

**REPORT ON THE DEATH INVESTIGATION OF ERIC J. LOGAN  
RIC HERTEL, SPECIAL PROSECUTOR**

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## STATEMENT OF AUTHORITY

On June 24, 2019, St. Joseph County Prosecuting Attorney Kenneth P. Cotter filed a petition for appointment of a special prosecuting attorney regarding the shooting death of Mr. Eric Logan by South Bend Police Dept. Sgt. Ryan O'Neill ("Sgt. O'Neill"). Following the filing of said petition, St. Joseph County Circuit Court Judge John Broden ordered that the appointment of a special prosecutor was necessary to avoid the appearance of impropriety or conflict of interest.

On July 3, 2019, Ric Hertel was appointed Special Prosecutor for the limited purpose of continuing the investigation and exercising prosecutorial discretion of all matters surrounding the officer involved shooting of Mr. Logan on June 16, 2019. As Special Prosecutor, Mr. Hertel was authorized to designate or appoint deputy prosecuting attorneys or investigators to assist in this case. Further, Special Prosecutor Hertel was granted the authority to consult with and/or utilize the Indiana State Police or any other law enforcement investigative agency that he deemed appropriate in order to conduct a thorough and independent review of the incident and, if necessary, to consult and/or retain any and all experts he deemed necessary to facilitate an independent investigation of this matter.

Pursuant to I.C. § 33-39-10-2(f), the special prosecutor must file a report at the investigation's conclusion when the investigation's target is a public servant. Based on Sgt. O'Neill's public servant status at the time of the shooting, this report has been prepared and filed in accordance with said requirement.

## LIST OF EVIDENCE REVIEWED

Shortly after the shooting of Mr. Logan, members of the St. Joseph County Metro Homicide Unit (MHU) began the investigation into the death of Mr. Logan. A team of investigators conducted an extensive investigation where interviews were completed, pictures and videos were taken, and evidence was collected and sent to the lab for forensic analysis. Their investigation was thoroughly documented in multiple police reports that were provided to the Special Prosecutor.

Following the appointment of the Special Prosecutor, multiple Indiana State Police detectives reviewed and examined the statements and evidence collected prior to their involvement in the case. They obtained additional evidence and conducted additional interviews. Further, the evidence was reviewed and analyzed by an independent expert to assist in the case's medical and forensic matters. The Special Prosecutor oversaw an exhaustive analysis of this matter, which included a review of the following pieces of evidence (explained thoroughly in the body of the report):

- All relevant South Bend Police Department ("SBPD") reports;
- All relevant Metro Homicide Unit reports;
- Video footage from multiple SBPD officers' body cameras and car dashboard cameras;
- Video surveillance from Memorial Hospital;
- Interviews of involved SBPD officers or officers with knowledge relevant information;

- Interviews of Sgt. O'Neill;
- Interviews of multiple car theft victims;
- Physical evidence collected at the scene and surrounding area;
- Evidence collected at Memorial Hospital and St. Joseph Hospital – Fort Wayne;
- Interview of the Central High Apartments' manager;
- Interview of the manager of a neighboring building;
- The relevant ShotSpotter report;
- St. Joseph County dispatch communications;
- 911 call recording;
- SBPD use of force and body camera policies;
- Interview of an SBPD use of force trainer;
- Information from the president of the company that manufactured the body-worn cameras used by SBPD;
- Autopsy report;
- Toxicology report;
- Eric Logan's medical records;
- Sgt. O'Neill's medical records;
- Firearm forensic analysis reports;
- Phone forensic analysis report;
- DNA and latent fingerprints forensic analysis report;
- Dr. Smock's independent forensic report;
- Eric Logan's criminal history; and

- Sgt. O'Neill's personnel file. During Sgt. O'Neill's 19 years as a South Bend Police Officer, he was the subject of nine formal complaints. Three of the nine complaints, 3 were substantiated after SBPD's internal review process.

### FACTUAL SUMMARY

The event unfolded in the parking lot of Central High Apartments located at 110 N. William Street, South Bend, IN. The parking lot borders Colfax Ave. to the north and N. William St. to the west. Central High Apartment buildings border the parking lot to the south and the east. The parking lot is laid out in three separate rows running north to south. The event occurred on the east side of the middle row in the area of the second parking spot from the south.

#### **A. THE CIRCUMSTANCES LEADING TO SGT. O'NEILL'S ARRIVAL AT CENTRAL HIGH APARTMENTS.**

On June 16, 2019 at 3:23 am, a 911 call was placed where the caller advised there was a person in the parking lot of the old South Bend High School walking around with a flashlight and busting out car windows. The caller explained that the person was "in dark clothes, like a black rain jacket" looking into the windows of cars.

At 3:27 am, SBPD Officers were dispatched to that location; they were told there was a subject in the north parking lot wearing dark clothing, carrying a flashlight, and possibly breaking out car windows.

At 3:30 am, Sgt. O'Neill informed dispatch that he had arrived on scene and entered the parking lot. Sgt. O'Neill was in full uniform and driving a fully-marked police car (South Bend Police Department Car #3020, Plate #17705). Upon entering the parking lot, Sgt. O'Neill turned his "alley lights" on to assist in illuminating the surrounding area. The alley lights are the two white lights located at the ends of the light bar affixed to the top of the vehicle. Sgt. O'Neill began to slowly drive through the rows of the parking lot looking for any signs of cars broken into.

#### **B. SGT. O'NEILL'S INTERACTION WITH MR. ERIC LOGAN.**

As Sgt. O'Neill drove through the parking lot, he observed a black Honda passenger car with the driver's door open. The black Honda car was parked on the east side of the middle row in the second space from the building to the south. Directly parked next to the black Honda was a white Subaru on the driver's side and a blue Honda on the passenger side. Sgt. O'Neill observed a pair of legs and buttocks sticking out of the black Honda's open driver's door.

Following his observation, Sgt. O'Neill parked his police car at an angle behind the black Honda and exited his police car leaving his driver's door open. At that point, Sgt. O'Neill was unaware of whether the person reaching into the vehicle had a lawful right to do so. Sgt. O'Neill, his left hand holding his flashlight pointed at the black Honda, approached the person reaching into the car. Sgt. O'Neill walked up toward the back of the black Honda and asked if they were the owner of the vehicle. The person inside the vehicle, later identified as Mr. Eric

Logan ("Mr. Logan"), said it was his vehicle and began to exit. As Mr. Logan did so, Sgt. O'Neill observed a beige-colored purse sticking out of Mr. Logan's coat, and noticed that Mr. Logan's right hand was cut and he was holding a napkin. Sgt. O'Neill asked Mr. Logan why he had a female's purse, and then observed a large knife in Mr. Logan's hand. After seeing the knife, Sgt. O'Neill unholstered his weapon, pointed it at Mr. Logan, and ordered him to drop the knife. At this point, Sgt. O'Neill and Mr. Logan were approximately 8 to 10 feet apart from each other.

According to Sgt. O'Neill, Mr. Logan did not comply with the order to drop the knife. Rather, Mr. Logan raised the knife, made a grunting noise, and began to advance towards Sgt. O'Neill. While Mr. Logan started moving forward, Sgt. O'Neill backed away from Mr. Logan and ordered Mr. Logan to drop the knife many times. Mr. Logan continued to walk toward Sgt. O'Neill until he was backed up very close to his parked police car. Sgt. O'Neill indicated that he was in fear for his life and fired two shots from his pistol at Mr. Logan. After the shots were fired, Mr. Logan stopped advancing and threw his knife at Sgt. O'Neill. The knife struck Sgt. O'Neill in the left forearm resulting in a red abrasion. Sgt. O'Neill was initially unsure if he had shot Mr. Logan, because Mr. Logan was still standing and making minimal reaction. Sgt. O'Neill no longer perceived Mr. Logan as a threat, because Mr. Logan had stopped advancing and thrown the knife. Sgt. O'Neill ordered Mr. Logan to get on his knees and he complied.

