

Expert Opinion Report

By JOSEPH J. STINE

QUALIFICATIONS

I am the former Police Chief of New Britain Township Pennsylvania (1990 – 2000). I am the former executive officer of the Police Training Bureau for the City of Philadelphia. In my 25 years with the Philadelphia Police Department, I served in every rank from Patrolman through Inspector. I was a Detective for three years and the night command Captain in charge of the Detective Bureau for 2 years. I was a patrol district supervisor at the ranks of Sergeant, Lieutenant and Captain for 12 years. I am the former School Director for the Philadelphia Police Recruit Training Academy. I am currently certified as an instructor for Police training for the Commonwealth of Pennsylvania. I have been retained by the Southeast Pennsylvania Transportation Authority Police Department to develop and deliver training to its officers.

I have been an adjunct faculty member in Criminal Justice Departments at Temple University, Holy Family College, Delaware Valley College and Philadelphia Community College.

I am a graduate of the Federal Bureau of Investigation National Academy and the Police Executive Research Forum. I graduated from St. Joseph University with a Master of Science in Administration of Criminal Justice. I am a life member of the International Association of Chiefs of Police, where I served on the Education and Training Committee from 1991 through 2003.

I have been recognized as an expert in the training, practices and procedures utilized by the police in the performance of their duties. My expertise in these areas has been accepted in numerous state and federal courts as well as by the United States Court of Appeals for the Sixth Circuit.

A copy of my curriculum vitae has been previously provided.

I have been retained by the City of Pittsburgh to review the case of and pertinent documents and materials relating to Jordan Miles vs. City of Pittsburgh , et al. I now render my expert opinion, to a reasonable degree of professional certainty, on the practices and procedures utilized. This opinion is based upon the review of the materials and information made available to me. In rendering this opinion I have utilized my education and experience in law enforcement and academia.

I reserve the right to change or modify this opinion should additional facts, documents or evidence become available to me.

MATERIALS AND DOCUMENTS REVIEWED:

1. Complaint;
2. Chief's Order re: "99" cars dated 5-25-07;
3. Pittsburgh PD Memorandums re: Zone 5 assignment to 3599 car;
4. Pittsburgh PD Incident Report and Arrest Paper Work for the Arrest of Jordan Miles;
5. Scene Photos;
6. Crime Statics for area of Arrest;
7. Jordan Miles Medical Records;
8. Officer Michael Saldutte Medical Records;
9. Officer David Sisak Medical Records;
10. Officer Saldutte interview/statement dated 1-27-10;
11. Officer Saldutte interview/statement dated 2-4-10;
12. Officer Sisak interview/statement dated 1-28-10;
13. Officer Richard Ewing interview/statement dated 1-29-10;
14. Officer Fedorski interview/statement dated 2-16-10;
15. Officer Horak interview/statement dated 2-16-10;
16. Sgt. Charles Henderson interview/statement dated 2-9-10;
17. Jordan Miles interview/statement dated 1-20-10;
18. Sgt. Henderson Memorandum dated 1-28-10;
19. OMI Investigation final report;
20. Pittsburgh PD training academy report;
21. Federal Bureau of Investigation file;
22. Federal Bureau of Investigation Press Release;
23. Jordan Miles Preliminary Hearing Transcript;
24. Officer Saldutte Polygraph Report 3-13-10;
25. Officer Saldutte Polygraph Report 8-7-10;
26. Officer Sisak Polygraph Report 3-13-10;
27. Officer Ewing Polygraph Report 3-13-10;

28. Jordan Miles Polygraph Report

29. Depositions:

- A. Officer Sisak with exhibits;
 - B. Officer Ewing with exhibits;
 - C. Officer Saldutte with exhibits;
 - D. Lt. Kevin Kraus;
 - E. Chief Nathan Harper;
 - F. Jordan Miles with exhibits;
30. Transcript of Officer Sisak's Review Petition before Arbitrator Miller-Kotula;
31. Department of Justice Press Release dated May 4, 2011

It should be noted that due to time constraints I have not read and analyzed the FBI investigative file relating this matter. It is my intention to read and analyze the information contained in that extensive file. I will file a supplemental report if necessary.

