

Use of Force – Fatality of:

**Andrea Churna**

King County Sheriff's Office, #C20029929



King County Prosecuting Attorney

Public Integrity Team

July 27, 2023

LEESA MANION (she/her)  
PROSECUTING ATTORNEY



Office of the Prosecuting Attorney  
CRIMINAL DIVISION  
W554 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 296-9000

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**DECLINE MEMORANDUM**

**CONFIDENTIAL – NOT INTENDED FOR DISCOVERY PRODUCTION**

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DATE: July 27, 2023

TO: Dan Clark, Senior Deputy Prosecuting Attorney  
Chief – Criminal Division

Gary Ernsdorff, Senior Deputy Prosecuting Attorney  
Chair – Special Operations Unit

FROM: Joseph Marchesano, Senior Deputy Prosecuting Attorney  
Special Operations Unit – Public Integrity

SUBJECT: Law Enforcement Use of Force Fatality re: **Churna, Andrea (12/22/1980)**

Incident Information

*Date:* 9/20/2020  
*Involved Agency:* Redmond (RPD)  
*Involved Officer:* Mendoza, Daniel  
*Involved Officer:* Tomlinson, Ty  
*Involved Officer:* Barnard, Evan  
*Result/Type:* Fatality/Firearm

Investigation Information

*Investigating Agency:* KCSO  
*Lead Investigator:* Hawkins, John  
*Case Number:* KCSO C20029929  
*PBK Number:* 33-749603  
*Inquest Number:* TBD

## **I. INTRODUCTION**

### **1. Purpose of the Memorandum**

The King County Prosecuting Attorney's Office (KCPAO) is mandated by law to analyze certain incidents regarding police use of force and to determine if the action was justified or if there was a criminal action such that criminal charges should be filed.<sup>1</sup> Because the investigation and analysis are mandatory if specific criteria are met, the KCPAO's review of an incident does not implicitly signal that the use of force was either justified or that criminal charges are appropriate. Instead, the KCPAO is required to assist independent investigations involving police use of deadly force to enhance accountability and increase trust to improve the legitimacy of policing for an increase in safety for everyone.<sup>2</sup>

Pursuant to the Law Enforcement Training and Community Safety Act, an independent investigation must be completed when the use of deadly force by a peace officers results in the death, substantial bodily harm, or great bodily harm.<sup>3</sup> The independent investigation is conducted in the same manner as a criminal investigation.<sup>4</sup>

Additionally, the KCPAO shall inform the King County Executive whenever the investigation into a death involving a member of any law enforcement agency in King County is complete and also advise whether an inquest should be initiated.<sup>5</sup> There shall be an inquest into the manner, facts, and circumstances of any death of an individual where an action, decision, or possible failure to offer the appropriate care by a member of any law enforcement agency might have contributed to an individual's death unless the County Executive determines, based on a

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<sup>1</sup> 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.

<sup>2</sup> Id. See also WAC 139-12-010.

<sup>3</sup> RCW 10.114.011. See also WAC 139-12-010.

<sup>4</sup> Id.

<sup>5</sup> Executive Order PHL 7-1-5 EO.

review of the investigation, that the role of law enforcement was de minimis and did not contribute in any discernable way to a person's death.<sup>6</sup>

## **2. Status of the Independent Investigation**

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

## **3. 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, administrative action by the involved agency or any other civil action. The Team expresses no opinion regarding the propriety or likely outcome of any such actions.

## **II. OVERVIEW**

On September 20, 2020, Redmond Police Officers responded to the Modera Apartments after the 911 caller, later identified as Andrea Churna, reported that someone was in her apartment trying to kill her. Officers found Churna standing on the opposite side of her 4<sup>th</sup> floor apartment balcony, holding onto the railing. Churna claimed she shot at someone, she pointed a handgun at an officer standing in a courtyard, and she pointed a gun at officers in the hallway of the building. Officers gave Churna commands to lay down on the ground in the prone position, which she initially did, but when Churna continued to turn and reached for her apartment door, an officer discharged his patrol rifle at Churna, resulting in her death.

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<sup>6</sup> Id. `

### III. INVESTIGATION AND EVIDENCE

#### 1. Lead Investigator Reports – Hawkins, John

- Property Summary
- PowerPoint Presentation
- Summary Report
- Report 1/14/2021
- Report 2/18/2021
- Report 3/31/2021
- Summary Sheet 4/20/2021
- Report 4/20/2021

#### 2. Officer Reports and Statements<sup>7</sup>

##### *Redmond Police Department (RPD)*

- RPD – Barnard
- RPD – Barnes 9/25/2020
- RPD – Beard 9/25/2020
- RPD – Bollerud 9/26/2020
- RPD – Coats 9/29/2020
- RPD – Corbray 9/30/2020
- RPD – Edwards 9/25/2020
- RPD – Fein 9/28/2020
- RPD – Gresham 9/30/2020
- RPD – Hall 12/11/2020
- RPD – Hall 9/26/2020
- RPD – Hindmarch 12/3/2020
- RPD – Hindmarch 9/25/2020
- RPD – Hood 3/11/2021
- RPD – Hood 9/26/2020
- RPD – Hopkins 12/3/2020
- RPD – Jones 9/26/2020
- RPD – Jones 9/30/2020
- RPD – Lincoln 9/25/2020
- RPD – McCormick
- RPD – McCormick 9/26/2020
- RPD – Mitchel 9/29/2020
- RPD - Moser
- RPD – Moser 12/3/2020
- RPD – Patrick 9/29/2020
- RPD - Tomlinson

##### *King County Sheriff's Office (KCSO)*

- KCSO – Batt 9/22/2020
- KCSO – Devore 10/14/2020
- KCSO – Gerlitz 11/14/2020
- KCSO – Gerlitz 1/13/2021
- KCSO – Glasgow 9/24/2020
- KCSO – Glasgow 12/16/2020
- KCSO – McNabb 1/14/2021
- KCSO – McNabb 2/11/2021
- KCSO – McNabb 4/6/2021
- KCSO – Mellis 1/12/2021
- KCSO – Mellis 4/20/2021
- KCSO – Miniken 11/10/2020
- KCSO – Myers 9/28/2020
- KCSO – Pedersen 9/22/2020
- KCSO – Pope 9/22/2020
- KCSO – Skaar 10/12/2020
- KCSO – Skaar 9/21/2020
- KCSO – Walford 10/16/2020
- KCSO – Williams 12/13/2020

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<sup>7</sup> Date indicates the date stamp listed on the report or statement.

*Kirkland Police Department (KPD)*

- Kirkland – Carson 9/20/2020
- Kirkland – Dreher 9/20/2020
- Kirkland – Hopkins

3. Civilian Statements

- Churna, Timothy
- Joshi, Pranav
- Long, Reggie
- Revyn, Dawn
- Sperandio, Priscilla
- Thomas, Margaret
- Thomas, Michael
- Walker, Kaitlyn

4. Electronic Discovery

- FARO Scene Scan
- Photos – Apartment and Evidence
- Photos – Officers’ Approximate Locations
- Photos – Officers and Round Count
- Photos – Wall X-rays
- Text messages – Dawn and Andrea

5. Search Warrants

- Apartment #450
- Two Apple iPhones

6. Medical Records

- Medical Information Release
- Overlake Hospital 9/14/2020

7. CAD/MDT

- Redmond Fire Call Detail
- Redmond Fire Dept. 2020-0007601
- Redmond PD A200092073

8. 911 Call and Radio

- Transcript – 911 Calls and Radio

9. Autopsy and Toxicology

- Autopsy Photos
- Autopsy Report
- Autopsy Report Request
- Body Injury Diagram
- Toxicology Report

#### 10. Miscellaneous

- Mendoza – Certificate History
- Mendoza – Code of Ethics
- Mendoza – Conditional Job Offer
- Mendoza – Hire Notice
- Mendoza – Oath of Office
- Mendoza – Patrol Schedule
- Mendoza – Personnel Action Notice 11/13/2019
- Mendoza – Personnel Action Notice 12/14/2020
- Mendoza – Personnel Action Notice 12/3/2019
- Mendoza – Personnel Action Notice 2/13/2020
- Mendoza – Personnel Action Notice 8/28/2019
- Mendoza – Personnel Action Notice 9/23/2020
- Mendoza – Physical Ability Test Card 11/11/2020
- Mendoza – Physical Ability Test Card 11/6/2019
- Mendoza – Training Records
- Mendoza – Values of RPD
- RPD Policy Manual
- RPD Training Lesson Plan 2019

#### IV. INVESTIGATION SUMMARY<sup>8</sup>

On September 20, 2020, Andrea Churna (Churna) called 911 at approximately 21:22 hours to report that someone was inside her apartment trying to kill her. Churna’s call was transferred from NORCOM to a Redmond Dispatcher and Churna stated she was located at “Modera,” but she did not answer the dispatcher’s follow-up questions and the line disconnected. The dispatcher attempted to call Churna’s number twice, but the number was not in service. The dispatcher alerted officers to a call of “unknown trouble” at the Modera Apartments. Within one

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<sup>8</sup> 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.

minute of being dispatched, Redmond Police Department (RPD) Officers Barnard, Hood, and Tomlinson responded to Modera apartments, which is less than one mile from the RPD's station.

