

Expert Report of Dr. Darrin Porcher

October 6, 2022

At Plaintiff's request, I have conducted a review of the facts and circumstances surrounding the violation of the constitutional rights of Donovan W. Lynch (Deceased) to be free from excessive force and the violation of the City of Virginia Beach Police Department guidelines. On March 26, 2021, Virginia Beach police officer Solomon D. Simmons ("Defendant Simmons") fired his gun at Mr. Donovan Lynch ("Mr. Lynch") three times, shooting him twice, as Mr. Lynch was walking to his car with a friend. Donovan Lynch lost his life as a result of the incident and the medical examiner deemed his death a homicide.

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Exhibit A: Dr. Darrin Porcher CV

My conclusions are set forth below. I have reviewed the following documents in connection with the matter of *Wayne B. Lynch, Administrator of the Estate of Donovan W. Lynch, Deceased v. Solomon D. Simmons, III, And In His Official Capacity As A Police Officer for the City of Virginia Beach, Virginia*:

- Amended Complaint
- Answer to Amended Complaint by Virginia Beach
- Virginia Beach Response to Plaintiff's Memorandum of Law and Motion to Dismiss
- Memorandum in Opposition to the City's Motion to Dismiss
- Defendants' Answers and Grounds of Defense
- Defendant Memorandum in Support of Motion to Dismiss
- Defendant Motion to Dismiss Amended Complaint
- Virginia Beach Police Department Administrative Notification Re: Solomon Simmons
Restricted Duty Status
- Virginia Beach Police Department Investigators Check List
- Virginia Beach Police Department IAB Resume Re: P.O. Solomon Simmons
- Officer George Annunziata Body Worn Camera Video
- Officer Armstead Body Worn Camera Video
- Officer Donald Austin Body Worn Camera Video
- Officer Justin Buck Body Worn Camera Video
- Officer Tyler Buckham Body Worn Camera Video
- Officer Vincent Bushman Body Worn Camera Video
- Officer Jonathan Cheng Body Worn Camera Video
- Officer Austin Cook Body Worn Camera Video

- Officer Andrew Crandall Body Worn Camera Video
- Officer Taylor Guarnieri Body Worn Camera Video
- Officer Daniel Herring Body Worn Camera Video (Apprehension of Kelvin Jones)
- Officer Connor McMahon Body Worn Camera Video (First Aid to Mr. Lynch)
- Officer Rachel Nash Body Worn Camera Video (Shots Fired, Car Wreck)
- Officer Caitlin Payne Body Worn Camera Video (Shots Fired, OIS at Scene)
- Officer Chyance Mattison Body Worn Camera Video (Capture of Kelvin Jones)
- Officer Adam Murawski Body Worn Camera Video
- Sergeant Daniel Fogerty Body Worn Camera Video (Simmons Informs Sgt. of Shooting)
- Officer Solomon Simmons Body Worn Camera Video
- Officer Michael Smith Body Worn Camera Video
- Officer Wadsworth Body Worn Camera Video
- Virginia Beach Police Department Incident/Investigation Internal Copy P.O. Phillip Armstead
- Virginia Beach Police Department Incident/Investigation Internal Copy Deshayla Harris Homicide
- Virginia Beach Police Department Incident/Investigation Internal Copy P.O. Simmons
- Virginia State Police Investigation Report
- Internal Affairs Interview Re: Officer Solomon Simmons
- Internal Affairs Interview Re: Detective Bryan Kreitzman
- Internal Affairs Interview Re: Officer Adam Murawski
- Virginia State Police Interview Re: Officer Solomon Simmons
- Witness Interview Darrion Marsh

- Witness Interview Re: Kelvin Jones
- Witness Interview Re: Todd Smith
- IAB Audit of Officer Simmons BWC History
- Firearms Analysis Re: Officer Simmons
- Firearms Analysis Re: Donovan Lynch
- Hampton Roads Mass Casualty Incident Response Guide
- VA Beach EMS Report Re: Donovan Lynch
- Pole Camera at 19th & Atlantic Video
- Pole Camera at 21st & Pacific Video (Muzzle flash from Officer Simmons)
- United Methodist Church Surveillance Video
- Virginia Beach Police Department General Order 4.06 Body-Worn Camera
- Virginia Beach Police Department General Order 5.01 Use of Force

I. BACKGROUND AND METHODOLOGY

A. Experience & Qualifications

My experience and qualifications are set forth at length in my CV which is attached hereto as Exhibit A. I began my career as a New York City Police Officer in 1991. I was a commissioned Officer in the United States Army. I was a member of the New York City Police Department Civilian Complaint Review Division and a member of the Internal Affairs Bureau. I have also served as an instructor in the Police Academy where I trained officers on the use of force and general police operations.

From 2007 until my retirement in 2011, I was a Lieutenant assigned to the Community Affairs Bureau. In that role, I supervised Police and Community Relations as an Integrity Control Officer. My responsibilities included reviewing hundreds of cases involving civilian complaints, including those related to officer use of force.

I have been trained and certified in the use of a firearm and have trained countless police officers in the police academy as an instructor on the use of a firearm, de-escalation, and the tactical advantage of introducing time, distance, and cover when engaging persons in possession of a firearm. During my time in Internal Affairs, I conducted investigations into the use of a firearm by police officers to determine whether the police officers' use of force complied with

the guidelines, policies, and procedures set forth by the New York City Police Department. These guidelines, policies, and procedures are similar to the relevant policies and procedures of the Virginia Beach Police Department.

In connection with those investigations, I have considered the evidence produced in discovery and conducted a review similar to that which was performed by Virginia State Police Special Agent Dustin T. Weymouth German and Sergeant Michael Flynn of the Virginia Beach Police Department (“Department”) Internal Affairs Bureau in this matter. Accordingly, herein I present my opinions and conclusions about whether Defendant Simmons’ use of a firearm to shoot and kill Mr. Lynch was consistent with Department policy and general policing practices.

During my career, as appropriate, I have made and recommended punitive and/or corrective action against police officers whose use of a firearm violated the policies and the law.

In addition to these investigations as a part of the New York City Police Department, I have conducted similar investigations on behalf of litigants across the country. I have worked on behalf of both Plaintiffs and Defendants. I have been qualified as an expert witness in police use of force cases in state and federal courts across the country, and I have never been barred as an expert witness or otherwise disqualified for any reason.

B. Methodology of This Report

An investigation starts with a review of all of the facts. An investigator determining whether the use of force was appropriate in a particular situation must look at the evidence presented from different perspectives, including those of the police officers, the victims, the civilians, and any independent witnesses. The reviewer must compare each perspective against physical evidence that can be gathered, including any medical evidence, electronic evidence, and in this case, interviews acquired from the defendant and witnesses. It is not the job of the investigator to determine which side is telling the truth; however, versions of the events that simply do not match up to the physical evidence or are inherently not credible can be discounted.

The investigator must then compare all of this evidence to the standards which are applicable in each case, including the rules that apply to the police officers. These rules come from several places, including the United States Constitution as implemented by the police departments themselves. These rules are set forth in writing on most occasions. That is true in this case with the Virginia Beach Police Department.

A comparison to the facts and the evidence must then be made to determine whether the officer complied with the guidelines for the appropriate use of force in a given situation.

There is a general concept in policing and the use of force that is worth noting: an officer is only permitted to use the amount of force necessary to overcome a threat or effectuate an arrest. The 1989 Supreme Court decision *Graham v. Conner* describes when police can use force under the standard of reasonableness. Any use of force that is not necessary to effectuate an

arrest or overcome a threat is simply not authorized by law and is excessive. Only the minimal amount of force necessary should be used.

