



*Equal Justice for All*

## Lewis County Prosecuting Attorney's Office

February 28, 2014

Detective Cameron Simper  
2000 Lakeridge Dr. SW  
Olympia, WA 98502-6045

Detective Simper:

In the early morning hours of February 13, 2014 I received notification that Officer Weismiller, of the Centralia Police Department, had been involved in an officer involved shooting and, as a result of that shooting, Joseph Wharton was dead. Upon my arrival at the scene of the shooting, I was contacted by Chief Robert Berg of the Centralia Police Department and was provided a brief overview. After the briefing, I, along with Detectives Pat Beall and Doug Lee of the Centralia Police Department, walked to various locations of interest involved in this matter. These area included Fiddlers Coffee, the vacant King Solomon's restaurant and the location of the shooting where the remains of Mr. Wharton were located.

The investigation of the incident was handed over to the Regional Sheriffs' Critical Incident Investigation Team. This unit is a multi-agency team made up of law enforcement from surrounding counties, to the exclusion of the department where the officer being investigated is employed. The purpose of the unit is to ensure that an outside agency would objectively review and investigate the incident. You were designated as the lead investigator on the case.

In preparation of my review of this case, I attended the autopsy, attended the briefing given by you, reviewed your report, the reports of others, witness statements, video, photographs, audio recordings, spoke with prosecutors, spoke with law enforcement, and reviewed applicable statutory authority as well as relevant case law.

In doing so, I have determined that Officer Weismiller's use of deadly force during this incident was justified. This opinion has been reviewed by my Chief Criminal Deputy, J. Bradley Meagher who concurs in this conclusion.

What follows is a factual summary outlining facts known to Officer Weismiller at the time of the shooting, some evidence discovered since the shooting, as well as relevant information, a legal analysis outlining the relevant authority and, finally, a conclusion that outlines, in detail my decision to not pursue criminal charges in this matter.

There are other items that were discovered after the shooting that may very well be relevant to the reason for Joseph Wharton's actions, but are not relevant to the actions taken by Officer Weismiller. Those include the extensive criminal history of

Mr. Wharton, including assaults on law enforcement, extensive drug abuse and alcohol abuse history, mental health issues, past suicide attempts, the behavior of Mr. Wharton seen by his significant other on the night of February 12, 2014 and the morning of February 13, 2014, and the apparent inebriation of Mr. Wharton at the time of the incident that led to his death. This document is not meant to form any opinion as to the reason(s) for Mr. Wharton's actions on the morning of February 13, 2014. Rather, it is a review of Officer Weismiller's actions on that morning based upon information known, at the time, to the officers involved.

### **FACTUAL SUMMARY RELEVANT TO SHOOTING**

At approximately 2:20 a.m. on February 13, 2014, Centralia Officer Tracy Murphy contacted Lewis County Dispatch and reported a suspicious person walking towards the back of Fiddlers Coffee near the drive-thru area<sup>1</sup>. Officer Murphy indicated that he was conducting extra patrols in the area based upon an earlier contact with the owner of Fiddlers regarding a suspicious person that had been seen in the area.<sup>2</sup>

Officer Weismiller indicated that when he heard the initial report from Officer Murphy, he started responding to Officer Murphy's location.<sup>3</sup> Officer Murphy described the subject, later identified as Joseph Wharton, as "...wearing a light colored hooded sweatshirt with a hoody pulled up."<sup>4</sup> From personal knowledge, I know that, at this time of the morning, Fiddlers Coffee is closed and was, in fact, closed when I arrived on scene at approximately 3:45 a.m.

Officer Murphy indicated that, upon contact, Mr. Wharton had something in his right hand and, upon seeing Officer Murphy, attempted to hide the object.<sup>5</sup> Mr. Wharton then changed direction, walking towards the Chevron, west of Fiddlers.<sup>6</sup> Officer Murphy thought Mr. Wharton may have been preparing for a burglary.<sup>7</sup>

Officer Murphy exited his patrol vehicle and called out to Mr. Wharton asking him "... what was going on or what he was doing and he kept walking, didn't look at [the officer], kept the hood up...briskly walking away."<sup>8</sup> Mr. Wharton continued to walk away and Officer Murphy yelled at him again.<sup>9</sup> When this occurred, Mr. Wharton turned towards officer Murphy, yelled "fuck you" and appeared "all sorts of agitated" and "threw that hood off."<sup>10</sup> Officer Murphy likened Mr. Wharton's action to that of a

<sup>1</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000191.

