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*OF COUNSEL:*

J. DEAN CARRO

July 17, 2017

Jennifer L. Arnold, Law Director  
City of Alliance  
470 E. Market St.  
Alliance, Ohio 44601

Re: Alliance Police Department Investigative Report

Dear Ms. Arnold:

**I. Issues presented**

Our office was asked to investigate the facts and circumstances surrounding two out of jurisdiction arrests and determine if the conduct of the involved officers and those in the chain of command was appropriate and lawful. We were also asked to determine if any existing policies, particularly regarding out of jurisdiction arrests and investigations, were consistent with Ohio and federal law.

The first arrest involved Timothy Hershberger and Melinda Griffiths on January 24, 2017 in Canton. The Alliance SIU officers had an arrest warrant for Hershberger but not Griffiths. Hershberger was located in Canton and resisted arrest; he was ultimately subdued and taken into custody. Griffiths was arrested by the officers based upon their belief Griffiths had committed a previous felony in Alliance. The critical issues in this incident concern coordinating police activity in Canton with officers in plain clothes and unmarked cars, appropriate oversight of such activity, and the arrest authority of officers of a suspect without an arrest warrant.

The second incident occurred in Plain Township involving Tammy Hale on February 24, 2017. SIU officers obtained an arrest warrant for Hale and visited her residence placing her under arrest. Before visiting the Hale home, the officers notified the Stark County Sheriff's office regarding the arrest warrant because the Alliance officers also had reason to believe Hale was not only a methamphetamine trafficker but also was creating meth in her home based on information obtained the day before the arrest. Hale was arrested in her home but escaped custody and was not found in the several hours following her escape. Later that evening, a neighbor called an Alliance Police department detective involved in the initial arrest and alerted the detective that Hale had returned to her home. Two officers were sent to the Hale home to arrest her a

second time. Upon their arrival, the house was dark. One of the officers entered the home to see if Hale was hiding inside. Entry was gained through an open window which the officer presumed was the same access point used by Hale. While inside the house searching for Hale, a Stark County Sheriff deputy arrived and questioned the officer's jurisdiction and right to enter the home.

Among the issues presented in this incident involve the arrest authority of police officers outside the City limits of Alliance and the coordination with the County on such procedures, along with the decision process used by management to authorize the officers to return to the Hale residence several hours after her escape. Another issue concerns the applicable law and policy followed by the involved officer who chose to enter the Hale residence when it was not certain whether Hale was in the home. More specifically, the Sheriff's office has suggested the entry was unlawful.

## **II. Policy issues**

*A. Appropriate oversight of police activity, particularly involving multi-jurisdictional policing*

*B. Arrest powers outside the jurisdiction*

*C. Coordinating arrest and investigation activity out of the City jurisdiction*

*D. Authority of SIU to utilize patrol officers for SIU tasks*

*E. Arrest authority through an arrest warrant*

*F. Arrest authority and authorization to enter the residence of a suspect with an arrest warrant without consent*

## **III. Factual Background and Findings**

### **A. Timothy Hershberger Incident**

#### **1. Factual Background**

##### **a. Investigation (Rajcan interview)**

In the fall of 2016, Captain Hilles received information indicating that arrestee Timothy Hershberger had committed numerous purse snatchings in and around the Giant Eagle in Alliance. There was evidence indicating Hershberger then went to an ATM at a bank in Alliance and attempted to use credit cards and/or ATM cards that were stolen from the stolen purse. Captain Hilles began accumulating evidence by trying to determine the identity of the vehicle that Hershberger used while committing the felonies. Capt. Hilles employed Facebook and the O.L.E.G. tracking system to

locate a Chevrolet Cruze and a partial plate number associated with Melinda Griffiths. Capt. Hilles then dispatched Detectives Rajcan and Minnick to try to find the vehicle in the City of Canton.

Detective Rajcan was finishing his shift the day before the arrest when he and Detective Minick were asked by Captain Hilles to head toward Canton to try to locate a vehicle. Detective Rajcan knew nothing more but left the City in an unmarked car with Minick. As they were driving, Captain Hilles communicated by radio a partial license plate number and a description of a dark colored Chevrolet Cruze that had been used by a serial purse snatcher. Hilles also indicated that he was accumulating other information from Facebook, tips from Hershberger's family members, and other jurisdictions that had warrants for Hershberger's arrest, as well as information about the vehicle he might be using to commit those crimes. As Rajcan moved south, he was given two addresses to investigate. Both addresses had come back in the OLEG computer as being associated with the vehicle for which the license plate was tracked. Melinda Griffiths was supposedly the owner of the vehicle and had lived at a residence somewhere in Canton and was also a resident somewhere in Waynesburg. The officers went to both residences but could not determine whether Griffiths was presently living there. As they began to come back to Canton, they received more information from Captain Hilles indicating that Tim Hershberger had come through a drive-thru near Winton Place Road in Plain Township/Canton and a drive-thru employee had taken a photograph of the license plate. With information matching the description of the Chevy Cruze, Captain Hilles asked Rajcan to go to a specific residence on Winton Place that the vehicle matched to see if the vehicle could be found. For over an hour, Rajcan and Minick toured the area and could not locate the vehicle. Ultimately, they located the vehicle in a driveway and Rajcan radioed Captain Hilles with the information.

