

Use of Force Non-Fatality Investigation
Branson Albert

Valley Independent Investigation Team
Des Moines Police Department, #24-2806



King County Prosecuting Attorney
Public Integrity Team

Published: September 15, 2025

Contents

I.	Introduction.....	3
1.	Purpose of the Memorandum.....	3
2.	Scope of the Memorandum.....	3
3.	Status of the Independent Investigation.....	4
II.	Overview.....	4
III.	Investigation and Evidence	5
IV.	Investigation Summary	6
1.	Independent Investigation.....	6
2.	Officer Processing.....	7
3.	Involved Officer 1 Statement.....	8
4.	Law Enforcement Witnesses.....	9
5.	Ballistics Report.....	11
6.	Video Evidence.....	11
V.	Legal Standard and Applicable Law.....	16
1.	Burden of Proof.....	16
2.	Applicable Jury Instructions	17
3.	Summary of Conclusion	17
4.	Defense of Self or Others.....	18
a.	Law Regarding Defense of Self or Others	18
b.	Analysis Regarding Defense of Self or Others	19
VI.	Conclusion	20
	Appendix A.....	21
1.	WPIC 16.01 - Justifiable Homicide by a Peace Officer	22
2.	WPIC 16.05 – Necessary	23
3.	WPIC 17.02 – Lawful Force – Charges Other than Homicide	24
4.	WPIC 2.16 Peace Officer—Definition	25
5.	WPIC 120.07 Lawful Arrest—Definition.....	26
6.	WPIC 16.07 – Justifiable Homicide – Actual Danger Not Necessary	27

I. INTRODUCTION

1. Purpose of the Memorandum

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 officer results in death, substantial bodily harm, or great bodily harm.¹ The independent investigation is conducted in the same manner as a criminal investigation and must be completely independent of the involved agency.²

The Revised Code of Washington requires the prosecuting attorney to represent the State of Washington and to prosecute all criminal actions in which the state or the county may be a party.³ In addition to exercising its prosecutorial discretion to initiate criminal proceedings, the prosecuting attorney is required to review certain incidents regarding police use of force and to determine if sufficient evidence exists to support the filing of criminal charges.⁴ Therefore, the review of an incident by the King County Prosecuting Attorney's Office (KCPAO) 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 in an independent investigation 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.⁵

2. Scope of the Memorandum

The KCPAO's determination whether 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

¹ RCW 10.114.011. See also WAC 139-12-010.

² WAC 139-12-010.

³ RCW 36.27.020(4).

⁴ 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. The KCPAO also reviews OIS investigations where no injury occurred if requested to do so by the IIT.

⁵ Id. See also WAC 139-12-010.

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, any civil action, or any inquiry, or other proceeding. Compared to a criminal prosecution, these proceedings involve different areas of the legal system, utilize different standards of proof, and may include evidence that is not admissible in a criminal prosecution. The KCPAO expresses no opinion regarding the propriety or likely outcome of any such actions. Topics that are relevant to matters outside the scope of this memorandum, such as department policy, procedures, or training, are included and reviewed to the extent those topics are relevant to assessing whether there is sufficient admissible evidence to file criminal charges.

3. Status of the Independent Investigation

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

II. OVERVIEW

At approximately 11:50 PM on November 9, 2024, Federal Way Police Department (FWPD), with the help of OnStar, was tracking an OnStar-equipped car traveling through Federal Way that had been reported stolen from a SeaTac Airport parking lot two hours prior. The OnStar operator notified FWPD that the vehicle had come to a stop at a 76 gas station located at 2535 S. 320th St. in Federal Way.

In separate patrol cars, Witness Officer 1 and Involved Officer 1, and shortly thereafter Witness Officer 2, arrived at the gas station. When the officers exited their patrol cars, the Subject, Branson Albert, was walking away from the stolen car. When Involved Officer 1 announced himself as a police officer and ordered Albert to stop, Albert ran westbound with a backpack slung over his shoulder. Involved Officer 1 gave chase westbound through the parking lot of the adjacent Centre at Federal Way, then crossed 25th Ave. S., and onto a walkway in the front lawn area of Steel Lake Presbyterian Church (church).