At 3:31 am, approximately 20 seconds after Sgt. O'Neill fired the two shots, he dispatched on his radio, "shots fired get me an ambo (ambulance)." Within two minutes of that dispatch, four additional officers from SBPD (Officers' Aaron Knepper, Jeffrey Vance, Kyle Lindzy, and Ben Canarecci) responded to the scene. The officers handcuffed Mr. Logan and located a gunshot wound on his torso. Sgt. O'Neill and the other officers observed Mr. Logan getting weaker and felt he needed medical attention immediately. With no ambulance on scene yet, Officer Knepper asked Sgt. O'Neill if he should do a "load and go". A "load and go" is used in emergent situations when an officer could load the injured person into their police vehicle and drive them to the hospital faster than it would take for an ambulance to arrive on scene. At 3:34 am, Sgt. O'Neill ordered the "load and go" and Mr. Logan was placed into Officer Knepper's car and transported to the hospital with emergency lights and sirens activated. The hospital was approximately .8 miles from the scene of the event. SBPD officers conducted road blocks at intersections, so Mr. Logan could get to the hospital as soon as possible.

### **C. MR. ERIC LOGAN TRANSPORTED TO THE HOSPITAL.**

At 3:36 am, Mr. Logan arrived at Memorial Hospital and received immediate medical treatment. At 3:40 am, Mr. Logan was seen in the emergency department's resuscitation room. After initial resuscitation treatment did not improve Mr. Logan's condition, he was taken to the operating room at 4:01 am where the medical staff attempted to control venous and arterial injuries to his gallbladder and liver. Additionally, he received significant blood transfusions. Despite the medical staff's efforts, Mr. Logan was pronounced deceased at 9:50 am in Memorial Hospital's Intensive Care Unit.

#### **D. SUMMARY OF MR. ERIC LOGAN'S AUTOPSY AND TOXICOLOGY REPORTS.**

On June 17, 2019, a complete postmortem examination was performed on Mr. Logan. The examination was completed by Dr. D.L. Wolfe, a forensic pathologist, at St. Joseph Hospital-Fort Wayne upon the request of the St. Joseph County Coroner's Office. Mr. Logan weighed 269 pounds and was 6 feet 2 inches tall. Dr. Wolfe determined that a single gunshot wound entered Mr. Logan in his right upper abdomen with an abrasion collar at the margin of the wound. There was no soot, powder tattooing, or muzzle imprint located. The direction of the projectile was described as front to back, downward, and slightly right to left. The projectile entered the skin and subcutaneous tissue of the upper abdomen then traveled through the lower right costal (rib) margin, right lobe of liver, gallbladder (surgically removed), right adrenal gland, right peri-renal tissue, and right posterior abdominal wall. The projectile came to rest in the deep subcutaneous tissue of the right lower back and did not exit Mr. Logan's body. Additionally, Mr. Logan had two abrasions on his right hand. Dr. Wolfe determined that the gunshot was fired at an indeterminate range meaning an unknown range greater than four feet.

Dr. Wolfe concluded that the cause of Mr. Logan's death was a gunshot wound of the abdomen and determined the manner of death as homicide. In this and any other case, a forensic pathologist's determination that the manner of death is homicide, does not resolve the issue of whether the homicide was justified.

Additionally, samples of Mr. Logan's blood and urine were sent to NMS Labs for the completion of a toxicology report. The toxicology report was performed at the request of the St. Joseph County Coroner. Toxicological analysis of Mr. Logan's blood revealed that his blood alcohol content was .143g/100 mL (.143 BAC).<sup>1</sup> Further analysis revealed that Mr. Logan's blood contained levels of THC (the psychoactive component of marijuana) and its metabolites. The report also indicated a presumptive positive finding of Cocaine and its metabolites and Cannabinoids in Mr. Logan's urine.<sup>2</sup>

#### **E. SUMMARY OF INVESTIGATION'S ADDITIONAL EVIDENCE.**

##### **1. PHYSICAL EVIDENCE COLLECTED AT THE CENTRAL HIGH APARTMENTS' PARKING LOT.**

Located at the scene, was a black Honda Civic facing west with the driver's side door open. Parked directly to the south of the black Honda Civic was a white Subaru and directly to the north of the black Honda Civic was a blue Honda Civic. Parked behind the black Honda Civic were two SBPD squad cars. The closest vehicle was Sgt. O'Neill's vehicle (SBPD #3020). His vehicle was parked facing southwest and was just southeast of the black Honda Civic. The other squad car (SBPD #752) was parked facing southwest, northeast of the Honda Civic, and behind Sgt. O'Neill's vehicle. The distance between the front driver's side door of the black Honda

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<sup>1</sup> For comparison purposes, Indiana's legal limit for the operation of a motor vehicle is .08 BAC.

<sup>2</sup> The use of intoxicating substances is only referenced here because it may help to explain why Mr. Logan acted with such fearlessness toward a uniformed officer with his weapon drawn.

Civic and the back tire of Sgt. O'Neill's car was approximately 23 feet. The distance from the front driver's side door of the black Honda Civic to its rear bumper was approximately 7 ½ feet.

Evidence technicians photographed, documented, and collected physical evidence from the scene. The following items were located behind the black Honda Civic laying on the ground in the parking lot:

- Two spent cartridge casings with head stamp "FC 9mm LUGER". One casing was located just northeast of Sgt. O'Neill's car and the other was located just northwest of Sgt. O'Neill's car.
- A Gerber brand fixed blade knife with a black and gray handle located near the back-passenger side wheel of Sgt. O'Neill's car. The knife measured approximately 8 ½ inches and its tip was broken. The distance of the knife to the open front driver's side door of the black Honda Civic was approximately 21 feet.
- A beige-colored purse located just south of Sgt. O'Neill's car. The purse was later identified as belonging to KH.
- A white tissue type material located directly east of the black Honda Civic and directly west of Sgt. O'Neill's car. The material was saturated from rain.
- A white phone with a black case and multiple cords located east of the black Honda Civic. The phone and cords were taken out of Mr. Logan's pocket at the scene. The phone was later identified as belonging to Mr. Logan. One of the cords was white in color, curly, and badly frayed that was later identified as belonging to JD.
- A pink wallet containing an ID and other cards in the name of KH and some U.S. Currency coins located east of the White Subaru.

Further, the black Honda Civic was searched for evidence. A perforating bullet defect was located on the bottom corner of the front driver's side door. The bullet entered the weather stripping of the inside of the bottom unhinged corner of the front driver's side door and exited the exterior of the bottom unhinged side corner of the front driver's door. The area was searched and two bullet fragments were located underneath the white Subaru parked directly to the south of the black Honda Civic. No other bullet holes were located in the parking lot or its surrounding area.

## 2. PHYSICAL EVIDENCE COLLECTED IN THE SURROUNDING AREA.

Evidence technicians photographed, documented, and collected physical evidence from the parking lot's surrounding area. The following items were located in the surrounding area:



- A car stereo faceplate located on N. William St. west of the parking lot at Central High Apartments. The faceplate was identified as belonging to LR.
- A black in color rectangular piece of trim from the car stereo faceplate located on N. William St. The piece of trim was located on the west side of N. William St. sidewalk west of the parking lot and was identified as belonging to LR.

