

1
2
3 KING COUNTY DEPARTMENT OF EXECUTIVE SERVICES
4 INQUEST PROGRAM

5 INQUEST INTO THE DEATH OF:

6 Jason Seavers,

7
8 Deceased.

NO. 18IQ61954

FAMILY OF JASON SEEVERS
MOTIONS IN LIMINE AND
BRIEFING

9
10 **I. INTRODUCTION**

11 The case that led to the death of Jason Seavers involved three different scenes.

12 *A. Scene 1-6000 block of 34 Avenue NE, Seattle*

13 A homeowner called 911 to report a gray Infiniti sedan being car prowled. Officer
14 Knoblauch responded and arrived at this scene. Officer Knoblauch spotted a suspect
15 when he was by an open driver's side door of a Toyota Sienna minivan and he then
16 called out to the suspect, who ultimately ran. A foot chase ensued, and shots were
17 fired by the suspect, and then shots were fired by Officer Knoblauch. Officer Erick
18 Schickler arrived at this scene and began searching for the suspect along with other
19 SPD officers.

20 *B. Scene 2-6018 27th Avenue NE, Seattle*

21 The suspect broke into a home located at 6018 27th Avenue NE and demanded
22 car keys from the homeowner at gunpoint. The suspect took the homeowner's
23 Volkswagen Jetta and proceeded to drive with its lights off until patrol vehicles
24 collided with the Jetta and brought it to a standstill. (Scene 2 was unknown to Officer
25 Schickler at the time he shot and killed Mr. Seavers).

26 *C. Scene 3-5500 block of 26th Avenue NE, Seattle*

27 The Volkswagen Jetta was ultimately stopped high-centered on a fire hydrant in a
planting strip and was surrounded by officers and patrol cars. Multiple officers
approached the suspect while he was locked inside of the Volkswagen Jetta. Officers
were yelling to break the glass windows of the Jetta and others were shouting to cut

1 the tires. Other officers were yelling for the suspect to show his hands. Officer
2 Schickler arrived at the scene after other officers were already surrounding the Jetta.
3 Officer Schickler moved from the rear driver's side to the driver's side window. The
4 suspect was seen shuffling through items that were in the backseat and backseat
5 footwell. Officer Grayson Sandlin had yelled out to the other officers that his hands
6 were clear at the moment, his right hand was clear, and he did not have a gun. No
7 officers ever saw a gun in the suspect's hand. Numerous officers had trouble breaking
8 the car windows. Just after the rear right passenger car windows were being broken,
9 Officer Erick Schickler fired 5-6 shots into the left back and side of the suspect, later
10 identified as Jason Seavers. Officer Schickler did not provide a verbal warning that
11 shots would be fired just prior to shooting and killing Mr. Seavers. Mr. Seavers died at
12 the scene.

13 **II. ESTIMATED SCHEDULING OF THE INQUEST HEARING**

14 The inquest into the death of Jason Seavers is scheduled for April 17-18, then a
15 recess from April 19-21, then the inquest is to resume April 24-26 with the next two
16 days available for jury deliberation.

17 **III. MOTIONS IN LIMINE**

18 **1. To instruct witnesses to refrain from discussing any testimony directly or
19 indirectly with other witnesses**

20 The Family requests that the witnesses be instructed to refrain from discussing their
21 testimony with other witnesses at any point during the course of this trial, either directly
22 or indirectly. Although the Executive Order governing the inquests allows for witnesses
23 to be present in the courtroom, the Order does not mention allowing witnesses to
24 discuss testimony with one another. To allow witnesses to discuss their testimony would
25 taint the entire inquest and could allow for the potential of collaboration of testimony. ER
26 615 allows for such an admonishment to not discuss this case with other witnesses.

27 **2. To exclude mentioning or referring to evidence of the decedent's criminal
history**

1 Paragraph 4.4 of the King County Executive Order PHL-7-1-5-EO states that the
2 decedent's criminal history may not be introduced into evidence unless the
3 administrator first determines it is directly related under specific circumstances. Here,
4 the identification of the suspect was not known at the time of the entire incident. His
5 identity was not learned until after he passed away and therefore his criminal history
6 or reference thereto would not be relevant or appropriate.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

3. To not allow reference to Mr. Seavers as a "Felon"

Whether advertent or inadvertent, SPD Captain Caylor referred to Mr. Seavers as a "Felon" in his interview. This label would be prejudicial (Caylor transcript page 43).

