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KING COUNTY DEPARTMENT OF EXECUTIVE
SERVICES INQUEST PROGRAM

INQUEST INTO THE DEATH OF:

DAMARIUS DEMONTA BUTTS,

Deceased.

No. 517IQ8013

INVOLVED OFFICERS’
RESPONSE TO FAMILY’S AND
SPD’S MOTIONS *IN LIMINE*

Involved Officers’ Response to Family’s Motions *in Limine*

- 1. Any exclusion of Adriana Butts’ identification or testimony ignores the clear legal mandates set forth by our Supreme Court, in statute, and through the most recent Executive order.**

Any decision not to call Adriana Butts as a witness or prevent any parties or witnesses from identifying her by name violates the clear mandates set forth by the Supreme Court, statute, and the most recent executive order. Indeed, it sets a dangerous precedent for future inquests and cavalierly jeopardizes the purported goal of transparency of the process.

First, RCW 36.24.050 mandates that “[t]he coroner must summon and examine as witnesses, on oath administered by the coroner, **every person, who**, in his or her opinion or that of any of the jury, **has any knowledge of the facts.**” (emphasis added). As held by our Supreme Court in *Family of Butts v. Constantine*, 198 Wn. 2d 27, 47, 491 P.3d 132 (2021), “the coroner

1 has a duty to ‘examine as witness ... every person’ with relevant testimony.’ The Butts court
2 defined “relevant testimony” as testimony possessed by any person having “any knowledge of
3 the facts.” *Id.* Here, neither the Family nor the Administrator can reasonably contend that
4 Adriana Butts does not have knowledge of the facts surrounding Mr. Butts’ interaction with law
5 enforcement (or others) as it relates to the cause and circumstances of Mr. Butts’ death.

6 Second, the Administrator has no authority to bar a witness or evidence prior to the
7 inquest:

8 The coroner and inquest jury share equal authority to determine what witnesses have
9 relevant knowledge of the facts regarding the circumstances attending a person’s
10 death. RCW 36.24.050 (‘The coroner must summon and examine as witnesses, on oath
11 administered by the coroner, every person, who, *in his or her opinion or that of any of the*
12 *jury*, has any knowledge of the facts.’ (emphasis added)). Because the inquest jury has
13 commensurate authority to decide what witnesses and evidence are relevant to its inquiry,
14 **the coroner cannot preemptively exempt or bar particular evidence or testimony**
15 **from the jury’s consideration.”**

16 *Butts v. Constantine*, 198 Wn. 2d 27, 58, 491 P.3d 132 (2021) (emphasis added). While the
17 Administrator previously ruled to exclude Adriana Butts as a witness, this determination was
18 made prior to the Supreme Court’s decision in *Butts*. That holding clearly invalidates the
19 Administrator’s earlier ruling and prevents the grant of any motion *in limine* excluding Adriana
20 Butts as a witness or barring any party or witness from identifying her by name. Indeed,
21 preventing her identification would invade the inquest jury’s entitlement to identify witnesses
22 with “knowledge of the facts.”

23 Last, the most recent Executive order prevents the exclusion of witnesses based on
relevance or being cumulative unless “exceptional circumstances” exist. PHL-7-1-5-EO
(Conducting Inquests in King County), Appendix 2, Paragraph 12.4 reads as follows:

The inquest is intended to be a transparent process to inform the public of the
circumstances of the death of a person that involved a representative of government. As
such, **there is a strong presumption against the exclusion of witnesses** until after their

1 testimony, and relevant, non-cumulative witnesses **should only be excluded by the**
2 **administrator in exceptional circumstances.**

3 Adriana Butts' testimony is clearly relevant and any other suggestion is not credible. Further, it
4 is not cumulative because she witnessed events from a very different perspective from officers
5 and others. However, even if her testimony was irrelevant and/or cumulative, the Family has not
6 identified any "exceptional circumstances" that support her testimony or identification at trial.

7 There is no legal or factual basis to support exclusion of Adriana Butts as a witness or to
8 prevent her identification at the inquest. Indeed, doing so completely undermines the
9 transparency of the process and will only lead to additional challenges to the Executive's
10 authority. As the first inquest to proceed under the new regimen, it is particularly important that
11 the process follow these unambiguous, mandatory directives to demonstrate that the process is
12 actually what it purports to be – a transparent review of the facts and circumstances – rather than
13 a limited examination founded upon whim. The Administrator should deny the Family's request
14 or, at a minimum, utilize Adriana Butts' video interview after the incident in lieu of calling her
15 live.

16 **2. The Administrator should deny the Family's request to exclude relevant**
17 **testimony of what occurred after Officer Kennedy was shot.**

18 The King County Charter requires coroner's inquests be held whenever "an action,
19 decision or possible failure to offer the appropriate care by a member of any law enforcement
20 agency might have contributed to an individual's death." KING COUNTY CHARTER § 895. As
21 demonstrated by instructions and interrogatories certified by the Administrator, an inquest
22 involves not only the actions leading up to an officer's decision to use deadly force, but also
23 action after deadly force is employed. For example, the panel must answer questions about
rendering and calling for aid and whether it was feasible for aid to be provided.

