

Use of Force – Fatality of  
**Fuhr, Shaun**

Seattle Police Department  
Force Investigation Team #2020FIT-0007



King County Prosecuting Attorney  
Public Integrity Team

February 21, 2024

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PROSECUTING ATTORNEY



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**DECLINE MEMORANDUM**

February 21, 2024

Law Enforcement Use of Force Fatality Regarding:

Shaun Fuhr

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## **I. INTRODUCTION**

### **1. Purpose of the Memorandum**

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

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

Additionally, the KCPAO shall inform the King County Executive whenever the investigation into a death involving a member of any law enforcement agency in King County is complete and also advise whether an inquest should be initiated in accordance with the King County Charter.<sup>5</sup> There shall be an inquest into the manner, facts, and circumstances of any death of an individual where an action, decision, or possible failure to offer the appropriate care by a member of any law enforcement agency might have contributed to an individual's death

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

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

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

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

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

unless the County Executive determines, based on a review of the investigation, that the role of law enforcement was de minimis and did not contribute in any discernable way to a person's death.<sup>6</sup>

**2. Scope of the Memorandum**

The KCPAO's conclusions in this matter are limited to whether sufficient admissible evidence exists to support the filing of criminal charges and to disprove any applicable likely defenses beyond a reasonable doubt. Those conclusions are based entirely on the investigation materials provided to the KCPAO, relevant criminal laws, rules of evidence governing criminal proceedings, the applicable burden of proof, applicable jury instructions, and the KCPAO's Filing and Disposition Standards. The conclusions do not include a determination of whether the officers' actions were legally justified. This memorandum is also not intended to address matters outside the scope of our analysis including, but not limited to, an administrative action by the involved agency or any other civil action. The KCPAO expresses no opinion regarding the propriety or likely outcome of any such actions.

**3. Status of the Independent Investigation**

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

**II. OVERVIEW**

On April 29, 2020, Seattle Police Department officers responded to the Rainier Playfield in response to 911 calls that Shaun Fuhr had assaulted and recently fired a gun at Civilian Witness 1 in front of their young child. Fuhr took their child and ran from the playfield. Fuhr entered a nearby home that was under construction, but he fled still holding the child, and he refused officers' commands to stop. Officers chased after Fuhr and when they turned the corner

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<sup>6</sup> Id.

into a common driveway, an officer discharged his rifle once at Fuhr, striking him. Officers and medics provided aid, and Fuhr was transported to a hospital, but he was deceased.

**III. INVESTIGATION AND EVIDENCE**

1. Force Investigation Reports
2. Officer Reports
3. Civilian Statements
4. Crime Scene Investigation
5. Search Warrants
6. Medical, Autopsy, and Toxicology
7. CAD/MDT
8. 911 Call and Radio
9. Audio
10. Body Worn Video
11. In-Car Video
12. Other Video
13. Photo
14. Miscellaneous

**IV. INFORMATION BEFORE AND DURING THE USE OF FORCE**

On April 29, 2020, Seattle Police Department (SPD) officers were dispatched to the Rainier Playfield in response to 911 calls regarding a male, later identified as Shaun Fuhr (Fuhr) and a female, later identified as Civilian Witness 1. At approximately 2:12 pm, Civilian Witness 2 called 911 to report that a Fuhr and Civilian Witness 1 were in an altercation, that he saw Fuhr in possession of a firearm, that he told Civilian Witness 1 to run away, and that Fuhr was with a young child. Additionally, he provided a description of Fuhr and Civilian Witness 1.

Approximately four minutes later, Civilian Witness 1 called 911 and reported that Fuhr took her child, he was intoxicated, he had beaten her, and there was a no-contact order in place. Civilian Witness 1 also stated that Fuhr was in possession of a firearm, which he shot at her in the playfield.

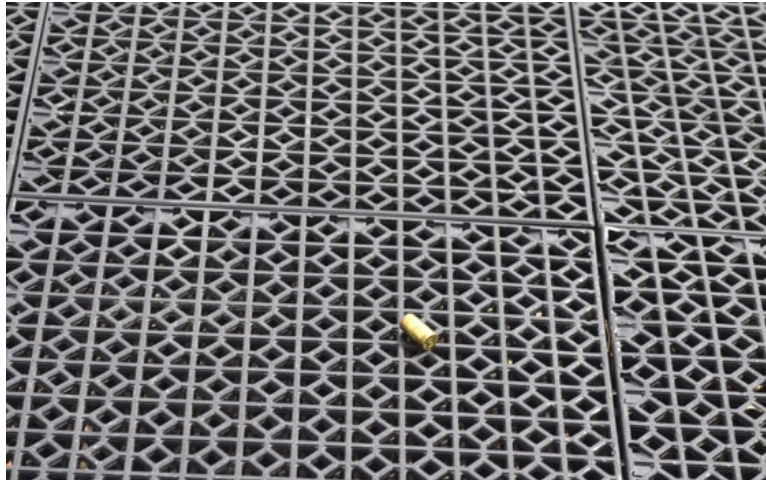
Witness Officer 1 arrived first, and Civilian Witness 1 approached him. He observed that Civilian Witness 1 was crying, shaking, and she appeared scared. He observed that her face was swollen, her arms were bruised, her hair had been ripped out, and a large tuft of hair was hanging on her shoulder. Civilian Witness 1 stated, "He has a gun and tried to shoot me in the park." In

addition to reporting that Fuhr was intoxicated and acting erratically, Civilian Witness 1 reported that he took their thirteen-month-old child with him.



