Use of Force Fatality Investigation

William M. Stephens

Seattle Police Department Force Investigation Team

2022FIT-0004 & 2022-56030

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 March 5, 2022, multiple 911 callers reported a male, later identified as William M. Stephens, was shooting a firearm outside the Henry M. Jackson Federal Building, which is located in Seattle. Private security officers and Seattle Police Department officers responded and commanded Stephens to surrender and put down his firearm. Stephens did not comply with their commands. Stephens ran towards officers while pointing his firearm in their direction. Multiple individuals discharged their firearms at Stephens, striking him. Officers administered lifesaving efforts, but Stephens died due to his injuries.

III. INVESTIGATION MATERIALS

1. Police Reports – Seattle Police Department 2022FIT-0004 & 2022-56030
2. Police Reports – Seattle Police Department 2022-067988

3. Police Reports – Bellevue Police Department 2022-10543
4. Police Reports – Bellevue Police Department 2022-8266
5. Civilian Statements
6. Computer Aided Dispatch
7. Crime Scene Investigation
8. Autopsy and Toxicology Reports
9. Involved Officer Information
10. Subject Information
11. 911 Calls and Police Radio Traffic
12. Audio
13. Body Worn Video
14. In-Car Video
15. Other Video
16. Photos
17. Miscellaneous

IV. FACTUAL SUMMARY[7]

1. Facts Prior To SPD Arrival

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 March 5, 2022.

At approximately 8:09 pm, private security officers (PSO) assigned to the Henry M. Jackson Federal Building (Federal Building), located at 915 2nd Ave in Seattle, observed via security cameras that a vehicle drove into the building's loading dock driveway and collided into

[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.

the closed secured parking garage gate. Civilian Witness 1 reported that he observed the vehicle drive at a high rate of speed towards the entrance of the loading dock. Based on the speed, Civilian Witness 1 stated it did not appear that the vehicle would stop prior to reaching the garage gate, which was closed and locked. Civilian Witness 1 observed the vehicle's brake lights activate, but the vehicle rammed through the garage door and entered the building.

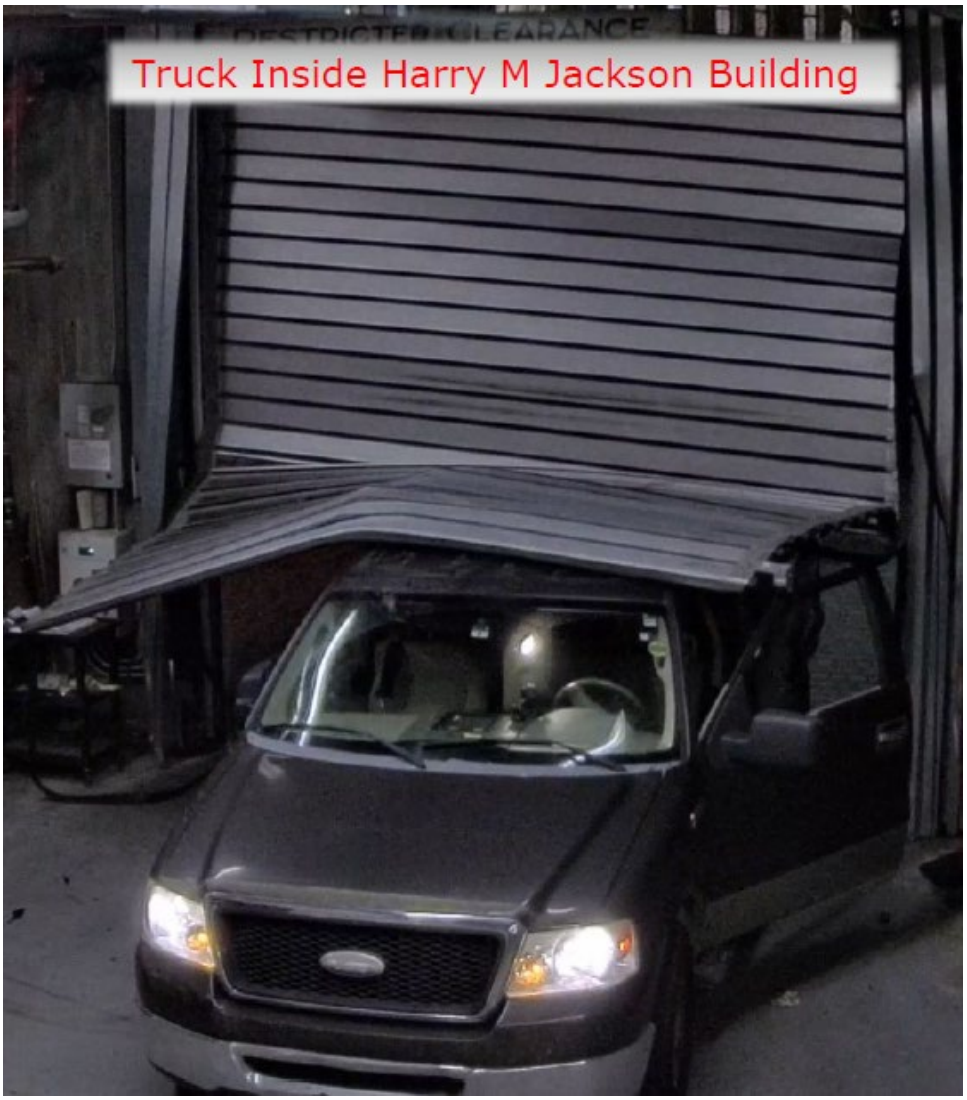

Figure 1 - Screenshot from building surveillance video showing Stephens' vehicle after it collided with the garage gate.

Figure 2 - FIT photograph of Stephens' vehicle.

Next, the driver exited the vehicle and walked towards the garage entrance. Civilian Witness 1 observed the driver, later identified as William M. Stephens (Stephens),[8] held a firearm and discharged it in the air. Security video captured a bright flash, followed by Stephens walking with a rifle in his hands and pulling the rifle's bolt back. Stephens walked towards the sidewalk on Marion St. and he continued to discharge the rifle into the air, the ground, and against a brick wall. Stephens reached into his pocket numerous times and appeared to reload the rifle.

