

# JON TUNHEIM

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**TO:** The Honorable John Snaza, Thurston County Sheriff  
**FROM:** Jon Tunheim, Thurston County Prosecuting Attorney *JT*  
**DATE:** September 20, 2021  
**RE:** Officer Involved Shooting Review – US Marshal's Fugitive Task Force

### Introduction

On September 3, 2020, members of the US Marshal's Pacific Northwest Violent Offenders Task Force shot and killed Michael Forest Reinoehl while attempting to apprehend him pursuant to an outstanding arrest warrant issued by a court in the State of Oregon. That warrant was issued when Reinoehl was charged with the murder of an individual during a protest event in Portland. Because the use of deadly force by this task force occurred in Thurston County, the Region III Critical Incident Investigation Team (CIIT) was tasked to investigate the circumstances. The matter was then referred to the Thurston County Prosecuting Attorney's Office (TCPAO) to conduct a legal review of the incident and determine if any criminal charges should be filed under Washington State law. This memorandum outlines my review of this incident and my resulting findings and conclusions.

In conducting this review, I personally reviewed all of the information provided to this office by the investigation team, including witness statements, photographs, recordings, and crime lab reports, along with the written statements of the involved officers and the reports of all of the officers involved in the investigation. It should be noted that none of the involved officers submitted to a live interview, choosing instead to submit written statements. In addition, despite several requests, Deputy United States Marshal Ryan Kimmel has never submitted to an interview or provided a statement or report describing his version of the events. Although Kimmel was on the scene at the time of the officer involved shooting, there is no evidence that he fired any rounds during the event.

### Summary of the Case

Aaron Danielson was shot and killed on August 29, 2020, during a protest event in the city of Portland, Oregon. During the investigation, Portland detectives developed sufficient evidence to ask a Multnomah County Circuit Court judge to order an arrest warrant for Michael Forest Reinoehl on charges of second-degree murder and unlawful use of a firearm. That request was granted, and the warrant was issued on September 3, 2020.

Because Reinoehl was a suspect in the Portland murder, federal authorities began searching for him. They developed information that he was associated with a silver Volkswagen Jetta and may be located at 7601 3<sup>rd</sup> Way SE, Apartment #1, in Thurston County, WA, just outside of the city limits of Lacey. Finally, they had information that led them to believe he was armed with a .380 handgun, an AR 22 assault style rifle, and a shotgun.

On September 3, 2020, Deputy US Marshal Ryan Kimmel assembled members of the Pacific Northwest Violent Offenders Task Force in an effort to locate and arrest Reinoehl on the outstanding warrant. This task force is comprised of law enforcement officers from local agencies including (but not limited to) the Pierce County Sheriff's Office, the Lakewood Police Department, and the Washington State Department of Corrections. The officers assembled for this detail were as follows:

- Deputy US Marshal Ryan Kimmel
- Sgt. Erik Clarkson, Pierce County Sheriff's Office
- Deputy James Oleole, Pierce County Sheriff's Office
- Deputy Craig Gocha, Pierce County Sheriff's Office
- Deputy Casey McEathron, Pierce County Sheriff's Office
- Deputy Justin Watts, Pierce County Sheriff's Office
- Officer Michael Merrill, Lakewood Police Department
- Corrections Specialist Jacob Whitehurst, Washington State Department of Corrections

In addition, Sgt. Clarkson also added the following members of the Pierce County Sheriff's office SWAT team who were not members of the task force.

- Detective Sgt. Byron Brockway, Pierce County Sheriff's Office
- Detective Jesse Hotz, Pierce County Sheriff's Office
- Deputy John Munson (K-9 handler), Pierce County Sheriff's Office

At about 3:30 P.M. the officers assembled at the South Hill Precinct of the Pierce County Sheriff's Office, where Sgt. Clarkson provided a briefing of the circumstances. During that briefing, the officers were shown photos of Reinoehl, and presented with background information on the Oregon murder case, along with the information regarding the possible weapons in his possession. They were also shown a photo of the silver Volkswagen Jetta associated with Reinoehl. The officers were all aware that an arrest warrant was forthcoming or had been issued. In addition, the officers were made aware of social media posts indicating that Reinoehl believed he was at war with police. He was described at the briefing as a high threat to law enforcement officers.

At about 4:30 P.M., the officers traveled to Lacey, WA. Once in Lacey, they convened in the parking lot of the Lacey Police Department at about 5:30 P.M. By 6:00 P.M., the officers had moved to surveillance locations where they could see the apartment where Reinoehl was suspected to be staying. Throughout the duration of this event, the weather was sunny, and visibility clear. At that time, officers identified two vehicles associated with Reinoehl, a Honda Passport and a Volkswagen Jetta. Members of the task force who were part of a sub-team located in a Dodge minivan, Deputy McEathron and K-9 Officer Munson, were not part of this surveillance so as to not give away the officer's presence.

The officers were divided into sub-teams, each assigned to a vehicle. Deputy Oleole and Officer Merrill were assigned to a Ford Escape. Deputy Marshal Kimmel and Deputy Gocha were assigned to a Chevy Traverse. DOC Officer Whitehurst was driving a Dodge Charger. Sgt. Clarkson, Sgt. Brockway, Detective Hotz, and Deputy Watts were all assigned to a Dodge minivan. Deputy McEathron was assigned to a Ford Explorer, and K-9 Deputy Munson and his partner “Brix” were in a fully marked Ford Explorer. With the exception of the K-9 vehicle, all of the vehicles were unmarked with emergency lighting equipment installed. All officers were wearing protective vests, which clearly identified them as law enforcement officers.

Although the task force conducted surveillance at this location in Thurston County (outside the city limits of Lacey), it is unclear from the documents presented whether task force members alerted the Thurston County Sheriff’s Office of their presence in Thurston County. There is an indication that a task force member may have notified a Lacey police officer that they would be in the area. No Thurston County or Lacey officers were involved in the surveillance or officer involved shooting incident.

Officer Merrill and Deputy Oleole were part of the surveillance team, watching the apartment from their Ford Escape parked on School Street. Merrill was driving and Oleole was in the front passenger seat. Oleole was armed with a department issued rifle. Deputy US Marshal Kimmel and Deputy Gocha were also part of the surveillance team, watching from the Chevy Traverse while parked behind the Ford Escape. Corrections Specialist Whitehurst parked his Dodge Charger at a location east of the Jetta on 3<sup>rd</sup> Way where he could observe the Jetta and the front door of apartment #1. (See the diagram below for an approximation of the vehicle locations during surveillance.)



The officers were equipped with radios issued by their respective departments for communication. Their communication plan was to use a Pierce County law enforcement channel. However, because they were operating outside of Pierce County, communication became intermittent and the transmissions had considerable static, making communication difficult.

