

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

Case No. 517IQ9301

INQUEST INTO THE DEATH OF
CHARLEENA CHAVON LYLES,

Deceased.

REPLY TO SEATTLE AND SEATTLE
POLICE OFFICERS' RESPONSE TO
MOTION TO CLARIFY PARTIES

I. INTRODUCTION

The family of Charleena Lyles jointly files this Reply to the Seattle and Seattle Police Officers Response to Motion to Clarify Parties. Seattle and the Officers' argue that their participation in the inquest is constitutionally mandated. As a threshold matter, the Administrator must decide whether constitutional decisions of the nature raised by Seattle and the Officers can be addressed in the confines of inquest proceedings. However, even if the Administrator decides that such decisions are within the purview of the Administrator, the City and Officers' arguments have no support in the law and must fail.

1 **II. ARGUMENT**

2 **1. The Administrator is not empowered to make decisions of a constitutional**
3 **magnitude.**

4 The Officers’ response to the Family’s Motion to Clarify Parties is primarily of a
5 constitutional nature, based on arguments rooted in the Fifth Amendment privilege against self-
6 incrimination. The resolution of some of the constitutional arguments raised by the officers may
7 fundamentally change the nature of inquest proceedings and irreparably impact the rights of
8 families as parties to the inquest. In proceedings that are judicial in nature and in which appellate
9 relief is available as a matter of right, judicial officers may freely make such decisions. However,
10 inquests are at best quasi-judicial in nature and occupy a “gray zone at the periphery of both the
11 executive and judicial branches.” *Carrick v. Locke*, 125 Wn. 2d 129, 139 (1994). And, courts
12 have held that inquest proceedings are not subject to direct appellate review. *See In re Boston*,
13 112 Wn.App 114 (2002). Were the Administrator to make decisions of a constitutional
14 magnitude that reshape the rights of parties to the inquest, the Family would have no avenue for
15 appellate review, a deeply problematic outcome.

16 Indeed, constitutional decisions are likely beyond the scope of authority in inquest
17 proceedings, which are fundamentally an executive function and fact-finding in nature. *See In re*
18 *Boston*, 112 Wn.App 114. This is especially true in this case where the proceeding is not being
19 overseen by a judge, but by an Administrator appointed by the County Executive. This
20 proposition is supported in case law. In *Exendine v. City of Sammamish*, 127 Wn.App 574
21 (2005), the court held that a hearing examiner did not have the authority to decide on the
22 constitutional validity of search warrants. *Exendine v. City of Sammamish*, 127 Wn.App 574, 586
23 (2005). Specifically, the court decided that because the office of the hearing examiner was a
24 creation of city council and that city council did not have the power to “enforce, interpret, or rule
25 on constitutional challenges,” the city council could not delegate authority it did not have. *Id.*

1 Similarly, here the Administrator derives its authority from the County Executive, which does
2 not have the authority to interpret and determine the scope of constitutional protections.

3 The Family therefore urges the Administrator to decline consideration of the
4 constitutional arguments presented in this case. However, if the Administrator is inclined to
5 decide on the City and Officers' constitutional arguments, they are addressed below.

6 **2. The Officers have neither a constitutional right to representation in inquest**
7 **proceedings, nor a blanket Fifth Amendment right not to testify in inquest**
8 **proceedings.**

9 In their Response to the Motion to Clarify Parties, the Officers assert that they have a
10 constitutional right to representation in inquest proceedings. In making this argument, the
11 Officers cite no case or constitutional authority. As result, we are left to speculate regarding the
12 underlying foundation of their argument. It appears that the Officers' argument relies entirely on
13 two flawed assumptions: (1) That inquest proceedings are exactly like criminal proceedings and
14 that the Officers must therefore be provided the same constitutional rights as those accused in a
15 criminal proceeding, and (2) that the Fifth Amendment privilege against self-incrimination
16 provides the Officers with a right not to be called to testify at all in inquest proceedings. Both
17 flawed assumptions are addressed in order below.

