

# **Use of Force Non-Fatality**

**Kevin Wiggins**

Valley Independent Investigative Team  
Renton Police Department, #2021-11451



King County Prosecuting Attorney  
Public Integrity Team

October 30, 2023



## I. INTRODUCTION

### A. 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 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 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>

The Special Operations Unit Public Integrity Team ("the Team") has determined that the investigation into this matter is complete. The determination whether to file charges is based entirely on the 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.

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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. 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.

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

<sup>4</sup> Id.

## II. OVERVIEW

On the evening of November 21, 2021, Involved Officer 1 and Involved Officer 2 were dispatched to a 911 call for an active home invasion robbery at 24303 16th Ave. S. in the City of Des Moines. When they arrived at the residence, both officers walked down the driveway. As Involved Officer 2 approached the front door, a great deal of gunfire was exchanged between unknown people inside the house. Involved Officer 1 and Involved Officer 2 immediately took cover behind a parked truck in the driveway whereupon they heard additional gunshots and observed the subject, Kevin M. Wiggins, shatter the home's large picture frame window facing the driveway, jump through it into from inside the home to the driveway, and run towards them armed with a gun. According to Involved Officer 1 and Involved Officer 2, Wiggins pointed his firearm at them. Both officers said Mr. Wiggins' actions made them afraid for their lives causing them to fire multiple rounds at Wiggins. None of the officers' rounds hit Wiggins. As Wiggins ran from the officers, a second suspect, who was likely also carrying a firearm, jumped out of the house through the window and fled through the victims' backyard. Wiggins fell to the ground after running a short distance down 16<sup>th</sup> Ave. S. He could no longer run after being shot while inside the house. A firearm and taser were beside him. No magazine was inserted into the firearm. The second suspect was detained a few blocks away with gunshot wounds to both legs, likely also sustained from the gunfire inside the home. During the investigation four handguns used by civilians in this incident were recovered, as well as a large amount of spent cartridge casings. There was extensive property damage inside the home as a result of the gunfire.

## III. SUMMARY OF INVESTIGATION<sup>5</sup>

### A. ITEMS REVIEWED

See attached *Appendix*.

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<sup>5</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 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.

**B. SCENE**

The Valley Independent Investigative Team (“VIIT”) was activated because officers from one of its member agencies, Des Moines PD, were involved in a shooting. Renton PD was assigned as the lead investigating agency for the officer-involved shooting (“OIS”) and they photographed the scene. Auburn PD processed the involved officers. Federal Way PD created a 3D map of the location. Port of Seattle PD and Kent PD canvassed the area for video and witnesses. Kent PD also assisted Tukwila PD with investigating the home invasion robbery.

The weather that evening was extremely cold for the area. The dewpoint was 36 degrees and the low temperature for the day was 34 degrees. The location just off the driveway where the officers took cover was muddy, and this was made worse by the many law enforcement officers that responded to assist in locating the second suspect who fled through the backyard.

The residence where the home invasion robbery occurred is on the west side of 16<sup>th</sup> Ave. S., which runs north to south. South 243<sup>rd</sup> St, which runs east to west, is just north of the crime scene and terminates at 16<sup>th</sup> Ave. S. There is a driveway on the southern end of the property. A white Toyota Tacoma truck with bullet damage was parked in the driveway. Cartridge casings were scattered near the back of the truck. To the north of the driveway is the large koi pond. Directly west of the koi pond is a shattered large picture frame window and the front door of the residence.



*Figure:* Location of officer involved shooting with 16<sup>th</sup> Ave. S. running north to south and S 243<sup>rd</sup> St. running east to west.

**C. TIMELINE**

The timeline below was created using CAD, dispatch recordings, and surveillance from 24303 16th Ave. S. and 1618 S. 243rd St.

<u>TIME</u>	<u>OFFICER</u>	<u>DISPATCH</u>	<u>Neighbor Video</u>	<u>Victim's Video</u>	<u>Description of Event(s)</u>
20:38:35		PD33			Reporting Party (RP) believes friend on scene and will arrive in 2 mins.
20:39:54	DAVID-3				Arrived on scene.
20:39:55	DAVID-4				Arrived on scene.
20:40:41	DAVID-3			:01	Involved Officer 2 approaching from door trailed by Involved Officer 1. Involved Officer 2 seen keying up his mic.
				:01-:04	Gunfire (GF). Trying the (GF) door. Shows Involved Officer 2 walking up to front door- <b>7 shots</b> are heard during this time frame.
				:02	Involved Officer 1 is seen redirecting away from the front door as Involved Officer 2 continues towards door.
			:28-:42		Hear GF commence.
				:04	Involved Officer 2 is heard announcing "POLICE DEPARTMENT" then Involved Officer 1 directs him to "GET BACK."
			:31		Hear Involved Officer 2 announce "POLICE DEPARTMENT."
				:05	Involved Officer 2 follows towards Involved Officer 1 and is seen unholstering his weapon.
				:06	A thud is heard and the front door and the red door moves slightly. The stationary Halloween decoration affixed to the porch light starts to slowly spin as it has been jostled.
20:40:46		PD33			3D Was that at the door?' (no response from officers)
				:06-:13	A minimum of <b>10 shots</b> heard from within the residence.
				:11-:22	Involved Officer 2 and Involved Officer 1 are both behind the rear of a white truck parked in the carport. They activate the motion light from the east side of the carport and are lit for several seconds. The light goes off at :22.
20:40:53	DAVID-4				"3D 4- Hold the air (possible GF) send me (possible GF) whoever is available."
				:12-:13	Involved Officer 1 is heard saying, "2D4- Hold the air" then her voice is drown out by GF.
20:40:57		PD33			"Airs closed-all units to 3D4 & 3D3-24303 16th Ave."
				:13-:18	A minimum of <b>3 shots</b> are heard from within the residence.
				:23	A loud thud is heard then glass breaking.
				:24	Small glass splinters explode out towards the road, a cloud of discolored light air is exiting from the window. Due to light pollution from the porch light it is unknown if it is muzzle flash, suspects breath or a combo of both.
				:24	Involved Officer 2 is heard yelling, "POLICE DEPARTMENT" repeatedly but the exact language is drowned out by the breaking of glass and commotion.
					Loud bang and Involved Officer 2 yelling "POLICE DEPARTMENT! DROP THE GUN! DROP THE GUN! DROP THE GUN! DROP IT NOW! Then GF
			:52		

