

Use of Force Non-Fatality of  
Wendell Downs III

Valley Independent Investigation Team  
Tukwila Police Department, #24-3350



King County Prosecuting Attorney  
Public Integrity Team

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## DECLINE MEMORANDUM

### USE OF FORCE NON-FATALITY OF WENDELL DOWNS

#### I. INTRODUCTION

##### 1. PURPOSE AND SCOPE OF MEMORANDUM

The King County Prosecuting Attorney's Office (KCPAO) is mandated by law to analyze certain incidents regarding police use of force and to determine if there is sufficient admissible evidence to file criminal charges. 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.<sup>1</sup>

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.<sup>2</sup> The independent investigation is conducted in the same manner as a criminal investigation.<sup>3</sup>

The filing decision is based entirely on the investigation materials provided to the KCPAO, relevant criminal laws, rules of evidence governing criminal proceedings, the applicable burden of proof, and the KCPAO's Filing and Disposition Standards. This determination is not intended to address matters outside the scope of this memorandum including, but not limited to, administrative action by the involved agency or any other civil action. The Team expresses no opinion regarding the propriety or likely outcome of any such actions.

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<sup>1</sup> RCW 10.114.011; WAC 139-12-010.

<sup>2</sup> RCW 10.114.011. See also WAC 139-12-010.

<sup>3</sup> Id.

## **2. STATUS OF THE INDEPENDENT INVESTIGATION**

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

## **II. OVERVIEW**

On June 9, 2024, at around 5:00 AM, Renton Police Department (RPD) Involved Officer 1 and Witness Officer 1 responded to a 911 call at a single-family residence reporting an ongoing domestic violence incident. As they responded, officers learned that the suspect had a history of arrests for violent assaults. When the officers entered the home a teenage girl whispered, "He's got my mom," and pointed to a hallway door leading to the garage. The door frame was damaged as though it had been kicked open. When they entered the garage, the suspect was sitting in the front passenger seat of the lone car in the garage. The car was facing the officers who were standing on a raised staircase. A female was standing outside the driver's door and looked scared. Witness Officer 1 then opened the garage door to let the female victim flee. At that moment, the suspect began reaching towards multiple areas inside the car despite Involved Officer 1's orders to him to show his hands. The suspect then opened the car door and fled out of the garage. Involved Officer 1 shot at the suspect nine times hitting him twice. Involved Officer 1 later told a sergeant at the scene that he thought the suspect was chasing the female and intended to hurt her. The suspect then fled in another car that was parked in the driveway. Officers performed a PIT maneuver to detain the fleeing suspect who was then apprehended and transported to the hospital where he survived his injuries.

## **III. INVESTIGATION AND EVIDENCE**

The KCPAO reviewed all relevant reports, photos, video, search warrant(s), CAD, radio dispatch, and audio interviews.

## **IV. INVESTIGATION SUMMARY**

The Valley Independent Investigation Team (VIIT) investigated this officer-involved shooting because state law prohibits a police agency from investigating a shooting committed by an agency's own officers. Witness Officer 3 from Renton PD briefed VIIT investigators on the

incident. Tasks were then split between members of VIIT. Tukwila PD was the lead investigating agency. Des Moines PD processed Involved Officer 1 and Witness Officer 1. Auburn PD's Crime Scene Response Team processed and scanned the shooting scene. Port of Seattle PD and Kent PD canvassed the area for witnesses. KCSO canvassed the second scene where the subject was arrested. They searched for video evidence, collected physical evidence, and photographed the scene, including scanning the scene and taking aerial photos.

The investigation found that on June 9, 2024, at approximately 5:00 AM, 911 received a call for help from a crying female. The female whispered, "Hurry, please." The line then disconnected. Dispatch relayed to officers that upon playback of the call, there were possible sounds of a child or someone else crying and the female had whispered "domestic violence" before hanging up. The address of the location was 9419 S. 196th Place in the city of Renton.

