Use of Force Fatality of Franklin Ross

Valley Independent Investigation Team
Renton Police Department, #23-13256

King County Prosecuting Attorney Public Integrity Team

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DECLINE MEMORANDUM

USE OF FORCE FATALITY OF

FRANKLIN ROSS

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. PURPOSE AND SCOPE OF MEMORANDUM

Per County Executive Order, the King County Prosecuting Attorney's Office (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.[1] There shall be an inquest into the manner, facts, and circumstances of any death of an individual where an action, decision, or possible failure to offer the appropriate care by a member of any law enforcement agency might have contributed to an individual's death unless the County Executive determines, based on a review of the investigation, that the role of law enforcement was *de minimis* and did not contribute in any discernable way to a person's death.[2]

The Special Operations Unit Public Integrity Team (Team) has determined that the investigation into this matter is complete. The determination whether to file charges is based entirely on the materials provided to the KCPAO, relevant criminal laws, rules of evidence governing criminal proceedings, the applicable burden of proof, and the KCPAO's Filing and Disposition Standards. This determination is not intended to address matters outside the scope of this memorandum including, but not limited to, administrative action by the involved agency or any other civil action. The Team expresses no opinion regarding the propriety or likely outcome of any such actions.

II. OVERVIEW

On November 16, 2023, at 4:43 PM Valley Communications received a call for service at a single-family residence at 4049 SW 337th St. in the city of Federal Way. The homeowner claimed that her adult son, Franklin Ross, was having mental health issues and causing a disturbance at her home. The call was held until 6:03 PM when Federal Way Police Department Involved Officer 1 and his partner, Witness Officer 1, were dispatched to the location. At 8:18 PM the two officers arrived and spoke with the elderly homeowner who was waiting at a neighbor's house before approaching the homeowner's residence on foot. Subject, Franklin Ross (Franklin), was waiting outside when the officers arrived. Franklin threatened to kill the officers

1 Executive Order PHL 7-1-5 EO.
2 Id.

and charged Involved Officer 1 with a knife in his right hand. Involved Officer 1 then shot Franklin five times fatally wounding him. Aid was attempted on scene, but was unsuccessful.[3] Franklin died as a result of the shooting.

III. INVESTIGATION AND EVIDENCE

The KCPAO reviewed all relevant reports, photos, 3-D scans, video, search warrant(s), CADs, 911 calls, dispatch recordings, training records, and King County Medical Examiner's Office reports it received from investigators.

IV. INVESTIGATION SUMMARY

The Valley Independent Investigation Team (VIIT) investigated this officer-involved shooting because state law prohibits a police agency from investigating a shooting committed by an agency's own officers. Federal Way PD briefed VIIT investigators on the incident. Tasks were then split between members of VIIT. Renton PD was the lead investigating agency. Auburn PD and Port of Seattle PD canvassed the area and interviewed witnesses. Des Moines PD processed the scene. KCSO processed the witness-officers. Kent PD processed the involved officer. Tukwila PD assisted in processing the scene.

On November 16, 2023, at 4:43 PM, Civilian Witness 2, the next-door neighbor of Civilian Witness 3, called 911 to report domestic violence at Civilian Witness 3's residence located at 4049 337th St. in the city of Federal Way. Civilian Witness 3 was then handed the phone. While crying, she said that her son, Franklin, just showed up at her house. She said that he was inside her home being violent and demanding money, but that he did not hit her. She left the house to get away from him, but he remained in the house. She said that he has mental health problems and is not taking his medication. The phone call ended with the operator stating that the police would respond to the house.

Three hours later, at 7:45 PM, Civilian Witness 2 called 911 again to report that the police never responded, that Franklin was still in his mother's house, and that Civilian Witness 3

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[3] This is Involved Officer 1's second officer-involved shooting (OIS) fatality. His previous OIS fatality occurred on Nov. 13, 2022. (See Port of Seattle Police Department Case # PORTS 220072001).

was still waiting at Civilian Witness 2's home. The operator looked up the incident. She realized the call was still open. She apologized and dispatched officers to the scene.

