

Use of Force – Fatality of
Darren Butrick

Valley Independent Investigation Team
Des Moines Police Department, #20-2726



King County Prosecuting Attorney
Public Integrity Team

July 12, 2023



DECLINE MEMORANDUM

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Law Enforcement Use of Force Fatality Regarding:
Darren Butrick

A. INTRODUCTION

1. PURPOSE OF THE MEMORANDUM

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

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.

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

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

2. STATUS OF THE INDEPENDENT INVESTIGATION

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

3. SCOPE OF THE MEMORANDUM

The KCPAO's determination if the police action was justified or if there was a criminal action such that criminal charges should be filed is based entirely on the investigation materials provided to the KCPAO, relevant criminal laws, rules of evidence governing criminal proceedings, the applicable burden of proof, and the KCPAO's Filing and Disposition Standards. This determination is not intended to address matters outside the scope of this memorandum

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

⁴ Id.

⁵ Executive Order PHL 7-1-5 EO.

⁶ Id. `

including, but not limited to, administrative action by the involved agency or any other civil action. The Team expresses no opinion regarding the propriety or likely outcome of any such actions.

B. OVERVIEW

Civilian 1 called 911 to report that Darren Butrick was drinking, breaking items within their home, and armed with a rifle equipped with a laser. Three officers from the Kent Police Department arrived and saw Butrick come to the home's front door with a rifle. Butrick refused the officers' commands to exit the home. Officers saw Butrick shine the red laser out of his bedroom window. Within moments several gunshots were fired and Butrick was found deceased.

C. INVESTIGATION AND EVIDENCE

1. Narrative police reports
2. Body worn video
3. Toxicology report
4. Autopsy report
5. Firearms report
6. 911 call
7. Cell phone video from Civilian 1
8. CAD
9. Surveillance video
10. Witness audio statements

D. INVESTIGATION SUMMARY⁷

On November 4, 2020, Civilian 1 called 911 to report that her husband, Darren Butrick (Butrick), was drinking, breaking things within the home, and that she had a laceration on her hand. Civilian 1 also reported that Butrick had attempted suicide last year; Butrick brought two rifles inside the home fifteen minutes ago and they were in the bedroom; and her brother, sister-in-law and 11-year-old nephew were in the garage apartment. Civilian 1 reported that Butrick was inside the bedroom with a rifle in his hand, the rifle was loaded with an extended clip, and the rifle was equipped with a laser sighting device. Civilian 1 confirmed that all parties, except Butrick, were located outside the home.

Kent Police Department (KPD) Involved Officer 1, Involved Officer 3, Involved Officer 2 were dispatched to Civilian 1's location. Involved Officer 3 arrived and contacted Civilian 1, who appeared distraught. She confirmed that Butrick was inside the home. As Involved Officer 1 and Involved Officer 2 arrived, Butrick shut the front door of the home and moments later pointed the rifle with the red laser sight out of the front window. In response, the officers took cover behind their patrol vehicles and requested SWAT to respond. Approximately, a minute later, officers broadcast shots fired.

The involved officers did not provide voluntary statements, but they were equipped with body worn video cameras. Involved Officer 1's camera shows him approaching the Butrick home and moving the home's occupants toward the other officers. Involved Officer 1 moves behind his patrol car and an officer is overheard saying, "he turned off the lights, too" referring to Butrick. Involved Officer 1 uses his radio to see if a Civilian 1 can be connected to Butrick via telephone. In addition, the officers discuss moving further back to give space. An officer is heard mentioning where the laser came from, and the officers move back behind a vehicle that is

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.

further away. Officers duck down in response to seeing the laser again and an officer yelled, “Show us your hands!” three times. The officer states, “Do you have a shot? He poked his head out and went back in.” Soon after three gunshots are heard, followed by a significant number of gunshots.

Involved Officer 2 was also equipped with a body worn video camera. After he arrives, he tells the other officers that he responded to a previous incident where Butrick shot himself in the chin. Moments later, Involved Officer 2 states, “He is coming out of the front door with a rifle in his hands.” Approximately 8 seconds later, gun shots are heard on the video.

One of the responding officers noted that Butrick fell to the ground, but the officers could not see him after the shooting ended. Officers waited for SWAT to arrive so that a drone could confirm whether the inside of the home was safe. Butrick was in the entry way of the home, with a rifle lying across his chest. He was pronounced deceased at the scene.

The Washington State Patrol Crime Laboratory processed the firearms involved in this incident. The lab reported that, based on the shell casings found, Butrick fired his rifle at least seven times. In addition, an AR-style pistol was in the living room, a Glock handgun was in Butrick’s back pocket, and another Glock was in the bedroom.

E. LEGAL STANDARD AND APPLICABLE LAW

The State must prove each element of a criminal charge by competent evidence beyond a reasonable doubt.⁸ 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.⁹

⁸ RCW 9A.04.100; WPIC 4.01.

⁹ KCPAO Filing and Disposition Standards.

