Use of Force Fatality Investigation

Dylan Wallace

Valley Independent Investigation Team

Auburn Police Department #23-03872

King County Prosecuting Attorney

Public Integrity Team

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DECLINE MEMORANDUM

Use of Force Fatality Investigation

Dylan Wallace

This memorandum has been approved by the King County Prosecuting Attorney to be published on the website of the Prosecuting Attorney's Office Public Integrity Team.[1]

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.

[1] https://kingcounty.gov/en/dept/pao/about-king-county/about-pao/team-leadership/organizational-structure/criminal/mainstream/public-integrity-team

I. INTRODUCTION

1. Purpose of the Memorandum

Pursuant to the Law Enforcement Training and Community Safety Act, an independent investigation must be completed when the use of deadly force by a peace officer results in death, substantial bodily harm, or great bodily harm.[2] The independent investigation is conducted in the same manner as a criminal investigation and must be completely independent of the involved agency.[3]

The Revised Code of Washington requires the prosecuting attorney to represent the State of Washington and to prosecute all criminal actions in which the state or the county may be a party.[4] In addition to exercising its prosecutorial discretion to initiate criminal proceedings, the prosecuting attorney is mandated by law to review certain incidents regarding police use of force and to determine if sufficient evidence exists to support the filing of criminal charges.[5] Because the independent investigation and the prosecuting attorney's review are mandatory if specific criteria are met, the King County Prosecuting Attorney's Office (KCPAO) 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 an independent investigation involving police use of deadly force to enhance accountability and increase trust to improve the legitimacy of policing for an increase in safety for everyone.[6]

2. Scope of the Memorandum

The KCPAO's determination whether or not sufficient evidence exists to support the filing of criminal charges is based entirely on the investigation materials provided to the KCPAO,

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[2] RCW 10.114.011. See also WAC 139-12-010.
[3] WAC 139-12-010.
[4] RCW 36.27.020(4).
[5] Except as required by federal consent decree, federal settlement agreement, or federal court order, where the use of deadly force by a peace officer results in death, substantial bodily harm, or great bodily harm, an independent investigation must be completed to inform any determination of whether the use of deadly force met the good faith standard and satisfied other applicable laws and policies. RCW 10.114.011. Similarly, if the Office of Independent Investigation is the lead investigation agency, the prosecutorial entity must review the investigation. RCW 43.102.020. 2021 c 318 § 101.
[6] Id. See also WAC 139-12-010.

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, any civil action, or any inquiry, or other proceeding. The KCPAO expresses no opinion regarding the propriety or likely outcome of any such actions. Other topics relevant to matters outside the scope of this memorandum, such as department policy, procedures, or training, are included and reviewed to the extent those topics are relevant to assessing whether the police action was justified or if there was a criminal action such that criminal charges should be filed.

3. Status of the Independent Investigation

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

II. OVERVIEW

On April 18, 2023, a homeowner called 911 to report that her roommate had been drinking and refused to leave the home when she requested him to leave. Kent Police Department officers were dispatched to investigate. As the officers gathered information, they attempted to speak with her roommate, later identified as Dylan Wallace. Wallace charged at officers while wielding a powered circular saw. Officers attempted to use less lethal ammunition to incapacitate Wallace but it did not deter him. Wallace charged at the officers and they discharged their firearms at Wallace, striking him. Officers provided first aid to Wallace, but medics determined he died as a result of his injuries.