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

Figure 3 - Screenshot of building surveillance video showing Stephens discharging his firearm.

Beginning at approximately 8:10 pm, multiple civilians called 911 and reported that a male was shooting a firearm[9] around the intersection of 1st Ave and Marion St. For instance, Civilian Witness 2 reported he was inside a nearby restaurant and he heard approximately five gunshots. Civilian Witness 2 went outside to investigate and observed "a guy, in dark clothes with a gun" on Marion St. Initially, Civilian Witness 2 thought the male, Stephens, was a PSO from the Federal Building. However, when Stephens turned around, Civilian Witness 2 realized he was not a PSO, so Civilian Witness 2 ran back into the restaurant, locked the door, and directed patrons and employees away from the restaurant's windows. During his 911 call, Civilian Witness 2 described Stephens as male, carrying a shotgun, and wearing a black hat, jacket, and pants.

Investigators who reviewed the Federal Building security video estimated Stephens discharged the rifle approximately eleven to twelve times. At 8:11:41 pm, the security camera above the loading dock captured Stephens pointing the rifle at the camera and discharging it, which rendered the camera inoperable.

Another 911 caller, Civilian Witness 3, reported she saw a person shooting a gun into the sky on Marion St. between 1st Ave and 2nd Ave. Civilian Witness 3 reported she and her

[9] Some callers referred to the firearm as a rifle and others referred to it as a shotgun.

boyfriend were driving in a car when she observed the shooter on the sidewalk. They were fearful and sped away from the area without getting a better opportunity to observe the individual.

An SPD dispatcher issued a city-wide alert and broadcasted via radio there were reports of a male shooting a shotgun in the area of 1st Ave and Marion St. Several SPD officers indicated they would respond. As 911 callers provided additional information, the dispatcher updated responding officers. The dispatcher notified officers, "He's going to be walking westbound on Marion from 2. They say he's still shooting." The responding officers designated a location to meet. Witness Officer 1, using his radio, asked the dispatcher, "Just confirming this sounds legitimate? We have multiple callers on this?" The dispatcher replied, "A-firm. Multiple callers, lots of people hearing shots."

At approximately 8:11 pm, the Federal Building security cameras captured Involved Civilian 1 and Involved Civilian 2 exit onto the 2nd Ave plaza and run towards the loading dock driveway. Involved Civilian 1 reported he and Involved Civilian 2 initially did not know where the gunshots were coming from, but they soon determined the gunshots were coming from the direction of the loading dock.

Involved Civilian 1 reported they ran towards the plaza on Marion St. and he peered over the ledge, which was directly above the loading dock doors. Involved Civilian 1 observed Stephens, who appeared to be a white male, wearing a blue jumpsuit, shooting sporadically. Involved Civilian 1 observed Stephens reloading the weapon, so he drew his firearm, peered over the ledge and yelled, "Drop the gun! Drop the gun! Drop the gun!" Involved Civilian 2 heard Involved Civilian 1 say something to the effect of "put the weapon down" or "let me see your hands." Additionally, Involved Civilian 2 saw Involved Civilian 1 pointing his weapon downward towards the loading dock, which caused Involved Civilian 2 to believe that Involved Civilian 1 was pointing his firearm towards Stephens. Involved Civilian 1 observed Stephens turn towards his location and raise his rifle. When this occurred, Involved Civilian 1 discharged his firearm four times and observed Stephens fall to the ground.[10]

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[10] Based on a round count and crime scene investigation, it appears Involved Civilian 1 discharged his firearm a total of 8 times.

Involved Civilian 1 reported that, after he discharged his firearm, he and Involved Civilian 2 continued to point their firearms at Stephens because he was not "incapacitated immediately" and "he was still moving around." Involved Civilian 1 observed Stephens take control of the rifle, roll onto his back, place the barrel under his chin area, and pull the trigger.[11]

Involved Civilian 2 first observed Stephens as he was moving down the stairwell. He observed Stephens was "moving all over the place." Given the darkness, Involved Civilian 2 used his flashlight to illuminate Stephens. With Stephens illuminated, Involved Civilian 2 observed Stephens' weapon and saw Stephens removing ammunition from his pocket. Involved Civilian 2 yelled something to the effect of, "Let me see your hands!" but Stephens did not comply and, instead, loaded the weapon. Involved Civilian 2 observed blood on Stephens' face but he was not certain what caused the injury. Involved Civilian 2 observed Stephens pointing the weapon towards Involved Civilian 2. In response, Involved Civilian 2 discharged his firearm once at Stephens.[12]

Involved Civilian 1 and Involved Civilian 2 reported that SPD officers arrived after thirty to forty-five more seconds.

2. Facts After SPD Arrival

When the responding SPD officers arrived, they had no previous communication with the PSOs. Involved Officer 1 and Involved Officer 2 arrived first and approached the driveway to the loading dock. Involved Officer 1's BWV captured Involved Civilian 2, who had his firearm drawn and aimed towards the driveway. Involved Civilian 2 notified the officers that Involved Civilian 1 was "up here." Upon seeing Stephens on the ground, Involved Officer 1 used his radio

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[11] Involved Civilian 1 did not expressly describe what he observed after Stephens pulled the trigger while the rifle was under Stephens' chin. However, based upon other portions of Involved Civilian 1's statement and the autopsy results, it appeared that Stephens inflicted a gunshot upon himself. When asked to describe what occurred when SPD arrived, Involved Civilian 1 remarked that Stephens was continuing to move around after shooting himself in the face. Additionally, the autopsy report noted injuries consistent with a self-inflicted gunshot wound as Involved Civilian 1 described. The autopsy report stated that Stephens had a gunshot wound to the "anterior of the neck, the majority of the jaw, mouth, nose . . . The skin surrounding the inferior aspect of the wound is seared and possesses soot, representing the entrance."

