



The Peregrine Corporation

Specialists in Defense Dynamics

January 29, 2021

District Attorney General Neal Pinkston
11th Judicial District, Hamilton County
600 Market Street, Suite 310
Chattanooga, TN 37402

**RE: Possible Excessive Force Case in Hamilton County, Tennessee –
Date of Incident May 23, 2020, involving Hamilton County
Sheriff's Office and arrestee Reginald Arrington**

Dear General Pinkston:

You have asked me to render an opinion regarding the use of force by Hamilton County Sheriff's Office deputies in the above-referenced incident.

Preparation. In preparation, I have reviewed a large binder of materials you have provided. Its 38 numbered items include, among other things, the Tennessee Bureau of Investigation ("TBI") Investigative Report (7 typed pages); TBI list of witnesses; TBI list of exhibits; information on attempted interviews with Reginald Arrington and communications with Arrington's attorneys; report on telephone and in-person interviews with Hamilton County Sheriff's Office ("HCSO") Lt. Brian McDowell, Charlene Choate, Sgt. Mickey Rountree, Nicholas Dewey, Cpl. Curtis Killingsworth, Todd Cook, Collegedale Police Department ("CPD") Officer Ben Parker and Corporal Sheila Strange, and TLETA Instructor Robert Robinson; HCSO Use of Force Policy; information and TBI subpoena regarding medical reports from Erlanger Hospital on Reginald Arrington; HC EMS records for Reginald Arrington, including "Refusal of Transportation and/or Medical Care" document; HCSO Mugshot Profile of Reginald Arrington; criminal history of Reginald Arrington; CLEAR report of Reginald Arrington; dashcam videos Choate, Cook, Rountree and Dewey; body cam videos of Parker, Strange, Dewey, and Rountree; CPD body cam videos; multiple recordings/interviews of thumb drive; a disk of multiple documents, disk of personnel and training records, and disk with Arrington's medical records; Affidavit of Complaint against Reginald Arrington and related papers; information on video recordings received by TBI from HCSO; information on original 911 call, audio recordings of Hamilton County Dispatch communications, and CAD report; and materials concerning the request for TBI investigation by Deputy Attorney General Neal Pinkston.

I have watched and listened to the relevant dashcam and bodycam video/audio recordings literally over 100 times, breaking them down frame by frame, reviewing critical portions and watching/listening to them again and again to form my opinions. I have also compared the video/audio evidence with the interviews and reports of the deputies and officers involved.

Qualifications to Render Opinions. I have been a professional trainer and instructor-trainer on a nationwide basis in fields including firearms, use of force, police training and tactics, and evaluation of use of force incidents for approximately the past 41 years. During that time I have trained some 17,000 individuals, including law enforcement officers and instructors, security and military personnel, and others. I have taught use of force to police recruits, to in-service officers, to law enforcement instructors, to students on the university level, and to attorneys, prosecutors and judges.

Law enforcement agencies for which I have trained officers or instructors include the police departments of Philadelphia, Baltimore, Miami, Jacksonville, St. Petersburg, Phoenix, Seattle, Tacoma, Trenton, Atlantic City, Jersey City, Dallas, the Washington D.C. Metropolitan Police, Calgary Police Service Tactical Unit, Toronto Metropolitan Police Emergency Task Force and Dignitary Protection Unit, Massachusetts Metropolitan Police, the Louisiana State Police, Oregon State Police, Missouri Highway Patrol, San Francisco Sheriff's Office, Salt Lake County Sheriff's Office, and many others. I have been a presenter at numerous regional, national and international law enforcement training conferences (IALEFI, ASLET, ILEETA and others) since the mid-1980's. I have served on the Board of Directors of IALEFI, the International Association of Law Enforcement Firearms Instructors, for the past 35 years.

I have assisted the Pennsylvania Municipal Police Officers Education & Training Commission ("MPOETC") in writing the firearms and use of force curriculum used to train recruits at police academies in Pennsylvania for the past 18 years. I was also one of the developers and instructor-trainers for the MPOETC's mandatory in-service training class, "Police Use of Force," which was presented to some 25,000 law enforcement officers state-wide in 2016.

