

**Administrative Review of  
Officer Involved Shooting**

*Eau Claire Police Department  
Case #16-1558*

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## **Administrative Review of Officer Involved Shooting**

### ***Eau Claire Police Department Case #16-1558***

#### **Executive Summary:**

This administrative review will explain the facts pertaining to the officer involved shooting as well as events leading up to and following the shooting. This document contains the facts of the case which include officer(s) actions and decision making. The facts were gathered from officer reports, the comprehensive investigative report completed by the Wisconsin Department of Justice Division of Criminal Investigation (DCI), the criminal review by the Eau Claire County District Attorney's Office (Appendix #A) and the criminal investigation conducted by the Eau Claire Police Department. The administrative review will identify specific department policy/procedure that covers these specific actions and decision making. The officer(s) actions and decision making will be evaluated in a "Findings" portion of the review, identifying if the officer(s) actions were appropriate within the scope of departmental policy/procedure.

On January 24, 2016 officers responded to the area of Gordy's Market, 2717 Birch Street in the City of Eau Claire. A store employee called the communication center advising Sol Armer had just left the store. The store employee was aware that police were looking for Armer and was told to call police if he was observed. Armer had an active arrest warrant from Eau Claire County and was also being sought for criminal charges.

Officer Aaron Schiefelbein and Officer Olivia Erl were the initial officers detailed to the area. After receiving the dispatch Officer Schiefelbein advised they would discontinue their response as there was not adequate manpower at the time. At that point Armer's exact location was unknown. A short time later a subject believed to be Armer was observed via public space camera pushing a shopping cart on Galloway Street near Indianhead Foodservice Distributing (IFD). Dispatchers provided the updated information to officers and dispatched Officer Schiefelbein and Officer Erl back to the area. Officer Renee Stoik radioed the communication center and stated that she and Officer Anthony Briski were clear of their current call and would also respond to the area.

Officer Schiefelbein arrived in the area first and began checking the area behind Gordy's Market. He advised other responding officers to take Galloway Street to the area. Officers Stoik, Briski, and Erl arrived in the area about the same time, all on Galloway Street. Officer Erl located a male pushing a shopping cart and advised other officers. She was unsure at that time if the male was Armer as she did not see his face. Officer Briski was able to get ahead of the male and cut off his path with his squad. Officers Stoik and Erl positioned their squads to the south of Officer Briski and Armer. Officer Briski got out of his squad and contacted the male. He asked the

male if he was Sol. The male pulled his hoodie down off his head and Officer Briski recognized the male as Armer.

Officer Briski said he recalled the information from an officer safety bulletin; specifically that Armer wears heavy clothing and was known to carry knives. Officer Briski saw that Armer had an object in his hand, which was down by his leg. Officer Briski got a better look at the object and identified it as a long bladed knife or machete. The machete was later determined to be a half of a garden sheer consisting of a ten inch blade attached to a handle approximately eighteen inches long.

Officer Briski drew his service weapon and began ordering Armer down to his knees. Officer Stoik told Officer Erl to move with her to the east bike trail to get out of a crossfire situation. Officer Stoik observed Armer had a knife and told this to other officers. Officers Stoik and Erl each drew their service weapon and each gave a command to Armer to get on the ground. Armer did not comply with any commands given by officers. Armer removed his outer coat and began walking forward toward Officer Briski's squad car. Officer Briski moved to the other side of the squad car and gave Armer multiple commands to drop what was in his hands. Armer again did not comply.

Officer Briski told Officer Stoik to, "Step up closer and go T-Tom." The term "T-Tom" refers to the use of an electronic control device or Taser. As Officer Stoik drew and aimed her Taser Armer stated, "Your Tasers will not work on me" and something similar to, "and your guns [or bullets] will not hit me either." Officer Stoik deployed her Taser but the attempt was ineffective. Officer Briski again told Armer to "drop it" but Armer did not comply and responded by saying, "I mean you no harm."

Armer continued to advance toward Officer Briski and Officer Erl with the bladed weapon in hand. Armer was observed passing in front of Officer Briski's squad camera with the weapon held up waist to chest high with the end of the blade facing outward. Officer Briski was backing away from Armer at this time while still giving verbal commands. Officer Briski estimated Armer was the distance of his squad away at this time. Officer Briski said Armer was less than twenty one feet away from him putting Armer close enough to him to cause harm with the bladed weapon.

Officer Briski told Officer Erl to go with "P-Pepper" which was a request for her to deploy oleoresin capsicum or pepper spray. Officer Erl moved from the bike trail towards the center of the road near Officer Briski and Armer. Officer Erl holstered her service weapon and drew her pepper spray. Officer Briski continued to make verbal commands for Armer to "drop it" and "stop" while Officer Erl deployed her pepper spray with no apparent effect. Officer Erl said that Armer began swinging the knife higher and had his arm extended. Officer Erl said the knife was swinging within a few feet of her outstretched arm she was deploying pepper spray from.

Officer Briski drew his pepper spray with his left hand while keeping his service weapon in his right hand. Officer Briski deployed his pepper spray with no apparent effect. Officer Briski dropped his pepper spray canister and kept his service weapon drawn on Armer.

Armer continued to advance toward officers and refused continued commands to stop. Officer Briski reported that Armer got very close to Officer Erl. Officer Stoik said Armer was continuing to move toward officers and thought he (Armer) was going to harm them. Officer Stoik still had her service weapon drawn but was not in position to engage Armer. Officer Stoik said she wondered why it was taking Officer Briski so long to shoot Armer. A few moments later Officer Briski pointed his service weapon at Armer and shot twice. Officer Briski stated, "I was so afraid he (Armer) was going to stab her (Officer Erl) with it or kill her with it that I had no other choice but to shoot him."

After Armer was shot, officers immediately called "shots fired" over the radio and requested EMS. Officer Briski continued to provide lethal cover on Armer who had fallen to the ground. Officer Erl kicked the knife away from Armer. Officer Stoik told Officer Briski to take Armer into custody. Officers Briski and Stoik rolled Armer onto his stomach and Officer Briski applied his handcuffs to Armer's wrists. Once Armer was secure officers rolled him onto his back and began tending to his wounds.

[REDACTED]

DCI conducted the investigation of the officer's actions in this incident and submitted their completed investigation to Eau Claire County District Attorney Gary King.

District Attorney King reviewed the report and exonerated Officer Briski of criminal wrongdoing.

Lieutenant Derek Thomas completed the criminal investigation into the actions of Armer. Armer was issued an arrest card for an Eau Claire County bench warrant. [REDACTED]

[REDACTED] Charges of disorderly conduct and reckless endangering safety will be referred to the District Attorney's Office for consideration.

Lieutenant Greg Weber completed an administrative review of this incident. It is the conclusion of this administrative review that the decision making and actions of the Eau Claire Police

Department supervisors and officers were appropriate and compliant with the Eau Claire Police Department policies and procedures.

The following narrative contains a detailed comprehensive administrative examination of the supervisors' and officers' decision making and actions from the initial dispatch information received from the Gordy's Market employee through the Officer Involved Shooting which occurred on January 24, 2016 (Case #16-1558) as well as follow through actions after the officer involved shooting. In addition it will include general background information on Sol Armer from his first contact with Eau Claire police through officers multiple attempts to locate and arrest him for his active warrant.

Attached to this report are three documents:

- Appendix A: Eau Claire District Attorney Gary King's document
- Appendix B: Timeline of the officer involved shooting incident
- Appendix C: Timeline showing the history of police contacts with Armer

## Prior ECPD Contact History with Sol Armer

### Facts:

Between the dates of May 15, 2014 and January 24, 2016 the Eau Claire Police Department had fifteen documented incidents involving Sol Armer. A timeline of these contacts can be found under Appendix C. The majority of the contacts revolved around the fact that Armer was homeless. Information suggested that Armer likely arrived in Eau Claire in May of 2014. The following are summaries regarding Eau Claire Police contacts with Armer prior to the incident on January 24, 2016.

