

Use of Force Fatality of  
**Isaiah Obet**

Valley Independent Investigation Team  
Port of Seattle 2017-32867



King County Prosecuting Attorney  
Public Integrity Team

February 3, 2025



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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.<sup>1</sup>**

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### 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.<sup>2</sup> 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.<sup>3</sup>

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 officer results in death, substantial bodily harm, or great bodily harm.<sup>4</sup> The independent investigation is conducted in the same manner as a criminal investigation.<sup>5</sup>

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<sup>1</sup> <https://kingcounty.gov/en/dept/pao/about-king-county/about-pao/team-leadership/organizational-structure/criminal/mainstream/public-integrity-team>

<sup>2</sup> 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.

<sup>3</sup> Id. See also WAC 139-12-010.

<sup>4</sup> RCW 10.114.011. See also WAC 139-12-010.

<sup>5</sup> 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.<sup>6</sup> The Charter requires that "[t]here 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."<sup>7</sup>

## **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.

## **II. OVERVIEW**

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<sup>6</sup> Executive Order PHL 7-1-5 EO.

<sup>7</sup> Id.

On June 10, 2017, a witness called 911 to report that a male, later identified as Isaiah Obet, entered her home without permission while holding a knife and he asked her for money. The witness yelled at Obet to leave, which he did. Minutes later, a second witness called 911 on behalf of a young child who reported that Obet attempted to rob her mother and was going to kill her mother, but her father chased him away. Auburn Police Department officers were dispatched to the area. As Involved Officer 1 drove by Obet, witnesses observed Obet attempting to open the door of a vehicle that was driving and stopped to let Obet pass. The driver of the vehicle locked her doors as Obet attempted to open her doors and he hit her windows while holding a knife. Involved Officer 1 released his K9 and Involved Officer 1 discharged his handgun at Obet. Medics provided medical assistance to Obet, but they pronounced him deceased.

### **III. INVESTIGATION AND EVIDENCE**

1. Police Reports - Port of Seattle Police Department 2017-32867
2. Police Reports – Auburn Police Department 2017-7199
3. Police Reports – Kent Police Department 2017-32867
4. Civilian Statements
5. CAD
6. Crime Scene Investigation
7. Autopsy and Toxicology Reports
8. Involved Officer Information
9. Subject Information
10. 911 Call and Radio
11. Audio
12. In-Car Video
13. Other Video
14. Photos
15. Miscellaneous

#### IV. INVESTIGATION SUMMARY<sup>8</sup>

##### 1. Information Before and During the Use of Force

The following information is based upon several sources, including witness observations, police reports, the Auburn Police Department (APD) computer aided dispatch (CAD) report, recorded police radio, 911 recordings, and video from June 10, 2017.

At 12:24 pm, Civilian Witness 1, called 911 to report that two to three minutes ago an unknown male, later identified as Isaiah Obet (Obet) entered her home, located at 417 23<sup>rd</sup> St. SE in Auburn. Civilian Witness 1 provided a description of Obet and she explained that he came into her home holding a pocketknife in his right hand and he asked her for money. Although Obet did not point the knife directly at anyone, Civilian Witness 1 saw him raise the knife and she was fearful of him because she did not know him and she did not know what Obet intended to do with the knife. She screamed at him to leave her apartment, which he did.

Several APD officers were dispatched to the area of Civilian Witness 1's residence to investigate the incident and an officer requested that a perimeter be established so that an officer with a K9 could search the area for Obet. Involved Officer 1, who is a K9 officer, was one of the officers dispatched. However, at 12:26 pm, Civilian Witness 2 called 911 to report that her neighbor's nine-year-old daughter asked Civilian Witness 2 to call the police because "there is a bad man, he's robbing us, and I'm scared." Civilian Witness 2 gave the phone to the child who told the 911 operator that she saw a man with a knife and "the man was going to kill my mom, my dad said, 'leave my wife alone!'" Civilian Witness 2 reported their location was 425 22<sup>nd</sup> St. SE and that the man, who matched Obet's description, ran towards a nearby apartment building.

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<sup>8</sup> 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.

