

# **Administrative Review of Officer Involved Shooting**

*Eau Claire Police Department  
Case #17-1951*

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# **Executive Summary**

## **Introduction**

This administrative review will explain the facts pertaining to the officer-involved death as well as events leading up to and following the death. 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 La Crosse Police Department and the criminal review by the Eau Claire County District Attorney's Office (Appendix #A)

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 and procedure.

## **Summary of Incident Events**

On January 28, 2017 at 0716 hours a male caller contacted the Eau Claire County Emergency Center indicating there is a man with a gun in the parking lot at the Scottish Inns and Suites, 1135 W. MacArthur Avenue. Telecommunicator (TC) Rick Jungerberg received the initial 911. At 0718 hours TC Mary Kruschke dispatched the call to officers through a single tone broadcast over police frequencies and provided information to patrol officers. A brief description of the suspect was provided based on the caller's description. Sergeant Gary Axness and Officers Susan Zwiefelhofer and Daniel McIlhargey were first to advise they were responding.

Sergeant William Slaggie and Officers Kristopher O'Neill and Jesse Zurbuchen were investigating a family disturbance 300 block of Fifth Ave. At 0719 hours, Sergeant Slaggie advised the Communication Center they were leaving the Fifth Ave residence and were en route to the Scottish Inns and Suites. At 0720 hours, Officer Arthur Nelson cleared a call on Main Street and advised he was responding to the Scottish Inns and Suites.

At 0721 hours the Communication Center provided the suspect's description again and indicated the suspect is walking around the parking lot pointing a gun at people and cars.

At 0722 hours, Officer O'Neill arrived at the Scottish Inns and Suites in a fully marked police vehicle with the emergency lights operating. He drove to the east entrance. Upon driving into the parking lot on the northeast corner of the Scottish Inns and Suites Officer O'Neill immediately encountered a male as was described to responding officers. The subject walked directly towards Officer O'Neill's police vehicle with a handgun in his right hand. The man's arm was fully extended at about shoulder height and the handgun was pointed at Officer O'Neill's police vehicle. Officer O'Neill's emergency lights were still operating.

Officer O'Neill exited his police vehicle armed with the squad rifle. The squad rifle is a .223 caliber M4 style rifle. Each Eau Claire Police Department marked squad car has this rifle secured in a locked rack within the front passenger compartment of the squad car. For the purposes of this review this rifle will be referred to as a "squad rifle."

Officer O'Neill immediately orders the suspect to drop the weapon seven times during a sixteen second time frame. The man continued pointing the handgun at Officer O'Neill. Officer O'Neill then fired four rounds. As the subject falls, Officer O'Neill immediately notified other officers and the Communication Center via the police radio, "Shots fired, shots fired." He reported a second time, "Shots fired." Sergeant Slaggie reported the suspect was down on the east side of the building and EMS was requested.

Officer O'Neill approached the man on the ground covering him at gunpoint. Officer O'Neill walked over to a handgun lying next to the man and kicked it to the east away from the man. He maintained a position of cover on the man as assisting officers arrive.

Assisting police personnel arrived and secured the scene. Sergeant Axness approached the now unconscious suspect. Officer Zurbuchen searched the subject. At least one apparent bullet wound was observed on the subject's chest. Sergeant Axness began administering CPR on the suspect and Officer O'Neill was escorted from the scene by Sergeant Slaggie. Sergeant Axness continues doing chest compressions on the man until EMS personnel arrive and take over lifesaving efforts. The suspect was pronounced deceased at the shooting scene. The decedent was identified as Matthew Zank.

It was determined the original and only caller reporting the man with a gun called from the Scottish Inns and Suites, Room #202. This room was rented by Matthew Zank. That caller informed TC Jungerberg his name was Matthew Zank. The investigation confirmed Matthew Zank called the police and reported the "man with a gun." Zank then confronted Officer O'Neill, pointed a handgun at Officer O'Neill, and advanced towards Officer O'Neill while disregarding commands to drop the handgun.

La Crosse Police Department Investigators completed the Officer Involved Death investigation per statutory requirements. Follow up interviews with all involved officers and witnesses were conducted. A handwritten note was found in Matthew Zank's wallet indicating: "To the cop that shoot me I am sorry that I made you do it do not feel bad my life was worth lesses."

A further examination of Zank's handgun determined it was a Daisy brand air powered Airgun. Zank's hand gun was all black and it is difficult to discern it from a large caliber handgun. Officer O'Neill and multiple witnesses to the shooting incident perceived Zank's handgun to be a conventional high-powered caliber handgun. The investigation determined Zank purchased this handgun from Wal Mart, 3915 Gateway Drive, Eau Claire, WI on 01/25/2017.

## **Criminal and Administrative Review**

Investigators from The La Crosse Police Department completed the investigation into the legality of Officer O'Neill's use of deadly force. This investigative report was submitted to Eau Claire County District Attorney Gary King for review. District Attorney King determined Officer O'Neill's use of deadly force was appropriate. District Attorney King exonerated Officer O'Neill of any criminal wrongdoing.

Based on the nature of this incident and Matthew Zank's death there was no Eau Claire Police Department criminal investigation into the suspect's actions.

Eau Claire Police Department Lieutenant Tim Golden completed the administrative review of this incident, as is required by Wisconsin State Statute. It is the conclusion of this administrative review that the actions and decision-making of all Eau Claire Police Department personnel was appropriate and compliant with the Eau Claire Police Department policies and procedures.

## **Conclusions**

The administrative review of the contacts with Zank prior to this incident, the incident itself, and follow through actions determined that the actions of all Eau Claire Police Department personnel were appropriate and consistent with policy and procedures.

The most significant area of inquiry was Officer O'Neill's use of deadly force. The administrative review of this shooting incident determined Officer O'Neill's use of deadly force was objectively reasonable and compliant with Eau Claire Police Department policy and procedure. Officer O'Neill believed he and others were at risk to a likelihood of death or great bodily harm based on the following facts:

- Nature of the initial call from Matthew Zank to the Eau Claire Communications Center.
- Zank's gun was reasonably perceived as a large caliber semi-automatic handgun.
- Verbal accounts by Officer O'Neill and independent witnesses describing Zank advancing on Officer O'Neill while pointing a handgun at him.
- Video surveillance footage of Zank advancing on Officer O'Neill.
- Audio/video footage that Zank disregarded seven verbal commands made by Officer O'Neill to drop his gun within a sixteen second timeframe.
- When provided with these verbal commands Zank responded by continuing to advance on Officer O'Neill, Zank continuing to point his handgun at Officer O'Neill, and stating "No I will not" when commanded by Officer O'Neill to drop his gun.

Further information is included in this administrative review indicating that this officer-involved shooting and death was Zank's intended outcome for this event. This is demonstrated by the following facts:

- On January 13, 2017 Zank stated he would commit suicide if he could not obtain housing.
- Zank lost his housing in Eau Claire in October, 2015
- On January 25, 2017 Zank purchased the Daisy Powerline air gun used in this incident.
- On January 28, 2017 Zank called the Eau Claire Communication Center and reported there was a man pointing a gun at people outside of the Scottish Inns and Suites.
- When making this report Zank provided a description of himself as the suspect.
- During this telephone call to the Eau Claire Communication Center Zank asked the telecommunicator details about officer's response.
- When Officer O'Neill arrived at the Scottish Inns and Suites, Zank confronted Officer O'Neill as described above.
- A handwritten apology note was found in Zank's wallet, apologizing to a police officer for making the officer shoot him.

## **Contents of Review**

The following narrative contains a detailed comprehensive administrative examination of the supervisors' and officers' actions and decision-making. Facets of this incident that were reviewed include the initial 911 call made by Matthew Zank, the officers' response, the use of deadly force and follow through after the shooting. In addition it will include general background information on Matthew Zank and the many calls for service involving Mathew Zank that Eau Claire Police Department officers responded to since 2009.

Attached to this report are three documents:

- Appendix A: Eau Claire District Attorney Gary King's document (pg. 41 - 51)
- Appendix B: Narrative reports completed by responding Eau Claire Police Department officers and La Crosse Police Department investigators. (in folder of thumb drive)

## **Eau Claire Police Department Contact History with Matthew Zank**

### **Facts**

Between the dates of January 11, 2009 and February 13, 2017 the Eau Claire Police Department had 21 documented incidents involving Matthew Zank. Mathew Zank is described in many of the reports as having an apparent mental illness and many officers completing their investigative reports requested that their report be forwarded to the Department of Human Services for their information. The following are summaries regarding Eau Claire Police contacts with Zank prior to the incident on January 28, 2017.

