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August 16, 2011

Chris Connors, Esquire

Senior Deputy District Attorney

Office of the District Attorney

Allegheny County Court House

Grant St, Pittsburgh, Pa.

RE: Jordon Miles Case

Dear Mr. Connors,

With regard to the aforementioned case you asked me to review certain materials and render opinions with regard to the official police response, investigative operations and tactics, force options and procedures utilized and demonstrated by Pittsburgh City Police officers Michael Saldutte, Richard Ewing, and David Sisak, with regards to an encounter with a Jordan Miles, on the night of January 12, 2010..

Please accept this letter as my report for the requested opinions on the matter. I reserve the right to amend this report should any additional information become available at any time.

### **Qualifications**

I am a retired Pennsylvania State Police Officer with approximately 38 years of service to the Commonwealth of Pennsylvania. The Pennsylvania State Police is the oldest and largest State Constabulary in the United States with a rich history of exemplary service to the Commonwealth, maintaining the peace and protection of the majority of geographical Pennsylvania. The Department has been instrumental for over 100 years in responding to and effectively managing any crisis or dangers that have confronted the citizens in unique as well as day to day operations of this great Commonwealth.

As a career Pennsylvania State Trooper I served in a variety of ranks and assignments giving me a realistic, professional and first hand perspective of legal, tactical and procedural issues that sworn police officers are tasked with while in the performance of carrying out their sworn duty to attempt to intervene for the protection of society from illegal, disrupting and dangerous circumstances.

For over twenty two years of my State Police Career I was a Pennsylvania State Police and Pennsylvania Municipal Police Officer *certified instructor* and trainer for police officers. I have trained thousands of

Pennsylvania State Police officers and Municipal Police officers as well law enforcement and military personnel from a variety of state, county and United States enforcement and Armed Forces agencies.

As a result of my professional experience and training I have been designated as a Use of Force Expert by the Pennsylvania State Police for the Department since 1996 and up and until my retirement from the Department on April 16<sup>th</sup>, 2010.

Please find my Curriculum Vitae attached containing my complete education and professional training and experience, as well as a list of prior cases where I have qualified and testified under oath as an expert.

My fee schedule includes a minimum hourly rate of \$150.00 (one hundred and fifty dollars) per hour.

I was contracted for this amount rate without regard to my opinion being favorable to the client.

### **Materials Reviewed**

In preparation of this report I have reviewed the following case- related materials.

1. Title 18, Pennsylvania Crimes Code, Sections 501, 505 and 508 of Chapter 5, 2009 Edition, Pennsylvania State Police Criminal Justice Handbook, published by Lexis Nexis.
2. Case Law including Terry v. Ohio, 392 US page 1 (1968) and Graham v. Connor, 490 US page 386 (1989).
3. Reports and Materials supplied by the Office of the Allegheny County District Attorneys' Office to Include the following:
  - a. FBI Interviews of the Following
    - i. Charles Henderson
    - ii. Michael Saldutte
    - iii. Richard Ewing
    - iv. David Sisak
    - v. Rashall Brackney
    - vi. Robert Lee
    - vii. Tim OConnor
    - viii. Monica Wooding
    - ix. Patricia Coleman
    - x. Joy Caldwell
    - xi. Jamiah Anderson

- xii. Candice Foster
- xiii. Ryan Allen
- xiv. Earl Jones
- xv. Terez Miles
- xvi. A Ron Roberts
- xvii. James Taylor
- xviii. Anthony Negron
- xix. Edward Jones
- xx. Sean Castapheny
- xxi. Shirley Knapp
- xxii. Susan Leri
- xxiii. Kenneth Urban
- xxiv. David Onyshhko
- xxv. Chrissan Pierce
- xxvi. John Busko
- xxvii. Mildred Jenkins
- xxviii. Allen Baker
- xxix. Hart Coleman
- xxx. Yolanda Roberts
- xxxi. Missy Badamo
- xxxii. Thomas Martin
- xxxiii. Thomas Penn
- xxxiv. Cheryl Watson
- xxxv. Jordan Miles

- 4. Preliminary Hearing Transcript: Commonwealth vs. Jordan Miles**
- 5. OMI interview with Jordan Miles**
- 6. City of Pittsburgh Arrest/Summons Report CCR# 9532**
- 7. All available Pittsburgh Police Reports re: this investigation including:**

- a. **Scene Photographs**
  - b. **Medical Records of Jordon Miles**
- 8. **Mobile Crime Unit Report MCU Report # OMI-10-21**
  - 9. **Miscellaneous Reports produced by FBI**

## **SYNOPSIS**

**It is my opinion**, that with regard to this matter, that the actions of Pittsburgh City Police Officers Michael D. Saldutte, Richard L. Ewing Jr., and David M. Sisak, were consistent with accepted law enforcement practices, training and standards in the state of Pennsylvania and that their actions and investigative and arrest procedures, on January 12, 2010, as they encountered suspect Jordan Miles in the vicinity of 7940-7938 Tioga Street, Pittsburgh, Pennsylvania, while being assigned to a pro-active investigative street patrolling unit, in an area of the community that is known for routine serious and violent criminal activity, were “reasonable under the circumstances” that were presented by Jordan Miles and the environmental conditions that existed at the time of the encounter.

