

Use of Force Fatality of
Terry Caver

Seattle Police Department
Force Investigation Team 2020FIT-0009



King County Prosecuting Attorney
Public Integrity Team

September 17, 2024



DECLINE MEMORANDUM

Law Enforcement Use of Deadly Force Fatality Regarding Terry Caver

September 17, 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 officer 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 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.

⁵ Executive Order PHL 7-1-5 EO.

⁶ Id.

II. OVERVIEW

On May 19, 2020, Seattle Police Department officers responded to 911 calls that Terry Caver threatened two separate individuals with a knife. When officers arrived, they pursued Caver on foot and ordered him to drop the knife, but he did not comply. During the foot pursuit Caver began running, stopped, and quickly turned toward an officer while armed with the knife. Two officers discharged their handguns at Caver. Officers administered life saving efforts, but Caver died as a result of his injuries.

III. INVESTIGATION AND EVIDENCE

1. Force Investigation Reviews
2. Seattle Police Reports – 2020-165221
3. Body Worn Video
4. In-Car Video
5. Other Video
6. Witness Officer Statements
7. Civilian Witness Statements
8. Audio
9. Photos
10. Subject Information
11. Crime Scene Investigation
12. Evidence and Lab Reports
13. Medical Examiner Reports
14. Involved Officer Information
15. Witness Officer Information
16. Training Assessment Records
17. 911 and Radio
18. Computer Aided Dispatch
19. Miscellaneous
20. Communications

IV. **INVESTIGATION SUMMARY**⁷

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

The following information is based upon witness observations, the Seattle Police Department (SPD) computer aided dispatch (CAD) report, recorded police radio, 911 recordings, body worn video (BWV) cameras, and in-car video (ICV) cameras from May 19, 2020.

At approximately 3:20 pm, Civilian Witness 1 called 911 to report that a male, later identified as Terry Caver, ran towards him near the intersection of W Mercer St. and Elliott Ave W, brandished a knife, and told Civilian Witness 1 to “Stay the fuck away from me!” Civilian Witness 1 told the 911 operator that Caver continued running southbound on Elliott Ave W. Multiple SPD officers were dispatched to the scene to investigate. Civilian Witness 2 also called 911 and reported that Caver approached him with a six to eight inch kitchen knife in his hand and said, “You’re one of them aren’t you, motherfucker!” Caver ran towards Civilian Witness 2 and Civilian Witness 2 immediately turned around and ran away because he believed that Caver intended to stab him. After running for two blocks, Civilian Witness 2 turned around and did not see Caver, so he called 911.

Witness Officer 1 heard the information provided by the SPD dispatcher and drove to the area where Caver was last seen. As he arrived, he observed Caver walking and he noted that Caver’s fists were clenched and he appeared upset. Witness Officer 1 notified officers via his radio that he observed Caver. Witness Officer 1 saw Involved Officer 1 arrive and exit his vehicle with his K9. Witness Officer 1 and Involved Officer 1 ordered Caver to stop, but he refused their commands and said, “You’re going to have to kill me.” Caver ran from the officers while throwing a jacket at Involved Officer 1. When Caver threw the jacket, the officers

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.

observed he had a knife in his hand, which they ordered him to drop. Involved Officer 2 deployed his taser at Caver from approximately five to ten feet away, but it was not effective. After Involved Officer 2 deployed the taser, he was in front of Witness Officer 1 and Involved Officer 1 was approximately three to four feet left of Witness Officer 1. Witness Officer 1 observed Caver holding the knife in his right hand. Caver quickly turned towards Involved Officer 1 while making a slashing motion with the knife towards Involved Officer 1 and his K9. Witness Officer 1 had his firearm in the low ready position, and as Caver moved towards Involved Officer 1, Witness Officer 1 observed Involved Officer 1 discharge his firearm three to four times at Caver. Witness Officer 1 heard another officer discharge their handgun, but he did not see which officer discharged their firearm. Caver fell to the ground, dropping the knife in his hand. As he fell to the ground another knife also fell from Caver. Officers retrieved medical supplies and began to provide medical aid to Caver.

