

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

KING COUNTY DEPARTMENT OF EXECUTIVE SERVICES INQUEST PROGRAM

In re INQUEST INTO THE DEATH OF
CHARLEENA LYLES,

NO. 517IQ9301

**FAMILIES’ BRIEF RE OPEN
COURTS**

TO: CLERK OF THE ABOVE-ENTITLED COURT; and

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD:

I. RELIEF REQUESTED

The Families request that live streaming video and audio (without any blurring of the involved Officers’ faces) be available online to the Families and the public who are unable to participate in the inquest in person.

II. INTRODUCTION

On June 18, 2017, Seattle Police Department (SPD) officers Jason Anderson and Steven McNew shot and killed Charleena Lyles. In December 2017, in response to growing community concern Executive Dow Constantine convened a six-member Inquest Review Committee (IRC) to propose reforms to King County’s long-standing inquest procedures. *Family of Butts v. Constantine*, 198 Wn.2d 27, 34, 491 P.3d 132 (2021). The IRC found that inquest procedures

1 were largely perceived by community members as “favor[ing] law enforcement,” “lack[ing]
2 compassion” and “condescending to families” of those killed by police. *Id.* at 34-35. The IRC
3 proposed several reforms to improve the inquest process including allowing the inquest jury to
4 make more meaningful observations “as a voice of the community,” and improving the
5 transparency of and better educating the public about inquests. *Id.* at 35.

6 Nearly a year later, Executive Constantine issued Executive Order PHIL 7-1-EO (2018
7 EO) incorporating several of the IRC’s proposed reforms, including *expanding public access to*
8 *inquest proceedings, including by directing the inquest administrator to make video and audio*
9 *recordings available online.* *Id.* The 2018 EO maintained the long-standing practice of
10 mandating a transparent process. *Id.* at 36. In 2020, Executive Constantine issued a revised
11 Executive Order which provided that involved officers could be subpoenaed to testify at the
12 inquest hearing like any other witness. *Id.* at 38. The latest 2021 Executive Order requires that
13 the administrator “make the proceedings available to the public and to the media, this includes
14 video and audio recording and still photography.” PHIL 7-1-5 EO (2021 EO) Appendix 10.0. A
15 full, fair, and transparent review remains the purpose of inquest procedures. PHIL 7-1-5 EO
16 (2021 EO) Appendix 2.2.

17 III. ARGUMENT

18 The purpose of the inquest is to ensure a *full, fair, and transparent* review of any such
19 death, and to issue findings of fact regarding the facts and circumstances surrounding the death.
20 PHI-7-1-5-EO Appendix 2.2. Administrators shall strive to promote an atmosphere consistent
21 with administrative fact-finding and shall strive to minimize delay, cost, and burden to
22 participants, while promoting *fair and open* proceedings. PHI-7-1-5-EO Appendix 3.1. This is
23 because “[t]he public has a strong interest in a full and transparent review of the circumstances
24

1 surrounding the death of an individual involving law enforcement.” PHI-7-1-5-EO Appendix 7.1.
2 Although an inquest is not a court proceeding, administrators shall be guided by *open courts*
3 principles and GR 16. PHI-7-1-5-EO Appendix 3.1.

4 GR 16 states in pertinent part:

5 (c) If the judge finds that sufficient reasons exist to warrant limitations on
6 courtroom photography or recording, the judge shall make particularized
7 findings on the record at the time of announcing the limitations. This may
8 be done either orally or in a written order. In determining what, if any,
9 limitations should be imposed, the judge shall be guided by the following
10 principles:

- 11 (1) Open access is presumed; limitations on access must be
12 supported by reasons found by the judge to be sufficiently
13 compelling to outweigh that presumption;
- 14 (2) Prior to imposing any limitations on courtroom photography or
15 recording, the judge shall, upon request, hear from any party
16 and from any other person or entity deemed appropriate by the
17 judge; and
- 18 (3) Any reasons found sufficient to support limitations on
19 courtroom photography or recording shall relate to the specific
20 circumstances of the case before the court rather than reflecting
21 merely generalized views.

22 “The public trial right serves to ensure a fair trial, to remind the officers of the court the
23 importance of their functions, to encourage witnesses to come forward, and to discourage
24 perjury.” *State v. Brightman*, 155 Wn.2d 506, 514, 122 P.3d 150 (2005). While the right to
public trial is not absolute, protection of this basic constitutional right clearly requires a trial
court to resist a closure motion except under the most unusual circumstances.” *State v. Bone-*
Club, 128 Wn.2d 254, 259, 906 P.2d 325 (1995). The proponent of closure or sealing must make
some showing of a compelling interest, and where that need is based on a right other than the
right to a fair trial, the proponent must show a “serious and imminent threat” to that right. *Id.* at
258-59. While this inquest is not a court proceeding or trial, the inquest rules specifically affirm

1 that inquests be guided by open courts principles and GR 16.

