Investigation of Motor Vehicle Collision Fatality

David Shaw

Renton Police Department, 2023-12014

King County Prosecuting Attorney

Public Integrity Team

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DECLINE MEMORANDUM

Investigation of Motor Vehicle Collision Fatality Regarding: David Shaw

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] The KCPAO may also analyze incidents that fall outside the required mandate to determine whether a crime occurred.

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.[2] 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.[3]

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

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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] Executive Order PHL 7-1-5 EO.
[3] Id.

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 October 20, 2023, a Washington State Patrol Trooper activated his emergency lights to initiate a traffic stop after observing a Chevrolet Camero driving approximately 90 mph in a posted 50 mph limit area. The Trooper deactivated his emergency lights as the Camero approached an intersection. The Camero illegally entered the intersection, striking a Lexus RX 300 at a high rate of speed. The Trooper requested medical attention for both drivers. Medics pronounced the driver of the Camero as deceased and transported the driver of the Lexus for treatment.

III. INVESTIGATION AND EVIDENCE

- Police Reports – Renton Police Department 2023-12014
- Police Reports – Washington State Patrol 2023-18576
- CAD and Radio
- Crash Data Retrieval
- Body Worn Video
- In-Car Video
- Renton Traffic Camera
- Photos

IV. INVESTIGATION SUMMARY[4]

On October 20, 2023, David Shaw (Shaw) drove a 2013 Chevrolet Camero westbound on Maple Valley Highway. The posted speed limit is 50 mph, but Shaw passed Involved Officer 1 at approximately 90 mph. Involved Officer 1, who was commuting home in an unmarked Ford Explorer, activated his emergency lights to initiate a traffic stop. Shaw momentarily braked for approximately 3 seconds, but he subsequently accelerated.

At approximately 8:23 pm, a Renton traffic camera captured Shaw drive through the intersection of 154 Pl SE and Maple Valley Highway and collide into a 2022 Lexus RX 300, driven by Civilian Witness 1. Civilian Witness 1 was travelling eastbound and making a legal left turn to continue northbound at the time of the collision.

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

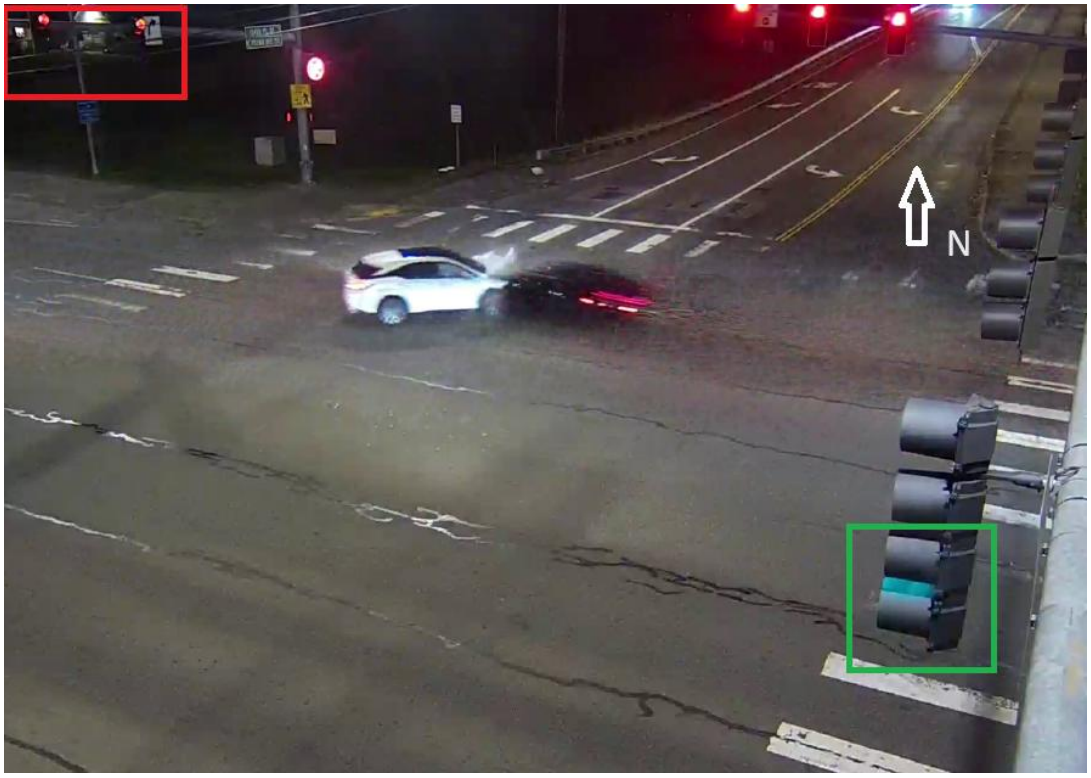

Figure 1 - Screenshot from traffic camera showing the Camero illegally enter the intersection against a red light (red square) while the Lexus legally entered the intersection with a green light (green square).

