

Use of Force – Fatality of
Anthony Chilcott

Seattle Police Department, #2019FIT-0021



King County Prosecuting Attorney
Public Integrity Team

July 31, 2023



DECLINE MEMORANDUM

July 31, 2023

Law Enforcement Use of Force Fatality Regarding:
Anthony Chilcott

A. 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 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 the

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.

death, substantial bodily harm, or great bodily harm.³ The independent investigation is conducted in the same manner as a criminal investigation.⁴

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.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. 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.

3. 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, administrative action by the involved agency or any other civil

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

⁴ Id.

⁵ Executive Order PHL 7-1-5 EO.

⁶ Id. '

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

B. OVERVIEW

On November 25, 2019, Anthony Chilcott was driving a stolen Ford truck, which contained a stolen dog, and attempting to elude police. Two King County Sheriff's Office Deputies, driving an unmarked vehicle, came into contact with the Ford. Deputies approached the Ford and a physical altercation ensued. Each deputy discharged their handgun once, striking Chilcott, who died as a result of these injuries.

C. INVESTIGATION AND EVIDENCE

1. Force Investigation Reports
2. Officer Reports
3. Civilian Statements
4. Forensics
5. Search Warrants
6. Medical, Autopsy, and Toxicology
7. CAD/MDT
8. Radio
9. In-Car Video
10. Other Video
11. Photos
12. Miscellaneous Documents

D. INVESTIGATION SUMMARY⁷

1. NOVEMBER 22, 2019

On November 22, 2019, Officer 1 of the Black Diamond Police Department (BPD) was dispatched to a local gas station regarding a report that a person, later identified as Anthony Chilcott (Chilcott), stole a 2018 Ford Raptor (Ford), including a dog inside the truck. The owner of the truck, Civilian 1, reported that he began to pump gas into the Ford and walked inside the gas station to purchase a soda, leaving his dog in the passenger seat of the Ford. As he walked out of the gas station, he watched the Ford being driven out of the parking lot, dragging the fuel hose that was still attached to the truck. Officer 1 entered the stolen Ford's information into WACIC as a stolen vehicle.

Officer 1 noticed an abandoned bicycle sitting in front of the gas station and multiple passing subjects told him that the bike belonged to Chilcott. Officer 1 was familiar with Chilcott from prior police contacts, he knew Chilcott did not own a vehicle, and he knew that Chilcott used a bicycle for transportation.

Officer 1 reviewed the gas station's surveillance video. He observed a subject riding a bicycle south on 4th Avenue turn into the gas station parking lot. Officer 1 was aware that Chilcott lived in a shed located on 4th Avenue. Additionally, Officer 1 noticed that the subject in the video wore the same clothing as the last time he arrested Chilcott and he observed the subject in the video appeared to be Chilcott. In the footage, Chilcott rode his bicycle around the parking lot while talking on his phone and appeared to pay particular attention to the Ford. Chilcott walked to the Ford, entered it, and drove away, causing the gas hose to detach from the fuel pump and drag behind the Ford.

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.

2. NOVEMBER 24, 2019

Officer 1 was aware that Chilcott was fixated on a female that lived in Sparks, Nevada based on previous emails he sent her, Chilcott's Facebook posts, and a prior incident where Chilcott attempted to drive to Nevada in a stolen vehicle. On November 24, 2019, Officer 1 spoke with the female to warn her that Chilcott might be driving to her residence.

Additionally, Officer 1 posted a BOLO (Be On the Look Out) for Chilcott. The BOLO indicated that there was probable cause to arrest Chilcott for Theft of a Motor Vehicle, Theft in the First Degree, Theft in the Second Degree, Taking a Pet Animal, Driving While License Suspended in the Third Degree, and Stalking. The BOLO included photos of Chilcott, the stolen dog, and the Ford. Additionally, the BOLO warned that Chilcott "has reacted violently toward law enforcement in the past and has a [c]aution notice in WACIC."

3. NOVEMBER 25, 2019

The following information is based upon information from various sources, including 911 calls, CAD, police radio transmissions, Washington State Patrol (WSP) in-car video, witness statements, and vehicle infotainment systems.