				More glass and thin white slats from the blinds protrude out the window. A male in red, black and gray jumps and falls to the ground onto his back tangled up in the blinds.
			:27-:29	Video shows the male in red, black and gray with a black firearm in his right hand. Male is getting up from being on his back. Gun initially pointed towards the sky, as male gets to his feet and starts running south, with the gun still in his hand pointed in the direction of the officers. The male runs towards the truck where the officers are behind cover.
			:29-:31	Involved Officer 2 can be heard loudly yelling, "GET ON THE GROUND!" and "DROP IT NOW!"
			:31-:32	A second male suspect in a gray hooded sweatshirt and dark pants jumps out the window and lands on the ground. END OF VIDEO.
		1:02		Last frame of the video a poof of dust comes from the right of the camera view and appears to be the moment there is a bullet strike or a bullet fragment hits the home where the video is affixed.
20:41:38	3D3			D3 ONE AT GUN POINT! IN THE STREET!
20:41:42		PD33		One at gunpoint in the street.
20:41:45	3D3			"FIRED! Officers OK." (shots may have been cut off in transmission).
20:41:49		PD33		"Shots fired Officer fine."
			3D2	D2... one suspect down on the ground in the street, still moving, could be more in the house.
			6D3	6D we got communication with people inside, looks like this might be a home invasion, we don't know if we have anybody else outstanding. Can you find me a K-9? K955's enroute. K955 did you copy?
20:47				6D1 And 3D2 we're gonna try and drag the suspect over to fire.
			1D2	1D2 this is an apparent armed robbery we have two suspects one in the street and one outstanding.
			6D3	We are evacuating the house. We have multiple children and a couple females.

**D. CIVILIAN INTERVIEWS**

**i. Civilian 1**

Civilian 1 is a resident of 24303 16th Ave. S. and was home with her three young boys when Kevin M. Wiggins and Leevon D. Whitney, strangers, entered her house. She said that when the robbery occurred she was in her room on her phone browsing the internet. She heard a notification that the backdoor had been opened. The first suspect, Kevin M. Wiggins, entered the room wearing a mask. He was armed with a small black handgun and taser. He ordered Civilian 1 to put her hands behind her back and lay down. Wiggins then zip tied her hands. A second suspect, Mr. Whitney, then entered her room. Civilian 1 still had her phone, which allowed her to dial 911 twice. The first suspect, Wiggins, demanded her money and jewelry, which she gave up. He then demanded she open the safe; but she told him they did not own a safe. Her three kids

were brought into the room with her. Wiggins threatened to tase her if she did not open the safe. She then sent text messages to her husband stating that they were being robbed. Wiggins grabbed the phone out of her hands. He threw the phone across the room, cocked his firearm, and told her, "You're done!" He then threatened to burn the house down.

Civilian 1's friend, Civilian 2, then entered the house and the suspects brought her into the room and zip tied her hands. Civilian 1 heard one of the suspects tell the other, "It's time to go!" and they left the room. A couple minutes passed, and Civilian 1 heard gunshots being exchanged within the house. Civilian 1 believed her friend, Civilian 3, Civilian 2's husband, was exchanging gunfire with the suspects. After gunshots ceased, Civilian 1 was the first to leave the bedroom. Civilian 1 told the police that she lived there and not to shoot. She also told the police that her children were inside. At that point all of the victims exited the residence.

Civilian 1 told investigators that the incident was possibly recorded by her porch video surveillance camera. She did not observe the officer involved shooting.

**ii. Civilian 2**

Civilian 2 and her husband, Civilian 3, arrived at the residence around 7:00PM to play with the dogs they co-own with the Civilian 1's family. Civilian 2 left her husband in the backyard and went towards the house. She saw that the backyard door was open. When she entered, the house was quiet. She decided to get some food in the kitchen. She noticed that the dog bowl had spilled on the kitchen carpet and the dog was acting oddly. She was trying to calm the dog when one suspect came out from the bedroom, approached her and told her to be quiet and come into the master bedroom. When she did, he told her to lay down and put her hands behind her back. She was able to hear a second suspect's voice, but never saw his face. That person said, "We need to leave soon!" She then heard them leave the room. The women locked the bedroom door after the suspects left them. The house was quiet and then Civilian 2 heard gunshots. After the gunshots ceased, Civilian 2 cut off one of her zip ties and walked out of the room toward the front of the house. Civilian 2 saw police lights and approached the broken front window where the police ordered her to put her hands in the air.

**iii. Civilian 3**

Civilian 3 was interviewed by Port of Seattle PD detectives. Civilian 3 said the residence in question at 24303 16th Ave. S. belongs to his friends Civilians 1 and 4. Civilian 3 had

primarily come to the house that night, with his wife Civilian 2, to take care of a dog he co-owns with Civilian 4. Civilian 3 arrived at the house shortly before 7:00PM and briefly saw Civilian 4 before Civilian 4 left for work. Civilian 3 went straight to the fenced backyard through a side gate to spend time with the dogs. Civilian 3 and Civilian 2 were outside for roughly an hour before Civilian 2 went inside the house. Shortly after she went inside, Civilian 3 received a text message from Civilian 4 asking if he was still at the house. Civilian 3 did not hear the text, and Civilian 4 followed up by calling him. Civilian 4 told Civilian 3 that he had received word from his wife that the house was being robbed.

Civilian 3 said he was skeptical at first and thought it may have been a joke. He went inside the house through a set of French doors off the backyard patio. The back doors access a recreation room, which Civilian 3 went through to enter an open kitchen and dining room. As Civilian 3 exited the recreation room, he saw two males standing in the dining room. Both males were facing Civilian 3.