Witness Officer 3 was among the officers pursuing Caver on foot. During the pursuit, Witness Officer 3 saw Caver holding a large knife, which was originally under a blue jacket. She also observed Involved Officer 2's unsuccessful attempt to stop Caver with a taser. Subsequently, she observed Caver quickly turn in the direction of the pursuing officers, followed by the sound of gunshots.

When Witness Officer 4 arrived in the area, he heard another officer announce over the radio that they saw Caver. Witness Officer 4 responded to that location and observed Caver walking southbound. He also observed Involved Officer 1 arrive and retrieve his K9. As Witness Officer 4 exited his patrol vehicle, he estimated that Caver was seventy-five to one hundred feet south of his location. Additionally, he heard officers giving Caver commands, but he could not hear the specific commands. As Witness Officer 4 joined the other officers on foot, Caver began running southbound. Witness Officer 4 was a few steps behind the other officers, and he heard Involved Officer 2 and Involved Officer 1 giving Caver commands, which he did not obey. After pursuing Caver for approximately thirty feet, Witness Officer 4 heard an officer deploy their taser, but it did not stop Caver who continued running. Witness Officer 4 saw Caver suddenly turn towards the officers that were pursuing him while he held a large knife, which Witness Officer 4 estimated was eight to ten inches long. Witness Officer 4 described Caver as holding the knife in his hand with the blade facing downwards, like a slashing downward motion.

Witness Officer 4 noted that when Caver turned towards the officers, he was within fifteen feet and it was his belief that Caver intended to harm the officers. Witness Officer 4 moved to the left so that the other officers were not in his line of sight, but another officer discharged their firearm. Witness Officer 4 approached Caver with other officers and removed the knife from the area where Caver fell.

As Witness Officer 5 drove to the area, she heard an officer announce over the radio that they saw Caver. Witness Officer 5 responded to that officer's location and saw Caver running away from officers who pursued Caver on foot. Witness Officer 5 heard the officers yelling, "Stop! Stop!" As Witness Officer 5 attempted to cut off Caver's path with her patrol vehicle, she observed that he was carrying a large knife in his hand. Witness Officer 5 observed Caver quickly turn around and move towards the officers who were behind him, which allowed Caver to shorten the distance between himself and the officers very quickly. As Witness Officer 5 observed Caver moving, she heard gunshots and observed Caver fall to the ground. Witness Officer 5 retrieved her first aid kit so that the officers could provide medical aid to Caver until medics arrived. When medics arrived, they took over providing medical care and transported Caver to an ambulance, but they later pronounced him deceased.

2. Independent Investigation Conducted by the Seattle Police Department

As other officers arrived, the police secured the incident scene and rerouted traffic away from the area. The Seattle Police Department Force Investigation Team (FIT) was requested to respond to the scene and to conduct an independent investigation. SPD Investigator 1 was assigned as the lead investigator. FIT divided assignments between themselves and began to process the incident scenes.

3. Processing of the Officers

As part of standard practice, FIT determined which officers used force. Investigators determined that Involved Officer 1 and Involved Officer 2 discharged their handguns.

Regarding Involved Officer 1, FIT reported that his handgun contained one unfired cartridge in the chamber, thirteen unfired cartridges in the magazine, and that the magazine could hold seventeen cartridges. Involved Officer 1's spare magazines were loaded with seventeen

unfired cartridges and could hold seventeen cartridges. If Involved Officer 1 filled his loaded magazine to capacity with an additional cartridge in the chamber, his handgun was loaded with eighteen cartridges, which would indicate that he discharged four rounds.

Regarding Involved Officer 2, FIT reported that his handgun contained one unfired cartridge in the chamber, twelve unfired cartridges in the magazine, and that the magazine could hold sixteen cartridges. Involved Officer 2's spare magazines were loaded with sixteen unfired cartridges and could hold sixteen cartridges. If Involved Officer 2 filled his loaded magazine to capacity with an additional cartridge in the chamber, his handgun was loaded with seventeen cartridges, which would indicate that he discharged four rounds.

