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KING COUNTY DEPARTMENT OF EXECUTIVE  
SERVICES INQUEST PROGRAM

INQUEST INTO THE DEATH OF:  
  
DAMARIUS DEMONTA BUTTS,  
  
Deceased.

No. 517IQ8013  
  
MOTION FOR  
RECONSIDERATION RE  
EXCLUDING LIVE TESTIMONY

**I. INTRODUCTION**

The involved officers respectfully request the Administrator reconsider his October 18, 2019 Pre-Inquest Order. Specifically, the officers request the Court permit the testimony of Daniel Yohannes and Officer Adam Merritt. This testimony is required and necessary so that an inquest panel may make findings regarding the facts and circumstances of the death.

**II. ARGUMENT**

The Administrator’s decision to prohibit testimony from Daniel Yohannes and Officer Adam Merritt testimony appears to rely on the family’s incorrect argument that “the issues that will be put before the panel primarily revolve around the Involved Officers’ conduct and whether the actions related to the death were pursuant to the Seattle Police Department’s (SPD) policies

1 and training.”<sup>1</sup> The primary purpose of an inquest, however, is not to determine whether officer  
2 conduct complied with policies and training. The primary purpose is and has always been to  
3 determine the facts and circumstances surrounding a death:

4       The purpose of the inquest is to ensure a full, fair, and transparent review of any such  
5 death, and to issue findings of fact regarding the facts and circumstances surrounding the  
6 death.<sup>2</sup>

7 The recent amendment to the inquest procedures order merely supplemented that primary  
8 purpose by asking the panel to make findings regarding policy and training:

9       The review will result in the issuance of findings regarding the cause and manner of  
10 death, **and** whether the law enforcement member acted pursuant to policy and training.”<sup>3</sup>

11 This supplement, however, does not eliminate the original purpose – a full, fair, and transparent  
12 review of the facts and circumstances surrounding the death.

13       Beyond that misunderstanding of the process, however, the need for live witness  
14 testimony is provided by Washington precedent interpreting the enabling legislation and by  
15 substantial prior inquest juror experience.

16       Washington Supreme Court’s recent opinion in *BNSF Ry. Co. v. Clark*, 192 Wn.2d 832,  
17 845-46 (2019) establishes the importance of live witness testimony under the enabling  
18 legislation:

19       The inquest jury must “hear **all** the evidence concerning the death.” RCW 36.24.020.  
20 “The coroner **must** summon and examine as witnesses...every person, who, in his or her  
21 opinion or that of any of the jury, has any knowledge of the facts.” RCW 36.24.050

22 (emphasis added). Prohibiting the testimony of witnesses with information directly related to the  
23 circumstances surrounding Mr. Butts’ death is not in keeping with this recognized legislative  
mandate.

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<sup>1</sup> See pg. 2 of October 18, 2019 Pre-Inquest Order.

<sup>2</sup> See ¶ 2.2 in Appendix 1 to PHL-7-1-2-EO.

<sup>3</sup> *Id.* (emphasis added).

1           Moreover, stipulating to facts surrounding substantive witnesses – assuming such  
2 stipulation could be reached – does not serve the goal of transparency that lies at the heart of the  
3 inquest process, including as envisioned by the executive in his recent amendments to the  
4 process. As noted in PHL-7-1-2-EO:

5           12.4. The inquest is intended to be a transparent process to inform the public of the  
6 circumstances of the death of a person that involved a representative of government. *As*  
7 *such, there is a strong presumption against the exclusion of witnesses until after their*  
8 *testimony, and relevant, non-cumulative witnesses should only be excluded by the*  
9 *administrator in exceptional circumstances.*

10 (emphasis added). At day’s end it is not the parties or the Administrator that conduct the review  
11 and makes the relevant findings, it is the inquest panel; the parties’ subjective evaluation of a  
12 witness’s testimony by stipulation would deprive the panel of that fundamental task. Frankly,  
13 there is no countervailing legal or transparency-related argument.

14           Moreover, based on counsel’s prior inquest experience, not having Mr. Yohannes testify  
15 in particular will lead to considerable speculation among the panel. It is *very* common for  
16 inquest juries to inquire as to why witnesses were not called when they plainly had evidence  
17 related to the circumstances of a death.<sup>4</sup> This is particularly so where the absentee witness is a  
18 civilian. Indeed, historically there has been a common agreement among involved officers,  
19 employing jurisdictions, families and the judges robed with the authority of the coroner that  
20 civilian testimony is of paramount importance, even where it is technically duplicative.  
21 Traditionally civilian witnesses with relevant testimony have been stricken only where their  
22 testimony adds nothing to the inquiry and is consistent with admitted facts – e.g., where many  
23 neighbors did not see an incident but did hear a series of shots. Even then, traditionally at least  
one civilian would be called to testify that he or she heard shots, even if that fact were not

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<sup>4</sup> Historically, witnesses, and particularly civilian witnesses, have not been called because the witness moved, could not otherwise be located, or for other reason was not capable of testifying.

1 contested. In counsel’s experience inquest juries take their duty very seriously; they want to hear  
2 from knowledgeable witnesses; they get suspicious when they do not.

3 Stipulations present another problem that the Administrator may not have considered.  
4 The panel may want to ask a witness specific questions about the incident; it is not uncommon  
5 for jurors to inquire into an issue that was not previously considered by the parties that goes to  
6 the heart of the event. Juror’s right to question to witnesses is fundamental to their duty; they  
7 should not be deprived of the tools essential to undertake that duty.