At 8:18 PM, Involved Officer 1 and Witness Officer 1 arrived on scene. Civilian Witness 3's home is located in a cul-de-sac. The officers first spoke with Civilian Witness 3's neighbors, Civilian Witness 1 and Civilian Witness 2, in front of their home. Civilian Witnesses 1 and 2 told officers that they saw Civilian Witness 3's son, Franklin, acting erratically earlier that afternoon, hitting Civilian Witness 3's vehicle as Civilian Witness 3 and her granddaughter were driving away from Civilian Witness 3's house. Civilian Witnesses 1 and 2 then told Involved Officer 1 that Franklin may have warrants for his arrest, which officers were able to confirm. One out-of-state warrant was for larceny and included a caution that Franklin is a violent offender. The other warrant was for a DUI. Civilian Witnesses 1 and 2 said that Civilian Witness 3 told them that her son does not have any weapons. However, Civilian Witness 3's young granddaughter told Civilian Witnesses 1 and 2 that there are weapons in the house. The officers ended their conversation and then went inside Civilian Witnesses 1 and 2's house to speak with Civilian Witness 3.

Civilian Witness 3 then told Involved Officer 1 that her son, Franklin, arrived at her house today. When asked, she said her son would not resist officers, though she said that he was violent and demanded money from her today. She told Involved Officer 1 that she has been watching Franklin via a surveillance camera she installed inside the house. She said he was talking to himself and she recently observed him eating on the front steps. She said the front door appeared to be open, but she could not see where Franklin currently was. The officers then left Civilian Witness 3 to speak with Franklin at Civilian Witness 3's home.

At 8:27 PM, Involved Officer 1's body-worn video footage shows that he and Witness Officer 1 walked to the driveway of Civilian Witness 3's home. When they arrived, Franklin made eye contact with the officers and said, "Don't get hostile with me bro." One second later Involved Officer 1 responds, in a very calm demeanor with a soft tone, "I'm not getting hostile with you." There appears to be nothing in Franklin's hands at this time.

Figure 1: The first contact between officers and Franklin. Franklin is pictured in left of the frame just in front of the steps to the front door of the home.

Involved Officer 1 is then heard asking Franklin, “What’s going on?” Franklin says, “Not much.” At this point Franklin is now seen turning away from the officers, starting to retreat towards the front porch, and his right arm is not visible.

Franklin is heard saying, “Why? What you trying to do?” It appears that Franklin’s right hand goes into the front right pants pocket and then is pulled back out. Due to the low level of light it is unclear if he retrieves anything.

Figure 2: Franklin seen reaching his right hand into his front right pants pocket.

Franklin immediately retreats backwards, onto the steps of the front porch. It is at this point that Franklin's demeanor drastically changes where he starts acting aggressively. Franklin walks up to the top of stairs. As he is nearing the top of the stairs, he is clearly seen putting his right hand into his pocket.

Figure 3: Franklin is seen on the left retreating up the stairs as his mood changes to being aggressive, and then on the right, placing his right hand in his front right pocket.

Then in an aggressive tone, Franklin repeats what he previously said, "What are you trying to do?" From the angle of Involved Officer 1, Franklin's right hand is now concealed behind his back, making it impossible to see what is in his hand. His left hand appears to still be empty. Franklin now has a different posture than he previously did. He appears to be in an

athletic stance similar to a modified runner's stance, as if he is prepared to run at a moment's notice.

Figure 4: Franklin in a runner's stance with his right hand behind his back after his demeanor turns aggressive.

Franklin then moves his right hand into view. He is holding a red handled knife with the blade extended. Later his red knife is recovered on his person.

Figure 5: Photo of knife recovered in Franklin's right hand. Though it was recovered closed under his body, video evidence shows that it was indeed open when he threatened to kill officers.

It is unknown exactly where Franklin retrieved the knife from, but it is most likely his front right pants pocket. Franklin maintains the same modified runner's stance as he threatens to

kill the officers. Franklin is holding a knife in his right hand as he prepares to run down the stairs towards the two officers who begin to backpedal to create distance between them and Franklin. Franklin then rotates his right arm from his waist area, towards the front of his body. As he is doing this, he says to Involved Officer 1, “Dude, I am going to fucking kill your ass right now! What’s Up? What’s Up?”

Figure 6: Franklin with the knife extended in his right hand.

Figure 7: Franklin, with a knife in his right hand, as he threatens to kill Involved Officer 1 and prepares to run down the stairs.