**b. Warrant issued for Hershberger**

Hilles told the detectives to remain at the residence while Hilles typed up a warrant for Hershberger and had the Clerk of Courts come in to sign the warrant. As Hilles was speaking with Rajcan Hershberger came out of the house with an unknown woman, entered the car and left. Rajcan asked Hilles what to do, and Hilles told him to follow the vehicle while Hilles secured the warrant. Rajcan followed the vehicle as it meandered through the streets of Canton, ultimately ending up near the Hall of Fame. Hershberger lost the detectives in traffic.

Rajcan returned to the station early the next morning and learned that a court order had been obtained by Captain Hilles to have Sprint ping the cell phone Hershberger was using. The intelligence information suggested that Hershberger was in the area of the Target plaza, so Hilles instructed Rajcan to go to that location and look for the Chevy Cruze. After unsuccessfully cruising the parking lot several times, Hilles directed Rajcan to go back to the Winton Place residence to see if, perhaps, Hershberger had returned there. When Rajcan pulled up, he saw Hershberger and a

woman fitting the description of Melinda Griffiths loading clothes into a black Equinox. Rajcan called to Hilles and told him he had positively identified Hershberger and was told by Hilles to “follow the vehicle”.

**c. Herberger takedown – Griffiths’ arrest**

Moments later, Hilles arrived and he and Rajcan boxed in Hershberger’s vehicle with their unmarked police cars, lights and siren activated. Griffiths kept her foot on the brake but kept revving the engine as officers pulled their guns and came up alongside the driver and passenger doors. Rajcan was pointing his weapon at Hershberger and Hershberger refused to show his hands and tried to reach for something near the glove box. Rajcan tried to punch out the driver’s window unsuccessfully and ultimately the passenger door was opened and Hershberger was forcibly pulled from the vehicle. Rajcan tased him at least once before gaining control of Hershberger.

Griffiths was handcuffed and positioned at the back of the vehicle while Hershberger was secured. Shortly after securing Hershberger, Rajcan saw a patrol van pull up from the City of Canton and two adult parole authority officers jumped out. These officers were apparently looking for a parolee in the area and happened to see the take down take place. The parole officers stopped to offer assistance and made no effort to interfere with Alliance’s operations. Similarly, after the search of the contents of Griffiths’ purse was conducted, a Canton City detective arrived. This was the same detective who had apparently been contacted earlier in the day by Captain Hilles and informed about the intended apprehension of Hershberger. When the detective arrived, Rajcan offered to allow him to question Griffiths before they took her to the Alliance Police Department. The detective declined. Rajcan also gave the Canton detective two sets of keys to the Chevy Cruze which he had found in the purse. He learned from Griffiths at the scene that the Chevy Cruze had a flat tire and was located somewhere in Canton. Officer Rajcan was unsure as to whether the Canton police ever tracked down the Cruze for purposes of evidence collection or forfeiture proceedings. Rajcan did not recall the Canton officer expressing any concern or opposition regarding the arrest of Griffiths.

Rajcan specifically asked Captain Hilles what they were going to do with Griffiths. Hilles told Rajcan to arrest her as there was probable cause to do so. Rajcan followed his captain’s orders, arrested Griffiths and processed her. He did not make an independent assessment of probable cause and was acting pursuant to Hilles’ order. Rajcan stated that he believed that an officer could arrest someone outside of their jurisdiction without a warrant if they had a reasonable belief that the individual had committed a felony. Rajcan did not believe that it was necessary for an individual to commit a felony in the presence of an officer in order for that officer to have arrest authority outside of the officer’s jurisdiction.

**d. Hilles interview**

Captain Hilles was in charge of the Detective Bureau at the time of the incident. He corroborated Detective Rajcan's recollection of the investigation and pursuit of Hershberger. Captain Hilles and Officer Rajcan in two different vehicles with two assist officers went out to Belden Village looking for a Chevrolet Cruze vehicle they knew Mr. Hershberger to drive.

Captain Hilles was the senior officer and would have been the primary individual to contact other jurisdictions regarding operations. At time of the Hershberger arrest, Captain Hilles notified Jackson Township Police Department, as he was aware that Jackson also had a warrant for Mr. Hershberger, and he wanted to let the Jackson police to know Alliance officers intended to apprehend him in Belden Village. However, at the time of the actual arrest, the officers believed they were in Plain Township and not in the City of Canton. Nevertheless, Captain Hilles, once he had pulled over Hershberger, contacted Canton City detectives and informed them that Alliance intended to take Hershberger into custody. Hilles asked Canton whether Canton wanted to come to the scene or whether Canton wanted Alliance to bring Hershberger down to Canton PD for questioning before Alliance took him to jail. Supposedly, Canton PD declined, although a Canton police detective arrived at the scene. Hilles does not remember anyone from Canton questioning him or his decision to take Griffiths from the scene.

At the time of the roadside stop, Captain Hilles was aware that he did not have a warrant for Melinda Griffiths. Griffiths was in the vehicle along with a dog when Hershberger was pulled over. Although the suspects were not in Griffiths' vehicle, Captain Hilles was aware based upon prior information that Ms. Griffiths' Chevrolet Cruze had been used by Hershberger in the commission of several purse snatchings. He was also aware that Hershberger had used the Chevy Cruze to go to several ATM's in Alliance for purposes of using credit cards and ATM cards he had stolen in the purse snatchings. Hilles believed he had probable cause to arrest of Griffiths, notwithstanding the absence of a warrant. The charge was complicity in relation to the purse snatching which is a 5th degree felony. Consequently, Griffiths was taken into custody, evaluated at Alliance Community Hospital, and then booked in the Police Department and taken to jail.

