KING COUNTY DEPARTMENT OF EXECUTIVE SERVICES INQUEST PROGRAM

IN RE INQUEST INTO THE DEATH OF DAMARIUS D. BUTTS .	No. 517IQ8013 SEATTLE POLICE DEPARTMENT'S BRIEF ADDRESSING JURY INTERROGATORIES

The City of Seattle, through the Seattle Police Department (hereinafter, "SPD"), hereby submits this brief addressing issues related to the interrogatories to be submitted to the jury.

INTRODUCTION

SPD respectfully requests that the interrogatories proposed by the Inquest Administrator (IA) be edited to reduce the number of interrogatories on criminal means, policies, and training; to more clearly distinguish between the interrogatories on criminal means as opposed to those on policies and training; and to ensure a fair and accurate inquiry into the causes and circumstances of death with respect to medical aid.

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ARGUMENT

I. SPD proposes to consolidate the interrogatories on criminal means, policy, and training.

In criminal cases, courts have consistently recognized that the greater the number of interrogatories, the more "coercive" the effect on the jury and the more likely to lead to a conviction. The Ninth Circuit explained the reasoning in *United States v. Reed*, 147 F.3d 1178, 1180 (9th Cir. 1998):

> Although there is no per se prohibition, as a rule, special verdicts in criminal trials are not favored. This rule is fashioned to protect the rights of criminal defendants by preventing the court from pressuring the jury to convict. To ask the jury special questions might be said to infringe on its power to deliberate free from legal fetters; on its power to arrive at a general verdict without having to support it by reasons or by a report of its deliberations; and on its power to follow or not to follow the instructions of the court.

147 F.3d at 1180 (alterations and internal quotation marks omitted). Although special verdict forms are disfavored, courts have recognized many exceptions to the general rule against them. *Id.* at 1181. Nonetheless, the background principle is important.

Accordingly, SPD submits that it is preferable to limit the number of interrogatories where possible. Setting aside the questions about causes and circumstances, on which the parties have largely reached agreement, SPD here focuses on the questions that go to possible wrongdoing by the involved officers. The latest version of the interrogatories proposed by the IA, dated December 14, 2021, contains 24 questions per officer regarding criminal means, policy, and training.[1]

To reduce the number of questions, SPD first proposes to eliminate the questions about each individual element of criminal means liability, identified in the IA's proposal, dated December 14,

[1] Interrogatories 89-92 regarding criminal means; 71-88 and "XX" regarding policy and training.

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2021, as interrogatories 89-91. As discussed above, courts disfavor the practice of putting questions to a jury about each individual element of a charged crime, unless there is a reason to depart from standard practice. *See, e.g., United States v. Reed*, 147 F.3d 1178, 1181 (9th Cir. 1998) ("There is no easier way to reach, and perhaps force, a verdict of guilty than to approach it step by step." (quoting *United States v. Spock*, 416 F.2d 165, 182 (1st Cir.1969).

Aside from traditional concerns about coerciveness discussed above, based on the sheer number of questions, there are additional reasons to combine questions on policy and training. SPD's second proposal is to combine all the questions about SPD's Use of Force Policy (8.200 sections 1, 3, and 4, 8.300-POL-4 sections 1, 5, and 7). In light of interviews with Captain Davisson and Captain Teeter, it is clear that these provisions are all interrelated and that the testimony presented to the jury will address them holistically. Separating them out incorrectly suggests that they contain separate, discrete principles that can be applied to a set of circumstances in isolation or in a vacuum. The same is true for training; as Captain Teeter explained, officers do not receive separate training for separate policy provisions; rather, SPD training is skills-based with a goal to equip officers with the tools and principles to make sound decisions that further SPD's mission and policy goals. For the same reasons, the medical aid questions should be combined as well.

Implementing SPD's requests will reduce the number of questions by half, from 24 to 12 per officer, as follows:

1. Criminal means question
2. De-escalation policy – did it apply
3. De-escalation policy – did officer comply
4. De-escalation training – did officer comply
5. Use of force policy – did it apply
6. Use of force policy – did officer comply
7. Use of force training – did officer comply
8. Medical aid policy – did it apply
9. Medical aid policy – did officer comply

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10. Medical aid training – did officer comply
11. Barricaded subjects training – did it apply
12. Barricaded subjects training – did officer comply

II. The interrogatories on policy and training should come after the interrogatories on criminal means to more clearly distinguish between these separate inquiries.

SPD's 12/09/2021 proposal is for the jury first to answer all of the criminal means questions for all officers; second, the jury would proceed to answer the policy and training questions. This proposal will use the formatting of the interrogatories to reinforce the efforts of the jurors to keep the two areas of inquiry separate in their minds.

However, the IA's 12/14/2021 proposal instead asks the inquest jury to answer these questions for each involved officer separately. Under the IA's proposal, the jurors would go back and forth between criminal means questions and policy and training questions several times as they work through the interrogatories.

In order to ensure a fair verdict, it is important that the inquest jury clearly distinguish between criminal means questions, on the one hand, and policy and training questions. SPD's policy and training set a higher bar than the standards for imposing civil liability, and a much higher bar than the criminal statutes. It is not surprising that SPD requires officers to adhere to best practices, rather than simply follow the law, when one considers that SPD's policies and training were developed and implemented over many years while under federal oversight and, ultimately, approved by a federal court. *See United States v. City of Seattle*, Civil Case Number 12-1282, U.S. District Court for the Western District of Washington. In describing the reformed policies and training, the court-appointed, federal Monitor reported that they provide "detailed, precise guidelines that provide line officers and supervisors alike with clear guidance on performance expectations." *Id.*, Dkt. 154 at 14. It would be error for jurors to conflate officer conduct that is criminal with officer conduct that violates SPD's policies and training.

