Non-Fatal Use of Force
Matthew Cherry

Seattle Police Department, #2023FIT-0009

King County Prosecuting Attorney
Public Integrity Team

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DECLINE MEMORANDUM

WARNING – This memorandum contains images and descriptions of violence that may be offensive and disturbing to some readers. The images and descriptions are included to provide the reader with the most accurate information regarding the topic of this memorandum.

I. INTRODUCTION

1. Purpose 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.[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]

2. Status of 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 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 materials provided to the KCPAO, relevant criminal laws, rules of evidence governing criminal proceedings, the

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[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.

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

At 8:00 AM on July 18, 2023, three Seattle Police Department (SPD) officers arrived at 1st Ave. and Cherry St. in Seattle to arrest Matthew Cherry (Subject Cherry) who had just stabbed another civilian. Officers ordered Subject Cherry to stop. Instead of stopping he brandished a knife and ran downhill on the sidewalk towards Officer 1 and Officer 2. Involved Officer 1, standing in the street roughly 20-30 feet to their side shot Subject Cherry two times in order to protect his colleagues. The shots hit Subject Cherry in the chest and hand, subduing him. He was arrested and transported to Harborview Medical Center. He survived the gunshot wounds, but required amputation of one finger.

III. SUMMARY OF INVESTIGATION[5]

1. ITEMS REVIEWED

The KCAPO reviewed all relevant body-worn video, in-car video, photographs, dispatch recordings, audio recordings, and reports.

2. SCENE

The SPD Force Investigation Team responded to the scene to investigate Involved Officer 1's use of deadly force. It was daytime. The temperature was 64 degrees Fahrenheit. Visibility was good. There was no precipitation and very little wind.

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[5] 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.

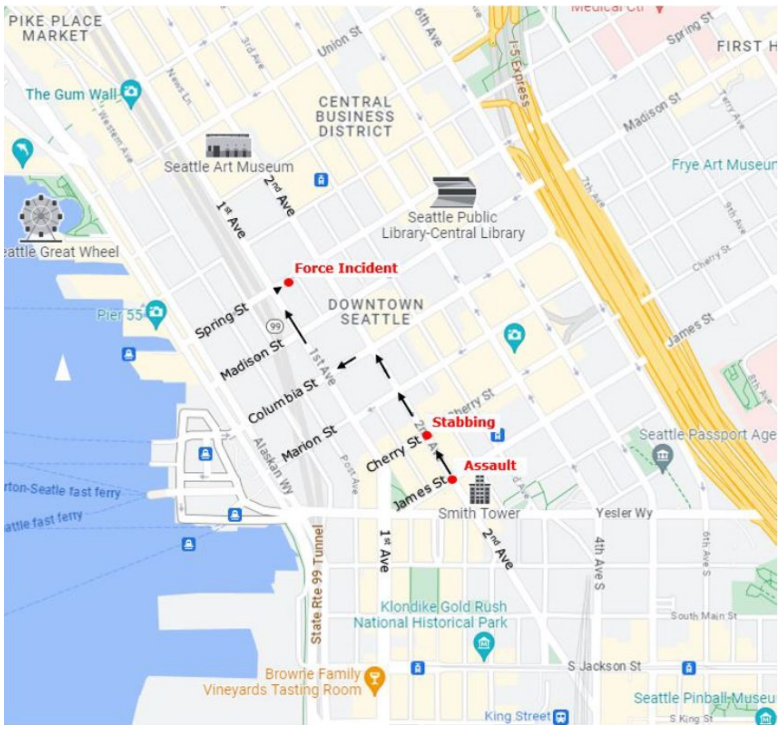

Figure 1: Map showing the location of each incident and Subject Cherry's path of travel.

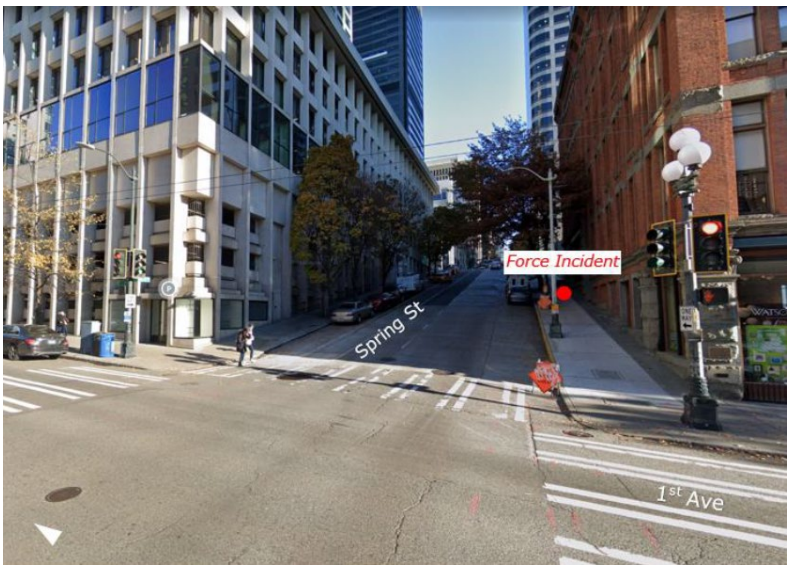

Figure 2: Google Maps street-view photo showing the location of the OIS.

3. TIMELINE

- 7:45 AM - Civilian Witness 1 called 911 to report that Subject Cherry assaulted a man (Civilian Witness 2) at 2nd Ave. and James St. and brandished a knife.

- 7:46 AM - Civilian Witness 1 updated the 911 dispatcher that Subject Cherry was stabbing another man (Civilian Witness 3) at 2nd Ave. and Cherry St.
    - Civilian Witness 1 gave a description of Subject Cherry and reported he was also following Subject Cherry northbound on 2nd Ave.
- 7:47 AM- The dispatcher broadcast to officers that a possible stabbing had just occurred at 2nd Ave. and Cherry St.
- 7:48 AM - Officer 3 and Officer 4 were dispatched as the primary officers. Officer 5 and Officer 6 responded as backing officers and rendered medical aid to Civilian Witness 3.
- 7:52 AM- The dispatcher broadcast that Subject Cherry was northbound on 1st Ave. approaching Spring St.
- 7:53 AM – The dispatcher broadcast a description of Subject Cherry.
    - Officer 1 broadcast that she located Subject Cherry at 1st Ave. and Spring St.
- 7:54 AM- Officer 1 broadcast that Subject Cherry was non-compliant and running eastbound up Spring St.
    - Involved Officer 1 and Officer 2 arrived at 1st Ave. and Spring St.
    - Subject Cherry charged Officer 2 and Officer 1 with a knife.
    - Officer 2 fired a non-lethal Bola Wrap round at Subject Cherry. It was ineffective.
    - Involved Officer 1 fired two rounds from his handgun at Subject Cherry striking him in the abdomen and right hand.
- 7:55 AM - Officers rendered medical aid to Subject Cherry.
- 7:59 AM - Seattle Fire Department (SFD) Medics arrived on scene and took over medical aid.

