

REPORT OF THE STATE'S ATTORNEY

OCTOBER 7, 2009

CHAMPAIGN POLICE DEPARTMENT
OFFICER INVOLVED FATAL SHOOTING

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Champaign County State's Attorney

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SUMMARY OF EVIDENCE FROM THE ISP INVESTIGATION

On October 9, 2009, at 1:20 p.m., Everett Riley, 701 North Prospect, Champaign, called the Champaign Police Department front desk to report a possible break-in to the house next door on Vine Street. Champaign Police Department staff personnel Jamie Weidenburner answered the call, and transmitted the information to METCAD to dispatch officers to the location. Riley did not give his name to Weidenburner, but he was located that day at 1:55 p.m. and provided a tape recorded statement.

Riley said "I seen two guys prowling around my neighbors' house and I know her, and I know those guys don't live there and I seen them trying to find a way to get inside the house, pushing on windows, walking around to the back of the house, going around to opposite sides of the house, trying to find a way to get inside the house. I know her, she's at school..." He further stated "She's not at home, I know this because she's at school, but these guys are walking around the house trying to find a way to break into her house." Riley said he could not see their faces because they had hoodies on. Riley further stated "I knew they were trying to break into the house, I mean I know there wasn't nobody there, so I kind of figured they were trying to break into the house, that's what made me give you people a call."

Riley reported that he called the "Champaign County Police," and reported what was going on, and continued to watch the two and report to the individual who answered the phone what was going on. Riley reported that he saw the police arrive, that he heard the police "hollering get down on the ground, get down on the ground, and then I heard a shot go off." He reported that he could not see the person they were trying to get on the ground, because they were behind the house. He reported seeing quite a few officers, with their guns out. He reported seeing 7 or 8 officers, maybe less. He said "I did hear the officer say get on the ground, get on the ground, get on the ground. I don't know if the guy refused or what, but I heard a shot go off."

Jamie Weidenburner reported that she took a call from an anonymous subject indicating that he thought three black males were trying to break into the house next door. The caller reported knowing that no one was supposed to be around the house because the lady that lives there was gone to school. The caller described two of the subjects by clothing, but was unable to describe the third subject. The caller said the subjects had gone around the back and "disappeared, this led him to believe that they had made entry into the house." While on the phone with the caller she could hear one of the officers "holler at the subjects to get down." She then ended the call.

While on the phone with Riley, Weidenburner transmitted the information to METCAD to dispatch officers to the scene. According to the dispatch records, at 1:20:51, she reported a burglary in the 900 block of West Vine. At 1:22:50, she reported "3 b/m subj (subjects) prowling around the house." The dispatch describes the clothing of two subjects, but not of the third. At 1:23:34, the dispatch indicates "Subjs around the back of the house now, RP (Reporting Person) said he has been watching them and they have been trying doors and windows, no one should be there, owner is at school and knows that the subjs do not live there."

METCAD originally dispatched CPD Officer Russell Beck, with Officers Steven Reynolds and Dan Norbits as back-up. The METCAD dispatch printout reports the following:

1:26:09 “unknown clothing on the 3rd”
1:26:59 “RP thinks they may be trying to get in window now in the back”
1:27:07 “He cannot see them”
1:27:50, Chief RT Finney was added as a back up officer to the call.
1:29:08, Sgt. Tom Frost was added as a back up officer
1:29:02 Officer Beck reported “going down the tracks”
1:29:33 Sgt. Frost reported “coming down McKinnley”
1:29:40 Chief Finney reported “white house just west 902”
1:29:55 Sgt. Frost reported “at correct house per RP”
1:30:07 Chief Finney reported “open door in back”
1:30:51 Comment: Shots fired on Vine, 1 susp (suspect) down

Following that report, 3 more officers were added as back up and fire and paramedics were dispatched to the scene.

CPD Chief RT Finney was the first officer to arrive on the scene. In his October 13, 2009, recorded interview, Finney reported that he was on Prospect at University when he heard the call of a burglary in progress. He drove to Vine Street and identified the house. He was wearing a black jacket with a badge on the front, his sidearm and a police radio. He informed dispatch that he was east by the Icehouse bar, moving to the location. He heard dispatch say that the reporting person could see the officers, and that he was at the right house. When he got to the end of the fence line he saw a door open in the back. He could not see in the house. He then saw Officer Norbits moving toward him from the south. He moved closer to peek around the corner of the house, and saw two individuals at the door, either looking in or pushing against the door. He described them as “up tight against that door.” The two subjects were later identified as Jashaun Manning-Carter and Kiwane Carrington.