## **FACTUAL FINDINGS:**

1. All three Pittsburgh City Police Officers involved in the arrest encounter with subject Jordan Miles, in this case were sworn officers of the Department and scheduled to be on duty and with each other on pro-active patrol on the date and time of the incident at issue.
2. All three of the aforementioned officers, hereafter referred to as PO Saldutte, PO Ewing, and PO Sisak, have undergone the requisite training for Municipal Police Officers in accordance with the Law and the requirements of the Pennsylvania Municipal Police Officers Training Commission under Act 120.
3. PO Saldutte, PO Ewing and PO Sisak, all have a minimum of five years experience with the Pittsburgh City Police Department and are familiar with the investigating policies and police procedures including reporting procedures for the Department.
4. These officers were assigned to a plain clothes, pro-active patrol unit (99 car) in a known high crime area of the community and late in the night hours, approximately 2300 hrs., when they observed a subject, later determined to be a Jordan Miles, standing in an area along side of an occupied residence at 7940 Tioga St., Pittsburgh, Pa.
5. As Miles was observed by patrolling investigators Saldutte and Ewing, he appeared to be attempting to conceal his presence or avoid being seen, in an unlighted area along the left side of the residence.
6. The three officers approached in their Pittsburgh City Police vehicle to the approximate location in the street adjacent to where Miles was standing by 7940 Tioga St., with the intent and purpose of investigating the subject’s (Miles) purpose for being at that location.

7. The location of the suspect Miles, was suspicious to the officers as it would have been to any basic trained investigator for the following reasons:
  - a. It was 11:00 o'clock PM and dark.
  - b. It was an unlighted location in close proximity to an occupied dwelling with no obvious reasonable activity taking place at the time.
  - c. It was near a parked vehicle.
  - d. It was a winter night and extremely cold outside.
  - e. This area of the community is known to the police for continuous serious and violent criminal activity.
  - f. Uniform Crime Reporting for the City of Pittsburgh in 2010 reported 30,164 criminal offenses averaging out to approximately 82 crimes each day within the city limits. 17,108 of those offenses were property crimes.

NOTE: PA UCR reporting actually has PA. Crime activity down by approx. 5% from 2009.

8. The Law provides that police officers are allowed to investigate activity that would amount to "reasonable suspicion" of criminal activity afoot, which could include the aforementioned circumstances at 7 (a – f) for the purpose of attempting or committing a variety of crimes including , loitering and prowling, criminal mischief, trespassing, burglary, theft, robbery, assault and illegal controlled substance abuse and trafficking (all of which have been documented as ongoing criminal activity for the time period by Uniform Crime Reporting).
9. A Reasonable Community expects that its Police Officers assigned to pro-active patrol would engage and investigate suspicious persons or activity under the aforementioned circumstances.
10. Reasonable persons of a community would be expected to co-operate with police officers even in mere-encounter situations in a late night, and dark residential community setting.
11. Persons with criminal intent would not reasonably be expected to fully co-operate with police officers who are investigating suspicious activities within the community.
12. Pittsburgh City Police Officers and inclusive of the three officers involved in this case are experienced with the real potential to encounter violent offenders armed with illegal firearms and other dangerous weapons for the purpose of fulfilling criminal acts against other citizens and police officers encountered.
13. On the initial encounter with Jordan Miles, who walked towards the street from his initial position of observation along the side of the house at 7940 Tioga St, Officer Saldutte exited the passenger side of the (police) vehicle, stood on the passenger side of the vehicle and identified himself as a Police Officer and displayed his badge around his neck. As Miles was

observed to have his right hand in a right front pocket, PO Saldutte told Miles to take his hand out of his pocket, and explain what he was doing in the vicinity of 7940 Tioga St.