- May 15, 2014 (Case #14-9127). Armer was inside Mega Foods East and clerks wanted him to leave because Armer was making them uncomfortable. Armer was contacted and mentioned he was from the state of Washington, was homeless, and was just passing through the area. Officers asked Armer to leave the store and he did so without issue.
- June 21, 2014 (Case #14-12059). Armer was reported as a missing person by his brother, Steven Armer. Steven reported Armer was in Chanhassen, MN in April 2014 seeking the Eckankar religion. Steven said that Armer stayed in Chanhassen for about a month and then left for Eau Claire. Steven said he generally talked with Armer on the phone daily, or at least weekly when Armer ran out of phone minutes. Steven reported him missing because it had been almost a month since he talked with Armer. Officers located Armer the following day and found he was fine. Armer was cancelled as a missing person.
- August 7, 2014 (Case #14-12059). Steven again wanted to report Armer as missing. Steven had not heard from Armer since prior to the original missing person report. Steven was told that Armer appeared to be in good health during the last contact with him so he was not going to be entered as missing. Steven understood and said he wanted Armer to come stay at his home in Connecticut. Steven asked to have Armer call him when located so he could arrange transportation.
- November 6, 2014 (Case #14-22938). Armer was contacted in the area of 200 Pinnacle Way following a report of a man camping on Eau Claire Country Club property. Armer admitted to camping on the land since May 2014 but did not agree that it was private property. Armer said he was going to investigate the matter on his own. Armer was given two days to move his property and told he would be cited if this was not done.
- March 7, 2015 (Case #15-4032). Armer went inside a barber shop at 401 Pinnacle Way and had used the restroom and telephone with the owner's permission. The owner said he no

longer wanted Armer in the business and called police to remove him. Armer left before officer arrival and was not contacted.

- March 19, 2015 (Case #15-4899). Steven Armer requested Eau Claire Police check the welfare of Armer as he had not heard from him since August 2014. Steven was concerned that Armer may not have survived the winter. Steven was told there was a case involving Armer in March 2015 and that satisfied Steven. It was noted in the report that Armer was likely still camping in the area. The area around the Waterford Apartments was checked but Armer was not located.
- March 28, 2015 (Case #15-5478). Officers received information regarding a male camping near the Eau Claire Country Club. The complainant had been walking on a trail along the Eau Claire River when the camp was discovered. The caller had a verbal confrontation with a male living in the camp and described the male as "hostile." Officers located the camp and contacted Armer. Armer mentioned that he was a survivalist and talked about how he had taken residency on the property. Armer admitted the property belonged to the country club but felt they would need to evict him to force him to leave. Armer was allowed to remain on the property that day as officers wanted to verify the jurisdiction of the camp.

On April 11, 2015 officers returned to the camp after confirming it was located within the City of Eau Claire and on Eau Claire County Club property. Armer was contacted and passively refused to leave or pick up his property. The report was forwarded to the city inspections department for assistance.

- April 17, 2015 (Case #15-6866). Armer was reportedly still camping on Eau Claire Country Club property. Armer was contacted and ordered to remove his camp from the property. Due to the large amount of items present in the camp Armer was given one week to vacate. Armer said he would comply.

On April 21, 2015 officers were advised Armer was still there and had made no attempts to leave. Officers contacted Armer who said he was still working on the logistics of moving and had not started packing yet. Officers advised Armer that he needed to begin taking down the camp immediately and remained on scene while he did this. Armer provided phone numbers of his friends owning vehicles that may be able to help out. Officers called the friends but none were able to assist. Once it was clear that Armer was actually removing his camp officers cleared.

- June 1, 2015 (Case #15-10251). Armer was stopped driving a vehicle that was later determined to be stolen. Armer said he found the vehicle abandoned behind a building at 400 Pinnacle Way. The vehicle was unlocked with the keys inside so he believed it was fine



to take the vehicle. Armer was arrested for operating a motor vehicle without owner's consent and was taken to jail. During a search Armer was found in possession of a pocket knife and nun chucks. Armer was later found guilty and served 71 days in the Eau Claire County Jail.

- August 18, 2015 (ECSO Case #2-15-5377). Armer was checked on by a deputy who had observed him in the area of US HWY 12 and Prill Road on consecutive days. Armer admitted he had been camping in the area since being released from jail. The deputy noted Armer had a long blade knife in a sheath, which was inside his backpack. The deputy assisted Armer and then allowed him to go on his way.
- October 3, 2015 (Case #15-20531). Armer was contacted by officers investigating suspicious activity. A caller said Armer had been breaking pallets behind Gordy's Market for about two hours. It was determined that Armer had permission from a store manager to take apart old pallets for his own use. The report noted that Armer had stayed at local homeless shelters in the past but prefers to rely on his survival skills. Officers believed that Armer was likely camping close by but did not determine where.
- November 30, 2015 (Case #15-24932). Armer was at the Salvation Army when he got into a disagreement with a female patron who was waiting to pick up food. Armer hit the female with his hat and discharged nasal mucus onto her coat. Armer threatened the female when she mentioned calling the police. Armer left prior to officer arrival. The incident was captured on video and the report noted that Armer was being sought for the charges of disorderly conduct and intimidation of a victim.
- December 2, 2015 (Case #15-25091). Armer returned to the Salvation Army and officers responded to take him into custody. Officers contacted Armer and walked him outside to talk with him. Once outside, Officer Tyler Larsen told Armer he was under arrest. Armer spun around and punched Officer Larsen in the face. Armer was arrested for battery to a law enforcement officer and resisting/obstructing an officer. He was also arrested for disorderly conduct and intimidation of a victim regarding case #15-24932. The report noted that Armer was in possession of two pocket knives when he was searched.
- December 3, 2015 (Case #15-25173). Officer Larsen received information about Armer camping in the wooded area near Indianhead Foodservice Distributors and attempted to locate his camp. Officer Larsen found that Armer had constructed a treehouse out of old pallet boards and tarps. Officer Larsen was aware Armer had been warned about camping on city property. Officer Larsen cited Armer for camping on city property and illegal dumping.

- December 7, 2015 (Case #15-25444). Sergeant Bill Slaggie and a city shops employee responded to the treehouse to determine how to remove it. Sergeant Slaggie indicated that he had announced several times that the treehouse was in violation of city ordinances, but received no response. A plan was devised to return the next day with additional officers and shops employees to remove the treehouse.

On December 8, 2015 officers and shops personnel returned to the treehouse for its removal. Sergeant George Eliopoulos made several announcements for Armer to come down from the fort, but he refused. A ladder was placed up against the fort at which time Armer stated, "That's a bad idea." Officers tried to talk Armer down but he said something similar to, "I'll kill anyone who tries to come up." All city employees present left the scene with Armer still in the treehouse. As a result of the contact officers determined Armer should be arrested for disorderly conduct, obstructing an officer, and felony bail jumping.

After the incident an officer safety "BOLO" was entered on Armer. A flier was created and distributed to nearby businesses encouraging them to contact police if Armer was observed. In addition, Sergeant Eliopoulos created an officer safety bulletin explaining the recent contact with Armer and a list of protocols to follow as officers attempt to contact him. The bulletin recommended that a minimum of 2 officers be present for any contact with Armer if possible. It also noted that Armer had an assaultive history with police, had been known to carry knives, and had shown signs that he was mentally unpredictable. The bulletin was sent to all officers through electronic mail, discussed in briefings, and posed in the briefing room.

- December 15, 2015 (Case #15-26046). An employee reported seeing Armer outside the Mega Holiday on Birch Street. Officers responded but did not locate Armer.
- On December 17, 2015 (No case # assigned). Armer was reportedly sitting on a bench outside the Community Table. Officers checked the area but did not locate Armer.

