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KING COUNTY DISTRICT COURT OF WASHINGTON  
WEST DIVISION

INQUEST INTO THE DEATH OF:  
  
DAMARIUS DEMONTA BUTTS,  
  
Deceased.

No. 517IQ8013  
  
INVOLVED OFFICERS’  
RESPONSE BRIEF IN SUPPORT  
OF PROTECTIVE ORDER AND  
LIMITATION ON DISCOVERY

The protective order proposed by the Seattle Police Department does not inhibit a transparent review into the death of Damarius Butts. Indeed, any suggestion that the protective order violates the open court doctrine is misguided. Further, the discovery sought by Family counsel is outside the scope of the inquest and serves no relevant purpose in this proceeding. Finally, the administrator should grant the requested protective order and limit the Family’s discovery requests because the requests to avoid the burdensome exchange of materials that are inadmissible in the inquest and not relevant to the proceedings.

1       **1. The protective order does not prevent a transparent review of Mr. Butts' death or**  
2       **prevent public access to the inquest proceedings.**

3               The consistent use of protective orders in legal proceedings throughout the country belies  
4 any argument that use of a protective order in these proceedings violates the open court doctrine.  
5 Protective orders govern the exchange of confidential information between the parties and do not  
6 prevent the public from attending proceedings or accessing the court record. Importantly, the  
7 protective order proposed by the Seattle Police Department is very limited and not overbroad as  
8 the Family suggests. Indeed, the order itself states:

9               The parties acknowledge that this agreement is consistent with LCR 26(c) and CR  
10              45(c)(3)(A)(iii), in that it: a) does not confer blanket protection on all disclosures or  
11              responses to discovery, b) the protection it affords from public disclosure and use extends  
12              only to the limited information or items that are entitled to confidential treatment under  
13              the applicable legal principles, and c) it does not presumptively entitle parties to file  
14              confidential information under seal.

15             The cases the Family identifies in support of its position address blanket protective orders that do  
16             not apply here. *See Dreiling v. Jain*, 151 Wn.2d 900, 912, 93 P.3d 861, 866 (2004). Further, the  
17             Family cites to cases addressing access to sealed court records. **The inquest does not even**  
18             **provide a mechanism for filing court records**, thus it is unclear how any of these cases apply.  
19             Records exchanged in discovery may be used in the actual inquest proceeding, but there is little  
20             reason to believe that many of the exchanged records, especially those containing confidential  
21             information, would ever be filed.

22             The proposed protective order is appropriate and ensures that an **inquest jury, for**  
23             **example, will not be exposed to confidential information** (e.g., personal identifying or medical  
information).

1           **2. The Executive Order specifically identifies the use of protective orders.**

2           The King County Executive’s Order (Executive Order PHL-7-1-2-EO) makes clear that  
3 “[p]rotective orders may be used to limit discovery[.]” The Executive recognized that protective  
4 orders are commonplace in the exchange of discovery and circumstances may arise where a  
5 protective order is appropriate. Those circumstances include scenarios like the present where the  
6 parties are exchanging confidential information that serves no legitimate public interest.  
7 Consistent with the Executive Order, the Court should enter the proposed protective order to  
8 insure no confidential information is disseminated during the inquest.

9           **3. The Court should limit the Family’s discovery requests in accordance with the  
10 Executive Order.**

11           The Family has requested the Office of Professional Accountability (OPA) files and Use  
12 of Force reports related to firearm and/or Taser discharge for nine law enforcement personnel,  
13 including officers that did not discharge their weapons. This information has no relevancy to the  
14 inquest as established in its purpose – “to ensure a full, fair, and transparent review of any such  
15 death, and to issue findings of fact regarding the facts and circumstances surrounding the death.”  
16 Executive Order, Appendix 1, Section 2.2. Indeed, the Executive Order specifically states that  
17 such information is not admissible:

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

22           Executive Order, Appendix 2, Section 4.6. There is no logical basis to claim that any information  
23 obtained in the OPA files of the nine identified officers could have any bearing on this  
proceeding or the facts and circumstances of Mr. Butts’ death – especially those that were not  
directly involved in his death. The force used in this matter was a direct result of Mr. Butts firing

1 his weapon at officers, striking three of them. There is simply nothing in the OPA files that “is  
2 directly related to the use of force” in this case.

3 Moreover, the **Executive Order identifies discoverable material** as “the police and/or agency  
4 investigative file of the incident that resulted in the death,” “the report of the medical examiner,”  
5 “crime laboratory reports,” and “the name, addresses, and summaries and/or copies of statements  
6 of any witnesses obtained by any party.” Not only are unrelated OPA matters and Use of Force  
7 reports not contemplated as being discoverable under the Executive Order, **neither are the**  
8 **numerous training materials requested through the Family’s discovery.** For example, Family  
9 counsel requests Officer Kennedy’s training related to “Bias Free Policing.” However, there is  
10 absolutely no evidence that Officer Kennedy engaged in any bias as it relates to the cause and  
11 circumstances of Mr. Butt’s death. Officer Kennedy employed lethal force after Mr. Butts drew  
12 his handgun and shot her. If the Court is going to permit Family counsel to seek particular  
13 materials through discovery, it **should require said counsel to identify the relevancy or potential**  
14 **relevancy of such material in this proceeding in order to prevent the burdensome and**  
15 **unnecessary exchange of thousands of pages of irrelevant documents.** The purpose of the inquest  
16 is to “issue findings of fact regarding the facts and circumstances surrounding the death.” That is  
17 accomplished through the discoverable materials addressed above and specifically identified by  
18 the Executive in Appendix 2, Section 4.2.

19 DATED this 9<sup>th</sup> day of July, 2019, at Seattle, Washington.

20 **FREY BUCK, P.S.**

21 By:                     /s/ Evan Bariault                      
22 Ted Buck, WSBA #22029  
Evan Bariault, WSBA #42867  
23 Attorney for Seattle Police Department Involved  
Officers

1 CERTIFICATE OF SERVICE

2 The undersigned certifies under the penalty of perjury according to the laws of the United  
3 States and the State of Washington that on this date I caused to be served in the manner noted  
4 below a copy of this document entitled INVOLVED OFFICERS RESPONSE BRIEF IN  
5 SUPPORT OF PROTECTIVE ORDER on the following individuals:

6 Dan Satterberg, Prosecuting Attorney  
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[ ] Via Facsimile  
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DATED this 9<sup>th</sup> day of July, 2019, at Seattle, Washington.

/s/ Lisa Smith

Lisa Smith