Use of Force Fatality Investigation

Brambila-Pelayo, Rigoberto

Seattle Police Force Investigation Team

2022FIT-0001 & 2022-3935

King County Prosecuting Attorney

Public Integrity Team

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DECLINE MEMORANDUM

This memorandum has been approved by the King County Prosecuting Attorney to be published on the website of the Prosecuting Attorney's Office Public Integrity Team.[1]

[1] https://kingcounty.gov/en/dept/pao/about-king-county/about-pao/team-leadership/organizational-structure/criminal/mainstream/public-integrity-team

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I. INTRODUCTION

1. Purpose of the Memorandum

Pursuant to the Law Enforcement Training and Community Safety Act, an independent investigation must be completed when the use of deadly force by a peace officer results in death, substantial bodily harm, or great bodily harm.[2] The independent investigation is conducted in the same manner as a criminal investigation and must be completely independent of the involved agency.[3]

The Revised Code of Washington requires the prosecuting attorney to represent the State of Washington and to prosecute all criminal actions in which the state or the county may be a party.[4] In addition to exercising its prosecutorial discretion to initiate criminal proceedings, the prosecuting attorney is required to review certain incidents regarding police use of force and to determine if sufficient evidence exists to support the filing of criminal charges.[5] Therefore, the review of an incident by the King County Prosecuting Attorney's Office (KCPAO) 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 an independent investigation 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.[6]

2. Scope of the Memorandum

The KCPAO's decision whether 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

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[2] RCW 10.114.011. See also WAC 139-12-010.
[3] WAC 139-12-010.
[4] RCW 36.27.020(4).
[5] 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.
[6] Id. See also WAC 139-12-010.

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.

The KCPAO's determination is not intended to address matters outside the scope of this memorandum, including, but not limited to, an administrative action by the involved agency, any civil action, or any inquiry, or other proceeding. Compared to a criminal prosecution, these proceedings involve different areas of the legal system, utilize different standards of proof, and may include evidence that is not admissible in a criminal prosecution. The KCPAO expresses no opinion regarding the propriety or likely outcome of any such actions. However, topics that are relevant to matters outside the scope of this memorandum, such as department policy, procedures, or training, may be included and reviewed in this memorandum to the extent those topics are relevant to assessing whether the police action was justified or if there was a criminal action such that criminal charges should be filed.

3. Status of the Independent Investigation

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

II. OVERVIEW

On January 5, 2022, a civilian called 911 to report there was a stranger inside his home and the person was armed with a machete. Seattle Police Department officers responded and observed Rigoberto Brambila-Pelayo, who matched the description provided by the homeowner, in the immediate area. Officers commanded Brambila-Pelayo to stop numerous times and used a police canine to apprehend him. However, Brambila-Pelayo stabbed the police canine, which led to the canine's death. As Brambila-Pelayo stabbed the police canine, an officer attempted to arrest Brambila-Pelayo, but he lunged at the officer with a metal post and a knife. In response, another officer discharged his firearm at Brambila-Pelayo, striking him, which ultimately led to his death.

III. INVESTIGATION MATERIALS

1. Police Reports – Seattle Police Department 2022FIT-0001 and 2022-3935
2. Police Reports – Seattle Police Department 2022-021776
3. Civilian Statements
4. Computer Aided Dispatch
5. Crime Scene Investigation
6. Autopsy and Toxicology Reports
7. Involved Officer Information
8. Subject Information
9. 911 Call and Police Radio Traffic
10. Audio
11. Body Worn Video
12. In-Car Video
13. Other Video
14. Photos
15. Miscellaneous

IV. FACTUAL SUMMARY[7]

1. Facts Prior To The Use Of Force

The following information is based upon several sources, including, but not limited to, witness observations, police reports, the Seattle Police Department (SPD) computer aided dispatch (CAD) report, recorded police radio, 911 recordings, body worn video (BWV) cameras, and in-car video (ICV) cameras from January 5, 2022.

At approximately 2:11 pm, Civilian Witness 1 called 911 and reported there was an "intruder" inside his home, located at 2205 S. Eddy St. Civilian Witness 1 reported that the male,

[7] The Factual 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.

later identified as Rigoberto Brambila-Pelayo (Brambila-Pelayo)[8], was a "white Latin" male, twenty-four to twenty-five years old, and threatened Civilian Witness 1 with a machete. One minute later, the SPD dispatcher notified officers with the information provided by Civilian Witness 1. Witness Officer 1 was dispatched as the primary officer. Involved Officer 1 and Witness Officer 2, who was partnered with his police canine, Jedi, responded as backing units.

While Civilian Witness 1 provided more information to the 911 operator, there was audible banging and yelling on the line. Civilian Witness 1 stopped responding to the 911 operator and the SPD dispatcher updated the call information to alert officers there was a "possible struggle" inside the home. Shortly afterwards, Civilian Witness 1's phone disconnected. The 911 operator called Civilian Witness 1, but he did not answer the phone. The SPD dispatcher notified the responding officers contact with Civilian Witness 1 was lost.

At approximately 2:15 pm, Witness Officer 2 and Involved Officer 1 arrived separately at Civilian Witness 1's location. When they arrived, they found Civilian Witness 1 standing outside of his home holding a sledgehammer. Witness Officer 2 asked Civilian Witness 1 where Brambila-Pelayo was located and Civilian Witness 1 replied Brambila-Pelayo was inside the house, inside a locked bedroom, and was "almost dead." Witness Officer 2 notified Involved Officer 1 he was going to his patrol vehicle to retrieve his police canine, Jedi. Involved Officer 1 advised Civilian Witness 1 to wait outside and positioned himself by the front entrance of the home until the backing officers arrived. Witness Officer 1 arrived and Civilian Witness 1 notified him that Brambila-Pelayo was the only person inside the home. Civilian Witness 1 also confirmed he did not know Brambila-Pelayo and his home was "destroyed."

[8] Brambila-Pelayo's identity was not established when police were initially dispatched. Unless stated otherwise, the witnesses did not identify BP by name or recognize him from previous encounters. However, because Brambila-Pelayo's identity is not at issue for purposes of this memorandum, the individual that the witnesses described will be referred to as Brambila-Pelayo for clarity throughout the memorandum.

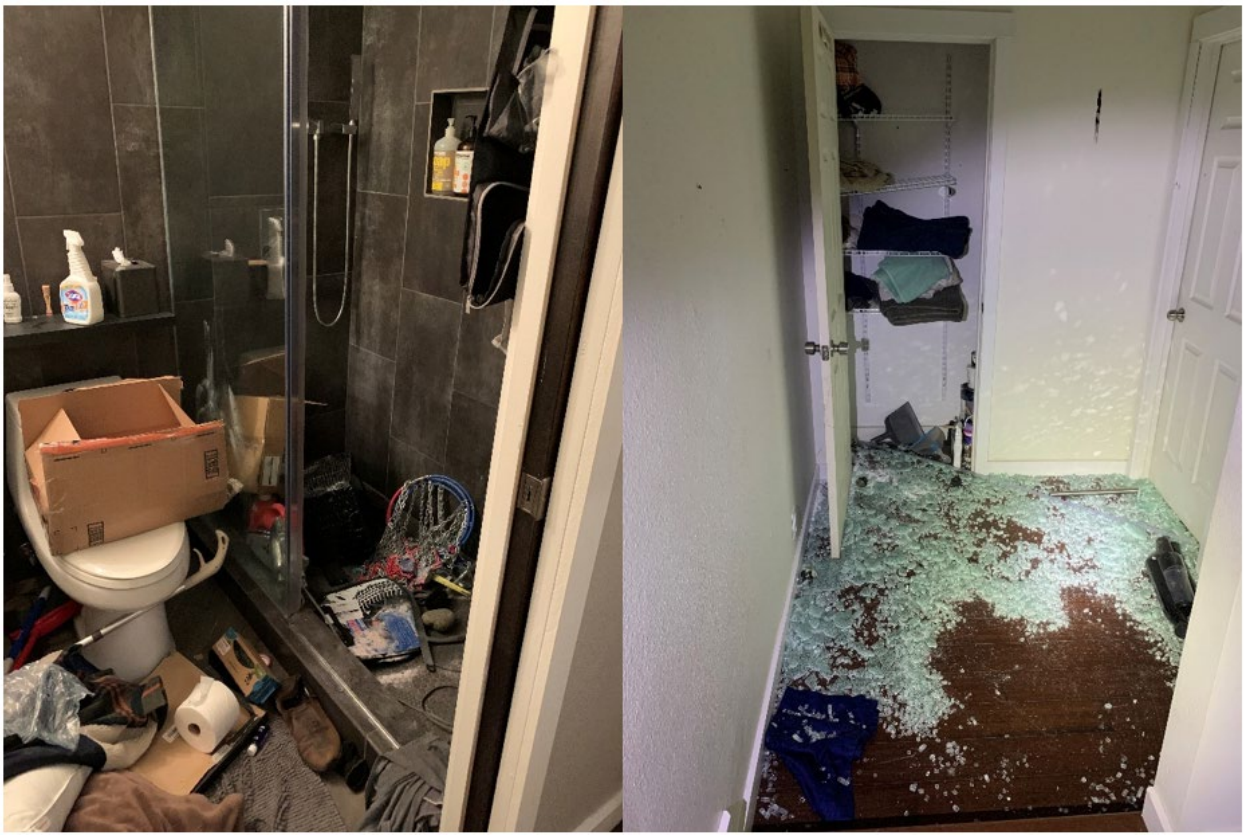


Figure 1 - FIT photographs of damage inside Civilian Witness 1's home.