<sup>2</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000198 – 1/000199.

<sup>3</sup> See Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000201. See, also, Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000205.

<sup>4</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000191.

<sup>5</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000191. This object is later described as a knife. See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000199.

<sup>6</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000191.

<sup>7</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000199.

<sup>8</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000191-1/000192.

<sup>9</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000192.

<sup>10</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000192. See, also, Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000196.

“...catcher clearing his mask, getting his mask off his head so he could see everything....”<sup>11</sup>

Mr. Wharton again ignored Officer Murphy’s command to “come here” with Mr. Wharton’s reply being “fuck you” as he continued to walk away, keeping his right hand in his pocket.<sup>12</sup> Officer Murphy indicated that “...it was almost like he was trying to intimidate me and there, there was something about his whole demeanor and his actions that was completely not normal.”<sup>13</sup>

Officer Murphy continued to watch Mr. Wharton to determine where he was going.<sup>14</sup> Officer Murphy indicated that if Mr. Wharton was going to go towards the Chevron store, he, Officer Murphy, was going go on foot.<sup>15</sup> However, if Mr. Wharton was going to go towards Mellen Street, Officer Murphy would stay in his vehicle.<sup>16</sup> Officer Murphy decided to wait to minimize the risk of losing sight of Mr. Wharton.<sup>17</sup> Officer Murphy radioed a description of Mr. Wharton, backed up his vehicle and entered Mellen Street.<sup>18</sup>

Officer Weismiller, hearing the radio transmission, sped up his response.<sup>19</sup> Upon entering Mellen Street, Officer Murphy observed Mr. Wharton in a “full run, full sprint” across the parking lot of King Solomon’s heading towards the west side of the building.<sup>20, 21</sup> Officer Murphy was able to re-contact Mr. Wharton by cutting off his route near the back of King Solomon’s. Officer Murphy exited his vehicle and told Mr. Wharton to stop.<sup>22</sup> Mr. Wharton slowed down and pulled a knife out of his pocket.<sup>23</sup>

Officer Murphy described the blade as fully extended and Officer Murphy saw Mr. Wharton turning towards him.<sup>24</sup> Officer Murphy described pulling his weapon and Mr. Wharton coming towards him and then stopped.<sup>25</sup> Officer Murphy believes he got on the radio and indicated that Mr. Wharton had a knife.<sup>26, 27</sup> Officer Weismiller heard the call indicating Mr. Wharton had a knife and activated his lights.<sup>28</sup> Officer Weismiller

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<sup>11</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000192.

<sup>12</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000192.

<sup>13</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000197.

<sup>14</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000192.

<sup>15</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000192.

<sup>16</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000192.

<sup>17</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000192.

<sup>18</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000192.

<sup>19</sup> See Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000201.

<sup>20</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000192.

<sup>21</sup> This statement is backed up by the surveillance video obtained from the Chevron station.

<sup>22</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000192.

<sup>23</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000192.

<sup>24</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000192. See, also, Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000196.

<sup>25</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000192.

<sup>26</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000192.

<sup>27</sup> This statement is backed up by the audio transmissions recorded by dispatch.

