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April 24, 2018

**Expert Report on the November 8, 2012 Officer Involved Shooting by
Brandon Ternand**

Summary of Findings

It is my expert opinion that the preponderance of the evidence obtained during the investigation indicates that the use of deadly force by Chicago Police Officer Brandon Ternand on November 8, 2012 violated the Chicago Police Department's General Order 02-08-03. On the date in question, the use of deadly force against Dakota Bright resulting in his death was not justified because there was insufficient evidence for Officer Ternand to reasonably believe that the use of such force was necessary to prevent the death or great bodily injury to himself or to another person.

Materials, Evidence and Information Considered

During the course of my evaluation, I reviewed and considered the following materials:

- Complete Investigative File of Independent Police Review Authority/Civilian Office of Police Accountability (IPRA/COPA) relating to the investigation of the November 8, 2012 officer involved shooting by Brandon Ternand.
- All attachments to the IPRA/COPA investigative file, including recordings of interviews of witnesses and involved officer.
- Training history of Officer Ternand.
- CPD Training Materials on Field Patrol.
- October 3, 2017 non-concurrence letter authored by Chicago Police Superintendent Eddie T. Johnson.

- October 18, 2017 request for review to Chicago Police Board authored by COPA's Interim Chief Administrator Patricia Banks.

Background and Qualifications

A detailed account of my qualifications is attached to this report. However, to highlight my background and qualifications, my work in police practices began as a prosecutor for the Criminal Section of the Civil Rights Division in Washington, D.C., commencing in 1986. As a prosecutor, my core responsibility was to review scores of FBI excessive force investigations involving police officers throughout the country to determine whether the force, including deadly force, violated federal statutes relating to unreasonable or unnecessary force. For every deadly force incident that was found to be non-prosecutable, I prepared a letter analyzing the evidence and relevant statutes and forwarded it to the involved officer's agency head.

For those cases in which the evidence indicated a violation of the federal criminal civil rights statutes, I convened a federal grand jury investigation into the incident. Following the presentation, I recommended to the grand jury whether to return an indictment. While I reviewed numerous force incidents and found most to be within Constitutional standards, for those where the force was unreasonable, I prosecuted those cases in federal court. In my eight years with the Criminal Section of the Civil Rights Division, I prosecuted police officers in the states of New York, Georgia, Alabama, Florida, California, and Missouri. In Illinois, I successfully prosecuted a police officer with the East Saint Louis Police Department for using excessive force. Beginning in 1994, I continued my work investigating and prosecuting police misconduct in the Central District of California for the United States Attorney. Those investigations resulted in prosecutions of law enforcement officers in Los Angeles, San Bernardino, Santa Barbara, and Ventura Counties.

Beginning in 2001, I was appointed by the Los Angeles County Board of Supervisors to head up the newly formed Office of Independent Review (OIR), created to provide independent oversight for the Los Angeles County Sheriff's Department. As a result, OIR reviewed approximately forty deadly force incidents each year, resulting in a review of over 500 officer-involved shootings during my tenure. In each case, we were required to review the investigation and make independent recommendations whether the use of deadly force complied with Departmental policy and Constitutional standards.

Beginning in 2003, I was appointed by Judge Thelton Henderson as a Court expert in the use of force in *Madrid v. Gomez*, a case that successfully challenged the use of force standards of the California Department of Corrections and Rehabilitation. As a designated court expert, I was asked to work with the parties to revise and reform the Department's Use of Force policies.

I have also been asked to review numerous deadly force incidents for a number of police agencies, critiquing their investigations and deadly force review process. I was requested to conduct an internal investigation into the death of Kelly Thomas, an in-custody use of deadly

force case involving officers from the Fullerton Police Department that received national attention.

I have been asked by police agencies to review their use of force training protocols to determine the degree to which they effectively train police officers on Constitutional standards and their own policies. I have assisted in developing classroom and scenario-based training on use of force. In conducting that work, I have participated and attended numerous use of deadly force training sessions throughout the country.

I have provided state certified training to police officers on Constitutional standards for use of force, civil liability, and assisted the California Peace Officer Standards and Training on improving state-wide training regarding use of lethal force. I have been asked by the California Attorney General to serve as an expert and review use of force policies and training of police agencies to determine whether they were in compliance with use of force standards.

I have been qualified as an expert in use of force, internal investigations, Fourth Amendment, and police practices in various fora including federal court and police administrative hearings. In my over thirty years of experience, I have been personally asked to opine on the appropriateness of the use of deadly force in over two hundred officer-involved shootings for at least twenty police agencies.

The Objective Evidence Indicates the Use of Deadly force by Officer Ternand Against Dakota Bright Violated the Chicago Police Department's Use of Deadly Force Policy.

