In-Custody Death Investigation

Sharieff Sylvester

Valley Independent Investigative Team

Tukwila Police Department, #220006405



King County Prosecuting Attorney

Public Integrity Team

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DECLINE MEMORANDUM

In-Custody Death of Sharieff Sylvester

WARNING – This memorandum contains images and descriptions of violence that may be offensive and disturbing to some readers. The images and descriptions are included to provide the reader with the most accurate information regarding the topic of this memorandum.

I. INTRODUCTION

1. Purpose of the Memorandum

The King County Prosecuting Attorney's (KCPAO) role is to ensure that the in-custody death investigation is thorough and complete, determine whether sufficient admissible evidence exists to support filing criminal charges, and inform the King County Executive whether an inquest should be initiated.[1] An inquest is required when "an action, decision or possible failure to offer the appropriate care by a member of any law enforcement agency might have contributed to an individual's death."[2]

The Public Integrity Team (Team) has determined that the investigation of the October 12, 2022, in-custody death of Sharieff Sylvester is complete at this time. Based on a thorough review, the Team has concluded that the evidence is insufficient to support Second Degree Manslaughter charges against any of the responding Kent Police Department (KPD) officers. As a result, the KCPAO declines to file criminal charges.[3]

Additionally, after a careful review of these materials, pursuant to Executive Order PHL-7-1-5-EO, we recommend an inquest be initiated.

2. Scope of the Memorandum

The KCPAO's determination if the police action was justified or if there was a criminal action such that criminal charges should be filed is based entirely on the investigation materials provided to the KCPAO, relevant criminal laws, rules of evidence governing criminal proceedings, the applicable burden of proof, and the KCPAO's Filing and Disposition Standards. This determination is not intended to address matters outside the scope of this memorandum including, but not limited to, an administrative action by the involved agency or any other civil

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[1] Executive Order PHL 7-1-5 EO.
[2] King County Charter Section 895.
[3] See. King County Sheriff's Office Report # C22035438 and KCPAO File # 033-781084 for related investigation and filing decision.

action. The Team expresses no opinion regarding the propriety or likely outcome of any such actions.

II. OVERVIEW

On October 6, 2022, Kent PD (KPD) officers responded to a call for service. When officers arrived, the subject, Sharieff Sylvester (Sylvester), who appeared to be under the influence of narcotics or having a mental health crisis, had just attempted to carjack a female driver, later caused a traffic collision, punched out the window of a semi-truck, and was lying in the middle of the street yelling incoherently. Police handcuffed him, rolled him into the recovery position, and firefighters provided aid to Sylvester after he stated that he was having trouble breathing. Sylvester admitted to recently using cocaine. When the firefighters tried to examine his torso, he became startled, stood up, and began physically resisting fire personnel and police officers. He tensed his arms and used his body weight to try to pull away from officers and took approximately two steps towards traffic. Officers forced him onto his stomach so he would not run into traffic. They used their knees to pin his left and right arms to the ground as he continued to resist arrest and kick. They rolled him into the recovery position again. After the medic arrived, the subject stopped breathing. He was resuscitated with one round of CPR and Epinephrine and transported to Valley Medical Center where he died four days later. The medical examiner found the cause of death to be anoxic and metabolic encephalopathy following recent cocaine use and police restraint with struggle, and further found the contribution of restraint could not be entirely excluded. As a result, the manner of death was certified as undetermined.

III. INVESTIGATION AND EVIDENCE

- Independent Investigation Team Reports
- Police Reports – Kent Police Department 2022-13397
- Police Reports – Des Moines Police Department 2022-2469
- Civilian Statements
- CAD/MDT
- Medical Reports and Records
- KFD Radio Traffic and KPD Radio Traffic
- Video and Body Worn Video (BWV)
- Policy Manual (Kent PD)
- Photos

IV. INVESTIGATION SUMMARY[4]

1. Independent Investigation Conducted by the Tukwila Police Department

On October 11, 2023, five days after Sylvester's arrest, KPD's Chief requested the assistance of the Valley Independent Investigation Team (VIIT) to investigate the incident after KPD command staff realized the arrestee was most likely going to die. Tukwila Police Department (TPD) investigators were assigned as the lead investigators. KPD command staff then briefed TPD investigators on the incident.

