither heard the second part of the conversation as reported by Tucker. In speaking with [REDACTED] she stated that she was close enough to reach out and touch [REDACTED] while he was speaking on the phone. However, she also told me that she was pressing a towel on his wound while he was on the phone. [REDACTED] never said that she left the room for a brief period of time to get a towel, but it is reasonable to believe that she most likely did so. Therefore, she may not have been present the entire time that [REDACTED] was speaking with Tucker.

During my interview with Mr. Steinmetz we discussed the testimony of [REDACTED] and why Mr. Steinmetz chose not to recall him as a witness after Tucker's testimony. Mr. Steinmetz told me that [REDACTED] displayed what appeared to be a very anti-police bias, and that he had described [REDACTED] as a "homicidal maniac." Steinmetz also said that [REDACTED] did not present well as a credible witness and that some of his testimony was "off by a country mile." As an example of this Mr. Steinmetz (and also [REDACTED]) stated that [REDACTED] insisted that medical treatment had been denied to [REDACTED] for a period of 30 to 45 minutes. [REDACTED] was adamant that this was the case even though CAD records show the time lapse was closer to 5 to 10 minutes than the time frame stated by [REDACTED]. Mr. Steinmetz declined to recall [REDACTED] for the reasons stated above in addition to consideration for his medical state.

It is not the purpose of this inquiry to discredit any particular individual; it is however an attempt to ascertain what actually occurred. After completing a careful examination of the information there appears to be a preponderance of evidence that supports the belief that Mr. Tucker did have the conversation with [REDACTED] as he testified to. If the previous statement is correct, it is painfully obvious that Mr. Tucker did not act with proper diligence in documenting or recording the conversation he had with [REDACTED]. This failure on Mr. Tucker's part resulted in a breach of confidence in not only the law enforcement community but also in the criminal justice system. Had Mr. Tucker simply recorded this critical piece of information into the CAD history this situation could have been averted.

Mr. Tucker was also responsible for filling the request for information that had been made by [REDACTED]. It is important to note that Tucker is not the only person responsible for filling these requests; however this one came to him. Mr. Tucker stated that he read the request, realized it had to do with the [REDACTED] case and then provided just the radio dispatch traffic per the request. Tucker stated that the request had been bounced around between SPD dispatch and 911, so he assumed other operators had already provided the tape of his phone conversation with [REDACTED]. Tucker said that he did not realize investigators did not have the recording of his conversation with [REDACTED] until he was contacted by [REDACTED]. Tucker said that he was shocked when he learned this. It was apparent to me that Mr. Tucker neither intentionally failed to provide the phone recording nor was he responsible for that portion of the tape being recorded over.

### Recommendations:

The first portion of this inquiry included recommendations for addressing the manner in which requests for information from 911/Dispatch should be handled in the future. Therefore they will not be repeated here.

In addition to investigators being required to obtain statements from dispatch personnel after an officer involved critical incident, Mr. Tucker made a valuable suggestion. Mr. Tucker opined that investigators are not always as familiar with the nuances of a CAD history as a dispatcher. Interpreting what is included in the CAD history could be critical to the success of an investigation and therefore, a dispatcher or dispatch supervisor should be utilized to assist the investigator in fully understanding the document. Inclusion of dispatch personnel for the capture, retrieval, retention and interpretation of information should be made part of the Officer Involved Shooting protocol.

Lastly, Marvin Tucker's failure to properly document his conversation with [REDACTED] and the concomitant problems that followed this failure appear to be a policy violation. Mr. Tucker's actions were an inadequate response under the circumstances. His failure to recognize the importance of the information and his lack of any steps to preserve it also appear to be a violation of policy and contrary to best practice. An Internal Affairs investigation should be completed to investigate these performance deficiencies.

### Conclusion

This inquiry was conducted in order to examine the circumstances and controversy surrounding the [REDACTED] criminal trial. The controversy revolved around missing or excluded pieces of information and testimony provided by Marvin Tucker at trial.

