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6 KING COUNTY DEPARTMENT OF EXECUTIVE
7 SERVICES INQUEST PROGRAM

8 INQUEST INTO THE DEATH OF:
9 DAMARIUS DEMONTA BUTTS.

No. 517IQ8013

FAMILY'S RESPONSE TO
PARTIES MOTIONS IN LIMINE

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12 **I. Introduction**

13 The Family's responses to the Involved Officer's and City's motions in limine are
14 contained below. The Family is not responding to motions in limine that the inquest attorney,
15 Mr. Anderson, indicated did not require response based on prior rulings by the Inquest
16 Administrator.¹

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18 **II. Involved Officer's Motions in Limine – Family Responses**

19 **5. "Motion to exclude proposed Exhibit 123 (Photo of Kang's Ballistic Vest)." ²**

20 The Family objects to excluding exhibit 123 (photograph of Officer Kang's ballistic
21 vest). As a procedural matter, Officer Kang has already testified in a video deposition. The
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23 ¹ This explanation is found in an email from Mr. Anderson to all parties, dated 2/2/22.

24 ² This was referred to as #4 in Mr. Anderson's email, but is in fact #5 in the Involved Officers pleadings.
The rest of the numbering by the Family reflects the numbering in the Involved Officer's brief.

1 purpose of that video deposition was to take Officer Kang’s testimony, in lieu of live testimony
2 at the inquest, because Officer Kang is unavailable during the scheduled inquest dates. Critically,
3 the Inquest Administrator was present at the video deposition to rule on any objections. The
4 Family and other parties agreed to this procedure.

5 The Inquest Administrator heard motions in limine regarding Officer Kang’s testimony
6 prior to his video deposition, and this issue was not raised by the Involved Officers. During
7 Officer Kang’s testimony, the City objected to questions about the patches of Officer Kang’s
8 vest based on relevance and the Inquest Administrator overruled the single objection. Now, the
9 Involved Officers seek to exclude this testimony, despite it being given under oath and subject to
10 motions and limine and objections during testimony.

11 Given the procedural posture of Officer’s Kang’s testimony, and the purpose of the video
12 deposition, which was to record Officer Kang’s testimony as though it were live testimony and
13 later play it for the inquest jury, the Inquest Administrator should deny the Involved Officer’s
14 motions in limine to exclude exhibit 123. Officer Kang was properly questioned about this
15 exhibit. Moreover, implicit in the Involved Officer’s motion is the suggestion that this line of
16 questioning would then be redacted and not played before the jury. This would be improper and
17 run afoul of the purpose of Officer Kang’s video deposition, which was agreed to by all parties.
18 The jury can properly weigh this short line of questioning and related exhibit as related to the
19 interrogatories before them in this inquest.

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21 **7. “Motion to exclude questions surrounding the robbery at 7-11.”**

22 The Family objects. Questions of what a witness did not see are proper and unrelated to
23 the factual stipulation agreed to by the Family regarding the robbery at 7-11. Here, Officer Kang
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1 testified about information that he received from dispatch, as related to his involvement in this
2 case. This information received by dispatch is a hearsay statement, admitted not for the truth of
3 the matter asserted by rather to explain the context of Officer Kang's involvement in this
4 incident. Presumably, every law enforcement officer who testifies in this inquest will be
5 permitted to testify to similar hearsay statements.

6 Even with a factual stipulation, what Officer Kang (and the other officers) did not see is
7 relevant. The questions are for the purpose of eliciting an issue of fact about whether Mr. Butts
8 had a gun, which is a stipulated fact and is clear from all of the evidence before this jury. Instead,
9 the question is to emphasize what in fact Officer Kang, or any other given officers, actually saw
10 versus what they heard before or learned after. This clarifies for the jury the involvement of each
11 officer and clarifies what indeed each offer him or herself saw.

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13 **8. "Motion to exclude attorney summation."**

14 The Family objects and, separately (contained in the Family's supplemental motions in
15 limine) moved the Inquest Administrator to permit summation.

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17 **9. "Motion to exclude hypothetical questions regarding training and policy."**

18 The Family objects. This motion in limine is overbroad and lacks specifics regarding
19 what questions the Involved Officers specifically object to. The parties should properly be
20 permitted to ask questions about training and policy, that insert real world facts to illustrate an
21 application of that policy. While this may be deemed a "hypothetical question," it is also a
22 common way to contextualize an otherwise broad subject area. While hypothetical questions that
23 too specifically mirror the facts of this case may be objectionable, the proper time to object is at
24 the time of the question and specific to that question, rather than as general motion in limine.

