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8 **STATE OF WASHINGTON**
 PIERCE COUNTY SUPERIOR COURT

9 THE STATE OF WASHINGTON,

10 Plaintiff,

11 v.

12 CHRISTOPHER SHANE BURBANK,

13 Defendant.

NO. 21-1-01286-6

DECLARATION FOR
DETERMINATION OF PROBABLE
CAUSE

14
15 Patty A. Eakes and Kent Liu declare under penalty of perjury:

16 We are a special assistant attorney general and an assistant attorney general,
17 respectively, and are familiar with the police reports and/or investigations conducted by the
18 PIERCE COUNTY SHERIFF'S OFFICE (incident 20-063-02251) and the WASHINGTON
19 STATE PATROL (WSP) (incident 20-009681). In addition, after receiving the WSP report,
20 the ATTORNEY GENERAL conducted a further investigation. We have also reviewed and
21 are familiar with the work product of experts Grant Fredericks, David Hallimore, Dr. Thomas
22 Clark, and Sue Peters. The police reports, investigations, and expert work product provided us
23 the following information.

24 In Pierce County, Washington, on or about March 3, 2020, CHRISTOPHER
25 BURBANK and MATTHEW COLLINS committed the crimes of FELONY MURDER IN
26 THE SECOND DEGREE based on the predicate felonies of Assault in the Second Degree

1 and/or Assault in the Third Degree and/or Unlawful Imprisonment, and MANSLAUGHTER
2 IN THE FIRST DEGREE. And, on or about the same day and in the same location, TIMOTHY
3 RANKINE committed the crime of MANSLAUGHTER IN THE FIRST DEGREE.

4 This belief is predicated on the above referenced police reports, expert reports, and the
5 subsequent investigation by the Attorney General's Office (AGO) regarding the following facts
6 and circumstances upon which this certification for the determination of probable cause is made:

7 **I. BACKGROUND**

8 Manuel Ellis, known as "Manny" to his friends and family, began the evening of
9 Tuesday, March 3, 2020, at his church. "He just fell in love with, with goin' to church," said
10 C.A., a man who had been mentoring Ellis and giving him a place to live. Ellis stayed at the
11 church until approximately 9:30 PM, playing drums with the worship band. "He's a great
12 drummer, you know," C.A. remembered. Ellis and C.A. then returned home together. While
13 home, sometime between 10:08 PM and 10:30 PM, Ellis called his mom. He talked with her
14 by video for approximately half an hour. His sister remembers overhearing her mom's laughter
15 as she talked with Ellis, and hearing the sound of his distinct laugh over the phone. After talking
16 with his mom, Ellis ate some burgers with C.A.

17 A little later, Ellis went out to get a late-night snack from the 7-11 on South Steele Street,
18 as he often did. He greeted the clerk as he walked in. "He's a nice kid," the clerk remembered.
19 "Really respectful kid. He always say[s] hi." Ellis is believed to have bought a box of donuts
20 and some water at 11:11 PM, and wished the clerk a good night on his way out. He then began
21 his walk home.

22 But Ellis never made it home. On his walk back from the 7-11, at around 11:21 PM, at
23 the intersection of 96th Street South and Ainsworth Avenue South, Ellis came upon a police
24 car. Sitting in that police car were CHRISTOPHER BURBANK and MATTHEW COLLINS.

II. OFFICERS BURBANK AND COLLINS

COLLINS and BURBANK are police officers with the Tacoma Police Department. COLLINS weighs an estimated 215 pounds, standing nearly six feet tall, and BURBANK weighs an estimated 160 pounds, and is also six feet tall.

By March 2020, COLLINS had been a police officer for more than four years, served on the Tacoma Police Department SWAT team, and previously served eight years in the army. He was also trained in grappling martial arts and taught classes on defensive tactics. BURBANK had been a police officer for more than four years, and previously served eight years in the army. According to Washington State Criminal Justice Training Commission records, BURBANK and COLLINS were both trained in crisis intervention.

On March 3, 2020, COLLINS and BURBANK were on patrol together in the same car. According to dispatch logs, just before 11:16 PM, COLLINS and BURBANK conducted a traffic stop at 96th Street East and A Street South in Tacoma, which they cleared a few seconds before 11:20 PM. They then drove a little over a mile to the intersection of 96th Street South and Ainsworth Avenue South.

III. CIVILIAN WITNESSES SEE BURBANK AND COLLINS ATTACK ELLIS

Around 11:21 PM, as Ellis walked along the sidewalk towards them, COLLINS and BURBANK were sitting at a red light at 96th and Ainsworth, facing west. Immediately behind BURBANK and COLLINS at the red light was a woman, S.M., in her car. In a car behind S.M. was her former boyfriend, K.L., with their two daughters sitting in the back seat. S.M. and K.L. were on their way to drop off their daughters with S.M.'s sister.

