



King County

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PRE-INQUEST CONFERENCE ORDER

INQUEST INTO THE DEATH OF DAMARIUS DEMONTA BUTTS INQUEST # 517IQ0713

PARTIES:

Family of the decedent:	Mother of Damarius Demonta Butts represented by Adrien Leavitt and La Rond Baker
Law enforcement officers:	Seattle Police Department Officers Elizabeth Kennedy, Christopher Myers, Joshua Vaaga and Canek Gordillo represented by Evan Bariault and Ted Buck
Employing government department:	Seattle Police Department, represented by Ghazal Sharifi, Erika Evans, Rebecca Boatright - Chief Carmen Best's representative
Administrator:	Michael Spearman assisted by Matt Anderson

The Administrator, having considered the briefing of Parties, hereby determines that the scope of inquiry and witness list at the Inquest Hearing be as follows:

I. Scope of Inquiry – Factual.

Pursuant to Executive Order (EO), App. 2, Section 3.2, “The administrator, after consultation with the participating parties, shall determine the inquest scope.... [which] shall include an inquiry into ... the cause, manner, and circumstances of the death, including applicable law enforcement policy.” Because the panel is ultimately required to make “findings regarding whether the law enforcement officer complied with applicable law enforcement

agency training and policy as they relate to the death[.]” the inquest scope also includes relevant training the law enforcement officer has received. Id.

The circumstances of the death in this case began on April 20, 2017 at approximately 1:00 pm with Damarius Butts’ participation in a robbery of the 7-Eleven store located at 627 First Avenue, Seattle, WA, along with his sister and one other person. The circumstances continued through Officers Merritt and Gordillo making contact with the three participants, the pursuit of Mr. Butts to the Federal Building, the shooting that occurred in the loading dock of the Federal Building and ended with the official determination by EMT personnel that Mr. Butts was deceased. No party seriously contends otherwise. Accordingly, evidence regarding these events falls within the scope of the inquest. Evidence of the subsequent investigation into the death by SPD and the Medical Examiner’s Office is also deemed within the scope.

The parties dispute the extent to which evidence of the 7-Eleven robbery should be presented to the panel. And, to the extent it is allowed, they dispute whether it should be by live testimony or by means of stipulated facts. Addressing the first issue, the Family argues that Mr. Butts’ involvement in the robbery is “criminal history” and that its use as evidence is limited by EO, App. 2, Sections 4.4 and 4.5.¹ They argue that under those sections, to the extent evidence of the robbery is allowed, only those facts which were known to the Involved Officers² are admissible. However, the Family’s reliance on sections 4.4 and 4.5 of the Executive Order is misplaced. The references to criminal history in those sections are clearly referring to a decedent’s history of criminal convictions. (See the example given in Section 4.4 – “e.g. officers were arresting an individual convicted of a felony who they believed was carrying a weapon.” (emphasis added)). That is not the case here. At issue here, is the underlying conduct that was the basis for the Officers’ initial contact. Thus, the cited sections have no bearing on the admissibility of this evidence.

The Family also properly points out, however, that the issues that will be put before the panel primarily revolve around the Involved Officers’ conduct and whether the actions related to the death were pursuant to the Seattle Police Department’s (SPD) policies and training.

¹ Those sections provide as follows:

4.4. The decedent’s criminal history may not be introduced into evidence unless the administrator first determines that: it is directly related to the reason for an arrest, detention, or use of force (e.g. officers were arresting an individual convicted of a felony who they believed was carrying a firearm); it served as the basis for an officer safety caution (or equivalent warning) that the member(s) of the law enforcement agency was aware of prior to any use of force; or other, contemporaneous knowledge of the individual’s criminal history was relevant to the actions the officer(s) took or how the officer(s) assessed whether the person posed a threat.

4.5. If decedent’s criminal history is admitted, it must be limited to the greatest extent possible. It may only include information both actually known to officer(s) at the time, and actually forming a basis for the decision to use deadly force or the tactics in approaching the individual. It may not include the specific crime of conviction, the nature of the crime (e.g. violent or nonviolent), the deceased’s incarceration history, or any other criminal charge, unless the administrator makes a specific finding of relevance to a contested issue in the inquest.

