



January 26, 2024

Sent via Electronic Mail Only

Honorable Rick Tedrow
District Attorney
Eleventh Judicial District Attorney's Office
Email: rtedrow@da.state.nm.us

RE: Prosecutorial Review of the April 5, 2023, events related to the fatal shooting of Mr. Robert Dotson by Farmington Police Department Officers Daniel Estrada, Dylan Goodluck, and Waylon Wasson and the shooting involving Mrs. Kimberly Dotson and Officers Estrada and Wasson.

Dear District Attorney Tedrow:

As per your request, the New Mexico Department of Justice has conducted a review of the fatal shooting of Mr. Robert Dotson that took place on April 5, 2023; in addition to the shooting involving Mrs. Kimberly Dotson for potential prosecution. We comprehensively reviewed all available evidence including, police reports, witness statements, videos, and photographs.

Furthermore, we sought assistance from Professor Seth Stoughton, a former police officer, tenured Professor at the University of South Carolina Joseph F. Rice School of Law. He is a nationally recognized expert in the field of police officer use of force, and principal co-author of *Evaluating Police Uses of Force* (NYU Press 2020). Moreover, he regularly conducts reviews of use of force incidents and has been retained as an expert who has rendered opinions both for and against police officers in both state and federal cases.

Professor Stoughton provided a detailed report concluding that, under the circumstances, Officers Daniel Estrada, Dylan Goodluck, and Waylon Wasson did not use excessive force when they discharged their weapons and shot Mr. Dotson. His analysis also found that Officers Estrada and Wasson did not use excessive force under the circumstances when they discharged their weapons towards Mrs. Dotson. Professor Stoughton recognized that the officers' initial approach to the Dotson home, although they erroneously approached the wrong house, was reasonable, appropriate and consistent with generally accepted police practices. The approach, knock on the door and announcement at the incorrect address did not foreseeably create an unnecessarily dangerous situation. Unexpectedly, Mr. Dotson opened the front door and storm door, then partially exited the house while raising a firearm into a firing position and pointed in the direction of the officers. At that moment, Professor Stoughton concluded that Mr. Dotson presented an imminent threat of death or great bodily harm to the officers, and all three reasonably fired their weapons, acting

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within the bounds of accepted police practices. Mr. Dotson was wounded and when Mrs. Dotson found him moments later she fired additional shots out of the front door towards the officers. Those shots again created a second imminent threat of death or great bodily harm to the officers, and Officers Estrada and Wasson once again reasonably returned fire. Professor Stoughton found that during the encounters, all three officers acted proportionally to the level of threat presented.

New Mexico evaluates whether an officer's use of force is excessive under the standard articulated by the United States Supreme Court in *Graham v. Connor*, 490 U.S. 386 (1989). *See State v. Ellis*, 2008-NMSC-032, ¶ 25; *see also* NMSA, 1978, § 30-2-6 (1989) (defining justifiable homicide by a public officer). As confirmed by Professor Stoughton, the officers' actions were consistent with a lawful use of force because a peace officer may justifiably use deadly physical force when threatened with serious harm or deadly force. This inquiry is an objective standard, viewed from the perspective of the officer at the time of the incident with the understanding that officers often must make split-second decisions in difficult situations about what type of force is necessary. To hold an officer accountable for the use of excessive force, the State would be required to disprove beyond a reasonable doubt that a reasonable officer would have acted as the officer did under the totality of the circumstances. UJI 14-5173 NMRA.

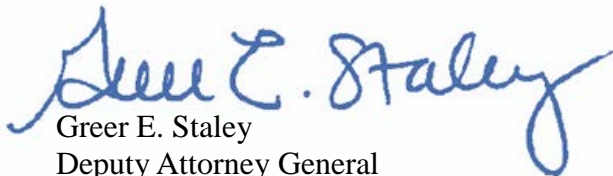
For the reasons explained in Professor Stoughton's report, which is attached to this letter, the State would be unable to meet this standard of proof under the circumstances of this case.

Therefore, we have determined that no criminal charges can be sustained under these circumstances. As such, the New Mexico Department of Justice considers this matter closed.

However, our review is limited to potential criminal liability and does not address any potential disciplinary and/or civil liability issues.

Thank you for contacting the New Mexico Department of Justice.

Sincerely,



Greer E. Staley
Deputy Attorney General
Criminal Affairs

Enclosure: As Referenced Above

cc: Chief Steve Hebbe, Farmington Police Department, shebbe@fmtn.org
Chief Troy Weisler, New Mexico State Police, william.weisler@dps.nm.gov

Preliminary Expert Report of Seth W. Stoughton

I was retained by the New Mexico Office of the Attorney General to review the April 5, 2023, events related to the fatal shooting of Robert Dotson by Farmington Police Department Officers David Estrada, Dylan Goodluck, and Waylan Wasson and the shooting at Kimberly Dotson by Ofcs. Estrada and Wasson.

This report is based on the materials reviewed to date. Should any additional information cause me to expand, add, or revise any of my opinions, I reserve the right to revise, amend, or supplement this report accordingly.

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Background and Qualifications

My opinions are based, in part, on my training, professional experience, education, and academic research. My background and qualifications are set forth in the curriculum vitae attached to this report. I highlight and supplement that material here with information relevant to my review and evaluation in this case.

I served as an officer in the Tallahassee Police Department in Tallahassee, Florida. The city of Tallahassee is located in northern Florida; it encompasses over ninety square miles with a city population of over 180,000 and a metropolitan-area population of over 375,000. The Tallahassee Police Department employs over 350 sworn officers.

I was employed as an officer for a total of five and a half years, serving as a full-time officer from March 2001 until October 2005, and as a reserve (part-time) officer from November 2005 until June 2006. During the course of my service with the department, I was assigned to the Uniform Patrol Division. As a full-time officer, I earned and maintained multiple operator and instructor certifications beyond my state certification as a police officer. I also had a wide range of duties beyond my standard duty assignment, including serving as a founding member of our Special Response Team (a tactical team focused on crowd control and riot response), teaching report writing, establishing, and teaching community self-defense courses, and serving as an acting supervisor as needed. As an officer, I engaged in both regular and special duties, responded to thousands of calls for service (including many 911 and domestic disturbance calls), approached many houses, and used force on a number of occasions.

I have conducted academic research on policing since 2012. I am a tenured Professor at the University of South Carolina School of Law, where I teach in the area of criminal law, criminal procedure, and policing. I am the Faculty Director of the Excellence in Policing and Public Safety Program at the University of South Carolina Joseph F. Rice School of Law, where I oversee a staff that includes a Director of Research and Technical Assistance, a Director of Training and Professional Development, and multiple research assistants and advisors. I also hold a courtesy appointment as a Professor in the University of South Carolina's Department of Criminology and Criminal Justice. My previous academic appointment was a two-year teaching fellowship at Harvard Law School.

My research focuses on the regulation of policing, including the use of force, police investigations, agency policies, and industry practices. I have published extensively on policing, including on police investigative actions such as searches and seizures, as well as tactical decision making and the use of force. I am the principal author of *Evaluating Police Uses of Force*, a book published by NYU Press in May 2020. My academic articles have been published or are scheduled for publication in the *Cambridge Journal of Evidence-Based Policing*, the *Emory Law Journal*, the

Harvard Law Review Forum, the *Journal of Criminology and Criminal*, the *Minnesota Law Review*, the *North Carolina Law Review*, the *Tulane Law Review*, the *Virginia Law Review*, the *Wake Forest Law Review*, and other prestigious journals. I have published, or have forthcoming, book chapters in *Rethinking and Reforming American Policing: Leadership Challenges and Future Opportunities*; in *Evidence Based Policing: An Introduction*; in *Legal Issues Around the Globe* (Vol. I); and in *Critical Issues in Policing* (8th ed.). Additionally, I was among a group of scholars commissioned by the National Academies of Sciences, Engineering, and Medicine to write a report on the use of force by police. A complete list of my publications is provided in the curriculum vitae that accompanies this report.

