



Office of the Washington State Auditor
Pat McCarthy

Compliance Audit Report

Reviewing Investigations of Police Use of Deadly Force

Snohomish County Multiple Agency Response Team – Officer Jonathan Shoop

**Use of Deadly Force Incident on July 13, 2020, by the Bothell Police
Department**

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Office of the Washington State Auditor

Pat McCarthy

October 9, 2023

Captain Jerry Strieck
Snohomish County Multiple Agency Response Team

Report on Use of Deadly Force Investigation Audit

Attached is the official report on our audit of the investigation into the use of deadly force on July 13, 2020, that resulted in the death of Officer Jonathan Shoop.

The audit assessed the Bothell Police Department's and the Snohomish County Multiple Agency Response Team's compliance with state laws and rules regarding independent investigations of police use of deadly force as defined in WAC 139-12-030.

Our independent audits provide essential accountability and transparency regarding police use of deadly force investigations. These audits are valuable to the Legislature, law enforcement agencies and the public in assessing police accountability efforts.

If you are a member of the media and have questions about this report, please contact Director of Communications Kathleen Cooper at (564) 999-0800. Otherwise, please contact Use of Deadly Force Investigations Program Manager Michael Huynh at (564) 999-0831.

Pat McCarthy, State Auditor

Olympia, WA

cc: Monica Alexander, Executive Director, Criminal Justice Training Commission
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EXECUTIVE SUMMARY

Results in Brief

Snohomish County Multiple Agency Response Team (SMART) investigators and officers involved in the shooting complied with most requirements to ensure the investigation into Officer Jonathan Shoop's death was independent, transparent, credible, and communicated to the public timely, as state laws and rules require. These actions included, but were not limited to, securing and maintaining a perimeter around the scene of the shooting, relinquishing control of the scene to SMART once the investigation team arrived, collecting and preserving evidence, and canvassing the scene for witnesses.

We found instances when SMART did not follow state rules, as well as opportunities to improve documentation. Specifically, we found SMART did not:

- Require one investigator and both community representatives assigned to the case to sign conflict of interest assessments
- Restrict the case file access to only SMART members participating in the investigation
- Include the community representatives at briefings between SMART and the involved agency
- Require community representatives to sign a legally binding confidentiality agreement at the start of the investigation
- Maintain documentation demonstrating it notified the community representatives and Shoop's family of all press releases
- Withhold all information about the investigation from the involved agency. The SMART commander decided it was in the best interest of Officer Mustafa Kumcur and the Bothell Police Department to inform them, prior to releasing details to the media, that Kumcur fired the bullet that inadvertently killed Shoop.

Recommendations

We recommend SMART:

- Ensure all independent investigation team (IIT) investigators and community representatives submit a signed conflict of interest form within 72 hours of the start of an investigation, or from the date they were assigned to the investigation
- Restrict the case file so only SMART members participating in the investigation have access to it

- Ensure the community representatives are present at all briefings between SMART and the involved agency
- Ensure the community representatives sign a legally binding confidentiality agreement at the start of an investigation
- Maintain logs, narratives or other documentation demonstrating the community representatives and family have received advance notice of press releases

As part of our audit, we also reviewed SMART's compliance with state rules that govern the selection process and training requirements for IIT members. Recommendations for improving compliance with these criteria can be found in the Team Requirements section of this report.

BACKGROUND

Use of Deadly Force Incident

The following summary of events is based on the investigation's case files:

On the evening of July 13, 2020, Bothell Police Officer Mustafa Kumcur was training Officer Jonathan Shoop. Shoop was driving a patrol vehicle, and Kumcur was in the passenger seat. At around 9:45 p.m., while driving on state Route 522, they conducted a traffic stop of a vehicle for driving without a license plate. Shoop and Kumcur exited their vehicle and approached the driver, Henry Washington. However, Washington drove off, and Shoop and Kumcur ran back to their vehicle to pursue him. After striking a person riding a scooter, Washington drove his vehicle across the center median and came to a stop in the opposing lane. Shoop relayed over radio that Washington had hit a person, and a sergeant with the Bothell Police Department requested aid to the scene. As Shoop and Kumcur drove toward Washington, he exited his vehicle and fired his gun at the driver's side window of the patrol car. One of the bullets ricocheted off Kumcur's gun and grazed his head. Kumcur and Shoop immediately returned fire at Washington. Moments later, Shoop collapsed in his seat, and Washington ran away.

Kumcur got out of the car to help Shoop, and partially pulled him out of the vehicle. A Bothell Police Department sergeant arrived shortly after, and reported it was clear to him that Shoop had died from a gunshot wound to the head. Paramedics arrived and attempted life saving measures on Shoop, but confirmed he was dead at the scene. Kumcur was taken to the hospital by paramedics for his head injury. Washington was arrested later that night. He was not injured during the shooting.

