

Report of Advisors to City Manager

In considering the factual circumstances surrounding the use and discharge of a police firearm which resulted in the death of Kiwane Carrington on October 9, 2009, the advisors to the City Manager of Champaign, Illinois, have considered all of the materials that have been made available to them, including the investigative reports of the Multi-jurisdictional Task Force (Illinois State Police, lead agency) and all witness statements and recordings of witness statements included with said reports; the autopsy report, photographs, and opinions of the physician who conducted the autopsy; the Champaign Police Department's Policy Manual--policies 1.3 (Use of Force), 1.4 (Weapons - Requirements and Proficiency), and 1.5 (Firearms Discharge Investigation and Review); and the report of the State's Attorney of Champaign County.

In addition, the advisors interviewed the Director, and two instructors, at the Police Training Institute (PTI) of the University of Illinois, regarding the curriculum and instruction of police officers attending PTI (including Officer Norbits) on various subject matter areas, including firearms, use of force, weapons care and maintenance, communications, tactical communications, arrest and control tactics, decision-making and situational shooting, crimes in progress, approach and deployment, entry and search, and others. [see attached letter from Krystal L. Fitzpatrick, Director, Police Training Institute, with enclosed documents regarding the curriculum and course outlines of selected courses at PTI as well as standards published by the Illinois Law Enforcement Training and Standards Board]

The advisors also viewed the scene of the incident, and had the opportunity to observe the physical surroundings on North Prospect Avenue and West Vine Street.

Findings of Fact

On October 9, 2009, several officers of the Champaign Police Department responded to a dispatch of a "burglary in progress" call in the 900 block of West Vine Street. The initial officer to arrive on scene was Chief R. T. Finney. Officer Daniel Norbits arrived shortly thereafter. Each officer observed the presence of the other and each was aware that other officers were also either on scene or enroute. According to Officer Norbits, he observed Chief Finney approach the rear of the residence from the east and observed Finney draw his weapon and say "stop--get on the ground--I will shoot you." According to Chief Finney, as he went around the corner of the residence into the backyard, he said "police--get down--get down." He did not recall making the statement suggested by Norbits but said there was a possibility that he said "don't make me shoot" as he had done so on other occasions when individuals improperly advanced upon him. Norbits, who had been at the southeast side of the residence, came to Finney's location at the northeast side of the residence to assist Finney. He drew his weapon because of the totality of the circumstances known to him, including his observation of Finney with his weapon drawn and Finney's statement.

As the officers entered the backyard of 906 W. Vine, they observed two subjects standing at the back door of the residence attempting to push on the door to get in. The officers each made commands to the subjects to "get down on the ground" but neither subject complied. In his statement, Finney indicated that the suspect with whom he was engaged, JeShaun Manning-Carter, came toward him and Finney had to push him back to provide distance. Finney indicated that he grabbed ahold of Manning-Carter to "take him to the ground." Norbits indicated that he approached Kiwane Carrington and attempted to take Carrington to the ground by grabbing Carrington's collar with his left hand, while holding his service weapon in his right hand. He indicated that Carrington twisted away so that Norbits momentarily lost his grip and that he had to reengage with Carrington by grabbing him again by the collar in a further attempt

to bring him to the ground. While engaged with Carrington, Norbits indicated that his weapon discharged and Carrington was hit. Carrington then slumped to the ground, on his back, immediately in front of the back door to the residence.

Prior to Officer Norbits' contact with Kiwane Carrington there was a deficiency in communication between the officers that must be noted. PTI curriculum and training instruct that prior communication occur between officers to insure that proper tactics are implemented. According to the statements of Chief Finney and Officer Norbits no communication occurred between them--either verbally or by signal-- before or during the engagement of the suspects and the attempted arrests.

With regards to the actions of Officer Norbits, his statements demonstrate that he placed himself to Chief Finney's right side (by moving behind Finney) as both men took positions in the backyard of the residence on West Vine. Finney was focused on Manning-Carter and Norbits was focused on Carrington. As the police radio traffic had earlier indicated that there were three suspects, Norbits was also observing the doors and windows to the house behind the suspects as he wanted to insure that another potential suspect was not present. Norbits also said that Carrington was putting his hands in and out of the pockets of his outer clothing throughout this time. Both Finney and Norbits shouted commands for the two suspects to "get down...get on the ground" but neither complied. As Finney was engaged in struggling with Manning-Carter, Norbits approached Carrington and put his left hand on Carrington's collar near the right shoulder to take him to the ground. Carrington appears to have maintained his location at the rear door of the residence during Norbit's attempts to put hands upon him to bring him to the ground. Norbits indicated that Carrington twisted away and he lost his grip on Carrington's clothing. When he attempted to reestablish control over Carrington, the weapon discharged. There is no indication in the witness statements or investigative reports that Carrington touched or came in contact with Norbit's weapon before it discharged. Norbits, in his statements, acknowledged that he is trained to hold his weapon with his

finger indexed off of the trigger and he does not know how his weapon discharged on this occasion. Based upon the investigation to date, it appears that during Norbits' efforts to take Carrington to the ground Norbits' finger pressed the trigger of his weapon and it discharged. It should be noted that Norbits' weapon is currently at the FBI laboratory where it is undergoing further analysis, which has not yet been completed.

The autopsy photos and report of the examining physician demonstrate that the trajectory of the bullet was downwards, passing through Carrington's left arm and entering the mid-chest, one (1) inch below the left nipple. The autopsy report, therefore, suggests that Carrington was below Norbits' weapon, when the weapon discharged.

The Champaign Police radio log for October 9, 2009, demonstrates that the final radio transmission by Chief Finney prior to the discharge of the police weapon occurred at 13:30:22 hours, when the Chief was on foot east of 906 W. Vine, and prior to the time he entered the rear yard of that residence. The first radio transmission by Chief Finney after the discharge of the weapon occurred at 13:31:06 hours, when he called for an ambulance after the shooting. A total of forty-four seconds elapsed between these two transmissions and there was no intervening police radio traffic. It is appropriate to note that this total incident occurred during a relatively short period of time

Analysis

The residents of any community understand and appreciate the critical role that police officers have in insuring the safety of their community. In that regard, they expect police officers to carry deadly weapons in the performance of their duties and have trust and confidence that officers are trained in their care and use. The community also has an expectation that regulations and training on the care and use of deadly weapons will protect the community from the accidental or careless use of a duty weapon by a police officer.

In the instant case, it is clear that Officer Norbits did not know what he was going to find upon entering the rear yard of 906 W. Vine. He had heard the commands of Chief Finney, had seen Finney draw his weapon and had observed Finney proceed to the rear yard. He withdrew his weapon from his holster and followed Finney, moving behind Finney to take a position to Finney's right. He saw Chief Finney engage with a suspect and became aware that a struggle was underway to his left. Training would have informed Officer Norbits that he needed to maintain a safe distance from his subject with his weapon drawn and to not approach the subject to 'put hands on' without first holstering and securing his weapon. Instead--with Chief Finney engaged with his subject almost immediately to Officer Norbits' left--Norbits advanced upon his subject (Kiwane Carrington) and tried to take his subject to the ground with one hand, his left hand, all the while holding his weapon in his right hand.

Officer Norbits does not know how or why his duty weapon discharged. He does not suggest, nor is there any evidence, that Carrington struck or grabbed the weapon. In his statements to investigators, Norbits recognized that training required him to maintain his weapon, with finger indexed, until he determined to discharge his weapon and also indicated that he did not intend to discharge his weapon on this occasion. There appears to be no other explanation for the firing of the weapon in this case than that, during his physical exertion to try to take Carrington to the ground with his left hand, Norbits' index finger on his right hand (gun hand) placed sufficient pressure on the trigger to discharge the weapon. This is further supported by the autopsy report indicating that the path that the bullet traveled upon discharge suggests that Carrington was below the weapon when it discharged.

Norbit's actions on October 9, 2009, were violative of the Illinois Mandatory Firearms Training Manual, as promulgated by the Illinois Law Enforcement Training and Standards Board ["The following rules concerning the safe handling of firearms are universally accepted. These rules should apply in all situations:
3. Keep your finger off the trigger until your sights are on the

target"--page 3] ["Keep your finger off the trigger until the sights are on the target"--page 24]; Champaign Police Department policy 1.4, "1.H. Officers shall not unnecessarily draw (from their holster), display or carelessly handle firearms."; and the PTI curriculum and course instruction. The PTI course of training that Norbits attended as a police officer also instructed him to maintain a reasonable and safe distance from a suspect, and to holster a weapon when approaching a suspect to lay hands on to effectuate an arrest. That training also taught Norbits to always hold his weapon with the trigger finger indexed (keeping the trigger finger out of the trigger guard and extended along the side of the barrel of the weapon) until a decision is made to fire the weapon.

In considering the investigative reports, the witness statements, the physical evidence including photographs, the standards and training materials from the State Board and PTI, and the policies and rules of the Champaign Police Department, the advisors find that Officer Daniel Norbits violated policy and training in the following way: Failure to use firearms in accordance with law and departmental directive by failing to exercise due care upon drawing his weapon by not keeping his trigger finger indexed on the weapon until he was ready to fire said weapon [Champaign Police Department's Policy Manual--policy 1.4.1.H.].

Recommendations

In considering what discipline, if any, is to be imposed in this case, the advisors have considered the facts of the underlying incident (as more fully described in the factual statement in this report) and the prior disciplinary record of Officer Norbits. In considering the disciplinary record, the advisors would note that Officer Norbits has been a member of the Champaign Police Department since 1995. He has received several awards during his tenure with the Department. He has also been disciplined on several occasions,*

In considering the totality of the circumstances in the instant case, the advisors find that Officer Norbits should be disciplined under Champaign Police Department Rule 4. H. for

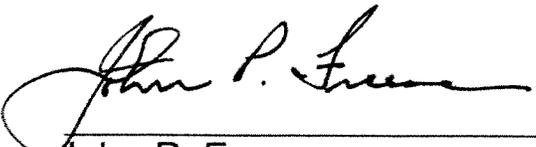
the violation of Champaign Police Department Policy Manual, policy 1.4.1.H.

Additional Recommendations

In considering the written policies and rules of the Champaign Police Department, the advisors find them to be thorough and in compliance with State Standards and training guidelines. In fact, the department has recently received certification by the Illinois Law Enforcement Accreditation Program, one of a very few departments in the State of Illinois so recognized thus far.