- a. Refer to CCR# 9532 submitted by Reporting Officers Ewing and Saldutte.
  - b. Testimony of PO Saldutte, Preliminary Hearing Transcript Commonwealth of Pennsylvania vs. Jordan Miles, Pages 17 and 18.
14. Jordan Miles initial response was to show his hands and state that he did not live here at the residence where he was observed at 11:00 PM, in the cold and dark of night.
  15. When challenged by PO Saldutte to explain his activities at this location he turned away, walked inbound on Tioga as Officers Ewing and Saldutte observed a large heavy object in his right pocket of his coat (waist area).
  16. PO Saldutte told Miles to “stop” as he began to walk towards him.
  17. Believing Miles was involved in criminal activity, and possibly armed PO Saldutte again ordered Miles to Stop.
  18. Miles looked back at Police Officer Saldutte and began running inbound of Tioga St. as he grabbed his right pocket to prevent it from swinging.
    - a. Refer to Page 2 of CCR 9532.
  19. PO Saldutte gave commands “Stop Pittsburgh Police”.
  20. Jordan Miles moved in a definitive direction away from the investigating officers contrary to their lawful commands to “stop”.
    - a. Refer to Page 2 of CCR 9532.
  21. Miles attempted to run but slipped and fell to the ground face first on the front sidewalk of 7940 Tioga St.
  22. The suspicion and concerns for suspect Miles criminal intent escalated for the three officers when Miles dismissively turned away from the identified officer and appeared to have a potential weapon in his right front sagging coat pocket.
  23. Pennsylvania Police Officers are all trained at the basic and advanced courses of officer safety training to be cognizant and observant of the “Traditional Red Zone” of a suspect’s body/anatomy, which includes the waist band area of the person as well as the hands.
    - a. These areas are the primary areas of concern that conceal conventional weapons and firearms that are used to injure police officers in criminal encounters.
    - b. The hands themselves are the number one concern for injury to a police officer so that any place the hand moves to that is not controlled by a police officer is of concern.

24. Miles' blatant disregard for PO Saldutte's inquiry as to his activity in the area combined with his visible bulging right coat pocket and his right hand positioning at the bulge as well as his unauthorized flight away from the officers to avoid further investigation clearly signaled to the officers that something of concern from a community safety standpoint was afoot and that they must move to physically seize suspect Miles and determine the nature of his suspicious and escalating actions.
25. Jordan Miles looked back at Officer Saldutte as walked away and moved his right hand to his right pocket to prevent it from swinging.
  - a. Refer to Page 2 of CCR 9532.
26. As Jordan Miles moved away from the stop location inbound on Tioga the Police Officers immediately noticed that he had a "sagging" right coat pocket, indicating that he had something heavy as a weapon in that pocket. ("Miles right coat pocket was hanging much lower than the left side and the size of the object was pulling his pocket open")
  - a. Refer to Page 2 of CCR 9532.
27. Jordan Miles slipped on ice and snow covered pavement and landed hard, face down.
28. PO Saldutte gave foot pursuit after the fleeing suspect Miles as the PO Ewing and PO Sisak followed in the patrol vehicle inbound on Tioga in the direction Miles was fleeing.
29. When Miles slips and falls on his face on the sidewalk, PO Saldutte gives an additional command to "stop and stay on the ground" which Miles again ignores and tries to regain his upright stance.
30. PO Saldutte closes the "reactionary gap" between himself and the suspect Miles as Miles stands up and grabs Miles at the collar area with his left hand and wraps his (Saldutte's) right hand around Miles right side in an attempt to control the fleeing subject and keep Miles right hand away from the pocket with an apparent heavy object. (Weapon Concern) (Statement to FBI by Saldutte and Hearing Transcript).
31. As PO Saldutte makes contact with Miles he is intentionally struck in the head by Miles right elbow as Miles struggles to get loose and Saldutte is knocked off balance and away from his attempted measures to control the fleeing [potentially armed] suspect. This action by Miles is witnessed and is perceived as an assault on PO Saldutte by PO Ewing and PO Sisak who is now also on foot and pursuing.
32. As Officer Sisak continued the pursuit of Miles he gave the verbal command to Miles to "stop" and announced to Miles, "You're under arrest".
33. PO Sisak then attempted to physically seize the fleeing Miles with the use of his less lethal Department issued TASER. As PO Sisak deploys his TASER towards the fleeing Miles the dart/probes strike Miles in the rear of his coat but there is no effect on Miles from the TASER being observed by Sisak after the deployment.
34. PO Sisak then is able to close the "gap" by running and subsequently tackling the fleeing Miles by shoving him from the rear.

