

Use of Force Fatality Investigation

Daniel Kerr

King County Independent Force Investigation Team

Kirkland Police Department #24-45503



King County Prosecuting Attorney

Public Integrity Team

July 18, 2025



DECLINE MEMORANDUM

This memorandum has been approved by the King County Prosecuting Attorney to be published on the website of the Prosecuting Attorney's Office Public Integrity Team.¹

I. INTRODUCTION

1. Purpose of the Memorandum

Pursuant to the Law Enforcement Training and Community Safety Act, an independent investigation must be completed when the use of deadly force by a peace officer results in death, substantial bodily harm, or great bodily harm.² The independent investigation is conducted in the same manner as a criminal investigation and must be completely independent of the involved agency.³

The Revised Code of Washington requires the prosecuting attorney to represent the State of Washington and to prosecute all criminal actions in which the state or the county may be a party.⁴ In addition to exercising its prosecutorial discretion to initiate criminal proceedings, the prosecuting attorney is required by law to review certain incidents regarding police use of force and to determine if sufficient evidence exists to support the filing of criminal charges.⁵ Because the independent investigation and the prosecuting attorney's review are required if specific

¹ <https://kingcounty.gov/en/dept/pao/about-king-county/about-pao/team-leadership/organizational-structure/criminal/mainstream/public-integrity-team>

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

³ WAC 139-12-010.

⁴ RCW 36.27.020(4).

⁵ 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.

criteria are met, the review of an incident by the King County Prosecuting Attorney's Office (KCPAO) does not implicitly signal that the use of force was either justified or that criminal charges are appropriate. Instead, the KCPAO is required to assist in an independent investigation involving police use of deadly force to enhance accountability and increase trust to improve the legitimacy of policing for an increase in safety for everyone.⁶

2. Scope of the Memorandum

The KCPAO's determination if the police action was justified or if there was a criminal action such that criminal charges should be filed is based entirely on the investigation materials provided to the KCPAO, relevant criminal laws, rules of evidence governing criminal proceedings, the applicable burden of proof, and the KCPAO's Filing and Disposition Standards. This determination is not intended to address matters outside the scope of this memorandum including, but not limited to, an administrative action by the involved agency, any civil action, or any inquiry, or other proceeding. Compared to a criminal prosecution, these proceedings involve different areas of the legal system, utilize different standards of proof, and may include evidence that is not admissible in a criminal prosecution. The KCPAO expresses no opinion regarding the propriety or likely outcome of any such actions. Topics that are relevant to matters outside the scope of this memorandum, such as department policy, procedures, or training, are included and reviewed to the extent those topics are relevant to assessing whether the police action was justified or if there was a criminal action such that criminal charges should be filed.

3. Status of the Independent Investigation

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

⁶ Id. See also WAC 139-12-010.

II. OVERVIEW

On December 9, 2024, Bellevue Police Department officers determined there was probable cause to arrest Daniel H. Kerr for harassment. Officers attempted to communicate to Kerr through various methods and Kerr sporadically exited and entered his home. At one point, Kerr exited his home with a knife and advanced towards officers. Two officers deployed their tasers at Kerr, which had no apparent effect on him. Kerr, who was armed with a knife in one hand and an unknown object in the other hand, ran towards an officer, swinging his arms wildly. The officer attempted to block Kerr with his hands while another officer discharged his firearm twice at Kerr, striking him. Officers administered life savings efforts, but Kerr died as a result of his injuries.

III. INVESTIGATION AND EVIDENCE

1. Police Reports – Kirkland Police Department 24-45503
2. Police Reports – Bellevue Police Department 24-65421
3. Police Reports – King County Sheriff's Office C24041067
4. Police Reports – Washington State Patrol 24-022850
5. Police Reports – Lake Forest Police Department 24-09242
6. Police Reports – Seattle Police Department 24-436426
7. Police Reports – Redmond Police Department 24-32836
8. Civilian Statements
9. Computer Aided Dispatch
10. Search Warrants
11. Crime Scene Investigation
12. Autopsy and Toxicology Reports
13. Involved Officer Information
14. Subject Information
15. 911 Call and Police Radio Traffic
16. Audio
17. Body Worn Video
18. Other Video
19. Photos
20. Miscellaneous

IV. INVESTIGATION SUMMARY⁷

1. Factual Summary

The following information is based upon several sources, including, but not limited to, witness observations, police reports, the Bellevue Police Department (BPD) computer aided dispatch (CAD) report, recorded police radio, 911 recordings, and body worn video (BWV) cameras from December 9, 2024.

At approximately 9:52 am, Civilian Witness 1⁸ called 911 to report that his neighbor, Daniel H. Kerr (Kerr),⁹ had threatened to stab Civilian Witness 1's dogs. Civilian Witness 1 described Kerr as a white male; he was sixty-five to seventy-five years old; he was wearing a tan vest, plaid shirt, brown slacks, and a beanie; and he was last seen on his own driveway pacing and yelling. Witness Officer 1 was dispatched to investigate and he was the first officer to arrive. Witness Officer 2 arrived shortly afterwards and assisted Witness Officer 1.

⁷ The Investigation Summary is based upon the investigation and evidence outlined in Section III. When necessary, the Team will identify the source of the information. It is common for witnesses, including law enforcement officers, to provide multiple statements about the events witnessed. Similarly, it is common for multiple witnesses to provide information about the same event. If a witness provides multiple statements and the statement contains material and substantial differences that could affect the investigation or analysis, the Team will identify information that is materially and substantially different. However, if the information has a de minimis effect on the investigation or analysis, the differences may not be identified. Similarly, although some events may be observed by more than one witness, the Team may not summarize each witnesses' statement unless it has a material and substantial effect on the investigation and analysis.

⁸ Civilian Witness 1's name was spelled in varying ways throughout police reports. For clarity, this spelling will be used throughout the memorandum.

⁹ Kerr's identity was not established when police were initially dispatched. Unless stated otherwise, the witnesses did not identify Kerr by name. However, because Kerr's identity is not at issue for purposes of this memorandum, the individual that the witnesses described will be referred to as Kerr for clarity.



Figure 1 - Google Map image of Kerr's home, highlighting the area where the use of force occurred (red rectangle).

