

**Use of Force Fatality of  
Alexander Whittal**

Des Moines Police Department, #2021-2595



King County Prosecuting Attorney  
Public Integrity Team

July 11, 2023



---

## **DECLINE MEMORANDUM**

Law Enforcement Use of Force Fatality Regarding:  
**ALEXANDER WHITTAL**

---

### **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.<sup>1</sup> 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.<sup>2</sup>

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

---

<sup>1</sup> 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.

<sup>2</sup> Id. See also WAC 139-12-010.

death, substantial bodily harm, or great bodily harm.<sup>3</sup> The independent investigation is conducted in the same manner as a criminal investigation.<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup>

## **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.

---

<sup>3</sup> RCW 10.114.011. See also WAC 139-12-010.

<sup>4</sup> Id.

<sup>5</sup> Executive Order PHL 7-1-5 EO.

<sup>6</sup> Id. '

## **B. OVERVIEW**

A 911 caller reported that Whittal was discharging a firearm, including discharging the firearm at an occupied school district building. Renton Police Department Officers arrived and Whittal began walking toward them with the firearm pointed at officers. Officers discharged their firearms, striking Whittal, and Whittal shot himself once in the head. Whittal died as a result of the gunshot wounds.

## **C. INVESTIGATION AND EVIDENCE**

1. CAD and radio traffic
2. 911 calls
3. Involved officer voluntary statements
4. Narrative reports
5. Civilian witness statements
6. Civilian videos
7. Family witness statements
8. Autopsy report
9. Drone diagram
10. Renton in-car video
11. NIBIN
12. WSPCL firearms examination report

## **D. INVESTIGATION SUMMARY**<sup>7</sup>

On November 4, 2021, Renton Police Department (RPD) officers were dispatched to a welfare check of Alexander Whittal (Whittal). His girlfriend stated that Whittal was alone in his

---

<sup>7</sup> 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

car at Walmart with a gun and wanted to die by suicide by cop. RPD made the decision to not contact Whittal in-person at that time. Later, Whittal's sister reported from Fred Meyer in Renton and stated that Whittal was still suicidal and wanted to die by suicide by cop. Again, RPD did not contact Whittal in-person.

On November 5, 2021, the Seattle Police Department (SPD) requested RPD to look for Whittal's vehicle near the Plum Tree Apartments, located at 200 SW 5<sup>th</sup> Place, Renton. Whittal's vehicle was a suspect vehicle in a Seattle shooting investigation. According to SPD, Whittal broke into his girlfriend's husband's apartment by shooting a sliding glass door and discharging several rounds at the husband, which missed him. SPD also reported to RPD that Whittal owns a handgun and a shotgun, and he keeps both inside his vehicle. Whittal's vehicle was located unoccupied in the parking lot west of the apartment complex's leasing office.

On November 8, 2021, at approximately 1:50 pm, an employee of the Washington State Department of Social and Health Services (DSHS) called 911 to report that a subject, later identified as Alexander Whittal, was outside of a DSHS building shooting a pistol. Renton Police Department (RPD) officers responded to the DSHS building, located at 500 SW 7th Street, Renton. Additionally, the 911 caller described Whittal and said that Whittal shot toward an occupied school district building a few minutes prior. The 911 caller reported that Whittal walked toward the Plum Tree Apartment complex. As officers drove toward Whittal, the dispatcher advised officers of Whittal's recent contacts with police, his mental health situation, his statement of wanting to commit "suicide by cop," and that he was likely involved in a shooting in the days prior.

RPD Involved Officer 1, Involved Officer 2, and Involved Officer 3 located Whittal in the grassy barbeque pit area of the Plum Tree Apartments. Involved Officer 1 arrived first in his

---

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.

unmarked SUV, parked, and watched Whittal. He observed Whittal insert a magazine into a handgun and noted that Whittal's actions appeared aggressive due to Whittal using bigger movements than necessary to load a handgun. Involved Officer 2 and Involved Officer 3 arrived shortly after. While the three officers took cover behind the unmarked SUV, they observed that Whittal see them and began moving toward them with his firearm raised, pointed directly at the officers. Involved Officer 1 advised dispatch that Whittal had a gun in his right hand and was walking towards the officers. In response to Whittal's actions, all three officers fired their weapons at Whittal. Involved Officer 2 noted that as Whittal fell to the ground, Whittal's arm with the gun moved from the forward position to an upward position. From Involved Officer 2's point of view, it appeared that Whittal pointed his gun at his head and discharged a shot. Whittal was pronounced deceased at the scene.

A 9mm semi-automatic pistol, serial number C133880, was located under Whittal's body. In addition, one 9mm casing was located near Whittal's body, which was the same type of ammunition inside the pistol underneath Whittal. The Washington State Patrol Crime Laboratory provided a presumptive investigative lead that found the 9mm casing found near Whittal, a test fired casing from the pistol underneath Whittal, and casings from the SPD shooting have similar characteristics and all could be from the same firearm.

The King County Medical Examiner's Office conducted an autopsy of Whittal. Their report stated the manner of death is undetermined. Specially, the report noted that the cause of death is multiple, three, gun shots sustained during a confrontation with police. Since both the head and torso gun shot would have been fatal and the muzzle stamp around the head wound is consistent with the decedent's gun (i.e., self-inflicted), the manner of death is undetermined.