4. 911 Calls

a. Civilian Witness 4

Civilian Witness 4 is a security guard in the area of 2nd Ave. and Spring St. He called 911 to report a stabbing at 2nd and Cherry St. He said that the suspect, who matched Subject Cherry's description, walked away northbound on 2nd Ave. Civilian Witness 4 stayed on the phone with the operator and followed Subject Cherry until police arrived.

b. Civilian Witness 2

Civilian Witness 2 called 911 to report being assaulted by Subject Cherry. He then followed Subject Cherry while remaining on the phone with a 911 operator. As the police followed Subject Cherry up Spring St. Civilian Witness 2 is heard yelling that Subject Cherry has a knife. Then gunshots are heard and Civilian Witness 2 states, "Police just shot him. He pulled a knife out on them. They had no choice."

c. Civilian Witness 1

Civilian Witness 1 called 911 to report Subject Cherry attempting to stab Civilian Witness 2 on 2nd Ave. and James St. He described the suspect, Subject Cherry, as a 40-year-old, white male, brown hair, wearing black jacket and blue jeans, brown 40s, 5-8, beard with straggly hair. He said the suspect was walking southbound on 2nd Ave.

Then one minute into the call while the suspect was walking on Cherry and 2nd Ave., Civilian Witness 1 told the operator, "He's attacking someone else in the street… Hurry, please. They're stabbing each other." He advised that the victim was stabbed several times in the left shoulder area. He then advised that SPD was on scene and went on to describe the suspect's knife as a 4" kitchen knife with a blue handle. He said that he lost sight of the suspect walking down Columbia towards 1st Ave.

5. SUBJECT INTERVIEW

a. Matthew Cherry

On August 3, 2023, investigators spoke with Subject Cherry in a rambling 25-minute interview where he made claims that were not based in reality and shared his paranoia about being watched and followed by others. Specifically, he said he was targeted by "gang stalkers" who pretended to be his parents. He further explained that he was being hunted by criminals and that the police used "psychological ammunition" to "traumatize" him. Subject Cherry warned that he had more money than the police and could pay for their "logic" to go away.

When asked specifically what happened the day he was shot, he said the last thing he remembered was being shot by a Taser. He said the person who shot him with the Taser was an "exiled" military man who looked like his dad. Further, he said he remembered a female present

as well who he believed was impersonating a police officer. He said both the male and female made him "scared" and "enraged."

When asked about the knife he possessed the day he was shot, Subject Cherry stated he had to have a weapon to protect himself from the gang. Further, he said it was not a knife he possessed; it was "yellow" scissors. After he was shot, Subject Cherry stated "they" let him go.

6. CIVILIAN INTERVIEWS

a. Civilian Witness 4

Civilian Witness 4 told police that he first observed Subject Cherry at 2nd Ave. and James St. He described Subject Cherry as a white male, approximately 5'8 to 5'10, 200 pounds, black and silver hair, wearing a black jacket with a camo shirt underneath, blue jean pants, carrying a big black duffle bag, and wielding a knife. At 2nd Ave. and James St., he said he observed Subject Cherry get into a "scuffle" with another person (Civilian Witness 2) and a couple bystanders broke it up. On the northwest corner of 2nd Ave. and Cherry St., Civilian Witness 4 stated a homeless man (Civilian Witness 3) approached Subject Cherry and stated, "Hey why did you do that?" In response, Civilian Witness 4 said Subject Cherry stabbed Civilian Witness 3 six to seven times in the neck, head, and shoulder. He described the knife as a "chef's knife" approximately six to ten inches long. While the stabbing was taking place, he stated he called 911. After Subject Cherry stabbed Civilian Witness 3, he said Subject Cherry walked away to 1st Ave. and Spring St. During that time, he said he followed Subject Cherry while updating the call taker with their location. When the first officer (Officer 1) showed up on the southeast corner of 1st Ave. and Spring St., he said he pointed Subject Cherry out to her. He explained that the officer told Subject Cherry to stop several times. He said Subject Cherry was pacing back and forth and saying something to Officer 1 that he could not discern. He stated that Subject Cherry then walked up Spring St. (eastbound) toward an alleyway. While that was happening, he stated that another officer (Officer 2 and Involved Officer 1) arrived from the north and told Subject Cherry several times to, "Get on the ground." He said three to four more officers showed up. During the officers' interaction with Subject Cherry, he stated that he heard Subject Cherry say, "I got a knife. I got a knife." Further, he said Subject Cherry was not listening to the officers' commands. Civilian Witness 4 said shortly after shots were fired at Subject Cherry on the 100 block of Spring St (midblock), on the south sidewalk. When the shots

were fired, he said he was standing in the middle of the intersection at 1st Ave. and Spring St. approximately two hundred feet away.

b. Civilian Witness 2

Civilian Witness 2 told police that around 7:45 AM, he was walking westbound on James St. toward 2nd Ave. when he heard two homeless men yelling. He said one of the homeless men (Subject Cherry) was pulling a medium sized luggage bag and sounded "very agitated" and appeared "mentally unstable." He described Subject Cherry as having dark hair that was graying, heavy set, 5'6", 230 pounds, jeans, black jacket and a "Camo type shirt." He said Subject Cherry was yelling while crossing James St. toward where he was standing. While Subject Cherry was walking toward him, he stated that Subject Cherry "fully" spat in his face and on his upper torso. He said he pushed Subject Cherry away from him, and an altercation ensued. He stated that Subject Cherry was lunging at him, so he kicked at Subject Cherry and hit him with his bag. Further, he said three male bystanders (Civilian Witness 1 and Civilian Witness 4 were two of the three). He stated that one of the three bystanders announced that he was calling 911 and that's when Subject Cherry brandished a knife from his right front pocket and lunged at them. He described the knife as a "cheap steak knife," approximately three inches in length with a green handle. He said they "scattered" from Subject Cherry, but Subject Cherry continued toward them. Eventually, after yelling at Subject Cherry to go away, he said Subject Cherry walked away northbound on 2nd Ave. Civilian Witness 2 stated that he and the witnesses, Civilian Witness 1 and Civilian Witness 4, followed Subject Cherry from a distance and spoke to 911 call takers about the incident and Subject Cherry's location. At 2nd Ave. and Cherry St., he said a homeless man, Civilian Witness 3, shouted at Subject Cherry, "Why are you doing this!?" In response, he stated that Subject Cherry stabbed Civilian Witness 3. He said he observed Civilian Witness 3 bleeding from his neck and shoulder, but he was still standing up and seemed to be okay. Civilian Witness 2 said he and Civilian Witness 4 continued to follow Subject Cherry westbound to the front of Hotel 1000. At one point, he said Subject Cherry took his jacket off and then put it back on while continuing to walk northbound. He stated that Subject Cherry approached him again and yelled, "Get out of here! I'm a terrorist!" He said police officers arrived and he flagged one of the officers down. He said a female officer followed Subject Cherry up the hill eastbound and that identified where Subject Cherry stopped and he appeared

