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IN THE STATE OF WASHINGTON
KING COUNTY DEPARTMENT OF EXECUTIVE SERVICES

IN RE: THE INQUEST INTO THE
DEATH OF ISAIAH OBET

No. 417IQ7199

CITY'S RESPONSE TO FAMILY'S
BRIEFING RE: SCOPE OF INQUEST

I. INTRODUCTION

In its briefing, the Family argues that none of Mr. Obet’s actions on the day of the shooting, including all the reasons the police were looking for him in the first place, are relevant to the inquest here. *See Family’s Brief at 2:20 et seq.* Simultaneously, the Family argues that every single thing Officer Nelson has ever done since becoming a police officer, including every single use of force he has ever been involved in during his 12-year career, is somehow relevant here. *Id. at 3:22 et seq.* Aside from the unavoidable irony of these two contradictory positions, they fail for a variety of reasons and should be rejected.

II. ARGUMENT

A. The Facts and Circumstances Leading Directly to the Shooting Are Within the Explicit Scope of the Inquest.

The Family argues the inquest jury should be prohibited from hearing anything “about the incidents that took place prior to the killing of Mr. Obet that Officer Nelson was

1 not a witness to nor involved in.” *Id. at 2:22-24.* Specifically, the Family seeks to
2 whitewash Obet’s drug-fueled crime spree in the minutes leading up to the shooting – home
3 invasion, assaults, carjackings, etc. – which was the entire reason the police had responded
4 *en masse* to the area in the first place, and the entire reason Officer Nelson eventually
5 confronted Obet, who was actively trying to carjack a terrified female driver in broad
6 daylight when Officer Nelson found him. The Family’s argument is based on a variety of
7 untenable and plainly erroneous assertions.

9 First, the Family argues that Mr. Obet’s actions leading up to the shooting are
10 irrelevant because “[t]he only relevant inquiry in this Inquest is whether the killing of Isaiah
11 Obet by Officer Nelson complied with his training and department policy.” *Id. at 2:25-26.*
12 In contrast, the Executive Order on inquests says something quite different about the
13 “relevant inquiry,” and does so repeatedly.

- 15 - “The purpose of the inquest is to ensure a full, fair, and transparent
16 review of any such death, and to issue findings of fact regarding the
17 facts and circumstances surrounding the death.” *PHL-7-1-3-EO, App.*
18 *1 §2.2 (emphasis added).*
- 19 - “‘Inquest’ means an administrative, fact-finding inquiry into and
20 review of the manner, facts and circumstances of the death of an
21 individual...” *Id. at §5.3 (emphasis added).*
- 22 - There shall be an inquest into the manner, facts, and circumstances of
23 any death of an individual involving a member of any law enforcement
24 agency...” *Id. at §6.1 (emphasis added).*
- 25 - “...the inquest scope shall include an inquiry into and the panel shall
26 make findings regarding the cause, manner, and circumstances of the
27 death...” *Id. at App. 2 §3.2. (emphasis added).*
- “The purpose of the inquest is to provide public inquiry into the causes
and circumstances surrounding the death of [decedent].” *Id. at §11.2*
(emphasis added).

The plain language of the Executive Order makes it clear that whether Officer

1 Nelson complied with training and policy is far from “the only relevant inquiry,” as the
2 Family now argues. As pointed out in the City’s prior brief, the events leading up to the
3 shooting of Mr. Obet are inextricably part of the “causes and circumstances surrounding the
4 death,” and are therefore plainly within the proper scope of this inquest.

5 Second, the Family argues the events leading up to the shooting should be excluded
6 because “Sec. 4.5 [of the Executive Order] clearly says that any prior bad acts of the
7 decedent must be limited to the ‘greatest extent possible’ and may only be included if it is
8 [sic] ‘actually known to the officer at the time’...” *Family’s Brief, 3:13-15*. Once again, the
9 Family artfully misconstrues the actual language of the Executive Order. Contrary to the
10 Family’s briefing, the section quoted does not address “prior bad acts” at all. Rather it
11 addresses “decedent’s criminal history.” *PHL-7-1-3-EO, App. 2 §4.4*. According to the
12 Order, a decedent’s prior *criminal history* is not relevant unless it was known to the officer
13 and was actually part of his decision-making during the contact. *Id.*

14 This restriction is consistent with the stated purpose of the Order; to inquire into the
15 facts and circumstances surrounding a death. That a decedent had been convicted of some
16 unrelated crime years ago, which was unknown to the officer at the time and played no part
17 in the events at issue, is clearly not part of the “manner, facts and circumstances of the
18 death.” In contrast here, the fact that Mr. Obet was on a continuing spree of home invasion,
19 assault, and carjackings – a spree he was actually in the midst of at the time he was
20 confronted – is incontrovertibly part of the facts and circumstances surrounding his death.
21 To deny the inquest jury a full review of the facts and circumstances surrounding the death
22 would be a direct contradiction of the Executive Order as expressed in its clear and
23 unambiguous language.

