

## **Addendum: Claim Form Estate of Charleena Lyles**

### **A. Background of SPD regarding excessive force against those with mental health issues and people of color.**

The Seattle Police Department has been under a Federal Consent Decree since 2012 after a Department of Justice investigation concluded SPD officers violated the U.S. Constitution and Federal Law by engaging in institutional, routine and widespread excessive use of force, most often against people with mental illness or substance-abuse problems. Federal investigators also found evidence of racially biased policing.

Specifically, the DOJ found reasonable cause to believe that SPD engaged in a pattern or practice of excessive force, in violation of the Fourth Amendment of the U.S. Constitution and the Violent Crime Control and Law Enforcement Act of 1994. Based on a randomized, stratified and statistically valid sample of SPD's use of force reports from Jan. 1, 2009, to April 4, 2011, DOJ factual findings included:

- SPD officers used force in an unconstitutional manner nearly 20 percent of the time;
- SPD estimates that 70 percent of use of force encounters involved individuals with mental illnesses or under the influence of alcohol or drugs. In those encounters, SPD officers unnecessarily escalated situations and used excessive force when arresting individuals for minor offenses.
- More than half of the excessive force cases involved minority populations supporting the allegations of discriminatory policing.

SPD was given the option of working with the DOJ to correct these institutional failures or face a federal lawsuit. According to the DOJ report:

To create lasting reform, SPD must continue to develop and implement new force policies and protocols, and to train its officers on how to conduct effective and constitutional policing. In addition, SPD must implement systems that ensure accountability, foster police-community partnerships, and eliminate unlawful bias.

Jenny A. Durkan, then U.S. Attorney for the Western District of Washington, made numerous statements supporting the DOJ's nine month investigation including:

- "We found in the cases that we reviewed that when officers used force, it was done in an unconstitutional and excessive manner nearly 20 percent of the time."
- "The solution to the problems identified within the Seattle Police Department will require strong and consistent leadership along the chain of command, effective training and policies, and vigilant oversight."
- "This investigation and its findings provide a clear path forward. Ongoing efforts by the city and department to address these findings will not only ensure that obligations under the Constitution are met, but will improve public confidence in the department and enhance its ability to serve the people of Seattle."

SPD elected to work with the Department of Justice which negotiated and filed a Consent Decree to address the departmental failures on July 27, 2012, and separately entered into a settlement agreement on related issues on that same date. On September 21, 2012 Federal Court Judge James L. Robart modified and entered the Consent Decree.

On paper SPD says all the right things. Its mission, policies, and training emphasize: “the sanctity of all human life and the importance of treating all persons with dignity and respect.”

At the core of SPD training is the requirement to use de-escalation tactics and techniques. The SPD Manual, sec. 8.000 through 8.2000 highlight officers’ affirmative obligations to de-escalate prior to using force when reasonably safe and feasible. Officers may only use force that is objectively reasonable, necessary, and proportionate to effectively bring a person under control.

Tracking contacts with people in crisis or suffering from mental-health issues is now supposed to be part of the department’s crisis-intervention program which was approved Judge Robart in February 2014.

Recently, a Federal court-appointed monitor found encouraging signs that the department had made significant progress in its reforms.

Unfortunately the case of Charleena Lyles and her children demonstrates that claims of significant SPD reform progress over these past several years may be largely illusory.

#### **B. The Questions raised by the killing of Charleena Lyles in front of her young children.**

This case presents the basic question:

Since when is it okay for police to ignore mental health crisis and de-escalation procedures when responding to a call for help from a pregnant black woman with well known mental health issues, so that they end up shooting and killing her in front of her children.

The SPD was called to answer this and numerous other questions posed by the Seattle City Council following the killing of Charleena Lyles. The tone of the SPD’s opus was imperious and defensive. It failed to acknowledge that the police actions and failures on June 18, 2017 were precisely the same as those that gave rise to the DOJ investigation and determination that SPD was violating the U.S. Constitution and Federal Law.

As of this date the SPD has released hundreds of pages of documents relating to this case, yet has failed to answer any of the following questions, relying on the excuse of pending internal investigations:

1. Why didn’t the officers take the time to assess the situation before entering the apartment – especially when the alleged burglary happened up to three hours before and involved computer games – making it a minor non-priority event;
2. Why did officers enter Charleena’s apartment without having first adequately determined that she had a caution both for mental health issues and for officer safety;

3. Why did officers fail to first have a plan before entering Charleena's apartment given what they should have known about her recent history;
4. Why did Officer Anderson take the lead when it was Officer McNew who was certified in Crisis Intervention Training (CIT);
5. Why did Officer Anderson tell Officer McNew that there was no mental caution when there was;
6. Why did the officers not first determine what type of weapons they had or didn't have;
7. Why didn't Officer McNew know that officer Anderson had failed to bring his taser;
8. Why was Officer Anderson allowed by his superiors and others within the department to not carry his mandated taser;
9. Why did Officer McNew direct Officer Anderson to tase Charleena if tasing would not have been effective;
10. Why didn't the officers instruct Charleena to drop the kitchen knife(s) before they shot and killed her;
11. What kind of an order is "get back";
12. Why didn't the officers warn Charleena that they were going to shoot and kill her before they did; and
13. Why wasn't a Crisis Response Team sent out when Charleena placed the call.

