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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THE STATE OF WASHINGTON,)	
	Plaintiff,)
v.)	No. 20-1-06432-3 KNT
)	
JEFFREY NELSON,)	INFORMATION
)	
	Defendant.)
)	
)	

I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by the authority of the State of Washington, do accuse JEFFREY NELSON of the following crime[s], which are of the same or similar character, and which are based on the same conduct or a series of acts connected together or constituting parts of a common scheme or plan: **Murder In The Second Degree, Assault In The First Degree**, committed as follows:

Count 1 Murder In The Second Degree

That the defendant JEFFREY NELSON in King County, Washington, on or about May 31, 2019, while committing and attempting to commit the crime of Assault in the First Degree, and in the course of and in furtherance of said crime and in immediate flight therefrom, did cause the death on or about May 31, 2019 of Jesse Sarey, a human being, who was not a participant in the crime;

Contrary to RCW 9A.32.050(1)(b), and against the peace and dignity of the State of Washington.

Count 2 Assault In The First Degree

That the defendant JEFFREY NELSON in King County, Washington, on or about May 31, 2019, with intent to inflict great bodily harm, did assault Jesse Sarey with a firearm and force and means likely to produce great bodily harm or death, to-wit: by shooting him;

1 Contrary to RCW 9A.36.011(1)(a), and against the peace and dignity of the State of
2 Washington.

3 DANIEL T. SATTERBERG
4 Prosecuting Attorney

5 By:

6 

7 _____
8 Mark R. Larson, WSBA #15328
9 Kathleen Van Olst, WSBA # 21186
10 Deputy Prosecuting Attorneys for King County
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1
2 CAUSE NO. 20-1-06432-3 KNT

3 PROSECUTING ATTORNEY CASE SUMMARY AND REQUEST FOR BAIL AND/OR
4 CONDITIONS OF RELEASE

5 The State incorporates by reference the Certification for Determination of Probable
6 Cause in this case.

7 The State requests that pursuant to CrR 2.2(b), the Court issue a summons directing
8 the defendant to appear in court and for the court to establish conditions of release.

9 This case arises in the context of the defendant's employment as a patrol officer.
10 While the defendant has no known criminal history, defendant Nelson's discharge of his
11 firearm in this case is of grave concern. To that end, the State requests the court order that
12 Officer Nelson be prohibited from possessing any and all firearms during the pendency of
13 this case, for work or personal purposes. The effect of this order would be to ensure that
14 until this case is adjudicated Officer Nelson is not in a position where he might have to
15 decide whether to administer deadly force.

16 Considering the requirements of CrR 2.2, the State is not seeking bail. CrR 2.2(b), in
17 pertinent part, reads:

18 **(b) Issuance of Summons in Lieu of Warrant.**

19 (1) *Generally.* If an indictment is found or an information is filed, the court may direct
20 the clerk to issue a summons commanding the defendant to appear before the court at
a specified time and place.

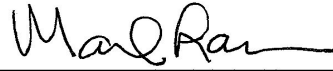
21 (2) *When Summons Must Issue.* The court shall direct the clerk to issue a summons
22 instead of a warrant unless it finds reasonable cause to believe that the defendant (i)
will not appear in response to a summons, (ii) will commit a violent offense, (iii) will
23 interfere with witnesses or the administration of justice, or (iv) is in custody. . . .

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The rule requires that bail and a warrant only be imposed if there is evidence that the accused is in custody, is a flight risk, is a risk to commit a violent offense or will tamper with witnesses or evidence. There is no evidence to support a request for bail under this rule, provided that Officer Nelson is not working in law enforcement as an officer.

Signed and dated on this ____ day of August, 2020.

By:



Mark R. Larson, WSBA #15328
Kathleen Van Olst, WSBA # 21186
Deputy Prosecuting Attorneys for King County

1 Certification for Determination of Probable Cause

2 20-1-06432-3 KNT

3 That Mark Larson is a Special Deputy Prosecuting Attorney in and for King County, Washington
4 and Kathleen Van Olst is a Senior Deputy Prosecuting Attorney in and for King County, Washington, and
5 are familiar with the following police report and the investigation conducted in Port of Seattle Police
6 Department case number 19-38910 and 19-2019, as well as the associated police reports and
7 investigations in Auburn Police Department incident number 19-06470, Des Moines Police Department
8 incident number 19-1402, Federal Way Police Department incident number 190006706, Renton Police
9 Department case number 2019-6078, Kent Police Department Case Report number 19-7614 with attached
10 reports, Tukwila Police report number 19-3220 – the police statements in which have all been made under
11 penalty of perjury under the law of the State of Washington declaring that they are true and correct to the
12 best of the investigators’ knowledge; and have reviewed and are familiar with the reports of experts Grant
13 Fredericks, Scot Haug and Jeff Noble; and based on the facts as set for in all these investigations and
14 reports, state:

15 There is probable cause to believe that **JEFFREY NELSON**, DOB 09/29/1978, on May 31, 2019,
16 committed the crimes of:

- 17 • Murder in the Second Degree, RCW 9A.32.050 in Auburn, King County Washington; and,
- 18 • Assault in the First Degree, RCW 9A.36.011, in Auburn, King County, Washington.

