Use of Force Fatality of

Joseph Ejeh

King County Independent Force Investigation Team

King County Sheriff's Office #C23041709

King County Prosecuting Attorney

Public Integrity Team

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DECLINE MEMORANDUM

Use of Force Fatality of Joseph Ejeh

WARNING – This memorandum contains images and descriptions of violence that may be offensive and disturbing to some readers. The images and descriptions are included to provide the reader with the most accurate information regarding the topic of this memorandum.

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 in independent investigations involving police use of deadly force to enhance accountability and increase trust to improve the legitimacy of policing for an increase in safety for everyone.[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 officer results in 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 in accordance with the King County Charter.[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

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

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. Scope of the Memorandum

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

3. Status of the Independent Investigation

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

II. OVERVIEW

On December 5, 2023, Bellevue Police Department officers attempted to contact Joseph Ejeh who had previously been trespassed from LA Fitness a few days prior. After being trespassed, Ejeh returned to the LA Fitness with a knife. An officer attempted to contact Ejeh outside in the parking lot where he refused to follow police requests to drop the knife and surrender. After numerous commands were given to Ejeh, he continued to move towards the officer with the knife. Ejeh switched his attention to a civilian vehicle and attempted to enter the vehicle. As Ejeh attempted to enter the vehicle, the officer discharged his handgun at Ejeh, striking him. Officers administered life savings efforts, but Ejeh died as result of his injuries.

[6] Id.

III. INVESTIGATION AND EVIDENCE

1. Police Reports – King County Sheriff's Office C23-041709
2. Police Reports – Bellevue Police Department 2023-65514
3. Police Reports – Issaquah Police Department 2023-14141
4. Police Reports – Kirkland Police Department 2023-41769
5. Police Reports – Lake Forest Part Police Department 2023-50862
6. Police Reports – Redmond Police Department 2023-033455
7. Police Reports – Washington State Patrol 2023-021471
8. Civilian Statements
9. CAD
10. Other Police Reports
11. Search Warrants
12. Crime Scene Investigation
13. Washington State Patrol Crime Laboratory
14. Autopsy and Toxicology Reports
15. Involved Officer Information
16. Subject Information
17. 911 Call and Radio
18. Audio
19. Video
20. Photos
21. Miscellaneous

IV. INVESTIGATION SUMMARY[7]

1. Information Before and During the Use of Force

The following information is based upon several sources, including witness observations, police reports, the Bellevue Police Department (BPD) computer aided dispatch (CAD) report, recorded police radio, 911 recordings, and video from December 5, 2023.

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[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

At approximately 6:35 pm, Civilian Witness 1 called 911 while she was leaving Bellevue's Kelsey Creek Center parking lot and she said she was concerned when she noticed a male, later identified by law enforcement as Joseph Ejeh (Ejeh), walking through the parking lot carrying a large knife. She described him as a tall, thin, black male wearing a red sweater with a brown overcoat and walking towards the LA Fitness.

Approximately, one minute later, Civilian Witness 2, a general manager at the LA Fitness in the Kelsey Creek Center called 911. Civilian Witness 2 reported that Ejeh, who had been trespassed from the business three days prior, had returned and entered the business with a knife in his hand. He was not threatening anyone but he appeared to be rubbing blood on the vending machines inside the business and other items. Civilian Witness 2 reported that Ejeh left the business and he was still in possession of the knife. He continued to provide updates on Ejeh's location until BPD officers arrived.

The BPD dispatcher notified officers via radio about the 911 calls, stating that Ejeh had been trespassed from LA Fitness, he was currently walking towards the locker room while waving a knife around, he was not threatening anyone, and he was rubbing blood on the glass door of the business. In addition, a request for medics to stage nearby was requested given that Ejeh may be injured.

Involved Officer 1 arrived first and notified the BPD dispatcher via his radio that, "He's not compliant. I'm in the second row. He has a knife. He's not compliant. Walking towards the Wing Stop." Approximately forty-four seconds later, Involved Officer 1 notified the dispatcher, "He's still advancing towards us with a knife." Approximately thirteen seconds later, Involved Officer 1 notified the dispatcher, "Shots fired. Shots fired." Subsequently, officers radioed that Ejeh was now in custody and they requested medics to come to their location.

When the BPD dispatcher provided information about Civilian Witness 1's and Civilian Witness 2's 911 calls, several other officers also began driving their patrol vehicles towards the Kelsey Creek Center, including Witness Officer 1, Witness Officer 2, Witness Officer 3, and Witness Officer 4.

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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.

Witness Officer 3, who is a field training officer, and Witness Officer 2 were together in a patrol vehicle and drove toward the Kelsey Creek Center after hearing the information provided by the BPD dispatcher. They arrived as Involved Officer 1 advised on the radio that Ejeh was not complying.

Witness Officer 2 parked their patrol vehicle near Involved Officer 1's patrol vehicle, which was located at the main entrance of the LA Fitness. Involved Officer 1 advised over the radio that Ejeh was walking towards the Wing Stop and that Ejeh had a knife. Witness Officer 2 exited his vehicle and observed Involved Officer 1 and Ejeh approximately thirty yards away. As they moved towards the Wing Stop, Witness Officer 3 and Witness Officer 2 heard Involved Officer 1 yell several loud commands, including "Get on the ground!" and "Drop the knife!" At the time, Witness Officer 3 could not see the knife in Ejeh's hands, but he continued to hear Involved Officer 1 issue the same commands. Both Witness Officer 3 and Witness Officer 2 drew their handguns, holding them in the low ready position. As they continued moving towards the Wing Stop, Witness Officer 3 observed that Ejeh was advancing towards Involved Officer 1 while Involved Officer 1 continued to back pedal away from Ejeh. When they were approximately fifteen to twenty feet away from Ejeh, Witness Officer 3 observed a large knife in Ejeh's hand. Although Involved Officer 1 continued to give Ejeh commands, Ejeh did not comply. The distance between LA Fitness and Wing Stop is approximately 300 feet.[8]

Witness Officer 3 transitioned from his handgun to his taser, a less lethal weapon, because Involved Officer 1 and Witness Officer 2 had their handguns drawn. Ejeh noticed Witness Officer 2 and Witness Officer 3 and he momentarily stopped by a red sedan and Ejeh made a motion towards the sedan with his hands. Ejeh lowered his body into a squatting position and scanned back and forth between the officers' positions. As Ejeh moved his body, Witness Officer 3 could no longer see Ejeh's hands, so he did not know if Ejeh still possessed the knife. Involved Officer 1 continued to issue commands and Ejeh transitioned from a squat to a pushup position. As this occurred, Witness Officer 2 and Witness Officer 3 moved closer towards Involved Officer 1. Witness Officer 3 heard Involved Officer 1 order Ejeh to "put his hands out," but Ejeh proceeded to stand up on his feet. Ejeh retrieved the knife from the sedan's trunk and began approaching Witness Officer 3's location. Given Ejeh was approximately twenty feet

[8] Approximate distance based upon Google Earth map information.

away, armed with a knife, moved sporadically, was non-compliant, and was wearing a trench coat and hoodie, Witness Officer 3 believed that the taser would not be a reasonably effect alternative against Ejeh's knife, so he transitioned back to his handgun. Witness Officer 2 and Witness Officer 3 were now positioned behind a parked vehicle, and Ejeh switched his attention back towards Involved Officer 1. Although Involved Officer 1 continued to issue commands, Ejeh did not comply and continued towards Involved Officer 1 who was in the furthest part of the parking lot near Wing Stop.

