

Use of Force Fatality of
Derek Sanchez

King County Independent Force Investigation Team
C19-026593



King County Prosecuting Attorney
Public Integrity Team

August 6, 2024



DECLINE MEMORANDUM

Law Enforcement Use of Force Fatality Regarding: Derek Sanchez

August 6, 2024

I. INTRODUCTION

1. Purpose of the Memorandum

The King County Prosecuting Attorney's Office (KCPAO) is mandated by law to analyze certain incidents regarding police use of force and to determine if the action was justified or if there was a criminal action such that criminal charges should be filed.¹ Because the investigation and analysis are mandatory if specific criteria are met, the KCPAO's review of an incident does not implicitly signal that the use of force was either justified or that criminal charges are appropriate. Instead, the KCPAO is required to assist in independent investigations involving police use of deadly force to enhance accountability and increase trust to improve the legitimacy of policing for an increase in safety for everyone.²

Pursuant to the Law Enforcement Training and Community Safety Act, an independent investigation must be completed when the use of deadly force by a peace officers results in death, substantial bodily harm, or great bodily harm.³ The independent investigation is conducted in the same manner as a criminal investigation.⁴

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

¹ Except as required by federal consent decree, federal settlement agreement, or federal court order, where the use of deadly force by a peace officer results in death, substantial bodily harm, or great bodily harm, an independent investigation must be completed to inform any determination of whether the use of deadly force met the good faith standard and satisfied other applicable laws and policies. RCW 10.114.011. Similarly, if the Office of Independent Investigation is the lead investigation agency, the prosecutorial entity must review the investigation. RCW 43.102.020. 2021 c 318 § 101.

² Id. See also WAC 139-12-010.

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

⁴ WAC 139-12-010.

complete and also advise whether an inquest should be initiated in accordance with the King County Charter.⁵ There shall be an inquest into the manner, facts, and circumstances of any death of an individual where an action, decision, or possible failure to offer the appropriate care by a member of any law enforcement agency might have contributed to an individual's death unless the County Executive determines, based on a review of the investigation, that the role of law enforcement was de minimis and did not contribute in any discernable way to a person's death.⁶

2. Scope of the Memorandum

The KCPAO's determination if the police action was justified or if there was a criminal action such that criminal charges should be filed is based entirely on the investigation materials provided to the KCPAO, relevant criminal laws, rules of evidence governing criminal proceedings, the applicable burden of proof, and the KCPAO's Filing and Disposition Standards. This determination is not intended to address matters outside the scope of this memorandum including, but not limited to, an administrative action by the involved agency or any other civil action. The KCPAO expresses no opinion regarding the propriety or likely outcome of any such actions.

3. Status of the Independent Investigation

After a thorough review of the independent investigation and applicable laws, the Special Operations Unit Public Integrity Team (the Team) has determined the investigation into this matter is complete.

II. OVERVIEW

On July 3, 2019, Kirkland Police Department Officers were dispatched to a tent in a wooded area due to 911 calls that Derek Sanchez had assaulted his child's mother, he was

⁵ Executive Order PHL 7-1-5 EO.

⁶ Id.

holding the child hostage inside the tent, and he threatened to harm the child. Officers contacted Sanchez and attempted to resolve the situation, but Sanchez refused to hand the child over to police. At various times officers observed Sanchez place the child in a headlock and squeeze, which caused the child to cry in pain. Officers determined that less lethal alternatives would possibly harm the child or would be unsuccessful, which could further endanger the child. An officer discharged his rifle at Sanchez, striking him. Medics were staged nearby and provided medical aid to Sanchez, but they determined he died from his injuries.

III. INVESTIGATION AND EVIDENCE

1. Independent Investigation Team Reports
2. Police Reports – King County Sheriff’s Office C19-026593
3. Police Reports – Kirkland Police Department 2019-25102
4. Civilian Statements
5. CAD
6. Search Warrants
7. Crime Scene Investigation
8. Medical
9. Involved Officer Information
10. Subject Information
11. 911 Call and Radio
12. Audio
13. Other Video
14. Photos
15. Miscellaneous

IV. INVESTIGATION SUMMARY⁷

1. Information Before and During the Use of Force

The following information is based upon several sources, including witness observations, the Kirkland Police Department (KPD) computer aided dispatch (CAD) report, recorded police radio, and 911 recordings from July 3, 2019.

