Use of Force Fatality of

Tommy Le

King County Sheriff's Office

C17-029406

King County Prosecuting Attorney

Public Integrity Team

November 8, 2024

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DECLINE MEMORANDUM

This memorandum has been approved by the King County Prosecuting Attorney to be published on the website of the Prosecuting Attorney's Office Public Integrity Team.[1]

I. INTRODUCTION

1. Purpose of the Memorandum

The King County Prosecuting Attorney's Office (KCPAO) is mandated by law to analyze certain incidents regarding police use of force and to determine if the action was justified or if there was a criminal action such that criminal charges should be filed.[2] Because the investigation and analysis are mandatory if specific criteria are met, the KCPAO's review of an incident does not implicitly signal that the use of force was either justified or that criminal charges are appropriate. Instead, the KCPAO is required to assist in independent investigations involving police use of deadly force to enhance accountability and increase trust to improve the legitimacy of policing for an increase in safety for everyone.[3]

Pursuant to the Law Enforcement Training and Community Safety Act, an independent investigation must be completed when the use of deadly force by a peace officers results in death, substantial bodily harm, or great bodily harm.[4] The independent investigation is conducted in the same manner as a criminal investigation.[5]

[1] https://kingcounty.gov/en/dept/pao/about-king-county/about-pao/team-leadership/organizational-structure/criminal/mainstream/public-integrity-team
[2] Except as required by federal consent decree, federal settlement agreement, or federal court order, where the use of deadly force by a peace officer results in death, substantial bodily harm, or great bodily harm, an independent investigation must be completed to inform any determination of whether the use of deadly force met the good faith standard and satisfied other applicable laws and policies. RCW 10.114.011. Similarly, if the Office of Independent Investigation is the lead investigation agency, the prosecutorial entity must review the investigation. RCW 43.102.020. 2021 c 318 § 101.
[3] Id. See also WAC 139-12-010.
[4] RCW 10.114.011. See also WAC 139-12-010.
[5] WAC 139-12-010.

Additionally, the KCPAO shall inform the King County Executive whenever the investigation into a death involving a member of any law enforcement agency in King County is complete and also advise whether an inquest should be initiated in accordance with the King County Charter.[6] The Charter provides "There shall be an inquest into the manner, facts, and circumstances of any death of an individual where 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 unless the County Executive determines, based on a review of the investigation, that the role of law enforcement was de minimis and did not contribute in any discernable way to a person's death."[7]

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

3. Status of the Independent Investigation

After a thorough review of the independent investigation and applicable laws, the Special Operations Unit Public Integrity Team (the Team) has determined the investigation into this matter is complete.

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[6] Executive Order PHL 7-1-5 EO.
[7] Id.

II. OVERVIEW

Late in the evening on June 13, 2017, deputies with the King County Sheriff's Office were dispatched to investigate several 911 calls regarding Tommy Le. The calls included information that Le was armed with a knife, he was shouting, and a gunshot had been discharged by one of the 911 callers. When deputies arrived, Le moved towards the deputies with an object in his hand and ignored their commands to stop. Two deputies used their tasers against Le as a less lethal alternative, but the tasers did not deter Le. Involved Officer 1 discharged his handgun, striking Le. Deputies provided medical aid to Le and medics transported him to a hospital where he was pronounced deceased.

III. INVESTIGATION AND EVIDENCE

1. Police Reports – King County Sheriff's Office C17-029406
2. Civilian Statements
3. CAD
4. Other Police Reports
5. Search Warrants
6. Crime Scene Investigation
7. Washington State Patrol Toxicology Laboratory
8. King County Medical Examiner's Office Autopsy
9. Involved Officer Information
10. Subject Information
11. 911 Call and Radio
12. Video
13. Photos
14. Miscellaneous

IV. INVESTIGATION SUMMARY[8]

1. Factual Summary

The following information is based upon several sources, including witness observations, police reports, the King County Sheriff's Office (KCSO) computer aided dispatch (CAD) report, recorded police radio, 911 recordings, video, and photographs from June 13 and June 14, 2017.

On June 13, 2017, beginning at 11:57 pm, the KCSO Communications Center received a series of 911 calls regarding several incidents in the same general area. At 11:57 pm, Civilian Witness 1 called 911 and reported that an Asian male, later identified at Tommy Le (Le),[9] came after him with "a knife." He added that Le repeatedly yelled, "I'm the creator!" over and over.

Two minutes later, at 11:59 pm, Civilian Witness 2 called 911 and reported that he heard a gunshot, he could see four people standing across the street from his home, and that one of the males was carrying a handgun. He could not determine if anyone was injured.

Two minutes later, at 12:01 am, Civilian Witness 3 called 911 and reported that Le was outside screaming at the top of his lungs. Civilian Witness 3 reported that Le was walking towards a nearby Seven Eleven store. One minute later, at 12:02 am, Civilian Witness 4 called 911 and reported he had discharged his gun after Le tried to attack him with a knife.

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[8] 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.

[9] Le's identity was not established when investigators initially interviewed the law enforcement witnesses or civilian witnesses. However, because Le's identity is not at issue for purposes of this memorandum, the individual that the witnesses described will be referred to as Le for clarity.

