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4 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
5 AT SEATTLE

6 BAO XUYEN LE, individually and as
7 Personal Representative of the Estate of
Tommy Le; HOAI “SUNNY” LE;
8 DIEU HO; UYEN LE; KIM TUYET LE;
QUOC NGUYEN; TAM NGUYEN;
9 DUNG NGYUEN; and JEFFERSON HO,

10 Plaintiffs,

11 v.

12 REVEREND DR. MARTIN LUTHER
KING, JR. COUNTY; and KING
13 COUNTY DEPUTY SHERIFF CESAR
MOLINA,

14 Defendants.

C18-55 TSZ

ORDER

15 THIS MATTER came before the Court on a motion for summary judgment
16 brought by defendant Reverend Dr. Martin Luther King, Jr. County (“King County”),
17 docket no. 78. The Court previously ruled on King County’s motion, *see* Minute Orders
18 (docket nos. 143, 148, 163, & 178); Minutes (docket no. 167), and having considered all
19 papers filed in support of, and in opposition to, the motion, as well as the oral arguments
20 of counsel, the Court enters the following order explaining its decision to dismiss with
21 prejudice plaintiffs’ Third Cause of Action for outrage (intentional infliction of emotional
22 distress).

1 **Background**

2 On June 14, 2017, Tommy Le was fatally shot by King County Deputy Sheriff
3 Cesar Molina. The outrage claim asserted by Le’s father, mother, grandmother, aunts,
4 and siblings was not, however, premised on the shooting itself, but rather on events that
5 transpired after Le’s death. According to Bao Xuyen Le, one of Le’s aunts, King County
6 Detective Chris Johnson came to the family home during the afternoon of June 14, 2017,
7 and told her, as well as Le’s father and grandmother, that Le had been shot when he
8 “attacked the deputies with a knife.” Bao Xuyen Le Decl. at ¶ 31 (docket no. 129).
9 Detective Johnson appears to deny making this statement, indicating that he does not
10 recall exactly what he said, but remembers giving a “general account” of events,
11 including that deputies responded to the scene after receiving a call about “a man coming
12 at some people with a knife,” and that no knife was found. Johnson Decl. at ¶ 14 (docket
13 no. 82).

14 Two press releases about this incident were issued by the King County Sheriff’s
15 Office (“KCSO”), one on June 14, 2017, and the other on June 23, 2017. The first press
16 release recounted that “[a] homeowner fired a warning shot at a man running at him with
17 a sharp object in his hand,” and “[w]hen Deputies responded to the scene, the suspect
18 came at them as well.” Ex. 1 to Houck Decl. (docket no. 81-1). It further indicated that
19 the suspect did not comply with orders to get on the ground and drop what he was
20 holding, “continued to advance” after being tasered, and was struck “in the torso” by at
21 least one bullet. *Id.* It did not identify the suspect. *Id.*

1 The second press release contained a similar summary of events, stating that the
2 suspect attempted to stab the 9-1-1 caller with a knife before deputies arrived and the
3 suspect was shot, and identifying Tommy Le as the suspect. Ex. 1 to West Decl. (docket
4 no. 86-1). The second press release disclosed that “[t]he object the suspect had in his
5 hand at the time of the shooting was a pen,” but it did not discuss the autopsy results, and
6 instead indicated that “[t]he number of times the suspect was hit will come from the
7 Medical Examiner’s Office.” See id. Plaintiffs contend that, as a result of the press
8 releases, and the KCSO’s failure to correct alleged misstatements or omissions, they have
9 been publicly shamed within the local Vietnamese community. See Bao Xuyen Le Decl.
10 at ¶¶ 38-40 (docket no. 129).

11 This litigation commenced in January 2018. On June 20, 2018, a Use of Force
12 Review Board convened pursuant to Chapter 6 of the KCSO General Orders Manual
13 (“GOM”). See Ex. 81 to Arnold Decl. (docket no. 109-17). The Use of Force Review
14 Board, which was chaired by Undersheriff Scott A. Somers, answered the questions set
15 forth in GOM 6.03.010(6), indicating *inter alia* that the use of force was “justified.” Id.
16 Plaintiffs assert that the KCSO, and in particular Detective Johnson, withheld information
17 from the Use of Force Review Board, as well as the public, in an attempt to cover up
18 Deputy Molina’s wrongful conduct and shield King County from liability,¹ and that such

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22 ¹ Plaintiffs also suggest that a black Paper Mate pen found at the scene was “planted,” but they
23 offer no evidence to support this assertion, and they will not be permitted to proceed to trial on a
theory founded entirely on speculation or conjecture.

