

Use of Force Fatality of  
**Mantry Norris**

Valley Independent Investigation Team  
Des Moines Police Department, #19-1563



King County Prosecuting Attorney  
Public Integrity Team

May 7, 2024



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## DECLINE MEMORANDUM

Law Enforcement Use of Force Fatality Regarding: Mantry Norris

May 7, 2024

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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>1</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>2</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 officers results in death, substantial bodily harm, or great bodily harm.<sup>3</sup> The independent investigation is conducted in the same manner as a criminal investigation.<sup>4</sup>

Additionally, the KCPAO shall inform the King County Executive whenever the

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<sup>1</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>2</sup> Id. See also WAC 139-12-010.

<sup>3</sup> RCW 10.114.011. See also WAC 139-12-010.

<sup>4</sup> WAC 139-12-010.

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>5</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>6</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**

On June 15, 2019, Renton Police Department officers responded to a report of suspected drug activity outside of a restaurant. When they arrived, they observed Mantry Norris run into

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

<sup>6</sup> Id.

the restaurant with a knife. Officers observed patrons running out of the restaurant, while the officers ran into the restaurant. An officer saw Norris attacking a patron with the knife. The officer discharged his handgun at Norris. Norris turned and advanced towards the officer with the knife, so the officer discharged his handgun again, striking Norris. Medics arrived to provide aid to Norris, but he was deceased.

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

1. Independent Investigation Team Reports
2. Police Reports – Renton Police Department 2016-11595
3. Police Reports – Auburn Police Department 2019-07136
4. Police Reports – Des Moines Police Department 2019-1563
5. Police Reports – Kent Police Department 2019-8438
6. Police Reports – Port of Seattle Police Department 2019-43574
7. Police Reports – Renton Police Department 2019-6716
8. Civilian Statements
9. CAD/MDT
10. Incident Scene Investigation
11. Medical
12. Involved Officer Information
13. Subject Information
14. 911 Call and Radio
15. Surveillance Video
16. Photos

### **IV. INVESTIGATION SUMMARY<sup>7</sup>**

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<sup>7</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

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

The following information is based upon the Renton Police Department (RPD) computer aided dispatch (CAD) report and recorded 911 audio from June 15, 2019:

- 10:07 pm A 911 caller, who identified himself as Mantree North,<sup>8</sup> reported that there were two unknown individuals “smoking crack” in a vehicle outside of Cheers Bar and Grill (Cheers), located at 201 Williams Ave South, in Renton. Additionally, he noted that the individuals “looked sketchy” and could have weapons.
- 10:10 pm Involved Officer 1 and Witness Officer 1 were dispatched to investigate the drug activity.
- 10:21 pm Witness Officer 1 notified dispatch that shots were fired.

Witness Officer 1 reported that when she arrived at the location, she observed Involved Officer 1’s police vehicle, but she did not see any vehicle matching the description provided by the 911 caller. She noted that an individual, later identified as Mantry Norris (Norris), was pacing on the sidewalk and appeared to be waiting for the police. When Witness Officer 1 and Involved Officer 1 approached Norris, Witness Officer 1 heard Norris yell something about “killing some people,” and Norris ran towards Cheers. Given the unusual behavior, Witness Officer 1 was concerned that the initial 911 call was not legitimate.

Within moments of Norris running to the front door of Cheers, Witness Officer 1 heard screaming and saw people running out of Cheers. She heard the people screaming things about a man with a knife. Witness Officer 1 and Involved Officer 1 drew their department-issued handguns and ran towards Cheers. Involved Officer 1 entered first. Witness Officer 1 noted that it was very loud inside Cheers due to the screaming patrons and music. As she entered the restaurant, she heard gunshots from the center of the bar and radioed, “Shots fired, shots fired!”

Witness Officer 1 moved past several tables to an open area in the center of the restaurant

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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.

<sup>8</sup> The 911 caller’s name is written based on how it was recorded in the CAD. However, it is suspected that the 911 caller was Mantry Norris.

and observed Norris facing Involved Officer 1. It appeared to her that Norris was going towards Involved Officer 1 and she saw Involved Officer 1 discharge several more rounds. Once Norris fell to the ground, Witness Officer 1 handcuffed him, checked him for weapons, and requested medics to respond to the scene; however, it appeared to her that Norris was already deceased.

