Use of Force Fatality of

Eduar Torres Velasquez

Valley Independent Investigation Team

Port of Seattle Police Department 2023-76316

King County Prosecuting Attorney

Public Integrity Team

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DECLINE MEMORANDUM

Law Enforcement Use of Force Fatality Regarding Eduar Torres Velasquez

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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 October 24, 2023, Kent Police Department Officers attempted to contact Eduar Torres Velasquez and Civilian Witness 3 to investigate a stolen vehicle they were associated with. When the officers contacted Torres Velasquez and Civilian Witness 3, Torres Velasquez ran away from the officers. Involved Officer 1 ran after Torres Velasquez who fled into the backyard of a home. While running into the backyard, Torres Velasquez fell to the ground. As Torres Velasquez was getting up from the ground, he armed himself with a knife and moved towards Involved Officer 1. Involved Officer 1 discharged his handgun at Torres Velasquez, striking him. Officers provided medical aid to Torres Velasquez until medics arrived, but medics pronounced Torres Velasquez as deceased.

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[6] Id.

III. INVESTIGATION AND EVIDENCE

1. Police Reports – Auburn Police Department 2023-10708
2. Police Reports – Des Moines Police Department 2023-2867
3. Police Reports – Kent Police Department 2023-14423
4. Police Reports – King County Sheriff's Office C23-36428
5. Police Reports – Federal Way Police Department 2023-13093
6. Police Reports – Port of Seattle Police Department 2023-76314
7. Police Reports – Renton Police Department 2023-12172
8. Police Reports – Washington State Patrol 2023-14423
9. Civilian Statements
10. CAD
11. Consent to Search
12. Crime Scene Investigation
13. Autopsy and Toxicology
14. Involved Officer Information
15. Subject Information
16. 911 Call and Radio
17. Body Worn Video
18. Other Video
19. Photos

IV. INVESTIGATION SUMMARY[7]

1. Information Before and During the Use of Force

The following information is based upon witness observations, the Kent Police Department (KPD) computer aided dispatch (CAD) report, recorded police radio, 911 recordings, body worn video (BWV) cameras, and in-car video (ICV) cameras from October 24, 2023.

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

At approximately 12:15 pm, Civilian Witness 1 called 911 to report that two males parked a Ford truck in his driveway, stated they ran out of gas, and left on foot while carrying a gas can. Additionally, Civilian Witness 1's father, Civilian Witness 2, reported that the truck had damage to the ignition. The truck was reported as stolen and KPD officers, including Involved Officer 1, Witness Officer 1, and Witness Officer 2, were dispatched to investigate.

At approximately 12:25 pm, the officers observed two males who matched the description provided by Civilian Witness 1, at a nearby Chevron gas station, which was located less than one mile from Civilian Witness 1's home. The males were later identified as Eduar Torres Velasquez (Torres Velazquez) and Civilian Witness 3.

Involved Officer 1 and Witness Officer 1 contacted Torres Velasquez while Witness Officer 2 contacted Civilian Witness 3. The officers instructed Torres Velasquez and Civilian Witness 3 to get on the ground. Civilian Witness 3 complied with the officers' instructions, but Torres Velasquez ran away from the officers. Involved Officer 1 said that Torres Velasquez was "running."

Figure 1 - BWV showing Torres Velasquez running away from officers.

Involved Officer 1 and Witness Officer 2 ran after Torres Velasquez for approximately one minute, covering approximately 900 yards. During the foot pursuit, Involved Officer 1's

BWV captured him identifying himself as a police officer, telling Torres Velasquez that he was under arrest, and warning Torres Velasquez that he could be shot several times.

Figure 2 - Torres Velasquez fleeing from officers while Involved Officer 1 identifies himself and yells at Torres Velasquez that he is under arrest.

Figure 3 - Torres Velasquez looking in Involved Officer 1's direction during the foot pursuit.

Figure 4 - Involved Officer 1 informs Witness Officer 2 that he saw Torres Velasquez has a knife.

