

Use of Force Non-Fatality Investigation
Conor Reilly

Valley Independent Investigation Team
King County Sheriff's Office, C24033124



King County Prosecuting Attorney
Public Integrity Team

Published: January 23, 2025



DECLINE MEMORANDUM

NON-FATAL USE OF FORCE RE: CONOR REILLY

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.¹

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.² The independent investigation is conducted in the same manner as a criminal investigation.³ Additionally, when requested by law enforcement the KCPAO will also review officer-involved shooting investigations where a subject was not struck by the gunfire.

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

¹ RCW 10.114.011; WAC 139-12-010.

² RCW 10.114.011. See also WAC 139-12-010.

³ Id.

including, but not limited to, administrative action by the involved agency or any other civil action. The Team expresses no opinion regarding the propriety or likely outcome of any such actions.

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

At 10:37 PM on October 1, 2024, Witness Officer 1 of the Kent Police Department (Kent PD or KPD) was on patrol in a marked police vehicle when he attempted to pull over the driver of a stolen U-Haul box truck, subject Reilly (Subject or Reilly). The subject failed to yield and took Kent PD officers on an 8.3-mile, 12-minute vehicle pursuit into the neighboring city of SeaTac.

Near the end of the pursuit, the subject drove the box truck through the parking lot of the Chinook Manor apartments on S. 182nd St. in SeaTac and then onto the grass, looping around the back of the building back towards S. 182nd St. where the grass dead ends into a retaining wall.

Multiple Kent PD patrol cars followed the subject into the apartment complex. Witness Officer 2 pursued the truck on foot through the complex. As he stood behind the U-Haul at the dead end, he observed the driver crash into a tree and then the retaining wall facing S. 182nd St. The subject then rapidly reversed nearly striking Witness Officer 2 who narrowly dodged the truck's back bumper. In doing so, the truck hit the building so hard that it damaged the roof of the structure and caused the entire rain gutter to collapse to the ground. The truck also crashed into a fence on the opposing side. As Witness Officer 2 attempted to run forward away from the truck he dove or fell causing him to drop his gun, also dislodging his taser and backup magazines from his equipment belt. The driver continued to attempt to escape, but had difficulty navigating the area, which was extremely narrow.

Involved Officer 1, who was positioned in front of the truck, and Involved Officer 2, who was positioned behind the truck, shot into the truck to stop the subject from running over Witness Officer 2. According to Witness Officer 2, when the officers fired, it appeared to him

that the driver intended to drive forward to run him over. A photo of the truck shows that when it came to rest, its rear wheel was buried in the dirt after apparently spinning in place. The subject was not hit by the gunfire and was arrested.

III. INVESTIGATION AND EVIDENCE

KCPAO reviewed all relevant reports, interviews, photos radio recordings, video files, and warrant(s).

IV. INVESTIGATION

1. TIMELINE

<u>Time</u>	<u>Summary of Communication or Action</u>
22:37:17	Witness Officer 1 located AZ/AH84569, a 2018 Ford Econoline U-Haul truck, in the area of W. Smith St. and 4th Ave. N. A records check revealed that the vehicle had been reported stolen to Kent PD on 10/1/2024 at 14:43 hours. The vehicle theft was documented under Kent PD Case #24-13357. Witness Officer 1 attempted to pull it over and then initiated a pursuit of the vehicle when the driver did not pull over. Numerous other Kent PD officers joined the pursuit as it progressed.
22:37:54	The suspect vehicle was westbound on W. Meeker St., approaching Washington Ave. N.
22:41:55	The suspect vehicle was traveling at 60 MPH and was driving in both the east and west bound lanes of travel.
22:42:32	Spike Strips were deployed and appeared to have been successful.
22:47:51	The suspect vehicle was still traveling westbound on S. 182nd St., and had just driven through the intersection of 42nd Ave. S. without stopping at the stop sign.
22:48:11	The suspect vehicle was turning into an apartment complex.
22:48:45	The suspect vehicle was "driving on grass around apartment building".
22:49:15	It was broadcasted that shots had been fired. Approximately 22 minutes had elapsed from when Witness Officer 1 had first located the stolen vehicle to when the shots were reported to have been fired.
22:55:23	It was broadcasted that the suspect had been taken into custody and the vehicle was clear.