### **Policy/Procedures:**

#### **317.2 PUBLIC ALERTS**

Public alerts may be employed using the Emergency Alert System (EAS), local radio, television and press organizations and other groups to notify the public of incidents, or enlist the aid of the public, when the exchange of information may enhance the safety of the community. Various types of alerts may be available based upon each situation and the alert system's individual criteria.

### **317.3.1 EMPLOYEE RESPONSIBILITIES**

Employees of the Eau Claire Police Department should notify their supervisor or Detective Division supervisor as soon as practicable upon learning of a situation where public notification, a warning or enlisting the help of the media and public could assist in locating a missing person, apprehending a dangerous person or gathering information.

### **427.1 PURPOSE AND SCOPE (HOMELESS PERSONS)**

The purpose of this policy is to ensure that personnel understand the needs and rights of the homeless and to establish procedures to guide officers during all contacts with the homeless, whether consensual or for enforcement purposes. The Eau Claire Police Department recognizes that members of the homeless community are often in need of special protection and services. The Eau Claire Police Department will address these needs in balance with the overall mission of this department. Therefore, officers will consider the following policy when serving the homeless community.

#### **4.27.1.1 POLICY**

It is the policy of the Eau Claire Police Department to provide law enforcement services to all members of the community while protecting the rights, dignity and private property of the homeless. Homelessness is not a crime and members of this department will not use homelessness solely as a basis for detention or law enforcement action.

### **427.2 FIELD CONTACTS**

Officers are encouraged to contact the homeless for purposes of rendering aid, support and for community-oriented policing purposes. Nothing in this policy is meant to dissuade an officer from taking reasonable enforcement action when facts support a reasonable suspicion of criminal activity. However, when encountering a homeless person who has committed a nonviolent misdemeanor and continued freedom is not likely to result in a continuation of the offense or a breach of the peace, officers are encouraged to consider long-term solutions to problems that may relate to the homeless, such as shelter referrals, counseling and summons and release in lieu of physical arrest.

Officers should provide homeless persons with resource and assistance information whenever it is reasonably apparent such services may be appropriate.

### **427.4 ECOLOGICAL ISSUES**

Sometimes homeless encampments can affect the ecology and natural resources of the community and may involve criminal offenses beyond mere littering. Officers are encouraged to notify other appropriate agencies or departments when a significant impact to the environment

has or is likely to occur. Significant impacts to the environment may warrant a crime report, investigation, supporting photographs and supervisor notification.

**Findings:**

A number of officers from the Eau Claire Police Department had contacts with Armer between May 2014 and January 2016. It was evident from the nature of contacts and through his admission that Armer was homeless. The Eau Claire Police Department homeless policy was adopted on July 1, 2015 and covers a portion of the timeframe officers had been dealing with Armer. Despite not having policy prior to that date, the principles of this policy will be evaluated on all cases involving Armer.

An important aspect of the policy is the fact that homelessness is not a crime and should not be used solely as a basis for detention or law enforcement action. Officers had a number of contacts with Armer where enforcement action could have been taken. Armer was contacted multiple times for camping on Eau Claire Country Club property but was never cited or arrested. Armer was contacted driving a stolen car and was arrested. Armer was disorderly at the Salvation Army and threatened a patron which led to multiple arrests. Armer punched an officer in the face and was arrested. All of the cases where Armer was arrested were criminal in nature and had no bearing on the fact he was homeless. The cases that dealt directly with his homelessness were handled in a different manner. Not only was enforcement action not taken, Armer was given an extensive amount of time to change his behavior, which he did not do. He only chose to move his camp from the country club when officers physically stood by and watched him remove his camp. Even at this extreme, no enforcement action was taken by law enforcement.

In all of the above examples officers appropriately applied this policy. If anything, officers were overly accommodating with Armer in instances related directly to homelessness. Officers could have used a more enforcement driven approach with Armer regarding his camp at the country club and still been in compliance with this policy. Armer was given two days to leave the property on November 6, 2014 but chose not to leave until ordered to on March 21, 2015.

The homeless policy also encourages officers to contact the homeless for purposes of rendering aid and support. Officers should provide homeless persons with resource and assistance information whenever it is reasonably apparent such services may be appropriate. Armer did not want to rely on services available to him. Armer made it clear to officers that he was a survivalist and wanted to rely on himself. Armer constructed his camp and treehouse in areas away from people. The constructions themselves were intricate and of a more permanent nature. It was clear Armer was content living in these areas and did not want to be found. Armer did use some of the resources available for homeless, including the Salvation Army, other food pantries, and occasionally the Sojourner House. Armer refused help from his brother as well. Despite the fact that officers were well aware of his homelessness it would not have been prudent for officers

to provide assistance as Armer did not want it in his situation. Officers appropriately dealt with Armer's homelessness.

After officers located the camp and the treehouse, other agencies were contacted to assist in the removal of garbage and other items on site. Sergeant Adam Taylor contacted the inspections department to assist with the legality of the structure itself. There was no necessity to go beyond that contact as Armer removed his camp and the property owners agreed to clean up what was left behind. The treehouse site posed a different challenge as it extended upward approximately 30 feet above the ground. Officers utilized both the city shops and the fire department to remove the structure and debris left behind. In both cases officers made the appropriate decision in getting other agencies involved to remove the potential ecological hazards.

Public alerts are utilized to alert the public to important information and for soliciting public aid when appropriate. The exchange of information can be used to enhance the safety of the community in a number of ways, including apprehending a dangerous person. A public alert was created and given out to businesses in the vicinity of Armer's treehouse and to businesses that aid the homeless. Armer had demonstrated he could be dangerous to apprehend at his treehouse, and had displayed resistive and violent behavior in the past. The use of the public to help locate Armer away from his treehouse was an appropriate use of this policy.

## **Battery – Knife/Cutting Instrument**

### ***Eau Claire Police Department Case #16-1558***

#### ***Dispatch to Gordy's Market***

##### **Facts:**

Several officers were interviewed by DCI regarding their actions during the Galloway Street deployment. In the following paragraphs, the quotes attributed to the respective officers were derived from those reports. The officers interviewed by DCI are as follows: Officer Anthony Briski, Officer Renee Stoik and Officer Olivia Erl. In addition, all reports generated by the Eau Claire Police Department, calls to the communication center, relevant radio traffic, and squad car video have been reviewed.

On January 24, 2016 at 9:09 p.m., the Eau Claire Communication Center received a phone call from an employee at Gordy's Market who stated Sol Armer was at the store. Store employees were previously informed by officers that the department was actively looking for Armer and that they should call the communication center if Armer was observed. The caller was able to describe Armer as wearing a full black snowsuit, as having a really dirty face, and as carrying a dark colored backpack. Before the call was dispatched to officers the caller advised the communication center that Armer left the store headed in an unknown direction.

The initial call was dispatched at 9:12 p.m. to Officer Schiefelbein as general information and he said he would head to the area. Officer Erl advised that she was clear from the call she was on and said she would head to the area as well. After a few minutes Officer Schiefelbein radioed the communication center and advised that due to a separate incident within the city he and Officer Erl would not be responding at this time. There was a high risk call in another location within the city allocating the majority of the available patrol staff. At the time of the initial dispatch Officer Schiefelbein and Officer Erl were the only two available officers within the city.

Officers had been informed through briefings and an officer safety bulletin to follow certain protocols when dealing with Armer. The bulletin suggested that a minimum of two officers should be present when contacting Armer. The bulletin mentioned Armer had an assaultive history toward law enforcement, would likely be resistive toward officers, had a history of carrying knives, and was mentally unpredictable.

