

Non-Fatal Use of Force

Sulial Sikong

Valley Independent Investigative Team

Port of Seattle PD, # 2022-039298



King County Prosecuting Attorney

Public Integrity Team

August 19, 2024



DECLINE MEMORANDUM

Non-Fatal Use of Force: Sulial Sikong

I. INTRODUCTION

1. Purpose of the 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.¹ 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.²

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.³ The independent investigation is conducted in the same manner as a criminal investigation.⁴

¹ 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.

² Id. See also WAC 139-12-010.

³ RCW 10.114.011. See also WAC 139-12-010.

⁴ Id.

2. Status of the Independent Investigation

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

3. Scope of the Memorandum

The KCPAO's determination if the police action was justified or if there was a criminal action such that criminal charges should be filed is based entirely on the investigation materials provided to the KCPAO, relevant criminal laws, rules of evidence governing criminal proceedings, the applicable burden of proof, and the KCPAO's Filing and Disposition Standards. This determination is not intended to address matters outside the scope of this memorandum including, but not limited to, 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.

II. OVERVIEW

On June 26, 2022, Kent Police Department (Kent PD or KPD) Involved Officer 1 fired one shot at subject, Sulial Sikong who had just assaulted a civilian with a machete and then thrown a machete at police officers who were trying to apprehend him. The shot missed Mr. Sikong striking only his backpack. In an incident with the subject three months prior, Sikong swung a machete at Involved Officer 1 and his partner, attempted to take their firearms and bite one of the officers.

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III. INVESTIGATION AND EVIDENCE

1. Independent Investigation Team Call Out

The Valley Independent Investigation Team (VIIT) was activated because a member agency, Kent PD, was involved in a shooting. The Port of Seattle Police Department was the lead investigating agency, canvassed the scene, and assisted Tukwila Police Department processed the crime scene. Detective 1 was the lead investigator. Federal Way Police Department (FWPD) officers processed Involved Officer 1. Des Moines Police Department assisted with interviews.

2. Timeline (based on Computer Aided Dispatch Report)

<u>Time</u>	<u>Officer / Unit</u>	<u>Description</u>
15:59:35		Incident created.
16:01:22		Male Swung machete at reporting party's face.
16:02-16:03		Two units dispatched to scene, including Involved Officer 1 (1K53).
16:04:17	Involved Officer 1 / 1K53	Involved Officer 1 states he made contact w/ RP outside of apartments
16:06:14	Involved Officer 1 / 1K53	Involved Officer 1 said PC established for felony harassment.
16:07:17	Officer 13 / 4K62	Officer 13 requests perimeter be set at 900 1 st Ave N.
16:08:04	Involved Officer 1 / 1K53	Suspect description – all black clothing, black hoodie with hood up, last name is Sikong.
16:08:37		Dispatcher runs query for Mr. Sikong's name.
16:10:40		Inquiry returned. She advises officers of recent incident where Mr. Sikong tried to grab two different officers' handguns, bit one officer, and swung a machete at both officers.
16:10:50	Officer 1 / K917	Officer 1 says he is aware of that incident. Reports that subject is still armed with a machete.

16:10:59	Officer 4 / 3K43	Officer 4 advises that his K9 is present, ready to assist.
16:11:14	Involved Officer 1 / 1K53	Involved Officer 1 says that he's walking with the victim.
16:12:32	Officer 3 / 3K58	Officer 3 advises dispatch that he has the subject at building K at gunpoint.
16:12:42	Officer 3 / 3K58	Subject non-compliant. Still armed w/ machete.
16:13:07	Officer 3 / 3K58	Subject walked into the woods. Request for officers.
16:13:22	Officer 3 / 3K58	Subject is on north side of apartment complex walking towards the train tracks. Asks units to move to the other side of the train tracks on 1 st Ave. to stop subject.
16:13:15	Officer 3 / 3K58	Officer 3 announces that the subject threw a machete at the officers and was fired upon. The subject was not hit. The officers are safe. The subject is now armed with a second knife.
16:14:11	Officer 3 / 3K58	Subject still has second knife and is walking southbound on train tracks to a convalescent home.
16:15:15	Officer 3 / 3K58	Detaining the subject.

