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**REVISED EXPERT'S REPORT**

**December 26, 2015 Officer Involved Shooting by Robert Rialmo**

**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 Robert Rialmo on December 26, 2015 violated the Chicago Police Department's General Order 02-08-03. On the date in question, the use of deadly force resulting in the death of Bettie Jones was not justified because there was insufficient evidence for Officer Rialmo to reasonably believe that the use of such force and the manner in which it was deployed was necessary to prevent the death or great bodily injury to himself or to another person.

In addition, Officer Rialmo's conduct on the date in question established that he was inattentive to his duties as a Chicago Police Officer, which include protecting the lives and safety of Chicago citizens, and that he was incompetent or inefficient in the performance of his duty. Competent performance would not have resulted in the death of an innocent bystander.

**Materials, Evidence and Information Considered**

As part 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 December 26, 2015 officer involved shooting by Robert Rialmo.

- All attachments to the IPRA/COPA investigative file, including recordings of interviews of witnesses and involved officer.
- Training history of Officer Rialmo.
- Interview with CPD's Rangemaster, Sgt. John F. Pardell, Education and Training Division, Firearms Training Unit.
- CPD Firearms Instruction Manual
- Non-concurrence letter authored by Chicago Police Superintendent Eddie T. Johnson.
- Request for review to Chicago Police Board authored by COPA's Interim Chief Administrator Patricia Banks.
- Deposition transcripts in *LeGrier, et al v. City of Chicago*, civil proceedings emanating from the officer-involved shooting.
- Transcripts of *LeGrier v. City of Chicago*, the trial emanating from the officer-involved shooting.
- Rules and Regulations of the Chicago Police Department

## **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 the great majority 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 was appointed as a judicial monitor to oversee use of police reforms for a School District Police Department in Stockton, California.

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, including a prior administrative hearing involving a use of deadly force by a Chicago police officer. 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 Rialmo Resulting in the Death of Bettie Jones Violated the Chicago Police Department's Use of Deadly Force Policy.**

***Factual Background***

On December 26, 2015, CPD Officers Robert Rialmo and LaPalermo were dispatched to a domestic violence call for service. The officers received information that a baseball bat may have been involved. The officers parked outside the front of the two-story residence. Officer Rialmo, closely followed by his partner, rang the bell. Bettie Jones opened the door and informed the officers that the source of the call was upstairs.

At that point, Quintonio LeGrier came down from the inside stairwell, carrying a baseball bat. The officers moved backwards. Officer Rialmo drew his firearm and fired multiple shots at LeGrier striking him with numerous rounds. Jones was also struck by one of the rounds fired by Rialmo. Neither LeGrier nor Jones survived their wounds.

## ***Applicable Policies and Standards***

### **Use of Deadly Force**

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 Orders 03-02 and 03-02-03<sup>1</sup>:

#### **GO-03-02**

[...]

#### **II. GENERAL INFORMATION**

Chapter 720, Article 5, Section 7-5, of the Illinois Compiled Statutes provides in part:

“A peace officer ... need not retreat or desist from efforts to make a lawful arrest Because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he reasonably believes to be necessary to effect the arrest and of any force which he reasonably believes to be necessary to defend himself or another from bodily harm while making the arrest.”

[...]

**III. B.** Department members will use an amount of force reasonably necessary based on the totality of the circumstances to perform a lawful task, effect an arrest, overcome resistance, control a subject, or protect themselves or others from injury.

**C.** As set forth by the United States Supreme Court in *Graham v. Connor*, 490 U.S. 386 (1989), the central inquiry in every use of force is whether the amount of force used

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

by the officer was objectively reasonable in light of the particular circumstances faced by the officer.

1. Reasonableness is not capable of precise definition or mechanical application. Circumstances that may govern the reasonableness of using a particular force option include but are not limited to:
  - a. the severity of the crime at issue.
  - b. whether the subject poses an immediate threat to the safety of officers or others.
  - c. whether the subject is actively resisting arrest or attempting to evade arrest by flight.
2. The reasonableness of a particular use of force will be judged under the totality of the circumstances viewed from the perspective of a reasonable officer on the scene.

### **G03-02-03**

[...]

- II. A. 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.

### **Other Applicable Policies and Standards**

I.A.1 The motto “We Serve and Protect” states the essential purpose of the Chicago Police Department. The Department serves the citizens of the City of Chicago by performing the law enforcement function in a professional manner, and it is to these citizens that it is ultimately responsible. The Department protects the right of all persons within its jurisdiction to be free from criminal attack, to be secure in their possessions and to live in peace.

I.A.3.a. "As a law enforcement officer, my fundamental duty is to serve mankind; to safeguard lives and property, to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder and to respect the Constitutional rights of all men to liberty, equality and justice."

## II. REGULATIONS ESTABLISHING THE GOALS OF THE DEPARTMENT

To implement the foregoing regulations of the Chicago Police Department the following goals are hereby established:

- A. Protection of life, limb and property in the City of Chicago.

## III. REGULATIONS ESTABLISHING THE GOALS OF DEPARTMENT MEMBERS

The goals of Department members which embody and implement the policy of the Department are:

- B. Excellent in the performance of duty.

## ARTICLE V. RULES OF CONDUCT

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.

Rule 6: Disobedience of an order or directive, whether written or oral.

Rule 10: Inattention to duty.

Rule 11: Incompetency or inefficiency in the performance of duty.

Rule 38: Unlawful or unnecessary use or display of a weapon.

## ***Factual 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***

#### **Officer Rialmo's Battery Report: December 26, 2015**

In the Battery Report prepared on the date of the incident, Officer Rialmo wrote:

Subject attacked officers by swinging an aluminum baseball bat.

