



**King County**

Department of Executive Services

**Inquest Program**

401 Fifth Avenue, Suite 135  
Seattle, WA 98104

**206-477-6191**

TTY Relay 711

Webpage: [kingcounty.gov/inquests](http://kingcounty.gov/inquests)

Email: [Inquests@kingcounty.gov](mailto:Inquests@kingcounty.gov)

**PRE-INQUEST CONFERENCE ORDER**

**INQUEST INTO THE DEATH OF DAMARIUS DEMONTA BUTTS  
INQUEST # 517IQ0713**

**PARTIES PRESENT:**

- Family of the decedent: Mother of Damarius Demonta Butts represented by Adrien Leavitt and La Rond Baker
- Law enforcement officers: Seattle Police Department Officers Elizabeth Kennedy, Christopher Myers, Joshua Vaaga and Canek Gordillo represented by Evan Bariault and Ted Buck (officers not present at this hearing)
- Employing government department: Seattle Police Department, represented by Ghazal Sharifi, Erika Evans, Rebecca Boatright present as Chief Carmen Best's representative
- Administrator: Michael Spearman assisted by Matt Anderson

The Administrator, having presided over the Pre-Inquest Conference on November 1, 2019 and having heard from the parties, hereby orders the following:

1. **Next pre-inquest conference:** A pre-inquest conference is hereby scheduled for December 4, 2019 at 9:00 a.m. in a court room to be determined.
2. **Inquest date:** The inquest in this matter is set for Monday, December 9, 2019 at 9:00 a.m. at the King County Courthouse, courtroom to be determined. Parties shall reserve two weeks of time for completion of the inquest.

- 3. Motion to Reconsider Scope (Testimony of Daniel Yohannes and Ofc. Adam Merritt):** An October 18, 2019 Pre-Inquest Order excluded Ofc. Adam Merritt’s testimony as cumulative and likely to cause speculation and distraction on the part of the panel. The order also solicited a stipulation from the parties regarding the testimony of Daniel Yohannes, to minimize the risk of distracting the panel. The Officers and SPD moved for reconsideration of that order on the basis that Ofc. Merritt’s testimony was not cumulative and objected to presenting Mr. Yohannes’ testimony through stipulation.

Appendix 2, section 12.4 of the Executive Order provides that “relevant, non-cumulative witnesses should only be excluded by the administrator in exceptional circumstances.” Because Officer Gordillo did not witness all of Ofc. Merritt’s relevant interactions with Mr. Butts, the Involved Officers and SPD’s argument that at least part of Officer Merritt’s testimony would not be cumulative is well taken. Accordingly, Officer Merritt will be allowed to testify to the non-cumulative portion of his actions and observations. In addition, as to Mr. Yohannes, the legitimate goals of preventing speculation and passion from distracting the panel can be accomplished by appropriate limitations on his testimony and, if necessary, a limiting instruction for the panel.

The scope of Mr. Yohannes’ and Ofc. Merritt’s testimony on direct examination and any limitations of cross examination will be determined prior to the inquest. The parties may submit proposals re: the scope of each witness prior with their *Motions in Limine*.

- 4. Motion to Compel Interviews:** RCW 36.24.200 provides authority to the coroner (or as designated in King County, the Inquest Administrator) to issue subpoenas for testimony and documents and for the subpoenaed witness to appear at a specified time and place. Thus, where necessary a witness may be required to appear and submit to deposition. In determining whether the exercise of this authority is necessary, the Administrator must be mindful of the duty to “promote an atmosphere consistent with administrative fact-finding and strive to minimize delay, cost, and burden to participants, while promoting fair and open proceedings.” EO, Appendix 1, Section 3.1. With the exception of SPD Dets. Ledbetter and Det. Simmons, who have been designated as the forensic investigators,<sup>1</sup> the Family has not established that each of the requested interviews is necessary to further a full, fair and transparent review of the death. An inquest is an investigation, not an adversarial proceeding. As with any investigation it isn’t necessary that the parties know the answer to each question before it is asked. Instead, the parties must have sufficient information to enable them to inquire in a manner that ensures that the panel will have the relevant information to answer the interrogatories and ensure that the inquest proceeds in an efficient manner.

Accordingly, I deny the Family’s motion to issue subpoenas for deposition testimony at this time except as to SPD Dets. Ledbetter and Simmons. I order that the depositions of SPD Dets Ledbetter and Simmons occur, with Notices of Deposition to be served in compliance with CR 30(b)(1).