As Albert ran westbound along the pathway in front of the church, he pulled a pistol from his bag and, according to him, pointed it straight into the air for approximately ten to fifteen

seconds. Involved Officer 1, still giving chase, then ordered Albert to drop the gun. Albert did not and Involved Officer 1 fired one shot at Albert, missing him. Albert continued to flee westbound through the church parking lot and into the parking lot of the adjacent University of Washington Medical Center where a police canine bit him just before reaching S. 320th St. Albert was then handcuffed without further incident.

In a post-incident interview, Albert told the police investigator that he drew the gun in order to scare the police officer so that the officer would stop chasing him. He characterized his choice to draw a firearm as a “bad move.” Mr. Albert was ultimately charged with Unlawful Possession of a Firearm in the Second Degree. He is currently awaiting trial.

III. INVESTIGATION AND EVIDENCE

1. VIIT Reports
 - a. Des Moines Police Department Reports – Case No. 24-2806
 - b. Kent Police Department Reports – Case No. 24-15114
 - c. VIIT Officer Processing Documents
 - d. VIIT Evidence Log
2. Federal Way Police Department Reports – Case No. 240013496
3. Computer Aided Dispatch
4. Dispatch Recordings
5. Ballistic Report
6. Body-Worn Camera Footage
7. Drone Video Footage
8. Photos
9. Video Surveillance
10. Miscellaneous
 - a. Port of Seattle Police Department Reports – Case No. 2024-088792
 - b. WACIC Vehicle Return
 - c. Firearm Return

IV. INVESTIGATION SUMMARY⁶

1. Independent Investigation

Federal Way Police Department requested that the Valley Independent Investigation Team (VIIT) be dispatched to investigate the officer-involved shooting (OIS) portion of the incident. VIIT investigators were delayed in responding because FWPD notified them of the OIS some three hours after it occurred. FWPD command staff was not made aware that Involved Officer 1 fired his gun until after the Subject had been transported to the hospital, which caused a delay in notifying VIIT.

Kent PD detectives were tasked with officer processing and Des Moines PD (DMPD) detectives were tasked with scene processing, vehicle processing, referring underlying criminal charges to the KCPAO, and interviewing the Subject.



Figure 1. Overhead map of scene. The green circle is the location where the police contact began. The red circle is the location where the Subject was apprehended. The blue and yellow Xs represent the location of Involved Officer 1 and the Subject, respectively, when Involved Officer 1 fired at the Subject.

⁶ 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.

When DMPD investigators arrived, they walked the scene. As they walked along the sidewalk on the north side of the church, Investigator 1 located one fired cartridge casing (FCC). The FCC was lying on the cement sidewalk in the curved area of the sidewalk. Upon observing the FCC, he confirmed it was approximately in the same area Involved Officer 1 was located when he discharged his firearm, as observed in his BWC video. Investigator 2 and Investigator 3 photographed and collected the FCC, which was later booked into evidence.

2. Officer Processing

Processing refers to the investigative steps of documenting the physical appearance and condition of uniforms and equipment of each Involved Officer 1. Depending on the specific facts and circumstances of the incident, processing typically consists of four parts:

- Investigators photograph the Involved Officer 1 to document their appearance, including the Involved Officer 1's clothing and equipment worn during the use of force, uniform defects, injuries, equipment, and potential trace evidence.
- Investigators identify which weapons were involved during the use of force and document the condition of those items.
- Investigators determine and document the number of firearm cartridges, if applicable, in the Involved Officer 1's firearm, loaded magazine, and any spare magazines.
- Investigators collect firearms, equipment, uniforms, and other items as necessary.

Investigators determined that Involved Officer 1 discharged his firearm. As mentioned above, one 9mm FCC was recovered by Investigator 1 at the church. Below is a round count performed on Involved Officer 1's firearm and spare magazine. Involved Officer 1's duty firearm is a 9mm H&K VP9. His duty rounds are WIN 9mm Luger. The magazine seated in his firearm has a twenty-round capacity. Nineteen rounds were in the seated magazine. One round was chambered in the firearm. He carried three spare magazines. He stated that he dropped one magazine at the scene, possibly when he tripped over a curb in the church parking lot. The other two had twenty round capacities and twenty rounds were loaded in each magazine. This indicates that Involved Officer 1 fired one round.