Chief Finney reported that he identified himself as police and ordered them to get down. He said “I yelled it several times, get down, get down. The one individual walks straight toward me. In fact, close enough to where I then pushed him back, you know, get down.” This subject was Manning-Carter. Finney reported “Officer Norbits then moved, I believe, to my right and kind went around ‘cause they were still in this doorway. I pushed the subject back. Officer Norbits was yelling get down...I had yelled police, get down. They didn’t say anything. The guy I had continued to push forward. I..grabbed him and pushed him down. I believe I may have gone down on my knees with him at that point....Officer Norbits was yelling to get down it seemed like he had gone up close to him ...and I could see some struggling.” This subject was Kiwane Carrington.

Chief Finney’s statement continued, “My guy was trying to get back up and I was trying to put some distance between us so I could either holster my gun or if I needed to, use it. Norbits was yelling something to the effect let me see your hands. The guy that was in the doorway had his hands in his pockets and began to look like he was either

going into his jacket or going into his pants pocket....we haven't closed the....of the door when a shot goes off and when the shot goes off I look at Norbits and....Officer Norbits, and he is still got his hand or something on the guy and my guy is right up next to him. We're real tight in proximity and....they're trying to get up. At that point Norbits indicates that the subject's been shot." Chief Finney further reported "...from what I could see out of the corner of my eye Norbits was dealing with him and this guy was struggling and he had hands on him. When the gun went off...in fact I didn't even know who it was. I had no idea whether it was him or the bad guy but when the gun went off I looked up. He was still dealing with him, still with the kid. He had his hands on him trying to hold him down." Chief Finney described Norbits as "face to face" with Carrington. He said he did not see the shot fired, but heard it because he was dealing with Manning-Carter, and they were "real close....almost touching each other...right in that doorway." He reported hearing Officer Norbits say "show me hands..." and reported seeing that Carrington was fumbling around with something in his pockets or jacket. He reported that Officer Norbits immediately began giving first aid to Carrington after he had been shot. Chief Finney further reported that he was injured in the struggle.

Officer Daniel Norbits was interviewed on October 13. Officer Norbits' statement was made after he was read what is know as his "Garrity rights," essentially requiring him as a peace officer to make a report about the incident or face termination, but advising him that because the report is being made under duress that the statement cannot be used against him. His statement is instructive in analyzing the facts and evidence for purposes of criminal charging. Officer Norbits reported that he was on duty on October 9, working the 12:00 p.m. to 10:30 p.m. shift. He reported being dispatched to a burglary in progress call in the 900 block of west Vine Street. He reported Chief Finney had just pulled up when he arrived. He parked in the 900 block of West Vine. Officer Norbits saw Chief Finney walking around the house. Officer Norbits walked up the drive. When he was at the southeast corner of the house he saw Finney draw his gun and say "stop or I will shoot you." He could not see around the corner of the house.

He made his way to the back of the house and saw two black male teenagers at the back door. He said "Chief is yelling for them to get down on the ground. I'm yelling for them to get down on the ground." Norbits had his gun drawn, and saw both of the subjects at the back door of the residence. He reported "We yell for them to get down, they're not. The one I was dealing with, uh, hands are going in and out of pockets....I remember trying to put my hand on his shoulder and pulling him, telling him to get down. Get down on the ground. He moves, twists. Something happens where I no longer have a hold of him....we re-engage....I remember trying to get him down on the ground...and the gun goes off...He falls down...on his back right there at the back door. I can see that he's starting to bleed. I lift up his shirt. I see where the wound is and I immediately put my hand on it, kept pressure on."

