

Use of Force – Non-Fatality

Jamie Hays

Kirkland Police Department, #2022-46170



King County Prosecuting Attorney
Public Integrity Team

March 15, 2023



DECLINE MEMORANDUM

Use of Force – Non-Fatality re:

Jamie Hays

I. INTRODUCTION

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. (RCW 10.114.01). The King County Prosecuting Attorney's (KCPAO) role in deadly use of force incidents is to ensure the investigation is thorough and complete and determine whether sufficient admissible evidence exists to support filing criminal charges.

The Public Integrity Team has determined that the investigation of the December 23, 2022 shooting of Jamie Hays is complete. As detailed in the discussion below, the Team has concluded that the evidence presented is insufficient to support criminal charges against Bellevue Police Department Officer, Involved Officer #1. Accordingly, the KCPAO declines to file criminal charges in this matter based on the evidence presently available.

This determination is based entirely on the relevant criminal laws, rules of evidence governing criminal proceedings, and the criminal burden of proof in Washington. Additionally, the current determination that the evidence is insufficient to support criminal charges against Involved Officer #1 does not limit administrative action by the Bellevue Police Department, or any other civil action. The Team expresses no opinion regarding the propriety or likely outcome of any such actions.

II. OVERVIEW

At approximately 6:00 PM, on December 23, 2022, Bellevue Police Department was

conducting a crime suppression initiative at the Home Depot store off of NE 4th St. and Interstate 405. A snowstorm had just hit the Puget Sound area and the roads were slick and covered in snow and ice. As part of the crime suppression initiative, Bellevue PD Involved Officer #1 noticed a truck without license plates that had just parked in the Home Depot parking lot. He parked behind it and approached the truck on foot. It was discovered afterwards that the driver and her passenger were in a stolen vehicle and both had felony arrest warrants. The driver first drove towards Involved Officer #1 and then reversed, before being struck by another arriving patrol car. The driver then accelerated forward again, nearly striking Involved Officer #1 before driving over a parking stone and destroying a temporary parking sign in the process of fleeing. Involved Officer #1 fired 7 shots at the vehicle during this encounter.

III. INVESTIGATION AND EVIDENCE

a. Items Reviewed:

- Narrative police reports
- Written Civilian Witness Statements:
 - Civilian #1
 - Civilian #2
 - Civilian #3
 - Civilian #4
 - Civilian #5
- Audio Interviews of:
 - Jamie Hays
 - Kelly Cole Nickell
- Video:
 - Civilian iPhone video of OIS
 - Home Depot surveillance video of incident
 - City of Bellevue traffic camera footage
- Search Warrant Applications & Search Warrants:
 - #22-0-62923-4 (for subject-vehicle)
 - #23-2-12087 (for real time location and historical cell phone records of Ms. Hays and Mr. Nickell)

- Photos:
 - Scene photos, aerial diagrams, photos of subject vehicle when recovered
 - WSP photos of truck and evidence collected
- CAD/Radio Traffic
- In-person review of suspect vehicle
- WSP Crime Laboratory Report

b. Incident Scene:

The ground was wet and covered with a layer of wet slush in areas on the pavement and snow in non-paved, planter areas. The incident occurred in the area of the parking lot where customers pull up to have their orders delivered to their vehicle. This area was immediately in front of the building, which is north facing. Present on scene were three Bellevue PD patrol vehicles and a vehicle (Jeep) that had been damaged.



Caption: Overview of scene.

///
///
///



Caption: Scene photograph depicting the weather and road conditions on scene.

c. Timeline of Events:

