



**Lorain Police Department
Office of Professional Standards**

**Investigative
Report**

Honor • Respect • Public Service

IA-23-031 / 2023-22429

Report Issued: August 7, 2023



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James P. McCann
Chief of Police

The Lorain Police Department's Office of Professional Standards is responsible for upholding the integrity of the Lorain Police Department by conducting unbiased, thorough investigations of alleged employee misconduct, while seeking the truth, safeguarding rights, and ensuring the parties involved are treated with dignity and respect.

The Lorain Police Department's Office of Professional Standards serves as a foundation for building transparency, accountability, and public trust within the community. Through continuous growth and innovative practices, the Office of Professional Standards strives to exemplify the highest standards of fairness, objectivity, and professionalism.



EXECUTIVE SUMMARY

The Lorain Police Department’s Office of Professional Standards (“OPS”) initiated an investigation into Officer Palmer after he used force against a dog that had purportedly gotten loose. The dog had charged Officer Palmer, causing him to discharge his weapon, ultimately resulting in fatal injuries for the dog. The incident garnered a great deal of controversy, particularly on social media.¹ The dog’s family generally alleged in the public square that the dog was “harmless” and was shot for “no reason.” Due to the circumstances surrounding the incident, the Chief of Police directed an administrative investigation be conducted to determine if the officer’s actions were justified, to determine if the officer acted in accordance with department policy and procedures, and to review the incident in its entirety.

On July 2, 2023, at approximately 1258 hrs., Officer Palmer was patrolling the area of Oberlin Avenue and W. 8th Street. Officer Palmer observed approximately five large yellow dogs running at-large. The dogs were not wearing any collars, were not on a leash, and were not otherwise contained. Officer Palmer also observed three people, two females and a male, attempting to control the dogs by grabbing on to their tails. Their efforts were unsuccessful, and

¹ According to academic research, social media encourages the spread of misinformation. Social media users frequently collect in echo chambers, which are generally figurative, but sometimes literal places where similarities among people greatly outnumber differences. Echo chambers allow misinformation to flourish because users are less likely to fact-check a post by someone with whom they identify and want to agree. Controversial events on social media, often create a host of negative effects, to include cyberbullying, flaming, trolling, and doxing. In this case, Officer Palmer has been the victim of on-going harassment and threats.



the dogs continued to run at-large. Due to the situation, notwithstanding the law violations, Officer Palmer stopped his patrol car to assist the parties in getting their dogs under control and restrained.

When Officer Palmer exited his cruiser, he walked towards the back of the cruiser and instructed one of the females to get the dogs under control. Officer Palmer reported that he observed one of the involved females to have a fresh injury on her forearm, which he attributed to the dogs. Meanwhile, as the females were attempting to corral the dogs, Officer Palmer observed one of the dogs² to be “hyper-focused” on him. The dog also failed to react to the actions of the other dog which was next to it. At that point, Officer Palmer reported the dog charged at him. Officer Palmer feared for his safety and drew his duty weapon as the dog was charging. He subsequently discharged his firearm several times as the dog was charging and within several feet of him. After being struck, the dog retreated to the front of his cruiser and later succumbed to its injuries sustained in this incident.

Immediately after the shooting, several people ran towards Officer Palmer and engaged him with threats and insults. Officer Palmer requested immediate assistance. When the shift supervisor, Sergeant Rivera, arrived on scene, he directed Officer Palmer to leave the scene and to respond to the station to calm the situation. Due to the hostile and volatile situation at the time, Officer Palmer was not able to gather the dog’s owner’s information, nor any information regarding the dog.

² The dog was identified by Lorain County Auditor Records as a “mixed breed” dog. Contrary to popular belief or misinformation circulated to the public, the dog was not a full-breed Labrador Retriever.



OPS investigated the complaint over the course of several weeks, conducting witness interviews and subpoenaing documents and other related evidence. The findings of this investigation are addressed in the final section of this investigative report, following the investigative analysis. OPS forwarded this report to Chief McCann, the Lorain Police Department’s Employee Review Board (“ERB”), and to the Lorain City Prosecutor’s Office for their information and review. In addition, OPS is recommending the Lorain City Prosecutor consider the incident for possible action based on the event and the conduct of the dog’s owners. However, charging decisions are ultimately up to the Prosecutor’s Office.



Investigative Information.

Reports/Incident's reviewed:

1. 2023-22429.
2. 2023-11656.

Employees interviewed:

1. Officer E. Palmer.
2. Sergeant E. Rivera.
3. Officer M. Bonkoski.
4. Officer T. Rospert.

Policies & Procedures reviewed:

1. Know and Obey Laws and Organizational Directives (Procedure 303).
2. Competent Performance (Procedure 304).
3. Use of Force (Policy 300).
4. Firearms (Policy 306).
5. Standards of Conduct (Policy 320).
6. Animal Control (Policy 806).
7. Animal Related Incidents (Procedure 809).
8. Mobile Audio/Video (Policy 421).
9. Investigating Allegations of Employee Misconduct (Procedure 1004).



Recordings reviewed:

1. *Garrity* Interview with Officer Palmer.
2. *Garrity* Interview with Sergeant Rivera.
3. *Garrity* Interview with Officer Rospert.
4. *Garrity* Interview with Officer Bonkoski.
5. Officer Palmer's body-camera recording.
6. Officer Bonkoski's body-camera recording.
7. Officer Rospert's body-camera recording.
8. Radio traffic from the incident.

Documents/Evidence reviewed:

1. Witness statement from Colleen Paradissis.
2. Witness statement from Mellenie Kerns.
3. Dog registration records from Lorain County Auditor's Office.
4. Records provided by the Lorain County Dog Warden.
5. Officer Palmer's medical records and photographs from previous dog encounter.
6. Grand Jury Subpoena issued to Lorain County Auditor's Office.
7. Grand Jury Subpoena issued to Lorain County Dog Warden.
8. Records provided by City of Lorain Building, Housing, & Planning.
9. Records provided by Lorain County Public Health.
10. Training records provided by Lorain County Community College Police Academy.



The Incident.

On July 2, 2023, at approximately 1258 hrs., Officer Palmer was patrolling the area of Oberlin Avenue and W. 8th Street. Officer Palmer observed approximately five large yellow dogs running at-large. The dogs were not wearing any collars, were not on a leash, and were not otherwise contained. Officer Palmer also observed three people, two females and a male, attempting to control the dogs by grabbing on to their tails. Their efforts were unsuccessful, and the dogs continued to run at-large. Due to the situation, notwithstanding the apparent law violations, Officer Palmer stopped his patrol car to assist the parties in getting their dogs under control and restrained.

When Officer Palmer exited his cruiser, he walked towards the back of the cruiser and instructed one of the females to get the dogs under control. At that point, one of the dogs approached him. Officer Palmer perceived this dog to be friendly and it ended up meandering off. While this was happening, Officer Palmer said he observed one of the involved females to have, what appeared to be, a fresh injury to her forearm. Officer Palmer attributed the injury to the dogs. Meanwhile, as the females were attempting to corral the dogs, Officer Palmer observed one of the dogs to be “hyper-focused” on him. The dog also failed to react to the actions of the other dog which was next to it. Officer Palmer reported that he observed the dog’s tail to be straight and rolled up onto its back; the tail was not wagging.

At that point, Officer Palmer reported the dog charged at him. Officer Palmer attempted to sidestep out of the path of the dog and back up; however, the dog changed direction and continued



to charge. Officer Palmer feared for his safety and drew his duty weapon as the dog was advancing. He subsequently discharged his firearm several times as the dog was charging and within several feet of him. After being struck, the dog retreated to the front of his cruiser and later succumbed to its injuries sustained in this incident.

Immediately after the shooting, the scene evolved into further chaos and several people ran towards Officer Palmer and engaged him with threats and insults. Officer Palmer requested immediate assistance. When the shift supervisor, Sergeant Rivera, arrived on scene, Officer Palmer was instructed to leave the scene to calm the situation and to debrief the incident on station. Due to the limited time and reactions of the people at the scene, Officer Palmer was not able to gather the dog's owner's information, nor any information regarding the dog, for his police report.



Figure 1: Officer Palmer's first shot at the dog as the dog was charging him.

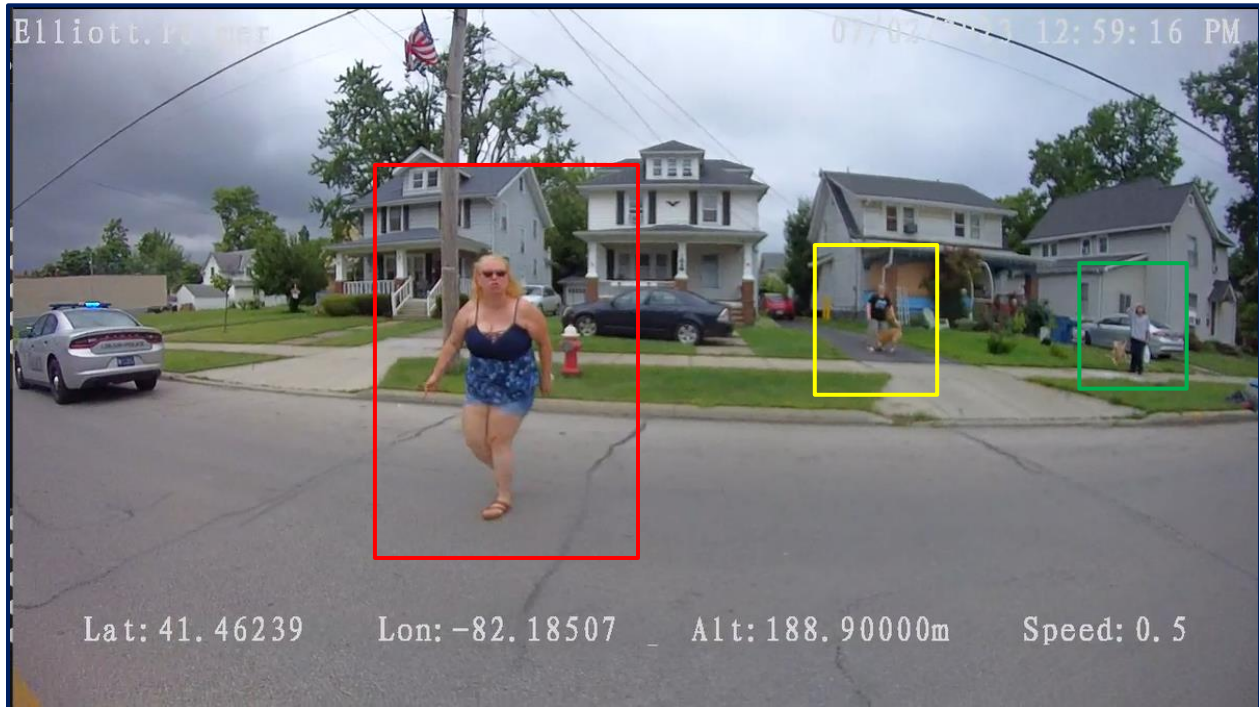


Figure 2: Tammie Kerns is observed immediately after the shooting coming towards Officer Palmer. Two other dogs are observed in the background.



Figure 3: Image of post-shooting scene.



Summary of Statement by Coleen Paradissis.

Coleen Paradissis was identified as a witness to the incident by Patrol. According to a written statement by Paradissis, she was making a right turn at the stop sign at the corner of W. 8th Street and Oberlin Avenue. She said while she was stopped, she witnessed Officer Palmer shoot a Labrador dog approximately twenty feet away at least four times. Paradissis claimed that the action was unprovoked, and that the dog was not showing any aggression. She also noted that Officer Palmer never tried to pull his Taser or pepper spray.

Summary of Statement by Mellenie Kerns.

Mellenie Kerns was identified as one of the involved parties who was attempting to control the dogs. According to a written statement by Kerns, her four dogs got out. She said her and her mother, Tammie Kerns, were in the process of catching them when Officer Palmer pulled up. She said Officer Palmer stepped out of his cruiser and started yelling at her to get the dogs under control and reportedly had his hand on his gun. Kerns claimed that she had been getting the one dog (Dixie) under control when he drew his weapon. Kerns said she “lost focus” and “lost [her] grip” as she became afraid.³ Kerns alleged that Officer Palmer yelled out at the dog, making the dog look at him. According to Kerns, the dog went to run across the street six or more feet away from Officer

³ Mellenie Kerns was identified as one of the parties holding the dog by the tail.



Palmer when Officer Palmer began to fire upon the dog once.⁴ She said Officer Palmer then fired three more times after the dog began to run away, killing her.

⁴ Kern's written statement is not consistent with the body camera footage of this incident.



Summary of Interview with Officer Palmer.⁵

On July 6, 2023, at approximately 1000 hrs., Officer Palmer was interviewed regarding this investigation in the conference room of Faulkner, Hoffman & Phillips, LLP. in Cleveland. Officer Palmer had been given advance notice of the scheduled interview. Present for the interview were: Officer Palmer; his union/legal representative, Robert Phillips; and me. The interview was digitally recorded for evidentiary purposes.

Prior to questioning commencing, Officer Palmer was given a copy of his *Garrity* warnings. He also signed the Employee Rights / Insubordination Warning form.

According to Officer Palmer, on July 2nd he was on routine patrol. He was stopped at a red light at the intersection of Oberlin Avenue and W. Erie Avenue. While stopped at the light he observed several dogs running at-large in the distance. As he got closer, Officer Palmer said he also observed three people chasing the dogs and trying to gain control of them. While Officer Palmer was driving down Oberlin Avenue and was observing what was happening, he said he determined that he must get control of the situation to prevent someone from being bit by these at-large dogs. Officer Palmer said he stopped his cruiser near the intersection of Oberlin Avenue and W. 8th Street and got out.⁶

⁵ The following is a summary of the interview. It is not intended to be a verbatim account and does not memorialize all statements made during the interview. Communications by the parties were electronically recorded and the recordings capture the actual words spoken.

⁶ The time the recording starts to when the dog is shot is approximately eight seconds.



When he exited the cruiser he said he told one of the people who was attempting to corral the dogs to get the situation under control, or something to that effect. He said that while he was speaking to one of the females, he observed another female to be holding the dog by its tail. Meanwhile, he said one of the dogs had “sauntered”⁷ up to him. Officer Palmer said he observed the dog “hopping along” and noted that it was “wagging its tail.” The dog came up to him, sniffed him and ran off.

While this was happening, he observed one of the females to have an injury to her arm, specifically a laceration to her forearm.⁸ Officer Palmer said he did not know at the time how the female had received the laceration but noted that the injury appeared fresh, and he attributed it to what was occurring with the dogs. At this point, he said he had observed the two females fighting to gain control of the dogs and one of them appeared to be injured.

While all this was going on, Officer Palmer said he observed the one dog being held on to by its tail. He noted the dog was “intently staring” at him while he was being “yanked on” by one of the females. At that point, the female let go of the dog and the dog started to run straight at him. According to Officer Palmer, the dog was not “sauntering” in a lazy “s-mode”. The dog was going straight towards him; its tail was not wagging or in a neutral position. Officer Palmer stated that based on his numerous experiences with dogs and other animals, and his training, he reasonably

⁷ *Verb.* Walk in a slow, relaxed manner, without hurry or any effort.

