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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  
BRIEF ADDRESSING THE PRE-INQUEST  
CONFERENCE ORDER RE: SCOPE OF  
INQUIRY

The Seattle City Attorney’s Office, on behalf of the Seattle Police Department (“SPD”), hereby submits this brief regarding the scope of this Inquest.

**INTRODUCTION**

Under the *Proposed Scope of Inquest* (3)(e), SPD does not object to the scope detailed in that Section, per se. However, SPD seeks clarification of the language of the *Proposed Scope of Inquest* (3)(e) that relates to the “circumstances, readily observable facts or conditions . . . leading up to and immediately following the death” of Damarius Butts. Pre-inquest Conference Order, *Proposed Scope*

1 of *Inquest* (3)(e). SPD also seeks clarification of the *Proposed Scope of Inquest* (3)(h) that expands  
2 the scope of inquiry in the inquest to whether “the officers who caused the death” acted pursuant to  
3 “policies and training.” Pre-inquest Conference Order *Proposed Scope of Inquest* (3)(h). Finally,  
4 SPD will detail what policy and training it considers applicable to the scope of this inquiry.

5 **I. The Administrator should clarify what “leading up to and immediately**  
6 **following” the death entails.**

7 SPD seeks clarification on what “leading up to and immediately following” the death means  
8 as it concerns the scope of this Inquest. *See* Pre-inquest Conference Order *Proposed Scope of Inquest*  
9 (3)(e). If the scope addresses only the facts and circumstances surrounding the moments immediately  
10 preceding and following the death, SPD respectfully requests this clarification. Otherwise, if there is  
11 a review of whether actions “leading up to and immediately following the death” were consistent  
12 with policy and training, then SPD objects to the extent that such an inquiry goes beyond the scope –  
13 to the actions of non-shooting officers.

14 For example, the Medical Examiner made clear that the cause of death were the fatal gunshots  
15 that Mr. Butts incurred. There was no evidence that the foot chase preceding the exchange of gun fire  
16 or that the canine bites after the exchange of gun fire caused Mr. Butts’ death. In fact, the Medical  
17 Examiner’s pre-inquest interview reveals that it was likely that Mr. Butts was already deceased prior  
18 to the canine bite. Accordingly, SPD does not object to presentation of facts detailing the  
19 circumstances before and following the death. However, SPD objects if this inquiry extends to  
20 policy/training applicable to the alleged actions “leading up to and immediately following the death”  
21 because it is beyond the scope of the inquest. Such an inquiry would render the non-shooting officers  
22 as potential subject officers, confusing the issues before the fact-finder.

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1           **II.     Whether officers who caused the death were acting pursuant to policy and**  
2           **training is an ultimate issue that must be decided by the jury.**

3           SPD seeks clarification of the language of the Pre-inquest Conference Order *Proposed Scope*  
4 *of Inquest* (3)(h). Whether the officers who caused the death of Mr. Butts acted pursuant to policy  
5 and training must be left to the province of the inquest jury. The Supreme Court of Washington is  
6 clear on this precedent that “no witness may offer testimony in the form of an opinion regarding the  
7 guilt or veracity of the defendant; such testimony is unfairly prejudicial to the defendant” “because it  
8 ‘invad[es] the exclusive province of the [jury].” *State v. Demery*, 144 Wn.2d 753, 759, (2001) citing  
9 to *City of Seattle v. Heatley*, 70 Wash.App. 573, 577 (1993) (quoting *State v. Black*, 109 Wash.2d  
10 336, 348 (1987). While the Family may argue that the officers in this case are not defendants, this  
11 argument necessarily fails. The inquest proceedings are quasi-criminal in nature. In fact, the  
12 Executive Order contemplates this; while whether officers should be disciplined or held accountable  
13 with civil or criminal liability is not the purpose of the inquest, “it is acknowledged that the facts  
14 determined in the course of the inquest may sometimes have an indirect bearing on such  
15 determinations.” King County Inquest Executive Order, *Purpose 2.3*.

16           Opinion testimony, by any party, about whether officers complied with policy and training is  
17 improper and invades the province of the jury – and has a great likelihood of unduly influencing the  
18 ultimate decision of that jury. The Executive Order supports this proposition, it states the review of  
19 the inquest “will result in the issuance of findings regarding the cause and manner of death, and  
20 whether the law enforcement member acted pursuant to policy and training.” King County Inquest  
21 Executive Order, *Purpose 2.2*. These findings are to be strictly decided by the trier of fact. While  
22 SPD does not object to attorneys by any party making closing arguments to support their proposition  
23 on whether officers complied with training and policy, offering opinion testimony through witnesses

1 to opine on this ultimate issue should be strictly prohibited. Thus, the Pre-inquest Conference Order  
2 *Proposed Scope of Inquest* (3)(h) calling for inquiry into whether the officers who caused the death  
3 acted pursuant to policy and training, must be clarified.