[12] Based on a round count and crime scene investigation, it appears that Involved Civilian 2 discharged his firearm a total of 3 times.

to announce one suspect was detained. He and Involved Officer 2 moved eastbound on Marion St. and used the brick wall as cover while they gained a better view of the loading dock area. BWV captured Involved Officer 2 order Stephens not to move. Additionally, BWV captured Involved Civilian 2 telling the officers that Stephens had two hands on his weapon. Involved Officer 1 and Involved Officer 2 yelled commands for Stephens to remove his hands from the firearm.

Involved Officer 3 and Witness Officer 2 arrived and moved towards Involved Officer 2 and Involved Officer 1. Involved Officer 1's BWV captured one of the PSOs say something to the effect of, "He's loading! He's reloading!" Involved Officer 1 yelled to Stephens, "Put your hands up now!" Involved Officer 3 announced, "He's loading the shotgun now."

Witness Officer 3 and Involved Officer 4 next arrived. They initially went to the area where the other officers were located, but they soon ascended the stairs and observed Involved Civilian 2 and Involved Civilian 1. Involved Officer 3 and Witness Officer 2 also ascended the stairs and Involved Officer 3 instructed the PSOs to "back up."

Involved Officer 5 arrived and joined Involved Officer 2 and Involved Officer 1 behind the brick wall. Witness Officer 4 arrived and ascended the stairs where the other officers were located. As Witness Officer 4 moved towards the other officers, his BWV captured Involved Officer 4, Witness Officer 3, and Involved Officer 3 yelling commands to Stephens, such as "Hands up! Drop it! Drop it now!" Quickly, the officers' commands changed to, "Don't do it. Don't do it. Stop! We can get you help!"

Witness Officer 4 reported that when he looked over the concrete railing, he observed Stephens lying on the ground and there was a rifle near him. Stephens grabbed the rifle with his hands and rested it on his chest, with the barrel of the rifle pointing towards Stephens' head. From Witness Officer 4's point of view, it appeared that Stephens was searching for the rifle's trigger with his hands.

3. Facts During the Use of Force

Involved Officer 1's BWV captured the various commands he gave to Stephens. Initially, Involved Officer 1 commanded, "Seattle Police! Put your hands up now!" However, Involved Officer 1's commands quickly changed to, "Hey, don't do it bud! Don't do it!" Involved Officer

1's BWV also captured Involved Officer 5 aiming a taser in Stephens' direction. Involved Officer 1 told Involved Officer 5 that his taser would not be effective at that distance. Involved Officer 5 reported Stephens appeared to be fifteen to twenty feet away and his taser probes may shoot up to twenty feet. However, when Involved Officer 5 tried to aim the taser at Stephens, he recognized it would not be effective at this distance.

Involved Officer 1 used his radio to announce Stephens was "trying to shoot himself in the head now." As he relayed this information, Witness Officer 5 drove his patrol vehicle into the opening of the driveway, stopped quickly, and exited.

Figure 4 - FIT photograph of Witness Officer 5's patrol vehicle and the wall used by officers for cover (red rectangle).

Figure 5 - FIT photograph of Witness Officer 5's patrol vehicle and the wall used by officers for cover (red rectangle).

Witness Officer 5's ICV captured Stephens pushing himself to his feet while the rifle was still in his possession. Stephens raised the rifle level to his hip, aimed it in the direction of Involved Officer 5, Involved Officer 1, and Involved Officer 2, and took two quick steps in their direction. In response, Involved Officer 2, Involved Officer 1, and Involved Officer 5 discharged their firearms from street level while Involved Officer 4 and Involved Officer 3 discharged their firearms from an elevated position.

Figure 6 - FIT photograph of Stephens' approximate point of view during the use of force.

Involved Officer 1 reported that when he observed Stephens roll onto his hands and knees, he heard one of the PSOs yell Stephens was getting up and the firearm was in his hands. The PSO's statements matched what Involved Officer 1 observed. Specifically, he reported he observed Stephens stood with the rifle, turned towards him and Involved Officer 2's location, and walked towards them with the rifle raised. At that moment, Involved Officer 1 reported he discharged his firearm.

Involved Officer 2 also reported he saw Stephens stand and point the firearm in their direction. Believing Stephens was about to discharge his firearm at the officers, Involved Officer 2 discharged his firearm.

Involved Officer 5 reported when Stephens stood, he observed Stephens was bleeding, Stephens did not say anything, and Stephens did not acknowledge the police presence in any way. Involved Officer 5 observed Stephens turning towards the officers so he drew his firearm. When Stephens finished his turn, Involved Officer 5 observed Stephens was holding the rifle in a "low ready" position. This caused Involved Officer 5 to believe Stephens was preparing to

discharge his weapon at the officers or others. When Stephens raised his rifle, Involved Officer 5 discharged his firearm.

Involved Officer 3, who was in an elevated position, reported he heard officers giving Stephens commands to drop his weapon and that they could get him help. Involved Officer 3 reported he saw Stephens move the rifle from underneath his chin directly to his side where he pointed it towards Involved Officer 2 and Involved Officer 1. At this moment, Involved Officer 3 believed Stephens was going to discharge the rifle towards the officers, so he discharged his firearm.

Involved Officer 4, who was also in an elevated position, reported when Stephens stood, Stephens' back was to the officers. She observed Stephens turned with the rifle and pointed it in the direction of the officers. In addition to having reason to believe Stephens had already discharged the rifle in public, she was concerned Stephens was pointing the rifle at the officers and any potential individuals behind the officers, so she discharged her firearm.

Involved Civilian 2 reported he heard the officers tell Stephens numerous times to drop his weapon and that they could get him help. When Stephens stood, Involved Civilian 2 stated Stephens started "charging" at the officers. This action caused Involved Civilian 2 to discharge his firearm. At the same time, he heard other gunshots which he believed came from SPD officers or Stephens.

4. Facts Immediately After The Use of Force

Involved Officer 1 used his radio to announced shots were fired. The officers formed a contact team and Involved Officer 1 yelled, "Seattle Police! I'm giving you a warning to not move! Do you understand? If you reach for the weapon, we will shoot again. Do you understand?" Witness Officer 6 arrived and requested medics to stage in the area so they could enter once the officers secured the scene. Another officer brought a ballistics shield from their patrol vehicle and the contact team moved forward.

