

1
2
3
4
5
6
7
8
9
10
11
12
13
14

KING COUNTY DEPARTMENT OF EXECUTIVE SERVICES
INQUEST PROGRAM

IN RE INQUEST INTO THE DEATH OF
DAMARIUS DEMONTA BUTTS

No.
517IQ8013
THE PARTIES JOINT MOTION TO
PROHIBIT INQUEST VIDEO UPLOAD

The Family, Involved Officers, and the City of Seattle, through their counsel jointly submit this brief through the Administrator and to the King County Executive to terminate the decision to stream and upload the inquest videos to a third-party entertainment platform –and to afford civilian witnesses the opportunity to not have their face recorded. In support thereof, the Parties submit the following:

There is a distinct difference between voyeurism and transparency. The decision by the Executive to not only live-stream, but then post onto a third party entertainment platform, YouTube, the entirety of the inquest is intrusive. Such an invasion into the privacy rights of the family, the involved officers, and wholly unconnected civilian witnesses is contrary to the law and to basic

1 public policy. The Executive should terminate the decision to stream and upload the videos to any
2 web platform.

3 The Executive’s goal of a full transparent review is met by conducting a public hearing, in
4 an open courtroom – allowing interested members of the *King County* community to have access to
5 the process that is occurring in their community. Subsequently, the damage arises from the upload
6 onto a third-party entertainment platform. The triggering and emotional impact on family members,
7 involved law enforcement, civilian witnesses, and even attorneys having their stories, faces, and
8 images plastered on the internet available for manipulation, duplication, and the onslaught of attacks
9 by internet trolls enters the realm of voyeurism. There is no purpose served in the interest of
10 transparency by such an invasive approach.

11 In *Lee v. City of Seattle*, the Court of Appeals held that death scene photographs were not
12 subject to public disclosure because of the substantive due process rights of the Family members. In
13 that case, Division 1 identified,

14 The long-standing tradition of respecting family members' privacy in death images
15 partakes of both types of privacy interests protected by the Fourteenth Amendment.
16 First, the publication of death images interferes with “the individual interest in
17 avoiding disclosure of personal matters....” Few things are more personal than the
18 graphic details of a close family member's tragic death. Images of the body usually
19 reveal a great deal about the manner of death and the decedent's suffering during his
20 final moments—all matters of private grief not generally shared with the world at
21 large. Second, a parent's right to control a deceased child's remains and death images
22 flows from the well-established substantive due process right to family integrity.

19 *Lee v. City of Seattle*, No. 75815-2-I, 2018 WL 2203287, at *4 (Wash. Ct. App. May 14,
20 2018), *review denied*, 192 Wash. 2d 1017, 433 P.3d 806 (2019). GR 16, governing courtroom
21 photography and recordings by the news media, has an inherent presumption of free access – but
22 makes clear that the judge or judicial authority can impose limitations. In fact, the Administrator has
23

1 done so in the instant case. There is nothing in the proposed approach that violates the tenants of
2 access. The Courtroom is open. Even media can record.

3 The parties respectfully request that the Administrator consider the consequences on the
4 Family, the parties, and the civilian witnesses should every moment of this Inquest– and others to
5 follow- be video streamed, uploaded onto YouTube, duplicated, spliced, commented on, and
6 attacked. Civilian witnesses will be disinclined to cooperate for fear of potential repercussions on
7 the web, Families will be disinclined to participate for a desire to protect their “due process right to
8 family integrity.” Officers will be disinclined to participate for the same inherent fears. *See Lee*,
9 2018 WL 2203287, at *4.

10 In a similar vein, the Administrator should also afford civilian witnesses the opportunity to
11 decline having their faces recorded or photographed during the course of testimony. Civilian
12 witnesses had no ability to consent to their involvement in these proceedings. They were simply in
13 a certain place at a certain time and able to testify about what they saw. Placing these witnesses in a
14 position where they are recorded by photographers, news cameras, and by a livestream, resulting in
15 subsequent memorialization is understandably uncomfortable and chilling. If these witnesses are not
16 afforded the opportunity to indicate whether they consent, their willingness to participate and their
17 candidness during the proceedings will inevitably be impacted.

18 There is no aspect of the laws of the state of Washington mandating the livestream and
19 subsequent upload of these proceedings onto a web platform. There is no authority in public records
20 requiring such a permanent and public preservation of such a proceeding. The livestream – and
21 subsequent recording is anticipated to collect not only the demeanor and faces of the testifying
22 witnesses but often graphic images or video depicted alongside the witness during the course of
23 testimony. It should not be the position of one entity (the Executive) to make such a monumental

1 decision impacting the lives of so many individuals because there is no legitimate legal or public
2 policy basis to do so. The emotional and personal toll outweighs any public benefit of widespread
3 and permanent dissemination.

4
5 DATED this 18th day of December, 2019.

6 PETER S. HOLMES
7 Seattle City Attorney

8 By: /s/ Ghazal Sharifi
9 Ghazal Sharifi, WSBA# 47750
10 Assistant City Attorneys
11 E-Mail: Ghazal.Sharifi@seattle.gov
12 Seattle City Attorney's Office
13 701 Fifth Avenue, Suite 2050
14 Seattle, WA 98104
15 Phone: (206) 684-8200
16 *Attorneys for Seattle Police Department*

17 **FREY BUCK, P.S.**

18 By: /s/ Ted Buck
19 Ted Buck, WSBA #22029
20 Evan Bariault, WSBA #42867
21 Attorney for Seattle Police Department Involved Officers

22 **KING COUNTY DEPARTMENT OF PUBLIC DEFENSE**

23 /s/ La Rond Baker
La Rond Baker, WSBA No. 43610
Adrien Leavitt, WSBA No. 44451
King County Department of Public Defense
Attorneys for Family of Damarius Butts

1 **CERTIFICATE OF SERVICE**

2 I certify that on the 19th day of December, 2019, I caused a true and correct copy of this
3 document to be served on the following in the manner indicated below:

4 Matthew Anderson Inquest Attorney	(x) Via Email Matt.Anderson@kingcounty.gov
5 Dee Sylve Inquest Program Manager 6 DES-Dept. of Executive Services 7 401 5 th Ave., suite 131 8 Seattle, WA 98104 9 Mailstop: CNK-DES-135	(x) Via Email Dee.Sylve@kingcounty.gov
10 Adrian Leavitt 11 Northwest Defenders Division, King 12 County Department of Public Defense 13 710 2 nd Ave, Suite 250 14 Seattle, WA 98104	(x) Via Email Adrian.Leavitt@kingcounty.gov
15 La Rond Baker 16 Northwest Defenders Division, King 17 County Department of Public Defense 18 710 2 nd Ave, Suite 250 19 Seattle, WA 98104	(x) Via Email lbaker@kingcounty.gov
20 Lori Levinson 21 Paralegal, Felony Unit 22 Northwest Defenders Division 23 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 Seattle, WA 98101-3135	(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

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