

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

KING COUNTY DEPARTMENT OF EXECUTIVE SERVICES
INQUEST PROGRAM

IN RE INQUEST INTO THE DEATH OF
CHARLEENA LYLES

No. 517IQ9301

SEATTLE POLICE DEPARTMENT'S
RESPONSE TO THE FAMILY'S MOTION
TO DETERMINE INQUEST SCOPE

INTRODUCTION

None of the parties requested a scope narrower than proposed by SPD - starting at the point when Ms. Lyles called 911 at 8:55 a.m. on June 18, 2017 until she is pronounced dead at 10:18 a.m. Nor have the parties objected to including within the scope all events occurring during this timeframe.

The Family suggest that SPD's proposed time frame should be expanded to include domestic violence that occurred days, weeks, months, and years before June 18, 2017. The Family further suggest that the psychological autopsy performed by Dr. Mark Whitehill should be

1 admitted, shedding light on Ms. Lyles' state of mind at the time that she pulled a knife and
2 threatened the officers. Finally, the Family seeks the admission of several isolated facts which are
3 either prohibited outright by the Executive Order or their relevance can only be gleaned after the
4 application of extensive speculation.

5 An expansion of the timeframe beyond that proposed by SPD is unnecessary, potentially
6 misleading, beyond the scope of this inquest, and unfairly prejudicial to SPD and officers. For
7 example, the proffered mental health evaluation is inherently unreliable. More importantly it
8 suggests to the jury that they should consider what the officers could have done in hindsight if they
9 had known what the Family retained psychologist purports to know after evaluating the encounter.
10 Judging the officers' actions from a hindsight perspective has never been part of the scope or
11 purpose of the inquest. Nor does the recent expansion of the inquest subject matter to include law
12 enforcement policy now make this analysis relevant. Evidence of Ms. Lyles' domestic violence
13 history or information about Ms. Lyles' mental health not known to the officers prior to contacting
14 her should be excluded as unfairly prejudicial and beyond the scope of this inquest.

15 SPD requests that the Administrator adopt as the scope of this inquest the timeframe,
16 policy and training as identified in SPD's brief.

17 **A. Areas of disagreement with Family Members:**

18 1. Evidence of the June 5 incident outside of the four corners of the report (Family
19 6:14)

20 It is unclear from the Family's brief whether they intend to call any witnesses from the June
21 5th encounter with SPD officers and resulting in Ms. Lyles' arrest. To the extent a party intends to
22 do so, SPD objects on the basis that admitting evidence beyond the four corners of the report
23

1 reviewed by Officer Anderson may mislead the jury as to what the officers knew on June 18, 2017
2 when they approached Ms. Lyles' apartment.

3 2. Prior use of force and discipline by either Officer Anderson or Officer McNew.

4 The Family argues that prior discipline and use of force is relevant to get an understanding
5 of the totality of the officers' experience and judgment gained therefrom. The example they use is
6 hypothetically if the officer had used OC spray in the past, he may have gained insight as to whether
7 OC spray would be effective in this instance. The City opposes a blanket order finding relevant this
8 type of inquiry because it brings in prior acts which may not be appropriately admitted under an ER
9 401/403 analysis.

10 Such elicited information is pure propensity evidence without any causal connection to the
11 underlying event itself. Additionally, discovery and discussion of such materials are unduly
12 burdensome, yielding voluminous and purely irrelevant information that should not lead to the
13 discovery of any admissible evidence for the purpose of the inquest itself. In the Executive Order, there
14 is a caution against the use or attempted use of such evidence. The Order states:

15 4.6. The disciplinary history of the law enforcement member(s) involved may not be introduced
16 into evidence unless the administrator first determines that it is directly related to the use of
force. If such information is admitted, it must be limited to the greatest extent possible.

17 *Appendix 2, ¶ 4.6.* There is nothing in this case to show *any* causal connection of the officers' prior
18 discipline to the use of force on the decedent. There is nothing in the discovery that has been
19 produced to date to show *any* causal connection between the officers' prior uses of force and the
20 force used on the date of incident.

21 404(b) states, "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the
22 character of a person in order to show action in conformity therewith. It may, however, be admissible
23

1 for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge,
2 identity, or absence of mistake or accident.” ER 404(b). None of these exceptions apply to the facts
3 and circumstances at hand – rendering any need for discovery of the requested materials.

4 In civil rights litigation, prior acts of alleged misconduct or force have been excluded by
5 courts under 404(b) and 403. *See Valerie Allen v. City of Los Angeles et al.*, 2012 WL 1641712*4
6 (citing *Gates v. Rivera*, 993 F.2d 697, 700 (9th Cir.1993) (excluding evidence of prior acts of police
7 officer in civil rights case)); *see also Berkovich v. Hicks*, 922 F.2d 1018 (2d Cir. 1991) (upholding
8 the exclusion at trial of all references to the defendant police officers’ history of prior civilian
9 complaints pursuant to 403 and 404(b) of the Federal Rules of Evidence); *Maddox v. City of Los*
10 *Angeles*, 792 F.2d 1408, 1417 (9th Cir.1986)).

