

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

KING COUNTY DEPARTMENT OF EXECUTIVE SERVICES
INQUEST PROGRAM

IN RE INQUEST INTO THE DEATH
OF DAMARIUS D. BUTTS

No. 517IQ8013
SEATTLE POLICE DEPARTMENT'S
MOTIONS *IN LIMINE*

I. RELIEF REQUESTED

The Seattle Police Department (“SPD”) moves the Court for an order *in limine* prohibiting the Family and their attorneys and witnesses, from mentioning, seeking to introduce evidence, or referencing in any way, directly or indirectly, in the presence of the inquest panel, the subjects identified in the following motions.

- 1. **AGREED - Bar any reference to the thoroughness of SPD’s investigation or subsequent post-incident steps taken by SPD.**

This motion is to exclude reference, testimony, or evidence about the thoroughness of SPD’s investigation. This motion also seeks to exclude any post-incident trainings/policy changes that took effect.

1 2. **AGREED - Motion to exclude testimony or evidence about what could have been done**
2 **differently by the shooting officers.**

3 This motion is to exclude any elicited testimony or presented evidence on “could have” or
4 “should have” as to the shooting officers’ actions.

5 3. **AGREED EXCEPT FOR VOIR DIRE - Bar any reference by any witness or counsel to**
6 **(1) the December 16, 2011, Report of the Department of Justice; (2) the Consent Decree;**
7 **or (3) generalizations or characterizations about the Seattle Police Department that are**
8 **not directly relevant to this case.**

9 Counsel should be prohibited from introducing argument, testimony, evidence, or otherwise
10 inquiring questions from witnesses regarding the consent decree, the DOJ findings letter, or
11 criticizing SPD as a law enforcement body concerning any acts that do not relate to this case.
12 (Agreed).

13 *Voir Dire (opposed):*

14 The Administrator’s proposed voir dire pose significant questions on law enforcement related
15 issues that will dig deep into the prospective jurors’ perceptions and beliefs about law enforcement,
16 SPD, crime, activism, and legal proceedings in general:

17 /
18 /
19 /
20 /
21 /

- 1 11. Have you ever served as a juror whether in an inquest or in a civil or criminal matter?
- 2 12. Have you, a relative, or a close friend ever been a victim of a crime?
- 3 13. Have you, a relative, or a close friend ever been accused of a crime, whether rightly or
- 4 wrongly, or arrested and/or booked into jail, or convicted of a crime other than minor
- 5 traffic violations?
- 6 14. Have you, or do you have any family members or close friends who have worked in or
- 7 have any connection to the court system or law enforcement?
- 8 15. Do you, or any family members or close friends, current work or have worked in the past
- 9 in a Prosecuting Attorney's office or a Public Defenders office?
- 10 16. Do you have particularly strong feelings, positive or negative, about law enforcement
- 11 officers, including Seattle Police Department officers?
- 12 17. Have you ever had any particularly good or particularly bad experiences with law
- 13 enforcement officers, including Seattle Police Department officers?
- 14 18. Is there anything about the nature or subject matter of these proceedings that causes you
- 15 to be hesitant about sitting on this inquest?
- 16 19. Do you in general have strong feelings about firearms?
- 17 20. Do you or any members of your family own any guns? If yes, what is the purpose of
- 18 owning the gun (hunting, protection, etc.)?
- 19 21. Are you generally opposed to the use of firearms by anyone, including law enforcement
- 20 officers?
- 21 22. Do you have strong feelings about the use of force by police officers?
- 22 23. Do you have strong feelings about the right of self-defense or defense of others?
- 23 24. Would the fact that police officers were involved in this incident cause you to have any
- preconceived notions about this case?
25. Are you familiar with the phrase Black Lives Matter? Do you have particularly strong
- feelings, positive or negative, about the phrase or the Black Lives Matter movement?

1 30. Do you have strong feelings or opinions regarding whether law enforcement officers are
2 too aggressive or not aggressive enough in dealing with actual or potential criminal
conduct?