35. Miles and PO Sisak both fall through a set of hedges in the vicinity of 7938 Tioga St., Pittsburgh, Pa.
36. As Officer Sisak attempted to retrieve his handcuffs from a retained position on his person to handcuff Miles who is now on all fours on the ground Miles delivers an intentional kick with his right foot [described in the police report as a donkey style kick] to the right knee and shin area of PO Sisak, disabling a second City Police officer and causing PO Sisak to fall to the ground with injury and in pain.
  - a. Refer to Pittsburgh City Police Report CCR9532, page 3.
37. PO Ewing, who has now exited the drivers position of the City Patrol Unit and joined the foot pursuit, catches up to Miles who is regaining his standing balance again and places him in an "arm bar" hold and utilizing a "foot sweep" technique attempts to put Miles back onto the ground in a prone position for the purpose of handcuffing him.
38. PO Saldutte again joined officer Ewing and as Ewing attempts to hold Miles on the ground Saldutte attempts to gain control of Miles' right hand for handcuffing.
39. PO Saldutte feels a large heavy object in the right side front pocket of Miles' coat which he believes is a gun and "stated [to the other officers] that he believed that Miles was armed"
  - a. Refer to page 3 of CCR#9532.
40. As neither of the two officers , Ewing or Saldutte, were able to get control of Miles arms as he struggled to keep them under his body and in the position of the "Traditional Red Zone", the officers delivered knee strikes to the sides of the body of Miles in an attempt to gain compliance from the actively resisting suspect with the objective of causing pain, distraction from Miles objective to control his own arms and nerve and muscle dysfunction to allow the Officers control of Miles arms and hands for handcuffing control.
  - a. **NOTE: the "Traditional Red Zone" is an area of the suspect's body that is of ultimate "officer safety concern" in any officer - suspect encounter because of the potential for dangerous weapons being concealed in that "easily accessible area of the waist band or clothing. This area is known for concealing conventional weapons like firearms, knives or other implement's that are commonly used as weapons.**
    - i. **The Hands of any suspect are a primary part of the "Traditional Red Zone" because historically they are the primary delivery implement of "Officer Injury" in any confrontation.**
    - ii. **In this case the officers are already aware of a potential weapon being in the right front pocket of the actively aggressive suspect so there is an elevated concern of serious bodily injury to themselves if the "suspect's hands" are not controlled immediately upon contact and he is able to reach that suspected weapon.**
    - iii. **Knee strikes to effector nerves of the suspects anatomy are a technique that the officers are trained to use as a less lethal force option in order to achieve the objective of Control of a combatant or aggressively resisting suspect. The objectivity of knee strikes is three fold. They are designed to**



**cause pain which then encourages or results in the suspect becoming compliant with the commands of the arresting officers. Knee strikes to the effector nerves are also designed to cause a distraction from the focus of the suspects goal, which is to continue resisting or attempting to gain control of a weapon or other implement to facilitate his escape by injury to the arresting officers. The 3<sup>rd</sup> objective of knee strikes to effector nerves is to cause temporary muscle dysfunction {cramping or spasms} which disable the effective use of the muscles by the resisting suspect to further his/her attempts to fight and resist or assault.**

41. PO Saldutte is able to get a handcuff onto the right wrist of Miles during this sequence of force option tactics but then as Miles continues to escalate his struggle immediately loses control of the “now handcuffed wrist” which is affixed with a steel chain and loose swinging steel cuff to the suspect.
  - a. **Note: now the chain and loose handcuff attached to the struggling suspect are of concern because it has the same potential to be used against the officers as a weapon as any other object in the suspects hand would be a weapon.**
42. Miles makes a statement “you’re not taking me to jail, just let me go home”, during this part of the struggle to the officers.
  - a. **This is a statement of intent to resist by Miles and “acknowledgement that he knows he is struggling with the Police”.**
43. As Officers Ewing and Saldutte continue to attempt to regain control of Miles hands, they witness him repositioning his body to roll to his left side and reach for his pocket area where the concern for the weapon is located, with his right hand.
44. Officer Sisak who has now joined the control attempt and aware of the potential for Miles retrieving a weapon with his uncontrolled hands delivers 2 to 3 closed fist strikes to the face and head area of Miles to distract Miles from his aggressively escalating attempts to control his own hands as he reaches for his pocket.
45. Officer Ewing witnessing that PO Sisak’s empty hand strikes have no effect on the aggressively resisting suspect and escalating dangerous circumstances delivers a knee strike to the head area of Miles which immediately results in Miles being “stunned” and “distracted” from his own efforts to resist, and that distraction effectively brought about the gaining of control of Miles’ hands by PO Saldutte for the application of controlling handcuffing.
  - a. NOTE: The total struggle to gain control of Miles and effectively restrain him lasted a little over one minute.
  - b. That struggle which was facilitated by Miles attempts to escape and flee was in an area that was in the stubble of hedges and snow covered rocks on the ground.
    - i. Refer to the photographs submitted of the crime and arrest scene submitted by the Mobile Crime Unit of the City of Pgh, MCU Report Number OMI-10-21

46. Jordan Miles was subsequently searched and determined to have the following items on his person at the time of handcuffing :
  - a. iPod
  - b. Wallet
  - c. Keys
  - d. Mt. Dew (21 ounce ) bottle
    - i. Determined to be the large heavy object of concern in the right front coat pocket.
47. Jordan Miles was then transported by the Pittsburgh City Police to West Penn Hospital where he was examined and treated by Dr. Thomas Martin for tissue swelling and the removal of a piece of stick from between the teeth and lip of Miles.
  - a. MRI examinations revealed no damage other than soft tissue swelling in the right side of the face of Miles.
48. Miles was released to Pittsburgh City Police by Dr. Martin after examination.
49. Miles was lodged in the Allegheny County Jail pending bail.
50. Investigation at the scene revealed that the owner of the property at 7940 Tioga, Monica Wooding, did not know or identify Jordan Miles at the time of the arrest and that he did not have permission to be on or about the premises.