One was holding a large, red suitcase at chest level and the other was pointing a handgun in Civilian 3's direction. Civilian 3 did not see anyone else and he believed the males knew he had entered the house, as an audible notification through the house alarm system stated, "back door open" when he came through the door. Civilian 3 said he panicked and freaked out. Civilian 3 did not recognize the males but knew they were not supposed to be in the house, especially after Civilian 4 had just told him the house was being robbed. Civilian 3 was scared and worried for his wife, who was somewhere inside the house. Civilian 3 quickly ducked back into the recreation room and pulled out his Smith and Wesson .380 Bodyguard handgun, which he kept on a waist holster. The gun had six rounds in the magazine and Civilian 3 believed there was a round in the chamber. Civilian 3 stepped back out of the recreation room with his handgun to see what was going on and confronted the two males. The one male had his handgun pointed towards Civilian 3 and they exchanged gunfire. Civilian 3 said it all happened so quickly he does not know who started shooting first, but the other guy was definitely shooting back. Civilian 3 recalled seeing drywall dust from the opposing gunshots and it seemed like the other guy was firing more rounds. When Civilian 3's gun went empty, he ran out of the house through the backdoor and hid by a bush in the backyard. Civilian 3 feared for his life and was worried the suspects would come after him. Other than one of them saying, "Oh Fuck!" during the exchange of gun fire, Civilian 3 did not recall them saying anything. Civilian 3 estimated they were about 10-15 feet apart, and during the exchange, they moved from the dining room to the living room. Civilian 3 said he had feared for his life and thought he was lucky he did not get shot.



When Civilian 3 ran into the backyard, he could see police lights from the front of the house. He also heard a bunch of gunfire, but he could not tell where the shots were coming from. He was not sure if the suspects were still firing at him or exchanging fire with the police. Civilian 3 heard one of the suspects run into the backyard, and he first thought they were looking for him. The suspect then jumped the backyard fence. The backyard had been dark, and Civilian 3 did not get a good look at the suspect and did not know which one it was. While Civilian 3 was hiding in the back, he spoke with Civilian 4 by phone. Civilian 4 told Civilian 3 he was home, and Civilian 3 was directed to leave the backyard through the side gate with his hands up. Before leaving, Civilian 3 left his empty handgun in the holster and put it on a wooden fish tank stand at the side of the house.

**iv. Subjects Kevin Wiggins and Leevon Whitney**

Neither provided a statement to investigators.

**E. VIDEO EVIDENCE**

Neither involved officers' body-worn video camera ("BWV") was turned on prior to the shooting so the incident was not captured by their BWV. However, portions of the incident were captured by the victims' and neighbor's home surveillance cameras, which are detailed below.

**i. Video from 24303 16th Ave. South**

This motion activated surveillance camera is manufactured by Arlo. According to the lead investigator, once activated it records for 30 seconds which is why the recording stops during the middle of the exchange. Seattle PD Detective Officer 1 broke the video down frame by frame to help the lead investigator analyze the video footage.

The footage shows the two officers approach the home on foot. Involved Officer 2 is taking lead and moving towards the front door. As Involved Officer 2 starts to inform dispatch that they are attempting contact with the residence, gunfire erupts inside the residence. Involved Officer 1 reacts first and starts moving away from the front door towards a truck/carport to the south. During this time Involved Officer 2 is announcing "POLICE DEPARTMENT!" Involved Officer 1 orders him to retreat. Involved Officer 2 immediately unholsters his pistol and joins

Involved Officer 1 behind the cover of a truck parked in the carport. Involved Officer 1 calls for any available units to respond. The volley of gunfire inside the residence lasts approximately 21 seconds. After approximately 2 seconds another pop is heard then loud banging can heard originating from within the residence. A male (later positively identified as Kevin Wiggins) takes a running shoulder strike to the front picture window attempting to break through, but the window does not break. A second shoulder strike from Wiggins' is successful and the large picture window shatters. During the investigation investigators learned the front door was deadbolted with key access only, so the only method of exiting the residence was through the window or out the back door where armed Civilian 3 was last seen. Wiggins jumps out of the front window tangled in blinds with a gun in his right hand. Wiggins lands on his back in between the house and the Koi pond where you can still see a gun in his right hand. Wiggins immediately jumps to his feet and starts running in a south/southwest direction towards Involved Officer 2 and Involved Officer 1 with the gun up and still in his right hand. Involved Officer 2 can be heard yelling commands "police" and "drop the gun" while a second suspect is seen jumping through the same picture frame window, landing face down on the ground. The video then abruptly ends.



*Figure:* View of truck and front door of 24303 16th Ave. S. taken from 16th Ave S.



*Figure: Frame #516 – Involved Officer 2 (left) and Involved Officer 1 (right) taking cover behind the truck.*



*Figure: Frame #704 – Mr. Wiggins on the ground after jumping through the glass window carrying a firearm in his right gloved hand.*

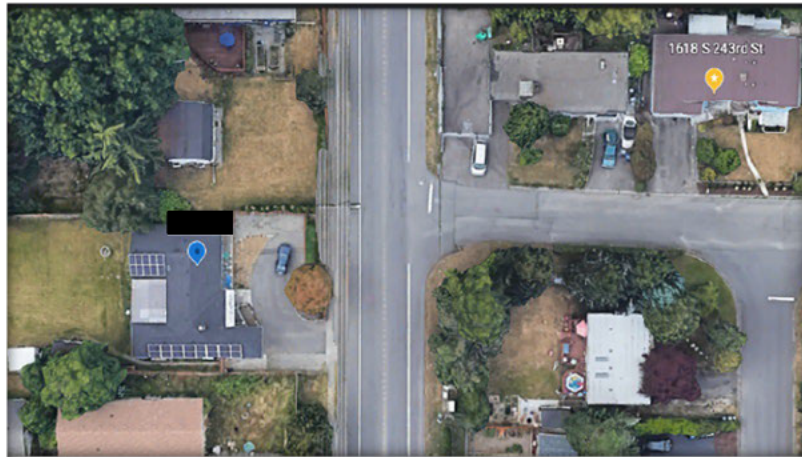


*Figure:* Frame #721 – Mr. Wiggins pointing a gun at officers who are still behind the truck. The light from the flashlight depicts their location.



*Figure:* Frame # 737 – A 2<sup>nd</sup> suspect jumps through window; Mr. Wiggins is now next to the truck where the officers are standing. The video ends at this point.

ii. **RING Video: 1618 S 243<sup>rd</sup> St., Des Moines, WA**



*Figure:* Demonstrates the location of the video camera in relation to the victim's residence. The home on the left is the victims' home. On the right is 1618 S. 243<sup>rd</sup> is where the video camera was located.

