

THE U.S. SUPREME COURT & WASHINGTON LAW AT RCW 9A.16.020 (3); RCW 9A.16.030; RCW 9A.16.040 & RCW 9A.16.050 SAYS THAT I HAVE THE RCW 4.04.010 COMMON LAW RIGHT TO RESIST AN UNLAWFUL ARREST WITH USE OF DEADLY FORCE INCLUDING KILLING A POLICE OFFICER IN SELF DEFENSE

RCW 9A.16.040 at the footnote says:

“Legislative recognition: ““The legislature recognizes that RCW 9A.16.040 establishes a dual standard with respect to the use of deadly force by peace officers and private citizens, **AND 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.] See also 40 Am Jur.2d, Homicide, Sec. 140, p. 420.

“At common law, if a party resisted arrest by an officer without warrant, and who had no right to arrest him, and if in the course of that resistance the officer was killed, the offense of the party resisting arrest would be reduced from what would have been murder, if the officer had the right to arrest, to manslaughter. What would be murder, if the officer had the right to arrest, might be reduced to manslaughter by the very fact that he had no such right. So an officer, at common law, was not authorized to make an arrest without a warrant, for a mere misdemeanor not committed in his presence. 1 Arch. Crim. Pr. & P. 7th Am. Ed. 103, note (1); also page 861 and following pages; 2 Hawk. P.C. 129, sec. 8; 3 Russell on Crimes, 6th ed. 83, 84, 97; 1 Chitty’s Crim. L. star page 15; 1 East P.C. c. 5, page 328; Derecourt v. Corbishley, 5 E. & B. 188; Fox v. Gaunt, 3 B. & Ad. 798; Reg. v. Chapman, 12 Cox’s Crim. Cas. 4; Rafferty v. The People, 69 Ill. 111; S.C. on a subsequent writ, 72 Ill. 37.” **JOHN BAD ELK v. UNITED STATES, 177 U.S. 529, 44 L.Ed. 874, 20 S.Ct. 729 (April 30, 1900)**. See also State v. Valentine, 132 Wn.2d 1, 935 P.2d 1294 (May 1, 1997) and The Queen v. Tooley, 92 Eng. Rep. 349, 351-352 (K.B. 1710).

“It is the law that a person illegally arrested by an officer may resist that arrest, even to the extent of the taking of his life if his own life or any great bodily harm is threatened. John Bad Elk v. United States, 177 U.S. 529, 44 L.Ed. 874, 20 S.Ct. 729; State v. Gum, 68 W.Va. 105, 69 S.E. 463, 33 L.B.A. (N.S.) 150. . . . There is authority to the effect that, even in the case of an unlawful arrest, the person arrested would be warranted in using force and inflicting personal injury upon the officer only in self defense, the necessity or apparent necessity for which must appear. State v. Spaulding, 34 Minn. 361, 25 N.W. 793. . . . A similar rule was stated in a recent case, State v. Robinson, (1950), 72 A. (2d) (Me.) 260, where it was said: “An illegal arrest is an assault and battery. The person so attempted to be restrained of his liberty has the same right, and only the same right, to use force in defending himself as he would have in repelling any other assault and battery.” Had the appellant merely attempted to escape from the officer by flight, there would be no question but that the second arrest was as illegal as the first. [2] “Every man, however guilty, has a right to shun an illegal arrest by flight. The exercise of this right should not, and would not, subject him to be arrested as a fugitive.” Thomas v. State, 91 Ga. 204, 206, 18 S.E. 305; cited with approval in Porter v. State, 124 Ga. 297, 52 S.E. 283.” . . . [3] The issue of whether unnecessary force has been used in resisting arrest usually arises in prosecutions for assaulting or killing arresting officers, and in such cases that issue is usually a question for the jury under all circumstances. Harris v. State, 21 Ga.App. 792, 95 S.E. 268; 4 Am. Jur. 64, Arrest, Section 92.” **State v. Rosseau, 40 Wn.2d 92, 94, 95-96 (February 28, 1952)**. And;

