

Use of Force – Non-Fatality

Jason Miller-Brown

Valley Independent Investigative Team
Port of Seattle Police Department, #2021-68572



King County Prosecuting Attorney
Public Integrity Team

April 27, 2022



DECLINE MEMORANDUM

USE OF FORCE - NON-FATALITY

JASON MILLER-BROWN

I. INTRODUCTION

a. PURPOSE AND SCOPE

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 the action was justified or if there was a criminal action such that criminal charges should be filed.¹ 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.²

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.³ The independent investigation is conducted in the same manner as a criminal investigation.⁴

The Special Operations Unit Public Integrity Team ("the Team") has determined that the investigation into this matter is complete. The determination whether to file charges is based entirely on the materials provided to the KCPAO, relevant criminal laws, rules of evidence

¹ 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

² Id. See also WAC 139-12-010

³ RCW 10.114.011. See also WAC 139-12-010.

⁴ Id.

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.

II. SUMMARY OF INVESTIGATION & FACTUAL ANALYSIS

On September 20, 2021, after stealing a handgun from a parked car at a Federal Way Walmart, subject Jason WC Miller-Brown approached victim Civilian 1, a ride share driver, who was cleaning his green Toyota Prius at the Elephant Car Wash on Pacific Highway S and S 316 St. in Federal Way. The two locations are less than ½ mile apart. Miller-Brown then attempted to steal Civilian 1's vehicle at gunpoint. Civilian 1 said, "Once I noticed the gun I was suddenly frightened and I decided walk away." Since Civilian 1 was holding the car's key fob, Miller-Brown was unable to steal the car. Instead, he ransacked the car's passenger compartment stealing a mobile phone. Car wash employee Civilian 2 heard someone yelling "Call the police!" and saw V-Civilian 1 running toward him. Meanwhile, the subject fled from the car wash southbound (or left to right) along the rock wall pictured below.⁵ The police were notified of the incident and were dispatched to the area.

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⁵ The events at the car wash are captured on the car wash's video surveillance and were also observed by Civilian 3 and Civilian 4, employees of a nearby business, Car Toys.



Photo No. 1; Still photograph from Elephant Car wash’s video surveillance camera. The footage captures the attempted carjacking of V-Civilian 1. Civilian 1 is pictured in the yellow circle in front of his green Toyota Prius. Miller-Brown, in the red circle, is walking towards Civilian 1 about to attempt to carjack the green Prius. The orange umbrella from the vacuum stand obstructs the view of the carjacking. One cannot see the subject brandishing his firearm.



Photo No. 2: Some 29 seconds later Civilian 1, again in the yellow circle, is running away from Miller-Brown, in red, after Miller-Brown pointed a gun at him and demanded his car.

After Miller-Brown fled southbound on foot with his skateboard in hand, Involved Officer 1 was flagged down by car wash employees just south of the car wash at the Comfort Inn. They had taken a picture of the subject and showed it to Involved Officer 1 who relayed the subject's appearance to dispatch. Shortly thereafter, Officer 1 observed the subject just south of the Comfort Inn in the alley behind Trader Joes. The subject then ran towards Officer 2's nearby patrol car which was stopped on Pete von Reichbauer Way S. ("PVR"). The subject stopped on the opposite side of the patrol car as Officer 2 and pointed a firearm at his own head before fleeing on his skateboard south towards S. 320th St. and into The Commons parking lot. Officer 1 and Officer 2 followed in their squad cars. Officer 1 stated that the subject pointed a firearm at him twice during their interaction.



Photo No.3: Still from Safe Streets footage of Miller Brown skateboarding away from Officer 2 and Officer 1 S/B on PVR Way.



Photo No. 4: Still from Safe Streets footage of Miller-Brown pointing handgun back at police car before getting off his skateboard and running right into the Panera parking lot on S 320th St.

In the Panera parking lot of The Commons, Miller-Brown attempted to steal another car, this time driven by Civilian 5 who was with her husband and dog. According to them, Miller-Brown had the gun drawn but pointed downward and yelled at them to get out of the car. The occupants exited the car and Miller-Brown entered it. Civilian 5 said Miller-Brown seemed

desperate. FWPD Officer 3 and Officer 4 ordered the subject to stop and drop his firearm. The subject was unsuccessful in stealing Civilian 5's car and began walking away from the police between the Panera and Verizon stores and NE bound on S 320th St. Officers followed. Miller-Brown rotated between holding the gun to his head and trying to place it in his waistband. Officer 3 told Miller-Brown several times, "It's not worth it, drop the weapon and talk to us." The subject did not comply.



Photo No. 5: Still from Safe Streets footage of attempted carjacking of Civilian 5's car, with her passenger Civilian 6 attempting to remove their pet from the backseat of the car before fleeing.

