

**KING COUNTY  
DEPARTMENT OF EXECUTIVE SERVICES  
INQUEST PROGRAM**

**FINAL PRE-HEARING CONFERENCE ORDER**

**INQUEST INTO THE DEATH OF CURTIS ELROY TADE  
INQUEST # 17IQ61739**

**PARTIES:**

Family of the Curtis Elroy Tade:	Represented by Teri Rogers Kemp
Law enforcement officers:	Kirkland Police Department Officer Scott Cox, represented by Derrick Isackson
Employing government department:	Kirkland Police Department, represented by Stew Estes and Audrey M. Airut Murphy
Administrator:	Robert McBeth, assisted by Matt Anderson and Cady Nicol

The Inquest Administrator, having presided over a Pre-Hearing Conference on June 9, 2023, and having considered the briefs and comments of counsel, hereby orders:

1. **Inquest date:** The Inquest Hearing in this matter is scheduled to commence on Monday, June 12, 2022 with testimony to run until Friday, June 23, 2023. It will occur at The Clark Children & Family Justice Center, Second Floor, Reign and Sounder Conference Rooms, 1211 East Alder Street, Seattle WA 98122. The daily schedule will be from 9 a.m. - Noon and 1:30 p.m. – 4:30 p.m. each day, with breaks at 10:30a.m. and 2:45 p.m.. Exceptions to this schedule will be determined by the IA as needed to accommodate witness schedules and ensure the clear presentation of evidence.
2. **Viewing and attending the proceedings** – The proceedings will be open to the public, subject to any necessary health precautions. Media attendance will be governed by the [2022 General Order](#). The proceedings will be livestreamed via a link available at the [Curtis Elroy Tade Inquest page](#). Recordings of the proceedings will be available via a link available on that same page.
3. **Jury Panel** – Panelists # 8, 12, 20, 23, 30, and 32 were selected to serve on the jury in this inquest. Panelists # 41, 45 and 46 were chosen to serve if any of the chosen Panelists were

unable to confirm that they would be able to attend the entirety of the hearing. Panelist # 32 was replaced by Panelist # 41 for that reason.

- 4. Preliminary Instruction update** – The Administrator proposed adding a paragraph to the Preliminary Instruction to the Jury describing reasons for the timing of the inquest. After the Pre-Hearing Conference, each party indicated they did not object to the addition. That language was added.

## **5. Criminal Means Instructions**

Former RCW 9A.36.040 governed whether Mr. Tade’s death was occasioned by criminal means.<sup>1</sup> Subsection (1) defined whether an officer’s use of deadly force was justifiable and, therefore, any death obtained by such force was not by criminal means. The inquiry did not end there. If a jury determined that the killing was not justifiable, subsection (3) provided that the officer’s mental state would still prevent a finding of criminal liability in certain circumstances:

A public officer or peace officer 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.

RCW 9A.16.040(3). Officer Cox and Kirkland Police Department (Collectively, “the parties”) ask that the jury be instructed that either a lack of malice by Officer Cox or a good faith belief by Officer Cox that his use of deadly force was justifiable prevents this death from being caused by criminal means. This Administrator declines to do so.

The parties<sup>2</sup> argue either a “lack of malice,” or “a good faith belief that [the use of deadly force] was justifiable,” prevents the attachment of criminal liability. At issue is the whether the term “and” is conjunctive or disjunctive. Such an interpretation essentially replaces the word “and” in the statute with the word “or.” The process for determining the effect of the words of a statute is clear in Washington.

The goal of statutory interpretation is to carry out the legislature's intent. If the meaning of the statute is plain, the court discerns legislative intent from the ordinary meaning of the words. Susceptibility to more than one reasonable interpretation renders the statute ambiguous and allows the court to employ tools of statutory construction such as legislative history to interpret the statute. The mere fact that two interpretations are conceivable does not make a statute

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<sup>1</sup> RCW 9a.36.040 underwent a series of changes, the first of which was effective on February 4, 2019. This opinion only applies to deaths prior to such changes.

<sup>2</sup> The Family of Curtis Tade agreed with the IO and PD interpretation but did not argue.

ambiguous. . . . As a default rule, the word “or” does not mean “and” unless legislative intent clearly indicates to the contrary

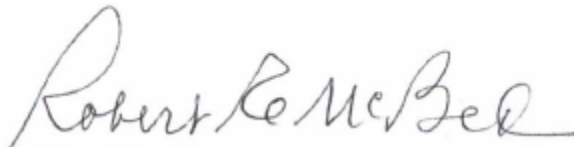
Tesoro Ref. & Mktg. Co. v. State, Dep't of Revenue, 164 Wn. 2d 310, 317–19, 190 P.3d 28 (2008) (*citations omitted*).

The parties argue that the legislature’s subsequent removal of “malice” and incorporation<sup>3</sup> of an objective “good faith” standard establishes that the statutory language was ambiguous. To the contrary, eliminating “Malice” removed a hurdle to prosecution. Making “Good Faith” the sole mental state provides guidance and accountability consistent with Supreme Court guidance on police use of force. These changes do not clarify the intent of the legislature in 1986 when RCW 9a.16.040(3) was enacted, they reflect a significant overhaul to the statutory scheme.

Based on the foregoing, the plain meaning of the statute is clear: An officer must possess both a lack of malice and a good faith belief that the use of deadly force was justifiable to prevent criminal liability from attaching to an unjustified use of deadly force.

**6. Exhibits** – The List of Admitted Exhibits is updated as agreed at the hearing.

DATED this 11<sup>th</sup> of June, 2023.



Robert McBeth  
Inquest Administrator

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<sup>3</sup> All parties have agreed that the jury be instructed that “‘Good faith’ means that the officer honestly believed his or her action was justifiable. This is a subjective standard.