International Municipal Lawyers Association
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Las Vegas, Nevada

Litigation, Insurance & Risk Management Section Meeting

DEFENDANTS' MATERIALS

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

ROBIN THOMPSON, as Personal Representative
of the ESTATE OF JERMELL THOMPSON, deceased PLAINTIFF

v. CASE NO. 4:11CV804 BRW

JAMES "CLINT" MURRAY, individually and in his
official capacity; DUSTIN CAUDELL, individually
and in his official capacity; THE CITY OF MORRILTON,
a municipality; and NORBET GUNDERMAN, JR.,
individually and in his official capacity DEFENDANTS

STATEMENT OF UNDISPUTED MATERIAL FACTS

1. At approximately 4:15 p.m. on November 29, 2008, an employee of the No. 9 liquor store in Morrilton called 911 to report the shoplifting of a bottle of Crown Royal whiskey. *Initial 911 Call to Dispatch, attached as Exhibit A; Incident Report, attached as Exhibit 1 to Exhibit U (Affidavit of Clint Murray).*

2. The caller reported that after he noticed the theft the caller "walked out behind [the suspect] and told [the suspect] to bring the bottle back in, and uh, [the suspect] wouldn't stop. He just kept on going." *Exhibit A,* 1:05 – 1:12, *attached as Exhibit A.*

3. The caller then advised that the suspect was leaving, described the suspect's car as an older model maroon Chevy, and provided the license plate number. *Exhibit A,* 0:30-0:35.

4. The employee then added, "[h]e's probably intoxicated 'cause he come by earlier and got some beer." *Exhibit A*, 1:22-1:26.

5. The 911 operator then dispatched city units to No. 9 Liquor reporting that "They've got someone stealing; they said he's fixing to leave." *Initial Dispatch to officers*, 0:07-0:08, *attached as Exhibit B*.

6. Officer Clint Murray was the initial officer to respond: "10-4 in route." *Exhibit B*, 0:13.

7. In a subsequent dispatch, the 911 operator notifed officers that "it's going to be a maroon Corsica" and provided officers with the license plate and address corresponding to the license plate. *Dispatch Recording,* 0:06-0:12, *Exhibit C*,.

8. The operator then told officers that the liquor store employees thinks the suspect is turning right onto Bridge Street and that the employees believe the suspect is drunk, too. *Exhibit C*, 0:41-1:01.

9. Shortly thereafter, Officer Caudell responded to dispatch and advised he was on Bridge Street. *Dispatch Recording,* 0:20, *attached as Exhibit D*.

10. Officer Caudell then began to communicate with Officer Murray about where he sees the suspect; both officers then communicate their positions in relation to the suspect. *Dispatch Recordings, Exhibit E through I.*

11. Within a minute Officer Caudell was able to get behind the suspect on Hwy. 9. *Dispatch Recording, attached as Exhibit J*.

12. Officer Caudell then "activated [his] blue lights and attempted to stop the vehicle." *Caudell's Statement to the Arkansas State Police,* page 2, *attached as Exhibit 2 to Exhibit V*.

13. Then, Officer Caudell and Mr. Thompson "proceeded up on the Bypass, got toward the [Hwy.] 64 Overpass, uh, he wasn't stopping, [Officer Caudell] activated [his] siren, [yet they] just continued northbound." *Id.*

14. At the moment Officer Caudell radioed that he was behind Mr. Thompson on Hwy. 9. *Id.*

15. Officer Caudell and Mr. Thompson came in to Officer Murray's view, according to Officer Murray's dash cam video, at 16:20:56 and he initiated his siren at 16:21:05. *Officer Murray's Dash Cam Video, attached as Exhibit W.*

16. Less than a minute later, Officer Murray was directly behind Officer Caudell who was directly behind Mr. Thompson. *Id,* at 16:21:57.

17. At that moment, Officer Murray was traveling 61 mph. *Id.* (see "VS" for vehicle speed at the bottom center of the screen.). *Id.*

18. As Mr. Thompson's vehicle entered a 45 mph zone, Mr. Thompson was still traveling approximately 64 mph. *Id,* at 16:22:04; *Officer Caudell's Dash Cam,* 04:17:20, *attached as Exhibit X.*[1]

19. Mr. Thompson maintained this approximate speed through that zone and into the 35 mph zone. *Exhibit W,* at 16:22:26; *Exhibit X,* 04:17:42.

20. Mr. Thompson finally began to slow down as he approached the intersection of Highway 9 and Highway 9B. *Exhibit W*, at 16:22:29; *Exhibit X,* 04:17:45.

[1] Officer Caudell's dash cam shows Mr. Thompson's car entering the 45 mph zone at 04:17:20. Thus, Officer Caudell's dash cam is approximately 4 minutes and 44 seconds behind Officer Murray's (This, of course, disregards the obvious use of military time by Officer Murray or the additional 12 hour difference between the times.)

21. As he approached the intersection, the light was red for Mr. Thompson's lane of traffic. *Exhibit W*, at 16:22:35; Exhibit X, 04:17:51.

22. Cars heading east on Hwy. 9B were making a left turn to head north onto Hwy. 9, and thus, proceeding across the intersection into Mr. Thompson's lane of traffic. *Exhibit W,* at 16:22:35; *Exhibit X*, 04:17:51.

23. As the three approached the intersection, Mr. Thompson slowed down his vehicle; Officer Caudell pulled to the right of Mr. Thompson's car; and Officer Murray pulled in front of Mr. Thompson's car at an approximate 45 degree angle, and Mr. Thompson's car comes to a stop. *Exhibit X*, 4:17:58; *Exhibit W,* 16:22:42.

24. According to Officer Murray, "I circle around and go around behind Officer Caudell and circle around and go to the left and try to, and point my vehicle at the left front corner of the suspect's vehicle to box him in." *Murray's Statement to the Arkansas State Police, attached as Exhibit 2 to Exhibit U.*

25. Officer Caudell stated, "we had an opportunity to block him in to get the vehicle to stop. I pulled, we pulled up at the light, I pull to the right of the vehicle and Officer Murray came around to the front." *Exhibit 2 to Exhibit V* (*Caudell's Statement to ASP*).

26. Officer Caudell immediately got out of his vehicle and "before [he] knows it [Mr. Thompson] put it in reverse coming at [him]." *Id.*

27. At this point, Officer Caudell was positioned near the back driver side quarter panel of his car. *Exhibit 2 to Caudell's Deposition, Deposition attached as Exhibit S (reference to Exhibit found on page 43 of deposition).*

28. On Officer Caudell's dash cam, Mr. Thompson's car can be seen reversing at 4:18:00 – within two seconds of Mr. Thompson coming to a stop. *Exhibit X; Exhibit W*, 16:22:44.

29. As this is happening, Officer Murray "[went] around the back of [his] car." *Murray's Statement to the Arkansas State Police, attached as Exhibit 2 to Exhibit U.*

30. And, when Officer Murray was behind his car he drew his weapon pointed his gun at Mr. Thompson. *Clint Murray's Deposition,* 57:15-16, *attached as Exhibit T*.

31. Once out of his car and around to the back, Officer Murray ordered Mr. Thompson, "You stop right there!" *Exhibit W*, 16:22:49; *Exhibit X,* 04:18:05.

32. The first order can be heard within five (5) seconds of Mr. Thompson beginning to back up. *Exhibit W*, 16:22:49; *Exhibit X,* 04:18:05.