19 That this belief is predicated on the above referenced police reports and expert reports regarding the
20 following facts and circumstances upon which this motion for the determination of probable cause is
21 made:

22 I. Background

23 On the afternoon of May 31, 2019, several calls were received by 911 regarding a young man
24 creating disturbances outside stores in the area of Auburn Way North and Harvey Road in the town of
Auburn, King County, Washington. The subject of these calls, as determined by subsequent investigation,
was Jesse Sarey, a 26-year-old south King County resident. On this date, Mr. Sarey weighed 146 pounds
and was 5 feet, 5 inches tall.

The first call, received at 17:20, from an employee of Dollar Tree on Auburn Way North reported
a man throwing garbage and banging on store windows, kicking at vehicles and throwing rocks. Thirty-
two minutes later (at 17:52), the 911 dispatcher received two calls from employees at a nearby Walgreens.
These callers reported a man throwing items outside the store at vehicles and hitting and kicking the walls

1 of the store and a Redbox machine. The callers were uncertain whether the person had been drinking, was
2 under the influence of drugs or had a mental health issue.

3 Auburn Police Officer Jeffrey Nelson, with his K-9 in the backseat of his patrol car, responded to
4 the 911 calls. Officer Nelson is 6 feet tall and weighed 223 pounds. Both the police patrol vehicle and
5 Officer Nelson's uniform are clearly marked as "police." Officer Nelson was also wearing a police duty
6 belt equipped with two pairs of handcuffs, a flashlight, a radio, three spare magazines with additional
7 handgun rounds, a handgun (secured in a level three holster on his right hip) and a Taser holstered on his
8 lower left thigh.

9 Auburn Police Officer Doug Johnson joined Officer Nelson in responding to the first call at the
10 Dollar Tree store. Upon arrival, the officers were unable to locate Mr. Sarey and they left the area.

11 Officer Nelson was the only officer to respond to the second set of calls from Walgreens. Upon
12 arrival at Walgreens, citizens directed Officer Nelson to the location of Mr. Sarey. Officer Nelson parked
13 his vehicle, walked up to Mr. Sarey and began speaking with him. Officer Nelson described Mr. Sarey as
14 breathing heavily, perspiring on his forehead, not blinking his eyes, nostrils flared, standing so as to
15 directly face Officer Nelson with his fists clenched. Officer Nelson described Mr. Sarey's stance as a
16 recognized pre-fight indicator with mannerisms of being "under the influence of a narcotic." After the two
17 spoke for a brief time, Mr. Sarey abruptly turned and walked away, dropping a white plastic bracelet from
18 his pocket. Officer Nelson called out to Mr. Sarey in order to return the bracelet. Mr. Sarey turned around
19 and returned to the Officer for his bracelet. Officer Nelson warned Mr. Sarey as he returned the bracelet
20 that he would be arrested if he continued to disrupt citizens. Officer Nelson described that while returning
21 the bracelet to Mr. Sarey, he appeared to be "mentally preparing himself to assault me" but then turned
22 and walked away from the Officer again.

23 After leaving Walgreens, Mr. Sarey jaywalked through traffic across Harvey Road to a small
24 business center that included the Maestro Barbershop and Sunshine Grocery. Based on the behavior
Officer Nelson witnessed and citizens' expressed fear and concern about Mr. Sarey's behavior, Officer

1 Nelson drove his patrol vehicle to the parking lot of the Sunshine Grocery located at 1402 Auburn Way
2 North with the intent of arresting Mr. Sarey for disorderly conduct, a misdemeanor offense.

3 As Officer Nelson drove to the Sunshine Grocery, he requested an additional patrol unit for
4 backup and activated his in-car COBAN audio and video system. The COBAN system activated by
5 Officer Nelson in his patrol vehicle and police radio recorded his request for a backup unit to assist.
6 Police radio also recorded, within a second of Officer Nelson's request, the responses from two separate
7 Auburn patrol units that they would divert from other calls and provide backup to Officer Nelson.
8 Nonetheless, before back-up units arrived, Officer Nelson parked his patrol car just a few yards from
9 where Mr. Sarey was sitting on the sidewalk outside Sunshine Grocery and immediately walked up to
10 speak with Mr. Sarey and to arrest him. Over the next 67 seconds, video from surrounding buildings
11 captured the struggle between Officer Nelson and Mr. Sarey. That struggle, unfolded in a series of quick,
12 escalating interactions and ended with Officer Nelson shooting Mr. Sarey twice.

12 II. Video Evidence

13 The interaction between Officer Nelson and Mr. Sarey outside the Sunshine Grocery location was
14 captured by two exterior cameras from a business at the south end of the grocery parking lot. One camera
15 was about 194 feet East ("East camera") from Mr. Sarey's location and the other camera was about 142
16 feet West ("West camera"). Due to the location of Officer Nelson's vehicle, his COBAN in-car camera
17 did not capture video of the interaction between Officer Nelson and Mr. Sarey. (This camera records only
18 events occurring directly in front of the vehicle.) However, Officer Nelson was wearing a microphone, so
19 audio of the entire event was recorded.