3. PHYSICAL EVIDENCE COLLECTED FROM MEMORIAL HOSPITAL AND ST. JOSEPH HOSPITAL-FORT WAYNE.

Evidence was collected and documented from Memorial Hospital and St. Joseph Hospital-Fort Wayne. The following items were collected:

- Sgt. O'Neill's police issued firearm. Specifically, the firearm is a Smith and Wesson M & P 9mm semi-automatic pistol (Serial #HKB6675). When collected, the firearm had one round of ammunition chambered. Additionally, three magazines were collected that contained 17 bullets, 17 bullets, and 15 bullets respectively. The firearm was collected from Sgt. O'Neill while he was being evaluated and treated at Memorial Hospital for an abrasion on his left forearm.
- The bullet projectile removed from Mr. Logan's body during his autopsy.
- Mr. Logan's clothes at the time of the event. Specifically, a gray t-shirt with red stains and a black coat.
- Blood and urine samples from Mr. Logan.

4. MULTIPLE VEHICLES BROKEN INTO IN THE PARKING LOT AND SURROUNDING AREA.

Between the evening hours of June 15 and the early morning hours of June 16, 2019, there were seven vehicles discovered to have been broken into in the Central High Apartments' parking lot and its surrounding area.<sup>3</sup> The vehicles and any items taken from those vehicles were as follows:

- 2016 Honda Civic (Black): The owner of the vehicle is CM. Mr. Logan exited this vehicle after being approached by Sgt. O'Neill. This vehicle was parked in the parking lot of the Central High Apartments. CM informed officers that she locked her doors and parked her vehicle in the parking lot on the afternoon of June 15<sup>th</sup>. She stated that she didn't believe anything had been taken from the car and confirmed that the car did not have a bullet hole in the driver's side door when she parked it on Saturday afternoon. CM further stated she had heard a couple gunshots in the middle of the night.

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<sup>3</sup> Initials have been used to protect the victims' identities.

- 2007 Toyota Highlander: KH was the operator of the vehicle. She stated that she parked her vehicle at the Central High Apartments' parking lot between the evening of June 15 and the morning of June 16, 2019. The vehicle's front passenger side window had been broken out and her purse had been stolen from the vehicle. KH was able to describe her purse and it matched the description of the beige-colored purse located at the scene. Further, she explained she had a pink wallet in the purse that matched the description of the wallet collected at the scene. She was shown the items collected and confirmed that those items belonged to her and were taken from her vehicle.
- 2013 Honda CRV: EF was the operator of the vehicle. He explained that he parked the vehicle at approximately 12:07 am on June 16, 2019 at his apartment complex's parking lot off of S. Taylor St. This lot is approximately one block southwest of Central High Apartments' parking lot. He advised that two knives were missing from his vehicle. EF positively identified the Gerber knife Mr. Logan had at the scene as one of the knives that were taken from his vehicle. He further stated that the knife's tip was intact when it was in the vehicle.
- Mercury Grand Marquis: The owner of the vehicle is LR. She explained that she parked her vehicle on Saturday (June 15) around noon southwest of the Central High Apartments' parking lot on N. William St. near W. Washington St. Further, she stated that the stereo faceplate had been taken from her vehicle and confirmed that the faceplate and trim piece that had been recovered on N. William St. came from her vehicle.
- 2006 Toyota Scion: The owner of the vehicle is CP. The vehicle was parked on N. William St. in front of 110 N. William St.'s main door. The driver's side door window had been shattered. CP stated that he parked the vehicle on Saturday (June 15) at approximately 10:00 or 11:00 pm. Further, CP stated that he heard two gunshots in the early morning hours of June 16, 2019.
- 2002 Honda Civic (Red): The owner of the vehicle is DP. He stated that he parked his vehicle on Saturday (June 15) at approximately 6:30 pm at his apartment's parking lot located on Taylor St. approximately one block west of the Central High Apartments' parking lot. On Sunday (June 16) around noon, he observed that his car window had been broken out. He indicated that the items in his vehicle had been rifled through but did not notice anything missing. Further, he stated he believed he heard two gunshots.
- 2003 Honda EX: The owner of the vehicle is JD. JD explained that her vehicle was parked on W. Jefferson Blvd. just west of S. William St. She stated that she parked her vehicle on Saturday (June 15) at approximately 9:00 pm. On Sunday morning (June 16), she discovered that her car window had been busted out and she was missing some CD's and an universal phone charger. She indicated that the charger was worn, curly, white in color, and badly frayed at the plug. She

positively identified the phone charger recovered at the parking lot as the charger from her vehicle.

#### 5. FORENSIC ANALYSIS OF SGT. O'NEILL'S FIREARM AND RELATED ITEMS.

On June 18, 2019, the St. Joseph County Metro Homicide Unit requested that the two 9mm casings collected in the parking lot, the two bullet fragments collected in the parking lot, the bullet collected from Mr. Logan's autopsy, and Sgt. O'Neill's firearm be forensically analyzed by the SBPD Crime Lab for firearm comparison purposes. On June 26, 2019, the analysis was completed and determined the following:

- Both 9mm casings were fired from Sgt. O'Neill's firearm.
- Neither of the bullet fragments located in the parking lot were suitable for microscopic comparison.
- The bullet collected from Mr. Logan's autopsy was fired from Sgt. O'Neill's firearm.
- Sgt. O'Neill's firearm was in good operating condition.

On September 6, 2019, Indiana State Police detectives submitted to the Indiana State Police Laboratory Sgt. O'Neill's 9mm firearm, his three magazines with ammunition, and Mr. Logan's gray t-shirt and black coat for forensic analysis. On November, 25, 2019, the analysis was completed and determined the following:

- Sgt. O'Neill's firearm test fired without any functional defects.
- The three magazines seated and functioned operationally in Sgt. O'Neill's firearm.
- All of the ammunition were 9mm Luger cartridges typical of those manufactured by or marketed as Federal. There were fifty cartridges total.
- Examination of Mr. Logan's black coat and gray t-shirt revealed corresponding defects in the right chest area of the garments. The areas around the defects were visually, microscopically, and chemically examined for the presence of gunshot residues. No gunshot residues were detected in the areas around the defects. Due to the lack of such residues, no distance measurement could be determined between the muzzle of the firearm and Mr. Logan's clothes when the firearm was discharged.

During an interview with Sgt. Ryan Hiipakka, a supervisor with SBPD, he explained that SBPD officers carry three magazines with seventeen bullets per magazine and a chambered round in the gun totaling 52 rounds. Sgt. O'Neill fired two rounds at Mr. Logan and had 50 unfired rounds when the firearm was collected.

## 6. FORENSIC ANALYSIS OF DNA AND LATENT FINGERPRINTS.

The Metro Homicide Unit submitted a request to the Indiana State Police Laboratory Division to have a number of items forensically analyzed for the presence of DNA and/or latent fingerprints. Prior to submitting said items to the lab, MHU officers collected DNA buccal swab samples and/or blood stain cards for comparison purposes from Mr. Logan, Sgt. O'Neill, KH- the owner of the purse and wallet, LR- the owner of the radio faceplate and trim piece, and EF- the owner of the knife.

The knife and faceplate were analyzed for the presence of both DNA and fingerprints. There was not a sufficient quantity of DNA for further analysis on either item nor were there any latent fingerprints of any value located.

The purse, wallet, and tissue collected at the scene of the event were analyzed for the presence of DNA. The items did not contain a sufficient quantity of DNA or had too many contributors to continue the DNA analysis.

