

Use of Force – Fatality of  
**Joshua Sarrett**

Valley Independent Investigation Team  
Port of Seattle Police Department – 2020-67474



King County Prosecuting Attorney  
Public Integrity Team

October 2, 2023



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**DECLINE MEMORANDUM**

October 2, 2023

Law Enforcement Use of Force Fatality Regarding:

Joshua Sarrett

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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 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 the

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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.

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.<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 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. Status of the Independent Investigation**

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

## **3. Scope of the Memorandum**

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

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

<sup>4</sup> Id.

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

<sup>6</sup> Id. `

## **II. OVERVIEW**

On September 19, 2020, Civilian Witness 1 stopped a King County Sheriff's Office Deputy to report that her brother, Joshua Sarrett (Sarrett), was intoxicated, he was armed with a firearm that was in his right pocket, he had possibly assaulted his fiancée, and he had possibly discharged his firearm earlier. The deputy attempted to speak with Sarrett and he ordered Sarrett not to put his hands in his pockets. The deputy noticed that Sarrett's pocket appeared heavy and Sarrett did not comply with the deputy's commands. While Sarrett continued putting his hands in and near his pocket, the deputy discharged his firearm at Sarrett, striking him.

## **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. Photos

#### IV. INVESTIGATION SUMMARY<sup>7</sup>

##### 1. Information Known Before and During the Use of Force

On September 19, 2020, Civilian Witness 2 was concerned that her daughter, Civilian Witness 3 was recently assaulted by her boyfriend, Joshua Starrett (Sarrett).<sup>8</sup> Civilian Witness 2 called Sarrett's sister, Civilian Witness 1, to get Sarrett's address so Civilian Witness 2 could request the police to perform a welfare check. Civilian Witness 1 did not provide the address to Civilian Witness 2, but Civilian Witness 1 went to Sarrett's home with their other sister, Civilian Witness 4.

When Civilian Witness 1 and Civilian Witness 4 arrived at Sarrett's home, he initially slammed the door on them. However, he agreed to let them inside and they observed that he was drinking vodka directly from a bottle and he appeared intoxicated and irritated. Civilian Witness 1 and Civilian Witness 4 also observed there were damaged items, including holes in a door. Sarrett explained that he broke those items when he got angry. Sarrett explained that he wanted to go to a store to buy cigarettes. Concerned about his level of intoxication, Civilian Witness 4 drove Sarrett to the store while Civilian Witness 1 spoke with Civilian Witness 3. Civilian Witness 1 observed visible injuries on Civilian Witness 3, including a swollen lip and bruised cheek. Civilian Witness 3 explained the injuries occurred in a recent accident, that she did not

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<sup>7</sup> 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.

<sup>8</sup> Civilian Witness 2's concern is likely related to Auburn Police Case #20-53464. In that case, a phone belonging to Civilian Witness 3 called 911. When the 911 operator answered, it was an open line and the operator noted that a male and female were arguing, the female was crying, the female said, "Don't hit me," and the male called the female "Civilian Witness 3." Police responding to Sarrett's and Civilian Witness 3's address, but no one answered the door and they did not see or hear anything suspicious at the home. This 911 call occurred approximately 30 minutes prior to Civilian Witness 2 contacting Civilian Witness 1.

want Civilian Witness 1 to talk to Sarrett about the situation, and that she was afraid for Civilian Witness 1 and Civilian Witness 4 to leave.<sup>9</sup>

When Civilian Witness 4 and Sarrett returned, Sarrett stumbled through the front gate. Civilian Witness 1 began to record Sarrett after he removed an unholstered firearm from his pocket, pointed it backward (with the muzzle facing Sarrett) and stated, "I have a gun." Civilian Witness 4 followed Sarrett into the home to take the firearm from him because she was concerned about his safety and she knew he was not allowed to possess firearms.<sup>10</sup> While they were alone inside the kitchen, Sarrett pointed the firearm at Civilian Witness 4's head. He told her the firearm was unloaded, but he ejected a cartridge by pulling back the slide on the firearm.

Civilian Witness 1 exited the home to speak with a neighbor to see if he had observed any violence between Sarrett and Civilian Witness 3. The neighbor reported he saw Sarrett throw Civilian Witness 3 down a set of stairs and he heard gunshots from the backyard area of Sarrett's home. Civilian Witness 4 exited the home and told Civilian Witness 1 that they should call the police for assistance. Coincidentally, King County Sheriff's Office (KCSO) Involved Officer 1 was driving down the street in his marked patrol vehicle.<sup>11</sup> Civilian Witness 1 advised Involved Officer 1 about the situation, including that Sarrett was intoxicated, he allegedly hit Civilian Witness 3, he was armed with a firearm, the firearm was last seen in the right pocket of his shorts, he pointed the firearm at Civilian Witness 4's head, and he may have discharged the firearm in the backyard at some point. As Civilian Witness 1 provided Involved Officer 1 with this information, Sarrett exited and entered his residence, slamming the front door. When Involved Officer 1 asked Sarrett to sit on the porch, Sarrett said that Involved Officer 1 would need to get a warrant to come onto the property.

