Use of Force – Fatality of

Derrick Ellis

Valley Independent Investigation Team

Des Moines Police Department, #22-2220

King County Prosecuting Attorney

Public Integrity Team

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DECLINE MEMORANDUM

Law Enforcement Use of Force Fatality Regarding: Derrick Ellis

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

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.[2] Because the investigation and analysis are mandatory if specific criteria are met, the KCPAO's review of an incident does not implicitly signal that the use of force was either justified or that criminal charges are appropriate. Instead, the KCPAO is required to assist in independent investigations involving police use of deadly force to enhance accountability and increase trust to improve the legitimacy of policing for an increase in safety for everyone.[3]

Pursuant to the Law Enforcement Training and Community Safety Act, an independent investigation must be completed when the use of deadly force by a peace officers results in death, substantial bodily harm, or great bodily harm.[4] The independent investigation is conducted in the same manner as a criminal investigation.[5]

Additionally, the KCPAO shall inform the King County Executive whenever the investigation into a death involving a member of any law enforcement agency in King County is complete and also advise whether an inquest should be initiated in accordance with the King County Charter.[6] 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

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[2] 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.
[3] Id. See also WAC 139-12-010.
[4] RCW 10.114.011. See also WAC 139-12-010.
[5] WAC 139-12-010.
[6] Executive Order PHL 7-1-5 EO.

law enforcement was de minimis and did not contribute in any discernable way to a person's death.[7]

2. Scope of the Memorandum

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

3. Status of the Independent Investigation

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

I. OVERVIEW

On September 10, 2022, King County Sherriff's Office Deputies attempted to contact Derrick Ellis and question him about an allegation that he was recently involved in a domestic violence assault where he discharged a firearm. As deputies attempted to contact Ellis, he withdrew a handgun and pointed it at the deputies. Four deputies discharged their handguns at Ellis, who was struck and fell to the ground. The deputies administered aid to Ellis until medics arrived, but he was pronounced deceased.

II. INVESTIGATION AND EVIDENCE

1. Independent Investigation Team Reports
2. Police Reports – Des Moines Police Department 2022-2220
3. Police Reports – Washington State Patrol 2022-015353
4. Police Reports – Tukwila Police Department 22-5727
5. Police Reports – Port of Seattle Police Department 2022-55847

[7] Id.

6. Police Reports – Renton Police Department 22-9365
7. Police Reports – Federal Way Police Department 22-10706
8. Police Reports – King County Sheriff's Office 22-30221
9. Police Reports – Kent Police Department 2022-11988
10. Police Reports – Auburn Police Department 22-9084
11. Civilian Statements
12. CAD/MDT
13. Other Police Reports
14. Search Warrants
15. Crime Scene Investigation
16. Crime Laboratory
17. Medical
18. Involved Officer Information
19. Subject Information
20. 911 Call and Radio
21. Video
22. Photo

III. INVESTIGATION SUMMARY[8]

1. Initial Investigation and the Use of Force

On September 10, 2022, at around 5:30 am, a civilian called 911 to report that a male, later identified as Derrick Ellis (Ellis), and female were fighting at 12438 Roseberg Ave South, Unit A, an apartment building located in Burien. As King County Sheriff's Office (KCSO) deputies were dispatched, the 911 caller and operator reported hearing gunshots. When deputies arrived at Unit A, they knocked on the door to contact anyone inside, but no one answered. At the same time, other KCSO deputies observed Ellis, who matched the description of the male provided by the 911 caller, within walking distance of the apartment building. Deputies attempted to contact Ellis near 11852 Des Moines Memorial Drive South, but within moments they reported "shots fired" over the radio.

[8] 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.

