



King County

Department of Executive Services

Inquest Program

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**INQUEST INTO THE DEATH OF
ALBERT WAYNE FREDERICKS, JR.
INQUEST # 17IQ427069**

**PRE-HEARING CONFERENCE ORDER
for March 23, 2023**

Law enforcement officers:	Seattle Police Department Officers Rogers, Oliverson, Hay, Jerome and Swartz represented by Ted Buck, Karen Cobb and Delaney DiGiovanni
Employing government department:	Seattle Police Department (SPD), represented by Alison Markette, Rebecca Widen and Ghazal Sharifi
Inquest Administrator:	Marcine Anderson
Inquest Program Attorney:	Claire Thornton
Inquest Program Coordinators:	Flo Armah (primary); Kaela Reilly (secondary)

Having held a Pre-Hearing Conference on the date noted above, Inquest Administrator (IA) Anderson hereby orders the following:

1. WPIC 4.76 and WPIC 4.73

IA Anderson will include WPIC 4.76 and WPIC 4.73 in the Jury Instructions. No objection from either party.

2. Final Introductory Instructions – Family Statement and Photo

Prior to the Family withdrawing from the Inquest proceeding, the Family submitted a statement about Mr. Fredericks to be read to the jury in the Introductory Jury Instructions, as is customary in the Inquest process. Now that the Family is no longer participating in the Inquest process, the Involved Officers object to the Family statement being shared with the jury. IA Anderson orders that the Family statement shall be included with minor revisions with the input of the parties. Two photos of Mr. Fredericks will also be shared with the jury. A final version of the Introductory Jury Instructions will be distributed prior to the start of the Inquest Hearing.

3. Exhibit Laptop vs. Attorney Laptops for Displaying Exhibits (need HDMI port and headphone port)

All parties indicate they intend to use the Inquest Program’s Exhibit Laptop to display exhibits during the Inquest Hearing and appreciate the assistance of Inquest Program Coordinator Ms. Armah facilitating the process.

4. Stipulations

- a. Stipulation re: use of the 2015 PBLEA Use of Force Decision Making has been finalized.
- b. Stipulation re: date and time on Axon BWV to be finalized (draft circulated March 22, 2023). While there may be testimony from FIT Detective Simmons regarding the date and time, IA Anderson would like to have the stipulation in the event that the jury needs additional information. Parties shall respond with any comments by 12:00 p.m. on March 29, 2023.
- c. IA Anderson encourages additional stipulations.

5. Masking Requirements during Inquest Hearing

“A judicial officer may require masking/facial covering in their courtroom, in their discretion, based on particularized findings related to the judicial officer, staff, parties, case, and/or public health circumstances and issues.” Emergency Order 37 Re: Public Health – Masking/Facial Covering, issued by King County Superior Court Presiding Judge Patrick Oishi (February 21, 2023).

During the Inquest Hearing into the Death of Albert Wayne Fredericks, Jr., all people in the courtroom shall be required to wear a mask or facial covering over their nose and mouth. This requirement is based upon the following factual findings:

- a. There will be people in the courtroom who are vulnerable to consequences of an airborne infection such as Covid 19, the flu or a cold. Those include people who are above a certain age as defined by the Center for Disease Control (CDC); people with certain chronic illnesses and people with medical conditions which make them vulnerable to airborne infections.
- b. Some of the people are Inquest program employees and some of the people are participants in this inquest. Those include people who are above a certain age as defined by the Center for Disease Control (CDC); people with certain chronic illnesses and people with medical conditions which make them vulnerable to airborne infections.
- c. The exceptions to this order will be:
 - i. Witnesses while testifying,
 - ii. Counsel while carrying out their duties as an attorney in the proceeding, including addressing the Inquest Administrator or questioning a witness, and
 - iii. The Inquest Administrator when speaking to jurors or counsel.

6. Addition of Exhibit 95

The Involved Officers and SPD present oral argument and object to the addition of Exhibit 95 (SPD-2016 - SPD-2016 CPR AED per ASHI Standards) as outside of and expanding the Training Scope originally established for this Inquest Hearing. SPD indicates the need to find an additional Policy/Training Designee to address the topics covered in Exhibit 95, that such a person has been identified and is available to testify only on Wednesday, March 29, 2023.

IA Anderson overrules the objections and orders the parties to confer with the Inquest Program Attorney and come to an agreement about which, if any, portions of Exhibit 95 will be a marked exhibit and the subject of testimony at the Inquest Hearing.

7. Motions in Limine

The Involved Officers filed Motions in Limine on March 23, 2023, prior to this PHC. IA Anderson had the opportunity to review the Motions, hear from the parties during the PHC and makes the following rulings:

1. Motion to exclude any questions regarding civil or criminal liability; also, questions that relate to elements of any crime that a party may believe is applicable to the Officer acts is **granted**.
2. Motion to exclude undesignated portions of Officers' Body Worn Video ("BWV") is **reserved**.
3. Motion to exclude images of Mr. Fredericks at the King County Medical Examiner's Office is **granted**.
4. Motion to prohibit evidence intended to elicit speculation and sympathy regarding Mr. Fredericks' race is **denied** as this was the subject of a prior ruling by Inquest Administrator Spearman.
5. Motion to exclude any mention of Officer Swartz's administrative leave is **granted**.
6. Motion to exclude any mention of Officer Jerome's reasons for leaving employment at SPD is **granted**.
7. Motion to exclude hypothetical questions regarding SPD policy and training is **reserved**.
8. Motion to exclude questions eliciting testimony or evidence about what could have been done differently by the IOs during the incident is **reserved**.
9. Motion to exclude any reference to "positional asphyxia," "compressional asphyxia," or "agonal breathing" is **reserved**.
10. Motion to exclude the use [of] or reference to the Family's independent interview transcripts ([Proposed] Ex. Nos. 3, 6, 52 and 54) is **granted**.
11. Motion to [limit] the scope of the FIT testimony . . . to exclude any reference to the involuntary nature of the Garrity statements is **reserved**.
12. Motion to exclude testimony or instruction regarding whether SPD Chief Diaz ordered the Officers to testify is **reserved**.
13. Motion to exclude any testimony or evidence of any officers' past discipline, reprimand, or unrelated use of force or other incidents is **reserved**.
14. Motion to exclude any testimony or evidence referring to any complaint, internal investigation, or any other lawsuit/inquest involving any involved or testifying officer is **denied** with respect to the FIT investigation in this case and **granted** with respect to any other cases.

8. Jury Selection

A jury of six persons is selected after IA Anderson and the parties reviewed the jurors' answers to the electronic Jury Questionnaire.

9. Revised Start Date of Inquest Hearing

After the conclusion of the PHC, IA Anderson informed the parties via email that, for preparation and scheduling reasons, the Inquest Hearing will start on March 30, 2023. If there is a need to preserve testimony of Training/Policy Designee from SPD who is not available to testify live during the hearing, the parties shall arrange to take video testimony of the witness at a time convenient to all parties.

Dated: March 24, 2023.

_____/s/ Marcine Anderson _____
Inquest Administrator Marcine Anderson (she/her)