There is no disputing the fact that a key piece of information (the recording containing Marvin Tucker's conversation with [REDACTED]) was never made available to investigators. This information was also not provided to prosecutors for use in either the [REDACTED] criminal trials. The reasons for this exclusion are numerous and have been detailed in this inquiry. In summary, the base cause was primarily a systemic error in the manner in which requests for information were both requested and filled. Investigators asked for information in a manner that they believed was very straight forward and intuitive. Employees of both 911 and SPD interpreted requests from detectives as literal and specific. Assumptions were made on both sides that led to a breakdown in communication. Investigators assumed they were asking the right way for the information that they wanted, and dispatchers assumed that investigators knew what information they retain and how to ask for it. It seems counter-intuitive that asking for "all radio traffic related to a call" would not yield every bit of information that is available. Yet from the dispatch side they have a lot of information that is recorded that investigators may not want or be interested in. In the future, the set of circumstances that resulted in this error will not be repeated. Request forms are being redesigned and investigators will personally interview dispatchers to prevent information from being lost.

In examining the loss of the recording of the phone conversation at the center of this controversy, it became readily apparent that the tape was neither "destroyed" nor "erased" by design. To be specific, no employee of the Spokane Police Department purposely or intentionally destroyed or caused the information to be erased. It is extremely unfortunate that this evidence was lost, but it was unrecoverable because of the errors listed above and not because of the actions of one specific individual. The recording system in use at the Dispatch Center is programmed to re-record over information every 90 days unless some type of intervention occurs.

Marvin Tucker's failure to document the conversation with [REDACTED] is not part of the systemic error noted above, but is an example of human error. Tucker's exclusion of this information does not appear to be purposeful; rather it is a mistake on his part. An egregious mistake, but a mistake never the less. Tucker explained that he was initially overwhelmed with activities during the first stages of this incident and it was during this period that he failed to make the appropriate documentation. Mr. Tucker should and will be held accountable for any performance failures that occurred.

The issue of Mr. Tucker's testimony at [REDACTED] trial is problematic at best. It is certainly understandable that his testimony would be subjected to speculation given the fact that it is not supported in trial by either tape recordings or written documentation produced at the time of the incident. As mentioned above, there is a single CAD notation in the history of this incident in which information was captured that indicated [REDACTED] was responsible for taking [REDACTED] truck. This was recorded independently of Mr. Tucker and supports his assertion of what he claims to have been told by [REDACTED]. Mr. Tucker also had conversations with other employees at the time of the incident or in the weeks immediately after the incident. His version of what happened has remained constant through out the months from when it occurred until such time as he testified. Mr. Tucker is not close friends with [REDACTED] and would have no motivation to lie about what

occurred and subject himself to the scrutiny that he has experienced since the trial. It has been opined that Mr. Tucker's testimony was a critical factor in [REDACTED] acquittal. This assumption appears erroneous in light of information that [REDACTED] received in his poll of the jury. [REDACTED] was told that the jury placed a great deal of emphasis on the 5 to 10 seconds just prior to [REDACTED] being shot. In his closing argument Mr. Cossey, [REDACTED] attorney, told the jury that [REDACTED] was "not on trial as a police officer" and that he had the right to defend himself. Cossey added that "That 10 seconds on the hill is the most important part of this trial...you have to put yourself in his shoes, what his perception was that night." In light of this information it appears that the jury listened to Mr. Cossey's argument in defense of [REDACTED] and that his acquittal can be attributed more to a successful aggressive defense by his attorney rather than testimony provided by Marvin Tucker. This also fits with the information [REDACTED] received that the jury discounted Tucker's testimony and that it had little or no effect on the verdict.

In conclusion it is very unfortunate that evidence of significance was not provided for either the trial of [REDACTED]. In the [REDACTED] trial it may have provided the jury with corroborative evidence that would have assisted in the prosecution of that case. It may or may not have changed the outcome of the jury verdict, but that is something that will never be known. In the trial of [REDACTED] the inclusion of this evidence would have supported the testimony of Marvin Tucker and avoided the appearance of any impropriety on the part of law enforcement, dispatch personnel or the prosecutor's office. The exclusion of the evidence was the result of a combination of both systemic and human error both of which are being addressed.