4. Civilian Witnesses

a. Civilian Witness 1

As previously stated, Civilian Witness 1 called 911 because he was jogging and Caver approached him with a knife and stated, "Stay the fuck away from me." Civilian Witness 1 reported to one of the responding SPD officers that Caver initially approached him by jumping over a chain link fence and running after Civilian Witness 1. Civilian Witness 1 responded by jumping into the street to get out of the way. Civilian Witness 1 reported he saw Caver continue walking down the street while brandishing the knife towards two females. He agreed to stay at the scene to answer additional questions from investigators.

While Civilian Witness 1 waited to be interviewed, officers observed another male approach Civilian Witness 1 and yell at him "Why didn't you just keep running? Why did you stop to engage him? What did you say?" The officers heard Civilian Witness 1 respond, "What? I don't understand, he confronted me. I didn't say anything." Officers told the male that he should speak with one of the officers if he observed what occurred. The male responded, "I'm not speaking to you. I'm speaking to him (pointing at Civilian Witness 1). I'm not interested in talking to Seattle PD." Given that Civilian Witness 1 appeared uncomfortable with the confrontation, the officers offered to have an officer speak with the male or suggested that he walk away from the area, but the male refused.

An officer began to escort Civilian Witness 1 away, but the male stood in front of Civilian Witness 1 and said "You don't look like a runner. In fact, you don't look like you've

ever run a day in your life. You should have kept running. What did you say to him? There wouldn't be a dead man down there. You realize there's a dead man down there now, right?" Officers observed that Civilian Witness 1 was noticeably uncomfortable with the male's accusations, so they offered to transport him to his home, which Civilian Witness 1 accepted.

Civilian Witness 1 provided a follow-up interview to FIT investigators. He reported that while he was running, he had Air Pods in his ears and he was listening to music, but he heard someone behind trees yelling, "Stay the fuck away from me. Stay the fuck away from me. Get the fuck away from me. I'll fucking kill you." Civilian Witness 1 removed his Air Pods and observed Caver emerge from the trees and move towards Civilian Witness 1's location. Caver began to "lurch" at Civilian Witness 1 while holding a knife, which he swung towards Civilian Witness 1 from approximately three to five feet away. Civilian Witness 1 moved onto the street to get away from Caver and continued running past Caver. As he was running, he put one of his Air Pods back in his ear and called 911.

b. Civilian Witness 3

Civilian Witness 3 reported to officers that he was in a first-floor conference room in a building located at 300 Elliott Ave W when he noticed several SPD patrol cars arrive with their lights and sirens activated. He observed a male walking down the street with a jacket slung around his arm, but he could not see if there was anything in the male's hands. He stated that SPD officers converged around the male in an arc, and he heard the officers order the male to get down on the ground, but the male continued to walk away at a faster pace. He estimated there were approximately six officers within eight to ten feet of the male. He observed an officer deploy a Taser, but the male continued to walk away. The male appeared to "bolt" across Elliott Ave W, drop his jacket, and Civilian Witness 3 saw there was a large object, approximately one foot long, in the male's hand. Civilian Witness 3 observed the male turn around, raise his arms in what looked like a fighting stance, and look towards the officers prior to sprinting at the officers. Civilian Witness 3 then heard and saw officers discharge their handguns approximately six times at the male.

c. Civilian Witness 4

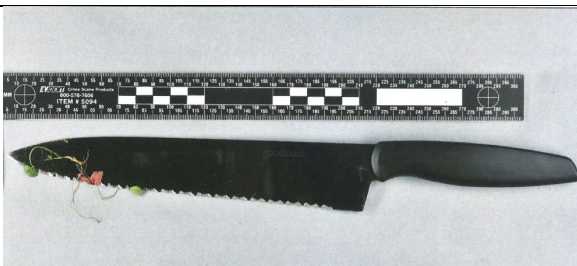
Civilian Witness 4 reported to officers that he was employed at the front desk area in one of the buildings near the incident scene. He looked outside when he saw police cars with their lights activated. He observed a male running down the street followed by uniformed officers. Civilian Witness 4 reported that the male stopped suddenly and made “a turning motion” towards the officers that were pursuing him. Civilian Witness 4 reported that officers were yelling at the male, but he could not hear specifically what they said. Next, Civilian Witness 4 heard four to five gunshots and observed the male fall to the ground. Given the cadence of the gunshots, Civilian Witness 4 believed that multiple officers discharged their firearms.

