

Use of Force – Fatality of
Joseph Peppan

King County Sheriff's Office, C18037295



King County Prosecuting Attorney
Public Integrity Team

July 21, 2023



DECLINE MEMORANDUM

July 21, 2023

Law Enforcement Use of Force Fatality Regarding:
Joseph Peppan

A. 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. 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.² There shall be an inquest into the manner, facts, and circumstances of any death of an individual where an action, decision, or possible failure to offer the appropriate care by a member of any law enforcement agency might have contributed to an individual's death unless the County Executive determines, based on a

¹ Except as required by federal consent decree, federal settlement agreement, or federal court order, where the use of deadly force by a peace officer results in death, substantial bodily harm, or great bodily harm, an independent investigation must be completed to inform any determination of whether the use of deadly force met the good faith standard and satisfied other applicable laws and policies. RCW 10.114.011. Similarly, if the Office of Independent Investigation is the lead investigation agency, the prosecutorial entity must review the investigation. RCW 43.102.020. 2021 c 318 § 101.

² Executive Order PHL 7-1-5 EO.



review of the investigation, that the role of law enforcement was de minimis and did not contribute in any discernable way to a person's death.³

2. STATUS OF THE INVESTIGATION

After a thorough review of the 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.

B. OVERVIEW

On August 23, 2018, at approximately 4:00 am, the King County Sheriff's Office TAC 30 Unit assisted in serving a warrant for the arrest of Joseph Peppan and the search of his residence. After deputies entered the home, Peppan armed himself with a large revolver and ignored numerous commands to drop the weapon. Three deputies discharged their rifles towards Peppan, striking him. Deputies provided medical assistance to Peppan, but he was pronounced deceased by medics at the scene.

³ Id. '



C. INVESTIGATION AND EVIDENCE

1. Force Investigation Reports
2. Officer Reports
3. CAD/MDT
4. Involved Officer Statements
5. Witness Officer Statements
6. Crime Scene Investigation
7. Search Warrant
8. Medical, Autopsy, and Toxicology
9. 911 Call and Radio
10. Civilian Statements
11. Photos
12. Miscellaneous Documents

D. INVESTIGATION SUMMARY⁴

In July 2018, a confidential informant (CI) contacted Officer 1 with the King County Sheriff's Office (KCSO) regarding Joseph Peppan (Peppan). The CI agreed to purchase narcotics

⁴ The Investigation Summary is based upon the investigation and evidence outlined in Section III. When necessary, the Team will identify the source of the information. It is common for witnesses, including law enforcement officers, to provide multiple statements about the events witnessed. Similarly, it is common for multiple witnesses to provide information about the same event. If a witness provides multiple statements and the statement contains material and substantial differences that could affect

from Peppan at Peppan's residence, located at 19028 16th Ave NE, Shoreline, WA 98155. During August 2018, the CI purchased narcotics from Peppan on two occasions and the CI gave those narcotics to KCSO. In addition, the CI reported to KCSO that Peppan was armed with a firearm and the CI saw a firearm in Peppan's bedroom where the narcotics transactions occurred. Based on this information and additional investigation by law enforcement, Officer 1 sought a search warrant for Peppan's arrest and to permit a search of Peppan's home, which was granted. Given that Peppan was known to be associated with firearms, KCSO's TAC 30 Unit⁵ was assigned to serve the search warrant.

On August 23, 2018, at approximately 3:00 am, TAC 30 deputies and other KCSO deputies met at a police station for a briefing to explain how the search warrant would take place. Officer 1 provided an operational briefing, which explained that there was probable cause to arrest Peppan for Violation of the Uniform Controlled Substances Act. Further, Officer 1 explained that Peppan was known to possess a large-framed revolver within the house and there were other weapons inside the house. TAC 30 deputies provided a tactical briefing, which assigned specific roles to those team members during the search warrant service.