2. Kent Police Department Policy Regarding Permissible Force

The Department's Use of Force Policy, which officers are required to abide, permits officers to use physical force against a person to the extent necessary to, among other things, effect an arrest and prevent an escape. The policy goes on to state that physical force is necessary in that, under the totality of the circumstances, no reasonably effective alternative to physical force appears to exist and it is reasonable and proportional response to effect the legal purpose intended or to protect against the threat posed to the officer or others.

An officer must also use reasonable care in determining whether force should be used including considering the subject's physical condition and attempting de-escalation tactics if appropriate in the circumstances. Officers are required to use the least amount of physical force necessary to overcome resistance under the circumstances. This includes considering the characteristics and conditions of a person for the purposes of determining whether to use physical force or deadly force against that person and, if physical force is necessary, determining the appropriate and least amount of physical force possible to effect a lawful purpose.

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[4] The Investigation Summary is based upon the investigation and evidence outlined in Section III. When necessary, the Team will identify the source of the information. It is common for witnesses, including law enforcement officers, to provide multiple statements about the events witnessed. Similarly, it is common for multiple witnesses to provide information about the same event. If a witness provides multiple statements and the statement contains material and substantial differences that could affect the investigation or analysis, the Team will identify information that is materially and substantially different. However, if the information has a de minimis effect on the investigation or analysis, the differences may not be identified. Similarly, although some events may be observed by more than one witness, the Team may not summarize each witnesses' statement unless it has a material and substantial effect on the investigation and analysis.

KPD's policy splits levels of force into three categories, Level 1 being the lowest and Level 3 being the highest level of force. Level 1 Force uses an officer's bodily force to gain control of a person. The force used is not intended to, and has a low probability of, causing injury but may cause momentary discomfort or pain. Depending on the circumstances, including the characteristics and conditions of the person, non-deadly force options may include:

a. Techniques to direct movement (e.g., push back, escort, shove);
b. Control holds (e.g., wrist locks, finger locks, joint manipulation);
c. Open hand techniques;
d. Take downs;
e. Swarming; or
f. Use of a restraint device, other than compliant handcuffing

KPD policy states that once the scene is safe and as soon as practical after using force, an officer shall transition to in-custody care and provide appropriate medical care.

3. Summary of Evidence

On October 6, 2023, at 3:14 am, KPD Sergeant 1 and Officer 1 were dispatched to a suspicious circumstance call in the area of 23400 68th Ave. S., in the city of Kent. Dispatch advised officers that a male, later determined to be Sylvester, entered a female stranger's occupied vehicle. The female was screaming. The male was associated with another car, a Dodge Charger, blocking a lane of traffic. On the open line another male can be heard saying he needed help.

As Sergeant 1 arrived at the scene, he requested the assistance of a third unit. He also requested the assistance of Kent Fire Department. When Sergeant 1 and Officer 1 arrived, they observed a semi-truck blocking a northbound lane of travel on 68th Ave. S. There was a large amount of glass on the ground near the driver's door to the semi-truck. There was a dark colored sedan in the center lane of southbound 68th Ave. S. The sedan was occupied by a male. Lying on the cement next to the sedan's passenger side rear tire was another person, a black male, later identified as the subject, Sylvester. Sergeant 1 could see that Sylvester's hands had several cuts that were bleeding. Sylvester had defecated himself and he was rolling around on the ground

screaming nonsensically. He was saying that he needed help. To Sergeant 1, the male subject appeared to be on drugs or experiencing a mental health crisis.



Figure 1: Officer 3's BWV. The subject, Sylvester, in a yellow Seahawks jersey, is laying on the ground in the middle of the street next to the dark colored sedan as officers arrived. Sergeant 1 is the pictured on the bottom right.

It was later determined that just prior to officers arriving a female driver had stopped her car after Sylvester entered traffic on foot. Sylvester then entered the woman's stopped car and attacked her inside of her vehicle, biting her in the face. The female was able to free herself and fled the area where she called 911. Sylvester then attacked a male driver who had stopped his car to assist Sylvester. Sylvester got into that victim's vehicle and fought with him as his vehicle ran off the roadway and collided with a light pole, nearly toppling it.