3. Branson Albert's Statement

The Subject, Mr. Albert, was interviewed by Investigator 1 at the hospital. The Subject fell in and out of sleep during the interview. He said that he was drowsy because he had not taken methamphetamine in some time.

When asked what happened that night, he said that he was walking in SeaTac looking for a ride home to Tacoma when a stranger asked Albert if he could transport a car to Tacoma for the stranger. Albert agreed. He said the car was running when he got into it and he was even given a key fob. After he drove away, he pulled into a gas station, which is when he lost track of the stranger who allegedly gave him the car. Albert bought food in the gas station mini mart and went back to car, but he said the car would not start (unbeknownst to him, it had been remotely disabled by OnStar). According to him, he began looking through the contents of the car and discovered a firearm. He then got out of the car and walked to the passenger side, which is when he saw police cars enter the gas station. He said that he panicked because he is a felon and cannot possess a gun. He then placed the gun in a bag so he could sell it later, picked up the bag, and walked away from the car. When the police officer told him to stop, he ran. That officer chased Albert. Albert said that he grabbed the gun from the bag and held the gun up to the sky in his right hand for maybe ten to fifteen seconds so the officer would know he was armed and stop running after him. He was approximately fifteen feet ahead of the officer when he heard the officer fire one shot. Albert then threw the gun down, realizing that pointing the gun in the air was a bad idea as it did not have the effect he intended. After he threw the gun down, he stumbled and an officer's canine caught up to him, bit him, and officers arrested him.

He denied pointing the gun at the officer and said he did not believe brandishing the gun would cause the officer to shoot at him. He admitted that holding the gun in the manner that he held it was threatening, but he thought that he needed to show more of a threat than he did for an officer to shoot at him. He described brandishing the gun as a "bad move."

4. Involved Officer 1 Statement

Involved Officer 1 did not provide a voluntary statement to investigators. However, his BWC footage captured him discussing the incident with FWPD Lieutenant 1 after it occurred.

Lieutenant 1: Describe the gun pulling.
Involved Officer 1: Um, I don't know. I just know we were running and I couldn't see his hands and all of a sudden I saw the gun in his right hand as he's running away. He didn't have it out initially when we started running and then all of a sudden...
Lieutenant 1: And did he point it or to drop it?
Involved Officer 1: I couldn't tell.
Lieutenant 1: When did you first see it?
Involved Officer 1: As uh, as soon as we rounded that corner.

5. Law Enforcement Witnesses

a. Witness Officer 1

Witness Officer 1 arrived on-scene right in front of Involved Officer 1. As the Subject fled, Witness Officer 1 saw Involved Officer 1 give chase. Witness Officer 1 wrote that he was approximately ½ a block away from Involved Officer 1 and having difficulty maintaining a visual of Involved Officer 1 due to trees and shrubs obstructing his view. He heard one pop sound and heard Involved Officer 1 yell shots fired. He assisted Witness Officer 2 and Involved Officer 1 in arresting the Subject after Witness Officer 2's canine detained the Subject.

b. Witness Officer 2

Witness Officer 2 is a canine officer. His service dog's name is Canine 1. He wrote that at 11:35 PM, DMPD advised they had terminated pursuit of a confirmed stolen vehicle which was described as a black 2020 Cadillac with WA registration PF06224. DMPD advised the vehicle continued south on Pacific Hwy S. and was actively being tracked by OnStar. Dispatch advised that OnStar was tracking the vehicle as it was driving around Federal Way. Lieutenant 1 advised the dispatcher that FWPD would attempt to recover it if it became stationary.

According to Witness Officer 2, at approximately 11:42 PM, dispatch advised the stolen vehicle was now stationary on the west side of the parking lot of the 76 gas station located at 2535 S 320th St. As Witness Officer 2 was responding to the area in an attempt to recover the vehicle, several officers arrived on scene around 11:52 PM.