Witness Officer 1 began to mark the location of cartridge casings and noted a kitchen knife with a 5-inch blade within feet of Norris. When medics arrived, they pronounced Norris as deceased. As the medics examined Norris, Witness Officer 1 noted there was a cell phone and a closed folding knife in the pocket of Norris' hooded sweatshirt.

Witness Officer 2 arrived shortly after Witness Officer 1 announced shots fired. When she arrived, Involved Officer 1 told her there was a stabbing victim inside Cheers. Witness Officer 2 approached the stabbing victim, later identified as Civilian Witness 1, and saw that he had a significant stab wound to his upper arm and right hand, which was bleeding profusely. She retrieved her trauma kit and administered aid to Civilian Witness 1.

Civilian Witness 1 told Witness Officer 2 that he was inside the bar when an unknown male, later identified as Norris, came running inside the bar, holding a large knife. Civilian Witness 1 was standing near the pool tables when Norris approached him with the knife. Civilian Witness 1 stepped in front of other patrons and was stabbed in the upper arm and hand. Civilian Witness 1 provided an additional statement, detailed below, to officers while being treated at the hospital.

**2. Independent Investigation Conducted by the Des Moines Police Department**

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

**3. 911 Call Regarding Norris on June 14, 2019**

The IIT learned that Norris was subject of a 911 call the day prior, on June 14, 2019. The

911 caller, who worked with Norris, called to report that Norris may be suicidal. The caller reported that Norris was acting erratic and was punching himself in the head approximately ten minutes ago. The caller provided Norris' phone number. When an officer called Norris and identified himself as a police officer, Norris responded, "Stop fucking calling me!" and hung up the phone. The officer called again to explain that he was attempting to help Norris, and Norris responded, "I don't need any help. I don't give a crap about who you are. Stop fucking calling me!" The officer attempted a third call, but it went straight to voicemail, which led the officer to think that Norris had turned off his phone. Officers attempted to find Norris in the area where the 911 caller described, but they could not locate him. The officer contacted the 911 caller who further stated that Norris appeared to be acting odd, was possibly intoxicated, or having a mental condition. When Norris mentioned suicide and punched himself in the head, the 911 caller became concerned and called 911.

#### **4. Processing of the Officers**

As part of standard practice, the IIT processed the involved officer and determined that Involved Officer 1 used his handgun during the use of force. The IIT reported his handgun contained one unfired cartridge in the chamber, twelve unfired cartridges in the magazine, and that the magazine could hold twenty cartridges. Involved Officer 1's two spare magazines were loaded with twenty unfired cartridges and could hold twenty cartridges. If Involved Officer 1 filled his loaded magazine to capacity with an additional cartridge in the chamber, his handgun was loaded with twenty-one cartridges, which would indicate that he discharged eight cartridges.

#### **5. Civilian Witnesses**

The IIT spoke with numerous witnesses, including eyewitnesses inside of Cheers and a therapist that treated Norris. The therapist confirmed that Norris was diagnosed with schizophrenia and major depressive disorder. Although Norris should have had medicine that lasted until August, the therapist confirmed that Norris often missed appointments or did not answer calls.

Civilian Witness 2 reported he was outside the bar prior to the shooting when he was

approached by an unknown male. The male walked up to him and pounded his fists. Sometime later, he saw the male inside Cheers holding a knife. He observed the male move towards another patron inside Cheers and an officer shot the male. He stated that the officer had no choice but to shoot the male.

