Non-Fatal Use of Force on
Steel Maharaj
Seattle Police Department: 2019FIT-0007

King County Prosecuting Attorney

Public Integrity Team

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LEESA MANION (she/her)
PROSECUTING ATTORNEY

King County

Office of the Prosecuting Attorney
CRIMINAL DIVISION
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000

I. INTRODUCTION

1. Purpose of the Memorandum

Pursuant to the Law Enforcement Training and Community Safety Act, an independent investigation must be completed when the use of deadly force by a peace officer results in death, substantial bodily harm, or great bodily harm.[1] [2] The independent investigation is conducted in the same manner as a criminal investigation and must be completely independent of the involved agency.[3]

The Revised Code of Washington requires the prosecuting attorney to represent the State of Washington and to prosecute all criminal actions in which the state or the county may be a party.[4] In addition to exercising its prosecutorial discretion to initiate criminal proceedings, the prosecuting attorney is mandated by law to review certain incidents regarding police use of force and to determine if sufficient evidence exists to support the filing of criminal charges.[5] Because the independent investigation and the prosecuting attorney's review are mandatory if specific criteria are met, the review of an incident by the King County Prosecuting Attorney's Office (KCPAO) does not implicitly signal that the use of force was either justified or that criminal charges are appropriate. Instead, the KCPAO is required to assist in an independent investigation involving police use of deadly force to enhance accountability and increase trust to improve the legitimacy of policing for an increase in safety for everyone.[6]

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[1] RCW 10.114.011. See also WAC 139-12-010.
[2] Upon law enforcement's request, he KCPAO will also review investigations into an officer's use of deadly force that does not result in death, substantial bodily harm, or great bodily harm, such as when an officer's gunfire does not cause injury.
[3] WAC 139-12-010.
[4] RCW 36.27.020(4).
[5] Except as required by federal consent decree, federal settlement agreement, or federal court order, where the use of deadly force by a peace officer results in death, substantial bodily harm, or great bodily harm, an independent investigation must be completed to inform any determination of whether the use of deadly force met the good faith standard and satisfied other applicable laws and policies. RCW 10.114.011. Similarly, if the Office of Independent Investigation is the lead investigation agency, the prosecutorial entity must review the investigation. RCW 43.102.020. 2021 c 318 § 101.
[6] Id. See also WAC 139-12-010.

2. 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, an administrative action by the involved agency, any civil action, or any inquiry, or other proceeding. Compared to a criminal prosecution, these proceedings involve different areas of the legal system, utilize different standards of proof, and may include evidence that is not admissible in a criminal prosecution. The KCPAO expresses no opinion regarding the propriety or likely outcome of any such actions. Topics that are relevant to matters outside the scope of this memorandum, such as department policy, procedures, or training, are included and reviewed to the extent those topics are relevant to assessing whether there is sufficient admissible evidence to file criminal charges.

3. Status of the Independent Investigation

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

II. OVERVIEW

On March 19, 2019, 911 operators received a call from a woman stating, "My husband has a gun and says he's going to kill himself." The woman provided her husband's name as Steel Maharaj (Subject), gave a physical description, and listed her address as 1620 Melrose Ave Unit 402 in Seattle. She also indicated he had just left the apartment and he intended to be killed via "suicide by cop."

Multiple Seattle Police Department (SPD) officers were dispatched to the scene. Contact teams formed to the north and south of the Subject, who was standing outside his apartment complex on Melrose Ave. Officers to the north took cover across the street behind a sedan. Officers to the south took cover behind a ballistic shield. Officers then heard the Subject manipulating a firearm consistent with chambering a round. Officers from the closer north

contact team ordered the Subject to drop the firearm. He declined and instead raised his firearm at the north contact team. After the Subject pointed his gun at officers, an officer on the north team fired a non-lethal launcher and within seconds four other officers from both teams fired their guns at the Subject approximately ten times, striking him in the upper left scapula, striking his T6 and T7 vertebrae, paralyzing him. The Subject then fell to the ground. Officers ceased firing and moved in to arrest the Subject and provide him with medical aid. During the investigation it was found that the Subject's firearm malfunctioned due to the ammunition being loaded incorrectly, so it is unclear whether the subject was attempting to fire at the officers. In cause number 19-1-02106-0 SEA, the Subject was charged with one count of first-degree assault for assaulting the four officers in the north contact team. He plead guilty to four counts of second-degree assault and was sentenced to 39 months in prison.

III. INVESTIGATION AND EVIDENCE

1. Force Investigation Team Reports – 2019FIT-0007
2. Witness Officer Statements SPD Incident - 2019-98802
3. Civilian Statements
4. Computer Aided Dispatches
5. Mobile Data Terminal
6. Other Police Reports
7. Search Warrant Material
8. Crime Scene Investigation
9. Fingerprint Report
10. Involved Officer Information
11. Subject's Medical Records
12. Seattle Fire Dept. Run Sheet
13. List of Training Completed by Involved Officers
14. Subject Information
15. 911 Call and Police Radio Traffic
16. Audio
17. Body Worn Video
18. In-Car Video
19. Other Video
20. Photos
21. Miscellaneous

IV. INVESTIGATION SUMMARY[7]

1. Factual Summary

The following information is based upon several sources, including, but not limited to, witness observations, police reports, the Seattle Police Department (SPD) computer aided dispatch (CAD) report, recorded police radio, 911 recordings, body worn video (BWV) cameras, and in-car video (ICV) cameras from March 19, 2019.