The Snohomish County Multiple Agency Response Team (SMART), an independent investigation team (IIT) that investigates police use of deadly force incidents in Snohomish County, responded to the shooting. Investigators from the Snohomish County Sheriff's Office, Washington State Patrol, and the Everett, Marysville, Monroe, Lynnwood, Edmonds, Lake Stevens, Arlington, and Mountlake Terrace police departments worked on the investigation. Within days, investigators determined that Kumcur fired the shot that inadvertently killed Shoop.

The King County Prosecuting Attorney's Office charged Henry Washington with Shoop's murder on July 17, 2020, stating the "fact that [he] did not fire the fatal shot is immaterial to his culpability in this crime." Kumcur was given immunity on November 18, 2020. SMART provided its investigation to the King County Prosecuting Attorney's Office on August 4, 2022. The case against Washington is pending trial.

Independent Investigation Teams

Voters approved Initiative 940 in 2018. It ensures that one of an IIT's key functions is to investigate police use of deadly force incidents. The initiative requires investigations of police use of deadly force be conducted by an agency completely independent of the one with the involved officer(s). Regional IITs allow law enforcement agencies to respond quickly to use of deadly force incidents while keeping the involved agency out of the investigation. IITs are made up of command staff, detectives and other crime scene investigators from law enforcement agencies in a given region. An IIT also consists of volunteers, called non-law enforcement community representatives, who help give the community perspective during an investigation.

Washington has 17 IITs throughout the state. Many of these teams existed before recent police reform and accountability laws, including Initiative 940, and allowed law enforcement agencies to pool resources for major investigations. Prohibiting the involved agency from participating in these investigations was meant to improve their impartiality and independence by preventing people who are more likely to have a personal relationship with the involved officers from investigating the incident.

The initiative tasked the Washington State Criminal Justice Commission (CJTC) with adopting rules to govern these investigations. The CJTC adopted Washington Administrative Code (WAC) 139-12-030, which requires independent use of deadly force investigations to meet four key principles:

- Independence – the involved agency cannot have undue influence or the appearance of undue influence on the investigation.
- Transparency – community members are able to assess whether the investigation is conducted in a trustworthy manner and complies with the standards defined in state laws and rules.
- Communication – the IIT must communicate the investigation's progress to the public and family of the person killed or harmed by police use of deadly force.
- Credibility – use of deadly force investigations follow best practices for criminal investigations, and investigators meet necessary training requirements and demonstrate ethical behavior and impartiality.

Audit Objective

State law (RCW 43.101.460) requires the Office of the Washington State Auditor to audit all investigations into police use of deadly force resulting in death, substantial bodily harm or great bodily harm.

To determine whether the Bothell Police Department and SMART complied with state laws and rules in the investigation of the death of Officer Jonathan Shoop, we reviewed investigative files related to the case, reviewed training records held by the CJTC and member police agencies, and interviewed IIT members, including community representatives. We assessed the involved agencies' and IIT's compliance with each of the requirements under the key principles in WAC 139-12-030. This included whether the IIT followed the CJTC's published best practices for conducting homicide investigations.

This report outlines the steps the investigation team took to meet each of these key principles. Appendix A contains information about our methodology.

AUDIT RESULTS

Appendix A outlines our Office's authority and methodology for this audit. In short, state law (RCW 43.101.460) requires the Office of the Washington State Auditor to audit all investigations into police use of deadly force resulting in death, substantial bodily harm or great bodily harm. Our charge is to assess whether the investigations complied with relevant rules and laws. The audit only reviewed the investigation. It did not assess the incident itself or whether the use of force was justified.

Independence

To help ensure the investigation was conducted independently of the involved agency, SMART investigators reported they assumed control of the scene of the shooting upon arrival and excluded investigators from the Bothell Police Department. We reviewed investigative reports and found a Bothell Police Department captain notified SMART of the shooting around 10 p.m., about 15 minutes after it happened. The SMART commander arrived soon after and determined the incident occurred within King County. The SMART commander and a commander from the King County Sheriff's Office, also on scene, agreed SMART would be responsible for conducting the investigation. The SMART commander activated the IIT at about 12:30 a.m. and assumed control of the investigation.

Investigators from the Snohomish County Sheriff's Office, Washington State Patrol, and the Everett, Marysville, Monroe, Lynnwood, Edmonds, Lake Stevens, Arlington, and Mountlake Terrace police departments worked on the investigation. We did not find any evidence that any employees from the Bothell Police Department took part in the investigation.

Except for limited details about an investigation's progress, the 2020 WAC prohibits an IIT from sharing investigative information with an involved agency. SMART leadership acknowledged these requirements in their reports; however, they decided it was in the best interest of Kumcur and the Bothell Police Department to inform them – rather than learn from news media – that Kumcur had fired the fatal shot, not Washington. As a result, SMART held two briefings with the Bothell Police Department within 48 hours of the shooting. The first briefing informed them that preliminary findings suggested Kumcur fired the fatal shot, and the second briefing, which occurred after Shoop's autopsy, confirmed this information. After approval from the Bothell Police Department, SMART leadership, peer support officers, and Kumcur's attorney informed him of the investigation's findings.