“The existence of probable cause for the arrest is crucial to the State’s case because, as defendant correctly contends, not only does a citizen have the right to resist an unlawful arrest so long

as that resistance is reasonable in light of all the circumstances, . . . but if an officer's actions are unlawful, a defendant cannot be convicted of third degree assault, which requires intent to prevent or resist lawful apprehension or detention, State v. Humphries, 21 Wn.App 405, 408, 586 P.2d 130 (1978)." STATE v. JOHNSON, 29 Wn. App. 307, 309, 628 P.2d 479 (April 22, 1981); "A citizen has the right to resist an unlawful arrest so long as that resistance is reasonable in light of all the circumstances." KENNEWICK v. KELLER, 11 Wn. App. 777, 787, 525 P.2d 267 (August 7, 1974); "The law in the state of Washington has been that one may resist an unlawful arrest by an amount of force reasonable and in proportion to the injury the arrestee faces. State v. Rosseau, 40 Wn.2d 92, 241 P.2d 447 (1952); State v. Schultze, 51 Wn.2d 878, 322 P.2d 839 (1958); State v. Eckman, 9 Wn.App. 905, 515 P.2d 837 (1973). . . . The Miller rule is that an accused assailant, in asserting self-defense, is entitled to rely upon his reasonable understanding of the circumstances. Under that rule, if a person reasonably but mistakenly believes himself to be in genuine danger of serious bodily injury, he may defend against that injury by the use of reasonable force, even though he is not truly in such danger. Miller was followed in State v. Dunning, 8 Wn.App. 340, 506 P.2d 321 (1973) and in State v. Ladiges, 66 Wn.2d 273, 401 P.2d 977 (1965), neither of which involved an arrest situation." State v. Westlund, 13 Wn.App. 460, 465, 466 (May 9, 1975).

"A person illegally arrested by an officer may resist that arrest; the force used in resisting an unlawful arrest must be reasonable and proportioned to the injury attempted upon party sought to be arrested. STATE v. HUMPHRIES, 21 Wn. App. 405, 407, 408, 586 P.2d 130 (October 2, 1978); "Lawful apprehension or detention of necessity must be carried out by a law enforcement or peace officer as defined in RCW 9A.16.020." State v. Williams, 29 Wn. App. 86, 91 (1981); "We recognize that the defendant had a right to defend himself against an unlawful arrest. State v. Counts, 99 Wn.2d 54, 659, P.2d 1087 (1983); . . . Whether he used reasonable force under the circumstances is, however, a question for the jury. State v. Rousseau, 40 W.2d 92, 241 P.2d 447 (1952)." STATE v. HOFFMAN, 35 Wn. App. 13 17, 664 P.2d 1259 (November 18, 1983). And;

"In Seattle v. Gordon, 54 Wn.2d 515, 342 P.2d 604 (1959), the court stated at page 520 (quoting 39 Am. Jur. 510): ". . . If an officer does not disclose his authority and the accused does not know he is an officer and is attempting to arrest him for an offense, he has a right to resist the arrest with whatever force is necessary." See also Morton v. State, 190 Ga. 792, 10 S.E.2D 836, 840 (1940); 5 Am.Jur. 2d Arrest §§ 69-70 (1962); 6A C.J.S. Arrest § 48 (1975). "It is, ordinarily incumbent on an officer, seeking to make an arrest without a warrant, to inform the accused of his authority or official character. An officer must make a reasonable disclosure, adapted to the circumstances, of his character and purpose; but, as a general rule, the notice is sufficient when it is such as to inform a reasonable man of the authority and the purpose of the one making the arrest. 6A C.J.S. Arrest § 45." State v. Brown, 36 Wn.App. 166, at 169-170 (October 24, 1983).

The basic right of everyone to resist an unlawful arrest is recognized by all authorities. In

5 Am. Jur. 2d, p. 778, is stated:

"Any unlawful interference with the fundamental right of personal liberty may be resisted. Accordingly, every person has a right to resist an unlawful arrest."

For help with bogus charges of Assaulting a Police Officer, Obstructing a Law Enforcement Officer or Refusal to Cooperate and Give Information, call Tribal Lawyer Luis Ewing at (253) 226-3741 or e-mail <rcwcodebuster@gmail.com> or <rcwcodebuster@aol.com>