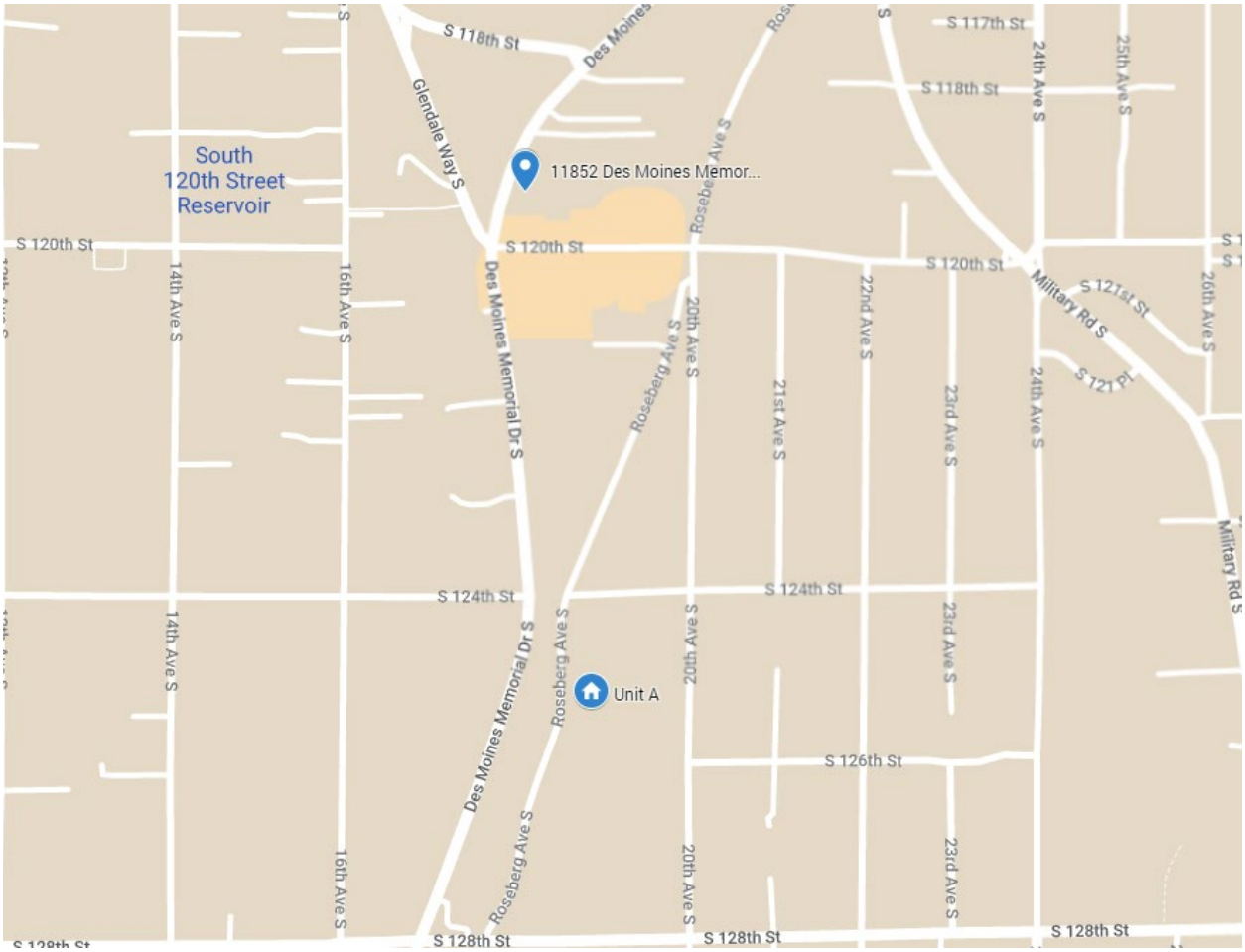

Figure 1 - Google Map displaying Unit A and the use of force scene. Per Google Maps, it is approximately a ten-minute walk from Unit A to the use of force scene.

The following information is based upon the KCSO computer aided dispatch (CAD) report, 911 calls, and recorded police radio:

5:38:27 a.m. A 911 caller reported a male and female were fighting.[9] The caller reported that the "woman is on the floor," "it is bad," and the fighting is happening inside and outside the apartment.

5:38:46 a.m. Audible gun noises are heard in the background and the caller stated "Oh, my gosh!" A male took the phone and reported, "Shots! Shots! Hurry up, please! I heard shots. The lady is screaming really bad." The 911 operator also noted hearing "gunshots."

[9] Initially a female called 911 to report the incident. However, due to a language barrier, the female 911 caller occasionally gave the phone to another individual who could communicate with the 911 call receiver.

5:39:03 a.m. Several deputies, including Involved Officer 1, Involved Officer 2, and Involved Officer 3, were dispatched to the apartment.

5:41:13 a.m. The caller reported that the male left in a vehicle, the female is possibly still in the apartment, and that she did not hear anything else. The caller reported that the door to the unit was now closed. She stated she had heard the woman yelling followed by three gunshots.

5:43:40 a.m. The caller reported that the male and female are black. The male caller also added that the male was wearing a white shirt. He further described the male in his 30s, has tattoos, approximately 6'00" tall.

5:46:16 a.m. Involved Officer 1 and Involved Officer 2 noted that a male who matched the description of the male involved was located eastbound South 124th St. and then northbound on 20th Ave South.

5:46:23 a.m. The KCSO dispatcher called the 911 caller back. The caller stated that he heard the shots from within the apartment, that the female left in a black car, the male had the gun, the male chased after the female, and that the male was inside the apartment.

The KCSO dispatcher also confirmed with the 911 caller that he could hear the police knocking on the apartment door. Deputies notified the KCSO dispatcher that no one was answering the door to Unit A. They also reported seeing two bullet holes in Unit A's window and shattered glass on the outside of the apartment.

The caller denied that any bullets entered his home. He also added that the male and female were possibly husband and wife, that there may be children in the apartment. The 911 caller clarified that he saw the male run out of the apartment, then he saw the door closed, which is why he assumed the male was still inside the apartment.

A deputy advised that they should stop the male who matched the description of the involved male. Moments later, a deputy shouted on the radio, "Shots fired! Shots fired!" A deputy also stated that there was a gun on the ground, approximately four feet from the male's hands, and that medics should respond.