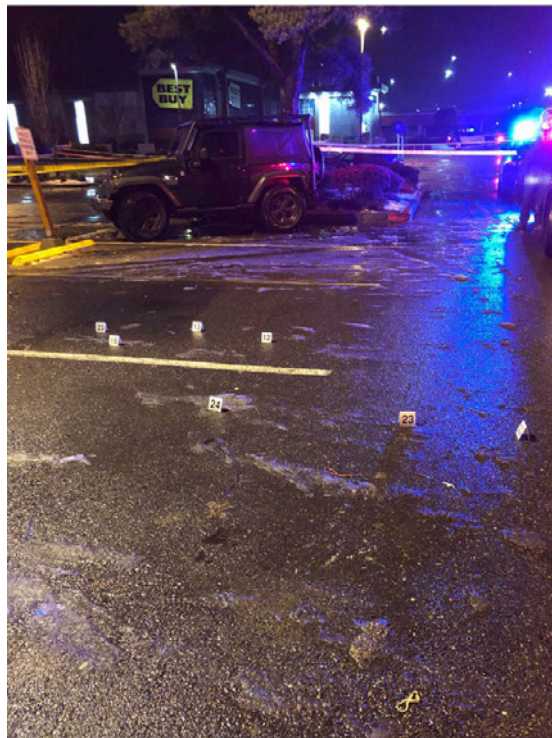
- 18:09:06 – Involved Officer #1 calls out a contact in the Home Depot Parking Lot – Black Chevy truck with no plates.
- 18:09:37 - Involved Officer #1 radios, “She is running.”
- 18:09:47 – Officer #1 radios, “He[sic] is trying to hit [Involved Officer #1].”
- 18:09:59 - Officer #1 radios that shots were fired. The radio captures the sound of 3-4 shots.
- 18:10:13 – Unknown officer states that the vehicle tried to hit officers and took off towards I-405.

IV. INVESTIGATION SUMMARY

It was initially unclear whether the occupants of the truck were struck by Involved Officer #1’s gunfire, which would trigger an independent investigation by IFIT-KC under RCW 10.114.01. Ultimately, investigators learned that the truck’s occupants did not suffer injuries of the magnitude that require an independent investigation. At the outset of the incident, out of an abundance of caution, Bellevue PD asked Kirkland PD to investigate this officer involved

shooting.

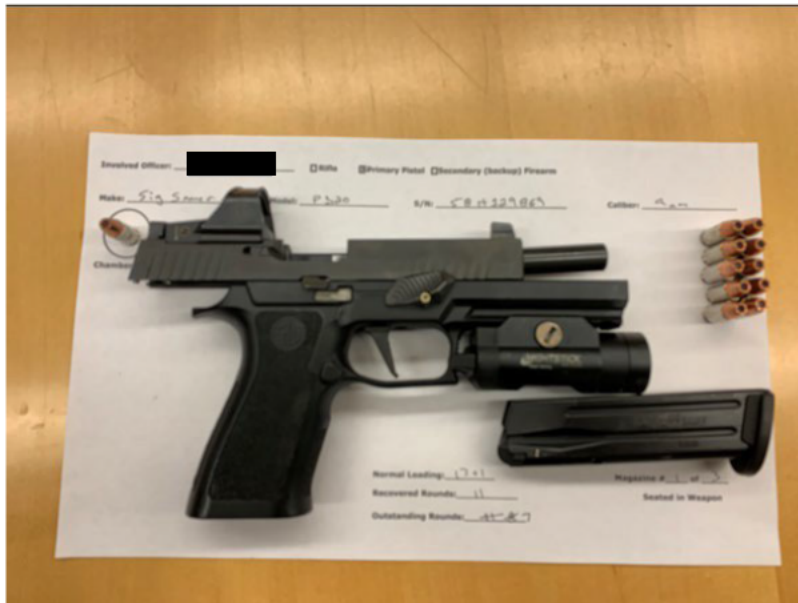
Two hours after the incident, at around 9:00 PM, Kirkland PD detectives Officer #2 and Officer #3 were assigned this investigation and began processing Involved Officer #1 and Officer #1 at Bellevue Police Department. When done, they drove to Home Depot to oversee the crime scene. Prior to their arrival, the scene had been roped off and evidence had been marked with placards, including the seven 9mm cartridge casings ejected from Involved Officer #1's gun. The Bellevue PD traffic unit assisted by making a 3D rendering of the crime scene.



Caption: Photograph of cartridge casings.