V. SUMMARY

1. CALL-OUT

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. KCSO took on the entire investigation. They reported to KPD where they were briefed about the incident by KPD Commander 1. Detective 1 was the lead investigator.

2. MAP OF PURSUIT

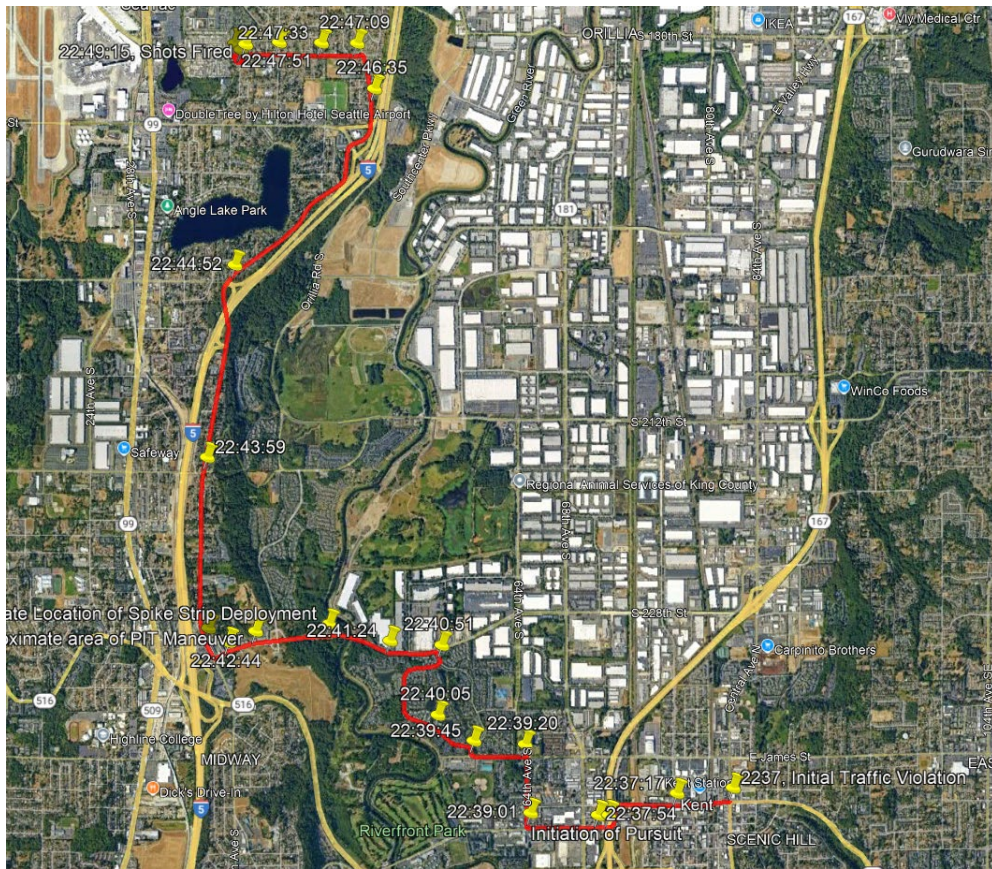


Figure: Bottom right shows where the pursuit began. Top left shows where the pursuit ended, and the shooting occurred. Also noted, are significant times in the pursuit and various attempts to stop the subject-car.

3. VIDEO

a. Guardian-1

KCSO helicopter, Guardian-1 recorded the end of the pursuit, capturing the shooting. The recording is approximately nine minutes in length. It starts at time/date stamp of 10/1/2024 at

22:48:24 hours, with the U-Haul truck driving around the southside of the apartment complex in the grassy area behind the buildings and then north along the eastside of the complex. As the vehicle passes the breezeway between the two buildings that run east/west, a person is seen running through the breezeway towards the grassy area where the truck is traveling northbound.

At 22:48:37 hours, 13 seconds later, the U-Haul crashes into a retaining wall and tree at the northeast corner of the property. The truck comes to a complete stop and the person seen running through the breezeway runs towards the rear of the U-Haul truck. This section of grass between the apartment building on the westside and a fence on the eastside appears to be barely wider than the vehicle itself. Another police officer comes to a stop in the roadway in front of where the U-Haul truck crashed into the retaining wall.



