Use of Force Non-Fatality Investigation
Subject – Quinton Barker
Involved Agency- Federal Way PD

Investigative Agency-
Valley Independent Investigative Team
Incident # 24-06378 (APD)

King County Prosecuting Attorney
Public Integrity Team

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DECLINE MEMORANDUM

Non-Fatal Use of Force
Quinton Barker

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

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 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] 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.

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 a similarly situated reasonable peace officer would have believed that the use of deadly force was necessary to prevent death or serious physical harm.[6]

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

On July 7, 2024, at 5:49 AM, Civilian Witness 1, a 16-year-old male, called 911 to report a domestic dispute in unit 102 of Building G at the Kitts Corner Apartment Complex in the city of Federal Way. Federal Way Police Department (FWPD) Involved Officer 1 and Involved Officer 2 were dispatched to the scene. After they arrived on scene, Civilian Witness 1 told the 911 operator that his mother's boyfriend, Quinton Barker (Subject), was assaulting his mom and attempted to kill their dogs. The dispatcher heard Civilian Witness 1 yell, "He has a gun!" Dispatch advised the officers that the boyfriend was on the back porch aiming a gun into the back window and provided the officers with a description of the Subject.

Less than one minute after arriving in front of Building G, the officers heard multiple gunshots from inside the building. The officers walked along the north side of Building G to access the backside of the building where the porch to unit 102 was located. As they were doing so, they heard one additional gunshot. When they turned the corner of the building and looked towards the back porch, they heard the Subject yelling at Civilian Witness 1 and his mother, who were inside the apartment.

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[6] RCW 9A.16.040(4) (Good Faith Standard- Justifiable homicide or use of deadly force by public officer).

Although the officers' body-worn video cameras (BWCs) were obstructed by their drawn firearms, based on Civilian Witness 1's call to 911 and the recovered physical evidence, when the officers fired 3 rounds each at the Subject the Subject was armed and had already fired his gun into the apartment. After the Subject was struck by gunfire, the officers ordered the Subject to climb over the back porch gate and walk backwards towards them, which he did; he was then handcuffed and treated for his gunshot wounds.

III. INVESTIGATION SUMMARY[7]

1. Independent Investigation

The Valley Independent Investigation Team (VIIT) was dispatched to investigate this officer-involved shooting because one of its member agencies, FWPD, was involved in the shooting. Auburn Police Department (APD) acted as the lead investigators. Renton Police Department (RPD) processed the two involved officers, and King County Sheriff's Office (KCSO) processed the crime scene. Tukwila Police Department (TPD), Port of Seattle Police Department (POSPD), and Des Moines Police Department (DMPD) canvased the apartment complex for witnesses and video of the incident.

Figure 1: Overhead view of Kitts Corner Apartment Complex. The purple rectangle represents Building G where the OIS occurred. Involved Officer 1 approached the building in his patrol car from the north; Involved Officer 2 approached from the south.

[7] 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.

2. Video Evidence

Axon's feature that allows users to view multiple officer's BWC footage simultaneously was used to review the footage of the exchange between the officers and the Subject. Still frames from the footage are used in this analysis. In the multi-camera photos displayed below, the frame on the left is from Involved Officer 1's BWC and the frame on the right is from Involved Officer 2's BWC. The BWC footage does not show the Subject during the exchange of gunfire because each BWC was obstructed by the officers' drawn firearms.

At 5:49:22 AM, Civilian Witness 1 called 911 to report that his mother's boyfriend assaulted her. He said her boyfriend was armed and trying to get into his mother's apartment where he and his mother were currently located.

At 5:51:06 AM, Involved Officer 1 arrives on scene at the apartment complex. He parks in the parking lot just north of Building G and gets out of his patrol car. Dispatch advises officers on radio,"…This is [reporting party's] mom versus mom's boyfriend. He was hitting mom. Attempted to kill the dog. We heard yelling, 'He has a gun!' in the background. Boyfriend's on the back porch aiming a gun through the window. Black male, heavy build, black hair, beard, unknown clothing with an orange backpack."

At 5:51:41 AM, Involved Officer 2 arrives on scene. He parks just south of Building G and gets out of his patrol car.

At 5:51:47 AM, BWC captures the sound of 2 gunshots. Six seconds later at 5:51:53 AM, BWC captures the sound of another gunshot. Involved Officer 2 then radios, "Shots actively being fired."