This is the methodology I have used, and the countless other internal affairs officers have used in investigating cases such as this, and the methodology I have used in my practice investigating cases in a litigation context as well. I have applied this methodology here.

I am not a lawyer and my report does not provide a legal opinion. In certain instances where legal authorities have shaped the obligations and responsibilities of police officers and police departments, I may so note for the purpose of providing context.

II. SCOPE OF RETENTION

I was retained by the Law Firm of Anchor Legal Group PLLC in September 2022 to study and evaluate the matter involving the use of force by the Virginia Beach Police Department resulting in the death of Donovan W. Lynch. I have been retained by the Law Firm of Anchor Legal Group PLLC to provide expert opinions and testimony in this matter based on my education, professional knowledge, and experience. More specifically, I have been asked to determine whether the policies and practices of the Virginia Beach Police Department contributed to the death of Donovan W. Lynch and to review the actions of Defendant Simmons in his lethal shooting of Mr. Lynch.

In this report, I have described my opinions and the bases for those opinions. In reaching the opinions expressed in this report, I have relied upon my education, my more than twenty years of professional knowledge, and my experience on the subjects of police discipline. I have also relied upon my review of case documents and discovery commonly relied upon by experts in my field. The documents and discovery relied upon include those cited in this report. I also considered the pleadings, discovery responses, and the documents exchanged by the parties in discovery. Further, I have relied upon my experience as a former NYPD Lieutenant assigned to the Internal Affairs Bureau which is commonly accepted and held reliable by experts in my field. My hourly billing rate for my work on this case is \$300.00 per hour for field work, research, and preparation time; \$3,000.00 per day for depositions; and \$3,000.00 per day for trial testimony. The amount of my fee is not contingent upon the opinions expressed herein or the outcome of this matter.

Discovery in this case is ongoing. If additional information becomes available, I reserve the right to revise and/or supplement my opinions. I may also provide supplemental and/or rebuttal opinions regarding this case if requested. References cited in this report are not to be exhaustive but rather exemplary. The opinions described in this report are made to a reasonable degree of certainty in my field and were arrived at using the same methodology and principles I employ in my non-litigation projects.

III. SUMMARY OF FACTS AND CONCLUSIONS

Mr. Lynch and his friend Darrion Marsh (“Mr. Marsh”) went out at the Virginia Beach oceanfront on a Friday night that the City of Virginia Beach lifted COVID 19 lockdown restrictions – the evening of March 26, 2021. Hours later, Mr. Marsh watched Defendant Simmons gun down and kill Mr. Lynch.

Eyewitness accounts of the events leading up to Mr. Lynch’s untimely and unnecessary death vary and are discussed in greater detail, *infra* at Section IV. Generally speaking, at around one minute prior to the shooting, Officer Buck passed Mr. Lynch and Mr. Marsh and took no action to indicate he believed them to be a threat. Approximately one minute later, Defendant Simmons encountered Mr. Lynch and Mr. Marsh. According to Defendant Simmons’s statements to state investigators, he heard a gun racking to his left and when he turned, he saw Mr. Lynch crouched in some bushes. Defendant Simmons claims he yelled something at Mr. Lynch that neither Defendant Simmons, nor another officer on the scene, Detective Kreitzman, later recalled; however, no witnesses claim that what Defendant Simmons shouted was a warning or self-identification as a police officer. Thereafter, Mr. Lynch turned around, and Officer Simmons shot at him three times, striking him twice and causing his death.

In my opinion, the City of Virginia Beach failed to provide appropriate oversight over the Virginia Beach Police Department. As a result of this, Virginia Beach police officer Simmons failed to identify himself and employ the command of “drop your weapon” or similar. Officer Simmons further failed to employ de-escalation tactics before he shot Mr. Lynch twice, causing his death. The Virginia Beach Police Department failed to provide basic supervision to its officers and supervisors. The need for supervision of the officers should have been plainly obvious to Virginia Beach Chief of Department Paul Neudigate. These above actions, including the use of force by Virginia Beach police officer Solomon Simmons, resulted in the death of Donovan Lynch while he was lawfully in possession of a firearm and concealed carry permit.

On the night of March 26, 2021, Mr. Lynch and Mr. Marsh were walking on the Oceanfront resort area of Virginia Beach during the late hours after leaving a restaurant.

Earlier the same night, Virginia Beach police officer Solomon Simmons heard gunshots while operating his police vehicle on the Oceanfront resort; therefore, he stopped and exited his vehicle to investigate the incident. Defendant Simmons was unsuccessful in identifying either victims or shooters. Defendant Simmons alleges that he had begun walking back to his police vehicle when he allegedly heard a firearm slide rack and observed Mr. Lynch in possession of a pistol.

Defendant Simmons has stated that he approached Mr. Lynch from behind while Defendant Simmons continued to hold his firearm in his hand and yelled “He’s got a gun, he’s got a gun.” Without identifying himself as police nor providing instructions to Mr. Lynch to drop the weapon, Defendant Simmons discharged his firearm three times resulting in Mr. Lynch being struck once in his chest and once in his leg with two bullets.

IV.

V. **FACTUAL BACKGROUND**

The following represents my understanding of the facts based upon the documents I have reviewed. As far as I am aware, the events of the night were not all recorded by audio or video. Witnesses recall the events differently and some details are not available. My understanding of the facts comes from interviews, video and audio recordings, and other evidence; where possible, I have attributed facts to those sources.

During the COVID 19 pandemic, a series of lockdowns occurred in the United States that placed a moratorium on various pedestrian venues. The City of Virginia Beach endured the same COVID 19 pandemic lockdowns experienced by the rest of the country. As the City of Virginia Beach began to loosen lockdown restrictions, many citizens embraced the opportunity to re-engage socially and began to visit the resort area of Virginia Beach once again.

The Virginia Beach Police Department expected large numbers of citizens to be patronizing the resort area of Virginia Beach due to the increased temperature and loosening of COVID 19 restrictions on that Friday night. At the time, the Virginia Beach Police Department employed 828 sworn police officers; however, they scheduled only 12 officers to work the evening/night shift to manage the massive anticipated patronage of the resort area.

On that evening, Mr. Lynch and Mr. Marsh were walking on the Virginia Beach Oceanfront resort area. At approximately 11:20 pm, Virginia Beach Police were called to the Oceanfront area concerning complaints of shots fired. Mr. Marsh and Mr. Lynch were in a restaurant at the time the shots were fired; they were not involved in the incident.

Upon leaving the restaurant, Mr. Marsh and Mr. Lynch observed a large crowd that included Virginia Beach police officers. They elected to walk towards their cars and leave the area. Mr. Lynch and Mr. Marsh were observed at 1:17 into Officer Buck's body worn camera ("BWC") video casually walking down Pacific Avenue past various police officers. None of these officers took any actions to suggest that they found either of these young men to pose a threat. At 1:32 into Officer Buck's body worn camera video, Mr. Lynch and Mr. Marsh paused on Pacific Street. At 11:22 p.m., Virginia Beach Police Department Traffic Safety Officer Solomon Simmons was with a gunshot wound victim in front of Nightmare Mansion, located at 2008 Atlantic Ave. Upon arrival of Emergency Medical Services ("EMS"), who placed the victim into the ambulance, Defendant Simmons began following EMS to Sentara Virginia Beach General Hospital, during which time he deactivated his BWC. Sentara Virginia Beach General Hospital is four miles away from the Oceanfront.