Swabs were taken from the red stained area of the white Subaru parked directly to the south of the black Honda Civic and were tested for the presence of DNA. The analysis showed the DNA profile from those swabs originated from a single individual, and provided very strong support that Mr. Logan was a contributor to the DNA profile. Sgt. O'Neill, LR, KH, and EF were all excluded as contributors of that DNA sample.

## 7. FORENSIC ANALYSIS OF MR. LOGAN'S PHONE.

On June 18, 2019, forensic analysis was performed on the white phone that was located just east of the black Honda Civic. The analysis was performed by the St. Joseph County Cyber Crimes Unit at the request of the St. Joseph County Metro Homicide Unit. The phone collected was a LG Tribute Empire (LM-X220PM), SN: 901VTYK0129194, IMEI: 359635091256941. The phone indicated that its owner was Eric Jack Logan.

The data from the phone was processed and analyzed by a member of the Cyber Crimes Unit. The analysis of the phone's data showed the phone contained the following:

- Multiple images of car radios and entertainment systems. The radios were pictured in household settings outside of vehicles with many of the images showing the radios with wires attached. These images have time stamps from 3/2/19 to 5/27/19.
- Text conversations regarding cars. There were two separate but similar conversations regarding cars on May 3, 2019 and June 3, 2019 between midnight and 4:00 am, where the phone user was even referencing how tired they were. Both conversations reference cars that do not belong to either of the phone users ("Were this car at", "Didn't I tell u he was gon go to his car").

- On 6/16/19 at 12:38 am, an outgoing call was made to a contact listed as “Will Car Man” (574-287-9530). Additionally, the phone user made and received calls to contacts listed as “Doc,” “Wife,” and “Munk” in the several hours leading up to the event.

## 8. SHOTSPOTTER TECHNOLOGY.

The city of South Bend utilizes technology called ShotSpotter that actively detects and documents gunshots fired by use of 64 acoustic sensors deployed across the city. Anytime a gun is fired, those acoustic sensors are triggered by the impulsive sound and a triangulation technique is initiated to determine the shot’s approximate location, date, and time. The information is reviewed, logged, and documented into a report by a human operator who confirms the sensors’ detection of gunfire. Once confirmed, the human operator provides law enforcement with the gunfire event’s information. Law enforcement can then use the information to assist in both their response and investigation of gunshots. ShotSpotter technology is utilized in over 100 major cities including Chicago, IL, Cincinnati, OH, and Miami, FL.

A ShotSpotter report was generated for purposes of this investigation. The report indicated that two gunshots were fired on June 16, 2019 at 3:31:35 am and 3:31:36 am. The gunshots’ coordinates and a map of where they were fired showed that both shots occurred at the southern end of the middle row of the Central High Apartments’ parking lot.<sup>4</sup> The report indicated that these were the only shots fired in the area at that time. The report did indicate that on June 16, 2019 from 12:00 am to 6:00 am there were two additional gunshot events in the city. One occurred approximately 2.5 miles southwest of Central High Apartments at 3:22 am and the other approximately 2 miles northwest of the apartments at 12:57 am.

## 9. SURVEILLANCE CAMERAS AT CENTRAL HIGH APARTMENTS AND SURROUNDING AREA.

While processing the scene during the early morning hours of June 16, 2019, MHU officers observed surveillance cameras affixed to the exterior of Central High Apartments. Believing the surveillance footage from those cameras could assist in the investigation, MHU officers contacted the apartment manager over the phone to obtain a copy of the footage. The apartment manager informed the officers that the cameras were inoperable. She further stated that the apartment went through renovations approximately five years ago where the cords to the surveillance cameras were cut and have never been reconnected. On June 19, 2019, MHU officers met with the apartment manager in person where she again reiterated that the system was inoperable and showed them the disconnected surveillance cameras.

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<sup>4</sup> The report indicated a physical address (117S N William St., South Bend, IN) that does not match the marked coordinates on the map provided by the report. The physical address indicated is approximately 1 block south of where the event occurred. Regarding the physical address listed in the report compared to the location established by the coordinates of the shots, the report makes the following disclosure: “The address of 117S N William St. was read from either a database of parcel information provided by the city or county and uploaded into ShotSpotter or is sourced from the satellite map provider. The red dot (referencing the location of the coordinates of the shots on the map) indicates the location of the shooting event as calculated by ShotSpotter in real-time and reported to the ShotSpotter operator.”

On June 17, 2019, MHU officers learned that there were cameras outside the apartment building located at 501 W. Washington St. approximately one-half block southwest of the Central High Apartments' parking lot. The officers also learned that Mr. Logan had been living in that building with a relative.

MHU officers met with the building's Director of Property Management to obtain a copy of the surveillance footage of the early morning hours of June 16, 2019. She informed the officers that the surveillance cameras are activated through motion sensors. The officers had her check the cameras around the time frame of the event and she indicated that no recordings were made during that time. On June 21, 2019, MHU officers contacted the director and asked if they could view the security system themselves. The director gave MHU officers complete access of the security camera system. They verified that there were no recordings around the time of the event. The last motion censored activation of the security cameras prior to the event occurred at 11:13:09 pm on June 15, 2019. All motion activated security segments were reviewed from 8:00 pm on June 15, 2019 to 4:00 am on June 16, 2019. There were no recordings that showed Mr. Logan during that time frame.

On July 22, 2019, Indiana State Police detectives met with the Central High Apartments' property manager to verify that the surveillance system was not operational on June 15-16, 2019. Prior to the interview being conducted, the detectives were shown the areas of the apartment complex where the video surveillance wires had either terminated or been cut. The property manager then verified that the system has been inoperable for approximately five years following the building's renovation after it was sold to new owners. She stated that wires had been severed on the inside and outside of the building during the construction process and were never put back together. Prior to the renovation construction, she stated that the camera system was operational.

In sum, no surveillance videos were located from any location or source that provided any information regarding the present investigation.

#### 10. DEADLY USE OF FORCE.

South Bend Police Department sets forth their "Use of Force" policy in their agency's policy manual. Sgt. O'Neill utilized deadly force by discharging his firearm at Mr. Logan. Based on Sgt. O'Neill's use of deadly force, the following portions of the policy at the time of the event are most pertinent:

- 300.1.1 Definitions

Deadly force- Force reasonably anticipated and intended to create a substantial likelihood of causing death or very serious injury.

- 300.4 Deadly Force Applications

Use of deadly force is justified in the following circumstances:

- (a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes would be an imminent threat of death or serious bodily injury.
- (b) An officer may use deadly force to stop a fleeing subject when the officer has probable cause to believe that the individual has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death, and the officer reasonably believes that there is an imminent risk of serious bodily injury or death to any other person if the individual is not immediately apprehended. Under such circumstance, a verbal warning should precede the use of deadly force, where feasible (I.C. 35-41-3-3).

Imminent does not mean immediate or instantaneous. An imminent danger may exist even if the suspect is not at that very moment pointing a weapon at someone. For example, an imminent danger may exist if an officer reasonably believes any of the following:

1. The individual has a weapon or is attempting to access one and it is reasonable to believe the individual intends to use it against the officer or another.
2. The individual is capable of causing serious bodily injury or death without a weapon and it is reasonable to believe the individual intends to.

