International Municipal Lawyers Association
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Litigation, Insurance & Risk Management Section Meeting

PLAINTIFF'S 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, et al. — DEFENDANTS

PLAINTIFF'S STATEMENT OF UNDISPUTED FACTS

1. On November 29, 2008, at approximately 4:14 pm, the Morrilton Police Dispatch Center received a call from the Number 9 Liquor store that an unknown Black man had walked out the store with a bottle of whiskey that was not paid for.

2. The caller reported the vehicle as a Maroon Chevrolet bearing license plate number 059 MWR. The caller also gave the direction of travel of the vehicle. Def. attachments A-R.

3. The information dispatched to all Morrilton Police Officers was a misdemeanor in that the value of the item alleged to have been taken was $60.00. or less.

4. There was no allegation of use of force. Def. Exhibits A-R.

5. The plates came back as belonging to the car and gave the name and address of the registered owner. Def. Exhibits A-R.

6. Murray and Caudell heard the information and responded by going to the area where the vehicle was seen to travel. Def. exhibit S; & Def. Exhibit T.

7. Caudell saw a Maroon Chevrolet ahead of him that fit the description and followed it for a few blocks. Def. Exhibit S.

8. Jermell Thompson, the deceased was driving the car. He turned north onto SH 9.

9. Caudell caught up to Jermell and verified the tag number, advising dispatch of their location. Def. Exhibit S.

10. He then activated his blue lights and siren. Def. Exhibit S.

11. After a short period, Caudell advised dispatch that the vehicle was not stopping. Def. Exhibit S.

12. Shortly thereafter, Murray caught up falling in behind Caudell and they trailed Jermell as he drove north on SH 9 in the direction of the address broadcasted by dispatch as that of the vehicle's owner. Def. Exhibit T

13. Caudell was the lead vehicle and Murray was behind him. Def. Exhibit W.

14. At no point did Jermell cross the center line into oncoming traffic, dodge around vehicles ahead of him or otherwise drive in a dangerous or hazardous manner. Def. Exhibit X

15. At no point is Jermell observed weaving back and forth within his lane, driving on the fog line or shoulder or driving in a way to suggest that he was a drunk driver or otherwise impaired. Def. Exhibit X

16. Jermell never exceeded 61 miles per hour. Def. Exhibit X.

17. While exceeding the speed limit for a time, when the speed limit dropped to thirty five miles an hour, Jermell began to slowed to that speed. Def. Exhibit X.

18. Caudell and Murray were aware that the plates came back to the car. Def. Exhibit S, page 36, line 12 and Exhibit T, page 49, line 17-19.

19. They had the name and address of the registered owner of the vehicle. Def. Exhibit S, page 36, line 12 and Exhibit T, page 49, line 17-25.

20. Jermell was not driving in an erratic manner such as to be a danger to himself, the

officers, or the general public. Exhibit X, Exhibit S, page36, line 17, page 36, line 11 and Exhibit T, page 104.

21. As Jermell approached the intersection with Harding Road, the signal light for his lane of traffic was red. Def. Exhibit X.

22. Caudell's dash camera shows Jermell slowing for the light. Def. Exhibit X.

23. Caudell, who had been first behind Jermell, drove his vehicle onto the shoulder coming to a stop a head of Jermell's car. Def. Exhibit X.

24. By Caudell's dash camera, Murray's car comes into view and stops ahead of Jermell's car. Def. Exhibit X.

25. Jermell's car appears next slightly after Murray's car, and roll slowly to a stop. Def. Exhibit X.

26. Upon stopping, Jermell car immediately begins backing up out of view. Def. Exhibit X.

27. By Caudell's dash cam, Murray gets out of his vehicle at the moment Jermell backs up out of view. Def. Exhibit X.

28. By Caudell's dash cam, the appearance of Murray's and Jermell's car and Jermell backing out, takes place within two seconds. Def. Exhibit X.

29. Murray was conducting what he termed a felony stop on Jermell. Def. Exhibit T, page 55, line 3.

30. He drew his gun aiming it at Jermell as he ran to the rear of his police cruiser. Def. Exhibit T, page 55, line 14.

31. Within one second of exiting his vehicle, Murray is heard yelling for Jermell to stop and get out of the car. Def. Exhibit W.

32. Jermell's window was rolled up. Def. Exhibit T, page , line .

33. The yelling stops after two seconds, then Murray opens fire as Jermell drives forward. Def. Exhibit T, line and Exhibit W.

34. Murray admits Jermell's driver's window was up. Def. Exhibit T, page 59, line 21-22.

35. Murray did not warn Jermell to stop or deadly force would be used before he opened fire killing Jermell. Def. Exhibit W.

36. One witness, Marita Williams, estimated that Jermell was driving forward at no more than 2 miles per hour. Exhibit B, page 9, ¶ q.

37. Another witness, Angela Holt, estimated he was going no more than 10 miles per hour as he drove forward. Exhibit B, page 8, ¶ h.

38. Another witness, Katy Williams, estimated 5 miles per hour. Exhibit B, page 9 ¶ p.

39. At 10 miles per hour, Jermell's car travels 14.6 feet per second.

40. Murray ran from his protected position out into the open and began firing.

41. Murray claimed that Jermell was driving at him going no less than 20 miles per hour. Def. Exhibit T, page 62, line 11-19.

42. Four of Murray's shots were directly into the front of Jermell's car. Exhibit C, page 26.

43. Jermell's car decelerated when Jermell was struck by one of Murray's frontal shots. Def. Exhibit T, pg. 65, lines 5-14 and page 69, lines 22-24.

44. Murray shot at least two more times through the driver's window as he moved to his right as Jermell's car rolled slowly past. Exhibit C, page 34.

45. This glass splatter caused by several of Murray's bullets indicate Jermell's window was up. Exhibit C, page 17.

45. Murray had been in a protected position with his vehicle between him and Jermell's car.

47. Caudell had gotten out of his car as Jermell's car was coming to a stop. Def. Exhibit S, page , line .

48. Caudell had begun walking to the rear of his cruiser with the intent to take a protected defensive position behind his car. Def. Exhibit S, page , line .

49. Jermell did not hit Caudell or Caudell's car as he backed up. Def. Exhibit S, page 66, line 4.

50. Caudell did not recall having to walk fast or run out of the way as Jermell backed in his direction. Def. Exhibit S, page 52, line 4-11.

51. Caudell recalled stopping near the rear of his car along the fog line. Def. Exhibit S, page 49, line 20-13.

52. Caudell drew his weapon when Jermell's car began forward. Def. Exhibit S, page 49, line 15.

53. Caudell did not know where Murray was positioned. Def. Exhibit S, page52, line 14-17 .

54. As Jermell's car started forward, Caudell shot at right rear tire trying to disable it, to keep it from leaving. Def. Exhibit S, page 63, line 12.

55. When Jermell was shot, he slumped forward and to his right against the steering wheel, causing the car to roll into the ditch along SH 9.

56. Caudell had been a full time Morrilton Police Officer approximately 3 years and

11 months at the time of the shooting.

57. Murray was hired as a full time Morrilton Police officer on July 31, 2007. Exhibit A, page 93, line 7.

58. Murray had come off probation status only 4 months prior to shooting Jermell Thompson.

59. In a town hall meeting called by various Morrilton citizens concerned over the shooting, Gunderman spoke to the group stating that Caudell and Murray were inexperienced; that many of his experienced officers had been hired away by the better paying jobs in the natural gas industry; and that it was hard to find qualified officers to replace them. Attachment D.

60. The Arkansas Commission on Law Enforcement Standards, CLEST, establishes the minimum standards for the admission to employment as a law enforcement officer in Arkansas. Attachment A, page 33, line 4-8 and page 36, line 5-12.

61. All applicants for law enforcement positions must meet the requirements established by CLEST to obtain their certifications. Attachment A, page 33, line 4-8 and page 36, line 5-12.

62. All law enforcement agencies in the state of Arkansas must meet the minimum standards established by CLEST. Attachment A, page 58, line 24 and page 60 line 2.

63. Gunderman was familiar with the CLEST standards for employment of officers within the Morrilton Police Department. Attachment A, page 59, line 13-15.

64. Gunderman knew he was obligated to apply the minimum standards to the employment of officers within the Morrilton Police Department. Attachment A, page 59, line 23 and page 60, line 2.

65. Gunderman was the final decision maker and chief policymaker for the Morrilton

Police Department. Attachment A, page 47, line 9 and page 48, line 5-15.

66. When, on July 31, 2007, Gunderman decided to hire Murray as a full time police officer, he choose to use Murray's 2005 background check, psychological report and medical examination report obtained for Murray's hire as an Morrilton Reserve officer. Attachment A, page 93, line 7-14.

67. CLEST specification S-3 requires the hiring agency to conduct a background investigation, the purpose of which is "to find character traits which might prevent the applicant from becoming a successful law enforcement officer." Attachment A, exhibit 4, thereto.

68. Under "RECOMMENDED PROCEDURES", Specification S-3 states: "It is recommended that the investigation include a check of as many of the following sources as possible: (i) Previous employers." Attachment . exhibit 4, thereto.

69. It was Chief Gunderman's practice to delegate his responsibility for conducting background checks to Lt. Russell, who in turn may delegate some of the duties to others. Attachment A, page 31, line 2-17.

70. Lt. Russell only interviewed people that Murray listed as references. Attachment A, exhibit 2.

71. Lt. Russell interviewed only one former employer, and no co-workers at Murray's prior places of employment. Attachment A, page 95, line 8.

72. Several of Murray's previous co-workers and employees stated that they were aware that Murray was blind in his right eye and deaf in his right ear; that he complained of frequent headaches; that he had short term memory problems necessitating that he be given the same instructions over and over again. Attachment B, page 17,¶ c.

73. One former employer opined that Murray could not be rehired in anything above a

menial position where he could be closely monitored. Attachment B, page 17, ¶ c .

74. This information was available in 2005 and 2007 as well.

75. This is important information that Gunderman admits would have caused him to look closer at Murray's fitness for duty. Attachment A, page 95, line 13 and page 99, line 11.

76. CLEST specification S-5 provides in key part:

> " ... a law enforcement officer must be physically sound and free of any defect which might adversely affect the performance of duty. The officer's personal safety and the safety and lives of others will be endangered if these important physical qualifications are not met. (3) VISION – Applicants must possess normal color discrimination, normal depth perception and peripheral vision of at least 75 degrees in each eye. Must possess uncorrected visual acuity of 20/100 or better in each eye, corrected to 20/20 in each eye, both at 16 inches and 20 feet. Vision correction, when required, may be either glasses or contact lenses. Must have no active internal or external eye pathology. Should an eye pathology be found, the applicant must be referred to the appropriate practitioner. There must be no apparent eye deviation.

Attachment A, exhibit 5, thereto.

77. Murray's medical examination report showed that Murray was legally blind in his right eye, had no peripheral vision on that side, and had no depth perception. Attachment E.

78. The report does not indicate that the medical doctor complied with CLEST standards and referred Murray to the appropriate practitioner to justify his comment. Attachment E.

79. Gunderman claimed he was unaware that Murray was blind in his right eye or that he was deaf in his right ear; that he only thought Murray had had an eye injury of some type. Attachment A, pg 101-102.

80. Although Murray's medical examination report was returned to Gunderman, per Gunderman's usual practice and custom, he did not review it except to look at the doctor's comment in box 23 that he had no "reservation about this candidate's ability to physically

perform the duties of a peace officer." Attachment A, pg. 102, line 2-3.

81. CLEST specification S-7 provides that the applicant be examined for emotional stability by an individual licensed to practice Psychiatry or Psychology and be qualified to perform such evaluations in the State of Arkansas. Attachment A, Exhibit .

82. The PROCEDURES provision in S-7 provides that "[t]he results of the evaluation will be recorded. A report of the evaluation will be forwarded to the employing agency. The report will be signed by a licensed psychologist or psychiatrist designating the applicant as RECOMMENDED or NO RECOMMENDED." Attachment A, exhibit 8.

83. Neither Murray's nor Caudell's psychological reports complied with specification S-7. The examiner's reports did not make a recommendation either way thus failing to meet CLEST standards. Attachment A, exhibits 12 and 13.

84. Gunderman did not require Murray, in 2007, or Caudell, in 2005, to under go new psychological examinations when promoting them from reserve officer status to full time employment as a Morrilton Police Officer. Attachment A, page , line .

