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King County Superior Court  
Seattle Division

IN RE INQUEST INTO THE DEATH OF )  
 )  
CHARLEENA CHAVON LYLES, ) No. 517IQ9301  
 )  
 ) SEATTLE POLICE OFFICERS' BRIEF  
 ) RE: SCOPE OF INQUEST  
 )  
 )  
 )

**I. INTRODUCTION**

Seattle Police Officers Steven McNew and Jason Anderson respectfully submit this brief regarding the appropriate scope of discovery and of the inquest hearing itself. The stated intent of the inquest statute is to hold a public, non-adversarial, fact-finding hearing to determine the facts surrounding the death of Ms. Lyles and whether the officers followed department policy during the interaction resulting in the death. Given that narrow scope, only information that was in the possession of the officers regarding Ms. Lyles and the circumstances is relevant to the inquiry. Ms. Lyle's family seeks significant discovery well outside of the scope of the inquest that would serve no relevant or intended purpose. In keeping with the Executive's directives, the officers urge the Administrator to limit the scope of the inquest hearing and discovery to only those topics and materials relevant to the case and the interrogatories that will be posed to the panel.

1 **II. AUTHORITY RE SCOPE OF THIS INQUEST**

2 **A. The Executive Order dictates the general scope of an inquest.**

3 The King County Executive’s Order PHL-7-1-2-EO (“Executive Order”) states that the  
4 Administrator shall determine the scope of the inquest after consultation with the parties. *Executive*  
5 *Order, Appendix 2, ¶ 3.2.* The scope shall be consistent with the purpose as set forth in the Amended  
6 Charter, Executive Order and Appendices 1 and 2. *Id.* The directive on scope is as follows:

7 [T]he inquest scope shall include an inquiry into and the panel shall make findings  
8 regarding the cause, manner, and circumstances of the death, including applicable law  
9 enforcement agency policy. The panel shall make findings regarding whether the law  
enforcement officer complies with applicable law enforcement agency training and policy  
as they relate to the death.

10 *Appendix 2, ¶ 3.2.* In the first pre-inquest order, the Administrator proposed the following specific  
11 scope of inquiry for this matter:

- 12 **8. Proposed Scope of Inquiry:** The scope of inquiry in the inquest proceeding shall  
13 include the following areas:  
14 **a.** The identity of the decedent;  
15 **b.** The place of death;  
16 **c.** The means of death;  
17 **d.** The person or persons who caused the death;  
18 **e.** The circumstances attending to the death, i.e. all readily observable facts or  
19 conditions **known to the officers and other first responders and witnesses on**  
20 **scene** at the time of, leading up to and immediately following the death;  
21 **f.** What department policies were the person or persons who caused the death acting  
22 under at the time they took the actions that caused the death;  
23 **g.** What training did the person or persons receive with regard to those policies;  
24 **h.** Were the acts of person or persons who caused the death pursuant to **and**  
**consistent with** those policies and training.

20 *Preinquest Order, ¶ 8,* dated September 20, 2019. Pursuant to the Administrator’s request, the  
21 Officers recommended the addition of the **bolded** terms above, to achieve the scope dictated by  
22 *Appendix 2, ¶ 3.2* and to assist the parties in responding to the Administrator’s request for additional  
23 briefing re the same.

1 **B. What is the proper scope of inquiry and related discovery?**

2 The Administrator has requested additional briefing on the following subjects:

3 **9. Briefing –**

4 ...

5 **b. Proposed Scope of inquiry:** Each party shall provide proposed additions and deletions to the scope of inquiry in this inquest (see section 8, above). Specifically, the parties shall address:

6 i. The subject matter of the policies governing the person or persons who caused the death of Charleena Lyles;

7 ii. The subject matter of trainings that governed the person or persons who caused the death of Charleena Lyles; and

8 iii. The events leading up to the death of Charleena Lyles (with specificity – including time, date, case number, if applicable, and factual summary.)

9 *Preinquest Order*, ¶ 9(b). Limiting the scope pursuant to the dictates of the Executive Order (“*cause, manner and circumstances of the death, including applicable law enforcement agency policy*” and “*whether the law enforcement officer complied with applicable law enforcement agency training and policy as they relate to the death*”) necessarily narrows discovery related to policies and training to materials that could provide evidence or insight into these topics. The family’s discovery requests expand well beyond this scope and serve only to cause “delay, costs, and burden to participants,” in contradiction with the inquest rules. *Appendix 2*, ¶ 3.1.