Three seconds after Franklin threatens to kill the officers while brandishing a knife, Involved Officer 1's BWV shows Involved Officer 1 drawing his pistol and pointing it directly at Franklin as Franklin rapidly comes down the stairs towards the officers. Franklin then says, "Shoot nigga! Shoot nigga!"

Figure 8: Franklin coming down the stairs yelling at Involved Officer 1 to shoot.

Both Officers continue to back away from Franklin, creating greater distance. Franklin is now seen pointing to his right at Witness Officer 1 and yelling, “Get the fuck outta here!” Franklin has now come off the front porch and is back to the area where the officers first encountered Franklin, parallel to the garage doors. Franklin continues to advance and challenge the officers as he waves his right hand around. One can see the exterior lighting reflecting off the blade of Franklin’s knife.

Figure 9: Light seen reflecting from the extended knife blade in Franklin's hand as he walks towards Witness Officer 1.

Franklin closes the distance on Witness Officer 1 as both officers continue to back up, continuing to attempt to create distance between them and Franklin. Witness Officer 1 is standing parallel and to the left of Involved Officer 1. Franklin is heard yelling, "Get some motherfuckers out here!" as he continues to advance on Witness Officer 1. Franklin's right hand can be seen raised in the air and pointing directly at Witness Officer 1, as he advances towards him. For a third time Involved Officer 1 announces that Franklin has a knife. Witness Officer 1 orders Franklin to stay put in an attempt to stop him from advancing towards the officers. Involved Officer 1 then orders Franklin, "Drop the knife." Throughout the interaction with Franklin both officers appeared to have a calm demeanor and created distance while telling Franklin to drop the knife. Involved Officer 1 continues to point his firearm at Franklin, the shadow of which can be seen in Involved Officer 1's BWV footage, below. A fraction of a second later, Franklin turns from facing Witness Officer 1 and turns towards Involved Officer 1. Franklin then lowers his head, looking at Involved Officer 1 in an aggressive manner. Franklin then takes one large step closer towards Involved Officer 1 with his arms extended and knife blade facing Involved Officer 1. At this point Involved Officer 1 fires his first of five shots at Franklin. It appears that Franklin is approximately 10 to 15 feet away from Involved Officer 1 at the point in time he advances towards Involved Officer 1 and is shot.

Figure 10: Top left, first shot. Top right, second shot. Middle left, third shot. Middle right, fourth shot. Bottom left, fifth and final shot. All five shots occurred in under two seconds. Bottom right, still photo from witness, Witness Officer 1's BWV showing how close Franklin was to Involved Officer 1 when Involved Officer 1 fired.

Involved Officer 1 reported to dispatch that shots were fired and the officers were alright. The officers did not immediately provide medical care to Franklin. On BWV they discuss how they are concerned that Franklin is still holding the knife which is under his stomach as he lays on his belly. Involved Officer 1 requested backup officers bring a shield so they can safely approach Franklin and disarm him and render aid. Five minutes after the final shot, backup units arrive. Witness Officer 2 approaches Franklin and pins him down with a ballistic shield as

another officer takes the knife out of Franklin's right hand. After Witness Officer 2 orders Involved Officer 1 and Witness Officer 1 to leave the scene, the backup officers rendered medical aid to Franklin, but were not able to resuscitate him.

Later, King County Medical Examiner Investigator 1 arrived on scene to examine, photograph, and transport the body away from the scene for an autopsy to be performed.

Civilian Witness 3 was interviewed by Port of Seattle Police Department investigators. She said Franklin grew up in the Seattle area but lives in Houston, Texas. He has a child, but is not married. He currently is employed installing insulation. She said he has warrants for his arrest out-of-state. She said, as a result, that he was afraid of being arrested. Around 10:00 AM the day of the shooting she said that she picked him up from a motel in Federal Way where he had been staying for three days. She drove him back to her house. They had coffee and then he went into the front yard and began talking to himself. She was able to convince him to come inside, so as not to scare the neighbors. Civilian Witness 3 then told Franklin she needed to leave to pick up her granddaughter, Civilian Witness 4. When she came home, Franklin was sweating, talking to himself, walking back and forth inside the house. He then accused Civilian Witness 3 of lying to him and demanded money. Civilian Witness 3 believed that he wanted the money to leave the state. Civilian Witness 3 said Franklin's behavior was scaring her granddaughter, Franklin's niece, Civilian Witness 4, who was now crying. Civilian Witness 3 tried to calm Franklin down. She and Civilian Witness 4 drove away. As they left, Franklin came outside and demanded money. As she drove away, Civilian Witness 3 saw her neighbor Civilian Witness 2 call what she presumed to be 911.