My work is widely relied upon in the field. Electronic versions of my work have been downloaded thousands of times, and my published research has been broadly cited by legal scholars in top journals including the *Yale Law Journal*, the *Harvard Law Review*, the *California Law Review*, the *Duke Law Journal*, the *Columbia Law Review*, the *N.Y.U. Law Review*, the *Georgetown Law Journal*, and the *Cornell Law Review*, just to name a few. My work has also been broadly cited by scholars in other disciplines, most prominently in criminology (e.g., in *Criminology & Public Policy*, *Police Quarterly*, and *Journal of Research in Crime and Delinquency*) but also in geography (e.g., in *Political Geography*) and psychology (e.g., in *Psychonomic Bulletin & Review*). It has also been cited in textbooks, casebooks, treatises (e.g., in Wayne LaFave's *A Treatise on the Fourth Amendment*), and both popular books and academic texts (including in James Forman, Jr.'s *Locking Up Our Own*, Barry Friedman's *Unwarranted: Policing Without Permission*, Stephen Rushin's *Federal Intervention in American Police Departments*, Chris Hayes' *A Colony in a Nation*, and Norm Stamper's *To Protect and Serve*). Further, my academic research has been featured in national and international media, including in *The New York Times*, on National Public Radio, and in a host of other publications.

I am active in policing beyond publishing academic research. I am a Member of the American Law Institute and served as an Adviser to the ALI's *Principles of the Law, Policing*. I am a Fellow of the American Bar Foundation. As the Faculty Director of the Excellence in Policing and Public Safety Program, I oversee and actively participate in the design and delivery of a suite of courses developed for police executives. I have provided use-of-force investigations training to the City of Chicago's Civilian Office of Police Accountability on multiple occasions. I have served as a subject matter expert on policing in multiple capacities, including for CNA Analysis & Solutions, which received a Bureau of Justice Assistance grant to develop technical assistance related to police body-worn cameras; in that capacity, I provided verbal and written consultation, as well as presented, by invitation, a keynote address on using police body-worn cameras to investigate and evaluate officer actions with an emphasis on use-of-force incidents. I also served as a subject matter expert in the OIR Group review of the Madison Police Department. I was retained by the City Council of Hammond, Louisiana to conduct an independent investigation of a use-of-force

incident and to issue a report documenting findings, conclusions, and recommendations. I currently serve, by appointment, on the Citizen Advisory Council of the Columbia Police Department in Columbia, South Carolina, a department of approximately 350 sworn officers serving a city with a population of over 130,000 and a metropolitan-area population of over 800,000. I was appointed as one of the original members of the council and have served in that capacity since 2015.

As a policing expert, I am regularly invited to speak about various aspects of policing to legal, law enforcement, and academic audiences. To date, I have formally presented on policing issues well over 100 times to audiences that include the Fourth Circuit Judicial Conference; the American Judges Association; the Conference of Chief Justices; the National Conference of State Courts; state judicial conferences in Indiana, Kansas, Missouri, New York, North Dakota, Ohio, South Carolina, and Tennessee; the Federal Law Enforcement Training Center; federal Inspectors General & Inspectors General Investigators; the Senior Executive Staff of the Bureau of Alcohol, Tobacco, Firearms, and Explosives; the National Association of Women Law Enforcement Executives; the Peace Officers' Association of Georgia; the South Carolina Police Chiefs Association; the Command Staff of the Kansas City (Missouri) Police Department; the Washington State Criminal Justice Training Commission; and a host of others.

I have testified before or consulted with legislators, legislative committees, and public task forces or task force members in California, Massachusetts, North Carolina, Pennsylvania, South Carolina, and Virginia. I have filed or joined multiple briefs *amicus curiae* to the Supreme Court of the United States and United States Courts of Appeals related to police procedure. I have written about policing for *The New York Times*, *The Atlantic*, *TIME*, and other media publications. Either I or my work on policing has appeared on or been featured in domestic and international print, radio, and television media on more than seven hundred occasions.

I am regularly retained to provide expert review and testimony related to police litigation. I have been retained as an expert witness in state and federal court in the course of both civil and criminal litigation, and I have testified in deposition, grand jury, and trial. A list of cases is provided in my curriculum vitae that accompanies this report.

Compensation

My fee for analysis in this case is \$485 per hour, billed in 0.25-hour increments, with days of anticipated testimony billed at an 8-hour minimum, as well as reimbursement for any expenses incurred.

Methodology

To ensure my methodology was reliable, my opinions in this matter are predicated on a comprehensive review of the provided materials that establishes my understanding of the facts of the case and on the professional and generally accepted principles and practices in policing as of the date of this incident. “Generally accepted principles” refer to those concepts and theories that are widely known, acknowledged, and relied upon in the field. “Generally accepted practices” refers to those protocols, techniques, and procedures that are widely known, acknowledged, and relied upon in the field. A principle or practice is generally accepted when well-educated, well-trained, and experienced professionals would agree that it is conventional, customary, and reasonably standard.

Generally accepted principles and practices in policing reflect technical and specialized knowledge in the law enforcement field. A principle or practice can be generally accepted without necessarily being universally adopted or rising to the level of a long-established, empirically validated best practice. Generally accepted principles and practices may be, but are not necessarily, reflected in Department of Justice consent decrees, publications by professional associations (such as the International Association of Chiefs of Police, the Police Executive Research Forum, the National Policing Institute, etc.), in agency policies, and in reputable training materials.

To identify and apply the applicable generally accepted principles and practices in policing, I rely on my knowledge, skill, experience, training, and education in law enforcement. This includes extensive work in my field of study as a policing scholar and author; my knowledge of historical and contemporary law enforcement standards and methods; and the relevant professional and academic literature. I employ a similar methodology when I conduct professional evaluations of police officers or agencies as a consultant; when conducting research on, with, or for police agencies or governmental entities such as cities, counties, or the Department of Justice; and when writing for reputable academic publishers. The methodology I applied in this case is consistent with the methodology utilized by other experts in the field of law enforcement when analyzing incidents of this type.

A list of materials provided and reviewed is provided below. Other materials specifically reviewed and relied upon are cited as appropriate.

- Farmington Police Department
 - Case Report Detail, 2023-00019241
 - Incident Analysis Report Detail (CAD Records)
- Multimedia
 - Audio Recordings

- Various
- Photographs
 - Various
- Video Recordings
 - Body Worn Camera Videos
 - Daniel Estrada
 - DanielEstrada_202304052345_WFC1146750_87578669.mp4
 - Dylan Goodluck
 - DylanGoodluck_202304052346_WFN1006173_22999929.mp4
 - Waylon Wasson
 - WaylonWasson_202304052345_WFC1068148_24610052.mp4
 - Justin Anaya
 - JustinAnaya_202304060216_WFC1110041_43451726.mp4
 - JustinAnaya_202304060917_WFC1110041_43502248.mp4
 - JustinAnaya_202304060936_WFC1110041_43504574.mp4
 - JustinAnaya_202304061313_WFC1110041_43530561.mp4
 - JustinAnaya_202304061419_WFC1110041_43538496.mp4
 - JustinAnaya_202304061426_WFC1110041_43539276.mp4
 - JustinAnaya_202304061428_WFC1110041_43539277.mp4
 - Edwardo Arreola
 - EdwardoArreola_202304052343_WFC1055515_96932264.mp4
 - Daven Baldoni
 - DavenBadoni_202304060202_WFC1059917_184937731.mp4
 - Manuelito Benallie
 - ManuelitoBenallie_202304060651_VXL1005463_122304271.mp4

- In-Car Camera Videos
 - Dylan Goodluck
 - DylanGoodluck_202304052345_10551_20709675.mp4
 - DylanGoodluck_202304052345_10551_20709675.mp4
 - DylanGoodluck_202304052345_10551_20709675.mp4
 - Edwardo Arreola
 - EdwardoArreola_202304052343_10841_20533376.mp4
 - EdwardoArreola_202304052343_10841_20533376.mp4
 - EdwardoArreola_202304052343_10841_20533376.mp4
 - Callie Boyd
 - CallieBoyd_202304052349_9845_202536815.mp4
 - CallieBoyd_202304052349_9845_202536815.mp4
 - CallieBoyd_202304052349_9845_202536815.mp4
 - Ring Video
 - Miscellaneous
 - Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives, Firearms Trace Summary
 - Search Warrant & Affidavit
 - New Mexico State Police
 - Report # NMSPR2303499
 - Other materials not specifically listed
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Understanding of Facts