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This is not to say that the inquest jury may not consider policy and training at all when they are answering the criminal means questions. However, such consideration must be carefully limited. The inquest jurors may consider SPD's policies and training, but only to the extent that they bear on the involved officers' mental states. The City was able to identify only a small number of cases addressing this issue in the context of criminal charges brought against a police officer defendant, and that is the line drawn in each case.[2] The courts explained that an officer's personal knowledge and experience are, in part, a product of that officer's training, including exposure to police department policy. Because an officer's personal knowledge and experience are relevant to mental state, therefore policy and training also can be relevant to mental state. By contrast, the courts were careful to limit how the evidence could be used. *See supra*, footnote 2.[3]

Therefore, SPD proposes to ensure a fair verdict and limit the possibilities for confusion in two ways. First, by separating out the criminal means and policy and training questions in the interrogatories to draw a clearer distinction between these areas. *See* SPD's 12/09/2021 proposal. Second, by giving a limiting jury instruction addressing this topic. *See* SPD's 12/17/2021 proposal.

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[2] *See United States v. Krug*, No. 1:15-CR-00157 RJA, 2019 WL 336568, at *7-8 (W.D.N.Y. Jan. 28, 2019) (in determining whether defendant police officer acted willfully, jury may look at how officer's training shaped his experience and knowledge, but evidence could be used only to refresh witness' recollection so that jury was not permitted to consider the training and policy outside the context of the witnesses' testimony); *United States v. Propano*, 2019 WL 115317, at *5-6 (7th Cir. Jan. 7, 2019) (evidence of training was relevant to defendant police officer's intent); *Rankin v. Commonwealth*, No. 1671-16-1, 2018 WL 1915538, at *4 (Va. Ct. App. Apr. 24, 2018), *aff'd*, 297 Va. 199, 825 S.E.2d 81 (2019) ("In this case, evidence of the appellant's actions in the context of *his* training and *his* police department policy on use of force was probative of his state of mind in the context of the crimes charged and his defense." (emphasis in original)); *United States v. Rodella*, 804 F.3d 1317, 1338 (10th Cir. 2015) (jury received a limiting instruction that they were only to consider the evidence in determining whether defendant acted willfully).

[3] In some jurisdictions such evidence is not admissible even as to mental state. *See, e.g., State v. Davis*, No. E2003-02214-CCA-R3CD, 2004 WL 2583893, at *10 (Tenn. Crim. App. Nov. 15, 2004); *Lozano v. State*, 584 So.2d 19, 24 (Fla.Dist.Ct.App.1991).

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III. SPD requests edits to the causes-and-circumstances interrogatories regarding medical aid.

SPD understands that the IA does not plan to revisit his previous ruling as to whether or not to put this question to the jury. Accordingly, SPD limits argument to the specific interrogatories proposed and does not renew its objections to inclusion of the topic.

The IA's 12/14/21 proposal is missing questions about important facts relevant to the causes and circumstances of Mr. Butts' death. As Acting Captain Davisson and Captain Teeter both explained in their interviews, SPD policy on requesting and rendering medical aid does not impose an independent obligation on each and every officer present at the scene, for obvious reasons. It would be chaotic, inefficient, and counterproductive for every officer to radio for medical aid, once the first request has been made. Nor should multiple people simultaneously attempt to render medical aid. In this incident, the evidence shows that a large number of officers responded to the scene in addition to the involved officers; one of those officers, the supervising officer, Sergeant Lang, immediately summoned aid when shots were fired. She did not request medical aid for any specific person, because in that moment she did not yet know who, if anyone, had been shot. Accordingly, to ensure an accurate inquiry into the causes and circumstances of Mr. Butts' death, particularly with respect to whether SPD policy on requesting and rendering aid was followed, the jury should answer these additional questions:

- Did Sergeant Lang request medical aid from the Seattle Fire Department as soon as reasonably possible?
- Did medics from the Seattle Fire Department respond to a request for aid, wait nearby until the situation was safe, and attempt to provide medical aid to Damarius Butts as soon as reasonably possible?
- Was it reasonably possible for any SPD officer or medic to render medical aid to Damarius Butts before it was determined that Damarius Butts had died?

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For these same reasons, the IA's proposed interrogatory number 67 is at odds with SPD policy and training. It poses the following question: "Was it reasonably possible for Officers Gordillo, Kennedy, Myers and Vaaga to request medical aid for Damarius Butts before it was determined that Damarius Butts had died?" But the relevant question is not whether the involved officers could reasonably have requested aid at any point up until the moment when Mr. Butts was determined to be deceased. What good would it do to request medical aid after medics from the Seattle Fire Department already were waiting, staged only a short distance away? Rather, this question should be trying to determine whether there was a gap of time before medical aid already had been requested by Sergeant Lang during which any of the involved officers could reasonably have had an opportunity to request aid. There could be a number of ways to edit this question, for example:

> Was it reasonably possible for Officers Gordillo, Kennedy, Myers and Vaaga to request medical aid for Damarius Butts at any time before ~~it~~ Sergeant Lang requested medical aid~~was determined that Damarius Butts had died~~?

CONCLUSION

For the foregoing reasons, SPD respectfully requests that the interrogatories be edited to reduce the number of interrogatories on criminal means, policies, and training; to more clearly distinguish between the interrogatories on criminal means as opposed to those on policies and training; and to ensure a fair and accurate inquiry into the causes and circumstances of death with respect to medical aid.

DATED this 10 day of January, 2022.

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CERTIFICATE OF SERVICE

I certify that on the tenth day of January, 2022, 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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