Once officers secured Stephens, they provided medical aid and requested medics to enter. Officers observed Stephens suffered multiple gunshot wounds. At approximately 8:22 pm, Seattle Fire Department emergency medical technicians entered and took over medical aid. Soon

after, medics arrived and assisted the emergency medical technicians. However, after approximately three minutes, they determined Stephens was deceased.

Figure 7 - FIT photograph of the rifle found next to Stephens.

V. INDEPENDENT INVESTIGATION

1. Independent Investigation Team

Other officers arrived, they secured the incident scene, and they 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.[13]

The SPD Force Investigation Team (FIT) was contacted to conduct the independent investigation 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. Background Investigation

Investigators reviewed other police reports where police contacted Stephens:

[13] RCW 10.114.011. See also WAC 139-12-010.

March 14, 2020	Bellevue Police Department (BPD) responded to Stephens' home regarding a domestic violence incident. Based on their investigation, police arrested Stephens for assault in the fourth degree domestic violence.[14]
January 29, 2022	BPD officers contacted Stephens who reported his ex-wife, ex-pastor, and several others were involved with the mafia and plotted to kill him. Stephens refused offers for mental health services. He did not indicate a threat to harm himself or others, so officers determined he did not meet the criteria for an involuntary commitment.[15]
February 15, 2022	BPD officers contacted Stephens who repeated the same information he reported on January 29, 2022. Stephens again refused to go to a hospital and speak with a social worker. Based on these two interactions, officers believed Stephens was suffering from a mental health crisis and requested the Bellevue CARES team contact Stephens.[16]
February 18, 2022	Stephens obtained a Concealed Pistol License from the Bellevue Police Department.[17]
February 26, 2022	A psychiatrist contacted the BPD due to his belief that Stephens' rapidly deteriorating mental health presented a risk to his wife and others who may encounter him. Based on this information, BPD sought an Extreme Risk Protection Order against Stephens.[18]
February 28, 2022	BPD petitioned for a temporary Extreme Risk Protection Order, which was granted.[19]

[14] BPD Case # 2020-14415.
[15] BPD Case # 2022-5159.
[16] BPD Case # 2022-8266.
[17] Concealed Pistol License #BV0009232.
[18] BPD Case #2022-10543.
[19] King County Superior Court Cause # 22-2-02908-1 SEA.

March 1, 2022	Police were unsuccessful in serving the order on Stephens.[20]
March 8, 2022	BPD requested the Extreme Risk Protection Order be dismissed because Stephens was deceased as a result of this incident. [21]

3. 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. 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 five SPD officers (involved officers) discharged their firearms:

- Involved Officer 5
- Involved Officer 4
- Involved Officer 1

[20] Id.
[21] Id.

- Involved Officer 2
- Involved Officer 3

Additionally, investigators determined Involved Civilian 1 and Involved Civilian 2 discharged their firearms.

Based upon photographs taken by investigators, the involved officers wore SPD uniforms, which were obviously marked with the word “Police” and other law enforcement insignias that clearly identified them as law enforcement.

Figure 8 - FIT photograph of an involved officer.

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 cartridges 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.[22] However, it is also common for officers to not load a magazine to the its full capacity to ensure that the spring located inside the magazine functions properly. Regarding rifles, many departments require that officers equipped with rifles not load their rifle with a round in the chamber and, instead, keep all unfired cartridges in the loaded magazine.

c. Involved Officer Training

FIT reviewed the training records for the involved officers. Investigators determined the involved officers were qualified to use the firearms they used during the use of force. Additionally, investigators determined the involved officers were current with SPD required training.

d. Involved Officer 5

Weapon Examined: Glock 17 Gen 4, 9x19mm semi-automatic pistol

Cartridge Location	Unfired	Capacity	Headstamp
Chamber	1	1	Speer 9mm Luger +P
Loaded Magazine	14	17	Speer 9mm Luger +P
Spare Magazine	16	17	Speer 9mm Luger +P
Spare Magazine	15	17	Speer 9mm Luger +P
Total	46	52	

Based upon the examination of Involved Officer 5's firearm, investigators determined he may have discharged six cartridges.

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

e. Involved Officer 4

Weapon Examined: Glock 22 Gen 4, .40 caliber semi-automatic pistol

Cartridge Location	Unfired	Capacity	Headstamp
Chamber	1	1	Speer 40 S&W
Loaded Magazine	10	15	Speer 40 S&W
Spare Magazine	14	15	Speer 40 S&W
Spare Magazine	14	15	Speer 40 S&W
Total	39	46	

Based upon the examination of Involved Officer 4's firearm, investigators determined she may have discharged seven cartridges.

f. Involved Officer 1

Weapon Examined: Glock 17 Gen 4, 9x19mm semi-automatic pistol

Cartridge Location	Unfired	Capacity	Headstamp
Chamber	1	1	Speer 9mm Luger +P
Loaded Magazine	16	17	Speer 9mm Luger +P
Spare Magazine	9	17	Speer 9mm Luger +P
Spare Magazine	16	17	Speer 9mm Luger +P
Total	42	52	

Based upon the examination of Involved Officer 1's firearm, investigators determined he may have discharged ten cartridges.

g. Involved Officer 2

Weapon Examined: Glock 17 Gen 4, 9x19mm semi-automatic pistol

Cartridge Location	Unfired	Capacity	Headstamp
Chamber	1	1	Speer 9mm Luger +P
Loaded Magazine	17	17	Speer 9mm Luger +P
Spare Magazine	16	17	Speer 9mm Luger +P
Spare Magazine	17	17	Speer 9mm Luger +P
Total	51	52	

Weapon Examined: FN15 multi caliber rifle

Cartridge Location	Unfired	Capacity	Headstamp
Chamber	1	1	FC – 21 223 – REM
Loaded Magazine	21	30	FC – 21 223 – REM
Spare Magazine	26	30	FC – 21 223 - REM
Total	48	61	