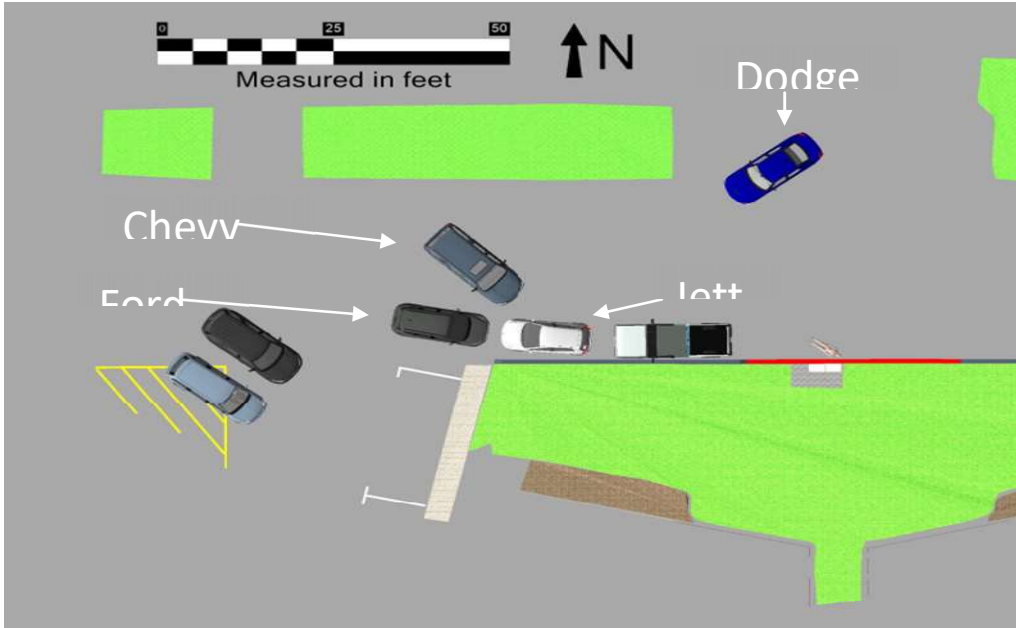
At approximately 6:44 P.M., surveillance officers watched three people emerge from the apartment they were watching. Two of the people were Nathaniel Dinguss and Stephanie Ellis, both of whom were believed to be associated with Reinoehl. The officers recognized both individuals from photos shown during the initial briefing. The third person was unknown to the officers. Those three people lingered by a Honda Pilot for a short time, apparently smoking cigarettes. The recorded radio transmissions indicate that the three people then re-entered the apartment. Dinguss came out a short time later and seated himself in the driver's seat of the Pilot. Thereafter, another individual walked out of the apartment who the officers believed could be Reinoehl, however, his face was covered by some sort of facial covering. Radio transmissions confirm that officers believed this was Reinoehl and they began trying to positively identify him. Whitehurst wrote in his statement that he was able to see a portion of a tattoo of a fist on the subject's neck which was consistent with a known tattoo of Reinoehl. He also recognized the pants the suspect was wearing from video footage of the Portland homicide they watched during their initial briefing. He transmitted that information to the other officers.

The surveillance officers also observed the subject carrying a bag that was consistent with a bag that could be used to carry a rifle. Given that Reinoehl was believed to be in possession of a rifle, that fact was specifically noticed. In addition, Deputy Gocha also saw what he believed to be two holsters on the subject's belt, one of which appeared to be holding a knife. He could not see what was in the other holster, if anything, but noted that the holster appeared to be capable of carrying the size of handgun that Reinoehl was believed to be carrying.

The subject eventually walked toward the Jetta. At this point, the officers seemed confident he was Michael Reinoehl based on their observations matching his description and his behavior when he walked toward the Jetta, entered the Jetta in the driver's seat and apparently started the engine. The Jetta was parallel parked on the south side of 3<sup>rd</sup> Way facing west. Directly behind it was a white full-sized pickup truck which blocked the Jetta from moving backward. There were no vehicles parked directly in front of the Jetta.

At this point, there appeared to be some disagreement on whether the officers should move in to arrest Reinoehl or allow him to drive away and continue the surveillance. As the subject entered the Jetta on the driver's side, Oleole called out "He is getting in the Jetta, we should take him." Another officer called out, "We're too far, let him drive," seeming to indicate that they should wait for a better opportunity to apprehend Reinoehl. Whitehurst called out on his radio that the Jetta's engine was running, and the brake lights were on. Oleole then called out, "Let's go take him." Another officer said, "He's blocked from the rear, let's go to the front," and in response Oleole called out, "Okay, we're moving." Another officer called out, "Are you guys taking him, because we've got to move if you are," and Oleole responds, "Take him, take him now."

Merrill drove his vehicle toward the front of the Jetta in order to prevent the Jetta from driving away. No emergency lights or sirens were activated at that time. He parked his vehicle bumper-to-bumper, directly in front of and facing the Jetta such that he and Oleole both had a clear view of the Jetta's driver. At the same time, Gocha drove his vehicle and positioned it at an angle from the Jetta's passenger side so that he could also see directly into the Jetta. Whitehurst drove his Charger toward the Jetta, approaching from the rear, and parked at an angle to the side and rear of the Jetta, with his vehicle facing the Jetta.



In his written statement, Deputy Oleole gives the following account of the events as the Ford parked in front of the Jetta:

“TFO Merrill drove our vehicle over to Reinoehl’s vehicle and blocked it in. Our vehicle and Reinoehl’s vehicle were front bumper to front bumper. We were very close to the suspect and I immediately opened my door and yelled “POLICE...” as loud as I could while exiting the vehicle - I had no time to get completely out of my car. I had my rifle with me and I began pointing it toward the suspect. Before I could get any other words out, Reinoehl looked up at us and it appeared to me based on his facial expression that he recognized us as police and/or heard my announcement.

I was close enough that I could see the white in the suspect’s eyes when he looked up at us his eyes got really big and he immediately looked back down. I could not see where his hands were but he was making a movement with his arms that based on my training and experience is consistent with the moves that someone makes when they are attempting to grab a gun they have on their person. He appeared to be reaching for something that he knew where it was and appeared to only be looking in one place.

I feared that he was grabbing a gun. I was immediately afraid for my safety and for the safety of the other officers around me. I knew him to be armed and dangerous and his previous statements indicated to me that he was going to fight any arrest attempts. I had no time to employ any other means of force. The repercussions of hesitation on my part would mean that he could fire on my partners or me and kill one of us. I fired my rifle through the front windshield of our vehicle towards Reinoehl. The front windshield did not shatter and I still had a clear unobstructed view of the suspect. I did not see any reaction to the gunshots while he was sitting in the car and I continued to fire several shots at the suspect through the windshield. I could see Reinoehl still trying to reach for something and he showed no reaction to the gunshots.”

Officer Merrill, in his written statement, gave the following account of the same events:

“I drove my SUV toward the Jetta. As we were approaching, I was driving the SUV towards the front of the Jetta so we were facing towards each other in a roughly "nose to nose" but slightly offset position. I saw Reinoehl get into the driver seat of the Jetta. I saw the Jetta headlights come on which indicated to me that he was starting the Jetta. As we were driving up, Oleole opened the passenger door of the SUV we were in. I believe he did so in order to exit the SUV when we stopped. I saw Reinoehl looked right at Oleole and I when we were driving up to his location. When our cars were short distance apart, I estimate about 10 feet or so apart, I noticed Reinoehl's eyes got wide and then he

appeared to recognize us. I then saw him lunge forward in his car with his right hand going forward in the car.