3 31. Would you tend to believe the testimony of a police officer witness more than the testimony
of a non-police officer witness?

4 32. Do you have any special training, education, or experience in police tactics, firearms or
use of force issues?

5 33. Do you have any specialized training in self-defense or in recognizing the risks presented
6 by deadly weapons, including firearms?

7 34. Do you watch any crime-related television shows or have a particular interest in crime
scene investigation and investigation techniques?

8
9 35. Do you believe that television or motion picture depictions of law enforcement activities
mostly portray such activities accurately?

10 36. Do you belong to or materially support, by monetary donation or volunteering your time,
11 to any organization with a primary purpose related to support of law enforcement officers
or organizations, civil liberties or civil rights?

12 The City and the United States entered into a settlement agreement (the “Consent Decree”)
13 which was approved by the Court on August 30, 2012. The Consent Decree was intended to address
14 findings made by the U.S. Department of Justice (DOJ) in a 2011 investigation of the Seattle Police
15 Department (SPD). As required by the Consent Decree, SPD developed comprehensive policies to
16 address all areas of the consent decree. With respect to the use of force, the federal monitor submitted
17 new policies to the Court on November 27, 2013, and, after hearing from the Community Police
18 Commission and DOJ, the Court approved them. *United States v. City of Seattle*, 12-1282, WDWA,
19 Dkts. 107 & 118. The Monitor praised the new policies, writing, “SPD’s use of force policy, approved
20 by the Court in December 2013, is the embodiment of the Consent Decree. It provides officers with
21 clear guidance and expectations consistent with constitutional imperatives.” *Monitor’s Fourth*
22 *Semiannual Rept.* at 20. On January 10, 2018, SPD was found to be in full and effective compliance
23

1 with the terms of the Consent Decree. *See* 12-1282, Dkt. 439. The City is nearing the end of its two-
2 year sustainment period.

3 In voir dire (or otherwise), there is no need to highlight an irrelevant and complicated subject
4 such as the Consent Decree. Introduction of such a subject matter will potentially require explanation
5 or prejudice the jury pool against the Seattle Police Department's policies and procedures because of
6 the fact alone that SPD is currently under federal oversight. As indicated from the preceding
7 paragraph, the consent decree is a lengthy and complicated process – much of which is nearly
8 complete.

9 There is no prejudice to any party by excluding voir dire questions 26-29 addressing law
10 enforcement training, oversight, and supervision, and the Consent Decree directly. These questions
11 are not a subject of this inquest. Prejudicing SPD or potentially tainting the jury pool by eliciting
12 answers to such questions does not serve any purpose for the limited inquiry in this Inquest. The
13 Administrator should exclude voir dire questions 26-29.

14 **4. AGREED - Prohibit designees from opining or presenting evidence regarding whether**
15 **SPD acted pursuant to policy and training.**

16 This Motion is to prohibit SPD designees from being asked to opine on the issue of whether
17 the shooting officers acted pursuant to policy/training.

18 **5. AGREED - Motion to prohibit allusion or reference to inconsistency between**
19 **policy/training**

20 During the interview of Captain Teeter, Mr. Anderson asked Captain Teeter several questions
21 regarding how an officer is expected to resolve the differences between a conflict in policy versus
22 training. This motion asks that any such questioning or similar references be prohibited.

23 **6. Motion to prohibit discussion on rendering medical aid under use of force policy**

1 Counsel for the Officers will brief this issue. SPD anticipates joining. This motion argues that
2 given the factual development of this incident, there is no testimony or evidence that can be presented
3 on the viability of the shooting officers complying or not complying with the provisions of the use of
4 force policy addressing rendering medical aid and therefore, such a provision is inapplicable.