Factual Background

On November 8, 2012, CPD Officer Brandon Ternand and three additional CPD officers (Officers Razo, Bruno, and Sledge) responded to a burglary in progress call. Upon arrival, the officers found that there was no crime in progress and cleared the call. As the officers were leaving the location, Officers Ternand and Razo observed an individual, now known as Dakota Bright, with a gun in his hand. According to the officers, after noticing them Bright tucked the gun in his waistband area and began to flee.

As Bright ran from the location, Officers Ternand and Razo went into vehicle pursuit. When Bright headed into a vacant lot, Officer Ternand exited the vehicle and began to chase Bright on foot. As Officer Ternand ran through the lot, he encountered Officer Bruno on foot who was also in pursuit. The two officers split, with Officer Bruno running through the alley and Officer Ternand continuing to pursue Bright as he began to scale fences in the backyards of the 6700 block of Indiana Avenue.

Officer Ternand scaled one fence while Bright had scaled four fences. Officer Ternand later reported that after Bright cleared the fourth fence, Bright reached into his waistband and

turned toward the officer. Officer Ternand fired one round at Bright, striking him in the back of the head. Bright was pronounced dead at the scene. No weapons were found on Bright or in the immediate vicinity where he had fallen. Later, a firearm was recovered close to the early stages of the pursuit path.

Applicable Policy

Applicable policy regarding the use of deadly force at the time of this shooting incident can be found at the Chicago Police Department's (CPD) General Order 02-08-03, Section III, A¹:

[A] sworn member is justified in using force likely to cause death or great bodily harm only when he or she reasonably believes that such force is necessary:

1. to prevent death or great bodily harm to the sworn member or to another person, or;
2. to prevent an arrest from being defeated by resistance or escape and the sworn member reasonably believe that the person to be arrested;
 - a. has committed or has attempted to commit a forcible felony which involves the infliction, threatened infliction, or threatened use of physical force likely to cause death or great bodily harm;
 - b. is attempting to escape by use of a deadly weapon, or;
 - c. otherwise indicates that he or she will endanger human life or inflict great bodily harm unless arrested without delay.

CPD and other police agencies consider Fourth Amendment jurisprudence in determining whether an officer's use of deadly force was justified. The Supreme Court, in *Graham v. Connor*, held that the use of excessive force by a law enforcement officer violates the Fourth Amendment to the United States Constitution. The Court taught that in determining whether police used excessive force under the Fourth Amendment, the relevant inquiry is whether the officers' actions were objectively reasonable in light of the totality of the circumstances. In determining whether force used by a law enforcement officer is objectively reasonable, law enforcement agencies have borrowed from Supreme Court jurisprudence and look to the severity of the crime at issue², whether the suspect poses an immediate threat to the safety of

¹ Since the incident, CPD's policy regarding use of deadly force has been modified.

² In this case, Dakota Bright, the person being pursued was suspected, at most, for illegally possessing a firearm. This offense under Illinois law is either a class 3 felony or class A misdemeanor, a significant offense but not a serious or forcible felony or crime of violence. The fact that Bright fled could also have resulted in a charge for resisting or obstructing a peace officer, a class A misdemeanor. Moreover, while it is unclear whether the officers were able to clearly ascertain this at the time of their encounter (eyewitness Cheri Jackson in her 911 call

the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. Whether a particular use of force is reasonable is judged from the perspective of a reasonable office on the scene, rather than with the 20/20 vision of hindsight.

Analysis

As an initial matter, it is important to recognize that the applicable General Order permits the use of deadly force “only when” certain factors are met as set out in the directive. Thus, for any use of deadly force by a CPD officer to be within policy, the investigation must establish that the requisite factors were present. The determination of whether the use of deadly force was reasonable and within policy is adjudged by the totality of the circumstances.

Involved Officer’s Accounts of the Reason for Using Deadly Force

Detective Report: November 8, 2012

According to detective’s reports³, Officer Ternand told them on the date of the incident that he observed Bright climb over four fences and after climbing over the fourth one, Bright stumbled to the ground. Officer Ternand stated that Bright, while rising to his feet, looked back at him, reached to his waistband with his right arm, and began turning his body and right arm back in Ternand’s direction. Ternand stated that he believed that Bright was still armed with the handgun, and in fear for his life and that of other pursuing officers fired one shot at Bright.

Tactical Response Report: November 8, 2012

In his Tactical Response Report prepared on the date of the incident, Officer Ternand wrote:

R/MEMBER OBSERVED SUBJECT GRAB AT THIS WAISTBAND AND SPIN TO FACE THE MEMBER. R/MEMBER FEARING THE SUBJECT WAS STILL ARMED AND FEARING AN ATTACK CAUSING GREAT BODILY HARM DISCHARGED HIS WEAPON.