**Officer Rialmo's Tactical Response Report: December 26, 2015**

In his Tactical Response Report (TRR) prepared on the date of the incident, Officer Rialmo wrote:

SUBJECT ATTACKED RO'S BY ATTEMPTING TO STRIKE RO'S WITH THE BASEBALL BAT.

Rialmo indicated in the TRR that he fired eight<sup>2</sup> rounds and that he did not use the sights of his weapon when firing. In response to the entry asking the reporter to DESCRIBE PROTECTIVE COVER USED, Officer Rialmo wrote "DNA".

**Chicago Police Department's Detective Report (First Interview of Officer Rialmo):**

*December 26, 2015*

According to the CPD detective report, Officer Rialmo related that he and Officer LaPalermo responded to a disturbance. According to Rialmo, the PDT notes indicated that the offender was armed with a baseball bat. Rialmo said that the officers approached the front door with himself in front and LaPalermo behind and to the right. Rialmo rang the doorbell and a female, later identified as Bettie Jones, opened the front door. According to Rialmo's account, Jones said: "It's upstairs", and pointed to the upstairs apartment. Rialmo said that Jones turned to walk back into her apartment at which time an individual later identified as Quintonio LeGrier pulled the front door all the way open.

Rialmo reported that Legrier had an aluminum baseball bat in his hands which were raised above his head. Rialmo said he started to back up as LeGrier started onto the front porch. Rialmo stated that he drew his firearm while giving verbal commands for LeGrier to drop the bat. Rialmo said that in fear of his life he fired his weapon three to four times at LeGrier. Rialmo reported that LeGrier then grabbed his chest and stated: "Oh fuck, fuck, fuck", turned to his right and collapsed into the vestibule. According to Rialmo's account, he was stepping backwards down the stairs while discharging his firearm and stopped firing at the bottom of the stairs on the walkway leading to the house. Rialmo said he stopped shooting when LeGrier collapsed and the threat was gone.

Rialmo said he returned to the porch and could see LeGrier lying face down on the floor in the vestibule and Jones on her back with her legs in the vestibule and her body inside the apartment. Rialmo said he called for backup and two ambulances. Rialmo said he saw a female later identified as Latisha Jones (the daughter of Bettie Jones) and a male later identified as William Wells standing in the rear of the first-floor hallway. Rialmo said that he first told

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<sup>2</sup> Uncertainty remains regarding whether Officer Rialmo fired seven or eight shots during the incident.

Latisha Jones to stay back but then told her to keep her mother awake by talking to her. According to Rialmo, Latisha Jones said that her mother still had a pulse and asked him to call for an ambulance.

Rialmo said he again called on the radio for backup and ambulances. Rialmo said he observed the lower body, feet and knees of a man later identified as Antonio LeGrier, the father of Quintonio LeGrier. Rialmo said he yelled: "Dad, what the fuck" and heard Antonio LeGrier reply: "Hey. You did what you had to do", several times. Antonio LeGrier then came down to the vestibule and told Rialmo that they needed to hurry with the ambulance. Rialmo said that as assisting units arrived, he left the front porch and walked out to the street.

#### ***December 28, 2015 Statement***

According to the Detective's report, Rialmo was re-interviewed by CPD on this date to "verify the original interviews and clarify details".

During this interview, Rialmo said that after Jones said: "its upstairs" and pointed to the upstairs apartment, Rialmo, who was standing in the threshold of the front door heard someone charging down the stairs from the second floor. Rialmo said at this time, LeGrier opened the door leading from the second-floor apartment and stepped into the vestibule. Rialmo reported that he started backing out the door when LeGrier stepped in between him and Jones.

Rialmo said that LeGrier opened the front door and had an aluminum baseball bat in his hands which were raised above his head. Rialmo said he started to back up as LeGrier started onto the front porch. Rialmo stated that LeGrier swung the bat at him with an overhand downward swing and then a half backwards swing.

Rialmo said that he drew his firearm while giving verbal commands to LeGrier to drop the bat. Rialmo stated that he was in fear of his life and fired his weapon three to four times at LeGrier. Rialmo said that after LeGrier stepped in between himself and Jones, he did not see Jones as his attention was on LeGrier.

#### ***Officer Rialmo's Interview with Independent Police Review Authority: June 29, 2016***

In his interview with the Independent Police Review Authority, Rialmo said he and his partner received the "domestic disturbance" call over the radio, but as they were getting out of the police vehicle, his partner received information that the individual might have a bat. Rialmo estimated that it took 10-15 minutes to arrive at the location. Rialmo said that they had their emergency lights activated.

Rialmo said when he and LaPalermo arrived at the location, that he walked up to the entrance, knocked on the door and rang the doorbell. Rialmo said that Jones partially opened the door, rested her head against it, pointed up to the top floor and told him "it's upstairs". Rialmo said

he thanked her and Jones turned around to walk back into her apartment. Rialmo said that he might have told Jones to go back into her apartment but did not specifically recall if he had done so. Later in the interview, Rialmo said that as he stepped into the vestibule, Jones was also standing in the vestibule in front of her door and that she never went back into her apartment.

Rialmo said that as he took a step into the vestibule, he heard someone "charging down" from the second floor with feet pounding. Rialmo said there was a door leading to the upstairs apartment that was closed. Rialmo said that the next thing he knew, both that door and the front door flew open and he saw a "male black with a baseball bat raised above his head." Rialmo said that once he heard the noise from the second floor, he stopped in the doorframe of the building and never pushed the main door open. Rialmo said that when he first saw the black male, Officer LaPalermo, who was now behind him, grabbed his shoulder and screamed "watch out."