- January 11, 2009 (Case # 09-0668). Matthew Zank is issued an ordinance citation for Disorderly Conduct after causing a disturbance in the parking lot of his apartment building at

3110 Blakeley Ave. Zank was described as yelling at a young female in the parking lot over a parking space.

- March 23, 2009 (Case # 09-5460). Mathew Zank reported his landlord came into his apartment #4 at 3110 Blakeley Ave. The report was closed after the incident involved a need for pest control and a landlord's failure to give appropriate notice before allowing a contracted business to enter a renter's apartment.
- May 18, 2009 (Case # 09-9797). Matthew Zank reports that his neighbors in apartment 9 at 3110 Blakeley Ave were playing their music too loud. Officers contacted the residents in apartment 9 (Solis-Gomez, Aguet-Galdamez) who reported Zank was violently kicking at their door, scaring them into not answering the door. The music was not unreasonably loud. Zank commented he would handle the matter his own way, and was warned to avoid doing so. The reporting officer described Zank as mentally impaired.
- July 15, 2010 (Case # 10-14282). This investigation is a threats/criminal damage report made by a neighbor of Zank at 3110 Blakeley Ave. The complainant reports someone put multiple scratches on the hood of his vehicle. While he didn't witness the criminal act, the complainant stated the evening prior, Zank was parked in the complainant's stall, so he parked behind Zank's car. Zank observed this, and yelled for the complainant to move the car, adding he had a gun. Upon being interviewed, Zank replied, "That's very juvenile, and I'm not a juvenile." Zank added that if he would have damaged that man's car, he would have done something other than scratch it.
- July 23, 2010 (Case # 10-14971). Matthew Zank begins communicating with a female via phone calls and text messages after "meeting" her on the dating site "Plenty of Fish". The female quickly determines Zank is not her type and requests Matthew stop communicating with her. Zank becomes upset and begins sending inappropriate responses with vulgar language and threatening to make her life, "A living hell." The female files a police report and an Officer warns Zank to discontinue contact with the female. The officer notes Zank appears to be mentally diminished.
- November 4, 2010 (Case # 10-23528). Matthew Zank drives to his brother Tim Zank's home and after a disagreement punches Tim in the eye causing a laceration requiring medical treatment. Matthew drives home after the battery and is located there by officers. Zank yells at the officers to arrest him, exits his apartment with his own set of handcuffs and handcuffs himself behind his back. He is intoxicated and arrested for OMVWI 1<sup>st</sup> offense, and Domestic related Battery and Disorderly Conduct. At the jail garage, Zank continues trying to ram his head into a wall divider and a concrete pillar.

- August 24, 2011 (Case # 11-17040). Matthew Zank is told by City of Eau Claire Housing that his housing assistance would be terminated due to being involved in a recent violent criminal act. Zank repeatedly call city hall demanding to speak with someone indicating that if he loses his housing, “Something is going to happen.” Zank was described as having mental issues. Zank was warned to stop calling city hall about this matter. He stated he wouldn’t harm anyone and was not planning to harm himself.
- December 19, 2011 (Case # 11-25410). Zank reports that persons in apartment 9 at 3110 Blakeley Ave always playing their music too loud. The reporting officer arrives to hear no music, but contacts the resident in apartment 9 regardless. The resident reports that previous residents of apartment 9 requested a transfer to a different apartment due to a series of unfounded noise complaints filed by Matthew Zank.
- January 1, 2012 (Case #12-0050). A female caller reports she was in the Mega Holiday Gas Station parking lot, 2308 E. Claremont Ave, attempting to drive out. A vehicle driven by Matthew Zank stopped in front of the female caller and “flipped her off” (extending his middle finger). Zank drove to a nearby parking spot and exited his vehicle with a snow brush in his hand. He pointed the brush at the female as if it were a gun and stated, “Bang bang.” Upon contact with Zank, he was described as suffering from mental illness.
- June 27, 2012 (Case # 12-1206). EC Fire Department EMS personnel responded to Matthew Zank’s residence, 3110 Blakeley Ave apartment apt. 4 regarding a sick person. EMS personnel believed that Zank became ill due to deplorable and uninhabitable conditions in his apartment. Investigating officers described the apartment as moldy, dirty and unlivable. There was weeks’ worth of garbage stacked, rotten food in the non-working refrigerator and a terrible odor. The report was forwarded to the Health Department
- November 17, 2012 (Case # 12-23911). A female complainant reports that her neighbor across the street at 3110 Blakeley Ave threatened her with a knife because she was playing her music too loud. The complainant actually called in the complaint the following day because she was intoxicated. All parties were warned to avoid one another.
- February 17, 2013 (Case # 13-2996). Matthew Zank files a report for loud music coming from Apartment 8 at 3110 Blakeley Ave. The investigating officer could not hear music, and contacted Zank. Zank stated that the residents in apartment 8 were, “Illegals” and that he was going to get them all deported. The residents in apartment 8 were contacted despite no detectable cause for the complaint. The residents reported that Zank is constantly complaining of loud noise without cause.



- March 2, 2013 (Case #13-3853). Matthew Zank files a report for loud music coming from Apartment 9 at 3110 Blakeley Ave and adds that police better hurry in their response or he would take the law into his own hands. Zank further expressed his dislike of the residents in apartment 9 because they are “Illegals”. Zank told the investigating officer that the subjects were playing their music too loud and are “Illegal Mexican aliens”. Zank would not elaborate what he meant by taking the law into his own hands but was warned not to do so.
- February 22, 2014 (No case # assigned). Matthew Zank is stopped for a vehicle registration issue and given a documented warning.
- May 24, 2015 (Case # 15-9578). Matthew Zank calls the Communication Center reporting he has locked himself in handcuffs and shackles and couldn’t get the handcuffs unlocked. Officers released Zank from the shackles which Zank claims he ordered from Galls because he collects police equipment. Officers found Zank’s apartment deplorable and potentially uninhabitable. The report was forwarded to the Department of Human Services and the Health Department.
- July 16, 2015 (Case # 15-14020). Matthew Zank reports finding two kittens in a dumpster, one deceased. Animal control handled the investigation. Five days after the initial report, an anon complainant called requesting information about which investigator was following up with the “sicko” that left the kittens in the trash. Phone contact was made with Zank who stated he had PTSD from seeing the dead cat and believed the suspect may start killing people.
- September 15, 2015 (Case # 15-18999) Matthew Zank’s Brother Timothy died of what was determined to be natural causes. Matthew has no involvement in the investigation other than being contacted by our agency and notified of Timothy Zank’s death (Case # 15-19004).
- September 24, 2015 (Case # 15-19760). Family of Matthew Zank call concerned for Matthew’s welfare as he did not show up at his Brother Timothy’s funeral. Officers checked Matthew’s residence 3110 Blakeley Ave #4 finding no one home. Neighbors indicate Matthew left in his car. He was seen with a large bloody bandage around his head. It was determined later that Zank had checked himself in at Sacred Heart Hospital, but SHH could provide no other information than Matthew was in a safe place.
- November 22, 2015 (Case # 15-24510). Matthew Zank’s vehicle is called by Sacred Heart Hospital security staff for a 48 hour parking violation. The vehicle remains there until it is towed 11-24-2016 by Adam’s towing.

- January 12, 2017 (Case # 17-878). Matthew Zank is in Room 627 at Sacred Heart Hospital threatening nursing staff. Hospital staff advises the investigating officer that Zank was transferred to SHH from the Clark County Jail after he was observed banging his head into the walls, allegedly trying to kill himself, while in their custody. Zank ultimately knocked himself out.

Zank was initially incarcerated at the Clark County Jail for assault of a Clark County Rehabilitation and Living Center staff member in which he had placed the female staff member in a “headlock” and punched her 10-12 times. He then stated to staff members they were lucky he didn’t kill her.

On this occasion at SHH, Northwest Connections was notified and arrangements for follow through with Zank were discussed.

- January 13, 2017 (Case # 17-898). Matthew Zank continues to make suicidal statement to Northwest Connections staff while he is at Sacred Heart Hospital, advising that when he is released he will jump off a bridge or off of the civic center parking ramp. He claims he will do this because he has nowhere to go and he is homeless. Zank is held at Sacred Heart Hospital on a Chapter 51.

## **Policy/Procedures**

### **409.1 Purpose and Scope**

This policy provides guidelines for when officers assist in the placement of a person under Emergency Detention (Wis. Statutes 51.15)

### **409.3 Authority**

An officer may initiate an emergency detention when the officer has reasonable cause to believe that a person is mentally ill, drug dependent or developmentally disabled and such person presents a substantial probability of physical harm to him/herself or others as evidenced by recent overt acts or omissions, attempts or threats. The person shall be transported to an approved detention facility, but only when taking the person into custody is the least restrictive alternative appropriate to the person's needs (Wis. Stat. § 51.15).

## **Findings**

In the matters investigated by the Eau Claire Police Department, Officers indicate that Matthew Zank appears to be suffering from mental illness, but until the January 2017, doesn’t present a substantial probability of physical harm to himself or others. Officers investigating those matters

took the appropriate action in each investigation and exercised reasonable discretion appropriately.

On May 24, 2015 Officer Noland investigates a call where Zank had handcuffed himself. Based on Officer Noland's observations, he recommends the report be forwarded to the Eau Claire County Department of Human Services to review Zank's disposition. Eau Claire Police Department Sergeant Randall Fahrenkrog forwards the matter to the Eau Claire County Department of Human Services for follow-up services.

On January 12, 2017 Sacred Heart Hospital staff initiated a mental health evaluation and contacted Northwest Connections to complete and assessment of Zank. Zank makes comments that if he is released he will go to a bridge and jump off of it or go to the Civic Center parking ramp and jump to kill himself.

