

Use of Force – Fatality of
Sanchez, Cicero 10/29/1990

Valley Independent Investigation Team
Auburn Police Department #22-04420



King County Prosecuting Attorney
Public Integrity Team

October 10, 2023



DECLINE MEMORANDUM

October 10, 2023

Law Enforcement Use of Force Fatality Regarding:

Cicero Sanchez

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.¹ Because the investigation and analysis are mandatory if specific criteria are met, the KCPAO's review of an incident does not implicitly signal that the use of force was either justified or that criminal charges are appropriate. Instead, the KCPAO is required to assist independent investigations involving police use of deadly force to enhance accountability and increase trust to improve the legitimacy of policing for an increase in safety for everyone.²

Pursuant to the Law Enforcement Training and Community Safety Act, an independent investigation must be completed when the use of deadly force by a peace officers results in the

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

² Id. See also WAC 139-12-010.

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

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

2. Status of the Independent Investigation

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

3. Scope of the Memorandum

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

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

⁴ Id.

⁵ Executive Order PHL 7-1-5 EO.

⁶ Id. `

II. OVERVIEW

On April 14, 2022, members of the King County Sheriff's Office attempted to arrest Cicero Sanchez (Sanchez) for Assault in the Second Degree. When officers attempted to arrest him, Sanchez drove away from the officers to elude them. Officers eventually stopped Sanchez and ordered him to exit his vehicle. As Sanchez exited the vehicle, he armed himself with a handgun. Two officers discharged their firearms at Sanchez, striking him. Officers provided life savings measures, but Sanchez died from his injuries.

III. INVESTIGATION AND EVIDENCE

1. Force Investigation Reports
2. Officer Reports
3. Civilian Statements
4. Crime Scene Investigation
5. Search Warrants
6. Medical, Autopsy, and Toxicology
7. CAD/MDT
8. 911 Call and Radio
9. Audio
10. Video
11. Photos

IV. INVESTIGATION SUMMARY⁷

1. Ramada Inn Shooting on April 14, 2022

On April 14, 2022, an employee of the Ramada Inn, located at 16720 International Blvd in SeaTac, reported a shooting that occurred on the first floor. King County Sheriff's Office (KCSO) deputies arrived and investigated. A witness reported a white male in his thirties exited a truck armed with a handgun and yelling; the male shot once into a room on the first floor; and the witness heard two more gunshots and saw the male drive off in his truck. Deputies located two cartridge casings inside the hotel but they did not locate any suspects or injured persons.

The follow-up investigation was assigned to Witness Officer 1 and he reviewed surveillance video provided by an employee of the Ramada Inn. Witness Officer 1 noted a male and female entered the lobby on April 13, at approximately 1:00 pm. On April 14, at approximately 1:00 am, which is six minutes prior to the shooting, the same female entered the lobby, followed by the same male, and the male was carrying a black handgun. Witness Officer 1 conducted further investigation regarding the male and female depicted in the video and identified the male as Cicero Sanchez (Sanchez). On May 2, 2022, Witness Officer 1 conducted surveillance on Sanchez and developed probable cause to arrest Sanchez for the shooting at the Ramada Inn, specifically for Assault in the Second Degree.

2. Attempted Arrest of Sanchez and the Use of Force

On May 4, 2022, an arrest team within KCSO's TAC 30 Unit was organized to arrest Sanchez. At approximately 8:30 am, Witness Officer 1 confirmed that Sanchez was driving a blue Chevrolet Blazer, wearing a red Cincinnati Reds baseball cap, and a green Nike sweatshirt.

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

At approximately 10:30 am, KCSO deputies located Sanchez in a parking lot near the Federal Way Library, located at 34200 1st Way South in Federal Way.

Although the KCSO deputies were not equipped with body worn cameras or in-car cameras, the attempted arrest was recorded by Guardian One, a KCSO helicopter. The sequence of events, ranging from the attempt to arrest, Sanchez's attempt to flee, and the deputies' use of force lasted approximately five minutes.

After Sanchez was positively identified, Witness Officer 2 ordered the arrest team to contact and arrest Sanchez. The arrest team drove into the parking lot using unmarked KCSO vehicles that were equipped with activated emergency lights. Sanchez entered the driver's seat of the Blazer, and drove away from the arrest team, eventually driving up and over a landscaped curb. Deputies continued to pursue Sanchez as Guardian One followed along, providing updates to the deputies via their radios.