At approximately 11:36pm on April 5, 2023, several officers employed by the Farmington Police Department were dispatched to 5308 Valley View Avenue to respond to a reported domestic violence call.¹ An audio recording of the dispatch reflects that they were informed that “Possibly 57 at 5308 Valley View Avenue. We got a male calling on 911, has a confidence factor of six. Lots of yelling in the background. He’s arguing with a female. He’s stating he’s bleeding. And he’s telling us the female works at the CDC.”²

Officers David Estrada, Dylan Goodluck, and Waylon Wasson responded, arriving at approximately 11:45pm,³ but they went to 5305 Valley View Avenue instead of 5308 Valley View Avenue.⁴

Ofcs. Estrada, Goodluck, and Wasson were equipped with body-worn cameras (BWCs), which recorded certain relevant events.⁵

The three officers approached; Ofc. Wasson walked to the front door, followed by Ofc. Goodluck while Ofc. Estrada moved laterally across the front of the house.⁶ Ofc. Wasson opened the storm door, then knocked on the front door and announced, “Police department.”⁷ Approximately thirty-four seconds (0:00:34) after opening the storm door, Ofc. Wasson again knocked on the door,⁸ announcing, “Farmington police.”⁹

Shortly thereafter, Ofc. Goodluck moved to a position near Ofc. Estrada.¹⁰ As officers held these positions, Ofc. Wasson asked dispatch via radio to call the complainant and have him come to the door.¹¹ After a brief exchange with dispatch, Ofc. Wasson again knocked on the front door,

¹ New Mexico State Police, Report # NMSPR2303499 – Supplemental Report – 9, p. 2; 003_R_CH_10_FPD_Primary_2023_04_05_23_36_34_by_Start_Time_asc.wav.

² 003_R_CH_10_FPD_Primary_2023_04_05_23_36_34_by_Start_Time_asc.wav.

³ New Mexico State Police, Report # NMSPR2303499 – Supplemental Report – 9, p. 2

⁴ New Mexico State Police, Report # NMSPR2303499 – Supplemental Report – 9, p. 1; Wasson BWC (0:01:11.671).

⁵ The BWC video was imported into VSDC Version 8.3.7.506, at native specifications—29.970 fps with a resolution of 1280x720—and synchronized as closely as manually possible using visual and audio waveform analysis.

⁶ Synchronized Video 0:01:45.605.

⁷ Synchronized Video 0:01:47.173.

⁸ Synchronized Video 0:02:21.875.

⁹ Synchronized Video 0:02:34.354.

¹⁰ Synchronized Video 0:02:41.427.

¹¹ Synchronized Video 0:02:46.000.

announcing, “Farmington Police.”¹²

Shortly thereafter, the officers began to discuss whether they were at the right address, with Ofc. Goodluck first suggesting that the address might have been 4308, then, after input from Ofc. Wasson, saying, “It might have been 5308.”¹³ Ofc. Wasson then asked whether they were at 5308, and Ofc. Goodluck confirmed that the house numbers read 5305.¹⁴ Ofc. Wasson then asked the dispatcher, via radio, to repeat the address, who confirmed that the call came from 5308 Valley View Avenue.¹⁵ Ofc. Wasson said, jokingly, “Don’t tell me I’m wrong, Dylan,” and chuckled.¹⁶

Almost immediately afterward, Ofc. Wasson said, “Oh, shit,” and began backing away from the front door.¹⁷ A later report reflected Ofc. Wasson’s statement that “he heard the sound of a firearm being racked on the other side of the door.”¹⁸ As Ofc. Wasson backed away from the door, Ofc. Estrada illuminated the area of the door with his flashlight.¹⁹

Robert Dotson, later determined to be a resident at 5305 Valley View St., opened the front door and storm door, then partially exited the house while raising a firearm into a firing position, pointing in the direction of the officers as reflected in the screen captures on the following page:

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¹² Synchronized Video 0:03:14.394.

¹³ Synchronized Video 0:03:29.000.

¹⁴ Synchronized Video 0:03:34.000.

¹⁵ Synchronized Video 0:03:42.000.

¹⁶ Synchronized Video 0:03:48.000.

¹⁷ Synchronized Video 0:03:54.000.

¹⁸ New Mexico State Police, Report # NMSPR2303499 – Supplemental Report – 9, p. 6.

¹⁹ Synchronized Video 0:03:57.370.

Wasson BWC		
0:03:39.118	0:03:39.319	0:03:39.485
		
0:03:39.619	0:03:39.719	0:03:39.819
		

Estrada BWC		
0:03:57.904	0:03:58.137	0:03:58.271
		
0:03:58.404	0:03:58.504	0:03:58.705
		

As Mr. Dotson moved, officers said, “Hey, hey. Hands up!” before they began firing at him.²⁰ All three officers fired. Mr. Dotson was struck and fell.²¹

Immediately after, Ofc. Wasson communicated, via radio, “Shots fired, shots fired.”²²

The officers then communicated and tactically repositioned, communicating via radio that there was “one down in the doorway.”²³

Shortly thereafter, a woman, later identified a Kimberly Dotson, could be heard screaming in the house.²⁴ Ofc. Wasson yelled out, “Hands up.”²⁵ Ofc. Estrada said quietly, “Please don’t.”²⁶

A few seconds later, additional shots were fired; although not clear from the video, later statements from both Ms. Dotson and the officers indicate that Ms. Dotson fired at least twice; although Ms. Dotson later indicated that she believed she fired “toward the ground,”²⁷ Ofc. Wasson later stated that he “felt the velocity and the ‘zip’ of the round as it passed to the left of him.”²⁸

Ofcs. Estrada and Wasson returned fire.²⁹ Their shots did not strike Ms. Dotson.

Eventually, officers were able to secure the scene. Mr. Dotson was declared deceased.

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²⁰ Synchronized Video 0:03:57.000.

²¹ Synchronized Video 0:04:00.000.

²² Synchronized Video 0:04:01.000.

²³ Synchronized Video 0:04:39.000.

²⁴ Synchronized Video 0:04:44.000.

²⁵ Synchronized Video 0:04:47.000.

²⁶ Synchronized Video 0:04:52.000.

²⁷ New Mexico State Police, Report # NMSPR2303499 – Supplemental Report – 13, p. 3.

²⁸ New Mexico State Police, Report # NMSPR2303499 – Supplemental Report – 9, p. 7.

²⁹ New Mexico State Police, Report # NMSPR2303499 – Supplemental Report – 9, p. 2; New Mexico State Police, Report # NMSPR2303499 – Supplemental Report – 13, p. 3.

Opinions

The opinions below relate to whether the actions or decisions under consideration were consistent with the well-known and generally accepted principles and practices in policing, as discussed in the Methodology section, *supra*. My use of terminology such as “excessive,” “unreasonable,” and “disproportionate,” etc., is intended to and should be read as references to the professional and generally accepted standards in policing and is not intended and should not be interpreted as references to or the application of legal standards within the sole province of the factfinder or judge.

My opinions and any related testimony about the generally accepted police principles and practices implicated in this case are relevant areas that concern issues of which lay jurors are unaware or about which they frequently have misconceptions. My testimony would assist jurors in understanding relevant evidence presented to them.