Prior to serving the search warrant, TAC 30 deputies rehearsed their roles at a staging area. Once the rehearsal was complete, TAC 30 deputies boarded an armored vehicle and drove to Peppan's home. At approximately, 4:30 am, the TAC 30 deputies dismounted the armored vehicle at the dismount point near Peppan's home and walked towards Peppan's home. After deputies were in place, Officer 2 gave the order to "knock and announce." Officer 3, a TAC 30 deputy, heard Officer 4 bang on the front door and announce, "Police with a search warrant. Come to the door!" three times. When no one came to the door, Officer 2 gave an order to

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.

⁵ The Tac 30 Unit is the KCSO's SWAT team.

“breach.” Officer 3 saw the breaching deputy check the door handle, which was unlocked. Another deputy opened the door and deployed a noise flash diversionary device (NFDD).⁶

As TAC 30 deputies flowed into Peppan’s home, deputies announced very loudly, “Police with a warrant.” One deputy saw another resident of the home with his hands up and he instructed the resident to not move. Other deputies entered the kitchen, and they heard Involved Officer 1 yell “He’s got a gun!” several times, “Drop the gun!” followed by several gunshots, however, they could not see who shot nor what they were shooting at because they were tasked with securing different areas of the home.

Once the gunshots stopped, Officer 3 entered the room where the gunshots occurred. He saw Peppan lying on a bed close to a wall with what appeared to be a .44 magnum revolver lying approximately three inches from Peppan’s waist. Officer 3 moved the revolver, which was taken by another deputy, so that he could provide medical aid to Peppan until medics arrived and took over care.

Other deputies continued to check the remaining rooms inside the home for other residents. Two other residents were located and complied with the deputies’ directions so that they could be safely taken out of the home. Once medics arrived, they continued to provide medical assistance, but they pronounced Peppan deceased at the scene.

After the scene was secured, Officer 1 sought an addendum to his original warrant, requesting permission, which was granted, to also search the home for evidence involved in the shooting. After completing the search, deputies found the following items in Peppan’s bedroom: a .44 Ruger revolver; a rifle; a lighter designed to look like a replica revolver; 124.1 grams of cocaine and crack cocaine; 35.29 grams of heroin; multiple prescription medications, including a baggy containing seven blue “M30” pills.

⁶ NFDDs are designed to produce counter-personnel effects that disorientate individuals but produce little or no injury. <https://www.ojp.gov/ncjrs/virtual-library/abstracts/performance-characterization-study-noise-flash-diversionary-devices>

1. FORCE INVESTIGATION

The force investigation lead detectives conducted a round count of the TAC 30 deputies and determined that the discharged rounds came from the three involved deputies. Specifically, the detectives reported that Involved Officer 2 discharged 14 rounds, Involved Officer 3 discharged 4 rounds, and Involved Officer 1 discharged 7 or 8 rounds.⁷

The revolver that was found laying next to Peppan was examined. The revolver was a Ruger .44 magnum that could hold six rounds in the cylinder. The gun was not loaded, and the barrel length was 7.5” in length. Deputies also discovered a .308 caliber rifle under Peppan’s bed inside a zippered canvass case.



Figure 1 - .44 magnum Ruger revolver found next to Peppan.



Figure 2 - Replica revolver found in Peppan's room.

According to the CAD, the following relevant entries include:

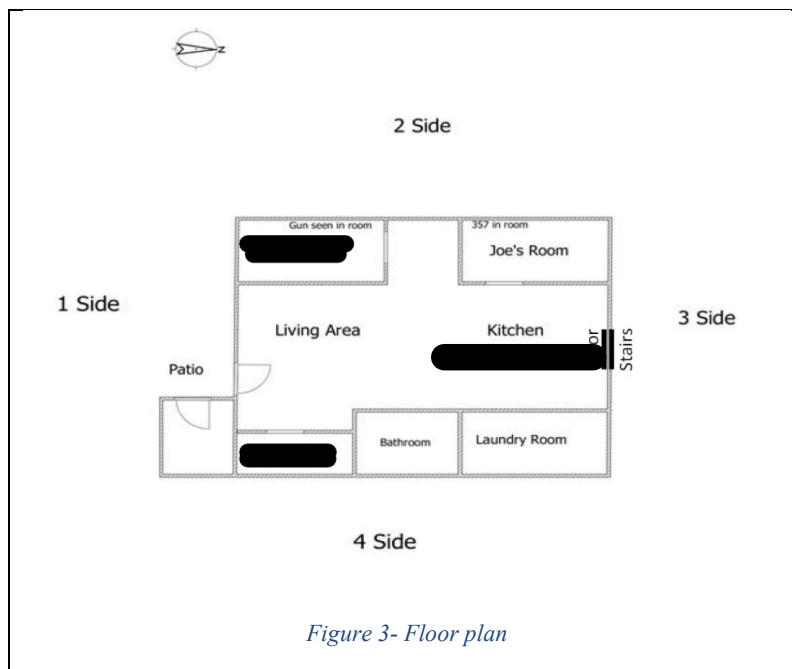
- 04:32:38: Knock and announce
- 04:32:45: Breach
- 04:33:12: Shots fired inside
- 04:34:32: Medics providing aid

2. OFFICER 5

Officer 5 provided a statement to deputies and detectives assigned to investigate the officer involved shooting. Officer 5 stated he was located on the 2/3 corner of Peppan’s home, and he was tasked with covering the backdoor, which was located on the 3 side of the home. He

⁷ It was unclear if Involved Officer 1’s rifle magazine was loaded with 27 or 28 rounds.

saw Officer 6 and Involved Officer 2 take their positions by the three windows on the 2 side of the house. After Officer 2 gave the order to breach the residence, Officer 6 used a harpoon to breach the window that was closest to the 2/3 corner on the 2 side of the home. Once the window was completely broken out, Involved Officer 2 stepped to the open window and yelled, “Police!” and “Show me your hands!” multiple times. Officer 5 heard an unknown deputy say “Gun, gun, gun!” followed by multiple gunshots from the area where Involved Officer 2 and Officer 6 were standing. Almost simultaneously, Officer 5 heard gunshots from inside the home and saw debris coming out of the 3 side of the home where more windows to the bedroom were located. Officer 5 felt something whiz by his head along with debris and suspected it may have been a bullet.



3. OFFICER 6

Officer 6 also provided a statement to deputies and detectives assigned to investigate the officer involved shooting. Officer 6 was located at the window on the 2 side of the home, closest to the 2/3 corner. He could not see through the windows because they were blocked by other items inside the room, but he believed the lights were on and there were flickering lights from a television inside the room. After Officer 2 gave the order to breach the home, Officer 6 used his

harpoon to break the window closest to the 2/3 corner. Involved Officer 2 stood next to Officer 6 and pointed his rifle toward the bedroom. Involved Officer 2 began to announce they were the police, but he noticed there was a person, later identified as Peppan, laying on a bed inside the room. Peppan had his feet towards them and his head towards the wall of the back of the room. Involved Officer 2 said Peppan was laying on his right side, sat up, and looked directly at the deputies when the window was broken.

As Involved Officer 2 announced their presence, Peppan laid back down on the bed and reached over to the right side of his body. Officer 6 heard Involved Officer 2's voice rise while he gave Peppan orders to show his hands. Officer 6 observed Peppan roll back on the bed while bringing up his left hand, in a slow sweeping motion towards the ceiling. He saw that Peppan was holding a large revolver and another deputy yelled, "Gun, gun, gun!" Involved Officer 2 continued to give orders to Peppan to show his hands, but the firearm was raised up and in clear view. Officer 6 observed Involved Officer 2 discharge multiple rounds into the bedroom and Officer 6 also heard multiple gunshots from inside the bedroom, assuming it was other TAC 30 deputies discharging their rifles.