On the south side of the intersection, to the police officers' left, was a pizza delivery driver named S.C., in route back to the restaurant after a delivery.

None of the three civilian witnesses at the intersection knew Ellis, BURBANK, or COLLINS before that night. And neither S.M. nor K.L. knew S.C.

1 **A. S.M. and K.L. see Ellis walking along sidewalk and briefly speaking with officers.**

2 S.M. and K.L. remember that when they stopped at the red light, Ellis was facing them
3 and walking along the sidewalk toward their location. As Ellis walked by the police car, he
4 stopped and appeared to briefly interact with the officers as they sat in their car. It looked to
5 S.M. and K.L. like just a casual conversation, almost as if “the officers knew him from
6 somewhere maybe,” S.M. would later say. Both S.M. and K.L. remember seeing a peaceful,
7 apparently respectful conversation, with no signs of aggression from Ellis. After that exchange,
8 which S.M. estimated lasted about “10 to 15 seconds,” Ellis turned away from the officers and
9 began to walk away.

10 **B. Officers attack Ellis and the civilian witnesses pull out their phones to record.**

11 The officers did not let Ellis walk away. Instead, as both S.M. and K.L. described
12 witnessing, BURBANK abruptly swung open the passenger door of the car, striking Ellis from
13 behind and knocking him to his knees. S.C. similarly described seeing the passenger door to
14 the police car open suddenly and then seeing Ellis fall to the ground.

15 S.M. and K.L. then saw BURBANK emerge from the passenger side of the car and get
16 on top of Ellis as Ellis tried to get back up. All three of the witnesses described then seeing the
17 driver of the police car, COLLINS, open his door and run around the front of the car towards
18 Ellis.

19 S.M. and S.C. both immediately took out their cell phones and began to record what
20 they were seeing.

21 **IV. AUDIO AND VIDEO EVIDENCE RECORDS THE ATTACK ON ELLIS AND**
22 **HIS RESTRAINT**

23 Multiple video and audio sources captured what happened next. After receiving the
24 investigation file from WSP, the AGO retained experts to create a timeline of events and merge
25 all video and audio recordings that captured the events of that night. Forensic video analyst
26

1 Grant Fredericks and forensic audio analyst David J. Hallimore analyzed those video and audio
2 recordings.

3 Mr. Fredericks produced a chronological alignment of all the digital multimedia
4 evidence, including the following:

- 5 • Cell phone video (and any accompanying audio) from S.M., S.C., and a woman named
6 A.W., who lived in a house about 112 feet from Ellis and the Officers.
- 7 • A Vivint “Doorbell” camera on the house A.W. lived in, which captured both video and
8 audio.
- 9 • Audio recordings from South Sound 911 “TPD S PRIM” dispatch radio traffic.
- 10 • Taser activation data.

11 This alignment was produced by identifying visual activity that is consistent among two
12 or more camera views, as well as by matching dispatch and audio records with the timing on
13 the video recordings. This was then used to synchronize the audio and video recordings into a
14 single audio/video presentation with an on-screen time-of-day stamp, accurate to the
15 millisecond for reference purposes.

16 The audio expert, Mr. Hallimore, focused on identifying and clarifying speech contained
17 within the Vivint doorbell videos and two cell phone videos captured by S.M. Mr. Hallimore
18 used these sources, along with South Sound 911 “TPD S PRIM” dispatch radio traffic and
19 timing data provided by Mr. Fredericks, to create a chronological timeline transcript covering
20 the timeframe of 23:21:40–23:34:09 on March 3, 2020.

21 Mr. Fredericks’s synchronized multimedia recording, and Mr. Hallimore’s
22 chronological audio timeline, capture much of what transpired between Mr. Ellis and
23 BURBANK and COLLINS following the initial attack.

24 **A. Video shows the officers tackle, and repeatedly strike Ellis.**

25 The video from S.M., the woman sitting in her car behind COLLINS and BURBANK,
26 starts 46 seconds after 11:21 PM. When it begins, BURBANK can be seen wrapping his arms

1 around Ellis, lifting him into the air, and driving him down into the pavement, striking at him
2 with one of his fists as he does so. Ellis can then be seen curling his legs in towards his body,
3 as BURBANK backs away from him. The bag from the 7-11 that Ellis had been carrying just
4 a few seconds earlier can be seen drifting away, pushed by that night's gusty winds. COLLINS
5 then moves in towards Ellis and brings his weight down onto him. With Ellis underneath him,
6 COLLINS begins striking Ellis's head with his fist. Meanwhile, BURBANK draws his taser
7 gun and walks close in towards Ellis. COLLINS can be seen on S.M.'s video striking Ellis's
8 head four times, with Ellis screaming after each strike. After the fourth strike, S.M.'s video
9 shifts away, as S.M. begins to lift herself up so she can open her door and shout towards the
10 officers.

11 "Hey! Stop! Oh my god, stop hitting him! Stop hitting him! Just arrest him," cried
12 out S.M.