Aerial photo of the 1600 block of Melrose Avenue. Photo taken from Google Maps.

Figure 1: The Subject was standing outside of 1620 Melrose Ave (X). The north contact team was located across Melrose from the Subject (arrow up), and the south contact team was located to the right of the diagram near 1610 Melrose Ave. (arrow down)

21:19:54 A civilian female living in an apartment complex at 1620 Melrose Ave. in Seattle called 911 to report that her husband just loaded a handgun, left the apartment, and walked outside to kill himself.

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[7] The Investigation Summary is based upon the investigation and evidence outlined in Section III. When necessary, the Team will identify the source of the information. It is common for witnesses, including law enforcement officers, to provide multiple statements about the events witnessed. Similarly, it is common for multiple witnesses to provide information about the same event. If a witness provides multiple statements and the statement contains material and substantial differences that could affect the investigation or analysis, the Team will identify information that is materially and substantially different. However, if the information has a de minimis effect on the investigation or analysis, the differences may not be identified. Similarly, although some events may be observed by more than one witness, the Team may not summarize each witnesses' statement unless it has a material and substantial effect on the investigation and analysis.

21:21:15	Dispatch broadcasted a call of a suicidal subject with a gun going into the alley.
21:21:54	Dispatch updated units on the call that the subject was possibly in the alley, that the subject took the elevator one minute ago. The subject was described as a middle eastern male, 6'1", thin build.
21:22:09 - 21:22:37	Dispatch requested a unit with a shield and rifle. Witness Officer 3 responded that he could respond with a shield. Witness Officer 5 and Involved Officer 2 responded that they would respond with a rifle.
21:22:46	Dispatch broadcasted an update that the subject took the gun with him when he left and that he was loading it as he walked out.
21:23:19	Upon request from Involved Officer 4 for a suspect description, Dispatch repeated a description of the Subject - Steel Maharaj, middle eastern male, 6'1", thin, black shirt, black pants. Dispatch also broadcasted an update that the subject wanted to be killed by "suicide by cop."
21:26:16	Witness Officer 6 broadcasted, "We just heard a possible gun shot." (This likely was not a gunshot but the sound of Witness Officer 3's heavy ballistic shield falling out of his patrol car when he arrived on scene).
21:28:47	Contact teams were forming on the north and south side of Melrose Ave. Involved Officer 4, who was with the north contact team, stated that officers have "eyes on" one subject about halfway down the block, along the fence of the orange building.
21:28:56	Involved Officer 2, who was with the south contact team, acknowledged Involved Officer 4 stating that they also had "eyes on him." Involved Officer 2 said his team would move closer after first clearing a parking lot between the team and the subject.
21:29:26- 21:29:44	Witness Officer 1 began giving Steel verbal commands. She says, "Steel, it's the Seattle Police. Please put your hands up in the air. Do it now. Nobody wants to shoot you. I do not want to shoot you. Nobody here wants to shoot you. I just want to talk to you. But I can't talk to you with a gun in your hand…"
21:29:39	Involved Officer 4 radioed, "We have priority. This is our guy."
21:29:57	Witness Officer 1 says to Steel, "Do not point that gun at me." One loud bang is heard near the north team. Then a short pause and then gunfire from the south team is heard.
21:29:57	On Involved Officer 3's BWV footage just prior to hearing multiple gunshots, Involved Officer 3, who is on the south contact team says, "He's got a gun and he's pointing it. He just…"
21:30:05	Involved Officer 4 radioed, "Shots Fired!"
21:34:14	Involved Officer 2, who was armed with a rifle, told Witness Officer 3 that he fired twice.

2. Use of Force Investigation

The SPD Force Investigation Team (FIT) was requested to respond to the scene and to investigate.

3. Law Enforcement Witnesses

Witness Officer 1

Witness Officer 1 arrived later than other officers. She joined the three other officers in the north contact team who had already taken cover behind a red sedan across Melrose Ave. from the Subject. Two of the officers had their handguns drawn and the other had a less lethal launcher drawn. The Subject's back was towards the officers at the time. He was moving his hands in a manner that looked like he was loading a magazine or manipulating a gun; his movement made a metallic sound consistent with manipulating a gun. She heard another officer radio that he heard the Subject rack his gun, which was consistent with her observations. Another officer asked her to be the point person speaking to the Subject, so she addressed him in an attempt to deescalate the situation. She told the Subject that they were Seattle PD and ordered him to drop the gun. She was not optimistic that he would relinquish the gun given all that had taken place that evening. The Subject then turned around and said, "You're going to have to shoot me to get me to put this gun down." She told him multiple times that they did not want to shoot him. He was very aggravated and shook his left hand which held what appeared to be a gun. He said, "This is what I want." Other officers ordered him to put the gun down. The Subject then moved westward. Witness Officer 1 could only see his upper torso because a parked car blocked her vision of the Subject's hands. She told investigators:

> So, after I continued that dialog, after he had said your I'm not gonna put this down, you're gonna have to shoot me, he said some like this is what I want um and I lost sight of his hands and the next thing I see is his right hand come up and I see the barrel of the gun and hear one shot. And then I told him as I saw the barrel come up I just the way his body language was when he turned and faced me was I thought he was gonna shoot and that's when I said "do not point that gun at me" and immediately the gun came up and I looked down the barrel and I heard a one shot.