3. Police Reports

i. Officer 1

Officer 1 is a K-9 officer. As he was arriving, Officer 2 and Officer 4 were also arriving. They ran onto the trail and were able to catch up to Officer 3. The space was narrow and only allowed for two to three officers to walk side by side. As such, he was walking behind Involved Officer 1 to his left and Officer 3 to his right. As they walked west on the trail Sikong was approximately 25 to 30 feet away from officers. He observed Sikong ahead of them. Sikong's demeanor appeared hostile, he was sweating, and he appeared to be yelling something unintelligible. Officer 1 recognized Sikong from the prior incident, he was wearing the clothes described in the initial call, and was swinging a machete with his right hand, as he walked away

from them. Officers were commanding Sikong to drop his knife and stop running away. Involved Officer 1 and Officer 3 both had their firearms drawn. Officer 1 was now positioned behind Involved Officer 1 and Officer 3. Officer 1 drew his taser to give them a less lethal option. Officer 1 tapped Involved Officer 1 on the shoulder to gain his attention and have him switch positions with him. Simultaneously, he observed Sikong look over his right shoulder, back towards the officers, and throw the machete in their direction. Officer 1 was immediately afraid that the machete was going to hit and kill one of them. He wrote that it all happened very fast, and he had no time to react to the threat. Officer 1 heard a single round fired and he looked over and saw smoke from Involved Officer 1's gun. Sikong started walking away from them again going west towards the train tracks where he was ultimately arrested.

ii. Officer 2

Officer 2 was one of the officers dispatched to Alderbrooke Apartments. When he arrived on scene he went to Involved Officer 1's location. He heard Involved Officer 1 talking to the civilian assault victim. The victim told him the suspect had come up to his truck and swung the machete at him. The victim told Involved Officer 1 the suspect's name was Sikong. Involved Officer 1 relayed to Officer 2 and the other officers that he knew the suspect from a previous incident where Sikong had come at him and another officer with a machete. Involved Officer 1 told Officer 2 he had developed probable cause for second degree assault. The K9 unit arrived at our location, and Officer 2 asked the victim if he could show them where the incident occurred so they could track for the suspect. As Involved Officer 1 and Officer 2 walked with the victim towards the front of the apartment complex towards Novak Lane, Officer 2 heard Officer 3 advise over the radio he had the suspect at gunpoint at the K building. Officer 3 also advised the suspect was not compliant and had a machete in his hand. The K building is near the wooded area behind Alderbrooke Apartments. Officer 2 ran towards that direction and observed the male go through the hole in the fence and into the woods. As he and other officers stepped onto the path, he heard Officer 3 giving verbal commands to Sikong to stop and that he was under arrest. He observed the suspect turn around a few times and saw that he was swinging the machete around wildly. Officer 2 wrote that he was afraid that Sikong might throw it and that he would hit or kill one of the officers. Officer 2 heard Officer 3 advise the suspect that if he threw the machete at the officers he would be shot. As other officers had their guns out, Officer 2 took out

his taser for as a less lethal option if it was needed. He was not able to get close enough or have a clear shot to effectively utilize his taser. The suspect continued west bound through the woods and then he turned and threw the machete at the group of officers. Officer 2 wrote that he thought that it might hit him, so he moved to the left to avoid being hit. At the same time, he heard Involved Officer 1 shoot at the suspect one time. The shot missed the suspect and the suspect turned and continued away from officers through the wooded area towards the railroad tracks. Officer 2 aired over the radio that shots were fired. It was also aired that officers were okay, and the suspect was not hit. As officers got to the railroad tracks from the wooded area, he noticed that the suspect was now armed with another machete, and he heard someone put that out over the radio. Officers exited the wooded area and came onto the railroad tracks between Alderbrooke Apartments and 1st Ave S. Sikong was ultimately arrested on the railroad tracks.

