Non-Fatal Use of Force

Paleti Veniale

Valley Independent Investigation Team

Federal Way Police Department #23-15716

King County Prosecuting Attorney

Public Integrity Team

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Table of Contents

I. INTRODUCTION 4

1. Purpose of the Memorandum 4

2. Status of the Independent Investigation 4

3. Scope of the Memorandum 4

II. OVERVIEW 5

III. INVESTIGATION AND EVIDENCE 5

IV. INVESTIGATION SUMMARY 5

1. Attempted Murder in the First Degree on December 21, 2023 5

2. Arrest Attempt of Veniale and the Use of Force 6

3. Independent Investigation Conducted by the Federal Way Police Department 7

4. Witnesses 8

5. Processing of Officers 9

6. Video Evidence 10

V. LEGAL STANDARD AND APPLICABLE LAW 11

1. Burden of Proof 11

VI. ANALYSIS AND CONCLUSION 12

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DECLINE MEMORANDUM

Non Fatal Use of Force Review
Paleti Veniale Jr.

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 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]

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

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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.

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 December 23, 2023, Kent Police Department officers attempted to arrest Paleti Veniale for attempted murder and assault in the first degree. Veniale ran away from the officers who chased after him. During the pursuit, Veniale armed himself with a knife and suddenly turned towards one of the officers and raised the knife in an apparent effort to stab the officer. The officers discharged their firearms, striking Veniale. Officers administered life savings efforts and Veniale was transported to a hospital for treatment. He survived his injuries.

III. INVESTIGATION AND EVIDENCE

1. Force Investigation Reports
2. Officer Reports
3. Crime Scene Investigation o9p
4. Search Warrants
5. Medical, Autopsy, and Toxicology
6. CAD
7. Radio
8. Body Worn Video
9. Other Video
10. Photos

IV. INVESTIGATION SUMMARY[5]

1. Attempted Murder in the First Degree on December 21, 2023

On December 21, 2023, medics were dispatched to a park in Federal Way and located a

[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.

71-year-old male with life threatening stab wounds to his head, face, and chest. A surveillance camera captured an unknown individual, later identified as Paleti Veniale (Veniale), following the victim. As Veniale and the victim approached a parking lot, Veniale produced a hatchet and repeatedly struck the victim.[6] Using the surveillance video, officers determined that Veniale exited a King County Metro bus shortly before the assault. The bus was equipped with surveillance cameras and captured Veniale's face from multiple angles. Officers canvassed the area but were unable to located Veniale.

The detective assigned to investigate this assault generated a bulletin about the assault, including Veniale's photos, and distributed the bulletin to other law enforcement agencies in the area. On December 22, 2023, Kent Police Department (KPD) Involved Officer 1 emailed the assigned detective and stated that he believed the unknown individual was Veniale based on previous contacts with Veniale, including an incident where Veniale threatened Involved Officer 1 with a machete.

The detective assigned to the assault also learned that Veniale was released from the Department of Corrections on December 18, 2023, and he failed to report to his corrections officer on December 21, 2023, which is the same day the assault occurred.

2. Arrest Attempt of Veniale and the Use of Force

On December 23, 2023, Involved Officer 1 and Involved Officer 2 observed Veniale near 24800 Pacific Highway South in Kent. Based upon the KPD computer aided dispatch (CAD) report and recorded police radio, the officers radioed a description of Veniale and his location.

As Involved Officer 1 and Involved Officer 2 coordinated an arrest plan with other KPD officers, Veniale observed a KPD officer and ran back in the direction of Involved Officer 1 and Involved Officer 2. Suddenly an officer shouted on the radio that they were running eastbound across Pacific Highway and "shots fired." The officers clarified that there were multiple gunshots, that there were at least two entry wounds, and that medics should be dispatched to the scene. The officers provided first aid to Veniale until medics arrived and transported Veniale to a hospital.

Veniale sustained at least one gunshot wound, and he survived his injuries.

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[6] Veniale was subsequently charged with Attempted Murder in the First Degree under King County Cause Number 23-1-07721-7.