Rialmo said that he stepped back to create distance and directed the man to drop the bat. Rialmo stated that the male, later identified as Quintonio LeGrier, swung the bat and Rialmo again gave him direction to drop the bat but LeGrier did not comply. Rialmo said LeGrier approached him at the top of the stairs while he was backing down the stairs.

Rialmo said that LeGrier had the bat over his head and moved it "like a right-hand swing downwards." Rialmo indicated that when LeGrier first swung the bat, he was in the threshold that leads from the vestibule to the porch. Rialmo related that he backed off the porch onto the top step and moved his head and shoulder away to create distance. Rialmo said that after making the full right-handed swing, LeGrier executed a backwards swing to "cock back again" that Rialmo also described as a "defensive swing".

Rialmo said that when LeGrier executed the second swing, LeGrier was on the top step and Rialmo was on the bottom of the steps. Rialmo said that during the encounter, he continuously instructed LeGrier to drop the bat and estimated he gave the command ten times.

Rialmo said he then drew his weapon and fired. He said at the time he fired, he was on the walkway and LeGrier was on the top step, about three feet from Rialmo. Rialmo said he started firing at hip level and continued firing as he brought his gun to chest level. Rialmo estimated that the first three rounds may have been at hip level with the last two being at chest level. Rialmo stated that he continued backing up as he was firing and estimated that he took three backwards steps while delivering the rounds. Rialmo said the closest he was to LeGrier was two to three feet in the vestibule area and the furthest he was from him was eight to ten feet at the end of the shooting sequence.

Rialmo said that after he was struck, LeGrier took a step, he grabbed his chest, screamed "oh, fuck", turned around, took a step back and dropped in the vestibule. Rialmo said LeGrier fell face down with his legs "still in the front door's path" and noted that the door would not have been able to be closed without moving him.

After he stopped shooting, Rialmo noticed that Jones had also fallen in the vestibule area apparently felled by a bullet he had fired. Rialmo said that while Jones had turned to her apartment at the beginning of the encounter, she never reentered her apartment. Rialmo said that because LeGrier came down the stairs so suddenly, all Jones had time to do was stand there and look back at him and LeGrier. Rialmo said that the last time he saw Jones prior to the shooting she was standing in the doorway of her apartment facing the front door and towards him and LeGrier.

Rialmo said that after the shooting, he noticed that Officer LaPalermo had positioned himself behind a car parked on the street with his firearm drawn. Rialmo said that LaPalermo did not fire because he was in his line of fire.

Rialmo said that his question to LeGrier's father about "Dad, what the fuck" was intended to ask him why he had not given the police officers a "heads up" about his son coming down the stairs so that he and his partner would not have been surprised.

Rialmo confirmed that after the shooting he was still on scene when he said: "I fucked up", the statement that Officer Jones reported hearing him say. Rialmo said he made the statement because, "Bettie Jones was never a threat to me." When further asked what he meant by the comment, Rialmo replied as follows:

*Rialmo:* Yeah, that was never my intentions. That was not on purpose. Shooting an innocent lady on purpose, no. Yeah, I fucked up.

[...]

*Question:* How did you fuck up for lack of a better way to say it.

*Rialmo:* Well, Bettie Jones was alive when I knocked on the door. She was dead as I left. Wasn't for no reason. I had a lot to do with it.

Rialmo added that LeGrier caused Jones' death because LeGrier's actions caused Rialmo to react. Rialmo said his admission did not mean he believed he had done something wrong but that he had not meant to cause Jones harm and had caused her great harm. Rialmo said that he had no way to tell whether Jones was in harm's way during the incident because his focus was entirely on LeGrier. Rialmo said that he did not make the statement to Officer Jones directly and that Jones must have heard him make the statement in passing.

Rialmo said that, consistent with his training, he shot to eliminate the threat and stopped shooting once the threat was eliminated. Rialmo stated that he did not have a Taser nor OC spray with him when he responded to the call and that he left his asp in the police vehicle. Rialmo said that his certification authorizing him to carry a Taser had lapsed. Rialmo said that LaPalermo also did not have a Taser or OC spray with him but was carrying an asp. Besides deadly force, Rialmo said his only other option was using his fists but that such force would not have been sufficient against a person armed with a baseball bat.

Rialmo was asked why the initial report of his statement to CPD did not include any reference to LeGrier swinging the bat. Rialmo said he had told CPD detectives that fact in his initial statement.<sup>3</sup>

Rialmo was asked about his statement to the media that the training at the Academy was a joke; Rialmo said that he believed that you could not train someone for the job which was essentially dealing with people.

#### **Officer Rialmo (Second IPRA Interview, December 1, 2017)**

Officer Rialmo told IPRA that due to his personal schedule, he had allowed his Taser certification to lapse.

#### **Officer Rialmo's Deposition Testimony (April 17, 2017)**

Rialmo admitted that before he and his partner walked up to the residence that they did not have any kind of a game plan.

Rialmo testified that when he approached the residence, he was not sure what to expect, and did not have a name of the individual who called in.<sup>4</sup> Rialmo said that he did not know how many people were in the residence, and did not know who was involved in the domestic disturbance.

Rialmo said that when he heard someone rapidly coming down the stairs, he first "kind of froze" in the threshold of the doors but then started to move backwards to create distance in order to assess the situation. Rialmo agreed that he wanted to create distance because distance is safety and that he was taught in the Academy that establishing distance creates a safer position.

