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KING COUNTY DEPARTMENT OF EXECUTIVE
SERVICES INQUEST PROGRAM

<p>INQUEST INTO THE DEATH OF: DAMARIUS DEMONTA BUTTS, Deceased.</p>	<p>No. 517IQ8013 INVOLVED OFFICERS’ RESPONSE TO FAMILY’S MOTION TO EXPAND THE SCOPE OF THE INQUEST AND MOTION IN LIMINE</p>
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1. As SPD’s barricaded person policy and training is not applicable, the panel is not permitted to determine whether officers complied with said policy.

It is not the role of the Administrator, the Family or the inquest panel to determine the applicability of policy or training. The executive order is clear that the Seattle Police Department “shall provide testimony concerning applicable law enforcement agency training and policy as they relate to the death[.]”¹ The order does not state, suggest or contemplate the Administrator, the Family, or the inquest panel determining or opining on whether a particular policy or training applies. SPD has repeatedly indicated barricaded person policy and training are not relevant to the fact and circumstances of this event, and the Family does not possess the expertise or foundation to suggest otherwise. Indeed, Family counsel attempted to suggest barricaded person

¹ Paragraph 12.3, Appendix 2, PHL-7-1-2-EO “Conducting Inquests in King County”.

1 training applied to this inquest during the interview of Captain Teeter. However, Teeter quickly
2 dispelled the theory by identifying counsel's incomplete hypothetical that removed relevant facts
3 applicable to this inquest:

4 Family Counsel: So you indicated that a static situation would be one in which an
5 individual suspect enters into a building or a room but there is no
6 indication that they are going to leave or that they can leave
7 through any other door other than where the SPD officer is. I
8 believe that's how you indicated what training looks like for the
9 difference between static and dynamic for barricaded persons; is
10 that right?

11 Captain Teeter: I don't think that necessarily covers every aspect of it, but for the
12 piece of static, yes, that a person is fixed in a room they're not
13 moving from, that would be considered static. There are other
14 things that might come into play, though.

15 Family Counsel: What other things might come into play?

16 Captain Teeter: So an example would be, say they were static in a restroom and
17 they were flushing the evidence, the officers believe they were
18 flushing drugs down a toilet, and that might create an exigency that
19 might suggest that an officer should enter that room, maybe with a
20 subject who's not armed. There are so many different factors. But
21 just focusing on the word "static," yeah, I think that's fair. If they're
22 fixed in a room, they're not moving out of that room, maybe it's
23 static. But it depends on what they are doing in the room. If they're
shooting out of that room, shooting a firearm or shooting arrows or
some other weapon that would pose a danger to others, then they
may be static but officers may still choose to enter. So I think the
term static is partly position but it's also kind of what the person's
actions are.

...

19 Family Counsel: Okay. So this scenario, can you describe what's happening in this
20 training scenario?

21 Captain Teeter: Let me read this. This is a scenario where it's located in front of a
22 bar where the building is empty. The bartender calls 9-1-1 because
23 they see several people arguing in front of the bar and they believe
it might escalate. Officers arrive. One person pulls out a gun and
shoots the other person and then runs into the bar, shuts the door
and yells at the officers, Don't come in here or I'll shoot you, and
refuses to come out. And so that's the scenario. And the officers

1 are expected to work to rescue the person whose been shot and to
2 implement the four Cs.

3 ...

3 Family Counsel: Under the barricaded-person's training, this scenario, an individual
4 has a firearm, shoots another person, and then goes into a locked
5 room. The expected outcome for the officers is not necessarily to
6 use deadly force for that individual; is that correct?

6 Ms. Sharifi: I'm going to object. That slightly mischaracterizes the training. Go
7 ahead.

7 Captain Teeter: So what I will say is in this scenario, given the particular
8 circumstances of it, the expectation is that the officers will
9 implement the four Cs. But this is a scenario where the suspect is
10 not pointing a firearm or firing at the officers where they don't
11 believe anyone else is in danger because they're given information
12 that the building is empty. So there are a number of additional facts
13 kind of beyond the ones that you stated that kind of play into why
14 that is the expected action for the officers.

11 Ex. 1 (Teeter Interview Excerpts). The above dialogue is a perfect example of why only the
12 designated SPD personnel may testify about applicable policy. Family counsel, the attorneys
13 involved, the inquest panel and the Administrator do not have sufficient foundation or expertise
14 to opine on applicable policy. The Administrator should reject any effort by the Family counsel
15 or anyone else to suggest or propose policy or training not identified as applicable by the Seattle
16 Police Department training and policy representatives.

17 **2. The executive order does not support permitting Ms. Butts' testimony.**

18 The executive order does not contemplate the Family testifying about the decedent's
19 biographical information. Indeed, none of the interrogatories requires this information. For
20 example, an inquest panel will not identify Mr. Butt's height, weight, and date of birth. Further,
21 Mr. Butts' name does not need to be presented by his mother and his date of death will be
22 identified through significant testimony, including that of the medical examiner. This is not a
23 civil damages case where the emotional impact of an event is on trial. Indeed, the City and

1 Involved Officers agreed to the Family’s motion *in limine* excluding testimony about the
2 emotional impact of the shooting on the officers. As most of the information the Family seeks to
3 present through Ms. Butts is not relevant to this fact-finding inquiry, the only purpose of her
4 testimony is to produce an improper emotional response from the panel. ER 403. No such
5 testimony has been permitted in the past and nothing has changed in the inquest process that
6 permits it now.

7 **3. There is no reasonable basis to exclude the physical evidence.**

8 The physical evidence is available and should be submitted to view by the inquest panel.
9 Courts have “a wide latitude of discretion to determine the admissibility of demonstrative
10 evidence...” *State v. Bergen*, 13 Wn. App. 974, 976, 538 P.2d 533, 536 (1975). Demonstrative
11 evidence should be admissible when it is relevant. *State v. Finch*, 137 Wn.2d 792, 975 P.2d 967
12 (1999).

13 Here, the physical presentation of the revolver, the jacket, ammunition, and ballistic vest
14 does tend to make the existence of facts of consequence more likely than it would be without
15 them. There are facts and circumstances surrounding Mr. Butts’ death that are contained within
16 these pieces of evidence. These pieces of evidence in their physical form allow the jury to
17 properly examine the evidence, which they would be denied by the use of photos. The
18 presentation of the revolver, the jacket, ammunition, and ballistic vest does not substantially
19 outweigh the prejudice, especially where a jury is not determining guilt or liability.

20 The jury may wish to view the physical evidence as some photographs do not clearly
21 depict the evidence as the physical object itself. This is a practice used in criminal, civil, and
22 administrative hearings – even motion hearings before Superior Court judges. Prior inquests
23 have involved the presentation of physical evidence as it is the best evidence. The Administrator

1 should deny the Family's request.

2 DATED this 3rd day of December, 2019, at Seattle, Washington.

3 **FREY BUCK, P.S.**

4 By: /s/ Evan Bariault
5 Ted Buck, WSBA #22029
6 Evan Bariault, WSBA #42867
7 Attorney for Seattle Police Department Involved
8 Officers
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CERTIFICATE OF SERVICE

I certify that on the 3rd day of December, 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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DATED this 3rd day of December, 2019, at Seattle, Washington.

/s/ Evan Bariault
Evan Bariault