Defendant Simmons claims to have heard upwards of 40 gunshots coming from the 19th St. north parking lot while at 20th St. and Pacific Avenue during his drive toward the hospital at 11:48:49 p.m. (Simmons Recorded Interview.) Defendant Simmons stated that he parked his vehicle at the intersection and entered the parking lot in search of the shooter and any victims; however, he was unsuccessful in finding either any shooter or any victims. Defendant Simmons began walking back to his police vehicle through a column of hedges with his firearm drawn and flashlight out. Officer Simmons then holstered his flashlight. Despite no indication that the shooter(s) was present, he continued to maintain his firearm in his hand as he walked to his

vehicle. Officer Simmons's firearm contained a flashlight mounted to his weapon, but he failed to engage the illumination component.

Defendant Simmons walked through an opening in the hedges, where he claims he observed Mr. Lynch and Kelvin Jones next to a tree to the left side of him. Defendant Simmons alleges it was at that time that he heard a firearm slide rack¹. Defendant Simmons stated that the lighting was sufficient to allow him to see Mr. Lynch and Mr. Jones. (Simmons Recorded Statement.) Defendant Simmons claims he then turned to his left where he observed Mr. Lynch crouched near an opening in the hedges on grass as he was manipulating a firearm placed in between his legs while facing the parking lot. Officer Simmons further stated Mr. Lynch had a handgun in his hands and was peering over the hedges and pointing his firearm towards the parking lot. (Simmons Recorded Interview). Defendant Simmons and Mr. Lynch knew each other because they attended the same high school (Darrion Marsh Interview). Contrary to Simmons's and Detective Kreitzman's statements, Mr. Marsh has stated that Mr. Lynch did not expose his firearm during the incident.

Defendant Simmons continued to hold his firearm in his hand when he approached Mr. Lynch from behind. (Simmons Recorded Statement.) Detective Brian Kreitzman, who also had his firearm drawn, followed Defendant Simmons, then Detective Kreitzman lowered his weapon as Defendant Simmons approached Mr. Lynch. (Kreitzman Interview.) Detective Kreitzman's firearm was equipped with a flashlight that engages when the weapon is drawn; however, he claims not to remember if he activated the lighting function. (Kreitzman Interview.) Officer Simmons and Detective Kreitzman approached Mr. Lynch from his left side rear. Detective Kreitzman stated that he acquired cover behind the green electrical box next to him (Kreitzman Interview.)

Defendant Simmons told state investigators that when he approached Mr. Lynch from the rear, Defendant Simmons said something out loud; however, he claims not to recall what he said. (VA State Police Simmons Interview 21-70383A.) Defendant Simmons alleges that Mr. Lynch turned toward him with a gun in his right hand close to his body pointing it at Defendant Simmons; Defendant Simmons then discharged his firearm at Mr. Lynch three times in a single second, at 11:51:58 p.m. (VA State Police Simmons Interview 21-70383A.)

One of Officer Simmons's bullets struck Mr. Lynch in his left shoulder and the bullet traveled into his chest. The second bullet struck him in the left thigh, hit his cellular phone in his pocket, and caused Mr. Lynch to fall to the ground in the grassy area. After Defendant Simmons shot Mr. Lynch, Mr. Lynch stated "why did you shoot me?" (Todd Smith Recorded Interview.) There is no evidence that Mr. Lynch discharged his firearm on the night of the incident. No gunshot residue was found on Mr. Lynch and one round was chambered in his firearm. Mr. Lynch was the holder of a concealed firearm carry permit and in possession of a pistol legally registered to him. Mr. Lynch had no criminal record, related to gun-usage or otherwise.

¹ A firearm slide rack is a loud sound that occurs when a bullet elevates from the pistol magazine into the chamber of the weapon.

These three shots can be heard at timestamp 2:32 in Officer Buck's BWC. One minute had passed since Mr. Lynch and Mr. Marsh were captured standing on a corner by Officer Buck's camera at timestamp 1:32.

Neither Detective Kreitzman nor Defendant Simmons recall what commands, if any, Defendant Simmons issued to Mr. Lynch. There is no evidence that Defendant Simmons identified himself as a police officer or offered any warning to Mr. Lynch before quickly firing three shots at him.

Officer Adam Murawski approached the scene and was advised by Mr. Jones that Mr. Lynch was shot in the chest as he applied pressure to the wound (Murawski BWC Video). Officer Murawski then noticed Defendant Simmons who informed him that he shot Mr. Lynch; therefore, Officer Murawski communicated over his police radio that an officer involved shooting occurred (Murawski Recorded Statement).

Mr. Marsh, who Defendant Simmons knows from high school, and who had been nearby the hedges when Mr. Lynch was shot, approached Simmons and stated "You shot Donovan." Officer Simmons later admitted to investigators that he recognized Mr. Lynch's face; however, he denied knowing him. (Simmons VA State Police Investigation pg. 1.) Officer Simmons stated that he had seen Mr. Marsh a week prior to the shooting.

EMT firefighters arrived on the scene at 11:56:30 to render first aid to Mr. Lynch. At 12:07 a.m., Mr. Lynch was pronounced deceased by EMS on scene. Sergeant Daniel Fogerty escorted Defendant Simmons to his police vehicle. Defendant Simmons refused to be interviewed by the State Police on the day of the shooting as per his PBA union rights. (VA State Police Activity Report 21-70342A.)

Officer Simmons was trained on firearms control during his attendance in the police academy prior to his appointment as a patrol officer in the Virginia Beach Police Department. Officer Simmons was trained on de-escalation techniques during his training in the police academy; however, he failed to introduce these essential skills and elected to employ deadly physical force against Mr. Lynch.

Police officers are trained nationally on both firearms control and de-escalation techniques when engaging potentially armed subjects which significantly reduces firearms discharges by law enforcement.

VI. OPINIONS

Opinion 1 Failure to Apply De-Escalation Tactics

Opinion 2 Excessive Force

Opinion 3 Failure to Provide Immediate Medical Aid

Opinion 4 Failure to Supervise

Opinion 5 Virginia Beach Police Department's Failure to Properly Train it's Officers

A. Opinion 1: Failure to Apply De-Escalation Tactics

1. *De-Escalation Tactics Generally and in VBPD Policy*

The use of force by law enforcement personnel is a matter of critical concern, both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied interactions and, when warranted, may use reasonable force in carrying out their duties. Officers should attempt to utilize de-escalation techniques whenever practicable and resort to violent interventions, particularly those that can be life-threatening, as a last resort.

De-escalation” is the strategic slowing down of an incident in a manner that allows officers more time, distance, space and tactical flexibility during dynamic situations on the street. De-escalation training teaches officers to slow down, create space, and use communication techniques to defuse potentially dangerous situations. Persuasion can be an effective instrument in obtaining the suspect's cooperation in criminal investigation and court processing of the case.

De-escalation tactics have proven to be an essential tool for police departments nationwide. De-escalation training teaches police to create space, slow things down, ask open-ended questions, hold off on the deployment of force, and avoid ramping up confrontation.

De-escalation training has been widely implemented by U.S. police agencies in the wake of adverse public reaction to recent controversial police use of force incidents. In general, officers trained in de-escalation apply learned techniques following training.

As first responders police officers are regularly involved in situations of human conflict and or crisis (emotional, physical, etc.) where action is needed.

De-escalation helps officers stay focused and calm during a crisis situation to bring chaotic moments to as peaceful a resolution as the circumstances will allow. De-escalation techniques make use of time, distance, and communication to minimize the level of force needed in a particular situation. Officer Simmons failed to effectively de-escalate the situation with Mr. Lynch and utilize time, distance, and communication.

Virginia Beach Police Department General Order 5.01 lists de-escalation as taking action or communicating verbally or non-verbally during a potential force encounter in attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources can be called upon to resolve the situation without the use of force or with a reduction in the force necessary. De-escalation may include the use of such techniques as command presence, advisements, warnings, verbal persuasion, and tactical repositioning.