In the interview, Officer Norbits went over the event a number of times. Officer Norbits reported drawing his weapon as he moved towards the house. He said, "Obviously there was a lot going on because I didn't actually know if they actually made entry or if there was anybody else in the house so I'm trying to keep attention on the house in case there is...somebody else in there and again the thought process that was running through my mind when...he said "Stop I will shoot you" what did he see? All of

sudden my awareness is heightened...because I don't know if he sees somebody else inside or one of them is armed with a gun." He reported that Carrington was not complying with his commands, that Carrington did not throw punches but was resisting. He reported seeing Carrington moving his hands in and out of his pocket. He said "I remember grabbing the top portion of his shirt...to pull him down to the ground...there's some twisting, I don't have a complete recollection of what exactly, I just remember some twisting and pulling away because I lost whatever grip." He reported that he did not know if entry had been gained into the house, and that he was "trying to keep an eye on the back door...to do two things at once," as he did not know if there was somebody else in there." He reported that he and Carrington were facing each other, that he had his left hand on Carrington's shoulder, and his weapon in his right hand. He reported that he did not recall Carrington trying to reach for his weapon. Officer Norbits reported that he did not recall consciously discharging his weapon.

Officer Norbits' personnel records with regard to citizen complaints and commendations in the previous five years were reviewed as part of the investigation. Officer Norbits received a compliment from a citizen in December, 2004, for assisting with a disabled vehicle, a letter of commendation in December, 2004, for handling a street robbery, a compliment from a citizen in February, 2005, for professionalism on a traffic stop, a commendation from Parkland Police Chief Von Young in May, 2005, for assistance in a robbery investigation, and a commendation in May, 2008, for response to a campus street robbery. Officer Norbits received one citizen complaint in that period in February, 2005, from a local businessman, who complained that Officer Norbits was rude when investigating a complaint from the businessman about an alleged trespasser in the business. The complaint was investigated and unfounded. Officer Norbits' records do not reveal any complaints or discipline for excessive use of force.

Officer Norbits carries a Glock 45, which is standard issue for the Champaign Police Department, and is the weapon carried by the majority of US law enforcement agencies. The Glock does not have an external safety. It has internal safeties to prevent accidental discharge due to dropping or jarring the weapon. When the trigger is pulled, the internal safeties are deactivated and the weapon fires. ISP laboratory reports indicate that the weapon is in proper working condition.

Officer Steven Reynolds was the third officer to arrive on the scene at 906 W. Vine Street. Reynolds was initially dispatched to the call of a burglary in progress, but Officer Norbits took the call as he was closer. Reynolds reported that the call was three suspects trying windows or trying to get into the house. He arrived northbound on Prospect, and stopped at Columbia Street and approached on foot. He saw Chief Finney's vehicle. He saw Officer Norbits pull up on Vine Street and approach the house. Reynolds went to the west side of the house to set up a perimeter. On the west side, he saw that there was a fence blocking the back side of the house. He then heard the Chief and Norbits yelling "get down, get down." He was preparing for the suspects to run towards the west when he heard a "scuffle." At that time, he ran along the southeast side of the house and as he was running he heard a gunshot. When he arrived around the back of the house he saw Chief Finney and a young man in a black shirt. He also saw Officer

Norbis dealing with another young man, asking him if he was okay. Officer Reynolds reported “What I knew at that point is we’ve got a gunshot, we’ve got three suspects. We’ve got two here. I don’t know where that third one is. Was he the shooter or what...” Officer Reynolds handcuffed the young man Chief Finney had been dealing with, later identified as Manning-Carter, and took him to the front of the house because he did not know where the third guy was. Officer Reynolds put Manning-Carter in his squad car. Manning-Carter did not make any statements. Sgt. Frost, who had arrived, radioed Officer Reynolds and told him to ask Manning-Carter if there was a third person. Manning-Carter indicated that it was just him and the other young man. Manning-Carter did not make any other statements or ask any questions. Officer Reynolds transported Manning-Carter to the Champaign Police Department. His in-car video was activated and recorded Manning-Carter during the drive. Manning-Carter made no statements during the drive.

Officer Arthur Miller was the fourth officer on the scene. He had been at the scene of a traffic accident nearby, and heard the call of a burglary in progress. He proceeded to the call. As he was arriving he heard Chief Finney report that there was an open door. He began walking up on foot, with Sgt. Tom Frost. He then heard a gunshot, and began running towards the address. He heard Chief Finney call for an ambulance. When he arrived on the scene, he saw Officer Norbits giving medical aid to Carrington, who was lying on the back step with his head up against the door.