At 5:51:59 AM, Involved Officer 2 advises Involved Officer 1 via radio that they should meet and then approach from the back of the building. Involved Officer 1 agrees. Both officers approach the eastbound sidewalk north of Building G.

Figure 2: Left, Involved Officer 1 running eastbound through the parking lot towards Building G, pictured on is right. Building A is pictured on his left. Involved Officer 2 is circled in red on Involved Officer 1's BWC footage. He is running northbound through the parking lot towards Involved Officer 1 and the sidewalk north of Building G that leads to the back porch of unit G-102. Right, Involved Officer 2' BWC footage is obstructed by his rifle while he runs.

At 5:52:04 AM, BWC captures the sound of one gunshot as both officers reach the eastbound sidewalk between the buildings.

Figure 3: Left, Involved Officer 1 running eastbound on the northern sidewalk towards the back of Building G where the back porch of unit G-102 is located. Right, Involved Officer 2 running behind Involved Officer 1 who is pictured in red running towards the back of Building G.

Involved Officer 1 is the first to cross the east boundary of the building and look south/right toward the porch of unit G-102. As he rounds the corner, a male (presumably Quinton Barker) is heard yelling at someone inside the unit "…smoking a cigarette bitch as nigg*." At this point Involved Officer 1 has what appears to be a direct line of sight of G-102's porch where he was advised Barker was. Involved Officer 1 has both of his hands on his pistol with the pistol pointed in the direction of the porch. With his pistol and hands in this position, his BWC becomes obscured.

At 5:52:13 AM, in rapid succession, Involved Officer 1 fires his pistol southbound three times in the direction of the porch. As Involved Officer 1 fires his pistol he slowly moves east/left on the sidewalk.

Figure 4: Involved Officer 1 and Involved Officer 2 standing side-by-side facing the porch of G-102. The porch's black fence is pictured inside the yellow rectangle.

At 5:52:15 AM, Involved Officer 2, on Involved Officer 1's right, discharges his rifle three times in rapid succession also in the direction of the porch.

Figure 5: Involved Officer 2 firing his rifle towards the porch.

At 5:52:17 AM, Involved Officer 2 and Involved Officer 1 repeatedly begin giving Barker commands, "Hands up! Hands up! Put your hands where I can see them."

At 5:53:19 AM, after several commands, Barker is seen inside the porch area of unit G-102 standing with his hands up. Officers order Barker is to exit the porch area and walk toward the police officers and he complies.

At 5:54:01 AM, Barker is placed in handcuffs while he is on his knees. Officers escort Barker to the front of the building where officers and medical personnel treat Barker's injuries.

3. Law Enforcement Witnesses

Neither Involved Officer 1 nor Involved Officer 2 provided investigators with a voluntary statement. Through their attorney, they were later asked to provide voluntary statements but did not.

4. Civilian Witnesses

a. Civilian Witness 2

After the incident, APD Investigator 8 and Investigator 1 interviewed Civilian Witness 2 at the Federal Way Police Department. They recorded their interview with Civilian Witness 2, during which she revealed that she and Quinton have been in an on-and-off open relationship for 9 years. Quinton lives in the town of Orting with another woman, but spends 1 to 2 nights a month at Civilian Witness 2's apartment, and has a key to the apartment.

According to Civilian Witness 2, their relationship is "complicated." She also mentioned that Quinton, whom she refers to as "Q" has no right to be in her apartment when she is not there. On the night of the incident, Quinton visited the apartment and started drinking alcohol with Civilian Witness 2 at around 12:00 AM. A verbal dispute erupted when Quinton discovered that Civilian Witness 2 was involved in other relationships with men, which he learned about by looking through her phone. Quinton became upset and then left the apartment with Civilian Witness 2's phone. Civilian Witness 2 stated that she confronted Quinton about taking her phone as she followed him out of the apartment, but he denied taking it.

Civilian Witness 2 reported that shortly after 3:00 AM, Quinton began calling her juvenile son, Civilian Witness 1, and sending him derogatory text messages about Civilian Witness 2. Although Quinton had left the area in his car, they continued to receive calls and messages from him. Civilian Witness 2 mentioned she knew Quinton was behaving erratically, so she retrieved her purple pistol from a safe where she stored it. Civilian Witness 2 said that Quinton came back to the apartment and she allowed him in so that they could talk. She mentioned that at some point, Quinton picked up her gun from the countertop where she had left it. Civilian Witness 2 said that she asked Quinton to leave multiple times, but he refused. She described a situation in which Quinton grabbed her dogs by their throats and lifted them into the air. Civilian Witness 2 mentioned that she and Civilian Witness 1 tried to get the dogs away from Quinton, who still had her gun in his pocket. During this struggle, her gun fell out of Quinton's possession and onto the floor. Civilian Witness 2 said that the whole incident happened quickly, but she managed to push Quinton out the front door.

