

Use of Force Non-Fatality

Keith McQuilliams

Independent Force Investigations Team - King County

#2022-30825



King County Prosecuting Attorney

Public Integrity Team

March 17, 2023



DECLINE MEMORANDUM

Use of Force – Non-Fatality

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I. Introduction

During a routine traffic stop, the vehicle's driver refused to pull over. After the Washington State Trooper ("Involved Officer 1") pulled in front of the subject's car, the subject car eventually came to a stop. Involved Officer 1 then approached the subject's car on foot, at which point the subject vehicle reversed, then accelerated forward towards Involved Officer 1 nearly striking Involved Officer 1 who was standing near his back bumper. Involved Officer 1 fired two shots at the subject hitting him in the chest and groin. The subject received immediate medical attention and ultimately survived his injuries.

State law requires an independent investigation when police use of deadly force results in substantial bodily harm or death. An independent investigation informs the determination of whether a reasonable, similarly situated officer would have believed that deadly force was necessary. RCW 10.114.011. The King County Prosecuting Attorney's role is to ensure the investigation is thorough and complete, determine whether sufficient admissible evidence exists to support filing criminal charges.

The Public Integrity Team has determined that the investigation of the August 24, 2022 shooting of Keith McQuilliams is complete at this time. Based on a thorough review, the Team has concluded that the evidence is insufficient to support criminal charges against 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 Washington State Patrol, or any other civil action. The Team expresses no opinion regarding the propriety or likely outcome of

any such actions.

II. Call-Out & Investigation

Although this officer-involved shooting (OIS) occurred in south King County, IFIT-KC investigated this incident because Washington State Patrol is one of its member agencies. Officer 1 of Kirkland PD was assigned as the lead investigator. The scene was processed by a combination of IFIT-KC detectives and KCSO's Major Accident Response and Reconstruction (MARR) unit. Bellevue PD recorded the scene with assistance of a drone and FARO 3-D scanner. KCSO processed the involved officer. Bellevue PD canvassed the scene for video. Bellevue PD and Lake Forrest Park PD responded to Harborview Medical Center to check McQuilliams' medical status. Various agencies assisted in interviewing witnesses. The investigation was presented to the Prosecuting Attorney's office for review.

III. Factual Analysis

On August 24, 2022, Involved Officer 1 was on routine patrol in a marked police vehicle in Federal Way, Washington. At approximately 8:00 PM, at the intersection of S. 348th Street and Enchanted Parkway S., he observed subject, Keith McQuilliams driving a blue Mazda sedan that failed to display a license plate or a temporary operating permit; Mr. McQuilliams was also not wearing a seat belt.

Involved Officer 1 radioed dispatch that he was pulling over the subject-car, positioned himself behind McQuilliams' car and turned on his overhead lights.¹ McQuilliams chose not to pull over, making numerous turns at various intersections instead of stopping.

Regarding McQuilliams' motive for not pulling over, he later told investigators that he did not pull over because he was confident that he did not commit any traffic violations and chose to drive home instead of cooperating. However, investigators later discovered that McQuilliams had an extraditable arrest warrant. Medical records also show that McQuilliams was likely driving under the influence of alcohol, as his blood-alcohol content was 0.11%, At one point in the short 2/3 mile, 3 ½ minute long, low speed pursuit, Involved Officer 1 made an announcement to McQuilliams over his PA system to pull over. When McQuilliams did not, Involved Officer 1 accelerated his vehicle to pass McQuilliams, merged into the same lane as

¹After the incident, investigators determined that McQuilliams purchased the car in Bellingham earlier that day whereupon the seller removed the license plates.