*Figure 1 - Photograph of Civilian Witness 1's injured arm. Civilian Witness 1's other injuries, such as bruises on her face, were documented but are not included to protect her privacy.*

Civilian Witness 1 showed Witness Officer 1 where Fuhr shot at her, and Witness Officer 1 located a fired cartridge casing on a basketball court, which was later collected as evidence. Civilian Witness 1 also provided a description of Fuhr and their child. Witness Officer 1 used his radio to update other officers and the SPD dispatcher with the information Civilian Witness 1 reported.



*Figure 2 - Discharged cartridge casing found on basketball court.*

Based on the information he gathered from Civilian Witness 1, Witness Officer 1 requested officers to set a containment area of four to five blocks, requested a K9 officer, and had local bus routes notified in case Fuhr attempted to flee on a bus. He also requested the Seattle Fire Department respond to evaluate Civilian Witness 1's injuries. After medics examined Civilian Witness 1, they advised her to go to a hospital because her arm was likely broken. As this occurred Witness Officer 1 heard via his radio that a civilian alerted officers a person was breaking into nearby homes that were under construction, approximately four blocks north of the playfield.

Civilian Witness 1 brought Witness Officer 1 to her vehicle so she could charge her phone. When she opened the door, she showed him another fired cartridge casing, which appeared to be the same appearance and caliber of the casing found in the playfield.



*Figure 3 - Discharged cartridge casing found in Civilian Witness 1's vehicle.*

As other officers entered the containment area, it was broadcast over the radio that there was probable cause to arrest Fuhr for Domestic Violence Assault and Kidnapping. Additionally, the broadcast notified officers that Fuhr had discharged a firearm and was armed with a firearm when he fled with the child.

The SPD dispatcher notified officers that another 911 caller, identified as Civilian Witness 3, called to report that a suspect was breaking into houses under construction on the southeast corner of 37<sup>th</sup> Ave S and S Dakota St. Civilian Witness 3 also provided a description of the suspect and child, which matched the description Civilian Witness 1 provided.

Witness Officer 2 went to contain the building that Civilian Witness 3 described, and he saw Fuhr run from the back of the building into an alley. Witness Officer 2 ran southbound on 37<sup>th</sup> Ave S and heard a gunshot. He proceeded up the driveway of 4114 37<sup>th</sup> Ave S, entered the adjacent property through a fence and saw officers providing first aid to Fuhr. In Witness Officer 2's body worn video, audible commands from officers ordering Fuhr to stop are heard.

Witness Officer 3 also assisted in containing the home that Civilian Witness 3 described. An SPD SWAT officer requested that Witness Officer 3 and another officer coordinate to contain the building. As this occurred, Witness Officer 3 saw Fuhr running from their location. He yelled something to the effect of, "Police! Shaun, stop!" However, Fuhr continued running.



Witness Officer 3 attempted to cut off Fuhr’s path of escape, but as he was running, he heard a single gunshot. Witness Officer 3 went to the location where the shot was fired. He observed another officer carrying a child away and he saw officers providing first aid to Fuhr. Medics arrived and transferred Fuhr to Harborview Hospital, but he was pronounced deceased.