The advisors do recommend that the Champaign Police Department make 'indexing of a weapon', which is taught at the Champaign Police Department Basic Orientation Course, part of the curriculum and instruction at annual weapons and use of force training within the department.

Dated this 12th day of March, 2010, in Champaign, Illinois.

	
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Eddie B. Adair, Chief of Police, retired City of Urbana	John P. Freese Chief Circuit Judge, retired Eleventh Judicial Circuit

*Legally required to be omitted pursuant to 820 ILCS 40/8
Personnel Records Review Act.

Memorandum

To: Mr. Steve Carter
From: DC H. Nearing
Date: March 31, 2010
Re: Internal Investigation 2009-04, 906 W. Vine

This internal investigation was conducted in accordance with the Firearms Discharge Investigation and Review policy statement 1.5 which requires that a Professional Standards investigation be completed in the event of an officer firearms discharge.

This investigation involved the review of the Multijurisdictional Investigative Team reports, among other reports, evidence, and supplementary information. The internal investigation does not replicate what has already been established in existing reports.

Incident Summary

This summary is intentionally succinct, due to the amount of existing information on this incident.

On October 9, 2009 at approximately 1320 hrs, reporting party Everett Riley called a front desk operator at the Champaign Police Department to report three subjects prowling around the house next to 902 W. Vine, Champaign. The operator entered the information into the dispatch system.

METCAD 911 dispatched the call as "suspicious subjects," and directed Ofc. Beck to respond. Ofc. Reynolds keyed the radio and said he would respond from campus. Ofc. Norbits keyed the radio and said he would respond, and Ofc. Reynolds could disregard. METCAD continued to report what the reporting party was saying, that the subjects had been "trying" windows and doors, and had gone around to the back of the house, and the owner was not present.

Chief Finney keyed the radio about five minutes after the initial dispatch and said he was enroute to the call; in fact, he was first on the scene. METCAD reiterated that the call was in reference to three subjects, and described their clothing. The officers then arrived in this order: Ofc. Beck from the west, Ofc. Norbits from the east, Ofc. Reynolds from the south, and Sgt. Frost, also from the west. Ofc. Norbits parked on the north side of Vine St., in front of 902 W. Vine facing west.

There was some radio discussion about what house is involved, and then Chief Finney stated there was an open door in the back of the house. Forty-four seconds later, Chief Finney called for an ambulance.

During that forty-four seconds, Ofc. Norbits and Ofc. Reynolds indicated to each other, as they were walking up to 906 W. Vine, that they should cover different sides of the house. Chief Finney moved to a location of cover at 906 W. Vine. As Chief Finney looked around the corner of the house, he drew his weapon, and he saw two subjects at the back door looking in or trying to get in. Chief Finney identified and showed himself, and ordered them to get down or stop. When Ofc. Norbits observed and heard this, came up to the Chief's location, and also drew his weapon.

Chief Finney said one of the subjects then walked up to him, ignoring his commands, and attempted to walk past him. He said he pushed back the subject with his free hand, and Ofc. Norbits, who was then right next to him, began dealing with the other subject (Carrington). Chief Finney stated when his subject did not get on the ground upon command and being pushed, Chief Finney grabbed him with one hand in order to take him down. He did not have time or distance to holster his weapon.

Ofc. Norbits in his struggle with Carrington also ordered him to get down. Ofc. Norbits was concerned that Carrington did not keep his hands out of his pockets, coupled with not knowing exactly what Chief Finney had first seen, Ofc. Norbits' concern was that Carrington had a weapon. Carrington did not heed the orders, and a physical altercation ensued, with Ofc. Norbits trying to get him to get on the ground using one hand. Carrington broke free from Ofc. Norbits' grasp at one point, but Ofc. Norbits re-engaged physically with Carrington. As Ofc. Norbits was trying to get him on the ground, Ofc. Norbits weapon discharged, striking Carrington.

Both Ofc. Norbits and Chief Finney stated they saw the other struggling with the subject in front of them before the shot rang out. Chief Finney stated both subjects were right next to each other.

Ofc. Reynolds, who heard a struggle coming from the back of the house, came from the southwest side of the house to the back yard and placed Chief Finney's subject in handcuffs. He observed Ofc. Norbits trying to talk to Carrington, and saw blood on Carrington. Chief Finney requested an ambulance from METCAD.

Sgt. Frost and Ofc. Art Miller then arrived at the back of 906 W. Vine, and Sgt. Frost called for a medical kit from a squad car. Sgt. Griffet and Ofc. Bednarz brought their kits, and Ofc. Norbits rendered medical aid to Carrington.

Chief Finney confirmed with METCAD that medical assistance was on the way, and asked for Investigations and Deputy Chief Daniels to be notified.

There was concern that there was a third subject possibly in the house: METCAD had dispatched that there were three subjects, only two subjects were outside the house, and the back door was locked. Officers coordinated to enter the house to search it safely, and had to break the back door to do so. In the ensuing minutes, the house was searched; it was empty, and the renter contacted.

Information learned and actions taken post-shooting:

The renter, Deborah Thomas, was interviewed by officers and said in her initial interview no one had permission to be in the house when she was not there¹.

Chief Finney turned his weapon and the investigation over to Deputy Chief Troy Daniels, and Ofc. Norbits was placed on Administrative Leave.

The two subjects did not have keys to the house, and neither had a weapon. The spent round and shell casing were recovered, and it was determined that Ofc. Norbits' weapon discharged the only round, and his weapon was a different caliber than Chief Finney's². Because laboratory analysis is not complete on the clothing of Carrington, it is difficult to say how far away the weapon was from Carrington when it discharged.

The State's Attorney reviewed this case with respect to criminal charges, and filed charges only on the arrested subject; Ofc. Norbits' actions were deemed not to be criminal.

Ofc. Norbits was asked about the circumstances under which his weapon discharged, but he does not know why his weapon discharged.

The Multijurisdictional Investigative Team was activated to investigate the circumstances involved in the shooting; ISP was the lead agency, and the CPD Crime Scene Unit assisted the Illinois State Police Crime Scene Unit. Their activities are documented in the Multijurisdictional Investigative Team report.

Professional Standards Investigation

I was directed to open an internal investigation (II 2009-04) on the incident that culminated in an officer-involved shooting at 906 W. Vine, Champaign.

1. Use of Force, Policy Statement 1.3

The Champaign Police Department Use of Force policy and Illinois state law authorize officers to use force to accomplish a lawful objective when they reasonably believe the force is warranted. Officers are authorized to use force to prevent or terminate the commission of an offense. The circumstances under which officers may use deadly force are described in policy 1.3.2.

The use of force issues that are raised in this case are: was the use of force by the officers reasonable, and if Ofc. Norbits intended to discharge his weapon toward Kiwane Carrington, was it reasonable (justified).

2. Tennessee vs. Garner Analysis (deadly force/reasonableness)

Tennessee v Garner requires that all uses of deadly force must be objectively reasonable based upon the totality of the circumstances surrounding its use. The use of deadly force delineated in Champaign Police policy directs officers when they may intentionally use deadly force.

Ofc. Norbits does not remember why or know why his gun discharged during his struggle with Carrington. In his taped statement Ofc. Norbits states five times that the gun goes off or discharges, but does not recollect why it does³. In fact, he believes, as he has been trained,

that his trigger finger is "indexed" (pointing straight ahead, off the trigger) during the altercation⁴.

I asked Ofc. Norbits directly if he intended to use deadly force in this situation, and he said, "No."

I conclude that the firing of Ofc. Norbits' weapon is NOT an intentional use of deadly force; there is no evidence of intent to use deadly force, properly or improperly.

3. Graham vs. Connor Analysis (use of force)

Graham vs. Connor is the seminal case for analyzing use of force cases. The facts used to analyze use of force are those facts and circumstances known to the officers only at the time of the use of force. Twenty-twenty hindsight explicitly cannot be used to determine the reasonableness of use of force. Graham asks, were the officers' actions objectively reasonable given the facts and circumstances confronting them. Graham also acknowledges that officers are often placed in circumstances that are tense, uncertain and rapidly evolving, requiring them to make split-second decisions.

The factors against which the facts and circumstances are weighed are, in a nutshell: 1. seriousness of the offense, 2. were the subjects an immediate threat to officers or others, 3. actively resisting or attempting to evade arrest by flight. These factors are weighed against what force was used by officers, and asks if a reasonable officer would do the same in similar circumstances.

What is not disputed in this case is that a reporting party called in that subjects were prowling around a house next to 902 W. Vine, trying windows and doors, and that the reporting party did not think they belonged there because the owner was not home. Whether the subjects could or should have been there or allowed to be there is information learned after the fact, and cannot be considered in light of Graham.

The officers responding believed there may be an in-progress burglary, and had a duty to the resident to prevent a burglary, or detain or apprehend the suspects. Burglary is a forcible felony and officers know by experience that burglars can be armed with weapons either to gain entry, or for self-protection⁵. Champaign police officers are trained to have their weapons out when confronting subjects in these circumstances⁶. Chief Finney's observation that there was an open door prompted the drawing of his weapon. Verbal commands and the display of weapons are tools used to gain compliance. We know that verbal commands were given to gain compliance based on the officers' statements, the reporting party's statement and the Front Desk staff member who heard verbal commands over the phone.

Chief Finney began his verbal commands and display of weapon when he saw the open door and the subjects at the back door. Ofc. Norbits followed by doing the same thing. Ofc. Norbits had a heightened concern that he did not know what was in Carrington's pockets⁷ and Carrington's hands were going in and out of his pockets. By officers' reports, the subjects did not comply with verbal commands and weapons pointed at them to get on the ground. Ofc. Reynolds, who did not see what was going on reported that he heard a struggle⁸, which is indicative of non-compliance with verbal police orders.

Unknown to the officers, but likely known to the subjects, was that the only way out of the back yard was where the officers positioned themselves, because the yard was entirely

fenced except for the portion by the driveway between the garage and the house. The tactical decisions made by Chief Finney and the other officers were based on a balancing of the need to apprehend the subjects and a need to keep enough distance to be able to react to a threat.

