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IN THE DISTRICT COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

IN RE INQUEST INTO THE DEATH
OF DAMARIUS D. BUTTS

No. 517IQ8013

SEATTLE POLICE DEPARTMENT'S
REPLY IN SUPPORT OF ENTRY OF
PROTECTIVE ORDER

The Seattle City Attorney’s Office, on behalf of the Seattle Police Department (“SPD”), hereby submits this reply brief in support of its request for entry of its proposed Protective Order.

I. The Family cannot justify the need for policy and training discovery regarding the non-shooting officers.

The Family fails to identify why discovery is necessary on the alleged training and policies surrounding the four¹ non-shooting officers identified in discovery. To clarify, the statements, in car video, interviews, reports, etc. of the non-shooting officers have *already* been produced to all counsel.

¹ The family’s counsel withdrew its request for one officer, Clark.

1 The objected to discovery focuses solely on four non-shooting officers that used non-lethal force and
2 discovery inquiring as to whether they complied with policy and training. The Family argues “[t]he
3 actions of the non-shooting officers is relevant to the inquiry into the facts and circumstances of Mr.
4 Butts death because their actions create the context for his death and actions by the Seattle Police
5 after shots were fired, which may have been before or after his death.” (Response at p. 3). The facts
6 and circumstances around the “actions” of the non-shooting officers are already contained in
7 produced records. However, furthering this inquiry beyond the scope of this inquest as to whether the
8 “actions” of the non-shooting officers were consistent with policy and training takes the scope of
9 inquiry far beyond what is intended for inquests. *See* Executive Order 2.1-2.3.

10 The Family draws a false comparison when it writes, “[j]ust like the other parties will seek to
11 elicit testimony about Mr. Butts’ actions downtown which led to pursuant by police, the contextual
12 information of which officers drew their weapons, whether the officers followed relevant training and
13 procedure in doing so, and whether those officers were involved in prior misconduct that bears
14 relevance to subsequent police action here.” (Response at p. 4). Inquiring and eliciting testimony
15 about the facts that preceded the ultimate shooting death of Mr. Butts is different from the Family’s
16 attempt to engage in irrelevant discovery about whether the non-shooting officers complied with
17 policy and training when they did not shoot and were not the cause of Mr. Butts’ death. The additional
18 inquiry is beyond the scope and not reasonably calculated to lead to the discovery of admissible
19 evidence.

20 **II. The Family fails to justify discovery into past use of force reports and OPA files.**

21 The Family admits that the Executive Order section 4.6 limits the use of disciplinary history
22 and prior instances of conduct. However, the Family argues, without support, that the Executive Order
23 contemplates discovery on the subject. 4.6 states, “[t]he disciplinary history of the law enforcement

1 member(s) involved may not be introduced into evidence unless the administrator first determines
2 that it is directly related to the use of force.” Again, discovery must be reasonably calculated to lead
3 to the discovery of admissible evidence. The Family argues “[e]ach officer’s OCA [*sic*] file is critical
4 to determine whether the officer was in good standing, whether there have been past findings of
5 biased policing, disciplinary history, or other relevant topics.” (Response at 5). The Family’s other
6 discovery requests already address the issues of bias policing or whether an officer is in “good
7 standing.” The sweeping discovery requests for all prior OPA files and all prior use of force reports
8 – amounting in presumably thousands of pages of records – are too broad and sweeping to be
9 reasonably calculated. There is nothing in the Family’s Response or anywhere in the discovery
10 materials that warrant the Family’s discovery request for prior OPA files and prior use of force
11 records. This request is purely for propensity evidence. As discussed at length in SPD’s opening brief,
12 an overwhelming body of caselaw opposes such sweeping requests – which are clearly requests for
13 improper 404(b) evidence.

14 DATED this 11th day of July, 2019.

15 PETER S. HOLMES
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CERTIFICATE OF SERVICE

I certify that on the 11th day of July, 2019, I caused a true and correct copy of this document to be served on the following in the manner indicated below:

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