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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 TO FAMILY’S BRIEF
RE: SCOPE OF INQUEST AND
WITNESSES

The involved officers respectfully submit the following response to the Butts Family’s
brief regarding the scope of the inquest and witness list:

1. Inquest evidence is not limited to information possessed by the involved officers.

“The purpose of the inquest is to ensure a full, fair, and transparent review of any such
death, and to issue findings of fact regarding the facts and circumstances surrounding the
death.”¹

Noticeably absent from the above is any language stating or even suggesting that the
review shall be limited to information known by the involved officers. To the contrary, the above
statement makes clear that the inquest is a transparent review of the death and the facts
surrounding the death. This is further supported by Paragraph 3.2 to Appendix 2 of PHL-7-1-2-

¹ Appendix 1, Paragraph 2.2, PHL-7-1-2-EO (Conducting Inquests in King County)
INVOLVED OFFICERS’ RESPONSE
BRIEF RE: SCOPE OF INQUEST AND
WITNESSES - 1
{00295024;1}

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1 E), which states in relevant part: “the inquest scope shall include an inquiry into and the panel
2 shall make findings regarding the cause, manner, and circumstances of the death, including
3 applicable law enforcement agency policy.” The findings are not limited to knowledge possessed
4 by the involved officers.

5 An inquest reviews all the facts and circumstances surrounding the death, whether known
6 or unknown to involved officers. The family’s suggested limitation on evidence ignores the
7 stated purpose of the inquest – a full, fair and transparent review of the death. Moreover, the
8 family’s reasoning is internally inconsistent, as they have endorsed civilian witnesses whose
9 knowledge of the incident was plainly not known to the involved officers. Further, testimony
10 from non-involved officers would be inadmissible because the involved officers did not possess
11 the same knowledge. The inquest rules are incompatible with such a limited survey of the
12 circumstances surrounding the death.

13 Much of what the Family seeks to exclude is essential to a full and transparent evaluation
14 of the event. For example, the facts surrounding Officer Merritt’s encounter with Damarius and
15 Adrian Butts are highly significant. Officer Merritt is expected to testify that he had Mr. Butts
16 pinned to the ground and intended to arrest him at the corner of 1st & Madison. However, due to
17 Adriana Butts’ assault of Officer Merrit, Damarius Butts was able to escape and continue fleeing
18 on foot. This information is highly relevant to the facts and circumstances of Damarius Butt’s
19 death as they show (1) that law enforcement attempted to detain and arrest Mr. Butts without the
20 application (or even consideration) of deadly force,² (2) that the actions of Adriana Butts allowed
21 Mr. Butts to escape, thus leading to a later deadly confrontation, and (3) evidence Damarius
22 Butts’ state of mind during his interactions with law enforcement.

23 _____
² The fact Mr. Butts had opportunities to comply with law enforcement prior to the deadly confrontation is highly relevant to the facts and circumstances of his death.

1 The family's argument that the decedent's prior criminal history is not admissible ignores
2 the clear directive contained in PHL-7-1-2-EO (Conducting Inquests in King County). It states:

3 4.4 The decedent's criminal history may not be introduced into evidence unless the
4 administrator first determines that: it is directly related to the reason for an arrest,
5 detention, or use of force (e.g. officers were arresting an individual convicted of a
6 felony who they believed was carrying a firearm); it served as the basis for an
7 officer safety caution (or equivalent warning) that the member(s) of the law
enforcement agency was aware of prior to any use of force; or other,
contemporaneous knowledge of the individual's criminal history was relevant to
the actions the officer(s) took or how the officer(s) assessed whether the person
posed a threat.

8 Here, Damarius and Adriana Butts' activities at the 7-11 and on the corner of 1st & Madison are
9 directly related to the reason police attempted to detain both and later ended up in a deadly
10 confrontation with Mr. Butts. Further, the activity at 7-11 led to dispatch notifying officers that
11 Mr. Butts was alleged to be carrying a gun (i.e., officer and civilian safety caution). Criminal
12 history is not admissible where it has no relationship to law enforcement's interaction with the
13 individual and plays no role in officer decision-making. For example, if Mr. Butts had previously
14 been arrested for a crime, such evidence would not be admissible unless a particular officer knew
15 that information and said information directly impacted her decision-making. The original and
16 ongoing activities, criminal and otherwise, that lead to Mr. Butts' demise, however, are seminal
17 considerations of the inquest process.