- | | |
|----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 10:51 am | A 911 caller reported seeing the Ford driving eastbound on Green Valley Road from Highway 18. |
| 11:02 am | Officer 2, a Deputy with the King County Sheriff's Office (KCSO), reported the Ford was still eastbound on Green Valley Road, but he lost sight of the Ford near the entrance to Flaming Geyser Park. Officer 2 then reported the Ford made a U-turn, heading westbound. He noted that another officer was attempting to stop the Ford. |
| 11:04 am | Officer 3 asked if anyone was in pursuit of the Ford. Officer 2 reported he was not in pursuit, and he did not have the Ford within sight. Shortly after, Officer 2 reported the Ford struck his vehicle on Green Valley Road near the Flaming Geyser State Park and the Ford was headed eastbound. Shortly after, Officer 2 confirmed there was no damage to his vehicle, that he had blocked the road, and the Ford hit his push bar. |

11:06 am Officer 3 was driving north on 212th Way SE at the SE Green Valley Road and 218th Ave SE stop sign when he noticed the Ford coming towards him at a high rate of speed. Officer 3 observed the Ford pass into a gravel lot on the southeast corner of the intersection, making a loop and nearly rolling over. The Ford passed in front of Officer 3 and headed south bound on 212th Way SE. Officer 3 saw a Washington State Department of Fish and Wildlife agent pursuing the Ford with lights and sirens. Officer 3 joined the pursuit. And reached speeds of up to 100 mph, but he was unable to keep up with the Ford. Additionally, he did not realize this was the stolen Ford from Black Diamond and he lost sight of the Ford after it turned onto SE 384th St.

11:07 am An unknown individual on the KCSO radio asked if there was probable cause for more than theft of a motor vehicle. Officer 2 responded, "Eluding." Officer 4 asked if this was the "same car," referring to the stolen Ford. Officer 2 also replied that "Poodle was in the front seat with the driver." Officer 4 stated he would not authorize a pursuit if the only crime was auto theft. Officer 4 asked about the stalking charge listed in the BOLO and Officer 1 radioed that the stalking charge was a misdemeanor and he confirmed there was probable cause for Theft of a Motor Vehicle, Theft in the First Degree, and Theft in the Second Degree. Additionally, he replied there was a "caution on" Chilcott.

Approximately one minute later, Officer 4 broadcast that units could assist in trying to box in the Ford but they could not pursue. He reiterated this less than one minute later and also stated, ". . . we can assist with whatever we need to do to try and get him cornered but we are not to then pursue."

Based on his training and experience, Officer 3 opined that the Ford was likely headed toward the Cumberland area.

11:51 am Involved Officer 1 was driving northbound on Cumberland Kanaskat Road with Involved Officer 2 in the passenger seat of their undercover vehicle, a white GMC Yukon (GMC). Involved Officer 2 radioed that that the Ford was driving southbound on Cumberland-Kanaskat Road and they would be turning around to follow it. He stated their speed was approximately 50 mph in a 45 mph zone.

11:52:46 am Involved Officer 2 radioed, ". . .he just rammed us. We're at SE Kuzak Road and Cumberland-Kana. . ." In the background another voice is heard saying something to the effect of, "What are you doing?"

11:53:04 am Involved Officer 2 radioed that Chilcott was "stuck."

11:54:53 am The Ford and the GMC come into frame on Officer 5's in-car video.



11:55:01 am The reverse lights of the Ford are activated.



11:55:09 am Involved Officer 1 appears to holster his firearm. It does not appear that his badge is visible.



11:55:17 am Involved Officer 2's badge appears to be visible on his chest.



11:57:13 am Officer 5 enters the Ford to place the truck in park and turn off the engine.



12:53 pm

Chilcott’s mother called BPD to report she talked with Chilcott “a couple of days ago.” She stated that Chilcott would not say where he or the dog were located. Chilcott asked to borrow \$50 from his mother and stated that he dropped the dog off at a home, but he did not state the location.

There were several civilian witnesses located near a gravel parking area at the northeast corner of the intersection of Cumberland Kanaskat Road and SE Kuzak Road, which is where the GMC and Ford came to rest. Civilian 2 reported to police that she observed a black truck (the Ford) slowing down on Cumberland Kanaskat Road and park at the “electric station” driveway, which is located on the west side of Cumberland Kanaskat Road, facing southbound.