Transparency

To help provide transparency in investigations, WAC 139-12-030 requires IITs to include at least two community representatives on investigation teams. Community representatives are volunteers, not law enforcement agency employees, and they provide the community's perspective on key processes in use of deadly force investigations. They are supposed to review potential conflicts of interest between IIT investigators and involved officers, be present at any briefings with the involved agency, receive a copy of all press releases before they are sent to the media, and have access to the case file once the investigation is complete.

At the time of this investigation, SMART's roster included five community representatives. After arriving on scene and establishing control over the investigation, the SMART commander contacted two community representatives to participate in this investigation, as the WAC requires.

The WAC requires the community representatives to sign confidentiality forms agreeing not to share information about the investigation until it is complete. At the time of the investigation, the CJTC had not created a standard confidentiality form for the IIT to use. In lieu of a form, the SMART commander emailed both community representatives the WAC's language on confidentiality agreements, and asked them to reply acknowledging the requirements. Although both community representatives replied to the commander's request stating their intended compliance, we determined an email reply is not a legally binding agreement, as the WAC requires.

We found SMART did not include the community representatives in any briefings held with the involved agency, even though their presence is required by the WAC. Instead, SMART told them afterward that the team had met with the Bothell Police Department.

Further, as of the publication of this report, SMART has not yet shared the completed case file with the community representatives. The SMART commander said he considers the case to be open still because the IIT's investigation led to charges against Washington for the murder of Shoop, and his trial is pending.

Communication

We reviewed investigative reports and found SMART complied with most of the communication criteria requirements.

A few hours after the shooting, the chief deputy and chaplain of the Bothell Police Department notified Shoop's family of his death. SMART leadership also assigned a family liaison within 24 hours of the shooting, and the liaison kept Shoop's family updated on significant developments in the investigation, as the WAC requires.

SMART issued 22 weekly public updates from the start of the investigation through the day Kumcur received immunity, as the WAC requires. During an interview, the SMART commander said the IIT gave Shoop's family and the community representatives advance notice of all press releases. SMART provided one documented example, and the commander said that in addition to email, the IIT also communicated with Shoop's family and the community representatives in person and over the phone and, therefore, did not have documentation of those notices. We interviewed both community representatives assigned to this case, and they believed they had received advance notice of all press releases.

As of the publication of this report, SMART continues to release weekly public updates on the status of the case, given Washington's trial is still pending.

Credibility

SMART followed many best practices for homicide investigations required under WAC 139-12-030.

Crime Scene Investigation

We reviewed the investigative files and found that responding officers immediately taped off the scene, provided security by stationing responding agency officers around the scene's perimeter, and used patrol vehicles to block surrounding roadways. When the SMART commander arrived, which was about 15 minutes after the shooting, he noted the scene was secure and that more than 100 officers were on site searching for Washington. Despite the large police presence, the commander reported SMART made sure no Bothell police officers were within the inner perimeter of the crime scene, and all Bothell Police Department members were removed from the command post so SMART could assume complete control.

SMART investigators and responding officers photographed the scene, located, marked, and collected evidence throughout it, and backtracked the short pursuit route. Investigators photographed and collected Kumcur's and Shoop's clothing, duty belts and equipment, and counted the number of bullets in their firearms, which were in the patrol vehicle. Investigators collected shell casings at the scene, and both the patrol vehicle and Washington's vehicle were photographed and processed for evidence.

Officers located Washington about six hours after the shooting. After he was taken into custody, investigators took photos of him, his clothes and firearm, and collected the items for evidence.

Interviewing Involved Officers and Witnesses

SMART member agency policies state that after a use of force incident, involved officer(s) are transported to the nearest police or sheriff station, and that all involved and witness officers are to be given administrative orders not to discuss the incident with each other. The policies also prohibit

involved officers from meeting collectively or in groups with attorneys or therapists before being interviewed. However, involved officers are assigned an uninvolved officer for peer support.

A support officer was assigned to Kumcur at the incident scene, and stayed with him during the ride to the hospital and for his entire stay in it. Additional Bothell police officers also went to the hospital as peer support until Kumcur was released. Kumcur and Shoop were the only officers on scene at the time of the shooting, and due to Shoop's death, there were no other involved or witness officers Kumcur could have discussed the incident with before providing a statement to SMART.

SMART's policy states an interview with involved and witness officers is desired as soon as possible after a use of force incident, though, it also acknowledges that involved officers have a constitutional right not to make a statement, which is granted to other people during a criminal investigation. Kumcur declined to sit for an interview in the days following the shooting, but he participated in a recorded interview with SMART investigators four months later, on November 18, 2020.

SMART investigators recorded interviews with multiple civilian witnesses and collected videos that some of them had recorded of the shooting. Investigators also collected surveillance videos from surrounding businesses.

Case File Integrity

SMART's policy requires all case file records be stored under the control of an uninvolved IIT member agency. In an interview with the SMART commander, he said the IIT's understanding of the WAC was that the case file only needed to be restricted from the involved agency. As such, the commander said the case file was restricted from Bothell Police Department personnel, and it was generally restricted from anyone other than IIT members. We reviewed access logs to the case file and did not find that any officers or members of the Bothell Police Department accessed the case file. However, we did find two IIT members who were not assigned to the investigation had accessed the case file, and neither had filled out a conflict of interest form for the case.