16 The basic facts are largely undisputed as they are captured on the audio of the officers’ ICV (in-car video). That knowledge must be used to gauge proper scope. Ms. Lyles reported a burglary that had occurred hours prior to her call. The first officer responded with knowledge that she had previously threatened officers, likely in a mental health crisis following a domestic violence dispute. Based upon that caution, a second officer was requested. The audio from the ICV reflects a calm and orderly investigation, which very suddenly changed to a scene of great distress. After yelling repeatedly for her to “get back,” the officers fired upon Ms. Lyles, stating in the aftermath that she had

1 assaulted them with a knife or knives. Additional officers quickly arrived on scene, removed the  
2 children, and rendered medical aid.

3 Here, the family has suggested that Ms. Lyles' mental health issues and law enforcement  
4 contacts are relevant, along with the history of the involved officers. They have provided no  
5 explanation or argument to support the breadth of their position. There is no evidence Ms. Lyles knew  
6 of the officers' history or was in any way impacted by their history. There is simply no basis for  
7 discovery of information related to the officers' history. Moreover, there is no evidence the officers  
8 knew of her history other than the single incident that is described in the ICV recording. Ms. Lyles  
9 had a substantial history of contacts with law enforcement both as an alleged perpetrator and as an  
10 alleged victim of crime. The responding officers, however, did not know of that history and  
11 consequently it could not have impacted the event. To allow a foray into Ms. Lyles' history would not  
12 only exceed the Executive's directive, it would also unfairly and needlessly prejudice Ms. Lyles'  
13 position by focusing the panel on past events that would only distract from the undertaking at hand.

14 While the family has expressed an interest in proffering a theory that Ms. Lyles' history with  
15 law enforcement somehow preordained this tragedy, any such theory is utter speculation. Only the  
16 facts known to the officers on the day of the event and the circumstances of Ms. Lyles' behavior and  
17 the events at her apartment are relevant.

18 1. The subject matter of the policies governing the person or persons who caused the death of  
19 Charleena Lyles.

20 Based upon the undisputed facts, the following policies contained in the Seattle Police  
21 Department manual governing the officers' conduct may be relevant to the inquiry:

- 22 - Use of force (SPD Manual §§ 8.000 Core Principles; 8.050 Use of Force  
Definitions; 8.200 Using Force)
- 23 - De-escalation techniques (SPD Manual § 8.100 De-Escalation)
- 24 - Crisis Intervention (to the extent that it covers dealing with potential mental health  
issues) (SPD Manual § 16.110)

1 - Rendering first aid (SPD Manual § 8.200 Using Force)

2 These are the policies related to the manner and circumstances of Ms. Lyles' death. Anything else  
3 would be beyond the Executive's scope.

4 While there may be a call for introduction of policy information related to Taser applications,  
5 that too is beyond the scope. First, officers are trained to not use Tasers in deadly force  
6 confrontations. Second, no Taser was present, leaving such policy as irrelevant as SPD's K9 or  
7 mounted patrol policies.

8 The family has suggested that training and attendant policies related to bias free policing,  
9 profiling are also relevant. They are not. Other than unsupported speculation from the family that race  
10 played a role, there is simply no evidence to support such proposition. The recorded interaction  
11 between Ms. Lyles and the officers was nothing but civil and respectful until Ms. Lyles' demeanor  
12 rapidly changed. Prior to that moment, the officers were only aware that Ms. Lyles had previously  
13 been involved in a domestic violence incident, after which she exhibited threatening behavior toward  
14 officers in the presence of at least one of her children. Introducing such training and policy  
15 considerations would, accordingly, insert the *presumption* that race played a role where no evidence  
16 supports that position. The prejudice to the officers is manifest.

17 Moreover, the family's expressed interest in rapid intervention, family intervention, field  
18 training officer course, firearm qualifications, Terry stops, whistleblower code, etc., are equally  
19 irrelevant. Unless the family is able to clearly articulate how such policies could in any way impact  
20 the questions the panel will face their speculation is not enough to expand the scope of this inquest  
21 beyond the policy topics identified above.

1       2. The subject matter of trainings that governed the person or persons who caused the death of  
2       Charleena Lyles;

3               **a. August 2019 Discovery Demand Sections 1-5: FIT related materials**

4               For the same reasons described above, training related to the above-identified policies may be  
5 relevant to the inquest, while those outside of the fact-finding scope will not be. The records detailing  
6 the FIT investigation into Ms. Lyles' death have already been produced. In addition, the City as has  
7 already agreed, in addition to discovery already provided, to produce section numbers 1-5 of the  
8 August 2019 discovery demand.

