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IN THE DISTRICT COURT OF WASHINGTON FOR KING COUNTY

In re INQUEST INTO THE DEATH OF
CHARLEENA LYLES,

NO. 517IQ9301

FAMILY’S OPPOSITION TO SEATTLE
POLICE DEPARTMENT’S MOTION TO
STAY

I. INTRODUCTION

The Seattle Police Department (SPD) seeks to shut down the inquest so that the Family of Charleena Lyles will not be able use the new and improved fact-finding procedure to shed light on the death of their daughter, sister, and mother. Staying the inquest will also significantly impact the community. The family and the public want to know why was a young pregnant mother of four children who called police for help, was shot and killed in her own home. The family and the public want to know what happened – not simply the SPD version – but the facts as revealed in a fair and formal inquest proceeding.

The wrongful death suit has been largely dismissed and is stayed pending appeals. The maternal side of Charleena’s family is not party to that litigation. Both sides of the family have come together to exercise their right to participate in this inquest now.

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II. STATEMENT OF FACTS

On June 18, 2017, Charleena Lyles was shot and killed in her apartment by Seattle Police Department officers Jason Anderson and Steven McNew. Three of her children were in the home with two of them extremely close to their mother when the shots were fired.

In September 2017, Charles Lyles, Ms. Lyles' paternal father, was appointed Personal Representative of the Estate of Charleena Lyles and hired the Stritmatter firm and Law Offices of Edward Moore to file suit. Commissioner Eric Watness was later substituted as PR.

In November 2017, Executive Constantine called for an inquest pursuant to the rules in place at the time. See PHL 7-1-1 (AEO). The maternal side of the family was prepared to participate in the inquest. The Estate voiced its concern for the one-sided procedure and declined to participate.

In January 2018, King County Executive Dow Constantine halted nine pending inquests to convene a six-member committee of stakeholders to review the inquest process and recommend changes. Later that year, in October 2018, Executive Constantine made considerable changes to the inquest procedure including expanding the scope of the inquest to determine whether the officers' actions complied with department training and policy. In July 2019, Executive Constantine re-ordered an inquest into the death of Charleena Lyles under the new rules established by PHI-7-1-2-EO.

Meanwhile, the wrongful death case was being litigated. Discovery was conducted including but not limited to:

- Exchange of documentary discovery
- CR 30(b)(6) deposition of the Seattle Police Department
- Deposition of the SPD employee in charge of Taser training

- Depositions of both officers involving in the shooting
- Depositions of staff at Solid Ground regarding events leading up to the shooting.

Solid Ground was added to the litigation then upon motion dismissed. The Defendants brought multiple CR 12 motions to narrow the claims. But it was a motion brought by the Estate that led to a series of events that have resulted in the case landing in the court of appeals.

Plaintiffs had retained experts who performed document review, analysis and reviewed the exterior hallway video and audio tapes of the shooting. In his deposition, Officer Anderson testified that he was inside the apartment when he shot Charleena Lyles in the presence of her children. Officer Anderson had also made this claim during the internal investigation. The police investigation including the FIT report were broadcast to the public. Those broadcasts included significant errors one of which was an erroneous transcription of Charleena Lyles' final words – incorrectly transforming a statement of fact into an alleged threat against the officers.

Plaintiffs' experts used video footage from the hallway of the apartment building and matched it to the SPD audio that was recorded at the scene. They concluded Officer Anderson was outside of the apartment while shooting Charleena Lyles. This information directly contradicted Officer Anderson's repeat sworn testimony.

The Officer's location was an important fact in part because of the claim that he feared for his life. Yet he was not backed up against a closed door as represented. When Plaintiff asked the Court to utilize a little used statute to refer the matter to a prosecutor, the case took a major detour.

The Court tossed the expert declarations, found the motion frivolous and sanctioned this firm \$26,000 – the appellate argument on this point occurred last week. The officers then filed a motion for summary judgment which was granted after the lower court threw out all of the

1 Plaintiffs' expert's testimony. That matter is currently on appeal. In addition the SPD attempted
2 to file a motion for summary judgment but the court stayed the motion pending the officer's
3 appeal. That has also been appealed by the SPD.

4 The heavy amount of litigation in the wrongful death case is germane to the pending
5 motion for stay. There is a full court press being waged by the SPD and officers to prevent
6 public inquiry as to the facts and circumstances relating to the shooting of Charleena Lyles
7 which has spilled over into these inquest proceedings.

8 If Judge Spector's dismissal of the wrongful death case against the officers is upheld, the
9 superior court case will be over without the maternal side of the family or the public being
10 allowed to complete a fact and truth finding process.

11 There is no rule that says an inquest must be completed before a civil case is brought nor
12 vice versa. Here, through no fault of anyone, Executive Constantine stayed pending inquests
13 until he could make the process better. Neither the civil case nor the inquest have concluded.
14 The only investigation that has been completed is that done via FIT and the police review board.
15 And has been explained earlier – that investigation was premised upon Officer Anderson stating
16 that he was inside the apartment when he shot Charleena Lyles, whereas now in most recent
17 court of appeals pleadings the position is that perhaps he was out in the hall after all.