Civilian Witness 1 provided a statement to the IIT while he was in the hospital. He reported that an unknown male ran into the bar carrying a knife, which he described as being eight to ten inches in length. Norris swung the knife around and yelled obscenities. Civilian Witness 1 also heard Norris say something to the effect of, "Don't make me hurt you." As people walked away from Norris, Civilian Witness 1 saw Norris approaching him so he picked up a pool cue and told Norris to calm down. Norris lunged at Civilian Witness 1 with a knife. Civilian Witness 1 used the pool cue to block Norris' first lunge, but he could not block the second lunge. Norris stabbed Civilian Witness 1 in the shoulder, which knocked Civilian Witness 1 to the ground. As Norris stood over Civilian Witness 1, Norris was still holding the knife and Civilian Witness 1 believed Norris was going to stab him again. At that moment, Civilian Witness 1 heard a popping noise and saw Norris turn away. Civilian Witness 1 saw and heard a uniformed police officer yelling, but he could not hear what he said. Civilian Witness 1 saw Norris turn toward the officer while waving the knife and he saw the officer fire at Norris several more times, which caused Norris to fall to the ground.

Civilian Witness 3, a Cheers employee, reported she saw Norris run into the bar with a knife while yelling. She saw Norris grab another patron and yelled that he was going to stab him. Norris pushed the patron aside and moved closer to the pool tables, which caused several other patrons to run away. She saw Norris grab another patron and then she noticed officers enter through the front door of the restaurant. As the officers entered, she heard them tell Norris to put down the knife, but he responded that he was going to use it, and Norris slashed the knife at the patron. When this occurred, an officer fired at Norris six times.

Several other employees and patrons reported substantially similar information, including that they saw Norris running into Cheers with a knife, heard Norris say he was going to kill someone, saw Norris swing the knife at a patron, and saw the officer fire at Norris. One patron reported that she saw the officers running after Norris and that they yelled "Stop!" when Norris



stabbed Civilian Witness 1.

## **6. Involved Officer Statement**

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

Involved Officer 1 provided a compelled statement on June 20, 2019. He graduated from the police academy in 2006 and at the time of this incident was a patrol officer with RPD and a member of the Valley Regional SWAT Team. Prior to being a police officer, Involved Officer 1 was in the United States Army and held the rank of Captain.

On the night of this incident, Involved Officer 1, who was wearing his department issued police uniform and he was dispatched to Cheers to investigate possible drug activity. When he arrived at Cheers, he noticed that Witness Officer 1 also arrived and that there was a male, later identified as Norris, who was pacing back and forth while looking in the officers' direction. As Involved Officer 1 walked towards Norris, he saw Norris raise a large knife above his head and yell, "I'm going to kill people in the bar!" Next, Norris ran into Cheers, holding the knife in his

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

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

right hand.