11 The Supreme Court of Washington identifies in criminal cases that when defense counsel fails
12 to substantiate the materiality of documents sought, a trial court abuses its discretion in awarding
13 discovery. *See State v. Blackwell*, 120 Wn.2d 822, 845 P.2d 1017 (1993) (*en banc*). In *Blackwell*, the
14 defense sought via subpoena service records and personnel files of police officers, arguing that those
15 documents were material because they “*could* lead to exculpatory evidence of improper police conduct
16 and/or arrests based on race and excessive force that might rebut the officers’ claim of proper police
17 conduct.” 120 Wn.2d at 829 (emphasis in original). The *Blackwell* Court explicitly rejected such a
18 rationale as the basis for compelling production and found that a “broad, unsupported claim” that such
19 documents “*may* lead to material information does not justify automatic disclosure of the documents.”
20 *Id.* (emphasis in original). The Supreme Court of Washington in *Blackwell* further found that “[a]
21 defendant must advance some factual predicate which makes it reasonably likely the requested file will
22 bear information material to his or her defense. A bare assertion that a document ‘might’ bear such fruit
23 is insufficient.” *Id.* at 830. As the defense made no such factual showing, the *Blackwell* Court found

1 that compelling disclosure of the documents was inappropriate. *Id.*

2 There is no reason to insert irrelevant prior instances of conduct for propensity evidence that
3 is inapplicable to the issue at hand. This Court should prohibit this inquiry because a showing has
4 not been made and no evidence has suggested that the limited exceptions identified in Section 4.6
5 of the Order apply.

6 3. Mental health diagnoses including major depressive disorder, post-traumatic stress
7 disorder, adjustment disorder, paranoia, delusions, and psychotic features. (Family
8 13:23)

8 The Family seeks to inject postmortem diagnoses by an expert retained in the civil action.
9 These diagnoses are not based on a mental health evaluation administered under normal conditions.
10 Rather they come from an expert, Dr. Mark Whitehill,¹ retained by Ms. Lyles' family in the civil
11 litigation who made these opinions after reviewing events and circumstances with the limited
12 information available to him after Ms. Lyles' death. Aside from being inherently speculative, these
13 opinions about Ms. Lyles' mental health go well beyond what the officers knew or could have
14 known as they responded to Ms. Lyles' request. Moreover, even if the officers had this information
15 prior to contacting Ms. Lyles, Ms. Lyles exhibited no unusual behavior prior to the second that she
16 pulled out a knife and attempted to stab Officer Anderson. Evidence that Ms. Lyles suffered from
17 any of the above disorders is unfairly prejudicial to the officers and City and is beyond the scope
18 of this inquest.

19 4. Domestic violence history (Family 14:4 through 18:6)

20 Evidence that Ms. Lyles endured frequent and long-term domestic violence bears no
21 relevance as to what occurred on June 18, 2017. It has no impact on how the officers acted or were

22 _____
23 ¹ To the extent the Family would like to inject expert opinions or proposes to use any experts, SPD reserves the right in future briefs to oppose the expert opinions, the scope of their proposed testimony, and their qualifications. SPD does not believe that this briefing is where expert challenges are made.

1 expected to act when they contacted Ms. Lyles. It does not explain why she reported a false
2 burglary. It does not explain why she pulled a knife from her jacket and attempted to stab the
3 officers.

4 5. Security issues at Brettler Place (Family 18:7)

5 The family claims *upon information and belief* that evidence exists to support a finding that
6 there were security issues at Brettler Place and that these security issues are relevant to this inquest
7 in rebutting City and officers' claims that Ms. Lyles falsely reported a burglary. First, the Family
8 should support its supposition with something beyond "information and belief" before attempting to
9 inject unrelated information into this Inquest. Second, Ms. Lyles reported the burglary as having
10 occurred three hours earlier than 8:55 a.m. when she was out, yet hallway videotape shows that Ms.
11 Lyles never left her apartment as she claims that she did earlier that morning. (Family Member's
12 Briefing, 13:1-2). Nor did the officers' investigation reveal any indication that a forced entry had
13 occurred. (*See* FIT statements; CSI report). Under these circumstances, regardless of whether
14 Brettler Place experiences an unusually high number of security issue -none of it is relevant to the
15 inquiry for this Inquest.

16 6. Videotape indicating that Ms. Lyles was outside at 6:45 p.m. the night before.