Although the camera does not capture the incident on video, the audio from the camera provides a much clearer audio recording of the exchange because it is not distorted by the sound of gunfire and breaking glass.



*Figure:* The crime scene is blocked by trees. However, audio captures key moments of incident.

As officers approach the victims' residence one can hear Involved Officer 2 yell, "Police department." Prior to firing their service weapons one can also clearly hear Involved Officer 2 order Mr. Wiggins numerous times to drop his gun. Involved Officer 2 yelled, "Police Department. Drop the gun! Drop the gun! Drop the gun! Drop it now!" After those commands,

gunfire begins. A bullet struck the camera hitting the house, as well. It was likely fired by Involved Officer 2, but that cannot be said conclusively.

**F. WRITTEN STATEMENTS:**

**i. Involved Officer 1**

Involved Officer 1 wrote a statement detailing her encounter. The statement is not dated, but was received by Renton PD approximately two weeks after the incident. She wrote that at approximately 10:30PM, she responded to a residence at 24303 16th Ave. S. in Des Moines regarding a call about suspicious circumstances. Prior to arriving on scene, dispatch advised the reporting party (RP), whom was not at the location, received a message from his wife that the above listed address was being robbed. He advised his wife and children were within the home and a possible male family friend was also at the location. She and Involved Officer 2 arrived at the location at approximately the same time, but in separate cars. She smelled a strong odor of cannabis and observed lights on inside the residence. While approaching the front door, she did not immediately hear or see anything out of place. It seemed very quiet.

As she neared the front door with Involved Officer 2, she heard multiple pop-like sounds coming from within the home. Based on her training and experience she recognized the sounds to be gunfire and believed someone was being shot at or that there was some kind of shooting going on inside the home. She instructed Involved Officer 2 to move back from the front entrance and they moved to a place of cover behind a white pickup truck, which had been parked in the driveway of the involved residence. She believed that someone's life inside the residence was in danger so she drew her firearm from the holster. She wrote that she was afraid that a family had just been murdered. As they got behind the vehicle, she radioed to dispatch to restrict the radio traffic and to send her any available units. She wrote that she was afraid that if there was anyone left alive in the house they would soon be murdered. She thought the suspect had killed people inside and was going to now come after her. She wrote that she needed to help the people inside the house and try not to be killed herself.

As Involved Officer 1 and Involved Officer 2 positioned themselves on the driver side of the white pick-up truck, Involved Officer 1 saw the front eastward window of the residence break out. She saw and heard the breaking of the glass and saw a person coming out of the window in the front of the house. She wrote that this all happened very fast between the shooting inside and the person now kicking out the window. She announced herself as a police

officer in a loud voice. She could then see it was a male and saw a gun in his hand. It looked like a big handgun as she saw it come through the broken window, pushing through the window blinds.

Almost immediately, the male that was coming through the broken window began firing rounds of bullets towards Involved Officer 1 and Involved Officer 2. She could hear the sound of the shots and feel the heat and pressure from the bullets as they passed near her head. She thought she was going to die and feared for her life, and the life of her partner, Involved Officer 2. She wrote that she was also fearful for the lives of innocent by-standers. She feared for the lives of the reported family members and children within the home if anyone was still alive. She believed if the male was able to flee, innocent lives would be in imminent danger and immediate risk of injury or death based on his wonton disregard for human life. She was being met with deadly force and it was all happening very fast.

She wrote that she had no time for any other means of force to defend herself other than using deadly force. Her life was in immediate danger and she believed that any hesitation would cause her death or the death of Involved Officer 2, so she returned fire. While shots were being fired, the male continued towards the roadway. He had to run past the passenger side of the truck to get to the roadway. A second unknown male exited the residence from the broken window, passing through the collapsing window blinds. He did not appear to be armed. He ran and climbed over the south fence. She lost sight of him, but still maintained her line of sight on the first male.

The male with the handgun made it to the center of the roadway before she saw him go to the ground and fall flat on his stomach. She could see the gun on the ground in the roadway just out of reach and he attempted to push himself up while reaching for the gun. She believed that he was attempting to reach for the firearm to continue shooting at whoever was in his way.

She went to engage her firearm again and observed the slide was locked back. She attempted to drop the magazine, but it did not dislodge and was not dropping. She was in shock that she might not be able to defend herself. She does not carry a backup gun. She wrote that all she was trying to do was stay alive and fix the gun. She made a lateral movement in the side yard and took a kneeling position near the south fence line. She was finally able to pull the magazine from her firearm and inserted a fully loaded one.

She held her kneeling position, with her firearm at low-ready, and maintained her line of sight on the male in the roadway. The gun was not pointed at anyone and there was no gunfire at this point. She did not perceive an immediate threat. She yelled verbal commands at the suspect

something to the effect of, "Show me your hands and do not reach for the gun." She continued holding that position and yelling commands until additional units arrived. Other units quickly arrived, and they moved in to render aid to the male.

**ii. Involved Officer 2**

Involved Officer 2 also wrote a statement detailing his encounter. His statement is also not dated. It states that on November 21, 2021 at approximately 2030 hours he was dispatched to a residence at 24303 16th Ave. S. in the City Des Moines. The 911 caller said that a robbery inside his home was in progress. Involved Officer 2 was the first to arrive on scene. Involved Officer 1 arrived shortly after. The house appeared very dark inside. The blinds of the large front picture window were closed. Involved Officer 2 approached the front door to knock on it. Involved Officer 1 took cover behind a pickup truck parked in the driveway to Involved Officer 2's left. As he approached the door he heard popping sounds consistent with gunshots though he could not tell if they were associated with the residence. Involved Officer 2 yelled, "Police Department" twice. Involved Officer 1 told him to take cover behind the truck, which he did. He was positioned closer to the front door of the residence than Involved Officer 1. He wrote that he drew his firearm in the "sul"/low and ready position. Involved Officer 2 saw a male suspect run up to the window and body slam the window. In the suspect's right hand was a black handgun. When the suspect's body hit the window, the window did not break. Involved Officer 2 shouted, "Police Department." He saw the suspect break through the window. He again shouted, "Police Department" and yelled twice at the suspect, "Drop the gun! The suspect jumped out of the house through the window, and fell to the ground. He then heard Involved Officer 1 order the suspect multiple times to drop the gun. He pointed his pistol at the suspect. The suspect stood up and looked in the direction of Involved Officer 1 and Involved Officer 2. The suspect began running eastward towards 16th Ave. S. As he passed Involved Officer 1 and Involved Officer 2, he raised the pistol in his right hand towards the officers. Involved Officer 2 then aimed his pistol at the suspect and fired. He said that the suspect fired his pistol at the officers. He saw Involved Officer 1 return fire and then fall to the ground on her left side. Involved Officer 2 continued to return fire at the suspect rotating his body to follow the suspect as the suspect ran east out of the house. The suspect ran east to 16th Ave. S., which meant Involved Officer 2 no longer had cover from the pick-up truck. He continued to fire at the suspect. The suspect reached the yellow markers on the roadway that divide the middle of 16th Ave. S. Involved Officer 2 saw