At 5:05 AM, Renton Police Department Involved Officer 1 and Witness Officer 1 were dispatched to the call. To protect the reporting party's (RP) safety, the operator did not call the RP back. Involved Officer 1 looked up and then provided dispatch with the following two names possibly associated with the phone number used by the reporting party: Wendell Downs and Civilian Witness 1. Involved Officer 1 asked the dispatcher what Downs' most serious convictions were. Dispatch told officers that Downs had arrests for Second and Third-Degree Assault.

At 5:15 AM, a woman identifying herself as the godmother of the children inside the residence called 911 and reported that she was outside with one child and four other children were still inside the residence. According to the computer-aided dispatch record of the incident, the caller said that the boyfriend of the "...mom not letting any others leave, physical, unk weps..." The caller was receiving text messages from her goddaughter inside the location. A description of the male was provided as a black male, in his 30s, light skinned, short, shaved hair, and goes by "W." Dispatch aired that there were multiple arrest warrants for Wendell Downs and sent a Washington Department of Licensing photo of Downs.

Involved Officer 1 and Witness Officer 1 arrived at the residence at approximately 5:15 AM. Involved Officer 1 knocked multiple times on the front door and announced their presence. Eventually, after Involved Officer 1 knocked on the door a fourth time, a teenage female, later identified as Civilian Witness 2, opened the front door, but then attempted to close the door on the officers. Involved Officer 1 was able to push the door open before it closed. The officers entered the residence and again announced their presence. Involved Officer 1 warned, "Come out

and show me your hands now, or else force may be used.” While pointing toward a door just east of the front door, Civilian Witness 2 whispered to the officers, “He’s got my mom.” Civilian Witness 2 hyperventilated as she spoke. The officers walked toward the door. The interior door trim near the door jamb appeared to be damaged and hanging off the wall.

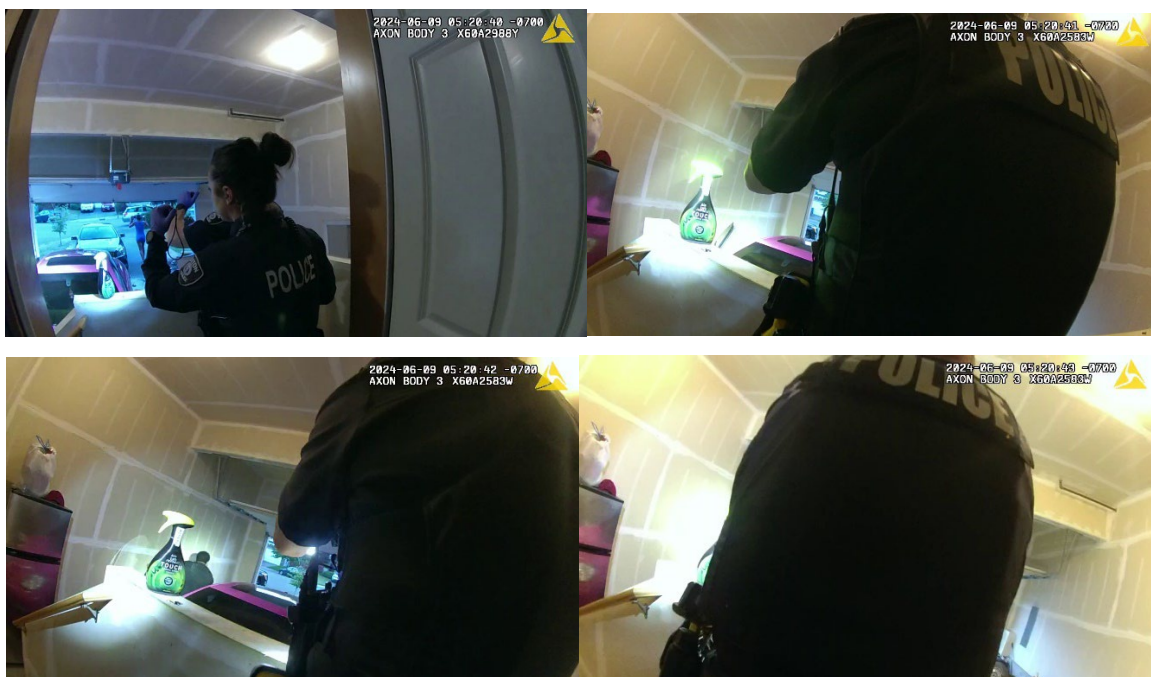
Involved Officer 1 then informed dispatch, “We’ve got a hostage situation.” Involved Officer 1 then opened the damaged door, which led to a garage. The garage door was closed, and a pink Porsche was parked inside. A female, later identified as Civilian Witness 1, was standing outside of the pink Porsche on the driver’s side holding an unopened soda can, which she later used to soothe the injuries to her head caused by Downs striking her before the officers arrived. Involved Officer 1 then asked her, “Where is he?” Downs was sitting in the front passenger seat of the sole car parked in the garage.