Witness Officer 2 returned with Jedi, placed him on a 6' lead, and they proceeded to the rear of the home to determine if Jedi detected any signs of Brambila-Pelayo. When he entered the backyard, Witness Officer 2 noted a window and the sliding glass door were shattered. Additionally, he noticed the blinds were raised. He used his radio to broadcast that the sliding glass door in the back of the house was "busted out."

Figure 2 - FIT photographs of damage to Civilian Witness 1's home

While Witness Officer 2 and Jedi were in the backyard, Involved Officer 1, Witness Officer 1, and Witness Officer 3 entered the front of the house. While officers looked for Brambila-Pelayo inside the home, the ICV inside Involved Officer 1's patrol vehicle recorded Brambila-Pelayo walking southbound from Civilian Witness 1's home. Witness Officer 4 broadcasted he was about to arrive and advised the officers to stand by before entering locked bedrooms. Moments later, Involved Officer 1's ICV recorded a civilian, later identified as Civilian Witness 2, carrying a baseball bat and walking behind Brambila-Pelayo.

At 2:20 pm, Witness Officer 4 arrived and broadcasted there was a disturbance at "23rd and Eddy" and it might be related to the incident at Civilian Witness 1's home. Witness Officer 4 also broadcasted the subject was a Hispanic male wearing a towel. He also advised someone was following the subject with a baseball bat, so he asked officers to relocate to this area. When Witness Officer 4 observed Brambila-Pelayo, he noted Brambila-Pelayo stood out to him

because he was only wearing a towel on a cold day and Brambila-Pelayo was carrying "a collection of different items," including a pole.

Witness Officer 2 and Jedi, who were now inside Civilian Witness 1's home, exited and ran to the location Witness Officer 4 described. When Witness Officer 2 observed Brambila-Pelayo, he noted Brambila-Pelayo matched the description given as the subject in Civilian Witness 1's home. Additionally, Witness Officer 2 opined that, because one civilian armed himself with a sledgehammer and another armed himself with a bat, it was likely something occurred to cause the civilians' concern. When Civilian Witness 2 saw Witness Officer 2, he pointed in the direction of Brambila-Pelayo and Witness Officer 2 announced Brambila-Pelayo's location via radio.

Witness Officer 2 reported he observed Brambila-Pelayo moving southbound on 23rd Ave S., carrying several items, including a "broomstick . . . like a Swifter" and a machete, which was "clear as day." Brambila-Pelayo stopped and looked north toward the intersection of 23rd Ave S. and S. Eddy St, which is where Witness Officer 2 was located. Witness Officer 2 yelled, "Get on the ground now!" However, Brambila-Pelayo ran southbound on 23rd Ave S. towards S. Warsaw St. Witness Officer 2 and Jedi continued running after Brambila-Pelayo. While running he shouted, "Stop! Get on the ground! I'll send the dog!" Witness Officer 2 attempted to broadcast, "Hold the air, he's got a machete," but his transmission met interference due to other officers attempting to communicate with the SPD dispatcher.

Based upon Witness Officer 2's understanding of SPD policy, it was permissible for him to release Jedi and allow Jedi to apprehend Brambila-Pelayo because there was probable cause Brambila-Pelayo committed burglary in the first degree. However, Witness Officer 2 did not release Jedi at this time. During a later interview, Witness Officer 2 explained he did not release Jedi at this time for two reasons. First, Brambila-Pelayo was armed with a "machete . . . a sharp weapon . . . it can cause serious damage . . . if I send Jedi to bite him, most likely he's going to take that machete and he's going to start cutting my dog." Related to this reason, it was Witness Officer 2's understanding that he was not permitted to use deadly force solely to protect Jedi

under SPD policy and current law. Second, Witness Officer 2 did not release Jedi at this time because he was by himself and he was looking for another officer to assist with the arrest.[9]

When Brambila-Pelayo approached the intersection of 23rd Ave S. and S. Warsaw St., he ran southwest through the yard of 6502 Swift Ave S. As Brambila-Pelayo approached the front door of the home, his pace slowed and he looked back towards Witness Officer 2 and Jedi. Witness Officer 2 again yelled, "Stop!" During his interview, Witness Officer 2 reported "He's constantly looking back at me. He knows that I'm there. There's nothing to obstruct his view. He knows that I'm a cop. He, clear as day, he can see that I'm running at him with a police dog on lead."

Figure 3 - BWV screenshot of Brambila-Pelayo near the front door of 6502 Swift Ave S.

[9] Regarding the second reason Witness Officer 2 did not release Jedi, it does not appear that Witness Officer 2 was asked to elaborate on why he waited for another officer to assist with the arrest. However, for purposes of the analysis, the Team assumed there may have been multiple explanations for Witness Officer 2's rational. For example, there are SPD policies that require the canine handler to remove the canine from a suspect after the canine engages a suspect. Additionally, attempting to arrest Brambila-Pelayo, who was armed with a machete, and remove Jedi at the same time may have proven impractical or impracticable.

Witness Officer 2 was concerned that Brambila-Pelayo intended to break into the home, but Brambila-Pelayo walked westbound through the yard toward Swift Ave S. As Brambila-Pelayo ran into the roadway, Witness Officer 4 positioned his patrol vehicle south of Brambila-Pelayo, which appeared to be the direction Brambila-Pelayo was going. During a later interview, Witness Officer 4 reported he parked his patrol vehicle ahead of Brambila-Pelayo "to block him, ideally from going any further, and I got out of my car real quick."[10]

Figure 4 - BWV screenshot of Brambila-Pelayo crossing Swift Ave S.

[10] Based upon BWV, the Team observed there were occupied civilian vehicles beyond Witness Officer 4's patrol vehicle.

2. Facts During The Use of Force

Brambila-Pelayo approached Witness Officer 4 and raised the machete using his right arm. Witness Officer 2 yelled, "Sarge, he's got a fucking machete!" Witness Officer 4 backed up, drew his firearm, and yelled "Stop right there! Stop! You want to take him? Stop it now! Stay back! Stay back!" Witness Officer 2 yelled, "Drop it!" During his interview, Witness Officer 4 noted Brambila-Pelayo's lack of response to the officers stood out to him. Additionally, he added that in his nearly twenty-nine years of law enforcement, Brambila-Pelayo's behavior indicated an extreme mental health crisis or drug use. As Brambila-Pelayo continued to ignore their commands, Witness Officer 2 believed Brambila-Pelayo presented an "imminent" danger.

Figure 5 - BWV screenshot of Brambila-Pelayo raising the machete and moving towards Witness Officer 4. Occupied civilian vehicles are present in the background behind Witness Officer 4.

Witness Officer 2 and Witness Officer 4 drew their firearms, pointed their firearms at Brambila-Pelayo, and continued to order Brambila-Pelayo to stop and get on the ground, but Brambila-Pelayo did not respond to them. Brambila-Pelayo changed his direction towards a guardrail on the road, stopped, turned towards the officers, pointed the machete at them, and yelled, "Get away from me!"