iii. Officer 3

Officer 3 was the first officer to contact Mr. Sikong. He wrote that at about 4:10 pm officers were driving to where the reporting party last knew the male suspect to be. While driving passed the K building, he observed a male who was turned away from him matching the description he heard via radio. Officer 3 yelled his name and he said "what" and turned towards Officer 3. Officer 3 asked if his name was Sikong and he said yes. When Officer 3 saw his face, he recognized him from the previous incident. Officer 3 exited his patrol vehicle and told him to come talk. Sikong had a backpack on, and something was sticking straight up out of the backpack. Officer 3 could not see what it was because it was covered and thought it might be a machete type knife. He had one in the previous incident, and it appeared to have that same shape under the sweatshirt. Officer 3 told him to come talk to him and requested additional units. Officer 3 drew his department issued firearm because of the potential that he was armed and violent. The male was in close proximity, and Officer 3 knew him to be dangerous. Sikong also had a caution for law enforcement in the Washington Crime Information Center database. Officer 3 told the male to get down on the ground several times and he did not comply. The male then reached his arm back uncovered the machete and removed it from his backpack, arming himself with it. Officer 3 told him to "put the knife" down and he did not comply. He began walking away with the machete in his hand. He began exiting the complex onto a trail through the woods on the northwest corner of the complex which leads to train tracks. Officer 3 yelled at

him again to drop the knife and told him he was under arrest. Officer 3 told him this several times. When they got onto the trail, Officer 3 had additional units arriving behind him. They continued into the woods as Officer 3 continued giving him commands to drop the knife and that he was under arrest. He then reached into his pants and removed a smaller knife. Sikong now had a machete in one hand and a smaller knife in the other. Officer 3 called out to the other officers on scene that he was going to throw the knife at us. He was moving his arms in a way that is indicative of someone throwing something but was not letting go of it. Officer 3 knew this based on his stance towards them, and how he lifted it above his arm in a manner consistent with throwing a baseball. Officer 3 told him if he threw the knife at officers he would be shot. He pretended to throw the knife several times but continued walking. He then stopped, faced officers, lifted his arm, and threw the knife in our immediate direction which could have cause serious bodily injury or death to an officer. Officer 3 was in fear for his safety and afraid that Officer 3 would be hit and killed. Officer 3 ducked down to avoid being hit and the knife curved away from us and went into the bushes nearby. Involved Officer 1 was right next to Officer 3, and Involved Officer 1 fired one round at the suspect, missing him. The male then turned around quickly and began walking away from them again with the original machete still in his hand. Officer 3 continued to give commands for the male to drop the knife and that he was under arrest. He still did not comply with Officer 3's commands. Officers continued walking towards the train tracks behind him and ultimately detained him.

iv. Officer 4

Officer 4 wrote that he saw Officer 2 sprinting toward the northwest corner of the apartment complex. Officer 4 began sprinting after Officer 2 and quickly saw the back of Officer 3's police vest about 50 feet further. Officer 4 heard Officer 3 yelling commands at Sikong and saw Sikong duck under a torn back piece of fence to enter a tree lined area. It was at this time Officer 4 saw a machete in Sikong's hand. Officer 4 unholstered his duty pistol and joined officers who were now following Sikong into the wooded area on a very narrow trail. On either side of the trail were sticker bushes which limited the ability for officers to spread out posing a danger if Sikong rushed them. Officer 3 was just ahead of Sikong, and Officer 4 was all the way to the right side. Officer 4 could not see which officers were to the left of Officer 3. Officers continued to give commands to Sikong to drop the machete and to stop and that he was under