to be in an aggressive mood. He said two more officers showed up and that is when Subject Cherry pulled a knife from his right jacket pocket. He stated that Subject Cherry gestured toward the officers and that is when the shots were fired. He explained that right before the shots were fired, he thought the officer in the middle (Officer 2) had a Taser beam pointed at Subject Cherry's chest, but Subject Cherry had the knife out and was moving very quickly at the officers. Further, he said Subject Cherry had the knife in his right hand at hip level. He said Subject Cherry was pointing the blade toward the officers while lunging at them as if he was going to "slash" them. He added that the officers were close enough to Subject Cherry that they could have been stabbed. Civilian Witness 2 explained that he was hearing impaired and could not hear what was being said between the police officers and Subject Cherry.

c. Civilian Witness 5

While he was standing outside the We Work office on Spring St., Civilian Witness 5 heard a commotion and shouting coming from 1st Ave. He said he looked down the street and saw a white male (Cherry) wearing black clothing and in possession of a suitcase, running up Spring St. eastbound. He stated that behind Subject Cherry there was a female police officer shouting "Stop!" and "Get on the ground!" He explained that Subject Cherry kept looking back at the female officer who kept approximately five to ten feet distance from him. Additionally, the officer was telling Subject Cherry that she would, "Sic the dogs on him." He said Subject Cherry continued to run away up Spring St. and that is when he saw more police officers arrive. He stated that he got worried something bad was going to happen, so he pulled his iPhone out and started recording the incident. He said he saw and heard two to three police officers telling Subject Cherry to stop and at one point Subject Cherry stopped and turned toward the police officers. In that moment, he explained he heard two pops. He said originally, he thought the two pops came from a Taser because he saw lights on the device that one of the other officers was holding (Officer 2). Following the two pops, he said Subject Cherry fell to the ground and he stopped recording so he could move further into the alleyway. He explained that paramedics arrived and provided medical aid.

d. Civilian Witness 6

Civilian Witness 6 reported that she was at her work desk on the fourth floor of her office building when she heard screaming. Seconds later she stated she heard two shots. She described

the two shots as coming from a gun. She stated she went to her window and looked down onto Spring St. There, she said she saw an officer (Involved Officer 1) "screaming" and "shooting." Further, she described Involved Officer 1 as "Walking…aiming…and firing," approximately two times at something not in view of her window. She explained that the only person she could see from her window was Involved Officer 1. She said Involved Officer 1 was right underneath her window, but she could not discern what was being said. After the shots were fired, she stated that Involved Officer 1 walked in front of his patrol vehicle and out of her view from the window.

7. VIDEO EVIDENCE

a. In-Car Video Footage

Officer 1's car was equipped with an in-car video (ICV) system. Involved Officer 1 and Officer 2 were riding in the same car. Their car was also equipped with an ICV system.

i. Officer 1's Video

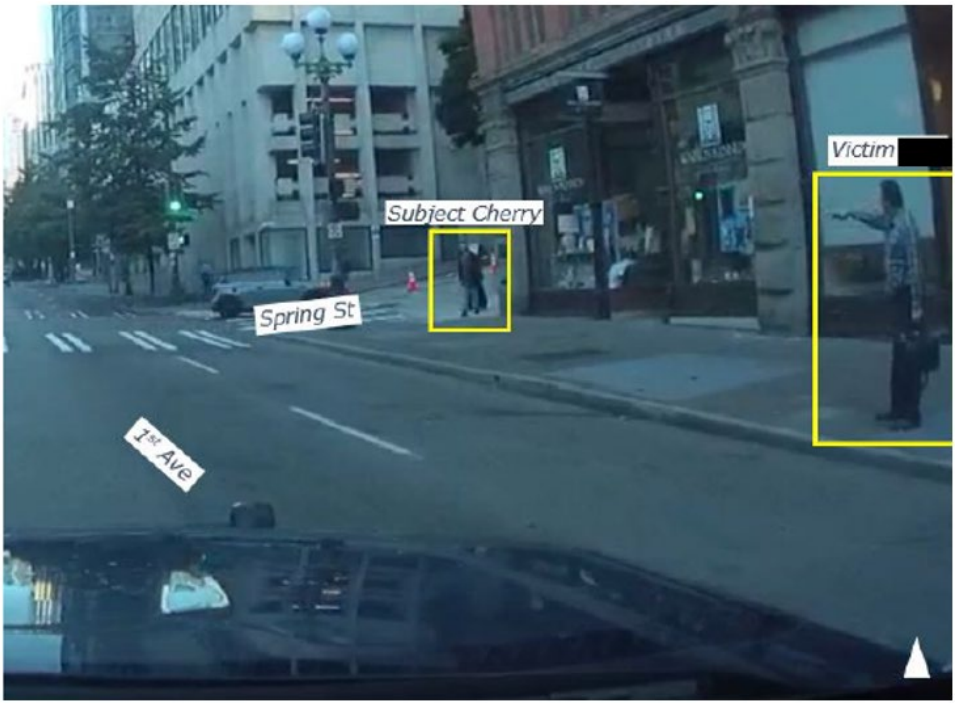

Figure 3: Officer 1's ICV shows Subject Cherry turning right (east) up Spring St. from 1st Ave. as Civilian Witness 2 points him out to Officer 1.

Figure 4: Officer 1's ICV shows her running up Spring St. eastbound following Subject Cherry.