1 intentional acts rise to the level of outrage. King County contends that plaintiffs cannot,
2 as a matter of law, prevail on their outrage claim. The Court agrees.

3 **Discussion**

4 **A. Standard for Summary Judgment**

5 Summary judgment may be granted if no genuine dispute of material fact exists
6 and the moving party is entitled to judgment as a matter of law. *See* Fed. R. Civ.
7 P. 56(a). The moving party bears the initial burden of demonstrating the absence of any
8 issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). A fact is
9 material if it might affect the outcome of the suit under the governing law. *Anderson v.*
10 *Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). To survive a motion for summary
11 judgment, the adverse party must present “affirmative evidence,” which “is to be
12 believed” and from which all “justifiable inferences” are to be favorably drawn, *id.* at
13 255, 257, showing that a rational trier of fact could find for such party on matters as to
14 which such party will bear the burden of proof at trial, *see Matsushita Elec. Indus. Co. v.*
15 *Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *see also Celotex*, 477 U.S. at 322.

16 **B. Outrage**

17 In Washington, outrage is the same tort as intentional infliction of emotional
18 distress. *Kloepfel v. Bokor*, 149 Wn.2d 192, 193 n.1, 66 P.3d 630 (2003). Under
19 Washington law, the elements of outrage are: (i) extreme and outrageous conduct;
20 (ii) intentional or reckless infliction of emotional distress; and (iii) actual result to the
21 plaintiff of severe emotional distress. *Kloepfel*, 149 Wn.2d at 195; *Dombrosky v.*
22 *Farmers Ins. Co. of Wash.*, 84 Wn. App. 245, 261, 928 P.2d 1127 (1996). The claim
23

1 must be predicated on conduct that is “so outrageous in character, and so extreme in
2 degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious,
3 and utterly intolerable in a civilized community.” *Kloepfel*, 149 Wn.2d at 196;
4 *Dombrosky*, 84 Wn. App. at 261. The tort of outrage does not extend to mere insults,
5 indignities, threats, annoyances, or petty oppressions. *Kloepfel*, 149 Wn.2d at 196.
6 Similarly, “a certain degree of rough language, unkindness, and lack of consideration” is
7 not actionable as outrage. *See id.* The question of whether particular conduct rises to the
8 requisite level of outrageousness is “ordinarily a question of fact for the jury.”
9 *Dombrosky*, 84 Wn. App. at 261. The Court, however, may dismiss an outrage claim if
10 reasonable minds could not differ as to the conclusion that the alleged behavior was not
11 sufficiently extreme. *Id.* at 261-62.

12 **C. King County’s Motion**

13 In moving for summary judgment, King County made three distinct arguments,
14 namely that (i) King County has a qualified privilege with respect to statements made to
15 the media, (ii) family members who were not present when Detective Johnson visited the
16 family home have no cognizable claim based on the comments he allegedly made, and
17 (iii) plaintiffs cannot establish the elements of outrage. Each contention has merit.

18 The Court agrees with King County that the two press releases at issue cannot
19 form the basis of an outrage claim. King County enjoys a qualified privilege to release
20 information to the public through the media, so long as it does not make “gratuitous
21 statements concerning the facts of a case or disparaging the character of other parties to
22 an action.” *Bender v. City of Seattle*, 99 Wn.2d 582, 601, 664 P.2d 492 (1983). Plaintiffs
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1 bear the burden of establishing that King County abused its qualified privilege because it
2 knew of or acted with reckless disregard as to the falsity of one or more statements in the
3 press releases. *See id.* at 601-02. Plaintiffs have not made the requisite showing of any
4 triable issue concerning King County’s knowledge or reckless disregard as to any
5 inaccuracy of the material in the press releases.