Griffiths waived the preliminary probable cause hearing regarding the charges and was bound over to the Stark County grand jury. Captain Hilles testified in the grand jury. The grand jury did not issue an indictment.

Captain Hilles stated in the investigation that he had the power to arrest Griffiths because there was probable cause to believe she committed a felony. Hilles believed this arrest was proper even though it was out of his jurisdiction and he had no warrant.

We spoke to Canton City Prosecutor Kris Bates Aylward regarding this incident. She said that officers from the Canton Detective Bureau had expressed concern to her about the arrest of Griffiths because Alliance PD was out of jurisdiction and had no warrant. She said that Alliance frequently comes into Canton and conducts operations without notifying Canton police. This is a problem because if an arrest is handled unlawfully and there are other arrests for which Alliance PD has no warrant, technically Alliance would be unable to arrest those individuals because of the absence of arrest power (assuming the Alliance police officers did not personally witness the commission of a felony). Also, there seems to be some confusion about whether Canton police were actively surveilling Hershberger.

Attorney Bates gave the impression that Canton police officers actually saw the roadside stop and, momentarily, did not know the Alliance officers were police officers because they were in an unmarked car, in plain clothes but had their guns out. This information is somewhat different than what we were told by Captain Hilles. The Captain indicated that the unmarked cars are equipped with lights and sirens and that those were activated in order to effect the take down. This would suggest that anybody in the vicinity would have immediately known they were police officers. Likewise, on the POV footage, there are at least two uniformed officers, one with a long gun, who are standing in the driveway of the residence Hershberger was pulled over in front of. Again, this would suggest that the police operation was easily visible at the time of the take down.

Captain Hilles did not express any concern about the validity of the arrest, notwithstanding the absence of a warrant. Captain Hilles was in error in his assessment. Considering the time line and the nature of the efforts to locate Hershberger through Griffiths, there was no reason a warrant could not have been obtained for her as well. *The decision to arrest Griffiths without a warrant was improper and unlawful.* It is clear specific additional training is needed to provide the officers a better understanding of the application of the Fourth Amendment as it relates to warrantless arrests made outside of the jurisdiction.

## **2. Issues to be resolved**

Captain Hilles stated that he made contact with Jackson Township Police Department when Alliance officers went into Jackson Township to track Tim Hershberger. Captain Hilles also stated that he contacted Hartville law enforcement and let Hartville know that Hershberger had been arrested and that Hartville could come and interrogate him once he was in the Alliance Police Department. Captain Hilles also claims to have notified the Canton City Detective Bureau and let them know that Alliance intended to arrest Tim Hershberger, although it was unclear at that time precisely where Hershberger was located at the time his vehicle was pulled over. Frankly, Captain Hilles initially believed that Hershberger was pulled over in Plain Township as opposed to the City of Canton. Consequently, Captain Hilles claims he notified the Sheriff's office.

Under normal circumstances, *it should not be the policy* for the City of Alliance that officers may conduct a warrantless arrest of persons outside the jurisdiction even if the officer has a reason to believe that the person committed a felony (although not in the officer's presence). As discussed by the Ohio Supreme Court in *State v. Jones*, 121 Ohio St. 3d 103 (2009), a violation of 2935.03 (arrest outside jurisdiction) is not elevated to a Fourth Amendment violation, imposing the exclusionary rule – if there was probable cause to arrest. *See also Virginia v. Moore* (2008), 553 U.S. 164. ORC 2935.03 (D)(1,2,3) would require and prefer – based on case law – that a pursuit be initiated within Alliance and the offense involves a felony to justify a warrantless arrest outside of the jurisdiction. Although a warrantless arrest outside the jurisdiction may constitute a violation of a state statute, there is no criminal remedy for that and it would not likely rise to the level of a Fourth Amendment violation. The mere presence or association or use of her car by a criminal without her intent to aid or abet does not equate to criminal conduct. In this respect, the Griffiths arrest was without probable cause. *The better policy is to require Alliance officers to have a warrant for anyone they arrest outside the jurisdiction.* Presumably, a warrant for Griffiths should have been obtained at the same time the warrant for Hershberger was requested. Without having secured the warrant beforehand, Griffiths should not have been arrested outside the jurisdiction. A police legal advisor should be consulted in any case where potential arrestees are considered outside the jurisdiction without a warrant.

## **B. Tammy Hale Incident**

### **1. Factual background**

On February 22, 2017 Alliance officers arrested two women. The women ultimately agreed to work with the police to coordinate a drug buy with a supplier identified by one of the women, Tammy Hale of Plain Township. The police determined the women would be valuable confidential informants, and a buy of illegal drugs was set up where the informant called Hale from Alliance and Hale agreed to make the sale from her home the following day, February 23, 2017. When the informant arrived, Hale not only agreed to make the sale, but elected to “cook” the meth from her self-created laboratory. Hale's conduct elevated the nature of her criminal activity from a drug trafficker (F-4) to a drug manufacturer (F-1). The sale was completed and recorded by the Alliance SIU officers through the coordination with the informant. An arrest warrant was obtained the following day, February 24, 2017. Capt. Hilles, Detective Rajcan and Officer McCord visited the Hale residence with the arrest warrant. Before leaving, Capt Hilles contacted the Stark County Sheriff's office and Stark County Metro to alert the agencies of their intention to come to Plain Township to arrest Hale and coordinate with both agencies regarding the arrest and/or handling of any potential meth laboratory in the home. Both the Sheriff's office and Metro

acknowledged the communication and information but declined to participate at that time.