Witness Officer 3 observed a white SUV approach Involved Officer 1 from behind and drive into the row where Ejeh and Involved Officer 1 were located. Involved Officer 1 tried to signal the driver to stop, but the driver, later identified as Civilian Witness 3, continued into the row. As Civilian Witness 3 entered the row, her SUV blocked Witness Officer 2's and Witness Officer 3's path to Ejeh and Involved Officer 1. In other words, Witness Officer 2 and Witness Officer 3 were positioned north on the driver's side of the SUV, while Ejeh and Involved Officer 1 were positioned on the passenger side of the SUV.

From Witness Officer 3's point of view, Ejeh appeared to approach the passenger side of the SUV, however Witness Officer 3 lost sight of Ejeh due to the SUV blocking his sightline. Given Ejeh's prior behavior, coupled with his distance to the driver of the SUV and Involved Officer 1, Witness Officer 3 thought that Ejeh's conduct presented an immediate threat to the driver of the SUV and Involved Officer 1. However, given that his sightline was blocked by the SUV, Witness Officer 3 determined that he was not in a safe position to use force to stop Ejeh. As Ejeh disappeared from his sightline, Witness Officer 3 heard several gunshots discharged, followed by Involved Officer 1's announcement over the radio, "Shots fired."

As Witness Officer 1 drove his patrol vehicle, he heard Involved Officer 1 over the radio advise that he was in contact with Ejeh in the second row of the parking lot and that Ejeh had a knife. He also heard Involved Officer 1 advise that Ejeh was non-compliant and he was walking towards the Wing Stop. As he entered the parking lot, Witness Officer 1 observed Involved Officer 1, Witness Officer 2, and Witness Officer 3 in the parking lot. Additionally, he heard an officer advise over the radio that Ejeh was walking towards them with a knife.

Witness Officer 1 yelled at Involved Officer 1, asking him how Involved Officer 1 wanted to handle the situation. Involved Officer 1 stated that Ejeh had a knife and Witness Officer 1 observed that Involved Officer 1 was holding his handgun in a low ready position as he

backed away from Ejeh, who was approximately fifty feet from Involved Officer 1, but Ejeh continued to move towards Involved Officer 1's direction while holding the knife. In addition, Witness Officer 1 saw Witness Officer 2 and Witness Officer 3 to his left, taking cover behind parked vehicles. Officers yelled at Ejeh to drop the knife, but he did not comply with their commands.

As Ejeh continued walking, Witness Officer 1 drove past Civilian Witness 3's SUV so that he could use his patrol vehicle to block any traffic or pedestrians from Ejeh. As he passed the SUV, he heard three gunshots being discharged. Witness Officer 1 exited his vehicle and observed Ejeh lying face down on the ground with his hands tucked under his body. The officers formed a contact team to detain Ejeh and provide him with medical attention. Once Ejeh was detained, Witness Officer 1 requested the medics who were staged nearby to come to their location.

After hearing the dispatcher describe the 911 calls, Witness Officer 4 also drove his patrol vehicle towards the Wing Stop. After he entered the parking lot, he joined the officers forming a contact team. Witness Officer 4 and the other officers moved toward Ejeh and turned him onto his back so that they could provide medical attention until the medics arrived. When they turned Ejeh over, Witness Officer 4 saw a large kitchen knife on the ground where Ejeh's hands and torso had been. As other officers provided medical attention, Witness Officer 4 took possession of the knife and secured it in his vehicle. Medics soon arrived and provided medical aid, but they determined that Ejeh was deceased.

2. Independent Investigation

As other officers arrived, they secured the incident scene and rerouted traffic away from the area. The King County Independent Force Investigation Team was requested to respond to the scene and to conduct an independent investigation. King County Sheriff's Office Investigator 1 was assigned as the lead investigator. The independent investigation team (IIT) divided assignments between themselves and began to process the incident scene.

3. Prior Incidents Involving Ejeh and LA Fitness

Based on witness statements, the IIT retrieved a copy of the police report that led to Ejeh's trespass from LA Fitness. According to the report, BPD issued a notice of trespass to Ejeh

on December 3, 2023, at approximately 12:59 pm, after a manager reported that Ejeh was causing a disturbance.[9] In addition, the IIT found a Seattle Police Department report from October 24, 2023, where an employee of LA Fitness, located at a location in Seattle, called 911 after Ejeh caused a disturbance and punched an employee.[10]

4. Processing of the Officers

As part of standard practice, the IIT determined which officers used force. Investigators determined that Involved Officer 1 discharged his handgun. The IIT reported that his handgun contained one unfired cartridge in the chamber, thirteen unfired cartridges in the magazine, and that the magazine could hold seventeen cartridges. Involved Officer 1's two spare magazines were loaded with sixteen and seventeen unfired cartridges, respectively. If Involved Officer 1 filled his loaded magazine to capacity with an additional cartridge in the chamber, his handgun was loaded with eighteen cartridges, which would indicate that he discharged four cartridges.

5. Civilian Witnesses

a. Civilian Witness 2

Civilian Witness 2 provided a statement to the IIT and reported that he was at the front desk of LA Fitness on December 3, 2023, when Ejeh entered. Civilian Witness 2 told Ejeh that he needed to check in, but Ejeh removed his coat and placed it in Civilian Witness 2's arms. Civilian Witness 2 instructed Ejeh to leave the gym since he was not checking in. Ejeh, instead, walked over to an occupied machine, tapped the user on the shoulder, and yelled at him to leave the machine. Ejeh began to swing his fists, which made Civilian Witness 2 believe Ejeh may hit the other person. The other person left and Ejeh got onto the machine, loaded it to the maximum weight, pulled the weight up and dropped it several times, which led Civilian Witness 2 to believe that Ejeh was trying to break the machine. Civilian Witness 2 heard Ejeh saying something, but he could not understand Ejeh, so he thought that Ejeh may be suffering from mental health issues. After five minutes, Ejeh ripped out his Air Pods, started flexing, and left the

[9] Bellevue Police Department Case #2023-65079.
[10] Seattle Police Department Case #2023-308146.

gym. Civilian Witness 2 called 911. When officers arrived, he described what occurred, and he requested that Ejeh be trespassed from the gym.

Civilian Witness 2 reported that on this evening another member alerted him to someone outside that was acting erratically and waving something around. Civilian Witness 2 looked outside and observed Ejeh, who was wearing the same clothes from the previous incident, and he saw that Ejeh was holding a knife in his hand. Civilian Witness 2 was concerned that Ejeh returned to assault him, so he called 911.