d. Civilian Witness 5

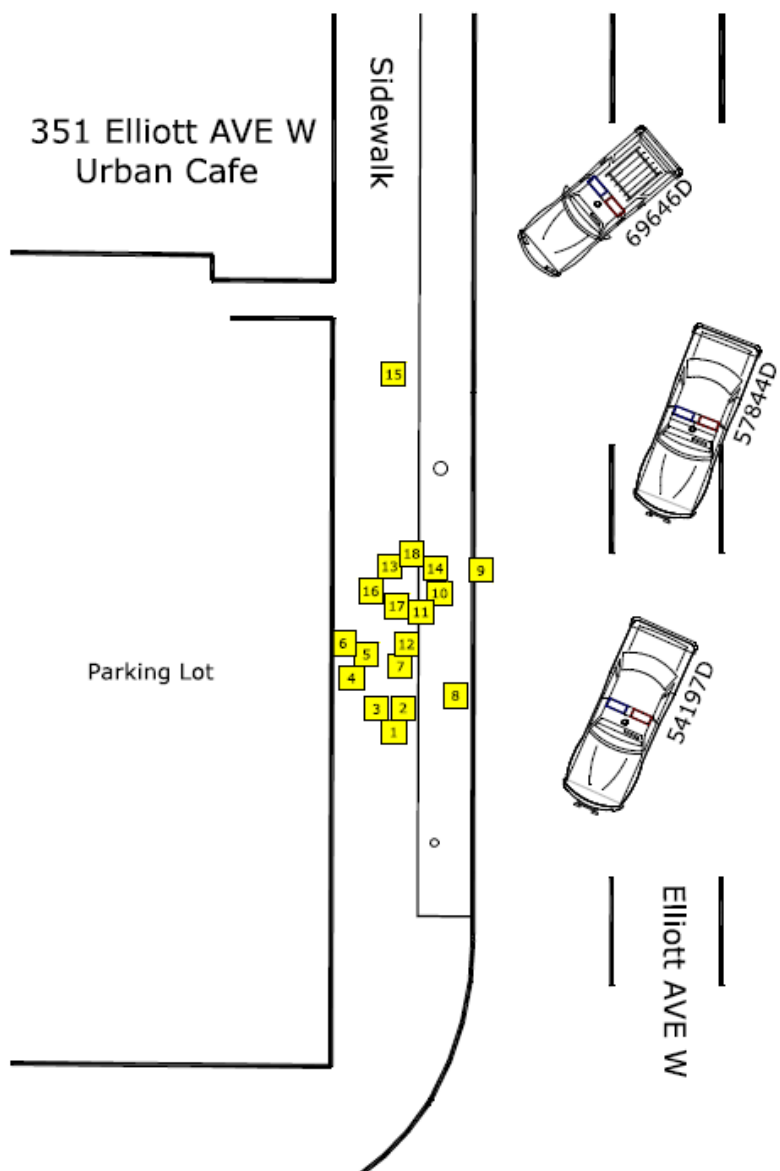
Civilian Witness 5 reported to officers that he observed Civilian Witness 1 jogging when Caver began walking toward Civilian Witness 1. He described Civilian Witness 1 as “minding his own business” and described Caver as upset, possibly under the influence of something, and yelling. As Caver approached, Caver started yelling “Get away from me!” Civilian Witness 5 observed that Caver had an unknown object in his hand. The object was silver, fourteen to eighteen inches long, and pointed upwards. Civilian Witness 5 observed Civilian Witness 1 jump out of the way and into the street before continuing northbound.

5. Crime Scene Investigation

FIT investigators conducted a crime scene investigation, documented the location of various items that appeared to have evidentiary value, and collected various items as evidence. Investigators collected eight fired cartridge casings that were believed to come from the involved officers when they discharged their handguns. Investigators also collected Involved Officer 2’s Taser and four Taser probes. One of the probes was recovered from Caver’s jeans. Investigators also collected and photographed the two knives that Caver possessed during the use of force.