4. To not allow scene 2 to be referred to as a "Robbery"

This issue had been raised earlier regarding the labeling of certain exhibits using the word "Robbery." The Family reasserts this objection to using the word "Robbery" during testimony as this is a legal conclusion and would be prejudicial. ER 403.

5. To instruct witnesses regarding the court's rulings on motions and excluded testimony

The Family moves the IA to require all parties to apprise its witnesses of all of the IA's rulings. The purposes of obtaining pre-trial rulings on evidentiary issues are to ensure the right to a fair hearing and to preserve the integrity of the fact-finding process. Such rulings would be meaningless if not communicated in a timely manner to the witnesses. Tegland, 5A Washington Practice: Evidence 266 (3d ed. 1989); *United States v. Buchanan*, 787 F.2d 477, 485 (10th Cir. 1986); *United States v. Johnston*, 578 F.2d 1352, 1355 (10th Cir.), *cert. denied*. 439 U.S. 931 (1978). must comply with such rulings.

6. To clarify whether this inquest is to be a non-adversarial hearing and whether cross-examination is permitted

The inquest process under PHL-7-1-5-EO is new and novel. It is clear that the inquest's purpose is to ensure a full, fair, and transparent review of the death of Mr. Seavers. However, it is unclear whether the pre-hearing process and inquest

1 hearings are to be conducted in a non-adversarial and non-confrontational manner
2 and whether cross-examination and leading questions are permitted during the
3 examination of witnesses. A request for clarification is being made regarding the
4 above issues.

5 **7. To prohibit the mentioning of the SPD Force Review Board's**
6 **determinations**

7 This inquest would be tainted if the SPD Force Review Board's determinations and
8 conclusion would be revealed to the jurors in this inquest. The jurors need to make
9 their own independent determinations and not be swayed by a different administrative
10 bodies' conclusions. There is not the opportunity at this hearing to questions members
11 of the FRB and therefore these conclusions should not be admissible or allowed in
12 testimony.

13 **8. To permit the Family of Jason Seavers to have an expert testify at the**
14 **inquest**

15 ER 702 allows an expert to testify if they are qualified, and they rely on generally
16 accepted theories in their field of expertise. *State v. Morales*, 196 Wash. App. 106,
17 122, 383 P.3d 539, 547 (Div. I 2016)(citing *Johnston–Forbes v. Matsunaga*, 181
18 Wash.2d 346, 352, 333 P.3d 388 (2014)). The testimony must be helpful to the jury,
19 which means it concerns matters beyond common knowledge. *Id.*, citing *State v.*
20 *Groth*, 163 Wn.App. 548, 564, 261 P. 3d 183 (Div. I 2011). Helpful testimony relates
21 to testimony that helps the jury to “understand the evidence, or to determine a fact in
22 issue.” *Johnston–Forbes v. Matsunaga*, at 352.

23 Meanwhile, “ER 703 allows an expert to base his or her opinion on evidence
24 not admissible in evidence and to base his or her opinion on facts or data
25 perceived by or made known to the expert at or before the hearing,” and those
26 materials reasonably relied upon by experts in their field. *Id.*, at 352-53. ER 704
27 allows an expert to testify upon the ultimate issue of fact that the jury is to
resolve. *Id.* The fact that the issue an expert testifies regarding is an issue for the
jury to determine does not cause automatic exclusion of the expert testimony.
State v. Montgomery, 163 Wash. 2d 577, 590, 183 P.3d 267, 273–74
(2008)(citing *State v. Kirkman*, 159 Wash.2d 918, 929, 155 P.3d 125; *State v.*

1 *Ring*, 54 Wash.2d 250, 255, 339 P.2d 461 (1959). Finally, ER 705 provides that
2 an expert need not disclose what evidence formed the basis of his/her opinion,
3 especially since some of that evidence is otherwise inadmissible. *Id.*

