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KING COUNTY DEPARTMENT OF EXECUTIVE SERVICES  
INQUEST PROGRAM

IN RE INQUEST INTO THE DEATH OF  
CHARLEENA LYLES

No. 517IQ9301

INVOLVED OFFICERS’ BRIEF RE  
APPLICATION OF RCW 9A.040 AND RCW  
9A.16.050 IN THE ADMINISTRATOR’S  
INSTRUCTIONS TO THE INQUEST JURY  
PANEL

**I. INTRODUCTION AND RELIEF REQUESTED**

Seattle Police Officers Jason Anderson and Steven McNew (the “officers”) submit this briefing pursuant to the Inquest Administrator’s request that the parties weigh in on the applicability of instructing the inquest panel on self-defense statutes RCW 9A.16.040 and RCW 9A.16.050. The officers assert, based upon well settled Washington law, that both sets of instructions should be given as the question of justification is at the heart of the inquiry regarding criminal means as required by the revised King County Inquest Procedures.

**II. ARGUMENT AND AUTHORITY**

The officers’ fatal encounter with Ms. Lyles occurred in the course of their duties as police officers when they were called to investigate a burglary reported by Ms. Lyles in her apartment. The officers were not called to Ms. Lyles’ home to arrest her or to investigate any criminal conduct on her behalf. However, when during the initially pleasant encounter Ms. Lyles suddenly pulled a knife

1 from her pocket and attempted to stab Officer Anderson, she committed an assault with a deadly  
2 weapon. Assault in the third degree occurs when a person “assaults a law enforcement officer or  
3 other employee of a law enforcement agency who was performing his or her official duties at the  
4 time of the assault.” RCW 9A.36.031(1)(g). Assault in the third degree is a class C felony. RCW  
5 9A.36.031(2).

6 "Deadly weapon" means any explosive or loaded or unloaded firearm, and shall include any  
7 other weapon, device, instrument, article, or substance...which, under the circumstances in  
8 which it is used, attempted to be used, or threatened to be used, is readily capable of causing  
9 death or substantial bodily harm.

10 RCW 9A.04.110 (6). Were it not for Ms. Lyles assault or attempted assault, no use of force would  
11 have been necessary.

12 **A. The officers are entitled to instructions under RCW 9A.16.040.**

13 Law enforcement officers are specifically entitled to the benefit of RCW 9A.16.040, which  
14 governs “[j]ustifiable homicide or use of deadly force by public officer, peace officer, [or] person  
15 aiding.” *Beltran-Serrano v. City of Tacoma*, 193 Wn.2d 537, 548, 442 P.3d 608, 613 (2019). In a  
16 footnote to the current version of RCW 9A.16.040, referencing the 1986 version, the legislature  
17 specifically recognized and differentiated the differences between self-defense claims by peace  
18 officers and private citizens.

19 **Legislative recognition:** "The legislature recognizes that RCW 9A.16.040 establishes a dual  
20 standard with respect to the use of deadly force by peace officers and private citizens, and  
21 further recognizes that private citizens' permissible use of deadly force under the authority  
of RCW 9.01.200, 9A.16.020, or 9A.16.050 is not restricted and remains broader than the  
limitations imposed on peace officers." [ 1986 c 209 § 3.]

22 Specifically, RCW 9A.16.040 (as it existed from 1986 through 2017<sup>1</sup>) reads as follows:  
23  
24

25 <sup>1</sup> RCW 9A.16.040 has been revised twice since the 2017 incident, in 2018 and 2020. The 2017 statute had  
been in existence since 1985 and the language from that version is included here.

1           Sec. 2. Section 9A.16.040, chapter 260, Laws of 1975 1st ex. sess. and  
2           RCW 9A.16.040 are each amended to read as follows:

3           (1) Homicide or the use of deadly force is justifiable ((when committed  
4           by a public officer, or person acting under his command and in his aid;)) in  
5           the following cases:

6           ((1)) (a) When a public officer is acting in obedience to the judgment  
7           of a competent court(:); or

8           ((2)) (b) When ((necessary)) necessarily used by a peace officer to  
9           overcome actual resistance to the execution of the legal process, mandate, or  
10           order of a court or officer, or in the discharge of a legal duty.

11           ((3) When necessary in retaking an escaped or rescued prisoner who  
12           has been committed, arrested for, or convicted of a felony, or in arresting a  
13           person who has committed a felony and is fleeing from justice, or in at-  
14           tempting, by lawful ways or means, to apprehend a person for a felony ac-  
15           tually committed; or in lawfully suppressing a riot or preserving the peace:))

16           (c) When necessarily used by a peace officer or person acting under the of-  
17           icer's command and in the officer's aid:

18           (i) To arrest or apprehend a person who the officer reasonably believes  
19           has committed, has attempted to commit, is committing, or is attempting to  
20           commit a felony;

21 ...

22           Certain factors are considered in determining what is "necessary" in the discharge of an  
23 officers' legal duty, including the officer being threatened by the subject with a weapon. Justification  
24 is not limited to circumstances where a subject is actively resisting arrest, as has been suggested  
25 during these proceedings.