Civilian Witness 2 said that she held the lock to the front door while Quinton continuously banged on it. Civilian Witness 1 then walked through the apartment to the back door to stop Quinton from possibly entering the apartment through the porch door. Civilian Witness 1 then shouted that he saw Quinton at the back door with a gun. Civilian Witness 2 mentioned that she knew Quinton carried a black pistol for protection because he sells drugs, but she did not see the pistol at that time. Civilian Witness 2 then saw Quinton break her back window with the butt of his pistol and attempt to gain access to the apartment via the adjacent door.

Civilian Witness 2 explained that Civilian Witness 1 armed himself with her pistol and Quinton started "talking shit to Civilian Witness 1" and “he just started like shooting, and [Civilian Witness 1] started shooting back." During this time Civilian Witness 1 and Civilian Witness 2 were standing between the kitchen and living room. Civilian Witness 2 stated that they were on the phone with the 911 operator during the entire incident. Civilian Witness 2 stated that she then heard police yelling, "Get down! Get down!" Civilian Witness 2 stated that she thought Civilian Witness 1 and Quinton fired three times each.

Detectives observed that Civilian Witness 2 had several quarter-sized bruises on both of her forearms. She had about a 2-inch scratch on the lower right side of her face and bruising near her right eye. Civilian Witness 2 stated that all the injuries were caused by Quinton assaulting her.

b. Civilian Witness 1

Civilian Witness 1 stated that he arrived home at the apartment unit at approximately 1:30 AM after visiting a friend. Civilian Witness 1 stated that as he got home, he observed Quinton leaving the apartment. Civilian Witness 1 went inside his apartment and observed his mother, Civilian Witness 2, was in a "panic."

Quinton later called Civilian Witness 1's phone multiple times and made threats to return to the unit. At one point, Quinton left Civilian Witness 1 and Civilian Witness 2 a voicemail stating, "If you don't pick up, I am going to come back." Civilian Witness 1 expressed that they were afraid of what Quinton might do if he returned. Due to their fear, Civilian Witness 2 retrieved her pistol from a safe and placed it in the main living room area. When Civilian Witness 1 answered the phone, he said that Quinton was angry.

At about 2:00 AM, Quinton returned to the unit and entered the apartment through the main door using a key. Civilian Witness 1 stated that initially when Quinton returned, he went to

his room, but then he started hearing Civilian Witness 2 saying things such as, "Back away from me" and then "Give me my gun back."

Civilian Witness 1 explained that from about 2:00 AM to about 6:00 AM, Quinton was "just freaking out" as he was upset about his and Civilian Witness 2's relationship. Civilian Witness 1 said that Quinton "choked the shit out of her" at about the time the shooting occurred. Leading up to that, Civilian Witness 1 described how Quinton was becoming increasingly aggressive towards Civilian Witness 2. Civilian Witness 1 stated that while they were arguing, Quinton removed Civilian Witness 2's gun from his pocket, cocked it, and then said, "I'm not fucking playing around. I'll bust a cap in this apartment right now." Civilian Witness 1 stated that it seemed like Quinton was going to shoot them. Civilian Witness 1 stated that Quinton told them that he would "go murder someone and blame it on her."

Civilian Witness 1 stated, "It escalated more and more and then he just kept putting his hands on her and it was really hard to watch because like I can only do so much." Civilian Witness 1 explained that the altercation climaxed when Civilian Witness 2 and Civilian Witness 1 attempted to push Quinton toward the front door to get him to leave. Quinton then grabbed Civilian Witness 2 by the neck using both hands and pushed her toward the front door. Civilian Witness 1 stated that he grabbed and tackled Quinton, at which point Civilian Witness 2's pistol fell from Quinton's possession and to the ground.

Civilian Witness 1 reported that their two small dogs walked outside while Quinton was at the front door. Civilian Witness 1 stated that Quinton then picked up each dog by the neck and dropped them.

