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IN THE DISTRICT COURT OF WASHINGTON FOR KING COUNTY

In re INQUEST INTO THE DEATH OF
CHARLEENA LYLES,

NO. 517IQ9301

MOTION RE ADMISSIBLE INQUEST
EVIDENCE

TO: CLERK OF THE ABOVE-ENTITLED COURT; and

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD:

I. RELIEF REQUESTED

The Estate of Charleena Lyles and the paternal side of the family¹ requests discovery and admission of evidence previously discovered in civil case *Lyles v. City of Seattle*, 17-2-23731-1 SEA.

II. BRIEF STATEMENT OF MATERIAL FACTS

On June 18, 2017, Charleena Lyles was shot and killed by Seattle Police Department Officers Jason M. Anderson and Steven A. McNew, in her own apartment and in the presence of two of her minor children, after she had called 911 to report a burglary.

¹ Charles Lyles, Jr., natural father of Charleena Lyles; Ernestine Lyles, step-mother of Charleena Lyles; Charles Lyles, Sr., grandfather of Charleena Lyles; Helen Lyles, grandmother of Charleena Lyles; Paula Young, aunt of Charleena Lyles; Chelvett Hill, aunt of Charleena Lyles; Merry Kilpatrick, aunt of Charleena Lyles; Kim Lyles, aunt of Charleena Lyles; Paris Manuel, first cousin to Charleena Lyles; and Rose Maxey, step-aunt to Charleena Lyles.

1 Based on previous interactions Ms. Lyles had with the Seattle Police, both the Police
2 Department and the responding officers knew that Ms. Lyles could be suffering from a mental
3 illness and could pose a threat of physical violence as a result of that illness. Seattle Police
4 Department records included an Officer Safety Caution detailing that just weeks earlier, Ms.
5 Lyles was delusional due to a mental health crisis and threatened officers with a pair of scissors.
6 Both Officers Anderson and McNew were aware of this record when they responded to Ms.
7 Lyles' burglary call, and knew that crisis intervention techniques had been required to safely
8 resolve that earlier incident. Officer Anderson was also TASER trained, and obligated by Seattle
9 Police Department policy to carry his police-issued TASER whenever he was on duty. Yet
10 Officer Anderson was not carrying his TASER when he responded to Ms. Lyles' burglary call.
11 About two weeks prior to Charleena's death, Officer Anderson's TASER had stopped
12 functioning. Instead of reporting the malfunction to his superiors, Officer Anderson simply left it
13 in his locker. Upon arrival to Charleena's apartment, Officers Anderson and McNew neglected
14 to make an adequate plan should Ms. Lyles have a mental crisis while they investigated her
15 burglary report. The officers' actions and omissions led directly to the shooting death of Ms.
16 Lyles.

17 On September 8, 2017, the undersigned counsel filed a Complaint against Officers
18 Anderson and McNew for civil rights violations and wrongful death action on behalf of Ms.
19 Lyles's Estate and her four minor children statutory beneficiaries. On October 12, 2017, the
20 Complaint was amended to include the City of Seattle as a defendant.

21 The parties in the civil action engaged in extensive discovery regarding the facts
22 surrounding the shooting and the events leading up to it, including:

- 23 • Video depositions of the responding officers Anderson and McNew;

- 1 • Depositions of multiple City of Seattle 30(b)(6) designees;
- 2 • Deposition of Seattle Police Department Officer Kerry Zieger, responsible for
- 3 TASER training at the department;
- 4 • Depositions of multiple Seattle Police Department Officers who responded to
- 5 prior interactions with Ms. Lyles, including the June 5 incident involving the
- 6 scissors just weeks before the shooting;

