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6 KING COUNTY DEPARTMENT OF EXECUTIVE SERVICES INQUEST PROGRAM

7 In re INQUEST INTO THE DEATH OF
8 CHARLEENA LYLES,

NO. 517IQ9301

FAMILY’S BRIEF RE RCW 9A.16.040,
9A.16.050

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11 **I. INTRODUCTION AND RELIEF REQUESTED**

12 On June 17, 2017, Charleena Lyles was shot seven times and killed by SPD officers after
13 she called to report a burglary and suffered a mental health incident. The Administrator
14 requested that the parties submit briefing on whether statutes RCW 9A.16.040 and RCW
15 9A.16.050 apply to the inquest proceedings and should be given to the jury.

16 For years prior to Ms. Lyles’ death, the community rallied to change Washington’s
17 restrictive standard under 9A.16.040 to make it possible to hold officers accountable to actions
18 important for community trust in law enforcement. They succeeded when Initiative I-940 passed
19 – removing the requirement that police “malice” be proven in order to bring criminal charges and
20 replaced it with an objective “good faith” or reasonable police officer standard by which
21 prosecutors can more fairly evaluate deadly force incidents.¹ Our state Supreme Court later
22

23

24 [https://ballotpedia.org/Washington_Initiative_940_Police_Training_and_Criminal_Liability_in_Cases_of_Deadly_Force_Measure_\(2018\)#:~:text=940%20concerns%20law%20enforcement.,faith%22%20standard%20and%20inde](https://ballotpedia.org/Washington_Initiative_940_Police_Training_and_Criminal_Liability_in_Cases_of_Deadly_Force_Measure_(2018)#:~:text=940%20concerns%20law%20enforcement.,faith%22%20standard%20and%20inde)

1 affirmed that RCW 9A.16.040’s “good faith” standard fully accords with the Court’s
2 requirement that Courts analyze the “totality of the circumstances” in negligence claims.
3 *Beltran-Serrano v. City of Tacoma*, 193 Wn.2d 537, 548, 442 P.3d 608 (2019). There was no
4 analysis of RCW 9A.16.050 in the *Beltran-Serrano* opinion.

5 RCW 9A.16.040 applies to police officers and RCW 9A.16.050 does not. The Family
6 requests that only .040 language be included in the interrogatories and jury instructions. In
7 addition, the interrogatories and jury instructions should employ the current “good faith”
8 standard required under *Beltran-Serrano* and any mention of “malice” should be removed.

9 II. ARGUMENT AND AUTHORITY

10 The court's fundamental objective is to ascertain and carry out the Legislature's intent,
11 and if the statute's meaning is plain on its face, then the court must give effect to that plain
12 meaning as an expression of legislative intent. *State v. J.M.*, 144 Wn.2d 472 480, 28 P.3d 720
13 (2001). RCW 9A.16.040 states:

14 (1) Homicide or the use of deadly force is justifiable in the following
15 cases:

16 ...

17 (b) When necessarily used by a peace officer meeting the good faith
18 standard of this section to overcome actual resistance to the execution of
19 the legal process, mandate, or order of a court or officer, or in the
20 discharge of a legal duty; or

21 (c) When necessarily used by a peace officer meeting the good faith
22 standard of this section or person acting under the officer's command and
23 in the officer's aid:

24 ...

(3) A *public officer* covered by subsection (1)(a) of this section shall not
be held criminally liable for using deadly force without malice and with a
good faith belief that such act is justifiable pursuant to this section.
(Emphasis added).

pendent%20investigation. see also <https://housedemocrats.wa.gov/goodman/2019/01/24/house-passes-legislation-to-strengthen-and-clarify-initiative-940/>

1 (4) A *peace officer* shall not be held criminally liable for using deadly
2 force in good faith, where “good faith” is an objective standard which
3 shall consider all the facts, circumstances, and information known to the
4 officer at the time to determine whether a similarly situated reasonable
officer would have believed that the use of deadly force was necessary to
prevent death or serious physical harm to the officer or another individual.
(Emphasis added).

5 A “public officer” is defined any person other than a witness who presently occupies the
6 position of or has been elected, appointed, or designated to become any officer or employee of
7 government, including a legislator, judge, judicial officer, juror, and any person participating as
8 an advisor, consultant, or otherwise in performing a governmental function. RCW
9 9A.04.110(23). A peace officer is defined as a duly appointed city, county, or state *law*
10 *enforcement officer*. RCW 9A.04.110(15). The legislative recognition of RCW 9A.16.040 states:

11 The legislature recognizes that RCW 9A.16.040 establishes a dual
12 standard with respect to the use of deadly force by peace officers and
13 private citizens, and further recognizes that private citizens’ permissible
14 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.]

