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5 THE STATE OF WASHINGTON
6 KING COUNTY DEPARTMENT OF EXECUTIVE SERVICES INQUEST PROGRAM

7
8 IN RE INQUEST INTO THE DEATH OF
9 DAMARIUS D. BUTTS

NO. 517IQ8013

10 SEATTLE POLICE DEPARTMENT'S
11 RESPONSE TO FAMILY'S MOTIONS IN
LIMINE

12 The City of Seattle, through the Seattle Police Department (hereinafter "SPD,") by and
13 through its undersigned counsel, hereby submits this response to the Family's Motions in Limine.

14 **A. Responses to Family Motions in Limine filed February 14, 2022.**

15 **1. Testimony regarding Adrianna Butts should be permitted to refer to her by name.**

16 While recognizing that the Administrator indicated that he is not inclined to revisit previous
17 rulings on this issue, SPD respectfully notes for the record that—as it previously argued—it agrees
18 with the Involved Officers' position that Ms. Butts' testimony would be highly relevant, non-
19 cumulative, and not confusing. Indeed, obscuring her identity is likely to be confusing.

20 Ms. Butts is the only fact witness who is not being named or called to testify, despite the fact
21 that she was unquestionably involved in the events leading up to Mr. Butts' death. No party contends

1 that Ms. Butts lacked knowledge of the facts and circumstances surrounding Mr. Butts' death. The
2 family has not shown sufficient justification to withhold her identity, alone from all the witnesses and
3 involved actors, from the Inquest Panel. Doing so risks confusing the jury as to this anonymous
4 individual's involvement in the incident. Officer Kennedy Should Be Permitted to Testify to Facts
5 Regarding SPD and Emergency Response to the Incident That She Observed After Leaving the
6 Loading Dock.

7 The Inquest Administrator's October 18, 2019 Order establishes that the events leading up to
8 and including the determination by EMS that Mr. Butts was deceased fall within the scope of this
9 inquest. October 18, 2019 Order at 2; see also February 2, 2022 Order on Motions in Limine re Officer
10 Kang's Testimony at 2. Accordingly, to the extent Officer Kennedy observed the response by SPD
11 and EMS during and after the time she left the loading dock itself, her testimony is relevant to the
12 extent that it establishes or corroborates aspects of that response. This is consistent with the
13 Administrator's Order regarding the Family's similar Motion in Limine with respect to Officer Kang.
14 There, the Administrator permitted Kang "to testify about the shooting up until the point that he is in
15 the care of the EMTs." *Id.* Moreover, Officer Kennedy had the opportunity to observe the entire
16 "stack" of SPD officers positioned outside the room in which Mr. Butts was shot, the shooting of
17 Officer Kang and the tactical decision-making that went into SPD's deployment. To grant the family's
18 motion to exclude testimony of what Officer Kennedy observed "immediately after she was struck
19 by a bullet" would prevent the Inquest Panel from understanding important aspects of this incident,
20 and would prevent the "full, fair, and transparent review" into the "facts and circumstances
21 surrounding the death" of Mr. Butts as required by the Executive Order.

1 **2. Officer Kennedy Should Be Permitted to Testify Regarding the Fact That She Was Shot,**
2 **As Well As Any Inferences That Are Helpful and Rationally Based On Her Perceptions,**
3 **But Not Detailed Speculation Regarding Hypothetical Injuries.**

4 ER 701 permits a lay witness like Officer Kennedy to testify to opinions that are (a)
5 rationally based on her own perceptions; (b) helpful to the trier of fact, and (c) not based on
6 scientific, technical, or specialized knowledge. SPD agrees with the Family that testimony about
7 hypothetical injuries such as might be offered by an emergency medical expert or a forensic
8 reconstructionist is not properly elicited from Officer Kennedy. However, Officer Kennedy should
9 be permitted to testify as to what she could rationally infer—i.e. that she would have suffered a
10 grievous injury had she not been wearing her ballistic vest. That testimony is highly relevant to
11 the decision for officers to use deadly force under SPD Policy 8.200 (Using Force). *See* SPD Policy
12 8.200 (requiring all force to be (1) reasonable; (2) necessary, and (3) proportional). Officer
13 Kennedy’s reasonable belief that she was at imminent risk of serious injury or death is therefore
14 relevant and helpful to the trier of fact in assessing compliance with that policy. Moreover, this
15 evidence can be presented in such a way as not to run afoul of ER 403. SPD agrees that Officer
16 Kennedy should not speculate extensively about the nature and degree of physical injury she might
17 have suffered. However, her reasonable inference that she might have suffered a gunshot wound
18 by being shot in the torso but for her protective vest is not, in itself, either irrelevant or unduly
19 prejudicial in an inquiry as to SPD’s response to an active shooter in an office building with
20 multiple civilians present.
21