9               **b. August 2019 Discovery Demand Section 6: Training materials**

10              The City and the family's attorneys are working to narrow down the training topics/modules  
11 contained in section 6, a – jjjj, so those will not be addressed line by line in this brief. However, it is  
12 the officers' position that only training related to the following topics is relevant:

- 13              - Use of force;
- 14              - De-escalation;
- 15              - CIT (to the extent that it addresses dealing with potential mental health issues);
- Taking a suspect into custody; and
- Rendering first aid (possibly, depending on the ME's position re survivability).

16              Again, an argument will likely be made that Taser training is also relevant – for the same reasons  
17 previously discussed it is not. A Taser could not have impacted this event because none was present.

18              As to the remainder of the requests in section 6, unless the family can clearly articulate some basis to  
19 believe that other topics are relevant, they should be deemed outside the scope of the inquest and  
20 discovery denied. This is especially true of any topics related to race, discriminatory policing, anti-  
21 harassment, profiling, etc. The family has suggested, for example, that because Ms. Lyles is black and  
22 the officers white, there is an "inherent bias" that must be considered. However, to reach that  
23 conclusion here, with absolutely no evidence that the officers' use of force was based upon anything  
24 other than a reaction to Ms. Lyles own actions, would be entirely speculative and improper. It is

1 impossible to prove the “fact” that the officers carried an inherent bias in their encounter with Ms.  
2 Lyles and facts are the purpose of these proceedings. The only evidence shows that the officers  
3 contacted Ms. Lyles as a complainant and treated her with respect. The inquest must not be stained by  
4 speculation or vague, *ad hominem* inferences.

5 The family recently suggested that Ms. Lyles’ referral to other officers involved in the prior  
6 event as “KKK” is enough to make that leap. That evidence only supports the conclusion that Ms.  
7 Lyles’ may herself have harbored inherent bias, but again that is wholly speculative and improper.  
8 Training topics must be narrowed to 1) training that the officers actually received; 2) training that was  
9 in effect at the time of the incident; and 3) training that is relevant to the officers’ decision making and  
10 conduct at the time—and pursuant to the undisputed facts—regarding their encounter with Ms. Lyles.

11 **c. August 2019 Discovery Request Section 7: McNew 2015 SPD supervisory action**

12 The inquest procedures state that “the disciplinary history of the law enforcement officer  
13 involved may not be introduced into evidence unless the administrator first determines that it is  
14 directly related to the use of force. If such information is admitted, it must be limited to the greatest  
15 extent possible.” *Appendix 2*, ¶ 4.6. The record at issue is in no way related to the use of force in this  
16 matter or any other. It is also not related to any law enforcement contact with the public and did not  
17 result in any discipline. It is irrelevant and not admissible under the inquest rules.

18 **d. August 2019 Discovery Request Sections 8-9: ALL Force I, II and III use of force**  
19 **reports written by Officers Anderson and McNew, including all related documents,**  
20 **audio and video (not including related to Charleena Lyles)**

21 In addition to being seriously overbroad and burdensome, there is no possible way that every  
22 single use of force report written by both officers could be relevant. Indeed, there is no basis to argue  
23 that *any* other use of force could be relevant. This request is not supportable.

1           For example, Level 1 force is extremely minor and unrelated to this incident. Level I uses of  
2 force include the following:

- 3           • any use of force that causes transitory pain or the complaint of transitory pain;
- 4           • transitory pain disorientation; pointing of a firearm at a subject;
- 5           • deployment of a blast ball away from people; NFDD (Noise Flash Diversion Device)  
6           away from people;
- 7           • complaint of pain during the application of handcuffs;
- 8           • use of a hobble restraint;
- 9           • use of 40 mm less lethal launcher away from people;
- 10          • deployment of stop sticks at a vehicle, but no contact was made;
- 11          • controlled placement/takedown that results in a complaint of pain or causes/is likely to  
12          cause transitory pain or disorientation;
- 13          • strikes with sufficient force to cause pain or complaint of pain;
- 14          • open hand technique with sufficient force to cause complaint or indication of pain;
- 15          • improper application of handcuffs, causing pain.