<sup>28</sup> See Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000201. See, also, Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000206.

indicated that he had never heard Officer Murphy say anything like that on the air and had never heard the pitch on Officer Murphy's voice.<sup>29</sup>

Officer Murphy ordered Mr. Wharton to drop the knife and Mr. Wharton responded "fuck you."<sup>30</sup> Officer Murphy indicated that he told Mr. Wharton that he was going to shoot Mr. Wharton who responded "fine, fuck you, I got a gun too."<sup>31</sup> As Mr. Wharton said this, he put his right hand into his pocket.<sup>32</sup> Officer Murphy radioed that Mr. Wharton had a knife, but does not remember if he radioed about Mr. Wharton saying he had a gun.<sup>33, 34</sup> Officer Weismiller indicated that he heard the call that Mr. Wharton had a gun.<sup>35</sup>

Officer Weismiller indicated that he then had his lights and sirens activated because "...I wanted to let Murphy know and the suspect know there's another guy comin[g]."<sup>36</sup> Officer Murphy indicated that he repeated his command to drop the knife and ordered Mr. Wharton to remove his hand from his pocket.<sup>37</sup> Mr. Wharton again told Officer Murphy "fuck you" and turned away running around the back of the building.<sup>38</sup> Officer Murphy indicated Mr. Wharton escalated the situation further by running and, as a result, Officer Murphy had no choice but to attempt contact Mr. Wharton.<sup>39</sup>

Officer Murphy began after Mr. Wharton when Officer Weismiller arrived.<sup>40</sup> Officer Weismiller indicated that he radioed his arrival on the scene.<sup>41</sup> Officer Weismiller indicated that upon his arrival, he saw Mr. Wharton running from Officer Murphy.<sup>42</sup> Officer Weismiller pursued Mr. Wharton and could see the knife in Mr. Wharton's hand.<sup>43</sup>

Officer Weismiller went ahead of Officer Murphy so Officer Murphy returned to his vehicle in an attempt to pursue Mr. Wharton and get in front of him.<sup>44</sup> Officer Murphy

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<sup>29</sup> See Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000205.

<sup>30</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000193.

<sup>31</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000193. See, also, Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000197.

<sup>32</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000193.

<sup>33</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000193.

<sup>34</sup> Radio transmission confirms that Officer Murphy did, indeed, report that Mr. Wharton had a gun.

<sup>35</sup> See Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000201. See, also, Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000209.

<sup>36</sup> See Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000201. See, also, Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000206.

<sup>37</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000193.

<sup>38</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000193.

<sup>39</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000197.

<sup>40</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000193.

<sup>41</sup> See Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000206. No such transmission was recorded. However, there is an audible "click" that can be heard on the audio recording that coincides with Officer Weismiller's arrival on scene.

<sup>42</sup> See Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000201. See, also, Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000206.

<sup>43</sup> See Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000201. See Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000206.

<sup>44</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000193.

radioed that Mr. Wharton had a knife, but does not remember if he radioed about Mr. Wharton saying he had a gun.<sup>45, 46</sup> Officer Weismiller indicated that he heard the call that Mr. Wharton had a gun.<sup>47</sup> Officer Murphy drove down the alley as Officer Weismiller continued his pursuit.<sup>48</sup> Officer Murphy recalled seeing Officer Weismiller pursuing Mr. Wharton on foot.<sup>49</sup> During this time, Officer Murphy was retrieving his “less lethal” weapon.<sup>50</sup> Officer Murphy indicated that the less lethal weapon would now be an option since there was more than one officer involved.<sup>51</sup>

Mr. Wharton went around jersey barriers blocking the road.<sup>52</sup> Officer Weismiller exited his car and told Mr. Wharton “[s]top right there, police.”<sup>53</sup> Mr. Wharton yelled back something to the effect of “fuck you.”<sup>54</sup> Mr. Wharton was again ordered to “stop right there.”<sup>55</sup> Officer Weismiller also informed Mr. Wharton that “I’m pointing a gun at you.”<sup>56</sup> As they are running, Officer Weismiller is flashing Mr. Wharton with his flashlight and can see the knife in Mr. Wharton’s hand.<sup>57</sup> Mr. Wharton went around a corner of a house.<sup>58</sup> Officer Weismiller, in response, used a tactical maneuver and “pied” the corner to ensure officer safety.<sup>59</sup> Officer Weismiller indicated that “[y]ou know, he has a knife, I see the knife, he’s also supposed to have a gun.”<sup>60</sup>

Officer Weismiller saw Mr. Wharton with the knife in his hand as he was trying to get over a fence.<sup>61</sup> Officer Weismiller describes weighing his options as to how to deal with Mr. Wharton including the possibility of Mr. Wharton taking hostages.<sup>62</sup> As this is occurring, Mr. Wharton “...jumps off the fence and he turn and he turns in a way that he basically does a diagonal sweep, a diagonal strike kind of downward, at a downward angle with the knife.”<sup>63</sup> This caused Officer Weismiller to take a step back and Mr. Wharton took another step towards Officer Weismiller.<sup>64</sup>

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<sup>45</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000193.