33. Officer Murray repeats this order immediately, "You stop right there!" *Id.*

34. At this time, Mr. Thompson's "car [was] probably ten feet away from [Officer Murray]." *Murray's Statement to the Arkansas State Police, attached as Exhibit 2 to Exhibit U. .*

35. Officer Murray then saw Mr. Thompson "look up and make eye contact with [him]" and then turn the steering wheel towards Officer Murray. *Murray's Statement to the Arkansas State Police, attached as Exhibit 2 to Exhibit U.*

36. Mr. Thompson then "put it in gear" and came at Officer Murray "at a high rate of speed." *Murray to ASP. Murray's Statement to the Arkansas State Police, attached as Exhibit 2 to Exhibit U.*

37. As the vehicle came at Officer Murray "started shooting as [he] was trying to get out of the way." *Murray's Statement to the Arkansas State Police, attached as Exhibit 2 to Exhibit U.*

38. To get out of the way, Officer Murray "ran to [his] right." *Id.*

39. Officer Murray "fired seven or eight rounds, uh, mainly through the windshield," and one or two "through the door." *Id; hear also Exhibit W,* 16:22:52.

40. Mr. Thompson "missed [Officer Murray] and went on the outside of [Officer Murray's] car, on the left side of [Officer Murray's] car, and then went around through the intersection of the northeast corner of the intersection." *Murray's Statement to the Arkansas State Police, attached as Exhibit 2 to Exhibit U.*

41. At that north-east corner is "a big bar ditch and [Mr. Thompson] ended up in there." *Murray's Statement to the Arkansas State Police, attached as Exhibit 2 to Exhibit U.*

42. According to an expert obtained by the Defendants, Mr. Thompson was traveling 19.84 mph after the shots were fired. *Expert Report Breshears, attached as Exhibit Y, see page 1.*

43. Thus, Mr. Thompson would have necessarily been traveling at or about that speed prior to the shots being fired. *See id.*

44. To Officer Murray, Mr. Thompson's intentions were "to run over and kill me." *Murray's Statement to the Arkansas State Police, attached as Exhibit 2 to Exhibit U.* (Q: "Did you feel like that you were in jeopardy of either death or serious physical injury?" A: "Yes.").

45. Officer Caudell, too, opened fire on Mr. Thompson's vehicle. *Exhibit 2 to Exhibit V* (*Caudell's Statement to ASP*).

46. However, Officer Caudell only shot "at the right rear tire to disable the vehicle." *Exhibit 2 to Exhibit V* (*Caudell's Statement to ASP*).

47. According to Officer Caudell, "Officer Murray was there; I was thinking officer safety and also trying to disable the vehicle to prevent any further high speed chase." *Id.*

48. When asked if he felt like Officer Murray's life was in danger, Officer Caudell said "Yes sir." *Exhibit 2 to Exhibit V* (*Caudell's Statement to ASP*), *p. 7.*

49. According to Victor Trevino who witnessed the shooting from the north-west corner of the intersection, Officer Murray "walked around behind his patrol car and he had his hand kind of, you know -- stuck his hand up like to stop, and then the car took off. I thought he was going to hit him." *Trevino's Statement to the Arkansas State Police,* 5:22-25,6:1-7, *attached as Exhibit 2 to Exhibit Z.*

50. Mr. Trevino's wife, Betty, agreed that Mr. Thompson's car "backed up and started coming toward them." *Betty Trevino's Statement to the Arkansas State Police*, *attached as Exhibit 1 to Exhibit AA.*

51. According to Randell Holden, who witnessed the shooting from the east side of the intersection, "[b]oth officers jumped out of the car and they yelling and screaming at [Mr. Thompson] as he was starting to back up." *Holden's Statement to Arkansas State Police,* 5:11-14, *attached as Exhibit BB*.

52. Mr. Holden described Officer Murray "standing more over toward the road side -- toward, like, the – the rear end of his car." *Id.*

53. And, when Mr. Thompson "backed up, [Mr. Thompson] went to take off -- take off forward. It looked like -- I thought he was going to run the cop down. I mean, he took off, like, right toward the officer." *Id,* 9:16-22.

54. Finally, Mr. and Mrs. Davidson saw the same thing. Mrs. Davidson saw Mr. Thompson drive his car toward the officer "attempting to run over officer." *Mrs. Davidson's Statement to Arkansas State Police, attached as Exhibit CC*.

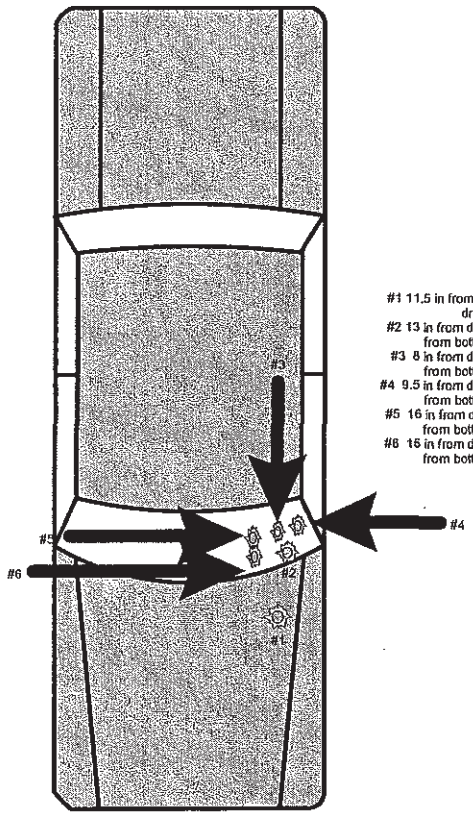
55. Mr. Davidson saw much the same; "[b]oth officers got out of their vehicles with their guns drawn." The dark colored vehicle backed up and then started forward. It looked to me like he attempted to run over the officer." *Mr. Davidson's Statement to Arkansas State Police, attached as Exhibit DD.*

56. From the time in which Mr. Thompson came to a complete stop at the intersection until Officer Murray fired the shots was a mere ten (10) seconds. *See Exhibit W & X (Dash Cam Videos)*

57. More specifically, five (5) seconds elapsed from the moment Mr. Thompson reversed his car until Officer Murray fired the fatal shots. *Id.*

Digram Prepared by:
S/A Joe Carter

Diagram Not Scale
All Measurements Approximate



#1 11.5 in from driver side edge of hood/5 in from driver side front of hood
#2 13 in from driver side edge of windshield/2.5 in from bottom of driver side windshield
#3 8 in from driver side edge of windshield/11 in from bottom of driver side windshield
#4 9.5 in from driver side edge of windshield/10.5 in from bottom of driver side windshield
#5 16 in from driver side edge of windshield/7.5 in from bottom of driver side windshield
#6 16 in from driver side edge of windshield/6.5 in from bottom of driver side windshield

FILE NUMBER: CID-E-03856-08

CRIME: ATTEMPTED CAPITAL MURDER

OFFICER'S LETTER

To: Sgt. Snook September 9, 2013

From: Ofc. Breshears

Sir:

On today's date I was requested to assist the Municipal League of Arkansas (MLA) with a reconstruction of a fatal incident from November 29, 2008. The incident was in the city of Morrilton Arkansas, and would require me to travel to the location of the crime scene. Once on scene the total station was deployed to complete the scene to scale. The roadway was resurfaced after 2008 by the Arkansas Highway Department and the lane markings on today's date are different. While using the notes from Special Agent Larry Carter with the Arkansas State Police from December 10, 2008, I was able to plot the spent shell casings and mark their locations as well as the location of the police vehicle that was recorded by measurements at the time of the incident. During the process I was able to determine what SA Carter used as his reference point. I was then able to locate the points for an accurate account of the date of the incident and I have shown where the "old" lines were located in 2008 on my diagram. These plots were then transferred to the computer program that I use for collision reconstruction (Edge FX) and then printed on paper for use in court.

The question that was asked by the MLA was at what speed was the suspect vehicle traveling as it approached the Officers of Morrilton Police Department. After diagramming the scene to scale I was able to determine that the vehicle was going a minimal speed of 19.84 miles per hour (mph). This was calculated using the time distance formula which is attached to this report. I was able to determine that the distance the suspect vehicle traveled as it came into view of the officer's dash cam recorder was 64 feet from camera view to the edge of the grass that was in the northeast area off of the roadway. I then timed the vehicle as it traveled across the road, and ranged the time between 1.8 to 2.2 seconds. To allow the suspect the benefit of the doubt I used the longer of the times. The distance was divided by the time and produced the answer of 19.84 mph or 20 mph.