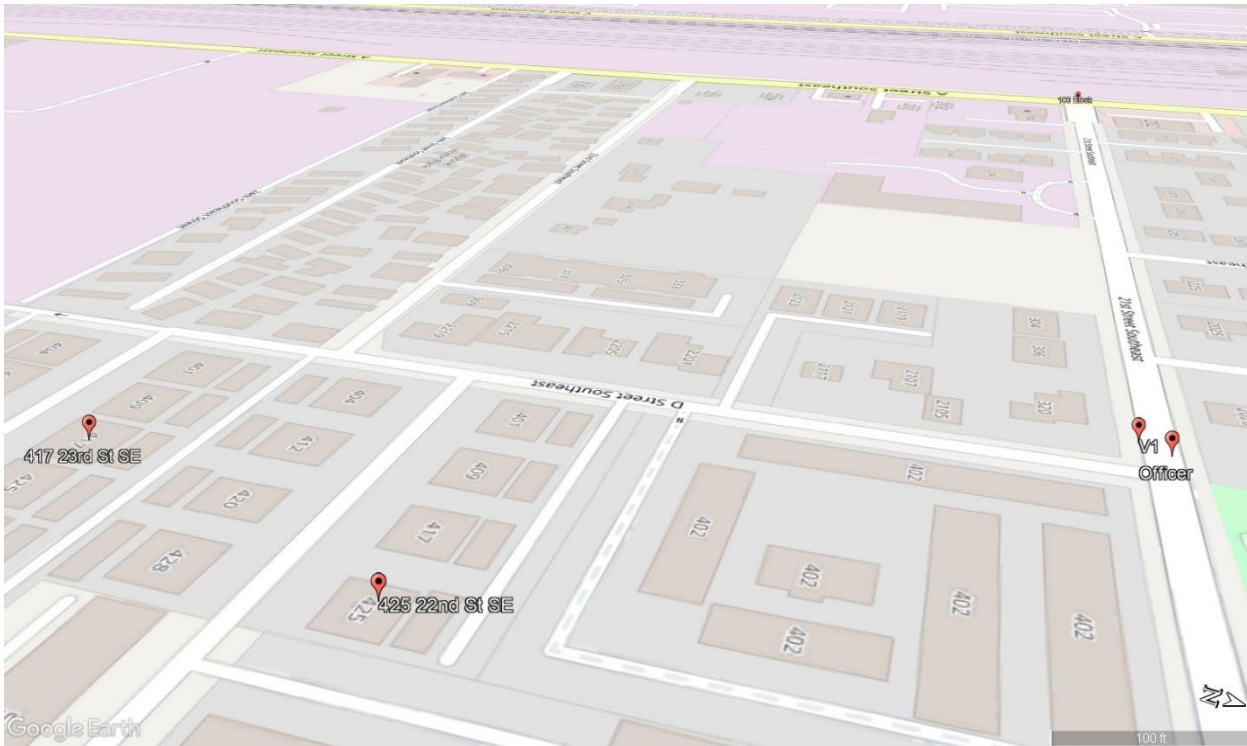
The child's mother, Civilian Witness 3, later spoke with police. She told police that she drove up to her house with her husband in the front passenger seat and her child in the rear seat. Civilian Witness 3 reported that Obet, whom she recognized from the neighborhood, walked up to her door and opened it. Obet put a knife to her chest and told her to give him the car keys. She refused and Obet raised the knife as if he was going to stab her. Her husband jumped out of the car and grabbed a bat that was lying nearby. When Obet saw her husband, he fled the area.

At approximately 12:28 pm, Witness Officer 1, who was in the 100 block of 21<sup>st</sup> St. SE heard Involved Officer 1, who was located at 21<sup>st</sup> St SE and D St. SE, announce over the radio, "Shots fired!" Witness Officer 1 quickly drove to Involved Officer 1's location and saw Obet next to a vehicle, laying with his stomach on the ground. Involved Officer 1 was recalling his K9 and told Witness Officer 1 that "320 was the backstop," which Witness Officer 1 understood meant that Involved Officer 1 was facing 320 21<sup>st</sup> St. SE at the time he discharged his handgun. Witness Officer 1 looked at Obet, he noticed that Obet had been shot, and he matched the description of the individual described in the previous 911 calls. Additionally, he observed an open pocketknife, with a 3"-4" blade, lying on the ground near Obet's feet. Witness Officer 1 completed a public safety statement with Involved Officer 1 and began notifying his chain of command about the incident.