Civilian Witness 3 waited at Edgewood Park for two hours for the police to arrive. When she came home, she went to her neighbor Civilian Witness 2's house who called the police again. On surveillance video, she saw Franklin eating inside of her house. Two police officers later arrived and spoke with her. She told them that Franklin opened the front door but she could not see him in the footage. The minute the police walked to her house she heard four gunshots. She said Franklin did not have a gun or knife. She began crying during the interview. She said that she looked outside and Franklin was laying down dead her in front yard.

Civilian Witness 2, Civilian Witness 3's neighbor, was interviewed by Port of Seattle Police Department Investigator 1. Civilian Witness 2 said she and Civilian Witness 3 have been neighbors for eight years but are not close. The afternoon of the shooting, she said her attention

was drawn to Civilian Witness 3's house when she heard Franklin yelling in the front yard towards the house and street. Franklin does not live there and Civilian Witness 2 has never seen him at Civilian Witness 3's house in the eight years she has lived in the neighborhood. At 5:00 PM she heard Franklin yelling at Civilian Witness 3 in a SUV. Civilian Witness 2 ran outside and saw Franklin hitting the SUV. Civilian Witness 2 said she was going to call the police and Civilian Witness 3 signaled her approval. As Civilian Witness 3 and the granddaughter, Civilian Witness 4, drove away she told Civilian Witness 3 that she could stay at her house until Franklin left. She estimates Civilian Witness 3 and Civilian Witness 4 came back to the house at 6:00 to 6:30 PM and stayed at Civilian Witness 2's house. Civilian Witness 3 told Civilian Witness 2 that Franklin was off of his mental health medicine and asking her for money. To Civilian Witness 2, it appeared that Civilian Witness 3 was minimizing the situation. At some point, Civilian Witness 2 contacted the police again because they had not come. She believes the police arrived around 7:30 to 8:00 PM. The police spoke to her, her husband Civilian Witness 1, and Civilian Witness 3. After the police left, she heard gunshots and became concerned. Later, Civilian Witness 1 told her that he saw Franklin face down and he thought Franklin was dead. Civilian Witness 3 told her that she was confused why the police shot him. She did not think Franklin had a weapon.

Neither Involved Officer 1 nor Witness Officer 1 was willing to provide a statement to VIIT investigators regarding the shooting.

Video from Civilian Witness 3's in-home surveillance system was recovered during the execution of a search warrant. Twenty-one videos were recovered. They ranged in length from 9 seconds to 20 seconds. The videos all captured movement from within the residence pointing towards the staircase with the front door in the background. The videos mainly capture the movements of Franklin where he is seen and heard talking to himself. In none of the videos does Franklin pick up the knife that he is later seen holding when the officers approach him outside of the house on the front porch. In all of the videos Franklin is seen moving throughout the main floor of the house engaged in a conversation. In none of the videos is anyone else contributing to these conversations. Franklin appears to be the only person in the house and appears to be talking to himself. Franklin's confrontation with police officers is not captured by the surveillance camera.

On November 20, 2023, King County Medical Examiner Doctor 1 performed an autopsy. Doctor 1 later opined in his autopsy report, the cause of death is multiple gunshot wounds. The manner of death is homicide. There were 6 gunshot entry wounds (GSW) on the decedent's body. The medical examiner agrees that video evidence shows only 5 shots were fired, so believes it is possible that the GSW to the right forearm is an entry-exit-reentry wound path. One GSW perforated the decedent's left superior chest, perforating the left upper and lower lung lobes and terminating in the left thoracic vertebrae where the deformed lead core was recovered. A second GSW perforated the left anterior chest of the decedent, damaging the ribs, left lung, heart, and esophagus terminating in the right thoracic vertebrae where the mushroomed copper jacket was recovered. A third GSW perforated the left upper back, damaging the ribs and heart terminating in the abdominal wall where the mushroomed copper jacket was recovered. A fourth GSW perforated the left lower back exiting the left hip. A fifth GSW was a through and through wound to the decedent's right forearm. A sixth GSW was a through-and-through wound to the decedent's left thigh. During a phone conversation with Investigator 2, Doctor 1 told the detective that one of the rounds that struck Franklin's heart destroyed almost 80% of the heart. The decedent's blood also tested presumptively positive for methamphetamine.