*Figures: Sequence of Involved Officer 1 and Witness Officer 1 entering the residence. Top Left frame is Civilian Witness 1’s teenage daughter opening the door. Involved Officer 1 then pushes the door open to prevent her from closing it on the officers. He turns left. Past the stairs down the hall on the left is the door to the garage. The door frame appears damaged. When Involved Officer 1 opens the door, he sees Civilian Witness 1 next to the driver side of the pink vehicle standing unsteadily holding an unopened soda can. He asks her where the subject is and then sees the subject sitting in the passenger side of the car.*

Witness Officer 1, with Involved Officer 1’s consent, then opened the rollup garage door and Civilian Witness 1 ran out of the garage, stopping midway in the driveway behind a parked black Mercedes-Benz sedan. At the same time, Downs reached across to the front driver’s seat. Involved Officer 1 gave multiple commands to Downs to “stop” and to show his hands. Involved Officer 1 then told dispatch he needed backup to come to the driveway. Downs exited the pink Porsche from the front passenger door, turned his back to the officers and ran toward the open garage door in the direction of Civilian Witness 1.

At this point, Involved Officer 1 fired 9 shots at Downs from his handgun as Downs continued to run out of the garage. This timeframe spans roughly 3-4 seconds. On Involved Officer 1’s BWV, Downs’ right hand is not visible as he ran between the narrow area of the car door and the wall of the garage. Downs briefly opened the front driver’s door of the black Mercedes-Benz, but fled behind the trunk of the vehicle while Involved Officer 1 continued to fire. Involved Officer 1 struck Downs with two bullets. He also struck both cars including the Mercedes’ windshield and the driver side door.

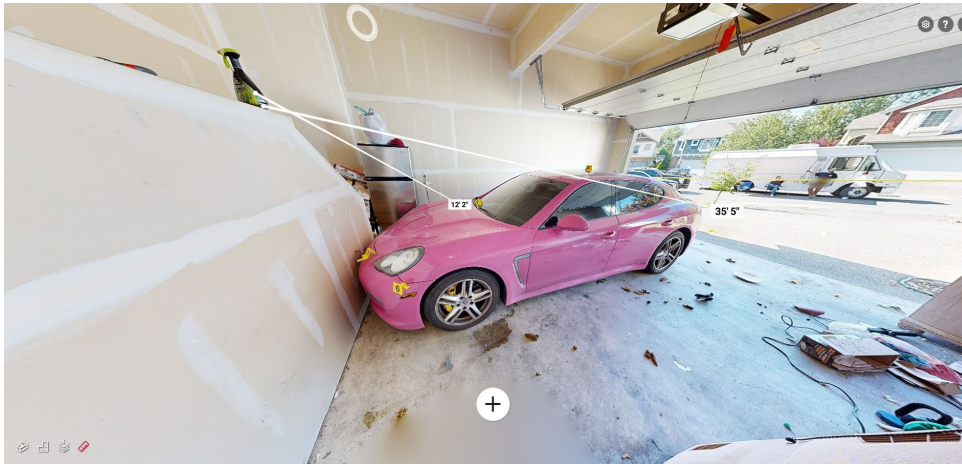




*Figures: Sequence of shooting from top to bottom, left to right. Top left photo is BWV from backing officer, Witness Officer 2. It shows Witness Officer 1, the female, who is partially blocking Involved Officer 1 from view. Domestic violence victim Civilian Witness 1 can be seen, dressed in light blue, walking out of the garage towards the street. The remaining frames are from Witness Officer 1's BWV showing subject Downs, located in the front passenger seat of the pink vehicle exit the vehicle and then Involved Officer 1 firing at him.*

Downs went back to the front driver's door of the Mercedes-Benz, yells "I don't have nothing" and then entered the driver's seat. Witness Officer 1 asked Involved Officer 1, "Does he have a gun?" Involved Officer 1 responded, "I don't see a gun." Civilian Witness 1 then yells

to officers, “He’s not armed.” Downs started the engine and fled the area driving onto the raised sidewalk to get around police cars parked in the middle of the street.