At approximately 11:53 PM, Involved Officer 1 advised he was in foot pursuit of a suspect fleeing from the vehicle. Witness Officer 2 arrived in the area from the south and as he was driving north on 25th Ave S, Witness Officer 2 observed a male wearing dark clothing run west across 25th Ave S around the north side of the church. Witness Officer 2 observed Involved

Officer 1 running after the male and lost sight of him as he ran around the north side in pursuit. Witness Officer 2 drove into the south entrance of the church in an attempt to cut off the suspect when Involved Officer 1 advised via radio that the suspect had a gun. As Witness Officer 2 rounded the corner of the parking lot to turn north, he observed the suspect running westbound holding a black object which appeared to be a gun in his hand. The suspect stumbled and fell into the middle of the parking lot. Witness Officer 2 drove towards Albert as he got up and continued to run west but Witness Officer 2 was unable to see if he was still armed with the gun. Witness Officer 2 exited his patrol vehicle and yelled "get on the ground or you're going to get bit." Albert did not comply and ran through the shrubs on the west side of the church parking lot and fell in the parking lot of the UW Medicine Clinic. Witness Officer 2 ordered Albert again to get on the ground as he was getting up. He released Canine 1 from his patrol vehicle with his remote door opener as Albert got up from the ground and ran north towards the intersection of S. 320th St. and 23rd Ave S. Witness Officer 2 wrote that there were numerous unsuspecting citizens driving on S. 320th St. and a full drive-through at the McDonald's restaurant on the north side of the road. Albert was ordered to show his hands because Witness Officer 2 was unable to verify if he was still holding a gun. Fearing that Albert was still armed with a gun and running towards possible victims that he could car-jack or take hostage, Witness Officer 2 gave Canine 1 the command to apprehend him. Canine 1 closed the distance with Albert and ran into him causing him to fall to the ground. Canine 1 contacted Albert on his left leg as they rolled around on the ground. Witness Officer 2 was unable to see if Albert had anything in his right hand, but his left hand was prying at Canine 1. Witness Officer 2 ordered Albert to show his hands, or he would shoot him at which point Witness Officer 2 finally was able to get visual confirmation that his right hand was empty. Involved Officer 1 and Witness Officer 1 arrived at the location and took physical control of Albert's arms. As soon as officers had control of Albert's arms, Witness Officer 2 gained physical control of Canine 1 and commanded him to release the bite. Canine 1 immediately released the bite but one of his teeth remained stuck in Albert's clothing, so Witness Officer 2 gave him a second command as he pulled him away from Albert. Involved Officer 1 and Witness Officer 1 placed Albert into custody and Witness Officer 2 requested that aid respond to the location for the canine contact.

As he walked back to his patrol vehicle, which was left in the northwest parking lot of the church, Witness Officer 2 observed a handgun on the cement in the same location where Albert fell.



Figure 2. Photo of gun found by Witness Officer 2. The gun was loaded.

Witness Officer 2 put Canine 1 back into the patrol vehicle and relayed the location of the gun to Corporal 1 and Witness Officer 3 who took custody of it.

6. Ballistics Report

On August 4, 2025, Washington State Patrol Forensic Scientist 1 authored a ballistics report. The report states that she test-fired both the handguns possessed by Involved Officer 1 and the Subject; both were operable. She then compared the fired cartridge casings (FCC) from the guns to the FCC recovered at the scene. She concluded that the FCC found at the scene matched Involved Officer 1's service weapon.

7. Video Evidence

Several exterior video cameras were located that captured footage of important events leading up to the OIS. Those cameras were located at the 76 gas station, Steel Lake Presbyterian Church, and Involved Officer 1's body-worn camera (BWC). The BWC footage was edited with Axon Investigate to stabilize the footage to make it easier to view and interpret. The footage from Involved Officer 1's BWC captures the entirety of the exchange but the other two cameras provide more helpful perspectives of different points during the chase; the gas station's camera captures the initial exchange well and the church's footage captures the events just after Involved

Officer 1 fires his gun. Below is a chronological display of events incorporating frames from all three cameras.



Figure 3. This still is taken from the video surveillance footage provided by the gas station. Inside the red circle is the Subject standing at driver side door of the stolen car immediately before fleeing on foot.