My opinions in this case are as follows:

1. The officers’ tactics in approaching the house and attempting to make contact with the residents were reasonable, appropriate, consistent with generally accepted police practices; although they erroneously approached the wrong house, that mistake did not foreseeably create an unnecessarily dangerous situation
2. Ofc. Estrada’s, Ofc. Goodluck’s, and Ofc. Wasson’s uses of deadly force against Mr. Dotson and Ofc. Estrada’s and Ofc. Wasson’s use of deadly force against Ms. Dotson were reasonable, appropriate, and consistent with generally accepted police practices
 - A. Ofcs. Estrada, Goodluck, and Wasson used deadly force against Mr. Dotson, and Ofcs. Estrada and Wasson used deadly force against Ms. Dotson
 - B. Mr. Dotson and Ms. Dotson presented imminent threats of death or great bodily harm to the officers
 - C. Ofc. Estrada’s, Ofc. Goodluck’s, and Ofc. Wasson’s use of deadly force against Mr. Dotson, and Ofc. Estrada’s and Ofc. Wasson’s use of deadly force against Ms. Dotson were proportional to the threat that Mr. Dotson and Ms. Dotson presented at the time

The justifications for my opinions are laid out on the following pages.

1. The officers’ tactics in approaching the house and attempting to make contact with the residents were reasonable, appropriate, consistent with generally accepted police practices; although they erroneously approached the wrong house, that mistake did not foreseeably create an unnecessarily dangerous situation

It is well known and generally accepted that the operational realities of policing require officers to manage an array of risks and threats. To manage those risks and threats, officers use tactics, which one source has defined as “a sequence of moves that limit the suspect’s ability to inflict harm and [that] advance the ability of the officer to conclude the situation in the safest and least intrusive way.”³⁰ “Tactics are the techniques and procedures that officers use to protect themselves and community members by reducing risks, mitigating the likelihood that risks will become threats, and preventing threats from manifesting into harms.”³¹ As they determine which tactical techniques and procedures are appropriate, officers must balance different and often shifting priorities in dynamic situations. While there is no way to completely ensure safety, police tactics seek to appropriately balance the safety of officers, subjects, and bystanders in light of those priorities. Tactics have been a component of policing from the early days of formalized training program,³² although the precise nature has changed over time.³³

It is well known and generally accepted in policing that police tactics and tactical decision making are highly contextual; an approach that may be entirely appropriate in one context may be entirely inappropriate in another. To use a simplified example, the tactics that officers might use to address an armed, barricaded subject are generally inappropriate in an active shooter situation and *vice versa*. Context is key, with context being highly dependent on officers’ reasonable perceptions of the situation. For a number of reasons, different officers may perceive the same situation differently. Tactically, it follows that those officers may adopt different approaches, each aligning their approach with their perception of the situation. The ultimate question is whether, in light of the facts reasonably available at the time, the potential benefits of the officer’s decision or action were justified in light of the potential risks of that decision or action.

There is no generic or broadly applicable answer to that question. Police-community interactions

³⁰ Jeffrey J. Noble & Geoffrey P. Alpert, *State-Created Danger* in CRITICAL ISSUES IN POLICING: CONTEMPORARY READINGS at 568 (Roger Dunham and Geoffrey P. Alpert, eds., 7th ed., 2015).

³¹ SETH W. STOUGHTON ET AL., EVALUATING POLICE USES OF FORCE 155 (2020).

³² *The Police Training School*, in 146 THE ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE, at 170 (1929).

³³ John J. Sloan, III, and Eugene Paoline, III, “*The Need More Training!*” *A National Level Analysis of Police Academy Basic Training Priorities*, 24 POLICE QUARTERLY 486 (2021).

can be dynamic, implicating different tactical principles as the situation evolves. Encounters can evolve in a number of ways, and officers must be able to respond appropriately to those evolutions. As the International Association of Chiefs of Police has written by way of example, “a so-called routine vehicle stop involving traffic violations may quickly develop into a high-risk vehicle stop when more facts are established by the officer.”³⁴ In the same vein, what starts as a consensual welfare check on a motorist can become an investigative detention as officers develop reasonable suspicion of criminality, a vehicle pursuit if the motorist flees, a barricaded subject situation if the fleeing motorist enters a residence, and an active shooter scenario if gunshots are fired inside. At each stage of the encounter, officers must use appropriate tactics; an officer should not approach a barricaded subject the same way that they approached the motorist originally just because the encounter started as a welfare check. In short, it is well recognized that as the situation changes, officers’ tactics and actions must keep pace.

Further, it is well known and generally accepted within policing that there may be a range of reasonable responses in any given situation. The spectrum of options represents the number of ways in which the different priorities of the situation may be balanced. To use a simplified example, an officer may be safer from being physically assaulted if they stand farther away from the subject but may have more opportunity to prevent the subject from fleeing if they stand closer, so there may be a range of reasonable distances at which an officer could stand depending on their assessment of the risk of potential assault or potential flight. For purposes of this analysis, then, the question is not whether the officers involved adopted the best possible tactics, but whether their tactics fell within the spectrum of tactical options that could be considered reasonable under the circumstances as reasonably perceived.

Importantly, reliably analyzing an officer’s tactical decision-making requires recognizing and avoiding the potential for erroneously relying on *hindsight bias*.³⁵ Hindsight bias is the tendency for people to exaggerate, after a particular event, the predictability of that event occurring.³⁶ In short, knowing that something *did* happen can lead people to think, after the fact, that the event was more likely to happen than it actually was.³⁷ Minimizing or avoiding hindsight bias requires

³⁴ International Association of Chiefs of Police, *Motor Vehicle Stops* 5, May 2018.

³⁵ Hindsight bias is also referred to as the *knew-it-all-along phenomenon* and as *creeping determinism*.

³⁶ See Rüdiger F, Pohland Edgar Erdfelder, *Hindsight Bias*, in *COGNITIVE ILLUSIONS: INTRIGUING PHENOMENA IN JUDGMENT, THINKING, AND MEMORY* (Rüdiger F. Pohl ed., 2d ed. 2017)

³⁷ Consider a simplified example: prior to a sporting event, people might report that they believe there is a 50% probability of a particular team winning. After that team wins, hindsight bias may lead people to report that they believed (beforehand) that there was a substantially greater than 50% probability that the winning team would ultimately win. In short, the after-the-fact information that the team won tends to lead people to exaggerate the extent

reviewing the relevant decisions at the time they were made without regard for the ultimate outcome. A decision that was unreasonable at the time does not become reasonable because it contributed to a positive outcome. Similarly, a decision that was reasonable at the time it was made does not become unreasonable because it contributed to a negative outcome. Put simply, whether a particular decision or set of decisions was reasonable or unreasonable depends on, and only on, the facts reasonably available at the time the decision was made.

Over time, policing has developed tactical options for many—although not all—situations that officers may encounter. For example, there are a set of generally accepted practices for officers conducting a traffic stop, initiating a “felony” or “high-risk” stop, responding to an active shooter, working as “contact” and “cover” officers, and so forth. The precise manner in which any given tactic may apply will depend on the circumstances, of course; i.e., the circumstances of a traffic stop—including time, location, and how a motorist pulls over—will determine how an officer positions their vehicle and whether they approach from the driver or passenger side or call the stopped driver back.

It is well known and generally accepted that “[t]ime is the single most important tactical concept in policing.”³⁸

In stressful environments, human decision making suffers. Officers may experience distorted sensory perceptions, including visual distortions (e.g., “tunnel vision”), auditory distortions (e.g., “auditory blunting”), and temporal distortions (perceiving events as occurring more quickly or more slowly than they actually are). In a time-compressed, high-stress situation, officers may also suffer from cognitive impairments, such as slowed reaction time; and physiological deficiencies, including a reduction in manual dexterity and motor skills. In short, even the best-trained officers may make mistakes, exercise poor judgment, and perform deficiently in high-stress environments, especially when they are forced to make truly split-second decisions.

The reality, however, is that “there are very few instances where police officers have only a split second to make a significant use of force determination.” This is particularly true when officers use sound tactics. To a significant extent, the field of police tactics was designed to protect the safety of officers and community

to which it seemed beforehand as if the team would win.

³⁸ SETH W. STOUGHTON ET AL., EVALUATING POLICE USES OF FORCE 159 (2020)

members alike by minimizing the extent to which officers must make truly split-second decisions.³⁹

In some circumstances, such as active shooter scenarios, officers have no choice but to respond quickly and aggressively. In most circumstances, however, officers have the benefit of time and should generally seek to stabilize the scene until other officers can respond to assist in securing the scene. That is, officers should generally exercise tactical restraint, maintaining a stable position rather than moving in, until there are a sufficient number of officers to safely address the situation.