Deposition Testimony: October 9, 2013

In a civil deposition taken on October 9, 2013, Officer Ternand stated that after Bright scaled a third taller fence, he fell to the ground. Officer Ternand said that as Bright got up off the ground, he saw him adjust his waistband, “as if there were an item in there.”

referred to Bright as a “boy”), Dakota Bright was a juvenile and any charges emanating from the offense could well have been handled as a juvenile adjudication.

³ Unfortunately, detectives did not record their interview of Officer Ternand.

According to Ternand, after scaling the tall fence, Bright scaled two more smaller fences, and Bright:

kind of stumbles... at that point he looked back at me because I'm still telling him, "Stop, stop, police." He looks back... At that point when he looks back I could see his hands briefly.

Officer Ternand said Bright looked over his right shoulder. Officer Ternand stated: "Then he looks away and his hand goes into his waistband area." Officer Ternand said that he saw Bright look over his right shoulder and reach his right hand toward the left waistband area and said: "He then begins turning towards me and I fire one shot. I believed he was drawing his gun that I saw earlier."

IPRA Interview: July 24, 2014

In his first interview with IPRA on July 24, 2014, Officer Ternand stated that Bright went over another fence:

goes to his waistband again, and turns towards me, and I fired one shot, and fell to the ground.

Later in the interview, Ternand stated that Bright goes over another fence:

and readjusts but, hesitates. He stands up, hesitates, looks back, and then makes a, you know, movement towards his waistband. He gets kinda toward me, and then, at which point I fired a shot.

Second IPRA Interview: March 4, 2016

In a second interview with IPRA on March 4, 2016, Officer Ternand stated that at the moment where he discharged his firearm Bright:

was reaching into his waistband area and turning towards me in a, like an abrupt movement....

Officer Ternand later stated:

He was drawing [the weapon], and that's when I fired.

[...]

and he was like a, it was like a pause when he got over the fence that's when it was a very like his body was very like nervous. It was like I got the, it felt like as if he was very nervous.

Third IPRA Interview: July 20, 2016

In a third interview with IPRA on July 20, 2016, Officer Ternand stated that prior to his use of deadly force Bright:

reached, he reached into his waistband area, couldn't see his hand and his body turned towards me.

Officer Ternand demonstrated that he saw Bright reach with his right hand toward his left hip. Officer Ternand stated later in the interview that:

He's reaching toward his waistband area and his body is turning like in an abrupt motion.

Officer Ternand said when Bright turned towards him, he fired his weapon "almost simultaneously" Later, Officer Ternand said it was a "split second" between when he observed the reaching turning motion and his decision to fire. Officer Ternand said that when Bright turned towards him with his hand in his waistband, Bright was "lookin' back at me."

- I. **The weight of the evidence does not support Officer Ternand's statements that Dakota Bright reached into his waistband and turned towards him. The evidence rather supports a finding that Officer Ternand shot and killed Dakota Bright because he was getting away.**

The analysis begins with a necessary critical review of Officer Ternand's statements. An officer's version of events cannot be simply accepted without consideration of all other relevant evidence. In this case, as detailed below, ballistic, forensic, circumstantial, and eyewitness evidence does not support Officer Ternand's statement that Dakota Bright reached into his waistband and turned towards him causing him to be in fear for his life and justifying his use of deadly force. Rather, the evidence indicates that a winded and frustrated officer, seeing a suspect successfully maintaining or gaining distance on him, putting fence after fence between the two of them, used deadly force to prevent Dakota Bright from getting away.

- A. **Forensic evidence shows the bullet strike to have entered the back of Dakota Bright's head, dead center, straight back to front, supporting a finding that Bright was turned away from the officer at the time he decided to use deadly force.**

Certainly, the entrance of a bullet does not determinatively prove that Dakota Bright was facing away at the time that Officer Ternand decided to use deadly force. As Officer Ternand himself theorizes, Bright *could* have been facing Officer Ternand when the officer made the decision to fire and that by the time he actually fired, Bright *could* have turned away, resulting in the entrance wound to the back of the head. However, considering the probabilities and Officer Ternand's own statements that he decided to fire as soon as he saw

the turning movement, it is more likely than not that Dakota Bright had his back to the officer when Ternand decided to deploy deadly force.⁴

There is evidence that Bright glanced back at Officer Ternand during the foot pursuit⁵ and may have done so even moments prior to the use of deadly force. However, a fleeting glance by Bright to see where the officer was positioned is not what Officer Ternand said he observed, rather, he asserted that Dakota Bright stumbled, returned to his feet, reached to his waistband for a weapon, and then turned around to face him. Certainly, an observed glance back by Bright would not have been sufficient provocation to justify the use of deadly force by Officer Ternand. But the simple physics of the bullet trajectory do not support the more serious move of “aggression” described by the shooting officer.

B. The past actions and positioning of Bright and Officer Ternand at the time deadly force was used supports a finding that Officer Ternand shot Bright because he was getting away.