16           Level II is also irrelevant. Level II force includes:

- 17          • force that causes or is reasonably expected to cause physical injury greater than  
18          transitory pain but less than great or substantial bodily harm;
- 19          • physical injury (greater than transitory pain);
- 20          • reasonably expected to cause physical injury;
- 21          • complaint of injury;
- 22          • use of TASER;
- 23          • use of OC spray;
- 24          • use of impact weapon causing less than a Type III injury;
- 25          • canine physical contact with less than Type III injury or complaint of less than a Type  
26          III injury;
- 27          • vehicle-related force tactics causing less than Type III Injury;
- 28          • deployment of stop sticks against a vehicle, other than a motorcycle, where contact is  
29          made with the vehicle, regardless of any injury but not causing Type III injury;
- 30          • pursuit intervention technique (PIT); d
- 31          • deployment of a blast ball toward people causing less than Type III injury;
- 32          • deployment of a 40 mm less lethal device at a person causing less than Type III Injury;  
33          NFDD (Noise Flash Diversion Device) toward people causing less than Type III Injury;
- 34          • abrasion, bruising or laceration;
- 35          • takedown that causes injury or is reasonably expected to cause injury;
- 36          • punch or kick with less than Type III injury;
- 37          • punch or kick to the groin with less than Type III injury;
- 38          • unintentional injury caused by “bang out” of a blast ball;
- 39          • abrasion, laceration or bruising caused by handcuffs or handcuffing.

40           Even Type III force is irrelevant as to her circumstances, though at least it does encompass  
41 more serious force applications, including deadly force. The use of such force in completely different



1 circumstances cannot illuminate any issue properly at stake in this inquest. The scope of this massive  
2 request is utterly untethered from the purpose of an inquest. This request should be denied.

3 **e. August 2019 Discovery Request Section 10: Any and all police reports and related**  
4 **files (including video, audio, etc.) that “mention or concern” Charleena Lyles (except**  
5 **related to this incident)**

6 This request would be inclusive of reports in which Ms. Lyles was a complainant, a victim,  
7 and/or a suspect in a criminal matter. At oral argument, the family speculated that Ms. Lyles’  
8 extensive history of being the victim of domestic violence, where police allegedly “did not help her,”  
9 likely affected her interaction with the officers that day. Ms. Lyles is, of course, not here to testify, but  
10 speculating as to her mental state and feelings towards the officers, especially when the audio evidence  
11 shows an entirely cooperative and friendly interaction until her demeanor changed, goes beyond  
12 ordinary speculation into the realm of wild guess. Any reports of which the officers were unaware are  
13 not relevant or admissible. The only police report that concerns Ms. Lyles is the June 5, 2017 report  
14 that Officer Anderson reviewed on his MDT and shared with Officer McNew (SPD #2017-200822).  
15 There she was originally reported as the victim, but turned into the suspect once the officers entered  
16 the apartment and she threatened them with large scissors while her child sat on her lap. The  
17 information in that report informed of an officer caution and the potential for Ms. Lyles to exhibit  
18 threatening behavior. Officers Anderson and McNew discussed that incident, made a plan and then  
19 appropriately responded to Ms. Lyles’ burglary call – by impartially and respectful investigation.

20 As to any other reports that may describe Ms. Lyles as the suspect in any criminal behavior,  
21 those are also inadmissible and not relevant. The inquest procedures state that the decedent’s criminal  
22 history may not be introduced into evidence unless the administrator first determines that: 1) it is  
23 directly related to the reasons for the [use of force], 2) it served as the basis for an officer safety  
24 caution that the officer was aware of prior to the use of any force, or 3) other contemporaneous

1 knowledge of the individual's criminal history was relevant to the actions the officer took or how the  
2 officer assessed whether the person posed a threat. Only one prior incident fits that rubric. Ms. Lyles'  
3 criminal history or other interactions with police played no role in the officers' decision-making.

4 **f. August 2019 Discovery Request Sections 11 and 12: any and all police reports and**  
5 **related documents (including audio, video, etc.) related to Ms. Lyles specific address**  
6 **(but not Ms. Lyles) and reports of burglary, suspected burglary, trespass or suspected**  
7 **trespass at her entire apartment complex between October of 2015 and June of 2017**

8 It is hard to fathom what evidence that the family expects to glean from police reports that may  
9 or may not involve either of the involved officers and do not involve Ms. Lyles. As to the evidence  
10 sought related to burglary and trespass calls, not only are such calls in the entire complex entirely  
11 irrelevant, but the evidence in this matter establishes that there was no entry by any person other than  
12 Ms. Lyles to her apartment during the 24 hours prior to her call regarding the alleged burglary of her  
13 apartment. Evidence shows that the complex was frequently the location of calls to SPD. However,  
14 that fact has absolutely nothing to do with the officers' use of force in response to Ms. Lyles' conduct  
15 and is far afield from the proper scope of this interest.