When Witness Officer 1 arrived, he looked around the area, but he did not see Kerr. Civilian Witness 1 exited his home and identified himself. Civilian Witness 1 explained that he moved into his home a couple of months ago and had only two or three interactions with Kerr. They have not had issues in the past, but this morning Civilian Witness 1 heard yelling outside, so he went to his front yard to investigate. He observed Kerr yelling at Civilian Witness 1's dog. Kerr threatened to stab the dog and said something to the effect of "come and get some." Civilian Witness 1 saw that Kerr was holding a knife in his hand. Civilian Witness 1 explained that it was not unusual for Kerr to be in Civilian Witness 1's front yard because Kerr regularly walked his own dog through Civilian Witness 1's yard towards an open grass field. Civilian Witness 1 further stated that he did not wish to press charges and simply wanted the police to be aware of the incident. He stated that he did not feel he was in danger and he just wanted to have the incident documented.

After speaking with Civilian Witness 1, Witness Officer 1 was told by other officers that Kerr briefly exited his home and yelled at the officers to stay off his property. Since Civilian Witness 1 did not wish to press charges and Kerr did not want to speak with police about the interaction with Civilian Witness 1, the officers decided to leave the scene. As Witness Officer 1 walked back towards his patrol vehicle, a construction worker advised him that a male had

threatened another construction worker, later identified as Civilian Witness 2, and the male had a knife.

Witness Officer 1 consulted Witness Officer 3 regarding the situation and she advised Witness Officer 1 to conduct a risk assessment for Kerr due to his behavior up to this point and not wanting to speak with the police. The BPD risk assessment assesses several categories, including the subject's criminal history and the facts and circumstances known to officers. While Witness Officer 1 conducted the risk assessment, Witness Officer 2 spoke with Civilian Witness 2. Based upon the risk assessment, Kerr scored as a seventeen.¹⁰ Based on this score, the risk assessment advised BPD officers to consult with a SWAT team commander to determine if their resources are needed.

Witness Officer 2 spoke with Civilian Witness 2 who stated she was at a nearby intersection flagging traffic for construction. While standing at her post, a subject with a dog walked up to her, spit on the ground, and said something to the effect of, "Real professional." Civilian Witness 2 did not respond and as the male passed her, he lifted his arm to show her a knife that was concealed under his arm. The male moved his arm so that the knife was pointing towards her and he said, "Do you want some of this?" Civilian Witness 2 replied, "No. I'm good." The male walked away, but he returned and Civilian Witness 2 observed that he was still in possession of the knife she previously saw. She described the knife as having a six-inch blade. Civilian Witness 2 also stated that she did not feel safe and she wanted to press charges for harassment.

At approximately 10:19 am, after speaking with Civilian Witness 2, Witness Officer 2 informed Witness Officer 1 what Civilian Witness 2 reported and stated there was probable cause to arrest Kerr for harassment. Given the information officers knew so far, Witness Officer 3 felt that there were significant enough safety concerns that BPD could not leave the area without taking Kerr into custody. Witness Officer 3 ordered the officers to set up a perimeter around Kerr's home. Witness Officer 3 confirmed that the department's Community Crisis

¹⁰ In addition to reviewing the subject's criminal history, the risk assessment requires the officers to determine what type of crime is involved, what method of entry is required to contact the subject, and whether they have access to weapons. Kerr's score was based upon his threat to harm a person, that he was inside a home, and that he had access to a knife.

Assistance Team had not been in contact with Kerr. However, she learned that the fire department's Community Advocates for Referral and Educations Services team had been in contact with Kerr and assisted him in setting up utilities for the home. Officers were unable to locate a phone number for Kerr, but they sent messages to an email address they believed was associated with Kerr. In addition, Witness Officer 3 and a SWAT team leader decided that a small group of the SWAT team would respond to assist.



Figure 2 – BWV screenshot of an officer requesting Kerr (red circle) to put down an object in his hands and talk with the officers.

At approximately 10:37 am, Witness Officer 3 observed there was a BPD patrol vehicle parked southwest of Kerr's home and it was facing the door that Kerr previously used. Officers activated the patrol car's overhead emergency lights, used a siren, and used an air horn to get Kerr's attention. Officers also used the public address (PA) system on their patrol vehicles to communicate with Kerr. Witness Officer 3 heard officers use the PA to advise Kerr that he was under arrest for harassment and that BPD was not leaving the area. Witness Officer 3 also requested Witness Officer 4, who is a crisis negotiator, to use the PA and email Kerr. Kerr exited his house and officers communicated with him via the PA. The officers told Kerr that they needed to speak with him, he should come out with nothing in his hands, and his hands should be on his head. Witness Officer 3 could not hear what Kerr said. The officers asked him to call 911 so they could communicate with him. Kerr went back inside, but he did not call 911.



Figure 3 – BWV screenshot of officers using their PA system to communicate with Kerr (red circle).

Two minutes later, at approximately 10:39 am, Kerr came outside of his home for a moment and returned inside. During one of the times Kerr exited his home, Witness Officer 3 observed Kerr holding a key, which led her to believe that Kerr intended to leave. She observed there were two vehicles on Kerr's property, so she directed officers to place tire deflation devices under the vehicle tires.

At approximately 10:47 am, Witness Officer 1 deployed a drone to capture an overhead view of the house and identify possible exits. While operating the drone, Witness Officer 1 took a photograph of the area and provided it to other officers that responded.

Witness Officer 5, who was stationed at the rear of Kerr's property, observed Kerr exit the home. Witness Officer 5 gave Kerr commands, but instead of complying with the commands, Kerr dropped a piece of paper on the ground and went back inside. Witness Officer 5 gave the paper to Witness Officer 3, which appeared to be a notice sent to Kerr that he was being evicted from the property.

At approximately 12:00 pm, BPD SWAT team members arrived, which included Witness Officer 6, Involved Officer 1, Witness Officer 7 and their team leader, Witness Officer 8. Witness Officer 3 provided Witness Officer 8 with an update on what had occurred thus far. During their conversation, Kerr exited the home at approximately 12:14 pm. Witness Officer 8

waived his hand towards Kerr and asked him to walk towards Witness Officer 8 so they could talk. Kerr replied that Witness Officer 8 could not be on his property and told him to leave.