Witness Officer 2 arrived very shortly after Witness Officer 1. As he approached Involved Officer 1, Involved Officer 1 stated that the driver of the vehicle was the victim of the carjacking and she was still inside the vehicle. Witness Officer 2 opened the vehicle and observed the driver, identified as Civilian Witness 4, was extremely shaken. She was crying and said that, "[Obet] had a knife." Witness Officer 2 confirmed that Civilian Witness 4 was uninjured.

Civilian Witness 4 stated she was on her way to see a friend in the 2100 block of D St. SE. As she approached the intersection to make a right-hand turn, she saw Obet standing in the intersection. As she got closer to the intersection, she saw Obet looking at Involved Officer 1's nearby police car. Obet turned and ran at her car, so she stopped driving. When Obet got to her car, he hit her driver's side window with an object that she later realized was an open pocketknife. After Obet struck her window several times, he attempted to open the door by

pulling the handle. Civilian Witness 4 stated she was in fear that Obet would open the door and stab her.



*Figure 1 - Approximate locations of the 911 callers, Involved Officer 1 ("Officer"), and Civilian Witness 4 ("V1").*

As this occurred, Civilian Witness 4 saw Involved Officer 1 leave his patrol vehicle and heard him saying something to Obet, although she could not hear what he said. After Obet could not open the driver's side door, he attempted to open the rear door and struck the window again, which is when Involved Officer 1 discharged his handgun at Obet. Civilian Witness 4 explained that she recalled seeing a dog with Involved Officer 1, but she did not know if he was holding the dog. When Involved Officer 1 discharged his handgun, Civilian Witness 4 stated that Involved Officer 1 and Obet were "close" to each other, that she did not know if Obet was still holding the knife, and she was in fear for her life because she did not know what Obet intended to do if he opened her door.

Witness Officer 3 arrived and he also observed the knife near Obet. He noted the knife was open, but not fully extended. Additionally, he noticed two discharged cartridge casings

approximately two to three feet north of Obet's body. Medics arrived and they provided aid to Obet. Witness Officer 3 observed a medic pick up the knife and throw it approximately two to three feet in front of Civilian Witness 4's vehicle. Concerned about the integrity of the scene, Witness Officer 3 began photographing the area. While he took photographs, medics pronounced Obet deceased and ceased medical treatment.

## **2. Independent Investigation Conducted by the Port of Seattle Police Department**

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. Port of Seattle 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 1 discharged his handgun. The IIT examined his handgun and reported that Involved Officer 1's handgun contained one unfired cartridge in the chamber, six unfired cartridges in the magazine, and that the magazine could hold eight cartridges. Involved Officer 1's three spare magazines were loaded with eight unfired cartridges and could hold eight cartridges. If Involved Officer 1 filled his loaded magazine to capacity with an additional cartridge in the chamber, his handgun was loaded with nine cartridges, which would indicate that he discharged two cartridges. All of Involved Officer 1's ammunition was .45 ACP, which was the same type of discharged cartridge casings located by Witness Officer 3.

## **4. Civilian Witnesses**

### **a. Civilian Witness 5**

Civilian Witness 5 reported to the IIT that she was driving a vehicle behind Involved Officer 1's police car prior to the use of force. Civilian Witness 5 admitted to the IIT that she had



consumed alcohol, the IIT noted that she smelled of intoxicants and slurred her speech, but she was able to express herself and she provided a statement to the investigators. Civilian Witness 5 reported she made a handwritten note regarding the incident to ensure she did not forget any details. She provided the note to the IIT. Civilian Witness 5 reported she was driving and saw a police car ahead of her on the side of the road. She also saw a stopped black SUV facing the opposite direction on the opposite of the street. She described the driver of the SUV as a female and that a young man ran into the street. Civilian Witness 5's stereo was playing and she did not hear what was said, but she observed the officer walking towards the male. She stated the male tried opening the door of the SUV, which appeared locked, and "he pound[ed] on her window." Civilian Witness 5 reported that it looked like the officer was warning him, but she did not believe that the male said anything in response. Civilian Witness 5 estimated that she was approximately twenty feet away from the male. She also estimated she was approximately four parking stalls away. Civilian Witness 5 did not see anything in the male's hands. As the officer continued to warn the male, the male attempted to open the SUV's door. She believed the male attempted to open the door with his left hand and he hit the window with his right hand. She observed the officer's dog jump up and grab the male in the right shoulder. Civilian Witness 5 briefly covered her eyes, but when she uncovered them, she observed that the dog had taken the male to the ground and the officer, who was standing over the male, shot the male twice while he was on the ground. Civilian Witness 5 described the two shots as simultaneous. Initially, Civilian Witness 5 described the male as face down on the ground, but later she stated that the male was face up when he was shot.

