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KING COUNTY DEPARTMENT OF EXECUTIVE SERVICES
INQUEST PROGRAM

INQUEST INTO THE DEATH OF:

ALBERT WAYNE FREDERICKS, JR.,

Deceased.

Inquest No.: 17IQ427069

DEFENDANTS’ MOTIONS *IN LIMINE*

Noted for Consideration on March 27,
2023.

I. RELIEF REQUESTED

Seattle Police Department Officers Timothy Oliverson, Jacob Rogers, Garret Hay, Nathan Jerome, and Andrew Swartz (the “Officers”), by and through their counsel, Karen L. Cobb and Delaney DiGiovanni of Frey Buck, P.S., move the Administrator for an order *in limine* precluding all parties, their witnesses and attorneys from offering any evidence, making any comment, or asking any question relating to matters which are the subject of this motion. The following motions *in limine* are consistent with the mandates set forth in PHL-7-1-5-EO “Conducting Inquests in King County” and the Washington rules of evidence.

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1 **1. Exclude any questions regarding civil or criminal liability; also, questions**
2 **that relate to elements of any crime that a party may believe is applicable to**
3 **the Officer acts.**

4 Any testimony about an officer’s or SPD’s civil or criminal liability regarding this
5 incident is outside the scope and is irrelevant to the facts and circumstances of this case. *See also*
6 ¶¶ 2.3, 11.1 (“It is not the purpose of this inquest to determine the criminal or civil liability of
7 any person or agency.”).

8 **2. Exclude undesignated portions of Officers’ Body Worn Video (“BWV”).**

9 Exclude all portions of the Officers’ BWV footage that is outside of the timestamps the
10 Officers’ submitted in the IA’s “Final Draft Exhibit List” emailed to the Administrator on March
11 21, 2023. The other portions of the BWV should not be marked, played during the inquest, or
12 admitted because the Officers’ involvement with Mr. Fredericks has ended and the remainder of
13 the footage will not help the jury determine the facts and circumstances of the case; instead,
14 showing this footage will confuse the issues, mislead the jury, cause undue delay, and waste
15 time. ER 403. Moreover, there are Garrity protected statements/conversations that can be heard
16 in those portions of the videos not designated.

17 **3. Exclude images of Mr. Fredericks at the King County Medical Examiner’s**
18 **Office.**

19 The images of Mr. Fredericks’ body are highly prejudicial, inflammatory and should be
20 excluded under ER 403.¹ Typically, images of a decedent’s body only have probative value when
21 they are used to illustrate or explain the testimony of a pathologist and/or a forensic examiner at
22 the time of trial. *State v. Yates*, 161 Wn.2d 714, 768, 168 P.3d 359 (2007) (citing *State v. Lord*,
23 17 Wn.2d 829, 870, 822 P.2d 177 (1991)). Here, KCME Dr. Mazrim will not need to view the
autopsy photos during testimony as he was able to discuss Mr. Frederick’s cause of death during

¹ As of March 22, 2023, no such photos are included in the IA’s “Final Draft Exhibit List”; nevertheless, the Officers move to exclude as the exhibit list is not yet finalized.

1 a pre-inquest interview without viewing any photographs and only referencing the autopsy report
2 and addendum, which are marked as exhibits.

3 **4. Prohibit evidence intended to elicit speculation and sympathy regarding Mr.
4 Fredericks' race.**

5 There should be no mention or suggestion that Mr. Frederick's race played any role in the
6 officers' decisions regarding their contacts with Mr. Fredericks. The Administrator has already
7 agreed to allow a family statement that identifies Mr. Fredericks as Native American and a
8 training segment regarding racial bias, allowing the jury to hear that officers are trained in bias-
9 free policing. *See CITY_Fredericks_A_00000001-83.* Because there is no evidence of actual bias
10 in the encounter, any further discussion or suggestion should be prohibited.