The WAC also prohibits IIT members from remaining on an investigation if they receive compelled information that could contaminate the investigation. We did not find any evidence the IIT received prohibited content during the investigation.

Conflicts of Interest

Within 72 hours of the start of the investigation, almost all the involved SMART investigators filled out forms to assess whether they had any conflicts of interest with the involved officer, as required by the WAC. The form included questions on work and social relationships with Kumcur, as well as any potential biases investigators had that could affect the objectivity of the investigation. However, we found that both community representatives and one SMART investigator who participated in the investigation did not fill out a conflict of interest form, as the

WAC requires. During an interview, a SMART member said the investigator who did not fill out a conflict of interest form had been assigned to the investigation later than the other members, and this could have been why she did not complete one. The SMART commander did not know why the IIT did not have completed conflict of interest forms for the community representatives.

The SMART commander and the community representatives reviewed each conflict of interest form completed by the investigators, as the WAC requires. The investigators did not report any conflicts of interest with Kumcur.

RECOMMENDATIONS

We recommend SMART:

- Ensure all independent investigation team (IIT) investigators and community representatives submit a signed conflict of interest form within 72 hours of the start of an investigation, or from the date they were assigned to the investigation
- Restrict the case file so only SMART members participating in the investigation have access to it
- Ensure the community representatives are present at all briefings between SMART and the involved agency
- Ensure the community representatives sign a legally binding confidentiality agreement at the start of an investigation
- Maintain logs, narratives or other documentation demonstrating the community representatives and family have received advance notice of press releases

TEAM REQUIREMENTS

Results in Brief

Under WAC 139-12-030, IITs must adhere to specific team-related requirements to ensure their teams are credible and transparent. These requirements can be completed outside of any particular investigation. We found SMART has processes in place to help ensure compliance with all team-related requirements. These requirements include, but are not limited to, ensuring lead investigators have requisite training and experience to conduct a criminal investigation, maintaining a roster of community representatives who have credibility and ties to communities affected by police use of deadly force, and making available to the public the IIT's policies, operating procedures and names of IIT members.

Investigators

Selection Process

The WAC requires a panel, consisting of community representatives and IIT members, to interview applicants for IIT investigator positions. The interview questions are required to be the same for all applicants and pertinent to the investigator role. The IIT commander will consider the panel's recommendations and then decide if an applicant is suited for membership on the IIT.

As required by the WAC, a panel of SMART members and community representatives interview investigator applicants. During our interviews with the community representatives, they said they have participated in interview panels for investigator applicants, and each panelist asks the applicant two to three questions from a preset list. The SMART commander said that each applicant is asked the same questions. After the interview, the panel discusses and decides whether the applicant is suited for the team.

Experience Requirements

The WAC requires each IIT investigator to be employed by a member agency, and have previous experience as a detective, investigator, or have special skills or experience necessary for the team. SMART's policy restates these requirements, and its current roster of members are all employed by member agencies. Most SMART members are detectives with their respective agency, and those who are not have had experience in investigations or have special skills necessary for the team.

Honorable Behavior and Misconduct Requirements

In addition to the conflict of interest assessments, SMART depends on the chiefs and sheriffs of member agencies to ensure its IIT members are free of misconduct and behavior that would indicate they could not conduct investigations objectively. Examples of disqualifying conduct

could be discriminatory behavior, threats of violence, harassment, or falsifying records. The rules the CJTC has established do not describe how IITs should verify members' work history.

The SMART commander said that in addition to questioning applicants on their background during the panel interview, they also ask the chiefs and sheriffs of member agencies to provide a statement verifying the applicant's history is free from disqualifying misconduct and bias. SMART provided emails showing the requests for SMART applicants. The SMART commander said the IIT plans to ask all current and future members to obtain this documentation again for its records.

We did not review any personnel records ourselves to verify whether all SMART members had histories free of disqualifying behavior or misconduct. However, as of July 25, 2021, law enforcement agencies are required under RCW 43.101.135 to notify the CJTC of any disciplinary decisions they make when officers are accused of serious misconduct, which could offer an additional verification process for SMART leadership and the CJTC.

Community Representatives

Selection Process

SMART currently has five community representative positions. All five community representatives currently serving on the SMART team were recruited through nominations made by member agency chiefs and sheriffs. The five community representatives have extensive ties to the communities they serve. For example, some of their experiences include being a city councilmember, being heavily involved with their city council, being a business owner in their city, working for nonprofit organizations in their communities, and being board members on various committees, such as those devoted to diversity, equity and inclusion. SMART's website publishes each community representative's name and biography, which includes their work, education, training and community involvement experiences.

SMART has since switched to an application process to recruit community representatives. SMART's website includes an application available for the public to download, as well as an email address where interested people can submit a completed application.