Rialmo agreed that the direction that he was firing his weapon was toward the doorway where he had last seen Bettie Jones and that each of the rounds that he fired were toward the entranceway of the building where he knew Jones to have last been.

Rialmo admitted that he did not give Jones any warning prior to him firing his weapon or an opportunity for her to position herself where she would not be at risk of harm from him firing his weapon. Rialmo agreed that he had been trained not to place innocent people at risk of injury or death when carrying out police duties and responsibilities.

Rialmo said he did not take any steps whatsoever to ensure that Jones was not at risk of injury or harm from the firing of the weapon toward the entranceway of the home. Rialmo said he

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<sup>3</sup> Unfortunately, neither of Rialmo's statements to CPD were tape-recorded.

<sup>4</sup> On the date in question, both Antonio and Quintonio LeGrier had made 911 telephone calls.

did not take any steps to move to the left or right to position himself so that bullets he fired were not going toward the location that he knew Jones to be last known standing.

Rialmo admitted that he did not have a Taser available to him to respond to the call because he had not been recertified and that he chose to leave his ASP in the police vehicle when he walked up to the front door of the residence.

When asked if he had ever said he had “fucked up” at the scene, Rialmo testified that he did not recall making the statement.

#### **Officer Rialmo’s Second Deposition Testimony (May 19, 2017)**

During the second deposition, Rialmo testified that he did make the statement “I fucked up” at the scene of the incident. Rialmo said that the statement meant that he did not mean to hurt Jones.

#### **Officer Rialmo’s Trial Testimony (June 20, 2018)**

Rialmo was called to testify in *LeGrier v. City of Chicago*. At trial, Rialmo said that as they got out of the car, his partner told him to be careful because there might be someone with a baseball bat. Rialmo admitted that he did not talk with his partner as they walked up to the residence and had no “game plan” as to what they were going to do.

Rialmo initially testified that after Bettie Jones opened the front door and indicated where the concern was, he did not tell her to go back inside her apartment.<sup>5</sup> Rialmo testified that at that point, LeGrier charged out of both doors, brushed past Jones, and came at him. Rialmo initially testified that Jones did not turn to go back into her apartment as LeGrier came down and out the door.<sup>6</sup> Rialmo testified that Jones never actually went back into her apartment because she did not have time to do so.

At trial, Rialmo agreed that he was on the walkway between the porch steps and the sidewalk when he fired his first shot. Rialmo said that he was closer to LeGrier when he fired the first shot and increasing distance as he continued to backpedal and fire. Rialmo testified that he was on the sidewalk when he fired the last shot. Rialmo testified that his partner did not fire because he (Rialmo) was between LeGrier and his partner (LaPalermo) and in his partner’s line of fire.

Rialmo testified at trial that when he saw Jones go down it was the worst thing he had ever seen because a person that was never a threat to him was hurt because of something that took place that he was involved in. Rialmo admitted at trial that after the incident he told

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<sup>5</sup> Later in the trial proceedings, Officer Rialmo testified that he did tell Jones to go back inside.

<sup>6</sup> Later in the trial proceedings, Officer Rialmo’s memory was refreshed by his prior deposition in which he had stated that Jones turned toward her apartment.

responding Officer Hodges Smith that he “fucked up”. When asked what he meant by that, Rialmo said that two people had just been shot, that Jones was never a threat to him, and was never meant to be hurt at all. Rialmo said his intent was to put down the threat as LeGrier presented it to me. Rialmo said the comment was about the whole situation; that he didn’t “fuck up” with LeGrier, he “fucked up” with Jones.

Rialmo testified that he had an asp with him but left it in his backpack in the police vehicle. He also indicated that he was not carrying OC spray and that he did not like to use it. Rialmo admitted that he had allowed his Taser certification to lapse.<sup>7</sup> Rialmo further admitted that without OC spray, an asp, or a Taser, his force options were limited.

The following exchange occurred at trial regarding other potential tactical options:

Q: Now, if you had known that this was a barri- -- that somebody was barricaded upstairs, would you have handled this situation differently?

A: Yes.

Q: How?

A: I probably would have called for a few more cars, a supervisor, to get their input on the situation, to see what they could have offered or what they suggested.

Q: Is there anything else?

A: Maybe a SWAT team.

Q: Do you think you would have approached the door if you knew it was a barricade situation?

A: Probably not.

Q: What could you have done if you didn't approach the door to make contact?

A: I would have got on the bullhorn.

Q: But you didn't know it was a barricade situation.

A: I did not know.

Q: Because nobody told you guys.

A: Right.

### **Accounts of Partner Officer Anthony LaPalermo**

#### **Officer LaPalermo's Interview by CPD (December 26, 2015: First Interview)**

Officer LaPalermo was interviewed by CPD on the date of the incident. He said that he was working with Officer Rialmo with him being the driver and Rialmo the passenger. LaPalermo related that the officers responded to a disturbance/check the well-being call. According to LaPalermo the PDT notes indicated that the offender was armed with a baseball bat.

LaPalermo related that the officers arrived on scene and approached the front door with Rialmo in front and LaPalermo just behind and to the right. LaPalermo said he had one foot on

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<sup>7</sup> In fact, records show that Rialmo's Taser certification lapsed for at least a year.

the porch and one foot on the top step. Rialmo rang the doorbell and a female, later identified as Bettie Jones, opened the door and pointed upstairs. According to LaPalermo, Jones turned back towards her apartment.

La Palermo said that Rialmo was standing in the doorway and started backing up. The front door swung open and a male, later identified as Quintonio LeGrier had an aluminum baseball bat in his hands raised above his head. LaPalermo said he tapped Rialmo on the back and told him to "look out".