16 **g. August 2019 Discovery Request Section 13: training curriculum and materials given**  
17 **to the Force Investigation Team detectives (FIT)**

18 It appears this request is aimed at finding nits to pick with the investigatory process. That is  
19 not the role of an inquest.

20 **h. August 2019 Discovery Request Section 14: all records prepared for or related to the**  
21 **Force Review Board hearing and its findings**

22 The City has already released, publically, the Force Review Board (FRB) findings:

23 [https://spdblotter.seattle.gov/2017/12/08/seattle-police-department-releases-force-review-board-  
findings-and-report-regarding-june-18th-officer-involved-shooting/](https://spdblotter.seattle.gov/2017/12/08/seattle-police-department-releases-force-review-board-<br/>24 findings-and-report-regarding-june-18th-officer-involved-shooting/) The purpose of an inquest is to

allow a jury to render its own opinion as to the facts surrounding the incident of Ms. Lyles' death and  
whether the officers followed policy. Whereas the FRB is a similar hearing, introduction of these

1 materials is improper and would invade the province of the jury panel in this matter. Evidence of a  
2 different investigative process undertaken for different purposes is irrelevant and could result in a  
3 tainting of the panel's own review and determination of facts and circumstances.

4 i. **August 2019 Discovery Request Section 15: The exhibits used in connection with the**  
5 **depositions taken in Lyles v. City of Seattle, 17-2-23731-1 SEA**

6 In his first Pre-inquest Order, the Administrator ruled on this request by allowing counsel for  
7 the family to share these materials with other counsel for the family, but not designating it as discovery  
8 here; this issues appears to be fully resolved except to the extent that information is covered by the  
9 protective order entered by the superior court judge. Any such issue will have to be addressed as it  
10 comes to light.

11 3. The events leading up to the death of Charleena Lyles (with specificity – including time, date,  
case number, if applicable, and factual summary.)

12 The officers' response to this inquiry is subsumed in their prior responses. Generally, the only  
13 materials relevant to this matter are the materials provided as discovery from the FIT investigation,  
14 including the information that Officer Anderson reviewed in relation to the officer caution and the  
15 June 5, 2017 incident.

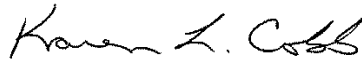
16 However, additional information that is relevant, in light of the family's dispute that Ms. Lyles  
17 threatened the officers with a knife, is information provided by Solid Ground that describes the  
18 incident in the weeks prior to Ms. Lyles' death (May 30, 2017), in which she reportedly threatened a  
19 young boy with a knife in a common area in her apartment complex. This report is relevant and  
20 admissible as it relates directly to Ms. Lyles' history of using a knife to threaten others prior to her  
21 encounter with Officers Anderson and McNew on June 18, 2017.

22 The scope of this inquest must be narrowed to the FIT investigation, the facts as confirmed in  
23 the audio portion of the officers' ICV, information known to the officers at the time of their encounter  
24

1 with Ms. Lyles, evidence establishing that she has threatened another person with a knife prior to her  
2 encounter with Officers Anderson and McNew, along with the policies and training outlined above,  
3 that are directly related to the officers' training and conduct.

4 Dated this 30<sup>th</sup> day of September, 2019.

5  
6 FREY BUCK P.S.

7 

8 Ted Buck, WSBA # 22029

9 Karen L. Cobb, WSBA # 34958

10 *Attorneys for Officers Anderson and McNew*

1 **Certificate of Service**

2 The undersigned certifies under the penalty of perjury according to the laws of the United  
3 States and the State of Washington that on this date I caused to be served in the manner noted  
4 below a copy of this document entitled **SEATTLE OFFICERS' BRIEF RE SCOPE OF**  
5 **INQUEST** on the following individuals:

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32 DATED this 30<sup>th</sup> day of September, 2019, at Seattle, Washington.

33 /s/ Matthew C. Kniffen  
34 Matthew C. Kniffen, Paralegal