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**THE STATE OF WASHINGTON
DR. MARTIN LUTHER KING, JR. COUNTY
DEPARTMENT OF EXECUTIVE SERVICES**

<p>Inquest into the Death of Robert J. Lightfeather</p>	<p>Case No.: 17IQ16588 MEMORANDUM RE: IMMUNITY FROM PROSECUTION RE: COMPULSION BY CHIEF TO TESTIFY</p>
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MEMORANDUM

The Family moves the Inquest Administrator to order that if Officer Rogers testifies that the *Garrity* Admonishment be read to the jury, and the *Garrity* Statement itself be allowed for impeachment, regarding the testimony of Officer Rogers.

STATEMENT OF RELEVANT FACTS

The Inquest into the death of Mr. Robert J. Lightfeather is ongoing since September 26, 2022. The Friday before the Inquest was set to begin it was learned that Officer (Ofc.) Rogers had been compelled to testify under *Garrity* by order of the chief of the Federal Way Police Department. The chief ordered Ofc. Rogers to testify intending to confer immunity when testifying.

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2 The IA previously ruled that if the involved officers asserted their Fifth amendment right
3 not to testify, the *Garrity* Admonishment and the *Garrity* Statement itself would be read to the
4 jury, so that the jury would not be misled or confused about the circumstances as to which the
5 *Garrity* Statement was obtained.

6 ARGUMENT

7 The Supreme Court ruled in *Family of Damarius Butts et al. v. King County Exec.*
8 *Constantine et al.*, Washington Supreme Court No. 98985- (2020) that for the inquest jury to be
9 able to fulfill their duties under the Coroner's Act, that the law requires inquest juries be able to
10 examine the involved officers and to decide whether those officers killed ... by criminal means.
11 The Supreme Court did not intend to force the victim/survivor family to trade their right to seek
12 justice and redress from the potential perpetrator for the harm that they have suffered by way
13 of criminal prosecution.

14 The department's intentional extension of immunity to the police officer by *Garrity* may
15 impede the victim's right to seek redress in a criminal prosecution. The immunity extended by
16 *Garrity* precludes not just the use of the testimony, but also any evidence that may be derived
17 from the testimony, which derivative evidence must be proved independent discovered of the
18 compelled statement. There is a danger that the Family and community risks a severely
19 hampered prosecution of the person or entity that may be culpable for the death of their loved
20 one.

21 Use and derivative use immunity prevents the prosecution from using a witness's
22 statement or any evidence derived from those statements against the witness in a criminal

1 prosecution. Such immunity is conferred on a officer when an officer is compelled to give a
2 statement under *Garrity*.

3 Allowing the officers to testify by a compulsion from the chief without informing the jury
4 of the compulsion would have a negative and harmful impact on the process and psyche of the
5 Family and community. Also, such flies in the face of a thorough, fair, transparent hearing found
6 to be critical by the *Butts* Court. The compelled testimony amounts to a complete Fifth
7 Amendment privilege, cloaked from the knowledge and awareness of the Family and
8 community.

9 “[T]here is no blanket Fifth Amendment right to refuse to answer questions based on an
10 assertion that any and all questions might tend to be incriminatory.” *Butts*, citing *Eastham v.*
11 *Arndt*, 28 Wn. App. 524, 532, 624 P.2d 1159 (1981). “Instead, in noncriminal proceedings like
12 coroner’s inquests, the “only way the privilege can be asserted is on a question-by-question
13 basis.” *Butts*, citing *Jane Doe ex rel. Rudy-Glanzer v. Glanzer*, 232 F.3d 1258, 1263 (9th Cir.
14 2000); *see also State v. King*, 130 Wn.2d 517, 524, 925 P.2d 606 (1996). The Supreme Court
15 intended that the officer’s *submit* to the process of the court’s subpoena, answering the questions
16 put to them under oath. The Family submits that that submission is voluntary.

17 “Nothing in the challenged executive orders prevents law enforcement officers from
18 asserting their Fifth Amendment privilege against self-incrimination on a question-by-question
19 basis, even when testifying under subpoena.” *Butts*. The Supreme Court recognized the
20 officer’s right to Fifth Amendment due process. “[The officers’] retain the unfettered right to
21 invoke their Fifth Amendment privilege when it is actually implicated, and their status as law
22 enforcement officers does not diminish that right.” *Butts*.

1 “It is critical to a full, fair and transparent investigation that the panel hear from the
2 Involved Officers regarding the events that occurred.” *Butts*. The Family submits that the
3 Supreme Court intended that that hearing should occur regardless of whether it is the Fifth
4 Amendment invocation or the officers’ recitation of what happened.

5 **REQUEST FOR RELIEF**

6 The Family moves that if Ofc. Rogers testifies the *Garrity* Admonishment be read to the
7 jury, and the *Garrity* Statement itself be allowed for impeachment, so that the jury would not be
8 misled or confused about the circumstances as to which the *Garrity* Statement was obtained.

9
10 Respectfully submitted this 29th day of September 2022.

11 /s/ Teri Rogers Kemp
12 Teri Rogers Kemp, WSBA #24701