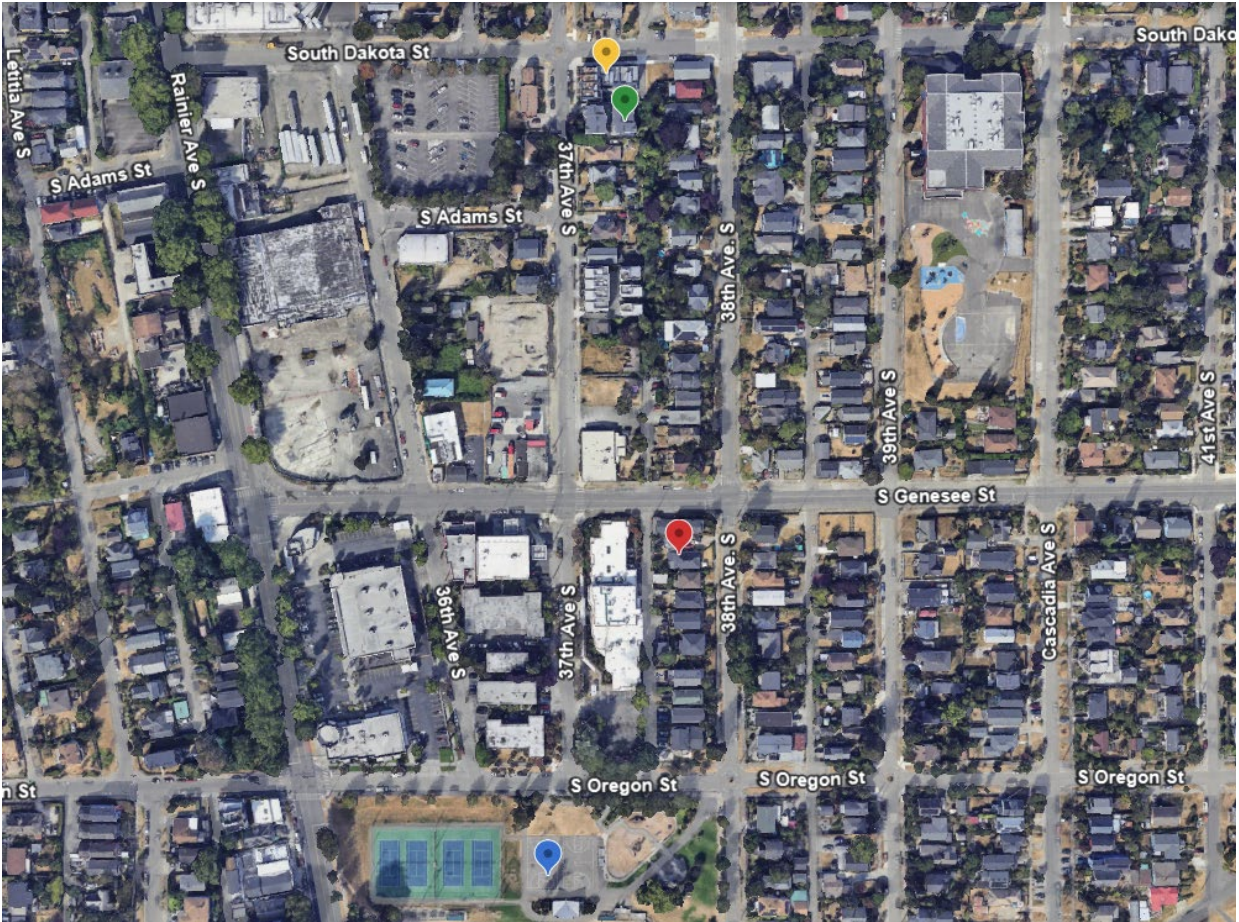


Figure 4 - Approximate area of Ranier Playfield (blue), the home under construction (yellow), the use of force location (green), and the location where a handgun was found (red).



Figure 5 - Photograph of 4104 37th Ave S (under construction) and the driveway between the two buildings.

**1. 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 SPD Force Investigation Team (FIT) was requested to respond to the scene and to conduct an independent investigation. Investigator 1 was assigned as the lead investigator and FIT investigators divided assignments between themselves to conduct the investigation.

**2. Processing of the Officers**

The FIT determined that Involved Officer 1 used his department-issued rifle during the use of force. As part of standard practice, FIT investigators processed Involved Officer 1 and his equipment. FIT investigators reported that his rifle contained one unfired cartridge in the chamber, twenty-eight unfired cartridges in the magazine, and that the magazine could hold thirty cartridges. Involved Officer 1's spare rifle magazine was loaded with twenty unfired cartridges and could hold twenty cartridges. If Involved Officer 1 filled his loaded magazine to

capacity, his rifle was loaded with thirty cartridges, which would indicate that he discharged one cartridge.

**3. Law Enforcement Witnesses**

a. Witness Officer 4

Witness Officer 4 provided a statement to FIT investigators. He reported that he was partnered with Involved Officer 1 and prior to being dispatched to this incident, they were located at the SPD SWAT office and heard via radio about a domestical violence incident involving a shot fired and a small child taken. Based on the information provided by dispatch, their sergeant requested they go to assist. While enroute, Witness Officer 4 was aware that there was probable cause to arrest the male suspect for felony assault and kidnapping and that approximately ten minutes earlier a civilian reported seeing the suspect enter a home that was under construction.

As he drove into the area, Witness Officer 4 noticed SPD officers and a K9 officer. He heard a request for SWAT officers to join the K9 officer, so he and Involved Officer 1 exited their vehicle with their rifles. Once the specific home under construction was identified, the officers began to formulate a containment plan by placing officers at different sides or corners of the building.



Figure 6 - Map showing building sides labeled as numbers.<sup>7</sup>

Witness Officer 4 was located at the southwest corner of the building (3/4 corner), and he saw a driveway on the south side of the building (3 side). Witness Officer 4 observed the K9 officers and two patrol officers north of building (1 side).

An officer motioned for Witness Officer 4 to move up to the 1/4 corner and he directed patrol officers to join Involved Officer 1 at the 3/4 corner, which they did. After those officers moved to the 3/4 corner, Witness Officer 4 heard, “Police! Stop!” near the 3/4 corner. He saw Involved Officer 1 and the patrol officers running east on the driveway of side 3, so Witness Officer 4 ran southbound towards the 3/4 corner and turned east into the driveway of side 3.

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<sup>7</sup> Construction of the buildings were completed at the time this Google Map image was taken.

Witness Officer 4 was approximately twenty feet behind the last patrol officer. The officers turned southbound off the driveway into a shared common driveway between two buildings. Witness Officer 4 saw Involved Officer 1 run eastbound out the common driveway, closely followed by the two patrol officers.

As Involved Officer 1 turned eastbound, Witness Officer 4 intended to order the patrol officers out of the way so that he run up to and assist Involved Officer 1 because SWAT officers have more extensive training in hostage situations. However, he heard a muffled gunshot before he could give that order. Witness Officer 4 recognized the muffled gunshot as coming from the type of rifle that he and Involved Officer 1 carried, so he believed that Involved Officer 1 discharged his rifle. As Witness Officer 4 rounded the corner where the use of force occurred, he saw Fuhr falling to the ground. Witness Officer 4 noted that Fuhr appeared to be facing Involved Officer 1, which led him to believe Fuhr ran into the alley and turned toward Involved Officer 1 prior to Involved Officer 1 discharging his rifle.

Involved Officer 1 directed Witness Officer 4 to pick up the child, which he did and passed the child to another officer. Other officers arrived within moments and began to provide aid to Fuhr. As this occurred, Witness Officer 4 noticed a fired cartridge casing that he believed came from Involved Officer 1's rifle, so he asked an officer to mark that item for evidence collection.

b. Witness Officer 5

Witness Officer 5 provided a statement to FIT investigators. He reported he was partnered with Witness Officer 6 and they assisted the K9 officer in the search from the playfield to the home under construction. During the track, he recalled that the officers were notified there was probable cause to arrest Fuhr for assault and kidnapping and that the assault involved a firearm.

