

**Use of Force – Fatality**  
**Jesus Hernandez-Murillo**

King County Sheriff's Office, #C18033145



King County Prosecuting Attorney  
Public Integrity Team

June 1, 2023



## **DECLINE MEMORANDUM**

Law Enforcement Use of Force Fatality re: **Jesus Hernandez-Murillo**

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### **A. PURPOSE AND SCOPE OF MEMORANDUM**

Per County Executive Order, The King County Prosecuting Attorney's Office (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.<sup>1</sup> 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.<sup>2</sup>

The Special Operations Unit Public Integrity Team (the Team) has determined that the investigation into this matter is complete. The determination whether to file charges is based entirely on the 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, administrative action by the involved agency or any other civil action. The Team expresses no opinion regarding the propriety or likely outcome of any such actions.

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

<sup>2</sup> Id.

## **B. OVERVIEW**

On July 26, 2018, King County Sheriff's Involved Officer #1 attempted to arrest the driver, later identified as Jesus Hernandez-Murillo,<sup>3</sup> of a confirmed stolen vehicle. During the arrest, Jesus<sup>4</sup> removed an AR-15 style assault rifle from the car and he attempted to point the rifle at Involved Officer #1. During the struggle to control the rifle, Involved Officer #1 and Jesus went to the ground and Involved Officer #1 discharged a single shot from his duty firearm, striking Jesus in the chest. Police and medics attempted lifesaving procedures, but Jesus was pronounced deceased at the hospital.

## **C. INVESTIGATION AND EVIDENCE**

1. Lead Investigator Reports
2. Officer Reports and Statements
3. Civilian Statements
4. Electronic Discovery
5. Search Warrants
6. Medical Records
7. CAD/MDT
8. 911 Call
9. Other Related Police Cases
10. Autopsy and Toxicology
11. Maps, Diagrams, and Miscellaneous Documents

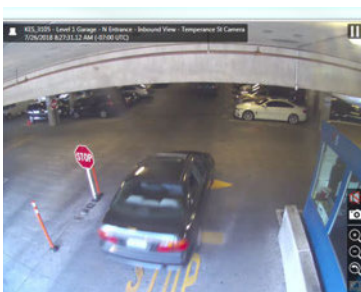
## **D. INVESTIGATION SUMMARY**

On July 26, 2018, King County Sheriff's Office (KCSO) Involved Officer #1, assigned as a patrol officer with the Sound Transit Division, was on routine patrol, driving his marked KCSO vehicle near the Kent Station parking garage in Kent, WA. Video surveillance captured a dark gray Honda Civic (Civic) entering the garage at 08:27 followed by a gold Honda Accord (Accord). Involved Officer #1 is also captured on surveillance video, driving into the garage at 08:40. Given the location of the surveillance cameras, the interaction between Involved Officer #1, Jesus, and other civilians was not captured.

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<sup>3</sup> DOB 7/18/2000.

<sup>4</sup> For clarity, the involved civilians will be referred to by their first names.