The following are my opinions in the matter of Jordan Miles vs. City of Pittsburgh, et al.

Factual Background

On January 12, 2010 at approximately 11:00PM, Pittsburgh PD Officers Saldutte, Sisak and Ewing were on duty in plain clothes utilizing car number 3599, an unmarked Pittsburgh PD vehicle. They were on patrol in Zone 5, in the area of the 7900 block of Tioga St.

On January 12, 2010 at approximately 11:00PM, Jordan Miles was on foot in the 7900 block of Tioga St.

The officers and Mr. Miles have differing accounts of what occurred at that time and place. The officers' state that Mr. Miles came to their attention due to the following:

- They were on patrol in a high crime area;
- The area was known to be frequented by dealers and users of illegal drugs;
- The area was known to be frequented by persons carrying illegal concealed firearms;
- The area was prone to burglaries;
- The area was prone to auto thefts;

- They observed a male hiding in the shadows in a lot between two homes, that male was later identified as Jordan Miles;
- Mr. Miles was facing the side of a home, a few feet away, with his back to the street;
- Mr. Miles was standing near an unoccupied vehicle.

Officer Saldutte states that he observed Mr. Miles as they drove past 7940 Tioga St. The officers' state that they stopped short of the corner; turned the vehicle around and came back down Tioga St. in-bound toward the City to investigate Mr. Miles.

Mr. Miles' states that he was walking in the driving portion of Tioga St. because the sidewalks were slippery due to accumulated ice and snow. He states the vehicle appeared to be stopped up the street and then drove rapidly toward him and stopped, nearly striking him.

The officers state that as they approached the area where Mr. Miles had been observed, he came out from between the homes and walked toward the sidewalk. Mr. Miles looked in their direction and then put his hands into his pockets.

The driver of the vehicle, Officer Ewing, states that he lowered the vehicle window; identified himself as a Pittsburgh PD police officer and asked Mr. Miles to stop and Mr. Miles complied. When the vehicle came to a stop Officer Saldutte stepped out of the car from his front seat passenger side door and identified himself as a Pittsburgh PD police officer. The officers were using a two-door vehicle and Officer Sisak remained in the back seat. The officers had their badges hanging on chains around their necks. The badges were prominently displayed and both Officers Saldutte and Ewing held their badges up to identify themselves. The badges were displayed outside of their outermost garments.

Officer Saldutte asked Mr. Miles to remove his hands from his pockets and Mr. Miles complied. The officers state that they then asked Mr. Miles if he lived in the home they had seen him standing beside. Mr. Miles answered negatively and added that he lived down the street. The officers asked Mr. Miles what he was doing near the home where they had observed him and Mr. Miles did not answer. As this was occurring Officer Saldutte leaned into the vehicle and stated "He has something on him", "I think he's going to go." Officer Saldutte came to this conclusion because he observed something heavy in Mr. Miles's right jacket pocket and he observed Mr. Miles touching the area of the heavy object as if to make sure that it was secure.

Mr. Miles started to walk away from the officers and Officer Saldutte again identified himself and added, "Pittsburgh PD. Stop." When Officer Saldutte said "stop", Mr. Miles began to run. When Mr. Miles began to run Officer Saldutte ran after him shouting "stop, police." Officer Ewing started to drive down the street, in the direction Mr. Miles was running, until he observed Mr. Miles fall on the sidewalk. Officer Sisak unsuccessfully attempted to exit the vehicle prior to Officer Ewing stopping the vehicle. Officer Ewing then stopped the vehicle and he and Officer Sisak exited the vehicle.