the suspect turn towards him and raise his gun in his right hand. Involved Officer 2 wrote that he believed that if the suspect continued to run, Involved Officer 2's would exceed the effective range of his pistol, he decided stopping his movement to prevent the suspect from harming him or other individuals was the highest priority. He aimed his pistol at the suspect's pelvic girdle. Involved Officer 2 then fired and the suspect fell to the ground with an apparent gunshot wound to his left thigh. The suspect, who was laying on his back, immediately dropped his gun, and put his hands in the air. Involved Officer 2 shouted for the suspect to keep his hands up. Involved Officer 1 also yelled at the suspect to keep his hands up. Involved Officer 2 could see that blood was beginning to pour out of his left leg onto the ground. He asked Involved Officer 1 if she was ok, and she replied "yes." Involved Officer 2 said that he activated his push-to-talk radio microphone. He advised dispatch there was an officer involved shooting, the officers were ok, and he had one suspect at gun point in the roadway of 16th Ave. S. In the process of activating his microphone he looked to his left, towards the pick-up truck, and observed multiple gunshot entrance holes in the vehicle's body that appeared consistent with the suspect shooting towards him. He saw the lights of incoming units flash over the suspect on the ground, and heard shouts from other officers. He ejected the magazine from his service pistol, letting it fall freely to the ground, and replaced it with a fully loaded magazine from the carrier on his external ballistic vest. Involved Officer 1 told him her right elbow hurt badly and asked him to check her for a gunshot wound. He checked Involved Officer 1 for gunshot wounds. He found none. He directed Involved Officer 1 to maintain cover on the residence, while he covered the suspect as responding units approached

#### **G. ARREST OF SUBJECTS KEVIN WIGGINS AND LEEVON WHITNEY**

Mr. Wiggins was arrested on 16th Ave. S. just south of the residence. In his possession were a Springfield handgun, zip ties, and a prod-style taser. He sustained gunshot wounds to his face and knee; neither were caused by police gunfire, but from the gunfight with Mr. Civilian 3 inside the home. Law enforcement provided Wiggins with immediate medical assistance and he was transported to Harborview Medical Center.

Mr. Whitney fled southwest through the backyard after jumping out of the picture frame window. He ran through a number of backyards before being arrested near S. 245<sup>th</sup> St. He sustained gunshot wounds to both legs likely sustained from the gunfire inside the home though that cannot be said definitively because the bullet or bullets that struck him were never

recovered. When he was arrested he was not in possession of a firearm, but possessed over \$14,000 in cash.

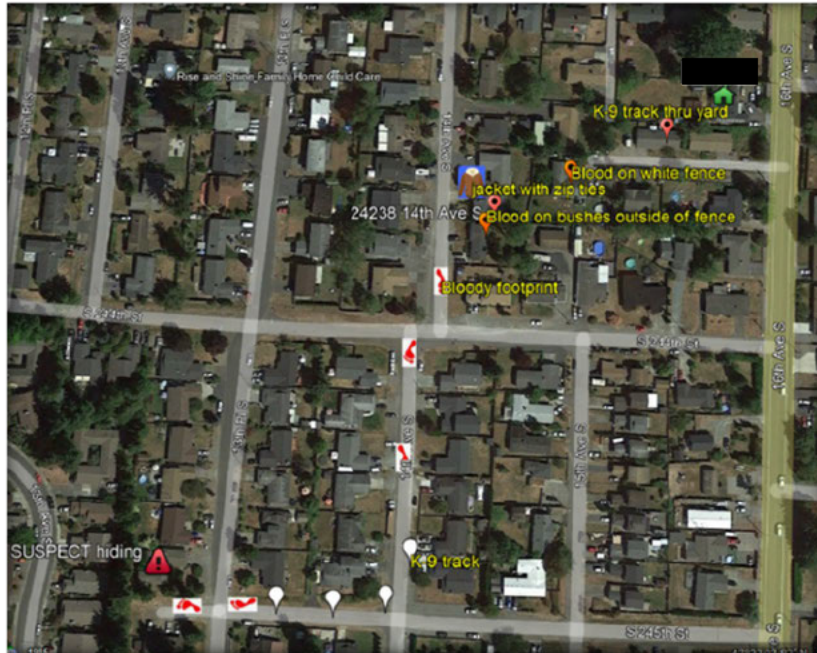


Figure: Map showing direction Mr. Whitney fled before being arrested.

## H. RECOVERED EVIDENCE

In the backyard of the residence, Tukwila PD recovered a .380 caliber Smith and Wesson Body Guard handgun, belonging to Civilian 3. From inside the residence, Tukwila PD recovered a .45 caliber Taurus PT 145 handgun, 14 spent cartridge casings (six .380 casings and eight .45 caliber casings), and 10 bullet fragments.

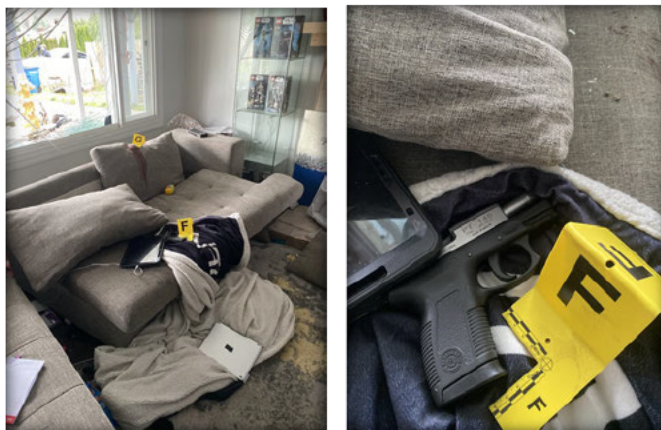


Figure: Photos of Taurus handgun found on couch in the front of the window the subjects jumped out of. The gun was fired dry.