Referring to Jedi, Witness Officer 2 told Witness Officer 4, "Sarge, I can't fucking send him." It is unclear if Witness Officer 4 heard Witness Officer 2 because Witness Officer 4 was also broadcasting directions to other officers headed to the scene. Moments after Witness Officer 2's statement, Witness Officer 4 asked Witness Officer 2, "What do you want to do?" Witness Officer 2 replied, "I'm gonna send the dog. He's gonna get fucking shot though." Involved Officer 1 drove southbound past the officers and Brambila-Pelayo as they continued moving further southbound on Swift Ave S.

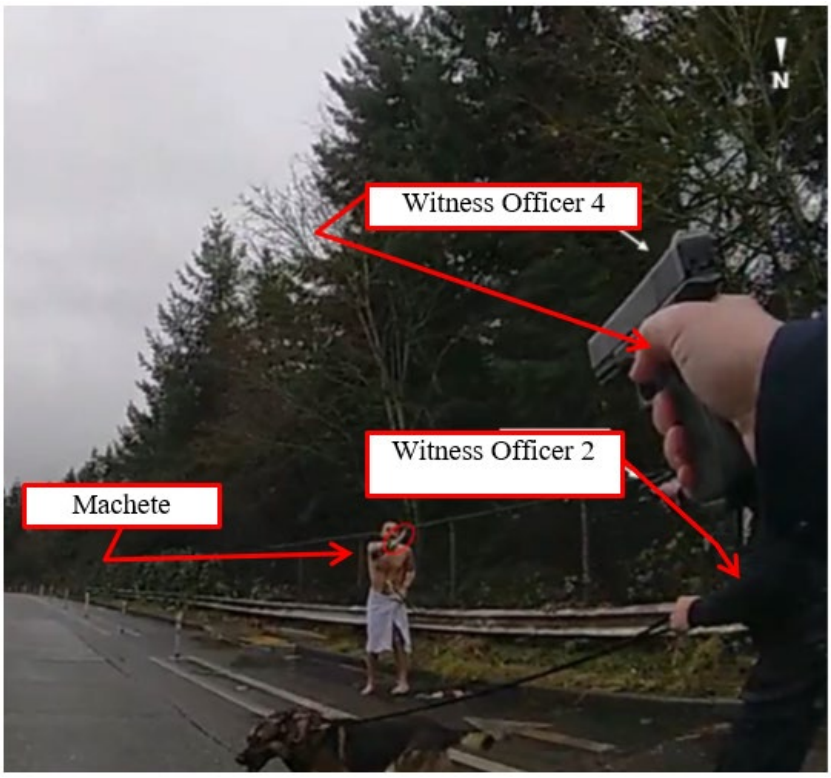


Figure 6 - BWV screenshot of Witness Officer 2 and Witness Officer 4 pursuing Brambila-Pelayo, who is pointing the machete in their direction.

As Involved Officer 1 exited his patrol vehicle, Witness Officer 2 said, “That’s it, fuck it.” Witness Officer 2 yelled, “Dog! Dog! Dog!” and gave Jedi a command to apprehend Brambila-Pelayo. During his interview, Witness Officer 2 stated he released Jedi when he observed Brambila-Pelayo’s pace slowed. Based on his previous experience working with Jedi, Witness Officer 2 believed it was possible that when Jedi attempted to apprehend Brambila-Pelayo, Jedi may knock Brambila-Pelayo down, and this would allow officers to safely arrest Brambila-Pelayo. Witness Officer 2 opined that officers had made several attempts to arrest Brambila-Pelayo without injury and releasing Jedi was his last attempt to de-escalate.

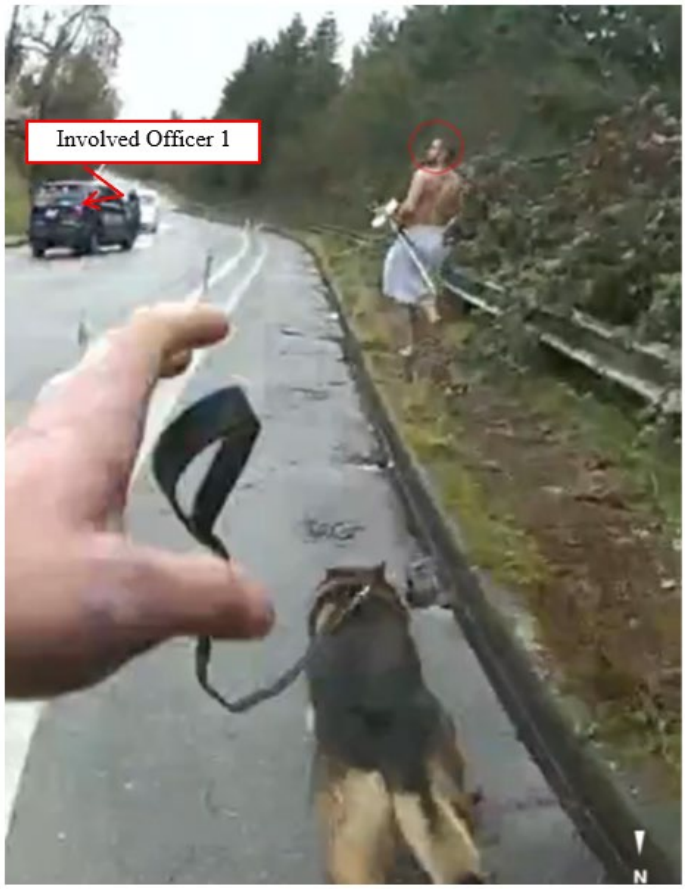


Figure 7 - BWV screenshot of Witness Officer 2 releasing Jedi so Jedi could apprehend Brambila-Pelayo. Involved Officer 1, in the background, exited his vehicle.

During his interview, Witness Officer 2 recalled a similar incident involving a suspect with a knife and a police canine that occurred the year prior. According to Witness Officer 2, the

officer was disciplined by the Office of Professional Accountability (OPA) for not sending his police canine to apprehend the subject with a knife.[11] Witness Officer 2 stated the reason police canine handlers do not send a canine at a subject with a knife is because it is highly likely the suspect will stab the police canine.

As Jedi approached Brambila-Pelayo, Brambila-Pelayo looked over his left shoulder and ran southbound. As he ran, Brambila-Pelayo turned and struck Jedi with the machete that was in his right hand. Seeing Jedi being attacked, Witness Officer 2 gave Jedi a command to come back, but Brambila-Pelayo struck Jedi a second time while Jedi bit and pulled on the towel wrapped around Brambila-Pelayo.

Figure 8 - BWV screenshot of Brambila-Pelayo striking Jedi with the machete.

[11] The Team is familiar with the incident Witness Officer 2 referenced, which occurred in May 2020. In 2020OPA-0519, the involved officer discussed his concern about releasing his canine because he believed the canine would have been stabbed by the suspect. OPA determined the involved officer failed to de-escalate by not using his police canine to apprehend the suspect. OPA cited additional tactical decisions made by the involved officer that led to their finding. Based upon the Team's analysis, the additional tactical decisions cited by OPA are not applicable to Witness Officer 2 or the current incident.

Figure 9 - BWV screenshot of Brambila-Pelayo striking Jedi a second time with the machete.

Witness Officer 2 gave Jedi another command to return and he also used Jedi's e-collar to order Jedi to release and return. In his interview, Witness Officer 2 explained it appeared Brambila-Pelayo struck Jedi in the neck with the machete. Witness Officer 2 reported he verbally ordered Jedi to leave, which Jedi had consistently done in the past. Based on his experience working with Jedi, Witness Officer 2 opined Jedi may not have responded to Witness Officer 2's commands because Jedi was injured by the machete and went into "defensive mode."

As Brambila-Pelayo attacked Jedi, he fell backward over the guardrail located on Swift Ave S., but his fall was stopped by a chain link fence next to the guardrail, which left Brambila-Pelayo sitting atop the guardrail. Brambila-Pelayo struck Jedi a third time with the machete. At the time of his interview, Witness Officer 2 had not watched any video of the incident. Witness Officer 2 reported that when he saw Brambila-Pelayo on the guardrail, he started moving toward Brambila-Pelayo because it appeared Brambila-Pelayo had dropped the machete.