At 6:25 am, Civilian Witness 1 called 911 to report that a man in the woods, later identified as Derek Sanchez (Sanchez), was threatening to hurt his baby and snap the baby's neck. She reported that Sanchez was asking for heroin, he was "dope sick," he was not intoxicated, and that the child's mother was present. Civilian Witness 2, the child's mother, took the phone and told the 911 operator that Sanchez previously assaulted her and threatened their baby.⁸ Civilian Witness 2 further reported that Sanchez kept her hostage in the tent and that she was able to escape the tent by lying to Sanchez, telling him that she would get him heroin. Civilian Witness 2 reported that Sanchez had a knife inside the tent, but she was unaware if there were other weapons. She stated that Sanchez threatened to "snap" the baby's neck and that when she tried to get Sanchez to stop, he punched her in the face.

Several KPD officers were dispatched to Civilian Witness 2's location. The officers noted that Civilian Witness 2 had visible injuries, including fresh bruises on her face, head, arms, and lips. Civilian Witness 2 confirmed to the officers that Sanchez was holding the baby hostage inside a tent and that the baby was theirs in common. She further reported that Sanchez began assaulting her at approximately 3:00 am by punching, kicking, pinching, and strangling her.

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.

⁸ The child was approximately 24 months old.

Sanchez demanded that Civilian Witness 2 provide him with money for heroin or that she get him heroin.

Civilian Witness 1 also reported to officers that she heard Civilian Witness 2 screaming. Specifically, recalled hearing Civilian Witness 2 yelling that she was being pinched, hit, and that she shouted, "Give me the baby!" She heard Sanchez respond, "No!" Civilian Witness 1 and another individual walked over towards Civilian Witness 2 and Sanchez and heard Sanchez say, "If you call the cops, I'm going to snap the baby's neck." Civilian Witness 1 also recalled seeing the baby cry when she approached Sanchez and Civilian Witness 2.

Officers confirmed that Sanchez had an active Department of Corrections arrest warrant for Escape from Community Custody and that there was an active no-contact order in place that prohibited Sanchez from having contact with Civilian Witness 2 or the baby. Based on this information, officers had probable cause to arrest Sanchez for violation of the no-contact order, his arrest warrant, and the assault against Civilian Witness 2.

At approximately 6:35 am, officers located Sanchez's tent. The tent was staked into the ground and tied to nearby trees. An officer estimated the tent was approximately eight feet by sixteen feet with two zippered openings.

Witness Officer 1 stopped approximately twenty feet from the tent and announced that the police were present. Sanchez initially did not respond, so Witness Officer 1 made the same announcement. Sanchez replied, "Get the fuck back. I need some black!"⁹ Witness Officer 1 observed Sanchez holding the baby with his right arm around the baby's neck in a "reverse headlock." As other officers continued to arrive near the tent, Witness Officer 1 observed the baby crying as Sanchez became more agitated.

Sanchez continued to tell the officers to leave and Witness Officer 2 took over the negotiation with Sanchez and explained that the officers could not leave. Witness Officer 3 joined Witness Officer 2 and informed Sanchez that he had cigarettes for Sanchez. While Witness Officer 2 spoke with Sanchez, neither Witness Officer 2 nor Witness Officer 3 had

⁹ The officer understood "black" to mean heroin.

unholstered their handguns because they believed that Sanchez would not engage with them if they drew their handguns.

When Sanchez began smoking his first cigarette, Witness Officer 3 looked inside the tent and the surrounding area, he observed that it was extremely unsanitary and opined that it was a health hazard for anyone, especially a child. He observed the immediate area was littered with waste, garbage, human waste, capped and uncapped syringes, and pieces of tinfoil that are commonly used to smoke narcotics.