While officers arrived at the apartment and looked signs of a disturbance, the dispatcher continued to call Churna's number with no success. The dispatcher contacted the Verizon Security Assistance Team to get additional contact information while officers searched each floor in the apartment building. Verizon eventually found contact information for Churna, but the information was outdated.

After Officers Barnard, Hood, and Tomlinson arrived, a resident let the officers borrow a key fob that accessed the building and elevators. Because officers did not know where Churna was located or her apartment number, they split up and individually checked each floor for signs of a disturbance. After checking each floor and finding no signs of a disturbance, Officers Barnard, Hood, and Tomlinson reconvened on the fifth floor. Upon learning the 911 caller was named "Andrea Churna," Officer Hood asked Sgt. Jones to look for Churna's name in the apartment callbox, but he could not find her name. Officers Barnard, Hood, and Tomlinson descended a staircase to exit the building, but Officer Hood suggested they check the apartment's internal courtyard.



*Figure 1 - Fourth floor map of the Modera Apartments with inner courtyard and Churna's unit circled red.*

**1. Officer Hood<sup>9</sup>**

After entering the courtyard, Officer Hood saw a woman standing on the opposite side of an apartment balcony railing, holding the railing. Officer Hood confirmed that the woman was Churna and she stated she called 911 but her phone died. Churna stated her apartment number was unit #450. Churna told Officer Hood that she was climbing over the balcony railing because she did not feel safe inside her apartment, there was no one inside her apartment, and that “I shot at someone.” Given her statement and behavior, Officer Hood thought that Churna may be suffering from mental health issues. He relayed this information to officers via his radio and he continued to update other officers about what he observed and what Churna told him.

Officer Hood asked Churna to climb over the balcony railing, which she did. He asked if she had access to a firearm, and she replied “yeah” while running inside the apartment. When she emerged on the balcony, Officer Hood observed the profile of a dark-colored handgun in Churna’s right hand. She leaned her arm over the railing and pointed the handgun at Officer Hood. Officer Hood felt immediate fear for his life, but he recognized he could not fire at her from this distance and be certain that he would not accidentally strike another person or another unit. Instead, Officer Hood moved behind an exterior wall for protection, but he remained close

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<sup>9</sup> Officer Hood became a law enforcement officer in 2011 in Florida. He transferred to RPD in 2019.

enough to speak with Churna. Officer Hood notified other officers that Churna had a handgun, but he was uncertain if he also stated she pointed the handgun at him.<sup>10</sup> Officer Tomlinson confirmed receipt of Officer Hood's message and advised he and Officer Barnard would hold their positions and watch Churna's apartment door.



*Figure 2 - View from Churna's unit to inner courtyard.*



*Figure 3 - View from inner courtyard to Churna's balcony, circled red.*

Officer Hood peaked around the corner of the wall he used for cover and saw that Churna was still pointing the gun at him. He explained that to have peaceful contact with the officers, the gun needed to be out of play. He observed Churna go into her apartment and emerge empty-handed. Churna told him that she set the gun down on a table inside the apartment. Officer Hood asked Churna if her unit was unlocked, she quickly went back inside, then Churna emerged and said her door was unlocked.

Officer Hood started to tell Churna that it was important to follow commands and always keep her hands visible. However, Churna ran back inside during this instruction and Officer Hood notified the officers that Churna was inside the unit. Within seconds, Officer Tomlinson advised over the radio that Churna was pointing a gun at them. Immediately afterwards, Officer Hood heard several gunshots and an officer announced "shots fired" over the radio. After a few moments, Officers Barnard and Tomlinson stated they were not injured.

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<sup>10</sup> Police radio recordings confirm Officer Hood did not notify other officers that Churna pointed a handgun at him, but it does confirm he notified officers that Churna had a handgun.

Shortly after the gunshots, Churna reappeared on the balcony holding a black object that looked like a phone and Churna appeared to be speaking into the phone. Churna told Officer Hood that she did not shoot at the officers, they fired at her, and she was not injured. Churna told Officer Hood she was now holding a phone. Officer Hood asked Churna to throw the gun over the balcony, but she refused. He asked Churna to climb back over the balcony railing to keep her at a disadvantaged position, but she did not comply.

Officer Hood asked Churna what it would take to get her into custody peacefully and she stated that she would only turn herself into her ex-husband, later identified as Timothy Churna (Timothy). Officer Hood radioed this information to other officers and Sgt. Jones replied that Timothy was outside the apartment building. Officer Hood notified officers inside the apartment building that Churna was unarmed on the balcony if they felt this was a good opportunity to enter her apartment and take her into custody while she was distracted speaking with Officer Hood. Officer Mendoza replied they were going to hold their position and wait for a ballistic shield.

Officer Hood continued to tell Churna to stay on the balcony, but she disregarded his command by going back inside the apartment and Officer Hood notified the other officers. After a few seconds, Officer Mendoza announced over the radio that Churna was “proned out” followed shortly by another round of gunshots.<sup>11</sup> Officer Hood heard officers request aid and a medical kit. He exited the courtyard and briefly spoke with Timothy.

## **2. Officer Tomlinson<sup>12</sup>**

After checking the fourth floor for signs of a disturbance, Officer Tomlinson joined Officers Barnard and Hood to exit the apartment building. When the officers entered the apartment’s inner courtyard, Officer Tomlinson observed a woman, later identified as Churna, standing on the opposite side of an apartment balcony railing. Officer Tomlinson heard Churna

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<sup>11</sup> Several officers were asked to define “proned out.” Each officer provided a similar definition, describing a subject laying with on the floor with subject’s stomach facing the ground.

<sup>12</sup> Officer Tomlinson became a law enforcement officer in 2018. Officer Tomlinson initially declined to provide a voluntary statement after the incident. In March 2021, he submitted a voluntary written statement that was unsigned and not under penalty of perjury. He also declined to take part in in-person interviews with KCSO detectives.

stated she was in unit #450, so he and Officer Barnard went upstairs to the fourth floor. Officer Tomlinson heard Officer Hood advise Churna stated she shot at someone, and she may have a firearm. He also heard Officer Hood state that Churna did have a firearm.

When Officers Tomlinson and Barnard entered the fourth floor, they started to look for unit #450. As scanned the hallways, Officer Tomlinson heard Officer Hood advise that Churna went back inside her apartment. Immediately afterward, Officer Tomlinson heard a door open and saw Churna enter the hallway while moving her head, checking both directions of the hallway. Officer Tomlinson saw Churna look at him, saw she rapidly walked towards him, and he saw she was holding a black handgun in her right hand. Officer Tomlinson thought he was going to be shot at and he quickly stepped backwards into a different hallway to find cover.

Officer Tomlinson continued to back up approximately 10-15 yards and he saw Churna come down the hallway pointing the gun directly at him. He noted the gun was in her right hand, but the barrel was pointed directly at him. Officer Tomlinson saw the only other available sources of cover were the entryways for each apartment unit, but he noted they were not deep enough to hide in or take cover in. As Churna advanced towards Officer Tomlinson, he feared that she would shoot and kill him. Given the hallway layout and Churna's distance from him, Officer Tomlinson thought there were no other means of force available, so he discharged his handgun at Churna.

Officer Tomlinson observed Churna run back towards her unit, and he continued to back up further down the hallway. At this time, he did not know where Officer Barnard was located. Officer Tomlinson saw Churna step into the hallway again with the handgun in her right hand. Officer Tomlinson continued to fear that Churna was going to shoot him and he also feared that Churna may shoot Officer Barnard. Officer Tomlinson discharged his handgun towards Churna a second time, which caused her to run back towards her apartment.

Officer Barnard radioed that he was not injured. Officer Tomlinson radioed that he was also not injured, shots had been fired, but he did not know if Churna was injured. Officer Tomlinson reloaded his handgun. Other officers entered the hallway from the elevator and they advanced with Officer Tomlinson towards Churna's last location. As they approached, Officer

Tomlinson could not see Officer Barnard, but he heard Officer Barnard giving Churna commands to get on the ground.