300 Block Elliott AVE W Scene Closeup



Evidence Legend	
1	FCC "SPEER 9MM LUGER +P"
2	FCC "SPEER 9MM LUGER +P"
3	FCC "SPEER 9MM LUGER +P"
4	FCC "SPEER 9MM LUGER +P"
5	FCC "SPEER 9MM LUGER +P"
6	FCC "SPEER 9MM LUGER +P"
7	Taser
8	Chef Knife
9	Folding Knife
10	Wallet
11	Clothing
12	Boot (Left)
13	Boot (Right)
14	Clothing
15	Jacket
16	FCC "SPEER 9MM LUGER +P"
17	FCC "SPEER 9MM LUGER +P"
18	Blood Swab

6. Video Evidence

The foot pursuit and use of force was captured by several body worn cameras (BWV) worn by the SPD officers, including Involved Officer 1's camera. Relevant screenshots from Involved Officer 1's BWV are included in this memorandum.



Figure 1 - Screenshot from Involved Officer 1's BWV the moment Caver threw his jacket and revealed the knife in his left hand.



Figure 2 - Screenshot from Involved Officer 1's BWV when Involved Officer 2 discharged his taser at Caver.



Figure 3 - Screenshot from Involved Officer 1's BWV showing Caver raising the knife. Involved Officer 1's K9's ears are seen in the lower left of the screenshot.



Figure 4 - Screenshot from Involved Officer 1's BWV showing the moment Caver changed directions and began running towards the officers.



Figure 5 - Screenshot from Involved Officer 1's BWV showing Caver making a slashing movement towards Involved Officer 1.

7. Medical

The King County Medical Examiner's Office performed an autopsy of Caver, which opined the cause of death is multiple gunshot wounds sustained in a confrontation with police and the manner of death is homicide.⁸ The Washington State Patrol Toxicology Laboratory performed a drug analysis of Caver's blood. The results showed that Caver's blood tested positive for methamphetamine (.10 mg/L).

8. Administrative Review

SPD FIT policies require a sergeant, a lieutenant, and a captain to review the investigation, which included compelled statements of the involved officers. They identified potential training issues to be addressed regarding whether Involved Officer 1 should have deployed his K9 as a less lethal option or to lessen the risk to officers. Additionally, they noted potential training issues to be addressed regarding whether the pursuing officers created a potential crossfire situation and whether the officers should have maintained a greater distance that would have allowed for more reaction time and options when Caver turned back towards the officers.

9. Seattle Office of Police Accountability

The Seattle Office of Police Accountability (OPA) also conducted an investigation, which relied upon compelled statements. The OPA investigation evaluated whether Witness Officer 1 and Involved Officer 1 failed to properly de-escalate and whether Involved Officer 1 improperly used deadly force.⁹

After the FIT investigation concluded, the case was reviewed by the SPD Force Review Board (the Board). The Board raised concerns that Involved Officer 1 did not maintain distance

⁸ 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.

⁹ The OPA investigation refers to officers as "Named Employee #1" and "Named Employee #2." While Witness Officer 1 and Involved Officer 1 are not expressly named in the OPA report, their roles are apparent based on the content of the OPA report. Involved Officer 2 was no longer employed by SPD at the time of the OPA investigation, so the portion of the investigation that pertains to him remains open and there was no analysis of his actions by OPA.

from Caver, that he did not use his patrol vehicle for cover, and that he only used commands rather than trying to communicate with Caver. The Board also found that Involved Officer 2 was not aware of his backdrop when he discharged his firearm and was positioned in a manner that created a possibility of crossfire.

Regarding Witness Officer 1, OPA determined that the allegation that he failed to de-escalate was not sustained. OPA opined that because he was alone in his patrol vehicle and traveling to the scene, it was not feasible for Witness Officer 1 to engage in any tactical planning or to create a contact team. Additionally, OPA noted that Witness Officer 1 rushed towards Caver after exiting his patrol vehicle to provide backup and safety to the other officers, not to go hands-on or make contact with Caver.