The 911 caller reported that when the female, who is black and in her 40s, wearing a black bra ran out of the apartment, she was bleeding from the face.

6:00:44 a.m. Medics were advised to respond to 11852 Des Moines.

6:02:14 a.m. A deputy reported that they were starting CPR.

6:02:43 a.m. A deputy reported they were going to use an AED.

6:03:04 a.m. Medics arrived at the scene.

4. Independent Investigation Conducted by the Des Moines Police Department

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

5. Investigation Related to 911 Call at 12438 Roseberg Ave S, Unit A

Given the information contained in the CAD, police radio, and 911 calls, the IIT sought permission to search the Unit A, located at 12438 Roseberg Ave S, which was granted.

When Investigator 1 arrived at the address, he observed the building appeared to be a four-plex apartment building and Unit A was located on the lower north side of the building. He observed what appeared to be two bullet defects in the upper right corner of Unit A's front room window. Directly in front of the window was a vehicle, which had shards of glass lying on the hood of the vehicle. This indicated to him that the fired bullets had come from somewhere inside Unit A, shattering the glass that landed on the vehicle's hood.

Figure 2 - Bullet defects in Unit A's window.

When the IIT entered Unit A, they observed bullet defects in the primary bedroom wall, which was in line with defects in the curtains and window blinds of the window that Investigator

1 previously observed. This further indicated to him that projectiles were fired from inside the primary bedroom, passing through the wall, curtains, blinds and window.

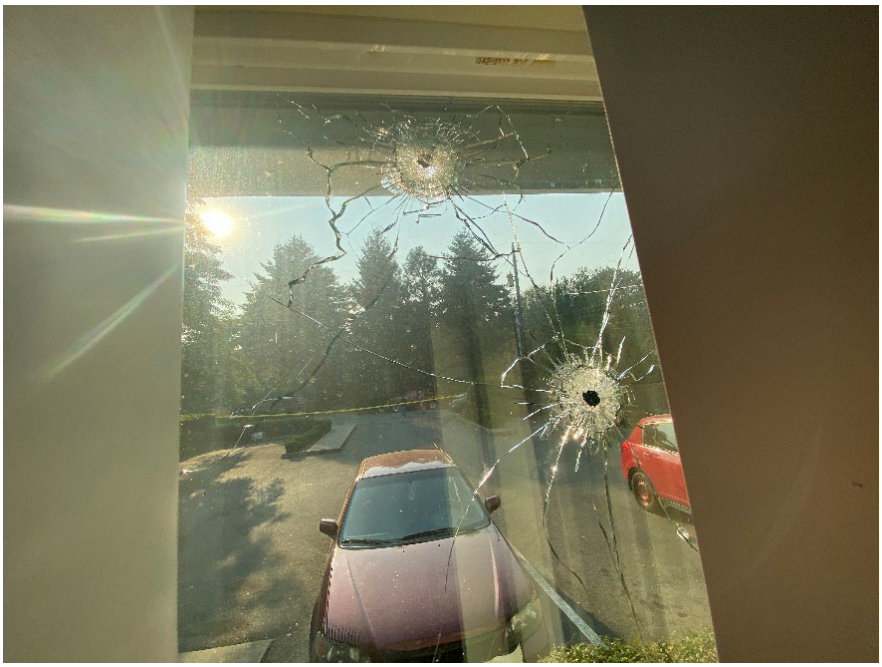

Figure 3 - Bullet defects from inside Unit A showing shattered glass on the vehicle beyond the window.

Inside a trashcan, the IIT observed a Taser device that was switched on, indicating that someone had possibly used it. When the IIT searched the primary bedroom, they observed that it appeared to be occupied by a man and a woman based on the clothing. The IIT also located two fired 9mm Speer Luger cartridge casings inside the bedroom. In a clothing hamper inside the bedroom, the IIT located Department of Corrections paperwork bearing Ellis' name. On a windowsill, the IIT located a single unloaded Glock handgun magazine. Additionally, the IIT observed drug paraphernalia on a nightstand and pills marked "M30," which the IIT suspected contained counterfeit fentanyl. The second bedroom contained items that were consistent with children.

6. Investigation Related to Use of Force at 11852 Des Moines Memorial Drive

Investigator 1 arrived at the scene where the use of force occurred and learned which KCSO vehicles belonged to the deputies involved in the use of force. He learned that vehicle E21710 was driven by Involved Officer 4; vehicle E18745 was driven by Involved Officer 1 and Involved Officer 2 was the passenger; and vehicle E20772 was driven by Involved Officer 3.