The following sections discuss several de-escalation tactics that Defendant Simmons should have been trained to utilize, and should have deployed per general policing practices, state and federal law, and Virginia Beach Police Department regulations, yet failed to utilize.

2. *Defendant Simmons's Failure to De-Escalate by Command Presence and Advisement*

Best practices in policing dictate that officers should issues commands such as “Police Don’t Move” when engaging armed subjects. The command of “Police Don’t Move” establishes the identification process that informs subjects that they are being engaged by police. A command of “Police Don’t Move,” followed by “Drop Your Weapon,” provides the subject the opportunity to disarm willingly which disengages the element of danger.

When an officer properly identifies himself or herself and gives an appropriate command, it provides the subject the opportunity to follow the officer’s instructions. An officer who confronts an armed subject does not know if the individual is an on-duty plainclothes officer conducting a police operation, off duty officer taking police action, or concealed carry permit owner.

Law enforcement officers in the United States encounter armed subjects thousands of times daily without discharging their firearms. Firearms control is of optimum importance when engaging armed suspects. Police officers encounter armed subjects on many occasions with limited information; therefore, it’s essential to establish immediate control over the situation with commands such as “Police Don’t Move” and “Drop Your Weapon.” The introduction of the appropriate commands establishes police identification and instructions for the subject to create a safer environment. Police Departments routinely reinforce this germane command throughout the workplace, including by placing stickers on officer’s lockers that state “Police Don’t Move.”

Virginia State law, and corresponding Virginia Beach Police Department regulations, incorporate these basic principles. For example:

- Under Virginia Code § 19.2-83.5(A), “A law enforcement officer shall not use deadly force against a person unless ... [among other things,] [i]f feasible, the law-enforcement officer has provided a warning to the subject of the deadly force that he will use deadly force”; *see also id.* § 19.2-83.5(B) (reasonableness of officer’s use of force depends on, among other things, whether a subject possessing a deadly weapon “refused to comply with the law-enforcement officer’s lawful order to surrender an object believed to be a deadly weapon prior to the law-enforcement officer using deadly force”).
- Under Virginia Beach Police Department General Order 5.01, before using deadly force, “When feasible, a verbal warning such as ‘Police, stop or I’ll shoot,’ should be utilized.”

Since Defendant Simmons approached Mr. Lynch from behind, in all likelihood, Mr. Lynch was not aware that police were the persons approaching him. And, indeed, there is no evidence to support the notion that Mr. Lynch knew that officers were sneaking up behind him.

Defendant Simmons admitted that his presence at the scene was in response to numerous shots fired, which resulted in a danger to public safety. Numerous civilians were shot during the course of the incident. Police BWC footage revealed that the shooting was gang related. (Mattison BWC Video.) Based on the violence plaguing the area, it should have been obvious to Defendant Simmons that he needed to establish his presence as “Police” because Mr. Lynch did not know who he was based on his sudden emergence from the rear.

Defendant Simmons failed to either identify himself or afford Mr. Lynch the opportunity to surrender his weapon or disclose to police that he was the holder of a concealed carry permit. Mr. Lynch has no criminal history; therefore, it is reasonable to believe that if Defendant Simmons identified himself as police, Mr. Lynch would have simply dropped his weapon and informed him that he is the holder of a concealed carry permit. There is no evidence to suggest that Mr. Lynch intended to act any differently towards law enforcement than he had for the twenty-five years he had been alive.

B. *Officer Simmons’s Failure to Utilize Non-Deadly Tactics and Force*

In addition to identifying themselves and giving commands, police officers are trained in a wide array of tactics to avoid the use of deadly force unless it is absolutely necessary. Virginia State law, and corresponding Virginia Beach Police Department regulations, recognize this:

- Under Virginia Code § 19.2-83.5(B), the reasonableness of an officer’s use of deadly force depends upon, among other things, “whether the law enforcement officer engaged in de-escalation measures prior to the use of deadly force, including taking cover, waiting for backup, trying to calm the subject prior to the use of force, or using non-deadly force prior to the use of deadly force.”

Officer Simmons did not utilize any of these de-escalatory measures. According to Simmons, when he approached Mr. Lynch, there was a green electrical box behind which he intended to take cover. (Simmons Recorded Interview.) Det. Krietzman did in fact take cover behind the same box, demonstrating the feasibility of doing so. (Det Krietzman Interview.)

Police officers should refrain from the “all gas and no brakes” philosophy and maintain distance from a suspect when appropriate as opposed to continuing the confrontation. Officer Simmons failed to take cover behind the green electrical box with Detective Kreitzman, which would have afforded him more time to negotiate with Mr. Lynch (if necessary) and provide him the time to drop his weapon and introduce to police that he was the holder of a concealed carry permit.

C. Opinion 2: Excessive Force

Deadly physical force may be used if and only if an officer reasonably believes a lesser degree of force is inadequate to accomplish a legitimate law enforcement purpose. Accordingly, officers shall use only the amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose. When determining whether to apply force, officers should consider the

availability of other options and their possible effectiveness. Then, when evaluating whether an officer has used reasonable force, the same guidelines apply.

The previous section focused on options that Defendant Simmons could have used, consistent with his training and legal obligations, before even considering the use of deadly force. This section focuses on the related but distinct question of whether the use of deadly force itself was consistent with Officer Simmons's training and obligations as a police officer.

Virginia Police Department Operational General Order 5.01 states that officers have the ability to impact the direction and the outcome of many situations they encounter based on their decision-making and the tactics that they choose to employ. It is the policy of the Virginia Police Department to utilize the amount of force that is objectively reasonable, considering the totality of circumstances in a given situation, in order to affect an arrest and/or accomplish the lawful performance of duty while protecting the public.

The 1989 Supreme Court decision *Graham v. Connor* introduced the level of force police officers are authorized to apply based on a standard of reasonableness. An officer's actions are to be "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.

As they must, the regulations of the Virginia Beach Police Department incorporate the *Graham* standard for when it is reasonable to use force, including deadly force. *See* V.B.P.D. Gen. Ord. 5.01 at 1. Virginia Beach Police Department General Order 5.01 provides its police officers the following factors to guide their use of force, including deadly force:

- The severity of the crime at issue
- The level of threat or resistance presented by the subject
- Whether the subject was posing an immediate threat to officers or danger to the community
- The potential for injury to citizens, officers, or subjects
- The risk or apparent attempt by the subject to escape
- The conduct of the subject being confronted
- The time available to an officer to make a decision
- The availability of other resources
- The training and experience of the officer
- The proximity or access of weapons to the subject
- Officer versus subject factors such as age, size, relative strength, skill level, injury/exhaustion, and number officers versus subjects
- The environmental factors and/or other exigent circumstances

I have considered whether Simmons's conduct is consistent with proper training and action under these factors, and conclude that it is not. To be clear, as I have stated, I am not a lawyer, and my purpose is not to analyze Officer Simmons's compliance with any legal standard. Instead, I am using the standards the VBPD purports to hold its officers to as a lens through which to analyze Officer Simmons's conduct.

Severity of the crime. Mr. Lynch did not commit any crimes. Officer Simmons observed Mr. Lynch carrying a firearm, but Mr. Lynch was lawfully in possession of a firearm with a concealed carry permit.