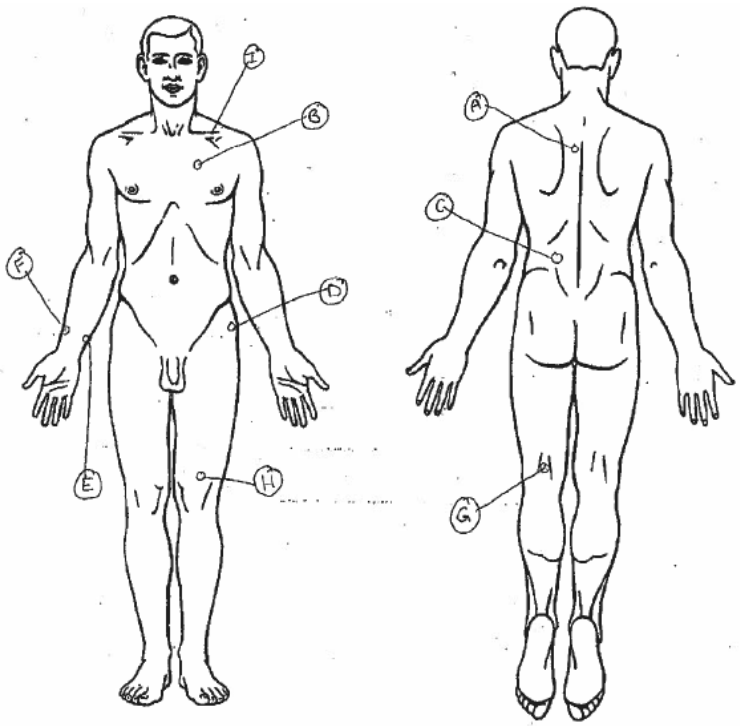

Figure 11: Medical Examiner's diagram of the decedent's body from the Autopsy report showing the injuries the decedent sustained.

V. LEGAL STANDARD

The State must prove each element of a criminal charge by competent evidence beyond a reasonable doubt.[4] In addition, the State must disprove the existence of a defense that negates an element of the crime.[5] The State 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 fact-finder.[6]

Additionally, 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 refuse the affirmative defense.[7] Therefore, the State is also required to disprove the existence of several defenses:

- Justifiable Homicide by Peace Officer[8]
- Justifiable Homicide Defense of Self or Others[9]

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

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

Justifiable Homicide by a Peace Officer under the good faith standard and Justifiable Homicide in Defense of Self or Others contain related but distinct concepts and definitions. For

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4 RCW 9A.04.100; WPIC 4.01.

5 WPIC 14.00.

6 KCPAO Filing and Disposition Standards.

7 Id.

8 RCW 9A.16.030; RCW 9A.16.040; WPIC 16.01.

9 RCW 9A.16.050(1); WPIC 16.02.

instance, homicide or the use of deadly force is justifiable when used necessarily and in good faith by a peace officer 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. On the other hand, homicide is also justifiable 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.

VI. ANALYSIS AND CONCLUSION

Under the KCPAO filing standards, prosecution should not be declined because of an affirmative defense unless the affirmative defense is of such nature that, if established, would result in complete freedom for the accused and there is no substantial evidence to refute the affirmative defense."

The investigation did not reveal any substantial evidence to refute these self-defense and justifiable homicide defenses. Based on these facts, a reasonable and objective fact-finder is likely to determine that Involved Officer 1 reasonably believed that Franklin intended to kill him, that there was an imminent danger in this harm being accomplished, and that Involved Officer 1 employed a necessary amount of force that a reasonably prudent person would use under the same or similar circumstances to prevent this harm to himself from occurring. Under the circumstances, it appears Involved Officer 1 acted in self-defense and in good faith.