As Witness Officer 2 moved closer to Brambila-Pelayo, he could not see anything in Brambila-Pelayo's hands, so he intended to approach Brambila-Pelayo and arrest him. However, according to BWV, Brambila-Pelayo had moved the machete from his right hand to his left hand

and Brambila-Pelayo moved a knife from his left hand to his right hand. As Witness Officer 2 approached Brambila-Pelayo, BWV showed his firearm was holstered and his hands were positioned in front of his chest. Brambila-Pelayo leaned forward and placed his feet on the ground. With the knife in his right hand, Brambila-Pelayo made a downward sweeping motion towards Jedi, stabbing him. As this occurred, Witness Officer 2 stated he was unsure what Brambila-Pelayo used to strike Jedi.

Brambila-Pelayo stabbed Jedi a second time and Witness Officer 2 slid to a stop in front of Brambila-Pelayo and Jedi. Witness Officer 4 reported his attention was focused on the machete located in Brambila-Pelayo's left hand, so he only observed Brambila-Pelayo "hitting" Jedi with his right hand.

Figure 10 - BWV screenshot of Brambila-Pelayo stabbing Jedi twice with a knife in his right hand.

According to Involved Officer 1's BWV, timestamped at 2:22:28 pm, Brambila-Pelayo looked in Witness Officer 2's direction and lunged toward him. Using his left hand, Brambila-Pelayo struck Witness Officer 2 in the face with the tip of a metal fence post. While his momentum continued forward, Brambila-Pelayo used his right hand to swing the knife towards Witness Officer 2's left midsection. However, Brambila-Pelayo could not fully rotate towards

Witness Officer 2 because Jedi blocked Brambila-Pelayo's right leg and hip. Witness Officer 2 reported that when he was struck in the face, he observed that Brambila-Pelayo "actually had something" in his right hand. Involved Officer 1's BWV recorded him discharging his firearm at Brambila-Pelayo seven times. According to his BWV, the gunshots spanned approximately two seconds from timestamps 2:22:28 pm through 2:22:30 pm.

Metal Fence Post

Figure 11 – Series of BWV screenshots from Involved Officer 1's BWV showing Brambila-Pelayo turning his attention towards Witness Officer 2, striking Witness Officer 2 in the face with the metal fence post, lunging towards Witness Officer 2, and swinging the knife at Witness Officer 2's left side.

3. Facts Immediately After The Use of Force

After Involved Officer 1 discharged his firearm, Witness Officer 4 broadcasted, "Shots fired. Shots fired." Witness Officer 2 secured Jedi and stated, "My dog's hurt, guys. I'm hit. I'm hit." At approximately 2:23 pm, Witness Officer 4 broadcasted an officer was "partially injured," the suspect was down, and he requested medics.

Witness Officer 2 attempted to provide aid to Jedi. He reported he felt Jedi collapse and he heard "wheezing in his lungs." Witness Officer 2 tried to keep pressure on Jedi's wounds, but he observed Jedi's breathing became increasingly labored until it appeared he died.

Officers on scene did not render medical aid to Brambila-Pelayo. During his interview, Witness Officer 4 explained aid was not rendered because he observed Brambila-Pelayo "was shot, shot multiple times, he went down quickly . . . After that, I saw zero signs of life from him indicative that lifesavings efforts would be of value . . ." Witness Officer 4 described Brambila-Pelayo as having "no movement, no obvious breathing, no moaning in pain or crying out, nothing like that." Further, he stated he realized Brambila-Pelayo was deceased "very early on" and when Brambila-Pelayo was shot and fell, it was "like lights out."

At 2:31 pm, approximately nine minutes after the use of force, members of the Seattle Fire Department (SFD) arrived. A firefighter checked Brambila-Pelayo's carotid pulse for

"almost a minute" and later reported he found no signs of life. He confirmed Brambila-Pelayo was deceased. SFD generated a "Patient Care Record" for Brambila-Pelayo and made the following notations:

- Primary Impression – Obvious Death
- Chief Complaint – Multiple GSW[12]
- Signs and Symptoms – Obvious Death – Severe traumatic injuries
- Final Patient Acuity – Dead Without Resuscitation Efforts
- Narrative – SFD "only verified viability of pt.[13] Due to crime scene, GSW locations, were not documented, since they could not be accessed without moving the body."

V. INDEPENDENT INVESTIGATION

1. Independent Investigation Team

Other officers arrived and they secured the incident scene and rerouted traffic away from the area. An independent investigation team was notified about the use of force and requested to respond to the scene to conduct an independent investigation. The SPD Force Investigation Team (FIT) was contacted and Investigator 1 was designated as the lead investigator. FIT divided assignments between themselves, such as interviewing witnesses, officer processing, crime scene investigation, and evidence collection.

2. Officer Processing

a. General Information

Consistent with standard protocol, FIT determined which officers used force and processed those officers. Officer processing refers to the investigative steps of documenting the physical appearance and condition of uniforms and equipment of each involved officer.

[12] Gunshot wound(s).
[13] Patient.

Depending on the specific facts and circumstances of the incident, officer processing typically consists of four parts:

- Investigators photograph the involved officer to document their appearance, including the involved officer's clothing and equipment worn during the use of force, uniform defects, injuries, equipment, and potential trace evidence.
- Investigators identify which weapons were involved during the use of force and document the condition of those items.
- Investigators determine and document the number of firearm cartridges, if applicable, in the involved officer's firearm, loaded magazine, and any spare magazines.
- Investigators collect firearms, equipment, uniforms, and other items as necessary.

b. Officer Processing During The Current Incident

Investigators determined that Involved Officer 1 discharged his handgun. Based upon the photographs taken by investigators, Witness Officer 4, Witness Officer 2, and Involved Officer 1 wore SPD uniforms, which were obviously marked with the word "Police" and other law enforcement insignias that clearly identified them as law enforcement.

Figure 12 - Photograph of Witness Officer 2 taken during officer processing; and Figure 13 - Photograph of Involved Officer 1 taken during officer processing.

While examining an involved officer's firearm, investigators determine if the firearm is loaded, whether there is an unfired cartridge in the chamber of the firearm, whether there are unfired cartridges in the magazine loaded into the firearm, and whether there are unfired cartridges in the involved officer's spare magazines. Based on this examination, investigators can estimate how many cartridges were discharged during the use of force. Crime scene investigators also seek to collect discharged cartridge casings located at the use of force scene to ensure that all the involved officer's discharged cartridges are accounted for.

At times, however, there is a discrepancy between the number of discharged cartridges estimated during officer processing and the number of discharged cartridge casings recovered at the scene. This is likely due to the involved officer's preferred loading procedure. Regarding handguns, officers generally fill their loaded magazine to maximum capacity, insert the magazine into their handgun, load a cartridge into the chamber, remove the magazine, and place another cartridge into the magazine so that the loaded magazine is at maximum capacity in

addition to the cartridge in the chamber.[14] However, it is also common for officers to not load a magazine to its full capacity to ensure that the spring located inside the magazine functions properly.

c. Involved Officer 1

Weapon Examined: Glock 17 Gen 4, 9x19mm

Cartridge Location	Unfired	Capacity	Headstamp
Chamber	1	1	Speer 9mm Luger +P
Loaded Magazine	17	17	Speer 9mm Luger +P
Spare Magazine	17	17	Speer 9mm Luger +P
Spare Magazine	17	17	Speer 9mm Luger +P
Spare Magazine	9	17	Speer 9mm Luger +P

If Involved Officer 1 filled his loaded magazine to capacity with an additional cartridge in the chamber, his handgun was loaded with eighteen cartridges, which would indicate that he may have discharged eight cartridges. However, if Involved Officer 1 did not fill his loaded magazine to capacity, leaving it one cartridge short of capacity, it would indicate that he may have discharged seven cartridges.

3. Witness Officer 2's Injuries

During officer processing, investigators noted that Witness Officer 2 had bloodstains on his uniform and microphone. Additionally, there was a laceration on Witness Officer 2's face, caused by the object Brambila-Pelayo used to hit Witness Officer 2 in the face.

[14] A process referred to as "topping off a magazine."