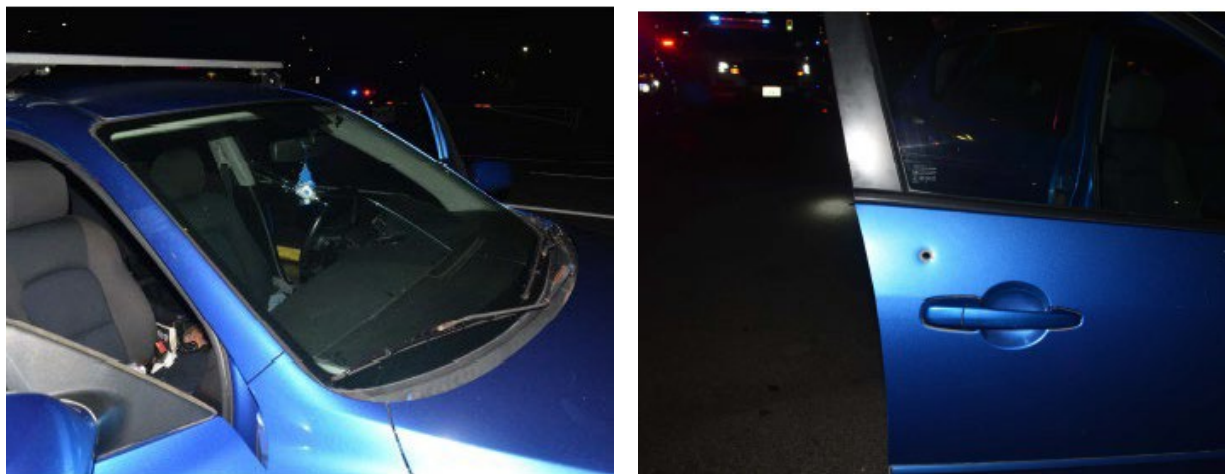
McQuilliams, and then decelerated which forced McQuilliams to stop near the right shoulder of the road, behind Involved Officer 1's vehicle.

Involved Officer 1 exited his vehicle and walked down the driver's side of his vehicle towards McQuilliams' car. As he passed the trunk of his squad car and began approaching the subject's car, grainy surveillance footage from a City of Federal Way pole camera shows McQuilliams reversing and then accelerating his car forward towards the rear of the patrol car where Involved Officer 1 was walking. Audio from Involved Officer 1's in car video ("ICV") captures the sound of McQuilliams' engine revving and the tires breaking traction. Contemporaneously, Involved Officer 1 said, "Watch out!" and fired two rounds from his service weapon into McQuilliams' vehicle, striking McQuilliams twice. One bullet entered through the front windshield and the second entered the front passenger side door, the door nearest to Involved Officer 1.



Caption: Still photograph #1 depicts McQuilliams' sedan on the shoulder behind Involved Officer 1's squad car after both cars stopped. Still #2 depicts Involved Officer 1's door open and Involved Officer 1 walk back towards McQuilliams' car. McQuilliams car is not visible. By this time, he has reversed his car. It does not appear from the video that Involved Officer 1 realized this fact. Still #3 depicts Involved Officer 1 near the back bumper of his squad car. McQuilliams' car is not visible, as he was in the process of reversing. Still #4 depicts Involved Officer 1 in between his back bumper and McQuilliams' car as McQuilliams accelerates in the direction of Involved Officer 1. Either just prior to or just after this point in time is when Involved Officer 1 fired twice. Still #5 shows McQuilliams making a U-turn onto Enchanted Parkway S. after being shot. Involved Officer 1 is standing behind the bumper of his squad car.

It took approximately three and one half minutes between the time Involved Officer 1 switched on his overhead lights to when McQuilliams came to a stop on the shoulder. From there, the incident transpired quickly. Approximately five seconds elapsed between the time Involved Officer 1 opened his driver side door to when Involved Officer 1 fired the second shot. And less than 0.5 seconds separated Involved Officer 1's first shot through the sedan's windshield and his second shot through the front passenger side door (see photos below).



Caption: Bullet holes in the subject's car.



Viewed by damerrick@kingcounty.gov (kingcountyprosecutor.evidence.com) on 15 Feb 2023

Caption: Trajectory rod placed through second bullet's entry and exit points.