I momentarily thought he was going to try to put the Jetta into drive and try to either ram us or get away, but then realized he was moving towards the interior front center console of the car and then I saw Reinoehl raising an object in his hand. I thought it was a firearm. I was still driving my SUV and had to stop it so I could react. I momentarily looked down to put the SUV into park when I began hearing multiple gunshots. I was almost simultaneously struck in the face with shards of glass from the windshield of my car. The windshield was cracking and splintering in front of me and spraying me with glass dust. I realized the windshield was being struck by bullets. I thought we were being shot at and I needed to get out of the vehicle to respond to the threat. I almost simultaneously realized Oleole was firing his rifle at Reinoehl. Oleole's shots was extremely loud in SUV. The rifle sound was significantly affecting my hearing.

I immediately opened the door to my SUV to get out of it. I had my Lakewood Police Department issued rifle with me on my left side, just inside the door. As I got out, I grabbed my rifle. I raised my rifle and aimed it at Reinoehl. Reinoehl was still in the car. I recall clicking the safety off on my rifle and I may have fired one or more rounds at him at that time, but I am not completely certain as the events were unfolding quickly. At that time, I saw Reinoehl reach towards and begin opening his car door. Reinoehl then began exiting the Jetta.”

Deputy Gocha related the following account of his approach on the Jetta:

“TFOs Oleole and Merrill accelerated their vehicle and I followed. There were no lights and sirens activated that I noticed or heard. I cut through a parallel driveway/access road and pulled into the front passenger side of the Jetta as TFOs Oleole and Merrill nosed into the Jetta. As we were pulling up, I observed Reinoehl’s face and could clearly see it was him. The front windshield of our vehicle was not tinted and Reinoehl’s seemed to recognize us as law enforcement because he mouthed “Oh Shit” as he reached down with his right hand and frantically pulled on his waistband/front right pocket area. I was getting out of the vehicle and went left into the open area to make sure we had a good line of sight without any cross fire and I pointed my gun at Reinoehl and I yelled loudly and clearly in a commanding voice “POLICE, Stop or I’ll Shoot”. There was no ambient sound that would have prevented him from hearing the command. In my experience suspects often carry firearms inside their waistband. I believed Reinoehl was reaching for a gun. The suspect was known to carry a gun. I knew from the video of the murder that the suspect fired his weapon with his right hand and I was concerned that Reinoehl was actively trying to retrieve a means of causing serious bodily injury or death to myself, or other Officers. I was a car length away from the suspect.

I had no time to employ any other means of defense and I did not believe that any less lethal means would stop the threat. I believed the suspect had a gun he was trying to access and that any hesitation would allow the suspect to retrieve the weapon he was reaching for and fire on us. I was afraid that this would result in my death or the death of one of the other law enforcement officers. I fired my gun at Reinoehl to try to stop the threat to my life and the lives of those around me. I was immediately aware that other shots were going off as well. I did not know if it was law enforcement firing or not. I was constantly assessing the threat and he didn't look as if any of the bullets were affecting him at all. He continued his movements and I continued firing."

Specialist Whitehurst provided his perspective in his written statement as follows:

"TFOs Mike Merrill (Lakewood PD) and James Oleole (Pierce County Sheriff's Office) blocked the front of Reinoehl's Jetta with the Ford Escape SUV they were operating. TFO Craig Gocha (Pierce County Sheriff's Office) and Deputy US Marshal (DUSM) Ryan Kimmel parked their Chevrolet Traverse perpendicular to the front passenger door of Reinoehl's Jetta. Both vehicles approached with their blue and red police lights activated.

I activated the police lights on my Dodge Charger and began driving closer to Reinoehl's vehicle to assist with the arrest. As I approached in my vehicle, I saw TFOs Merrill, Oleole, and Gocha, as well as DUSM Kimmel, exit their vehicles and address Reinoehl. All PNVOTF members were clearly marked as law enforcement. Though my vehicle window was up, I clearly heard PNVOTF members loudly yell, "Police, Police, show me your hands!" From my vantage point, I could only see the top back of Reinoehl's head as he sat in the Jetta.

As I began to approach in my vehicle, and other PNVOTF members continued to announce, "Police," and "Show me your hands," I heard several gun shots and saw several of the windows in Reinoehl's vehicle shatter.

Upon witnessing gun-fire, I immediately stopped my vehicle. Where I stopped, my vehicle was pointing southwest, approximately 45 degrees off the right corner of Reinoehl's rear bumper and approximately 30 feet away. My vehicle was stopped nearly even with the rear bumper of the Chevrolet pickup parked behind Reinoehl's Jetta.

Once stopped, I exited my vehicle and stood behind my open driver's door. I was still wearing my DOC issued body armor, with clear law enforcement markings: on my chest I wore a placard that read "US Marshal Fugitive Task Force," on my right hip and shoulder, I wore DOC badges, and on my back I wore a placard that read, "POLICE-US Marshal Fugitive Task Force." The police lights in my vehicle



were still activated and were visible 360 degrees around the vehicle. While using my door as cover, I drew my DOC issued Smith and Wesson Military and Police 9mm pistol, and prepared to assist in the situation.”

A civilian witness, Terry Lee, was later interviewed by a detective with the Washington State Patrol. In his statement, Lee told the detective he was walking his dog along School Street approaching 3<sup>rd</sup> Way when he noticed two silver vehicles driving side by side on School Street toward 3<sup>rd</sup> Way as if they were involved in a road rage incident. The cars briefly separated and then converged on another silver car. He also saw a blue Dodge Charger drive up behind the silver car and park. Mr. Lee related that the Charger had police emergency lights flashing but the silver SUVs did not. As soon as the silver SUVs parked, he saw the passenger doors open on each, heard gunshots, and saw “puffs of smoke” coming from the cars, including both SUVs and the smaller silver car. He did not recall hearing any yelling during the shooting. When he realized he was observing gun fire, he picked up his dog, fled to the other side of School Street and laid down until the shooting subsided.

Following the initial round of gunfire, the officers all indicate that Reinoehl exited the driver’s side of the Jetta in a crouched position and moved to the rear of the car. There was a pause in the gunfire as Officer Merrill moved around the rear of his Ford Escape to the passenger side so he could better see Reinoehl’s movements. While doing so, he noted that Oleole continued to give verbal commands by yelling, “Stop. Police,” as he moved to his right, away from the Escape, to avoid Merrill’s line of fire and to better see Reinoehl. Both officers indicated they could see Reinoehl continuing to manipulate something near his waistband.

Deputy Oleole gave the following account of these events:

“Reinoehl began to stumble out of his vehicle and I was now able to get out of our vehicle. Reinoehl was continuously reaching into his pocket or waistband area as if trying to retrieve something. I briefly lost a visual on him as he passed by his door. I was no longer firing my weapon and I yelled several times “POLICE, stop!” I was yelling as loud as could in a loud and clear commanding voice. There was no ambient noise that would have prevented him from hearing me. Reinoehl was moving away from me and toward the rear of his car. I knew there were other officers in that direction. He was still reaching for something, showed no reaction to gunshots and showed no signs of compliance with commands.

