

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

IN RE: THE INQUEST INTO THE
DEATH OF ISAIAH OBET

NO. 417IQ7199

FAMILY STATEMENT
REGARDING STAY OF
PROCEEDINGS

I. REQUEST

COMES NOW the Family of Isaiah Obet (hereinafter “the Family”), by and through counsel of record, and moves the Administrator to deny the City of Auburn and Mr. Nelson’s request for a stay of the inquest.

II. STATEMENT

An inquest is not a civil trial, it is not a criminal trial, and it is not a probation hearing. An inquest is an investigation. If this inquest is going to be compared to anything it should be compared to a law enforcement investigation or a grand jury proceeding. *Carrick v. Locke*, 125 Wn. 2d 129, 882 P.2d 173 (1994).¹ Under this proper framing the issue is, should the investigation into the killing of Isaiah Obet be stayed because Mr. Nelson has been criminally charged with a completely different and unrelated homicide?

As of today, the family and community have been waiting four years, four months months, and eight days for answers regarding the death of Mr. Obet. During that

¹ Grand juries “act in a manner closely analogous to inquest proceedings.” *Carrick v. Locke*, 125 Wn. 2d 129, 882 P.2d 173 (1994).

time, Mr. Nelson killed again. The family and the community are entitled to answers and those answers should not be further delayed because Mr. Nelson has been charged with murder for killing another young man.

From the beginning of these proceedings, Mr. Nelson, has ignored the inquest. After repeated attempts to contact Mr. Nelson about the inquest a letter was sent from Mr. Anderson which stated as follows, “To date there has been no Notice of Appearance filed on Mr. Nelson’s behalf. There was no one to represent his interests at the September 10, 2017 Pre-Inquest Conference..... In the absence of a response IA will likely determine that Officer Nelson has elected to not participate and the inquest will go forward without him”. After Mr. Nelson failed to respond to that letter he was removed as a participant from the proceedings.

On August 24, 2020, Mr. Nelson was arraigned for two felonies, Murder in the Second degree and Assault in the First degree. Attorney Emma Scanlan submitted and notice of appearance on behalf of Mr. Nelson in his criminal case on September 17, 2020 but did not submit one in the inquest. Now, two years into the inquest, Mr. Nelson has opted to show up through counsel and request the proceedings be halted.

There have already been significant delays while the Executive amended the Executive Order, then through the mandamus relief process, and finally the appeal process through the Supreme Court. *See Generally, Fam. of Butts v. Constantine*, 491 P.3d 132 (Wash. 2021). After the families were granted the relief they sought by the Supreme Court the Executive issued a new order and a requested “deliberate speed” to restart the inquest proceedings.

After years of delays, we can finally begin to deliver answers for the public and for the families of those who have died in an interaction with the state. With today’s action, I am also directing our Inquest Program to **move with all deliberate speed to restart inquests** so that we can start to take steps towards clarity, accountability, and closure.²

Emphasis added.

² King County Executive Dow Constantine Press Release, July 2021, <https://kingcounty.gov/elected/executive/constantine/news/release/2021/July/28-inquest-executive-order.aspx>

There are two sections of the Executive Order that address when a stay may be ordered, the first section applies to the Executive's authority, and is not applicable here, and the second applies to the Administrator's authority. *PHL-7-1-5-EO 6.1; 8.15.*

Action By: Administrator: May stay an inquest where charges are pending against an accused person and the stay is necessary to avoid compromising the criminal case.

PHL-7-1-5-EO 8.15

This section is referencing pending criminal charges for the same incident, not for two unrelated killings. Certainly, this language was not intended to halt the inquest of an officer who kills, and while his inquest is pending, kills again. Section 8.15 is the only section that gives the Administrator authority to stay an inquest and the administrator can only do that if the administrator makes specific findings that the stay is necessary to avoid compromising the criminal case. The King County Prosecutor's office has already declined to file criminal charges for the death of Isaiah Obet and the Executive has already referred the case of Isaiah Obet for an inquest. There is no criminal case into the death of Isaiah Obet to be compromised, so any reliance on this language to justify a stay is misplaced.