Based upon the examination of Involved Officer 2's firearms, investigators determined he may have discharged thirteen cartridges from his rifle and one cartridge from his handgun.

h. Involved Officer 3

Weapon Examined: Glock 17 Gen 4, 9x19mm semi-automatic pistol

Cartridge Location	Unfired	Capacity	Headstamp
Chamber	1	1	Speer 9mm Luger +P
Loaded Magazine	16	17	Speer 9mm Luger +P
Spare Magazine	16	17	Speer 9mm Luger +P
Spare Magazine	16	17	Speer 9mm Luger +P
Spare Magazine	7	17	Speer 9mm Luger +P
Total	56	69	

Based upon the examination of Involved Officer 3's firearm, investigators determined he may have discharged thirteen cartridges.

i. Involved Civilian 1

Weapon Examined: Smith & Wesson model M&P Shield .40 caliber

Cartridge Location	Unfired	Capacity	Headstamp
Chamber	1	1	P M C 40 S&W
Loaded Magazine	7	15	P M C 40 S&W
Total	8	16	

Based upon the examination of Involved Civilian 1's firearm, investigators determined he may have discharged eight cartridges.

j. Involved Civilian 2

Weapon Examined: Smith & Wesson model M&P Shield .40 caliber

Cartridge Location	Unfired	Capacity	Headstamp
Chamber	1	1	W I N 40 S&W
Loaded Magazine	12	15	W I N 40 S&W
Total	13	16	

Based upon the examination of Involved Civilian 2's firearm, investigators determined he may have discharged three cartridges.

4. 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.

a. Incident Scene

Crime scene investigators investigated where the use of force occurred. Investigators used streetlights and flashlights to illuminate the scene, but no other weather conditions negatively impacted the processing of the scene. After surveying the scene, investigators used placards to mark various items as evidence and used a laser scanner to create a scene diagram.

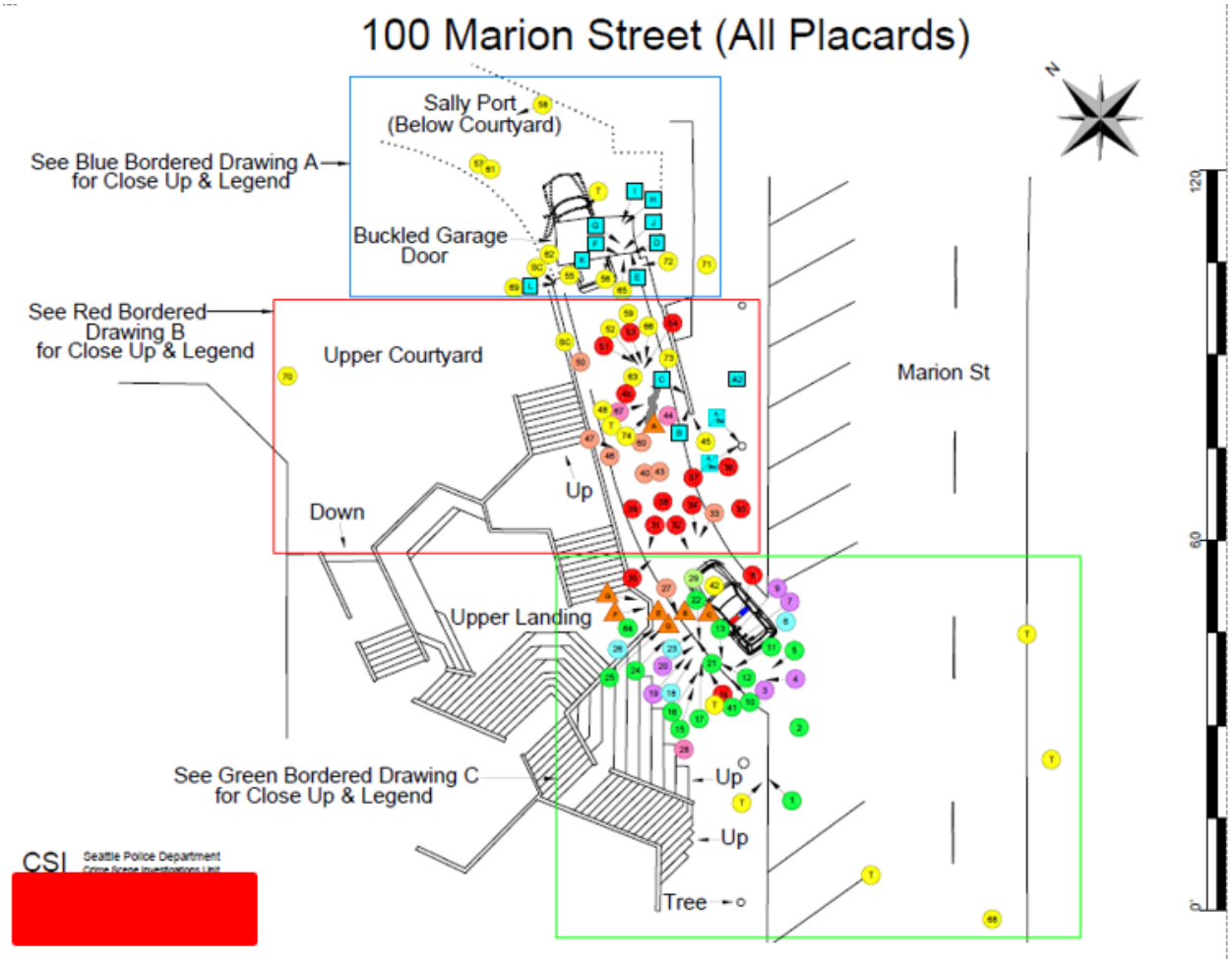

Figure 9 – FIT diagram of the incident scene.