The Guardian One video depicts two unmarked KCSO vehicles entering the parking lot, approaching Sanchez's location near the Blazer. Both KCSO vehicles have emergency police lights activated and the deputies that exited the vehicles are wearing green uniforms with obvious police markings.



Figure 1 - Two unmarked KCSO vehicles entered a parking lot to arrest Sanchez.

A KCSO deputy exited the passenger side door with an unholstered firearm, pointed toward the ground. Sanchez had already entered the Blazer and drove forward. A KCSO deputy attempted to prevent Sanchez from driving away by driving a KCSO vehicle slowly into the bumper of Sanchez's Blazer, but Sanchez continued to drive over landscaping and out of the parking lot.



Figure 2 - An unmarked KCSO vehicle, with its emergency lights activated, stopped in front of the Blazer while a uniformed deputy, attempted to open the Blazer door.



Figure 3 - An unmarked KCSO vehicle attempted to stop Sanchez's Blazer as he drove away.

As KCSO deputies pursued Sanchez, one noted on the radio that Sanchez was driving at 60 mph and the front axle of his Blazer was broken. Sanchez continued eastbound on S 312th St, entering an oncoming traffic lane, driving through a redlight, and increasing his speed to

approximately 60 mph. A KCSO deputy announced on the radio that Sanchez “losing his tires” and that parts of the tires are “flaking off.”



Figure 4 - Police pursuing Sanchez, who drove in the wrong lane of travel.



Figure 5 - Sanchez drove through a red light, causing other cars to avoid a collision.



Figure 6 - Sanchez drove in the center turn lane.

KCSO deputies continue to pursue Sanchez with their emergency lights activated. Sanchez turned southbound on 28th Ave SW, passed a semitruck, and he drove onto the shoulder of the road. A KCSO deputy announced over the radio that a “PIT is authorized” while Sanchez drove the wrong way into a roundabout and turned eastbound towards I-5.



Figure 7 - Sanchez drove into a roundabout in the wrong lane of travel.

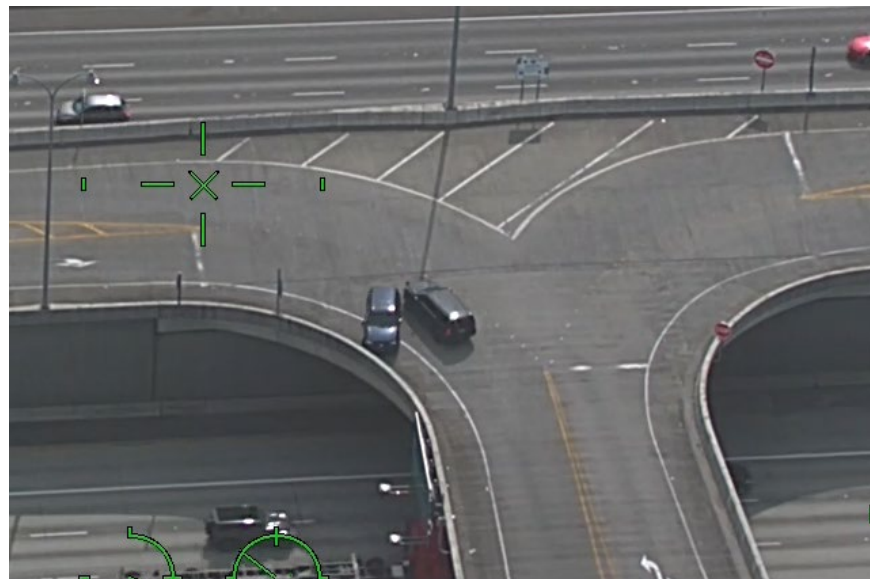


Figure 8 - An unmarked KCSO vehicle performed a successful PIT maneuver to stop Sanchez from driving.

Approximately two and a half minutes into the pursuit, a KCSO vehicle conducted a successful PIT maneuver, causing Sanchez's Blazer to spin and stop. Other KCSO vehicles assisted by boxing the Blazer against the highway's concrete barrier, but Sanchez's wheels

continue to spin as he tried to drive away. Once Sanchez was unable to drive away, several uniformed KCSO deputies exited their vehicles with their weapons drawn and intermittently deployed distraction devices while one deputy used a baton to break the back windshield of the Blazer. Sanchez's tires continue to spin, causing a significant amount of smoke to engulf the Blazer and the deputies.