I have prepared this letter to explain my findings; also included is all of the data and notes that I used during my investigation.

Respectfully,

Ralph Breshears

Officer Ralph Breshears 15026

EXHIBIT Y

Incident # 08-02335 **Morrilton Police Department** Report Date 11/29/08

Page 1 of 4 Incident Report Report Time 5:11 PM

Status	Exception Clearance Date	Reporting Officer	ORI/Agency
Active	Not Applicable	108 Caudell, Dustin .	AR0150100
	Assigned Officer: Carter, Joe	Entered By: CAUDELL	Approving Officer:
	Assisting Officers: Gunderman, Norbert Eoff, Cheryl Luter, Scott Murray, James Clint Lee, Eric Ault, James		

Complainant

Name	Contact Name
Number 9 Liquor	Larry Newberry
Business Address: 1217 S State 9 Hwy.,Morrilton, AR 72110	Business Phone: 5013545650

Offenses

Incident Location	Zone	Earliest Poss Date	Time	Latest Poss Date	Time
Intersection Of Business 9 / Hwy 9		11/29/2008	16:14	11/29/2008	17:11

#	Statute/Code	Description	Fel/Misd	Att/Comp	Loc	Bias	Wpn	CATypes
1	5-54-125	FLEEING	Misd	Completed	25	88	99	
2	5-36-116	SHOPLIFTING	Misd	Completed	25	88	99	P
3	5-13-204	AGGRAVATED ASSAULT	Felony	Completed	13	88	35	O

MO | Method Of Entry: n/a | # Prems: 0

Location Types
01 Air/Bus/Train Terminal; 02 Bank/S&L; 03 Bar/Night Club; 04 Church/Synag/Temple; 05 Commercial/Off Bldg; 06 Construction Site; 07 Convenience Store; 08 Dept/Discount Store; 09 Drug Str/Dr Off/Hosp; 10 Field/Woods; 11 Govt/Public Bldg; 12 Grocery/Supermarket; 13 Hway/Road/Alley; 14 Hotel/Motel; 15 Jail/Prison; 16 Lake/Waterway; 17 Liquor Store; 18 Parking Lot/Garage; 19 Rental Storage Facility; 20 Residence/Home; 21 Restaurant; 22 School/College; 23 Service/Gas Station; 24 Specialty Store; 25 Unknown/Other

Bias Motivation Codes
ANTI- 11 White; 12 Black; 13 Amer Ind/Alaskan; 14 Asian/Pacific Islander; 15 Multi-racial group; 21 Jewish; 22 Catholic; 23 Protestant; 24 Moslem; 25 Other Religion; 26 Multi-religious group; 27 Atheist/Agnostic; 31 Arab; 32 Hispanic; 33 Other Ethnicity; 41 Gay (male); 42 Lesbian; 43 Homosexual; 44 Heterosexual; 45 Bisexual; 51 Phys Disability; 52 Mental Disability; 88 None; 99 Unknown

Suspected Of Using: None

Criminal Activity Types
B Buying/Receiving; C Cultivating/Manuf/Publishing; P Possessing/Concealing; O Operating/Promoting/Assisting; D Distributing/Selling; T Transport/Import/Transmit; E Exploiting Children; U Using/Consuming

Weapon Type(s)
11 Firearm (Auto); 12 Handgun (Auto); 13 Rifle (Auto); 14 Shotgun (Auto); 15 Other Firearm; 20 Knife/Cutting Instr; 30 Blunt Object; 35 Motor Vehicle; 40 Personal Weapons; 50 Poison; 60 Explosives; 65 Fire/Incendiary Device; 70 Drugs/Narc./Sleeping Pills; 85 Asphyxiation; 90 Other; 95 Unknown; 99 None

Victim #1 — Event #s Related: 1,2,3

SSN/ID/TIN	Title	Name	DOB	Age	Sex	Resident Status
** MASKED **	Mr	Murray, James Clint	[redacted]	30	M	Resident

Race	Ethnicity	Home Phone	Work Phone	Other Phone	DL (#, ST)
White	Not Hispanic		(501)354-0131		** MASKED **

US Citizen	Legal Alien	Doc Type	Immig Doc #	Nationality
Unknown				

Home Address | Employer: City Of Morrilton Police Department

Work Address: 212 N Moose St.,Morrilton, AR 72110 | Occupation: Law Enforcement

Victim Type	Injury Type	Aggravated Assault/Homicide Circumstances	Relationship To Suspect
Individual	None,	Assault On Officer(s)	#1 N/A

Justifiable Homicide Circumstances: None | Taken to: (Hospital Name)

Injury Description

EXHIBIT

tabbies

EXHIBIT U

Incident # 08-02335 **Morrilton Police Department** Report Date 11/29/2008

Page 2 of 4 Incident Report Report Time 5:11 PM

Suspect #1

SSN/ID/TIN	Title	Name	DOB	Age	Sex	Resident Status
** MASKED **	Mr	Thompson, Jermell Lasean	[redacted]	19	M	Resident

Race	Ethnicity	Home Phone	Work Phone	Other Phone	DL (#, ST)
Black	Not Hispanic	[redacted]			** MASKED **

US Citizen	Legal Alien	Doc Type	Immig Doc #	Nationality
Yes				

Home Address	Employer
[redacted]	Love's Country Store
Work Address	Occupation
	Clerk

Height	Weight	Eyes	Build	AKA
5' 10"	190	Brown	Medium	

Appearance	HairColor	Hair Style	Teeth	Beard/Facial Hair	Demeanor	Speech	Voice
	Black			Full Beard			
	Dexterity	Hair Length	Complexion				
			Medium				

Property

Involvement: 1 None, 2 Burned, 3 Counterfeit/Forge, 4 Destroyed/Damaged, 5 Recovered, 6 Seized, 7 Stolen, 8 Unknown

Category: 02 Alcohol, 03 Automobiles, 04 Bicycles, 06 Clothes/Fur, 07 Computer Hdwr/Sftwr, 08 Consumer Goods, 09 Credit Cards/Debit Cards, 10 Drugs/Narcotics, 11 Drug/Narc Equipment, 13 Firearms, 16 Household Goods, 17 Jewelry/Precious Metals, 18 Livestock, 19 Merchandise, 20 Money, 21 Negotiable Instruments, 22 Non-negotiable Instruments, 23 Office-Type Equip, 25 Purses/Handbags/Wallets, 26 Radio/TV/VCR, 26 Recordings-Audio/Visual, 29 Structures-Single Occ, 30 Structures-OtherDwelling, 31 Structures-Commercial, 32 Structures-Industrial, 33 Structures-Public, 34 Structures-Storage, 37 Tools-Power/Hand, 38 Vehicle Parts, 39 Other, 40 Pending Inventory, 41 Special Category

Involvement	Category	Qty/Wt	Brand/Make	Model	Style	CAL/GA
7	02	1			Crown Royal	

Description	Value
1/2 gallon, whiskey.	$60.00

Owner	Serial# / Owner Applied#	NCIC Ref #	Evidence #

Vehicles

Involvement: 1 None, 2 Burned, 3 Counterfeited/Forged, 5 Recovered, 6 Seized, 7 Stolen, 8 Unknown, 9 Crime Location, 10 Suspect Vehicle

Category: 01 Aircraft, 03 Auto, 05 Buses, 24 Other, 37 Trucks, 39 Watercraft

Involvement	Category	Tag #	Tag Yr	State	Tag Type	VIN	NCIC Ref #
Suspect Vehicle	03	[redacted]	0		Passenger Automobile		

Year	Make	Model	Style	Primary Color	Secondary Color
0					

Owner	Description	Est. Value	Evidence #	Impounded	Towed By
		$0.00		No	

Narrative & Statements

Narrative & Statements

Narrative - Caudell, Dustin - 11/29/2008 (Initial)

On this date at approximately 4:16 p.m., this officer was responding to a shoplifting call at Number 9 Liquor located on South Highway 9 in Morrilton. I was advised by dispatch that the suspect was a black male and he had just stole a bottle of "Crown Royal" whiskey and left in a maroon in color Chevrolet passenger car with Arkansas license plate tag number [redacted], which returns to a 1992 Chevrolet CRS, four door, maroon in color car, to a Robert Wilt of 150 Turkey Pond Loop Morrilton Arkansas.