III. INVESTIGATION AND EVIDENCE

1. Independent Investigation Team Reports – Auburn Police Department – 23-03872
2. Kent Police Department Reports – 23-5021
3. Renton Police Department Reports – 23-04365
4. Tukwila Police Department Reports – 23-2193
5. Des Moines Police Department Reports – 23-1049

6. Port of Seattle Police Department Reports – 23-026043
7. Civilian Statements
8. Computer Aided Dispatch
9. Crime Scene Investigation
10. Washington State Patrol Crime Laboratory Reports
11. Autopsy and Toxicology Reports
12. Involved Officer Information
13. Subject Information
14. 911 Call and Police Radio Traffic
15. Audio
16. Body Worn Video
17. Other Video
18. Photos
19. Miscellaneous

IV. INVESTIGATION SUMMARY[7]

1. Factual Summary

The following information is based upon several sources, including, but not limited to, witness observations, police reports, the Kent Police Department (KPD) computer aided dispatch (CAD) report, recorded police radio, 911 recordings, and body worn video (BWV) cameras from April 18, 2023.

According to the CAD report and KPD radio, the following information was provided by Civilian Witness 1, who called 911 to report a verbal argument with her roommate, later identified as Dylan Wallace (Wallace).[8]

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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 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.

[8] Wallace's identity was not definitively established when police were initially dispatched. However, because Wallace's identity is not at issue for purposes of this memorandum, the individual that the witnesses described will be referred to as Wallace for clarity.

Time:	Action:
1:55 p.m.	Civilian Witness 1 called 911 and reported she was in a verbal argument with her roommate, Wallace, and he had been drinking. She also reported Wallace was in the garage, he was screaming to himself, and an Uber was enroute to pick up Wallace but the driver was thirty minutes away. She clarified she is the owner of the home and that Wallace did not know she called 911. She provided a physical description of Wallace.
2:11 p.m.	As Civilian Witness 1 continued to provide more information to the dispatcher, KPD Involved Officer 1 and Involved Officer 2 were dispatched to her home to investigate.
2:20 p.m.	Civilian Witness 1 called 911 again to report that Wallace was breaking something in the garage and he locked himself inside the garage. She stated she was now outside the home, her garage door was open, and Wallace was walking outside. KPD Involved Officer 3 and Witness Officer 1 also began to drive towards Civilian Witness 1's home.
2:24 p.m.	Involved Officer 4 was listed as a backing officer, while Involved Officer 2 and Involved Officer 1 indicated they arrived at the scene. Civilian Witness 1 told the dispatcher there were firearms inside the home, but they were locked inside a safe and Wallace did not have the combination to the safe.
2:27 p.m.	Civilian Witness 1 reported Wallace told her to get her gun, to kill him, and to say she was defending herself. She stated she did not know if Wallace was suicidal.
2:32 p.m.	An officer requested the fire department to respond and stage nearby because Wallace was "drinking gasoline and pouring gasoline on himself." Multiple other KPD officers indicated they would respond to assist. Involved Officer 4 radioed that Wallace was "coming at us with a circular." Approximately fifteen seconds later, Involved Officer 1 radioed, "Shots fired!" Five seconds later, Involved Officer 1 requested medics to come to their location.

While working in another area of Kent, Witness Officer 2 heard on his police radio that KPD officers were contacting an individual who had drunk gasoline and poured it on himself. Moments later, he heard over the radio that the male was advancing towards the officers with a circular saw. Witness Officer 2 reported that, based on the officers' training, a taser should not be used when a subject is covered in a flammable liquid, such as gasoline, because the taser could ignite the flammable liquid and cause a fire. With this limitation on less-lethal alternatives, he responded towards the scene to assist the other officers. Witness Officer 2 arrived at the scene shortly after the use of force occurred. When he arrived, he observed KPD officers providing

first aid to Wallace by applying multiple torniquets and chest seals to his body. Witness Officer 2 also applied chest seals, but he could not feel a pulse in Wallace's carotid artery. Witness Officer 2 and Involved Officer 3 began CPR and performed chest compressions until relieved by medics. Witness Officer 2 observed the medics continue lifesaving attempts, but the medics stopped when they determined that Wallace was deceased.

2. Independent Investigation

As other officers arrived, they secured the incident scene and rerouted traffic away from the area. The Valley Independent Investigation Team (VIIT) was requested to respond to the scene and to conduct an independent investigation. Auburn Police Department Investigator 1 was assigned as the lead investigator.

