

**Use of Force Fatality of
Cody Rebeschke**

Kirkland Police Department, #2021-41091



King County Prosecuting Attorney
Public Integrity Team

July 20, 2023



DECLINE MEMORANDUM

July 20, 2023

Law Enforcement Use of Force Fatality Regarding:
Cody Rebischke

A. OVERVIEW

During the evening of 11/16/21, Involved Officer 1 of the Snoqualmie Police Department was alone on patrol in the city of Snoqualmie. Part of his routine included patrolling the city's parks after-hours to check for people illegally in the parks. Shortly after 11:00 p.m. he notified dispatch that he had contacted a suspicious male subject (later identified as Cody Rebischke) at Torguson Park who was working on a white SUV with no plates. Minutes later Involved Officer 1 requested a second officer, then requested that the second units "step it up." Involved Officer 1 then called out that the subject was fighting, shots were fired, and requested a medic. Other officers arrived and observed Rebischke laying in the parking lot some 70 feet from his vehicle. Medics shortly thereafter pronounced Rebischke deceased. He died of a single gunshot wound to the abdomen from Involved Officer 1's service pistol.

State law requires an independent investigation when police use of deadly force results in substantial bodily harm or death. An independent investigation informs the determination of whether a reasonable, similarly situated officer would have believed that deadly force was necessary. RCW 10.114.011. The King County Prosecuting Attorney's role is to ensure the investigation is thorough and complete, determine whether sufficient admissible evidence exists to support filing criminal charges, and inform the King County Executive whether an inquest

should be initiated. Executive Order PHL 7-1-5EO. An inquest is required when any action by law enforcement might have contributed to an individual's death. King County Charter Section 895.

The Public Integrity Team has determined that the investigation of the 11/16/21 fatal shooting of Cody Rebeschke is complete at this time. Based on a thorough review, the Team has concluded that the evidence is insufficient to support criminal charges against Involved Officer 1. Accordingly, the KCPAO is declining to file criminal charges in this matter based on the evidence presently available. We will forward the complete investigative file to the Inquest Program Manager at this time. The Public Integrity Team will review the results of the inquest process to determine if any additional admissible evidence was developed that would support the filing of criminal charges.¹

This determination is based entirely on the relevant criminal laws, rules of evidence governing criminal proceedings, and the criminal burden of proof in Washington. This determination does not limit, direct, or otherwise affect the inquest process, which employs less stringent evidentiary rules and a lower burden of proof. Additionally, the current determination that the evidence is insufficient to support criminal charges against Involved Officer 1 does not limit administrative action by the Snoqualmie Police Department, or any other civil action. The Team expresses no opinion regarding the propriety or likely outcome of any such actions.

B. INVESTIGATION AND EVIDENCE

1. ITEMS REVIEWED:

- Narrative police reports
- Audio Interviews
- KCME report

¹ For example, compelled statements of involved officers are not admissible in a criminal proceeding and cannot be considered for purposes of probable cause. *Garrity v. State of N.J.*, 385 U.S. 493 (1967)

- Video – Body Worn Video
- Security Video
- Photos - Scene Photos, aerial diagrams
- CAD/Radio Traffic

2. INCIDENT SCENE

- The incident scene is the parking lot of Torguson Park in Snoqualmie. At the time the incident occurred, it was dark, cold, and dry with little to no lighting. The decedent's vehicle, a Chevy Suburban, had its headlights off. The headlights on Involved Officer 1's patrol car were on. The emergency lights were not activated. There was some ambient lighting from the park's public bathroom, but it did not illuminate the parking lot area. The following photo taken at the scene is only illuminated by the police vehicles that arrived after the incident:



- The parking lot was mostly empty with only two other occupied vehicles in the lot at the time of the shooting. The following map shows the location of the other vehicles in relation to the incident:



Blue = Officer [REDACTED] Patrol Vehicle
Yellow = Cody Rebeschke's Chevrolet Suburban
Red = [REDACTED] vehicle
Orange = *Approximate location of [REDACTED] vehicle
Purple = Resting location of Cody Rebeschke

3. TIMELINE OF EVENTS

- 23:00 (estimate) – Involved Officer 1 initially contacts Rebeschke at the park and asks him to leave.
- 23:11:06 – After waiting about 10 minutes, Involved Officer 1 re-contacts Rebeschke and updates dispatch: suspicious at Torguson Park with a male working on a white SUV with no plates
- 23:12:14 – Involved Officer 1 requested a second officer
- 23:12:47 – Involved Officer 1 broadcasts a description
- 23:13:05 – Involved Officer 1 requested second units to “step it up.”
- 23:14:22 – Involved Officer 1 called out that the subject was fighting.
- 23:15:35 – Involved Officer 1 called out that shots were fired
- 23:16:47 – Involved Officer 1 called out, “673- I need medic. One gun shot in the side-on the suspect. I’m not hit.”
- 23:16:50 - Officer 1 activated his body worn camera while driving to the scene
- 23:23:42 – Medics pronounced Rebeschke deceased

C. INVESTIGATION SUMMARY

1. SCENE/OFFICER PROCESSING

Kirkland Police Officer 2 was assigned to complete the independent investigation into this incident and responded to the scene. As part of his narrative, he details the evidentiary items found at the scene near Rebeschke's body:

1. One fired Luger 9mm cartridge casing
2. One jacket
3. One black gaiter
4. One black beanie
5. Two battery packs (orange and blue)
6. Chevy key on key chain with circular metal tag and the number "108."
7. Medical scissors
8. Medical debris
9. Flashlight
10. Earbud

Involved Officer 1 was processed by an independent investigation team after the incident occurred. The processing included taking photographs of him and collecting his firearm. In doing so, the investigators observe that the back/left side of his uniform top was covered in mud, as was the top left part of his pants just at and below his duty belt. Both shoes had visible mud as did the bottom of his left leg and right legs on the front, just below the knees. Based on this, investigators noted it appeared as if Involved Officer 1 had been in a struggle on the ground with someone. Involved Officer 1 did not provide the independent investigative team a voluntary statement at that time.

2. OFFICER WITNESS

King County Sheriff's Officer 1 provided a voluntary officer narrative statement. On the day of the incident, Officer 1 was on duty and patrolling in the area. At 11:14 PM, he heard Snoqualmie Police Involved Officer 1 request additional units. While driving to the scene,

Officer 1 heard the 'shots fired' call. Officer 1 arrived at the park and observed Involved Officer 1 kneeling next to a white male adult applying pressure to what appeared to be a single gunshot wound to the lower right chest/upper right abdomen area.

When Snoqualmie Police Officer 3 and Officer 4 arrived, Officer 1 asked Involved Officer 1 if he was the involved officer and he said he was. Officer 1 had Involved Officer 1 step away with Officer 3 while Officer 4 assisted in providing first aid. Officer 1 applied a single chest seal over the wound and began cutting Rebeschke's clothes off to look for other potential injuries. Officer 4 began immediate CPR and continued until Bellevue Medics arrived and declared the male deceased.

While looking around Rebeschke for any potential identification that may have fallen from his person, Officer 1 located a single shell casing laying to the right of Rebeschke. Officer 1 placed a yellow sticky note over the casing to mark it. Officer 1 stayed with Rebeschke until the area was able to be taped off and made secure.