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<sup>9</sup> Civilian Witness 3 was involved in two automobile accidents prior to this incident. On September 9, 2020, Civilian Witness 3 was a passenger in Sarrett's car. On September 17, 2020, Civilian Witness 3 was involved in another accident. No injuries were noted for either Sarrett or Civilian Witness 3 in either accident.

<sup>10</sup> Subsequent investigation confirmed that Sarrett was not allowed to possess firearms due to no-contact orders. Additionally, he was denied the purchase of a firearm on September 15, 2020, during a background check.

<sup>11</sup> Based upon the computer-aided dispatch report, this occurred approximately at 3:00 pm.

Involved Officer 1 advised Civilian Witness 1 and Civilian Witness 4 to get behind his vehicle and he provided updates to the KCSO dispatcher via his radio. In the radio communication, Involved Officer 1 communicated the following:<sup>12</sup>

- He was responding to a disturbance involving someone possibly with a weapon.
- He provided the location of the incident, a description of Sarrett, and Sarrett's name.
- Sarrett may have pointed the weapon at someone, he was intoxicated, he went back inside the house, and Involved Officer 1 was told that Sarrett may have fired the weapon in the backyard.
- A female was coming out to talk with Involved Officer 1 and Sarrett was on the front porch.
- Sarrett may have a firearm in his right front pocket.
- Sarrett did have a heavy front pocket and there was likely a firearm in there.
- Shots fired.

While updating the KCSO dispatcher, Involved Officer 1 called Civilian Witness 3 over to his vehicle so he could interview her, but Sarrett told Civilian Witness 3 to go inside the house. Involved Officer 1 instructed Sarrett to come over to speak with him, but Sarrett refused. Additionally, Sarrett's dog ran out of the house towards Involved Officer 1 and Sarrett yelled at the dog to return.

Several witnesses that were present provided statements to the police.<sup>13</sup> In sum, the witnesses heard Involved Officer 1 commanding Sarrett to either not place his hands in his pockets, to keep his hands away from his pockets, or to take his hands out of his pockets. Additionally, Civilian Witness 1 saw Sarrett walking towards Involved Officer 1, despite Involved Officer 1 giving Sarrett commands to not come closer and to put his hands in the air. In response, Involved Officer 1 discharged his firearm at Sarrett, striking him. Police and medics provided first aid, but Sarrett died at the scene.

Officers also performed a protective sweep of Sarrett's home to ensure that no one else was injured. An officer learned from one of Sarrett's sisters that Sarrett's firearm was inside a

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<sup>12</sup> According to the dispatch recording, the length of time between Involved Officer 1 reporting the disturbance and reporting shots fired is approximately three and a half minutes.

<sup>13</sup> Civilian witness statements are summarized in further detail in Section 3.

nightstand in the bedroom. The officer confirmed that the firearm was inside the nightstand, but he did not remove it at that time.

**2. Independent Investigation Conducted by the Port of Seattle Police Department**

Once the scene was secured, the Valley Independent Investigative Team was requested to respond and Port of Seattle Police Department (PSPD) Detective 1 was assigned as the lead investigator. After being briefed on what led up to the shooting, Detective 1 requested a search warrant to search Sarrett's home and the security cameras on his home, which was approved by a judge and served by investigators.

a. Search Warrant Regarding Sarrett's Security Cameras

Investigators attempted to recover video footage from the video cameras at Sarrett's home. However, according to the camera's providers, the cameras were off-line as of September 4, 2020. Therefore, they were not functioning on the date of this incident and no video was captured.

b. Crime Scene Investigation

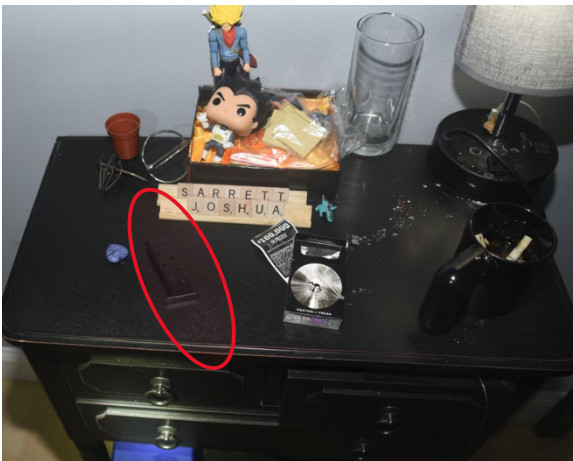
Federal Way Police Department Detective 2 was assigned to lead the crime scene investigation. When he first arrived, another officer gave Detective 2 a Glock magazine found near Sarrett's body and bloody gloves removed from Involved Officer 1.<sup>14</sup> Detective 2 took photographs of the scene and collected several items that appeared to be evidence. He collected four 9mm cartridge casings, head stamped "FC 9mm Luger," on the ground in the vicinity of Involved Officer 1's vehicle. He observed a medicolegal investigator remove a loaded magazine from the right side of Sarrett's shorts pocket. Detective 2 noted the loaded magazine was consistent with .380 ammunition. He also collected a phone, wallet, and dog signaling device near Sarrett's body. Detective 2 collected eight cartridge casings that appeared consistent with .380 ammunition from Sarrett's backyard and one .380 cartridge casing in the kitchen. Inside

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<sup>14</sup> While processing Involved Officer 1, it became apparent that he was missing a Glock magazine. This magazine was fully loaded and likely fell from Involved Officer 1's uniform while rendering aid to Sarrett.