**C. The events leading up to the killing of Charleena Lyles in front of her children.**

In November 2015, with the help of Catholic Community Services, Charleena and her four children (ranging in age from 2 to 14) settled into the Brettler Family Place in Magnuson Park which is operated by Solid Ground, an anti-poverty group that provides housing to vulnerable populations.

In the summer of 2016, Charleena sought a restraining order against the father of her two youngest children. She alleged that he hit her with a baby bottle, struck her on the head and shattered the back window of her car, where all four kids had been sitting. She stated he had been violent for at least four of the eight years they had been together and was known to punch holes in walls, even hitting her while she was pregnant. "I feel so scared for my safety, and I just got out of the hospital from having our 6-days-old baby boy, and I had a c-section. I think he ripped my stitches open," she wrote in her June 2nd petition for an order for protection. She ended by noting that she "didn't see him changing." She asked the court for help.

That same summer, Charleena began treatment at Sound Mental Health after a domestic violence arrest in Auburn involving an altercation with one of her sisters. Charleena acknowledged she needed counseling and thought she was suffering from depression. She was stressed that she would lose her home and that the state would take her children.

Between January 2017 and June 2017, 23 calls were made from Charleena's apartment, including: 10 domestic disturbances; 4 domestic assaults, 3 reports of burglary, 2 child abuse/neglect, 1 threat, 1 welfare check, 1 missing child, and 1 follow up on a prior disturbance.

The 23 calls in a six month period were extraordinary in number and placed SPD and other City agencies on notice that Charleena and her children were in an at risk situation.

On June 5, 2017, a physical domestic disturbance was reported to the SPD. Charleena told police she had been the victim of domestic violence. Shortly after arrival two officers (Legg and Bauer) requested immediate assistance. Charleena armed herself with extra-long, metal shears. She was making unusual comments such as wanting to “morph into a wolf” and talked about “cloning her daughter.” She was sure the police officers were devils and also members of the KKK. The officers drew their guns in the presence of her young children. Charleena was instructed to drop the shears and move away from them. She did so. It was apparent to the officers that she had a mental health condition. Charleena’s family members were later consulted and told the police that Charleena had experienced a recent sudden and rapid decline in her mental health.

The officers arrested Charleena and booked her into jail for harassment. They recognized she was suffering from mental illness and recommended the case be forwarded to mental health court. She was not sent to the Crisis Solutions Center.

Ashwin Kumar, a new public defender appeared at the bail hearing in Seattle Municipal Court for the harassment and obstruction charges. He noted how fundamentally wrong it was that Charleena had called for help for domestic violence but was arrested instead. Specifically officers pulled their guns on her in the presence of her children and even though she was experiencing a mental health episode at the time.

Charleena pleaded not guilty and was jailed. It is unknown if she received mental health treatment or intervention during this time. She appeared in Mental Health Court on Tuesday June 13, 2017 where she was ordered to be released from jail the next day with conditions. She was ordered to possess no weapons and check-in with the court’s Day Reporting Program every Tuesday and Thursday and submit to random drug and alcohol testing. Her next court appearance was set for June 27.

Four days after she was released from jail, on Father’s Day Sunday June 18, 2017, at 8:55 a.m. in the morning, Charleena called 911 for help stating that “an xbox was missing” from her house and the door was open. She said the incident had occurred about three hours earlier.

Officer Anderson responded to this call. When he arrived he recalled that he had been to the unit before. He was not told by dispatch that there was an officer caution on Charleena. But because he recalled her, he reviewed the police file and noted that Charleena had been flagged as an officer safety caution. He called for additional assistance. Officer McNew then arrived. Officer McNew asked if Charleena had been “flagged mental” and Anderson replied no - just an officer safety caution. This was incorrect. Charleena had most certainly been flagged “mental. There appears to be a question as to whether the SPD was dilatory in updating the caution screen or if Officer Anderson did not properly read it. The screen disseminated by SPD after the incident clearly read: “caution: assaultive to officers, mental, threats to officers, weapon.”

The officers were not responding to a burglary in process. There was no imminent threat to life or safety involved at that point. Three hours had passed since the alleged break in.