3. CIVILIAN WITNESSES

Civilian 1 was on a road trip and was in his vehicle to sleep for the night. He was browsing on his cell phone. Civilian 1 saw the subject working on his car when he came into the parking lot. Civilian 1 put blinders up on the windows of his car and could not see anything. He peeked out briefly when he heard a car drive through the lot and observed the police car. He did not see anything else. He had his window cracked for air and could hear some of the incident. He was unable to hear distinct words used initially but could hear two male voices arguing. He believed one of the voices to be a police officer, because at one point he heard 'put your hands behind your back.' As the altercation continued, Civilian 1 heard escalating agitation, including the officer saying, 'put your hands behind your fucking back' and also calling the other male a 'bitch.' He heard a physical fight and then heard a single gunshot. He estimated the time from beginning of the argument until the gunshot was about 15-20 minutes.

Civilian 2 was in his red jeep on his cell phone. Although his reason for being in the park is not explicitly known, it is likely that he was also there to sleep for the evening (he is a known transient the area). He could see the altercation occurring and stated that Rebeschke was

aggressive and that his movements were sharp. Civilian 2 did not want to be involved, so he did not watch the entire incident, trying instead to look at his phone. He heard the officer say, “Put your hands behind your back.” Civilian 2 observed Rebischke yelling at the officer, and stated it looked he wanted to fight the officer. Civilian 2 did not see the gunshot as he was looking at his phone but heard Rebischke make a sound like he was wounded. Civilian 2 estimated the time from the beginning of the contact to the end was about 4-5 minutes. Civilian 2 left the parking lot to avoid being contacted. He was stopped briefly by another officer to be identified and then left.

4. INVOLVED OFFICER 1

Involved Officer 1 was represented by a Guild Attorney. A Deputy Prosecutor from the King County Prosecutor’s Office reached out to the Guild Attorney to discuss the investigation and to request that Involved Officer 1 provide a voluntary statement. Eventually the Guild Attorney and his client agreed to provide a written statement in response to written questions. On December 22, 2021, they voluntarily provided an 8-page written statement, summarized as follows:

At approximately 11 pm on November 16, 2021, Involved Officer 1 was patrolling Torguson Park in North Bend.² Involved Officer 1 observed a white SUV in the parking lot with its hood up and a male walking around it. Involved Officer 1 stopped his patrol car and asked through the open window if the male needed help. The male, later identified to be Cody Rebischke, told Involved Officer 1 that he was putting vinyl wrap on the hood of his car. At this point, Involved Officer 1 advised Rebischke that park was closed. Rebischke stated that he would pack up his property and leave the park. Involved Officer 1 did not advise dispatch of this contact.

There were two other occupied vehicles in the parking lot. Involved Officer 1 did not contact either of these vehicles. Involved Officer 1 left the park and returned more than ten minutes later. He found Rebischke still in the park. Involved Officer 1 alerted dispatch of the

² Pursuant to North Bend Municipal Code, it is a misdemeanor to be in a park after park closure.

contact in the park and parked his patrol vehicle. He turned on the patrol car's white LED light bar to illuminate the area but did not activate the emergency lights.

Involved Officer 1 approached Rebeschke and asked him why he had not left the park. Rebeschke stated he thought he could finish his job and then leave. Involved Officer 1 asked Rebeschke for his name. Rebeschke moved around the vehicle and continued working on the vehicle. Rebeschke said he would start packing up and leave. Involved Officer 1 again requested Rebeschke's name to which Rebeschke did not respond and continued working on his vehicle.

Rebeschke then said he was leaving and was late for a date. Rebeschke moved to the back of the vehicle. Involved Officer 1 requested back up officers to respond to location. Involved Officer 1 ordered Rebeschke to stop and wait. Rebeschke did not stop or respond to Involved Officer 1's command. Involved Officer 1 ordered Rebeschke to stand at the front of the patrol vehicle. Rebeschke did not stand in front of the patrol car, and instead walked towards the restroom building. Involved Officer 1 followed Rebeschke. Rebeschke appeared to pick up objects that were plugged into an electrical outlet at the restrooms. He then turned back towards Involved Officer 1 and walked towards him and the vehicles. As he approached Involved Officer 1, the officer took hold of Rebeschke's left sleeve to detain him. Rebeschke tried to pull away from Involved Officer 1 and a struggle ensued.