Upon arrival at the home, the SIU officers found Hale at home and she ultimately consented to entry and was placed under arrest. Officer McCord and Detective Rajcan utilized their POV technology, and the events at the home are well recorded. During the arrest, interview and clearing the home for other occupants, the officers discovered the meth laboratory equipment in trash bags in an apparent effort of disposal. Capt Hilles contacted the Sheriff's office about the laboratory, requesting assistance in obtaining a search warrant since Hale declined the request to search her home. The SIU officers believed the Sheriff's office intended to come to the residence with the search warrant and take over the laboratory dismantling and handling duties. Once these arrangements were made, Capt Hilles left to return to the police department, leaving Detective Rajcan and Officer McCord in charge of the suspect Hale.

Several hours passed and the Sheriff's office did not send any deputies to assist. Ultimately Capt Hilles asked the OIC, Lt. Morris to dispatch a uniformed officer to pick up Hale so Rajcan and McCord could return to Alliance. Upon the arrival of Officer Aric Cook, it was decided McCord and Rajcan would wait longer for the Sheriff's team to arrive. When it became clear the Sheriff's office was not responding immediately after Cook's arrival, Capt Hilles authorized McCord and Rajcan to return to Alliance, instructing Cook to continue to wait for the Sheriff's office to arrive.

While waiting for the Sheriff's personnel to arrive, Cook handcuffed Hale to a chair while he used the restroom. Although gone only briefly, Hale managed to escape by removing the arm from the chair and fleeing out the front door with one handcuff dangling from her arm. Up to this point, there does not appear to be any inappropriate conduct by any officer. *The arrest was lawful based upon a valid arrest warrant.* Hale allowed the officers to enter her home, and the POV footage document the professional conduct used by all three officers while interrogating Hale after properly advising her of her Miranda rights.

Clearly the escape falls squarely at the feet of Office Cook. All of the events that followed which have led to this inquiry would have arguably never occurred had Hale remained in police custody.

As soon as Officer Cook learned of the escape, he immediately checked outside the home, but concerned Hale could still be in the house, Officer Cook had to clear the home as well. Upon learning of her escape, Cook notified dispatch who then alerted Detective Rajcan and Officer McCord, who were still traveling back to Alliance. The officers immediately returned to the Hale residence and participated in the search which failed to find Hale. The Hale residence was part of a duplex, and the neighbors

in the adjoining unit were interviewed and asked to alert the police officers if Hale returned.

All the officers returned to the police department. Officer Cook prepared an IDC at the directive of Lt. Morris. The IDC was given to the shift sergeant and Capt. Bair, the shift commander of the afternoon shift. Later, at the direction of acting Chief Jenkins, Cook completed a report regarding his involvement in the detention of Hale and the escape. The report mirrors the IDC in every respect except in the IDC, Cook accepts full responsibility for the escape and indicates he will not question any punishment for his error.

Later that evening, the neighbors in the adjoining unit were surprised when Hale appeared at their door. While one neighbor allowed Hale to use the neighbor's cell phone, the other neighbor called Det Rajcan and advised Hale had returned home. The neighbors believed Hale then entered her apartment through a window adjacent to the front door. The window is low, swings outward and was open allowing Hale easy access to her apartment. The neighbors indicated the window used by Hale was an obvious access point and the window appeared to be open from casual observation. This is consistent with McCord's statement that he concluded Hale entered the apartment through the window as all other doors were locked and secure.

Detective Rajcan contacted Capt. Hilles, who was at a police awards dinner. Capt Hilles advised Rajcan to contact Capt. Bair to determine if there were officers available to go to the Hale home and re-arrest her, and also to advise the Sheriff's office of the return so the Sheriff's department could arrest her. Detective Rajcan also spoke with Officer McCord after receiving the neighbor's call. McCord spoke with Capt. Baird and volunteered to return to the police department and accompany an officer to the Hale residence to re-arrest. Capt. Bair felt he could release one officer for the detail, and authorized McCord to return to the police department and accompany Officer Bushe to Plain Township to re-arrest Hale.

By the time McCord and Bushe arrived at the Hale residence, it was evening and the home was dark. After confirming all the doors to the residence were locked, and no one was outside, McCord spoke with the duplex neighbors. The neighbors confirmed Hale had returned, and may have entered the residence through a window adjacent to the front door which was still ajar. The neighbors told both McCord and Sgt. Manser of the Sheriff's department they were *not sure* if Hale was still in the apartment. The neighbors distinctly remember McCord stating " I think she is hiding," before entering through the window near the front door which was obviously open and ajar before McCord arrived, according to the neighbors.