*Figure: Post-incident 3D scan of the scene showing the stairs where the officers were located and the approximate range between Downs and Involved Officer 1 when shots were fired.*

After Downs fled, Civilian Witness 1 walked towards Involved Officer 1, who was now standing at the edge of the driveway. Civilian Witness 1 was crying and holding the soda can against the right side of her face. Involved Officer 1 asked her if she was ok, and weeping, she collapsed near Involved Officer 1’s feet and said no. Witness Officer 3 then approached Involved Officer 1 and asked if Involved Officer 1 was ok. Involved Officer 1 responded, “I’m okay. I thought he was going after her.” Involved Officer 1 told the sergeant that he believed at least one of his shots hit Downs. Involved Officer 1 then walked inside the house to check on the well-being of other residents who may be inside the house.



*Figure: Civilian Witness 1 walking towards Involved Officer 1 after the shooting while weeping and telling Involved Officer 1 that she was not ok.*

Additional Renton PD officers pursued Downs’ car and eventually were able to stop the vehicle after using PIT maneuvers in the area of East Valley Highway and S. 180th Street. Downs repeatedly asked the officers on scene why the police shot him since he did not have a weapon. Downs was taken into custody and transported to Harborview Medical Center for further medical treatment. He was discharged on June 11, 2024.

On scene, Witness Officer 3 asked Involved Officer 1 what happened. Involved Officer 1 told the sergeant that when officers entered the house, the girl who opened the front door said Downs had “taken her mom.”

Involved Officer 1 further explained that as officers entered the garage, Downs was seated in the car and did not comply with the officers’ orders. Officers then directed Civilian Witness 1 to move away from the car. After one of the officers opened the garage door, Civilian Witness 1 exited the garage.

Involved Officer 1 then described how he saw Downs reach for an unknown object inside the car. Involved Officer 1 said that he had his own gun drawn. Involved Officer 1 was giving Downs commands, which Downs again ignored. Downs then exited the car and started running after Civilian Witness 1. Involved Officer 1 then told Witness Officer 3, “Shots were fired.” Involved Officer 1 did not specify how many shots he fired. When Downs reached a second car that was parked in the driveway, Involved Officer 1 said that Downs tried to reach inside its driver side door. Downs then ran towards the trunk of the car. Involved Officer 1 said that he fired more shots. Downs then told Involved Officer 1 he was not armed. Involved Officer 1 saw that Downs did not have a gun in his hand and did not fire any more shots.

Later that afternoon, Tukwila PD interviewed Civilian Witness 1 about the incident. Civilian Witness 1 stated that she and her four children had moved to 9419 S. 196th Place about a month ago. Civilian Witness 1 split up with Downs about a month previous, but has two children in-common with him who reside with her at the aforementioned address. Downs had never lived at 9419 S. 196th Place, but had visited to help take care of the children. On the night prior, Civilian Witness 1 was at a friend’s house at a party and she “passed out” after drinking.

Civilian Witness 1 woke up at approximately 3:00 AM and asked her friend if Downs had come by. Civilian Witness 1 was expecting Downs because they had previously discussed Downs dropping off money to Civilian Witness 1 at the friend’s house. The friend told Civilian Witness 1 that Downs had arrived earlier, but he had left to give a ride home to another female. Civilian Witness 1 called Downs to question him why he had given another female a ride home. Downs responded by saying, “Bitch” and “Fuck you. I’ll beat your ass.” Both continued to argue on the phone as Downs threatened her. Civilian Witness 1 left the friend’s house and drove to her home. She parked her pink Porsche in the driveway and went inside. Civilian Witness 1 stated that Downs continued to argue and threaten her over the phone. Due to Downs damaging her mother’s vehicle from a previous incident, Civilian Witness 1 thought it would be best to park