Figure: Sparks seen behind the U-Haul truck as Reilly crashes into the north retainer wall.

At 22:48:44, 21 seconds into the recording, the U-Haul reverses southbound. The officer is approximately 5 feet south of the back bumper and reacts to the vehicle's movement, beginning to run away to the south. The U-Haul accelerates as it continues backwards and then veers at an angle to the southeast, traveling directly towards the south.



Figure: Reilly reverses the truck. Witness Officer 2 is standing behind the truck preparing to run away.

At 22:48:49 hours, 26 seconds into the video, the U-Haul strikes the fence on the eastside of the property, appearing to miss the running subject by less than a foot. The running subject is then seen stepping forward of where the truck struck the fence and then runs to the north, appearing to fall down in the grass and dirt and then continues to move to the north. Based on Witness Officer 2's statement, he appears to be the person seen almost being struck by the vehicle.



Figure: Witness Officer 2, partially pictured, running northbound away from the truck.

Also, at 22:48:49 hours, a second person is standing at the southeast corner of the building next to the U-Haul truck, approximately 20 yards south of where the truck crashed into the east fence. This person's movements are mostly obstructed by a large tree to the east of the incident location.



Figure: Witness Officer 2 circled at the top of the frame. A second officer, likely Involved Officer 2 circled at the bottom of the frame.

At 22:48:51 hours, 28 seconds into the video, a third person is seen running from the roadway into the grassy area, pointing their hands towards the direction of the vehicle and a series of bright flashes are seen coming from the area of the person's hands. Several small bright objects are seen appearing to fly away from the person's hands to their right, consistent with fired casings being ejected from a handgun. At least four bright flashes are individually visible in the video. Based on the processing that was conducted with Involved Officer 1 and the fact that it appears that five cartridges were missing from his firearm, it appears that this third person who appears to be firing a handgun, is Involved Officer 1. The four visible flashes occur in less than two seconds of time. The first flash is seen approximately two seconds after the vehicle almost struck the person who appears to be Witness Officer 2. The video recording also captured audio recording of the Kent PD Officer's radio communications.



Figure: Involved Officer 1 is partially visible on the top right shooting his firearm at the subject-truck.

At 22:49:01 hours, the 28 second mark, an officer can be heard saying, "Shots fired. Shots fired. He has his hands up. He almost hit officers."

At 22:49:17 hours, 54 seconds, three officers can be seen standing at the north end of the grassy area where the truck had hit the retaining wall, pointing their firearms towards the truck, which is now stationary and stuck in the fence on the eastside of the property. Over the next two minutes a large number of officers are seen taking up positions to the north of the truck and in the parking lot to the west of the truck. At the 3 minute and 34 second mark, time stamp 22:51:59 hours, the passenger side door is seen being opened from inside of the vehicle. A subject, who appears to be Reilly, is then seen exiting the vehicle through the opened passenger door, with his hands in the air. He is seen standing still next to the vehicle, with his back towards

the officers who are to the north of him. He is then seen placing both of his hands onto his head and slowly walking backwards, to the north.

At 22:52:44 hours, 4 minute and 20 seconds, Reilly is seen coming to a stop approximately halfway between the truck and the officers.

At 22:53:36 hours, the 5 minute and 12 second mark, Reilly is seen being taken into custody by multiple officers. Officers are then seen approaching the truck and searching it briefly, where no other subjects are found.

At 22:55:16 hours, the 6 minute and 53 second mark, an officer is heard on the radio saying that Reilly is not injured. At the 7 minute and 30 second mark, time stamp 22:55:53 hours, KCSO Unit "4L" is heard requesting via radio that an Aid unit be dispatched to the scene to check on officers and Reilly.