### **My Opinion and Basis**

It is my opinion that on January 12, 2010, Pittsburgh City Police officers Richard Ewing, Badge #4062, Michael Saldutte, Badge # 4026 and David Sisak, Badge # 4018 were dutifully assigned as a special proactive crime prevention unit patrolling in the Homewood area of the City of Pittsburgh, and as such were justified in pursuing an investigation into the reasonable suspicion that a crime could be in progress at or around the location of 7940 Tioga Street, within the jurisdiction of the Pittsburgh City Police, and at approximately 2300 Hrs., (11:00 o'clock PM) at night when the officers observed a suspect "lurking" in the shadow area along the side of the occupied residence at that address.

This particular area of the City of Pittsburgh is known by the Department members to be a haven for serious and violent criminal activity. As a result of crime in this area the Pittsburgh City Police Department has added proactive enforcement patrols in the area to better protect the community residents by intensely investigating and thwarting or stopping would be criminal activity through early intervention and investigation.

It is my opinion that the officers involved in this incident would have “reasonably concluded” that a person standing alongside of a residence at 11:00 o’clock PM, in the dark shadows of that dwelling, on an extremely cold winter night need to be approached and investigated, not only on the suspicion that criminal activity could possibly be afoot in a known “high crime” area, but also to insure the physical safety of the person in question, in light of the severe environmental weather conditions under the circumstances.

It is my opinion that the circumstances that Jordan Miles was a part of, when officers Saldutte, Ewing and Sisak observed him, would have caused another reasonable person to “wonder what he was doing” out on a cold night, at 11:00 o’clock PM in the shadows of an occupied dwelling when no apparent or visible cause for his actions were evident at first sight.

It is my opinion that the officers approaching of the suspect Jordan Miles was “objectively reasonable” and consistent with their Department policy and expectation of employment, as well as with the precedent case law interpretation of Terry v Ohio, in that the reasonableness of their investigatory intercession and questioning of Miles presence and activities at the location and time was consistent with the standards for “reasonable suspicion” of criminal activity afoot, in that it was a dark night, late at night, extremely cold temperature outside, a single person standing for no obvious reason in the shadows and in close concealed proximity of an occupied residence in a known high crime area of the City in which they are dutifully assigned and sworn to prevent criminal activity if possible.

**Note: Pennsylvania Uniform Crime Reporting for the City of Pittsburgh for 2010 (down 5% from the previous year) was listed at 30,164 crimes for the year committed in the Cities Jurisdiction.**

**17,108 of those crimes were property offenses. The City averages 82 crimes a day for that year.**

It is my opinion, as outlined by the Court in Terry v Ohio, that when Officer Saldutte observed what his professional experience and training had caused him to suspect or believe that Miles may be armed because of the observed bulge in his right hand coat pocket {Traditional Red Zone}in addition to his body posture, hand position, and non- cooperative demeanor when approached by identified officers, that for “officer safety” and “community safety” they [officers] needed to further investigate Miles activities and “take necessary measures to determine whether that person is carrying a weapon” **[Terry vs. Ohio HELD 5 (d)]**.

It is my opinion that when Jordan Miles declined to cooperate further and answer PO Saldutte’s question or inquiry as to “why he is sneaking around” at this time of night and in a location that he admittedly did not live at, and then began to leave the scene and away from the encounter location of the “identified City Police Officers” in the middle of their investigation, he is escalating the “suspicion” of criminal activity in the minds of the investigators.

It is my opinion that a reasonable citizen, or one not impaired by intoxicants or mind altering circumstances would be respectful of a police inquiry into neighborhood safety and especially if that

person were actually from the neighborhood and knew, as Miles later purported to investigators, that this Tioga Street area of the city was routinely victimized by criminals including “gangbangers” who would have shot him if he resisted them or fought with them.

It is my opinion that when Officer Saldutte observed the low hanging, bulging pocket of Miles coat on the right front side, and Miles hand move immediately to the vicinity of the pocket in question, as he began his retreat from the encounter with the investigators, that Miles escalated the concern for officer safety and community safety in the minds of the experienced City Police Officers.

**NOTE: Most professional police officers are trained to understand that the majority of people [86%] are right handed with regard to fine motor skills including the handling of firearms or weapons.**

**The Officers are also trained to recognize that most conventional style weapons are carried on a suspects body in the “Tradition Red Zone” which includes the waist band area and pockets that would be in that proximity. If a person is most likely right handed he/she will carry a weapon in the proximity of the right hand.**

It is my opinion that Officer Saldutte, already apprehensive of an unreasonable person, without authorization, leaving scene of a reasonable police inquiry into possible criminal activity, now fears that the same suspect is armed with a deadly weapon.