4 Moreover, regarding admissibility of expert testimony, Courts are to **“interpret**
5 **possible helpfulness to the trier of fact broadly and favor admissibility in**
6 **doubtful cases.”** *State v. King Cty. Dist. Ct. W. Div.*, 175 Wash. App. 630, 638, 307
7 P.3d 765, 769 (2013)(emphasis added);(citing *Miller v. Likins*, 109 Wash.App. 140,
8 148, 34 P.3d 835 (2001)). The Washington State Supreme Court has repeatedly
9 held that an expert’s testimony and opinion may be based upon personal or
10 professional experience alone. See e.g. *Katara v. Katara*, 175 Wash. 2d 23, 38, 283
11 P.3d 546 (2012); see also *Johnston-Forbes v. Matsunaga*, 181 Wash. 2d 346, 355,
12 333 P.3d 388, 393 (2014). “ ‘Practical experience is sufficient to qualify a witness as
13 an expert.’ ” *Acord v. Pettit*, 174 Wash. App. 95, 111, 302 P.3d 1265, 1273
14 (2013)(citing *State v. McPherson*, 111 Wn.App. 747, 761-62, 46 P.3d 284
15 (2002)(quoting *State v. Ortiz*, 119 Wash.2d 294, 310, 831 P.2d 1060 (1992)).

16 Additionally, the King County Executive Order authorizing these inquests clearly
17 states that the purpose of Inquests in King County is, “To establish policies and
18 procedures for conducting reviews into the facts and circumstances of any death of an
19 individual where action, decision or possible failure to offer the appropriate care by a
20 member of any law enforcement agency might have contributed to an individual’s
21 death. (P. 2 PHL-7-1-5-EO). The Executive Order goes on to state that, “The public
22 has a strong interest in a full and transparent review of the circumstances surrounding
23 the death of an individual involving law enforcement. (p.4). Section 3.2 of the
24 Executive Order discusses inquest scope. “The inquest scope shall include an inquiry
25 into and the panel shall make findings regarding the cause, manner, and
26 circumstances of the death, including applicable law enforcement agency training and
27 policy. The panel shall make findings regarding whether the law enforcement officer
28 complied with applicable law enforcement agency training and policy as they relate to
29 the death. (p.7) Also, the Executive Order governing this inquest states in section
30 12.1 that, “Each party, including the administrator, through the inquest program

1 attorney, may proffer its own witnesses to provide testimony that aids the panel in the
2 understanding of the facts, including factual areas of experts.” (p. 10).

3 Also, the Washington Supreme Court articulated in the *Butts* case, “In officer-
4 involved shootings like the three at issue here, whether the officers complied with
5 training and policy may be relevant to whether the officers’ actions were criminal. This
6 court also held that the inquest may include testimony and evidence from outside
7 expert witnesses.” *Butts*.

8 The Family’s expert witness, Captain Ashley Heiberger, is being offered as an
9 expert for the issues including BUT NOT limited to: Police Practices such as Use of
10 Force (including De-Escalation concepts, principles, and techniques), Police Policy,
11 and Police Training as it relates to the Seavers case. The very issues focused on at
12 the inquest hearing of policy and training are exactly the areas of expertise of this
13 expert. Captain Heiberger has reviewed the relevant materials that had been provided
14 to the other expert in this case, Dr. Alpert. Captain Heiberger has reviewed the SPD
15 Force Investigation Unit report, SPD Policy manual, relevant SPD training materials,
and relevant video clips.

16 An inquest hearing differs from a criminal trial. Instead of the jurors having to
17 decide between the choices of guilty or not guilty, here there are approximately 65
18 questions in this case that the jurors will need to answer. Captain Heiberger’s
19 testimony would assist the jurors in answering the questions put before them.

20 Captain Heiberger has extensive education, training, and experience relating to the
21 issues presented in this case. Based on his qualifications in those areas, he was
22 selected to serve as a police practice expert for the firm monitoring compliance
23 pursuant to a Federal Department of Justice settlement agreement administered by
24 the Civil Rights Division.

