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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 RESPONSE TO THE  
13 INVOLVED OFFICERS’ MOTION FOR  
14 RECONSIDERATION

15 **I. INTRODUCTION**

16 The Involved Officers’ Motion for Reconsideration should be denied. Based on the  
17 parameters of the inquest panel’s fact-finding directive, the Administrator correctly determined  
18 that “the issues that will be put before the panel primarily revolve around the Involved Officers’  
19 conduct and whether the actions related to the death were pursuant to the Seattle Police  
20 Department’s (SPD) policies and training.” Oct. 18, 2019 Pre-Inquest Conference Order (Order).  
21 The inquest parameters and purpose make clear that exclusion of witnesses who cannot provide  
22 evidence regarding “the cause, manner, and circumstances of the death, including applicable law  
23 enforcement agency policy[,]” is appropriate Appx. 2 at 3.2. Evidence that does not relate to the  
24 cause of death and that may lead to confusion of the issues or an inefficient hearing should be  
excluded.

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## II. ARGUMENT

### A. Exclusion of Daniel Yohannes and Officer Merritt Is Necessary to Avoid Prejudice and Confusion of the Issues

Evidence Rule 403 (ER 403) allows for the exclusion of evidence “if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury[.]” ER 403. The rule also allows for the exclusion of evidence likely to cause undue delay, waste time, or is the needless presentation of cumulative evidence. *Id.*

ER 403 is concerned about “unfair prejudice,” which has termed as prejudice caused by evidence of “scant or cumulative probative force, dragged in by the heels for the sake of its prejudicial effect.” *Carson v. Fine*, 123 Wn.2d 206, 223, 867 P.2d 610, 620 (1994). Evidence may be unfairly prejudicial under ER 403 “if it appeals to the jury's sympathies, arouses its sense of horror, provokes its instinct to punish, or triggers other mainsprings of human action.” *Id.* (citing 1 J. Weinstein & M. Berger, *Evidence* § 403[03], at 403–36 (1985)). In Washington, it is clear that unfair prejudice is caused by evidence likely to arouse an emotional response rather than a rational decision among the jurors. *Id.* (citing *Lockwood v. AC & S, Inc.*, 109 Wn.2d 235, 257, 744 P.2d 605 (1987); *State v. Cameron*, 100 Wn.2d 520, 529, 674 P.2d 650 (1983)).

Here, the Administrator correctly determined that:

“Extensive live testimony drawing out the details of Mr. Butts’ actions during the robbery or the fear that those actions may have caused the store clerk may very well distract the panel from that focus. In addition, a statement of facts with sufficient detail to apprise the panel of the conduct that brought Mr. Butts to the Involved Officers’ attention and that he was armed with and displayed a firearm during the robbery may adequately substitute for live testimony and expedite an otherwise lengthy proceeding.”

Order at 3.

While the Involved Officers are not wrong that the “primary purpose of an inquest . . . is to determine the facts and circumstances surrounding a death[.]” they are incorrect in their assertions that the purpose requires an uncabined exploration into all potential details related to

1 the death. The Inquest Rules clearly state that the Administrator is to set the scope of the inquest  
2 with the purpose of ensuring that the panel can make appropriate findings regarding the “cause,  
3 manner, and circumstances of the death, including applicable law enforcement agency policy,”  
4 Appx. 3.2. Here, exclusion of testimony from Daniel Yohannes and Officer Merritt is necessary  
5 to avoid inflaming the panel’s decision making or encouraging the panel to make decisions based  
6 off of information that was not available to the Involved Officers when they killed Mr. Butts.