The foot pursuit engaged in by Officer Ternand indicates that at the time that deadly force was used Bright was approximately fifty feet between himself and the officer. At that time, Bright had successfully negotiated a guard rail and four fences with only one or two more fences to go in the block. Officer Ternand, on the other hand, had negotiated the guard rail and climbed one three-foot fence, but could not negotiate the higher six-foot fence that lay between him and Bright. Facing the barrier, the frustration of the moment, and the exertion and adrenalin from the foot pursuit, Officer Ternand likely fired one round to stop the suspect.

Uncontroverted physical and testimonial evidence supports this version of events. Officer Ternand stated that Bright had just negotiated the fourth fence immediately prior to the use of deadly force. There is evidence that Officer Ternand had just tried and had been unable to scale the tallest fence in the sequence of fences in the back yards of Indiana Avenue. This account is set out by eyewitness Cheri Jackson:

the boy started jumping gates. Then I seen the officer; he was chasin' after him. He tried to jump the gate but he couldn't. He got stuck on the gate. And then when he got unstuck, I heard shots fired. The boy didn't come up.

⁴ It is also important for this analysis to note that on several of the accounts provided by Officer Ternand, he indicated that he fired as Bright began to turn toward him: “then begins turning towards me and I fire one shot.” This indicates that in order for the bullet to have struck Bright in the back of his head, Bright would have had to stop his turn and then turn back before the bullet struck him.

⁵ As set out above, Officer Ternand said that Bright was “lookin back” at him during the foot pursuit. Cheri Jackson similarly stated that when Bright was scaling fences, “he [was] lookin' back” towards Officer Ternand.

Jackson said that she observed the police officer's arm appear to get stuck on the fence when he attempted to climb over it, adding that the officer never made it over the fence. Jackson was likely relating Officer Ternand's unsuccessful attempt to scale the second and tallest six-foot fence, consistent with his positioning at the time that he shot and providing further explanation for the likelihood of mounting frustration due to his inability to continue his pursuit of Mr. Bright.⁶

For Officer Ternand, the chase was over⁷ and he watched as Bright successfully eluded him, the second armed suspect to do so in a few months. The evidence indicates that a likely exerted and frustrated Officer Ternand then decided to use deadly force to prevent Bright from getting away.

C. The manner and mode of the use of deadly force in this case do not support a conclusion that Officer Ternand fired because he was in reasonable fear for his life.

Close analysis of the evidence of the manner and execution of this shooting incident is not indicative of an officer who reasonably felt in fear for his life:

- Considerations of fire discipline do not support Officer Ternand's account of events. Officer Ternand fired only one round at Dakota Bright. In this expert's experience supported by the sparse data available⁸, when officers are reasonably in fear for their lives, they react instinctively to this fear and fire at least several rounds until the threat is believed to have been eliminated. The firing of one round is more indicative of a special weapons team deployment that is designed to interrupt a suspect's aggression

⁶ While as discussed elsewhere, Ms. Jackson is subject to impeachment for her repeated denials that she was the person who called 911, she consistently recounted that the officer tried but was unable to scale a fence. Moreover, there is no reason for Jackson to fabricate, shade, or color this recollection. Unfortunately, in neither of the two CPD detective interviews, the civil deposition, nor the three IPRA interviews was Officer Ternand asked to detail his pursuit through the backyards of Indiana Avenue and whether he had unsuccessfully tried to traverse the six-foot fence prior to his use of deadly force.

⁷ Jackson stated: "If he didn't get shot, he was gonna get away." CPD suggests agreement with COPA's conclusion that at the time of the shooting, Bright had a high likelihood of escaping.

⁸ The Chicago Tribune collected officer-involved shooting data from CPD and reported that between 2010-15, at least 2,623 bullets were fired by police in 435 shootings, an average of 6.02 rounds fired per shooting. NYPD reported that a review of its officer-involved shootings between 1979 and 2001 found that each involved officer averaged 2.86 rounds fired and in 2014-15, averaged 3.45 rounds fired. The District of Columbia Metropolitan Police reported nearly 500 firearms "incidents" from 1994-98 in which they fired over 2,500 rounds.

upon another or an accidental discharge, neither scenario which is suggested here. The firing of only one round is not consistent with an officer who believes his life is in danger and is reacting to a sudden threat.

