

KING COUNTY DEPARTMENT OF EXECUTIVE  
SERVICES INQUEST PROGRAM

INQUEST INTO THE DEATH OF:

DAMARIUS DEMONTA BUTTS,

Deceased.

No. 517IQ8013

INVOLVED OFFICERS' REPLY  
BRIEF RE: SCOPE OF INQUEST  
AND WITNESSES

The involved officers respectfully reply to the family's scope argument.

**1. Scope of policy/training.**

The family contends that all policy and training stretched throughout the officers' encounter with Mr. Butts is fair game. The reality, of course, is that he did not die as a result of a foot pursuit, as a result of defensive tactics used to attempt to take him into custody on 1<sup>st</sup> Avenue, whether he ran into a room that happened to have a locked door, etc.; those issues played no role in his death. Policy and training associated with a response to a threat of lethal force did. That is the scope provided in the rules and executive order, and it should be so limited.

1 The family's argument that other training "may have impacted" the encounter further  
2 dissuades from the discovery and scope they request. The focus of an inquest is not what might  
3 have happened, or what should have happened, but rather what *did* happen. The deadly force  
4 policy itself identifies the parameters of when such force is allowed and when it is not. By  
5 analyzing that policy and the related training the panel will meet the inquest goal.

6 **2. Civilian testimony from the commencement of the event.**

7 The family argues that civilian testimony should be suppressed for a number of different  
8 reasons. It is an extraordinary request, historically civilian testimony of facts and circumstances  
9 has been highly valued as objective and vital to the inquest process. The family claims the 7-11  
10 witnesses are not necessary because those facts "are not disputed." Frankly, there are virtually  
11 no facts in this matter that are disputed, so by the family's logic they presumably would have the  
12 panel only read statements and/or hear recordings.

13 The family also argues the civilian testimony is not appropriate because the officers had  
14 no "first hand knowledge" of their observations. The scope of an inquest, however, is not  
15 limited to the officers' first hand knowledge, but rather to the facts and circumstances  
16 surrounding the death. The event that commenced Mr. Butts' demise is plainly within that  
17 scope.

18 Finally, the family suggests that introducing Mr. Butts' behavior would impermissibly  
19 insert "criminal history" into the proceeding – an argument that fails on factual and logical  
20 grounds. First, Butts' behavior would be in front of the panel anyway, so allowing the civilian  
21 testimony would not impact that introduction. Second, "criminal history" is not the event itself,  
22 which never had a chance to make it to the status of criminal history. Washington recognizes  
23 "criminal history" as a term of art:

1 “[c]riminal history” means the list of a defendant's prior convictions and juvenile  
2 adjudications, whether in this state, in federal court, or elsewhere. The history shall  
3 include, where known, for each conviction (a) whether the defendant has been placed on  
probation and the length and terms thereof; and (b) whether the defendant has been  
incarcerated and the length of incarceration.

4 *State v. Varga*, 151 Wash.2d 179, 192, 86 P.3d 139, 146 (2004), citing Laws of 1997, ch. 338, §  
5 2(12). The obvious purpose of the limitations placed on “criminal history” in the executive order  
6 is to prevent prejudicing the panel by the introduction of other, earlier criminal activity, unless  
7 that activity was known to the involved officers and colored their response to the incident.

### 8 **3. Introduction of expert testimony.**

9 As earlier noted by the involved officers, the executive order specifically limits testimony  
10 related to policy and training, even as to the witnesses who actually know the policy and training,  
11 who must only testify as to what the policy and training is.

12 The family’s intention with regard to their proffered expert testimony is transparent – and  
13 improper. Citing a bevy of civil cases in which liability is at issue, they claim that precedent  
14 support the introduction of expert testimony. Here, however, liability and “what if” questions  
15 are expressly excluded from scope. The panel is simply tasked with determining whether the  
16 officers complied with policy and training. The family unabashedly notes that they intend to  
17 have their expert opinion on the “appropriateness of law enforcement’s use of deadly force” and  
18 the “appropriateness of police conduct.” These topics are expressly off limits in an inquest. A  
19 civil trial, not an inquest, is the appropriate stage for such opinions.