20 During review of this case, the State hired Mr. Grant Fredericks, an expert in video forensics, to
21 review and synchronize the video and audio evidence that captured the events leading up to and including
22 the use of deadly force by Officer Nelson against Mr. Sarey. Fredericks synchronized the video images –
23 the East and West cameras and the COBAN audio and video – to produce a video summary that provides
24 detail of the event that would not be apparent viewing any of the single video elements separately. The
image size of the synchronized video is 4032 x 2260 pixels. A high-resolution video like this must be

1 viewed on a 4K monitor in order to see the details of the interaction between Officer Nelson and Mr.
2 Sarey. Fredericks also separated the video into a series of shorter segments, so that the precise order of
3 events can be scrutinized. The discrete segments also require a 4K monitor for proper viewing.

4 The video record shows Officer Nelson arriving at the Sunshine Grocery within minutes of
5 leaving Walgreens. Officer Nelson parked his patrol car behind and perpendicular to other vehicles that
6 were parked in the grocery store spaces. What follows is a description of four sequential video segments
7 that together cover the entire 67 second event.



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15 *Photograph of Sunshine Grocery and Steven Woodard's black vehicle*

16 **A. Segment #1 (38 seconds): Officer Nelson exits patrol car and verbally confronts Mr. Sarey**

17 Officer Nelson exited his vehicle and approached Mr. Sarey. Mr. Sarey was sitting on the sidewalk
18 between the grocery's entrance (10 feet to Mr. Sarey's right) and within a few feet of a large packaged-ice
19 freezer box (to Mr. Sarey's left). Mr. Sarey's back was against the front wall of the store. When Officer
20 Nelson neared Mr. Sarey, he stopped just a few feet in front of him on the sidewalk. Officer Nelson first
21 said to Mr. Sarey, "I told you to stop kicking stuff, stop throwin' stuff, right?" Mr. Sarey agreed. Officer
22 Nelson continued, "Ok, so now you gotta put your hands behind your back, OK?" Mr. Sarey responded that
23 he was "not kicking anything though." When Officer Nelson said he couldn't hear Mr. Sarey, Mr. Sarey
24 repeated, "I'm not kicking anything." Officer Nelson persisted stating, "OK. You're under arrest for

1 disorderly conduct.” Mr. Sarey did not immediately respond. Instead, Mr. Sarey looked into a box of trash
2 sitting to his left next to the freezer box finding a discarded can from which to drink. Officer Nelson then
3 directed: “Put it [the can] down.” Officer Nelson remained standing above Mr. Sarey awaiting his response.
4 However, 38 seconds after walking up to Mr. Sarey, Officer Nelson intensified his efforts to effect an arrest,
5 as seen over the next segments.

6 **B. Segment #2 (6 seconds): Officer Nelson begins to physically subdue Mr. Sarey**

7 After Mr. Sarey failed to comply with the request to put the can down and put his hands behind
8 his back, Officer Nelson moved in to physically arrest Mr. Sarey. Officer Nelson stepped toward Mr.
9 Sarey, placed his hands on his shoulders and pulled him into a standing position. Now face to face, Mr.
10 Sarey said, “You need to stop pushin’ me, bro.” The video then shows Officer Nelson continuing to hold
11 Mr. Sarey by his shoulders pressing him against the glass windows of the grocery store. Officer Nelson
12 also appears to be patting along the left side of Mr. Sarey’s body. Mr. Sarey again tells Officer Nelson,
13 “Keep your hands off me.”

14 Immediately, Officer Nelson pivots to his left while grasping Mr. Sarey in an attempt to sweep
15 Mr. Sarey’s legs out from under him or “hip throw” Mr. Sarey to the ground. But the maneuver failed,
16 and Mr. Sarey remained on his feet.

17 **C. Segment #3 (13 seconds): Officer Nelson and Mr. Sarey continue to struggle**

18 Over the first 7 seconds of this segment, Officer Nelson and Mr. Sarey grapple. Mr. Sarey can be
19 heard asking, “Hey, what the hell are you doing to me?” It is unclear how Officer Nelson initially
20 responds to Mr. Sarey, but the video shows Mr. Sarey with his back toward the glass of the grocery store
21 and his arms moving rapidly around Officer Nelson. Officer Nelson is also moving and bobbing,
22 attempting to control Mr. Sarey.