⁸ OPS was unable to corroborate this observation because the Kerns did not respond to certified letters sent to them by OPS requesting information/interviews.



believed that the dog was coming to attack him. He drew his duty weapon and fired several rounds at the dog using point shooting at a distance of no more than four to five feet.

I asked Officer Palmer if he was aware of where the dogs originally came from. Officer Palmer said he could tell they were running around, but he did not know where they initially came from. Officer Palmer also said he observed the dogs running around the sidewalks and the law prohibits dogs from running at-large. Officer Palmer also observed the dogs without any collars.

Officer Palmer said he became concerned as to what was occurring because he is an animal owner himself, and based on what was happening, he believed that the two females needed assistance in getting control of the animals. I asked Officer Palmer if he had been dispatched to the residence, or if he happened upon the scene; Officer Palmer responded that he came upon it as he was patrolling the area. Since the dogs were running at-large, I asked Officer Palmer when he originally stopped if it was his intent to investigate a crime or to assist the owner in corralling the dogs. Officer Palmer responded that his main intention was to assist the owner in catching the animals and to make sure an innocent civilian walking around did not get injured by one of them.

I asked Officer Palmer if it was normal to grab a dog by its tail and if the dog would become agitated by such action. Officer Palmer said that he would be surprised if the dog did not become agitated because someone was grabbing on to its tail. Officer Palmer said that he understands that it is quite uncomfortable for the dog when someone does that, noting that animals do not like to be put in discomfort.



I asked Officer Palmer if the two women who were present at the scene had asked for his assistance in catching the dogs. Officer Palmer said he did not recall the two females saying anything initially. He said they appeared to be focused on getting the animals, so his only interaction with them initially was telling them that they needed to get the animals under control.

I asked Officer Palmer to expand on his statement that the dog who ended up charging him was “hyper-focused” on him. Officer Palmer explained that it would be beneficial to compare it to the behavior of the other dog that approached him first. Officer Palmer said the first dog that approached him was very “lazy” and “moseyed” up to him, running in an “S” and wagging its tail. Whereas the second dog was staring directly at him. Officer Palmer said he found this unusual because the dog was surrounded by other dogs. Additionally, one of its family members was behind it holding on to its tail. Despite the other things that were going on, the dog appeared to be paying attention to only him. At that point, Officer Palmer said he noted that the dog was “fixed” and “focused” on him and nothing else that was going on at the time.

I asked Officer Palmer if the dog was growling; Officer Palmer stated that he did not recall hearing it growl. I then asked if the dog’s tail was in an up position. He said the dog’s tail was in “a position of balance,” noting that dogs typically communicate with their tail. He said that when dogs are excited or neutral, they will wag their tail. The second dog Officer Palmer encountered was not wagging its tail and was specifically set in a manner to help it maintain balance while running at speed. I asked Officer Palmer to explain further. Officer Palmer said the tail of the second dog was in an up position and partially curled towards its back.



I asked Officer Palmer if he believed that the dog was just attempting to greet him. Officer Palmer responded, “No.” He went on to explain that he has been on numerous calls where people’s animals come up to greet him with no issue. Usually, he said the dogs are wagging their tails and are just stomping around. The problem dog that Officer Palmer said he encountered was not doing any of that.

OPS observed in Officer Palmer’s police report that he wrote that the “dog charged” at him, and due to the dog’s charge, he feared for his safety. I asked Officer Palmer to expound on why he feared for his safety. Officer Palmer explained that during his time as a police officer, he has investigated numerous dog bites. He said dog bites can range from a minor injury to things like he has experienced in the past. He said he was bitten by a dog and his injuries required surgery, and nearly a month of serious antibiotic treatment. Officer Palmer said when dogs bite they can cause “great harm.” Officer Palmer said during the incident, he had determined that the dog had “no positive intention” towards him. He added, if the dog was going to bite him, Officer Palmer might be doing another month of recovery and rehabilitation, like he had to do during his last incident. Officer Palmer also noted there were other dogs at-large, which could have also jumped in the attack.

I asked Officer Palmer if the dog had “triggered him” based on his last experience. Officer Palmer said he would not characterize it that way. He said when the first dog approached him, he had no reaction to it. Officer Palmer said based on his experience, he had additional knowledge that dogs have the capability to cause great injury. He said that was something that he must keep in perspective. He explained that when he must make a decision as a police officer, he must



consider the ‘totality of the circumstances,’ which includes previous knowledge or interactions. Officer Palmer said “in a split second” he had to judge the dog’s behavior and had to consider what could happen if he were bitten. He said those considerations were part of his decision-making process in this incident.

I asked Officer Palmer if he was overly concerned that the dog would attempt to cause him harm because of his prior experience. Officer Palmer responded, “I don’t think overly... Ah... My concern would be...It didn’t change that I believed that I was receiving injury, but changed kind of the understanding what injuries from a dog can be...”

Officer Palmer said, had the prior experience to him never happened, he still knew that he was going to be bit, but he may not have been able to properly articulate the outcome of being bit and all that it entailed. Officer Palmer admitted to the fact that the prior experience had been involved in his decision making; however, it did not negate the fact that he was going to be bitten based on all accounts of the dog’s behavior, but he also understood how a dog bite could negatively affect his health and general wellbeing.

I asked Officer Palmer to estimate how many shots he believed he discharged at the dog. Officer Palmer said he estimated that he discharged his duty weapon at the dog approximately three times. He said a citizen came over to him and said he had shot the dog four times.

I told Officer Palmer that the on-going discussion in the public was that he had called the dog over to him. I asked Officer Palmer if that was in fact true. Officer Palmer responded, “No. I



had no intention of the dog coming to me at that time. I never told it to come. I heard people say that I called it by its name. I didn't even know its name."

I asked Officer Palmer when he drew his duty weapon, what the position of the dog was at the time. Officer Palmer said he recalled drawing it after the dog had already been released by the person who was grabbing onto its tail. He said he observed the dog running towards him and was within a couple of feet of him. Based on his training, Officer Palmer said he naturally reacted to the dog's impending attack. Officer Palmer said he estimated the dog was within four feet of him when he discharged his duty weapon.

I asked Officer Palmer if he had caught the dog's attention while he was yelling at the owners to get the dog under control. Officer Palmer responded that it "was possible."

I asked Officer Palmer if he had considered other options to address the dog charging at him. Officer Palmer responded that he did not have time to consider other options, such as a Taser. Officer Palmer added that Tasers are generally not made for dogs and the Taser prongs could have missed the dog as it was coming at him. He said getting proper placement of the Taser prongs was difficult enough for humans moving at human speeds, let alone a dog. He said the animal was moving at a quick speed, and accordingly, he believed that he would not have had enough time to address the threat by the use of his Taser. Officer Palmer said based on the situation which presented itself (he believed the dog was about to cause him serious physical harm), he did not even consider the use of a Taser, or some other less lethal option. Officer Palmer said based on the level of the threat that was presented, it required the use of a firearm.



At that point in the interview, I reviewed Officer Palmer's body camera footage with him. Officer Palmer noted that when he first stepped out of the car, he was accessing the situation and did not yet have an opportunity to activate his body camera. Officer Palmer and I noted the point he did in fact activate his body camera footage after reviewing the footage.⁹

Officer Palmer reported that when Sergeant Rivera arrived on scene, he explained to him the situation and what had transpired. After being briefed, Officer Palmer said Sergeant Rivera ordered him to go to the station and wait for him so they could debrief the incident more fully. Officer Palmer said at the time the situation was getting out of control and people were surrounding him and yelling at him. Sergeant Rivera said it would be difficult for the situation to get under control if Officer Palmer was still on the scene.

Officer Palmer said ultimately, he felt he followed the Department's policies in this encounter with the dog. Officer Palmer also reported that all his rounds were part of the initial volley of shots, and he immediately ceased fire once the dog was no longer a threat to him. Officer Palmer said the dog presented itself as a threat to him and he acted. He noted that if the dog did not present itself as a threat, he would have taken no action, like his encounter with the first dog that approached him.

Officer Palmer also noted that this incident has caused him a significant amount of personal stress. He said he is an animal lover. He has dogs and even has a horse. He said the thought of

⁹ Based on the time the body camera is activated, there is not initially sound. An officer's body camera is always recording and is on a thirty second video loop. When the body camera is manually activated by the officer, it is set up to go back thirty seconds in time consisting of video only. Additionally, the body worn camera view does not necessary depict where the officer is looking.



losing a family pet is “terrible,” and that he could not imagine the amount of pain that the dog’s family is going through. However, Officer Palmer said he can’t rectify the fact that the dog reasonably made him believe that he was going to be injured and the dog triggered his fight or flight response. He said even days after the incident, his resting heart rate is much higher than it normally is. He said he has not been sleeping or eating very well. He also noted that he and his family had been receiving a significant amount of death threats and has had to change his phone number.¹⁰ He also noted that people have also been contacting his fiancé and other family members and telling them horrible things. He also noted that the department had to deactivate his e-mail because of all the hate mail that he had been receiving.

Officer Palmer expressed the entire situation is regrettable and he feels terrible for the dog’s family.

The interview concluded at approximately 1109 hrs.

¹⁰ Threats made to Officer Palmer in violation of Ohio law are currently under criminal investigation by OPS and will be presented to the Lorain County Grand Jury for criminal indictment if there is a finding of probable cause at the conclusion of the investigation.



Investigative Analysis.

Investigations by the Lorain Police Department’s Office of Professional Standards (“OPS”) are generally directed at the determination of whether an officer’s behavior and decisions were “objectively reasonable under the totality of the circumstances confronting the officer.” Administrative investigations are aimed at determining whether the officer or anyone else broke the law, the officer acted within or without Department policy, and/or whether the need exists for the Department to alter Department policies or procedure, or to provide more, better, or different training to its officers. The outcome of an administrative investigation, of course, carries with it the potential exposure for the involved officer to disciplinary action and/or termination of employment if evidence of gross misconduct is found. Administrators, courts, media, and the public who weigh an officer’s decisions and actions, sometimes long after the incident, will often base their judgments on human emotion, misunderstandings of law and police procedure, and unrealistic notions of human response that have little foundation in the realm of human behavior or in the science of human performance under stress. OPS’s responsibility in this investigation is to be an objective fact gatherer whose goal is to collect and report as complete a factual account of the incident as possible and to determine if any Lorain Police Officer committed any violation of policy or procedure. In that spirit, OPS will present the below analysis on this incident involving the Kerns’ family dog, Dixie, a mixed breed dog.

To begin the analysis, it is important to review the relevant law and department policy. According to R.C. §955.28 (Dog may be killed for certain acts – owner liable for damages), *“Subject to divisions (A)(2) and (3) of section 955.261 of the Revised Code, a dog that is chasing*

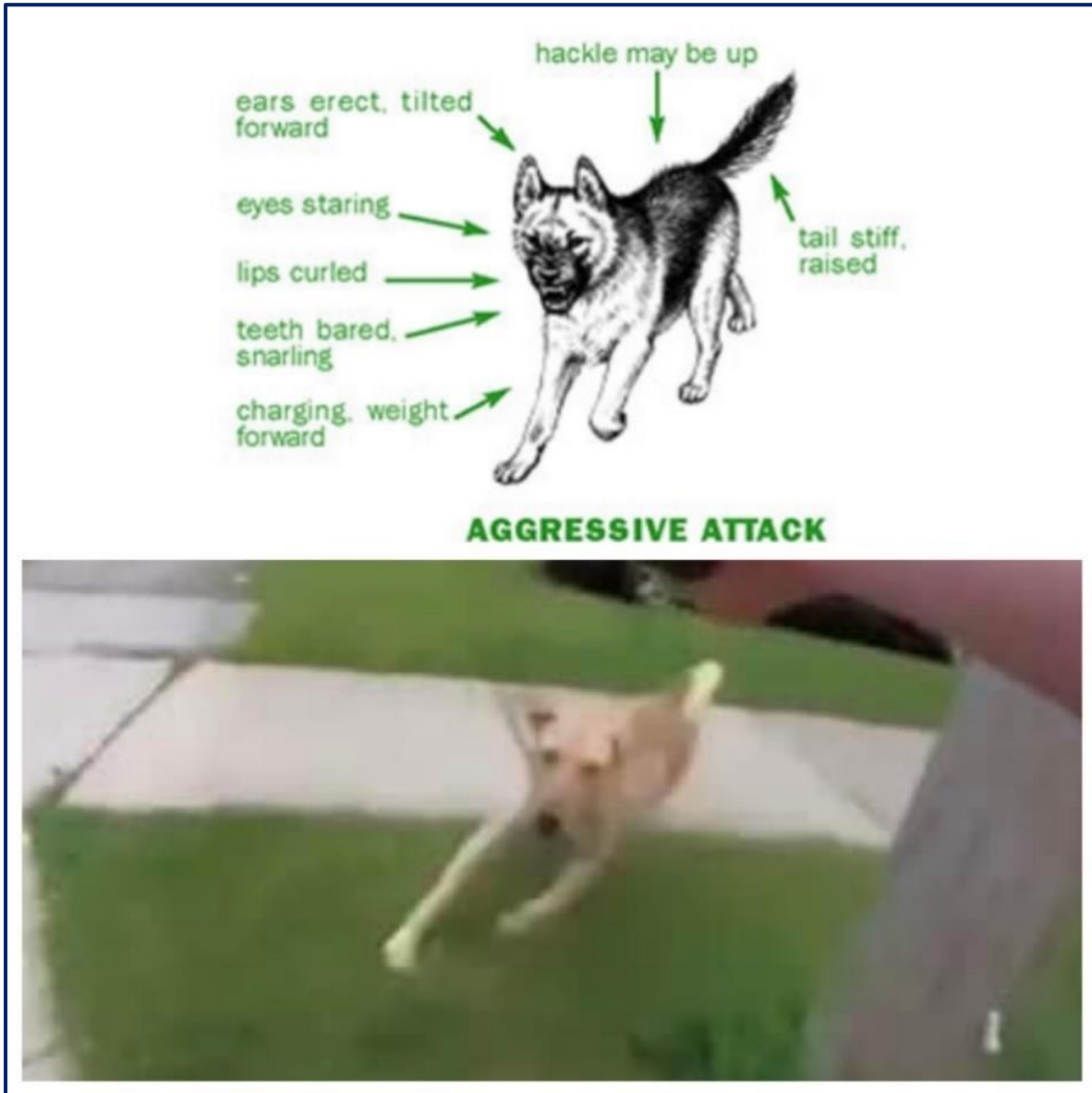


or approaching in a menacing fashion or apparent attitude of attack, that attempts to bite or otherwise endangers, or that kills or injures a person or dog that chases, threatens, harasses, injures, or kills livestock, poultry, other domestic animal, or other animal, that is the property of another person, except a cat or other dog, can be killed at the time of that chasing, threatening, harassment, approaching, attempt, killing, or injury. If, in attempting to kill such a dog, a person wounds it, the person is not liable to prosecution under the penal laws that punish cruelty to animals (Emphasis added). *Nothing in this section precludes a law enforcement officer from killing a dog that attacks a police dog as defined in section 2921.321 of the Revised Code.*" (Emphasis added.)

