

Use of Force – Non-Fatality

Demarco Black

Renton Police Department, #2020-869



King County Prosecuting Attorney

Public Integrity Team

August 1, 2022



DECLINE MEMORANDUM

Law Enforcement Use of Force Regarding:
Demarco Black

I. OVERVIEW

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. RCW 10.114.01. The King County Prosecuting Attorney's role in deadly use of force incidents is to ensure the investigation is thorough and complete and determine whether sufficient admissible evidence exists to support filing criminal charges.

The Public Integrity Team has determined that the investigation into the January 22, 2020 officer involved shooting by of Demarco Black is complete at this time. As detailed in the discussion below, the Team has concluded that the evidence presented is insufficient to support criminal charges against the involved officers. Accordingly, the KCPAO is declining to file criminal charges in this matter based on the evidence presently available.

This determination is based entirely on the relevant criminal laws, rules of evidence governing criminal proceedings, and the criminal burden of proof in Washington. Additionally, the current determination that the evidence is insufficient to support criminal charges against the officers does not limit administrative action by their departments, or any other civil action. The Team expresses no opinion regarding the propriety or likely outcome of any such actions.

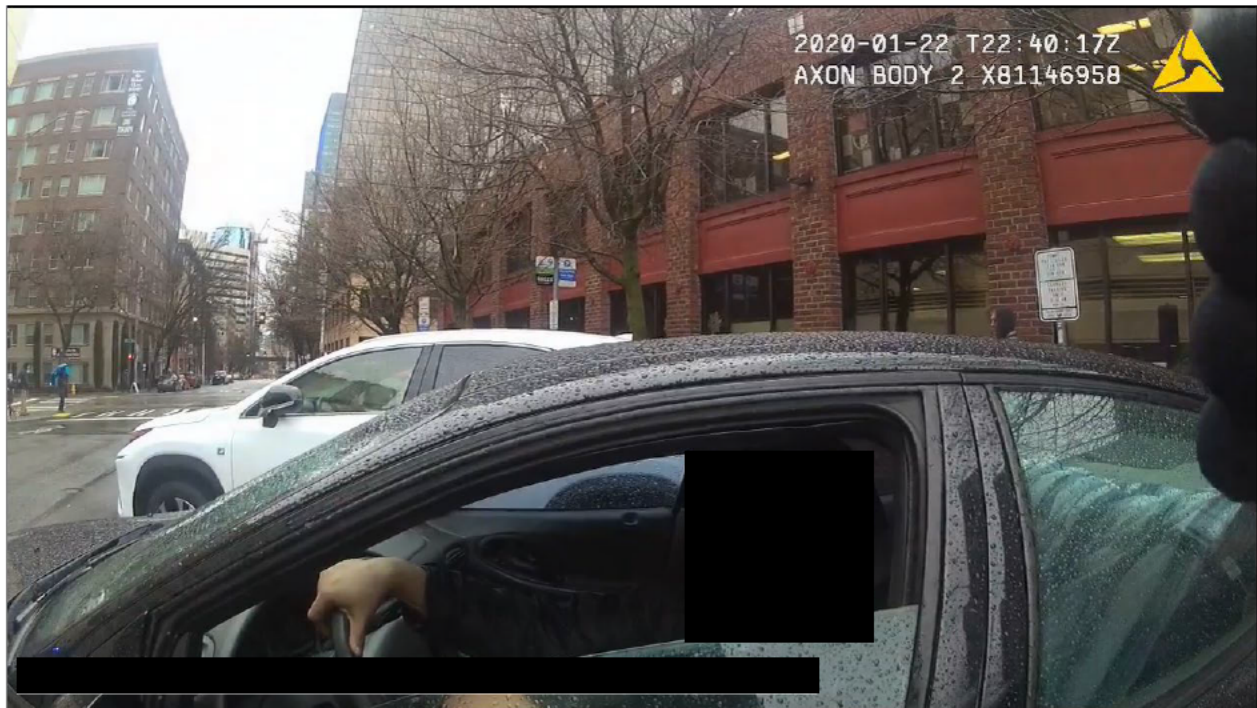
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I. INVESTIGATION AND EVIDENCE

KCPAO reviewed all relevant body-worn video, video surveillance, King County Metro video, interviews, in-car video, 911 calls, dispatch recordings, police reports, and photographs.

II. INVESTIGATION SUMMARY

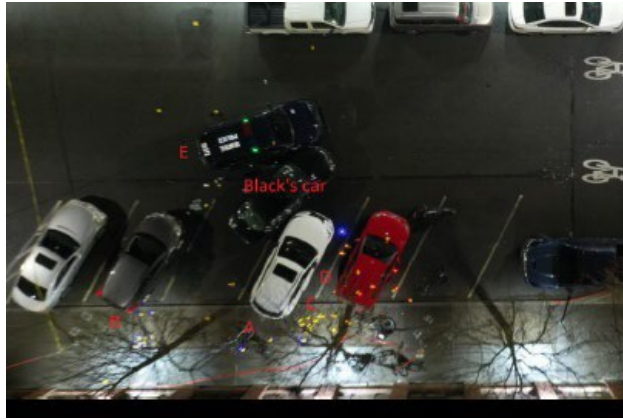
On January 22, 2020, SPD and KCSO were conducting a “buy-bust” narcotics operation at 3rd Ave. and Bell St. in the city of Seattle. At approximately 1430, undercover deputy from KCSO, Officer #1, purchased cocaine from the subject, Demarco Black, with a prerecorded \$20 bill. Black then walked to and entered his car that was in a back-in only parking stall on 2nd Ave. and Blanchard St. Officer #2, a patrol officer from SPD, blocked Black’s car from exiting by parking his squad car in front of Black’s front bumper. Assisting Officer #2 with the arrest were 3 uniformed SPD bike officers and 4 uniformed KCSO bike deputies.



