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IN THE STATE OF WASHINGTON
KING COUNTY DEPARTMENT OF EXECUTIVE SERVICES

IN RE: THE INQUEST INTO THE
DEATH OF ISAIAH

No. 417IQ7199

CITY’S RESPONSE TO FAMILY’S
MOTION ON SCOPE OF INQUEST

I. INTRODUCTION

The Inquest Administrator ordered the parties to provide their positions on the scope of the inquest by October 14, 2019, at 12:00 noon. *See Pre-Inquest Order, p. 2.* While the City filed its briefing as required, the Family did not file its brief until after 2:00 pm on October 15, more than 26 hours after the deadline. In addition to being late, the Family’s briefing amounts to a collection of irrelevant arguments, baseless factual assertions, and misstatements of the law regarding inquests. As expected, the Family’s attorney has taken what is explicitly a non-adversarial fact-finding proceeding, and immediately converted it into a political smear campaign against the King County Prosecutor, Officer Nelson, the City of Auburn, and law enforcement in general. Even assuming Ms. Parker’s arguments are made at the direction of her “clients” in this matter, they stretch the seams of CR 11, and risk derailing the entire proceeding at issue here.

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II. RESPONSE ARGUMENT

A. WITNESS STATEMENTS

The Family’s brief begins by immediately alleging Officer Nelson’s version of events is full of “inconsistencies and inaccuracies.” *Family’s Brief, p. 1*. They point to three eyewitnesses, and claim that “all three witnesses agree that after the first shot...Nelson approached Mr. Obet and shot him in the head as he laid on the ground.” *Id. at 3*. Despite claiming all three witnesses tell the same story, the only witness they actually quote is Mr. Langidrik. *Id. at 2-3*. This should not be surprising, though, since Mr. Langidrik is literally the only witness that makes that claim.¹ For example, Langidrik’s passenger, Mr. Milne, clearly states Officer Nelson shot Obet once while he was standing up straight, and the second time as he was leaning forward, before he fell to the ground. *Milne Interview, OBET_I 0903-0923*.²

DET CARLTON: So, you said the first shot the suspect was standing up...

F. MILNE: Mm-hm.

DET CARLTON: and then he starts to-you said he starts to fall and then he-he-uh a second shot as he’s-as he’s leaning forward...

F. MILNE: Yeah.

DET CARLTON: or leaning, or...

F. MILNE: Mm-hm.

DET CARLTON: And then after the second shot he collapses or...

F. MILNE: All the way down to the...

DET CARLTON: all the way to the ground?

Id. at 0917:20-0918:6.

¹ Langidrik also claims Obet was lying on his right side when Nelson shot him in the head, which is not physically possible given his wounds. *Id. at 0898:8-11*.

² Milne also claimed Obet fought with the dog for “more than a minute I think,” which is not possible given the timing of the incident *Id. at 0915:21-23*.

1 Stacey Cowell, another eyewitness, told detectives almost exactly the opposite story.
2 *Cowell Interview, Obet_I 0865-0891*. According to Cowell, she saw the K9 bite Obet, then
3 closed her eyes. When she opened her eyes Obet was lying face up on the ground, with Nelson
4 standing directly over him, and Nelson shot him two times in quick succession – calling it a
5 “double tap.” *Id. at 0878-0879, 0887*. Her hand-written statement tells a similar story; “He
6 [Obet] went down and the next thing I know the officer drew his weapon and shot the guy
7 twice!”³ *Id. at 0415*. It should be noted that Cowell left the scene immediately after the
8 shooting. When detectives located her a few hours later to interview her, she had to be woken
9 up, and detectives noted she smelled of alcohol and her speech was slurred. *Id. at 0193*.

10 Simply put, Mr. Parker’s claim that “all three witnesses agree” as to the shooting is
11 not only irrelevant to the purpose of this briefing – to propose additions or deletions to the
12 scope of the inquest – but is also demonstrably untrue.

13 **B. PRIOR USES OF FORCE**

14 Next, the Family spends 14 pages reviewing what appears to be almost every single
15 use of force Officer Nelson has documented since 2012. There are several problems with this
16 recitation.

17 First, none of Officer Nelson’s prior uses of force are within the scope of this inquest,
18 or relevant here in any way. Inclusion of baselessly-editorialized descriptions of prior uses of
19 force in a publicly-filed briefing is a poorly-disguised ruse to get inadmissible information in
20 front of the public and potential jury pool, but it contributes nothing whatsoever to this inquest.
21 For example, the Administrator will note that over the entire 14-page listing of prior uses of
22 force, Ms. Parker fails to include a single citation to a single document. That is because she
23 did not find use of force records among the documents produced in discovery here, or the
24 records deemed relevant by the Administrator. Ms. Parker and her investigator have requested
25 the use of force records via the Public Records Act, but it is unclear whether they have actually
26

27 ³ As with the other two witnesses, Ms. Cowell’s version is physically impossible given Obet’s injuries and the physical evidence here.