In addition, the State must disprove the existence of a defense that negates an element of the crime.¹⁰ 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.¹¹ Therefore, the State may be required to disprove one or more of the following defenses:

- Justifiable Homicide by Peace Officer;¹²
- Justifiable Homicide Defense of Self or Others;¹³

This incident occurred on November 8, 2021; therefore, the applicable Justifiable Homicide by a Peace Officer instruction would require the State to prove the officer acted without good faith.¹⁴

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

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

F. ANALYSIS AND CONCLUSION

Under the KCPAO filing standards, "Homicide cases will be filed if sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense

¹⁰ WPIC 14.00.

¹¹ Id.

¹² RCW 9A.16.040; WPIC 16.01.

¹³ RCW 9A.16.050(1); WPIC 16.02.

¹⁴ The former version of WPIC 16.01, which included the malice standard, is applicable to offenses committed on or prior to December 6, 2018. The current version of WPIC 16.01, which removed malice and applied the good faith standard, is applicable to offenses committed on or after February 4, 2019. There are no pattern jury instructions for offenses committed between December 7, 2018, and February 3, 2019.

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.”

Law enforcement officers are justified in using deadly force when necessarily used in good faith to overcome actual resistance to the execution of the legal process, mandate, or order of a court or officer, or in the discharge of a legal duty; or to apprehend a person who the officer reasonably believes has committed or is committing a felony and the officer has probable cause to believe that the suspect poses a threat of serious physical harm to the officer or others if not apprehended.¹⁵ "Good faith" is an objective standard which considers 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 file charges against Involved Officer 1, Involved Officer 2, and Involved Officer 3 for their actions in this case, the State would need to prove beyond a reasonable doubt that the officers were not acting in good faith in using deadly force in this situation. In other words, the State must prove that a reasonable, similarly situated officer would not have believed that the use of deadly force was necessary in this situation.

The admissible evidence shows to the contrary. The involved officers were acting in accordance with their duties as police officers in responding to the dispatch of a 911 call for a domestic disturbance. Upon arrival at the scene, officers spoke with Civilian 1 and determined correctly that they had probable cause to arrest Butrick for Assault 4 DV. Officers were also aware of Butrick's access to firearms. Officers attempted to call Butrick out of the home with his hands in the air. Butrick appeared at the door briefly and then went back inside. Officers continued to yell “show us your hands.” Butrick then pointed the rifle out the window with the laser activated. Butrick then reappeared at the front door and discharged his rifle at officers. In response, the officers discharged their weapons. It is unclear based on the body worn video alone

¹⁵ RCW 9A.16.040

who fired first. Therefore, at this time, there is insufficient evidence to overcome the State's burden to prove that the officers were not¹⁶ acting in good faith.

In addition, any person is justified in using deadly force when used in the lawful defense of the slayer or another when there is reasonable ground to apprehend a design on the part of the person slain to commit a felony or to do some great personal injury to the slayer or to any such person, and there is imminent danger of such design being accomplished; or in the actual resistance of an attempt to commit a felony upon the slayer, in his or her presence, or upon or in a dwelling, or other place of abode, in which he or she is.

To file charges against Involved Officer 1, Involved Officer 2, and Involved Officer 3 for their actions in this case, the State would need to prove beyond a reasonable doubt that the officers were not acting in self-defense or defense of others in this situation.

The admissible evidence shows that the officers were acting in defense of self or others in this case, where a subject who was being contacted for a domestic assault appeared at his doorway and began firing shots from a rifle out into a crowded street and towards other neighborhood homes. Therefore, at this time, there is insufficient evidence to overcome the State's burden to prove that the officers were not acting in defense of self or others.

G. RECOMMENDATION FOR INQUEST

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

¹⁶ RCW 9A.16.050

Attachment A

WPIC 16.01 - Justifiable Homicide by a Peace Officer

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

Homicide or the use of deadly force is justifiable:

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

2) when necessarily and in good faith used by a peace officer or person acting under the officer's command and in the officer's aid to arrest or apprehend a person who the officer reasonably believes has committed, has attempted to commit, is committing, or is attempting to commit a felony. In considering whether to use deadly force to arrest or apprehend any person for the commission of any crime, a peace officer must have probable cause to believe that the suspect, if not apprehended, poses a threat of serious physical harm to others. Among the circumstances that may be considered by a peace officer as a "threat of serious physical harm" are the following: (a) The suspect threatens a peace officer with a weapon or displays a weapon in a manner that could reasonably be construed as threatening; or (b) There is probable cause to believe that the suspect has committed any crime involving the infliction or threatened infliction of serious physical harm. ~~Under these circumstances deadly force may also be used if necessary to prevent escape from the officer, when, if feasible, some warning is given.~~

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

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

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

WPIC 16.05 – Necessary

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

WPIC 16.02 – Justifiable Homicide – Defense of Self and Others

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

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

- (1) the slayer reasonably believed that the person slain intended to commit a felony¹⁷ or to inflict death or great personal injury;
- (2) the slayer reasonably believed that there was imminent danger¹⁸ 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.

¹⁷ 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).

¹⁸ 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 felony¹⁹ 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.

¹⁹ 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)