Involved Officer 1 indicated that he was blinded by a headlamp that Rebeschke was wearing and was concerned that Rebeschke may use the objects that he had picked up from the bathroom as weapons. Involved Officer 1 attempted to use a 'bent armbar takedown' to obtain control of Rebeschke, but Rebeschke was able to break free. Involved Officer 1 radioed for second units to hurry to the scene in an obvious winded tone.

During the physical struggle, Rebeschke said something to Involved Officer 1 about 'you guys' and 'rolled his car' while struggling with Involved Officer 1. Involved Officer 1 told Rebeschke that he was going to receive more charges if he continued to resist. Rebeschke responded, "no I'm not." Involved Officer 1 told Rebeschke that he would use his taser if Rebeschke continued to resist, and at that point Rebeschke shoved Involved Officer 1 and stepped backwards and was able to fully break free of Involved Officer 1's grip. Rebeschke ran through the parking lot, chased by Involved Officer 1, who caught up and tackled Rebeschke to the

ground. As they struggled on the ground, Rebeschke was able to get on top of Involved Officer 1 and hold him down. He grabbed at Involved Officer 1's firearm holster, and said, "You know what? This is because you're a pussy." Rebeschke pulled on the holster hard enough that it turned Involved Officer 1's leg inward. Rebeschke pushed Involved Officer 1 to the ground on his back and got on top of him. Rebeschke moved from the holster and started pulling on the firearm. Involved Officer 1 grabbed the firearm and they struggled over control of it. At one point, Involved Officer 1 let go of the firearm to attempt to make space to get out from underneath Rebeschke. They began to roll, but Rebeschke pushed Involved Officer 1 back down and then pinned him underneath his knee. At some point during the struggle, Involved Officer 1's radio had been knocked from his uniform, and he was unable to further call for help. Rebeschke continued to grab for the firearm. Involved Officer 1 grabbed Rebeschke by the jacket to attempt to pull him down, but Rebeschke slipped out of the jacket, and then returned to trying to get control of the firearm. Rebeschke grabbed the firearm again, but then lost his grip, and Involved Officer 1 was able to gain control of it. Rebeschke then began to attempt to strike Involved Officer 1 in the head, down towards the ground.

From Involved Officer 1's voluntary statement:

"I believed the subject was going carry out his threats and efforts to kill me. He was in such a dominant position over me that I could not break free and force him off of me. He was continuously trying to pull out my firearm. In the quick moment where he lost his grip on the firearm, I was able to break free and draw my firearm. I felt I had no choice but to fire my weapon to stop him. I believe that I had no other option or choice. I believed he was going to carry out his threat and pound my head into the pavement and take my firearm and kill me. I had no choice but to defend myself. I didn't have any other option but to use my firearm. I had a Tazer but could not get to it as it was pinned on my side. I wasn't even sure it would work as we were so close. I had tried to physically force him off me but was unsuccessful. I had tried physical restraints on him but he broke free. There were no other options for me at the time. I had to protect myself from the subject. I fired one shot from my firearm in my left hand into his side. I was on the ground under him when I shot. The shot was to his right side as he was over top of me so his right side was on my left side and I shot with my left hand."

The gunshot wound rendered Rebeschke immobile almost immediately. Involved Officer 1 handcuffed Rebeschke for safety and then began to render aid. Officer 4 and Officer 1 arrived within minutes and took over rendering aid to Rebeschke. Medics arrived, evaluated Rebeschke and ceased aid efforts within minutes. Rebeschke was pronounced deceased at approximately 11:23 pm.

5. AUTOPSY REPORT

The King County Medical Examiner's report indicates that the cause of death is a homicide, with one bullet entering the body in the right chest at a front to back, right to left upward trajectory. The bullet was recovered from the left back. The estimated range of fire is intermediate (inches to feet), as evidenced by gunpowder stippling located at the entrance wound.