13 **B. Collins applies a neck restraint on Ellis as Burbank aims his taser.**

14 At this point—56 seconds after 11:21 PM—the pizza delivery driver (S.C.)'s phone
15 begins recording. That video begins by showing COLLINS, now behind Ellis, wrapping his
16 arm around the front of Ellis's neck, as BURBANK takes aim with his taser gun. COLLINS
17 then locks his hands together while squeezing the arm around Ellis's neck, applying what is
18 called a "lateral vascular neck restraint," or "LVNR."

19 As described in a recent federal court case, an LVNR hold "involves bilateral
20 compression of the neck, compressing the carotid arteries (which supply blood to the brain), the
21 jugular veins (which return blood from the brain to the heart), and the carotid sinus (which
22 measures and regulates blood pressure of the brain)." *Petersen v. Smith*, No. C19-6033-BHS-
23 MAT, 2021 WL 1873159, at *9 (W.D. Wash. Feb. 11, 2021), report and recommendation
24 adopted, No. C19-6033 BHS-MAT, 2021 WL 1541175 (W.D. Wash. Apr. 20, 2021). An
25 LVNR hold can render a person unconscious within four to seven seconds, if maximum
26 compression is applied. *Id.* Courts have determined that an LVNR hold can constitute deadly

1 force. *See, e.g., Hunter v. Durell*, No. C16-1445-MJP, 2018 WL 6249789, at *11 (W.D. Wash.
2 Nov. 29, 2018), *aff'd sub nom. Hunter v. City of Fed. Way*, 806 F. App'x 518 (9th Cir. 2020);
3 *Petersen*, No. C19-6033-BHS-MAT, 2021 WL 1873159, at *9. In fact, many police
4 departments ban the practice altogether. *See id.* at *6 & n.2.

5 Ellis was not fighting back. All three civilian witnesses at the intersection—the two
6 parents, K.L. and S.M., and the pizza delivery driver, S.C.—state that they never saw Ellis strike
7 at the officers. A neighbor, A.W., who witnessed some of the attack from her house across the
8 street, likewise never saw Ellis strike at the officers. As S.C. put it, “it doesn’t seem like he was
9 fighting at all to me.” “He wasn’t even defending himself,” remembered K.L. The civilian
10 witnesses’ accounts are corroborated by the video evidence. The video depicts Ellis struggling
11 at times against the officers’ restraints, but does not show Ellis attempting to strike the officers
12 at any point.

13 **C. Burbank fires taser as Collins continues to apply LVNR.**

14 S.C.’s video next shows Ellis, held in an LVNR by COLLINS, looking towards
15 BURBANK and the taser gun BURBANK has aimed at his chest. Ellis lifts his arms straight
16 up into the air, with his palms open and facing BURBANK, in a surrender-type position. At
17 that moment, COLLINS pulls back on Ellis’s neck, causing Ellis to fall backwards onto
18 COLLINS, who then twists the LVNR hold around Ellis’s neck, rolling Ellis onto the pavement.

19 Ellis, now on his side, briefly moves his hands up towards the arm COLLINS has
20 wrapped around the front of his neck. As Ellis looks again towards BURBANK, who is still
21 standing just a few feet in front of Ellis with his taser gun pointed towards Ellis’s chest, Ellis
22 quickly puts his hands up. His palms are open towards BURBANK. BURBANK then fires the
23 taser probes into Ellis’s chest, and delivers a five-second round of electricity to his body. At
24 the same time COLLINS continues to apply the LVNR hold around Ellis’s neck.

25 “Hey, ya’ll in the wrong right now,” K.L. can be heard yelling on S.M.’s cell phone
26 video during the attack. K.L. had jumped out of his car by this point, leaving his kids sitting in

1 the backseat, because he was so distressed by what he was witnessing. S.M. can then be heard
2 reprimanding K.L. for getting out of his car and shouting at the officers while their kids are in
3 his car. S.M. later explained that she was scared and did not want K.L. to get involved given
4 what she was witnessing. Specifically, she feared that K.L., a Black male, would himself be
5 assaulted by the officers. K.L. can be heard on audio responding to S.M., saying, “I don’t care,
6 I just saw him punch him in the face.”

7 As the five-second taser cycle ends, S.C.’s video shows Ellis motionless, with
8 COLLINS’s arms still applying an LVNR hold around Ellis’s neck. COLLINS then removes
9 his arms from Ellis’s neck, and Ellis’s head falls limply towards the pavement. COLLINS can
10 then be seen pushing down with his arm onto the back of Ellis’s head or neck, pressing Ellis’s
11 face into the pavement.

12 **D. Burbank and Collins make their first radio communication about Ellis.**

13 BURBANK can be heard on the radio at this time—14 seconds after 11:22 PM—calling
14 in with his and COLLINS’s location, “96th and Ainsworth.” The radio dispatcher then reports
15 out that BURBANK and COLLINS are experiencing “unknown trouble” at 96th and Ainsworth.