6 The Court also agrees with King County that, to the extent the outrage claim is
7 based on statements allegedly made by Detective Johnson on June 14, 2017, Tommy Le’s
8 mother (Dieu Ho), one of his aunts (Uyen Le), and his siblings (Quoc Nguyen, Tam
9 Nguyen, Dung Nguyen, and Jefferson Ho) cannot recover because they were not present
10 at the time. *See* Restatement (Second) of Torts § 46(2)(a) & cmt. 1 (AM. LAW INST. 1965)
11 (cited with approval in *Grimsby v. Samson*, 85 Wn.2d 52, 59-60, 530 P.2d 291 (1975)).

12 Finally, the Court agrees with King County that plaintiffs have not identified
13 conduct “so outrageous in character, and so extreme in degree, as to go beyond all
14 possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a
15 civilized community.” *See, e.g., Kloepfel*, 149 Wn.2d at 196. The KCSO’s press releases
16 do not, as a matter of law, meet this standard. The initial press release did not even
17 identify Tommy Le. *See* Ex. 1 to Houck Decl. (docket no. 81-1). The second press
18 release was consistent with the data available at the time, bearing in mind that an
19 investigation was then on-going. *Compare* Ex. 1 to West Decl. (docket no. 86-1) *with*
20 Johnson Report, Ex. 74 to Arnold Decl. (docket no. 109-15).

21 Detective Johnson’s alleged statement that Tommy Le “attacked the deputies with
22 a knife” is likewise not actionable. When Detective Johnson first visited the family
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1 home, he was not even certain that Le was the individual who had been shot by Deputy
2 Molina. See Johnson Report at 13, Ex. 74 to Arnold Decl. (docket no. 109-15). When
3 he returned to the family home about an hour and a half later, having confirmed the
4 identity of the person who had been killed, the investigation was still in a nascent stage
5 and information about what transpired was still being gathered. See id. at 15. Although
6 the family would have been understandably upset by hearing an accusation that Tommy
7 Le was attacking law enforcement personnel with a knife, such statement, if made, was
8 not so inconsistent with the events leading up to the shooting, even as plaintiffs suggest
9 they unfolded, that it could be considered outrageous.

10 Finally, plaintiffs' challenges to the thoroughness of Detective Johnson's
11 investigation and to the adequacy of the Use of Force Review Board's examination do
12 not establish an outrage claim. Plaintiffs have not named Detective Johnson as a
13 defendant, and they have not explained why King County would be liable under an
14 outrage theory for any lack of diligence and/or candor on Detective Johnson's part in
15 conducting his investigation and presenting his findings to the Use of Force Review
16 Board. Plaintiffs' criticisms concerning the work of Detective Johnson and the Use of
17 Force Review Board remain at issue in the case, but in the context of King County's
18 potential liability under Monell v. Dep't of Soc. Servs. of N.Y.C., 436 U.S. 658 (1978),
19 and its progeny. Plaintiffs have provided no basis for pursuing this matter under what
20 would essentially be a duplicative claim for outrage.

1 **Conclusion**

2 For the foregoing reasons, the Court previously GRANTED in part King County’s
3 motion for summary judgment, docket no. 78, and DISMISSED with prejudice plaintiffs’
4 outrage claim (Third Cause of Action). See Minute Order at ¶ 1(a) (docket no. 178). The
5 Court further ORDERS:

6 (1) The Clerk is DIRECTED to (a) TERMINATE as plaintiffs Uyen Le, Kim
7 Tuyet Le, Quoc Nguyen, Tam Nguyen, Dung Nguyen, and Jefferson Ho; and
8 (b) AMEND the description for plaintiff Bao Xuyen Le to reflect that she sues only as
9 Personal Representative of the Estate of Tommy Le and not individually;

10 (2) The caption of this action shall now be as follows:

11 BAO XUYEN LE, as Personal Representative
12 of the Estate of Tommy Le; HOAI “SUNNY”
13 LE; and DIEU HO,

13 Plaintiffs,

14 v.

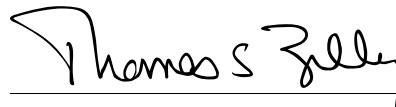
15 REVEREND DR. MARTIN LUTHER KING,
16 JR. COUNTY; and KING COUNTY DEPUTY
17 SHERIFF CESAR MOLINA,

18 Defendants.

19 (3) The Clerk is further DIRECTED to send a copy of this Order to all counsel
20 of record.

21 IT IS SO ORDERED.

22 Dated this 24th day of May, 2019.

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Thomas S. Zilly
United States District Judge