The officers' state that, as they observed Mr. Miles walk and then run away from them, something heavy was observed in Mr. Miles's right coat pocket. Mr. Miles reached toward the heavy object in his pocket. As he was running, Mr. Miles made a gesture to ensure that the object remained securely in his pocket. The officers' state that based on their training, experience and the totality of the circumstances, they believed that Mr. Miles was checking to make sure the gun in his pocket was secure.

The officers' state that when Mr. Miles fell to the ground, they thought that his attempt to flee was over. The officers' state that as they approached Mr. Miles, they repeatedly yelled "Police", "Stay down."

Mr. Miles' states that when the vehicle came to a stop all three police officers exited simultaneously. He states that the officers never identified themselves. He states that the officers immediately asked him "Where's the drugs", "Where's the gun", "Where's the money?" Mr. Miles' states that males who exited the vehicle never identified themselves as police officers. He states that he thought that the three white males had come to this predominantly African American neighborhood to rob him. Mr. Miles' states that he attempted to run away from the three males. Mr. Miles stated that he slipped and fell on the ice and snow.

From the time Mr. Miles fell on the ground until the time he was eventually handcuffed, all parties to this matter agree that a violent struggle took place. That struggle included the following:

- The officers' state Mr. Miles was they grabbed by the shoulder after he originally fell.
- Mr. Miles states they jumped on his back.
- While the officers were trying to get control of Mr. Miles, he was attempting to get up and run away.

- The officers state that in his attempt to get away, Mr. Miles struck Officer Saldutte in the face with his elbow. Officer Saldutte states that this blow knocked him backwards and he lost his balance.
- All parties agree that, during the struggle, Mr. Miles was able to return to the standing position.
- All parties agree that Mr. Miles was able to pull his arm away and put both arms under his body.
- All parties agree that Mr. Miles had not been frisked and/or checked for weapons until after he was compliant and restrained.
- All parties agree that close fists strikes to Mr. Miles's were used in an effort to gain control of him, including strikes to the body, face and head of Mr. Miles.
- All parties agree that these strikes were unsuccessful in getting Mr. Miles to submit to handcuffing.
- All parties agree that these strikes did not cause Mr. Miles to cease resisting and/or comply with the officers' demands.
- All parties agree that the struggle to gain control of Mr. Miles ended when a solid blow to Mr. Miles's head stunned him and the officers were able to restrain him with handcuffs. The officers state that the stunning blow was a knee strike delivered by Officer Ewing.
- All parties agree that at some point Mr. Miles's right hand was handcuffed.
- All parties agree that it was not until after Mr. Miles was restrained that the pockets of Mr. Miles's jacket were searched.

In addition the officers state the following:

- They each repeatedly stated that they were police officers throughout the struggle.
- They each repeatedly told Mr. Miles that he was under arrest.
- They each repeatedly told Mr. Miles to stop resisting.
- Mr. Miles responded by asking not to be arrested.
- When Mr. Miles attempted to flee, after striking Officer Saldutte with the elbow, Officer Sisak attempted to use the Taser in an to attempt to complete the arrest of Mr. Miles. The Taser had no effect.

- During his attempt to escape Mr. Miles kicked Officer Sisak in the knee knocking him to the ground.
- Mr. Miles and one officer fell or were pushed through some nearby bushes.
- Once Mr. Miles was restrained in handcuffs all strikes ceased.
- A Mountain Dew Soda bottle was located in Mr. Miles's right jacket pocket.

In addition Mr. Miles states the following:

- He was never told that these were police officers until a police wagon arrived
- He was not told he was under arrest.
- He has no recollection of being tasered.
- He denies any recollection of striking or kicking the officers.
- He alleges that the officers struck him after he was restrained and in cuffs.
- He denies that he ever had any heavy object in his pocket, including a Mountain Dew bottle.