20 On a more practical basis, the family’s request would usher in only a battle of experts, as  
21 the city and the involved officers would quite likely disagree with the paid opinions of the family  
22 expert as to the “appropriateness” of the conduct. That imbroglio would do nothing save  
23 interfere with the province of the panel.

1 The family may, of course, rely on an expert to educate themselves as to policy and  
2 training, but such testimony is plainly beyond the inquest scope.

3 **4. A brief note on scope.**

4 Finally, the involved officers respectfully offer the following observation of the general  
5 issues of scope and discovery.

6 The inquest, as established through PHL-7-1-2-EO (Conducting Inquests in King  
7 County), “is an administrative hearing intended to be a fact-finding, non-adversarial process.”<sup>1</sup> It  
8 does not establish culpability, liability or the justification of any particular action. Instead, its  
9 purpose is to determine the facts and circumstances surrounding a death. To accomplish that  
10 purpose, an inquest hearing allows the parties to present factual evidence and elicit testimony  
11 that helps better define the facts and circumstances of a death (e.g., When did you first see the  
12 decedent? How many times did you fire your weapon?). The “review” as discussed in the inquest  
13 rules, occurs at the inquest hearing and is conducted by an inquest panel.

14 The inquest process is not an opportunity for full blown civil discovery, nor is it an  
15 opportunity for the parties to test out legal theories to be utilized in later proceedings. Indeed, the  
16 inquest discovery rules define limited discovery that includes “the police and/or agency  
17 investigative file of the incident that result in the death,” “the report of the medical examiner,  
18 crime laboratory reports, and the names, addresses, and summaries and/or copies of statements of  
19 any witnesses obtained by any party.”<sup>2</sup> Although already exchanged in this inquest, the rules do  
20 not contemplate the exchange of training records and policy information. To the contrary, the  
21 rules state this information is presented solely through testimony by the employing government  
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<sup>1</sup> Appendix 2, Paragraph 1.1.

<sup>2</sup> Appendix 2, Paragraph 4.2.

1 department.<sup>3</sup> Further, the discovery rules do not contemplate witness interviews, depositions or  
2 related inquiries of any witnesses. Indeed, the terms “interview” and “deposition” do not exist in  
3 PHL-7-1-2-EO.

4 The executive order limits discovery and provides no vehicle for depositions and other  
5 civil law variety discovery for the simple reason that the inquest itself is designed to be the fact  
6 finding proceeding, not a vehicle for outside, extensive discovery. The parties have already  
7 received all of the material and information provided under the executive order and necessary to  
8 achieve the evidentiary goal of the inquest – to permit each party to “proffer its own witnesses to  
9 provide testimony that aids the panel in the understanding of the facts, including factual areas of  
10 experts (e.g. ballistics and forensic medical examination).”

11 Discovery in this matter should be complete. Interviewing individuals behind closed  
12 doors, including the interviews of SPD training and policy personnel, is not transparent.  
13 Transparency and the process of review occurs at the hearing. This is not a trial, but an  
14 administrative proceeding to establish facts, not liability.

15 DATED this 9<sup>th</sup> day of October, 2019, at Seattle, Washington.

16 **FREY BUCK, P.S.**

17 By: /s/ Evan Bariault  
18 Ted Buck, WSBA #22029  
19 Evan Bariault, WSBA #42867  
20 Attorney for Seattle Police Department Involved  
21 Officers  
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<sup>3</sup> *Id.*, Paragraph 12.3.

## CERTIFICATE OF SERVICE

I certify that on the 4<sup>th</sup> day of October, 2019, I caused a true and correct copy of this document to be served on the following in the manner indicated below:

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DATED this 9<sup>th</sup> day of October, 2019, at Seattle, Washington.

/s/ Lisa Smith

Lisa Smith