Figure 4 – BWV screenshot of Witness Officer 8 offering to let Kerr use a department-issued cell phone. Witness Officer 8 told Kerr that he wanted to speak with Kerr and Kerr refused. Kerr told Witness Officer 8 that he was not a police officer.

Witness Officer 8 introduced himself and told Kerr that he wanted to hear what Kerr had to say, but Kerr continued to yell at Witness Officer 8. Witness Officer 8 extended his department-issued phone to Kerr and asked if he could give it to Kerr so they could call and have a conversation, but Kerr refused. While Witness Officer 8 spoke with Kerr, he did not see him carrying a knife. Kerr returned to the house and Witness Officer 3 informed Witness Officer 8 that this response by Kerr was consistent with his previous responses towards BPD.

Around 12:20 pm, Kerr exited the home with his dog. Witness Officer 3 told Kerr that he was under arrest for harassment and that BPD was not leaving the area. Further, she explained that the police were not there for the eviction notice in case Kerr believed that was the reason for the officers' presence.



Figure 5 – BWV screenshot of officers standing behind Kerr’s vehicle and communicating to Kerr that he was under arrest, that they were not leaving, and they were not present to evict him.

At approximately 12:27 pm, Witness Officer 3, who was standing in Kerr’s driveway near the front porch area, observed Witness Officer 9 and Witness Officer 8 attempting to go around the north side of the home through the yard.



Figure 6 – BWV screenshot showing the patio where the use of force occurred.

Kerr exited the home and Witness Officer 8 observed that Kerr was holding a bright, silver knife in his right hand. He estimated the blade was four to five inches long. In addition, Kerr was holding another object in his left hand, but Witness Officer 8 could not identify it. Witness Officer 8 observed Kerr walking quickly towards himself and Witness Officer 9, so he told Witness Officer 9 that they were going to leave the property to de-escalate.

Witness Officer 8 and Witness Officer 9 retreated from Kerr towards Witness Officer 3's location. Witness Officer 8 observed Kerr walk to the area where Witness Officer 8 was originally located and then Kerr began to walk back towards the house at a normal pace. Witness Officer 8 used his radio to notify all the officers on scene that Kerr was armed with a knife. In addition, he verbally notified nearby officers in a loud voice. Witness Officer 8 commanded Kerr to drop the knife but he did not respond or comply. Additionally, Witness Officer 10 heard Witness Officer 8 yell something to effect of, "Put that away or you're going to get hurt!"

Witness Officer 8 continued to watch Kerr and heard Witness Officer 6 ask, "What is that?" Witness Officer 8 yelled to Witness Officer 6 that Kerr was armed with a knife. Witness Officer 6 stepped over a small retaining wall towards the patio and commanded Kerr to stop and drop the knife. Witness Officer 3 and Witness Officer 8 observed Kerr pass the home's sliding glass door and the same door that Kerr previously exited from. Instead of returning into the

house, Kerr continued to advance towards Witness Officer 6. Witness Officer 6 gave Kerr additional commands, which Kerr ignored. As Kerr got closer, Witness Officer 6 deployed his taser, a less lethal weapon, at Kerr, but the taser had no apparent effect on Kerr.

Witness Officer 3 observed Kerr approaching the officers, swinging the knife, and saying, “Get the fuck out!” Witness Officer 4 deployed his taser, which also appeared to have no effect on Kerr. Witness Officer 3 noted that, given the patio layout and items on the patio, there was no more room for Witness Officer 6 to retreat and Kerr continued to swing the knife in Witness Officer 6’s direction, which caused Witness Officer 3 to believe Witness Officer 6 was about to be stabbed by Kerr. Witness Officer 8 noted that, given how close Kerr was to Witness Officer 6, he was “absolutely convinced Witness Officer 6 was being cut or stabbed by Kerr.” In response, Witness Officer 6 dropped his taser and defended himself with his hands while Kerr continued to make slashing motions at Witness Officer 6.

As Witness Officer 6 attempted to block Kerr’s swing, Involved Officer 1 approached Kerr and discharged his rifle twice, striking Kerr. Kerr fell to the ground and officers began providing Kerr with medical aid. While this occurred Witness Officer 8 noted that the knife Kerr had during the use of force was on the ground in the patio area.



Figure 7 - Photograph of the knife held by Kerr during the use of force.

Additional officers briefly entered the home to ensure that there was no one else in need of medical attention. While inside, Witness Officer 11 noted that the interior of the home was filled with miscellaneous items and appeared to be in a state of disarray. Officers continued to provide Kerr with medical aid while they transported him down the driveway so that he would be closer to the responding medics. However, at approximately 12:34 pm, medics arrived and they determined that Kerr was deceased.

2. Independent Investigation

As other officers arrived, they secured the incident scene and rerouted traffic away from the area. The King County Independent Force Investigation Team (KCIFIT) was requested to respond to the scene and to conduct an independent investigation. Kirkland Police Department Investigator 1 was assigned as the lead investigator. Investigators from KCIFIT divided assignments between themselves, processed the incident scene, and conducted their investigation.

3. Processing of the Officers

As part of standard practice, KCIFIT determined which officers used force. Investigators determined that Involved Officer 1 discharged his rifle. During this process, KCIFIT photographed the involved officer to show what he was wearing when the use of force occurred. Based upon the photographs, the involved officer wore a BPD uniform, which was obviously marked with "Police" and had other law enforcement insignias that clearly identified him as a law enforcement officer.



Figure 8 - Photograph of Involved Officer 1, showing how his uniform appeared during the use of force.

In addition, KCIFIT examined the involved officer's firearms and documented the status of any weapon used during the incident. Regarding Involved Officer 1, KCIFIT reported that his rifle contained one unfired cartridge in the chamber, twenty-seven unfired cartridges in the magazine, and that the magazine had a maximum capacity of thirty cartridges.¹¹ Involved Officer 1's two spare rifle magazines were each fully loaded. If Involved Officer 1 filled his loaded magazine to capacity, his rifle was loaded with thirty cartridges, which would indicate that he discharged two cartridges.

