

**Police Practices and Training Expert Report of Perry Tarrant in
Williams v. City of Detroit, et al.
(Case No. 21-cv-10827)**

Report Date: May 25, 2023

I. Overview and Credentials of Mr. Perry Tarrant

- A. Perry Tarrant — I am a consultant providing insights, guidance, recommendations, and observations based on nearly four decades of policing, leadership, and academic experiences. I served as a certified law enforcement officer ranging from first line responder through assistant chief of police. Additionally, I have served in chief executive roles such as the president of the National Organization of Black Law Enforcement Executives (NOBLE), Executive Director of FBI Law Enforcement Executive Development Association (FBI-LEEDA), FEMA Incident Commander, and Director of Emergency Preparedness (Public Safety) Director. I am a police practices expert.
- B. I have been providing police operations policy development and training since 1990. Likewise, I have been called upon to be an instructor, keynote presenter, and resource for the development of best practices. I provided guidance, instruction, and expertise to the White House, the NAACP for Continuous Legal Education, the FBI Washington State Command College, The Lawyers Committee for Civil Rights Under the Law, the University of Arizona, the FBI National Academy Associates, Arizona Black Law Enforcement, the National Sheriffs Association, The International Association of Chiefs of Police (IACP), and the Attorney General of the United States, the USDOJ Office of Community Oriented Policing Services (COPS), Measures for Justice, The National Institute for Justice, and the Bureau of Justice Statistics.
- C. I have provided review and expertise to the City of Ferguson, MO, Charlotte, NC, Bellevue, WA, Joplin, MO, Rochester, NY, Tempe, AZ, and the Metro Transit Police (Houston, TX). I have provided testimony before the President’s Taskforce on 21st Century Policing, before becoming part of the follow-on Law Enforcement Advisory Workgroup.
- D. In an ongoing capacity, I provide instruction and expertise to the USDOJ COPS Office Collaborative Reform Initiative Technical Assistance Center. I provide experiential knowledge and expertise as the Chair of the NOBLE Emerging Technologies Committee, as an Advisor and Law Enforcement Technology Evaluator for Massachusetts Institute of Technology Solve Program, and I have provided technical expertise to the IACP on policy development and program development.
- E. I was formally trained as an internal affairs investigator at the Florida State University, Institute of Police Technology and Management and the FBI’s Internal Affairs Investigations course. I was assigned as an Internal Affairs Unit Supervisor tasked with investigating personnel criminal misconduct, Officer Involved Weapon Discharges

(shootings), and EEOC intake. I attended the IACP Officer Involved Shooting Advanced Investigation Course and Advanced Death Investigations at the FBI National Academy.

- F. I developed and presented advanced law enforcement training for the Washington State Criminal Justice Training Center. Prior to working in the State of Washington, I led oversight of curriculum and revisions of Basic Detective School while a Detective Division Commander in Tucson, AZ. Among my duties as the Executive Director of FBI-LEEDA was oversight and review of all professional development courses and direct evaluation of the instructors. Other tasks were to ensure all curriculum delivered to law enforcement agencies and personnel was contemporary, which required review of the course materials and certifying the chiefs and lawyers presenting the material.
- G. I hold a Bachelor of Arts in Political Science (Counterterrorism Minor) from The University of Arizona; Masters of Administration (Leadership Emphasis) from the Northern Arizona University; and a Criminal Justice Graduate Studies Certificate from the University of Virginia. Additionally, I hold leadership certificates from the FBI National Academy; FEMA All-Hazards Incident Commander, National Fire Academy Emergency Management Institute, Senior Management Institute for Police, Leading Police Organizations from the Center for Leadership Excellence, Southwest Leadership Institute, and a Certificate of Training from the Clery Center.
- H. I am being compensated \$1,000 for producing an expert report in this matter, and will be compensated at a rate of \$2,000 per day for appearing for depositions or trial; \$200 per hour for any standby time on days when I am not testifying; and \$100 per hour for travel time. This represents a discounted “low bono” rate, reflecting the fact that Mr. Williams is represented *pro bono* and that this case is of public significance.

II. Materials Reviewed in this Case

As a police practices expert witness, I ask the attorney or firm who has retained me to provide all available relevant police investigative materials related to their client’s case. I was provided with and have reviewed the following materials:

Case Files

- Investigator’s Report 19-CI-03-250
- Wayne County Prosecuting Attorney’s Recommendation
- Incident/Investigation Report 181005-0167
- 6-Pack Photo Array
- Digital photographs from Shinola security camera
- Probe image used in FRT search
- Investigative Lead Report BID-39641-19
- MIDRS Williams, Robert, Julian-Borchak
- LEIN Inquiry on SID: 402988T
- Wayne County Prosecutor’s Office Witness List

- Prosecutor Case No. 2019715301
- Warrant Prosecutor's Notes and Instructions
- Case Supplemental Report 1810050167
- Case Management (DPD 181005-0167)
- Revised Mackinac Partners Report 18-SHPLFT-10001-16
- Internal Affairs Inter-Office Memorandum 20-0258
- 6-pack created by Detective Levan Adams
- CCTV Security Footage of Theft
- Robert Williams 36th District Court Register of Actions
- Robert Williams signed arrest warrant
- Robert Williams larceny charge Order of Dismissal
- Timeline of Robert Williams case
- Initial Mackinac Partners Report 18-SHPLFT-10001-16-Theft Report 5.8.19

Arrest and Detective Videos

- Body and dash cam footage from Officer Salem
- Body and dash cam footage from Officer Ali
- Custodial interview of Mr. Williams

Discovery Responses

- Robert Williams Rule 26(a)(1) Initial Disclosures
- Plaintiff's First Set of Interrogatories to Defendants
- Plaintiff's Second Set of Interrogatories to Defendants
- Plaintiff's First Request for Production to Defendants
- Plaintiff's Second Request for Production to Defendants
- Plaintiff's Third Request for Production to Defendants
- Defendants' Response to Plaintiff's First Set of Interrogatories to Defendants
- Defendants' Supplemental Response to Plaintiff's First Set of Interrogatories to Defendants
- Defendants' Fourth Supplemental Response to Plaintiff's First Set of Interrogatories to Defendants
- Defendants' Response to Plaintiff's Second Set of Interrogatories to Defendants
- Defendants' Response to Plaintiff's First Request for Production to Defendants
- Defendants' Supplemental Response to Plaintiff's First Request for Production to Defendants
- Defendants' Second Supplemental Response to Plaintiff's First Request for Production to Defendants
- Defendants' Fifth Supplemental Response to Plaintiff's First Request for Production to Defendants
- Defendants' Response to Plaintiff's Second Request for Production to Defendants
- Defendants' Request for Production to Plaintiff
- Defendants' First Set of Interrogatories to Plaintiff

Internal Affairs Investigation

- Internal Affairs Investigation Notice from Lieutenant. Jeffrey Hahn (7/1/2020)
- Redacted version of the Detroit Police Department Internal Affairs report
- Inter-Office Memorandum on “Facial Recognition Policy and the Shinola Incident” from Former Assistant Chief (and current Chief of Police) James White to Former Chief of Police James Craig (7/9/2020)
- Recordings of Internal Affairs Investigation Interviews of the following persons:
 - Detective Levan Adams
 - Police Officer Benjamin Atkinson
 - Detective Donald Bussa
 - Lieutenant Angelique Chadwick-Bills
 - Captain Rodney Cox
 - Sergeant Chimene Irvin
 - Katherine Johnston
 - Lieutenant Barbara Kozloff
 - Detective Steve Posey
 - Detective James Ronan
 - Sergeant Ray Saati
 - Police Officer Mohammed Salem
 - Rathe Yager
- Summary of Internal Affairs Investigation Interviews
- Detective Levan Adams Official Reprimand
- Captain Rodney Cox Official Reprimand

Correspondence

- Package #1 of e-mails between DPD and Mackinac Partners and between DPD and the Wayne County Prosecutor’s Office
- Package #2 of e-mails between DPD and Mackinac Partners and between DPD and the Wayne County Prosecutor’s Office
- Attachments to Package #1 and Package #2 e-mails
- Additional e-mails between DPD and Mackinac Partners, including attachments
- E-mail from Donald Bussa to Wayne County Prosecutor Jane Gillis
- E-mails from DPD regarding other Shinola thefts

DPD Policies

- DPD Directive Number 101.1: Written Directive System (September 2014)
- DPD Directive Number 202.1: Arrests (November 2014)
- DPD Directive Number 202.2: Search and Seizure (May 2015)
- DPD Directive Number 307.6: Use of Traffic Light-Mounted Cameras and Facial Recognition Technology (April 2019)
- Training Directive 19-07: Use of Traffic Light-Mounted Cameras and Facial Recognition Technology (April 2019)
- DPD Directive Number 307.5: Facial Recognition (July 2019)
- DPD Directive Number 307.5: Facial Recognition (September 2019)
- Revised DPD Directive Number 307.5 with BOPC recommendations: Facial Recognition (September 2019)

- Special Order 21-23: Eyewitness Identification and Lineups (10/28/2021)
- DPD Directive Number 203.11: Eyewitness Identification and Lineups (10/2014)
- Crime Intelligence Unit Standard Operating Procedures (Entire Booklet)
- Crime Intelligence Unit Standard Operating Procedure Section 8: Facial Recognition (Revised 12/21/20)

Documents related to DPD's use of FRT

- Case number 190819-0208, in which Detective Bussa used facial recognition technology
- Case files of other cases where Detective Bussa used facial recognition technology:
 - Case number 190408-0259
 - Case number 190427-0320
 - Case number 190430-0325
 - Case number 190502-0003
 - Case number 190509-0368
 - Case number 190515-0273
 - Case number 190731-0172
 - Case number 109518-0199
 - Case number 109519-0145
 - Case number 109723-0128
- DataWorks Plus FRT proposal to DPD
- Flyball Labs FRT proposal to DPD
- ID Networks FRT proposal to DPD
- Police Surveillance and Facial Recognition Technology Report (September 2019)
- DPD Annual Report on Facial Recognition, 2020
- DPD FRT 2021 Annual Report Summary
- Crime Intelligence Unit Project Green Light Detroit Presentation (August 6, 2020)
- Numerous Weekly FRT Reports
- Numerous case files of other DPD cases where FRT was used to generate an investigative lead

Board of Police Commissioners Documents

- Board of Police Commissioners' (BOPC) Policy Division Memorandum on Policy Recommendations for Facial Recognition 307.5 (September 2019)
- Board of Police Commissioners (BOPC) 6/13/2019 Meeting Transcript
- Board of Police Commissioners (BOPC) 8/29/2019 Meeting Transcript
- Board of Police Commissioners (BOPC) 9/5/2019 Meeting Transcript
- Board of Police Commissioners (BOPC) 9/19/2019 Meeting Transcript
- Board of Police Commissioners (BOPC) 6/25/2020 Meeting Transcript
- Board of Police Commissioners (BOPC) 7/9/2020 Meeting Transcript
- BOPC Presentation on Shinola Investigation
- Third Precinct Response to BOPC Shinola Case 7-7-20

Detective Training Materials (from 2020 and 2021)

- Evidence.com tutorial
- Evidence.com tutorial revised

- Extracting video from Genetec
- BOPC PPT for Sergeants and Lieutenants (April 2021)
- Crime Intelligence Unit Presentation LPAC-SPAC-Detectives
- Photographic Show-Up Instructions
- State Bar of Michigan Law Enforcement and Eyewitness Identifications: A Policy Writing Guide
- Canvassing Neighborhood For Clues In Shooting Death video
- Exemplar of a Proper Police Sequential Photo Array video
- Neighborhood Canvass PPT
- Police Lineups, Field Showups and Photo Arrays PPT
- Problems with Lineups video
- Reforms Aim To Make Police Lineups More Reliable
- Class PowerPoint Birth of a Criminal
- Class PowerPoint Crime Classification
- Class PowerPoint Crime Scene Analysis
- Class PowerPoint Interview and Interrogation
- Crime Scene Canvas Sheet
- Crime Scene Management Field Information
- Training Crime Scene Management PPT
- Case Note Guidelines Final
- Investigative Reload Training 4/20/21
- Numerous Sample Search Warrants
- Numerous Search Warrant Scenarios
- Search Warrant Review PPT
- Time Management Police Investigations
- August 28, 2020 Administrative Message #20-0476
- Video Class Presentation
- Surveillance Video Presentation
- Video Surveillance video
- Whodunnit video
- Court Officers 2020
- Investigative Ops Warrants PPT
- Sample Investigator's Report
- 2021 Detective School Warrant Preparation PPT
- Warrant Request Module Guide
- Warrant Package Construction
- WCPO Phone List
- WCPO 2020 Comm Pro
- APA and arraignment package instructions
- NDA FBI training