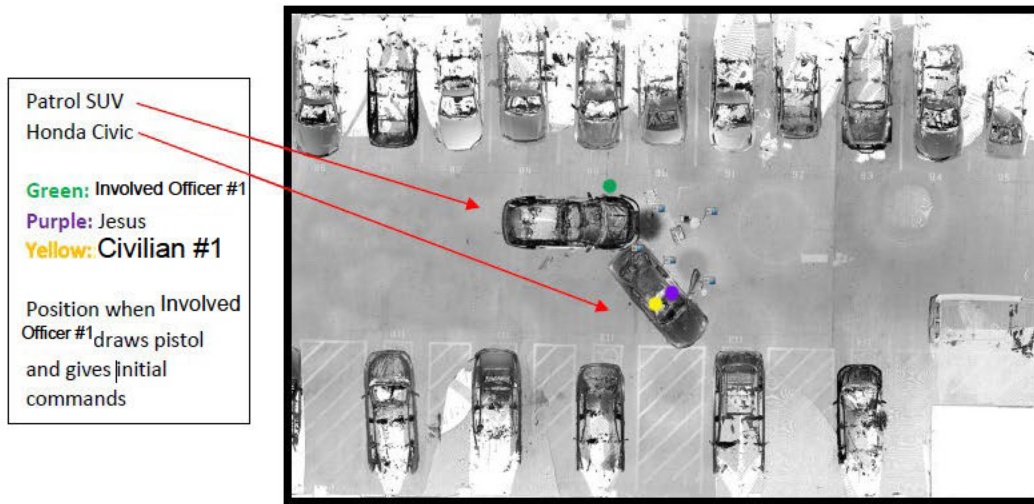


At 08:42, Involved Officer #1 used the computer in his patrol car to run the license plate of the Civic, which resulted in a confirmed “stolen vehicle” result. Involved Officer #1 began to type in the license plate of the Accord, but he did not complete entry, so there was no confirmation at that time that the Accord was stolen. Surveillance video captured the Accord leaving the parking garage at 08:42.

Involved Officer #1 provided a compelled statement, where he reported he has been a law enforcement officer for over 35 years and employed by the KCSO since August 1990.<sup>5</sup> His shift

<sup>5</sup> Involved Officer #1 was ordered to provide a compelled statement on July 30, 2018, and he was given notice of his Garrity admonishment. His written statement is dated August 1, 2018.

began at 05:30, providing safety emphasis for railroad crossings. At approximately 08:40, he conducted a routine check of the Kent Sounder Station parking garage. He observed the Accord first and the position of the car appeared suspicious because it was not parked in a parking stall, yet the driver remained inside the car. He also noted the Civic pull next to the Accord and decided to run the Civic's license plate first. At this time, Involved Officer #1 received a confirmation that the Civic was reported stolen, but the Accord drove away before he logged the license plate. He positioned his patrol vehicle behind the Civic to prevent the car from leaving, exited his patrol vehicle and pointed his duty weapon toward the Civic.



Involved Officer #1 noted the driver's window was down and he gave verbal commands to the two occupants inside. He announced "Sheriff's Office. Get your hands up." The driver, later identified as Jesus, stated that they did not do anything wrong, and Involved Officer #1 responded that they were inside a stolen vehicle. He observed the passenger raise his hands above his head and he observed the driver place both his hands out of the window. Using his radio, he advised dispatch he had "two at gunpoint." Involved Officer #1 observed Jesus and Civilian #1 talking to each other and was concerned they may be planning to run from the vehicle. He ordered them not to move and Jesus placed his head out the window and asked if Involved Officer #1 was going to shoot him. Involved Officer #1 responded that he would not unless he had no choice. To dissuade them from running, Involved Officer #1 removed his X2

Taser for approximately two to three seconds, activated the red laser, pointed it toward the ground, and returned the Taser to its holster.<sup>6</sup>

Involved Officer #1 continued to observe Jesus and the passenger talking to each other, but he could not hear their conversation. He was concerned that it would take backup a significant time to arrive given that the Kent Police Department was preparing for a community vigil to honor an officer that recently died in the line of duty.<sup>7</sup> He was aware that other KCSO deputies were covering different Kent districts to allow Kent officers to attend the service and that the only KCSO backup left the Kent area approximately 20-30 minutes prior.