23 The next 6 seconds of this segment shows a witness, Steven Woodard, jumping out of his black
24 vehicle which was parked directly in front of where the two men are struggling. Woodard later stated that
he jumped from his vehicle when he saw Mr. Sarey’s arm reach behind Officer Nelson and touch Officer
Nelson’s holstered gun. Woodward became frightened about what Mr. Sarey might do if he secured

1 Officer Nelson's handgun. As Woodard is getting out of his vehicle, a voice can be heard on the video
2 stating, "[unintelligible] ...under arrest" and "[unintelligible ...] fuckin' stupid ass [unintelligible]."
3 Officer Nelson can be seen in the video, moving the right side of his body backward, increasing the
4 distance between Mr. Sarey and his gun which was holstered on the officer's right hip. Officer Nelson
5 then began a series of seven punches toward Mr. Sarey's head and upper body. Mr. Sarey covers up and
6 appears to push back from the Officer to deflect the blows. Following the series of punches, Officer
7 Nelson pushes Mr. Sarey up against the side of the freezer box.

8 **D. Segment #4 (10 seconds): Officer Nelson fires two shots separated by 3.44 seconds**

9 Backed against the freezer box, Mr. Sarey continued to resist while Officer Nelson used his left
10 arm to hold Mr. Sarey against the ice box. Woodard, who remained at the hood of his car watching the
11 struggle, is heard yelling to Mr. Sarey, "Stop resisting dude, just go down." Woodard then immediately
12 leaned down out of view of the video to pick up a closed folding-knife that had fallen to the ground and
13 landed near his feet. As Woodard retrieved the knife, which he placed on the hood of his car, Mr. Sarey is
14 heard yelling back to Woodard that he was "not doing anything wrong." Mr. Sarey can be seen leaning
15 forward at this point but is pushed back to the freezer box once again by Officer Nelson while Woodard
16 exclaims, "Bullshit you're not."

17 Officer Nelson is seen pushing Mr. Sarey against the freezer box while drawing his weapon with
18 his right hand and bending to his right. Two seconds after Woodard picked up the knife, Officer Nelson
19 fired his weapon into Mr. Sarey's torso. Immediately, Mr. Sarey dropped down the side of the freezer
20 box, his back slightly angled toward the parking lot. Although his torso is no longer visible behind the
21 patrol car, Mr. Sarey's head is visible through the patrol car front driver's window. It can be seen falling
22 backward toward the pavement. Woodard exclaimed, "Oh, my god," and jumped back toward the side of
23 his vehicle. Officer Nelson is seen working on his gun to clear a jammed round and racking another round
24 for firing. At this moment, Officer Nelson stood approximately seven feet away from Mr. Sarey who was
now lying back propped up on his right elbow with his feet toward the Officer. Officer Nelson first
looked up at Woodard, looked back at Mr. Sarey, and then aimed and fired his handgun at Mr. Sarey,

1 striking Mr. Sarey in his forehead. The two shots were separated by 3.44 seconds. After the second shot,
2 Woodard again jumps and exclaims, “Oh, my god.” Within seconds, Officer Nelson is heard announcing
3 over police radio, “Shots fired.”

4 III. Civilian Witnesses

5 In addition to Steven Woodard, who is seen and heard in the video, the incident was also partially
6 witnessed by Quincy Williams. Each witness provided details regarding what they observed.

7 Steven Woodard provided statements to the Auburn Police Department and the Valley
8 Investigations Team lead agency, the Port of Seattle Police Department. Steven Woodard said that prior
9 to Officer Nelson’s arrival, he had been sitting in the front passenger seat of his black vehicle in front of
10 the Sunshine Grocery when Mr. Sarey approached and asked for change. Woodard described Mr. Sarey’s
11 demeanor as odd and attributed it to drugs or mental health issues. Woodard stated that he was still sitting
12 in his car parked in front of the grocery when Officer Nelson contacted Mr. Sarey on the sidewalk directly
13 in front of his car. Woodard observed Officer Nelson tell Mr. Sarey to get up and put his hands behind his
14 back. When Mr. Sarey got up, Woodard observed Mr. Sarey to start flailing about. Woodard said when
15 Officer Nelson tried to restrain Mr. Sarey everything went crazy and they began fighting like “Tasmanian
16 devils.” During the struggle, Woodard saw Mr. Sarey reach around Officer Nelson and touch the butt of
17 his handgun. Woodard then jumped out of his car, wondering if Officer Nelson needed help and what he
18 should do.

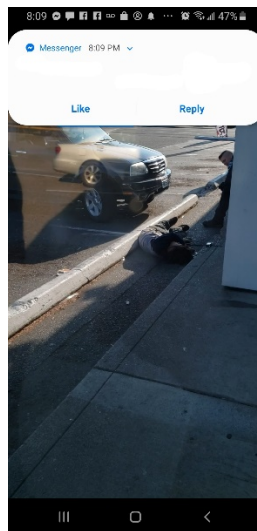
19 Seconds after Woodard stepped out of his car, a closed folding-knife “flew” to the ground at his
20 feet. Woodard said the knife “came over my feet.” Woodard stooped, picked it up, and placed it on the
21 hood of his car. As Woodard looked back at the struggle, Officer Nelson was punching Mr. Sarey but the
22 punches did not seem to have much effect. Woodard initially said Mr. Sarey fell to the ground and Officer
23 Nelson shot him in the stomach. But after reviewing the video with police, Woodard corrected his
24 statement and said that Mr. Sarey was standing during the first shot by Officer Nelson. Woodard
described that, just before the second shot, Officer Nelson looked over at Woodard, then looked back at
Mr. Sarey and shot Mr. Sarey in the head. Woodard described and demonstrated that at the time of the

1 second shot by Officer Nelson, Mr. Sarey had fallen, was seated on his buttocks with his feet toward the
2 Officer, his body curled up, and propped against a curb. Woodard could hear Mr. Sarey “gurgling” as he
3 lay in that position.



