

Use of Force Fatality of
Ryan Smith

Seattle Police Department
Force Investigation Team 2019FIT-0011



King County Prosecuting Attorney
Public Integrity Team

May 2, 2024



DECLINE MEMORANDUM

May 2, 2024

Law Enforcement Use of Force Fatality Regarding: Ryan Smith

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

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.

Additionally, the KCPAO shall inform the King County Executive whenever the investigation into a death involving a member of any law enforcement agency in King County is complete and also advise whether an inquest should be initiated in accordance with the King County Charter.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 Team 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 May 8, 2019, Seattle Police Department officers responded to a 911 call where a female reported she was being attacked by her boyfriend with a knife. The female locked herself

⁵ Executive Order PHL 7-1-5 EO.

⁶ Id.

inside the bathroom and reported that he was trying to kill her. Officers arrived and when no one answered the door, they forced it open. The male stood inside the door and advanced towards the officers with a knife. Although the officers backed away and ordered the male to put down the knife, he did not. Two officers discharged their handguns, striking the male. Medics attempted to provide medical aid to the male, but he was deceased.

III. INVESTIGATION SUMMARY⁷

1. Information Before and During the Use of Force

On May 8, 2019, at approximately 7:15 pm, Civilian Witness 1 called 911 to report that her boyfriend, Ryan Smith (Smith), was trying to kill her. Civilian Witness 1 initially called 911 and the dispatcher heard screaming, then the call disconnected. Civilian Witness 1 called 911 again and reported to the dispatcher that she was hiding in her bathroom, the earlier call disconnected when Smith tackled her, that Smith was trying to kill her, that he would not leave her apartment, he was suicidal, and he was armed with a four-inch knife. She also reported that there was blood everywhere inside of the bathroom.

Several Seattle Police Department (SPD) officers were dispatched to this call, including Involved Officer 1, Witness Officer 1, Involved Officer 2, and Witness Officer 2. When they arrived at Civilian Witness 1's apartment door, Involved Officer 1 ordered Smith to open the door, while another officer announced, "Seattle Police." When there was no response, Involved Officer 1 and Involved Officer 2 kicked the door in an effort to open it and Involved Officer 1 shouted, "Open it now!" The officers successfully kicked open the door panel and saw Smith stood inside the threshold of the apartment. An officer yelled, "Drop the knife!" However, Smith lifted his right hand and stepped towards the officers.

⁷ 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.

Involved Officer 1 reported that based on the information from the 911 call, he was concerned about Civilian Witness 1's safety. Given what she reported, there was an exigency to provide her treatment if she was injured. He saw Smith step forward with the knife in his hand, which caused Involved Officer 1 to direct his focus to Smith's hand.

Involved Officer 2 was directly to the right of Involved Officer 1. He also observed the knife in Smith's hand and recalled Smith saying that he was previously a boxer. He estimated that Smith was approximately three to four feet in front of him, and this distance caused him to believe that he was in imminent danger of being attacked by Smith.

Involved Officer 1 and Involved Officer 2 discharged their department-issued handguns at Smith. Smith fell to the ground and Witness Officer 1 entered the apartment to find Civilian Witness 1. He located her in the bathroom and removed her from the apartment. While Involved Officer 1 requested medics, the other officers confirmed no one else was located inside the apartment. Involved Officer 2 retrieved medical equipment; however, Witness Officer 1 advised him that he could not locate a pulse on Smith. Medics arrived and provided aid to Smith, but they determined he was deceased.

2. Independent Investigation Conducted by the Seattle Police Department

The SPD Force Investigation Team was requested to respond to the scene and to conduct an independent investigation. SPD Investigator 1 was assigned as the lead investigator. Investigators divided assignments between themselves and began to process the incident scenes.

3. Processing of the Officers

As part of standard practice, the investigation team processed the involved officers and determined that Involved Officer 1 and Involved Officer 2 used their handgun during the use of force. The investigators reported that Involved Officer 1 discharged eight total cartridges and Involved Officer 2 discharged two cartridges.