Figure 4. Subject walking away from car with backpack carrying gun.



Figure 5. Nine seconds later, Witness Officer 1's patrol car, followed by Involved Officer 1's car, parks behind the subject-car as the Subject walks away west.



Figure 6. Subject, circled in red, walking away from the police westbound through the parking lot at the Centre at Federal Way.



Figure 7. Frame from Involved Officer 1's BWC. Involved Officer 1 is at the gas station standing behind Witness Officer 1's car looking west. The Subject is circled. Involved Officer 1 announced, "Federal Way police. You're not free to leave." The Subject continues walking and then runs westbound. Involved Officer 1 gives chase yelling, "Stop."



Figure 8. Subject, circle on left, running away from Involved Officer 1, circled on the right. As they run through the parking lot to the left at the Centre at Federal Way and across 25th Ave S, Involved Officer 1 yells "Stop!" once more.



Figures 9-10. Frames from Involved Officer 1's BWC footage as he follows the Subject on the pathway on the north of the church. Involved Officer 1 mentions a gun for the first time yelling, "Hey, drop the gun. Drop the gun." He then fires one shot at the Subject. Smoke from the muzzle can be seen in the frame on the right.



Figures 11-12. Top, surveillance footage from the church showing the Subject running down the pathway right after Involved Officer 1 fires; the Subject is holding a black object in his right hand which resembles a handgun. Bottom, Involved Officer 1 then radios, "Shots fired. He has a gun." He then says, "Hey stop. Drop the gun. Get on the ground." The Subject runs into the parking lot of the church.



Figure 13. Frame from Involved Officer 1's BWC. Involved Officer 1 yells at the Subject, circled in red, "Hey stop! Drop the gun." You can then hear the sound of something metallic striking the ground.

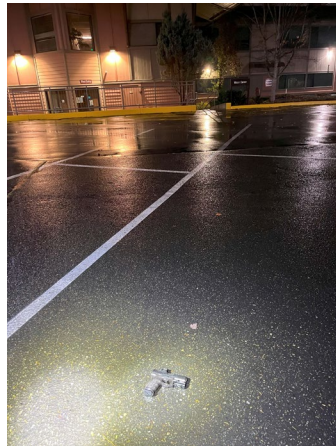


Figure 14. Photo taken by FWPD of a loaded gun found in the area of the church parking lot where the Subject was running when the metallic sound was heard. The handrails to the stairwell leading down to the pathway can be seen at the top of the photo.

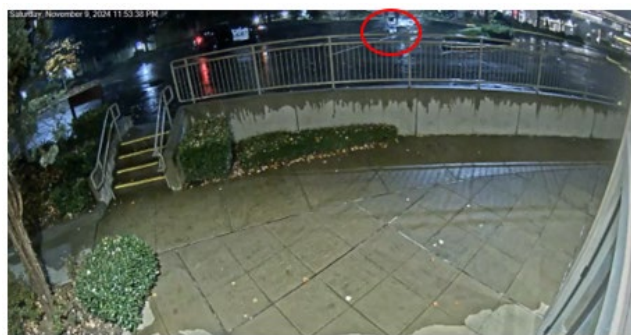


Figure 15. Witness Officer 2's patrol car is pictured in the parking lot. The Subject ran down an embankment circled at the top of the frame. Within the circle is Witness Officer 2 on the left, then his Canine 1, and Involved Officer 1 on the right.



Figures 16-18. Frames from Involved Officer 1's BWV. Top, Witness Officer 2 running down the embankment to UW Medicine's parking lot. Middle, Canine 1 and Witness Officer 2 running after the Subject in the UW parking lot. Bottom, Canine 1, Witness Officer 2 and Witness Officer 1 arresting the Subject in the UW parking lot.

V. LEGAL STANDARD AND APPLICABLE LAW

1. Burden of Proof

In a criminal prosecution, 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

⁷ RCW 9A.04.100; WPIC 4.01.