He and Witness Officer 6 were directed to provide containment on the south side of the building. Once they arrived, he saw Involved Officer 1 raise his rifle, so Witness Officer 5 looked in that direction and saw Fuhr running eastbound. Witness Officer 5 withdrew his handgun and started to run with Involved Officer 1. They ran eastbound down a driveway, then turned southbound into the common driveway. Witness Officer 5 could not recall what facial

expressions Fuhr made, but he recalled the way that Fuhr held the child in his hand while he was running caused the child to flop around.

As they turned the corner, he reported that he and Involved Officer 1 yelled something to the effect of, "Police! Stop!" While they were running, Witness Officer 5 was next to Involved Officer 1's left shoulder, and he believed that Witness Officer 6 was shortly behind them. Within moments of turning the corner, he saw smoke come out of Involved Officer 1's rifle and saw Fuhr was struck underneath the left side of his jaw. Witness Officer 5 saw that Fuhr was facing Involved Officer 1 the moment force was used, and it appeared that Fuhr was trying to change his direction of travel, not that he was stopping.

c. Witness Officer 6

Witness Officer 6 provided a statement to FIT investigators. He reported he was partnered with Witness Officer 5, and they assisted the K9 officer in the search from the playfield to the home under construction. Witness Officer 6 recalled hearing there was probable cause to arrest Fuhr for several felonies and that Fuhr was armed with a firearm. When they arrived at the home under construction, he and Witness Officer 5 were told by a SWAT officer to move to the south side of the home to provide containment and get further directions from the other SWAT officer who was already at that corner. As he ran to the south side of the home, Witness Officer 6 heard other officers yell something to the effect of, "Stop! I see movement." He ran in the same direction of Witness Officer 5 and Involved Officer 1. He recalled the officers yelling, but he could not recall the specific commands. As they turned the corner, he saw Fuhr run eastbound, away from them, but then he turned back in the officers' direction. At that moment, Witness Officer 6 heard a gun discharge to his right. Witness Officer 6 took hold of the child and brought the child to a patrol car to check for injuries, which he found none. He also requested the fire department to examine the child and they found no injuries.

**4. Civilian Witnesses**

a. Witnesses at the Rainier Playfield

An investigator canvassed the area of Rainier Playfield for potential witnesses and spoke with two males. An unidentified male who was lying on the ground south of the playfield bathrooms reported that he was sleeping when he was awoken by two gunshots nearby. He did not see where the gunshot came from, but he was certain it was in this area.

A second witness, Civilian Witness 4, appeared intoxicated and reported he was near the basketball courts when he heard a male and a female arguing loudly. He saw that a baby was involved and observed the male and female grabbing at each other while arguing. At some point, Civilian Witness 4 saw the male grab a firearm from his waistband and point it at the female. He heard the male say something to the effect of, "I'm going to kill you!" followed by a gunshot. The male picked up the baby and ran away while holding the firearm. The female ran away after the male shot at her.

Investigators also reviewed surveillance video from the playfield, but they did not find anything noteworthy.

b. Civilian Witness 1

Civilian Witness 1 provided a recorded interview to an investigator. She stated that Fuhr had assaulted her multiple times over the day prior and today, that he aimed a handgun at her twice, and that he fired at her twice. Civilian Witness 1 reported that she and Fuhr have been in a dating relationship for the last three years and the child is theirs in common. Civilian Witness 1 explained there is a current no-contact order in place that prohibits Fuhr from contacting Civilian Witness 1.

Civilian Witness 1 reported that on the day prior, she and her child were visiting one of Fuhr's cousins. Fuhr arrived and accused Civilian Witness 1 of cheating on him. He pulled her by the hair and physically hit her with his fists, but no one stopped the assault. Civilian Witness 1 reported that Fuhr forced her into a car and drove her and their child to a nearby hotel where they

spent the night. At the hotel, Fuhr assaulted Civilian Witness 1 with a clothing iron, which caused severe pain in her left arm. While they were at the hotel, Civilian Witness 1 saw Fuhr load what appeared to be a rifle bag into the trunk of her vehicle, but she did not know what was inside.

Civilian Witness 1 reported that Fuhr was already intoxicated and continued to drink into the next day. They left the hotel in the afternoon and started driving through Skyway. Fuhr told Civilian Witness 1, “Bitch, I will just kill you . . .,” and he pulled out a green and black handgun, pointed it towards Civilian Witness 1, and pulled the trigger. Civilian Witness 1 reported that she moved before Fuhr discharged the handgun and the bullet pass through her open window. She reported there was a fired cartridge casing inside the vehicle.

When they arrived at the Rainier Playfield, Fuhr continued to threaten Civilian Witness 1. In between threats, Fuhr told Civilian Witness 1 to “get her baby” to lure her back towards him. At this point, Fuhr removed the handgun and discharged it at Civilian Witness 1, but he missed. Civilian Witness 1 reported she ran away and found a woman that let Civilian Witness 1 use her phone to call 911 while she saw Fuhr run away with their child out of the playfield.

c. Civilian Witness 2

Civilian Witness 2, who initially called 911, also provided a statement to FIT investigators. He was playing soccer at the playfield and heard a small explosion. When he looked around, he saw a female pleading with someone, saying “Come on, please,” and “No.” He observed a male holding or standing next to a small child, and he the male yelling obscenities and something to the effect of, “Don’t you want to fuck or something.” The female ran away and the male chased after her, leaving the child near a picnic table. The male removed a handgun from his waistband, looked in Civilian Witness 2’s direction, and put a handgun back into his waistband. The female shouted to Civilian Witness 2 to call the police.