It is my opinion that Officer Saldutte gave a verbal command of police authority to Jordan Miles to “Stop”.

When Jordan Miles, who was not responding to the commands of Officer Saldutte, slipped and fell on his face on the hard surface of the sidewalk in the vicinity of 7940 Tioga, Officer Saldutte in pursuit again commanded him (Miles) to “stay on the ground”.

It is my opinion that Officer Saldutte intended to seize Miles at this time (as Miles intentionally fled) for continued investigation into the suspected crimes of loitering and prowling at minimum, and subsequently moved across the “gap”, created by Miles flight, to physically control him and determine if he, in fact, was armed with a weapon as now suspected.

It is my opinion that Officer Saldutte’s intention to seize and investigate is in conformance with and consistent with standard police policy, law and case law.

Miles refuses to obey the commands to stay down as Saldutte reaches him and grabs him by his collar area with his left hand as he tries to secure the waist area of Miles with his right hand in an effort to control his flight while minimizing his access to his right coat pocket wherein was contained the suspected weapon.

**NOTE: Terry v Ohio says that “an officer justified in believing that an individual whose suspicious behavior he is investigating at close range is armed may, to neutralize the threat of**

**physical harm, [to himself, partners, community] take necessary measures to determine whether that person is carrying a weapon.”**

**As in “Terry”, it is my opinion in this case, that the officer’s apprehension of Miles and the search of Miles were “minimally necessary” to determine whether Miles was armed, and the intrusion which was made for the sole purpose of protecting himself and others nearby, was confined to ascertaining the presence of weapons and purpose.**

As Jordan Miles attempted to continue his escape in bound on the sidewalk of Tioga he struck officer Saldutte in the right side of his head with his (Miles) right elbow in a rearward strike.

This strike to Saldutte’s head effectively stunned Saldutte and dislodged him from his attempted control hold on Miles. As Saldutte lost his balance and partially fell to a position on the sidewalk supporting himself on his hand, Officer Sisak took over the pursuit of Miles.

**NOTE: Officer Saldutte intended to keep Miles on the ground for Handcuffing and searching purposes at the time he commanded him to “stay on the ground and moved to control him.**

**Officer Saldutte knows that if Miles regains his balance and footing he is not only more of a flight risk but also more of a danger to the investigating and arresting officers who are forced to close the “reactionary gap” in order to take control of Miles.**

**When Miles is on his feet he has a much better position to fight or “target” the officers as they approach.**

Officer Sisak who was originally a passenger officer in the right rear seat of the patrol unit was able to exit the patrol unit in the vicinity of 7940 Tioga and assist in the pursuit of Jordan Miles as he moved inbound on Tioga.

It is my observation that when Officer Sisak observed Officer Saldutte being struck and dislodged from his attempted control hold of Miles that he (Sisak) perceived the situation to be escalating now into an assault on a fellow officer for the purpose of Miles fleeing a crime scene.

It is my opinion that the Law under Title 18, Section 508, of which Sisak would have been trained in as a basic police officer, authorizes and allows Officer Sisak to use any force which he believes to be necessary to effect the arrest of a resisting suspect, to effect the arrest, defend himself and defend another from bodily harm while making the arrest. He would also have been trained that the use of Deadly force was not justified unless specific circumstances existed to create a significant threat of serious bodily injury or death to himself or another.

Officer Sisak announced as he ran that he was “Pittsburgh City Police” and that Miles should “stop” and additionally commanded to Miles “you’re under arrest”.

Officer Sisak then attempted to use a less lethal force option known as a TASER or Electronic Immobilization Device, to apprehend Miles by deploying the TASER darts/probes and targeting the back of Miles as he again fled from the encounter with Saldutte.

**NOTE: The technology of the EID unit (TASER) is designed to send an electronic signal through two wires attached to the deployed darts that make contact with the targeted suspect. The electronic signal then by design overrides the voluntary muscle signals normally sent to the effected muscle groups by the brain of the suspect and prevents or minimizes the subjects ability to voluntarily move or resist the control of the TASER signal as long as the electronic signal is being deployed. If effective, the EID device usually brings about temporary immobilization of the target for the short period of time (0-5 seconds) that the device is active, allowing the arresting officer a window of opportunity to gain physical control of a resisting suspect and handcuff or effectively restrain the suspect.**

**The Control of any suspect when arrest takes place is “ minimally achieved” only after physical restraints such as handcuffs are in place with the suspects hands being restricted from movement. Unless other restraint devices are available and applied this handcuffing restraint can only be safely accomplished with the suspects hands cuffed behind his or her back and maintained by the ever present watch of an attending officer.**

Unfortunately the suspect was not affected by the TASER deployment from Officer Sisak and continued to flee.