Witness Officer 3 also observed that Sanchez held the baby with one arm up to his chest with the baby's head just underneath Sanchez's, which led him to believe Sanchez was holding the baby as a "human shield." Additionally, Witness Officer 3 reported that Sanchez was partially covered by a blanket around his shoulders that draped around himself and the baby, which made it impossible for officers to observe if Sanchez had a weapon concealed under the blanket, his clothing, or the baby. Witness Officer 3 also observed a large wrench on the floor of the tent that, if used as a weapon, could cause serious injury to a person, especially the baby. Given the presence of the wrench and the initial call information that Sanchez had access to a knife, Witness Officer 3's concern and fear for the child grew each time Sanchez moved around the tent because it was unclear if he was going to access a weapon.

As Witness Officer 2 continued to speak with Sanchez, he and Witness Officer 3 continued to observe Sanchez's actions when he became angry. For instance, when Sanchez appeared angry, he brought the baby up to just below his chin, holding the baby in the crook of his arm, and applied pressure against the baby's neck. Officers observed the baby immediately begin screaming and crying, which led them to believe that the baby was experiencing pain. Witness Officer 3 observed Sanchez cause the baby to scream out three to four times and he feared that Sanchez could seriously injure or kill the baby.

Witness Officer 3 noted in his report that he believed he would ultimately need to discharge his handgun at Sanchez to protect the baby. Witness Officer 3 stated he came to this conclusion due to the report that Sanchez threatened to "snap" the baby's neck, his in-person observation of Sanchez squeezing the baby causing it to scream and cry, Sanchez's refusal to

give the baby to the police in exchange for medical treatment, Sanchez's use of the baby as a human shield, and the officers' belief that less lethal alternatives would be ineffective.

Regarding less lethal alternatives, several officers noted they were aware that less lethal alternatives were present. However, due to their knowledge, training, and experience with these alternatives, the officers did not believe the alternatives would be effective in the current situation. For instance, one officer was armed with a less lethal munition that fires a high velocity impact projectile. However, the officers believed this device would be ineffective because it is far less accurate than a handgun or rifle and it is typically more effective if the projectile strikes a large muscle area, such as the thigh, buttocks, or back. Given how Sanchez was holding the baby, it appeared more likely that the projectile could impact the baby, which could cause a fatal injury.

Additionally, the officers were aware that several officers were equipped with a taser, which deploys two barbed probes connected to wires meant to conduct an electrical current. To be ideally effective, each probe should connect to a large muscle group, preferably with one probe above the waist and one probe below the waist. However, the officers were also aware that taser probes can be ineffective if obstructed by items such as clothing or the blanket that Sanchez used to cover himself and the baby. Additionally, to deploy the taser, an officer would have to have enough space to discharge the taser. Given the confined space, it would be difficult for another officer to fully enter the tent and accurately deploy the taser at Sanchez. Despite this, Witness Officer 3 did advise another officer to have a knife ready to cut open the tent to deploy the taser if the chance presented itself.

The officers were also aware that several officers were equipped with oleoresin capicum (OC) spray. However, given the confined space of the tent, the officers and the baby would certainly be exposed to the OC spray. Additionally, if Sanchez was exposed to the OC spray, he could become upset and seriously injure or kill the baby before officers could physically contact Sanchez and remove the baby from him.

Finally, officers considered using a noise flash diversionary device that the SWAT officers are trained to deploy. Witness Officer 3, a former SWAT officer noted that the use of these devices in confined spaces with a baby present was prohibited or strongly discouraged

because it was certain to damage the sensitive inner ears of a small child. Similarly, if Sanchez was exposed to this device, he could become upset and seriously injure or kill the baby before officers could physically contact Sanchez and remove the baby from him.

Witness Officer 4 and Involved Officer 1, who are members of SWAT, were dispatched to this incident given the hostage situation. When they arrived, Witness Officer 3 provided Involved Officer 1 with a synopsis of what had occurred thus far, including Witness Officer 3's intent to find an opportunity to shoot Sanchez because less lethal alternatives would likely be ineffective.

Witness Officer 4 and Involved Officer 1 approached the tent and observed Witness Officer 2 in active negotiations with Sanchez. By this time, Witness Officer 4 and Involved Officer 1 had determined that Involved Officer 1 would provide lethal cover, if needed, and Witness Officer 4 would make physical contact with Sanchez, if needed. Witness Officer 4 and Involved Officer 1 positioned themselves outside the tent. Involved Officer 1 was behind and between Witness Officer 2 and Witness Officer 3 so as not to expose himself to Sanchez.