2 **A. Blurring of the involved Officers' faces would contradict GR 16, open courts**
3 **principles, the inquest's long-standing practice of transparency, and Executive**
4 **Constantine's new reforms expanding public access.**

5 Since the 2018 Executive order, Executive Constantine has emphasized that inquests
6 provide a meaningful, transparent process for the families of those killed by SPD officers. He
7 carefully considered the community's concerns that the inquest process "favor[ed] law
8 enforcement," "lack[ed] compassion" and was "condescending to families" of those killed by
9 police and incorporated the IRC's proposed reforms. *Butts*, 198 Wn.2d at 34. He specifically
10 expanded public access by directing the inquest administrator to make video and audio
11 recordings available online. The latest 2021 Executive Order highlights "transparent" or
12 "transparency" at least five times. PHL-7-1-5-EO.

13 Blurring the Officers' faces would be wholly inconsistent with the intent of the entire
14 inquest process, which is to reassure the community in a transparent manner that the police
15 shooting of a woman suffering a mental crisis, in her own home in the presence of her children,
16 has gone through an objective process of review and without merely rubber stamping by the
17 police or City. A public trial discourages perjury, and a meaningful, transparent process includes
18 the Families and the public having the opportunity to observe the Officers' facial expressions and
19 look them in the eyes when they testify about what happened the night Charleena Lyles died. Not
20 allowing the Families and the public to actually view the Officers' faces would deny everyone
21 that right.

22 **B. The involved Officers' safety concerns regarding video streaming do not**
23 **outweigh the presumption of open access.**

24 Officers Anderson and McNew argue that safety concerns require the blurring of their
faces during video recording. They noted during the pre-hearing conference that Officer

1 McNew’s wife’s retail store was targeted during the 2020 Black Lives Matter protests because
2 she was married to him. But Steven McNew’s wife’s store, Rove, was located in Capitol Hill
3 where all stores were painted or drawn on.

4 This isn’t a case with sensitive information or involving minors whose identities should
5 be protected. This case, its facts, and the identities of Officers Anderson and McNew have
6 already been widely reported. A quick google search of either of their names reveals multiple
7 images of their faces. Open access is presumed and limitations on access must be supported by
8 reasons sufficiently compelling to outweigh that presumption. The involved Officers must
9 demonstrate a “serious and imminent threat” to their right to privacy or safety and they cannot
10 given the fact that they have already been identified and shown in numerous articles and
11 publications. Blurring the Officers’ faces during the inquest does not protect them – it only
12 serves to deny the Families and the public the opportunity to fully comprehend, participate in,
13 and view the entire inquest process.

14 **IV. CONCLUSION**

15 As our state Supreme Court has stated, “the Families are beneficially interested in the
16 conduct of the coroner’s inquests. The inquest process is integral to the Families’ deeply
17 personal interest in seeking justice on behalf of their family members who have been killed by
18 law enforcement officers.” *Butts*, 198 Wn.2d at 52.

19 //

20 //

21 //

22 //

23 //

24

1 Blurring the involved Officers' faces will rob the Families from truly participating in the inquest
2 process, by taking away their right to observe the Officers when they finally answer questions
3 about the death of their daughter, sister, and mother, Charleena Lyles. The Families request full
4 audio and video live streaming to be available, just as it was available for the Damarius Butts
5 inquest.

6 s/ Karen Koehler

Karen Koehler, WSBA #15325

7 Edward H. Moore, WSBA #41584

8 Melanie Nguyen, WSBA #51724

Stritmatter Kessler Koehler Moore

3600 15th Ave W Ste 300

9 Seattle, WA 98119-1330

(206) 448-1777

10 Karenk@stritmatter.com

Attorney for the Family of Charleena Lyles

CERTIFICATION

I hereby certify that on May 23, 2022, 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 Claire Thornton Claire.Thornton@kingcounty.gov Dee Sylve Dee.Sylve@kingcounty.gov Matt Anderson Matt.Anderson@kingcounty.gov DES-Dept. of Executive Services 401 5th Ave., suite 131 Seattle, WA 98104</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, WSBA 47750 Ghazal.Sharifi@seattle.gov Rebecca Boatright Rebecca.Boatright@Seattle.gov Rebecca Widen Rebecca.widen@seattle.gov Seattle City Attorney's Office 701 5th Ave. Suite 2050 Seattle, WA 98104-7097 Counsel for City of Seattle 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>Ted Buck, WSBA #22029 tbuck@freybuck.com Karen Cobb, WSBA #34958 kcobb@freybuck.com Frey Buck, PS 1200 5th Ave, Suite 1900 Seattle, WA 98101 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>

/s/ Anne Roberson

 Anne Roberson
 anner@stritmatter.com