In addition to the policy set forth in the manual, Sgt. O'Neill was trained to follow the policy. On June 24, 2019, MHU officers interviewed a SBPD officer in the training and recruiting division. The officer explained that every South Bend Police officer is trained on the department's "Use of Force" policy. The SBPD training officer explained that deadly force should always be met with deadly force and officers are never taught to meet a deadly force threat with a less lethal approach. The training officer also said that if a deadly threat deescalates, the officer can then transition to a less lethal option. He stated that an edged weapon is a deadly weapon and should be met with deadly force. Lastly, the training officer described the "twenty-one foot rule" that was taught to SBPD officers. He explained that an officer can be charged at from a person who is twenty-one feet away or closer without the officer having enough time to react and pull their weapon to engage.

## 11. USE OF BODY-WORN CAMERAS.

As uniformed members of the South Bend Police Department, Sgt. O'Neill and the other officers who responded to the event at the Central High Apartments' parking lot were each equipped with agency issued body-worn cameras. SBPD sets forth their policy on body-worn devices in their agency's policy manual. The pertinent portions of the policy at the time of the event were as follows:

- 424.6 Activation of the Recorder

This policy is not intended to describe every possible situation in which the recorder should be used, although there are many situations where its use is appropriate. Members should activate the recorder any time the member believes it would be appropriate or valuable to record an incident.

The recorder shall be activated in any of the following situations:

- (a) All enforcement and investigative contacts including stops and field interview situations (including assisting/back-up officers)
- (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops (including assisting/back-up officers)
- (c) Self-initiated activity in which an officer would or should normally notify Communication Center
- (d) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording

Members should remain sensitive and respectful to the dignity of all individuals being recorded and exercise sound discretion to respecting privacy by discontinuing recording whenever it reasonably appears that such privacy may outweigh any legitimate law enforcement interest in recording. Requests by member of the public to stop recording should be considered using this same criterion. Recording should resume when privacy is no longer at issue unless the circumstances no longer fit the criteria for recording.

At no time is a member expected to jeopardize his/her safety in order to activate a portable recorder or change the recording media. However, the recorder should be activated in situations described above as soon as reasonably practicable.

- 424.6.2 Cessation of Recording

Once activated, the portable recorder should remain on continuously until the member reasonably believes that his/her direct participation in the incident is complete or the situation no longer fits the criteria for activation. Recording may be stopped during significant periods of inactivity such as report writing or other breaks from direct participation in the incident.

The body-worn cameras worn by the SBPD officers have a mute setting that is controlled by the person wearing the camera. When activated, the video portion continues to record but no



audio can be heard. The SBPD policy makes no reference to when an officer should or should not activate his/her mute setting.

Additionally, the SBPD body-worn cameras have “pre-event” recording capabilities meaning the camera will make a recording for a specific period of time prior to the camera being manually or automatically turned on. After contacting the body-worn camera manufacturer, the State was informed that the department has complete autonomy to set the pre-event recording period ranging from no recording to 2 minutes. At the time of the shooting, SBPD’s body-worn cameras were set to make no recording prior to being manually or automatically initiated.

When interviewed by Indiana State Police detectives, Sgt. O’Neill explained that he believed the body-worn camera could either be manually activated or would turn on automatically under three different circumstances. The three automatic circumstances were 1) when the officer initiated his/her red and blue emergency lights and opened the vehicle’s door, 2) drove the vehicle over a certain high-rate of speed, and/or 3) when the camera laid flat for a certain period of time.

Sgt. O’Neill’s body-worn camera was not activated when he fired two shots at Mr. Logan one second apart at 3:31 am. Prior to the event, Sgt. O’Neill’s body-worn camera wasn’t manually or automatically initiated until he manually turned it on at 3:33:03 am. A summary of Sgt. O’Neill’s body-worn camera recording is as follows:

- Once initiated, Mr. Logan was standing and making groaning type noises while being secured by Officers Canarecci and Lindzy. The officers tried to determine where he was shot and found an injury to his torso while Sgt. O’Neill stated, “guy fucking threw that knife at me man.”
- Additional officers began to arrive on scene. At approximately 3:34 am, Officer Knepper asked, “you think it’s best for us to just load and go with him?” Sgt. O’Neill responded, “yea might as well, throw him in the car, just get him right to the hospital.”
- Mr. Logan was led to Officer Knepper’s car parked at the southern edge of the parking lot to be taken to the hospital.
- At 3:34:38 am, another officer asked Sgt. O’Neill about his status. Sgt. O’Neill responded, “yea fucker threw that knife at me, he’s coming at me with the knife and I’m like drop the knife then he fucking throws it at me, yea he fucking threw the knife at me so I fucking shot him.”
- At approximately 3:35 am, officers left the scene with Mr. Logan headed to the hospital. Sgt. O’Neill is speaking with officers. At approximately 3:36 am, Sgt. O’Neill started to explain to the officers the circumstances that led to Mr. Logan’s shooting and how and where he was hit by Mr. Logan’s knife.

- At approximately 3:37 am, Officer Canarecci stated, “I’ll stay here and make sure this stuff doesn’t move I guess.” Officer Canarecci made this statement while standing directly behind the black Honda Civic and items of evidence were seen lying in the area.
- At 3:39:04 am, Sgt. O’Neill manually muted his body-worn camera while speaking with Officer Canarecci. He remained on the scene appearing to speak with other officers. At 3:39:21 am, Officer Canarecci manually muted his body-worn camera while still speaking with Sgt. O’Neill. Officer Bilinski’s and Officer Ryan’s body-worn cameras were muted throughout the entirety of them being present on the scene.
- At 3:47:24 am, Sgt. O’Neill briefly unmuted then quickly muted his body-worn camera again.
- At 3:53:03 am, Sgt. O’Neill manually shut his body-worn camera completely off.

When asked by the Indiana State Police detectives why his body-worn camera wasn’t on at the time of the shooting, Sgt. O’Neill stated:

“At the time, you know, the policy was different. It’s not like the general order that’s out now. So, for low-level crimes- something like somebody going through vehicles- it wasn’t required...So when I heard it dispatched, to me it’s a low-priority call. It’s just something that most of the time; we get there- the guy’s already gone. You know- anyone who’s going through cars. So, when I pull onto the street, uh, Colfax, uh, where all this took place, I called that I was on scene, but it, you know, I would have had to have turned it on on Colfax- a block away- and have it on filming my steering wheel as I was driving through the parking lot and, uh, because at the time I saw him, everything happened so quickly, I did not turn it on. Uh, but yeah, at the time, it wasn’t required, and it just was a low-priority call... You know, uh, so I just sort of assumed that there probably wasn’t going to be anyone there and didn’t turn it on.”

When asked why he eventually turned his body-worn camera on, Sgt. O’Neill stated:

“...I start thinking “Holy Shit!” This went from being a guy rummaging through cars to, I just fired my pistol for the first time in my whole career. Uh, so I turned the body cam on, cause I’m like, you know. And, if, if I could go back, but at the time, it just, for a low, low priority call like that, it didn’t make sense to turn it on, and it wasn’t required...Uh, but my thinking then was, you know, like I said, “Shit! I need to turn this on.” I, I don’t, it was kind of like, I wish it would’ve been on. This should’ve been on, but, there’s no way I could’ve known. No way I could’ve known it was going to turn into that. So, I just thought, I better get this on and record as much as I can.”

When asked why he muted his body-worn camera, Sgt. O'Neill stated:

"...it was kind of one of those things where the, the suspect was already gone. The event was over, and that's something that had been done, it was pretty common practice for us to mute the camera when it was over. So, you could look back at thousands of videos, and they're muted pretty frequently...And, the idea is just that, you know, uh if you and I go to uh, any kind of scene and something happens, and then it's done, suspect's gone, there's nothing there that's going to be used in the prosecution or whatever, and we're going to stand there and bullshit, uh we might mute it. Now, we'll leave the camera run. Sometimes, we turn it off. We might leave it run, so that if, you know something unanticipated happens, we can get the volume back right away, but there's a continuous video file of it..."