Investigators from VIIT divided assignments between themselves, processed the incident scene, and conducted their investigation. During Investigator 1's initial walkthrough of the scene, he observed a cordless Ryobi circular saw approximately fifteen feet away from Wallace's body. The saw contained a five to six inch blade and there was a battery inserted inside the battery port. He also observed a red plastic gasoline container at the end of Civilian Witness 1's driveway. When he walked to Wallace's body, he smelled an overwhelming odor of gasoline coming from Wallace's body.

3. Processing of the Officers

As part of standard practice, VIIT determined which officers used force. Investigators determined that Involved Officer 1, Involved Officer 2, Involved Officer 3, and Involved Officer 4 discharged their handguns.

Regarding Involved Officer 1, VIIT reported that his handgun contained one unfired cartridge in the chamber, twelve unfired cartridges in the magazine, and that the magazine had a maximum capacity of seventeen cartridges. 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 five cartridges.

Regarding Involved Officer 2, VIIT reported that his handgun contained one unfired cartridge in the chamber, eighteen unfired cartridges in the magazine, and that the magazine had a maximum capacity of twenty-one cartridges. If Involved Officer 2 filled his loaded magazine

to capacity with an additional cartridge in the chamber, his handgun was loaded with twenty-two cartridges, which would indicate that he discharged three cartridges.

Regarding Involved Officer 3, VIIT reported that his handgun contained one unfired cartridge in the chamber, seven unfired cartridges in the magazine, and that the magazine had a maximum capacity of seventeen cartridges. If Involved Officer 3 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 ten cartridges.

Regarding Involved Officer 4, VIIT reported that his handgun contained one unfired cartridge in the chamber, sixteen unfired cartridges in the magazine, and that the magazine had a maximum capacity of twenty-two cartridges. If Involved Officer 4 filled his loaded magazine to capacity with an additional cartridge in the chamber, his handgun was loaded with twenty-three cartridges, which would indicate that he discharged six cartridges.

VIIT also test-fired a pepper ball launcher, a less lethal weapon, which was used by Involved Officer 2. An investigator loaded ten inert pepper ball rounds into the launcher and discharged the rounds. The launcher functioned properly.

4. Civilian Witnesses

Civilian Witness 1 provided a subsequent statement to law enforcement. During the interview, she stated that she and Wallace were in a dating relationship for over two years. Over the last few days, however, the relationship ended and she asked Wallace to move out of the home. Prior to calling 911, she observed Wallace drinking inside the garage and she asked Wallace to leave the property, which caused him to become upset and belligerent. She heard Wallace screaming and using power tools. The power inside her home turned off, which led her to believe that Wallace had turned off the electricity using the breaker inside the garage. Civilian Witness 1 was worried that Wallace would force his way into the home, so she braced heavy dining room chairs against the door that connected the house and garage.

Civilian Witness 2 provided a statement to law enforcement. He reported that he had returned home from lunch, parked his vehicle in his driveway, he noticed two police vehicles nearby, and he observed a female arguing with Wallace. During the use of force, Civilian Witness 2 was inside his vehicle. He reported when the police arrived, he heard Wallace yelling

and screaming inside the garage. At some point, Wallace kicked a gas can out of the garage. Civilian Witness 2 observed an officer speak with the female as several other officers slowly approached the residence. As an officer walked toward the house, Wallace came out of the garage with a battery-operated power circular saw. He believed the circular saw was on because he heard Wallace "rev" it several times while proceeding towards the police officers. Civilian Witness 2 observed Wallace running towards the officers and an officer shot him with a beanbag several times, however, Wallace continued to advance towards the officers.[9] Civilian Witness 2 reported that the officers told Wallace to drop the saw while they retreated from him. Eventually, the police fired at Wallace when he was approximately ten to fifteen feet away. He opined that Wallace appeared to have a "death wish."