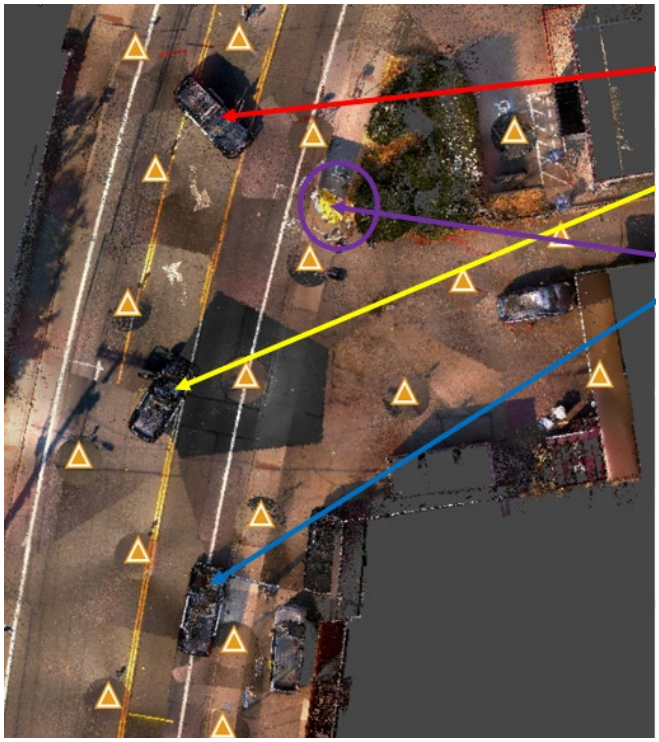

Figure 4 - Red arrow corresponds to Involved Officer 4's vehicle; purple circle corresponds to Ellis' location during the use of force; yellow arrow corresponds to Involved Officer 3's vehicle; blue arrow corresponds to Involved Officer 2's and Involved Officer 1's vehicle.

Investigator 1 looked around the area of Involved Officer 1 and Involved Officer 2's vehicle. He observed a collection of fired cartridge casings on the roof of the vehicle and near the driver's door. The vehicle was facing north, which faced Ellis' location. Additionally, Investigator 1 observed that the deputies' rifle was locked in place inside the vehicle.

Investigator 1 observed that Involved Officer 3's vehicle was parked facing northeast in the center turn lane, angled in a fashion that suggested the driver's focus was on the location where Ellis was located. He also observed fired cartridge casings on the ground near the driver's door and he noted that the Involved Officer 3's rifle was locked into position and secured between the seats. Additionally, he observed a pair of handcuffs, with what appeared to be blood on them, lying on the engine hood of the vehicle. Next to the handcuffs was a loaded black Smith and Wesson handgun with an obliterated serial number. The handgun also had what appeared to be blood covering the exterior surfaces.

Investigator 1 observed that Involved Officer 4's vehicle was parked perpendicular in the center turn lane, facing slightly southeast with its wheel's turned to the left as if it had been making a left turn, which was towards the direction Ellis. He saw fired cartridge casings on the ground near the driver's door, inside the vehicle between the driver's seat and door, on the

floorboard, and on the center console. He noted bullet defects in the windshield above the dashboard. The defects and glass fragments suggested to Investigator 1 that Involved Officer 4 fired from a seated position inside the vehicle, possibly because he did not have time to exit the vehicle to discharge his weapon. He observed no damage to the inside of the vehicle that would indicate that shots were fired towards the vehicle.

Figure 5 - View from inside Involved Officer 4's vehicle.

Next, Investigator 1 observed the area near Ellis, which included evidence of medical equipment. Additionally, he observed a plastic sandwich baggy, which contained smaller baggies of blue pills that Investigator 1 recognized likely contained counterfeit fentanyl.

7. Processing of the Involved Officers

After the use of force, the IIT processed the involved officers and determined that the four deputies each used their handgun during this incident.

Regarding Involved Officer 4, the IIT reported that he normally carried three handgun magazines, but one was still inside his patrol vehicle. His magazines have a capacity of twenty-two rounds. The magazine loaded into the handgun contained twenty-one rounds, plus an additional round in the chamber of the firearm. The other magazine contained twenty-two rounds. The magazine inside the patrol vehicle was subsequently recovered and it contained eight rounds.

Regarding Involved Officer 3, the IIT reported that his three handgun magazines have a capacity of twenty-two rounds each. His firearm contained a magazine with fifteen rounds, plus an additional round in the chamber of the firearm. His other two magazines contained twenty-two rounds each.

Regarding Involved Officer 1, the IIT reported that his three handgun magazines have a capacity of seventeen rounds each. His firearm contained a magazine with eight rounds. His other two magazines contained eighteen and sixteen rounds.

Regarding Involved Officer 2, the IIT reported that his three handgun magazines have a capacity of seventeen rounds each. His firearm contained a magazine with seventeen rounds. His other two magazines contained six and seventeen rounds.

8. Civilian Witnesses

There were no civilian witnesses present at the time of the use of force, but the IIT did interview witnesses who were present near Unit A. One witness reported being woken up by the sound of gunshots and a male voice shouting. The second witness, who was also one of the individuals who spoke with the 911 call receiver, provided substantially the same information she provided during the 911 call. She reported that when she went to walk her dog, she saw a young teenage girl associated with Unit A crying and she heard a man and a woman fighting, which lasted for approximately thirty minutes. She went to sleep around 11:00 p.m. but was woken up and saw the male hitting the female who was on the floor. She reported that her husband called 911 and approximately ten minutes later they heard gunshots.

