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KING COUNTY DISTRICT COURT OF WASHINGTON
WEST DIVISION

INQUEST INTO THE DEATH OF:

DAMARIUS DEMONTA BUTTS,

Deceased.

No. 517IQ8013

**INVOLVED OFFICERS’
SUBMISSION RE: CRIMINAL
MEANS INSTRUCTION**

On October 19, 2021, the Involved Officers proposed a Criminal Means instruction consistent with the plain language of RCW 9A.16.040 as it existed at the time of Damarius Butts’ death. It should be utilized in its entirety as it is consistent with our Supreme Court’s holding in *Family of Butts v. Constantine*, 198 Wn.2d 27, 491 P.3d 132 (2021).

The Family’s request to remove the malice standard is without merit. Indeed, it ignores and/or mischaracterizes the plain language set forth in *Family of Butt*:

As noted, the Coroner’s Act also commands the jury to determine the means by which the decedent was killed and, if by criminal means, who is guilty thereof. RCW 36.24.070. This inquiry encompasses a determination of whether the means by which the decedent was killed was criminal. Id. **The jury cannot make that determination without evidence pertaining to criminal liability, ...**

1 198 Wn.2d at 57. Ironically, this is exactly what the Family asked the Supreme Court to find, yet
2 it now wants to limit that finding by arguing the inquest is not a criminal proceeding.

3 By plain language, an act that is justified under existing law cannot be by “criminal means.”
4 RCW 9A.16.040(3) renders any act “without malice” and “with a good faith belief that such act is
5 justifiable” non-criminal as a matter of law. The jury must evaluate malice, consequently, since a
6 finding of a lack of malice is dispositive to the question of criminal means.

7 The Involved Officers agree that criminal guilt will not be found, and the inquest findings
8 are not binding, however, according to *Family of Butts*, “the jury must determine whether the
9 means by which someone was killed was, in fact, criminal.” In a footnote to that statement, the
10 *Family of Butts* court elaborated on what that requires:

11 The Law Enforcement Parties argue the inquest jury cannot be allowed to determine issues
12 of criminal liability because an inquest is not a criminal trial. Not only is this argument
13 contrary to the clear commands of RCW 36.24.070, it also misunderstands the purpose and
14 nature of the criminal means question. “A coroner’s inquest is not a culpability-finding
15 proceeding,” so the inquest jury’s verdict is not a binding adjudication of criminal
16 guilt. *State v. Ogle*, 78 Wn.2d 86, 88, 469 P.2d 918 (1970). Rather, an inquest is one of
four “established, recognized and legally permissible methods for determining the
existence of probable cause.” *State v. Jefferson*, 79 Wn.2d 345, 347, 485 P.2d 77
(1971). Consistent with this purpose, the inquest jury’s verdict is a determination whether
probable cause exists to arrest and charge a person who allegedly committed
homicide. *See* RCW 36.24.100.

17 *Id.* at 48, fn. 5. Again, our Supreme Court reiterates that a determination whether a party acted
18 with criminal means includes questions related to criminal liability, regardless of the fact said
19 determination does not establish criminal guilt and this is not a criminal proceeding. Any finding
20 of a lack of malice and good faith under RCW 9A. 16.040(3) *necessarily* forecloses even the
21 prospect that probable cause exists to arrest for criminal behavior. The statutory justifications for
22 force and a finding of probable cause must necessarily be premised upon the same measure, even
23

1 by the Family’s reasoning – that of a preponderance of the evidence. Otherwise, the evaluation
2 would not be consistent, fair, or justifiable.

3 The use of an inquest proceeding to assist in the establishment or lack of probable cause
4 does not prohibit questions related to an officer’s intent. Indeed, our Supreme Court confirms a
5 “jury cannot make that determination without evidence pertaining to criminal liability[.]” *Id.* at 57.
6 There is no rational argument that RCW 9A.16.040(3) does not impact potential criminal liability
7 given it contains the clause “...shall not be held criminally liable...” Instead, as confirmed by our
8 Supreme Court, its use is mandatory and necessary to a full review of the evidence and to an
9 informed determination of criminal means, regardless of the standard of proof or nature of the
10 proceeding. The Family’s offering betrays the necessity of this inquiry, noting that criminal means
11 exists on a finding “that the person who caused the death committed a crime in the use of deadly
12 force.” As noted, in the absence of malice no crime *could* be committed.


13 The other problem with the Family’s offering is that it presumes the death was the result
14 of homicide. Plainly that question must first be decided before the jury can determine who
15 “caused” a death. If the death was the result of a medical condition or independent accident, for
16 example, there would be no foundation to ask “who caused” the death. While the remainder of the
17 Family’s offering largely parallels the Involved Officers’ version, the officers’ version faithfully
18 tracks the actual state laws at issue. The Family’s paraphrasing risks introducing consideration
19 beyond the actual law.

20 The Involved Officers respectfully request this Court adopt their proposed Criminal Means
21 instruction as it is consistent with applicable law and binding precedent. Any argument by the
22 Family to the contrary should be rejected.

23 //

1 DATED this 2nd day of November, 2021, at Seattle, Washington.

2 **FREY BUCK, P.S.**

3 By: 
4 Ted Buck, WSBA #22029

5 Evan Bariault, WSBA #42867
6 Attorney for Seattle Police Department Involved
7 Officers
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1 **CERTIFICATE OF SERVICE**

2 I certify that on the 2nd day of November 2021, I caused a true and correct copy of this
3 document to be served on the following in the manner indicated below:

4 Matthew Anderson Matt.Anderson@kingcounty.gov	(x) Via Email
5 Dee Sylve Dee.Sylve@kingcounty.gov	(x) Via Email
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