Corrective actions have been identified and will be implemented to ensure that the circumstances that created this situation shall not be experienced in future cases.

# **CONFIDENTIAL**

## **SPOKANE POLICE DEPARTMENT INTERNAL INQUIRY**

### **ADDITIONAL**

Type of Inquiry: Management of Evidence & Witness Statements	Case #: <u>07-0053701</u>
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On 16 March 2009, I was instructed by A/C Nicks to conduct an Internal Inquiry into the management of certain pieces of evidence and witness statements by members of the Spokane Police Department in regards to the [REDACTED] criminal case. A/C Nicks directed that the inquiry focus on several aspects of this case, specifically:

1. Determine if specific 911/Dispatch tapes had not been obtained as evidence.
2. If evidence had not been captured determine why this evidence was not obtained or retained appropriately.
3. Determine if evidence/information had been provided to the Prosecutor's Office in an effective manner.
4. To examine Marvin Tucker's role in this case, including identification of what knowledge he had of the incident, his actions in regards to the reporting, notification, sharing and preservation of the information.

I was advised by A/C Nicks that the prevailing reason for the inquiry was to examine the facts and circumstances surrounding this case in order to identify any possible systemic problems, policy/training failures and/or to determine if there had been any violations of Spokane Police Department policy.

On 20 March 2009, I spoke with [REDACTED] and interviewed him by telephone. [REDACTED] had been the Peaceful Valley homeowner from whom [REDACTED] had sought help on the night of 26 February 2007. [REDACTED] currently resides in [REDACTED]. See typed summary of his interview.

On 20 March 2009, I spoke with [REDACTED] and interviewed her by telephone. [REDACTED] currently lives [REDACTED] with [REDACTED] was living with [REDACTED] in February of 2007 when [REDACTED] appeared at their house seeking help. See typed summary of her interview.

On 24 March 2009, I interviewed [REDACTED] of the Spokane Police Department Major Crimes Unit. [REDACTED] worked closely with [REDACTED] on the [REDACTED] criminal case. See typed summary of his interview.

On 24 March 2009, I interviewed [REDACTED] of the Spokane County Sheriff's Office Major Crimes Unit. [REDACTED] had been the lead investigator on the [REDACTED] criminal case. See typed summary of his interview.

On 30 March 2009, I interviewed Mr. Larry Steinmetz of the Spokane County Prosecutor's Office. Mr. Steinmetz had been the lead prosecutor in the [REDACTED] criminal trial. See typed summary of his interview.

On 30 March 2009, I interviewed Mr. Marvin Tucker of the Spokane Police Department Communications Center. Mr. Tucker had been the on-duty dispatch supervisor on 26 February 2007. See attached transcribed interview.

On 31 March 2009, I interviewed [REDACTED] of the Robert Cossey and Associates law firm. [REDACTED] had been part of the defense team hired to represent [REDACTED]. See typed summary of his interview.

On 31 March 2009, I interviewed [REDACTED] of the Spokane Police Department Special Investigative Unit. See typed summary of his interview.

On 1 April 2009, I interviewed [REDACTED] had been the presiding juror during the [REDACTED] criminal trial. See typed summary of his interview.

On 8 April 2009, I interviewed [REDACTED] of the Spokane Police Department Communications Center. [REDACTED] had been the south side channel primary operator on the night of 26 February 2009. See typed summary of her interview.

Major Scott Stephens  
Operations Support Bureau  
10 April 2009

# CONFIDENTIAL

## SPOKANE POLICE DEPARTMENT INTERNAL INQUIRY

### ADDITIONAL

Type of Inquiry: Management of Evidence & Witness Statements	Case #: 07-0053701
Interview of [REDACTED]	

I was directed by A/C Nicks to begin an Internal Inquiry into the manner in which evidence and witness statements were managed in regards to the [REDACTED] criminal case. During [REDACTED] trial questions were raised in reference to a 911 tape that was not provided either to investigating officers or to the prosecutor's office, and in addition questions were raised regarding the testimony that was provided by Dispatch Supervisor Marvin Tucker. Mr. Tucker's testimony had been cast into doubt by a recent article in the Spokesman Review in which the original complainants refuted his testimony.