The evidence and testimony are highly likely to show that Involved Officer 1 and his partner were asked by the homeowner to help her convince her son to leave her house. The officers knew that Franklin might be afraid of being arrested because had open out-of-state arrest warrants, even though they were likely non-extraditable. The officers also knew that Franklin was verbally aggressive towards his mother and there was a possibility that he had access to knives inside the house. The officers then approached Franklin at the front of his mother's house and asked him calmly how he was doing. Neither officer had a weapon drawn at this time while speaking to Franklin. Franklin responded aggressively, stating "Don't be hostile," despite Involved Officer 1 speaking in a calm voice. Franklin then retreated up the stairs to get away from Involved Officer 1, extended a folding knife, and threatened to kill Involved Officer 1.

Franklin challenged Involved Officer 1 stating, "Dude, I am going to fucking kill your ass right now! What's up? What's up?" Involved Officer 1 and Witness Officer 1 drew their firearms and aimed them at Franklin as they backpedaled to create distance between themselves and Franklin to prevent injury. From a close distance, Franklin then turned towards Involved Officer 1 who was still backpedaling. When Franklin turned towards Involved Officer 1, Franklin took a step towards Involved Officer 1 with the knife still in his hand. Involved Officer 1 then fired his gun five times in less than two seconds killing Franklin almost immediately.

1. Justifiable Homicide By A Peace Officer

A peace officer acts in good faith if a similarly situated reasonable peace officer would have acted similarly. The peace officer must have probable cause to believe that the suspect, if not apprehended, poses a threat of serious physical harm to others. A threat of serious physical harm may include instances where the suspect threatens a peace officer with a weapon, displays a weapon in a manner that could reasonably be construed as threatening, or there is probable cause to believe the suspect committed any crime involving the infliction or threatened infliction of serious physical harm.

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.[10] "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."[11]

Given the facts presented, the Team declines to file any criminal charges against Involved Officer 1. The evidence in the investigation establishes that Involved Officer 1 acted in self-defense and that his actions were justifiable. For example, a homicide is justifiable when a person reasonably believes that the person slain intended to inflict death or great personal injury, the person reasonably believed there was an imminent danger of such harm being accomplished, and the person employed such force and means as a reasonably prudent person would under the same or similar circumstances.[12]

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

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

12 WPIC 16.02.

Here, the evidence and testimony are highly likely to demonstrate that a similarly situated reasonable peace officer would have acted similar to Involved Officer 1. When Involved Officer 1 shot Franklin there was probable cause that Franklin was committing a felony assault against Involved Officer 1. Franklin displayed his knife in a threatening manner towards Involved Officer 1 and if Involved Officer 1 did not fire his gun serious physical harm to Involved Officer 1 would have resulted.

2. Justifiable Homicide In Defense Of Self Or Others

A homicide is justifiable 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.

Justifiable Homicide by a Peace Officer requires that, at a minimum, the harm to be avoided is "serious physical harm," which is not defined by statute. However, Justifiable Homicide in Defense of Self or Others requires that, at a minimum, the harm to be avoided is "great personal injury," which includes severe pain and suffering. Given that Franklin threatened to kill Involved Officer 1 and advanced towards him from a short distance with the blade of his folding knife extended, the involved officers reasonably believed that Franklin intended to commit a felony, to inflict death, or to inflict great personal injury upon the officers.

VII. RECOMMENDATION FOR INQUEST

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

ATTACHMENT A

WPIC 16.01 - Justifiable Homicide by a Peace Officer

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

Homicide or the use of deadly force is justifiable:

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

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

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

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

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

WPIC 16.05 – Necessary

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

WPIC 16.02 – Justifiable Homicide – Defense of Self and Others

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

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

(1) the slayer reasonably believed that the person slain intended to commit a felony[13] or to inflict death or great personal injury;

(2) the slayer reasonably believed that there was imminent danger[14] 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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[13] 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).

[14] Regarding imminent danger, the WPIC commented:

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

WPIC 2.04.01 – Great Personal Injury

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

WPIC 16.07 – Justifiable Homicide – Actual Danger Not Necessary

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

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

WPIC 16.03 – Justifiable Homicide – Resistance to a Felony

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

Homicide is justifiable when committed in the actual resistance of an attempt to commit a felony[15] 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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[15] 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)