arrest. He did not drop the machete and appeared very hostile. Officer 4 advised dispatch we were on the north side of the complex, walking through the woods, toward the train tracks and backing officers needed to respond to 1st Ave. Just after airing this information Sikong turned his body back to get leverage as if someone who was throwing a discus would do. Officer 4 was afraid for the safety of all of them and feared they were about to have a large knife thrown at them that could come down and hit one, or multiple officers, in the head. Officer 4 saw him throw the machete at them and he had to immediately duck in order to avoid being hit. Officer 4 heard a shot go off coming from his left side and he believed it to be an officer. Officer 4 heard the machete land just behind him to the right in the bushes. He saw the suspect now had another machete in his hand. The suspect did not appear to have any physical reaction to the gunshot as if he was struck. Officer 4 heard him yell something, but he could not hear what it was. Officer 4 heard more commands and he saw the suspect turn around and start walking in an aggressive manner toward the train tracks with the machete in his hand. He heard an officer advise over the radio that shots were fired. He then advised dispatch that officers were ok, the suspect did not appear to be struck, and the suspect threw a machete at officers. Officer 4 stated that Sikong was continuing to walk westbound through woods toward a senior living apartment just across the train tracks.

v. Officer 5

Officer 5 wrote that he followed other officers who ran through a hole in the fence into a trail leading to the railroad tracks by the northwest portion of the apartment complex. Officer 5 was behind several officers and only caught glimpse of the suspect holding a machete. Officer 5 had his pistol drawn in the low ready position. Sikong continued to walk away while disregarding lawful commands from other officers. He heard one gun shot and saw a machete flying in the air in their general direction from the suspect's direction. It landed in the bushes on the north side of the trail. Officers continued to pursue Sikong onto the railroad track and then south. Sikong held another machete in his hand and refused commands from the other officers who told him to drop the weapon and that he was under arrest. Sikong continued running southbound on the railroad tracks. He was tased, which caused him to drop his machete and ultimately arrested.

vi. Officer 6

Officer 6 did not witness the shooting, but spoke with Sikong on scene after he was arrested. Sikong told him that he threw the machete at the group of cops chasing after him. He said that he threw it over their heads but that he was trying to get the police to kill him. When asked if Sikong knew that machetes are dangerous weapons, Sikong said that he knows that a machete is dangerous. He said if he really wanted to, he could have hurt the police officers that were chasing after him. Sikong told Officer 6 that he wanted the officers to kill him because he has tried but could not do it himself.

vii. Other Officers

The following officers wrote reports but did not witness the shooting – Officer 7, Officer 8, Officer 9, Officer 10, Officer 11, Officer 12, Officer 13, Officer 14, Officer 15, Officer 16, Officer 17, Officer 18, and Officer 19.

4. Subject Interview

Mr. Sikong was interviewed under *Miranda* at the Kent Jail by Des Moines Detective 2 and Detective 3. Sikong said he is homeless and lives in a tent in the wooded area around behind the Alderbrooke apartments. Sikong said he knows the alleged assault victim, Civilian 1 and admitted they had a dispute last week over a marijuana pipe. Sikong said he was "not really upset" with Civilian 1 in regard to the argument they had last week. Sikong admitted to swinging a machete at Civilian 1 but said he did not have any intentions of hurting him.

Sikong admitted that the machete strike hit Civilian 1's door, but minimized his conduct by saying that only the back of the machete contacted Civilian 1's door. This caused him to drop the machete on the ground. Sikong picked up the machete and began walking away, while telling Civilian 1, "Your next." Sikong stated that Civilian 1 then got in his vehicle and attempted to run him over. Sikong ran around the abandoned house. Sikong described the machete he used to hit Civilian 1's door as being approximately 2 1/2 feet long with an orange handle. After his encounter with Civilian 1, Sikong said he began walking toward the woods. This is when he was contacted by an officer who were wearing police uniforms. Sikong said at that time he did not have a machete in his hand. He explained he had his long machete in his backpack, which he was

wearing. He also had another machete hanging from his side, that he described as shorter and a black handle. When the officer told him he was under arrest, Sikong said he told the officer "No" and pulled out his long machete from his backpack, turned around and started walking away. As he was walking away the officers began to follow him. At one point, Sikong said he turned around toward the officers and pulled the smaller machete he had hanging from his waist. He then threw the smaller machete toward the officers and off to the side. Sikong stated he threw the machete because he "wanted them to shoot me." Sikong said he intentionally threw the machete toward the officers, but off to the side because he did not want to hurt the officers.