7 Counsel for the family also requested and obtained the following unredacted records:

- 8 • Seattle Police Department General Offense Report # 2017-200822, related to the
- 9 June 5 incident;
- 10 • Records/reports relating to the shooting, including:
 - 11 ○ Seattle Police Department General Offense Report # 2017-219301;
 - 12 ○ the Seattle Police Department's Force Investigations Team ("FIT")
 - 13 Report;
 - 14 ○ the Seattle Police Department's Crime Scene Investigation ("CSI")
 - 15 Report;
 - 16 ○ Statements taken of officers Anderson and McNew;
 - 17 ○ King County Medical Examiner's Autopsy Report;
- 18 • Video recording from the hallway outside of Ms. Lyles' apartment at the time of
- 19 the shooting and in the time leading up to it;
- 20 • Audio recording from the responding officers at the time of the shooting and in
- 21 the time leading up to it;
- 22 • Seattle Police Department's Manual, including the standards for the Use of Force
- 23 and issuing/carrying of a TASER;
- 24

- 1 • Seattle Police Department’s Education & Training Section relating to
- 2 TASER/less-lethal tactics.
- 3 • Records from Solid Ground concerning Charleena Lyles’ residency, and in
- 4 particular her mental health status and incident reports.
- 5 • Depositions from Solid Ground employees.

6 This material is relevant to the subject of this inquest.

7 A protective order was entered on February 2, 2018. *See Declaration of Karen Koehler,*

8 *Exh. A.* At the time that the protective order was entered, counsel for the Estate and paternal side

9 of the family objected to an unfair inquest process and had no intention of participating in any

10 such proceeding. However, the inquest process has now been completely overhauled in a

11 manner not contemplated by civil counsel. The protective order was never meant to inhibit the

12 use of materials obtained in a proceeding which could shed light on the truth of why Charleena

13 Lyles was killed.

14 III. EVIDENCE RELIED UPON

15 This Motion relies upon the Declaration of Karen Koehler and the pleadings and files in

16 this Inquest.

17 IV. MOTION

18 **a. This Court should admit in this Inquest the highly relevant material collected in**

19 **the related civil wrongful death matter**

20 An Inquest, such as this one, is an administrative, fact-finding inquiry into and review of

21 the manner, facts, and circumstances of the death of an individual involving a member of any

22 law enforcement agency within King County while in the performance of his or her duties and/or

23 the exercise of his or her authority, as determined by the County Executive. PHI-7-1-2-EO

24 Appendix 1:5.3; *see also In re Boston*, 112 Wn. App. 114, 116, 47 P.3d 956, 956 (2002).

1 The purpose of the inquest is to ensure a full, fair, and transparent review of any such
2 death, and to issue findings of fact regarding the facts and circumstances surrounding the death.
3 The review will result in the issuance of findings regarding the cause and manner of death, and
4 whether the law enforcement member acted pursuant to policy and training. PHI-7-1-2-EO
5 Appendix 1:2.0.

6 The proceedings are quasi-judicial in nature, with represented parties, and the
7 presentation of evidence through direct and cross-examination, and subject to the Rules of
8 Evidence. Administrators shall strive to promote an atmosphere consistent with administrative
9 fact-finding and shall strive to minimize delay, cost, and burden to participants, while promoting
10 fair and open proceedings. Although an inquest is not a court proceeding, administrators shall be
11 guided by open courts principles and GR 16. PHI-7-1-2-EO Appendix 2:3.1.

12 Consistent with the purpose as set forth in the amended Charter, Executive Order, and
13 Appendix 1 and 2, the inquest scope shall include an inquiry into and the panel shall make
14 findings regarding the cause, manner, and circumstances of the death, including applicable law
15 enforcement agency policy. The panel shall make findings regarding whether the law
16 enforcement officer complied with applicable law enforcement agency training and policy as
17 they relate to the death. PHI-7-1-2-EO Appendix 2:3.2.

18 The Rules of Evidence shall generally apply, but may be supplemented and/or modified
19 by additional rules governing administrative proceedings, at the discretion of the administrator.
20 The administrator shall construe the Rules of Evidence in a manner consistent with the goal of
21 administrative fact-finding proceedings and to promote fairness and to minimize the delays,
22 costs, and burdens that can be associated with judicial proceedings. PHI-7-1-2-EO Appendix
23 2:3.3.

1 Under the Rules of Evidence, all relevant evidence is admissible, except as limited by
2 Constitutional requirements or as otherwise provided by statute, by these rules or by other rules
3 or regulations applicable in the courts of this state. ER 402. ER 401 defines “relevant evidence”
4 as:

5 ... evidence having a tendency to make the existence of any fact that is of
6 consequence to the determination of the action more probable or less
probable than it would be without the evidence.