8 **A. Daniel Yohannes**

9 Mr. Yohannes is arguably the most important witness in this process as his interaction  
10 with Mr. Butts and his communications with law enforcement precipitated the event. His  
11 testimony is central to the foundational facts and circumstances surrounding Mr. Butts’ death. As  
12 previously stated, the panel’s focus is not limited to law enforcement behavior, but includes the  
13 behavior of Mr. Butts, his sister, and others. The panel may and likely will inquire of Mr.  
14 Yohannes as to specifics of his observations – Mr. Butts’ demeanor, questions seeking details of  
15 the weapon he saw, whether he had other, different interactions with law enforcement beyond the  
16 911 call, etc. As the inquest jury, not the parties, conducts the review, it is entitled to hear live  
17 testimony and ask questions related to that testimony. Mr. Yohannes should testify.

18 **B. Officer Adam Merritt**

19 As with Mr. Yohannes, Officer Merritt cannot legitimately be said to have been outside  
20 the “facts and circumstances” of Mr. Butts’ death. He observed Mr. Butts’ behavior, had  
21 physical contact with him in an effort to safely take him into custody, and observed the aftermath  
22 of Mr. Butts’ escape and subsequent flight from other officers. Here too the panel may and  
23

1 likely will question Off. Merritt on details of his encounter, his observations, his considerations.  
2 Again, by legislative mandate and executive order, his is essential testimony.

3 In striking Officer Merritt from the witness list, it would appear the Administrator is  
4 concerned that testimony surrounding Adriana Butts will detract the panel from the “focal point  
5 of the inquest, the actions of Involved Officers.” However, as noted, that is not the focal point.  
6 “[T]he purpose of a coroner’s inquest is to determine who died, what was the cause of death, *and*  
7 *what were the circumstances surrounding the death*, including the identification of any actors  
8 who may be criminally liable for the death.” *Carrick v. Locke*, 125 Wn.2d 129, 133, 882 P.2d  
9 173 (1994)(emphasis added).

10 Here again there is no serious argument to be made that Adriana Butts’ behavior was not  
11 integral to the “facts and circumstances” surrounding Mr. Butts’ death. It is the panel’s duty to  
12 review all such evidence, and by legislative mandate it is the coroner’s duty to exhibit such  
13 evidence. The involved officers agree that it would not be proper to argue that Ms. Butts’  
14 behavior “caused” Mr. Butts’ demise, but her behavior was certainly part of the picture.  
15 Ultimately, factual interrogatories related to her involvement with Officer Merritt would be  
16 abundantly appropriate for the panel’s consideration.

17 Finally, the Administrator struck Officer Merritt’s testimony, in part, as being duplicative  
18 of Officer Gordillo. That incorrectly assumes that Officer Gordillo will testify, and also  
19 incorrectly assumes Officer Gordillo can establish the facts otherwise covered by a stipulation as  
20 to Merritt’s observations/actions. Officer Gordillo may not testify. Moreover, Officer Merritt’s  
21 testimony is not duplicative of Gordillo as Merritt is the only witness that can testify about *his*  
22 interaction with Mr. Butts and his sister, and *his* observations of Mr. Butts both before and after  
23 his physical interaction with Butts. Again, jurors will wonder why this significant player is not



1 **CERTIFICATE OF SERVICE**

2 I certify that on the 25rd day of October, 2019, I caused a true and correct copy of this  
3 document to be served on the following in the manner indicated below:

4

5 Matthew Anderson 6 <a href="mailto:Matt.Anderson@kingcounty.gov">Matt.Anderson@kingcounty.gov</a>	(x) Via Email
7 Dee Sylve 8 <a href="mailto:Dee.Sylve@kingcounty.gov">Dee.Sylve@kingcounty.gov</a>	(x) Via Email
9 Adrien Leavitt 10 <a href="mailto:Adrien.Leavitt@kingcounty.gov">Adrien.Leavitt@kingcounty.gov</a>	(x) Via Email
11 La Rond Baker 12 <a href="mailto:lbaker@kingcounty.gov">lbaker@kingcounty.gov</a>	(x) Via Email
13 Lori Levinson 14 <a href="mailto:Lori.Levinson@kingcounty.gov">Lori.Levinson@kingcounty.gov</a>	(x) Via Email
15 Rebecca Boatright 16 <a href="mailto:Rebecca.Boatright@seattle.gov">Rebecca.Boatright@seattle.gov</a>	(x) Via Email
17 Jennifer Litfin 18 <a href="mailto:Jennifer.Litfin@seattle.gov">Jennifer.Litfin@seattle.gov</a>	(x) Via Email
19 Ghazal.Sharifi 20 <a href="mailto:Ghazal.Sharifi@seattle.gov">Ghazal.Sharifi@seattle.gov</a>	(x) Via Email
21 Erika Evans 22 <a href="mailto:Erika.Evans@seattle.gov">Erika.Evans@seattle.gov</a>	(x) Via Email
23 Viktor Vodak <a href="mailto:vvodak@kingcounty.gov">vvodak@kingcounty.gov</a>	(x) Via Email
Kelly Nakata <a href="mailto:Kelly.Nakata@seattle.gov">Kelly.Nakata@seattle.gov</a>	(x) Via Email

21 DATED this 23rd day of October, 2019, at Seattle, Washington.

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23 \_\_\_\_\_  
/s/ Ted Buck  
Ted Buck