When Officer Tomlinson reached the intersection of the hallways, he observed Churna lying on her stomach, facing away from the officers in front of her apartment. Officer Tomlinson noted the other officers present had more effective weapons, so he stepped behind Officer Mendoza, but this caused him to lose visual observation of Churna. He heard Officer Mendoza give Churna clear instructions to follow and that she would be shot if she failed to follow those instructions. Additionally, he heard, but could not see, other officers yell repeatedly for Churna to stay on the ground; however, he did not hear the officers speaking over each other. Officer Tomlinson then heard a rifle being discharged multiple times.

Moments after the shooting, officers moved towards Churna and Officer Tomlinson saw Officers McCormick and Moser render first aid to Churna. Officer Tomlinson and other officers did a protective sweep of unit #450 and he noted a black handgun on a table located on the balcony.

### **3. Office Barnard<sup>13</sup>**

After checking the third and fifth floor for signs of disturbance, Officer Barnard joined Officers Tomlinson and Hood to exit the apartment building. When they entered the courtyard, Officer Barnard observed a woman, later identified as Churna, standing on the opposite side of an apartment balcony railing. While Officer Hood stayed in the courtyard to speak with Churna, Officers Barnard and Tomlinson went back inside the building. Officer Barnard heard Churna say she may have shot someone. As Officer Barnard was going up the stairs, he heard Officer Hood advise that Churna had a gun. Given that Churna said she had shot someone, and that Officer Hood observed Churna with a handgun, Officer Barnard drew his handgun and held it at the low ready position.

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<sup>13</sup> Officer Barnard graduated from the police academy in January 2020. Officer Barnard initially declined to provide a voluntary statement after the incident. In March 2021, he submitted a voluntary written statement that was unsigned and not under penalty of perjury. He also declined to take part in in-person interviews with KCSO detectives.

Officers Barnard and Tomlinson exited the stairwell and walked eastbound down the hallway towards a visible corner into another hallway. At the corner of the hallways was a direction sign that pointed towards the hallways leading south and had unit #450 listed first. Officer Barnard positioned himself on the west side of the hallway, looking south towards unit #450, while Officer Tomlinson positioned himself on the east side of the hallway. Officer Hood advised Churna left the balcony and entered her apartment. Shortly afterward, Officer Barnard saw an apartment door open and Churna emerged, peeking her head out, then looking left and right very quickly. Officer Barnard believed that Churna saw them when she looked at them and she immediately stepped out of the door into the hallway, holding a handgun in her right hand. Churna held the gun down by her side, but before Officers Barnard and Tomlinson could issue commands, she pointed the gun in the direction of Officers Barnard and Tomlinson. Officer Barnard noted that Churna's hand was gripped around the handgun, and he feared that she would shoot or kill someone. Officer Barnard heard numerous shots come from Churna's direction and he immediately backed up and retreated from the direction he came, retreating towards the stairwell he previously exited. Officer Barnard took cover and advised over radio that shots were fired. He heard additional shots being fired down the hallway where he believed Officer Tomlinson was located, but he was not sure where Officer Tomlinson was located. Given that Officer Barnard did not hear any commands, he thought that Officer Tomlinson was being shot at or Officer Tomlinson was injured.

Shortly afterward, Officer Barnard heard Churna state, "the police are shooting at me." Officer Barnard looked towards Churna's direction and saw a phone in her left hand by her left ear and a handgun in her right hand. Churna faced Officer Barnard's direction, pointed the gun at him, and he heard a shot being discharged from her location. Officer Barnard felt she was at close enough range that the Churna could kill him, so he discharged his weapon. Churna ran out of sight and Officer Barnard heard Officer Hood advise Churna was on the balcony without the handgun. Officer Barnard returned to his initial position in the hallway where he first saw Churna exit her apartment.

While Officer Barnard stood in this position, Churna entered the hallway and Officer Barnard gave her commands to show her hands, which she placed in the air. He advised her to turn away and lie flat on the ground with her hands at her side and her feet crossed, which she

did. At this moment, Officer Barnard was alone with Churna while he gave her commands. Churna was wearing yoga-type pants and a shirt. While waiting for other officers to arrive, Officer Barnard told Churna not to move or she would be shot. Churna's body was positioned parallel to the walls. For Churna to enter her apartment she would have to rotate 90 degrees to the east. Officer Mendoza arrived, taking Officer Tomlinson's previous position, and Officer McCormick arrived, taking Officer Barnard's current position. There is no indication in Officer Barnard's report that he told the other officers that Churna did not have a weapon on her person at the time she exited her apartment and moved into the prone position.

The officers waited for additional officers to arrive with a ballistic shield, but Churna turned her head and asked if her ex-husband was here. Officer Mendoza and other officers yelled she should not move or she would be shot. Churna continued to ask if her ex-husband was here and inched her way toward her door despite more warnings to not move. Officer Barnard feared Churna would try to get back into the apartment, retrieve the firearm, and shoot at officers again.

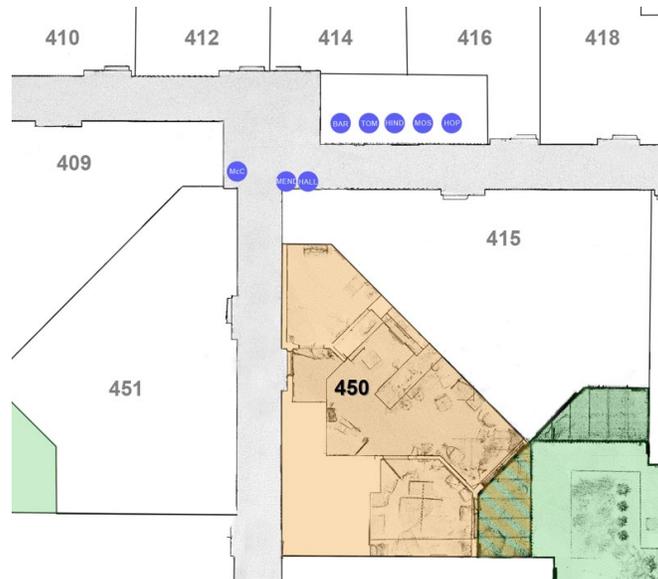
Officer Barnard observed that Churna continued moving until her head was facing her door and her body was perpendicular to the walls. Officer Barnard saw Cpl. Hall and other officers arrive with the ballistic shield. It appeared to Officer Barnard they were preparing to take Churna into custody, so he moved to the back of the line so those officers could advance. Officer Barnard saw Churna look at the officers and then at her apartment door handle. Next, he observed her reach toward the door handle with her right hand despite more commands, including from Officer Mendoza, to stop moving. Officer Barnard opined that he did not fire at Churna because there were other officers in front of him who were in his line of fire. He opined that if he had been in the front of the line he would have fired because he was afraid that he or another officer would be killed if Churna entered her apartment.

Officer Barnard observed Officer Mendoza discharge his rifle multiple times, striking Churna. Officer Barnard advised that shots were fired and approached Churna with other officers to render aid. Officer Barnard assisted in the protective sweep of unit #450 and was taken to the station for processing.

**4. Cpl. Hall**

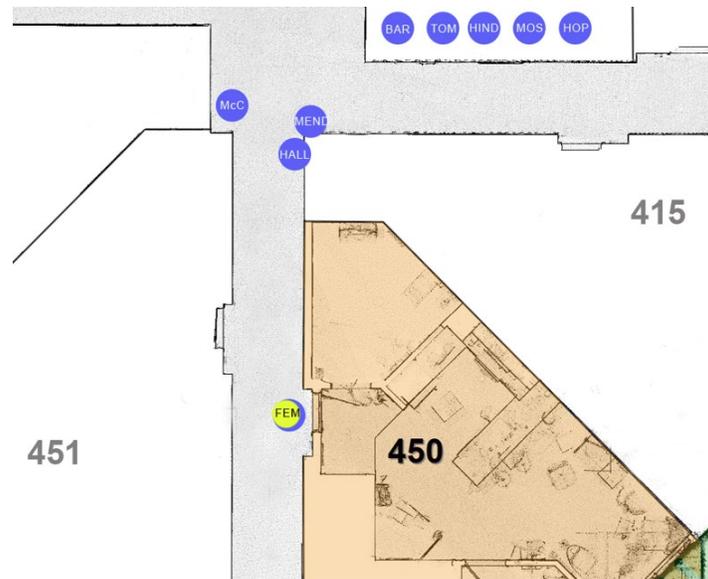
When Churna initially called 911, Cpl. Hall and Officer Moser were located at an unrelated call. Although the radio reception from the Modera Apartments was inconsistent, Cpl. Hall heard Officer Hood advise Churna stated she shot at someone and was armed with a handgun. He decided they would join Churna's call because it presented a higher priority. While running to their patrol vehicle, Cpl. Hall heard Officer Tomlinson advise shots were fired, and he heard officers indicate they were not injured. When he arrived at the Modera Apartments, Cpl. Hall took the ballistic shield from Sgt. Jones, ordered Officer Moser to ready his patrol rifle, and they entered the building with Officer Hindmarch.