Whitehurst was behind the white truck in an unmarked charger. I could hear other gunfire going off. I perceived it to be other officers firing their weapons but I did not turn or look to verify. I maintained my view of the suspect - my fear was that he would do whatever it takes to get away including hostages and harming civilians or other officers. He was a danger to everyone around him. The suspect was not responding to the gunfire and was still trying to retrieve something in his waistband or pocket. I was still afraid that this suspect was trying to retrieve a weapon and he was going to try and kill me or anyone around me. I again fired

my rifle at Reinoehl to stop him from retrieving what I believed to be a firearm killing someone. Reinoehl's body showed no reaction of being hit by any round. Reinoehl was able to make it back towards another vehicle that was parked behind his vehicle. As he reached the back of the other vehicle he turned towards TFO Whitehurst. Reinoehl was still reaching for his pocket or waistband area and I continued to fire as I was in fear that he was still trying to grab a gun. I thought that if he were able to retrieve it he would fire on anyone in the area or shoot and kill me.

I continued firing until Reinoehl fell to the ground face down with both of his hands under his body. I stopped firing. He was no longer reaching and no longer an immediate threat."

Officer Merrill gave the following account of these events:

"As Reinoehl was opening the door and starting to get out, I ran around the back of the SUV to the passenger side near Oleole's position. I went to the passenger side of my SUV as Reinoehl was on that side of my car. I believe Oleole may have moved to my right which would put him further away from my SUV but still on the passenger side. I was aware that other officers were approaching from behind and to my left (driver's side) of my SUV.

As I was running around the SUV and coming up on the passenger side, I heard Oleole yell "Stop, Police." Reinoehl did not stop. As I arrived at the passenger side of my SUV, I saw Reinoehl was mostly out of the Jetta. He started turning away from us. I recall yelling "show me your hands" at Reinoehl as well. Reinoehl did not comply with either command.

Reinoehl started to run towards the rear of the Jetta in the direction of the apartments where I saw the child playing earlier. I was worried that he would take the child or another person hostage if he got away. I also knew that other PNVOTF officers were in the area and may not be fully aware of the events unfolding from their locations.

As Reinoehl started running, I could see that Reinoehl's hands were at or near his waist in front of his body. His body was initially facing away from me when he started running. His hands were in a lower position near his waistline and he appeared to be trying to do something the gun while he was running. As he got a few steps away from us and towards side of a pickup truck that was parked behind the Jetta, Reinoehl turned his upper torso in a right twisting motion towards Oleole and I, while continuing to run. As he did so, he started raising his right arm up and towards us.

I believed he was turning to fire the gun at Oleole and I. I feared for our lives. In order to defend myself and Oleole, I fired my rifle at Reinoehl. I fired my rifle more than once to stop the threat we were facing. Reinoehl continued to run a couple of steps and then fell to the ground on his stomach and landed with his hands in the front of and underneath his body. He fell on the roadway near a cluster of mailboxes.”

Deputy Gocha provided the following statement of these events:

“Reinoehl opened the door of his car with his left hand and exited the vehicle. Reinoehl was now out of the vehicle and crouched and looking around. He appeared to be assessing the area so he could take a defensive position and engage us. I could still hear gunfire going off. Reinoehl at no time attempted to put his hands in the air or get on the ground in a prone position. He did not say anything and in no way appeared as if he was going to surrender. I did a full emergency reload and brought my weapon back up pointed toward Reinoehl when I saw Reinoehl continue to try to pull something out of his right pocket with his right hand. He looked for a brief second around as if he was deciding where to run. I was in constant fear of being fired on and killed. He was still reaching for something in his pants or waistband and I was fearful that he would be able to retrieve a gun or a weapon from his pants and be able to kill one of the other law enforcement officers. I began firing again at Reinoehl. He was still continuously trying to pull something out of his right pocket and he ran east alongside the white truck. Reinoehl stumbled but never stopped trying to retrieve the item from his pocket. As Reinoehl ran from where I was standing, he was running towards two more members of the Task Force and the residential complexes. The other officers appeared to be close to the suspect, all within 50 feet and some closer than others. With the extremely violent crime Reinoehl was wanted for, his access to firearms, his active flight from Officers, and his active attempted to retrieve a suspected firearm from his pocket, I was fearful that if Reinoehl was able to get away it would place the public and responding Officers in great peril. I did not want him to get to the apartments where he could potentially take someone hostage or enter an apartment and barricade with innocent civilians.

As Reinoehl passed the rear of the white truck parked in the area and moving closer to TFO Whitehurst and Deputy US Marshall McCluskey I was still afraid he would be able to pull out a weapon. He was still digging into his right pocket and if he had been able to pull out a weapon he could have fired on and killed any one of us in the area. I had no other options to defend my life or the lives of the other LEOS and I discharged my firearm again. Reinoehl then collapsed to the ground facedown near the mailboxes with his hands still under his waistband. I stopped firing as he was falling and then he was on the ground and

wasn't moving so I did not fire again. All of this happened within seconds. From the first time I fired to last time."

In a written answer in response to a question submitted by investigators, Gocha gave the following clarifying statements:

"When I say that I 'went left into the open area' My movements are as follows: As I exited the vehicle I moved to my left parallel to the suspect vehicle and along the passenger side of that vehicle. I was in motion for the first round of shots.

When Reinoehl 'exited' his vehicle he moved towards the rear of his vehicle along the drivers side and I continued to parallel him from the other side of the same car.

Reinoehl moved the length of his car and over to truck parked behind him on the driver' s side. I statyed [sic] on the passenger side of that truck. I lost site of his body when he went behind the truck but could still see his feet. Reinoehl ran alongside the driver' s side of the truck as I reloaded. I slowed down or stopped for a moment as I could only see Reinoehl' s feet and legs under the truck as he stumbled forward but was able to maintain his balance to continue moving forward. I moved alongside the passenger side of the truck, parallel to Reinoehl. I again saw Reinoehl when he exited from behind the truck and was near the mailboxes. At that time I now had a clear view of him and I could see him tying [sic] to pull something out of his pocket."

Specialist Whitehurst provided the following statement:

"As soon as I was in position, Reinoehl exited his vehicle and began running east on 3rd Way SE. When Reinoehl was about even with the rear bumper of the Chevrolet pickup, he fell down in the street. When he fell, Reinoehl had his right hand in his right front pants pocket. It appeared he had a cell phone in his left hand, and he was bleeding. Reinoehl was approximately 20 feet away from me at that time.

I covered Reinoehl with my duty weapon and yelled, 'Police-stay down!'. Reinoehl, with his right hand still in his pocket, quickly stood up and faced me. I yelled, 'Police, police-stop!' I yelled "Police" approximately three times in the moment. Reinoehl did not comply, but appeared to be attempting to pull his right hand out of his right front pocket.

