

# **Use of Force Non-Fatality**

**Khamsao Vilaikham**

Seattle Police Department,  
Force Investigation Team, #2019FIT-0014



King County Prosecuting Attorney

Public Integrity Team

March 28, 2025



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**MEMORANDUM**

**USE OF FORCE NON-FATALITY**

**RE: KHAMSAO VILAIKHAM**

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**A. INTRODUCTION**

**1. PURPOSE AND SCOPE OF 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 there is sufficient admissible evidence to file criminal charges. 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>1</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 death, substantial bodily harm, or great bodily harm.<sup>2</sup> The independent investigation is conducted in the same manner as a criminal investigation.<sup>3</sup>

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<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. SPD is able to investigate its own officer involved shootings under its federal consent decree.

<sup>2</sup> RCW 10.114.011. See also WAC 139-12-010.

<sup>3</sup> Id.

The filing decision is based entirely on the investigation materials provided to the KCPAO, relevant criminal laws, rules of evidence governing criminal proceedings, the applicable burden of proof, and the KCPAO's Filing and Disposition Standards. This determination is not intended to address matters outside the scope of this memorandum including, but not limited to, administrative action by the involved agency or any other civil action. The Team expresses no opinion regarding the propriety or likely outcome of any such actions.

## **B. OVERVIEW**

On July 3, 2019, Seattle Police Department (SPD) Involved Officer 1 and Involved Officer 2, were partners riding in the same patrol car. Around 8:00 p.m., they were dispatched to the area of S Jackson St and 10 Ave S after multiple people reported seeing a person firing a gun. As they arrived on scene, they saw Subject, Khamsao Vilaikham who matched the description of the shooter. They exited their patrol car and contacted the Subject who was on foot. They ordered the Subject to stop and show her hands. She said she did not have anything in her hands and then proceeded to reach for a firearm. Both officers fired their handguns at her as the Subject threw the gun across the intersection. One of the officers' bullets struck Vilaikham in the right shoulder. She was given emergency aid and transported to Harborview Medical Center where she survived her injuries.

## **C. INVESTIGATION AND EVIDENCE**

- Police reports
  - Seattle Police Dept
  - King County Sheriff's Office
- Civilian witness statements
- CAD/MDT/Dispatch/911 calls
- Photos (387)
- Officer training transcripts
- Video
  - In-Car Video

- Body Worn Video
- Surveillance Video
- Subject's Medical/Fire Department/AMR Records

#### **D. INVESTIGATION SUMMARY**

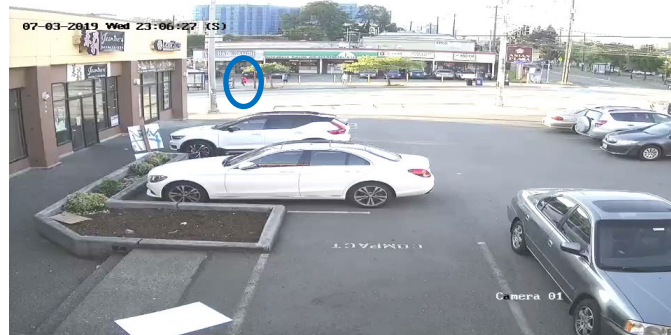
On July 3, 2019, sometime around 8:00 p.m. Civilian Witness 1's loaded Sig Sauer P365 handgun was stolen from his sedan at 12<sup>th</sup> Ave S and South Main St while he was inside a nearby restaurant picking up dinner.

A few minutes later, just one block away, Subject, Khamsao Vilaikham was captured on surveillance video holding what was later determined to be Civilian Witness 1's handgun.



*Figure 1: Still frame from Fresh Bubble Tea surveillance footage on the southwest corner of S Jackson St and 10<sup>th</sup> Ave S. The subject can be seen wearing purple pants holding a firearm in her right hand. The firearm was recovered after the subsequent OIS. Note, the footage's time stamp is not accurate.*

Video footage then captures the Subject place the handgun in her outfit and then cross S Jackson St on foot into the parking lot of Asian Plaza where Tamarind Tree Restaurant is located.