Tactical restraint serves as a reminder that aggressing—that is, moving toward the subject—is not always the safest or most appropriate option. In some situations, advancing toward the subject is tactically sound. In many others, though, it will be preferable for officers to maintain a position that provides at least some tactical advantage rather than forsake that advantage by moving out of that position. Consider a simplified example: an officer interacting with a wheelchair-bound paraplegic who is aggressively wielding a knife in an otherwise empty parking lot. One need not have the tactical instincts of Napoleon to appreciate that an officer who rushes in to apprehend the subject risks putting themselves into a dangerous situation, one in which they could be cut or stabbed. Aggressing in that situation is likely to be considered officer-created jeopardy; the officer would be better served by keeping some distance away from the knife-wielding subject.⁴⁰

“[P]olice tactics often seek to ‘create’ time in which officers can assess or respond to the situation” as a way of improving the accuracy of an officer’s perceptions and the quality of an officer’s decision-making.⁴¹ “A poor tactical decision . . . can deprive the officer of time in which to safely make a decision about how to act, forcing the officer to make a seat-of-the-pants decision about how to respond.”⁴² Indeed, it is no exaggeration to say that the majority of police tactics are designed to *avoid*, to the extent possible, putting officers into the position of having to make truly split-second decisions.

It is well known and generally accepted in policing that poor tactics predictably increase the likelihood of a suboptimal outcome by introducing additional and avoidable constraints on an

³⁹ SETH W. STOUGHTON, ET AL., EVALUATING POLICE USES OF FORCE 159 (2020).

⁴⁰ SETH W. STOUGHTON, ET AL., EVALUATING POLICE USES OF FORCE 172-73 (2020).

⁴¹ Brandon Garrett & Seth Stoughton, *A Tactical Fourth Amendment*, 103 Va. L. Rev. 211, 253 (2017)

⁴² Brandon Garrett & Seth Stoughton, *A Tactical Fourth Amendment*, 103 Va. L. Rev. 211, 259 (2017)

officer's decision-making process. As officers manage the risks and threats of any given situation, they may expose themselves to potential harm, and increase the likelihood that they will use force to address the threat of harm. In some circumstances, this exposure can be entirely warranted. On other occasions, however, an officer's decision to affirmatively create or passively accept a particular threat is unjustified in light of the availability of other, readily available tactical options that would avoid or minimize the threat.

“Officer-created jeopardy” refers to situations in which officers affirmatively create or passively accept *unjustified* risks or threats that otherwise could have, and should have, been avoided.⁴³ Officer-created jeopardy is, in essence, a manner of describing unjustified risk-taking that can increase the likelihood of injury to officers and can, correspondingly, increase the likelihood that officers will use force to protect themselves from a threat of physical harm that they were, in part, responsible for creating.

An officer who successfully manages potential threats early in an encounter is less likely to be physically threatened—and thus less susceptible to harm—later in the encounter. In the same vein, the officer is also less likely to perceive any need to use force to address a threat of harm, which increases the *subject's* physical safety. The opposite is also true; an officer's poor tactics can foreseeably expose them to an otherwise avoidable threat, which increases the likelihood that they will use force to address that threat.⁴⁴

The Police Executive Research Forum has defined “officer-created jeopardy” to mean “a situation where an officer deviates from established tactics or policies and his/her actions unnecessarily place them (and/or others) at great risk of harm.”⁴⁵ In that vein,

[o]fficer-created jeopardy . . . includes the actions of officers who, without sound justification, willingly fail to take advantage of available tactical concepts like distance, cover, and concealment (discussed later in this chapter), willingly abandon tactically advantageous positions by moving into disadvantaged positions

⁴³ See Jeffrey J. Noble & Geoffrey P. Alpert, *State-Created Danger: Should Police Officers Be Accountable for Reckless Tactical Decision Making?*, in *CRITICAL ISSUES IN POLICING: CONTEMPORARY READINGS* 481, 493 (Roger G. Dunham & Geoffrey P. Alpert eds., 6th ed. 2010).

⁴⁴ SETH W. STOUGHTON ET AL., *EVALUATING POLICE USES OF FORCE* 155 (2020).

⁴⁵ Police Executive Research Forum, *Guiding Principles on Use of Force Presentation*, <https://justiceclearinghouse.com/wp-content/uploads/2017/10/PERF-Use-of-Force-Presentation.pdf>.

without justification, or act precipitously on their own without waiting for available assistance from other officers.⁴⁶

In this case, Ofcs. Estrada, Goodluck, and Wasson were dispatched to respond to a domestic violence call. The tactics that officers used—taking positions at the front of the house while one officer knocks and announces the police presence—are entirely consistent with generally accepted police practices when responding to calls of this type.

Although the officers were dispatched to respond to 5308 Valley View Avenue, they responded to 5305 Valley View Avenue.⁴⁷ This is clearly an error. It goes without saying that officers should ensure that they are responding to the locations to which they are dispatched. However, given the context of the police actions in this case—knocking on the door to make contact with the resident—the foreseeable consequences of responding to the wrong house are limited to the delay in locating and responding to the *correct* address. From the perspective of police practices, it simply is not foreseeable that knocking on the wrong door and announcing the police presence will create a deadly force situation.

That is not to say that such risks are *never* the foreseeable result of responding to an incorrect address. In more intrusive operations, for example, such as when officers are planning to forcibly enter a home to execute a search warrant or arrest warrant and *especially* when officers are going to conduct a dynamic entry, the foreseeable risks of the operation are significantly higher. In such operations, it is of paramount importance to ensure that officers are targeting the right house precisely because of how foreseeable resistance by law-abiding community members may lead to a police use of force. Such is not the case here, however. When officers are merely attempting to make contact with a resident by knocking on the front door—essentially setting the stage for what will initially be a consensual encounter outside of or at the door of a house—there is no specific reason to predict any danger of armed confrontation.

Under the circumstances, responding to the wrong address was not a *tactical* error—that is, it was not a mistake that negatively affected their ability “to conclude the situation in the safest and least intrusive way”⁴⁸ or put them in a position of being unable to “reduc[e] risks, mitigate[e] the likelihood that risks will become threats, and prevent[] threats from manifesting into harms.”⁴⁹

⁴⁶ SETH W. STOUGHTON ET AL., EVALUATING POLICE USES OF FORCE 158 (2020).

⁴⁷ New Mexico State Police, Report # NMSPR2303499 – Supplemental Report – 9, p. 1; Wasson BWC (0:01:11.671).

⁴⁸ Jeffrey J. Noble & Geoffrey P. Alpert, *State-Created Danger* in CRITICAL ISSUES IN POLICING: CONTEMPORARY READINGS at 568 (Roger Dunham and Geoffrey P. Alpert, eds., 7th ed., 2015).

⁴⁹ SETH W. STOUGHTON ET AL., EVALUATING POLICE USES OF FORCE 155 (2020).

Responding to an incorrect address did not “deprive the officer[s] of time in which to safely make a decision about how to act.”⁵⁰ Nor did it foreseeably expose them to an otherwise avoidable threat or predictably and “unnecessarily place them (and/or others) at great risk of harm.”⁵¹

Additionally, it is worth noting that officers realized they were at the wrong address within two minutes from the time that they approached 5305 Valley View Avenue and first knocked on the front door.⁵²

For the foregoing reasons, Ofcs. Estrada, Goodluck, and Wasson’s tactics in approaching the house and attempting to make contact with the residents were reasonable, appropriate, consistent with generally accepted police practices; although they erroneously approached the wrong house, that mistake did not foreseeably create an unnecessarily dangerous situation.

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⁵⁰ Brandon Garrett & Seth Stoughton, *A Tactical Fourth Amendment*, 103 Va. L. Rev. 211, 259 (2017)

⁵¹ Police Executive Research Forum, *Guiding Principles on Use of Force Presentation*, <https://justiceclearinghouse.com/wp-content/uploads/2017/10/PERF-Use-of-Force-Presentation.pdf>.