LaPalermo said he was looking down as he backed down the stairs. Officer LaPalermo said that he looked back at Rialmo who now had his service weapon unholstered. According to Officer LaPalermo, Rialmo had one foot on the porch and one foot on the stairs and was still moving backwards. LaPalermo said that Rialmo discharged his firearm six to eight times in the direction of LeGrier. LeGrier turned back into the vestibule and collapsed on the floor. LaPalermo said he radioed that shots had been fired and requested an ambulance.

LaPalermo said that he had drawn his firearm when coming down the stairs but did not discharge his weapon.

#### **Officer LaPalermo's Interview by CPD (December 28, 2015: Second Interview)**

Officer LaPalermo was re-interviewed by CPD to "verify the original interviews and clarify details."

According to the report, Officer LaPalermo said that when the front door swung open, LeGrier had an aluminum baseball bat in his hands raised above his head. LaPalermo said he tapped Rialmo on the back and told him to "look out". LaPalermo said that he was looking down as he backed down the stairs and did not see LeGrier swing the bat at Rialmo.

#### **Officer LaPalermos' IPRA Interview (January 4, 2016)**

Officer LaPalermo told investigators that on the date of the incident, he and his partner Robert Rialmo had received a call over the radio and also via digital transmission regarding a man who had said his son was beating on his door with a baseball bat. LaPalermo also said that the son had also called but that was a little "messed up" so the focus was on the father's call. LaPalermo said that the call from the son was "gibberish" while the one from the father made sense.

LaPalermo said they responded to the call, parked in front of the residence, and went up to the porch with Rialmo in front. LaPalermo said that Rialmo rang the doorbell, a lady, later identified as Bettie Jones answered the door, gestured and whispered "upstairs". LaPalermo said that as he believed the lady was turning to go back into her apartment, he heard a commotion as if someone was rapidly coming down the stairs, the door "whipped open" and a man, later identified as Quintonio LeGrier came out holding a bat in a raised position.

LaPalermo said that LeGrier had the bat with two hands above his head ready to strike at the officers and advancing on them. LaPalermo said he did not know if Jones ever crossed the threshold to her apartment.

LaPalermo said he grabbed his partner's shoulder and said: "look out." LaPalermo said he had one foot on the porch and one on the stairs and thought that he needed to create distance between himself and LeGrier so he jumped down the stairs and unholstered his weapon. LaPalermo heard Rialmo start to shoot as Rialmo was backpedaling down the stairs. LaPalermo said as he and Rialmo came down the stairs, he went off to the left off of the stairs while Rialmo went off to the right.

LaPalermo said that LeGrier dropped the bat, went to his upper body with his hands and said "oh fuck, oh fuck". LaPalermo said LeGrier fell into the foyer with his feet hanging out of the threshold. LaPalermo said he further retreated behind a parked car because he was not sure initially who else was in the building.

LaPalermo said that Rialmo had no other option than to use deadly force to prevent getting hit in the head with the bat. LaPalermo said he did not fire because Rialmo was in his line of fire.

In contrast to Rialmo's statements, LaPalermo did not indicate that Rialmo gave any commands to LeGrier to drop the bat and he reported that he did not see LeGrier swing the bat during the encounter.

#### **Officer LaPalermo's Trial Testimony (June 19, 2018)**

LaPalermo testified in the *LeGrier* trial that he and Officer Rialmo were informed by the dispatcher that there was a male calling for help and a second caller from the same address saying that they had locked themselves in their bedroom and somebody was at the door with a bat. LaPalermo testified that they were informed by dispatch that one caller said that his son was at the door with a baseball bat.

LaPalermo testified that when they arrived at the location, they sat in the police vehicle with lights on for less than a minute. LaPalermo testified that if somebody happens to come out of a building to tell you what is going on, it helps.

LaPalermo testified that he had an asp with him when he went to the door of the residence but was not carrying a Taser or OC spray.

#### **Statement of Officer Hodges Smith**

#### **May 12, 2016 Interview to IPRA**

Officer Hodges Smith said that he was one of the first officers on the scene to respond to the shooting incident. He observed Officer Rialmo on the sidewalk "distraught and cursing" saying:

"I fucked up, I fucked up. Fuck. Fuck." Officer Smith said he told Rialmo to calm down and breathe, instructing him to "get his head straight" and to "relax, think about what happened and get his story straight."

### **CPD Homicide Report**

According to the Homicide Report, after the shooting, there was observed damage in the siding to the left of the front door and damage in the siding to the right side of the front door. The report indicated that the front door had apparent bullet damage on the right side. The report noted that there was a bullet hole in the north wall of the first-floor apartment with the path of the bullet continuing through several walls and a bathroom door with the bullet striking the glass block window in the pantry.

### **Medical Examiner's Report**

The autopsy report found that LeGrier received multiple gunshot wounds, striking him primarily in the side and back. The autopsy report of Jones found that she received one bullet entry wound to her chest.

### **Analysis**

***The decision by Officer Rialmo to approach the residence without fully processing the information they had received about the nature of the call and without attempting to obtain further information was a serious tactical blunder that significantly contributed to the subsequent tragic sequence of events.***

After arriving in front of the residence, the officers decided to respond to the location without fully considering the information they had received or attempting to learn more about the basis for the calls. As noted above, Officer LaPalermo told IPRA that he and Rialmo had received a call over the radio and also via digital transmission regarding a man who had said his son was beating on his door with a baseball bat. Similarly, Officer LaPalermo testified at trial that he and Officer Rialmo had been informed by dispatch that a male had called for help and a second caller from the same address saying that they had locked themselves in their bedroom and somebody was at the door with a bat. LaPalermo testified that they were informed by dispatch that one caller said that his son was at the door with a baseball bat. In essence, the information that Officer PaLermo acknowledged receiving indicated that they were responding to a possible barricade situation in which the father was unable to leave the residence and had locked himself in his room because his son was threatening him with a baseball bat.