her vehicle in the garage. After she pulled her vehicle into the garage, she observed the black Mercedes-Benz pull into the driveway as the garage door was closing. Civilian Witness 1 said Downs "slid" under the garage door as it was closing and got into Civilian Witness 1's pink Porsche in the rear passenger seat on the driver's side while Civilian Witness 1 was still seated in the driver's seat. Downs said to Civilian Witness 1, "Yeah bitch, didn't I tell you to stop playin' with me? Bitch, you want me to show you?" Downs grabbed Civilian Witness 1 by her hair and hit her in the face, approximately 4-5 times. Civilian Witness 1 stated that Downs was high on cocaine at the time, which was one of the reasons why they had broken up.

Downs ordered Civilian Witness 1 to go inside the house, so she exited her vehicle and ran up a set of stairs to the interior garage door. Civilian Witness 1 closed the door and locked it behind her, but Downs kicked the door open. Downs chased Civilian Witness 1 into the living room, pulled her to the ground by her hair. Downs then continued to punch and kick Civilian Witness 1. Civilian Witness 1's daughter, Civilian Witness 2, who was upstairs at the time contacted her godmother, asking her to come pick her up and that she was scared. Civilian Witness 2 then went downstairs and said to Downs, "Stop, stop, please stop." Downs responded to her, "Get out of here" and told her to "mind her business." Downs then heard that Civilian Witness 2 was on the phone with someone and said, "Who the fuck did you call?" and "Hang up that fucking phone before I fucking slap you!" Downs then walked off, but continued to yell and argue with Civilian Witness 1.

Civilian Witness 2 continued to text her godmother and told her to not knock on the door because "...he's not gonna let us out." Downs told Civilian Witness 1 to go upstairs to find the title to the pink Porsche. While upstairs, Renton PD arrived at the home and announced their presence. Civilian Witness 1 said Downs grabbed her by the hair and forced her into the garage. Once in the garage, Downs got into the front passenger seat of the pink Porsche and told Civilian Witness 1 to get in the car. The rear passenger side door did not work, so Civilian Witness 1 had to walk around to the driver's side to get in.

Before she could get inside, Civilian Witness 2 had let Renton PD officers inside and "...must've told them that he has my mom in the garage." When Renton PD officers entered the garage, they gave Downs orders to "get out of the car" and to "put your hands up." The officers opened the garage rollup door and told Civilian Witness 1 to leave. The officers continued to give commands to Downs to get out of the vehicle, but he just sat inside the pink Porsche. Civilian Witness 1 went out of the garage, but stayed within viewing distance of the garage.

Civilian Witness 1 observed Downs exit out of the pink Porsche and run out of the garage. Civilian Witness 1 witnessed the officer shooting at Downs.

The area around Civilian Witness 1's right cheek bone was red and appeared to have slight bruising underneath her right eye. Civilian Witness 1 stated that she was also injured on the right side of her head, which was covered by her hair and no obvious injuries were visible. Civilian Witness 1 had a small laceration to her bottom inner lip on the left side. Civilian Witness 1 had bruising to her left forearm where she was kicked during the assault inside the home. Civilian Witness 1 also had an abrasion to her right knee. Civilian Witness 1 had two small punctures on her left forearm with dark circles around them. Civilian Witness 1 said that the injury was from bullet fragments that medical personnel had removed while at the scene.

Downs was treated at Harborview Medical Center for his three gunshot wounds – one to his right leg and two to his abdomen, likely a through-and-through wound.

In cause number 24-1-04597-6 KNT, Downs was charged for his conduct in the underlying incident with Burglary in the First Degree with a domestic violence enhancement and Assault in the Fourth Degree – Domestic Violence. The case has since resolved.

## V. LEGAL STANDARD

The State must prove each element of a criminal charge by competent evidence beyond a reasonable doubt.<sup>4</sup> In addition, the State must disprove the existence of a defense that negates an element of the crime.<sup>5</sup> The State 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 fact-finder.<sup>6</sup>

Additionally, 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.<sup>7</sup> Therefore,

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<sup>4</sup> RCW 9A.04.100; WPIC 4.01.

