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6 KING COUNTY DISTRICT COURT OF WASHINGTON
7 WEST DIVISION

8 INQUEST INTO THE DEATH OF:
9 DAMARIUS DEMONTA BUTTS,
10 Defendant.

No. 517IQ8013

FAMILY OF THE DECEASED MOTION
REGARDING SCOPE OF DISCOVERY

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14 **I. INTRODUCTION**

15 The mother of Damarius Butts, by and through counsel Adrien Leavitt and Sadé Smith of
16 the King County Department of Public Defense, Northwest Defenders Division, object to
17 limiting discovery narrowly to only include the shooting officers in this incident.¹

18 **II. ISSUE**

- 19 1) Whether the inquest Administrator should grant the discovery demand made by counsel
20 for the mother of Damarius Butts seeking production of information relevant to the
21 actions of officers who deployed non-lethal use of force, because those the actions of

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23 ¹ Counsel for Mr. Butts' mother takes no position as to whether the involved officers who deployed non-deadly force
24 should have legal representation.

1 those officer's bear direct consequence on the circumstances by which the police shot and
2 killed Mr. Butts.

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4 **III. ARGUMENT**

- 5 1) The Administrator should permit discovery relevant to the actions of the officers who
6 deployed non-lethal use of force because those officers' actions impacted the
7 circumstances by which the shooting officers fired upon and killed Damarius Butts.

8 The purpose of an inquest is to “ensure a full, fair, and transparent review” of the facts and
9 circumstances of any death of a person involving a member of law enforcement. Executive
10 Order, Conducting Inquests in King County, October 3, 2018, 2.0 (hereinafter E.O.). In an effort
11 to strive towards fairness, the new inquest procedures in King County appoint counsel from the
12 King County Department of Public Defense to the family of the deceased if the family is
13 unrepresented. E.O. 8.12. In this case, the mother of Damarius Butts, the only family member a
14 party to this action, was unrepresented; due to the new procedures, Mr. Butts' mother is now
15 represented by assigned counsel from the Department of Public Defense.

16 Through counsel, Mr. Butts' mother requested discovery from the City Attorney's office
17 related to the shooting officers, SPD Officer Canek Gordillo, #7651; SPD Officer Elizabeth
18 Kennedy, #7725; SPD Officer Christopher Mysers, #5452; SPD Officer Joseph Vaaga, #8397.
19 This request specifically included a demand for information related to this specific incident,
20 information contacted in their personnel file with the Seattle Police Department, and information
21 relevant to their prior training and experience with Seattle Police. It appears undisputed that
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1 counsel for Mr. Butts' mother is entitled to these materials.² See Appendix A, Discovery
2 Demand, June 18, 2019.

3 In addition, counsel for Mr. Butts' mother also requests similar discovery regarding the
4 actions of **four**³ additional Seattle Police Department officers who deployed non-lethal force in
5 this incident⁴, specifically:

- 6 i. SPD Officer Chris Bandel, #8367, who pointed his firearm at Mr. Butts;
- 7 ii. SPD Officer Jacob Briskey, #6824, who was assigned to the canine and ordered the
8 dog to bite and drag Mr. Butts after he was shot;
- 9 iii. SPD Officer Hudson Kang, #7759, who pointed his firearm at Mr. Butts and was
10 subsequently shot and removed from the scene with injuries; and
- 11 iv. SPD Officer Adam Merritt, #7673, who drew his weapon in an attempt to detain Mr.
12 Butts at the outset of this incident but before Mr. Butts ran into the loading dock at the
13 federal building.

14 The actions of the non-shooting officers is relevant to the inquiry into the facts and
15 circumstances of Mr. Butts death because their actions **create the context for his death** and
16 actions by the Seattle Police after shots were fired, which may have been before or after his
17 death. Under the discovery rules, **the request is material and reasonably calculated to lead the**
18 **discovery of admissible evidence.** CrR 4.7, CR 26. While actual admissibility is not an issue at
19 this early juncture, the request is material and reasonably calculated to lead to the discovery of

21 ² At the request of the Assistant City Attorney attorneys and in hopes of aiding of the discovery process, counsel for
Mr. Butts' mother provided a narrow request for training records.

22 ³ Originally, as noted in Attachment A, the demand included information regarding a fifth officer, Officer Matthew
Clark, #8310. That request is now rescinded.