16 This was the first verbal radio communication from BURBANK or COLLINS. Neither
17 BURBANK nor COLLINS had communicated over their radios when they first began
18 interacting with Ellis. COLLINS did activate his microphone after BURBANK tackled Ellis to
19 the ground—just as S.M. was beginning to shout out towards him—but he did not transmit any
20 words to the dispatcher at that time. This type of transmission is known as a “mic click” and
21 can be either intentional or unintentional. Dispatch protocol is to respond to mic clicks and
22 inquire if they need assistance.

23 After the exchange with the radio dispatcher reporting BURBANK and COLLINS’s
24 location, Ellis can be seen on S.C.’s video beginning to move again, screaming out and writhing
25 his body and legs as the officers hold his arms behind his back and apply pressure down onto
26 his body. At this point, the taser probes remain stuck into Ellis’s chest, and 26 seconds after

1 11:22 PM, BURBANK uses them to fire another five-second round of electricity through Ellis's
2 body. Ellis screams out once again, his body and legs writhing as COLLINS and BURBANK
3 continue to press down onto him with the weight of their bodies.

4 **E. Civilian witnesses leave the scene.**

5 About 30 seconds after 11:22 PM, the parents, S.M. and K.L., begin to drive around the
6 police car and around BURBANK and COLLINS, as the officers continue applying pressure to
7 Ellis's body. As S.M. drives by, continuing to record, either BURBANK or COLLINS can be
8 heard telling Ellis to put his hands behind his back, with the other saying "you're gonna get it
9 again." The pizza delivery driver, S.C., then drives on as well. As S.C. drives away,
10 BURBANK can be seen in the final moments of S.C.'s video firing another five-second round
11 of electricity through the taser probes sticking into Ellis's chest.

12 S.M. then dropped off the children at her sister's home. She tried to return to the scene,
13 "because I was scared for Manny." She later explained, "I was just like, wanted to go figure
14 out what, what happened to him like or why that happened." But by the time S.M. returned,
15 there were more officers on the scene, and they were directing traffic away from the area. S.C.
16 would likewise return to the intersection that night. Like S.M., he found the intersection blocked
17 off by the time he returned.

18 **F. Ellis tells the officers he cannot breathe; backup arrives.**

19 Within a minute after S.C., S.M., and K.L. drove away, Ellis began telling the officers
20 that he could not breathe. At 25 seconds after 11:23 PM, the Vivint doorbell security camera
21 on a house across the street captures the sound of Ellis saying clearly "**Can't breathe sir. Can't**
22 **breathe!**" That house is approximately 112 feet away from the officers and Ellis. Less than
23 15 seconds later, Ellis can again be heard pleading with the officers and referring to them as
24 "sir," saying either "**Breathe sir?**" or "**Please sir?**"

25 "Shut the fuck up, man," one of the officers says back to him.
26

1 Less than a minute later—about 19 seconds after 11:24 PM—backup begins to arrive.
2 Driving the car that arrives first to the scene is Officer TIMOTHY RANKINE.

3 **V. OFFICER RANKINE**

4 RANKINE joined the Tacoma Police Department in 2018 after serving in the army for
5 six years and the Department of State for two years as a security contractor. While in the army,
6 RANKINE took a combat lifesaving course. With the Department of State, he was trained in
7 Tactical Combat Casualty Care. RANKINE, like BURBANK and COLLINS, was also trained
8 in crisis intervention. He and COLLINS had also been trained in Washington's Basic Law
9 Enforcement Academy (BLEA) by the Criminal Justice Training Commission. The BLEA
10 curriculum includes a course on "excited delirium." The course materials make clear that
11 excited delirium is a medical emergency and that when a subject is experiencing excited
12 delirium, officers should (1) take care to ensure that the subject can breathe; (2) avoid inhibiting
13 breathing in any way; and (3) not put pressure on the subject's thorax or leave the subject face
14 down.

15 According to Washington State Department of Licensing data, RANKINE weighs an
16 estimated 200 pounds and is six foot, two inches tall.

17 **VI. STATEMENTS FROM OFFICER RANKINE AND OTHER OFFICERS** 18 **ABOUT ELLIS'S TREATMENT WHILE IN CUSTODY OF POLICE**

19 At least 20 law enforcement officers responded to the scene in the 11 minutes after
20 BURBANK and COLLINS transmitted their location. The Tacoma Police Department officers
21 at the scene refused requests for follow up interviews with the WSP and the AGO. Several of
22 the officers involved, including RANKINE, gave recorded statements to law enforcement
23 officials in the hours and days after Ellis's death. Those statements describe Ellis's treatment
24 at the hands of the police after he was restrained and repeatedly told BURBANK and COLLINS
25 that he could not breathe.
26