3. Independent Investigation Conducted by the Federal Way Police Department

As other officers arrived, the police secured the incident scene and rerouted traffic away from the area. The Valley Independent Investigation Team was requested to respond to the scene and to conduct an independent investigation. Federal Way Police Department Investigator 1 was assigned as the lead investigator. The Independent Investigation Team (IIT) divided assignments between themselves and began to process the scene. When Investigator 1 reviewed the scene he observed miscellaneous clothing, medical debris, and a backpack on top of a pool of blood in the center of a parking lot. He also observed a Taser lying on the ground and it appeared that the Taser had been fired. Investigator 1 also saw a silver fix bladed knife within a few feet of the Taser.

Figure 1 - Knife located at the use of force scene.

Figure 2 - Knife found at the scene.

4. Witnesses

Prior to starting his shift on December 23, 2023, Witness Officer 1 received an email bulletin from Involved Officer 1 about Veniale, which stated there was probable cause to arrest Veniale for attempted murder and assault in the first degree. Later, Witness Officer 1 heard Involved Officer 1 announce over the radio that Veniale was around S 248th St and Pacific Highway. Witness Officer 1 drove towards that location to assist Involved Officer 1 and Involved Officer 2 in arresting Veniale. Witness Officer 1 and other officers communicated via radio to determine which position they should take to stop Veniale if he decided to run from the officers. While Witness Officer 1 waited at his location, he observed Veniale and he saw that Veniale noticed the officer. In response, Veniale turned around and fled back in the direction of Involved Officer 1 and Involved Officer 2.

Witness Officer 1 heard Involved Officer 1 announce over the radio that he was in a foot pursuit of Veniale, so Witness Officer 1 went to Involved Officer 1's location. As he approached, he heard a volley of gunshots but he did not see who fired. As Witness Officer 1 approached, he saw Involved Officer 1 and Involved Officer 2 standing and Veniale on the ground in front of them. He observed a unique knife lying on the ground and saw a Taser and Taser prongs on the

ground. Officers provided medical aid to Veniale until medics arrived and then Witness Officer 1 assisted in placing cones over the discharged cartridge casings.

Witness Officer 2 also responded to Involved Officer 1's and Involved Officer 2's location to assist in the arrest attempt. As Witness Officer 2 approached their location, he saw Veniale running across Pacific Highway with Involved Officer 1 and Involved Officer 2 closely behind. As Witness Officer 2 fixed his attention on Veniale, he saw Veniale stop and turn towards the officers. Witness Officer 2 was approximately fifty yards away and driving, so he did not focus on Veniale's hands or arms, but he observed Veniale fall to the ground and heard an officer announced, "shots fired." As officers and medics provided aid to Veniale, Witness Officer 2 observed a knife on the ground.

5. Processing of Officers

As part of their standard practice, the IIT processed the involved and potentially involved officers to determine who used force. The IIT determined that the only officers to use force were Involved Officer 1 and Involved Officer 2.

Regarding Involved Officer 2, the IIT reported that his handgun contained one unfired cartridge in the chamber, fifteen unfired cartridges in the magazine, and that the magazine could hold eighteen cartridges. Involved Officer 2's two spare magazines were loaded with eighteen unfired cartridges and could hold eighteen cartridges. If Involved Officer 2 filled his loaded magazine to capacity with an additional cartridge in the chamber, his handgun was loaded with nineteen cartridges, which would indicate that he discharged three cartridges. Additionally, the IIT determined that the Taser located at the use of force scene was assigned to Involved Officer 2.

Regarding Involved Officer 1, the IIT reported that his handgun contained one unfired cartridge in the chamber, thirteen unfired cartridges in the magazine, and that the magazine could hold seventeen cartridges. Involved Officer 1's two spare magazines were loaded with seventeen unfired cartridges and could hold seventeen cartridges. If Involved Officer 1 filled his loaded magazine to capacity with an additional cartridge in the chamber, his handgun was loaded with eighteen cartridges, which would indicate that he discharged four cartridges. Additionally, the IIT inspected Involved Officer 1's Taser and determined it had not been used during the use of force.

6. Video Evidence

Involved Officer 1's and Involved Officer 2's police uniforms were equipped with body worn cameras during this incident. Investigator 1 reviewed the video and reported that Involved Officer 1's video began while Veniale was running through a parking lot, prior to entering Pacific Highway. Involved Officer 1 commanded Veniale to, "Stop!" and "Get on the ground!" Involved Officer 2 stepped in front of Involved Officer 1 as they chased Veniale across the road and Involved Officer 1 yelled for Involved Officer 2 to tase Veniale. Involved Officer 1 updated the other officers of their location and confirmed the suspect was Veniale.