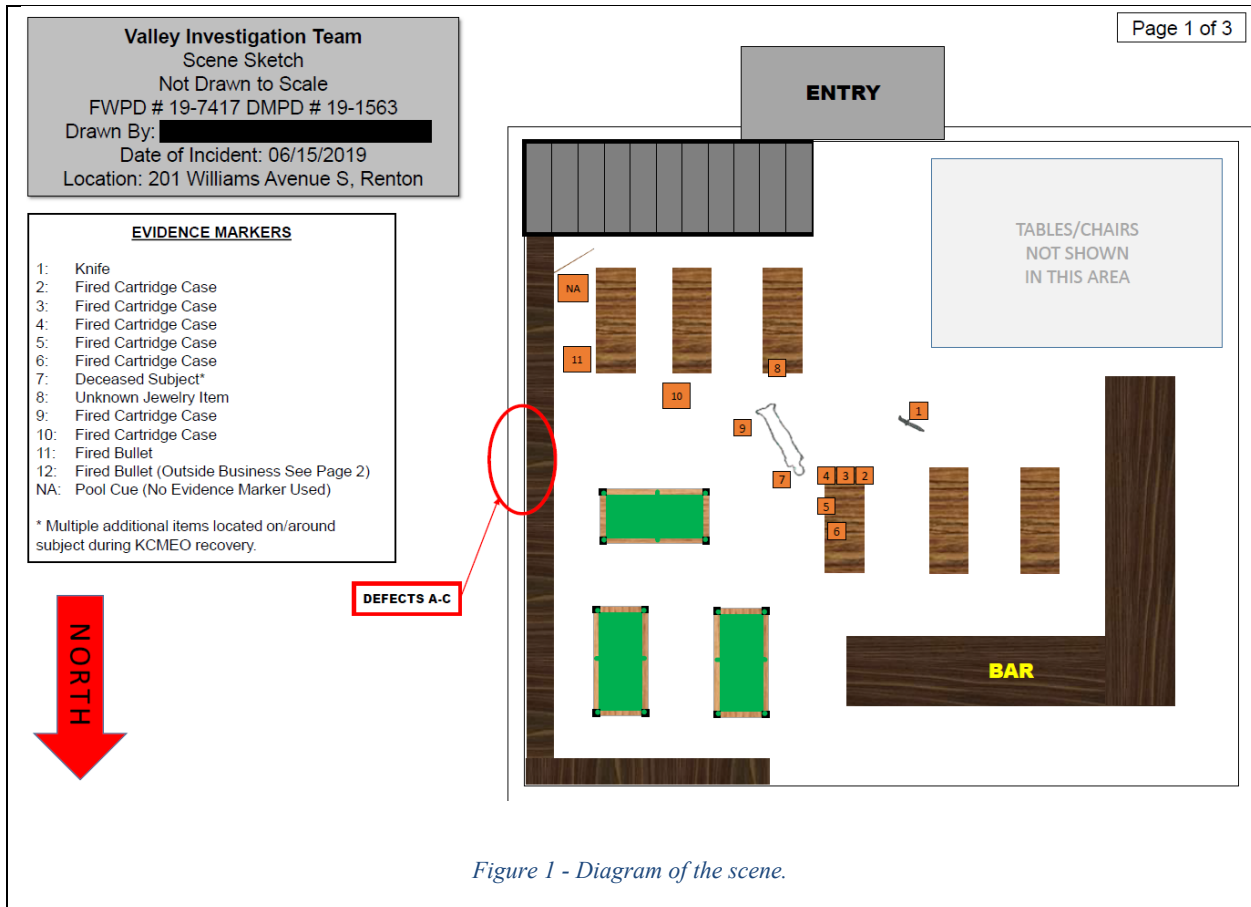
Concerned for the safety of the patrons inside Cheers, Involved Officer 1 drew his handgun and entered Cheers. As he entered the restaurant, Involved Officer 1 saw fleeing patrons and heard someone say, "He's in there trying to stab people!" Once inside, Involved Officer 1 scanned the bar area for Norris and saw him near the pool tables. Although the restaurant was loud due to the music and screaming patrons, Involved Officer 1 could see Norris waving the knife around and yelling indiscernible statements.

