

Use of Force Fatality of
Robert Lightfeather

Valley Independent Investigation Team
Kent Police Department 17-16588



King County Prosecuting Attorney
Public Integrity Team

July 9, 2024



DECLINE MEMORANDUM

Law Enforcement Use of Force Fatality Regarding: Robert Lightfeather

July 9, 2024

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.¹ 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.²

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.³ The independent investigation is conducted in the same manner as a criminal investigation.⁴

¹ 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.

² Id. See also WAC 139-12-010.

³ RCW 10.114.011. See also WAC 139-12-010.

⁴ 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.⁵ 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.⁶

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.

⁵ Executive Order PHL 7-1-5 EO.

⁶ Id.

II. OVERVIEW

On October 30, 2017, Federal Way Police Officers responded to a 911 call that described Robert Lightfeather pointing a handgun at another person in the Elephant Car Wash parking lot. When officers arrived, Lightfeather pointed a handgun at the officers' direction. Two officers discharged their handguns, striking Lightfeather. Officers attempted to provide aid, but Lightfeather died as a result of his injuries.

III. INVESTIGATION AND EVIDENCE

1. Independent Investigation Team Reports
2. Civilian Statements
3. CAD/MDT
4. Search Warrants
5. Crime Scene Investigation
6. Crime Laboratory
7. Medical
8. Involved Officer Information
9. Subject Information
10. 911 Call and Radio
11. Video
12. Photos

IV. INVESTIGATION SUMMARY⁷

1. Information Before and During the Use of Force

The following information is based upon witness observations, the Federal Way Police Department (FWPD) computer aided dispatch (CAD) report, recorded police radio, 911 recordings, and video from October 30, 2017.

At approximately 10:28 p.m., Civilian Witness 1 called 911 to report that she just observed a male, later identified as Robert Lightfeather (Lightfeather), pointing a gun at another male in the Elephant Car Wash located at 31458 Pacific Highway S. in Federal Way. She described Lightfeather as wearing a plaid long-sleeved shirt. Several FWPD officers, including Involved Officer 1 and Involved Officer 2 were dispatched to investigate.

When the 911 call occurred, Involved Officer 1 was approximately two blocks south of the Elephant Carwash. Civilian Witness 2, a FWPD Records Specialist, was inside Involved Officer 1's patrol vehicle taking part in a ride along with Involved Officer 1. Civilian Witness 2 reported to police that Involved Officer 1 had just performed a traffic stop when she heard the police radio emit "toners," which she described as audible tones or beeps on the police radio that proceed a priority call from the FWPD dispatcher. She observed Involved Officer 1 run back to his vehicle and drive towards the Elephant Car Wash. They arrived at the scene within thirty to forty-five seconds and Involved Officer 1 was the first officer on the scene. She observed Lightfeather talking to two other males, later identified as Civilian Witness 3 and Civilian Witness 4.

When Lightfeather saw Involved Officer 1 arrive, Civilian Witness 2 observed Lightfeather turn towards Involved Officer 1 and raise a black semi-automatic handgun with his

⁷ 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.

right hand. She shouted "Gun!" She saw Involved Officer 1 exit the vehicle and take cover between his vehicle and Involved Officer 2's vehicle, who had just arrived. She continued to observe Lightfeather pointing the gun towards the officers' location, but he did not discharge the firearm. She reported that it appeared the gun malfunctioned because she saw Lightfeather rack the slide and re-aim at the officers. Civilian Witness 2 ducked down for her safety and she heard multiple gunshots. Civilian Witness 2 stated Involved Officer 1 was obviously a police officer given that his lights were activated, he drove a marked police vehicle, and he was wearing a police uniform. She did not recall hearing any verbal commands but stated she could not be certain given how fast the incident occurred.

Civilian Witness 3 provided a statement to police after the incident occurred. He reported he was in the driver's seat of his vehicle, Civilian Witness 4 was in the front passenger seat, and they were stopped at a traffic light on Pacific Highway South when Lightfeather pulled up next to him and waived his hands to get Civilian Witness 3's attention. Lightfeather yelled, "Your car! Your car!" and Civilian Witness 3 observed smoke coming up from the hood of his vehicle. Civilian Witness 3 drove into the parking lot of the Elephant Car Wash and exited his vehicle to inspect it.