From reviewing this section of law, OPS would direct its inquiry at the question if the dog was approaching Officer Palmer "in a menacing fashion or attitude of attack," or otherwise "endangered" the officer. Officer Palmer reported in his *Garrity* interview that the dog was "intently staring" at him while one of the females was "yanking" on the dog's tail. Officer Palmer also stated that he observed some type of fresh injury on the female who was attempting to hold onto the dog by its tail. Officer Palmer contributed the perceived injury on the female to the fracas that was actively occurring with the dogs. In other words, Officer Palmer believed that the owner had been injured by her own animal. Officer Palmer said that the dog broke free, at which point, he observed the dog "run straight at [him]." Officer Palmer said the dog's tail was not wagging and was not "in a neutral position." Officer Palmer said it appeared that the dog was utilizing it



“for balance” as it was coming towards him. Officer Palmer reported that based on his experience with animals, and his training¹¹, he “reasonably believed that the dog was coming to attack [him].”



¹¹ Officer Palmer received two hours of mandated training by the Ohio Peace Officer Training Academy (OPOTA) in responding to incidents involving companion animals (Section 8-2; Companion Animals Encounters). According to training records, the training occurred on October 23, 2020.



According to the American Kennel Club, there are several “signals” that a dog may be aggressive. Those signs include:

1. Intensive stare. **(Present in this case)**
2. Ears that are either laid back flat or standing straight up. **(Present in this case)**
3. Bared teeth or curled lips. Some dogs do “smile” when excited, but their happy body language won’t be confused with aggression.
4. A slightly upturned nose, typically caused by the lifting of lips to bare teeth.
5. A guarding posture in which the dog’s neck is a bit lower than shoulder level and his head is lowered and stretched forward.
6. Hair standing up, starting in the neck area, as a result of the piloerector reflex.
7. A squared-off, tense, and a very quiet stance. **(Present in this case)**
8. A stiff and straight tail or one placed high over the dogs’ back. Short, staccato wags, or wagging at just the top can be a threat gesture. **(Present in this case)**

The National Library of Medicine found that more than 4.5 million people are bitten by dogs in the United States each year. Approximately 800,000 people receive medical attention for dog bites, and approximately 10-20 people die from their injuries. Pit Bulls have the greatest frequency of bites (25.07%), **with Labrador Retrievers having the second highest rate of bite attacks (13.72%)**. Dog breeds with wide heads and weighing between 66 – 100 pounds are most likely to bite and attack. Between 15 and 20% of dog bite wounds become infected. Infections caused by dogs can include meningitis, endocarditis, and septic shock, which can be fatal.



**Figure 4: Dixie is observed as Officer Palmer described as “intently staring at him.”
Meanwhile another dog approaches Officer Palmer. Officer Palmer points at the dog and takes no further action.**



Figure 5: The dog is observed getting loose from the female and starts coming directly towards Officer Palmer. The dog’s tail is observed in the up position. The dog is fixated on Officer Palmer via intense stare. Meanwhile, Mellenie Kerns is grabbing the other dog’s tail while it is barking at Tammie Kerns.



Figure 6: Dixie is observed getting loose from Mellenie Kerns and begins charging towards Officer Palmer. The dog is fixated on Officer Palmer.



Figure 7: The dog is observed charging towards Officer Palmer. The dog's ears are in an up position and the dog is fixated on Officer Palmer.

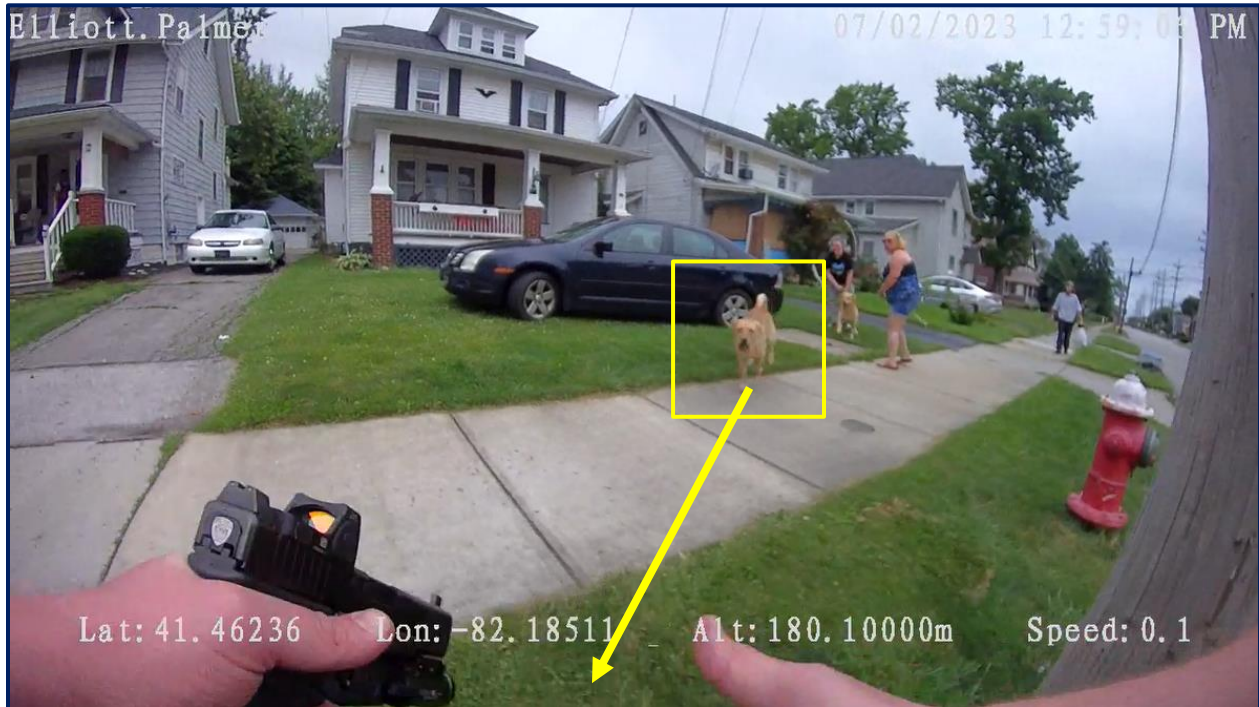


Figure 8: The dog is observed coming towards Officer Palmer. The dog's tail is raised, and its mouth is observed to be open.



Figure 9: Officer Palmer is observed stepping towards the side, at which point the dog changes direction and runs towards Officer Palmer. The dog never loose eye contact after changing course.



Figure 10: Officer Palmer's first shot at the dog as the dog was charging him.



Figure 11: Officer Palmer's second shot.



Figure 12: Officer Palmer is believed to continue to shoot at the dog based on observed recoil from the firearm.



Figure 13: Officer Palmer is observed disengaging with the dog.

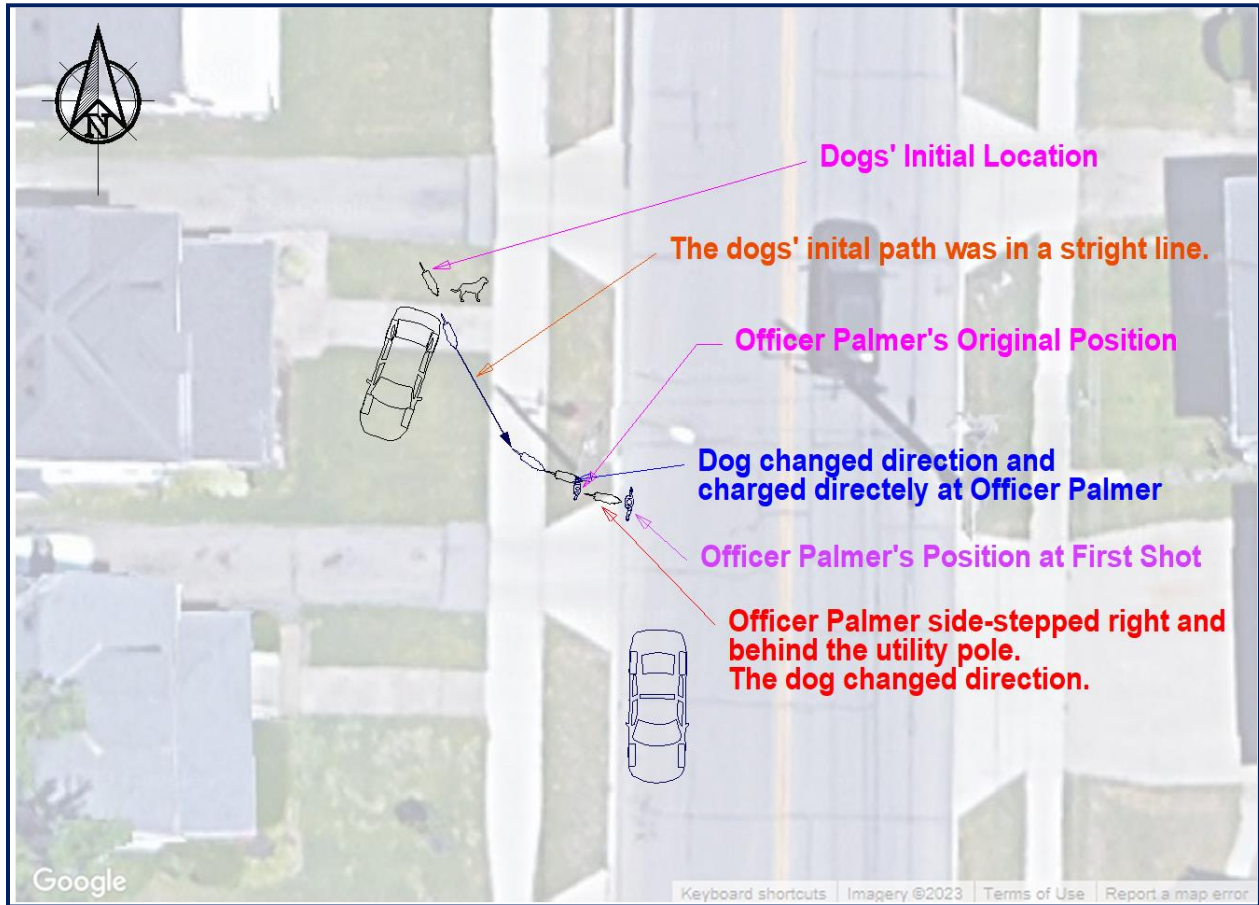


Figure 14: OPS's diagram of incident based on body camera footage.



**710 Oberlin Avenue
Kerns Residence**



Figure 15: Scene aerial photograph.

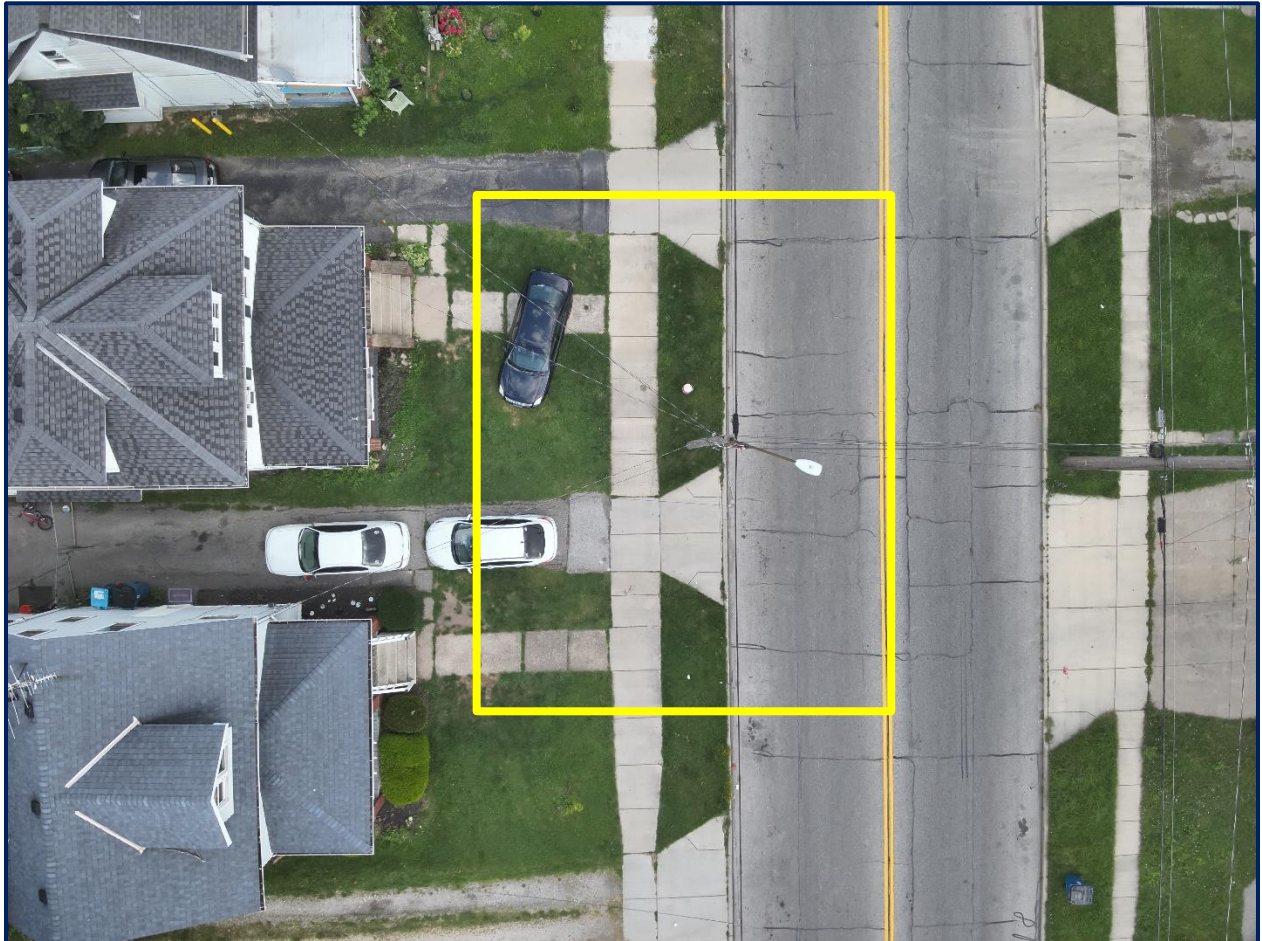


Figure 16: Scene aerial photograph.