It is unknown what the subjects' intent was, and the only description of the confrontation is from the officers. Chief Finney said one subject came at him, in a confined area, forcing a physical confrontation where Chief Finney and then Ofc. Norbits began to use hands-on tactics to control and apprehend the subjects, but only with their free hands. Chief Finney was injured in the process of apprehending a subject. Ofc. Norbits stated that he had Carrington in his grasp at one point, but then Carrington twisted free. Ofc. Norbits reported that he grasped him again, and that is when his weapon discharged.

The officers stated that they did not have time to re-holster their weapons when the physical confrontation occurred due to how quickly it occurred, and the confined area.

Several levels of force were involved in this situation, verbal persuasion/commands, display of weapon, and use of physical control tactics. As Illinois State statute affirms, officers need not retreat in the face of resistance in the lawful performance of their duties. Officers were reasonable in their belief that these were necessary to apprehend the subjects to prevent or terminate the commission of a crime, and that the subjects posed a possible danger to the officers or others; therefore, the officers complied with the Use of Force policy.

4. Weapons-Requirement and Proficiency, Policy Statement 1.4.1

Champaign Police Policy 1.4.1(h) states that, "Officers shall not unnecessarily draw (from the holster), display, or carelessly handle firearms." As stated earlier, when officers respond to what they reasonably believe is a forcible felony in progress, they are authorized and trained to have their weapons ready, and to point them to gain compliance⁹, if they reasonably believe it is necessary.

It is very likely that if Carrington had been trying to get Ofc. Norbits' weapon, that fact would have been seared into Ofc. Norbits' memory. He does not recall this. Because Ofc. Norbits cannot recall why or how the weapon discharged, it is more likely than not the weapon was away from Carrington, and Ofc. Norbits' finger was on the trigger when it discharged. There are many theories as to why the weapon may have discharged, but these remain theories because Ofc. Norbits does not remember how or why it did.

The crux of the matter is the control of the weapon by Ofc. Norbits in the circumstances of fighting with his subject. Even though the shooting of Carrington was an accident, Ofc. Norbits is required to handle his weapon with due care, and the fact that it discharged most likely by Ofc. Norbits' hand is evidence that it was not handled with due care.

Findings:

A. The weapons discharge by Ofc. Norbits was in violation of Rule 4(H) and Policy 1.4.1.

1. *Factor in aggravation:* the factor in aggravation of this policy violation is that it resulted in the accidental death of Kiwane Carrington.

2. Factors in mitigation: the factors in mitigation of this policy violation are the failure of the subjects at 906 W. Vine to cooperate with verbal commands and the display of the weapon, and their resistance by the forcing of a physical confrontation with two officers with their guns drawn. Had there been cooperation of any sort (stopping, hands up, getting on the ground), the discharge of the weapon likely would not have happened.

Other critical policies and procedures that were followed were: medical attention was immediately sought, the dispatcher was notified, the scene was protected (and evidence recovered), the officers' weapons preserved and submitted for testing, and the Multijurisdictional Investigative Team was activated.

B. Evaluate Training Considerations

Policies: In January 2009, a lieutenant was temporarily assigned to work on departmental accreditation. The first step in accreditation was to evaluate existing policies in light of the promulgated standards to ensure policies conform to those standards. A revised policy manual was ready to go by October 1, 2009. Until that time, all the previous policies were in effect. On October 1, 2009, the new policy manual was distributed to all employees via a software program called "Policy and Procedure Manager (PPM)."

One of the revised policies was the policy on Use of Force. The previous policy was 17 pages long, and the department decided that it needed to be shortened and clarified to more clearly provide direction to officers on use of force. Other parts of the policy that dealt with what procedures needed to be followed in the aftermath of a use of force incident were culled out and placed into policies separate from the Use of Force policy.

Several of the critical policies from the revised policy manual published October 1, 2009 were required reading by the officers, even if the policy had not changed from the previous version. Some were considered so critical as to be re-read by officers with an acknowledgment that they read and understood the policy. Use of Force was one such policy that was required to be read and acknowledged; all officers received that instruction their first day back to work on or after October 1, 2009.

There were several management discussions about the content of the Use of Force policy before it was finalized. Chief Finney was familiar with the policy. Ofc. Dan Norbits was also familiar with the October 1, 2009 issued Use of Force policy because he had read and taught the policy to a new officer the morning of October 9, 2009¹⁰. The Use of Force policy is also taught annually at the departmental handgun qualification and other training.

Weapons and defensive tactics: Illinois law enforcement officers are required to pass a departmental firearms qualification with their duty weapon annually. Ofc. Norbits, using the weapon that was involved in this incident, passed the departmental handgun qualification on October 11, 2008. Ofc. Norbits also has more experience than most officers in defensive tactics because he is a departmental defensive tactics instructor who has been to specialized training in defensive tactics. In the year prior to the incident at 906 W. Vine, Ofc. Norbits attended annual duty weapon qualification on October 11, 2008 and a night shoot training session on March 16, 2009.

Other departmental training includes the Basic Orientation Course, and Step One of the field training program, where officers are trained in use of force, crimes in progress, safeguard and

retention of the weapon, safety concerns when the weapon is drawn, holstering the weapon when the subject is under verbal control, among other topics.

Ofc. Norbits has over 400 hours of training in the areas of firearms and defensive tactics¹¹, and the majority of these classes have use of force training as part of the curriculum.

I find that the training Ofc. Norbits received on use of force, firearms and defensive tactics was sufficient.

C. Evaluate Policy Considerations

As stated in the section above, the Use of Force policy was revised and disseminated on October 1, 2009. It is predicated on state law and directs reasonable responses by the officer. That reasonableness is defined by what an average officer would deem reasonable given the same circumstances.

Officers rely upon policy and training to guide their reactions to what is presented to them in the field. There is nothing deficient in policy that would induce an accidental shooting.

In the months after the shooting at 906 W. Vine, the police department revised its Use of Force policy issued October 1, 2009. Changes to the policy were made in the areas of: expanded definition of reasonable belief; mission and values added; reiterated that Illinois law contained in policy; direction on when to deploy firearms; taser deployment; and distribution of annual use of force analysis. I would note that the departmental mission and values were already in policy 12.2, and that the October 1, 2009 Use of Force policy did have Illinois law on peace officers' use of force contained within it.

In the Use of Force policy in effect prior to October 1, 2009, there was a statement about the deployment (display) of a firearm. When the Use of Force policy was revised for October 1, 2009, many changes were made, and this statement was removed, one of the reasons being it was already covered in policy 1.4.1 (h). It was requested that this statement be added back in to the Use of Force policy, but the effect of not having the statement in policy did not lead to a change in the deployment or display of the firearm, because any use of force must be reasonable, and based on training, displaying a firearm in the circumstances presented by the call at 906 W. Vine was reasonable.

No other policy changes are critical.

D. Evaluate firearms equipment considerations

Ofc. Norbits' on-duty handgun on October 9, 2009 was a Glock model 21 .45 caliber semi-automatic pistol. Det. Funkhouser, a Champaign Police Department Glock armorer (servicing Glock weapons), reports that about 80% of all police officers have a Glock weapon for on-duty or off-duty.

No Champaign Police Department-issued handguns have external safeties; very few weapons nationwide have an external safety.

The ammunition used by Ofc. Norbits was departmental approved Speer Gold Dot .45ACP. The Illinois State Police Crime Lab reports that the spent cartridge casing found at 906 W.

Vine was a Speer .45 caliber fired from Ofc. Norbits' weapon. Ofc. Norbits' weapon was in firing condition.

Ofc. Norbits was carrying a department approved firearm that he was qualified to carry, with department approved ammunition. The weapon is reported to be functioning correctly. The equipment is within the constraints of policy.

E. Evaluate the Quality of Supervision

Chief Finney, the ranking officer on scene, relinquished supervision of the scene to DC Daniels as soon as the deputy chief arrived. Sgt. Frost properly responded to the initial call, as a supervisor should on a forcible felony with multiple officers responding, and was the fourth officer at the back of the house at 906 W. Vine; he called for a medical kit.

Lt. Gallo responded to the scene quickly, and took control of Chief Finney's weapon and the scene.

Lt. Yohnka and Lt. Walker both responded to the scene, as did numerous sergeants.

Supervisors quickly took control of the scene and followed the proper steps to take custody of one subject, direct medical aid, ensure the security of the situation, and then secure the scene for evidence. Chief Finney, as a fully commissioned peace officer, responded to the initial call as most police officers would, but by doing so he placed himself in a situation where his ability to lead the department was hindered because he was present at an officer-involved shooting.

It is recommended that a Firearms Discharge Review Board be convened, with the tasks of examining the tactics involved, including communication and safe distances, and exploring the use of a different type of retention holster that would allow secure one-handed re-holstering of the weapon.

Annotations

MIT Report=report of the Multijurisdictional Investigative Team

II Report=report of the Internal Investigation

¹MIT Report, p. B38

²MIT Report, p. G162

³MIT Report, pp. A115, A124, A127, A129, A131

⁴MIT Report, p. A131; II Report, Training, course BOC 12, p. 4

⁵II Report, Training, CPD lesson plan Nov 2006 Night shoot/search tactics, p. 8

⁶II Report, PTI Arrest and Control Tactics Manual, "Tactical considerations for high risk and unknown risk"

⁷MIT Report, p. A125; II Report, Training, Field Training Step 1, week 1, p. 2

⁸MIT Report, p. A154

⁹ II Report, PTI Arrest and Control Tactics Manual, "Tactical considerations for high risk and unknown risk"; 2007 Police Officer Basic Training Curriculum, pp. 333-5

¹⁰II Report, Training, Basic Orientation Course, Ofc. Chambers, Oct. 7-9, 2009

¹¹II Report, Ofc. Norbits' training records

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FIREARMS DISCHARGE REVIEW BOARD

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April 8, 2010

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MEMORANDUM

TO: Deputy Chief Murphy

FROM: Officer Ansell #714 *[Signature]*

DATE: 04/10/2010

SUBJECT: 906 W. Vine St. Diagram (709-10418)

On 04/09/10 and 04/10/10 I used department owned, Vista FX software to create a digital diagram of the scene and surrounding area related to file 709-10418. Per your instruction, I used the Illinois State Police Crime Scene Unit's diagram and the information obtained by Chris Sokolowski to create a diagram of buildings and landscape features of the scene.