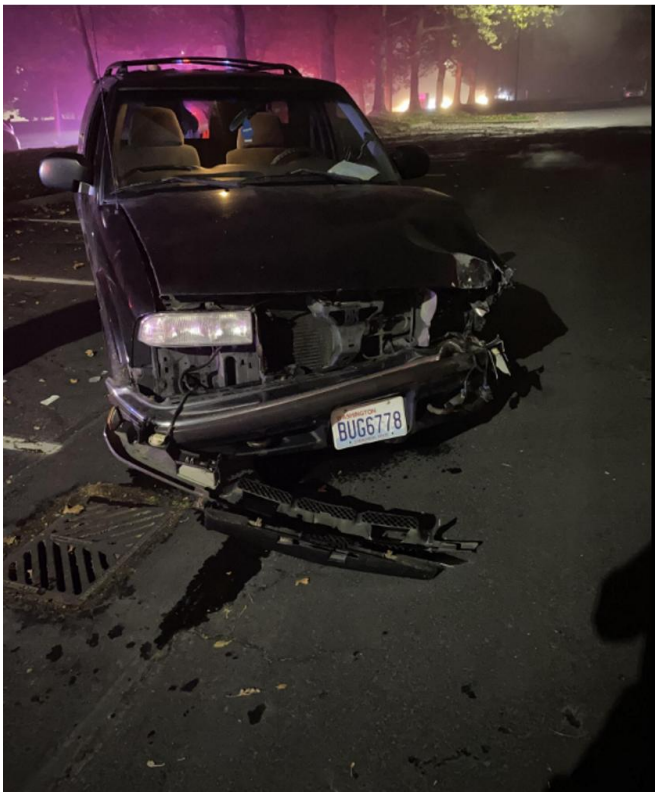


Figure 2: Photograph of vehicle damage Sylvester caused when the car struck a light pole.

Sylvester then fled from that vehicle and ran back out to 68th Ave. S. where a male driving a semi-truck had stopped. Sylvester used his fist to punch out the driver side door window, which is likely the source of Sylvester's injured hand. Sylvester then climbed inside the cab of the semi-truck and began assaulting the driver.

Once Officer 2 and Officer 3 arrived on scene, multiple officers moved in to detain and handcuff Sylvester. Once complete, they rolled him onto his side into the recovery position so his breathing would not be restricted. Officers observed that Sylvester was sweating and also bleeding from the face. They sat him up to a seated position and then helped him up to a standing position. He continued yelling that he needed help, and that people were chasing and attacking him. Officers then walked him to a patrol vehicle where they had Sylvester sit on the vehicle's front bumper. Sylvester stated that he was having trouble breathing. They attempted to deescalate the situation by telling Sylvester that he would be okay and the fire department was coming to assess him. Kent firefighters walked over and started medically evaluating Sylvester. He was initially cooperative but soon became uncooperative. Sergeant 1 realized that Sylvester may escalate the situation and requested that traffic on 68th Ave. S. be shut down for safety

reasons, as they were located in the middle of the street, which made oncoming traffic a danger to them.



Figure 3: Still photo from Sergeant 1's BWV camera of the subject sitting on the bumper of a patrol car. Officer 2, wearing glasses, is directly behind the subject. The white semi-truck located on the left is one of the vehicle's Sylvester vandalized.



Figure 4: Still photo from Officer 2's BWV camera of firefighters coming to assist the subject approximately 6 mins. later.

When firefighters attempted to lift Sylvester's shirt to examine his torso area, Sylvester became startled and began physically resisting fire personnel and police officers. He tensed his arms and used his body weight to try to pull away from officers and took approximately two

steps towards traffic on 68th Ave. S. Officer 2 and Sergeant 1 forced Sylvester to the ground and onto his stomach. Sylvester continued to resist officers as they attempted to restrain him.



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Figure 5: Still photo from Sergeant 1's BWV of the subject, right, standing up from the patrol car's bumper and moving towards traffic with firefighters and police holding onto him.