- On the date of the incident, Officer Ternand completed his Tactical Response Report and indicated that he used his sights in deploying deadly force. Again, the experience of this expert is that when officers are suddenly faced with an act of aggression, as what Officer Ternand avers occurred in this case, the officer usually feels there is insufficient time to “sight” the target and resorts to a point and shoot technique.
- In this expert’s experience and a review of available data, officers who are suddenly faced with a deadly threat, usually fire rounds that do not strike the suspect.⁹ The lack of non-hit rounds in this case and one dead center round to the back of the head are more indicative of a shooting pattern by an officer who has the time to use sights and more effectively dispatch the subject, rather than an officer who is reacting to a sudden movement perceived to be threatening.
- In the civil deposition, Officer Ternand was asked about a prior officer-involved shooting that occurred a few months before the Bright shooting. As Officer Ternand described the event, an individual pointed a gun at him, at which time he fired 3-4 rounds at the suspect, with none of the rounds striking him. According to Officer Ternand, the man ran, he pursued, but the man was able to elude arrest. This reaction, number of rounds, and hit ratio, are more consistent with officers’ responses when faced with a deadly threat situation.

D. The “reaching and turning” allegedly observed by Officer Ternand are illogical considering the situation presented to Dakota Bright.

While the death of Dakota Bright makes him unavailable as a witness, his actions described by Officer Ternand immediately prior to the incident are illogical. While in the experience of this expert, sometimes individuals do irrational acts that predicate the use of deadly force, the facts collected in this incident do not support the reaching and turning actions alleged by Officer Ternand for the following reasons:

- At the time of the incident, Dakota Bright was unarmed and presented no actual threat to Officer Ternand. While the officer may not have known this, Dakota Bright certainly did. It would make no sense for Dakota Bright, who was scaling fences,

⁹ NYPD reported that between 1990-2000, the hit ratio of its officer-involved shootings averaged 15%. The Miami Metro-Dade Police Department reported that between 1990-2001, its police officers fired about 1,300 bullets at suspects, and missed more than 1,100 times, a 15.4% hit rate. The Chicago Tribune reported that a review of officer-involved shooting data found that between 2010-15, there were 435 shootings with 200 of those shootings resulting in no persons being hit.

increasing or maintaining distance, and successfully eluding Officer Ternand, to reach to his waistband for a nonexistent firearm and then turn to face the officer, prompting a deadly force response.

- All other evidence from the incident indicates that Dakota Bright's intent was to elude the police not aggress them. When he was observed with a firearm¹⁰, he immediately secreted it from the officers' view and ran away. When he was able to briefly run out of sight of the pursuing officers, Bright tossed the firearm and continued to attempt to escape. While the officers were not aware, Bright likely knew of the existing warrant for his arrest and likely knew that he had been observed by the officers illegally possessing a firearm.
- While sometimes unarmed individuals being confronted by police reach for nonexistent weapons, provoking a deadly force response, usually those individuals have a prior history of mental illness and/or are found to be under the influence of drugs or alcohol. The investigation elucidated no evidence of prior mental illness regarding Dakota Bright and toxicological results proved negative.
- If Bright wanted to intimidate the pursuing officer, he could have done so at less risk to himself when the officer was scaling the first fence and did not have his firearm at the ready. It is illogical for Bright to decide to aggress the officer immediately after he had just successfully negotiated his fourth fence and was increasing or maintaining distance between himself and the officer.

E. The sole additional eyewitness account does not support Officer Ternand's claim that Bright reached to his waistband and turned prior to the use of deadly force.

Besides Officer Ternand, the sole surviving eyewitness to the shooting was Cheris Jackson who called "911" immediately after the incident. Certainly, Ms. Jackson's credibility is subject to impeachment for her repeated denials that she was the "911" caller. However, the "pure statement" of her 911 call directly contradicts Officer Ternand's version that Dakota Bright reached for his waistband and turned toward him immediately prior to the use of deadly force:

[S]ome boy was just runnin' from the police officers ... and ... while he was jumpin' the gate, one of the officers just shot him in the back.

Additional evidence collected by CPD's investigation also suggests possible bases for Ms. Jackson to be potentially biased in favor of Mr. Bright and against the police.

¹⁰ This part of the analysis relies on the very likely assumption that Officers Ternand and Razo correctly perceived Bright to be in possession of a firearm at the beginning of the encounter.

This expert did consider the various areas of impeachment regarding Ms. Jackson's statements in evaluating this incident as well as the potential for biases articulated by CPD. I conclude, nonetheless, that her version of the incident, as set out in the 911 call, when there was little time and less motivation to fabricate, stands out as more consistent with the physical evidence than the version put forward by Officer Ternand.¹¹

F. Officer Ternand had reasons to articulate movement by Dakota Bright that was not actually observed.

The credibility of all witnesses should be adjudged by whether their version of events is consistent with other evidence and any motivation to put forward a false narrative. Police officer statements should not be excluded from this exercise. Clearly, when he was interviewed, Officer Ternand had numerous reasons to articulate or embellish threatening movements by Dakota Bright; he had just used deadly force on a fleeing individual and recognized the need to justify the shooting.¹² Officer Ternand appreciated that he would be the subject of a criminal and internal investigation where an unjustified shooting finding could result in the loss of his employ or worse. It would have been in Officer Ternand's self-interest to create or embellish the "reach" for the waistband and the "turn" attributed to Bright that would justify the officer's use of deadly force, even if he had not done so.¹³ The existence of self-interest by a subject officer should not be discounted or ignored.