During an interview with Chief Finney and Officer Norbits, I was shown approximate paths that each individual traveled as they approached the rear yard of 906 W. Vine St. I also conducted an exercise with both Chief Finney and Officer. Norbits to get an average walking speed for both as they casually walked a distance of 140 ft. at a relaxed pace.

I used the aforementioned information to create a three-dimensional simulation of the events that transpired on 10/09/09 during the police response to an attempted burglary at 906 W. Vine St.

Finally, I was provided a copy by Deputy Chief Nearing of the master digital recording from METCAD for the radio traffic on "Patrol 1" during the incident. I used that recording to further fine-tune the diagram into how it was finally saved and presented to you and Sgt. Clark.

This simulation is understood to be an imperfect representation of the event which is documented by file 709-10418. The purpose of the simulation is to provide further information to obtain a better understanding of what took place at that scene.

MEMORANDUM

TO: Mr. Steve Carter, City Manager

FROM: Deputy Chief John F. Murphy

DATE: April 8, 2010

SUBJECT: Shooting Review Board-Carrington Investigation

On April 7, 2010 the departmental Shooting Review Board was held to examine the events surrounding the unintentional death of Kiwane Carrington on October 9, 2009. This process is mandated by Champaign Police Departmental policy 1.5.8. The board consisted of deputy Chief Troy Daniels, Sgt. David Shaffer (Firearms Cadre), Sgt. Tod Myers (Norbits' supervisor), Detective Nathan Rath (peer officer/firearms trainer), and myself (board chair). The specific membership of the board is provided for in the same policy that requires the review.

The members of the board were provided copies of the following documents:

1. Transcript of Officer Dan Norbits interview.
2. Transcript of Chief RT Finney's interview(s).
3. Copy of Internal Investigation report (2009-04) prepared by Deputy Chief Holly Nearing.
4. Copy of the Computer Aided Dispatch (CAD) ticket from the original call.
5. Transcripts of the audio transmissions from this call.
6. Copy of crime scene sketch (ISP 09-17284).
7. Copy of pre-formatted questions drafted by Deputy Chief John Murphy (attached).
8. Aerial photograph of the area.
9. Copy of CPD policy statement 1.5.8.

The members of the board were provided directions by me regarding their duties and the scope of the board's responsibilities. In addition to the printed documents, the board heard testimony from Officer Daniel Norbits and Chief RT Finney. Officer Norbits was accompanied by Fraternal Order of Police (FOP) counsel Tamara Cummings. The board was convened at **1100 hrs.** in the second floor conference room at the Champaign Police Department.

The participants were advised that they would have access to the "external review" report when it became available. They were told that the board would reconvene if a member(s) felt the need to ask further questions based on that report. As of this writing it has been determined that no further questioning is necessary, and FOP counsel was advised of that decision. She was also e-mailed a copy of the "external review" report.

The board confined their review to the following areas:

1. **Whether the shooting was consistent with policy, inconsistent, negligent, or accidental-** The shooting was unintentional, so the focus was on whether the shooting was negligent or accidental. The board universally agreed that police officers are always responsible for their weapon. However, it was less clear as to how a third person's intervention affected a finding of negligence. Some of the board members believed that Carrington's action so significantly affected this event that it was not possible to attribute the outcome to negligence by Officer Norbits. Many of the comments focused on what constitutes a reasonable threshold to measure due diligence, and at what point is the officer simply trying to address the suspect's actions, and survive the event.
2. **Tactical Considerations-** The board talked at length about the tactics. The board universally recognized that the privacy fence surrounding the backyard greatly reduced the options available to responding officers. It was too tall for officers to see into the backyard, and narrowed available vantage points to the area in which the contact between Norbits/Finney and Carrington/Manning occurred. There were no other obvious alternate areas that provided a combination of both cover and a view. This impacted the outcome to the extent that the contact occurred in a very confined space with little room to react to the suspects actions. Additionally, the board recognized that the officers' approach to the house was tactically sound and they were still in the process of establishing the perimeter and surveying the residence. Officers had not fully ascertained whether a forced entry had occurred, and it is appropriate that they had their weapons unholstered and at the ready, when they were suddenly face to face with the suspects, at a distance of approximately 10-12 feet. This changed the dynamics and required that Chief Finney and Officer Norbits immediately take steps to control their actions.

The board did not have an opportunity to review it; but Crime Scene Technician Brian Ahsell produced a 3-D animation of this event. He utilized METCAD radio transcripts, interviews with Chief Finney and Officer Dan Norbits, crime scene photographs, as well as pace calculations to produce the recreation. It is not an absolutely perfect rendition, but by all assessments it appears to be very close. After viewing it, there are a couple of important issues that become much easier to understand. First, this was not a static event consisting of a set of sequential steps; with time to reflect during each period. Instead, it was extremely fluid event marked by many overlapping actions and reactions. It is likely that this event began and ended in about the same amount of time required to dial a telephone number.

Second, it highlights the fact that the accepted processes for handling a call of this nature were either attempted, but defeated by geography, or they were followed. These are important issues when making a tactical assessment of this incident (See Ahsell memo attached).

3. **Training Considerations-** The board discussed the issue of physical confrontations while officers have their weapon(s) deployed. The board was in agreement that this is the least desirable option when a confrontation occurs. They also discussed that it is not entirely avoidable, as there will be situations in which an uncooperative/resistant subject who has not been determined to be unarmed, through their actions will require some immediate physical response from the officer(s). The board discussed the tactics taught by the Police Training Institute (PTI) to specifically deal with his eventuality, and the fact that the department's firearms cadre as also taught the tactic during in-service training. During Officer Norbit's testimony he demonstrated the manner in which he tried to hold his weapon while dealing with Carrington. The specific tactic is codified in the Spontaneous Protection Enabling Accelerated Response (SPEAR) technique taught to numerous law enforcement and military organizations. The majority of the CPD defensive tactics instructors have been taught/teach these tactics. It is also consistent with current PTI and CPD tactics. There was additional conversation as to whether the skills could be enhanced or improved. The board did not find that a training omission or deficiency up to the point the gun discharged was an issue. The actual discharge of the weapon, if done by Officer Norbits, is a training failure. The actions by Carrington and the impact they had had on the discharge of the weapon can not be quantified. The Champaign Police Department has recently purchased training weapons that provide officers and trainers a visual indication when an officers' finger is on the trigger, and when sufficient pressure has been applied that would make a pistol fire. These tools were not on the market at the time of this incident, but have since been incorporated into CPD in-service training.
4. **Firearms Equipment Considerations:** The board did not identify any specific equipment concerns. There was no attempt to holster weapons so the officers' gear was not an issue. Officer Norbits handgun was found to be operating within manufacturer specifications and no mechanical problems were noted.

5. **Quality of Supervision:** The board felt that the supervision during and immediately after the incident was satisfactory. Sgt. Frost had taken steps to confirm that officers were at the correct house, and that the suspects had gone to the location described. This information was immediately broadcast to all officers involved in the call. Additionally, there were immediate first aid steps taken, officers were separated and the required notifications were made in a timely manner.

6. **Discipline Considerations:** The issue of discipline was challenged by the board's inability to attribute degrees of culpability to Officer Norbits and Kiwane Carrington. The board believes that if discipline is administered, then it should be balanced and it should be based on the consideration of all of the factors that influenced the outcome of this event. The board agreed that this tragedy would have been easily averted had Kiwane Carrington followed the specific and simple directions given to him on October 9, 2009.

7. **Quality of the Post-Shooting Review:** The board identified aspects of the investigation that were satisfactory, but there were also issues identified that need to be corrected. There are oversight issues that need to be improved to reduce the possibility of steps missed or evidentiary examinations that are time sensitive. The board believes that the entire process needs to be reviewed by the participating agencies with a strong emphasis on daily updates to the agency requesting the outside investigation of an event.

Conclusion: The board took their responsibility very seriously and put a great deal of time into examining all of the factors associated with the various areas of review.

The board agreed that the configuration of the backyard (privacy fence) at 906 W. Vine and the resistance by Kiwane Carrington were the two most significant variables that influenced the outcome on October 9, 2009. The board believes that the entire investigative process would be enhanced by using subject matter experts to both investigate and review future events of this magnitude. The board concluded at 1:30 p.m.

Date: April 7, 2010
Time: 11:00 a.m.
Location: Chief's Conference Room, Champaign PD
Meeting: Firearms Discharge Review Board
Re: Review of Incident at 906 W. Vine on October 9, 2009
Interview of Officer Dan Norbits

Present: Deputy Chief John Murphy
Deputy Chief Troy Daniels
Sgt. Dave Shaffer
Sgt. Tod Myers
Det. Nate Rath
Dan Norbits
F.O.P. Attorney Tamara Cummings
Jan Orr (Secretary)

Murphy: Today is April 7, 2010, approximately 11:00 a.m. We're in the Chief's Conference Room at the Champaign Police Department. For benefit of the recording, present is Detective Nate Rath, Sgt. Tod Myers, Sgt. Dave Shaffer, Deputy Chief Troy Daniels, F.O.P. Attorney Tamara Cummings, and Officer Dan Norbits, and Jan Orr is taking the minutes and notes for this Board. The Champaign Police Department's Policy 1.5.8 requires that a Firearms Discharge Review Board is convened any time an officer discharges his firearm outside of a couple of very narrow exceptions. Given that it's a part of our policy, and it's required that it be conducted, your participation in this, Dan, is required by policy, and therefore, you're obligated to answer the questions of the Board today. Okay?

Norbit: I understand.

Murphy: Do you understand that?

Norbit: Yes.

Murphy: Okay. Just for format, I'm going to review for the Board very quickly what the scope of the Board's responsibilities are.

Norbit: Okay.

Murphy: And then I will begin by asking the questions that were provided to the F.O.P. Our intent here is, I realize that some of the questions are very similar to the questions that you were asked during your initial interview by State Police investigators. The intent is not to pressure you into an answer that maybe you weren't able to provide at that time. If the time that has elapsed allows you to provide that answer, that's great, but it's more of a, some of the questions are more to set the context for the following questions.

Norbit: I understand.