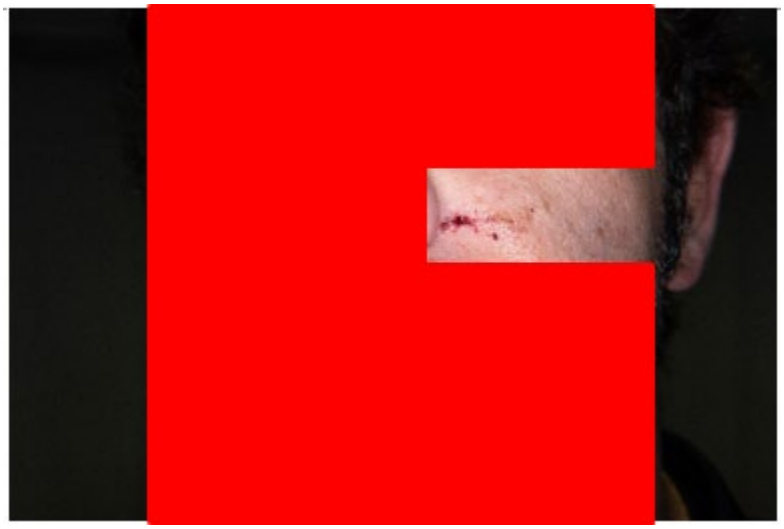


Figure 14 – FIT photograph of Witness Officer 2's injury.

Based on the initial review of the BWV, investigators were uncertain if Brambila-Pelayo also struck Witness Officer 2 with the knife near his left hip. After a closer review of the BWV, civilian video, and Witness Officer 2's uniform, investigators determined the knife did not contact Witness Officer 2 nor a belt clip on his uniform, which was likely due to Jedi blocking Brambila-Pelayo when he attempted to stab Witness Officer 2.

4. Civilian Witnesses Statements

a. Civilian Witness 1

Civilian Witness 1 provided a statement to FIT. He reported when he arrived home, he noticed his kitchen faucet was running, his oven and instant pot were on, there was a "mess" on the counter, and there was "glass all over the floor." Additionally, Civilian Witness 1 heard water running in the bathroom. When he entered the bathroom, he saw a naked male, Brambila-Pelayo, showering inside. Civilian Witness 1 ordered Brambila-Pelayo out of the home and Brambila-Pelayo replied that it was his home. Brambila-Pelayo picked up a fire extinguisher, which was previously located in the kitchen, and he attempted to spray Civilian Witness 1 with it. Civilian Witness 1 quickly closed the shower door and called 911. As he provided information to the 911 operator, Brambila-Pelayo picked up a machete and struck the glass shower door. Civilian Witness 1 believed the machete belonged to Brambila-Pelayo.

When Brambila-Pelayo hit the glass shower door, Civilian Witness 1 felt Brambila-Pelayo was trying to "chop [his] hand off." While he provided information to the 911 operator, Civilian Witness 1 thought to himself that he needed to keep Brambila-Pelayo contained inside the shower. Initially Brambila-Pelayo attempted to climb out of the shower, but he grabbed a piece of "iron" and pried the shower door open, which struck Civilian Witness 1's hand and caused him to drop his phone on the ground.

After Civilian Witness 1 dropped his phone, he retreated to his bedroom and locked the door. Once inside, he noticed that the furniture inside the room had been moved and the sliding glass door to the backyard was shattered. Civilian Witness 1 exited his bedroom through the broken sliding glass door and retrieved a sledgehammer from his garden shed. Civilian Witness 1 reentered his home through the front door and saw Brambila-Pelayo in the spare bedroom. Civilian Witness 1 observed the glass shower door was now in the hallway. Brambila-Pelayo emerged with the machete and broke the glass shower door, causing it to shatter everywhere. Civilian Witness 1 screamed at Brambila-Pelayo something to the effect of "I've got a fucking sledgehammer and it's bigger than your machete." Civilian Witness 1 ordered Brambila-Pelayo to get out of his home. Brambila-Pelayo responded, "It's my house, it's my house!" Civilian Witness 1 shut the door to the spare bedroom, leaving Brambila-Pelayo inside, and Civilian Witness 1 exited his home through the front door. The police arrived shortly after he had left his home.

b. Civilian Witness 2

Civilian Witness 2 provided a statement to FIT. Civilian Witness 2 reported his wife told him a "naked man" tried to enter their kitchen. He located the male, Brambila-Pelayo, outside. He observed that Brambila-Pelayo was wearing nothing but a white towel and that he was carrying a machete, two garden items from Civilian Witness 2's yard, and a flashlight in his mouth. When Civilian Witness 2 confronted Brambila-Pelayo, he did not say anything, but he pointed the machete at Civilian Witness 2.

5. Crime Scene Investigation and Search Warrants

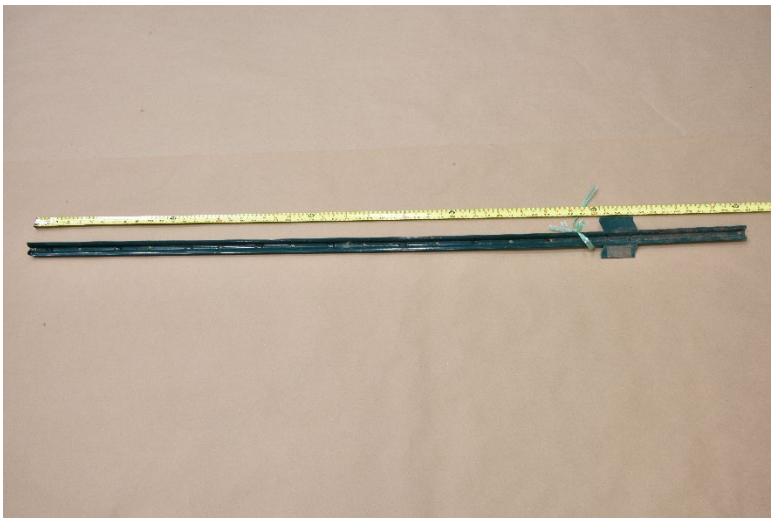
Investigators conducted a crime scene investigation, documented the location of various items that appeared to have evidentiary value, and collected various items as evidence.

Regarding the scene, investigators determined officers pursued Brambila-Pelayo for over 1000' from Civilian Witness 1's home to the location where the use of force occurred.

Investigators located the following items near Brambila-Pelayo's body:

- A fixed blade knife, whose blade measured approximately 3.5", was recovered from Brambila-Pelayo's right hand
- A machete, whose blade measured approximately 17.5", was recovered under Brambila-Pelayo's left hand

- A metal fence post, approximately 5’ long, was recovered from Brambila-Pelayo’s left hand



- A Swiffer Sweeper broom was recovered from Brambila-Pelayo’s left hand
- A wooden dowel, approximately 67” long, was recovered near the right side of Brambila-Pelayo’s body
- A bloodstained towel was underneath Brambila-Pelayo’s right leg

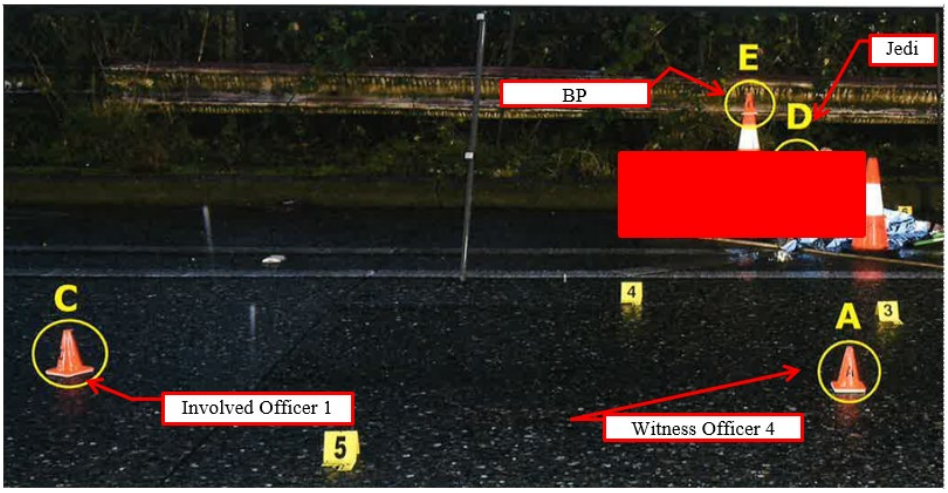
- A flashlight was observed inside Brambila-Pelayo's mouth

When investigators examined the fixed blade knife more closely, they observed blood on the blade and handle. Additionally, they observed thick dark hair matted on the blade. The hair appeared consistent with Jedi's hair.

Figure 15 – FIT photograph of Brambila-Pelayo's knife, including black hair on the blade.

Investigators located seven fired cartridge casings near Brambila-Pelayo. The cartridge casings were marked with the headstamp Speer 9mm Luger +P, which is consistent with SPD duty ammunition.