<sup>46</sup> Radio transmission confirms that Officer Murphy did, indeed, report that Mr. Wharton had a gun.

<sup>47</sup> See Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000201.

<sup>48</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000193.

<sup>49</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000193.

<sup>50</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000193.

<sup>51</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000198.

<sup>52</sup> See Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000201.

<sup>53</sup> See Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000201.

<sup>54</sup> See Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000201.

<sup>55</sup> See Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000201.

<sup>56</sup> See Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000207.

<sup>57</sup> See Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000201 – 1/000202.

<sup>58</sup> See Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000202. See, also, Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000207.

<sup>59</sup> See Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000202.

<sup>60</sup> See Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000207.

<sup>61</sup> See Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000202. See, also, Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000207.

<sup>62</sup> See Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000207. See, also, Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000209.

<sup>63</sup> See Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000207.

<sup>64</sup> See Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000208.

Officer Weismiller silhouetted his hand and weapon with his flashlight so Mr. Wharton could see the weapon.<sup>65</sup> Mr. Wharton stood, looking at Officer Weismiller “looking around a thousand yards” with a knife in one hand and his other fist clinched.<sup>66</sup> Mr. Wharton is irate, frustrated and appears to be on “something.”<sup>67</sup> Officer Weismiller commanded Mr. Wharton to “[d]rop the knife right now.”<sup>68</sup> Mr. Wharton responded “[f]uck you. I’m not doing anything”<sup>69</sup> Officer Weismiller told Mr. Wharton “[d]rop the knife right fucking now.”<sup>70</sup> Mr. Wharton said [f]uck you. I’m not doing anything. I am not going back to fucking jail.”<sup>71</sup> Officer Weismiller said “[i]f you don’t drop the knife right now, I’m gonna fucking shoot you.”<sup>72</sup> Mr. Wharton responded [g]o ahead and fucking shoot me. I wanna fucking die.”<sup>73</sup>

Officer Weismiller again demanded that Mr. Wharton drop the knife.<sup>74</sup> Officer Weismiller described Mr. Wharton as screaming “ahhh” and “peppin himself up” “preparing himself to attack.”<sup>75</sup> Officer Weismiller estimated the distance from Mr. Wharton as “probably seven feet”.<sup>76</sup> Mr. Wharton advanced on Officer Weismiller.<sup>77</sup> Officer Weismiller “shot maybe three times”.<sup>78</sup> Officer Weismiller describes shooting at Mr. Wharton’s chest and did not see any bullets hit, did not see any blood and did not see Mr. Wharton’s shirt move.<sup>79</sup> Officer Weismiller then continued shooting until Mr. Wharton fell.<sup>80</sup> It was determined that a total of eight shots were fired.<sup>81</sup>

As Officer Murphy was turning onto the street, he heard “...several shots, a lot of shots.”<sup>82</sup> Officer Murphy described an initial volley, a pause, and then a “huge volley.”<sup>83</sup> Officer Murphy approached and saw Officer Weismiller standing and Mr. Wharton on the ground.<sup>84</sup> As he approached, Officer Murphy observed Mr. Wharton

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<sup>65</sup> See Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000208. See, also, Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000210.

<sup>66</sup> See Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000208.

<sup>67</sup> See Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000208.

<sup>68</sup> See Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000202.

<sup>69</sup> See Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000202.

<sup>70</sup> See Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000202.

<sup>71</sup> See Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000202. See, also, Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000208.

<sup>72</sup> See Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000202.

<sup>73</sup> See Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000202. See, also, Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000208.

<sup>74</sup> See Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000202. See, also, Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000207.

<sup>75</sup> See Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000202.

<sup>76</sup> See Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000202.