Eau Claire Police Department Officer Taylor Comeau was assigned to investigate and meets at Sacred Heart Hospital with Northwest Connections. He also meets with Matthew Zank who again states his suicidal intentions. The appropriate decision is made to hold Matthew Zank in custody of Sacred Heart Hospital on a Chapter 51.15 commitment. Matthew Zank clearly represented a substantial probability of harm to himself based on his statements.

## **Weapon-Man with a Gun** ***Eau Claire Police Department Case #17-1951*** **Dispatch to Scottish Inns and Suites**

### **Facts**

Several officers were interviewed by La Crosse Police Investigators Captain Shawn Kudron, Sergeant Mike Blokhuis and Detective Tom Hansen regarding their actions during this incident. Several witnesses were also interviewed. In the following paragraphs, many of the quotes attributed to the respective officers were derived from those reports.

The officers interviewed by La Crosse Police are as follows: Officer O'Neill, Sergeant Slaggie, Sergeant Axness, Officer Zurbuchen, Officer Nelson, Officer Zwiefelhofer, Officer McIlhargey, Sergeant Adam Taylor and TC Rick Jungerberg. 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 02/01/2017, at approximately 1024 hours, Sergeant Blokhuis and Captain Kudron interviewed Eau Claire Communications Center TC Rick C. Jungerberg at the Eau Claire Police Department. Jungerberg was working in the Communications Center on 01/28/2017, and was the 911 call taker for the officer-involved shooting incident.

### **Rick Jungerberg Activity**

TC Rick Jungerberg explained within the Communications Center there are five different positions, one being the 911 call taker and the others being dispatchers for the various emergency services within Eau Claire County. TC Jungerberg indicated on this specific date, 01/28/2017, he was assigned as the 911 call taker. TC Jungerberg indicated as part of his responsibilities as the 911 call taker, he speaks to people who call 911 and he also inputs data into the CAD system as he is speaking to individuals on the 911 call line. TC Jungerberg also indicated that there would be a separate dispatcher that would be actually dispatching calls to officers and speaking to officers on the radio.

On 01/28/2017, when the 911 call came in for this incident TC Jungerberg indicated that the 911 display showed the Highlander Inn. TC Jungerberg indicated that he lives in the vicinity and he knew that the hotel was actually now called the Scottish Inns and Suites. TC Jungerberg indicated that the 911 caller stated that there was a guy outside the hotel pointing a gun at people and cars. TC Jungerberg indicated that when he asked where the individual was, the caller stated he was outside. TC Jungerberg indicated he asked the caller what side of the building the person was on and the caller stated, "What do you mean what side of the building?" TC Jungerberg indicated that the caller finally understood and stated that the person was in between the hotel and the Kwik Trip across the street.

TC Jungerberg indicated that he tried to obtain additional information from the caller and each time he asked a question the caller would just repeat the same information over again. TC Jungerberg also stated that the caller said to him that, "You need to get someone over here." TC Jungerberg indicated that he asked the caller for a description of the person and the caller said that the person had a tan jacket, blue jeans, and that he had a gun. TC Jungerberg advised that the caller kept stating that he had to go and Jungerberg advised that he was trying to keep the caller on the line until officers could arrive. Jungerberg indicated that he tried to keep the caller on the line for as long as he could, but finally the caller said, "No, I've gotta go," and hung up.

As the single tone was broadcast and TC Mary Kruschke advised of the man with a gun details, Sergeant Axness is asked if he can respond and Officer Zwiefelhofer is assigned to respond. Officer McIlhargey volunteers to assist. Officer Nelson advises he can respond and Sergeant Axness confirms his response.

Officers O'Neill, Zurbuchen, Porn and Sergeant Slaggie were investigating a family disturbance on Fifth Ave. As the single tone was broadcast and TC Mary Kruschke assigned the initial units, Sergeant Slaggie informed the Communication Center that he, Officer O'Neill and Officer Zurbuchen will respond from Fifth Ave.

### **Officer Kristopher O'Neill Response**

At the start of his shift of January 28, 2017 Officer O'Neill was assigned to assist Officers at a family trouble call at 324 Fifth Ave. During that investigation, a single tone emergency alert was broadcast via the police radio, indicating a serious incident in progress. Officer O'Neill heard

dispatch advise there was a report of a man with a gun, pointing the gun at people and cars in the area of 1135 W. MacArthur Ave. Officer O'Neill conferred with Sergeant Slaggie and Officer Zurbuchen and they chose to clear the current call and respond to the new call based on the potential risk to citizens in that area.

Officer O'Neill advised dispatch he would be responding to the man with a gun call. Officer O'Neill turns his squad around from his parked position on 300 Fifth Ave and upon reaching the intersection of Fifth Ave at Water St activated his emergency lights and siren. He drove west on Water St to Menomonie St, turned south onto W. Clairemont Ave to Craig Rd. Officer O'Neill turned south on Craig Rd.

While traveling southbound on Craig Rd, Officer O'Neill turns off his siren but leaves the emergency lights on. He activated the squad's long gun release and removed the squad rifle from the locked mechanism and charged the rifle. This involves pulling the charging handle to the back of the rifle and letting it ram forward. This has now loaded a .223 round in the chamber and the rifle is "call ready."

Officer O'Neill turned from Craig Rd eastbound onto W. MacArthur and advised to dispatch he is on scene. Seeing no one matching the description he has been given, Officer O'Neill continued driving in front of the Scottish Inns and Suites. Officer O'Neill entered the second, eastern most driveway to the front of Scottish Inns and Suites. Officer O'Neill's emergency lights were still operating. Officer O'Neill observed a man matching the broadcasted physical description. Officer O'Neill exited his squad car with his squad rifle.

### **Sergeant William Slaggie Response**

Sergeant Slaggie indicated the first significant call for service on this date occurred at approximately 0715 hours. Officer Porn took a report of a domestic dispute on Fifth Avenue. Officers O'Neill, Zurbuchen, and Porn along with Sergeant Slaggie were preparing to enter a residence on Fifth Avenue when a single tone emergency alert was broadcast indicating a man with a gun in the area of the Scottish Inns and Suites parking lot. Sergeant Slaggie stated that Officer Porn remained on Fifth Avenue to complete the domestic disturbance while Officers O'Neill, Zurbuchen and himself responded to the Scottish Inns and Suites. Sergeant Slaggie advised Officer O'Neill was leading, then Officer Zurbuchen, and then himself. Sergeant Slaggie stated that Officer O'Neill was far enough ahead of him that he was not able to see Officer O'Neill turn on to W. MacArthur Avenue. Sergeant Slaggie stated at that point he did not really know Officer O'Neill's exact location. Sergeant Slaggie stated he was fairly close to Officer Zurbuchen at which point he heard via radio that Officer Zurbuchen observed people smoking.

Sergeant Slaggie stated the information known to responding officers was there was a man with a gun threatening people in the parking lot of the Scottish Inns and Suites. Sergeant Slaggie believed the broadcast identified the suspect as a white male. Sergeant Slaggie did not recall the

suspect's clothing description or if there was a known complainant. Sergeant Slaggie heard the Communication Center say the caller was uncooperative and something about "meth". Sergeant Slaggie attempted to clarify over the radio if they stated, "meth". He was then informed that there were mental health issues. The main point that Sergeant Slaggie kept in his mind was that there was a report of a man with a gun in the parking lot and there was limited information on specifics.

Sergeant Slaggie did not remember the exact point he turned off his emergency lights but he was still right behind Officer Zurbuchen. As they were approached the Scottish Inns and Suites, Sergeant Slaggie heard Officer Zurbuchen state over the radio state he observed two people. Sergeant Slaggie understood this meant the west end since he was right behind him. Sergeant Slaggie parked directly behind Officer Zurbuchen using the west driveway. Sergeant Slaggie believed he was out of the roadway, but was probably blocking the sidewalk. Sergeant Slaggie then exited his patrol vehicle with his squad rifle. Sergeant Slaggie could not recall exactly how far he walked towards the west end but he was able to see one of the people described by Officer Zurbuchen. In the process of walking to the south west end he heard gun shots.

### **Officer Daniel McIlhargey Response**

Officer McIlhargey stated dispatch sent out a single tone, which normally signifies an armed robbery or other type of high risk incident. Additional information was broadcast that there was a man with a gun in the parking lot of the Scottish Inns and Suites. Officer McIlhargey stated at the time there were only eight patrol officers working and all but two were on other calls. At the time of the call only Officer McIlhargey (North District) and Officer Zwiefelhofer (West District) were available. There is a current policy that officers are not to self-dispatch and they are instructed to allow dispatch to determine responding personnel. For this specific call Officer Zwiefelhofer was initially dispatched, but Sergeant Slaggie or Sergeant Axness provided information they were also responding. Officer McIlhargey waited a few moments to see if dispatch was going to send anyone else before advising he would respond. Shortly after Officer McIlhargey stated he was responding several other officers also advised they would be clearing their current call and responding.

Officer McIlhargey advised there was limited information available and someone asked for more specifics. Dispatch advised difficulties obtaining additional information. When the initial call came out Officer McIlhargey was traveling on Galloway Street in the North District. Officer McIlhargey used Hastings Way to Clairemont Ave to Stein Blvd to W. MacArthur Avenue. Using this route brought him to the scene from the east.