7 The definition encompasses two concepts -- probative value and what is often loosely
8 referred to as “materiality.” 5 K. Tegland, *Wash. Prac., Evidence Law and Practice* § 401.2 (6th
9 ed.). The test for “materiality” is well-settled:

10 With reference to materiality, Rule 401 defines relevant evidence as
11 evidence that tends to prove or disprove “any fact that is *of consequence* to
12 the determination of the action” Facts that are “of consequence”
13 include facts that offer direct evidence of an element of a claim or defense;
14 also included are facts that imply an element of a claim or defense
(circumstantial evidence), as well as facts bearing on the credibility or
probative value of other evidence (background information and evidence
offered to impeach or rehabilitate a witness).

15 *Id.* at § 401.5 (6th ed.).

16 Admissions by a party opponent are admissible as non-hearsay evidence. ER 801(d)(2).
17 Statements are admissions by a party opponent when the statement is offered against a party and
18 is: (i) the party’s own statement, in either an individual or a representative capacity or (ii) a
19 statement of which the party has manifested an adoption or belief in its truth, or (iii) a statement
20 by a person authorized by the party to make a statement concerning the subject, or (iv) a
21 statement by the party’s agent or servant acting within the scope of the authority to make the
22 statement for the party, or (v) a statement by a coconspirator of a party during the course and in
23 furtherance of the conspiracy.
24

1 The Court should admit in this Inquest all of the evidence identified above. It is highly
2 relevant to the issues before this Inquest, namely the facts and circumstances surrounding the
3 death of Charleena Lyles in an officer-involved shooting. The statements of the officers made
4 under oath in deposition constitute admissions by a party opponent. The officers may elect not to
5 participate in the Inquest, which is their right, but prior statements they have made under oath are
6 still admissible, and would provide valuable details relevant to the Inquest issues before this
7 Court. And should the officers decide to participate, the evidence would still be admissible, not
8 only as substantive admissions but also for impeachment.

9 To the extent any of the other above listed materials may constitute hearsay, this Court in
10 its discretion should nonetheless admit it as consistent with the goal of administrative fact-
11 finding proceedings; to promote fairness; and to minimize the delays, costs, and burdens that can
12 be associated with judicial proceedings. PHI-7-1-2-EO Appendix 2:3.3. The statements made in
13 the reports and other materials referenced above were compiled as part of a detailed investigation
14 of the shooting involving dozens of investigators, witnesses, and other personnel. Many of these
15 statements were made and/or recorded shortly after the shooting occurred, when people's
16 recollections were strongest. It would promote both fairness and economy in this Inquest to
17 permit these materials to be submitted in lieu of calling each and every one of these people to
18 testify live.

19 **b. The protective order entered on February 2, 2018 should not prevent this court**
20 **from admitting these materials in this Inquest**

21 In determining whether court records may be sealed from public disclosure, a court
22 begins with the presumption of openness. *McCallum v. Allstate*, 149 Wn. App. 412, 420, 204
23 P.3d 944 (2009), *rev denied*, 166 Wn.2d 1037 (2009). Indeed, the Washington State Constitution
24 requires that “[j]ustice in all cases shall be administered openly,” Const. art. I, § 10.

1 Notwithstanding this presumption, court records may be sealed “to protect other significant and
2 fundamental rights.” *Rufer v. Abbott Labs.*, 154 Wn.2d 530, 540, 114 P.3d 1182 (2005) (quoting
3 *Dreiling v. Jain*, 151 Wn.2d 900, 909, 93 P.3d 861 (2004)).

4 The Washington Supreme Court has outlined standards applicable for sealing records in
5 three distinct categories: the raw fruits of discovery, trial proceedings, and dispositive motions,
6 and records attached to those motions. *Rufer*, 154 Wn.2d at 540. Civil Rule 26(c) empowers the
7 courts to limit the scope of discovery and the use of its fruits only “[u]pon motion” and “for good
8 cause shown.” Because there is not yet a *public* right of access with respect to these materials,
9 “[m]ere discovery may be sealed ‘for good cause shown.’” *Rufer*, 154 Wn.2d at 541 (quoting
10 *Dreiling*, 151 Wn.2d at 909, CR 26(c)).

