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KING COUNTY DEPARTMENT OF EXECUTIVE SERVICES
INQUEST PROGRAM

INQUEST INTO THE DEATH OF:

JASON SEAVERS.,

Deceased.

Inquest No.: 18IQ61954

**INVOLVED OFFICER’S RESPONSE
TO PARTIES’ MOTIONS *IN LIMINE***

Noted for Consideration on April 17, 2023

ORAL ARGUMENT REQUESTED

Involved Officer Erick Schickler (“Officer Schickler”) joins the City of Seattle’s Motions *in Limine* (re family expert) and its Motions *in Limine* (general) Nos. 2, 3, 6, 7, 8 and have no objections to the remaining.

I. FAMILY’S MOTIONS AND INVOLVED OFFICER’S RESPONSES

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

Officer Schickler has no objection to this motion.

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

Officer Schickler has no objection to this motion, as evidence of past activities by any party are not relevant to the inquest process unless a party was aware of another party’s past and acted on that knowledge. An example would be if a police officer had prior contact with a

1 suspect and knew the suspect routinely carried a weapon. For this reason the family's motion
2 should be granted, and its motion to invoke Officer Schickler's history should be denied. There
3 is no credible basis to be on both sides of the issue.

4 In that same vein, the Administrator should exclude any argument or testimony that
5 Officer Schickler is a "killer" because that label would be prejudicial and mislead the jury. ER
6 403. Moreover, the Administrator should advise parties to refrain from questions and argument
7 stating that Officer Schickler "killed" Mr. Seavers; instead, stating Officer Schickler use force
8 against Mr. Seavers. This is an inquest, not criminal a trial, this type of vernacular will unduly
9 prejudice Officer Schickler.

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

11 Officer Schickler has no objection to this motion and reiterates his argument above.

12 **4. To not allow Scene 2 to be referred to as a "Robbery."**

13 Officer Schickler objects to this motion as the scene two incident was, by definition, a
14 "robbery" pursuant to RCW 9A.56.190-200; this is an undisputed fact. There is evidence that
15 Mr. Geary was held at gunpoint and Mr. Seavers took his car against his will by the threatened
16 injury to his person. *Id.* Nevertheless, Officer Schickler's counsel will refrain from describing it
17 as "robbery" during questioning. However, to avoid wasting time, if a witness chooses to
18 independently describe the Scene 2 incident as a "robbery" while testifying the Administrator
19 should bar objections from counsel forcing the witness to modify the way they are describing the
20 scene two incident.

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

23 Officer Schickler has no objection to this motion.

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

3 Officer Schickler has no objection to this motion for clarification. However, to be clear,
4 Mr. Seaver’s family’s expert Ashley Heiberger is opining that Officer Schickler used unjustified
5 deadly force, disregarded SPD policy and training, manufactured the necessity to use force, and
6 essentially caused the problem and then “[shot] his way out of it.” *Heiberger Report* at p. 12, 14;
7 *Heiberger recorded interview part two* at 42:35. Needless to say, those opinions are adversarial.

8 Whether this process is meant to be non-adversarial or not, Officer Schickler has a right,
9 and his counsel a duty, to argue against these allegations and demonstrate their falsity. Indeed, it
10 would be a violation of counsel’s duty to their clients if they did not confront witnesses and
11 evidence against their clients. Particularly where, as Division One of the Court of Appeals in
12 *Miranda v. Sims*, 98 Wn. App. 898, 909, 991 P.2d 681 (2000) has recognized, the involved
13 officers are the only participants that could face an adverse legal outcome, appropriate
14 confrontation is essential, including traditional leading questions.

15 Moreover, as a practical matter, forcing the use of non-leading questions on cross
16 examination after a thorough direct by the IPA would necessarily lead to unnecessary cumulative
17 testimony and waste of time. Officer Schickler agrees that the approach should be objective and
18 non-adversarial as possible, but that goal should not drive needless inefficiency into the process.

19 **7. To prohibit the mentioning of the SPD Force Review Board’s determinations.**

20 Officer Schickler objections to this motion. The Inquest Order requires that the
21 designated agency representative provide “[a] comprehensive overview of the forensic
22 investigation into the incident (e.g., statements collected by investigators, an investigators’
23 review of forensic evidence, physical evidence collected by the investigators, etc.)” PHL-7-1-5-

1 EO, ¶ 12.3. The Force Review Board’s (FRB) findings are an essential part of the investigation
2 and its overall findings.