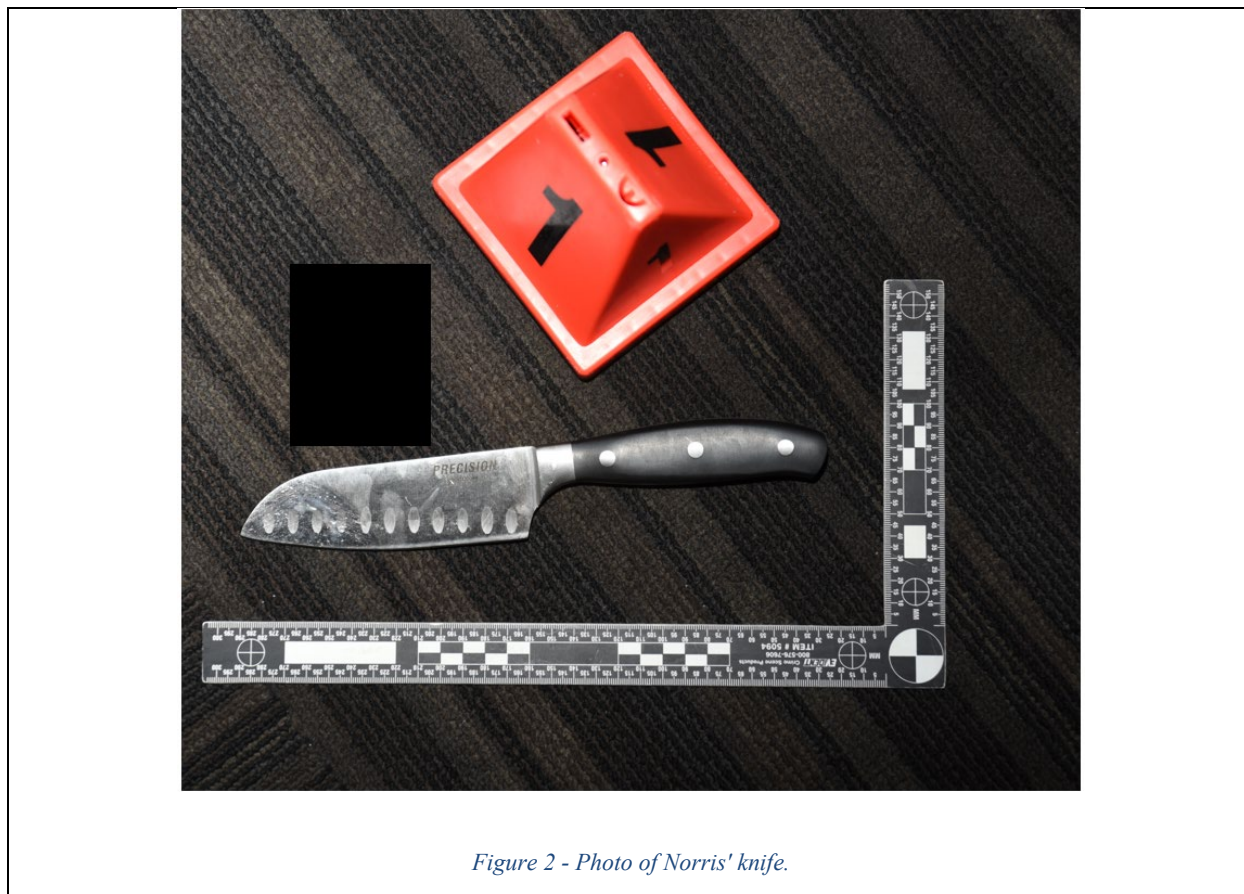
Involved Officer 1 activated the flashlight attached to his handgun and approached Norris. He commanded Norris to drop his knife, but Norris held the knife above his head and ran towards a male patron, later identified as Civilian Witness 1. Involved Officer 1 saw Norris grab Civilian Witness 1 and stab him. Involved Officer 1 positioned himself so that he could discharge his weapon without endangering Civilian Witness 1 and shot at Norris. After Involved Officer 1 discharged his handgun, Norris turned and charged at Involved Officer 1 while still armed with the knife in his right hand. This caused Involved Officer 1 to now fear for his own life, so he discharged his weapon again to stop Norris. Given the speed at which Norris attacked Civilian Witness 1 and turned towards Involved Officer 1, Involved Officer 1 believed that he had no alternative methods to stop Norris. He observed the rounds impacted Norris and saw Norris fall to the ground with the knife in his hand.

As Witness Officer 1 handcuffed Norris and removed the knife, Involved Officer 1 requested other officers to get statements from witnesses, requested the employees to turn on all the lights, and ordered them to not turn off the surveillance cameras.

## **7. Incident Scene Investigation**

The IIT investigator assigned to collect evidence at the incident scene recovered several items of evidence, including a knife, seven fired cartridge cases, two fired bullets, and a pool cue with blood on it. The investigator noted that the knife had likely been moved or kicked away from Norris' area when he was handcuffed.





*Figure 2 - Photo of Norris' knife.*

## **8. Video Evidence**

The IIT also recovered and reviewed various videos. While the RPD officers were not equipped with body worn cameras, the restaurant's surveillance system captured the incident.

The Cheers surveillance system recorded Norris enter Cheers with a knife in his right hand and push a patron. Norris stood near the pool tables with the knife pointing at other patrons and paced back and forth. Involved Officer 1 entered the restaurant with his firearm in the low ready position. As he entered, the patrons pointed in the direction of Norris. Involved Officer 1 advanced forward towards Norris as Norris sprinted towards Civilian Witness 1. Norris stabbed Civilian Witness 1 and Involved Officer 1 discharged his firearm several times until Norris fell to the ground.