¹¹ Handgun and rifle ammunition contain several distinct parts, which are often used interchangeably. A "cartridge" is a unit of ammunition, made up of a cartridge case, primer, powder, and a bullet. It may also be referred to as a "round" or "load." It is sometimes incorrectly referred to as a "bullet." The "cartridge case" is the container for all the components that comprise a cartridge. The "primer" is an explosive substance that ignites when struck to detonate the powder in a cartridge. The "powder" is the propellant in a cartridge." When a handgun or rifle is fired (also referred to as "discharged"), the "bullet" is the projectile that is propelled by the force of gases produced by rapidly burning powder.

4. Potential Impeachment Information Regarding Law Enforcement Witnesses

Law enforcement agencies are required to report misconduct that an officer has engaged in that affects their credibility.¹² In turn, each county prosecutor is required to develop and adopt a written protocol addressing potential impeachment disclosures pursuant to Brady v. Maryland, 373 U.S. 83 (1963), and subsequent case law.¹³ The Team has confirmed that, to its knowledge, there is no potential impeachment information regarding the involved officer who used deadly force in this incident.

5. Involved Officer Statement

The involved officer in this incident was compelled to provide a statement to BPD. Such compelled statements are inadmissible against an officer in a subsequent criminal trial.¹⁴ Police and prosecutors are also barred from making “indirect evidentiary use” of the officer’s compelled statement, which includes investigative efforts or testimony that has been shaped, altered, or affected, directly or indirectly, by the officer’s compelled statement.¹⁵ While the compelled statement and information derived from such a statement cannot be used to support criminal charges against an officer, a credible compelled statement provides insight into the potential testimony of an involved officer. At times, such a statement may be useful to the Team in analyzing a use of force incident and may be used in support of a finding of no criminal liability for the officer’s actions. However, in this incident, the Team did not review or rely upon the involved officer’s compelled statements.

6. Crime Scene Investigation and Search Warrants

KCIFIT conducted a crime scene investigation, documented the location of various items that appeared to have evidentiary value, and collected various items as evidence. In addition to other items, they collected two discharged cartridge casings that appeared to be from Involved Officer 1’s rifle, Kerr’s knife, and discharged taser cartridges. They also collected a gold-colored

¹² RCW 10.93.180(2)(a)(ii).

¹³ RCW 10.93.180(1)(a).

¹⁴ Garrity v. State of N.J., 385 U.S. 493, 500, 87 S. Ct. 616, 620, 17 L. Ed. 2d 562 (1967).

¹⁵ U.S. v. North, 910 F.2d 843, 857-858 (D.C. Cir., 1990).

screwdriver they believed Kerr was also holding during the incident. However, when Investigator 1 more closely examined the BWV, he noted that the unknown object on Kerr's other hand did not appear to be the screwdriver. Instead, the object appeared to be a type of gardening shears. On January 10, 2025, Investigator 1 returned to the scene to search for the shears. However, the company who was hired to sell the property had hired another company to clean out the property. Investigator 1 noted that debris had been removed from the property and he was unable to locate the shears. Investigator 1 asked an employee of the cleaning company if they recalled seeing gardening shears, but they did not.

7. Video Evidence

BPD officers are equipped with BWV cameras. Screenshots relevant to the Team's analysis are included below, including, if relevant, statements captured by the BWV. Based upon the officers' BWV, all gunshots discharged by Involved Officer 1 occurred within a span of approximately half of one second.



Figure 9 - Screenshot from Witness Officer 6's BWV showing Kerr across the patio. Witness Officer 6 told Kerr to stop and asked what he was holding.



Figure 10 - Screenshot from Witness Officer 6's BWV showing Kerr walking towards the officers. Witness Officer 6 continued telling Kerr to stop.



Figure 11 - Screenshot from Witness Officer 6's BWV showing Kerr pointing at Witness Officer 6. Officers warned Kerr he would be tased. Kerr is pointing an object at Witness Officer 6 with his right hand.



Figure 12 - Screenshot from Witness Officer 6's BWV showing the approximate time he deployed his taser. Within approximately six seconds Kerr is within a few feet of Witness Officer 6. The blade of Kerr's knife is visible in his left hand.



Figure 13 - Screenshot from Witness Officer 6's BWV showing Kerr swinging an object at Witness Officer 6. The silver knife is in Kerr's left hand.



Figure 14 - Screenshot from Witness Officer 9's BWV showing the approximate distance between Kerr and Witness Officer 6 when Kerr attempted to strike the officer.



Figure 15 - Screenshot from Witness Officer 9's BWV showing Witness Officer 6 ducking to his left to avoid Kerr's assault.



Figure 16 - Screenshot from Witness Officer 6's BWV showing the approximate time Witness Officer 4 deployed his taser at Kerr. The knife and unknown object are visible in Kerr's hands.



Figure 17 - Screenshot from Witness Officer 4's BWV showing Kerr reaching out towards Witness Officer 6's location. The knife is visible in Kerr's left hand and Witness Officer 6's taser is visible within the frame.



Figure 18 - Screenshot from Witness Officer 4's BWV showing Kerr running towards Witness Officer 6. Witness Officer 6's taser and hands (blue gloves) are within the frame.



Figure 19 - Screenshot from Witness Officer 6's BWV showing Kerr running towards Witness Officer 6. The knife and other object are visible in his hands.



Figure 20 - Screenshot from Witness Officer 4's BWV showing the moment before Involved Officer 1 discharged his firearm.



Figure 21 - Screenshot from Involved Officer 1's BWV showing Kerr lunging at Witness Officer 6 with the knife in his left hand.



Figure 22 - Screenshot from Witness Officer 6's BWV showing Witness Officer 6 using his hands to defend himself. The silver knife came loose but Kerr is still holding another object in his right hand.



Figure 23 - Screenshot from Witness Officer 6's BWV showing the approximate time when Involved Officer 1 discharged his firearm.



Figure 22 - Screenshot from an officer's BWV showing Kerr's right arm swinging an object at Witness Officer 6's head as Involved Officer 1 discharged his firearm.



Figure 25 - Screenshot from Involved Officer 1's BWV showing the approximate moment he discharged his firearm. Although the knife has fallen from Kerr's hand, Kerr is attempting to strike Witness Officer 6 in the head with another object.