1 **A. Rankine arrives and begins applying pressure to Ellis's back.**

2 31 seconds after 11:24 PM, the recording from the Vivint doorbell camera shows
3 RANKINE emerging from his car and running towards Ellis, BURBANK, and COLLINS.
4 RANKINE described in his statement how, when he arrived, Ellis was in the prone position on
5 his stomach. According to RANKINE's partner, at that time BURBANK was on Ellis's back
6 and COLLINS had Ellis's legs. RANKINE ran over and started applying pressure to Ellis's
7 back. He saw that Ellis was already in handcuffs. RANKINE then put "all [his] weight to the
8 middle of [Ellis's] body, securing [his] right knee over the top of his spine just below the base
9 of his neck" with his "left knee in the middle of his spine, on his lower back." RANKINE then
10 kicked out his own ankles so that he was "almost in like a seated position" atop Ellis's back.

11 **B. Ellis again says he cannot breathe.**

12 After applying pressure to Ellis's back, RANKINE recalled hearing Ellis "making really
13 strange animal grunting noises," and then hearing him say in a "very calm normal voice" that
14 he could not breathe. RANKINE responded that "if you're talking to me, you can breathe just
15 fine." RANKINE said that Ellis then "got quiet." RANKINE moved his right knee up towards
16 Ellis's right shoulder, which caused Ellis to "violently thrash[]" his body, so RANKINE moved
17 his knee back to the middle of Ellis's spine.

18 Meanwhile, Ellis can be heard on audio continuing to tell the officers he cannot breathe.
19 Within the first minute of RANKINE's arrival on the scene, Ellis can be heard on the Vivint
20 doorbell camera repeating three more times that he cannot breathe. Around 49 seconds after
21 11:24 PM Ellis can be heard saying **"I can't breathe."** Seconds later, 58 seconds after 11:24
22 PM, he again says he can't breathe, adding "sir" as he pleads to the officers: **"Can't breathe.**
23 **Can't breathe, sir."**

1 **C. Ellis hogtied and “agonal breathing” is heard.**

2 As backup was arriving at 11:24 PM, COLLINS requested over the radio that “someone
3 bring some hobbles.” A “hobble” is a nylon strap used to restrain legs. A little after 11:25 PM,
4 as RANKINE applied pressure to Ellis’s back, the hobble was wrapped around Ellis’s legs and
5 then tied to the handcuffs behind Ellis’s back. These actions left Ellis in a position commonly
6 called a “hogtie,” with his arms and legs tied together behind his back. Ellis remained face
7 down, or prone, on the ground.

8 Around this time, 21 seconds after 11:25 PM, another officer on the scene, Sgt. Michael
9 Lim, took to his radio to tell responding officers that they could slow their approach to the scene.
10 As Sgt. Lim did so, Ellis can be heard in the background, speaking his last known words, the
11 same desperate plea he had been repeating throughout the attack: **“Can’t breathe.” “Can’t**
12 **breathe.”**

13 “Once that hobble was on he went quiet, he did not move,” recalled Lt. Anthony
14 Messineo, a 19-year veteran with the Pierce County Sheriff’s Department who responded to the
15 scene and was interviewed later that night. Ellis then began to “snore”—“[t]hat agonal
16 breathing,” Lt. Messineo said later. They sounded to him like a person’s last breaths, explaining
17 that when “someone is dying and they have the agonal breathing, their last breaths. . . . That’s
18 what I heard.”

19 RANKINE instructed the other officers at the scene to roll the hogtied Ellis onto his
20 side. RANKINE swept Ellis for weapons, and found none. RANKINE and another officer then
21 removed the taser probes from Ellis’s chest.

22 RANKINE noticed at this time that Ellis’s body temperature was hot, that he was
23 sweating profusely, and that “he was bleeding from his face.” Lt. Messineo said he recognized
24 Ellis’s condition as “excited delirium,” based on his temperature and agonal breathing, and he
25 alerted the officers at the scene that he thought Ellis was experiencing excited delirium. Another
26 officer on the scene, Detective Sgt. Gary Sanders of the Pierce County Sheriff’s Department,

1 recalled hearing Lt. Messineo alerting the officers that Ellis might be experiencing excited
2 delirium: “Once everything was done . . . I think one officer had his knees still on his like
3 shoulder, kind of having him pinned, and [Lt. Messineo] said something about it being excited
4 delirium.”

5 **D. Tacoma Fire Department dispatched to evaluate Ellis.**

6 40 seconds after 11:25 PM, the dispatcher can be heard asking if anyone at the scene
7 needs medical aid. Sgt. Lim responds “Yeah, go ahead and start Fire . . . check him out.”
8 Neither BURBANK nor COLLINS nor RANKINE had requested medical aid before that point,
9 despite having heard Ellis say multiple times that he could not breathe. They did not inform the
10 dispatcher that Ellis had said he could not breathe. They did not tell the dispatcher that Ellis
11 was now experiencing agonal breathing. They did not tell the Tacoma Fire Department that
12 Ellis might be experiencing excited delirium, even though Tacoma Police Department policy
13 specifically instructs officers after a taser application to “[m]ake sure to inform TFD if the
14 subject is showing any signs of excited delirium.” As a result, all the Tacoma Fire Department
15 understood about the situation is that that they should “check [Ellis] out.” The Tacoma Fire
16 Department recorded the incident as “TPD REQUESTING EVAL AFTER ARREST.”

