

Use of Force - Fatality

Isaiah Hinds

Seattle Police Department, Force Investigation Team
#2021FIT-0008



King County Prosecuting Attorney
Public Integrity Team

July 11, 2023



DECLINE MEMORANDUM

Law Enforcement Use of Force Fatality Regarding:

Isaiah Hinds

A. INTRODUCTION

1. Purpose of the Memorandum

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

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

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

² Id. See also WAC 139-12-010.

death, substantial bodily harm, or great bodily harm.³ The independent investigation is conducted in the same manner as a criminal investigation.⁴

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

2. Status of the Independent Investigation

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

3. Scope of the Memorandum

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

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

⁴ Id.

⁵ Executive Order PHL 7-1-5 EO.

⁶ Id. '

B. OVERVIEW

The Seattle Police Department conducted a SWAT operation to arrest Hinds on a homicide warrant and Department of Corrections escape warrant. Hinds exited his home with a handgun and fired at police, discharging his handgun three times. In response, Officers discharged their weapons, striking Hinds, who was pronounced deceased at the scene.

C. INVESTIGATION AND EVIDENCE

1. Force Investigation Team Reports
2. General Offense Reports
3. Body Worn Video
4. Scene Diagram and Maps
5. Autopsy Report

D. INVESTIGATION SUMMARY⁷

On August 5, 2021, at approximately 5:40 pm, members of the Seattle Police Department (SPD) SWAT Team attempted to arrest Isaiah Hinds (Hinds). At the time of the incident, probable cause existed to arrest Hinds for Murder in the First Degree and Escape from Community Custody. Officers approached Hinds' home with two bearcat vehicles and announced their presence to call Hinds out of the home. The announcement stated, "Occupants inside of 10040 21st Ave SW, this is the Seattle Police Department. I need you to come to the front door, open it slowly with nothing in your hands, and put your hands out the front door. Do it now."