At approximately 9:22 p.m. Officer Schiefelbein and Officer Erl were dispatched back to the area. Communication center staff believed they had observed Armer using the Mt. Tom public space camera. The subject on camera appeared to be wearing dark clothing and was pushing what appeared to be a shopping cart. Officers were advised that the subject was last observed

near the Indianhead Foodservice Distributors (IFD) loading docks. Additional information was given that the subject believed to be Armer was pushing a shopping cart. The communication center advised that they had discussed the case with Sergeant Aaron Jensen and were advised to have officers respond. Officers Schiefelbein and Erl acknowledged they were responding. A few seconds later, Officer Stoik radioed the communication center and said she and Officer Briski were clear from their current call. Officer Stoik advised they would respond to the area as well.

**Policy/Procedures:**

**308.2 RESPONSE TO CALLS**

When possible officers responding to any call shall proceed immediately. Officers responding to an emergency as an emergency response shall continuously operate emergency lighting equipment and shall sound the siren as reasonably necessary (Wis. Stat. § 346.03).

**400.1.1 FUNCTION (PATROL)**

Officers will generally patrol in clearly marked vehicles. They will patrol assigned jurisdictional areas of Eau Claire, identify community needs, provide support and assistance to the community, respond to calls for assistance, act as a deterrent to crime, enforce state and local laws and respond to emergencies 24 hours a day seven days a week.

Patrol will generally provide services within the limits of available resources. These include:

- (a) Patrol that is directed at the prevention of criminal acts, traffic violations and crashes, the maintenance of public order and the discovery of hazardous situations or conditions.
- (b) Crime prevention activities.
- (c) Calls for service, both routine and emergency.
- (d) Investigation of both criminal and non-criminal acts.
- (e) The apprehension of criminal offenders
- (f) Problem-solving activities, such as citizen assists and individual citizen contacts of a positive nature.
- (g) The sharing of information between the patrol and other divisions within the Department, as well as other government agencies.
- (h) The application of resources to specific problems or situations within the community that may be improved or resolved by evidence based policing strategies.
- (i) Traffic direction and control.
- (j) Response to disasters, civic unrest and natural emergencies.

**Findings:**

Officer Schiefelbein and Officer Erl were the initial officers dispatched to the incident. After several minutes Officer Schiefelbein advised that they were discontinuing their response due to lack of resources. Officer Schiefelbein was aware that Armer was wanted and posed an officer safety concern (minimum of two officers). Additionally, Armer was wanted on other charges that would require additional investigation. Officer Schiefelbein believed this would further reduce resources needed throughout the rest of the city.

Amongst the duties and services of patrol are the investigation of both criminal and non-criminal acts, the apprehension of criminal offenders, and the application of resources to specific problems or situations within the community. Policy states that responding officers shall proceed immediately to any call when possible, but also states patrol can only provide services within the limits of available resources. Officer Schiefelbein had no information on the status or availability of other officers on duty at that time. A unit from the Eau Claire County Sheriff's Department was able to assist and had started to the area, but Officer Schiefelbein was aware that the current incident could be time intensive for the limited available resources. Officer Schiefelbein's decision to temporarily discontinue the response to locate Armer based on his knowledge of available resources at the time was appropriate and within the guidelines of policy.

Sergeant Aaron Jensen then had officers respond back to the area. Sergeant Jensen had been monitoring two separate radio frequencies at the time. One frequency was for normal radio traffic, including the incident involving Armer. The other frequency was dedicated to a high risk incident at another location within the city. Sergeant Jensen heard information that the high risk incident within the city was now stable and the suspect was in custody. Sergeant Jensen talked to dispatchers who had observed a subject believed to be Armer via public space camera and were able to give an accurate and timely location for him. Based on the new information Sergeant Jensen's decision to have dispatch send officers back to look for Armer was appropriate.

***Contact on Galloway Street***

**Facts:**

The communication center provided an update that the subject they observed on camera should be on the Galloway Street side or the east side of IFD where the loading docks are. Officers were told that this was the same area that the semi-trucks were parked near the curve in the road.

Officer Schiefelbein arrived in the area and asked other responding officers to take Galloway Street to the area. Officer Schiefelbein began checking around the Gordy's Market loading docks for Armer.



Officers Erl, Stoik and Briski all arrived on Galloway Street around the same time. Officer Erl was the first to locate the male pushing the shopping cart. Officer Erl radioed that the male was near the end of the loading docks. Officer Briski asked her if she believed the subject was Armer, but she replied that she did not see his face.

Officer Briski then located the male and was able to drive ahead of him and block his path with his squad. Officer Briski also activated his emergency lights at this time. Officer Briski said he was familiar with Armer but could not initially tell if the subject was him because the male had a hoodie pulled up over his head. Officer Briski asked the male if he was "Sol" at which time the male removed the hoodie from his head. Officer Briski saw the male's face and recognized him as Armer. Officer Briski said he remembered that Armer was known to carry knives and saw that Armer had something in his hand which was down by his leg. Officer Briski drew his service weapon and began ordering Armer down to his knees. Officer Briski gave this command 8 times without compliance from Armer. After one of the commands Armer could be heard saying, "I cannot do that my friend."

While Officer Briski gave commands to Armer, Officer Stoik and Officer Erl moved from their squads which were parked behind (south) of Armer to the east sidewalk/bike trail. Officer Briski had displayed his service weapon and Officer Stoik wanted to get out of the crossfire. Officer Stoik and Officer Erl each drew their respective service weapons once out of Officer Briski's line of fire. Officer Stoik observed that Armer had a knife and told this to the other officers.

Officer Briski began giving commands to Armer to drop what was in his hand. As this was occurring Officer Stoik transitioned to her electronic control device or Taser. Armer did not follow commands and took off his outer jacket. Armer placed his jacket in the shopping cart and began walking toward Officer Briski's squad. After Officer Briski gave his 4<sup>th</sup> command to drop what was in his hand he told Officer Stoik to step up closer and go with "T-Tom," referring to her Taser.

Armer appeared to hear what Officer Briski said and replied, "Your Tasers will not work on me." He then added, "Your guns will not hit me either." Officer Stoik was positioned on the bike trail on the east side of the road when she deployed her Taser. Armer was standing near the fog line on the west side of the road. The Taser deployment was unsuccessful. Officer Stoik stated in her interview that she believed she was a lot closer to Armer than she actually was.

Officer Briski gave another command to "drop it." Armer responded by saying, "I mean you no harm." Officer Briski moved to the north side of his squad while Armer continued to the north as well. Officer Briski said he tried to use the front of his squad for cover. Officer Briski said Armer was about the length of the car away from him when Armer moved to the north side of the squad. Officer Briski said Armer was less than twenty one feet away from him putting Armer close enough to him to cause harm with the bladed weapon. Officer Briski said he began backing away from Armer to create distance.

Armer was pulling the shopping cart with his left hand while holding the knife with his right hand. The knife was being held up waist to chest high with the end of the blade facing outward. Additional commands were given to Armer to drop the knife. Officer Briski requested "P-Pepper" referring to pepper spray or oleoresin capsicum.

Officer Stoik and Officer Erl had been moving north along the bike trail paralleling Armer. When Officer Briski requested pepper spray Officer Erl moved closer to his location. Officer Erl met Officer Briski near the center of the road as he continued to tell her to pepper spray Armer. Officer Erl holstered her service weapon and drew her pepper spray. Armer continued to move toward them when she discharged her spray. As she sprayed Armer said, "Do not do that." Officer Erl said Armer began swinging the knife higher and had his arm extended so that the knife was swinging within a few feet of her outstretched arm.

Officer Erl said after she sprayed Armer his actions seemed to intensify and he began to swing the knife more wildly. Officer Erl said at that point she felt Armer would harm her or Officer Briski if they did not get out of his way.

Officer Erl said at this point she felt an imminent threat of death or great bodily harm. She said she was concerned about the knife that Armer had, that his prior actions had shown he could do harm, that his actions had intensified, and that his movement forward with the swinging of the knife was closing the distance between them.

Officer Erl said her pepper spray stream didn't appear to reach Armer's eyes, and that it possibly hit his shirt. Officer Erl's pepper spray deployment was not effective.