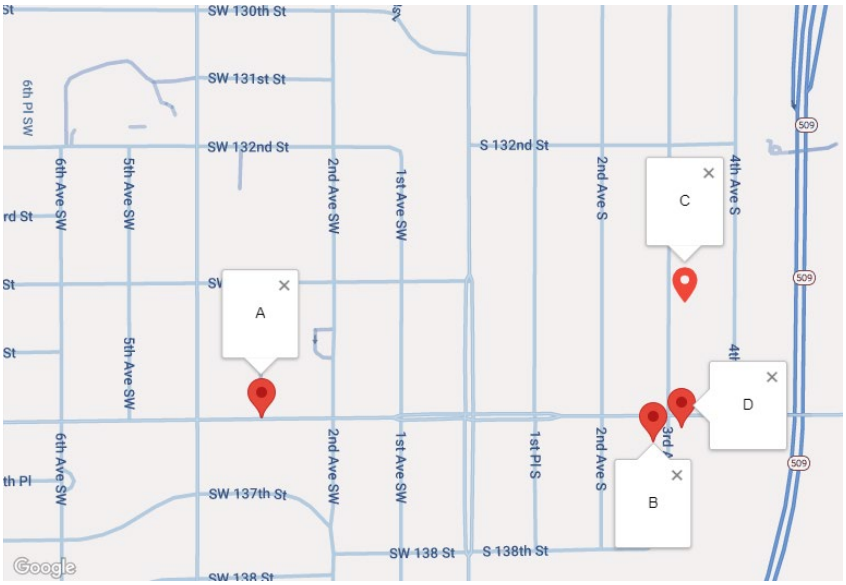

Figure 1 - Approximate location of 911 callers:
A - Civilian Witness 1
B – Civilian Witness 2
C – Civilian Witness 3
D - Civilian Witness 4

KCSO Involved Officer 1 and Witness Officer 1 arrived in the area at approximately 12:02 am. Witness Officer 2 arrived two minutes later, at 12:04 am. When Witness Officer 2 arrived, he reported over his radio that shots had been fired and he requested aid for Le, who appeared to have been struck by gunshots three times, was conscious, and semi-alert. As deputies began medical aid, medics arrived and transported Le to Harborview Medical Center, but he died as a result of his injuries.

While deputies secured the incident scene and marked the location of evidentiary items, the KCSO Major Crimes Unit was requested to conduct an independent investigation regarding the use of force. Detectives interviewed several deputies and civilian witnesses who provided details regarding what they observed prior to, during, and after the use of force.

a. Witness Officer 2

Witness Officer 2 told investigators that he was dispatched to investigate an incident where “someone assaulted or someone had a knife and was trying to assault another.” As he

drove to the location, the deputies received updates that "there might have been a shooting." When he arrived, his immediate attention was focused on several males with firearms. Witness Officer 2 ordered the males to drop their firearms and get on the ground, which they did. He recalled one of the males said that "some dude tried to stab him." The suspect was initially described as an Asian male, wearing a black shirt, black shorts, and no shoes.

As Witness Officer 2 gathered more information about the suspect, he saw Le was approaching the area. Witness Officer 2 used his flashlight to illuminate Le from approximately twenty feet away, which allowed him to see that Le was wearing a black t-shirt, black shorts, no shoes, and that a shiny object was cupped in his hand. Witness Officer 2 asked if this was the suspect, and one of the males stated, "Yes, that's the dude. Be careful, he had a knife in his hand. He had a knife on him." Witness Officer 2's attention was divided between Le and the other civilians, so he was unsure which deputy gave commands, but he heard "stop," followed by a taser being deployed. Witness Officer 2 turned around and observed Le "charging after Witness Officer 1 and Involved Officer 1." Next, he heard someone yell, "Drop it!" followed by a second taser being deployed, followed by four or five gunshots. Witness Officer 2 heard the first few shots and turned his attention towards the other deputies, which is when he observed Involved Officer 1 discharge approximately two more gunshots from about five to ten feet away from Le, totaling four to five gunshots. As this occurred, he observed the deputies backing away from Le who continued to move towards the deputies until he fell to the ground.

b. Witness Officer 3

Witness Officer 3 told investigators that he was dispatched to investigate an incident where the suspect "tried to stab" someone. As he drove to the scene, he learned that someone had discharged a handgun once. As he neared the scene, he learned that a third person called 911 to report that the "guy tried to stab him and that he did fire one shot." When he got closer, he saw Le standing in the road across from Involved Officer 1 and Witness Officer 1. He observed Le "rush" towards the deputies, so he increased his speed to get to the deputies more quickly. As he got closer, he observed the deputies continually move to keep their distance from Le, but Le kept changings directions to advance towards the deputies. As Le advanced towards the deputies, he observed that Le was holding an object in his hand in a threatening manner. Given how he held

the object and information from the 911 calls regarding a knife, he believed the object was a knife. As he stopped his patrol vehicle and put it in park, he saw Involved Officer 1 discharge his handgun. Although Le was struck by the gunfire, Witness Officer 3 observed that Le vacillated from being docile to suddenly flexing while the deputies provided medical aid. As he approached Le, he could tell that there was an object in his hand, but he could not see exactly what it was. He told Witness Officer 1 to kick the object out of Le's hands, which Witness Officer 1 did. At this point, Witness Officer 3 observed the object was an ink pen. When asked to provide more detail about the pen in Le's hand, he noted that approximately an inch was visible and that the tip appeared metal.

Figure 2 - Photograph of ink pen found at the use of force scene.

c. Civilian Witness 4

Civilian Witness 4 told investigators that he was inside his living room when he heard a person knocking at his front door and demanding to be let in. Civilian Witness 4 retrieved his handgun, opened his front door, and he observed his friend, Civilian Witness 1, yelling, "Get away from me!" Civilian Witness 4 walked outside and saw Civilian Witness 1 walking towards Civilian Witness 4's home while Civilian Witness 1 spoke on the phone with 911. Civilian Witness 4 heard Civilian Witness 1 say, "The guy was trying to stab me."

