

No.

It is your duty to determine the cause and circumstances surrounding who caused the death of Damarius Butts and whether his death was caused by criminal means. A death is caused by criminal means if (1) the death was caused by the use of deadly force, ~~and~~ (2) the use of such force was not justifiable, and (3) the officer acted with malice and without a good faith belief that the use of such force was justifiable ~~as defined in these instructions.~~

City Position: Because this proposed instruction refers only to whether the force was “justifiable,” it does not take into account the safe haven of RCW 9A.16.040(3) which protects officers who lack a culpable mental state from criminal liability.

Legal authority: RCW 9A.16.040(3).

No.

1. The use of deadly force ~~_that results in a death_~~ is justifiable when necessarily used by a ~~peace~~-police officer to arrest or apprehend a person who the officer reasonably believes is committing, has committed, or has attempted to commit a felony and ~~the officer acts without malice and with a good faith belief that the police officer has~~ probable cause ~~exists~~ to believe that the suspect, if not apprehended, posed a threat of serious physical harm to the officer or a threat of serious physical harm to others.

City position: See proposed redlines above. Change “peace” to “police” for clarity. Using only the past tense of the verb “commit” is inaccurate and confusing.

Delete provisions addressing “malice” and “good faith,” because those terms do not come into play unless the jury finds that the use of deadly force was not justifiable. The proposed instruction combines sections (1) and (3) of RCW 9A.16.040 into one inquiry instead of two and incorrectly tells that jury that—even if it determines as an objective matter that the deadly force was justified under section (1)—then it still must reach the questions raised by section (3). That is inconsistent with the statute.

The phrase “that results in death” seems unnecessary. Here, there’s no dispute that there was a death, extra words may risk creating confusion. Also, the statute applies even when the result is not death.

Legal authority: RCW 9A.16.040(1); RCW 9A.16.040(3).

2. Among the circumstances that may be considered by a ~~peace~~-police officer as a “threat of serious physical harm” are the following: (a) The suspect threatened a ~~peace~~police officer with a weapon or displayed a weapon in a manner that could reasonably be construed as threatening; or (b) There was probable cause to believe that the suspect committed any crime involving the infliction or threatened infliction of serious physical harm.

City position: See proposed redlines above. Change “peace” to “police” for clarity.

3. Necessary means that, under the circumstances as they reasonably appeared to the officer at the time, (1) no reasonably effective alternative to the use of force appeared to exist and (2) the amount of force used was reasonable to effect the lawful purpose intended.

City position: No objection.

4. Malice means an evil intent, wish, or design to vex, annoy, or injure another person. Malice may be, but is not required to be, inferred from an act done in willful disregard of the rights of another.

City position: No objection.

Legal authority: RCW 9A.16.040(3); RCW 9A.04.110(12).