Sarrett's bedroom, he collected a magazine that was consistent with .380 ammunition from the top of a nightstand, which was to the left of the bed. Additionally, there was a Browning single-action pistol, chambered with .380 ammunition, inside the nightstand drawer. Detectives also collected three magazines located in the closet of Sarrett's bedroom, which was consistent with .380 ammunition. Detectives also collected an unloaded shotgun from Sarrett's closet and other firearm ammunition and accessories. Finally, detectives observed multiple bottles of vodka in the home.



*Figure 1 - Magazine located on top of nightstand.*



*Figure 2 - Browning pistol located inside nightstand.*

### **3. Civilian Witnesses**

#### **a. Civilian Witness 4**

Civilian Witness 4 provided a statement to an officer shortly after the shooting. Civilian Witness 4 reported that when she arrived, she observed Sarrett and Civilian Witness 3 drinking and that Sarrett appeared intoxicated. She took him to the store to buy cigarettes and when they returned, Sarrett removed a small pistol and waved it around. She saw Sarrett "chugging" from a bottle of vodka while Civilian Witness 1 and Civilian Witness 3 were speaking. Civilian Witness 4 heard Sarrett tell Civilian Witness 3 to "Shut the fuck up." when he suspected Civilian Witness 1 and Civilian Witness 3 were talking about domestic violence. When asked if the firearm was loaded, Sarrett removed a bullet from the chamber and handed it to Civilian Witness 4. Civilian

Witness 4 and Sarrett got into an argument about the firearm and Sarrett removed the magazine from the gun and placed it into his pocket.

Civilian Witness 4 exited the home and saw that Civilian Witness 1 had flagged down Involved Officer 1. Sarrett exited the home, yelling at Civilian Witness 3 and telling her to go back inside the house. Sarrett told Involved Officer 1 that he was not going to talk to him and he did not have to, so he went inside the home. Sarrett exited the home again, and Involved Officer 1 yelled at Sarrett to keep his hands out of his pockets. Involved Officer 1 told Sarrett that his pockets looked heavy, and Sarrett began pulling things out of his pockets. Involved Officer 1 again told Sarrett to not put his hands in his pockets, but Sarrett ignored him and put his hands in and out of his pocket. At the time Sarrett was shot, Civilian Witness 4 believed that Sarrett still had the magazine in his pocket but she was unsure if he still possessed the firearm or if he had given it to Civilian Witness 3 when he went inside the home.

When Sarrett's mother arrived, the officer who took Civilian Witness 4's statement overheard Civilian Witness 4 tell Sarrett's mother, "Mom, he put a gun to my head."

b. Civilian Witness 1

Civilian Witness 1 provided several statements to the police, which are summarized below.

i. September 19, 2020

Civilian Witness 1 provided a statement to an officer shortly after the shooting at 3:44 pm. She reported that Civilian Witness 2 called her at 1:00 am to report that Sarrett assaulted Civilian Witness 3. She and Civilian Witness 4 went to Sarrett's home to figure out what occurred. Civilian Witness 1 saw that Sarrett was intoxicated and Civilian Witness 3 had bruises on her. While Civilian Witness 4 took Sarrett to the store to buy cigarettes, Civilian Witness 1 spoke with Civilian Witness 3 who stated she was afraid of what would happen when the sisters left.

When Civilian Witness 4 and Sarrett returned to the home, Sarrett stumbled while walking and asked Civilian Witness 4 about her firearm, which was holstered on her person. He stated he had a firearm, but he refused to give it to Civilian Witness 4. Civilian Witness 1 heard Sarrett say that he keeps the firearm in his pocket for safety. Civilian Witness 1 noticed that his

pockets appeared to be sagging. Sarrett denied that there was a bullet in the chamber and went inside. Civilian Witness 4 exited the home and told Civilian Witness 1 that Sarrett pointed the firearm in her face, they needed to leave, and they needed to call the police.

Civilian Witness 1 saw a neighbor across the street and asked him if he had seen Sarrett mistreat Civilian Witness 3. The neighbor stated he did not, but his sister saw Sarrett push Civilian Witness 3 down the stairs. The neighbor also stated that he heard gunshots come from Sarrett's property last night or earlier in the week.

Civilian Witness 1 noticed a KCSO deputy driving down the street, and she flagged him down to stop. She explained to the deputy that she was here to investigate allegations of domestic violence by her brother, that he has a gun, she is unsure if he is allowed to have a firearm, she is worried about her brother, and the firearm was in her brother's right pocket. Sarrett exited the home and yelled that this was his house and his property. The deputy instructed Civilian Witness 1 to move behind his vehicle. Civilian Witness 1 saw Sarrett emptying his pockets, and when he put his hand in his right pocket "the deputy thought he had a gun" and he shot Sarrett four times.