1 **3. Officer Kennedy Should Be Permitted to Testify to Her Mental Impressions and**
2 **Understanding of How the Incident Unfolded on April 20, 2017.**

3 As discussed above, Officer Kennedy’s perception of being shot is highly relevant not only
4 to her own decision to use force, but to the tactical planning and decision-making by SPD as a
5 whole for the remainder of this incident. Whether or not Officer Kennedy and others reasonably
6 perceived that Mr. Butts represented an imminent, deadly threat is highly relevant to questions of
7 whether the officers individually and collectively followed applicable policies and training,
8 including but not limited to policies regarding the use of force and de-escalation. The question of
9 whether an officer acted reasonably is judged from the perspective of a reasonable officer at the
10 scene experiencing the incident as the officers in question perceived it, not through the omniscient
11 20/20 perspective of hindsight. *Staats v. Brown*, 139 Wn.2d 757, 774, 991 P.2d 615 (2000) (citing
12 *Graham v. Connor*, 490 U.S. 386, 109 S. Ct. 1865 (1989)). As such, what Officer Kennedy
13 perceived, including her mental impressions as the incident unfolded and as the bullet impacted
14 her protective vest are relevant and probative of whether she acted reasonably in using force.
15 Although the Family states that Officer Kennedy’s thought process “does not go to any questions
16 before the jury,” Family’s MIL at 3, that is incorrect. *See, e.g.*, IA’s Proposed Interrogatory Nos.
17 58, 59, 80, 81, 83, 84.

18 **4. Testimony Solely Regarding Lasting Emotional Impacts.**

19 As a general proposition, SPD agrees that testimony solely pertaining to the lasting
20 emotional impacts this incident has had on the involved officers or family members is beyond the
21 scope of the inquest. However, inquiry should be permitted into the facts of the incident with

1 respect to whether an officer feared for his/her safety or was injured during the exchange of
2 gunfire, as it is relevant to the reasonableness of force. *See Staats*, 139 Wn.2d at 775 (analyzing
3 whether officer actually “felt any immediate threat of safety to himself or others” in context of
4 determining whether force was reasonable). The extent of and basis for that fear is also relevant
5 to that inquiry. *Id.* Additionally, to the extent that a witness observed another being shot, that
6 testimony should be permitted, as it is undoubtedly a part of the facts and circumstances
7 surrounding the death of Mr. Butts.

8 **B. Responses to Family’s Supplemental Motions in Limine Filed February 23, 2022.**

9 SPD objects to Administrator’s consideration of the late-filed motions of the Family. The
10 family did not seek leave to file motions in limine late nor did the Family provide any explanation
11 of whether there was good cause for why the motions were filed on February 23, 2022—nine days
12 late. In addition, the Family recently missed the deadline for proposing new exhibits by nearly two
13 months. *Compare* December 7, 2021 Order (proposed exhibits due by Dec. 13, 2021) *with*
14 Family’s February 4, 2021 proposal to add new exhibit.¹ When deadlines are not met by one party,
15 it adds to the time and resources that all parties must expend. In addition, it undermines the
16 perception of a fair process.

17 In the event that the Administrator nonetheless decides to consider the Family’s late-filed
18 motions in limine, SPD provides responses below.

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¹ Moreover, the proposal was provided at 8:41pm on a Friday night for use during
testimony provided by Officer Kang at 9am the following Monday morning.

1 **1. The Family Has Demonstrated No Need For Summation.**

2 The Executive order states that “participating parties may offer statements of summation
3 only if preapproved by the administrator.” Order at ¶ 13.0. The administrator has discretion to
4 permit summations, which must in any event “be consistent with the fact-finding purpose of the
5 inquest.” *Id.* Ordinarily, the purpose of summation is for the parties to provide argument in favor
6 of the relief they seek. Summation is therefore generally inconsistent with the fact-finding purpose
7 of an inquest. The Family has provided no basis for requesting summation, and their participation
8 is fully achieved by their inclusion in proceedings as a represented party with the ability to question
9 witnesses. Moreover, the Administrator has already ruled that biographical information related to
10 the Family’s relationship with Mr. Butts is outside the scope of this Inquest. *See* December 12,
11 2019 Pre-Inquest Conference Order at 4. Finally, in the event that the Family is permitted
12 summation, all parties should have the opportunity to provide the same in the interest of ensuring
13 that the Inquest is a full, fair, and transparent inquiry into the circumstances of Mr. Butts’ death.

