



## King County

Department of Executive Services

### Inquest Program

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### PRE-INQUEST CONFERENCE ORDER

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

#### PARTIES PRESENT:

Family of the decedent:	Mother and Uncle 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

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The Administrator, having presided over the Pre-Inquest Conference on December 4, 2019 and having heard from the parties, hereby orders the following:

- Inquest date:** The inquest in this matter was set for Monday, December 9, 2019 at 9:00 a.m. at the King County Courthouse but stayed in an order dated December 6, 2019. The date of the inquest hearing will be scheduled at a hearing on Monday, December 16, 2018 at 9:00 a.m. in court room E-753.

2. **Admissibility of Garrity Statements:** The Involved Officers object to the admission of statements provided by them pursuant to Garrity v. New Jersey, 385 U.S. 493 (1967). They argue that the statements are inadmissible hearsay. The Family disputes this contention. The Administrator need not resolve this issue because even if the statements are hearsay, they are still admissible in this proceeding. Executive Order, App. 2, Section 3.3 provides that although the Rules of Evidence generally apply in inquest proceedings, they “may be supplemented and/or modified by additional rules governing administrative proceedings, at the discretion of the administrator.” The rules governing administrative hearings in King County allow for the admissibility of “reliable hearsay.” (See Rules of Procedure and Mediation, Office of the Hearing Examiner, Section XII(B)(1).)

No party disputes the reliability of the Garrity statements taken from the Involved Officers in this case, and for good reason: The statements were made within days of the incident and, although not sworn, the officers were instructed not to speak to anyone else about the event before making the statements. In addition, significant portions of the statements are corroborated by other evidence in this record. The Administrator also finds, given the Involved Officers’ decision to not testify, that the admission of the Garrity statements is necessary to ensure a full and fair hearing into facts and circumstances of the death of Mr. Butts. The community will have little faith in the outcome of this inquest if the panel hears neither the testimony nor the recorded statements of the Involved Officers as to their account of the facts and circumstances leading to Mr. Butts’ death. The Administrator concludes that the statements are admissible.

3. **Redactions to Garrity Statements:** Each statement shall be redacted as indicated in transcripts provided under separate cover. The IA thanks counsel for the Involved Officers for their assistance in transferring those redactions to the audio recordings.

4. **Scope of Inquiry:** EO, App. 2, Section 3.2 provides

The administrator, after consultation with the participating parties, shall determine the inquest scope. Consistent with the purpose as set forth in the amended Charter, Executive Order, and Appendix 1 and 2, the inquest scope shall include an inquiry into and **the panel shall make findings regarding** the cause, manner, and circumstances of the death, including **applicable law enforcement agency policy**. The panel shall make findings regarding whether the law enforcement officer complied with applicable law enforcement agency training and policy as they relate to the death (emphasis added).

The EO is clear on this point. The administrator determines the scope, i.e. the universe of policies and trainings that the panel is to consider and within that scope the panel determines which policies are applicable to the facts of the particular case under consideration. And, although the controlling language of the second sentence of EO, App 2, Section 3.2, high-lighted above, does not explicitly mention training, allowing the panel to make findings regarding applicable law enforcement agency training is consistent with the final sentence in that section which requires the panel to “make findings regarding whether the law enforcement officer complied with applicable law

enforcement agency training and policy as they relate to the death.” Accordingly, the following discussion considers whether the applicability of both policies and trainings are issues for the panel to decide.

The Involved Officers and the Seattle Police Department (SPD) contend that the applicable policies and trainings are to be determined by the department chief. They cite EO, App. 2, Section 12.3 which provides in relevant part, “the chief law enforcement officer of the involved agency ... shall provide testimony concerning applicable law enforcement agency training and policy as they relate to the death ...” But this section only states that the chief shall provide testimony concerning the applicable training and policy. It does not say that the chief shall determine what policies and trainings are applicable. Accordingly, the chief may testify concerning the applicable policies and trainings that the Administrator has found are within the scope of the policies and trainings that the panel shall consider.

The Involved Officers also argue that the final sentence of section 3.2 precludes the panel from determining what training and policy applies and limits the panel to determining solely whether the officers followed training and policy. There is no limiting language in that sentence of the order and interpreting it that way would render the language authorizing the jury to make findings regarding applicable law enforcement policy superfluous.