18 In sum, evidence and testimony from the point Damarius and Adrian Butts interacted
19 with Daniel Yohannes at the 7-11 up until officers' deadly confrontation with Mr. Butts should
20 be admitted, as it serves the purpose of the inquest – a full, fair and transparent review of the
21 death.

1 **2. The subject matter of law enforcement policy and training should be limited to**
2 **information surrounding the application of force.**

3 The family requests the inclusion of a considerable quantity and diversity of policy and
4 training information, but provides no argument as to why such information is relevant to the
5 inquest or within its scope. Accordingly, it is virtually impossible to respond meaningfully to the
6 request. As expressed in the involved officers' preliminary briefing regarding the scope of the
7 inquest, policy and training information should be limited to information related to the
8 application of the use of force. Policy, for example, related to Emergency Operations and Serious
9 Incident Plans has no application to the facts and circumstances in this inquest (such policy
10 involves LE response to major incidents or disasters, e.g. WTO riots, earthquakes, etc.)
11 Similarly, policy related to barricaded suspects has no relevance, as there is simply no evidence
12 that Damarius Butts was a barricaded subject. If the family is going to request the inclusion of
13 particular policy and training,³ we request the Administrator require the family to identify why it
14 believes such policy/training is relevant.

15 **3. Witness testimony should be limited to factual information.**

16 The family posits that a broad swathe of policy and training should be explored by
17 "expert and lay witness testimony." Pursuant to the inquest rules, the only individuals who may
18 testify about policy or training are Assistant Chief Lesly Cordner and Captain Michael Teeter.
19 Further, their testimony is limited to a statement of what a policy or training session consists of
20 (i.e., factual information), not an analysis of the merits of the policy or training. Moreover, no
21 witness is permitted to discuss whether officers adhered to any particular policy or training:

22 Additionally, the chief law enforcement officer of the involved agency or director of the
23 employing government department shall provide testimony concerning applicable law
enforcement agency training and policy as they relate to the death but may not comment

³ For example, the family suggests the inclusion of Taser training, but there is no evidence related to this inquest that would support the use of a Taser under the circumstances.

1 on whether employees' actions related to the death were pursuant to training and policy;
2 or any conclusions about whether the employee's actions were within policy and training.

3 Indeed, any discussion of whether officers followed particular policy or training would invade
4 the province of the inquest panel. For this reason, it is unclear what testimony the family's
5 proposed police practice expert, D.P. Van Blaricom, could provide that would not run afoul of
6 the inquest rules. Mr. Van Blaricom cannot testify as to particular Seattle Police Department
7 policies or training as he has never worked for the Seattle Police Department or been involved in
8 the implementation of said policies or training. Further, he is not permitted to testify about
9 whether officers followed particular policy or training or whether the particular policy or training
10 was adequate. Hence, there is nothing he could provide that would be relevant or permissible in
11 the inquest context. The family can certainly consult his expertise, but any effort to invite his
12 testimony at the inquest should be rejected. Perhaps the family has recognized this limitation as
13 it failed to provide any information as to his proposed testimony by Oct. 3, as required by the
14 pre-inquest order.

15 In short, the scope of this inquest should be precisely what the executive order requires –
16 an investigation of the facts and circumstances surrounding the death. Mr. Butts' behavior at the
17 7-11 commenced the investigation, along with his interactions with officers and civilians'
18 observations, and ending with his ultimate demise. The policy and training at issue is that related
19 to his death, i.e. SPD's use of force policy and training.

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1 DATED this 4th day of October, 2019, at Seattle, Washington.

2 **FREY BUCK, P.S.**

3 By: /s/ Evan Bariault
4 Ted Buck, WSBA #22029
5 Evan Bariault, WSBA #42867
6 Attorney for Seattle Police Department Involved
7 Officers
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CERTIFICATE OF SERVICE

I certify that on the 4th day of October, 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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/s/ Lisa Smith
Lisa Smith