Officer 6 broke out another window and observed Peppan lying on the bed, unresponsive, and with agonal breathing. Additionally, he saw Officer 3 begin to provide medical assistance. Officer 6 entered Peppan's room to assist Officer 3 and noted the large revolver was now laying on the ottoman in the middle of the room.

4. CIVILIAN 1

Civilian 1 participated in an interview with KCSO deputies after the shooting. Civilian 1 reported that he lived at the residence for a couple of years and rented one of the bedrooms. He pays rent to Civilian 4, who also lives in the home, but he was unsure who else lived inside the home. He believed that another renter is named, "Joe" because he heard that name a lot. He described various people who come and leave frequently, but he was not certain if they also rented rooms. He suspected that "Joe" sold drugs from inside the home because various people would come for short visits lasting approximately five minutes.

Civilian 1 reported he fell asleep at approximately 1:00 am and woke up to a big bang. He was unsure who was inside the home, but he heard commands to come out with his hands raised. He described the person that gave him commands as “nice” and that he was “surprised how friendly [the deputies] are.” Civilian 1 stated he did not see any other residents with guns, but he also stated emphatically that he did not speak to the other residents.

5. CIVILIAN 2

Civilian 2 participated in an interview with KCSO deputies after the shooting. Civilian 2 was contacted by KCSO deputies shortly before the shooting because he had been seen driving away from the home and deputies could not confirm if it was Peppan or another person leaving the home. When he was stopped, deputies asked him about Peppan. He stated he was friends with Peppan. When asked if Peppan was known to have firearms, Civilian 2 mentioned the replica revolver. Civilian 2 had controlled substances in his car, but it was unclear if he received those from Peppan.

During his interview, Civilian 2 stated that Peppan used cocaine and appeared to be in a “Zen state” prior to leaving the home. He reported that Peppan had a lighter that was a realistic looking gun on nightstand. In addition, he observed a similar type of gun in Peppan’s room three to four weeks ago, but he did not believe it was Peppan’s.

6. CIVILIAN 3

Civilian 3 participated in an interview with KCSO deputies after the shooting.⁸ Civilian 3 reported that she only knew about Peppan’s lighter gun inside his room, which appeared to be a replica revolver and she knew that Peppan used crack cocaine. Prior to the search warrant, she and Peppan used drugs. During the search warrant she was taking a shower and she heard “Police, search warrant!” She denied having an intimate relationship with Peppan, and reported that he made comments about feeling depressed, but he never stated feeling suicidal.

⁸ The detective who interviewed Civilian 3 observed that Civilian 3 appeared to be under the influence of a controlled substance, specifically heroin, based on her demeanor and mannerisms.

7. CIVILIAN 4

Civilian 4 participated in an interview with KCSO deputies after the shooting. Civilian 4 reported he was in his room, which is adjacent to Peppan's, during the search warrant. His door was pushed open, he saw bright lights, and he could not recognize the deputies as police. He heard someone say "police" and heard someone say, "He has a gun." He reported he had not seen Peppan with real guns, but he did see the replica revolver in his room.

8. AUTOPSY AND TOXICOLOGY

The King County Medical Examiner's Office performed an autopsy of Peppan, which opined that Peppan was shot an unknown number of times due to extensive bullet fragmentation. Twenty-two probable entrance wounds were identified, with five partially deformed bullets and two jacket fragments recovered. However, many of the entrance wounds represent bullet fragments, rather than intact bullets, striking the body. One partially deformed bullet and one jacket fragment were received with Peppan's body. The cause of death is multiple gunshot wounds, and the manner of death is homicide.⁹

The Washington State Patrol Toxicology Laboratory performed a drug analysis of Peppan's blood. The results showed that Peppan's blood tested positive for cocaine (.61 mg/L) and positive for morphine (.049 mg/L).

E. COMPELLED STATEMENTS

After receiving a Garrity admonishment, the three involved deputies were ordered to provide involuntary statements under threat of termination if they failed to fully cooperate with the investigation.