I have served as a reserve deputy sheriff for over 20 years in sheriff's departments in the two states where I have lived during those years. I have hands-on experience in a wide range of law enforcement situations, including prisoner transports, traffic control and enforcement, response to calls for service and crimes in progress, vehicular and foot pursuits, service of search warrants and arrest warrants, up to and including the arrest of armed robbery suspects at gunpoint.

I have testified as an expert in the above-mentioned fields for the past 37 years. In total, I have served as an expert in over 400 cases, and have testified approximately ninety (90) times at trials in state and federal courts throughout the United States, in addition to testimony before grand juries, Police Boards, arbitration panels and administrative tribunals, state legislative committees, and by invitation before committees of both Houses of the United States Congress. I have been qualified as an expert by state courts in California, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Tennessee, Georgia, Florida, Louisiana, Arizona, Wisconsin, Michigan, Minnesota, Ohio, Illinois and Iowa, and by federal courts in California,

Connecticut, New York, New Jersey, Pennsylvania, Maryland, Tennessee, Louisiana, Arkansas, Florida, Illinois and Oregon. In total I have been qualified and have testified as an expert in some 14 federal courts in 12 states, and in 45 state courts in 18 states, as well as in the District of Columbia. In some instances I have testified in multiple cases before the same court.

I have completed several training classes and courses on analysis and use of video evidence, and I have taught about the analysis and use of video evidence in my own instructor-level and university-level classes for years. My work in cases involving video evidence goes back to at least 1997, when I served as an expert for the U.S. Department of Justice in the fatal shooting of a man at the White House. For some years now, 40% or more of the police use of force cases in which I work as an expert have involved video evidence. Nationally high-profile cases in which I have testified as an expert in which video evidence has been significant include the Brailsford case (Daniel Shaver shooting) in Mesa, Arizona, and the Yanez case (Philandro Castile shooting) in St. Paul.

Of particular significance to my evaluation of this case, in addition to my multiple certifications as a law enforcement firearms instructor I have been certified as an instructor in 320 defensive tactics (empty-hand self-defense and subject control), baton (with the two types of batons used in this incident), pepper spray, less lethal impact munitions, and as a Taser Master Instructor, as well as in shooting scene reconstruction, as a Force Science Analyst, and as an Advanced Specialist in Force Science.

Because of my background, and because I have taken cases and testified as an expert both for and against law enforcement officers and law enforcement agencies, I have many times, as in this case, been asked by prosecutors to evaluate police and other use of force incidents to provide my opinions as to whether the use of force was justified, and as to whether criminal charges should or should not be brought. As an example, I am currently working in such a case in Nashville, in which I have opined that a fatal police shooting was not justified.

Further details of my training, experience and qualifications are contained in my curriculum vitae, provided with this report.

Summary of the Incident. The incident took place on May 23, 2020, around 10:00 to 10:15 a.m., Hamilton County 911 received a call from a woman who reported that a black man wearing a blue jump suit was approaching women and girls on Waverly Court, asking them "weird questions" (including questions about how to get out of the neighborhood) and making them uncomfortable. Several HCSO units responded to the area, where the deputies found Reginald Arrington, who met the description, walking along Old Lee Highway. I note that throughout this report, I will use the term "deputies" to refer generally to HCSO officers of any rank, whether deputy, corporal, investigator or sergeant.

Arrington was generally cooperative with the deputies and was not belligerent, but could produce no identification and, as it later turned out, initially gave the deputies a false name for himself. Without being requested to do so by the deputies he emptied his pockets onto the roadway and laid down on the ground, saying he "didn't want to get shot." The deputies told him to get up, which he did. At one point he sat down on the guardrail. He began to walk away,

at which point Deputy Cook told him he was not free to leave, and drew his Taser. Eventually the deputies decided to arrest Arrington, after having some discussion among themselves about using Arrington's violation of a law concerning which side of the road pedestrians were permitted to walk on as the basis for the arrest. Shortly after arresting Arrington the deputies found an Ohio identification card showing Arrington's true name and date of birth. He was then being arrested for criminal impersonation. Audible on one of the bodycam recordings, a deputy can be heard to say to Arrington, "You're not gonna lie to the Sheriff's Office and walk away from it." With Arrington handcuffed behind his back, and with a deputy on either side of him holding him by his upper arms, the deputies were walking Arrington back to place him in one of the marked HCSO cars. Arrington apparently made a comment to the effect that he wanted to be placed in a closer HCSO car, to which a deputy replied, audible on the recording, "I don't care which one you wanna get in, you're getting in the one I'm telling you." As the deputies continued to escort Arrington to the car in which he was going to be placed and transported, he apparently began to resist, as a deputy can be heard to say, very sternly, "DO NOT get stupid!" This appears to indicate that Arrington is resisting being taken to the car.