Several other civilian witnesses, including Civilian 2, independently reported to police that the GMC hit the side of the Ford.⁸ Civilian 3 reported that it appeared that the GMC “t-boned” the Ford. Additionally, Civilian 4 and Civilian 5, who were driving northbound on Cumberland Kanaskat Road, independently stated they saw the GMC hit the Ford. Civilian 5 reported it looked like the GMC “guided” the Ford. After the collision, the Ford went over a

⁸ Some witnesses referred to the Ford as black or gray. Similarly, they referred to the GMC as a car or an SUV. Given their descriptions, however, the summary reflects which vehicle they intended to reference.

large rock and became stuck. Witnesses reported the Ford's wheels were moving to reverse off the rocks, but the truck could not move. Similarly, Involved Officer 2 radioed that the Ford was "stuck."

Civilian 5 reported that the GMC was wedged into the driver's side of the Ford and the Ford's driver's side front window was rolled down approximately four inches. She reported that Involved Officer 2 exited the passenger side of the GMC, stood on the GMC's running boards, and pointed his firearm into the cab of the Ford at a downward angle towards Chilcott's face. She also reported that Involved Officer 1 exited the driver's side of the GMC with his firearm out, ran to the Ford's driver's side next to Involved Officer 2, and pointed his firearm through the same open window toward the back of Chilcott's head. At one point, Civilian 5 observed one of the deputies remove a sledgehammer from the GMC. None of the witnesses could identify the two deputies as law enforcement officers.

Civilian 2 observed one of the deputies, likely Involved Officer 2, hit the front passenger side window with the sledgehammer. Other witnesses also reported both deputies hitting the windows of the Ford, possibly with their firearms. One witness heard someone yell, "Get out of the car!" from the driver's side of the Ford. Another witness heard both deputies yelling, "Put your hand's up!"

Civilian 6 reported that one of the deputies, likely Involved Officer 1, was in a "scuffle" with the driver of the Ford. He stated that it appeared that Involved Officer 1 was trying to get at something inside the Ford or that Chilcott was trying to pull Involved Officer 1 into the truck. Another witness heard someone saying, "Give it back!"

As Involved Officer 1 and Involved Officer 2 were interacting with Chilcott, Officer 5 was driving northbound to their location. Officer 5 observed the two vehicles and his in-car video system captured portions of the scene.⁹ The video shows the GMC to the left of the Ford,

⁹ Officer 5's in-car video was not activated, but the WSP was able to retrieve video from the camera's backup system without sound.

but neither deputy is visible. As he approached, Officer 5 observed that the Ford was stuck on a rock. The video also showed the GMC trunk open and the Ford's reverse lights activated. As Officer 5 continued, the Ford's brake lights, and the reverse lights alternated off and on. As Officer 5 approached the scene and turned right, the GMC and Ford are briefly out of view then return into view, which is appears likely when the shots were fired.



Figure 1 - Damage to driver's side of Ford.



Figure 2 - Ford stuck on large rock and sledgehammer outside passenger door.

When Officer 5 completed his right turn, Involved Officer 2 and Involved Officer 1 came into the camera's view. Officer 5 did not immediately recognize them as law enforcement, and it does not appear that either deputy's badge was easily visible. Officer 5 observed both deputies had blood on them and checked them for injuries. Next, he entered the Ford, placed it in park, and turned off the engine.

Officer 6 arrived and photographed the scene and the deputies. Officer 6 also transported Involved Officer 1 to a fire station. During the ride, Involved Officer 1 stated "they had found the truck and they were trying to get the guy out of it, and he grabbed onto [me] and was trying to pull [me] into the truck." Involved Officer 1 also told Officer 6 that after the Ford stalled, Chilcott turned the engine back on and put it in reverse. Involved Officer 1 stated he thought he was going to be ran over and that Chilcott grabbed onto Involved Officer 1, making him think that Chilcott could kill him. Involved Officer 1 stated he was surprised how loud the Ford was when Chilcott tried to reverse.