4. Civilian Witnesses

Civilian Witness 1 provided a statement to investigators regarding what occurred prior to her calling 911. She reported she came home during her lunch break and found Smith passed out

and intoxicated. She wanted him to leave, so she took his keys, but this caused a fight during which she sustained a thin scratch to the left side of her chest. Civilian Witness 1 packed her lunch and left the apartment. She returned home at approximately 4:45 pm. When she returned, she observed that Smith was agitated and slamming doors. Smith repeatedly asked her if their relationship was over and Civilian Witness 1 began to pack up Smith's belongings. Civilian Witness 1 reported that she tried to remain calm, and repeatedly told Smith, "You need to leave." In response, Smith said, "You better call the cops, that's the only way I'm going to get out of here." Civilian Witness 1 began to call 911 and Smith tackled her onto the bed and hung up the phone. Smith flipped out a knife and threatened Civilian Witness 1's life, which caused her to barricade herself in the bathroom and call 911 a second time. She remained in the bathroom until the police arrived.

Civilian Witness 1 also described Smith as suicidal and angry when he was intoxicated, and that he had not taken his medication. She stated that Smith used to be a boxer and would punch things, such as walls, when he was angry. She stated it was not uncommon for Smith to threaten her life and that he previously threatened her approximately one month prior. Investigator 1 reviewed SPD records and located case 2019-132314, which occurred on April 14, 2019, at approximately 6:24 pm. During this incident, Civilian Witness 1 reported that Smith threatened her life and when she called 911, he made comment saying, "Watch me get shot down." in reference to officers arriving. Involved Officer 2 had responded to this call as a backing officer. Officers noted that Smith had blood on his knuckles and he admitted to punching walls. Civilian Witness 1 agreed to leave the apartment for a few days and officers waited while she packed up her items.

5. 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.⁸ 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.⁹ 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 2 provided a compelled statement. He reported hearing over his radio about a 911 call involving a knife. While driving to the location of the call, he recalled that it sounded like the same location he responded to a month prior regarding a domestic violence incident. Additional information was provided by the police dispatcher, including that the knife was approximately four inches and that there was blood everywhere in the apartment. Involved Officer 2 stated this caused him to think that someone was being killed during a domestic violence dispute. When he arrived at the apartment building, he believed this was the same location he responded to a month prior. He recalled talking to Smith, who stated he enjoyed boxing. As Involved Officer 2 ran into the apartment building, he located other officers outside the unit’s door giving commands. He observed Involved Officer 1 kicking the door and eventually he assisted by kicking the door. Once the door panel broke open, Involved Officer 2 saw Smith standing in the entry way facing the officers. He also heard, what he believed to be, the female 911 caller inside the bathroom. Smith’s arms were down at his side and Involved Officer 2 described Smith as having a “thousand-yard stare.” After looking at Smith’s face, Involved Officer 2 saw that Smith was holding a knife in his hand. He did not remember specific commands, but he recalled officers yelling at Smith. Involved Officer 2 saw Smith step forward towards the officers. Given the location of the apartment door, there was a wall directly to Involved Officer 2’s right, a wall directly behind him, the other officers directly to his left, and Smith was three to four feet in front of him. Due to the small area and Smith’s action, Involved Officer 2 felt fear that Smith was going to attack him. As Smith moved forward, Involved

⁸ Garrity v. State of N.J., 385 U.S. 493, 500, 87 S. Ct. 616, 620, 17 L. Ed. 2d 562 (1967).

⁹ U.S. v. North, 910 F.2d 843, 857-858 (D.C. Cir., 1990).

Officer 2 discharged his weapon and saw Smith fall to the ground. Once Smith was on the ground, he saw Smith's knife and ordered another officer to ensure the knife was not removed.