I began this Inquiry by interviewing the complainants to whom [REDACTED] fled after being shot. The complainants, [REDACTED] were living in Peaceful Valley at the time of the incident, but now reside [REDACTED] Washington. I contacted them on 20 March 2009 at [REDACTED]. I spoke first to a male who identified himself as [REDACTED]. I explained to [REDACTED] the purpose for my call and he agreed to speak with me. [REDACTED] began his statement with a comment that he believed that Marvin Tucker had lied in his testimony. [REDACTED] explained that [REDACTED] arrived on his door step, bleeding and frantically banging on the door. [REDACTED] said that he feared that whoever had injured [REDACTED] was still at large, so he pulled [REDACTED] into his house. [REDACTED] stated that [REDACTED] told him that he was asking a guy for a ride when the guy pulled out a gun. [REDACTED] further told [REDACTED] that he ran away from the guy with the gun and that he was shot by him. [REDACTED] called 911, told the dispatcher briefly what was happening and then gave the phone to [REDACTED]. [REDACTED] stated that he was within arms length of [REDACTED] while he spoke to 911. [REDACTED] said that [REDACTED] conversation did not last for more than one to two minutes and he heard [REDACTED] give his name, age and address to the operator. [REDACTED] said that he could not hear what was being said to [REDACTED] but he could clearly hear what [REDACTED] was saying on his end of the conversation. [REDACTED] did not remember specifically what [REDACTED] said, but he explained that he clearly remembers what was not said. [REDACTED] said that [REDACTED] never said anything at all about being in a vehicle. He clearly heard [REDACTED] explain that he was just looking for a lift up north.

I asked [REDACTED] if it were possible that [REDACTED] could have said something about being in a vehicle that he may not have heard, and [REDACTED] was certain that if that had been said, he would remember it and would have shared that information with responding police officers. [REDACTED]

was adamant that [REDACTED] never made any admissions of being in anyone's vehicle. [REDACTED] was very certain about the information that he was relating to me and insisted that [REDACTED] had never made any statements similar to those as attributed to [REDACTED] by Mr. Tucker.

This concluded my interview with [REDACTED]

Major Scott Stephens  
Operations Support Bureau  
23 March 2009

# CONFIDENTIAL

## SPOKANE POLICE DEPARTMENT INTERNAL INQUIRY

### ADDITIONAL

Type of Inquiry: Management of Evidence & Witness Statements	Case #: 07-0053701
Interview of [REDACTED]	

On 20 March 2009 at approximately 0945 hours I contacted the residence of [REDACTED] and [REDACTED] by telephone. The individuals listed above are currently living [REDACTED] Washington. I contacted the couple at [REDACTED] and spoke first with [REDACTED]. I asked if [REDACTED] was present and [REDACTED] stated that she was and that he would put her on the phone.

I then spoke to a female who identified herself as [REDACTED]. I explained the purpose for my call and asked if she would be willing to speak with me. [REDACTED] agreed to speak with me and stated that on the night in question, she had heard what she believed to be gunshots. She further stated that a short time later there was the noise of pounding on the front door and when she looked out she saw a bleeding man on her porch. [REDACTED] stated that [REDACTED] was bleeding heavily from a head injury. [REDACTED] stated that [REDACTED] asked them to call the police because he had been shot. [REDACTED] said that [REDACTED] was pulled into the house because she and [REDACTED] feared that whoever had shot [REDACTED] was still at large at that none of them were safe standing outside the house. [REDACTED] stated that she believed that [REDACTED] initiated the call to 911 and then handed the phone to [REDACTED]. [REDACTED] said that she was probably only three to four feet away from [REDACTED] while he spoke on the phone to 911. She remembered hearing [REDACTED] say that somebody had shot him and that he needed help. She remembers hearing [REDACTED] give his name, age and then when asked for an address, [REDACTED] gave him her address so that he could relay that information to the dispatcher. [REDACTED] said that [REDACTED] telephone conversation lasted approximately one to two minutes at most. She stated that she heard [REDACTED] say that he just wanted a ride home and some guy shot him. [REDACTED] said that [REDACTED] stated that he went up to a truck to ask for a ride and the guy pulled a gun on him. [REDACTED] said that [REDACTED] told her that he ran away and that the man shot at him.

