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7 **THE STATE OF WASHINGTON**
8 **KING COUNTY DEPARTMENT OF EXECUTIVE SERVICES**
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10 *IN RE: THE INQUEST INTO THE*
11 *DEATH OF DAMARIUS BUTTS*

NO. 517IQ8013

12 THE FAMILY'S RESPONSE TO PRE-
13 INQUEST HEARING ORDER
14 ADDRESSING THE SCOPE OF
15 INQUEST HEARING

16 The Butts family respectfully moves the Inquest Hearing Administrator to limit the scope
17 of the inquest and testifying witnesses as described below.

18 **I. BACKGROUND FACTS**

19 **A. Inquest Rules Limit Evidence Unknown to the Officers Involved in the Death**

20 Inquests held pursuant to the Executive Order *Conducting Inquests in King County* shall
21 inquire “into the manner, facts, and circumstances of any death of an individual involving a
22 member of any law enforcement agency. Appx. 1 at 6.1. The purpose of an inquest hearing is
23 “ensure a full, fair, and transparent review” of the facts and circumstances of any death of an

1 individual involving an officer of any law enforcement agency within King County that occurred
2 during the course of contact. *See* Appx. 1 at 2.2-2.3.

3 The “inquest scope shall include an inquiry into and the panel shall make findings
4 regarding the cause, manner, and circumstances of the death, including applicable law enforcement
5 agency policy.” Appx. 2 at 3.2. In order to narrow the scope of the inquest “[t]he administrator
6 shall solicit proposed stipulations of fact from the participating parties[.]” Appx. 2 at 5.3. During
7 an inquest the “decendent’s criminal history may not be introduced into evidence” unless such
8 information is directly related to the use of force. *Id.* at 4.4. If decedent’s criminal history is
9 admitted “it must be limited to the greatest extent possible.” *Id.* And such evidence will “only
10 include information both actually known to officer(s) at the time, and actually forming a basis for
11 the decision to use deadly force[.]” *Id.* at 4.5.

12 **B. Facts Known to SPD Officers Involved in the Shooting Death of Damarius Butts**

13 On April 20, 2017, at 1:19 pm, Damarius Butts and his sister, Ms. Butts, entered a 7-Eleven
14 store at 627 First Avenue S. Butts 0001 (Major Investigation Summary). The two “grabbed a
15 number of items from the shelves and fled the store[.]” *Id.* “A store clerk pursued the suspect and
16 attempted to recover the stolen items.” *Id.* Damarius Butts then “brandished a pistol towards the
17 store clerk.” *Id.* Officers from across downtown responded to the report of the robbery. The first
18 contact Damarius Butts had with responding officers was at First and Madison. *Id.* These facts are
19 uncontested.

20 **1. Seattle Police Department Officer Gordillo**

21 Officer Gordillo responded to a call of an armed burglary at 7-Eleven on First Avenue.
22 Butts 1759. He responded on his bike with his partner, Officer Merritt. *Id.* Officers Gordillo and
23 Merritt encountered Damarius Butts and his colleagues at First and Madison. Butts 1760. Officer

1 Gordillo directed the group to “get on the ground” and “the heavy set African American male did
2 that immediately.” *Id.* Officer Gordillo saw Damarius Butts attempt to run and saw Officer Merritt
3 “physically fighting with him on the corner[.]” *Id.* Officer Gordillo also saw Damarius Butts’
4 sister assault Officer Merritt. *Id.* Officer Gordillo ran towards Officer Merritt and broadcast via
5 police radio that he has contacted suspects at First and Madison. *Id.* Officer Gordillo then saw
6 Damarius Butts escape Merritt’s grip and flee the scene. *Id.* Officer Gordillo began to chase
7 Damarius Butts ultimately following Damarius Butts into the loading dock. Butts 1762. Officer
8 Gordillo entered the loading dock, heard shots, and ultimately discharged his firearm at Damarius
9 Butts. Butts 1764.