11 To establish good cause, the party should show specific prejudice or harm
12 will result if no protective order is issued. When possible, the party must
13 use affidavits and concrete examples to demonstrate specific facts
14 showing harm; broad or conclusory allegations of potential harm may not
15 be enough. And finally, in exercising its discretion to issue a protective
16 order under CR 26(c) for raw fruits of discovery, a court must weigh the
17 respective interests of the parties.

18 *McCallum*, 149 Wn. App. at 423-24 (internal citations omitted).

19 However, when previously sealed discovery documents are presented in connection with
20 the adjudication of the substantive rights of the parties, such as in a summary judgment motion
21 or trial, “they lose their character as the raw fruits of discovery” and “may not be kept from
22 public view ‘without some overriding interest’ requiring secrecy.” *Dreiling*, 151 Wn.2d at 910
23 (quoting *Rushford*, 846 F.2d at 252). *See also Rufer*, 154 Wn.2d at 541; *Cohen v. Everett City*
24 *Council*, 85 Wn.2d 385, 388-89, 535 P.2d 801 (1975) (holding that “our constitution mandates
an open public trial in a civil case, absent any of the statutory exceptions or compelling reasons
calling for exercise of the court’s inherent power to control its proceedings”).

1 As explained in *Rufer*:

2 The open administration of justice is more than just assuring that a court
3 achieved the “right” result in any given case:

4 We adhere to the constitutional principle that it is the right of the
5 people to access open courts where they may freely observe the
6 administration of civil and criminal justice. Openness of courts is
7 essential to the courts’ ability to maintain public confidence in the
8 fairness and honesty of the judicial branch of government as being
9 the ultimate protector of liberty, property, and constitutional
10 integrity.

11 *Rufer*, 154 Wn.2d at 542 (quoting *Allied Daily Newspapers of Wash. v. Eikenberry*, 121 Wn.2d
12 205, 211, 848 P.2d 1258 (1993)).

13 The Court must consider the following five factors when deciding whether to restrict the
14 public’s access to such materials:

- 15 1. The proponent of the restriction must make some showing of the need. Because
16 courts are presumptively open, the burden of justification rests on the party seeking to
17 infringe the public’s right.
- 18 2. Anyone present when the motion is made must be given an opportunity to object. For
19 this opportunity to have meaning, the proponent must have stated the grounds for the
20 motion with reasonable specificity.
- 21 3. The Court, proponents, and objectors should carefully analyze whether the requested
22 method for curtailing access would be both the least restrictive means available and
23 effective in protecting the interests threatened.
- 24 4. The Court must weight the competing interests of the parties and the public, and
consider the alternative methods suggested. Its considerations of these issues should
be articulated in its findings and conclusions, which should be as specific as possible
rather than conclusory.

1 5. The order must be no broader in its application or duration than necessary to serve its
2 purpose.

3 *See Dreiling*, 151 Wn.2d at 914-15; *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 37-39, 640 P.2d
4 716 (1982).

5 Given the nature and purpose of this Inquest process – to ensure a full, fair, and
6 transparent review of the manner, facts, and circumstances of the death of an individual
7 involving law enforcement while in the performance of his or her duties – this is a matter in
8 which the public has a strong interest. The protective order entered in the *Lyles* civil action never
9 prohibited the discovery that the parties collected and which we now seek to admit – it only
10 addressed the issue of confidentiality and dissemination. Nor was it meant to inhibit the use of
11 materials obtained in a proceeding which could shed light on the truth of why Charleena Lyles
12 was killed. This Court can and should allow this highly relevant information to be admitted in
13 this Inquest – first for purposes of discovery, and subsequently as evidence in the Inquest.

14 V. CONCLUSION

15 For these reasons, the family of Charleena Lyles requests admission of evidence
16 previously discovered in *Lyles v. City of Seattle*, 17-2-23731-1 SEA.