Officer McIlhargey was still on Clairemont Ave when radio traffic was received from Officer Zurbuchen that he and Sergeant Slaggie were on scene and observed two people smoking. Officer McIlhargey did not recall if he heard if Officer O'Neill advised he was on scene, but did hear Officer O'Neill (W808) say shots fired. This occurred when Officer McIlhargey was still

driving on Clairemont Street. Dispatch responded by stating they would send an ambulance. The next transmission Officer McIlhargey heard was from Officer O'Neill and it was something to the effect of "suspect is down". Officer McIlhargey believed he was driving south on Stein Blvd at this time.

### **Officer Arthur Nelson Response**

Officer Nelson was assisting Officer Glennon on a traffic stop. When the call came out Officer Glennon told Officer Nelson to clear if he needed to. Officer Nelson was dispatched to the man with a gun call. Officer Nelson heard via radio that Officer O'Neill, Officer Zurbuchen, and Sergeant Slaggie were also headed to the call. Officer Nelson had knowledge that they were somewhere near Water Street and were much closer than he was. Officer Nelson asked Sergeant Slaggie if he wanted him to continue since they were closer. Sergeant Slaggie requested he continue to the Scottish Inns and Suites.

Officer Nelson stated he started near Main Street and Margaret Street, headed out to Hwy 53 and was almost out to Highland Ave when he had this conversation with Sergeant Slaggie. Officer Nelson indicated he was operating in emergency mode and was not able to hear if there were any other radio transmissions noting the other officers were on scene. The next radio transmission he heard was shots were fired. Officer Nelson was near East Clairemont Ave at Rudolph Rd when he heard this transmission.

### **Sergeant Gary Axness Response**

On 01/28/2017 Sergeant Axness was working the 0515 hours to 1500 hours shift. Sergeant Axness was at the Law Enforcement Center when he heard a single alert tone from the Communication Center. The broadcast following the tone advised there was a man with a gun in the Scottish Inns and Suites parking lot, pointing a gun at people and cars as they passed by. A description of the suspect was provided.

Sergeant Axness knew a number of officers were busy, so he left his office in the Law Enforcement Center and started to look for a squad to use. While outside, the Communication Center specifically called him on the radio, asking him to respond to the call. Sergeant Axness responded to the call in emergency mode, emergency lights and siren.

When he came near the Scottish Inns and Suites, he shut down his siren so he would not alert the suspect and when he became even closer, he turned off his red and blue lights. Sergeant Axness slowed his speed down even more due to the Communication Center advising the caller was being uncooperative and wanted to hang up with the telecommunicator. He also heard other officers coming into the area of the Scottish Inns and Suites.

Sergeant Axness advised when he was approximately 2 blocks away, he heard Officer O'Neill state on the radio that shots had been fired. When he arrived on scene at the Scottish Inns and Suites, he pulled his squad car directly into the parking lot, east of the hotel.

### **Officer Jesse Zurbuchen Response**

Officer Zurbuchen stated at the time of the initial dispatch to 1135 W. MacArthur Avenue he was assisting with a domestic dispute at an address on Fifth Avenue. Also at this incident were Officer O'Neill and Sergeant Slaggie. Officer Zurbuchen explained that an anonymous call was received about a man with a gun around at the Scottish Inns and Suites. Officer Zurbuchen along with Officer O'Neill and Sergeant Slaggie cleared from the domestic call and responded to the Scottish Inns and Suites driving in emergency mode. Officer Zurbuchen stated that Officer O'Neill arrived at the Scottish Inns and Suites first, he was second, and Sergeant Slaggie was third. Officer Zurbuchen noted they arrived at the same approximate time.

Officer Zurbuchen was asked if any further details were provided prior to his arrival about where the man with a gun was or what he was wearing. Officer Zurbuchen stated the information was limited and that it was just a man with a gun waving it around in the parking lot. Officer Zurbuchen also recalled a general clothing description was provided of tan pants with a blue coat. Officer Zurbuchen advised he would have to review his notes to provide the exact information given at the time. Officer Zurbuchen described the initial information as vague. Officer Zurbuchen confirmed that the address of the Scottish Inns and Suites, more specifically the parking lot was provided by the Communication Center, but that was all the information provided.

Officer Zurbuchen stated the identity of the caller was not known and the race of the suspect was not provided. Officer Zurbuchen was asked to describe the route he used to respond to the Scottish Inns and Suites. Officer Zurbuchen stated they all responded from the Fifth Avenue area using Craig Road before turning on MacArthur Avenue. It should be noted Craig Road runs north and south, which is located immediately west of the Scottish Inns and Suites. After turning left or east on MacArthur Avenue, Officer Zurbuchen stated he observed Officer O'Neill entering a driveway to the Scottish Inns and Suites on the east end. Officer Zurbuchen then enters the closer driveway located on the west end of the Scottish Inns and Suites. Officer Zurbuchen's attention was immediately drawn to two people smoking under an overhang located on the south west corner of the Scottish Inns and Suites, which is why he entered the west driveway. Officer Zurbuchen later described these people as a male/white with a heavy set and a female/white with a thin build. Officer Zurbuchen did not know if they were staying there. Officer Zurbuchen advised he provided this information via radio and observed Sergeant Slaggie enter the driveway immediately behind him. Officer Zurbuchen stated that a very short time after advising that they had arrived and that he observed the people smoking; he heard what he believed to be 3 gun shots from the direction of the other side of the hotel (east end). Officer Zurbuchen clarified that he parked near the northwest corner of the hotel and observed the



people smoking at the south west corner of the hotel. Upon exiting his patrol vehicle to further investigate he heard the gun shots.

### **Officer Susan Zwiefelhofer Response**

Officer Zwiefelhofer advised the initial information she received was a man with a gun at the Scottish Inns and Suites. The suspect was pointing a gun at people and cars that were driving by. Officer Zwiefelhofer also stated dispatch provided the suspect description as a male/white with blue pants and a tan shirt or jacket. Officer Zwiefelhofer stated she attempted to clarify if the suspect was in a vehicle or on foot. Dispatch responded stating they were still getting information. Officer Zwiefelhofer advised her computer “crashed” a short time later and she was not able to see any other information being provided.

Officer Zwiefelhofer advised she was near the Law Enforcement Center when the call came out because she had just started her shift. Officer Zwiefelhofer advised the route used to respond was Fifth Avenue to Menomonie Street to Clairemont Ave to Craig Road, and finally turned east on W. MacArthur Avenue. Officer Zwiefelhofer heard via radio from Officers when she was still on Clairemont Ave that shots had been fired. Officer Zwiefelhofer advised there was not too much more information that came over the radio and she did not have a computer. While approaching on Craig Road, Officer Zwiefelhofer asked via radio where more help was needed. Officer Zwiefelhofer was directed to the west end of the parking lot to block the driveway. Officer Zwiefelhofer stated after blocking the west driveway she approached the east end of the hotel by staying close to the walls of the hotel.

### **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).

#### **308.3 RESPONSIBILITIES OF THE RESPONDING OFFICER**

Officers shall exercise sound judgment and care with due regard for life and property when responding to an emergency call. Officers shall reduce speed at all street intersections to such a degree that they shall have complete control of the vehicle.

During a call involving an emergency response, after giving a visual and audible siren or exhaust whistle, officers may (Wis. Stat. § 346.03):

- a. Disregard regulations governing stopping, parking or standing when using a red or red and blue flashing, oscillating or rotating light.

- b. Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation.
- c. Exceed any speed limits provided this does not endanger life or property.
- d. Disregard regulations governing direction of movement or turning in specified directions.

The decision to continue as an emergency response is at the discretion of the officer. If, in the officer's judgment, the roadway conditions or traffic congestion does not permit such a response without unreasonable risk, the officer may elect to respond to the call without the use of red lights and siren at the legal speed limit. In such an event, the officer should immediately notify Communications Center. An officer shall also discontinue an emergency response when directed by a supervisor.

The first officer arriving at an emergency response scene should, whenever possible, determine whether to increase or reduce the level of the response and notify Communications Center of their determination. Any subsequent change in the appropriate response level should be communicated to Communications Center by the officer in charge of the scene unless a supervisor assumes this responsibility.

### **308.3.1 EMERGENCY RESPONSE SPECIAL CONDITIONS**

While performing certain emergency response tasks, the use of emergency lights or sirens may increase the danger to the responding officers or the public. In the following circumstances, officers may exceed the speed limit without giving a visual and audible signal if (Wis. Stat. § 346.03(4)):

- a. The officer is obtaining evidence of a speed violation.
- b. The officer is responding to a call which the officer reasonably believes involves a felony in progress and the officer reasonably believes that knowledge of the officer's presence may:
  - 1. Endanger the safety of a victim or other person, or
  - 2. Cause the suspected violator to evade apprehension, or
  - 3. Cause the suspected violator to destroy evidence of a suspected felony or may otherwise result in the loss of evidence of a suspected felony, or
  - 4. Cause the suspected violator to cease the commission of a suspected felony before the officer obtains sufficient evidence to establish grounds for arrest.

Any emergency response without the use of emergency lights and siren shall be conducted with due regard for the safety of the public and property and the recognition that such a response may not provide an exemption from the vehicle laws (Wis. Stat. § 346.03(5)).

Any emergency response without the use of lights or siren shall cease if the circumstances no longer warrant such a response.