Per the traffic camera, when the collision occurred, the traffic signal for eastbound traffic (Civilian Witness 1's direction of travel) glowed green. The traffic signal for westbound traffic (Shaw's direction of travel) displayed red for 16 seconds prior to the collision. The traffic signal remained red as Shaw drove through the intersection.

Involved Officer 1 requested medics to treat Shaw and Civilian Witness 1. Shaw was obviously deceased, and Civilian Witness 1 was transferred by medics to Harborview Medical Center for treatment. Civilian Witness 1 ultimately suffered fractures to both of her ankles, a left fibula fracture, broken ribs, and a lumbar spine injury. The King County Medical Examiner's Officer performed an autopsy of Shaw and noted several injuries, including a transection of the aorta, which appeared to be the fatal injury. Toxicology results confirmed that Shaw's blood tested positive for 5.4 ng/mL of THC.[5]

[5] Per RCW 46.61.502, the legal limit of THC while driving is 5.0 ng/mL.

Detectives reviewed the crash data from the airbag control modules for both vehicles, which is summarized below. Both vehicles logged triggering events that coincided with the collision. Shaw's vehicle logged an event occurring at the time of the collision and a second event occurring .5 seconds after the collision but during the same ignition cycle.

Timing:	**Data Event #2:**	**Data Event #3:**	**Data Event #6:**
Seconds prior to triggering event	Pre-Crash Data: Shaw – Event #2[6]	Pre-Crash Data: Shaw – Event #3[7]	Pre-Crash Data: Civilian Witness 1 – Event #6[8]
5 seconds	Accelerator at 0% Speed at 130 mph Brake applied[9]		Accelerator at 0% Speed at 0 mph Brake applied
1.5 seconds	Accelerator at 22% Speed at 117 mph No brake applied		
0.5 seconds	Accelerator at 0% Speed at 102 mph Brake applied	Accelerator at 0% Speed at 99mph Brake applied[10]	
0 seconds			Accelerator at 5.5% Speed at 17.4 mph No brake applied

Detectives also reviewed the in-car video mounted inside of Involved Officer 1's vehicle, which began at 8:35:28 pm.[11]

[6] The Camero's airbag control module logged a triggering event, Event #1, at time preceding this collision. Thus, Event #1 is not relevant to this investigation. Event #2 was triggered at the time of this incident.
[7] The Camero's airbag control module logged a triggering event, Event #3, .5 seconds after Event #2.
[8] The Lexus's airbag control module logged triggering events, Events #1 - #5, at a time preceding this collision. Thus, Events #1 - #5 are not relevant to this investigation. Event #6 was triggered at the time of this incident.
[9] Given that the brake was applied, detectives opined that Shaw was likely traveling at more than 130 mph prior to this recording.
[10] Detectives opined this data "presumably shows the approximate speed at the .5 second mark which would be the impact speed with the Lexus."
[11] Audio was not recorded.

Figure 2 - 1:01[12] – Shaw passed Involved Officer 1 at a high rate of speed.

Figure 3 - 1:03 – Involved Officer 1 activated his emergency lights.

[12] Timestamp correlates with the elapsed time on the video file.

Figure 4 - 1:04 – Shaw activated his brake lights.

Figure 5 - 1:07 – Shaw deactivated his brake lights.

Figure 6 - 1:15 – Shaw appears to increase his distance from Involved Officer 1.

Figure 7 - 1:22 – Shaw changed lanes to pass to two vehicles.

Figure 8 - 1:31 – Involved Officer 1 deactivated his emergency lights. The traffic signal facing westbound traffic is red.

Figure 9 - 1:33 – Shaw entered the intersection and collided into Civilian Witness 1.

Figure 10 - 1:40 – Involved Officer 1 activated his emergency lights.

Figure 11 - 1:58 – Involved Officer 1 arrived at the collision scene.

Initially, WSP was assigned as the investigating agency. Witness Officer 1 spoke with Involved Officer 1, who reported the Camero passed him at a high rate of speed, he began to overtake the vehicle and had not activated his emergency lights yet, as he accelerated the Camero accelerated, he realized they were coming up to the intersection at an extreme speed; he did not want to enter the intersection at the extreme speed; the Camero continued into the intersection;

the Camero struck the Lexus. The Renton Police Department subsequently assumed the responsibility as the investigating agency. After their investigation concluded, the Renton Police Department referred the investigation to the KCPAO for review only and without the recommendation for any charges.