Just outside the broken window Renton PD recovered a Ruger Security 6 revolver containing six spent casings.



*Figure:* Photo is of the shattered picture frame window.



*Figures:* Left is a photo of the revolver found just outside of the broken window. Right shows the 6 cartridge casings from the revolver. All were spent.

In the street next to Mr. Wiggins, Renton PD recovered one 9mm Springfield XD9 handgun which was missing its magazine, along with one taser stick and unused zip ties. The gun's magazine was never recovered.



*Figure:* Photograph of the Springfield handgun and taser recovered next to subject Wiggins when he was arrested on 16<sup>th</sup> Ave. S.

The white Toyota truck in the driveway was shot six times.

One of Involved Officer 1's magazine was recovered near where she took cover. It contained 13 live rounds. One of Involved Officer 2's magazine was recovered, as well. It contained live 2 rounds.

Not all the spent casings were recovered. That is, in part, due to the darkness, muddy conditions from where the officers fired, and the area was well trodden because many law enforcement officers who responded to assist in locating the second suspect ran through the crime scene.

From the front yard, eight 9mm cartridge casings were recovered as well as numerous bullet fragments. One 9mm fragment was recovered inside a box fan located in the window frame of the bedroom window immediately north of the front door. Another 9mm fragment was found lodged inside the home of 1618 S. 243<sup>rd</sup> St., which is northwest of the crime scene.



*Figure:* Photograph of the truck the officers took cover behind. Bullet damage can be seen on the right fender. Evidence markers to the left of the tailgate signify cartridge casings fired by officers during the incident.

## **I. OFFICER PROCESSING**

Auburn Police Department personnel processed the involved officers at the Des Moines Police Department. Involved Officer 1 carried a Glock 17 model 9mm handgun loaded with Luger Speer 9mm rounds. It was missing a gun light which was knocked off during the tumult. One round was chambered in the firearm. The magazine seated in the firearm had a 17 round capacity and contained 17 rounds. On her tactical vest there was space for two magazines, however, one was missing. She told detectives that she left one magazine at the scene. It was recovered and contained 13 live rounds. Involved Officer 1 stated that she loads her weapon with 18 rounds - one chambered round plus a full 17 round magazine. As a result, it appears that she fired approximately 5 times.

Involved Officer 2 also carried a Glock 17 model 9mm handgun. A round was chambered. The seated magazine contained 17 rounds of Luger Speer 9mm bullets. The capacity of the magazine is 17 rounds. Like Involved Officer 1, Involved Officer 2 only had one of two backup magazines. The one he possessed was filled to capacity. The missing magazine was recovered at the crime scene and contained 2 live rounds. Involved Officer 2 loads his weapon with 18 rounds. Since one round was chambered and two live rounds from his initial magazine were recovered, it appears he fired approximately 15 bullets.

## **J. LAW ENFORCEMENT EXPERIENCE**

At the time of the incident Involved Officer 1 had 9 years of law enforcement experience, the last 6 were with Des Moines Police Department. Involved Officer 2 had three years of law enforcement experience, less than one year of which was at Des Moines Police Department.

## **K. FORENSIC REPORTS**

### **i. DNA Testing**

WSP Forensic Scientist 1 analyzed the blood recovered from the tailgate of white truck, the broken glass window, and the bench from outside of the broken window. The same male's DNA profile was obtained from each sample. The DNA profile was then entered into CODIS,

the combined DNA Index System, and matched the DNA profile of Kevin Wiggins.<sup>6</sup>

## ii. Ballistic Testing

WSP Forensic Scientist 2 analyzed the firearms, cartridge casings, and bullets recovered from the crime scene.

The Springfield, Smith & Wesson, and Taurus firearms were test fired and were found to be operable.

Two of the recovered 9mm Luger casings were found to have been fired from Involved Officer 1's weapon. One casing, Placard #10, below, was found behind the white truck where she took cover. The second casing, placard #35, below, was located along the south fence which is near the white truck.

Two bullet fragments fired from her weapon were recovered, one near the Koi pond just east of the front door, and the second near the tailgate of the white truck.



*Figures:* Casings marked by placards #10 and #35 were fired by Involved Officer 1. Placard #11 is a bullet fragment from Involved Officer 1's gun. The casing marked by placard #9 was fired by Involved Officer 2. In the bottom photograph, the red arrow pointing behind the orange bucket indicates the location of a bullet fragment fired from Involved Officer 1's weapon.

<sup>6</sup> A known sample from an individual must be submitted to the crime lab before a match can officially be confirmed.

Six of the recovered 9mm Luger casings were fired from Involved Officer 2's weapon. The casings were located behind the white truck marked by evidence placard #9, #13, #14, #24, #33 and #34. This pattern demonstrates that Involved Officer 2 was shooting from the south or southeast side of the carport possibly close to the south fence of the residence.



*Figures:* Casings marked by placards #13, #14, #24, #33 and #34 were fired by Involved Officer 2.

Four of the recovered bullet fragments were also found to have been fired from Involved Officer 2's gun. One under the rear driver side tire of the truck. One from a blue box fan located in the bedroom window to the right/north of the homes' front door. This bullet first passed through the frame of the front door, which protrudes outward from the house towards 16<sup>th</sup> Ave. S.

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*Figures:* Placard #18 is the location of the first fragment. The red arrow to the right of the front door is the location the path another bullet took before it hit the blue space fan seen in the window to the right of the door. The red arrow in the far right photos show the blue box fan from a different perspective.

There were 6 bullet strikes on the white Toyota truck, all traveling away from where the officers sought cover. One bullet fired from Involved Officer 2 was recovered under the white truck. Two additional bullets from his weapon were found in the front passenger seat of the white truck.

