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KING COUNTY DEPARTMENT OF EXECUTIVE SERVICES
INQUEST PROGRAM

IN RE INQUEST INTO THE DEATH OF
ALBERT WAYNE FREDERICKS JR.

No. 17IQ427069

**CITY OF SEATTLE’S RESPONSE IN
SUPPORT OF THE INVOLVED
OFFICERS’ BRIEFING RE JURY
INSTRUCTIONS**

I. INTRODUCTION

The City of Seattle (“City”) submits this brief both in support of the Involved Officer’s (“IO”) briefing regarding the proposed jury instructions and to address concerns with the current proposed jury instructions. The City’s agrees with the IO’s position on the proposed instructions, and further asserts the current proposed instructions incorrectly address causation, combine the inquiry as to how Mr. Fredericks died with the inquiry into whether his death was by criminal means, improperly introduce positional breathing issues, and inaccurately state SPD’s policies. The City’s position is that the IO’s proposed instructions should be adopted for this Inquest, or alternatively, the proposed instructions should be revised as set forth below.

1 asked the EMTs if he should call the Seattle Fire Department (“SFD”) to the scene, a higher level of
2 medical response. The EMTs declined, saying that Mr. Fredericks’ pulse was “purposeful.” Shortly
3 thereafter, Mr. Fredericks apparently stopped breathing, and the EMTs started CPR. Officer
4 Oliverson called SFD to respond, and upon their arrival, SFD’s paramedics took over lifesaving
5 efforts on Mr. Fredericks. Those efforts were unsuccessful, and SFD notified SPD Mr. Fredericks
6 had died shortly after midnight on November 18, 2017.

7 The King County Medical Examiner’s Office investigated Mr. Frederick’s death and
8 performed an autopsy. During his interview, Associate Medical Examiner Brian Mazrim, MD
9 explained that Mr. Fredericks experienced a cardiac event. Mr. Frederick’s cause of death was acute
10 combined methamphetamine and alcohol intoxication. Contributing factors included cardiomegaly
11 (an enlarged heart) and coronary artery atherosclerosis (build up in his coronary arteries). Mr.
12 Fredericks’ agitation following his interactions with the officers and physical exertion of resisting
13 arrest may have been contributing factors leading to the cardiac event. He could not say definitively
14 that these were contributing factors, because Mr. Fredericks may have died of methamphetamine
15 intoxication regardless of whether he encountered officers on the night of the incident. As such, in
16 accordance with the practice of the King County Medical Examiner’s Office, the manner of Mr.
17 Fredericks’ death has been categorized as undetermined. Dr. Mazrim was clear that the officers did
18 not compress Mr. Fredericks’ chest and airways in any way that would significantly impact his
19 ability to breathe, and there was no evidence that positional asphyxia was a cause or contributor to
20 his death.

21 **III. CITY’S JOINDER IN THE IO’S BRIEF AND PROPOSED JURY INSTRUCTIONS**

22 The City agrees with the IO’s proposed jury instructions. The IO’s Briefing Re Jury
23 Instructions thoroughly sets forth arguments, authority, and proposed revisions to the instructions.

1 The City incorporates the IO’s brief herein and submits the IO’s proposed instructions should be
2 used in this Inquest.

3 **IV. ADDITIONAL ISSUES WITH THE CURRENT PROPOSED JURY**
4 **INSTRUCTIONS**

5 The City urges the adoption of the IO’s proposed instructions for the reasons set forth in their
6 brief. If those instructions are rejected, however, the current instructions proposed by the Inquest
7 Administrator have additional defects that make them improper in this matter. The current proposed
8 instructions do not accurately address causation. Causation is a mandatory element of the inquest
9 proceeding, and the proposed instructions place too much emphasis on criminal means. Causation,
10 the how or means by which Mr. Fredericks’ died, must be answered prior to any determination of
11 criminal means.

12 “A coroner’s inquest is a death investigation facilitated by the coroner and decided by a jury.”
13 *Butts v. Constantine*, 198 Wn.2d 27, 44, 491 P.3d 132 (2021) (citing *BNSF Railway Co. v. Clark*,
14 192 Wn.2d 832, 837-38, 434 P.3d 50 (2019)). An inquest is governed by the Coroner’s Act, Chapter
15 35.24 RCW, which provides the “basic framework for conducting inquests” and requires the coroner
16 to “(1) request jurors from the superior court, RCW 36.24.020, (2) administer an oath to the inquest
17 jury, .040, and (3) summon and examine any witness with knowledge of the facts surrounding the
18 death under investigation, .050.” *Id.* at 43.