PO Sisak then closed the gap in pursuit of Miles and tackled him to bring him to a prone position. As Officer Sisak made contact with Miles they fell through a section of hedges in the vicinity of the front of 7938 Tioga St.

As PO Sisak attempted to retrieve his hand cuffs from his carry location for the purpose of handcuffing Miles who was now on his hands and knees on the snow covered ground, Miles intentionally delivered a kicking blow to Officers Sisak’s right knee and shin area, with his (Miles) right foot.

Officer Sisak, now suffering pain and injury to his right leg, was also temporarily disabled and dislodged from his attempt to take Miles into custody and apply restraints at this encounter.

It is my opinion that the EID deployment and attempted ineffective temporary immobilization of Miles along with the tackling and handcuffing attempt by Officer Sisak were both less lethal “objectively reasonable” attempts under the circumstances to bring Miles under control for arrest and custodial processing.

It is my opinion that the second option of tackling Miles, to attempt to effect the arrest and control of Miles, of physical contact, albeit necessary, actually placed officer Sisak at greater risk as he had just witnessed the assault of Officer Saldutte and knew the physical strength and ability of Miles.

It is my observation that after the assault on Officer Sisak, as Miles yet again gets on his feet to flee from the contact location with Sisak, Officer Ewing (formerly driving the patrol unit) now on foot, catches up

with Miles and places his left arm in an “arm bar” technique to attempt to restrain him and utilizing a “leg sweeping” technique takes Miles back down to the ground to a prone position for attempted handcuffing.

Officer Saldutte is able to assist again at this encounter and takes a position on the right side of Miles as he is on the ground while both Ewing on the left and Saldutte on the right attempt to get Miles’ arms and hands behind his back to apply the handcuffs.

As Miles continues to effectively resist the handcuffing attempts of the police officers he pulls his arms and hands under his body and into a position where the officers know by training and experience potentially dangerous weapons are concealed and can be accessed by the suspect’s uncontrolled hands.

It is my observation at this point that both Ewing and Saldutte are delivering “knee Strikes” to the sides of Miles legs and torso in an attempt to strike effector nerves in or to bring about compliance through pain, or effectively distract Miles from his continued “focus” on resisting and controlling his own hand movement and potentially reaching for some object or weapon.

**NOTE: Knee Strikes to effector nerves are a less lethal force option with which officers are trained at the basic level to bring about the objectives of Pain compliance, distraction from subject focus on endangering self or others , and muscle motor dysfunction. Any of the three objectives, if not all collectively can be effective in aiding the arresting officers in gaining compliance or control of an actively resisting or actively aggressive suspect whose continued course of action raises the potential for more injury to everyone involved.**

- 1. Pain compliance is simply that the subject submits because of the temporary discomfort associated with the striking of the effector nerves of the body.**
- 2. Distraction is the redirecting of the suspects thought process away from what his or her intended action is focused on accomplishing.**
- 3. Motor Muscle Dysfunction is the simple result of the muscle group either cramping or temporarily going into minor spasms, minimizing the suspect control of that muscle group to resist or assault an officer.**

**\*The cramping is like a “Charlie Horse” spasm of the thigh or a spasm of the diaphragm which feels like you had the “wind knocked out of you”.**

**It is my opinion that the effectiveness of the knee strikes gave officer Saldutte a small window of opportunity to get one handcuff on the right wrist of Miles before Miles begins another escalation of resistance and gains control of the hand with the chain and loose cuff and pulls away from Saldutte.**

It is my opinion that all the officers involved are aware of the escalating dangers from Miles actively assaultive and resisting behavior. In a matter of a few seconds he has injured two of the three officers and repeatedly demonstrated his strength and ability to control his own hands.

PO Saldutte recognizes as he attempts to gain control of Miles right hand that there is some large hard object in Miles right side coat pocket and announces to Ewing and Sisak that **he believes Miles is “armed”**.

It is my opinion and experience that any police officer who hears that announcement or becomes aware of that circumstance while in close proximity to a suspect or while engaged in a hand to hand struggle with any “suspect” knows that the element of danger is raised significantly to all involved if the subject is not immediately controlled or stopped.

Officer Sisak, who now again is able to position himself to assist Ewing and Saldutte and aware of the escalated danger because of the “armed” announcement along with the observation that Miles has again effectively pulled away from being handcuffed and actually has the chain and loose cuff as a swinging weapon on his right wrist and has now rolled over on to his left side and has positioned his right hand as if to access or grab whatever weapon is in his right pocket, delivers what both he and Miles (**statements and transcripts**) describes as 2 (two) or 3 (three) closed fist strikes to the head and face area of Miles in an attempt to stun or distract him from his course of escalating resistance.

