

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

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  
RESPONSE TO THE FAMILY'S BRIEF  
RE: SCOPE OF INQUIRY

The Seattle City Attorney's Office, on behalf of the Seattle Police Department ("SPD"), hereby submits this brief in reply to the family's response regarding the scope of this Inquest.

**INTRODUCTION**

SPD set forth its position on the substantive portions of its scope briefing submitted on September 27, 2019. As such, for the purposes of efficiency, SPD adopts and incorporates its submissions herein. Otherwise, SPD responds as follows:

///

///

1 **ARGUMENT**

2 **I. Scope**

3 The Family seeks to exclude the testimony of the 7-Eleven clerk and instead introduce  
4 stipulated facts regarding Mr. Butts’ use of a firearm at the 7-Eleven store. It is unclear why the  
5 Family is objecting to live testimony regarding these facts when the Family concurrently  
6 acknowledges that this information is relevant to the overall sequence of events. Mr. Yohannes’  
7 interactions with the Butts siblings was the event that triggered the rest of the events up to the death  
8 of Mr. Butts. The facts that would be elicited through his testimony are acknowledged as relevant.  
9 He should be permitted to testify regarding his memory of events.

10 The Family seeks to limit the scope of the Inquest in such a manner that the “facts and  
11 circumstances” surrounding the death are not fully explored. The Family seeks to exclude testimony  
12 and evidence regarding Adrianna Butts’ assault on Officer Merritt – a factor that contributed to the  
13 chain of events resulting in Mr. Butts’ shooting engagement with Officers. This is particularly  
14 applicable with Officer Gordillo and Merritt’s statements that they believe that but for Adrianna’s  
15 assault, the events would not have unfolded as they did. These facts should be considered by the  
16 Inquest jury when evaluating the actions of the shooting officers and the facts and circumstances of  
17 Mr. Butts’ death.

18 **II. Witness List**

19 SPD provided its objections/positions on witnesses in an earlier submission to the parties.  
20 SPD responds further to some witnesses identified by Plaintiff or objected to by Plaintiff.

21 **• Daniel Yohannes – Family Objects.**

22 Pursuant Appx. 2 at 3.2, Mr. Yohannes’ testimony will assist the trier of facts in  
23 understanding the cause, manner, and circumstances of Mr. Butts’ death. Mr.

1 Yohannes was the 7-Eleven clerk on duty when Mr. Butts and Adrianna Butts  
2 committed the robbery. The Washington State Supreme Court has held that “evidence  
3 of other crimes or misconduct is admissible to complete the story of the crime by  
4 establishing the immediate time and place of its occurrence. Where another offense  
5 constitutes a “link in the chain” of an unbroken sequence of events surrounding the  
6 charged offense, evidence of that offense is admissible “in order that a complete  
7 picture be depicted for the jury.” *State v. Brown*, 132 Wn.2d 529, 571, (1997). Here,  
8 Mr. Yohannes told Officer Matthew Atkinson, that Mr. Butts pulled a gun from his  
9 waistband when he confronted them outside the store immediately after the robbery.  
10 His testimony is highly relevant.

11 • **Officer Adam Merritt – Family Objects.**

12 Under Appx. 2 at 3.2, Officer Merritt’s testimony will assist the trier of facts in  
13 understanding the cause, manner, and circumstances of death. The chase leading up to  
14 the shooting is an unbroken chain of events. As referenced in *State v. Brown*, jurors  
15 are permitted to be presented with a “more complete picture of events surrounding the  
16 crimes committed...” *State v. Brown*, at 573.

17 • **Officer Matthew Clark – No objection from family, but SPD objects.**

18 Pursuant Appx. 2 at 3.3, the rules of evidence apply. Officer Clark’s testimony is  
19 cumulative and not helpful to the trier of facts. Officer Clark’s only testimony is that  
20 he heard gunfire. Under ER 403, Officer Clark’s testimony is a waste of time and a  
21 needless presentation of cumulative evidence because it does not provide the trier of  
22 facts with any additional information.

1 **III. Policies and Training.**

2 The Family’s list on policies and training are not sufficient to identify why they apply to the  
3 facts and circumstances of this case. While SPD identified some of the policies/training as applicable  
4 to the facts and circumstances of this Inquest, others are not applicable. SPD further elaborates  
5 below:

6 **a. Policies.**

- 7 1. *SPD Use of Force policy: no objection.*
- 8 2. *SPD Emergency Operations and Serious Incident Plans: SPD objects.* One look  
9 at the SPD Emergency Operations policies and those concerning serious  
10 incident plans establishes that these policies are inapplicable to the facts and  
11 circumstances of this case. These policies largely govern protests and  
12 demonstrations. Additionally, the Inquest does not concern how SPD manages  
13 its emergency operations or serious incidents – it concerns the shooting death  
14 of one individual and the facts and circumstances surrounding the death.
- 15 3. *SPD policies governing law enforcement response to threats and assaults on*  
16 *officers; SPD objects.* The use of force policy generally applies to responses to  
17 assault on officers as it concerns officer use of force. The policy identified on  
18 threats/assaults to officers (15.330 – CITY 2550-2552) addresses reporting  
19 requirements and investigation. This is not applicable to the issues at hand in  
20 this Inquest.
- 21 4. SPD policies regarding de-escalation; This is contained within the use of force  
22 policy.
- 23 5. SPD policies regarding bystander safety; **SPD objects.** Any policy on bystander  
safety is beyond the scope of inquiry of this Inquest as it concerns the facts and

1 circumstances surrounding the death of decedent, Mr. Butts. Policies  
2 surrounding bystander safety are irrelevant to whether officers causing Mr.  
3 Butts' death complied with SPD policies and training. Additionally, there are  
4 no facts to suggest that bystander safety was an issue factually in this case.