19 The purpose of an inquest is to determine the identity of who died, their cause of death, the
20 circumstances surrounding their death, and any individuals who may be criminally liable for their
21 death. *Id.* at 42-43 (citing *Carrick v. Locke*, 125 Wn.2d 129, 133, 882 P.2d 173 (1994)). With that
22 purpose in mind, an inquest jury must address the following issues: who died; when they died; where
23 they died; by what means they died; whether those means were criminal; and if the means were
criminal, then who is guilty thereof. RCW 36.24.070. *see also Butts*, 198 Wn.2d at 46 (stating the

1 jury’s “verdict must set forth the identity of the decedent, when and where they were killed, and the
2 means by which they were killed.... If those means were criminal, the Coroner's Act requires the
3 inquest jury name ‘who is guilty thereof, if known.’”). Therefore, the jury must answer “how”
4 someone died, and then, whether those means were criminal. *Butts*, 198 Wn.2d at 43.

5 The Coroner’s Act does not define the term “criminal means.” *See* Chapter 36.24 RCW.
6 Instead, it requires the jury to determine if the means by which a person was killed were criminal,
7 and if so, “who is guilty thereof.” RCW 36.24.070; *Butts*, 198 Wn.2d at 46. “Implicit in this
8 combination of commands is that the jury must determine whether the means by which someone
9 was killed was, in fact, criminal.” *Butts*, 198 Wn.2d at 46. Both the Coroner’s Act and *Butts* appear
10 to treat “criminal means” as if the death was a homicide. *See* RCW 36.24.100; *Butts*, 198 Wn.2d at
11 43,46, n. 5. In fact, inquests are one of several methods for determining whether there is probable
12 cause to charge a person with a crime. *Id.* Under the Washington Criminal Code, homicide is defined
13 as “the killing by act or omission of another and is either murder, homicide by abuse, excusable
14 homicide, or justifiable homicide.” RCW 9A.32.010. Homicide requires an individual to cause the
15 death of another person. *See* Chapter 9A.32; *see also* RCW 9A.16.030-.050.

16 Causation in criminal law is different than causation in tort law. *See State v. Bauer*, 180
17 Wn.2d 929, 329 P.3d 67 (2014). For criminal law, the defendant’s conduct “must be both (1) the
18 actual cause, and (2) the legal or proximate cause of the result.” *Id.* at 935-936 (citations and
19 quotations omitted). Actual cause, also known as cause in fact, is the “but for consequences of an
20 act-the physical connection between an act and an injury.” *Id.* at 936 (citations and quotations
21 omitted). Whereas legal causation

22 involves a determination of whether liability *should* attach as a matter of
23 law given the existence of cause in fact. If the factual elements of the tort

1 are proved, determination of legal liability will be dependent on “mixed
2 considerations of logic, common sense, justice, policy, and precedent.

3 *Id.* at 936 (citations omitted, emphasis in original). For actual cause or cause in fact, “tort and
4 criminal situations are exactly alike.” *Id.* (citations and quotations omitted). For legal causation,
5 however, “criminal law and tort law serve different purposes and therefore have different principles
6 of legal causation.” *Id.* “In determining whether liability in a criminal case should attach as a matter
7 of law, legal causation in a criminal case requires a closer relationship between the result achieved
8 and that intended or hazarded.” *State v. Harris*, 199 Wn. App. 137, 151, 398 P.3d 1229 (citing *Bauer*,
9 180 Wn.2d at 936-37).

10 In this case, not only is the proposed proximate cause instruction the civil proximate cause
11 instruction, but the proposed jury instructions improperly address criminal means before causation.

12 *1. The Proposed Proximate Cause Instruction is Inappropriately Based Off Civil Tort
13 Proximate Cause*

14 Despite that direction from the Coroner’s Act and Butts regarding the scope of the inquest,
15 the proposed proximate cause instruction is the Civil WPIC definition of proximate cause. *See* WPIC
16 15.01 Proximate Cause – Definition.

17 No. _____

18 The term “proximate cause” means a cause which in a direct sequence
19 unbroken by any superseding cause, causes the death and without which
20 the death would not have occurred.

21 There may be more than one proximate cause of a death.

22 WPI 15.01

23 In *Bauer*, the Supreme Court held causation for criminal liability and tort liability are different.
Criminal liability is stricter and requires a closer connection between the result and event. Therefore,

1 the Civil WPIC for proximate cause should not be used in this inquest. It is effectively a different
2 definition of causation and should not be used in a proceeding that can determine whether there is
3 probable cause to charge someone with a crime. To the extent a proximate cause instruction is
4 included in the inquest, the instruction should be based off the Criminal WPIC 25.02 – Homicide –
5 Proximate Cause.