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12 *Woodard demonstrating Mr. Sarey’s position at the time of the second shot*

13 After the second shot, Woodard said Officer Nelson sat on the sidewalk near Mr. Sarey and didn’t do
14 anything else until other Auburn police officers arrived on the scene minutes later.



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22 *Cellphone video still photo taken by a barbershop client just after shooting*

1 Woodard did not see Officer Nelson handcuff Mr. Sarey or search Mr. Sarey for weapons. Woodard told
2 police investigators that he believed the second shot was unnecessary.

3 The second eyewitness, Quincy Williams witnessed the incident from his parked car which was
4 further away from the incident. Williams walked out of the Sunshine Grocery while Officer Nelson
5 initiated his contact with Mr. Sarey. Williams got into his car, which was also parked in front of the
6 grocery but a couple stalls away from Officer Nelson and Mr. Sarey. Williams was sitting in his car when
7 the struggle and shooting occurred. Williams described Officer Nelson and Mr. Sarey as grabbing each
8 other under the collar and wrestling. At some point, Officer Nelson unsuccessfully attempted to hip-throw
9 Mr. Sarey to the ground. Officer Nelson had his back towards Williams when Officer Nelson pinned Mr.
10 Sarey to the freezer box with his left hand and shot him once in the chest. Williams lost sight of Mr. Sarey
11 before Officer Nelson fired the second shot.

12 Cell phone video was taken by a customer who was in the Maestro Barbershop, next door to the
13 Sunshine Grocery, just moments after the shooting. The video shows Officer Nelson with one knee on the
14 curb of the sidewalk a few feet from Mr. Sarey. There is no indication in the video that Mr. Sarey was
15 handcuffed by Officer Nelson or that Officer Nelson rendered medical aid to Mr. Sarey after the shots
16 were fired.

17 IV. Medical and Other Forensic Evidence

18 Just over two minutes after Mr. Sarey was shot the second time, Auburn officers arrived on the
19 scene. One of the officers began lifesaving measures on Mr. Sarey until medics responded. Medics found
20 Mr. Sarey without a pulse but after continued CPR and medication, they regained a pulse and he was
21 transported to Harborview Medical Center. Upon admission to the hospital, Mr. Sarey was in
22 hemorrhagic shock due to blood loss from the gunshot wound to the upper abdomen and the gunshot
23 wound to the head. He was taken into emergency surgery. In surgery, doctors discovered Mr. Sarey
24 suffered a through-and-through injury to his liver causing blood loss which they ultimately were never
able to control. Doctors determined that Mr. Sarey had a “devastating brain injury and liver injury
resulting in death in the OR [operating room].”

1 Dr. Brian Mazrim, an associate medical examiner for King County, performed the autopsy on Mr.
2 Sarey. Dr. Mazrim determined that the cause of Mr. Sarey's death was "multiple gunshot wounds
3 sustained in a confrontation with police." He classified the manner of death as homicide.

4 Dr. Mazrim determined that Mr. Sarey had penetrating handgun wounds to the abdomen and head.
5 The gunshot wound to Mr. Sarey's abdomen was in the upper quadrant of his abdomen and the direction of
6 the shot was front to back, left to right and slightly downwards. The bullet entered his abdomen, passed
7 through the liver and body cavities, and exited through the right 11th back rib. The bullet was recovered
8 from the subcutaneous soft tissues of the back, about 43.5" above Mr. Sarey's heels. The bullet left a
9 laceration in Mr. Sarey's back. The back laceration and bruising surrounding the laceration is consistent
10 with Mr. Sarey's back being against a hard surface, such as the freezer box, when he was shot in the torso.
11 Dr. Mazrim concluded that the gunshot wound to Mr. Sarey's torso, severely damaging his liver, was a
lethal injury due to the resulting uncontrollable blood loss.

12 With regard to the wound to the head, Dr. Mazrim determined that the entrance wound was above
13 Mr. Sarey's lateral left brow and the direction of the shot was left to right, downwards, and front to back.
14 The bullet entered and disrupted Mr. Sarey's left eye and left eye orbit, passed through his cranial cavity
15 fracturing the C1 and C2 vertebrae, and penetrated the soft tissues of his right neck. The bullet was
16 recovered from his neck. Dr. Mazrim concluded that the gunshot wound to Mr. Sarey's head produced a
17 significant injury to his brain and to his vertebral blood vessels but was not definitively lethal.

