KING COUNTY DEPARTMENT OF EXECUTIVE SERVICES INQUEST PROGRAM

IN RE INQUEST INTO THE DEATH OF ROBERT LIGHTFEATHER, DECEASED.	INQUEST NO. 17IQ16588 CITY OF FEDERAL WAY, AUSTIN ROGERS, AND TYLER TURPIN'S MOTIONS IN LIMINE

The City of Federal Way, Officer Austin Rogers, and Officer Tyler Turpin submit the following motions in lime for the Administrator's consideration. Pretrial motions to exclude evidence are designed to simplify the trial and to avoid the prejudice that often occurs when a party is forced to object in front of the jury to the introduction of evidence. *Fenimore v. Donald M. Drake Construction*, 87 Wn.2d 85, 89, 549 P.2d 43 (1976). Motions in limine are favored by the courts, and the filing of the same is not admissible before thejury. *See, Fenimore*, 87 Wn.2d at 85. When a trial court is able to determine the admissibility of the questioned testimony prior to its introduction at trial, it is appropriate to grant the motion in limine and thereby avoid prejudice before the jury. *State v. Kelly*, 102 Wn.2d 188, 192-93, 685 P.2d 564 (1984). The standards for granting a motion in limine are set forth in Fenimore as follows:

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> [T]he trial court should grant a motion if it describes the evidence which is sought to be excluded with sufficient specificity to enable the trial court to determine that it is clearly inadmissible under the issues as drawn which may develop during the trial and if the evidence is so prejudicial in its nature that the moving party should be spared the necessity of calling attention to it by objecting when it is offered during the trial.

Id. at 91.

The City and the Involved Officers should be spared the necessity of calling attention to the evidence by objecting when it is offered at trial. As discussed herein an order in limine should be entered prior to trial prohibiting evidence or testimony on the following issues.

1. **Exclude Any Reference to How the Involved Officers' Statements Were Prepared and *Garrity* Advisments.**

The Administrator has identified Officers Rogers and Turpin's Public Safety Statements and *Garrity* Statements as exhibits that may be used to refresh recollection. (Exs. 163-166.) The Administrator should rule in limine that no party may seek to elicit testimony from any witness or otherwise reference the process by which the officers gave their statements, particularly whether the officers' attorneys were involved in that process or the statements were compelled under *Garrity v. New Jersey*, 385 U.S. 493, 87 S. Ct. 616 (1967).

Any inquiry into the process by which any officer provided statements would be irrelevant and confusing to the jury, because it is not relevant to the scope of the inquest under PHL-7-1-5-EO, Appx. 2, Section 3. ER 401 & 403. Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without that evidence. ER 401. The interactions of officers, command staff, and attorneys after the incident do not make the relevant facts of the incident more or less likely.

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Allowing evidence of the fact that the officers were appointed attorneys to represent them after the shooting would unfairly prejudicial to the officers under ER 403. It may cause the jury to speculate that the officers somehow acted improperly by engaging attorneys. However, the officers have constitutional rights to counsel, just as every citizen does, and they should not be punished for exercising those rights. Any advice, discussions, or meetings with attorneys are protected by the work product doctrine and attorney-client privilege. The Administrator should rule in limine that no party can reference, allude to, or raise in any way the fact that the officers were provided attorneys after the incident.

Similarly, the Administrator should preclude any reference to the fact that the officers received "*Garrity*" advisements or gave statements pursuant to *Garrity v. New Jersey*, 385 U.S. 493, 87 S. Ct. 616 (1967), and its progeny. *Garrity* protects individuals (including police officers) under the Fourteenth Amendment against the use of coerced statements, obtained under threat of removal from office, in subsequent criminal proceedings. *See generally Seattle Police Officers' Guild v. City of Seattle*, 80 Wn.2d 307, 309-10, 494 P.2d 485 (1972) (discussing *Garrity* and its sister cases: considering the options given to officers involved in an investigation into fixing traffic tickets, they included "self-incrimination or job forfeiture," which was "tantamount to coercion, thereby rendering [the officer statements'] involuntary.")