As Witness Officer 2 and Sanchez continued to speak, Sanchez started a small fire inside the tent. Witness Officer 2 used this opportunity to fully enter the tent. As Sanchez started the fire, Witness Officer 3 noticed that his demeanor escalated and the baby began to cry. Witness Officer 3 heard Witness Officer 2's voice elevate in concern and Sanchez began to yell. As Sanchez's anger escalated, Witness Officer 3 believed that Sanchez intended to harm the baby. Witness Officer 2 observed Sanchez move to the corner of the tent and aggressively put his arm around the baby's neck. Witness Officer 2 observed Sanchez's arm flex and the baby cried out. Witness Officer 3 moved to his left while holding open the tent door flap so that Involved Officer 1 could enter the tent and have a clear view of Sanchez. Witness Officer 2 observed Involved Officer 1 enter the tent with his rifle pointed at Sanchez. Witness Officer 2 continued to tell Sanchez to "stop," but he feared if he tried to physically take the baby from Sanchez or discharge his taser that Sanchez could injure or kill the baby. At this moment, Involved Officer 1 discharged his rifle once, striking Sanchez. Officers quickly grabbed the baby and brought the baby to nearby medics for an evaluation. Medics also began to provide medical aid to Sanchez, but they pronounced him deceased.

2. Independent Investigation Conducted by the King County Sheriff's Office

As other officers arrived, the police secured the incident scene. The King County Independent Force Investigation Team was requested to respond to the scene and to conduct an independent investigation. King County Sheriff's Office Investigator 1 was assigned as the lead investigator. The independent investigation team (IIT) divided assignments between themselves and began to process the incident scene.

3. Processing of the Officers

As part of standard practice, the IIT determined which officers used force. Investigators determined that Involved Officer 1 discharged his rifle. The IIT reported that his rifle contained one unfired cartridge in the chamber, twenty-six unfired cartridges in the magazine, and that the magazine could hold twenty-eight cartridges. If Involved Officer 1 loaded the rifle magazine to capacity, his rifle was loaded with twenty-eight cartridges, which would indicate that he discharged one cartridge. During a subsequent search of the tent, investigators located one fired cartridge casing that was consistent with the cartridges in Involved Officer 1's rifle.

4. Medical

The King County Medical Examiner's Office performed an autopsy of Sanchez, which opined the cause of death is a gunshot wound sustained in a confrontation with police and the manner of death is homicide.¹⁰ The pathological diagnoses included evidence of one penetrating gunshot wound of the head.¹¹

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.

¹¹ A penetrating gunshot wound occurs when a bullet pierces the skin, enters the body creating an entrance wound, but the bullet does not exit the body. In contrast, a perforating gunshot wound occurs when the bullet pierces the skin, enters the body creating an entrance wound, and exits the body creating an exit wound.

V. LEGAL STANDARD AND APPLICABLE LAW

1. Burden of Proof

The State must prove each element of a criminal charge by competent evidence beyond a reasonable doubt.¹² The KCPAO will file charges if sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defenses that could be raised under the evidence, would justify conviction by a reasonable and objective factfinder.¹³

In addition, the State must disprove the existence of a defense that negates an element of the crime.¹⁴ Prosecution should not be declined because of an affirmative defense unless the affirmative defense is of such nature that, if established, would result in a complete defense for the accused and there is no substantial evidence to refute the affirmative defense.¹⁵ Therefore, the State may be required to disprove one or more of the following defenses:

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

2. Applicable Law

This incident occurred on July 13, 2019; therefore, the applicable Justifiable Homicide by a Peace Officer instruction would require the State to prove the officer acted without good faith.¹⁹

¹² RCW 9A.04.100; WPIC 4.01.

¹³ KCPAO Filing and Disposition Standards.

¹⁴ WPIC 14.00.

¹⁵ Id.

¹⁶ RCW 9A.16.040; WPIC 16.01.