18 III. ARGUMENT

19 a. There is no authority for a stay.

20 An inquest proceeding is a *statutorily* authorized inquiry into the death of an individual.
21 *In re Boston*, 112 Wn. App. 114, 116, 47 P.3d 956 (2002). The Seattle Police Department (SPD)
22 is incorrect that the Administrator has the authority “to control the disposition of the causes on its
23

1 docket...”¹ The Administrator’s authority is authorized solely by the Executive’s Order. That
2 Order states that the Administrator “shall conduct the inquest.” While the Administrator “shall
3 strive to minimize delay, cost, and burden to participants,” the Administrator has no authority to
4 stay the inquest after the Executive has ordered it. PHI-7-1-2-EO Appendix 3.1

5 SPD relies solely on *King v. Olympic Pipeline Co.*² in support of their argument for a
6 stay. In *King*, the plaintiffs were individuals and families affected by an Olympic Pipeline
7 Company pipeline rupture and subsequent explosion. The Plaintiffs brought a wrongful death
8 suit against Olympic and individual defendants. At the same time, criminal investigations into
9 the cause of the tragedy began immediately. While the civil suit was pending and federal
10 investigators continued their investigation, the defendants moved for a limited, partial stay of
11 discovery until the anticipated date of completion of the federal investigations. They sought a
12 stay to preserve both *the right to invoke the Fifth Amendment privilege*, and the right to *defend*
13 *fully in the civil case. Id.* at 346. *King* is inapposite.

14 In *King*, the defendants requested a stay of discovery in the *civil litigation* because they
15 were concerned that civil discovery may place them in jeopardy of self-incrimination in light of
16 the ongoing federal criminal investigation. There is no similar concern here. There is no criminal
17 investigation into Charleena’s death and the officers did not invoke their Fifth Amendment
18 privilege in the civil litigation. In fact, the officers readily participated in their discovery
19 depositions and did so with competent counsel. Those depositions are now available for use in
20 any proceeding against the officers as admissions by a party opponent. ER 801(d)(2).

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¹ SPD’s Motion to Stay, p. 4 citing *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55, 57 S. Ct. 163, 81 L. Ed. 153 (1936).

24 ² 104 Wn. App. 338, 346, 16 P.3d 45 (2000), as amended on reconsideration (Feb. 14, 2001).

1 SPD continues to argue for a stay stating that the civil action is premised on the same
2 underlying events as the inquest. Of course it is – but that is immaterial. When analyzing the
3 similarities between civil and criminal cases the *King* court noted:

4 One of the most important factors in the balancing is the degree to which
5 the civil issues overlap with the criminal issues, because [i]f there is no
6 overlap, there would be no danger of self-incrimination and accordingly
7 no need for a stay.

8 *Id.* at 357.

9 Given that there are no dangers of self-incrimination, SPD’s reliance on *King* is misplaced.

10 SPD also attempts to argue that the inquest is similar to a criminal case because inquest
11 proceedings are quasi-judicial in nature and may have potential criminal implications.³ But our
12 courts have repeatedly rejected the argument that an inquest is equivalent to a trial. *In re Boston*,
13 112 Wn. App at 118. The inquest is not meant to be an adversary proceeding and inquest results
14 are not binding on anyone. SPD cites no other legal authority that would support a stay.

15 **b. The interests of justice demand that the inquest take place now.**

16 SPD argues that the parallel proceedings are detrimental to the interests of justice. The
17 purpose of the inquest is to “ensure a full, fair, and transparent review of any such death, and to
18 issue findings of fact regarding the facts and circumstances surrounding the death.” Justice
19 means allowing the entire family to participate in a fair and transparent review of their beloved
20 family member’s death. SPD knows that the maternal side of the family is not party to the civil
21 litigation. Still, it ignores the fact that the civil litigation is an entirely separate procedure that
22 does not involve all the parties to this inquest. The inquest rules allow the family of the deceased
23 to participate. PHI-7-1-2-EO Appendix 2.1. The maternal side of Charleena’s family deserves to

24 ³ SPD Motion to Stay, p. 6.

1 have a voice in this inquest proceeding and two years after the death is already at least one year
2 too late.

3 SPD spends considerable time arguing that there is no purpose in beginning parallel
4 proceedings because the “civil matter has moved far ahead of this Inquest.” It is unclear whether
5 SPD is feigning ignorance to the maternal side’s right to be heard in this matter or whether they
6 do not consider it worthy of recognition. The fact that both proceedings are premised on the
7 same underlying events is inconsequential. As the Family noted in its briefing for separate
8 counsel, there are divergent interests between the paternal and maternal sides of the family and
9 the strategies of the two proceedings have been and will be distinct. In addition of course, SPD is
10 hoping that its dismissal in the wrongful death case will be upheld on appeal. In that event and if
11 the inquest doesn’t proceed, the SPD will be spared from ever having to engage in public non-
12 internal police inquiry – into what happened on that fateful day.