10 **2. Seattle Police Department Officer Kennedy**

11 Officer Kennedy was at Starbucks on Fourth and Seneca when she first heard dispatch
12 announce an armed robbery at the 7-Eleven on First Avenue. Butts 1712 (Kennedy Statement).
13 When Officer Kennedy left Starbucks she got in her car to respond to the incident. *Id.* At this time
14 she was aware “that the call was an armed robbery and that . . . the gun had been involved and
15 that I believe the 6 pack of beer had been stolen.” *Id.* She was also aware that there were “at least
16 2 suspects[.]” *Id.* As Officer Kennedy drove she heard Officer Gordillo state that he was at First
17 and Marion and that Damarius Butts was running toward the water. *Id.* Officer Kennedy
18 immediately drove towards First and Marion. *Id.* As she entered the intersection of Marion and
19 Western she saw “an individual matching the description” of Damarius Butts. *Id.* Officer Kennedy
20 then saw Officer Gordillo “pointing at him” while running after Damarius Butts. Butts 1713.
21 Officer Kennedy attempted to block Damarius Butts with her car. *Id.* Damarius Butts ran around
22 the front of her car and Kennedy “immediately got out and gave chase.” *Id.* Officer Kennedy
23 pursued Damarius Butts into the loading dock area and then into a small back room. *Id.* Once

1 inside the room Officer Kennedy saw Damarius Butts try to escape via a locked door, realize that
2 he could not escape without going out the way he entered, confronted him, and shortly thereafter
3 both discharged their firearms. *Id.*

4 **3. Seattle Police Department Officer Kang**

5 Officer Kang was also at Starbucks on Fourth and Seneca when a “call came out as a
6 robbery at gunpoint ... at 7-Eleven ... at 1 Avenue and James and Cherry Street.” Butts 1635
7 (Kang Statement). From dispatch, Officer Kang learned that Damarius Butts was at the corner of
8 First and Madison. Butts 1636. As Officer Kang approached the intersection he “saw Officer
9 Gordillo, Canek, running westbound on Madison to Western.” *Id.* Officer Kang then began to drive
10 towards Damarius Butts. *Id.* Officer Kang saw Damarius Butts “run towards the loading dock[.]”
11 *Id.* Officer Kang then parked his car, ran towards the loading dock, and jumped onto the loading
12 dock and entered the building. *Id.* Officer Kang heard shots fired, but did not see anyone shoot. *Id.*
13 Officer Kang “didn’t know if it was the suspect shooting or the officer shooting[.]” *Id.* Officer
14 Kang then immediately ran into the room and was shot soon thereafter. *Id.*

15 **4. Seattle Police Department Officer Meyers**

16 Officer Meyers learned that there was an armed robbery from dispatch’s radio
17 announcement. Butts 1781. Officer Meyers responded to the call and parked their vehicle just
18 south of the federal building. *Id.* Officer Meyers listened to the radio broadcasts and learned that
19 Damarius Butts had removed his jacket and was running southbound on Western. *Id.* Officer
20 Meyers entered the loading dock, saw Damarius Butts, and heard shots. *Id.* One of the shots hit
21 Officer Meyers the hand and he then discharged his firearm at Damarius Butts. *Id.*

22 **5. Seattle Police Department Officer Vaaga**

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1 Officer Vaaga was driving on Airport Way when he heard an alert announcing that an
2 armed robbery had just occurred at the 7-Eleven store on 1st Avenue. Butts 1705. He reported he
3 would respond and then drove towards the location. Butts 1705-06. As he was nearing the location
4 of the incident, he heard other officers announce that they were engaged in a foot pursuit of
5 Damarius Butts at Western and Madison. Butts 1706. As Officer Vaaga drove to Western Avenue
6 and Marion Street where he saw officers and Damarius Butts run into the loading dock. *Id.* As he
7 exited his vehicle he heard multiple gunshots. *Id.* Officer Vaaga then entered the loading dock and
8 shouted for Damarius Butts to show his hands. *Id.* Officer Vaaga heard a gunshot, saw Officer
9 Kang drop to the ground, and then discharged his firearm at Damarius Butts. *Id.*

10 **6. Seattle Police Department Officer Bandel**

11 Officer Bandel was dispatched to respond to an armed robbery at the 7-Eleven on First
12 Avenue. Butts 1653. As Officer Bandel drove down Alaskan Way he heard on the radio that there
13 was a foot pursuit happening on First and Marion heading towards Western Avenue. Butts 1654.
14 When Officer Bandel arrived at Western and Marion he parked his car, got out, and saw an officer
15 pointing at a person running. *Id.* Officer Bandel pursued Damarius Butts, yelling for him to stop.
16 *Id.* Officer Bandel followed Damarius Butts into the loading dock. Butts 1655. Officer Bandel
17 continued yelling at Damarius Butts to stop and put his hands up. Butts 1655. Officer Bandel
18 chased Damarius Butts into the backroom but did not enter. Butts 1655. Officer Bandel saw
19 Damarius Butts realize he could not escape, turnaround, extricate his gun from his clothing, and
20 shoot towards the officers. Butts 1655. Officer Bandel did not discharge his firearm.