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.

1. INVOLVED OFFICER 1

Involved Officer 1 has been employed with KCSO since 1998 and he has been a member of TAC 30 since 2006. Along with other deputies, Involved Officer 1 helped to plan the tactical portion regarding how the search warrant would be served. Prior to planning, Involved Officer 1 spoke with Officer 1 and learned about the search warrant, that Peppan was known to carry a large handgun on his person, and that Peppan was known to have access to other firearms inside the home.

Involved Officer 1 was assigned to the main entry team, which would enter the front door of Peppan's home. After a deputy breached the door and deployed the NFDD, Involved Officer 1 entered the home along with other deputies and announced loudly, "Police, search warrant!" Once inside the home, Involved Officer 1 moved toward the west end of the home and saw that Peppan's bedroom door was partially open. Involved Officer 1 saw Peppan sitting on his bed, facing the northwest corner of the room, which is where other TAC 30 deputies were located. Peppan was holding a larger revolver handgun pointed towards the ceiling as he visually scanned the room.

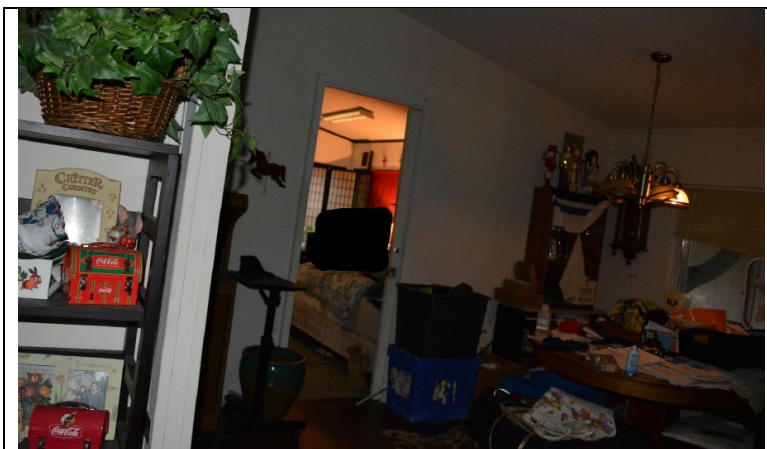
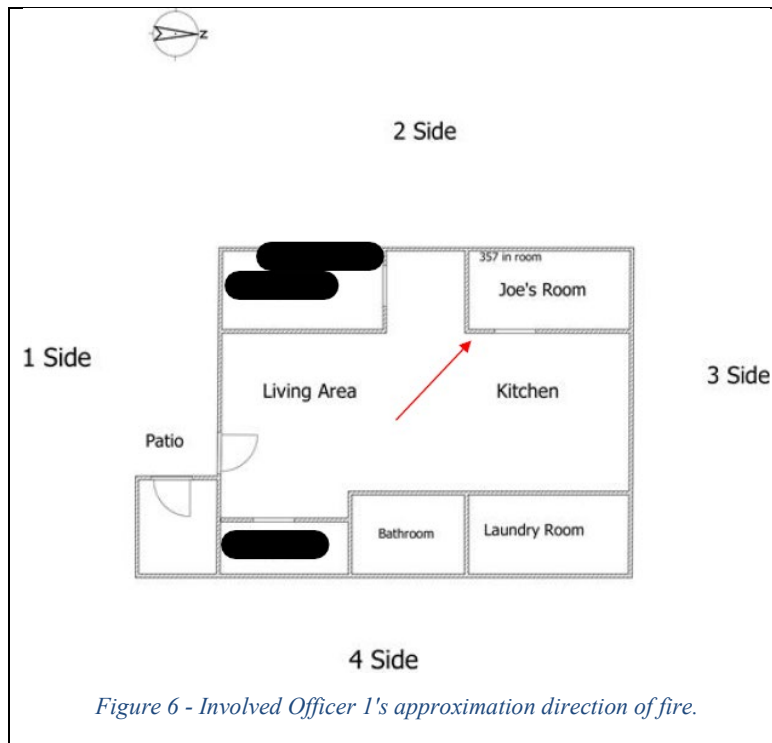


Figure 4 - View into Peppan's bedroom.