*Figure 2:* The blue circle shows the Subject wearing a red blanket, standing on the northside of S Jackson St after crossing the street.

At 8:07 p.m., Civilian Witness 2 and Civilian Witness 3 were in the parking lot of Tamarind Tree Restaurant on the northside of S Jackson St when they called 911 after seeing the Subject holding a gun. They reported that they saw the Subject fire one shot and then five additional shots. They said the Subject then walked westbound through the parking lot. Civilian Witness 2 thought the Subject was an Asian male and about 45 years old stating, “He had some kind of a blanket and as he swung the blanket around, um, I thought I glimpsed a dark handgun.”

Less than one minute later Civilian Witness 4 called 911 to report a woman shooting a gun in the same parking lot firing approximately five shots into the air with a black handgun, but not at anyone in particular. Civilian Witness 4 said she was familiar with the subject and said the subject was known to have mental health issues. The caller described the subject as a female, Vietnamese and Black, in her 30s, wearing purple clothing and carrying a red blanket.

The Subject was ultimately charged in cause number 19-1-03890-6 SEA with Second Degree assault of Civilian Witness 5. Civilian Witness 5 alleged that after the Subject fired a shot into the air in the parking lot on the northside of S Jackson, the Subject then pointed the firearm at Civilian Witness 5. Civilian Witness 5 said she believed the Subject was going to shoot him with the handgun when she pointed it at him. Civilian Witness 5 said that he was so scared that he could not move. He said the Subject then walked behind two vehicles and fired off two more shots before walking towards the Tamarind Tree sign and firing off another shot. The Subject then walked past Civilian Witness 5's vehicle and fired a fifth shot into the air before walking westbound on S Jackson St. This information was not contained in the dispatch

recordings, so it appears that neither involved officer was aware of this information; it is only mentioned for context and to explain the route the Subject walked before encountering police.

Involved Officer 1 and Involved Officer 2 were dispatched to the scene. They were in the same unit. Involved Officer 1 was the driver, Involved Officer 2 the passenger. They were both equipped with Body-Worn Video (BWV) and their patrol car was equipped with In-Car Video (ICV). As they arrived on scene from the west, they passed the Subject walking westbound on S Jackson St at 12<sup>th</sup> Ave S. Involved Officer 2 told Involved Officer 1, “Whoa. There’s a dude in purple with a red blanket.” Involved Officer 1 stopped the patrol car. BWV then shows both officers exiting the car and walking west on S Jackson St towards the Subject.



*Figure 3:* Map of the scene. S. Main St and 12<sup>th</sup> Ave S, top right, is where the gun was stolen. 1043 South Jackson, bottom right, is where the Subject is first captured on video footage from Fresh Bubble Tea holding the stolen gun. Tamarind Tree Restaurant is pictured on the north side of Jackson St. To the left of the map is scene of the OIS, which occurred on the southwest corner of S. Jackson St and 10<sup>th</sup> Ave S. just outside the Thai Binh Apartment building.

The officers’ BWV shows that at 8:12 p.m. they exited their patrol car drawing their handguns and pointing them in the Subject’s direction. As the officers walked westbound on S Jackson St towards the Subject, they both officers yelled at her, “Stop. Show me your hands!” The Subject was standing on southwest corner of S Jackson St and 10th Ave S outside the Thai Binh Apartment building. The two officers were on the southeast corner on the opposite side of the crosswalk from the Subject. They had no cover. The officers then ordered the Subject to stop and to sit down. The Subject stopped, walk slightly towards the officers and said, “I don’t have anything.” She then dropped the bag and red blanket she was holding in front of her displaying a