When those strikes exhibit no effect on Miles continued action PO Ewing immediately administers a knee strike to the head area of miles from his position.

It is my observation and opinion that the “knee to the head strike” seems to immediately bring about a submission from Miles and his hands are able to be finally brought behind his back and handcuffed.

It is my opinion and observation from the police reports, as well as interviews given my Jordan Miles that the number of strikes delivered and the locations delivered on Miles body are consistent with each other’s account.

**Miles Interview by Interviewer Roy Dean about the number of times he was struck by the police officers is completely consistent with the account that the officers give in the Pittsburgh City Police Report of the incident.**

**The officers never try to hedge or minimize what they had to do and use to bring this suspect under control.**

**They (the officers) appear to be candid and truthful with the recounting of the use of force and the objectives for which it was intended.**

**Of course the objectivity of the strikes or blows is different in Miles rendition because he is not trained to understand the objectivity of Police use of force nor does he choose to acknowledge the legitimacy of these officers investigation into his suspicious and non compliant, unreasonable activity on that night.**

**Miles never says they hit him after he was handcuffed, which is an indicator to me that as soon as their objective of getting him under control by cuffing was accomplished all “need for any force options” was finished so all “use of force” was finished.**



It is my opinion that once Miles was properly restrained and searched the officers continued conducting their investigation in fulfillment of their original concerns about the suspicious activity of Miles. They made contact with the occupant(s) of 7940 Tioga to determine if there was knowledge of the suspect or potential burglary attempts. The occupant, Monica Wooding, advised the police that she did not know the suspect, and that no one was supposed to be on the premises, nor was there any attempt to break into her home but that her dogs had alerted to some minor sound that they heard.

In addition, the officers' remanded custody of Jordan Miles to a transport vehicle to be taken to West Penn Hospital for attention to any injury he may have incurred during the struggle to arrest him.

Jordan Miles was treated by a physician, Dr. Thomas Martin, who according to medical reports did an extensive examination to insure that no serious injury had been suffered by Miles.

**NOTE: The small piece of stick removed from Miles' mouth would have been consistent with the hedge that he and PO Sisak fell into and struggled in as he attempted to flee after he struck and freed himself from Officer Saldutte on the first close contact encounter.**

Miles was released from West Penn Hospital into police custody with minor injury and tissue swelling and remanded to the County Jail until bond was posted.

It is my opinion that the lack of injury to Jordan Miles as reported by the West Penn hospital examination is indicative that the officers strikes and blows were geared for the objectives of "stunning" the nerves of Miles in order to effectively achieve the pain compliance, distraction and muscle dysfunction objectives and were not intended to cause severe injury even though two of the officers themselves were injured and all officers were concerned for a for more serious and significant threat of danger during the duration of the struggle to get Miles under control.

#### **My Conclusion:**

**It is my opinion and conclusion that except for the difference in understanding the objectivity of the use of force by the Pittsburgh City Police officers Saldutte, Ewing and Sisak, under tense, and uncertain, rapidly evolving circumstances, Miles statements to interviewers verify what the officers reported and related in respective interviews and judicial proceedings, with regard to the nature and the amount of force used.**

**It is my opinion that under the totality of circumstances their (Saldutte, Ewing and Sisak) actions and use of force were "objectively reasonable", to investigate "reasonably suspicious activity" and to effect the seizure and control of a fleeing criminal suspect who was believed or reasonably suspected to be armed with a dangerous weapon prior to and during a struggle to resist police intervention.**

NOTE: Miles admits inadvertently in his interview to DEAN on Page 7 Line 290 that he knew they were cops and that he "was resisting".

The law is clear in Chapter 5, Section 505, (b) under limitations on justifying necessity for use of force in self-protection, (1) the use of force is not justifiable under this section to (i) resist an arrest which the actor knows is being made by a peace officer, although the arrest is unlawful,

It is my opinion that even if Miles was walking home at 11:00 o'clock at night, with no criminal intent at the time of the encounter with the police, he knew they were the police and he knew or should have known because of his age, education and his understanding of how to interact with police officers who are trying to protect your home and community, and that he should have been co-operative, not have run from them during their inquiries and should not have fought and resisted their attempts to seize him.

Jordan Miles unreasonable actions coupled with the other unique circumstance of time, environmental conditions, location, past history of criminal activity in the area and the escalating perception of the officers because of Miles' continued resistance during the encounter, all contributed to an unfortunate situation for the Police officers and Jordan Miles.

**My opinion is based on the information provided to me by the District Attorney's office of Allegheny County for review and comment.**

**I reserve the right to amend or change any or all parts of my opinion should other documented and corroborated information be presented to me at a future time that would cause me to view this matter differently.**

**Respectfully Submitted:**

**Clifford W. Jobe, Jr.**

**Date of Report:**

**Cliff Jobe Consulting, LLC**