Figure 5 - View from threshold in Peppan's room facing breached windows.

Involved Officer 1 yelled out to Peppan, “Police!” and yelled, “He’s got a gun!” so that other deputies could know that Peppan was armed. At the same time, Involved Officer 1 heard other deputies yell, “Drop the gun!” Peppan turned towards Involved Officer 1 and began to level the handgun in Involved Officer 1’s direction. Involved Officer 1 believed that Peppan was going to discharge his weapon at Involved Officer 1. Fearing for his life, the lives of the other deputies, and the lives of other residents inside the home, Involved Officer 1 discharged several rounds from his rifle. At the same time, Involved Officer 1 could hear and see another deputy discharging his gun at Peppan from outside the home through the window. Peppan fell back and slumped over onto his right side.



Involved Officer 1 and another deputy entered Peppan’s bedroom and moved the handgun off Peppan’s bed while other deputies began to administer medical aid.

2. INVOLVED OFFICER 3

Involved Officer 3 has been employed with KCSO since 2000 and he has been a member of TAC 30 since 2013. Involved Officer 3 was assigned to the main entry team, which would enter the front door of Peppan’s home. After a deputy breached the door and deployed the NFDD, Involved Officer 3 entered the home and announced multiple times, “Police with a search warrant!” Involved Officer 3 continued towards Peppan’s bedroom and saw it was partially open. Another deputy opened the door as Involved Officer 1 entered the threshold and Involved Officer 3 heard multiple deputies yelling, “Drop the gun!” As Involved Officer 3 approached the bedroom door’s threshold, he saw Peppan was the only occupant in the room. Peppan sitting on the bed holding a dark gray revolver handgun in his right hand, pointing the barrel facing up and forward at chest level. Involved Officer 3 could not see if Peppan’s finger was on the handgun’s trigger, but he saw Peppan shift the handgun towards Involved Officer 1

and himself. Despite multiple commands to drop the handgun, Peppan did not. As Peppan was in the process of pointing the gun at Involved Officer 1 and himself, Involved Officer 3 feared that Peppan was going to discharge rounds at the deputies. Additionally, given the large caliber handgun, he believed the handgun could cause serious bodily injury or death. Involved Officer 3 stepped to his right and discharged several rounds into the wall towards Peppan.