Officer Briski said he kept his service weapon drawn as Officer Erl sprayed Armer. Officer Briski said he believed Officer Erl's spray hit Armer at chest level, maybe up to his face. Officer Briski said Armer raised his right hand and pointed the bladed weapon out while moving at a fast pace toward Officer Erl. Officer Briski said he was still backing up trying to create distance while repeatedly commanding Armer to drop the knife. Officer Briski said he felt Armer was trying to get at Officer Erl at this point.

Officer Briski said Armer took a few steps and stopped. Officer Briski drew his pepper spray while still holding his service weapon and sprayed Armer in the face. Officer Briski said he saw the pepper spray hit Armer in the eyes, nose and mouth.

Officer Briski said Armer again raised the bladed weapon and ran toward Officer Erl. Officer Briski said Armer got very close to Officer Erl. Officer Briski said he pointed his service weapon at Armer and shot. Officer Briski said, "I was so afraid he (Armer) was going to stab her (Erl) with it or kill her with it that I had no other choice but to shoot him."

Officer Stoik was on the east side of the road when the pepper spray was deployed. Officer Stoik said she saw that the knife was in front of Armer's body and recalled Armer going toward

Officer Briski and Officer Erl with the knife. Officer Stoik said Armer was swinging the knife toward Officer Briski and Officer Erl and believed Armer was going to harm them.

Officer Stoik said it was clear to her that Armer had a weapon, intent, and delivery system. Officer Stoik told Officer Briski to shoot Armer multiple times. Officer Stoik said she was never so certain about something as it related to the use of deadly force. A short time later Officer Stoik said she heard two shots and saw Armer drop to the ground.

**Policy/Procedure:**

**300.3.1 USE OF FORCE TO EFFECT AN ARREST**

**State**

A law enforcement officer may use reasonable force to arrest a person or execute a warrant. Additionally, a law enforcement officer making a lawful arrest may command the aid of any person, and such person shall have the same power as that of the law enforcement officer (Wis. Stat. § 968.07; Wis. Stat. 968.14).

**300.3.2 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE**

**Federal**

When determining whether to apply force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit. These factors include, but are not limited to:

- (a) Immediacy and severity of the threat to officers or others.
- (b) The conduct of the individual being confronted, as reasonably perceived by the officer at the time.
- (c) Officer/subject factors (age, size, relative strength, still level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).
- (d) The effects of drugs or alcohol.
- (e) Subject's mental state or capacity.
- (f) Proximity of weapons or dangerous improvised devices.
- (g) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- (h) The availability of other options and their possible effectiveness.
- (i) Seriousness of the suspected offense or reason for contact with the individual.
- (j) Training and experience of the officer.
- (k) Potential for injury to officers, suspects and others.
- (l) Whether the person appears to be resisting, attempting to evade arrest by flight or is attacking the officer.
- (m) The risk and reasonably foreseeable consequences of escape.

- (n) The apparent need for immediate control of the subject or a prompt resolution of the situation.
- (o) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
- (p) Any other exigent circumstances.

### **300.4 DEADLY FORCE APPLICATIONS**

Use of deadly force is justified in the following circumstances:

- (a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes would be an imminent threat of death or serious bodily injury.
- (b) An officer may use deadly force to stop a fleeing subject when the officer has probable cause to believe that the person has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death to any other person if the subject is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force, where feasible.

Imminent does not mean immediate or instantaneous. An imminent danger may exist even if the suspect is not at that very moment pointing a weapon at someone. For example, an imminent danger may exist if an officer reasonably believes any one of the following:

1. The person has a weapon or is attempting to access one and it is reasonable to believe the person intends to use it against the officer or another.
2. The person is capable of causing serious bodily injury or death without a weapon and it is reasonable to believe the person intends to do so.

#### **300.4.1 IMMINENT THREAT CRITERIA**

An officer intending to use deadly force must reasonably believe all of the following criteria of “imminent threat” are present:

- INTENT: The displayed or indicated intent to cause great bodily harm or death to you or another person, and;
- WEAPON: A weapon capable of inflicting great bodily harm or death (conventional or unconventional weapon), and;
- DELIVERY SYSTEM: The delivery system for utilization of that weapon. The subject must have a means of using the weapon to inflict harm.

#### **Findings:**

Officer Erl located Armer walking on Galloway Street pushing a shopping cart. Officers were aware that Armer had a felony warrant and that he was to be arrested on additional charges as

well. Officers were aware that Armer had assaulted a police officer in the recent past and was known to carry knives. These factors would and should cause an officer to approach Armer with caution.

Officer Briski was the first officer to make verbal commands to Armer. Officer Briski initially gave Armer eight commands to get on his knees. Armer did not comply. Over the next minute and nine seconds Officer Briski gave at least twelve commands to drop the knife and at least ten commands to stop as he advanced towards officers. Armer did not comply. Officer Stoik commanded Armer to get on his knees twice and commanded him to drop the knife three times. Armer did not comply. Officer Erl commanded Armer to get down at least once. Armer did not comply.

An individual by the name of [REDACTED] who lives near the incident was interviewed by Special Agent Vosters as a witness to the incident. [REDACTED] said he was on his back deck and saw three police vehicles with their emergency lights activated. [REDACTED] said he could see a subject pulling a shopping cart with a knife in his hand. [REDACTED] said he could hear officers giving commands similar to, "don't move, stop, get down, lay down." [REDACTED] said he was approximately fifty to sixty yards away from where the shooting took place. [REDACTED] said he believed at some points in the event the officers were within five to ten feet of the subject.

An individual by the name of [REDACTED] who lives with and is the [REDACTED] was interviewed by Detective Ryan Lambeseder as a witness to the incident. [REDACTED] was called to the back deck of their home by [REDACTED] to view the incident. [REDACTED] said she observed a subject waving what appeared to be a knife and was running with a shopping cart. [REDACTED] said she could hear yelling back and forth. [REDACTED] said she heard officers saying, "stop right there, stop right there" and "put down your weapon."

An individual by the name of [REDACTED] who works at [REDACTED] was interviewed by Detective Ryan Prock as a witness to the incident. [REDACTED] said he was talking with another employee when they observed a male walk through the "yard." [REDACTED] said he and the other employee had a brief exchange with the male about trespassing and the male walked away. A short time later [REDACTED] said he could see the red and blue lights of a squad followed by a lot of yelling. [REDACTED] said he could not make out all of what was said, but one thing he heard was, "get down on your knees." [REDACTED] estimated the yelling went on for thirty to sixty seconds and then heard two gun shots close together.

An individual by the name of [REDACTED] who works at [REDACTED] was interviewed by Detective Ryan Lambeseder as a witness to the incident. [REDACTED] had been working with [REDACTED] and also talked about the brief exchange with the male about trespassing. Shortly after the male went out of view [REDACTED] said he could hear officers yelling at the male. [REDACTED] said he heard, "stop, stop, stop... get on your knees, get on your knees." [REDACTED] said he heard these commands about a dozen times and described them as "frantic." [REDACTED] further

described the commands as someone screaming, trying to force someone to do something. ██████████ said he then heard two gunshots, one after the other.

In total officers gave Armer over thirty commands to drop to his knees, drop the knife, or stop. Armer did not comply with any of these commands. It was clear that Armer could hear what officers were saying based on statements made by Armer during the incident. After one of the times Officer Briski commanded Armer to his knees Armer responded, "I cannot do that my friend." When officers coordinated their efforts to deploy a Taser Armer said, "Your Tasers will not work on me." The numerous verbal commands were not only in accordance with policy, they were clear to Armer and the public.

Armer never put down the knife and continually moved towards officers with the knife extended outward. Officers attempted the use of both an electronic control device and oleoresin capsicum to stop Armer without success. Armer continued to close the distance between him and officers who were backing away. As Armer continued to advance he became more aggressive with the knife, swinging it within several feet of Officer Erl's outstretched arm. This series of events caused Officer Briski to believe Armer was an imminent threat of serious injury to himself and Officer Erl. At this point in time, Officer Briski made the decision to shoot Armer because of the imminent threat posed by Armer.