When Involved Officer 1 fired each shot it appears that he was either directly in front of McQuilliams' vehicle, or in between his back bumper and the passenger side McQuilliams' vehicle as Involved Officer 1 stood precariously between the two. However, exactly how close Involved Officer 1 was in relation to the vehicle when Involved Officer 1 opened fired cannot be said definitively based on the available audio and video footage of the Federal Way's pole camera footage which is grainy and lacks audio. Additionally, there is not BWV or ICV footage

of the exchange as State Troopers do not wear BWV cameras and the ICV footage is forward facing. The most helpful evidence in this regard is the ICV audio from Involved Officer 1's microphone, where the rev of the subject's engine can be heard just prior to the sound of gunshots. It is worth noting that after the investigation was submitted, Officer 2 from the Seattle PD Force Investigation Team attempted to enhance the quality of the pole camera video. Because the City of Federal Way did not provide the footage in its original format, he was unable to enhance the video by any meaningful degree.

Similarly, the vehicle's trajectory, in relation to Involved Officer 1, cannot be determined with accuracy since McQuilliams was not driving in a straight line. Knowing this information is necessary to disprove self-defense. When Involved Officer 1 fired the second round at McQuilliams, the side or back end of McQuilliams' car may have been close to striking Involved Officer 1. From the grainy surveillance video, it appears that there may have been very little room between McQuilliams' vehicle and the rear of Involved Officer 1's patrol vehicle when Involved Officer 1 fired the second round. Additionally, neither car remained at the scene, which would have aided in this determination.

McQuilliams sustained two gunshot wounds – one to the upper right chest, just below the collar bone, and one to the lower abdomen. McQuilliams continued driving for a short period of time after he was shot, whereupon he crashed into the back bumper of Civilian 1 at 35100 block of Enchanted Parkway S., coming to a stop. Approximately 15 seconds after the shooting, Involved Officer 1 reported to dispatch that shots were fired and that he fired because subject attempted to run him over. Approximately one and a half minutes later he followed the subject's car and upon catching up to it immediately gave medical assistance to McQuilliams. He can be heard on his ICV audio asking McQuilliams why McQuilliams tried to run him over. He is also heard on ICV telling Civilian 1, "He tried to run me over. That's why I shot him." Federal Way Police Officer 3 was the first person to respond to the scene and took over emergency medical assistance from Involved Officer 1. The fire department then responded, and Mr. McQuilliams was taken to and treated at Harborview Medical Center. He ultimately survived his injuries. While at the hospital he was interviewed where he told detectives the reason why he did not stop and also that he was not attempting to hit Involved Officer 1 with his car.

While Involved Officer 1 declined to give a formal statement regarding the incident, he is captured on ICV audio discussing the incident. At one point he tells an officer on scene, "... I was trying to pull him over. I stopped next to him and he tried to hit my car. He tried to hit my car from the right side. I hopped out (indiscernible)." Involved Officer 1 went on to say that he

was, “a little rattled though.” He also said that McQuilliams drove “straight at me.” He later told his WSP sergeant on scene that after exiting his squad car, he waived at McQuilliams and McQuilliams then drove “straight at me.”

IV. Legal Analysis

a. Self-Defense:

The State has the burden of disproving self-defense beyond a reasonable doubt. The State cannot meet this high burden. The evidence demonstrates that each time Involved Officer 1 shot at McQuilliams he believed that Mr. McQuilliams was assaulting him with a vehicle. Specifically, on Involved Officer 1’s ICV audio one can hear McQuilliams’ engine revving and tires breaking traction right before Involved Officer 1 yells, “Watch out!” and fires two rounds. Although it is not possible to tell from the pole camera footage exactly how close Mr. McQuilliams car came to striking Involved Officer 1, the footage corroborates a potential claim of self-defense. McQuilliams’ car was close enough to Involved Officer 1’s car that McQuilliams’ needed to reverse in order to make a U- turn. The footage then shows McQuilliams accelerating his car forward in the direction of Involved Officer 1 who at that time of the shots was either directly in front of McQuilliams’ car or in- between McQuilliams’ car and the squad car’s back bumper.

