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KING COUNTY DEPARTMENT OF EXECUTIVE SERVICES
INQUEST PROGRAM

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 established 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:

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1 **ARGUMENT**

2 **I. Scope**

3 The Family’s Response confuses SPD’s argument. Not all the SPD officers that responded to
4 the robbery call, engaged with the Butts siblings, and then engaged in a foot pursuit were involved in
5 any way with the *death*. Many of these officers were not shooting officers – and therefore they are
6 not the “Involved Officers” for the purpose of this Inquest. If the Family proposes that the inquiry
7 here extends to whether these non-shooting officers complied with policy and training, then such an
8 inquiry extends far beyond the scope permitted by the Executive Order. The Family also does not
9 identify *what* training or policy regarding the circumstances leading up to and immediately following
10 the death should or would apply here. Such a blanket open-ended inquiry is not one contemplated by
11 the Inquest process or the Executive Order.

12 **II. Policies and Training.**

13 In its Response, the Family disputes SPD’s position that the only pertinent policy at issue in
14 this Inquest is the SPD use of force policy. Additionally, the Family disputes SPD’s position that the
15 only pertinent training materials applicable at issue in this Inquest are (1) use of force training; (2)
16 care under fire; and (3) contact/cover. However, the Family fails to identify what else does apply and
17 why.

18 *A. Policy.*

19 The SPD use of force policy is lengthy and expansive. It is also the framework by which
20 officers are assessed as it concerns uses of force. The Family does not identify what other policies
21 apply that go beyond the use of force policy and *why*. The Family keeps referencing Mr. Butts’
22 running into a locked room – and alludes to Mr. Butts being barricaded. However, the Family ignores
23

1 the fact that the officers followed Mr. Butts not knowing what was accessible from that space – many
2 feared it was a way to get into the Federal Building occupied by hundreds of civilians.

3 The Family challenges SPD’s position on policy and training – claiming that such a limited
4 scope obstructs transparency when looking at “one policy.” (Response at p. 4). The “one policy” is
5 65 pages long – extensive and complete. Again, it is the only policy that applies to the facts of this
6 case and the officers’ force decisions.

7 *B. Training*

8 The Family also challenges SPD’s position on training for similar reasons. The Family
9 obfuscates SPD’s position that “there is no single training that can be identified as the closed universe
10 of training and experience from which officers draw.” (Scope Motion at p. 4). This is because officers
11 draw from their training at the academy, their on the job training, and other trainings that may have
12 touched on certain overlapping circumstances. There is no practical way to incorporate all of this in
13 an Inquest. Distilled down to training materials provided by SPD – SPD identified three areas of
14 training that are pertinent. Again, the Family fails to identify what specific other training applies and
15 why. This was the entire purpose of this scope briefing. From SPD’s perspective, use of force training
16 applies in this case because this concerns officer use of force. Care under fire training applies in this
17 case because officers were being shot and injured during their encounter with Mr. Butts. Care under
18 fire also addresses rendering aid to other persons. Finally, contact/cover principles apply in this case
19 because of the involvement of multiple officers and their specific roles.

20 **III. The Family seeks to exclude facts about the initiating incident.**

21 From one perspective the Family attempts to include events, including policy and training,
22 that preceded the officers’ encounter with Mr. Butts in the building. From another perspective, the
23 Family seeks to exclude live testimony about the initiating events that brought the officers to the

1 scene to begin with. Instead, the Family proposes stipulated facts. Live testimony – if available – will
2 be able to provide the Inquest jury a whole perspective of *why* the officers contacted the Butts siblings
3 and how events unfolded. The Family’s position is inconsistent and should be rejected.

4 **IV. Use of force experts invade the province of the fact-finder.¹**

5 For the purposes of brevity and efficiency, SPD joins the Officers’ Reply positions as detailed
6 in Sections 3 and 4 of their Reply brief. As noted in detail in SPD’s opening brief, a use of force
7 expert opining on the ultimate question before the fact-finder is inappropriate in this Inquest context.
8 The Family cites to numerous civil cases to support its position that retained expert opinion testimony
9 is appropriate. Those cases are inapposite. This proceeding is a quasi-judicial proceeding with very
10 specific goals and a limited fact-finding scope. It is the province of the inquest *jury* to determine
11 whether the shooting officers complied with policy and training *of the department*. (EO 2.2; 3.2). The
12 testimony concerning applicable department policy and training comes directly from the Department
13 – it is then up to the fact-finder to reach an untainted opinion on whether the officer complied with
14 such training/policy. Notably, 12.3 identifies that the governing agency representative “shall provide
15 testimony concerning applicable law enforcement agency training and policy as they relate to the
16 death **but may not comment on whether employees' actions related to the death were pursuant**
17 **to training and policy; or any conclusions about whether the employee's actions were within**
18 **policy and training.”** (emphasis added). If the inquest rules explicitly prohibit the Department
19 chief/experts from opining on whether the Department’s officers complied with the Department’s
20 policy – then it begs the question, why would this be a permissible scope of testimony for an outside
21 individual – who in no way is an expert in *the Department’s* policies?

22 _____
23 ¹ SPD reserves objections to the specific expert chosen by the Family and the scope of his proposed testimony for the anticipated briefing that will occur in the coming weeks as set by the Administrator. However, SPD notes that it has strong objections to Mr. Van Blaricom, his qualifications, and the proposed scope of his testimony.

1 **CONCLUSION**

2 SPD respectfully requests that the Administrator sustain SPD’s objections to the Family’s
3 position on scope, policy, training, and the use of police practices experts.

4 DATED this 9th day of October, 2019.

5 PETER S. HOLMES
6 Seattle City Attorney

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CERTIFICATE OF SERVICE

I certify that on the 9th 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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