

1 **MTN**
2 Ross C. Goodman, Esq.
3 Nevada Bar No. 7722
4 GOODMAN LAW GROUP
5 520 S. Fourth Street, Second Floor
6 Las Vegas, NV 89101
7 Telephone: (702) 383-5088
8 Facsimile: (702) 385-5088

9 *Attorneys for the Estate of*
10 *Erik B. Scott*

11 **OFFICE OF THE CORONER**

12 **CLARK COUNTY, NEVADA**

13 IN THE MATTER OF THE INQUEST OF
14 ERIK B. SCOTT, deceased.

Case No: 10-5686

15 **MOTION TO PREVIEW EVIDENCE**
16 **PRE-INQUEST AND TO PROVIDE**
17 **ACCURATE AND COMPLETE JURY**
18 **INSTRUCTIONS**

19 **[ORAL ARGUMENT REQUESTED]**

20 The Estate of Erik B. Scott, by and through its attorney, Ross C. Goodman, Esq., of the
21 Goodman Law Group, hereby submits this Motion to Preview Evidence Pre-Inquest And to
22 Provide Accurate and Complete Jury Instructions pursuant to Clark County Code §2.12.080(h)
23 and §2.120.080(m)(7).

24 Dated this 8th day of September, 2010.

25 GOODMAN LAW GROUP

26 By

27 Ross C. Goodman, Esq.
28 Nevada Bar No. 7722
520 South Fourth Street, 2nd Floor
Las Vegas, Nevada 89101

Attorneys for the Estate of
Erik B. Scott

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

The State, in its sole prosecutorial discretion, has the opportunity to bring any evidence or testimony before a coroner's jury, regardless of whether it complies with the rules of evidence and without it being subject to cross examination or rebuttal by the family. *See*, Clark County Code §2.12.080. The recent reforms of the Coroner's inquest process, effectively making a grand jury proceeding public by requiring a Justice of the Peace to serve as a presiding officer and allowing written questions by interested parties, does nothing to change the public perception that a coroner's jury – like a grand jury – is a rubber stamp for prosecutors. *United States v. Navarro-Vargas*, 408 F.3d 1184, 1195 (9th Cir.2005) (en banc) (citing numerous commentators and courts that have suggested that the modern grand jury is but a rubber stamp for the prosecution and noting sarcasm by prominent judge that a grand jury would “indict a ham sandwich”).

In order to correct the glaring deficiencies present in the current inquest as painfully demonstrated in the Trevon Cole inquest, the Presiding Officer statutorily has the authority to grant the requested relief in this motion to “insure a fair and just hearing.” *See*, Clark County Code §2.120.080(m)(7). Absent any judicial intervention to alter this one sided process, the Erik B. Scott inquest will serve as yet another rubber stamp for a system designed to clear officers of any responsibility.

////

////

////

II.

ARGUMENT

**FAILURE TO INSTRUCT ON CRIMINAL NEGLIGENCE AND GIVE
COMPLETE INSTRUCTIONS BASED ON APPLICABLE LAWMAKES THE
INQUEST PROCESS A WASTE OF TAX PAYER DOLLARS**

A. The Presiding Officer Should *Sua Sponte* Give Accurate Jury Instructions
and Define "Criminal Means".

The "ham sandwich" adage has proven equally applicable during the Trevon Cole inquest in that any prosecutor can present one-sided facts and obtain a justifiable or excusable finding. This case sadly demonstrated that the Cole jury was utterly dependent upon the prosecutor for information, evidence and jury instructions. The jury was instructed that "homicide that is not justifiable or excusable, as defined in these instructions, is a killing by criminal means" without defining "criminal means." *See*, Instruction No. 4. The foreperson in the Cole inquest made clear that the jury had to speculate about the definition of "criminal means" since the prosecutor failed to provide an applicable jury instruction. *See*, LVRJ Aug. 23, 2010 by Antonio Planas.