Civilian Witness 1 reported that Quinton left the front door area and then walked to the back door of the unit. They tried blocking his attempts to gain access to the apartment. He described that the unit's back door as having a glass window and that there was a large glass window next to the door, as well. Civilian Witness 1 reported that he and Civilian Witness 2 fled to the hallway and toward Civilian Witness 2's room. Civilian Witness 1 stated that he then observed Quinton holding another silver pistol and pounding on the glass part of the door, breaking the glass. Civilian Witness 1 stated that he feared for his and Civilian Witness 2's lives if Quinton were to gain access through the locked door. Civilian Witness 1 stated that he retrieved Civilian Witness 2's pistol and then observed that Quinton had broken the glass to the back door and was attempting to open the door while yelling and threatening Civilian Witness 1 and Civilian Witness 2 with his pistol. Civilian Witness 1 stated that he watched as Quinton

pointed the pistol at Civilian Witness 2 as she fled toward her bedroom. Out of fear, Civilian Witness 1 stated that he moved to the hallway and then fired two rounds at Quinton. Civilian Witness 1 stated that he then heard and saw several rounds coming from Quinton's pistol, with one of the rounds striking a wall directly above his head. Civilian Witness 1 fled toward the bedroom and then heard police yelling at Quinton.

5. Subject's Jail Call

The Subject was not interviewed about the incident because he was going to be charged criminally. However, Investigator 1 listened to the first call the Subject made from jail, which was to his spouse, Civilian Witness 3. Below are some excerpts from that phone call:

During the interaction, Quinton explained why he become upset with Civilian Witness 2, stating, "This b*tch been f**ing with two, three other nig**s… Because I went over there like, so the other night, basically she was doing stop sign sht,* but she was trying to hide it. She was fumbling through the phone and sh*t. And she did the stop sign right in front of me. I said, don't fu*k with dope, you feel me? So after I came back from Seattle, sh*t, which was a dead b*tch, f**king, I stopped over there and I said, man, you really love me then let me see your phone. Went through the phone, found two, three nig**s in the phone, took the phone, put it in the sewer at Shell's and that's when I should have went home. I went back." "I went to Shell's dump her phone and then I came back. I went back to the house."

Quinton goes on to say, "Like her arguing and shit and the bitch pulled the gun out and set it on the counter. So when she went to go and use the restroom, I put the gun and put it on my hip. I'm like, why would you even have a gun out for? It's not that serious. So, uh, she was like, nigg*, gimme my phone. Gimme my gun. I was like, no, why would I leave your gun for you guys to shoot me and shit? So she pushed me on the refrigerator and then said, '[Civilian Witness 1], get the gun." Get the gun.' And we was tussling. And that's where I don't know if I got, if he shot me or not. So I went outside on the little balcony and shit. And by the time I was already firing in the house the police was on the corner right there. I don't know if them was who shot me or not. Like I didn't even feel it. I still don't feel it. My fault. I shouldn't even have taken my black a** home."

6. Physical Evidence

KCSO detectives processed the scene including both inside and outside the apartment unit marking items of evidence with placards before photographing and collecting the evidence.

Investigator 2 applied for a search warrant to search unit G-102 for evidence, which was signed by the Honorable Judge 1. The following evidence was found in the search of the apartment.

Placard 10, below, marked one 9mm fire cartridge casing (FCC) located on the kitchen floor.

Figure 6: FCC recovered in the kitchen.

Placard 11, below, marked one 10mm FCC located on the windowsill that faces the back porch. The window was open and the blinds were down. Portions of the blinds were bent and damaged. There was a small bullet hole in one of the blinds.