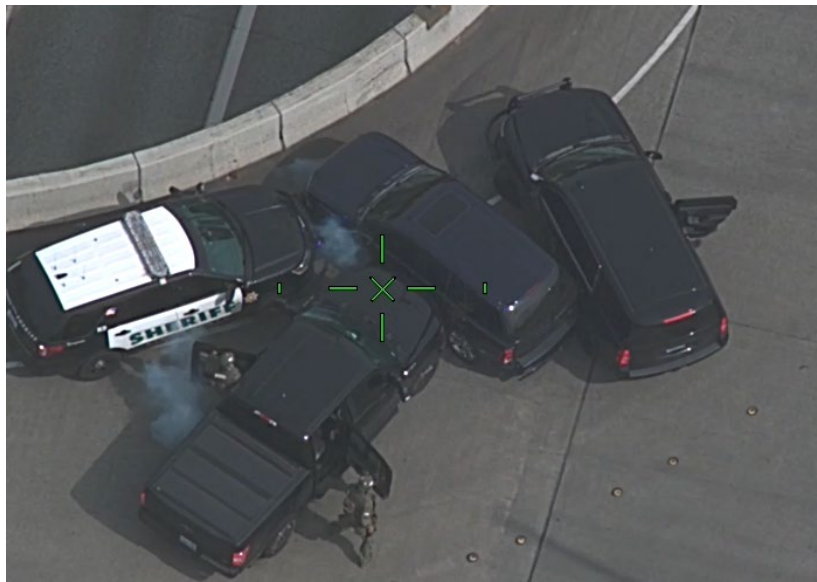


Figure 9 - KCSO deputies used their vehicles to box in Sanchez. In the video recorded by Guardian One, Sanchez's tires are visibly spinning but the Blazer is unable to move. Smoke is indicative of the distraction devices deployed by the deputies.



Figure 10 - A deputy shattered the rear windshield of the Blazer.



Figure 11 - Thick smoke engulfed the Blazer and the deputies due to Sanchez's attempt to drive away.



Figure 12 - Sanchez had rolled down his window and a KCSO vehicle reversed to allow Sanchez space to exit the Blazer.

A deputy announced on the radio “They’re making verbals [sic] with him. He is trying to climb out of the driver’s side.” At the same time, the KCSO vehicle that was against the Blazer’s driver’s side door reversed to give Sanchez space to exit. Sanchez emerged from the driver’s side window with a silver firearm visible in his right hand. As he exited the window, Sanchez did not have his hands raised, he was holding the firearm around the grip, and looked towards the deputies. As Sanchez continued to exit the window, his body flinched, which was likely when he was struck by gunfire, and he fell to the ground. Deputies began medical assistance until medics arrived, but Sanchez died as a result of his injuries.



Figure 13 - Sanchez emerged from the Blazer holding a silver firearm.

3. Independent Investigation Conducted by the Auburn Police Department

Once the scene was secured, the Valley Independent Investigation Team was activated and Auburn Police Department Investigator 1 was assigned as the lead investigator. Investigator 1 reviewed the Guardian One video and, in addition to the information noted above, Investigator 1 observed at the moment that most of Sanchez's body emerged from the window, it appeared a KCSO deputy deployed a non-lethal 40 mm cartridge at Sanchez's back. A second later, Sanchez appeared to flinch, which likely coincided with the first bullet striking him. A second later, Sanchez flinched a second time and fell to the ground.

Investigators determined there were a combination of eight involved and witness deputies. Of the eight, Involved Officer 1 and Involved Officer 2 used lethal force. Their firearms were inspected and investigators preliminary determined that Involved Officer 1 discharged his firearm three times and Involved Officer 2 discharged his firearm two times.

Investigator 1 sought a search warrant to search the Blazer, which was granted. Inside, police found pellet gun in the shape of a revolver on the front seat passenger floorboard, a black cell phone on the driver's seat, and methamphetamine pipe on the front passenger seat. Police also seized the firearm that Sanchez had in his right hand when he exited the Blazer. The firearm

was a Glock 9mm and it was loaded with nine rounds in the magazine and one round in the chamber.