Officer 1 yelled at Subject Cherry, "Get on the ground! I will send the f**king dog! Stop running!" He responded, "No." Officer 1 yelled again, "Stop running!" Subject Cherry yelled back, "No! I will not get on the ground you terrorist! You're a terrorist! I got to kill you! I will kill you!"

ii. Involved Officer 1 & Officer 2's Video

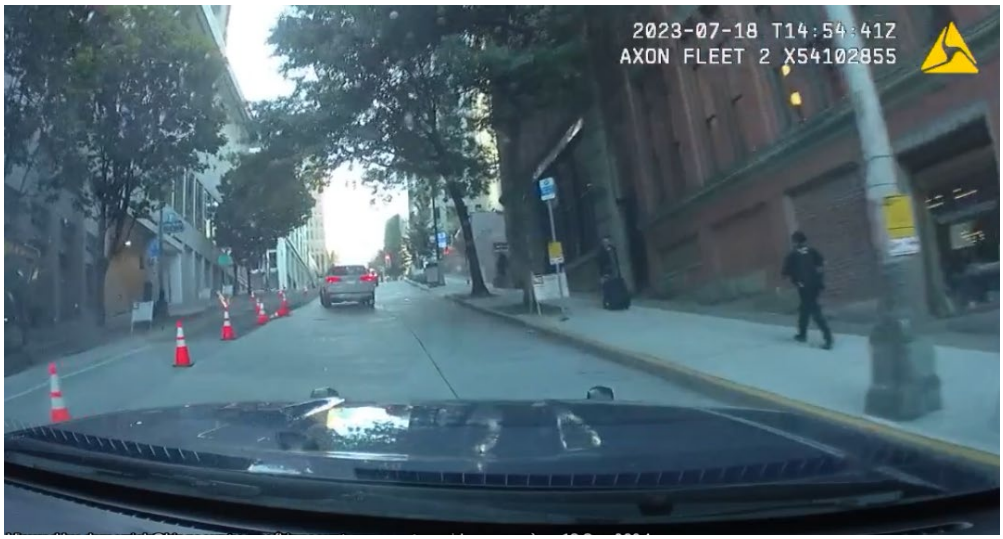

Figure 5: Involved Officer 1 & Officer 2 arriving on scene at Spring St. Officer 1 is seen following Subject Cherry up Spring St. from 1st Ave. Officer 1 is walking backwards rolling a suitcase.

Figure 6: Officer 2, having exited the front passenger door and joining Officer 1 on the sidewalk, follows Subject Cherry who stops and drops his luggage to confront them.

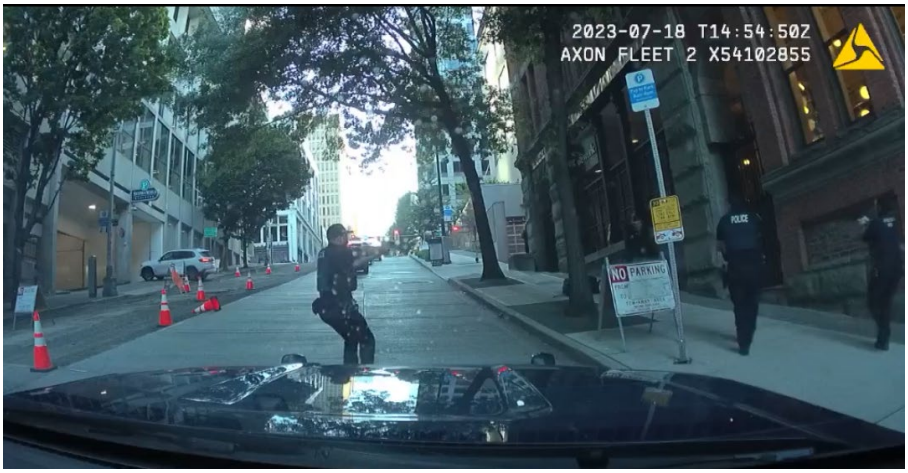

Figure 7: Involved Officer 1, left, having come out of the driver side of his patrol car has his gun drawn. Officer 2 fires his less lethal Bola Wrap at Subject Cherry, which failed to wrap around Subject Cherry.

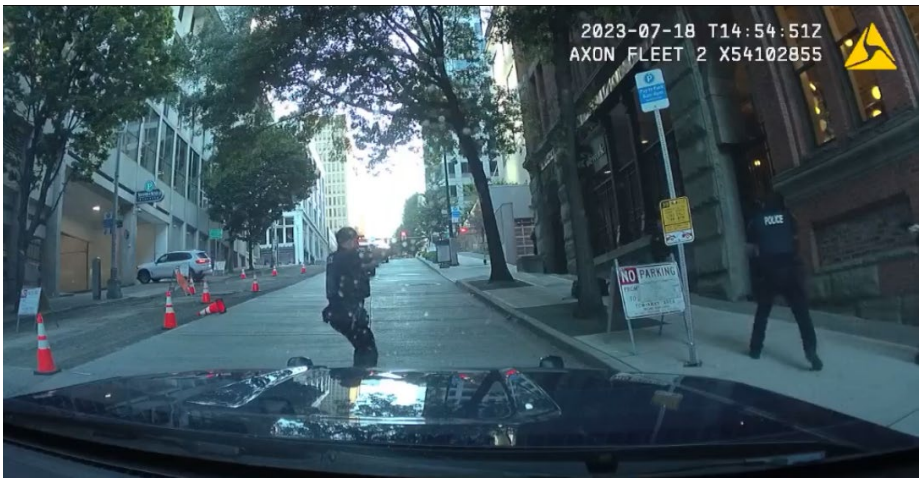

Figure 8: Involved Officer 1 then fires his first shot.

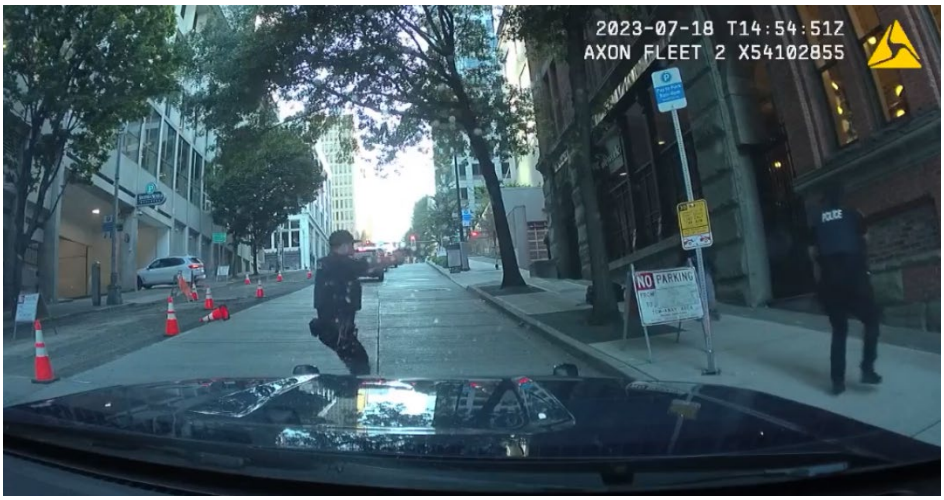

Figure 9: Involved Officer 1 fires a second shot.