The neighbors confirmed to McCord and Sgt. Manser Hale was not seen leaving. McCord claimed in our investigation the neighbors also expressed the belief Hale was still in her apartment. This comment is not in the McCord IDC. The neighbors confirm the statement Hale had entered her residence presumably through the

window, but as to whether she was in the apartment at the time McCord arrived, the neighbors only confirm uncertainty. The relevant commitment from the neighbor was they believed “*she[Hale] had entered the apartment but were not sure if she was still in the apartment.*” McCord elected to enter the apartment based on the information provided under the belief Hale may still be in the apartment and hiding. A few minutes before McCord and Bushe arrived, Sgt. Manser searched the premises and upon hearing the same information from the neighbors, concluded Hale was not in the apartment.

Officer Bushe did not utilize his POV at the time of arrival, which would have been very helpful with respect to the observations of McCord and the conversations with the neighbors leading up to the entry. Bushe turned on his POV once Stark County Sheriff deputy Sgt. Manser arrived and thus recorded some of the interaction between Manser and McCord. McCord did not have his POV in use because he had not downloaded the tape from earlier that day during the initial arrest of Hale. The combined failure of both officers to utilize equipment evidences the importance of the technology and following protocol.

Sgt. Manser completed a report following the incident. Sgt. Manser’s report indicates he and two other deputies arrived at the Hale residence, looked through the windows and confirmed in their minds Hale was not present. Sgt. Manser spoke to the neighbors about Hale, and the neighbors indicated they could not say “*for sure*” if Hale was still in the apartment. Sgt. Manser and his fellow deputies concluded Hale was not in the apartment and returned to their vehicles. As Sgt. Manser was driving past the Hale residence returning to patrol he saw the Alliance cruiser in the driveway and stopped. By the time Sgt. Manser returned, McCord was already in the apartment searching for Hale.

Once inside the apartment, McCord was clearing the first floor when he saw a light outside from another vehicle. McCord then discovered Sgt. Manser at the front door with Officer Bushe. Sgt. Manser’s body microphone recorded the conversation with McCord and Bushe. While Sgt. Manser was not confrontational, he was judgmental as he perceived McCord’s presence in the apartment constituted an unlawful act. McCord’s exchanges with Sgt. Manser were defensive and reactive. Both officers could have been more professional in their interaction.

Given that Sgt. Manser had already concluded through his own investigation Hale was not at the residence, he presumably determined McCord should have reached the same conclusion and thus, according to Sgt. Manser, the entry, even with an arrest warrant, was unlawful. This same opinion was ultimately reached by Major Oliver and Sheriff Maier. Prosecutor John Ferrero also considered the entry unlawful based on the facts presented to him. Although we have had conversations with the prosecutor’s office about these issues, the prosecutor has not permitted an interview of either Sgt. Manser or Major Oliver.

## **2. Issues to be resolved**

As revealed, the Stark County Prosecutor has not permitted an interview with Major Oliver or Sgt. Manser. We were provided the audio recording of Sgt. Manser's return to the Hale residence after seeing the cruiser. This recording revealed the interaction between Sgt. Manser and McCord in addition to Sgt. Manser's conversation with Hale's neighbors after McCord and Bushe left the area.

Chief Griffin was not aware of either of these excursions with multiple officers out of the City to pursue suspects with arrest warrants. In both situations, SIU, under the premise of crime prevention in Alliance, sent three or four officers at a time to various parts of Stark County with the hope of either tracking Herberger or finding Hale in her home. It may be difficult to justify these excursions when Alliance is large enough to have its own criminal element to deal with, and other Stark County agencies, including Metro, are available to assist. It appears Chief Griffin has given the Detective Bureau complete reign to conduct its affairs in any fashion Capt. Hilles deems necessary, which may be deemed a failure to properly administrate.

The Hershberger incident is a good example. Capt. Hilles demonstrated exceptional police skills to determine the link between the vehicle being used by Hershberger as a means to track his location. Once that location was determined to be outside of Alliance, the information should have been given to the appropriate agency, i.e. Jackson Township and the Sheriff, thereby allowing those agencies to use the work product to arrest Hershberger. Instead of following this logic, SIU began operations throughout Stark County to track down a single non-violent criminal who could have been just as easily apprehended by other agencies based on the information Alliance provided. Had Capt. Hilles been required to report such activity to the Chief, and then allow the Chief to direct the police work from that point, many of the issues presented in both of these incidents could have been avoided. In addition, the improper warrantless arrest of Griffiths would have also been avoided.

While the Chief expresses great confidence in Capt Hilles, SIU appears to make decisions on drug enforcement without supervision from the Chief, which allows SIU to operate independent of other agencies. This separatist perception creates distrust with the other police agencies, who perceive the Alliance officers as arrogant and undisciplined for multi-jurisdictional police work. It is therefore not surprising the Alliance officers operating outside of the City receive little assistance from the other agencies. The Prosecutor's office suggests the only police department that does not coordinate multi-jurisdictional crime prevention is Alliance. Assuming this fact to be true, the responsibility for this failure rests with the Chief.