With his left hand, while still facing me, Reinoehl lifted up the front of his shirt with his cell phone still in his left hand. It appeared that Reinoehl was having

difficulty removing whatever was in his right front pocket, and raised up his shirt to assist. Once his shirt was pulled up, Reinoehl yanked upward with his right hand from his right front pants pocket in a drawing motion. I could see from the bulge and outline in Reinoehl's right front pants pocket that he had something in his right hand consistent in size and shape with a pistol. As I watched Reinoehl's right hand start to come out of his pocket, I saw a portion of a small dark item in his hand that appeared to be a firearm. Fearing for my life, and the lives of my partners and civilians in the area, I raised my duty weapon to Reinoehl and fired two times. As I fired, I heard other gun shots over my right shoulder.

Immediately after I fired, Reinoehl spun to his right, to a couple steps to the east, and fell onto the street. Reinoehl laid facedown, with his head pointing to the east and his feet pointing west. Reinoehl's left hand lay at his side; his right arm was under his body. When Reinoehl turned and fell, I no longer perceived an immediate lethal threat and stopped firing. I lowered my weapon and repeatedly commanded Reinoehl to 'Show me your hands!' He did not respond."

Another civilian witness, Chad Smith, provided an account what he witnessed to a Washington State Patrol detective who was part of the investigative team. Smith resides in a nearby apartment and was outside working on a car with a neighbor when the events unfolded. He reported his wife and two children were also outside, but their precise location was not described. Smith related that his attention was drawn to a silver Ford SUV speeding down School Street at a speed he estimated to be 50 to 60 miles per hour. He related that when the SUV passed a Chevy SUV, that vehicle pulled out and sped toward the same area. The Ford SUV turned onto 3<sup>rd</sup> Way while the Chevy proceeded through the grass, eventually coming to stop in front of the Jetta.

Smith went on to say that initially, he thought it was a road rage incident but then heard shooting and believed it may be gang activity. He was clear there were no lights, sirens, or other indication that law enforcement was involved. He did not hear any yelling prior to the shooting. As he moved a little closer to see what was happening, he noticed officers positioned behind the SUVs shooting toward a figure standing on the other side of a white truck who was backing away from them. He described the officers as "kind of like ducked down" behind the SUV as if they were taking cover. Later in his statement he related that he thought he saw something in the hand of the man backing away but could not be sure. He did assume, however, that the man had a gun and was firing at the officers.

Smith related that there were "two or three different waves" of gunfire, with a variation in the sound of the shots, one being louder and the other being "quiet and fast." He went on to say that following the first volley of gunfire, "everything went quiet for about 10 to 15 seconds..." and then there was a "second wave of, of [sic] shots." Then the shooting stopped. After waiting a short time, he approached and saw a body on the ground. Smith told the detective he believed

the first shot was fired from the Jetta, although his basis of knowledge for that statement is not clear. He did say he heard 10 or 15 quieter shots before he heard the first “pop,” which he previously described as being louder.

Garrett Louis, a resident of a nearby apartment, was also outside watching his young children just prior to the shooting. Louis, who was later interviewed by Thurston County Sheriff’s Office detectives, related that he noticed two SUVs drive quickly and “erratically” to a position blocking another car from leaving. The vehicles had no markings or lights and he did not know they were police vehicles. He did not see any other vehicles drive up at that time.

Louis was watching his two children and a neighbor child and as the vehicles parked, he was immediately concerned for their safety. Two of the children were playing in a location close to him and he immediately went to them as the shooting started. He estimated the shooting started within five seconds of the vehicles stopping. He heard no yelling or commands before the shooting started. He was able to grab the children and get them to a safe location. His older son, who will be referred to by his initials, S.L., was riding his bike in an area near where the cars parked. As the shooting erupted, he was also watching S.L. He did not see any other people in the area at that time. He told them that he saw Reinoehl running from the Jetta as the shooting was going on. He did not see Reinoehl with a gun and did not believe any shots were being fired toward police. He made his way to S.L., removed him from his bike and brought him to a safe location.

A detective also spoke with S.L., who told detectives that he was riding his bike when the shooting started. He immediately went behind what he called a “shed,” at which time his father grabbed him and took him to safety. S.L. told detectives that he was hit by a “spark” from the gunfire, although he could not explain further what that meant. His father told detectives that S.L. had a small abrasion on his ankle but did not know what caused it. S.L. further told detectives that the guy the police were shooting at was shooting back at them. He said he saw him with a gun, although he did not see the gun and could not describe it. He also said he clearly knew which of the men were police because they were wearing vests and had badges.

Once Reinoehl was on the ground, Officer Oleole called out on his radio, “shots fired, shots fired.” Deputy Gocha retrieved a ballistics shield from his vehicle and the officers used the shield for cover as they approached Reinoehl and yelled verbal commands. The officers soon confirmed Reinoehl was unresponsive and began administering CPR, while another officer called out on his radio for a medical response. When medics arrived, they confirmed Reinoehl was deceased.

As the officers approached Reinoehl, they saw that his right hand was underneath his body and appeared to be holding an object which was still partially in his pocket. That item was determined to be a .380 caliber handgun. A later examination would reveal that the clip of the handgun clip was fully loaded and there was no round in the chamber. The officers also located a fixed blade knife in a sheath on Reinoehl’s belt, along with a small empty pouch. The lead detective opined in his report, based on his observations, that the handgun found would have fit in the empty pouch.

When the shooting first began, the Thurston County 911 center received calls about the gunshots and immediately dispatched Thurston County Sheriff's Deputies to respond. At first, the Thurston County deputies did not know the shooting involved law enforcement officers because they had never been alerted to the task force's presence in Thurston County. While enroute, they learned that law enforcement officers were involved as bystanders and reported that to the 911 center.

Because the shooting occurred in Thurston County, and because no Thurston County deputies or officers were involved in the shooting, it was decided that the Thurston County Sheriff's Office would be the primary agency to investigate the shooting with the assistance of the area III Critical Incident Investigation Team, comprised of detectives from several other agencies. Detective Mickey Hamilton of the Thurston County Sheriff's Office was assigned to be the lead detective.

The Jetta was impounded by the Thurston County Sheriff's Office and moved to a secure evidence location. Later, it was searched by Detective Hamilton with the assistance of a Washington State Patrol Crime Scene Response team. In the front passenger seat of the Jetta, they located a dark grey backpack which, when searched, was found to contain a disassembled .22 caliber AR-15 style rifle, with each piece wrapped in clothing. There was also a loaded clip in the backpack and a zip-lock style sandwich bag containing many more rounds of .22 caliber ammunition. In addition to the backpack, they also located a black fanny pack-style bag which, when searched, was found to contain 29 additional .380 caliber rounds of ammunition. The fanny pack also carried a Washington State ID card for Michael Reinoehl.

In the rear passenger side area of the Jetta, lying on the floor between the front and back seat, WSP investigators located a spent .380 caliber shell casing. A Crime lab analysis later confirmed that the shell casing had been fired by the handgun found in Reinoehl's possession when he was killed. However, there is no way to determine when it was fired or how it came to be in the location it was found.