Civilian Witness 4's dog exited his home and barked at Le, who was standing in the street. Le began walking towards Civilian Witness 4 with what Civilian Witness 4 believed was a knife in his hand. Civilian Witness 4 shouted at Le, "Hey stop! Drop the weapon! I'm armed. Drop the knife! I don't feel safe! Stop! Stop! Stop!" Civilian Witness 4 observed that Le did not stop and, instead, Le continued toward Civilian Witness 4 in a fast walk, stating, "I'm the creator." Civilian Witness 4 went through his yard towards his front door, but Le continued towards Civilian Witness 4 while holding the knife. Civilian Witness 4 reported that he was in fear for his life when Le continued to move towards him and came onto Civilian Witness 4's property. In response, Civilian Witness 4 discharged a warning shot from his handgun into the ground in front of Le, but it did not deter Le and Le moved towards Civilian Witness 4 at a quicker pace. Civilian Witness 4 told Le that he did not want to shoot him while he rushed inside his home and closed the door. As Civilian Witness 4 was closing the door, Civilian Witness 4 observed Le swing the knife in a downward motion, striking the door or part of his house as he closed the door.

A few minutes later, Civilian Witness 4 peeked out his front door, but Le was gone. However, Civilian Witness 4 observed his neighbor, Civilian Witness 5, was standing outside and holding a shotgun. Civilian Witness 4 exited his home and saw Le moving towards Civilian Witness 1 in the intersection of S 136th St and 3rd Ave S, so he called 911. While he was giving information to the 911 caller, Civilian Witness 4 saw Le walk northbound on 3rd Ave S. Moments later, KCSO vehicles drove into the neighborhood and deputies ordered Civilian Witness 4 and Civilian Witness 5 to put their firearms down and get on the ground, which they did. As officers were checking them for weapons, Civilian Witness 4 saw Le appear in the intersection of S 136th St. and 3rd Ave S. Civilian Witness 4 yelled to the deputies, "That's him! That's him!"

Civilian Witness 4 told the deputies that Le was the individual who attacked him with a knife and he observed the deputies turn their attention towards Le. Civilian Witness 4 recounted that it was dark and difficult to see clearly into the intersection. However, he heard the deputies give clear and loud commands several times, such as "Drop the knife!" and "Stop! Stop! Stop!" Civilian Witness 4 heard the "click of a taser" but it "obviously didn't work because the male

just groaned and continued to move towards the officers." The deputies continued to yell commands at Le to stop, and Civilian Witness 4 heard approximately three gunshots. Civilian Witness 4 reported that Le fell to the ground and deputies ordered Le to "Stay on the ground!" and to "Drop the knife!" Civilian Witness 4 observed Le on the ground and saw that he was still holding what he believed to be a knife in his right hand. As more deputies arrived, Civilian Witness 4 lost sight of Le.

In a second interview, Civilian Witness 4 was asked to describe in detail what he observed in Le's hand. Civilian Witness 4 reported that it was dark outside, but he could tell Le was holding something in his hand and that he believed was a knife. When Civilian Witness 4 was running away from Le and back towards his front door, his porch light lit up and he saw that Le was holding a knife blade. Investigators showed Civilian Witness 4 photographs of the four knives that were located inside Le's home and Civilian Witness 4 stated that the butterfly knife was the most consistent with what he observed. He noted that Le's hand was wrapped around the handle, so he could only compare what he saw to the blade of the knife.

Figure 3 - Butterfly knife seized from Le's residence.

Regarding the pen, Civilian Witness 4 reported that he had subsequently seen media coverage of the incident that Le had an ink pen in his hand when Involved Officer 1 discharged his handgun. Investigators showed Civilian Witness 4 a photograph of the ink pen and Civilian Witness 4 stated he was sure that Le was not holding a pen during his confrontation with Le.

d. Civilian Witness 1

Civilian Witness 1 told investigators that he arrived in the area to visit Civilian Witness 4. After he parked his car, he walked towards Civilian Witness 4's home and he knocked on the door when Le approached him with something sharp in his hand, which he believed was either a knife or a screwdriver. Concerned, Civilian Witness 1 knocked on the Civilian Witness 4's door harder and Le continued walking towards him while saying, "I'm the creator." and "I'm the killer." Civilian Witness 1 ran away from Le towards the street and called 911. He saw Civilian Witness 4 exit his home and heard Civilian Witness 4's interaction with Le. Civilian Witness 1 remained outside with Civilian Witness 4 and Civilian Witness 5 when the deputies arrived and ordered Civilian Witness 4 and Civilian Witness 5 to put down their firearms and get on the ground, which they did. He next observed Le return and he heard Civilian Witness 4 direct the deputies' attention to Le. Civilian Witness 1 heard the deputies give Le commands to drop the knife and to get on the ground, followed by two tasers being deployed, followed by gunshots.

In a second interview, Civilian Witness 1 was asked to describe in detail what he observed in Le's hand. Civilian Witness 1 reported that he observed Le holding an object and, based on the object's shape, he believed it was a knife or a screw driver. He also reported that Le's comments and the manner that he held the object led Civilian Witness 1 to believe Le was going to stab him. Investigators showed Civilian Witness 1 photographs of the four knives that were located inside Le's home and Civilian Witness 1 stated that the butterfly knife with the blade open looked most like what he observed in Le's hand.