Figure 23 - Screenshot from Witness Officer 6's BWV showing the approximate time Involved Officer 1 discharged his firearm a second time. According to the BWV both gunshots were discharged within approximately half of a second.

8. Autopsy and Toxicology Reports

The King County Medical Examiner's Office performed an autopsy of Kerr to determine the cause and manner of death. The cause of death is a term used to indicate *what* specific injury or disease led to death. The manner of death is a term used to categorize *how* the injury or disease led to death. Manner of death is categorized into one of five categories:

- Accident is defined as a death other than natural, where there is no evidence of intent.
- Homicide is defined as a death due to intentionally inflicted harm of one person by another. It is also defined as the killing of one person by another.¹⁶ Thus, the term homicide as used in an autopsy report refers to the mechanism of death and does not refer to legal terms, such as murder or manslaughter, which do include a determination legal liability or culpability.
- Natural is defined as a death solely by organic disease. If natural death is hastened by injury, such as a fall, the manner of death will not be considered natural.
- Pending is a temporary designation used when additional investigation, information, or test results are required to determine the cause or manner of death.
- Suicide is defined as a death as the result of a purposeful action, with intent to end one's life.
- Undetermined is defined as a death when there is insufficient evidence or information to assign to accident, homicide, suicide, or natural categories, or when two plausible manners are equally likely.

The King County Medical Examiner's Office opined the cause of death was gunshot wounds of the head and torso sustained in a confrontation with police and the manner of death was homicide. The pathological diagnoses included evidence of two gunshot wounds:

¹⁶ HOMICIDE, Black's Law Dictionary (11th ed. 2019).

- Perforating gunshot wound of head¹⁷
- Penetrating gunshot wound of abdomen

The Washington State Patrol Toxicology Laboratory performed a drug analysis of Kerr's blood. The results showed that Kerr's blood tested positive for ethanol (.10 g/100mL).

V. LEGAL STANDARD AND APPLICABLE LAW

1. Burden of Proof

In a criminal prosecution, the State must prove each element of a criminal charge by competent evidence beyond a reasonable doubt.¹⁸ The KCPAO will file charges if sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defenses that could be raised under the evidence, would justify conviction by a reasonable and objective factfinder.¹⁹

In addition, the State must disprove the existence of a defense that negates an element of the crime beyond a reasonable doubt.²⁰ Prosecution should not be declined because of an affirmative defense unless the affirmative defense is of such nature that, if established, would result in a complete defense for the accused and there is no substantial evidence to refute the affirmative defense.²¹

Therefore, in addition to proving that the accused committed a crime, the State will be required to disprove one or more of the following defenses:

- Justifiable Homicide by Peace Officer²²
- Justifiable Homicide Defense of Self or Others²³
- Justifiable Homicide Resistance to Felony²⁴

¹⁷ A penetrating gunshot wound occurs when a bullet pierces the skin, enters the body creating an entrance wound, but the bullet does not exit the body. In contrast, a perforating gunshot wound occurs when the bullet pierces the skin, enters the body creating an entrance wound, and exits the body creating an exit wound.

¹⁸ RCW 9A.04.100; WPIC 4.01.

¹⁹ KCPAO Filing and Disposition Standards.

²⁰ WPIC 14.00.

²¹ KCPAO Filing and Disposition Standards.

²² RCW 9A.16.040; WPIC 16.01.

²³ RCW 9A.16.050(1); WPIC 16.02.

²⁴ RCW 9A.16.050(2); WPIC 16.03.

2. Applicable Law Regarding Justifiable Homicide by a Peace Officer

This incident occurred on December 9, 2024. The applicable pattern jury instruction for Justifiable Homicide by a Peace Officer requires the State to prove the involved officer acted without good faith.²⁵

3. Applicable Jury Instructions

The following jury instructions, contained in Appendix A, would be applicable in a criminal prosecution and provided to the factfinder to determine whether the State met the required burden of proof. Therefore, these instructions are highly relevant to the Team's analysis and conclusion:

- WPIC 16.01 - Justifiable Homicide by a Peace Officer
- WPIC 16.05 - Necessary
- WPIC 2.09 - Felony
- WPIC 2.16 - Peace Officer
- WPIC 120.07 - Lawful Arrest and Probable Cause
- WPIC 16.02 - Justifiable Homicide – Defense of Self and Others
- WPIC 2.04.01 - Great Personal Injury
- WPIC 16.07 - Justifiable Homicide – Actual Danger Not Necessary
- WPIC 16.03 - Justifiable Homicide – Resistance to a Felony

VI. ANALYSIS AND CONCLUSION

1. Summary of Conclusion

Under the KCPAO filing standards, “Homicide cases 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

²⁵ For offenses committed on or prior to December 6, 2018, the former version of WPIC 16.01, based upon RCW 9A.16.040, required the prosecution to prove the officer acted with malice. For offenses committed between December 7, 2018, and February 3, 2019, RCW 9A.16.040, based upon Laws of 2019, Chapter 1, § 7, removed the malice standard and required the prosecution to prove the officer did not act in good faith. There are no pattern jury instructions for offenses committed between December 7, 2018, and February 3, 2019. For offenses committed on or after February 4, 2019, the current version of WPIC 16.01, based upon RCW 9A.16.040, requires the prosecution to prove the officer did not act in good faith. RCW 9A.16.040(1)(a) utilizes the malice and good faith standard, but this section only applies when a “public officer applied deadly force in obedience to the judgment of a competent court.”

factfinder. 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.”²⁶

The KCPAO declines to file charges against the involved officer because the independent investigation and the Team’s analysis reveal that the involved officer’s actions were lawful and justifiable as either Justifiable Homicide by a Peace Officer, Justifiable Homicide in Defense of Self or Others, or both. These defenses contain related but distinct concepts and definitions. Criminal charges should be declined because the defenses are of such nature that prosecution would result in a complete defense for the accused and there is no substantial evidence to refute either affirmative defense.