#### **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**

Sergeant Slaggie, Sergeant Axness, Officer O'Neill, Officer Zurbuchen, Officer Nelson, Officer Zwiefelhofer and Officer McIlhargey are either assigned to respond following the initial dispatch or volunteered to proceed to the Scottish Inns and Suites. Videos of each officer responding were viewed from the start of the camera activation until each arrived on scene.

Sergeant Axness, Sergeant Slaggie, and Officers Zwiefelhofer, McIlhargey, Zurbuchen, Nelson and O'Neill all responded in emergency mode. They responded immediately upon receiving the call, utilizing emergency lighting and siren as it appeared reasonably necessary in each

individual circumstance. Officers utilized sound driving techniques, operated with due regard. All officer videos are copied and included in their electronic format with this report.

## *Contact at Scottish Inns and Suites*

### **Facts**

At 0716 hours TC Jungerberg received a call from a man indicating he was witnessing a man with a gun in the parking lot of the Scottish Inns and Suites. The caller indicated he was calling from Room #202 of the Scottish Inns and Suites. The caller describes the man as wearing “blue pants and a light tan jacket.” The caller states the subject is pointing the gun at vehicles and at people, saying he sees it from his (motel) window.

The caller indicates his name is Matthew Zank and continues to ask TC Jungerberg, “What are you going to do about it?” The caller repeatedly says he wants to terminate the call but TC Jungerberg is able to keep the caller on the phone for over 5 ½ minutes until the caller hangs up.

As TC Jungerberg is receiving the information from the caller, TC Mary Kruschke is broadcasting the details to responding officers. Starting with the single tone and “man with a gun”, officers begin to respond. As the initial seven officers respond, they are given updates that include;

- Suspect description and clothing
- Suspect is walking around in the parking lot
- Suspect has a firearm and is pointing it at cars and people
- Caller seems to be uncooperative and possibly has mental health issues.

Officer O’Neill was first to arrive on scene. He had driven to the scene in emergency mode from Fifth Ave. On Craig Rd at Clairemont Ave Officer O’Neill turned off his siren and left his emergency lights on. He removed his squad rifle from its mount and made the rifle “call ready”, cycling the chamber so the rifle now had a round in the chamber. He continued south on Craig Rd, then drove east on W. MacArthur Ave until he reached the east driveway to the parking lot.

Officer O’Neill pulled into the east parking lot entrance, pointing his vehicle to the south. When he entered into the second entranceway, Officer O’Neill immediately recognized or identified the possible suspect in the matter. He observed the suspect come from behind a white box truck, near the building and started walking towards him, with his hands at his sides and a black handgun in his right hand. Officer O’Neill obtained his long gun, and stepped out of his vehicle.

Officer O’Neill stepped out of the vehicle, placing himself behind or beside the driver side door (he could not remember) and re-observed the suspect who at this time was pointing a handgun at him continuing to walk towards him.

Officer O'Neill pointed his long gun at the suspect, giving the suspect several commands to "drop the gun" as the suspect continued to walk towards him.

Officer O'Neill fired his squad rifle at the suspect until the suspect stopped. Officer O'Neill could not definitively state how many times he fired. Officer O'Neill estimated he discharged the squad rifle approximately three times.

After Officer O'Neill fired the rounds at the suspect, the suspect fell in a backward motion. The suspect's knees buckled, falling to his buttocks, then to his back, lying on his back, his arms and hands to his side. The gun fell from the suspect's hand, lying in front of the suspect, near his feet. Officer O'Neill used his portable radio and radioed to dispatch two different times that shots had been fired.

Officer O'Neill approached the suspect due to the gun lying near the suspect's feet. Officer O'Neill did not want the suspect to get back up and reach for the gun. When he neared the gun, Officer O'Neill kicked the suspect's gun away from the suspect's feet, kicking the gun back towards his squad car. Officer O'Neill covered the suspect with his long gun until Sergeant Slaggie and Officer Zurbuchen came to him. Officer O'Neill could not remember what was said, but remembers walking away from the suspect with Sergeant Slaggie. They walked back to his squad car.

Officer O'Neill's audio/video was running throughout the entire incident, capturing all of his verbal commands to the suspect. The suspect is not visible on Officer O'Neill's video during the force confrontation. In review of Officer O'Neill's audio/video, Officer O'Neill enters the east end of the Scottish Inns and Suites parking lot and the suspect appeared to his right, to the west and somewhat south of his squad car. Officer O'Neill exits his squad car and gives his first loud, verbal command, "Drop the gun!" Over the next 14 seconds, Officer O'Neill gives six additional loud, clear commands, "Drop the gun; drop it now; put it down; put the gun down; drop it; drop the gun!" Four distinct shots are heard following Officer O'Neill's last command to drop the gun, and Officer O'Neill's camera shakes a bit as each round is fired.

Officer O'Neill indicated in his interview that the suspect yelled to Officer O'Neill, "No I will not" in response to Officer O'Neill's commands. Officer O'Neill also stated that the subject, "Was intent on killing me, he never stopped walking towards me."

A further examination of the suspect's handgun revealed that it was a Daisy brand air powered Airgun. The handgun was all black and it was not discernable from a large caliber handgun.

## **Policy/Procedure**

### **300.3.1 USE OF FORCE TO AFFECT 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, skill 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.

#### **416.6 DEPLOYMENT OF THE PATROL RIFLE**

Officers may deploy the patrol rifle in any circumstance where the officer can articulate a reasonable expectation that the rifle may be needed. Examples of some general guidelines for deploying the patrol rifle may include, but are not limited to:

1. Situations where the officer reasonably anticipates an armed encounter.
2. When an officer is faced with a situation that may require the delivery of accurate and effective fire at long range.
3. Situations where an officer reasonably expects the need to meet or exceed a suspect's firepower.
4. When an officer reasonably believes that there may be a need to deliver fire on a barricaded suspect or a suspect with a hostage.
5. When an officer reasonably believes that a suspect may be wearing body armor.
6. When authorized or requested by a supervisor.

## **Findings**

Officer O'Neill was the first and only officer that confronted Mathew Zank. Officer O'Neill entered the Scottish Inns and Suites parking lot and observed a subject as had been described through broadcasts made to responding officers. Officer O'Neill had readied his squad rifle based on the information provided and upon driving into the parking lot, recognized the man suspect and observed he was armed with a handgun.

Officer O'Neill gave seven loud and clear commands for Zank to drop the gun. Zank did not comply, and in fact replied, "No I will not." Zank continued walking towards Officer O'Neill with a handgun pointed at Officer O'Neill.

No other Eau Claire Police Officers witnessed Zank's actions or Officer O'Neill's actions.

Follow up investigation reveals that the gun that Zank pointed at Officer O'Neill was a .177 caliber air-powered handgun. Officer O'Neill's actions were compliant with department policy, DAAT guidelines, and appropriate according to deadly force criteria. The handgun is not discernable from a large caliber handgun from just inches away, let alone 50-75 feet. A photograph of Zank's handgun is contained below in Figure 1.



Figure 1.

Matthew Zank called the Communication Center clearly reporting himself as a high-risk situation, stating that officers would find a man with a handgun pointing it at cars and people. Zank walked to the parking lot with the handgun he purchased three days prior. As Officer O'Neill entered the parking lot where Zank was standing, Zank walked towards Officer O'Neill with the handgun raised and pointed at Officer O'Neill. Zank refused to comply with commands to drop the gun.



Upon searching Zank's wallet, a handwritten note was located. The note appears to be written by Zank and is an apology to an officer for his actions which would force the officer to shoot Zank. The outcome of the events on January 28, 2017 was clearly Matthew Zank's intended outcome.

Four witnesses to the shooting were ultimately identified. Each provided specific details about their observations. All witnesses were in the Kwik Trip parking lot at 1130 W. MacArthur Ave, north and across the street from the Scottish Inns and Suites and Suites parking lot. The witnesses are [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. All of these witnesses perceived Zank's handgun as being a large caliber style handgun.

### [REDACTED] Observations

[REDACTED] indicated that she was at [REDACTED] house and [REDACTED] mother was going to drive them to a basketball tournament. [REDACTED] indicated that they left [REDACTED] house and went to Starbucks to get breakfast and from there they went to the Kwik Trip gas station to put gas in the van. [REDACTED] indicated the Kwik Trip gas station was across the street from the hotel.

[REDACTED] indicated that she saw two police vehicles driving toward the hotel. [REDACTED] indicated that she told [REDACTED] what she saw and then she saw the suspect who had a gun in his hand. The investigation determined this person was Zank. [REDACTED] indicated she then saw a police officer from one of the cars that had driven up get out of his car and shoot at Zank. The investigation determined this was Officer O'Neill. [REDACTED] indicated she did not know how many times Officer O'Neill shot, but thought it was possibly four or five times. She then saw more police vehicles arrive.

[REDACTED] indicated that they were at the Kwik Trip to get gas and that the vehicle she was in was parked facing toward the hotel parking lot and was in the middle area of the gas station. [REDACTED] indicated that she was sitting inside the van in the second row of seats behind the front passenger seat. [REDACTED] indicated that she was observing what was occurring in the hotel parking lot by looking through the windshield. [REDACTED] indicated that she saw Zank with the gun in his hand pointing it at Officer O'Neill. [REDACTED] indicated that she saw Zank had his arm up and saw that he had a gun in his hand. It was then she heard shots fired and saw the man fall.