Sgt. Tom Frost was the fifth officer to arrive on the scene. He heard the dispatch of a residential burglary in progress. He recalled the dispatch as involving two suspects. He was not dispatched to the call, but decided to respond as it was in his patrol beat. When he arrived on Vine he heard on the radio that Chief Finney and Officer Norbits were on scene. He heard one of the officers report that he saw an open door. He parked towards the west end of the 900 block of Vine and ran towards the residence. He saw Officer Miller run past him towards the scene. They were running because they heard the dispatch of the open door to the residence. As he ran, he heard a shot fired, and heard Chief Finney request an ambulance over the radio. When he arrived on the driveway, he saw Chief Finney, who appeared “shaken up,” and saw Officer Norbits kneeling on the ground giving medical aid to Carrington who was lying at the base of the door on the ground. He saw the screen door was open, but the wooden inside door was closed. He saw Officer Reynolds taking Manning-Carter into custody. He did not hear Manning-Carter make any statements.

ISP investigators took photographs and measurements of the exterior of 906 W. Vine. There is an 8 foot privacy fence surrounding the back yard. The only way to get in or out of the backyard is through the break between the house and the garage; there are no other gates or breaks in the fence. That gap measures a bit less than 8 feet wide. From the back door to that gap is 12.9 feet. There is a short concrete step in front of the back door, and a concrete path from that step to the gravel driveway. There are two garbage cans next to the house on the sidewalk, and a closed large brown full garbage bag on the grass next to the gap. There is a weight bench and free weights in the grass just north of the back door.

Jeshaun Manning-Carter was taken into custody at the scene and transported to the Champaign Police Department. Illinois State Police investigators offered him drinks, which he refused. He provided contact information for his mother, who was contacted. Manning-Carter provided personal information to the State Police investigators. He was given his Miranda warnings and indicated that he understood his rights. When asked if he wanted to speak to the investigators he said "I do not want to speak." He was audio and video recorded while in custody at the police department. He was then transported to the Champaign County Youth Detention Center.

Manning-Carter has a history of contacts with law enforcement beginning in 2006. Neither Officer Norbits nor Chief Finney were involved in any of these previous contacts and there is no evidence that either of them have had prior contact with him. He has been placed on one previous formal station adjustment, and was the subject of a juvenile court petition for Battery in 2007 in which he fought with an off-duty police officer who was working security at a movie theater. That case was dismissed after Manning-Carter completed public service work through a juvenile diversion program run by the Regional Planning Commission. His MySpace page indicates that he associates with the North End Gorillas, a Champaign street gang.

Carrington was taken by ambulance to Carle Hospital. ISP investigators interviewed all the fire, paramedic, and ER personnel involved in his care. Carrington was unresponsive throughout and was pronounced dead at the Carle ER by Dr. Oliphant.

Dr. Scott Denton, MD, Forensic Pathologist, performed the autopsy on October 10, 2009. A toxicology screen was run, the results of which indicated that Carrington had THC in his system, indicating recent marijuana use. Dr. Denton determined cause of death to be a gunshot wound of the left arm with reentry into the chest, with the direction of the wound to be left to right, front to back, and downwards. Dr. Denton observed no evidence of close range firing. In a follow up phone conversation, Dr. Denton indicated that he defines close range firing as less than 18 to 24 inches, that he saw nothing obvious to suggest close range firing, but that he conducted no tests on Carrington's clothing to for the presence of soot or gunpowder residue. Such tests would be necessary to further determine the range of the weapon.

