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

10 Inquest into the Death of 11 Eugene Dewan Nelson	12 <b>Case No.: 417IQ2075</b> 13 MOTION FOR RECONSIDERATION
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14 **TO:** Department of Executive Services;

15 **AND TO:** Inquest Administrator McBeth, Counsel Claire Thornton  
16 Inquest Mgr. Dee Sylve;  
17 Family of Mr. Eugene D. Nelson  
18 Jeremy W. Culumber, Counsel for Ofc. Reed, Ofc. Waldo; Kent P.D.

19 **SUMMARY OF PROCEDURAL HISTORY**

20 On April 11, 2022 Honda of Burien (Burien Honda) in King County emailed to the  
21 Inquest Administrator that King County had been holding its vehicle since August 9, 2017, an  
22 Audi; the vehicle central in the shooting death of Mr. Eugene Nelson, and there was no  
23 scheduled hearing date in sight. Burien Honda asserted that it incurred ongoing damage relating  
24 to the withholding of the vehicle and threatened to file a motion to ask the court to order the  
25 release of the vehicle; and requested that the Inquest Hearing parties agree to the release of the  
26 vehicle sans a court order. Burien Honda contacted the King County Prosecuting Attorney's  
27

28 *MOTION FOR RECONSIDERATION – PAGE 1 OF 4*

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1 Office and the Kent Police Department in an effort to have the vehicle returned to Honda of  
2 Burien, also.

3  
4 After the IA's counsel contacted all of the parties to the Inquest; on May 11, 2022 the IA  
5 issued an order that allowed "having reviewed and considered the entirety of the police  
6 investigation file in the matter of the death of Eugene Nelson, [the IA] has determined that the  
7 2015 Audi held by the Renton Police Department is not a necessary piece of evidence for the  
8 purposes of the Inquest hearing and that the Program makes no claim to hold the vehicle."  
9

10 Counsel was assigned to represent the Family of Mr. Nelson, on or about April 22, 2022,  
11 as substitute counsel, in the middle of ongoing preparation for Mr. Nelson's Inquest.  
12 Simultaneously, Counsel was assigned to represent the Family of Robert Lightfeather, on or  
13 about April 19, 2022, as substitute counsel, in the middle of ongoing preparation for Mr.  
14 Lightfeather's Inquest. The Inquest into the death of Mr. Lightfeather has an earlier scheduled  
15 hearing date, which subsequently Counsel is reviewing the voluminous discovery in that case,  
16 first.  
17

18 Counsel for Eugene Nelson's family objected to the release of the vehicle and requested  
19 time to review the discovery and perhaps the opportunity to view the evidence, before  
20 considering agreement to release.  
21

### 22 MOTION FOR RECONSIDERATION

23 The Family of Mr. Nelson respectfully moves the Inquest Administer (IA) to reconsider  
24 the decision filed on May 11, 2022 entitled Order Regarding Evidence Held by Renton Police  
25 Department. The IA's Order is antithetical to the reasoning supporting the Order issued by the  
26 Washington State Supreme Court in *The Family of Damarius Butts, et al v. Dow Constantine, et*  
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28 *MOTION FOR RECONSIDERATION – PAGE 2 OF 4*

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1 *al*, No. 98985-1 (July 15, 2021). The Supreme Court concluded in *The Family of Damarius*  
2 *Butts* that, “Coroner’s inquests are an important feature of state and local law in Washington.  
3 They empower community members to conduct thorough, transparent, and public death  
4 investigations, including when individuals like Damarius Butts, Isaiah Obet, and Charleena Lyles  
5 are shot and killed by police. In such instances, coroner’s inquests can offer some measure of the  
6 accountability necessary to rebuild trust between law enforcement and the communities they  
7 serve—but that accountability depends on how coroner’s inquests are conducted.”  
8

9  
10 Releasing the vehicle to Burien Honda is in fact releasing evidence that is material and  
11 might be used in a criminal case given charges are filed and impresses the community that  
12 charges will not be filed, and therefore the Inquest hearing does not matter. This is especially  
13 true when the IA returns evidence that The Family of Mr. Nelson has not been able to view; left  
14 only to rely upon an investigation done by a police department that is part of the Valley  
15 Investigation team and which department would be investigated by the same Investigation team  
16 in the event of an associated officer involved death. Such ruling negatively impacts the trust of  
17 the community towards law enforcement and the conduct of the Inquest hearing itself.  
18

19 The IA has a duty to preserve evidence. “Aside perhaps from perjury, no act serves to  
20 threaten the integrity of the judicial process more than the spoliation of evidence. ‘Our  
21 adversarial process is designed to tolerate human failings—erring judges can be reversed,  
22 uncooperative counsel can be shepherded, and recalcitrant witnesses compelled to testify. ‘But,  
23 when critical documents go missing, judges and litigants alike descend into a world of *ad hocery*  
24 and half measures—and our civil justice system suffers. ‘To guard against this, each party in  
25  
26  
27

1 litigation is solemnly bound to preserve potentially relevant evidence.” *United Medical Supply*  
2 *Co. v. United States*, 77 Fed. Cl. 257 (2007).

3  
4 Releasing the vehicle to Burien Honda breaks any chain of custody and causes the spectre  
5 of spoliation of evidence. “RCW 36.24.070 commands the jury to issue a verdict identifying,  
6 among other things, the means by which a person was killed. If those means were criminal, the  
7 statute further commands the jury to identify “who is guilty thereof, if known.” *The Family of*  
8 *Damarius Butts, supra*. ‘Implicit in this combination of commands is that the jury must  
9 determine whether the means by which someone was killed was, in fact, criminal; “an inquest is  
10 one of four ‘established, recognized and legally permissible methods for determining the  
11 existence of probable cause.’” *The Family of Damarius Butts*, citing *State v. Jefferson*, 79  
12 Wn.2d 345, 347, 485 P.2d 77 (1971). Releasing the vehicle to Burien Honda is premature,  
13 pending the determination of the Inquest Jury’s decision regarding probable cause.  
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16 CONCLUSION

17 The Family of Mr. Nelson respectfully moves the Inquest Administer (IA) to reconsider  
18 the decision filed on May 11, 2022 to release the Audi vehicle. At the least, the Family requests  
19 time to review the evidence, including viewing the vehicle.  
20

21 DATED this 23<sup>rd</sup> day of May 2022

22  
23 Respectfully submitted;



24 Teri Rogers Kemp, WSBA #24701  
25 Attorney for the Family of Eugene Nelson