<sup>77</sup> See Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000208.

<sup>78</sup> See Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000202. See, also, Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000208.

<sup>79</sup> See Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000202. See, also, Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000208.

<sup>80</sup> See Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000202. See, also, Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000208.

<sup>81</sup> See Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000202.

<sup>82</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000194.

<sup>83</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000194.

<sup>84</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000194.

on his left side with the knife “less than a foot in front of his head” and Officer Weismiller less than 15 feet away from Mr. Wharton.<sup>85</sup>

Officer Murphy approached Mr. Wharton, handcuffed him, and checked him for weapons.<sup>86</sup> During the search, Officer Murphy discovered blood on his hand.<sup>87</sup> During this time, Officer Weismiller approached and kicked the knife away to ensure that it could not be accessed by Mr. Wharton. After the blood was discovered, the knife was moved to a safe distance and Mr. Wharton was checked for weapons, Officer Murphy removed the handcuffs and tended to Mr. Wharton’s medical needs.<sup>88</sup>

Officer Murphy reported that he heard what he thought were breath sounds and felt a pulse.<sup>89</sup> However, the pulse faded during a subsequent check before it was checked a final time by Officer Murphy and he was unable to locate a pulse.<sup>90</sup> Officer Murphy considered chest compressions, but made the decision not to after hearing what he described as a sucking chest wound.<sup>91</sup>

Arriving on scene were Officer John Panco, the Officer in Charge, of the Centralia Police Department, Sgt. Pat (PK) Smith, of the Lewis County Sheriff’s Office, and Deputy Brady Taylor, also of the Lewis County Sheriff’s Office.<sup>92</sup> Aid responded and it was determined that Mr. Wharton was deceased.<sup>93</sup> The scene was secured and Officer Weismiller was told to contact Officer Panco.<sup>94</sup> Detective Pat Beall, of the Centralia Police Department, responded and was provided a walk through by Officer Murphy.<sup>95</sup>

Officer Weismiller stated that

“[h]e [Mr. Wharton] was coming to kill me to get away, no question about it at all. What else is he going to do? What-what other option did he have, he had no escape, he’s armed with a knife, he said, he even verbalized it, I’m not going back to fucking jail. You’re going to have to shoot me. I want to fucking die. And the he, walked, and he took a step, after he screamed and got himself mentally

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<sup>85</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000194. See, also, Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000208 – 1/000209.

<sup>86</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000194. See, also, Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000209.

<sup>87</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000194.

<sup>88</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000194.

<sup>89</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000194.

<sup>90</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000194 – 1/000195.

<sup>91</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000195.

<sup>92</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000195.

<sup>93</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000195.

<sup>94</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000195.

<sup>95</sup> See Officer Murphy Transcript. Bates Stamp Number OIS Cent. PD – 1/000196.

physically prepared, he took a step in my direction.”<sup>96</sup>

### **LEGAL ANALYSIS**

The controlling statute in Washington on this issue is RCW 9A.16.040. Under that statute, police officers are authorized to use deadly force when it is reasonable and necessary to arrest and/or apprehend a person who is committing, or has committed, a felony. When making the decision to use deadly force, an officer must have probable cause to believe that the person “...poses a threat of serious physical harm to the officer...”<sup>97</sup> “A public officer or peace officer 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.”<sup>98</sup> When applying the facts of this case to the applicable law, it is clear that Officer Weismiller was legally justified when he used deadly force against Joseph Wharton on February 13, 2014.

Officer Murphy contacted Mr. Wharton under circumstances that caused Officer Murphy concern. Mr. Wharton was at a location that was not opened, appeared to have an instrument of some sort in his hand and was acting in a manner that was suspicious. Officer Murphy’s contact with Mr. Wharton does not appear to have been hostile, yet Mr. Wharton’s response was. Officer Murphy observed Mr. Wharton armed with a knife and, when Mr. Wharton was contacted at King Solomon, caused Officer Murphy such concern that he drew his service weapon. The substance of the interaction between Mr. Wharton and Officer Murphy was broadcast over the radio and Officer Weismiller could hear the contact escalating. This would include Mr. Wharton’s threat that he too had a gun.