Caption: BWV footage from Officer #2 as he speaks with Mr. Black after boxing in Black’s car at 2nd & Blanchard just prior to backup arriving.

Officer #2 and a KCSO deputy spoke with Black on the driver’s side. Officer #3 approached the vehicle on the passenger side. SPD bike officers, including Involved Officer #1 and Involved Officer #2, stood by standing on the sidewalk while Officer #2 informed Black that he was being investigated for narcotics and the car’s registered owner having a felony warrant. A subsequent records check showed that Black’s license was valid and he did not have any outstanding

warrants. Officer #2 then told Black that his part of the investigation was complete and that KCSO deputies needed to talk with him about their narcotics investigation. This is when the situation turned south. Over the radio, Black was confirmed to be the person who sold narcotics to Officer #1. Involved Officer #4 and Officer #4 then approached the driver's side door and asked Black to exit his vehicle. Black instead attempted to drive away by ramming Officer #2's squad car. After failing to escape, Black pointed a firearm at Officer #4 who had just attempted to open Black's door to arrest him. Officer #4 then yelled "Gun, gun, gun!" Officer #2 corroborated Officer #4's account later writing that the suspect pointed what looked to be a gun at him and other officers. In response to hearing Officer #4 yell "Gun!" Involved Officer #3 and Involved Officer #4, deputies from KCSO, as well as Involved Officer #1 and Involved Officer #2 fired at the subject's car from behind. Approximately 43 rounds were fired at the subject's car by police officers in a 17 second period. Incredibly, the subject only sustained a single gunshot wound to his left thumb. No officers or civilians were injured by the officers' gunfire. When Officer #2, who was the closest to the subject's car, observed the subject was no longer moving, he yelled, "Chill!" to the other officers who then immediately stopped firing. The officers then gave Mr. Black emergency medical aid.



Caption: Mr. Black's gunshot wound & drone footage of scene including a key noting where the involved officers were positioned at the time of the shooting.

Key:

- A. Involved Officer #3 - KCSO
- B. Involved Officer #4 - KSCO
- C. Involved Officer #1 - SPD
- D. Involved Officer #2 - SPD
- E. Officer #2 - SPD

A subsequent search of the subject's car revealed the prerecorded \$20 used in the buy-bust operation and a loaded handgun on the passenger side floorboard.



Caption: Floorboard of subject' car.

At the hospital, under *Miranda*, the subject gave a recorded statement. He admitted to drawing the gun, from the driver's side door. He claimed that he was afraid the police posed a danger to him, and in Officer #2's BWV, Mr. Black's voice is indeed quivering. He also denied pointing the gun at any individual officer. However, Black admitted that police shot at him only after he drew his firearm.

Mr. Black was prosecuted for his underlying conduct in cause no. 20-1-00274-3 SEA. He ultimately pled guilty to two charges of assault in the second degree against law enforcement officers and attempted UPFA 1. On July 31, 2020, he was sentenced to 84 months in prison.

IV. LEGAL STANDARD

RCW 9A.16.040(4) states that a peace officer shall not be held criminally liable when using deadly force in good faith. Good faith is an objective standard. The pertinent question is whether a reasonable officer, similarly situated, considering all the facts and circumstances and the information known to the officer at the time, would believe that using deadly force was necessary to prevent death or serious physical harm to the officer or another individual. One of the circumscribed instances where deadly force can be used in good faith is 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. RCW 9A.16.040(1)(c)(i). However, the peace officer must also have probable cause to believe that the suspect, if not apprehended, poses a threat of serious physical harm to the officer or a threat of serious physical harm to others. RCW 9A.16.040(2). One example provided in this section is when the suspect displays a weapon in a manner that could reasonably be construed as threatening. *Id.*

III. ANALYSIS AND CONCLUSION

Here, the officers' and deputies' use of deadly force was justified under the applicable law. They reasonably believed that Mr. Black committed multiple felonies, among them, Assault 2 on a police officer, Attempting to Elude, and VUCSA – Delivery of Narcotics. Before using deadly force, probable cause existed to believe that Mr. Black, if not apprehended, posed a threat of serious physical harm to the officers, as well as the other civilians in the area who were walking nearby. If he was not immediately detained it is reasonable to believe that Mr. Black would have shot at the officers or began a car or foot pursuit through busy downtown Seattle in the middle of the day causing further danger to others. Mr. Black's behavior was unpredictable, and it was unknown to law enforcement what dangerous conduct he was willing to partake in order to avoid being detained. For instance, Mr. Black pointed a loaded firearm at Officer #4's face not to protect himself from harm, but to simply avoid arrest. While the four involved officers fired at Mr. Black's car a substantial number of times, each immediately ceased firing after Officer #2 informed them that Mr. Black was not moving and was longer a threat. Officers then rendered immediate emergency aid to Mr. Black as soon as they could.

Considering all of the abovementioned facts and circumstances, 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 officers and nearby civilians. As such, it appears that when Involved Officers 1, 2, 3, and 4 fired at Mr. Black, they did so in good faith as defined in RCW 9A.16.040. KCPAO filing standards state that crimes against persons will be filed if sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify conviction by a reasonable and objective fact-finder. That standard is not met in this instance. As a result, KCPAO declines to file criminal charges against Involved Officers 1, 2, 3, and 4.