Level of threat and potential for injury. Officer Simmons stated that he observed Mr. Lynch pointing a firearm in the direction of the parking lot where people were located. However, the testimony of independent witnesses on the scene does not support Simmons's allegation that Mr. Lynch was pointing a firearm anywhere during the encounter. Officer Simmons has also stated that Mr. Lynch was crouching behind a bush, as opposed to standing and pointing his weapon in the direction of the parking lot. Assuming Officer Simmons's account is accurate, at the time Officer Simmons arrived on the scene, Officer Simmons failed to identify himself as police and introduce commands such as "drop your weapon" prior to shooting Mr. Lynch. To the extent Officer Simmons perceived Mr. Lynch to pose a threat, by the time that Mr. Lynch turned around to face him, that threat could have been diffused by Officer Simmons's use of identification, command, or de-escalation techniques.

Whether the subject is actively resisting or attempting to evade arrest by flight. Mr. Lynch never attempted to resist or evade arrest during the encounter.

Conduct of the subject. Mr. Lynch was carrying a pistol as he was licensed to do. At a chaotic moment, he was stationary and among other members of the public at the time he was shot. He did not disobey any police issues commands to drop his weapon, as none were apparently given. None of his conduct was unlawful or, in my experience, unusual given the circumstances of the night in question. Mr. Lynch had no violent history nor was he ever arrested prior to this incident.

Time available to make a decision. Officer Simmons had opportunities to elongate the time available by seeking cover and attempting to identify himself and speak with Mr. Lynch. Instead, Officer Simmons arrived at the scene and immediately shot Mr. Lynch.

Availability of other resources. Several other officers were on the scene such as Detective Kreitzman; therefore, a plan of action should have been established prior to shooting Mr. Lynch.

Training and experience of the officer. Officer Simmons was a patrol officer with the Virginia Beach Police Department for five years prior to the shooting; therefore, he should have possessed a reasonable skillset to avail him to firearms control and de-escalation.

Proximity or access of weapons to the subject. Mr. Lynch was lawfully carrying a licensed handgun. Officer Simmons did not provide him an opportunity to make the lawful status of his handgun known.

Comparison of subject to officers. The ratio of law enforcement to subjects was two police officer (Simmons and Krietzman) to one subject (Mr. Lynch). Mr. Lynch was taller and heavier than Officer Simmons or Officer Kreitzman, but this distinction was not important under the circumstances.

Environmental factors and exigent circumstances. The weather conditions were clear and no precipitation existed.

Based on the above, Defendant Simmons's actions clearly reflect excessive force applied against Mr. Lynch. Defendant Simmons should have clearly understood that based on an evaluation of the facts and totality of the circumstances known to him that Mr. Lynch failed to present an imminent threat.

D. Opinion 3: Failure to Provide Immediate Medical Aid

It is generally accepted that even if police officers must use deadly force against a subject, they must attempt to render medical aid as soon as possible to a subject who survives the use of such force. Virginia Beach Police Department regulations recognize this critical, often life-saving principle, requiring that "Medical assistance shall be obtained as soon as is practical for persons who have sustained injury ... as the result of any force incident. In the event that a suspect is injured, officers have a duty and obligation to provide medical treatment while the suspect is in custody." V.B.P.D. Gen. Ord. 5.01 at 4.

Immediately upon shooting Mr. Lynch, Defendant Simmons failed to attempt CPR or render medical aid. Officers that arrived after the shooting attempted to resuscitate Mr. Lynch; however, Defendant Simmons failed to begin the process of attempting to stop the flow of blood or other methods of life saving provisions to stabilize him pending the arrival of EMS.

E. Opinion 4 - Failure to Supervise

Police departments are obligated to train and supervise their police officers, consistent with legal requirements and policing best practices. Based on my review of the facts in this case, I conclude that the Virginia Beach Police Department's training and supervision of Officer Simmons was inadequate.

1. *Supervision Failures on the Night in Question*

The Virginia Beach Police Department only had 12 officers working at the time of the incident. (Crandall Body Camera Video.) The Virginia Beach Police Department was clearly understaffed in the wake of the large crowd expected on the night of the incident. Adequate staffing is an essential cornerstone in policing; however, the Virginia Beach Police Department under the leadership of Chief Paul Neudigate failed to address this issue.

Best practices in policing dictate a command post should have been established to manage police operations in the mist of the multiple shootings on the night of the incident prior to the shooting of Mr. Lynch. Had a command post been established prior to the shooting of Mr. Lynch, Virginia Beach police officers would have established a better plan for addressing the situation and deployment of police personnel. Virginia Beach police officers acted with autonomy without direction from the chain of command which resulted in officer Simmons

shooting Mr. Lynch while unsupervised. A command post wasn't established until well after the shooting of Mr. Lynch.

2. *Historical Failures of Training and Supervision*

The shooting death of Mr. Lynch is a byproduct of the Virginia Beach Police Department's failure to appropriately supervise officers. Although the Virginia Beach Police Department has been involved in numerous incidents of alleged inappropriate use of force, supervisors within the agency failed to make the necessary adjustments. The Virginia Beach Police Department was enjoined from violating citizen's constitutional rights in several federal court cases listed as follows:

- In 2017, Jonathan Keenan was attacked by a Virginia Beach Police Department K-9. As a result of the attack, Mr. Keenan filed a 1983 action against the Virginia Beach Police Department for using excessive force and his claims are currently pending in the United States District Court for the Eastern District of Virginia Norfolk Division.
- In 2018, a Virginia jury held four Virginia Beach Police Department officers liable for gross negligence when they shot and killed India Kager, an innocent black woman.
- In August of 2021, a Virginia Beach police officer was found liable for the fatal shooting of a 57 year old man in 2019; however, the Virginia Beach Police Department continues to support him as he maintains employment with the agency.

The death of Mr. Lynch could have been avoided if Virginia Beach Chief of Police Paul Neudigate implemented a series of reforms within the department based on identifying the trends listed above. It should be clearly apparent to Chief of Police Paul Neudigate that a void in training and supervision was a key component in the *Monell* claims that preceded the death of Donovan Lynch. Virginia Beach Police Department supervisors failed to make the necessary adjustments in training and prevention of further *Monell* claims which ultimately allowed officer Simmons to act with impunity.

The Virginia Beach Police Department knew or should have known that Defendant Simmons's history of disrespect for rules and training posed a threat to the community of Virginia Beach.

The following are examples from his Internal Affairs File:

1. On October 14, 2018 the Virginia Beach Police Department charged Simmons with UNSATISFACTORY PERFORMANCE, and substantiated this allegation with a reprimand on February 6, 2019.

2. On November 1, 2018 the Virginia Beach Police Department charged Simmons with MISSING TRAINING, and substantiated this allegation with oral counseling on November 14, 2018.

3. On September 20, 2020 the Virginia Beach Police Department charged Simmons with FAILURE TO SECURE AND CARE FOR DEPARTMENTAL PROPERTY, and substantiated this allegation with oral counseling on October 21, 2020.

Defendant Simmons's disciplinary history reflects a need for additional supervision and continual oversight; however, the Virginia Beach Police Department failed to exercise the appropriate monitoring of his job performance or insist that he receive supplemental training. The Virginia Beach Police Department's failure to implement reforms based on the past *Monell* claims created an environment for officers to act with impunity resulting in the manifestation of prohibited conduct in the form of the wrongful death of Donovan Lynch.

The past *Monell* claims against the Virginia Beach Police Department are reflective of a pervasive culture of unchecked police misconduct. First-line supervisors/sergeants were ineffective in the control, discovery, and investigation of use of force by subordinates in their units.

The Virginia Beach Police Department failed to take meaningful remedial or disciplinary measures and failed to implement accepted police practices designed to eliminate the improper conduct of excessive force. The misconduct persisted. The Virginia Beach Police Department reflects a pattern of lack of training, discipline, and supervision on the critical issue of excessive force.