18 The toxicology report from Mr. Sarey's blood taken at the hospital tested positive for
19 methamphetamine.

20 Scientists from the Washington State Patrol Crime Laboratory examined Officer Nelson's
21 handgun, a Kimber pistol. They determined it was operable and that the two bullets recovered from Mr.
22 Sarey's body at autopsy were fired from Officer Nelson's handgun. The scientists also examined the
23 sweatshirt Mr. Sarey was wearing when he was shot by Officer Nelson. The Crime Laboratory was able
24 to determine, based on the presence and pattern of gunpowder residue surrounding a hole in the front right

1 torso of the sweatshirt, that the distance between the muzzle of Officer Nelson’s handgun and Mr. Sarey
2 was likely further than 12 inches but less than 69 inches.

3 V. Statement of Officer Nelson

4 Officer Nelson gave a detailed written account of this incident in a voluntary statement to
5 investigators on July 2, 2019. Officer Nelson noted that after parking his patrol car, he approached within
6 4 feet of Mr. Sarey. After telling Mr. Sarey he was under arrest, Officer Nelson said Mr. Sarey was
7 physically and verbally non-compliant. Officer Nelson said that he gave instructions for Mr. Sarey to
8 stand and put his hands behind his back to be arrested. As Mr. Sarey began to stand, leaning against the
9 grocery store wall, Officer Nelson stated he “quickly closed the distance to him [Mr. Sarey] and extended
10 my arms...to secure one of his forearms for upper body control....”

11 Officer Nelson says that when Mr. Sarey stood up, Mr. Sarey struck him in the chest knocking off
12 his radio microphone. Officer Nelson wrote that he then attempted a hip-throw to allow him to handcuff
13 Mr. Sarey. In attempting this maneuver, Officer Nelson felt sharp pain to his ribs that was intense, and he
14 was unable to throw Mr. Sarey. Officer Nelson said that Mr. Sarey broke free of his grasp and used his
15 elbow to strike Officer Nelson on the right side of his head. As well, Officer Nelson felt Mr. Sarey reach
16 behind him and then felt his duty belt being pulled violently upward. Officer Nelson felt and heard sounds
17 from his holster which he associated with Mr. Sarey attempting to take his handgun. Officer Nelson
18 reached back to his handgun and felt Mr. Sarey’s hands on the grip of his weapon. The weapon had not,
19 however, cleared the final level of retention, so Officer Nelson forced the handgun down in the holster
20 and attempted to push Mr. Sarey away from him, but Mr. Sarey held on to the Officer’s jumpsuit. Again,
21 Officer Nelson felt Mr. Sarey continuing to try to remove his handgun so Officer Nelson punched Mr.
22 Sarey’s lower jaw with a closed fist. Officer Nelson continued to punch Mr. Sarey to obtain distance from
23 him. Mr. Sarey continued holding Officer Nelson’s jumpsuit and Mr. Sarey was knocking items out of the
24 Officer’s uniform jumpsuit pockets.

At one point, Officer Nelson stated that Mr. Sarey removed the Officer’s utility knife from his
front jumpsuit pocket. Officer Nelson saw the silver blade of the knife become visible. Officer Nelson

1 saw the blade from his knife, that appeared to be half open, at least at a 90-degree angle, being held by the
2 handle by Mr. Sarey. Officer Nelson believed Mr. Sarey was about to stab him in the face or neck. In
3 response, Officer Nelson retracted his face in a downward motion and used his right hand to remove his
4 handgun. Officer Nelson used his left forearm to push and block Mr. Sarey's right arm. Mr. Sarey
5 released his hold on Officer Nelson with his left arm and attempted to grab Officer Nelson's drawn
6 handgun. Officer Nelson rotated the handgun to the right and using his left forearm to block the gun from
7 Mr. Sarey, Officer Nelson fired into Mr. Sarey's torso. Officer Nelson felt the gun malfunction due to his
8 own arm pressing down on the slide. Officer Nelson stated that he pushed Mr. Sarey back against the
9 freezer box after the shot, but due to Mr. Sarey's baggy t-shirt, Officer Nelson was unable to determine
10 where Mr. Sarey was shot or if the shot was effective. Officer Nelson saw Mr. Sarey fall against the
11 freezer box and rotate to the ground in a kneeling position. At that point, Officer Nelson cleared the
12 malfunction in his handgun. Officer Nelson also scanned around him and looked at Mr. Sarey who was in
13 a squatting position with his hands before his knees, ready to spring forward and reengage him. Still
14 believing Mr. Sarey was armed with his knife, Officer Nelson fired a second shot at Mr. Sarey striking
15 him in the head. Officer Nelson stated that he advised dispatch via radio what occurred and immediately
16 requested aid to respond to the scene.

16 VI. Fredericks Comparison of Video with Officer Nelson's Statement

17 Grant Fredericks, the video expert, was asked to perform a comparison of events depicted in the
18 video with the written statement of Officer Nelson. From this work, Fredericks concluded that many of
19 the statements made by Officer Nelson were inconsistent with the video and that events described by
20 Officer Nelson were out of sequence from the chronological order shown in the video.