Once he threw the smaller machete, he turned back around while still holding the long machete in his hand; this is when he heard a shot and felt something hit his backpack. He began running along the tree line toward the railroad tracks still holding his long machete with the orange handle. The officers were telling him to stop, and he told them they better shoot him. He began running along the railroad tracks when the officers caught up to him. Sikong said he was tased by the officers and arrested. Detective 2 noticed a red mark on Sikong's right shoulder. Detective 2 took a photo of the red mark using his cell phone. Sikong also complained of foot pain from when he describes the officers were pressing down on him. Jail staff was informed of Sikong's injuries and potentially suicidal thoughts.

5. Officer Processing

FWPD Detective 4 and Detective 5 processed Involved Officer 1. Involved Officer 1's service weapon is a Smith & Wesson MP 9mm with a 17-round capacity. The magazine loaded in the firearm had 17 rounds - one round chambered and 16 rounds in the magazine. Police officer handguns are usually loaded with one more bullet than the maximum with the additional bullet pre-loaded in the chamber, so it appears Involved Officer 1 was short 1 round. His two backup magazines were fully loaded with 17 rounds.

The firearm was later test fired and found to be in proper working order.

6. Crime Scene

According to Detective 6, based on body camera footage, it appears the OIS occurred roughly 20 feet west of the hole in the fence where Sikong and police accessed the trail. The casing for the Officer's fired bullet was not located after an extensive search. It was likely not found because of the foliage surrounding the trail.

Detective 7 was able to find the thrown machete. It was in blackberry bushes about a couple feet in from the north side of the trail and just to the east of where officers were standing during the OIS.

The backpack the subject was wearing was recovered. It had a possible bullet hole in it. The backpack contained a bike pump with a possible damage from a gunshot though no bullet or bullet fragment was recovered.

7. Body-Worn Video

i. Officer 3's BWV

Officer 3's video the most comprehensive view of the officer-involved shooting. At approximately 6 minutes and 53 seconds into the BWC video, Officer 3 contacts Sikong in front of Building K. Officer 3 orders Sikong to the ground at gunpoint. Sikong is non-compliant and continues to walk toward the trail behind the building and away from Officer 3 and pulls a machete out according to Officer 3. Officer 3 orders Sikong to "put the knife down you are under arrest" several times. Sikong ignores him and continues to walk down the trail. Two times he turns around and pretends as though he is going to throw the machete at the officers. At 7 minutes and 47 seconds Officer 3 advises officers that Sikong is going to "throw the knife." At 7 minutes and 52 seconds Officer 3

advises Sikong, "If you throw the knife, you will be shot." At 7 minutes and 55 seconds into the video, Sikong turns around and faces the officers and throws the machete in their direction. At 7 minutes and 56 seconds you can hear one gun shot. Sikong responds to the gunshot by yelling something unintelligible and continues down the trail and onto the train tracks. While on the tracks Sikong is now clearly armed with a second machete in his left hand. At 8 minutes and 40 seconds, Sikong turns around, stops, and is now facing the pursuing Kent PD Officers while wielding the machete. Sikong then turns around and continues to walk southbound on the railroad tracks. Officers continue to give him verbal commands to drop the knife and Sikong ignores their commands. At 7 minutes and 47 seconds Sikong is tased. Several Kent Officers take Sikong into custody 9 minutes and 38 seconds into the video.



Figure: Frame from Officer 3's BWV where Mr. Sikong (far left ahead on trail) has stopped walking away from police, turned towards the officers, and is winding up to throw the machete towards officers.

ii. Involved Officer 1's BWV

Involved Officer 1's BWV shows he and Officer 2 speaking with the victim in the parking lot immediately before Officer 3 requests additional officers to follow Sikong who has entered the trail. Involved Officer 1 and Officer 2 then run through the

apartment complex parking lot, walk through the hole in the fence, and onto the walking trail providing Officer 3 back up.