Figure 5 - Google Map showing Involved Officer 1's foot pursuit of Torres Velasquez from the Chevron to the use of force scene.

As Torres Velasquez neared a home located at 27225 33rd Pl S, Involved Officer 1 yelled, "Get on the ground. You are under arrest!" Torres Velasquez replied, "No." The King County Sheriff's Office's helicopter, Guardian 1, was in the area and video recorded the foot pursuit. While Involved Officer 1 chased after Torres Velasquez, Guardian 1 activated its siren to further demonstrate the police presence. Torres Velasquez ignored Involved Officer 1's commands, turned into the driveway of the home, and ran towards the backyard. During the pursuit, Witness Officer 2 asked Involved Officer 1 what Torres Velasquez was holding and Involved Officer 1 stated, "It's a knife." Witness Officer 2 relayed this information over the radio.

Figure 6 - Torres Velasquez running into the homeowner's backyard.

As they approach the backyard, Involved Officer 1 discharged his taser twice, but neither application appeared to stop Torres Velasquez. As Torres Velasquez entered the backyard, he fell onto the ground and Involved Officer 1 stopped a few feet away from Torres Velasquez.

Figure 7 - Torres Velasquez falling while running.

Torres Velasquez began to get up from the ground and move towards Involved Officer 1. As Torres Velasquez did so, he opened a knife while looking at Involved Officer 1. Involved Officer 1 yelled, "Don't fucking move. I'll shoot you. I'll shoot you right now."

Figure 8 - Torres Velasquez opening a knife while beginning to move towards Involved Officer 1.

Torres Velasquez successfully opened the knife and he continued to move towards Involved Officer 1 while holding the knife with the blade pointing towards Involved Officer 1. Involved Officer 1 discharged his handgun six times towards Torres Velasquez. Torres Velasquez fell to the ground with the knife in his right hand. Witness Officer 2 and other officers entered the backyard shortly after Involved Officer 1 discharged his handgun and they provided medical aid to Torres Velasquez. Medics soon arrived and continued to provide aid, but they advised that Torres Velasquez was deceased.

Figure 9 - Torres Velasquez holding the opened knife, blade out, while continuing to move towards Involved Officer 1.

2. Investigation Conducted by the Valley Independent Investigation Team

As other officers arrived, the police secured the incident scene and rerouted traffic away from the area. The Valley Independent Investigation Team was requested to respond to the scene and to conduct an independent investigation. Port of Seattle Police Department Investigator 1 was assigned as the lead investigator. The independent investigation team (IIT) divided assignments between themselves and began to process the two incident scenes.

3. 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 and ten unfired cartridges in the magazine. Involved Officer 1's two spare magazines each contained seventeen unfired cartridge casings. Based on their investigation, the IIT determined that Involved Officer 1 discharged his handgun six times at Torres Velasquez and they located an unfired cartridge along the path of Involved Officer 1's foot pursuit.[8]

4. Civilian Witnesses

a. Civilian Witness 1

Civilian Witness 1 provided a statement to the police. He reported he was inside his home when he heard a car engine outside his home. He looked outside and saw Torres Velasquez and Civilian Witness 3 standing near the Ford truck. Torres Velasquez and Civilian Witness 3 told Civilian Witness 1 that they ran out of gas and were trying to contact a friend to bring them fuel. Civilian Witness 1 provided Torres Velasquez and Civilian Witness 3 with directions to a nearby gas station. Civilian Witness 1 observed Torres Velasquez and Civilian Witness 3 walking towards the gas station while carrying a gas can. He told his father, Civilian Witness 2, what occurred and Civilian Witness 2 directed Civilian Witness 1 to call 911. Civilian Witness 1 and Civilian Witness 2 noticed that Civilian Witness 2's truck, which was parked behind the truck that Torres Velasquez and Civilian Witness 3 arrived in, had been tampered with. Specifically, they noticed that it appeared that someone damaged a lock on the truck and attempted to siphon gas from the truck. Civilian Witness 1 showed officers a home security camera, which captured Torres Velasquez and Civilian Witness 3 parking the truck in Civilian Witness 1's driveway, trying to siphon gas from Civilian Witness 2's truck and entering the interior of the truck.