Robert Williams Medical Documents

- Robert Williams MyChart summary
- Psychological evaluation of Robert Williams

Relevant Criminal Statute

- MCL.750.356c – Retail Fraud First Degree

Third-Party Discovery Produced by Michigan State Police

- Investigative Lead – Supplemental Information Report
- E-mails regarding Investigative Lead – Supplemental Information Report
- SNAP Overview-DPD 2021 PPT

Third-Party Discovery Produced by Mackinac Partners

- Katherine Johnston Training Record (7/2019)
- Katherine Johnston Department of Licensing and Regulatory Affairs Report
- Mackinac Employment Offer Letter -Katherine Johnston Executed 10-15-2014
- Mackinac Partners Bio – KJ

Deposition Transcripts; Videos

- Detective Donald Bussa Deposition Transcript (10/24/2022)
- Videos of Detective Donald Bussa Deposition (10/24/2022)
- Robert Williams Deposition Transcript (10/27/2022)
- Detective Donald Bussa Deposition Transcript (11/03/2022)
- Videos of Detective Donald Bussa Deposition (11/03/2022)
- Rathe Yager Deposition Transcript (11/08/2022)
- Sergeant Ray Saati Deposition Transcript (11/08/2022)
- Detective Benjamin Atkinson Deposition Transcript (11/09/2022)
- Lieutenant. Rodney Cox Deposition Transcript (11/16/2022)
- Detective Steven Posey Deposition Transcript (11/22/2022)
- Detective Levan Adams Deposition Transcript (11/22/2022)
- Lieutenant. Angelique Chadwick-Bills Deposition Transcript (12/05/2022)
- Michigan State Police Digital Image Examiner Department Specialist Jennifer Coulson Deposition Transcript (1/10/2023)
- Michigan State Police Digital Analysis and Identification Section Manager Krystal Howard Deposition Transcript (1/10/2023)
- Deputy Chief Franklin Hayes Deposition Transcript (2/2/2023)
- Associate Director of Administration Christopher Graveline Deposition Transcript (2/9/2023)
- Former Chief James Craig Deposition Transcript (3/8/2023)
- Public Safety IT manager John Fennessey
- Detroit Police Department Crime Analyst Nathan Howell
- Lieutenant Jeffrey Hahn (5/18/23)

III. Summary of Opinions Offered

Based on my professional law enforcement experience and training, below is a summary of my expert opinions regarding the Detroit Police Department's (DPD) investigation into the October

2, 2018, theft at a Shinola store, DPD's use of Facial Recognition Technology (FRT), and the arrest of Mr. Robert Williams.

- A.** At the time of Mr. Williams' arrest, DPD fell short of generally accepted police practices by failing to develop and enforce a comprehensive policy regarding the proper investigatory use of new investigative technology or methods, namely, facial recognition. This failure was a cause of Mr. Williams' false arrest and created obvious risks that the technology would be misused, resulting in the violation of citizens' constitutional rights. Moreover, DPD's current FRT policies remain deficient and fall below generally accepted police practices today because they do not provide adequate guidance on how Detectives should conduct proper investigations after obtaining an FRT match, and do not inform DPD officers of the potential defects of FRT matches. This creates an ongoing and obvious risk that DPD personnel will continue to misuse facial recognition and do so in violation of citizens' constitutional rights. See, Section IV.A below, pp. 10–13.
- B.** At the time of Mr. Williams' arrest, DPD fell short of generally accepted police practices by failing to provide or require formal training for new Detectives when promoted to the position. As it pertains to this case, DPD's detective training should include:

 - i. The legal definition of probable cause.
 - ii. The proper procedures for conducting witness identifications and photo lineups, including the definition of an eyewitness as a person in position to observe the crime and/or perpetrator.
 - iii. The proper procedures for following-up on investigative leads, including conducting non-custodial interviews with identified suspects and investigating alibis.
 - iv. The proper procedures for developing warrant requests, including the requirement that detectives must disclose all known exculpatory information.

These basic investigation training failures created the obvious and foreseeable risk that Detectives would: (1) misunderstand probable cause; (2) misuse and overly rely on facial recognition technology to investigate crimes; (3) conduct improperly suggestive lineups; (4) target improper suspects; and (5) fail to disclose exculpatory evidence to prosecutors and judges.

Furthermore, these failures are directly responsible for Mr. Williams' arrest and created an obvious risk that DPD personnel would conduct improper and insufficient investigations in violation of citizens' constitutional rights. To the extent such training still is not provided to Detectives, which is unclear from the records I examined, these risks persist to this day. See, Section IV.B below, pp. 13–15.

- C.** At the time of Mr. Williams' arrest, DPD fell short of reasonable professional standards by failing to provide training regarding the proper use of FRT in

investigations and its limitations. This is a failure to abide by generally accepted police practices that require all users, regardless of their experience or tenure, receive training on new and significant technologies that are deployed by their department before relying upon those technologies. Here, officers should have been trained on:

- i. The methods and guidelines for assessing the results of a facial recognition search.
- ii. The principle that a facial recognition search cannot be the sole basis for conducting an eyewitness identification.
- iii. The principle that potential eyewitnesses should not be notified that a suspect has already been identified by FRT.
- iv. The reputable studies which indicate that FRT technology misidentifies people of color at disproportionately higher rates than other people.
- v. The principle that FRT matches resulting in investigative leads are impacted by the quality of the images being compared.

These FRT training failures created the obvious and foreseeable risk that Detectives would misuse and overly rely on facial recognition technology and fail to disclose exculpatory evidence to prosecutors and judges. Further, these failures led directly to Mr. Williams' arrest and will likely continue to lead to future false arrests and constitutional violations if not addressed. See, Section IV.C below, pp. 15–19.

D. DPD fell short of generally accepted police practices by improperly delegating decision-making and investigation into the Shinola theft to entities outside the department. Pressure from Shinola theft investigators to identify and arrest a suspect in the Mr. Williams' case, and to connect him to other theft cases, caused supervisors to seek and accept investigative irregularities. This failure to maintain control and responsibility of this investigation demonstrates an obvious risk that DPD supervisors and Detective Bussa would prioritize solving the case over completing a thorough investigation based on accepted investigative and legal procedures. See, Section IV.D below, pp. 19–21.

E. Detective Bussa fell short of generally accepted police practices by failing to adequately investigate and document the Shinola theft. His investigation was deficient in that he:

- i. Obtained a warrant without probable cause.
- ii. Misused facial recognition technology, including using facial recognition search results as the sole basis for conducting the photo lineup with Katherine Johnston.
- iii. Conducted a line up identification with Katherine Johnston, a non-eyewitness.
- iv. Failed to conduct a non-custodial interview with Mr. Williams.
- v. Failed to disclose exculpatory information on the warrant request that the “eyewitness” who identified Mr. Williams in a photo lineup did not

witness the crime in person. Detective Bussa also did not explain the limitations of FRT identifications and matches.

- vi. Failed to clearly and accurately document case tracking notes.

See, Section IV.E below, pp. 21–28.

- F.** DPD fell short of generally accepted police practices by failing to supervise personnel throughout the chain of command. Supervisory and command personnel knew detectives within their chain did not receive training, were using new technology without direction, and that there were supervisory personnel movements within the division that would disrupt quality control of investigations.

These supervisory failures demonstrate an obvious risk that untrained and poorly supervised detectives would conduct improper and insufficient investigations—including the flawed investigation that resulted in Mr. Williams’ false arrest. See, Section IV.F below, pp. 29–32.

- G.** DPD fell short of generally accepted police practices by failing to hold Lieutenant Chadwick-Bills and Detective Bussa accountable for their actions that lead to Mr. Williams’ false arrest.

Lieutenant Chadwick-Bills was not held accountable regarding:

- i. Assigning the case for investigation knowing investigative and legal issues associated with it that would impede prosecution.
- ii. Failing to assure members under her command were adequately trained in laws applicable to investigations, investigative procedures, and FRT technology.

Detective Bussa’s investigative failures are discussed below.

This accountability failure creates an obvious risk that Lieutenant Chadwick-Bills and Detective Bussa will continue to apply misinformation and constitutionally unsound decisions when working on future investigations. As evidence, Detective Bussa stated in his deposition that continues to believe his actions were appropriate in this case.¹

See, Section IV.G below, pp. 32–33.

IV. Investigation Findings

- A. DPD failed to create a comprehensive policy on the proper, investigative use of FRT.**

The industry standard for the adoption or deployment of new policing methods or technology includes conducting a needs analysis, creating a project plan (with risk assessment), acquiring

¹ Bussa dep. 293:25–294:2, (Nov. 3, 2022).

the technology, implementation (including training), and managing change through project reviews and benchmarking.²

Based on my professional experience and in my expert opinion, at the time of the investigation leading to Mr. Williams' arrest, DPD fell short of reasonable professional standards by failing to develop and enforce a comprehensive policy regarding the proper, investigatory use of facial recognition. In fact, then-Chief Craig told the Detroit Board of Police Commissioners (BOPC) in his presentation to them that he attributes a lack of a DPD FRT policy as one of the failures in Mr. Williams's case.³

DPD's current FRT policies remain deficient. Although the current policy does address a number of issues about how FRT searches are to be conducted by the DPD's Crime Intelligence Unit analysts, it does not provide sufficient guidance to detectives about what to do once analysts have identified an FRT investigative lead.⁴ Specifically, it does not provide adequate guidance on how detectives should conduct proper investigations after obtaining an FRT match (other than, a statement that detectives must still conduct a "thorough and comprehensive investigation") and does not inform DPD officers of the potential defects of FRT matches.⁵

The DPD contracted for the use of FRT with DataWorks Plus Company in 2017 and seems to have been relying on FRT investigative leads generated by the Michigan State Police for longer. However, DPD did not present a proposed policy for its use to the BOPC until January 2019. While that January proposal was apparently still pending, in April 2019 DPD adopted a minimal department-wide training directive on FRT, which stated "[m]embers will not use FRT unless that technology is in support of an active or ongoing criminal or homeland security investigation" and "[m]embers may not use FRT on any person unless there is reasonable suspicion that such use of FRT will provide information relevant to an active or ongoing criminal or homeland security investigation."⁶ The April 2019 training directive provided no guidance to investigators on FRT, how FRT functions, or how to use FRT results in investigations. In April 2019, the DPD also adopted a new standard operating procedure for its Crime Intelligence Unit regarding FRT, but that policy did not apply to—and was not provided to—DPD personnel outside of CIU and so could not guide detectives' use of FRT and FRT search results.⁷

² *How to Plan, Purchase, and Manage Technology (Successfully!), a Guide for Executives, Managers, and Technologists*, U.S. Dep't of Just. (Aug. 2002), <https://cops.usdoj.gov/RIC/Publications/cops-p042-pub.pdf>.

³ James Craig, Former Chief of Police, Detroit Police Dep't, Detroit Board of Police Commissioners Regular Meeting, 55:20–56:21 (July 9, 2020).

⁴ Detroit Police Dep't, Crime Intel. Unit, Standard Operation Procedure (SOP), Subject 8. Facial Recognition (rev. Dec. 1, 2020).

⁵ *Id.*

⁶ Detroit Police Dep't, Training Directive 19-07, Use of Traffic Light-Mounted Cameras and Facial Recognition Technology 3 (Apr. 22, 2019).

⁷ Detroit Police Dep't, Crime Intel. Unit, Standard Operation Procedure (SOP), Subject 8. Facial Recognition (rev. Apr. 1, 2019); Bussa dep. 48:14–22 (Oct. 24, 2022); Adams dep. 24:14–20; Atkinson dep. 41:9–17.