5. Potential Impeachment Information Regarding Law Enforcement Witnesses

Law enforcement agencies are required to report misconduct that an officer has engaged in that affects their credibility.[10] In turn, each county prosecutor is required to develop and adopt a written protocol addressing potential impeachment disclosures pursuant to Brady v. Maryland, 373 U.S. 83 (1963), and subsequent case law.[11] The Team has confirmed that, to its knowledge, there is no potential impeachment information regarding the involved officers involved in this incident.

6. Involved Officer Statement

The involved officers in this incident were compelled to provide a statement to KPD. Such compelled statements are inadmissible against an officer in a subsequent criminal trial.[12] Police and prosecutors are also barred from making "indirect evidentiary use" of the officer's compelled statement, which includes investigative efforts or testimony that has been shaped, altered, or affected, directly or indirectly, by the officer's compelled statement.[13] While the

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[9] There was no evidence that a less lethal beanbag weapon was used; thus, it is likely Civilian Witness 2 was referring to the pepper ball launcher.
[10] RCW 10.93.180(2)(a)(ii).
[11] RCW 10.93.180(1)(a).
[12] Garrity v. State of N.J., 385 U.S. 493, 500, 87 S. Ct. 616, 620, 17 L. Ed. 2d 562 (1967).
[13] U.S. v. North, 910 F.2d 843, 857-858 (D.C. Cir., 1990).

compelled statement and information derived from such a statement cannot be used to support criminal charges against an officer, a credible compelled statement provides insight into the potential testimony of an involved officer. At times, such a statement may be useful to the Team in analyzing a use of force incident and may be used in support of a finding of no criminal liability for the officer's actions. However, in this incident, the Team did not review or rely upon the involved officers' compelled statements.

7. Video Evidence

The involved officers were equipped with BWV. Screenshots relevant to the Team's analysis are included below, including, if relevant, audio statements captured by the BWV. The officers were wearing KPD uniforms, which were obviously marked "Police" and clearly indicated they were law enforcement officers. In addition to the BWV, a neighbor's home surveillance system captured the use of force, which corroborated the information in the officers' BWV.

Based upon the officers' BWV, all gunshots were discharged by the involved officers within approximately four seconds and officers provided first aid to Wallace less than one minute after using force.

Figure 1 – After briefly speaking with Civilian Witness 1, the officers slowly approach her residence. Involved Officer 3 announced that Kent Police are present and Wallace, from inside the open garage (red square), told Involved Officer 3 to "Fuck off."

Figure 2 - Involved Officer 3 described Wallace's location inside the garage to the other officers and notified them that it appeared Wallace was drinking from a gas can. Officers requested the fire department to respond and stage nearby.

Figure 3 - Involved Officer 3 announced that Wallace was pouring gas on himself. Involved Officer 3 asked Wallace to talk with the officers. Wallace responded that he was pouring gasoline on himself.

Figure 4 - Involved Officer 3 asked Wallace to stop pouring gas on himself and Wallace slid the red gas cannister out of the garage.

Figure 5 - Wallace made an inaudible statement, and Involved Officer 3 replied, "I don't want to. Please put the saw down." The saw can audibly be heard in the background of the BWV.

Figure 6 - Involved Officer 3 informed Involved Officer 2, who has the yellow pepper ball launcher, that Wallace is exiting the garage.

Figure 7 - Officers repeatedly gave Wallace commands to put the saw down and to "Stop." Wallace exited the garage and walked towards the officers. Although multiple officers gave commands, the commands were consistent and they did not overlap in a way that rendered them inaudible.

Figure 8 – Approximate moment when Involved Officer 2 discharged several pepper balls at Wallace, but they were ineffective in stopping him.

Figure 9 - Involved Officer 4's BWV captured the approximate distance between Wallace and Involved Officer 2 when Involved Officer 2 discharged the pepper ball launcher.

Figure 10 - Wallace sprinted towards the officers while armed with the circular saw, which was audible in the background.