15 **A. The legislative history clearly evinces the legislature’s intent to remove the
“malice” requirement for police officers.**

16 For years, prior to RCW 9A.16.040’s latest amendment, families, community groups, and
17 law enforcement collaborated on changing RCW 9A.16.040 knowing that .040 specifically
18 applied to law enforcement. In 2015, the U.S. Department of Justice issued a final report from
19 the 21st Century Task Force on Policing.² A core focus of that report addressed strategies for
20 improving relationships, increasing community engagement, and fostering cooperation. The
21 report recommended clear and comprehensive policies on the use of force, training on the
22 importance of de-escalation, crisis intervention and mental health, the provision of first aid, and

23 _____
24 ² https://policingequity.org/images/pdfs-doc/reports/presidents_taskforce_finalreport.pdf

1 recommended external and independent investigations in officer involved shootings resulting in
2 injury or death. With this report in mind, Initiative 940 sought to clarify the language in RCW
3 9A.16.040 by removing the “malice” standard.³

4 The process involved a compromise, House Bill 3003, resulting from discussion with and
5 input from law enforcement agencies and De-Escalate Washington.⁴ The changes to RCW
6 9A.16.040 included removing peace officer from section (3) and adding sections (4) and (5):

7 (1) Homicide or the use of deadly force is justifiable in the following
8 cases:

9 (a) When a public officer applies deadly force ~~is acting~~ in obedience
10 to the judgment of a competent ~~ve teourt; or~~

11 (b) When necessarily used by a peace officer meeting the good faith
12 standard of this section to overcome actual resistance to the execution of
13 the legal process, mandate, or order of a court or officer, or in the
14 discharge of a legal duty; or

15 (c) When necessarily used by a peace officer meeting the good faith
16 standard of this section or person acting under the officer's command and
17 in the officer's aid:

18 ...

19 Under these circumstances deadly force may also be used if necessary to
20 prevent escape from the officer, where, if feasible, some warning is given,
21 provided the officer meets the good faith standard of this section.

22 (3) A public officer ~~or peace officer~~ covered by subsection (1)(a) of this
23 section shall not be held criminally liable for using deadly force without
24 malice and with a good faith belief that such act is justifiable pursuant to
this section.

(4) A law enforcement officer shall not be held criminally liable for using
deadly force if such officer meets the good faith standard adopted in this
section.⁵

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³ [https://ballotpedia.org/Washington_Initiative_940,_Police_Training_and_Criminal_Liability_in_Cases_of_Deadly_Force_Measure_\(2018\)#:~:text=940%20concerns%20law%20enforcement.,faith%22%20standard%20and%20independent%20investigation.](https://ballotpedia.org/Washington_Initiative_940,_Police_Training_and_Criminal_Liability_in_Cases_of_Deadly_Force_Measure_(2018)#:~:text=940%20concerns%20law%20enforcement.,faith%22%20standard%20and%20independent%20investigation.)

⁴ *Id.*

⁵ *Id.*

1 The statute has since been amended but the pertinent sections remain. A “public officer”
2 is defined any person other than a witness who presently occupies the position of or has been
3 elected, appointed, or designated to become any officer or employee of government, including a
4 legislator, judge, judicial officer, juror, and any person participating as an advisor, consultant, or
5 otherwise in performing a governmental function. RCW 9A.04.110(23). A peace officer is
6 defined as a duly appointed city, county, or state *law enforcement officer*. RCW 9A.04.110(15).
7 The involved officers are peace officers subject to section (4), not (3). The plain meaning of the
8 statute and its legislative intent is clear – that the malice requirement was removed and replaced
9 by the “good faith” standard. Our state Supreme Court later confirmed that the good faith
10 standard of RCW 9A.16.040 applied in officer-involved shootings that resulted in injury or
11 death. *Beltran-Serrano*, 193 Wn.2d at 548.

12 **B. The interrogatories and jury instructions should employ the current “good**
13 **faith” standard required under *Beltran-Serrano* without any mention of malice.**

14 *Beltran-Serrano* involved a 2013 police shooting of a mentally ill homeless man with
15 limited English language proficiency. *Id.* at 540. There, the City argued that 9A.16.040 would
16 “circumvent both the defense of self-defense and the standard of objective reasonableness
17 applicable to an excessive force claim.” *Id.* at 548. The Court disagreed and held that .040
18 “defines when police officers are justified in using deadly force.” *Id.*

19 The Involved Officers here argue that they are entitled to the “without malice” language
20 from RCW 9A.16.040(3), but that is not the standard, as explained above. The *Beltran-Serrano*
21 Court cites the current version of the statute stating “the statute allows Officer Volk to argue to
22 the jury that her actions were privileged under the *good faith standard* of the statute that requires
23 consideration of ‘all the facts, circumstances, and information known to the officer at the time.’”
24 *Id.* (citing RCW 9A.16.040(4)). (Emphasis added). The early 2018 version of the statute does not

1 have this specific language the *Beltran-Serrano* Court specifically held the officer was entitled
2 to.⁶

3 The Court further noted that RCW 9A.16.040 imposes a “good faith” standard and
4 provides that the use of deadly force is justifiable when “necessarily used by a peace officer
5 meeting the good faith standard of this section to overcome actual resistance to the execution of
6 the legal process, mandate, or order of a court of officer, in the discharge of a legal duty. *Id.* at
7 550 n 9. The statute is clear, and even if it could be construed ambiguously, the legislative
8 history is clear. *Beltran-Serrano* is clear. The legislature intended to remove the “malice”
9 requirement for police officers, it did so and our Supreme Court confirmed the statute’s proper
10 use in police-involved shootings.