The January proposed policy, which contained significantly more detail than the April training directive, was never adopted and was withdrawn six months later for “technical refinements.”⁸ A revised policy was presented to the BOPC in August 2019, with a “willingness to engage in a discussion and refinement to the proposed Facial Recognition policy.”⁹ The BOPC requested the policy be reviewed by their Policy Review Committee, and on September 5, 2019, the committee returned its finding to the BOPC with eight “Administrative” recommendations and fifteen recommendations of “Critical Importance.”¹⁰ A final policy inclusive of these recommendations for the use of FRT was not made effective until September 19, 2019—two years after DPD contracted for FRT and long after it had begun to use and rely on FRT in its investigations.¹¹

When then-Chief of Police James Craig (now retired) was asked in his deposition why DPD used FRT while the policy was still in the approval process, he stated that the department was already using FRT through the Michigan State Police and the difference was that they now had the technology in-house.¹² However, there is no record or indication of training or education offered DPD personnel during the period when they exclusively obtained FRT search results from the Michigan State Police, nor did then-Chief Craig know of any policies governing the use of FRT prior to DPD’s acquisition and deployment of the technology.¹³

DPD should have known the importance of a well-developed policy as it was articulated in the “Law Enforcement and Eyewitness Identifications: A Policy Writing Guide,” one of their own training documents.¹⁴ The first paragraph states: “Organizational policies and procedures represent the standard of care expected of law enforcement officials. Suspects and defendants must be afforded constitutional due process and law enforcement officials must work to eliminate potential mistaken eyewitness identifications” and “writing valid procedures requires research and study—a policy and procedure cannot be created overnight.”¹⁵ DPD did not follow proper policy development processes in a timely manner, nor did they adhere to their own policy development training curriculum.

Mr. William’s arrest was published in the media. Subsequently on July 9, 2020, then-Chief Craig reassured the BOPC the new policy would have prevented the mistakes made in Mr. William’s case in part on the grounds that the new policy did not allow the use of FRT in larceny

⁸ Inter-Office Memorandum from Gregory Hicks, Sec’y to the Bd. of Police Comm’rs, and Melanie White, Exec. Manager of Pol’y, Bd. of Police Commissioners, to Bd. of Police Commissioners 1 (Sept. 5, 2019).

⁹ *Id.*

¹⁰ *Id.* at 3–7.

¹¹ Detroit Police Dt, Directive 307.5, Facial Recognition (Sept. 19, 2019).

¹² Craig dep. 32:5–34:11.

¹³ *Id.* at 49:7–25.

¹⁴ State Bar of Mich., Eyewitness Identification Task Force, *Law Enforcement and Eyewitness Identifications: A Policy Writing Guide* (Dec. 22, 2015), https://www.michigan.gov/-/media/Project/Websites/mcoles/TD-Webpage/state_bar_eyewitness_law_enforcement_policy_writing_guide.pdf?rev=6e19807bd78447d2b54e6f9cc7ab186b.

¹⁵ *Id.*

investigations.¹⁶ However, the investigative mistakes and lack of training and supervision that permeated this case are not addressed in the new FRT or any other available DPD policy.¹⁷

The new FRT policy is administrative in nature and governs some behavior by facial recognition analysis, but it does not provide investigative direction regarding how detectives should proceed with the information obtained through FRT and, critically, it does not inform officers about any of the shortcomings or technological limitations of facial recognition.¹⁸ Without such information, detectives are at obvious risk of overly relying on FRT investigative leads and are not equipped with the information they predictably need to ask critical questions of FRT examiners to determine important information about the quality or reliability of an FRT lead that they have been given.

This lack of an adequate FRT policy directly contributed to Mr. Williams' wrongful arrest and created obvious risks that the technology would be misused, resulting in the violation of citizens' constitutional rights. In my expert opinion, it was irresponsible, unprofessional, and fell short of generally accepted police practices for DPD to rely upon the results of FRT technology, whether the technology was administered by DPD itself or another law enforcement agency such as MSP, without having developed any policy to guide its proper use and without providing training to its investigators regarding its proper use and functioning.

B. Detroit Police Department failed to train new detectives on relevant legal standards and investigatory practices.

Based on the current record in this case, before and during the Shinola investigation DPD did not require any formal investigative training for police officers being promoted to the rank of detective or working in investigative assignments.¹⁹ Moreover, if the record were to suggest that some type of formal training did exist, whatever training was provided was insufficient. By not providing basic and ongoing investigative training to new and established detectives, investigators, and their supervisors, DPD falls well below generally accepted police practices and standards for law enforcement training.

DPD did not provide this training despite being aware of its importance. As just one example, in his deposition, Christopher Graveline, Director of Professional Standards and Constitutional Policing for the Detroit Police Department stated that "at all times we're only supposed to be submitting warrant requests that we believe have met the probable cause standard."²⁰ But in my expert experience, and as demonstrated in this case, it is obvious that detectives will at some point seek warrants based on less than probable cause if they are not trained about the definition of that term and their duty to consider and disclose exculpatory information.

¹⁶ James Craig, Former Chief of Police, Detroit Police Dep't, Detroit Board of Police Commissioners Regular Meeting, 55:20–56:21 (July 9, 2020).

¹⁷ See Detroit Police Dep't, Crime Intel. Unit, Standard Operation Procedure (SOP), Subject 8. Facial Recognition (rev. Dec. 1, 2020).

¹⁸ *Id.*

¹⁹ Hahn dep. 35:6-14, 41:18-42:6, 58:11-62:21, 65:19-66:14, 79:16-23.

²⁰ Graveline dep. 73:6–9.

I note that Director Graveline claimed in his deposition that DPD provides annual training to detectives on the 4th Amendment.²¹ However, none of the detectives deposed for this case testified that they attended any kind of annual training in this area in 2019, and multiple detectives (including Detective Bussa) stated that they received no probable cause training whatsoever as a detective.²² Rather, the only probable cause training they ever received was at the police academy, which in the case of Detective Adams was fourteen years prior to becoming a detective.²³ Detective Atkinson's training is an exception, as he was trained probable cause in detective school and allegedly has attended a yearly training;²⁴ however, his experience reflects DPD's re-introduction of the detective school, which was not in place during the Shinola investigation.²⁵ In any event, if such training occurred, the facts of this case suggest that it was not calculated to be effective. If it did not occur, then DPD's official policy of providing such trainings merely underscores how important the need for such training is and why the failure to provide it is so problematic.

More importantly, Detective Bussa stated he has never received detective training.²⁶ Nor was he told to find and complete such a training.²⁷ In his deposition, Detective Bussa said that when he had questions, he was directed to confer with his supervisor or other detectives but said he would often get conflicting information.²⁸ This type of informal, on-the-job training—which appears typical of detectives within the Third Precinct²⁹—is, of course, useful in further understanding specific norms and procedures that a detective has already been trained on. However, it is no substitute for formalized training that educates detectives on the accurate investigative tools and legal standards relevant to their investigatory duties.

To ensure investigators develop the skills necessary to conduct investigations, most police departments have integrated mandatory basic and advanced detective training programs into their training curriculum. One source used to establish training standards is the Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA®).³⁰ CALEA works with executive law enforcement agencies such as the International Association of Chiefs of Police and the National Organization of Black Law Enforcement Executives to create standards police agencies must meet and maintain for accreditation. CALEA has identified sixteen investigative standards that include case file management, accountability for primary and follow up investigations, exculpatory information, line ups, and others.³¹ Also, the Federal Law Enforcement Training Center offers a nine-day Introduction to Criminal Investigations course with subject matter

²¹ Graveline dep. 59:1–22.

²² Bussa dep. 32:20–33:4, (Oct. 24, 2022); Adams dep. 18:23–19:13.

²³ Adams dep. 14:4–9; 15:7–8; 18:8–19:5.

²⁴ Atkinson dep. 31:10–32:1.

²⁵ Adams dep. 19:2–10; Bussa dep. 28:6–16, (Oct. 24, 2022); Atkinson dep. 33:13–34:9.

²⁶ Bussa dep. 27:10–18, (Oct. 24, 2022).

²⁷ *Id.* at 29:1–3.

²⁸ *Id.* at 29:12–30:22.

²⁹ Bussa dep. 29:12–33:7, (Oct. 24, 2022); Cox dep. 46:10–47:12, Nov. 16, 2022.

³⁰ *About Us*, CALEA (last accessed May 12, 2023), <https://calea.org/about-us>.

³¹ CALEA® Standards for Law Enf't Agencies, CALEA (last accessed May 12, 2023), <https://calea.org/node/11406>.

typical of most detective training programs.³² Had DPD taken advantage of these training resources and Detective Bussa attended an introductory investigative training program that met national standards, he would have learned proper lineup procedures, non-custodial and witness interview techniques, case documentation, and the importance of identifying and communicating exculpatory information. These were the tools needed to properly investigate the theft and to dismiss the FRT identification of Mr. Williams. The “sloppy” investigative work described by then-Chief Craig could have been avoided.³³

DPD should have trained all new investigative personnel on relevant legal standards and investigatory practices, including but not limited to:

- i. The definition of probable cause.
- ii. The proper procedures for conducting witness identifications and photo lineups, including the definition of an eyewitness and the requirement that Detectives must use an eyewitness who observed the alleged crime in-person.
- iii. The proper procedures for following-up on reasonable suspicion, including conducting non-custodial interviews with identified suspects and investigating any potential alibis.
- iv. The proper procedures for developing warrant requests, including the requirement that Detectives must clearly disclose all known exculpatory information.

As relevant to this case, these failures created the obvious and foreseeable risk that detectives would: (1) misunderstand probable cause; (2) misuse and overly rely on facial recognition technology; (3) conduct improperly suggestive lineups; (4) improperly focus investigations; and (5) fail to disclose exculpatory evidence to prosecutors and judges.

These failures are directly responsible for Mr. Williams’ arrest as training would have provided Detective Bussa with the skills needed to investigate the Shinola theft once Mr. Williams was identified as an investigative lead. If not addressed in current detective training that DPD now offers, these failures create an ongoing and obvious risk that DPD personnel will continue to conduct improper and insufficient investigations in violation of citizens’ constitutional rights.

C. DPD failed to train its personnel on the proper use of facial recognition technology in investigations.

At the time of Mr. Williams’ arrest, and continuing through the time of the depositions in this case, DPD falls short of reasonable professional standards by failing to provide training to its criminal analysts or investigative officers regarding the proper use of facial recognition technology in investigations, how FRT works and the potential flaws of an FRT investigative lead. Based on my professional experience and in my expert opinion, this failure reflects a deviation from the generally accepted police practice that all users—regardless of their

³² *Criminal Investigator Training Program*, Federal Law Enforcement Training Centers (last accessed May 12, 2023), <https://www.fletc.gov/criminal-investigator-training-program>.

³³ James Craig, Former Chief of Police, Detroit Police Dep’t, Detroit Board of Police Commissioners Regular Meeting, 56:1–4 (July 9, 2020).

experience or tenure—receive training on new and significant technologies introduced by their department before relying upon those technologies.

In July 2019 the International Association of Chiefs of Police (IACP) established “Guiding Principles for Law Enforcement’s Use of Facial Recognition Technology.”³⁴ Concerning training it states: “[b]efore access to any facial recognition system is authorized, a law enforcement agency should require individual users to participate in training on how the facial recognition system functions, its limitations, the importance of using high resolution equipment and images, and the interpretation of results, as well as the implementation of and adherence to the agency’s facial recognition policy.”³⁵

Before its use DPD did not provide FRT familiarization to its potential users, nor did they explain its shortcomings. Had Detective Bussa received proper training, he would have known the significance of the poor quality of the probe photograph used in Mr. Williams’ case and the importance of establishing probable cause using information independent of the FRT identification of Mr. Williams. This would be important for following up on *any* FRT lead, but especially one of low quality, which Detective Bussa would have known if he’d received FRT-specific training.

In his deposition, then-Chief Craig described the DPD’s in-house processing of FRT administered through the Criminal Intelligence Unit (CIU).³⁶ Crime Analysts are responsible for assessing the appropriateness of photos submitted for analysis, conducting the probe, and reporting their findings.

However, information gleaned from depositions and e-mails from CIU analysts show a lack of knowledge and detail regarding FRT and/or a failure to share important exculpatory information with investigators.

For example, in March 2017 in another investigation involving use of FRT, DPD Sergeant Fulgenzi asked CIU for details in reference to an FRT investigative lead he received from DPD Criminal Analyst Lingo.³⁷ He requested a report that might detail the FRT match and asked “when explaining the facial recognition process in my case is there like a level of accuracy (scoring etc)?, like was he the only match the video etc.” The reply was “[f]or facial recognition, just say that he was in the top scoring row. There are 3 different rows you can look through of pictures, and the 1st row is yhe [sic] highest level of accuracy.”³⁸ The analyst does not mention the available similarity score or importance of the quality of the probe photo or the existence of

³⁴ *Guiding Principles for Law Enforcement’s Use of Facial Recognition Technology*, Int’l Ass’n of Chiefs of Police (July 2019), <https://www.theiacp.org/sites/default/files/2019-10/LE%20Facial%20Rec%20Guiding%20Principles%20Document%20July%202019.pdf>.