This officer, while enroute to the call, was told that the vehicle had made a turn onto State Highway 9 business and was traveling north bound. I met a vehicle matching the description given by dispatch of the suspect vehicle at the intersection of South Bridge and East Burrow Streets. I turned around and attempted to catch back up with the vehicle. I seen the car turn right onto Crestview and I observed that in the gravel section just to the south of the roadway there was fresh tire tracks in the gravel and mud as it appeared to have been traveling at a good rate of speed. I then observed the maroon vehicle turning north of Highway 9 at the intersection of Sardis and Highway 9. I then got behind the vehicle on the overpass of Highway 9 and U. S. Highway 64. I then asked dispatch again for the tag given on the suspect vehicle and it was [redacted] and it returned to the vehicle this officer was behind. I then activated the blue lights and attempted to make a traffic stop on the vehicle.

I then made contact with city officers and dispatch by radio and advised them that I was attempting to stop the vehicle and to notify Conway County Deputies. I followed the suspect vehicle on Highway 9 and we was traveling north bound. I then notified Dispatch and told them that the vehicle was not stopping and we were approaching the Highway 9 and 9 South Intersection. I, along with Officer Murray who assisted this officer while at the stop light at Highway 9 and 9 business in front of the Waffle House, then attempted to box in the vehicle. I then got out of this officers patrol unit and began to draw my duty weapon while approaching the vehicle on the passenger side. The suspect vehicle then began to back out and was approaching toward this officers patrol unit at a high rate of speed. This officer was standing to the right of the suspect vehicle. I then began to fire at the right rear tire of the vehicle, attempting to disable the vehicle to prevent the vehicle from leaving at a high rate of speed. I then observed the vehicle take off toward Officer Murray and the suspect vehicle went across the roadway and came to a stop in a ditch located on the northeast corner of Highway 9.

This officer, along with Officer Murray, went over towards the vehicle and observed that the suspect in the vehicle had been severely injured which lead this officer to believe that the suspect was dead. Officer Murray then made contact with Dispatch to start an ambulance immediately to get the suspect some medical attention. I then made contact with Sgt. Cheryl Eoff and told her to come on scene. This officer remained on scene until Lt. Russell arrived where he took this officers duty weapon. This officer was then told by Lt. Russell to go back to the Morrilton Police Department.

CASE #08-02335

Narrative - Murray, James Clint - 11/29/2008 (Initial)

On the above date at around 4:15 p.m., a call from dispatch came over the radio that there was a man in the process of taking some Crown Royal whiskey from number 9 Liquor located on State Highway 9 in Morrilton.

While in route to Number 9 Liquor, Dispatch stated that the man had left the store in a maroon in color, four door, Chevrolet car with Arkansas license plate number [redacted] The car was driving south on Highway 9. Dispatch then said that the car had turned on to Hwy 9B (Bridge Street), heading north bound.

While in route to that area I got in behind Ptl. Dustin Caudell's patrol car who was also responding to the call. When we got to the intersection of Bridge Street and Winthrop Lane Caudell asked me to go to Moose Street in case the car had gone down Burrow Street. As I was doing so, Caudell came over the radio and told me that he had just met the car on Bridge Street, and had seen it turn on to Crestview Drive. As I was going to back up Caudell, he said over the radio that the car had turned north onto State Highway 9. I then went down Crestview Drive onto State Highway 9, and I then went North on Highway 9. I caught up with Caudell at around the intersection of Highway 9 and U. S. Highway 64. I could see that Caudell had his blue lights on and could hear that he had his siren on. Caudell came over the radio and said that the car was not stopping, and asked dispatch to tell the county units. I notified Caudell that I was behind him. We then came to the intersection of Highway 9 and Harding Street where the car we were pursuing came to a stop. I then went around in front of the suspects vehicle and stopped in front of the left front corner. I then got out of my patrol car and went around the back of it. I could see the car backing toward Caudell. We were both, officer Caudell and myself, yelling at the driver to stop the car. Caudell had his weapon drawn, and was shooting at the car. The car stopped, and then the driver looked at me and turned the front tires toward me, the car was about 10 feet from me. He then accelerated the car at me at a very high rate of speed trying to run over me. Being scared for my life, I opened fire with my weapon. I fired my weapon into the car as the car was coming toward me, and continued to fire as I jumped out of the way of the car. The car then went north on Highway 9 and crashed into the ditch on the north east side of the intersection of Highway 9 and Harding Street. I then approached the car and could see that the driver was severely injured, and I believed to be deceased. I then contacted Dispatch and told them to send Med Tech to my location. A county deputy then arrived at my location. After the deputies arrival I went back to my car, and stayed there until Lt. Russell arrived and I turned my weapon over to him. I was then directed to go to the police department.

CRIME SCENE FORENSICS, LLC
2217 Matthews Township Pkwy
Suite D #246
Matthews, NC 28105

September 09, 2013

John L. Wilkerson
301 W. Second Street
North Little Rock, AR 72114

REF: Thompson V. City of Morrilton et al... Case # 4:11cv 804 BRW

Dear Mr. Wilkerson,

This letter will serve as a report of my findings and opinions based on my review of the following materials and information:

- Arkansas State Police Investigative File; Including Crime Scene Report
- Witness Interviews/Statements
- Officer Statements
- Police Radio Transmissions
- No Bill Report
- Misc Agent Notes
- Incident Reports
- Crime Scene Photos
- Evidence Photos
- Recorded Interviews
- Police Vehicle Dash Mounted Video Camera Recordings
- Autopsy Report and Autopsy Photos
- Laboratory Reports
- Site Visit/Scene Examination September 09, 2013

Introduction:

In the above case investigation, I was asked to review and analyze the above listed materials and information, and to render an opinion as to the events surrounding the officer involved shooting incident, which resulted in the death of Jermell Thompson.

Background:

On November 29, 2008, at approximately 4:14PM, the Morrilton AR, Police Department received a 911 call from the Number 9 Liquor Store reporting the theft of a bottle of Crown Royal Whiskey. Employees of the liquor store described a black male who walked into the store while talking on a cell phone, and went into the area of the bathrooms. The

individual returned from this area a short time later; still talking on the cell phone and holding his pants leg. Number 9 Liquor employees subsequently checked the bathroom area and discovered a Crown Royal Whiskey box from which the bottle was missing. Employees followed the subject out of the store and obtained his vehicle description, license plate number, and direction of travel, which were all reported to the Morrilton Police Department. The described vehicle was a maroon Chevrolet (Corsica), operated by the reported subject, later identified as Jermell Thompson. A Crown Royal Whiskey bottle was recovered from the maroon Corsica that Mr. Thompson was operating.

Subsequent to the 911 report of the theft of the bottle of whiskey, Officer Dustin Caudell encountered the described vehicle northbound on State Highway 9, and attempted to stop the vehicle. Officer Caudell was soon assisted by Officer James Murray who followed directly behind Officer Caudell's cruiser and the maroon Corsica operated by Jermell Thompson. Mr. Thompson eventually stopped his vehicle at a red traffic light on State Highway 9 northbound at the intersection of State Highway 9B. At this time Officer Caudell positioned his patrol vehicle to the right and rear of the Corsica, while Officer Murray positioned his patrol vehicle diagonally across the front driver's side of the Corsica, in an attempt to block Mr. Thompson's vehicle and to prevent him from leaving the area. Both patrolmen exited their respective vehicles and Mr. Thompson attempted to back up and drive around the police patrol vehicles. Shots were subsequently fired at Mr. Thompson as he drove his vehicle forward toward Officer Murray.