⁵² Synchronized Video 0:01:47.173-03:34.000

2. Ofc. Estrada’s, Ofc. Goodluck’s, and Ofc. Wasson’s uses of deadly force against Mr. Dotson and Ofc. Estrada’s and Ofc. Wasson’s use of deadly force against Ms. Dotson were reasonable, appropriate, and consistent with generally accepted police practices

It is well known and generally accepted within policing that officers have the authority to use force in the course of their duties when an individual’s actions present an imminent threat of frustrating a legitimate police interest, such as by evading officers’ apprehension attempts or by physically injuring an officer or another person. When that is the case, officers are permitted under generally accepted police practices to use the nature and degree of force that is proportional to the nature and severity of the threat. Evaluating police uses of force under the standard of generally accepted principles and practices requires identifying whether and how the subject’s actions presented an imminent threat, identifying the severity of the officer’s use of force, and assessing whether the use of force was proportional in light of the threat presented.

As a threshold matter, it is well known and generally accepted in policing that the operative facts when evaluating police uses of force are those of which a reasonable officer on the scene would have been aware at the time. This framework, which originated in constitutional law, has been adopted as a generally accepted principle in policing.

In the context of constitutional law, certain police uses of force are regulated as “seizures” under the Fourth Amendment. The Supreme Court held in *Graham v. Connor* that police uses of force that constitute seizures must be “objectively reasonable.”⁵³ In *Graham*, the Court held that the determination of whether a particular seizure was constitutionally reasonable “requires a careful balancing of the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the countervailing governmental interests at stake.”⁵⁴ That balancing test demands “careful attention to the facts and circumstances of each particular case.”⁵⁵ Specifically, the Court provided guidance as to the relevant facts and circumstances:

The “reasonableness” of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. . . . The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments — in

⁵³ 490 U.S. 386 (1989).

⁵⁴ *Graham v. Connor*, 490 U.S. 386, 396 (1989) (internal quotation marks omitted).

⁵⁵ *Graham v. Connor*, 490 U.S. 386, 396 (1989).

circumstances that are tense, uncertain, and rapidly evolving — about the amount of force that is necessary in a particular situation.⁵⁶

Policing has incorporated aspects of the constitutional framework promulgated by the Supreme Court into generally accepted police principles. Specifically, it is generally accepted in policing that the framework for factual analysis requires looking at the facts as they would have been understood by “a reasonable officer on the scene”⁵⁷ at the time of the relevant decision by the officer. As the International Association of Chiefs of Police laid out in a *National Consensus Policy and Discussion Paper on Use of Force*, “a collaborative effort among 11 of the most significant law enforcement leadership and labor organizations in the United States”⁵⁸:

This evaluation as to whether or not force is justified is based on what was reasonably believed by the officer, to include what information others communicated to the officers, *at the time the force was used* and upon what a reasonably prudent officer would use under the same or similar circumstances. This standard is not intended to be an analysis after the incident has ended of circumstances not known to the officer at the time the force was utilized.

...

The decision to employ any force . . . may be considered excessive by law and agency policy or both[] if it knowingly exceeded a degree of force that reasonably appeared necessary based on the specific situation.⁵⁹

Thus, the operative facts and circumstances for assessing an officer’s use of force requires reviewing the facts and circumstances as they would have appeared to a reasonable officer on the scene, subject to the perceptual and cognitive stresses of the situation. Information that a reasonable officer on the scene would have *not* been aware of at the time, including information discovered after the use of force, is relevant only to the limited extent that it can help assess the reasonableness of the officer’s perceptions and conclusions prior to and during the use of force.⁶⁰

⁵⁶ *Graham v. Connor*, 490 U.S. 386, 396-97 (1989).

⁵⁷ INTERNATIONAL ASS’N OF CHIEFS OF POLICE, NATIONAL CONSENSUS POLICY & DISCUSSION PAPER ON USE OF FORCE 2 (2017) (quoting *Graham v. Connor*, 490 U.S. 386 (1989)).

⁵⁸ INTERNATIONAL ASS’N OF CHIEFS OF POLICE, NATIONAL CONSENSUS POLICY & DISCUSSION PAPER ON USE OF FORCE 5 (2017) .

⁵⁹ *Id.* at 8 (emphasis in original) (internal quotation marks omitted).

⁶⁰ For example, the reasonableness of an officer’s perception that a subject was reaching for a weapon in their

A. Ofcs. Estrada, Goodluck, and Wasson used deadly force against Mr. Dotson, and Ofcs. Estrada and Wasson used deadly force against Ms. Dotson

The analytical framework for assessing police uses of force is described above. That framework first requires identifying the nature and severity of the officer’s use of force.

It is well known and generally accepted in policing that an officer’s actions, including their use-of-force decisions, must be evaluated based on the *foreseeable effects* of such force.⁶¹

The reasonableness of a use of force depends on the risk inherent in the type and manner of the force being used, not the ultimate effect of that force. For example, firing a gun at an individual is properly considered deadly force because of the potential harm the bullet is likely to cause, even if the bullet only grazes the person’s leg, causing a superficial injury, or misses entirely. Similarly, using a closed fist to strike a subject in the face when the subject’s head is on the ground is properly considered a serious use of force because of the potential for harm, even if the strike results in only a minor injury. In either of those two cases, predicating the reasonableness inquiry on the ultimate injury would lead reviewers to incorrectly ask whether the use of minor force was appropriate. Clearly, that is the wrong way to approach those examples. The correct question is whether the use of deadly force or serious force, respectively, was appropriate under the circumstances. In short, the reasonableness of any use of force depends on the foreseeable harms that arise from the officer’s actions—that is, the harms that the “reasonable officer on the scene” would have anticipated—not the actual harms that result.⁶²

It is generally accepted in policing that force options that carry a substantial likelihood of death or serious bodily injury are categorized as “deadly force.”

waistband will tend to be corroborated if it is later determined that the subject had a weapon in their waistband. In the same vein, the reasonableness of an officer’s perception that a subject was reaching for a weapon in their waistband may be undermined if it is later determined that the subject did not have anything in their waistband at the time. Critically, the later findings are not dispositive: a subject might reach for their waistband even without a weapon there, and a subject who does have a weapon in their waistband might not reach for it. Nevertheless, in this narrow context, information that would not have been available to the reasonable officer at the time can be relevant to the evaluation of the officer’s perspective and conclusions.

⁶¹ The actual results of an officer’s use of force can be pertinent, but only to the limited extent that it advances the evaluation of the foreseeable effects of the officer’s actions.

⁶² SETH W. STOUGHTON ET AL., EVALUATING POLICE USES OF FORCE 23 (2020)

In this case, Ofcs. Estrada, Goodluck, and Wasson all discharged their firearms at Mr. Dotson. Shortly thereafter, Ofcs. Estrada and Wasson discharged their firearms at Ms. Dotson. The discharge of a firearm is substantially likely to cause serious bodily injury or death. Indeed, the discharge of a firearm is the paradigmatic example of deadly force in policing.

For the foregoing reasons, Ofcs. Estrada, Goodluck, and Wasson used deadly force against Mr. Dotson, and Ofcs. Estrada and Wasson used deadly force against Ms. Dotson.

B. Mr. Dotson and Ms. Dotson presented imminent threats of death or great bodily harm to the officers

The analytical framework for assessing police uses of force under the standard of generally accepted principles and practices is described above. That framework requires identifying whether the subject's actions presented an imminent threat and, if so, assessing the nature and severity of that threat.

It is well recognized within policing that officers can use force only to address imminent threats to certain government interests, including to effect the apprehension of criminal suspects and to ensure the safety of community members and officers. Importantly, the concept of "threat" is referential and requires identifying a specific action that would harm a government interest. Without some specific reference to the harm that could result to the government interest at stake, the concept of "threat" is vacuous. In other words, there is no freestanding concept of "threat" in the absence of specific harm; "a threat" must refer to the potential for, *inter alia*, unacceptable delay, escape, physical injury, or serious physical injury or death.