As Veniale crossed the street and reached the curb, he rapidly turned around to face Involved Officer 2 who was only a few steps behind. Involved Officer 2 lost his footing and slid on the ground as Veniale, clutching the silver knife, extended his arm up and over his head.

Veniale appeared to be loading his arm to thrust the knife downward at Involved Officer 2.

Figure 3 - After Veniale turned towards Involved Officer 2, he slid on the ground and Veniale began to raise the knife towards Involved Officer 2.

Involved Officer 2 quickly deployed his Taser while Involved Officer 1 yelled, "Drop it!" and discharged his firearm. As this occurred, Involved Officer 2 regained his footing, withdrew his firearm, and discharged it at Veniale who was still in possession of the knife. As Involved Officer 1 announced that shots were fired, Involved Officer 2 ordered Veniale to drop the knife, which he did.

Figure 4 - After being shot, Veniale dropped the knife out of his right hand.

V. LEGAL STANDARD AND APPLICABLE LAW

1. Burden of Proof

The State must prove each element of a criminal charge by competent evidence beyond a reasonable doubt.[7] 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.[8]

In addition, the State must disprove the existence of a defense that negates an element of the crime.[9] 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.[10] Therefore, the State may be required to disprove one or more of the following defenses:

- Lawful Force by Public Officer;[11]
- Defense of Self or Others;[12]

[7] RCW 9A.04.100; WPIC 4.01.
[8] KCPAO Filing and Disposition Standards.
[9] WPIC 14.00.
[10] Id.
[11] RCW 9A.16.020(1), (2); WPIC 17.01.
[12] RCW 9A.16.020(3); WPIC 17.02.

VI. ANALYSIS AND CONCLUSION

Under the KCPAO filing standards, crimes against persons will be filed if sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify conviction by a reasonable and objective fact-finder. Prosecution should not be declined because of an affirmative defense unless the affirmative defense is of such nature that, if established, would result in complete freedom for the accused and there is no substantial evidence to refute the affirmative defense.

The KCPAO declines to file charges against any of the involved officers because the independent investigation and the Team's analysis reveal that the involved officers' actions were lawful and justifiable as either Lawful Force by a Public Officer or in Defense of Self or Others, or both. These two defenses contain related but distinct concepts and definitions and there is no substantial evidence to refute either affirmative defense.

The use of force upon or toward the person of another is lawful when necessarily used by a public officer in the performance of a legal duty.[13] 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.[14] 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.[15] "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."[16]

Additionally, the use of force upon or toward the person of another is lawful when used by a person who reasonably believes that he or another is about to be injured and the force is not more than necessary.[17] The person using the force may employ such force and means as a reasonably prudent person would use under the same or similar conditions as they appeared to

[13] RCW 9A.16.020(1), (2); WPIC 17.01.
[14] RCW 9A.16.010; WPIC 16.05.
[15] Graham v. Connor, 490 U.S. 386, 396, 109 S. Ct. 1865, 1872, 104 L. Ed. 2d 443 (1989).
[16] Id. 490 U.S. at 396-97.
[17] RCW 9A.16.020(3); WPIC 17.02.

the person, taking into consideration all of the facts and circumstances known to the person at the time of and prior to the incident.[18]

In the current incident, Involved Officer 1 and Involved Officer 2 had a legal duty to arrest Veniale because there was probable cause that he committed attempted murder and assault in the first degree when he attacked a victim with a hatchet two days prior. Involved Officer 1 was familiar with Veniale, previously identified him as the suspect in the hatchet assault, and observed him prior to attempting to arrest him. When Veniale stopped, turned, and raised the knife to stab, and presumably kill, Involved Officer 2, Involved Officer 1 had no reasonably effective alternative to using his firearm to protect Involved Officer 2.

Similarly, Involved Officer 2 did not deploy his Taser until Veniale presented a real and certain safety concern. Involved Officer 2's decision to use his firearm was also legally justifiable because he discharged his weapon while Veniale was still in possession of the knife and continued to present a significant safety risk. Given the perspective of Involved Officer 2, it is highly unlikely he could reasonably determine if Involved Officer 1's use of force was effective.

[18] Id.