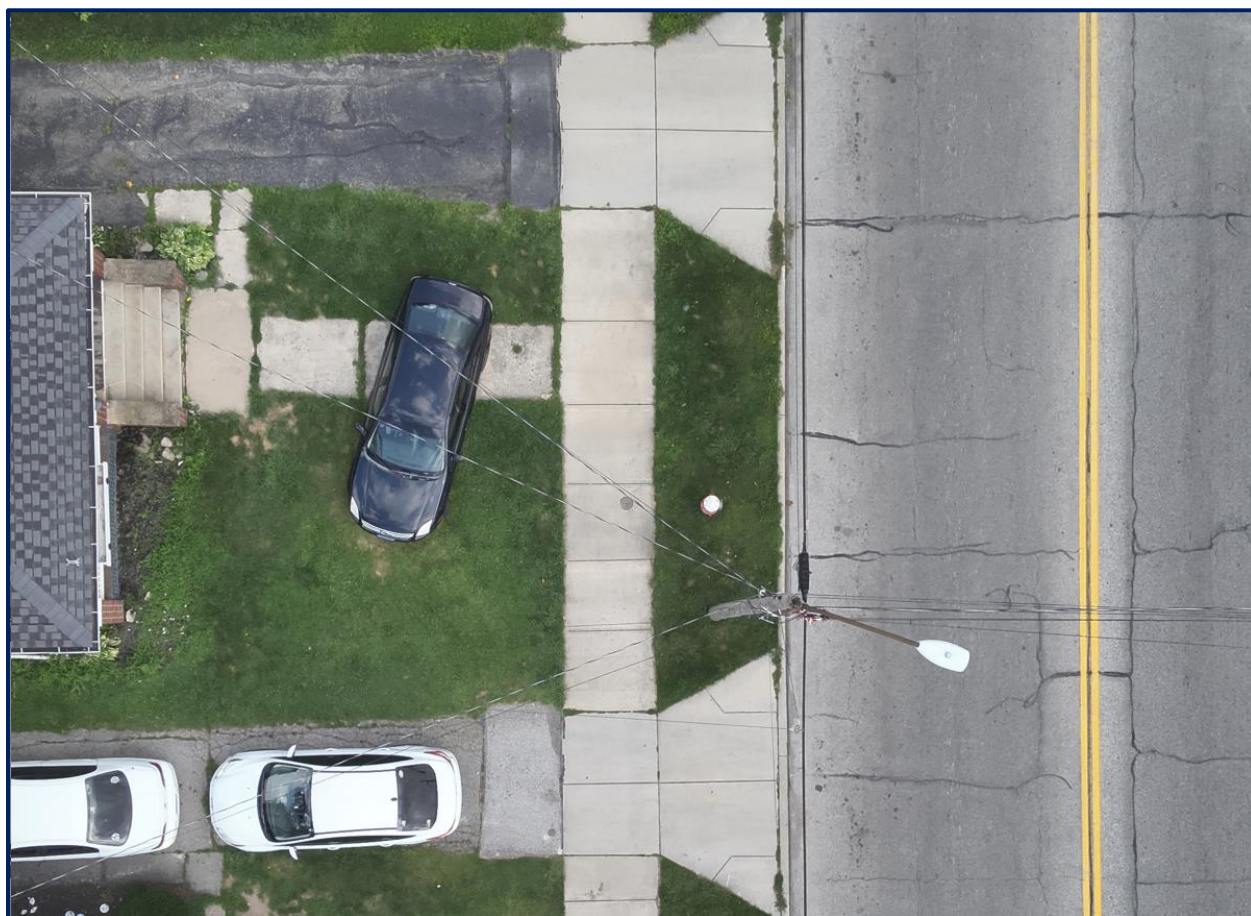


Figure 17: Scene aerial photograph.



Figure 18: Scene aerial photograph. The Kerns house is highlighted.



The Use of Force Encounter and the Officer's Response.¹²

When an officer is presented with a situation he perceives as dangerous, the officer's body undergoes stress. During use of force encounters a chemical reaction occurs in the body due, most notably, to the effect of adrenaline and other hormones that mobilize the body to fight, flee, or freeze. The fight, flight, or freeze response characteristic of arousal in high-stress conditions harkens back to an earlier day and time in human development as a species. This very primitive but effective survival response produces both positive and negative effects on both perception and performance in modern society. The typical survival stress response results in a release of increased adrenaline and hydrocortisone, which produces an upsurge in heart rate, blood pressure, breathing rate, pupil size, perspiration, and muscle tension, resulting in improved blood flow to the brain, heart, and large muscles. Fine motor skills that require hand/eye coordination begin to deteriorate as sources are allocated elsewhere toward the utilization of gross motor facilities that are more effective for running or fighting.

The eye and the brain work together to help us pay attention to information that is important to us. When stress levels are low, the mind can maintain a soft attentional focus across many senses and many elements within each sense as well as on the internal thoughts and self-talk. However, as the level of stress increases and/or the task becomes more complex, the brain automatically narrows our focus and excludes and then suppresses information that is deemed not important.

¹² Honig, A. & Lewinski, W. J. (2008). A Survey of the Research on Human Factors Related to Lethal Force Encounters: Implications for Law Enforcement Training, Tactics, and Testimony. *Law Enforcement Executive Forum*, 8(4).



Attention in particular focuses on the areas of the expected hazard at the expense of awareness toward less likely hazards, or even those hazards with a sudden onset, which had previously been thought to capture attention automatically. Besides high level of stress narrowing the attentional processes and limiting the officer's ability to perceive and then remember all the elements in the encounter, research has also shown that the more complex an environment (i.e., the more distractions), the more pronounced will be the effect of stress on perception and memory.

When confronted with a life-threatening incident or where the body has a chance to become injured, the body prepares itself to physically respond. As discussed, this is known as the fight, flight¹³, or freeze. This occurs because all of the stress response system's resources are allocated to the primary task of survival, and one of these responses in a life-threatening encounter will become the default option and will usually lead to survival. The increased blood flow to the heart and large muscles prepares the body for a physical response. As noted previously, one of the stress responses is an increased blood flow to the brain as the body prepares to respond to the threatening encounter. The brain prepares for this by not only narrowing perception and attention to focus on the threatening event, but also by changing the very way it processes information and makes decisions.

Under high stress, the focus and processes of the brain shift from one of thinking to one of reacting. The focus of operation shifts from the *new brain* and the hippocampus to the amygdala,

¹³ Officers are not expected to flee dangerous encounters. This is contrary to how officers are trained and the public expects officers to react to dangerous situations accordingly. Moreover, officers can become derelict in their duties if they fail to perform. The charge of dereliction of duty is usually used in cases where an officer fails to protect the public or fails to properly investigate a crime.



known as the *old brain*. The adrenaline surge accompanying a high-stress encounter results in increased cortisol, which combines with a decrease in the hippocampus functioning an increase in amygdala functioning to improve the speed of our survival response. The hippocampus and other high-level brain processes commonly referred to as our thinking brain begin to shut down. In other words, the survival system is predisposed to focus all of its resources on responding to the threat, to the detriment of cognition or conscious thought and slower reasoned decision making. Reactions are enhanced, but decision-making speed and ability are reduced, as is our ability to make judgements. Cognitive processing deteriorates. Learning and memory becomes less of a priority. These higher, new brain functions, while having the potential to increase the accuracy and appropriateness of the response, tend to also slow the response, potentially endangering both individual survival and survival of the species in events that are of a sudden onset and thus, rapidly unfolding and are of a threatening nature.

It is important to note and to have some understanding of the body's response to stress because in this case the dog that charged at Officer Palmer notably aroused him to the point where his amygdala¹⁴ was activated and his *old brain* took over. Officer Palmer also admitted in his *Garrity* interview that he feared for his safety as the dog was charging at him, which he reasonably perceived as aggressive. Consequently, Officer Palmer underwent an adrenaline dump and responded to the dog charging at him.

¹⁴ The amygdala helps define a particular stimulus and allows the body to respond appropriately.



In reviewing the body camera footage of the encounter, OPS also noted that after Officer Palmer had ceased firing at the dog, Officer Palmer was still “covering” the dog with his duty weapon even though it was no longer a threat (*See Image 19 on Page 40*). This indicates a level of fear and continued fear of the dog, even though it had been immobilized. Furthermore, it indicates that Officer Palmer’s body had not yet returned to a normal state where the *new brain* with higher cognitive functioning was in charge.

It should be noted, OPS observed that Officer Palmer canted his weapon after he stopped firing. This is not to say that Officer Palmer canted the weapon while he was firing. At this point of the encounter Officer Palmer was utilizing his right hand to key up his microphone to advise dispatch of the situation. Additionally, during police firearms training, officers are trained to rotate the weapon inward because it utilizes more muscle mass and upper body strength to control the weapon, especially if the officer is in movement. It is more ergonomically correct. The contention that Officer Palmer was shooting “gangster style” with his weapon turned sideways is disingenuous and without merit.



Figure 19: Officer Palmer is still “covering the dog” once it was no longer a threat.



Officer Palmer's previous injury from a dog played a part in this encounter.

OPS contends that Officer Palmer, being seriously injured by a dog a few months prior to this incident, played a contributing role in this encounter. In a previous encounter, which occurred on April 8, 2023, Officer Palmer was bitten by a dog which caused him serious medical complications. Officer Palmer had to be admitted to the hospital where he spent two days in the Intensive Care Unit (ICU). He also had to undergo painful surgery and IV antibiotics for several weeks to address the infection that the dog had caused. The dog in that incident, a Pit Bull, **was seemingly friendly** and was on a leash when Officer Palmer was bitten as he was attempting to transport it to the animal hospital.

Previous memories are important to note here. A person's limbic system's ability to form memories causes a person to react or ignore a certain stimulus (e.g., rattlesnake or Cuban musician using a maraca?). Moreover, we see with our brains. Visual input is sent to the Occipital lobe, then to other parts of the brain for interpretation and comparison to previous stored images. What we see can be influenced by previous experiences, expectations, memories, and biases. Juries watching the same video and listening to the same evidence can come to completely different judgements about what happened based on conformational biases (anchoring).

It is important to understand that OPS does not believe that Officer Palmer has post-traumatic stress disorder from the previous incident when the dog bit him. PTSD can only be diagnosed by a mental health professional. However, in OPS's view Officer Palmer had learned a



lesson from his previous encounter. That lesson being: (1) “Don’t let your guard down” with dogs; and (2) “Exercise the necessary caution” with animals, which can be unpredictable.

Information from Officer Palmer’s previous dog encounter.¹⁵

On April 8, 2023, at approximately 1119 hrs., Officer Palmer received injuries after he was bit on the right hand by a Pit Bull, he was attempting to transport to an animal hospital because the Dog Warden was not available.¹⁶ Officer Palmer had sustained dorsal and thenar penetrating wounds. After initially being treated at the emergency department shortly after the dog bite, Officer Palmer’s condition worsened with swelling cellulitis. Due to the infection, Officer Palmer was admitted to the hospital and later underwent operative intervention on April 10, 2023.

Officer Palmer was off work until May 12, 2023, because of this dog bite incident. While Officer Palmer was undergoing medical treatment, the doctors were concerned that the infection he had received as a result of the dog bite was going to his heart, resulting in him having to go on a heart monitor. He was also told initially that he had a 50/50 chance of losing his hand and that he would ultimately have to undergo medical disability and retire from police service. The previous dog encounter was in the back of Officer Palmer’s mind when he encountered the Kerns’ dog. This prior incident must be taken into consideration in the review of the current incident because it was part and parcel of Officer Palmer’s response to the current one.

¹⁵ Officer Palmer has agreed to waive any HIPPA considerations, given the circumstances of this case, and for the public’s knowledge and consumption.

¹⁶ See Lorain Police Department #2023-11656 for additional information.



Figure 20: Officer Palmer's initial dog bite injury.



Figure 21: Officer Palmer's initial dog bite injury.



Figure 22: Officer Palmer's Dog Bite Injury with complications.



Figure 23: Officer Palmer's Dog Bite Injury with complications.



Figure 24: Officer Palmer's injuries post-surgery.



Figure 25: Officer Palmer's injuries post-surgery.



The time it took Officer Palmer to stop shooting.¹⁷

When officers are in a critical high stress situation, with a threatening stimulus, they are encouraged to shoot as many rounds as necessary, as quickly as possible, and to continue until the threat stops (Adams et al., 2009; Squires & Kennison, 2010). This type of shooting stems from previous research and experience in the police field, as oftentimes, unlike common portrayal in movies, threatening suspects are not stopped with only one round fired by officers. This is supported by medical research as it has been found that 64% of gunshot victims with wounds to the chest and abdomen and 36% of those with wounds to the head and neck can survive more than five minutes, some even able to perform strenuous activity and continue to physically fight (Adams et al., 2009; Levy & Rao, 1988; Newgard, 1992; Spitz et al., 1961). Thus, for the safety of the officers and others during dangerous encounters, officers are trained to use a continuous and rapid shooting technique until the threat is completely controlled.

Regardless of the safety benefits, however, a common conflict of this defensive shooting is that officers are expected to cease-fire nearly instantaneously when they determine the stimulus is no longer a threat. Officers are trained that a suspect is most likely no longer a deadly threat when they fall to the ground or drop their weapon; however, this is not always the case. Whether or not a subject is capable of continuing the assault on an officer if they fall to the ground or drop a weapon, officers are expected to use this point as a “stop shooting” signal.

¹⁷ Lewinski, W. J., Hudson, W. B., & Dysterheft, J. L. (2014). Police Officer Reaction Time to Start and Stop Shooting: The Influence of Decision-Making and Pattern Recognition, *Law Enforcement Executive Forum*, 14(2).



What often causes controversy with officer-involved shootings is the inability of officers to immediately cease-fire at this perceived signal. This occurrence has been at the root of many legal cases, often resulting in officers being accused of excessive force for any number of additional rounds fired, particularly if the location of the shots fired indicated that the officer was no longer in danger as the deceased or wounded subject was falling through the plane of gunfire or had turned. In a number of situations, officers have faced harsh media and legal criticism for using multiple rounds to stop deadly offenders while defending their own and other lives.

Investigators often consider the number of rounds fired by officers in these situations. Two of the most critical factors influencing the bullet paths are the timing at which the rounds were fired and the movement of the vehicle or suspect. Although the consequences of these charges (e.g., the number of rounds fired were found to be unreasonable) are very severe, an officer's ability to immediately stop an action, specifically to stop pulling the trigger after recognizing a "stop shooting signal," has not been fully examined. This is a critical concept because even the firing of a single round could be considered excessive force if the circumstances changed within the hundredths of a second it takes an officer to make a decision and then fire that single shot. It is important to understand this because the suspect may be moving, as well as the officer, and by the time it takes the officer to complete a single trigger pull, the suspect may no longer be a threat, thus making it appear that the officer was unjustified in the shooting. Without empirical understanding of these measures and how continuous assessment influences action, the speed of which an officer should be expected to cease trigger pulls and whether additional trigger pulls can be considered excessive force remains in question.



It is well-recognized within research in experimental psychology and neuroscience, that the act of stopping a continuous action, such as a trigger pull, consists of two processes: (1) the “go process” and (2) the “stop process.” In order for a person to cease an action being performed, triggered by the stop stimulus, the stop process signal must be received prior to the go process signal. In short, the stop process signal must be faster than the go process signal, or the action will continue (Verbruggen & Logan, 2008). Additionally, the longer the duration of time between the onset of go stimulus and the onset of the stop stimulus, theoretically, the greater amount of time it takes for the stop process signal to be received and for a stopping action to take place. Even if the action had not started prior to the stop stimulus, the action will still likely occur and the stopping action will be delayed. Behavior of this type, that is usually too short in duration to allow feedback to influence the action, is known as an “open loop” motor program (Schmidt & Lee, 2005) – a process which officers often experience when required to react at incredibly fast speeds.