b. Civilian Witness 6

While reviewing the in-car video from Involved Officer 1's patrol car, the IIT noted a vehicle behind Civilian Witness 4's. The IIT determined the vehicle belonged to Civilian Witness 6 who provided a statement to investigators. Civilian Witness 6 reported that it appeared the male who was shot was trying to break the window of the SUV stopped in front of him. He did not know what was in the male's hands, but he used a downward stabbing motion to describe the male's attempt to break the SUV's window. Civilian Witness 6 observed an officer trying to

speak with the male, but the male did not stop. He observed the officer let a dog out of his police car and saw the male fighting the dog and attempting to get the dog off of him. Civilian Witness 6 could not hear what the officer said, but he described the officer as talking to the male while waiving his hand in a downward motion. Civilian Witness 6 observed the male fall to the ground after the officer discharged one shot. While lying on the ground, the officer walked up to the male and shot him in the head. In a subsequent interview, Civilian Witness 6 described the gunshots as approximately one second apart.

c. Civilian Witness 7

Civilian Witness 7 was a passenger in Civilian Witness 6's vehicle during the use of force. He estimated they were approximately twenty to twenty-five feet behind the SUV, but they had a clear, unobstructed view of the incident. He reported he saw a male punching and kicking the SUV's driver's door. The male told the driver to, "Stop!" and he hit her window with both hands using hammer fists. Civilian Witness 7 saw a police dog leave a police car and attack the male, but the male continued punching and kicking the SUV as the K9 attacked him, which lasted for approximately one minute. The officer who exited the police vehicle approached the male with his gun drawn and pointed at the male. Civilian Witness 7 saw the male turn from the SUV and he fought the K9 by kicking it. The officer yelled, "Stop! Stop! Stop!" and the K9 attacked the male's right shoulder. The officer discharged two shots in quick succession, approximately one second apart. After the first shot, the male leaned forward and the officer discharged a second shot, which is when the male fell to the ground. Civilian Witness 7 did not observe anything in the male's hands.

**5. Crime Scene Investigation and Search Warrants**

IIT investigators conducted a crime scene investigation, documented the location of various items that appeared to have evidentiary value, and collected various items as evidence. Based on the location of Involved Officer 1's vehicle and the cartridge casings, the IIT opined that he was approximately twenty-four feet from Obet when he discharged his handgun. Additionally, the IIT documented Obet's knife and marks on Civilian Witness 4's vehicle, which appeared to be caused by Obet while he struck the vehicle.

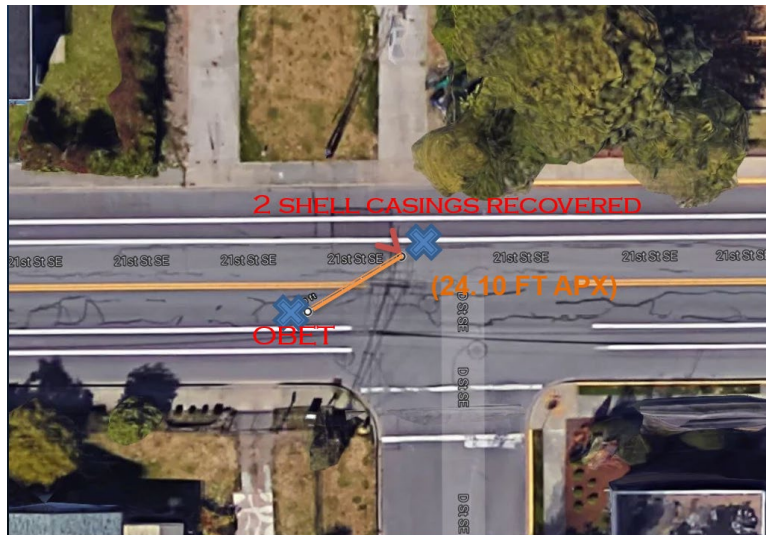


Figure 2 - Approximate distance between Involved Officer 1 and Obet during the use of force.