[REDACTED] was asked to demonstrate what she meant by the Zank having his hand up with the gun in his hand. [REDACTED] demonstrated by lifting her right hand and pointing her hand out as if she was holding a gun. [REDACTED] stated Zank was holding his gun up toward Officer O'Neill's police vehicle. [REDACTED] stated Zank was pointing the gun at Officer O'Neill. Again, when questioned [REDACTED] thought she heard four or five shots fired.

When asked what she observed next, [REDACTED] indicated that she saw Officer O'Neill walk toward Zank really slow and then she observed officers running over to the area and then more police cars began to arrive. [REDACTED] indicated they were sitting in the parking lot for a few

minutes and they observed four or five more police cars arrive and then a fire truck and an ambulance. [REDACTED] indicated that eventually they left the area.

### **[REDACTED] [REDACTED] Observations**

[REDACTED] advised on the morning of 01/28/2017 at approximately 7:00 a.m., she was in a vehicle with her mother [REDACTED], who was driving their vehicle (mini-van) and her friend [REDACTED] J. [REDACTED] [REDACTED] dob: [REDACTED]. [REDACTED] advised they were heading to a basketball tournament in Hudson and had to stop for gas at the Kwik Trip, 1130 West MacArthur Avenue.

[REDACTED] advised her mother pulled the vehicle into the Kwik Trip and parked pointing towards the hotel. [REDACTED] advised she was seated behind the driver seat, [REDACTED] was seated in the rear passenger side and no one was seated in the front other than her mother, who was driving.

[REDACTED] stated she thought her mother got out of the van to start pumping gas, when she heard [REDACTED] say "Oh my god, oh my god" and point towards the hotel. [REDACTED] stated she looked up, around the driver seat, and observed the suspect holding and pointing a gun at a police car in the parking lot next to the hotel. [REDACTED] stated she could not see the Police officer, but the suspect was pointing a gun and walking towards the police car. The investigation determined the suspect [REDACTED] was referring to was Matthew Zank. The investigation determined the police officer [REDACTED] was referring to was Officer O'Neill.

In this recorded interview session, [REDACTED] was asked demonstrate how Zank was holding the gun. [REDACTED] held up her right hand with her arm fully extended forward. She held her hand like it was a gun. She stated it, "Kinda seemed like he was about to shoot someone."

[REDACTED] stated while Zank was pointing the gun and walking at the police car, she heard at least one gun shot. She then observed Zank lay down on his back in the parking lot.

[REDACTED] stated she could discern the Zank's clothing description because it was still dark outside and was a distance away from her. [REDACTED] stated she only remembered seeing one police car in the parking lot when she heard the gun shot.

### **[REDACTED] [REDACTED] Observations**

[REDACTED] advised on Saturday morning, 01/28/2017 at approximately 0715 hours an acquaintance named [REDACTED] and his other two sons, [REDACTED] and [REDACTED], and himself pulled into the Kwik Trip across from the Scottish Inns and Suites. They pulled into the pumps in the middle of Kwik Trip facing the Scottish Inns and Suites. About that same time, a police vehicle pulled into the Scottish Inns and Suites parking lot.

[REDACTED] advised he was in the process of getting out of the car, when [REDACTED] stated, "Dad that guy has a gun". [REDACTED] stated he stopped, closed the door and got back inside of the van. [REDACTED] saw the

suspect who was pointing a gun walking towards the police car. The investigation determined the suspect [REDACTED] [REDACTED] was referring to was Matthew Zank.

[REDACTED] saw a police officer standing behind the door of his police vehicle. The investigation determined this was Officer O'Neill. [REDACTED] was predominantly watching Zank. [REDACTED] decided he was going to move the vehicle to a safer place. When [REDACTED] started up the vehicle and was turning it around, he heard the gun shots. [REDACTED] thought three or four; however he was not sure. When [REDACTED] was turning, he saw Zank drop to the ground. [REDACTED] pulled through the Kwik Trip lot and went back to the same spot as [REDACTED] was making a circle.

[REDACTED] described Zank as wearing a dark jacket and dark hair and was holding a handgun. [REDACTED] was asked to demonstrate how the individual was holding the gun. [REDACTED] held his left arm up, extended it out and stated, "To me the individual was walking directly towards the police vehicle and it seemed like he was talking or yelling at him, holding the gun and then (he) heard the gun shots".

### [REDACTED] [REDACTED] Observations

[REDACTED] stated on Saturday morning he was with his father, [REDACTED], and two brothers in their van, when they pulled into the Kwik Trip, across from the Scottish Inns and Suites, to get gas before heading to a basketball tournament.

[REDACTED] stated he was seated in the front seat of the van, his dad was driving and his two brothers were in the rear seats of the van. [REDACTED] stated his dad parked the van, facing the Scottish Inns and Suites.

[REDACTED] stated his dad was in the process of getting out of the car, when he saw the suspect come from the stairs of the hotel. The investigation determined this was Matthew Zank. Zank was walking towards the police car with a handgun pointed at it. [REDACTED] stated he told his dad, "Dad that guy has a gun". [REDACTED] stated his dad got back in the car and started to pull away, "when I heard 3 shots" after two of them the guy was still approaching the car and the third one I saw the guy fall.

[REDACTED] was asked if he could give a description of the suspect. [REDACTED] stated he could only see the upper half, not his legs because there was a car there. [REDACTED] described Zank as wearing a hooded sweatshirt. [REDACTED] demonstrated how Zank was holding and pointing the gun, holding up his right hand, extended, in a pointing manner.

[REDACTED] stated he did not observe the Police Officer until after the man was shot. The police officer came out from the side of his squad car and walked towards the man. The investigation determined this was Officer O'Neill. [REDACTED] stated moments later a lot of police cars started coming into the area.

## Findings

Officer O'Neill gave Zank seven commands to drop his weapon. Zank refused to comply, stated he would not comply and continued advancing on Officer O'Neill with a handgun pointed at Officer O'Neill. The handgun held by Zank in this threatening manner was reasonably perceived by Officer O'Neill as a high caliber handgun. There were no other attempts to use less lethal force when Officer O'Neill fired at Zank. Officer O'Neill fired his squad rifle at Zank until he observed that Zank was no longer an imminent threat to himself or the public. Officer O'Neill made the decision to shoot Zank because of the imminent threat posed by Zank.

When Officer O'Neill first exits his squad and gives commands for Zank to drop his gun, Zank is 74.74 feet from Officer O'Neill. Zank is standing next to the motel. There are citizens walking in the same parking lot, and a crowded gas station parking lot immediately north across the street. Officer O'Neill has his squad car for concealment. When Officer O'Neill fires his weapon at Zank, Zank falls straight to the ground at a distance of 54.29 feet from Officer O'Neill. Zank walked directly towards Officer O'Neill over 20 feet with a handgun raised in a threatening manner.

Officer O'Neill'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 other persons in view of Zank. 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."

Zank never dropped the gun as ordered and continually moved towards officer O'Neill with the handgun extended outward. Zank continued to close the distance between himself and officer O'Neill who had only his squad for concealment and no reasonable options for cover. As Zank advanced with the gun on Officer O'Neill's position, Zank stated he would not comply with Officer O'Neill's commands. This series of events caused Officer O'Neill to believe Zank was an imminent threat of serious injury to himself and others in the area.

The concept of **imminence** as defined by DAAT guidelines includes the following criteria: *intent*, *weapon*, and *delivery system*. Zank did not explicitly state he intended on harming officers. However, his willful refusal to drop his gun and failure to comply as directed numerous times can reasonably be construed as **intent**. It was clear from Officer O'Neill's statements, independent witness statements, physical evidence collected, and video footage Officer O'Neill reasonably believed Zank possessed a **weapon**. Officer O'Neill quickly recognized that Zank had a handgun in his hand and gave Zank commands to drop it, which were ignored. The criterion of **delivery system** was met, as Zank was fully ambulatory and in control of his

physical faculties. He had the handgun grasped in his hand, and was pointing the gun at Officer O'Neill. Officer O'Neill believed that, based on everything he observed at that time, Zank would cause death or great bodily harm to Officer O'Neill or other innocent persons if the threat was not stopped.

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. Zank was in possession of a handgun and continued moving toward officer O'Neill. Officer attempted to verbalize with Zank seven times, telling Zank to drop the gun. Zank not only moved towards Officer O'Neill with the gun raised in a life threatening manner, Zank also told Officer O'Neill, "No, I will not" (drop the gun). Any additional attempts to use a less lethal level of force would have been unreasonable. Officer O'Neill not only wouldn't have had time to obtain and utilize a less lethal weapon (taser, pepper spray) he has been instructed for nearly twenty years that a suspect approaching with a firearm that is not compliant, refusing to obey commands, and represents a risk of great bodily harm to himself or others should be stopped by use of deadly force. Officer O'Neill was utilizing the only concealment available to him, his squad car. If he moved from that concealment, he would have been unprotected in front of a man pointing a firearm at him.