Figure 11 - While giving Wallace commands to drop the saw, the officers backpedaled from Wallace, however Wallace advanced quickly towards Involved Officer 3's (#1) and Witness Officer 1's (#2) direction. According to Google Maps, the length of the driveway next to Wallace and Involved Officer 3 is approximately twenty feet long.

Figure 12 - Involved Officer 3 discharged his handgun at Wallace, striking him, while Wallace ran towards Involved Officer 3 with the circular saw extended outwards towards Involved Officer 3.

Figure 13 - Photograph, taken by investigators, of the Ryobi circular saw, which depicts the saw, saw blade, and battery.

8. Autopsy and Toxicology Reports

The King County Medical Examiner's Office performed an autopsy of Wallace to determine the cause and manner of death. The cause of death is a term used to indicate *what* specific injury or disease led to death. The manner of death is a term used to categorize *how* the injury or disease led to death. Manner of death is categorized into one of five categories:

- Accident is defined as a death other than natural, where there is no evidence of intent.
- Homicide is defined as a death due to intentionally inflicted harm of one person by another. It is also defined as the killing of one person by another.[14] Thus, the term homicide as used in an autopsy report refers to the mechanism of death and does not refer to legal terms, such as murder or manslaughter, which do include a determination legal liability or culpability.

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

- Natural is defined as a death solely by organic disease. If natural death is hastened by injury, such as a fall, the manner of deal will not be considered natural.

- Pending is a temporary designation used when additional investigation, information, or test results are required to determine the cause or manner of death.

- Suicide is defined as a death as the result of a purposeful action, with intent to end one's life.

- Undetermined is defined as a death when there is insufficient evidence or information to assign to accident, homicide, suicide, or natural categories, or when two plausible manners are equally likely.

The King County Medical Examiner's Office opined the cause of death was multiple gunshot wounds sustained in a confrontation with police and the manner of death was homicide. The pathological diagnoses included evidence of seventeen handgun wounds.

The Washington State Patrol Toxicology Laboratory performed a drug analysis of Wallace's blood. The results showed that Wallace's blood tested positive for ethanol (.23g/100mL).

V. LEGAL STANDARD AND APPLICABLE LAW

1. Burden of Proof

In a criminal prosecution, the State must prove each element of a criminal charge by competent evidence beyond a reasonable doubt.[15] 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.[16]

In addition, the State must disprove the existence of a defense that negates an element of the crime beyond a reasonable doubt.[17] Prosecution should not be declined because of an affirmative defense unless the affirmative defense is of such nature that, if established, would

[15] RCW 9A.04.100; WPIC 4.01.
[16] KCPAO Filing and Disposition Standards.
[17] WPIC 14.00.

result in a complete defense for the accused and there is no substantial evidence to refute the affirmative defense.[18]

Therefore, in addition to proving that the accused committed a crime, the State will be required to disprove one or more of the following defenses:

- Justifiable Homicide by Peace Officer[19]
- Justifiable Homicide Defense of Self or Others[20]
- Justifiable Homicide Resistance to Felony[21]

2. Applicable Law Regarding Justifiable Homicide by a Peace Officer

This incident occurred on April 18, 2023. The applicable pattern jury instruction for Justifiable Homicide by a Peace Officer requires the State to prove the involved officer acted without good faith.[22]

3. Applicable Jury Instructions

The following jury instructions, contained in Appendix A, would be applicable in a criminal prosecution and provided to the factfinder to determine whether the State met the required burden of proof. Therefore, these instructions are highly relevant to the Team's analysis and conclusion:

- WPIC 16.01 - Justifiable Homicide by a Peace Officer
- WPIC 16.05 - Necessary
- WPIC 2.09 - Felony
- WPIC 2.16 - Peace Officer
- WPIC 120.07 - Lawful Arrest and Probable Cause

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[18] KCPAO Filing and Disposition Standards.
[19] RCW 9A.16.040; WPIC 16.01.
[20] RCW 9A.16.050(1); WPIC 16.02.
[21] RCW 9A.16.050(2); WPIC 16.03.
[22] 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."