Additional SBPD officers who arrived on scene were also wearing body-worn cameras. As no other officers were at the scene at the time of the shooting, no officer has a recording of the event. The other officers' recordings show Mr. Logan bleeding from his torso while standing behind the black Honda Civic and white Subaru, being loaded into the back of Officer Knepper's police vehicle, being driven to the hospital, then taken to the emergency department of the hospital. Additionally, some of the officers' body-worn camera recordings show the officers securing and/or processing the scene. Officer Canarecci's body-worn camera recordings show that he indicated he would remain on the scene to ensure the evidence in the parking lot was preserved.

## 12. MR. LOGAN'S ACTIVE ARREST WARRANT AT TIME OF EVENT.

In 2008, Mr. Logan pled guilty to Dealing in Cocaine or a Narcotic Drug, a Class A Felony in St. Joseph County Superior Court (Cause No. 71D03-0709-FA-000037). Pursuant to a plea agreement, he was sentenced to 28 years in the Department of Corrections with no probation. On September 11, 2012, an agreed order was entered modifying Mr. Logan's sentence to 23 years in the Department of Corrections followed by 5 years suspended to probation. Mr. Logan was released from the Department of Corrections in June of 2018 and placed on probation with an expected probation release date of June 25, 2023. On August 28, 2018, a Petition to Revoke Probation and/or Placement was filed by the St. Joseph County Prosecutor alleging that Mr. Logan had violated the terms of his probation. On August 29, 2018, St. Joseph Superior Court issued an order for the arrest of Mr. Logan and a bench warrant was issued.<sup>5</sup>

On June 16, 2019, the bench warrant issued for the arrest of Mr. Logan was still active and had not been served. Upon its issuance, Mr. Logan's warrant was public record.

There is no evidence to indicate Sgt. O'Neill was aware of Mr. Logan's active arrest warrant. Further, the evidence indicated that Sgt. O'Neill did not know who he was engaging with on June 16, 2019 until Mr. Logan was identified by way of his fingerprints.

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<sup>5</sup> This information is only provided because it may help to explain why Mr. Logan acted as he did when confronted by a uniformed officer.

### 13. INDEPENDENT EXPERT'S REVIEW OF EVIDENCE AND FINDINGS.

As part of its investigation, the Special Prosecutor consulted with an independent expert. This case was reviewed by Dr. William S. Smock, an expert in the fields of emergency medicine, forensic medicine, gunshot wounds, and the investigation and reconstruction of officer-involved shooting incidents, to assist in the examination of the case's forensic and medical issues. Dr. Smock is an emergency medicine and forensic fellowship trained physician with more than 30 years of experience in the forensic evaluation of injuries and the analysis of injury causation. He presently holds positions as a Police Surgeon, a Professor of Emergency Medicine, Medical Advisor to the FBI and an Assistant Medical Examiner with the Kentucky Medical Examiner's Office giving him extensive training and experience in emergency treatment, investigation and reconstruction of injuries sustained in traumatic incidents, including the investigation of officer-involved shootings. Additionally, he has treated and evaluated thousands of patients, both fatally and not-fatally injured, who have experienced the physiological consequences of penetrating trauma, including gunshot wounds. Lastly, Dr. Smock has been previously accepted in the United States in both federal and state courts as an expert in the areas of forensic medicine and emergency medicine, and has written and lectured extensively on the forensic evaluation and interpretation of gunshot wounds and the reconstruction of officer-involved shootings.

Based on his education, experience, and review of the evidence, Dr. Smock issued a report on December 23, 2019 of his expert opinions regarding the forensic and medical issues of the officer-involved shooting of Mr. Logan. Dr. Smock's opinions within a reasonable degree of medical and scientific certainty were as follows:

- Mr. Logan sustained a penetrating gunshot wound to the right upper abdomen on 6/16/19 when he was shot by Sgt. O'Neill of the South Bend Police Department.
- The range-of-fire associated with Mr. Logan's penetrating gunshot wound to the right upper abdomen is distant/indeterminate (greater than 4 feet).
- Mr. Logan was struck by one of the two 9mm rounds discharged by Sgt. O'Neill as Mr. Logan advanced toward him armed with a deadly weapon, a sharp-edged knife.
- The wound path of the bullet which entered Mr. Logan's right upper quadrant traveled from anterior to posterior, right to left and superior to inferior. After perforating the liver, the bullet came to rest in the soft tissues of the back at the T2 level. The wound path is consistent with Sgt. O'Neill's statement that Mr. Logan was advancing toward him.
- The bullet trajectory is downward at approximately 30 degrees. The trajectory is consistent with Mr. Logan being slightly bent forward, toward Sgt. O'Neill.
- The Gerber knife brandished and thrown by Mr. Logan is a dangerous sharp-edged weapon capable of causing serious physical injuries and death.

- The Gerber knife brandished and thrown by Mr. Logan is capable of penetrating Kevlar body armor.
- Sgt. O'Neill sustained a pattern abrasion to his left forearm. The abrasion is consistent with being struck by the serrated edge of the Gerber knife thrown by Mr. Logan.
- The Gerber knife thrown by Mr. Logan at Sgt. O'Neill was reportedly stolen from within a vehicle in the area of the shooting.
- Mr. Logan was impaired and under the influence of alcohol when he was shot by Sgt. O'Neill on 6/16/19.
- The decision by SBPD Officers to "load and go" and transport Mr. Logan in a police vehicle to the Memorial Hospital of South Bend provided Mr. Logan with the optimal chances for survival. The shorter the time period from injury to the operating room, the lower associated mortality from penetrating trauma.
- The use of deadly force by Sgt. O'Neill was justified based upon the threat and imminent danger presented by the sharp-edged knife in the right hand of Mr. Logan.
- He agreed with the findings and opinions of Dr. D.L. Wolfe's forensic autopsy.

### LEGAL DISCUSSION

When evaluating whether a person's conduct rises to criminal liability, prosecutors focus on a fundamental question: whether sufficient, admissible evidence exists to obtain and sustain a conviction for a criminal offense. The State must determine, in every case, whether it can meet its strict and heavy burden of proving guilt "beyond a reasonable doubt". See *In re Winship*, 397 U.S. 358 (1970); *Winegeart v. State*, 665 N.E.2d 893 (Ind. 1996).

Constitutional due process entitles every criminal defendant to a presumption of innocence. This presumption remains unless and until the State proves each and every element of a criminal charge beyond a reasonable doubt. See U.S. Const. Amend. XIV; *Christoffel v. United States*, 338 U.S. 84, 89 (1949) ("An essential part of a procedure which can be said fairly to inflict punishment is that all the elements of the crime charged shall be proved beyond a reasonable doubt.")

The presumption of innocence further requires the State to *affirmatively disprove* any and all legal justification(s) or defense(s) to the crime charged. See e.g. *Wash v. State*, 456 N.E.2d 1009 (Ind. 1983) (requiring prosecutors to disprove self-defense beyond a reasonable doubt.) Therefore, the State is ethically required to act in good faith and determine beforehand whether sufficient admissible evidence exists to overcome a legal defense. See e.g. National District Attorney's Association, "National Prosecution Standards" Section 4-2.2 (3d 2009) ("A prosecutor should file charges that he or she believes adequately encompass the accused's

criminal activity and which he or she reasonably believes can be substantiated by admissible evidence at trial.”)