The Seattle Police Department's (SPD) Force Investigation Team was assigned to investigate the use of force by Involved Officer 1 and Involved Officer 2. Officer 7, the lead investigator assigned to this incident, took photographs of both deputies and he oversaw the collection of evidence.

A traffic collision investigator attempted to retrieve a collision report from the GMC, but the damage was not sufficient to register any events. Two spent shell casings were located inside the Ford. An SPD detective analyzed the casings and opined that the two shell casings were discharged from two separate firearms. One firearm was likely a Glock Generation 5 and the other firearm was likely an older Glock model. Photographs of the deputies' firearms confirm that Involved Officer 1 carried a Glock and Involved Officer 2 carried a Glock Generation 5.

A WSP Crime Laboratory forensic scientist reviewed the evidence, including photographs of the scene and the deputies' firearms, after speaking with Officer 7. The scientist's

report contained four findings. First, Chilcott was shot twice in the left side of the head with two corresponding exit wounds to the right side of the head. Therefore, both shots were fired from the driver's side of the vehicle while Chilcott was in the driver's seat of the Ford. Second, both deputies' firearms exhibited backspatter bloodstains and, therefore, were likely in proximity to the left side of Chilcott's head when he was shot. Third, the spatter bloodstains on Chilcott's jacket were likely the result of backspatter and/or forward spatter bloodstains that occurred when Chilcott was shot. Fourth, because the bloodstains on Chilcott's jacket could be the result of backspatter and/or front spatter, the position of Chilcott's hands and arms at the time of the gunshots could not be determined.

4. MEDICAL, AUTOPSY, AND TOXICOLOGY

The King County Medical Examiner's Office performed an autopsy of Chilcott, which opined that there were multiple gunshot wounds perforating Chilcott's head. The cause of death is multiple gunshot wounds of the head, and the manner of death is homicide.¹⁰

Entrance wound "A" was described as a perforating near-contact entrance wound of the left temporal scalp. There was soot overlying the wound and within the wound tract. Entrance wound "B" was described as a perforating distant entrance wound of the parietal scalp. Given the proximity of the entrance and exit wounds, unique tracts and pairing of the wounds was not possible.

The medical examiner also noted blunt force injury to Chilcott's head and extremities. Specifically, there was a contusion on the left forehead in a U-shaped pattern surrounding a circular contusion in the middle of the "U." A second circular abrasion was located on the left forehead.

¹⁰ 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.

E. LEGAL STANDARD AND APPLICABLE LAW

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

In addition, the State must disprove the existence of a defense that negates an element of the crime.¹³ Prosecution should not be declined because of an affirmative defense unless the affirmative defense is of such nature that, if established, would result in a complete defense for the accused and there is no substantial evidence to refute the affirmative defense.¹⁴ Therefore, the State may be required to disprove one or more of the following defenses:

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

This incident occurred on November 25, 2019; therefore, the applicable Justifiable Homicide by a Peace Officer instruction would require the State to prove the officer acted without good faith.¹⁸

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

¹¹ RCW 9A.04.100; WPIC 4.01.

¹² KCPAO Filing and Disposition Standards.

¹³ WPIC 14.00.

¹⁴ Id.

¹⁵ RCW 9A.16.040; WPIC 16.01.

¹⁶ RCW 9A.16.050(1); WPIC 16.02.

¹⁷ RCW 9A.16.050(2); WPIC 16.03.

¹⁸ 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.

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

F. 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.”

Justifiable Homicide by a Peace Officer and Justifiable Homicide in Defense of Self or Others contain related but distinct concepts and definitions. Given the information contained in the investigation and anticipated evidence and testimony, there is insufficient evidence to refute the officer’s actions were justifiable under either affirmative defense. Therefore, the Team recommends that no criminal charges be filed against Involved Officer 1 or Involved Officer 2.