- 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

VI. ANALYSIS AND CONCLUSION

1. Summary of Conclusion

Under the KCPAO filing standards, "Homicide cases will be filed if sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense 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."[23]

The KCPAO declines to file charges against the involved officers because the independent investigation and the Team's analysis reveal that the involved officers' actions were lawful and justifiable as either Justifiable Homicide by a Peace Officer, Justifiable Homicide in Defense of Self or Others, or both. These defenses contain related but distinct concepts and definitions. Criminal charges should be declined because the defenses are of such nature that prosecution would result in a complete defense for the accused and there is no substantial evidence to refute either affirmative defense.

2. Justifiable Homicide by a Peace Officer

a. Graham v. Connor

In Graham v. Connor, the seminal case on evaluating police use of force, the United States Supreme Court determined that the test to determine whether the force used by the police was "reasonable" is not capable of a "precise definition or mechanical application."[24] 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

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

to the safety of the officers or others, and whether the suspect is actively resisting arrest or attempting to evade arrest by flight.[25] In other words, the reasonableness of whether the officer's use of force is justified is determined by "the totality of the circumstances."[26]

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.[27] "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."[28] 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.[29]

b. Law Regarding Justifiable Homicide by a Peace Officer

Homicide is justifiable when necessarily used by a peace officer meeting the good faith standard to overcome actual resistance to the execution of the legal process, mandate, or order of a court or officer, or in the discharge of a legal duty.[30] Homicide is also is justifiable when necessarily used by a peace officer meeting the good faith standard to arrest or apprehend a person who the officer reasonably believes has committed, has attempted to commit, is committing, or is attempting to commit a felony.[31]

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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[25] Id.
[26] Id.
[27] Id.
[28] Id. at 396-97.
[29] Id. at 397.
[30] RCW 9A.16.040(1)(b); WPIC 16.01.
[31] RCW 9A.16.040(1)(c)(i); WPIC 16.01.

physical harm to others.[32] 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.[33]

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.[34] 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.[35]

c. Analysis Regarding Justifiable Homicide by a Peace Officer

The evidence in the independent investigation showed the involved officers used deadly force to overcome actual resistance to the execution of the legal process, mandate, or order of a court or officer, or in the discharge of a legal duty. Further at the time Wallace resisted their legal order, there was also probable cause for the involved officers to reasonably believe that Wallace was committing or was attempting to commit various felonies against them. For instance, when the officers instructed Wallace to put down the saw, he did not comply with their order. The involved officers did not immediately use deadly force against Wallace, presumably, because they determined he was initially too far away from any individuals to assault them with the circular saw. However, as Wallace continued to advance towards the officers, the danger he presented increased. Officers deployed a less lethal pepper ball launcher to incapacitate Wallace. Although it appears that Wallace was struck by the pepper balls, it did not deter him. Instead,

[32] RCW 9A.16.040(2).
[33] Id.
[34] RCW 9A.16.040(4).
[35] RCW 9A.16.010; WPIC 16.05.

Wallace quickened his pace and ran towards at least two of the officers. Although the officers backpedaled away from Wallace, he had the advantage of running forward, which allowed him to shorten the distance between himself and the officers. Based on this information, there was probable cause to believe that Wallace was committing or was attempting to commit various felonies, such as assault, against the officers.

The evidence in the independent investigation showed there was probable cause for the involved officers to believe that Wallace, if not apprehended, posed a threat of serious physical harm to the officers or others. This defense provides two explicit examples that may be considered by peace officers as a threat of serious physical harm. First, a threat of serious physical harm may include circumstances where the suspect threatens a peace officer with a weapon or displays a weapon in a manner that could reasonably be construed as threatening. Second, a threat of serious physical harm may include circumstances where there is probable cause to believe that the suspect has committed any crime involving the infliction or threatened infliction of serious physical harm.