Witness Officer 4 took part in a scene walkthrough with crime scene investigators. During the walkthrough, he directed investigators to place markers where individuals were located during the use of force. Witness Officer 4 could not recall where Witness Officer 2 was located during the use of force, so there was no marker placed for him.



6. Medical Information

a. Jedi

Specialty Vetpath performed a necropsy of Jedi. The pathologist who performed the necropsy noted two puncture wounds. The first wound was a puncture wound through the underlying muscle and intercostal space of the rib cage and into the right cranial lung where the first branch of the right pulmonary artery was lacerated. The second wound was a puncture wound that extended through the muscle to the bone of the scapula. The first wound caused a massive hemorrhage, and the pathologist opined this wound caused Jedi's death.

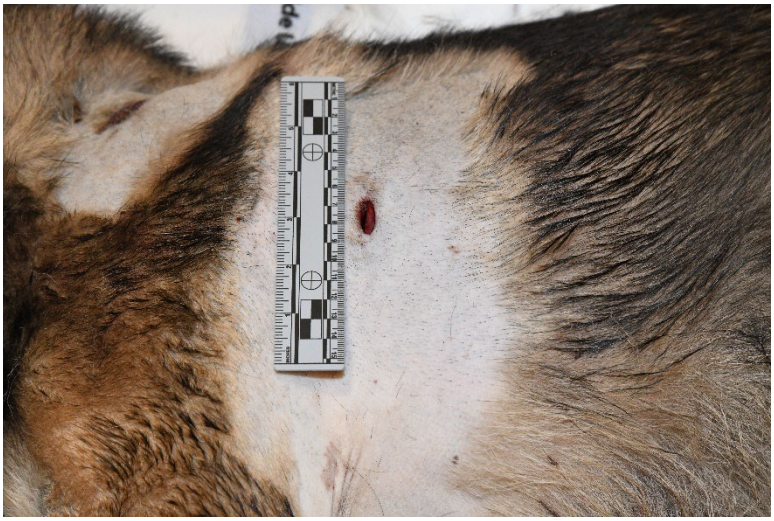


Figure 16 - Photograph of Jedi's injury, which Vetpath identified as his cause of death.

b. Brambila-Pelayo

The King County Medical Examiner's Office performed an autopsy of Brambila-Pelayo to determine the cause and manner of death. The cause of death is a term used to indicate *what* specific injury or disease led to death. The manner of death is a term used to categorize *how* the injury or disease led to death. Manner of death is categorized into one of five categories:

- Accident is defined as a death other than natural, where there is no evidence of intent.
- Homicide is defined as a death due to intentionally inflicted harm of one

person by another. It is also defined as the killing of one person by another.[15] Thus, the term homicide as used in an autopsy report refers to the mechanism of death and does not refer to legal terms, such as murder or manslaughter, which do include a determination of legal liability or culpability.

- Natural is defined as a death solely by organic disease. If natural death is hastened by injury, such as a fall, the manner of death will not be considered natural.
- Pending is a temporary designation used when additional investigation, information, or test results are required to determine the cause or manner of death.
- Suicide is defined as a death as the result of a purposeful action, with intent to end one's life.
- Undetermined is defined as a death when there is insufficient evidence or information to assign to accident, homicide, suicide, or natural categories, or when two plausible manners are equally likely.

The King County Medical Examiner's Office opined the cause of death was multiple gunshot wounds sustained in a confrontation with police and the manner of death was homicide. The pathological diagnoses included evidence of six gunshot wounds:

1. Gunshot wounds of head (3x)
2. Gunshot wound of right neck
3. Gunshot wound of right shoulder into chest
4. Gunshot wound of torso

The Washington State Patrol Toxicology Laboratory performed a drug analysis of Brambila-Pelayo's blood. The results showed that Brambila-Pelayo's blood tested positive for amphetamine (.055 mg/L) and methamphetamine (.43 mg/L).

On September 3, 2025, the Team spoke with the medical examiner who performed Brambila-Pelayo's autopsy. The medical examiner confirmed the gunshot wounds to Brambila-Pelayo's head would have caused his death within seconds. If the gunshot wounds to Brambila-Pelayo's head were excluded, the gunshot wounds to Brambila-Pelayo's neck and chest would have caused his death within minutes.

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[15] HOMICIDE, Black's Law Dictionary (11th ed. 2019).

7. Involved Officer's Statement

a. 5th Amendment Protections

Under current law the independent investigation must be conducted in the same manner as a criminal investigation.[16] Moreover, one of the primary purposes of the independent investigation is to "inform any determination of whether the use of deadly force met the good faith standard and satisfied other applicable laws and policies."[17] Thus, a law enforcement officer, like any other citizen, is protected by the 5th Amendment of the United States Constitution, which prohibits compelling a person to be a witness against themselves.[18] A law enforcement officer, like any other citizen, can choose whether or not to voluntarily waive their 5th Amendment protection and provide a statement to criminal investigators.

The involved agency, however, may compel an involved officer to provide a statement in an administrative investigation for the purpose of determining if the involved officer's actions were in accordance with the agency's policy and training. If an involved officer refuses to provide a statement during an administrative investigation, their refusal may result in consequences such as termination.

While the involved officer's statements may be used against them in an administrative or civil proceeding, such compelled statements are inadmissible against an officer in a subsequent criminal trial.[19] 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.[20] Therefore, the investigators conducting the independent investigation may not receive any compelled statements from an involved officer or any investigative content that was informed by such compelled statements.[21]

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[16] WAC 139-12-010.
[17] Id.
[18] U.S. Const. amend. V.
[19] Garrity v. State of N.J., 385 U.S. 493, 500, 87 S. Ct. 616, 620, 17 L. Ed. 2d 562 (1967).
[20] U.S. v. North, 910 F.2d 843, 857-858 (D.C. Cir., 1990).
[21] WAC 139-12-030.

b. Compelled Statements Taken During The Current Incident

An exception to the independent investigation criteria exists when required by a federal consent decree, federal settlement agreement, or federal court order.[22] At the time of this incident, SPD was subject to a federal settlement agreement. Under the agreement, FIT will conduct use of force investigations unless information is obtained that suggests an involved officer may have committed a crime during the use of force incident. If this occurred, the investigation would be bifurcated into an administrative and a criminal investigation. All the information gathered during the FIT investigation would be screened to ensure that no compelled statements or inadmissible evidence is passed onto a new team assigned to conduct the criminal investigation.

Although the compelled statement and information derived from such a statement cannot be used to support criminal charges against an involved officer, a credible compelled statement provides insight into the potential testimony of an involved officer. At times, such a statement may be useful to the Team in analyzing a use of force incident and may be used in support of a finding of no criminal liability for the officer's actions. While the involved officer provided a compelled statement to investigators during this investigation, the Team did not review or rely upon the involved officer's compelled statements. However, portions of the investigation materials contain reports, such as the SPD Administrative review and OPA report, that do rely on compelled statements. These reports themselves do contain statements that were compelled and the Team reviewed them during its analysis.

VI. OTHER PROCEEDINGS

1. Administrative Review

SPD policies require supervising officers to review the FIT investigation, which included the involved officer's compelled statements. The reviewing sergeant determined, based on a statement made by Involved Officer 1, that officers should be reminded about policies and law regarding use of deadly force to protect police canines. Specifically, during his FIT interview,

[22] RCW 10.114.011.

which was compelled, Involved Officer 1 stated he was going to discharge his firearm to prevent Brambila-Pelayo from further stabbing Jedi. However, he stated that he did not discharge his firearm because he observed Witness Officer 2 moving towards Brambila-Pelayo.[23] The reviewing sergeant identified other training issues, however, those training issues did not involve any of the officers involved in the circumstances that led to the use of force. In addition, the reviewing captain noted officers at the scene did not render aid. This issue was discussed with OPA to determine if there was a violation of SPD policy.

2. Seattle Office Of Police Accountability

SPD OPA conducted an investigation, which relied upon the involved officer's compelled statements. The OPA investigation evaluated whether the involved officer violated SPD policy regarding use of deadly force. OPA opined the involved officer's use of deadly force was reasonable, necessary, and proportional. Therefore, OPA determined this allegation was not sustained. There was no discussion in the OPA report regarding the lack of medical aid provided by the officers.