Regarding the pen, Civilian Witness 1 reported that he had subsequently seen media coverage of the incident that Le had an ink pen in his hand when Involved Officer 1 discharged his handgun. Investigators showed Civilian Witness 1 a photograph of the ink pen and Civilian Witness 1 stated he was sure that Le was not holding a pen during his confrontation with Le.

e. Civilian Witness 5

Civilian Witness 5 told investigators that he heard yelling and a gunshot, so he went outside. He saw Civilian Witness 4 and Le, and he heard Civilian Witness 4 telling Le to "drop the knife." Initially Civilian Witness 5 came outside with a handgun, but after Le left, Civilian Witness 5 went back inside his home and retrieved his shotgun. He went back outside and saw

the deputies arriving. The deputies ordered him to put his shotgun down, which he did. When Le returned, he heard the deputies telling Le to get on the ground and drop the knife, followed by one or two tasers being deployed, followed by approximately six gunshots.

f. Civilian Witness 6

Civilian Witness 6 told investigators that she was at home with her brother, Civilian Witness 7, when she heard a gunshot. She and Civilian Witness 7 ran outside and saw people in the intersection of S 136th St. and 3rd Ave S. She saw a police car arrive and heard someone shout, "Stop! Stop!" She observed Le run towards the deputies, saw the deputies deploy their tasers, and noted that the tasers did not appear to affect Le. She reported that it appeared that Le had something in his hand, but she could not see what it was. As Le continued running towards the deputies, she heard approximately five gunshots.

g. Civilian Witness 7

Civilian Witness 7 told investigators that he was awakened by the sound of a gunshot. He went outside and saw one of his neighbors holding a gun and shouting at an individual that Civilian Witness 7 could not see. The police soon arrived and he observed Le walk south on 3rd Ave S. towards the deputies. He heard the deputies yelling, "Stand down!" or "Stay down!" but Le did not stop. Civilian Witness 7 observed Le start walking towards him and his sister's location, which caused him fear. However, Le then turned and ran towards the deputies. He heard the deputies tell Le to "Stop!" and "Lay down!" Next, Civilian Witness 7 heard one or two tasers deployed, followed by four or five gunshots. Civilian Witness 7 reported that the first four gunshots did not appear to affect Le.

h. Civilian Witness 8

Civilian Witness 8 told investigators that he is friends with Le and assisted investigators in identifying Le. He told investigators that Le had recently experimented with controlled substances, such as acid, and documenting the effects in his diary. He last saw Le on the day of the incident and Le told Civilian Witness 8 that he was going to do a "trip," a term the investigators were familiar with being associated with acid use.

2. Processing of the Officers

As part of standard practice, the investigators determined which deputies used force. Investigators determined that Witness Officer 1 discharged his taser at Le, but he did not discharge his handgun. Investigators downloaded data from Witness Officer 1's taser and determined that a five second discharge occurred near the time of the incident. However, the data regarding this type of taser model does not show whether the taser successfully connected with Le.

Investigators determined that Involved Officer 1 discharged his taser at Le and that he discharged his handgun. Similarly, investigators downloaded data from Involved Officer 1's taser and determined that a five second discharge occurred near the time of the incident. However, the data regarding this type of taser model does not show whether the taser successfully connected with Le. Further, the investigators examined his handgun and reported that he discharged six cartridges.

3. Crime Scene Investigation

Investigators conducted a crime scene investigation, documented the location of various items that appeared to have evidentiary value, and collected various items as evidence.

Investigators located six discharged cartridge casings in the area where witnesses described Involved Officer 1 standing at the time he discharged his handgun. The six casings were Winchester 9mm, which was the same type of ammunition loaded into Involved Officer 1's handgun. Investigators also located a taser cartridge, one taser probe, and taser wires in the area where the confrontation between Le and the deputies occurred. In this same area, investigators located a black colored ink pen with a broken top. Witness Officer 2 confirmed that the pen was found in the same area where Le fell to the ground. Investigators did not locate a knife at the incident scene.

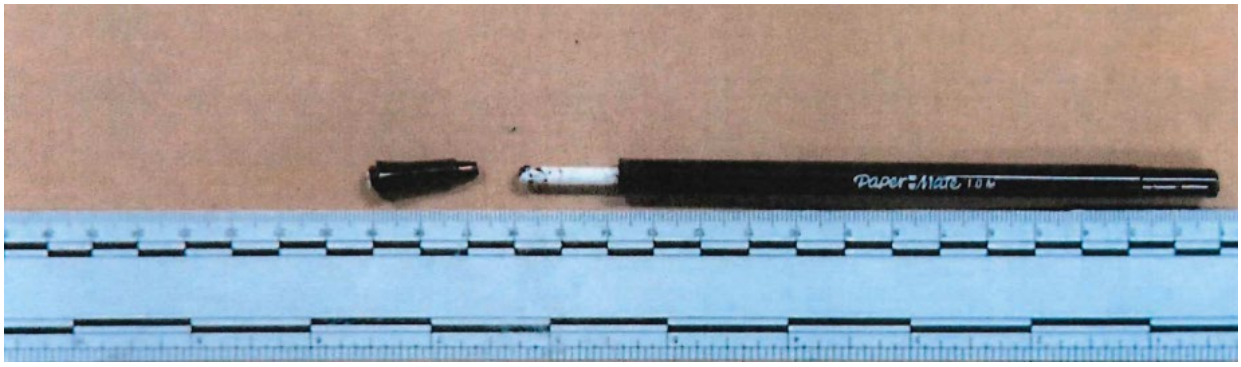

Figure 4 - Photograph of the ink pen found at the use of force scene.