Ejeh entered the gym while holding the knife. Once inside, Ejeh began to waive the knife around. He walked towards the vending machines and rubbed it with his hand, leaving what appeared to be blood on the machine. Next, Civilian Witness 2 saw Ejeh rubbed more blood on an AED machine, fire extinguisher, and gym signage.

Ejeh exited the gym as a police vehicle with flashing lights arrived. Civilian Witness 2 exited the gym and heard the officer tell Ejeh to drop the knife and get on the ground repeatedly. When the officer got to a stop sign, he drew his handgun and Civilian Witness 2 noticed that a white SUV was in the same area as the officer and Ejeh. Civilian Witness 2 saw Ejeh walk up to the SUV and Ejeh reached for the front passenger door handle. As this occurred, he heard the officer discharge approximately four gunshots. Civilian Witness 2 also described the officer as backpedaling for a distance while Ejeh had a knife in his hand. He recalled seeing Ejeh put the knife on a red sedan, get on the ground, perform pushups, jump up, and retrieve the knife before attempting to grab the SUV's door handle.

b. Civilian Witness 4

Civilian Witness 4 provided a statement to the IIT and reported that he is also a manager at the LA Fitness. Civilian Witness 2 had previously notified him of the incident involving Ejeh from a few days prior. This evening, Civilian Witness 2 told Civilian Witness 4 that Ejeh had returned with a knife and entered the gym. Civilian Witness 4 observed Ejeh and saw Ejeh holding a knife sheath in one hand and a large black knife in the other hand. Ejeh was waving the knife around and walked back towards the locker rooms, so they called the police while Ejeh yelled and Civilian Witness 4 attempted to herd people away from Ejeh. Civilian Witness 4 observed Ejeh wipe blood on various surfaces, but he did not see where the blood originated from.

Ejeh exited the gym and Civilian Witness 4 and Civilian Witness 2 went outside and pointed out Ejeh to the officer. Civilian Witness 4 heard the officer tell Ejeh to drop the knife and get on the ground repeatedly. Ejeh kept walking towards the officer and the officer kept backing up. Two other officers arrived near the gym, so Civilian Witness 4 told them that the other officer needed assistance. Civilian Witness 4 observed Ejeh get on the ground and perform pushups. Ejeh jumped up, grabbed the knife, and continued to walk towards the officers. A white SUV moved toward the police vehicles and Ejeh approached the SUV. As Ejeh reached for the SUV, Civilian Witness 4 heard gunshots. Civilian Witness 4 noted that the first officer, Involved Officer 1, appeared patient when giving Ejeh commands. He recalled that Involved Officer 1 yelled for Ejeh to drop the knife so many times and so loudly that he could hear the commands from across the parking lot. He also noted that Involved Officer 1 had backed up all the way across the parking lot.

c. Civilian Witness 5

Civilian Witness 5 provided a statement to the IIT and reported that he is an employee at LA Fitness and observed Ejeh enter the gym. He recognized Ejeh as the same individual from a few days prior. Civilian Witness 5 observed that Ejeh had a large knife and smeared blood on various surfaces throughout the gym.

When Ejeh exited the gym, Civilian Witness 5 also exited the gym with Civilian Witness 4 and Civilian Witness 2. He recalled seeing the officer draw his handgun and order Ejeh to drop the knife. At this point, Civilian Witness 5 could not see the knife, but Civilian Witness 5 eventually saw Ejeh raise the knife above his head, holding the knife in one hand while pulling the sheath off with his other hand. Ejeh began walking towards the officer, which caused the officer to back away while he repeatedly told Ejeh to put the knife down.

Civilian Witness 5 thought that the officer had a good line of sight of Ejeh until the white SUV entered the row. He saw Ejeh reach with his hand to the passenger side door handle of the SUV, which led Civilian Witness 5 to think that if Ejeh got inside the SUV it was unclear what Ejeh would do inside the SUV, and he believed the officer would no longer have control of the situation. He next observed the officer discharge his handgun four times.

d. Civilian Witness 6

Civilian Witness 6 provided a statement to the IIT and reported she was working at Wing Stop and she saw a police officer following Ejeh, who was walking very closely to another police officer. She saw that Ejeh had his hand up and then he was on the ground. She did not see the knife at that moment, but she took a video and saw the knife when she looked at the video afterward. She described Ejeh as doing "weird" things and that Ejeh was very close to the police officer while he had the knife.

e. Civilian Witness 3

Civilian Witness 3 provided a brief statement to Witness Officer 1 directly after the use of force and she provide a subsequent statement to the IIT. She reported to Witness Officer 1 that she saw Ejeh holding a knife, walking toward her car, and attempting to open the front passenger door. She believed that Ejeh was going to stab her with the knife, which caused her to be in fear.

Civilian Witness 3 reported to the IIT that she was the driver of the white SUV and she was looking for a parking spot when she saw Ejeh holding a knife. She was able to drive around him and she continued to look for a spot. When she circled a second time, she saw Ejeh with the knife again and a police officer pointing a handgun at Ejeh. She heard the officer say something to the effect of, "Raise your hands." Civilian Witness 3 took a short video using her phone, but it did not capture the incident. She reported that Ejeh tried to get into the passenger side of her SUV, but she was not sure if he touched the handle. Given that Ejeh had a knife, she was afraid. The officer and Ejeh moved out of her view behind her car, which is when she heard gunshots.

6. Crime Scene Investigation and Search Warrants

IIT investigators conducted a crime scene investigation, documented the location of various items that appeared to have evidentiary value, and collected various items as evidence. During their investigation, the IIT located four discharged casings near the location of Ejeh's body. The IIT also recovered Ejeh's knife, which Witness Officer 4 secured inside his vehicle. The knife was black and approximately seven inches long. Upon closer inspection, the IIT noted there was a thin sheath over the blade, which was difficult to observe up close and inside a patrol vehicle. The tip of the knife sheath had blood on it.

Figure 1 - Ejeh's knife photographed in Witness Officer 4's vehicle.

In addition, the IIT located Ejeh's car, which was parked in the parking lot. While looking through the windows, the IIT observed what appeared to be blood on the center console and on the inside of the driver's door. There was a comforter on the front passenger seat and a plastic bottle with a yellow substance inside, which appeared to be urine. The back seat had a blanket and a pillow laid out. Taken together, the IIT believed that Ejeh was likely living in his vehicle. When the medical examiner arrived to conduct their investigation, she noted a wound on Ejeh's hand near the base of his pointer finger, which may have accounted for the blood that he smeared on items inside LA Fitness and the blood seen inside his vehicle. Given this information, the IIT and the Team determined there was not a sufficient legal basis to apply for a search warrant to examine Ejeh's vehicle.