SMART's policy states that starting in 2023, each community representative will serve a five-year term, and SMART will stagger the terms served so there will only be one vacancy per year. However, SMART's policy states that after serving a five-year term, the community representatives, chiefs and sheriffs may approve a current community representative to serve an additional five-year term if desired. Otherwise, SMART will interview people who have submitted completed applications to fill vacant community representative positions.

Participation in Investigator Selection

Aiming to increase transparency in use of deadly force investigations, the WAC requires community representatives not only be involved in specific processes during an active investigation, such as reviewing investigator conflicts of interest, but also be directly involved in vetting, interviewing, or selecting investigators to serve on an IIT.

SMART includes community representatives on the interview panels held for investigator applicants. As noted earlier, community representatives ask each applicant two to three preset questions, and they are involved in post-interview discussions to determine whether the applicant is fit for the IIT.

Training

Lead Investigator

The WAC requires investigators to have specific training and/or experience to be in a lead investigator role. The lead investigator role requires the completion of basic training or having two or more years of relevant, full-time criminal investigation experience to substitute for basic training, and at least eight hours of ongoing annual advanced training related to criminal investigations. The CJTC developed a lead investigator certificate for IIT members who meet the requirements of the lead investigator role. The application for the lead investigator certificate was made available in September of 2020.

For the investigations that we reviewed that started in 2020 before the certificate was available, we reviewed the training records of the lead investigators on the investigation. At the time of the investigations, the four lead investigators had multiple years of experience working as detectives. All four lead investigators had taken multiple hours of basic and advanced training in criminal investigations throughout their careers in law enforcement, including interviewing and interrogation techniques, basic homicide investigations, officer-involved shooting investigations, and blood-stain pattern analysis, meeting the WAC's basic requirements of the lead investigator role.

Currently, 20 IIT members have the lead investigator certificate on the SMART team, and the commander said only IIT members with the certificate are assigned as the lead investigator on current investigations.

Team Training

As a unit, an IIT is required to train annually. Annual team training is included in SMART's policy as protocol, and we received documentation showing the IIT conducted annual team training in 2020, 2021 and 2022.

Firewalls

To help uphold an investigation's credibility, IIT commanders must create and enforce firewalls - a process to prevent the sharing of prohibited information, such as compelled statements in whole or investigative information stemming from compelled statements, to the IIT by the involved agency.

SMART addresses prohibited content in its policy, requiring any IIT member to report immediately to a supervisor that they received prohibited information. We found the case file provided an email sent from a SMART commander to all IIT members, specifically instructing them to inform any involved agency member they encounter that they must not provide anyone on the IIT with any information from a compelled statement. In the email, the commander further instructs that if IIT members do encounter prohibited information, they are to immediately notify a SMART supervisor, and are not to share the prohibited information with anyone else on the SMART team, including the supervisor they report to.

Public Information

Policies, Operating Procedures & IIT Members' Names

To help provide transparency in investigations, the WAC requires IITs to make their policies, operating procedures, and members' names, including supervisors, commanders and community representatives, available to the public.

SMART's policy and procedures manual and its current roster of members are available to the public on its website.

INDEPENDENT INVESTIGATION TEAM RESPONSE

The Honorable Pat McCarthy
State Auditor's Office
PO Box 40021
Olympia WA 98504

Dear State Auditor McCarthy,

Thank you for the opportunity to respond to the State Auditors Compliance Report entitled "Use of Deadly force Incident on July 29, 2020, by the Bothell Police Department".

The Snohomish County Multi Agency Response Team (SMART) values and is committed to the values of integrity, credibility, and independence in order to maintain the trust of the public we serve. Snohomish County law enforcement agencies created SMART in 2005 in an effort to establish trust and transparency with the community when investigating law enforcement uses of deadly force.

In review of the audit, I agree that one investigator failed to sign of conflict-of-interest form. That investigator was not present on the night of the incident but was assigned follow up duties in the days following the murder. The failure to have that investigator sign a conflict-of-interest form was an oversight. I also agree that the two assigned community representatives also failed to sign a conflict-of-interest form within 72 hours. This is likely due to the magnitude of the incident and the fact that neither assigned community representative responded to the scene. To remedy both of these errors, the team has instituted a "compliance officer" whose sole responsibility is to ensure compliance with WAC 139-12-030 as it relates to law enforcement officers and community representatives signing the conflict-of-interest forms.

It is acknowledged that approximately one year after the incident records indicate that 2 SMART detectives accessed the investigative file who had not completed conflict-of-interest forms. In conversation with one of the detectives, he has no recollection of ever accessing the case file. He did not initially respond to the incident, nor did he participate in the investigation. The second detective moved out of state shortly after the incident and I have been unable to contact him to ascertain why, or if he accessed the case file.

To remedy this issue, all access to SMART case files will now be restricted in our Records Management System (RMS), and only those associated with the investigation will be granted access to the case files. The names of detectives and other investigative personnel will need to be affirmatively added in order to be granted access the investigative case files. Anyone with access will be required to complete a conflict-of-interest form prior to access and immediately forward that form to the SMART commander for review with a community representative within 72 hours of its signing.