Some of the controversy surrounding this incident is how it appeared Officer Palmer continued to shoot at the dog after it changed direction and there was growing distance between Officer Palmer and the dog. Simply put, the dog appeared to be no longer a threat to Officer Palmer and Officer Palmer was still engaging the dog. As noted above, there has been scientific research that examined an officer’s reaction time and the amount of time it took an officer to stop shooting. In the study conducted by Lewinski et al. (2014), they examined the officers’ ability to rapidly and continuously pull the trigger of their training weapons. Additionally, the officers were instructed that they were required to stop pulling the trigger as soon as the green light went off (stimulus offset). To emphasize officers’ stopping reactions, they were informed that the experimenters



wanted to be as accurate as they could in this study so they must stop instantly, and any trigger pulls or after the green light went off would count against their overall scores. What the study found overall was the duration of time between the moment the green light was turned off to the completion of the last trigger pull was 0.29 seconds (Median) \pm 0.17 (Standard Deviation). The minimum time was 0.11 and the maximum time was 1.60 seconds. In the case at bar, OPS took the frame where the dog appeared to be changing directions to when after Officer Palmer's last shot left the firearm.¹⁸ OPS then determined the frame rate. From the time the dog changed direction to when the final shot was fired, it took **44 frames**. With the video being **29.97 frames** per second, it would equal **147 centiseconds or 1.47 seconds**.

Table 2. Variable Definitions for Data Analysis with Movement M \pm SD, Max, and Min Values

Variable	Definition	Experiment One		Experiment Two		Experiment Three		Experiment Four	
		M \pm SD	Min (Max)	M \pm SD	Min (Max)	M \pm SD	Min (Max)	M \pm SD	Min (Max)
Time from SOn to Start of TP (s)	The duration of time between the moment the green light was turned on and the officer began to move the trigger for TP action	0.25 \pm 0.06	0.17 (0.50)	0.24 \pm 0.04	0.17 (0.41)	0.56 \pm 0.08	0.37 (0.87)	0.46 \pm 0.09	0.32 (0.84)
Time to Complete TP (s)	The duration of time between officer initiation of TP and completion of the TP (travel time of the trigger)	0.06 \pm 0.02	0.03 (0.13)	0.07 \pm 0.02	0.04 (0.22)				
Time from SOn to TF (s)	The duration of time between the moment the green light was turned on to the completion of the TP into TF	0.31 \pm 0.07	0.20 (0.58)	0.31 \pm 0.05	0.21 (0.50)				
Time from SOff to Completion of Last TP (s)	The duration of time between the moment the green light was turned off to the completion of the last TP			0.29 \pm 0.17	0.11 (1.60)				
Number of TPs Completed Prior to SOff	The amount of TPs completed between the moment the green light was turned on and the moment the green light was turned off			2.81 \pm 0.53	0.0 (7.0)				
Number of TPs Completed After SOff	The amount of TPs completed after the green light was turned off			1.06 \pm 0.52	0.0 (6.0)				
Time Between Consecutive TPs (s)	The amount of time from the beginning of one TP to the start of the TP immediately following			0.28 \pm 0.06	0.14 (0.82)				
Time Between TPCs (s)	The amount of time from the release of the trigger to the beginning of the next TP			0.04 \pm 0.02	0.02 (0.11)				

Figure 26: Data analysis from study conducted by Lewinski et al. (2014).

¹⁸ OPS determined from the available evidence that Officer Palmer fired four shots.



Threat identified	Engaging threat	Behavior change	Engagement stop
0 seconds (SON)	1.07 seconds	0.43 seconds (Dog’s Behavior Change – SOff)	1.47 seconds (Last TP)
Total Time for Officer Palmer’s Encounter with the dog.	1.07 seconds	1.5 seconds	2.97 seconds (Total Time of the Encounter)
Research Time (Lewinski et al., 2014)	0.31 ± 0.05 seconds (Time from SON to TFs)		0.29 ± 0.17 seconds (Time from SOff to Completion of Last TP(s). .82 Seconds
			Difference between research time and Officer Palmer’s “Engagement Stop” is + .65 seconds.¹⁹ ↓ Officer Palmer’s “stop engagement” time is reasonable.

¹⁹ This was determined by calculating the difference in Experiment 1 “Time from SON to Start of TP” to that of Experiment 2 (0.25 seconds versus 0.56 seconds). That value was then applied to experiment 2’s “Time from SOff to Completion of Last TP”. This value (0.65 ± .17 seconds) was then subtracted from the 1.47 seconds of the incident.



It should be noted, the study conducted by Lewinski et al. (2014) was conducted in a closed facility, under no stress, and with a pre-determined stimulus. When decision making was added in another experiment in this study (Experiment 1 of 0.25 sec; and Experiment 3 of 0.56 sec), it more than **doubled the response time** of the officers. If this factor were to be applied to the above-mentioned experiment, that would make the response time to stop shooting 0.65 seconds. Using the same standard deviation would change it to **.82 seconds**. **Therefore, Officer Palmer's response time to the change in stimulus would be considered reasonable under stress, as it only took him .82 seconds to stop shooting. The difference between Officer Palmer's performance and the officers in the Lewinski study was Officer Palmer's reaction time was .65 seconds longer.**

According to Lewinski et al., in high stress situations **“the number of anticipated rounds fired following a stopping signal may stand at anywhere from zero to four.”** (Emphasis added.) They noted the results in their study apply to real-world shooting situations where the officer is shooting, assessing, and attempting to simultaneously recognize a stop-shooting signal or indicator as the primary reason why they stop shooting. Understanding that the simple elements of an officer's response such as perceiving, deciding, and reacting take time, and understanding how much time is critical in investigating the dynamics at play in officer-involved use of force scenarios.

It should be noted, however, OPS is concerned with the “tunnel vision” that appeared to be presenting in this incident that will need to be addressed by the Department's Training Unit regarding Officer Palmer. Officer Palmer continued to fire at the dog once it was immobilized and



the distance had increased between Officer Palmer and the dog. Officer Palmer should have recognized the “pattern change” that the dog exhibited, specifically the change in the shooting environment and the distance change between Officer Palmer and the dog. Lorain Police Officers must have the ability to visually scan the scene, process identifying information (i.e., relevant cues), and make timely decisions based on their assessment and training recollection. OPS has identified this as a training issue and because Officer Palmer is a relatively newer officer and most likely has not fully encountered a high stress incident yet where he has had to discharge his weapon, further training is needed in this regard. The Lorain Police Department demands better performance out of its officers as one of the most trained departments in the State of Ohio.



Figure 27: The threat perceived by Officer Palmer used in OPS’s analysis. It should be noted that the dog is locked on Officer Palmer.



Figure 28: The dog's change in direction used in the stop shooting analysis.



Figure 29: Officer Palmer's last shot at the dog.



Was the seizure of the dog “reasonable”?

In previous cases, the Courts have held that a dog is an “effect” within the meaning of the Fourth Amendment. In this case, Officer Palmer’s actions constituted a seizure of the dog. A Fourth Amendment “seizure” of personal property occurs when “there is some meaningful interference with an individual’s possessory interests in that property.” *Jacobsen*, 466 U.S. [*205] at 113. Destroying property meaningfully interferes with an individual’s possessory interest in that property by changing a temporary deprivation into a permanent deprivation. See *id.* at 124-25. Thus, when an officer destroys a dog, they have “seized” the dog owner’s “effects.” See *Brown*, 269 F.3d at 210; *Fuller*, 36 F.3d at 68.

In order for the officer’s warrantless seizure of a citizen’s dog to be constitutional, the seizure must be “reasonable.” A seizure of personal property conducted without a warrant is presumptively unreasonable. See *Place*, 462 U.S. at 701. Under the basic reasonableness calculus, a court must balance the nature and quality of the intrusion on the individual’s Fourth Amendment interest against the importance of the governmental interests alleged to justify the intrusion.” *Id.* at 703. The reasonableness calculus is objective in nature; it does turn upon the subjective intent of the officer. *Cf. Graham v. Connor*, 490 U.S. 386, 397, 104 L. Ed. 2d 443, 109 S. Ct. 1865 (1989) – stating, in the context of a Fourth Amendment excessive force claim, that “the question is whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting the officer, without regard to their underlying intent or motivation. The Supreme Court has admonished that “the calculus of reasonableness must embody allowance for the fact that



police officers are often forced to make split-second judgements – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary [***30] in a particular situation.” *Id.* at 396-97. Finally, in judging the reasonableness of the officer’s actions, OPS will assess only the reasonableness of the officer’s actions vis-à-vis the dog. The task of OPS is to put itself into the shoes of Officer Palmer at the time the actions took place and to ask whether the actions taken by the officer was objectively reasonable.

Engaging in that exercise in this instant case can render only the conclusion that the actions of Officer Palmer were objectively reasonable when he first engaged the dog. Before delving too far into the peculiar facts of the incident, it must be noted the overarching interests involved. On the one hand, the public interests in this case are significant. The City of Lorain has a substantial interest in protecting their citizens from all the dangers and nuisances associated with dogs. Dogs may harass or attack people or other pets. Dogs can maim or even kill. Dogs may also spread disease or cause property damage. Historically, the City of Lorain has struggled with issues involving dogs. On the other hand, the private Fourth Amendment interests are appreciable. Dogs have aptly been labeled “Man’s Best Friend,” and certainly the bond between a dog owner and their pet can be strong and enduring, as I am sure was in this case. Many consider dogs to be their most prized personal possessions, and still others think of dogs solely in terms of an emotional relationship, rather than a property relationship. There is no dispute that Officer Palmer’s shooting of the Kerns’ dog was a severe intrusion given the emotional attachment between a dog and an owner. On the other hand, ensuring officer safety is a significant governmental interest. Moreover, the courts have held that it is reasonable for an officer to shoot a dog that he believes poses a threat



to his safety or the safety of the community. *See, e.g., Altman, 330 F.3d at 205-06; Brown, 269 F.3d at 210-11.*

The current case before OPS does not present both interests at their apex, however. When a dog leaves the control of its owner and runs at large, the government interest in controlling the animal and preventing the evils mentioned above increases dramatically, while private interests correspondingly decrease. Simply put, while OPS does not depreciate the possessory interest a dog owner has in his pet, it does note that the Courts have concluded that a dog owners forfeit many of these possessory interests when they allow their dogs to run at large, unleashed, without a collar, and unrestrained, for at that point the dog ceases to become simply a personal effect and takes on the nature of a public nuisance.

The Courts have also held that **if a dog is showing signs of aggression** (e.g., baring teeth, **ears back, tail straight, lunging**, growling, snarling, barking, or **charging**), it is **reasonable for the officers to defend themselves**. *See Carroll, 712 F. 3d at 650, 652* (finding lethal force could be reasonable where the dog was growling, barking, and quickly approaching the officer); *Grant v. City of Huston, 625 F. App'x 670, 677-78 (5th Cir. 2015)* (finding lethal force reasonably used where dog was biting at police officer's legs and aggressively barking); *Kendall v. Olsen, 237 F. Supp. 3d 1156, 1169 (D. Utah Feb. 17, 2017)* (finding lethal force reasonably used where dog charged police officer and lunged with ears back and straight tail while barking loudly, snarling, and baring its teeth).



In this incident, the dogs that Officer Palmer encountered were at-large and uncontrolled. Officer Palmer was standing in a public street when he was first engaged by both dogs. Officer Palmer took no action when the first dog approached him. Shortly thereafter the first dog sauntered away. Interestingly, none of the three dogs recorded by Officer Palmer’s body-worn camera were wearing collars. Arguably, if they were in fact wearing their collars, they would have been easy to corral and/or control. When a pet is found at large, the City undoubtedly has a governmental interest in restraining it so that it will pose no danger to a person or property. Moreover, the state’s interest in protecting life and property may be implicated when there is reason to believe that the pet poses an immediate danger. In the latter case, the state’s interest may even justify the extreme intrusion occasioned by the destruction of the pet in the owner’s presence (See *Place*, 462 U.S. at 705 contrasting the degree of intrusion when a seizure of personal effects is made ‘after the owner has relinquished control of the property to a third party [and when the seizure is] from the immediate custody and control of the owner’).

Mellenie Kerns, and her mother, Tammie Kerns, reportedly told the *Chronicle Telegram* that their dogs got out while they were getting ready to go to the store that Sunday afternoon.²⁰ Mellenie Kerns also told the *Chronicle* that Officer Palmer arrived within about five minutes of her and her parents trying to get the dogs back in the house. She also claimed that she almost had the “situation under control” when Officer Palmer arrived.

²⁰ [Lorain police investigating after officer shoots family's dog \(UPDATED\) | Chronicle Telegram](#)



Tammie Kerns reportedly told a reporter from *WKYC Channel 3* that the dog did not run towards the officer, but that it was just running away.²¹ This statement, if quoted correctly, is inaccurate and misleading and does not comport with the evidence in this investigation. She also reportedly added that she plans to file a lawsuit against the police department and wanted the officer fired.

In reviewing the body camera footage of the incident in detail, when Officer Palmer engaged the animal with his firearm, the animal was in close proximity and physical distance and the dog was running towards him in a full sprint. Meanwhile, Officer Palmer was attempting to retreat by backing up and side-stepping out of the animal's path. The animal changed direction towards the officer and Officer Palmer subsequently engaged the animal. **Accordingly, given the facts and circumstances of this incident, the law gives Officer Palmer the authority to engage the animal with his duty weapon to prevent what he reasonably perceived as an impending attack by the animal which could result in serious physical harm.** (Emphasis added.) Recall, R.C. §955.28 states that the dog can be killed because of the “chasing, threatening, harassment, approaching, attempt, killing, or injury.” In other words, it is objectively reasonable for an officer to shoot a dog that he reasonably believes poses a threat; that is the case here.

Based on a review of these facts, OPS determined that the dog was approaching Officer Palmer, in what he perceived as a “menacing fashion” and/or had an “apparent attitude of attack.”

²¹ Kay, K. (July 3, 2023). “Lorain Family plans to file lawsuit after police officer shoots, kills dog: Video of the incident aftermath made its way onto social media Sunday. The dog’s owner says the officer shot the Lab multiple times.”



A **reasonable person**²² after breaking down this incident second by second and frame by frame, devoid of any human emotion and **looking at the situation objectively, would have to conclude that the dog was acting in a manner that could reasonably be perceived as aggressive.** OPS makes such determination. Recall that the incident cannot be judged by 20-20 hindsight, but rather it must be judged in the shoes of a reasonable officer at the scene at the time of the use of force. Moreover, it has been suggested in the public square that there was the possibility of using pepper spray, a Taser²³, or some other less than lethal means should have been employed by the officer. From the evidence OPS reviewed there is no indication that these non-lethal means would have been effective given the circumstances in this case.

I have been involved in incidents like Officer Palmer encountered over my eighteen-year career and I can appreciate the type of natural response that Officer Palmer experienced in this incident. I have experienced that intense crisis moment that Officer Palmer underwent in this case. I have experienced dogs charging at me where I had a matter of seconds to make a decision and take immediate action, or I would have found myself maimed.

