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April 2021 Update

Washington State Supreme Court Committee on Jury Instructions

Part IV. Defenses**WPIC CHAPTER 16. Justifiable Homicide****WPIC 16.01 Justifiable Homicide—Peace Officer or Others in Aid of Officer****It is a defense to a charge of [murder] [manslaughter] that the homicide was justifiable as defined in this instruction.****Homicide or the use of deadly force is justifiable:****[when necessarily used by a peace officer acting in good faith to overcome actual resistance to the execution of the legal process, mandate, or order of a court or officer, or in discharge of a legal duty] [or]****[when necessarily and in good faith used by a peace officer or person acting under the officer's command and in the officer's aid [to arrest or apprehend a person who the officer reasonably believes has committed, has attempted to commit, is committing, or is attempting to commit a felony] [or] [to prevent the escape of a person from a federal or state correctional facility or in retaking a person who escapes from such a facility] [or] [to prevent the escape of a person from a county or city jail or holding facility if the person has been arrested for, charged with, or convicted of a felony] [or] [to lawfully suppress a riot if the actor or another participant is armed with a deadly weapon]. In considering whether to use deadly force to arrest or apprehend any person for the commission of any crime, a peace officer must have probable cause to believe that the suspect, if not apprehended, poses a threat of serious physical harm to others. Among the circumstances that may be considered by a peace officer as a “threat of serious physical harm” are the following: (a) The suspect threatens a peace officer with a weapon or displays a weapon in a manner that could reasonably be construed as threatening; or (b) There is probable cause to believe that the suspect has committed any crime involving the infliction or threatened infliction of serious physical harm. Under these circumstances deadly force may also be used if necessary to prevent escape from the officer, when, if feasible, some warning is given.]****[A peace officer shall not be held criminally liable for using deadly force with a good faith belief that such act is justifiable.]****“Good faith” is an objective standard. A peace officer acts in “good faith” if a similarly situated reasonable peace officer would have believed that the use of deadly force was necessary to prevent death or serious physical harm to the peace officer or another individual. In deciding whether a peace officer acted in good faith, you should consider all the facts, circumstances, and information known to the officer at the time.****The State has the burden of proving beyond a reasonable doubt that the homicide was not justifiable. If you find that the State has not proved the absence of this defense beyond a reasonable doubt, it will be your duty to return a verdict of not guilty.****NOTE ON USE**

Use this instruction in any homicide case in which this defense is an issue supported by the evidence.

Use bracketed material as applicable.

Use WPIC 25.01 (Homicide—Definition) and WPIC 16.05 (Necessary—Definition) with this instruction. Use WPIC 2.09 (Felony—Designation of), WPIC 2.14 (Officer—Public Officer—Definition), WPIC 2.16 (Peace Officer—Definition), and WPIC 2.20 (Prisoner—Definition), as applicable with this instruction. The term “probable cause” will need to be defined for the jury, if the defense is raised that the homicide was justified under RCW 9A.16.040(1)(c). See RCW 9A.16.040(2).

COMMENT

RCW 9A.16.040. This instruction has been revised to reflect changes to RCW 9A.16.040 contained in Laws of 2019, Chapter 4, § 3 (effective February 4, 2019). Laws of 2019, Chapter 4, § 3 removed a requirement to prove malice and adopted a good faith standard. The good faith standard is objective. The State has the burden of proof that the peace officer's use of deadly force was not justified. This instruction applies to offenses committed on or after February 4, 2019.

RCW 9A.16.040 was amended four times between 2018 and 2019. See Laws of 2019, Chapter 4, § 3; Laws 2019, Chapter 1, § 7 (Initiative Measure No. 940); Laws 2018, Chapter 11, § 7 (Initiative Measure No. 940, repealed by Laws of 2019, Chapter 4, § 8); Laws of 2018, Chapter 10, § 3 repealed by Laws of 2019, Chapter 4, § 8). Two of the four amendments were invalidated. See *Eyman v. Wyman*, 191 Wn.2d 581, 424 P.3d 1183 (2018).

Former WPIC16.01, 11 Washington Practice, Washington Pattern Jury Instructions: Criminal (4th ed.), based upon former RCW 9A.16.040 (Laws of 1986, Chapter 209, § 2), should be used for offenses committed on or prior to December 6, 2018. The version of RCW 9A.16.040 that applies to offenses committed between December 7, 2018, and February 3, 2019, is Laws of 2019, Chapter 1, § 7. Pattern instructions have not been prepared for these offenses.

RCW 9A.16.040(1)(a) states that homicide or the use of deadly force is justifiable when a public officer is acting in obedience to the judgment of a competent court. The word "competent" has not been included in the instruction, because competency of a court, as that term is used in the statute, is a matter of law to be determined by the trial judge.

The instruction will need to be modified for the rare cases involving public officers other than peace officers.

For a general discussion of whether the burden of proving a defense can be shifted to the defendant, see WPIC 14.00 (Defenses—Introduction).

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