17 The Family suggests that the fact that Ms. Lyles was seen outside her apartment at 6:45 p.m.
18 the evening of June 17th somehow supports a conclusion that Ms. Lyles was delusional and that she
19 falsely, but genuinely, believed she was experiencing a burglary. The connection between these two
20 facts appears to be tenuous at best and not flushed out in the Family briefing. To the extent that
21 evidence of Ms. Lyles' presence outside of her apartment the evening before she called 911 to report
22 a burglary has any bearing on her mental state or whether she falsely reported the burglary is purely
23 speculative and should be excluded under an ER 401/403 analysis. This is particularly important

1 because the Family cannot draw a nexus between her being outside the *night before* and her call the
2 following morning to report a burglary. There is no evidence that the officers knew any of these facts
3 – regardless of whether they are applicable – when they went to her home to investigate the reported
4 burglary.

5 7. Anderson discipline re: taser (Family 18:21)

6 The fact that Officer Anderson was disciplined for failing to carry his Taser while on patrol
7 is not relevant to this inquiry. Parties may inquire into whether SPD policy required officer
8 Anderson to carry a Taser while on patrol and the jury may consider whether that was a violation
9 of SPD policy. However, evidence that SPD disciplined Officer Anderson for failing to carry a
10 Taser on that day invades the province of the jury and is unfairly prejudicial. Prior discipline is
11 not relevant to the inquest since the parties concede that Officer Anderson was taser certified and
12 that he did not carry a taser with him on the day of the incident as was required by SPD policy.

13 8. Lyles attack on Brettler Place resident child (Family 11:11)

14 Evidence that on May 30, 2017, Ms. Lyles threatened a child with a knife at Brettler Place
15 is not relevant to this inquest because no person reported this incident to SPD. This incident is
16 relevant only to the extent that a party challenges the evidence that Ms. Lyles brandished a knife
17 and threatened the officers on the day of the shooting. Under such circumstances, it may be relevant
18 to show that she was capable of threatening a person with a knife. Again, the Family here and in
19 the civil litigation have readily conceded that the evidence established she pulled a knife and
20 threatened the officers. (Exhibit 2 at p. 6 to *Guilmette Decl.*).

21 9. McNew's prior decision making in unrelated mental health matter where FIT
22 found fault (10:21)

1 The Family seek to admit information from Exhibit 1 to *Guilmette Decl.* which is an SPD
2 Force Review Board determination in another completely unrelated case with respect to five
3 officers, Officer McNew being one of them. There is absolutely no connection between this case
4 and Officer McNew's discipline in the unrelated matter. Such a request violates EO 4.6 and should
5 be denied by the Administrator.

6 **C. Policy – Areas of Agreement:**

7 SPD agrees that SPD Manual Chapter applies to this Inquest.

8 **D. Training – Areas of Agreement:**

9 Without conceding that the officers violated any policy or training, SPD agrees with the
10 parties that the following training is discoverable and within the scope inquest:

- 11 1. *Use of force* training (Family 8:1)
- 12 2. *Team tactics including contact/cover* (Family 10:14)
- 13 3. *Unbiased policing and implicit bias* (Family 8:16 and 9:6)
- 14 4. *Training as to less lethal* of options (Family 8:6)
- 15 5. *Training as to how to respond to a knife attack* (Family 8:12) (encompassed by use of
16 force training)

17 The City objects to any training occurring pre-2014 because this training predates the Consent
18 Decree at which time training was substantively reviewed and modified.

19 **1. Training Areas of Disagreement:**

- 20 1. *Engaging individuals in mental crisis* (Family 9:15)

21 There is no evidence that any individual involved in the alleged incident was in crisis at
22 any time. Crisis intervention training is not applicable.

- 23 2. *Responding to officer safety caution* (Family 10:3)

1 This is subsumed in other training and no specific training to this topic has been
2 provided.

3 3. *First aid* (Family 10:18) There is no evidence that first aid was improperly
4 administered.

5 4. *Early Intervention System Mentoring Plan* – SPD Manual Title 3.070 (Family 11:10)
6 EIS pertains to Officer wellness programs. The Family’s brief provides no explanation as
7 to how officer wellness programing is relevant to the facts or circumstances of Ms. Lyles’ death.

8 CONCLUSION

9 The City requests that the Administrator adopt SPD’s proposed timeframe starting at 8:55
10 a.m. when Ms. Lyles called 911 and extending through the time when officers administering first aid
11 determined that she was deceased at 10:18 a.m. The purpose of the inquest is to determine the facts
12 and circumstances of Ms. Lyles’ death. If death involved law enforcement, the inquiry shall focus on
13 what occurred “. . .while in the performance of his or her duties [and/or the exercise of his or her
14 authority]. . . .” *Appendix 2 ¶ 5.3*. The inquest is not designed or intended to bring in all sorts of
15 extrinsic evidence about the decedent occurring during her lifetime or to ask a jury to speculate as to
16 her thought processes during events leading up to her death. Extrinsic evidence is admitted only under
17 limited circumstances. As an example, evidence of criminal history is specifically permitted only if
18 the administrator first determines that it is directly related to the reason for an arrest or other relevant
19 actions the officers took or how the officers assessed whether the person posed a threat. *Appendix 2,*
20 *¶ 4.5*. There is no rational nexus between Ms. Lyles’ domestic violence history and how the officers
21 treated her, perceived her, or actions the officers took. The evidence here is that the officers treated
22 her with nothing but the utmost respect and professionalism up until the point where she initiated an
23 attack using lethal force.