However, during Ejeh's autopsy, the medical examiner did not locate any other cuts on Ejeh's body. In addition, it was possible that the wound on Ejeh's finger was a bullet defect he sustained during the use of force. Given this, the IIT could not account for the origin of the blood found on Ejeh's knife, inside the LA Fitness, and inside Ejeh's vehicle. If the blood did not

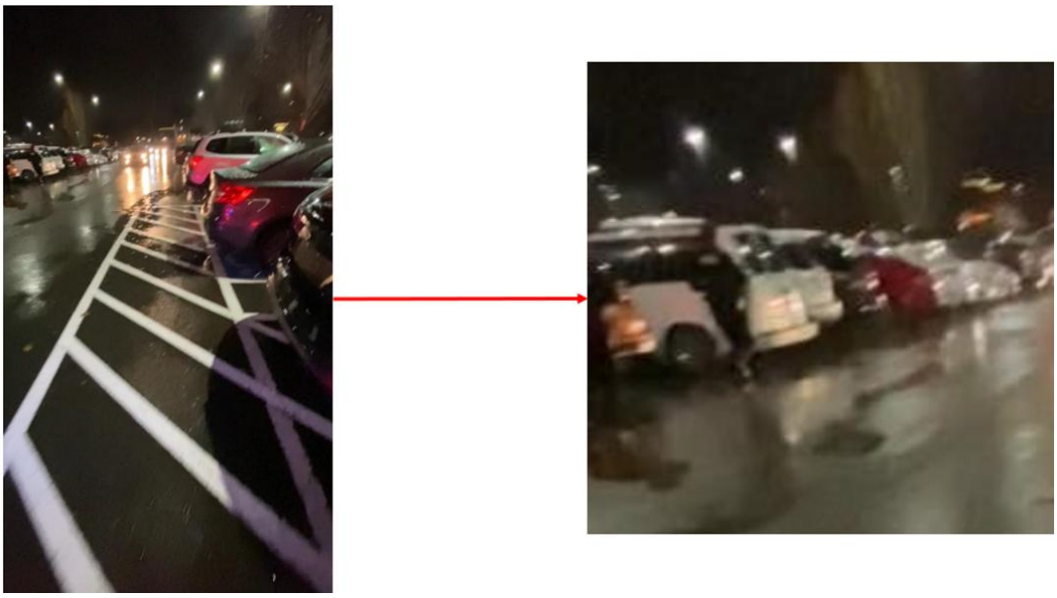
originate from Ejeh, the IIT was concerned the blood may have originated from another injured individual. With this new information, the IIT and the Team agreed that Investigator 1 should apply for a search warrant to examine Ejeh's vehicle.

After receiving judicial approval to search Ejeh's vehicle, the IIT seized Ejeh's vehicle and examined it. In addition to paperwork with Ejeh's name, the IIT collected suspected blood spatter from multiple locations inside the vehicle.

7. Video Evidence

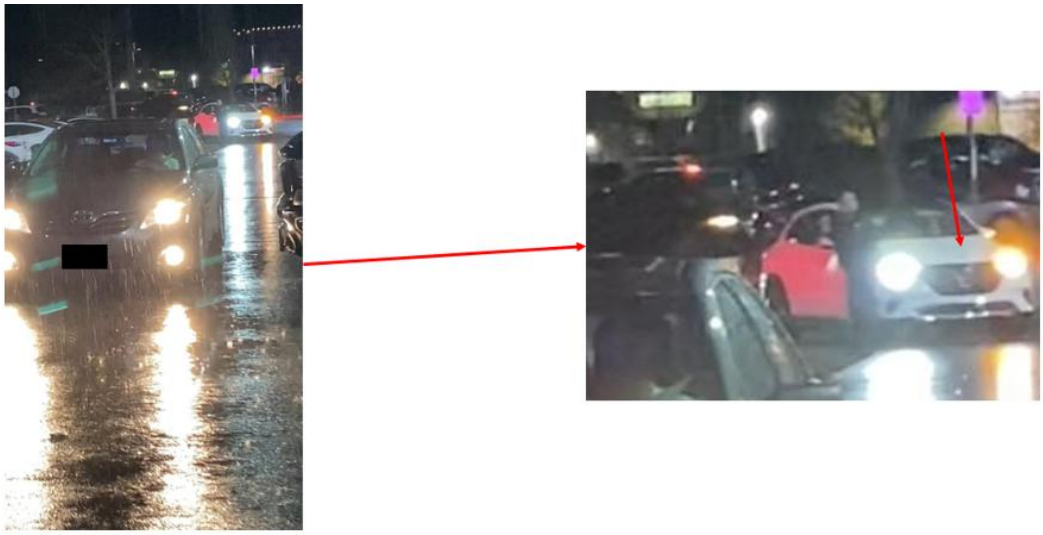
Civilian Witness 2 also provided the IIT with a video he captured on his phone. The video showed Ejeh near a red sedan when he crouched down. Involved Officer 1 is in between the white SUV and Ejeh, who is approximately fifteen to twenty feet from Involved Officer 1. Ejeh dropped to the ground and performed pushups, then he jumped to his feet and retrieved something from the trunk of the red sedan. Ejeh advanced towards Involved Officer 1 and the white SUV with an object in his hand. Involved Officer 1 moved to the opposite side of the white SUV, which placed the SUV in between Involved Officer 1 and Ejeh. As Ejeh continues towards the passenger side of the SUV, he got closer to the vehicle and moved his right hand towards the SUV. Involved Officer 1 circled around the back of the white SUV and four distinct gunshots were heard.

Witness Officer 2 and Witness Officer 3 moving towards Involved Officer 1's location. Involved Officer 1 can be heard giving several loud and clear commands to Ejeh.

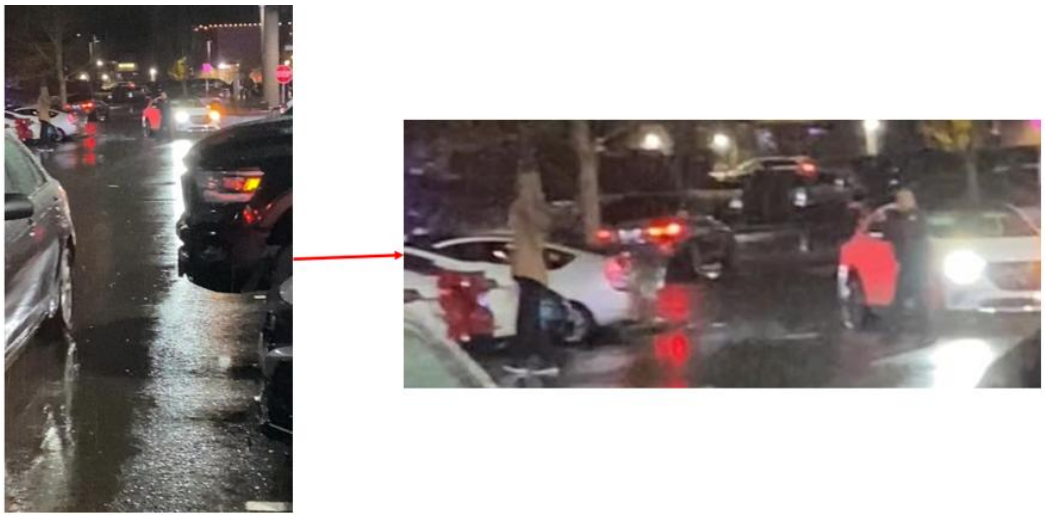


Ejeh squatting on the ground to the right of a red sedan.