6
7 **WPIC 25.02 Homicide—Proximate Cause—Definition**
8 **To constitute [murder] [manslaughter] [homicide by abuse] [or]**
9 **[controlled substance homicide], there must be a causal**
10 **connection between the criminal conduct of a defendant and the**
11 **death of a human being such that the defendant's [act] [or]**
12 **[omission] was a proximate cause of the resulting death.**

13
14 **The term “proximate cause” means a cause which, in a direct**
15 **sequence, unbroken by any new independent cause, produces**
16 **the death, and without which the death would not have**
17 **happened.**

18 **[There may be more than one proximate cause of a death.]**

19 The criminal proximate cause instruction captures the requisite tighter connection between the event
20 and result and should serve as the foundation for any proximate cause instruction within the Inquest.

21 2. *The Instructions Should Address the Causation, Including the Means By Which or*
22 *How Mr. Fredericks’ Died, Before Tackling Criminal Means*

23 In an inquest, the jury determines who died, when they died, where they died, and by what
means they died. RCW 36.24.070. Then, the jury addresses whether those means were criminal,
and if so, who is guilty. *Id.* Causation is a significant issue in this inquest, because it is disputed
that the IO’s conduct caused Mr. Fredericks’ death. For instance, Dr. Mazrim stated Mr. Fredericks’
died from acute methamphetamine and alcohol intoxication leading to a cardiac event. His
underlying heart disease and hypertension were contributing factors. His agitation and exertion from
his interactions with SPD may have been contributing factors. If the IO’s conduct did not cause Mr.

1 Fredericks’ death, then their conduct should not be subject to a criminal means evaluation in this
2 context.

3 The issue of the cause of Mr. Fredericks death and the issue of whether the cause was by
4 criminal means cannot be combined. The jury first must determine how Mr. Fredericks died. Then
5 the jury can determine whether the means by which he died were criminal. The causation
6 determination cannot be collapsed into the criminal means determination. Contrary to the Coroner’s
7 Act and *Butts* opinion, the proposed instructions address criminal means prior to proximate cause.

Proposed Instructions	Actual Law Related to Content of Jury Verdict
<p data-bbox="386 821 581 852">No. _____</p> <p data-bbox="203 892 766 1360">A death caused by an officer’s use of force is committed by criminal means if the officer’s use of force is criminally negligent or reckless and is <u>a proximate cause of the death</u>. If you find by a preponderance of the evidence that the death was caused by criminal means, you must also specifically identify each officer who so acted.</p>	<p data-bbox="824 821 1386 1178">After hearing the testimony, the jury shall render its verdict and certify the same in writing signed by the jurors, and setting forth who the person killed is, if known, and when, where and <u>by what means he or she came to his or her death</u>; or if he or she was killed, or his or her death was occasioned by the act of another by criminal means, who is guilty thereof, if known.</p> <p data-bbox="824 1220 1240 1251">RCW 36.24.070 Verdict of jury.</p> <p data-bbox="824 1293 1386 1692">“[T]he Coroner's Act compels the coroner to facilitate the jury's duty to issue a verdict setting forth the essential details of the circumstances attending the death being investigated. RCW 36.24.070. The verdict must set forth the identity of the decedent, when and where they were killed, <u>and the means by which they were killed</u>. <i>Id.</i> If those means were criminal, the Coroner's Act requires the inquest jury name “who is guilty thereof, if known.””</p>
<p data-bbox="386 1472 581 1503">No. _____</p> <p data-bbox="203 1545 756 1797">A death caused by an officer is also committed by criminal means if, following a use of force, 1) the officer fails to closely monitor the person or 2) the officer restrains a person in custody</p>	<p data-bbox="824 1734 1386 1829"><i>Fam. of Butts v. Constantine</i>, 198 Wn.2d 27, 46, 491 P.3d 132, 144 (2021) (citations omitted).</p>

1 **in a manner that compromises the**
2 **person's ability to breathe, and 3) the**
3 **officer's act or failure to act is criminally**
4 **negligent or reckless and is a proximate**
5 **cause of the death.** If you find by a
6 preponderance of the evidence that the
7 death was caused by criminal means, you
8 must also specifically identify each officer
9 who so acted or failed to act.

10 When reading the current instructions, a jury could improperly assume the officers' conduct
11 caused Mr. Fredericks' death. The instructions cannot combine the issues into one inquiry or address
12 criminal means before causation. If the inquiries are combined, then there is a risk the jury will
13 overlook addressing proximate cause.