The deputy called for help and other police arrived to perform CPR. Civilian Witness 1 said that Sarrett allegedly put the gun inside the house, but no one knew that at the time of the shooting.

ii. September 21, 2020

On September 21, 2020, Civilian Witness 1 spoke with Detective 1 and reported that the prior to the shooting, Involved Officer 1 was told that Sarrett was armed with a gun. Civilian Witness 1 also showed Detective 1 a video she took approximately fifteen minutes prior to the shooting. In the video, Sarrett is seen walking in the front yard, holding firearm backwards in his left hand, and lifting the gun up towards Civilian Witness 4. Sarrett asked why Civilian Witness 4 has a gun, and stated that he has one, too. Civilian Witness 1 told Sarrett that he was not supposed to have a gun and she is not comfortable with him having a gun when he cannot walk straight. Civilian Witness 1 sent a copy of the video to Detective 1. After viewing the video, Detective 1 noted that the Sarrett's firearm in the video appeared very similar to the one found in his home.



*Figure 3 - Video taken by Civilian Witness 1, showing a firearm (facing backwards) in Sarrett's hand.*



*Figure 4 - Video taken by Civilian Witness 1, showing Sarrett raising the firearm (facing backwards).*

iii. October 12, 2020

Detective 1 called Civilian Witness 1 to provide her with a status of the investigation. During their conversation, she confirmed that she did tell Involved Officer 1 that Sarrett pointed the firearm at Civilian Witness 4's head. Further, she explained that she strongly suspects that Sarrett handed the gun back to Civilian Witness 3 while Involved Officer 1 was talking with the sisters. Civilian Witness 1 saw Sarrett hand something back toward Civilian Witness 3 who went inside the house immediately thereafter. Civilian Witness 1 stated that Sarrett was standing just below the front porch and Civilian Witness 3 was behind him when this exchange occurred. However, Civilian Witness 1 reported that the scene was likely chaotic given everything going on.

iv. October 15, 2020

Civilian Witness 1 provided another interview to law enforcement. Civilian Witness 1 confirmed that Involved Officer 1 was the only officer present at the time of the shooting. She also reported that she did not show any video to Involved Officer 1. She described the scene as chaotic – Sarrett was trying to go inside the home, Civilian Witness 3 was trying to go inside the

home, Involved Officer 1 was trying to get Civilian Witness 3 to come talk with him, Sarrett's dog was running around, and Involved Officer 1 instructed Civilian Witness 1 and Civilian Witness 4 to get behind his vehicle. When asked why she thought Involved Officer 1 instructed her to get behind his vehicle, Civilian Witness 1 stated, "Because I told him that my brother had a gun and he didn't want us getting hurt." Civilian Witness 1 explained that she did not see whether Sarrett handed anything to Civilian Witness 3, but at one-point Sarrett was standing at the base of the front porch stairs, leaning backward with his hands behind his back, Civilian Witness 3 was standing behind Sarrett, Civilian Witness 3 walked inside the house and then exited the house. Civilian Witness 1 stated that Involved Officer 1 leaned over his vehicle, giving Sarrett instructions, such as to put his hands up and sit on the steps, and Civilian Witness 1 recalled thinking that Sarrett needed to listen or he was going to be shot. At the time Involved Officer 1 discharged his firearm, Sarrett lowered a hand towards his pocket.

v. December 12, 2020

On December 12, 2020, Civilian Witness 1 sent a text message to Detective 1, which said "I guess I changed my mind. I asked the officer for help with my brother and he killed him."

vi. December 15, 2020

On December 15, 2020, Detective 1 called Civilian Witness 1 to talk with her about the text message. Civilian Witness 1 explained she has been going to counseling, she has had pressure from people regarding the incident, and saw hurtful comments on social media, such as a post that stated a ballistics report confirmed Civilian Witness 1 got her brother killed.

c. Civilian Witness 3

Civilian Witness 3 provided three statements to the police, which are summarized below.

i. September 19, 2020, at approximately 3:44 pm

Civilian Witness 3 reported that Sarrett's sisters came to the house because they were concerned about Sarrett's drinking and thought that he could detox if he went to jail. Civilian Witness 3 stated Sarrett had been drinking, he was being semi-hostile, and a "teeny-tiny bit hostile with me, not anything out of the ordinary but, [his sisters] were worried." When asked about Sarrett's firearm, Civilian Witness 3 stated that he had it on him earlier so that he could

show his sister; however, when the deputy arrived, he instructed Civilian Witness 3 to put it away. Civilian Witness 3 put the firearm in a nightstand table drawer in their bedroom. Civilian Witness 3 opined there were three officers present prior to and during the shooting. The officers instructed Civilian Witness 3 to come out to give an interview and Sarrett told her to go back inside. Eventually, Civilian Witness 3 walked outside to do an interview and the officers told Sarrett he could stay outside but he needed to stay away and empty his pockets. Civilian Witness 3 stated that Sarrett emptied his pockets to show the officers he had nothing in them and that is when they shot him. When the interviewing officer asked Civilian Witness 3 about a bruise on her lip, she stated she was injured approximately three days ago in a car accident.