17 A little more than 90 seconds later, at 11:27 PM, Sgt. Lim told the dispatcher to “[a]dvice
18 fire they’re gonna need a[n] ambulance too.” He added that Ellis “has to be strapped down”
19 but provided no other details.

20 Not until 47 seconds after 11:32 PM—more than seven minutes after the initial request
21 for medical aid—would anyone alert the dispatcher that the fire department should run
22 “priority” in bringing medical aid to Ellis. And even then, none of the officers told the fire
23 department about Ellis’s breathing difficulties. Sgt. Lim refused requests to be interviewed by
24 WSP or AGO investigators and therefore it is unknown why Sgt. Lim requested an ambulance
25 for Ellis.

1 **E. Rankine rolls Ellis back onto his stomach.**

2 Sometime between 11:25 PM and 11:27 PM, RANKINE rolled Ellis back onto his
3 stomach from his side. Other officers who arrived shortly after 11:25 PM describe seeing Ellis
4 on his stomach. According to RANKINE, Ellis had “violently started thrashing all over again”
5 while he was on his side, so RANKINE “instructed the Officers to roll, roll him back on his
6 stomach as we applied, reapplied pressure on him just to hold him down.” RANKINE said he
7 had his right knee around Ellis’s right shoulder blade, and his left knee in the middle of Ellis’s
8 back. Ellis remained under RANKINE—hogtied and face down—for the next 6–9 minutes
9 until the fire department arrived at Ellis’s side at 11:34 PM.

10 Rankine’s statement that Ellis was violently thrashing around is contradicted by
11 observations from two other officers on the scene who were interviewed later that night. Both
12 said that Ellis went quiet and stopped moving after the hobbles were applied. According to
13 Detective Sgt. Sanders, once Ellis was placed in hobbles “it was pretty controlled at that
14 point . . . and he kind of just went quiet.” And according to Lt. Messineo, once the hobble was
15 applied, Ellis “went quiet” and “stopped moving.” Lt. Messineo reiterated that again later in
16 his interview, saying “once that hobble went on, he went quiet, he did not move.”

17 **F. A spit hood is placed over Ellis’s head.**

18 At approximately 11:27 PM, an officer who had just arrived on the scene (according to
19 computer aided dispatch data) put a spit hood over Ellis’s head. At that time, Ellis was hogtied
20 on his stomach, with RANKINE continuing to apply pressure on his back.

21 A spit hood is a fabric hood that goes over and covers a person’s head and is meant to
22 prevent the person from transmitting fluids by spitting, sneezing, or coughing. When applied
23 properly, mesh covers the head down to around the bridge of a person’s nose, and a thicker
24 fabric then covers the person’s lower nose, nostrils, and mouth, down to the person’s neck.

25 The brand of spit hood that was used on Ellis includes instructions that specifically say
26 “DO NOT USE on anyone that is . . . having difficulty breathing.” The instructions further

1 warn that “improper use may result in serious injury or death due to asphyxiation, suffocation
2 or drowning in one’s own fluids.” Even though RANKINE, COLLINS, AND BURBANK
3 heard Ellis repeatedly plead that he could not breathe, they did not intervene when the officer
4 put the spit hood on Ellis or remove the spit hood. The spit hood would remain over Ellis’s
5 head until the fire department removed it sometime after 11:34 PM.

6 **G. The fire department arrives to find Ellis unresponsive; Ellis declared dead at scene.**

7 RANKINE admits that he continued to pin Ellis to the ground with his body weight until
8 he saw the fire department arrive. As the fire department pulled up around 11:34 PM,
9 RANKINE said that he decided to roll Ellis back onto his side, “because . . . from medical
10 training experience, that’s the best position to put someone in, it’s like the recovery position is
11 what they called it.” RANKINE said he then took Ellis’s pulse and found it was lower than he
12 expected.

13 The lead paramedic on the first fire department vehicle to arrive at the scene later said
14 that he found Ellis hogtied with a spit hood over his head, not moving. The paramedic recorded
15 Ellis’s condition as “unconscious and unresponsive.” He immediately recognized that Ellis had
16 a “deteriorating respiratory drive,” with a “weak and slow” pulse. Ellis “did not appear to be
17 breathing” in a way that would sustain life, the paramedic recalled, saying that Ellis’s breaths
18 were just agonal respirations. Ellis’s pupils were “fixed and dilated,” indicating possible brain
19 death. Simply put, Ellis’s condition was “[n]ot sustainable with life” and without immediate
20 medical intervention, Ellis would surely die.