Investigators located a discharged Speer 9mm cartridge casing in the area where Civilian Witness 4 was standing when he reported he discharged a warning shot at Le. There was an apparent bullet strike on the concrete walkway near the casing, which was consistent with Civilian Witness 4's statement about the warning shot. Investigators examined Civilian Witness 4's front door and noted damage that could have been caused by a sharp object striking the door.

Investigators sought judicial approval to serve a search warrant on Le's home, which was located near the incident scene. During the search, they found a wallet with identification belonging to Le, a diary, and three knives in Le's bedroom. They also located a fourth knife inside the kitchen. Investigators reviewed Le's diary and noted references to "acid," "salvia," "shrooms," and "weed." During the examination of Le's wallet, the investigators found strips of brown colored paper that appeared consistent with "blotter paper." The investigators were familiar with blotter paper being used for ingesting controlled substances, such as LSD.

Investigators seized a damaged metal weatherstrip from Civilian Witness 4's door and requested the Washington State Patrol Crime Laboratory examine the defects on the metal weather strip to determine if they could have been caused by strikes from any of the seized knives or an ink pen.

4. Video Evidence

Investigators canvassed the incident scene and the surrounding area for video cameras, but did not discover any that captured the incident with sufficient detail. For instance, the surveillance system of one home was over fifteen years old and showed the individuals in the

street prior to the use of force, but the individuals appeared to be "blobs lost in a 'fog' of distortion."

5. Forensic Examination

The Washington State Patrol Crime Laboratory tested the "blotter paper" that investigators seized, but it determined the paper did not contain any controlled substances.

The Crime Laboratory also analyzed the weather strip taken from Civilian Witness 4's door to determine if the markings were made by the ink pen or one of the knives seized from Le's residence. The ink pen collected at the use of force scene was unable to be used in its original condition because of a broken and missing metallic ball point tip. However, the analyst used a similar make and model ink pen as an exemplar ink pen. The analyst opined that the markings on the interior of the weather strip had similar class characteristics to the four knives, but they could not be conclusively identified or eliminated as the tools that made the toolmark on the interior door trim weather strip due to limited markings. The exemplar pen had some disagreement of class characteristics but could not be conclusively identified or eliminated as the type of tool that made the toolmark on the interior door trim weather strip. Similarly, the exemplar pen had similar class characteristics but could not conclusively be identified or eliminated as the type of tool that made the striated toolmarks on the exterior door trim weather strip.

6. Autopsy and Toxicology Reports

The King County Medical Examiner's Office performed an autopsy of Le to determine the cause and manner of death. The cause of death is a term used to indicate *what* specific injury or disease led to death. The manner of death is a term used to categorize *how* the injury or disease led to death. Manner of death is categorized into one of five categories:

- Accident is defined as a death other than natural, where there is no evidence of intent.
- Homicide is defined as a death due to intentionally inflicted harm of one

person by another. It is also defined as the killing of one person by another.[10] Thus, the term homicide as used in an autopsy report refers to the mechanism of death and does not refer to legal terms, such as murder or manslaughter, which do include a determination legal liability or culpability.

- Natural is defined as a death solely by organic disease. If natural death is hastened by injury, such as a fall, the manner of deal will not be considered natural.

- Pending is a temporary designation used when additional investigation, information, or test results are required to determine the cause or manner of death.

- Suicide is defined as a death as the result of a purposeful action, with intent to end one's life.

- Undetermined is defined as a death when there is insufficient evidence or information to assign to accident, homicide, suicide, or natural categories, or when two plausible manners are equally likely.

The King County Medical Examiner's Office opined the cause of death was multiple gunshot wounds sustained in a confrontation with police and the manner of death was homicide. The pathological diagnoses included evidence of three handgun wounds.

The Washington State Patrol Toxicology Laboratory performed a drug analysis of Le's blood. The results showed that Le's blood tested negative for acetone, ethanol, isopropanol, methanol, amphetamines, barbiturates, benzodiazepines, cannabinoids, cocaine metabolite, and opiates. NMS Laboratory, which occasionally conducts testing on behalf of the Toxicology Laboratory, opined that Le's blood tested negative for psilocin, but his blood did test positive for LSD. According to materials provided by NMS Laboratory, LSD, also known as lysergic acid diethylamide, is . . .

> . . .a U.S. DEA Schedule I substance with no medical use. It is generally classified as a hallucinogen or psychedelic drug, and may produce illusion, both auditory and visual. Physiological effects are primarily sympathomimetic and may include . . . panic and paranoid reactions.

[10] HOMICIDE, Black's Law Dictionary (11th ed. 2019).