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[8] During the foot pursuit, Involved Officer 1's BWV captured him racking the slide of his handgun. It is unknown why Involved Officer 1 did this, but the IIT opined that Involved Officer 1 may have wanted to ensure that his handgun was loaded, which caused an unfired cartridge to eject.

5. Forensic Examination

Involved Officer 1's handgun was test-fired to confirm functionality. During the test-fire, the investigator noted the trigger did not consistently reset after the investigator racked the slide. When this occurred, the investigator noted that the trigger was fully pressed, but the firing pin was not released, so it did not move forward and strike the primer on the cartridge. The investigator attempted to replicate the malfunction, but he noted that the malfunction occurred at inconsistent intervals. There was no indication that Involved Officer 1's handgun malfunctioned during the use of force. Investigator 1 researched the model of the handgun and trigger and learned that the malfunction was discussed in multiple online forums. Given that a potentially malfunctioning handgun represents a public safety and officer safety concern, Investigator 1 and the Team agreed that KPD should be notified of the potential malfunction out of an abundance of caution.

6. Medical

The King County Medical Examiner's Office performed an autopsy of Torres Velasquez, which opined the cause of death is multiple gunshot wounds sustained in a confrontation with police and the manner of death is homicide.[9] The Washington State Patrol Toxicology Laboratory performed a drug analysis of Torres Velasquez's blood. The results showed that Torres Velasquez's blood tested positive for methamphetamine (.64 mg/L) and amphetamine (.10 mg/L).

V. LEGAL STANDARD AND APPLICABLE LAW

1. Burden of Proof

The State must prove each element of a criminal charge by competent evidence beyond a reasonable doubt.[10] The KCPAO will file charges if sufficient admissible evidence exists, which,

[9] 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.
[10] RCW 9A.04.100; WPIC 4.01.

when considered with the most plausible, reasonably foreseeable defenses that could be raised under the evidence, would justify conviction by a reasonable and objective factfinder.[11]

In addition, the State must disprove the existence of a defense that negates an element of the crime.[12] Prosecution should not be declined because of an affirmative defense unless the affirmative defense is of such nature that, if established, would result in a complete defense for the accused and there is no substantial evidence to refute the affirmative defense.[13] Therefore, the State may be required to disprove one or more of the following defenses:

20. Justifiable Homicide by Peace Officer;[14]
21. Justifiable Homicide Defense of Self or Others;[15]
22. Justifiable Homicide Resistance to Felony;[16]

2. Applicable Law

This incident occurred on October 24, 2023; therefore, the applicable Justifiable Homicide by a Peace Officer instruction would require the State to prove the officer acted without good faith.[17]

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

23. Justifiable Homicide by a Peace Officer[18]
24. Necessary[19]
25. Justifiable Homicide – Defense of Self and Others[20]

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[11] KCPAO Filing and Disposition Standards.
[12] WPIC 14.00.
[13] Id.
[14] RCW 9A.16.040; WPIC 16.01.
[15] RCW 9A.16.050(1); WPIC 16.02.
[16] RCW 9A.16.050(2); WPIC 16.03.
[17] 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."
[18] WPIC 16.01.
[19] WPIC 16.05.
[20] WPIC 16.02.

