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7 **IN THE STATE OF WASHINGTON**
8 **KING COUNTY DEPARTMENT OF EXECUTIVE SERVICES**

9 NO. 417I17199

10
11 *IN RE: THE INQUEST INTO THE*
12 *DEATH OF ISAIAH OBET*

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15 Reply Brief on Scope
16 RE: Pre-inquest order

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21 **A. Introduction**

22 It is unclear how stating the facts that are relevant to the Administrator's determination
23 regarding scope, "immediately converted [the inquest] into a political smear campaign against
24 the King County Prosecutor, Officer Nelson, the City of Auburn, and law enforcement in
25 general."

26 The issue before the court is considering the **facts** of this case; what is the appropriate
27 scope for the purpose of this inquest? The facts that have been reviewed by the Administrator are
28 a narrow version of events that has not received even a modicum of scrutiny. It is the family's
desire that this inquest have meaning and that it be more than a mere rubber stamp of police use
of deadly force. The intent of the family is to share additional information with the Administrator

1 so that a proper decision can be rendered. Courts have recognized the importance of the family's
2 participation in the inquest because the family shares the same interest as general public.

3 *Miranda v. Sims*, 98 Wn. App. 898, 909, 991 P.2d 681, 687 (2000).

4 If these inquests are to have any meaning at all, each participant must be able to explore
5 their viewpoint without being accused of engaging in a "political smear campaign". It is clear by
6 the City's response that they are not used to being held accountable by the inquest proceeding.
7 This is understandable, as there is a long tradition in King County of failing to hold police
8 officers accountable for misconduct. When one is accustomed to power and privilege,
9 accountability can feel like an attack, even when it is not.
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11 **B. Reply Facts**

12 The City asserts in their pleadings that the family's claims that all three witnesses agree
13 to certain fundamental facts are "demonstrably untrue". The sequence of events by all three
14 witnesses cited (Milne, Cowell, and Langidrik) are remarkably consistent and inconsistent with
15 Officer Nelson's transcribed statement. There is nothing untrue in the family's assertions of fact.
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17 The family requested the in-car videos of the responding officers and was able to review
18 them on Friday 10/24/19. As asserted by the family, those videos would likely be a crucial piece
19 to determining what really occurred during the shooting of Mr. Obet. After reviewing those
20 videos, the family's suspicions are confirmed. Those videos provide firm details about the
21 homicide of Mr. Obet. We now know, after reviewing those videos, that officer Nelson made his
22 first statement shortly after the incident. That statement is drastically different than his
23 transcribed statement. Moreover, it confirms the three eye-witness accounts.
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1 In that statement, Nelson reported that he saw Mr. Obet with a knife. He said that Mr.
2 Obet tried to break into the vehicle of “this chick”. Then Nelson sent the dog and the dog
3 attacked Mr. Obet. Nelson reported that then Mr. Obet came at him and that was when he fired
4 the first shot. Nelson stated that while Mr. Obet was on his way down to the ground he fired the
5 second shot. These inconsistencies are not highlighted in the investigative reports.

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7 Finally, Mr. Obet’s position shortly after the shots can be clearly seen on the video,
8 confirming the family’s assertions about the forensics.

9 C. **Legal argument**

10 1. **Plain meaning of RCW 36.24.70**

11 The family agrees with the City that an inquest is not a criminal proceeding. The family
12 agrees that there will be no conviction or loss of liberty as a result of the jury’s finding in this
13 inquest. The inquest “...merely supplies the executive with the jury's opinion as to the cause of
14 death and **criminal responsibility of those involved.**” *In re Boston*, 112 Wn. App. 114, 121, 47
15 P.3d 956, 959 (2002). “Although the prosecutor may use the information learned from the
16 inquest in making charging decisions, the inquest results are not binding on anyone.” *Id.* at 118,
17 *Citing, Miranda v. Sims*, 98 Wn.App. 898, 903, 991 P.2d 681 (2000).