Kiwane Carrington has a history of contacts with law enforcement. Neither Officer Norbits nor Chief Finney were involved in any of these previous contacts and there is no evidence that either of them have had prior contact with him. In April, 2007, he was placed on a formal station adjustment for theft from Meijer's. In May, 2007, he was found in possession of a stolen bicycle. In August, 2007, he was placed on a Formal Station Adjustment for Theft for stealing bottles of soda from a coin operated machine. In November, 2007, he was placed on a Formal Station Adjustment for Possession of Cannabis at Jefferson Middle School. In March, 2008, he was placed on a Formal Station Adjustment for Criminal Damage to Property at Columbia School. In 2008, he was picked up for curfew violations 3 times. On one of those occasions, he ran from the police but was later apprehended. Also in 2008, he was reported as a runaway on three

occasions by his guardian. Finally, in 2008, he was arrested twice for Aggravated Battery for fighting with other juveniles in school. No charges were filed in these matters as reports indicated that Kiwane's mother was suffering from cancer. Efforts were made to provide him with counseling and support. In January, 2009, Carrington was arrested for Possession of Alcohol by a Minor and Possession of Cannabis. A juvenile delinquency petition was filed in that matter. In 2009, while that matter was pending, Carrington was reported as a runaway, and failed to appear in court as ordered on 2 occasions. He was placed on pre-trial release orders, and petitions were filed due to violations of those pre-trial release orders 3 times. Warrants were issued for his arrest due to the failures to appear and violations of the court orders, and he was detained in the Champaign County Juvenile Detention Center on five occasions, most recently from August 14, 2009, through September 3, 2009. On September 19, 2009, he was the subject of an arson investigation for setting a fire in his bedroom with a lighter. He was placed on probation for the underlying offense of Possession of Alcohol by a Minor on September 22, 2009. As a condition of his probation, he was ordered to obey the household rules of his sister/guardian, and attend school regularly, with no tardies or discipline reports. He was also ordered to refrain from consumption of alcohol or use of illegal drugs. On September 28, 2009, he was reported as a runaway by his guardian/sister. That runaway report remained open on October 9, 2009.

Richard Kelly, the principal of the READY School, was interviewed on October 14, 2009. Kelly reported that Carrington was a student at the school. Kelly reported that Carrington did not attend class every day, and that he would show up in the lobby of the Illinois Terminal, where the READY School is located, and socialize with other students, but would leave when classes started. Kelly reported that he saw Carrington in the lobby on October 8, 2009, in the morning before school. He said he told Carrington to get in touch with his sister because she was worried about him. Kelly said Carrington said he was not going to stay at school that day because he did not want Kelly to have him arrested. At that time, Carrington left. Investigators also spoke to Donna Shonk, director of the READY program. Shonk reported that on October 9, 2009, a man came to the school and identified himself as Carrington's father. Neither Shonk nor Kelly had previous contact with the father, and refused to release any information to him because he was not Carrington's legal guardian. Attendance records indicate that Carrington attended school 15 days, and was absent 21 days for the 2009 school year. He was also the subject of 3 discipline reports in September, 2009.

James Taylor Jessee, 18, of Pesotum, was interviewed on October 27, 2009. Taylor was a READY classmate of Carrington's. Jessee reported seeing Carrington on University Avenue by Carle Hospital on Friday, October 9, 2009, in the morning. He picked Carrington up and drove him to Columbia Street, where he said he was meeting a friend. Jessee admitted that he and Carrington smoked cannabis during the drive.

Deborah Thomas, her teenage children Issiah and Ebonee Thomas, and her boyfriend, Dennis Atkins, were interviewed on October 9, 2009. The interviews were audio and video recorded. Deborah and her children reside at 906 W. Vine Street, and Atkins stays at the house occasionally. Deborah attends school at Parkland College.

Deborah reported that on October 9, 2009, she left the home to go to class at 6:30 a.m. When she returned at 8:30 a.m., Atkins and Kiwane Carrington were at the house. Carrington was in the kitchen making food. Carrington was a friend of her son, Issiah, and would spend the night at the house "almost every weekend." He had been sneaking in and spending the night without her knowledge during the week. On this morning, she asked him why he was not in school, and he told her he did not have to be at school until 10:00. At 10:00 she checked the basement and Carrington was gone. Deborah and Dennis both left the house at 11:20. When they left, they closed and locked all the doors. The windows are also all locked. When asked who has permission to be at her house when she is not there, Deborah said "Mainly just my brother because he's the only one that actually has the key." When asked if her son's friends were allowed to be in the house when she is not there she said "Well he knows I say don't have them in the house but if it's warm they might be outside when I'm not there too." When asked if anybody had permission to be in the house when neither she nor her son is there she said "Nobody...no one, no one." When asked if she had ever given any of friends of her children permission to be in the house if the family was not home she said "No." When asked if Carrington had permission to be in the house when the family was not home she said "No." When asked if her children had a friend named Dashon or Jashon she said she did not know anyone by that name.