Cpl. Hall and the other officers took the elevator to the fourth floor. When they exited, Cpl. Hall heard officers yelling commands. As he ran into the hallway, Cpl. Hall saw Officers Barnard, McCormick, Mendoza, and Tomlinson. He continued to hear other officers repeatedly tell Churna to stop moving. Cpl. Hall lined up behind Officer Mendoza, but he could not see Churna around the corner of the hallway. Although he remembered other officers being present, he could only recall the positions of himself, Officer Mendoza and Officer McCormick.



*Figure 5 - Cpl. Hall's recollection of positions when he arrived with the ballistic shield.*

As Cpl. Hall announced that he had the ballistic shield, he heard Officer Mendoza order Churna to stop moving and he warned her she would be shot if she did not stop moving. Moments later, he heard Officer Mendoza discharge his patrol rifle. Cpl. Hall rounded the corner and approached Churna with the ballistic shield. When he confirmed she was no longer a threat, he advised other officers to begin giving her aid.



*Figure 6 - Cpl. Hall's recollection of positions after shots were fired.*

## **5. Officer McCormick**

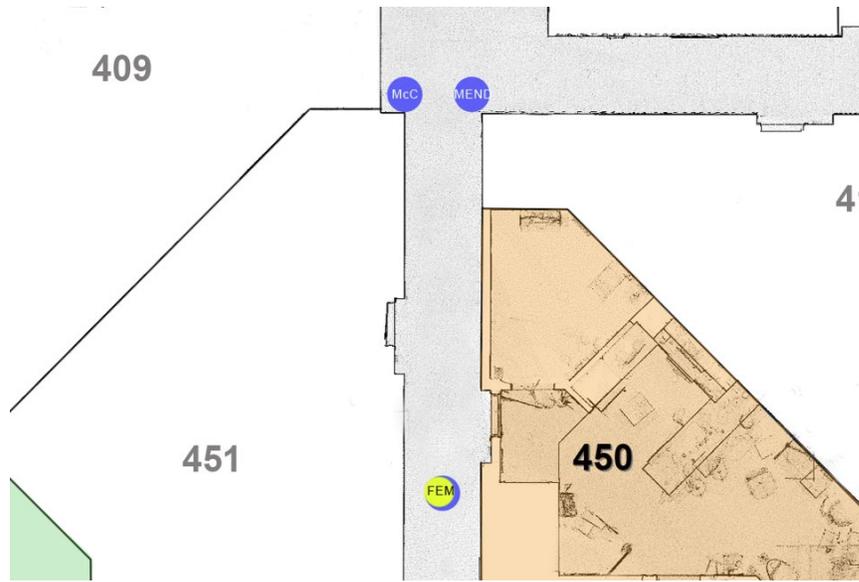
Officer McCormick rode the elevator to the fourth floor with Sgt. Jones, Officer Mendoza, and Officer Hindmarch. He heard Officer Tomlinson state Churna pointed a gun at officers and he shot at her, but was unsure if he injured her. Minutes later, Officer McCormick heard Officer Barnard announce that Churna was exiting the apartment and he heard Officer Barnard command Churna to get on the ground, which she did. Officer McCormick did not know if Officer Barnard was alone, so he advised Officers Tomlinson, Mendoza, and Hindmarch they would advance to Officer Barnard's location.

When they reached Officer Barnard, Officer McCormick saw Churna lying in the prone position on the hallway floor. He observed that her body parallel to the walls, her hands were out to her sides, her legs were spread apart, and he did not see a weapon. Sgt. Jones advised he was going to get a ballistic shield and Officer McCormick gave orders to the other officers regarding how they would use the shield to arrest Churna. During this conversation, Officer McCormick was on the right side of the hallway facing Churna and Officer Mendoza was on the left side of the hallway facing Churna. Officers Barnard and Tomlinson were behind them.



*Figure 7 - Officer McCormick's recollection of his, Officer Tomlinson's, and Officer Mendoza's position as they approached Officer Barnard's location.*

While waiting for the ballistic shield, Officer McCormick observed Churna lift her head, look back at the officers, and she asked about her ex-husband's location. Officers Mendoza, Barnard, and McCormick told Churna to stop moving or she would be shot. Officer McCormick opined to himself that Churna could not be allowed back into the apartment given that she pointed a gun at officers and allowing her to go back into the apartment could endanger officers or other civilians.



*Figure 8 - Officer McCormick's recollection of his and Officer Mendoza's position while waiting for the ballistic shield.*

While still lying on her stomach, Churna shifted her body counterclockwise and asked about her ex-husband while officers continued to order her to stop moving. Officer McCormick observed Churna move her body and he saw her raise her arm in the direction of her door. Officer McCormick opined to himself he had decided he would discharge his weapon if Churna attempted to get off the ground from her current position. As he continued to look for a weapon, Churna lifted the top half of her body off the ground and Officer McCormick heard shots being discharged from Officer Mendoza's location.

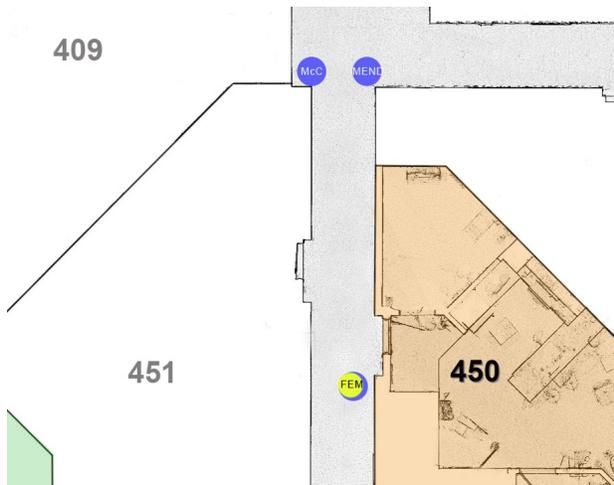


Figure 9 - Officer McCormick's recollection of positions when Churna slightly motioned toward her door and turned counterclockwise.

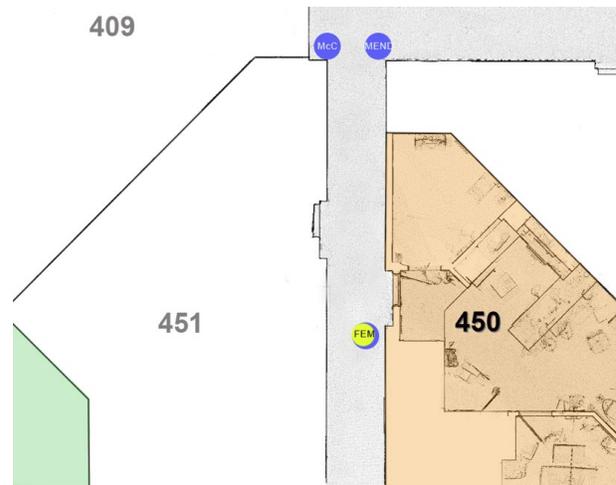


Figure 10 - Officer McCormick's recollection of positions the first time Churna reached towards her door.

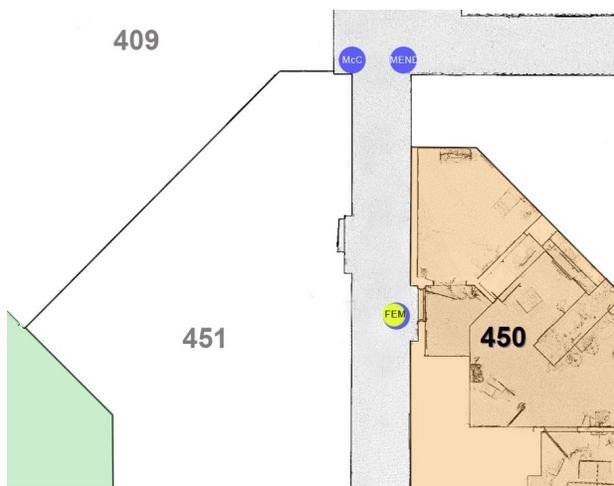


Figure 11 - Officer McCormick's recollection of positions the second time Churna reached towards her door.