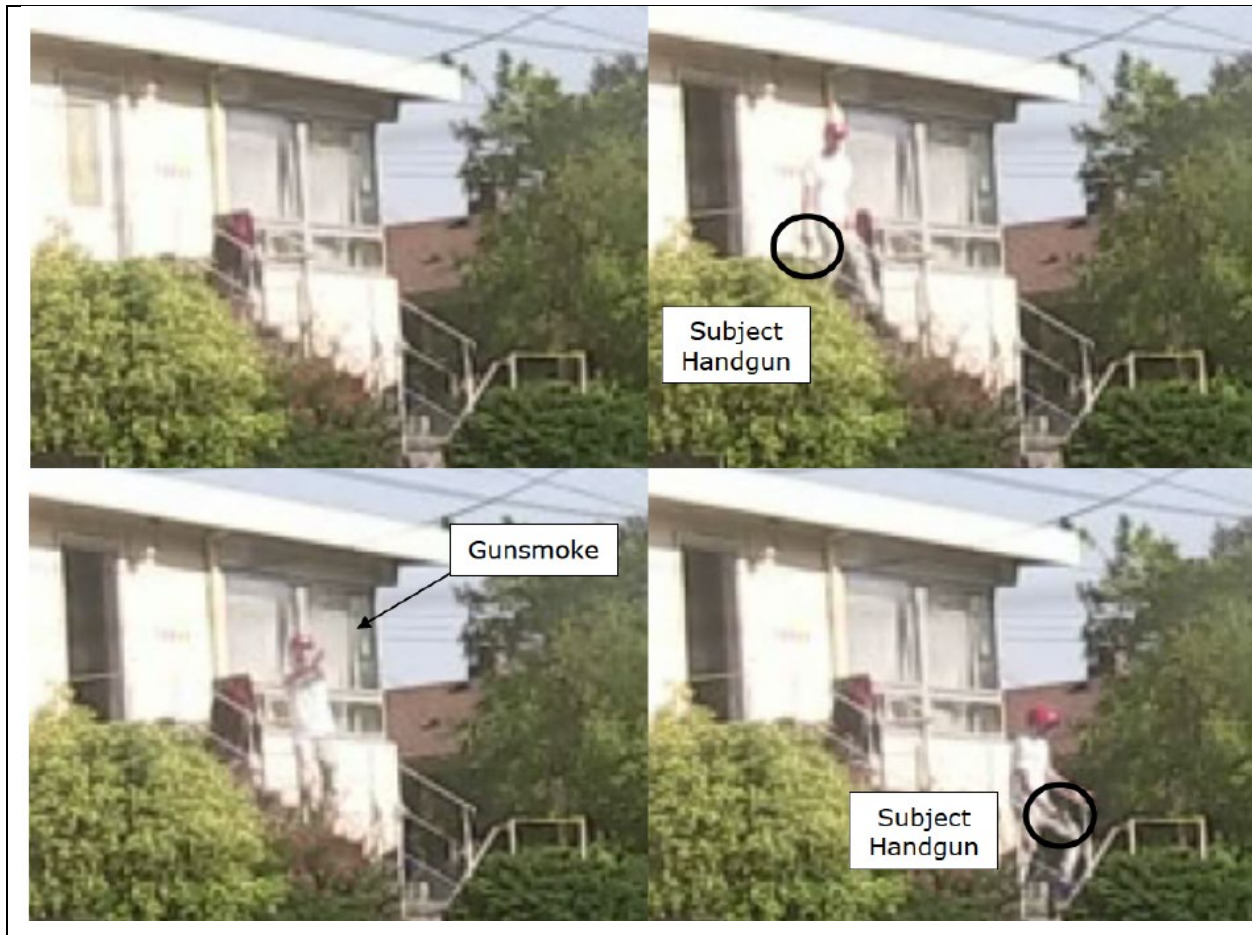
⁷ The Investigation Summary is based upon the investigation and evidence outlined in Section III. When necessary, the Team will identify the source of the information. It is common for witnesses, including law enforcement officers, to provide multiple statements about the events witnessed. Similarly, it is common for multiple witnesses to provide information about the same event. If a witness provides multiple statements and the statement contains material and substantial differences that could affect the investigation or analysis, the Team will identify information that is materially and substantially different. However, if the information has a de minimis effect on the investigation or analysis, the differences may not be identified. Similarly, although some events may be observed by more than one witness, the Team may not summarize each witnesses' statement unless it has a material and substantial effect on the investigation and analysis.

Hinds emerged from the front door of the home within seconds holding a handgun in his hand. Officer 1 yelled, "Heads up! Hands! Let me see your hands!" Hinds discharged three gunshots at officers and officers discharged thirteen gunshots in response. Based on body worn video, Force Investigation Detectives reviewed noted that the shots were fired in the following sequence:⁸

- 17:41:57 – Hinds discharged three shots in approximately .5 seconds.
- 17:42:01 – Involved Officer 1 discharged three shots in approximately .5 seconds.
- 17:42:02 – Hinds jumped or fell down the slope to street level, landed feet-first and fell backward into reclined sitting position.
- 17:42:04 – Hinds rolled to his right, sat up, and leaned forward.
- 17:42:04 – Involved Officer 2 fired one shot; Hinds grabbed his gun while in a reclined position on the ground.
- 17:42:05 – Involved Officer 3 discharged one shot.
- 17:42:05 – Involved Officer 2 discharged one shot.
- 17:42:06 – Involved Officer 3 discharged two shots in approximately 0.8 seconds.
- 17:42:07 – Involved Officer 2 discharged one shot.
- 17:42:07 – Involved Officer 3 discharged four shots in approximately .7 seconds.

A neighboring home's surveillance camera recorded the incident, which showed Hinds exiting the door with a handgun, pointing it towards police, and discharging the handgun.

⁸ Times are approximate.