14 **2. Offer Pritchard Should Be Permitted to Testify to What He Observed In The Room**
15 **Where Mr. Butts was Concealed.**

16 As noted above, the Executive Order requires a full, fair, and transparent review of the
17 facts and circumstances surrounding Mr. Butts’ death. EO at ¶ 2.1. Officer Pritchard was among
18 the first officers to enter the room in which Mr. Butts was standing, and he observed the physical
19 layout of the room. Officer Pritchard can testify to how he and other officers moved objects, such
20 as rolling carts and recycling bins, to provide concealment for themselves and Officer Kang.
21 Officer Kang had just been shot and can in no way be expected to provide a detailed description

1 of the events as they unfolded. Officer Pritchard’s testimony is therefore critical to providing the
2 Inquest Panel with a full and accurate understanding of the tactical situation confronting SPD
3 officers at a time they understood Mr. Butts to be an armed and potentially active shooter.

4 In addition, Officer Pritchard can corroborate other aspects of SPD’s response, including
5 the response by SPD’s SWAT team, KCSO Deputy Mullinax, and the K-9 unit. Of all officers
6 called to testify, Pritchard most clearly observed this incident from the moment Officer Kang was
7 shot to the determination that Mr. Butts was deceased. Any supposedly prejudicial effect of his
8 testimony can be limited by restricting inquiry into the details of Officer Kang’s injuries, consistent
9 with the IA’s February 2, 2022 Order. *See* Order re Officer Kang’s Testimony at 2 (noting that the
10 prejudice of such testimony is “limited.”)

11 **3. The Family’s Motion Should Be Denied Because It Fails To Accurately Describe Mr.**
12 **Townsend’s Testimony, and to Preserve the Independence of the Inquest.**

13 The Family’s Motion in Limine with respect to the testimony of Mr. Townsend and “any
14 other civilian, fact witnesses” to which it applies should be denied on two equally important
15 grounds: (1) that it mischaracterizes Mr. Townsend’s testimony as being limited to seeing Ms.
16 Butts struggle with Officer Merritt, and (2) to preserve the independence of the Inquest process as
17 a factfinder independent of law enforcement.

18 First, the Family’s Motion mischaracterizes Mr. Townsend’s testimony to the extent that it
19 argues his “observations were limited to viewing part of the altercation between Adrianna Butts
20 and Officer Merritt.” Rather, Mr. Townsend observed Mr. Butts running west on Madison and
21 turning south onto Western Avenue pursued by officers. Mr. Butts brushed past Mr. Townsend

1 while he ran. Rather than being cumulative as the Family suggests, this testimony is
2 unquestionably part of the “facts and circumstances surrounding the death” of Mr. Butts, as it
3 describes where Mr. Butts was and what he was doing just minutes before the fatal encounter. Mr.
4 Townsend’s observation of a female subject (Ms. Butts) was brief, but it corroborates Officer
5 Merritt’s testimony and can easily be handled in a non-prejudicial manner. More broadly, the
6 testimony of civilian witnesses who corroborate the account of SPD officer witnesses is not
7 cumulative. These witnesses have different perspectives, and it is important for the jury to hear the
8 corroboration that they provide.

9 Second, the testimony of members of the public like Mr. Townsend is critical to ensuring
10 the independence of an Inquest’s examination of the facts and circumstances surrounding a death.
11 The strong public interest in an independent review of a law enforcement-involved death underpins
12 the entire Executive Order. Executive Order at ¶ 6.1 and throughout. Excluding Mr. Townsend
13 and any other civilian witnesses who observed Ms. Butts struggling with Officer Merritt would
14 risk elimination of multiple civilian witnesses. “[T]here is a strong presumption against the
15 exclusion of witnesses...and relevant, non-cumulative witnesses should only be excluded by the
16 administrator in exceptional circumstances.” *Id.* at ¶ 12.5. Because the Family has failed to show
17 that Mr. Townsend’s testimony is truly cumulative, no exceptional circumstances permit his
18 exclusion.

1 DATED this 25th day of February, 2022.

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10 **CERTIFICATE OF SERVICE**

11 I hereby certify that on the 25th day of February, 2022, I caused a true and correct copy of
12 the foregoing document to be served upon the following in the manner indicated below:

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