Involved Officer 1 provided a compelled statement. He reported hearing information via radio that a female 911 caller was being assaulted by her boyfriend, who was armed with a knife. He also heard that the male was trying to kill her, kill himself, that the female was inside a bathroom, and there was blood everywhere. Involved Officer 1 began to go to the call, but he noted that backup officers were not as close to the location as he was. He has been trained to wait for backup to assist in de-escalation, so once Witness Officer 1 arrived, they both entered the building. As he approached the unit's door, he observed the peephole, approximately four inches wide, on the door was opened. He described the peephole as a small opening covered by grating. Involved Officer 1 saw, what he believed to be a male, looking through the peephole and slamming it shut, which led him to believe that the suspect was inside the apartment and aware that officers had arrived.



Figure 1 - Involved Officer 1's body camera, which captured the open peephole.



Figure 2 - Involved Officer 1's body camera, which captured the closed peephole.

Given the information he had up to that moment, Involved Officer 1 reported he was concerned for the safety of the 911 caller who may be seriously injured. He attempted to kick in the door, but he was not successful due to the angle, Involved Officer 2 moved in front of the door and kicked it several times. As Involved Officer 2 kicked the door, the door panel cracked open briefly and Involved Officer 1 saw the male standing in the entry way. He did not see a weapon in the male's hand, but he noted that the male continued to stand in the entry way. Involved Officer 2 continued to kick the door until the door panel broke open. Involved Officer 1 observed Smith and saw that he had a knife in his hand. He recalled officers giving commands and he heard the female in the bathroom. He believed that he and Involved Officer 2 yelled for Smith to drop the knife. Involved Officer 1 attempted to create space by backing into the hallway, but it was very narrow. He saw Smith advance forward towards Involved Officer 2, which caused Involved Officer 1 to fear for his safety and Involved Officer 2's safety. Involved Officer 1 discharged his weapon until he saw the knife leave Smith's hands.

6. Incident Scene Investigation

Investigators sought a search warrant to seize evidence located inside the apartment, which was granted by a judge. Investigators recovered several items including two fired bullets

and a folding knife from inside the apartment. Additionally, investigators collected two knives from Smith's person, for a total of three knives collected.

7. Video Evidence

The officers who responded to Civilian Witness 1's home were equipped with body worn cameras. Witness Officer 1's camera captured Involved Officer 1 and his approach to Civilian Witness 1's door. The officers identified themselves as Seattle Police and ordered the door to be opened, but there was no response. Involved Officer 1 tried to force the door open by kicking it. Involved Officer 2 joined and assisted by kicking the door panel open. Once the door panel was opened, Smith can be seen standing in the entry area. The officers immediately ordered Smith to put his hands up and get on the ground, but he did not comply. Involved Officer 2 yelled for Smith to, "Drop the knife!"

Relevant portions of Involved Officer 2's camera are below.



Figure 3 - Smith seen standing in the home's entry after officers kicked open the door.



Figure 4 - Smith's left leg rises as he begins to move towards officers.



Figure 5 - Involved Officer 2 backs away from Smith who continues to advance. Involved Officer 1 is seen to the left of Involved Officer 2.



Figure 6 - Involved Officer 2 and Involved Officer 1 have backed up into the hallway, but Smith continues to advance. A knife is seen in his right hand at chest level with the blade pointed outward.



Figure 7 - A second image of Smith holding the knife.

8. Medical

The King County Medical Examiner's Office performed an autopsy of Smith, which opined the cause of death is multiple gunshot wounds sustained in a confrontation with police

and the manner of death is homicide.¹⁰ The pathological diagnoses included evidence of four handgun wounds:

- Gunshot wound of the neck;
- Gunshot wound of the right shoulder;
- Five gunshot wounds of the torso;
- Three gunshot wounds of the right upper extremity;
- Gunshot wound of the right knee;
- Gunshot wound of the left thigh.