An autopsy examination of Mr. Reinoehl's remains was performed on September 9, 2020 by forensic pathologist Dr. Eric Kiesel. During the autopsy, Dr. Kiesel recovered a 9mm bullet from Reinoehl's back, a 9mm bullet from his head, and a .223 caliber bullet from the back of his neck. The cause of Reinoehl's death was attributed to gunshot wounds to the head and torso and the manner of death was determined to be homicide.

On March 1, 2021, the WSP Crime Lab issued a report following examination of the recovered bullets and weapons. Following analysis, a forensic scientist determined that the 9mm bullets recovered from Reinoehl's head and back were fired by the Glock pistol collected from Deputy Gocha. The .223 caliber bullet recovered from Reinoehl's neck was fired by the rifle collected from Officer Merrill.

## Jurisdiction to Review

In conducting this review, I am compelled to note that the jurisdiction of this office to review this use of force under Washington State law is unclear. Generally, federal officers may be immune from criminal prosecution under state authority under the Supremacy Clause to the United States Constitution.<sup>1</sup> This immunity applies when federal officers are performing their official duties while acting under the authority of United States law.<sup>2</sup>

An example of the application of this doctrine, commonly known as Supremacy Clause Immunity, is outlined in the case of *Clifton v. Cox*<sup>3</sup>, a case decided in 1977 by the United States Court of Appeals for the 9<sup>th</sup> circuit (which includes Washington State). In that case, a United States Drug Enforcement Administration task force made up of state and federal officers was serving a search warrant at the site of a suspected drug manufacturing operation in California. Along with the search warrant, the officers obtained an arrest warrant for a suspect named Dickinson, one of the owners of the property. To serve the warrant, the officers were transported to the property by helicopter, which landed in front of a cabin located on the property, creating significant noise, and raising considerable dust and debris. As the agents jumped out of the helicopter and ran toward the cabin, one of the officers lost his footing and fell. Clifton, another officer in the task force, believed his fellow officer fell because he had been hit by gunfire. With this in mind, Clifton forced entry into the cabin just as Dickenson jumped into the back yard and fled toward a nearby wooded area. Clifton drew his pistol and pointed it at Dickenson calling “halt,” waited a few seconds and called “halt” again. After waiting another moment, Clifton shot Dickenson in the back, who later died from his wound on the way to the hospital.

Clifton was indicted in state court on charges of second-degree murder and involuntary manslaughter and in response, he petitioned a federal court for a Writ of Habeas Corpus seeking his release from state custody. That petition was granted by the Federal District Court and later upheld by the Court of Appeals. The court found that the officer could assert immunity because he honestly and reasonably believed that: (1) the fleeing suspect was Dickinson, the individual named in the arrest warrant; (2) the suspect had just shot a fellow agent; and (3) the fleeing suspect was potentially armed and dangerous. In its decision, the Court of Appeals upheld the doctrine that “a federal officer cannot be held on a state criminal charge where the alleged crime arose during the performance of his federal duties.”<sup>4</sup> The court went on to hold that this immunity only applies when the means employed by the officers is “reasonable in the discharge of his duties.”<sup>5</sup> Reasonableness includes a determination of not only the subjective belief of the officer, but also an objective review of the officers’ actions. After reviewing the facts, the court

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<sup>1</sup> See *In Re Neagle*, 135 U.S. 1; 10 S.Ct. 658 (1890)

<sup>2</sup> Id. See also, *Clifton v. Cox*, 549 F.2d 722 (9<sup>th</sup> Cir. 1977)

<sup>3</sup> Id.

<sup>4</sup> *Clifton* at 725 (citing *Neagle*, Id.)

<sup>5</sup> *Clifton* at 728.



found that Clifton's actions were reasonable and upheld the issuance of the writ freeing the officer from state prosecution. Other courts have held similarly.<sup>6</sup>

In the present situation, there is little question that the officers involved were acting as federal agents. All officers were commissioned as Special Deputy US Marshals and were acting at the direction of a Deputy US Marshal. Their stated objective was to arrest Reinoehl pursuant to the warrant issued for a charge of murder. In my opinion, if the state were to file criminal charges against any of these officers, a federal court would likely be petitioned to review the case to determine if federal immunity applies. If that court deemed the officers' actions reasonable, then immunity would apply, and the state would be barred from pursuing a criminal prosecution.

I include this section to note that this office's jurisdiction to review this use of force under state law would likely be challenged. I strongly recommend this matter be reviewed by the United States Attorney's Office or other appropriate federal authority to determine if the use of force was in violation of federal law or policy.

### Legal Analysis

In Washington, law enforcement officers are authorized to use deadly force under very limited circumstances. Use of deadly force by law enforcement is regulated by RCW 9A.16.040 which reads in pertinent part as follows:

(1) Homicide or the use of deadly force is justifiable in the following cases:

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(b) When necessarily used by a peace officer meeting the good faith standard of this section 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; or

(c) When necessarily used by a peace officer meeting the good faith standard of this section or person acting under the officer's command and in the officer's aid:

(i) 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....

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(2) In considering whether to use deadly force under subsection (1)(c) of this section, 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 physical harm to others. Among the circumstances which may be considered by peace officers as a "threat of serious physical harm" are the following:

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<sup>6</sup> See *Idaho v. Horiuchi*, 1998 U.S. Dist. LEXIS 7667 (1998); *Wyoming v. Livingston*, 443 F.3d 1211 (2006); *Texas v. Kleinert*, 855 F.3d 305 (2017).

(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, where, if feasible, some warning is given, provided the officer meets the good faith standard of this section.

(3) A public officer covered by subsection (1)(a) of this section shall not be held criminally liable for using deadly force without malice and with a good faith belief that such act is justifiable pursuant to this section.

(4) A peace officer shall not be held criminally liable for using deadly force in good faith, where "good faith" is an objective standard which shall consider 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.<sup>7</sup>

In reviewing the use of deadly force by a peace officer, the role of the Prosecuting Attorney is to provide a legal opinion on whether the use of deadly force was justified, and, if not justified, determine whether criminal charges should be brought against the officers. Washington law provides guidance to prosecutors when reviewing cases for criminal charges. RCW 9.94A.411 reads in pertinent part:

(2) Decision to prosecute.

(a) STANDARD:

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.<sup>8</sup>

Washington also adopts a fundamental principal in criminal jurisprudence in RCW 10.58.020 which provides, "Every person charged with the commission of a crime shall be presumed innocent until the contrary is proved by competent evidence beyond a reasonable doubt...."<sup>9</sup> Thus, in order to proceed with a criminal prosecution against any of the involved officers in this case, a Prosecuting Attorney must be able to produce sufficient evidence to prove that the use of deadly force was not lawful beyond a reasonable doubt.

