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KING COUNTY DEPARTMENT OF EXECUTIVE SERVICES INQUEST PROGRAM

IN RE INQUEST INTO THE DEATH  
OF DAMARIUS D. BUTTS

No. 517IQ8013

SEATTLE POLICE DEPARTMENT'S  
MOTIONS IN LIMINE

The City of Seattle, through the Seattle Police Department (hereinafter, "SPD"), hereby submits these motions in limine.

Pretrial motions to exclude evidence are designed to simplify the trial and to avoid the prejudice that often occurs when a party is forced to object in front of the jury to the introduction of evidence. *Fenimore v. Donald M. Drake Construction*, 87 Wn.2d 85, 89, 549 P.2d 43 (1976). Motions in limine are favored by the courts, and the filing of the same is not admissible before the jury. *See Fenimore*, 87 Wn. 2d at 85. When a trial court is able to determine the admissibility of the questioned testimony prior to its introduction at trial, it is appropriate to grant the motion in limine and thereby avoid prejudice before the jury. *State v. Kelly*, 102 Wn.2d 188, 192-93, 685 P.2d 564 (1984); *see also*

1 *Dunn v. United States*, 307 F.2d 883, 886 (5th Cir. 1962) (“if you throw a skunk into the jury box,  
2 you can’t instruct the jury not to smell it”).

### 3 **ARGUMENT**

#### 4 **A. NEW MOTIONS IN LIMINE**

5 **1. The parties should be precluded from eliciting testimony that duplicates testimony**  
6 **already elicited from the inquest attorney.**

7 During Officer Kang’s testimony, the Family repeated several lines of questioning that had  
8 already been asked and answered by either the inquest attorney or the Involved Officers. Repeating  
9 the same questions to the same witness unnecessarily takes up the jurors’ time and presents a risk of  
10 confusing the witness and the jurors.

11 **2. Motion to exclude duplicative testimony about whether the officers were present**  
12 **during the robbery of the 7-11.**

13 SPD does not object to appropriate testimony establishing where the officers were when they  
14 learned of the robbery, how they learned about the robbery, and the basic facts that they learned about  
15 it which bear on the following incidents. During Officer Kang’s testimony, however, the Family  
16 asked a series of duplicative questions with no possible purpose other than to cast doubt on the  
17 information that Officer Kang had learned about the robbery from dispatch.

18 The Family has already stipulated to the basic facts about the robbery and Mr. Butts’  
19 undisputed involvement in it. Any inquiry intended to create confusion about those facts is improper.  
20 Moreover, in part based on that stipulation, the Inquest Administrator has excluded the testimony of  
21 Adrianna Butts—a witness who could corroborate the officers’ understanding of what happened  
22 during the robbery. It would be fundamentally unfair and misleading to the jury to exclude Ms. Butts’  
23

1 testimony, while also allowing argumentative cross-examination questions that cast doubt on Mr.  
2 Butts' involvement in the robbery.

3 Accordingly, the parties should be prevented from pursuing any line of questioning intended  
4 to cast doubt on the basic facts of the robbery and Mr. Butts participation in it. In the alternative, SPD  
5 seeks a ruling from the Inquest Administrator that eliciting such testimony opens the door to  
6 reconsideration of whether Adrianna's Butts' testimony should be presented to the jury.

7 **3. Motion to exclude reference to unrelated incidents or uses of force by any of the**  
8 **involved SPD officers or any SPD officers who are witnesses**

9 Evidence and testimony regarding other incidents or uses of force SPD officers were  
10 involved in on other, unrelated occasions should be prohibited. Evidence of SPD officer conduct on  
11 other occasions would be irrelevant and unduly prejudicial.

12 Evidence of prior misconduct, prior complaints, prior lawsuits, and personnel complaints  
13 must be excluded under Rule 404(b). It should also be excluded under paragraph 4.6 of Executive  
14 Order No. PHL-7-1-5-EO.

15 **B. RENEWED MOTIONS IN LIMINE<sup>1</sup> (See SPD's Motions in Limine Filed November 27,**  
16 **2019)**

17 **4. Motion to limit scope of lead FIT investigator testimony.**

18 Detective Simmons should be protected from being asked to lay a foundation for the Officers'  
19 *Garrity* statements or discuss the purpose behind *Garrity* statements. Explanation of the purpose and  
20 intent behind *Garrity* is outside the foundational scope of Detective Simmons. Detective Simmons is  
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22 <sup>1</sup> From the record, it appears that the inquest was stayed prior to a written ruling on this  
23 motion. However, it is possible that there was an oral ruling at a hearing that counsel was unable to identify.