85. At the time Murray shot and killed Jermell he did not meet the minimum stands to be a certified law enforcement officer in Arkansas. Attachment F.

86. Furthermore, the Office of Law Enforcement Standards (OLES) never received a received an application from the Morrilton Police Department to certify Murray as a law enforcement officer. Attachment E.

87. At the time Murray shot and killed Jermell he was not a certified law enforcement officer authorized to enforce the laws of the state of Arkansas. Attachment E.

88. Gunderman was the final decision and policy maker for the Morrilton Police Department. Attachment A, pages 25-29, & 43-48.

89. Gunderman delegated his duty to do background checks to Lt. Russell who in turn may have had other officers assist. Attachment A, page 31, line 2-17 and exhibit 2 thereto.

90. Gunderman did not review applicant's entire medical examination report. Attachment A, page 40, line 7 and page 41, line 16.

91. Gunderman relied upon the medical doctor to advise him in section 23 of the report as to whether an applicant passed or failed. Attachment A, page 41, line 3-13.

92. Unless so advised in section 23, he sent it on to CLEST. Attachment A, page 40, line 7 and page 41, line 16.

93. Murray's 2005 medical examination report documented that he was legally blind in his right eye, had no peripheral vision on that side, and had no depth perception and could not hear out of his right ear. Attachment E.

94. The medical exam report does not indicate that the medical doctor complied with CLEST standards and referred Murray to the appropriate practitioner to justify his comment in box 23. Attachment E.

95. Gunderman followed his usual practice with Murray's medical examination report and did not read other than section 23, before sending it on to CLEST. Attachment A, 102, line 1-8.

96. Gunderman acknowledged that the duties of Morrilton patrol officers included enforcing the laws of the state of Arkansas. Attachment A, page 60, line 8 and page 64, line 1.

97. Gunderman acknowledged that given the fact they patrol the streets of Morrilton, it was expected that they would have to make traffic stops. Attachment A, page 60, line 8 and page 64, line 1.

98. Gunderman acknowledged that given their patrol duties, it was possible for them

to have to respond to suspects who may be fleeing or leaving the scene of a suspected offense. Attachment A, page 60, line 8 and page 64, line 1.

99. Gunderman acknowledged that given their duty to enforce traffic and criminal laws he realized the possibility they would have to use force to apprehend fleeing felons or persons suspected of committing various levels of criminal offenses. Attachment A, page 60, line 8 and page 64, line 1.

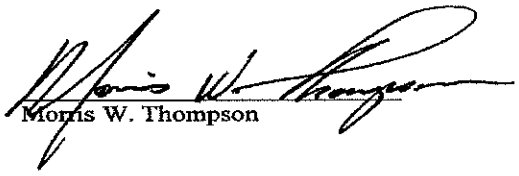
100. The Morrilton Police Department did not provide training for its full time police officers in high risk stops, relying on their training received at ALETA. Attachment A , page 55, line 8-10.

101. Nothing in Morrilton's Police Department Policies and Procedures manual addressed procedures for handling high risk vehicle stops or employing pursuit intervention techniques. Attachment G.

102. Nothing in the ALETA Basic Police Training Course, 2005-B, attended by Caudell provided training in high risk stops or pursuit intervention techniques. Attachment H.

103. Nothing in the ALETA Basic Police Training Course, 2007-D, attended by Murray provided training in high risk stops or pursuit intervention techniques. Attachment H.

Respectfully submitted for
Robin Thompson, plaintiff herein



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CERTIFICATE OF SERVICE

I, the undersigned attorney for the Plaintiff herein, certify that the foregoing has been served using the Court's CM/ECF system, which will send notification of the filing to:

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SPECIFICATION S-7

S-7

TITLE: PSYCHOLOGICAL EXAMINATION REPORT

Section 1002(3)(i) of the Regulations requires that applicants be examined for emotional stability by an individual licensed to practice Psychiatry or Psychology and qualified to perform such evaluations in the State of Arkansas. The emotional stability to withstand the pressures of modern law enforcement work is an essential qualification for applicants for law enforcement service and although psychological tests and interviews have recognized limitations, many personality defects can and are identified through screening by trained professionals.

REQUIREMENTS

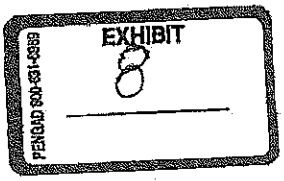
1. All applicants will be examined to determine emotional stability.

2. No person will be eligible for certification if they have any condition listed in the Diagnostic and Statistical Manual IV (DSMIV) of the American Psychiatric Association which would limit the police officer's ability to cope with the stress of modern day police work such as:

   (a) Any organic mental disorder or organic brain syndrome that currently results in impairment in memory, cognitive functions, judgment and personality.

   (b) Any substance use such as alcohol, barbiturate, opium, cocaine, amphetamine, hallucinogenic and cannabis which impairs social or occupational functioning due to an inability to control use or stop taking the substance and the development of serious withdrawal symptoms after cessation or reduction in substance use. Previous substance use should be in remission for three (3) years.

   (c) Any psychotic reaction showing disturbance in content of thought involving delusions, fragmented thoughts, distortions of reality, breakdown of ego defenses or hallucinations. Any previous psychotic episodes should be in remission for three (3) years and be currently evaluated as showing no residual symptoms.



(d) Any neurotic disorder such as excessive anxiety, panic, or convulsions which would indicate that irrational behavior would occur under stress.

(e) Any impulse control problem, particularly with anger, having resulted in husband/wife or child abuse or revealed in explosive outbreaks.

(f) Any environmental stresses such as divorce, loss of job, business difficulty, or death in family can result in maladaptive reactions resulting in either impairment in social or occupational functioning that are in excess of a normal and expected reaction.

(g) Any personality disorder showing a pervasive and unwarranted suspicion and mistrust of people, hypersensitivity, emotional coldness and aloofness resulting in an ability to make and maintain relationships. Any history of continuous and chronic antisocial behavior.

(h) Behavior disorders as evidenced by:

(1) Frequent encounters with law enforcement agencies or antisocial attitudes or behavior which, while not a cause for rejection under Regulation 1002(3)(d) are tangible evidence of an impaired characterological capacity to adapt to the demands of law enforcement service.

(2) Behavior disorders where it is evident by history and objective examination that the degree of immaturity, instability, personality inadequacy and dependency will seriously interfere with the performance of law enforcement duties as demonstrated by repeated inability to maintain reasonable adjustment in school, with employers and fellow workers, and other social groups.

PROCEDURES

1. An actual interview and psychometric evaluation will be utilized:

(a) The employing agency will determine the examiner to be utilized.

1002. MINIMUM STANDARDS FOR EMPLOYMENT OR APPOINTMENT OR CONTINUED EMPLOYMENT

(1) Subject to the provisions of A.C.A. 12-9-106(e), no individual shall serve, be employed or otherwise function as a law enforcement officer in this State who is not certified by the Commission at the appropriate classification for the position held by the individual, except, an individual may serve, be employed or otherwise function as a law enforcement officer for a term of one year from his initial employment or appointment as a law enforcement officer. Upon the finding of extraordinary circumstances, the Commission, by majority vote, may extend this period by a maximum of eight (8) months, for an absolute maximum period of twenty (20) months. (See Regulation 1008 for exceptions.) All requests for extensions must be submitted and received by the Commission prior to the end of the 12-month period, or any extension thereof. No individual who has been decertified by the Commission shall be eligible to serve, be employed or otherwise function as a law enforcement officer in this State unless the Commission shall have by majority vote agreed that the individual shall again be eligible to so serve.

(2) Verification of minimum employment standards must be maintained by the employing department.

(3) Every officer employed by a law enforcement unit shall:

(a) Be a citizen of the United States. (See Specification S-1)

(b) Be at least 21 years of age. (See Specification S-1)

(c) Be fingerprinted and a search initiated of state and national fingerprint files to disclose any criminal record. Procedure is prescribed in Specification S-2, Fingerprint Record Check.

(d) Be free of a felony record. A felony record shall mean having entered a plea of guilty, been found guilty, or otherwise having been convicted of an offense, the punishment for which could have been imprisonment in a federal penitentiary or a state



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(d) Be free of a felony record. A felony record shall mean having entered a plea of guilty, been found guilty, or otherwise having been convicted of an offense, the punishment for which could have been imprisonment in a federal penitentiary or a state

penitentiary. The fact that an individual has received a pardon, or their record has been expunged shall not release the individual from having a felony record for the purposes of this regulation. (See Specification S-2)

(e) Be of good character as determined by a thorough background investigation as prescribed in Specification S-3, The Background Investigation.

(f) Be a high school graduate or have passed the General Education Development (GED) Test indicating high school graduation level. (See Specification S-4)

(g) Be examined by a licensed physician and meet the physical requirements prescribed in Specification S-5, Physical Examination.

(h) Be interviewed personally prior to employment by the department head or his representative, or representatives to determine such things as the applicant's motivation, appearance, demeanor, attitude and ability to communicate. Commission Form F-11, Qualifications Appraisal Guide, or other appropriate form may be used to record the interview. (See Specification S-6)

(i) Be examined by an individual licensed to practice psychiatry or psychology and qualified to perform such evaluations in the State of Arkansas, who after examination finds the officer to be competent and recommends the agency hire the individual. (See Specification S-7)

(j) Possess a valid driver's license.

(4) It is emphasized that these are minimum standards for employment or appointment. Higher standards are recommended whenever the availability of qualified applicants meets the demand.

(5) The minimum standards for employment or appointment must be complied with as contained herein before employment. The decision to employ an applicant should depend upon the results and recommendations received by the investigators and examiners, except, for items (3)(g) and (3)(i). In accordance with the Americans with Disabilities Act. a determination to hire or not hire individuals should be made prior to the examinations required by (3)(g) and (3)(i). An offer of employment, if any, is to then be made contingent upon the successful completion of (3)(g) and (3)(i).

(6) Law enforcement officers who have complied with the minimum standards for employment or appointment who terminate their employment and are reemployed by a law enforcement agency within six (6) months following their termination date, may transfer the required documentation evidencing compliance with the standards to the files of the new agency. The only pre-employment requirement that the new employer will be required to complete is a new background investigation and oral interview. The employing agency may require the officer to meet any or all pre-employment requirements, again, if they so desire.

(7) If an officer is determined by the Commission to be in noncompliance, the Commission will notify the director of the employing agency by certified letter. The Commission shall give the individual and the employing agency a reasonable amount of time to remedy the deficiency. If at the end of that period, including any extension thereof, the individual remains in noncompliance, the individual will not be eligible to function as a law enforcement officer until proof of compliance is presented to the Commission by the agency director or his representative. In addition, at the end of the period allowed by the Commission for the individual to remedy the deficiency, including any extensions thereof, if the officer remains in noncompliance, the officer will be removed from the agency payroll and will not be eligible to be employed in any capacity as a law enforcement officer until compliance is met and proof is furnished to the Commission by the agency director or his representative. In the event the agency refuses to remove the officer from the payroll and/or continues to allow the officer to serve as a law enforcement officer, the Commission shall seek an injunction prohibiting the agency from employing and/or using the officer and prohibiting the officer from acting as a law enforcement officer.

(8) Any individual who fails the required training course, as set out herein, or is expelled from the required training course, will not be eligible to serve as a law enforcement officer for twenty-four (24) months following the date of failure or expulsion from the training course.

(9) Any individual who fails to meet the physical or mental minimum standards of this Regulation, shall be individually reviewed to determine if said person can perform the essential functions of the duties of a law enforcement officer, with or without reasonable accommodations. The employing or appointing agency shall first determine if the individual can perform the essential functions of the duties of a law enforcement officer. If the agency believes that individual can perform the essential functions of the duties of a law enforcement officer, with or without reasonable accommodations, the employing or appointing agency shall request the Commission to determine if said person can perform the essential functions of the duties of a law enforcement officer. If the Commission determines, by a majority vote, that the individual can perform the essential functions of a law enforcement officer, with or without reasonable accommodations, and the employing or appointing unit and/or the individual agrees to the reasonable accommodations, then the Commission shall waive the minimum standard in question.