Figure: Frame from Involved Officer 1’s BWV where Mr. Sikong (yellow circle) throws the machete towards officers. Involved Officer 1 fires one shot at this time. Officer 2 is to his immediate left and Officer 3 is to his immediate right.

After the subject was arrested, Officer 2 asks Involved Officer 1 if he is ok. Involved Officer 1 responds by stating, “I saw a knife flying at my partner, so...” “We’ve dealt with this guy before. Me and him (pointing to Officer 3). I didn’t want to risk it again, but...”

iii. Officer 1’s BWV

Officer 1’s BWV shows how narrow the trail was where the officer’s pursued Mr. Sikong. He wrote the trail only allowed for two to three officers to walk side by side.



Figure: Frame from Officer 1's BWV seconds before Involved Officer 1 fires at the subject. Involved Officer 1 is the officer directly in front of and to the left of Officer 1.



Figure: Frame from Officer 1's BWV where Officer 1 tapped Involved Officer 1 on the shoulder to gain his attention and have him switch positions with him. Simultaneously, he observed Sikong look over his right shoulder, back towards the officers, and throw the machete in their direction.

IV. INVESTIGATION SUMMARY

Involved Officer 1 was familiar with the subject from a prior contact three months prior where Mr. Sikong bit an officer, attempted to take the firearm of two officers, and swung a machete at Involved Officer 1 three times.

On the day of this incident on June 26, 2022, during this service call for an alleged assault in progress, Involved Officer 1 was dispatched to the area of near Alderbrooke Apartments in the City of Kent. Officer 3 saw the suspect, pulled up to him, and exited car.

Officer 3 addressed the suspect by first name asking suspect to talk with him. The suspect ignored the officer's questions and continued walking away towards a wooded walking path. Officer 3 reported to dispatch that he had suspect at gunpoint. Officer 3 is seen on his BWV pulling out gun and pointing it at suspect. Officer 3 ordered the suspect to lay on the ground. The subject ignored his command. Dispatch told officers the suspect was in possession of a machete. Officer 3 advised the subject multiple times that he was under arrest. Officer 3 ordered Sikong multiple times to put his machetes down. The suspect ignored his orders and continued to walk through a hole in the fence behind apartment complex and onto the walking trail which leads to the train tracks. Multiple officers responded to the location to provide backup including Involved Officer 1. The subject turned around and mimicked throwing his machete at the officers at least twice. Officer 3 advised the other officers following closely behind Officer 3 that the suspect was going to throw machete at them. Officer 3 warned suspect that he would be shot if the subject threw the machete at the officers. BWV shows that as the suspect wound up to throw the knife, Involved Officer 1 fired one shot at the suspect, missing. It is unclear how many feet away from the officers the machete landed, or how close the suspect was to Involved Officer 1 due to the fisheye lense on the BWV camera. The subject appeared to be roughly 50 feet ahead of Involved Officer 1. The other officers behind Involved Officer 1 and Officer 3 did not shoot. They either had their tasers drawn or were blocked by Involved Officer 1 and Officer 3 on the narrow trail. The pursuit continued after the shot was fired. Sikong was ultimately subdued nearby by police when the police tased him while walking on the railroad tracks. During that interaction Sikong swung a second machete he possessed at an officer, but did not come close to striking him. The electrification from the taser caused him to drop machete and he was handcuffed and arrested. Later Sikong told investigators that he threw the machete at officers because he intended to commit suicide by cop.

V. LEGAL STANDARD AND APPLICABLE LAW

The State must prove each element of a criminal charge by competent evidence beyond a reasonable doubt.⁵ The KCPAO will file charges if sufficient admissible evidence exists, which,

⁵ RCW 9A.04.100; WPIC 4.01.