The State must consider the nature and quality of all the evidence obtained in an investigation. Further, the State must determine whether (1) such evidence is likely admissible at trial; (2) that evidence is strong enough to prove *each and every* element of a criminal charge and (3) that evidence is strong enough to *disprove* any legal defense(s) that are likely to be offered by a criminal defendant at trial.

Indiana law recognizes that a person’s use of force—even deadly force—may be legally justifiable in specific circumstances. Specifically, “[a] person is justified in engaging in conduct otherwise prohibited if he has legal authority to do so.” I.C. 35-41-3-1. The law permits all citizens—including police officers—to use deadly force in specific self-defense purposes. *See* I.C. 35-41-3-2. Further, Indiana law grants explicit, additional authority to police officers to use deadly force in the scope of their official duties. *See* I.C. 35-41-3-3. Together these statutes provide multiple, related legal defenses that are relevant in any criminal trial regarding a police officer’s use of deadly force against another person. Therefore, the State must consider these potential defenses when evaluating the evidence in a police-involved shooting.

#### A. INDIANA LAW AND SELF-DEFENSE.

Indiana citizens are afforded a “robust” right to self-defense and “have a right to defend themselves and third parties from physical harm and crime.” I.C. 35-41-3-2(a). The right to self-defense applies to everyone, including police officers. I.C. 35-41-3-3(f) (“a law enforcement officer who is a defendant in a criminal prosecution has the same right as a person who is not a law enforcement officer to assert self-defense under I.C. 35-41-3-2.”)

Indiana’s self-defense law states, “[n]o person...in this state shall be placed in legal jeopardy of any kind whatsoever for protecting the person...by reasonable means necessary.” I.C. 35-41-3-2(c). A person’s use of deadly force is justified if “the person reasonably believes that the force is necessary to prevent serious bodily injury to the person...or the commission of a forcible felony.” *Id.* Additionally, the person has no legal “duty to retreat.” *Id.*

The legislature has broadly defined relevant terms related to self-defense to embrace a wide range of potential conduct. Under the law, “deadly force” means any “force that creates a substantial risk of serious bodily injury.” I.C. 35-31.5-2-85. A “serious bodily injury” is any bodily injury that creates a “substantial risk of death” or “serious permanent disfigurement, unconsciousness, extreme pain, permanent or protracted loss or impairment of the function of a bodily member or organ, or loss of a fetus.” I.C. 35-31.5-2-292. Lastly, a “forcible felony” is any felony that involves either the “use or threat of force against a human being” or “imminent danger of bodily injury to a human being.” I.C. 35-31.5-2-138.

Indiana Courts have established that self-defense provides a “complete defense” to conviction. *See Hart v. State*, 93 N.E.3d 803 (Ind. Ct. App. 2018) (parental privilege and self-defense are complete defenses). To claim self-defense, a defendant only needs to show “he or she was in a place where he or she had the right to be, acted without fault, and was in reasonable fear or apprehension of death or great bodily harm.” *Miller v. State*, 720 N.E.2d 696, 699-700 (Ind. 1999).

Once a defendant invokes self-defense, the State bears the burden of *disproving* the defense beyond a reasonable doubt. *Id.* at 700. Generally, the issue requiring the most scrutiny is whether the person's belief was reasonable. A defendant's reasonable belief must be evaluated both subjectively and objectively. *Little v. State*, 871 N.E.2d 276, 279 (Ind. 2007). "The phrase 'reasonably believes,' as used in the Indiana self-defense statute, requires both subjective belief that force was necessary to prevent serious bodily injury, and that such actual belief was one that a reasonable person would have under the circumstances." *Id.*

In the present case, the question is whether Sgt. O'Neill reasonably believed that deadly force was necessary to prevent Mr. Logan from inflicting serious bodily injury or a forcible felony against him. Specifically, can the State prove beyond a reasonable doubt that Sgt. O'Neill's belief *was not reasonable* in believing that deadly force was necessary to prevent serious bodily injury or the commission of a forcible felony against him.

Analyzing whether a Defendant's beliefs were reasonable requires the State to consider "what a reasonable person would believe if they were standing in the shoes of the defendant." *Washington v. State*, 997 N.E.2d 342, 349 (Ind. 2013). Thus, the evaluation of a defendant's belief that he was entitled to act in self-defense is determined from the point in time at which the defendant takes arguably defensive action. *Henson v. State*, 786 N.E.2d 274, 278 (Ind. 2003). Any belief must be "supported by evidence that the alleged victim was imminently prepared to inflict bodily harm on the defendant." *Id.*

## B. INDIANA LAW AND USE OF FORCE RELATING TO ARREST OR ESCAPE.

In addition to self-defense, Indiana law provides further legal justification to police officers who use deadly force when acting in the scope of their official duties. Under I.C. 35-41-3-3(b), "a law enforcement officer is justified in using reasonable force if the officer reasonably believes that the force is necessary to effect a lawful arrest." Further, an officer is permitted to use deadly force when he has "probable cause that deadly force is necessary" to either "prevent the commission of a forcible felony; or to effect an arrest of a person who the officer has probable cause to believe poses a threat of serious bodily injury to the officer or a third person." I.C. 35-41-3-3(b)(1). As with self-defense, this statute imposes no duty to retreat, however an officer must give warning, "if feasible" to the "person against whom deadly force is to be used." I.C. 35-41-3-3(b)(2).

Although Indiana state courts have not analyzed I.C. 35-41-3-3(b) in the context of a criminal prosecution of a police officer, both Indiana state courts and federal district courts in Indiana have routinely analyzed this statute in excessive force claims involving police officers. *See O'Bannon v. City of Anderson*, 733 N.E.2d 1 (Ind. Ct. App. 2000); *Estate of Williams v. Ind. State Police*, 26 F. Supp. 3d 824 (S.D. Ind. 2014); *Rincon v. United States*, No. 2:10-CV-2682012 U.S. Dist. LEXIS 76301, 2012 WL 1981725 (N.D. Ind. 2012). Such case law informs our understanding of how this specific defense would likely function in the context of a criminal prosecution and its related appeals.

The United States Supreme Court has determined that all claims of excessive force by police officers are evaluated within the framework of the Fourth Amendment to the United States Constitution. *Graham v. Connor*, 490 U.S. 386 (1989). Therefore, Indiana courts are bound to

follow the *Graham* standard. *O'Bannon v. City of Anderson*, 733 N.E.2d 1, 3 (Ind. Ct. App. 2000).

*Graham* advises that a thorough inquiry requires a fact-finder to consider whether a belief was objectively reasonable under the circumstances as would be understood by a "reasonable officer on the scene." *Graham*, 490 U.S. at 396. This analysis should occur as if it were done in real time to mitigate the potentially distorting effects of hindsight. *Graham* warns against evaluating an officer's beliefs purely in retrospect, long after an officer has been forced to make "split-second judgments" in "tense, uncertain, and rapidly evolving" circumstances. *Id.* at 396-397.

Instead, *Graham* requires that courts must consider whether the officer's use of force was objectively reasonable at the time *force was employed*, in light of all known facts, including "the severity of the crime involved, whether the suspect is an immediate threat to officers, and whether the suspect is attempting to resist or evade arrest." *O'Bannon v. City of Anderson*, 733 N.E.2d at 3.

The State must consider *Graham*'s standard in evaluating whether it was objectively reasonable for Sgt. O'Neill to believe he had probable cause to use deadly force against Mr. Logan. In doing so, the State must weigh any evidence that probable cause existed to demonstrate Mr. Logan would have either committed a forcible felony or inflicted serious bodily injury to Sgt. O'Neill.