To carry out the purpose of the inquest process, the Presiding Officer should *sua sponte* provide the jury with an applicable jury instruction defining criminal means. Pursuant to NRS 200.070(1), involuntary manslaughter, which is the killing of a human being, without any intent to do so, in the commission of . . . a lawful act which probably might produce such a consequence in an unlawful manner. The Presiding Officer should instruct the jury consistent with case law that the degree of negligence required, where an unintentional killing is established, is such recklessness or carelessness that is incompatible with proper regard for human life." *See State v. Lewis*, 59 Nev. 262, 273-74, 91 P.2d 820, 824 (1939); *see also* NRS 200.040(2) (a lawful act without due caution or circumspection).

////

1 B. The Catch-All Excusable Homicide Instruction is Unsupported by Case Law
2 And Virtually Guarantees a Justifiable or Excusable Finding.

3 The prosecutor's definition of excusable homicide removes the possibility of a jury to
4 return a third option allowed by the Clark County Code of a criminal finding based on reckless
5 conduct. This instruction for an excusable homicide occurs "when committed by a person doing
6 a lawful act, without any intention of killing, yet unfortunately kills another" is flawed and
7 unsupported by any legal authority. *See*, Instruction No. 9; *compare* to California Jury
8 Instruction 5.50 (2010) (excusable homicide has been defined as unintentional killing when (1)
9 committed by accident and misfortune in the performance of a lawful act by lawful means; and
10 (2) where the person causing the death acted with that care and caution that would be exercised
11 by an ordinarily careful and prudent individual under like circumstances).

12 It is even more important "in the interest of justice" that the Presiding Officer provides
13 the jury with "accurate, clear and complete instructions" with "applicable legal principles" given
14 that the prosecutor is cloaked with the title of being the jury's "legal advisor". *See, Crawford v.*
15 *State*, 121 Nev 744, 754, 121 P.3d 582 (2005) (in the context of a non-adversarial setting of a
16 grand jury the Court held that "jurors should neither be expected to be legal experts nor make
17 legal inferences with respect to the meaning of the law").

18 Consequently, the Erik B. Scott Family should not suffer the same fate as previous
19 inquests by repeating the flawed catch-all instruction of excusable homicide. Instead, the
20 Presiding Officer should provide the jury with accurate, clear and complete instructions based on
21 applicable law.

22 **ERIK B. SCOTT FAMILY SHOULD BE ALLOWED TO ATTEND THE**
23 **PRE-INQUEST HEARING AND PREVIEW ALL THE EVIDENCE**
24 **IN ORDER TO SUBMIT MEANINGFUL QUESTIONS**

25 A. Justice Requires The Family Preview All The Evidence.

26 A coroner's inquest depends solely on the prosecuting attorney for conducting its
27
28

1 investigative function. It is the prosecutor's discretion to choose which witnesses will attend and
2 give testimony at the coroner's inquest as well as what portions of the police officer and/or
3 witness statements and recordings are introduced to the jury. Thus, the scope and direction of
4 any coroner's inquest is largely (if not exclusively) in the hands of the District Attorney's Office.
5 The so-called "fact finding" expected of the coroner's jury is really nothing more than a review
6 of the prosecutor's predigested evidence and a ratification of his conclusion.
7

8 To date, the Family has been deprived of reviewing their son's autopsy report, crime
9 scene analyst reports and other Metro reports, witness statements, 911 recordings and other radio
10 transmissions, and of course, the video. The mutual disclosure will also serve as a check and
11 balance mechanism to ensure that the prosecutor is acting as a "neutral presenter of facts" in
12 accordance with Clark County Code §2.12.080(g). The inclusion of the Family during the pre-
13 inquest process substantially enhances public perception that the Family is provided an
14 opportunity to equally digest the evidence in advance of the inquest in order to meaningfully
15 prepare written questions. There is no prejudice to the prosecutor's office in preparing for the
16 inquest process by disclosing such evidence.
17