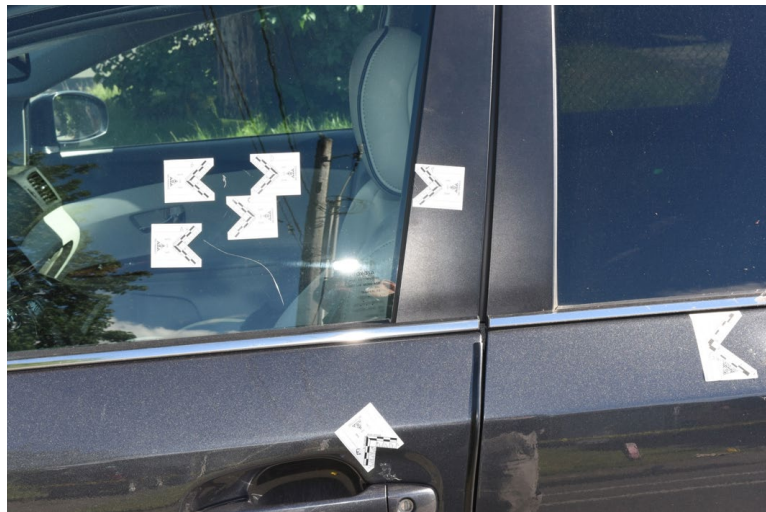
Figure 3 - Two fired cartridge casings (circled red) in close proximity of each other.



*Figure 4 - CSI Photo showing various evidence markers, including two fired shell casings (red circle).*



*Figure 5 - Photograph of Obet's knife as it was found at the scene.*



*Figure 6 - Crime scene markers used to indicate damage caused by Obet.*

## **6. Video Evidence**

The IIT reviewed video from the property between Civilian Witness 1's and Civilian Witness 2's locations. The video captured Obet walking up to Civilian Witness 3's vehicle where he opened her driver's side door. Obet reached into the driver's door twice before Civilian Witness 3's husband, who grabbed an object, confronted Obet and caused Obet to flee towards another apartment building.



*Figure 7 - Screenshot of Obet opening up Civilian Witness 3's door and being chased away by her husband.*

The IIT reviewed the in-car video from Involved Officer 1's patrol vehicle. When the video initially captured Obet, he was walking on the sidewalk and the parked vehicles block his hands. As Obet continued across the street towards Civilian Witness 4's vehicle, he exited the frame. Because the camera is in a fixed position, it did not capture the use of force. Additionally, Involved Officer 1's in-car video did not capture audio. The Team spoke with Witness Officer 1 who explained that at the time of this incident, APD vehicles were equipped with Coban cameras that utilized a separate microphone that required charging.<sup>9</sup> Because Involved Officer 1 was a K9 officer, he would be responsible for taking his patrol vehicle home and charging his microphone. Since Involved Officer 1's in-car video did not capture any sound, it is likely that the microphone was not charged or connected to the Coban system at the time of the recording.

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<sup>9</sup> Based on a conversation that took place November 13, 2024.

The Team also reviewed the in-car video from Witness Officer 1's vehicle. At the instant Involved Officer 1 announced over the radio that shots were fired, Witness Officer 1 had not yet turned onto 21<sup>st</sup> St, so his in-car video did not capture what occurred prior to and during the use of force. As Witness Officer 1 approached Involved Officer 1's and Obet's location, Witness Officer 1's in-car video shows Involved Officer 1 regaining control of his K9. After stopping his patrol vehicle, Witness Officer 1 requested medics and checked on the residents of 320 21st St. SE. Witness Officer 1 assumed control of the scene and assigned duties to other officers as they arrived.

As Witness Officer 1 approached Involved Officer 1, Involved Officer 1 stated, "I'm travelling eastbound on 21<sup>st</sup> . . . this guy, white tank top, thin beard, matches the description, that's why I asked about the shorts, because he has black shorts on. He's carrying a knife. In between the cars, I can see it. I do a horrible three-point turn. He's on the sidewalk, running this way. Well he's walking, but he starts running when he sees me. So I do a hasty three-point . . . past that, see that Ranger, so I do a three-point, come down this way, he turns and laughs and smiles at me, runs into the middle of the street and tries to carjack this chick. He has a knife in his hand, starts pulling on the door handle, and then this chick is losing her mind. He comes out in traffic and stops her, then he tried to open the car door. Boom, boom, he tries it several times. I think he's about to get it. I come out, I send the dog, he turns, he comes at me, and then I . . . you know, because the dog's not going to stop him. So, I put one in him and then on the way down a second."