1 viewed the records, or how else they may have obtained them. Regardless, the use of force
2 records are not relevant here, and were not produced here, and Ms. Parker’s uncited reference
3 to them again confirms the lack of any intent to abide by the Executive Order or the role the
4 OPD has been assigned in this matter.

5 Second, even if prior uses of force were relevant here, Mr. Parker’s unqualified
6 analysis of these incidents is both baseless and improper. Time and again Ms. Parker makes
7 wholly inappropriate and unqualified conclusions about Officer Nelson. She claims Officer
8 Nelson’s use of force is “extraordinary and highly unusual.” *Brief*, p. 5. She claims he has
9 “64 instances of pretty extreme force.” *Id.* She claims Nelson “has an unusually high number
10 of incidents where he chokes people until they pass out,” and that “the sheer number of
11 incidents is remarkable.” *Id.* Later on, she concludes that Officer Nelson “has a substantial
12 and extraordinary history and pattern of violence,” and “a pattern of significant violence in
13 the line of duty.” It is entirely unclear what qualification Ms. Parker has to offer any opinion
14 at all in this matter, let alone opinions on the number and nature of uses of force of a
15 commissioned police officer.

16 Finally, even if the prior uses of force were relevant here – and assuming they are
17 actual uses of force by Nelson, which remains unclear since nothing is cited – the incidents
18 outlined are largely routine incidents in which a K9 officer would be exposed to in a busy
19 jurisdiction like the City of Auburn. Most of them amount to little more than “criminal hides
20 from police – criminal refuses to surrender – police dog finds and bites criminal – criminal
21 treated for his injuries.” Nor is the rate at which subjects were treated for their injuries
22 especially noteworthy, as medical personnel are called to the scene as a matter of course when
23 a subject is detained via taser or police K9.

24 **C. “FORENSICS”**

25 The Family’s brief includes a section devoted to the apparent theory that Obet was
26 killed “over half a car lane width from the SUV,” and not where the scene photos depict,
27

1 which is somehow relevant to “the risk that Mr. Obet did or did not pose.” It is unclear why
2 this section is included in the briefing, which is supposed to address the scope of the inquest.
3 All dashcam in the possession of the APD will be disclosed, subject to an appropriate
4 protective order, the necessity of which has become obvious.

5 **D. CRIMINAL CHARGES**

6 Finally, the Family’s brief turns to the actual subject of the briefing; the proposed
7 scope of the inquest. However, rather than addressing the facts and circumstances of the
8 incident, or the training of the Auburn Police Department, Ms. Parker’s sole demand is that
9 the scope of the inquest be expanded to include criminal charges against Officer Nelson.
10 Needless to say, this demand is contrary to the law, contrary to the Administrator’s authority
11 here, and should be rejected.

12 **1. The Statute Does Not Allow for Determination of Criminal Liability**

13 First, the explicit language of RCW 36.24.070 does not allow for determination of
14 criminal liability against the officer. The statute clearly states that the inquest jury is tasked
15 with deciding the manner of death (*i.e.*, suicide vs. homicide vs. accident). If the jury
16 determines the person was “killed” (*i.e.*, homicide, rather than suicide or accident), or if the
17 death was the result of a criminal act, then the jury should attempt to determine who was
18 responsible for the death. Here, there is little doubt as to either fact. Obet was clearly shot to
19 death (*i.e.*, “homicide”), and Officer Nelson is clearly the one who killed him.

20 In many cases, the determination of “homicide” means, by definition, a crime has been
21 committed. For example, if a person is found shot to death in his own bed, and did not commit
22 suicide, then a crime has been committed. In a police shooting however, it is not as simple.
23 The operative issues for potential criminal charges against Officer Nelson here involve the
24 privileged use of force by a police officer, interpretation and construction of state statutes
25 regarding that privilege, and federal and state case law. Those issues have never been subject
26 to decision by an inquest jury, and cannot be here.
27

1 2. **Inquests Are Non-Adversarial and Non-Binding**

2 Moreover, our courts have repeatedly held that inquests are non-adversarial executive
3 proceedings that do not affect the legal rights of anyone. In *In re Boston*, 112 Wn.App 114,
4 47 P.3d 956 (2002), the State Supreme Court explicitly held that “our courts have repeatedly
5 rejected the argument that an inquest is equivalent to a trial... The inquest is not meant to be
6 an adversary proceeding, but a means by which the executive determines cause of death.” *Id.*
7 at 118.

8 But even under a broad interpretation of the rules, an inquest jury's verdict
9 is not a “final decision of a court.” It is at most a “final decision” of an
10 advisory panel of jurors as to the answers to certain questions the coroner
11 (or judge acting as the coroner) has asked them. The jury's verdict does not
12 adjudicate the rights of anyone, nor does it affect anyone's rights.