After both incidents occurred, the Chief investigated each incident. In doing so, the Chief interviewed most of the officers involved, reviewed the POV information and began a dialogue with the Sheriff and Metro in an effort to create better communication, particularly in the area of drug crime. The Chief has set up monthly

meetings with Alliance, the Sheriff and Metro, all in an effort to create better communication and coordination. If nothing else, these two incidents are being properly vetted in order to create a change in policy which is a positive development. It is clear, however, the Chief was not fully aware of all the work being undertaken by SIU, even though everyone appears concerned with budgetary issues and efficiency. It may be difficult to justify the hours worked in obtaining the arrest of Tammy Hale or Timothy Hershberger when one compares the cost to the City to apprehend two non-violent individuals who could have and probably would have been arrested by other agencies with limited cost to the City. And while it is easy to reach such conclusions after the fact, and the desire of the officers to apprehend and incarcerate criminals is a tremendous asset to the City, we all operate in environments with limitations as to boundaries, manpower, and funding. Proper leadership and management must find methods to create efficiency as well as the best use of personnel while mindful of costs. Clearly the first step in such process is awareness of the problem, which may be part of the dilemma in Alliance.

### **3. Summary of issues**

The pursuit of Hershberger and incidental warrantless arrest of Griffiths presents concerns about the coordination of SIU operations at the command level and officer awareness of proper arrest powers. The investigation, detention, arrest, escape and subsequent attempts to apprehend Hale raise a series of issues regarding inter-agency coordination, communication and cooperation. There are also issues concerning oversight from the officers in charge of the department and its various divisions. And finally, there are fundamental issues concerning the logistics of crime prevention outside the City limits and the training necessary to conduct such activities within the boundaries of policy and the Constitution.

### **4. Findings**

*What are the issues regarding the Griffiths arrest?* The investigation by Rajcan and Minick the night before the apprehension provided sufficient evidence, arguably, to request a warrant for Timothy Hershberger and created reasonable suspicion as to the conduct of Melinda Griffiths. Presumably, it was Melinda Griffiths' two addresses that Rajcan and Minick were sent to by Captain Hilles for purposes of trying to find Tim Hershberger. Consequently, the Chevrolet Cruze registered to Melinda Griffiths was of interest in the investigation. Griffiths should have been questioned, but there did not appear to be probable cause for the arrest.

Arguably, coordination between Captain Hillis, Officer Rajcan and the law director may have resulted in the legal advisor recommending a different approach to Melinda Griffiths. Because the law director was never consulted, the officers made a warrantless arrest without probable cause which was improper.

Although these matters are easy to judge in hindsight, even the evidence obtained at the time of the investigation by Capt. Hilles suggested that it was likely Griffiths would be in Hershberger's presence at the time he was taken down, therefore if Alliance was determined to execute its warrant on Hershberger and arrest him regardless of where he was or who he was with, obtaining a warrant for Griffiths would have been an appropriate and necessary step. As suggested elsewhere in this report, the likelihood of Hershberger being outside of Alliance and within one of the neighboring jurisdictions that had already sworn out warrants against him was significant and probable, so sharing information by Hilles with the Sheriff's Department or the Canton Police Department as well as Jackson and Hartville would have been additional protection, and it would have reduced exposure of the officers and the City with regard to any Constitutional challenge by the arrestees.

Were communications between the Alliance Police Department and other jurisdictions sufficient under the circumstances? Although Officers Rajcan and Hillis indicated that efforts were made to apprise Jackson Township Police Department, Canton Police Department, Hartville Police Department, and the Sheriff's Office during the pursuit of Hershberger and Griffiths, information we obtained from those officers simply does not square with information obtained from the Canton City and Stark County Prosecutors offices. The concerns about Canton Police Department and the Sheriff's Office confusion during armed takedowns or roadside stops by unmarked Alliance Police Department vehicles outside Alliance demonstrates that whatever Captain Hillis and Detective Rajcan assumed constituted appropriate notice was obviously inadequate.

Simply cautioning Alliance police officers, SIU members or command to "do a better job of notifying various entities from outside jurisdictions" is not going to address the concerns raised. There must be a more formal structure put in place, setting forth channels of communication and appropriate protocol in the interest of officer security, but also for purposes of reducing the likelihood of successful challenges in suppression hearings and prosecutions.

The City of Canton has suggested that Alliance officers call Canton dispatch in advance to identify the officers, tell where they will be and when, requesting that the Canton Police Department officer in charge be notified. All calls to dispatch are recorded, so any dispute about communication could be easily resolved. All other agencies follow this procedure and it seems to work well.

Is there any concern regarding the investigation and initial arrest of Tammy Hale?

The issue concerns the nexus between Alliance and a suspect out of the City limits. The connection was the confidential informant resided in Alliance and made the phone call to set up the illegal drug purchase from Alliance. Thereafter, the process followed by SIU to investigate, utilize the confidential informant and arrest Tammy Hale appears appropriate, lawful and within policy. The officers obtained an arrest warrant through the law director. The warrant was sealed. The officers claim the

sealed arrest warrant prevents suspects from searching court records to discover issued warrants and take steps to avoid arrest and destroy evidence. In the initial arrest, the officers properly documented their efforts through the use of POV. The events leading to the initial arrest reflect good police work.

What about communication to the Sheriff's office? In this situation, there does not appear to be a dispute about initial notice to the Sheriff. The officers advised the Sheriff's office of their intention to enter Plain Township and thus all proper protocols were followed. The Sheriff's office was involved in other serious matters on the day of the incident, and was not able to provide assistance immediately once the meth laboratory was verified. Still, there could have been better communication from both entities: Alliance on the decision to come to Plain Township and remain there following the arrest, and the Sheriff's office regarding obtaining a search warrant and offering assistance.