Green: Involved Officer #1  
Purple: Jesus  
Yellow: Civilian #1  
  
General area of  
Physical confrontation  
- limits

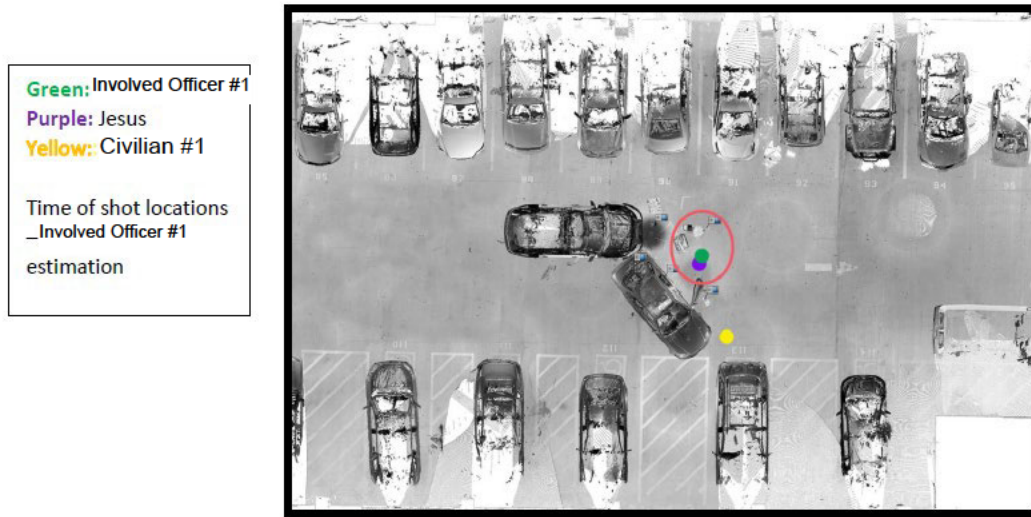


After waiting several minutes, Involved Officer #1 decided to arrest Jesus and the passenger alone because they were compliant thus far. With his firearm in his right hand, he approached the car and used his left hand to place handcuffs on the Jesus' left wrist, which was still outside the window. Involved Officer #1 instructed Jesus to unfasten his seatbelt, which he did. Involved Officer #1 unlocked the driver's door, holstered his firearm, opened the door, and began positioning himself to complete the arrest. Once Jesus was outside the car, he was facing away from Involved Officer #1 and began to violently pull his left arm away while pushing his body back towards Involved Officer #1. Involved Officer #1 could not see Jesus' right hand, but

<sup>6</sup> Involved Officer #1's Taser record was downloaded, and the record corroborated his statement regarding the Taser.

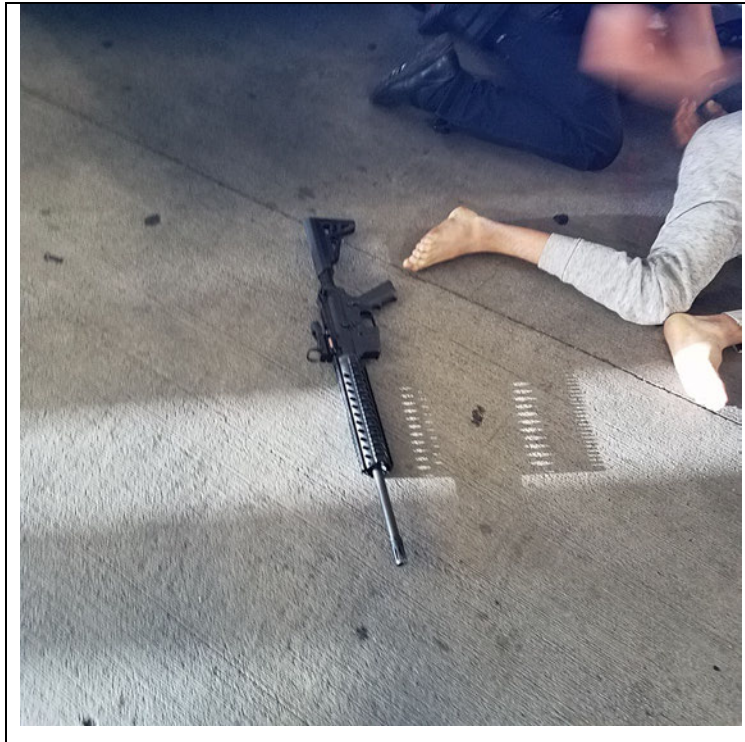
<sup>7</sup> <https://www.kiro7.com/news/local/vigil-held-for-fallen-kent-officer/798639351/>

as they continued to struggle, he saw the muzzle end of an assault rifle appear over the driver's left shoulder. Involved Officer #1 could see Jesus was trying to rotate the rifle stock upwards, which caused him to believe he was about to be killed. Additionally, Involved Officer #1 could no longer see the passenger, and did not know if he was armed as well.