At the same time, the northbound traffic on 68th Ave. S. re-routed itself and now vehicles were traveling very close to Sylvester and the officers. The officers feared that they could be struck by oncoming traffic if they were not able to control Sylvester.



Figure 6: Still photo shows officers forcing the subject to the ground and onto his stomach.



Figure 7: Still photo from BWV less than 1 minute later, showing the officers restraining Sylvester in a prone position on the right of the frame with traffic passing by them. The subject continued to physically resist and scream nonsensically while being detained.

Officers then requested additional units to assist in detaining Sylvester. However, no units were available to assist because they were busy assisting an unrelated homicide investigation. Renton PD was also not able to assist. Des Moines PD then sent two officers to assist with traffic control. KPD then asked the fire department to move their rigs to block all north and southbound traffic on 68th Ave. S. The subject continued to physically resist the officers who pleaded for Sylvester to cooperate with them. Officer 2 said to him, "I want to put you in the recovery position, but you're making it tough." The subject responded, "I don't give a f**k." Sergeant 1 used his right knee to pin Sylvester's left arm to the ground. Officer 2 pinned Sylvester's right arm to the ground. Sergeant 1 said there was very limited pressure placed directly on Sylvester's back, which is supported by the body-worn video. He said that he wanted to make sure their force did not affect the subject's breathing.

Five- and one-half minutes after officers first put the subject in the prone position, Sergeant 1 worriedly stated, "His pulse is racing," referring to Sylvester. One and a half minutes later, the subject stopped yelling. BWV shows his chest still moving up and down. Next, officers used a hobble to secure Sylvester's ankles.



Figure 8: Officers holding the subject's arms down to restrain him while he continued to resist being arrested. He was in the prone position with both of his arms pinned down for approximately 8 minutes as he resisted officers. Officers advised him to take deep breaths.



Figure 9: Officers rolling the subject into the recovery position after he stopped being resistive.

Shortly afterwards, Sergeant 1 noticed Sylvester was frothing at the mouth and suggested to Kent Fire personnel that Medic-1 respond. Sylvester went from yelling and resisting to making no noise.



Figure 10: Still photo shows the medic arriving on scene. He is the person in the foreground of the shot. Sergeant 1 told the medic, "This is the most mellow he has been."



Figure 11: Two minutes later, still photo shows a firefighter taking the subject's blood pressure. They were able to find a pulse, but the subject stopped breathing.

After Medic-1 arrived, it appears on BWV that Sylvester stopped breathing. This was confirmed by Kent Firefighters. The handcuffs were removed from Sylvester and Officer 2 started CPR at the direction of Medic-1. Medic-1 and Kent Fire took over rescue efforts, including one round of Epinephrine, and a pulse was again obtained. Medic-1 transported Sylvester to Valley Medical Center for further treatment.



Figure 12: Officer 2 administering chest compressions.



Figure 13: Approximately 3 minutes later medical personnel stated that the subject regained a pulse.

Sylvester's medical condition dramatically worsened after he was transported away from the scene. Upon entry into the Critical Care Unit one doctor who treated him wrote, "Patient continued to be severely acidotic. His clinical presentation was consistent with drug overdose, synthetic marijuana use." Additionally, neurologist Doctor 1 wrote that the patient suffered "widespread irreversible damage to the brain as a result of lack of blood flow and oxygen… this usually occurs when someone has had a prolonged period of cardiac arrest before resuscitation, but in this case I suspect that the drug(s) on board may have placed him at higher risk of anoxic injury given potential cerebral vasoconstrictive effects. Discussed that the range of outcomes

from a scan like this ranges from vegetative to severely impaired…" He passed away six days later after suffering organ failure.

An autopsy was subsequently performed by Doctor 2 who concluded, "The decedent was a 30-year-old man who became unresponsive following confrontation with law enforcement and first responders during arrest. Initial EMS reports documented an elevated core temperature (101.8º F) and an initial drug screen was positive for cocaine. At autopsy, anoxic and metabolic brain injury was identified, as well as multiple contusions, abrasions, and lacerations. Sequalae of prolonged hospitalization were also noted ... Hospital admission blood toxicology was positive for cocaine and cocaine metabolites. Posterior neck muscle hemorrhage was also noted at autopsy; however, the etiology of this hemorrhage is unknown. The cause of death is anoxic and metabolic encephalopathy following recent cocaine use and police restraint with struggle. Because the contribution of restraint cannot be entirely excluded, the manner of death is certified undetermined."