After Mr. Miles was restrained, the resident of the property, where the officers' state they saw Mr. Miles lurking in the shadows, came to the second floor and had a brief conversation with the officers. The contents of that conversation are subject to dispute.

All involved parties took and passed polygraph tests regarding their involvement in and statement about this incident.

Opinions

#1.

The use of unmarked cars and plain clothes officers is a generally accepted practice for professional police departments in their efforts to address criminal activity within their jurisdiction.

Professional police departments utilize various tactics and techniques to combat crime and make the community they police safe for those who live, work and visit there. The predominant form of police activity is uniformed patrol in marked police units. The goals of this type of patrol are to deter crime with their easily identified presence and to rapidly respond to calls for service. The use of uniformed officers in marked units is ideal for these purposes.

Modifications of the uniform and/or the method of transportation are functional adaptations of this type of patrol.

To a lesser degree, professional police department utilize plain-clothes officers and unmarked vehicles. There are many uses for these officers and their methods of operation are dictated by the specific task they are attempting to accomplish.

One generally accepted goal is to apprehend criminals in the act of committing crimes. This is accomplished by making it more difficult to spot police officers from afar. When police officers are in plain-clothes and in unmarked vehicles they lessen the possibility that criminals will detect their presence until the actual arrest is made. That is the type of assignment the officers in this case were on at the time of this incident.

The Pittsburgh PD utilizes this method of policing through its use of the "99" cars. Under this program zone commanders are permitted to hand pick officers from within their command. The officers are chosen on the basis of their training, past performance and experience in dealing with the specific tasks and/or objectives envisaged by the Zone Commander.

In Zone 5 the Commander identified that there were problems with drugs, illegal weapons, and break-ins. The commander sought volunteers from within his command to address these problems and 19 officers volunteered. The commander chose the three officers he believed to be the most qualified for the assignment.

#2.

It is a generally accepted practice and procedure for professional police officers to immediately identify themselves as police officers when they initiate police actions.

From the earliest training given in police academies, police officers are constantly advised that they must announce their office when they are engaging in police action. This training emphasizes that the necessity for identifying one's self as a police officer increases exponentially when the officer taking the action is in plain-clothes. This training is so engrained that it becomes a reflex action for officers to immediately and continuously identify themselves when they are taking police action, especially while in plain-clothes.

A professional police officer's training and experience causes them to understand that they cannot assume that a person will know they are the police. They must identify themselves in order to establish their authority.

In this case there is a disagreement between the involved parties regarding whether or not the officers identified themselves as police officers. It is neither my place nor inclination to opine on the credibility of any of the parties involved in the struggle which occurred in the 7900 block of Tioga St. on January 12th, 2010. It is my place to analyze and opine on those events utilizing my training and experience.

It is my opinion that in order for Jordan Miles not to have known that the males who attempted to stop him and whom he eventually struggled with were police officers, he would have had to believe that three adult white males had come into predominantly Afro-American community in order to rob him. He would have had to believe this even though he had never heard of any such attack previously occurring. He would have had to believe this even though there were no reports of any such activity in any of the media or even in the daily word of mouth communications in the neighborhood. He would have to have not heard any of the constant repetition of "Police. Stop. Police. Remain on the ground. Police, you're under arrest. Police, stop resisting."

It is my opinion that in order for the officers to have not identified themselves as police officers, they would have had to agree to act in ways that were contrary to their training, experience, safety and self-interest. Each of the three officers would have separately and in collusion with each other had to engage in the following actions:

Each of the three officers, separately and in collusion with each other, would have had to agree that for the encounter with Mr. Miles they were going to act in ways that were contrary to their daily practice and routine.

Each of the three officers, separately and in collusion with each other, would have had to agree that for the encounter with Mr. Miles they were going to act in ways that increased danger to each officer's safety.

Each of the three officers, separately and in collusion with each other, would have had to agree that for the encounter with Mr. Miles they were going to act in ways that served no practical purpose.