Murphy: Okay, all right. So the Review Board is responsible for looking at this incident from a couple of different angles. The initial responsibility is to determine consistency with policy and whether it was inconsistent with policy, a negligent act, or an accidental act. The

other area is tactical considerations, training considerations, whether there were firearms or equipment issues that contributed to this incident, the quality of the supervision, discipline considerations, and then the quality of the post-shooting investigative process. That's what we want to confine our questions to. It may be that if we start to wander in our questions into other areas, I'm going to bring the Board participants back to the scope of what our responsibility is today. Anybody have any questions or anything, any comments before we get started?

- Cummings: Just to clarify, when you indicated that Officer Norbits, he's required to participate, he's under obligation to participate, and not participating is not an option. I just want to make sure that's clear.
- Murphy: That's correct.
- Cummings: Okay.
- Murphy: Yes.
- Cummings: So he's essentially under your order to participate.
- Murphy: Yes.
- Cummings: Okay. Thank you.
- Murphy: Okay, we'll go ahead and get started. Dan, the first four or five questions are general, and you can draw on anything, whether it be your initial PTI training, subsequent schools that you've attended, or in-house training here. Would you describe for the Board, in your mind, what's the purpose of establishing a perimeter at an in-progress call?
- Norbits: To prevent the escape, or eliminate an area where the suspect could escape. It defines an area where people could be held hostage or innocent citizens have been caught up in the matter. It allows other officers to know our positions, so we wouldn't get into a crossfire situation, and then officers that are responding to the scene, they may have peripheral duties, where to block traffic, know where to keep citizens or bystanders out of a particular area.
- Murphy: Does the geography or physical layout of a location affect how that perimeter is established?
- Norbits: Absolutely.
- Murphy: Would you say that one of the components of the perimeter is also to conduct an initial survey of the area, a visual examination of what's going on?
- Norbits: From what is visible from your particular vantage point, yes.
- Murphy: Okay. In your opinion, to what degree are various tactics affected by a suspect's willingness to comply or not comply or not comply with the directions that they're given?
- Norbits: Um, a suspect's compliance with officers' commands will typically result in them being taken into custody without further incident, as far as use of force or threat of an additional

use of force. An example would be occupants of a vehicle on a felony traffic stop. If officers have their guns drawn, they order the occupants out, they would be handcuffed. And if they're compliant, they would be handcuffed without further incident. Conversely, if you're making a traffic stop and someone flees, then obviously officers would use a higher level of force to contain that person.

Murphy: That's a good example. So if they flee or they don't comply with the direction that they're given, it could change the tactics that follow that action.

Norbits: Absolutely.

Murphy: Would you say that in some of your duties, there are very specific processes, like a traffic stop. There's a process or series of steps that are followed for handling a traffic stop.

Norbits: Yes.

Murphy: In other areas, it's not quite as structured.

Norbits: Correct, yes.

Murphy: Some of those examples are "in-progress" calls, responding to a burglary in progress. Doesn't necessarily have the very specific sequence of steps.

Norbits: Correct.

Murphy: Okay. In your experience and your training, when you have the option of confronting the suspect, either in open air, in the middle of the street, in a front yard, or you are required to go inside of a structure, into a house, into a building, do you find that typically it's safer to have that confrontation occur in the open air setting, rather than in the...

Norbits: Definitely in the open air setting.

Murphy: What are some advantages of the open air setting?

Norbits: If you allow them to get into a structure, they can gain a tactical advantage. In an open air setting, you obviously can visually inspect your surroundings. If they get into a structure, there could be innocent citizens in there that could force a hostage situation, it could force a barricaded subject situation, so I think you're better served, if possible, to attempt to apprehend in an open air setting.

Murphy: So preventing them from going into a structure is not only safer for the officers, but there's a large public safety component to it.

Norbits: Yes.

Murphy: And does their attempt to gain entry to a structure or not affect the decision as to the timing of the confrontation with the suspect? If you see a person moving from an open air setting to a structure, to a building, might it affect when you would choose to begin giving that person commands or try to...

Norbits: Yes, it would definitely increase the emergency, because the goal would obviously be to keep them from entering that structure.

Murphy: Over the course of your career, have you had a need to point your duty weapon at a criminal suspect and provide some type of verbal direction in that setting?

Norbits: Yes.

Murphy: In the majority of instances when that's happened, did the suspect or suspects comply with the directions?

Norbits: In the majority of instances, yes.

Murphy: Can you estimate how many times you've had a suspect refuse to comply under those conditions?

Norbits: I can think of three specific instances. Now, do I remember every single one that would have happened over the course of my career? No. But there have been instances where people have refused to comply.

Murphy: And you think of three that come to mind?

Norbits: Specifically, that I have a distinct recollection of.

Murphy: And with those three, do you have a rough estimate of how many times, where you've given direction under the threat of deadly force, and the persons have complied?

Norbits: Percentage-wise, I would say approximately 95% and up.

Murphy: So there have been dozens of instances where that's happened?

Norbits: Where they complied?

Murphy: Over the course of your career.

Norbits: Where they've complied?

Murphy: Yes.

Norbits: Yes.

Murphy: Okay. If, as you're presenting potentially deadly force to a suspect, how does their refusal to comply with those directions affect your assessment of their threat to you or to others?

Norbits: Well, their refusal to comply heightens my awareness, makes me think that there's a reason that they're not, that they're either going to produce a weapon, attempt to attack or injure officers, or flee.

Murphy: Okay. All right. Let me go backwards for a second. Before I go into questions specifically related to 906 West Vine Street, does anybody have any other background questions

they'd like to ask right now? Okay. Dan, on October 9th, 2009, you had an occasion to respond to a call at 906 West Vine Street.

Norbits: Yes.

Murphy: And what was the severity of the crime that you were dispatched to?

Norbits: Residential burglary in progress.

Murphy: So this was a felony?

Norbits: Forcible felony, yes.

Murphy: On your arrival there and ultimately when you came into contact with Mr. Carrington and Mr. Manning, did you view them as an immediate threat to yourself and other officers?

Norbits: Yes.

Murphy: Did you view them as an immediate threat to members of the general public? In particular, would you have viewed them as a threat to anybody who may have been inside of 906 West Vine Street?

Norbits: Yes.

Murphy: Did Kiwane Carrington actively resist your efforts to arrest him?

Norbits: Yes.

Murphy: In your opinion, was Kiwane Carrington attempting to evade the arrest by flight, be fleeing from you?

Norbits: Yes.

Murphy: Okay. Optimally, when you are forced to go hands-on or to initiate physical contact with a person, given the option, would you choose to do that while your weapon is drawn and in your hand?

Norbits: Optimally being the operative word, no.

Murphy: Okay. What are some circumstances that would make it unavoidable?

Norbits: Being suddenly confronted by a suspect while you have your weapon in your hand.

Murphy: Would the amount of time that you have available to assess them as a threat affect that?

Norbits: Yes.

Murphy: Upon arriving in the 900 block of West Vine Street and exiting your vehicle, can you estimate how long it took you to reach the general vicinity of Chief Finney?

Norbits: I may need just a little bit of clarification on that, based on where I parked my squad car and where I got out, because as I was still in my car, yielding to southbound traffic, waiting to turn onto Vine Street, I saw Chief Finney walking, so I'm confused as to at what point you're saying that I saw him again, or...

Murphy: From the time your foot stepped out onto the street...

Norbits: Right.

Murphy: ...how long would you guess it took you to move from wherever that position was to a point where you were proximal to Chief Finney?

Norbits: Approximately 20 seconds.

Murphy: Okay. Do you have any estimate at all of what the distance is that you covered from your vehicle to where you came into the vicinity of Chief Finney?

Norbits: I don't. I don't want to speculate on what it would have been.

Murphy: Okay.

Norbits: Essentially, the length of the driveway of the residence.

Murphy: Okay. As you're moving from your vehicle to Chief Finney's location, did you have an occasion to provide any direction to any of the other officers on the scene?

Norbits: Once I was on foot, at the foot of the drive, Officer Reynolds was coming up behind me, and I asked him to take up a position on the west side of the residence.

Murphy: Did that action delay your arrival at Chief Finney's location?

Norbits: No.

Murphy: As you're establishing a perimeter, and as the coordination between officers is occurring, did you receive any information over the radio that verified that you were both at the right house and dealing with the people described by the initial caller?

Norbits: Uh, Sgt. Frost got on the radio and advised that we were at the correct location.

Murphy: So there was no question in your mind, you were at the house that the original caller had described.

Norbits: Correct.

Murphy: Okay. On October 9th, did you have an occasion to speak to Kiwane Carrington?

Norbits: Yes.

Murphy: What did you say to him?

Norbits: It wasn't a conversation. Once he engaged me, I immediately told him to get down on the ground, repeatedly.

Murphy: Did he respond to you verbally?

Norbits: I don't recall what, if anything, he said.

Murphy: Did he have any physical reaction to those commands?

Norbits: While I was giving him commands, telling him to pull his hands out of his pockets, trying to get him down on the ground, he stiffened up, tried to pull away.

Murphy: So he physically resisted those commands.

Norbits: Yes.

Murphy: Okay. On October 9th, did you have any indications that caused you to be concerned that Kiwane Carrington might be armed?

Norbits: Yes.

Murphy: What were those indicators?

Norbits: Looking at the totality of the circumstances, hearing Chief Finney emerge, draw his weapon, telling them to get down on the ground or I will shoot. At that point, I wasn't seeing what Chief Finney was seeing, because I was still coming up the driveway. That heightened my awareness that maybe he's seeing something that I haven't yet seen. When I come around the corner, the fact that he immediately engages me, he will not comply with verbal commands, he won't keep his hands out of his pockets after I've told him repeatedly to keep his hands out of his pockets, he keeps reaching into his hooded sweatshirt, so at that point, I'm thinking he either has a weapon or he's maybe retrieving one.

Murphy: Okay. Was there ever a point during this event that you were satisfied that Kiwane Carrington was not armed?

Norbits: After he had been shot, he went to the ground. In an effort to find out where he was injured and provide first aid, I did a cursory search of his waistband and front area. At that point, I was confident that he did not have a weapon.

Murphy: And before that, you were never able to satisfy yourself, from an officer safety standpoint, that he was not armed.

Norbits: That is correct.

Murphy: Does the nature of the call raise your concerns regarding the potential that a person, or in this case, that Kiwane Carrington might be armed?

Norbits: Yes.

Murphy: Would you say that in the past, when you've responded, in particular to a residential burglary call in progress, is it common that officers would have their guns drawn in that setting?