*Figure 8 - Screenshot from Involved Officer 1's in-car video captures Obet walking.*





Figure 9 - Screenshot from Involved Officer 1's in-car video. Obet (circled) continued to walk towards the location marked by an arrow, which is where Civilian Witness 4's vehicle (behind the minivan) stopped. Involved Officer 1 ultimately stopped his patrol vehicle at the "X."

## 7. Autopsy and Toxicology

The King County Medical Examiner's Office performed an autopsy of Obet, which opined the cause of death was multiple gunshot wounds sustained in a confrontation with law enforcement, including a canine unit, and the manner of death was homicide.<sup>10</sup> The pathological diagnoses included evidence of two gunshot wounds. The perforating gunshot wound of the head entered the right side of the head and exited the left side. The direction of fire was observed to be right to left, downwards, and slightly back to front. The wound of the right anterior chest entered

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<sup>10</sup> 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.

the right anterior side and exited the right upper back near the midline. The direction of fire was front to back, slightly right to left, and downwards. There was no evidence of soot or stippling near the location of either wound. The autopsy showed evidence of canine bite marks.

Investigator 1 inquired whether the bite marks indicated that Obet was standing or lying when he sustained the injuries, but the medical examiner could not determine when the injuries occurred.

The Washington State Patrol Toxicology Laboratory performed a drug analysis of Obet's blood. The results showed that Obet's blood tested positive for methamphetamine and amphetamine.

## 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.<sup>11</sup> 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.<sup>12</sup>

In addition, the State must disprove the existence of a defense that negates an element of the crime.<sup>13</sup> 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.<sup>14</sup> Therefore, the State may be required to disprove one or more of the following defenses:

- Justifiable Homicide by Peace Officer;<sup>15</sup>
- Justifiable Homicide Defense of Self or Others;<sup>16</sup>
- Justifiable Homicide Resistance to Felony;<sup>17</sup>

### 2. **Applicable Law**

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<sup>11</sup> RCW 9A.04.100; WPIC 4.01.

<sup>12</sup> KCPAO Filing and Disposition Standards.

<sup>13</sup> WPIC 14.00.

<sup>14</sup> Id.

<sup>15</sup> RCW 9A.16.040; WPIC 16.01.

<sup>16</sup> RCW 9A.16.050(1); WPIC 16.02.

<sup>17</sup> RCW 9A.16.050(2); WPIC 16.03.

This incident occurred on June 20, 2017. At the time of this incident, the applicable statute and pattern jury instruction required the State to prove the officer acted with malice.<sup>18</sup>

## **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 officer because the independent investigation and the Team’s analysis reveal that there is insufficient evidence to prove any criminal charges or disprove applicable affirmative defenses beyond a reasonable doubt.

### **1. Subsequent Prosecution of Involved Officer 1**

On May 31, 2019, Involved Officer 1 was on duty and involved in a use of force incident where he caused the death of Jesse Sarey (Sarey). On August 20, 2020, the KCPAO charged Involved Officer 1 with Murder in the Second Degree and Assault in the First Degree.<sup>19</sup> On June 27, 2024, a jury found Involved Officer 1 guilty of both crimes beyond a reasonable doubt.

Prior to the trial and pursuant to evidence rule 404(b), the KCPAO sought to admit evidence of Involved Officer 1’s “commonly used plan in his policework to seize opportunities and invent excuses to use violence during routine and unthreatening situations to show that

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<sup>18</sup> 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.”

<sup>19</sup> Cause No. 20-1-06432-3 KNT.

Involved Officer 1's use of force against [Sarey] was neither necessary nor reasonable."<sup>20</sup> An independent expert hired by the KCPAO examined dozens of Involved Officer 1's incident reports and use of force reports between 2011 and 2019. The expert opined there were seventeen instances in which Involved Officer 1 used force that "was at best unnecessary and often excessive or unconstitutional."<sup>21</sup>

In conducting its analysis for this incident, the Team reviewed the expert's report and confirmed that the expert reviewed the APD case and the APD Internal Affairs case that corresponded to the use of force against Obet. The expert did not include the use of force against Obet as one of the seventeen incidents where the expert questioned Involved Officer 1's use of force. Similarly, of the seventeen incidents identified by the expert, the KCPAO sought to introduce ten of those incidents under evidence rule 404(b); however, none of those incidents referred to Obet or the current use of force investigation. Thus, the Team's analysis, as discussed below, appears consistent with the expert's decision to not include the use of force regarding Obet.