11 **C. RCW 91.16.050 applies only to “Other” (non-public officer, peace officer, person
12 aiding’s) use of deadly force.**

13 The court assesses the plain meaning of a statute “viewing the words of a particular
14 provision in the context of the statute in which they are found, together with related statutory
15 provisions, and the statutory scheme as a whole.” *Burns v. City of Seattle*, 161 Wn.2d 129, 140,
16 164 P.3d 475 (2007). RCW 9A.16.050 is titled “Homicide – By *Other* person – When justifiable.
17 (Emphasis added). .050 follows .040 which is titled “Justifiable homicide or the use of deadly
18 force by public officer, *peace officer*, person aiding.” Emphasis added). Again, the legislative
19 recognition in RCW 9A.16.040 states that “9A.16.050 is not restricted and remains broader than
20 the limitations imposed on peace officers.” A police officer is a peace officer. If .050 was

21 ⁶ The early 2018 RCW 9A.16.040(4) states:

22 This section shall not be construed as:

23 (a) Affecting the permissible use of force by a person acting under the authority of [RCW](#)
[9A.16.020](#) or [9A.16.050](#); or

24 (b) Preventing a law enforcement agency from adopting standards pertaining to its use of deadly
force that are more restrictive than this section.

1 available to peace officers, .040 would not have included language stating that .050 is broader
2 than “limitations imposed on peace officers.” Those words are not ambiguous or confusing. A
3 frequently repeated maxim of statutory construction is that “statutes should receive a sensible
4 construction to effect the legislative intent, and if possible, to avoid unjust and absurd
5 consequences.” *State v. Vela*, 100 Wn.2d 636, 641, 673 P.2d 185 (1983).

6 III. CONCLUSION

7 It is clear from the legislative intent and the plain meaning of the statute that only the
8 “good faith” standard from RCW 9A.16.040 applies. RCW 9A.16.050 has none of the language
9 the community fought for to amend RCW 9A.16.040. To apply both statutes to the inquest would
10 undo the work that went into rebuilding community trust in law enforcement and specifically
11 providing more accountability for law enforcement actions. For these reasons, the Family
12 requests that the interrogatories and jury instructions employ the current “good faith” standard
13 required under *Beltran-Serrano* and any mention of “malice” should be removed.

14 Dated this 24th day of June, 2022.

15
16 /s/ Melanie Nguyen

17 Karen K. Koehler, WSBA #15325

18 Melanie Nguyen, WSBA #51724

19 STRITMATTER KESSLER KOEHLER MOORE

CERTIFICATION

I hereby certify that on June 24, 2022, I delivered a copy of the document to which this certification is attached for delivery to all parties of record as follows:

<p>Inquest Program Personnel Hon. Michael Spearman Claire Thornton Claire.Thornton@kingcounty.gov Dee Sylve Dee.Sylve@kingcounty.gov Matt Anderson Matt.Anderson@kingcounty.gov DES-Dept. of Executive Services 401 5th Ave., suite 131 Seattle, WA 98104</p>	<input type="checkbox"/> U.S. Mail (First Class and Certified) <input type="checkbox"/> Fax <input type="checkbox"/> Process Server <input checked="" type="checkbox"/> Electronic Delivery
<p>Ghazal Sharifi, WSBA 47750 Ghazal.Sharifi@seattle.gov Rebecca Boatright Rebecca.Boatright@Seattle.gov Rebecca Widen Rebecca.widen@seattle.gov Seattle City Attorney’s Office 701 5th Ave. Suite 2050 Seattle, WA 98104-7097 Counsel for City of Seattle re Inquest</p>	<input type="checkbox"/> U.S. Mail (First Class and Certified) <input type="checkbox"/> Fax <input type="checkbox"/> Process Server <input checked="" type="checkbox"/> Electronic Delivery
<p>Ted Buck, WSBA #22029 tbuck@freybuck.com Karen Cobb, WSBA #34958 kcobb@freybuck.com Frey Buck, PS 1200 5th Ave, Suite 1900 Seattle, WA 98101 Counsel for Officers Anderson and McNew</p>	<input type="checkbox"/> U.S. Mail (First Class and Certified) <input type="checkbox"/> Fax <input type="checkbox"/> Process Server <input checked="" type="checkbox"/> Electronic Delivery

/s/ Melanie Nguyen
Melanie Nguyen
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