Additionally, it is of no legal consequence that McQuilliams apparently did not intend to hit Involved Officer 1. Caselaw holds that 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. Although McQuilliams told investigators that he had no intention of hitting Involved Officer 1, Involved Officer 1 had no way of knowing that in the moment and was outside of his car unprotected when McQuilliams accelerated his car in Involved Officer 1’s direction. In addition, McQuilliams had displayed erratic and illogical behavior preceding the shooting, failing to stop at multiple intersections after Involved Officer 1 pulled behind him and turned on his forward-facing lights. In the moment, when McQuilliams was driving at him, the officer could not know if McQuilliams’ motive was sinister or benevolent.

Furthermore, while it is true that Involved Officer 1 successfully got out of the vehicle’s way, 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). In that split second, the evidence indicates that Involved Officer 1 believed that McQuilliams was going to run him over, that he did not have time to get out of the way and as a result had no alternative other than using deadly force to prevent himself from being killed. See. RCW 10.116.060(3).

Approximately 0.5 seconds separated Involved Officer 1's first shot through the front windshield and second shot. Although there is limited research regarding officer reaction times in complex and ambiguous high-stress situations such as this one, it is well known that an individual's ability 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 them and begin to respond.³ Their ability to do so when adding an additional complicating factor, like sending a voice text message is even longer, 2.3 seconds. Id. As mentioned above, only 0.5 seconds separated Involved Officer 1's first and second shot. Even if between firing shot 1 and 2, Involved Officer 1 began to realize that McQuilliams no longer posed a threat to him, it is not clear that Involved Officer 1 had sufficient time to change his conduct accordingly. It should also be noted that Involved Officer 1 stopped firing after the second shot. In sum, 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.

b. Insufficient Evidence:

The quality of the evidence makes it difficult to test or disprove Involved Officer 1's version of events, which is necessary to disprove a claim of self-defense and meet our ethical requirement when determining whether to file criminal charges. RCW 13.40.077(2). Based on the available evidence, we are unable to know exactly how close McQuilliams came to striking Involved Officer 1. This is because there is no ICV of the interaction and the Federal Way traffic camera video, despite our attempt to have it enhanced, is too grainy to provide clarity on this point. There is also little additional evidence that would help recreate the scene. For instance, there is audio of the subject's tires screeching just prior to and after the shooting, but there are no photographs of any tire marks. Further complicating matters, neither car was at the crime scene when the investigators arrived, as both cars had driven down Enchanted Parkway S.

² See. How Long Does It Take to Stop?" Methodological Analysis of Driver Perception-Brake Times, Transportation Human Factors, Green, M. (2000) 2:3, 195-216.

³ See. An Evaluation of the Effectiveness of Voice-to-Text Programs at Reducing Incidences of Distracted Driving. Yager, C. (2013). College Station, TX. Texas A&M Transportation Institute.

Additionally, because Mr. McQuilliams broke traction and was making a U-turn, the trajectory rod demonstrating that the second bullet travelled slightly back to front, is less helpful to determining what occurred than it first appeared because when Involved Officer 1 fired the second round, the back end of McQuilliams' car was capable of hitting Involved Officer 1, or sandwiching Involved Officer 1 between McQuilliams' car and his bumper.

V. Conclusion

Based on the totality of the evidence, when considering all plausible defenses, there is insufficient evidence to overcome self-defense. No criminal charges will be filed because it cannot be proven beyond a reasonable doubt that Involved Officer 1 did not act in lawful self-defense. As such, it is not necessary to render an opinion regarding whether Involved Officer 1 acted in good faith as defined by RCW 9A.16.040.