When he exited his vehicle, Civilian Witness 3 observed Lightfeather exit his vehicle and walk towards Civilian Witness 3's location carrying a handgun. As Lightfeather approached Civilian Witness 3's location, Lightfeather passed the handgun between his hands. Civilian Witness 3 thought his best course of action was to make small talk with Lightfeather so that he would not perceive Civilian Witness 3 and Civilian Witness 4 as threats. Civilian Witness 3 initially did not feel threatened because Lightfeather held the handgun at his side. However, Civilian Witness 3 noticed that when Lightfeather saw a police officer conducting a traffic stop approximately one hundred yards away, Lightfeather's demeanor changed to more serious. As they continued talking, Lightfeather became more upset and raised the gun at Civilian Witness 3 several times, including placing the handgun against Civilian Witness 3's head. Civilian Witness 3 observed that a brass cartridge was hanging out of the slide, so he knew that the handgun "was

not in battery.”⁸ Despite this, Civilian Witness 3 observed Lightfeather pull the trigger several times during the conversation.

Civilian Witness 3 tried to move Lightfeather away from Civilian Witness 4 as Involved Officer 1 arrived. He saw Lightfeather face the officers and heard an officer yelling, “Put the gun down!” several times. Civilian Witness 3 saw Lightfeather raise the handgun in the officers’ direction, so he ran for cover near his vehicle, which is when he heard multiple gunshots.

As other FWPD officers arrived, they observed Lightfeather on the ground and temporarily detained Civilian Witness 3 and Civilian Witness 4 to determine their roles in the incident. Officers rolled Lightfeather over to begin administering first aid, but medics arrived and determined that Lightfeather was deceased. When the officers moved Lightfeather to administer aid, they observed a black handgun underneath him. An officer who was familiar with this handgun model observed that the rear slide indicator was red, which indicates that the handgun is ready to fire. Additionally, the officer observed an unfired cartridge casing on the ground that appeared to be the correct caliber for the handgun found underneath Lightfeather.

2. Independent Investigation

As other officers arrived, the police secured the incident scene and rerouted traffic away from the area. The Valley Independent Investigation Team was requested to respond to the scene and to conduct an independent investigation. Kent Police Department Investigator 1 was assigned as the lead investigator. The independent investigation team (IIT) divided assignments between themselves and began to process the incident scene.

3. Processing of the Officers

As part of standard practice, the IIT determined which officers used force. Investigators determined that Involved Officer 2 and Involved Officer 1 discharged their handguns.

⁸ A handgun is out of battery when the slide is not fully seated in the normal firing position. Typically, a handgun that is out of battery cannot be discharged.

Regarding Involved Officer 1, the IIT reported that his handgun contained one unfired cartridge in the chamber, fifteen unfired cartridges in the magazine, and that the magazine could hold seventeen cartridges. His two spare magazines were fully loaded, which led the IIT to believe that Involved Officer 1 discharged two cartridges during the use of force.

Regarding Involved Officer 2, the IIT reported that his handgun contained one unfired cartridge in the chamber, three unfired cartridges in the magazine, and that the magazine could hold seventeen cartridges. His two spare magazines were fully loaded, which led the IIT to believe that Involved Officer 2 discharged fourteen cartridges during the use of force.

4. Involved Officer Statement

The investigation into this incident occurred prior to the implementation of RCW 10.114.011 and WAC 139-12-030, which established the requirements for an Independent Investigative Team to conduct independent investigations into police use of force cases. As was often the practice of the involved agencies, the investigative material supplied in this case included the involved officer's compelled statements. Such compelled statements are inadmissible against an officer in a subsequent criminal trial.⁹ Police and prosecutors are also barred from making "indirect evidentiary use" of the officer's compelled statement, which includes investigative efforts or testimony that has been shaped, altered, or affected, directly or indirectly, by the officer's compelled statement.¹⁰ While the compelled statement and information derived from such a statement cannot be used to support criminal charges against an officer, a credible compelled statement provides insight into the potential testimony of an involved officer. Therefore, it may be useful to the Team in analyzing the current incident and may be used in support of a finding of no criminal liability for the officer's actions.