³⁵ *Id.*

³⁶ Craig dep. 34:18–37:16.

³⁷ E-mail from Matthew Fulgenzi, Sergeant, Detroit Police Dep’t, to Breanna Lingo, Crime Analyst, Detroit Police Dep’t (Mar. 15, 2017, 4:16 PM).

³⁸ E-mail from Breanna Lingo, Crime Analyst, Detroit Police Dep’t, to Matthew Fulgenzi, Seargant, Detroit Police Dep’t (Mar. 20, 2017, 12:05 PM).

multiple different galleries of photos that are typically returned by different algorithms in response to an FRT search.³⁹

In his deposition DPD Crime Analyst Nathan Howell did not know what the similarity score (also called confidence score) was or its meaning, and said it is not given to the investigator requesting the FRT search.⁴⁰ He explained that once the FRT system identifies a group of potential candidates, the criminal analyst compares those candidates to the photo image and either picks the best “match” or determines there are no matches.⁴¹ Only one investigative lead is sent to the investigator.⁴² When asked why just one, he answered, “[y]ou only do one because otherwise it's not how it works. You do one investigative lead. If there's no investigative lead, that's it. You stop the process, you just select the one. Doing two would not be beneficial.”⁴³

DPD CIU Executive Manager Andrew Rutebuka also did not know the significance of the computer-generated similarity score that appears on each candidate image. The Michigan State Police Digital Analysis and Identification Section Manager explained to him in an email that it was a rating out of 1000.⁴⁴ The image he is asking about had a similarity score of 663.000.⁴⁵

Although CIU personnel receive some training on conducting FRT searches, when communicating the results of FRT searches to detectives they provide no guidance to the detectives other than a disclaimer noting that the result “is only an investigative lead and is not to be considered a positive identification of any subject.”⁴⁶

When asked in his deposition if DPD’s policy provides guidance on how to proceed with investigations that include FRT matches, Deputy Chief Franklin Hayes responded that the investigator would “go to their detective training” for direction.⁴⁷ However, no updated training directives, curriculum, or other information related to investigative follow-up practices were made available. No police officer, detective, lieutenant, sergeant, or captain deposed for this case

³⁹ *Id.*

⁴⁰ Howell dep. 34:23–35:17; 36:1–3; 37:16–18.

⁴¹ *Id.* at 37:24–38:1.

⁴² *Id.* at 40:16–41:8.

⁴³ Howell dep. 41:5–8.

⁴⁴ E-mail from Angela Yankowski, Section Manager, Digit. Analysis and Identification Section, Mich. State Police, to Andrew Rutebuka, Exec. Manager, Crime Intel. Unit, Detroit Police Dep’t (July 17, 2019, 2:56 PM).

⁴⁵ E-mail from Andrew Rutebuka, Exec. Manager, Crime Intel. Unit, Detroit Police Dep’t, to Angela Yankowski, Section Manager, Digit. Analysis and Identification Section, Mich. State Police (July 17, 2019, 4:36 PM).

⁴⁶ Detroit Police Dep’t, Crime Intel. Unit, Standard Operation Procedure (SOP), Subject 8. Facial Recognition § 8.5(d)(viii)(g) (rev. Apr. 1, 2019); Detroit Police Dep’t, Crime Intel. Unit, Standard Operation Procedure (SOP), Subject 8. Facial Recognition § 1.5(d)(iv) (rev. Dec. 1, 2020).

⁴⁷ Hayes dep. 68:13–69:2.

stated that they had received any training on the proper use of FRT in investigations prior to July 2019.⁴⁸

In addition to implementing policies to ensure officers do not misuse FRT as an investigative tool, based on my professional experience and in my expert opinion DPD should have trained personnel using the technology regarding:

- i. Fundamentals of how FRT works.
- ii. The reliability factor of FRT investigative leads.
- iii. The methods and guidelines used by FRT analysts for assessing the results of a facial recognition search.
- iv. The principle that a facial recognition search cannot be the sole basis for conducting an eyewitness identification.
- v. The principle that a witness identification obtained using facial recognition is not sufficient to establish probable cause.
- vi. The principle that potential eyewitnesses should not be notified that a suspect has already been identified by FRT.
- vii. The numerous, reputable studies which indicate that FRT technology misidentifies people of color at disproportionately higher rates than other people.
- viii. The principle that FRT investigative leads that do not indicate a match to the most current available picture of a suspect may be particularly unreliable.

The expectation that investigators be familiar with how technology works is not limited to the use of FRT. Consider the example of polygraph technology. Personnel other than polygraph operators are not expected to know how to read and interpret a polygraph chart in respect to spikes and plateaus in heart rate, blood pressure, breathing rate, etc. However, they do need to know the factors that may affect or limit the usefulness of the results, such as alcohol or drug use, sleep deprivation, or use of counter measures to try to “fool” the machine. It is incumbent upon the investigator to assure the quality of input into the technology is consistent with optimal results (person being polygraphed is told not to use mind altering substances and to get a good night’s sleep prior to the test). Investigators must also know the significance of outcome results (the meaning of the polygraph score and recognition of “undetermined” results) as it applies to determining probable cause in the case.

Without this training, officers will not understand how to interpret an investigative lead produced from an FRT search and will predictably be prone to overly rely on the results. The DPD’s failures to train its investigators in any facet of FRT technology or its proper use in investigations created the obvious and foreseeable risk that detectives would misuse and overly rely on FRT and fail to disclose or obtain exculpatory evidence to prosecutors and judges. Further, these failures led to Detective Bussa’s misuse of FRT in the Shinola investigation, which was a direct cause of Mr. Williams’ arrest.

⁴⁸ Bussa dep. 32:14–16 (Oct. 24, 2022); Adams dep. 19:23–25; Posey dep. 25:8–26:8; Cox dep. 36:21–37:1; Chadwick-Bills dep. 27:7–25; Saati dep. 29:5–7.

In my expert opinion, this lack of training, which persists to this day, for investigative staff on how FRT functions, its weaknesses, and how to properly use an investigative lead creates an ongoing and obvious danger that DPD personnel will continue to misuse the technology and do so in violation of citizens' constitutional rights.

D. Detroit Police Department improperly outsourced decision-making and investigation of the Shinola theft to entities outside the Department.

Law enforcement is responsible for the integrity of its investigations throughout the entire process. Law enforcement may and should work with community partners to maintain an important professional working relationship with businesses and citizens, and to consult the prosecutor's office in legal matters, but should maintain control over every investigation. DPD relinquished investigative control of the case by assigning it for investigation knowing there were no eyewitnesses available to identify the suspect or testify in court, and by attempting to force the case through the legal system.

Lieutenant Chadwick-Bills spoke to Katherine Johnston, former Director of Investigations at Mackinac Partners, at a May 2019 Compstat meeting.⁴⁹ Ms. Johnston was responsible for theft investigations at the Shinola store and expressed her frustration that the case involving the Shinola theft was not moving forward, despite Ms. Johnston knowing there had been an FRT "hit."⁵⁰ Lieutenant Chadwick-Bills pointed out to Ms. Johnston that one of the things preventing prosecution was the company's "policy with their personnel as far as not having an expectation for them to participate in prosecution."⁵¹ When asked in her deposition about the problem with not using an eyewitness, Lieutenant Chadwick-Bills responded, "being able to identify the person, the offender."⁵² Lieutenant Chadwick-Bills, knowing there were investigative and prosecutorial issues, nonetheless directed the case be assigned for investigation at Ms. Johnston's insistence, without providing necessary guidance on what next steps might be appropriate or possible.

Detective Bussa was assigned the Shinola investigation on May 20, 2019— seven months after the theft—with only five weeks of detective experience and no training. Lieutenant Chadwick-Bills told Detective Bussa "they needed to act on the case because a complaint was filed."⁵³ On , July 23, 2019, he met with Ms. Johnston who requested she be Shinola's representative on the theft case and be the one to view the photo lineup.⁵⁴ Detective Bussa discussed this request with Lieutenant Chadwick-Bills, who told him to contact the prosecutor's office to see if it was acceptable to use Ms. Johnston as a witness.⁵⁵ Detective Bussa claims to have contacted an

⁴⁹ Chadwick-Bills dep. 64:13–20.

⁵⁰ *Id.* at 67:6–14.

⁵¹ *Id.* at 65:22–66:7.

⁵² *Id.* at 65:22–67:5.

⁵³ Bussa dep. 189:2–4 (Nov. 3, 2022).

⁵⁴ *Id.* at 186:5–11.

⁵⁵ *Id.* at 187:21–189:19 (Nov. 3, 2022).

unknown person at the prosecutor's office and says he was told Ms. Johnston could view the lineup.⁵⁶

Lieutenant Chadwick-Bills knew the request to use Ms. Johnston as a witness was out of the ordinary⁵⁷ and should have been proactive in guiding and monitoring case progression and status. In her deposition, Lieutenant Chadwick-Bills acknowledged it was unusual for the attorney's office to issue a warrant without an "in-person eyewitness" identification.⁵⁸ Had she discussed the case with Detective Bussa in a manner reflecting proper supervision, she could have clarified whether he informed the prosecutor's office that Ms. Johnston was not present at the time of the theft and directed him to the additional investigation needed to establish probable cause or to exclude Mr. Williams.

Once Lieutenant Chadwick-Bills assigned the case at Ms. Johnston's insistence, Detective Bussa failed to manage Ms. Johnston as a participant in this investigation as her insertion into this case continued throughout the investigation.

There are two versions of the Shinola theft incident report. The first report was authored by Scott Ratkowski (store manager present at the time of the theft) that includes the names of the employees (Ranetta and Santita) who interacted with the suspect on the date of the theft.⁵⁹ Ms. Johnston created a second version of the report in July 2019, which does not contain the names of any employees and instead describes her review of the CCTV surveillance tape.⁶⁰ The first report was mentioned in a group of emails between Ms. Johnston and Detective Bussa and is not mentioned anywhere else in the documentation presented.⁶¹ There should be an explanation in Detective Bussa's case documentation as to why a "corrected" report was necessary and why it excluded the names of witnesses, and the failure to include such documentation is an indicator of Ms. Johnston's undue influence over the investigation. As discussed in the next section, Detective Bussa's failure to properly track and disclose the original report also bears on his general failure to note and disclose exculpatory information.

Ms. Johnston's undue influence over the investigation also led to major investigative failings. Because of her level of involvement in the investigation, she was informed that an FRT lead had been obtained before appropriate next steps were taken in response to that lead. She was then allowed to participate in the lineup process as a witness even though she was not an eyewitness, and even though she had been informed that DPD had identified a suspect using facial

⁵⁶ Bussa dep. 189:24–191:16 (Nov. 3, 2022).

⁵⁷ Chadwick-Bills dep. 78:19–79:22; 88:5–14.

⁵⁸ *Id.* at 88:5–14.

⁵⁹ Shinola Detroit, *Detroit - Shoplifting Report, CASE #: 18-SHPLFT-10001-16* (file dated May 8, 2019) (report completed by Scott Ratkowski).

⁶⁰ Shinola Detroit, *Detroit - Shoplifting Report, CASE #: 18-SHPLFT-10001-16* (undated) (report completed by Katherine Johnston); e-mail from Katherine Johnston, Director of Investigations, Mackinac Partners, to Donald Bussa, Detective, Detroit Police Dep't (July 24, 2019, 9:39 AM).

⁶¹ See e-mail from Katherine Johnston, Director of Investigations, Mackinac Partners, to Donald Bussa, Detective, Detroit Police Dep't (July 25, 2019, 12:34 PM).

recognition technology. These investigative failings likely would have been avoided had Ms. Johnston not been involved to an improper degree in the investigation.

Ms. Johnston's improper participation in the investigation continued after she performed the (improper) lineup as well. Once the warrant was obtained, Ms. Johnston conducted internet research on Mr. Williams.⁶² This resulted in her discovering his address, marital status, and other personal information including the contents of his barbeque blog and a photograph of his wife and children, which she included in an email to Detective Bussa.⁶³ Detective Bussa responded to this information by messaging, "look at you guys go, good work."⁶⁴ She also emailed this information to Sergeant Glazer at Wayne State University and (falsely) identified Mr. Williams as a repeat offender responsible for several thefts totaling \$15,000.⁶⁵ Although the information Ms. Johnston forwarded was public record and available online, it was unprofessional of Detective Bussa to encourage her continued interference in the case and Mr. Williams's privacy.