ii. September 19, 2020, at approximately 7:15 pm

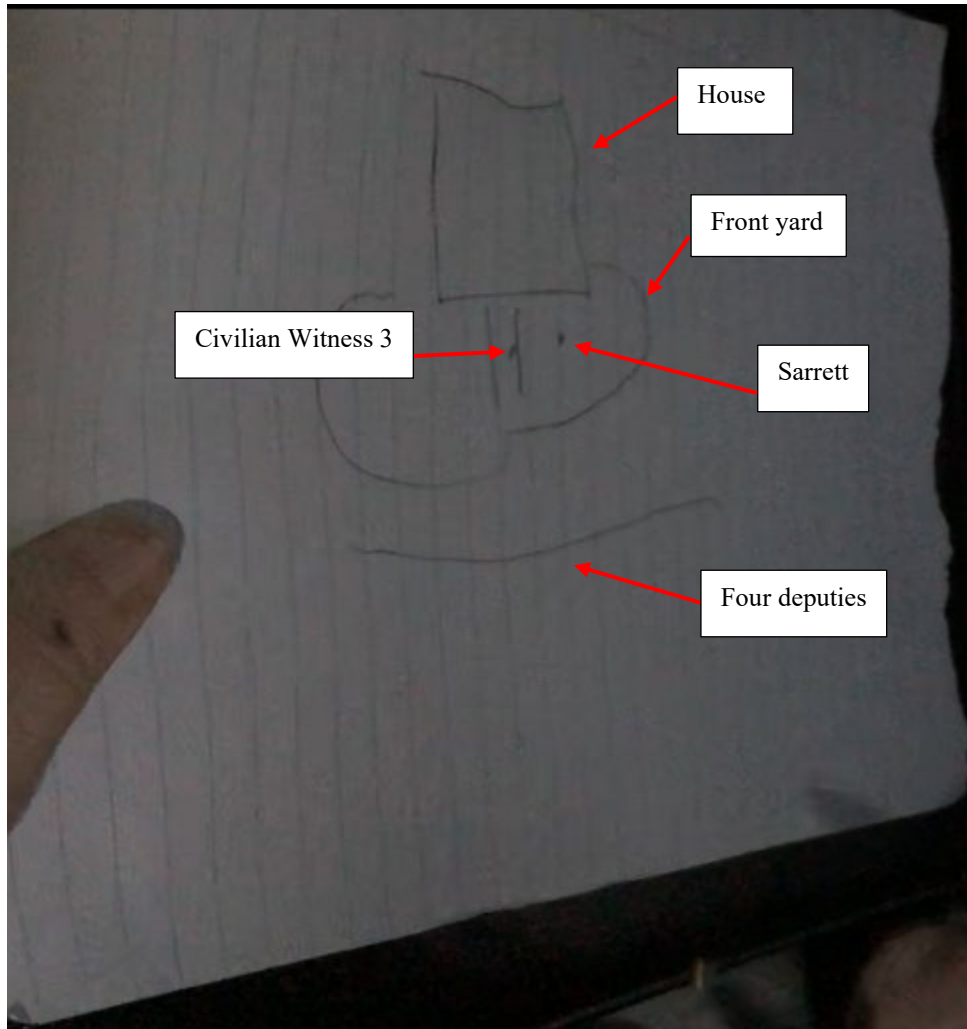
Civilian Witness 3 stated that Civilian Witness 1 and Civilian Witness 4 arrived at the house unannounced at either 10:00 am or 11:00 am as a surprise to hangout. After they arrived, Sarrett was outside the house arguing with Civilian Witness 1 and Civilian Witness 4. She stated that the police arrived and Sarrett told her to come outside, but that he did not want to talk to the police. She described Sarrett as “mildly intoxicated.” He instructed her not to go outside and she saw the police talking with Civilian Witness 1 and Civilian Witness 4. She estimated four KCSO deputies arrived at the same time, but that she was not certain due to her concussion.

Civilian Witness 3 went outside with Sarrett and “they” asked her if she was in danger, which she denied. Sarrett was standing in the yard and Civilian Witness 3 believes that one of Sarrett’s sisters told the officers that Sarrett had a firearm because the officers told Sarrett to empty his pockets. At the time of the shooting, Civilian Witness 3 estimated the deputies were approximately 100’ away from the Sarrett, Sarrett was standing in the front yard, and she was standing in the walkway. She denied that the officers gave Sarrett any warnings or commands to raise his hands. She stated that the officers told him to empty his pockets only once, that Sarrett complied slowly, removed his phone and wallet, and they started shooting at him. She believed that only one officer shot five times at Sarrett and that the officer who shot Sarrett “just sat there.”

During her interview with police after the shooting, Civilian Witness 3 stated she was involved in two car collisions within the last week and that she was sleeping a lot due to a concussion. She denied that Sarrett took any drugs. She stated she took a “couple of shots this

morning . . . like two shots at eight o'clock this morning." She was uncertain how much Sarrett drank, but she estimated he drank seven shots of vodka. She denied that he was intoxicated, confirmed his speech was normal, and confirmed his ability to walk and stand appeared normal. Sarrett typically drank a fifth of vodka a day, but it would not cause him to become intoxicated. She denied that Sarrett had any suicidal ideations. Civilian Witness 3 also denied there were gunshots discharged earlier in the day. She confirmed that Sarrett does have a firearm but "it's been in our bedroom." Civilian Witness 3 denied that Sarrett threatened anyone earlier in the day and that he "wouldn't do that to his sisters."

Civilian Witness 3 described there were three home security cameras on the house; however, she was not certain how the system worked. After the shooting the officers stood there "bullshitting and laughing, like, they thought the entire thing was a joke." She denied that Sarrett pointed the firearm at anyone.