b. Chinook Manor Apartments

Two cameras captured recordings associated with the incident, both of which are mounted on the north exterior wall, on the northeast corner of the apartment building directly south of the garage building. Only the first recording captured relevant evidence. The first recording starts at time stamp 10/2/2024 at 00:48:30 hours, which appears to be a true time of 10/1/2024 at 22:48:30 hours. It runs for 2 minutes and 12 seconds and ends at time stamp 00:50:42 hours, which appears to be a true time of 22:50:42 hours. A police officer, who appears to be Witness Officer 2 is seen running eastbound between the garage building and the apartment building. Two Kent PD police cars are seen driving through the complex and then Involved Officer 2 is seen running eastbound a few moments after Witness Officer 2. At time stamp 00:48:50 hours, which appears to be a true time of 22:48:50 hours, a series of what appears to be gun shots is heard. This is consistent with the Guardian-1 video that appears to show Involved Officer 1 firing his firearm at that time. A total of six apparent gun shots are heard, five in quick succession that sound farther away, and a closer-sounding gunshot that occurs between the third and fourth shots by Involved Officer 1. Less than two seconds passes between the first and last apparent gun shot.

c. Body-Worn Video

i. Witness Officer 2

None of the officers BWV captured the shooting. They did not turn on their cameras until after the shooting. Witness Officer 2's BWC recording begins at time stamp 10/1/2024 at 22:51:01 hours, runs for 7 minutes and 29 seconds, and ends at time stamp 22:58:26 hours.

The recording shows Witness Officer 2 running through the parking lot to the south end of the garage, south of where the U-Haul was stuck in between the east fence and the east side of the garage. Involved Officer 2 is seen running with him and Witness Officer 2 is heard saying, "He almost fucking ran me over." Both Officers take up a cover position on the southwest corner of the garage, as seen in the surveillance cameras from the complex.

At the 31 second mark (22:51:32) Witness Officer 1 is heard asking who had fired, and Witness Officer 2 is heard responding, "It was (Involved Officer 1), he almost ran me over." Involved Officer 2 did not respond to the question. At the 3 minute and 30 second mark (22:54:31), Involved Officer 2 and Witness Officer 2 are seen walking away from the cover position and briefly conversing, along with Witness Officer 1. Involved Officer 2 is heard asking Witness Officer 2 if he is okay, to which he says he is and that he was not hit. Witness Officer 2 is heard saying, "He almost fucking took me out." Involved Officer 2 is then seen and heard responding, "I saw that, and I thought he was going to take me out too bro." Witness Officer 2 is heard saying, "You were there behind me?" To which Involved Officer 2 is heard responding, "I was right behind you bro. I shot too bro, I shot too." Witness Officer 2 is heard responding, "Oh, you did?" Involved Officer 2 then says, "I thought you were gone bro." Witness Officer 2 is heard responding, "Don't say anything." Both officers are then seen walking out to the street on the north side of the scene.

4. OFFICER REPORTS/INTERVIEWS

Neither of the involved officers were willing to provide statements to criminal investigators.

a. Witness Officer 1

Witness Officer 1 wrote that at 2237 hours he observed the U-Haul truck stopped, facing southbound at the intersection of Central Ave. S. and E. Smith St. He observed the vehicle turn onto westbound W. Smith St., driving through the red traffic light and turning from a straight only lane. He attempted to conduct a traffic stop at W. Smith St. and Railroad Ave., but the

driver of the U-Haul truck ignored his emergency lights and continued westbound on W. Smith St. He stated that when the vehicle reached westbound W. Meeker St. he initiated the pursuit as it appeared at that time that the driver was attempting to elude. He stated that at that same time is when the dispatcher advised that the vehicle was reported stolen.

He stated that Witness Officer 5 deployed a Spike Strip when the vehicle traveled westbound on S. 228th St. They appeared to strike the front tires of the U-Haul truck. Shortly after that in the 3900 block of Veterans Dr., Witness Officer 1 attempted to utilize a PIT maneuver, unsuccessfully. Once the U-Haul truck reached the apartment complex and drove from the parking lot into the grassy area, Witness Officer 1 stopped pursuing the vehicle and came to a stop in the parking lot.