² The Involved Officers’ (the term “Involved Officers” refers to the officers who fired their weapons at Mr. Butts) object to fact testimony regarding SPD’s use of the flash bang device and the K9 officer to determine Mr. Butts’ condition. They argue that the evidence is irrelevant because, according to the Medical Examiner, Mr. Butts died before their use. I reject the argument and adhere to my ruling on September 6, 2019. The scope of the inquest includes officer actions until the official determination that Mr. Butts had died. However, any policy and training issues related to the use of those means are beyond the scope because neither was related to the cause of death.

Extensive live testimony drawing out the details of Mr. Butts' actions during the robbery or the fear that those actions may have caused the store clerk may very well distract the panel from that focus. In addition, a statement of facts with sufficient detail to apprise the panel of the conduct that brought Mr. Butts to the Involved Officers' attention and that he was armed with and displayed a firearm during the robbery may adequately substitute for live testimony and expedite an otherwise lengthy proceeding.

Accordingly, the parties are directed to propose stipulated facts regarding the robbery of the 7-Eleven for my consideration.

II. Scope of Inquiry - Policy and Training.

The following policies and trainings are within the scope of the inquest.³

- **Policies:** SPD Use of Force Policy, including De-escalation Policies.
- **Training:** Use of Force Training, including De-escalation Training; Post BLEA De-escalation, Post BLEA Contact/Cover Roles, Post BLEA Care Under Fire, Officer Sustainment – Use of Force

The Family has proposed several other areas of policy and training but has not made the specifics of the suggested areas apparent except by title.⁴ The Family argues that the panel should have the ability to consider all policies and trainings because they are implicated in the death and “it is the province of the panel to decide what policies/trainings were ultimately triggered in the police interaction and whether the Involved Officers' actions comported with those policies/trainings.” The Family's Reply re the Scope of Inquest Hearing at 6.⁵ The argument fails for two reasons. First, the Family has made no argument as to why the suggested policies and trainings are implicated in this case. Second, it is the duty of the inquest administrator to decide the scope of the inquest which includes “applicable law enforcement

³ This determination is not meant to limit the inquiries during the interviews of SPD Assistant Chief Cordner or Captain Teeter. The Family is explicitly authorized to ask questions intended to determine the scope of relevant policies and trainings. If a party concludes as a result of those interviews that additional areas of policy or training are at issue, they may raise the issue for my consideration. Likewise, if it is made clear from information obtained during the interviews that inquiry certain subsections of policy authorized by this order are irrelevant to the scope of inquiry for this inquest, the party may raise the issue for my consideration. Any such briefing shall be submitted no later than 7 days after the conclusion of the interviews of Captain Teeter and Assistant Chief Cordner.

⁴ Specifically, the family has proposed, and this order denies, inquiry into the following areas of SPD Policy or training:

Policy: SPD policies governing law enforcement response to threats and assaults on officers; SPD policies regarding bystander safety; SPD policies regarding barricaded suspects; Any SPD policies and training materials that have [sic] incorporates learning from the April 20, 2017 law enforcement involved death of Damarius Butts.

Trainings: Crowd Control/Firearms and Tactics Training; Crisis Intervention Training; Post BLEA Field Training Program; Post BLEA Firearms Days 1-4; Post BLEA Taser X2 Operator; Post BLEA Introduction to Rapid Intervention; Post BLEA Defensive Tactics #4 Ground Control & Survival; Post BLEA Fundamental Principals; Post BLEA Barricaded Person; Post BLEA Defense Tactics #1 Control & Cuffing; Early Intervention Training Id., at 10-11.

