

Use of Force – Fatality of
Miguel Angel Barassa Lugo

Valley Independent Investigation Team
Tukwila Police Department, #19-131



King County Prosecuting Attorney
Public Integrity Team

September 5, 2023



DECLINE MEMORANDUM

September 5, 2023

Law Enforcement Use of Force Fatality Regarding:

Miguel Angel Barassa Lugo

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 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 officers results in the

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.

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.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 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. 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.

3. 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, administrative action by the involved agency or any other civil action. The Team expresses no opinion regarding the propriety or likely outcome of any such actions.

³ RCW 10.114.011. See also WAC 139-12-010.

⁴ Id.

⁵ Executive Order PHL 7-1-5 EO.

⁶ Id. `

II. OVERVIEW

On January 6, 2019, Officers with the Auburn Police Department attempted to stop a driver who eluded police and was suspected in a hit and run. Officers with the Kent Police Department continued the pursuit, and Involved Officer 1 performed a pursuit intervention technique to stop the driver, which was successful. When Involved Officer 1 approached the driver, the driver pointed a revolver at Involved Officer 1 and fired. Involved Officer 1 discharged his firearm in response, striking the driver, who died as a result.

III. INVESTIGATION AND EVIDENCE

1. Force Investigation Reports
2. Officer Reports
3. Civilian Statements
4. Crime Scene Investigation
5. Search Warrants
6. Medical, Autopsy, and Toxicology
7. CAD/MDT
8. 911 Call and Radio
9. Audio
10. Body Worn Video
11. In-Car Video
12. Other Video
13. Photos
14. Media
15. Miscellaneous

IV. INVESTIGATION SUMMARY⁷

1. Officer Reports

On January 6, 2019, at approximately 11:52 pm, Witness Officer 1 with the Auburn Police Department (APD) was conducting speed emphasis patrol. He observed the driver of a large, lifted, white Chevrolet Silverado pickup truck, later identified as Miguel Angel Barassa Lugo, illegally pass another vehicle. Witness Officer 1 activated his emergency overhead lights and radioed that he would be conducting a traffic stop on the vehicle. Witness Officer 1 noted that Barassa Lugo continued to drive despite passing several locations where it would have been safe to pull over. In response, Witness Officer 1 also activated his siren, but Barassa Lugo did not stop his vehicle.

After two minutes later, Witness Officer 1 successfully initiated a pursuit intervention technique (PIT) maneuver. The PIT maneuver caused Barassa Lugo's vehicle to spin 180 degrees; however, Barassa Lugo drove away in the opposite direction. Witness Officer 2 observed the PIT maneuver and saw Barassa Lugo accelerate away from Witness Officer 1, causing several civilian vehicles to swerve out of Barassa Lugo's way in order to avoid a collision.