Officer Briski's decision to use deadly force was objectively reasonable based on United States case law, Wisconsin law, Wisconsin DAAT guidelines, and department policy. Wisconsin law states an officer may use deadly force based upon the reasonable belief "that such force is necessary to prevent imminent death or great bodily harm to himself or herself." This principle is extended to third parties, and in this case would specifically extend to Officer Erl. As for further justification for the use of deadly force, the DAAT manual defines that conduct as behavior "which has caused or imminently threatens to cause death or great bodily harm to you or another person or persons."

The concept of **imminence** as defined by DAAT guidelines includes the following criteria: *intent*, *weapon*, and *delivery system*. Armer did not explicitly state he intended on harming officers. In fact, Armer said that he meant them no harm. However, his willful refusal to drop the edged weapon and get on his knees as directed numerous times, even after officers attempted to subdue him with lower levels of force, can reasonably be construed as **intent**. It was clear from all officers involved that Armer possessed a **weapon**. Officers quickly recognized that Armer had some sort of edged weapon in his hand and gave commands to drop it, which were ignored. The criterion of **delivery system** was met, as Armer was fully ambulatory and in control of his physical faculties, had the weapon grasped in his hand, and was swinging the weapon in a motion that would have likely caused death of great bodily harm had it struck another on scene.

Another factor to consider in any deadly force situation is the concept of **preclusion**. Preclusion, as outlined by the DAAT manual, is the notion that the application of a lower level of force would not be reasonable or effective under the given circumstances an officer is in. Armer was in possession of an edged weapon and continued moving toward officers. Officers had attempted to use lesser force prior to the application of deadly force but were unsuccessful. Initially an electronic control device (Taser) was deployed but was unsuccessful. The Taser was deployed at such a distance that it was unlikely both probes would have hit the target. In addition, Armer was wearing heavy clothing, which decreases the likelihood of a successful deployment of the Taser. Officers later attempted to utilize oleoresin capsicum to stop the resistive behavior. Both Officer Erl and Officer Briski attempted to spray Armer with OC, but Armer showed no effects from the spray. Finally, Officers noted that Armer was well within twenty one feet of both Officer Briski and Officer Erl and continually moving toward them with weapon in hand when the OC spray proved ineffective. Therefore, the concept of preclusion in this case tells us that Officer Briski felt he and Officer Erl were imminently threatened with deadly force, lesser uses of force were attempted and unsuccessful, and to use anything less than deadly force against Armer would have been an unreasonable resolution.

Eau Claire District Attorney Gary King reviewed the investigation conducted by DCI and concluded that the actions of Officer Briski were justified under the circumstances of this incident. District Attorney King identified 10 separate reasons for the justification. This document can be located in Appendix A (pages 10 and 11).

Based on our findings, the officers' actions and decision making when Armer was confronted on Galloway Street were appropriate per departmental policy.

### ***Follow Through Actions and Medical Treatment of Armer***

#### **Facts:**

After Armer was shot officers immediately notified the communication center and requested EMS. Officer Erl kicked the knife away from Armer and Officer Briski rolled Armer onto his stomach and handcuffed him. Officer Stoik rolled Armer back onto his back and began to assess his injuries. Officer Stoik asked Armer where he was shot and Armer said he was struck in the left lung. Officer Briski cut away Armer's clothing and observed a wound to the left chest area. Officer Erl went to her squad to retrieve Quick Clot gauze. Officer Erl returned with the gauze and Officer Briski applied it to the chest wound. Officer Briski said he observed a second wound on the left side below the ribs that was not bleeding as bad as the chest wound. Officer Briski continued to pack the gauze into the chest wound. EMS arrived on scene and took over the care of Armer. Armer was agitated as he was loaded into the ambulance and at one point tried

spitting on a medic. Officer Aaron Schiefelbein rode with medics as Armer was transported to the Mayo Clinic Health System Eau Claire for further treatment.

A number of officers began arriving on scene to assist. Arriving officers included the following: Officer Aaron Schiefelbein, Officer Dave Mikunda, Officer Ian O'Connell, Officer David Chapin, Officer Mark Vang, Officer Kyle Roder, Sergeant Jesse Henning and Lieutenant Ryan Dahlgren. Sergeant Henning was the first supervisor on scene and took over incident command. As he arrived Officer Roder was already leading Officer Briski from the scene. Sergeant Henning identified Officer Stoik and Officer Erl as being involved in the incident. Sergeant Henning escorted them away from Armer and had them sit in Officer Stoik's squad car. Sergeant Henning advised Officer Stoik and Officer Erl that they could be there for each other for emotional support but they should not discuss the incident with each other. Sergeant Henning briefly left Officer Stoik and Officer Erl with Officer O'Connell as he checked on Officer Briski. Once Lieutenant Dahlgren arrived on scene Sergeant Henning returned to Officer Stoik and Officer Erl and had Officer O'Connell transport them to the police department.

Lieutenant Dahlgren met Officer Briski who had been seated in Officer Roder's vehicle. Lieutenant Dahlgren exchanged weapons with Officer Briski and transported him to the police department. Lieutenant Dahlgren left Officer Briski at the police department with Officer Wade Beardsley and returned to the scene. Lieutenant Dahlgren met with Deputy Chief Hoyord who was now on scene. After conferring with Deputy Chief Hoyord, Lieutenant Dahlgren returned to the police department and remained with Officer Briski. While at the police department Lieutenant Dahlgren exchanged his magazines with Officer Briski's. Officer Briski's service weapon and magazines were turned over to ECPD Detective Josh Miller who photographed the items and secured them into evidence.

### **Policy/Procedure:**

#### **305.4 INVESTIGATION PROCESS**

The following procedures are guidelines used in the investigation of an officer-involved shooting or death.

##### **305.4.1 UNINVOLVED OFFICER RESPONSIBILITIES**

Upon arrival at the scene of an officer-involved shooting or death, the first uninvolved ECPD officer will be the officer-in-charge and will assume the responsibilities of a supervisor until properly relieved. This officer should, as appropriate:

- (a) Secure the scene and identify and eliminate hazards for all those involved.
- (b) Take reasonable steps to obtain emergency medical attention for injured individuals.
- (c) Request additional resources from the Department or other agencies.
- (d) Coordinate a perimeter or pursuit of suspects.



- (e) Check for injured persons and evacuate as needed.
- (f) Brief the supervisor upon arrival.

### **305.4.2 SUPERVISOR RESPONSIBILITIES**

Upon arrival at the scene, the first uninvolved ECPD supervisor should ensure completion of the duties as outlined above plus:

- (a) Attempt to obtain a brief overview of the situation from any uninvolved officers.
  - 1. In the event that there are no uninvolved officers who can supply adequate overview, the supervisor should attempt to obtain a brief voluntary overview from one involved officer.
- (b) If necessary, the supervisor may administratively order any ECPD officer to immediately provide public safety information necessary to secure the scene, identify injured parties and pursue suspects.
  - 1. Public safety information shall be limited to such things as outstanding suspect information, number and direction of any shots fired, perimeter of the incident scene, identity of known or potential witnesses and any other pertinent information.
  - 2. The initial on-scene supervisor should not attempt to order any involved officer to provide any information other than public safety information.
- (c) Provide all available information to the Shift Commander and the Communication Center. If feasible, sensitive information should be communicated over secure networks.
- (d) Take command of and secure the incident scene with additional ECPD members until properly relieved by another supervisor or other assigned personnel or investigator.
- (e) As soon as practicable, ensure that involved officers are transported (separately, if feasible) to a suitable location for further direction.
  - 1. Each involved ECPD officer should be given an administrative order not to discuss the incident with other involved officers or ECPD members pending further direction from a supervisor.
  - 2. When an involved officer's weapon is taken or left at the scene for other than officer-safety reasons (e.g., evidence), ensure that he/she is provided with a comparable replacement weapon or transported by other officers.