Involved Officer 1 provided a compelled statement. He reported he heard dispatch advise of the 911 call, which included "tones" that alerted him that the call involved a "serious crime." The call information stated that a male was pointing a gun at another male at the Elephant Car

⁹ *Garrity v. State of N.J.*, 385 U.S. 493, 500, 87 S. Ct. 616, 620, 17 L. Ed. 2d 562 (1967).

¹⁰ *U.S. v. North*, 910 F.2d 843, 857-858 (D.C. Cir., 1990).

Wash. As he drove towards the car wash, Involved Officer 1 noted that Involved Officer 2 was close behind him. When he pulled into the car wash parking lot, Involved Officer 1 observed Lightfeather, Civilian Witness 3, and Civilian Witness 4. He saw Lightfeather look over his shoulder and noted that Lightfeather was holding a handgun. By the time Involved Officer 1 placed his vehicle in park, Lightfeather turned to face Involved Officer 1, racked the slide, and pointed the handgun at Involved Officer 1.

Involved Officer 1 believed that Lightfeather was going to discharge his handgun, but Involved Officer 1 felt that he could not defend himself by discharging his weapon because Civilian Witness 3 and Civilian Witness 4 were behind Lightfeather. As he exited his vehicle, Involved Officer 1 yelled for Lightfeather to drop the handgun as he moved to the rear of his vehicle. While making his way around the vehicle, Involved Officer 1 heard gunshots and believed that Lightfeather discharged his handgun.

As Involved Officer 1 came around his vehicle, Lightfeather was still standing with the handgun in the officers' direction, but Civilian Witness 3 and Civilian Witness 4 were no longer behind him. Believing that Lightfeather was a threat to his life, Involved Officer 2's life, and Civilian Witness 2's life, Involved Officer 1 moved towards the front of his vehicle and discharged his handgun twice at Lightfeather.

Involved Officer 2 provided a compelled statement. He reported that he heard dispatch advise about a male pointing a handgun at another male at the Elephant Car Wash, which was approximately four blocks from his location. Involved Officer 2 drove to the car wash and observed Involved Officer 1 arrive first. As he arrived, he observed Lightfeather turn his entire body around and face the officers' direction. Lightfeather raised his hand, which was holding a handgun, and he pointed it in the officers' direction.

Involved Officer 2 observed Involved Officer 1 exit his vehicle and quickly move towards the rear of his vehicle. As Involved Officer 2 exited his vehicle, he saw Lightfeather still pointing the gun in Involved Officer 1's direction. Before Involved Officer 2 could give commands, he observed Lightfeather rack the slide and point the handgun in Involved Officer 2's direction. Believing that Lightfeather intended to discharge the firearm at the officers, Involved Officer 2 discharged his handgun multiple times at Lightfeather.

5. Medical

The King County Medical Examiner's Office performed an autopsy of Lightfeather, which opined the cause of death is seven gunshot wounds sustained in a confrontation with police and the manner of death is homicide.¹¹ The Washington State Patrol Toxicology Laboratory performed a drug analysis of Lightfeather's blood. The results showed that Lightfeather's blood tested positive for ethanol (.24 g/100 mL).

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.¹² 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.¹³

In addition, the State must disprove the existence of a defense that negates an element of the crime.¹⁴ 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.¹⁵ Therefore, the State may be required to disprove one or more of the following defenses:

- Justifiable Homicide by Peace Officer;¹⁶
- Justifiable Homicide Defense of Self or Others;¹⁷
- Justifiable Homicide Resistance to Felony;¹⁸

¹¹ Homicide is defined as the killing of one person by another. HOMICIDE, Black's Law Dictionary (11th ed. 2019). Thus, the term homicide as used in an autopsy report refers to the mechanism of death and does not refer to legal liability or culpability.

¹² RCW 9A.04.100; WPIC 4.01.

¹³ KCPAO Filing and Disposition Standards.

¹⁴ WPIC 14.00.

¹⁵ Id.

¹⁶ RCW 9A.16.040; WPIC 16.01.

¹⁷ RCW 9A.16.050(1); WPIC 16.02.

¹⁸ RCW 9A.16.050(2); WPIC 16.03.