A moment later Arrington began to struggle overtly with the deputies, and Killingsworth can be heard to say, "Don't grab my gun," or words to that effect. While Arrington's hands, which are handcuffed behind his back, cannot be seen at that point due to the angle of the dashcam that is recording that portion of the incident, I note, significantly, that the video shows Arrington and the deputies struggling in a position where Arrington's hands could very well have been grabbing Killingsworth's gun, as Killingsworth's gun is in a holster on Killingsworth's right side, which is toward Arrington at that point in the struggle. This is at approximately 10:14:30 on the Dewey Body Audio, and at 10:14:30 on the Dewey Car Audio.

A moment later in the struggle, Killingsworth reaches his right arm between Arrington's left arm and his body, places his hand on Arrington's left shoulder, and applies force to try to put Arrington down on the hood of a police car. I note that this technique can result in injury to the suspect's shoulder, and is currently discouraged in some training methodologies. Luckily it does not appear to have caused injury in this instance, but neither did it prove effective. A more effective technique with less likelihood of injury is the wrist lock discussed elsewhere in this report.

When interviewed by TBI, Cpl. Killingsworth stated that Arrington did, in fact, grab his holstered pistol and yanked up on it 2 to 4 times. Killingsworth said that Arrington had a strong grasp on his handgun, and was yanking up on it so hard that it lifted Killingsworth's duty belt up several inches. If this was in fact true – something there is no reason to doubt and as to which there is no physical evidence to the contrary – I note that officers nationwide are trained to view and respond to an attempted gun grab of this sort by a suspect as big and strong as Arrington as potentially being a deadly force attack. I say "potentially" because whether or not the attack would ultimately justify the use of deadly force by the officer would depend on many factors, including whether or not the officer's use of an unarmed weapon retention technique or some other less-than-lethal defensive technique or tool promptly results in the officer retaining or regaining control of his weapon. If the struggle for the officer's weapon continues for more than a few seconds, and possibly even before that, the officer's use of deadly force against the suspect is likely to be justified, as the officer is not required to wait to learn the outcome of a weapon

retention struggle in which, if the suspect prevails, the officer is likely to be shot and killed an instant later with his own gun.

When interviewed by TBI, Sgt. Rountree, who was walking behind Arrington as Arrington was being escorted and thus had an excellent view of the situation, said he saw Arrington's hand over Killingsworth's holster. In his report, Rountree says he saw Arrington grab Killingsworth's gun and attempt to pull it from the holster. Rountree and Dewey both said they heard Killingsworth yell at Arrington not to grab his gun. While Killingsworth's words to Arrington are audible on the video recordings so there is no doubt as to what Killingsworth said, the fact that Rountree and Dewey both heard what Killingsworth said at the time is significant, as it shows that they knew an attempted gun grab -- a potentially deadly force attack -- by Arrington was occurring. Dewey said he also felt Arrington resisting, and believed Arrington was trying to grab Killingsworth's gun. Dewey stated in his report that Arrington tried to pull the gun from Killingsworth's holster.

Killingsworth was knocked to the ground by Arrington's shoulder, and video footage shows Killingsworth going to the ground headfirst with his feet in the air. Killingsworth suffered a bleeding laceration to his head, and his sunglasses were crushed and broken. Dewey suffered an injury to his hand. Rountree suffered a shoulder injury later on when Arrington, having finally been controlled, refused to stand up and walk to the police car, and had to be lifted by the deputies and placed in the car.