¹⁷ RCW 9A.16.050(1); WPIC 16.02.

¹⁸ RCW 9A.16.050(2); WPIC 16.03.

¹⁹ For offenses committed on or prior to December 6, 2018, the former version of WPIC 16.01, based upon RCW 9A.16.040, required the prosecution to prove the officer acted with malice. For offenses committed between December 7, 2018, and February 3, 2019, RCW 9A.16.040, based upon Laws of 2019, Chapter 1, § 7, removed the malice standard and required the prosecution to prove the officer did not act in good faith. There are no pattern jury instructions for offenses committed between December 7, 2018, and February 3, 2019. For offenses committed on or after February 4, 2019, the current version of WPIC 16.01, based upon RCW 9A.16.040, requires the prosecution to prove the officer did not act in good faith. RCW 9A.16.040(1)(a) utilizes the malice and good faith standard, but this section only applies when a “public officer applied deadly force in obedience to the judgment of a competent court.”

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

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

VI. ANALYSIS AND CONCLUSION

Under the KCPAO filing standards, “Homicide cases will be filed if sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify conviction by a reasonable and objective fact-finder. Prosecution should not be declined because of an affirmative defense unless the affirmative defense is of such nature that, if established, would result in complete freedom for the accused and there is no substantial evidence to refute the affirmative defense.”

The KCPAO declines to file charges against the involved officer because the independent investigation and the Team's analysis reveal that there is insufficient evidence to prove any criminal charges or disprove applicable affirmative defenses beyond a reasonable doubt.

²⁰ WPIC 16.01.

²¹ WPIC 16.05.

²² WPIC 16.02.

²³ WPIC 2.04.01.

²⁴ WPIC 16.07.

²⁵ WPIC 16.03.

1. Justifiable Homicide by a Peace Officer

a. Law Regarding Justifiable Homicide by a Peace Officer

Homicide 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.²⁶

In considering whether to use deadly force to arrest or apprehend any person for the commission of any crime, the peace officer must have probable cause to believe that the suspect, if not apprehended, poses a threat of serious physical harm to the officer or a threat of serious physical harm to others.²⁷ Among the circumstances which may be considered by peace officers as a “threat of serious physical harm” are the following:

- The suspect threatens a peace officer with a weapon or displays a weapon in a manner that could reasonably be construed as threatening;
- or
- There is probable cause to believe that the suspect has committed any crime involving the infliction or threatened infliction of serious physical harm.²⁸

A 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.²⁹ 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.³⁰

The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.³¹ “The calculus of

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

²⁷ RCW 9A.16.040(2).

²⁸ Id.

²⁹ RCW 9A.16.040(4).

³⁰ RCW 9A.16.010; WPIC 16.05.

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

reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.”³²

b. Analysis Regarding Justifiable Homicide by a Peace Officer

First, the evidence in the independent investigation showed there was probable cause for the officers, including Involved Officer 1, to believe that Sanchez committed and was in the process of committing various felonies. Specifically, based on the information known to police, there was probable cause to believe that Sanchez had committed a felony assault against Civilian Witness 2. Additionally, while Sanchez was inside the tent with the baby, there was probable cause that Sanchez was in the process of committing kidnapping and assault of a child.

Second, the evidence in the independent investigation showed there was probable cause to believe that Sanchez, if not apprehended, posed a threat of serious physical harm to the officers or others. Although Sanchez did not use an object, such as a knife or wrench, he repeatedly squeezed the baby in a manner that caused the baby to cry out. Given that officers observed this while Sanchez was holding the baby around the neck, there was probable cause to believe that his actions threatened to inflict serious physical harm on the baby.

Third, the evidence in the independent investigation showed that Involved Officer 1 used deadly force with a good faith belief that his actions were necessary to prevent death or serious physical harm to the officers or another individual. Ideally this incident would have resolved with Sanchez giving the baby to the officers, so that the baby was safe and officers could investigate what occurred prior to the 911 call. However, throughout the course of the negotiation, Sanchez refused to return the baby and instead used the baby as a shield to prohibit police from arresting him. This decision forced the officers to determine whether they could apprehend Sanchez in a manner that did not harm the baby or expose the baby to additional risk of being harmed by Sanchez. While officers are required to use alternatives to force, those

³² Id. 490 U.S. at 396-97.

alternatives must be reasonably effective. The evidence in a potential prosecution would show that the officers considered the pros and cons of less lethal alternatives. Based on their training and experience, the risks of using less lethal alternatives outweighed the benefits given the potential harm to the baby.