A threat is imminent, as policing has defined that term, when the subject has (or reasonably appears to have) the ability, opportunity, and intention to cause a particular type of harm.⁶³ "Ability" refers to the subject's capacity to cause the identified harm through some explicitly identified means or mechanism. For example, an individual armed with a tire iron has the ability to strike someone in a way that can cause serious injuries or death, while an individual without a tire iron cannot. "Opportunity" refers to the subject's proximity to the potential target in light of the specific harm at issue. For example, an individual with a tire iron who is physically close to an officer has both the ability and the opportunity to strike them with it, while an individual with

⁶³ See, e.g., INTERNATIONAL ASS'N OF CHIEFS OF POLICE, NATIONAL CONSENSUS POLICY & DISCUSSION PAPER ON USE OF FORCE at 11 (2017).

Some sources refer to "imminent threats" instead of "immediate threats" There is no wide accepted agreement about how "imminent" and "immediate" are defined. For the purposes of this report, we use the terms "imminent" and "immediate" synonymously.

a tire iron who is fifty feet away has the ability, but not the opportunity, to do so. “Intention” refers to the subject’s perceived mental state, their apparent desire to cause the identified harm. For example, an individual with a tire iron who is physically close to an officer and who is preparing to swing it at the officer has the apparent intention to injure or kill the officer, while an individual who is using a tire iron to change a tire while speaking with an officer standing nearby might have the physical ability and opportunity to do so, but lacks the apparent intention. It is important to recognize that

intent may be properly articulated through a combination of multiple factors even if no individual factor is sufficient on its own. [M]erely holding a tire iron is not in and of itself indicative of the intent to cause harm. Nor is walking toward an officer. Nor is failing to obey an officer’s commands. However, walking toward an officer while holding a tire iron and ignoring the officer’s commands to stop or drop the weapon can be, in combination, indicative of the individual’s intent.⁶⁴

Importantly, it is well known and generally accepted in policing that the relevant touchstone for evaluating police uses of force is the nature and severity of the *threat* that the subject’s actions present, which is distinct from the subject’s behavior itself.

[A] superficial assessment based exclusively on the subject’s behavior is insufficient. Consider, for example, a subject who is kicking and punching an officer; clearly, that subject is engaged in assaultive resistance. A mechanical review of the subject’s behavior would lead a reviewer to conclude that officers are justified in using force to protect themselves from assaultive resistance. If, however, the subject is an unarmed and physically diminutive ten-year-old, for example, the threat to officer safety is minimal; the use of severe force is inappropriate in that case even if it might be appropriate against a physically larger subject who was doing the same thing. Similarly, pulling away from officers or fleeing on foot is commonly classified as active resistance, presenting a potential threat to the government’s interest in apprehension, but the same actions present very different levels of threat when the subject is a morbidly obese octogenarian (assuming such an individual presents any threat . . .) as opposed to a young,

⁶⁴ SETH W. STOUGHTON, JEFFREY J. NOBLE, AND GEOFFREY P. ALPERT, EVALUATING POLICE USES OF FORCE 35 (2020).

athletically built subject wearing a t-shirt indicating that they are a member of the local college's cross-country running team.

As those examples suggest, it is not the suspect's behavior itself that drives proportionality analysis, it is the extent to which the suspect's behavior threatens a governmental interest. Reviewers can assess the severity of a threat by considering subject characteristics, officer characteristics, encounter characteristics, and environmental factors.⁶⁵

Officers need not wait until a threat has fully manifested into an attack, of course. To continue the example in the previous paragraph, an officer need not wait until the approaching individual actually swings the tire iron before using force. Indeed, at that point the officer's actions may be too late to prevent the relevant harm. However,

[i]t is also essential to distinguish the concept of "threat," meaning an imminent danger to a legitimate governmental interest, from the concept of "risk." Risk is best described as a potential threat. More precisely, risk is the presence of at least one but not all three of the prerequisites of threat (ability, opportunity, and intent) and the potential for the remaining factors to materialize.

While it may be wise, in many cases, for officers to mitigate risk in various ways, the lack of imminent danger to a governmental interest makes it inappropriate to use force at that point. Consider again the example of a motorist using a tire iron to change a tire; as the motorist is changing the tire, they have the physical ability and opportunity to attack the officer with the tire iron, which means that there is some risk to the officer. The officer could step farther away from the motorist (creating distance) or could move to a position that keeps part of a vehicle between them and the motorist (using a physical obstacle to increase the amount of time it would take for the motorist to reach them), but the officer would not be justified in using force at that point because there was no perceptible intent to harm. Although there was some risk, there was no apparent intent to cause harm, and therefore there was no threat. And with no threat, there was no governmental interest at stake, and no justification for using force. The same is true in other situations; the fact that someone is capable of causing harm, has the opportunity to cause harm, or has the

⁶⁵ SETH W. STOUGHTON, JEFFREY J. NOBLE, AND GEOFFREY P. ALPERT, EVALUATING POLICE USES OF FORCE 51-52 (2020).

intent to cause harm does not justify a use of force: all three factors must be present.⁶⁶

The distinction between *threat* and *risk* is an essential aspect of understanding and evaluating police uses of force. Several decades of research into police uses of force reflect how various factors contribute to officers' use-of-force decision-making.⁶⁷ There is strong empirical evidence that officers operationalize the components of imminent threat—ability, opportunity, and intention—in the day-to-day performance of their duties. In 2023, an experimental study of 360 officers assessing threats in various scenarios as depicted in body-worn camera footage of real police encounters confirmed that a threat assessment model—involving specifically the evaluation of a subject's ability, opportunity, and apparent intention to cause harm—was consistent with officers' cognitive processes during threat assessment.⁶⁸ While the nature of the subject's resistance is a relevant consideration in officer threat assessments, officers consider factors beyond resistance—specifically ability, opportunity, and apparent intention.⁶⁹ Additionally, a large scale study of 11,597 use-of-force reports drawn from 87 different agencies between 2014 and 2018 found that each of the three conditions—ability, opportunity, and intention—were related in a statistically significant way to force levels and that the “inputs” were interactive, meaning that they were predictive of force used when taken together.⁷⁰ In short, police policy documents, training, and actual field practices establish the generally accepted practice of defining and assessing threat by evaluating the subject's ability, opportunity, and apparent intention to cause a specific harm.

Additionally, the distinction between risk and threat “makes clear that a use of force cannot be predicated on an officer's speculative articulation of what an individual *might* have done or the

⁶⁶ SETH W. STOUGHTON, JEFFREY J. NOBLE, AND GEOFFREY P. ALPERT, EVALUATING POLICE USES OF FORCE 36-37 (2020).

⁶⁷ William Terrill & Michael D. Ressig, *Neighborhood Context and Police Use of Force*, 40 J. RESEARCH CRIM. & DELINQUENCY 291 (2003); Joel H. Garner et al., *Characteristics Associated with the Prevalence and Severity of Force Used by the Police*, 19 JUST. QUARTERLY 705 (2002); Geoffrey P. Alpert & John M. MacDonald, *Police Use of Force: An Analysis of Organizational Characteristics*, 18 JUST. QUARTERLY 393 (2001).

⁶⁸ Kyle McLean et al., *Re-examining the Use of Force Continuum: Why Resistance is Not the Only Driver of Use of Force Decisions*, 26 POLICE QUARTERLY 85 (2023).

⁶⁹ Kyle McLean et al., *Re-examining the Use of Force Continuum: Why Resistance is Not the Only Driver of Use of Force Decisions*, 26 POLICE QUARTERLY 85 (2023).