Therefore, the concept of preclusion in this case tells us that Officer O'Neill felt he was imminently threatened with deadly force, lesser uses of force were not reasonable, and to use anything less than deadly force against Zank would have been an unreasonable resolution.

Eau Claire District Attorney Gary King reviewed the investigation conducted by La Crosse Police Department and concluded that the actions of Officer O'Neill were justified under the circumstances of this incident. District Attorney King identified ten separate reasons for the justification. This document can be located in Appendix A (pages 41 - 51).

Based on the findings of this review, the officers' actions and decision making when Zank was confronted were appropriate per departmental policy.

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

### **Facts**

After Zank was shot by Officer O'Neill, Officer O'Neill immediately notified the Communication Center via portable radio of shots fired. He repeated that shots were fired after he initially received no response. He then called out, "I have one down, send an ambulance" but his transmission was covered by Sergeant Axness asking, "Where's the suspect, where's the suspect." Officer O'Neill's request for the ambulance was not heard. Officer O'Neill's attempted call for EMS came fifteen (15) seconds after his shots were fired.

Sergeant Slaggie arrived as the shots were fired and ran to the east side of the building with Officer Zurbuchen. Sergeant Slaggie announced via portable radio, "east side of the building" and requested EMS. His request for EMS was covered by other radio traffic. Sergeant Axness notified the Communication Center via squad radio that the suspect was down on the east side of the building. The Communication Center acknowledged and advised they were notifying EMS. This was twenty six (26) seconds after the first call of shots fired.

Sergeant Axness' squad video captured Officer O'Neill as Officer O'Neill approached Zank. Officer O'Neill is seen sliding an object away from Zank who was on his back on the ground. Officer O'Neill maintained a position of cover on Zank as Sergeant Axness approached. Sergeant Axness briefly looked at Zank and returned to his squad for combat gauze (clotting material) seeing that Zank's injuries appeared life-threatening. The item slid away from Zank by Officer O'Neill is recognized by assisting officers as a handgun and requests are made by officers to cover the handgun to maintain its integrity. The handgun is covered with a recycling bin and remained in that position until later photographed and collected as evidence.

Sergeant Slaggie and Officer Zurbuchen then searched Zank for additional weapons. Sergeant Slaggie lifted Zank's shirt and observed what appeared to be a bullet hole in Zank's upper right chest near his nipple. Sergeant Axness returned to Zank from his squad with medical equipment and began CPR chest compressions. This is two minutes and 18 seconds (2:18) after the first call of shots fired. Sergeant Axness continued doing CPR chest compressions on Zank for nearly four minutes until EMS personnel took over.

One minute and forty five seconds (1:45) after the initial call of shots fired, the Communication Center advised that Eau Claire Fire Department ambulance personnel needed confirmation the scene was safe to enter. EMS was given instructions by Sergeant Slaggie to enter immediately upon arrival using the entrance across from Kwik Trip Gas Station. EMS personnel arrive five minutes after the initial request.

Within three minutes of the incident, Sergeant Slaggie recognized that he and Sergeant Axness were both involved in various duties and requested detectives be notified of the incident immediately to assist in scene management and supervision.

Approximately two minutes and thirty six seconds (2:36) after the first call of shots fired, Sergeant Slaggie escorted Officer O'Neill away from Zank. Sergeant Slaggie spoke with Officer O'Neill and asked him several times if he was alright. Sergeant Slaggie then collected Officer O'Neill's squad rifle that was just fired. Sergeant Slaggie removed the magazine from the rifle and ejected the live round from the chamber. He placed the rifle, magazine and unfired .223 round in a position where he could maintain eye contact with it, placing it behind the rear passenger side tire of Officer O'Neill's squad car, #41.

Officer Zurbuchen collected a zipper style wallet that had been found by Sergeant Slaggie on Zank's person. Officer Zurbuchen would later turn the wallet over to Sergeant Slaggie, who placed the wallet with the rifle, magazine and unfired .223 caliber cartridge next to squad #41.

As the scene is initially secured and officers are attempting lifesaving efforts on Zank, Officer Nelson gained the assistance of an assisting WSP trooper and they located Room #202. They learned that this room was rented by Zank and that he is the person that was just shot. Officer Nelson, a deputy from the ECSO and the WSP trooper entered Room #202 using a key card they obtained from the hotel manager. The room was checked to make sure there were no persons in need of assistance. The room was found unoccupied. It was cleared and secured for evidentiary purposes. Officer Nelson then assisted in roping off the entire scene with "crime scene – do not cross" tape.

Deputy Chief Matt Rokus was called and a message was left for him to call regarding this incident. Deputy Chief Chad Hoyord was notified of the incident by Sergeant Axness. Deputy Chief Hoyord notified Chief Jerry Staniszewski of the incident by phone. Chief Staniszewski contacted La Crosse Police Chief Ron Tischer and formally requested that the La Crosse Police Department complete the officer-involved shooting investigation. Captain Kudron, Sergeant Blokhuis and Detective Hanson were assigned by Chief Tischer to investigate the shooting.

Sergeant Slaggie maintained visible custody of the squad rifle, magazine and unfired .223 caliber cartridge and wallet until he appointed Officer Zwiefelhofer to take over. Sergeant Slaggie returned to the items and Officer Zwiefelhofer was directed to assist with scene security. The evidence was then secured by Sergeant Slaggie in squad 70 and Sergeant Slaggie stayed with the items. At 0948 hours, Sergeant Taylor arrived and relieved Sergeant Slaggie of scene command. Sergeant Taylor took over chain of custody of the squad rifle, magazine, unfired .223 round and the wallet. These items were ultimately collected as evidence under the direction of La Crosse PD.

Off-duty Sergeant Quella arrived on scene approximately five (5) minutes after the first call of shots fired. Sergeant Axness assigned Sergeant Quella to stay with Officer O'Neill. Officer O'Neill was driven to the Police Department and met up with Officers Jentsch and Anderson. Sergeant Quella remained with Officer O'Neill until relieved, then returned to the scene and was appointed CSU Supervisor. Deputy Chief Hoyord arrived at the scene and appointed Sergeant Slaggie as Scene Supervisor. Deputy Chief Hoyord then assumed overall Incident Command and drove to the Eau Claire Police Department.

Deputy Chief Hoyord met with Officer O'Neill at the Police Department and explained what the process would entail. Lieutenant [REDACTED] Dahlgren was assigned to take Officer O'Neill to Mayo Hospital for a legal blood draw. The legal blood draw was witnessed by Lieutenant Dahlgren and Officer O'Neill's WPPA representative Mike Backus. The blood sample was tagged and secured.

The scene integrity officer assigned to document all personnel entering and exiting the scene at 1135 W. MacArthur Ave was initially Officer McIlhargey. Officer McIlhargey was then reassigned to work with the Crime Scene Unit under the direction of La Crosse Police Department. Officer Gullickson took over scene personnel documentation until the scene was released.

Additional assignments included Eau Claire Police Department Detective Justin Greuel taking photographs of Officer O'Neill in full uniform; Eau Claire Police Department Detective Lambeseder to collect Officer O'Neill's uniform and then work with other members of the Crime Scene Unit under the direction of La Crosse Police Department.

Based on the nature of this incident and Matthew Zank's death there was no Eau Claire Police Department criminal investigation into a suspect's actions.

## **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 Eau Claire Police Department 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 Eau Claire Police Department 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 Eau Claire Police Department 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 Eau Claire Police Department 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 Eau Claire Police Department officer should be given an administrative order not to discuss the incident with other involved officers or Eau Claire Police Department 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 Eau Claire Police Department 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-Eau Claire Police Department 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 Eau Claire Police Department officer. A licensed psychotherapist may also be provided to any other affected Eau Claire Police Department 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 Eau Claire Police Department 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 Eau Claire Police Department (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 Eau Claire Police Department 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 Eau Claire Police Department 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 and supervisors. 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 Axness and Sergeant Slaggie arrived on scene at approximately the same time. Sergeant Axness was the first officer to initiate CPR on Zank, leaving Sergeant Slaggie to take care of Officer O'Neill. Sergeant Slaggie collected Officer O'Neill's rifle, maintained it for evidence and stayed with Officer O'Neill until Sergeant Quella arrived. Sergeant Slaggie assigned Sergeant Quella to escort Officer O'Neill to the Eau Claire Police Department where Officer

O'Neill met with fellow coworkers Jentzsch and Anderson and Wisconsin Professional Police Association (WPPA) representative Mike Backus. Lieutenant Dahlgren assumed responsibility of Officer O'Neill at the Police Department.

Sergeant Taylor was the second uninvolved supervisor on scene. He was briefed on the incident by Sergeant Slaggie and assumed scene command responsibilities. Sergeant Slaggie cleared the scene and returned to the Police Department for an interview.

**Policy 305.4.3 explains the responsibilities of the watch commander.**

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 Axness was the Shift Commander. He was involved in the incident. Sergeant Axness left the scene and Sergeant Slaggie assumed scene command. Sergeant Axness took over incident command. He notified or attempted notifications to both Deputy Chief Hoyord and Deputy Chief Rokus. Deputy Chief Hoyord arrived at the Police Department and assumed overall Incident Command. Sergeant Axness resumed his shift commander responsibilities.