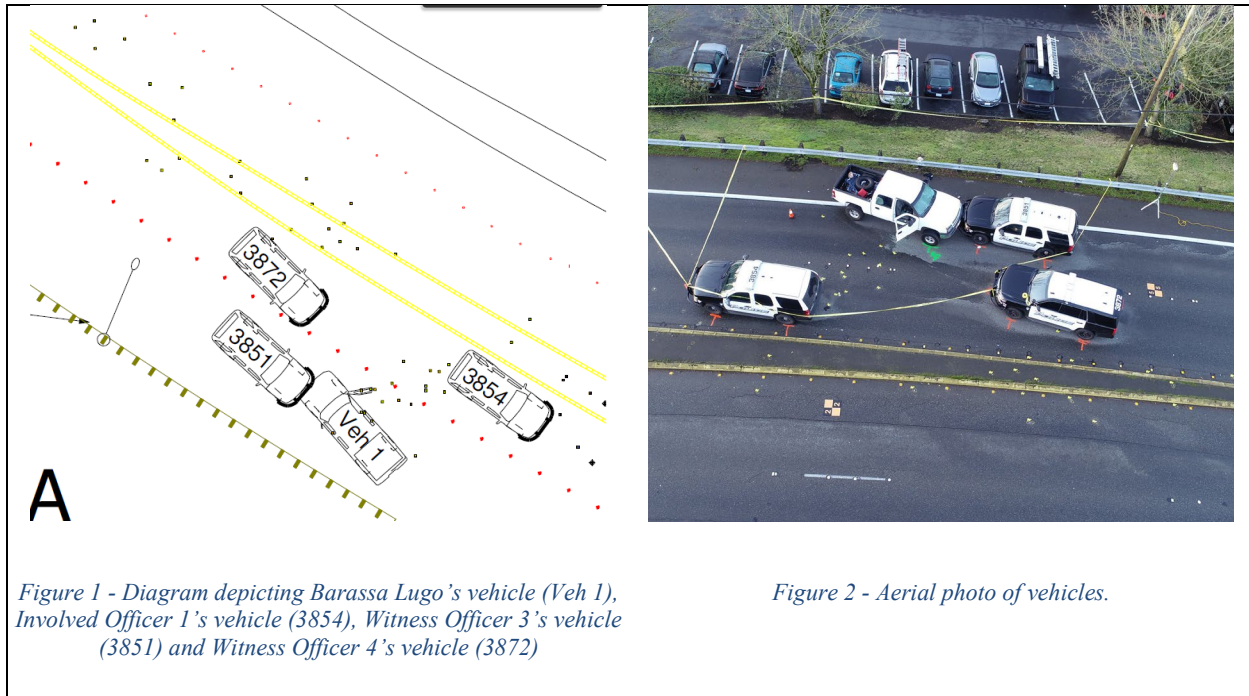
Concerned that Barassa Lugo's driving could cause bodily injury or death, Witness Officer 2 utilized spike strips to prevent Barassa Lugo from continuing to elude police. Witness Officer 2 successfully deployed the spike strips, and the front passenger wheel of Barassa Lugo's vehicle ran over the spikes. Witness Officer 2 continued to pursue Barassa Lugo towards Kent; however, the APD officer in charge instructed APD officers to cease pursuing Barassa Lugo.

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.

Approximately six minutes later at 11:58 pm, Kent Police Department (KPD) Witness Officer 3 observed Barassa Lugo drive past her. Witness Officer 3 and Involved Officer 1 pursued Barassa Lugo and Witness Officer 3 advised that she activated her emergency overhead lights. Additionally, Witness Officer 3 overheard on the radio that Barassa Lugo was a suspect in a hit and run that occurred a short time ago. When Witness Officer 4 joined the pursuit, he also observed that Witness Officer 3 and Involved Officer 1 had their emergency overhead lights activated. He also smelled the odor of burning rubber and hot metal, which indicated to him that Barassa Lugo drove over a spike strip.

Involved Officer 1 positioned his vehicle on the passenger side of Barassa Lugo's vehicle and initiated a successful PIT maneuver, causing Barassa Lugo to spin 180 degrees and hit the guard rail. Witness Officer 3 radioed the PIT maneuver was successful and positioned the front bumper of her patrol vehicle against Barassa Lugo's vehicle to prohibit him from driving away. Witness Officer 3 heard Barassa Lugo's vehicle revving its engine and saw it drive forward, partially up onto the front of her vehicle. Given the position and size of Barassa Lugo's vehicle, Witness Officer 3 could only see the top half of Barassa Lugo's head, approximately from his eyes up.

Witness Officer 4 arrived and placed his patrol vehicle alongside Witness Officer 3's vehicle, facing Barassa Lugo's vehicle. Witness Officer 5, a K9 officer, also arrived and parked directly behind Witness Officer 3's vehicle. As he exited his vehicle to retrieve his K9, he heard several gunshots. Witness Officer 3 also heard "popping" sounds that she recognized as gunfire, but she could not see the exchange of gun fire given her position.



When Witness Officer 4 arrived, he observed Barassa Lugo raise his right arm across the front passenger seat. He saw that Barassa Lugo had a handgun in his right hand, which was pointed at Involved Officer 1. As Involved Officer 1 approached Barassa Lugo's vehicle, Witness Officer 4 saw Barassa Lugo discharge his firearm toward Involved Officer 1 and Involved Officer 1 discharged his firearm in response towards Barassa Lugo. Witness Officer 4 opined this occurred in the amount of time between him putting his patrol vehicle in park and undoing his seatbelt.

