



## King County

Department of Executive Services

### Inquest Program

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### AMENDED PRE-INQUEST CONFERENCE ORDER

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

#### PARTIES PRESENT:

Family of the decedent:	The Mother of Damarius Demonta Butts present and 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, Kerala Cowart and Tom Miller. Rebecca Boatright present as Chief Adrian Diaz's representative
Administrator:	Michael Spearman assisted by Matt Anderson

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The Inquest Administrator, having presided over a Pre-Inquest Conference on October 19, 2021 and having heard from the parties, hereby orders the following:

- Inquest date:** If the December 6, 2021 trial set in O'Neil v. Evers, King County Superior Court Case No. 20-2-06000-3 SEA settles as a result of the settlement conference currently scheduled for October 29, 2021, the inquest in this matter will commence on December 6, 2021 at 9:00 a.m. and continue until completed. If not, the inquest in this matter shall commence on Monday, March 7, 2022 at 9:00 a.m. and continue until

completed. All parties shall reserve December 6, 2017 until December 17, 2021 and March 7, 2022 until March 18, 2022 in their schedule until further order.

2. **Pre-Inquest Conference:** The next Pre-Inquest conference will be virtual and occur on November 12, 2021 at 9:00 a.m. (Link to follow).
3. **Confirmation of parties:** Based on the representations of the parties and review of discovery, there appears to be no reason to believe that Mr. Butts was an enrolled member of a federally recognized Indian tribe or that the death occurred on a federal Indian reservation. The above-listed parties constitute all parties to this inquest.
4. **Prior rulings vacated without objection:** Having considered the decision in Family of Butts v. Constantine, No. 98985-1 (July 15, 2021), current executive Order PHL-7-1-5-EO, their effects on these proceedings, and the parties having raised no objections, the following language from paragraph 3 of the Pre-Inquest Conference Order signed November 5, 2019 is hereby stricken:

. . . Accordingly, Officer Merritt will be allowed to testify to ~~the non-cumulative portion of~~ his actions and observations. . . .<sup>1</sup>

The following language admitting the recordings of the statements made by the Involved Officers from the Pre-Inquest Conference Order signed December 12, 2019 as reliable hearsay is hereby stricken because the officers will be subpoenaed and are expected to testify:

~~**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, t “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~~

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<sup>11</sup> Although the Family did not object to striking “the non-cumulative portion of” from this ruling, the Family did object to allowing Officer Merritt to testify as to any information that was not possessed by the Involved officers at the time of the shooting. The Administrator has agreed to consider a brief from the Family on this related, but separate, issue. See **9. Schedule**, below.

~~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.~~

The following language from the Pre-Inquest Conference Order signed December 12, 2019 is hereby stricken because the former prohibition on such testimony was invalidated by the Supreme Court and not included in the current Executive Order:

**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.~~

The following language from the Pre-Inquest Conference Order signed December 12, 2019 is hereby stricken as unnecessary. Individual objections may be dealt with during testimony:

~~**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.~~

- 5. Inquest Scope - Criminal Means:** The decision in Family of Butts v. Constantine, No. 98985-1 (July 15, 2021) and current executive Order PHL-7-1-5-EO clearly require the panel to render a verdict on whether the killing of Damarius Demonta Butts was by criminal means. (See App. 2, Section 14.2) Accordingly, and without objection from any party, the scope of this inquest is hereby expanded to include this issue. Previous rulings defining the factual scope of this inquest need not be expanded as they allow for the admission of all evidence necessary for the jury to answer such interrogatories.

The Administrator has proposed jury instruction language on the criminal means injury and each party has provided alternate proposals. The parties will brief this issue in accordance with briefing schedule provided below (see paragraph 9. Schedule). The Administrator will propose interrogatories after considering the parties' briefing on the proposed instructions relating to criminal means.

- 6. Discovery Completed:** All discovery, aside from the interviews of Det. Ledbetter and Policy Designee, Capt. George Davisson), and discovery related to possible testimony by Matthew Noedell has been completed at this time. No further discovery shall be allowed beyond that described below (see paragraph 9. Schedule).

**7. Witness list:** The following witnesses shall be called:

Daniel Yohannes	SPD Officer Adam Merritt	Former SPD Officer Christopher Bandel
SPD Officer Hudson Kang	Justin Keaton	SPD Officer Brian Pritchard
SPD Officer Jacob Briskey	KCSO Dep. Anthony Mullinax	SPD Detective David Simmons
SPD Det. Donald Ledbetter	SPD Captain George Davisson	SPD Captain Michael Teeter
Douglas Houck	Jason Benson	Brad Richardson
Tom Townsend	Melissa Miller	KCME Brian Mazrim

The Administrator denies the Involved Officers and Seattle Police Department's renewed request to call Adrianna Butts, finding that her testimony is irrelevant, cumulative, and more confusing than helpful to the jury.

The Administrator reserves ruling on whether to call Mathew Noedell until such time as a summary of his testimony is provided (see paragraph 9. Schedule, below).

**8. Voir Dire:** The Administrator has proposed voir dire questions to be asked to the parties and received one set of objections/additions. Any remaining objections or additions the parties wish the Administrator to consider shall be provided as detailed below (see paragraph 9. Schedule).

**9. Schedule**

**a. October 26, 2021**

- i. Any substantive<sup>2</sup> objections/suggestions to the Administrator's proposed Voir Dire.

**b. October 29, 2021**

- i. Any resolution or failure to reach resolution in O'Neil v. Evers shall be provided as soon as known. The involved officers shall provide an estimate of the likelihood and timing of a possible resolution by the end of day, October 29, 2021.
- ii. Matthew Noedell materials (CV, report and summary of expected testimony) unless the Involved Officers do not expect to propose him as a witness.
- iii. Family briefing re: Limits on Ofc. Merritt's testimony (5-page limit).

**c. November 2, 2021**

- i. Family's proposal for biographical information to be read by the Administrator to the jury.
- ii. Briefing on criminal means (15-page limit) from all parties.

**d. November 8, 2021**

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<sup>2</sup> The Administrator will propose, and the parties will have an opportunity to comment on, appropriate measures to insure virtual participation by the jurors. The Administrator will also propose, and the parties will have an opportunity to comment on, which inquiries should be made via questionnaire.

- i. Criminal means responses (5-page limit; no replies will be allowed).
- e. **November 18, 2021**
  - i. Interviews of Det. Ledbetter and Cpt. Davisson to be completed by this date if inquest is to start December 6, 2021.
- f. **December 17, 2021**
  - i. Interviews of Det. Ledbetter and Cpt. Davisson to be completed by this date if the inquest hearing is to start March 7, 2022.

DATED: November 1, 2021

A handwritten signature in black ink, appearing to be 'M. Spearman', written on a light blue background.

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Michael Spearman  
Administrator