5 6. SPD policies regarding barricaded suspects; **SPD objects.** Specific policy  
6 provisions on "barricaded suspects" is inapplicable and irrelevant to the facts  
7 and circumstances of this Inquest. *See* Sections 14.060 (Bates stamped CITY  
8 2398 – CITY 2400), and Sections 15.350 (Bates stamped CITY 2554).

9 7. Any SPD policies and training materials that incorporates learning from the  
10 April 20, 2017 law enforcement involved death of Damarius Butts. **SPD**  
11 **objects.** What SPD changed its policies or training to *after* the alleged incident  
12 (if any) is absolutely beyond the scope of the inquiry of this Inquest. The Inquest  
13 may not opine on SPD policies and training in general. It is only for the inquest  
14 jury to evaluate whether the officers complied with existing policy and training.  
15 Additionally, the materials that were produced in discovery reveal that the  
16 training incorporating this incident specifically (in addition to the Las Vegas  
17 active shooter and Mumbai attacks) dealt with command organization – and not  
18 officer use of force responses.

19 **b. Training.**

20 1. Crowd Control/Firearms and Tactics Training: **SPD objects.** A quick review  
21 of this training will identify how this training is wholly inapplicable to the  
22 facts and circumstances of this case. There is no crowd control issue involved  
23

1 in this Inquest. Accordingly, the firearm and tactical training in crowd control  
2 situations does not and should not apply.

- 3 2. Crisis Intervention Training: **SPD objects**. There is no indication that any  
4 individual involved in the alleged incident was in crisis at any time. Crisis  
5 intervention training is not applicable.
- 6 3. Post BLEA Defense Tactics #3 Impact Weapons: **SPD objects**. Impact weapons  
7 were not at issue in the facts and circumstances of this event. A review of the  
8 relevant training (CITY43-44) confirms this fact.
- 9 4. Post BLEA Field Training Program: **SPD objects**. The Family fails to identify  
10 what aspect of Field Training Officer Training applies to this event. None of  
11 the shooting officers were Field Training Officers.
- 12 5. Post BLEA Firearms Days 1-4: **SPD objects and requests further**  
13 **clarification**. The Family fails to identify what aspect of Firearms training  
14 applies to the fact-finding inquiry of the Inquest jury.
- 15 6. Post BLEA Taser X2 Operator: **SPD objects**. The Administrator already  
16 addressed that Taser is inapplicable to the facts and circumstances of this case.  
17 The Family has not presented any facts or circumstances to the contrary.
- 18 7. Post BLEA Introduction to Rapid Intervention: **SPD objects and requests**  
19 **further clarification**. The Family fails to identify what aspect of Firearms  
20 training applies to the fact-finding inquiry of the Inquest jury.
- 21 8. Post BLEA Defensive Tactics #4 Ground Control & Survival: **SPD objects**.  
22 The Family fails to identify why ground control and survival training (*See*  
23 CITY 39-42) applies to the shooting death of Mr. Butts. The identified

1 relevance of this training is also contrary to the Family's asserted position  
2 about the earlier physical struggle between Officer Merritt and Mr. Butts.

3 Further, the Administrator made clear that compliance with policy and training  
4 does not apply to the alleged actions of non-shooting officers.

5 9. Post BLEA Fundamental Principals: **SPD objects and requests further**  
6 **clarification.** The Family fails to identify what aspect of this training applies  
7 to the fact-finding inquiry of the Inquest jury. Post-BLEA training applies to  
8 officers that are newly out of the Basic Law Enforcement Academy. Most of  
9 the involved officers had several years on the job, and therefore, this training  
10 was either not required of them or outdated. Additionally, the training itself is  
11 broad and the Family fails to identify what aspect of this training applies.

12 10. Post BLEA Defense Tactics #2 Country (counter?) Striking Tools: **SPD**  
13 **objects.** This training generally applies to physical body movement and striking  
14 during hand-to-hand engagement with a suspect (CITY 511-515). There is no  
15 relevance to the events at issue.

16 11. Post BLEA Barricaded Person: **SPD objects and seeks clarification.** It is not  
17 established that the "barricaded persons" training would apply to the facts and  
18 circumstances of this event. The Family does not identify what aspect of this  
19 training applies or why it is applicable.

20 12. Post BLEA De-Escalation: **SPD objects and seeks clarification.** The Family  
21 fails to identify what aspect of de-escalation training is applicable to the facts  
22 and circumstances of this case.

23 13. Post BLEA Contact/Cover Roles: **No objection.**

1 14. Post BLEA Defense Tactics #1 Control & Cuffing: **SPD objects and seeks**  
2 **clarification.** The Family fails to identify what control & cuffing training is  
3 applicable to the facts and circumstances of this case.

4 15. Early Intervention Training: **SPD Objects.** SPD objects because Early  
5 Intervention concerns officer training and wellness. These factors are to the  
6 issues in this Inquest.

7 16. Post BLEA Care Under Fire: **No objection.**

8 17. Officer Sustainment – Use of Force: **No objection.**

9  
10 **CONCLUSION**

11 SPD respectfully requests that the Administrator sustain SPD's objections to the Family's  
12 policy and training proposals.

13 DATED this 4<sup>th</sup> day of October, 2019.

14 PETER S. HOLMES  
15 Seattle City Attorney

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

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

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

23 *Attorneys for the Seattle Police Department*



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

### CERTIFICATE OF SERVICE

I certify that on the 4<sup>th</sup> 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:

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