23 ⁴ The officers who deployed non-deadly force during this incident are sometimes referred to as the "non-shooting"
officers. There were far more officers involved in this case beyond the eight at issue in this discovery demand. The
discovery demand does not contemplate information about the officers who did not use any force during this
24 incident.

1 admissible evidence. The demand contemplates the background, training, and experience of the
2 involved officers who deployed non-lethal force that is directly relevant to the decisions made
3 each officer in this incident, which ultimately led the officer-involved shooting death of Mr.
4 Butts. Just like the other parties will seek to elicit testimony about Mr. Butts' actions downtown
5 which led to pursuant by police, the contextual information of which officers drew their
6 weapons, whether the officers followed relevant training and procedure in doing so, and whether
7 those officers were involved in prior misconduct that bears relevance to subsequent police action
8 here. The actions of the non-shooting officers leading up to the shooting is directly relevant to
9 assess the actions of the shooting officers. Moreover, the context does not cease to be relevant
10 once the Seattle Police officers stopped shooting at Mr. Butts; actions of the non-shooting
11 officers continue to be relevant, particularly because we do not know the exact time of Mr. Butts
12 death and whether he was indeed deceased when the canine dog bit him and dragged his body.

13 For each of the non-shooting officers who deployed non-deadly force, the discovery
14 request with additional explanation outlining why the request is material and reasonably
15 calculated to lead the discovery of admissible evidence is as follows:

16 1) Records outlining when each of the shooting and non-shooting officers received SPD issued
17 body worn video

18 The purpose of this request is to ascertain when each of the officers received and started
19 using their SPD issued body worn video (BWV). In this case, discovery contains only dash cam
20 video and no BWV. This demand seeks to verify that, in fact, none of the officers present for this
21 incident had BWV capacity.

22 2) Shooting and non-shooting officer firearms certifications and renewals

1 The purpose of this request is to verify that each officer was in compliance with their
2 firearm certification and renewal requirements. If an officer was not in compliance, this
3 information is material to show that either all officers were up-to-date on their firearms renewal
4 or, if not up-to-date, their failure to do so may be related to the facts and circumstances regarding
5 Mr. Butts' death.

6 3) Records outline each shooting and non-shooting officer's assigned firearms and Tasers for
7 the date of this incident

8 The purpose of this request is to ascertain which firearms were assigned to which officers
9 the day of this incident. Regarding Tasers, the purpose of this request is to ascertain if any of the
10 officers were armed with Tasers at the time of this incident. Each officer's firearm is material to
11 the ballistics analysis performed after Mr. Butts' death. Whether each officer was armed with a
12 Taser is material to the question of whether non-lethal force could have been used first; if the
13 officers were not armed with Tasers, then this demand will verify that fact which is otherwise not
14 verified in discovery.

15 4) OCA files for each officer & use of force history for each officer, including firearms and
16 Tasers

17 The inquest rules clearly suggest an assumption that an officer's disciplinary history, as
18 contacted in an OCA file, would be included in discovery. In the discovery section of the
19 Executive Order, 4.6 states: "The disciplinary history of the law enforcement member(s)
20 involved may not be introduced into evidence unless the administrator first determines that it is
21 directly related to the use of force." Each officer's OCA file is critical to determine whether the
22 officer was in good standing, whether there have been past findings of biased policing,
23 disciplinary history, or other relevant topics. Counsel for Mr. Butts' mother has submitted a

1 public disclosure request for each of these files for the shooting and non-shooting officers.
2 However, due to the length of time a return could take, these records are requested through
3 discovery.

4 5) Training records & specific training materials based on what appears relevant from each
5 officer's training records⁵

6 The purpose of an inquest includes inquiry into “whether the law enforcement officer
7 acted pursuant to policy and training.” E.O. 2.2. In order to inquire into whether the officers
8 followed training, counsel for Mr. Butts’ mother must know what the training purports to teach
9 as well as relevant policies. This clearly applies to the shooting officers, and also applies to the
10 non-shooting officers who were part of the dynamic scene that ultimately led to Mr. Butts’ death.

11
12 DATED this 8th day of July, 2019

13
14 /s Adrien Leavitt

15 _____
16 Adrien Leavitt, WSBA #44451
17 Sadé Smith, WSBA #44867
18 Attorneys for Mother of Damarius Butts

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23 ⁵ After the prior hearing, in an effort to streamline the request and based on the suggestion from the City Attorney’s
24 Office as well as the Administrator, counsel for Mr. Butts’ mother reviewed all of the training records that are in
discovery and provided an enumerated list of the training that appear relevant to this inquest.