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

4 Officer Schickler agrees with the City that ultimate determination witnesses – those that
5 opine on the ultimate policy, practice and criminal means issues reserved to the jury – are neither
6 contemplated within nor appropriate to the inquest process. Purely fact enhancement experts, e.g.
7 video/audio clean up or enhancement, ballistics, mechanical processes, toxicology, manner of
8 death, etc., may be appropriate but only where there is a legitimate basis for additional expert
9 input. The introduction of non-neutral experts on ultimate issue questions would serve no
10 purpose but to turn a process designed to minimize adversarial positioning into one compelled to
11 create adversaries. Mr. Hieberger’s opinions are a perfect example of this problem.

12 While a neutral expert selected by the inquest program could minimize this problem,
13 plainly such testimony on the ultimate issues from a supposedly neutral expert could also lead to
14 a highly adversarial process. Allowing parties to pick hired guns, however, creates a certain
15 adversarial scenario.

16 Officer Schickler’s objections to Mr. Heiberger’s report, opinion, and testimony are in
17 his Motions *in Limine* re Expert filed on April 11, 2023.

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

19 Officer Schickler objects to this motion for the reasons set forth in IO’s motion *in limine*
20 No. 7 and below.

21 It is neither necessary nor “imperative” that the jury be apprised of why Officer Schickler
22 provided previous statements and/or is potentially testifying. The fact that Officer Schickler
23 provided an involuntary statement the night of the incident has no bearing on whether he

1 described the incident truthfully and accurately and/or is testifying truthfully at the inquest.
2 Indeed, given that he risked termination if he was not truthful in his compelled statement if
3 anything lends substantial credence to it. The jurors will be presented with witnesses all adhering
4 to the same oath – to tell the truth, the whole truth and nothing but the truth. There is no credible
5 argument that Officer Schickler – again, the only participant that could face legal ramifications
6 from this process, should be singled out on the basis of constitutional protections that would be
7 utterly foreign to the jury and grossly prejudicial to the officer. Officer Schickler’s credibility
8 must be judged as is every other witness, by the jurors on his oath.

9 Moreover, the grounds for the *Garrity* opinion augur against introducing such evidence.
10 It is precisely because an employee must choose between his constitutional rights or potentially
11 his job that such statements may not be used in criminal prosecutions. Infusing the compelled
12 nature of the statement into this process would run counter to the very protections engendered in
13 *Garrity*. The reasoning behind Officer Schickler’s decisions to provide statements and
14 potentially testify is irrelevant to the facts and circumstances surrounding the death of Mr.
15 Seavers. ER 401, 402.

16 The Family states that:

17 “It is critical to a full, fair and transparent investigation that the panel hear from the
18 involved officers regarding the events that occurred.” Id. Ultimately, permitting Officer
19 Schickler to testify under compulsion from the chief without informing the jury of such
would have a negative and harmful impact on the integrity of the process; the jury will be
misled about the circumstances of the testimony.

20 Besides being nothing but argument, this statement is erroneous. A compelled statement is just
21 that – an order to answer questions. The oath is the touchstone to credibility, just as with every
22 other witness. That an officer is compelled to go and answer questions does not impact the
23 solemnity of the oath. Moreover, the Executive Order requires a full and transparent review of

1 the circumstances surrounding the death of an individual involving law enforcement, not
2 surrounding the specific circumstances of the involved officer's post-incident statements and
3 testimony. PHL-7-1-5-EO, ¶ 6.1.

4 The introduction of this evidence would do nothing but confuse the jury, require
5 substantial testimony as to why departments compel officers to speak, and necessitate legal
6 explanation to the jury to clarify the unique and complicated considerations tied up in the
7 concept and the accompanying legal protections. None of that has a legitimate place in a limited-
8 scope inquest.

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

12 Officer Schickler objects to this motion for the same reasons set forth in IO's motions *in*
13 *limine* No. 8-9. As earlier noted, there is no credible nor principled basis to argue on one hand
14 that Mr. Seavers' history is irrelevant and inadmissible while simultaneously arguing the
15 officer's history is.

16 DATED this 12th day of April, 2023, at Seattle, Washington.

17 **FREY BUCK, P.S.**

18 By: /s/ Ted Buck
19 Ted Buck, WSBA #22029
20 Delaney DiGiovanni, WSBA #56851
21 *Attorneys for Seattle Police Department*
22 *Involved Officer*
23

1 **CERTIFICATE OF SERVICE**

2 The undersigned certifies under penalty of perjury under the laws of the State of
3 Washington that on the date indicated, they caused to be served in the manner noted below, a
4 copy of the foregoing document on the following individuals:

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20 DATED this 12th day of April, 2023, at Seattle, Washington.

21 /s/ Delaney DiGiovanni
22 Delaney M. DiGiovanni