V. LEGAL STANDARD AND APPLICABLE LAW

1. Burden of Proof

The State must prove each element of a criminal charge by competent evidence beyond a reasonable doubt.[5] Under the KCPAO filing standards, "Homicide cases will be filed if sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify conviction by a reasonable and objective fact-finder. Prosecution should not be declined because of an affirmative defense unless the affirmative defense is of such nature that, if established, would result in complete freedom for the accused and there is no substantial evidence to refute the affirmative defense."[6]

In addition, the State must disprove the existence of a defense that negates an element of the crime.[7] Prosecution should not be declined because of an affirmative defense unless the

[5] RCW 9A.04.100; WPIC 4.01.
[6] KCPAO Filing and Disposition Standards.
[7] WPIC 14.00.

affirmative defense is of such nature that, if established, would result in a complete defense for the accused and there is no substantial evidence to refute the affirmative defense.[8]

2. Applicable Law

A person commits Reckless First-Degree Manslaughter if they (1) engage in reckless conduct (2) that causes the victim's death. A person conduct is reckless when they know of and disregard a substantial risk that death may occur and this disregard is a gross deviation from conduct that a reasonable person would exercise in the same situation.[9]

A person commits Criminally Negligent Second-Degree Manslaughter if they (1) engage in criminally negligent conduct (2) that causes the victim's death.[10] A person is criminally negligent when they fail to be aware of a substantial risk that death may occur and this failure constitutes a gross deviation from the standard of care that a reasonable person would exercise in the same situation.[11]

Homicide is justifiable when necessarily used by a peace officer acting in "good faith" to overcome actual resistance in the discharge of a legal duty. "Good faith" is an objective standard. A peace officer acts in "good faith" if a similarly situated reasonable peace officer would have believed that the use of deadly force was necessary to prevent death or serious physical harm to the peace officer or another individual. In deciding whether a peace officer acted in good faith, one should consider all the facts, circumstances, and information known to the officer at the time. The State has the burden of proving beyond a reasonable doubt that the homicide was not justifiable.[12]

Necessary or necessarily means that, under the circumstances as they reasonably appeared to the actor at the time, (1) no reasonably effective alternative to the use of force appeared to exist and (2) the amount of force used was reasonable to effect the lawful purpose intended.[13]

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[8] Id.
[9] RCW 9A.32.060(1)(a), WPIC 28.02 & WPIC 10.03.
[10] RCW 9A.32.070 & WPIC 28.06.
[11] WPIC 10.04.
[12] RCW 9A.16.040 & WPIC 16.01.
[13] RCW 9A.16.010; WPIC 16.05.

VI. ANALYSIS AND CONCLUSION

The KCPAO declines to file charges against the involved officers because (1) there is insufficient evidence of manslaughter and (2) the involved officers' use of force was in good faith, as defined by statute.

1. Manslaughter

To begin, the loss of any human life is a tragedy, and the loss of Sharieff Sylvester is no exception. However, the independent investigation and the Team's analysis provides insufficient evidence that (1) the officers' use of force against Sylvester was a gross deviation from conduct that a reasonable police officer would exercise in the same situation, and (2) that the officers were the legal cause of Sylvester's death. Because there is insufficient evidence that would justify conviction by a reasonable and objective fact-finder, a manslaughter charge of any degree is not supported by the evidence.

First, the evidence does not support the conclusion that the involved officers disregarded or failed to be aware of a substantial risk of death, nor does it show any such disregard or failure constitutes a gross deviation from the conduct expected of a reasonable police officer confronted with a detainee attempting to flee from their control into traffic. The evidence shows officers were concerned about Sylvester's safety. They asked firefighters to examine him when he complained he was having trouble breathing. On numerous occasions they pleaded for Sylvester to cooperate, told him they did not intend to hurt him, and said they would like him to stop resisting arrest so they could move him into the recovery position. At one point when Sylvester was in the prone position Officer 2 told the subject, "I want to put you in the recovery position, but you're making it tough." The subject responded, "I don't give a f**k." At least one statement captured on video demonstrates that the officers were consciously trying not to restrict Sylvester's breathing. Additionally, Sylvester did not stop breathing until after they stopped applying force. Had they continued to apply force after they recognized his breathing ceased, their conduct would have been reckless or negligent, but there is no evidence of that.