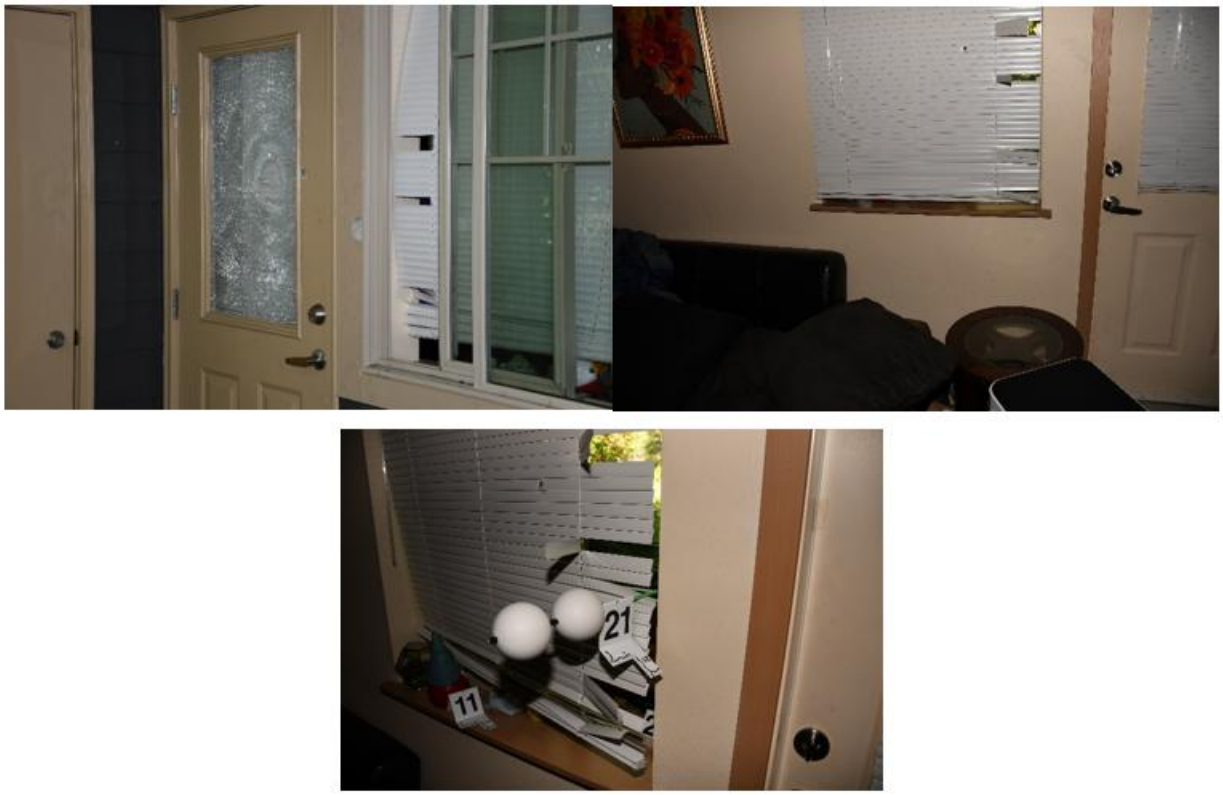

Figure 7: Top Left, back porch view of door and window Subject attempted to open to gain access to the unit. Top Right, same door and window but viewed from inside the living room. Bottom, view of window from the living room again with trajectory rod, #21, and 10mm FCC, #11.

Placard 12, below, marked one 10mm shell casing located on top of the couch next to the window to the porch.

Figure 8: Two 10mm FCCs (#11-12).

Below are photos of damage to the hallway bathroom door caused by gunfire. The hallway bathroom is just south of the living room, the location the Subject tried to access.

Figure 9: Top, yellow rectangle marks the hallway bathroom. Below, pictured in red is damaged caused by gunfire.

Placard 13 marked one 9mm FCC located on the hallway floor in front of the kitchen.

Figure 10: 9mm FCC in hallway.

On the back porch detectives recovered the following evidence: Placard 14, below, marked one 10mm live round located on the back porch next to the outside door and storage room.

Figure 11: Photos of live 10mm round.

Placard 16, below, marked one black Glock 10mm handgun that was located on the back porch just north of the porch window. The handgun had a seated magazine and one 10mm round chambered.

Figure 12: Photos of Subject's 10mm handgun.

Placard 17, below, marked one loaded 9mm magazine that was in an open gun safe on the master bedroom nightstand.

Figure 13: Gun safe in master bedroom.

Placard 18 marked one purple Taurus G2C 9mm handgun located in the bathroom connected to the master bedroom. The gun was laying on top of the sink with a seated magazine and a chambered 9mm round.

Figure 14: Civilian Witness 2's 9mm handgun that Civilian Witness 1 fired.

Placard 20 marked one spent bullet that was located inside the door frame next to the porch window. The bullet appears to have come from the inside of the apartment.

Figure 15: Spent bullet on porch.

From the evidence that was located, it appears that Barker, the Subject, was in possession of the black Glock 10mm pistol and fired 2 rounds while he was on the back porch. It appears he reached into the apartment through the open window and fired the gun due to the placement of the 10mm shell casings found inside the apartment. It also appears, due to the 9mm casings that were located inside the apartment, that Civilian Witness 1 fired the purple Taurus 9mm pistol from inside the apartment towards the back porch.