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 beyond a reasonable doubt.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, in addition to proving that the accused committed a crime, the State will be required to disprove one or more of the following defenses:

- Defense of Self or Others (applies to non-homicide charges)¹¹
- Justifiable Homicide or Use of Deadly Force by Peace Officer¹²

2. Applicable Jury Instructions

The following jury instructions, contained in Appendix A, would be applicable in a criminal prosecution and provided to the factfinder to determine whether the State met the required burden of proof. Therefore, these instructions are relevant to the Team's analysis and conclusion:

- WPIC 17.02 Lawful Force—Defense of Self, Others, Property
- WPIC 120.07 - Lawful Arrest and Probable Cause
- WPIC 16.05 – Necessary
- WPIC 2.16 - Peace Officer
- WPIC 16.01 - Use of Deadly Force by a Peace Officer

3. Summary of Conclusion

The KCPAO declines to file charges against Involved Officer 1 because there is insufficient evidence to disprove that Involved Officer 1 was acting in self-defense. Individuals are permitted to act on appearances in defending themselves if they believe they are in actual

⁸ KCPAO Filing and Disposition Standards.

⁹ WPIC 14.00.

¹⁰ KCPAO Filing and Disposition Standards.

¹¹ RCW 9A.16.020(3).

¹² RCW 9A.16.040.

danger of injury and that belief is in good faith and on reasonable grounds, which appears to be the case here.¹³

4. Defense of Self or Others

a. Law Regarding Defense of Self or Others

The legislature recognizes that the defense of Justifiable Homicide or the Use of Deadly Force by a Peace Officer does not restrict an Officer from asserting self-defense/defense of others, which remains broader than the limitations imposed by this section.¹⁴

The use of force upon another is lawful when used by a person who reasonably believes that they are about to be injured, or by someone lawfully aiding a person who he or she 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.¹⁵

Necessary 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.¹⁶

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 the person, taking into consideration all of the facts and circumstances known to the person at the time of and prior to the incident.¹⁷

The State has the burden of proving beyond a reasonable doubt that the force used by the defendant was not lawful.¹⁸

A person can act in self-defense, even if they were mistaken about the extent of the danger the Subject posed to them. In Miller, *supra*, the court stated:

If the appellants, at the time of the alleged assault upon them, as reasonably and ordinarily cautious and prudent men, honestly believed that they were in danger of great bodily harm, they would have the right to resort to self-defense, and their conduct is to be

¹³ State v. Miller, 141 Wash. 104, 105–06 (1926).

¹⁴ RCW 9A.16.040(5)(a) [1986 c 209 §3].

¹⁵ RCW 9A.16.020(3); WPIC 17.02.

¹⁶ WPIC 16.05.

¹⁷ WPIC 17.02.

¹⁸ *Id.*

judged by the condition appearing to them at the time, not by the condition as it might appear to the jury in light of the testimony before it.

The appellants need not have been in actual danger of great bodily harm, but they were entitled to act on appearances; and if they believed in good faith and on reasonable grounds that they were in actual danger of great bodily harm, although it afterwards might develop that they were mistaken as to the extent of the danger, if they acted as reasonably and ordinarily cautious and prudent men would have acted under the circumstances as they appeared to them, they were justified in defending themselves.¹⁹

b. Analysis Regarding Defense of Self or Others

Here, the evidence is insufficient to (1) disprove that Involved Officer 1's belief that the Subject was about to injure him was unreasonable even though he was mistaken about the extent of the danger the Subject posed. Individuals can act on reasonable, good faith impressions, even when impressions ultimately turn out to be wrong.

In this incident, Involved Officer 1 gave chase to a Subject who he had probable cause to believe committed a felony by possessing of a stolen vehicle. Involved Officer 1 ordered the Subject to stop. The Subject showed Involved Officer 1 that he was unwilling to be caught when he chose to run away. Involved Officer 1 gave chase, crossing a street and running down the church's walkway. Involved Officer 1 was the sole officer who had eyes on the Subject at the time the Subject brandished a firearm while running down the church walkway. None of the backing officers, at that moment, were in a position to protect him. Involved Officer 1 immediately ordered the Subject to drop the firearm. The Subject refused. Involved Officer 1 then fired one shot at the Subject at close range, missing the Subject. Involved Officer 1 and other officers continued to chase the Subject on foot who was detained shortly thereafter.