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.⁶

In addition, the State must disprove the existence of a defense that negates an element of the crime.⁷ 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.⁸

The use of deadly force is lawful when necessarily used by a peace officer meeting the good faith standard to arrest or apprehend a person who the officer reasonably believes has committed, has attempted to commit, is committing, or is attempting to commit a felony.⁹

In considering whether to use deadly force to arrest or apprehend any person for the commission of any crime, the peace officer must have probable cause to believe that the suspect, if not apprehended, poses a threat of serious physical harm to the officer or a threat of serious physical harm to others. Among the circumstances which may be considered by peace officers as a “threat of serious physical harm” are the following:

1. The suspect threatens a peace officer with a weapon or displays a weapon in a matter that could reasonably be construed as threatening; or
2. There is probable cause to believe that the suspect has committed any crime involving the infliction or threatened infliction of serious physical harm.¹⁰

Necessary means that no reasonably effective alternative to use the force appeared to exist and that the amount of force used was reasonable to effect the lawful purpose intended. A peace officer acts in good faith, an objective standard, when considering all the facts, circumstances, and information known to the officer at the time to determine whether a similarly

⁶ KCPAO Filing and Disposition Standards.

⁷ WPIC 14.00.

⁸ Id.

⁹ RCW 9A.16.040

¹⁰ Id.

situated reasonable officer would have believed that the use of deadly force was necessary to prevent death or serious physical harm to the officer or another individual.¹¹

The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.¹² “The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.”¹³

VI. ANALYSIS AND CONCLUSION

Given the evidence presented in this investigation, there is insufficient evidence to prove that Involved Officer 1’s use deadly force was not in good faith.

Specifically, when Involved Officer 1 used deadly force, there was probable cause for Involved Officer 1 to believe that Sikong committed a felony. In this instance Second Degree Assault on a civilian and Third Degree Assault of a Peace Officer

Probable cause also existed to believe that Sikong, if not apprehended, posed a threat of serious physical harm to others. First, the felony that Sikong had just committed involved the attempted infliction or threatened infliction of serious physical harm. Minutes earlier the reporting party had told Involved Officer 1 that Sikong had swung a machete at him nearly striking him. Second, the suspect threatened officers with a weapon or displayed a weapon in a matter that could reasonably be construed as threatening. Body-worn video footage and Mr. Sikong’s statements show that he slung one of his two machetes at the officers as they pursued him. Third, Involved Officer 1 knew from a recent prior contact with Sikong that he posed a threat of serious physical harm to others. Just three months prior Sikong swung a machete at officers, bit an officer, and attempted to disarm multiple officers.

¹¹ Id.

¹² Graham v. Connor, 490 U.S. 386 (1989).

¹³ Id.

Finally, the independent investigation shows that Involved Officer 1 had reason to believe that the use of deadly force was necessary to prevent death or serious physical harm to the officer or another individual. As Sikong wound up to throw the machete at officers, Involved Officer 1 fired one shot at Sikong striking Sikong's backpack. He ceased firing his weapon after Mr. Sikong released the weapon from his hand and no longer posed an immediate deadly threat to the officers. Although no other officer fired their gun, it was not unreasonable for Involved Officer 1 to conclude that shooting Sikong was necessary to prevent officers from being struck with a machete. Multiple officers wrote that they were in fear for their safety when Mr. Sikong threw the machete towards them. Involved Officer 1 was forced to make a split-second decision. In that split-second Involved Officer 1 could not have known that Sikong was suicidal and his intent was to provoke police into shoot him. Nor was he capable of knowing that Sikong intended to throw the machete away from the officers and not directly at them. Moreover, was positioned in front of most of the other officers. Those officers may not have fired for reasons unrelated to whether they believed deadly force was necessary. Specifically, Officer 1, who was positioned behind Involved Officer 1, described the trail as narrow and only allowing for two to three officers to walk side by side. The officers behind Involved Officer 1 may have been blocked by the officers in front of them on the narrow trail, either blocking their line of sight or making it unsafe for them to shoot. Additionally, some of other officers who chose not to shoot were not recently assaulted by the subject like Involved Officer 1 was. That likely played a role in his assessment of whether using deadly force was necessary. For all of these reasons, the evidence establishes that the State cannot disprove beyond a reasonable doubt that Involved Officer 1's use deadly force was not in good faith. As a result, KCPAO declines to file assault charges against Involved Officer 1.