2. Justifiable Homicide by a Peace Officer

a. Graham v. Connor

In Graham v. Connor, the seminal case on evaluating police use of force, the United States Supreme Court determined that the test to determine whether the force used by the police was “reasonable” is not capable of a “precise definition or mechanical application.”²⁷ Instead, its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether the suspect is actively resisting arrest or attempting to evade arrest by flight.²⁸ In other words, the reasonableness of whether the officer’s use of force is justified is determined by “the totality of the circumstances.”²⁹

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.³⁰ “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

²⁶ KCPAO Filing and Disposition Standards.

²⁷ Graham v. Connor, 490 U.S. 386, 396, 109 S.Ct. 1865, 1871-72, 104 L.Ed.2d 443 (1989).

²⁸ Id.

²⁹ Id.

³⁰ Id.

the amount of force that is necessary in a particular situation.”³¹ However, the inquiry is an objective one. The question is whether the officer’s actions are “objectively reasonable” in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.³²

b. Bellevue Police Department’s Policies Relevant to Analysis

Given the analysis and ruling in Graham v. Connor, it is common for a police department’s policy manual and training curriculum to incorporate the standards set out by the United States Supreme Court. The following excerpts of BPD policies were in effect at the time force was used by the involved officer and are relevant to the analysis of this incident:

1.00.020 – Use of Firearms

A police officer is authorized and has the duty to prevent death or serious physical injury to themselves, a fellow officer, or another person by utilizing whatever force is reasonably necessary, including the use of firearms. In determining whether the use of a firearm is necessary, officers shall:

- Evaluate each situation considering the totality of the circumstances to determine that no reasonably effective alternative to the use of a firearm exists to protect against an immediate threat of serious physical injury or death to the officer or another person;
- Evaluate that the use of a firearm is a reasonable and proportional response to the immediate threat of death or serious physical injury posed to the officer and/or others;
- When feasible, use all de-escalation tactics that are available and appropriate under the circumstances before using physical force;
- When feasible, use less lethal alternatives that are available and appropriate under the circumstances before using deadly force.
- If feasible, and if doing so would not increase the danger to the officer or others, the officer should give a verbal warning prior to using deadly force.

An officer may discharge a firearm in the performance of their official duties when necessary:

- To protect themselves or others from what is reasonably believed to be an immediate threat of death or serious physical injury.
- To prevent a crime where the subject’s actions are reasonably believed to place

³¹ Id. at 396-97.

³² Id. at 397.

- the person(s) in immediate jeopardy of death or serious physical injury.
- To effect an arrest or prevent an escape when the officer reasonably believes the subject to be arrested poses an immediate threat to cause death or serious physical injury if apprehension is delayed.

1.00.011 De-Escalation

When feasible, officers are expected to use all de-escalation techniques that are available and appropriate under the circumstances prior to using physical force or deadly force, unless doing so would create undue risk of harm to any person due to the exigency/threat of a situation. Selection of de-escalation options should be guided by the totality of the circumstances.

De-escalation tactics and techniques include, but are not limited to the following:

- a) Gathering information about the incident
- b) Verifying information provided by dispatch
- c) Assessing risks
- d) Gathering resources (both personnel and equipment)
- e) Communicating with the subject- using communication skills and strategies intended to gain voluntary compliance
- f) Using time, distance and shielding to maximize tactical advantage
- g) Using available crisis intervention personnel and techniques
- h) Communicating and coordinating with other responding officers
- i) Leaving the area of the scene if there is no threat of imminent harm and no crime has been committed, is being committed, or is about to be committed

c. Law Regarding Justifiable Homicide by a Peace Officer

Homicide is justifiable when necessarily used by a peace officer meeting the good faith standard to overcome actual resistance to the execution of the legal process, mandate, or order of a court or officer, or in the discharge of a legal duty.³³ Alternatively, homicide is also justifiable when necessarily used by a peace officer meeting the good faith standard 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.³⁴

In considering whether to use deadly force to arrest or apprehend any person for the commission of any crime, 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

³³ RCW 9A.16.040(1)(b); WPIC 16.01.

³⁴ RCW 9A.16.040(1)(c)(i); WPIC 16.01.

physical harm to others.³⁵ Among the circumstances which may be considered by peace officers as a “threat of serious physical harm” are the following:

- The suspect threatens a peace officer with a weapon or displays a weapon in a manner that could reasonably be construed as threatening; or
- There is probable cause to believe that the suspect has committed any crime involving the infliction or threatened infliction of serious physical harm.³⁶

A peace officer acts in good faith, an objective standard, when considering all the facts, circumstances, and information known to the officer at the time to determine whether a similarly situated reasonable officer would have believed that the use of deadly force was necessary to prevent death or serious physical harm to the officer or another individual.³⁷ Necessary means that no reasonably effective alternative to use the force appeared to exist and that the amount of force used was reasonable to effect the lawful purpose intended.³⁸

d. Analysis Regarding Justifiable Homicide by a Peace Officer

In the current incident, the evidence in the independent investigation showed that the involved officer used deadly force to overcome actual resistance by Kerr and there was sufficient information for the involved officer to believe that Kerr, if not apprehended, posed a threat of serious physical harm to an officer or others.

The evidence in the independent investigation showed the involved officer used deadly force to overcome actual resistance to the execution of the legal process, mandate, or order of a court or officer, or in the discharge of a legal duty. Similarly, the evidence in the independent investigation showed there was probable cause for the involved officer to reasonably believe that Kerr had committed, had attempted to commit, was committing, or was attempting to commit various felonies. Specifically, based on the facts that would likely be known to Involved Officer 1 at the time, there was probable cause to believe that Kerr had threatened two civilians earlier

³⁵ RCW 9A.16.040(2).

³⁶ Id.

³⁷ RCW 9A.16.040(4).

³⁸ RCW 9A.16.010; WPIC 16.05.

that morning. Additionally, officers had communicated to each other via radio and by voice that Kerr was not communicating with officers and had access to a knife that he had brought outside the home. When Kerr exited his home, officers had probable cause to arrest him for harassment. Officers gave him several commands to drop his knife but Kerr did not comply. When Kerr approached Witness Officer 6 with the knife in an aggressive manner, there was probable cause to believe that Kerr was not complying with the officers' orders and that he possessed an intent to assault Witness Officer 6 or other officers.