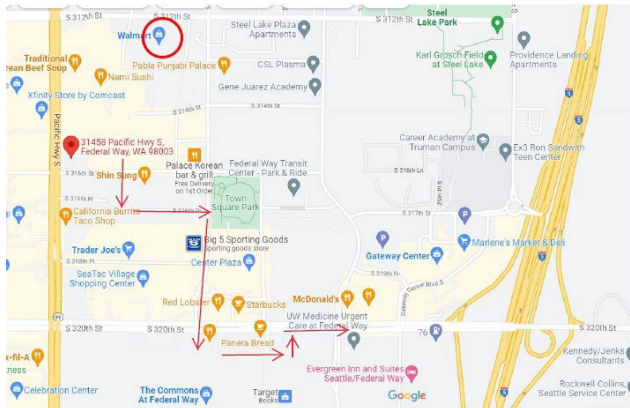


Photo No.6: Subject's path of travel. At the top left is the Walmart parking where he earlier stole the firearm.

Multiple officers then approached the subject on S. 320th St. The subject then tried carjacking a third car, a dark colored Toyota Corolla driven by an individual who chose to stop in the westbound lanes on S. 320th St. because he heard police sirens. The subject pointed the gun at his own head multiple times. Officers told him to drop his gun. The subject pointed his firearm at the Corolla's driver Civilian 7, yelled at Civilian 7 to get out of the car, and forced him out of the driver seat. Civilian 7 ran towards the trunk of his vehicle. Civilian 7 said that he was scared and thought Miller-Brown might shoot him. At this point the officers shot the subject. Miller-Brown

was still holding the firearm when shot by police. After he was shot, the subject threw his firearm approximately 20-40 feet across the street. Officers immediately rendered aid to the subject, applying a tourniquet to his left bicep. Search incident to arrest brass knuckles and a collapsible baton were found in the subject's pocket. Later on, a hunting knife was also found in his backpack. The firearm that Miller-Brown possessed was recovered. It was a Smith and Wesson M&P 9mm pistol. One round was chambered, and an additional 5 rounds were in the magazine.

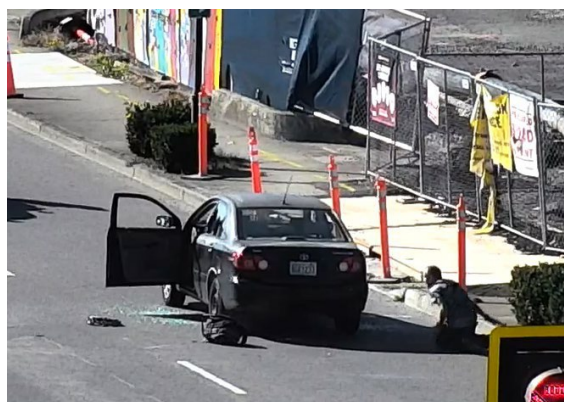
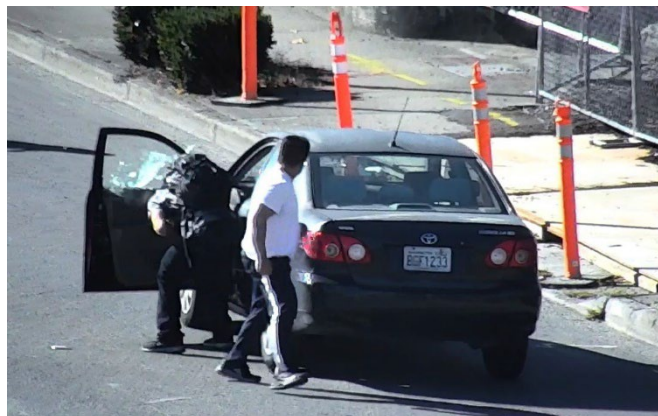
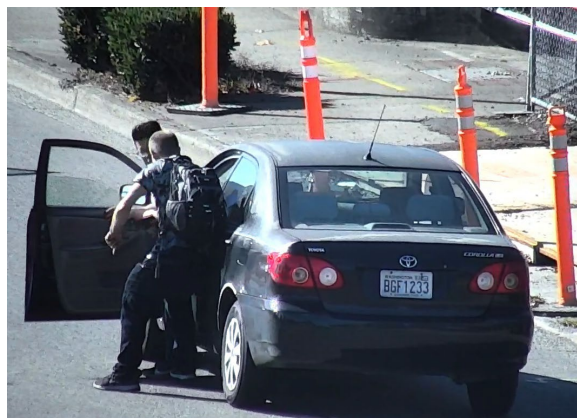
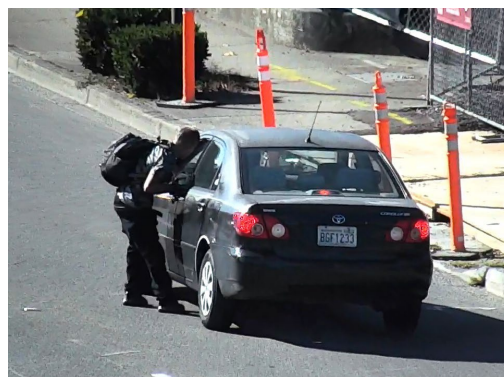
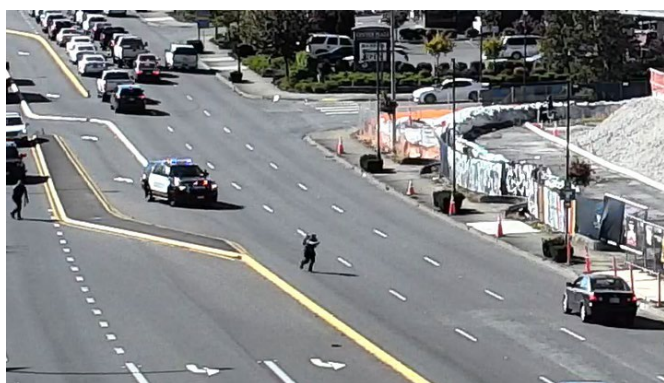