*Figure 5 - Civilian Witness 3's drawing, showing the location of Sarrett, Civilian Witness 3 and KCSO Deputies when force was used.*

iii. October 8, 2020

Civilian Witness 3 stated that Sarrett's sisters came to the home unannounced at approximately 11:00 am or 12:00 pm and the shooting occurred around 3:00 pm. She stated that she had sustained two concussions, on September 9 and September 18, due to two car accidents. She also stated that Sarrett suffered a concussion in the September 9 car accident and that he was diagnosed at a hospital; however, she did not notice any changes in Sarrett since the concussion.

Civilian Witness 3 was asleep when Civilian Witness 1 and Civilian Witness 4 arrived and she did not have any interaction with them until the deputy arrived. When the interviewing



officer noted that Civilian Witness 3 previously reported she spoke with Civilian Witness 1 prior to the deputy arriving, she stated that she was certain she did not speak with Civilian Witness 1 prior to the deputy arriving.

Civilian Witness 3 stated that she had two shots of vodka that morning, but no other alcohol throughout the day. When asked about the odor of alcohol coming from her during her first statement, Civilian Witness 3 stated that she emits an odor of alcohol. She denied seeing Sarrett drinking, but she opined that he likely had drank more than he should have drunk.

Civilian Witness 3 recalled Sarrett telling her not to go outside, but she stated this occurred before the deputy arrived. Civilian Witness 3 stated she was “100 percent” certain that Sarrett was not in possession of the firearm and that she did not take the firearm from him and put it in the nightstand table drawer. When asked if she remembered making that statement on the day of the shooting, she stated she was unsure why she said that and that it was not true. When asked about the casings found in the backyard, she denied knowing how they got there. When asked about her previous statement where Civilian Witness 3 stated that Sarrett gave her the firearm to put away, Civilian Witness 3 stated she did not recall why she said that.

Civilian Witness 3 stated that she first learned the deputy was present when Sarrett woke her up, told her that an officer wanted to talk to her, and that “Civilian Witness 1 told the cop that [I] had a gun.” When Civilian Witness 3 spoke with the officers, they asked if she was in danger and she said she was not. The deputies told Sarrett that his pants looked baggy and Sarrett took out his phone and wallet, which is when the deputy discharged his firearm.

d. Civilian Witness 5

Civilian Witness 5 lives across the street from Sarrett. He reported to police that prior to the shooting, one of Sarrett’s sisters asked Civilian Witness 5 if he ever saw Sarrett mistreat Civilian Witness 3. Civilian Witness 5 reported that one of Sarrett’s sisters waived down a police vehicle and she informed the deputy that she suspected Sarrett was being rough with his girlfriend, he had a gun at some point, and she was afraid he was going to kill himself. Civilian Witness 5 recalled that Sarrett exited the home and yelled for the women to come inside. Civilian Witness 5 heard the deputy tell Sarrett to keep his hands out of his pockets two to three times, but Sarrett put his hands in and out of his pockets several times. Sarrett came down from the

porch, possibly to retrieve his dog, and pulled his hand out of his pocket when the deputy discharged his firearm. Civilian Witness 5 observed that Sarrett appeared intoxicated and had difficulty standing. Civilian Witness 5 saw that Sarrett was holding something, likely a clicking device for his dog, in his hand when he was shot, but it did not appear to be a firearm. After the shooting, the deputy placed Sarrett in handcuffs, put on rubber gloves, and began administering aid.

e. Civilian Witness 6

Civilian Witness 6 provided a statement to police, explaining she was previously friends with Sarrett, they had lost contact, but they recontacted in March 2020. Civilian Witness 6 reported that approximately one week prior to the shooting, Sarrett told her he was recently in a car accident and he noticed that he slept for days following the accident, his perception of time was off, he was not answering questions appropriately, he was not fully comprehending what happened, and he felt angrier since the accident. Civilian Witness 6 advised him to see a doctor because he possibly had a concussion.

f. Civilian Witness 7

Civilian Witness 7, who lives across the street from Sarrett's home, provided a statement to the police. She saw the deputy's vehicle in the middle of the street and the deputy was standing behind the vehicle, which placed the deputy closer to her side of the street. Civilian Witness 7 saw Sarrett exit the home, enter the home, exit the home, and walk towards the front yard fence. She did not hear anything exchanged between Involved Officer 1 and Sarrett. As Sarrett walked towards the front yard fence, she heard gunshots and saw that Sarrett was struck by the gunshots. At the time of the gunshots, Sarrett had his left hand in the air, but she could not see Sarrett's right hand because it was blocked by the vehicle. Because his right hand was blocked by a vehicle, she could not determine if there was anything in his right hand at the time of Involved Officer 1 discharged his firearm.

**4. Forensics**

The Washington State Patrol Crime Lab conducted forensic analysis on several items of evidence and reported the following conclusions:

- Involved Officer 1's Glock pistol was operable.
- The Browning pistol, found in the nightstand of Sarrett's home, was operable.
- The two fired bullets were identified as having been fired from Involved Officer 1's Glock pistol.
- The nine fired .380 Auto caliber cartridge casings were identified as having been fired from the Browning pistol.
- The four fired 9mm Luger caliber cartridge casings were identified as having been fired from Involved Officer 1's Glock pistol.