Additionally, since the officers' force was within Kent PD's policy regarding use of force, which permitted them to use Level 1 Force under these circumstances, it cannot be said that their conduct constitutes a gross deviation from a similarly situated officer. Per KPD policy, officers first attempted de-escalation tactics trying to calm Sylvester down. But when Sylvester

attempted to lead them into traffic, using force became necessary to ensure their safety and keep Sylvester in their custody. Additionally, they applied Level 1 Force, the lowest level of force possible. Level 1 Force includes take downs, techniques to direct movement (e.g., push back, escort, shove), and the use of a restraint device. The techniques they used, by forcing him the ground, pinning down each of his arms, and applying a hobble to his legs when he kicked, are all examples of Level 1 Force.

Moreover, because the Medical Examiner cannot say that police action caused Sylvester's death, there is insufficient evidence to prove causation beyond a reasonable doubt at trial, a necessary element of any homicide charge.

2. Defense – "Good Faith"

Second, if manslaughter charges were supported by the evidence, the available evidence shows that Sergeant 1 and Officer 2 acted in good faith when using force against Sylvester because a similarly situated officer would have believed that some force was necessary to protect themselves and others in the community when Sylvester attempted to escape their custody towards traffic.

The first element of "necessary" force is that the officers had no reasonably effective alternative to using force. That was indeed the case here because Sylvester, who police initially encountered in the middle of the street, was on the verge of leading officers into traffic before they were able to subdue him. Officers have an obligation to maintain the safety of arrestees and the community. When Sylvester alighted from the car's bumper and pulled away from officers towards traffic, the officers were obligated to maintain custody of Sylvester whose prior conducted demonstrated that he posed a danger to others. Additionally, in the BWV of Sergeant 1, he expressed concern for the risk to officer-safety Sylvester's conduct posed. Officers tried to reduce this risk by requesting backup officers to close 68th Ave. S. to traffic, but no additional KPD units were available because they were occupied assisting a homicide investigation. They were forced to ask other police departments for assistance whose arrival was delayed.

The second and final element of "necessary" is that the amount of force officers used was reasonable to effect an arrest. That was also the case here as officers used the lowest level of force, level one force, for the minimum amount of time necessary in arresting Sylvester. Officers pinned both of Sylvester's arms to the ground for roughly eight minutes, but Sylvester was

physically resisting arrest the entire time as officers waited for backup to reroute traffic and a medic to arrive to treat Sylvester. Officer 2 told the subject that he wanted to put him in the recovery position, but that the subject was making it difficult. The subject continued to resist. Placing Sylvester on a gurney with soft restraints would have been preferable, but that option was not available as firefighters did not have such a gurney and the medic unit had not arrived. Traffic was finally closed around the same time that officers restrained Sylvester's legs with a hobble. They then rolled him onto his side in the recovery position immediately after as the medic unit arrived. Shortly after the medic arrived, Sylvester ceased breathing. As soon as he stopped breathing officers immediately tried to resuscitate him. Sergeant 1 immediately took the handcuffs off of Sylvester and Officer 2 administered CPR. As such, the evidence shows the amount of force officers used was reasonable. In short, once the scene was secure, officers stopped applying force to Sylvester's elbows.

Because the officers acted in good faith in the performance of a legal duty when they used force on Sylvester, KCPAO declines to file homicide charges against Sergeant 1 and Officer 2 for the death of Sylvester.

VII. RECOMMENDATION FOR INQUEST

An inquest is mandatory to determine the manner, facts, and circumstances of Sylvester's death pursuant to Executive Order PHL 7-1-5 EO unless the Executive determines the role of law enforcement was *de minimis* and did not contribute in any discernable way to a person's death. Given the facts outlined in the investigation, it is the Team's belief that an inquest is required under the current Executive Order.