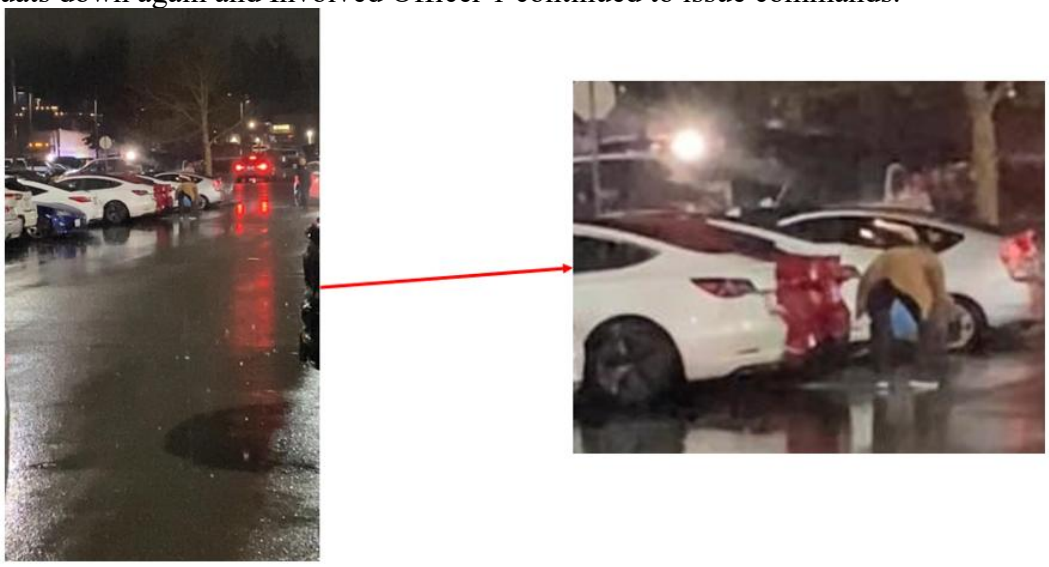
Civilian Witness 2's view of Ejeh is momentarily blocked by a vehicle while the white SUV, driven by Civilian Witness 3, pulls in behind Involved Officer 1.



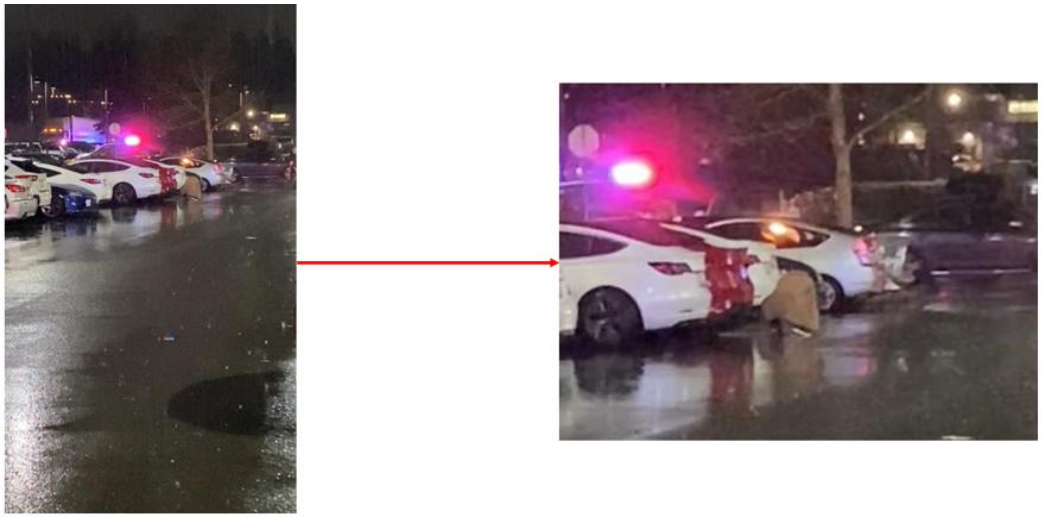
Civilian Witness 2 regains his view of Ejeh, who is now standing and motioning towards Involved Officer 1.



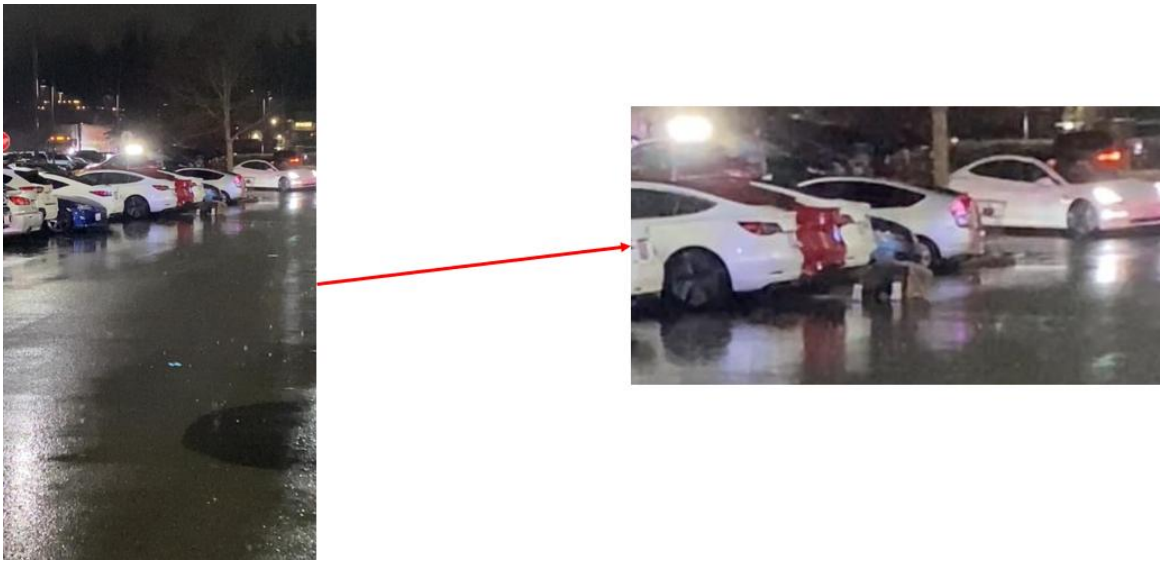
Ejeh squats down again and Involved Officer 1 continued to issue commands.