In one of the most notable incidents in my career that comes to my mind, I had been chasing a suspect on foot while working a night shift. As the suspect attempted to climb a fence, I tased him, but he ended up falling on the other side of the fence. I jumped the fence to take him into

²² A person with an ordinary degree of reason, prudence, care, foresight, or intelligence whose conduct, conclusion, or expectation in relation to a particular circumstance or fact is used as an objective standard by which to measure or determine something. A police officer is held to the standard of care for their profession, regardless of their experience or training.

²³ According to research, a dog who is tased is only immobilized for twenty seconds. Moreover, an officer firing a Taser at the dog must be at a closer distance to the dog, specifically less than ten feet.



custody; however, once I got to the other side, a lady who was in a tent in the back yard released her two Huskies out after me (she claimed she didn't know I was the police, even though I was yelling "Police Stop!"). The dogs charged me, causing me to take immediate action and fire at the dogs. However, the dog's owner was "down range" as I was firing at them. Thankfully, none of the rounds struck the citizen and no one ended up getting hurt. The suspect ended up getting away and after seventeen years I can still recall that incident vividly.

With that said, I can appreciate what Officer Palmer felt when he believed he was under imminent attack by the dog. Many citizens, the majority of whom do not reside in Lorain, or in Ohio for that matter, who have contacted the police department after this incident have postured that Officer Palmer's conduct was unreasonable and demanded that he be fired. The majority of the cynics themselves, I would venture to speculate, have never been in that type of situation that Officer Palmer was faced with in the course of his duties. They are judging the incident from both an emotional response (because it was a dog and a family pet) and in 20-20 hindsight. In reviewing police involved incidents, those types of evaluations do not stand up to the inevitable legal challenge which the City will undoubtedly face if it proceeds erroneously, without due process, or in bad faith (e.g., arbitration, court action, etc.). The department will have to defend its investigation and its actions which has the potential to cost Lorain taxpayers thousands or millions of dollars. Contrary to popular belief, an officer cannot be fired without "just cause" and the city has the burden of proof to prove officer wrongdoing. Moreover, the Lorain Police Department does not acquiesce to public pressure, mob rule, or petitions which do not have any force or effect



of law. Simply put, we do the right thing, at the right time, for the right reasons, and we follow the law.

Most of the controversy surrounding this incident appears to be from those who failed to take the time to research the matter, fact-find, and/or otherwise wait for an investigation to be conducted before ultimately jumping to conclusions.²⁴ The Lorain Police Department must proceed responsibly and with due diligence in any investigation under its purview. We must apply the law and the facts before coming to any conclusion. That is what **due process** in America is all about, whether it be pertaining to an officer or a criminal suspect.

Nonetheless, the body undergoes that natural fight, flight, or freeze response and acts accordingly based on the natural programming and the training that has been engrained in him. Some people cannot fully appreciate a situation similar to this unless they have actually experienced it. I suspect that many of the authors of the visceral hate mail the police department has received within the past couple of weeks and those who have harassed and threatened our employees have not experienced anything like it in their lives; their response to the incident seemingly is strictly an emotional one because the dog was a family pet. I can appreciate this fact. I would never ever

²⁴ According Jolley et al. (2014), jumping to conclusions is a cognitive distortion or a cognitive bias where a person reaches an unwarranted conclusion based on minimal information. Humans are jumping to conclusion machines prone to making quick judgements that are often wrong. Humans jump to conclusions using heuristics or mental shortcuts based on rules of thumb, emotion, experience, and memory as opposed to more information. Jumping to conclusions is fueled by the desire to seek closure and end uncertainty. Jumping to conclusions is not only fueled by minimal information and seeking closure but by the tendency to confirm one's belief's disregarding evidence to the contrary.

(Jolley, S., Thompson, C. Hurley, J., Medin, E. Butler, L., Bebbington, P. & Garety, P. (2014). Jumping to the wrong conclusions? An investigation of the mechanism of reasoning errors in delusions. *Psychiatry Research*, 219(2), 275 – 282.



want to see the police shoot at one of my dogs and can appreciate the great personal trauma the Kerns family experienced as a result of this incident. However, I am a responsible pet owner and I make sure my animals are restrained and properly cared for so an incident like this never happens.

Indeed, another officer facing the same scenario, may have acted differently. That is not to say the action that Officer Palmer took was wrong. Again, he perceived the dog as a threat, and based on his experience, he subsequently engaged the animal, which the law permitted him to do. Officers do not have to wait to be attacked and injured to take action. Ultimately, this was an unrestrained animal, and animals regardless of what type of breed they are can be unpredictable.

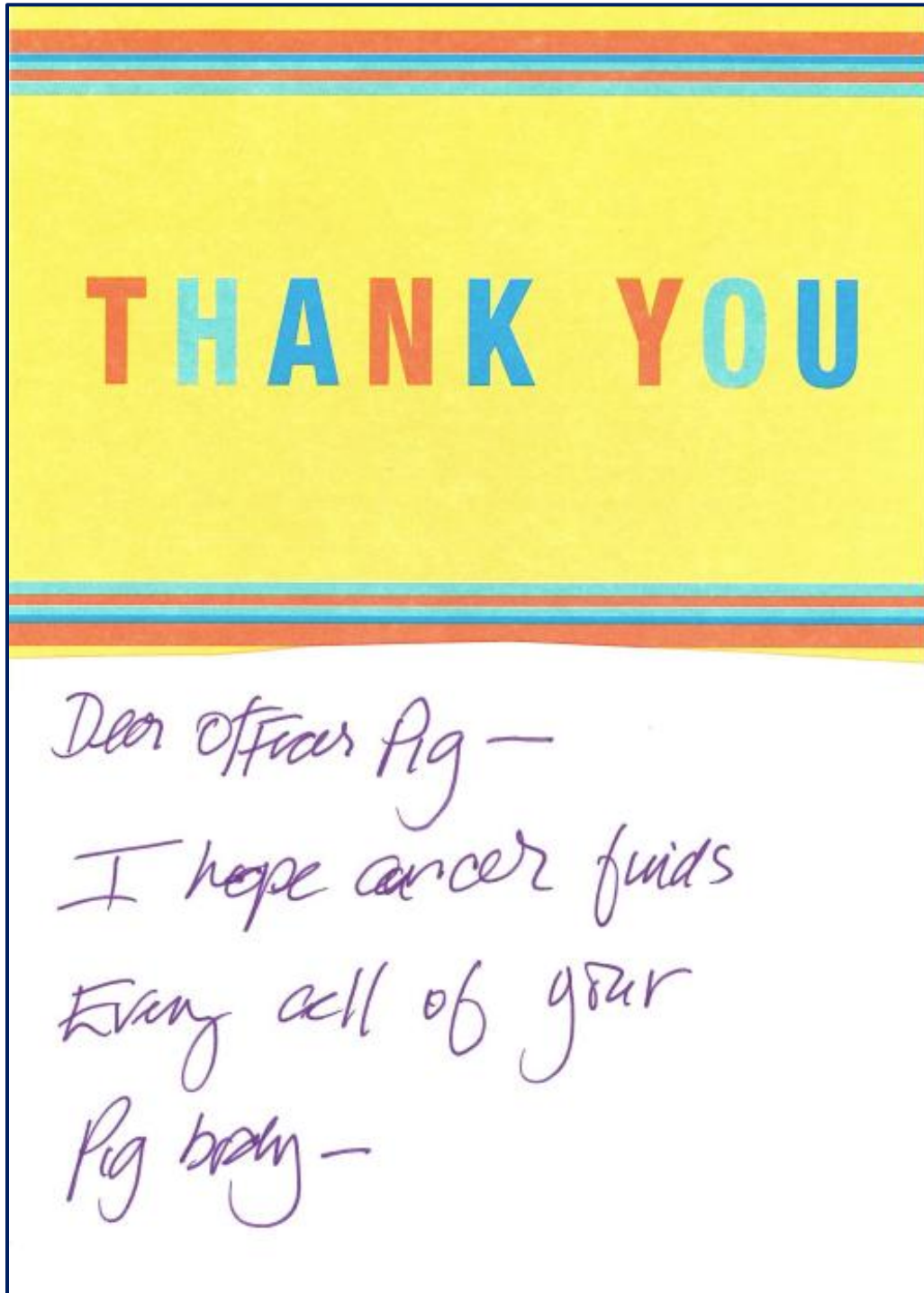


Figure 30: Hate mail sent to Officer Palmer from Santa Clarita, CA.

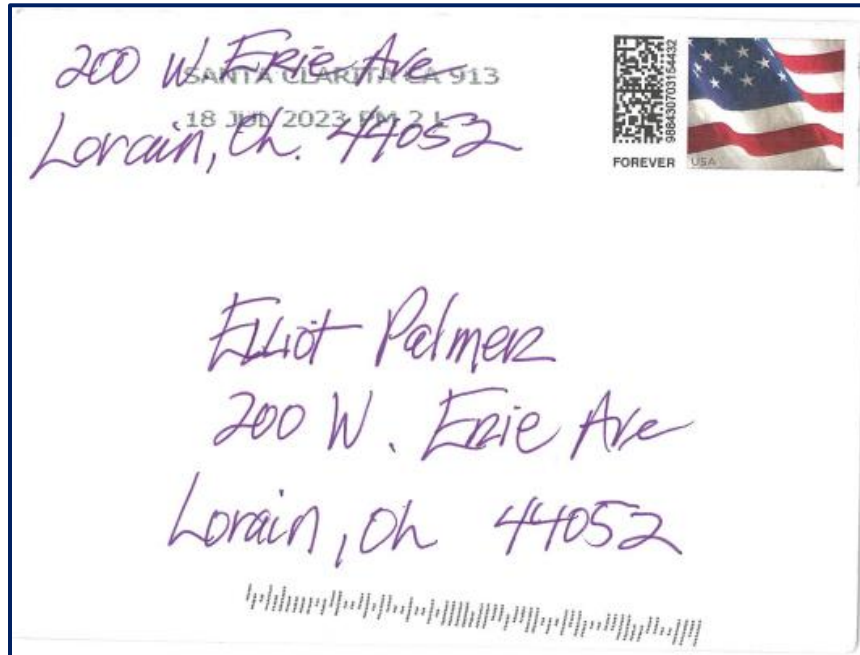


Figure 31: Hate mail sent to Officer Palmer from Santa Clarita, CA.

There's a group of us out here in the west who absolutely despise cops, especially when they kill peoples' pets. Now that we know who this fucking pig Palmer is and we will all have his photo, he better keep his murdering ass east of the Mississippi. We don't go east of the Mississippi, but if he goes west of it and we get him, we'll throw him head first, and alive, down a 200' shaft in an abandoned mine. That's the last anyone will ever hear from that pig fucker.

Figure 32: Hate mail sent to Officer Palmer from Salt Lake City, UT.

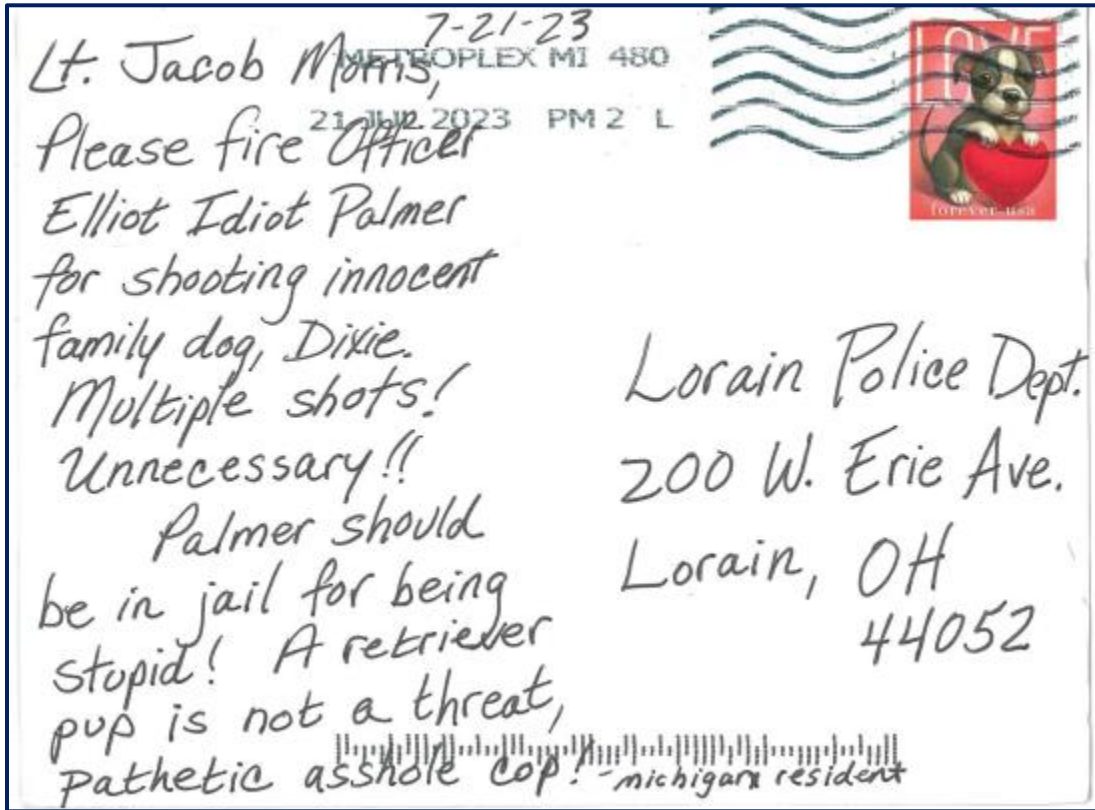


Figure 33: Mail received by the Lorain Police Department regarding the incident from a Michigan resident.

From: [REDACTED]
Sent: Thursday, July 6, 2023 11:38 AM
To: [REDACTED]
Subject: Officer Elliot Palmer is a piece of shit

Every day in America a cop somewhere does something like this to lose the public's trust and support.

We're getting pretty fucking sick of this bullshit, and the lack of punishment that comes after you've investigated yourselves and have found no wrongdoing.

There's a reason for the slogan ACAB. Because it's true. ALL COPS ARE BASTARDS.

fuck all of you, hope everyone you love dies a horrible death.



From: [REDACTED]
Sent: Saturday, July 8, 2023 4:09 PM
To: [REDACTED]
Subject: ELLIOT PALMER WILL BURN IN HELL

Faggot pigs

From: [REDACTED]
Sent: Thursday, July 6, 2023 7:15 AM
To: [REDACTED]
Subject: harassing callers

sooo a guy keeps calling from [REDACTED] and a few other numbers from New Hartford, IN where, according to [REDACTED], he threatened to come to Palmers house and kill him. hes still calling but its obviously bothersome to our working environment.

he started around 0650 this morning and hasnt stopped.

[REDACTED] is one of the other numbers

Re: Dixie, the murdered dog

I hope that you fire the idiot cop that shot the innocent Dixie, a member of your community.

I will pray that the idiot you hired gets the same treatment he gave this dog. Get shot in the back and dies. You see, that's called karma.

Thankfully, there are people that are going to cause him enough grief that he will be in court and jobless.

Congratulations Chief, you got a real winner there. I can't wait to see him go down.

A concerned citizen. *[Signature]*
[REDACTED]



Lorain Police Department Policies Related to Animal Control & the Destruction of Animals.