Norbits: A burglary in progress, yes – as opposed to a burglary alarm or something more benign.

Murphy: Right.

Norbits: But yes, burglary in progress, yes.

Murphy: Okay. At the point that you began giving commands to Kiwane Carrington, can you estimate how far away he was from you?

Norbits: Approximately 3 ½ feet.

Murphy: Okay. And is that because he moved from the door toward the garage, or was it because you had moved from the... here's an aerial photo of 906 West Vine Street.

Norbits: That's supposed to be 701 North Prospect?

?: Right, yes.

Norbits: That correct? Okay.

Murphy: Okay, as you're looking at the house and you see the northeast corner of the house...

Norbits: Okay.

Murphy: ...and the southwest corner of the garage...

Norbits: Okay.

Murphy: ...using that as a reference point, where were you at? Do you recall where you were at?

Norbits: Yes, I would have made my way up the drive, around the corner of the house, so I would have been, the door's on the north side of the residence.

Murphy: Okay.

Norbits: I would have been standing, and Kiwane was at the door, and I would have been standing directly in front of Kiwane.

Murphy: Okay. So you had moved some distance past the northeast corner of the house.

Norbits: Correct.

Murphy: Okay. And you said you think that was about 3 ½ feet?

Norbits: Okay, the distance from when we actually came face to face was about 3 ½ feet, when he began moving towards me. My guess is, well, I would be speculating, but approximately 6 to 7 feet, maybe, from the northeast corner to the door.

Murphy: Okay, okay. And at that point, Chief Finney had already been giving verbal commands to them.

Norbits: Correct.

Murphy: Okay. So they knew that the police were there at the point that you came in contact with Kiwane Carrington?

Norbits: Yes.

Murphy: All right. I think you mentioned this in your previous answer, but as you began giving commands to Kiwane Carrington, did he close the distance between you and him, or did you advance toward him?

Norbits: He closed the distance.

Murphy: And as that's occurring, did you have an opportunity to secure your weapon prior to coming into physical contact with Carrington?

Norbits: No.

Murphy: Did the environment ever change to the point that you felt compelled to secure your weapon?

Norbits: After he had been shot and went to the ground, I holstered.

Murphy: Okay. As you're responding to that call, how many suspects were reported to have been present?

Norbits: Three.

Murphy: All right. At the point that you see that Kiwane Carrington is not following your commands, is not cooperating with your directions, did you feel like simply leaving, because of their lack of cooperation, was an option available to you?

Norbits: No, under Illinois law and department policy, we're not obligated to retreat; I would have been remiss in my duties had I just walked away.

Murphy: Okay. From the position that you and Chief Finney eventually ended up in, in proximity to the house and to the garage and everything, was there any other position that you saw that would have offered both a vantage point and some degree of cover?

Norbits: No.

Murphy: And why is that?

Norbits: It was an open back yard. There was nothing that would have provided adequate cover. There's not even anything that could have put a substantial barrier between Kiwane and I.

Murphy: Were there any other adjacent properties where you would have had a view of that north door?

Norbits: It's fenced in. The property to the west, there's a privacy fence...

Murphy: Okay.

Norbits: ...that actually surrounds 906, and then Chief Finney, when he went to the north side of 907 North Prospect, I believe was the address, he was able to get the vantage point to the north door.

Murphy: Okay. All right. That's all the questions I have. Does anybody else have questions they'd like to ask Officer Norbits?

Rath: I have two questions. What is the reason, you said earlier about the, when you're presenting the weapon to a suspect, and not only did they not follow your commands but they then make a physical effort to overpower your commands, as well as your physical presence there with a weapon...

Norbits: Right.

Rath: ...how does that heighten your awareness level?

Norbits: Well, you have a uniformed police officer who has his weapon drawn, I mean, we are the last line of defense. If they're not going to comply with that, it raises my suspicion and awareness that if that doesn't have any effect on them, what would it take to get them to comply?

Rath: And when it came to the, Chief Murphy had asked you about the, was there any opportunity to possibly retreat from the whole scenario and, considering how quickly this all transpired, did you ever, was the opportunity to retreat ever something that you recognized during this altercation?

Norbits: No.

Rath: And even if you had recognized that as an option, would that have offered any tactical or safety advantage to you or the Chief or to anybody who possibly could have been in the house?

Norbits: No.

Rath: Okay.

Murphy: Sgt. Myers, do you have any follow-up questions?

Myers: Just a couple that I think you probably answered. What was preventing you from creating space between you and Kiwane?

Norbits: He was coming toward me. We're trained that we don't fight and retreat. We either stand our ground or try to move forward. That's how we're trained.

Myers: So it was more that he kept coming at you?

Norbits: Correct.

Myers: And during this struggle with Kiwane, when you had your hand up on his shoulder and giving him verbal commands, and then trying to direct him to the ground, do you recall where in relation to your body that your weapon was?

Norbits: Like in this type posture, brought back.

Myers: Okay.

Norbits: Held closer to my torso, if that helps to clarify.

Murphy: Sgt. Shaffer?

Shaffer: Just so I'm clear, once you had your weapon out of the holster and pointed toward Kiwane, things happened so quickly that, as I understand it, there wasn't time to re-holster at that point?

Norbits: Yes, correct.

Shaffer: That's all I have, Chief.

Murphy: In response to Sgt. Myers' question regarding to where your weapon was in relationship to your body, you actually physically demonstrated to Sgt. Myers with your left hand extended and your right hand drawn back along your torso.

Norbits: Yes, that's correct.

Murphy: Is that a weapon handling position that you've received actual instruction in?

Norbits: Yes.

Murphy: In fact, that is a weapon handling option that's provided during your basic training?

Norbits: Yes.

Murphy: And why, specifically, is that particular option taught to you or trained to you?

Norbits: If someone is advancing on you and you have your weapon out, the goal is to, at a minimum, keep them from advancing any further and to keep them a distance away from you.

Murphy: So in your earliest training that you received in your police career, it was demonstrated to you that there can be situations where you would both have a need to have a weapon drawn and ready and also potentially have physical contact with a suspect?

Norbits: Yes.

Murphy: I don't have any other questions. Deputy Chief Daniels?

Daniels: No.

Murphy: Ms. Cummings, is there any questions that aren't clear from your standpoint or anything that you would like to follow up with?

Cummings: No, nothing from me.

Murphy: Okay. What the Board will do, we're going to call Chief Finney to ask him some similar questions, and at the point that we get done interviewing Chief Finney, we will recess until have a copy of the external report that's going to be provided to us. The Board will review that report, and if there are any follow-up questions we have from that report, we will forward those to you in an email, if that's all right.

Cummings: That's fine, and I can give you my card if you need it.

Murphy: Yes, that would be...

Cummings: With all that information.

Murphy: Okay. It's about 11:30, and that concludes our interview with Officer Dan Norbits.

Brief discussion following interview of Officer Dan Norbits:

- Murphy: All right, so we can stay focused, we're going to go down through Section E of Policy 1.5.8. One of the things that we're tasked with is we're tasked with determining with whether or not this shooting was consistent with policy, inconsistent with policy, a negligent act, or an accidental act. So I'm not necessarily asking at this point for you to select one of those, but maybe that we'll just start the conversation along that line of thought. Troy, do you want to start?
- Daniels: Real quick question. Do we want to hear Chief Finney first before we go into these?
- Murphy: Yes, actually, that's a good point. Let's do this. Let's go ahead and take a recess right now, it's about 11:35, until we get Chief Finney here. And then we'll run through these questions with him, and then go through that.

Date: April 7, 2010
Time: 11:36 a.m.
Location: Chief's Conference Room, Champaign PD
Meeting: Firearms Discharge Review Board
Re: Review of Incident at 906 W. Vine on October 9, 2009
Interview of Chief R.T. Finney

Present: Deputy Chief John Murphy
Deputy Chief Troy Daniels
Sgt. Dave Shaffer
Sgt. Tod Myers
Det. Nate Rath
Chief R.T. Finney
Jan Orr (Secretary)

Murphy: It's about 11:36 p.m. We're going to resume the Firearms Discharge Review Board, looking into the shooting of Kiwane Carrington on October 9th, 2009. At this point, Officer Norbits and F.O.P. Council Tamara Cummings have left. Chief R.T. Finney is present, and we will resume our questioning. Chief, what we explained to Officer Norbits was that because we don't have the external report from the City Building yet, we will recess this meeting when we're done with your questions, and then if we have follow-up questions, we'll email those questions to you if anything gets raised in that external report.

Finney: Okay.

Murphy: All right. We've got a prepared set of questions that we asked Officer Norbits, and that I'm going to ask you also. Some of these questions were more specific to Officer Norbits, and may be less of an issue from your standpoint or your role in this event. But just for consistency, we'll go through these and ask them anyway. In terms of background questions, would you describe for the Board, in your opinion, why perimeters are established at in-progress calls?

Finney: Well, perimeters have to be established to not only contain the area, but to also prevent escape, safety of the officers, and as well as the public, to make sure that this incident is regulated in the most contained area that we can do. So it's important to make sure that a perimeter is set up to make sure that the issue doesn't move outside to another area and that it's controlled.

Murphy: Okay. When you're determining how to set up a perimeter at a particular situation, is the availability of cover, as well as a vantage point, important?

Finney: Absolutely.

Murphy: And do the specific geography or characteristics of a particular situation dictate the type of perimeter that would be established?

Finney: Right. I don't think you can ever use very specific generalities on a scene, because each scene is different. Each piece of property where you might be setting perimeter, might be

different. There's going to be differences in the concealment and cover that you can establish, so yes, it would be different for each one.

Murphy: And so we don't have, in the Champaign Police Department policy, we don't have a specific set of steps for establishing a perimeter.

Finney: No, there are probably basic safety issues that an officer would be aware of, but you wouldn't establish specifics because you don't know what the terrain or the issue would be.

Murphy: Okay. In your experience, what effect or to what degree are tactics affected by a suspect's compliance or lack of compliance to directions given by a police officer?

Finney: Well, the effect is a substantial effect. If the perimeter is set up or a contact is made and the suspect is complying, then the situation is much more controlled. When a suspect resists and flees or attempts to do so, that changes the whole dynamic, because you then have the unknown of why they're doing it and you don't know exactly how the situation is going to turn out. The dynamics change if a person is going to resist.