*Figure 3 - Norris entering Cheers.*



*Figure 4 - Norris enters cheers and raises the knife in his right hand.*



*Figure 5 - Norris pushes a patron in a white shirt.*



*Figure 6 - Norris standing in the bar area, waving around the knife.*



*Figure 7 - Norris standing in the bar area, holding the knife in his right hand with the blade pointing down.*



*Figure 8 - Norris begins to walk towards the pool table area.*



*Figure 9 - Officers enter Cheers.*



*Figure 10 - Norris sprints towards Civilian Witness 1 who attempts to defend himself with a pool cue.*





*Figure 11 - Involved Officer 1 discharges his handgun at Norris.*

## **9. Medical**

The King County Medical Examiner's Office performed an autopsy of Norris, which opined the cause of death is multiple gunshot wounds sustained in a confrontation with police and the manner of death is homicide.<sup>11</sup> The pathological diagnoses included evidence of six gunshot wounds.

The Washington State Patrol Toxicology Laboratory performed a drug analysis of Norris' blood. The results showed that Norris' blood tested positive for phenylpropanolamine, amphetamine, 11-hydroxy delta-9 THC, delta-9 carboxy THC, and delta-9 THC.

## **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>12</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>13</sup>

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<sup>11</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.

<sup>12</sup> RCW 9A.04.100; WPIC 4.01.

<sup>13</sup> KCPAO Filing and Disposition Standards.



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

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

## **2. Applicable Law**

This incident occurred on June 15, 2019. At the time of this incident, there were no pattern jury instruction for Justifiable Homicide by a Peace Officer. However, the applicable statute removed the previously used malice standard and required the State to prove the officer acted without good faith.<sup>19</sup>

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

- Justifiable Homicide by a Peace Officer<sup>20</sup>
- Necessary<sup>21</sup>
- Justifiable Homicide – Defense of Self and Others<sup>22</sup>

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<sup>14</sup> WPIC 14.00.

<sup>15</sup> Id.

<sup>16</sup> RCW 9A.16.040; WPIC 16.01.

<sup>17</sup> RCW 9A.16.050(1); WPIC 16.02.

<sup>18</sup> RCW 9A.16.050(2); WPIC 16.03.

<sup>19</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>20</sup> WPIC 16.01.

<sup>21</sup> WPIC 16.05.

<sup>22</sup> WPIC 16.02.

- Great Personal Injury<sup>23</sup>
- Justifiable Homicide – Actual Danger Not Necessary<sup>24</sup>
- Justifiable Homicide – Resistance to a Felony<sup>25</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.”

Based on the evidence in the independent investigation, Involved Officer 1 used deadly force at the time he observed Norris attacking Civilian Witness 1 and again when Norris advanced towards Involved Officer 1 with a knife. While the amount of time between the two instances was short, the Team analyzed each instance to determine if the Involved Officer 1’s actions were justified or if there was a criminal action such that criminal charges should be filed. The KCPAO declines to file any charges in this case against Involved Officer 1 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. Justifiable Homicide by a Peace Officer**

Homicide or deadly force is justifiable when necessarily used 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.<sup>26</sup>

In considering whether to use deadly force to arrest or apprehend any person for the

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<sup>23</sup> WPIC 2.04.01.

<sup>24</sup> WPIC 16.07.

<sup>25</sup> WPIC 16.03.

<sup>26</sup> RCW 9A.16.040(1)(c)(i); WPIC 16.01.

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>27</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>28</sup>

Necessary means that no reasonably effective alternative to use the force appeared to exist and that the amount of force used was reasonable to effect the lawful purpose intended.<sup>29</sup> 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.<sup>30</sup>

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>31</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>32</sup>

First, the evidence in independent investigation showed there was probable cause for Involved Officer 1 to believe that Norris committed and was in the process of committing various felonies. Regarding the attack on Civilian Witness 1, Involved Officer 1 observed Norris in the process of stabbing Civilian Witness 1, thus there was probable cause to that Norris was

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<sup>27</sup> RCW 9A.16.040(2).

<sup>28</sup> *Id.*

<sup>29</sup> RCW 9A.16.010; WPIC 16.05.

<sup>30</sup> RCW 9A.16.040(4).

