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7 **THE STATE OF WASHINGTON**  
8 **KING COUNTY DEPARTMENT OF EXECUTIVE SERVICES INQUEST PROGRAM**

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10 *IN RE*: THE INQUEST INTO THE  
11 DEATH OF DAMARIUS BUTTS

NO. 517IQ8013

12 THE FAMILY’S REPLY RE THE SCOPE  
13 OF INQUEST HEARING  
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15 The Family’s proposal regarding the scope of the inquest inquiry will ensure that the  
16 inquest’s competing interests of ensuring a thorough, fair, and transparent assessment of the death  
of Mr. Butts and doing so in an efficient manner are met.

17 **A. Presentation of Stipulated Facts Regarding the 7-Eleven Incident Is Necessary,**  
18 **Efficient, and Consistent with the Inquest Principles and Rules**

19 The purpose of the inquest into Mr. Butts’ death is “to ensure a full, fair, and transparent  
20 review” of the “facts and circumstances surrounding” his death. Appx. 1 at 2.2. While “[t]he  
21 purpose of the inquest is not to determine whether the law enforcement member[s] acted in good  
22 faith or should be disciplined[,]” *id.* at 2.3, the inquest will “result in the issuance of findings  
23 regarding the cause and manner of death, and whether the law enforcement member[] acted  
pursuant to policy and training[,]” *id.* at 2.2. In order to accomplish such a review in a timely  
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1 manner the inquest rules direct the Administrator “to promote an atmosphere consistent with  
2 administrative fact-finding and . . . to strive to minimize delay, cost, and burden to participants,  
3 while promoting fair and open proceedings.” Appx. 2 at 3.1. The Administrator is directed to  
4 utilize stipulated facts as a means of efficiently narrowing the scope of the inquest while ensuring  
5 that relevant, uncontested, and necessary evidence is proffered to the panel. Appx. 2 at 5.3.

6 The parties agree that on April 20, 2017 at 1:19 pm, Damarius Butts and his sister, Ms.  
7 Butts, entered a 7-Eleven store at 627 First Avenue S. Butts 0001. The two “grabbed a number of  
8 items from the shelves and fled the store[.]” *Id.* “A store clerk pursued the suspect and attempted  
9 to recover the stolen items.” *Id.* Mr. Butts then “brandished a pistol towards the store clerk.” *Id.*  
10 Officers from across downtown responded to the report of the robbery. The first contact Mr. Butts  
11 had with responding officers occurred at First and Madison with Officers Merritt and Gordillo. *Id.*  
12 These facts are uncontested.

13 Providing the panel with stipulated facts regarding the robbery at 7-Eleven is consistent  
14 with the inquest rules which direct the parties to “work diligently to narrow the scope of the inquiry  
15 at the inquest.” Appx. 2 at 5.3. Further, utilizing stipulated facts is also consistent with the inquest  
16 rules’ directive to limit the admission of Mr. Butts’ criminal history or activities to avoid  
17 prejudicial information from tainting the decision-making process of the panel—especially  
18 information that the Involved Officers did not themselves know or rely upon when they killed Mr.  
19 Butts. *See* Family’s Op. Brief at 2-5 (detailing that the Involved Officers knew little about the  
20 robbery at 7-Eleven other than a gun had been involved and a six-pack of beer was stolen). *See*  
21 *also* Butts 1712-13; Butts 1635-36; Butts 1781; Butts 1705-06; Butts 1654-55. Presenting this  
22 evidence via stipulated facts and thereby limiting extraneous testimony about information that no  
23 law enforcement officer relied upon is consistent with ER 403’s protections that allow for the  
24 exclusion of relevant evidence “if its probative value is substantially outweighed by the danger of  
unfair prejudice, confusion of issues, or misleading the [panel.]” ER 403.

1           SPD’s and the Involved Officers’ arguments for proffering live testimony regarding the 7-  
2 Eleven incident relies upon the flimsy assertion that without such testimony “an inquest panel  
3 would question why law enforcement personnel were pursuing Mr. Butts in the first place or why  
4 they believed Mr. Butts to be armed.” I.O. Resp. at 3. This argument, however, ignores the basic  
5 tenets of the Family’s argument. The Family is not arguing to exclude all evidence of the 7-Eleven  
6 robbery but to proffer such evidence in the form of stipulated facts to save time and to avoid  
7 inserting unnecessary and inflammatory testimony regarding details that the Involved Officers, nor  
8 the uninvolved officers, knew when they killed Mr. Butts. Doing so would not be—as the Involved  
9 Officers argue—inconsistent with allowing other civilian witnesses to testify even though their  
10 “knowledge of the incident was not known to the involved officers.” I.O. Resp. at 2. This is because  
11 the other proposed civilian witnesses are ones who witnessed or were in close proximity to the  
12 Involved Officers’ use of deadly force. These civilians witnessed the immediate moments leading  
13 to the death of Mr. Butts—just as the Involved Officers did. The relevance and importance of live  
14 testimony from witnesses who were in close physical proximity to the shooting cannot be is far  
15 more important and relevant than testimony from a witness about matters and details that the  
16 Involved Officers did not know or rely upon when they chose to kill Mr. Butts.