Photo No. 7: On the top left, Safe Streets footage shows Miller-Brown in the middle of S 320th St. running away from the police and towards Civilian 7's Toyota Corolla pointing a gun in the direction of the Corolla. The subsequent photos show Miller-Brown using force to eject Civilian 7 from the car, whereupon the police shoot at Miller-Brown as Civilian 7 is seen walking away from the car. In the subsequent photos, Miller-

Brown then retreats behind the Corolla and winds up to throw his firearm towards the middle of S. 320th St. The police then approach and render medical aid.



Photo No. 8: Civilian 7's Toyota Corolla showing where it was struck by gunfire.

Nine bullets struck Civilian 7's vehicle. There were 5 bullet holes in the blue Sound Transit tarp fence pictured behind the vehicle in Photo No. 8.

The following officers were processed as being officers involved in the shooting. Below are the bullet counts from their service weapons.

- Involved Officer 1 fired 1 round from his assault rifle at the subject.⁶
- Involved Officer 2 fired 6 rounds from his handgun at the subject.
- Involved Officer 3 fired 3 rounds from his handgun at the subject.
- Involved Officer 4 fired 1 round from his handgun at the subject.
- Involved Officer 5 fired 9 rounds from his handgun at the subject.

Renton detectives recovered all 20 casings - 16 rounds of .9mm, 3 rounds of .45acp, and 1 rifle round. The number of rounds determined to be fired matches the number of casings recovered at the scene.

Each involved officer declined to give a voluntary statement.

⁶ Des Moines PD processed the involved officers and their weapons. During his investigation, lead investigator Officer 5 noticed that Des Moines PD miscounted the outstanding rounds for Involved Officer 1, Involved Officer 2, and Involved Officer 5. The above count shows them correctly accounted for.



Photo No. 9: Aerial photo of the scene and evidence.

Miller-Brown was hit by 2 rounds. It is unclear which officer's gunfire struck him. Miller-Brown sustained gunshot wounds to L pectoral and L bicep. He was treated at Harborview Medical Center. The wound to his pectoral penetrated his L hemothorax and the bullet remains in his R mid-back. As a result, he was intubated. His L hemothorax resolved in approximately 1 day. No surgery was required. He also sustained fractures to his L scapula and L ribs. The ICU team noted the presence of methamphetamine in his system.

Miller-Brown was subsequently charged in Cause No. 21-1-03608-5 KNT with having committed the following crimes in this incident: Robbery in the 1st Degree, Attempted Robbery in the 1st Degree & Unlawful Possession of a Firearm in the 1st.

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III. LEGAL STANDARD, ANALYSIS & CONCLUSION

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. Furthermore, RCW 9A.16.040(1)(c)(i) permits an officer, acting in good faith, to use deadly force 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. However, the peace officer must 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.*

Here, Miller-Brown committed multiple felonies. He attempted to carjack Civilian 1 of his Prius and robbed him of his cellphone; he attempted to carjack Civilian 5 of her Mercedes; and he attempted to carjack Civilian 7 of his Toyota. Officer 1 also stated that Miller-Brown pointed a firearm at him two times when Officer 1 and Officer 2 attempted to arrest Miller-Brown prior to the officer-involved shooting.

Although Involved Officer 1, Involved Officer 2, Involved Officer 3, Involved Officer 4, and Involved Officer 5 declined to give statements, the Safe Streets video footage makes clear that when each of them fired at Mr. Miller-Brown he posed a threat of serious physical harm to the officers and also posed a threat of serious physical harm to Civilian 7 as well as the other civilians in the area if he was not immediately detained. Mr. Miller-Brown had just committed a string of violent crimes at gunpoint and showed that he was unwilling to follow multiple officers' orders to stop. It is reasonable to believe that Mr. Miller-Brown would continue his string of violent crimes unless he was apprehended.

Additionally, it is reasonable that the involved officers believed that Mr. Miller-Brown's display of a firearm during the attempted carjacking of Civilian 7 was threatening. Although, Miller-Brown often pointed the firearm at his own head, he also pointed the firearm at civilians and at an officer at various points. His behavior was unpredictable and it was unknown who he might fire upon or when.

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 or Civilian 7 and nearby civilians. As such, it appears that when Involved

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Officer 1, Involved Officer 2, Involved Officer 3, Involved Officer 4, and Involved Officer 5 fired upon Mr. Miller-Brown, they did so in good faith as defined in RCW 9A.16.040(4).