handgun in her right hand. She then turned her back towards the officers and made an affirmative motion forward with her right arm, the arm whose hand was clutching the handgun. Involved Officer 2 then fired. Approximately 0.2 seconds later the Subject threw the firearm into the air. As the Subject made this affirmative motion forward with the gun, Involved Officer 1's vision was likely at least partially blocked by Involved Officer 2's body as Involved Officer 1 walked behind Involved Officer 2 from right to left. When Involved Officer 1 regained his vision on the Subject, he fired his weapon. From the quality and angle of the video, it is not possible to tell if Involved Officer 1 began firing before or after she threw the firearm. It is difficult to tell from the videos when each officer fired each shot, but Involved Officer 2 appears to have fired first and all four shots from the officers were fired within approximately 1.5 seconds. One of those rounds struck the Subject in the right shoulder and exited her right tricep. It was not determined which officer's shot hit her. The officers then immediately approached the Subject and provided medical aid placing a tourniquet above her right shoulder to stop any bleeding.

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*Figures 4-9:* The top two frames, 4 & 5, are from Involved Officer 2's BWV. The first frame shows Involved Officer 2 first shot; the Subject is holding the gun when he fired. The remaining frames, 6-9, are from Involved Officer 1's BWV showing the Subject throwing the handgun pictured in the red circle, flying a crossing 10<sup>th</sup> Ave S. It ultimately landed on the southeast sidewalk.

SPD's Force Investigation Team (FIT) investigated the shooting, and the Homicide Unit investigated the underlying crimes. On the southeast corner of 10<sup>th</sup> Ave S, the stolen handgun was recovered. The magazine had ejected and was lying near the gun as was one loose round of ammunition.





Figures 10-12: The Subject's gun, magazine, and loose round picked on the southeast corner of 10<sup>th</sup> Ave S.

Four spent cartridge casings were also recovered in the street where the officers fired at the Subject.



Figure 13: Evidence markers 4-7 are the officer's spent cartridge casings. The patrol cars pictured in this photo are not the involved officers' car.

After the shooting, both Involved Officer 1 and Involved Officer 2 were processed. Both Officers carried department issued Glock Model 17 Gen 4 handguns. Involved Officer 1 was missing three rounds and Involved Officer 2 was missing one round. A total of four possible

bullet strikes from the officers were identified at the scene – two to the concrete pillar directly behind the subject, one to a wooden utility cover both directly behind the subject, and the fourth to the Subject’s right shoulder.

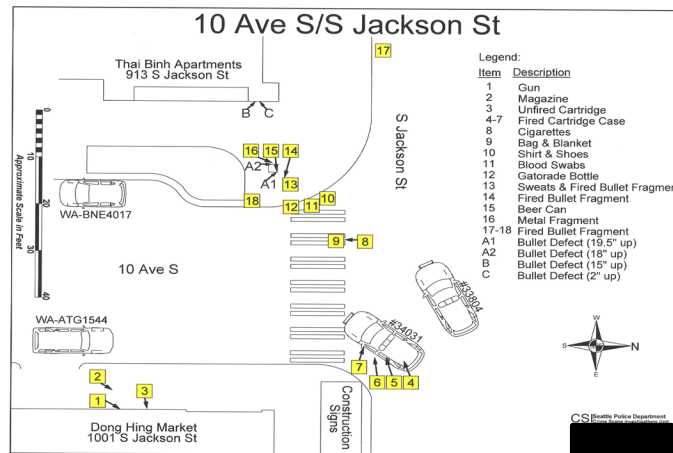


Figure 14: Evidence map of OIS generated by Crime Scene Investigation Team.

At the first scene, the parking lot of Fresh Bubble Tea, one spent cartridge casing was recovered. At the second scene, the parking lot of Tamarind Tree Restaurant, five spent cartridge casings were recovered. This is consistent with the 911 callers’ statements that they heard the Subject fire six shots prior to the OIS.

Neither officer provided a voluntary statement to investigators.

### E. LEGAL STANDARD

The State must prove each element of a criminal charge by competent evidence beyond a reasonable doubt.<sup>4</sup> In addition, the State must disprove the existence of a defense that negates an element of the crime.<sup>5</sup> The State 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 fact-finder.<sup>6</sup>

<sup>4</sup> RCW 9A.04.100; WPIC 4.01.