Regarding the shots fired by the police, Investigator 3 located and placed placards on the shell casings and taped lettered placards on the bullet entrance points near the exterior porch door of the apartment unit. Investigator 3 also placed trajectory rods in the bullet entry points on the exterior of the apartment building. The exception to this was the bullet that struck the glass window of the back door. Evidence placards AA-AC, below, marked three rifle FCCs. Evidence placards AD-AF, below, marked three 9mm FCCs.

Figure 16: Left, photo of FCCs fired by Involved Officer 1. Right, photo of FCCs fired by Involved Officer 2.

On the north side of the unit, there were four bullet defects. One above the unit, about 15 feet off the ground. Three defects were in a close grouping about 2-3 feet off the ground. According to detectives, their trajectory suggests that they were created by the officers who fired and were in the direction of the Subject who was standing on the back porch.

Figure 17: Bullet defects with trajectory rods on north side of unit next to back porch.

There was also one defect within the porch area. The trajectory suggested that it was fired from one of the officers and toward the Subject. The bullet appears to have passed through the door to a storage closet on the south side of the porch and an exterior wall.

There was also a bullet impact/bullet strike that skipped off the back door glass window. The bullet broke the first pane of glass, skipped off the second pane, and lodged itself between the 2 panes of glass.

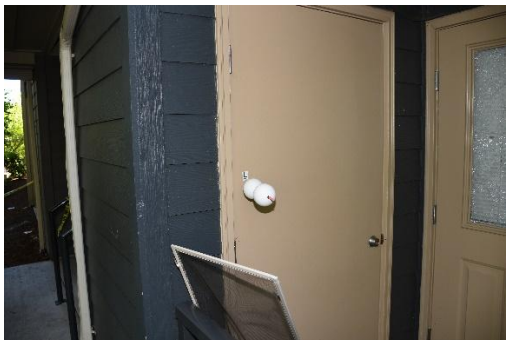

Figure 18: Bullet defect to storage closet door and trajectory rod.

7. Officer Processing

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

- Investigators photograph the involved officer to document their appearance, including the involved officer'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's firearm, loaded magazine, and any spare magazines.
- Investigators collect firearms, equipment, uniforms, and other items as necessary.

Renton PD Investigator 4 and Investigator 5 processed Involved Officer 1 who was armed with a Glock 17 9mm handgun equipped with a Trijicon RMR optic and a TLR 1 Streamlight flashlight attachment. The firearm had a seated magazine loaded with 19 rounds. It had a capacity of 22 rounds. One additional round was in the chamber. Involved Officer 1 carried 2 spare magazines, each with a 17-round capacity and each loaded 17 rounds.

Renton PD Investigator 6 and Investigator 7 processed Involved Officer 2 who was armed with an Aero Precision X15 equipped with Aimpoint Rifle Optics and a TLR HL Streamlight and 1 backup magazine. The seated magazine had a 30-round capacity though Involved Officer 2 only loaded it with 28 rounds. One round was located in the firearm's chamber. His spare magazine was loaded with 28 rounds.

It appears from the round counts and physical evidence that each officer fired three rounds.

8. Ballistics Report

A Washington State Patrol (WSP) forensic scientist microscopically compared the fired cartridge casings with the four firearms discharged in this incident. Her findings are as follows:

Involved Officer 1's 9mm Luger caliber Glock pistol, item VM05, and Involved Officer 2' 5.56x45mm caliber Aero Precision rifle, item VM06, were operable with functional safeties.

The three fired .223 Remington caliber cartridge cases, items VM29, VM30, and VM31, were identified as having been fired in the Aero Precision rifle, item VM06.

The two fired 9mm Luger caliber cartridge cases, items VM32 and VM33, were identified as having been fired in the Glock pistol, item VM05.

The fired bullet, item VM36 (hallway bathroom), and the fired bullet jacket fragment, item VM37 (exterior), had similar class characteristics but were inconclusive as having been fired from Involved Officer 1's firearm, due to limited marks, damage, and rifling type. The fired bullet and fired bullet jacket fragment were eliminated as having been fired from Involved Officer 2's rifle due to differences in class characteristics.

IV. FACTUAL ANALYSIS

This entire incident lasted approximately one minute and fifteen seconds from the point the officers arrived on scene until the last shot was fired.

Initially, the officers responded to a call for service for domestic violence. They were told that the participants may be armed with guns. They arrived on scene less than two minutes after a juvenile, Civilian Witness 1, called 911 to report that the Subject was assaulting his mother.