The audit points out that Snohomish County SMART community representatives were not present during two different briefings with the Bothell Police. The circumstances surrounding the murder of Officer Shoop is unique and to my knowledge, had never occurred before in Washington. In this case, while engaging Mr. Washington in a gun-battle, Officer Kumcur unintentionally shot and killed Officer Shoop. This fact came to light after approximately 5-6 hours of investigation.

Once this evidence came to light, Mr. Washington was in-custody and was in the process of being booked at the King County Jail. The fact that Officer Kumcur fired the fatal round was shared with the senior King County deputy prosecuting attorney at which point she directed SMART to book Mr. Washington on charges of first-degree murder (Officer Shoop), attempted murder (Officer Kumcur) and vehicular assault for striking and seriously injuring a pedestrian with a motor vehicle.

One of the legal requirements for booking any individual into jail is a probable cause statement completed by law enforcement. In this case, the probable cause statement would include the fact that Officer Kumcur fired the fatal round that killed Officer Shoop. Probable cause statements are public records and subject to public disclosure laws. Thus, the realization that Officer Kumcur fired the fatal round would become public knowledge very quickly, particularly considering the very large media coverage of this event.

Given this fact, the SMART commander and assistant commander in consult with both community representatives and the King County deputy prosecutor made the decision to brief the Bothell chief of police and deputy chief of police even though WAC 139-12-030 prohibited the sharing of any information about the ongoing independent investigation of police use of deadly force with the involved agency.

The decision to brief the Chief and Deputy Chief was not made lightly but, in the end, it was decided that the Chief and Deputy Chief should be told by the SMART command that Mr. Washington did not shoot and kill Officer Shoop (as was originally thought) but that the fatal round was fired by Officer Kumcur rather than finding out that information out via the media. This course of action was the only reasonable and humane method of communicating the news and the SMART command stands by that decision and believes no corrective action is needed due to the unique circumstances surrounding this case.

The second briefing made by SMART occurred the following day when members of SMART in concert with the King County Prosecuting Attorney's Office, peer support from the Bothell Police Department, and with the agreement of SMART community members, drove to the residence of Officer Kumcur and informed him that Mr. Washington did not kill Officer Shoop, but that it was a round fired by Officer Kumcur that killed Officer Shoop. The briefing lasted less than a minute and was recorded to preserve the record. Once that information was shared with Officer Kumcur, SMART members immediately left.

As previously stated, SMART command made the decision that Officer Kumcur should be informed about how Officer Shoop died by members of the investigative team. This course of action was the only reasonable and humane method of communicating that news to Officer Kumcur and the SMART command stands by that decision and no corrective action is needed due to the unique circumstances surrounding this case.

The audit also found that SMART failed to have the two community representatives assigned to this case sign a legally binding confidentiality agreement at the beginning of the investigation. It should be noted, that at the time of this incident, the Washington State Criminal Justice Training Center had not yet produced the confidentiality document that IIT teams were to use. Lacking that form, the SMART commander sent an email to both assigned community representatives that included the verbatim language from WAC 139-12-030 as it relates to the obligation to keep all information concerning the investigation confidential. Both community representatives sent a reply email stating they understood the language and would abide by it. To remedy this issue, SMART immediately adopted the confidentiality agreement document produced by the CJTC once it was made available to SMART.

Finally, the audit points out that SMART failed to "maintain documentation demonstrating it notified community representatives and Shoop's family of all press releases." It should be noted that nowhere in WAC 139-12-030 does the law require SMART to "Maintain documentation" that it complied with the notification portion of the law. It was not implemented until 2021 when the state legislature enacted RCW 43.101.460 authorizing the State Auditor's Office to conduct audits on state IIT's. Furthermore, the state IIT's were not made aware of the audit requirements until July 8, 2021 when the Honorable Pat McCarthy sent notification to all stakeholders that the Auditor's Office would be initiating audits of all IIT

investigations which occurred after 2019. To ensure compliance with future audits, SMART has adopted a comprehensive log that will be completed and maintained by the detective assigned as the family liaison which will provide the date, time, name of the family member, and names of the community representatives who reviewed the press release prior to its release to the public.

The Snohomish County IIT appreciates the hard work completed by the Auditor's Office. Likewise, the commanders of Snohomish County IIT also appreciate the cooperative nature and positive interactions with the audit team which were experienced during this process.

Finally, the Snohomish County IIT welcomes the feedback provided to it by the audit team as we strive to continue to fulfill the mandates of WAC 139-12.

On behalf of co- commanders, Captain Jerry Strieck, Captain Bryan Keller, and the Snohomish County IIT executive board,

Captain Douglas Jeske,

SMART Commander

APPENDIX A: AUTHORITY, SCOPE, OBJECTIVE AND METHODOLOGY

Authority

In 2018, Washington voters passed Initiative 940, which, in part, required investigations of police use of deadly force be conducted by an agency completely independent of one with the involved officer. It tasked the Washington State Criminal Justice Commission (CJTC) with adopting rules to govern these investigations. In 2019, the CJTC created a workgroup, including stakeholders from community groups and law enforcement agencies to adopt rules for independent investigations. The rules were outlined in Washington Administrative Code (WAC) 139-12-030 and took effect in January 2020.

