King County

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ORDER ON MOTIONS IN LIMINE

INQUEST INTO THE DEATH OF DAMARIUS DEMONTA BUTTS
INQUEST # 517IQ8013

PARTIES PRESENT:

Family of the decedent:	Mother of Damarius Demonta Butts present and represented by Adrien Leavitt and La Rond Baker
Law enforcement officers:	Seattle Police Department Officers Elizabeth Kennedy, Christopher Myers, Joshua Vaaga and Canek Gordillo represented by Evan Bariault and Ted Buck (officers not present at this hearing)
Employing government department:	Seattle Police Department, represented by Ghazal Sharifi, Kerala Cowart and Tom Miller.
Administrator:	Michael Spearman assisted by Matt Anderson

The Inquest Administrator, having been informed that the Involved Officers intend to invoke the 5th Amendment privilege against self-incrimination and refuse to testify, and having heard from the parties, hereby orders that, should the Involved Officers not testify, the compelled statements they provided to the Force Investigation Team during the investigation of this matter are admissible and will be played to the jury, subject to the redactions already provided. The jurors will be provided a copy of the transcript as they listen to the statements. The audio recordings will not be available to the jurors during deliberations.

Garrity v. New Jersey forbids the "use in subsequent criminal proceedings of statements obtained under threat of removal from office …"385 U.S. 493, 500. (emphasis added) No authority has been presented holding that the prohibition extends to noncriminal proceedings. Our Supreme Court has made it abundantly clear that an inquest is a "noncriminal proceeding." Butt v. Constantine, 198 Wn.2d 27, 64. Thus, I conclude the Garrity statements of Officers Gordillo, Kennedy, Myers and Vaaga are admissible in this inquest if they invoke the 5th Amendment privilege.[1]

It has been argued that the Supreme Court's determination in Butts, that inquests are noncriminal proceedings, should be viewed with caution in light of the Court's assertion, also in Butts, that "an inquest is one of four 'established, recognized and legally permissible methods for determining the existence of probable cause.'" Id. at 48, n. 5, quoting State v. Jefferson, 79 Wn.2d 345, 347 (1971). The argument fails for two reasons. First, the Court's assertion in Butts that inquests are noncriminal proceedings was made without equivocation and, presumably, in full awareness of its citation to Jefferson in footnote five. For that reason alone, I am disinclined to speculate on an interpretation that is at odds with the Court's explicit and unqualified language.

Second, it is worth noting that Jefferson was decided in 1971. At that time, the Coroner's Act, RCW 36.24.100, provided that "[i]f the jury finds that the person was killed and the party committing the homicide is ascertained by the inquisition, but is not in custody, the coroner shall issue a warrant for the arrest of the person charged, returnable forthwith to the nearest magistrate." (emphasis added) Thus, the coroner stood on par with the county prosecutor and the county courts to determine probable cause and issue arrest warrants. If a person could be held in custody on a coroner's authority based solely on an inquest jury's findings, perhaps a persuasive argument could be made that the inquest is a criminal proceeding. But this is no longer the law.

In 2016, RCW 36.24.100 was amended to remove the coroner's authority to issue arrest warrants and instead determined that where the inquest finds that a person committed a homicide, "the coroner must deliver the findings of the jury and all documents, testimony, records generated, possessed, or used during the inquest to the prosecuting attorney of the county where the inquest was held." Thus, under the current statute, even if an inquest jury's findings may be read as a determination of probable cause, the ability to institute any action resulting

[1]If the Involved Officers choose to testify at the inquest hearing their statements may be used for impeachment purposes but will not be admitted as substantive evidence.

from such a finding is no longer in the hands of the coroner. Instead, that authority now lies with the county prosecutor. This diminution in the coroner's authority greatly lessens the force of the argument that an inquest is in any manner a criminal proceeding. This is so, because if a criminal proceeding is instituted, it is not based on the authority of the coroner or on the findings of the inquest jury alone, but instead results from the independent judgment of the relevant prosecutorial authority.

DATED: March 20, 2022.

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Michael Spearman
Administrator