APPENDIX A

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6 KING COUNTY DISTRICT COURT OF WASHINGTON
7 WEST DIVISION

8 INQUEST INTO THE DEATH OF:
9 DAMARIUS DEMONTA BUTTS,
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No. 517IQ8013
DISCOVERY DEMAND

12
13 **TO:** Ghazal Sharifi and Erika Evans, City of Seattle representing the Seattle Police Department

14 **CC:** Ted Buck and Evan Bariault, attorneys for Officers Elizabeth Kennedy, Hudson Kang,
15 Chris Myers, Joshua Vaga, and Xavier Gordillo; Matthew Anderson, King County Inquest
16 Administrator Assistant.

17 DISCOVERY DEMAND

18 Pursuant to representation of the mother of Damarius Butts, the undersigned counsel
19 request that the Seattle Police Department, provide the following records. This demand is made
20 pursuant to EO, A1, § 4 and Civil Rule 26.

21 (1) Relevant records outlining when each of the following officers was issued body worn
22 video:

23 (a) C. Bandel, #8367
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- 1 (b) J. Briskey, #6824
- 2 (c) M. Clark, #6824
- 3 (d) C. Gordillo, #7651
- 4 (e) H. Kang, #7759
- 5 (f) E. Kennedy, #7725
- 6 (g) A. Merritt, #7673
- 7 (h) C. Myers, #5452
- 8 (i) J. Vaaga, #8397

9 (2) Relevant records regarding each of the following officer's firearms certifications and
10 renewals :

- 11 (a) C. Bandel, #8367
- 12 (b) J. Briskey, #6824
- 13 (c) M. Clark, #6824
- 14 (d) C. Gordillo, #7651
- 15 (e) H. Kang, #7759
- 16 (f) E. Kennedy, #7725
- 17 (g) A. Merritt, #7673
- 18 (h) C. Myers, #5452
- 19 (i) J. Vaaga, #8397

20 (3) Relevant records regarding each of the following officer's assigned firearms & Tasers

- 21 (a) C. Bandel, #8367
- 22 (b) J. Briskey, #6824
- 23 (c) M. Clark, #6824

24

1 (d) C. Gordillo, #7651

2 (e) H. Kang, #7759

3 (f) E. Kennedy, #7725

4 (g) A. Merritt, #7673

5 (h) C. Myers, #5452

6 (i) J. Vaaga, #8397

7 (4) SPD policy regarding ongoing training requirements in order to be an officer in good
8 standing with SPD, including general good standing to be an officer and for firearms
9 certification

10 (5) DNA results and/or status of DNA testing (as ordered by WSP in Bates 852)

11 (6) SPD new officer handbook and/or new hire training requirements (with underlying
12 documents)

13 (7) Confirmation that the flash bang used was via KCSO

14 (8) Confirmation that the K9 used with SPD

15 (a) Training records for K9 and handler specific to duties and dog handler.

16 (9) All materials held by SPD subject to *Brady* disclosure for the following officers:

17 (a) C. Bandel, #8367

18 (b) J. Briskey, #6824

19 (c) M. Clark, #6824

20 (d) C. Gordillo, #7651

21 (e) H. Kang, #7759

22 (f) E. Kennedy, #7725

23 (g) A. Merritt, #7673

24

1 (h) C. Myers, #5452

2 (i) J. Vaaga, #8397

3 (10) OPA files for each of the following officers:

4 (a) C. Bandel, #8367

5 (b) J. Briskey, #6824

6 (c) M. Clark, #6824

7 (d) C. Gordillo, #7651

8 (e) H. Kang, #7759

9 (f) E. Kennedy, #7725

10 (g) A. Merritt, #7673

11 (h) C. Myers, #5452

12 (i) J. Vaaga, #8397

13 (11) All Other Use of Force reports related to firearm and/or Taser discharge for the
14 following officers:

15 (a) C. Bandel, #8367

16 (b) J. Briskey, #6824

17 (c) M. Clark, #6824

18 (d) C. Gordillo, #7651

19 (e) H. Kang, #7759

20 (f) E. Kennedy, #7725

21 (g) A. Merritt, #7673

22 (h) C. Myers, #5452

23 (i) J. Vaaga, #8397

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1 (12) Training material records (like what is requested in Bates 3606 and provided thereafter
2 for) the following officers:

3 (a) C. Bandel, #8367

4 (b) M. Clark, #6824

5 (c) H. Kang, #7759

6 (13) The following materials, if available to SPD, for each of the following training
7 attended by the below-listened officer. If SPD did not create or retain the materials,
8 please note that and any relevant information.