11 **5. Exclude any mention of Officer Swartz's administrative leave.**

12 Officer Swartz's current administration leave is not connected or relevant to this incident,
13 therefore, any questions regarding his leave or eliciting testimony thereof should be prohibited as
14 prejudicial. This includes, but is not limited to, any questions about his current 2022-2023 duties
15 and assignment.

16 **6. Exclude any mention of Officer Jerome's reasons for leaving employment at
17 SPD.**

18 Officer Jerome's departure from SPD was not connected or relevant to this incident, but
19 due to an inadmissible personal matter; therefore, questions regarding his departure from SPD
20 should be prohibited to avoid speculation as to the reasons. Questions should be limited to
21 where he currently works, at another law enforcement agency in the Midwest, solely to explain
22 why he is testifying via remote video.

23 **7. Exclude hypothetical questions regarding SPD policy and training.**

The Administrator should exclude any efforts to utilize hypotheticals to identify
compliance or non-compliance with policy and/or training. While examples may be helpful in

1 explaining policy and training, manipulating the actual facts of this case to elicit testimony
2 regarding differing scenarios is goes beyond the scope of inquiry in this matter, elicits
3 speculation, confuses the factfinder, unduly prejudices the parties and would serve no purpose.
4 For example, asking hypothetical questions that incorporate facts similar to the facts of this
5 inquest and asking how those hypothetical facts may apply to particular policies and training
6 would be improper. The inquest process is to evaluate whether involved officers complied with
7 policy and training under the circumstances presented. Whether a particular policy or training
8 would also apply to a different situation is wholly irrelevant.

9
10 **8. Exclude questions eliciting testimony or evidence about what could have
been done differently by the IOs during the incident.**

11 Exclude all elicited testimony or presented evidence on “could have” or “should have” as
12 to the Officers’ actions. For example, “should you have known this type of breathing was
13 considered agonal breathing, should you have been trained on how to listen for and address a
14 “death-snore,’ or should you have started CPR?”² Moreover, questions about whether initiating
15 CPR sooner would have made a difference would be purely speculative and prejudicial. This line
16 of inquiry with any of the witnesses, particularly the Officers, lacks foundation, is based upon
17 facts not in evidence, and invites speculation premised upon 20-20 hindsight. In this regard, the
18 Officers may be asked about their training, SPD policies, and actual facts surrounding their
19 interactions with Mr. Fredericks – the only relevant issues to this fact-finding process.

20 **9. Exclude any reference to “positional asphyxia,” “compressional asphyxia,”
21 or “agonal breathing.”**

22 There is no admissible evidence in this case that Mr. Fredericks suffered from
23 “positional” or “compressional” asphyxia or exhibited “agonal breathing.” The introduction of

² See also email sent by Attorney Karen Cobb on March 22, 2023, at 9:44am to all parties arguing against inappropriate questioning re the officers’ medical assessment.

1 those issues into this matter came solely by way of family counsel's leading and factually
2 unsupported questioning of Dr. Mazrim and the EMTs Ota and Hays.

3 There is no witness with sufficient foundation to opine on whether Mr. Fredericks died
4 of asphyxia or encountered agonal breathing; Dr. Mazrim has already rejected these theories.
5 Allowing this line of foundationless questioning will encourage speculation, confuse the jury,
6 and be more prejudicial than probative. ER 403. Further support for this argument is contained
7 in the March 22, 2023 email from Karen Cobb to the parties.

8 **10. Exclude the use or reference to the Family's independent interview**
9 **transcripts (Ex. Nos. 3, 6, 52 and 54)**

10 These interviews were taken without any other party participation or notice. There were
11 multiple questions/answers that are objectionable for lack of foundation and speculation and are
12 highly prejudicial and irrelevant to this case. ER 403. The interviewees are all scheduled to
13 testify at the inquest, or already testified via perpetuation testimony, therefore these statements
14 are unnecessary as exhibits. If their recollection needs to be refreshed, it should be refreshed by
15 their statements provided to the Force Investigation Team at or near the time of the incident,³
16 which is presumably their best recollection of the events, rather than the Family's interviews
17 which took place in August 2022. The Officers move to preclude these witnesses from
18 refreshing their memory and testifying to theories or facts not in evidence that will mislead the
19 jury and confuse the issues. ER 403.