What about the escape of Hale? Officer Aric Cook failed to properly secure Hale in the home when he needed to use the restroom. In so doing, the suspect was out of his sight for several minutes. The decision to cuff Hale to a chair was a poor choice given all the other possible options, including cuffing her hands behind her back, or cuffing her to a more secure, stationary fixture. Officer Cook recognizes this error, is embarrassed by it, and some form of discipline should be issued in the form of verbal counseling or a written reprimand.

What of the decision to authorize two officers to travel to Plain Township after notice from the neighbor of Hale's return? This decision was not the best choice. First, Capt. Bair properly notified the Sheriff's office of the alert, and ultimately the Sheriff's office responded with deputies before the Alliance officers arrived. This was not only expected, but should have been anticipated. In other words, the likelihood Hale would remain in her home for an extended period of time seems remote, and the probability she would stay in the home for more than an hour after her return is also relatively small. The decision to authorize two officers to leave the City to apprehend Hale at her home after the Sheriff had been notified seems redundant. The command decision at this point was required to consider the redundancy as well as the remote likelihood of success. Both Capt Bair and Capt Hilles failed to consider these logical consequences. At a minimum, there should be policies in place to minimize redundancy, particularly in situations requiring officers to leave the City and perform police functions available to cooperating agencies.

What issues arise concerning Officer McCord's decision to return to the Hale residence? Officer McCord's conduct leading up to the entry is within policy and appropriate. As discussed above, McCord requested and was granted permission to leave the City and attempt to apprehend Hale. A different decision by command would have also negated the issue presented.

Understandably, McCord wanted to play a role in the ultimate re-arrest of Hale, but more important, he was given permission by Capt. Bair to do so after Capt. Hilles requested Capt. Bair do his best to see if officers could go the Hale residence for a possible arrest. While acting Chief Jenkins is critical of McCord for his interest in participating in the attempt to re-arrest Hale, McCord's willingness to do so was based on his hope to complete the arrest, and his understandable frustration that the good police work which led to her initial apprehension was squandered by her escape. Since McCord was given permission by both the head of the Detective Bureau and the OIC to revisit the Hale residence, his participation in the re-arrest efforts was appropriate.

*But what about the entry into the home?* McCord claims his decision to enter the home was based on a constellation of elements, including his experience and his discussions with the neighbors. Although McCord claimed the neighbors expressed certainty that Hale was still in the apartment, the neighbors claim their comments were less definite. Nonetheless the doubt created by the uncertainty of whether Hale was still in the residence militates toward the reasonableness evaluation of McCord. If the neighbors had expressed certainty Hale had left the apartment, then the entry would have been inappropriate. Even Sgt. Manser concedes in his report the best the neighbors could state regarding whether Hale was still in her apartment was they were not "sure." McCord had initially canvassed the outside of the house including an inspection of the doors. The front door was locked, and the rear door was still padlocked. The window beside the main entry was ajar and this statement was confirmed by the neighbors, suggesting the window was Hale's initial access point. McCord concluded that Hale may still be in the house because the doors remained locked, and the window was still ajar. McCord's statement to the neighbors that he thought "*she[Hale] may be hiding*" is a reliable statement as to his present state of mind before entering the apartment, and is consistent with a reasonable belief as to the decision to enter. These facts, in combination with the statements of the neighbors that they did not see Hale leave the apartment establish a reasonable basis for McCord's decision to enter.

Sgt Manser's POV reveals his conversation with the neighbors after McCord and Bushe left the area. The neighbors confirm they called the Alliance police once Hale returned, and the neighbors believed at the time of the call— more than an hour earlier— Hale was still in the residence and did not see her leave.

Lawfully, a police officer armed with an arrest warrant such as McCord can enter a residence of the suspect if the officer has a *reasonable belief* the suspect may be in the dwelling. There is no question the structure was Hale's residence. This fact was established earlier in the day during the initial arrest. Thus, according to law, as long as the police officer had a reasonable belief the suspect was in the residence, the arrest warrant creates probable cause to enter without being unlawful. In addition, McCord was engaged in a search for a fleeing felon, and the situation would be deemed a "hot

pursuit” which would also justify his decision to enter the apartment. *U.S. v. Santana* 427 U.S. 38 (1976); *Warden v. Hayden*, 387 U.S. 294 (1967).

Under these facts, it is more probable than not that McCord had reasonable cause to believe Hale may have been still hiding in the home. Accordingly, *it is our opinion that McCord’s entry through the window of the home was lawful under these facts.* McCord knew Hale had already managed to escape in a bizarre and rare fashion. The notion she could be hiding in her home at the time both the deputies and then the Alliance police arrived was a real probability. Arguably, these facts, coupled with the comments of the neighbors that they did not see Hale leave the apartment created the reasonable belief necessary for McCord to enter in pursuit of a fleeing felon.

However, this scenario demonstrates the need for training and the policy adjustment regarding attempting to arrest individuals when it is not clear whether the suspect is somewhere within the residence. Had McCord been required to call the OIC before he entered, then there would have been an objective analysis of the underlying facts leading to the entry, and any issue of disregard of Fourth Amendment rights would be avoided. Given the dynamics of this incident, it is fair to say had McCord called either Capt. Bair or Capt. Hilles, both captains would have probably authorized the entry. That said, McCord should not be disciplined for any claimed policy breach since McCord understood the legal requirements necessary for entry and based his decision to enter the residence on the facts as outlined.