It is my expert opinion that Lieutenant Chadwick-Bills' and Detective Bussa's insertion of Ms. Johnston into the investigatory process was not consistent with generally accepted police practices, tainted the investigation, and opened Mr. Williams to unwarranted law enforcement scrutiny and surveillance.

E. Detective Bussa's investigation into the Shinola theft was not consistent with general investigatory police practices.

Detective Bussa's conduct during the Shinola investigation consistently fell below generally accepted police practices in the following distinct but mutually reinforcing ways.

i. Misunderstanding and misapplying probable cause.

The International Association of Chiefs of Police define probable cause as "when articulable facts and circumstances within an officer's knowledge are sufficient to warrant a prudent person or one of reasonable caution to believe that the suspect has committed, is committing, or is about to commit an offense."⁶⁶

Detective Bussa knew, per the investigative lead document, that an FRT identification of a suspect did not constitute probable cause and that further investigation was required.

⁶² E-mail from Katherine Johnston, Director of Investigations, Mackinac Partners, to Donald Bussa, Detective, Detroit Police Dep't (Dec. 27, 2019, 1:37 PM).

⁶³ *Id.*; E-mail from Katherine Johnston, Director of Investigations, Mackinac Partners, to Donald Bussa, Detective, Detroit Police Dep't (Dec. 27, 2019, 2:44 PM).

⁶⁴ E-mail from Donald Bussa, Detective, Detroit Police Dep't, to Katherine Johnston, Director of Investigations (Dec. 27, 2019, 2:59 PM).

⁶⁵ E-mail from Katherine Johnston, Director of Investigations, Mackinac Partners, to Sergeant Cary Glazer, Wayne State Univ. Police Dep't (Jan. 7, 2020, 9:43).

⁶⁶ Law Enf't Pol'y Ctr., *Arrest and Investigative Stops Policy*, Int'l Ass'n of Chiefs of Police 2 (Sept. 2019), <https://www.theiacp.org/sites/default/files/2020-06/Arrests%20etc.%20June%202020.pdf>.

The only “further investigation” Detective Bussa initiated was a suggestive and inappropriately administered lineup using a non-eyewitness for identification and a photo for Mr. Williams.

In my expert opinion, these facts did not rise to the level of probable cause to seek a warrant and arrest Mr. Williams.

ii. Misusing and over relying on facial recognition technology.

When Detective Bussa received the investigative lead in May 2019, he did not ask DPD or MSP personnel for additional information about the results of the search or the quality of the probe image. Because he received no training from DPD on the proper, investigative use of FRT, he had no knowledge of the technology’s potential flaws and risks or how to proceed with an investigation.

Detective Bussa believed that the investigative lead was, on its own, sufficient to conduct eyewitness identification. Detective Bussa confirmed in his deposition that it was his general investigative practice to take the investigative lead and use it to conduct an eyewitness identification.⁶⁷ Detective Bussa also stated that if he obtained a witness identification using the investigative lead, he believed he had satisfied the probable cause standard for arrest.⁶⁸

Detective Bussa used the investigative lead identifying Mr. Williams as a potential suspect to begin his multiple attempts to conduct a photo lineup.⁶⁹ As he did not receive cooperation from Shinola employees present at the time of the theft, he presented the lineup to Ms. Johnston, at her insistence. He then used the identification he obtained from Katherine Johnston, a non-eyewitness, along with the investigative lead, to submit the warrant request for Mr. Williams arrest.⁷⁰

In my expert opinion, Detective Bussa misused and overly relied on FRT in this case, falling short of generally accepted police practices by:

1. Failing to ask for additional information about the investigative lead report or the probe image. Had Detective Bussa apprised himself of this information, he would have learned important exculpatory information that he was required to include in the warrant request, including that the quality of the probe image was deemed “poor” by MSP and that Mr. Williams’ (expired) driver’s license had only showed up as even a possible candidate in one out of three galleries of photos that facial recognition examiners viewed.⁷¹

⁶⁷ Bussa dep. 152:5–153:7, (Nov. 3, 2022).

⁶⁸ Bussa dep. 153:14–22, (Nov. 3, 2022).

⁶⁹ Bussa dep. 173:16–175:13, 178:22–179:1, (Nov. 3, 2022).

⁷⁰ Detroit Police Dep’t, Detroit Police Request for Warrant, Case # 181005-0167 (July 30, 2019) [hereinafter *Request for Warrant*].

⁷¹ Michigan State Police, Investigative Lead Report – Supplemental Information, BID-39641-19.

2. Using the results of the investigative lead as the sole basis for conducting an eyewitness identification.
 3. Submitting a warrant request under the belief that the FRT results and subsequent non-eyewitness identification satisfied the probable cause standard.
- iii. Conducting a lineup identification with Katherine Johnston, a non-eyewitness.

Katherine Johnston was not present in the Shinola store during the theft and did not see the suspect.⁷² Her only basis for attempting an identification was that she had viewed the store's surveillance footage of the theft—the same video that Detective Bussa had in his possession.⁷³ Ms. Johnston had no independent recollection of what the suspect looked like and was no better situated to make an identification than any other person who might have viewed the video. Indeed, Ms. Johnston did not perform the lineup based upon her memory of what the suspect looked like on the video but instead performed the lineup by comparing an image from the surveillance footage to the six pictures in the photo lineup—a task she had no reason to be able to perform more accurately than anyone else.⁷⁴ Additionally, in my expert opinion, Detective Bussa used other improper and unduly suggestive lineup procedures that do not meet generally accepted police practices, namely (at the least), he was present in the room during the lineup and Ms. Johnston had already been informed that a suspect had been identified by FRT.⁷⁵ These failures were an obvious and foreseeable result of DPD's failure to provide Detective Bussa with any training in proper lineup procedures.

- iv. Failing to interview Mr. Williams prior to his arrest.

Given that no eyewitnesses were willing to participate in the investigation, Detective Bussa should have conducted basic investigative follow-up. Here, reasonable suspicion would have provided a sufficient basis for a non-custodial interview. However, Mr. Williams was not interviewed about this offense and was simply arrested and taken into custody. Mr. Williams was not given the opportunity to respond to the allegation, provide an alibi, or relay other information he may have had regarding the theft. The slow pace of the Shinola investigation demonstrates that there was ample time for Detective Bussa to have invited Mr. Williams for a non-custodial interview.

Detective Bussa indicated in emails to Ms. Johnston that he was attempting to work with the prosecutor's office to link Mr. Williams to other Shinola thefts.⁷⁶ This would magnify

⁷² Johnston dep. 51:20–52:1; Bussa dep. 185:17–186:4.

⁷³ *Request for Warrant*, supra note 70; Johnston dep. 134:11–18.

⁷⁴ Donald Bussa, 6-Pack Photo Lineup, Report # 1810050167 (July 30, 2019) (completed by Katherine Johnston); Johnston dep. 124:6–14.

⁷⁵ Posey dep. 38:20–39:4; Bussa dep. 192:14–193:5 (Nov. 3, 2022); Johnston dep. 93:8–18; Donald Bussa, 6-Pack Photo Lineup, Report # 1810050167 (July 30, 2019) (completed by Katherine Johnston).

⁷⁶ Bussa dep. 251:17–252:11 (Nov. 3, 2022); e-mail from Donald Bussa, Detective, Detroit Police Dep't, to Katherine Johnston, Director of Investigations (Jan. 7, 2020, 6:43 PM).

the need for Detective Bussa develop probable cause for those offenses by interviewing Mr. Williams.

- v. Failing to disclose exculpatory information in the warrant request, including that the witness who identified Mr. Williams in a photo lineup had not witnessed the crime in person.

Detective Bussa stated he called the prosecutor's office around July 24, 2019, to obtain approval to use Ms. Johnston as a witness, per Lieutenant Chadwick-Bill's direction.⁷⁷ He said he called the general information number and was transferred to an unknown prosecutor who advised him it would be acceptable to use Ms. Johnston as a witness because this a Retail Fraud case.⁷⁸

In his deposition, Detective Bussa said he doesn't remember specifically telling the prosecutor that Ms. Johnston was not present for the theft and thus not an actual eyewitness.⁷⁹ There is also no documentation of this phone call even happened, and I have been informed by counsel that DPD claims that Bussa's phone logs have been deleted. The fact that Ms. Johnston was not an actual eyewitness was a critical fact here and should have been explicitly discussed at every step of these proceedings.

Detective Bussa also neglected to clearly inform the magistrate and prosecutors of this important detail on his warrant request, simply stating: "Video was reviewed by Katherine Johnston . . . Ms. Johnston seen (sic) the suspect Mr. Williams in the watch area take five watches from the displays and then exit the store. Ms. Johnston saved the video and store notified police."⁸⁰ Bussa's written statement could cause a reasonable reader to believe that Ms. Johnston witnessed the suspect take the watches, and then saved and viewed the video of it. Documents attached to the warrant request did not reduce the ambiguity. While Ms. Johnston's Shinola shoplifting report indicates that she "witnessed this theft occur on CCTV once the store reported this theft internally to my team,"⁸¹ the signed photo lineup array—also included in the warrant request—includes Ms. Johnston's answer to the question "Where do you recognize them from? as "10/2/18 shoplifting at Shinola's Canfield store."⁸² That latter statement again could lead a reasonable reader to believe that Ms. Johnston had been physically present at the store and saw the suspect at the time of the theft.

Warrant requests should document probable cause for the warrant and be comprehensive, clear, accurate, and reflect all aspects of the investigation, including exculpatory

⁷⁷ See Bussa dep. 186:5–15 (Nov. 3, 2022).

⁷⁸ Bussa dep. 189:17–191:13 (Nov. 3, 2022).

⁷⁹ Bussa dep. 190:19–14, 191:11–13 (Nov. 3, 2022).

⁸⁰ *Request for Warrant*, *supra* note 70.

⁸¹ Shinola Detroit, *Detroit - Shoplifting Report, CASE #: 18-SHPLFT-10001-16* (undated) (report completed by Katherine Johnston).

⁸² Donald Bussa, 6-Pack Photo Lineup, Report # 1810050167 (July 30, 2019) (completed by Katherine Johnston).

information. Detective Bussa said he felt there was enough evidence that Mr. Williams was the right suspect based on the facial recognition match and Ms. Johnston's positive ID of Mr. Williams at the photo lineup.⁸³ However, he did not document that Ms. Johnston's merely reviewed the surveillance tape and was not an eyewitness to the theft.⁸⁴ Nor did he include that the employees working at the time of the theft declined to participate in the investigation, and that decision was supported by Shinola policy.⁸⁵ Although the warrant packet did attach a report prepared by Ms. Johnston that included some possible indications that she was not an eyewitness,⁸⁶ it is my professional opinion that any Detective should have clearly articulated this important fact, especially given the ambiguity introduced by the signed photo lineup array document also included in the warrant packet.

Furthermore, there are several other exculpatory facts that Detective Bussa failed to include in his warrant application. He did not mention that Ms. Johnston reviewed an image of the perpetrator while performing the lineup, that Ms. Johnston already knew that FRT had identified a subject, or that Detective Bussa was in the room while the lineup was performed.⁸⁷ Detective Bussa also did not mention that he permitted Ms. Johnston to revise the original incident report to delete the names of the store employees who were physically present to see the perpetrator in person.⁸⁸ Those known eyewitnesses declined to participate in the investigation. As noted above, generally accepted police practice would require the submission of a supplemental incident report to the original report rather than replacing the report and deleting important information. Detective Bussa should not have removed or omitted the first case report from the file and should have mentioned it in his warrant application because it mentioned known witnesses who were declining to participate in the investigation.

In my expert opinion and based on my professional experience, Detective Bussa's failure to clearly disclose that Ms. Johnston was not an eyewitness in his warrant application fell short of generally accepted police practices for investigatory police officers, as did his failure to disclose other exculpatory facts and evidence. Defendants have a constitutional

⁸³ Bussa dep. 208:12–23 (Nov. 3, 2022).

⁸⁴ *Request for Warrant*, *supra* note 70.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*; Bussa dep. 185:17–186:4, 192:14–193:5 (Nov. 3, 2022); Johnston dep. 51:20–52:1, 93:8–18, 124:6–14, 134:11–18; Posey dep. 38:20–39:4; Donald Bussa, 6-Pack Photo Lineup, Report # 1810050167 (July 30, 2019) (completed by Katherine Johnston).