When Arrington, whom Killingsworth was holding on the ground by lying across Arrington's chest, drew his legs back into a cocked position, Killingsworth had to move his head several times to avoid being hit in the face by Arrington's knees. Dewey stated in his report that his (Dewey's) glasses were struck and partially knocked off when Arrington kicked him in the face. Deputy Cook was kicked by Arrington, and Arrington reportedly attempted to kick Deputy Choate as she was attempting to put shackles on Arrington's legs.

Regarding the attempted gun grab, I also note that on the audio track of one of the videos, shortly after the incident is stabilized, I can hear a deputy commenting that the suspect was "trying to get Killingsworth's gun."

All things considered, I think it is unlikely that Killingsworth and other deputies would all have said things, either during or immediately following the incident, indicating that Arrington attempted to grab Killingsworth's gun from the holster if that had not, in fact, occurred.

The Threat to the Deputies. Initially, I note that Arrington could still pose a significant threat to the deputies, even though he was handcuffed behind his back. There have been many cases in which suspects handcuffed behind their backs have nevertheless used their hands to effectively attacked and injure officers, themselves or others. I myself worked as an expert in a case in Houston in which a suspect handcuffed behind his back grabbed and ripped a Houston Police officer's gun from the officer's duty holster, and then, firing the gun with it held upside down behind his back and using his little finger to operate the trigger, shot two police officers. Arrington was six feet tall, weighed between 240 and 320 pounds (based on varying weights

provided in the documents I reviewed), and was a laborer by occupation, so he was thus presumably very strong. The deputies described him afterwards as being very strong, or as having "superhuman strength." In addition to grabbing a deputy's gun, Arrington could of course also injure one or more deputies by kicking with his unrestrained legs, feet and/or knees (which he did during the struggle), or by use of other personal weapons such as with head butts or by means of spitting or biting. There are also many instances in which suspects handcuffed behind their backs have been able to "sit through" their handcuffs so that their hands are then in front of them. I myself have worked as an expert in such a case, in which the suspect was eventually shot and killed during a struggle with three police officers in New Jersey.

If Arrington did in fact grab Cpl. Killingsworth's handgun and attempt to pull it from Killingsworth's holster, that was properly viewed by the deputies as potentially a deadly force attack. It was certainly an attack that would justify Sgt. Rountree's use of his baton to strike Arrington in the leg as he did. The deputies could not afford to wait to see whether Arrington would, in fact, succeed in pulling Killingsworth's gun out of the holster, as when the gun comes out of the holster (something it can do at any instant during the struggle), it can be fired in literally one second or less, which I can demonstrate if asked to do so. In fact, the gun doesn't necessarily even have to be pulled all the way out of the holster to be fired and strike the deputy. Three years ago I worked as an expert in a case in South Carolina in which a suspect, struggling with a deputy over the deputy's holstered pistol while two other deputies tried to assist in arresting the suspect, succeeded in either getting his finger into the deputy's holster and firing the holstered pistol, or in pulling the pistol partway out of the holster and firing it, a detail of the attack that could not be determined from the evidence. In either case, the deputy was struck in the leg by the bullet fired by the suspect from the holstered or partially holstered pistol. The bullet severed the deputy's femoral vein, and partially severed his femoral artery, resulting in immediate, extensive bleeding. The deputy lived only because a tourniquet he was carrying was applied to his leg by another deputy. In my own sheriff's department, a deputy was shot in the leg by someone who inserted his finger into the deputy's holster and pulled the trigger of the holstered pistol. The bullet broke into and traveled down the length of the deputy's femur, breaking out of the bottom of the femur near the knee and resulting in a life-long injury. In short, if Arrington grabbed Sgt. Killington's handgun, indicating an intent to arm himself with a deadly weapon, and especially given Arrington's size and strength and the apparent inability of the deputies to control him by empty-hand physical restraint techniques, the deputies were justified in their initial use of their batons against Arrington, that is, in their use of baton strikes against him while he was still on his feet.

Arrington's criminal history includes charges of aggravated menacing, vehicular manslaughter, firearms possession while prohibited to possess firearms, and drug offenses. It also includes a notation, "WARNING: Approach with caution." To what degree, if at all, the deputies were aware of Arrington's criminal history at the time of the incident is unclear to me. If they were aware of his history at the time of the struggle, it might justify use of higher levels of force than might otherwise be the case.