9 (a) Officer Vaaga, #8397:

10 i. SPD – 2017 Crowd Control/Firearms and Tactics

11 ii. SPD – 2016 Crisis Intervention Training

12 iii. SPD – 2016 Integrated Tactics

13 iv. SPD – 2016 Post BLEA Defense Tactics #3 Impact Weapons

14 v. SPD – 2016 Post BLEA Field Training Program

15 vi. SPD – 2016 Post BLEA Firearms Day 4

16 vii. SPD – 2016 Post BLEA Firearms Day 3

17 viii. SPD – 2016 Post BLEA Firearms Day 2

18 ix. SPD – 2016 Post BLEA Firearms Day 1

19 x. SPD – 2016 Post BLEA Taser X2 Operator

20 xi. SPD – 2016 Post BLEA Introduction to Rapid Intervention

21 xii. SPD – 2016 Post BLEA Defensive Tactics #4 Ground Control &
22 Survival

23 xiii. SPD – 2016 Post BLEA Fundamental Principals
24

- xiv. SPD – 2016 Post BLEA Defense Tactics #2 Counter Striking Trools
- xv. SPD – 2016 Post BLEA Barricaded Person
- xvi. SPD – 2016 Post BLEA De-Escalation
- xvii. SPD – 2016 Post BLEA Contact/Cover Roles
- xviii. SPD – 2016 Post BLEA Defense Tactics #1 Control & Cuffing
- xix. SPD – 2016 Early Intervention Training

(b) Officer Merritt, #7673:

- i. SPD – 2017 ACT Refresher – Entry
- ii. SPD – 2017 Small Team Tactics
- iii. SPD – 2017 Crown Control/Firearms and Tactics
- iv. SPD – 2016 Crisis Intervention Training
- v. SPD – 2016 Firearm Qualification and Less-lethal Recertification
- vi. SPD – 2016 Tukwila Taser Use of Force Roll Call Training
- vii. SPD – 2016 Bias-Based Complain Roll Call Training
- viii. SPD – 2015 Tactical De-Escalation/Firearms Individual Skills
- ix. SPC – 2014 Bias Free Policing
- x. SPD – 2015 Advanced Crisis Intervention Training
- xi. SPD – 2016 Early Intervention System
- xii. SPD – 2016 Defense Tactics #1

(c) Officer Myers, #5452:

- i. SPD – 2017 Crown Control/Firearms and Tactics
- ii. SPD – 2016 Integrated Tactics
- iii. SPD – 2016 Post BLEA Care Under Fire

- 1 iv. SPD – 2016 Crisis Intervention Training
- 2 v. SPD – 2016 Firearms Qualification and Less-lethal Recertification
- 3 vi. SPD – 2015 Bias-Based Complained Roll Call Training
- 4 vii. SPD – 2016 Tactical De-Escalation/Firearms Individual Skills
- 5 viii. SPD – 2016 Biased Free Policing
- 6 ix. SPD – 2015 Early Invention System
- 7 x. SPD – 2015 Officer Sustainment – Use of Force
- 8 xi. SPD – 2015 Defense Tactics #1

9 (d) Officer Kennedy, #7725:

- 10 i. SPD – 2017 Frontline Investigations
- 11 ii. SPD – 2017 Crown Control/Firearms and Tactics
- 12 iii. SPD – 2017 Care Under Fire
- 13 iv. SPD – 2016 Integrated Tactics
- 14 v. SPD – 2016 Firearm Qualification and Less-lethal Recertification
- 15 vi. SPD – 2016 Crisis Intervention Training Anti-Harassment and Anti-
- 16 Discrimination
- 17 vii. SPD – 2015 Handgun Qualification
- 18 viii. SPD – 2015 Rapid Intervention Training
- 19 ix. SPD – 2014 Bias Free Policing

20 (e) Officer Gordillo, #7651:

- 21 i. SPD – 2017 Small Team Tactics
- 22 ii. SPD – 2017 Crown Control/Firearms and Tactics
- 23 iii. SPD – 2017 Care Under Fire