It is the responsibility of the Virginia Beach Police Department to make efforts to detect and correct such police misconduct. A recognized police administrative mechanism to accomplish that objective is an effective internal disciplinary system. In addition, it is critical to have an independent body to review police policies and practices and to recommend remedial measures.

As a result, the Virginia Beach Police Department has a long history of officers not being adequately directed, trained, or supervised when it comes to matters such as excessive force and similar types of misconduct.

The Virginia Police Department's actions and/or inactions reflect a deliberate disregard of the wellbeing of citizens' legal protections. Based on my review of this matter, training, supervision, discipline, and accountability are root issues and deficiencies in the Virginia Police Department.

Sergeant J. L. Johannesen failed to supervise Simmons on the night of the incident. When police misconduct occurs, the agency must have a system in place to investigate and address the behavior. In addition to the investigation of police misconduct complaints, utilization of early warning systems and performance reviews provide additional data to monitor officers' conduct individually and the force as a whole.

F. Opinion 5: Virginia Beach Police Department's Failure to Properly Train its Officers

Professional development is an essential component in policing. Well-trained officers are less likely to engage in incidents of excessive force. As discussed above, Simmons's conduct does not indicate adherence to the standards, policies, and procedures that Virginia Beach purports to hold its officers to. The above is a reflection of an apparent lack of professional development which manifested in the death of Donovan Lynch as a result of Defendant Simmons's actions.

VI. FINDINGS

As a police procedural expert, I have reviewed the case materials available at this time and have determined that the actions of Defendant Simmons and the Virginia Beach Police Department were willful, wanton, and a deviation from accepted police practices. Additionally, the City of Virginia Beach failed to provide oversight upon the Virginia Beach Police Department. One of the basic responsibilities a municipality owes its citizens is maintaining a quality assurance mechanism of oversight over all departments within the purview of city government. Liability must be shouldered by the City of Virginia Beach as a result of the Virginia Beach Police Departments failed policies and by Simmons for his use of excessive force.

Police officers are sworn to protect the constitutional rights of citizens who trust them with their safety and their lives. It is their duty to enforce the laws and comply with agency established rules, regulations, policies, and procedures. Police are necessarily and appropriately held to a higher standard of ethical behavior by society because they are considered the guardians or gatekeepers of public trust.

Excessive force by police cannot be driven away by repressive or temporary measures. Police agencies must have a proactive mechanism in place which trains officers on de-escalation techniques to decrease use of force encounters. Police departments must also continue to revolutionize internal assessments of its members to ensure officers who pose a propensity for excessive force are monitored and subsequently properly trained. In addition to the investigation of police use of force complaints, utilization of early warning systems and performance reviews provide additional data to monitor officers' conduct individually and the force as a whole.

The Virginia Beach Police Department's Internal Affairs Bureau failed to proactively impose upon members of the department that excessive force will not be tolerated. Proactive efforts by an Internal Affairs Unit will apprise officers of oversight.

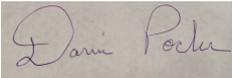
Defendant Simmons elected to approach Mr. Lynch from the rear while failing to identify himself and take *any* de-escalation measures, including ordering him to drop his weapon while behind available protective cover. Defendant Simmons chose to shoot and kill Mr. Lynch as opposed to employing the essential tenets of time, distance, and cover.

VII. CONCLUSION

The City of Virginia Beach failed to provide appropriate oversight over the Virginia Beach Police Department. As a result of this, Simmons failed to identify himself and employ the command of “drop your weapon” or similar. Simmons further failed to employ de-escalation tactics and shot Mr. Lynch twice, causing his death. The Virginia Beach Police Department failed to provide basic supervision to its officers and supervisors. The need for supervision of the officers should have been plainly obvious to Virginia Beach Chief of Department Paul Neudigate. These above actions resulted in the death of Donovan Lynch while lawfully in possession of a firearm and concealed carry permit as a result of a use of force by Virginia Beach police officer Solomon Simmons.

All of the above opinions contained herein are held to a reasonable degree of professional certainty as a police officer and investigator familiar with investigations into the appropriate use of force. I certify and verify under penalty of perjury that the foregoing is true and correct. 28 U.S. Code, sec. 1746.

Executed on October 6, 2022



Dr. Darrin Porcher

EXHIBIT

A

Dr. Darrin K. Porcher Ed.D.

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Bronx NY, 10463
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EDUCATION

- September 2011 **Doctorate Degree In Education, Fordham University**
Dissertation: “Reducing school misdemeanor assaults in urban settings through school leader and police collaboration: A comparative case study.”
Dissertation Committee: Bruce S Cooper Ph.D. (chair), Sheldon Marcus Ed.D, and Edgar Tyson Ph.D.
- May 2003 **MPA, Marist College, Poughkeepsie, New York**
- May 2000
New York **BS, Organizational Management, St. Joseph’s College, Brooklyn,**

PROFESSIONAL POSITIONS

- 1/15/22-Present **Commissioner** New York City Districting Commission
- 9/2013-Present **Adjunct Professor**, Pace University, School of Criminal Justice
- 9/2012-12/2013 **Adjunct Professor**, Fairleigh Dickinson University, School of Criminal Justice

9/2004 – Present **Adjunct Professor**, Monroe College, School of Criminal Justice

4/1991-4/2011 **Police Officer, Detective, Sergeant, Lieutenant**, New York City Police Department

3/1986 – 3/1990 **Enlisted Airman/Non Commissioned Officer**, United States Air force

3/1990-3/2003 **Non Commissioned Officer**, United States Air Force Reserve

3/2003-10/2007 **Commissioned Officer**, Executive Officer 1st FST United States Army Reserve

POLICE CAREER

2007-2011 New York City Police Department: Lieutenant Assigned to the Community Affairs Bureau as a Supervisor of Police and Community Relations and Integrity Control Officer

2004-2007 New York City Police Department: Lieutenant Assigned to the Internal Affairs Bureau as an Investigative Supervisor

2003-2004 New York City Police Department: Lieutenant assigned to the NYC Department of Personnel for the purposes of constructing a Promotional Examination for the rank of Lieutenant (open to NYPD Sergeants)

2002-2003 New York City Police Department: Lieutenant assigned to Transit District 3 (Harlem) as the Platoon Commander and Counterterrorism Coordinator

1998-2002 New York City Police Department: Sergeant Assigned to the Police Academy as an Instructor

1995-1998 New York City Police Department: Detective Assigned to the Internal Affairs Bureau

1994-1995 New York City Police Department: Police Officer Assigned to the Civilian Complaint Review Board

1991-1994 New York City Police Department: Uniformed Police Officer assigned to Police Service Area 7 (South Bronx)

ACADEMIC CAREER

9/2012 Adjunct Professor, Fairleigh Dickinson University, Teaneck New Jersey: Teaching experience includes onsite instruction for graduate and undergraduate students

9/2004 -Present Adjunct Professor, Monroe College, Bronx New York: Teaching
experience
Includes online and onsite forum

6/2006-12/2008 SW BOCES: Homeland Security, Police & Emergency Management
Curriculum author and editor

COLLEGE TEACHING EXPERIENCE

Spring 2021 (Pace University)

CJ-242 Crime and Public Policy

CJ-414 Integrity Issues in the Criminal Justice System

Fall 2020 (Pace University)

CJ-242 Crime and Public Policy

CJ-250 Community Relations in the Criminal Justice System

Spring 2020 (Pace University)

CJ-242 Crime and Public Policy

CJ-414 Integrity Issues in the Criminal Justice System

Fall 2019 (Pace University)

CJ-242 Crime and Public Policy

Spring 2019 (Pace University)