⁵ The Family also argues that it undermines the appearance of fairness and neutrality to allow the involved officers and law enforcement agencies to decide which policies and trainings the panel is allowed to consider. But this argument ignores that the decision as to which policies and trainings the panel is to consider is made by the inquest administrator, not by a party or parties.

agency policy.” EO, App. 2, Section 3.2. It is the panel’s duty to then decide whether the Involved Officers’ “complied with applicable law enforcement agency training and policy as they relate to the death.” Id. (emphasis added). The Family also argues that the panel is entitled to consider SPD policy and training as it relates to the entire sequence of events from any officers’ initial contact with Mr. Butts until his death. But as I read the Executive Order, the policies and trainings that are implicated are those that “relate to the death.” EO, App. 2, Section 3.2. In my view, to read this language more broadly, as the Family suggests, would only serve to confuse the panel and lead to speculation and conjecture.

III. Witness List

The Family objected to Sgt. Chriseley Lang. SPD objected to Officer Matthew Clark. Both witnesses shall be stricken from the list. The Involved Officers requested the addition of Tom Townsend and Melissa Miller, to which there was no objection. These persons will be added to the list.

The Family argues that Officer Merritt should be stricken as a witness because his testimony is duplicative of Officer Gordillo’s. Officer Gordillo’s statements show that he observed Officer Merritt’s struggle with Mr. Butts and saw Adriana Butts assaulting Officer Merritt. He observed Mr. Butts escape Officer Merritt’s grasp and flee. He then gave chase, following Mr. Butts to the Federal Building. SPD and the Involved Officers argue that Officer Merritt’s testimony is necessary because his interaction with Mr. Butts and Adriana Butts is part of an unbroken chain of events and will assist the panel in understanding the cause, manner, and circumstances of death. But they do not explain why similar evidence should be presented to the panel more than once or by more than one witness. They also argue that the Officer Merritt’s testimony is necessary to show that, but for Adriana’s assault on Officer Merritt, the later deadly confrontation would not have occurred.⁶ This is speculation and would be more distracting to the panel than helpful. Indeed, drawing repeated attention to this portion of the incident could tempt the panel to blame Adriana for the death and thereby give less scrutiny to what should be the focal point of the inquest, the actions of the Involved Officers. Moreover, to assert that Adriana’s actions were a “but for” cause of the later deadly confrontation would open the door to arguments about the relevance of the policies and trainings applicable to Officer Merritt and whether his conduct was pursuant thereto. And as I have indicated, in my view, those issues are beyond the scope of this inquiry. Officer Merritt is stricken from the witness list.

The parties did not otherwise object to the witness list previously proposed.⁷ Accordingly, the following witnesses will be called:

1. Daniel Yohannes (to the extent not made unnecessary by stipulation of the parties or admission of other testimony or evidence, including summary testimony by the lead FIT investigator)

⁶ See Involved Officers’ Response Brief re Scope of Inquest at 2, Seattle Police Department’s Response to the Family’s Brief re Scope of Inquiry (10/04/19) at 2. I would also note that because of the speculative nature of this testimony and argument, I do not anticipate its admission at the inquest hearing. Should any party anticipate otherwise they should offer briefing on the issue.

⁷ No ruling has been made at this time regarding the Family’s proposed use of force expert witness.

2. Seattle Police Department Officer Christopher Bandel
3. Seattle Police Department Officer Hudson Kang
4. Justin Keaton
5. Seattle Police Department Officer Brian Pritchard
6. Seattle Police Department Officer Jacob Briskey
7. King County Sheriff's Office Deputy Anthony Mullinax
8. Detective David Simmons – Lead FIT Investigator
9. Detective Donald Ledbetter – Chief Detective CSI
10. Seattle Police Department Assistant Chief Lesley Cordner – Professional Standards Bureau
11. Seattle Police Department Captain Michael Teeter
12. Douglas Houck
13. Jason Benson
14. Brad Richardson
15. Tom Townsend
16. Melissa Miller

DATED October 18, 2019

A handwritten signature in black ink, appearing to read 'M. Spearman', is centered on the page. The signature is fluid and cursive, with a prominent initial 'M' and a long, sweeping underline.

Michael Spearman
Administrator