26. Great Personal Injury[21]
27. Justifiable Homicide – Actual Danger Not Necessary[22]
28. Justifiable Homicide – Resistance to a Felony[23]

VI. ANALYSIS AND CONCLUSION

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

The KCPAO declines to file charges against 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

Homicide is justifiable when necessarily used by a peace officer meeting the good faith standard to overcome actual resistance to the execution of the legal process, mandate, or order of a court or officer, or in the discharge of a legal duty.[24] Homicide 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.[25]

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

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[21] WPIC 2.04.01.
[22] WPIC 16.07.
[23] WPIC 16.03.
[24] RCW 9A.16.040(1)(b); WPIC 16.01.
[25] RCW 9A.16.040(1)(c)(i); WPIC 16.01.

physical harm to others.[26] Among the circumstances which may be considered by peace officers as a "threat of serious physical harm" are the following:

29. The suspect threatens a peace officer with a weapon or displays a weapon in a manner that could reasonably be construed as threatening; or
30. There is probable cause to believe that the suspect has committed any crime involving the infliction or threatened infliction of serious physical harm.[27]

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.[28] 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.[29]

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.[30] "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."[31]

b. Analysis Regarding Justifiable Homicide by a Peace Officer

First, the evidence in the independent investigation showed there was probable cause for Involved Officer 1 to believe that Torres Velasquez and Civilian Witness 3 committed possession of a stolen vehicle. Further, when Torres Velasquez fell in front of Involved Officer 1, opened a knife with the blade pointed towards Involved Officer 1, and began to move towards

[26] RCW 9A.16.040(2).
[27] Id.
[28] RCW 9A.16.040(4).
[29] RCW 9A.16.010; WPIC 16.05.
[30] Graham v. Connor, 490 U.S. 386, 396, 109 S. Ct. 1865, 1872, 104 L. Ed. 2d 443 (1989).
[31] Id. 490 U.S. at 396-97.

Involved Officer 1 with the knife, there was probable cause to believe that Torres Velasquez had committed and was in the process of committing a felony assault upon Involved Officer 1.

Second, the evidence in the independent investigation showed there was probable cause to believe that Torres Velasquez, if not apprehended, posed a threat of serious physical harm to Involved Officer 1. During the foot pursuit, Involved Officer 1 identified himself as an officer, was wearing his uniform, instructed Torres Velasquez to stop, and informed him that he was under arrest several times. At no point during the foot pursuit did Torres Velasquez indicate he intended to comply with Involved Officer 1's instructions. At the point that Involved Officer 1 saw Torres Velasquez opening the knife and moving towards him, Involved Officer 1 had probable cause to believe that Torres Velasquez posed a threat of serious physical harm.

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. When Involved Officer 1 initially pursued Torres Velasquez on foot, he did not use deadly force. Even after Involved Officer 1 observed that Torres Velasquez was running with a knife, Torres Velasquez had not yet threatened Involved Officer 1. However, after Torres Velasquez fell to the ground, he opened the knife and moved towards Involved Officer 1. It would have been unreasonable and dangerous for Involved Officer 1 to allow Torres Velasquez to get closer to him while displaying the knife in a threatening manner.

Therefore, based on the admissible evidence, which is corroborated by video evidence, there is insufficient evidence to prove criminal charges against Involved Officer 1 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.[32] 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.[33]

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."[34] 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.[35]

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 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 above, Torres Velasquez fled from Involved Officer 1 and refused to comply with Involved Officer 1's instructions. After Torres Velasquez entered the backyard and fell, he opened a knife, and began moving towards Involved Officer 1 with the blade pointed towards Involved Officer 1. Based upon Torres Velasquez's actions, it was reasonable for Involved Officer 1 to believe that Torres Velasquez intended to assault him with the knife and that Torres Velasquez had the ability to carry out the assault.

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[32] RCW 9A.16.050(1); WPIC 16.02.
[33] WPIC 2.04.01.
[34] WPIC 16.02.
[35] WPIC 16.07.

Therefore, based on the admissible evidence, which is corroborated by several witnesses including video evidence, there is insufficient evidence to prove criminal charges against Involved Officer 1 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.[36] 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."[37] 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.[38] 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.[39]

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[36] Executive Order PHL 7-1-5 EO.
[37] King County Charter § 895.
[38] Executive Order PHL 7-1-5 EO.
[39] Id.

VIII. ATTACHMENT A

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.

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[40] or to inflict death or great personal injury;

(2) the slayer reasonably believed that there was imminent danger[41] 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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[40] 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).

[41] 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[42] 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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[42] 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)