21 With regard to the events during the struggle and just before the shots were fired, Fredericks
22 noted that the video shows movement by Mr. Sarey's left arm or hand on the right side of Officer Nelson
23 but the video is unclear whether Mr. Sarey's hand makes contact with Officer Nelson's handgun.
24 Approximately a half a second after Mr. Sarey's hand motion, Officer Nelson responds by moving the

1 right side of his body backward and away from Mr. Sarey. Officer Nelson then made seven punching
2 actions against Mr. Sarey.

3 Following the punching but prior to the first shot, the video shows that the front of Officer
4 Nelson's body is visible to the camera and Mr. Sarey is on the left side of Officer Nelson. Contrary to
5 Officer Nelson's claim that Mr. Sarey made a second grab toward his gun at this time, Fredericks was
6 unable to see in the video that Mr. Sarey ever reached forward toward the Officer's handgun, or that Mr.
7 Sarey's hands, arms or body ever passed in front of Officer Nelson's body toward his handgun. Instead,
8 Mr. Sarey remained on the left side of Officer Nelson's body even throughout the time that Officer
9 Nelson pulled his handgun, without any movement visible in the video toward Officer Nelson by Mr.
10 Sarey.

11 The video also shows that after the first shot was fired, Mr. Sarey dropped to the sidewalk.
12 Fredericks concludes that the video does not support Officer Nelson's claim that he pushed Mr. Sarey
13 backward toward the freezer box between the first and second shots. Rather the video shows Officer
14 Nelson's left hand move toward his handgun and a racking sound is heard as a round is chambered in the
15 gun.

16 Also contrary to Officer Nelson's statement – that Mr. Sarey fell against the freezer box after the
17 first shot and then rotated to the ground in a kneeling position – the reverse projection examination done
18 by Fredericks establishes that Mr. Sarey was on the ground, on his buttocks and leaning backward when
19 the second shot was fired with his head in a position that was likely no more than 16 to 18 inches off the
20 ground. Mr. Sarey was not at the height of a kneeling position when Officer Nelson fired the second shot.
21 Fredericks also determined that Officer Nelson's face was approximately seven feet from Mr. Sarey's
22 face when the second round was chambered in the gun.

23 Finally, Fredericks determined that, contrary to Officer Nelson's statement, Mr. Sarey could not
24 have been armed with a knife during either shot. The video shows that 2.26 seconds prior to the first shot
and 5.7 seconds before the second shot, Woodard can be seen picking up Officer Nelson's knife from the
ground and placing it on the hood of his vehicle.

1 VII. Expert Opinions on Use of Force

2 The State hired two use of force experts in order to evaluate the facts in this case, Mr. Jeff Noble
3 and Mr. Scott Haug. Jeff Noble was a Deputy Chief of Police in Irvine, California. He served in law
4 enforcement for over 30 years and has been an expert and consultant on related issues since 2006. Mr.
5 Scott Haug worked in law enforcement for 32 years and served as Chief of the Post Falls, Idaho Police
6 Department for the last 10 years. He has served as a consultant on a wide array of law enforcement issues
7 since 2002.

8 Mr. Noble and Mr. Haug have provided expert opinions and testified in a number of civil and
9 criminal cases sometimes in defense of an officer's use of force and sometimes in support of litigants
10 criticizing officers for excessive use of force. In this case, both experts have reviewed all the available
11 materials, including investigative reports, witness statements, Officer Nelson's statements, the autopsy,
12 medical and crime lab reports, video evidence and the report of Mr. Grant Fredericks. They have also
13 examined Officer Nelson's training records and available trainings from the Auburn Police Department
14 and the Washington Criminal Justice Training Center. Finally, they have reviewed the policy manual
15 from the Auburn Police Department, and they reviewed the new changes to Washington law regarding the
16 use of deadly force by officers following the passage of initiative I-940.

17 Mr. Haug and Mr. Noble both find that in his encounter with Mr. Sarey, Officer Nelson did not
18 follow his training in a number of material ways. Both agree that those failures needlessly provoked the
19 circumstances that led to the use of deadly force against Mr. Sarey.

20 In terms of how this situation would have appeared, objectively, to a person in Officer Nelson's
21 position, the experts find clear evidence that Mr. Sarey was suffering a mental health crisis and/or was
22 under the influence of drugs, and that his impairment would have been clear to Officer Nelson. They also
23 note that Mr. Sarey was being arrested for a non-violent misdemeanor and that there was no reason to
24 believe Mr. Sarey was armed.

25 The experts agreed that law enforcement officers are provided with specific training about how to
engage a subject in the circumstance presented by Mr. Sarey. First and foremost, Officer Nelson should

1 have waited for backup if he intended to make an arrest. The presence of multiple officers would have
2 significantly reduced the chance that lethal force would be necessary. This instruction is even more
3 compelling considering that Mr. Sarey did not pose an immediate threat to Officer Nelson or to the public
4 and because Officer Nelson was a K-9 officer who could not transport an arrestee in any event, due to the
5 configuration of his vehicle. To effectuate an arrest as a K-9 officer, Officer Nelson understood that a
6 second patrol car had to respond. Finally, it is notable that backup did arrive approximately 3 minutes
7 after Officer Nelson first arrived at the Sunshine Grocery.