In determining the scope, the Administrator should consider the undisputed facts of the case at hand and determine which law enforcement agency policies and trainings could be applicable to those facts. For example, given the nature of inquest proceedings, undoubtedly, policies and training regarding use of force and use of deadly force will be within the scope. In addition, in this case the parties also have agreed that policies and training regarding de-escalation are within the scope. They dispute, however, whether policies and training regarding fleeing suspects, and rendering/requesting medical aid and training regarding barricaded suspects are within the scope. In resolving this dispute, the question is whether there are disputed material facts that could result in a determination that the policies and training apply. If there are, then those policies and/or trainings are within the scope that the panel shall consider.

No material disputed facts exist about the policy and training on fleeing suspects (SPD Policy Manual Section 8.050(5)). These policies and trainings apply if the suspect was fleeing at the time deadly force was used. Although, Mr. Butts had been in flight and the police in pursuit, once Mr. Butts was in the vestibule with no escape route except through the single doorway occupied by the officers, he was no longer fleeing. Instead, it appears undisputed that at that point he turned and faced his pursuers. At some subsequent point, when gunfire erupted, the undisputed evidence shows that Mr. Butts was not fleeing. Thus, the policy and training regarding fleeing suspects is outside the scope of this inquest’s inquiry.

Applying a similar analysis to SPD Policy Manual Section 8.050(7), reaches the opposite result. That policy requires that officers “shall automatically request medical aid” with

every use of deadly force. Here it is undisputed that deadly force was used. Thus, this policy clearly falls within the scope of policies that the panel shall consider.

Although, there is no SPD policy regarding barricaded subjects, SPD does offer training on that issue. The same analysis applicable to SPD policy should apply. According to the deposition testimony of SPD Captain Michael Teeter, it is “fair” to consider barricaded suspect training if the situation is “static.” Captain Teeter also testified that “[i]f they’re fixed in a room, they’re not moving out of that room, maybe its static. But it depends on what they’re doing in the room.” 11/18/2019 Interview at 39. Here, it is undisputed that Mr. Butts was in a room from which he had no escape because the only available exit was covered by SPD officers. On these facts, Mr. Butts could fall within the SPD training protocols for a barricaded suspect. The material issue is what Mr. Butts was doing at the time the officers decided to use deadly force. There is disputed evidence on this issue and whether the training is applicable depends on how it is resolved by the panel. Accordingly, barricaded suspect training is within the scope of trainings that the panel should consider.

As to the disputed scope issues, the panel shall hear testimony and evidence regarding SPD policy on rendering/requesting medical aid (8.000(6) & (7)) and any training associated with this policy and barricaded suspect training. No evidence will be permitted regarding SPD’s fleeing suspect policy (8.000(5)) or any training associated with that policy.

5. **Opinion Testimony by Assistant Chief Cordner and Captain Teeter:** Assistant Chief Cordner and Captain Teeter may testify regarding whether each individual policy or training, respectively, applies. However, in accordance with EO, App. 2, Section 12.3, neither shall be allowed to opine on whether an officer followed any individual policy or training.
6. **Hypotheticals:** The pro tem attorney shall advise the witnesses that examples may be helpful in explaining policies and trainings but that any such examples shall not be based upon the facts of this case. Questions from counsel shall likewise avoid hypotheticals based upon the facts of this case. Objections to any such questions or testimony will be dealt with on a case by case basis during testimony. The parties shall apprise the IA outside the presence of the jury of questions they intend to ask that include hypotheticals that touch upon the specific facts of this case.
7. **Witnesses:** The Involved Officer’s request to subpoena Adrianna Butts for testimony is denied. The Family’s offer of testimony providing biographical information by Mr. Butts’ mother is denied. The family may offer supplemental language to be included in the opening instructions for review.
8. **Physical Evidence:** Evidence of a pistol possessed by Mr. Butts shall be presented through photographs and testimony. The Administrator will admit the jacket, hat, mountain dew bottle and ammunition discarded by Mr. Butts as well as Officer Kennedy’s ballistics vest and jacket.

9. **Voir Dire:** The Administrator will include questions relating to the juror's knowledge of the consent decree but will review the questions relating to possible prejudice against law enforcement for redundancy.
10. **Testimony by Daniel Yohannes:** The attorneys shall not ask questions designed to elicit testimony about Mr. Yohannes' emotional response during or after the robbery.
11. **Testimony relating to Adrianna Butts.** The pro tem attorney shall admonish the witnesses that they shall not refer to Adrianna Butts by name or by her relationship to Mr. Butts. Nor shall counsel ask any questions designed to elicit such information from a witness.
12. **Witness Order and Exhibits:** Subject to further order.

DATED: December 12, 2019

A handwritten signature in black ink, appearing to read 'M. Spearman', is centered on the page. The signature is fluid and cursive, with a large loop at the end.

Michael Spearman  
Administrator