SPECIFICATION S-3

S-3

TITLE: THE BACKGROUND INVESTIGATION

In compliance with Section 1002 (3)(e) of the Regulations, a background investigation must be conducted for each applicant employed as a law enforcement officer under the Act. The purpose of the background investigation is to find character traits which might prevent the applicant from becoming a successful law enforcement officer.

REQUIREMENTS

1. A background investigation must be conducted on each applicant to determine character traits and habits indicative of moral character.

2. Only applicants of good character should be employed.

3. Retention on a permanent basis by the employing unit will depend on the satisfactory results of the background investigation on all law enforcement officers employed under the Act.

RECOMMENDED PROCEDURES

1. The applicant should complete a detailed personal history statement on which the investigation will be based.

2. If no other department forms are available, the Form F-3, Personal History Statement, with appropriate instruction sheet may be utilized for the personal history statement or application form.

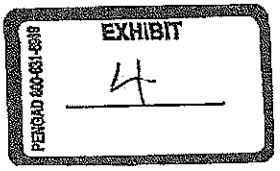
3. The background investigation should be conducted by an experienced officer.

4. All results of the personal history investigation should be considered confidential and processed accordingly.

5. Some suggested questions to be answered during the investigation are, does the applicant:

   (a) Ever display temper?

   (b) Drink to excess?



(c) Lose control when confronted by danger, crisis or stressful situations?

(d) Have any evidence or indication of instability?

(e) Appear to be well adjusted and will the applicant make a good law enforcement officer?

(f) Demonstrate high ethics and morals?

(g) Appear to be intolerant or highly prejudiced against other races or religions or political causes?

(h) Appear to be honest and trustworthy?

(i) Demonstrate reasonable loyalty to his former employers?

(j) Have a good past work record indicating dependability and punctuality?

(k) Have a complete list of all former employers?

6. What are the applicant's reasons for seeking a law enforcement officer position?

7. Names of the spouse and close relatives may be checked through appropriate files to determine whether they have criminal records. are in prison, or are in any status or position which might adversely affect the applicant's obligation as a law enforcement officer.

8. It is recommended that the investigation include a check of as many of the following sources as possible:

(a) Military records.

(b) Documents, including driver's license, high school diploma or other suitable record of graduation.

(c) Birth or naturalization records to determine age and citizenship.

(d) All local law enforcement files.

(e) Police files in cities where the applicant has lived or worked.

(f) State criminal records.

(g) FBI records.

(h) State department granting driver's license and statewide traffic offenses.

(i) Previous employers.

(j) All schools attended.

(k) Present and past neighbors and landlords.

(l) Fraternal and social organizations.

(m) Credit records.

(n) Obtain a signed release of medical information.

(o) Any other source of information which previous contacts show to be important.

(9) The final step in the background investigation should be an interview with the applicant' present employer following permission from the applicant.

(10) The results of the background investigation shall ultimately be evaluated by the department head and/or the hiring authority to determine whether the applicant is suitable for employment. All doubts in personnel suitability matters shall be resolved in favor of the department.

(11) Background investigation results will be retained by the employing agency and must be available for examination at any reasonable time by representatives of the Commission.

SPECIFICATION S-5

S-5

TITLE: PHYSICAL EXAMINATION

This requirement supplements Section 1002(3)(g) of the Regulations. It is in keeping with the concept that in order to render proper service to the community. a law enforcement officer must be physically sound and free of any defect which might adversely affect the performance of duty. The officer's personal safety and the safety and lives of others will be endangered if these important physical qualifications are not met.

REQUIREMENTS

1. Medical examination administered by a licensed physician.

2. A medical history statement, Form F-2a or an equivalent Form, will be supplied to the examining physician upon request. The medical history should include information on past diseases, injuries and operations. Commission Form F-2 or an equivalent Medical Examination Report should be utilized.

3. **VISION** – Applicant must possess normal color discrimination. normal depth perception and peripheral vision of at least 75 degrees in each eye.

   Must possess uncorrected visual acuity of 20/100 or better in each eye. corrected to 20/20 in each eye, both at 16 inches and 20 feet. Vision correction. when required, may be either glasses or contact lenses. Must have no active internal or external eye pathology. Should an eye pathology be found, the applicant must be referred to an appropriate practitioner.

   There must be no apparent eye deviation.

4. **HEARING** – Applicant must be free of any hearing defect which in the opinion of the examining physical would adversely affect the performance of duty:

   (a) Hearing may be considered normal when a whispered conversation can be heard at 15 feet.

EXHIBIT 5

PERIGAD 800-631-6989

5. Retention on a permanent basis by the employing unit will depend on the satisfactory results of the physical examination of all law enforcement officers employed under the Act.

6. The physician's report after examination, must conclude and clearly state that, in his opinion, the applicant has the ability to physically perform the duties of a law enforcement officer in the State of Arkansas.

RECOMMENDED PROCEDURES

1. Completion of Medical History questionnaire by the applicant. (Form F-2a or equivalent form)

2. The physical examination will be conducted by a licensed physician after review of the applicant's Medical History questionnaire.

3. The physician shall record his findings and shall note for evaluation by the hiring authority, any past or present physical defects, diseases, injuries, operations or conditions of an abnormal or unusual nature. (Form F-2 or equivalent form should be used)

4. The examining physician should carefully consider the response to question 23 of the Medical Examination Report.

   A department head should consider the form incomplete until question 23 is completed by the examining physician.

PSYCHOLOGICAL REPORT

Dr. Steve A. Shy
McKinnon Law Firm Building
615 West B Street
Russellville, Arkansas
Phone: (479) 967-5555 Fax: (479) 967-5172

Name: James Murray
Date of Birth: 08/06/78
Date of Evaluation: 11/14/05

Reason for Referral: Mr. Murray was referred by Community Services for a Fitness for Duty evaluation. Client was administered the MMPI 2 test along with an interview.

Mr. Murray appeared to be free of disturbed thought process and responded appropriately to all the questions asked of him. He evidenced no unusual mannerisms or impaired cognition.
He denied depression, high anxiety, substance abuse (including DUI or DWI), or past history of mental disorder.

On the MMPI-2, Client was within normal ranges on the validity scales and normal ranges on all of the clinical scales. There is no evidence of personality disturbances or psychotic process.

Based on this screening interview and test Mr. Murray appears to be functioning within the normal ranges psychologically.

Steve A. Shy, Ph.D.
Steve A. Shy, Ph.D.
Clinical Psychologist

12/09/05
Date

MEDICAL EXAMINATION REPORT

FORM F-2

To Be Completed by a Licensed Physician

INSTRUCTIONS TO EXAMINING PHYSICIAN: Please review Health Questionnaire before examining the candidate. Do not forward this report until lab results are received. Use Section 24 for explanation of details, if necessary.

1. Name (Last, First, Middle): Murray, James Clinton
2. Birth Date (Mo., Day, Yr.): 5-6-78
3. Height (without shoes): 68"
4. Weight (without shoes and coat): 214#
5. Chest Girth (Expiration): 43¼"
6. Abdominal Girth: 41½"

7. Visual Acuity (If applicant wears glasses, test and record acuity both with and without glasses)

a. Color discrimination _____ b. Depth Perception _____

c. Peripheral Vision (Temporal) Right Eye _____ degrees Left Eye _____ degrees
(Each eye on zero line)

d. Visual Acuity (16 inches) without glasses R-20 _____ L-20/ _____ B-20/ _____
(16 inches) with glasses R-20/ N/A L-20/ 10 B-20/ 10
(20 feet) without glasses R-20/ _____ L-20/ _____ B-20/ _____
(20 feet) with glasses R-20/ N/A L-20/ 20 B-20/ 20

e. Eye fundus — findings WNL OU

f. Does examination reveal any internal or external eye pathology? ☐ No ☒ Yes
If yes, describe: (R) MD SCARRING

g. Is there any apparent eye deviation? ☐ No ☒ Yes
Note any eye or visual abnormality (R) STRABISMUS

8. HEARING
(Whispered conversation at 16 ft. considered normal)

	HEARING AID USED	DRUM PERFORATION OR DRAINAGE
RIGHT 15/ 15 LEFT 15/ 15	☒ NO ☐ YES	☒ NO ☐ YES

NOTE ANY ABNORMALITY
WNL

9. Head (note any defect, disease, or injury involving eyes, ears, nose, mouth, throat)
(R) EYE ABNORMALITY AS ABOVE

10. Dentist Recommended ☐ NO ☒ YES

11. Lungs CLEAR

12. Date Chest X-ray Taken 11-16-05

13. Chest X-ray normal ☐ NO ☒ YES (report must be attached)

14. CARDIO VASCULAR SYSTEM

TYPE OF ACTION	BLOOD PRESSURE	PULSE RATE	SOUNDS	RHYTHM
A. AT REST	116 / 68	60		
B. AFTER MODERATE EXERCISE		110		
C. TWO MINUTES AFTER EXERCISE	132 / 84	75	RRR	REG

D. CIRCULATION TO EXTREMITIES WNL

E. NOTE ANY ABNORMALITY

15. NERVOUS SYSTEM (describe any pathology or abnormal reflexes)
WNL

16. ABDOMEN	17. RECTAL
MASSES WNL	FISSURE WNL
TENDERNESS WNL	FISTULA WNL
HERNIA WNL	HEMORRHOIDS WNL

18. GENITO-URINARY SYSTEM (note any abnormalities)
WNL

Revised 8-1-94

19. MUSCULO – SKELETAL (Test by bending, stooping, squatting; also by head, arm, leg, and finger motions)

A. SPINE	MOBILITY WNL	SYMMETRY Some Scoliosis	POSTURE WNL	X-RAY RECOMMENDED ☑ NO ☐ YES
B. UPPER EXTREMITIES	LIMITED FUNCTION Ø		MISSING PARTS Ø	
C. LOWER EXTREMITIES	LIMITED FUNCTION Ø		MISSING PARTS Ø	

20. SKIN (scars, varicosities, disease, abnormalities -- nature and severity)

21. LABORATORY (Report May Be Attached)

A. URINALYSIS	SP. GRAVITY 1.020	ALB. Ø	SUGAR WNL	MICROSCOPIC WNL

B. SEROLOGY (VDRL) ☐ POSITIVE ☐ NEGATIVE ☒ NON-REACTIVE BLOOD TYPE (A) POSITIVE

22. ARE THERE ANY CONDITIONS, PHYSICAL, MENTAL OR EMOTIONAL WHICH, IN YOUR OPINION, SUGGEST FURTHER EXAMINATION?
☑ NO ☐ YES (explain in 24 below)

23. DO YOU HAVE ANY RESERVATIONS ABOUT THIS CANDIDATE'S ABILITY TO PHYSICALLY PERFORM THE DUTIES OF A PEACE OFFICER?
☑ NO ☐ YES (explain in 24 below)

24. SUMMARY COMMENTS

NORMAL EXAM

I LEGALLY BLIND (R) EYE → ABLE TO DRIVE W/ DIFFICULTY

↓

NO RESTRICTIONS

SPECIAL INSTRUCTIONS:

PHYSICIAN'S SIGNATURE [signature] MD

Date 11-18-05

NAME AND ADDRESS OF PHYSICIAN (Print or Type)
Joel Milligan, MD
10 Hospital Dr. Morrilton, AR 72110

SECTION A CONTINUED	NO	YES
47. HAVE YOU HAD ANY OTHER ILLNESS, INJURY, OR PHYSICAL CONDITION NOT NAMED ABOVE, OTHER THAN CHILDHOOD DISEASES OR MINOR ILLNESSES? IF "YES", EXPLAIN:	✓	
48. HAVE YOU HAD AN INJURY WITHIN THE LAST 5 YEARS WHICH CAUSED YOU TO LOSE TIME FROM WORK?	✓	
49. HAVE YOU EVER BEEN DENIED EMPLOYMENT OR INSURANCE FOR MEDICAL REASONS?	✓	
50. HAVE YOU EVER BEEN DEFERRED FROM MILITARY SERVICE FOR MEDICAL, EMOTIONAL, OR HEALTH REASONS?	✓	
51. HAVE YOU EVER BEEN DISCHARGED OR RELEASED FROM EMPLOYMENT OR FROM THE ARMED FORCES FOR MEDICAL, EMOTIONAL, OR HEALTH REASONS?	✓	
52. HAVE YOU EVER RECEIVED OR APPLIED FOR PENSION OR COMPENSATION FOR DISABILITY OR INJURY?	✓	
53. ARE YOU PRESENTLY UNDER THE DOCTOR'S CARE FOR ANY CONDITION?	✓	
54. HAVE YOU TAKEN MEDICATION WITHIN THE LAST 12 MONTHS FOR ANY REASON? IF "YES", EXPLAIN:		✓
55. HAVE YOU EVER USED MARIJUANA OR OTHER NON-PRESCRIPTION DRUGS? (IF YES, EXPLAIN WHEN AND DURATION OF USE IN SECTION B BELOW)	✓	
56. DO YOU OR HAVE YOU EVER HAD ANY PHYSICAL OR EMOTIONAL LIMITATIONS? IF "YES", EXPLAIN:	✓	
57. ARE YOU NOW OR WITHIN THE PAST 5 YEARS HAVE YOU BEEN INVOLVED IN A HOMOSEXUAL RELATIONSHIP?	✓	

PHYSICIANS CONSULTED (for above items checked "Yes," identify Item No.)