As mentioned above, one bullet from his weapon was also recovered from the south side of a northeast carport pillar. Another went through the door frame of the home's front door and into the north bedroom window.

Additionally, one bullet fired from a police firearm was found at another residence catty-corner from the crime scene. Due to the damage to the bullet itself, it is unclear whether Involved Officer 1 or Involved Officer 2's gun fired this bullet although it was likely fired by Involved Officer 2.

The six spent .380 caliber casings recovered from inside the home were found to have been fired from civilian Civilian 3's Smith & Wesson .380 handgun. Six recovered bullets or bullet jackets were found to have been fired from this gun - two were recovered from subject Wiggins' body, one lodged in Wiggins'; tongue and the second in his knee. Three were found in various locations inside the home.

Eight recovered casings were found to have been fired from the .45 caliber Taurus



firearm recovered at the scene on the living room couch just below the broken front window. This gun is suspected to have been fired by Mr. Wiggins. Three bullet fragments fired from the Taurus were also found inside the home.

Two other bullet fragments inside the home either originated from the Ruger revolver found under the shattered glass window, or Mr. Civilian 3's Smith & Wesson firearm. While ballistics could not determine which gun fired these bullets, all six bullets that Mr. Civilian 3 fired have been accounted for.

#### **L. TRAJECTORY ROD ANALYSIS**

Renton PD. Detective Officer 2 concluded that all six bullet strikes in the victims' 2020 Toyota Tacoma truck (WA/C52022T) were traveling in a SE to the NW direction and appeared to originate from the driver's side rear of the truck, the area where the officers sought cover.



*Figure:* Photograph depicts trajectory analysis performed by Renton PD. The bullet holes are pushed inward which, in part, shows they were from the officer shooting from this position of cover as opposed to being caused by gunfire coming toward them from Mr. Wiggins.

#### **IV. FACTUAL ANALYSIS**

When Involved Officer 1 and Involved Officer 2 arrived at 24303 16<sup>th</sup> Ave. S. they were aware that they were responding to a dangerous situation, an active home invasion robbery. As the two officers approached the house seven shots were fired from within the house. Involved Officer 1 immediately identified the sounds as gunfire and took cover behind a white truck in the resident's driveway in order to protect herself. A few seconds later, Involved Officer 2 also took cover behind the same truck. Given the substance of the 911 call and the sound of gunfire from

within the house, Involved Officer 1 later wrote that she was afraid that the family inside the residence had been murdered. Both officers unholstered their firearms. Only a couple seconds later, there were an additional 10 or more gun shots originating from inside the residence. Involved Officer 1 wrote that she was afraid that if there was anyone left alive inside the house they would soon be murdered. She thought the suspect may now come for her and Involved Officer 2 who were only a short distance away. Demonstrating the gravity of the situation, she requested the dispatcher send any available units to the location and for all other officers to “hold the air,” meaning to mute themselves, so that she could communicate with dispatch without any interruption. A few seconds later, another 3 gunshots were fired from inside the residence. This is consistent with the physical evidence; twenty cartridge casings were recovered from the gunfire inside the residence. Then roughly 5 to 10 seconds later, Involved Officer 2 saw an armed suspect, later determine to be Mr. Wiggins, run shoulder first into the picture frame window facing the driveway in an attempt to crack it and flee. Investigators were later told by residents that the front door was deadbolted and required a key to unlock it, which Mr. Wiggins did not have. The window did not initially break. A few seconds after the first failed attempt, Mr. Wiggins successfully broke the window. Officers saw glass shatter everywhere and then Mr. Wiggins jumped through the window armed with a handgun. Mr. Wiggins likely shot out the front window, but investigators were unable to conclusively determine that. Mr. Wiggins then got back onto his feet, still holding a firearm in his right hand and ran in the officers’ direction eastbound towards 16<sup>th</sup> Ave. S. The resident’s surveillance camera stopped recording before Mr. Wiggins reached the officers, but audio of this exchange, from a neighbor’s surveillance camera captures Involved Officer 2 yelling prior to shooting, “Police Department. Drop the gun! Drop the gun! Drop the gun! Drop it now!” Involved Officer 2 later wrote, “I saw the suspect stand back up, and look in the direction of Involved Officer 1 and me. The suspect began running eastward towards 16th Ave S., as he passed Involved Officer 1 and me, he raised the pistol in his right hand towards us. I aimed my pistol at the suspect and fired it. The suspect fired his pistol at myself and Involved Officer 1. I saw Involved Officer 1 return fire, and then fall to the ground on her left side.” It is unclear whether Involved Officer 2 believed the suspect’s gunfire struck Involved Officer 1.

Involved Officer 1 wrote, “Almost immediately, the male that was coming th[r]ough the broken window started firing rounds of bullets towards Involved Officer 2 [sic] and myself. I could hear the sound of the shots and feel the heat and pressure from the bullets as they passed near my head.” She wrote that she feared for her life, Involved Officer 2’s life, and the lives of the family

inside the residence. "I was being met with deadly force and it was all happening very fast," she wrote. She stated that she had no time to use any other means of force, beside lethal force, to defend herself. She returned fire, she wrote, because she believed that her life was in immediate danger and that any hesitation would cause her death or the death of Involved Officer 2.

Although, the victims' surveillance video cut out before Mr. Wiggins reached the truck, his blood was found on the passenger side of the truck demonstrating that he was just a few feet away from the officers while still holding a handgun. Six of the officers' shots struck the side panel of the white truck behind which they took cover. Involved Officer 1 then saw a second suspect, later identified as Leevon Whitney, jump through the broken picture frame window, run towards the fence, and jump the fence. There is no evidence that either officer shot at Mr. Whitney.

Involved Officer 2 wrote that as Mr. Wiggins passed him, he began rotating his firearm and body in clockwise direction to track Mr. Wiggins who ran past him towards the street. Involved Officer 2 wrote that he continued to return fire at Mr. Wiggins. This shooting pattern is consistent with the physical evidence which shows one of Involved Officer 2's shots struck the door frame of the home's front door and another struck a neighbor's house across the street.