The evidence in the independent investigation showed there was probable cause for the involved officer to believe that Kerr, if not apprehended, posed a threat of serious physical harm to the officer or others. This defense provides two explicit examples that may be considered by peace officers as a threat of serious physical harm. First, a threat of serious physical harm may include circumstances where the suspect threatens a peace officer with a weapon or displays a weapon in a manner that could reasonably be construed as threatening. Second, a threat of serious physical harm may include circumstances where there is probable cause to believe that the suspect has committed any crime involving the infliction or threatened infliction of serious physical harm.

In the current incident, when Kerr approached Witness Officer 6 with the knife and refused to comply with commands to drop the knife, Witness Officer 6 used his taser, a less lethal weapon, to incapacitate Kerr. Based on the BWV, the taser clearly did not stop Kerr from advancing. In response to Kerr's threat, Witness Officer 4 deployed his taser at Kerr, which also had no effect in stopping Kerr. Based on BWV, Involved Officer 1 was in a position where he very likely saw the two tasers fail to incapacitate Kerr. Additionally, it is also very likely that Involved Officer 1 observed Kerr lunging at Witness Officer 6 with the knife and another object in his hands while Witness Officer 6 was at a tactical disadvantage. Although a frame-by-frame analysis shows that the knife came loose from Kerr's hand prior to the use of force, this occurred nearly at the same instant Involved Officer 1 discharged his firearm. Even assuming Involved Officer 1 had the ability to observe and process the information that the knife was loose, Kerr continued to assault Witness Officer 6 using a similar thrusting motion with an unknown object, so it would be reasonable if Involved Officer 1 believed the other object was also being used as a deadly weapon. Therefore, it is highly likely that the factfinder would find that Kerr's actions

caused Involved Officer 1 to have probable cause to believe that Kerr posed a threat of serious physical harm to others, such as Witness Officer 6.

The evidence in the independent investigation showed that Involved Officer 1 used deadly force with a good faith belief that his actions were necessary to prevent death or serious physical harm to an officer or another individual. A factfinder would likely find that Involved Officer 1 acted in good faith because, under an objective standard, when considering all the facts, circumstances, and information known to Involved Officer 1 at the time, a similarly situated reasonable officer would have believed that the use of deadly force was necessary to prevent death or serious physical harm to an officer or another individual. By the time the use of force occurred, officers had made several attempts to communicate with Kerr and resolve the situation peacefully. When force was initially used, officers employed less lethal force with their tasers.

Further, a factfinder would also likely find that Involved Officer 1's use of deadly force was necessary because no reasonable effective alternative to use the force appeared to exist and the amount of force used was reasonable to effect the lawful purpose intended. As described above, it is highly likely Involved Officer 1 saw the tasers had no effect in incapacitating Kerr. Despite the tasers, Kerr lunged towards Witness Officer 6 with the knife and another object. Given the lack of distance between Kerr and Witness Officer 6, Involved Officer 1 had no reasonably effective alternative to using his firearm.

While compliance with BPD policy is not within the immediate scope of this memorandum, it is highly likely that a criminal prosecution would include testimony and evidence pertaining to BPD policies regarding use of deadly force. Such testimony and evidence would likely be in the form of expert opinion, BPD policy manual, and training information. The independent investigation and the Team's analysis show that the BPD officers, including Involved Officer 1, complied with their policies. For instance, officers used various forms of de-escalation prior to using force, such as gathering resources like a drone and crisis negotiator. They made numerous attempts to communicate with Kerr and used time to their advantage. While officers are required to use all de-escalation tactics and less lethal alternatives that are available, this is required only when feasible. BPD policies permit deadly force to protect the officers or others from a subject's actions that are reasonably believed to place the officers or others in immediate jeopardy of death or serious physical injury.

Therefore, based on the anticipated admissible evidence and testimony, which is corroborated by video evidence, the involved officer's actions were lawful and justifiable and there is insufficient evidence to prove criminal charges beyond a reasonable doubt or refute this defense beyond a reasonable doubt.

3. Justifiable Homicide in Defense of Self or Others

a. Law Regarding Justifiable Homicide in Defense of Self or Others

The legislature recognizes that the defense of Justifiable Homicide by a Peace Officer established a dual standard with respect to the use of deadly force by peace officers and private citizens, and further recognizes that private citizens' permissible use of deadly force under the defense of Justifiable Homicide in Defense of Self or Others is not restricted and remains broader than the limitations imposed on peace officers.³⁹

The defense of Justifiable Homicide by a Peace Officer allows a peace officer to use deadly force against another person only when necessary to protect against an *immediate* threat of serious physical injury to the officer or another person.⁴⁰ An immediate threat of serious physical injury or death means that, based on the totality of the circumstances, it is objectively reasonable to believe that a person has the present and apparent ability, opportunity, and intent to immediately cause death or serious bodily injury to the peace officer or another person.⁴¹

However, the defense of Justifiable Homicide in Defense of Self or Others is also applicable to peace officers.⁴² Under this defense, homicide is justifiable in defense of self or others when the slayer reasonably believed the person slain intended to commit a felony, to inflict death, or to inflict great personal injury; the slayer reasonably believed there was *imminent* danger of such harm being accomplished; and the slayer employed such force and means as a reasonably prudent person would under the same or similar conditions as they reasonably appeared to the slayer.⁴³ Great personal injury includes an injury that the slayer reasonably

³⁹ RCW 9A.16.040 [1986 c 209 §3].

⁴⁰ RCW 10.120.020(2). See also, Graham, 490 U.S. at 396.

⁴¹ RCW 10.120.020(2).

⁴² RCW 9A.16.040(5)(a).

⁴³ RCW 9A.16.050(1); WPIC 16.02.