Use of Batons Against Arrington When He Was On The Ground. When Arrington fell to the ground, with Cpl. Killingsworth landing head first on the pavement with his feet in the air in the process, Arrington at first swiveled around on his back on the ground, kicking at the

deputies and apparently trying to sweep the legs of Dewey and Rountree and regain his feet. Sgt. Rountree struck Arrington in the upper left arm with his baton to keep him from regaining his feet. Killingsworth put his body across Arrington's chest, pinning Arrington's upper body to the ground. Arrington continued to kick with his feet and legs, sometimes pulling his legs back into a bent-kneed ("cocked") position from which very powerful kicks could be delivered. As Arrington pulled his legs back into a cocked position, Killingsworth had to turn his head to protect against being struck in the face by Arrington's knees. Throughout this part of the struggle the deputies intermittently delivered baton strikes to Arrington's legs, spaced between commands of "stay on the ground," "stop kicking," "put your legs down," "keep 'em down," "stop!," "do not kick," "Relax – nobody wants to hurt you," and other words to that effect.

Some of the baton strikes seemed to be intentionally delivered at less than full force, and the baton strikes in general appeared to be delivered in a measured manner, for the purpose of gaining control over Arrington, rather than in fear or anger, maliciously, or with the intent either to injure or punish Arrington or to cause him unnecessary pain.

At various times Dewey, Rountree and Cook each delivered baton strikes to Arrington's upper legs in what appears to have been an attempt to get him to stop kicking at the deputies. Rountree, Dewey and Cook also struck Arrington in the lower legs. All of the baton strikes I could see were delivered to "green" target areas (areas trained as acceptable striking zones) on the Mondadnock baton chart, with the possible exception of one strike that appears may have been directed to the rear neck/head area, and one short baton-end jab by Sgt. Rountree at Arrington's upper right side, delivered when the deputies were trying to control Arrington on the ground. It is unclear whether the strike to the rear neck/head area connected, and as it occurred during a very dynamic, fast-moving portion of the struggle it is unclear what the intended target area of that strike had been. I believe that overall the batons were used in an appropriate manner, as generally trained in law enforcement baton classes, and that any less-than-perfect use of the batons was unintentional, as can often occur during a dynamic struggle such as this.

At various times during this part of the struggle, Arrington can be heard to yell things like "Please, please, I didn't do nothing – I didn't do nothing," or words to that effect. Of course, it isn't true that Arrington "didn't do nothing" – he had resisted arrest, attempted to grab Killingsworth's gun, knocked deputies to the ground, and kicked deputies, causing injury to several of them.

I think it is important to recognize that Arrington, who was handcuffed behind his back, was lying on his back on the pavement with Killingsworth lying across his upper body. As Arrington was in all likelihood lying on his own handcuffed hands, this may have been painful. It is unclear whether, at least toward the end of the confrontation, Arrington was kicking his legs and bending them at the knees in an attempt to kick or threaten the deputies, or whether he was doing it as a natural, and perhaps uncontrollable, defensive reaction to being struck in the legs with batons by the deputies. Whether Arrington's intention was to harm the deputies, or simply to protect himself from the baton strikes, or as a natural and perhaps unavoidable reaction to pain could, in the final analysis, be known only to Arrington. But in any case, Arrington brought this situation on himself, and it appears it would never have happened if he had simply allowed himself to be escorted to and placed into the police car without resisting. The deputies are not

mind readers, and it was reasonable for them to interpret Arrington's kicks and his drawing back his legs into a cocked position as threatening and assaultive, with the potential to cause serious injury if a powerful kick by Arrington connected with a deputy's knee, groin, face, throat, or other vulnerable target.

Given Arrington's size and strength, and their difficulty in physically controlling him, in my opinion the deputies were reasonable in their views, expressed in their TBI interviews, that since Arrington had already shown his intention to arm himself with a deadly weapon by his attempt to disarm Cpl. Killington, it was critical that they not allow Arrington to regain his feet. Thus, their use of their batons, while perhaps presenting a bad "optic," was in my opinion objectively reasonable.