<sup>5</sup> WPIC 14.00; Patterson v. New York (1977), 214–15 (holding, If a statute indicates an intent to include absence of a defense as an element of the offense, or the defense negates one or more elements of the offense, the State has a constitutional burden to prove the absence of the defense beyond a reasonable doubt.)

<sup>6</sup> KCPAO Filing and Disposition Standards.

<sup>7</sup> Id.

the State is also required to prove beyond a reasonable doubt that the shooting officer did not act in good faith when they used deadly force on the subject.<sup>8 9</sup>

The following jury instructions, contained in Attachment A, would likely be applicable and are relevant to the Team's analysis and conclusion:

- WPIC 16.01 – Justifiable Homicide/Deadly Force by a Peace Officer
- WPIC 16.05 – Necessary
- WPIC 2.04.01 – Justifiable Homicide - Great Personal Injury
- WPIC 16.07 – Justifiable Homicide – Actual Danger Not Necessary

## VI. ANALYSIS AND CONCLUSION

There is insufficient evidence to overcome the State's burden to prove beyond a reasonable doubt to a jury of twelve that Involved Officer 1 did not act in good faith when he used deadly force against Mr. Downs.

The evidence in the investigation establishes that Involved Officer 1 and Witness Officer 1 responded to a service call for help regarding an ongoing domestic violence assault. It appeared that at least three children were present, and time was of the essence as the caller was whispering asking the police to hurry before the call disconnected.

The responding officers were aware that the suspect had a possible history of violence having previously been arrested for assault in the second and third degrees. The danger of continued domestic violence became more immediate when no one responded to officers knocking at the front door. Involved Officer 1 drew his firearm and held it by his side at a low and ready position. A teenage girl then opened the door tentatively and whispered to Involved Officer 1, "He's got my mom," and directed Involved Officer 1 and Witness Officer 1 to the left where a door to the garage was located. The door jamb appeared as though it had been kicked in with someone's foot. Officers had probable cause to believe there was an ongoing unlawful imprisonment and possibly first-degree burglary - domestic violence. Showing his concern for the victim's safety, Involved Officer 1 announced over his radio that there was a possible "hostage situation" and asked dispatch to close the air. When Involved Officer 1 entered the garage, Witness Officer 1 was standing behind him on the steps. Victim Civilian Witness 1 was

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<sup>8</sup> RCW 9A.16.030; RCW 9A.16.040; WPIC 16.01.

<sup>9</sup> RCW 9A.16.050(1); WPIC 16.02.

nearby standing outside the driver side door of the lone vehicle parked in the garage. She looked terrified, with her shoulders slumped and holding a frozen aluminum can against her face as though she was injured. Downs was sitting in the front passenger seat of the car. The car's windshield appeared heavily tinted or dark making it difficult to see what Downs was doing inside the vehicle with his hands. Witness Officer 1 then decided to open the garage door to let the victim out. Downs then took that as an opportunity to exit through the garage door. Downs ignored multiple commands from Involved Officer 1 to stop and show his hands. From Involved Officer 1's BWV, Downs is seen reaching towards the steering wheel and then towards the area near the passenger door handle and glove box. Due to the tint of the window and Down's hands reaching below the dashboard, it is unclear if Downs obtained anything. Both Witness Officer 1 and Witness Officer 2 noted this in their written statements that they could not see the suspect's hands inside the vehicle.

Although Involved Officer 1 did not give a formal statement, it is probable that he would testify at trial that Downs' reaching around inside the car combined with Downs ignoring commands to show his hands, and his previous second-degree assault arrest made him concerned that Downs was in possession of a gun or knife. Downs then exited the car, turned his back to the officers and ran toward the open garage rollup door. Involved Officer 1 later told Witness Officer 3 that he believed Downs was attempting to chase victim Civilian Witness 1 who he had just assaulted and forced into the garage. In Involved Officer 1's BWV, both Downs' left and right hand are not visible together until Downs passed the trunk of the car and ran towards the driver side door of the black vehicle parked in the driveway. Involved Officer 1 fired two to three shots by this time. Over the next two seconds Involved Officer 1 fired five to six more shots as Downs attempted to enter the driver side door of the black car and then took cover behind the back bumper of that car. Three of the shots hit Downs in the leg and abdomen area. Downs then told Involved Officer 1, "I don't have nothing." Victim Civilian Witness 1 then stated that Downs was not armed. It appeared Involved Officer 1 stopped firing his gun when he knew Downs was not armed. Downs then quickly entered the black car and fled from the police.