After an evidentiary hearing, the trial court determined that Involved Officer 1's actions during the prior ten incidents displayed a common scheme or plan – the use of violence during routine and nonthreatening situations when someone showed him disrespect or failed to acknowledge his authority.<sup>22</sup> However, the trial court determined there was insufficient evidence that Involved Officer 1's prior acts and the death of Sarey were so "markedly and substantially similar" that they constituted a common scheme or plan as contemplated by ER 404(b).<sup>23</sup>

Hypothetically, if Involved Officer 1 were prosecuted for causing the death of Obet, the KCPAO could seek to admit evidence of Involved Officer 1's other use of force incidents for the same purposes. In other words, the trial court's previous ruling would not automatically be binding on a future court. However, the trial court's analysis is instructive in determining how future courts would likely analyze this request. For instance, given the facts of this case – that

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<sup>20</sup> State's Motion for Admission of ER 404(b) Evidence.

<sup>21</sup> Id.

<sup>22</sup> Order on State's Motion for Admission of ER 404(b) Evidence.

<sup>23</sup> Id.

Involved Officer 1 encountered Obet as he attempted to illegally enter Civilian Witness 4's vehicle while armed with a knife – it is highly likely a trial court would find that the prior acts and the death of Obet were not “markedly and substantially similar” because the use of force against Obet did not occur during a routine and nonthreatening situation when someone showed him disrespect or failed to acknowledge his authority. Therefore, it is highly likely that the motion to admit prior evidence of Involved Officer 1's use of force would be denied and such evidence would not be admissible.

## **2. Justifiable Homicide by a Peace Officer**

In Graham v. Connor, the seminal case on evaluating police use of force, the United States Supreme Court determined that the test to determine whether the force used by the police was “reasonable” is not capable of a “precise definition or mechanical application.”<sup>24</sup> Instead, its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether the suspect is actively resisting arrest or attempting to evade arrest by flight.<sup>25</sup> In other words, the reasonableness of whether the officer's use of force is justified is determined by “the totality of the circumstances.”<sup>26</sup> Thus, it is common for a police department's policy manual and training to incorporate the standards set out by the United States Supreme Court.

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.<sup>27</sup> “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.”<sup>28</sup> However, the inquiry is an objective one. The question is whether the officer's actions are “objectively reasonable” in light

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<sup>24</sup> Graham v. Connor, 490 U.S. 386, 396, 109 S.Ct. 1865, 1871-72, 104 L.Ed.2d 443 (1989).

<sup>25</sup> Id.

<sup>26</sup> Id.

<sup>27</sup> Id.

<sup>28</sup> Id. at 396-97.

of the facts and circumstances confronting them, without regard to their underlying intent or motivation.<sup>29</sup>

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.<sup>30</sup>

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.<sup>31</sup> 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.<sup>32</sup>

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.<sup>33</sup> 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.<sup>34</sup>

First, the independent investigation showed there was probable cause for Involved Officer 1 to believe that Obet committed or was in the process of committing various felonies, such as residential burglary and assault. Specifically, Obet entered Civilian Witness 1’s home

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<sup>29</sup> *Id.* at 397.

<sup>30</sup> RCW 9A.16.040(1)(c)(i); WPIC 16.01.

<sup>31</sup> RCW 9A.16.040(2).

<sup>32</sup> *Id.*

<sup>33</sup> RCW 9A.04.110(12).

<sup>34</sup> *Id.*

without permission while armed with a knife and seeking money. Minutes later, Civilian Witness 2 assisted Civilian Witness 3's daughter in calling 911 to report Obet was "robbing" them and "the man was going to kill my mom." This information was disseminated to responding officers via their radio.

Further, the statements of Civilian Witness 4, Civilian Witness 5, Civilian Witness 6, and Civilian Witness 7 provide corroborating information about what occurred prior to Involved Officer 1 using force. For instance, each witness recalled seeing Obet attempt to open Civilian Witness 4's door, Obet hitting her window, Involved Officer 1 speaking to Obet, and Involved Officer 1's K9. Thus, Involved Officer 1, who was also present, would have likely seen similar behavior by Obet, which would have likely led him to believe that the same individual who was involved in the prior two incidents was now attempting to attack Civilian Witness 4.