Lorain Police Department Policy²⁵ (306.7.1 – Destruction of Animals) states, *“Members are authorized to use firearms to stop an animal in circumstances where the animal reasonably appears to pose an imminent threat to human safety and alternative methods are not reasonably available or would likely to be ineffective.”* The policy goes on to state that, *“In circumstances where there is sufficient advance notice at a potentially dangerous animal may be encountered, department members should develop reasonable contingency plans for dealing with the animal (e.g., fire extinguisher, TASER, oleoresin capsicum (OC) spray, animal control officer). Nothing in this policy shall prohibit any member from shooting a dangerous animal if circumstances reasonably dictate that a contingency plan has failed or becomes impractical.”*

In this case, based on the evidence that is currently available for review, Officer Palmer did not have enough time to resort to other methods to address the forthcoming threat that the dog was presenting. Accordingly, the department’s policy gives Officer Palmer the authority to shoot the animal, as other methods to address the dog’s aggression in this instant case were unreasonable or impractical. It should be also noted that officers carry Tasers on their weak side. Therefore, an

²⁵ The Lorain Police Department has adopted the Lexipol Policy System. Lexipol provides fully developed, state-specific policies researched and written by subject matter experts and vetted by attorneys. The Lorain Police Department’s policies are based on nationwide standards and best practices, while also incorporating state and federal laws and regulations where appropriate.



officer must cross draw the Taser, which causes more time for an officer to come on target, compared to drawing their firearm from their strong side.

Lorain Police Policy 806 (Animal Control) states, *“It is the policy of the Lorain Police Department to be responsive to the needs of the community regarding animal-related issues. This includes enforcing local, state and federal laws relating to animals and appropriately resolving or referring animal-related problems, as outlined...”* The policy goes on to state, *“Members who respond to or assist with animal-related calls for service should evaluate the situation to determine appropriate actions to control the situation. Due to the hazards of handling animals without proper training and equipment, responding officers generally should not attempt to capture and pick up any animal, but should keep the animal under observation until the arrival of appropriate assistance. Members may consider acting before the arrival of such assistance when: (a) There is a threat to public safety; (b) An animal has bitten someone. Members should take measures to confine the animal and prevent further injury; (c) An animal is creating a traffic hazard; and (d) The animal is seriously injured...”*

In Lorain Police Department Procedure 809 (Animal Related Incidents), the procedure states, *“Officers shall attempt to stabilize the situation until an Animal Control Officer arrives, if available. The officer will attempt to locate the animal’s owner or another responsible party, if applicable, to take care of the animal, or contain the animal in an enclosed area. **Animals that cannot be controlled and are a threat to citizens or officer shall be destroyed as outlined...** When necessary, the officer may immediately destroy the animal using caution not to endanger persons or property... Whenever an officer destroys an animal a case report shall be submitted.”*



OPS underscores the fact that the policy states that animal control services are generally the primary responsibility of the Lorain County Dog Warden; however, the County Dog Warden is responsible for the entire county and requests from the Lorain Police Department alone can inundate its only two dog wardens over animal issues. Not to mention this incident occurred on a Sunday when the dog warden is typically not on duty. Notwithstanding these facts, it would likely not have mattered if the County Dog Warden had been contacted or not because Officer Palmer did not have enough time to contact the dog warden given the amount of time the dog engaged him.

However, OPS is concerned that Officer Palmer did not effectively evaluate the situation. OPS disagrees with his contention that the dogs were some type of immediate threat to public safety. From all accounts the dogs had gotten out and were at large. Undeniably, the dogs running at large were a violation of the law. However, the Department's policy makes it clear that animal control services are generally the primary responsibility of the Lorain County Dog Warden. Moreover, the policy states, ***“Due to the hazards of handling animals without proper training and equipment, responding officers generally should not attempt to capture and pick up the animal, but should keep the animal under observation until the arrival of appropriate assistance.”***

In this case, non-engagement may have been the more appropriate course of action, notwithstanding the fact that Officer Palmer had the legal authority to be there and to intervene. Officer Palmer was not dispatched to a call for service and the contact in this case was completely officer initiated. To assist the public, Officer Palmer decided to stop and to help the family corral



their dogs. Considering Officer Palmer is a dog owner, it is reasonable to believe that if his dogs got loose and the police were driving by, he would expect police assistance. However, Officer Palmer may not have fully considered that the encounter with the dogs could go bad.

In OPS's view, Officer Palmer put himself in this situation unnecessarily. If he wanted to take law enforcement action to issue the dog owners a citation (which do not appear to be his initial intentions, or at least he never admitted it in his *Garrity* interview) he could have stayed in the cruiser until the family took control of the animals and then he could have issued the citation. If the dog had started attacking one of its owners, Officer Palmer could have taken immediate action. Likewise, Officer Palmer could have acted if the dogs attacked an innocent citizen. Officer Palmer could have attempted to call the Dog Warden, even though it was highly unlikely that he would have responded on a Sunday.²⁶ According to the record, it was not his intention to investigate a crime (e.g., dogs-at-large), instead he approached the incident more from a place of a "community care taking" effort. Community care taking involves activities by police officers, which don't relate to investigating crimes. Typically, there is a situation where an officer attempts to protect the welfare of a person or community.

The public generally frowns upon when an officer must use force, whether it be a person or a dog. The public and the media have been quick to judge the justification of the officer's action and in most cases, have condemned it without bothering to learn all the facts. This has led to public

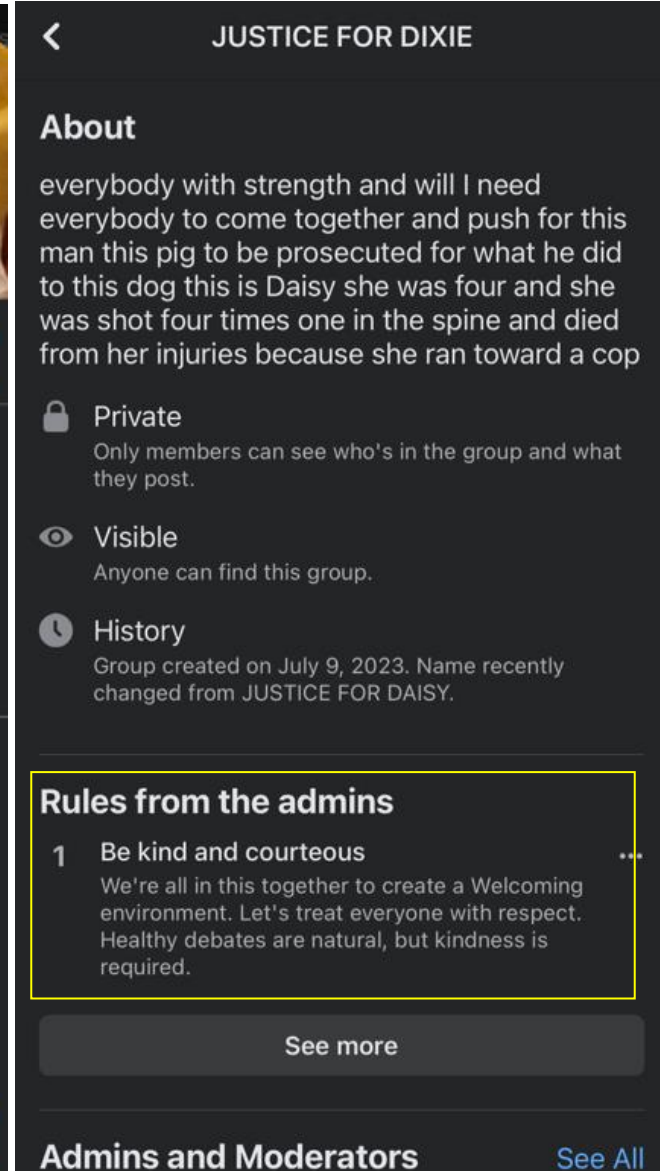
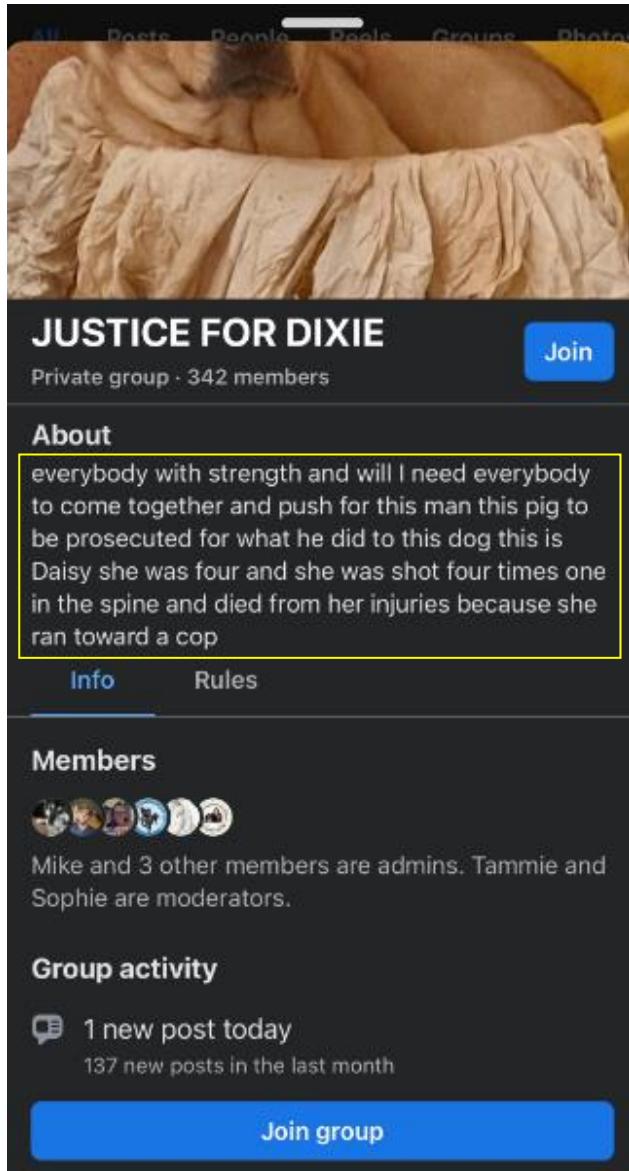
²⁶ The Lorain Police Department has historically found it is difficult to get the Lorain County Dog Warden to respond to dog related incidents during the ordinary work week (Monday – Friday). Typically, the Dog Warden requests the officer corral the dog and transport it to Dr. Wood's Office so they pick up the dog at their convenience.



outrage which has resulted in some protesting and other negative effects. The general population and many in the media are completely ill-informed of the laws that govern an officer's use of force, and the circumstances that officers are presented with, in their totality, that can warrant an officer using force. The general reaction by the public to an officer involved in use of force incidents is based on the public's own biases and lack of training or knowledge on the use of force by the police. There have been a number of empirical studies in the criminal justice field which show that the media and the public should not be so quick to judge the officer's motives and intentions when they are involved in a use of force incident. It is unfortunate that many people have chosen to ignore facts and base their opinions on their own biases and emotional responses. These premature reactions have caused much disdain for law enforcement and unnecessary controversy have historically ensued. With that said, the police department can't win in the eyes of the public when these types of incidents happen, especially involving dogs! It creates unnecessary controversy for the Department, the City, and the involved officer.



Figure 34: "Justice for Dixie" Facebook page.





Dog Ownership.

A Lorain County Grand Jury Subpoena was prepared and issued to the Lorain County Auditor’s Office to determine if the dog involved in this incident was registered in accordance with law, and to determine the dog’s owner.

On July 17, 2023, I received the requested records from the Lorain County Auditor’s Office. According to the records, the owner of the dog known as “Dixie” was **Wilbur Kerns** of 710 Oberlin Avenue, Lorain, Ohio. OPS determined that the dog was properly registered at the time of the incident. Between Wilbur Kerns and Tammie Kerns they have **eight dogs** registered in the year of 2023.²⁷ Having eight animals in one house is against the law (see footnote below).

Lorain County Auditor Craig Snodgrass Lorain County Admin. Building 226 Middle Ave., 2nd Floor Elyria, OH 44035 (440) 329-5207		Receipt Number: CC-310210	
		Wilbur Kerns 710 Oberlin Avenue, Lorain, OH 44052	
Tag Type:	2023 Dog License	Color(s):	Brown and white
Dog Age:	Y: 10 M: 0	Dog Breed:	Mixed
Dog Sex:	M	Dog Name:	Fudge
Current Tag:	9560	New Tag:	2023*008206
		License Fee:	\$ 26.00
		Penalty:	\$ 0.00
		Card Processor Fee:	\$ 0.75
Tag Type:	2023 Dog License	Color(s):	dark tan
Dog Age:	Y: 4 M: 0	Dog Breed:	Mixed
Dog Sex:	F	Dog Name:	Dixie
Current Tag:	9561	New Tag:	2023*008207
		License Fee:	\$ 26.00
		Penalty:	\$ 0.00
		Card Processor Fee:	\$ 0.75

Figure 35: Registration record provided by Lorain County Auditor’s Office.

²⁷ According to Lorain Codified Ordinance §505.22 (Maximum Number of Domestic Animals Permitted), “Not more than five domestic animals, excepting puppies, kittens, hamsters, gerbils, or other small pets that are caged or kept in aquariums, may be kept in any single-family dwelling, or in any separate suite in a two-family dwelling, multiple-family dwelling or apartment, within the City of Lorain, Ohio.



7/13/23, 3:05 PM Lorain County Auditor Dog License Look-up

[New Search](#)

Apply Dog(s) *2023*

Use	Owner	No Longer Owned
<input type="checkbox"/>	(apply owner) Kerns, Tammie (#9050; BooBoo; gold and off white; Mixed; Male), 710 Oberlin Avenue , Lorain, 4406706982	<input type="checkbox"/>
<input type="checkbox"/>	(apply owner) Kerns, Tammie (#9051; Beethoven; gold and off white; Mixed; Male), 710 Oberlin Avenue , Lorain, 4406706982	<input type="checkbox"/>
<input type="checkbox"/>	(apply owner) Kerns, Tammie (#9052; Nora; gold and off white; Mixed; Female), 710 Oberlin Avenue , Lorain, 4406706982	<input type="checkbox"/>
<input type="checkbox"/>	(apply owner) Kerns, Tammie (#9053; Grizzly; Black and Tan; Mixed; Male), 710 Oberlin Avenue , Lorain, 4406706982	<input type="checkbox"/>
<input type="checkbox"/>	(apply owner) Kerns, Wilbur (#8206; Fudge; Brown and white; Mixed; Male), 710 Oberlin Avenue, , Lorain, 4407149499	<input type="checkbox"/>
<input type="checkbox"/>	(apply owner) Kerns, Wilbur (#8207; Dixie; dark tan; Mixed; Female), 710 Oberlin Avenue, , Lorain, 4407149499	<input type="checkbox"/>
<input type="checkbox"/>	(apply owner) Kerns, Wilbur (#8208; Bear; White and tan; Mixed; Male), 710 Oberlin Avenue, , Lorain, 4407149499	<input type="checkbox"/>
<input type="checkbox"/>	(apply owner) Kerns, Wilbur (#8209; Snow Flake; White and Brown; Mixed; Female), 710 Oberlin Avenue, , Lorain, 4407149499	<input type="checkbox"/>

Figure 36: Dog registration records for the Kerns provided by the Lorain County Auditor’s Office pursuant to a Grand Jury Subpoena.