24 **B. Officer Nelson’s Prior Uses of Force Are Irrelevant Here**

25 After arguing the jury should hear nothing about what Mr. Obet was actually doing
26 in the few minutes before he was shot – actions that directly led to his confrontation with
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1 Officer Nelson – the Family argues without a hint of irony that Officer Nelson’s “prior
2 misconduct” and “65 use of force complaints” should be fair game, because they “may be
3 relevant and admissible to judge the credibility of Officer Nelson, his bias, uncover a
4 pattern, and/or highlight what his mental state was at the time of the killing of Mr. Obet.”
5 *Family’s Brief, 3:25-4:3*. There are several issues with this argument.

6 First, again, is the pure irony of the argument. As outlined above, the Family clearly
7 does not believe Mr. Obet’s prior actions – even those in the few minutes before he was
8 killed – are relevant to show his bias, to uncover his pattern of behavior, or to highlight his
9 mental state at the time. How, then, can they legitimately claim that prior uses of force from
10 years before are appropriate to establish anything about Officer Nelson at the time of the
11 incident? In fact, their own briefing actually acknowledges – only with regard to Mr. Obet’s
12 actions – that “under the rules of evidence prior misconduct is not admissible under ER
13 404(b) unless offered for an admissible purpose.” *Id. at 3:7-8*.

14 Second, the Family once again artfully misstates the nature of the actual records at
15 issue here. For example, the heading of this section of their briefing refers to Officer
16 Nelson’s “prior misconduct.” *Id. at 3:23-24*. They then transition into describing “the 65
17 use of force complaints against Officer Nelson from 2011 until 2019.” *Id. at 3:25-27*
18 *(emphasis added)*. In reality, the incidents they refer to are neither “prior misconduct” nor
19 “use of force complaints.” Rather, they are simply the 65 separate use of force reports
20 prepare and submitted by Officer Nelson as part of his routine duties since 2012. As the
21 City pointed out the last time the Family referenced these reports, they are required to be
22 completed by any Auburn police officer anytime they use more than minimal force in the
23 course of their duties. *See City’s Briefing submitted 10/23/19*. These reports are largely
24 insignificant, merely outlining the routine incidents to which a K9 officer would be exposed
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1 in a busy jurisdiction like Auburn.¹

2 There are a variety of other issues with the Family’s arguments on these records. For
3 example, the Family argues these records are relevant to judge the credibility of Officer
4 Nelson, yet they fail to describe how that could possibly occur. Neither 404(a) or (b) apply
5 to Officer Nelson here, and he will not be a testifying witness at the inquest. Nor does the
6 Family make any attempt to argue how (1) Officer Nelson’s “bias,” “pattern,” or “mental
7 state” are relevant here, or (2) how years-old use of force reports would be probative of any
8 of those things even if they were relevant. Moreover, even if found to be relevant, the
9 Family offers no explanation as to how these years-old reports could possibly be introduced
10 into evidence at the inquest. They are laden with multiple levels of hearsay and were
11 prepared by an individual (Officer Nelson) who is not a party to the inquest and will not be
12 testifying before the inquest jury. And finally, there is the practical consideration that
13 litigation of these prior uses of force is a two-way street. If prior uses of force are admitted
14 into evidence, the City will exercise its right to fully litigate each and every incident in
15 which Officer Nelson has been involved, undoubtedly adding weeks to the length of the
16 inquest.

17 In the end, the Family concludes by arguing there is a “substantial amount of
18 material and witnesses to investigate” regarding these prior uses of force, and they are
19 therefore “not prepared to assert which incidents are probative at this time.” *Family’s*
20 *Briefing, 4:3-9*. However, the Family has had these reports for months. In fact, the Family
21 submitted a 14-page exhaustive analysis of every single one of these use of force reports
22 nearly two months ago. *See Family’s Briefing on Scope, submitted 10/15/19*. They have
23 had months to review these records and have repeatedly submitted briefing on the particulars
24 of what these records include. Simply put, it is not lack of time that prevents them from
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27 ¹ As argued before, the Family also ignores the fact that these reports were not provided in discovery and were not found to be relevant by the Administrator. Rather, they were obtained by the Family’s attorney and her investigator via a public records request. *Id.*

1 finding anything probative in the records; there is nothing probative to be found.

2 These records of years-old uses of force, none of which were found to be misconduct
3 of any sort, are not part of discovery in this matter, are irrelevant to the facts and
4 circumstance surrounding the death of Mr. Obet and are outside the factual scope of this
5 inquest.

6 **III. CONCLUSION**

7 Based on the arguments outlined above, the City of Auburn respectfully submits that
8 (1) the factual scope of the inquest must include the actions of Obet in the minutes leading
9 up to the shooting, and (2) Officer Nelson's uses of force months and years prior, none of
10 which have any relation to the facts and circumstances of Obet's death, are clearly outside
11 the proper scope of inquiry in this inquest.

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13 DATED this 3rd day of January, 2020.

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

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DECLARATION OF SERVICE

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

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DATED this 3rd day of January 2020, at Seattle, Washington.

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