18 As in the Cole inquest, the prosecutor will prepare witnesses to give testimony, by among
19 other things, reviewing witness statements and recorded interviews. However, Metro and the
20 prosecutor have refused to produce such items to allow witnesses that contacted the Family the
21 same opportunity to review previous statements. The Presiding Officer has the authority to order
22 these witness statements produced to "insure a fair and just hearing" for all witnesses not just
23 police witnesses. See, Clark County Code §2.12.080(m)(7). Notably, there is no statutory
24 authority preventing the Presiding Officer from disclosing such evidence to the Family at a pre-
25 inquest meeting. See, Clark County Code §2.12.080(h).
26

27 ////
28

1 C. The Family Should Be Permitted to Inspect the Hard Drive and Back Up
2 Drive.

3 The Family has formally requested Costco to preserve all video evidence concerning Erik
4 B. Scott inside and outside of Costco on July 10, 2010. In addition, Metro has failed to respond
5 to any of the Family's formal requests regarding the status of retrieving the video except for
6 stating that it was sent to a California lab. However, on August 23, 2010, Sheriff Gillespie
7 reported that no video existed of the shooting despite hundreds of cameras. Since the video is
8 the best evidence and Metro has had exclusive control over the original hard drive and back-up
9 drive for two (2) months, there is no prejudice in permitting the Erik B. Scott Family to inspect
10 the video equipment and related information provided by Costco to Metro regarding the video,
11 equipment and any "work orders" to "insure a fair and just hearing."

13 D. The Fact Finding Process Requires the Jury to Consider All Relevant
14 Evidence Not Filtered by The Prosecutor.

15 Even in the face of contradictory medical evidence and officer testimony demonstrating
16 that the shooting could not have occurred in the manner claimed by the officer, the foreperson of
17 the Cole jury acknowledged that the officer's testimony was taken in "high regard." *See*, LVRJ
18 Aug. 23, 2010 by Antonio Planas. However, the prosecutor chose not to inform the jury of a
19 pending Metro investigation involving this same officer apparently lying about a drug buy with a
20 person not even in the country. *See*, LVRJ Aug. 26, 2010 by Lawrence Mower.

22 There is no telling how this evidence or other undisclosed evidence would have impacted
23 the Cole jury which relied heavily on the officer's credibility. This case illustrates why there
24 must be checks and balances by the Presiding Officer and mutual disclosure of evidence to the
25 Family in advance of the hearing. Without such intervention, the prosecutors are expected to
26 repeat this one-sided process by filtering selected information to the jury without any scrutiny
27 from the Presiding Officer or Family.
28

1 The Presiding Officer must take these steps allowed under the current Code in order to
2 mitigate the Family's inability to lodge any evidentiary objections, to cross-examine witnesses or
3 refute any other allegations.

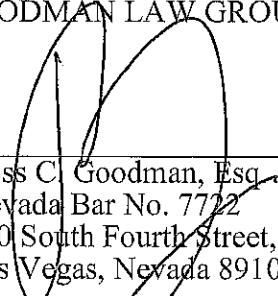
4
5 **III.**

6 **CONCLUSION**

7 The Code allows the Presiding Officer to take these requested measures in order to
8 "insure a fair and just hearing" to mitigate the one-sided process controlled by the prosecutors.
9 The failure to do so will virtually guarantee yet another justifiable or excusable homicide even if
10 the jury believes the officer's conduct was reckless.

11 Dated this 8th day of September, 2010.

12
13 GOODMAN LAW GROUP

14
15 By 
16 Ross C. Goodman, Esq.
17 Nevada Bar No. 7722
18 520 South Fourth Street, 2nd Floor
19 Las Vegas, Nevada 89101
20
21 *Attorneys for the Estate of*
22 *Erik B. Scott*
23
24
25
26
27
28