b. Body-Worn Video

i. Officer 1

On body-worn video, Officer 1 broadcast that she located Subject Cherry at 1st Ave. and Spring St. She advised that Subject Cherry had a suitcase with him. The dispatcher repeated Officer 1's broadcast. Officer 2 asked what side of the street Subject Cherry was on. Officer 1 broadcast that Subject Cherry was on the east side of the street and that he was not stopping for her. She advised that she was waiting for another unit. Officer 1 put her patrol vehicle in park and exited her driver door. Upon exiting her driver door, she walked northbound to the front edge of her patrol vehicle. Subject Cherry was standing on the southeast corner of 1st Ave. and Spring St. Subject Cherry was facing southbound toward Officer 1's patrol vehicle. Subject Cherry was wearing a black jacket with a camo undershirt, blue jeans, and pulling a roller suitcase. Officer 1 pointed at Subject Cherry and yelled, "Get on the ground! Get on the ground!" Audible yelling from Subject Cherry was not discernible. Subject Cherry turned away from Officer 1 and moved eastbound on the south sidewalk of Spring St. Subject Cherry looked over his right shoulder at Officer 1 several times as he continued up Spring St. Officer 1 followed Subject Cherry from a distance. Officer 1 yelled to Subject Cherry, "Get on the ground! I will send the f**king dog! Stop running!" Subject Cherry stopped, turned his body toward Officer 1 (westbound), and yelled, "No!" He proceeded to jog backwards (eastbound) up Spring St. while pulling his roller suitcase with his right hand. Officer 1 yelled to Subject Cherry, "Stop running!" Subject Cherry yelled back, "No! I will not get on the ground you terrorist! You're a terrorist! I

got to kill you! I will kill you!" Officer 1 broadcast that Subject Cherry was running backwards (eastbound). During that moment, there was audible noise of a vehicle approaching from the west and Involved Officer 1 yelling at Subject Cherry to get on the ground. Subject Cherry instantly dropped his roller suitcase from his right hand and reached toward the left sleeve of his jacket. At chest level, his right hand met with his left hand, and then separated. Subject Cherry took a fighting stance. His legs were shoulder-width apart and his left foot was forward. His body was at a forty-five-degree angle facing westbound toward Officer 1 and Officer 2. Subject Cherry jumped up and down and swung both his arms across his body. Officer 1 yelled, "He's got a knife!" and began to back away from Subject Cherry (westbound).

Figure 10: Subject Cherry drops his luggage and turns towards officers holding a knife.

Visible to the north of Officer 1 was Officer 2 who had his Bola Wrap pointed directly at Subject Cherry.

Subject Cherry ran towards the officers (westbound). In that moment, there was audible noise of three loud pops. Subject Cherry fell backwards to the ground.

Figure 11: Officer 2 firing a bola wrap round as Subject Cherry begins to run towards officers.

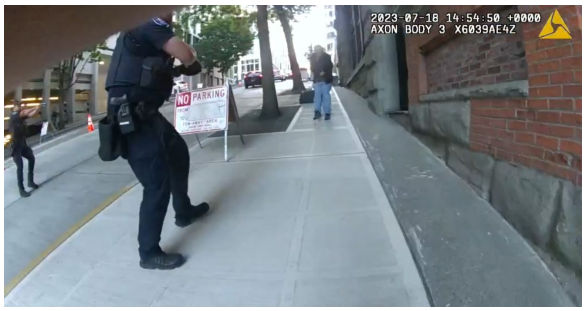

Figure 12: Involved Officer 1, visible on the left, then fires his gun at Subject Cherry.

Subject Cherry landed on the left side of his body and rolled onto his stomach His head was facing eastbound, and his feet were facing westbound toward the officers. Officer 1 moved forward (eastbound) toward Subject Cherry. Visible to the north of Officer 1 was Officer 2 and Involved Officer 1. Officer 2 had his Bola Wrap pointed at Subject Cherry and Involved Officer 1 had his firearm pointed at Subject Cherry. Also visible to the north of Officer 1 was Officer 2's and Involved Officer 1's patrol vehicle. Their patrol vehicle had its emergency lights activated. Approximately two feet from Subject Cherry's right foot was a fixed blade knife with a blue handle. Officer 1 asked the officers if they were "okay." Officer 1 approached Subject Cherry as he lifted his head from the ground and rolled onto his right shoulder. Visible was Officer 2 placing his hands on Subject Cherry's upper back and pushing Subject Cherry back to his stomach. He then took control of Subject Cherry's right arm.

ii. Involved Officer 1

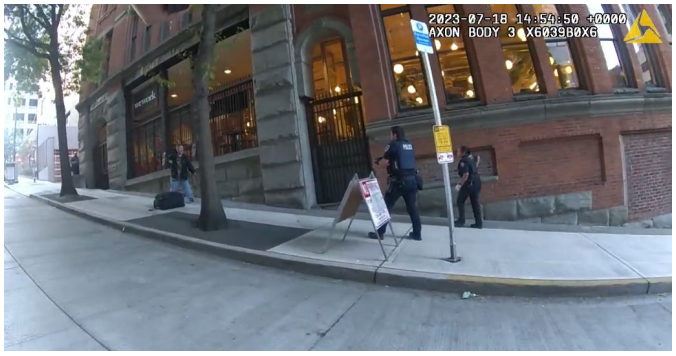

Figure 13: Subject Cherry, who was walking up the hill, drops his suitcase on the ground, turns around towards officers, and wields a knife. Officer is reaching for her firearm. Officer 2 has his Bola Strap unholstered.

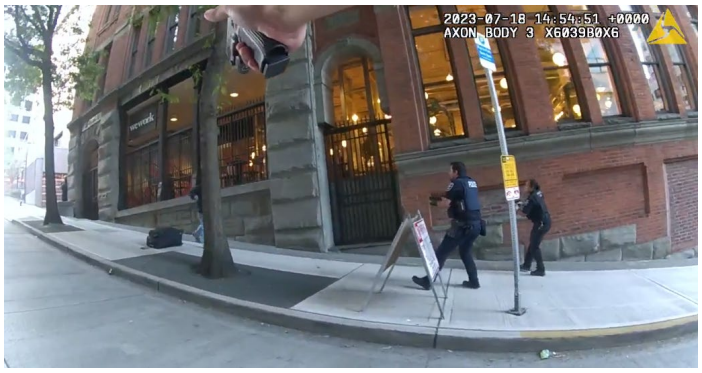

Figure 14: Subject Cherry, now running downhill towards the officers who are both backpedaling.