### **5. Medical, Autopsy, and Toxicology**

The King County Medical Examiner's Office performed an autopsy of Starrett, which opined the cause of death is multiple gunshot wounds sustained in a confrontation with police and the manner of death is homicide.<sup>15</sup> The pathological diagnoses included evidence of four handgun wounds:

- Perforating handgun wound of the left chest.
- Penetrating handgun wound of the upper left back.
- Perforating handgun wound of the lower left back.
- Perforating handgun wound of the right back.<sup>16</sup>

The Washington State Patrol Toxicology Laboratory performed a drug analysis of Sarrett's blood. The results showed that Sarrett's blood tested positive for:

- Ethanol (.037 g/100mL)
- Chlordiazepoxide (.17 mg/L)
- Nordiazepam (.29 mg/L)
- Citalopram (.11 mg/L)

## **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>17</sup> The KCPAO will file charges if sufficient admissible evidence exists, which,

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<sup>15</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>16</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.

<sup>17</sup> 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.<sup>18</sup>

In addition, the State must disprove the existence of a defense that negates an element of the crime.<sup>19</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>20</sup> Therefore, the State may be required to disprove one or more of the following defenses:

- Justifiable Homicide by Peace Officer;<sup>21</sup>
- Justifiable Homicide Defense of Self or Others;<sup>22</sup>
- Justifiable Homicide Resistance to Felony;<sup>23</sup>

## **2. Applicable Law in Effect at the Time**

This incident occurred on September 19, 2020; therefore, the applicable Justifiable Homicide by a Peace Officer instruction would require the State to prove the officer acted without good faith.<sup>24</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

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<sup>18</sup> KCPAO Filing and Disposition Standards.

<sup>19</sup> WPIC 14.00.

<sup>20</sup> Id.

<sup>21</sup> RCW 9A.16.040; WPIC 16.01.

<sup>22</sup> RCW 9A.16.050(1); WPIC 16.02.

<sup>23</sup> RCW 9A.16.050(2); WPIC 16.03.

<sup>24</sup> The former version of WPIC 16.01, which included the malice standard, is applicable to offenses committed on or prior to December 6, 2018. The current version of WPIC 16.01, which removed malice and applied the good faith standard, is applicable to offenses committed on or after February 4, 2019. There are no pattern jury instructions for offenses committed between December 7, 2018, and February 3, 2019.

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 officer because the independent investigation and the Team’s analysis reveal that there is insufficient evidence to prove any criminal charges or disprove an affirmative defense 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 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.<sup>25</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>26</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>27</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>28</sup>

In the current incident, the independent investigation shows Involved Officer 1 used deadly force to overcome actual resistance to a lawful order or in the discharge of his legal duty. It was permissible for Involved Officer 1 to investigate Civilian Witness 1 allegations and give commands to Sarrett after Civilian Witness 1 informed Involved Officer 1 that her brother was

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<sup>25</sup> RCW 9A.16.040; WPIC 16.01.

<sup>26</sup> *Id.*

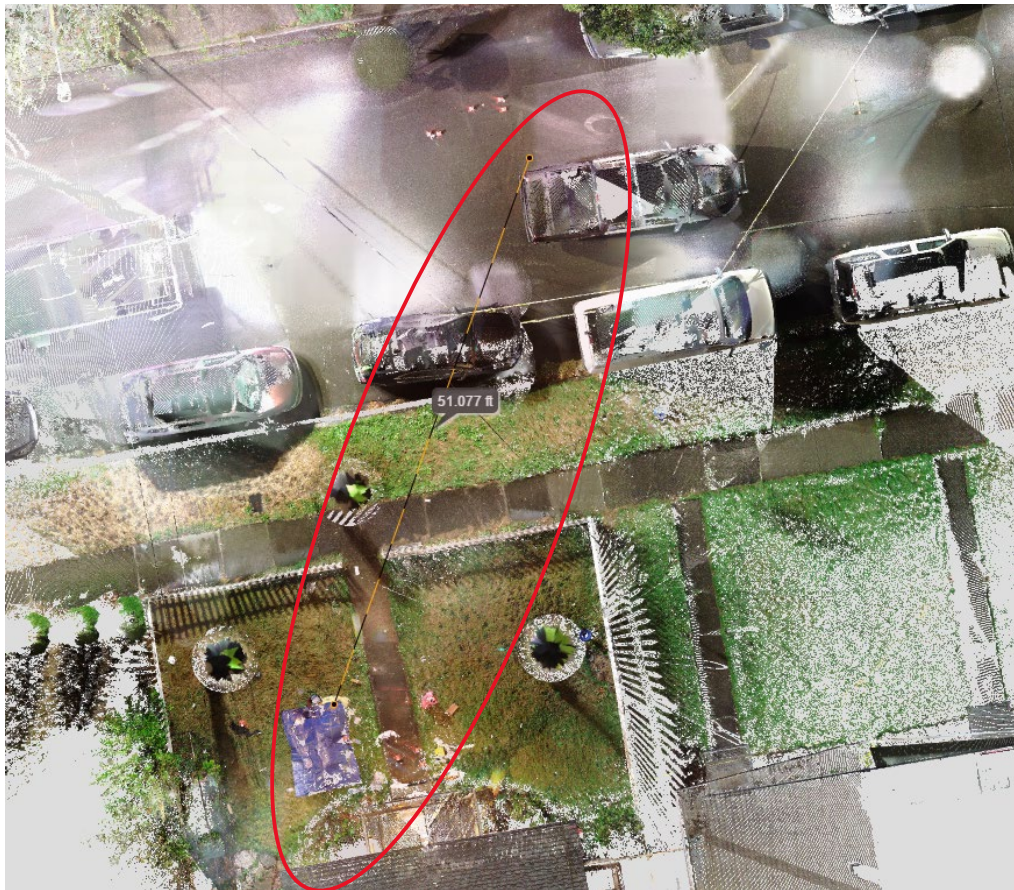
<sup>27</sup> *Graham v. Connor*, 490 U.S. 386, 396, 109 S. Ct. 1865, 1872, 104 L. Ed. 2d 443 (1989).