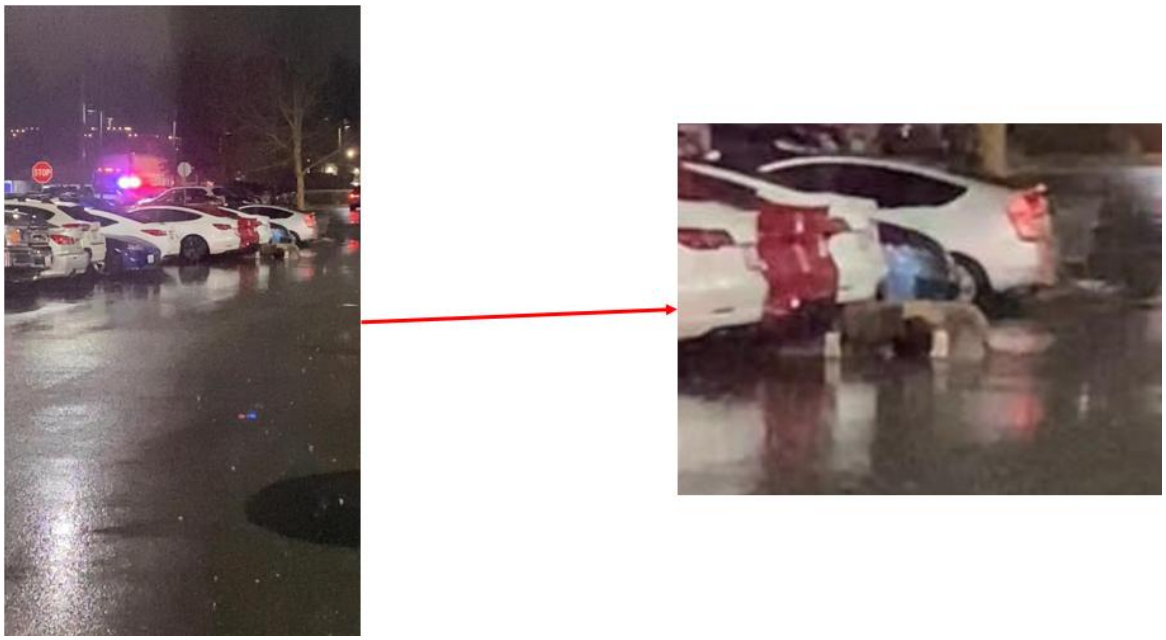
Ejeh continues lowering himself to the ground.



Ejeh performs pushups.

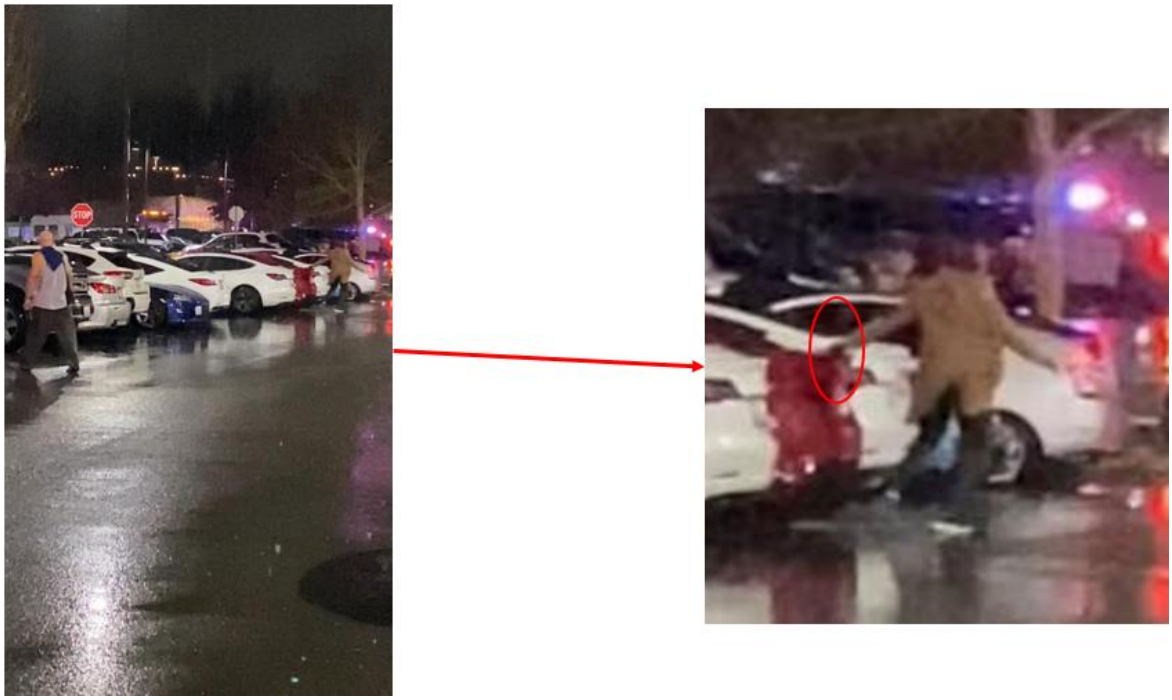


Ejeh extends his arms and continues pushups.

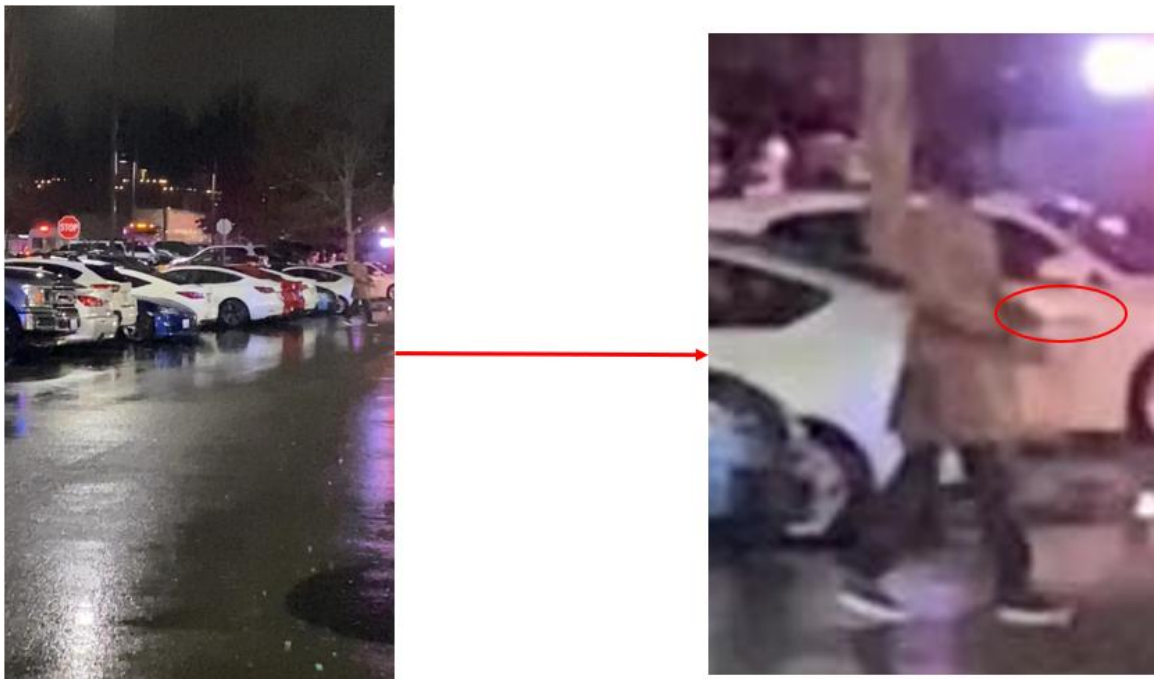


Ejeh quickly jumps to his feet and reaches for something on the trunk of the red sedan.