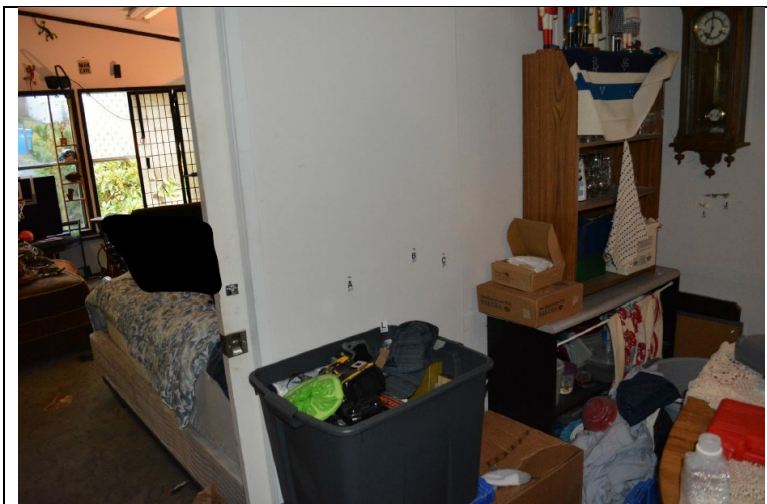
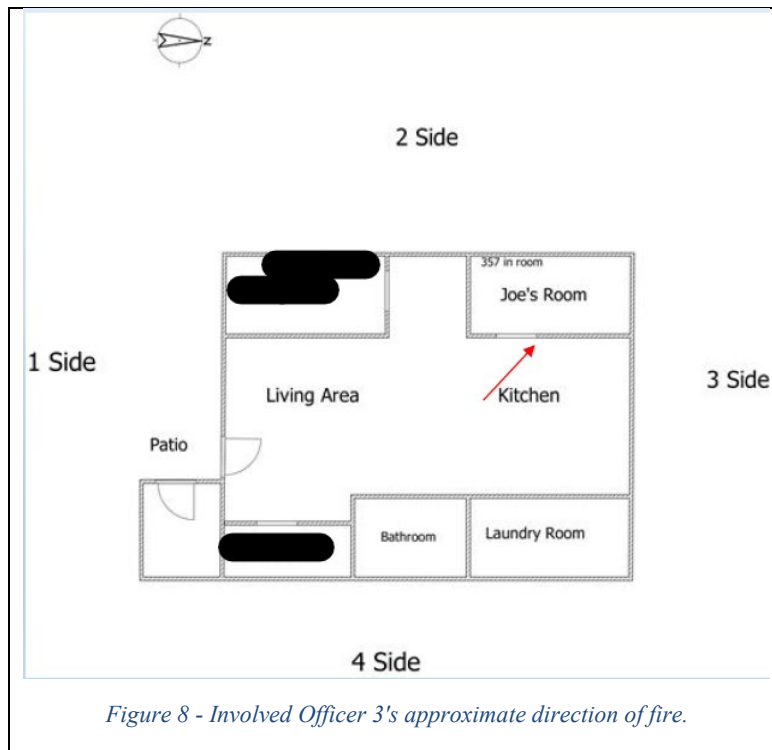


Figure 7 - Point of View of Involved Officer 3



After he discharged his rifle, Involved Officer 3 moved back into the threshold of door and saw that the gun was lying on the bed and Peppan was unresponsive. Involved Officer 3 helped secure the rest of the rooms and the home's occupants.

3. INVOLVED OFFICER 2

Involved Officer 2 has been employed with KCSO since 2012 and has been a member of TAC 30 since 2016. Involved Officer 2 was assigned to the team that would enter through Peppan's bedroom windows. After a deputy breached the door and deployed the NFDD, Officer 6 used a harpoon to break out Peppan's bedroom window. Once the window broke, Involved Officer 2 yell, "Police, search warrant!" Officer 6 moved a screen divider out of Involved Officer 2's view so that he could see into the room. Involved Officer 2 saw Peppan laying on the bed perpendicular to them. Involved Officer 2 yell, "Police show me your hands!" but Peppan did not comply. Instead, Peppan rolled towards Involved Officer 2 and rummaged around. Fearing that Peppan was retrieving a weapon, Involved Officer 2 yelled more loudly, "Show me your fucking hands!" Peppan ignored the commands and continued to focus on whatever he was looking for.

As Peppan was rummaging, Involved Officer 2 could not see Peppan’s hands from his vantage point.

Involved Officer 2 next saw Peppan pull out a large black revolver, with a long barrel pointing upwards, while sitting up in bed. Involved Officer 2 shouted multiple times, “Drop the gun!” but Peppan did not comply. Involved Officer 2, having heard the other deputies shouting commands, believed that Peppan also knew law enforcement was inside his home. He believed that Peppan could lower the barrel of the revolver very quickly, which would threaten Involved Officer 2’s life and the lives of the other deputies, so he discharged his rifle at Peppan until it appeared Peppan was no longer a threat. Once the gunfire stopped, Involved Officer 2 saw Involved Officer 1 enter the room.



Figure 9- Side 2 of home, showing Peppan’s bedroom after windows were breached.