13 *Id.* at 121. If an inquest is non-adversarial, does not adjudicate anyone’s rights, and is not a
14 final decision of any court, then it cannot legally or constitutionally determine criminal
15 liability. In the end, the only relation an inquest has to a criminal proceeding is that a
16 prosecutor may use the decision of the inquest jury on factual questions as a basis for probable
17 cause to bring criminal charges; however, the power to actually bring criminal charges
18 remains solely with the prosecutor. *State v. Jefferson*, 79 Wn.2d 345, 347 485 P.2d 77 (1971).⁴
19 The Family attempts to read into RCW 36.24.070 an expansion of the power of an inquest
20 jury. It conflates the inquest jury’s proper authority, which is to determine **who** killed a
21 person, with the power of a criminal court to determine whether the killing was **unlawful**.
22 This attempt is contrary to the law and must fail.

23 _____
24 ⁴ The Administrator may recall the case of highly-publicized case of Ronda Reynolds, a state trooper who was
25 found shot to death in her home in 1998, which illustrates the issues here. The Lewis County coroner
26 determined Reynolds died by suicide. Years later, a newly-elected coroner ordered an inquest into the death.
27 The inquest jury determined the cause of death was homicide. The jury was sent back to determine who was
responsible for the homicide, and decided it was Reynold’s husband and his son. The Lewis County
prosecutor nevertheless declined to file any criminal charges. See Reynolds v. Lewis County, 711 Fed Appx.
747 (2017); <https://www.spokesman.com/stories/2011/nov/10/husband-says-he-did-not-kill-ex-trooper-1998/>.

1 **3. The Administrator Lacks the Authority to Expand the Scope Beyond**
2 **What Has Been Ordered By the County Executive**

3 Finally, even if the applicable statutes authorized the inquest jury to determine
4 criminal liability here, the City respectfully submits that enlarging the scope of the inquest to
5 make such a determination is outside the authority delegated to the Administrator by the
6 County Executive in this matter.

7 Under King County Code 2.35A.090.B, the authority to hold inquests is vested solely
8 in the King County Executive. In Executive Order PHL 7-1-2-EO, the King County Executive
9 has ordered that he alone “has discretion to determine how inquest proceedings are to be
10 conducted.” While the Order allows the Executive “to delegate the duty of presiding over an
11 inquest to another impartial public official,” it reiterates that the Executive “retains the
12 ultimate responsibility for the exercise of the inquest power and the performance of that
13 delegated duty.”

14 With regard to the Inquest Administrator, the only authority delegated is the authority
15 to “[c]onduct the inquest according to the procedures in Appendices 1 and 2.” *Id. at Appendix*
16 *1, §8.11* (emphasis added). The appendices to the Executive Order make clear that
17 determination of criminal liability is not part of the inquest process, and is therefore outside
18 the scope of the Administrator’s delegated authority.

- 19 - The purpose of the inquest is **not to** determine whether the law
20 enforcement member acted in good faith or should be disciplined or
21 otherwise held accountable, or to otherwise find fault, or to determine if
22 the use of force was justified, **or to determine civil or criminal**
23 **liability.** *PHL-7-1-2-EO, Appendix 1, §2.3* (emphasis added)
- 24 - The judge’s introduction will include an instruction in substantially the
25 following form... “It is not the purpose of this inquest **to determine the**
26 **criminal or civil liability** of any person or agency...” *Id. at Appendix*
27 *2, §11.1* (emphasis added).
- The administrator shall instruct the panel that it may not comment on
 fault, or on justification—including the mental state of the involved
 officer(s), such as whether the officer thought the decedent posed a
 threat of death or serious bodily injury to the officer(s)—**or on the**

1 **criminal or civil liability** of a person or agency. *Id. at Appendix 2, §*
2 *14.2 (emphasis added).*

3 Based on the clear language of the King County Code, and the Executive Order on
4 inquests, the Inquest Administrator has only been delegated the authority to conduct inquests
5 consistent with the procedures outlined in the appendices to the Order; procedures that
6 explicitly forbid the determination of any criminal liability of any kind. As a result, only the
7 King County Executive himself could attempt to enlarge the scope of this inquest to include
8 a determination of criminal liability by way of an amended Executive Order (if such a
9 determination were possible under RCW 36.24.070).

10 **III. CONCLUSION**

11 The City respectfully requests that the Administrator reject the Family’s invitation to
12 enlarge the scope of this inquest to determine criminal liability.

13 DATED this 23rd day of October, 2019.

14 KEATING, BUCKLIN & McCORMACK, INC., P.S.

15
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DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that on October 23, 2019, a true and correct copy of the foregoing was served upon the parties listed below via E-mail only, per agreement:

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DATED this 23rd day of October, 2019, at Seattle, Washington.

s/ Tia Uy

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