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.⁴⁴

The Washington Pattern Instruction Committee noted that “Imminence does not require an actual physical assault. A threat, or its equivalent, can support self-defense when there is a reasonable belief that the threat will be carried out.”⁴⁵ Additionally, a person is entitled to act on appearances in defending themselves, if that person acts in good faith and on reasonable grounds, although it afterwards might develop that the person was mistaken as to the extent of the danger.⁴⁶

The reasonable person standard as used in this instruction does not expressly require the factfinder to compare the slayer to a reasonable officer. However, because law enforcement officers – especially compared to non-law enforcement civilians – receive significant amounts of training on weapons, defensive tactics, and the use of force, it is prudent to assume the factfinder would be required to take Involved Officer 1’s training and experience into account to determine how a reasonable person would have acted. Therefore, the same evidence and testimony used to determine whether Involved Officer 1 acted as a reasonable peace officer under the previous instruction is also relevant to this instruction.

b. Analysis Regarding Justifiable Homicide in Defense of Self or Others

The evidence in the independent investigation also showed Involved Officer 1 reasonably believed that Kerr intended to commit a felony, to inflict death, or to inflict great personal injury upon Witness Officer 6. As described above, Involved Officer 1 would likely have seen Witness Officer 6 and Witness Officer 4 deploy their tasers against Kerr, which had no effect in stopping him. Kerr lunged at Witness Officer 6 with the knife and other object in an aggressive manner, which reasonably shows Kerr’s intent to seriously injure another person.

The evidence in the independent investigation showed that Involved Officer 1 reasonably believed that Kerr’s actions constituted an imminent danger of such harm being accomplished. Under the broader standard of imminence, it is even more likely that the factfinder would find

⁴⁴ WPIC 2.04.01.

⁴⁵ WPIC 16.02.

⁴⁶ WPIC 16.07.

that Kerr's actions, as described earlier, caused Involved Officer 1 to reasonably believe that Kerr's threats would be carried out upon Witness Officer 6.

The evidence in the independent investigation showed that Involved Officer 1 employed such force and means as a reasonably prudent person would under the same or similar conditions as they reasonably appeared to Involved Officer 1. Here, Involved Officer 1 likely heard and observed that officers exhausted multiple types of de-escalation techniques, including using less lethal weapons. When Involved Officer 1 discharged his firearm, he was faced with the choice of using his firearm or allowing Kerr to assault Witness Officer 6 with a knife and unknown object. Therefore, the situation was such that a reasonably prudent person would have deployed similar force.

Therefore, based on the anticipated admissible evidence and testimony, which is corroborated by video evidence, the involved officer's actions were lawful and justifiable and there is insufficient evidence to prove criminal charges beyond a reasonable doubt or refute this defense beyond a reasonable doubt.

VII. KCPAO RESPONSIBILITIES REGARDING INQUEST

Pursuant to Executive Order PHL 7-1-6 EO, the KCPAO shall inform the King County Inquest Program Manager in writing whenever the KCPAO becomes aware of a person's death following an interaction with law enforcement or while in the custody of law enforcement. The KCPAO previously complied with this requirement.

Appendix A

1. WPIC 16.01 - Justifiable Homicide by a Peace Officer

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

Homicide or the use of deadly force is justifiable:

[when necessarily used by a peace officer acting in good faith to overcome actual resistance to the execution of the legal process, mandate, or order of a court or officer, or in discharge of a legal duty] [or]

[when necessarily and in good faith used by a peace officer or person acting under the officer's command and in the officer's aid [to arrest or apprehend a person who the officer reasonably believes has committed, has attempted to commit, is committing, or is attempting to commit a felony] [or] [to prevent the escape of a person from a federal or state correctional facility or in retaking a person who escapes from such a facility] [or] [to prevent the escape of a person from a county or city jail or holding facility if the person has been arrested for, charged with, or convicted of a felony] [or] [to lawfully suppress a riot if the actor or another participant is armed with a deadly weapon]. In considering whether to use deadly force to arrest or apprehend any person for the commission of any crime, a peace officer must have probable cause to believe that the 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 2.09 Felony—Designation Of
_____ is a felony.⁴⁷

⁴⁷ Whether a crime is a felony is a matter of law for the court to decide.

4. WPIC 2.16 Peace Officer—Definition

Peace officer means a duly appointed city, county, or state law enforcement officer.

5. WPIC 120.07 Lawful Arrest—Definition

[An arrest is lawful if made pursuant to an arrest warrant.] [An arrest is [also] lawful if the arresting officer had probable cause to believe that the person arrested had committed the crime of (name of crime) [in the officer's presence]. “Probable cause” means facts that would cause a reasonably cautious officer to believe that the person had committed that crime. In determining whether the facts known to the officer justified this belief, you may take into account the officer's experience and expertise.]

6. WPIC 16.02 – Justifiable Homicide – Defense of Self and Others

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

Homicide is justifiable when committed in the lawful defense of the slayer or any person in the slayer's presence or company when:

- (1) the slayer reasonably believed that the person slain intended to commit a felony⁴⁸ or to inflict death or great personal injury;
- (2) the slayer reasonably believed that there was imminent danger⁴⁹ of such harm being accomplished; and
- (3) the slayer employed such force and means as a reasonably prudent person would use under the same or similar conditions as they reasonably appeared to the slayer, taking into consideration all the facts and circumstances as they appeared to him, at the time of and prior to the incident.

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.

⁴⁸ For purposes of the defense, the use of deadly force appears to be limited to the resistance of violent felonies that threaten human life or may result in great personal injury. See *State v. Nyland*, 47 Wn.2d 240, 287 P.2d 345 (1955).

⁴⁹ Regarding imminent danger, the WPIC commented:

Imminence does not require an actual physical assault. A threat, or its equivalent, can support self-defense when there is a reasonable belief that the threat will be carried out. *State v. Janes*, 121 Wn.2d at 241 (citations omitted). While “immediate harm” means “occurring, acting, or accomplished without loss of time: made or done at once,” “imminent harm” means “ready to take place: near at hand: ... hanging threateningly over one's head.”

7. 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.

8. 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.

9. WPIC 16.03 – Justifiable Homicide – Resistance to a Felony

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

Homicide is justifiable when committed in the actual resistance of an attempt to commit a felony⁵⁰ upon the slayer or in the presence of the slayer.

The slayer may employ such force and means as a reasonably prudent person would use under the same or similar conditions as they reasonably appeared to the slayer, taking into consideration all the facts and circumstances as they appeared to him at the time and prior to the incident.

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.

⁵⁰ For purposes of the defense, the use of deadly force appears to be limited to the resistance of violent felonies that threaten human life or may result in great personal injury. See State v. Nyland, 47 Wn.2d 240, 287 P.2d 345 (1955)