The struggle continued, causing Involved Officer #1 and Jesus to fall to their knees while Involved Officer #1 continued to hold onto Jesus's left wrist to prevent him from turning and firing the rifle. Involved Officer #1 forced Jesus's body forward, causing Jesus to use his right arm to prevent his body from going to the ground. At the same time, Involved Officer #1 heard the rifle striking the concrete, which indicated to him that Jesus was still in possession of the rifle. Involved Officer #1 heard Jesus yell to the passenger for help. He observed the passenger move to the front of the Civic. Given that Involved Officer #1 was beginning to fatigue and due to the size of the passenger, Involved Officer #1 reported that he feared he would be overcome by Jesus and the passenger. Involved Officer #1 drew his firearm from the holster and fired one shot into the upper torso of the driver. He saw the passenger run away from the area. Although Jesus was shot, he continued to struggle and fell forward with his hand on the rifle. Jesus continued to tense his muscles, which prevented Involved Officer #1 from handcuffing Jesus's right wrist or remove the rifle from his hand. Eventually, Jesus's body relaxed, and Involved Officer #1 completed handcuffing him. Within moments, Kent and KCSO officers arrived and

began rendering first aid, followed shortly by fire department personnel. Involved Officer #1 later confirmed that he was never able to hold or control the rifle during the struggle.



Witness Officer #1 arrived and checked Involved Officer #1 for injuries. He noted scratches on Involved Officer #1 arms and Involved Officer #1 said that the suspect was trying to point a rifle at his head. As officers began to administer aid to Jesus, Witness Officer #2 noted a clear rifle magazine with bullets inside and a rifle round on the ground in addition to Jesus' rifle. Another officer located one of Involved Officer #1 extra handgun magazines that likely fell during the struggle.

Officers notified Involved Officer #1 they detained two suspects and asked him to participate in a one-on-one show up. He confirmed he did not recognize the first suspect, later identified as Civilian #2,<sup>8</sup> and he confirmed the second suspect was the passenger of the Civic, later identified as Civilian #1.<sup>9</sup> Civilian #2 and Civilian #1 are brothers.<sup>10</sup>

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8 DOB 4/8/2000.

9 DOB 2/12/1996.

10 Subsequent investigation revealed that Civilian #2 and Civilian #1 were involved in the theft of the Civic and the Accord.



Witness Officer #3 photographed Involved Officer #1 and Involved Officer #1 noted that he was experiencing pain in his lower back, left arm from wrist to shoulder, his right wrist was bleeding and swollen, he had a minor cut on his left hand, and abrasions to his knees. Later he noticed bruises on his right knee and right wrist. Witness Officer #3 also performed a round count on Involved Officer #1 firearm, which confirmed his firearm was short one cartridge.<sup>11</sup> Witness Officer #3 confirmed that none of Involved Officer #1 other weapons were used during the struggle.



Civilian #3, a civilian Sound Transit Security Officer, was present and observed portions of the struggle between Involved Officer #1 and Jesus. Civilian #3 reported<sup>12</sup> he had intermittent contact with Involved Officer #1 throughout the morning and inadvertently came across Involved Officer #1 struggling with Jesus near the open driver's door of a stationary car. He noticed that Involved Officer #1 was struggling to take Jesus into custody because Jesus was resisting despite Involved Officer #1 giving clear and concise commands for Jesus to comply. He approached Involved Officer #1, asking if he needed help and Involved Officer #1 responded with something to the effect of "maybe" or "I might." Before Civilian #3 could assist, he saw Jesus retrieve an

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11 Involved Officer #1 duty firearm is a Glock 19 9mm. In total, he had three magazines with a capacity of 15 cartridges per magazine. Witness Officer #3 confirmed that two of the magazines contained 15 cartridges, that the magazine inside the Glock 19 9mm contained 14 cartridges, and one cartridge was in the chamber of the Glock 19 9mm.