Officers radioed that shots had been fired and issued commands for Barassa Lugo to exit his vehicle. The officers noted that Barassa Lugo appeared slumped over and they approached his vehicle to take him into custody and provide medical assistance. While an officer opened the front passenger door, an officer shouted, "Where's the gun?" When officers opened the driver's door of Barassa Lugo's vehicle, Witness Officer 3 saw a black, short, barreled revolver resting upside down on top of Barassa Lugo's left foot. She removed the revolver from Barassa Lugo's vehicle and locked it inside her patrol vehicle so it could be seized as evidence.

Officers attempted to provide medical aid to Barassa Lugo, including treating his wounds, providing CPR, and using an automated external defibrillator. Witness Officer 6

observed Involved Officer 1 getting more medical supplies. When Witness Officer 6 contacted Involved Officer 1, Witness Officer 6 heard him say something to the effect of, “It was so close, he shot right at me.” Medics arrived within eight minutes and continued providing lifesavings efforts while they transported Barassa Lugo to a hospital. However, during transport, they pronounced Barassa Lugo deceased at 12:52 am.

2. Forensic Evaluations

During the investigation, the crime scene investigation team examined the revolver found inside Barassa Lugo’s vehicle. The revolver was a .38 caliber Smith and Wesson Airweight. When the officer opened the revolver’s cylinder was opened, he saw that two fired casings were present in the firearm. One of the fired casings was in battery, which indicated that round was discharged. Additionally, the casing to the right was dented, which indicated it had also been discharged. The revolver was loaded with three unfired cartridges. Additionally, crime scene investigators located eleven casings on the ground near Barassa Lugo’s vehicle.



Figure 3 - Black revolver found in Barassa Lugo's vehicle. Figure 4 - Revolver showing two spent casings and three unfired cartridges.

The Washington State Patrol Crime Laboratory conducted forensic testing on the following items:

- Eleven 9mm casings recovered from the ground near Barassa Lugo's vehicle.
- The revolver recovered from Barassa Lugo's vehicle.
- Two .38 caliber casings recovered from the revolver found in Barassa Lugo's vehicle.
- Three unfired .38 caliber cartridges recovered from the revolver found in Barassa Lugo's vehicle.
- Four fired bullets.⁸
- Five 9mm casings test-fired from Involved Officer 1's firearm.

Based on its analysis, the lab concluded the following:

⁸ Based on crime scene investigation reports, officers' reports, and the autopsy report, it is presumed that three of the fired bullets were recovered from Barassa Lugo during his autopsy and one fired bullet was located on the ground near Barassa Lugo's vehicle.

- The revolver recovered from Barassa Lugo's vehicle was operable.
- The eleven 9mm casings recovered from the ground near Barassa Lugo's vehicle were fired from the same firearm (Involved Officer 1's) that test-fired the five 9mm casings.
- The two .38 caliber casings recovered from the revolver found in Barassa Lugo's vehicle had the same class characteristics but could not be conclusively identified or eliminated as having been fired from that revolver due to limited markings.
- Three of the four fired bullets were fired from the same firearm (Involved Officer 1's) that test-fired the five 9mm casings. The fourth bullet could not be conclusively identified or eliminated as having been fired from the same firearm due to the bullet being damaged. However, the fired bullet was eliminated as having been fired from the revolver due to difference in class characteristics.⁹

3. Civilian Statements

During the investigation, police also interviewed several civilian witnesses who lived in nearby buildings. Civilian Witness 1 reported she heard a total of eight gunshots, but that it was obvious there were two different guns involved based on the timing of the guns going off and the slight difference in sound that each gun made when discharged. An officer estimated that Civilian Witness 1's front door was less than two semi-truck lengths to where the incident occurred. When asked how she concluded that two different guns were involved, Civilian Witness 1 reported that she heard the first set of gunshots in succession with the second set of gunshots in an overlapping manner. Additionally, she explained she grew up around firearms and was familiar with the differing sounds of various calibers.