20 **11. The scope of the FIT testimony should limited so as to exclude any reference**
21 **to the involuntary nature of the Garrity statements.**

22 An explanation of the purpose and intent behind *Garrity* is outside the foundational scope
23 of any witness, particularly Detective Simmons. Detective Simmons is a FIT investigator, not an

³ Zoe Cavnar-Lewandowski statement: 01/31/2018; Nicholas Fradkin statement taken on 02/01/2018; and Patrick Hayes and Timothy Ota statements taken on 11/18/2017.

1 attorney. He cannot be asked to opine on the routine nature of *Garrity* statements or what they
2 are. This goes beyond the scope of his role in this inquest. *See* PHL_7-1-5-EO, Appx. 2, ¶ 12.3.
3 Second, any discussion of *Garrity* statements, their purpose or intent is irrelevant to the scope of
4 this inquest, it is confusing to the fact-finder, and it is prejudicial to the officers that routinely
5 provide *Garrity* statements pursuant to their terms of employment. *See* ER 401, 403.

6 **12. Exclude testimony or instruction regarding whether SPD Chief Diaz ordered**
7 **the Officers to testify.**

8 Any mention regarding whether SPD Chief Diaz ordered the Officers to testify should be
9 precluded. In that same vein, the Officers should not be questioned regarding their willingness to
10 provide a voluntary statement during their FIT interviews.

11 **13. Exclude any testimony or evidence of any officers' past discipline, reprimand,**
12 **or unrelated use of force or other incidents.**

13 In order for disciplinary history and unrelated use of force incidents to be admissible, it
14 must be “directly related” to the use of force in this case. *See* PHL-7-1-5-EO ¶ 4.6.

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

19 *Id.*

20 Additionally, evidence of this type is improper under ER 404(b), which prohibits
21 evidence of other crimes, wrongs or acts “in order to show action in conformity therewith.” ER
22 404(b). Since evidence of a prior officer involved incident or inquest could only be offered to
23 show action in conformity with alleged bad acts, the evidence is inadmissible. Last, such
evidence would serve no purpose in in clarifying the facts in this case and would require mini-
trials of the incidents involved to explain the circumstances and perspective of the events. The

1 extraordinarily limited value of such evidence, if any, would be vastly outweighed by the
2 prejudice the evidence would present.

3 **14. Exclude any testimony or evidence referring to any complaint, internal**
4 **investigation, or any other lawsuit/inquest involving any involved or**
5 **testifying officer.**

6 The Administrator should exclude evidence of any unrelated complaint, internal
7 investigation, or lawsuit against any individual or testifying officer because such evidence is not
8 relevant, will confuse the jury, is unduly prejudicial, consists of inadmissible evidence of alleged
9 prior bad acts, and is inadmissible as evidence of subsequent remedial measures. *See* ER 403;
10 404(b); 407. First, such evidence is not relevant in the instant matter as it has no tendency to
11 make any fact at issue more or less probable and has no bearing on any issue of consequence in
12 this matter. ER 401. Second, it would confuse the jury. ER 403. Third, evidence of this type is
13 improper under ER 404(b), which prohibits evidence of other crimes, wrongs or acts “in order to
14 show action in conformity therewith.” ER 404(b). Since evidence of previous complaints could
15 only be offered to show action in conformity with alleged bad acts, the evidence is inadmissible.
16 Finally, evidence of any other lawsuits or inquests involving any other officers testifying at trial
17 should also be excluded.

18 DATED this 23rd day of March, 2023, at Seattle, Washington.

19 **FREY BUCK, P.S.**

20 By: /s/ Karen L. Cobb
21 Karen L. Cobb, WSBA #34958
22 Delaney DiGiovanni, WSBA #56851
23 Attorneys for Seattle Police Department
Involved Officers