VII. POTENTIAL IMPEACHMENT INFORMATION

Law enforcement agencies are required to report misconduct that an officer has engaged in that affects their credibility.[24] In turn, each county prosecutor is required to develop and adopt a written protocol addressing potential impeachment disclosures pursuant to Brady v. Maryland, 373 U.S. 83 (1963), and subsequent case law.[25] The Team has confirmed that, to its knowledge, there is no potential impeachment information regarding the involved officer who used deadly force in this incident.

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[23] BWV supports the conclusion that Involved Officer 1 did not discharge his firearm in response to Brambila-Pelayo stabbing Jedi. Instead, BWV supports the conclusion Involved Officer 1 discharged his firearm after Brambila-Pelayo struck Office Ducre with the metal post and attempted to stab Office Ducre. Therefore, the Team analyzed the legality of Involved Officer 1's use of force for the actions taken, not contemplated.
[24] RCW 10.93.180(2)(a)(ii).
[25] RCW 10.93.180(1)(a).

VIII. LEGAL STANDARD AND APPLICABLE LAW

1. Burden of Proof

In a criminal prosecution, the State must prove each element of a criminal charge to the factfinder by competent evidence beyond a reasonable doubt.[26] 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.[27]

In addition, the State must disprove the existence of a defense that negates an element of the crime to the factfinder beyond a reasonable doubt.[28] 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.[29]

Therefore, in addition to proving that the accused committed a crime, the State will be required to disprove one or more of the following defenses:

- Justifiable Homicide by Peace Officer[30]
- Justifiable Homicide Defense of Self or Others[31]
- Justifiable Homicide Resistance to Felony[32]

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[26] RCW 9A.04.100; WPIC 4.01.
[27] KCPAO Filing and Disposition Standards.
[28] WPIC 14.00.
[29] KCPAO Filing and Disposition Standards.
[30] RCW 9A.16.040; WPIC 16.01.
[31] RCW 9A.16.050(1); WPIC 16.02.
[32] RCW 9A.16.050(2); WPIC 16.03.

2. Applicable Law Regarding Justifiable Homicide By A Peace Officer

This incident occurred on January 5, 2022. The applicable pattern jury instruction for Justifiable Homicide by a Peace Officer requires the State to prove to the factfinder that the involved officer acted without good faith.[33]

3. Applicable Jury Instructions

The following jury instructions, contained in Appendix A, would be applicable in a criminal prosecution and provided to the factfinder to determine whether the State met the required burden of proof. Therefore, these instructions are highly relevant to the Team's analysis and conclusion:

1. WPIC 16.01 Justifiable Homicide by a Peace Officer
2. WPIC 16.05 Necessary
3. WPIC 2.09 Felony
4. WPIC 2.16 Peace Officer
5. WPIC 120.07 Lawful Arrest and Probable Cause
6. WPIC 16.02 Justifiable Homicide – Defense of Self and Others
7. WPIC 2.04.01 Great Personal Injury
8. WPIC 16.07 Justifiable Homicide – Actual Danger Not Necessary
9. WPIC 16.03 Justifiable Homicide – Resistance to a Felony

IX. ANALYSIS AND CONCLUSION

1. Summary Of 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

[33] 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."

that could be raised under the evidence, would justify conviction by a reasonable and objective factfinder. 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."[34]

The KCPAO declines to file charges against the involved officer because the independent investigation and the Team's analysis reveal the involved officer's actions were lawful and justifiable as either Justifiable Homicide by a Peace Officer, Justifiable Homicide in Defense of Self or Others, or both. These defenses contain related but distinct concepts and definitions. Criminal charges should be declined because the defenses are of such nature that prosecution would result in a complete defense for the accused and there is no substantial evidence to refute either affirmative defense.

2. Justifiable Homicide By A Peace Officer

a. Graham v. Connor

In Graham v. Connor, the seminal case on evaluating police use of force, the United States Supreme Court determined that the test to determine whether the force used by the police was "reasonable" is not capable of a "precise definition or mechanical application."[35] Instead, its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether the suspect is actively resisting arrest or attempting to evade arrest by flight.[36] In other words, the reasonableness of whether the officer's use of force is justified is determined by "the totality of the circumstances."[37]

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.[38] "The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make

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[34] KCPAO Filing and Disposition Standards.
[35] Graham v. Connor, 490 U.S. 386, 396, 109 S.Ct. 1865, 1871-72, 104 L.Ed.2d 443 (1989).
[36] Id.
[37] Id.
[38] Id.

split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation."[39] However, the inquiry is an objective one. The question is whether the officer's actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.[40]

b. Seattle Police Department's Policies Relevant To Analysis

Given the analysis and ruling in Graham v. Connor, it is common for a police department's policy manual and training curriculum to incorporate the standards set out by the United States Supreme Court. The following SPD policies were in effect at the time force was used by the involved officer and are relevant to the analysis of this incident:

- 8.100 – De-Escalation
- 8.300 – Use of Force Tools – Weapons and Tools
- 16.130 – Providing Medical Aid
- 16.300 – Patrol Canines

c. Law Regarding 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.[41]

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 physical harm to others.[42] Among the circumstances which may be considered by peace officers as a "threat of serious physical harm" are the following:

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[39] Id. at 396-97.
[40] Id. at 397.
[41] RCW 9A.16.040(1)(c)(i); WPIC 16.01.
[42] RCW 9A.16.040(2).

- The suspect threatens a peace officer with a weapon or displays a weapon in a manner that could reasonably be construed as threatening; or
- There is probable cause to believe that the suspect has committed any crime involving the infliction or threatened infliction of serious physical harm.[43]

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.[44] 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.[45]

d. Analysis Regarding Justifiable Homicide By A Peace Officer

First, the evidence in the independent investigation supports the conclusion that the factfinder would find there was probable cause for the involved officer to reasonably believe that Brambila-Pelayo had committed, had attempted to commit, was committing, or was attempting to commit various felonies. Here, there was probable cause for the involved officer to believe that Brambila-Pelayo committed, had attempted to commit, was committing, or was attempting to commit numerous felonies, such as residential burglary, burglary in the first degree, assault in the second degree, and felony harassment when he remained in Civilian Witness 1's home, without permission, and threatened to inflict injury to Civilian Witness 1 while armed with a machete, a deadly weapon. Additionally, there was probable cause for the involved officer to believe that Brambila-Pelayo committed, had attempted to commit, was committing, or was attempting to commit additional felonies, such as harming a police canine, assault in the second degree, and assault in the first degree when he lunged towards Witness Officer 2 while armed with a knife and machete.

Second, the evidence in the independent investigation supports the conclusion that the factfinder would find that there was probable cause for the involved officer to believe that

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[43] Id.
[44] RCW 9A.16.040(4).
[45] RCW 9A.16.010; WPIC 16.05.

Brambila-Pelayo, if not apprehended, posed a threat of serious physical harm to an officer or others. This defense provides two explicit examples that may be considered by peace officers as a threat of serious physical harm. First, a threat of serious physical harm may include circumstances where the suspect threatens a peace officer with a weapon or displays a weapon in a manner that could reasonably be construed as threatening. Second, a threat of serious physical harm may include circumstances where there is probable cause to believe that the suspect has committed any crime involving the infliction or threatened infliction of serious physical harm.

Here, the involved officer would have been aware, via radio communications, of the information that Brambila-Pelayo remained inside Civilian Witness 1's home and threatened Civilian Witness 1 with a machete. Additionally, the involved officer was within feet of Brambila-Pelayo while he stabbed Jedi and attempted to assault Witness Officer 2. Therefore, it is highly likely the factfinder would find that Brambila-Pelayo's actions caused the involved officer to have probable cause to believe Brambila-Pelayo, if not apprehended, posed a threat of serious physical harm to an officer or others.

Third, the evidence in the independent investigation supports the conclusion that the factfinder would find the involved officer used deadly force with a good faith belief his actions were necessary to prevent death or serious physical harm to the officer or another individual.

Regarding good faith, a factfinder would likely find that the involved officer acted in good faith because, under an objective standard, when considering all the facts, circumstances, and information known to the involved officer at the time, 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. In this incident, the involved officer was aware of the information provided by Civilian Witness 1. More importantly, the involved officer was in a location where he could observe Brambila-Pelayo stabbing Jedi and lunging towards Witness Officer 2.