17           As the Involved Officers had limited information regarding what occurred at the 7-  
18 Eleven—that there was an armed robbery and that a 6-pack of beer was stolen—there is no basis  
19 for including live testimony that would likely go beyond what the information or evidence that any  
20 SPD officers knew when they engaged with Mr. Butts or at the time of their deadly use of force.  
21 In order to protect against prejudicial and irrelevant testimony on uncontested facts, the  
22 Administrator should exclude live testimony about the initiating incident and instead provide the  
23 panel with stipulated facts regarding the incident at 7-Eleven consistent with the information that  
24 was broadcast to the Involved Officers.

1       **B. Testimony Regarding the Butts’ Interactions with Officer Merritt Should Be**  
2       **Permitted Only by Involved Officers with Knowledge of the Incident**

3               Consistent with *Procedures for Conducting Inquests*, evidence regarding criminal activity  
4 unknown to the officers involved in the death of Mr. Butts is outside of the scope of the inquest  
5 and should be excluded. *See* Appx. 2 at 4.4-4.5. Indeed, the inquest rules create a presumptive  
6 exclusion of evidence of the decedent’s criminal record or activity unless such information is:

- 7               1. Directly related to the reason for the use of force;
- 8               2. Served as a basis for officer safety **and** the involved officers were aware of the  
9               information before the use of deadly force;
3. Contemporaneous knowledge of the decedent’s criminal activity was relevant to the  
              involved officers’ determination of level of threat posed by the decedent.

10              *See* Appx. 2 at 4.4. *See also* ER 404(b) (excluding evidence of prior “crimes, wrongs, or acts” to  
11 prove the character or otherwise show conformity with prior bad acts).

12              None of the Involved Officers, other than Officer Gordillo, had any knowledge or  
13 information regarding the Butts’ interaction with or physical altercation with Officer Merritt. As  
14 such, information about the physical altercation between the Butts and Officer Merritt should be  
15 excluded as it is not “directly related to the reason for the . . . use of force” nor did such information  
16 “serve[] as the basis for an officer safety caution[.]” Appx. 2 at 4.4.

17              The only existent basis for admitting such evidence is related to Officer Gordillo, who  
18 witnessed part of the physical altercation between the Butts and Officer Merritt before chasing Mr.  
19 Butts into the loading dock. As Officer Gordillo’s “contemporaneous knowledge” of Mr. Butts’  
20 physical altercation with Officer Merritt may have influenced Officer Gordillo’s decision making,  
21 his testimony regarding the incident may be admitted.

22              However, Officer Merritt should not be allowed to testify regarding his experience with  
23 the Butts. The Involved Officers did not know of Officer Merritt’s experiences with the Butts nor  
24 did the Involved Officers rely on such information in deciding to use deadly force against Mr.  
Butts—especially Officer Merritt’s interaction with Ms. Butts. Testimony regarding incidents in  
which Mr. Butts did not participate—and of which the Involved Officers did not know—would be

1 prejudicial, inflammatory, and likely to cause the panel confusion regarding whether the Involved  
2 Officers relied upon this information and whether the panel must do the same in determining  
3 whether the shooting occurred in accordance with SPD policies and training. Due to this testimony  
4 from Officer Merritt about his physical altercation with the Butts must be excluded. Inasmuch as  
5 the Administrator may determine that evidence of the Butts' interaction and physical altercation  
6 with Officer Merritt is evidentiarily necessary for the inquest panel to understand the events  
7 leading to Mr. Butts' death, such evidence should be limited to testimony from Officer Gordillo  
8 regarding his "contemporaneous knowledge" of the interaction and how such knowledge may have  
9 impacted his decision-making regarding Mr. Butts.

10 Arguments from the Involved Officers do not justify any other outcome. The Involved  
11 Officers argue that testimony from Officer Merritt is necessary to show: (1) that law enforcement  
12 attempted to detain Mr. Butts without the use of deadly force; (2) Ms. Butts' actions allowed Mr.  
13 Butts to escape thereby leading to the deadly use of force; and (3) evidence of Mr. Butts' state of  
14 mind. I.O. Resp. at 2. None of these reasons justify allowing Officer Merritt to testify regarding  
15 his interactions with the Butts. *First*, Officer Gordillo can testify regarding his and his partner's  
16 experience attempting to detain Mr. Butts, the interactions he observed between Officer Merritt  
17 and the Butts, and how that impacted his decision to use deadly force. *Second*, Ms. Butts' actions  
18 had no bearing on the Involved Officers' decision to use deadly force. They were unaware of Ms.  
19 Butts' actions and Ms. Butts did not cause the Involved Officers to kill her brother. Further, any  
20 evidence deemed necessary regarding Mr. Butts' extricating himself from Officer Merritt's control  
21 can be provided by Officer Gordillo who witnessed the interaction and began chasing Mr. Butts  
22 due to the outcome of that interaction. *Third*, evidence of Mr. Butts' state of mind is irrelevant  
23 here where the panel is making a determination of whether the Involved Officers acted "pursuant  
24 to policy and training." Appx. 1 at 2.3. The inquest must be a fair and neutral assessment of the  
facts and not one where law enforcement blames the decedent and their family for the use of force.