V. LEGAL ANALYSIS AND CONCLUSION

1. Burden of Proof

The State must prove each element of a criminal charge by competent evidence beyond a reasonable doubt.[13] 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.[14]

2. Applicable Law

At the time of this incident, a police officer could not engage in a vehicular pursuit unless there was reasonable suspicion that the person in the vehicle had committed or was committing specific types of crimes.[15] Such crimes include, for instance, vehicular assault, a violent offense, or driving under the influence.[16] A violation of the vehicular pursuit law is not, in and of itself, a crime. Therefore, while potential evidence of an alleged policy violation is necessary to incorporate into the Team's analysis, concluding whether a policy violation occurred is not within the scope of this memorandum. While it is unlikely Involved Officer 1 knew that Shaw was driving under the influence of THC, the investigation shows that had Shaw survived, there likely would have been probable cause to charge Shaw with vehicular assault, which is a violent offense.[17]

However, even if the Team were to assume arguendo that a policy violation of the vehicular pursuit law occurred, the investigation and the Team's analysis show that there is insufficient evidence to prove that Involved Officer 1 committed a crime during the short pursuit of Shaw. For instance, a driver is guilty of vehicular homicide or vehicular assault when the

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[13] RCW 9A.04.100; WPIC 4.01.
[14] KCPAO Filing and Disposition Standards.
[15] RCW 10.116.060.
[16] Id.
[17] RCW 9.94A.030.

death or injury of any person is proximately caused by the driver and the driver operated their vehicle in a reckless manner or with disregard for the safety of others.[18]

Regarding Shaw's death, the investigation and the Team's analysis show that there is insufficient evidence to prove that Involved Officer 1 proximately caused Shaw's death, that Involved Officer 1 drove in a reckless manner, or that he drove with a disregard for the safety of others. Similarly, regarding Civilian Witness 1's injuries, the investigation and the Team's analysis show that there is insufficient evidence to prove that Involved Officer 1 caused her substantial bodily harm, that Involved Officer 1 drove in a reckless manner, or that he drove with a disregard for the safety of others.

Proximate cause is a cause which, in a direct sequence, unbroken by any new independent cause, produced the death or substantial bodily harm, and without which the death or substantial bodily harm would not have happened.[19] In the current incident, Involved Officer 1 activated his emergency lights shortly after seeing Shaw pass him at a high rate of speed, nearly double the posted limit. Based on his in-car video, Involved Officer 1's emergency lights were active for approximately 28 seconds. Although Shaw momentarily activated his brake lights after Involved Officer 1 activated his emergency lights, Shaw subsequently accelerated away from Involved Officer 1, increasing the distance between them. Despite Involved Officer 1 deactivating his emergency lights, Shaw continued to speed towards the intersections, which had a red traffic signal facing westbound traffic. Although there may be more than one proximate cause, an action is not a proximate cause of an injury if it is interrupted by a sperate intervening act.[20] During the time his emergency lights were activated, Involved Officer 1 did not attempt to overtake or contact Shaw's vehicle. Instead, it appeared that Involved Officer 1 maintained a safe distance from Shaw as they continued along the highway. While it could be stated that Shaw continued to drive at a high rate of speed because he was aware that Involved Officer 1 was behind him, the evidence tends to show that Shaw would have likely continued at a high rate of speed and illegally entered the intersection regardless of Involved Officer 1's presence.

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[18] RCW 46.61.520 and RCW 46.61.522.
[19] WPIC 90.07.
[20] Id.

To operate a motor vehicle in a reckless manner means to drive in a rash or heedless manner, indifferent to the consequences.[21] Disregard for the safety of others means an aggravated kind of negligence or carelessness, falling short of recklessness but constituting a more serious dereliction than ordinary negligence.[22] Ordinary negligence is the failure to exercise ordinary care.[23] Ordinary negligence is the doing of some act which a reasonably careful person would not do under the same or similar circumstances or the failure to do something which a reasonably careful person would have done under the same or similar circumstances.[24] Ordinary negligence in operating a motor vehicle does not render a person guilty of vehicular homicide or assault.[25]

The investigation and the Team's analysis show that there is insufficient evidence to prove that Involved Officer 1 drove in a reckless manner or with disregard for the safety of others. Police officers are permitted to exceed the maximum speed limit when in the pursuit of an actual or suspected violator of the law so long as they do not endanger life or property.[26] As mentioned above, Involved Officer 1's emergency lights were active for approximately 28 seconds. During this time, he neither overtook nor contacted Shaw's vehicle. Additionally, Involved Officer 1 did not weave through traffic, the highway was not significantly crowded, and the road conditions appeared fair. Moreover, when it became apparent that Shaw was approaching an intersection at a high rate of speed, Involved Officer 1 deactivated his emergency lights even though Shaw was a considerable distance from Involved Officer 1 prior to the collision. Involved Officer 1's decision to deactivate his emergency lights would buttress the argument that he acted with care and attention to the safety of others.

VI. 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

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[21] WPIC 90.05.
[22] Id.
[23] Id.
[24] Id.
[25] Id.
[26] RCW 46.61.035.

initiated pursuant to the King County Charter.[27] 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."[28] Given the facts outlined in the investigation, it is the Team's believe that the investigation is complete. However, given the circumstances, the Team has little information to determine whether a law enforcement action or decision contributed to Mr. Shaw's death; the only person who would is the deceased Mr. Shaw. "Might have contributed . . ." is a low standard. The Team is deferring to the County Executive who has discretion under the Executive Order to decide an inquest need not be initiated if the Executive determines that the role of law enforcement was de minimis and did not contribute in any discernible way to a person's death.[29]

[27] Executive Order PHL 7-1-5 EO.
[28] King County Charter § 895.
[29] Id.