V. LEGAL STANDARD AND APPLICABLE LAW

1. Burden of Proof

In a criminal prosecution, the State must prove each element of a criminal charge by competent evidence beyond a reasonable doubt.[11] The KCPAO will file charges if sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defenses that could be raised under the evidence, would justify conviction by a reasonable and objective factfinder.[12]

In addition, the State must disprove the existence of a defense that negates an element of the crime beyond a reasonable doubt.[13] Prosecution should not be declined because of an affirmative defense unless the 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.[14]

Therefore, in addition to proving that the accused committed a crime, the State will be required to disprove one or more of the following defenses:

- Justifiable Homicide by Peace Officer[15]
- Justifiable Homicide Defense of Self or Others[16]
- Justifiable Homicide Resistance to Felony[17]

2. Applicable Law Regarding Justifiable Homicide by a Peace Officer

This incident occurred on June 14, 2017. At the time of this incident, the applicable statute and pattern jury instruction required the State to prove the officer acted with malice.[18]

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[11] RCW 9A.04.100; WPIC 4.01.
[12] KCPAO Filing and Disposition Standards.
[13] WPIC 14.00.
[14] KCPAO Filing and Disposition Standards.
[15] RCW 9A.16.040; WPIC 16.01.
[16] RCW 9A.16.050(1); WPIC 16.02.
[17] RCW 9A.16.050(2); WPIC 16.03.
[18] For offenses committed on or prior to December 6, 2018, the former version of WPIC 16.01, based upon RCW 9A.16.040, required the prosecution to prove the officer acted with malice. For offenses committed between December 7, 2018, and February 3, 2019, RCW 9A.16.040, based upon Laws of 2019, Chapter 1, § 7, removed the

3. Applicable Jury Instructions

The following jury instructions, contained in Attachment A, would be applicable in a criminal prosecution and provided to the factfinder to determine whether the State met the required burden of proof. Therefore, these instructions are highly relevant to the Team's analysis and conclusion:

- WPIC 16.01 - Justifiable Homicide by a Peace Officer
- WPIC 16.05 - Necessary
- WPIC 2.09 - Felony
- WPIC 2.16 - Peace Officer
- WPIC 120.07 - Lawful Arrest and Probable Cause
- WPIC 16.02 - Justifiable Homicide – Defense of Self and Others
- WPIC 2.04.01 - Great Personal Injury
- WPIC 16.07 - Justifiable Homicide – Actual Danger Not Necessary
- WPIC 16.03 - Justifiable Homicide – Resistance to a Felony

VI. ANALYSIS AND CONCLUSION

1. Summary of Conclusion

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."[19]

The KCPAO declines to file charges against the involved officer because the independent investigation and the Team's analysis reveal that there is insufficient evidence to prove any

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malice standard and required the prosecution to prove the officer did not act in good faith. There are no pattern jury instructions for offenses committed between December 7, 2018, and February 3, 2019. For offenses committed on or after February 4, 2019, the current version of WPIC 16.01, based upon RCW 9A.16.040, requires the prosecution to prove the officer did not act in good faith. RCW 9A.16.040(1)(a) utilizes the malice and good faith standard, but this section only applies when a "public officer applied deadly force in obedience to the judgment of a competent court."

[19] KCPAO Filing and Disposition Standards.

criminal charges beyond a reasonable doubt or disprove applicable affirmative defenses, such as Justifiable Homicide by a Peace Officer or Justifiable Homicide in Defense of Self or Others, beyond a reasonable doubt.

2. Justifiable Homicide by a Peace Officer

Under the former RCW 9A.16.040, homicide is justifiable when used by a peace officer to arrest or apprehend a person who the officer reasonably believes has committed, has attempted to commit, is committing, or is attempting to commit a felony.[20]

In considering whether to use deadly force to arrest or apprehend any person for the commission of any crime, the peace officer must have probable cause to believe that the suspect, if not apprehended, poses a threat of serious physical harm to the officer or a threat of serious physical harm to others.[21] Among the circumstances which may be considered by peace officers as a "threat of serious physical harm" are the following:

- The suspect threatens a peace officer with a weapon or displays a weapon in a matter that could reasonably be construed as threatening; or
- There is probable cause to believe that the suspect has committed any crime involving the infliction or threatened infliction of serious physical harm.[22]

A public officer or peace officer shall not be held criminally liable for using deadly force without malice and with a good faith belief that such act is justifiable pursuant to this section. In order to prove malice, the State must prove beyond a reasonable doubt that the officer acted with an evil intent, wish, or design to vex, annoy, or injure another person.[23] Malice may be inferred from an act done in willful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty.[24]

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[20] RCW 9A.16.040(1)(c)(i); WPIC 16.01.
[21] RCW 9A.16.040(2).
[22] Id.
[23] RCW 9A.04.110(12).
[24] Id.

The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.[25] "The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation."[26]

First, the independent investigation showed there was probable cause for the officers to believe that Le committed a felony towards one of the 911 callers based on the information provided in the 911 calls. Moreover, it would be reasonable for Involved Officer 1 to believe, based on the information provided in the 911 calls, Le's continued movements towards Involved Officer 1 and Witness Officer 1, Le's refusal to comply with their commands, and Le's movements with an object in his hand, that Le intended to commit an assault upon one of the deputies.

Second, the independent investigation showed there was probable cause to believe that Le, if not apprehended, posed a threat of serious physical harm to the deputies. Based on information discovered after the use of deadly force, it is apparent that Le was not armed with a knife during the moment Involved Officer 1 used deadly force and that he was, instead, holding an ink pen. As stated previously, however, "use of force must be judged from the perspective of a reasonable officer, rather with 20/20 vision of hindsight."[27] The current incident illustrates that, as the United States Supreme Court stated, officers are forced to make split-second judgments under tense, uncertain, and rapidly evolving circumstances.[28] Thus, whether there was probable cause to believe Le posed a threat of serious physical harm to the deputies must be examined based on the information Involved Officer 1 knew up to and at the time he used deadly force, not afterwards.