Item	Physician's Name	Address (no., st., city, state)
54	John Smith	Dave Ward Drive Conway, AR

SECTION B WRITE YOUR OWN ACCOUNT AND EXPLAIN ALL ITEMS ANSWERED "YES" IN THIS QUESTIONNAIRE; IDENTIFY ITEM NUMBER, INCLUDE DIAGNOSIS, DATE OF ONSET, AND YOUR PRESENT CONDITION. CONTINUE ON 8½ x 11 SHEETS OF PAPER AND ATTACH.

2	I recieved a gun shoot wound to the head on 8/2/96 I had reconstructive
	surgery and I now am back 100 percent.
8	I had glass and lead taken from my ~~eye~~ jaw right eye after the gun shot. I
	have some sight impairment.
44	I had this illness as a child but I am 200% now.

PENALTY

ANY FALSIFICATION, WITHHOLDING OR FAILURE TO ANSWER ALL QUESTIONS COMPLETELY AND ACCURATELY MAY CAUSE FORFEITURE OF ALL RIGHTS TO THIS EMPLOYMENT.

CERTIFICATION

I HEREBY CERTIFY THAT THERE ARE NO WILLFUL MISREPRESENTATIONS, OMISSIONS OR FALSIFICATIONS IN THE FOREGOING STATEMENTS AND ANSWERS TO QUESTIONS; AND THAT ALL STATEMENTS AND ANSWERS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Signature of Applicant (sign in ink)	DATE SIGNED
X [signature]	11/03/05

SECTION A CONTINUED	NO	YES
47. HAVE YOU HAD ANY OTHER ILLNESS, INJURY, OR PHYSICAL CONDITION NOT NAMED ABOVE, OTHER THAN CHILDHOOD DISEASES OR MINOR ILLNESSES? IF "YES", EXPLAIN:	✓	
48. HAVE YOU HAD AN INJURY WITHIN THE LAST 5 YEARS WHICH CAUSED YOU TO LOSE TIME FROM WORK?	✓	
49. HAVE YOU EVER BEEN DENIED EMPLOYMENT OR INSURANCE FOR MEDICAL REASONS?	✓	
50. HAVE YOU EVER BEEN DEFERRED FROM MILITARY SERVICE FOR MEDICAL, EMOTIONAL, OR HEALTH REASONS?	✓	
51. HAVE YOU EVER BEEN DISCHARGED OR RELEASED FROM EMPLOYMENT OR FROM THE ARMED FORCES FOR MEDICAL, EMOTIONAL, OR HEALTH REASONS?	✓	
52. HAVE YOU EVER RECEIVED OR APPLIED FOR PENSION OR COMPENSATION FOR DISABILITY OR INJURY?	✓	
53. ARE YOU PRESENTLY UNDER THE DOCTOR'S CARE FOR ANY CONDITION?	✓	
54. HAVE YOU TAKEN MEDICATION WITHIN THE LAST 12 MONTHS FOR ANY REASON? IF "YES", EXPLAIN:		✓
55. HAVE YOU EVER USED MARIJUANA OR OTHER NON-PRESCRIPTION DRUGS? (IF YES, EXPLAIN WHEN AND DURATION OF USE IN SECTION B BELOW)	✓	
56. DO YOU OR HAVE YOU EVER HAD ANY PHYSICAL OR EMOTIONAL LIMITATIONS? IF "YES", EXPLAIN:	✓	
57. ARE YOU NOW OR WITHIN THE PAST 5 YEARS HAVE YOU BEEN INVOLVED IN A HOMOSEXUAL RELATIONSHIP?	✓	

PHYSICIANS CONSULTED (For above items checked "Yes," identify Item No.)

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	surgery and I now am back 100 percent.
8	I had glass and lead taken from my ~~eye~~ Jan right eye after the gun shot. I
	have some sight impairment.
44	I had this illness as a child but I am 100% now.

PENALTY

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CERTIFICATION

I HEREBY CERTIFY THAT THERE ARE NO WILLFUL MISREPRESENTATIONS, OMISSIONS OR FALSIFICATIONS IN THE FOREGOING STATEMENTS AND ANSWERS TO QUESTIONS; AND THAT ALL STATEMENTS AND ANSWERS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Signature of Applicant (sign in ink)	DATE SIGNED
X [signature]	11/18/05

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

ROBIN THOMPSON, as Personal Representative of the ESTATE OF JERMELL THOMPSON, deceased Plaintiffs, v. JAMES "CLINT" MURRAY, individually and in his official capacity; DUSTIN CAUDELL, individually and in his official capacity; THE CITY OF MORRILTON, a municipality; and NORBERT GUNDERMAN, Jr., individually and in his official capacity Defendants.	) Case No: 4:11-cv-00804 BRW

Preliminary Expert Report of Jonathyn W. Priest

1. My name is Jonathyn Priest. I have thirty-two years of law enforcement experience including being the Lieutenant Commander of the Major Crimes Section for the Denver Police Department from 2000-2011. In this position, I had the responsibility for complex case investigations including homicide and death investigations, officer-involved critical incident investigations, sex crimes, missing persons and "cold case" investigations.
2. I developed the major case management protocols, crime scene processing protocols, and critical incident investigation protocols for the entire police department. As a lieutenant, I was in charge of 45 detectives and 6 supervisors in the Denver Police Department.
3. I developed the officer-involved critical incident investigation and training protocols for the Denver Police Department
4. I developed the cold case investigation and training protocols for the State of Colorado.
5. From 1994 - 2000, I was the Homicide Unit supervisor for the Denver Police Department. I was in charge of the investigations of hundreds of homicides, death, officer-involved critical incidents and murder-for-hire cases. I supervised many

complex case investigations and trained other investigators in the area of complex case management.

6. From 1989 - 1992, I was a homicide detective investigating hundreds of homicide, death, officer-involved critical incidents, and murder-for-hire cases.
7. Since 1990 I have provided instruction in the area of crime and death scene investigation, major case management, interviewing and interrogations techniques, and critical incident command at various colleges and universities in Colorado.
8. Since 1989 I have provided instruction to the Denver Police Department and dozens of other law enforcement agencies in twenty states at the municipal, county, state and federal levels. Instruction courses include criminal investigation of violent crimes, interviewing and interrogation techniques, crime scene and death scene reconstruction, bloodstain pattern analysis, shooting incident and crime scene reconstruction, officer-involved critical incident investigations, and major case management.
9. My experience, training and background are more fully described in the attached curriculum vitae, which I incorporate, by reference to this report.
10. Materials Considered and Examined
    a. **Video**
        i. Dash Cam Video from the vehicle of Officer Murray – 14:12 minutes
        ii. Dash Cam Video from the vehicle of Officer Caudell – 17:01 minutes
    b. **Audio Files**
        i. 911 calls – 120 .wav files – 22:38 minutes
    c. **Photographs**
        i. Folder Titled Morrilton Officer Shooting – 113 Photographs
        ii. Folder Titled Morrilton Officer Shooting 2 – 5 Photographs
        iii. Folder Titled Morrilton Officer Shooting 3 – 3 Photographs
        iv. Photographs taken by others – 7 Photographs
        v. Private Investigator Photographs – 120 Photographs
    d. **Documents received March 21, 2013 via email**
        i. PDF File labeled AR State Police – Investigation – 192 pgs.
        ii. PDF File labeled Letter to the Thompsons – 1 pg.
        iii. PDF File labeled AR State Crime Lab Autopsy – 6 pgs.
        iv. PDF File labeled Book Body (Policy/Procedures Manual) – 287 pgs.
        v. PDF File labeled Contents (Policy/Procedure Manual) – 5 pgs.
    e. **Documents received March 22, 2013 via email**
        i. PDF File labeled Report of Investigation Thompson Final – 100 pgs.

f. Documents and items received March 29, 2013

i. Documents

1. Cover Letter – 1 pg.
2. State Statutes related to the Use of Force – 4 pgs.
3. Map showing pursuit route – 1 pg.
4. FOIA response letter – 2 pgs.

ii. CDs

1. CD – ASP Investigation, Audio Interviews
2. Interview Jennifer Miller – 21:08 minutes
3. Interview Curtiss Canady – 5:27 minutes
4. Interview Randall Holden – 22:44 minutes
5. Interview Victor Trevino – 15:16 minutes
6. Interview Steven Pledger – 17:52 minutes
7. Interview Officer Clinton Murray – 17:00 minutes
8. Interview Officer Dustin Caudell – 17:52 minutes
9. Phone Interview Curtiss Canady – 13:40 minutes
10. Interview Katy Williams – 18:00 minutes
11. Interview Marita Williams – 19:22 minutes
12. Interview Temeca Johnson – 12:04
13. CD – ASP State Crime Lab – Investigator's Report
14. PDF File AR State Crime Lab Investigator's Report – 346 pgs.
15. PDF File AR State Crime Lab Investigator's Report part 1 – 100 pgs.

g. Documents and items received April 5, 2013

i. Documents

1. Cover Letter 1 pg.

ii. CDs

1. CD – Officer Caudell's Personnel File
2. PDF File Caudell's Personnel File – 67 pgs.
3. PDF File Cumulative Record of Law Enforcement Training – 4 pgs.
4. PDF File Training Academy Records (ALETA) part 1 – 28 pgs.
5. PDF File Training Academy Records (ALETA) part 2 – 48 pgs.
6. CD – Officer Murray's Personnel File

7. PDF File Letter from Morrilton Police Depart 120209 – 2 pgs.
8. PDF File Murray's Cumulative Record of Law Enforcement Training – 3 pgs.
9. PDF File Murray's Personnel File – 29 pgs.
10. PDF File Murray's Training Academy Records (ALETA) part 1 – 72 pgs.
11. PDF File Murray's Training Academy Records (ALETA) part 2 – 33 pgs.

h. Documents and Items received May 2, 2013

i. Documents

1. Cover Letter – 1 pg.

ii. CDs

1. CD – Murray Reports
2. Incident Report 07-01681 – 2 pgs.
3. Incident Report 08-00119 – 2 pgs.
4. Incident Report 08-00286 – 3 pgs.
5. Incident Report 08-00681 – 3 pgs.
6. Incident Report 08-00777 – 2 pgs.
7. Incident Report 08-00901 – 2 pgs.
8. Incident Report 08-00902 – 2 pgs.
9. Incident Report 08-01147 – 3 pgs.
10. Incident Report 08-01657 – 2 pgs.
11. Incident Report 08-01738 – 3 pgs.
12. Incident Report 08-01779 – 3 pgs.
13. Incident Report 08-01795 – 2 pgs.
14. Incident Report 08-02055 – 2 pgs.
15. Incident Report 08-02116 – 2 pgs.
16. Incident Report 09-00880 – 2 pgs.
17. Incident Report 09-01485 – 3 pgs.
18. CD – Dustin Caudell Reports
19. Incident Report 06-01002 – 3 pgs.
20. Incident Report 07-00621 – 3 pgs.
21. Incident Report 07-01172 – 3 pgs.
22. Incident Report 08-00794 – 4 pgs.
23. Incident Report 08-00913 – 3 pgs.
24. Incident Report 08-01686 – 3 pgs.