17 Dated this 13th day of August, 2019.

18
19 _____
20 Karen K. Koehler, WSBA #15325
21 Melanie Nguyen, WSBA #51724
22 Lisa Benedetti, WSBA #43194
23 STRITMATTER KESSLER KOEHLER MOORE

24 and

Edward H. Moore, WSBA #41584
LAW OFFICES OF EDWARD H. MOORE, PC

CERTIFICATION

I hereby certify that on August 13, 2019, I delivered a copy of the document to which this certification is attached for delivery to all parties of record as follows:

<p>Inquest Program Personnel Hon. Michael Spearman Dee Sylve Matt Anderson DES-Dept. of Executive Services 401 5th Ave., suite 131 Seattle, WA 98104 Mailstop: CNK-DES-135 Email: Dee.Sylve@kingcounty.gov Phone (Ms. Sylve): 206.477.6191 Email: Matt.Anderson@kingcounty.gov Phone (Mr. Anderson): 206.263.7568</p>	<p><input type="checkbox"/> U.S. Mail (First Class and Certified) <input type="checkbox"/> Fax <input type="checkbox"/> Process Server <input checked="" type="checkbox"/> Electronic Delivery</p>
<p>Corey Guilmette Prachi Dave Public Defender’s Association 810 Third Avenue, Suite 705 Seattle, WA 98104 Email: Corey.Guilmette@defender.org Phone (Mr. Guilmette): 206.641.5334 Email: Prachi.Dave@defender.org Phone (Ms. Dave): 610.517.9062</p> <p>Counsel for Tiffany Rogers, Monika Williams, Domico Jones, Jr., Katrina Johnson, Tonya Isabelol (Siblings and Cousin re Inquest)</p>	<p><input type="checkbox"/> U.S. Mail (First Class and Certified) <input type="checkbox"/> Fax <input type="checkbox"/> Process Server <input checked="" type="checkbox"/> Electronic Delivery</p>
<p>Ghazal Sharifi Jeff Wolf Rebecca Boatright Kelly Nakata (paralegal) Jennifer Litfin (legal assistant) Seattle City Attorney’s Office Civil Division – Police Action Team 701 Fifth Avenue, Suite 2050 Seattle, WA 98104-7097 Email: Ghazal.Sharifi@seattle.gov Phone (Ms. Sharifi): 206.684.8217 Email: Jeff.Wolf@seattle.gov</p>	<p><input type="checkbox"/> U.S. Mail (First Class and Certified) <input type="checkbox"/> Fax <input type="checkbox"/> Legal messenger <input checked="" type="checkbox"/> Electronic Delivery</p>

<p>1 Phone (Mr. Wolf): 206.233.2166 Email: Rebecca.Boatright@seattle.gov 2 Email: Kelly.Nakata@seattle.gov Phone (Ms. Nakata): 206.233.2164 3 Email: Jennifer.Litfin@seattle.gov Phone (Ms. Litfin): 206.684.5939 4 Counsel for Seattle Police Department</p>	
<p>6 Ted Buck Karen Cobb Lisa Smith (paralegal) 7 Frey Buck, PS 1200 5th Ave, Suite 1900 8 Seattle, WA 98101 Email: tbuck@freybuck.com 9 Email: kobb@freybuck.com Email: lsmith@freybuck.com 10 Phone: 206.486.8000 (main) 11 Counsel for Officers Anderson and McNew</p>	<p><input type="checkbox"/> U.S. Mail (First Class and Certified) <input type="checkbox"/> Fax <input type="checkbox"/> Process Server <input checked="" type="checkbox"/> Electronic Delivery</p>
<p>12 Commissioner Eric Watness Ericwatness1@gmail.com 13 Personal Representative of the Estate of 14 Charleena Lyles</p>	<p><input type="checkbox"/> U.S. Mail (First Class and Certified) <input type="checkbox"/> Fax <input type="checkbox"/> Process Server <input checked="" type="checkbox"/> Electronic Delivery</p>

15
 16 /s/ Anne Roberson
 17 Anne Roberson, Paralegal
 STRITMATTER KESSLER
 KOEHLER MOORE