1 Officer Kennedy’s testimony about what occurred after she was shot is highly relevant to
2 this proceeding for several reasons: (1) it corroborates the testimony of other testifying officers;
3 (2) it demonstrates that aid was present on the scene but unable to enter due to unresolved safety
4 issues; and (3) assists in establishing the location of personnel after shots were fired.

5 **3. The Administrator should deny the Family’s request to prevent Officer Kennedy**
6 **from testifying about what may have happened if she was not wearing a ballistic**
7 **vest.**

8 Officer Kennedy’s understanding of the purpose of ballistics vests and what they are
9 intended to prevent does not require medical testimony or expert knowledge. More importantly,
10 she has been trained on how vests are worn and why they are used. Further, the testimony is
11 relevant as it relates to Mr. Butts’ use of deadly force and what officers faced when confronted
12 by a deadly threat.

13 **4. The Administrator should deny the Family’s request to prevent Officer Kennedy**
14 **from testifying about what was going through her mind when she realized she**
15 **was shot.**

16 What was going through Officer Kennedy’s mind before and after she was shot are
17 highly relevant to the facts and circumstances of Mr. Butts’ death and Officer Kennedy’s
18 decision-making during the incident; indeed, it goes to the very heart of her decision-making
19 process. There is nothing prejudicial about this testimony as evidenced by the Family’s failure to
20 articulate the alleged prejudice.

21 **5. The Administrator should deny and/or reserve on witness testimony about**
22 **lasting emotional impacts following the incident.**

23 The Involved Officers are not requesting that questions be proffered to witnesses asking
them to describe lasting emotional impacts from the incident. However, witnesses should not be
barred from discussing the lasting emotional impacts if, for example, it impacts their memory of
the incident or relates to a particular answer. Further, this was a scary, traumatic event for many

1 involved and the testimony itself may be emotionally charged. Where a witness expresses
2 emotion during testimony, neither he nor she should be prohibited from explaining the reasoning
3 for the emotion. Eliciting the truth is not prejudicial to any party or the process. Accordingly, we
4 request the Administrator deny or reserve on this matter.

5 **6. The Administrator should reserve on the Family’s summation request.**

6 While the executive order contemplates the use of statements of summation, the
7 Administrator has the authority and discretion to permit or reject said statements. The
8 Administrator should reserve on this issue until all evidence and testimony is presented at the
9 inquest. Thereafter, the parties can advocate for or against the need for attorney summation.

10 **7. The Administrator should deny the Family’s request to exclude Officer
11 Pritchard’s testimony.**

12 For the same reasons it would be improper to exclude Adriana Butts’ testimony, it would
13 be improper to exclude Officer Pritchard’s testimony. Moreover, Officer Pritchard’s testimony is
14 from his unique perspective and, therefore, is not cumulative of Officer Kang’s testimony.
15 Moreover, the Family must demonstrate “exceptional circumstances” warrant exclusion. The
16 mere fact witness testimony may be cumulative is not sufficient.

17 **8. The Administrator should deny the Family’s request to exclude Tom
18 Townsend’s testimony.**

19 For the same reasons it would be improper to exclude Adriana Butts’ testimony, it would
20 be improper to exclude Tom Townsend’s testimony. Moreover, Mr. Townsend’s testimony is
21 from his unique perspective and, therefore, is not cumulative of Officer Merritt’s testimony.
22 Moreover, the Family must demonstrate “exceptional circumstances” warrant exclusion. The
23 mere fact witness testimony may be cumulative is not sufficient.

1 **Involved Officers' Response to SPD's Motions in Limine**

- 2 **1. The parties should be precluded from eliciting testimony that duplicates**
3 **testimony already elicited from the inquest attorney. – AGREED**

4 The Involved Officers agree that the Administrator should limit repetitive questions.

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

7 As outlined the Involved Officers' Motions in Limine, this line of questioning is
8 improper and only seeks to cast doubt on stipulated facts.

- 9 **3. Motion to exclude reference to unrelated incidents or uses of force by any of the**
10 **involved SPD officers or any SPD officers who are witnesses. – AGREED**

11 Unrelated incidents or uses of force are not relevant and should be excluded.

- 12 **4. Motion to limit scope of lead FIT investigator testimony. – AGREED**

- 13 **5. Detective Simmons should not be asked about who could have or [what] should**
14 **have been done differently regarding his investigation. – AGREED**

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

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

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

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

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

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DATED this 25th day of February, 2022, at Seattle, Washington.

FREY BUCK, P.S.

By: /s/ Evan Bariault
Ted Buck, WSBA #22029
Evan Bariault, WSBA #42867
Attorney for Seattle Police Department Involved
Officers

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CERTIFICATE OF SERVICE

I certify that on the 25th 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:

Matthew Anderson Matt.Anderson@kingcounty.gov	(x) Via Email
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DATED this 25th day of February, 2022, at Seattle, Washington.

/s/ Evan Bariault
Evan Bariault