The United States Supreme Court recognizes that probable cause "is not a high bar." *Kaley v. United States*, 571 U.S. 320, 338 (2014). Rather, probable cause is a "fluid" concept that requires only a probability or substantial chance of criminal activity, not an actual showing of such activity. *Illinois v. Gates*, 462 U.S. 213, 232 (1983).

### C. LEGAL AND FACTUAL ANALYSIS OF THE DEATH OF MR. ERIC LOGAN.

At all times relevant to the shooting death of Mr. Logan, Sgt. O'Neill was both an Indiana citizen and police officer who was responding to a call for service in his official capacity. Therefore, O'Neill would be entitled to claim both a personal right to self-defense and the legal authority to use deadly force in the performance of his official duties.

The State's investigation into Mr. Logan's shooting death has revealed considerable evidence relevant to both overlapping justification defenses. In light of that evidence, the State analyzed whether sufficient admissible evidence exists that would overcome those defenses at trial. Regardless of whether that evidence is evaluated under the framework outlined in either I.C. 35-41-3-2 or I.C. 35-41-3-3, we conclude that we cannot disprove either defense beyond a reasonable doubt. Since there is no reasonable likelihood that any potential homicide charged could be substantiated at trial, the State concludes that criminal prosecution is not possible.

In reaching this conclusion, the State evaluated whether it could prove beyond a reasonable doubt that it was *unreasonable* for Sgt. O'Neill to believe, at the moment he fired the fatal shots, deadly force was necessary to prevent Mr. Logan from inflicting serious bodily injury or committing a forcible felony against him. The State cannot prove beyond a reasonable doubt Sgt.



O'Neill's purported belief that Mr. Logan was going to harm him was unreasonable, based on the following salient facts:

- Following a 911 call, South Bend Police Officers received notice of a person in dark clothes possibly breaking out car windows at Central High Apartments' parking lot. Sgt. O'Neill responded to the scene in the course of his official duties wearing a full uniform and driving a marked police car;
- Sgt. O'Neill observed Mr. Logan leaning into the interior of a parked black Honda Civic in the parking lot. The car did not belong to Mr. Logan nor did he have permission to be in the vehicle;
- As Mr. Logan exited the vehicle, Sgt. O'Neill observed Mr. Logan holding a woman's beige-colored purse, consistent with reports that cars were being broken into. A woman's beige-colored purse was recovered from the scene and identified as belonging to a car break-in victim parked at Central High Apartments' parking lot;
- Upon Mr. Logan's exit from the vehicle, Sgt. O'Neill immediately observed Mr. Logan holding a large fixed blade knife and Mr. Logan's right-hand bleeding and holding a napkin. A Gerber brand fixed blade knife was recovered from the scene and identified as having been stolen from a victim's car parked approximately one-block southwest of Central High Apartments' parking lot. The recovered knife was consistent with Sgt. O'Neill's description and its tip was broken off, consistent with it having been used to force entry into vehicles. A white tissue type material was located in close proximity to the black Honda Civic and Sgt. O'Neill's police vehicle;
- Sgt. O'Neill ordered Mr. Logan to drop the knife and Mr. Logan failed to comply. The order to drop the knife was made when Sgt. O'Neill and Mr. Logan were approximately 8 to 10 feet away from each other;
- Mr. Logan advanced toward Sgt. O'Neill with a knife in his hand within range of launching an attack on Sgt. O'Neill. Sgt. O'Neill back-pedaled away from Mr. Logan almost running into his parked police vehicle and ordered Mr. Logan to drop the knife multiple additional times. Mr. Logan continued to advance on Sgt. O'Neill despite multiple verbal orders to stop. Sgt. O'Neill indicated that he was in fear for his life and believed Mr. Logan was advancing toward him with the knife with the intent to harm him. Mr. Logan's actions toward Sgt. O'Neill are likely to be considered possible forcible felonies;
- Mr. Logan was advancing toward Sgt. O'Neill at the time of the shooting. An independent expert determined that the bullet's wound path is consistent with Sgt. O'Neill's statement that Mr. Logan was advancing toward him. Further, an independent expert determined that the bullet's downward trajectory is consistent with Mr. Logan being slightly bent forward, toward Sgt. O'Neill;

- Sgt. O'Neill fired two rounds from his police issued pistol in immediate succession to prevent Mr. Logan from advancing with the knife. Mr. Logan threw the knife at Sgt. O'Neill, striking him the left forearm. Sgt. O'Neill fired only when Mr. Logan was armed with a knife. Sgt. O'Neill no longer perceived Mr. Logan as a threat after Mr. Logan threw the knife and stopped advancing. The knife's serrated edge was determined by an independent expert to be consistent with the abrasion on Sgt. O'Neill's arm;
- ShotSpotter technology revealed only 2 rounds were fired in this location, both occurring within a fraction of one second. Sgt. O'Neill's firearm and additional ammunition were collected as evidence with all additional ammunition accounted for;
- An autopsy revealed that Mr. Logan was impaired with a .143 BAC at the time of the shooting. Further presumptive tests indicated possible presence of cocaine and marijuana in Mr. Logan's system;
- Forensic analysis of a phone recovered from the scene and identified as Mr. Logan's revealed multiple images of car radios and entertainment systems outside of vehicles and in household settings, an outgoing call made to "Will Car Man" just three hours prior to the shooting, and prior conversations related to cars that don't belong to either phone user. This analysis, coupled with Mr. Logan being located leaning into someone else's car and in possession of items taken from other people's cars, supports the likelihood Mr. Logan was engaged in the breaking and entering of vehicles to steal from them;
- The forensic analysis of DNA, latent fingerprints, and/or any additional trace evidence provided no evidence to refute any facts found during the investigation;
- Mr. Logan had an active arrest warrant for a probation violation that could have resulted in a relatively lengthy incarceration period. Further, Mr. Logan was potentially subjected to an additional period of incarceration based on allegations of his unlawful entry into motor vehicles;
- The knife held by Mr. Logan was a deadly weapon. An independent expert's evaluation concluded that the knife recovered was a deadly weapon capable of inflicting serious bodily harm to persons and death and capable of penetrating Sgt. O'Neill's body armor;
- The "load and go" ordered by Sgt. O'Neill was appropriate. An independent expert determined the decision to immediately transport Mr. Logan to the hospital increased the likelihood of Mr. Logan's survival;
- At 6 feet 2 inches tall and 269 pounds, Mr. Logan was considerably larger in physical size than Sgt. O'Neill;

- SBPD Officers are trained that an edged weapon is a deadly weapon and should be met with deadly force. Further, they're trained to meet deadly force with deadly force;
- When dealing with knife-armed subjects, SBPD officers have been trained that there is a "twenty-one foot rule," meaning an officer can be charged at from a person who is twenty-one feet away or closer without the officer having enough time to react and pull their weapon to engage; and
- An independent expert has determined Sgt. O'Neill's use of force to be "justifiable" in light of the facts he reviewed.

Based on this evidence, the State has determined that it cannot prove beyond a reasonable doubt that it was *unreasonable* for Sgt. O'Neill to believe deadly force was necessary to prevent Mr. Logan from inflicting serious bodily injury or committing a forcible felony against him. Rather, evidence exists supporting two legal justification defenses of the shooting. Following an exhaustive investigation and analysis of the facts and the law, the State concludes that criminal prosecution of Sgt. Ryan O'Neill for the shooting death of Mr. Eric Logan is not possible.