⁸⁸ Shinola Detroit, *Detroit - Shoplifting Report*, CASE #: 18-SHPLFT-10001-16 (undated) (report completed by Katherine Johnston); e-mail from Katherine Johnston, Director of Investigations, to Donald Bussa, Detective, Detroit Police Dep't (July 24, 2019, 9:39 AM); e-mail from Donald Bussa, Detective, Detroit Police Dep't, to Katherine Johnston, Director of Investigations (July 24, 2019, 9:45 AM); e-mail from Katherine Johnston, Director of Investigations, to Donald Bussa, Detective, Detroit Police Dep't (July 25, 2019, 12:34 PM); e-mail from Donald Bussa, Detective, Detroit Police Dep't, to Katherine Johnston, Director of Investigations (July 25, 2019, 3:22 PM).

right to have exculpatory information disclosed to magistrates, and obscuring or excluding exculpatory information violates the norms expected of police officers.

vi. Failing to document his actions clearly and accurately through case tracking notes.

Best practices provide that case tracking and other detective notes are considered part of the investigation file and should be accurate, detailed, and incorporated into the file. In my expert opinion and based on my professional experience, Detective Bussa failed to keep proper case notes. Below is a summary of Detective Bussa's case tracking information, with my expert findings regarding contradictions and irregularities that lack explanation:⁸⁹

1. May 20, 2019: Bussa is assigned the case.⁹⁰
2. June 3, 2019: According to the case tracking notes, Detective Bussa went to the store and spoke to Scott Ratkowski who provided the video and statement for the incident. Ratkowski says "they did not want to send someone in place of the store to court and would have to get it cleared with corporate and would contact me when he finds out."⁹¹

The statement from Scott Ratkowski was not included in the documentation provided. This suggests that either: 1) Detective Bussa did not include this statement in the case file; or 2) Detective Bussa merely spoke with Ratkowski but deemed this a "statement" in his case tracking notes.

3. June 10, 2019: Ms. Johnston called Detective Bussa and stated that the store staff would contact him to set up an appointment.⁹²

There is no further information explaining who the staff member was, or if an appointment was made.

4. June 17, 2019: Bussa made an entry "set appointment for 6 pack on 6/18/19."⁹³

There is no documentation as to who this appointment was made with.

⁸⁹ Detroit Police Dep't, Supplements & Tracking For RMS # 1810050167 - Retail Fraud – Theft As of 7/8/2020 (case tracking notes for Shinola investigation) [hereinafter *Case Tracking Notes*].

⁹⁰ *Id.* at 1; Inter-Office Memorandum from Sergeant Dominic Davidson, Internal Affairs, Detroit Police Dep't, to Commander Michael McGinnis, Professional Standards Bureau, Detroit Police Dep't 1 (Nov. 5, 2020) (Internal Affairs Memo Case #20 058) [hereinafter *Internal Affairs Memo*].

⁹¹ *Case Tracking Notes*, *supra* note 89, at 1.

⁹² *Id.* at 2.

⁹³ *Id.*

5. June 18, 2019: Bussa made an entry “6 pack photo lineup with Atkinson.”⁹⁴ There is a handwritten note “June 18, 2019, photo lineup conducted with Omari Jackson.”⁹⁵

There was no information about the results of this lineup, and it’s unclear whether this lineup ever occurred. In her Internal Affairs interview, Ms. Johnston said she believed there was a photo lineup conducted with assistant manager Omari Jackson in June 2019.⁹⁶ During her deposition, she said she didn’t remember whether the lineup took place but had “no reason to think that it didn’t.”⁹⁷ Her belief was “based on communications with the client, and also, most likely, with the detective.”⁹⁸

When asked the meaning of the handwritten note, Detective Bussa said he thought Jackson was the person coming to view the lineup.⁹⁹ However, according to Detective Bussa, Jackson did not show up to the photo lineup.¹⁰⁰ The unknown person who did show up was not interviewed, but left a video, which Detective Bussa already had from June 3, 2019.¹⁰¹ Detective Atkinson also denies any knowledge of this lineup.¹⁰² Despite this, Detective Bussa never corrected his notes—assuming that his account that a lineup did not occur is true.

In addition, during his Internal Affairs interview, Detective Bussa stated that Ms. Johnston facilitated a meeting with manager Ratkowski for June 18, but Ratkowski did not show.¹⁰³ If there was a scheduled meeting and no one showed, Detective Bussa should have documented his attempts to recontact, find out why, or document the no-show. This lack of cooperation from an eyewitness would have detracted from probable cause.

6. June 19, 2019: Bussa made an entry that there was a “WARRANT SUBMITTED” with “Jacket no.19-CI-03-250.”¹⁰⁴ The name of the form that contains this jacket number is the “Detroit Police Request for Warrant.”¹⁰⁵ However, Johnston did not view the lineup until July 30, 2019.¹⁰⁶

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Internal Affairs Memo*, *supra* note 90, at 7.

⁹⁷ Johnston dep. 83:20–84:11.

⁹⁸ *Id.* at 84:10–11.

⁹⁹ Bussa dep. 174:8–175:9 (Nov. 3, 2022).

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Atkinson dep. 70:17–23.

¹⁰³ *Internal Affairs Memo*, *supra* note 90, at 30.

¹⁰⁴ *Case Tracking Notes*, *supra* note 89, at 2.

¹⁰⁵ *Request for Warrant*, *supra* note 70.

¹⁰⁶ *Case Tracking Notes*, *supra* note 89, at 2; Bussa dep. 177:24–9, 185:5–13 (Nov. 3, 2022).

This would imply that Detective Bussa submitted for a warrant before any lineups were shown, suggesting that he was already assuming the results of the lineup before even conducting it. In his deposition, Detective Bussa said he was trying to get a warrant number and selected “warrant submitted” from a drop-down menu as no other selections applied.¹⁰⁷ But if that is the case, Detective Bussa should have made a note in his file to explain his actions.

7. July 25, 2019: Detective Bussa made an entry that he “got a corrected incident report from Shinola. Need to redo a photo 6 pack.”¹⁰⁸ This is associated with a July 24, 2019 email from Ms. Johnston to Detective Bussa, in which she stated, “I owe you an updated incident report with my written statement included.”¹⁰⁹

In response to why he needed to redo a 6-pack, Bussa responded, “[t]his 6-pack is what I used to present it. Re-do was presenting, as re-present it, redoing the whole 6-pack process.”¹¹⁰ It is not clear to whom he was re-presenting the lineup.

8. July 30, 2019: Bussa notes that “[w]ith Det. Posey, did a 6 pack lineup,” which was completed by Ms. Johnston.¹¹¹
9. July 30, 2019: Bussa makes the following entry: “[w]arrant retyped, same jackst [sic] number.”¹¹²

This is the date of the request for the warrant with the associated jacket number from June 19, 2019. It is unclear why he needed to re-type the warrant and the original warrant was not included in the documentation provided.

Detective Bussa’s case tracking notes are not only confusing, but also contradictory. He did not follow generally accepted police practices regarding case documentation by failing to document his actions fully and accurately in his case tracking notes, making it difficult to reconstruct exactly what happened and creating some reasons to question whether Detective Bussa has been fully forthcoming in his description of the events leading up to Mr. Williams’ arrest. Relatedly, Detective Bussa’s supervisor did not follow through with adequate oversight of Detective Bussa’s documentation.

¹⁰⁷ Bussa dep. at 181:3–10 (Nov. 3, 2022).

¹⁰⁸ *Case Tracking Notes*, *supra* note 89, at 2.

¹⁰⁹ E-mail from Katherine Johnston, Director of Investigations, to Donald Bussa, Detective, Detroit Police Dep’t (July 24, 2019, 9:39 AM).

¹¹⁰ Bussa dep. 182:11–14 (Nov. 3, 2022).

¹¹¹ *Case Tracking Notes*, *supra* note 89, at 2.

¹¹² *Id.*

F. Detroit Police department failed to supervise its members throughout the chain of command.

DPD fell short of professional standards by failing to supervise its personnel throughout the chain of command. DPD supervisors at every level knowingly allowed detectives who had not received basic and/or FRT training to employ improper police tactics, while also delegating decision-making authority and investigative responsibilities to third parties. These failures demonstrate a pattern of inadequate supervision in this case, creating an obvious risk that untrained and poorly supervised detectives would conduct improper and insufficient investigations—including the flawed investigation that resulted in Mr. Williams’ false arrest.

Law enforcement operates under a chain of command system where all personnel are responsible not only for their actions but also for the actions of their subordinates.¹¹³ This creates a system of formal communication, assures a manageable span of control, and creates checks and balances. Duties of supervisors include, but are not limited to, assuring their subordinates have the training, resources, and support to do their job. Supervisors also need to reward successes and address deficiencies. At his deposition, then-Chief Craig was critical of the supervision and management by the chain of command.¹¹⁴ However, this realization was after the fact and too late to prevent the false arrest of and the subsequent life changing consequences for Mr. Williams.

The Department of Justice (DOJ) describes law enforcement supervisory standards through consent decree improvement expectations, as demonstrated in the City of Baltimore’s consent decree summary.¹¹⁵ DPD did not meet supervisory standards described by DOJ in the following areas:

- i. Standard 1: Establish and enforce throughout the department the expectation that officers will police in a manner that is consistent with the Constitution and other laws.
 1. Instability in the chain of command due to personnel changes diminished administrative oversight that should have identified the issues that led to the mishandling of this investigation. Personnel movement in police departments is common due to changes in assignments, promotions, and retirements. However, it is incumbent on the chain of command to assure gaps in supervision are addressed to assure police work within acceptable practices and the law. That did not occur here.
 2. Although then-Captain Cox does not recall such a conversation, Detective Bussa testified that then-Captain-Cox pressured him to submit a warrant request based exclusively on the facial recognition match even before a photographic lineup had

¹¹³ *The Military and Law Enforcement: A Thank You.*, U.S. Dep’t of Just., Cmty. Oriented Policing Servs., 2014)], <https://cops.usdoj.gov>.

¹¹⁴ Craig dep. 80:18–81:11, 86:3:88:13.

¹¹⁵ Consent Decree at 11, *U.S. v. Police Dep’t of Balt. City*, no. 1:17-cv-00099-JKB (D. Md. Jan. 12, 2017), https://www.baltimorepolice.org/sites/default/files/General%20Website%20PDFs/Baltimore_Police_Consent_Decree_3.pdf.

even been conducted.¹¹⁶ Detective Bussa stated that then-Captain Cox told him to submit the request and let prosecutors decide whether to proceed.¹¹⁷ As stated by Detective Bussa during his deposition, “[h]e said that since we have a facial ID with Shinola being the witness to submit the warrant to the prosecutor and they would kick it back if [it] wasn’t enough.”¹¹⁸ Then-Captain Cox does not recall speaking to Detective Bussa about the case but now states the FRT identification alone would not have been sufficient probable cause.¹¹⁹ Assuming this conversation happened, it represents a failure of leadership to supervise. Rather than ensuring that Detective Bussa received proper training, Captain Cox went around the chain of command and instructed Detective Bussa to file a warrant based upon evidence that plainly did not satisfy the standard for probable cause. Such inappropriate direction from a superior officer well above him in the chain of command obviously would have added pressure to Detective Bussa and may have been related to the many defects in Detective Bussa’s investigations discussed elsewhere in this report.

- ii. Standard 2: Provide leadership, counseling, direction, and support to officers as needed.
 1. Increased supervisory attention over Detective Bussa in this case was warranted for several reasons.
 - a. Detective Bussa was a new Detective with no investigatory training or experience.
 - b. DPD was using FRT technology with no comprehensive policy or training in place.
 - c. In May 2019, Detective Bussa was involved in another overlapping FRT case (involving a suspect named Michael Oliver) that resulted in dropped charges¹²⁰—a fact that should have been known to Detective Bussa’s supervisors. This should have been a red flag for a supervisor to monitor his cases more closely.
 - d. There was external pressure to resolve the case as Ms. Johnston, store security manager, was complaining about the lack of prosecution of several thefts from Shinola stores.¹²¹
 - e. The theft occurred seven months prior, and Detective Adams—the original Detective working the case—was re-assigned leaving behind no case notes or updates.¹²²
 2. Sergeant Jackson was first in Detective Bussa’s chain of command but retired within two months of assigning the case to Detective Bussa.¹²³ Sergeant Jackson

¹¹⁶ Bussa dep. 209:5–211:5 (Nov. 3, 2022).

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 210:13–16.

¹¹⁹ Cox dep. 100:16–23, 129:3–133:23, 142:24–143:11.