Evaluation of the Case Materials:

Initial Pursuit of Jermell Thompson - Dash Mounted Video Recordings:

The patrol vehicles operated by both Officer Dustin Caudell and Officer James Murray were each equipped with an in-car dash mounted video camera (dash cam), which recorded the events of this incident. The dash cam in Officer Caudell's patrol vehicle recorded this incident without sound, and the dash cam in Officer Murray's patrol vehicle recorded this incident with sound.

Officer Caudell and Officer Murray pursued the Maroon Corsica for approximately 3.25 miles *(Refer to attached image from Yahoo! Maps).* The dash cam evidence of this pursuit demonstrates that Mr. Thompson failed to pull his vehicle over to the side of the road for the emergency vehicles, and is traveling at speeds that exceed the posted speed limits.

Officer Murray's dash cam video records the pursuit of Jermell Thompson in the maroon Chevrolet Corsica, from the position behind Officer Caudell's patrol vehicle. In this dash cam video recording, the siren on Officer Murray's patrol vehicle is clearly audible, and the emergency overhead blue lights on Officer Caudell's patrol vehicle are clearly visible. The lights and sirens of two marked police patrol vehicles directly behind him are a clear indication that police wanted Mr. Thompson to pull his vehicle to the side of the road; Jermell Thompson did not comply.

During the pursuit of Mr. Thompson, the dash cams capture the posted speed limit signs on Highway 9 northbound and show the posted speed limit as gradually decreasing from 55MPH at the beginning of the recording, to 45MPH, then to 35MPH just before the traffic light at the intersection of Highway 9B. During the attempt to stop Mr. Thompson, it is noted on Officer Murray's dash cam that speeds reached approximately 64MPH in the posted 45MPH zone, *(refer to Officer Murray's dash cam recording at the 16:22:05 mark, as*

well as the attached photo of same), and 66 MPH in the 35MPH zone. *(Refer to Officer Murray's dash cam recording at the 16:22:24 mark, as well as the attached photo of same).*

It is noted on both officers' dash cams, that when Mr. Thompson's vehicle is approaching the red traffic light at the intersection, he is observed coming to a stop, as there is traffic in front of him proceeding through the intersection from Highway 9B to Highway 9 northbound. On Officer Caudell's dash cam, at the 4:17:58 mark, the Corsica is observed briefly coming to a complete stop, before immediately backing up and out of the view of the dash cam approximately two seconds later. At the time that Mr. Thompson's vehicle is once again visible on Officer Caudell's dash cam, the traffic signal is still red. This indicates that after Mr. Thompson backed up and around the patrol vehicles, shifted his vehicle into "drive" and began moving forward toward Officer Murray, the traffic signal was still red. Given the short distance between the location of the traffic stop, the location where Mr. Thompson began to proceed forward toward Officer Murray, the location of the traffic light, and the fact that the traffic light was still red at the time Mr. Thompson began moving forward; it is reasonable to suggest that Mr. Thompson's intent was to proceed through the steady red traffic light once he passed Officer Murray.

Timeline of Events Regarding the Shooting Aspect of this Case:

Dash cam Video - Officer Caudell's Patrol Vehicle

Officer Caudell's dash cam records his patrol car following Mr. Thompson's vehicle to the red traffic signal, and then pulling to the right or passenger side of Mr. Thompson's vehicle. At the 4:17:58 mark of this recording, the front end of Mr. Thompson's vehicle becomes visible on the dash cam recording, and comes to a full stop. At the same mark, the front of Officer Murray's vehicle is observed coming to a full stop partially in front of Mr. Thompson's vehicle.

At the 4:18:00 mark of Officer Caudell's dash cam recording, Mr. Thompson's vehicle is observed backing up and immediately disappears from the view of this dash cam.

At the 4:18:10 mark of Officer Caudell's dash cam recording, Mr. Thompson's vehicle is first observed coming back into the view of the camera. At this point in time, the shooting has already occurred and ended, and Mr. Thompson's vehicle is proceeding northeast through the intersection and toward the culvert in which his vehicle came to its eventual final rest.

This review of the dash cam evidence from Officer Caudell's patrol vehicle shows that only twelve seconds elapsed on the dash cam recording, from the time that all three vehicles are observed coming to a complete stop, to the time that Mr. Thompson's vehicle is next observed passing the view of the camera, after the shooting has taken place. This time frame will be evaluated further in the review of Officer Murray's dash cam in the next section.

Dash cam Video - Officer Murray's Vehicle

Officer Murray's dash cam recording shows Mr. Thompson's vehicle coming to a stop at the red traffic light as traffic is proceeding from Highway 9B east to Highway 9 northbound in front of him. Officer Murray's vehicle is observed traveling to the left or driver's side of Mr. Thompson's vehicle, before turning to a northeast direction partially in front of Mr. Thompson's vehicle in order to prevent him from proceeding further.

At the 16:22:44 mark of Officer Murray's dash cam, Officer Murray's patrol vehicle comes to a complete stop. While the dash cam's video recording at this time is facing northeast, and the events are taking place behind the camera, the audio recording of the dash cam documents the next events.

At the 16:22:49 mark of Officer Murray's dash cam, Officer Murray can be heard giving Mr. Thompson verbal commands. The words "Just stop right there! Just stop right there!" can be heard from the 16:22:49 mark to the 16:22:51 mark of the recording.

At the 16:22:52 mark of Officer Murray's dash cam, the first gunshots are heard. The gunfire ends at the 16:22:54 mark on the recording.

Officer Murray's patrol vehicle is observed coming to a stop at the 16:22:44 mark, and the last gun shots are heard at the 16:22:54 mark, indicating a maximum time of ten seconds in which this event occurred. It logically would have taken some seconds for Mr. Thompson to operate his vehicle backward and between the two patrol vehicles, before beginning to move northbound around Officer Murray's patrol vehicle and toward Officer Murray. It also would have taken some seconds simultaneously, for Officer Murray to have exited his patrol vehicle, take up a position near the rear of his patrol car, and assess Mr. Thompson's actions as Mr. Thompson was backing up. The first verbal commands given by Officer Murray are observed at the 16:22:49 mark, with the last gunshots being heard at the 16:22:54 mark. Therefore, the confrontation aspect of this event took place in a period of approximately five seconds.

Crime Scene Report:

The scene consists of the intersection of State Highway 9 and State Highway 9B located in Morrilton, AR. The intersection is a four way intersection; State Highway 9 runs in a general north/south direction, and State Highway 9B crosses the intersection in an easterly direction and proceeds into the parking lot shared by the Waffle House and Super 8 Motel, on the eastern side of Highway 9. *(Refer to attached diagram of scene, ARSP scene diagram, labeled aerial photo from Google Maps, photos #DSC_0064, and #DSC_0067).*

At this described intersection, Highway 9 northbound consists of a clearly designated left turn only lane for traffic turning west onto Highway 9B, a lane for traffic proceeding straight through the traffic light on Highway 9 north, and a full sized shoulder. *(Refer to attached diagram of scene and photo #DSC_0067).*

Highway 9 southbound consists of a clearly designated left turn only lane for traffic turning east into the Waffle House/Super 8 Motel parking lot, as well as a lane for traffic proceeding straight south through the intersection on Highway 9. There is an off ramp well before the intersection (southbound, north of the intersection) for traffic moving from Highway 9 southbound to Highway 9B westbound. *(Refer to attached diagram of scene, photo labeled Jamel Thompson 131, and attached & labeled Google Maps aerial view of intersection).*

The maroon Chevrolet Corsica operated by Mr. Thompson is recovered in a culvert located just north of the roadway leading into the Waffle House/Super 8 parking lot. Officer Murray's patrol vehicle is located on an angle facing northeast where it was originally positioned in order to block Mr. Thompson's vehicle from proceeding north on Highway 9. *(Refer to attached diagram of scene, ARSP scene diagram, photo #DSC_0052, and labeled aerial photo).* Officer Caudell's vehicle was moved from its original location prior to the crime

scene measurements being taken by investigators.