### **305.4.3 WATCH COMMANDER RESPONSIBILITIES**

Upon learning of an officer-involved shooting or death, the Shift Commander shall be responsible for coordinating all aspects of the incident until he/she is relieved by the Chief of Police or a Deputy Chief.

All outside inquiries about the incident should be directed to the shift commander until that responsibility can be delegated.

#### **305.4.4 NOTIFICATIONS**

The following persons shall be notified:

Mandatory notifications:

- Chief of Police
- Detective Deputy Chief
- Patrol Deputy Chief
- Lieutenant of Special Services (PIO)
- Director of Administration
- Director of Communications Center
- Chief of Police Assistant

Other notifications to consider:

- Use of Force Coordinator
- Outside agency investigators (if appropriate)
- City Risk Manager
- Psychological/peer support personnel
- Chaplain
- Records technician
- Medical Examiner (if necessary)
- Officer representative (if necessary)

#### **305.4.5 INVOLVED OFFICERS**

The following shall be considered for the involved officer:

- (a) Any request for legal representation will be accommodated (Wis. Stat. § 164.02(1)(b)).
  1. Involved ECPD officers shall not be permitted to meet collectively or in a group with an attorney or any representative prior to providing a formal interview or report.
  2. Requests from involved non-ECPD officers should be referred to their employing agency.
- (b) Discussions with licensed attorneys will be considered privileged as attorney-client communications.
- (c) Discussions with agency representatives will be privileged only as to the discussion of non-criminal information.
- (d) A licensed psychotherapist shall be provided by the department to each involved ECPD officer. A licensed psychotherapist may also be provided to any other affected ECPD members, upon request.
  1. Interviews with a licensed psychotherapist will be considered privileged.

2. An interview or session with a licensed psychotherapist may take place prior to the member providing a formal interview or report. However, involved members shall not be permitted to consult or meet collectively or in a group with a licensed psychotherapist prior to providing a formal interview or report.
  3. A separate fitness-for-duty exam may also be required (see the Fitness for Duty Policy).
- (e) Although the Department will honor the sensitivity of communications with peer counselors, there is no legal privilege to such communications. Peer counselors are cautioned against discussing the facts of any incident with an involved witness officer.

Care should be taken to preserve the integrity of any physical evidence present on the involved officer's equipment or clothing, such as blood or fingerprints, until investigators or lab personnel can properly retrieve it.

Each involved ECPD officer shall be given the reasonable paid administrative leave following an officer-involved shooting or death. It shall be the responsibility of the Shift Commander to make schedule adjustments to accommodate such leave.

### **305.5 CRIMINAL INVESTIGATION**

In the event of an officer involved death the Eau Claire Police Department will request a team of investigators consisting of three individuals, two of whom must be from an agency that does not employ an officer involved in the death being investigated, to investigate the officers' actions relating to the death. One agency will be appointed the lead investigative agency by the Chief of Police or his/her designee.

If the officer-involved death being investigated is traffic-related, the investigation must include the use of a crash reconstruction unit from a law enforcement agency separate from ECPD (Wis. Stat. § 175.47(3) (b)).

Once public safety issues have been addressed, criminal investigators should be given the opportunity to obtain a voluntary statement from involved officers and to complete their interviews. The following shall be considered for the involved officer:

- (a) Supervisory personnel should not participate directly in any voluntary interview of ECPD officers. This will not prohibit such personnel from monitoring interviews or providing the criminal investigators with topics for inquiry.
- (b) If requested, any involved officer will be afforded the opportunity to consult individually with a representative of his/her choosing or an attorney prior to speaking with criminal investigators. However, in order to maintain the integrity of each involved officer's statement, involved officers shall not consult or meet with a representative or an attorney collectively or in groups prior to being interviewed.

- (c) If any involved officer is physically, emotionally or otherwise not in a position to provide a voluntary statement when interviewed by criminal investigators, consideration should be given to allowing a reasonable period for the officer to schedule an alternate time for the interview.
- (d) Any voluntary statement provided by an involved officer will be made available for inclusion in any related investigation, including administrative investigations. However, no administratively coerced statement will be provided to any criminal investigators unless the officer consents.
- (e) An Eau Claire Police Department supervisor will be assigned as the liaison to the investigators from the lead investigating agency.

The Deputy Chief of Detectives should assign investigators from the Eau Claire Police Department to investigate the suspect's actions.

### **305.6 ADMINISTRATIVE INVESTIGATION**

In addition to all other investigations associated with an officer-involved shooting or death, this department will conduct an internal administrative investigation of involved ECPD officers to determine conformance with department policy. This investigation will be conducted under the supervision of the Deputy Chief or his/her designee and will be considered a confidential officer personnel file.

Interviews of members shall be subject to department policies and applicable laws.

- (a) Any officer involved in a shooting or death shall be administratively compelled to provide a blood sample for alcohol/drug screening. Absent consent from the officer or a court order, such samples shall not be submitted for analysis. At the conclusion of the investigation of the death, the sample may be destroyed if a court approves.
- (b) If any officer has voluntarily elected to provide a statement to criminal investigators, the assigned administrative investigator should review that statement before proceeding with any further interview of that involved officer.
  - (1) If a further interview of the officer is deemed necessary to determine policy compliance, care should be taken to limit the inquiry to new areas with minimal, if any, duplication of questions addressed in the voluntary statement. The involved officer shall be provided with a copy of his/her prior statement before proceeding with any subsequent interviews.
- (c) In the event that an involved officer has elected not to provide criminal investigators with a voluntary statement, the assigned administrative investigator shall conduct an administrative interview to determine all relevant information.
  - (1) Although this interview should not be unreasonably delayed, care should be taken to ensure that the officer's physical and psychological needs have been addressed before commencing the interview.

- (2) If requested, the officer shall have the opportunity to select an uninvolved representative to be present during the interview (Wis. Stat. § 164.02(1)(b)). However, in order to maintain the integrity of each individual officer's statement, involved officers shall not consult or meet with a representative collectively or in groups prior to being interviewed.
- (3) Administrative interviews should be recorded by the investigator. The officer may also record the interview.
- (4) The officer shall be informed of the nature of the investigation. (Wis. Stat. § 164.02(1) (a)). If an officer refuses to answer questions, he/she should be given his/her Garrity rights and ordered to provide full and truthful answers to all questions. The officer shall be informed that the interview will be for administrative purposes only and that the statement cannot be used criminally.
- (5) The Supervisor shall compile all relevant information and reports necessary for the Department to determine compliance with applicable policies.
- (6) Any other indications of potential policy violations shall be determined in accordance with standard disciplinary procedures.

### **305.8 AUDIO AND VIDEO RECORDINGS**

Any officer involved in a shooting or death may be permitted to review available Mobile Audio/Video (MAV), body-worn video, or other video or audio recordings prior to providing a recorded statement or completing reports.

Upon request, non-law enforcement witnesses who are able to verify their presence and their ability to contemporaneously perceive events at the scene of an incident may also be permitted to review MAV, body-worn video, or other video or audio recordings with the approval of assigned investigators or a supervisor.

Any MAV, body-worn and other known video or audio recordings of an incident should not be publicly released during an ongoing investigation without consulting the Chief of Police or his/her designee.

#### **Findings:**

Policy 305 establishes guidelines and procedures for the investigation of an incident in which a person is injured or dies as the result of an officer-involved shooting. Policy 305.4 relates directly to the investigation process and identifies the responsibilities of various individuals. Individuals considered are uninvolved officers, supervisors, watch commanders and involved officers. The policy also identifies notifications that shall be made. A comprehensive review was completed into the responsibilities and notifications.