¹²⁰ Bussa dep. 134:5–138:6 (Nov. 3, 2022).

¹²¹ Chadwick-Bills dep. 64:7–67:19; Bussa dep. 187:21–188:23 (Nov. 3, 2022).

¹²² *Case Tracking Notes*, *supra* note 89, at 1; Adams dep. 57:21–58:2, 76:25–77:16.

¹²³ *Internal Affairs Memo*, *supra* note 90, at 15; Bussa dep. 290:10–21, 294:15–18 (Nov. 3, 2022).

did not facilitate a briefing between Detective Bussa and the previous detective, which resulted in ambiguities.¹²⁴ Sergeant Jackson directed Detective Bussa to apply for a warrant in this case, stating the case was complete.¹²⁵ However, there had been no photo lineup or identification made of the suspect.¹²⁶ Sergeant Jackson's instructions reflect either a failure to review the file before giving such instructions or a failure to instruct or train Detective Bussa in proper investigative procedures.

- iii. Standard 3: Identify training and professional development needs and opportunities on an individual, squad, and department-wide level.
 1. Lieutenant Angelique Chadwick-Bills (assigned to the Division in April 2019) was next in Detective Bussa's chain of command.¹²⁷ She described her duties as supervising and holding monthly staff meetings and case reviews.¹²⁸ However, she failed to monitor this case and provide investigative follow-up direction to this new detective. She was unaware whether the detectives working under her had received any detective training.¹²⁹ Lieutenant Chadwick-Bills would have been in a position to provide or facilitate this training as she described a lengthy list of training that she herself attended.
 2. Then-Captain Rodney Cox was Lieutenant Chadwick-Bill's direct supervisor and Detective Bussa's indirect supervisor. He did not recall many details about Mr. Williams' case.
 - a. Then-Captain Cox stated in his deposition that he knew Detective Bussa had not received any formal training.¹³⁰ Rather than requiring Detective Bussa attend formal training, then-Captain Cox relied on peer training and instructed sergeants "to make sure that, of course, all new people abide by the policies and make sure that they do everything they're supposed to do."¹³¹
 - b. Then-Chief Craig testified that he de-appointed Cox from Captain to Lieutenant due to his less-than-satisfactory performance, including his handling of Mr. Williams' case, as well as poor supervision in other matters.¹³²

In addition to the evidence showing that professional standards of supervision were not being followed at the DPD at the time of the Williams investigation, I reviewed other information showing failures of supervision. At the time of Mr. Williams' arrest, DPD policy required a

¹²⁴ *Internal Affairs Memo, supra* note 90, at 29.

¹²⁵ *Id.*; Bussa dep. 166:1–4 (Nov. 3, 2022).

¹²⁶ Bussa dep. 166:1–168:9 (Nov. 3, 2022).

¹²⁷ Chadwick-Bills dep. 15:3–7; *Internal Affairs Memo, supra* note 90, at 15; Bussa dep. 290:10–21 (Nov. 3, 2022).

¹²⁸ Chadwick-Bills dep. 16:9–19.

¹²⁹ *Id.* at 33:8–11, 70:13–20.

¹³⁰ Cox dep. 149:20–21, Nov. 16, 2022.

¹³¹ Cox dep. 92:21–98:11, Nov. 16, 2022.

¹³² Craig dep. 88:7–13, 102:22–103:6, 104:17–106:3.

supervisor to provide written approval before submission of a warrant request to the Wayne County Prosecutor's Office (WCPO).¹³³ However, the policy did not require that the supervisory officer have any relevant training or background.¹³⁴ In this case, Detective Bussa did not seek approval for the warrant for Mr. Williams' from anyone in his direct chain of command.¹³⁵ Instead, he sought approval from Sergeant Ray Saati, who had no training or experience in investigations.¹³⁶ In his deposition, Sergeant Saati said he was not sure about the definition of probable cause, nor the details of what should be included in a warrant request.¹³⁷ Sergeant Saati said he never worked in the Property Crimes Unit, was never an officer (i.e., a).¹³⁸

In my professional experience, and in my expert opinion, it is improper to allow a supervisor who has no training or experience in investigations to sign off a warrant request. Such policies create an obvious risk that DPD Detectives could produce insufficient and potentially misleading warrant requests and may fail to disclose exculpatory information. As a result of Mr. Williams' case, DPD policy was changed to require an investigative supervisor to sign off on warrant requests, demonstrating DPD's awareness that its prior policies were insufficient.

Given then-Captain Cox's role as the top supervisor in his precinct, the fact that multiple detectives in the precinct were untrained, and the level of disengagement shown by mid-level supervisors such as Lieutenant Chadwick-Bills, it is my expert opinion that these failures of supervision demonstrate a pattern and practice of inadequate supervision. This creates an obvious risk that untrained and poorly supervised Detectives would conduct improper and insufficient investigations—including the flawed investigation that resulted in Mr. Williams' false arrest.

G. DPD did not hold Detective Bussa or Lieutenant Chadwick-Bills accountable for their actions.

For Detective Bussa's deficient investigation described above, DPD fell short of generally accepted police procedures by failing to discipline him, or at a minimum, require him to attend appropriate training.

Similarly, DPD's failure to hold Lieutenant Chadwick-Bills accountable demonstrates neglect and indicates that DPD tacitly approved her actions.

An Internal Affairs investigation resulted in the following:

- i. Then-Captain Cox: Neglect of Duty—failure to supervise and train personnel.¹³⁹

¹³³ Detroit Police Dep't, Directive 202.1, Arrests, at 202.1 - 2 (Nov. 5, 2014).

¹³⁴ *Id.*

¹³⁵ Bussa dep. 201:1–5, 211:6–13.

¹³⁶ *Id.*; Saati dep. 14:1–6, 25:25–26:1.

¹³⁷ Saati dep. 15:10–16:2, 23:4–24:12, 24:23–26:4.

¹³⁸ Saati dep. 25:25–26:1.

¹³⁹ Detroit Police Dep't, Notice of Discipline, DA# 20-0367A (Jan. 7, 2021) (Rodney Cox notice of discipline).

- ii. Lieutenant Kozloff: Neglect of Duty—failure to assure Detective Adams's case notes were documented (Detective Adams was assigned Mr. Williams’s case prior to Detective Bussa. Kozloff was Adams’ supervisor and was replaced by Lieutenant Chadwick-Bills).¹⁴⁰
- iii. Detective Adams: 1) Misuse of Facial Recognition, which was exonerated (no violations found);¹⁴¹ 2) Neglect of Duty—failure to Document Case Notes¹⁴²

In his report to the BOPC about what went wrong in this case, then-Chief Craig described the police work in Mr. Williams’ case as “clearly sloppy, sloppy investigative work.”¹⁴³ However, through the Internal Affairs investigation, Detective Bussa was not disciplined for any wrongdoing¹⁴⁴—a result that clearly is not justified by the facts for the reasons I have already explained in detail above. In his deposition, Detective Bussa still did not recognize the weaknesses in his investigation and maintained he did not need to seek any other information to support probable cause.¹⁴⁵

Although DPD now has a detective training program, Detective Bussa has not attended it as of his deposition in November 2022 and has not been ordered to do so.¹⁴⁶

In my expert opinion, at the very least Detective Bussa should have been ordered to attend detective training. The failure to hold him accountable, or provide him with training, falls short of professional standards and demonstrates an ongoing failure by the DPD to adequately train and supervise its investigators. This creates an obvious risk of further constitutional violations both by Detective Bussa and by other staff subject to similarly inadequate policies, supervision, and discipline.

V. Conclusion

In my expert opinion and professional experience, the Detroit Police Department employed the reckless and careless use of Facial Recognition Technology in this case which resulted in the

¹⁴⁰ Detroit Police Dep’t, Notice of Discipline, DA# 20-0367B (Jan. 14, 2021) (Barbara Kozloff notice of discipline); Adams dep. 49:11–19; *Internal Affairs Memo, supra* note 90, at 15, 20.

¹⁴¹ Inter-Office Memorandum from Director Christopher Graveline, Pro. Standards Bureau, Detroit Police Dep’t., to Detective Levan Adams, Commercial Auto Theft Section (Direct), Detroit Police Dep’t. (Nov. 5, 2020) (Levan Adams decision of misuse of facial recognition allegation).

¹⁴² Detroit Police Dep’t, Notice of Discipline, DA# 20-0367C (Jan. 7, 2021) (Levan Adams notice of discipline); Inter-Office Memorandum from Lieutenant Robert Torres, Disciplinary Admin., Detroit Police Dep’t., to Detective Levan Adams, Commercial Auto Theft Section (Direct), Detroit Police Dep’t. (Jan. 28, 2021) (Levan Adams appeal decision of neglect of duty allegation).

¹⁴³ James Craig, Former Chief of Police, Detroit Police Dep’t, Detroit Board of Police Commissioners Regular Meeting, 56:1–4 (July 9, 2020).

¹⁴⁴ Graveline dep. 89:19–89:24, 107:6–8.

¹⁴⁵ Bussa dep. 293:3–299:11 (Nov. 3, 2022).

¹⁴⁶ *Id.* at 34:14–35:1, 36:4–22, 44:23–45:1.

unlawful arrest and detainment of Mr. Williams. This disregard for professional standards and generally accepted police practices permeated the Detroit Police Department from its Chief of Police, down through its supervisors, to its untrained investigative officers.

Through my review of the materials provided, I have identified deficiencies in the way the Detroit Police Department implemented, managed, and utilized Facial Recognition. Additionally, I have identified other issues within the Department that contributed to and exacerbated the failure of this investigation.

These areas of deficiency include policy development, investigative training, facial recognition training, decision making, investigations, supervision, and accountability. In sum, the Detroit Police Department personnel who participated in this investigation were untrained, unprofessional, and unsupervised, which resulted in the unjustified arrest of Mr. Williams.



Perry Tarrant 25 May 2023

Perry A. Tarrant
Curriculum Vitae

Appearances & Contributions

Police Practices SME

Law Enforcement Executive Advisory Council, Measures for Justice, Charleston, SC; April 2023

“Best Practices for Implementing New Technology into Law Enforcement Practices,”
NOBLE ‘William R. Bracey’ Winter CEO Symposium, Detroit, MI; April 2023

Law Enforcement Political Action Committee Strategic Plan, Police Leaders for Community Safety, Washington, DC; January 2023

Web Design/Developer Bid Evaluator, National Organization of Black Law Enforcement Executives (NOBLE), Alexandria, VA; December 2022

Robert J.B. Williams v. City of Detroit Police Department, University of Michigan Legal Clinic, Virtual; November 2022

Leadership Course Development Convening

“Diversity, Culture, and Inclusion” FBI-LEEDA Course Development, Malvern, PA; June 2022

Subject Matter Expert

SENTRY “Future School Safety,” DHS Cyber and Infrastructure Protection Agency, Virtual; April 2022

Training SME

Measures for Law Enforcement In-Service Training; Training Expert Working Group, Bureau of Justice Statistics, Virtual; February 2022

Law Enforcement Technology SME

MIT Solve Entrepreneur Incubator law enforcement technology challenge: Development advisor and feasibility evaluator. March 2021

Leadership SME

Executive Search City of Edmonds Chief of Police, International Association of Chiefs of Police, Virtual; Feb 2021

Command training

Provided Rochester Police Department leadership training and preparation for civil disturbance following the death of Daniel Prude in Rochester, NY; October 2020

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Use of Force SME

Review of Bellevue Police Use of Force Policy actions, and response, following the death of George Floyd. Bellevue, WA; August 2020

Documentary appearance

“Public Enemy Number One.” Director Robert Rippberger — focus on major shifts in policy from Nixon to today, incarceration, racial biases, and solutions for the future. Washington, D.C.; July 2019

Technology Conference

IACP Annual Technology and Analytic Tools Conference. Jacksonville, FL.; May 2019

SME Critic Incident Response

Hate Crime on Campus – University of Arizona, Tucson, AZ; April 2019

Use of Force SME

Officer Involved Death Inquest Hearing Procedures – Police Tactics Subject Matter Expert
King County, WA Officer Involved Shooting and Use of Force case review and death inquest hearing expert witness; April 2019

Panelist

“Local Law Enforcement Commitment to 21st Century Policing,” Community Forum. Tempe, AZ; December 2018

Round Table Discussion

“The Criminal Justice Role in Reducing Oppression and Harm.” Harm Reduction Conference. New Orleans, LA.; October 2018