Third, the evidence obtained by the independent investigation team would support a jury finding that Involved Officer 1 used deadly force with a good faith belief that his actions were

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[25] Graham v. Connor, 490 U.S. 386, 396, 109 S. Ct. 1865, 1872, 104 L. Ed. 2d 443 (1989).
[26] Id. 490 U.S. at 396-97.
[27] Id. 490 U.S. at 396.
[28] Id. 490 U.S. at 396-97.

justifiable and without malice. The investigation showed that Involved Officer 1 and Witness Officer 1 gave numerous commands to Le, who ignored their commands. Le continued to approach the deputies who were already aware that a suspect matching Le's description attempted to stab another individual. It is likely, based on the witness reports and what Involved Officer 1 and Witness Officer 1 yelled at Le, that it appeared to them that Le was holding a weapon as he moved towards them. Further, it appears uncontested that Involved Officer 1 and Witness Officer 1 each deployed their taser, a less lethal alternative, but neither of the deputies' tasers stopped Le. Between the instant the deputies used their tasers and the instant Involved Officer 1 discharged his handgun, there was no apparent change in any of the information or circumstances known to Involved Officer 1. Thus, there is insufficient evidence to disprove that Involved Officer 1 acted without good faith and that he acted with malice towards Le. Therefore, based on the admissible evidence, which is corroborated by several witnesses, there is insufficient evidence to prove criminal charges beyond a reasonable doubt or refute the applicable defenses beyond a reasonable doubt.

3. Justifiable Homicide in Defense of Self or Others

Homicide is justifiable in defense of self or others when the slayer reasonably believed the person slain intended to commit a felony, to inflict death, or to inflict great personal injury; the slayer reasonably believed that was imminent danger of such harm being accomplished; and the slayer employed such force and means as a reasonably prudent person would under the same or similar conditions as they reasonably appeared to the slayer.[29] Great personal injury includes an injury that the slayer reasonably believed, in light of all the facts and circumstances known at the time, would produce severe pain and suffering, if it were inflicted upon either the slayer or another person.[30]

Under this instruction, the danger must be imminent, not immediate. The Washington Instruction Committee noted that "Imminence does not require an actual physical assault. A threat, or its equivalent, can support self-defense when there is a reasonable belief that the threat

[29] RCW 9A.16.050(1); WPIC 16.02.
[30] WPIC 2.04.01.

will be carried out."[31] Additionally, a person is entitled to act on appearances in defending himself, if that person acts in good faith and on reasonable grounds, although it afterwards might develop that the person was mistaken as to the extent of the danger.[32]

The reasonable person standard used in this instruction does not expressly require the jury to compare the slayer to a reasonable officer. However, because law enforcement officers – especially compared to non-law enforcement civilians – receive significant amounts of training on weapons, defensive tactics, and the use of force, it is prudent to assume the jury would be required to take Involved Officer 1's training into account. Therefore, the same evidence and testimony used to determine whether Involved Officer 1 acted as a reasonable peace officer are also relevant to this instruction.

As stated above, it is reasonable to expect that testimony and evidence would show that Involved Officer 1 arrived at the scene understanding that Le had attempted to stab at least one individual, that a civilian discharged their weapon at Le, that Le refused to follow Involved Officer 1's or Witness Officer 1's commands for him to stop, get on the ground, or drop the object in his hands. Further, Involved Officer 1 would have very likely seen that neither his nor Witness Officer 1's taser had any stopping effect on Le, but he continued to advance towards their position, despite them moving backwards. There is no convincing information that would lead the factfinder to believe that Involved Officer 1 saw or knew that Le was merely in possession of an ink pen at the time Involved Officer 1 used deadly force. Therefore, based on the admissible evidence, which is corroborated by several witnesses, there is insufficient evidence to prove criminal charges beyond a reasonable doubt or refute the applicable defenses beyond a reasonable doubt.

VII. KCPAO RESPONSIBILITIES REGARDING INQUEST

At the time of this incident, inquests were conducted pursuant to Executive Order PHL 7-1-1. This order required the KCPAO to notify the County Executive whenever an investigation

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[31] WPIC 16.02.
[32] WPIC 16.07.

into a death involving a member of any law enforcement agency in King County is complete and shall also advise whether an inquest is required pursuant to the policies outlined in the order. In addition, the KCPAO was responsible for assisting the judge designated to conduct the inquest.

On October 6, 2017, the KCPAO notified the County Executive that the investigation into this incident was complete and advised that an inquest was required under the current order. On October 9, 2017, the County Executive ordered an inquest and requested that a judge be assigned to conduct the inquest. On October 12, 2017, an inquest regarding this incident was assigned to a judge. In December 2017, the County Executive paused all inquest proceedings so an Inquest Review Committee could propose reforms to the current process. Inquests initially resumed in June 2019 but they were subsequently stayed in 2020 due to several legal challenges, which were ultimately resolved by the Washington State Supreme Court in July 2021.

In March 2022, the County Executive resumed inquests under Executive Order PHL 7-1-5. Under the new order, the KCPAO was no longer responsible for assisting the inquest program in conducting the inquest. This responsibility was transferred to an inquest program attorney within the inquest program. Although the inquest program completed several other inquests, there was no documentation or updates provided for the inquest into this incident.

In October 2024, the inquest program added Le's inquest to its list of "archived" inquests. It noted that the inquest hearing was "Waived by county executive in lieu of case report issued by King County Office of Law Enforcement Oversight." The case report referenced a report created by the OIR Group, which was hired by the King County Office of Law Enforcement Oversight to "assess the objectivity and thoroughness of fact collections and the rigor of the subsequent internal review of KCSO actions."

Attachment A

1. WPIC 16.01 - Justifiable Homicide by a Peace Officer

It is a defense to a charge of [murder] [manslaughter] that the homicide was justifiable as defined in this instruction.