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<sup>7</sup> RCW 9A.16.040

<sup>8</sup> RCW 9.94A.411(2)

<sup>9</sup> RCW 10.58.020

This case presents several instances where deadly force was used by several different officers. Each of these instances must be reviewed separately, considering the knowledge and perspective of each officer at the time the force was used. The use of deadly force is justified if it was used without malice, in good faith, and in compliance with state law.<sup>10</sup>

The analysis in this case actually begins with the initial briefing of the involved officers when they were provided background information about Reinoehl. All of the officers indicated in their written statements they were aware that Reinoehl was wanted for murder and that a warrant had been issued for his arrest. They were aware of the general circumstances of the murder, including that Reinoehl was accused of shooting the victim with a handgun that had never been recovered. Thus, each officer knew a judge had determined there was probable cause for Reinoehl's arrest for murder.

In addition, the officers received information that Reinoehl was believed to be currently armed with a handgun, an assault style rifle, and a shotgun. They were advised of social media posts attributed to Reinoehl indicating he would resist efforts to arrest him and was at war with the police. This background information is important, because at the time of the shooting the officers were already aware of Reinoehl's propensity to violence and his stated intent to evade and/or resist arrest.

The officers' concerns about Reinoehl being armed were corroborated when they spotted a person who they believed was Reinoehl during their surveillance. In addition to identifying him, they were immediately looking for weapons he may be carrying. Deputy Gocha specifically noted two pouches on the person's belt, one of which appeared to be holding a knife, with the other being large enough to carry a small pistol. They also noticed he was carrying a black bag which they believed was large enough to carry a rifle.

The officers' statements, combined with the recorded radio traffic, indicate they became increasingly confident the person they were watching was Reinoehl which was further confirmed when he entered the Jetta, a vehicle they knew to be associated with Reinoehl based on the information shared in the briefing. As they watched him get into the Jetta and start the engine, they were faced with the decision to make an arrest before he left in the vehicle or continue the surveillance to look for another opportunity.

The evidence suggests that Deputy Oleole and Officer Merrill ultimately made the decision to move in to make the arrest, and the other officers followed when they heard the announcement on the radio. The Ford Escape, driven by Officer Merrill, and the Chevy Traverse, driven by Deputy Gocha, both approached the Jetta very quickly, blocking it in to prevent Reinoehl from leaving.

The first use of deadly force was by Deputy Oleole, who was in the passenger seat of the Ford, armed with his department issued rifle. In his statement he describes clearly seeing Reinoehl in the driver's seat of the Jetta and noticing a change in his facial expression, giving Oleole the

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<sup>10</sup> RCW 9A16.040(3)

impression that Reinoehl recognized they were law enforcement. At the same time, Oleole reports that he saw Reinoehl making movements with his arms that appeared as if he was trying to grab something. He feared that Reinoehl was grabbing a gun and therefore pointed his rifle at him and opened fire from inside the Ford, shooting out through the windshield.

The first issue in analyzing any use of deadly force is whether the use of deadly force at that moment was “necessary” under the current circumstances. RCW 9A.16.010(1) defines “necessary” to mean that “no reasonably effective alternative to the use of force appeared to exist and that the amount of force used was reasonable to effect the lawful purpose intended.”<sup>11</sup>

If Reinoehl had produced a handgun and pointed it at the officers, there is no question that the use of deadly force would be necessary and justified. Therefore, the issue is whether Deputy Oleole, possessing the knowledge he did at that time, should have or could have reasonably delayed opening fire until he actually saw a weapon produced. In my opinion, the law does not require him to do so under these circumstances.

The previously cited use of deadly force statute provides guidance. In considering whether to use deadly force, officers are directed to consider whether a weapon has been displayed, OR whether there is probable cause to believe that the suspect has committed a felony involving the infliction of serious bodily harm. The use of the word “or” indicates a legislative intent that officers need not see a weapon displayed if there is probable cause to believe the suspect has already inflicted serious harm on another, especially if that harm was inflicted by a weapon such as a firearm.

In the present case, Reinoehl was wanted for murder and was believed by Deputy Oleole and the other officers to be armed. When Reinoehl apparently realizes he is being confronted by police and appears to grab for something out of the sight of the officers, there was no reasonable alternative but to use deadly force. If Reinoehl had produced a gun, he could have opened fire on the officers, instantly leaving Oleole or any other officer without time to react or prevent him from firing. Under these circumstances, I do not believe it is reasonable to expect Oleole to delay firing until he actually saw a weapon.

I also note that Deputy Oleole’s actions are consistent with someone firing in defense to a perceived immediate threat. Oleole would have had a much better tactical position if he had fully exited the Ford and allowed himself time to get postured before aiming or firing his rifle. The fact that he fired his rifle while still inside the Ford, and shot through the Ford’s windshield, corroborates his statement that he believed Reinoehl was trying to grab a gun and could potentially open fire before he could get out of the car. In my view, this corroborates his belief that Reinoehl was about to use immediate force against the officers.

The next question is whether Deputy Oleole was also acting in “good faith” when he opened fire. In other words, would another similarly situated reasonable officer also have felt the use of deadly force was necessary. In my opinion, Oleole was acting in good faith and any other officer

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<sup>11</sup> RCW 9A.16.010(1)

in the same circumstances would likely have determined that the use of deadly force in that moment was necessary. Therefore, I conclude that Oleole's initial use of deadly force was justified under Washington State law.

Officer Merrill's observations further corroborate the perceptions of Deputy Oleole. As Merrill drove the Ford into position, he too noticed a significant change in Reinoehl's facial expression consistent with recognition they were law enforcement officers. He described seeing Reinoehl reaching toward the interior front console area and saw Reinoehl raising an object in his hand. Merrill thought it was weapon. As he came to a stop, he momentarily looked down to put the car in park and then heard gunshots followed by being struck with shards of glass. At first, he thought he was being shot at, and realized Oleole was shooting out through the windshield.

It is not clear if Merrill opened fire at this point, but his observations are consistent with Oleole and justify the use of deadly force in that instance. If he had fired his weapon, he too would have been justified in doing so.

The next use of deadly force is by Deputy Gocha who was the driver of the Chevy Traverse. In his statement, he relates similar observations as his vehicle approached the Jetta. He indicated he could clearly see Reinoehl in the driver's seat and observed his facial expression change dramatically. He relates that he saw Reinoehl's mouth move in exclamation, as he reached down to his waistband area. At this point, Gocha got out of the Traverse, began moving to his left with his handgun out and pointed it at Reinoehl. He watched Reinoehl continue to move as if trying to retrieve something and then opened fire. At the time he fired his weapon, he also heard other shots being fired. I cannot confidently determine from the evidence which officer actually fired the first shot. However, given the descriptions of the officers, it is reasonable to conclude that they opened fire in close succession based on their similar observations.

The analysis of Deputy Gocha's use of deadly force is very similar to that of Deputy Oleole. Both officers were provided the same background information, and both believed that Reinoehl was likely armed. The observations of Reinoehl's facial expressions along with his furtive movements presented Gocha with the same circumstances as Oleole. I conclude, for the reasons stated earlier, that Gocha's use of deadly force was necessary and that he too was acting in good faith. Therefore, his use of deadly force at this instance was also justified.