Involved Officer 1 arrived first and waited for his backup, Involved Officer 2, to arrive. Both officers knew from the Dispatcher that this was a domestic incident between a boyfriend and the tenant-girlfriend. Dispatch also told them the boyfriend had a gun and was on the back porch aiming it into the unit through the back porch window. They also had a description of the Subject – a black male, heavy build, black hair, beard, unknown clothing with an orange backpack, which matched the person they saw on the back porch.

Approximately thirty-nine seconds after the first officer arrived on scene, the officers heard three gunshots from Building G. Involved Officer 1 was armed with a handgun. Involved Officer 2 was armed with a rifle and followed Involved Officer 1 as they ran behind Building G where the back porch to G-102 was located. While running, they heard another gunshot. And when they turned the corner of the building to face the back porch of unit G-102, they heard the Subject on the porch yelling at the tenants. Involved Officer 1 rapidly fired three shots towards the porch and Involved Officer 2 then rapidly fired three shots towards the porch. The six shots were fired in approximately 2-3 seconds. Although the involved officers did not provide statements to investigators, the Subject admitted that he was firing inside the apartment when the police arrived saying on a recorded phone call from jail, "…I went outside on the little balcony... And by the time I was already firing in the house, the police was on the corner right there. I don't know if them was who shot me or not."

Later, investigators utilized trajectory rods to demonstrate the angle the officers' bullets struck the building. They did this by inserting the metal rods into the entry and exit points of the

bullets. The rods showed that five gunshot holes were likely caused by gunfire from the officers, though investigators could not attribute the strikes to one particular officer. Three strikes were grouped together near the base of the beige pole on the north side of the porch. Another strike was in the façade about ten feet higher than the grouping of three. A fifth bullet struck another door on the porch.

The Subject was struck by two bullets. However, the investigators could not determine who fired those rounds, as the officers and Civilian Witness 1 both fired at the Subject.

A 10mm Glock pistol was recovered on the porch where the Subject was standing along with two 10mm fired cartridge casing just inside the porch window of the house showing that he indeed reached the gun through the window and fired at the tenants.

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.[8] 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.[9]

In addition, the State must disprove the existence of a defense that negates an element of the crime beyond a reasonable doubt.[10] 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.[11]

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:

- Justifiable Homicide or Use of Deadly Force by Peace Officer[12]
- Defense of Self or Others (applies to non-homicide charges)[13]

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[8] RCW 9A.04.100; WPIC 4.01.
[9] KCPAO Filing and Disposition Standards.
[10] WPIC 14.00.
[11] KCPAO Filing and Disposition Standards.
[12] RCW 9A.16.040.
[13] RCW 9A.16.020(3).

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

3. Summary of Conclusion

The KCPAO declines to file charges against both officers because the Independent Investigation and the Team's analysis reveal that the involved officer's actions were in defense of others and justifiable uses of deadly force by a peace officer.[14]

a. Use of Deadly Force by a Peace Officer

i. ***Law Regarding Use of Deadly Force by a Peace Officer***

a) RCW 9A.16.040(1)(b) – In the Discharge of Legal Duty & Good Faith

One instance where deadly force by a police officer is justified by law is when an officer necessarily uses deadly force in good faith to overcome actual resistance to the execution of the legal process, mandate, or order of a court or officer, or in the discharge of a legal duty.[15]

In Washington State, "The primary duty of peace officers, when responding to a domestic violence situation, is to enforce the laws allegedly violated and to protect the complaining party."[16] Officers shall arrest perpetrators of domestic violence where there is probable cause.[17]

A peace officer acts in good faith, an objective standard, when considering all the facts, circumstances, and information known to the officer at the time to determine whether a similarly situated reasonable officer would have believed that the use of deadly force was necessary to

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[14] State v. Miller, 141 Wash. 104, 105–06 (1926).
[15] RCW 9A.16.040(1)(b); WPIC 16.01.
[16] RCW 10.99.030(1) (emphasis added).
[17] RCW 10.99.030(2)(1).

prevent death or serious physical harm to the officer or another individual.[18] 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.[19]

b. Law Regarding Defense of 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 that section.[20]

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.[21]

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.[22]

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 the facts and circumstances known to the person at the time of and prior to the incident.[23]

The State has the burden of proving beyond a reasonable doubt that the force used by the defendant was not lawful.[24]

The reasonable prudent person standard as used in this jury instruction does not expressly require the factfinder to compare the involved officer to a reasonable officer.[25] However, because law enforcement officers – especially compared to non-law enforcement civilians – receive significant amounts of training on weapons, defensive tactics, and the use of force, it is likely the factfinder would be required to take the officers' training and experience into account to