While the City of Auburn's position on the matter is not surprising, given they have consistently advocated against transparency and accountability, it is clearly based on a lack of understanding of the inquest process and the recent Supreme Court decision. Mr. Nelson and the City of Auburn's reliance on the *King v. Olympic Pipeline Co.*, is misplaced. 104 Wn. App. 338. 358, 16 P. 3d 45, (2000). First, the inquest is not a civil matter, it is investigatory so the the law they cited doesn't apply. Second, the two killings by Mr. Nelson are unrelated to one and other and are thus not "parallel proceedings" as the caselaw outlines.³ The killings are separated by two years in time, the locations of the killings are not the same, and the eye-witnesses are not the same. Because they are not parallel proceedings the next factors are moot.⁴ Moreover, it is

³ *King v. Olympic Pipeline Co.*, at 357, "where the subject matter of the parallel civil and criminal proceeding or investigation is the same."

⁴ The eight factors are (1) the extent to which a defendant's Fifth Amendment rights are implicated, (2) the similarities between the civil and criminal cases, (3) the status of the criminal case, (4) the interest of the plaintiffs in

important to note that in *King v. Olympic Pipeline Co.*, the parties were only seeking a stay regarding certain discovery, which was ultimately lifted by the court, they were not seeking the shelf the entire proceeding as the City of Auburn and Mr. Nelson propose here.

RCW 36.24.090 clearly already contemplated the subject of an inquest also being under arrest for the charge being investigated at the inquest and assumed that would occur and potentially be part of the process. The statute itself, says nothing about a stay when this is occurring. The inquest is not a civil trial, the inquest is “a death investigation facilitated by the coroner and decided by a jury.” *Fam. of Butts v. Constantine*, 198 Wn. 2d 27, 42, 491 P.3d 132, 142 (2021). The process required under RCW 36.24.040 must continue and there is no basis for a stay.

In the City of Auburn’s response and Mr. Nelson’s response they highlight Fifth amendment considerations as a reason justifying the stay. But the Supreme Court addressing this very case already addressed this issue. “The Fifth Amendment privilege permits a person to refuse to testify at criminal trial, or to refuse to answer official questions asked in any other proceeding, where the answer might tend to incriminate [them] in future criminal proceedings.” *King v. Olympic Pipe Line Co.*, 104 Wn. App. 338, 351, 16 P.3d 45 (2000). Mr. Nelson asserts he is now in a “Hobson’s choice” to defend himself in an inquest by testifying and then risk incriminating himself in his criminal trial or not to testify and defend himself in the inquest. This is a false choice presented by Mr. Nelson. Mr. Nelson had the same Fifth amendment rights and risks before a criminal charge was ever filed against him. He killed Mr. Obet, and he would be in a precarious position if he chose to testify regardless of whether he was facing criminal charges for the murder of Jesse Sarey. Courts have rejected this line of reasoning justifying a stay.⁵ The reality is, the choices that Mr. Nelson has are the

proceeding expeditiously and the potential prejudice to plaintiffs of delay, (5) the burden that any particular aspect of the proceeding may impose on the defendants, (6) the convenience of the court in the management of its cases and the efficient use of judicial resources, (7) the interests of persons not parties to the civil litigation, and (8) the interest of the public in the pending civil and criminal litigation. *Id.*

⁵ In *Smith v. Smith*, the trial court did not abuse their discretion in declining to stay a domestic violence protection order hearing pending the completion of the criminal trial. 1 Wn. App. 2d 122, 126, 404 P.3d 101, 103 (2017).

same difficult choices that any criminal defendant faces when they are facing criminal charges while simultaneously being investigated for other unrelated allegations. And defendants, who are not police officers, don't get to have investigations halted because they have difficult choices to make. That is the reality of being a defendant in a criminal case.

III. CONCLUSION

King County Charter Amendment 1, passed with eighty percent of the vote in King County.⁶ King County voters overwhelmingly support the use of inquests to address officer involved deaths. It is the Family's understanding that the criminal trial of Mr. Nelson is unlikely to be sent out prior to 2023. If that were the case, and the Administrator were to stay the Inquest into the Death of Isaiah Obet, the family and broader public would be forced to wait another year and a half, making it over 5 years before the family obtained answers.

The Family of Mr. Obet urges the Administrator to deny the requests for a stay and proceed with an inquest. Justice delayed is justice denied, and there has been no viable reason proposed why this inquest should be stayed.

DATED 10/18/21

Respectfully submitted,

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⁶[https://ballotpedia.org/King_County,_Washington,_Charter_Amendment_1,_Mandatory_Inquests_for_Police-Related_Deaths_\(November_2020\)](https://ballotpedia.org/King_County,_Washington,_Charter_Amendment_1,_Mandatory_Inquests_for_Police-Related_Deaths_(November_2020))