A total of ten .40 cal shell casings were recovered at the scene, south of the intersection. Six .40 cal shell casings were recovered in the southbound lane of Highway 9. These shell casings were generally located to the rear (south) and west of Officer Murray's patrol vehicle. *(Refer to Crime Scene Search report page 2 of 3, ARSP crime scene diagram, and photo #DSC_0038).* Four additional .40 cal shell casings were located south of Officer Murray's patrol vehicle both on the shoulder of Highway 9 and the northbound lane of travel. *(Refer to Crime Scene Search report page 2 of 3, ARSP crime scene diagram, and photo #DSC_0054).* Each casing was measured in its respective location, and has been plotted on the attached ARSP crime scene diagram to demonstrate its reported location.

An examination of Mr. Thompson's vehicle by the Arkansas State Police reveals five apparent bullet holes in the windshield directly in front of the steering wheel and one apparent bullet hole in the hood in line with the steering wheel. *(Refer to photo #DSC_0015).* One bullet was recovered in the front pass seat - right lumbar area, *(Refer to Agent Notes/Bullet Recovery SA Larry J. Carter dated December 10, 2008, and photo #DSC_0008)*

The driver's side window of the Corsica has been shattered and there is glass noted in the roadway, north of the spent shell casings. The broken glass is noted on, and immediately next to, the solid double yellow line. *(Refer to Crime Scene Search Report page 2 of 3 and photo #DSC_0051).* Photos of the Corsica demonstrate no damage to the rear driver side window, the front passenger side window, the rear passenger side window, or the rear window.

The approximate bullet trajectories are demonstrated by investigators through the use of trajectory rods. The bullet trajectories, along with the evidence of the shattered window and recovered projectile, are consistent with shots being fired from in front of the Corsica, from approximately the front driver's side corner of the Corsica, and from the middle to front driver's side of the Corsica. (Refer to photo #DSC_0101). These trajectories are consistent with Officer Murray being in front of the Corsica when he began to fire, and continuing to fire as the Corsica moved past him. The audio recording on Officer Murray's dash cam indicates that the shots were fired from 16:22:52 to 16:22:54; a time period of only two seconds.

The driver's side rear tire was examined by the ARSP and was found to be flat, however no bullet holes were noted in this tire*. (Refer to Agent Notes/tire Examination; SA Scott Luter #66, dated december 08, 2008).*

A small dent with black and maroon colored paint was discovered on the passenger side front door area of Officer Murray's patrol vehicle. This damage was photographed and examined by investigators, however it is stated in the report that it could not be confirmed as to whether or not Mr. Thompson's vehicle actually struck Officer Murray's patrol vehicle. In the absence of a scientific conclusion as to whether or not there was contact between these two vehicles, it is noted that the damage consists of a small dent and paint colors that are consistent with the black and maroon colored front bumper of the Corsica. Further, the described damage is noted in an area of Officer Murray's patrol vehicle that was exposed to the Corsica while Mr. Thompson was being blocked in by, and backing away from the police vehicles. *(Refer to Agent Notes by SA Larry J, Carter #805, dated Dec 4, 2008, and to photos #DSC_0002 and Jamal Thompson 047).*

Medical Examiner's Report

The Medical Examiner's post mortem examination of Jermell Thompson reports six gunshot wounds. Four of the projectiles associated with these wounds were recovered during the post mortem exam and subsequently submitted to the Arkansas State Crime Laboratory. Gunshot wounds were reported as follows: 1) Gunshot wound of head entering the left lower frontal scalp. This wound path was described as front to back, left to right, and downward. 2) Gunshot wound of left cheek. The wound path was described as front to back and downward. 3) Graze wound of right cheek. This wound path was described as front to back, downward, and slightly left to right. 4) Gunshot wound of right arm entering the right upper arm. This wound path was described as right to left, front to back, and downward. 5) Gunshot wound of left arm entering the left upper arm. This wound path was described as left to right and back to front. 6) Gunshot wound of left lower arm entering the left lower arm. This wound path was back to front, left to right, and slightly downward. Photographs of these injuries accompany the medical examiner's report

Arkansas State Crime Laboratory Analysis

Test fires were performed by the Arkansas State Crime Lab in an effort to determine which officer's pistol fired the rounds that were recovered from the body of Jermell Thompson. Although the lab findings report an inconclusive scientific result, the facts and circumstances of the event indicate that the fatal shots were fired by Officer James Murray.

Toxicology tests reveal that Jermell Thompson tested positive for THC/Cannabinoids, which are found in marijuana.

Witness Statements

During the course of this investigation approximately twenty-one witnesses were interviewed regarding their knowledge of the events. Two witnesses were interviewed regarding phone conversations that each had with Mr. Thompson during the pursuit, while two others were employees of Number 9 Liquor Store who were interviewed regarding the original theft of the whiskey bottle. Most of the witnesses interviewed by investigators claimed to have a first hand view of the event from their respective vantage points. While there are subtle differences in some of these accounts, approximately fifteen witness accounts agree to the following details in substance: police were chasing a car and boxed that car in at the intersection. As police boxed in the car (operated by Jermell Thompson), the car began to move backward and subsequently forward and around officer Murray's vehicle, in a direction toward Officer Murray. Police began to shoot at the car as it was coming forward toward Officer Murray. The car (Mr. Thompson's vehicle) subsequently ran off the roadway and into a nearby ditch.

While there are interpretive differences in some of the witness accounts these basic observations remain consistent. Some witness accounts detail the belief that Mr. Thompson's vehicle was going to "run over the officer," while other accounts describe the car, (Mr. Thompson's vehicle), as traveling slowly and suggesting that the officer, (Officer Murray), had enough time to get out of the way. There are other witness accounts which are clearly refuted by the dash cam video tape evidence. In spite of these interpretive differences, the most consistent theme contained within the eye-witness accounts, is that the police officers were attempting to stop a car, and that car was in turn attempting to evade the police.

Officer Statements - James Murray:

Officer James Murray was interviewed by Arkansas State Police Investigators on December 02, 2008. During this interview, Officer Murray stated to investigators that he and Officer Dustin Caudell pursued Mr. Thompson north on Highway 9 to the traffic light at the intersection of Highway 9B. When Mr. Thompson stopped his vehicle at the red light, Officer Murray stated that he pulled his patrol car around to the "*left front corner of the suspect's vehicle to box him in. And he immediately backs up towards Officer Cardell. Well, I get out of my unit and go around the back of my car and get back there, and the car is probably ten feet away from me and I see him look up and make eye contact with me, turn the steering wheel where the tires are facing me, and put it in gear and he came at a high rate of speed. I, uh, started shooting as I was trying to get out of the way, fired seven or eight rounds, uh, mainly through the windshield. I think I fired one or two through the door.*" *(Refer to statement of Officer James Murray dated 12/02/08; page 3).*

Officer Murray stated that he "*repeatedly told him* (Mr. Thompson) *to stop and get out of the car, get out of the car.*" *(Refer to statement of Officer James Murray dated 12/02/08; page 4).* As Mr. Thompson began to operate his vehicle toward Officer Murray; Officer Murray stated, "*I was probably, I'm not really certain on this but I think I was, you know, pretty well halfway between the middle and the left comer of it,* (the Corsica) *so I was about a quarter of the way into the vehicle... I was directly in front of it, pretty much.*" *(Refer to statement of Officer James Murray dated 12/02/08; page 3).*

As Mr. Thompson proceeded toward Officer Murray, Officer Murray moved to his right (Mr. Thompson's left) in order to get out of the way of Mr. Thompson's vehicle; Officer Murray stated: "*Yes. I ran to my right, which would be his left, his driver's side.*" *(Refer to statement of Officer James Murray dated 12/02/08; page 3).* It should be noted this action would have forced Officer Murray to move into the southbound traffic flow which would have been at Officer Murray's back. *(Refer to attached scene diagram).*