Scene/Officer Processing:

Involved Officer #1 was processed by Officer #2 and Officer #3. Officer #2 photographed Involved Officer #1 and collected his firearm, a Sig Sauer model 320 9mm pistol. Seven bullets were missing from his 18 round capacity magazine. This is consistent with 7 cartridge casings being recovered on scene. No bullets were unaccounted for from his backup magazines. He did not have a backup firearm.



Caption: Photograph of Involved Officer #1's firearm and ammunition when he was processed by Kirkland PD after the incident.

Officer #1 was also photographed and processed. Her firearm did not have any missing rounds.

Execution of Search Warrant on Truck:

The truck was recovered the day after the incident in Clyde Hill after being abandoned. After a search warrant was obtained, WSP analyzed and photographed the truck on December 29, 2022. WSP concluded that at least five shots were fired at the vehicle, but did not offer an opinion about the sequence of the shots. Bullet defects A, B and C were on the exterior driver's side of the front windshield. Bullet defect D was a perforating defect through the top of the driver's side mirror. Bullet defect E was a perforating defect to the center of the driver's door window trim. From the analysis of the truck, there is no evidence to determine where the other two shots went; it appears likely that two of the seven shots missed the vehicle.

///
///
///

Regarding bullet directionality, the report states that bullets from defects A-D were fired from the general direction of exterior to interior, front driver to rear passenger. It also states that bullet from defect E traveled in the general direction of exterior to interior, driver to passenger. However, it appears from a photograph of defect E, directly below, that the general direction was exterior to interior and both front to back and driver to passenger.¹



Caption: Angle of bullet defect E entering and exiting the driver side door.

Regarding damage to the vehicle, defect C is possibly related to defects F, F1 and F2 in the headliner. That bullet likely exited the rear window. The report does not state which bullet caused defect G in the headliner. That bullet also exited via the rear window. The bullet from defect D into the side view mirror, likely shattered the front driver's window.

¹ Prosecutors examined and photographed the damage to the vehicle at a later date.

WSP told Kirkland PD that it was unable to perform trajectory analysis stating that there appeared to be too many bullet deflections for an accurate analysis.

Officer Witnesses:

No Bellevue PD officers provided statements.

Involved Officer:

Involved Officer #1 did not provide a statement.

Civilian Witnesses:

Civilian #1 –

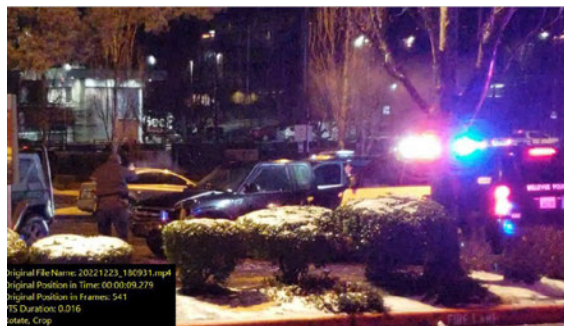
Civilian #1 was in the Home Depot parking lot when he began watching a police encounter from his car in an area he called a “close but safe distance” from the events. He saw a Caucasian male police officer standing in front of a truck yelling “Stop!” The truck reversed so it could move forward around the officer when another police car “rammed” into the back of the truck causing it to hit a Jeep and the male officer’s squad car. The truck then drove straight at the officer while the officer yelled stop, pulled his gun, and fired. He believed the officer was about to be run over. The officer got away and the truck drove forward over a sign and parking divider.



Caption: The yellow circle drawn onto this still photograph from Home Depot surveillance video footage shows Civilian #1’s vantage point, which was just west of the exchange. The incident occurred in the bottom right portion of the frame where the pickup truck is located.

Civilian #2 –

Civilian #2 took video of the officer involved shooting from his iPhone. The footage begins just prior to when Officer #1 rammed into the truck. Civilian #2 said that as he entered Home Depot, he saw an officer with his gun drawn at a pickup truck. The officer was telling the driver that he'll shoot, but the driver did not cooperate and started to drive away. The officer fired a few shots. Another squad car rammed the truck and more shots were fired at the truck as it sped away. Civilian #2's sequence of events and timeline was not borne out by any of the video evidence including his own footage.