8 Officer Nelson also had access to less lethal options as he approached Mr. Sarey, including his K-
9 9 and the Taser strapped to Officer Nelson's thigh, which was never deployed. Another essential tool
10 available to Officer Nelson was his training in de-escalation. De-escalation techniques included in Auburn
11 Police Department training include slowing the pace of the encounter, active listening/talking, avoiding
12 being provocative, maintaining distance and avoiding cornering persons or acting aggressively.

13 Instead, Officer Nelson exited his car and went "hands-on" with Mr. Sarey in just 38 seconds.
14 Mr. Sarey was lying on the ground, shot twice, 29 seconds after that. Expert Haug described the struggle
15 between Mr. Sarey and Officer Nelson as "predictable." Both experts label what occurred as a police-
16 created emergency. That is, by failing to employ reasonable, proper tactics and de-escalation techniques
17 common to modern policing and a part of Auburn PD policy and training, Officer Nelson created the very
18 situation that brought about his use of deadly force.

19 In comparing the video evidence and Officer Nelson's written statement, both experts found
20 significant discrepancies. Mr. Haug is of the opinion that many of the events described by Officer Nelson
21 as constituting a threat either did not occur or were substantially different from what Officer Nelson
22 described. Specifically, he does not find evidence to support Officer Nelson's claim that Mr. Sarey armed
23 himself with Officer Nelson's knife, or that Mr. Sarey grabbed the officer's gun such that the triple
24 retention holster was nearly defeated. Moreover, at the time of the initial shot, the evidence is clear: the
knife was on the hood of Mr. Woodard's car, and the handgun was fully in the possession of Officer

1 Nelson. As such Mr. Sarey did not pose a threat of death or serious physical harm to Officer Nelson,
2 according to Mr. Haug.

3 The experts both conclude that Officer Nelson's second shot was unreasonable. Having suffered
4 a gunshot to the abdomen, Mr. Sarey was clearly depicted falling immediately to the ground. He slides to
5 his buttocks, with his feet stretched toward Officer Nelson. He is falling backwards onto his arm and
6 back when Officer Nelson fires a second round into Mr. Sarey's forehead, 3.44 seconds after the first
7 shot. Officer Nelson claims that, after he cleared his weapon of a malfunction, he perceived that Mr.
8 Sarey was on his knees or haunches, in a position to pounce. Neither expert finds this description to be
9 accurate or credible. Each expert finds a lack of any credible evidence that Mr. Sarey posed a threat
10 immediately before the second shot.

11 As for the first shot, Mr. Noble is of the opinion that a jury should decide whether Officer Nelson
12 accurately and truthfully perceived a threat of death or serious physical harm. Noble writes in his report:
13 "While I cannot resolve these issues, I do believe that a jury could find Officer Nelson's use of deadly
14 force was unreasonable as the jury can appropriately assess Officer Nelson's credibility."

15 Mr. Haug finds both shots to be unreasonable: "I have carefully reviewed Officer Nelson's report
16 and the facts cited by Officer Nelson to justify the fatal shooting of Mr. Sarey - they are inconsistent with
17 the evidence. There are numerous inconsistencies. The fatal shooting of Mr. Sarey was an unnecessary
18 and unreasonable application of deadly force by Officer Nelson during a chaotic scenario best described
19 as a police-created emergency."

20 Prior to this incident, Officer Nelson had not had any previous contact with Mr. Sarey. Mr.
21 Sarey's only contact with law enforcement agencies over the years included calls for mental health related
22 issues, involuntary commitment and gross misdemeanor and misdemeanor convictions.

23 VIII. Conclusion

24 Recent changes in Washington law enacted in 2019, provide that:

A peace officer shall not be held criminally liable for using deadly force in good faith,
where "good faith" is an objective standard which shall consider all the facts, circumstances, and
information known to the officer at the time to determine whether a similarly situated reasonable

1 officer would have believed that the use of deadly force was necessary to prevent death or serious
2 physical harm to the officer or another individual.

3 As detailed above, it is the opinion of two experts on police use of force, Mr. Noble and Mr. Haug, that
4 Officer Nelson's actions fail to meet this "good faith" standard required by Washington State law. As
5 such, there is probable cause to support the charges being brought against Jeffrey Nelson.

6 We declare under penalty of perjury under the laws of the State of Washington that the
7 foregoing is true and correct. Signed and dated this _____ day of August 2020 in Seattle, Washington.

8 By:

9 

10 Mark R. Larson, WSBA #15328
11 Special Deputy Prosecuting Attorney for King County
12 For DANIEL T. SATTERBERG, Prosecuting
13 Attorney

14 

15 Kathleen Van Olst, WSBA # 21186
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