Murphy: Okay. I think we covered this somewhat, but would you say that there's a very specific protocol for effecting a traffic stop?

Finney: Yes, pretty specific. We train our people to do some of the same things each time and they are based around safety.

Murphy: Okay. As an officer is going through that set sequence of steps for effecting a traffic stop, if a person suddenly decides to exit a vehicle and flee on foot, or the vehicle accelerates and tries to flee from the officer, does that affect the sequence of those steps that we train officers in?

Finney: Absolutely. If a person does try to flee or they try to flee the traffic stop, that changes the dynamics. It puts the officer on higher alert because of the unknown of what they're going to have to deal with. The protocol on the traffic stop obviously would change at that point, because then they have to be prepared for what's in the car, why is the person fleeing, all the unknowns that then continue from that stop. I don't think it's possible to continue just the routine protocol of a traffic stop when that sort of thing happens. A traffic stop is set up on the basis of assuming that there's going to be some compliance. When that compliance is no longer there, it changes the environment.

Murphy: So officers are forced to improvise or develop tactics as the event's unfolding, then, at that point?

Finney: Yes, based on what's presented to them at the time, they have to be able to adapt to it.

Murphy: Do in-progress typically enjoy that same specific protocol as to how they are responded to?

Finney: In terms of just being standard and specific, or that the dynamics change?

Murphy: Being standard and specific. Do we have, for instance, responding to a burglary in progress, are we able to train officers that you'll do these eight very specific steps upon responding to an in-progress...

Finney: Well, I think we can train some safety factors, but they are going to have to make decisions when they get there, based on what's presented to them, and what's presented to them, while we can train generally on that, we can't anticipate every environmental change, every suspect resistance change, what's going to come out in the dispatch. It's difficult to train on every scenario.

Murphy: So there's an inverse relationship between variables and response. The more variables involved in a particular event, the less specific the response protocol.

Finney: That's correct.

Murphy: In your opinion, when you confront a suspect, if you're given the opportunity to confront a suspect in an open air environment, in the middle of a street, in the middle of a yard, or confront a suspect inside of a structure, sometimes called a stronghold position, do those options have any effect on when you would decide to confront that person?

Finney: Absolutely. In my mind, they would.

Murphy: And where, what would be your preference? If you were given the opportunity, where is your preference to confront a suspect?

Finney: My preference is open air, prior to getting into a structure where I don't know what might be in that structure, what advantage they may gain from being in that structure, and certainly the unknown of where they are in that structure. So once they get in, the dynamics change drastically. I would rather confront them outside, prior to entering, than to allow them to get in. And for the safety of the public, as well, not knowing who might be in the structure. Innocent parties might be in it.

Murphy: Would you say that that's a universal preference, that in the training you've participated in at the different department's you've worked for and the different specialized units you've been involved with, would you say that universally, officers prefer that option?

Finney: Absolutely, even to the degree from a SWAT standpoint, where we have trained when people have come out, not to allow them to go back in to the residence because of the potential unknown.

Murphy: Okay. On October 9th, 2009, you had an occasion to be in the area of 906 West Vine Street.

Finney: That's correct.

Murphy: And at that time, were you dispatched to a particular call in that area?

Finney: I overheard the dispatch...

Murphy: Okay.

Finney: ...of the burglary in progress.

Murphy: And how would you characterize the severity of that crime?

Finney: Very serious, especially during the daytime, with the possibility of people being in the residence, and the fact that it's a serious felony. I'd consider it very serious.

Murphy: Okay. At some point during your response to that incident, did you have an opportunity to have contact with Mr. Carrington and Mr. Manning?

Finney: I did.

Murphy: And at that initial contact, did you view Mr. Carrington and Mr. Manning as an immediate threat that officers needed to deal with?

Finney: Upon the initial contact or during the contact?

Murphy: Either, or.

Finney: Upon the initial contact, the orders and directions that were given to the two of them were very succinct and direct, but when they turned and came toward me, I believe the situation changed.

Murphy: So both Mr. Carrington and Mr. Manning came toward you?

Finney: I recall, and keeping in mind that my attention was pretty solely on the first person that came up to me, but I recall that they both turned and came toward me, at that point, and then I immediately became involved with Manning.

Murphy: Okay. While you were in contact with Manning, did you have an opportunity to see or to know what Mr. Carrington's reaction was to the orders they had been given?

Finney: I could see Carrington resisting Officer Norbits. I could hear Officer Norbits yelling to Carrington to get down. I could hear Officer Norbits saying, "Show me your hands," and I could see out of the corner of my eye, and just briefly diverting side to side, Carrington and Norbits fighting.

Murphy: Was there any difference between the reaction of Carrington versus Manning?

Finney: I think Carrington was probably in a more aggressive mode than Manning. I had Manning come up almost to my weapon, and I shoved him back probably at least twice, and then grabbed him by the shoulder to pull him down to the ground. His resistance, I never, his hands never came up. He wasn't slapping around, and his resistance, I think, was probably less than Carrington. It seemed to me like there was a lot of yelling by Norbits for Carrington to show his hands, and they were engaged much more aggressively than I think I had with Manning.

Murphy: Okay. At the time you were dealing with Manning, both at the time that he's moving toward you, and during the time that you're physically in contact with him, did you see any outward indicators to you that suggested that he was armed?

Finney: Manning?

Murphy: Yes.

Finney: No. My concentration on his hands, I can still see his hands. And that's what I was concentrating on, is where his hands were going. And I never saw his hands going in his pockets, and that I felt that there was a threat to me because of that. I had hands on with him, pulling him down to the ground, and even at that point, there was not a big concern about what was in his hands, because I could see that his hands were empty.

Murphy: Did that affect your decision to holster your weapon?

Finney: The scene was not, in my opinion, the scene was never completely secure. The desire to holster my weapon was because I knew that I was fighting with one hand, and the weak hand at that. And my inability to one-handed holster it, because I had a coat over the holster. So I felt like I probably couldn't do it, although my wish would have been to get it in the holster, to fight Manning. The problem with that is that I didn't know exactly what Norbits had and I could hear Norbits yelling for Carrington to show his hands, so I didn't exactly know what he had, and I did not have any idea where a third person was. So, you know, my weapon still remaining out was probably because of all those factors, that I couldn't get it in, the scene wasn't secure, although my guy was not presenting a particular threat to me, I just couldn't get the weapon back holstered.

Murphy: Were there any other officers present who would have been in a position to provide lethal cover while you essentially fought with Manning, or while Dan Norbits fought with Kiwane Carrington?

Finney: No, not at that point, there wasn't. And as quick as this went down, they would not have been able to get there that quickly, given where they set the perimeter up.

Murphy: Would you characterize this as a distinct series of steps? This whole event, was this a sequence of steps, or was this activity happening all at one time?

Finney: No, this was activity occurring within that small area at one time, and we were responding to what they were presenting to us.

Murphy: Okay.

Finney: At the point of contact with them, the sequence of what we were going to do at that point became trying to get them in custody and defend ourselves.

Murphy: Okay. You basically already covered this, but would you describe Kiwane Carrington as actively resisting efforts to arrest him?

Finney: Yes.

Murphy: Is it your opinion that Kiwane Carrington was attempting to evade arrest by fleeing from you?

Finney: I don't know what his intentions were coming toward us, but his intentions were to resist arrest, apparently. He did resist, and Norbits, whether his intentions were to flee or fight

or what, I have no idea. But I would assume that his intentions were to push through and run.

Murphy: Okay. Given the option, do you feel that it's optimal to go hands on or to initiate physical contact with a suspect while your weapon is in your hand?

Finney: If I were given the option, I would not go hand to hand with my weapon in my hand. However, I was never given that option.

Murphy: In the training that you've had in the last 29 years, have there been tactics taught to you that were taught with the idea of there being physical contact and having the need to have deadly force immediately available to you?

Finney: Yes.

Murphy: Can you describe just briefly what that tactic is?

Finney: Well, you know, someone in a tactical situation surrendering and having the cover officer where you can put hands on somebody and feel like you have somebody covering the situation with deadly force. If that need arises or a felony stop or what have you, those would situations where you would be able to maybe personally put your weapon away and begin to deal with the subject, knowing that somebody else was available to be a cover officer. Hands on with a weapon out, one on one, you know, depending on what the suspect does, that may occur. If a situation is secure enough that you know the person doesn't have a weapon and you can put your weapon away, optimally, that would be the best thing to do, if you can put distance between you and the suspect to do so.

Murphy: Have you read after action reports or seen video tapes of officers engaged in a physical struggle that ends up in them being shot by a suspect?

Finney: Oh, absolutely.

Murphy: Upon arriving in the area of the 900 block of West Vine Street, from the time you exited your vehicle until the time that you began giving verbal commands to the two suspects, how long would you say that, what was that period of time?

Finney: Between the time of exiting my vehicle and the verbal commands?

Murphy: Yes.

Finney: Well, I would have exited my vehicle and went along the fence line or along the house next to the fence, so I've got to believe walking through there, I don't know, 25, 30 seconds, maybe, maybe more. I'm not really sure of the time. I know I wasn't running to the back of the residence, but I was coming up through the northeastern side.

Murphy: Okay. And you're moving at a speed that allows you to assess what's going on around you as you're moving?

Finney: My intent was to be an observer to this situation and moving that direction to take, I heard where the other officers were out at and, my original intent was actually to get behind the bar and see what I could see in the house and report that to the officers, as I did with

driving in front of the house in the unmarked car to report whether I saw anything, to report where the house was, the location of the house, but when I got behind the bar fence, I noticed there was no opening, so that plan wasn't going to work, so I began to move in a western direction between the house and the fence. As I was moving that direction, I was watching the back of the house where the RP (reporting person) had indicated they were last seen at, and it was offset to where I could only see partially into the back yard. I knew from the dispatch at that time that we were at the right house and that they could see the officer. I knew it wasn't me that they were seeing because I was between the fence and the house, so they were seeing Norbits come up the driveway. When I got to the end of the house, again, my intentions were to try to observe the last known location that they were at, and that's when I saw the open back door and I reported that.

Murphy: So this fence that you're describing, that complicated the ability to see what was going on.

Finney: Absolutely. The fence was contained all the way around. And I knew this afterwards, not at the time, but I could tell at least on the east side, it was contained all the way around and I couldn't see through, so I had to go another direction.