She dove for cover behind the car. She then checked herself for injuries, and then asked the other three officers if they were shot. She was positive that the Subject had fired his weapon at them. She then recalls a very short pause, then heard multiple gunshots, which she thought came from the other contact team to the Subject's south. She did not know at the time that Involved Officer 4, a member of her contact team, had fired his gun. The Subject fell down to the ground. His head was positioned to the north and his feet to south. She saw an object still in his right hand. Officers then moved in to arrest him and render aid.

Witness Officer 2

Witness Officer 2 was a part of the north contact team. He recalls Involved Officer 4 of the north team saying that he thought he heard a shot (likely Witness Officer 3 dropping his ballistic shield). When he arrived, he sought cover behind a car. He recalled that Witness Officer 7 was to his left armed with a 40 millimeter less lethal launcher. Involved Officer 4 was standing to his right, armed with a handgun. He then saw the Subject fumble with an object in his hands. Witness Officer 1 then arrived and joined their contact team. Witness Officer 1 stood behind them. He asked Witness Officer 1 to give verbal commands to the Subject, which she did. Witness Officer 2 attempted to get proper sight on the subject with the gun. Witness Officer 1 ordered Steel to drop gun. The Subject told officers, "You'll need to shoot me." Witness Officer 2 said his view was obstructed by a white truck. He then saw the Subject make a quick motion, but his view was partially obstructed by the truck, so he did not know whether the Subject was raising his firearm or not. He then heard a soft pop in his left ear (Witness Officer 7's launcher). Next, he heard a louder pop in his right ear (Involved Officer 4's handgun). The Subject then fell to the ground. When the officers left their positions of cover, he saw the Subject's gun on ground. The Subject was laying on his side or back. He and Officer Morland moved in to arrest the Subject. He cut away the Subject's clothing and assessed his injuries. He told investigators that he did not shoot because his handgun would have been ineffective at penetrating through the car between he and the Subject.

Witness Officer 3

Witness Officer 3 was a part of the south contact team. He arrived with a rifle and ballistic shield which he dropped when he arrived on scene, making a loud sound that at least one other officer believed was a gunshot. Upon observing the Subject standing outside 1620 Melrose Ave., he saw the shiny "glint" of gun in the Subject's hand as the Subject racked a round. Witness Officer 3 was armed with a rifle and had the red dot of his rifle trained on the subject. He told investigators that he chose to lower his rifle in order to supervise the other officers to ensure they were all in the correct position, which he realized was more important than having another officer with a firearm trained on the Subject. He recalled seeing the subject raise a gun at the other contact group, the north contact group, raising the gun from waist to his eye level before pointing it at the north contact team. He then heard one loud bang. Then, multiple officers fired their weapons, and the Subject fell to ground, which caused the acting sergeant to yell "cease fire."

Witness Officer 4

Witness Officer 4 was part of the south contact team. When he arrived on scene, he took hold of the ballistic shield that Witness Officer 3 brought to the scene. His contact team was 40-50 yards south of the Subject who was standing in front of an apartment building facing away from officers. He believes the Subject was only aware of the north contact team's presence and not their presence. Witness Officer 4 was unable to hear the orders the north contact team was giving, but saw the Subject respond to the orders by raising his gun and firing at the north contact team. He said the sound of a shot was faint and the muzzle flash was unusual looking. He then heard multiple gunshots fired from officers. He does not know which officers fired. He then saw the Subject fall like he was shot. Given the large distance between his contact team and the Subject, he believes that a bullet from one of the two officers with rifles struck the Subject. Witness Officer 3 and Involved Officer 2 were the officers armed with rifles.

4. Involved Officer Statement

Involved Officer 1, Involved Officer 2, Involved Officer 3, and Involved Officer 4 did not provide voluntary statements.

5. Crime Scene Investigation and Search Warrants

SPD's Crime Scene Investigation unit performed an investigation, documented the location of various items that appeared to have evidentiary value, and collected various items as evidence.

