KING COUNTY DISTRICT COURT OF WASHINGTON
WEST DIVISION

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| INQUEST INTO THE DEATH OF:<br><br>DAMARIUS DEMONTA BUTTS,<br><br>Deceased. | No. 517IQ8013<br><br>**OFFICERS' SUBMISSION RE: USE OF GARRITY STATEMENTS** |

The officer parties respectfully respond to the following inquiry from the Administrator as follows:

> **9. Use of Garrity Statements** - The appropriate use, if any, of Garrity statements shall be briefed and determined prior to the inquest hearing. The parties shall provide their positions of the appropriate use of such statements whether or not an officer testifies at the inquest hearing.

PIO, Sept. 6, 2019.

The following portions of the governing executive order, specifically Appendix 2, govern this question. Paragraph 3.3 provides:

> 3.3. The Rules of Evidence shall generally apply, but may be supplemented and/or modified by additional rules governing administrative proceedings, at the discretion of the administrator. The administrator shall construe the Rules of Evidence in a manner consistent with the goal of administrative fact-finding



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> proceedings and to promote fairness and to minimize the delays, costs, and burdens that can be associated with judicial proceedings.

Paragraph 12.3 provides:

> 12.3. The employing government department shall designate an official(s) to provide a comprehensive overview of the forensic investigation into the incident (e.g., statements collected by investigators, investigators' review of forensic evidence, physical evidence collected by investigators, etc.). Additionally, the chief law enforcement officer of the involved agency or director of the employing government department shall provide testimony concerning applicable law enforcement agency training and policy as they relate to the death but may not comment on whether employees' actions related to the death were pursuant to training and policy; or any conclusions about whether the employee's actions were within policy and training.

By virtue of these provisions, the use of the officers' *Garrity* statements is both subject to the Rules of Evidence (and the Administrator's authority to deviated from those rules), and to the way in which the statements might be utilized. At this juncture the nature, extent, and purpose of any proffer of the statements at inquest remains unknown. Until the parties are aware of other parties' intended proffer of all or part of the statements, it is premature to speculate as to whether such proffers would be compatible with the evidence rules or the scope of the inquest.

Moreover, the Administrator has yet to determine the permissible scope of the designated official's "comprehensive overview" of "statements collected by investigators," including whether the *Garrity* statements are or can be subsumed within that scope.

In addition, the officers have yet to determine whether they will testify, cognizant of the Administrator's directive that they declare their intent by Oct. 7, 2019. The potential use or uses of the *Garrity* statements under the evidence rules will be determined, in part, on the officers' decisions.

Accordingly, the officer parties respectfully submit that it is currently impossible to meaningfully address the appropriate use of their *Garrity* statements. The officers



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respectfully request that a final determination of the matter be addressed after the officers' decision on testimony is made and after the parties proffer their respective uses of the statement, i.e. for impeachment, as substantive evidence, as exceptions to hearsay, etc.

Notwithstanding those considerations, the officers provide the following contingent response to the Administrator's request. Under no circumstances would the statements be admissible as evidence. They are hearsay with no applicable exception, and are the subject of coercion by virtue of the organic prompt – an order to provide information, which if refused, could result in departmental discipline up to and including termination. As such, the statements are the result of a condition plainly established as a matter of constitutional consequence since the *Garrity* decision.

Nor are the statements available for other, non-evidentiary purposes. Again, as a product of a coercive, employment-centric investigation, allowing their use as impeachment would interfere with the officers' protections enunciated in the *Garrity* decision. The prospect of prosecution remains a potential threat to the officers, one that the executive explicitly identified and noted could be impacted by the inquest process;

> 2.3. The purpose of the inquest is not to determine whether the law enforcement member acted in good faith or should be disciplined or otherwise held accountable, or to otherwise find fault, or to determine if the use of force was justified, or to determine civil or criminal liability. *It is acknowledged that the facts determined in the course of the inquest may sometimes have an indirect bearing on such determinations*.

See *King County Inquest Executive Order,* Appendix 1, ¶ 2.3 (emphasis supplied).

Allowing the coerced statements to be used in a subsequent proceeding impacting the officers' potential criminal exposure would violate the very constitutional protections



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considered by the Supreme Court in *Garrity*. There the Court noted that such statements are, in fact, coerced:

> The choice given petitioners was either to forfeit their jobs or to incriminate themselves. The option to lose their means of livelihood or to pay the penalty of self-incrimination is the antithesis of free choice to speak out or to remain silent. That practice, like interrogation practices we reviewed in *Miranda v. State of Arizona*, 384 U.S. 436, 464—465, 86 S.Ct. 1602, 1623, 16 L.Ed.2d 694, is 'likely to exert such pressure upon an individual as to disable him from making a free and rational choice.' We think the statements were infected by the coercion inherent in this scheme of questioning and cannot be sustained as voluntary under our prior decisions.

*Garrity v. State of N.J.*, 385 U.S. 493, 497–98 (1967). It was precisely because of this Morton's fork that the Supreme Court ruled that such coerced statements are inadmissible in subsequent proceedings. *Id.*, 500.

While the *Garrity* Court addressed subsequent criminal actions, the result of the introduction of the coerced information in a proceeding that is acknowledged to have a potential impact on criminal sanction is indistinguishable. Under either guise, the officers would be forced into a deprivation of their constitutional rights.

Under any potential theory of use, accordingly, the introduction of the coerced statements in this proceeding would be improper as a matter of established constitutional law.

DATED this 27th day of September, 2019, at Seattle, Washington.

**FREY BUCK, P.S.**

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## CERTIFICATE OF SERVICE

I certify that on the 27th 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:

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DATED this 27th day of September, 2019, at Seattle, Washington.

/s/ *Megan Riley*
Megan Riley



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