Caption: iPhone footage captured by Civilian #2 depicting the first shot by Involved Officer #1.

Interviews of Subjects:

Jamie Hays –

On January 18, 2023, Hays and Nickell were located in Seattle and arrested. At the time of her arrest, Hays had a small healing wound on her upper left arm. Officer #2 and Officer #4 interviewed Ms. Hays. Hays and Nickell are in a relationship. According to Hays, she and Nickell had gone to Home Depot that evening to purchase some spray paint for their house. Hays said that they had just left the Best Buy store across the street and parked when the officer came up to the truck. Hays said that she was driving and Nickell was the passenger. Hays said that the officer told them to get out of the truck right as he arrived and that he had his gun out. (Video shows that the officer did not draw his gun until after Hays backed the truck up and the truck lunged forward.) Hays said that she did not initially recognize the officer as the police because he was wearing what she thought was a hoodie. Hays said that she panicked because she and Nickell both had warrants and did not want to go to jail. Hays said that they could not get traction when they were backing up and only got traction after the other officer (Officer #1) hit their truck. Hays said that when the truck got traction to go is when the Officer started shooting at her. Hays said that she did not know what they had done wrong, so her thoughts were to get out of there. Hays did

not know where they left the truck and that after she parked the truck, they took an Uber home. Hays said that she had borrowed the truck from a friend “Chris” and that she knew the truck was stolen. Hays said that she had not gotten medical care because she was scared the medical facility would contact the police and she would go to jail. Hays said that she knew it was wrong to run but she did not know what to do and panicked. Hays said that she was not trying to hit the officer and had no idea why the officer shot at her. At the conclusion of the interview with Hays, she was transported to the Evergreen Hospital for a medical evaluation of her arm. A later medical examination suggested she had a foreign object embedded in her arm as a result of the incident. It is not known if the object is a bullet fragment or shrapnel from the vehicle.

Kelly Cole Nickell –

Officer #3 and Officer #5 interviewed passenger Kelly Cole Nickell. Nickell said that Hays was driving and that he was unaware that the truck was stolen. He admitted to “smoking blue” and clarified that “blue” is Percocet or a form of oxycontin. He did not say that he used any drugs the day of the shooting. Nickell said that they had gone to Best Buy to purchase a new power source for his laptop, which they did not find. They then went to Home Depot for something for the truck. He said that the officer contacted them and Hays tried to get away. He said she tried to back up, but did not have any traction. She tried to move again, but again could not get any traction. At this point the officer had his gun out and it was pointed at the truck. He yelled at them to stop, Hays did not stop, but only wanted to get out of there because she knew she had warrants for her arrest and was afraid to go to jail.

He said that their truck got hit by another police car pushing them into an area where they finally got traction. At some point the officer opened fire on them firing multiple shots. Hays drove past the officer and they then ditched the car. Nickell said that they called a friend, not an Uber, but would not say who they called.

Nickell emphasized that Hays was scared and only wanted to get away from the officer so she would not go to jail. He also said that the officer was never directly in front of the truck and that Hays would never intentionally injure a police officer. He said that the idea of striking the officer did not cross his mind until it was brought up in his interview. He thought the officer fired at them because the officer was upset they did not listen to his command to stop.

V. FACTUAL ANALYSIS

At approximately 6:00 PM, on Dec. 23, 2022, Bellevue Police Department was conducting a crime suppression initiative at the Home Depot store off of NE 4th St. and Interstate 405. The parking lot was slick, covered in snow and ice. Involved Officer #1 was driving in his patrol car when he noticed a black pickup truck without license plates parking in the front of the Home Depot parking lot. Involved Officer #1 parked behind the car and walked up to its front windshield. The car's taillights were still on. It was later determined to be stolen out of Seattle one week prior. As he looked at the VIN on the windshield with his flashlight, the driver reversed, which looks to have caught Involved Officer #1 by surprise. Involved Officer #1 placed his hand upon his holstered gun. The truck then lurched forward slightly towards him. Involved Officer #1 pulled his gun and pointed it at the truck. The truck reversed and drove towards him. He radioed, "She is running," and he backed up. Around this time, a civilian witness heard Involved Officer #1 yelling "Stop!" The truck reversed again. Involved Officer #1 took a few steps towards it with his gun still drawn. Officer #1, who just arrived on scene, radioed, "He [sic] is trying to hit Involved Officer #1." As the truck was backing up, Officer #1 rammed the back of the truck and the truck collided with another parked car which reoriented the truck so that it was now facing Involved Officer #1.