1 SPD also argues that testimony from Officers Gordillo and Merritt that “they believe that  
2 but for [Ms.] Butts assault, the events would not have unfolded as they did.” SPD Resp. at 2. Such  
3 testimony would be purely speculative and therefore outside of the scope of acceptable testimony.  
4 *See* ER 602 (noting that a witness may not testify to matters for which they have no personal  
5 knowledge). Such speculation certainly cannot justify the presentation of testimony from Officer  
6 Merritt on matters that did not serve as the basis for the use of deadly force, constitute information  
7 known by the Involved Officers used to assess officer safety, nor was such speculations relied  
8 upon in the Involved Officers’ assessment of any threat posed by Mr. Butts. SPD’s argument for  
including testimony from Officer Merritt does not stand up to scrutiny and must be rejected.

9 **C. The Involved Officers’ Compliance with Relevant SPD Policies and Trainings Must**  
10 **Be Explored During the Inquest**

11 SPD affirms that “there is no single training that can be identified as the closed universe of  
12 training and experience from which officers” draw when they perform their duties as law  
13 enforcement officers. SPD. Op. Br. at 4. Despite this, SPD and the Involved Officers argue that  
14 the inquest need only assess the Involved Officers’ actions under the Use of Force policy and  
15 training. *See* I.O. Reply at 1; SPD Resp. Br. at 4. This position ignores the fact that there are SPD  
16 policies and trainings that are meant to reduce the likelihood of needing to use deadly force against  
17 a community member, and that Involved Officers’ actions need to be assessed pursuant to those  
18 policies and trainings. Limiting the inquest to just the Use of Force policy and training would  
19 impermissibly infringe on the province of the panel and obfuscate the transparent inquiry into the  
Involved Officers’ actions.

20 Instead, the panel should be given the opportunity to explore all policies and trainings that  
21 informed or governed the Involved Officers’ actions to ensure that the resulting use of deadly force  
22 was consistent with the officers’ training and SPD policies. Indeed, it is the province of the panel  
23 to decide what policies/trainings were ultimately triggered in the police interaction and whether  
the Involved Officers’ actions comported with those policies/trainings. In order to do so, the panel

1 must be presented with all policies and trainings that were implicated in the law enforcement  
2 involved death including policies/trainings governing: bystander safety, barricaded persons,  
3 firearms, crisis intervention, rapid intervention, early fundamental principles training, suspect  
4 control and cuffing.

5 Further, there are policy reasons that demand that the panel be presented with all implicated  
6 policies/trainings. These include the fact that allowing the Involved Officers and the police agency  
7 to determine what policy and trainings pursuant to which their actions should be assessed  
8 undermines the appearance of fairness and neutrality that drives the new inquest process developed  
9 by the King County Executive.

10 As such, the Family reasserts its position that all policies identified in its opening brief be  
11 allowed to be explored in the inquest.

#### 12 **D. The Family's Position on Proposed Witnesses**

13 The Family reaffirms its positions on proposed witnesses discussed in its September 27<sup>th</sup>  
14 opening briefing. The Family also objects to the following proposed witnesses based on the  
15 arguments regarding the scope of the inquest detailed above and in previous briefing:

- 16 • **Daniel Yohannes** – Testimony regarding the incident at 7-Eleven should be presented to  
17 the panel via stipulated facts and *sans* live testimony. Doing so would avoid in injection of  
18 irrelevant and prejudicial information regarding uncontested facts that could not have been  
19 the basis for the Involved Officers' use of deadly force;
- 20 • **Officer Adam Merritt** – Testimony from Officer Merritt regarding his physical altercation  
21 with the Butts is irrelevant, against the inquest rules, and duplicative of testimony that can  
22 be presented by Officer Gordillo.

23 The Family takes no position on testimony from the two civilian witnesses proposed by the  
24 Involved Officers: Melissa Miller and Tom Townsend.

#### 25 **E. The Family's Use of Force Expert**

1 Pursuant to the Pro-Tem, Matt Anderson, October 8, 2019 email directive, the Family will  
2 inform the Administrator, SPD, and the Involved Officers if it will proffer an expert witness on  
3 Thursday, October 18, 2019. All briefing on this topic will be held in abeyance until October 22,  
4 2019 when the Family has been ordered to provide substantive briefing in support of any proffered  
5 expert. Until then the Family reserves it right to reply on this issue and requests that the  
6 Administrator not issue a ruling on this matter until it is resolved.

7 **CONCLUSION**

8 For the foregoing reasons the Family requests that you limit the scope of the inquest as  
9 detailed above.

10 DATED this 4th day of October, 2019

11  
12 */s La Rond Baker*

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La Rond Baker, WSBA No. 43610  
Adrien Leavitt, WSBA No. 44451  
Attorneys for Family of Damarius Butts