13 SPD argues that the inquest discovery process will “burden and prejudice” SPD. SPD
14 does not cite to any authority is arguing that “the fundamental principles of fairness and judicial
15 economy are not met when a parallel action may not reach its natural conclusion before
16 beginning another matter with the same general purpose and underlying facts.” The “burden and
17 prejudice” on SPD is minor in light of the purpose of the inquest which has been ordered by the
18 Executive. Significant discovery has already been complete; SPD’s prior engagement in
19 discovery in the civil litigation should reduce the time and cost of producing similar documents
20 for the inquest.

1 Next, SPD discusses another *King* factor despite its misplaced reliance. It argues that the
2 “public interest is fulfilled by the public nature of the civil proceedings.”⁴ SPD misconstrues the
3 “public interest” prong in *King*:

4 Where the government brings the civil suit to enforce laws designed to
5 protect the public, the public interest in the civil litigation has often been a
6 compelling basis for denying a stay because of a “tangible threat of
7 immediate and serious harm to the public at large.” For example, public
8 interests considered by courts rejecting stay requests have included the
9 need to protect consumers from misbranded pharmaceutical drugs, the
10 public interest in stable financial markets, and the public interest in speedy
11 resolution of an action to bar an individual from the federally-insured
12 banking industry.

13 On the other hand, where there was no indication of potential irreparable
14 injury to pension plan beneficiaries, “Possible mismanagement of a
15 pension fund simply does not present the same danger to the public
16 interest as violations that other courts have found to warrant denial of a
17 motion for a stay.” Similarly, a civil forfeiture action did not protect the
18 public interest as compared to a civil enforcement action brought by a
19 regulatory agency. In some regrettable situations, where government does
20 not or cannot act, private litigation may be the only means of addressing
21 serious public welfare issues. But where government can and does act, no
22 such purpose is attributable to related private litigation.

23 Here, it is the business of the various governmental entities to correct and
24 prevent and protect and punish. The public interests in placing
responsibility for the disaster and in protecting the community from future
harm as a result of pipeline operations are being vigorously pursued by
government. The interests at stake in this civil litigation are different: they
are the private rights of the parties to a determination of civil liability for
the tragic death of a child. These are highly important, but private,
interests.

19 *King*, 104 Wn. App. at 367-68.

20 SPD’s motion seems to argue that because news outlets are covering the civil
21 proceedings, it is appropriate to stay the inquest proceedings. The *King* case does not support
22 that conclusion. In fact, it supports the opposite. Stays in civil cases are often denied when there

24 ⁴ SPD Motion to Stay, p. 8.

1 is a need to protect consumers. Here, there is a public interest in the speedy resolution of how
2 Charleena Lyles was fatally shot and whether Officers Anderson and McNew violated policy and
3 training. There an acute danger to the public if SPD officers have or are violating policy and
4 training procedures. The public has never heard from the officers regarding what happened that
5 day between them and Charleena Lyles. The public has never heard from a government official
6 regarding investigation into her death. The inquest rules require that the City designate an
7 official “to provide a comprehensive overview of the forensic investigation into the incident
8 (e.g., statements collected by investigators, etc.)” PHI-7-1-2-EO Appendix 12.3. This is the
9 family, the public, and the department’s chance to fully review what happened in the public
10 arena.⁵ SPD is not asking for a dismissal of the inquest – they request a stay. A stay will only
11 ensure that the witnesses and evidence are even more stale by the time the inquest resumes.

12 Finally, SPD cites to the Tommy Le case. The Le case is not precedent. In Le the
13 Executive did not call an inquest. If it was the Executive’s intent that this case be stayed pending
14 civil litigation, the Executive would not have ordered the inquest. In addition, SPD argues that
15 because the family of Tommy Le stayed its inquest to focus on the civil trial, the Lyles inquest
16 should also be stayed. This is an absurd proposition. Certainly, the inquest should take into
17 account the family’s wishes and Charleena Lyles’ family wishes to proceed with the inquest
18 *now*.

19 IV. CONCLUSION

20 For these reasons, the Family of Charleena Lyles requests the Administrator deny SPD’s
21 motion for a stay.

22 Dated this 25th day of September, 2019.

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24 ⁵ The civil litigation is not proceeding expeditiously. It is currently on appeal in the Court of Appeals, Division 1.

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Karen K. Koehler, WSBA #15325
Melanie Nguyen, WSBA #51724
Lisa Benedetti, WSBA #43194
STRITMATTER KESSLER KOEHLER MOORE

and

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

And

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 Defendant

CERTIFICATION

I hereby certify that on September 25, 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: kcobb@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/ Elodie Daquila* _____
 17 Elodie Daquila, Paralegal
 STRITMATTER KESSLER
 18 KOEHLER MOORE