Investigators also spoke with two of Barassa Lugo's friends. Civilian Witness 2 reported that Barassa Lugo came to a party at Civilian Witness 2's home prior to the incident. Civilian Witness 2 recalled that Barassa Lugo arrived at 9:00 pm or 10:00 pm and left around 12:00 am. Civilian Witness 2 observed that Barassa Lugo was already intoxicated when he arrived at the

⁹ The fourth bullet is likely the bullet that perforated Barassa Lugo and was not recovered during his autopsy.

party and that Barassa Lugo consumed more alcohol while he was at the party. Civilian Witness 2 described Barassa Lugo as a friendly person and confirmed that Barassa Lugo possessed a pistol.

Another friend, Civilian Witness 3, also spoke with the police. Civilian Witness 3 confirmed that Barassa Lugo enjoyed alcohol and confirmed that Barassa Lugo possessed a black .38 caliber revolver. Civilian Witness 3 did not understand why Barassa Lugo refused to stop for the police. He explained that Barassa Lugo had never run from the police before and he was personally with Barassa Lugo when Barassa Lugo was stopped by the Washington State Patrol. Civilian Witness 3 confirmed that Barassa Lugo would have known what a police vehicle's lights and sirens indicated and that Barassa Lugo spoke conversational English.

4. Search Warrant

Investigators sought a search warrant to look for evidence inside Barassa Lugo's vehicle, which was granted. During the search, investigators found several empty beer cans in the bed of the truck, a leather gun holster, and a box of .38 caliber cartridges in the center counsel. There were thirty live cartridges in the box and an additional seventeen loose cartridges were located in the vehicle.

5. Involved Officer's Statement

Involved Officer 1 was given Garrity warnings and compelled to provide a statement, which he did on January 15, 2019. Involved Officer 1 noted that he believed there was probable cause to arrest Barassa Lugo for suspected crimes in Auburn, including Hit and Run and Attempting to Elude a Pursuing Police Vehicle. In addition, Involved Officer 1 believed there was probable cause to arrest Barassa Lugo for Attempting to Elude a Pursuing Police Vehicle when Barassa Lugo failed to stop for Witness Officer 3 and himself. After he initiated the successful PIT maneuver, Involved Officer 1 exited his vehicle and approached Barassa Lugo's vehicle. He observed Witness Officer 3 stop just short of Barassa Lugo's vehicle and he saw Barassa Lugo's vehicle accelerate toward Witness Officer 3's vehicle. Given the height of

Barassa Lugo's vehicle, Involved Officer 1 thought it was possible for Barassa Lugo to drive onto Witness Officer 3's patrol vehicle, causing great bodily harm or death to Witness Officer 3. Witness Officer 3 approached the passenger side of Barassa Lugo's vehicle and noted that Barassa Lugo's shoulder was approximately the height of Involved Officer 1's head. Involved Officer 1's screamed for Barassa Lugo to, "Stop your car!" while pointing his firearm at Barassa Lugo. Involved Officer 1 opined that he believed he had reasonable grounds to use deadly force at this time given the threat to Witness Officer 3, but he did not discharge his firearm. When Involved Officer 1 was approximately four to eight feet from the front passenger window, he observed Barassa Lugo turn his head to the right towards Involved Officer 1. Involved Officer 1 noted that Barassa Lugo's movement was slow, which he thought indicated the possibility that Barassa Lugo was under the influence of alcohol, narcotics, or both. Involved Officer 1 observed Barassa Lugo raise a handgun and point it at Involved Officer 1's head. From his position, Involved Officer 1 recognized the handgun as a revolver due to the cylinder sticking out on both sides of the firearm. Involved Officer 1 heard one gunshot come from Barassa Lugo's revolver and he observed a hole appear in the passenger window. Involved Officer 1 stated he was afraid for his life and the lives of others in the area if Barassa Lugo pointed the revolver at them. Involved Officer 1 discharged his firearm while retreating to the rear of Barassa Lugo's vehicle. As he moved to a safer position, Involved Officer 1 observed Barassa Lugo slump forwards.

6. Medical, Autopsy, and Toxicology

The King County Medical Examiner's Office performed an autopsy of Barassa Lugo, which revealed one perforating gunshot wound of the head/neck, a penetrating gunshot wound of the mid-upper back, a penetrating gunshot wound of the right upper shoulder, and a penetrating gunshot wound of the right lateral posterior shoulder. Three bullets were recovered from Barassa Lugo's body. The cause of death is multiple gunshot wounds, and the manner of death is homicide.¹⁰

¹⁰ 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.