**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.<sup>8</sup> Police and prosecutors are also barred from making "indirect evidentiary use" of the officer's compelled statement, which includes investigative efforts or testimony that has been shaped, altered, or affected, directly or indirectly, by the officer's compelled statement.<sup>9</sup> While the compelled statement and information derived from such a statement cannot be used to support criminal charges against an officer, a credible compelled statement provides insight into the potential testimony of an involved officer. In conducting its analysis into this incident, the Team did not review the involved officer's compelled statement, however it is likely that information the Team relied upon by others during the FIT investigation was derived from compelled statements.

## **6. Incident Scene Investigation**

FIT investigators searched the scene for items of evidentiary value. The investigators, with the assistance of a K9, searched the home where Fuhr entered but did not find any evidence, including Fuhr's handgun.

Witness Officer 7 and his K9 had initially responded to the scene to assist in locating Fuhr. After the use of force, Witness Officer 7 requested to conduct a search for evidence along Fuhr's path. A civilian notified him that they saw a young child's sock located near the entrance of the alley between 37<sup>th</sup> Ave S and 38<sup>th</sup> Ave S, which runs north and south between S. Genesee St. and S Oregon St. As Witness Officer 7 walked through the alley, his K9 stuck his head into the shrub, backed out, stuck his head back in, and laid down. Witness Officer 7 recognized this as the K9's queue when he found potential evidence.

Witness Officer 7 and another officer pulled back the shrub and observed a handgun. A FIT investigator responded to the alley observed a concrete retaining wall along the east side of

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

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

the alley, which had small trees growing at the base. The investigator observed a 9mm handgun between the trunk of a tree and the retaining wall. The handgun was loaded with one unfired cartridge in the chamber, and a seated magazine that contained seven cartridges. The headstamp on the cartridge in the chamber was “RP 9mm Luger,” which was the same headstamp as the cartridge found on the playfield.



*Figure 7 - Handgun found by K9.*

Investigators also noted potential evidence of where the use of force occurred. Specially, investigators noted one fired cartridge that appeared to be from a rifle. The fired cartridge was marked with the headstamp, “Speer 19 223 REM,” which was the same headstamp as the unfired cartridge casings found in Involved Officer 1’s magazine. Witness Officer 5 and Witness Officer 6 were brought to the use of force scene separately. Each officer provided the FIT investigator with the general location of themselves, Involved Officer 1, and Fuhr at the time Involved Officer 1 used force.

## **7. Video Evidence**

Several of the officers that responded to the area were equipped with body worn video (BWV) cameras. The following statements are audible on Witness Officer 6’s and Witness

Officer 5's BWV at the moment officers observed Fuhr flee the home that was under construction:

- "There's movement right there. Who's that?"
- "Hey! Stop! Hey, Shaun, stop!"
- "Stop"
- "He's running!"
- "You better stop right now!"

Relevant screenshots of BWV include<sup>10</sup>:

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<sup>10</sup> Approximately nineteen seconds elapsed from the time Involved Officer #1 noticed Fuhr running from the home under construction to the time that the use of force occurred. Approximately two seconds elapsed from the time Involved Officer #1 turned the corner into the common area and the time that the use of force occurred.



*Figure 8 - BWV from Involved Officer 1 showing Fuhr (red arrow) running from the home under construction. Officers yelled commands for Fuhr to stop, which he did not.*



*Figure 9 - BWV from Involved Officer 1 as he runs into the common driveway. Fuhr is approximately within the area of the red rectangle running east (towards the right).*



*Figure 10 - BWV from Involved Officer 1, showing the alley entrance where the use of force occurred.*



*Figure 11 - BWV from Involved Officer 1, showing Fuhr's approximate location when the use of force occurred.*



*Figure 12 – BWV from Involved Officer 1, showing Fuhr running into the common area holding the child.*





*Figure 13 - BWV from Involved Officer 1, showing that Fuhr's right hand is visible, holding the child, but his left hand is not visible.*



*Figure 14 - BWV from Involved Officer 1, showing Fuhr as he continued towards Involved Officer 1. It is unclear what, if anything, is in his hands that are carrying the child. Fuhr's left index finger appears extended while his middle finger, ring finger, and pinky finger appear curled.*



*Figure 15 - BWV from Involved Officer 1, showing Fuhr as he continued towards Involved Officer 1.*



*Figure 16 - BWV from Involved Officer 1, showing the moment the use of force occurred as evidenced by the smoke near Involved Officer 1's rifle.*

## **8. Forensic Examination**

The 9mm handgun and magazine found by the K9 officer was examined for fingerprints, but no prints of value were located. In addition to fingerprint processing, the items were swabbed

for potential DNA analysis. Investigators test-fired the 9mm handgun and noted that the cartridge casing appeared to match the cartridge casings found at the Rainier Playfield and inside Civilian Witness 1's vehicle.

## **9. Medical**

Fuhr was transported from the incident scene to Harborview Hospital by medics. When the medics arrived at the hospital, they had been performing CPR for fifteen minutes without success. The physician that treated Fuhr at the hospital noted that hospital staff continued CPR and administered epinephrine without success. The physician determined Fuhr was deceased at 3:22 pm.

The King County Medical Examiner's Office performed an autopsy of Fuhr, which opined the cause of death was a gunshot wound of the head sustained in a confrontation with police and the manner of death is homicide.<sup>11</sup> The pathological diagnoses found evidence of one penetrating rifle wound of the head and neck.<sup>12</sup>

The Washington State Patrol Toxicology Laboratory performed a drug analysis of Fuhr's blood. The results showed that Fuhr's blood tested positive for Ethanol (.15g 100mL), Carboxy-THC (25 ng/mL), and THC (2.5 ng/mL).