Officer Murray expressed that he was in fear for his life and believed that Mr. Thompson's intent was to run him over with his vehicle and kill him. When asked by investigators as to whether he believed that Mr. Thompson saw him in front of his vehicle, Officer Murray replied, "*I made eye contact with him.*" *(Refer to statement of Officer James Murray dated 12/02/08 page 5).* Officer Murray continues that as the vehicle was coming directly at him, he was moving the entire time while attempting to get out of the way of Mr. Thompson's vehicle, and he estimates that Mr. Thompson's vehicle came within two feet of him. During this extremely brief period of time, Officer Murray stated that he wasn't sure whether or not he was going to be able to get out of the way of Mr. Thompson's approaching vehicle. *(Refer to statement of Officer James Murray on 12/02/08 page 6).*

Officer Statements - Dustin Caudell:

Officer Dustin Caudell was interviewed by Arkansas State Police investigators on December 02, 2008. During this interview, Officer Caudell stated the following, "*I pull to the right of the (Mr. Thompson's) vehicle and Officer Murray came around to the front. Uh, I get out of my vehicle, before I get out of my vehicle I had my hand on my gun getting ready to take a felony take down and before I know it he puts it in reverse coming at me. I get out of the way and then I don't remember if I yell stop or I mean it's, it's real blurry but he puts it in drive, takes off pretty quick and I knew Officer Murray was over there and I, that's when I opened fire on the right rear tire to disable the vehicle cause I didn't know if he was, I mean Officer Murray was*

there, I was thinking officer safety and also trying to disable the vehicle to prevent any further high speed chase so. (Refer to statement of Officer Dustin Caudell on December 02, 2008, page 2).

Literature References - Looming:

The Force Science Institute, (FSI), based in Minnesota is renowned for its research into the dynamics of police officer involved shootings. The FSI has researched and reported on a concept known as “Looming”. Looming describes the situation in which a police officer is standing in front of a moving vehicle which is being operated toward the officer. According to this report, each time the gap between the officer and the oncoming car closes by half, the space occupied by the image of the vehicle in the officer's visual field roughly doubles. Since the vehicle appears to be growing dramatically in size, it may seem to be coming at a faster speed than it actually is, leaving the officer to believe that he has no time to clear the path of the on coming vehicle. (Refer to the Force Science Newsletter #218, *"Looming": Important consideration when cops fire at moving cars.)*

Time - Distance Calculations:

Basic time-distance calculations can provide a basic reference in understanding how quickly events can occur. For example, a vehicle traveling at a minimal constant speed of 10 mph, travels at a distance of 14.66 feet per second. The length of the 1992 Chevrolet Corsica is listed on *Edmunds.com* as being 183.4 inches, or about 15 feet 3 inches in length. Therefore, even at a minimal constant speed of 10 MPH, Mr. Thompson’s Corsica could have traveled the equivalent of almost three car lengths from the time that Officer Murray is first heard on the audio recording given verbal commands, at the16:22:49 mark, to the time that the first shot is heard three seconds later at the 16:22:52 mark. Logically, if the speed of Mr Thompson’s Corsica increases, from 10 MPH, then the number of car lengths that he is able to cover in that same three second period of time, would also increase.

Officer Murray visually estimated that he was approximately ten feet in front of Mr. Thompson’s Corsica when he made eye contact with Mr. Thompson and when Mr. Thompson began to operate the Corsica toward him at him at a “*high rate of speed.*” *(Refer to statement of Officer James Murray dated 12/02/08; page 3).* If Officer Murray’s estimate is accurate, and if Jermell Thompson was traveling at a minimal constant speed of 10 MPH, then it would have taken less than one second for Jermell Thompson to close the distance between the front of his vehicle and Officer Murray, giving Officer Murray less than one second to react to the vehicle coming at him. Logically, if Mr. Thompson were operating his Corsica at a rate of speed greater than 10MPH, then the time in which Officer Murray had to get out of the way of that vehicle, would be less.

Jermell Thompson's vehicle is observed traveling across the dash cam video of Officer Caudell's patrol car, after the shots have been fired by police. A review of Officer Caudell's dash cam video shows that a maximum of 2.2 seconds have elapsed on the dash cam time counter from the time that Mr. Thompson's vehicle is first observed coming into the view of Officer Caudell's dash cam, *(refer to the 4:18:10 mark and photo marked Caudell Dash Cam 01),* until the time that the front tires of Mr. Thompson's vehicle are at the edge of the roadway just before the grass, *(refer to the 4:18:12 mark and photo marked Caudell Dash Cam 02)*.

On September 09, 2013, I conducted a site visit/scene examination of the Highway 9/ Highway 9B intersection with assistance from the Little Rock Police Department Vehicular Homicide Investigation Unit. During this scene examination, an electronic total work station (ETWS) was utilized by the Little Rock PD, under the direction of Officer Ralph Breshears. The ETWS was used to measure the intersection and to subsequently produce a scale diagram of the intersection. Another part of this scene examination included using the original scene notes, photographs, and measurements generated by the Arkansas State Police on November 29, 2008, to mark the locations of the bullet casings, Officer Murray's patrol vehicle, and Mr. Thompson's Corsica, in the locations in which they were documented at the time of the incident. Using this information, the location in which Mr. Thompson's Corsica is first observed on Officer Caudell's dash cam was approximated, and measured to the location in which his front tires are observed at the edge of the roadway. *(Refer to attached photos Caudell Dash Cam 01 and Caudell Dash Cam 02)*. The distance between these two points measured approximately 64 feet. Therefore, the evidence shows that it took approximately 2.2 seconds, for Mr. Thompson's vehicle to travel the approximate 64 feet across the intersection.

Using basic time/distance calculations, it is determined that Jermell Thompson's vehicle would have been traveling at a constant speed of approximately 19.84 MPH, or approximately 29.09 feet per second, across the intersection, after the shots had been fired.

Prior Incident Reports:

On June 20, 2008, Officer Bryan Risner reported an encounter with Jermell Thompson in which Mr. Thompson resisted arrest. Officer Risner was called to a Walmart parking lot at 3:42AM, to investigate a male punching the window of a vehicle in which a female was seated. The male was identified as Jermell Thompson. According to the report, when Officer Risner approached Mr. Thompson relative to the investigation, Mr. Thompson physically resisted interview and apprehension and ran from Officer Risner into a wooded area. Officer Risner's report states: "*At that time, I asked Thompson to stop and come to me. Thompson kept walking away from me and digging in his pocket. I approached Thompson and told him to stop. At that time, Thompson tried to run from me. I attempted to grab Thompson by his left hand and he pulled away. At that time, I placed hands on Thompson and tried to place him under arrest. Thompson fell to the ground and was trying to pull something out of his pocket. I then radioed for help and tried to hold Thompson on the ground. He got loose from me and stood up, then tried to run again. I grabbed his shirt to try to stop him from getting away. Thompson pulled away from me, causing his shirt to come off and Thompson hit the ground again. I was attempting to contain him on the ground, when he tried to grab my firearm. While I was trying to reposition myself to keep him from gaining access to my gun, I saw a plastic bag in his right hand, as he got up again. I grabbed ahold of him once again and we went to the ground. Thompson pulled away from me as I was trying to hold onto his legs. As Thompson pulled away from me, his shorts came off and he left them behind as he ran behind Wal-Mart and into the nearby woods. Thompson left behind his hat, shirt, shorts and cell phone." (Refer to Report of Officer Bryan Risner dated June 20, 2008.)*

Official Findings of Special Prosecutor:

An official investigation was conducted into this incident under the direction of Special Prosecuting Attorney H.G. Foster. On October 16, 2009, Mr. Foster issued a letter outlining his investigation and reporting that after a review of all facts and circumstances, there was no basis for the filing of charges against the officers involved.