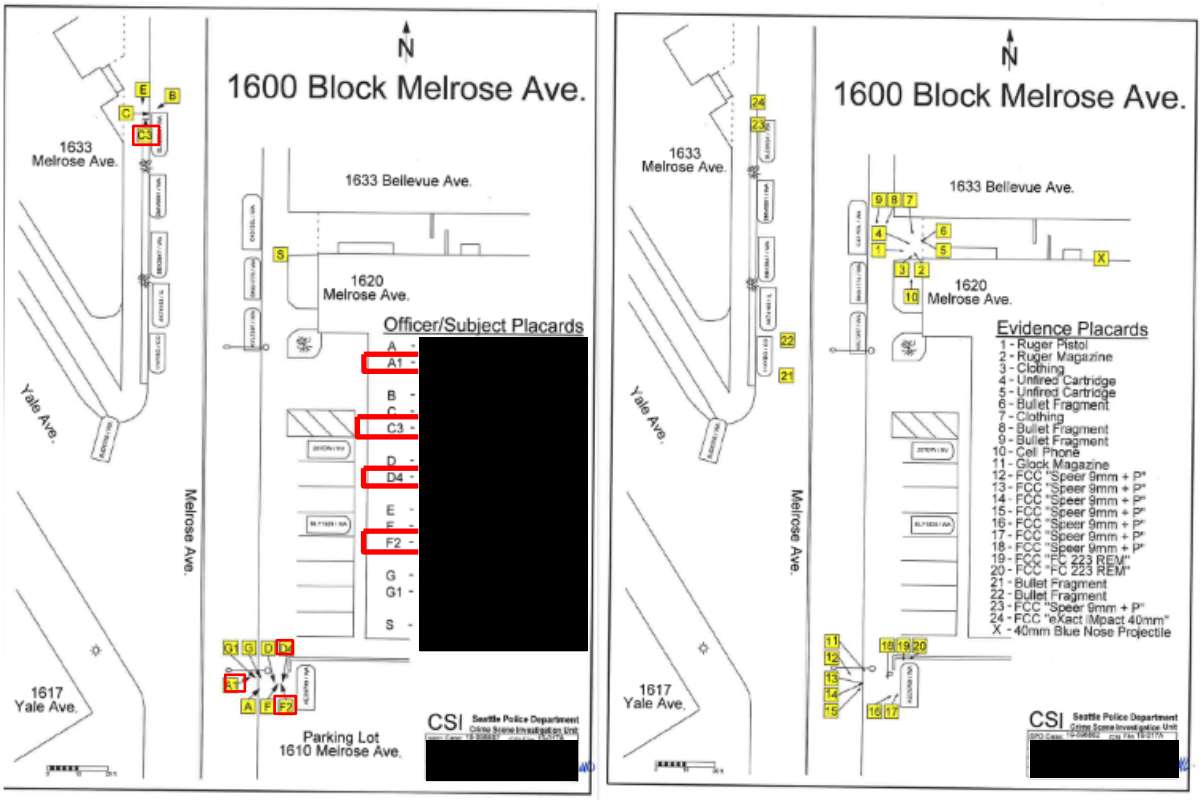


Figure 2: The diagram on the left depicts the location of the Subject as well as each officer at the time of the OIS. (Position of Involved Officers outlined in red). The diagram to the right depicts the location of the collected evidence. (Note: "FCC" stands for fired cartridge casings).

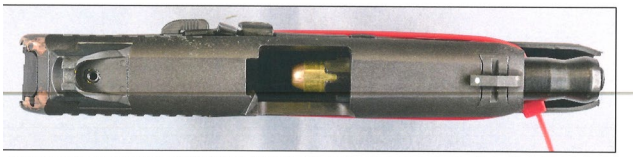
When the Subject's gun was recovered, one 9mm Luger cartridge was inserted halfway into the chamber with the bullet incorrectly facing backwards to the rear of the gun; the primer was facing forward. The cartridge head was stamped "FC 9MM LUGER." The slide of the pistol was out of battery and the breech face was pressed against the nose of the bullet. The slide had compressed the bullet into the cartridge case and the nose of the bullet was damaged by the breech face.

Evidence near the northwest corner of 1620 Melrose Avenue and apparent bullet defects to the wall at 1633 Bellevue Avenue. Defects are circled in red. View is to the north.

Figure 3: A Photograph of the location the Subject was standing when he was shot by police with evidence marked by yellow numbered placards. The red circles depict the bullet defects to the south facing wall.

In the photo above, Placard 1 depicts the Subject's firearm. Placard 4 marked an unfired cartridge with the headstamp "FC 9MM LUGER" and a jacketed, hollow point bullet, the same brand found in the Subject's gun. The bullet was compressed into the cartridge case and the nose of the bullet was damaged. Placard 5 marked a second unfired cartridge with headstamp "FC 9MM LUGER'" and a jacketed, hollow point bullet.

Side view photo of the Ruger LC9s semi-automatic pistol recovered at Placard 1.



Top view photo of the Ruger LC9s semi-automatic pistol recovered at Placard 1 with backwards cartridge and visible damage to the rear of the slide. The red zip-tie is in place for safety.

Figure 4: Photos of the firearm the Subject possessed and the chambered cartridge facing backwards.

The CSI Unit discovered six bullet defects to the apartment building's northwest wall, which faces south (*see* Figure, 3 above). Based on the angle of the defects, they were likely fired by members of the south contact team. An additional defect was found on a wall facing west, likely fired by an officer from the north contact team.

