



King County

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PRE-HEARING CONFERENCE ORDER

**INQUEST INTO THE DEATH OF ROBERT LIGHTFEATHER
INQUEST # 17IQ16588**

PARTIES:

Family of the Robert Lightfeather:	Represented by Teri Rogers Kemp
Law enforcement officers:	Federal Way Police Department Officers Tyler Turpin and Austin Rogers, represented by Thomas Miller and Ann Trivett
Employing government department:	Federal Way Police Department, represented by Thomas Miller and Ann Trivett
Administrator:	Robert McBeth, assisted by Matt Anderson

The Inquest Administrator (IA), having presided over a Pre-Hearing Conference on June 16, 2022, considered the briefing submitted by the parties on June 8 and 13, as well as their comments on June 16 and having reviewed the discovery produced thus far in this matter¹, hereby rules as follows:

At the Pre-Hearing conference on May 31, 2022, the parties agreed to the majority of the Witness List, Factual Scope and Policy Scope proposed by the IA. In short, the parties agreed that the jury will hear testimony describing what happened from the point when Mr. Lightfeather alerted Mr. Kangethe that his vehicle was smoking until Mr. Lightfeather was rolled over and taken into custody by FWPD shortly after being shot (See section 5 of the Pre-Hearing Conference Order signed June 8, 2022 for a full description of the Factual Scope). The parties

¹ All facts described in this order are based on the discovery provided thus far in this matter. No party has identified conflicts necessary to be resolved to determine the matters that form the basis of this order.

likewise agreed that jury will determine whether the Officers followed FWPD's policy on Deadly use of Force (See section 6 of the Pre-Hearing Conference Order signed June 8, 2022 for a full description of the Policy Scope). The IA reserved ruling on four matters to benefit from briefing and comments by the parties:

1. Factual Scope: Mr. Kangethe and Nyanjui may completely describe their interactions with, and observations of, Mr. Lightfeather. The responding officers may document evidence of alcohol found at the scene.

Mr. Lightfeather, Kangethe and Nyanjui were at the car wash interacting for about 20 minutes after Mr. Lightfeather let Mr. Kangethe know that his vehicle's hood was smoking. Mr. Kangethe and Lightfeather spoke and shared drinks of whiskey. Mr. Lightfeather had a firearm with him the whole time, at times changing hands to enable a drink. At one point he pointed the pistol at Mr. Kangethe, apparently taking issue with confusion that Mr. Kangethe exhibited over Mr. Lightfeather's name. After the shooting, an alcohol bottle was found with a small amount of alcohol left in it.

An inquest is not a trial, where the relevance of evidence is determined by whether a particular fact makes a claim or defense more or less likely. Instead, an inquest jury must hear evidence allowing them to determine "who the person was, and when, where, and by what means he or she came to his or her death, and into the circumstances attending his or her death." RCW 36.24.040." The interactions of Mr. Lightfeather with Mr. Kangethe and Nyanjui were the reason that the police came into contact with Mr. Lightfeather and are a "circumstance attending" Mr. Lightfeather's death.

The Family asks the IA to not allow this evidence because it is unduly prejudicial. While drinking and having an open container in public may carry some prejudice, such action is, at most, a civil infraction and the prejudice is slight. Furthermore, the fact of social engagement between the two in the form of drinking mitigates the evidence of Mr. Lightfeather appearing immediately with a gun. Overall, any prejudicial effect of such evidence is outweighed by its clear relevance to enable the jury to satisfy a clear mandate under RCW 36.24.040.

2. Factual Scope: The King County Medical Examiner (KCME) may testify that the Washington State Patrol Crime Lab (WSPCL) will be permitted to opine as to the actual BAC level in this case.