Involved Officer 5 and Involved Officer 3 separately participated in a scene walkthrough. During the walkthrough, the officers advised where individuals were located during the use of force. Based on that information, investigators placed a small cone in the area where the officers were located. Involved Officer 5 identified the individuals who were located at cones A, B, C, D, and E. Involved Officer 3 identified the individuals who were located at cones F and G. Based on these locations, investigators determined that the involved officers were all within approximately 30' of Stephens when they used deadly force.

Figure 10 – FIT photograph of officers' locations, according to Involved Officer 5, during the use of force.

A – Stephens
B – Involved Officer 5
C – Witness Officer 5
D – Involved Officer 1
E – Involved Officer 2

Figure 11 - FIT photograph of officers' locations, according to Involved Officer 3, during the use of force.

F – Involved Officer 3
G – Involved Officer 4

Investigators collected several items of evidence, including:

- Fired cartridge casings
  - 16 with headstamp "Speer 9mm Luger +P"
  - 6 with headstamp "FC – 21 223 – REM"
  - 15 fired with headstamp "188 72"

- 4 with headstamp “Speer 40 S&W”
- 8 with headstamp "P M C 40 S&W”
- 3 with headstamp “W I N 40 S&W”
- 1 with headstamp “Blazer 9mm Luger”

- Unfired cartridge casings
  - 3 with headstamp “188 72”
- A Mosin Nagant 7.62 x 54mmR rifle
  - A fired cartridge casing with headstamp “188 72” was recovered under the rifle and an unfired cartridge casing with headstamp “188 72” was recovered from the rifle’s chamber.
- A white pillowcase with $3,493 inside, which was located near Stephens’ vehicle.

Investigators opined the rifle used by Stephens discharged the casings with headstamp “188 72.” Investigators researched the ammunition and discovered these cartridges are 7.62 rifle cartridges, which were Soviet Military surplus ammunition.

Figure 12 - FIT photograph of an unfired cartridge casing with headstamp "188 72."

b. Stephens’ Vehicle

Investigators sought a search warrant for Stephens’ vehicle, which was granted. Investigators recovered several items, including several handwritten notes referencing murder, an unfired cartridge casing with headstamp “188 72,” and items of dominion and control.

Figure 13 - FIT photograph of a document found in Stephens' vehicle that referenced a murder plot.

5. Forensic Examination

An investigator test-fired the Mosin Nagent M44 7.62x54R rifle, which was found near Stephens. The rifle functioned properly and the investigator noted the discharged rifle casings located at the scene appeared to be from this rifle.

6. Video Evidence

The involved officers were equipped with BWV cameras during the use of force. Additionally, Witness Officer 5's ICV recorded the use of force. Screenshots relevant to the Team's analysis are included below, including, if relevant, statements captured by the BWV or ICV.

Based upon Witness Officer 5's ICV, all gunshots discharged by the involved officers and involved civilians occurred within approximately two seconds.[23] Officers provided first aid to Stephens within three and a half minutes after using force.[24]

Figure 14 – Screenshot from Involved Officer 1's BWV as he and Involved Officer 2 arrived and ran towards the Federal Building (arrow). Involved Officer 1 yelled, "Seattle Police!" as they approached.

[23] Approximation based on timestamps from Witness Officer 5's ICV video file, which showed the use of force by the involved officers and involved civilians occurred from approximately 3:28 to 3:30.
[24] Approximation based on timestamps from Witness Officer 5's ICV video file, which showed officers providing aid at 6:25.

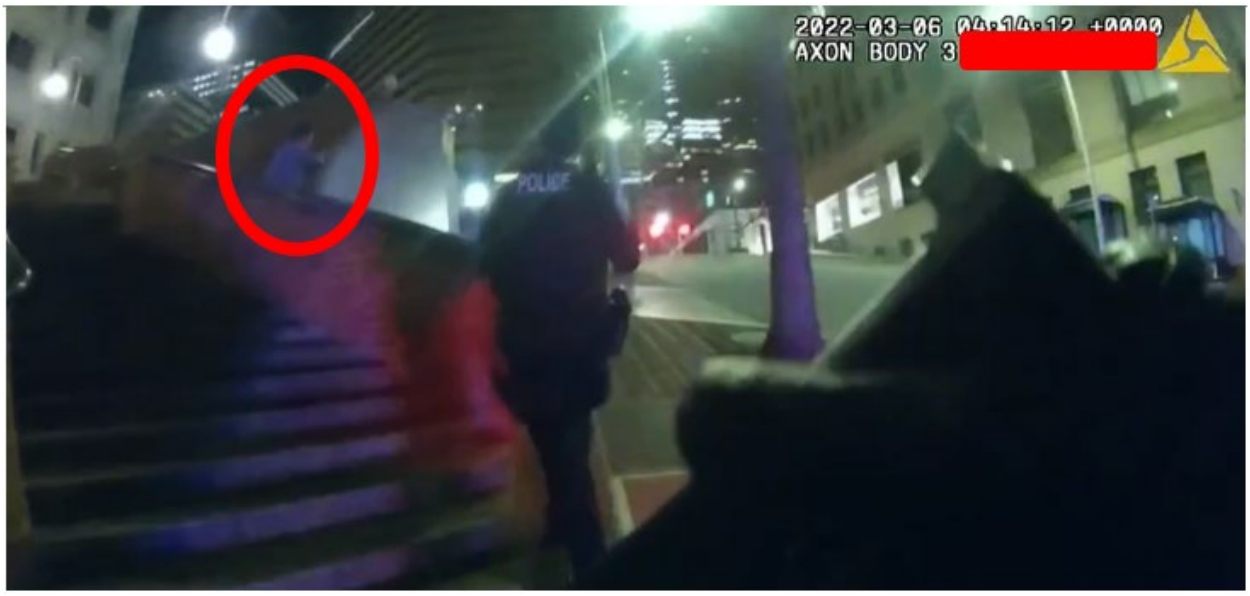

Figure 15 – Screenshot from Involved Officer 1's BWV as they approached the loading dock driveway and contact a PSO (circle).