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[18] RCW 9A.16.040(4).
[19] RCW 9A.16.010; WPIC 16.05.
[20] RCW 9A.16.040(5)(a) [1986 c 209 §3].
[21] RCW 9A.16.020(3); WPIC 17.02.
[22] WPIC 16.05.
[23] WPIC 17.02.
[24] Id.
[25] Id.

determine how a reasonable person would have acted. Therefore, the same evidence and testimony used to determine whether the officer acted as a reasonable peace officer under the previous instruction is also relevant to this instruction.

c. Relationship Between 4th Amendment Civil Rights Case Law, Police Training, and the "Similarly Situated Reasonable Officer" Standard

In Graham v. Connor, the seminal case on evaluating whether a police officer's use of force violated a person's constitutional right against unreasonable search and seizure, the United States Supreme Court determined that the test to determine whether the force used by the police was "reasonable" is not capable of a "precise definition or mechanical application."[26] Instead, its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the Subject poses an immediate threat to the safety of the officers or others, and whether the Subject is actively resisting arrest or attempting to evade arrest by flight.[27] In other words, the reasonableness of whether the officer's use of force is justified is determined by "the totality of the circumstances."[28]

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.[29] "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."[30] However, the inquiry is an objective one. The question is whether the officer's actions are "objectively reasonable" considering the facts and circumstances confronting them.[31]

d. Analysis Regarding Use of Deadly Force by a Peace Officer

i. RCW 9A.16.040(1)(b) – In the Discharge of a Legal Duty & Good Faith

Based on all the facts and circumstances known to both officers, it appears that when the officers fired their weapons at the Subject, they were performing a legal duty by protecting

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[26] Graham v. Connor, 490 U.S. 386, 396, 109 S.Ct. 1865, 1871-72, 104 L.Ed.2d 443 (1989).
[27] Id.
[28] Id.
[29] Id.
[30] Id. at 396-97.
[31] Id. at 397.

victims of domestic violence from the Subject who was shooting at them. A similarly situated reasonable officer, knowing all the facts and circumstances known to the officers, would believe that the use of deadly force was necessary to prevent serious physical harm to Civilian Witness 1 and his mother.

Specifically, when Involved Officer 1 and Involved Officer 2 arrived on scene, they knew the Subject posed a very real physical threat of harm to Civilian Witness 1 and his mother. They knew the Subject did not live at the location. They were also told by the police dispatcher that the Subject was armed and that he had just assaulted Civilian Witness 1's mother and her dogs. Dispatch told the officers, "We heard yelling, 'He has a gun!' in the background. Boyfriend's on the back porch aiming a gun through the window."

Forty seconds later, while standing in the parking lot in front of Building G, the officers then heard three gunshots coming from the back of Building G. As they ran towards the back porch, they had their firearms drawn in case they needed to protect themselves, Civilian Witness 1, or his mother. As they ran towards the porch, just seventeen seconds after the first gunshots, they heard one additional shot. When they arrived at the back of the apartment building, they saw the Subject on the back porch where he had no permission to be, yelling at someone inside the apartment. Although their firearms blocked their cameras, it appears from the Subject's recorded admission to his spouse and Civilian Witness 1's interview that the Subject was firing at Civilian Witness 1 and his mother and was still a threat to them. Seconds later, the officers fired their guns three times each at the Subject. The Subject then surrendered.

Presented with these facts, a similarly situated reasonable officer would have believed that the use of deadly force was necessary to prevent death or serious physical harm to another individual. When the officers used deadly force, the Subject was assaultive, armed, and trying to shoot the tenants inside unit G-102. Additionally, the officers' failure to warn the Subject before they fired was understandable. The officers needed to act immediately to protect the victims. The Subject was breaking into the apartment and assaulting the tenants with a firearm. Their use of deadly force was lawful and justifiable.

e. Analysis Regarding Defense of Self or Others

As described above, based on the facts, when both officers fired their weapons it was reasonable to believe that the Subject was about to injure the tenants. Additionally, the amount of force they used was no more than necessary. They stopped firing when the Subject surrendered. As a result, they both acted in lawful defense of others.

VI. CONCLUSION

Therefore, based on the anticipated admissible evidence and statements, criminal charges against Involved Officer 1 and Involved Officer 2 are not supported by the facts. The KCPAO declines to file criminal charges.

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 Subject, 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 Subject 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 Subject 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 another person 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.