25. Incident Report 08-01915 – 3 pgs.
26. Incident Report 08-02204 – 3 pgs.
27. Incident Report 09-01308 – 3 pgs.
28. Incident Report 09-02233 – 4 pgs.
29. Incident Report 10-01445 – 3 pgs.

i. Documents received September 7, 2013 via email

i. PDF File labeled Caudell personnel file-Prot Order – 173 pgs.
ii. PDF File labeled Gunderman Pers File-Prot Order – 103 pgs.
iii. PDF File labeled Murray personnel file-Prot Order – 83 pgs.
iv. PDF File labeled Murray's Personnel File – 29 pgs.
v. PDF File labeled Ar Investigative Services-Investigation Summary – 4 pgs.
vi. PDF File labeled Judgment of Acquittal – 10 pgs.
vii. PDF File labeled Doc 2 Amended Complaint – 17 pgs.

j. Documents received September 9, 2013 via email

i. PDF File labeled Defendant's Answers – 6 pgs.

k. Documents received September 10, 2013 via email

i. PDF File labeled Counseling Associates Forensic Report – 8 pgs.
ii. PDF File labeled Arkansas Investigative Service Report on James Murray – 27 pgs.

l. Documents received October 6, 2013 via email

i. PDF File labeled Forms-Caudell – 4 pgs.
ii. PDF File labeled Forms-Murray – 5 pgs.
iii. PDF File labeled 1002 – 4 pgs. (Duplicate of information obtained from Arkansas Website September 23, 2013)
iv. PDF File labeled s5 – 2 pgs. (Duplicate of information obtained from Arkansas Website September 23, 2013)

m. Documents received October 8, 2013 via email and Drop box

i. PDF file labeled Deposition of Clint Murray – 95 pgs.
ii. PDF file labeled Deposition of Dustin Caudell – 74 pgs.
iii. PDF file labeled Deposition of Norbert Gunderman – 158 pgs.

11. This expert report is founded upon the materials provided. I based the opinions presented in this report upon my specialized knowledge, experience and training as well as my continued educational research and instruction with law enforcement agencies. I recognize that there may be additional documentation as the investigation and case events develop. Should additional information become available, I reserve the right to consider the information and to amend this report as necessary.

12. This incident began on November 29, 2008, when the Morrilton Police Dispatch

received a call from employees of the Number 9 Liquor Store in Morrilton, Arkansas at approximately 4:14 P.M. The employees reported that an unknown black male had stolen a bottle of Crown Royal whiskey and left the store. A short time after the suspect left the store; two Morrilton Police officers located and followed the subject's maroon Chevy Corsica along State Highway (SH) 9. The subject stopped his vehicle at the intersection of SH9 and SH 9B due to a red light and traffic.

13. The officers, identified as Clint Murray and Dustin Caudell, positioned their police vehicles at the left front and right rear of the subject vehicle respectively. After getting out of their individual police vehicles, the officers attempted to make contact with the driver of the maroon Chevy Corsica. During this interaction, the subject backed his vehicle and then drove forward around the driver's side of Officer Murray's vehicle. Officer Murray left the cover of his vehicle and moved to a position in front of the maroon Chevy Corsica. It was during this period that the shooting event occurred. Officer Murray fired into the front and left side of the maroon vehicle, while Officer Caudell fired toward the right side of the vehicle. The maroon vehicle then rolled across the road past Officer Murray's position and came to a rest in the ditch northeast of the intersection.

14. The driver of the maroon car, later identified as Jermell Thompson, was transported by ambulance to a nearby hospital. He was later moved to UAMS in Little Rock, AR. Mr. Thompson subsequently died of his injuries on November 30, 2008 while at UAMS.

15. The Arkansas State Police conducted the subsequent investigation into this incident. As part of that investigation, the investigators interviewed the involved officers regarding the shooting incident.

    a. *Officer James Clinton Murray*: Officer Murray stated he took up a position behind Officer Caudell as they attempted to stop the vehicle driven by Mr. Thompson. When Mr. Thompson stopped at the red light, Officer Murray pulled his police vehicle in front of the maroon vehicle. The vehicle driven by Mr. Thompson immediately backed up and Officer Murray got out of his police vehicle. Mr. Thompson made eye contact with Officer Murray and drove toward him "at a high rate of speed." Officer Murray fired 7 or 8 times at Mr. Thompson.

    b. In his deposition taken on September 12, 2013, Officer Murray described that the only training he recalls receiving that covered felony stop procedures was while he was in the academy. His description of the felony stop procedure is very generalized and incomplete. His description leaves questions as to his knowledge of the proper procedures for handling such a stop.

    c. Regarding the shooting incident occurring on November 29, 2008, Officer Murray related that he was covering the call and joined Officer Caudell who was behind the suspect vehicle. He recalls the vehicle speeds

at this time to be in the sixties or seventies[1]. With respect to the driver controlling the suspect vehicle, Officer Murray stated the vehicle was under control. When questioned about his action of pulling in front of the suspect vehicle at the time of the stop, Officer Murray stated he was not trained to use that particular technique by the Academy or the Morrilton Police Department. Officer Murray indicated with a mark on a diagram of the shooting scene that he was standing near the right rear quarter panel of his police vehicle at the time of the shooting. This position would eliminate easy cover for Officer Murray and place him directly into the path of the suspect vehicle should it move toward Officer Murray.

d. *Officer Dustin Caudell*: Officer Caudell made initial contact with the maroon vehicle and attempted to stop the driver without success. Once they reached the traffic light, Officer Caudell pulled his vehicle behind the subject's vehicle on the right rear. Officer Caudell knew that Officer Murray was in front of the maroon vehicle and he opened fire on the right rear tire, trying to disable the vehicle.

e. Officer Caudell stated he has had no personal dealings with Mr. Thompson in the past, but is aware that other officers have had dealings with him. Officer Caudell did not know who was driving the vehicle until he was told during the investigation.

16. Neither Officer Murray nor Officer Caudell described the pursuit as "high-speed".

17. It is unknown weather Mr. Thompson stopped as a result of the active emergency equipment on the police vehicles the officers, or the traffic signal at the intersection of HWY 9 and Harding Street in Morrilton, AR. Irrespective to the reason, Mr. Thompson stopped his vehicle.

18. Several individuals (17) witnessed the shooting event. All of the witnesses recognized the uniformed individuals as police officers. The following synopses of the witness statements address their observations at the time of the shooting.

a. *Jenifer Miller*: "The shots were fired when the maroon car started to go forward."

b. *Curtiss Canady*: "The officer in front got out of his car with his gun in his hand. The passenger car was able to back up to go around the officer. That was when the officer in front started firing his weapon at the car. The officer in front made no attempt to get out of the way of the passenger car as it came forward."

c. *Victor Trevino*: "Once the maroon car started toward the officer, the officers started firing."

d. *Betty Trevino*: "The car they were chasing backed up and started going forward, toward the officer. The police began to shoot and then the car ran off the highway and into the ditch."

[1] Officer Murray's dash cam video indicated speeds between 61 and 66 MPH while following Officer Caudell and the subject vehicle.

e. *Alyson Lentz*: "The officers were shouting commands to the driver of the maroon car, but she couldn't tell what he was saying. The maroon car began to back up and then went forward. Lentz stated that shots were fired when the maroon car started to go forward."

f. *Randell Holden*: "Once the officers exited their cars, the maroon car backed up and then started driving toward the officer in front. The officers were yelling for the driver to stop, but he did not stop. The officers were yelling loud enough that the driver should have heard them. The officers fired several shots at the car."

g. *Frances Wead*: "The red car pulled away toward the west and drove around the police car that was directly in front of his car". Ms. Wead saw the 'bigger officer' fire first. "He was at the driver's side rear of his patrol car near the red car."

h. *Angela Holt*: "Holt saw the maroon car driving slow, 'going through the roadblock at 10 miles per hour.' The officer closest to her shot five times at 'close range.'"

i. *Geneva Paige*: "She saw one police car behind the red vehicle and one police car blocking the road in front of the vehicle. Geneva then heard the officers start yelling at the driver to stop. She then saw the vehicle 'gun it' on the shoulder and go around the police cars. Geneva heard approximately six shots as the red vehicle was speeding away. She also noticed that there was a police officer in front of the red vehicle when it tried to speed away."

j. *Brandi Wooten*: "The officer closest to the Waffle House then started firing at the passenger side rear tire of the vehicle. Brandi felt the officer fired five or six times. As the vehicle continued to try and go around the police cars, the second officer on the west side of the road started firing. Brandi felt that he fired approximately two times."

k. *Tonilyn Kozderka*: "One officer was behind the sedan, the other officer pulled to the left and boxed the sedan in. At that time, the sedan reversed and attempted to go around the officer in oncoming traffic. Both officers were out of their cars at that time, and opened fire on the sedan."

l. *Misty Waddle*: "One officer pulled his vehicle in front of the compact car. The compact car then reversed and tried to go around the officer. Misty heard approximately twelve [12] gunshots in rapid succession."

m. *Corryn Waddle*: "She looked over and saw two (2) police cars and a red car. Corryn then got into her vehicle. Once in the vehicle, she heard about a dozen gunshots."

n. *Michael Davidson*: "One patrol car pulled in front of the dark colored car and both officers got out of their units. Both officers had their guns drawn. The dark colored vehicle backed up and then started forward. Both officers opened fire on the dark colored car. He saw that the windshield was shot out."

o. *Theresa Davidson*: "A second officer came around the dark colored

vehicle and pulled in front of him, attempting to block him in. The police officers pulled their weapons and asked the driver of the dark vehicle to stop. The dark vehicle drove toward the police officer. The officers then began to fire."

p. *Katy Williams (Recognized the driver as Jermell Thompson)*: "Thompson put his hands in the air and both officers fired. She heard, 'pop, pop, pop, pop.' When that happened Thompson fell over in the passenger seat and the car rolled around the front of the police car and rolled down into the ditch. The car was 'coasting' and went to the right after the shooting. The 'bigger' officer of the two ran down into the ditch and fired at least three additional shots. She did not see the shots but she heard them." "She never heard any verbal commands from the officers." "Katy estimated Thompson was traveling at no more than five miles per hour. The officer in front of Thompson's car was approximately two to three feet away from the front bumper of the Corsica. Katy did not see the officer in front move."

q. *Marita Williams*: "She observed a police car parked at the rear of the maroon car and another patrol car pulled in front to block the path of the maroon car. She stated that Jermell had 'both hands on the wheel' and was traveling approximately two miles an hour attempting to get around the police car. Jermell first backed up and then pulled around the patrol unit." "When Jermell put his car in gear, the first officer was at his passenger window. Marita never heard verbal commands from either officer. Marita did not hear sirens but saw both patrol units had blue lights flashing. Marita saw the larger officer shoot first and then both officers 'opened fire' on the car. She did not know how many shots were fired. Jermell fell over in the seat and the maroon car 'coasted off into the ditch' to the right on the other side of the Waffle House. Both officers followed him down into the ditch 'and they shot him again.' Marita said the both officers 'ran' down into the ditch and she heard at least three more shots. When the officers went into the ditch, Marita stated that she saw the shells coming out of the gun. They shot at least three additional rounds while in the ditch."

19. The Fourth and Fourteenth Amendments of the United States Constitution and Section 15 of Article 2 of the Arkansas Constitution prohibit unreasonable searches and seizures. Each of these documents requires that searches and seizures be reasonable and made only pursuant to a warrant based upon probable cause and supported by oath or affirmation.

20. Generally, probable cause exists where the facts and circumstances within an officer's knowledge, and of which they had reasonably trustworthy information, are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed. In dealing with probable cause, one deals with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.

21. Officers Murray and Caudell began an investigation into a misdemeanor theft

occurring at the liquor store where a bottle of Crown Royal was taken. The probable cause consisted of the following:

a. An individual matching the description of Jermell Thompson removed a bottle of Crown Royal from the Number 9 liquor store without paying.

b. The cost of the liquor was less than $60.00 – an amount supporting a misdemeanor offense.

c. The store clerk (Ryan Bradshaw) was in a position to identify the person responsible for the theft.

d. The clerk obtained a license plate number for the vehicle driven by the person believed to be responsible for the theft and notified police.

e. The license plate listed to the address of 150 Turkey Pond Loop – the residence of Robert Wilt[2].

f. The clerk located an empty Crown Royal box in the restroom at the liquor store supporting the person taking the bottle of Crown Royal handled the box.

g. No known police officer witnessed this theft.

h. There were no other witnesses to the theft identified other than the store clerk.

i. The officers located and confirmed the license plate number on a vehicle matching the description provided by the clerk at the liquor store of the vehicle used in the theft.

j. The officers confirmed the vehicle was occupied by a single individual, consistent with the description of the suspect provided by the clerk at the liquor store.