- 5. Motion to Compel the Involved Officers to Elect whether they will Testify:** The Family’s motion to compel the Involved Officers to declare whether they will testify by a

---

<sup>1</sup> Deputy Chief Cordner and Captain Teeter have agreed to be interviewed and, as such, a deposition is unnecessary.

date certain is granted. It is critical to a full, fair and transparent investigation that the panel hear from the Involved Officers regarding the events that occurred resulting in Mr. Butts' death. While live testimony is preferred, the Involved Officers have the option of not testifying. If they decline to do so, it must be determined whether the panel should hear various statements made by the officers concerning these events and if so, to what extent, if any, redactions are necessary. Because making this determination could be time consuming, especially as to any recorded statements, it is necessary that the Involved Officers provide notice of whether they intend to testify. The failure to so provide could unnecessarily delay the proceedings. The Involved Officers request that they be allowed to declare whether they will testify after the Administrator's proposed final interrogatories are provided. That request is granted. See Section 10, below re: scheduling. To the extent the Family has also requested that the Involved Officers' ability to appear by counsel during these proceedings be conditioned on their agreement to testify at the Inquest, the request is denied

6. **Use of Garrity Statements:** Garrity v. New Jersey (385 U.S. 493, 500, 87 S. Ct. 616, 620, 17 L. Ed. 2d 562 (1967)) precludes the use of statements compelled under threat of removal from office in a subsequent criminal trial. No authority has been provided precluding the use of such statements in non-criminal proceedings, including inquests. Indeed, the purpose of such statements is for use at a later time, including in disciplinary and termination of employment actions. Furthermore, the Washington Supreme Court has made clear that it has "refused to apply the privilege to civil cases unless it has been shown conclusively that the penalty imposed is punishment tantamount to a criminal sanction." In Re Young, 122 Wn.2d 1, 50, 857 P.2d 989, 1013 (1993) (*superseded by statute on other grounds*). The fact that a statement offered for use in this proceeding was obtained under threat of removal from office will not preclude its use.
7. **Timing of Witness Interviews and Depositions:** The parties shall coordinate the interviews of Deputy Chief Cordner and Captain Teeter and the depositions of Det. Ledbetter and Det. Simmons with all due haste and in any event by November 26, 2019.
8. **Expert witnesses:** The parties confirmed that no expert witnesses will be called.
9. **Discovery Deadline:** All discovery, aside from witness interviews, has been completed at this time. No further discovery shall be allowed.
10. **Witness List Correction.** The Witness List in the Order entered October 18, 2019 inadvertently omitted Associate Medical Brian Mazrim, MD. Dr. Mazrim will be called as a witness.
11. **Required Submissions:**
  - a. **Proposed Interrogatories and Involved Officers Election re: Testimony:** The IA's intended interrogatories shall be provided as soon as practicable<sup>2</sup>. A schedule

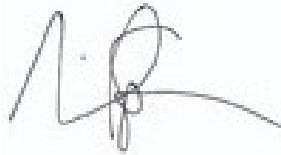
---

<sup>2</sup> Although intended interrogatories will be determined prior to the hearing, the parties will assess the actual interrogatories provided to the panel after the close of evidence.

allowing for comments by the parties and a deadline for the officers to declare whether they will testify will accompany the interrogatories.

- b. Proposed statements:** In the event that any involved Officer elects not to testify, Parties should be prepared to propose which prior statements they wish to have presented to the panel on a schedule to be provided at the time of the IA's draft intended interrogatories. A deadline for proposing redactions, if any, will be provided at the same time. The party proposing the redactions shall be responsible for providing the statements and/or transcripts, if necessary.
- c. *Motions in Limine:*** *Motions in Limine* are due November 27, 2019 at 12:00 noon. Responses are due December 3, 2019 at 12:00 noon.
- d. *Voir Dire* and Instructions:** The Administrator shall provide proposed *Voir Dire* and Instructions by November 12, 2019. Any responses by the parties to the proposals are due by November 27, 2019.
- e. Summation** – Any party who wishes to provide a summation to the panel at the close of the evidence should make that request to the Administrator well before the close of the evidence.
- f. Live Streaming and Proposed Media Order** – Pre-inquest conferences have been audio recorded. The Administrator proposes that the proceedings be live-streamed and that the attached Media Order govern recording at the hearing. The administrator will hear comments from any concerned party, media organization or person at the December 4, 2019 Pre-Inquest Conference. Please provide written comments, if any, by November 20, 2019.

DATED November 5, 2019

A handwritten signature in black ink, appearing to read 'M. Spearman', with a stylized flourish extending to the right.

Michael Spearman  
Administrator