<sup>5</sup> WPIC 14.00; *Patterson v. New York* (1977), 214–15 (holding, if a statute indicates an intent to include absence of a defense as an element of the offense, or the defense negates one or more elements of the offense, the State has a constitutional burden to prove the absence of the defense beyond a reasonable doubt.)

<sup>6</sup> KCPAO Filing and Disposition Standards.

Additionally, 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.<sup>7</sup> Therefore, the State is required to prove beyond a reasonable doubt that the shooting officer did not act in in self-defense.

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

- WPIC 16.01 – Justifiable Homicide—Peace Officer or Others in Aid of Officer
- WPIC 16.05 – Necessary

## **F. ANALYSIS AND CONCLUSION**

### **1. Use of Deadly Force by Public Officer**

An officer’s use of deadly force is justifiable when necessarily used by a peace officer acting in “good faith” to overcome actual resistance in the discharge of a legal duty.<sup>8</sup> “Good faith” is an objective standard.<sup>9</sup> 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.<sup>10</sup> The term “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.<sup>11</sup>

In deciding whether a peace officer acted in good faith, one should consider all the facts, circumstances, and information known to the officer at the time.<sup>12</sup> 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. “The calculus of reasonableness must embody

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<sup>7</sup> Id.

<sup>8</sup> RCW 9A.16.040(1)(b).

<sup>9</sup> RCW 9A.16.040(4).

<sup>10</sup> Id.

<sup>11</sup> WPIC 16.05.

<sup>12</sup> Id.

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>13</sup> The State has the burden of proving beyond a reasonable doubt that the officer’s use of force was not justifiable.<sup>14</sup>

Here, Involved Officer 1 and Involved Officer 2 were responding to a potential active shooting. They knew that the Subject was armed and had fired randomly into the air approximately six times before they arrived. However, they appeared unaware of the Subject’s assault of Civilian Witness 5. The area was busy. There were civilians in the area as it was dinner time and there are numerous restaurants in the area where they were dispatched. Prior to discharging their weapons, they ordered the Subject stop, show her hands, and sit down. The Subject said she did not have anything, presumably referring to a weapon. She then dropped her belongings and reached for a firearm which was previously not visible to the officers. The Subject then wound up and threw the firearm across 10<sup>th</sup> Ave S. The officers then fired their weapons at the Subject a total of three times, hitting her once in the arm. It appears from the video as though she was struck by the bullet just after throwing the firearm. The whole exchange between the time she dropped her belongings, and the officers fired took less than three seconds.

A person is entitled to act on appearances in defending themselves if the person believes in good faith and on reasonable grounds that they are in actual danger of injury, although it afterwards might develop that the person was mistaken as to the extent of the danger.<sup>15</sup> Involved Officer 1 and Involved Officer 2 were forced to react in a split-second to the Subject’s actions. They had no way of knowing what the Subject’s intentions were when she ignored their orders, brandished a firearm, and made an affirmative motion forward with the hand that was clutching the handgun . They could assume that she intended to fire the gun as she had just done six times earlier. The law does not require them to wait to see if the Subject is going to shoot at them before they react. They are able to act on appearances so long as they are reasonable, and the facts here demonstrates that they were. That Ms. Vilaikham intended to disarm herself by lobbing a loaded gun across a street is not an outcome that any reasonable officer would predict

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<sup>13</sup> Graham v. Connor, 490 U.S. 386, 396, 109 S. Ct. 1865, 1872, 104 L. Ed. 2d 443 (1989).

<sup>14</sup> WPIC 17.01.

<sup>15</sup> WPIC 17.04; State v. Miller (1926) 141 Wash. 104, 105-106.

after ordering a shooting suspect to stop and show their hands. Additionally, the officers stopped firing and provided immediate medical aid to the Subject after it was clear that she was no longer a threat. As a result, both officers acted in good faith when they fired their weapons at the Subject.

**G. CONCLUSION**

For the foregoing reasons the State declines to file charges against Involved Officer 1 and Involved Officer 2.