Caption: Involved Officer #1 pictured on the bottom left on foot. The subject-truck, partially blocked by the tree, is attempting to turn between the Jeep (top left) and Involved Officer #1's squad car (top right) when Officer #1 (bottom right) rams into the truck pushing it into the Jeep.



Caption: Photo of Involved Officer #1 firing the initial shot.

The Involved Officer #1's gun was still drawn. The truck rapidly reversed. Involved Officer #1 took a few steps toward the truck. The truck was then between the Jeep and Officer #1's squad car with Involved Officer #1 somewhat in front of the truck blocking its exit. The truck regained traction and accelerated forward. Involved Officer #1 took a few steps backwards and he fired seven shots as he tried to get out of the way. There was no noticeable pause in between the shots. Officer #1 called out shots fired. A witness Officer, Officer #6, pulled in behind Officer #1's squad car right before Involved Officer #1 began firing. The truck jumped the parking stone and went airborne, demolishing a temporary parking sign before driving off.



Caption: Photo of Involved Officer #1 firing the 5th or 6th shot.

Approximately 2 seconds elapsed between Involved Officer #1 firing his first and his

seventh shots. His first four shots took roughly 1.1 seconds. It appears from the Home Depot surveillance video that he is positioned to the side of the truck after firing shot number four. Roughly 0.8 or 0.9 seconds elapsed between that shot and shot number seven.

The truck was found the next day abandoned. It was searched, processed, and photographed by WSP. The evidence shows that at least five rounds struck the truck. Three rounds entered through the front windshield near the A-pillar, some striking the roof liner and breaking the back window. One round entered through the driver's side mirror. One round entered through the driver's side door. From the lack of other bullet defects, it is unclear where or what the other two rounds struck or where in the sequence they occurred.

The truck's driver, Jamie Hays, and the passenger, Kelly Nickell, were located on January 18, 2023 and agreed to be interviewed. The driver, Jamie Hays, had a small superficial wound to her left arm. She did not immediately seek medical assistance, so it is unclear if it was caused by shrapnel or is a gunshot wound. Each of the truck's occupants denied trying to strike Involved Officer #1. Jamie Hays told detectives that she knew the truck was stolen. They both stated they did not stop because they both had outstanding warrants for their arrest. Ms. Hays said that she was not ready to go to jail because she did not have her personal life in order yet. They said the officer was not in harm's way when he opened fire on them.

VI. LEGAL STANDARD

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

RCW 9A.16.050: Lawful Self-Defense

Any person is justified in using deadly force when there is reasonable grounds to apprehend a design to do some great personal injury to the slayer or to any such person, and there is imminent danger of such design being accomplished; or in the actual resistance of an attempt to commit a felony upon the slayer, in his or her presence, or upon or in a dwelling, or other place of abode, in which he or she is. RCW 9A.16.050. In other words, to file charges against the involved officer for his actions in this case, the State would need to prove beyond a

reasonable doubt that the officer was not acting in self-defense.

VII. ANALYSIS AND CONCLUSION

A criminal prosecution would require proof beyond a reasonable doubt that Involved Officer #1 did not act in self-defense in using deadly force against Ms. Hays. In this case, the evidence gathered in the course of the investigation does not rise to the level needed to disprove Involved Officer #1's foreseeable claim of self-defense.

Involved Officer #1 declined to provide a formal statement explaining his actions, so we are forced to use circumstantial evidence to assess a potential claim of self-defense.