Moments later, he heard another officer saying on the radio that shots had been fired. He did not witness the shooting. Witness Officer 1 eventually made his way to where the U-Haul truck was and assisted other officers in arresting Reilly. Witness Officer 2 stated to Witness Officer 1 that the driver, who was identified as Reilly, had tried to run over him with the U-Haul truck, which had precipitated the shots being fired at the truck. Witness Officer 1 took digital photos of the scene, the U-Haul truck, and his patrol vehicle.

b. Witness Officer 2

Regarding what lead to the OIS, Witness Officer 2 stated he ran directly south to avoid being struck by the vehicle. The truck continued to drive towards him in reverse and Witness Officer 2 moved to the southeast towards the fence to avoid being struck. The truck appeared to continue to follow him in that direction, forcing Witness Officer 2 to jump to the north, landing just in front of the vehicle as it struck the fence. As he landed, he stated that he dropped his pistol, which he had drawn when he had approached the truck. The impact also dislodged both of his pistol magazines from their pouches on his body armor vest, and both of them fell to the ground. At that moment in time Witness Officer 2 looked backwards at the U-Haul truck and heard the engine revving, and believed that the driver was now trying to drive forward towards him. Witness Officer 2 grabbed his pistol from the ground and then saw Involved Officer 1 firing his pistol at the driver. Witness Officer 2 then saw the driver put his hands in the air, which gave Witness Officer 2 the opportunity to run to the north where other officers were arriving. He then ran to the south side of the scene to block any potential exits for the suspect. Reilly was then taken into custody by the officers on the north side of the scene.

During an interview with Detective 2, he said that the complex appeared small so he assumed there was not an outlet on the other side and that the driver would likely have to bail from the vehicle and flee on foot. With that in mind, Witness Officer 2 said he parked his patrol car on S. 182 St. and ran into the apartment complex on foot so he would be prepared to give chase when he ran away.

At that point Witness Officer 2 saw the U-Haul driving back toward the main entrance on the grass through the narrow backyards on the eastern side of the complex. He stayed tucked in between two buildings when it approached so he was not in any immediate danger just then. The truck then blew through a nearby fence, passed him and then came to a stop a short distance away. Witness Officer 2 said he could only see the driver's side of the cab at that moment so he could not tell whether the suspect exited the passenger side or not. He said he was trying to cautiously maneuver around the cargo bay so he could see the other side when the driver put the truck in gear suddenly and quickly reversed in his direction. Because of the narrow open-space and uneven ground, Witness Officer 2 struggled to get out of the way in time and had to dive onto the ground. He said he accidentally dropped his firearm and lost both of his spare magazines as well as his car keys while scrambling to safety. That is when he saw Involved Officer 1 fire at the cab and believes this is what "essentially saved [his] life."

He did not see Involved Officer 2 shoot but heard him say, "Watch out! Watch out!" before the truck nearly struck him. He did not know where Involved Officer 2 was standing. Once he was no longer in danger, Witness Officer 2 said he had to take a few moments to reassess and get himself situated before assisting with taking the suspect into custody. He added that afterwards he was "gassed", and his legs hurt, possibly from diving or sprinting during the incident.

c. Witness Officer 3

During this incident Witness Officer 3 was acting as a Field Training Officer for Witness Officer 6, and they were riding in a patrol vehicle together. Witness Officer 6 was driving and Witness Officer 3 was in the front passenger seat. They joined the pursuit in the area of S. 228th St. and Lakeside Blvd. They stayed in the third position for the remainder of the pursuit until it ended at the Chinook Manor Apartments. As the U-Haul truck drove through the complex, Witness Officer 3 observed it drive into the grassy area on the south side of the complex. Witness Officer 3 assumed that the driver would try to get back onto S. 182nd St. and instructed

Witness Officer 6 to drive to the east side of the complex. As they did so he observed Involved Officer 2 and Witness Officer 2 running through the complex past the parking garage on the east side of the complex. As Witness Officer 3 and Witness Officer 6 approached the northeast corner of the complex, Witness Officer 3 observed the U-Haul truck drive through the northern most fence and crash into the retaining wall. Witness Officer 3 exited his vehicle and approached the U-Haul truck and observed Reilly seated in the driver's seat, who he recognized from a trespassing incident the day before. Witness Officer 3 also observed Involved Officer 1 standing directly in front of the U-Haul truck, to its north. Witness Officer 3 then saw Reilly begin to accelerate in reverse and drive backwards through the grassy area. He then heard Involved Officer 1 state that "there were other Officers behind the vehicle" and then fire four rounds in the direction of the U-Haul truck. As the shots were being fired Witness Officer 3 lost sight of the truck as he was northwest of it and his view became obstructed by the garage as the truck drove backwards. Witness Officer 3 noted that his BWC was not activated until after Reilly was taken into custody.