The WSPCL lab reports requested by the King County Medical Examiner (KCME) provide that Mr. Lightfeather's Blood Alcohol level was .240 g/100mL. Evidence that Mr. Lightfeather had alcohol in his blood corroborates the testimony described in section 1, above. Such evidence is relevant to show the facts and circumstances present at the scene and bears on the likelihood that Mr. Lightfeather acted in the manner described by the various eyewitnesses and will be admitted as evidence to be presented to the Inquest Jury. Such evidence is highly probative and outweighs any prejudicial effect.

3. Witness List: The Inquest Administrator will not call Kristin Maury or Kyle Davis to testify.

Neither Kristin Maury nor Kyle Davis were present at the Elephant Car Wash and neither have current, relevant information that will assist the Inquest Jury in making its findings of the facts and circumstances surrounding Mr. Lightfeather's death.

Kyle Davis worked at the car wash but was not present at the time of the shooting. He spoke to Det. Heather Castro who reported that he said that he met Mr. Lightfeather in 2006 and last saw Mr. Lightfeather in 2013 (11-4 years prior to Mr. Lightfeather's death). She reports that he also said that Mr. Lightfeather became hostile and confrontational after becoming intoxicated. No statement was taken from him. Det. Castro's report is silent as to how many incidents formed the basis for his belief, whether there were other reasons that Mr. Lightfeather might have been upset or when the incident(s) occurred.

Kristin Maury reported that she had seen Mr. Lightfeather on the day of his death as they were looking for a new apartment and picked up their mutual child from day care. He had not been drinking at the time and she did not notice that he had been drinking when they communicated later that evening. She also reported that he became a different person when he drank, but described the change as being more stupid/sad or "love-dovey." The last time that she had seen him intoxicated was when they were in a different living arrangement, "so long" ago. No party has offered more specific information as to the recency of that event or previous opportunities for her to observe him when intoxicated.

FYPD and the Involved Officers ask that this testimony be admitted under ER 406 because a habit of hostile and confrontational behavior when intoxicated supports the idea that Mr. Lightfeather pointed his firearm at Officers Turpin and Rogers.² In order to qualify for admission under ER 406, the offering party must establish that the habit is a "semi-automatic, almost involuntary and invariably specific response . . . to fairly specific stimuli." The conclusory nature of the statements provided by FYPD and the IOs preclude such a finding. The fact that they are conflicting and temporally removed from the incidents of this case renders them irrelevant. Here, the probative value of any such evidence is clearly outweighed by the prejudicial effect of such evidence.

4. Policy Scope: The inclusion or exclusion of FYPD Policy 1.3.5(A) requiring that aid be requested and facilitated in certain circumstances from the Policy Scope of this inquest is RESERVED.

The Executive Order defines the scope, testimony and jury interrogatories relating to policy and training:

The panel shall also make findings regarding whether the law enforcement officer complied with applicable law enforcement agency training and policy as they relate to the death.

EO App 2, section 14.1, see also section 3.2 and 12.1.

The FYPD manual in effect at the time of this incident required that a medical response be requested "immediately" if there is "significant injury" and that officers shall make "every effort to facilitate the rendering of aid to an injured person while maintaining necessary control of the person for safety reasons." Lightfeather R 00949.

² FYPD and the IOs also note that because "the inquest jury has commensurate authority to decide what witnesses and evidence are relevant to its inquiry, the coroner cannot preemptively exempt or bar particular evidence or testimony from the jury's consideration." That duty is not before this tribunal as the jury has not yet been impaneled. The jury will be given an opportunity to call witnesses and this Administrator will consider such requests under applicable authority.

The autopsy indicates that Mr. Lightfeather died of a number of wounds including a gunshot to the head. It does not indicate how long it would have taken him to die, nor is there any evidence as to whether any aid could have averted his death.

A determination of whether to include FWPD Policy 1.3.5(A) is RESERVED until the Medical Examiner is interviewed and the expected testimony on such matters is known.

DATED this 28th day of June, 2022.

A handwritten signature in cursive script that reads "Robert McBeth".

Robert McBeth
Inquest Administrator