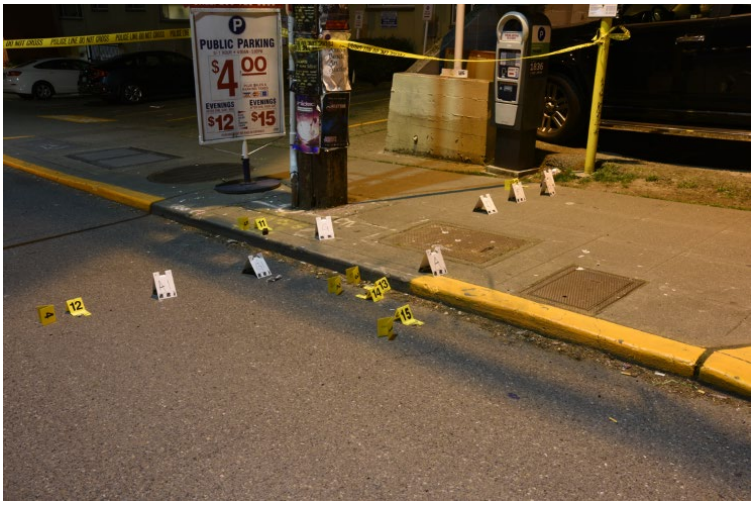


Figure 5: Evidence recovered from the south contact team.

CSI personal recovered a total of ten fired cartridge casings consistent with SPD duty ammunition. Eight were from pistols and two were from a rifle. No ballistics testing of the cartridge casings was provided to the KCPAO.

A total of eight defects were located which could possibly be attributed to rounds fired by officers. Six of these defects were to the south-facing wall of the building north of 1620 Melrose Avenue. Four were identified during the initial processing, and two were identified by Detective Conway during daylight. One defect was to the tree in front of 1620 Melrose Ave. One defect was to the west-facing wall at the northwest corner of 1620 Melrose Ave. In addition, Maharaj was struck by one round, for a total of nine strikes. One shot by officers was not accounted for.

A search warrant for the Subject's residence was obtained by investigators. On the floor, next to a computer desk, a detective recovered a box for a Ruger 9mm semiautomatic model LC9s, purchased from Wade's Eastside Gun along with a receipt showing the Subject as the purchaser. Antipsychotic medication in the Subject's name was also found inside the residence.

6. Processing of the Officers

Involved Officer 4

As part of standard practice, the FIT determined which officers used deadly force. Investigators determined that Involved Officer 4 discharged his handgun, a Glock model 17 Gen 4 semi-automatic pistol. Involved Officer 4's handgun contained one unfired cartridge in the chamber, sixteen unfired cartridges in the magazine, and that the magazine had a maximum capacity of seventeen cartridges.[8] Involved Officer 4's two spare magazines were each loaded with sixteen unfired cartridges and had a maximum capacity of seventeen cartridges.

[8] Handgun and rifle ammunition contain several distinct parts, which are often used interchangeably. A "cartridge" is a unit of ammunition, made up of a cartridge case, primer, powder, and a bullet. It may also be referred to as a "round" or "load." It is sometimes incorrectly referred to as a "bullet." The "cartridge case" is the container for all the components that comprise a cartridge. The "primer" is an explosive substance that ignites when struck to detonate the powder in a cartridge. The "powder" is the propellant in a cartridge." When a handgun or rifle is fired (also referred to as "discharged), the "bullet" is the projectile that is propelled by the force of gases produced by rapidly burning powder.

Involved Officer 4		
Location	Unfired Cartridges	Capacity
Chamber of handgun	1	1
Magazine – Seated	16	17
Magazine – Spare #1	16	17
Magazine – Spare #2	16	17
Total	49	52

Based upon the officers' BWV, all gunshots discharged by the officers occurred within a span of approximately three seconds.

The discrepancy between the number of unfired cartridges cases recovered from the involved officers' handguns and the number fired cartridge casings recovered at the scene is likely due to the involved officers' preferred loading procedure. Specifically, it is common for officers not to load a magazine to full capacity to ensure that the spring located inside the magazine functions properly.

Involved Officer 1

Investigators determined that Involved Officer 1 discharged his handgun. FIT reported that his handgun contained one unfired cartridge in the chamber, sixteen unfired cartridges in the magazine, and that the magazine had a maximum capacity of seventeen cartridges. Two of three spare magazines were each loaded with sixteen unfired cartridges and had a maximum capacity of seventeen cartridges. Involved Officer 1 dropped one magazine at the scene. It was found with only twelve cartridges.

Involved Officer 1		
Location	Unfired Cartridges	Capacity
Chamber of handgun	1	1
Magazine – Seated	16	17
Magazine – Spare #1	16	17
Magazine – Spare #2	16	17
Magazine – Spare #3	12	17
Total	61	68

Involved Officer 3

Investigators determined that Involved Officer 3 discharged his handgun, a Glock model 17 Gen 4, semi-automatic pistol. FIT reported that his handgun contained one unfired cartridge in the chamber, twelve unfired cartridges in the magazine, and that the magazine had a maximum capacity of seventeen cartridges. Involved Officer 3's three spare magazines were each loaded with sixteen unfired cartridges and had a maximum capacity of seventeen cartridges.