### 3. JUSTIFIABLE HOMICIDE/USE OF DEADLY FORCE BY A PEACE OFFICER

An officer is permitted to use deadly force on a suspect when apprehending the suspect, if the officer reasonably believes the suspect has committed or is attempting to commit a felony and deadly force is used in good faith.<sup>10</sup>

A peace officer acts in good faith if a similarly situated reasonable officer would have believed that the use of deadly force was necessary to prevent death or serious physical harm to the officer or another individual. Good faith is an objective standard considering all the facts, circumstances, and information known to the officer at the time the officer used deadly force.<sup>11</sup>

However, the involved officer must also have probable cause to believe that the suspect, if not apprehended, poses a “threat of serious physical harm” to others. A threat of serious physical harm may include instances where there is probable cause to believe the suspect committed any crime involving the infliction or threatened infliction of serious physical harm.

Serious physical harm is defined as an injury the involved officer reasonably believes would produce severe pain and suffering.<sup>12</sup> This standard requires a less severe injury than great bodily harm, which, for instance, is the level of injury required to prove first-degree assault. Unlike serious physical harm, great bodily harm requires an injury that creates the probability of death, or that causes significant serious permanent disfigurement, or that causes a significant permanent loss or impairment of the function of any bodily part or organ.<sup>13</sup>

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. “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.”

Given the facts presented, the Team declines to file criminal charges against Involved Officer 1. The evidence is insufficient to disprove beyond a reasonable doubt that Involved Officer 1 did not act in good faith. Officers were confronted with a situation where a domestic violence victim was in immediate need of police assistance, the situation was fast moving, the suspect had a history of felony violence, had apparently broken a door jamb to commit further

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<sup>10</sup> RCW 9A.16.040(c)(1).

<sup>11</sup> Id.

<sup>12</sup> State v. Walker, 136 Wn.2d 767(1998). WPIC 2.04.01.

<sup>13</sup> RCW 9A.04.110.

violence, and Involved Officer 1 subjectively believed that the suspect was chasing the victim with the intent to further assault her.

An officer is justified in using deadly force against a suspect whom they have probable cause to believe is committing a felony and poses a threat of serious physical harm if not apprehended. Because Involved Officer 1 did not provide a formal statement, it is unclear if he believed Downs possessed a weapon, but Involved Officer 1 was forced to make a split-second decision to protect victim Civilian Witness 1 after Involved Officer 1's partner opened the garage door allowing Civilian Witness 1 to flee. Whether Downs intended to chase Civilian Witness 1 when he exited the car, either on foot or by car, and further injure her is unknown but there appears to be insufficient evidence to prove beyond a reasonable doubt that Involved Officer 1 did not act with good faith at the time. Involved Officer 1 was forced to make a split-second decision to protect Civilian Witness 1. The law permits a person to act on appearances in defending another if that person believes, in good faith, and on reasonable grounds that 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.<sup>14</sup> As such, KCPAO declines to file criminal charges against Involved Officer 1.

## **VII. CONCLUSION**

For the foregoing reasons the State declines to file charges against Involved Officer 1.

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<sup>14</sup> State v. Miller, 141 Wash. 104 (1926).

**VIII. ATTACHMENT A**

### 1. WPIC 16.01 - Justifiable Homicide by a Peace Officer

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

Homicide or the use of deadly force is justifiable:

1) 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

2) 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. 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 2.04.01 – Great Personal Injury

Great personal injury means an injury that the slayer reasonably believed, in light of all the facts and circumstances known at the time, would produce severe pain and suffering, if it were inflicted upon either the slayer or another person.

4. 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