26           (2) In considering whether to use deadly force under subsection (1)(c)  
27           of this section, to arrest or apprehend any person for the commission of any  
28           crime, the peace officer must have probable cause to believe that the sus-  
29           pect, if not apprehended, poses a threat of serious physical harm to the offi-  
30           cer or a threat of serious physical harm to others. Among the circumstances  
31           which may be considered by peace officers as a "threat of serious physical  
32           harm" are the following:

33           (a) The suspect threatens a peace officer with a weapon or displays a  
34           weapon in a manner that could reasonably be construed as threatening; or

35           (b) There is probable cause to believe that the suspect has committed  
36           any crime involving the infliction or threatened infliction of serious physical  
37           harm.

1 Based upon the above factors, a police officer is absolutely and statutorily entitled to a  
2 determination of whether the officer acted “without malice” and “with a good faith belief that such  
3 act is justifiable.”

4 **(3) A public officer or peace officer shall not be held criminally liable**  
5 **for using deadly force without malice and with a good faith belief that such**  
6 **act is justifiable pursuant to this section.**

7 This statutory provision is the very crux of the criminal means determination that will be presented  
8 to the jury. To eliminate the statutory protection specifically granted by the legislature would be  
9 contrary to well-settled law and grossly prejudicial and unfair to the officers. This is true in any  
10 scenario where an officer is acting within the scope of his duties, including when a social contact  
11 escalates and turns deadly. *See Beltran-Serrano, supra, at 540-542; Bao Xuyen Le v. King, 2021*  
12 *U.S. Dist. LEXIS 53573, \*2-4.*<sup>2</sup>

13 The inquest rules promulgated most recently on July 28, 2021 require the Administrator to  
14 instruct the jury on the following questions:

15 **14.2. The inquest administrator shall give written instructions to the panel and shall submit**  
16 **questions to be answered, subject to the limitations of Section 3 (above), Chapter 36.24**  
17 **RCW, and keeping in mind the purpose of an inquest. At a minimum, per RCW 36.24.070,**  
18 **the panel must render a verdict setting out who was killed, when, where, how, by whom, and**  
19 **whether that killing was by criminal means. If the jury finds that the killing was by criminal**  
20 **means, the jury must identify who is guilty thereof, if known. The panel shall also make**  
21 **findings regarding whether the law enforcement officer complied with applicable law**  
22 **enforcement agency training and policy as they relate to the death.**

23 PHL-7-1-5-EO, Appx 2, Section 14.2.

24 \_\_\_\_\_  
25 <sup>2</sup> On these cases, Mr. Beltran-Serrano and Mr. Le were reportedly acting erratically and officers were called to intervene. The encounters escalated, resulting in the use of deadly force. RCW 9A.19.040 was found applicable to those circumstances.

1 In the preliminary interrogatories to the jury prepared by the Administrator and  
2 reviewed/revised by the parties, all agree that pursuant to the inquest rules, the jury will be asked the  
3 following, or a similar, question regarding criminal means:

4 **Interrogatory No. 87:** If you found that the use of deadly force by Officer Anderson or  
5 Officer McNew against Charleena Lyles was not justifiable, and was committed with  
6 malice or not in good faith, did that officer cause the death of Charleena Lyles by criminal  
7 means as defined in Instruction No. \_\_\_\_\_?

8 **Officer Anderson** YES \_\_\_\_\_ NO \_\_\_\_\_ UNKNOWN \_\_\_\_\_

9 **Officer McNew** YES \_\_\_\_\_ NO \_\_\_\_\_ UNKNOWN \_\_\_\_\_

10 Eliminating jury instructions regarding RCW 9A.16.040, which address the necessary elements of  
11 malice and good faith, would promote confusion and also eliminate the jury's ability to apply the  
12 proper factors necessary to determine whether the use of force was justified or not; thus defeating  
13 the seminal purpose of the entire proceeding.

14 **B. Jury instructions pursuant to RCW 9A.16.050 are also appropriate.**

15 Any person suspected of the homicide of another is entitled to the benefit of RCW 9A.16.050  
16 [2011] which reads as follows:

17 Homicide is also justifiable when committed either:

- 18 (1) In the lawful defense of the slayer, or his or her husband, wife, parent, child, brother, or  
19 sister, or of any other person in his or her presence or company, when there is  
20 reasonable ground to apprehend a design on the part of the person slain to commit a  
21 felony or to do some great personal injury to the slayer or to any such person, and there  
22 is imminent danger of such design being accomplished; or  
23 (2) In the actual resistance of an attempt to commit a felony upon the slayer, in his or her  
24 presence, or upon or in a dwelling, or other place of abode, in which he or she is.

25 Officers Anderson and McNew absolutely had reasonable ground to "apprehend a design on the part  
of' Ms. Lyles to commit a felony [assault in the third degree] or to do great personal injury to one  
or the other of them in imminent fashion. Where justification pursuant to RCW 9A.16.040 is

1 established, self-defense is established as well. Instructions under RCW 9A.16.050 should also be  
2 given.

3 **III. CONCLUSION**

4 In order for the inquest jury panel to fulfill its principal stated objective of determining  
5 whether or not Ms. Lyles death was justified, i.e. not by “criminal means,” the officers are entitled  
6 to all instructions that inform the jury on the dual standards for law enforcement officers and citizens,  
7 of which they are both. Anything less would be contrary to the law and the inquest process. RCW  
8 9A.16.040 and RCW 9A.16.050 must be included in the Administrator’s instruction to the inquest  
9 jury panel.

10 DATED 13<sup>th</sup> day of June 2022.

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16 Jason Anderson