12 Civilian #3 provided statements to multiple officers. Although there were minor differences in statements attributed to him (i.e., AR-15 versus assault rifle), his statements were substantially the same unless otherwise noted.

“AR-15” or “assault rifle” and witnessed Jesus and Involved Officer #1 struggling for control of it. He saw Involved Officer #1 bring Jesus to the ground, knee on top of Jesus, withdraw his firearm, and fired one shot. However, Civilian #3 was not able to see where Jesus was hit because Involved Officer #1’s back was blocking his view of Jesus. When speaking with another officer, Civilian #3 said that when he saw Involved Officer #1 and Jesus struggling over the rifle, he went to get cover for his own safety and heard the gun shot from the Involved Officer #1. In another statement, Civilian #3 explained that he could see Involved Officer #1 fire one shot as he looked back from his cover position. Civilian #3 explained that at the time Involved Officer #1 was shot, he believed the rifle was between Involved Officer #1 and Jesus, facing upward. Civilian #3 feared for his safety and believed that Jesus “would have killed us both” if he had gained possession of the rifle.

Civilian #4 and Civilian #5, Sound Transit electricians, were present in the parking garage and provided statements to police. Civilian #4 reported he noticed there was police activity and that the officer was wrestling with someone. He heard Civilian #5 say that someone had a shotgun, but he did not see the gun himself. Civilian #4 heard one shot fired and observed a civilian running from the area.

Civilian #5 also spoke with police and provided a substantially similar report to Civilian #4. Additionally, he snapped a photo of the passenger running from the vehicle and he positively identified the passenger in a show-up.

Civilian #2 provided a post-Miranda statement, stating that Civilian #1 and Jesus picked him up in the Civic the night prior.<sup>13</sup> When he asked Jesus about the car, Jesus admitted it was stolen. They drove to an apartment parking lot, smoked marijuana, and fell asleep in the car. They awoke the next morning and Jesus drove them to Kent Station. During the drive, Civilian #2 learned that Jesus had a “long gun” in between the driver’s door and seat. Jesus stated he was nervous to be caught by the police in a stolen vehicle. Prior to entering the garage, Civilian #2 asked to be let out of the Civic so he could get water at Jamba Juice.<sup>14</sup> When he exited the store,

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<sup>13</sup> Civilian #2 initially stated he was picked up at Starbucks, but later stated he was picked up at his apartment. He also initially denied knowledge that the car was stolen or that Jesus had a gun in the car.

<sup>14</sup> An officer contacted Jamba Juice employees who confirmed Civilian #2’s presence inside the store, asking for water.

he saw the police activity and walked the other direction where he eventually encountered Civilian #1. They were arrested shortly thereafter by police.<sup>15</sup>