Each of the three officers, separately and in collusion with each other, would have had to agree that for the encounter with Mr. Miles they were going to change their normal routine and hide their badges.

#3.

It would have been contrary to generally accepted practice and experience for these officers to have used their emergency lights and siren when they attempted to initiate an investigation into the actions of Mr. Miles.

Some unmarked police vehicles are equipped with emergency lights and sirens. The purpose of this equipment on an unmarked vehicle is to allow officers to respond quickly to crimes in progress and/or officers in need of assistance. Occasionally, they may also be used to assist in pulling over a vehicle wanted in connection with a crime.

It would be counterproductive, ineffective and contrary to generally accepted practices and procedures for professional police officers to utilize this emergency equipment as a means of identification for plain-clothes police officers attempting to stop a suspicious person who was on foot. Below are some of the reasons for those generally accepted practices and procedures:

- Persons involved in suspicious activities would generally run away if the emergency equipment was activated prior to the stop.
- Persons carrying illegal weapons and/or contraband would discard and or hide the contraband.
- Persons carrying illegal weapons would be placed on alert and have time to prepare and utilize their weapons on the police.
- The use of the emergency equipment would draw the attention of the neighborhood to the police action (these actions often occur in areas where the person being stopped has friends, family and allies).
- The use of the emergency equipment during an investigation would “burn” the unmarked vehicle (everyone in the area would know it was a police car).

This list is intended to be illustrative and not exhaustive.

#4.

It is my opinion that the officers involved in this stop had a reasonable articulable suspicion to believe that Mr. Miles was involved in criminal activity and subject to a pat down and/or frisk.

The officers state that they observed Mr. Miles next to an occupied structure. They observed Mr. Miles in the vicinity of an unoccupied vehicle. This occurred late at night. It occurred in an area that was prone to criminal activity at a time when criminal activity is more likely to happen. It would have been in accord with generally accepted practices and procedures for professional police officers to conduct a further investigation into what Mr. Miles was doing.

When the officers initiated the investigation into Mr. Miles, they made numerous observations that led them to believe that Mr. Miles was armed (see opinion #5).

Reasonably well trained professional police officers understand that under the Terry doctrine, and in consideration for the dangerous nature of police work, they are permitted to conduct a frisk/ pat down of a person believed to be armed.

#5.

Reasonably well trained professional police officers' training and experience tells them that when they are struggling with a person who they believe to be armed, they must gain control over that person.

Reasonably well trained police officers would use their training and experience to understand that their lives, the life of the struggling person and the lives of innocent persons in the area are at risk. Their training and experience tells them that this risk/danger will continue and even escalate as long as that person is not restrained and/or until the person they believe to be armed has been patted down and frisked.

In this case, these officers were highly trained and experienced in the recognition of armed persons. They state that the totality of the circumstances and their observations caused them to have a reasonable suspicion that Mr. Miles was armed.

Reasonably well trained professional police officers are trained to be alert for tell tale signs of persons carrying illegal and/or unlicensed fire arms. Some of those signs are:

- The time of day - in this case, late at night.

- The nature of the area - in this case, an area known for Narcotics and illegal firearms.
- The actions which brought the person to the attention of the police – in this case, Mr. Miles was observed lurking near a darkened home and an unoccupied vehicle.
- A bulge in the pocket of the person under investigation - In this case, the bulge in Mr. Miles's right pocket.
- One side of the jacket riding lower than the other - in this case, Mr. Miles's jacket appeared to be weighted down to one side.
- The touching of the area where the bulge and or heavy object was located in the jacket - in this case, Mr. Miles continually touched the bulging area.
- The actions of the person upon the approach of the police - in this case, Mr. Miles ran away after being asked a few simple questions.
- The physical characteristics of the jacket as a person ran - in this case, the jacket swung in a way that indicated that something heavy was in the pocket.
- The actions of the subject as he ran away – in this case, Mr. Miles grabbed and attempted to stabilize the area where the heavy object appeared to be located.
- The level of resistance and the actions of subject when the police attempt to conduct a pat down or frisk - Mr. Miles acknowledges that he used all his strength and physical resources to thwart being restrained by the officers. He acknowledges that he repeatedly attempted to regain his feet after he fell and/or was taken to the ground. He acknowledges that he pulled a handcuffed arm free from the grasp of the officers. He acknowledges that he placed his hands under his body and would not allow the officers to force them out. He acknowledges that the officers had not been able to pat him down or frisk him prior to and/or at any time during this violent struggle. He acknowledges that the repeated strikes from the officers' closed hands and knees did not cause him to desist in his struggle. He acknowledges that the strikes to his entire body, including to