25 As detailed in his report and CV, he has received significant education and training
26 on the aforementioned topics. He frequently provides related training presentations to
27 police executives and local government officials, and municipal attorneys, with several
presentations approved for Pennsylvania Continuing Legal Education credits.

1 Regarding police policy, Captain Heiberger has been developing and delivering
2 relevant training presentations for well over a decade. He has a dozen years of policy
3 experience, e.g., drafting, review, and analysis, through accreditation programs in
4 several states and nationally. In his federal oversight role, he participated in policy
5 development, and rendered expert opinions as to whether police conduct was within
6 policy, including directives addressing use of force and de-escalation.

7 As to training, he has been a Commonwealth of Pennsylvania law enforcement
8 instructor since 2007, and currently maintains that status. As noted above, he
9 frequently develops and delivers a variety of relevant training presentations to
10 professional audiences. In his federal oversight role, he evaluated training materials
11 and delivery, including those related to use of force and de-escalation.

12 Captain Heiberger began to investigate and evaluate use of force in his agency
13 upon promotion to sergeant in 2004, and continued until his retirement in 2017.
14 Through the accreditation program, he evaluated uses of force at other agencies
15 approximately sixty times over nine years. As noted above, he frequently develops
16 and delivers a variety of relevant training presentations to professional audiences. In
17 his federal oversight role, he evaluated use of force incidents, reporting, investigation,
18 and review. He also rendered expert opinions as to whether the force used was
19 objectively reasonable and in compliance with policy and training, including de-
20 escalation requirements.

21 Additionally, in his consulting and expert witness practice over the last five
22 years, he has accepted and declined numerous cases on both sides in criminal, civil,
23 and labor matters. He has provided informal commentary in the domestic and
24 international media regarding use of force incidents (including de-escalation) and
25 investigation.

26 Captain Heiberger drafted a comprehensive report pertaining to the inquest
27 into the death of Jason Seavers. His report clearly states that his opinions and any
related testimony about use of force, police practice, SPD training and SPD policy
would assist jurors in understanding the evidence presented to them. Additionally, the

1 inquest's focus is on whether the involved officer's actions complied with policy and
2 training.

3 SPD Captain Caylor will be rendering an opinion regarding officer Schickler's
4 actions. The family is not objecting to Captain Caylor as a witness even though an
5 argument could be made that he would have a potential bias being a command-level
6 officer in the same agency as Officer Schickler. Captain Caylor does not have the
7 academic CV that Dr. Alpert presents. However, Dr. Alpert does not have a
8 background as a police officer or captain, nor does Dr. Alpert have the training and
9 practical experience of the other experts. The family is not objecting to Dr. Alpert
10 testifying at the upcoming inquest either.

11 Counsel for the family has provided all parties with Captain Heiberger's
12 comprehensive report and his impressive CV. He combines practical experience (as
13 a police officer, trainer, and oversight professional) with academic qualifications and
14 evaluative skill. This combination enables him to speak authoritatively on matters of
15 police policy and training, and use of force. His background provides specific
16 expertise to provide opinions in all of the issues that are germane to this case.
17 Additionally, this expert had been previously vetted and approved as an expert for the
18 King County Inquests by two of the Inquest Program Attorneys.

19 **9. To allow for the Garrity admonishment to be provided to the jury**

20 The Inquest into the death of Jason Seavers is scheduled for April 17, 2023. The
21 schedule set forth indicates that counsel for the Involved Officer Erick Schickler,
22 inform the parties whether or not his client will be testifying at the upcoming inquest by
23 a date certain (this date was scheduled for March 24, 2023 but the parties still have
24 not received information regarding this response). Prior to both of Officer Schickler's
25 interviews by his superiors on February 19, 2018 and on March 7, 2018, Officer
26 Schickler was asked if he was willing to provide a voluntary statement regarding his
27 shooting and killing of Mr. Jason Seavers. Officer Schickler's response was, "I am
not." At that point, his superior ordered Officer Schickler to answer his questions and
those of the detectives and sergeants conducting the two respective interviews.