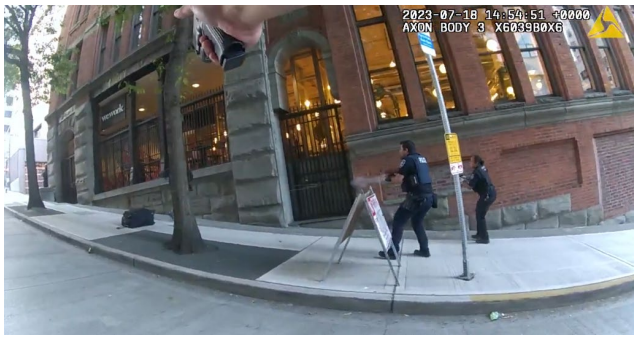

Figure 15: Officer 2 fires his Bola Wrap at the subject. The gun powder blast from the unit is visible. Involved Officer 1's drawn firearm can be seen at the top of the frame.

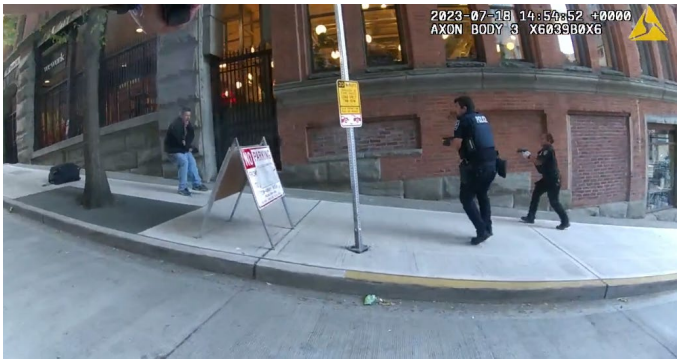

Figure 16: Subject Cherry reacts to being shot by a bullet or Bola Wrap round.

iii. Officer 2

When Officer 2 exits his patrol car, he unholsters his department issued Bola Wrap. The subject has not displayed a knife yet. Officer 1 is already on the sidewalk following the subject up Spring St. Her firearm is still holstered. Within seconds, the subject turns around, drops his suitcase, and raises a knife towards Officer 2 and Officer 1 in his right hand. He begins to run

towards them yelling, “Just shoot me.” Officer 1 and Officer 2 backstep. Officer 2 then fires his bola wrap, which was unsuccessful, and then immediately two gunshots are heard. The suspect drops his knife and falls to the ground. Once he is arrested, the officers give him lifesaving care until medical arrives and takes over.

Figure 17: Officer 2 gets out of the passenger side of his patrol car to assist Officer 1 apprehend Subject Cherry who are both at the top of the photo on the sidewalk.

Figure 18: Officer 2 readies his Bola Wrap to fire at the subject. A knife can be seen in Subject Cherry’s right hand.

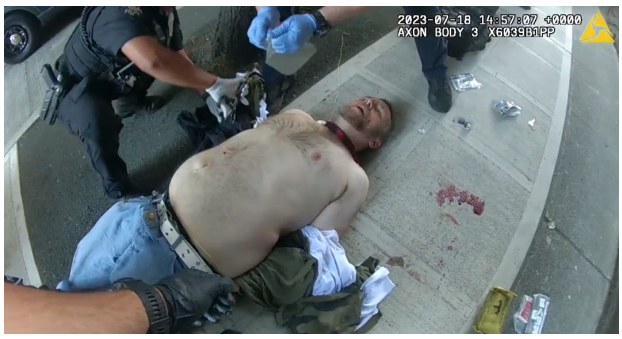

Figure 19: Officers provide lifesaving care to Subject Cherry after he is shot. A gunshot wound to the center of his stomach is visible.

c. Civilian Video

i. Civilian Witness 7 Video

Civilian Witness 7 recorded the stabbing from his hotel window on the thirteenth floor of the Courtyard Marriott at 612 2nd Ave. He later told KOMO News that he heard yelling and saw two men (Subject Cherry and Civilian Witness 3) in an "altercation" on the corner of 2nd Ave and Cherry St. While recording the altercation on his cell phone, Civilian Witness 7 said he heard someone yell, "He's got a knife!"

Figure 20: Cellphone footage taken by Civilian Witness 7 from his hotel room. The yellow circle shows Subject Cherry attempting to stab Civilian Witness 3.