Officer Weismiller arrived as backup for Officer Murphy, but, as the contact continued, Officer Weismiller found himself to be in the primary role with Officer Murphy positioning himself to contain Mr. Wharton and provide backup as needed to Officer Weismiller. Officer Weismiller, after leaving his car, continued the pursuit of Mr. Wharton on foot. Eventually, contact was made in the side yard of a residence a short distance from King Solomon.

Mr. Wharton refused repeated commands to drop the knife and, based upon Mr. Wharton’s own statements and the information that was relayed to Officer Weismiller from Officer Murphy, Officer Weismiller was justified in his belief that Mr. Wharton was armed with a firearm in addition to the knife that he observed.

Mr. Wharton turned on Officer Weismiller in an aggressive manner that, had Officer Weismiller been closer, would have resulted in significant injuries to Officer Weismiller. Mr. Wharton continued to advance his position on Officer Weismiller and Officer Weismiller stepped back in an attempt to maintain the distance and to, hopefully, end the contact in a safe manner.

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<sup>96</sup> See Officer Weismiller Transcript. Bates Stamp Number OIS Cent. PD – 1/000210.

<sup>97</sup> RCW 9A.16.040(2).

<sup>98</sup> RCW 9A.16.040(3).



Also significant was that Joseph Wharton's body was found approximately 13 feet away from Officer Weismiller was standing when shots were fired. Officer Weismiller, like all certified law enforcement personnel, received training. That training included instruction on the proximity of a threat to an officer. Based upon that training, along with training that Officer Weismiller has received during the course of his employment, it appears that drawing his weapon was the proper decision. A choice to employ a non-lethal weapon (i.e. Taser or OC spray) would have left Officer Weismiller with insufficient time to react if such a non-lethal approach did not have the desired result. As indicated Officer Murphy in his statement, such non-lethal methods should only be employed when a lethal option is prepared and ready. Officer Murphy, because of the actions of Mr. Wharton, was not given the opportunity to deploy a less lethal option.

Commands were ignored. After continually refusing verbal commands, Mr. Wharton told Officer Weismiller that he was not going to go back to prison and challenged Officer Weismiller to shoot him. At that point, there was a marked change in body posture. Mr. Wharton began to aggressively advance towards Officer Weismiller. At that point, Officer Weismiller was left with no choice, but to employ the use of deadly force.

The reason for Mr. Wharton's actions that night, although important to family and friends of Mr. Wharton, is not relevant to, nor does it change, the analysis here. As stated earlier, the imperative analysis deals with what was known to Officer Weismiller at the time and the fact that those beliefs are shown to be true by evidence known at the time and discovered subsequent to this incident.

Certainly, this case is a tragedy for everyone involved. While every law enforcement officer is trained how to react in a situation such as was present here, I am sure that it is his/her desire that such training will never be needed. The many difficulties and obstacles endured and overcome by Mr. Wharton throughout his life and leading up to this event were significant. However, such circumstances cannot impact the legal analysis that must occur.

It should also be noted that had Mr. Wharton survived this encounter, he would have been charged with two counts of Assault in the Second Degree based upon his actions towards Officer Murphy and Officer Weismiller.

In conclusion, I want to thank you and the members of your investigative team in your thorough and detailed investigation. The reports were extensive, detailed and well organized. The briefing provided a proper summation of the facts of this matter and gave me the opportunity to ask necessary question that allowed me to conduct this analysis. In addition, I want to express a sincere debt of gratitude to you, your team and to Officers Murphy and Weismiller for the hard and dangerous work that you all do on a daily basis. Through you work and the commitment shown by everyone involved in this process, the citizens of Lewis County can feel confident in the process used.

Finally, I am authorizing the return of items taken from Officer Weismiller including, but not limited, his service weapon, his utility belt, and its contents, as well as his uniform. If you have any additional question, please do not hesitate to contact me.

Sincerely,

JONATHAN L. MEYER  
Lewis County Prosecuting Attorney

cc: Chief Robert Berg, Centralia Police Department