9. Involved Officer Statements

The investigation into this incident occurred after the implementation of RCW 10.114.011 and WAC 139-12-030, which established the requirements for an IIT to conduct independent investigations into police use of force cases. Among these requirements, the IIT is precluded from receiving an involved officer's compelled statement or any investigative content that was informed by a compelled statement. However, the involved officer may waive this protection and elect to make a voluntarily statement or voluntarily release a previously compelled statement so that it may be reviewed by the IIT. In the current investigation, Involved Officer 4, Involved Officer 2, and Involved Officer 3 voluntarily released their previously compelled statements to the IIT.

a. Involved Officer 4

Involved Officer 4 has been employed by the KCSO since 2008. He is currently a patrol deputy, a generalist patrol K9 handler, and assigned to the KCSO TAC30. When Involved Officer 4 was dispatched to Unit A, he was aware that the 911 caller reported a fight between a male and a female and that gunshots were heard. He confirmed that the 911 call receiver and the reporting party heard gunshots. He was also aware that other deputies reported seeing a male matching the description provided by the 911 caller leaving the apartment, walking out of the driveway, and walking eastbound on 124th St. and turning onto 20th Ave S.

As Involved Officer 4 responded, he learned that the male who had the firearm was back inside the apartment, that there may be children in the apartment, and the female left in a black car. He also learned that deputies noted two bullet holes in the apartment window and that no one was responding from inside the apartment.

As Involved Officer 4 neared the 11800 block of Des Moines Memorial Drive South, he observed a male, later identified as Ellis, that matched the description previously provided. Additionally, he observed that Involved Officer 2's vehicle and another KCSO vehicle were driving slowly behind Ellis. The sergeant on duty advised the deputies to stop Ellis to investigate the shooting and assault at the apartment.

Involved Officer 4 drove up slowly and observed the other KCSO vehicles activate their emergency lights. Involved Officer 4 turned his vehicle eastbound so that it faced Ellis. As his car came to a stop, Involved Officer 4 was approximately twenty feet away from Ellis and he activated his emergency lights, shined his spotlight on Ellis, and saw Ellis glance back towards the other KCSO vehicle. At this moment, Involved Officer 4 could see Ellis' left arm down by his side, but he could not see Ellis' right arm.

While Involved Officer 4 stopped his car, he removed his seatbelt and saw Ellis suddenly began turning his body eastbound (away from Involved Officer 4) and frantically tugging with his right arm, but Involved Officer 4 could not see what Ellis was tugging at. Within seconds, Involved Officer 4 saw Ellis had a black handgun in his right hand, which Ellis raised up and pointed at Involved Officer 4. Involved Officer 4 could see the barrel of the handgun and feared for his life because he believed that Ellis intended to shoot him. Involved Officer 4 felt that he could not safely exit the vehicle without exposing himself nor could he deploy less lethal weapons or issue commands given how quickly Ellis introduced the handgun. While seated in the vehicle, Involved Officer 4 withdrew his handgun, slid down into his seat for additional

cover, and discharged his firearm through the windshield of the vehicle. Involved Officer 4 believed that his rounds struck Ellis and he heard additional gunfire, but at that moment he was not certain if the gunfire was from Ellis. He observed Ellis twist and it appeared to Involved Officer 4 that Ellis was now facing the direction of the other deputies. Involved Officer 4 observed Ellis fall to the ground and he heard Involved Officer 2 advise "shots fired" over the radio. Once the deputies confirmed they were not injured, Involved Officer 4 observed a black firearm lying approximately three feet west of Ellis. Other deputies arrived and they administered aid to Ellis.

Figure 6 - Black Smith and Wesson handgun located near Ellis (image redacted).

b. Involved Officer 2

At the time of this incident, Involved Officer 2 had been employed by KCSO for four years. He also had previous military experience in the United States Marine Corps. During this

incident he was assigned as Involved Officer 1's field training officer, who was also present. When they were dispatched to Unit A, Involved Officer 1 was driving and Involved Officer 2 was aware that the 911 caller reported a male and female fighting and that gunshots were fired. Once they arrived at the apartment building, the deputies decided to assist Involved Officer 3 who was trying to determine if a male walking in the area was involved in this incident.

Involved Officer 1 drove northbound on Roseberg Ave S. When they arrived at the intersection of Roseberg Ave S and South 124th St., Involved Officer 2 observed a black male walking eastbound on S 124th St towards 20th Ave S. As the male, later identified as Ellis, walked eastbound on South 124th St., Involved Officer 2 observed that his clothing matched the description provided by the 911 caller. Involved Officer 2 saw that Ellis was walking with his hands close to his midline and around his waistline.

Involved Officer 1 stopped the vehicle so that they could continue to watch Ellis while they received more information from the KCSO dispatcher and the deputies at the apartment. After deputies observed the bullet holes in the apartment window and did not receive an answer from anyone inside, the sergeant on duty directed the deputies to detain Ellis. By this point, Ellis was walking northbound on Des Moines Memorial Drive South from South 120th St., which is where Involved Officer 2 intended to contact Ellis.

