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KING COUNTY DEPARTMENT OF EXECUTIVE
SERVICES INQUEST PROGRAM

INQUEST INTO THE DEATH OF:
DAMARIUS DEMONTA BUTTS.

No. 517IQ8013

FAMILY’S MOTION TO
INSTRUCTION JURY
PERMITTING JURY TO DRAW
AN INFERENCE FROM
INVOCATION

I. Introduction

The Family of Damarius Butts moves the Inquest Administrator (IA) to instruct the jury that they may draw a negative inference from the fact of a witness invoking a 5th Amendment privilege pursuant to Ikeda v. Curtis, 43 Wn.2d 449, 457–58 (1953) and Passion Works, LLC v. Dep't of Labor & Indus., 13 Wn. App. 2d 1006, review denied sub nom. Passion Works, Inc. v. Dep't of Labor & Indus., 196 Wn.2d 1013, 475 P.3d 483 (2020).

1 **II. Motion**

2 An inquest is a “noncriminal” legal proceeding. Family of Butts v. Constantine, 198
3 Wn.2d 27, 63–64 (2021). “The Fifth Amendment privilege permits a person to refuse to testify at
4 a criminal trial, or to refuse to answer official questions asked in any other proceeding, where the
5 answer might tend to incriminate [them] in future criminal proceedings.” King v. Olympic
6 Pipeline Co., 104 Wash. App. 338, 351, (2000). “There is no blanket Fifth Amendment right to
7 refuse to answer questions based on an assertion that any and all questions might tend to be
8 incriminatory.” Eastham v. Arndt, 28 Wash. App. 524, 532 (1981). As such, in a noncriminal
9 proceeding like an inquest, any Fifth Amendment privilege must be asserted on a case-by-case
10 basis. Family of Butts v. Constantine, 198 Wn.2d at 63–64. “The purpose of the privilege against
11 self-incrimination is to protect the witness from compulsory disclosure of criminal liability.

12 When a witness in a civil suit refuses to answer a question on the ground that his answer might
13 tend to incriminate him, the result sought to be achieved by invoking the constitutional privilege
14 is accomplished. Such refusal cannot be used against him in a subsequent criminal proceeding.
15 *However, the trier of facts in a civil case is entitled to draw an inference from his refusal to so*
16 *testify.”* Ikeda v. Curtis, 43 Wn.2d 449, 457–58 (1953) (emphasis added).

17 Like in a civil proceeding, here, a witness has a constitutional right to assert his or her
18 privilege against self-incrimination. Because this is a noncriminal proceeding, the trier of fact is
19 entitled to draw an inference from such a refusal. Here, that trier of fact is the inquest jury; the
20 inquest jury should be instructed upon their ability to draw such an inference.

21 Although it is true that an inquest is a type of probable cause determination (Family of
22 Butts v. Constantine, 198 Wn.2d at 49), this does not morph an inquest into a criminal
23 proceeding. An inquest jury’s finding regarding criminal liability is not binding upon any
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1 prosecuting authority and lacks any arrest power. Id. Procedurally, an inquest has entirely
2 distinct process than a criminal probable cause finding. As such, the fact that an inquest is a type
3 of probable cause determination does not mean that it becomes a criminal proceeding, thus
4 impacting what types of inferences a jury is allowed to determine regarding any Fifth
5 Amendment assertion.

6
7 **III. Conclusion**

8 Based on the foregoing reasons, the Family moves the IA to instruct the jury that it may
9 draw a negative inference based on any witness's assertion of their privilege against self-
10 incrimination.

11 DATED this 11th day of March, 2022.

12
13 /s Adrien Leavitt

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