*What of McCord’s conduct during the interaction with Sgt Manser and other policy issues?* The tension was obvious at the scene once Sgt. Manser arrived. For this reason, Officer Bushe turned on his POV— which should have been initiated upon arrival, and would have confirmed the observations and conduct of McCord. Busche should be counseled on this important issue. Once McCord returned to the police department, he completed an IDC outlining the facts set forth above, again, pursuant to policy. The constant refrain regarding McCord is he is young, needs more experience, but has obvious passion for his work. The investigation confirms these opinions. McCord appears to be very intelligent and interested in not only defeating crime, but understanding the importance of police work and how policing interfaces with our very important Constitutional rights. However, this type of passion should be fostered and controlled. Clearly McCord needs more experience, but it appears his energy to learn and zeal to succeed will drive him to be a better police officer as long as he is constantly mentored to direct his energy appropriately. All commanders appear to recognize these attributes in McCord. Nonetheless, without stronger control, this same zeal can lead to claims of excessive force, unconstitutional actions, and liability for McCord and the City.

*What of the break in communication with the Sheriff’s office?* Capt. Hilles contacted the Sheriff’s office before the initial arrest and after the meth laboratory was visualized. Since the venue of the arrest was within the Sheriff’s domain, the only possible step the Alliance police department could do was advise the Sheriff’s office

of the meth laboratory, and ask the Sheriff to assume control of the site. Capt. Hilles attempted to obtain a search warrant but the Prosecutor's office indicated Alliance was not within its jurisdiction and refused to cooperate. The Sheriff's office was advised to assist and determine if a warrant was justified, which then caused the Alliance officers to wait for deputies to arrive. In waiting on the Sheriff, Hale escaped. While the escape was clearly not the fault or responsibility of the Sheriff's office, more clear communication would have led to more efficiency. For instance, had the Sheriff's office indicted it could not respond within a reasonable time or obtain the necessary search warrant, the Alliance officers would have simply secured the residence and booked Hale on trafficking charges. Instead, the Alliance officers waited hours for the Sheriff's group which never came, leading to the opportunity for escape.

The lesson for the Alliance Police SIU is that it must remain true to its mission and remain focused on the specific task at hand. In both arrests under scrutiny, the SIU legitimately took action to combat crime, but in each instance, the efforts sought to expand the original mission. Understandably, police must remain fluid and adjust when opportunities arise. This becomes more complicated when the events triggering the necessary fluidity occur outside the limits of Alliance. This is the point where policy must take control along with proper supervision. There appears to be distrust among the different police agencies, which seems inconsistent with each agency's identical mission to serve and protect.

In the Hale incident, SIU wanted to expand the claims against Hale by exposing the meth laboratory but in doing so, needed the cooperation of another agency. It is not always convenient or possible for other law enforcement agencies to respond without warning, and SIU's reliance on this possibility may have been unrealistic. As a result, there was unnecessary delay and expanded cost to the City while several officers waited, which led to the unfortunate escape. Had SIU simply accepted the premise the Sheriff may or may not investigate the laboratory in its jurisdiction, Hale would have been processed earlier in the day without incident.

In the Hershberger arrest, the focus was initially tasked as an event over several days outside the limits of Alliance. Then, the policing expanded to an additional arrest without a warrant, albeit in the interest of crime prevention. Again, the better policy may have been to remain focused on the task at hand, which would have been to provide the intelligence and information found by Captain Hilles to other agencies where the suspect was located. This policy would not create conflicting issues with other agencies who control the jurisdiction.

Both arrests share the common denominator that absent the cooperation of the agency policing the jurisdiction, Alliance officers have limited authority and therefore have more chance for error which defeats their purpose and efforts. Going forward the general policy should be that policing outside the jurisdiction requires global strategy and clear coordination with other agencies. According to the Stark County

Prosecutor, while police officers may arrest individuals outside their jurisdiction with a valid arrest warrant, the Sheriff, as the chief law enforcement officer in the County, may establish a protocol for such activity that must be followed.

As both of these incidents document, as the coordination fails, for whatever reason, the Alliance officers are left to rely on their training and available supervision, which in both instances was lacking at crucial moments. In Hershberger, the decision to arrest Griffiths was flawed, and unnecessary. Capt. Hilles made the decision, but should have sought confirmation from the Chief, or better yet, simply obtained a warrant. As the time line reveals, the Alliance officers knew of Griffiths involvement for at least an entire day before the arrest and had reasonable suspicion as to her activity but no probable cause at the time of the Herberger arrest.

In the Hale incident, the decision to send the officers back to Plain Township was arguably improper, the officers stumbled in the field by not taking the appropriate equipment or using their technology when needed most, thus placing an officer in a compromised position to make a decision which is being challenged as unlawful.

In time, as these efforts to work cooperatively continue, and other agencies have confidence the Alliance police officers understand the law and the limitations of their police powers, there will be less situations where the different agencies fail to cooperate and coordinate. We recommend aggressive efforts be undertaken to coordinate with other agencies through stronger policy, efficient use of personnel and better supervision. We also recommend the City call upon Attorney Dean Carro to assist in establishing the necessary policy and negotiating with the Sheriff's department and other agencies so a coordinated and effective effort to combat crime in multiple jurisdictions is implemented.

Very truly yours,

*s/ Gregory A. Beck*

Gregory A. Beck

*s/ Mel. L. Lute*

Mel L. Lute, Jr.