Involved Officer 2 directed Involved Officer 1 to activate their emergency lights, which he did. Additionally, Involved Officer 2 observed two other KCSO vehicles driving into the area. Involved Officer 2 exited the vehicle from the passenger side and drew his handgun to the low ready position and yelled to Ellis, "Police, stop! Show me your hands!" Involved Officer 2 saw Ellis turn and look at him over his shoulder and noticed his arms reach downward and forward toward his waistline. Ellis turned west and stood in a "shooting stance," holding a black handgun that he pointed at the KCSO vehicle that entered the area. Ellis rotated slightly south, which caused Involved Officer 2 to believe that Ellis was trying to locate a target using the sight posts of the handgun.

When Ellis pointed the handgun at the deputies west of him, Involved Officer 2 believed that Ellis presented an immediate threat of serious bodily injury to the deputies. Additionally, he did not believe there was a reasonably effective alternative to using deadly force and there was no time to deescalate given that Ellis already had pointed the handgun at the deputies.

Involved Officer 2 discharged his handgun eight to twelve times and stopped firing when Ellis knelt down. As Ellis fell to the ground, Involved Officer 2 saw the black handgun two to

three feet away from Ellis. Involved Officer 2 advised over the radio that shots were fired. As deputies arrived and administered aid to Ellis, Involved Officer 2 checked himself for injuries and was separated from the scene.

c. Involved Officer 3

At the time of this incident, Involved Officer 3 had been employed by KCSO from almost two years and served as a military police patrolman for five years. When he was dispatched to the apartment, he was aware that a 911 caller reported that a male and woman were fighting and gunshots were fired. Involved Officer 3 heard other deputies advise that they saw a male leaving the area walking northbound on Roseberg Ave. Given the time of day and his familiarity with the area, Involved Officer 3 knew from previous experience that there were few pedestrians walking around at this time, so he drove to Des Moines Memorial Drive.

By this time, Involved Officer 3 learned that the deputies at the apartment observed bullet holes in the window, that there may be children inside, and no one was responding from inside the apartment. Involved Officer 3 drove to S 120th St. where he observed a male, later identified as Ellis. He provided a description of the Ellis, which matched the description previously provided by the 911 caller. Additionally, Involved Officer 3 observed two KCSO vehicles driving slowly behind Ellis. He continued to observe Ellis walking along Des Moines Memorial Drive and saw that Ellis' hands were inside his pockets. After hearing the directive to detain Ellis, Involved Officer 3 noted that he and the other two vehicles had their emergency lights activated. Additionally, Involved Officer 3 saw that Ellis was looking in his direction over Ellis' shoulder and then at Involved Officer 4's location.

Without notice, Ellis removed his hands from his pocket and extended his right arm out, which was holding a black handgun. Ellis pointed the handgun towards Involved Officer 4's vehicle. While exiting his vehicle, Involved Officer 3 yelled, "Gun!" and withdrew his firearm. Involved Officer 3 heard gunshots and believed that Ellis was shooting at Involved Officer 4, which made him fearful for Involved Officer 4's life. Involved Officer 3 discharged four to five rounds at Ellis, believing that he did not have any time to use other weapons or tools. When Ellis fell to the ground, Involved Officer 3 observed the black handgun approximately two feet from Ellis. While the deputies checked themselves for injuries, other officers arrived and Involved Officer 3 assisted them in administering aid to Ellis.

10. Video Evidence

Investigator 1 reviewed video evidence collected by the IIT. La Rielera Mexican Restaurant is a business located southeast of the use of force location. The owner of the business provided video to the IIT and they confirmed the camera only captures video, not audio. Investigator 1 observed Ellis walking northbound on the sidewalk wearing black pants, a black hooded sweatshirt, and a white shirt under the sweatshirt. He observed Involved Officer 4's vehicle traveling southbound. After Ellis passed two parked cars, he is blocked from view. As Ellis passed the parked cars, two additional police vehicles with their emergency lights activated traveled northbound into frame. Investigator 1 determined that Involved Officer 3 was driving in the center lane and Involved Officer 2 and Involved Officer 1 were driving the northbound lane. Shortly after, Involved Officer 4 activated his emergency lights and his spotlight briefly illuminated Ellis. Involved Officer 2 is seen with his handgun extended and appears to fire based on the recoil.

Investigator 1 also reviewed video provided by Glendale Auto Repair. The camera captured two police vehicles with their overhead emergency lights activated traveling northbound. Although the vehicles travel out of frame, their emergency lights can be seen flashing off other buildings. A person can be heard yelling something to the effect of, "Police, stop, show me your hands!" followed shortly after by gunshots.

Figure 7 - Screenshot from Glendale Auto where a deputy is heard yelling, "Police stop! Show me your hands!"