Involved Officer 1 did not write a report or provide a statement. However, based on the evidence developed in the investigation, it was not unreasonable for Involved Officer 1 to believe that the Subject brandished the firearm during their foot chase because he intended to use the firearm against Involved Officer 1. In fact, it appears the Subject intended to have that effect

¹⁹ State v. Miller, *supra*, 141 Wash. at 105–06.

with his actions, although he claims that he did not intend to shoot his gun. Specifically, during his post-incident interview, the Subject admitted to the investigator that he brandished a firearm in order to intimidate Involved Officer 1 so Involved Officer 1 would stop chasing him. Branson said that he grabbed the gun from inside his bag and held it up towards the sky for an extended period of time so the officer would know he was armed and stop running after him. As a result, there is insufficient evidence to disprove a claim of self-defense even though the Subject did not point the firearm at Involved Officer 1 and Involved Officer 1 may have been mistaken about the extent of the danger to him posed by the Subject.

VI. CONCLUSION

Therefore, based on the anticipated admissible evidence and statements, criminal charges against Involved Officer 1 for the force he used is not supported by the facts. The KCPAO declines to file criminal charges.

VII. APPENDIX A

1. WPIC 16.01 - Justifiable Homicide by a Peace Officer

It is a defense to a charge of [murder] [manslaughter] that the homicide was justifiable as defined in this instruction.

Homicide or the use of deadly force is justifiable:

[when necessarily used by a peace officer acting in good faith to overcome actual resistance to the execution of the legal process, mandate, or order of a court or officer, or in discharge of a legal duty] [or]

[when necessarily and in good faith used by a peace officer or person acting under the officer's command and in the officer's aid [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] [or] [to prevent the escape of a person from a federal or state correctional facility or in retaking a person who escapes from such a facility] [or] [to prevent the escape of a person from a county or city jail or holding facility if the person has been arrested for, charged with, or convicted of a felony] [or] [to lawfully suppress a riot if the actor or another participant is armed with a deadly weapon]. In considering whether to use deadly force to arrest or apprehend any person for the commission of any crime, a peace officer must have probable cause to believe that the suspect, if not apprehended, poses a threat of serious physical harm to others. Among the circumstances that may be considered by a peace officer as a “threat of serious physical harm” are the following: (a) The suspect threatens a peace officer with a weapon or displays a weapon in a manner that could reasonably be construed as threatening; or (b) There is probable cause to believe that the suspect has committed any crime involving the infliction or threatened infliction of serious physical harm. Under these circumstances deadly force may also be used if necessary to prevent escape from the officer, when, if feasible, some warning is given.]

[A peace officer shall not be held criminally liable for using deadly force with a good faith belief that such act is justifiable.]

“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, you 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. If you find that the State has not proved the absence of this defense beyond a reasonable doubt, it will be your duty to return a verdict of not guilty.

2. WPIC 16.05 – Necessary

Necessary 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.

3. WPIC 17.02 – Lawful Force – Charges Other than Homicide

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.

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

The State has the burden of proving beyond a reasonable doubt that the force used by the defendant was not lawful. If you find that the State has not proved the absence of this defense beyond a reasonable doubt, it will be your duty to return a verdict of not guilty

4. WPIC 2.16 Peace Officer—Definition

Peace officer means a duly appointed city, county, or state law enforcement officer.

5. WPIC 120.07 Lawful Arrest—Definition

[An arrest is lawful if made pursuant to an arrest warrant.] [An arrest is [also] lawful if the arresting officer had probable cause to believe that the person arrested had committed the crime of (name of crime) [in the officer's presence]. “Probable cause” means facts that would cause a reasonably cautious officer to believe that the person had committed that crime. In determining whether the facts known to the officer justified this belief, you may take into account the officer's experience and expertise.]

6. WPIC 16.07 – Justifiable Homicide – Actual Danger Not Necessary

A person is entitled to act on appearances in defending himself or another, if that person believes in good faith and on reasonable grounds that he or another is in actual danger of great personal injury, although it afterwards might develop that the person was mistaken as to the extent of the danger.

Actual danger is not necessary for a homicide to be justifiable.