1 Moreover, this motion was already ruled upon by the Inquest Administrator (see Pre-Inquest
2 Hearing Conference Order, Dec 12, 2019³)

3 4 **III. City of Seattle’s Motions in Limine – Family Responses**

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

7 The Family objects. The City’s motion, which seeks to prohibit the Family from asking
8 about areas that were already covered by the other parties, is not based in any rule of evidence.
9 Cross examination is governed by ER 611. Cross examination is permissible based on the scope
10 of direct examination. ER 611(a). Direct examination, in this context, refers to questions by the
11 Inquest Attorney, Mr. Anderson. Cross examination follows, based on the scope of direct
12 examination. If cross examination were based on the scope of another parties cross examination,
13 rather than the direct examination of a party calling a witness, the first party to cross examine the
14 witness could limit the following parties ability to question based on their scope of questioning.
15 This would be a vast departure from trial practice in general and the rules of evidence. As such, a
16 party is permitted to cross examine on topics already crossed examined on by another party, if
17 within the scope of direct examination. During Officer Kang’s testimony, the City raised these
18 objections as “asked and answered,” which is an erroneous application of ER 611 (see also State

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22 ³ “The pro tem attorney shall advise the witnesses that examples may be helpful in explaining policies and
23 trainings but that any such examples shall not be based upon the facts of this case. Questions from
24 counsel shall likewise avoid hypotheticals based upon the facts of this case. Objections to any such
questions or testimony will be dealt with on a case by case basis during testimony. The parties shall
appraise the IA outside the presence of the jury of questions they intend to ask that include hypotheticals
that touch upon the specific facts of this case.”

1 v. Wheeler, 74. Wash. 2d 289 (1968) because that applies only to the party asking the questions,
2 not another party who has their independent opportunity for cross examination.

3 Practically, the impact of the City’s motion would be that the Family, as the party
4 questioning each witness last, could be precluded from asking any questions if the other parties
5 covered those areas first. This is a vast departure from the purpose of the inquest, and more
6 specifically the procedural safeguards employed by the Executive Order, which explicitly
7 provides appointed legal counsel to families in inquests to ensure that families who’s loved ones
8 were killed by the police have the opportunity for meaningful participation in the inquest
9 process.

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

13 The Family objects. Such questions are relevant (see response to IO’s MIL #7) and
14 proper cross examination, even if other parties elicit similar testimony, under ER 611.

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16 **3. “Motion to exclude reference to unrelated incidents or uses of force by any of the**
17 **involved SPD officers or any SPD officers who are witnesses.”**

18 The Family objects. Questions regarding other use of force incidents by SPD officers is
19 proper impeachment under ER 607. First, ER 607(a) broadly permits impeachment regarding a
20 witness’s bias. Here, bias could include: an officer’s prior experience with internal review of use
21 of force incidents and interest in the outcome, an officer’s interest in the outcome of this matter,
22 and similarities between prior use of force incidents and this one that raise question about bias
23 towards the individuals involved in these matters. Moreover, impeachment is permitted to rebut
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1 evidence of good character that may be admitted under ER 404(a). Here, questioning of any
2 individual officer could open the door to testimony regarding good character or character of non-
3 violence. Although this should no be permitted under 404(a)'s prohibition on the admission of
4 character evidence to for the purpose of proving action in conformity with good character, if the
5 door is opened then impeachment must be permitted on this topic, to include impeachment based
6 on prior uses of force by SPD officers.

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

9 The Family has no objection.

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11 **6. "Bar any reference to the thoroughness of SPD's investigation or subsequent post-
12 incident steps taken by SPD."**

13 The Family has no objection.

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15 **7. "Bar any reference to the thoroughness of SPD's investigation or subsequent post-
16 incident steps taken by SPD."**

17 The Family objects. This motion is overbroad and lacks any legal basis.

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

1 The Family has no objection.

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3 **9. “Motion to prohibit allusion or reference to inconsistency between policy/training.”**

4 The Family objects. This motion is overbroad and lacks any legal basis. If within the
5 scope of their knowledge, a witness may properly be able to compare and analyze related policy
6 and training. If this is beyond a witnesses personal knowledge, then an objection would be
7 proper at the time of the question but not as a broad motion in limine.

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9 **10. “Detective Simmons should not draw conclusions regarding compliance with**
10 **policy/training about his investigation or actions of the shooting officers.”**

11 The Family has no objection.

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13 DATED this 25th day of February, 2022.

14
15 /s Adrien Leavitt

16 Adrien Leavitt, WSBA #44451
17 La Rond Baker, WSBA #43610
18 Attorneys for the Family of Damarius Butts
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