#### **E. LEGAL STANDARD AND APPLICABLE LAW**

The State must prove each element of a criminal charge by competent evidence beyond a reasonable doubt.<sup>8</sup> The KCPAO will file charges if sufficient admissible evidence exists, which,

---

<sup>8</sup> 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.<sup>9</sup>

In addition, the State must disprove the existence of a defense that negates an element of the crime.<sup>10</sup> 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.<sup>11</sup> Therefore, the State may be required to disprove one or more of the following defenses:

- Justifiable Homicide by Peace Officer;<sup>12</sup>
- Justifiable Homicide Defense of Self or Others;<sup>13</sup>

This incident occurred on November 8, 2021; therefore, the applicable Justifiable Homicide by a Peace Officer instruction would require the State to prove the officer acted without good faith.<sup>14</sup>

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

- WPIC 16.01 – Justifiable Homicide by a Peace Officer
- WPIC 16.05 – Necessary
- 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

---

<sup>9</sup> KCPAO Filing and Disposition Standards.

<sup>10</sup> WPIC 14.00.

<sup>11</sup> Id.

<sup>12</sup> RCW 9A.16.040; WPIC 16.01.

<sup>13</sup> RCW 9A.16.050(1); WPIC 16.02.

<sup>14</sup> 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.

## **F. 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.”

Given the evidence presented in this case, there is insufficient evidence to prove that Whittal died as a result of the officers’ actions because Whittal would have died as a result of a self-inflicted gunshot wound. Even assuming credible evidence tended to show that the Whittal died because of the officers’ actions, there is insufficient evidence to refute the affirmative defense that the officers’ actions were justifiable under the good faith standard and/or justifiable in defense of self or others. Therefore, the actions of Involved Officer 1, Involved Officer 2, and Involved Officer 3 were lawful, and the Team recommends that no criminal charges be filed against them or any other officer present during this incident.

Justifiable Homicide by a Peace Officer under the good faith standard and Justifiable Homicide in Defense of Self or Others contain related but distinct concepts and definitions. For instance, homicide or the use of deadly force is justifiable when used necessarily and in good faith 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. On the other hand, 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 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.



**1. Justifiable Homicide by a Peace Officer**

A peace officer acts in good faith if a similarly situated reasonable peace officer would have acted similarly. The peace officer must have probable cause to believe that the suspect, if not apprehended, poses a threat of serious physical harm to others. A threat of serious physical harm may include instances where the suspect threatens a peace officer with a weapon, displays a weapon in a manner that could reasonably be construed as threatening, or there is probable cause to believe the suspect committed any crime involving the infliction or threatened infliction of serious physical harm.

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.<sup>15</sup> “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.”<sup>16</sup>

In the current incident, the evidence and testimony are highly likely to demonstrate that Whittal desired to provoke a deadly confrontation with police, that police were informed he had fired a handgun, and that Whittal moved towards officers pointing a gun at them. There was probable cause to believe that Whittal posed a threat of serious physical harm if not apprehended and Whittal posed an immediate threat of serious physical harm to officers.

**2. Justifiable Homicide in Defense of Self or Others**

A homicide is 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 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.

---

<sup>15</sup> Graham v. Connor, 490 U.S. 386, 396, 109 S. Ct. 1865, 1872, 104 L. Ed. 2d 443 (1989).

<sup>16</sup> Id., 490 U.S. at 396-97.

Justifiable Homicide by a Peace Officer requires that, at a minimum, the harm to be avoided is “serious physical harm,” which is not defined by statute. However, 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 Whittal pointed a handgun at officers, the involved officers reasonably believed that Whittal intended to commit a felony, to inflict death, or to inflict great personal injury upon the officers.

**G. RECOMMENDATION FOR INQUEST**

An inquest is mandatory to determine the manner, facts, and circumstances of Whittal’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.

# **Attachment A**

WPIC 16.01 - Justifiable Homicide by a Peace Officer

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

Homicide or the use of deadly force is justifiable:

1) 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

2) 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. In considering whether to use deadly force to arrest or apprehend any person for the commission of any crime, a peace officer must have probable cause to believe that the suspect, if not apprehended, poses a threat of serious physical harm to others. Among the circumstances that may be considered by a peace officer as a "threat of serious physical harm" are the following: (a) The suspect threatens a peace officer with a weapon or displays a weapon in a manner that could reasonably be construed as threatening; or (b) There is probable cause to believe that the suspect has committed any crime involving the infliction or threatened infliction of serious physical harm. ~~Under these circumstances deadly force may also be used if necessary to prevent escape from the officer, when, if feasible, some warning is given.~~

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

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

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

WPIC 16.05 – Necessary

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

WPIC 16.02 – Justifiable Homicide – Defense of Self and Others

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

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

- (1) the slayer reasonably believed that the person slain intended to commit a felony<sup>17</sup> or to inflict death or great personal injury;
- (2) the slayer reasonably believed that there was imminent danger<sup>18</sup> 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.

---

<sup>17</sup> 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).

<sup>18</sup> Regarding imminent danger, the WPIC commented:

Imminence does not require an actual physical assault. A threat, or its equivalent, can support self-defense when there is a reasonable belief that the threat will be carried out. *State v. Janes*, 121 Wn.2d at 241 (citations omitted). While “immediate harm” means “occurring, acting, or accomplished without loss of time: made or done at once,” “imminent harm” means “ready to take place: near at hand: ... hanging threateningly over one's head.”

WPIC 2.04.01 – Great Personal Injury

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

WPIC 16.07 – Justifiable Homicide – Actual Danger Not Necessary

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

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



WPIC 16.03 – Justifiable Homicide – Resistance to a Felony

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

Homicide is justifiable when committed in the actual resistance of an attempt to commit a felony<sup>19</sup> 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.

---

<sup>19</sup> 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)