Policy 305.4.1 explains the responsibilities of uninvolved officers. A number of uninvolved officers arrived on scene in close proximity to one another. Uninvolved officers took on multiple

roles after arriving on scene. Uninvolved officers met the responsibilities listed in (a) through (f) and were in compliance with this policy.

Policy 305.4.2 explains the responsibilities of supervisors. Sergeant Henning was the first uninvolved supervisor on the scene. Sergeant Henning observed Officer Briski was being removed from the area by Officer Roder. Sergeant Henning contacted Officer Stoik and learned she and Officer Erl were present during the shooting. Sergeant Henning escorted Officer Stoik and Officer Erl away from the scene. Sergeant Henning advised Officer Stoik and Officer Erl not to discuss the incident with each other. Sergeant Henning had Officer O'Connell transport Officer Stoik and Officer Erl to the police department. Sergeant Henning remained on scene as scene supervisor until later relieved. Sergeant Henning met the responsibilities listed in (a) through (e) and was in compliance with this policy.

Policy 305.4.3 explains the responsibilities of the watch commander. Lieutenant Dahlgren was the shift commander for the afternoon shift and had been the incident commander at a separate incident prior to the shooting. Sergeant Jensen was at the police department as the incoming shift commander. Lieutenant Dahlgren arrived on scene and was informed by Sergeant Henning that Officer Briski was the sole officer who fired a weapon. Lieutenant Dahlgren contacted Officer Briski and completed a weapon exchange with him. A short time later Lieutenant Dahlgren transported Officer Briski to the police department. Lieutenant Dahlgren returned to the scene and met with Deputy Chief Hoyord, who had arrived at the scene while Lieutenant Dahlgren was gone.

The policy states that the shift commander shall be responsible for coordinating all aspects of the incident until he/she is relieved by the Chief of Police or a Deputy Chief. In this case Sergeant Henning was left in charge until Deputy Chief Hoyord arrived. Based on this policy it appears Lieutenant Dahlgren should have remained on scene until Deputy Chief Hoyord arrived and relieved him of his duties.

Policy 305.4.4 explains the mandatory notifications that shall be made following an officer-involved shooting. All mandatory notifications were made in compliance with this policy.

Policy 305.4.5 explains considerations for involved officers. A comprehensive review of this policy showed that the personnel responsible for offering and providing these services were in compliance with this policy.

Policy 305.5 explains the criminal investigation process in the event of an officer-involved death. The eventual outcome of the incident did not result in death; however this policy was followed nonetheless. Chief Gerald Staniszewski contacted the Wisconsin Division of Criminal Investigation (DCI) and requested their assistance. DCI was appointed as the lead investigative agency. DCI Special Agent Adam Frederick and DCI Special Agent Lisa Wilson were the lead investigators outside the Eau Claire Police Department and interviewed Officers Briski, Stoik

and Erl. The interviews conducted with Officers Briski, Stoik and Erl were all voluntary. Detective Sergeant Mark Pieper was present during Officer Briski's interview but did not directly participate. Each involved officer had a representative from the Wisconsin Professional Police Association (WPPA) present for their respective interview. A review of this policy showed that all personnel involved with the criminal investigation process were in compliance with the policy.

Policy 305.6 explains the administrative investigation process in the event of an officer-involved shooting or death. The policy states under 305.6(a) that any officer involved in a shooting or death shall be administratively compelled to provide a blood sample for alcohol/drug screening. Deputy Chief Hoyord requested Sergeant Jensen to transport Officer Briski to Mayo Clinic Health System for the administrative blood draw. Sergeant Jensen was present when two vials of blood were drawn from Officer Briski. The sealed blood kit was turned over to Sergeant Jensen who retained possession of the blood kit until turning it over to Lieutenant Thomas. Lieutenant Thomas secured the blood kit in the evidence refrigerator where it remains. The collection and storage of the blood sample were in compliance with this policy.

The remainder of policy 305.6 relates to administrative interviews of involved officers. After reviewing the voluntary statements documented by DCI investigators it was determined no administrative interviews would be necessary.

Policy 305.8 states that any officer involved in a shooting or death may be permitted to review available Mobile Audio/Video (MAV), body-worn video, or other video or audio recordings prior to providing a recorded statement or completing reports. Officers Briski, Stoik and Erl all reviewed squad video during the course of their respective interviews in compliance with this policy.

### ***Post Incident Investigation***

#### **Facts:**

Officer O'Connell arrived on scene and observed two male subjects standing towards the east end of the IFD warehouse parking lot. The men were contacted and advised they had witnessed the incident. Officer Chapin was directed to identify the men and stay with them until they could be interviewed. Officer O'Connell directed the men not to talk to one another about the incident. Officer Chapin remained with the witnesses until they were separately picked up by detectives and transported to the police department for interviews.

**Policy/Procedure:**

**305.5.2 WITNESS IDENTIFICATION AND INTERVIEWS**

Because potential witnesses to an officer-involved shooting or death may become unavailable or the integrity of their statements compromised with the passage of time, a supervisor should take reasonable steps to promptly coordinate with criminal investigators to utilize available law enforcement personnel for the following:

- (a) Identification of all persons present at the scene and in the immediate area.
  - 1. When feasible, a recorded statement should be obtained from those persons who claim not to have witnessed the incident but who were present at the time it occurred.
  - 2. Any potential witness who is unwilling or unable to remain available for a formal interview should not be detained absent reasonable suspicion to detain or probable cause to arrest. Without detaining the individual for the sole purpose of identification, attempts to identify the witness prior to his/her departure should be made whenever feasible.
- (b) Witnesses who are willing to provide a formal interview should be asked to meet at a suitable location where criminal investigators may obtain a recorded statement. Such witnesses, if willing, may be transported by a member of the Department.
  - 1. A written, verbal or recorded statement of consent should be obtained prior to transporting a witness. When the witness is a minor, consent should be obtained from the parent or guardian, if available, prior to transportation.
- (c) Promptly contacting the suspect's known family and associates to obtain any available and untainted background information about the suspect's activities and state of mind prior to the incident.

**Findings:**

Officer O'Connell identified 2 witnesses on scene. The names of the witnesses were obtained and both agreed to be interviewed at the police department. Detectives transported the witnesses to the police department and obtained recorded interviews from each. Two other witnesses were identified at a later time and agreed to be interviewed. One interview was conducted by Detective Lambeseder at the police department. A second interview was conducted by Special Agent Vosters at the Altoona Police Department.

The actions and decision making of the officers involved in identifying and interviewing witnesses were appropriate per department policy.



**Conclusion:**

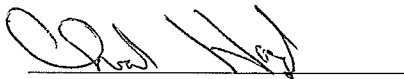
The administrative review report of this incident was a comprehensive report which evaluated the actions and decision making of officers involved in this incident. Facts were gathered from multiple sources, to include the criminal investigation report submitted by the Department of Criminal Investigation of the involved officer's actions, the comprehensive review submitted by Eau Claire District Attorney Gary King, the criminal investigation of the suspect's actions, numerous Eau Claire Police Department officer reports, squad video, recorded dispatch audio, recorded phone calls, and many other resources. Departmental Policies and Procedures were identified and used to evaluate the officers' actions and decision making during this incident.

Respectfully Submitted,



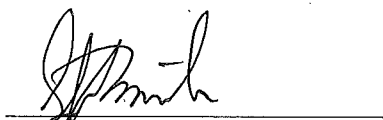
Greg Weber  
Lieutenant of Police

Reviewed by:



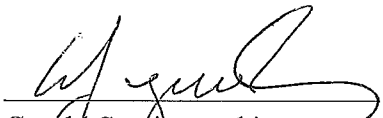
Chad Hoyord  
Deputy Chief of Patrol

6/6/2016  
(Date)



Stephen Nick  
City Attorney

6/6/2016  
(Date)



Gerald Staniszewski  
Chief of Police

6/7/2016  
(Date)