11. Forensic Examination

Investigator 1 requested forensic examinations on several items collected as evidence. He requested the loaded Smith and Wesson handgun, the magazine, and ammunition be processed for fingerprints and DNA. King County Regional AFIS confirmed that there were no latent prints found on these items.

Investigator 1 also requested that the Washington State Patrol Crime Laboratory conduct forensic examinations on the four deputies' handguns, the black Smith and Wesson handgun, the thirty-six cartridge casings collected from the use of force scene, the two cartridge casings collected from Unit A, and the eight bullets or bullet fragments recovered at the use of force scene and during Ellis's autopsy. He also requested that the suspected methamphetamine and fentanyl be analyzed.

The laboratory reported that the suspected methamphetamine and fentanyl tested positive for methamphetamine and fentanyl, respectively. Regarding the firearms, the laboratory reported that the black Smith and Wesson handgun (found near Ellis) was test fired and functioned properly. The laboratory was also able to restore the obliterated serial number, which matched a handgun that was reported stolen to the Dupont Police Department on June 24, 2022.

Additionally, the laboratory reported that the four involved deputies' handguns were test fired and functioned properly.

In total, the laboratory compared thirty-eight cartridge casings that were found at the two incident scenes to the test fired cartridge casings discharged from the involved deputies' handguns and the black Smith and Wesson handgun. The two cartridge casings recovered from Unit A were identified as being fired from the black Smith and Wesson handgun. Of the remaining thirty-six cartridge casings, which were recovered at the use of force scene, the laboratory confirmed that ten were fired from Involved Officer 2's handgun, ten were fired from Involved Officer 1's handgun, six were fired from Involved Officer 3's handgun, and nine were fired from Involved Officer 4's handgun. One cartridge casing that was recovered from the scene was excluded as being fired from any of the five handguns.

Regarding the eight bullets and bullet fragments, the laboratory reported that two were fired from Involved Officer 2's handgun, two were fired from Involved Officer 4's handgun, two were fired from Involved Officer 1's handgun, and one was fired from Involved Officer 3's handgun. The remaining bullet fragment had similar characteristics to the bullets fired from the involved officers' handguns, but it could not be conclusively identified due to damage and limited markings on the fragment.

12. Medical

The King County Medical Examiner's Office performed an autopsy of Ellis, which opined the cause of death is multiple gunshot wounds sustained in a confrontation with police and the manner of death is homicide.[10] The pathological diagnoses included evidence of eleven gunshot wounds:

- A penetrating gunshot wound of the torso.[11]
- A perforating gunshot wound of the left upper extremity.
- A penetrating gunshot wound of the left upper extremity.
- Two perforating gunshot wounds of the right lower extremity.

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

[11] A penetrating gunshot wound occurs when a bullet pierces the skin, enters the body creating an entrance wound, but the bullet does not exit the body. In contrast, a perforating gunshot wound occurs when the bullet pierces the skin, enters the body creating an entrance wound, and exits the body creating an exit wound.

- Three perforating gunshot wounds of the left lower extremity.
- A penetrating gunshot wound of the right lower extremity.
- A penetrating gunshot wound of the left lower extremity.
- A perforating gunshot wound of the head.

The Washington State Patrol Toxicology Laboratory performed a drug analysis of Ellis's blood. The results showed that Ellis's blood tested positive for amitriptyline, methamphetamine (.17 mg/L), and amphetamine (.038 mg/L).

IV. LEGAL STANDARD AND APPLICABLE LAW

13. Burden of Proof

The State must prove each element of a criminal charge by competent evidence beyond a reasonable doubt.[12] 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.[13]

In addition, the State must disprove the existence of a defense that negates an element of the crime.[14] 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.[15] Therefore, the State may be required to disprove one or more of the following defenses:

- Justifiable Homicide by Peace Officer;[16]
- Justifiable Homicide Defense of Self or Others;[17]
- Justifiable Homicide Resistance to Felony;[18]

[12] RCW 9A.04.100; WPIC 4.01.
[13] KCPAO Filing and Disposition Standards.
[14] WPIC 14.00.
[15] Id.
[16] RCW 9A.16.040; WPIC 16.01.
[17] RCW 9A.16.050(1); WPIC 16.02.
[18] RCW 9A.16.050(2); WPIC 16.03.

14. Applicable Law

This incident occurred This incident occurred on September 10, 2022; therefore, the applicable Justifiable Homicide by a Peace Officer instruction would require the State to prove the officer acted without good faith.[19]

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

- Justifiable Homicide by a Peace Officer[20]
- Necessary[21]
- Justifiable Homicide – Defense of Self and Others[22]
- Great Personal Injury[23]
- Justifiable Homicide – Actual Danger Not Necessary[24]
- Justifiable Homicide – Resistance to a Felony[25]

V. ANALYSIS AND CONCLUSION

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

The KCPAO declines to file charges against any of the involved officers because the independent investigation and the Team's analysis reveal that the involved officers' actions were lawful and justifiable as either Justifiable Homicide by a Peace Officer, Justifiable Homicide in

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[19] 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."
[20] WPIC 16.01.
[21] WPIC 16.05.
[22] WPIC 16.02.
[23] WPIC 2.04.01.
[24] WPIC 16.07.
[25] WPIC 16.03.