The Washington State Patrol Toxicology Laboratory performed an analysis of Barassa Lugo's blood. The results showed that Barassa Lugo's blood alcohol was .30 g/100mL.

V. LEGAL STANDARD AND APPLICABLE LAW

The State must prove each element of a criminal charge by competent evidence beyond a reasonable doubt.¹¹ 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.¹²

In addition, the State must disprove the existence of a defense that negates an element of the crime.¹³ 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.¹⁴ Therefore, the State may be required to disprove one or more of the following defenses:

- Justifiable Homicide by Peace Officer;¹⁵
- Justifiable Homicide Defense of Self or Others;¹⁶
- Justifiable Homicide Resistance to Felony;¹⁷

At the time of this incident, there was no pattern jury instruction for Justifiable Homicide by a Peace Officer. However, the applicable statute removed the malice standard and required the State to prove the officer acted without good faith.¹⁸

¹¹ RCW 9A.04.100; WPIC 4.01.

¹² KCPAO Filing and Disposition Standards.

¹³ WPIC 14.00.

¹⁴ Id.

¹⁵ RCW 9A.16.040; WPIC 16.01.

¹⁶ RCW 9A.16.050(1); WPIC 16.02.

¹⁷ RCW 9A.16.050(2); WPIC 16.03.

¹⁸ 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

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.”

Justifiable Homicide by a Peace Officer and Justifiable Homicide in Defense of Self or Others contain related but distinct concepts and definitions. Given the information contained in the investigation and anticipated evidence and testimony, there is insufficient evidence to refute the affirmative defense that the officer’s actions were justifiable either defense. Therefore, the Team recommends that no criminal charges be filed against Involved Officer 1 or any other officer present during this incident.

1. Justifiable Homicide by a Peace Officer

Under RCW 9A.16.040 in effect at the time, homicide is justifiable when used by a peace officer to arrest or apprehend a person who the officer reasonably believes has committed, has attempted to commit, is committing, or is attempting to commit a felony. In considering whether the use of deadly force under this prong, the peace officer must have probable cause to believe that the suspect, if not apprehended, poses a threat of serious physical harm to the officer or a threat of serious physical harm to others.

Among the circumstances which may be considered by peace officers as a "threat of serious physical harm" are the following:

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.”

- 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.

A public officer or peace officer shall not be held criminally liable for using deadly force without malice and with a good faith belief that such act is justifiable pursuant to this section. In order to prove malice, the State must prove beyond a reasonable doubt that the officer acted with an evil intent, wish, or design to vex, annoy, or injure another person.¹⁹ Malice may be inferred from an act done in willful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty.²⁰ A peace officer acts in good faith if a similarly situated reasonable peace officer would have acted similarly.

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.²¹ “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.”²²

In the current case, the evidence and anticipated testimony is likely to show that Barassa Lugo discharged his weapon at Involved Officer 1, which would encompass several felonies including murder and assault. Barassa Lugo’s actions also appear to qualify as a threat of serious physical harm to Involved Officer 1. Given the evidence described above, there appears to be no evidence to dispute an anticipated claim that the officer acted in good faith.

¹⁹ RCW 9A.04.110(12).

²⁰ *Id.*

²¹ *Graham v. Connor*, 490 U.S. 386, 396, 109 S. Ct. 1865, 1872, 104 L. Ed. 2d 443 (1989).

²² *Id.* 490 U.S. at 396-97.

2. Justifiable Homicide in Defense of Self or Others

As applied to this incident, 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.²³ 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.²⁴

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.

Given that Barassa Lugo discharged his weapon at Involved Officer 1, it appears reasonable for Involved Officer 1 to believe that based on this action, Barassa Lugo could inflict great personal injury with a handgun. Finally, 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.”²⁵ 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

²³ RCW 9A.16.050(1); WPIC 16.02.

²⁴ WPIC 2.04.01.

²⁵ WPIC 16.02.

the danger.²⁶ The actual physical assault toward Involved Officer 1 in this incident was immediate.

VII. RECOMMENDATION FOR INQUEST

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

²⁶ WPIC 16.07.