Involved Officer 3		
Location	Unfired Cartridges	Capacity
Chamber of handgun	1	1
Magazine – Seated	12	17
Magazine – Spare #1	16	17
Magazine – Spare #2	16	17
Magazine – Spare #3	16	17
Total	61	68

Involved Officer 2

Investigators determined that Involved Officer 2 discharged his rifle, a FN Model FN15, semi-automatic rifle, chambered for .223 Remington / 5.56 NATO ammunition. BWV footage confirms that he only fired a rifle. FIT reported that his rifle contained one unfired cartridge in the chamber, eighteen unfired cartridges in the magazine, and that the magazine had a maximum capacity of twenty-five cartridges. Involved Officer 2's spare magazine was loaded with twenty-five unfired cartridges and had a maximum capacity of twenty-five cartridges. Involved Officer 2 pistol, a Glock model 17 Gen 4, semi-automatic pistol, and his two spare magazines, were not missing any cartridges.

Involved Officer 2		
Location	Unfired Cartridges	Capacity
Chamber of Rifle	1	1
Magazine – Seated	18	25
Magazine – Spare #1	25	25
Total	44	51

7. Civilian Witnesses

Civilian Witness 1 was interview by Investigator 1 on March 19, 2019. Below is a summary of her interview. She is Steel Maharaj's wife. They moved to Seattle from Florida in 2011. She stated that on the night of the OIS, he threatened to pistol whip her, which is why she called the police. He told her that he did not want her to call the police and that he would shoot them if they came. She also said that he does not know how to shoot a gun despite owning one.

Regarding his mental state, she stated that he has been diagnosed as bi-polar and depressed. He recently began treatment with a psychiatrist who prescribed him medication which made him feel worse. He stopped taking his medication and going to treatment approximately two months before the OIS. He began to self-medicate with psychedelic mushrooms and Xanax. He had not gone outside their apartment in months, and he stopped eating. Leading up to the day of the OIS, she considered involuntary committing him. She said he was incoherent and could not keep his balance the day of the OIS. She also said he had threatened suicide before. She did not see the shooting.

8. Video Evidence

The officers on scene were equipped with BWV cameras during the use of force. Screenshots relevant to the Team's analysis are included below, including, if relevant, statements captured by the BWV. During this incident, the officers wore SPD uniforms, which were obviously marked "Police" and clearly indicated they were law enforcement officers. Based upon the officers' BWV, all gunshots discharged by the involved officers occurred within three seconds. Officers provided first aid to the Subject once the scene was secure, approximately two minutes after the last shot was fired.

Figure 6: A view from the north contact team approximately one minute before the OIS. This frame was taken from Involved Officer 4's BWV camera, showing the Subject across the street and Witness Officer 7 to Involved Officer 4's right.

Figure 7: A frame from Witness Officer 3's BWV camera less than one second before the OIS. It demonstrates the approximate distance between the south contact and the Subject. The brown building with the entrance lit up is where the Subject was standing when shot, though he is not visible in this frame. At this time in the incident, the officers were discussing moving to the left to find better cover when one of the officers says, "He's pointing a gun!" and the officers begin shooting.

Figure 8: A frame from Witness Officer 5's BWV camera showing the gunshot wound the Subject sustained.

V. LEGAL STANDARD AND APPLICABLE LAW

1. Burden of Proof

In a criminal prosecution, the State must prove each element of a criminal charged by competent evidence beyond a reasonable doubt.[9] 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.[10]

In addition, the State must disprove the existence of a defense that negates an element of the crime beyond a reasonable doubt.[11] 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.[12]

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

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[9] RCW 9A.04.100; WPIC 4.01.
[10] KCPAO Filing and Disposition Standards.
[11] WPIC 14.00.
[12] KCPAO Filing and Disposition Standards.

- Justifiable Homicide or Use of Deadly Force by Peace Officer[13]
- Lawful Force by Public Officer (applies to non-homicide charges)[14]
- Defense of Self or Others (applies to non-homicide charges)[15]

2. Applicable Jury Instructions

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

- WPIC 2.16 - Peace Officer
- WPIC 16.01 - Justifiable Homicide or Use of Deadly Force by a Peace Officer
- WPIC 16.05 - Necessary
- WPIC 17.01 Lawful Force—Public Officer or Others in Aid of Officer
- WPIC 17.02 Lawful Force—Defense of Self, Others, Property

VI. ANALYSIS AND CONCLUSION

1. Summary of Conclusion

The KCPAO declines to file charges against the involved officers because the Force Investigation Team and the Team's analysis reveal that the involved officers' actions were justifiable uses of deadly force by a peace officer. Criminal charges should be declined because the defenses are of such nature that prosecution would result in a complete defense for the accused and there is no substantial evidence to refute either affirmative defense.