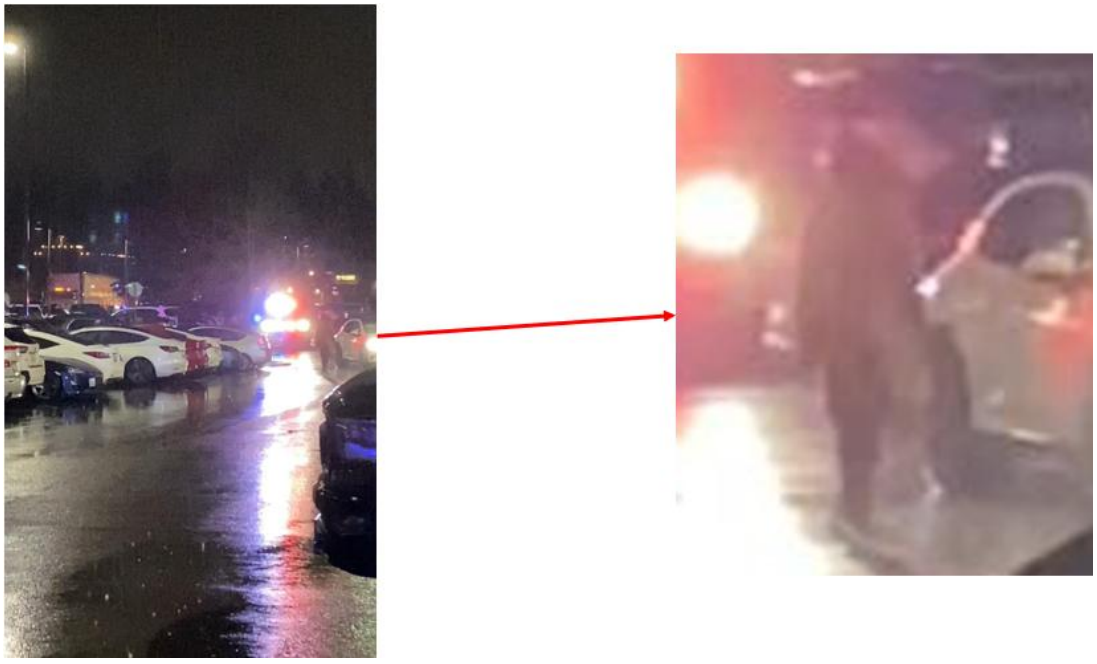
Ejeh uses his left hand to grab the item on the trunk of the red sedan.



Ejeh begins walking towards Involved Officer 1 and Civilian Witness 3 while holding an object extended outwards.



Ejeh, illuminated by Witness Officer 1's patrol vehicle, continues walking towards the white SUV.



As Ejeh continues walking towards the white SUV, and an object is visible in his left hand.

Ejeh uses his right hand to reach towards the white SUV's passenger front door, while holding the object in his left hand. Involved Officer 1 emerges from behind the trunk of the white SUV.

The moment Involved Officer 1 used force upon Ejeh, who is within feet of Involved Officer 1.

Civilian Witness 6 provided the video she referenced to the IIT. The video showed Involved Officer 1 in front of the white SUV with his gun pointed. Ejeh squats down to the ground, then gets back up. There is an object in his right hand that resembles a knife. As the white SUV backs up slightly, Involved Officer 1 moved around the driver's side of the vehicle out of view and Ejeh walks towards the SUV, which is when the video ends.

Ejeh reaching with his left hand to remove an object from the trunk of the red sedan, which is partially obscured by the white SUV.

Ejeh holding an object in his hand.

Ejeh walking towards Involved Officer 1 and the white SUV while holding an object in his hand.

Ejeh walking towards Involved Officer 1 and the white SUV while holding an object in his hand. Involved Officer 1 begins to move behind the white SUV.

Ejeh walking towards Involved Officer 1 and the white SUV while holding an object in his hand.

8. Forensic Examination

The Washington State Patrol Crime Laboratory conducted a forensic examination of Ejeh's knife. The laboratory determined the suspected blood on the knife was human blood. Further testing indicated the DNA profile of this blood originated from one male individual. The laboratory compared the DNA profile of the blood on the knife with a DNA refence sample of Ejeh's blood and the laboratory determined the two DNA profiles matched.

9. Autopsy and Toxicology

The King County Medical Examiner's Office performed an autopsy of Ejeh, which opined the cause of death is multiple gunshot wounds sustained in a confrontation with police and the manner of death is homicide.[11] There were five gunshot wounds documented in the autopsy report, which was based upon the autopsy findings. Based on scene investigation, a witness report, and the number of expended casings recovered from the scene, a total of four shots were discharged. As such, the perforating gunshot wound of the right hand may serve as a

[11] 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.

possibility for an entry-exit-reentry wound path, with a reentry wound represented on the left abdomen, which contained a slightly atypical entrance wound.

The Washington State Patrol Toxicology Laboratory performed a drug analysis of Ejeh's blood. The results showed that Ejeh's blood tested negative for the presence of acetone, ethanol, isopropanol, methanol, amphetamines, barbiturates, benzodiazepines, cocaine metabolite, and opiates.

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.[12] The KCPAO will file charges if sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defenses that could be raised under the evidence, would justify conviction by a reasonable and objective factfinder.[13]

In addition, the State must disprove the existence of a defense that negates an element of the crime.[14] Prosecution should not be declined because of an affirmative defense unless the affirmative defense is of such nature that, if established, would result in a complete defense for the accused and there is no substantial evidence to refute the affirmative defense.[15] Therefore, the State may be required to disprove one or more of the following defenses:

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

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

2. Applicable Law

This incident occurred on December 5, 2023; therefore, the applicable Justifiable Homicide by a Peace Officer instruction would require the State to prove the officer acted without good faith.[19]

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

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

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."

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[19] For offenses committed on or prior to December 6, 2018, the former version of WPIC 16.01, based upon RCW 9A.16.040, required the prosecution to prove the officer acted with malice. For offenses committed between December 7, 2018, and February 3, 2019, RCW 9A.16.040, based upon Laws of 2019, Chapter 1, § 7, removed the malice standard and required the prosecution to prove the officer did not act in good faith. There are no pattern jury instructions for offenses committed between December 7, 2018, and February 3, 2019. For offenses committed on or after February 4, 2019, the current version of WPIC 16.01, based upon RCW 9A.16.040, requires the prosecution to prove the officer did not act in good faith. RCW 9A.16.040(1)(a) utilizes the malice and good faith standard, but this section only applies when a "public officer applied deadly force in obedience to the judgment of a competent court."
[20] WPIC 16.01.
[21] WPIC 16.05.
[22] WPIC 16.02.
[23] WPIC 2.04.01.
[24] WPIC 16.07.
[25] WPIC 16.03.