As set out above, Officer Rialmo's description of the nature of the call was significantly less specific but he referred to the call during various interviews and testimony as a disturbance in

which the offender may have been armed with a baseball bat. Even the information that Rialmo reported hearing stated facts indicative of a potential barricade situation.

As noted above, Officer Rialmo testified at trial that if he was aware that they were responding to a barricade situation he would have called for backup and a supervisor and perhaps a SWAT team. Officer Rialmo testified that he would likely not have approached the front door of the residence if he knew it was a barricade situation and would have used the bullhorn to contact the occupants, but nobody had told him or his partners the particulars of the call.

However, it is apparent from Officer LaPalermo's account that the officers did know they were responding to a possible barricade situation, yet Officer Rialmo did not pay significantly close attention to the specifics of the information received. Moreover, if Rialmo had missed the particulars that had been broadcast over the radio and related in the PDT, he could have asked his partner to relay what he had heard or have asked dispatch to repeat the call to them. Rialmo, however, chose to do neither.

LaPalermo testified that when they arrived at the location, they sat in the police vehicle with lights on for less than a minute and that it would have been helpful if someone had come out of the building to tell them what was going on. Yet as he admitted at trial, Officer LaPalermo had received information of a potential barricade where the father may not have been able to get out of the residence to further advise the officers. If the officers had been interested in learning more details about the bases for the call, they could have asked dispatch to make further inquiry of the caller or asked dispatch for the telephone number of the caller and attempted to make direct contact with the caller over the phone.<sup>8</sup>

However, Officer Rialmo chose to do nothing to learn more about the specifics of the situation and chose to simply respond to the call armed with only rudimentary knowledge of what they might encounter. And as Officer Rialmo himself conceded, had he obtained further knowledge of the situation, his whole approach to the call for service would likely have changed. As Officer Rialmo testified, when officers are presented with a barricade situation as in this case, they are trained to call for additional resources and specialized units such as the SWAT team to address the situation. Officer Rialmo's failure to seek further information from his partner, dispatch, or the caller to obtain more information about the circumstances occurring upstairs was a grievous tactical mistake that impacted the tragic outcome of this case.

***The decision by Officer Rialmo and his partner not to devise a plan prior to approaching the residence left them unprepared to deal with the unfolding events and was a serious tactical mistake.***

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<sup>8</sup> In fact, as noted above, immediately after the shooting incident, Rialmo emotionally expressed to LeGrier's father unhappiness that he had not given the officers a "heads up" about his son. Rialmo failed to consider that he could have obtained a "heads up" had he paid closer attention to the dispatched communication or attempted to make direct contact with the father prior to approaching the residence.

From the inception of their training at the academy, officers are universally taught about the need for effective communication with their partners. Officer Rialmo said that it took 10-15 minutes for them to respond to the call yet during that time, there was no attempt to formulate a plan between himself or his partner. If during that discussion, the officers believed that it would have been helpful to obtain more information about the nature of the disturbance, they could have used the time in transit to do so. Consistent with how officers are trained, Rialmo could have discussed with his partner a series of “what ifs” so that each knew what they would do depending on how events unfolded. And Officer Rialmo could have talked with his partner about how to most effectively encounter a man who might be armed with a baseball bat.

Once they arrived on scene, the officers could have scouted the residence and further tailored any formulated plan based on additional observations they made of the location. Instead, during the drive, the officers did not discuss in any fashion how they would respond to the call nor devise any type of game plan. As a result, when events rapidly unfolded, instead of having a plan that they could act upon, the officers were forced to improvise and react to those events with no idea about how each other were planning to respond. The failure of the officers to devise a plan left them unprepared on how to deal with the event and precluded any thoughtful and coordinated action on their part.

***Officer Rialmo seriously limited his force options available to deal with the call for service which significantly increased the likelihood that deadly force would be used.***

Chicago police officers are authorized to carry pepper spray, batons, and Tasers as force options. CPD policy requires that in order to carry a Taser, officers must periodically take courses to keep their certification current. As noted above, when responding to this call, Officer Rialmo chose not to take his baton or equip himself with OC spray, precluding even the possibility of intermediate force options being available to him. More significantly, Officer Rialmo allowed his Taser certification to lapse, which prevented him from being able to carry one to the call.<sup>9</sup>

The failure of Officers Rialmo and LaPalermo to carry a Taser as they approached the apartment house had serious implications. If one of the officers had a Taser, they could have positioned themselves with one officer with a drawn Taser and a lethal cover officer. With that configuration, one officer could have discharged a Taser at LeGrier without the concern of injury should the darts miss their intended target or was otherwise ineffectual. If the situation became dire because of the failure of the Taser to neutralize the threat, the cover officer could

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<sup>9</sup> In addition to placing himself and his partner at a tactical disadvantage, by failing to requalify his certification to carry and handle a Taser, Officer Rialmo implicated General Order 04-02-02, disobedience of an order or directive, and Rules 10 and 11, inattention to duty and incompetency or inefficiency in the performance of duty respectively.

always follow with deadly force, resulting in little risk of serious injury to the officers. During Taser training officers are routinely given this scenario as an effective way to combat a potentially deadly situation without the risk of injury to the officer. By not having this force option available to them, Officer Rialmo and his partner left them at a serious tactical disadvantage in responding to the incident.<sup>10</sup>

As Officer Rialmo admitted, by allowing his Taser certification to lapse and failing to pull other weapons out of his bag as he approached the residence, it resulted in him having only two options when approaching the residence; his personal weapons and his firearm. It is unprecedented in this expert's experience reviewing force incidents that an on-duty uniformed police officer has so limited his force options.