F. LEGAL STANDARD AND APPLICABLE LAW

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,

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:

- Lawful Force by Public Officer (applies to non-homicide charges);¹⁴
- Defense of Self or Others (applies to non-homicide charges);¹⁵
- Excusable Homicide;¹⁶
- Justifiable Homicide by Peace Officer;¹⁷
- Justifiable Homicide Defense of Self or Others;¹⁸
- Justifiable Homicide Resistance to Felony;¹⁹

This incident occurred on August 23, 2018; therefore, the applicable Justifiable Homicide by a Peace Officer instruction would require the State to prove the officer acted with malice.²⁰

G. 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

¹¹ KCPAO Filing and Disposition Standards.

¹² WPIC 14.00.

¹³ Id.

¹⁴ RCW 9A.16.020(1), (2); WPIC 17.01.

¹⁵ RCW 9A.16.020(3); WPIC 17.02.

¹⁶ RCW 9A.16.030; WPIC 15.01.

¹⁷ RCW 9A.16.040; WPIC 16.01.

¹⁸ RCW 9A.16.050(1); WPIC 16.02.

¹⁹ RCW 9A.16.050(2); WPIC 16.03.

²⁰ The former version of WPIC 16.01, which included the malice standard, is applicable to offenses committed on or prior to December 6, 2018. The current version of WPIC 16.01, which removed malice and applied the good faith standard, is applicable to offenses committed on or after February 4, 2019. There are no pattern jury instructions for offenses committed between December 7, 2018, and February 3, 2019.

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.”

Given the evidence presented in this case, there is insufficient evidence to refute the affirmative defense that the involved deputies’ actions were justifiable under the malice standard and/or justifiable in defense of self or others. Therefore, the Team recommends that no criminal charges be filed against the involved deputies or any other deputy present during this incident.

1. JUSTIFIABLE HOMICIDE BY A PEACE OFFICER

Under the former RCW 9A.16.040, 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:

- 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.²¹ Malice may be inferred

²¹ RCW 9A.04.110(12).

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.²² 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.²³ “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.”²⁴

In the current incident, the evidence and testimony are highly likely to demonstrate that Involved Officer 1, Involved Officer 3, and Involved Officer 2, reasonably believed that Peppan was committing a felony, specifically Assault in the First Degree or Assault in the Second Degree, when he picked up and pointed a revolver in the direction of deputies after being told several times to drop the firearm. Peppan’s actions demonstrated there was probable cause that Peppan posed a threat of serious physical harm to the deputies.

Further, the evidence and testimony are highly likely to demonstrate that the deputies acted without malice. The deputies were serving a lawfully issued search warrant, announced their presence prior to entering the home and while entering the home, and gave Peppan numerous commands to drop his weapon. Given that the deputies were able to safely remove the other occupants from the home tends to demonstrate that the deputies acted without malice.

2. JUSTIFIABLE HOMICIDE IN DEFENSE OF SELF OR OTHERS

A homicide is also justifiable when the slayer reasonably believed the person slain intended to commit a felony, to inflict death, or to inflict great personal injury; the slayer

²² *Id.*

²³ *Graham v. Connor*, 490 U.S. 386, 396, 109 S. Ct. 1865, 1872, 104 L. Ed. 2d 443 (1989).

²⁴ *Id.*, 490 U.S. at 396-97.

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.

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 deputies’ training into account. Therefore, the same evidence and testimony used to determine whether the involved deputies acted as reasonable peace officers are also relevant to this instruction.

Justifiable Homicide in Defense of Self or Others requires that, at a minimum, the harm to be avoided is “great personal injury,” which includes severe pain and suffering. Given that the involved deputies did not know that Peppan’s revolver was not loaded or whether he intended to eventually comply with commands, it was reasonable for them to believe that based on Peppan’s actions, Peppan 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 the danger.²⁶

²⁵ WPIC 16.02.

²⁶ WPIC 16.07.

H. RECOMMENDATION FOR INQUEST

An inquest is mandatory to determine the manner, facts, and circumstances of Peppan'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.