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

1. Justifiable Homicide by a Peace Officer

a. Law Regarding Justifiable Homicide by a Peace Officer

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."[26] Instead, its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether the suspect is actively resisting arrest or attempting to evade arrest by flight.[27] In other words, the reasonableness of whether the officer's use of force is justified is determined by "the totality of the circumstances."[28] Thus, it is common for a police department's policy manual and training to incorporate the standards set out by the United States Supreme Court.

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.[29] "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."[30] 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.[31]

Deadly force 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

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[26] Graham v. Connor, 490 U.S. 386, 396, 109 S.Ct. 1865, 1871-72, 104 L.Ed.2d 443 (1989).
[27] Id.
[28] Id.
[29] Id.
[30] Id. at 396-97.
[31] Id. at 397.

order of a court or officer, or in the discharge of a legal duty.[32] Deadly force is also 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.[33]

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.[34] 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 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.[35]

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.[36] 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.[37]

b. Analysis Regarding Justifiable Homicide by a Peace Officer

First, the evidence in the independent investigation showed that Involved Officer 1 was issuing orders to Ejeh to drop his knife and surrender, which Ejeh repeatedly ignored, while Involved Officer 1 and Ejeh moved approximately 300 feet through the parking lot. Based on

[32] RCW 9A.16.040(1)(b); WPIC 16.01.
[33] RCW 9A.16.040(1)(c)(i); WPIC 16.01.
[34] RCW 9A.16.040(2).
[35] Id.
[36] RCW 9A.16.040(4).
[37] RCW 9A.16.010; WPIC 16.05.

Ejeh's behavior with the knife and his refusal to follow commands, there was probable cause for Involved Officer 1 to believe that Ejeh committed and was in the process of committing various felonies. Specifically, when Ejeh rearmed himself with the knife after doing pushups, he advanced towards Involved Officer 1 and Civilian Witness 3's SUV, which would constitute probable cause to belief that Ejeh intended to commit an assault with the knife.

Second, the evidence in the independent investigation showed there was probable cause to believe that Ejeh, if not apprehended, posed a threat of serious physical harm to the officer or others. Involved Officer 1 attempted to maintain control of Ejeh in the parking lot, but Ejeh repeatedly ignored Involved Officer 1's commands. As seen in Civilian Witness 2's video, the parking lot is full of parked vehicles, driving vehicles, and people walking to their vehicles. When Civilian Witness 3's vehicle entered the parking row and Ejeh advanced towards her vehicle, it increased the threat of serious physical harm that Ejeh posed. At the point that Ejeh reached for Civilian Witness 3's passenger door, it would have been unreasonable for Involved Officer 1 to allow Ejeh to enter her vehicle while armed with a knife. Doing so would have made it nearly impossible for officers to safely attend to Ejeh while not further endangering Civilian Witness 3.

Third, the evidence in the independent investigation showed that Involved Officer 1 used deadly force with a good faith belief that his actions were necessary to prevent death or serious physical harm to the officer or another individual. Based on the video gathered by the IIT and the witness officers' reports, it appears that Involved Officer 1 used deadly force at the moment it became necessary. For instance, according to witness statements by employees of LA Fitness, Involved Officer 1 initially contacted Ejeh closer to the LA Fitness location. By the time the use of force occurred, Involved Officer 1 and Ejeh had moved nearly 300 feet through a crowded parking lot. Additionally, the video evidence supports the fact that Involved Officer 1 gave Ejeh numerous, clear, loud commands to surrender and drop the knife. When Ejeh moved into the pushup position, Involved Officer 1 continued to give Ejeh commands because it may have appeared that Ejeh was going to surrender. However, when Ejeh stood, he appeared to rearm himself and increased the threat he initially posed.

Therefore, based on the admissible evidence, which is corroborated by several witnesses including video evidence, there is insufficient evidence to prove criminal charges beyond a reasonable doubt or refute the applicable defenses beyond a reasonable doubt.

2. Justifiable Homicide in Defense of Self or Others

a. Law Regarding 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.[38] 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.[39]

Under this instruction, the danger must be imminent, not immediate. The Washington Instruction Committee noted that "Imminence does not require an actual physical assault. A threat, or its equivalent, can support self-defense when there is a reasonable belief that the threat will be carried out."[40] 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.[41]

The reasonable person standard used in this instruction does not expressly require the jury to compare the slayer to a reasonable officer. However, because law enforcement officers – especially compared to non-law enforcement civilians – receive significant amounts of training on weapons, defensive tactics, and the use of force, it is prudent to assume the jury would be required to take Involved Officer 1's training into account. Therefore, the same evidence and testimony used to determine whether Involved Officer 1's acted as a reasonable peace officer are also relevant to this instruction.

b. Analysis Regarding Justifiable Homicide in Defense of Self or Others

As stated earlier, Involved Officer 1 possessed information that would lead a reasonable person to fear that Ejeh intended to harm Involved Officer 1 or Civilian Witness 3 based on

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[38] RCW 9A.16.050(1); WPIC 16.02.
[39] WPIC 2.04.01.
[40] WPIC 16.02.
[41] WPIC 16.07.

Ejeh's actions and refusal to comply with the officer's commands. Ejeh's actions, particularly when he appeared to attempt to open Civilian Witness 3's door, equate to an imminent danger. In other words, although Ejeh was not currently using his knife to assault another, his behavior and movement with the weapon would support a reasonable individual to believe that Ejeh intended to harm another person with the knife.

Therefore, based on the admissible evidence, which is corroborated by several witnesses including video evidence, there is insufficient evidence to prove criminal charges beyond a reasonable doubt or refute the applicable defenses beyond a reasonable doubt.

VII. KCPAO RESPONSIBILITIES REGARDING INQUEST

As outlined in Executive Order PHL 7-1-5 EO, 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 pursuant to the King County Charter.[42] Pursuant to the King County Charter, "An inquest shall be held to investigate the causes and circumstances of any death 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."[43] Given the facts outlined in the investigation, it is the Team's belief that the investigation is complete and an inquest should be initiated pursuant to the King County Charter.

The King County Executive, however, shall determine whether an inquest will be held.[44] The Charter requirement for an inquest does not apply where 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.[45]

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[42] Executive Order PHL 7-1-5 EO.
[43] King County Charter § 895.
[44] Executive Order PHL 7-1-5 EO.
[45] Id.

VIII. ATTACHMENT 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 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[46] or to inflict death or great personal injury;

(2) the slayer reasonably believed that there was imminent danger[47] 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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[46] 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).

[47] 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."

4. 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.

5. 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.

6. 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[48] 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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[48] 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)