Next, according to Involved Officer 2, Mr. Wiggins reached the middle of the street, east of the officers, turned towards the officers and pointed his firearm at the officers. Involved Officer 2 wrote that he shot again at Mr. Wiggins in order to protect both himself and others. Next, Mr. Wiggins fell to the ground. Involved Officer 2 believed that one of his shots struck Mr. Wiggins in the left leg causing him to fall to the ground and drop his gun. However, ballistics evidence shows that Mr. Wiggins sustained that gunshot wounds and a second gunshot wound to the face from a non-police issued firearm. Involved Officer 1 said that Mr. Wiggins continued to reach for the firearm while he lay on the ground.

Officers provided medical aid to Mr. Wiggins and Mr. Whitney after they were each handcuffed. Both men survived their injuries.

When Mr. Wiggins was arrested, a Springfield Arms handgun was next to him on the street, which corroborates a portion of Involved Officer 2's account that Mr. Wiggins pointed his firearm at the officers. Mr. Wiggins' firearm was missing a magazine, and no spent cartridge casings from his firearm were recovered by investigators. Although it appears that the officers' perception that Mr. Wiggins fired at them is incorrect, it bears noting that investigators were also not able to locate many of the spent casings fired outside the home due to the location being

dark, muddy, and numerous officers trampling over the crime scene in their attempt to arrest Mr. Whitney, who fled through the backyard. For instance, only casings from 6 of the 15 shots Involved Officer 2 fired were located. And casings from only 2 of the approximately 5 shots Involved Officer 1 fired were located.

Although investigators were able to determine the number of shots the officers fired at Mr. Wiggins, they were unable to determine when each of these shots was fired. Though, based on the officers' written statements it appears that Involved Officer 2 and Involved Officer 1 both fired at the suspect while he was in the driveway and because of Involved Officer 1's firearm malfunction, only Involved Officer 2 fired while the suspect was in the street.

## V. LEGAL STANDARD AND APPLICABLE LAW

The State must prove each element of a criminal charge by competent evidence beyond a reasonable doubt.<sup>7</sup> 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.<sup>8</sup>

In addition, the State must disprove the existence of a defense that negates an element of the crime.<sup>9</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>10</sup>

A person may act in self-defense or defense of others. Washington's Pattern Jury Instructions for Criminal Cases ("WPIC") 17.02 states that:

The use of force upon or toward the person of another is lawful when used by a person who reasonably believes that he is about to be injured or by someone lawfully aiding a person who he reasonably believes is about to be injured in preventing or attempting to prevent an offense against the person, and when the force is not more than is necessary.

Similarly, the use of force upon or toward the person of another is lawful when necessarily used by a public officer in the performance of a legal duty of the officer. (WPIC 17.01).

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<sup>7</sup> RCW 9A.04.100; WPIC 4.01.

<sup>8</sup> KCPAO Filing and Disposition Standards.

<sup>9</sup> WPIC 14.00.

<sup>10</sup> Id.

Both defenses use the term “necessary” which 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 16.05).

A person is entitled to act on appearance in defending themselves even if afterward the person was mistaken in their belief about the extent of the danger. State v. Miller (1926) 141 Wash. 104, 105-106.

## **VI. ANALYSIS AND CONCLUSION**

Involved Officer 1 and Involved Officer 2 encountered an unpredictable and rapidly unfolding scenarios. In order to protect themselves and the residence of the home, they were required to make split second decisions while operating on incomplete information, information that took investigators monthslong to uncover after the incident ended.

The use of force upon a person is lawful when done in self-defense or defense of others. The relevant question is whether each officer reasonably believed that Mr. Wiggins was going to shoot them when they fired each shot, and whether lethal force was necessary, meaning there was no effective alternative and the amount of force used was a reasonable under the circumstances.

When the officers arrived on scene, they knew they were responding an ongoing potentially violent crime. The unexpected and large amount of gunfire they heard once they arrived only heightened the dangerousness of the situation they entered. Involved Officer 1 believed she was hearing the murder of the people who lived inside of the home. They did not have the luxury of standing idly by, but had to confront the situation in order to protect the lives of the people inside. They had approximately 24 seconds between when the officers initially heard gunfire and when Mr. Wiggins smashed through the living room window armed with a gun, wearing gloves and a hooded jacket. Involved Officer 1 wrote that she saw a gun pushing through the window blinds. They had approximately two seconds to decide what to do between an armed suspect jumping through the window and running directly towards them holding a gun. Involved Officer 1 wrote, “[T]his all happened very fast.” There was almost no time for the officers to process the information and make a life-or-death decision about how best to protect themselves. Prior to engaging Mr. Wiggins, Involved Officer 2 ordered him drop his gun

multiple times. His unwillingness to disarm himself made the officers reasonably believe that he intended to shoot them. Even if Mr. Wiggins only pointed the gun at them but did not fire, both officers were reasonably in fear for their safety. They could not have feasibly known that his gun may not have been seated with a magazine.

Mr. Wiggins again pointed his gun at the officers when he ran into the street. In response, Involved Officer 2 continued to fire. Once again, Involved Officer 2 was responding to an unpredictable and rapidly unfolding situation. Involved Officer 2's fear was reasonable. He just lost his sole source of cover when Mr. Wiggins ran past the truck toward the street. With nowhere to seek cover, Mr. Wiggins pointed a gun at the officers.

Even though Involved Officer 2 was likely mistaken that Mr. Wiggins fired rounds at him when running in the street, Involved Officer 2 was justified in using lethal force based on the appearance Mr. Wiggins' gave that he was shooting at the officer. As mentioned above, an individual is entitled to act on appearance even if afterwards they were mistaken about the extent of the danger. State v. Miller, *supra*, 141 Wash at 105-106. A handgun was recovered in Mr. Wiggins' possession when he was arrested, which corroborates a portion of Involved Officer 2's account.

Moreover, there were no alternatives to lethal force and the level of force both officers used was no more than necessary. The officers were forced by Mr. Wiggins to make life-or-death decisions in only a few second's time. Less lethal alternatives, such as a taser, would not have been effective to prevent Mr. Wiggins from shooting them. Additionally, the officers ceased firing when the suspect fell to the ground and dropped his gun, no longer posing a threat.

Given the evidence presented in this case, the officers' actions were in justifiable defense of self or others. Therefore, the Team recommends that no criminal charges be filed against Involved Officer 1 or Involved Officer 2.