21 **II. ISSUES ADDRESSED**

22 **A. Consistent With the Inquest Rules Evidence and Testimony at the Inquest Hearing** 23 **Should Be Limited to What the Involved Officers Actually Knew**

1 **1. Rules governing inquest hearings**

2 The purpose of an inquest hearing is “ensure a full, fair, and transparent review” of the
3 facts and circumstances of any death of an individual involving an officer of any law enforcement
4 agency within King County that occurred during the course of contact with law enforcement
5 officers. *See* Appx. 1 at 2.2-2.3. The inquest hearings should be held in a manner that “promote[s]
6 fairness and . . . minimize[s] the delays, costs, and burdens that can be associated with judicial
7 proceedings.” Appx. 2 at 3.3 (providing direction regarding the application of the Rules of
8 Evidence). In order to narrow the scope of the inquest “[t]he administrator shall solicit proposed
9 stipulations of fact from the participating parties[.]” Appx. 2 at 5.3. The inquest hearing must
10 avoid raising the issue of the decedent’s criminal history unless such information is directly related
11 to the use of force. *Id.* at 4.4. To be deemed related to the use of force the criminal history or
12 actions must be: (1) related to the reason for the arrest, detention, or use of force; (2) it served as
13 the basis for an officer safety caution that the involved officers were actually “aware of prior to
14 any use of force;” or (3) the officers had “contemporaneous knowledge” of the decedent’s criminal
15 history that was relevant to the actions of the officers. Appx. 2 at 4.4 Any evidence of a decedent’s
16 criminal history will “only include information both actually known to officer(s) at the time, and
17 actually forming a basis for the decision to use deadly force[.]” *Id.* at 4.5.

18 **2. The events leading up to the death of Damarius Butts should be limited to what**
19 **the officers involved in his death actually knew**

20 Damarius Butts brandished a gun when he stole goods from a 7-Eleven store on First
21 Avenue. A 7-Eleven employee, Daniel Yohannes, called 911. Dispatch reported that an armed
22 burglary had just occurred and provided responding officers with a description of the individuals
23 involved. Seattle Police Department officers responded to the call from across downtown, but

1 Officers Merritt and Gordillo were the first to encounter those involved in the robbery. During an
2 attempt to detain the individuals, a physical altercation between Damarius Butts, his sister, and
3 Officer Merritt ensued. Officer Gordillo witnessed part of this interaction but none of the other
4 officers involved in the death of Damarius Butts did. According to statements from the officers
5 involved in the shooting, and those at the scene of the shooting, only Officer Gordillo had
6 witnessed the altercation with Officer Merritt. Neither Officer Merritt nor Officer Gordillo had
7 broadcast that Damarius Butts was involved in a physical altercation with an officer. Accordingly,
8 none of the officers at the scene—excluding Officer Gordillo—had any information regarding
9 Damarius Butts or his sister’s assault of Officer Merritt. As such, the officers involved in the
10 shooting death of Damarius Butts knew very little about the events that lead up to what occurred
11 in the loading dock of the Federal Building. This is evidenced by the fact that, of the six officers
12 present during the shooting, only one had engaged with Damarius Butts before following him into
13 the loading dock. *See above* at I(B)(1)-(6) (detailing that officer testimony affirms only Officer
14 Gordillo had any interaction or saw Damarius Butts before the foot pursuit that lead to the loading
15 dock).

16 Consistent with the *Procedures for Conducting Inquests*, evidence regarding criminal
17 activity unknown to the officers involved in the death of Damarius Butts are outside of the scope
18 of the inquest and should be excluded from the inquest hearing. Pursuant to this evidence regarding
19 the Butts’ interaction with Officer Merritt should be excluded from the inquest hearing—except
20 inasmuch as Officer Gordillo can testify regarding what he observed and how it impacted his
21 decision making. Further, as Officer Gordillo and the other involved officers did not know about
22 Damarius Butts’ sister’s assault on Officer Merritt or her interactions with Officer Palmer, all
23 evidence and testimony regarding same must be excluded as it is beyond the scope of what the

involved officers knew. Allowing such testimony or evidence and would cut against the plain language of the inquest rules by introducing evidence of criminal activity unknown to the involved officers into the hearing.