E. LEGAL STANDARD AND APPLICABLE LAW

The State must prove each element of a criminal charge by competent evidence beyond a reasonable doubt.⁹ 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.¹⁰

In addition, the State must disprove the existence of a defense that negates an element of the crime.¹¹ Prosecution should not be declined because of an affirmative defense unless the

⁹ RCW 9A.04.100; WPIC 4.01.

¹⁰ KCPAO Filing and Disposition Standards.

¹¹ WPIC 14.00.

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.¹² Therefore, the State may be required to disprove one or more of the following defenses:

- Justifiable Homicide by Peace Officer;¹³
- Justifiable Homicide Defense of Self or Others;¹⁴

This incident occurred on August 5, 2021; therefore, the applicable Justifiable Homicide by a Peace Officer instruction would require the State to prove the officer acted without good faith.¹⁵

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

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

F. ANALYSIS AND CONCLUSION

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

¹² Id.

¹³ RCW 9A.16.040; WPIC 16.01.

¹⁴ RCW 9A.16.050(1); WPIC 16.02.

¹⁵ 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.”

Given the evidence presented in this case, there is insufficient evidence to refute the affirmative defense that the officer’s actions were justifiable under the good faith standard and/or justifiable in defense of self or others. Therefore, the actions of Involved Officer 1, Involved Officer 2, and Involved Officer 3, were lawful and the Team recommends that no criminal charges be filed against Involved Officer 1, Involved Officer 2, Involved Officer 3, or any other officer present during this incident.

Justifiable Homicide by a Peace Officer under the good faith standard and Justifiable Homicide in Defense of Self or Others contain related but distinct concepts and definitions. For instance, homicide or the use of deadly force is justifiable when used necessarily and in good faith by a peace officer 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. On the other hand, homicide is also justifiable 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 there 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.

1. Justifiable Homicide by a Peace Officer

A peace officer acts in good faith if a similarly situated reasonable peace officer would have acted similarly. The peace officer must have probable cause to believe that the suspect, if not apprehended, poses a threat of serious physical harm to others. A threat of serious physical harm may include instances where the suspect threatens a peace officer with a weapon, displays a weapon in a manner that could reasonably be construed as threatening, or there is probable cause to believe the suspect committed any crime involving the infliction or threatened infliction of serious physical harm.

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.¹⁶ “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.”¹⁷

In the current incident, the evidence and testimony are highly likely to demonstrate that Hinds was wanted for homicide and, given that information, the officers had a duty to apprehend him and attempted to do so safely. There was probable cause to believe that Hinds posed a threat of serious physical harm if not apprehended and Hinds posed an instant threat of serious physical harm to officers when he exited the home and immediately discharged a handgun at officers three times.

2. Justifiable Homicide in Defense of Self or Others

A homicide is justifiable 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.

Justifiable Homicide by a Peace Officer requires that, at a minimum, the harm to be avoided is “serious physical harm,” which is not defined by statute. However, Justifiable Homicide in Defense of Self or Others requires that, at a minimum, the harm to be avoided is “great personal injury,” which includes severe pain and suffering. Given that Hinds pointed a handgun and discharged it three times at officers, the involved officers reasonably believed that Hinds intended to commit a felony, to inflict death, or to inflict great personal injury upon the officers.

¹⁶ Graham v. Connor, 490 U.S. 386, 396, 109 S. Ct. 1865, 1872, 104 L. Ed. 2d 443 (1989).

¹⁷ Id., 490 U.S. at 396-97.

G. RECOMMENDATION FOR INQUEST

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

Attachment A

WPIC 16.01 - Justifiable Homicide by a Peace Officer

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

Homicide or the use of deadly force is justifiable:

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

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

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

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

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

WPIC 16.05 – Necessary

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

WPIC 16.02 – Justifiable Homicide – Defense of Self and Others

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

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

- (1) the slayer reasonably believed that the person slain intended to commit a felony¹⁸ or to inflict death or great personal injury;
- (2) the slayer reasonably believed that there was imminent danger¹⁹ 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.

¹⁸ 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).

¹⁹ 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 felony²⁰ 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.

²⁰ 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)