18 **a. The Officers do not have the constitutional right to representation afforded to**
19 **individuals accused of crimes.**

20 Several times in their response, the Officers and City appear to argue that the officers
21 have the same constitutional rights as would a person criminally charged.¹ This assertion, that an
22 inquest is exactly like a criminal trial, is without any basis in the law. Neither the statutory
23 authority for inquests, nor the King County Executive Order on Conducting Inquests in King

24 ¹ City of Seattle and Seattle Police Officers' Response to Motion to Clarify Parties, at 2 (arguing that, "[o]ne can
25 only imagine the family's counsel's response should it be suggested that a party with equivalent rights, a criminal
defendant, not be allowed to "participate" with counsel in her trial unless she agreed to waive her constitutional
rights."

1 County, state or allude to the possibility that officers in such proceedings are constitutionally
2 entitled to counsel because inquests are akin to criminal proceedings. *See generally*, 36.40 RCW;
3 *See generally*, Conducting Inquests in King County, PHL-7-1-2-EO. In fact, the overwhelming
4 authority on inquest proceedings demonstrates that inquests are fact-finding proceedings only.
5 For example, the Executive Order itself states that “[t]he purpose of the inquest is to ensure a
6 full, fair, and transparent review of any such death, and to issue findings of fact regarding the
7 facts and circumstances surrounding the death. The review will result in the issuance of findings
8 regarding the cause and manner of death, and whether the law enforcement members acted
9 pursuant to policy and training.” *Id.* At 2. This alone distinguishes inquests entirely from
10 criminal trials, whose purpose is to arrive at a finding of guilt or innocence and always carry the
11 possibility of serious deprivations of liberty.

12 The fact-finding nature of inquests is supported by case law. In *Miranda v. Sims*, 38 Wn.
13 App 898, 903 (2000), an inquest case, the court stated that “the proceeding at issue is a
14 nonbinding factual inquiry and does not result in a determination of guilt or responsibility. The
15 purpose of an inquest is to determine the identity of the deceased, the cause of death, and the
16 circumstances of the death, including an identification of any actors who may be criminally
17 liable. Nevertheless, our courts have repeatedly rejected the argument that an inquest is
18 equivalent to a trial” *Miranda v. Sims*, 38 Wn. App 898, 903 (2000) (internal citations omitted),
19 *citing Carrick v. Locke*, 125 Wn.2d 129, 133 (1994). Further, the Washington Supreme Court has
20 confirmed that “a coroner’s inquest is not a culpability-finding proceeding.” *State v. Ogle*, 78
21 Wn. 2d 86, 88 (1970).

22 The court in *Miranda* also appears to have resolved the question of whether a right to
23 representation exists in inquests. *Miranda*, 38 Wn. App. at 903. In *Miranda*, the family of the
24 deceased brought suit against King County because, while they were permitted to participate in
25 the inquest, their request for reimbursement of attorneys’ fees was denied. The family challenged

1 the constitutionality of the proceedings, arguing that the failure to reimburse the family for costs
2 of representation conflicted with their constitutional right of access to the courts. *Id.* at 902. The
3 court, in response, stated that “[t]he civil litigant’s right of access, however, has never been
4 construed by courts to provide a right to counsel at public expense in every proceeding. Rather,
5 our courts have limited the right to appointed counsel in civil cases to proceedings where the
6 litigant’s physical liberty is threatened or where a fundamental liberty interest, similar to the
7 parent-child relationship, is at risk.” *Id.* at 902. *Miranda* places the right-to-counsel analysis in
8 inquests squarely in the civil, and not criminal, realm. Additionally and importantly, the
9 Officers’ reliance on *Miranda* is both misplaced and argued out of context. The *Miranda* court
10 does not provide any support for the argument that the Officers are entitled to counsel, but only
11 stated that simply because the County had provided counsel for its agents and employees, it was
12 not therefore required by equal protection principles to provide the family with counsel. *Id.* at
13 909. Finally, although the Officers anchor their right to representation in the law pertaining to
14 criminal proceedings, it is telling that the Officers’ response does not present any Sixth
15 Amendment support for their argument for a constitutional entitlement to representation. U.S.
16 Const. amend VI (“In all criminal prosecutions, the accused shall . . . have the assistance of
17 counsel for his defense.”) For the reasons explained above, the Administrator should deny the
18 Officers’ motion.