The Washington State Patrol Toxicology Laboratory performed a drug analysis of Smith's blood. The results showed that Smith's blood tested positive for ethanol (.36 g/100mL) and THC (1.7 ng/mL).

9. Administrative Review

SPD Force Investigation policies required a sergeant, a lieutenant, and a captain to review the investigation, which contained the involved officers' compelled statements. Regarding the involved officers' use of force, the administrative review determined there were no policy or training issues that needed to be addressed.¹¹

10. Seattle Office of Police Accountability

The Seattle Office of Police Accountability (OPA) conducted an independent investigation, which relied upon compelled statements. The OPA investigation evaluated whether the involved officers violated SPD policies. Regarding whether the involved officers used de-escalation tactics to reduce the need for force, OPA opined that the involved officers' actions were lawful and proper. Regarding whether the involved officers engaged in biased policing, OPA opined that the allegations were unfounded. Regarding whether the involved officers properly used deadly force, OPA opined that the involved officers' use of deadly force was lawful and proper. Finally, regarding whether the involved officers recognized the urgency

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 The administrative review determined that policy issues regarding body camera usage and use of police radio needed to be addressed. However, the substance of those issues did not affect the Team's analysis regarding the legality of this incident.

for providing medical aid, OPA opined that the involved officers' actions were lawful and proper.

IV. 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 May 8, 2019; therefore, the applicable Justifiable Homicide by a Peace Officer instruction would require the State to prove the involved officers acted without good faith.¹⁹ The following jury instructions, contained in Attachment A, would likely be applicable and are relevant to the Team's analysis and conclusion:

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

- 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

V. 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 any of the involved officers 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

a. Law Regarding 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.²⁶

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.”

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.

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

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 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.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 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 involved officers to believe that Smith committed and was in the process of committing various felonies. Specifically, based on information provided to 911, there was probable cause

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).

³² Id. 490 U.S. at 396-97.

that Smith had assaulted Civilian Witness 1 with a knife. Given the exigent circumstances presented, the officers were justified in forcing entry into the home. When officers observed Smith was armed with a knife and he advanced towards them, there was also probable cause to believe that Smith would assault the officers.

Second, the evidence in the independent investigation showed there was probable cause to believe that Smith, if not apprehended, posed a threat of serious physical harm to the officers or others. Despite several orders to open the door, get on the ground, and drop the knife, Smith did not comply with the officers' commands. Smith's approach towards officers with the knife pointed outwards, combined with his refusal to follow commands, would have caused the officers to believe that Smith posed a threat of serious physical harm.

Third, the evidence in the independent investigation showed that involved officers used deadly force with a good faith belief that their actions were necessary to prevent death or serious physical harm to the officer or another individual. Based on the information officers received about the 911 call, officers reasonably believed that Civilian Witness 1 was in the process of being attacked, was possibly injured, and Smith was armed with a knife. Given the risk to Civilian Witness 1's life, it would have been potentially dangerous for officers to not attempt entry into the home. Even so, when they confronted Smith, officers used verbal commands, but Smith refused to follow their orders. Although the hallway presented a confined area, the officers attempted to create space by backing into the hallway. As Smith continued to move towards the officers, other less lethal alternatives would likely prove ineffective, which could have resulted in additional injuries.

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

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

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

As stated above, when officers responded to the apartment, they had a reasonable belief that Civilian Witness 1 was in danger, likely injured, and Smith was armed with a weapon. When officers confronted Smith, he refused their commands and moved towards them with a knife. Based on the totality of the information the involved officers had up to that point, it was reasonable for them to believe that Smith intended to inflict death or great personal injury. 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.

VI. RECOMMENDATION FOR INQUEST

An inquest is mandatory to determine the manner, facts, and circumstances of Smith'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.

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 felony³⁷ or to inflict death or great personal injury;

(2) the slayer reasonably believed that there was imminent danger³⁸ 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.

³⁷ 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).

³⁸ 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 felony³⁹ 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.

³⁹ 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)