Figure 16 – Screenshot from Involved Officer 1's BWV of Involved Officer 1 and Involved Officer 2 using a brick wall for cover. Involved Officer 1 gave numerous commands, such as "Do not move! Do not move or you will be shot!" An involved civilian announced that Stephens (circle) had two hands on his weapon. Police yelled further commands.

Figure 17 – Screenshot from Involved Officer 1's BWV as Stephens (circle) manipulated his firearm. Involved Officer 2 told other officers to get behind him while officers gave Stephens more commands to surrender.

Figure 18 – Magnified screenshot from Involved Officer 1's BWV as Stephens (rectangle) manipulated his firearm. Officers discussed using a taser but determined Stephens was too far away for it to be effective. Officers commanded Stephens to "not do it!"

Figure 19 – Screenshot from Involved Officer 1's BWV as Witness Officer 5 arrived and Stephens (circle) began standing.

Figure 20 – Screenshot from Involved Officer 1's BWV as Stephens (circle) rose to his feet and pointed his firearm at the officers.

Figure 21 – Magnified screenshot from Involved Officer 1's BWV of Stephens (rectangle) pointing his firearm at officers.

Figure 22– Magnified screenshot from Involved Officer 1's BWV of Stephens (rectangle) prior to the use of force.

Figure 23 – Screenshot from Witness Officer 5's ICV of officers giving Stephens (rectangle) commands.

Figure 24 – Screenshot from Witness Officer 5's ICV of Stephens (rectangle) moving on the ground.

Figure 25 – Screenshot from Witness Officer 5's ICV of Stephens (rectangle) rolling onto his right side.

Figure 26 – Screenshot from Witness Officer 5's ICV of Stephens (rectangle) pushing himself off the ground.

Figure 27 – Screenshot from Witness Officer 5's ICV of Stephens (rectangle) standing and reaching for his firearm.

Figure 28 – Screenshot from Witness Officer 5's ICV of Stephens moving towards the officers while pointing his firearm (arrow) at the officers.

Figure 29 – Magnified screenshot from Witness Officer 5's ICV of Stephens pointing his firearm (arrow) at officers.

7. Autopsy and Toxicology

The King County Medical Examiner's Office performed an autopsy of Stephens 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.[25] 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.

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

- 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 at least fifteen gunshot wounds:

1. One gunshot wound of anterior neck and lower face
2. Five gunshot wounds of head
3. Two gunshot wounds of back
4. Three gunshot wounds of right arm
5. One gunshot wound of right leg
6. Graze wounds of right shoulder, left bicep, and left fingers

The Washington State Patrol Toxicology Laboratory performed a drug analysis of Stephens' blood. The results showed Stephens' blood tested negative for alcohol and drugs.

8. 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.[26] 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."[27] Thus, a law enforcement officer, like any other citizen, is protected by the 5th Amendment of the United States

[26] WAC 139-12-010.
[27] Id.

Constitution, which prohibits compelling a person to be a witness against themselves.[28] 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.[29] 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.[30] 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.[31]

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.[32] At the time of this incident, SPD was subject to a federal settlement agreement. Under the agreement, the 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

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[28] U.S. Const. amend. V.
[29] Garrity v. State of N.J., 385 U.S. 493, 500, 87 S. Ct. 616, 620, 17 L. Ed. 2d 562 (1967).
[30] U.S. v. North, 910 F.2d 843, 857-858 (D.C. Cir., 1990).
[31] WAC 139-12-030.
[32] RCW 10.114.011.

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. In the current incident, the Team did review the involved officers' compelled statements, which were previously referenced.

VI. OTHER PROCEEDINGS

1. Administrative Review

SPD policies require supervising officers to review the FIT investigation, which included the involved officers' compelled statements. The reviewing sergeant, lieutenant, and captain identified training issues, but those issues were unrelated to the involved officers' use of force.

2. Seattle Office Of Police Accountability

The Seattle Office of Police Accountability did not conduct an investigation related to this incident.

VII. POTENTIAL IMPEACHMENT INFORMATION

Law enforcement agencies are required to report misconduct that an officer has engaged in that affects their credibility.[33] 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.[34] The Team has confirmed that, to its knowledge, there is no potential impeachment information regarding the involved officers who used deadly force in this incident.

[33] RCW 10.93.180(2)(a)(ii).
[34] 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.[35] 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.[36]

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.[37] 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.[38]

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[39]
- Justifiable Homicide Defense of Self or Others[40]
- Justifiable Homicide Resistance to Felony[41]

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[35] RCW 9A.04.100; WPIC 4.01.
[36] KCPAO Filing and Disposition Standards.
[37] WPIC 14.00.
[38] KCPAO Filing and Disposition Standards.
[39] RCW 9A.16.040; WPIC 16.01.
[40] RCW 9A.16.050(1); WPIC 16.02.
[41] RCW 9A.16.050(2); WPIC 16.03.

2. Applicable Law Regarding Justifiable Homicide By A Peace Officer

This incident occurred on March 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.[42]

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

[42] 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."[43]

The KCPAO declines to file charges against the involved officers or the involved civilians because the independent investigation and the Team's analysis reveal the involved officers' and the involved civilians' 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

The following law and analysis are applicable only to individuals who are qualified as peace officers.[44] Thus, the analysis only considers this defense as applicable to the involved officers.

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."[45] 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

[43] KCPAO Filing and Disposition Standards.
[44] RCW 10.93.070.
[45] Graham v. Connor, 490 U.S. 386, 396, 109 S.Ct. 1865, 1871-72, 104 L.Ed.2d 443 (1989).

attempting to evade arrest by flight.[46] In other words, the reasonableness of whether the officer's use of force is justified is determined by "the totality of the circumstances."[47]

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.[48] "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."[49] 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.[50]

b. Law Regarding Justifiable Homicide By A Peace Officer

Homicide is justifiable when necessarily used by a peace officer meeting the good faith standard to overcome actual resistance to the execution of the legal process, mandate, or order of a court or officer, or in the discharge of a legal duty.[51]

Additionally, 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.[52]

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

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[46] Id.
[47] Id.
[48] Id.
[49] Id. at 396-97.
[50] Id. at 397.
[51] RCW 9A.16.040(1)(b); WPIC 16.01.
[52] RCW 9A.16.040(1)(c)(i); WPIC 16.01.
[53] 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.[54]

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.[55] 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.[56]

c. Analysis Regarding Justifiable Homicide By A Peace Officer

First, the evidence in the independent investigation supports the conclusion that the factfinder would find the involved officers used deadly force to overcome actual resistance to the execution of the legal process, mandate, or order of a court or officer, or in the discharge of a legal duty. Here, the involved officers had evidence to believe Stephens discharged his firearm in public and they commanded Stephens to put down his firearm, which was a lawful order. Stephens did not comply with this order, stood up, pointed his firearm at the officers and moved towards them.