19 **b. The Officers do not have a Fifth Amendment right not to testify in inquest**
20 **proceedings.**

21 The Officers’ response also appears to assert that the Fifth Amendment right against self-
22 incrimination grants them the right not to testify in inquest proceedings. For the reasons
23 addressed below, their arguments are inapposite, and their motion should be denied.

24 The Officers, in asserting that they have a constitutional right not to testify, rely on a
25 fundamental misunderstanding of Fifth Amendment principles. Again, it appears that the officers

1 conflate inquests and criminal proceedings. In criminal proceedings, the accused certainly has
2 the right not to testify. U.S. Const. amend. V, (“[n]o person shall be compelled in any criminal
3 case to be a witness against himself.”) However, inquests are not criminal proceedings and the
4 officers are not charged with crimes. As a result, the presumptive right not to testify that is
5 afforded the criminally accused does not attach to the Officers and the Officers’ argument fails.

6 Further, because the Officers misunderstand the Fifth Amendment protection against self-
7 incrimination, they also misunderstand the argument the Family makes about their participation
8 as parties in the inquest. The family does not argue that the officers must agree to incriminate
9 themselves as a condition of participating in the inquest. The Family simply argues that because
10 in an inquest (versus a criminal proceeding) the officers do not have a blanket Fifth Amendment
11 right not to testify, they must claim the protection against self-incrimination in the procedural
12 manner prescribed by the law.² Fifth Amendment jurisprudence has established that, “[t]he right
13 against self-incrimination must be invoked through specific, individual objections, not by
14 invoking blanket constitutional protection to avoid participating in the proceedings.” *State v.*
15 *Brelvis Consulting LLC*, 7 Wn.App 207 (2018), quoting *Alsager v. Bd. Of Osteopathic Med. &*
16 *Surgery*, 196 Wn.App 653, 668 (internal quotations omitted).³ Blanket declarations asserting a
17 nebulous and unspecific fear of self-incrimination do not suffice to invoke the Fifth Amendment
18 privilege against self-incrimination. *Id.* at 669 (stating that “[a] witness who does not assert the
19 privilege against self-incrimination as to specific topics or requests does not properly invoke it as
20 to matters potentially related to criminal activity”), (internal quotations omitted). Importantly, the
21 mere assertion of the privilege against self-incrimination does by itself establish the risk of self-

22 ² The Officers also make an argument under the “penalty situation” exception to the general rule that the Fifth
23 Amendment privilege is not self-executing. However, as the Officers are clearly (albeit inaccurately) asserting a
right against self-incrimination, any reliance on this argument is misplaced.

24 ³ City of Seattle and Seattle Police Officers’ Response to Motion to Clarify Parties, at 5 (arguing that, “the
25 Constitution demands that officers are entitled to “participate” by having counsel represent their interests even if
they not intend to testify or even appear.”)

1 incrimination. It is the court that must make that inquiry and determination. *Ohio v. Reiner*, 532
2 U.S. 17, 21 (2001). The Family, in objecting to the Officers as parties, does not request that these
3 proceedings force individuals to leave their constitutional rights at the courthouse door. Instead,
4 the Family argues that there is no need to develop a separate body of Fifth Amendment law for
5 the purposes of the inquest, when one already exists. The Officers desire to participate in these
6 proceedings on their terms, and their terms alone, would result in disparate and unfair treatment
7 of the parties involved in this case. For these reasons, the Officers' motion should be denied.