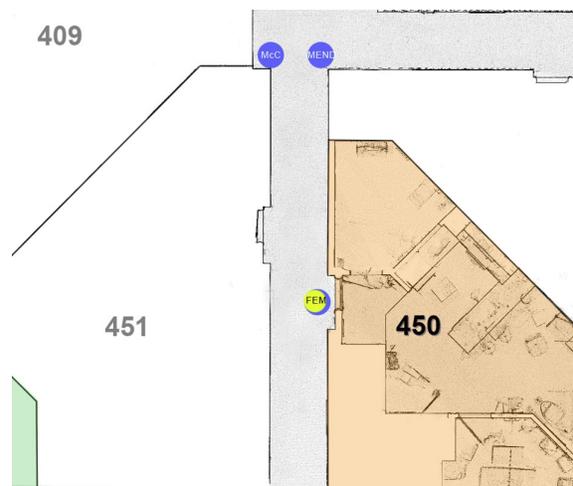


Figure 12 - Officer McCormick's recollection of positions when shots were fired.

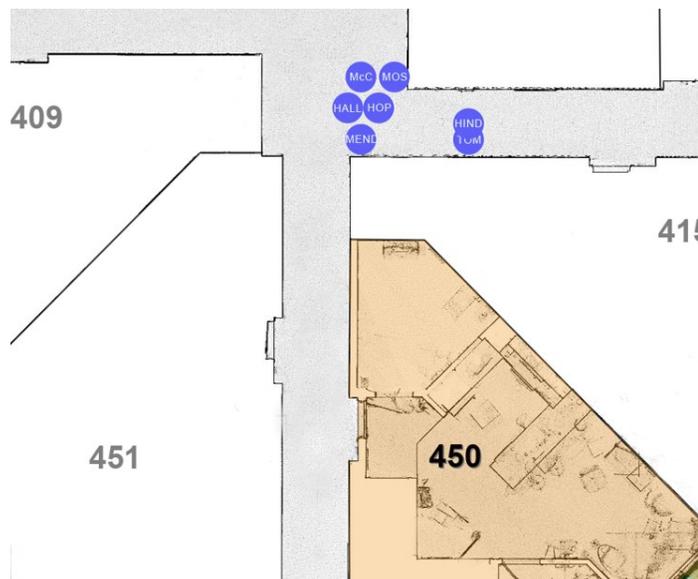
## 6. Other Officers

Several officers had a limited role in this incident; however, the following information is relevant in the Team's analysis:

Sgt. Jones was nearby the Modera Apartments when he heard Officer Hood say Churna had a gun. He positioned himself at the front entrance of the Modera Apartments, and he heard Officer Tomlinson say over the radio, “she’s pointing a gun at us,” followed by approximately six gunshots. Sgt. Jones rode the elevator to the fourth floor and contacted Officer Tomlinson, who stated Churna pointed a handgun at him, and he believed he fired three rounds.

Officers Edwards and Barnes arrived together. As Officer Edwards readied his patrol rifle, he heard officers advise over the radio that “she’s pointing a gun at us.” Officer Barnes heard Officer Hood advise that Churna pointed a gun at Officer Hood.

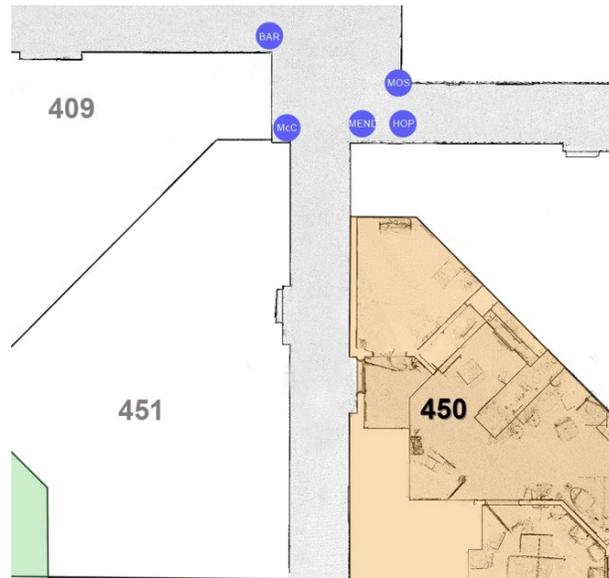
As Officer Hindmarch went to his patrol vehicle, he heard Officer Hood say Churna had a handgun. Shortly after he arrived at the Modera Apartments, he heard an officer via the radio say “she is pointing a gun at me!” followed by “shots fired!” Officer Hindmarch joined other officers on the fourth floor, but he could not see Churna because he had his back turned to the other officers so he could provide rear-guard position. Officer Hindmarch heard an officer yell something to the effect of “don’t do it or I will shoot you,” followed shortly by gunshots.



*Figure 13 - Officer Hindmarch's recollection of positions while providing rear-guard protection.*

As Officer Moser arrived, he heard over the radio that Churna had a handgun, shots had been fired, and that Churna was prone on the floor. As he entered the hallway, Officer Moser noted other officers had their weapons pointed down the hallway, as opposed to low ready,

which indicated to him based on his training and experience that there was an immediate threat. He positioned himself behind Officer Mendoza and he heard officers tell Churna not to move or she would be shot. Officer Moser could not see Churna from his cover position, but he heard multiple shots discharged.



*Figure 14 – Officer Moser’s recollection of positions when shots were fired.*

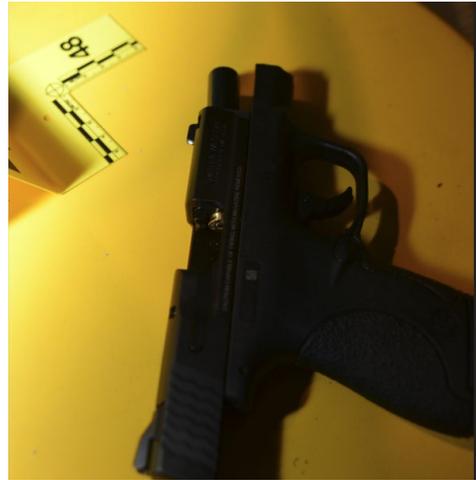
As Officer Hopkins drove to the scene, he heard over the radio that Churna pointed a gun at officers. As he entered the fourth floor, he heard Officer Mendoza yell “Don’t stand up. Don’t stand up” followed by Officer Mendoza’s rifle being discharged.

## **7. Det. Hawkins**

Det. Hawkins was assigned as the primary detective. Det. Gerlitz and Det. Mellis conducted a round count of the firearms used by Officers Mendoza, Tomlinson, and Barnard. They determined that Officer Mendoza was missing a total of six rounds from his patrol rifle, Officer Tomlinson was missing a total of six rounds from his handgun, and Officer Barnard was missing a total of two rounds from his handgun. None of their other weapons nor other officers’ weapons were determined to be used during the incident.

Det. Hawkins assisted in the search warrant Churna’s apartment. He noted a bullet exit mark on the exterior of Churna’s apartment door. It appeared that the path of the bullet passed

through Churna's unit, into the hallway, and impacted the door frame of unit #451 across the hallway. Det. Hawkins entered the balcony and observed an overturned yellow metal table and a matching metal chair. A semi-automatic Smith & Wesson handgun was on the chair, and it was loaded with a magazine, but the slide was back slightly and jammed. This indicated to Det. Hawkins that the handgun suffered a double feed, which caused the slide to jam. Looking over the balcony, Det. Hawkins observed a section of the metal table leg on the courtyard floor.

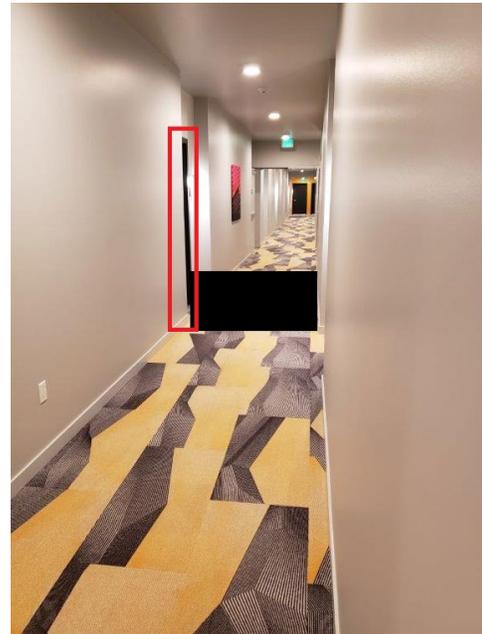


Inside Churna's closet, police found a box of 9mm ammunition and a Smith & Wesson handgun box. In Churna's kitchen, Det. Hawkins saw medical paperwork from the week prior and the corresponding pills that were prescribed. The prescription was for Vyvanse, to be taken once per day, however, only five pills remained.

Detectives also utilized a Faro scanner to map out the scene and relevant pieces of evidence. Based on the descriptions of the officers' locations at the time Officer Mendoza discharged his rifle, he was approximately 14 to 16 feet away from Churna. Further, it is likely that Officer Mendoza could not see whether Churna's door was opened or closed based on his position and that Officer McCormick may have been able to see whether Churna's door was opened or closed.