Homicide or the use of deadly force is justifiable:

[when necessarily used by a peace officer acting in good faith to overcome actual resistance to the execution of the legal process, mandate, or order of a court or officer, or in discharge of a legal duty] [or]

[when necessarily and in good faith used by a peace officer or person acting under the officer's command and in the officer's aid [to arrest or apprehend a person who the officer reasonably believes has committed, has attempted to commit, is committing, or is attempting to commit a felony] [or] [to prevent the escape of a person from a federal or state correctional facility or in retaking a person who escapes from such a facility] [or] [to prevent the escape of a person from a county or city jail or holding facility if the person has been arrested for, charged with, or convicted of a felony] [or] [to lawfully suppress a riot if the actor or another participant is armed with a deadly weapon]. In considering whether to use deadly force to arrest or apprehend any person for the commission of any crime, a peace officer must have probable cause to believe that the suspect, if not apprehended, poses a threat of serious physical harm to others. Among the circumstances that may be considered by a peace officer as a "threat of serious physical harm" are the following: (a) The suspect threatens a peace officer with a weapon or displays a weapon in a manner that could reasonably be construed as threatening; or (b) There is probable cause to believe that the suspect has committed any crime involving the infliction or threatened infliction of serious physical harm. Under these circumstances deadly force may also be used if necessary to prevent escape from the officer, when, if feasible, some warning is given.]

[A peace officer shall not be held criminally liable for using deadly force with a good faith belief that such act is justifiable.]

"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, you 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. If you find that the State has not proved the absence of this defense beyond a reasonable doubt, it will be your duty to return a verdict of not guilty.

2. WPIC 16.05 – Necessary

Necessary 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.

3. WPIC 2.09 Felony—Designation Of _____ is a felony.[33]

[33] Whether a crime is a felony is a matter of law for the court to decide.

4. WPIC 2.16 Peace Officer—Definition

Peace officer means a duly appointed city, county, or state law enforcement officer.

5. WPIC 120.07 Lawful Arrest—Definition

[An arrest is lawful if made pursuant to an arrest warrant.] [An arrest is [also] lawful if the arresting officer had probable cause to believe that the person arrested had committed the crime of (name of crime) [in the officer's presence]. “Probable cause” means facts that would cause a reasonably cautious officer to believe that the person had committed that crime. In determining whether the facts known to the officer justified this belief, you may take into account the officer's experience and expertise.]

6. WPIC 16.02 – Justifiable Homicide – Defense of Self and Others

It is a defense to a charge of murder or manslaughter that the homicide was justifiable as defined in this instruction.

Homicide is justifiable when committed in the lawful defense of the slayer or any person in the slayer's presence or company when:

(1) the slayer reasonably believed that the person slain intended to commit a felony[34] or to inflict death or great personal injury;

(2) the slayer reasonably believed that there was imminent danger[35] of such harm being accomplished; and

(3) the slayer employed such force and means as a reasonably prudent person would use under the same or similar conditions as they reasonably appeared to the slayer, taking into consideration all the facts and circumstances as they appeared to him, at the time of and prior to the incident.

The State has the burden of proving beyond a reasonable doubt that the homicide was not justifiable. If you find that the State has not proved the absence of this defense beyond a reasonable doubt, it will be your duty to return a verdict of not guilty.

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[34] For purposes of the defense, the use of deadly force appears to be limited to the resistance of violent felonies that threaten human life or may result in great personal injury. See State v. Nyland, 47 Wn.2d 240, 287 P.2d 345 (1955).

[35] Regarding imminent danger, the WPIC commented:
Imminence does not require an actual physical assault. A threat, or its equivalent, can support self-defense when there is a reasonable belief that the threat will be carried out. State v. Janes, 121 Wn.2d at 241 (citations omitted). While "immediate harm" means "occurring, acting, or accomplished without loss of time: made or done at once," "imminent harm" means "ready to take place: near at hand: … hanging threateningly over one's head."

7. WPIC 2.04.01 – Great Personal Injury

Great personal injury means an injury that the slayer reasonably believed, in light of all the facts and circumstances known at the time, would produce severe pain and suffering, if it were inflicted upon either the slayer or another person.

8. WPIC 16.07 – Justifiable Homicide – Actual Danger Not Necessary

A person is entitled to act on appearances in defending himself or another, if that person believes in good faith and on reasonable grounds that he or another is in actual danger of great personal injury, although it afterwards might develop that the person was mistaken as to the extent of the danger.

Actual danger is not necessary for a homicide to be justifiable.

9. WPIC 16.03 – Justifiable Homicide – Resistance to a Felony

It is a defense to a charge of murder or manslaughter that the homicide was justifiable as defined in this instruction.

Homicide is justifiable when committed in the actual resistance of an attempt to commit a felony[36] upon the slayer or in the presence of the slayer.

The slayer may employ such force and means as a reasonably prudent person would use under the same or similar conditions as they reasonably appeared to the slayer, taking into consideration all the facts and circumstances as they appeared to him at the time and prior to the incident.

The State has the burden of proving beyond a reasonable doubt that the homicide was not justifiable. If you find that the State has not proved the absence of this defense beyond a reasonable doubt, it will be your duty to return a verdict of not guilty.

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[36] For purposes of the defense, the use of deadly force appears to be limited to the resistance of violent felonies that threaten human life or may result in great personal injury. See State v. Nyland, 47 Wn.2d 240, 287 P.2d 345 (1955)