### 4 **III. Applicable policy and training is limited.**

5 The scope of this Inquest is limited to the facts and circumstances surrounding the death of  
6 Mr. Butts. As detailed in the Pre-inquest Conference Order, the scope of inquiry references the  
7 identity of the decedent, the place of death, the means of death, the officers who caused the death, the  
8 facts and circumstances of the death, and the “department policies” and “training” the officers who  
9 caused the death were “acting under.” This scope language does not capture the simple fact that law  
10 enforcement officers are to comply with the SPD manual and all their collective training (formal and  
11 on the job) when conducting their law enforcement responsibilities. Accordingly, this brief will focus  
12 on the most applicable manual provisions and training materials identified during discovery for this  
13 Inquest.

#### 14 *A. Policy*

15 The only applicable policy provisions at issue to provide the inquest jury the ability to assess  
16 whether the shooting officers complied with policy and training is Title 8 of the SPD manual,  
17 identified as Butts\_I 3685 and a duplicate at Bates stamped CITY 2214 – CITY 2219. This is the  
18 applicable use of force policy in effect at the time of the incident. Ultimately, the question before the  
19 Inquest jury panel centers on the officers’ use of force.

#### 20 *B. Training*

21 As noted in the preceding argument, there is no single training that can be identified as the  
22 closed universe of training and experience from which officers draw from. Officers use their training  
23 at the academy, their formal training at SPD after the academy, and the continuous on-the-job training

1 that they garner to conduct their law enforcement duties. In distilling down the identified trainings  
2 for the purposes of this Inquest, the City identifies four areas of training that it views as applicable to  
3 the Inquest inquiry: (1) use of force training; (2) care under fire; and (3) contact/cover.

4 **CONCLUSION**

5 For the reasons set forth above, the Administrator should clarify language from the *Proposed*  
6 *Scope of Inquest* (3)(e) that relates to the “circumstances, readily observable facts or conditions”  
7 “leading up to and immediately following the death” of Mr. Butts. Further, the Administrator should  
8 clarify that opinion evidence is prohibited to address whether the officers who caused the death acted  
9 pursuant to training and policy, which is the ultimate question for the fact-finder. Finally, the  
10 Administrator should limit applicable policy and training as identified above.

11  
12 DATED this 27<sup>th</sup> day of September, 2019.

13 PETER S. HOLMES  
14 Seattle City Attorney

15 By: /s/ Erika J. Evans  
16 Erika Evans, WSBA# 51159  
17 Ghazal Sharifi, WSBA# 47750

18 Assistant City Attorneys  
19 E-Mail: [Erika.Evans@seattle.gov](mailto:Erika.Evans@seattle.gov)  
20 E-Mail: [Ghazal.Sharifi@seattle.gov](mailto:Ghazal.Sharifi@seattle.gov)

21 Seattle City Attorney’s Office  
22 701 Fifth Avenue, Suite 2050  
23 Seattle, WA 98104  
Phone: (206) 684-8200

*Attorneys for the Seattle Police Department*

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### CERTIFICATE OF SERVICE

I certify that on the 27<sup>th</sup> day of September, 2019, I caused a true and correct copy of this document to be served on the following in the manner indicated below:

Matthew Anderson <a href="mailto:Matt.Anderson@kingcounty.gov">Matt.Anderson@kingcounty.gov</a>	( x ) Via Email
Dee Sylve <a href="mailto:Dee.Sylve@kingcounty.gov">Dee.Sylve@kingcounty.gov</a>	( x ) Via Email
Adrian Leavitt <a href="mailto:Adrian.Leavitt@kingcounty.gov">Adrian.Leavitt@kingcounty.gov</a>	( x ) Via Email
La Rond Baker <a href="mailto:lbaker@kingcounty.gov">lbaker@kingcounty.gov</a>	( x ) Via Email
Lori Levinson <a href="mailto:Lori.Levinson@kingcounty.gov">Lori.Levinson@kingcounty.gov</a>	( x ) Via Email
Ted Buck <a href="mailto:TBuck@freybuck.com">TBuck@freybuck.com</a>	( x ) Via Email
Evan Bariault <a href="mailto:EBariault@freybuck.com">EBariault@freybuck.com</a>	( x ) Via Email
Lisa Smith <a href="mailto:LSmith@freybuck.com">LSmith@freybuck.com</a>	( x ) Via Email
Rebecca Boatright <a href="mailto:Rebecca.Boatright@seattle.gov">Rebecca.Boatright@seattle.gov</a>	( x ) Via Email

/s/ Jennifer Litfin  
Jennifer Litfin, Legal Assistant