The evidence establishes that the road conditions were slick and icy when, on foot, Involved Officer #1 approached the stolen truck that Ms. Hays was driving. In surveillance footage, Involved Officer #1 appeared to be startled when Ms. Hays placed the truck in reverse, stepping backwards behind the parking stone as if it would give him some type of protection. Only after she reversed and lurched forward toward Involved Officer #1, did he pull out his firearm. She reversed and lurched forward towards him again trying to position her car so she could escape. It appeared that Ms. Hays was likely to escape northbound through the parking lot when Officer #1's squad car struck the truck, which caused it to reorientate. There was no avenue of escape for the truck other than driving directly where Involved Officer #1 was standing, who was still holding his firearm pointed at the truck. The truck then abruptly reversed and turned towards Involved Officer #1 as it accelerated. The truck accelerated so rapidly that it went airborne as it travelled over the parking stone and destroyed a temporary metal parking sign. Involved Officer #1 had no cover. When Involved Officer #1 began firing, the truck was still in front of him, approximately 10-20 feet away, and it was not apparent whether the driver intended to drive the truck through him to escape, or in another direction. Given the vulnerable position Involved Officer #1 found himself in, exacerbated by the slick road conditions and Ms. Hays' unpredictable behavior, it cannot be proven beyond a reasonable doubt that Involved Officer #1 lacked reasonable grounds to believe that Ms. Hays intended him great personal injury and that he was in imminent danger of that occurring when he began firing.

Involved Officer #1 was able to move away laterally during the brief incident. Less than one second elapsed during this time. While it is true that Involved Officer #1 successfully got out of the vehicle's path, the actions of an officer must be assessed from the perspective of a reasonable officer on the scene, including what the officer knew at the time, not with the 20/20 vision of hindsight. Graham v. Connor, 490 U.S. 386, 96 (1989). There is little research regarding officer reaction times in complex, ambiguous, high-stress situations such as this one. However, it is well known that an individual's ability to change their behavior is delayed when reacting to changing circumstances.² For instance, it takes approximately 1.3 seconds for a driver traveling 30 mph to recognize the brake lights of the vehicle ahead of it and begin to respond.³ Reaction time is even slower when adding an additional complicating factor, like sending a voice text message. The average reaction time in that scenario is 2.3 seconds. Id.

There were numerous complicating factors that Involved Officer #1 was required to interpret and react to during short, less than once second timeframe – his ability to move out of the truck's way; the unknown motive of the driver; Officer #1's action of striking the subject's truck, which abruptly changed the nature of the threat; the unknown path the truck would take; and the icy conditions that impacted safe and predictable travel. Given the collapsed time frame and the limitations of a person's capability to react and adapt their behavior to rapidly evolving changes in circumstance, one cannot say there exists proof beyond a reasonable doubt that when Involved Officer #1 fired, he did not reasonably believe that Ms. Hays intended him great personal injury and that he was in imminent danger of that occurring.

Additionally, it is of no legal consequence that Ms. Hays apparently did not intend to hit the police officer. Caselaw holds that a person is entitled to act on appearance in defending themselves even if the person was mistaken in their belief about the extent of the danger. State v. Miller (1926) 141 Wash. 104, 105-106. Although Ms. Hays told investigators that she had no intention of running over the officer, the officer had no way of knowing that in the moment and was outside of his car unprotected when Hays accelerated her truck wildly in the Officer's direction.

² See. How Long Does It Take to Stop?" Methodological Analysis of Driver Perception-Brake Times, Green, M. (2000). *Transportation Human Factors*, Vol. 2, pp. 195-216.

³ See. An Evaluation of the Effectiveness of Voice-to-Text Programs at Reducing Incidences of Distracted Driving, Yager, C. (2013). *Proceedings of the Human Factors and Ergonomics Society Annual Meeting*, Vol . 57, Issue 1.

Based on the evidence admissible in a criminal case and the applicable legal standards, we have determined that there is insufficient evidence to prove beyond a reasonable doubt that Involved Officer #1's use of force was not done in lawful self-defense. Because self-defense cannot be overcome, it is not necessary to render an opinion regarding whether the Officer acted in good faith as defined by RCW 9A.16.040.