1 Officer Schickler was then told, “If you refuse to answer questions relating to the
2 performance of your official duties, you will be subject to department charges, which
3 could result in your dismissal from the department, do you understand? Thereafter,
4 the Captain left the room and the interview of Officer Schickler proceeded. The Family
5 requests that the jury be apprised of these aforementioned orders and potential
6 consequences by Officer Schicklers superiors pertaining to the previous interviews
7 regarding the shooting of Mr. Seavers along with the anticipated order that would
8 apply to testimony by Officer Schickler at the upcoming inquest. The full disclosure of
9 the aforementioned information would ensure the requisite transparency mandated by
10 the Executive Order governing inquests. To this effect, the King County Executive
11 Order requires and states that, “The public has a strong interest in a full and
12 transparent review of the circumstances surrounding the death of an individual
13 involving law enforcement.” Paragraph 6.1 PHL-7-1-5-EO) In short, it is imperative
14 that the jury be informed of the *Garrity* admonishment in order for this inquest to be
15 conducted with the requisite transparency.

16 In *Garrity v. New Jersey*, 385 U.S. 493 (1967), a police officer was compelled to
17 make a statement or be fired, and then criminally prosecuted for his statement. The
18 Supreme Court concluded that the officer had been deprived of his Fifth Amendment
19 right against self-incrimination. The Court held that, “the threat of removal from public
20 office under the forfeiture of office statute to induce the petitioners to forgo the
21 privilege against self-incrimination secured by the Fourteenth Amendment rendered
22 the resulting statements involuntary, and therefore inadmissible in the state criminal
23 proceedings,” and that “the choice given petitioners either to forfeit their jobs or to
24 incriminate themselves constituted coercion.” *Garrity*, p. 494. Here, as in the case of
25 *Garrity*, the threat of potential dismissal from Officer Schickler’s job induces officer
26 Schickler to forgo his privilege against self-incrimination and to testify. A jury would
27 need to know this impetus for **Officer Schickler’s testimony**.

A conflict arises when there is the possibility that a police officer could receive **full
immunity** just by participating in an interview after the killing of a suspect or by
providing testimony at an inquest hearing under the threat of being removed from their
job. The essence of *Garrity* can prevent the prosecution of police officers. In an

1 involved officer shooting, simply commanding the involved officer to give an interview
2 or to provide testimony at an inquest hearing can provide the great benefit and
3 security knowing that the involved officer would not be criminally prosecuted for the
4 killing of another human being if the only evidence against them is their confession.
5 The upside of an amount of immunity from criminal prosecution clearly outweighs any
6 disciplinary action or dismissal from the department. This ultimately leads to a
7 tremendous amount of protection for police officers and a potential for the abuse of
8 power.

8 In the *Butts* case, the Court articulated, “The Fifth amendment does not grant law
9 enforcement officers blanket immunity from testifying in coroner’s inquests.” The court
10 went on further to state, “[T]here is no blanket Fifth Amendment right to refuse to
11 answer questions based on an assertion that any and all questions might tend to be
12 incriminatory.” *Family of Damarius Butts et al. v. King County Exec. Constantine et al.*,
13 Washington Supreme Court No. 98985-(2020), citing *Eastham v. Arndt*, 28 Wn. App.
14 524, 532, 624 P.2d 1159 (1981). “Instead, in noncriminal proceedings like coroner’s
15 inquests, the “only way the privilege can be asserted is on a question-by-question
16 basis.” *Butts*, citing *Jane Doe ex rel. Rudy-Glanzer*, 232 F.3d 1258, 1263 (9th Cir.
17 2000); *see also State v. King*, 130 Wn.2d 517, 524, 925 P.2d 606 (1996).

17 Also in *Butts*, the Supreme Court ruled that for the inquest jury to be able to fulfill
18 their duties under the Coroner’s Act, that the law requires inquest juries to be able to
19 examine the involved officers and to decide whether those officers killed...by criminal
20 means. The Court articulated, “The law enforcement officers involved in the killings of
21 Butts and Lyles have firsthand knowledge of the facts leading to those shootings and
22 are therefore within the universe of witnesses the coroner must examine.”
23 Determining credibility includes evaluating whether the officers are testifying truthfully
24 without an underlying incentive.