14 3. *The Criminal Instructions Improperly Interject Positional Breathing Issues Into the*
15 *Inquest*

16 Although there is no evidence the officers compromised Mr. Fredericks' airways or restricted
17 his breathing, the criminal means instructions inappropriately introduce positional breathing issues.
18 The specific instruction is copied below:

19 No. _____

20 A death caused by an officer is also committed by criminal means if, following a
21 use of force, 1) the officer fails to closely monitor the person or 2) the officer restrains a
22 person in custody in a manner that compromises the person's ability to breathe, and 3) the
23 officer's act or failure to act is criminally negligent or reckless and is a proximate cause of
the death. If you find by a preponderance of the evidence that the death was caused by
criminal means, you must also specifically identify each officer who so acted or failed to
act.

1 Positional breathing issues or asphyxia are not issues within the inquest and should not be included
2 in the jury instructions. Both in his interview and report addendum, Dr. Mazrim was adamant the
3 officers did not compromise Mr. Fredericks' ability to breathe and asphyxia was not a cause or
4 contributor to Mr. Fredericks' death.

5 Additionally, the instruction is problematic, because it uses SPD's Policies to create a
6 standard by which to determine criminal means. SPD's Policy is not the basis for civil liability in a
7 civil rights case and should not be the basis for possible criminal liability or probable cause to charge
8 someone with a crime. *See Edwards v. Baer*, 863 F.2d 606, 608 (8th Cir. 1988) (explaining the
9 failure to follow police department guidelines does not create a constitutional right); *see also Allen*
10 *v. City of Los Angeles*, No. CV10-4695 CAS (RCx), 2012 WL 1641712 * 3, n. 4 (C.D. Cal. May 7,
11 2012) (explaining an officer's breach of police department policy does not control the jury's
12 determination of whether an officer violated a plaintiff's constitutional right.) Neither Butts nor the
13 Coroner's Act contemplate "criminal means" to be interchangeable with the employing law
14 enforcement agency's policies and training.

15 4. *The Instruction Related to SPD Policy 8.200 (Section 6) is Not Accurate*

16 Section 8.200 of the SPD Manual related to Using Force. Fredericks_A 1644. Subsection 6
17 relates to rendering or requesting medical aid following the use of force. The proposed instruction
18 does not accurately reflect this policy.

Proposed Instruction	Actual SPD Policy
No. _____ Compliance with SPD Policies 8.200 (Section 6), regarding the duty, following a use of force, to request or render medical aid, to closely monitor persons taken into custody, and to place prone persons on their side in a recovery position, may	6. Following a Use-of-Force, Officers Shall Render or Request Medical Aid, if Needed or if Requested By Anyone, as Soon as Reasonably Possible

1 be accomplished by any officer and need not be
2 accomplished by the officer or officers who used
3 force. Once these duties have been accomplished
4 by any officer, any further obligations to any
5 other officers regarding these duties are
6 extinguished.

7 However, the prohibition in SPD Policies 8.200
8 (Section 6), against restraining persons in an
9 officer's custody and control in a manner that
10 compromises the person's ability to breathe, is an
11 individual obligation that applies to each officer
12 who participates in the restraint of such person.

Following a use-of-force, officers will request
a medical aid response, if necessary, for
suspects and others and will closely monitor
subjects taken into custody.

Absent exigent circumstances, prone subjects
will be placed on their side in a recovery
position. Officers shall not restrain subjects who
are in custody and under control in a manner that
compromises the subject's ability to breathe.

Fredericks_A 1646

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9
10 The proposed instructions states that after the use of force, the policy requires an SPD officer
11 to request or render aid. However, the policy requires an officer to request medical aid **if necessary**.
12 This is an important distinction. Similarly, the proposed instruction states the policy requires after
13 a use force an officer must place prone persons on their side in the recovery position. Whereas the
14 policy actually says "**absent exigent circumstances**, prone subjects will be placed on their side in
15 the recover position." Finally, the proposed instruction characterizes the prohibition against
16 restraining persons in a manner that compromises the person's ability to breathe applies when that
17 person is "in an officer's custody and control." The wording of the policy, however, is that the
18 prohibition only applies after the person is "in custody and **under** control." (Emphasis added). This
19 is an important distinction because Mr. Fredericks was not "under control" by law enforcement
20 standards until he was handcuffed. The City anticipates this section, including the IO's compliance
21 and training related to the Policy, will be a significant issue at the inquest. It is the City's position
22 the instructions should be revised to accurately reflect the substance of the policy.

23 V. CONCLUSION

1 The City respectfully requests the Inquest Administrator to adopt and use the IO's proposed
2 jury instructions in this Inquest, or alternatively, revise the current instructions to address the issues
3 raised in both the City's and IO's briefing.
4

5 DATED this 30th day of September, 2022.

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CERTIFICATE OF SERVICE

I certify that on the 30th day of September, 2022, 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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