Civilian #1 provided a post-Miranda statement, stating that he had a court hearing in the afternoon and texted Jesus for a ride. Jesus said he had to stop and do something at the Kent Station and Civilian #1 observed Jesus talking with a female. Civilian #1, who is familiar with jiggle keys, believed that Jesus had the Civic's legitimate keys, and he reported he did not see Jesus do anything abnormal to start the Civic. As Jesus began to drive to the exit, Civilian #1 realized they were going in the wrong way, so Jesus began a three-point turn. Civilian #1 reported that Involved Officer #1 vehicle struck the back of their car, and he approached them with his firearm out, yelling at them to put their hands up. Civilian #1 saw Involved Officer #1 place one handcuff on Jesus' wrist that was outside the window, and he observed Jesus exit the Civic. As Jesus stood up, Civilian #1 saw Jesus reach back into the Civic and grab a rifle with his right hand. Civilian #1 stated he stayed inside the Civic with his hands raised as Involved Officer #1 and Jesus struggled over the rifle. Civilian #1 said he warned Jesus to stop struggling and that Jesus asked Civilian #1 for help. When he heard the gunshot, he ran because he was afraid that he would be shot. While police were speaking with Civilian #1, they noted a pipe used for methamphetamine in his shirt pocket. Civilian #1 confirmed the pipe was used to smoke methamphetamine and admitted there was another pipe in the car with methamphetamine in it. Civilian #1 opined that the Deputy "did a good job" in the way that "he defended himself" and that he believed the Deputy shot Jesus because the Deputy's life was in danger.

On July 27, 2018, The King County Medical Examiner performed Jesus' autopsy. The King County Medical Examiner opined that Jesus died in the hospital due to a gunshot wound of the chest sustained in a confrontation with police. The manner of death is classified as homicide.<sup>16</sup> The King County Medical Examiner's pathological diagnosis included a 1) a

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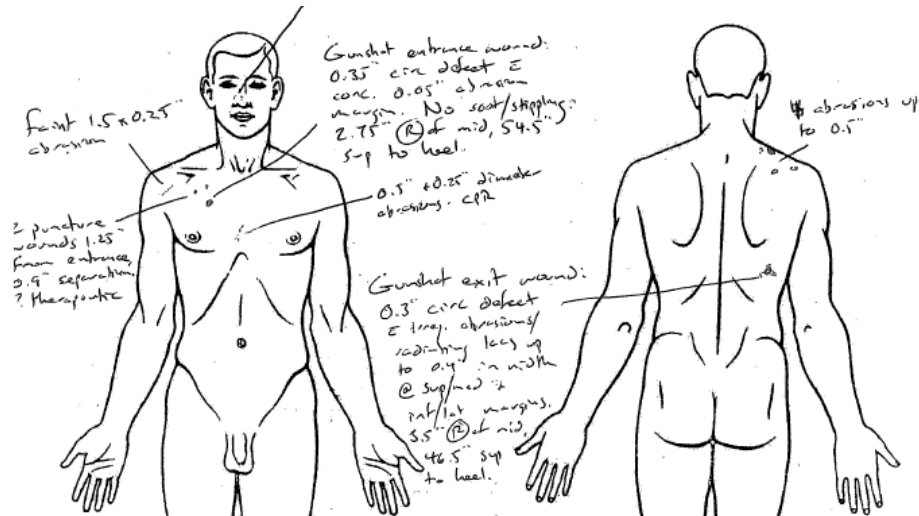
<sup>15</sup> Police later confirmed via surveillance video that Civilian #2 was driving the Accord as it exited the garage, which confirmed he was not present at the time of the struggle.

<sup>16</sup> 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 killing of one person by another. HOMICIDE, Black's Law Dictionary (11th ed. 2019).

perforating handgun wound of the chest; 2) superficial blunt force injuries of the nose and right shoulder; and 3) evidence of medical intervention including thoracotomy.<sup>17</sup>

The King County Medical Examiner described evidence of the perforating handgun wound of the chest. The gunshot entrance wound is present on the right anterior chest. No soot or stippling was associated with the entrance wound. The gunshot exit wound was present on the right back. The direction of fire was front to back, left to right, and downwards.

Additionally, Jesus' toxicology report was negative for alcohol, but it was positive for amphetamine (7 mg/L) and methamphetamine (.078 mg/L).



## **E. LEGAL STANDARD**

The State must prove each element of a criminal charge by competent evidence beyond a reasonable doubt.<sup>18</sup> In addition, the State must disprove the existence of a defense that negates an element of the crime.<sup>19</sup> The State 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 fact-finder.<sup>20</sup>

<sup>17</sup> A surgical procedure in which a cut is made between the ribs to see and reach the lungs or other organs in the chest or thorax.