ii. Civilian Witness 5 Video

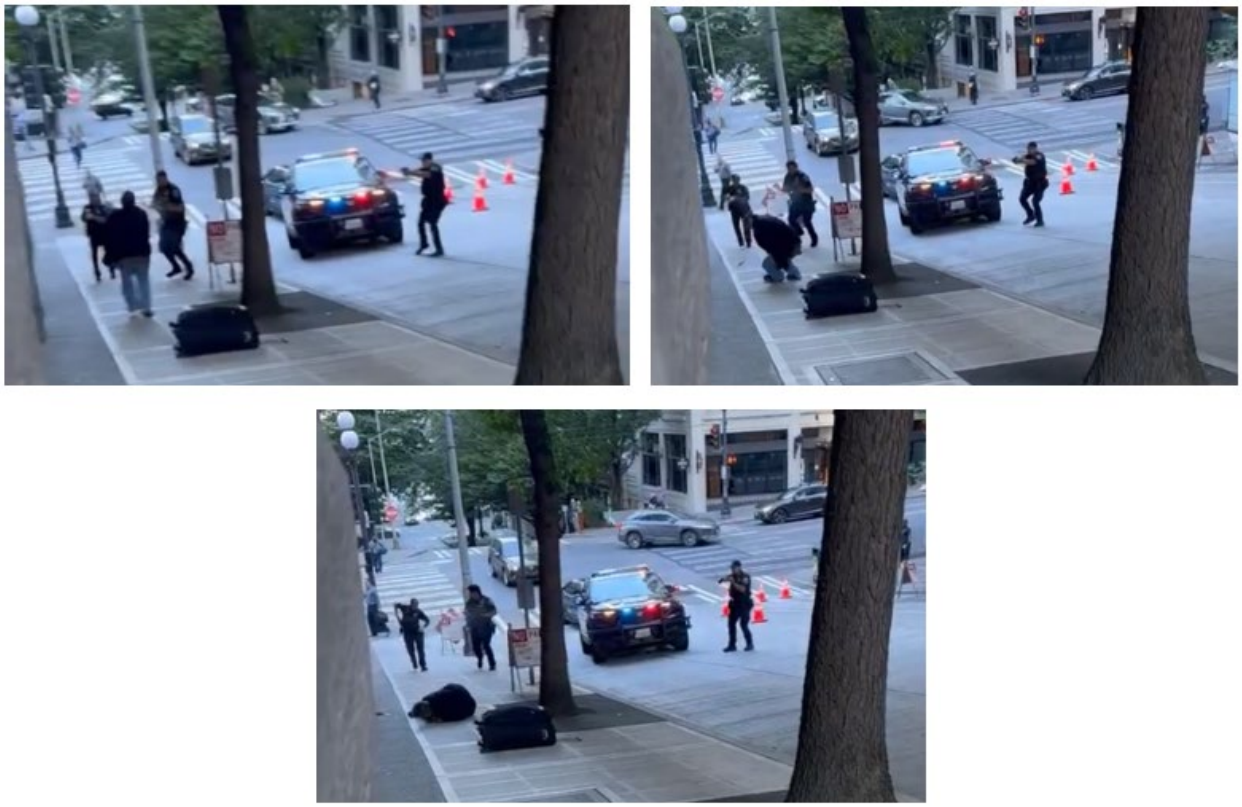

Figure 21: Top left, Subject Cherry charging Officer 1 and Officer 2. Top right, Subject Cherry dropping his knife once shot by Involved Officer 1 who is pictured on the right. Bottom, Subject Cherry falling to the ground after being shot.

d. Photographs

Figure 22: Photo of knife Subject Cherry possessed.

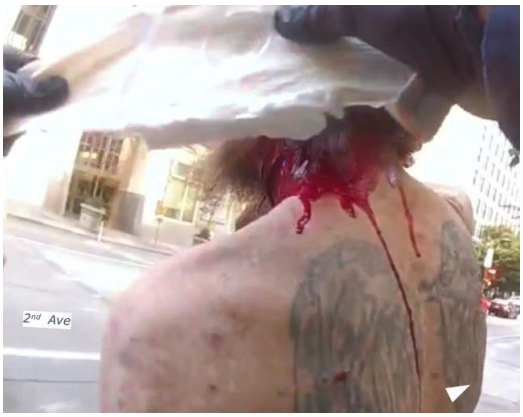

Figure 23: Bleeding wound of stabbing victim, Civilian Witness 3.

8. MEDICAL TREATMENT

Subject Cherry suffered gunshot wounds to his right hand and to his abdomen, which were through-and-through wounds. Emergency exploratory surgery of his abdomen was performed. He was ultimately transported to Harborview Medical Center. He had a successful splenectomy, and the pointer finger on his right hand was amputated.

9. RECOVERED EVIDENCE

Figure 24: Evidence markers 5 and 6 show the location of the shell casings from Involved Officer 1's gun. The orange cones represent the positions of Officer 2, Officer 1, and Subject Cherry.

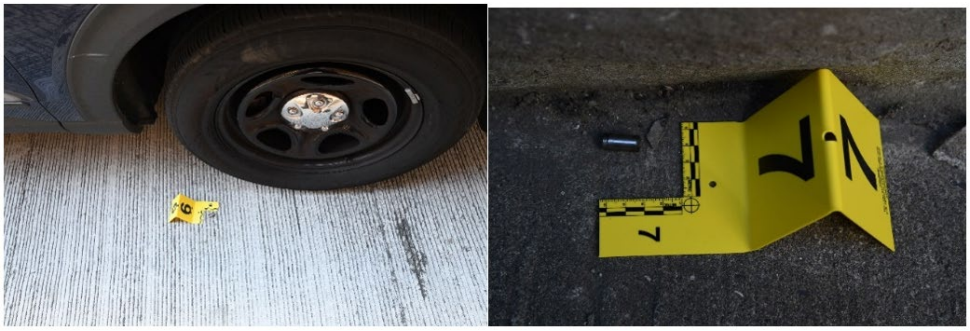

Figure 25: The recovered shell casings from Involved Officer 1's gun.

10. OFFICER PROCESSING

Involved Officer 1 used a department issued Glock model 17 Gen 5 9mm. Attached to the accessory mounting rail in front of the trigger guard on the Glock was an Olight model Valkyrie PL-Mini 2 tactical light, with an ambidextrous fingertip switch.

The Glock was loaded with one round in the chamber with headstamp "SPEER 9mm LUGER +P". The magazine from the handgun had a 17-round capacity and was loaded with 12 cartridges with headstamp "SPEER 9mm LUGER +P". Involved Officer 1 carried two additional magazines on his exterior vest carrier, each had a 17-round capacity, each was loaded with 17 cartridges with headstamps "SPEER 9mm LUGER +P".

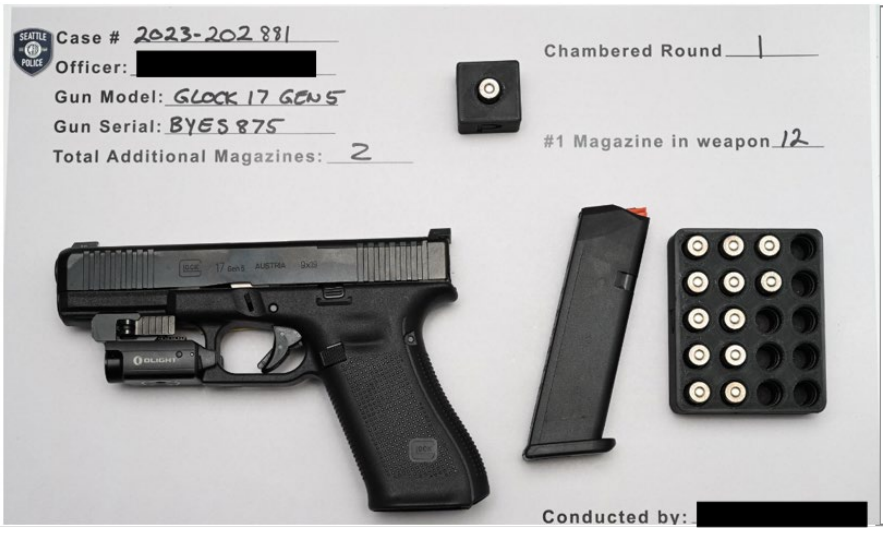

Figure 26: Photo of Involved Officer 1's firearm and round-count of ammunition.