In the current incident, there was probable cause to believe that Wallace posed a threat of serious physical harm by threatening the officers with a weapon such as battery powered circular saw, which could cause significant injury and possibly death. As noted earlier, the circular saw appeared to be operable based on the audible noise it emitted. This is corroborated by Civilian Witness 2, who witnessed Wallace “rev” the saw while he sprinted towards the officers. Therefore, it is highly likely that the fact-finder would find that Wallace’s actions caused the involved officers to have probable cause to believe that Wallace, if not apprehended, posed a threat of serious physical harm to the officers or others.

The evidence in the independent investigation showed that the used deadly force with a good faith belief that their actions were necessary to prevent death or serious physical harm to the officer or another individual. A factfinder would likely find that the involved officers acted in good faith because, under an objective standard, when considering all the facts, circumstances, and information known to the involved officers at the time, a similarly situated reasonable officers would have believed that the use of deadly force was necessary to prevent death or serious physical harm to the officer or another individual. At the time of the use of force, the involved officers had reason to believe that Wallace had been drinking alcohol, had engaged in

self-harm by drinking gasoline, and expressed suicidal ideations when he requested Civilian Witness 1 to kill him.

Further, a fact-finder would also likely find that the involved officers' use of deadly force was necessary because no reasonable effective alternative to use the deadly force appeared to exist and the amount of deadly force used was reasonable to effect the lawful purpose intended. Here, the involved officers attempted to de-escalate and used less lethal alternatives before resorting to deadly force. The officers' BWV indicates that they maintained distance from Wallace, spoke to him politely, indicated they wanted to help him, and gave him clear and concise orders. The officers, who were readily identifiable as police officers, used less lethal alternatives after Wallace refused to comply with their lawful orders and began to increase the danger to the officers' safety. As noted by Witness Officer 2, a taser would not have been the appropriate tool given that it may have set Wallace on fire. When the involved officers did use deadly force, they used no more than necessary. Although multiple officers discharged their firearms, they did so only during the period when Wallace appeared to be an immediate threat to officers.

Therefore, based on the anticipated admissible evidence and testimony, which is corroborated by several witnesses including video evidence, the involved officers' actions were lawful and justifiable and there is insufficient evidence to prove criminal charges beyond a reasonable doubt or refute this defense beyond a reasonable doubt.

3. Justifiable Homicide in Defense of Self or Others

a. Law Regarding Justifiable Homicide in Defense of Self or Others

The legislature recognizes that the defense of Justifiable Homicide by a Peace Officer established a dual standard with respect to the use of deadly force by peace officers and private citizens, and further recognizes that private citizens' permissible use of deadly force under the defense of Justifiable Homicide in Defense of Self or Others is not restricted and remains broader than the limitations imposed on peace officers.[36]

[36] RCW 9A.16.040 [1986 c 209 §3].

The defense of Justifiable Homicide by a Peace Officer allows a peace officer to use deadly force against another person only when necessary to protect against an *immediate* threat of serious physical injury to the officer or another person.[37] An immediate threat of serious physical injury or death means that, based on the totality of the circumstances, it is objectively reasonable to believe that a person has the present and apparent ability, opportunity, and intent to immediately cause death or serious bodily injury to the peace officer or another person.[38]

However, the defense of Justifiable Homicide in Defense of Self or Others is also applicable to peace officers.[39] Under this defense, homicide is justifiable in defense of self or others when the slayer reasonably believed the person slain intended to commit a felony, to inflict death, or to inflict great personal injury; the slayer reasonably believed there was *imminent* danger of such harm being accomplished; and the slayer employed such force and means as a reasonably prudent person would under the same or similar conditions as they reasonably appeared to the slayer.[40] 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.[41]

The Washington Pattern Instruction Committee noted that "Imminence does not require an actual physical assault. A threat, or its equivalent, can support self-defense when there is a reasonable belief that the threat will be carried out."[42] Additionally, a person is entitled to act on appearances in defending themself, if that person acts in good faith and on reasonable grounds, although it afterwards might develop that the person was mistaken as to the extent of the danger.[43]