7/13/23, 3:05 PM Lorain County Auditor Dog License Look-up

[New Search](#)

Apply Dog(s) *2022*

Use	Owner	No Longer Owned
<input type="checkbox"/>	(apply owner) Kerns, Mellenie (#9557; Polar; Tan White; Mixed; Male), 710 Oberlin Avenue, , Lorain, 4407149499	<input checked="" type="checkbox"/>
<input type="checkbox"/>	(apply owner) Kerns, Mellenie (#9558; Bear; White and tan; Mixed; Male), 710 Oberlin Avenue, , Lorain, 4407149499	<input type="checkbox"/>
<input type="checkbox"/>	(apply owner) Kerns, Mellenie (#9559; Fudge; Brown and white; Mixed; Male), 710 Oberlin Avenue, , Lorain, 4407149499	<input type="checkbox"/>
<input type="checkbox"/>	(apply owner) Kerns, Mellenie (#9560; Fudge; Brown and white; Mixed; Male), 710 Oberlin Avenue, , Lorain, 4407149499	<input checked="" type="checkbox"/>
<input type="checkbox"/>	(apply owner) Kerns, Mellenie (#9561; Dixie; dark tan; Mixed; Female), 710 Oberlin Avenue, , Lorain, 4407149499	<input type="checkbox"/>
<input type="checkbox"/>	(apply owner) Kerns, Wilbur (#9351; Snow Flake; White and Brown; Mixed; Female), 710 Oberlin Avenue, , Lorain, 4407149499	<input type="checkbox"/>
<input type="checkbox"/>	(apply owner) Kerns, Wilbur (#9352; BooBoo; gold and off white; Mixed; Male), 710 Oberlin Avenue, , Lorain, 4407149499	<input type="checkbox"/>
<input type="checkbox"/>	(apply owner) Kerns, Wilbur (#9353; Beethoven; gold and off white; Mixed; Male), 710 Oberlin Avenue, , Lorain, 4407149499	<input type="checkbox"/>
<input type="checkbox"/>	(apply owner) Kerns, Wilbur (#9354; Nora; gold and off white; Mixed; Female), 710 Oberlin Avenue, , Lorain, 4407149499	<input type="checkbox"/>
<input type="checkbox"/>	(apply owner) Kerns, Wilbur (#9355; Grizzly; Black and Tan; Mixed; Male), 710 Oberlin Avenue, , Lorain, 4407149499	<input type="checkbox"/>

Apply Dog(s)

Figure 37: Dog registration records for the Kerns provided by the Lorain County Auditor’s Office pursuant to a Grand Jury Subpoena.



The Kerns were unresponsive to OPS’s request for an interview.

On July 5, 2023, OPS sent certified letters to Tammie and Mellenie Kerns requesting an interview. Both letters had been received by the Kerns on July 10, 2023. Both Tammie and Mellenie Kerns did not respond to OPS’s request for an interview as of the time of this investigative report.²⁸

²⁸ Tammie Kerns other daughter, Brittany Kaspirek, reportedly told the *Chronicle Telegram* that she said the family planned to file a complaint against Officer Palmer; however, OPS has received no complaint from the Kerns family and they have chosen not to cooperate in OPS’s investigation despite OPS’s requests for an interview.



The Kerns have a history of irresponsible pet ownership and other health and safety concerns.

Arguably, this incident would never have happened if the dogs that Officer Palmer had come across had not been running around loose. According to public media reports the Kerns had claimed that the dogs had gotten loose when they were getting ready to leave for the store. OPS understands that accidents happen, and the dogs could have gotten out; however, the question that must be asked is why were the dogs not wearing collars? If they had, they would have been easy to corral and control. That is not what happened in this case. Instead, the dogs were grabbed by their tails. Any rational pet owner, or family member for that matter, would understand that a dog does not like getting grabbed by its tail. In general, pulling a dog's tail can lead to a lot of different effects. Not only can it injure the animal, but it can also cause the animal to become aggressive or agitated, resulting in the dog attempting to bite or claw the person grabbing onto its tail. It could also cause the dog to feel threatened and bark aggressively. It can also cause the dog to attack. Regardless, it is never recommended that a person grab a dog by its tail. The act of Mellenie Kerns grabbing the dog's tail likely caused the dog to become hostile, agitated, or otherwise aggressive.

Unfortunately, the Kerns household has had a history of irresponsible animal ownership and health and safety concerns/violations related to animals. On or about April 17, 2009, Wilbur and Tammie Kerns were arrested by the Lorain Police Department for two counts of child endangering.²⁹ An investigation conducted by the Lorain Police Department, in conjunction with

²⁹ See Lorain Police Report #2009-12031.



Lorain County Children Services, found unhealthy living conditions. The investigation concluded that the Kerns had more than ten dogs living inside the residence, with multiple cats and birds. The officers also discovered animal feces throughout the house, which appeared to have not been picked up or cleaned in months. After entering the home and observing a large amount of animal feces on the floor and a strong odor of feces and urine in the air, they located Kern’s two children (ages eight and ten at the time) in squalor. Tammie Kerns and Wilber Kerns were subsequently arrested on charges of child endangerment. *For additional information refer to Report #2009-12031.*³⁰

In that case, Tammie Kerns pleaded “No Contest” and was found guilty by the Court. The jail was suspended on the condition of five years’ good behavior. She retained custody of her children and was required to attend parenting classes and to keep her house clean. The judge also ordered “**No excessive pets.**” She was sentenced to fifty hours of community service.

³⁰ See Docket Entry 2009CRB01172.



Figure 38: Tammie Kerns booking photograph.

The screenshot shows a news website interface. At the top is a red banner with "19 NEWS" in white. Below it is a dark navigation bar with links for "News", "Live", "First Alert Weather", "Closings", "To Catch a Killer", "Sports", "Seen On TV", "Telemundo CLE", and "Podcasts". An advertisement banner for "COMIC COLLECTOR LIVE BUY SELL ORGANIZE" is visible. The main article title is "Deplorable: Lorain County Kids Pulled From Wretched Living Conditions". Below the title is the publication and update information: "Published: Apr. 20, 2009 at 2:30 PM EDT | Updated: Apr. 20, 2009 at 3:28 PM EDT". There are social media icons for Facebook, Email, Twitter, Pinterest, and LinkedIn. The first paragraph of the article reads: "Lorain, OH - Lorain County parents behind bars on child endangering charges." The second paragraph, which is highlighted with a red box, reads: "Tammie and Wilbur Kerns, Jr. busted after police went to the family's Lexington Avenue home and found the couple's two children unkempt and living in deplorable conditions. They also found nearly a dozen dogs living among animal feces and rotting food." The third paragraph reads: "An anonymous complaint tipped police off to the wretched state of the house."

Figure 39: Snippet from Cleveland 19 News Report.



<https://www.cleveland19.com/story/10213077/deplorable-lorain-county-kids-pulled-from-wretched-living-conditions/>

Deplorable: Lorain County Kids Pulled From Wretched Living Conditions

Published: Apr. 20, 2009 at 2:30 PM UTC | Updated: Apr. 20, 2009 at 3:28 PM UTC

Lorain, OH - Lorain County parents behind bars on child endangering charges.

Tammie and Wilbur Kerns, Jr. busted after police went to the family's Lexington Avenue home and found the couple's two children unkempt and living in deplorable conditions.

They also found nearly a dozen dogs living among animal feces and rotting food.

An anonymous complaint tipped police off to the wretched state of the house.

A strong odor of animal feces and urine permeated the home. Filthy floors, rotting food and dirty dishes littered the bedroom, kitchen and living room.

The couple's 10-year-old daughter and 8-year-old son are now in the care of relatives.

Figure 40: Snippet of Anonymous Letter received by OPS.

In further conducting a records check with respect to the Kerns family, OPS discovered that on August 4, 2017, Lorain Police Officer Richard Broz conducted a joint investigation along with Lorain County Humane Officer into the unhealthy living conditions at Kerns residence for their animals. The matter was referred to the Lorain County Humane Officer.

On August 24, 2020, the Lorain Building, Housing and Planning Department received a complaint on the Kerns' residence regarding noxious smells. According to the notes, the complaint pertained to eight dogs at the residence with excessive odors, flies, and lots of dog waste.

According to Lorain Building, Housing and Planning records, the Kern residence was cited for property maintenance issues on or about April 24, 2023. The violations were not abated as of May 18, 2023, and the case was set for Housing Court on July 28, 2023.



The Mayor's Office had also received complaints on or about May 15, 2023, regarding the Kerns residence and how poor the dog's living conditions were and that the neighbor cannot open their window due to the noxious odors. According to Lorain County Public Health records, Tammie Kerns was cited on or about May 19, 2023, by the Division of Environmental Health after a complaint had been received regarding the conditions on the porch of the property. Upon investigation, the porch was observed to be covered in rubbish, boxes, bins, human food, and cat food which was providing harborage to the numerous flies that were observed to be congregating in the porch area.

On June 30, 2023, Kerns was sent a second letter regarding the conditions at the residence and the unhealthy conditions not being abated. According to the records, the issue remains pending.



Investigative Findings.

Based on the foregoing, Officer Palmer is **Exonerated**³¹ with respect to the engagement with the dog. The dog was at-large, unrestrained, and charged Officer Palmer. The investigation concluded that Officer Palmer reasonably believed that the dog was hostile and that he was under imminent attack, which had the likelihood of causing him serious physical harm. Therefore, he was permitted to discharge his duty weapon at the dog, in accordance with law (R.C. §955.28) and department policy.³² The dogs being at-large, violated Lorain City Ordinance §505.03.

However, OPS has ruled that Officer Palmer committed **Other Misconduct**³³ specifically, a policy violation of the department's Mobile/Audio policy. According to the policy, an officer's body camera will be activated in all self-initiated activity. In this case, there was a delay from the point when Officer Palmer exited his cruiser, made contact with the public, and activated the body-worn camera. By a preponderance of the evidence standard, Officer Palmer is in error of Policy 421.4.1.

Additionally, OPS has determined there is evidence of crimes committed in this case (e.g., animals-at-large and having more than five animals in one house) that should be forwarded to the

³¹ If the alleged act occurred, but the action was lawful and proper.

³² Ohio Revised Code §959.131 – “Prohibitions concerning companion animals” does not apply in this case.

³³ If the investigation reveals sufficient evidence to indicate other infractions not based in the original complaint.

OFFICE OF

PROFESSIONAL STANDARDS | LORAIN

POLICE DEPARTMENT



Lorain City Prosecutor for review and criminal prosecution, based upon a determination of probable cause.



OPS's Recommended Referral for Criminal Charges.

According to Lorain Codified Ordinance §505.03 (Animals Running at Large), *“No person being the owner of or having charge of any cat or any other animal, whether wearing a registration or not, shall permit it to run at large upon any public place or upon the premises of another. The running at large of any such animal in or upon any of the places mentioned in this section is prima facie evidence that it is running at large in violation of this section. Whoever violates this section is guilty of a minor misdemeanor.”*

This investigation determined that the dog known as “Dixie”, along with three other dogs, were running at-large on or about July 2, 2023, in the City of Lorain, and that Wilber Kerns was the owner of the dogs. Accordingly, there is probable cause to believe that Wilber Kerns violated L.C.O. 505.03 – Animals at Large (3 Counts).

OPS further recommends a criminal investigation be initiated by the Lorain Police Department to determine if the Kerns are violating Lorain City Ordinance §505.22, which states, *“Not more than five domestic animals, expecting puppies, kittens, hamsters, gerbils, or other small pets that are caged or kept in aquariums, may be kept in any single-family dwelling, or in any separate suite in a two-family dwelling, multiple family dwelling or apartment, with the City of Lorain, Ohio.”* Based on evidence provided by the Lorain County Auditor’s Office, the Kerns have exceeded the number of domestic animals just in the number of dogs. OPS is not aware how many cats that they have. Moreover, the Kerns have an on-going history of health and safety violations at their residence which create squalor conditions for the animals to live in.



OPS's Recommendations relative to Officer Palmer and the handling of dogs.

OPS recommends that this matter be sent to the Department's Employee Review Board (ERB) to review this investigation. If needed, OPS recommends a pre-disciplinary conference be held with Officer Palmer and an appropriate disciplinary recommendation be made to the Chief of Police which comports with department policy and the officer's Collective Bargaining Agreement.^{34,35}

OPS also recommends that Officer Palmer should also undergo further firearms training with respect to "tunnel vision" and changes in environment during high stress situations. Further training is needed to prevent unreasonable safety hazards from occurring when the officer is involved in a dangerous incident requiring the use of his duty weapon (e.g., what safety hazards are in the officer's field of engagement, etc.).

OPS recommends that the department discourage officers from becoming involved in incidents with dogs. OPS believes that officers should only intercede in cases where there is an reasonable, articulable threat to public safety and/or at the approval of the on-duty officer-in-

³⁴ According to Article 11 of the Collective Bargaining Agreement between the City of Lorain and the Fraternal Order of Police, Lorain Lodge No. 3., any discipline must be applied in a corrective and progressive manner in accordance with the Employer's policy and Article 10 of the Agreement. Further, all discipline shall be administered in a fair, equitable, and timely manner.

³⁵ In accordance with Section 11.1, officers cannot be terminated without just cause, as defined in Ohio Revised Code §124.34.



charge (OIC).³⁶ OPS recommends Chief McCann's July 14, 2023, special order should permanently be added to the Department's Policy and a policy review should take place within the department.

Finally, OPS recommends that the Chief of Police work with the City Administration to establish a Humane Officer / Animal Control Officer position in the City of Lorain. That position, previously held by Officer Richard Broz, has remained unfilled since he retired. The current service provided by the Lorain County Dog warden is inadequate for the needs of the City of Lorain. Meanwhile, Lorain Police Dispatch should direct any animal related calls to the proper County authorities (e.g., Lorain County Dog Warden, Lorain County Humane Officer, etc.) until such time as the Humane Officer / Animal Control Officer is established for the City of Lorain.

³⁶ See Chief McCann's Special Order 23-02 – Modification to Policy 806, Animal Control.



Conclusion & Submittal.

Acting under the color of office and at the direction of the Chief of Police, this investigation should be submitted to the Chief of Police and the Employee Review Board for review, in accordance with department protocols. OPS recommends that further action be taken by the Lorain City Prosecutor, based on the information contained in this investigative report. OPS's investigation into this incident is considered closed. If any additional information or evidence becomes available, the investigation will be revised as necessary to consider all the information available.

Respectfully Submitted:



A blue ink handwritten signature that reads "K. J. Gelenius".

Sgt. K. J. Gelenius, M.S.
Investigator
Office of Professional Standards
Lorain Police Department



Peer reviewed by:

Lt. E. Manicsic
Chairman, Use of Force (UOF) Review Board
and Force Science Analyst

Date Submitted: August 7, 2023

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POLICE DEPARTMENT



Appendix A

Corresponding Exhibits & Investigative Work Product.