Cyber & Emerging Technology Committee Chair

National Organization of Black Law Enforcement Executives (NOBLE) lead evaluator of law enforcement technology and analytics. NOBLE National; Alexandria, VA.; July 2018

Keynote Speaker FBINAA Annual Conference

“The Future of Policing” address and keynote to the general session of the FBI National Academy Associates annual conference. Quebec City; June 2018

Attorney CLE Panelist

“The Future of Policing and Civil Rights.” NAACP Annual Conference; Washington, DC.; June, 2018

SME Engagement Assistance

Starbucks & Philadelphia PD Incident Response. Starbucks Coffee Company, Seattle, WA; April 2018

Perry A. Tarrant
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Dec Panelist

“21st Century Policing Taskforce and Moving Forward.” NOBLE Region VI Training Conference. Oakland, CA; April 2018

Mar Chair of Unmanned Aerial Systems Workgroup #3 EAP

US Department of Homeland Security (DHS) Critical Infrastructure Partnership Advisory Council CIPAC) LE, Education, and Industry technology working groups. Drone Emergency Action Plan (EAP) and Security Ops involving s/UAS. Washington, D.C.; March 2018

Law Enforcement Advisor

Active Shooter technology Public-private development of technology to prevent weapon attacks on campuses. Shadd Technologies, Washington, DC; March 2018

IACP SME

Community Engagement/Police Tactics/Officer Involved Shooting Subject Matter Expert. IACP Collaborative Reform Initiative — Technical Assistance Center (CRI-TAC) Resource. Washington, D.C.; April 2018

Panelist

“21st Century Policing Taskforce and Moving Forward.” NOBLE Region VI Training Conference. Oakland, CA; April 2018

Chair of Unmanned Aerial Systems Workgroup #3 EAP

US Department of Homeland Security (DHS) Critical Infrastructure Partnership Advisory Council CIPAC) LE, Education, and Industry technology working groups. Drone Emergency Action Plan (EAP) and Security Ops involving s/UAS. Washington, D.C.; March 2018

IACP SME

Community Engagement/Police Tactics/Officer Involved Shooting Subject Matter Expert. IACP Collaborative Reform Initiative — Technical Assistance Center (CRI-TAC) Resource. Washington, D.C.; March 2018

Policing and Technology Panelist

“Using Technology to Improve Police-Community Relations. SXSW Annual Conference and Festivals. Austin, TX; March 2018

Perry A. Tarrant
Curriculum Vitae

Leadership Presentation(s)

“The History and Future of Policing.” & “Lessons learned from Ferguson Incidents.” 31st Annual Northwest Law Enforcement Command College. Vancouver WA; February 2018

Advisory Board & Program Evaluator

2018 Annual Board National Initiative for Building Community Trust and Justice Meeting. John Jay College of Criminal Justice. New York. NY; January 2018

Civic Discussion

Supreme Court Justice Sonia Sotomayor public discussion; Police, Courts, and the Criminal Justice System. Seattle, WA; January 2018

SME/Contributor

“Enhancing Response to Hate Crimes.” Partnership between IACP & John Jay Criminal Justice College. Alexandria, VA; January 2018

Keynote Presenter

“Continuing efforts to attract and retain diversity in the organization through engagement,” NOBLE-NY Chapter. Police Plaza, NY; December 2017

Town Hall Speaker

Public presentation / panel discussion of Community Policing / Local city engagement with residents, visitors, and businesses. Ferguson, MO; Nov 2017

Co-Founder GSSC

Lead the collaborative development of the multi-jurisdictional law enforcement and major industry employers to establish the Greater Seattle Security Council (10 largest regional employers); November 2017

Community Engagement SME

NFL Social Justice Initiative Request for Assistance – Collaborative presentation development for team owners, Washington, D.C; October 2017

Leadership round table / Conference Presentation

“Police Militarization.” / “The Police role in Community.” Advancing Justice Summit. Hosted by Charles Koch Criminal Justice Institute. Washington, DC; November 2017

Keynote Speaker

“Looking Back While Moving Forward.” Black Women’s Taskforce 40th Anniversary Gala. Tucson, AZ; September 2017

Perry A. Tarrant
Curriculum Vitae

Panelist NOBLE President

“Criminal Justice Reform: Sound Bites and Slogans verses Real Reform” with Congressman John Conyers at the Congressional Black Caucus Foundation’s 47th Annual Legislative Conference in Washington, D.C; September 2017

Subject Matter Experience/Expertise

Certification of experience and knowledge in subject matter: Community Policing & Engagement; Police Tactics; Officer Involved Shooting Review. IACP & NOBLE Collaborative Reform Initiative — Technical Assistance Center. Washington, D.C.; August 2017

Community Town Hall

“National Forum on Community Policing Relations.” Chief Andre Anderson host @ Arizona State University Tempe, AZ; August 2017

Walter Lamb Award

NOBLE award for commitment to criminal justice reform, collaborative approaches to community safety, and innovative strategies to build trust. Atlanta, GA; July 2017

Town Hall Panel

“From Bart to Ferguson: Fair & Equal Protection Under the Law.” Mothers of Son killed by Law Enforcement, One Precinct, One Congregation, Benjamin Crump. Atlanta, GA; July 2017

Panelist (Bar Association CLE presentation)

NAACP Annual Conference — Law Enforcement Accountability in the wake of so many police shootings of African Americans. Baltimore, MD; July 2017

Presenter

“Reform and the Case for a National Criminal Justice Commission.” New York Department of Corrections Black Officer’s Association. New York, NY June 2017

Louisville leadership of community

“Opportunities to build after police and community stress.” Meetings with community organizers, police command staff, and mayor, League of Cities. Louisville, KY June 2017

Keynote Speaker

“Internal engagement is as important as external efforts.” NOBLE Region V Annual Training Conference, Baton Rouge, LA. May 2017

Practitioner Forum

US House Subcommittee on Department of Homeland Security Oversight. Input from experienced practitioners. Washington, DC; May 2017

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US Senate LE Roundtable

Cause discussion Next Steps for 21st Century Policing post President Obama Administration.
Washington, D.C.

Presenter

Candlelight Vigil “2017 Fallen Officers Roll-call.” National Law Enforcement Officers Memorial Fund
(Police Week) National Mall lawn; Washington, D.C May 2017

Law enforcement Brain Trust

“Policing in America: Lessons From the Past, Opportunities for the Future.” Policing Strategy
Summit. Former AG Ed Meese, Chair. Heritage Foundation, Washington, D.C.; March 2017

US Attorney 2017 Strategy Discussion

AG Jeff Sessions President Trump Administration Law Enforcement Strategies Convening,
Washington, D.C; February 2017

Presenter

Movie Premier “Shot Fired,” mini-series premier and panel discussion (actors, director/writer) with
the audience about race and policing. Charlotte, NC. February 2017

Keynote speaker

“The White House transition.” NOBLE ‘William R. Bracey’ Winter CEO Symposium. Seattle, WA.
February 2017.

Collaboration Award

“Appreciation for Programs that Build Community.” Award for efforts and forming partnerships to
advance Community Policing. NOBLE. Seattle, WA. February 2017

Community Engagement Collaboration

“Coffee with a Cop,” Collaboration with Starbucks IACP, Major City Police Chiefs. Seattle, WA.
February 2017

Keynote Speaker

“The Value of Recruiting and Retaining Diversity in LE Agencies.” “Blacking History Month. US
Marshal Service. Seattle, WA. February 2017

Special Guest Speaker

“The Legacy of Fredrick Douglas on law enforcement.” Sponsored by the Fredrick Douglas Family
Foundation. Library of Congress. Washington D.C. February 2017

Strategy forum

“Rebuilding Trust between Communities and law enforcement.” Boys & Girls Clubs of America HQ.
Develop recommendations and strategies where B&G Clubs and be used to facilitate conversations
with you and law enforcement. Washington, D.C. February 2017

Perry A. Tarrant
Curriculum Vitae

Taskforce Chief

NSSE Support Security liaison for 45th President Inauguration. Unified Command to secure the motorcade route and crowd management. Washington, D.C. January 2017

Keynote Speaker

MLK Jr. Celebration Seaside, CA annual community program event celebrating the MLK Jr. Holiday January 2017

Round Table with Risk Managers

“The Value of 21st Century to City, County, and State Risk Managers.” COPS Office. Washington, D.C. December 2016

National Advisory

National Initiative for Building Community Trust and Justice - Annual Board Meeting. John Jay College of Criminal Justice. New York. NY December 2016

Presenter (and award)

“The reconciling of Race and Policing in Today’s Law Enforcement.” President’s Distinguish Speakers Series. Morgan State University. Baltimore, MD. November 2016

Panel Speaker

2016 National Training Symposium. Hispanic American Command Officers Association (HAPCOA). Long Beach, CA November 2016

Use of Force Roundtable

IACP collaborative development a national model law enforcement policy — Use of Force. San Diego, CA October 2016

Community Town Hall Panelist

“North Carolina’s Restrictions on Police Release of Video.” Hosted by the Vera Institute and sponsored by The Charles Koch Criminal Justice Institute. Greensboro, NC October 2016

White House Intervention Team Leader

President Obama White House team lead to Charlotte following an Officer Involved Shooting of an African American man disabled by TBI. Charlotte, NC; October 2016

US Senate Part Caucus Roundtable

Racial Inequality in America “Candid Discussion on Racial Disparities in the Economic and Criminal Justice Systems.” Chairman, Senator Cory Booker. United States Capitol. Washington, D.C. September 2016

Panelist (multiple)

“Advancing the Civil Rights Agenda: In Pursuit of Policing and Criminal Justice Reform.” / “Policies Solutions Between Black Lives Matter and the Police.” / “The impact of current policing tension on

Perry A. Tarrant
Curriculum Vitae

Black tourism.” Congressional Black Caucus Foundation’s 46th Annual Legislative Conference in Washington, D.C September 2016

Firearms National Workgroup

“Requirements for law enforcement firearms. National Institute of Justice — Office of Justice Programs. Washington, D.C. August 2016

LE Advisory Group

President Obama convened working group to reduce deaths and tensions with the Black Lives Matter movement and attacks on police. VP Biden to Chair. White House, June 2016

SME Discussion

"Promoting Smart Gun Technology.” Pres. Obama White House call to action hosted by DOJ/BJI. Washington D.C. February 2016

Work History

Police Practices Consultant

Provide experience, expertise, and opinion in the subject areas of Investigation review: Internal investigations/inspections (including Title VI, VII, and IX); Officer involved shootings (OIS) and temporal deaths; Civil disturbance response training and evaluation; Infrastructure protection and emergency management; Leadership education; and Technology.

Executive Director

Leader of curriculum development, instructor credentialing, and day to day management of FBI Law Enforcement Executive Development Association (FBI-LEEDA). Led the Strategic Plan development process and added new leadership education courses. Annual refresh of Training: Internal Affairs Investigations, Supervisory, Command, Executive Leadership courses.

Chief of Special Operations

Recruited into Seattle Police Department to support progress through a Department of Justice Negotiated Settlement Agreement (Consent Decree). Oversight of training, readiness, and deployments of personnel in tactics intensive operations (i.e., civil disturbance, sporting events, and other large gathering). Built and maintained external relationships with large employers, maritime operators, and other mutual aid agencies.

FEMA Incident Commander

Recruited, trained, equipped, and led a FEMA All-hazards Incident Management Team for preparedness and response. Led disasters response, trained support personnel and elected officials, and other jurisdictional responders to support National Significant Safety Events (NSSE).

Perry A. Tarrant
Curriculum Vitae

Director or Preparedness and Public Safety

Led the development of the City of Yakima Washington's Comprehensive Emergency Management Plan for jurisdictional determination of response protocols and emergency management grant opportunities. Unified National Incident Management across all departments.

Division Commander

Command of various law enforcement training and functions of the Tucson Police Department: Investigations; Homeland Security; Intelligence; Recruiting; Neighborhood Relations; Aviation; Tactical; Canine; Bomb Squad; Internal Affairs; and Patrol.

Education and Studies

Certificate in Criminal Justice Studies,
University of Virginia
Master of Administration (Leadership),
Northern Arizona University
Bachelor of Science (Political Science),
University of Arizona

Licenses

Commercial Pilot

Certificates

Incident Commander, FEMA
FBI National Academy
Senior Management Institute for Police, PERF
Leading Police Organizations, Center for
Policing Excellence
Advanced Death Investigations, FBI Quantico
Advanced Death Investigations, IACP
Bomb Squad Managers Course