1 a FIT investigator, not an attorney. He cannot be asked to opine on the routine nature of *Garrity*  
2 statements or what they are. This goes beyond the scope of his role in this inquest. *See* Executive  
3 Order ¶ 12.3. Second, any discussion of *Garrity*, their purpose, or intent it is irrelevant to the scope  
4 of this inquest, it is confusing to the jury, and it is prejudicial to the officers that routinely provide  
5 *Garrity* statements. *See* ER 401, 403.

6 Similarly, Detective Simmons should be protected from providing testimony on his  
7 recollection of what was stated or occurred at the *Garrity* statements of the officers – including his  
8 evaluation or opinion about what the shooting officers were drawing in scribbled diagrams that the  
9 officers were developing and editing as they provided statements. Detective Simmons’ testimony  
10 cannot be used a substitute for the testimony of the shooting officers. He should be protected from  
11 offering improper opinion evidence on what the officers were attempting to convey in the context of  
12 their *Garrity* statements and certainly should be prohibited from speculating on *his* understanding of  
13 what the shooting officers may have been drawing at a given point in time. *See* ER 602, 701. If any  
14 aspect of the *Garrity* statements are introduced, Detective Simmons should be limited to indicating  
15 that as part of the investigation – officers provided statements.

16 **5. Detective Simmons should not be asked about who could have or should have been**  
17 **done differently regarding his investigation.**

18 Detective Simmons should be protected from speculating about what he would have done  
19 differently in his investigation, what he believes he missed, and what he would potentially do  
20 differently. The Order requires that the designated agency representative provide “[a] comprehensive  
21 overview of the forensic investigation into the incident (e.g., statements collected by investigators,  
22 investigators' review of forensic evidence, physical evidence collected by investigators, etc.)”  
23

1 Executive Order ¶ 12.3. Any further questioning into the “could have” and “should have” exceeds  
2 the scope of inquest, particularly as it relates to the investigation itself.

3  
4 **C. RENEWED, AGREED MOTIONS IN LIMINE (See SPD’s Motions in Limine Filed  
November 27, 2019)**

5 **6. AGREED - Bar any reference to the thoroughness of SPD’s investigation or  
6 subsequent post-incident steps taken by SPD.**

7 This motion is to exclude reference, testimony, or evidence about the thoroughness of SPD’s  
8 investigation. This motion also seeks to exclude any post-incident trainings/policy changes that took  
9 effect.

10 **7. AGREED - Motion to exclude testimony or evidence about what could have been done  
differently by the shooting officers.**

11 This motion is to exclude any elicited testimony or presented evidence on “could  
12 have” or “should have” as to the involved officers’ actions.

13 **8. AGREED - Bar any reference by any witness or counsel to (1) the December 16, 2011,  
14 Report of the Department of Justice; (2) the Consent Decree; or (3) generalizations or  
15 characterizations about the Seattle Police Department that are not directly relevant to  
this case.**

16 Counsel should be prohibited from introducing argument, testimony, evidence, or  
17 otherwise inquiring questions from witnesses regarding the consent decree, the DOJ findings  
18 letter, or criticizing SPD as a law enforcement body concerning any acts that do not relate to  
19 this case. There is no need to highlight an irrelevant and complicated subject such as the  
20 Consent Decree. Introduction of such a subject matter will potentially require explanation or  
21 prejudice the jury pool against the Seattle Police Department’s policies and procedures  
22 because of the fact alone that SPD is currently under federal oversight.

1       **9. AGREED - Motion to prohibit allusion or reference to inconsistency between**  
2       **policy/training.**

3               During the 2019 interview of Captain Teeter, Mr. Anderson asked Captain Teeter  
4 several questions regarding how an officer is expected to resolve the differences between a  
5 conflict in policy versus training. This motion asks that any such questioning or similar  
6 references be prohibited.

7       **10. AGREED - Detective Simmons should not draw conclusions regarding compliance**  
8       **with policy/training about his investigation or actions of the shooting officers. )**

9               As required, SPD has designated officials to provide testimony about these topics,  
10 and these topics are outside the scope of Detective Simmons' designated role, described  
11 above.

12               DATED this 14th day of February, 2022.

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14                               Seattle City Attorney

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**CERTIFICATE OF SERVICE**

I certify that on the 14th day of February, 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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