CJ-242 Crime and Public Policy

CJ-414 Integrity Issues in the Criminal Justice System

CJ-404 Emergency Management

Fall 2018 (Pace University)

CJ-242 Crime and Public Policy

Spring 2018 (Pace University)

CJ-242 Crime and Public Policy

CJ-414 Integrity Issues in the Criminal Justice System

Fall 2017 (Monroe College)

CJ-212 Ethical Issues in Criminal Justice

Fall 2017 (Pace University)

CJ-242 Crime and Public Policy

Summer 2017 (*Monroe College*)

CJ-210 Criminal Investigations
CJ- 212 Ethical Issues in Criminal Justice

Winter 2017 (*Pace University*)

CJ-414 Integrity Issues in the Criminal Justice System
CJ-242 Crime and Public Policy

Winter 2017 (*Monroe College*)

CJ-212 Ethical Issues in Criminal Justice
CJ-210 Criminal Investigations

Fall 2016 (*Monroe College*)

CJ-210 Criminal Investigation

Fall 2016 (*Pace University*)

CJ-242 Crime and Public Policy

Summer 2016 (*Monroe College*)

CJ-212 Ethical Issues in Criminal Justice

Winter 2016 (*Pace University*)

CJ-242 Crime and Public Policy
CJ-414 Integrity Issues in The Criminal Justice System

Winter 2016 (*Monroe College*)

CJ-212 Ethical Issues in Criminal Justice
CJ-210 Criminal Investigations

Fall 2015 (*Monroe College*)

CJ-212 Ethical Issues in Criminal Justice
CJ 210 Criminal Investigations

Fall 2015 (*Pace University*)

CJ-242 Crime and Public Policy
CJ-242 Crime and Public Policy

Summer 2015 (*Monroe College*)

CJ-212 Ethical Issues in Criminal Justice
CJ-212 Ethical Issues in Criminal Justice

Winter 2015(*Pace University*)

CJ-242 Crime and Public Policy
CJ-414 Integrity Issues in The Criminal Justice System

Winter 2015 (*Monroe College*)

CJ-210 Criminal Investigations
CJ-212 Ethical Issues in Criminal Justice

Fall 2014 (*Pace University*)

CJ-242 Crime and Public Policy
CJ-242 Crime and Public Policy

Fall 2014 (*Monroe College*)

CJ-212 Ethical Issues in Criminal Justice
CJ-210 Criminal Investigations

Spring 2014 (*Pace University*)

CJ-242 Crime and Public Policy
CJ-305 Criminal Law
CJ-414 Integrity Issues In The Criminal Justice System

Fall 2013 (*Fairleigh Dickinson University*)

CRIM-7070 Contemporary Issues in Crime and Justice (**Graduate Course**)

Fall 2013 (*Pace University*)

CJ-242 Crime and Public Policy

Fall 2013 (*Monroe College*)

CJ-212 Ethical Issues in Criminal Justice
CJ-210 Criminal Investigations
CJ-103 Intro to Political Science

Spring 2013 (*Fairleigh Dickinson University*)

CRIM-7020 Ethics, Politics & Justice (**Graduate Course**)

Spring 2013

LA-240 Criminology
LA-103 Political Science

Fall 2012 (*Fairleigh Dickinson University*)

CRIM-3313 Analysis of Serial Killers
CRIM-7090 Professional Development Seminar (**Graduate Course**)

Fall 2012 (*Monroe College*)

LA-240 Criminology
CJ-202 Prisons: Punishment and Rehabilitation In America
CJ-211 Police and Community

Summer 2012(*Monroe College*)

CJ-211 Police and Community
LA-103 Political Science

Spring 2012 (Monroe College)

CJ-212 Ethical Issues in Criminal Justice
CJ-211 Police and Community
CJ-301 Homeland Security

Fall 2011(Monroe College)

CJ-212 Ethical Issues in Criminal Justice
CJ-211 Police and Community
LA-103 Introduction to Political Science
CJ-301 Homeland Security Online

Summer 2011 (Monroe College)

CJ-211 Police and Community
CJ-210 Criminal Investigations Online
CJ-211 Police and Community Online
CJ-301 Homeland Security Online

Spring 2011(Monroe College)

CJ-211 Police and Community
CJ-210 Criminal Investigations Online
CJ-211 Police and Community Online
CJ 301 Homeland Security Online

Fall 2010(Monroe College)

CJ-211 Police and Community
CJ-210 Criminal Investigations Online
CJ-211 Police and Community Online

Summer 2010 (Monroe College)

CJ-211 Police and Community Online
CJ-210 Criminal Investigations Online

Spring 2010 (Monroe College)

CJ-211 Police and Community Online
CJ-210 Criminal Investigations Online

Fall 2009(Monroe College)

CJ-211 Police and Community Online
CJ-210 Criminal Investigations Online

Summer 2009(Monroe College)

CJ-211 Police and Community Online
CJ-210 Criminal Investigations Online

Spring 2009 (Monroe College)

CJ-210 Criminal Investigations Online
CJ-301 Homeland Security Online

Fall 2008(Monroe College)

CJ-210 Criminal Investigations Online
CJ-301 Homeland Security Online

Spring 2008(Monroe College)

CJ-210 Criminal Investigations Online
CJ-301 Homeland Security Online

Fall 2007(Monroe College)

LA-241 Juvenile Delinquency
CJ-311 Organized Crime and Gangs
LA-240 Criminology

Spring 2007(Monroe College)

LA-241 Juvenile Delinquency
CJ-305 Drugs in America
CJ-326 Sex Crimes

Fall 2006 (Monroe College)

CJ-205 Criminal Procedure and Process
CJ-200 Criminal Law
CJ-305 Drugs in America

Summer 2006 (Monroe College)

CJ-205 Criminal Procedure and Process
CJ-200 Criminal Law
CJ-320 Diversity in the Criminal Justice System

Spring 2006 (Monroe College)

LA-241 Juvenile Delinquency
CJ-311 Organized Crime and Gangs

Fall 2005(Monroe College)

CJ-240 Correctional Administration & the Law
CJ-205 Criminal Procedure and Process

Summer 2005(Monroe College)

CJ-240 Correctional Administration & the Law

CJ-101 Introduction to Criminal Justice

Spring 2005(Monroe College)

CJ-311 Organized Crime and Gangs

CJ-305 Drugs in America

Fall 2004(Monroe College)

CJ-205 Criminal Procedure and Process

POLICE TEACHING EXPERIENCE

12/1998-1/2002 New York City Police Academy – Homeland Security, NYS Penal law and Police Science

LEADERSHIP EXPERIENCE

12/1998- Sergeant, New York City Police Department- As a sergeant in the New York City Police Department I performed a multitude of supervisory tasks. Upon my initial promotion to the rank of sergeant, I was responsible for the supervision of 10 police officers who were required to perform uniformed patrol functions. I applied to and was accepted as an instructor for the New York City Police Academy. In my position as a sergeant within the Police Academy, I provided instruction in the discipline of the New York State Penal Law for over 2000 recruits during a three year period.

During the terrorist attacks on Manhattan in 2001, I was responsible for the supervision and rescue and recovery of victims in the World Trade Center complex.

In January of 2003, I was promoted to the rank of police Lieutenant and reassigned to Harlem. While in Harlem, I was responsible for 70 subordinates who were under my supervision. I was designated as the counterterrorism expert based on my military background and training.

In 2004, I was assigned to the Internal Affairs Bureau, while in the Internal Affairs Bureau; I constructed various corruption prevention strategies and conducted integrity testing for Police Officers. In addition, I supervised police investigations involving police corruption.