While we expect police officers to honor their oath and perform their functions within Constitutional parameters, and while most do just that, we have been disappointed by those few who may have fallen victim to the frailties of human fallibility, including recent notorious cases involving CPD officers. Moreover, we have seen cases where involved officers and witness officers have allegedly fabricated or embellished post-shooting accounts to justify the use of deadly force. Based on the facts obtained in this case, as detailed above and the critical analysis therefrom, it is this writer's opinion that on November 8, 2012, in the instant realization of what he had done, the resulting circumstances and implications, in the moments after the shooting, there is a greater likelihood than not that Officer Ternand articulated or embellished movements by Dakota Bright that he did not actually observe. It is probable that Officer Ternand more likely than not transformed, at most, a possible glance back by Bright into

¹¹ Subsequent statements made by Jackson also contradict Officer Ternand's version of events, e.g., "It wasn't nothin' on his waist or nothin' or he reachin' for nothin'. Cause he was runnin' so fast."

¹² Officer Ternand remained at the crime scene while emergency medical personnel pronounced Bright as deceased. By becoming aware of this fact, Officer Ternand knew the grave consequences of his act and that Bright would not be available to provide his account of the incident.

¹³ On at least two occasions, Officer Ternand described the November 8, 2012 incident as a "blur".

an over the torso waistband reach and turn toward the officer in an effort to justify the shooting.

II. Even if Officer Ternand observed Bright make a movement that he interpreted as reaching into his waistband and turning towards him, the decision to use deadly force was unreasonable and predicated, in large part, as a result of his own actions in unsafely chasing a believed to be armed suspect.

The uncontroverted evidence is that once Bright was observed to be carrying a firearm, the four responding officers pursued him, first in their vehicles and then two of them chased him on foot.¹⁴ Foot pursuits are inherently dangerous maneuvers, putting officers at high risk. Chasing a believed to be armed suspect dramatically increases the risk to the officer and many police agencies disallow the tactic, training officers to instead keep a safe distance and follow to contain, request backup, develop a perimeter and use safer apprehension techniques.

What makes chasing an armed suspect particularly dangerous is that he has the advantage of determining his path and is in a tactically superior position whereby he can stop, turn, and produce a weapon while the pursuing officer has little opportunity to react. The officer who is chasing a suspect has the option of running with his firearm drawn, increasing the likelihood of an accidental discharge or keeping his gun holstered which necessarily increases his reaction time in transitioning to deadly force, both options being sub-optimal. In sum, engaging in a foot pursuit with a believed to be armed suspect exponentially increases the danger to the officer and is not a safe tactic.¹⁵

Moreover, the physical mechanics of a foot pursuit also increase the risk to the officer. A suspect that is wishing to elude capture will run, at least initially, at full speed. If an officer attempts to pursue at that pace, he will soon become winded and fatigued. The exertion needed by an officer to close the gap and apprehend the suspect will be also be enhanced by the weight of the extra gear that he is required to carry; the ballistic vest and items on it combined with the firearm add approximately ten additional pounds to the weight the officer must carry with him. Finally, the officer must recognize that if he is able to successfully catch up to the suspect that the energy expended may compromise his ability to transition to defensive tactics and successfully bring a resisting armed suspect into custody.

¹⁴ This writer concludes that, based on the evidence obtained during the investigation, even though not factually true, Officer Ternand had a reasonable belief that Dakota Bright was in possession of a firearm at the time he was pursuing him through the backyards of the Indiana Avenue residences. Of course this belief, without more, would not be sufficient to justify the use of deadly force.

¹⁵ The dispatcher immediately recognized the potential for danger when she was informed that the suspect may have been armed, advising officers to “use caution”. Unfortunately, Officer Ternand did not heed this advice.

In this case, the foot pursuit engaged in by Officer Ternand was particularly dangerous in the following ways:

- Officer Razo and Officer Ternand initially pursued Dakota Bright in their police car but at some point, Officer Ternand split from his partner to pursue on foot. There is no evidence that during the time that Officers Ternand and Razo were following in the car that any plan was communicated nor was one apparently communicated at the time of the partner split. Officers are trained that during tactical operations, communication between officers is critical.¹⁶
- As a result, Officer Razo is essentially not involved in the apprehension after Officer Ternand and he split up. Partner splitting during foot pursuits increases the risk to the now lone foot officer and is universally tactically discouraged and in some law enforcement agencies prohibited.
- By sheer coincidence of Bright's escape path, Officer Ternand and Officer Bruno found themselves in foot pursuit together for a very brief time but then both again intentionally split with Officer Ternand following Bright into the backyards on Indiana Avenue and Officer Bruno pursuing in the alley. This second partner split increased the risk to both officers, particularly Officer Ternand since he was left alone and then chose to pursue Bright through backyards replete with barriers.
- After Bright jumped the barriers, Officer Ternand tried to follow suit, making it over a guardrail and a fence. The scaling of the fence was especially dangerous, because:
 - As Officer Ternand admitted, in order to scale the fence that he did climb, he was required to holster his weapon. This situation left him particularly vulnerable with his arms engaged, off of the ground, at a heightened position, and with no ability to facilely draw his weapon or otherwise defend himself.
 - Scaling fences has the increased opportunity to cause the officer to get hung up, trip, or fall, leaving an officer in a vulnerable position and subject to aggression by the armed subject.¹⁷

¹⁶ To his credit, Officer Ternand did radio to his partners in the other police unit when he observed Bright changing course and appearing to be heading in their direction.

¹⁷ As noted above, eyewitness Jackson said that she saw the police officer fall, as it appeared that he tripped trying to get over the fence, that he got his arm hung up on the fence, and that he was not unable to successfully scale it.

- Scaling fences requires an extraordinary exertion of energy, leaving an officer, already weighed down with extra equipment, with a high potential for high exertion.

Winded officers who have placed themselves in situations of peril will be more prone to have a heightened level of fear as a result of their own actions. As a result, virtually any movement the person being pursued may make can be interpreted as an act of aggression, even ambiguous ones that may be innocuous or even attempts at compliance.¹⁸

In this case, Officer Ternand indicated that several times during the chase he commanded Bright to “Stop” and “Drop the gun”. In fact, according to Ternand, what predicated the use of deadly force was when Bright stopped, which is precisely what he had been instructed to do. Moreover, in order to comply with the officer’s order to drop the gun, Bright would have had to reach to his waistband area to do so.

It is also critical to note that, according to Officer Ternand (and the other three responding officers), Bright was observed at other times during the foot pursuit holding his left side and reaching to his waistband. In fact, as the vehicle pursuit began, Officer Razo broadcast that the person they were pursuing was holding his left side. Officer Ternand said that Bright was holding his side and going to or adjusting his waistband throughout the entire pursuit. This activity, however, when observed earlier in the pursuit sequence, did not compel Officer Ternand or any other officer to deploy deadly force.¹⁹ It was only after Bright had negotiated a fourth fence that, according to Ternand, the stop, reach to his waistband, and subsequent turn became a reason to use deadly force. At this point, Officer Ternand was alone and likely winded as a result of his decision to pursue Bright through the fenced backyards; those unsafe decisions escalated the level of threat perceived by the officer even though the actual threat presented was markedly less due in most respects to the significant distance that Bright had achieved between himself and Officer Ternand.

More likely, any turning movement that Bright may have made would have been undertaken to look back at Officer Ternand to see how much distance and how many fences he had put between him and the officer. If Bright briefly stumbled upon clearing the fourth fence, as reported by Officer Ternand, it would be sensible for Bright to glance back at the officer as he gathered himself. Clearly, any perceived move to the waistband was likely not intended on

¹⁸ While the foot pursuit was approximately 24 seconds long, if Bright and Officer Ternand were running at full tilt, as reported by the officers, that length of time combined with scaling of a fence, is sufficient for an officer to become winded and begin to show signs of fatigue.

¹⁹ During the civil deposition, Officer Ternand was asked why he did not fire his weapon after Bright negotiated a fence and was observed to be adjusting his waistband, Ternand said that he did not believe that Bright was attempting to draw his weapon at that time.

Bright's part to be an act of aggression since there was no firearm to produce. However, because Officer Ternand had continually compromised his safety by placing himself in a position of vulnerability during the foot pursuit compounded with exertion from the chase and scaling of the fence, it caused his perception of threat that Bright presented to be unduly heightened. The unsafe pursuit and necessary exertion from it decreased Officer Ternand's ability to make a sound assessment of threat so that virtually any movement by Bright could have been perceived as an act of aggression resulting in the use of deadly force.

This heightened susceptibility to *any* movement by Bright negated Officer Ternand's ability to consider other ways the officer might respond to any glance back by Bright or seeing Bright's hand near his waist. For example, Officer Ternand did not apparently consider whether the distance (approximately fifty feet) and barriers that Bright had been able to place between the two of them provided other tactical options to the officer.²⁰ Of particular note was the presence of a large tree almost adjacent to Officer Ternand at the time of the shooting; there was no apparent consideration by the officer to move to available cover when Bright looked back or otherwise made a movement that the officer considered threatening.