Regarding Involved Officer 1, OPA determined the allegation that he failed to de-escalate was sustained. OPA opined that Involved Officer 1 did not avail himself to time, distance, or shielding; did not apply appropriate tactics or engage in tactical planning; did not use other communication styles with Caver; and that his actions sped the incident up and made the use of force more likely. However, OPA determined that the allegation that Involved Officer 1 improperly used deadly force was not sustained. Although Involved Officer 1 failed to de-escalate, OPA noted that he “could not have predicted, of the continuum of acts [Caver] might engage in, [Caver] would stop mid-run, turn around, and lunge towards [Involved Officer 1] while slashing the knife.” Further, OPA noted “once that occurred, [Involved Officer 1] was allowed to act to prevent himself from being stabbed and potentially killed.” In conclusion, OPA recommended various management actions for additional training of officers when faced with scenarios like this incident.

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.¹⁰ The KCPAO will file charges if sufficient admissible evidence exists, which,

¹⁰ RCW 9A.04.100; WPIC 4.01.

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.¹¹

In addition, the State must disprove the existence of a defense that negates an element of the crime.¹² 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.¹³ Therefore, the State may be required to disprove one or more of the following defenses:

- Justifiable Homicide by Peace Officer;¹⁴
- Justifiable Homicide Defense of Self or Others;¹⁵
- Justifiable Homicide Resistance to Felony;¹⁶

2. Applicable Law

This incident occurred on May 19, 2020; therefore, the applicable Justifiable Homicide by a Peace Officer instruction would require the State to prove the officer acted without good faith.¹⁷

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 Officer¹⁸
- Necessary¹⁹
- Justifiable Homicide – Defense of Self and Others²⁰

¹¹ KCPAO Filing and Disposition Standards.

¹² WPIC 14.00.

¹³ Id.

¹⁴ RCW 9A.16.040; WPIC 16.01.

¹⁵ RCW 9A.16.050(1); WPIC 16.02.

¹⁶ RCW 9A.16.050(2); WPIC 16.03.

¹⁷ 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."

¹⁸ WPIC 16.01.

¹⁹ WPIC 16.05.

²⁰ WPIC 16.02.

- Great Personal Injury²¹
- Justifiable Homicide – Actual Danger Not Necessary²²
- Justifiable Homicide – Resistance to a Felony²³

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 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 is justifiable when necessarily used by a peace officer meeting the good faith standard 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.²⁴ Similarly, deadly force is also 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.²⁵

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,

²¹ WPIC 2.04.01.

²² WPIC 16.07.

²³ WPIC 16.03.

²⁴ RCW 9A.16.040(1)(b); WPIC 16.01.

²⁵ RCW 9A.16.040(1)(c)(i); WPIC 16.01.

if not apprehended, poses a threat of serious physical harm to the officer or a threat of serious physical harm to others.²⁶ 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.²⁷

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.²⁸ 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.²⁹

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.³⁰ “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.”³¹

b. Analysis Regarding Justifiable Homicide by a Peace Officer

First, the evidence from the FIT investigation showed there was probable cause for the involved officers to believe that Caver committed or was in the process of committing a felony. Specifically, based on the information the involved officers received as they responded to the

²⁶ RCW 9A.16.040(2).

²⁷ *Id.*

²⁸ RCW 9A.16.040(4).

²⁹ RCW 9A.16.010; WPIC 16.05.

³⁰ *Graham v. Connor*, 490 U.S. 386, 396, 109 S. Ct. 1865, 1872, 104 L. Ed. 2d 443 (1989).

³¹ *Id.* 490 U.S. at 396-97.

scene, there was probable cause to believe that Caver committed felony harassment and felony assault by threatening Civilian Witness 1 and Civilian Witness 2 with a knife. Further, when Caver turned and made a slashing motion towards Involved Officer 1, probable cause existed for felony assault.