Conclusions and Opinion:

Actions of Jermell Thompson:

Jermell Thompson had just committed a larceny of a bottle of Crown Royal Whiskey from a local liquor store; the evidence of which was later recovered within his vehicle. Subsequent to this larceny, Mr. Thompson was being pursued by marked police vehicles with lights and sirens in operation. These facts alone would reasonably suggest that Mr. Thompson was aware that police were pursuing him for the larceny, and that he would be taken into custody for the crime that he had just committed. Mr. Thompson had ample opportunity to end the chain of events that he began, by simply pulling his vehicle to the side of the road and peacefully surrendering to police for the misdemeanor that he had just committed. Rather than take responsibility for his actions, Jermell Thompson continually escalated the situation by actively evading police and eventually driving his motor vehicle at police rather than be taken into custody. Further, although apparently unknown to either officer at the time, Jermell Thompson has demonstrated a propensity to evade police and resist resist through a previous incident on June 20, 2008.

During this pursuit, Jermell Thompson is observed on the dash cam video recordings traveling well over the posted speed limits. At one point during the pursuit, Mr. Thompson is traveling 31MPH over the posted speed limit as he approached the caution sign signaling the traffic light ahead at the intersection of State Highway 9 and Highway 9B. The yellow *traffic signal ahead* warning sign is visible on the video. (*Refer to Officer Murray's dash cam recording at the 16:22:24 mark, as well as the attached photo of same).*

Jermell Thompson was ultimately forced to stop at the intersection of Highway 9 and Highway 9B, as traffic was proceeding in front of him from Highway 9B eastbound to Highway 9 northbound. After stopping at the intersection and upon being "boxed in" by two marked police patrol cars that had been pursuing him, Jermell Thompson made a conscious decision to immediately back his vehicle between and around those two marked patrol cars. At the 4:17:58 mark of Officer Caudell's dash cam recording, the front end of Mr. Thompson's vehicle becomes visible on the dash cam recording, and comes to a full stop. At the same mark, the front of Officer Murray's vehicle is observed coming to a full stop partially in front of Mr. Thompson's vehicle. At the 4:18:00 mark of Officer Caudell's dash cam recording, Mr. Thompson's vehicle is observed backing up and immediately disappears from the view of this dash cam. Given this two second period of time, Mr. Thompson began to back his vehicle immediately upon being "boxed in" and therefore did not afford the officers an opportunity to approach his vehicle and safely take him into custody.

According to multiple eye witness accounts, when Mr. Thompson was "blocked in" by the police cars at the intersection, he first operated his vehicle backwards, and then drove forward as he passed Officer Murray's patrol vehicle and proceeded toward Officer Murray.

At the 4:18:10 mark of Officer Caudell's dash cam recording, Mr. Thompson's vehicle is observed traveling through the intersection and toward the culvert after the shooting has occurred. At this time, the traffic signal is still red, suggesting that when Mr. Thompson was moving forward toward Officer Murray, in the oncoming (southbound) lane of traffic, that he was prepared to run the red light in order to avoid the officers who were attempting to stop him.

Actions of Officer James Murray:

Officer Murray's patrol vehicle came to a complete stop at the 16:22:44 mark of his dash cam. Therefore, the entire incident from the stop of Jermell Thompson's vehicle to the last shot that was fired at 16:22:54 took place within ten seconds. While it may not be possible to definitively conclude the exact number of seconds that it would have taken Mr. Thompson to back his vehicle, or the exact number of seconds that it would have taken Officer Murray to take up his position and assess the situation, the audio tape evidence indicates that the actual confrontation between Officer Murray and Mr. Thompson occurred between the 16:22:49 mark and the 16:22:54 mark. This would be the time from the first verbal commands given by Officer Murray to the sound of the last shot being fired. The actual confrontation aspect of this event occurred within approximately a five second period of time.

The video recorded evidence from the dash cams on the officers' patrol vehicles demonstrates that Officer Murray had a maximum of ten seconds, but more likely closer to five seconds, in which to: 1) evaluate the situation in which he found himself, 2) assess the actions of Mr. Thompson to that point in time, 3) assess and determine his escape routes as Mr. Thompson's vehicle rapidly approached him, and 4) attempt to determine the ultimate intentions of Mr. Thompson based upon his behavior to that point, and finally, 5) take action in order to protect himself and any other innocent bystanders who might be in the path of Mr. Thompson's vehicle.

It is important to remember that when evaluating the actions of a police officer who uses deadly force, the evaluation must be made in consideration of the amount of time and available information that the officer had to assess and react to the given situation, not from the perspective of several years of evaluation and hindsight. Officer James Murray was put into a situation in which he had little information and could not be aware of the outcome or the consequences of taking additional time to evaluate that situation. It is improper to evaluate, criticize, or second guess a police officer's actions with the benefit of months or even years of hindsight. The proper way to evaluate the actions of a police officer who uses deadly force should be through the eyes of that police officer, considering only the information available to that officer at the time; in addition to considering the amount of time in which that officer had to recognize, evaluate, and react to the set of circumstances before him.

At the time of this incident, Officer Murray was pursuing a vehicle for which the operator was reported to have just committed a larceny. The vehicle that Officer Murray was pursuing was exceeding the speed limit and refusing to pull over and comply with two marked police cars behind him, with lights and sirens in operation.

Once the vehicle being pursued by Officer Murray came to a stop, and was "boxed in" by those two police vehicles, the operator of that vehicle, Jermell Thompson, made a conscious decision to back up between the two police cars, before moving forward toward Officer Murray and potentially oncoming southbound traffic. It should be further noted that Jermell Thompson, took the conscious action of driving around the police vehicles and toward Officer Murray, in spite of being given verbal commands to stop and and exit the vehicle. All of these events took place within a time period of less than ten seconds.

Officer Murray had been pursuing a person who had just committed a crime. Officer Murray observed the manner in which that person, Jermell Thompson was reacting to the police in pursuit of him, and blatantly evading police officers in the lawful pursuit of him. Finally, Officer Murray was faced with the reality that Jermell Thompson was operating a motor vehicle toward him, and Officer Murray had very limited options in which to avoid contact with Mr. Thompson's

vehicle. Officer Murray's potential options included: moving to the east of Mr. Thompson's approaching vehicle which was blocked by his own patrol car; moving to the north and out running Mr. Thompson's approaching vehicle; moving to the west of Mr. Thompson's approaching vehicle into potentially on coming traffic, or using deadly force to stop the approach of the vehicle. Officer Murray had to make this decision in no more than five seconds.

The time-distance calculations demonstrate that this period of time in which Officer Murray had to make his decision, could have been significantly shorter than five seconds; possibly even less than a single second. Officer Murray estimated that the Corsica was approximately ten feet away from him, when Jermell Thompson accelerated that vehicle in his direction. At just 10 MPH, Jermell Thompson could travel that distance of ten feet in less than a single second.

A review of the physical evidence in this case shows that the shots fired by Officer Murray were fired from the front of the Corsica, the front left (driver's side) corner of the Corsica, and the front to middle area of the Corsica as it drove toward and past him. The bullet holes and trajectories in the Corsica, and the wound paths described in the medical examiner's report, are consistent with Officer Murray initially being positioned in front of the Corsica, and then moving toward the driver's side of the Corsica as it passed by him, and while he continued to fire. The gunshots were all fired during a period of two seconds. At a constant speed of just 10 MPH, the Corsica could have traveled 29.32 feet during the two seconds that the shots were being fired. If the speed of Mr. Thompson's Corsica exceeded 10 MPH, then the distance traveled during that same two seconds would have been greater.

In review of the facts of this case, It is my opinion that Officer James Murray acted reasonably when he reacted to the set of circumstances that were forced upon him by Jermell Thompson. It is reasonable to expect that Officer Murray would be in fear for his life as a motor vehicle was approaching him, and the situation in which Officer Murray found himself is even more dire given the extremely brief period of time in which Officer Murray had to assess, evaluate, and react.

This report is based solely upon the information made available to me at this time. If new information or physical is evidence is provided to me after the submission of this report, I will consider that new evidence or information, and if necessary, will submit an amended report.

Respectfully Submitted,

Thomas L. Martin