Murphy: So based on what you're seeing at that time, and ultimately what you came to find out, was there more than one spot that offered you a position to both see what was going on and some degree of cover?

Finney: Was there more than one spot?

Murphy: Yes.

Finney: From where I was in the northeastern side of the house, when I stepped out away from that house, I was no longer in any cover. There would not have been any other cover for me.

Murphy: Okay.

Finney: Between the house and where they were at the back door, short of maintaining a little southern direction, I would have been in line with probably the back door. I gained as much information as I could. I couldn't see them. I could see the door open. And when I saw Dan coming up the drive, I tried to walk a little bit more southern, so once I got closer to the house, I wouldn't be in plain view of them.

Murphy: Okay. From the time that you first were aware that Officer Norbits was present, how long did it take him to arrive at your position?

Finney: It seemed to me like we arrived about the same time, so I want to say the distance between the house is going to be about 5 or 10 seconds. I mean, neither one of us was running to that location. We were moving slow. We were moving at a pace that, because that was the last point that they were seen by the RP, and a possible entry point into the house, so we weren't rushing to that location, so I don't know, 10 or 15 seconds, maybe, for us both to get to that point.

Murphy: Okay.

Finney: And I also have to say that as I'm walking to that point, I'm trying to keep an eye on that corner of the house. I had not sliced over yet to see, because in case they popped out, I had no idea, you know, there were supposed to be three people and we had no idea about any weapons or anything, so my attention was constantly on that corner or that house to see if they popped out through there. I knew Dan was to the south of me, but I didn't continue to look back and see where he was, how quickly he was coming up, so my assumption was that we ended up at the same point and he was either directly behind me or to my right, but I never did necessarily look back there to see.

Murphy: Okay. After arriving at the corner of the garage, did you have an occasion to verbally give directions to Kiwane Carrington?

Finney: Yes. Carrington and Manning.

Murphy: And what did you say to them?

Finney: I yelled, "Police," and I began to yell, "Get down, get down," several times. I heard Dan begin to yell, "Get down," at some point.

Murphy: Okay. How did they respond to those directions?

Finney: Immediately, when I got there, they looked like they were either pushing or pressed up against the door. But they immediately turned toward us and began to approach, and that's when I made contact with Manning, when he got up to my gun.

Murphy: Okay. On October 9th, did you have an opportunity to notice or see any indicators that Kiwane Carrington may or may not be armed?

Finney: I had no idea whether he was armed or not. Again, I could hear Dan saying, "Show me your hands," and I could see, when Dan would say that, looking over, because I had no idea what Carrington was doing at that time, and at least once, saw his hands in his hood.

Murphy: Okay.

Finney: But I had no idea whether he was armed or not.

Murphy: So you never had an opinion one way or another?

Finney: Of whether or not he was armed?

Murphy: Right.

Finney: Yeah, and other than seeing Manning's hands, I couldn't say that Manning wasn't armed as well at that point. But I could see Manning's hands and I know Carrington, we couldn't see his hands.

Murphy: Okay. Just prior to first giving them commands, how far would you estimate you were from them?

Finney: I'd say about, I don't know, about 15 feet or so. I probably sliced the corner of the house, saw them, began to yell commands, and at that point, was probably fairly close to that

opening, which would have been between the garage and the house, and then probably stepped up to that opening, but I never recall going further in, into that, when I made contact with Manning.

Murphy: So after you began giving those commands, you did not move any closer to Manning or Carrington?

Finney: No, I maintained the area next to the garage and the gate, which was, I don't know, about 4 or 5 feet wide, and then Manning came to me and I shoved him back. Now, when I shoved him back, and then the second, I think the second time, I may have stepped forward to grab him by the shoulder to pull him down, because he wasn't going down on my two shoves.

Murphy: Okay. So they closed the distance between the guns.

Finney: Yes.

Murphy: Okay. You mentioned this previously, but how many suspects were reported to have been present?

Finney: Three.

Murphy: At the time this is presented to you, you begin giving commands, and Manning and Carrington begin advancing toward you or not obeying your commands, did you see there being an option to just simply walk away because they weren't cooperative?

Finney: No.

Murphy: So you couldn't come back at a time when they were inclined to follow your commands.

Finney: Right, right. The fact that it was reported as a residential burglary in progress and the fact that they were trying to escape, there was no option to turn away and come back later at a different time.

Murphy: And you described in some detail the point that you ended up between the garage and the house. Did you ever see another position that offered you both a view of that north door and some degree of cover?

Finney: No. Given the fact that that was contained all the way through there, and at the time, we didn't know whether there was another gate or anything, and now, I mean, in retrospect, there was not, but I didn't see any other way of trying to view that open area, other than directly on from the house that was to the east of it. If you would have gone to the fence, the fence is high enough to where you couldn't just, you know, and I'm 6'01", see over the fence without climbing up onto the fence, and that's not a tactical option, to climb and stick your head over the fence. So this, when I established that there was no other opening, at least on the northeast side, then my tactical advantage point was going to be between that fence and that house, and that did give me somewhat of a view of the back of the house, albeit not completely. But I could at least see into an area that didn't have a gate or anything on it.

Murphy: Okay. That's all the questions that I have. Detective Rath?

Rath: No.

Murphy: Sgt. Myers?

Myers: Just one, Chief. When you were struggling with Manning, do you remember where your weapon was in relation to your body?

Finney: My, when I was struggling with him? The first contact that I had, when he came up, my weapon was extended. When he came up, what I thought to be within arm reach, I pulled my weapon in, in to my body, and I shoved him, gave him a strike. He went back a few feet and then continued on, and I believe that I shoved him again. The third time that occurred, when I reached for his shoulder, my weapon was down at my side, because again, at that, for Manning, I could see his hands and that he didn't have anything in his hands and I was concentrating on that. But as I was trying to pull him down, I recall having the weapon down to the side.

Myers: And what you're describing there was your right hand close to your body, your left hand extended.

Finney: Right.

Myers: Is that training that you have received over your 29 years, as being close quarters type training or...

Finney: Well, certainly, drawing the weapon in and not keeping it extended where someone can grab it. The other thing is my training is that if I can't get my weapon, I'm not using my weapon and I can't get it holstered, then I need to keep it out of the fight as much as I can, as much as one is possible to do. And keeping in mind that in my situation, I could see Manning's hands the entire time.

Murphy: Sgt. Shaffer?

Shaffer: I don't have anything.

Murphy: Deputy Chief Daniels?

Daniels: I have one question, Chief. Based on Officer Norbits' demeanor after the shot rang out, did Officer Norbits give you any indication that the weapon that was discharged was discharge purposefully?

Finney: Oh, no. No. As a matter of fact, my first indication was that Officer Norbits wasn't sure where the shot came from. I mean, that was my perception. When the shot went off and I looked at Officer Norbits trying to determine, and I had disengaged from Manning at that point, because the shot went off, and looking over to try to determine who shot what and where the shot went, from looking at Norbits, I'm not sure that, at that immediate time, that he knew his gun had discharged.

Daniels: So based on his body language, anything that he said, his actions after the shot was discharged, there was no indication that he did that purposefully.

Finney: No.

Daniels: That's all I have.

Murphy: Chief, that's all the questions that the Board has for you. Do you have any additions or anything that you think adds understanding to this even that we haven't asked you about?

Finney: No, I think you covered the resistance. I think we were in a good position had they complied with our orders to, you know, knowing how the situation in the back yard was, that we would have been able to contain them until cover officers would come up, and we would, I think we would have been able to cover the door and the two suspects had they complied. Given the fact that they didn't comply, that then brought into the play who was in the house, who may have gone in that door, who was in the rest of the yard, that we were never secure. I still maintain we never had that scene secure during that fight with these two, secure enough to be sure that nobody had weapons. That didn't occur until the shot went off and both were, well, my guy Manning was placed into custody and then we were able to determine at that point that the door was shut. We still weren't sure whether somebody was inside or not. So my feeling is that the scene never was adequately secure because of their resistance. Had that not occurred, I think the of us could have maintained that until resources could have come up.

Murphy: Okay. All right. That's all we have.

Finney: Thank you.

Shooting Review Board

April 7, 2010

Background

Why are perimeters established at in-progress calls?

To what degree are various tactics affected by a suspect's compliance, or not?

Is there a very specific protocol for affecting a traffic stop? If a person suddenly flees from the vehicle during that protocol; what does it do to the sequence of the protocol? Is there an equally specific protocol for handling all in-progress calls, or are there basic safety strategies and tenants that drive the response in each situation?

Normally, is it safer to confront a suspect while he is in an open air environment, or after they have entered a structure, and acquire a "stronghold" position? Does this issue have any impact on a decision to confront a suspect?

Over the course of your career have you had a need to point a weapon at a criminal suspect and give him some type of verbal direction? Did he comply? How many times have you had a suspect refuse to comply under those circumstances? Would a lack of compliance impact your assessment of the person as a threat to you or other officers?

906 W. Vine- General Questions

What was the severity of the crime at issue?

Were Carrington and/or Manning an immediate threat to the officers or others?

Was Carrington actively resisting?

Was Carrington attempting to evade arrest by flight?

906 W. Vine-Specific Questions

Optimally, would you go "hands on" with a suspect while your weapon is in your hand? What are some circumstances that would make this unavoidable?

Upon arriving in the 900 block of W. Vine St., and exiting your vehicle, how long did it take you reach the general vicinity of Chief Finney? Did you provide any directions to any other officers as you were walking towards Chief Finney's location?

Did you receive specific information that you were at the correct address and dealing with the individual(s) described by the caller? Did you have the time or opportunity to discuss this information with other officers at the scene?

On October 6, 2009 did you speak to Kiwane Carrington? What did you say to him? How did he respond?

On October 6, 2009 did you have any indications that caused you to be concerned the Kiwane Carrington was armed? What were those indicators?

At what point were you satisfied that Carrington was not armed?

Prior to giving commands to Carrington, how far were you from him? Did you close the distance between yourself and Carrington, or did he advance towards you?

Did you have an opportunity to secure your weapon prior to being in physical contact with Carrington? Did the environment ever change to the point that you felt compelled to secure your weapon?

How many suspects were reported to have been present?

Did you feel that simply walking away from the situation because Carrington and Manning were refusing to cooperate was an option?