IV. FACTUAL ANALYSIS

When Involved Officer 1 and Officer 2 arrived on scene, they knew the subject had likely just stabbed two civilians and was armed and dangerous. As they pulled up to the scene, they saw Officer 1 chasing the subject up Spring St. from 1st Ave. When Involved Officer 1 exited his car, he had his gun drawn and ordered the subject to get on the ground. The subject did not comply. Officer 2 had his Bola Wrap drawn when he exited the patrol car. The subject did not have his knife out at this point. The subject then dropped his suitcase, brandished a knife, and began running at them downhill. The subject was less than 20 feet from Officer 2 and Officer 1. Involved Officer 1 stood in the street farther away from the subject than Officer 1 and Officer 2. Officer 2 fired his Bola Wrap device (which proved to be ineffective) moments before Involved Officer 1 fired two rounds at the subject which incapacitated him. Involved Officer 1's gun fire struck the subject's chest and right pointer finger. Officers then handcuffed the subject and provided lifesaving care to him until they were relieved by medics and transported the subject to the hospital where his finger was amputated, and he underwent surgery.

V. LEGAL STANDARD AND APPLICABLE LAW

The State must prove each element of a criminal charge by competent evidence beyond a reasonable doubt.[6] 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.[7]

In addition, the State must disprove the existence of a defense that negates an element of the crime.[8] 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.[9]

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

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[6] RCW 9A.04.100; WPIC 4.01.
[7] KCPAO Filing and Disposition Standards.
[8] WPIC 14.00.
[9] Id.

> 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, an officer's use of deadly force is justifiable when necessarily used by a peace officer acting in "good faith" to overcome actual resistance in the discharge of a legal duty. "Good faith" is an objective standard. A peace officer acts in "good faith" if a similarly situated reasonable peace officer would have believed that the use of deadly force was necessary to prevent death or serious physical harm to the peace officer or another individual. In deciding whether a peace officer acted in good faith, one should consider all the facts, circumstances, and information known to the officer at the time. The State has the burden of proving beyond a reasonable doubt that the homicide was not justifiable.

Each 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).

VI. ANALYSIS AND CONCLUSION

Given the evidence presented in this investigation, Involved Officer 1's actions were in good faith and justifiable defense of others. Therefore, the Team recommends that no criminal charges be filed against Involved Officer 1.

1. Defense of Others

Involved Officer 1 reasonably believed that Subject Cherry intended to commit second degree assault against his colleagues, Officer 1 and Officer 2. Subject Cherry's conduct made it clear that he intended to carry out his threat to kill Officer 1 and Officer 2 who were standing just feet away from him. First, a few minutes before Involved Officer 1 fired at Subject Cherry, Subject Cherry had stabbed a stranger, so the identity of who Subject Cherry hurt was of no consequence to him. Involved Officer 1 knew of the stabbing from dispatch. Second, Subject Cherry showed no interest in de-escalating the situation by disobeying officers' commands to

surrender. Third, when Involved Officer 1 arrived on scene Subject Cherry, who was then walking away from Officer 1, stopped, dropped his luggage, turned around towards Officer 1 and Officer 2, and pulled out a knife pointing it at Officer 1 and Officer 2. Fourth, with the knife still in his hand, Subject Cherry charged downhill at Officer 1 and Officer 2. Fifth, it would have been clear to Involved Officer 1 that Officer 1 and Officer 2 were concerned with their safety as they walked backwards as soon as Subject Cherry brandished a knife.

The evidence also shows that the two shots Involved Officer 1 fired at Subject Cherry were necessary, as there was no reasonably effective alternative to force and the amount of force used was reasonable. First, it was rush-hour on a weekday in downtown Seattle, so it was incumbent upon Involved Officer 1 and the other officers to immediately apprehend Subject Cherry who was armed and clearly dangerous. Second, less lethal alternatives such verbal commands and the Bola Wrap were ineffective at neutralizing the deadly threat Subject Cherry posed. Third, Subject Cherry immediately brandished a knife as Involved Officer 1 arrived on scene and ran towards Officer 1 and Officer 2. Fourth, when Subject Cherry charged at the officers, he was very close to Officer 1 and Officer 2, approximately 15 feet away from them, so Involved Officer 1 was forced into immediate action in order to protect them. At the distance Involved Officer 1 was from Subject Cherry, a firearm was the only type of force that was guaranteed to be effective at preventing Subject Cherry from stabbing his colleagues. Additionally, immediately acting on the deadly threat Subject Cherry posed was necessary because Officer 1 and Officer 2 were at a positional disadvantage walking backwards downhill as Cherry advanced on them. If either of them tripped with Subject Cherry so close by, Subject Cherry could easily have stabbed them. As witness Civilian Witness 2 characterized it, “He pulled a knife out on them. They had no choice.”

In addition, the amount of force Involved Officer 1 used was no more than necessary. Involved Officer 1 fired only two rounds at Subject Cherry, which hit the subject and caused him to drop the knife and fall to the ground. Involved Officer 1 immediately stopped firing his weapon at this point. Furthermore, Subject Cherry posed a deadly threat to Officer 1 and Officer 2. Had neither Involved Officer 1 or Officer 1 used lethal force, Subject Cherry likely would have stabbed Officer 1 and Officer 2 just as he threatened to do and just as he stabbed Civilian Witness 3 minutes earlier. Finally, officers were cognizant of their shooting backdrop in the manner they arrived on scene and approached the subject so as to reduce stray gunfire. Involved

Officer 1 reduced the safety risk to innocent civilians and other officers by making sure his shooting backdrop was not straight down a busy street, but instead a windowless brick wall behind the subject.

2. <u>"Good Faith"</u>

Based on the facts and circumstances known to Involved Officer 1, from dispatch and what he observed when he encountered the Subject on Spring St. and 1st Ave., a similarly situated reasonable peace officer would have believed that the use of deadly force was necessary to prevent death or serious physical harm his fellow officers. Subject Cherry was attempting to use deadly force against his colleagues and Subject Cherry was in close proximity to them. Involved Officer 1 was justified in meeting deadly force with deadly force. Had he not done so, his fellow officers could have been severely injured or killed.

Because Involved Officer 1 used deadly force in good faith and defense of others his use of force was justified and no criminal charges against him for the shooting are warranted by the evidence.

Appendix

EVIDENCE REVIEWED

1. 911 Calls
2. Dispatch Recordings
3. CAD
4. Civilian Interviews
5. Firefighter Interviews
6. In-Car Video
7. Body-Worn Video
8. Civilian Video
9. Medical Records
10. CSI Report
11. Police Reports
12. Scene Photographs
13. Scene Documentation