## **10. Administrative Review**

SPD FIT policies required a sergeant, a lieutenant, and a captain to review the investigation, which included compelled statements. The reviewing sergeant determined that there was no training or policy issues that needed to be addressed. The reviewing lieutenant determined that there was no training or policy issues that needed to be addressed.

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<sup>11</sup> Homicide is defined as the killing of one person by another. HOMICIDE, Black's Law Dictionary (11th ed. 2019). Thus, the term homicide as used in an autopsy report refers to the mechanism of death and does not refer to legal liability or culpability.

<sup>12</sup> A penetrating gunshot wound occurs when a bullet pierces the skin, enters the body creating an entrance wound, but the bullet does not exit the body. In contrast, a perforating gunshot wound occurs when the bullet pierces the skin, enters the body creating an entrance wound, and exits the body creating an exit wound.

The reviewing captain also determined that there was no training or policy issues that needed to be addressed. Regarding policy, the review captain noted that SPD policy requires that officers use de-escalation when safe and feasible based on the information the officer had at the time, not additional information that was uncovered during the force investigation. The information Involved Officer 1 possessed was that a male armed with a handgun took a child from its mother after the male fired the handgun at the mother. Involved Officer 1 confronted the male as he carried the baby “like a football” with the subject’s hand hidden from view. The male ignored commands from the officers to stop. Involved Officer 1 believed that his first priority was to save the child. Based on the totality of the circumstances, the captain found that “the officers used de-escalation by getting adequate resources, giving commands, and securing the area. At the point force was used, further de-escalation was not safe or feasible.”

**11. Seattle Office of Police Accountability**

The Seattle Office of Police Accountability (OPA) self-initiated an investigation, which relied upon compelled statements. The OPA investigation evaluated whether Involved Officer 1 sufficiently de-escalated prior to using force, whether his ultimate application of deadly force was consistent with policy, and whether his actions constituted biased policing. The Director of OPA found that each allegation was not sustained.

**V. LEGAL STANDARD AND APPLICABLE LAW**

**1. Burden of Proof**

The State must prove each element of a criminal charge by competent evidence beyond a reasonable doubt.<sup>13</sup> The KCPAO will file charges if sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defenses that could be raised under the evidence, would justify conviction by a reasonable and objective factfinder.<sup>14</sup>

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<sup>13</sup> RCW 9A.04.100; WPIC 4.01.

<sup>14</sup> KCPAO Filing and Disposition Standards.

In addition, the State must disprove the existence of a defense that negates an element of the crime.<sup>15</sup> Prosecution should not be declined because of an affirmative defense unless the affirmative defense is of such nature that, if established, would result in a complete defense for the accused and there is no substantial evidence to refute the affirmative defense.<sup>16</sup> Therefore, the State may be required to disprove one or more of the following defenses:

- Justifiable Homicide by Peace Officer;<sup>17</sup>
- Justifiable Homicide Defense of Self or Others;<sup>18</sup>
- Justifiable Homicide Resistance to Felony;<sup>19</sup>

## 2. Applicable Law

This incident occurred This incident occurred on April 29, 2020; therefore, the applicable Justifiable Homicide by a Peace Officer instruction would require the State to prove the officer acted without good faith.<sup>20</sup>

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

- Justifiable Homicide by a Peace Officer<sup>21</sup>
- Necessary<sup>22</sup>

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<sup>15</sup> WPIC 14.00.

<sup>16</sup> Id.

<sup>17</sup> RCW 9A.16.040; WPIC 16.01.

<sup>18</sup> RCW 9A.16.050(1); WPIC 16.02.

<sup>19</sup> RCW 9A.16.050(2); WPIC 16.03.

<sup>20</sup> For offenses committed on or prior to December 6, 2018, the former version of WPIC 16.01, based upon RCW 9A.16.040, required the prosecution to prove the officer acted with malice. For offenses committed between December 7, 2018, and February 3, 2019, RCW 9A.16.040, based upon Laws of 2019, Chapter 1, § 7, removed the malice standard and required the prosecution to prove the officer did not act in good faith. There are no pattern jury instructions for offenses committed between December 7, 2018, and February 3, 2019. For offenses committed on or after February 4, 2019, the current version of WPIC 16.01, based upon RCW 9A.16.040, requires the prosecution to prove the officer did not act in good faith. RCW 9A.16.040(1)(a) utilizes the malice and good faith standard, but this section only applies when a “public officer applied deadly force in obedience to the judgment of a competent court.”

<sup>21</sup> WPIC 16.01.

<sup>22</sup> WPIC 16.05.

- Justifiable Homicide – Defense of Self and Others<sup>23</sup>
- Great Personal Injury<sup>24</sup>
- Justifiable Homicide – Actual Danger Not Necessary<sup>25</sup>
- Justifiable Homicide – Resistance to a Felony<sup>26</sup>

## **VI. ANALYSIS AND CONCLUSION**

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

The KCPAO declines to file charges against Involved Officer 1 because the independent investigation and the Team’s analysis reveal that there is insufficient evidence to prove any criminal charges or disprove applicable affirmative defenses beyond a reasonable doubt.

### **1. Justifiable Homicide by a Peace Officer**

Homicide is justifiable when necessarily used by a peace officer meeting the good faith standard to arrest or apprehend a person who the officer reasonably believes has committed, has attempted to commit, is committing, or is attempting to commit a felony.<sup>27</sup>

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

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<sup>23</sup> WPIC 16.02.

<sup>24</sup> WPIC 2.04.01.

<sup>25</sup> WPIC 16.07.

<sup>26</sup> WPIC 16.03.