*Figure 15 - Approximate viewpoint of Officer Mendoza showing Churna's apartment entryway (red square) and Churna's approximate location (black square).*



*Figure 16 - Approximate viewpoint of Officer McCormick's showing Churna's apartment entry way (red square) and Churna's approximately location (black square)*

## **8. Pranav Joshi**

Pranav Joshi (Pranav) resides in the Modera Apartments on the third floor and his balcony is across from Churna's, also facing the interior courtyard. Pranav observed Churna standing on the outside of her balcony, and he heard an officer confirm with Churna that she called 911. Pranav observed Churna go inside her apartment, and he heard gunshots. When Churna returned to the balcony, she told the officer she maybe shot that person. He heard Churna state she had a firearm and she returned to the balcony, holding the firearm, which caused the officer to retreat. Pranav did not see what Churna did with the firearm because his attention was on the officer and Pranav retreated into his apartment. From his kitchen, Pranav heard approximately four or five shots, followed by silence.



*Figure 17 – Pranav’s view of Churna’s balcony, circled red.*

## **9. Priscilla Sperandio**

Priscilla Sperandio (Priscilla) resides on the fourth floor of the Modera Apartments. While she was in bed with her earphones in her ears, she heard a male yelling, followed by two types of gunshots. Priscilla took cover in her kitchen and heard police in the hallways giving commands, such as “Hands up! Get on the ground! I will shoot if you move!” Priscilla estimated ten minutes elapsed and she heard an unknown voice say something to the effect of “You don’t understand,” followed by multiple warnings like, “I will shoot if you move!” followed by gunshots.

## **10. Kaitlyn Walker and Reggie Long**

Kaitlyn Walker (Kaitlyn) and Reggie Long (Reggie) live on the third floor of the Modera Apartments in unit #350, which is the unit below Churna. They had never met Churna, but on the night of the incident, at approximately 2130 hours, Kaitlyn heard loud noises from Churna’s apartment that sounded like a dresser was flipped over and someone dropping a metallic object on Churna’s balcony floor.

Kaitlyn saw an officer in the interior courtyard and heard the officer say “Please get off the balcony. Help is on the way. Please drop the gun.” Churna replied that she needed her ex-husband and that she unlocked the door for the police. The officer replied, “We can’t have the cops enter if you have a gun in hand, please drop the gun.” Approximately a minute later, Kaitlyn and Reggie heard an estimated ten gunshots, followed by police announcing themselves, followed by “gun down, gun down,” followed by three or four more gunshots.

#### **11. Dhananjay Bahal**

Dhananjay Bahal (Dhananjay) lives in unit 414 of the Modera Apartments. He heard two volleys of gun shots, four to five each, and he looked out the peephole of his apartment door. He observed a female walking away from his apartment with a gun in her hand. An officer approached from the right followed by two officers from the left. More officers arrived including a shield. Dhananjay saw the female proned out, with her feet towards him and her head away from him. After he heard the police say, “Don’t move or we will shoot. Don’t move or we will shoot,” he backed away from his door and returned to the living room, and he heard gunshots.



Figure 18 – Floor plan showing Dhananjay’s view of the hallway.

## 12. Timothy Churna

After the incident, Churna’s ex-husband, Timothy, spoke briefly with Officer Hood. Timothy stated he and Churna separated in 2014, they formerly divorced a year ago, after they separated Churna reported a man stalked her, Churna reported a boyfriend also stalked her, and Churna was becoming increasingly paranoid. Churna believed she was being cyberstalked and police were part of the conspiracy. Churna was involuntarily committed in California in December 2019 after overdosing on pills. After the involuntary commitment, Churna moved in with her parents in Port Orchard, then she moved to Seattle, and then she moved to Redmond. Timothy stated that Churna’s father gifted Churna the handgun and trained her how to use it, but he did not agree with the decision given Churna’s declining mental health.

Timothy also gave a statement to detectives conducting the use of force investigation. In addition to the information given to Officer Hood, Timothy opined that Churna took too much of her medication. Regarding Churna’s handgun, Timothy believed that Churna’s father gifted her the handgun to her when she moved into the Modera Apartments, which was approximately one month prior. Timothy was vehemently against Churna having a gun given her mental health and

her belief that she was targeted by an unknown group, which was comprised of members in the FBI and law enforcement. For instance, Churna would send Timothy videos from Snapchat or YouTube regarding stalking and child trafficking. In addition, Timothy reported Churna believed in the veracity of what she reported; however, she reported events that appeared objectively false. For instance, Churna described being attacked in a jail and that she stabbed one of the assailants.

On the night of the incident, Churna and Timothy were supposed to exchange custody of their son, but Churna had not slept the night prior. Churna called Timothy and requested he come to her apartment. During the call, Timothy heard Churna engaging with officers, but he did not here any gunshots or know that Churna was holding a handgun.

### **13. Margaret Thomas and Michael Thomas**

The investigation detectives interviewed Churna's parents, Margaret Thomas (Margaret) and Michael Thomas (Michael). Michael reported that when Churna lived with her parents, she was paranoid about a smart speaker listening to her, so Michael disconnected it. He described Churna's handgun as a Smith & Wesson 9mm. Margaret reported that she received several text messages from Churna on the day of the incident where Churna stated she did not feel safe and somebody was coming to get her.

### **14. Computer-Aided Dispatch System**

The following table contains excerpts from the RPD Computer-Aided Dispatch system:

21:22:50	Churna calls 911, reporting someone tried to kill her in her apartment at Modera. NORCOM transferred the call to Redmond Dispatch.
21:24:30	Dispatcher attempted to call Churna's number, but it was not in service.
21:25:31	Address updated for Modera Apartments.
21:34:49	Officer Hood reports no sounds of disturbances heard.
21:36:34	Officer Tomlinson reports no disturbances on the fourth floor.
21:39:02	Officer Barnard reports no disturbances on the third floor.
21:43:40	Sgt. Jones reports that he cannot find Churna's name in the apartment directory.

21:46:47	Officer Tomlinson reports Churna is hanging off the railing in the middle of the courtyard and her unit is #450.
21:47:27	Officer Hood reports possible mental issues and that Churna stated she shot at someone.
21:48:41	Corporal Hood reports Churna may have a firearm.
21:50:51	Corporal Hood reports Churna is on the balcony talking to him, she has a firearm, and she wants her ex-husband to come over.
21:51:48	Officer Hood reports Churna went back inside her apartment.
21:52:05	Officer Tomlinson reports Churna is pointing a gun at us.
21:52:21	Sgt. Jones reports shots fired.
21:52:37	Sgt. Jones reports the rounds are coming from the elevators right inside the front doors.
21:53:10	Officer Tomlinson reports shots fired, he is not hit, and he is unsure if Churna was hit.
21:53:22	Officer Hood reports he is talking with Churna again.
21:54:02	Officer Hood reports Churna is talking, and she is not hit.
21:55:04	Officer Hood reports Churna is at the balcony, her door is unlocked, she said her gun is inside, and she only has a phone in hand.
21:55:58	Officer Hood reports Churna is walking to the door and to be on alert.
21:57:24	Officer Barnard reports Churna is on the ground, and he has a shield.
21:57:40	Officer Barnard reports that Churna is prone out.
21:58:29	Sgt. Jones reports that the ex-husband is out front.
22:00:58	Officer Barnard reports shots fired.
22:01:50	Sgt. Jones requests aid to be sent in.
22:05:19	Sgt. Jones reports that aid in on the 4th floor.

## 15. Autopsy, Toxicology, and Medical Information

On September 14, 2020, Churna was prescribed 30 mg of lisdexamfetamine, commonly known as Vyvanse, to be taken once per day for 30 days.<sup>14</sup> She was also prescribed metformin, commonly known as Glucophage.<sup>15</sup>

Dr. Kathryn P. Scherpelz and Dr. Brian Mazrim, associate medical examiners, performed Churna's autopsy. They opined that Churna's cause of death was multiple gunshot wounds and the manner of death is certified as homicide.<sup>16</sup> They noted that six bullets were present in the body, all of which entered on the left upper extremity or left torso and travelled to the right torso. The direction of fire was predominantly left-to-right and horizontal, and the recovered bullets were near-identical.

The Washington State Patrol Toxicology Laboratory performed a toxicology of Churna's blood. No alcohol was detected, but amphetamine (.22 mg/L) was found.