Regarding whether the use of deadly force was necessary, a factfinder would also likely find that the involved officer's use of deadly force was necessary because no reasonable effective alternative to the use of force appeared to exist and the amount of force used was reasonable to effect the lawful purpose intended. Here, other officers gave Brambila-Pelayo multiple opportunities to comply with their commands. However, Brambila-Pelayo refused to stop and

relinquish his weapons. Instead, when Witness Officer 2 released Jedi, Brambila-Pelayo used a deadly weapon to stab Jedi and kill him. When Witness Officer 2 believed Brambila-Pelayo dropped the machete, he was unaware that Brambila-Pelayo was also in possession of a knife. Witness Officer 2 moved towards Brambila-Pelayo to arrest him. In response, Brambila-Pelayo lunged towards Witness Officer 2. Based on the circumstances, using a less lethal tool, such as a taser, may not have incapacitated Brambila-Pelayo and provided him an opportunity to seriously injure or kill Witness Officer 2. Therefore, it is highly likely the factfinder would find that the involved officer acted with good faith and his actions were necessary.

Fourth, although compliance with SPD policy and training is not within the immediate scope of this memorandum, any criminal prosecution would very likely include testimony and evidence pertaining to SPD's policies and training pertaining to the use of deadly force and other relevant topics. Such testimony and evidence would likely be in the form of expert opinion, SPD's policy manual, and training materials. The factfinder would very likely rely upon this opinion to assist in its assessment of the involved officer's actions.

The evidence in the independent investigation supports the conclusion that the factfinder would find that the involved officer complied with SPD's policy and training. For instance, SPD's policy manual states that:

- Officers should use de-escalation tactics when it is safe, feasible, and does not compromise law enforcement priorities.[46]
- Regarding the use of police dogs:
    - Canine deployments will be limited to the following situations where probable cause exists for felony crimes, such as burglary.[47]
    - Direct apprehension will be used only when the canine officer has probable cause that the subject has committed one of the listed crimes, such as burglary, and the subject is trying to escape from a crime against a person with aggravating factors, such as the suspect is in possession of a deadly weapon.[48]
    - When feasible, canine officers will attempt alternative tactics, such as providing a warning that a police canine will be released, prior to

[46] SPD Policy 8.100.
[47] SPD Policy 8.300.
[48] SPD Policy 8.300.

direct apprehension.[49]

- Officers will only discharge firearms in situations where deadly force is permitted.[50]

Therefore, based on the anticipated admissible evidence and testimony, which is corroborated by several witnesses including video evidence, the KCPAO declines to file charges against the involved officer. The independent investigation and the Team's analysis support the conclusion that the involved officer's actions were lawful and justifiable as Justifiable Homicide by a Peace Officer.

3. Justifiable Homicide In Defense Of Self Or Others

a. Law Regarding Justifiable Homicide In Defense Of Self Or Others

The legislature recognized that the defense of Justifiable Homicide by a Peace Officer established a dual standard with respect to the use of deadly force by peace officers and private citizens, and further recognizes that private citizens' permissible use of deadly force under the defense of Justifiable Homicide in Defense of Self or Others is not restricted and remains broader than the limitations imposed on peace officers.[51]

The defense of Justifiable Homicide by a Peace Officer allows a peace officer to use deadly force against another person only when necessary to protect against an *immediate* threat of serious physical injury to the officer or another person.[52] An immediate threat of serious physical injury or death means that, based on the totality of the circumstances, it is objectively reasonable to believe that a person has the present and apparent ability, opportunity, and intent to immediately cause death or serious bodily injury to the peace officer or another person.[53]

In comparison, the defense of Justifiable Homicide in Defense of Self or Others is also applicable to peace officers.[54] Under this defense, homicide is justifiable in defense of self or

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[49] SPD Policy 8.300.
[50] SPD Policy 8.300.
[51] RCW 9A.16.040 [1986 c 209 §3].
[52] RCW 10.120.020(2). See also, Graham, 490 U.S. at 396.
[53] RCW 10.120.020(2).
[54] RCW 9A.16.040(5)(a).

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 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.[55] 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.[56]

The Washington Pattern 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."[57] Additionally, a person is entitled to act on appearances in defending themself, 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.[58]

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

b. Analysis Regarding Justifiable Homicide In Defense Of Self Or Others

First, the evidence in the independent investigation supports the conclusion that the factfinder would find that the involved officer reasonably believed that Brambila-Pelayo intended to commit a felony, to inflict death, or to inflict great personally injury upon an officer

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[55] RCW 9A.16.050(1); WPIC 16.02.
[56] WPIC 2.04.01.
[57] WPIC 16.02.
[58] WPIC 16.07.

or others. Here, the involved officer reasonably believed that Brambila-Pelayo committed, had attempted to commit, was committing, or was attempting to commit felonies, such as assault in the second degree and assault in the first degree when he lunged at Witness Officer 2 with a knife.

Second, the evidence in the independent investigation supports the conclusion that the factfinder would find that the involved officer reasonably believed that Brambila-Pelayo's actions constituted an imminent danger of such harm being accomplished. Moreover, under the broader standard of imminent danger, as opposed to immediate danger, it is even more likely that the factfinder would find that Brambila-Pelayo's actions, as described above, caused the involved officer to reasonably believe that Brambila-Pelayo's threats would be carried out.

Third, the evidence in the independent investigation supports the conclusion that the factfinder would find that the involved officer employed such force and means as a reasonably prudent person would under the same or similar conditions as they reasonably appeared to the involved officer. Here, the involved officer had essentially no time to use less lethal tools or de-escalation. At the time Involved Officer 1 approached Brambila-Pelayo, Brambila-Pelayo was stabbing Jedi and quickly moving towards Witness Officer 2.

Therefore, based on the anticipated admissible evidence and testimony, which is corroborated by several witnesses including video evidence, the KCPAO declines to file charges against the involved officer. The independent investigation and the Team's analysis support the conclusion that the involved officer's actions were lawful and justifiable as Justifiable Homicide in Defense of Self or Others.

4. Duty to Render Aid

a. Law Regarding Duty to Render Aid

It is the policy of the State of Washington that all law enforcement personnel must provide or facilitate first aid such that it is rendered at the earliest opportunity to injured persons at a scene controlled by law enforcement.[59] Further, SPD policy requires officers to request

[59] RCW 36.28A.445.

medical aid, if needed, and render appropriate medical aid within their training as soon as possible.[60]

b. Analysis Regarding Duty to Render Aid

As described by Witness Officer 4, officers at the scene did not render medical aid to Brambila-Pelayo. Witness Officer 4's reasoning was, essentially, it appeared obvious that Brambila-Pelayo was deceased. Based upon the law and SPD policy, officers are required to render aid when it is possible to do so and within their training until other personnel, such as medics or emergency medical technicians, arrive at the scene. Given the medical examiner's opinion that Brambila-Pelayo's head wounds would have caused his death within seconds, it appears extremely unlikely any aid rendered by officers could have saved Brambila-Pelayo. Therefore, even assuming the officers failed to render aid, to the extent that this failure is related to any criminal wrongdoing, the KCPAO declines to file any charges against an officer present at the scene.

X. KING COUNTY INQUEST PROGRAM

Pursuant to Executive Order PHL 7-1-6 EO, the KCPAO shall inform the King County Inquest Program Manager in writing whenever the KCPAO becomes aware of a person's death following an interaction with law enforcement or while in the custody of law enforcement. The KCPAO previously complied with this requirement.

[60] SPD Policy 16.130.

Appendix A

1. 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.

2. 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.

3. WPIC 2.09 Felony—Designation Of

_____ is a felony.[61]

[61] Whether a crime is a felony is a matter of law for the court to decide.

4. WPIC 2.16 Peace Officer—Definition

Peace officer means a duly appointed city, county, or state law enforcement officer.

5. WPIC 120.07 Lawful Arrest—Definition

[An arrest is lawful if made pursuant to an arrest warrant.] [An arrest is [also] lawful if the arresting officer had probable cause to believe that the person arrested had committed the crime of (name of crime) [in the officer's presence]. “Probable cause” means facts that would cause a reasonably cautious officer to believe that the person had committed that crime. In determining whether the facts known to the officer justified this belief, you may take into account the officer's experience and expertise.]

6. 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[62] or to inflict death or great personal injury;

(2) the slayer reasonably believed that there was imminent danger[63] 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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[62] 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).

[63] 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."

7. 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.

8. 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.

9. 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[64] 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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[64] 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)