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

<sup>32</sup> *Id.* 490 U.S. at 396-97.

committing assault in the first degree, assault in the second degree, and attempted murder. Similarly, regarding Norris advancing towards Involved Officer 1, there was probable cause to believe that Norris intended to also attack Involved Officer 1 because he advanced towards Involved Officer 1 with the knife in his hand and did not comply with orders to drop the weapon.

Second, the evidence in independent investigation showed there was probable cause to believe that Norris, if not apprehended, posed a threat of serious physical harm to Civilian Witness 1 and, eventually, Involved Officer 1. As stated earlier, Involved Officer 1 observed Norris in the process of attacking Civilian Witness 1 using a large knife, which could have proved fatal. After discharging his weapon at Norris, Involved Officer 1 observed Norris advancing at him while still holding the knife. Therefore, it was reasonable for Involved Officer 1 to believe that Norris continued to pose a threat of serious physical harm.

Third, the evidence in the independent investigation showed that Involved Officer 1 used deadly force with a good faith belief that his actions was necessary to prevent death or serious physical harm to Civilian Witness 1 and himself. Given that Norris was in in the act of attacking Civilian Witness 1, it would have been unreasonable and potentially more dangerous for Civilian Witness 1 if Involved Officer 1 utilized an alternative force that was less likely to stop the threat that Norris presented. Similarly, when Norris advanced towards Involved Officer 1, it would have also been unreasonable and potentially dangerous for Involved Officer 1 to use an alternative force due to the fact that Norris was still armed with a knife, showed no intent to comply with police orders, and did not appear to be affected by the first gunshots.

## **2. Justifiable Homicide in Defense of Self or Others**

Homicide is justifiable in defense of self or others when the slayer reasonably believed the person slain intended to commit a felony, to inflict death, or to inflict great personal injury; the slayer reasonably believed that was imminent danger of such harm being accomplished; and the slayer employed such force and means as a reasonably prudent person would under the same or similar conditions as they reasonably appeared to the slayer.<sup>33</sup> Great personal injury includes

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<sup>33</sup> RCW 9A.16.050(1); WPIC 16.02.

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>34</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.

For the reasons outlined above, the evidence in the independent investigation showed that at the time Involved Officer 1 first used deadly force, he did so in defense of Civilian Witness 1 because he saw Norris attacking Civilian Witness 1 with a knife. The evidence also showed that at the time Involved Officer 1 again used deadly force, he did so in defense of himself because he thought that Norris would attack him with a knife.

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.”<sup>35</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>36</sup>

## **VII. RECOMMENDATION FOR INQUEST**

An inquest is mandatory to determine the manner, facts, and circumstances of Norris’s death pursuant to Executive Order PHL 7-1-5 EO unless the Executive determines the role of

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<sup>34</sup> WPIC 2.04.01.

<sup>35</sup> WPIC 16.02.

<sup>36</sup> WPIC 16.07.

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.

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# **Attachment A**

WPIC 16.01 - Justifiable Homicide by a Peace Officer

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

Homicide or the use of deadly force is justifiable:

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

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

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

“Good faith” is an objective standard. A peace officer acts in “good faith” if a similarly situated reasonable peace officer would have believed that the use of deadly force was necessary to prevent death or serious physical harm to the peace officer or another individual. In deciding whether a peace officer acted in good faith, you should consider all the facts, circumstances, and information known to the officer at the time.

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



WPIC 16.05 – Necessary

Necessary means that, under the circumstances as they reasonably appeared to the actor at the time, (1) no reasonably effective alternative to the use of force appeared to exist and (2) the amount of force used was reasonable to effect the lawful purpose intended.

WPIC 16.02 – Justifiable Homicide – Defense of Self and Others

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

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

(1) the slayer reasonably believed that the person slain intended to commit a felony<sup>37</sup> or to inflict death or great personal injury;

(2) the slayer reasonably believed that there was imminent danger<sup>38</sup> of such harm being accomplished; and

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

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

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<sup>37</sup> 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).

<sup>38</sup> 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 felony<sup>39</sup> upon the slayer or in the presence of the slayer.

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

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

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<sup>39</sup> 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)