8 III. CONCLUSION

9 For the reasons outlined in this Reply and the Family's original motion, the Family
10 requests that the Administrator grant the Family's original motion.

11 JOINTLY filed this 9th day of September, 2019.

12
13 s/ Prachi Dave

14 Prachi Dave, WSBA #50498
15 Public Defender Association
16 110 Prefontaine Pl. S., Suite 502
17 Seattle, WA 98104
18 Telephone: (610) 517-9062
19 E-mail: prachi.dave@defender.org
20 Attorney for Family of Charleena Lyles

21
22 s/ Karen Koehler

23 Karen Koehler
24 Stritmatter Kessler Koehler Moore
25 3600 15th Ave W Ste 300
Seattle, WA 98119-1330
(206) 448-1777
Karenk@stritmatter.com
Attorney for the Family of Charleena Lyles

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

s/ Edward H. Moore

Edward H. Moore
Law Offices of Edward H Moore PC
3600 15th Ave W Ste 300
Seattle, WA 98119-1330
(206) 826-8214
emoore@ehmpc.com
Attorney for the Family of Charleena Lyles

CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury according to the laws of the United States and the State of Washington that on this date I caused to be served in the manner noted below a copy of this document entitled **REPLY IN SUPPORT OF MOTION TO DETERMINE IF THE FAMILY OF CHARLEENA LYLES CAN BE REPRESENTED BY ONE ATTORNEY** on the following individuals:

Karen Cobb
Frey Buck, P.S.
1200 Fifth Avenue, Suite 1900
Seattle, WA 98101
kcobb@freybuck.com
(206) 486-8000
*Attorney for Seattle Police Department
Officer Steven McNew*

Ted Buck
Frey Buck, P.S.
1200 Fifth Avenue, Suite 1900
Seattle, WA 98101
tbuck@freybuck.com
(206) 486-8000
*Attorney for Seattle Police Department
Officer Jason Anderson*

Dee Sylve
DES-Dept. of Executive Services
401 5th Ave., suite 131
Seattle, WA 98104
(206) 477-6191
Dee.Sylve@kingcounty.gov
Inquest Program Manager

Edward H. Moore
Law Offices of Edward H Moore PC
3600 15th Ave W Ste 300
Seattle, WA 98119-1330
(206) 826-8214
emoore@ehmpc.com
*Attorney for the family of Charleena
Lyles*

Matt Anderson
(206) 263-7568
matt.anderson@kingcounty.gov
Pro-Tem Attorney

Ghazal Sharifi
Seattle City Attorney's Office
701 Fifth Avenue, Suite 2050
Seattle, WA 98104-7097
206-684-8217
ghazal.sharifi@seattle.gov
Attorney for the City of Seattle

Karen Koehler
Stritmatter Kessler Koehler Moore
3600 15th Ave W Ste 300
Seattle, WA 98119-1330
(206) 448-1777
Karenk@stritmatter.com
*Attorney for the family of Charleena
Lyles*

Jeff Wolf
Seattle City Attorney's Office
701 5th Ave Ste 2050
Seattle, WA 98104-7095
Jeff.Wolf@Seattle.gov
Attorney for the City of Seattle

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Rebecca Boatright
Seattle Police Department
610 5th Ave.
P.O. Box 34986
Seattle, WA 98124
rebecca.boatright@seattle.gov
(206) 233-5023
*Seattle Police Department, Executive
Director of Legal Affairs*

- Via Facsimile
- Via Electronic Mail
- Via Messenger

DATED this 9th day of September, 2019.

s/ Corey Guilmette

Corey Guilmette, WSBA #51165
Public Defender Association
110 Prefontaine Pl. S, Suite 502
Seattle, WA 98104
Telephone: (206) 641-5334
E-mail: corey.guilmette@defender.org
Attorney for Family of Charleena Lyles