his face and head, did not cause him to cease struggling against the officers. He acknowledges that it took a particularly hard stunning blow to the face to force him to stop resisting

It is my opinion that given the totality of the circumstances facing these officers on this night and given the level of resistance acknowledged by Mr. Miles, a reasonably well trained professional police officer would have believed that they were in a life and death struggle.

Professional police officers are trained that they have a duty to themselves, their partners and their families to do everything in their power to win life and death struggles. They are trained to use the force necessary to survive these struggles. In this case, based solely on Mr. Miles's description of what was occurring, Mr. Miles continued to struggle and resist until sufficient force was applied. It is clear from Mr. Miles's testimony that he continued to struggle and resist after attempts to cuff him failed. It is clear from Mr. Miles's testimony that he continued to struggle after he had been struck with hands and knees all over his body. It is clear from Mr. Miles's testimony that he only submitted to being restrained when a strike of sufficient force stunned him into submission.

A reasonably well trained professional police officers training and experience tells them that an advantage in numbers and size for the police does not automatically equal a quick and easy restraint of a subject. As demonstrated by Mr. Miles's testimony, he managed to resist control by these three officers until he was stunned into submission.

A reasonably well trained professional police officers training and experience tells them that a resisting person can make it very difficult to gain control over a person. Mr. Miles testimony makes it quite clear that these officers had a great deal of difficulty getting Mr. Miles restrained.

#6.

Mr. Miles alleges that the officers continued to strike him after they had restrained him. It is my opinion that if there were any strikes after the officers knew that Mr. Miles was restrained those strikes would not have been justified.

#7.

It is my opinion that these officers made a mistake when they discarded the soda bottle found in Mr. Miles's right pocket.

Police officers are human beings and can make mistakes. In this case, the officers had just been involved in what they believed to be a life and death struggle. They were totally focused on finding and removing the gun they were certain Mr. Miles possessed. When they found an object that was not contraband and appeared to have no evidentiary significance, they discarded it and continued their search for the weapon. They searched Mr. Miles's person and the surrounding area. They remained convinced that the gun was there somewhere. It would only have been human nature to not even consider that the soda bottle might have some evidentiary value.

#8.

It is my opinion that the disagreement over the contents of a conversation between the woman resident and the police was not a factor in what occurred prior to that conversation. The woman resident appeared at the 2nd story window after the initial stop, after Mr. Miles fled, after Mr. Miles struggled with the officers and after Mr. Miles was in custody. A professional police officer is trained to understand that information gathered after the arrest of a person cannot be used as a justification for the arrest. In this case, it made no difference what the woman in the window said because the investigatory detention and custodial arrest occurred prior to this conversation.

All of the opinions I have offered in this report are to a reasonable degree of professional certainty. Those opinions are based on the data listed in the Materials and Documents Reviewed section of this report. In forming these opinions I have also relied on the knowledge and experience that I have accumulated in more than 40 years as a police officer, police supervisor and police trainer. In addition, I have utilized my education and training in the field of law enforcement and from the world of academia to guide me in the formation of these opinions.

/s/ Joseph J. Stine

Joseph J. Stine December 22, 2011