***In the decision and manner of his use of deadly force, Officer Rialmo failed to consider the presence of Bettie Jones resulting in her demise.***

When Officer Rialmo heard an individual rapidly and loudly descending the inner stairway, he appropriately began to back away from the vestibule, porch, and down the stairs to create additional distance. However, before he had cleared himself from the tight confines of the entryway of the residence, he began firing numerous rounds at LeGrier. To the degree that LeGrier had attempted to strike Officer Rialmo with the baseball bat<sup>11</sup>, he had missed him, possibly as a result of Rialmo's brief retreat and indicating that the tactic of creating distance was proving at least initially effective in addressing the threat.

In fact, Officer LaPalermo, who was close enough to Rialmo to grab his shoulder as LeGrier emerged from upstairs, was able to use distance to move out of harm's way. Because he was closer to LeGrier, Officer Rialmo was in a more vulnerable position than his partner; but in addition to gauging the risk that LeGrier presented to himself, it was requisite for him to consider the great likelihood that firing seven or eight rounds into the porch and vestibule area would strike Bettie Jones as in fact one round did.

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<sup>10</sup> The concept of "lethal cover" is universally taught during defensive tactics training, a part of every Academy's training. The technique is trained for use in multiple scenarios, for example when an officer has to go hands on to handcuff an individual who may be armed, his partner is trained to provide the officer lethal cover.

<sup>11</sup> Questions have been raised about whether LeGrier actually swung the bat at Rialmo; in the CPD detective's initial report of Rialmo's interview, there is no mention of that observation. Moreover, Officer LaPalermo did not report seeing LeGrier swing the bat and forensic experts have opined in judicial proceedings that the bullet wounds are inconsistent with LeGrier having raised the bat above his head. However, for purposes of this analysis, we provide Officer Rialmo the benefit of the doubt and presume that he perceived that LeGrier made an aggressive move towards him with the bat.

Officer Rialmo could have lessened the threat presented by LeGrier and decreased the probability of striking Jones with errant shots by continuing to back down the stairs and away from the porch. If Rialmo had continued with that tactic, LeGrier would have either continued to advance on him or his partner or remained in the porch area. If LeGrier stopped, Rialmo and his partner would have been able to move to a safe distance and kept their firearms trained on LeGrier as further events unfolded. If LeGrier continued forward, Rialmo's movement away from the porch/vestibule area would have similarly drawn LeGrier away from Jones and any other occupants in the structure. And should LeGrier have continued to move on the officers, by continuing to move away from the entryway of the structure, Rialmo could have altered his backdrop so that Jones was no longer in his line of fire.

Officers are universally taught that they should always consider their backdrop in determining the reasonableness of using deadly force.<sup>12</sup> Officers are instructed to consider that any shots fired can enter buildings and hurt unininvolved persons and to avoid shooting when a residence is part of their backdrop. Unlike the general concern that firing into residential structures presents, in this case Officer Rialmo had *actual* knowledge that the woman who had provided him access to the front door was very close to his target. And, as noted above, Officer Rialmo agreed in judicial proceedings related to this incident, that he had been trained not to place innocent people at risk of injury or death when carrying out police duties and responsibilities. Rialmo also admitted in those judicial proceedings that he did not take any steps whatsoever to ensure that Jones was not at risk of injury or harm from his firing his weapon toward the entranceway of the home.

As noted above, Officer LaPalermo stated and Officer Rialmo recognized that his partner did not fire his weapon, not because LeGrier did not present a threat to him, but because Rialmo was in his line of fire and the risk was too great that he might strike his partner with errant rounds. In the same way, Jones was in Rialmo's line of fire, yet he chose to fire numerous bullets down range, with one fatally striking her.

Officer Rialmo also did not reasonably consider the likelihood of fatally striking an identified innocent bystander when he determined the manner and number of rounds that he fired.<sup>13</sup> Rialmo stated on several occasions that he fired his handgun as he was pulling it from the holster, with rounds being fired from hip to shoulder level. This point and shoot manner of bullet delivery, at various levels, without using the firearm's sights, and while moving backwards and down a set of stairs will almost inevitably result in rounds being fired off target as in this case. If Officer Rialmo had waited an additional fraction of a second so that he could

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<sup>12</sup> In fact, the CPD Training Manual issued to recruits during initial firearms training at the Academy expressly instructs them to "be sure of your target and what is beyond it".

<sup>13</sup> Some literature has calculated the "hit ratios" in an officer-involved shooting of no more than 25%, demonstrating the need for officers to ensure that persons in close proximity to the target are not harmed by off-target rounds.

have unholstered his weapon, moved it to chest level, and cleared the steps to a more stable platform such as the walkway below, he could have greatly increased the accuracy of his rounds and significantly reduced the likelihood of a fatality to a non-intended target.<sup>14</sup>

As importantly, considering the dynamic he found himself in, Officer Rialmo could have reduced the potential for stray rounds by reducing the number of rounds he fired. If initially, he only fired one or two rounds and then reassessed whether they had stopped the threat, the chances that Jones would have also been struck and killed would have been greatly reduced.<sup>15</sup>

The alternative approaches suggested here may have slightly increased the risk to Officer Rialmo, but under the circumstances, that increase was more than offset by the increased safety to Jones and other occupants of the residence from errant fire. By the very nature of their jobs, officers at CPD are constantly required to assume some level of risk. In this case, the additional risk that Rialmo may have needed to assume to keep Ms. Jones safe was the type of risk a reasonable officer on scene would have taken.