21 RANKINE acknowledged in his statement that the paramedic told him when he arrived
22 that Ellis needed an IV, “or he’s gonna code.” The paramedic asked RANKINE to remove the
23 restraints from Ellis’s body so he could administer that IV. RANKINE resisted. RANKINE
24 then told the paramedic that he did not “wanna get him outta cuffs in case he starts fighting
25 again,” as RANKINE would later explain in his statement. After the paramedics insisted that
26 they needed the restraints off to apply an IV, RANKINE relented and helped take off the hobbles

1 and handcuffs. The paramedics started an IV and also began respirating Ellis through a bag.
2 Within seconds, they began CPR.

3 These efforts proved unsuccessful. Ellis was declared dead at the scene, lying in the
4 street at 96th and Ainsworth, a box of donuts and bottle of water on the pavement nearby, just
5 a few feet from where he first encountered BURBANK and COLLINS on his walk home.

6 **H. Burbank and Collins tell other officers at the scene that Ellis randomly attacked**
7 **them.**

8 As RANKINE held down Ellis, BURBANK and COLLINS remained nearby. Pierce
9 County officers Lt. Messineo and Detective Sgt. Sanders, and Tacoma Police Department Sgt.
10 Lim all recalled hearing them describe their initial interaction with Ellis.

11 Messineo recalled hearing BURBANK and COLLINS say that they had first seen Ellis
12 “goin’ after a car” in the intersection, and then coming up to their car and “attack[ing] their car,
13 punchin’ their, punchin’ their window.” “They get out, he attacks them,” Messineo recounted.
14 “They’re just mindin’ their own business, drivin’ down the road at a red light and [Ellis] attacks
15 them.”

16 Detective Sgt. Sanders recalled hearing something similar from BURBANK and
17 COLLINS that night, as Ellis lay hogtied nearby:

18 [T]hey mentioned that he, they just pulled up to the light and they said this guy, the guy
19 that was, they were struggling with was over at this car. There was a car that was parked
20 there. And the car took off real fast. And then he just ran right at their vehicle and
21 basically slammed into it. And one officer said he was able to push him with the door
22 to get him up and then the fight was on. And it was just, the, he said there wasn’t, no
23 interaction, no nothin’.

24 Sgt. Lim recorded in his written statement a similar account that he recalled hearing
25 from BURBANK and COLLINS that night:

26 Both Officer Burbank and Officer Collins advised me that they were stopped at a
traffic light at the intersection facing WB. They advised that they suddenly
observed the subject in the street near them attempting to get into an unknown
vehicle that was passing through the intersection. The subject then came over to
the front passenger side of their marked patrol vehicle and suddenly punched the

1 passenger side window. Officer Burbank and Officer Collins said that they exited
2 the patrol vehicle to contact the subject when the subject immediately began
3 swinging his fists toward them, striking them both multiple times to include in
4 the face. The subject continued to assault the officers as they attempted to take
5 him into custody by punching and kicking them.

6 These accounts are contradicted by the three civilian witnesses, none of whom ever saw
7 Ellis in the intersection, or saw Ellis strike the officers' car, or saw Ellis attack, punch, or
8 otherwise strike the officers at any point. These civilian accounts are supported by video
9 sources. And both S.M. and K.L. described seeing a casual interaction between the officers and
10 Ellis before BURBANK struck Ellis with his car door—there was no sudden, random attack by
11 Ellis as the officers described that night to others.

12 **VII. MEDICAL EXAMINER DETERMINES ELLIS DIED OF HYPOXIA AND** 13 **RULES DEATH A HOMICIDE**

14 Pierce County Medical Examiner Dr. Thomas Clark examined Ellis's body. He
15 performed an autopsy and examined the spit hood used on Ellis. Dr. Clark determined that the
16 cause of death was "hypoxia" (a lack of oxygen) "due to physical restraint." In particular, Dr.
17 Clark concluded that the manner in which Ellis was restrained by officers and the application
18 of the spit hood prevented Ellis from breathing properly and caused respiratory arrest and death.
19 He determined Ellis's death to be a homicide. Dr. Clark noted that the manner in which Mr.
20 Ellis was hogtied and pressed faced down on the ground would inhibit regular breathing. He
21 also observed that the inside cloth portion of the spit hood was coated with blood and mucus,
22 inhibiting Ellis's ability to breathe.