<sup>27</sup> RCW 9A.16.040(1)(c)(i); WPIC 16.01.



physical harm to others.<sup>28</sup> Among the circumstances which may be considered by peace officers as a “threat of serious physical harm” are the following:

- The suspect threatens a peace officer with a weapon or displays a weapon in a matter that could reasonably be construed as threatening; or
- There is probable cause to believe that the suspect has committed any crime involving the infliction or threatened infliction of serious physical harm.<sup>29</sup>

Necessary means that no reasonably effective alternative to use the force appeared to exist and that the amount of force used was reasonable to effect the lawful purpose intended.<sup>30</sup> A peace officer acts in good faith, an objective standard, when considering all the facts, circumstances, and information known to the officer at the time to determine whether a similarly situated reasonable officer would have believed that the use of deadly force was necessary to prevent death or serious physical harm to the officer or another individual.<sup>31</sup>

The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.<sup>32</sup> “The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.”<sup>33</sup>

First, the independent investigation showed there was probable cause for Involved Officer 1 to believe that Fuhr committed and was in the process of committing various felonies. Specifically, based on the information provided in the 911 calls by Civilian Witness 2 and Civilian Witness 1, Civilian Witness 1’s initial statement to Witness Officer 1, Witness Officer 1’s observations of Civilian Witness 1’s injuries, and Witness Officer 1’s observations of the

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<sup>28</sup> RCW 9A.16.040(2).

<sup>29</sup> Id.

<sup>30</sup> RCW 9A.16.010; WPIC 16.05.

<sup>31</sup> RCW 9A.16.040(4).

<sup>32</sup> Graham v. Connor, 490 U.S. 386, 396, 109 S. Ct. 1865, 1872, 104 L. Ed. 2d 443 (1989).

<sup>33</sup> Id. 490 U.S. at 396-97.

discharged cartridge casings, there was probable cause to believe that Fuhr had committed, but not limited to, Assault in the Second Degree, Assault in the First Degree, and Kidnapping in the First Degree. Civilian Witness 1 described that Fuhr had assaulted her with fists and a clothing iron the day prior, that he was intoxicated, and he fired a handgun at her twice in the presence of their child. Civilian Witness 1 further explained that Fuhr was still in possession of the handgun when he took their child and ran away. Civilian Witness 1's account regarding what occurred at the Rainier Playfield was corroborated by Civilian Witness 2, Civilian Witness 4, and the unidentified male in the playfield.

Second, the independent investigation showed there was probable cause to believe that Fuhr, if not apprehended, posed a threat of serious physical harm to others. The information given to officers tends to show that the "threat of serious physical harm" was that probable cause existed to believe that Fuhr "had committed any crime involving the infliction or threatened infliction of serious physical harm." As stated earlier, at the time that the use of force occurred, Involved Officer 1 and other officers were given reliable information that Fuhr had seriously injured Civilian Witness 1, shot at Civilian Witness 1, was intoxicated, took their child, and was armed with a firearm.

Third, the independent investigation reviewed whether Involved Officer 1 used deadly force with a good faith belief that his actions were necessary to prevent death or serious physical harm to the officer or another individual. Given Fuhr's prior actions known to officers, it was not unreasonable for Involved Officer 1 to believe that Fuhr could harm the child or attempt to use the child to assist in his escape. It is apparent that several officers gave loud and clear commands for Fuhr to stop running, which he did not. Additionally, when Fuhr emerged from the bushes in the common area, his movements indicated that he was likely going to continue running as opposed to stopping and surrendering. Therefore, it is likely a jury would find that a reasonably situated officer would have responded in a similar manner considering all the facts, circumstances, and information known to Involved Officer 1 at the time.

Fourth, this defense also allows for deadly force to "be used if necessary to prevent escape from the officer, when, if feasible, some warning is given." In addition to the officers'

verbal commands prior to the use of force, it is highly likely that Fuhr would have been aware that officers were pursuing him. This presumption is based upon Civilian Witness 2's observation that Fuhr ran away when Civilian Witness 1 told him to call 911. In addition, based on the BWV and reports, there were numerous officers, police cars, and K9 dogs, which would have caused a significant amount of noise. Additionally, other civilians captured video of officers in the area, further indicating that their presence was known. The instruction does not state what type of warning is necessary, but given the large police presence, the officers' verbal commands, and the lack of time to give more express warnings, it is highly likely that a jury would find this warning was sufficient.

Fifth, the independent investigation reviewed whether the use of force was necessary. Based on the information Involved Officer 1 possessed at the time, he had reason to believe that Fuhr was still in possession of the handgun he used to shoot at Civilian Witness 1 and that he intended to flee with the child. Additionally, given Fuhr's running from the home under construction, ignoring officers' commands, it was reasonable for Involved Officer 1 to believe that Fuhr did not intend to surrender. Finally, as seen in the BWV, when Involved Officer 1 entered the common area and Fuhr emerged from the bushes, it is apparent that Fuhr did not surrender. Less lethal force, such as a taser, would not have been a reasonably effective alternative Fuhr if he possessed a handgun. Additionally, given Fuhr's running, Involved Officer 1 did not have time to implement an alternative use of force.

While compliance with SPD policy is not within the immediate scope of this memorandum, it is very likely that a judge would allow testimony about SPD's policy regarding use of deadly force in a trial. Therefore, it is noteworthy that a sergeant, lieutenant, captain, and the OPA did not find Involved Officer 1 violated SPD use of force policies. A jury would likely find it very persuasive to learn that an officer complied with their department's training and that even a civilian oversight group found no violations.

The Team thus concludes there is insufficient evidence to disprove beyond a reasonable doubt the defense of Justifiable Homicide by a Peace Officer.