Therefore, based on the admissible evidence, which is corroborated by several witnesses, there is insufficient evidence to prove criminal charges beyond a reasonable doubt or refute the applicable defenses beyond a reasonable doubt.

2. Justifiable Homicide in Defense of Self or Others

a. Law Regarding Justifiable Homicide in Defense of Self or Others

Homicide is justifiable in defense of self or others when the slayer reasonably believed the person slain intended to commit a felony, to inflict death, or to inflict great personal injury; the slayer reasonably believed that was imminent danger of such harm being accomplished; and the slayer employed such force and means as a reasonably prudent person would under the same or similar conditions as they reasonably appeared to the slayer.³³ Great personal injury includes an injury that the slayer reasonably believed, in light of all the facts and circumstances known at the time, would produce severe pain and suffering, if it were inflicted upon either the slayer or another person.³⁴

Under this instruction, the danger must be imminent, not immediate. The Washington Instruction Committee noted that “Imminence does not require an actual physical assault. A threat, or its equivalent, can support self-defense when there is a reasonable belief that the threat will be carried out.”³⁵ Additionally, a person is entitled to act on appearances in defending himself, if that person acts in good faith and on reasonable grounds, although it afterwards might develop that the person was mistaken as to the extent of the danger.³⁶

³³ RCW 9A.16.050(1); WPIC 16.02.

³⁴ WPIC 2.04.01.

³⁵ WPIC 16.02.

³⁶ WPIC 16.07.

b. Analysis Regarding Justifiable Homicide in Defense of Self or Others

As stated earlier, Involved Officer 1 possessed information that would lead a reasonable person to fear that Sanchez intended to harm the baby based on his actions and refusal to comply with the officers' commands throughout the negotiation. Although defense of others allows force to be used when there is a reasonable belief the threat will be carried out, the officers in this incident did not use force until Sanchez had repeatedly harmed the child and he was in the process of harming the child at the point force was used. In other words, it is very likely a factfinder would determine that Involved Officer 1 did not use force merely because of the reasonable belief the threat *would* be carried out. Instead, Involved Officer 1 used force *while* Sanchez was in the midst of carrying out his threat.

Therefore, based on the admissible evidence, which is corroborated by several witnesses, there is insufficient evidence to prove criminal charges beyond a reasonable doubt or refute the applicable defenses beyond a reasonable doubt.

VII. KCPAO RESPONSIBILITIES REGARDING INQUEST

As outlined in Executive Order PHL 7-1-5 EO, the KCPAO shall inform the King County Executive whenever the investigation into a death involving a member of any law enforcement agency in King County is complete and also advise whether an inquest should be initiated pursuant to the King County Charter.³⁷ Pursuant to the King County Charter, "An inquest shall be held to investigate the causes and circumstances of any death where an action, decision, or possible failure to offer the appropriate care by a member of any law enforcement agency might have contributed to an individual's death."³⁸ Given the facts outlined in the investigation, it is the Team's belief that the investigation is complete and an inquest should be initiated pursuant to the King County Charter.

³⁷ Executive Order PHL 7-1-5 EO.

³⁸ King County Charter § 895.

The King County Executive, however, shall determine whether an inquest will be held.³⁹ The Charter requirement for an inquest does not apply where the County Executive determines, based on a review of the investigation, that the role of law enforcement was de minimis and did not contribute in any discernable way to a person's death.⁴⁰

³⁹ Executive Order PHL 7-1-5 EO.

⁴⁰ Id.

Prosecuting Attorney

King County

Page 17

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 felony⁴¹ or to inflict death or great personal injury;

(2) the slayer reasonably believed that there was imminent danger⁴² 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.

⁴¹ 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).

⁴² 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 felony⁴³ 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.

⁴³ 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)