5. INTERVIEW OF CONOR REILLY

Mr. Reilly was interviewed at the police station interview room by Detective 1. He stated that he was under the influence of drugs and continued fleeing because he is afraid of the police. He denied knowing the truck was stolen despite the transmission being damaged. He claimed that he borrowed the truck from his "uncle." He denied seeing or trying to strike any officer with the truck. He did not know why the officers shot at him. He said he was unarmed.

6. PHOTOGRAPHS & OFFICER PROCESSING

Detective 2 and Detective 3 conducted the processing of Involved Officer 1, while Detectives 1 and 4 conducted the processing of Involved Officer 2. The magazine seated in Involved Officer 1's Smith & Wesson 9mm M&P 2.0 handgun was missing five rounds and the magazine seated in Involved Officer 2's Smith & Wesson M&P9 9mm was missing one round.

During the scene walkthrough, Detective 1 walked the path that Reilly had driven the vehicle through the south and east sides of the complex. It appears that he had driven through two wood fences and gates, completely destroying both. Detective 1 observed numerous trees and bushes that Reilly had knocked over and torn out of the ground. The gutter on the east side of the building next to where the truck was found had been torn off of the building and appeared

to have been struck by the truck, and a section of roofing tiles had been torn off along with the gutter. The cinderblock retaining wall that Reilly had struck on the northeast corner of the property was partially toppled over and cinderblocks were strewn around the area.



Figure: Photos of damage subject Reilly caused to the retaining wall and building roof.

During the walkthrough Detective 3 located five spent cartridge casings grouped together against the side wall of the building northwest of the truck and one spent cartridge casing approximately twenty-five feet southwest of the truck.



Figure: Five cartridge casings (placards 2-6) and two entry holes in truck's windshield consistent with where Involved Officer 1 was standing when the shooting occurred.



Figure: Entry hole to driver side door and cartridge casing consistent with Involved Officer 2's location when the shooting occurred. Shattered driver side window is consistent with being the exit point of shot D1 fired into the windshield, pictured above.



Figure: Back left wheel struck in the ground after apparently spinning its wheels.



Figure: Witness Officer 2's backup magazines located along the fence near the passenger side of the truck.

Detective 3 identified a projectile impact in a garden hose that was rolled up in a storage wheel on the east side of the building next to the U-Haul truck. Detective 1 recovered and booked the bullet. Detective 3 had also discovered what appeared to be a projectile impact in a piece of wood in the remaining section of fence on the south end of the building to the west of the truck. The small hole in the piece of fence, approximately five feet above the ground, with a clean end on the north side of the wood and a splintered edge on the south side of the piece of wood. Detective 3 recognized this as being consistent with a projectile that had struck the wood

and penetrated it while traveling from the north to the south. No other fired projectiles were located or recovered at the scene.

VI. LEGAL STANDARD

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

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 refuse the affirmative defense.⁷ Therefore, 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.^{8 9}

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

- WPIC 17.02 – Lawful Force - Defense of Self, Others, Property
- WPIC 16.01 – Justifiable Homicide/Deadly Force by a Peace Officer
- WPIC 16.05 – Necessary

VII. ANALYSIS AND CONCLUSION

1. BURDEN OF PROOF

Under the KCPAO filing standards, prosecution should not be declined because of an affirmative defense unless the affirmative defense is of such nature that, if established, would

4 RCW 9A.04.100; WPIC 4.01.

5 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.)

6 KCPAO Filing and Disposition Standards.

7 Id.

8 RCW 9A.16.030; RCW 9A.16.040; WPIC 16.01.

9 RCW 9A.16.050(1); WPIC 16.02.

result in complete freedom for the accused and there is no substantial evidence to refute the affirmative defense.”

The investigation did not reveal any substantial evidence to refute these defense of others and justifiable deadly force defenses. Based on these facts, a reasonable and objective fact-finder is likely to determine that Involved Officer 1 and Involved Officer 2 reasonably believed that Reilly was going to run over Witness Officer 2, that there was an imminent danger in this harm being accomplished, and that each of them employed a necessary amount of force that a reasonably prudent person would use under the same or similar circumstances to prevent this harm from occurring. Under the circumstances, it appears Involved Officer 1 and Involved Officer 2 acted in defense of others and in good faith.