5 **7. Motion to limit scope of lead FIT investigator testimony.**

6 Detective Simmons was the lead FIT investigator assigned to conduct the underlying force
7 investigation. In this capacity, Detective Simmons worked with other detectives to collect relevant
8 evidence, video, recordings, and statements related to the underlying use of force. In conjunction with
9 Detective Simmons, there was a separate detective investigating the assault and injuries to the
10 officers, as well as CSI Detective Ledbetter, who conducted the forensic examination of the scenes
11 at issue. This motion is intended to focus the scope of Detective Simmons' testimony.

12 a. Detective Simmons should not address contents of *Garrity* statements.

13 Based on the parties' call on 11/26/2019, it is believed that Detective Simmons is anticipated
14 to lay the foundation for the Officers' *Garrity* statements, discuss the purpose behind *Garrity*
15 statements, and even comment on the substance of the investigation – particularly the physical
16 drawings of the officers. If the *Garrity* statements are admitted, this proposed direction of Detective
17 Simmons' examination is not appropriate.

18 First, **explanation of the purpose and intent behind *Garrity*** is outside the foundational scope
19 of Detective Simmons. Detective Simmons is a FIT investigator, not an attorney. He cannot be asked
20 to opine on the routine nature of *Garrity* statements or what they are. This goes beyond the scope of
21 his role in this inquest. *See* E.O., Appx. 2, ¶ 12.3. Second, any discussion of *Garrity*, their purpose,
22 or intent it is irrelevant to the scope of this inquest, it is confusing to the fact-finder, and it is
23 prejudicial to the officers that routinely provide *Garrity* statements. *See* ER 401, 403.

1 Similarly, Detective Simmons should be protected from providing testimony on his
2 recollection of what was stated or occurred at the *Garrity* statements of the officers – including his
3 evaluation or opinion about what the shooting officers were drawing in scribbled diagrams that the
4 officers were developing and editing as they provided statements. Detective Simmons’ testimony
5 cannot be used a substitute for the testimony of the shooting officers. He should be protected from
6 offering improper opinion evidence on what the officers were attempting to convey in the context of
7 their *Garrity* statements and certainly should be prohibited from speculating on *his* understanding of
8 what the shooting officers may have been drawing at a given point in time. *See* ER 602, 701. If any
9 aspect of the *Garrity* statements are introduced, Detective Simmons should be limited to indicating
10 that as part of the investigation – officers provided statements.

- 11 b. Detective Simmons should not be asked about who could have or should have been
12 done differently regarding his investigation.

13 Detective Simmons should be protected from speculating about what he would have done
14 differently in his investigation, what he believes he missed, and what he would potentially do
15 differently. The Order requires that the designated agency representative provide “[a] comprehensive
16 overview of the forensic investigation into the incident (e.g., statements collected by investigators,
17 investigators' review of forensic evidence, physical evidence collected by investigators, etc.)” E.O.,
18 Appx. 2, ¶ 12.3. As such, the inquest panel’s responsibility is simple: garner facts regarding the
19 actions of the officers and identify whether the facts complied with policy and training. Any further
20 exploration into the could haves and should haves goes beyond the scope of inquest, particularly as
21 it relates to the investigation itself.

- 22 c. Detective Simmons should not draw conclusions regarding compliance with
23 policy/training about his investigation or actions of the shooting officers. (AGREED)

The portion of this request was agreed to by the parties.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

8. **Motion to exclude jury from identifying relevant policy or training and form of special interrogatories.**

It is anticipated that the Officers' counsel will submit the substance of this brief and proposal. SPD anticipates joining. This motion is an objection to the special interrogatories to the jury as they are drafted at present or proposed. The inquest panel should not opine on what policies/training are applicable as they lack the foundation to do so.

9. **Motion on process to introduce applicable policy and training.**

Based on the parties' 11/26/2019 phone conference, it is believed that the anticipated testimony of the agency designees on policy and training will not include questioning of the representatives about *what* the applicable agency policies/training are. This is inconsistent with the language of the Executive Order and places the inquest jury panel – not having the foundation to address the same in the shoes of the agency representative. This motion presents an overview of the proposed procedure for identifying and introducing applicable policy and training through the designees.