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19 In their responsive pleadings, the City did not address the family’s argument that the
20 supremacy clause requires adherence to RCW 36.24.70, requiring a determination of criminal
21 liability. Instead, the City argues that RCW 36.24.070 does not contain such a requirement. This
22 argument defies the plain reading of the statute and contradicts the language in *In re Boston*.
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25 In construing statutes, the primary objective is to ascertain the intent of the
26 Legislature. *Martin v. Meier*, 111 Wn.2d 471, 479, 760 P.2d 925 (1988). Clear language will be
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1 given effect. *People's Org. for Wash. Energy Resources v. Utilities & Transp. Comm'n*, 104
2 Wn.2d 798, 825, 711 P.2d 319 (1985). If a term is defined in a statute, that definition is used.
3 Absent a statutory definition, the term is generally accorded its plain and
4 ordinary meaning unless a contrary legislative intent appears. *Cowiche Canyon Conservancy v.*
5 *Bosley*, 118 Wn. 2d 801, 813, 828 P.2d 549, 555 (1992), *citing*, *Dennis v. Department of Labor*
6 *& Indus.*, 109 Wash.2d 467, 479–80, 745 P.2d 1295 (1987).

8 RCW 36.24.070 reads, “[a]fter hearing the testimony, the jury **shall** render its verdict
9 and certify the same in writing signed by the jurors, and setting forth who the person killed is, if
10 known, and when, where and by what means he or she came to his or her death; or if he or she
11 was killed, or his or her death was occasioned by the act of another by criminal means, who is
12 guilty thereof, if known.” RCW 36.24.070. The term *shall* is mandatory language and thus the
13 executive or the administrator does not have the authority to modify it.

15 *Guilty*, adj. 1. Having committed a crime; responsible for a crime.
16 [citations omitted] 2. Responsible for a civil wrong, such as a tort or
17 breach of contract... *Blacks Law Dictionary Eighth Edition*, 1999.

18 The plain meaning of RCW 36.24.070 requires the jury to make a determination of
19 whether the slayer is *guilty* of a criminal act. What the prosecutor chooses to do with
20 that information is beyond the scope of this inquest.

21 2. Supremacy Clause

22 “Any county ... may make and enforce within its limits all such local police, sanitary and
23 other regulations as are not in conflict with general laws.” Const. art. 11, § 11. *Carrick v. Locke*,
24 125 Wash. 2d 129, 143, 882 P.2d 173, 181 (1994).

26 *Carrick v. Locke*, clearly holds the EO cannot conflict with RCW 36.24.

1 The conflicts alleged by Respondents involve gaps in the statute which are
2 specifically dealt with by the Executive Order, and so do not create any direct
3 conflict. [*Footnote omitted*]. In some cases, activities that the statute permits are
4 made mandatory by the Executive Order. *Compare* RCW
5 36.24.020 (prosecutor may be present at inquest and assist
6 coroner) *with* Executive Order PHL 7-1 (AEP) app. 9.1, at 2 (prosecutor shall
7 participate in inquest). In other cases, the district court judge is given
8 responsibilities beyond those outlined in RCW Chapter 36.24, but these extra
9 duties do not contravene or render nugatory the duties outlined in that
10 chapter. *Compare* RCW 36.24.070-.110 (if jury finds murder or manslaughter
11 committed, coroner must issue arrest warrant for persons not in custody, or
12 deliver the jury's verdict, along with the witnesses' statements, to the charging
13 magistrate in the case of a person already in custody) *with* Executive Order PHL
14 7-1 (AEP) app. 9.1, at 17 (district court judge to deliver jury's findings to King
15 County Executive). Clearly, when the statute and the executive order contain
16 different, but not conflicting, requirements, the person conducting the inquest
17 must comply with both requirements.

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19 *Carrick v. Locke*, 125 Wn. 2d 129, 144, 882 P.2d 173, 181-82 (1994)

20 The Executive changed the scope of the inquest into an exploration about whether or not
21 the officer complied with applicable law enforcement training and policy. The question before
22 this court is whether that change conflicts with the scope of the coroner's inquest and thus
23 violates the supremacy clause. The legal question is simply boiled down to: Does the executive
24 order fundamentally alter the scope of coroner's inquest and impermissibly intrude on state law?

25 Given the plain meaning of RCW 36.24.070, the holding in *Carrick v. Locke*, *In Re*
26 *Boston*, and *Miranda v. Sims*, it is clear that culpability is a meaningful and necessary part of the
27 inquest scope. Limiting the scope leaves the community with a giant elephant sitting in the
28 room-- the unanswered question of culpability for the death of one of its community members.

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30 **D. Conclusion**

1 For those reasons the family respectfully requests the Administrator rule that the scope of
2 the inquest shall include, if Mr. Obet's death "was occasioned by the act of another by criminal
3 means, who is guilty thereof, if known." RCW 36.24.070.
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9 DONE this 28 day of October, 2019.

10
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