The reasonable person standard as used in this instruction does not expressly require the factfinder to compare the slayer to a reasonable officer. However, because law enforcement officers – especially compared to non-law enforcement civilians – receive significant amounts of

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[37] RCW 10.120.020(2). See also, Graham, 490 U.S. at 396.
[38] RCW 10.120.020(2).
[39] RCW 9A.16.040(5)(a).
[40] RCW 9A.16.050(1); WPIC 16.02.
[41] WPIC 2.04.01.
[42] WPIC 16.02.
[43] WPIC 16.07.

training on weapons, defensive tactics, and the use of force, it is prudent to assume the factfinder would be required to take involved officers' training and experience into account to determine how a reasonable person would have acted. Therefore, the same evidence and testimony used to determine whether the involved officers acted as a reasonable peace officer under the previous instruction is also relevant to this instruction.

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

The evidence in the independent investigation showed the involved officers reasonably believed that Wallace intended to commit a felony, to inflict death, or to inflict great personally injury upon them. Based upon Wallace running towards the officers, specifically Involved Officer 3, with an operable circular saw, a factfinder would likely find that Wallace intended to commit a felony, to inflict death, or to inflict great personally injury against one or more of the officers.

The evidence in the independent investigation showed that the involved officers reasonably believed that Wallace's actions constituted an imminent danger of such harm being accomplished. Under the broader standard of imminence, it is even more likely that the factfinder would find that Wallace's actions, as described earlier, caused the involved officers to reasonably believe that Wallace's threats of harm would be carried out.

The evidence in the independent investigation showed that the involved officers employed such force and means as a reasonably prudent person would under the same or similar conditions as they reasonably appeared to the involved officers. Here, the involved officers engaged in de-escalation, such as time and distance, verbal communication, and less lethal weapons prior to using deadly force.

Therefore, based on the anticipated admissible evidence and testimony, which is corroborated by several witnesses including video evidence, the involved officers' actions were lawful and justifiable and there is insufficient evidence to prove criminal charges beyond a reasonable doubt or refute this defense beyond a reasonable doubt.

VII. KCPAO RESPONSIBILITIES REGARDING INQUEST

As outlined in Executive Order PHL 7-1-6 EO,[44] the KCPAO shall inform the King County Inquest Program Manager in writing whenever the KCPAO becomes aware of a person's death following an interaction with law enforcement or while in the custody of law enforcement. The KCPAO previously complied with this requirement.

[44] Executive Order PHL 7-1-5 EO.

Appendix A

1. WPIC 16.01 - Justifiable Homicide by a Peace Officer

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

Homicide or the use of deadly force is justifiable:

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

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

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

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

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

2. WPIC 16.05 – Necessary

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

3. WPIC 2.09 Felony—Designation Of _____ is a felony.[45]

[45] Whether a crime is a felony is a matter of law for the court to decide.

4. WPIC 2.16 Peace Officer—Definition

Peace officer means a duly appointed city, county, or state law enforcement officer.

5. WPIC 120.07 Lawful Arrest—Definition

[An arrest is lawful if made pursuant to an arrest warrant.] [An arrest is [also] lawful if the arresting officer had probable cause to believe that the person arrested had committed the crime of (name of crime) [in the officer's presence]. “Probable cause” means facts that would cause a reasonably cautious officer to believe that the person had committed that crime. In determining whether the facts known to the officer justified this belief, you may take into account the officer's experience and expertise.]

6. WPIC 16.02 – Justifiable Homicide – Defense of Self and Others

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

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

(1) the slayer reasonably believed that the person slain intended to commit a felony[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."

7. WPIC 2.04.01 – Great Personal Injury

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

8. WPIC 16.07 – Justifiable Homicide – Actual Danger Not Necessary

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

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

9. WPIC 16.03 – Justifiable Homicide – Resistance to a Felony

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

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