24 “It is critical to a full, fair and transparent investigation that the panel hear from the
25 involved officers regarding the events that occurred.”*Id.*

25 Ultimately, permitting Officer Schickler to testify under compulsion from the chief
26 without informing the jury of such would have a negative and harmful impact on the
27

1 integrity of the process; the jury will be misled about the circumstances of the
2 testimony.

3 **10. Motion for reconsideration to allow the evidence of Officer Schickler's**
4 **prior officer involved shootings and/or to use this information for**
5 **impeachment purposes due to recently provided supplemental discovery**

6 In light of the supplemental discovery recently provided to the parties on April 3,
7 2023 (Bate pages 6142-6314) regarding Officer Schickler as an involved officer in a
8 2015 officer involved shooting of a civilian, the family requests that the IA allow the
9 jury to be informed of this officer's numerous officer involved shootings as this goes to
10 the **criminal means element the jury** will need to decide at this inquest hearing. It is
11 problematic when an officer repeatedly is involved in officer involved shootings and
12 killings throughout his career. Even SPD Captain Caylor stated in his interview that,
13 "Actually officer-involved shootings are remarkably uncommon in general. So to have
14 somebody who has multiple officer-involved shootings, we do have those officers just
15 because of circumstances that are in those situations, but it's not common (Caylor
16 transcript Bate page 6133)." The fact that it is unusual to be involved in one officer
17 shooting and Officer Schickler has been involved in many is beyond troubling.
18 Additionally, after review of the recently released discovery involving the 2015 officer
19 involved shooting, there are **similarities in the facts** that are concerning as well. In
20 both cases, the suspects were **suspected car prowlers**. In the 2015 case, Officer
21 Schickler was **yelling commands** to drop a knife. Here, there were repeated
22 commands for the suspect to show his hands but this case involving Mr. Seavers
23 differs in the sense that he was not possessing a weapon and none of the officers
24 saw him with a gun at the final scene when he was locked and confined in a car. Both
25 suspects were **shot by Officer Schickler after non-compliance** to verbal commands.
26 Additionally, in the 2015 case it appeared there was not a prior verbal warning prior to
27 Officer Schickler firing his gun. This information needs to be brought to the forefront
for transparency, for overall better police practices, to save future lives, to reduce the
number of officer involved shootings, and to have there be some sense of
accountability for excessive use of force by an officer.

1 ER Rule 404(b) provides that:

2 Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a
3 person in order to show action in conformity therein. It may, however, be admissible
4 for other purposes, such as proof of motive, opportunity, intent, preparation, plan,
5 knowledge, identity, or absence of mistake or accident.

6 Here, the Family contends that Officer Schickler's numerous prior officer involved
7 shootings and killings should be allowed for the jury to consider. In *Trahan v. City of*
8 *Oakland*, the Ninth Circuit held that an officer's "prior acts of **excessive use of force**
9 against minorities in his duties as a police officer" were admissible for the plaintiff's
10 state tort claim." *Past-Acts Evidence in Excessive Force Litigation, James Stone,*
11 *December 18, 2022 [https://wustllawreview.org/2022/12/18/past-acts-evidence-in-](https://wustllawreview.org/2022/12/18/past-acts-evidence-in-excessive-force-litigation/)*
12 *excessive-force-litigation/_See Trahan, 1992 WL 78090.* The Family also offers ER
13 403 providing for a balancing test to inform the IA's decision about whether to admit
14 evidence. The Family argues that the probative value of this information is
15 substantially outweighed by a danger of undue prejudice.

14 CONCLUSION

15 This memorandum is intended to address legal issues which may arise
16 during the inquest hearing. Failure to mention issues in this memorandum does not
17 waive them. The Family reserves the right to make additional motions when
18 necessary.

18 DATED this 10th day of April, 2023. Respectfully submitted,

21 By: /s/ Deborah Alexander

22 Deborah Alexander, WSBA #21505
23 Attorney for the Seavers Family