I asked [REDACTED] if she heard [REDACTED] say anything about being in someone's vehicle. She told me that [REDACTED] never said anything of that nature. [REDACTED] said that she was close enough to [REDACTED] to hear what he had been saying and that he never said anything about stealing a truck. [REDACTED] said that [REDACTED] asked for permission to call [REDACTED] and she told him to do so. [REDACTED] said that [REDACTED] told [REDACTED] the same story that he had told them and that

he never mentioned anything about stealing a truck to her either. [REDACTED] described [REDACTED] behavior as polite through out the entire incident.

I asked [REDACTED] if [REDACTED] may have said something about stealing a truck which she may not have been in a position to hear, and she responded that [REDACTED] never made any statements to the effect that he had tried to steal a truck. [REDACTED] stated again that she had been about three feet away from [REDACTED] while he was speaking on the phone. [REDACTED] stated that she was trying to either put a towel on [REDACTED] wound or have him do so while he was speaking on the phone.

I asked [REDACTED] if there was anything else that she felt was important for me to know, and she replied that she thought that the medics were slow in reaching [REDACTED] expressed concern that [REDACTED] had been treated like a "suspect", but she also acknowledged that with the information the officers had from [REDACTED] that it was understandable why [REDACTED] would be treated that way. [REDACTED] also complained that police intentionally withheld medical treatment from [REDACTED] for an unacceptably long time. [REDACTED] said that it 30 to 40 minutes for medics to contact [REDACTED] which she felt was not appropriate.

This concluded my interview of [REDACTED]

Major Scott Stepiens  
Operations Support Bureau  
23 March 2009

# CONFIDENTIAL

## SPOKANE POLICE DEPARTMENT INTERNAL INQUIRY

### ADDITIONAL

Type of Inquiry: Management of Evidence & Witness Statements	Case #: 07-0053701
Interview of [REDACTED]	

On 24 March 2009 I interviewed [REDACTED] reference the [REDACTED] criminal investigation. [REDACTED] told me that he had been assigned to "shadow" [REDACTED] from the SCSO during the course of the investigation. [REDACTED] said that he volunteered to help [REDACTED] with any aspect of the case necessary and in March of 2007 he offered to obtain the 911 tapes for him. [REDACTED] explained that at this point in the investigation involvement by the detectives of the SPD was minimal, which is why he volunteered to get the tapes. [REDACTED] made a request for the 911 tapes and sent it that organization for production of the appropriate tapes. [REDACTED] picked up the 911 tapes when they were ready. [REDACTED] then contacted [REDACTED] and informed him that there was no dispatch information included in the 911 tapes. [REDACTED] stated that he contacted a 911 supervisor, who explained that a request for 911 tapes only yields 911 conversations and does not include any dispatch conversations once the transfer has been made. [REDACTED] then did a second request to SPD Dispatch requesting "All radio dispatch traffic related to this call." When the tapes were ready, [REDACTED] picked them up and delivered them to [REDACTED]. [REDACTED] stated that he did not review the information, but merely delivered to [REDACTED].

I asked [REDACTED] what he anticipated receiving from Dispatch in reference to his request, and he replied that it was his expectation that he would get everything that SPD Dispatch had on that particular incident. [REDACTED] further explained that he believed that was what he had received. [REDACTED] stated that he did not know about Marvin Tucker's reported conversation with [REDACTED] until after the [REDACTED] trial had been completed. [REDACTED] also expressed some confusion over why the conversation that Tucker had had with [REDACTED] was not documented in the CAD entries or why Tucker had not contacted investigators with the information that he had.

Major Scott Stephens  
Operations Support Bureau  
24 March 2009