Deborah Thomas sat in on the interviews of her son Issiah and daughter Ebonee. Issiah reported that Carrington was a friend from school. Issiah said that Carrington would sneak into the house and spend the night, and that Carrington had told him said he was staying with the Thomases because his sister was out of town. Issiah said Carrington has clothes at the house. Issiah said that morning he left for school at 8:00 that morning, and that Carrington was supposed to be at school at 8:30. Deborah Thomas noted that Carrington had told her he was supposed to be at school at 10:00. Issiah said Carrington had been staying at their house every night for the past three to four weeks. Deborah Thomas said "I didn't know he was there every night for no last three weeks...I know on the weekends he's there but during the week, no I did not know he be there every night." When asked if he allows Carrington to stay at the house when he leaves for school Issiah said "No, he got to leave when I leave." When asked if he ever gives Carrington permission to come over when he is not there Issiah said "No." Issiah also said "He can sit on the porch, probably wait on somebody," but he was not allowed to be inside the house when the family was not there. Issiah said he knew Jashaun as a friend of Kiwane's, but Jashaun has not spent the night at the house.

Ebonee said she knew Carrington as a friend of her brother's, and that this morning she found him sleeping on the couch in the basement. She said she had never given Carrington permission to come over to the house when no one was home. She said she knows Jashaun as a friend of Carrington's, but that no one has ever told Jashaun that he could be at their house when no one was home.

Dennis Atkins, Deborah Thomas's boyfriend, was also interviewed. Atkins knew Carrington as a friend of Issiah's, and was aware that Carrington's mother had passed away. Atkins said that no kids were allowed to come in the house when no one was

home. He said “We do have nice games...and stuff like that. Kids come in a steal them...they stole their stuff before.” Atkins said that when the family was not home, no one else was supposed to be in the house, that Issiah and Ebonee’s friends knew that, that the “house is locked up and nobody’s there...that’s exactly what goes on in our house.” He went on to say “They’d eat up all the food there and everything you know...no kids hang out...they got to go. They got to leave....” Atkins was aware that Carrington was at the house that morning, and that he left before Atkins and Deborah Thomas left. He said he believed Carrington was staying at the house during the nights because he parents were out of town, but he did not know specifically who Carrington was living with. He did not know if Carrington’s sister knew that he had been staying at the house.

At approximately 5:40 p.m. on October 9, 2009, Deborah Thomas met detectives at 906 W. Vine Street to examine damage to the residence. Deborah pointed out new damage to the windows on the west side of the house and reported that the windows had not been damaged that morning. The ISP report of the examination of the house indicates that a footwear impression was found in the mud under the window on the south west corner. The southwest storm window was pushed up, the bottom edge sill trim of the frame was lying on the ground under the window, and smudges on the glass were consistent with fingers pushing upwards on the glass. On the northwest window, the storm window frame was pulled away from the window, and smudge marks on the glass were consistent with fingers sliding across the glass while pulling the storm window away from the building.

Deborah Thomas was re-interviewed on October 27, 2009. That interview was audio recorded. Deborah’s responses with regard to her relationship with Carrington and his authority to be in her home were somewhat different than those she had given on October 9, 2009. She described herself as Carrington’s “surrogate mother.” She acknowledged that her son had been sneaking Carrington into the house at night without her knowledge. She admitted that she had “never really talked” to Carrington’s sister, but had planned on contacting her to find out why he was not staying with his sister. When asked if Carrington had permission to be inside the house when no one was there she said she usually asked him to leave when she or her family had to leave but said that he had used the northeast window to enter the house if the window was open.