2. Use of Deadly Force by a Peace Officer

a. Law Regarding Use of Deadly Force by a Peace Officer

i. ***RCW 9A.16.040(1)(b) – Actual Resistance to Legal Order & Good Faith***

[13] RCW 9A.16.040.
[14] RCW 9A.16.020(1), (2).
[15] RCW 9A.16.02(3).

One example of when deadly force by a police officer is justified by law occurs when an officer necessarily uses deadly force in good faith to overcome actual resistance to the execution of the legal process, mandate, or order of a court or officer, or in the discharge of a legal duty.[16]

A peace officer acts in good faith, an objective standard, when considering all the facts, circumstances, and information known to the officer at the time to determine whether a similarly situated reasonable officer would have believed that the use of deadly force was necessary to prevent death or serious physical harm to the officer or another individual.[17] Necessary means that no reasonably effective alternative to use the force appeared to exist and that the amount of force used was reasonable to effect the lawful purpose intended.[18]

b. Totality of the Circumstance Test - *Graham v. Connor*

In Graham v. Connor, the seminal case on evaluating police use of force, the United States Supreme Court determined that the test to determine whether the force used by the police was "reasonable" under the 4th Amendment is not capable of a "precise definition or mechanical application."[19] Instead, its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether the suspect is actively resisting arrest or attempting to evade arrest by flight.[20] In other words, the reasonableness of whether the officer's use of force is justified is determined by "the totality of the circumstances."[21]

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.[22] "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

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[16] RCW 9A.16.040(1)(b); WPIC 16.01.
[17] RCW 9A.16.040(4).
[18] RCW 9A.16.010; WPIC 16.05.
[19] Graham v. Connor, 490 U.S. 386, 396, 109 S.Ct. 1865, 1871-72, 104 L.Ed.2d 443 (1989).
[20] Id.
[21] Id.
[22] Id.

the amount of force that is necessary in a particular situation."[23] However, the inquiry is an objective one. The question is whether the officer's actions are "objectively reasonable" in light of the facts and circumstances confronting them.[24]

c. Seattle Police Department's Policies Relevant to Analysis

Given the holding in Graham v. Connor, it is common for a police department's policy manual and training curriculum to incorporate the standards set out by the United States Supreme Court. Since the jury must determine what a similarly situated reasonable officer would have believed, the police department's policy and training on the Subject is likely relevant to the determination of whether the officer used deadly force in "Good Faith" as defined by RCW 9A.16.040(3). The following excerpts of SPD policies were in effect at the time force was used by the involved officers and are relevant to the analysis of this incident:

8.100 – De-Escalation

When safe under the totality of the circumstances and time and circumstances permit, officers shall use de-escalation tactics in order to reduce the need for force.

8.200 – Using Force

An officer shall use only the force reasonable, necessary, and proportionate to effectively bring an incident or person under control, while protecting the lives of the officer or others.

Deadly force may only be used in circumstances where threat of death or serious physical injury to the officer or others is imminent. A danger is imminent when an objectively reasonable officer would believe that a suspect is acting or threatening to cause death or serious physical injury to the officer or others, and the suspect has the means or instrumentalities to do so, and the suspect has the opportunity and ability to use the means or instrumentalities to cause death or serious physical injury.

8.300-POL 4 Use of Force - Firearms

Officers shall only shoot firearms in situations where deadly force is permitted.

[23] Id. at 396-97.
[24] Id. at 397.

d. Analysis Regarding Use of Deadly Force by a Peace Officer

i. Prong (1)(b) – Actual Resistance to Legal Order + Good Faith

The evidence in the investigation showed that each of the four involved officer used deadly force to overcome actual resistance to the execution of the discharge of a legal duty. Here, officers were dispatched to Melrose Ave and Olive St after the Subject's wife reported to the 911 operator that he was suicidal and left their apartment armed with a loaded firearm. The caller stated that her husband's intent was to be killed via "suicide by cop." The law permitted the officers to take an individual into custody in this situation.[25] A police officer may take a suicidal individual into custody when there is reasonable cause to believe the person presents a serious harm or is in imminent danger to himself or others.[26]

The officers had reason to believe the Subject was armed and a danger to officers, and as the situation progressed, it developed into a situation where the officer would conclude that deadly force necessary to prevent death or serious physical harm to the peace officer or another individual.

When the involved officers located the Subject, he was turned away from officers manipulating a firearm. Multiple officers reported hearing the Subject racking his firearm which one officer reported to the other officers over his radio. This is consistent with the physical evidence collected at the crime scene, which shows two unused cartridges near the Subject's body after the shooting. Both cartridges were the same as those later found in the Subject's magazine. Although he was apparently trying to clear a jam, it was reasonable for the officers to conclude that he was loading a round into the gun's chamber. Either way, a person only loads a cartridge or clears a jam if they believe they may fire the weapon.