<sup>28</sup> *Id.* 490 U.S. at 396-97.

intoxicated, possessed a firearm, possibly assaulted Civilian Witness 3, pointed the firearm at Civilian Witness 4, and possibly discharged his firearm earlier. Based upon the civilian witness statements, including Civilian Witness 4, Civilian Witness 1, and Civilian Witness 5, Sarrett did not comply with Involved Officer 1's orders to stop putting his hands in or near his pockets.

Given the information provided by Civilian Witness 1, Involved Officer 1's actions were committed in good faith. At the time Involved Officer 1 gave Sarrett orders, he had no reason or ability to know if Sarrett had transferred the firearm to Civilian Witness 3. Although Civilian Witness 3 later claimed that Involved Officer 1 should have known that Sarrett was not armed, her conflicting statements show significant inconsistencies, which a jury would likely find affect her credibility. For instance, although Civilian Witness 3 stated she drank a small amount of alcohol, she readily admitted she suffered a recent concussion. Regardless of whether the alcohol or concussion impacted her ability to perceive events, Civilian Witness 3's testimony is compromised by other objective evidence. For instance, Civilian Witness 3 claimed that Sarrett did not appear intoxicated, but her recall is undercut by the testimony of several other witnesses who opined that Sarrett appeared heavily intoxicated, which is corroborated by his toxicology results. Additionally, the video that Civilian Witness 1 took of Sarrett captured him slurring his words and having great difficulty maintaining his balance.

Civilian Witness 3 also opined that Involved Officer 1 shot Sarrett from approximately 100' away; however, the crime scene investigation scene scan indicates that Involved Officer 1 was approximately 50' away from Sarrett at the time of the shooting. Additionally, Civilian Witness 3 recalled multiple officers present prior to and during the shooting. The other witnesses, however, indicate that Involved Officer 1 was the only officer present prior to and during the shooting. These witnesses' recall is buttressed by radio and CAD reports that indicate Involved Officer 1 was the only officer present prior to and during the use of force.



*Figure 6 - Crime scene investigation scan showing the approximate distance between Involved Officer 1 and Sarrett was 51' at the time of the shooting.*

Civilian Witness 3 also had no recall of Involved Officer 1 administering aid. Instead, she specifically recalled that Involved Officer 1 “just sat there.” However, this testimony would also be impeached. For instance, officers who responded to the scene after Involved Officer 1 reported that he was providing aid to Sarrett, Involved Officer 1’s bloody gloves were collected as evidence, and Sarrett’s neighbor, Civilian Witness 5, recalled Involved Officer 1 handcuffing Sarrett and administering aid.

From Involved Officer 1’s perspective, Sarrett was intoxicated, recently engaged in domestic violence, was armed with a firearm, pointed the firearm at his sister, and was not following the deputy’s commands. Based on this information, it was objectively reasonable for Involved Officer 1 to believe that Sarrett could remove and use a firearm that he believed was

inside Sarrett's pocket. Credible witness statements confirm that Involved Officer 1 gave Sarrett several commands without success. Unfortunately, this scenario left Involved Officer 1 with limited options. When confronted with the possibility that Sarrett would remove and use his firearm, it was necessary for Involved Officer 1 to use deadly force to prevent death or serious physical harm to himself or others.

## **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.<sup>29</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>30</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's acted as a reasonable peace officer are also relevant to this instruction.

Given that Sarrett refused to comply with Involved Officer 1's lawful orders, combined with the knowledge that Sarrett was intoxicated, armed, recently assaulted Civilian Witness 3, and threatened Civilian Witness 4, it was reasonable for Involved Officer 1 to believe that Sarrett was reaching into his pants to retrieve the firearm. Involved Officer 1's specific focus on

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<sup>29</sup> RCW 9A.16.050(1); WPIC 16.02.

<sup>30</sup> WPIC 2.04.01.



Sarrett's right pocket was reasonable based on Civilian Witness 1 report and Involved Officer 1's own observation of Sarrett's behavior.

Finally, 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>31</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 danger.<sup>32</sup>

## **VII. RECOMMENDATION FOR INQUEST**

An inquest is mandatory to determine the manner, facts, and circumstances of Sarrett's death pursuant to Executive Order PHL 7-1-5 EO unless the Executive determines the role of law enforcement was de minimis and did not contribute in any discernable way to a person's death. Given the facts outlined in the investigation, it is the Team's belief that an inquest is required under the current Executive Order.

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<sup>31</sup> WPIC 16.02.

<sup>32</sup> WPIC 16.07.