The rules were designed to help ensure investigations are independent, transparent, credible, and communicated timely to the public and affected people. The rules define the elements of an independent investigation and explain the duties of the involved agency and independent investigation team (IIT) after police use deadly force that results in death, substantial bodily harm or great bodily harm. In 2021, the Legislature amended state law (RCW 43.101.460) to require our Office audit investigations into police use of deadly force to ensure compliance with the new rules.

Scope

This audit assessed whether the Bothell Police Department and the Snohomish County Multiple Agency Response Team (SMART) complied with state laws and rules regarding the investigation of the use of deadly force that resulted in the death of Officer Jonathan Shoop. It reviewed whether the law enforcement agencies met the criteria for independent investigations as outlined in WAC 139-12-030.

By law, the audit only reviewed the investigation. It did not review the use of deadly force incident, nor assess whether the use of force was justified.

Objective

This audit examined whether the Bothell Police Department and SMART complied with state laws and rules regarding independent investigations of police use of deadly force.

Methodology

To determine whether the Bothell Police Department and SMART complied with state laws and rules regarding independent investigations of police use of deadly force, we reviewed investigative files related to the case and interviewed IIT members. We interviewed IIT members to understand their investigative process and how they documented their procedures and findings. We also spoke

to the IIT's community representatives to confirm whether they were involved in required processes of the investigation. In the case files, we searched for evidence demonstrating the IIT followed the legal requirements. We also reviewed training records from the CJTC and member police agencies.

One major requirement in the credibility section of WAC 139-12-030 is for IITs to follow the CJTC's published best practices for homicide investigations. The CJTC did not publish best practices until September 2020, leaving the IITs without guidance and our Office with no defined criteria for the first eight months of 2020. While this investigation started before September 2020, we decided to apply the requirements from the CJTC's best practices document, as it is a key piece of the WAC and based on generally accepted practices for criminal investigations that all detectives should know and follow. The CJTC has not updated its best practices since originally publishing them.

Our Office also believes it is in the public's interest not to limit the scope of our audits of investigations that occurred before September 2020.

APPENDIX B: WAC 139-12-030 COMPLIANCE SUMMARY

Independence

Requirement	Compliant?
The involved agency and/or other first responders will provide or facilitate first aid at the scene when necessary.	Yes
The involved agency will relinquish control of the scene.	Yes
The involved agency will not participate in the investigation.	Yes
Any specialized equipment belonging to the involved agency will be approved by the community representatives and the IIT commander before it is used in the investigation.	Not applicable
Information shared by the IIT to the involved agency will be limited to briefings about the progress of the investigation.	No
The IIT commander will honor requests from the involved agency to release body cam video or other investigation information of urgent public interest.	Not applicable

Transparency

Requirement	Compliant?
A minimum of two community representatives will be assigned to the IIT.	Yes
The community representatives will:	
<ul style="list-style-type: none"> Review conflict of interest statements submitted within 72 hours of the commencement of each investigation 	Yes
<ul style="list-style-type: none"> Be present at the briefings with the chief or sheriff of the involved agency(ies) 	No
<ul style="list-style-type: none"> Have access to the investigation file when it is completed 	Not applicable
<ul style="list-style-type: none"> Be provided a copy of all press releases and communication sent to the media prior to release 	No
<ul style="list-style-type: none"> Review notification of equipment use of the involved agency 	Not applicable
The community representatives will sign a confidentiality agreement at the beginning of the investigation.	No
The IIT will provide public updates about the investigation at a minimum of once per week, even if there is no new progress to report.	Yes
When an independent investigation is complete, the information will be made available to the public in a manner consistent with applicable state law.	Not applicable

Communication

Requirement	Compliant?
A family member of the person against whom deadly force has been used will be notified of the incident as soon as possible.	Yes
The IIT will assign a family liaison within the first 24 hours of the investigation.	Yes
The family liaison will keep the family informed about all significant developments in the investigation.	Yes
The family liaison will give the family and the involved agency advanced notice of all scheduled press releases.	No
Neither the involved agency nor the IIT will provide the media with criminal background information of the person against whom deadly force has been used, unless it is specifically requested, and release of the information is required by the Public Records Act or other applicable laws.	Yes
The involved agency will notify the Governor's Office of Indian Affairs (GOIA) in accordance with RCW 10.114.021 if the person against whom deadly force is used is a member of a federally recognized tribe.	Not applicable
A member of the IIT will be assigned as a tribal liaison within the first 24 hours and keep the tribe (or a representative of the tribe's choice) informed about all significant developments of the investigation.	Not applicable