Similarly, evidence regarding the 7-Eleven robbery should be limited to what the involved officers actually knew and should be presented in the form of stipulated facts as what occurred at the store is uncontested.

Based on the above, the Family proposes that live testimony and evidence regarding the events that lead up to the death of Damarius Butts should be limited to:

- Stipulated facts regarding Damarius Butts' use of a firearm during the robbery at the 7-Eleven store on First Avenue;
- Officer Gordillo's testimony regarding what he observed before he engaged in a foot pursuit with Damarius Butts;
- What the officers involved in the death of Damarius Butts actually knew or believed when they pursued him and when they engaged with him in the loading dock area of the Federal Building.

For the similar reasons, the Family proposes that testimony regarding the arrest of Roberto Saavedra should be excluded. The arrest of Mr. Saavedra occurred long after Damarius Butts was killed and has no relevance to the officers' actions in the loading dock of the Federal Building.

B. Witness List

Below is the Family's position on each of the proposed witnesses:

- **Daniel Yohannes.** The shooting officers had very limited information regarding the incident at 7-Eleven which consistent solely of the fact that an armed robbery had occurred and descriptions of the "suspects." As the shooting officers had such limited information regarding the 7-Eleven incident and there are no factual disputes regarding the incident, evidence about the robbery should be presented as stipulated facts *sans* live testimony. *See* Appx. 2 at 5.3 (directing the Administrator to solicit proposed stipulations of fact from the participating parties to narrow the scope of the inquiry at the inquest). Excluding Mr. Yohannes from testifying about uncontested facts, of which the shooting officers knew

1 little, is consistent with the efficiency directive of the inquest rules. *See* Appx. 2 at 3.3 and
2 5.3.

- 3 • **Officer Adam Merritt.** Officer Merritt was not involved in the shooting nor was he present
4 during the shooting. The only testimony Officer Merritt can provide is evidence regarding
5 the initial stop of Damarius Butts and Officer Merritt's physical altercations with Damarius
6 Butts and Ms. Butts. However, such testimony is beyond the scope of the inquest as—prior
7 to the shooting—only one of the involved officers had any information regarding the initial
8 stop nor did those officers know that Damarius Butts had been involved in a physical
9 altercation with an officer. Officer Gordillo was the only involved officer with knew of the
10 Butts' interaction with Officer Merritt. Officer Gordillo can provide testimony regarding
11 what he knew about Damarius Butts' interactions with Officer Merritt and how it impacted
12 his decision making. Allowing Officer Merritt to testify about information that the involved
13 officers did not know or rely upon in making the decision to shoot Damarius Butts would
14 likely cause confusion to the Panel and should not be allowed. Further, excluding Officer
15 Merritt's testimony is consistent with the efficiency directive of the inquest rules. *See*
16 Appx. 2 at 3.3 and 5.3.
- 17 • **Officer Christopher Bandel.** The Family believes that testimony from Officer Bandel is
18 appropriate and likely to assist the Panel in its factfinding inquiry;
- 19 • **Officer Matthew Clark.** The Family believes that testimony from Office Clark is
20 appropriate and likely to assist the Panel in its factfinding inquiry;
- 21 • **Officer Hudson Kang.** The Family believes that testimony from Officer Kang is
22 appropriate and likely to assist the Panel in its factfinding inquiry;
- 23 • **Sgt. Chriseley Lang.** Sgt. Lang was not involved in the shooting nor was she present
24 during the shooting. Sgt. Lang also had no interaction with Damarius Butts on April 20,
2017. The only testimony Sgt. Lang could provide would be regarding her interaction with
Damarius Butts' sister and Officer Meyer. However, such testimony is beyond the scope
of the inquest as the shooting officers had no information regarding Officer Lang's
interactions with Ms. Butts or Ms. Butts' interaction with Officer Merritt. Allowing Sgt.
Lang to testify about information that the involved officers did not know or rely upon in
making the decision to shoot Damarius Butts would likely cause confusion to the Panel
and should not be allowed. Further, excluding Sgt. Lang's testimony is consistent with the
efficiency directive of the inquest rules. *See* Appx. 2 at 3.3.
- **Officer Brian Pritchard.** The Family believes that testimony from Officer Pritchard is
appropriate and likely to assist the Panel in its factfinding inquiry.