7 As the Administrator correctly identified, testimony from Mr. Yohannes regarding his  
8 personal experiences with Mr. Butts would be distracting and provide evidence and information  
9 that is not relevant to determining the cause of Mr. Butts’ death nor whether the Involved Officers  
10 acted in accordance with SPD policies and training when they killed him. This is because none of  
11 the Involved Officers knew any details regarding what occurred at the 7-Eleven store other than  
12 there was an armed robbery and that a 6-pack of beer was stolen. *See* Family’s Op. Scope Br. at  
13 2-5 (detailing that the Involved Officers knew little about the robbery at 7-Eleven other than a gun  
14 had been involved and a six-pack of beer was stolen). *See also* Butts 1712-13; Butts 1635-36; Butts  
15 1705-06; Butts 1654-55. And so detailed testimony from Mr. Yohannes will only provide the panel  
16 with information and evidence that they should not rely upon when serving in their factfinding role  
17 regarding the officers’ actions.

18 Similarly, of the Involved Officers, only Officer Gordillo had any knowledge or  
19 information regarding the Butts’ physical altercation with Officer Merritt. As such, only Officer  
20 Gordillo’s decision making could have been impacted by the Butts’ interaction with Officer  
21 Merritt. Allowing Officer Merritt to testify about his interaction with either Adrianna or Damarius  
22 Butts would only confuse the jury as none of the Involved Officers, except potentially Officer  
23 Gordillo, relied upon the incident when they shot Mr. Butts. Any testimony that Officer Merritt  
24 could give would be well outside of the factfinding that the panel is asked to engage in in this  
matter.

Testimony from Mr. Yohannes and Officer Merritt about what occurred at the 7-Eleven  
store and the physical altercation between the Butts’ and Officer Merritt should be excluded as it

1 is not directly related to the reason for the use of force nor did such information serve as the basis  
2 of an officer safety caution.

3 **B. The Inquest Rules Efficiency Directive Supports Exclusion of Daniel Yohannes**  
4 **and Officer Merritt**

5 Under the Inquest Rules, the administrator is required to “construe the Rules of Evidence  
6 in a manner consistent with the goal of administrative fact-finding proceedings and to promote  
7 fairness and to minimize the delays, costs, and burdens that can be associated with judicial  
8 proceedings.” Appx. 2 at 3.3. the Inquest Rules also require the Administrator to “minimize delay,  
9 cost, and burden to participants.” Appx. 2 at 3.1. The emphasis on efficiency is repeated throughout  
10 the Inquest Rules including a directive to the Administrator to “solicit proposed stipulations of fact  
11 from the participating parties and work diligently to narrow the scope of the inquiry at the inquest.”  
Appx. 2 at 5.3.

12 The Involved Officers rely on RCW 36.24.020 and RCW 36.24.050 to support their  
13 argument that “prohibiting the testimony of witnesses with information directly related to the  
14 circumstances surrounding Mr. Butts’ death is not in keeping with . . . [the] legislative mandate.”  
15 Mot. for Reconsideration at 2. This argument is unpersuasive. If the inquest were to include every  
16 witness who has information relating to the death of Mr. Butts, which occurred at a busy  
17 intersection in downtown Seattle and was responded to by a substantial portion of Seattle-based  
law enforcement officers, the inquest would take months to complete.

18 Further, use of stipulated facts is encouraged by the Inquest Rules. *See* Appx. 2 at 5.3. And,  
19 here where “there are virtually no facts in . . . dispute[,]” use of stipulated facts on matters that are  
20 likely to be prejudicial and cause confusion on issues for the panel is appropriate. The Involved  
21 Officers’ argument that there must be an extraordinary reason to exclude a witness from testifying  
22 ignores the foundational principles of the inquest process—the Administrator is tasked with  
23 narrowing the scope of the inquest hearing to that which is assist the factfinder in their duties and  
that in that process witnesses will be excluded. There is nothing surprising or untoward about

1 practices that are consistent with judicial efficiency and protecting a proceeding against the  
2 injection of prejudicial irrelevant evidence.

3 **III. CONCLUSION**

4 For the foregoing reasons the Family requests that you deny the Involved Officers'  
5 Motion for Reconsideration.

6 DATED this 30th day of October, 2019

7  
8 */s La Rond Baker*

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