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KING COUNTY DEPARTMENT OF
EXECUTIVE SERVICES INQUEST PROGRAM

Inquest into the death of
CURTIS ELROY TADE

No. 17IQ 61739

KIRKLAND POLICE DEPARTMENT
MEMORANDUM RE: *GARRITY*
ORDER AND DESIGNEE’S OPINION
TESTIMONY ON COMPLIANCE

I. INTRODUCTION

The Inquest Administrator requested briefing on three issues discussed at the January 6, 2023 Pre-Hearing Conference. The Kirkland Police Department (“the Department”) has previously briefed the jury instruction issue and will now address the ability of the Chief’s Designee to offer opinion testimony about Officer Cox’s compliance with his training and KPD policies, and the admissibility of the *Garrity* Order.

II. LEGAL ANALYSIS

A. The Coroner’s Act Requires That The Chief’s Designee Be Allowed to Offer Testimony On The Officer’s Compliance with Training and Policy.

The Coroner’s Act is clear. “The coroner must summon and examine as witnesses, on oath administered by the coroner, every person, who, in his or her opinion or that of any of the jury, has any knowledge of the facts.” RCW 36.24.050. The Executive has determined that this includes an officer’s training and department policy.

1 The former and current ExO *requires* that the panel to reach a finding about an
2 officer’s compliance with training and policy. “The panel shall also make findings regarding
3 whether the law enforcement officer complied with applicable law enforcement agency
4 training and policy as they relate to the death.” *ExO.*, 14.2. I

5 However, in the prior version of the ExO, the Executive inexplicably prohibited the
6 one witness with the best knowledge on these issues from offering testimony. The prior
7 version of the Executive Order (ExO) was challenged by various agencies because, *inter*
8 *alia*, it did not allow this testimony. The Supreme Court held it improper to restrict such
9 testimony because this violated the statutory language.

10 The coroner may, after the jury has asked to summon a witness, decide on a
11 case-by-case basis that the requested testimony or evidence is irrelevant or
12 unfairly prejudicial, cumulative or unhelpful to the jury's inquiry under the
13 rules of evidence. Indeed, the 2020 EO—like previous executive orders
14 governing inquests in King County—provides that the Rules of Evidence
15 apply to inquest proceedings. But ***the 2020 EO's preemptive prohibition***
16 ***on any inquest jury's ability to hear testimony from the chief law***
17 ***enforcement officer regarding the involved officers' compliance with***
18 ***training and policy impermissibly infringes on the jury's authority under***
19 ***the Coroner's Act to seek the evidence it needs.*** So too does the 2020 EO's
20 categorical prohibition on the jury's ability to hear testimony from the
21 involved officers regarding their mental state at the time of the killings. We
22 therefore strike the 2020 EO's preemptive prohibition of and limitation on
23 the testimony of potential witnesses, including the chief law enforcement
24 officer.

25 *Family of Butts v. Constantine*, 198 Wn.2d 27, 58–59, 491 P.3d 132 (2021) (“the coroner
26 cannot preemptively exempt or bar particular evidence or testimony from the jury's
27 consideration.”).

The Executive Order on inquests was revised on July 28, 2021 to comply with the
Butts holdings. But for whatever reason, the Executive chose not to specifically allow this
testimony. Instead, it simply struck the offending language that prohibited such testimony.

1 Additionally, the chief law enforcement officer of the involved agency or
2 director of the employing government department or the designee of such
3 chief/director shall provide testimony concerning applicable law
4 enforcement agency training and policy as they relate to the death, “~~but may
5 not comment on whether employees’ actions related to the death were
6 pursuant to training and policy; or any conclusions about whether the
7 employee’s actions were within policy and training.~~”

6 *ExO., Appendix 2, 12.3, PHL-7-1-5-ExO.*

7 Regardless of the verbiage, the ultimate outcome is the same: the Chief’s designee is
8 entitled to offer an opinion on compliance. The fact that the Executive failed to specifically
9 allow the testimony mandated by the Supreme Court is of no moment. The Family should
10 not be allowed to argue otherwise, as it would be inconsistent with the Coroner’s Act. The
11 Administrator should follow the Supreme Court’s holding: “[T]he 2020 EO’s preemptive
12 prohibition on any inquest jury’s ability to hear testimony from the chief law enforcement
13 officer regarding the involved officers’ compliance with training and policy *impermissibly*
14 *infringes on the jury’s authority* under the Coroner’s Act to seek the evidence it needs.” *Id.*
15 (emphasis supplied).

16 There is no legal basis to prohibit the testimony of the Chief/Designee regarding the
17 officer’s compliance with training and policy.

18 **B. The Fact of Officer Cox Being Compelled To Testify is Not Admissible.**

19 The City joins with the Involved Officer on this issue. This fact is not admissible.

20 DATED: March 28, 2023

21 KEATING, BUCKLIN & McCORMACK, INC., P.S.

22 By: /s/ Stewart A. Estes

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DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that on the below date, a true and correct copy of the foregoing document was served upon the parties listed below via the method indicated:

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DATED this 28th day of March, 2023, at Seattle, Washington.

/s/ Teresa A. Caceres
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