In 2007, I was assigned to the Community Affairs Bureau. In Community Affairs, I was responsible for the integrity and control of all Police Officers assigned to the Community Affairs Bureau within the City of New York. Attended Community Council meetings and interactive meetings with a variety of NYC communities designed to strengthen police and community relations.

BUSINESS EXPERIENCE

- Founding Partner Innovative Public Safety & Media LLC
- Innovative Public Safety & Media LLC exists to assist agency heads and other policymakers in organizational, structural, and human capital decision-making based on extent research and decades of experience in public safety practice.
- Innovative Public Safety & Media is a benchmark organization focused on the complex challenges facing today's public safety practitioners. Innovative Public Safety & Media is committed to sober, objective research and to an approach to problem-solving that is informed by academic rigor and analysis.
- Our work is interdisciplinary and broad in scope.
- Our work product is free of commercial, partisan, and ideological bias. Innovative Public Safety & Media is committed to the public good.
- Personal Protection for the following celebrities:
 - Mariah Carey
 - Nas (Nasir Jones)
 - DMX (Earl Simmons)
 - Interscope Records (CEO)

EXPERT WITNESS

As a Sergeant in the NYPD Police Academy I trained thousands of Police Officers on procedural guidelines, use of force, court testimony, and law. As a Lieutenant in the NYPD Internal Affairs Bureau, I disciplined numerous Police Officers, Sergeants, Detectives on procedural infractions coupled with testimony in the NYPD trial room on behalf of the New York City Police Department. Numerous appearances as an expert in high profile trials and depositions in both State and Federal court.

CURRICULUM EXPERIENCE

1999-2002 Police Academy - Produced curriculum for probationary police officers on homeland security and taught police procedural guidelines to newly hired recruits.

From 2006-2008, I was hired by BOCES Southern Westchester to develop a curriculum in Homeland Security and emergency management for high school students. This consisted of collecting literature and practical items and compiling them for instruction to students in a police, EMS and fire safety. The data collection alone took 18 months and the creation of the written curriculum took 6 months. Subsequently, the course was completed and certified by the State of New York.

MILITARY EXPERIENCE

United States Army Commissioned Officer, I managed budget and acquired logistics and provided leadership to enlisted soldiers in the capacity of the Executive Officer. From 2003-2007, I was the executive officer of the 1st FST Army unit assigned to Fort Totten Queens, NY.

In my capacity as the executive officer, I was the second in command answering directly to the commanding officer. I was responsible for monitoring the promotion board, physical training assessment, weight management and Officer Performance Reports. As a commissioned officer in the Army during a time of war I was tasked with ensuring that the unit was prepared in various aspects of counterterrorism. I constructed a series of homeland security professional development seminars for enlisted soldiers and my fellow officers to ensure unit compliance. I was also responsible for maintaining discipline within the unit and ensuring that all supply levels were adequate for wartime deployment.

EXAMINATION DEVELOPMENT

In May of 2002, I was assigned to the New York City Department of Personnel as the author of the 2003 New York City Police Department promotional exam for the rank of Lieutenant. In my role as the author of the Lieutenants exam, I conducted a critical assessment of the job description of a police sergeant. This assessment was transferred into a knowledge based examination which required 5,560 sergeants to utilize critical thinking and literature linked to the job description of a New York City Police Lieutenant.

STRENGTHS

Expert in implementing counterterrorism strategies and conducting homeland security needs assessment evaluations based on prior military training

Capable of creating and implementing public policy and managing a municipal budget based on MPA and current Doctoral Studies program

Expert in identifying violence in public high schools based on dissertation research

Able to manage community and police relations based on years of experience within the Community Affairs Bureau of the New York City Police Department

Public Speaking ability based on experience within the Community Affairs Bureau and as an Adjunct Professor, Monroe College, Fairleigh Dickinson University, and Pace University.

NYPD Internal Investigator and Supervisor based on experience within the Internal Affairs Bureau

Expert in 21st Century Policing and deployment of police personnel. Able to assist communities and law enforcement agencies to strengthen trust while maintaining a semiotic relationship and simultaneously reducing crime

Police Procedural and use of force expert with national trial experience and numerous court deposition appearances as a subject matter expert

AWARDS

| | |
|-----------|--|
| 2008-2011 | NYPD Perfect Attendance Award , New York City Police Department |
| 2006 | Iraq Enduring Freedom Award , United States Army |
| 2000 | Unit Citation Award , New York City Police Department |
| 1994 | Excellent Police Duty , New York City Police Department |
| 1993 | Excellent Police Duty , New York City Police Department |
| 1992 | Excellent Police Duty , New York City Police Department |
| 1991 | Iraq Desert Shield Desert Storm Award , United States Army |
| 1990 | Meritorious Service Award , United States Army |

Panels

2015 Presenter- New York State Bar Association Annual Forum on Race Justice and Police Reform
2016 HOT 97FM Push For Peace Panel to Reduce Gun Violence in New York City

Media Commentator

I continuously participate as a media commentator for a multitude of television and radio entities within the New York City metropolitan area on terminal issues of Criminal Justice. I currently and regularly make appearances with the following entities as a Criminal Justice and police tactics and procedural expert

New York 1 Television News (Inside City Hall)
Fox 5 News
Pix 11 Morning News
Hot 97 FM Radio
BBC Television
United Nations Associated Press (Russia, Turkey)
Al Jazeera America
Fox Network, Fox & Friends, Fox Business, Laura Ingram
Riverdale Press Newspaper
Fox News Nancy Grace
Court TV
CNN, Anderson Cooper 360, Erin Burnett Out Front, Cuomo Primetime

PBS
ABC News
CBS News
Bronx Net
MSNBC
NBC Nightly News with Lester Holt
Wendy Williams Show

PUBLISHING

Journal Article: Race and Social Problems, February 15, 2012

Racial Group Comparisons of Conceptualizations of Rap Music Constructs: A Cross-Racial

Validity Study of the Rap Music Attitude and Perception Scale

Various Newspaper articles with publications in the New York City area

DISSERTATION ABSTRACT

REDUCING SCHOOL MISDEMEANOR ASSAULTS IN URBAN SETTINGS THROUGH SCHOOL COLLABORATION BETWEEN SCHOOL LEADERS AND POLICE: A COMPARATIVE CASE STUDY

Darrin K. Porcher, EdD

Fordham University, New York, 2011

The purpose of this study was to identify how urban high schools can improve safety and reduce the number of misdemeanor assaults among students. The focus of the study was to determine if the leadership within three urban public high schools reduced misdemeanor assaults in their respective facilities through a collaboration with police. A review of school records revealed that all three large, urban high schools in the study initially had a high number of misdemeanor assaults, followed by a substantial reduction in assaults within a 3-year period. All three high schools had newly appointed principals at the beginning of the reduction period.

The principal in Public High School 1 employed a management strategy focused on collaboration with the police. The principal held regular strategy meetings with his staff, producing staff behaviors consisting of a closer administrative presence during arrivals, dismissals, and changes in periods. The strategies employed in Public High School 1 resulted in an 84% reduction in misdemeanor assaults over a 3-year period.

The principal in Public High School 2 also used a management strategy focused on collaboration with the police, and the principal relied on the knowledge base of his newly assigned dean of discipline, who had an extensive background in safety. Staff members became highly visible in the school hallways and corridors during student arrivals, dismissals, and

changes in periods, resulting in greater supervision and contributing to a reduction of 42% in misdemeanor assaults over a 3-year period.

The principal of Public High School 3 and a safety advisor appointed by the school board focused on a strategy of mediation and faculty oversight coupled with collaboration with police. The strategy resulted in a 46% reduction in misdemeanor assaults over a 3-year period.