In total, the deputies appear to strike at Arrington what I count to be over twenty (20) times with their batons, although as noted elsewhere in this report some of the strikes were ineffective, or were intentionally delivered at less than full force. Some of the strikes may have missed Arrington entirely. It is possible that once he was on the ground with a deputy controlling his upper body, Arrington's legs might have been controllable in some manner other than by the repeated, and largely ineffective, baton strikes. I am reminded of the saying, "If all you have is a hammer, every problem looks like a nail." Here, it appears as if the only tools in the deputies' subject control toolbox were their batons. While the use of the batons was not, in my opinion, objectively unreasonable, I believe other tools or techniques might have been more effective once Arrington was on his back on the ground with a deputy holding Arrington's upper body down, and it became apparent that the baton strikes were not succeeding in controlling Arrington's legs.

Recommendations. While the materials I received included lists of training classes the HCSO deputies attended, the materials did not, in most cases, provide the details of what specific techniques were taught in those classes. Accordingly, I can express no opinions as to those specific techniques. However, based on my review of the videos and other materials, I suggest that the HCSO should review, and should consider whether or not it needs to modify, its defensive tactics and subject control training programs. Arrington was a very big, very strong subject. Even with his hands handcuffed behind him, a subject as big and strong as Arrington can break loose, as Arrington did, from two deputies holding him by the upper arms on either side. A better way to escort a subject like Arrington would be to have one hand on his triceps area, and the other hand grasping the fingers of his hand, handcuffed behind his back. Escorted in that manner, if the subject begins to resist, the deputy can immediately take the slack out of the handcuffed wrist, which is very likely (nothing is 100% guaranteed, of course) to result in controlling the subject. With two deputies escorting a subject in that manner, and with each of the two deputies having hold of the subject's fingers of his handcuffed hands behind his back, there is even less likelihood of effective resistance by the suspect. Of course, as noted, no technique is 100% effective, and a subject controlled in the manner I have described can still resist at the moment when the deputies have to release his fingers to place him in the police car, but nevertheless the level of control is improved, and the likelihood of effective resistance is reduced.

I would also recommend that the HCSO review and reconsider the “use of force continuum” ordering contained in Section 1.3.01(B) of its Response to Resistance/Use of Force Policy. In that section, the use of baton strikes is placed earlier on the continuum (that is, it appears to be viewed as a lower or less physically intrusive use of force) than empty-hand defensive tactics, such as control holds. As baton strikes are more likely to result in physical injury to an individual than control holds, the written policy should make it clear that the use of baton strikes is a higher level use of force than control holds.

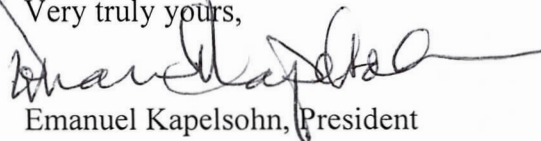
Conclusion. Based on the foregoing, it is my opinion, to a reasonable degree of professional certainty in my fields of expertise, that the Hamilton County deputies did not use excessive force against Reginal Arrington in the May 23, 2020 incident.

While the deputies might possibly have succeeded in controlling Arrington with the use of fewer baton strikes, I note the following points:

1. Whether or not that would, in fact, have proven to be possible is a matter of speculation, not a certainty;
2. It could also be the case that controlling Arrington with fewer baton strikes would have required more powerful, more effective baton strikes, resulting in greater injury to Arrington;
3. Attempting to control Arrington in some manner other than by baton strikes might have resulted in greater injury to the deputies and/or to Arrington;
4. It is unclear whether the Hamilton County deputies were trained in any techniques that might have effectively controlled Arrington’s aggression, other than the techniques they used; and
5. In the final analysis, law enforcement officers are not legally required to use the least amount of force that might possibly control an assaultive or resistant subject; they are required to use no more than objectively reasonable force. See, e.g. Graham v. Connor, 490 U.S. 386 (1989). The use of force by the Hamilton County deputies here was objectively reasonable, and was such as other reasonable officers on the scene might use.

I reserve the right to amend or supplement this report, and the facts and opinions contained herein, in the event additional information comes to my attention.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Emanuel Kapelsohn", written over a horizontal line.

Emanuel Kapelsohn, President