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IN THE DISTRICT COURT OF THE STATE OF WASHINGTON
KING COUNTY

IN RE INQUEST INTO THE DEATH OF
CHARLEENA LYLES

No. 517IQ9301

SEATTLE POLICE DEPARTMENT’S
REPLY IN SUPPORT OF MOTION TO
STAY INQUEST PENDING DISPOSITION
OF CIVIL ACTION

[Clerk’s Action Required]

INTRODUCTION

SPD seeks a stay of proceedings – not a termination of the Inquest. As such, the bulk of the Family’s argument that SPD is attempting to deprive the Family of a “fair and transparent review” sidesteps the point. SPD is asking that the Administrator, consistent with EO 3.1, work toward an efficient and fair proceeding. The Family’s counsel does not dispute that this Inquest requires overlapping processes with the existing civil action, that this Inquest requires considerable resources from all parties, and that this Inquest will directly impact their civil case and any potential criminal

1 action. Indeed, the Family affirmed in their Joint Reply Brief Regarding Family Counsel
2 Representation,

3 The inquest **impacts both prosecution decisions and civil litigation**, creating a
4 conflict of goals between family members who support and might benefit from civil
5 litigation and those who do not. As explained in the Family’s original motion, the
6 paternal side of the family has been involved in civil litigation and, as the custodians
of Ms. Lyles’s children, has a unique interest in how this inquest will affect civil
litigation.

7 (Reply in Support of M. re: Family Representation, p. 2) (emphasis added). There is thus an explicit
8 admission that the proceedings in this Inquest *will* impact prosecutorial decisions and the civil
9 litigation that is well underway.

10 **I. The Family is not being deprived of an Inquest or any public inquiry into the**
11 **circumstances of Ms. Lyles’ death.**

12 While the Family asserts that SPD is waging a “full court press” to “prevent public inquiry”
13 of the facts and circumstances of the shooting; their assertion is flatly belied by SPD’s immediate
14 and consistent transparency into this event from the initiation of the investigation – including review
15 and fact-finding from sources outside the department. (*See M, to Stay* at p. 2). Again, this is not
16 about “preventing public inquiry” – it is about staying a parallel proceeding while the much broader
civil litigation – the clear priority of the Family at least initially – proceeds.

17 The Family is silent as to its repeat admissions that the civil litigation is in fact an *expanded*
18 inquiry into the very issues that the parties are *beginning* to investigate in this Inquest. The Family
19 writes, “SPD continues to argue for a stay stating that the civil action is premised on the same
20 underlying events as the inquest. **Of course it is** – but that is immaterial.” (Response at pp. 5-6)
21 (emphasis added). That central nexus is not immaterial – it is the basis for SPD’s motion and a key
22 factor in case law on point. It is the reason that the Administrator has the authority and discretion to
23 ensure that the parties have a fair and transparent review without a waste of time, costs, and resources

1 to *all* parties. (E.O. 3.1). It is the reason why the balancing factors that courts typically apply to
2 assess a stay balance in favor of one.

3 The Family’s briefed positions are internally inconsistent. In one portion of their Response,
4 they argue that they have public deposition testimony of the officers and SPD employees addressing
5 policy and training (Response at pp.2 and 5). Yet, in another portion of their brief, they argue, “[t]he
6 public has never heard from the officers regarding what happened that day between them and
7 Charleena Lyles. The public has never heard from a government official regarding investigation into
8 her death.” (Response at p. 9). First, on the merits, SPD’s referenced public documents bely this
9 point entirely. Second, the parties are aware the EO itself provides that officers may not be
10 compelled to testify at the Inquest. Third, it is also well known to all parties that the civil litigation
11 takes a *far* broader scope than that permitted by the Inquest rules. As such, completing the civil
12 litigation that is stayed in the trial court is a natural step to expedite fact-finding goals ultimately
13 required of this Inquest. **Otherwise, the Family will utilize the half-complete civil discovery,**
14 **involving many broad ancillary issues, to bypass discovery limitations in the inquest. This is**
15 **highlighted by the Family’s most recent submissions on scope where there are repeat references to**
16 **the Summary Judgment briefs from the *civil litigation*.** (See Guilmette Dec. re: Scope Ex. 2). These
17 matters are inextricable. The Family’s attempt to continuously reference and weave in incomplete
18 discovery in the civil case is prejudicial and inconsistent with the letter and spirit of the Executive
19 Order.

20 **II. The Family does not dispute that the balancing factors from *King* and the priority**
21 **of action rule apply.**

22 The Family largely avoids SPD’s legal authority and the balancing required by *King*. The
23 Family is silent as to SPD’s discussion of the priority of action rule and does not raise any argument

1 in opposition. Distilled down, the Family’s sole arguments against the legal authority cited in SPD’s
2 Motion to Stay is (1) the Administrator does not have the authority to stay proceedings; and (2) *King*
3 does not apply because *that case* concerned a request to stay a civil action during the pendency of a
4 criminal action. (Response at p. 5); *King v. Olympic Pipeline Co.*, 104 Wn. App. 338, 350, 16 P.3d
5 45, 52-53 (2000), *as amended on reconsideration* (Feb. 14, 2001) (citing *Landis v. N. Am. Co.*, 299
6 U.S. 248, 254-55, 57 S.Ct. 163, 81 L.Ed. 153 (1936)). These arguments, again, miss the point.