Everett Riley was also re-interviewed on October 29, 2009. In Riley’s second statement he reported seeing eight to ten officers with weapons drawn standing outside of the backyard of the house yelling “Get on the ground,” to the two young men. He said all the officers were in full uniform. He said he saw a single uniformed officer bring one young man in a black hoodie from the west side of the house out to the front, and that after that he heard a single gun shot. He said he then could see an individual’s feet and lower legs on the ground by the backyard. Riley’s second statement about the number of officers at the scene when the shot was fired is contradicted by the dispatch reports, which indicate that only Chief Finney and Officer Norbits had arrived at the residence when the shot fired call was made, as well as by the squad car videos from the 9 Champaign PD squad cars that arrived after the shot fired call. His statement about the shot being fired after Manning-Carter was in custody is contradicted by squad car video

which shows Manning-Carter being escorted from the east side of the house rather than the west side after the shot fired call is made. Further, based on the reports from the paramedics and other officers who arrived on the scene and found Carrington laying on the back stoop up against the back door, Riley could not have seen feet or lower legs on the ground given the distance from the back door to the break between the garage and the house.

In addition to the above detailed information, the ISP report includes reports on neighborhood canvassing, interviews with other minors who may have had contact with Carrington that morning, cell phone records, reports of other officers involved in the investigation, and evidence records. With regard to neighborhood canvassing, no other neighbors reported being home at the time or seeing or hearing anything of evidentiary value. The other reports do not contain anything of evidentiary value for the purpose of criminal charging.

The officers' statements are consistent with the physical evidence. Everett Riley's initial statement, as well as Deborah Thomas's initial statement, and the statements of the other witnesses, are also consistent with the physical evidence. Riley and Thomas's second statements are somewhat different from their initial statements, and, where different, are not consistent with the other witnesses or with the physical evidence and therefore were not considered to be credible.

ANALYSIS OF THE FACTS AND THE LAW

The State's Attorney's role in this investigation is to review the evidence and determine if there is sufficient evidence to file criminal charges under Illinois criminal law. We do not review the investigation for purposes of determining whether or not there are grounds for a civil action. We do not review the investigation to determine if Champaign Police Department internal policies were violated, or to review the appropriateness of said policies. We are not expressing an opinion on these issues.

In the American criminal justice system, the question of whether or not a crime was committed is not based solely on the end result of an event, regardless of how tragic that end result might be. A criminal act is committed only when an individual physically commits an illegal act, and when while committing that illegal act the individual is acting intentionally or recklessly. Negligence alone is not a sufficient mental state to support criminal charges.

In reviewing this case, as in all other criminal investigations, we are cognizant of the high burden of proof beyond a reasonable doubt that the State must meet in criminal matters. We have reviewed the evidence to determine what evidence would be admissible, to weigh the credibility of that admissible evidence, and to analyze that credible, admissible evidence in light of Illinois statutes and caselaw. Based on that review, we have concluded that the credible, admissible evidence does not support the filing of criminal charges. The credible, admissible evidence supports our conclusion that the shooting of Kiwane Carrington was accidental.

We reviewed the investigation to determine if the officers violated any criminal laws by approaching the scene with their weapons drawn. According to Illinois law governing use of force by peace officers, drawing one's weapon in and of itself is not considered the use of deadly force. 720 ILCS 5/7-5(a), the statute that governs the use of deadly force by peace officers, defines the use of deadly force to include the firing of the weapon, and does not include language suggesting that merely drawing one's weapon is an impermissible use of force. Furthermore, the question of whether a criminal violation occurred is not made based on hindsight. The fact that the suspects turned out to be unarmed juveniles does not mean that Officer Norbits and Chief Finney acted illegally in approaching the situation with their weapons drawn. It is relevant to consider that the officers were approaching a forcible felony in progress. The information they had, rightly or wrongly, was that there were three suspects trying to break into the house. The officers' ability to see the suspects and to determine whether they were armed was impaired by the layout of the scene. Based on these facts, there is no evidence to support criminal charges based solely on the officers approaching the situation with their weapons drawn.

We have reviewed the investigation to determine if there is evidence to support charges of First Degree Murder. Under 720 ILCS 5/9-1, First Degree Murder requires that a individual perform the acts that cause the death of another, and that while performing those acts the individual has the intent to do great bodily harm or to cause

death, or has knowledge that his acts are likely to do great bodily harm or cause death. 720 ILCS 5/4-4 defines intent as a conscious objective or purpose to accomplish a result or engage in specific conduct. Knowledge is defined in 720 ILCS 5/4-5 as being consciously aware that a result is practically certain to be caused by one's conduct.