The Subject also never showed an interest in disarming himself and ending the situation peacefully. Before officers used force, Witness Officer 1 tried to deescalate the situation telling Mr. Maharaj that they did not want to hurt him. Mr. Maharaj told officers that if they wanted to disarm him, they would need to shoot him.

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[25] RCW 71.05.153.
[26] Id.

According to nearly every officer, Mr. Maharaj then pointed his pistol at the officers from the north contact team. There was a loud bang. Most officers believe this sound was the Subject firing at the north contact team. In fact, Witness Officer 1 said she was one hundred percent positive that Maharaj fired at officers. However, the sound was likely Witness Officer 7 firing his less lethal launcher at the Subject and not the Subject firing a shot. This conclusion is consistent with the physical evidence as there were no fired cartridge casings found near the Subject. Further supporting this conclusion, investigators found that the Subject had loaded the ammunition backward, so his firearm was incapable of firing. Despite the inoperability of his gun, the evidence is inconclusive whether or not the Subject pulled the trigger of his gun when he pointed it at officers. Whatever the conclusion, it does not take away from the reasonableness of the officers' belief that deadly force was necessary because although the Subject may not have fired a round, he pointed his firearm directly at them. As Witness Officer 1 told investigators, " I lost sight of his hands and the next thing I see is his right hand come up and I see the barrel of the gun." The involved officers had no way of knowing that the Subject loaded his ammunition backward and the gun did not pose a danger to them. To them, they believed he shot at them.

After the initial loud sound, there was then a short pause. Then, in the span of three seconds, Involved Officer 4 of the north team fired one shot; Involved Officer 2 of the south team fired two rifle rounds; and Involved Officer 1 and Involved Officer 3 of the south team fired three to four rounds each. According to the CSI unit, they collected ten fired cartridge casings. They observed eight bullet defects at the scene. One defect was to the west-facing wall at the northwest corner of 1620 Melrose Ave. Six bullet defects were to the south facing wall behind the Subject. One defect was to the tree in front of 1620 Melrose Ave. and one round struck the Subject. The round that struck the Subject was most likely fired by Involved Officer 2. This conclusion is supported by the fact that Involved Officer 2 was the only rifle officer who discharged his weapon, and Witness Officer 4, who was holding the ballistic shield for Involved Officer 2 and the south team, stated that an officer with a rifle was the most likely person to strike the Subject given the lengthy distance the south team was from the Subject, some forty-five plus yards.

Further, evidence in the investigation showed that the involved officers used deadly force with a good faith belief that their actions were necessary to prevent death or serious physical

harm to the officer or another individual. A factfinder would likely find that the officers acted in good faith because, under an objective standard, when considering all the facts, circumstances, and information known to officers at the time, a similarly situated reasonable officers would have believed that the use of deadly force was necessary to prevent death or serious physical harm to the officer or another individual. At the time of the use of force, the officers knew Mr. Maharaj was armed with a loaded weapon, racked a round in the gun's chamber, refused to disarm himself, and at the very least pointed the gun at Witness Officer 1's north contact team.

Further, a factfinder would also likely find that the officers use of deadly force was necessary because no reasonable effective alternative to use the force appeared to exist and the amount of force used was reasonable to effect the lawful purpose intended. Here, the north contact team attempted de-escalation, to which the Subject was not open. When Mr. Maharaj point a loaded gun at officers the officers had no reasonable alternative to force. Non-lethal force would not have been effective at stopping the Subject's perceived use of deadly force. Regarding the necessity of deadly force, it is worth addressing that decision of Witness Officer 7 to fire his less lethal rifle instead of a firearm. First, he stated that after seeing the Subject point a gun at his contact team, he did not have time to change weapons to a firearm. Additionally, the launcher was not effective at stopping the Subject's lethal conduct. A rifle round striking the Subject is what stopped the Subject's deadly conduct.

While compliance with SPD policy is not within the immediate scope of this memorandum, it is highly likely that a criminal prosecution would include testimony and evidence pertaining to SPD's policies regarding use of deadly force. Such testimony and evidence would likely be in the form of expert opinion, SPD's policy manual, and training information. The involved officers appeared to follow policy and training when using deadly force because death or serious physical injury to the officer or others was imminent once Mr. Maharaj point a loaded gun at officers.

ii. CONCLUSION

Therefore, based on the anticipated admissible evidence and testimony, which is corroborated by several witnesses including video evidence, the involved officers' actions were lawful and justifiable. Criminal charges against the officers are not supported by the evidence.

Appendix A

1. WPIC 16.01 - Justifiable Homicide by a Peace Officer

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

Homicide or the use of deadly force is justifiable:

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

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

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

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

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

2. WPIC 16.05 – Necessary

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

3. WPIC 2.16 Peace Officer—Definition

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

4. 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[27] or to inflict death or great personal injury;

(2) the slayer reasonably believed that there was imminent danger[28] of such harm being accomplished; and

(3) the slayer employed such force and means as a reasonably prudent person would use under the same or similar conditions as they reasonably appeared to the slayer, taking into consideration all the facts and circumstances as they appeared to him, at the time of and prior to the incident.

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

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[27] 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).

[28] 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."