As will be provided in greater detail in the Officers' motion about the panel's policy/training determinations, the introduction of *applicable* policy and training must come from the agency representatives. E.O., Appx. 2, ¶ 12.3 identifies that the agency chief or "director of the employing government department shall provide testimony *concerning applicable law enforcement agency training and policy as they relate to the death.*" (emphasis added). **As such, the language of the Executive Order calls for the representatives to be asked if certain policies/training are applicable. Then, depending on their response, they should identify why or why not and address those policies/training as needed.** The limitation imposed on the representatives is as follows: they "may not comment on *whether* employees' actions related to the death were pursuant to training and policy;

1 or any conclusions about whether the employee's actions were within policy and training.” E.O.,
2 Appx. 2, ¶ 12.3. Prohibiting the agency representatives from being asked whether that agency’s
3 policies or training is applicable allows room for speculation by the inquest panel, and the parties –
4 without appropriate foundation – to evaluate the facts of the case. This is improper and inconsistent
5 with the language and intent of the Executive Order.

6 **10. AGREED - Motion to exclude testimony or evidence by Officer Briskey or concerning**
7 **use of the canine**

8 This motion proposes that Officer Briskey’s testimony is unnecessary and the factual
9 circumstances around the use of the canine can come in from elsewhere. It was agreed that if the
10 timeframe and basic facts come from another witness, perhaps Det. Simmons.

11 DATED this 27th day of November, 2019.

12 PETER S. HOLMES
13 Seattle City Attorney

14 By: /s/ Ghazal Sharifi
15 Ghazal Sharifi, WSBA# 47750
16 Erika Evans, WSBA# 51159
17 Assistant City Attorneys
18 E-Mail: Erika.Evans@seattle.gov
19 E-Mail: Ghazal.Sharifi@seattle.gov

20 Seattle City Attorney’s Office
21 701 Fifth Avenue, Suite 2050
22 Seattle, WA 98104
23 Phone: (206) 684-8200

Attorneys for the Seattle Police Department

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

CERTIFICATE OF SERVICE

I certify that on the 27th day of November, 2019, I caused a true and correct copy of this document to be served on the following in the manner indicated below:

Matthew Anderson Attorney	(x) Via Email Matt.Anderson@kingcounty.gov
Dee Sylve Inquest Program Manager DES-Dept. of Executive Services 401 5 th Ave., suite 131 Seattle, WA 98104 Mailstop: CNK-DES-135	(x) Via Email Dee.Sylve@kingcounty.gov
Adrian Leavitt Northwest Defenders Division, King County Department of Public Defense 710 2 nd Ave, Suite 250 Seattle, WA 98104	(x) Via Email Adrian.Leavitt@kingcounty.gov
La Rond Baker Northwest Defenders Division, King County Department of Public Defense 710 2 nd Ave, Suite 250 Seattle, WA 98104	(x) Via Email lbaker@kingcounty.gov
Lori Levinson Paralegal, Felony Unit Northwest Defenders Division King County – Department of Public Defense 710 2nd Avenue, Suite 250 Seattle, WA 98104	(x) Via Email Lori.Levinson@kingcounty.gov
Ted Buck Frey Buck, P.S. 1200 5th Ave, Ste 1900 Seattle, WA 98101-3135	(x) Via Email TBuck@freybuck.com
Evan Bariault Frey Buck, P.S. 1200 5th Ave, Ste 1900	(x) Via Email EBariault@freybuck.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

Seattle, WA 98101-3135	
Lisa Smith Paralegal Frey Buck, P.S. 1200 5th Ave, Ste 1900 Seattle, WA 98101-3135	(x) Via Email LSmith@freybuck.com
Rebecca Boatright Executive Director of Legal Affairs, SPD Seattle City Attorney's Office 701 5th Ave Ste 2050 Seattle, WA 98104-7095	(x) Via Email Rebecca.Boatright@seattle.gov

/s/ Ghazal Sharifi
Ghazal Sharifi, Assistant City Attorney