In practice, *Garrity* warnings are given by employers in advance of compelling a statement by an employee, which could lead to either discipline, where a refusal to answer provides an avenue to potentially discipline/discharge the employee. The following collective opinions provide "a procedural formula whereby, for example, public officials may now be discharged and lawyers disciplined for refusing to divulge to appropriate authority information pertinent to the faithful

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performance of their offices." *See Seattle Police Officers' Guild v. City of Seattle*, 80 Wn.2d 307, 314, 494 P.2d 485 (1972) (positively quoting Harlan, J. concurrence in *Gardner v. Broderick*, 392 U.S. 273, 88 S. Ct. 1913 (1968)) (addressing thrust of *Garrity*, *Gardner*, and two additional cases: *Spevack v. Klein*, 385 U.S. 511, 87 S. Ct. 625 (1967) and *Uniformed Sanitation Men Ass'n v. Comm. of Sanitation*, 392 U.S. 280, 88 S. Ct. 1917 (1968)). However, *Garrity* serves to preclude incriminating statements from use during a later prosecution. *See generally id.* at 316.

The fact the officers' statements were given under *Garrity* has no relevance to the issues to be decided at the inquest. Questions or evidence referencing *Garrity* would also be confusing to the jury and unfairly prejudicial to the officers. ER 403. As with the aforementioned issues associated with the preparation of their statements, the Administrator should exclude any reference to or evidence of *Garrity* advisements to the officers.

2. Exclude Any Reference to Disciplinary Histories or Other Use of Force Incidents.

The Administrator should also exclude any reference, testimony, or evidence related disciplinary histories or other uses of force by the Involved Officers. PHL-7-1-5-EO, Appx. 2, Section 4.6 expressly prohibits any evidence of disciplinary history, unless it is related to the use of force. Here, the officers were not disciplined. The parties should be prohibited from any reference to the officers' disciplinary histories. The Administrator should also preclude any reference to other uses of force. In addition to being irrelevant to the inquiry at-hand, they would also be unfairly prejudicial and inadmissible under ER 404(b). Administrator Spearman properly excluded such evidence in the Butts inquest (see attached Orders), and Administrator MacBeth should do the same here.

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3. Exclude Any Reference to the Thoroughness of FWPD's Investigation or Subsequent Post-Incident Steps Taken By FWPD.

As Administrator Spearman did in *Butts*, the Administrator should exclude any reference, testimony, or evidence pertaining to the FWPD's post-incident investigation and any steps taken after the shooting. Deputy Chief Sumpter stated in his interview that the FWPD has not completed its internal review of the shooting, because they are waiting for the inquest to be completed. The City's policies and procedures related to intenal investigations are far afield from the scope of the inquest and is therefore irrelevant. ER 401, 402. It would also be confusing to the jury and unfairly prejudicial to the City and the Involved Officers. ER 403.

4. Motion to Exclude Any Reference to or Evidence of What The Officers "Could Have" or "Should Have" Done Differently.

The Administrator should exclude any reference, testimony, or evidence bearing on opinion testimony as to what Officers Turpin and Rogers could have or should have done differently. Such evidence is not within the scope of the inquest and is not relevant. ER 401, 402. Under Washington law and federal law, the inquiry into the lawfulness of use of force does not permit 20/20 hindsight. *See, Graham v. Connor*, 490 U.S. 386, 396, 109 S. Ct. 1865 (1989) (reasonableness is assessed from the perspective of an objectively reasonable officer on the scene, rather than with the 20/20 vision of hindsight, and must allow for the fact that "police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation."). It would be wholly improper to attempt to elicit any "Monday morning quarterback" testimony from any

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witness about what the Involved Officers could have or should have done differently. ER 403. The Administrator should so rule in limine.

DATED this 10th day of August, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of August, 2022, a true and correct copy of the foregoing document was served upon the parties listed below via the method indicated:

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