22. Prior to contact, the officers had information that the person driving the maroon Chevy Corsica was responsible for a misdemeanor theft from the Number 9 liquor store. The evidence used by the officers was limited to hearsay information passed from the complainant through the police dispatch. Although the officers had probable cause to act, they did not have the physical and testimonial evidence documented and collected at this point.

23. At the time the maroon Chevy Corsica stopped at the traffic light, the best offense or violation the officers could articulate through personal observation and knowledge was failure to yield to a police vehicle and possibly speeding[3] – both traffic offenses. As the officers followed the maroon Chevy Corsica, both activated the emergency equipment on their police vehicles (lights and siren) supporting a vehicle pursuit. I found no information in the provided documentation supporting that an officer of superior rank was monitoring and managing the pursuit. As the maroon Chevy Corsica approached a more populated and congested area, it would be best practice for a supervisor to

[2] The investigative report of the Arkansas State Police shows this address to that of Jermell Thompson as well. The correct address for Mr. Thompson is 114 Turkey Pond Loop

[3] The speeding offence depends on the statements of the officers. Murray: 60-70 mph, Caudell: driving normal

consider a comparison between the seriousness of the crime that caused the pursuit and the need to continue the pursuit to make an arrest.

24. As the driver of the vehicle voluntarily stopped his vehicle at a traffic light, the officers had several options available to them for contact and arrest of the driver. The officers could also further their probable cause and improve the quality of the case through observations they might make inside the vehicle and allowing the witness at the liquor store to view the driver once the scene was controlled.

25. Irrespective to the options available to the officers for initially contacting the driver of the maroon Chevy Corsica, Officer Murray decided to employ the use of a recklessly executed intervention tactic that placed Officer Murray, Officer Caudell, Mr. Thompson, and other citizens at risk.

26. I found no information in the supplied documentation supporting the need for the officers to employ the extreme intervention tactic of boxing the vehicle, e.g., reckless driving, weaving, creating a hazard, etc. The in-car video of both officers shows the driver of the maroon vehicle stopping for the traffic light voluntarily. When considering that prior to arriving at the controlled intersection, the driver of the maroon vehicle was not stopping for marked police vehicles with activated emergency equipment and the fact that the driver was a suspect in a criminal incident, employing the use of a typical behind the target vehicle felony stop tactic would be consistent with best practice.

27. Best practices dictate that decisions to initiate pursuits be based on the law enforcement officer's conclusion that the immediate danger to the officer and the risk to the public created by the pursuit is less than the immediate or potential danger should the pursued individual remain at large.

28. Making the decision to begin a pursuit could result from suspect actions supporting an intention to avoid apprehension by refusing to stop when properly directed to do so. Moreover, the decision to pursue might also be sound if the officer reasonably believes that the suspect, if allowed to flee, presents, or could present, a danger to human life or create an environment where serious injury could occur.

29. The officer making the decision to pursue must consider multiple circumstances when conducting this analysis. These include, but are not necessarily limited to road, weather, and environmental conditions; population density, vehicular and pedestrian traffic; the relative performance capabilities of the officer, the pursuit vehicle, and the vehicle being pursued; and the seriousness of the offense.

30. Managing police pursuits is the purview of supervisory officers. When made aware of a vehicular pursuit, the supervisor must actively involve him or herself in the pursuit by monitoring available information, coordinating and directing officer actions as needed to ensure the use of proper procedures. These managing supervisors also have the legitimate discretion to terminate the pursuit if necessary.

31. Supervision is also a consideration when officers seek approval to employ any pursuit intervention technique. These techniques for forced-stops of vehicles include tactics and devices to physically terminate a pursuit such as spike strips, boxing in, channeling, heading off, ramming, low speed precision intervention

technique (P.I.T. maneuvers), and roadblocks. Irrespective to the technique employed, it is important that only officers trained in the forced-stop method employed will be authorized to use such a method.

32. Decisions to discharge firearms at or from a moving vehicle, or to use roadblocks, should be governed by the agency's use of force policy, and considered inappropriate if they present an unreasonable risk to others. Prior to the use of such force, these options must first be authorized, whenever possible, by a supervisor.

33. Discharging a firearm at a moving motor vehicle will typically have a limited impact on stopping the vehicle. Small arms ammunition (handgun and rifle) does not have the mass or energy to disrupt the functioning or the normal operation of a motor vehicle[4]. Disabling the driver of the motor vehicle by use of physical or deadly physical force can have the unintended consequences of an uncontrolled vehicle. Additionally, the likelihood of injury to occupants of the vehicle (who may not be involved in the criminal incident) can increase when the vehicle is either out of control or bullets enter the passenger compartment. Although not always practical or possible, the best practice for an officer threatened by an oncoming vehicle is to move out of the way rather than discharging a firearm.

34. Policies developed and incorporated by law enforcement agencies should include language that directs that officers shall not discharge a firearm at a moving vehicle or its occupant(s) in response to a threat posed solely by the motor vehicle unless the officer has an objectively reasonable belief that includes the vehicle or suspect poses an immediate threat of death or serious physical injury to the officer or another person and the officer has no reasonable alternative course of action to prevent death or serious physical injury.

35. Increasingly, because such officer action(s) might create the need for the use of deadly physical force, most law enforcement agencies have integrated provisions into their policies that dissuade or prohibit officers from placing themselves in the path of motor vehicles in an attempt to stop the vehicle. Jurisdictions examining events that led to the use deadly physical force in the reasonableness inquiry of the incident are particularly sensitive to adopting and employing such policies.

36. Irrespective to the circumstances of the incident, officer safety and the safety of the public must be the overriding concern when the use of force by law enforcement is considered.

37. The Policy and Procedure Manual of the Morrilton Police Department has a section addressing shooting at or from a motor vehicle in basic terms[5]. Other than an equivocal entry in their Academy curriculum, I found nothing in the provided information where Officer Murray or Officer Caudell received training prior to this shooting incident that dealt with high-risk vehicle stop tactics.

38. In his deposition taken on September 12, 2013, Officer Murray described that the

[4] As an example, shooting a motor vehicle tire with standard law enforcement handgun ammunition (9 mm, .40 and .45) will create a defect causing air loss that takes more than two minutes to deflate the tire. The vehicle can continue to roll on the unaffected metal rim, however. Law enforcement rifle ammunition (5.56 mm, 7.62 mm, .308) performs in a similar manner.

[5] Policy and Procedure Manual Section 82 Procedures A 4 c. Page 257

only training he recalls receiving that covered felony stop procedures was while he was in the academy. His description of the felony stop procedure is very generalized and incomplete. His description leaves questions as to his knowledge of the proper procedures for handling such a stop.

39. Regarding the shooting incident occurring on November 29, 2008, Officer Murray related that he was covering the call and joined Officer Caudell who was behind the suspect vehicle. He recalls the vehicle speeds at this time to be in the sixties or seventies[6]. With respect to the driver controlling the suspect vehicle, Officer Murray stated the vehicle was under control. When questioned about his action of pulling in front of the suspect vehicle at the time of the stop, Officer Murray stated he was not trained to use that particular technique by the Academy or the Morrilton Police Department. Officer Murray indicated with a mark on a diagram of the shooting scene that he was standing near the right rear quarter panel of his police vehicle at the time of the shooting. This position would eliminate easy cover for Officer Murray and place him directly into the path of the suspect vehicle should it move toward Officer Murray.

40. In his deposition taken on September 12, 2013, Officer Caudell stated that he received training in the areas of pursuits and use of force while in the training academy. Officer Caudell did not recall additional training in these areas after becoming a full-time officer. Officer Caudell was able to describe in basic detail the premise for a felony stop; however, it is unclear if this is what was attempted during the stop of Jermell Thompson on November 29, 2008.

41. Regarding the shooting incident on November 29, 2008, Officer Caudell stated what was in his mind during the pursuit is that as the subject was not yielding to his police vehicle he would handle the stop as a felony stop. Officer Caudell further stated that he pulled his vehicle behind the suspect vehicle at the point of the stop for officer safety, consistent with his training. He added that "in his mind, he believed Officer Murray was going to box [the suspect] in", but there was no prior discussion with Officer Murray about using this tactic. Officer Caudell stated this technique was something he learned while at the Morrilton Police Department. At the moment of the shooting, Officer Caudell stated he fired at the rear tire of the vehicle as it began moving forward. Officer Caudell also stated he did not know Officer Murray's exact position at the time he discharged his firearm to disable the vehicle.

42. Once the pursued vehicle is stopped, officers shall utilize appropriate officer safety tactics and shall be aware of the necessity to utilize only reasonable and necessary force to take suspects into custody.

43. Vehicle stops are one of the most dangerous encounters that an officer can have with those in the general public when dealing with individuals who are visibly agitated and/or exhibiting irrational behavior. Officers making these high-risk contacts should expect the unexpected. However, the officer can experience or encounter issues not readily identified that could elicit a dangerous response from individuals who appear calm and rational. The driver of any given vehicle can have many unknown reasons or conditions that could cause the person to appear

[6] Officer Murray's dash cam video indicated speeds between 61 and 66 MPH while following Officer Caudell and the subject vehicle.

to use his/her vehicle in a threatening manner against an officer. Because of this, officers contacting individuals as a result of traffic or other critical motor vehicle stops should be vigilant and precautionary in their approach.

44. During dynamic traffic encounters, it is not always possible for an officer to position him or herself where the maximum tactical advantage will be realized. Wherever practical, however, an officer should avoid any location within a proximity to the front or rear of the vehicle when the vehicle is in an operational condition. Standard positioning when in close proximity (less than ten feet) to a vehicle, should involve a slight offset from the subject vehicle. An offset makes it significantly less likely that the driver could operate the vehicle abruptly enough to strike an officer directly. Such police vehicle positioning might tend to discourage a vehicular attack. An officer positioned parallel with or behind a subject vehicle that begins moving away unexpectedly, would not be in a situation where shooting the driver/vehicle would be necessary unless the officer believes someone else is in the immediate path of that vehicle.

45. Notwithstanding the reason for the contact, an officer should strictly avoid placing him or herself directly in front of or behind a vehicle with a noncompliant or irrational – or condition unknown – person in the driver's seat of the vehicle. Officers placing themselves in such an indefensible situation often limit their response options to one of using deadly physical force should the driver advance toward the officer's position.

46. When analyzing the Jermell Thompson shooting scenario, Officer Murray pulling his vehicle in front of Mr. Thompson's vehicle placed both officers in a crossfire situation with Officer Murray at the left front and Officer Caudell at the right rear. Additionally, this action limited Officer Murray's options for handling the stop. This act created a situation where the use of deadly physical force by Officer Murray was one of the only choices available to him. Another outcome of this situation could be injury to, or death of, Officer Murray.

47. Reviewing the Policy and Procedure Manual of the Morrilton Police Department, I found that the "decision to initiate pursuit must be based on the pursuing officer's conclusion that the immediate danger to the public created by the pursuit is less than the immediate or potential danger to the public should the suspect remain at large."[7] I found nothing in the documentation that supported Jermell Thompson posed an immediate danger to the public should he remain at large.

48. Other than the practical training the officers received in the academy, I found nothing in the provided documentation supporting specific training in the area of practical high-risk vehicle stops prior to this incident[8]. The training these officers received during their academy is typical for many law enforcement academies. The officers received training that specifically addressed the parameters for pursuing a vehicle, terminating vehicle pursuits, and what constitutes deadly physical force. When comparing the officer's training to their actions during the encounter with Jermell Thompson, these officers did not perform in a manner consistent with their training. Additionally, the academy training directs officers

[7] Policy and Procedure Manual Section 57 A 1

[8] Under the heading of Patrol Tactical & Practical in the Academy curriculum, there is reference to practical exercises related to felony traffic stops.

to follow the policies and procedures outlined by their agency. I found nothing in the Morrilton Police Department policy manual addressing the procedures for handling of high-risk vehicle stops or employing pursuit intervention techniques.