**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 to any person in the slayer’s presence; the slayer reasonably believed that was imminent danger of such harm being accomplished; and the slayer employed such force and means as a reasonably prudent person would under the same or similar conditions as they reasonably appeared to the slayer.<sup>34</sup> 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.<sup>35</sup>

The reasonable person standard used in this instruction does not expressly require the jury to compare the slayer to a reasonable officer. However, because law enforcement officers – especially compared to non-law enforcement civilians – receive significant amounts of training on weapons, defensive tactics, and the use of force, it is prudent to assume the jury would be required to take Involved Officer 1’s training into account. Therefore, the same evidence and testimony used to determine whether Involved Officer 1 acted as a reasonable peace officer are also relevant to this instruction.

As stated earlier, Involved Officer 1 possessed information that would lead a reasonable person to fear that Fuhr intended to harm the child based on his actions and refusal to comply with the officers’ commands. Under this instruction, the danger must be imminent, not immediate. The Washington Instruction Committee noted that “Imminence does not require an actual physical assault. A threat, or its equivalent, can support self-defense when there is a reasonable belief that the threat will be carried out.”<sup>36</sup> Additionally, a person is entitled to act on appearances in defending himself, if that person acts in good faith and on reasonable grounds, although it afterwards might develop that the person was mistaken as to the extent of the

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<sup>34</sup> RCW 9A.16.050(1); WPIC 16.02.

<sup>35</sup> WPIC 2.04.01.

<sup>36</sup> WPIC 16.02.

danger.<sup>37</sup> In other words, Justifiable Homicide in Defense of Self or Others does not require the slayer to be certain that the person slain was in the process of an actual physical assault. Instead, based on the instruction, Involved Officer 1 was permitted to act on the appearance that Fuhr would harm the child because he acted in good faith and on reasonable grounds, as described earlier.

In addition to claiming defense of others, it is likely that Involved Officer 1 would claim defense of self, which the State would also be required to disprove beyond a reasonable doubt. Because the Team did not analyze Involved Officer 1's compelled statement, the Team cannot state with certainty whether Involved Officer 1 discussed this fear during his compelled statement. However, when closely reviewing the BWV, particularly Involved Officer 1's, Fuhr's hands were not completely visible when he emerged from the bushes. Fuhr's right hand appears to be holding the child, who is lying horizontal, against his stomach and chest. However, Fuhr's left hand is initially concealed behind his torso. When Fuhr's left hand does come into view, it appears that his fingers are curled shut, except for his index finger that is extended. It is foreseeable that based on the distance between Involved Officer 1 and Fuhr and the short amount of time that passed, that Fuhr's hand appeared to be gripping a handgun. In addition, when Fuhr's hand is in this position, it is placed directly in front of the child's dark pants, which would further make it difficult to determine if there was a handgun in Fuhr's hand. In determining whether a crime should be charged, the KCPAO must consider plausible, reasonably foreseeable defenses that could be raised under the evidence. Thus, it is appropriate for the Team to consider other potential arguments that could be raised. If self-defense is raised, there appears to be insufficient evidence to prove beyond a reasonable doubt the absence of self-defense.

## **VII. RECOMMENDATION FOR INQUEST**

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

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<sup>37</sup> WPIC 16.07.

death. Given the facts outlined in the investigation, it is the Team's belief that an inquest is required under the current Executive Order.

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# **Attachment A**

WPIC 16.01 - Justifiable Homicide by a Peace Officer

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

Homicide or the use of deadly force is justifiable:

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

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

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

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

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



WPIC 16.05 – Necessary

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

WPIC 16.02 – Justifiable Homicide – Defense of Self and Others

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

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

(1) the slayer reasonably believed that the person slain intended to commit a felony<sup>38</sup> or to inflict death or great personal injury;

(2) the slayer reasonably believed that there was imminent danger<sup>39</sup> of such harm being accomplished; and

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

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

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<sup>38</sup> For purposes of the defense, the use of deadly force appears to be limited to the resistance of violent felonies that threaten human life or may result in great personal injury. See *State v. Nyland*, 47 Wn.2d 240, 287 P.2d 345 (1955).

<sup>39</sup> Regarding imminent danger, the WPIC commented:

Imminence does not require an actual physical assault. A threat, or its equivalent, can support self-defense when there is a reasonable belief that the threat will be carried out. *State v. Janes*, 121 Wn.2d at 241 (citations omitted). While “immediate harm” means “occurring, acting, or accomplished without loss of time: made or done at once,” “imminent harm” means “ready to take place: near at hand: ... hanging threateningly over one's head.”

WPIC 2.04.01 – Great Personal Injury

Great personal injury means an injury that the slayer reasonably believed, in light of all the facts and circumstances known at the time, would produce severe pain and suffering, if it were inflicted upon either the slayer or another person.

WPIC 16.07 – Justifiable Homicide – Actual Danger Not Necessary

A person is entitled to act on appearances in defending himself or another, if that person believes in good faith and on reasonable grounds that he or another is in actual danger of great personal injury, although it afterwards might develop that the person was mistaken as to the extent of the danger.

Actual danger is not necessary for a homicide to be justifiable.

WPIC 16.03 – Justifiable Homicide – Resistance to a Felony

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

Homicide is justifiable when committed in the actual resistance of an attempt to commit a felony<sup>40</sup> upon the slayer or in the presence of the slayer.

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

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

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<sup>40</sup> For purposes of the defense, the use of deadly force appears to be limited to the resistance of violent felonies that threaten human life or may result in great personal injury. See State v. Nyland, 47 Wn.2d 240, 287 P.2d 345 (1955)