<sup>18</sup> RCW 9A.04.100; WPIC 4.01.

<sup>19</sup> WPIC 14.00.

<sup>20</sup> KCPAO Filing and Disposition Standards.

Additionally, 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 refuse the affirmative defense.<sup>21</sup>

Therefore, the State is also required to disprove the existence of several defenses:

- Lawful Force by Public Officer (applies to non-homicide charges)<sup>22</sup>
- Defense of Self or Others (applies to non-homicide charges)<sup>23</sup>
- Excusable Homicide<sup>24</sup>
- Justifiable Homicide by Peace Officer<sup>25</sup>
- Justifiable Homicide Defense of Self or Others<sup>26</sup>
- Justifiable Homicide Resistance to Felony<sup>27</sup>

This incident occurred on July 26, 2018; therefore, the applicable justifiable homicide instruction at the time would require the State to prove the officer acted with malice or without good faith.<sup>28</sup>

## **F. ANALYSIS AND CONCLUSION**

Given the facts presented, the Team is declining to file any criminal charges against Involved Officer #1. The evidence in the investigation establishes that Involved Officer #1 acted in self-defense and that his actions were justifiable. For example, in a self-defense claim, a person is legally permitted to use force to defend themselves when they reasonably believe they are about to be injured and the force is not more than necessary.<sup>29</sup> Similarly, a homicide is justifiable when a person reasonably believes that the person slain intended to inflict death or great personal

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21 Id.

22 RCW 9A.16.020(1), (2); WPIC 17.01.

23 RCW 9A.16.020(3); WPIC 17.02.

24 WPIC 15.01.

25 RCW 9A.16.030; RCW 9A.16.040; WPIC 16.01.

26 RCW 9A.16.050(1); WPIC 16.02.

27 RCW 9A.16.050(2); WPIC 16.03.

28 The former version of WPIC 16.01, which included the malice standard, is applicable to offenses committed on or prior to December 6, 2018. The current version of WPIC 16.01, which removed malice and applied the good faith standard, is applicable to offenses committed on or after February 4, 2019. There are no pattern jury instructions for offenses committed between December 7, 2018, and February 3, 2019.

29 WPIC 17.02.

injury, the person reasonably believed there was an imminent danger of such harm being accomplished, and the person employed such force and means as a reasonably prudent person would under the same or similar circumstances.<sup>30</sup>

In the current case, there is no substantial evidence to refute these self-defense and justifiable homicide. The evidence and testimony are highly likely to show that Involved Officer #1 saw Jesus trying to point a rifle at Involved Officer #1 head during the arrest. Given the position of Involved Officer #1 and Jesus, the rifle's barrel was likely within inches of Involved Officer #1 face or head. Although Jesus and Involved Officer #1 fell to the ground and the rifle was likely in between Jesus' right hand and the garage floor, Involved Officer #1 never had control of Jesus' right hand nor the rifle. Based on Jesus' actions up to this point, it is reasonable for Involved Officer #1 to conclude that the threat to his life remained. Moreover, Involved Officer #1 anticipated testimony is further corroborated by independent civilian eyewitnesses, including Civilian #1.

Based on these facts, a reasonable and objective fact-finder is likely to determine that Involved Officer #1 reasonably believed that Jesus intended to shoot and kill him, that there was an imminent danger in this harm being accomplished, and that Involved Officer #1 employed a necessary amount of force that a reasonably prudent person would use under the same or similar circumstances. Under the circumstances, it appears that Involved Officer #1 did not act with malice toward Jesus and that he acted in good faith.<sup>31</sup>

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30 WPIC 16.02.

31 Malice shall import an evil intent, wish or design to vex, annoy, or inure another person. 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 of omission of duty betraying a willful disregard of social duty. RCW 9A.04.110.

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. RCW 9A.16.040(4).

**G. RECOMMENDATION FOR INQUEST**

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