Additionally, the independent investigation also supports the conclusion the factfinder would find there was probable cause for the involved officers to reasonably believe Stephens had committed, had attempted to commit, was committing, or was attempting to commit various felonies. Here, there was probable cause for the involved officers to believe Stephens committed, had attempted to commit, was committing, or was attempting to commit assault in the second degree, assault in the first degree, manslaughter, and murder when he pointed a firearm at the officers and moved towards them.

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[54] Id.
[55] RCW 9A.16.040(4).
[56] RCW 9A.16.010; WPIC 16.05.

Second, the evidence in the independent investigation supports the conclusion that the factfinder would find there was probable cause for the involved officers to believe that Stephens, 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 officers had probable cause to believe Stephens discharged his firearm in public numerous times. Additionally, the officers gave Stephens numerous commands to surrender and put down his firearm. In response, Stephens ignored the officers' commands, stood up, pointed his firearm at the officers, and moved towards them. Therefore, it is highly likely that the factfinder would find Stephens' actions caused the involved officers to have probable cause to believe Stephens, if not apprehended, posed a threat of serious physical harm to themselves or others.

Third, the evidence in the independent investigation supports the conclusion that the factfinder would find that the involved officers used deadly force with a good faith belief their 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 officers acted in good faith because, under an objective standard, when considering all the facts, circumstances, and information known to the involved officers 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 officers observed Stephens repeatedly refused to comply with their commands to surrender and drop his weapon. Based on their BWV, they were in position to see Stephens stand, point his firearm at them, and move towards them.

Regarding whether the use of deadly force was necessary, a factfinder would also likely find that the involved officers' use of deadly force was necessary because no reasonable effective

alternative to use the force appeared to exist and the amount of force used was reasonable to effect the lawful purpose intended. Here, the involved officers engaged in de-escalation tactics such as communication, time, distance, and cover to resolve this incident safely. BWV confirmed that officers considered using less lethal tools, such as a taser, but the taser would likely not reach Stephens to be effective. When Stephens stood and pointed the firearm at the officers, there were no other reasonable effective tools to incapacitate Stephens.

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 officers complied with SPD's policy and training. As described above, and supported by BWV, the involved officers engaged in de-escalation tactics such as communication, time, distance, and cover to resolve this incident safely.

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 officers or the involved civilians. The independent investigation and the Team's analysis support the conclusion that the involved officers' actions were lawful and justifiable as Justifiable Homicide by a Peace Officer.

3. Justifiable Homicide In Defense Of Self Or Others

The following law and analysis is applicable to the involved officers and involved civilians.

a. <u>Law Regarding Justifiable Homicide In Defense Of Self Or Others</u>

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.[57]

The defense of Justifiable Homicide by a Peace Officer allows a peace officer or a civilian 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.[58] 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.[59]

In comparison, the defense of Justifiable Homicide in Defense of Self or Others is also applicable to peace officers.[60] Under this defense, 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 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.[61] 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.[62]

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."[63] 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.[64]

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[57] RCW 9A.16.040 [1986 c 209 §3].
[58] RCW 10.120.020(2). See also, Graham, 490 U.S. at 396.
[59] RCW 10.120.020(2).
[60] RCW 9A.16.040(5)(a).
[61] RCW 9A.16.050(1); WPIC 16.02.
[62] WPIC 2.04.01.
[63] WPIC 16.02.
[64] WPIC 16.07.

Regarding the involved officers, 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 officers' 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 officers and involved civilians reasonably believed that Stephens intended to commit a felony, to inflict death, or to inflict great personally injury upon an officer or others.

Regarding the involved civilians' actions prior to the arrival of officers, surveillance video supports the conclusion that after Stephens collided into the garage gate, he discharged his firearm in a random manner. Although the involved civilians were not equipped with BWV, their statements and presumed testimony would be corroborated by 911 callers and BWV and ICV. Thus, prior to the arrival of officers, the involved civilians reasonably believed Stephens committed, had attempted to commit, was committing, or was attempting to commit assault in the first degree, manslaughter, or murder when he pointed his firearm at the involved civilians. After officers arrived, Stephens similarly committed, had attempted to commit, was committing, or was attempting to commit assault in the first degree, manslaughter, or murder when he pointed his firearm at the involved officers.

Second, the evidence in the independent investigation supports the conclusion that the factfinder would find that the involved civilians and involved officers reasonably believed that Stephens' 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 Stephens' actions, as described above, caused the

involved civilians and involved officers to reasonably believe that Stephens' threats would be carried out.

Third, the evidence in the independent investigation supports the conclusion that the factfinder would find that the involved civilians and involved officers employed such force and means as a reasonably prudent person would under the same or similar conditions as they reasonably appeared to the involved civilians and involved officers. Here, the involved civilians and involved officers provided Stephens with multiple commands to surrender and drop his firearm. Based upon BWV and ICV, a fact finder would likely find that the involved civilians and involved officers waited until the last moment possible before using deadly force to defend themselves or others.

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 civilians or the involved officers. The independent investigation and the Team's analysis support the conclusion that the involved officers' and the involved civilians' actions were lawful and justifiable as Justifiable Homicide in Defense of Self or Others.

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.

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.[65]

[65] 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[66] or to inflict death or great personal injury;

(2) the slayer reasonably believed that there was imminent danger[67] 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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[66] 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).

[67] 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[68] 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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[68] 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)