Investigators attempted to locate witnesses who may have seen what led up to the use of force. The only civilian eyewitnesses were driving in another vehicle exiting the highway. They reported that they observed a lot of smoke, which they thought was either from a car fire or tear gas. They noted the officers appeared to be in a “defensive” posture given that the officer’s had their firearms out and were taking cover behind their vehicles. Although they were able to hear the gunshots, they did not see what occurred prior to the gunshots or who fired them.

Investigators also submitted a request that the involved officer’s firearms be compared to the bullets recovered from Sanchez’s body. To date, that analysis is pending.

4. Medical, Autopsy, and Toxicology

The King County Medical Examiner’s Office performed an autopsy of Sanchez, which opined the cause of death is multiple gunshot wounds and the manner of death is homicide.⁸ The pathological diagnoses included evidence of four gunshot wounds, which included a perforating gunshot wound of the right chest, a penetrating gunshot wound of the right chest, and two penetrating gunshot wounds of the torso.⁹

The Washington State Patrol Toxicology Laboratory performed a drug analysis of Sanchez’s blood. The results showed that his blood tested positive for amphetamine (.30 mg/L) and methamphetamine (2.1 mg/L).

⁸ 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.

⁹ 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.

V. LEGAL STANDARD AND APPLICABLE LAW

1. Burden of Proof

The State must prove each element of a criminal charge by competent evidence beyond a reasonable doubt.¹⁰ 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.¹¹

In addition, the State must disprove the existence of a defense that negates an element of the crime.¹² 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.¹³ Therefore, the State may be required to disprove one or more of the following defenses:

- Justifiable Homicide by Peace Officer;¹⁴
- Justifiable Homicide Defense of Self or Others;¹⁵
- Justifiable Homicide Resistance to Felony;¹⁶

2. Applicable Law in Effect at the Time

This incident occurred on May 4, 2022; therefore, the applicable Justifiable Homicide by a Peace Officer instruction would require the State to prove the officer acted without good faith.¹⁷

¹⁰ RCW 9A.04.100; WPIC 4.01.

¹¹ KCPAO Filing and Disposition Standards.

¹² WPIC 14.00.

¹³ Id.

¹⁴ RCW 9A.16.040; WPIC 16.01.

¹⁵ RCW 9A.16.050(1); WPIC 16.02.

¹⁶ RCW 9A.16.050(2); WPIC 16.03.

¹⁷ The former version of WPIC 16.01, which included the malice standard, is applicable to offenses committed on or prior to December 6, 2018. The current version of WPIC 16.01, which removed malice and applied the good faith standard, is applicable to offenses committed on or after February 4, 2019. There are no pattern jury instructions for offenses committed between December 7, 2018, and February 3, 2019.

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

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

VI. ANALYSIS AND CONCLUSION

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

The KCPAO declines to file charges against any of the involved officers because the independent investigation and the Team's analysis reveal that there is insufficient evidence to prove any criminal charges beyond a reasonable doubt or disprove any affirmative defense beyond a reasonable doubt.

1. Justifiable Homicide by a Peace Officer

Homicide or deadly force 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.¹⁸

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

¹⁸ RCW 9A.16.040; WPIC 16.01.

physical harm to others.¹⁹ 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.²⁰

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.²¹

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.²² “The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.”²³

In the current incident, the independent investigation shows that the deputies possessed probable cause to arrest Sanchez for Assault in the Second Degree based upon Witness Officer 1’s investigation into the shooting at the Ramada Inn. In addition, deputies also had probable cause to arrest Sanchez for Attempting to Elude a Pursuing Police Vehicle when he failed to stop for KCSO deputies when they attempted to arrest him in the parking.

Additionally, there is probable cause to believe that Sanchez, if not apprehended, posed a threat of serious physical harm to the officers or a threat of serious physical harm to others, which is supported by several facts. For instance, at the point that the KCSO deputies boxed in

¹⁹ Id.

²⁰ Id.

²¹ Id.

²² Graham v. Connor, 490 U.S. 386, 396, 109 S. Ct. 1865, 1872, 104 L. Ed. 2d 443 (1989).

²³ Id. 490 U.S. at 396-97.