2. Applicable Law

This incident occurred on October 30, 2017. At the time of this incident, the applicable statute and pattern jury instruction required the State to prove the officer acted with malice.¹⁹

The following jury instructions, contained in Attachment A, would likely be applicable and are relevant to the Team's analysis and conclusion:

- Justifiable Homicide by a Peace Officer²⁰
- Necessary²¹
- Justifiable Homicide – Defense of Self and Others²²
- Great Personal Injury²³
- Justifiable Homicide – Actual Danger Not Necessary²⁴
- Justifiable Homicide – Resistance to a Felony²⁵

VI. ANALYSIS AND 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."

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

¹⁹ 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 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."

²⁰ WPIC 16.01.

²¹ WPIC 16.05.

²² WPIC 16.02.

²³ WPIC 2.04.01.

²⁴ WPIC 16.07.

²⁵ WPIC 16.03.

prove any criminal charges or disprove applicable affirmative defenses beyond a reasonable doubt.

1. 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.²⁶

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.²⁷ 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.²⁸

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.²⁹ 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.³⁰

²⁶ RCW 9A.16.040(1)(c)(i); WPIC 16.01.

²⁷ RCW 9A.16.040(2).

²⁸ Id.

²⁹ RCW 9A.04.110(12).

³⁰ 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.³¹ “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.”³²

First, the independent investigation showed there was probable cause for the officers to believe that Lightfeather committed or was in the process of committing various felonies. Specifically, Lightfeather pointed a handgun at another individual and pointed a handgun at the involved officers. Therefore, there was probable cause to believe that Lightfeather committed multiple counts of felony assault.

Second, the independent investigation showed there was probable cause to believe that Lightfeather, if not apprehended, posed a threat of serious physical harm to the officers or others. The investigation showed that involved officers were objectively identifiable as law enforcement and gave Lightfeather commands to drop his handgun. Lightfeather did not comply with the commands, and he pointed the handgun at the officers. When the officers observed Lightfeather racking the slide of the handgun, this would further cause them to believe that Lightfeather intended to discharge the handgun.

Third, the evidence obtained by the independent investigation team would support a jury finding that the involved officers used deadly force with a good faith belief that their actions were justifiable and without malice. The investigation showed the involved officers used deadly force when it appeared that Lightfeather intended to discharge his handgun in their direction.

Thus, there is insufficient evidence to prove beyond a reasonable doubt that the involved officers did not act justifiably under this instruction.

³¹ Graham v. Connor, 490 U.S. 386, 396, 109 S. Ct. 1865, 1872, 104 L. Ed. 2d 443 (1989).

³² Id. 490 U.S. at 396-97.

2. 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.³³ 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.³⁴

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 will be carried out.”³⁵ 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.³⁶

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 the involved officers training into account. Therefore, the same evidence and testimony used to determine whether the involved officers acted as a reasonable peace officer are also relevant to this instruction.

As stated above, the involved officers possessed sufficient information to believe that Lightfeather intended to inflict a felony, death, or great personal injury when they observed him pointing the handgun in the officers’ direction. A reasonably prudent person in the same situation

³³ RCW 9A.16.050(1); WPIC 16.02.

³⁴ WPIC 2.04.01.

³⁵ WPIC 16.02.

³⁶ WPIC 16.07.

would like fear for their life and the lives of others near them. Thus, there is insufficient evidence to prove beyond a reasonable doubt that the involved officers did not act justifiably under this instruction.

VII. KCPAO RESPONSIBILITIES REGARDING INQUEST

The Department of Executive Services Inquest Program conducted an inquest into this incident. On September 30, 2022, the jury answered several interrogatories. Based on the information presented to the jury, the jury determined that the involved officers discharged their handguns at Lightfeather and that Lightfeather presented an imminent risk of death or serious injury to the officers or others. Further, the jury opined that Lightfeather's death was not a result of criminal means.

Attachment A

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.

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.

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 felony³⁷ or to inflict death or great personal injury;

(2) the slayer reasonably believed that there was imminent danger³⁸ 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.

³⁷ 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).

³⁸ 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.”

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.

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.

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 felony³⁹ 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.

³⁹ 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)