2. SELF-DEFENSE/DEFENSE OF OTHERS

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.¹⁰

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.¹¹

The evidence and testimony are highly likely to show that when they fired at Reilly, the officers reasonably believed that Reilly would attempt to evade arrest in any manner possible, no matter the danger he posed to others, including running over their colleague. Demonstrating his intent to get away no matter the danger he posed, he took officers on an 8.3-mile high-speed pursuit in a stolen box truck, where he ran red lights, drove in opposing lanes of traffic, refused to stop after running over Stop Sticks, and continued to flee police after a PIT maneuver was attempted. Additionally, Reilly drove recklessly into a narrow unpaved area of a random apartment complex, tearing down bushes, trees, fences, a retaining wall, and crashing into a building. None of this convinced him to stop trying to flee arrest.

¹⁰ WPIC 17.02; WPIC 16.05.

¹¹ WPIC 17.02.

It is unclear if Reilly knew that Witness Officer 2 was behind him when he recklessly drove the stolen U-Haul in reverse nearly striking the officer. However, it was reasonable for Involved Officer 1 and Involved Officer 2 to believe that he did, and at the very least, Witness Officer 2's life was in danger if they did not immediately use lethal force to stop Reilly. The evidence shows that they also subjectively believed that Witness Officer 2's life was in jeopardy. First, Witness Officer 2 stated that after he dove out of the truck's way, he heard the truck's engine revving, which made him believe that the driver intended to drive forward to hit him. This interpretation is supported by the evidence, specifically the photo showing the truck came to rest with its back tire having spun in place causing it to kick up dirt. Although it was likely in reverse, it is unlikely the officers could have known that at the time. Witness Officer 2 stated that he then grabbed his pistol from the ground and then saw Involved Officer 1 firing at the driver. He stated that Involved Officer 1 firing at the truck is what "essentially saved [my] life." Second, right before shots were fired, Witness Officer 2 heard Involved Officer 2 warn him, "Watch out! Watch out!" Third, Witness Officer 3 wrote that right after the truck reversed, but before Involved Officer 1 fired four rounds at the U-Haul truck, he heard Involved Officer 1 warn that there were other officers in danger behind the vehicle. Fourth, on BWV after the shooting Witness Officer 2 is heard saying, "He almost fucking took me out." Involved Officer 2 is then heard responding, "I saw that, and I thought he was going to take me out too bro... I was right behind you bro. I shot too bro. I shot, too." Thus, the evidence shows the officers subjectively and objectively believed Witness Officer 2's life was in danger.

Additionally, the officers employed such force and means as a reasonably prudent person would use under the same or similar conditions. The officers were in a confined space, unprotected outside of their vehicles, with a driver of a large box truck who showed he had no intention of giving up no matter the circumstances. Lower levels of force had not been successful at stopping the suspect and he now posed a deadly threat to Witness Officer 2. The evidence supports Involved Officer 1 and Involved Officer 2's reasonable belief that they had no alternative to using lethal force in order to stop Reilly from injuring Witness Officer 2. Additionally, the officers ceased shooting once Reilly no longer posed a deadly threat. As such, the level of force they used was no more than necessary.

3. 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.¹²

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.¹³

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.¹⁴

The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. “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.”¹⁵

Here, the officers had probable cause to believe that Reilly had committed numerous felonies, Possession of a Stolen Vehicle and Attempting to Elude. As described above, a similarly situated reasonable officer would indeed have believed that if Reilly was not apprehended, he posed a “threat of serious physical harm” to Witness Officer 2 who was standing in front of the box truck as Reilly revved the truck’s engine. As such, Involved Officer 1’s and Involved Officer 2’s use of deadly force was in good faith and KCPAO declines to file criminal charges.

¹² RCW 9A.16.040(c)(1).

¹³ Id.

¹⁴ Id.

¹⁵ Garrity v. New Jersey, 385 US 493 (1967).

VIII. CONCLUSION

For the foregoing reasons the State declines to file charges against Involved Officer 1 and Involved Officer 2.

IX. 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 17.02 – Lawful Force—Defense of Self, Others, Property

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.