1. JUSTIFIABLE HOMICIDE BY A PEACE OFFICER

As applied to this incident, homicide or deadly force used by a peace officer is justifiable when necessarily by a peace officer meeting the good faith standard 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.¹⁹

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,

¹⁹ RCW 9A.16.040; WPIC 16.01.

if not apprehended, poses a threat of serious physical harm to the officer or a threat of serious physical harm to others.²⁰ Serious physical harm is not defined by statute; however, circumstances to determine whether the suspect poses a “threat of serious physical harm” include:

- 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.²¹

A peace officer acts in good faith, an objective standard, when considering all the facts, circumstances, and information known to the officer at the time to determine whether a similarly situated reasonable officer would have believed that the use of deadly force was necessary to prevent death or serious physical harm to the officer or another individual.²²

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.²³ “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.”²⁴

In the current incident, the evidence and testimony are highly likely to demonstrate that Involved Officer 1 and Involved Officer 2, based on the radio transmissions, were aware that probable cause existed to arrest Chilcott for Theft of a Motor Vehicle, Theft in the First Degree, and Theft in the Second Degree. Additionally, the Deputies may have believed that probable

²⁰ Id.

²¹ Id.

²² Id.

²³ *Graham v. Connor*, 490 U.S. 386, 396, 109 S. Ct. 1865, 1872, 104 L. Ed. 2d 443 (1989).

²⁴ *Id.*, 490 U.S. at 396-97.

cause existed for Assault in the Third Degree or Second Degree based on the deputies' perception that Chilcott rammed his truck into their GMC.

It is unlikely a jury would find that there was probable cause to believe that Chilcott posed a threat of serious physical harm to the officers or others based solely on taking the Ford or the dog. However, it is likely that the jury would find it reasonable that Chilcott posed a threat of serious physical harm to the officers or to others based on his driving, the "caution" warning that Officer 1 broadcast to other officers, and Chilcott's actions during the altercation. For instance, during the pursuit, police activated their lights and sirens and officers could not keep up with Chilcott despite reaching speeds of 100 mph. In addition, if a jury found that Chilcott swerved his vehicle into the GMC, he posed an additional risk to the safety of officers or others.

Lastly, just prior to the fatal shots being fired, Involved Officer 1 and Involved Officer 2 were both in the small space between their GMC and the stolen Ford. Chilcott was aggressively attempting to free the Ford from the rock on which it was high-centered. Chilcott was not obeying commands. Based on the civilian witness statements, it appears that Involved Officer 1 and Involved Officer 2 were in a physical altercation with Chilcott in which Chilcott attempted to pull Involved Officer 1 into the Ford while reversing the Ford. A reasonable jury could find the deputies believed the Ford could become dislodged, reverse, and strike one of the deputies. Based on the totality of the information as it appeared to Involved Officer 1 and Involved Officer 2, it is likely that another reasonable peace officer would have also believed that using deadly force was necessary to protect themselves based upon the threat that Chilcott posed at the time both deputies discharged their firearms.

2. JUSTIFIABLE HOMICIDE IN DEFENSE OF SELF OR OTHERS

As applied to this incident, 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.²⁵ 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.²⁶

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 and Involved Officer 2’s training into account. Therefore, the same evidence and testimony used to determine whether the deputies acted as a reasonable peace officer are also relevant to this instruction.

Given that Involved Officer 1 and Involved Officer 2 were unsuccessful in their attempt to remove Chilcott from the Ford and that Chilcott tried to reverse the Ford with both deputies next to it, it was reasonable for the deputies to believe Chilcott could inflict great personal injury on them. Further, based on the witness’ descriptions of the deputies’ firearms in relation to the open window during the altercation, it is reasonable that Involved Officer 1 or Involved Officer 2 thought Chilcott was attempting to disarm them. This finding is buttressed by the witness statements that they overheard a someone yell, “Give it back!” while Chilcott appeared to drag Involved Officer 1 into the cab.

Finally, 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.”²⁷ Additionally, a person is entitled to act on appearances in

²⁵ RCW 9A.16.050(1); WPIC 16.02.

²⁶ WPIC 2.04.01.

²⁷ WPIC 16.02.

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.²⁸

G. RECOMMENDATION FOR INQUEST

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

²⁸ WPIC 16.07.

Attachment A

WPIC 16.01 - Justifiable Homicide by a Peace Officer

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

Homicide or the use of deadly force is justifiable:

1) 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

2) 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. 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 felony²⁹ or to inflict death or great personal injury;
- (2) the slayer reasonably believed that there was imminent danger³⁰ 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.

²⁹ 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).

³⁰ 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 felony³¹ 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.

³¹ 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)