Officer Anderson told Officer McNew:

“She called for a DV. She let them in and then she started talking all crazy about how she, the officers weren’t gonna leave. And she had a giant pair of scissors and then

started talking about her... So this gal, she was the one making all these weird statements about how her and her daughter are gonna turn into wolves, and this was on the 5<sup>th</sup>...Cause they said she was fine at first and then they were inside with her and she had this giant pair of scissor and wouldn't put them down."

The officers spent a total of 1 minute 15 second inside the vehicle before exiting and approaching the apartment building. While walking they briefly discussed Charleena and her prior behavior arriving at her door.

In discussing the details of Charleena's June 5 incident – including that she believed she would morph into a wolf - both officers were alerted to the issue of mental illness. Officer McNew failed to utilize his special training at that point.

In the few minutes between both officers meeting up and arriving at Charleena's door – zero time was spent coming up with any strategy or plan, in terms of interacting with Charleena or to ensure the safety of Charleena and her young children. The officers simply agreed that they would make sure Charleena was not between them and the door. Officer Anderson took the lead in interacting with Charleena. But because he was a trained CIT certified, Officer McNew should have taken lead.

At 9:36 a.m. the officers were welcomed by Charleena into her family's apartment. She described what had happened and began showing them around. The police interaction with Charleena mirrored the events of two weeks before. Everything started off fine and low key. The children were playing and rolling around on the floor. No distress was noted.

Suddenly Charleena changed completely in terms of her interaction with the officers. She made no threats or overtures towards her children. Her sole focus was on the officers. It didn't take a mental health expert to instantly comprehend that Charleena was experiencing some sort of an involuntary mental-illness outburst just like what happened with the scissors two weeks before.

Charleena was around five feet tall and not quite 100 pounds. She was also three months pregnant. She held a small knife and had a second one. She waved them around. The two officers were quite large. Officer McNew is 6'2'' and 250 pounds. When Charleena started waving the knives around the officers completely lost their composure. This was complicated by the fact that Officer Anderson violated SPD rules by leaving his taser in his locker.

At the outset of the knives appearing, Officer McNew instructed Officer Anderson to tase Charleena. But Officer Anderson told him he didn't have his taser. Later officer Anderson would try to cover up this breach (SPM 8.300.2) by saying he would not have used his taser anyway. That excuse falls flat in light of Officer McNew's clear direction for Anderson to use the taser during their interaction with Charleena.

Officer McNew didn't ask Officer Anderson if he had a taser. Officer McNew knew Anderson was issued a taser and that he was required to have it on his person at all times. Officer McNew instructed Anderson to use his taser precisely because Charleena was so tiny. It would quickly and easily subdue her.

Caught off guard by Officer Anderson's lack of a taser, Officer McNew mentally ran out of other options and pulled his gun. So did Officer Anderson. They shouted a few times for Charleena to

“get back.” But forgot to tell her to drop her weapon. Officer McNew was so rattled he forgot what to say.

After making no physical attempt to disarm Charleena, the officers shot and killed her in front of two of her children and within the hearing of a third child. The officers watched as Charleena’s baby crawled on top of his dead mother and clung to her. Charleena’s four year old daughter with developmental delays remained seated in the living room. Her eleven year old son emerged from the bedroom and was told go to back inside.

#### **D. Legal allegations**

Charleena’s death was unnecessary, horrifying and preventable. Officers shot and killed her in the presence of children who could easily have been struck by the multiple bullets. The actions of the SPD were the same as those encompassed within the 2012 consent decree and were:

1. Negligent
2. In violation of Section 42 U.S.C. Sec. 1983
3. In violation of the State and U.S. Constitutions
4. In violation of the A.D.A

Officers McNew and Anderson acted objectively unreasonably when they: a) responded to Charleena’s call for help without planning for her known mental illness including her belief that officers were devils and members of the KKK; b) failed to plan for de-escalation procedures should she experience a mental health outburst as she did two weeks before; c) failed to consider possible danger to children by a police visit; and d) shot and killed Charleena in the presence of her children.

The officers did not have probable cause to believe that Charleena posed a significant threat of death or serious physical injury to themselves or others at the time they used deadly force. Deadly force is not appropriate simply because a person is armed. Charleena had made no movements or threats towards her children. She did not cut anyone. The officers failed to command Charleena to drop the knives. They failed to warn her that they would shoot her.

The government has a diminished interest in using deadly force against people with mental illness. In fact a person’s mental illness weighs against the use of deadly force. Specific less-intrusive methods of subduing Charleena had been made available to the officers. In particular the use of a taser was requested but unavailable due to one officer’s direct violation of SPD rules.

Damages will be sought by the Estate under RCW 4.20.010, 4.20.020, RCW 4.20.046, RCW 4.20.060. The children also have claims for negligent infliction of emotional distress.

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