7 First, as detailed in the preceding paragraphs – SPD is not seeking a dismissal of this Inquest.
8 It is merely seeking a stay of proceedings. The Executive Order vests the Administrator with
9 authority under the Executive Order, to “[p]romote an atmosphere consistent with administrative
10 fact-finding” and tasks the Administrator “to minimize delay, cost, and burden to participants, while
11 promoting fair and open proceedings.” (E.O. 3.1). Just as courts have the authority to manage their
12 dockets, the Administrator may exercise his discretion in granting SPD’s stay request. The Family
13 cites no authority to the contrary.

14 Second, *King* addresses the balancing factors that Washington Courts – and therefore, the
15 Administrator – weigh to evaluate a stay. In its opening Motion, SPD detailed each factor identified
16 by *King* and why the balance weighs in favor of a stay. The Family is correct in noting that there is
17 no self-incrimination issue here, especially as the officers have the option to decline to testify.
18 However, the Family fully admits that *this* Inquest may impact any potential criminal action and
19 certainly the civil action. Moreover, that one factor is not decisive; the Family does not address the
20 factors explicitly identified in *King* that are exclusive of self-incrimination issues:

21 [s]imilarities between the civil and criminal cases; status of the criminal
22 case; the interest of the plaintiffs in proceeding expeditiously with
23 litigation or any particular aspect of it, and the potential prejudice to
plaintiffs of a delay; the burden which any particular aspect of the
proceedings may impose on defendants; the convenience of the court in

1 the management of its cases, and the efficient use of judicial resources;
2 the interests of persons not parties to the civil litigation; and the interest
3 of the public in the pending civil and criminal litigation.

4 *King v. Olympic Pipeline Co.*, 104 Wn. at 352-53.

5 Here, the cases are not just similar, they are overlapping. Further, it cannot be said that there
6 is any prejudice to the Family when it was the Family that elected to almost immediately pursue a
7 very publicly litigated civil action. Third, the burden on SPD and the City is heavy. While the Family
8 claims now that SPD can simply just reproduce the same records as produced in the civil litigation,
9 their discovery requests suggest otherwise. (Response at p. 7). If the Family is willing to forego
10 narrowed and distinct written discovery, forego all witness interviews, forego experts, and any pre-
11 inquest discovery – then perhaps the Family’s arguments will have some weight. It is unlikely that
12 the Family would agree to this proposal.

13 Fourth, this motion highlights the anticipated conflicts that will inevitably arise if the parties
14 are compelled to navigate a half-complete civil action with a new parallel inquest inquiry beginning.
15 There will be continued litigation on scope, admissibility, fairness, and judicial economy.
16 Management of overlapping and parallel cases prejudices this Inquest and – the Family admits –will
17 impact the civil action. Finally, the public interest is served by a stay because civil litigation provides
18 the opportunity for a full and fair public hearing of expanded issues in a public courtroom with a
19 presiding judge and a reviewing jury. The Family members may be presented for testimony. SPD
20 personnel will inevitably testify. All this will precede this Inquest – inquiring into narrower but
21 overlapping issues. A stay is the only mechanism where the parties all have a fair opportunity to
22 present their respective positions and cases. The *King* factors heavily weigh in favor of a stay.

23 **III. Tommy Le is a parallel that can apply to the facts and circumstances of the case at
hand.**

1 The Executive Order requires a “full, fair, and transparent” review. (EO 2.2). In the *Le* matter,
2 the Le family is engaged in civil litigation with the exact same procedural posture as that of this
3 matter. Here, the Family states, “SPD argues that because the family of Tommy Le stayed its inquest
4 to focus on the civil trial, the Lyles inquest should also be stayed. This is an absurd proposition.
5 Certainly, the inquest should take into account the family’s wishes and Charleena Lyles’ family
6 wishes to proceed with the inquest *now*.” (Response at p. 9). It is clear from Ms. Sylve’s e-mail that
7 the presumed decision to not call the *Le* Inquest was made on the basis that there was civil litigation
8 in place. (Sharifi Dec., Ex. 1). There was no indication in that e-mail as to whether King County and
9 its officers were provided the option to proceed with an Inquest. Here, neither the City nor the Officers
10 were provided any opportunity to similarly raise the civil litigation before Executive Constantine
11 called the Inquest. The Family’s wishes are absolutely a consideration. But a fair review requires a
12 balancing of interests. Here, there is no prejudice to the Family that elected to file and pursue a civil
13 action to stay this proceeding while the other completes. The Family admits that at least some of its
14 counsel is using this Inquest to “impact” the civil litigation. There is nothing in the Executive Order
15 limiting this Administrator’s ability to ensure fairness and to protect against unnecessary waste. If the
16 Officers or the Department who are *also* engaged in the civil litigation cannot obtain relief to ensure
17 fairness, then the principles of the Executive Order are undermined.

18 CONCLUSION

19 The Family’s Response fails to show how the *King* factors balance against a stay. The
20 Response largely fails to respond to any of SPD’s legal authority or argument in support of a stay.
21 The Family’s response simply highlights the distinct prejudice to SPD and potentially the officers by

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1 proceeding in this manner. A stay is a remedy to ensure that the Executive Order's directive of a fair
2 and transparent review is met without undue prejudice or burden to *any* party.

3 DATED this 2nd day of October, 2019.

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CERTIFICATE OF SERVICE

I certify that on the 2nd day of October, 2019, I caused a true and correct copy of this document to be served on the following in the manner indicated below:

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