***Officer Rialmo's excited utterance shortly after the shooting incident that he had "fucked up" demonstrated an understanding on his part that his use of deadly force was a grievous error with tragic circumstances and not objectively reasonable.***

As noted above, after the incident, Officer Rialmo told an arriving officer that he had "fucked up". The term is defined by Merriam-Webster as "to act foolishly or stupidly, blunder". Collins Dictionary notes that if you fuck something up, you "make a mistake or do something badly." And the Urban Dictionary describes the term as "screwing up or making a mistake." Clearly, Officer Rialmo recognized immediately that his use of deadly force was undertaken in a way that resulted in the death of a person who was no threat to him and constituted a mistake. While in later explanations of his mindset, Officer Rialmo also asserts, quite correctly, that LeGrier's erratic behavior also played a role in the tragic outcome, Rialmo recognized that he had not performed to the level of even his own expectations.

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<sup>14</sup> As noted above, the ballistic forensic evidence found that in addition to the errant round that struck and killed Bettie Jones, at least one other round struck the dwelling, passed through interior walls, and ended up in the living area of the downstairs apartment, potentially endangering other occupants.

<sup>15</sup> As set out above, Rialmo said that he estimated that prior to his use of deadly force, he repeatedly told LeGrier to drop the bat ten times. This representation was a matter of contention during the prior judicial proceedings; LaPalermo did not report hearing his partner give commands to LeGrier and it is questionable whether there was sufficient time for that many commands to be given in the rapidly unfolding event as described by Rialmo. Assuming that Officer Rialmo did command LeGrier to drop the bat, it is certainly unclear whether he provided LeGrier sufficient time to comply. If Rialmo had continued backing away, he would have also provided LeGrier sufficient time to respond to those commands and potentially comply.

Officers are trained and expected to respond to potential deadly force situations in a way that keeps them safe as well as innocent bystanders. That maxim was why Officer LaPalermo did not fire; it would not have been safe for his partner. After the event, Officer Rialmo recognized that by using deadly force in the manner which he did, he had failed to keep Ms. Jones safe and his emotional outburst was a telling recognition of that failing.

### ***Application of Officer Rialmo's Use of Lethal Force to CPD Force Policy***

As noted above, under CPD Force policy in existence at the time of the incident, the reasonableness of a particular use of force will be judged under the totality of the circumstances viewed from the perspective of a reasonable officer on the scene. In the present case, even if the situation presented to Officer Rialmo provided justification for him to use force to address the threat that LeGrier may have presented, his decision-making at numerous stages during the incident seriously diverged from how a similarly situated and trained police officer would have acted. Those include:

- His failure to pay full attention to the information provided to dispatch about the nature of the call;
- His failure to attempt to make further inquiry of dispatch or the callers about the circumstances that prompted the call;
- His failure to devise a plan with his partner;
- His failure to equip himself with the full panoply of force options authorized and provided to CPD officers;
- His failure to move sufficiently away from the porch/vestibule area so that any eventual delivery of deadly force would not have presented a likelihood that rounds would cause lethality to uninvolved persons;
- His failure to consider the presence of Bettie Jones when he fired numerous lethal rounds into the porch/vestibule area;
- His failure to consider delivering fewer rounds at LeGrier to decrease the likelihood that those rounds would strike Bettie Jones;
- His failure to consider how delivering 7-8 rounds while moving backwards and before his firearm reached a stable level increased the likelihood that those rounds would strike unintended targets;
- His failure to consider hesitating in delivering any deadly force until he could move away from the steps of the porch even though it increased the risk to himself in order to keep Bettie Jones and others safe from harm from his firearm.

Nor does the policy's reference to the Illinois Statute: "A peace officer ... need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest" suggest a different result. In this case, Rialmo in fact admitted that he retreated from LeGrier in order to create distance and prevent him from being struck by the baseball bat. While repositioning is not required per se when faced with a deadly threat, when circumstances

are presented that indicate that a failure to reposition creates a high risk of harm to innocent third parties, the language of the Illinois Statute is inapposite. By violating the use of force order, Officer Rialmo violated Rule 6 of the Chicago Police Department's Rules of Conduct, which prohibits the disobedience of any order or directive.

For the same reasons stated herein, Officer Rialmo's use of deadly force that resulted in the death of Bettie Jones and errant rounds entering the structure of a dwelling also violated CPD's General Order 03-02-03, disobedience of an order or directive, whether written or oral, and Rules 2, 10, and 11. Officer Rialmo's Conduct violated the Chicago Police Department's Rules of Conduct.

Rule 2 of the CPD's Rules of Conduct prohibits an officer from engaging in "[a]ny action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit no the Department. Rule 10 prohibits an officer from being inattentive to his duties, and Rule 11 prohibits an officer's incompetency or inefficiency in the performance of his duties.

The Department's goals include the "[p]rotection of life, limb and property in the City of Chicago." Its motto, "We Serve and Protect," reflects that goal, as does its rules and regulations, which, among other things, state that a law enforcement officer's "fundamental duty is . . . to safeguard lives and property . . . and the peaceful against violence." Those rules and regulations also establish excellence in the performance of an officer's duty as a goal of the Department. In this instance, Officer Rialmo fell short of those goals. As a result of his inattention to the safety of Betty Jones, and his incompetent efforts to subdue Quintonio LeGrier, he impeded the Department's most fundamental duty of protecting the safety of innocent civilians.