Second, the evidence in the FIT investigation showed there was probable cause to believe that Caver, if not apprehended, posed a threat of serious physical harm to the officer or others. As the involved officers arrived at the scene, they were aware that Caver threatened two individuals with a knife, which resulted in two separate 911 calls. Whether Caver ultimately intended to assault Civilian Witness 2, Civilian Witness 1, or other civilians is unknown. However, Caver's refusal to comply with the officers' commands, throwing his jacket at Involved Officer 1, and running likely increased the officers' concerns that Caver would harm someone. Additionally, when Caver quickly turned around and slashed towards Involved Officer 1, it was reasonable for the involved officers to perceive Caver's actions as a threat of serious physical harm to Involved Officer 1 and others.

Third, the evidence in the FIT investigation showed that the involved officers used deadly force with a good faith belief that their actions were necessary to prevent death or serious physical harm to the officers or other individuals. For instance, the evidence supports that Involved Officer 2 used his taser, a less lethal alternative, but it had no effect on Caver. While Involved Officer 1 could have deployed his K9, it is likely the evidence would show that deploying a K9 against an individual armed with a knife could increase the risk that the individual would stab the K9, which would further complicate the officer's ability to gain compliance over the individual.

The OPA investigation, the Board, and the administrative review appropriately focused on whether the officers, specifically Involved Officer 1, failed to de-escalate. Testimony regarding de-escalation techniques and training would be a focal point in a potential prosecution. However, even assuming an expert witness opined that Involved Officer 1 failed to follow these proper techniques and training regarding de-escalation, the jury must evaluate his actions in the context of the actual situation. Indeed, the OPA investigation acknowledged the tension between policy and adhering to policy in real world application.

Officers are regularly placed in incredibly difficult and fast-moving situations. This can include, as was seen here, individuals who are armed and who may be in crisis or otherwise impaired. Officers have seconds to make a decision, and it is not an exaggeration to say that these decisions are the difference between life or death.

Assuming *arguendo* a jury agreed that either Involved Officer 1 or Involved Officer 2 failed to comply with SPD de-escalation policies, it is likely that a jury would agree that none of the officers could have predicted that Caver would suddenly stop running, turn around, and lunge towards Involved Officer 1 while slashing the knife. As OPA correctly noted, “. . . once that occurred, [Involved Officer 1] was allowed to act to prevent himself from being stabbed and potentially killed.” By extension, Involved Officer 2 was similarly allowed to use deadly force to protect the threat of physical harm toward Involved Officer 1.

Therefore, based on the admissible evidence, which is corroborated by several witnesses including video evidence, 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

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.³² 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.³³

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

³² RCW 9A.16.050(1); WPIC 16.02.

³³ WPIC 2.04.01.

will be carried out.”³⁴ 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.³⁵

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

As stated earlier, the involved officers possessed information that Caver was armed with a knife and recently threatened two individuals. Additionally, they observed Caver ignore officers’ commands and slash towards Involved Officer 1 while armed with the knife. Based on this information Involved Officer 1 was permitted to take action to protect himself and Involved Officer 2, similarly, was permitted to take action to protect Involved Officer 1.

Therefore, based on the admissible evidence, which is corroborated by several witnesses including video evidence, 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.³⁶ 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

³⁴ WPIC 16.02.

³⁵ WPIC 16.07.

³⁶ Executive Order PHL 7-1-5 EO.

agency might have contributed to an individual's death."³⁷ 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.

The King County Executive, however, shall determine whether an inquest will be held.³⁸ 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.³⁹

³⁷ King County Charter § 895.

³⁸ Executive Order PHL 7-1-5 EO.

³⁹ Id.

Prosecuting Attorney

King County

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Attachment A

WPIC 16.01 - Justifiable Homicide by a Peace Officer

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

Homicide or the use of deadly force is justifiable:

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

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

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

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

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

WPIC 16.05 – Necessary

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

WPIC 16.02 – Justifiable Homicide – Defense of Self and Others

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

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

(1) the slayer reasonably believed that the person slain intended to commit a felony⁴⁰ or to inflict death or great personal injury;

(2) the slayer reasonably believed that there was imminent danger⁴¹ 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.

⁴⁰ 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).

⁴¹ 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 felony⁴² 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.

⁴² 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)