In this case, there is no evidence that Officer Norbits had the intent or knowledge required to support the charge of First Degree Murder. There is no evidence that Officer Norbits intentionally fired his weapon. The evidence indicates that, after hearing Chief Finney yelling at the suspects to get down on the ground, Norbits came around the corner and was immediately confronted by Carrington. In the small area of the break between the house and the garage, Norbits and Finney were immediately involved in a physical fight with the two young men, who did not comply with their commands. Both Norbits and Finney saw Carrington putting his hands in and out of his pockets, making it unclear to them whether or not he was armed. Norbits was focused not only on Carrington, but on Chief Finney and Manning-Carter as well as on the open screen door. There is no evidence that in the course of this situation Norbits intentionally or knowingly fired his weapon at Carrington. Rather, the evidence supports the conclusion that he fired his weapon unintentionally, in the course of trying to subdue Carrington, who was not complying with his lawful instructions.

We have also reviewed the investigation to determine if there is evidence to support charges of Involuntary Manslaughter. (Under Illinois law, Reckless Homicide is the same offense as Involuntary Manslaughter, but involves the operation of a motor vehicle.) 720 ILCS 5/9-3, Involuntary Manslaughter requires that an individual performs the acts that cause the death of another recklessly. Recklessness is defined in 720 ILCS 5/4-6 as the conscious disregard of a substantial and unjustifiable risk that is a gross deviation from the standard of care which a reasonable person would exercise in the situation.

In this case, there is no evidence that Officer Norbits acted recklessly. Both Officer Norbits and Chief Finney were approaching a call of a forcible felony in progress. The information they had was that three subjects were trying to break into a residence. Their ability to see the subjects was substantially hampered by the privacy fence and the layout of the house and garage. The distance between the gap between the house and the garage and the back door was only 12 feet, which did not give them much room to assess the situation. Neither Carrington nor Manning-Carter complied with their lawful directives to get down on the ground. Although both Norbits and Finney recognized that the two were young when they confronted them in the backyard, they both saw Carrington putting his hands in and out of his pockets, and did not know if Carrington was armed. The METCAD dispatch tape indicates that the time frame within which this situation occurred was very short, 44 seconds from when Chief Finney reports "open door in back" to when he reports that the shot is fired. Significantly, the interaction between Norbits and Carrington was largely dictated by Carrington's behavior. By not complying with the officers' lawful commands to get down on the ground, and by physically resisting Norbits' efforts to get him to comply, Carrington put in motion a series of events that were entirely avoidable. The short time frame, coupled with the small area within which the event occurred, as well as the numerous unknown safety issues facing the officers when confronted with two uncooperative suspects is significant

in considering the reasonableness of Norbits' actions and supports the conclusion that Norbits acted reasonably when he engaged in a physical altercation with Carrington with his weapon drawn.

Moreover, there is no evidence that Norbits made a conscious decision to disregard a substantial risk when the weapon discharged. Simply put, there is no evidence that Norbits consciously pulled the trigger. Recklessness requires a conscious disregard of a risk. For example, if Norbits had fired a warning shot that caused injury or death to a resident in the house next door, that act could be evidence of recklessness. Here, the evidence indicates that Norbits pulled the trigger accidentally, most likely as a reflex when he was struggling to hold Carrington with his left hand. There is simply no evidence that he made a conscious decision to pull the trigger.

Because there is no evidence that Norbits made a conscious decision to shoot Carrington, we do not find it necessary to analyze whether the shooting was justifiable under 720 ILCS 5/7-5, the statute governing the use of force by a peace officer. There is no evidence that Norbits intentionally or consciously discharged his weapon in Carrington's direction in order to prevent him from fleeing or to protect himself or others. Rather, the evidence supports a conclusion that the shooting was accidental, due to an inadvertent, unintended act by Officer Norbits in the course of his struggle with Carrington.

CONCLUSION

The outcome of an event, regardless of how tragic that outcome might be, does not determine whether or not the event itself was a criminal act. Rather, it is the individual's actions and mental state, as proven by admissible, credible evidence, which provide the basis for criminal charges. Although Carrington's death is tragic, the evidence provided by the Illinois State Police investigation does not support the filing of criminal charges, and rather supports the conclusion that the shooting was accidental.