## V. EXPERT REPORTS

Churna's family, represented by counsel, hired two experts and the KCPAO hired one expert to evaluate the actions of the involved officers. Many of the opinions expressed in the experts' report discussed civil and administrative policies in addition to potential criminal charges. As stated above, the Team's analysis is not intended to address matters outside the scope of this memorandum, such as administrative actions or civil actions. However, opinions that have bearing on administrative or civil actions may be relevant to specific aspects of the

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<sup>14</sup> Vyvanse (lisdexamfetamine dimesylate) is a central nervous stimulant, used for the treatment of attention deficit hyperactivity disorder and moderate to severe binge eating disorders. Vyvanse, other amphetamine containing medicines, and methylphenidate have a high chance for abuse and may cause physical and psychological dependence. Mental side effect problems can include new or worse behavior and thought problems, new or worse bipolar illness, new psychotic symptoms (such as hearing voices, or seeing or believing things that are not real) or new manic symptoms. Medication Guide.

[https://medguide.shirecontent.com/MEDGUIDE/PDFs/MG\\_Vyvanse\\_USA\\_ENG.pdf](https://medguide.shirecontent.com/MEDGUIDE/PDFs/MG_Vyvanse_USA_ENG.pdf)

<sup>15</sup> A diabetes medicine that helps control blood sugar levels.

<https://www.drugs.com/glucofage.html#:~:text=What%20is%20Glucophage%3F,with%20type%20%20diabetes%20mellitus.>

<sup>16</sup> Homicide is defined as the killing of one person by another. HOMICIDE, Black's Law Dictionary (11th ed. 2019). Thus, the term homicide as used in an autopsy report refers to the mechanism of death and does not refer to legal liability or culpability.

Team's analysis and conclusion regarding defined terms, such as good faith, necessary, or reasonableness.

### **1. Russ Hicks – Hicks Consulting**

Russ Hicks authored a report on behalf of Churna's family.<sup>17</sup> The following includes some, but not all, of Mr. Hicks' opinions:

- The deadly force was not reasonable or necessary under RCW 9A.16.010.
- The deadly force was not objectively reasonable under any of the prongs in *Graham v. Connor*.
- The deadly force does not meet the two prongs of *Tennessee v. Gardner*.
- The deadly force does not meet the justifiable homicide by a peace officer.
- Officer Mendoza acted with abject negligence by not following mandated training regarding violence de-escalation and mental health training (RCW 43.101.455) and crisis intervention training (RCW 43.101.227).
- Officers Barnard, Tomlinson, McCormick, Hindmarch, Moser, Mendoza, and Hall engaged in negligent tactics, including not accepting Officer Hood's suggestion to keep Churna on the balcony; waiting over three minutes for a ballistic shield; positioning Churna in a prone position in front of her apartment door.
- Officer Hood perjured himself when he stated that Churna pointed a gun at him because Pranav, a credible eyewitness, stated Officer Hood fabricated this claim and that Churna was simply holding the gun. Alternatively, if Officer Hood did not perjure himself and Churna did, in fact, point a gun at him, he committed reckless endangerment by not communicating this to officers.<sup>18</sup>

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<sup>17</sup> Mr. Hicks was employed at the Washington State Criminal Justice Training Commission from 2007-2021 and several of the RPD officers who responded to this incident were his former students, including Officers, Barnard, Mendoza, and Tomlinson.

<sup>18</sup> The Team noted that Pranav neither opined nor was asked to opine on Officer Hood's statement that Churna pointed a gun at him. The following is an excerpt from Pranav's interview with KCSO detectives:

Pranav: "... then he asked whether, whether she has a gun or a firearm in the apartment. And she said yes. And I think uh, just to show, show it to the officer she went inside to get the firearm. Uh, but (unintelligible) and she came

- The RPD was negligent in training Officer Mendoza given his termination from the Whatcom County Sherriff's Office for significant report writing issues and he did not have a "working knowledge" of the definition of necessary force.
- The RPD was negligent in its firearms and use of force training using aggressive and militaristic phraseology. RPD Lethal Force Policy POL-1635 lethal force when there is an imminent threat. However, the standard used at the police academy is "whether the suspect poses an immediate threat to the safety of the officers or others."

## **2. Scott DeFoe – On-Scene Consulting**

Scott A. DeFoe also authored a report on behalf of Churna's family. The following includes some, but not all, of Mr. DeFoe's opinions:

- RPD officers failed to initially determine that Churna was mentally ill or experienced a mental crisis.
- RPD failed to properly train the officers who responded to the incident in crisis intervention techniques and failed to establish a Crisis Intervention Team. Further, the officers failed to utilize the RPD Mental Health Professional/Navigator Program.
- Sgt. Jones and Cpl. Hall failed to formulate an effective and safe tactical plan and failed to designate contact and cover officers.
- Officers Barnard, Mendoza, and Tomlinson failed to meet the reasonable officer standard by not giving a verbal warning to Churna that they were going to fire their service weapons and give Churna a reasonable opportunity to comply.

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out with the firearm. But then I saw the officer retreating . . . So I came inside the building. Oh, sorry. Came inside my apartment."

Detective: "Okay. So when, when she came out um, what was she doing with the, with the firearm?"

Pranav: "I didn't take a look because I was looking at the officer and he . . . was alert and he was maybe afraid, and he was looking for a place to hide."

- Assuming Churna attempted to enter her apartment, Officer Mendoza nor any other RPD officer could not fire their weapon at Churna under a fleeing felon theory, especially because Churna never inflicted death or serious bodily injury on anyone prior to the shooting. Further, if Churna entered her apartment or refused to submit to arrest, the utilization of a SWAT would have been safer given the advancing training, equipment, and tactics utilized by SWAT members.
- If Churna was not being compliant by failing to follow verbal commands and was attempting to grab the door handle to enter her apartment, the use of a Remington 870 Less Lethal Bean Bag Shotgun from a position of cover gun directed at her lower extremities (legs) would have been reasonable based on the totality of the circumstances.
- A reasonable officer would not have used lethal force in this situation for several reasons, including there was no immediate defense of life; other reasonable measures were available; all other reasonable measures were not exhausted; warnings when feasible that deadly force will be used; subjective fear is insufficient.
- A properly trained RPD officer would not have considered Churna to be a lethal threat as she was unarmed and laying prone on the ground.
- RPD failed to determine through their background, hiring, and selection process that Officer Mendoza should not have been hired by RPD as a police officer based on his prior employment and recent termination by Whatcom County Sheriff's Office.

### **3. Jeff Noble – Noble Consulting and Expert Witnesses**

Jeff Noble, of Noble Consulting and Expert Witnesses, authored a report on behalf of the KCPAO. The following includes some, but not all, of Mr. Noble's opinions:

- If Officer Mendoza saw Churna make a furtive movement as though she was armed with a handgun and had a reasonable belief that she was going to shoot at the officers, the use of deadly force would have been objectively reasonable and consistent with generally accepted police practices.

- If Officer Mendoza shot Churna simply because he was concerned that Churna may enter her apartment and gain access to a handgun, as suggested by Officer McCormick, the use of deadly force would be objectively unreasonable and inconsistent with generally accepted police practices.
- The determination of whether Officer Mendoza's use of deadly force in these circumstances was objectively reasonable and consistent with generally accepted police practices cannot be made absent a statement from Officer Mendoza and an understanding of his perception of the events immediately prior to his use of deadly force and his description of the threat that would cause a reasonable police officer to believe their life, or the life of another, was at immediate threat of death or serious bodily injury.

## **VI. LEGAL STANDARD AND APPLICABLE LAW**

The State must prove each element of a criminal charge by competent evidence beyond a reasonable doubt.<sup>19</sup> 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.<sup>20</sup>

In addition, the State must disprove the existence of a defense that negates an element of the crime.<sup>21</sup> 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.<sup>22</sup> Therefore, the State may be required to disprove one or more of the following defenses:

- Excusable Homicide;<sup>23</sup>
- Justifiable Homicide by Peace Officer;<sup>24</sup>

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<sup>19</sup> RCW 9A.04.100; WPIC 4.01.

<sup>20</sup> KCPAO Filing and Disposition Standards.

<sup>21</sup> WPIC 14.00.

<sup>22</sup> Id.

<sup>23</sup> WPIC 15.01.

<sup>24</sup> RCW 9A.16.030; RCW 9A.16.040; WPIC 16.01.

- Justifiable Homicide Defense of Self or Others;<sup>25</sup>
- Justifiable Homicide Resistance to Felony;<sup>26</sup>

This incident occurred on September 20, 2020; therefore, the applicable Justifiable Homicide by a Peace Officer instruction would require the State to prove the officer acted without good faith.<sup>27</sup>

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

- WPIC 16.01 – Justifiable Homicide by a Peace Officer
- WPIC 16.05 – Necessary
- 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

## **VII. ANALYSIS AND 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 fact-finder. 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.”