Even if the movement observed by Bright occurred precisely as Officer Ternand reported it (stumble, return to feet, across the torso reach for waistband and spin), the movement was sufficiently ambiguous to question whether the "objectively reasonable" decision by an officer would be to immediately deploy deadly force for movements which are just as easily subject to an innocuous interpretation. As detailed above, there was considerable distance between Bright and Officer Ternand at the point this observation was made. More significantly, a large tree was immediately adjacent to Officer Ternand that he could have used for cover as he continued to assess Bright's movements, instead of remaining in the open and sighting the target with his firearm. And finally, and most importantly, it was Officer Ternand's unsafe tactical decisions, inconsistent with the actions of a reasonable and prudent officer, that placed him in a position of vulnerability where any observed movement by Bright was interpreted as aggression.²¹ This writer opines that based on these factors, even if Dakota Bright reached to

²⁰ Distance between an armed suspect and a police officer is critical from an officer safety perspective and significantly reduces the threat to an officer. NYPD reported that between 1854 and 1979, only one of 242 officer firearm deaths during that time occurred at a distance greater than 25 feet. NYPD reported that between 1994-2000, only 3% of its officer-involved shootings occurred at a distance of greater than 45 feet.

²¹ CPD asserts that the import of any finding that Officer Ternand violated its deadly force policy would send a message that an officer must wait for an individual armed with a firearm to actually shoot the firearm at the officer before using deadly force, placing the officer's lives in jeopardy. In reality, the message in this case should be one that would result in increased safety to officers; namely to transition away from a "catch at all costs" mentality. Officer Ternand's tactically inadvisable and unsafe decisions, as detailed above, jeopardized his safety as well as Mr. Bright's, significantly increasing the risk that one or both individuals would be

his waistband and turned towards the pursuing officer, the decision by Officer Ternand to transition immediately to deadly force under the totality of circumstances presented to him on November 8, 2012 was not reasonable.²²

III. The Evidence Is Insufficient to Justify Officer Ternand’s Use of Deadly Force Under the Second Prong of CPD’s Use of Deadly Force Policy.

As set out above, at the time of this incident, the second prong of CPD’s applicable policy provided that:

[A] sworn member is justified in using force likely to cause death or great bodily harm only when he or she reasonably believes that such force is necessary:

[...]

2. to prevent an arrest from being defeated by resistance or escape and the sworn member reasonably believe that the person to be arrested;
 - a. has committed or has attempted to commit a forcible felony which involves the infliction, threatened infliction, or threatened use of physical force likely to cause death or great bodily harm;
 - b. is attempting to escape by use of a deadly weapon, or;
 - c. otherwise indicates that he or she will endanger human life or inflict great bodily harm unless arrested without delay.

For the reasons detailed below, the facts of this incident likewise do not provide sufficient justification for Officer Ternand’s use of deadly force under the second prong of the applicable policy.

A. There was no evidence that Bright had committed or attempted to commit a forcible felony.

Sec. 2-8 of Chapter 720 in the Illinois Compiled Statutes defines forcible felony as “treason, first degree murder, second degree murder, predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual assault, robbery, burglary, residential burglary, aggravated arson, arson, aggravated kidnaping, kidnaping, aggravated battery resulting in great

hurt or killed. The takeaway from this case should be that officers should use safe and proven apprehension techniques that do not place either officer or suspect at undue risk.

²² This expert opinion is limited to the unique facts and circumstances of this case and is not intended to rule out situations in which the use of deadly force would be justified when a suspect was observed reaching for his waistband and turning towards an officer.

bodily harm or permanent disability or disfigurement and any other felony which involves the use or threat of physical force or violence against any individual.”

There was no evidence that on the date of the incident that Dakota Bright had committed or attempted to commit a forcible felony.

B. There was no evidence that Bright was attempting to escape by use of a deadly weapon.

During his flight from the officers, there was no evidence that Bright attempted to use a deadly weapon to effectuate his escape. In fact, any gun that Bright may have possessed was tossed by Bright himself early on in his flight. While Officer Ternand stated that he believed that Bright was drawing a firearm to aggress him at the end of the incident, for the reasons stated above and under the same analysis, that belief was not reasonable.²³

C. There was no evidence that indicates Bright intended to endanger human life or inflict great bodily harm unless arrested without delay.

None of the responding officers, including Officer Ternand, advanced any evidence or indicated that they believed that Bright intended to endanger human life or inflict bodily harm while they were in pursuit of him. While Officer Ternand stated that he believed that Bright was drawing a firearm to aggress him at the end of the incident, for the reasons stated above and under the same analysis, that belief was not reasonable.

²³ CPD’s Case Supplementary Report indicates that Bright’s actions just prior to the shooting as described by Officer Ternand provided justification under both prongs of the deadly force policy. However, for the reasons described in this Report, there was insufficient justification under either prong of CPD’s use of deadly force policy for Officer Ternand to deploy deadly force when he did.