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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 INTERESTED PARTIES’ MOTION TO CONTINUE THE INQUEST TO MARCH 2022</p>
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I. INTRODUCTION

Stephanie Butts, mother of Damarius Butts, by and through counsel, La Rond Baker and Adrian Leavitt; Officers Elizabeth Kennedy, Xavier Gordillo, Christopher Myers, and Joshua Vaaga, by and through counsel, Ted Buck and Evan Bariault; and the City of Seattle/Seattle Police Department, by and through counsel, Kerala Cowart and Tom Miller (hereinafter “Interested Parties”), respectfully request the Administrator continue the inquest currently set for December 6, 2021 to March 14, 2022. The Interested Parties have a vested interest in the inquest process and they, along with the public, are entitled to an inquest that is full, fair, and transparent. At this juncture, the Interested Parties raise concerns and highlight numerous outstanding, unresolved matters regarding the Inquest into the Death of Damarius Butts set for December 6, 2021. To ensure expectations and obligations are met, a continuance is necessary.

1 **II. RELEVANT FACTS**

2 On October 19, 2021, the Interested Parties participated in a pre-inquest hearing to address
3 several matters related to this inquest, including setting a date for the inquest. At the time, the
4 Interested Parties each raised concerns about a December 6, 2021 inquest based on counsel
5 schedules, client schedules, whether there was sufficient time to prepare the inquest for that date,
6 and whether the inquest could be completed by December 17, 2021. All agreed they were available
7 to proceed in March 2022.

8 As of today, a number of weighty, outstanding issues remain. The Interested Parties possess
9 the following concerns:

- 10 1. The date of the inquest was selected on October 19 (but confirmed only on October 29)
11 and converted to an in-person proceeding on November 3, resulting in lead times of
12 approximately seven weeks and four-and-a-half weeks respectively. One of the involved
13 officers and SPD's designee on training are not available to testify in person. As of now, it
14 is unclear to the Interested Parties whether the civilian witnesses have been subpoenaed yet
15 and whether they are available to testify in person. We understand that at least one is
16 available only remotely. December is an incredibly busy time of year for most, and we
17 have concerns about significant witness unavailability. If key witnesses are unavailable or
18 if some witnesses testify remotely because they do not have the option to testify in person,
19 that may affect whether the inquest is full, fair, and transparent.
- 20 2. The Interested Parties have been informed they will not receive Interrogatories until
21 November 22, 2021, only two weeks before the inquest. Although this is not a civil or
22 criminal proceeding, the interrogatories frame the presentation of evidence and testimony.
23 That allows little time to resolve potential disputes over the Interrogatories through
conferences or through full briefing and argument. In addition, knowledge of the
interrogatories is necessary for the Interested Parties to make informed decisions
surrounding what position to take on the necessity of an expert, or particular fact witnesses.
3. The Interested Parties have been informed they will not receive jury instructions until
November 17, 2021, only three weeks before the inquest. Similar to the interrogatories,
what instructions are provided may necessitate additional expert needs or further
interviews. *See Butts*, 198 Wn.2d at 57 (discussing use of expert witnesses in response to
determination of whether decedent was killed by criminal means).
4. The Interested Parties have been informed they will not receive a Proposed Exhibit list
until November 17, 2021, only three weeks before the inquest. Again, it is extremely
difficult for the Interested Parties to prepare without this information.

- 1 5. This inquest is the first being held under the new process and it raises many novel and
2 complex issues. That makes it particularly difficult to predict how long the inquest will
3 take. In the event that it runs longer than the allotted two weeks and does not conclude by
4 December 17, that would disrupt the process greatly. As we have previously advised, many
5 of the attorneys for the Interested Parties have pre-planned leave (scheduled long before
6 the inquest was scheduled) starting after December 17.
- 7 6. Further contributing to uncertainty around the length of the inquest, according to the
8 Coroner's Act and the Supreme Court's opinion in *Constantine v. Butts*, inquest panel
9 members are entitled to identify relevant witnesses, however, the Interested Parties are not
10 aware of the mechanism being utilized to allow jurors to identify witnesses or evaluate
11 their relevancy. For example, is the panel going to be provided a list of witnesses and a
12 brief synopsis of information each possesses? If not, how can a panel identify whether it
13 may or may not want to hear from someone with knowledge of the facts and circumstances
14 not currently scheduled to be called?
- 15 7. As many as three outstanding interviews need to occur prior to the inquest. One interview
16 is already scheduled for November 18. In addition, the IA recently made a new request to
17 re-interview one of SPD's witnesses and the necessity of scheduling an interview of an
18 expert for the IO will remain undetermined until the Interrogatories are nearing completion.

11 III. ARGUMENT

12 PHL-7-1-5-EO makes clear that “[t]he purpose of the inquest is to ensure a full, fair, and
13 transparent review of any such death, and to issue findings of fact regarding the facts and
14 circumstances surrounding the death.” It further holds that “[t]he public has a strong interest in a
15 full and transparent review of the circumstances surrounding the death of an individual involving
16 law enforcement.” The Interested Parties strongly support these goals and agree that holding an
17 inquest that serves the public interest requires thought and deliberation.

18 To that end, each of the Interested Parties have voiced their concerns to Mr. Anderson
19 about proceeding on said date and believe more time is necessary to address the various needs of
20 this inquest.

21 This inquest not only impacts the Interested Parties but will also set the foundation for
22 inquest moving forward; it is imperative that all involved strive to create a full, fair, efficient, and
23 transparent process. Significant “good cause” exists to continue this matter until March so that all

1 involved can ensure the mandatory requirements and expectations of this inquest are met. This is
2 not a request to simply reconvene in three months, but to utilize that time to better define the
3 expectations, rules, and presentation of evidence for the inquest, thus setting a clear framework for
4 this and future inquests.

5 IV. CONCLUSION

6 Based on the foregoing, the Interested Parties respectfully request the Administrator
7 continue the inquest to March 14, 2022.

8 DATED this 11th day of November, 2021, at Seattle, Washington.

9 Respectfully submitted:

10 By: /s/ La Rond Baker
11 La Rond Baker, WSBA #43610
12 Adrien Leavitt, WSBA #44451
13 Attorneys for Family of Damarius Butts

By: /s/ Evan Bariault
Ted Buck, WSBA #22029
Evan Bariault, WSBA #42867
Attorneys for SPD Involved Officers

13 By: /s/ Kerala Cowart
14 Kerala Cowart, WSBA #53649
15 Ghazal Sharifi, WSBA #47750
16 Thomas Miller, WSBA #34472
17 Attorneys for Seattle Police Department

CERTIFICATE OF SERVICE

I certify that on the 11th day of November 2021, 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 11th day of November, 2021, at Seattle, Washington.

/s/ Evan Bariault

Evan Bariault