Given the evidence presented in this case, there is insufficient evidence to refute the affirmative defense that the officer’s actions were justifiable under the good faith standard and/or

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<sup>25</sup> RCW 9A.16.050(1); WPIC 16.02.

<sup>26</sup> RCW 9A.16.050(2); WPIC 16.03.

<sup>27</sup> The former version of WPIC 16.01, which included the malice standard, is applicable to offenses committed on or prior to December 6, 2018. The current version of WPIC 16.01, which removed malice and applied the good faith standard, is applicable to offenses committed on or after February 4, 2019. There are no pattern jury instructions for offenses committed between December 7, 2018, and February 3, 2019.

justifiable in defense of self or others. Therefore, the Team recommends that no criminal charges be filed against Officer Mendoza or any other officer present during this incident.

Justifiable Homicide by a Peace Officer under the good faith standard and Justifiable Homicide in Defense of Self or Others contain related but distinct concepts and definitions. For instance, homicide or the use of deadly force is justifiable when used necessarily and in good faith by a peace officer 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. On the other hand, homicide is also justifiable 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.

#### **1. Justifiable Homicide by a Peace Officer**

A peace officer acts in good faith if a similarly situated reasonable peace officer would have acted similarly. The peace officer must have probable cause to believe that the suspect, if not apprehended, poses a threat of serious physical harm to others. A threat of serious physical harm may include instances where the suspect threatens a peace officer with a weapon, displays a weapon in a manner that could reasonably be construed as threatening, or there is probable cause to believe the suspect committed any crime involving the infliction or threatened infliction of serious physical harm.

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.<sup>28</sup> “The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.”<sup>29</sup>

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<sup>28</sup> Graham v. Connor, 490 U.S. 386, 396, 109 S. Ct. 1865, 1872, 104 L. Ed. 2d 443 (1989).

<sup>29</sup> Id. 490 U.S. at 396-97.

In the current incident, the evidence and testimony is highly likely to demonstrate that Officer Mendoza reasonably believed that Churna had committed or was attempting to commit a felony.<sup>30</sup> Based on radio communication, there was probable cause to believe that Churna, if not apprehended, posed a threat of serious physical harm to the officers and potentially other building occupants. Further, even assuming all the officers knew Churna was unarmed when she was in the prone position and that her firearm was inside her apartment, it was reasonable for Officer Mendoza to believe that Churna intended to reenter her apartment and obtain her firearm when Churna repeatedly ignored officer's commands and reached towards her apartment door. Further, it would have been impossible for any officer, including Officer Mendoza, to know that Churna's handgun was jammed.

The evidence and testimony are also highly likely to show that Officer Mendoza's use of deadly force was necessary and in good faith. The evidence presented demonstrates that Mendoza knew that Churna had been armed, had pointed her firearm at numerous officers, and that she reported having fired a shot earlier. The evidence also demonstrates that by the time Mendoza was in a position to observe Churna, she was already prone on the floor with her right side and front not visible to him. There is no evidence to suggest that any information was communicated to Mendoza about the current location of Churna's firearm or any other officer's opinion on whether she was currently armed or not.

Under the circumstances, as they appeared to be to Officer Mendoza, there is insufficient evidence to prove beyond a reasonable doubt that the use of deadly force was not necessary and not in good faith. Although, good faith is an objective standard, the jury must determine whether 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 officer or another individual. Although Officer Mendoza was the only officer to discharge his weapon, Officer McCormick's and Barnard's anticipated testimony indicate they intended to discharge their weapons at nearly the same time that Officer Mendoza discharged his weapon. At the time of the incident, Officers Barnard and Mendoza had graduated from the police academy within the last few years – Officer Mendoza graduated in 2018 and Officer Barnard graduated in 2020. However, it is noteworthy

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<sup>30</sup> Probable cause for multiple felonies exists, including Assault in the First Degree.

that Officer McCormick completed a police academy in 2001, was a SWAT member for 12 years, is currently a field training officer, and a defensive tactics instructor. Based on the officers' reports, Officers Barnard, Mendoza, and McCormick were likely the closest to Churna, observing her movements, and assessing potential threats.

It is possible that a judge would allow testimony about RPD's policy regarding use of deadly force. Specifically, to assess whether another reasonable peace officer would have acted as Officer Mendoza, a judge may allow testimony regarding differences in RPD's deadly force training and the police academy deadly force training. Assuming, arguendo, that Mr. Hicks' and Mr. DeFoe's opinion that the RPD incorrectly trained officers to use deadly force on imminent threats, as opposed to immediate threats, the jury would have to consider that other RPD officers also received this training.<sup>31</sup> This fact tends to show that Officer Mendoza's actions were reasonable because they were consistent with RPD training and the presumption would be that other officers would follow their training.

## **2. Justifiable Homicide in Defense of Self or Others**

A homicide is justifiable 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 that 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.

The reasonable person standard used in this instruction does not expressly require the jury 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 jury would be required to take Officer Mendoza's training into account. Therefore, the same evidence and

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<sup>31</sup> "Immediate" is defined as occurring without delay; instant; without intervening agency. "Imminent" is defined as threatening to occur immediately; dangerously impending; about to take place. Black's Law Dictionary (11th ed. 2019).

testimony used to determine whether Officer Mendoza acted as a reasonable peace officer are also relevant to this instruction.

Justifiable Homicide by a Peace Officer requires that, at a minimum, the harm to be avoided is “serious physical harm,” which is not defined by statute. However, Justifiable Homicide in Defense of Self or Others requires that, at a minimum, the harm to be avoided is “great personal injury,” which includes severe pain and suffering. Given that Officer Mendoza did not know if Churna was armed in the prone position, or whether she was reaching inside her apartment versus reaching to open her door, it was reasonable for him to believe that based on her previous actions, Churna could inflict great personal injury with a handgun. Additionally, there is no information indicating that Officer Barnard informed Officer Mendoza that he did not see a weapon on Churna’s person when she moved into the prone position. Given Officer Mendoza’s likely view of Churna and based on other officer’s descriptions of her body, Officer Mendoza could not see if Churna had a firearm underneath her, if Churna had a firearm on her side opposite of Officer Mendoza, or if Churna’s door was opened or closed.

Finally, under this instruction, the danger must be imminent, not immediate. The Washington 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.”<sup>32</sup> Additionally, a person is entitled to act on appearances in defending himself, 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.<sup>33</sup>

## **VIII. RECOMMENDATION FOR INQUEST**

An inquest is mandatory to determine the manner, facts, and circumstances of Churna’s death pursuant to Executive Order PHL 7-1-5 EO unless the Executive determines the role of law was de minimis and did not contribute in any discernable way to a person’s death. Given the

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<sup>32</sup> WPIC 16.02.

<sup>33</sup> WPIC 16.07.

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facts outlined in the investigation, it is the Team's belief that an inquest is required under the current Executive Order.

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# **ATTACHMENT A**

WPIC 16.01 - Justifiable Homicide by a Peace Officer

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

Homicide or the use of deadly force is justifiable:

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

2) when necessarily and in good faith used by a peace officer or person acting under the officer's command and in the officer's aid to arrest or apprehend a person who the officer reasonably believes has committed, has attempted to commit, is committing, or is attempting to commit a felony. In considering whether to use deadly force to arrest or apprehend any person for the commission of any crime, a peace officer must have probable cause to believe that the suspect, if not apprehended, poses a threat of serious physical harm to others. Among the circumstances that may be considered by a peace officer as a "threat of serious physical harm" are the following: (a) The suspect threatens a peace officer with a weapon or displays a weapon in a manner that could reasonably be construed as threatening; or (b) There is probable cause to believe that the suspect has committed any crime involving the infliction or threatened infliction of serious physical harm. ~~Under these circumstances deadly force may also be used if necessary to prevent escape from the officer, when, if feasible, some warning is given.~~

A peace officer shall not be held criminally liable for using deadly force with a good faith belief that such act is justifiable.

"Good faith" is an objective standard. A peace officer acts in "good faith" if a similarly situated reasonable peace officer would have believed that the use of deadly force was necessary to prevent death or serious physical harm to the peace officer or another individual. In deciding whether a peace officer acted in good faith, you should consider all the facts, circumstances, and information known to the officer at the time.

The State has the burden of proving beyond a reasonable doubt that the homicide was not justifiable. If you find that the State has not proved the absence of this defense beyond a reasonable doubt, it will be your duty to return a verdict of not guilty.

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.

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 felony<sup>34</sup> or to inflict death or great personal injury;

(2) the slayer reasonably believed that there was imminent danger<sup>35</sup> 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.

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<sup>34</sup> 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).

<sup>35</sup> 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.”

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.

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.

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 felony<sup>36</sup> 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.

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<sup>36</sup> 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)