Credibility

Requirement	Compliant?
The involved agency and other first responders will secure the incident scene and maintain its integrity until the IIT arrives.	Yes
The involved agency and other first responders will locate and preserve evanescent evidence.	Yes
The IIT will follow these accepted best practices for homicide investigations published and annually updated by the Washington State Criminal Justice Training Center (CJTC):	Yes
<ul style="list-style-type: none"> Until all statements have been taken, involved and witness officers shall not discuss the case with any other witnesses. 	Yes
<ul style="list-style-type: none"> The involved agency or first responders will separate involved officer(s) and remove them from the immediate scene. 	Yes
<ul style="list-style-type: none"> The IIT will obtain statements from subjects and witnesses. Audio and/or video recording is preferred and should be attempted. 	Yes

<ul style="list-style-type: none"> Interviews of involved officers should follow the policies of their individual agency, collective bargaining agreement and case law. 	Yes
<ul style="list-style-type: none"> Interviews with emergency medical personnel, fire department personnel, and first responding officers should address conditions at the incident scene. 	Yes
<ul style="list-style-type: none"> The IIT will canvass the immediate area for potential witnesses who have not come forward and obtain information or statements as available. 	Yes
<ul style="list-style-type: none"> In the event of death, consult with the coroner or medical examiner at the scene and at, or subsequent to, the autopsy. A member of the IIT must attend the autopsy and take all appropriate investigative steps, consistent with other criminal investigations. 	Yes
<ul style="list-style-type: none"> Until the case file is delivered to the prosecutor, access to the IIT case file should be restricted to the IIT members involved. 	No
If any member of the IIT receives prohibited information, the investigator receiving the prohibited information must immediately report it to their supervisor and the member must discontinue participation in the investigation.	Not applicable
Within 72 hours of the start of each investigation, investigators and community representatives must complete a “conflict of interest” assessment tool regarding any connection to the officers being investigated that assess work and social conflicts and biases.	No
The conflict assessment will be reviewed by the IIT commander within 72 hours of the start of the investigation.	Yes
The conflict assessment will be discussed by the community representatives and the IIT commander.	Not applicable

Team-Related Requirements

Requirement	Compliant?
All IIT leadership shall be commissioned peace officer(s) with previous experience in criminal investigations.	Yes
The chiefs and sheriffs shall appoint the IIT leadership team, which may include an IIT commander, assistant commander, or co-commander.	Yes
The IIT supervisors shall be recommended by their agency to the IIT commander.	Yes
IIT investigators shall be commissioned peace officers in the state of Washington with previous experience as a detective or investigator, or have special skills or experience necessary for the team.	Yes

Investigators must be employed by a member agency of the IIT.	Yes
All applicants for the investigator position on an IIT are interviewed by a panel consisting of community representatives and other members of the IIT selected by the IIT commander.	Yes
All applicants shall be interviewed using criteria pertinent for the position of IIT investigator. The same questions should be asked of each applicant.	Yes
At the conclusion of the panel the IIT commander shall consider the recommendations of the panel and select those best suited for the needs of the IIT.	Yes
Lead investigators will be trained in basic homicide investigation, interviewing and interrogation, Law Enforcement Training and Community Safety Act (LETCSA) violence de-escalation and mental health training, or have at least two years of full-time criminal investigation experience to substitute. Leads must also have an annual minimum of eight hours in advanced training.	Yes
IIT members who do not meet the training requirement are eligible to participate on the IIT, but not in a lead position.	Yes
Investigators assigned to an IIT are expected to have a work history free of serious misconduct and/or a pattern of sustained complaints, as well as a personal history free of demonstrable bias or prejudice against community members that may be affected by the police use of deadly force.	Unable to determine
Civilian IIT members (i.e. crime scene investigators, evidence technicians, etc.) are not required to obtain the qualified lead investigator certificate, but the IIT leadership shall establish reasonable noncommissioned training requirements through their IIT protocol.	Yes
The IIT has at least two community representatives on its roster who have credibility with and ties to communities affected by police use of deadly force.	Yes
The chiefs and sheriffs of each regional team shall create a transparent process for soliciting names and creating a roster of people willing to serve as a community representative.	Yes
The IIT community representatives must be chosen from this list by the chief(s) or sheriff(s) of member agencies.	Yes
A minimum of two community representatives will be assigned to each IIT to participate directly in the vetting, interviewing, and/or selection of IIT investigators.	Yes
The chief or sheriff of a member agency and the IIT commander shall review the appointment of their IIT members who have served three years for possible rotation or replacement.	Not applicable
The IIT shall train as a unit at least annually.	Yes
The IIT commander must create and enforce firewalls, which is a process to prevent information sharing between the IIT from the involved agency, and	Yes

train all team members to observe them to ensure no IIT member receives any compelled statements of the involved officer(s) or any investigative content that was informed by such compelled statements. The firewall system and training must ensure that the involved agency is affirmatively advised not to furnish “prohibited content” to the IIT.	
The policies and operating procedures of the IIT will be available to the public.	Yes
The names of IIT members will be available to the public.	Yes

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In fulfilling our mission to provide citizens with independent and transparent examinations of how state and local governments use public funds, we hold ourselves to those same standards by continually improving our audit quality and operational efficiency, and by developing highly engaged and committed employees.

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