Defense of Self or Others, or both. These two defenses contain related but distinct concepts and definitions and there is no substantial evidence to refute either affirmative defense.

15. 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.[26]

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

- The suspect threatens a peace officer with a weapon or displays a weapon in a matter that could reasonably be construed as threatening; or
- There is probable cause to believe that the suspect has committed any crime involving the infliction or threatened infliction of serious physical harm.[28]

Necessary means that no reasonably effective alternative to use the force appeared to exist and that the amount of force used was reasonable to effect the lawful purpose intended.[29] 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.[30]

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

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[26] RCW 9A.16.040(1)(c)(i); WPIC 16.01.
[27] RCW 9A.16.040(2).
[28] Id.
[29] RCW 9A.16.010; WPIC 16.05.
[30] RCW 9A.16.040(4).
[31] Graham v. Connor, 490 U.S. 386, 396, 109 S. Ct. 1865, 1872, 104 L. Ed. 2d 443 (1989).

split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation."[32]

In the current incident, the independent investigation shows the involved deputies attempted to contact and speak with Ellis based on the information they possessed from the 911 call, Ellis' proximity to Unit A, and that Ellis matched the description of the male involved in the assault at Unit A. Based on the information that Ellis had discharged a firearm, the deputies likely had a heightened safety concern. However, the deputies did not discharge their handguns in response to that information alone. Instead, the independent investigation, the corroborating audio from surveillance video, and the involved officers' statements supports that the involved deputies used force after Ellis removed a handgun and pointed it in the direction of an involved deputy, which would be sufficient to show that Ellis was committed or attempting to commit a felony against the involved deputies.

Although it appears, based on the evidence collected, that Ellis did not discharge his firearm, his action of pointing the firearm at a deputy is sufficient to find that there was probable cause that he posed a threat of serious physical harm to the involved deputies. Based on the information possessed by the deputies, they had reason to believe that Ellis was recently involved in a violent domestic assault where he discharged a firearm. The video evidence collected supports that a deputy yelled for Ellis to show his hands, followed by gunshots. When Ellis pointed the handgun at any of the involved deputies, it was reasonable for each involved deputy to construe this as threatening or that there was probable cause to believe that he intended to inflict serious physical harm upon them.

The independent investigation also shows that the involved deputies' decision to discharge their handguns was done in good faith because 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. At the time the involved deputies observed Ellis pointing a handgun, there would have been no reasonably effective alternative to their use of force, including verbal de-escalation or less lethal equipment.

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[32] Id. 490 U.S. at 396-97.

16. <u>Justifiable Homicide in Defense of Self or Others</u>

Homicide is justifiable in defense of self or others when the slayer reasonably believed the person slain intended to commit a felony, to inflict death, or to inflict great personal injury; the slayer reasonably believed that was imminent danger of such harm being accomplished; and the slayer employed such force and means as a reasonably prudent person would under the same or similar conditions as they reasonably appeared to the slayer.[33] 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.[34]

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

At the time that Ellis pointed a handgun in the direction of an involved deputy, a reasonably prudent person would very likely believe that Ellis intended to inflict death or great personal injury upon them and that they were in imminent danger of this occurring. In addition, the involved deputies' concern was justifiably heightened because they possessed reliable information that prior to their contact with Ellis that he had discharged a handgun during a violent domestic assault.

Finally, under this instruction, the danger must be imminent, not immediate. The Washington Instruction Committee noted that "Imminence does not require an actual physical assault. A threat, or its equivalent, can support self-defense when there is a reasonable belief that the threat will be carried out."[35] Additionally, a person is entitled to act on appearances in

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[33] RCW 9A.16.050(1); WPIC 16.02.
[34] WPIC 2.04.01.
[35] WPIC 16.02.

defending himself, if that person acts in good faith and on reasonable grounds, although it afterwards might develop that the person was mistaken as to the extent of the danger.[36]

VI. RECOMMENDATION FOR INQUEST

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

[36] WPIC 16.07.

Attachment A

WPIC 16.01 - Justifiable Homicide by a Peace Officer

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

Homicide or the use of deadly force is justifiable:

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

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

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

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

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

WPIC 16.05 – Necessary

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

WPIC 16.02 – Justifiable Homicide – Defense of Self and Others

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

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

(1) the slayer reasonably believed that the person slain intended to commit a felony[37] or to inflict death or great personal injury;

(2) the slayer reasonably believed that there was imminent danger[38] 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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[37] 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).

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

WPIC 2.04.01 – Great Personal Injury

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

WPIC 16.07 – Justifiable Homicide – Actual Danger Not Necessary

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

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

WPIC 16.03 – Justifiable Homicide – Resistance to a Felony

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

Homicide is justifiable when committed in the actual resistance of an attempt to commit a felony[39] 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.

[39] 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)