D. FACTUAL ANALYSIS

The statement provided by Involved Officer 1 appears consistent with the rest of the investigation. It is likely that in a criminal proceeding, a fact finder would determine that Involved Officer 1 contacted Cody Rebeschke in Torguson Park after the park had closed. Involved Officer 1 asked Rebeschke to leave the park. Involved Officer 1 left, and then returned sometime later.

Rebeschke was in the same location and did not appear to be leaving. Involved Officer 1 contacted him again and attempted to place him under arrest for a misdemeanor violation. Rebeschke resisted arrest and physically fought with Involved Officer 1. The struggle continued and Rebeschke made a potentially threatening statement. Rebeschke was on top of Involved Officer 1 and attempting to take control of Involved Officer 1's firearm. Involved Officer 1 was able to get control of his firearm and fired one shot, immobilizing Rebeschke immediately. Involved Officer 1 then began to provide medical aid.

E. LEGAL STANDARD

In making any charging decision, the King County Prosecutor's Office is bound by state law in effect at the time of the incident. The applicable laws in this incident are as follows:

RCW 9A.16.040: Officer Use of Deadly Force

Law enforcement officers are justified in using deadly force when used in good faith to apprehend a person who the officer reasonably believes has committed or is committing a felony and the officer has probable cause to believe that the suspect poses a threat of serious physical harm to the officer or others if not apprehended. RCW 9A.16.040. "Good faith" is an objective standard which considers 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. RCW 9A.16.040. "[T]hreat of serious physical harm" includes being threatened by the suspect with weapon. RCW 9A.16.040.

RCW 9A.16.050: Lawful Self-Defense

Any person is justified in using deadly force when there is reasonable grounds to apprehend a design to do some great personal injury to the slayer or to any such person, and there is imminent danger of such design being accomplished; or in the actual resistance of an attempt to commit a felony upon the slayer, in his or her presence, or upon or in a dwelling, or other place of abode, in which he or she is. RCW 9A.16.050. In other words, to file charges against the involved officer for his actions in this case, the State would need to prove beyond a reasonable doubt that the officers were not acting in self-defense.

F. ANALYSIS AND CONCLUSION

A criminal prosecution would require proof beyond a reasonable doubt that Involved Officer 1 did not act in good faith in using deadly force against Rebischke. In other words, a judge or jury would have to find that a reasonable, similarly situated officer would not have believed that the use deadly force was necessary. In this case, however, the admissible evidence

shows that Involved Officer 1 reasonably used deadly force in defense of himself after being threatened with a weapon by Rebeschke.

The investigation shows that Involved Officer 1 contacted Rebeschke for a misdemeanor violation. Rebeschke became uncooperative and aggressive, according to both Involved Officer 1 and Civilian 2. When Involved Officer 1 attempted to detain Rebeschke to identify him, Rebeschke physically resisted. The resistance turned to assault when Rebeschke pushed Involved Officer 1 in the chest and attempted to flee. The assault escalated when Rebeschke got on top of Involved Officer 1 and attempted to get his firearm. Rebeschke threatened serious physical harm when he made a veiled threat of ‘this is because you are a pussy’ and then attempted to pin down Involved Officer 1 while grabbing at his firearm. The struggle over the firearm was more than momentary. Factually, Involved Officer 1’s statement is corroborated by the nearby witnesses, the physical evidence at the scene, the autopsy report, and the radio traffic recordings. Based on Involved Officer 1’s voluntary statement, he was in fear for his life at the time he used deadly force against Rebeschke.³

Based on the evidence admissible in a criminal case and the applicable legal standards, we have determined that there is insufficient evidence to prove beyond a reasonable doubt that the use of force was not used in good faith and was not done in lawful self-defense.

³ While there was a neighboring home with a security camera, the distance was too far to depict the incident in any discernable detail. What can be seen from the video does corroborate the timeline of events.