1 Restricting the timeframe and admitted evidence to activities occurring between 8:55 a.m. and
2 10:18 a.m. on June 18th allows the Family to bring into play all the information that Officers Anderson
3 and McNew learned from the June 5th incident report and evidence as to how they responded to that
4 information and every action they took from the time they met Ms. Lyles for the first time at her
5 apartment door until her death. An Order applying these restrictions is consistent with the Executive's
6 Order defining the limited purpose of this inquest.

7 DATED this 11th day of October, 2019.

8
9 PETER S. HOLMES
Seattle City Attorney

10 By: /s/ Jeffrey Wolf
11 Jeff Wolf, WSBA# 20107
Ghazal Sharifi, WSBA# 47750

12 Assistant City Attorneys
13 E-Mail: Jeff.Wolf@seattle.gov
E-Mail: Ghazal.Sharifi@seattle.gov

14 Seattle City Attorney's Office
15 701 Fifth Avenue, Suite 2050
Seattle, WA 98104
16 Phone: (206) 684-8200

17 *Attorneys for Defendant City of Seattle and Seattle Police*
18 *Department*

CERTIFICATE OF SERVICE

I certify that on the 11th 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:

Dee Sylve Inquest Program Manager DES-Dept. of Executive Services 401 5 th Ave., suite 131 Seattle, WA 98104 (206) 477-6191	(x) Electronic Delivery Dee.Sylve@kingcounty.gov
Matt Anderson Inquest Program Attorney DES-Dept. of Executive Services 401 5 th Ave., suite 131 Seattle, WA 98104 (206) 263-7568	(x) Electronic Delivery Matt.Anderson@kingcounty.gov
Karen Koehler Melanie Nguyen Lisa Benedetti 3600 15th Ave W Ste 300 Seattle, WA 98119-1330 (206) 448-1777 <i>[Attorneys for the Lyles Family]</i>	(x) Electronic Delivery Karenk@stritmatter.com Melanie@stritmatter.com Lisa@stritmatter.com elodie@stritmatter.com anner@stritmatter.com
Edward H. Moore Law Offices of Edward H Moore PC, Attorney for Lyles Estate 3600 15th Ave W Ste 300 Seattle, WA 98119-1330 (206) 826-8214 <i>[Attorneys for the Lyles Family]</i>	(x) Electronic Delivery emoore@ehmpc.com
Personal Representative of the Estate of Charleena Lyles Commissioner Eric Watness	(x) Electronic Delivery Ericwatness1@gmail.com
Corey Guilmette Public Defender Association 110 Prefontaine Pl. S, Suite 502 Seattle, WA 98104-2626	(x) Electronic Delivery corey.guilmette@defender.org

1	(206) 392-0050 EXT 711 <i>[Attorneys for the Lyles Family]</i>	
2		
3	Prachi Dave Public Defender Association 110 Prefontaine Pl. S, Suite 502 Seattle, WA 98104-2626 (610) 517-9062 <i>[Attorneys for the Lyles Family]</i>	(x) Electronic Delivery prachi.dave@defender.org
4		
5		
6	Karen Cobb Frey Buck, P.S. 1200 5th Ave, Ste 1900 Seattle, WA 98101-3135 (206) 486-8000 <i>[Attorney for Officer Steven McNew]</i>	(x) Electronic Delivery kcobb@freybuck.com
7		
8		
9		
10	Ted Buck Frey Buck, P.S. 1200 5th Ave, Ste 1900 Seattle, WA 98101-3135 (206) 486-8000 Paralegals: Lisa Smith Matthew Kniffen Megan Riley <i>[Attorney for Officer Jason Anderson]</i>	(x) Electronic Delivery tbuck@freybuck.com lsmith@freybuck.com mkniffen@freybuck.com MRiley@freybuck.com
11		
12		
13		
14		
15	Rebecca Boatright Executive Director for Seattle Police Dept. Attorney for Chief Best Seattle City Attorney's Office 701 5th Ave Ste 2050 Seattle, WA 98104-7095	(x) Electronic Delivery Rebecca.Boatright@Seattle.gov
16		
17		
18		

19

20 */s/ Jennifer Litfin*
Jennifer Litfin, Legal Assistant