Second, given the description of Obet, the proximity to the other two 911 calls, and Obet's behavior towards Civilian Witness 4, there was probable cause to believe that Obet, if not apprehended, posed a threat of serious physical harm to Civilian Witness 4. Although Civilian Witness 5, Civilian Witness 6, and Civilian Witness 7 did not observe a knife in Obet's hands, Civilian Witness 4, who was closest to Obet, did recall seeing Obet holding a knife while he hit her windows and attempted to open her doors. Further, officers who arrived at the scene also noted seeing a knife near Obet on the ground.

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 justifiable and without malice. Based upon the testimony of the witnesses who saw Obet attempting to enter Civilian Witness 4's vehicle, there appeared to have been little time for Involved Officer 1 to deescalate in lieu of releasing his K9 or using force.

Although the testimony of Civilian Witness 4, Civilian Witness 5, Civilian Witness 6, and Civilian Witness 7 corroborate Obet's actions prior to the use of force, their recollection of how the use of force occurred is significantly different, which would make proving Involved Officer 1 acted with malice very unlikely. For instance, Civilian Witness 4 recalled Involved Officer 1 and Obet were close to each other when Involved Officer 1 discharged his handgun.

She was not sure where Involved Officer 1's K9 was during the use of force. She recalled Obet was hitting her window while holding a knife.

Civilian Witness 5, who previously consumed alcohol, recalled that she did not see anything in Obet's hands. She saw Involved Officer 1 giving Obet commands, that Involved Officer 1's K9 had taken Obet to the ground, and Involved Officer 1 discharged two simultaneous shots at Obet while Obet was on the ground. Additionally, Civilian Witness 5 stated that Obet was facing down when he was shot, then she described him as facing up.

Civilian Witness 6 did not know what was in Obet's hands, but he described Obet as using a downward stabbing motion. He saw Involved Officer 1 speaking to Obet, Involved Officer 1 release his K9, and Obet fighting with the K9. After Involved Officer 1 discharged his handgun once, he walked over to Obet and shot him again. However, Civilian Witness 6 described the shots as one second apart.

Civilian Witness 7, who was in Civilian Witness 6's car and presumably had a similar view as Civilian Witness 6, saw Obet hitting Civilian Witness 4's windows with hammer fists and kicking the vehicle. He heard Involved Officer 1 yelling at Obet and he saw Involved Officer 1's K9 attack Obet. Involved Officer 1 discharged two shots in quick succession. After Involved Officer 1 discharged one shot, Obet leaned forward and Involved Officer 1 shot Obet again, which caused him to fall to the ground.

Given the differences in their memory, it is unlikely that the jury would find Involved Officer 1 acted with malice towards Obet because their recollection of the use of force is inconsistent, which leaves the jury with no clear understanding of how Involved Officer 1 used force. Thus, there is insufficient evidence to disprove that the Involved Officer 1 acted without good faith and that he acted with malice towards Obet.

Therefore, based on the admissible evidence, including the testimony of several witnesses and video evidence, 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**



a. Law Regarding 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.<sup>35</sup> 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.<sup>36</sup>

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.”<sup>37</sup> 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.<sup>38</sup>

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 earlier, Involved Officer 1 possessed information that would lead a reasonable person to fear that Obet intended to cause Civilian Witness 4 harm based on his actions while he attempted to open her vehicle’s doors. Therefore, based on the admissible evidence, which is

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<sup>35</sup> RCW 9A.16.050(1); WPIC 16.02.

<sup>36</sup> WPIC 2.04.01.

<sup>37</sup> WPIC 16.02.

<sup>38</sup> WPIC 16.07.

corroborated by several witnesses including video evidence, 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**

As outlined in Executive Order PHL 7-1-5 EO, 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 pursuant to the King County Charter.<sup>39</sup> Pursuant to the King County Charter, “An inquest shall be held to investigate the causes and circumstances of any death 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.”<sup>40</sup> Given the facts outlined in the investigation, it is the Team’s belief that the investigation is complete and an inquest should be initiated pursuant to the King County Charter.

The King County Executive, however, shall determine whether an inquest will be held.<sup>41</sup> The Charter requirement for an inquest does not apply where 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.<sup>42</sup>

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<sup>39</sup> Executive Order PHL 7-1-5 EO.

<sup>40</sup> King County Charter § 895.

<sup>41</sup> Executive Order PHL 7-1-5 EO.

<sup>42</sup> Id.