As the initial shots were being fired, Reinoehl was able to open the driver's-side door of the Jetta and eventually step out in what Deputy Gocha described as a crouching position. Gocha also relates that Reinoehl was looking around as if assessing the area. He then started to move away from the officers along the Jetta and then along the side of a white pickup truck parked directly behind the Jetta. At this point in time, it was obvious to Reinoehl that they were law enforcement officers because all of them were out of their vehicles wearing clearly marked tactical vests. Rather than make any effort to surrender, it appears Reinoehl was now attempting to evade arrest and possibly escape.

At this point in time, the use of deadly force analysis changes slightly in that officers need to consider whether Reinoehl could attempt to take someone hostage or otherwise inflict harm in order to escape. Washington law also authorizes officers to use deadly force against a fleeing suspect when warning is given, and it appears the suspect may escape.<sup>12</sup>

All three officers stated that very concern in their written statements, as they described Reinoehl moving away from them and toward the back of the white truck. All three officers also described Reinoehl continuing manipulation of something in his pocket or at his waistband as he moved away from them. They also stated that they continued to believe Reinoehl was armed, although none of them had yet observed a gun. All three then fired additional rounds at Reinoehl as he proceeded to the back of the white truck until he fell.

During this use of deadly force, it was clear that Reinoehl knew the other men were law enforcement and appeared to be actively attempting to evade capture or get to a position where he could use force against the officers. There is also no question that he had warning, both verbally and by the circumstances, that law enforcement wanted him to surrender. I find that the officers were also right to be concerned that if Reinoehl were allowed to move to an area where civilians were present, he may attempt to take a hostage or otherwise use them as a means to escape. His apparent desperation makes this a reasonable possibility. Under these circumstances, I find the officers use of deadly force at this point to also be justified.

The fourth officer to use deadly force in this incident is Corrections Specialist Whitehurst, who was driving the Dodge Charger and was originally surveilling the area from the east. In his statement, he relates hearing the instruction to move in and he did so in his Dodge Charger.

I note that the evidence regarding the use of emergency lights in the law enforcement vehicles is conflicting. Specialist Whitehurst stated he believed that the emergency lights in the Ford and the Chevy were activated as he drove up in the Charger, which also had its lights activated. Other witnesses, however, are clear that the Ford and the Chevy did not have their lights activated. One witness does corroborate that the lights in the Dodge Charger were activated. There is no clear documentation by officers who arrived on scene following the shooting on whether any emergency lights in the unmarked cars were activated when they arrived. As a result, I cannot conclude with any certainty whether the emergency lights in the unmarked cars were activated at the time they approached. However, this does not change my analysis of the use of deadly force because such analysis is done from the perspective of the involved officers, not the suspect. The presence of emergency lights is not a necessary factor to determine if the force used was justified.

By the time Specialist Whitehurst stopped his car, the initial gunfire was already occurring. He immediately exited the car, drew his weapon, and remained behind the car door for cover. He observed Reinoehl exit the Jetta and begin moving to the back of the white truck where he

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<sup>12</sup> RCW 9A.16.040(2)

stumbled and fell. Whitehurst went immediately to cover Reinoehl and ordered him to stay on the ground, noticing also that Reinoehl's right hand was in his right front pants pocket.

Despite Specialist Whitehurst's order, Reinoehl stood up and faced him while attempting to remove something from his pocket. Whitehurst notes in his written statement that he saw a portion of a small dark item that appeared to be a firearm. At this time, he fired two rounds from his handgun toward Reinoehl. Simultaneously, he heard other gunshots. Immediately thereafter, Reinoehl spun to his right took a couple of steps towards the east and fell.

The analysis for the use of force by Specialist Whitehurst is very similar to that of the initial shots fired by Deputy Oleole and Deputy Gocha. Whitehurst had the same background information as the other officers and knew Reinoehl was wanted for murder. He also knew that shots had been fired and had no way of determining who fired the shots and whether any had been fired by Reinoehl. Given Reinoehl's continued furtive movements with the object in his pocket, and Whitehurst's observations of an object that appeared consistent with a gun, he had reason to believe that Reinoehl was attempting to draw a weapon to use against him. There was no reasonable alternative but for Whitehurst to fire his weapon. I believe any other reasonable officer in the same situation would have done the same. Therefore, I conclude that Whitehurst was also justified in his use of deadly force.

### **Other Observations and Remarks**

While I have determined that the use of deadly force in this case was justified under Washington State law, there are aspects of the planning and management of this operation which deserve additional comment and scrutiny.

First, while this is a federal task force, it is based out of Pierce County and comprised of local officers working in Pierce County. There is no question they have authority to operate in Thurston County if they are doing so in their federal capacity. That being said, this task force should have provided the local law enforcement agency with notice that they were planning on operating in their jurisdiction, especially when they are attempting to apprehend someone as high risk as Reinoehl. In the present case, the local law enforcement agency for the involved area was the Thurston County Sheriff's Office. I find no evidence that the Sherriff's Office was provided notice, and when the shooting erupted, the responding deputies were unaware that a US Marshal's task force was operating in their jurisdiction. In my view, the Thurston County Sheriff's Office should have been provided notice of the presence of the task force. Fortunately, no bystanders were injured and responding officers were able to determine that other law enforcement officers were involved before they arrived on the scene.

I also question the tactical decision of the task force continuing the operation without finding a way to effectively communicate with each other. I was not surprised that officers could not communicate well on Pierce County frequencies while operating in Thurston County. In my view, this was a predictable issue for which a contingency plan could have been developed in advance. The communication deficiency created confusion during the critical tactical decision to attempt

an arrest and it appears that the leader of the team could not effectively communicate a decision to the other officers. In fact, the recorded radio traffic captured a debate among the members where some officers felt they should move in and at least one other expressed concern they were too far away and should wait. It appears the decision to proceed with attempting an arrest was actually made by the two officers who simply decided to move in.

Finally, I feel compelled to say how fortunate it was that no bystanders were injured or killed as a result of this confrontation. There is a distinct possibility that a small child was struck by some sort of object or debris during the shooting. He described being hit by one of the “sparks” from the officers’ gunfire. We do know that one bullet struck a nearby apartment building, travelling through the exterior wall, through a room, and lodged in another interior wall. Fortunately, no one was in its path.

I raise these concerns to recommend that this case be used to review task force procedures and policies to minimize danger to suspects, witnesses and officers during high-risk events.

### **Conclusion**

The investigation of this case provided considerable information and I wish to recognize the investigators in the Region III Critical Incident Investigation Team in their efforts to conduct an objective and thorough investigation of this officer involved shooting. After spending many hours reviewing events and circumstances which literally unfolded in a matter of seconds, I recognize that police officers are sometimes faced with making split-second decisions that have significant impact on everyone involved, including their loved ones, and the community in general.

The officers involved in this shooting were faced with exactly this type of split-second decision. In my view, Washington Law does not require officers to actually see a weapon when they have probable cause to believe a person is armed and a good faith belief the person is intending use deadly force against officers or others in an effort to escape capture. After considering the background information about Reinoehl known to the officers, along with the information presented as a result of the investigation and determining what I believe to be the facts and circumstances known to the officers at the time they acted, I have concluded that their use deadly force was justified under Washington State law. As such, no criminal charges will be filed against the involved officers by this office.