Sanchez's vehicle, they were aware of that there was probable cause he discharged a weapon at the Ramada Inn less than one month prior. When the deputies attempted to arrest him today, they used unmarked vehicles with emergency lights activated and they wore police uniforms, so it is highly likely that Sanchez would have recognized them to be police officers. The deputies also observed that Sanchez took drastic measures to avoid arrest, including driving away from several police vehicles, traveling at high speeds in the wrong lane of travel, disregarding a redlight, and driving the wrong way onto the highway ramp. Even when boxed in by three other vehicles against a concrete barrier, Sanchez attempted several times to drive away causing his tires to heavily smoke. Together, these facts demonstrate that Sanchez was unwilling to comply with the deputies' commands.

It is unclear whether Sanchez was holding the firearm while seated in the Blazer. Although Sanchez's window was rolled down prior to his exit, it is not possible to see both of his hands in the Guardian One video. However, it is likely the officers did not see a weapon at that time, possibly due to Sanchez not holding the firearm while seated or the amount of smoke that Sanchez's tires caused.

When Sanchez exited the driver's side window holding a firearm, it was reasonable for the deputies to suspect that Sanchez was actively threatening them or displaying the firearm in a manner that could reasonably be construed as threatening. There is no evidence contained in the independent investigation to demonstrate what Sanchez's intent or state of mind was at the time he exited the vehicle holding the firearm. However, this defense permits an officer to use deadly force when a weapon is displayed "in a matter that could reasonably be construed as threatening." In other words, this defense does not require the officer to wait until the weapon *is actually used* in a threatening matter. Given that Sanchez exited through the window by pulling himself through the window, the use of both his hands would likely have proven beneficial and made his exit easier. Instead, Sanchez armed himself with a firearm, likely making his egress more difficult and tending to lead to the conclusion that he armed himself with a firearm with intent to use it against the deputies. Additionally, it is noteworthy that Sanchez elected to arm himself with an operable firearm and not the pellet gun that was also inside the Blazer.

Finally, the independent investigation tends to show that the involved deputies acted in good faith. At the time the involved deputies used deadly force, the other deputies had also drawn their weapons in anticipation of arresting Sanchez. Although only two deputies discharged their weapon, that is likely due to the different vantage point of the deputies. Given that bullets struck Sanchez in the front of his body, it is reasonable and foreseeable that the deputies facing him were the ones that discharged their weapons likely because they also could see Sanchez's firearm as he exited from the window.

2. Justifiable Homicide in Defense of Self or Others

Homicide is justifiable in defense of self or others when the slayer reasonably believed the person slain intended to commit a felony, to inflict death, or to inflict great personal injury; the slayer reasonably believed that was imminent danger of such harm being accomplished; and the slayer employed such force and means as a reasonably prudent person would under the same or similar conditions as they reasonably appeared to the slayer.²⁴ 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.²⁵

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 the 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.

Based on the independent investigation, it was reasonable for the involved deputies to believe that Sanchez could inflict great personal injury based on the information they possessed

²⁴ RCW 9A.16.050(1); WPIC 16.02.

²⁵ WPIC 2.04.01.

about Sanchez, his efforts to evade law enforcement, and his display of a firearm. While it is likely that Sanchez knew his own intent to use or not use the firearm, this defense requires that the danger 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.”²⁶ Additionally, a person is entitled to act on appearances in defending himself, if that person acts in good faith and on reasonable grounds, although it afterwards might develop that the person was mistaken as to the extent of the danger.²⁷ Therefore, it is reasonable that the involved deputies reasonably believed that Sanchez would use the firearm based on his actions leading up to the use of force and his actions just prior to the use of force.

VII. RECOMMENDATION FOR INQUEST

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

²⁶ WPIC 16.02.

²⁷ WPIC 16.07.

Attachment A

WPIC 16.01 - Justifiable Homicide by a Peace Officer

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

Homicide or the use of deadly force is justifiable:

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

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

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

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

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

WPIC 16.05 – Necessary

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

WPIC 16.02 – Justifiable Homicide – Defense of Self and Others

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

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

- (1) the slayer reasonably believed that the person slain intended to commit a felony²⁸ or to inflict death or great personal injury;
- (2) the slayer reasonably believed that there was imminent danger²⁹ 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.

²⁸ 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).

²⁹ 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 felony³⁰ 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.

³⁰ 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)