⁷⁰ Andrew T. Krajewski et al., *Threat Dynamics and Police Use of Force*, 61 J. RESEARCH CRIM. & DELINQUENCY 1 (2023).

threat that *could have* existed *if* the individual were to have taken certain actions.”⁷¹

Purely generalized concerns about a safety risk do not amount to an actual threat. The existence of a bona fide threat must be predicated on an officer’s articulation of details and circumstances that would lead a reasonable officer to conclude that the individual was physically capable of causing harm, was in a position to physically inflict that harm, and had manifested the apparent intent to do so. For a use of force to be . . . permissible, an officer must have an objectively reasonable belief that something *is happening*, not just that something *might possibly* happen.⁷²

It is well known and generally accepted in policing that determining whether a subject presents any threat—and, if so, the severity of that threat—depends on, as the Supreme Court has articulated it in the Fourth Amendment context, “the facts and circumstances of each particular case.”⁷³ In the context of constitutional law, the Supreme Court has identified that the relevant “facts and circumstances” include, but are not limited to, what have become known as the “*Graham* factors”: “[1] the severity of the crime at issue, [2] whether the suspect poses an immediate threat to the safety of officers or others, and [3] whether he is actively resisting arrest or attempting to evade arrest by flight.”⁷⁴ These factors, and a variety of others, have been adopted into generally accepted principles in policing and are often incorporated into police agency policy and training.

In this case, Mr. Dotson opened the front door and storm door, then partially exited the house while raising a firearm into a firing position, pointed in the direction of the officers, as reflected in the screen captures on the following page:

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⁷¹ SETH W. STOUGHTON, JEFFREY J. NOBLE, AND GEOFFREY P. ALPERT, EVALUATING POLICE USES OF FORCE 37 (2020).

⁷² SETH W. STOUGHTON, JEFFREY J. NOBLE, AND GEOFFREY P. ALPERT, EVALUATING POLICE USES OF FORCE 37 (2020).

⁷³ *Graham v. Connor*, 490 U.S. 386, 396 (1989).

⁷⁴ *Graham v. Connor*, 490 U.S. 386, 396 (1989).

Wasson BWC		
0:03:39.118	0:03:39.319	0:03:39.485
		
0:03:39.619	0:03:39.719	0:03:39.819
		

Estrada BWC		
0:03:57.904	0:03:58.137	0:03:58.271
		
0:03:58.404	0:03:58.504	0:03:58.705
		

A few seconds later, additional shots were fired; although not clear from the video, later statements from both Ms. Dotson and the officers indicate that Ms. Dotson fired at least twice.⁷⁵ Although Ms. Dotson later indicated that she believed she fired “toward the ground,”⁷⁶ Ofc. Wasson later stated that he “felt the velocity and the ‘zip’ of the round as it passed to the left of him.”⁷⁷

Clearly, an individual who not only has a gun but has raised it and is discharging it at officers who are standing within line of sight has the ability, opportunity, and intention to inflict serious bodily injury or death. Assuming strictly for purposes of analysis that Ms. Dotson did fire into the ground instead of at the officers, the perception that she nevertheless possessed the ability, opportunity, and intention to inflict serious bodily injury or death was eminently reasonable under the circumstances.

For the foregoing reasons, Mr. Dotson and Ms. Dotson presented imminent threats of death or great bodily harm to the officers.

C. Ofc. Estrada’s, Ofc. Goodluck’s, and Ofc. Wasson’s use of deadly force against Mr. Dotson, and Ofc. Estrada’s and Ofc. Wasson’s use of deadly force against Ms. Dotson were proportional to the threat that Mr. Dotson and Ms. Dotson presented at the time

The analytical framework for assessing police uses of force is described above. That framework next requires evaluating whether the nature and severity of the officer’s use of force, discussed in Opinion 2(A), is proportional to any imminent threat presented by the subject’s actions, discussed in Opinion 2(B).

It is well known and generally accepted in policing that the techniques and weapons that officers employ in use-of-force situations exist on a spectrum from the least severe force options to the most severe force options; the location of any given force option on that spectrum is dependent on the likely results of applying that technique or weapon under the circumstances. Further, it is well known and generally accepted in policing that when officers are confronted by an imminent threat, they may address that threat by using the degree of force that is proportional to the nature and severity of the threat.⁷⁸ The question of proportionality is, in essence, a matter of determining

⁷⁵ New Mexico State Police, Report # NMSPR2303499 – Supplemental Report – 9, p. 2; New Mexico State Police, Report # NMSPR2303499 – Supplemental Report – 13, p. 3.

⁷⁶ New Mexico State Police, Report # NMSPR2303499 – Supplemental Report – 13, p. 3.

⁷⁷ New Mexico State Police, Report # NMSPR2303499 – Supplemental Report – 9, p. 7.

⁷⁸ This is *not* to suggest that all police agencies have adopted, or that officers are trained to refer to, a formal force

whether *the severity of the force used*, as determined from its foreseeable effects, is a professionally appropriate response to the *nature and severity of the threat presented* at the time.

As discussed in Opinion 2(A), all three officers' discharge of their firearms against Mr. Dotson and Ofc. Estrada's and Ofc. Wasson's discharge of their firearms against Ms. Dotson constitute deadly force. It is generally accepted in policing that force options that carry a substantial likelihood of death or serious bodily injury are categorized as "deadly force." As an industry, policing has generally accepted as the professional standard the rules that govern the constitutionality of deadly force articulated in *Tennessee v. Garner*: officers are permitted to use deadly force only when they have probable cause to believe that the subject presents an imminent threat of death or great bodily harm to the officers or others.⁷⁹

As discussed in Opinion 2(B), both Mr. Dotson and Ms. Dotson presented imminent threats of death or great bodily harm to the officers at the time.

For the foregoing reasons, Ofcs. Estrada's, Ofc. Goodluck's, and Ofc. Wasson's use of deadly force against Mr. Dotson and Ofcs. Estrada's and Ofc. Wasson's use of deadly force against Ms. Dotson were proportional to the threat that Mr. Dotson and Ms. Dotson presented at the time.

Based on the force used, the threat presented at the time, and the relationship between them, Ofc. Estrada's, Ofc. Goodluck's, and Ofc. Wasson's uses of deadly force against Mr. Dotson and Ofc. Estrada's and Ofc. Wasson's use of deadly force against Ms. Dotson were reasonable, appropriate, and consistent with generally accepted police practices.

matrix or force continuum. Although graphical depictions of force continua are very common, a sizeable minority of police agencies have eschewed such devices. See WILLIAM TERRILL, EUGENE A. PAOLINE III, AND JASON INGRAM, FINAL TECHNICAL REPORT DRAFT: ASSESSING POLICE USE OF FORCE POLICY AND OUTCOMES, ii (2011) (estimating more than 80% of police agencies use a force matrix); William Terrill and Eugene A. Paoline, *Force Continuums: Moving Beyond Speculation and Toward Empiricism*, 7 LAW ENFORCEMENT EXECUTIVE FORUM 27, 28 (2007).

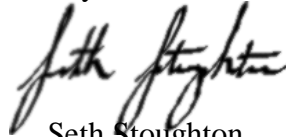
⁷⁹ 471 U.S. 1, 12 (1985). The conventional understanding of that rule was complicated in 2007, when the Court decided *Scott v. Harris*. 550 U.S. 372 (2007). In that case, the Court wrote, "*Garner* did not establish a magical on/off switch that triggers rigid preconditions whenever an officer's actions constitute 'deadly force.' *Garner* was simply an application of the Fourth Amendment's 'reasonableness' test, to the use of a particular type of force in a particular situation." *Scott v. Harris*, 550 U.S. 372, 382 (2007). *Harris* suggests that "all that matters is whether [the officer's] actions were reasonable." 550 U.S. 372, 383 (2007). As a matter of common practice, however, policing has generally adopted the approach laid out in *Garner*: officers may use deadly force to address imminent threats of serious physical injury or death. 471 U.S. 1, 3, 11 (1985).

Submission

The preceding constitutes my preliminary report regarding the April 5, 2023, events related to the fatal shooting of Robert Dotson by Farmington Police Department Officers David Estrada, Dylan Goodluck, and Waylan Wasson and the shooting at Kimberly Dotson by Ofcs. Estrada and Wasson.

This report is based on the materials reviewed to date. Should any additional information cause me to expand, add, or revise any of my opinions, I reserve the right to revise, amend, or supplement this report accordingly.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Seth Stoughton". The signature is written in a cursive style with a large, sweeping "S" and "t" that connect.

Seth Stoughton
December 15, 2023