49. The use of force, especially force likely to result in serious bodily injury or death, is a momentous action having the potential for far reaching or life-changing consequences for all individuals involved, for the agency employing the officers, and for the community of occurrence. When deciding whether to use force, officers must act within the boundaries of the United States and individual state constitutions and laws, ethics, good judgment, agency use of force policies, and all other relevant policies, practices and training. With these values in mind, an officer should use only the degree of force necessary and reasonable under the circumstances evidenced at the time of the given incident. An officer may use deadly physical force permitted by the law and agency policy when all reasonable alternatives appear impracticable and the officer reasonably believes that the use of deadly physical force is necessary.

50. Officers considering the use of deadly physical force should ensure the actions that precipitate the use of force are not unreasonable or occur as a result of tactical, strategic, and procedural errors that place themselves or others in jeopardy. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The calculus of reasonableness must embody allowance for the fact that law enforcement officers are often forced to make split-second judgments, in circumstances that are tense, uncertain, and rapidly evolving, about the amount of force that is necessary in a particular situation.[9] The reasonableness inquiry in an excessive force case is an objective one; the question is whether the officers' actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.

51. It is important for officers to recognize that there are many reasons an individual may be resisting arrest or may be unresponsive to the presence or directions of the officer(s). The person involved in the interaction with law enforcement may be incapable of understanding the severity of the situation. Moreover, the person's reasoning ability may be considerably affected by a number of factors, including but not limited to medical condition, mental impairment, developmental disability, physical limitation, language limitations, drug interaction, alcohol consumption, or emotional crisis. Therefore, it is possible that a person's mental state may prevent a proper understanding of an officer's commands or actions. In such circumstances, the person's lack of compliance may not be a deliberate attempt to resist the officer. An officer's awareness of these possibilities, when time and circumstances reasonably permit, should then be balanced against the facts of the incident facing the officer when deciding which tactical options are the most appropriate to render the situation safe.

52. Law enforcement operations require, at times, an officer exercise control over a violent, assaultive, or resisting individual to make an arrest, or to protect the officer, other officers, or members of the general public from risk of imminent harm. Officers may either escalate or de-escalate the use of force as the situation

[9] Graham v. Connor, 490 U.S. 386, 1989

progresses or circumstances change. Officers should recognize that their conduct immediately connected to the use of force might be a factor, which can influence the level of force necessary in a given situation. When reasonable under the totality of circumstances, officers should use advisements, warnings, verbal persuasion, and other tactics and recognize that an officer may withdraw to a position that is tactically more secure or allows an officer greater distance in order to consider or deploy a broader variety of force options. When a suspect is under control, either through the application of physical restraint or the suspect's compliance, the degree of force should be de-escalated accordingly.

53. Unnecessarily or prematurely drawing or exhibiting a firearm limits an officer's alternatives in controlling a situation, creates unnecessary anxiety on the part of citizens, and may result in an unwarranted, sympathetic, or accidental discharge of the firearm. An officer's decision to draw or exhibit a firearm should be based on the tactical situation and the officer's reasonable belief there is a substantial risk that the situation may escalate to the point where deadly force may be justified. When an officer has determined that the use of deadly force is not necessary, the officer should, as soon as practicable, secure or holster the firearm.

54. When examining the question of whether the Morrilton Chief of Police conducted sufficient background investigations specifically related to determining the duty fitness of Officers Murray and Caudell, I considered several areas.

    a. **Education:** Law enforcement agencies typically require a high school diploma or GED, an associate's or bachelor's degree, or any equivalent amount of active, full-time military experience, including military training/education.

    b. **Experience:** Individuals seeking employment as law enforcement officers often have at least two years of work and/or life experience relating to a combination of skills and experiences that include interviewing, public speaking, conflict resolution, and a demonstrated ability to solve problems using creative methods to resolve issues.

    c. Potential law enforcement candidates show a stable work history, have a valid driver's license and acceptable driving record, and show competencies in their ability to complete tasks using acceptable standards. Within their background information, a law enforcement candidate demonstrates personal and professional honesty, integrity, and good judgment.

    d. **Physical Requirements:** The typical law enforcement agency requires that applicants have the ability to perform essential physical functions. This includes, but is not limited to, corrected visual acuity of 20/30 in both eyes; no marked red-green deficiency of color vision and no dimming of red objects; normal depth perception; no significant interference with night vision; no significant loss of peripheral vision; and strabismus which is accompanied by double vision and not correctable. Law enforcement candidates are normally required to have limited hearing loss.

    e. Candidates who are otherwise qualified but cannot meet specific

standards due to a disability as defined by the Americans With Disabilities Act may be given an opportunity to demonstrate their ability to perform the job through individual testing.

f. The purpose of having normal visual acuity for an officer is accurate judgment of motion, distance, and speed. Auditory acuity is essential to determine distance and direction. Each of these is not only important for conducting the day-to-day operations of a law enforcement officer, but also necessary to ensure officer safety.

55. I found nothing consistent with a background report other than a listing of individuals interviewed by the officer completing the background check. Moreover, this series of interviews appears to be nothing more than an inquiry to the candidate's behavior as perceived by persons listed by the candidate. I saw no documentation indicating a neighborhood canvas, talking with former employers (unless listed as a reference by the candidate). I also saw no documentation (other than a check sheet indicated one occurred) showing the contents and outcome of oral interview with a board or with the chief.

56. On May 24, 2013, the Arkansas Investigative Services provided a report[10] detailing interviews with past employers and co-workers of James Murray. The following is a summary of the individual statements of the persons interviewed.

a. Ms. Laverne Lewis recalls during the time James Murray worked at AGRI CO-OP Supply, he complained about having a bad eye and severe headaches.

b. Mr. Larry Harris with NAPA stated he was aware of an application completed by James Murray where he listed his education as graduating with a degree in criminal justice, posting a GPA of 4.0 from the Southern Arkansas University Tech. This application was submitted on September 1, 2011.[11]

c. Mr. Brad Judkins with NAPA stated he was a former supervisor for James Murray prior to him becoming a police officer. He recalls that Mr. Murray was partially or completely blind in one eye. He also related that Mr. Murray had short-term memory problems, as Mr. Murray required continuous re-training on jobs for which he was responsible. Mr. Judkins described that Mr. Murray would become frustrated because he could not remember how to do certain jobs.

d. Mr. Phil Blaylock with the Morrilton Police Department stated that James Murray worked for him when Mr. Blaylock was the Jail Administrator. He described Mr. Murray as a competent employee without issues or disabilities.

57. There are seven areas of supervisory negligence under considerations of vicarious liability. These areas include negligent failure to train, negligent supervision,

[10] Ar Investigative Services- Investigation Summary_0062 pdf

[11] I found no documentation of this degree listed in the personnel file of Officer Murray held by the Morrilton Police Department.

negligent failure to direct, negligent hiring, negligent failure to discipline, negligent entrustment, and negligent assignment.

a. Negligent failure to train: The employee was not instructed or trained by the supervisor or agency to a point where he or she possessed sufficient skills, knowledge, or level of expertise needed for the job.

b. Negligent supervision: The employee was not properly overseen or supervised and therefore what happened could also be attributed to the supervisor or agency.

c. Negligent failure to direct: The supervisor or agency failed to adequately inform the employee of the extent and limits of the job to be performed.

d. Negligent hiring: The employee was hired without a proper background investigation that should have alerted the supervisor or employer to the risks involved in hiring that employee.

e. Negligent failure to discipline: The supervisor failed to take action against an employee through reprimand, suspension, transfer, or termination when such employee demonstrated unsuitability for the job to a dangerous degree.

f. Negligent entrustment: The supervisor failed to supervise or control properly an employee's custody, use or supervision of equipment or facilities entrusted to him or her on the job.

g. Negligent assignment: The employee was assigned by a supervisor to a job without ascertaining whether the employee was adequately prepared for it, or keeping an employee on the job after he or she was known to be unfit.

58. I considered these areas and compared them to the supervision of Officers Murray and Caudell.

a. *Negligent Failure to Train* - After reviewing the provided documents, I found that the officers received adequate basic training during their academy that dealt with use of force and emergency operation of their police vehicles. The academy curriculum also shows the officers would receive 20 hours of practical vehicle operation which included felony traffic stops. I found nothing in the provided documentation that supports the level or type of high-risk vehicle stops or any pursuit intervention techniques that would be practiced during training, however. Through an examination of their individual personnel files I found the officers also received periodic training in various law enforcement areas while employed with the Morrilton Police Department, but nothing specifically focusing on pursuits, pursuit intervention techniques, or use of deadly physical force.

b. *Negligent Supervision and Directing* - I reviewed several documents within the provided materials, which supported that supervisors were aware of the daily and routine activities of Officers Murray and Caudell. The supervisors counseled both when there were deficiencies in their work or behavior and suggested training when necessary or pertinent. In

their individual counseling reports, supervisors routinely commented on the ability of Officer Murray to make good decisions. Supervisors routinely commented on the weaknesses of Officer Murray and Officer Caudell when deficiencies in performance occurred. There were also several comments about Officer Caudell's poor performance at traffic stops that rose to a level where other officers believed his actions posed a danger. With respect to the Jermell Thompson incident, I found nothing in the documentation supporting that a supervisor monitored the pursuit or considered any of the appropriate reasons to continue or cancel the pursuit[12].

c. The Policy and Procedure Manual of the Morrilton Police Department[13] details supervisory responsibility during a pursuit, however, I found no documentation where a supervisor provided direction for the officer's actions during the pursuit[14] or stop of Mr. Thompson. Additionally, the Policy and Procedures Manual of the Morrilton Police Department states that officers may not intentionally use their police vehicle to bump or ram a suspect's vehicle to force it off the road. There is no discussion in the procedures manual that addresses other pursuit intervention techniques or the training required by officers to use these techniques.

d. *Negligent Hiring* - My experience in the area of hiring results from my position at the command level of a law enforcement agency and conducting investigations into the departures from standard operating procedures of agency personnel. Although my positions never required my review of personnel backgrounds for hiring, I did participate on oral review panels that recommended advancement in the positions of personnel. I also participated as a subject matter expert for the promotional process of personnel. I conducted complaint and disciplinary investigations requiring that I offer determinations for actions involving wrongful conduct by personnel and provide recommendations for discipline to superior officers. Furthermore, I testified in agency hearings and civil actions as a subject matter expert in proper law enforcement procedures and necessary skill sets to perform those functions.

e. The Commission on Law Enforcement Standards and Training (CLEST) establishes the minimum selection and training standards for admission to employment as a law enforcement officer in the State of Arkansas. CLEST also requires that all applicants for law enforcement positions must meet the requirements established by CLEST and complete CLEST approved training to obtain their certification.

f. Section 3 B of the Morrilton Police Department Policy and Procedure Manual details that the Morrilton Chief of Police shall determine what

[12] Policy and Procedure Manual Section 57 D
[13] Section 57 Police Vehicle: Pursuit Driving pgs. 188 - 190
[14] The dash cam of Officer Caudell's police vehicle shows the pursuit indicating a time of 60 seconds (4:16:58 – 4:17:58) from the beginning of the video to the location of the vehicle stop. Officer Murray's dash cam video indicates a time of 2 minutes and 12 seconds (16:20:32 – 16:22:44) from beginning to the stop of the vehicle. There is roughly a two-minute difference between the two camera systems.

functions of a job are essential, and prepare a written description of the job to be performed before advertising or interviewing applicants for the job; this description shall be considered evidence of the essential functions of the job. This section then cites 42 USC 12111 - Section 101.8 as a reference.

g. United States Code Section 42 USC 12111 (8) describes a qualified individual as any one who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this subchapter, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

h. The Arkansas CLEST Section 1002 details the minimum standards for employment or appointment or continued employment. With respect to (g) of this section, CLEST requires that a licensed physician examine an applicant and that the applicant meet the physical requirements prescribed in Specification S-5, Physical Examination.

i. Reviewing CLEST Specification S-5 3. Vision – Applicants must possess normal color discrimination, normal depth perception and peripheral vision of at least 75 degrees in each eye. Furthermore, the applicant must possess uncorrected visual acuity of 20/100 or better in each eye, corrected to 20/20 in each eye, both at 16 inches and 20 feet. Vision correction, when required, may be either glasses or contact lenses. Must have no active internal or external eye pathology. Should eye pathology be found, the applicant must be referred to an appropriate practitioner.