- 1 • **Officer Jacob Briskey.** The Family believes that testimony from Officer Briskey is
2 appropriate and likely to assist the Panel in its factfinding inquiry.
- 3 • **King County Sheriff's Office Deputy Anthony Mullinax.** The Family has no objection
4 to testimony from Deputy Mullinax.
- 5 • **Detective David Simmons – Chief Detective CSI.** The Family has no objection to
6 testimony from Detective David Simmons.
- 7 • **Assistant Chief Lesly Cordner.** The Family believes that testimony from Assistant Chief
8 Cordner is necessary, appropriate, and likely to assist the Panel in its factfinding inquiry.
- 9 • **Captain Michael Teeter.** The Family believes that testimony from Assistant Chief
10 Cordner is necessary, appropriate, and likely to assist the Panel in its factfinding inquiry.
- 11 • **Douglas Houck.** The Family believes that testimony from Mr. Houck is necessary,
12 appropriate, and likely to assist the Panel in its factfinding inquiry.
- 13 • **Jason Benson.** The Family believes that testimony from Mr. Benson is appropriate and
14 likely to assist the Panel in its factfinding inquiry.
- 15 • **Justin Keaton.** The Family believes that testimony from Mr. Keaton is appropriate and
16 likely to assist the Panel in its factfinding inquiry.
- 17 • **Brad Richardson.** The Family believes that testimony from Mr. Richardson is appropriate
18 and likely to assist the Panel in its factfinding inquiry.

18 C. Subject Matter of Policies Governing the Shooting Officers

19 The Family believes that all Seattle Police Department policies the Family has requested
20 and that have been produced are within the scope of the inquest and should be addressed and
21 explored by expert and lay witness testimony. These policies include:

- 22 • **SPD Use of Force policy;**
- 23 • ~~SPD Emergency Operations and Serious Incident Plans;~~
- 24 • ~~SPD policies governing law enforcement response to threats and assaults on officers;~~

- SPD policies regarding de-escalation;
- SPD policies regarding bystander safety;
- ~~SPD policies regarding barricaded suspects;~~
- ~~Any SPD policies and training materials that have incorporates learning from the April 20, 2017 law enforcement involved death of Damarius Butts.~~

The Family also believes that all relevant SPD policies that have yet to be identified but may be discovered or produced during the remaining discovery period should be included in the subject matter of policies explored during the inquest hearing.

D. Subject Matter of Training Officer Involved in the Death of Damarius Butts Received

The Family believes that all Seattle Police Department policies the Family has requested and that have been produced are within the scope of the inquest and should be addressed and explored by expert and lay witness testimony. These policies include:

- ~~Crowd Control/Firearms and Tactics Training;~~
- ~~Crisis Intervention Training;~~
- ~~Post BLEA Defense Tactics #3 Impact Weapons~~
- ~~Post BLEA Field Training Program~~
- ~~Post BLEA Firearms Days 1-4~~
- ~~Post BLEA Taser X2 Operator~~
- ~~Post BLEA Introduction to Rapid Intervention~~
- ~~Post BLEA Defensive Tactics #4 Ground Control & Survival~~
- ~~Post BLEA Fundamental Principals~~
- ~~Post BLEA Defense Tactics #2 Country Striking Tools~~
- ~~Post BLEA Barricaded Person~~
- Post BLEA De-Escalation
- Post BLEA Contact/Cover Roles
- ~~Post BLEA Defense Tactics #1 Control & Cuffing~~
- ~~Early Intervention Training~~
- Post BLEA Care Under Fire
- Officer Sustainment – Use of Force

The Family also believes that all relevant SPD trainings that have yet to be identified but that may be discovered or produced during the remaining discovery period should be included in the subject matter of policies explored during the inquest hearing.

1
2 **III. CONCLUSION**

3 For the foregoing reasons the Family requests that you limit the scope of the inquest as
4 detailed above.

5 DATED this 27th day of September, 2019

6
7 /s La Rond Baker

8 La Rond Baker, WSBA No. 43610

9 Adrien Leavitt, WSBA No. 44451

10 Attorneys for Family of Damarius Butts
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