23 Dr. Clark has since reviewed additional evidence in this case and confirmed that there
24 is a strong basis in scientific evidence for his determination that Ellis died due to a lack of
25 oxygen caused by physical restraint. Dr. Clark has also determined that the weight of an officer
26 on Ellis's back, which was not known to Dr. Clark at the time of the autopsy, may have
contributed to Ellis's respiratory distress and thus been a contributory factor in Ellis's death.
He has reviewed heart monitor readings obtained by paramedics prior to Ellis expiring and

1 determined that the gradual nature of Ellis's death while he was restrained was consistent with
2 death due to physical restraint and inconsistent with a sudden medical emergency. Dr. Clark
3 has also opined that, although blood collected from Ellis at autopsy showed the presence of
4 methamphetamine, Ellis's death was not likely caused by methamphetamine intoxication. As
5 Dr. Clark has explained, medical personnel arriving on the scene observed bradycardia (slow
6 heart rate) and conditions consistent with pulseless electrical activity, neither of which is known
7 to be caused by methamphetamine. Dr. Clark has also noted that Ellis repeatedly stated while
8 restrained that he could not breathe. According to Dr. Clark, this is empirical evidence that
9 Ellis was experiencing respiratory distress caused by the conditions of his restraint.

10 **VIII. THE ACTIONS OF OFFICERS COLLINS, BURBANK, AND RANKINE**
11 **WERE INCONSISTENT WITH TACOMA POLICE DEPARTMENT**
12 **POLICIES AND WASHINGTON STATE LAW**

13 COLLINS, RANKINE, and BURBANK were all subject to the Tacoma Police
14 Department's use-of-force policy. That policy requires the officers to "proportionally align"
15 their "use of force with subject actions," escalating and *de-escalating* as the subject's actions
16 change. Deadly force is reserved for situations in which the officers are "confronted with an
17 imminent danger of death or serious bodily injury to . . . themselves or others." The appropriate
18 level of force for other situations depends on the subject's actions, with assaultive conduct
19 warranting defensive tactics, active resistance warranting compliance techniques, and passive
20 resistance warranting only contact controls. And "[w]hen situations are reasonably stabilized,
21 application of force must proportionally de-escalate or cease in accordance with the subject
22 actions, when control is gained or threat is removed." After applying force, officers have a duty
23 under Tacoma Police Department policies to check for injuries and to request "qualified medical
24 assistance" as needed.

25 Also, under Washington State statute, RCW 36.28A.445, which was passed by ballot
26 initiative in 2019, police officers have a duty to "provide or facilitate first aid such that it is

1 rendered at the earliest safe opportunity to injured persons at a scene controlled by law
2 enforcement.”

3 **IX. EXPERT OPINIONS ON THE OFFICERS’ USE OF FORCE AND OTHER**
4 **POLICE PRACTICES**

5 Sue Peters, a retired police officer and expert in police practices and the use of force,
6 has reviewed audio and video records, as well as statements from the witnesses and officers
7 who responded to the scene. In her opinion, BURBANK and COLLINS were in a position to
8 know that Ellis needed emergency medical aid and should have contacted dispatch to request
9 medical aid after Ellis was handcuffed. The officers were in a position to know, Ms. Peters
10 explains, that Ellis was in need of urgent medical care, because the officers would have heard
11 him say multiple times he could not breathe. They also would have known that Ellis had been
12 hit with multiple rounds from the taser in his chest, a dangerous area for a taser application.
13 And they were in a position to recognize, based on their training, that Ellis was experiencing
14 either excited delirium or some other medical crisis that requires immediate medical
15 intervention.

16 Ms. Peters has also formed the opinion that, once Ellis was hogtied, RANKINE used
17 excessive force when he continued to apply pressure to Ellis’s back and to hold him face down
18 on his stomach, instead of holding him on his side in the “recovery position.” Ms. Peters notes
19 that Ellis posed no threat after he was hogtied, particularly given the number of officers on the
20 scene (at least six when the hobbles were applied, followed by more than a dozen more over the
21 next few minutes). RANKINE’s continued application of force after that point was not only
22 excessive, but violated the Tacoma Police Department’s de-escalation policy, which specifically
23 instructs that “[w]hen situations are reasonably stabilized, application of force must
24 proportionally de-escalate or cease in accordance with the subject actions, when control is
25 gained or threat is removed.”
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1 medical distress; and (5) failed to intervene when the officer put the spit hood on Ellis and then
2 failed to remove the spit hood, among other facts and circumstances.

3 The charge of FIRST DEGREE MANSLAUGHTER against RANKINE is supported
4 by the above-detailed evidence showing that RANKINE recklessly caused Ellis's death when,
5 after hearing Ellis say he could not breathe, RANKINE continued to hold Ellis in the prone
6 position and to apply pressure onto his back. The charge is also supported by the evidence that
7 RANKINE failed to render or call for urgent medical aid as Ellis exhibited signs of a medical
8 crisis, failed to alert other officers to Ellis's medical distress, failed to stop another officer from
9 putting a spit hood over Ellis's head, and failed to remove the spit hood as Ellis's condition
10 declined, among other facts and circumstances.

11 WE DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE
12 STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

13 DATED: May 27, 2021, at Seattle, WA.

14 ROBERT W. FERGUSON
15 Attorney General

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17 _____
18 PATTY EAKES, WSBA # 18888
19 Special Assistant Attorney General

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