j. When considering the disability of Officer Murray, he appears capable to perform the duties as delineated by the Morrilton Police Department, however, I am unclear how his disability is not in conflict with the minimum standards as outlined by CLEST. In his deposition[15], former Chief Norbert Gunderman stated that he was aware of the minimum standards outlined by CLEST, however, stated that he had no prior knowledge of Officer Murray's physical limitations. I note here that these physical limitations are presented plainly in Officer Murray's medical file maintained by the Morrilton Police Department[16].

k. *Negligent Failure to Discipline* - The Policy and Procedure Manual of the Morrilton Police Department outlines procedures for handling the internal investigation of externally received complaints. Internal investigations will also include the investigation of internally received complaints, however, there are no specific protocols outlined for such investigations[17]. The Disciplinary Section of the Policy and Procedures Manual outlines

[15] PDF document labeled Deposition of Norbert Gunderman - taken September 11, 2013, pgs. 103-104
[16] PDF file labeled Forms-Murray pg. 2
[17] Policy and Procedures Manual Section 37

basic offenses of employees, however, does not discuss an investigative procedure or the penalties for such digressions.[18]

l. Overall, the internal investigations conducted by the Morrilton Police Department appear consistent with those of other similar agencies. Although I was not provided with any documents related to internal investigations conducted on Officers Murray or Caudell, an investigative process appears to exist.

m. An area of inconsistency with the internal investigation procedures of the Morrilton Police Department was their handling of the failure to qualify with a firearm incidents involving Officer Caudell. Officer Caudell's recurrent failures to meet the Morrilton Police Department's firearm proficiency requirements would serve as a cause for discipline rather than remedial training.

n. *Negligent Entrustment and Assignment* - The area of entrustment that is of concern is mainly the fact that Officer Caudell was allowed by the Morrilton Police Department to carry a firearm considering the policies outlined in the policy and procedure manual as well as the fact that he continually failed to qualify with the firearm on a routine basis.

o. The Firearms Training and Qualification, Section 24-I specifically states: "Any officer who is unable to meet the minimum Firearms Qualification Score established by the department shall not be eligible to perform the duties of an armed law enforcement officer. The personal risk is high, and liability is indicated when an officer knows he or she cannot qualify with a firearm and the department continues to permit the officer to work on the streets. Failure to qualify may result in termination."

p. When handling Officer Caudell's failure to qualify in May of 2009, the department followed the procedure outlined in the police and procedure manual with the exception of termination. With respect to Officer Caudell's failure to qualify in February of 2010, this procedure was not followed. Instead, the chief cited the reason for this departure was that due to the number of officers failing to qualify. Although it appears the chief made an executive decision to depart from the proper adherence to the policy, I found nothing in the manual that allows for such a departure or decision.

q. The information within the provided documentation supports Officer Caudell has the ability to qualify with his firearm, however, the frequency of his failures to qualify are concerning.

r. A second area of concern is the fact that Officer Murray was allowed to work in a patrol function irrespective to the fact that he did not meet the minimum standards of CLEST. Although the policy and procedure manual states the chief will determine the essential functions of the department members, there is nothing in the manual exempting personnel from the minimum standards delineated in CLEST.

[18] Policy and Procedures Manual Section 53

59. Closing my evaluation I reasoned the following based on my training, experience, and background:

    a. As discussed in this document, there was clearly probable cause for the arrest of Jermell Thompson.

    b. The actions of Officers Murray and Caudell during the pursuit appear consistent with the policies and procedures of the Morrilton Police Department.

    c. The officer's actions at the time of the contact with Mr. Thompson were inconsistent with best practices used for the application of typical felony vehicle stops or of effective pursuit intervention techniques.

    d. There was no documentation that a supervisor monitored this pursuit.

    e. Considering the seriousness of the crime and the behavior of the subject driving the pursued vehicle, it would be prudent for a supervisor to cancel the pursuit.

    f. The Morrilton Police Department considers Officers Murray and Caudell to be experienced. Officer Murray is routinely considered as having the ability to make good decisions and act as a shift commander on occasion.

    g. The technique used by Officer Murray at the end of the pursuit would be considered a termination by use of force, specifically due to the use of a roadblock/boxing technique. The question Officer Murray must consider, would a reasonable officer under like circumstances (misdemeanor offense, non-violent subject) consider this action reasonable?

    h. Other officers in the Morrilton Police Department believe Officer Caudell will not cover them to a sufficient degree when necessary. One of the supervisors (Rathjen) described Officer Caudell as scared when handling traffic stops and covering officers.

    i. Officer Caudell has regular difficulties qualifying with his firearm. These failures are in conflict with the requirements of the policies and procedures of the Morrilton Police Department, yet he is allowed to work a patrol function.

    j. During the contact with Mr. Thompson, Officer Caudell shot at the right rear tire of the vehicle in an attempt to disable the motor vehicle[19]. Although he missed his shots (which could endanger others in the area), such a tactic is well outside best practices and a poor method for stopping a vehicle. The standard handgun round will cause tire deflation over a several minute period and will not cause immediate cessation of vehicle movement or ability to operate the vehicle effectively. Important to note here is although Officer Caudell did not know the exact position of Officer Murray, he believed that the driver was going to strike Officer Murray. This belief would make the driver, not the vehicle, the threat.

[19] Officer Caudell stated this action was both for officer safety (Murray in danger) and to keep the vehicle from continuing on its "high speed" pursuit.

Investigators never asked Officer Caudell to explain his reasoning about this decision.

k. When studying the position Officer Murray chose for stopping Mr. Thompson's vehicle, he had ample cover to avoid placing himself in a dangerous position that would allow Mr. Thompson to strike Officer Murray with his vehicle. It is important to note that although Officer Murray made the choice to place himself in the perilous position where Mr. Thompson became a threat, he was not hit by Mr. Thompson's vehicle. Moreover, when analyzing the locations of the bullet defects observed in the hood and windshield of the maroon Chevy Corsica support officer Murray being directly in front of the vehicle at the time these shots were fired. For this to occur, Officer Murray would need to leave his position at the rear of his police vehicle, irrespective to this location beginning on the driver's or passenger's side of the vehicle, and situate himself in front of the vehicle driven by Jermell Thompson. Investigators never asked Officer Murray why he put himself in such a precarious situation.

l. When examining the shooting event alone, it is my opinion that Officer Murray articulated his belief that the driver of the maroon Chevy Corsica posed a threat to his safety and in response to this threat, used a level of force consistent for the circumstances. When viewing the entire incident, however, it was the reckless actions of Officer Murray using his police vehicle in a blocking intervention manner, inconsistent with best practices, which created the situation where the options available to Officer Murray, when Mr. Thompson began to move his vehicle, were limited to the use of deadly physical force.

m. In his deposition, Officer Murray locates his position on a diagram and indicates he was near the right rear wheel of his police vehicle (passenger's side) just prior to the shooting. When considering the time available for Officer Murray to react and the location of the cartridge cases, the best explanation for Officer Murray's position would be on the driver's side of his police vehicle at the time of the shooting.

n. Although the individual civilian statements contain some differences from other witness statements about their observations, when considering only the shooting event, the civilian witnesses predominately support the statements made by Officers Murray and Caudell regarding their positions and the movement of the subject vehicle.

o. During their investigation, State Police investigators asked several questions about the incident. The investigators did not ask specific questions about the reasons for individual actions of Officers Murray and Caudell. Many of the investigator questions were leading and not designed to obtain clear, unbiased, knowledge information from Officers Murray or Caudell. These leading questions simply sought confirmatory or negating responses.

p. Investigations did not inquire of Officers Murray and Caudell about their individual reasons for discharging their firearms or about their reasons for

ceasing fire. Neither Officer Murray nor Officer Caudell was asked to articulate what they perceived as the threat, which necessitated use of deadly physical force.

q. Investigators did not ask Officer Murray why he continued to fire at Mr. Thompson when the threat was no longer present.

r. Investigators did not inquire of either Officer Murray or Officer Caudell about their knowledge of departmental procedures or about the training they received in handling pursuits and how their actions compared with departmental policy.

s. Subsequent searches of Mr. Thompson's vehicle located the bottle of liquor taken from the Number 9 Liquor Store; however, I also note there were no firearms or other weapons recovered from the vehicle or on the person of Jermell Thompson.

t. Chief Gunderman failed to discipline or cause to discipline Officer Caudell for his recurrent failures to qualify with his firearm consistent with department policy.

60. I also examined this incident from a view of deliberate indifference on the part of the Morrilton Police Department and the agency head.

61. Deliberate indifference is the conscious or reckless disregard of the consequences of one's acts or omissions. It entails something more than negligence, but is satisfied by something less than acts or omissions for the very purpose of causing harm or with knowledge that harm will result. Even though it is difficult to identify what does and does not constitute deliberate indifference, courts have recognized several factual scenarios where deliberate indifference exists.

62. Deliberate indifference is defined as requiring (1) an "awareness of facts from which the inference could be drawn that a substantial risk of serious harm exists" and (2) the actual "drawing of the inference."[20]

63. In his deposition, Chief Gunderman stated he was unaware of Officer Murray's physical deficiencies at anytime prior to Officer Murray being hired or during Officer Murray's tenure with the Morrilton Police Department. I note that it was compulsory on Chief Gunderman, as the agency head and hiring recommendation authority, to know whether active or candidate personnel met the CLEST standards and those of the agency. Chief Gunderman's failure to perform this compulsory examination caused the hiring of a substandard employee who had difficulty recalling specific duties and handling basic tasks.

64. Although Chief Gunderman claims no knowledge of Officer Murray's physical deficiencies, the medical report on Officer Murray received by Chief Gunderman clearly delineates these deficiencies. Additionally, a competent background investigation would have disclosed these defects and their affects on Officer Murray's abilities prior to hiring the officer. No such competent background investigation occurred with respect to the hiring of Officer Murray as a reserve officer and no background investigation of any type was completed prior to hiring Officer Murray as a full time officer.

[20] Elliott v. Jones, 2009 U.S. Dist. LEXIS 91125 (N.D. Fla. Sept. 1, 2009)

65. The background investigation conducted by the Morrilton Police Department on Officer Murray was inconsistent with the standards set forth in Specification S 3 of the Arkansas Commission on Law Enforcement Standards and Training (CLEST).

66. Officer Murray was not required to complete a second medical or psychological exam when changing his status from part time to full time officer.

67. Officer Murray was not certified as a police officer as required by Regulation #1010 of the Arkansas Commission on Law Enforcement Standards and Training (CLEST).[21]

68. Chief Gunderman never sent, or caused to be sent, the F-7 Application for Award of Law Enforcement Officer Certificate for Officer Murray as required by the Arkansas Commission on Law Enforcement Standards and Training (CLEST).

69. Chief Gunderman's failure to file the proper certification paperwork for Officer Murray hindered the Arkansas Commission on Law Enforcement Standards and Training (CLEST) from reviewing Officer Murray's qualifications to become a police officer in the state of Arkansas.

70. Requirement #1002 (2) requires the employing agency to maintain verification of minimum employment standards for officers. No such verification exits in the files of the Morrilton Police Department for Officer Murray.

71. Officer Murray does not meet the standards for police officer set forth by the Arkansas Commission on Law Enforcement Standards and Training (CLEST) and was not certified as a police officer prior to, during, or subsequent to the shooting of Jermell Thompson.

72. In his deposition, Chief Gunderman stated he was aware that officers employed by the Morrilton Police Department routinely made "high-risk" traffic stops. Other than training received in the academy, neither Officer Murray nor Officer Caudell received high-risk vehicle stop training prior to the shooting of Jermell Thompson.

73. Officer Murray and Officer Caudell received training in the area of High-Risk traffic stops[22] after the November 29, 2008 shooting of Jermell Thompson.

74. The actions of Officer Murray and Officer Caudell during the contact of Jermell Thompson after the pursuit support that each of these officers had a poor understanding of the proper procedures for employing and handling a "high-risk" traffic stop.

75. Officer Murray's dangerously inadequate tactical positioning of his police vehicle and his subsequent approach to Jermell Thompson's vehicle from the front further supports Officer Murray's lack of proper training in the area of high-risk stops.

76. I am unaware at this point as to any additional documents or materials I might be asked to review. If so requested, I will be prepared to render additional opinions or supplement the opinions stated within this affidavit.

[21] See Letter from Officer of Law Enforcement Standards dated November 18, 2013.
[22] Provided and conducted by the Morrilton Police Department on October 5, 2009