**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.**

Officer O'Neill was removed from the scene as soon as was reasonably possible. He was brought back to his department and met with his fellow officers and union representatives. Following the initial investigation, Officer O'Neill was placed on administrative assignment pending the outcome of the investigation.

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 outcome of this incident did result in death. Chief Gerald Staniszewski contacted the La Crosse Police Department and requested their assistance. La Crosse PD was appointed as the lead investigative agency. Captain Shawn Kudron, Sergeant Mike Blokhuis and Detective Tom Hanson were lead investigators outside the Eau Claire Police Department.

Following the incident, Officer O'Neill was given the opportunity to be with Eau Claire Police Department co-workers Officer Kyle Anderson and Officer Kyle Jentzsch as well as WPPA representative Mike Backus. After Officer O'Neill completed his blood draw at Mayo hospital, he agreed to do a walk through at 1135 W. MacArthur Ave. He was accompanied by Officer

Anderson, Mike Backus, Lieutenant Thomas and La Crosse Investigators Captain Shawn Kudron and Sergeant Mike Blokhuis.

Lieutenant Thomas was assigned as liaison to the La Crosse Investigators.

Follow up Interviews were conducted with Officer O'Neill, Sergeant Axness, Sergeant Slaggie, Officer Zurbuchen, Officer McIlhargey, Officer Zwiefelhofer, Officer Nelson, Sergeant Quella, Sergeant Taylor, Detective Gullickson, TC Jungerberg, TC Kruschke, Deputy Kaeding, Trooper Arras, Trooper Glasener, Trooper Anduze-Bell, ECFD personnel and several witnesses.

Based on the nature of this incident and Matthew Zank's death there was no Eau Claire Police Department criminal investigation into a suspect's actions as outlined by department policy.

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 assigned Lieutenant Dahlgren to transport Officer O'Neill to Mayo Clinic Health System for the administrative blood draw. Lieutenant Dahlgren was present when blood was drawn from Officer O'Neill. The sealed blood kit was turned over to Lieutenant Dahlgren who retained possession of the blood kit until securing it 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 La Crosse Police Department 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.**

Officer O'Neill was interviewed by La Crosse Investigators on 1/31/2017. Prior to the interview, Officer O'Neill was given the opportunity to review his squad video. Officer O'Neill reviewed the squad video before making a statement.

## *Post Incident Investigation*

### **Facts**

Witnesses to the incident left the area prior to making statements. Three witnesses informed off-duty Lieutenant Southworth what they had witnessed. Plans were made for these witnesses to meet with investigators the following day to make recorded interviews. Two additional witnesses came forward and indicated they had witnessed the shooting. Arrangements were made and these witnesses met with investigators and made recorded statements.

### **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**

██████████ drove her daughter ██████████ and ██████████ friend ██████████ ██████████ to the Kwik Trip parking lot, 1130 W. MacArthur Ave the morning of January 28, 2017. All three



witnessed the event. They left the area and traveled to a basketball tournament in Minnesota. They mentioned to off-duty Lieutenant Jim Southworth what they observed. Lieutenant Thomas was notified and interviews were arranged. Recorded interviews were completed.

██████████ and his son ██████████ witnessed the shooting from the Kwik Trip parking lot, 1130 W. MacArthur Ave. They left the area prior to making a statement. ██████████ mentioned to his mother what he had witnessed, and was encouraged to make a statement. Mr. ██████████ called the department to report they witnessed the incident. ██████████ and ██████████ were contacted by investigators and interviews were arranged. Recorded interviews were completed.

## **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 La Crosse Police Department 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,

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Tim Golden  
Lieutenant of Police

Reviewed by:

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Matt Rokus  
Deputy Chief of Police

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(Date)

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Stephen Nick  
City Attorney

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(Date)

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Gerald Staniszewski  
Chief of Police

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(Date)

## **APPENDIX A**

May 2, 2017

### **PRESS RELEASE – OFFICER INVOLVED SHOOTING JANUARY 28, 2017**

On January 28, 2017, an officer-involved shooting took place in the City of Eau Claire. The incident involved City of Eau Claire Police Officer Kristopher O’Neill. Officer O’Neill responded to the Scottish Inn and Suites located at 1135 West MacArthur Avenue in the City of Eau Claire after receiving a dispatch report of a man who had a gun at that location and was waving the gun at people and vehicles in the area. Upon arrival, Officer O’Neill immediately recognized a possible suspect given the description provided by dispatch. Officer O’Neill observed that the individual, later identified as Matthew Zank, was holding a weapon. Officer O’Neill exited his squad car with a service rifle. Officer O’Neill gave no fewer than seven commands to Zank to drop the weapon. While Officer O’Neill gave these repeated commands, Zank not only did not drop the weapon, but continued to walk toward Officer O’Neill while pointing the weapon at Officer O’Neill and verbalizing to Officer O’Neill that he would not drop the weapon. As Matthew Zank continued walking toward Officer O’Neill still brandishing the weapon and ignoring the verbal commands to drop the weapon, Officer O’Neill fired four shots. Matthew Zank fell to the ground as a result of the shots. Officer O’Neill notified dispatch multiple times that shots were fired. Officer O’Neill approached Matthew Zank and kicked the weapon that was near Zank away from him. Other officers arrived and began performing life-saving efforts on Matthew Zank until EMS staff arrived and took over. Zank was ultimately pronounced dead at the scene. As part of the investigation, the contents of Zank’s wallet were reviewed. Among the contents in Zank’s wallet was a folded up note that read, “To the cop that shoot me I am sorry that I made you do it do not feel bad my life was worthless.”

As a result of the incident on January 28, 2017, and pursuant to the laws of the State of Wisconsin, a comprehensive investigation was performed by an outside law enforcement agency – the City of La Crosse Police Department. The lead investigator was Captain Shawn Kudron. The investigation included scene documentation, video collection, witness interviews, ballistics testing, an autopsy of Matthew Zank, photographs, scene mapping, records review, and miscellaneous other information including, but not limited to, the origin of the weapon that Matthew Zank possessed at the time of the incident.

### **Matthew Zank Status January 28, 2017**

On January 28, 2017, Matthew Zank was residing at the Scottish Inn and Suites. He checked in on January 19, 2017 and stayed for the next nine nights for a total lodging cost of \$510.21. While staying at the Scottish Inn and Suites, Matthew Zank attempted to obtain housing through Hope Gospel Mission. A housing application was submitted on January 20, 2017. On January 24, 2017, Matthew Zank met with Hope Gospel Mission staff regarding potential housing. During this interview, Zank referenced a prior suicide attempt at the Clark County Jail at the end of December, 2016. On January 25, 2017, Matthew Zank learned that his housing application at Hope Gospel Mission was denied.

Matthew Zank had many interactions with the Eau Claire County Department of Human Services in January of 2017. A review of those records indicates that on January 13, 2017, Northwest Connections completed a Mobile Crisis assessment on Matthew Zank. During this assessment, Zank stated he wanted someone to find a house for him and that if he were homeless, he would kill himself. The same assessment found that Zank was not accepted to a behavioral health unit due to his "risk agitation level" towards staff. It was noted that Zank had threatened to kill a nurse. Zank had also stated that he would kill himself if he was discharged from the hospital. In the response plan portion of the assessment, it indicated that Matthew Zank presented with mental illness, was a danger to himself, and that he continued to state he would kill himself. On January 13, 2017, a Chapter 51 Emergency Detention form was completed for Zank.

A progress note dated January 18, 2017 indicates that Matthew Zank was being recommended for dismissal from Winnebago Mental Health Institution and that he had concerns of homelessness. The progress note also indicated that Zank "told us flat out he claims suicidal ideation when he has nowhere to go."

A progress note dated January 27, 2017 references the Hope Gospel Mission application and notes the concerns of staff regarding Zank. The note also references a sibling of Zank coming to the Department of Human Services and expressing concerns over Zank wanting to stay at the sibling's residence. The progress note indicates the sibling is afraid of Zank and does not want him at the residence. The progress note indicates that contact was made with Zank on January 25, 2017. During the call, Zank referenced that he did not meet the requirements for Hope Gospel, that he was still at the motel and that it was not possible for Zank to stay with his sibling. The note also indicates that Zank stated, "I am just better off dead."

Matthew Zank was charged in Clark County Case No. 16CM232 with *Battery and Disorderly Conduct* regarding an incident that took place on December 27, 2016. The incident took place at a medical rehabilitation center where Zank had been staying since

approximately September of 2016. Zank was found unresponsive in his jail cell in the early morning hours of December 28, 2016. Zank was transported to Sacred Heart Hospital in Eau Claire on December 28, 2016. Zank was discharged from Sacred Heart Hospital to Winnebago Mental Health Institute on January 15, 2017. Records indicate that Zank was taking as many as 16 different medications. Zank made multiple statements regarding self-harm while at Sacred Heart Hospital. A review of records further indicates that Zank was previously diagnosed with schizoaffective disorder, as well as a history of alcohol abuse.

### **911 Call Information**

A review of the 911 transcript from January 28, 2017 shows that the 911 Center received a call at 07:16:22. The caller, later identified as Matthew Zank, states “Yes there’s a man with a gun.” When asked where this is taking place, Zank responds “[a]t the hotel 111135 West MacArthur Avenue. Across from the gas station. He’s pointing it at vehicles and at, and at, and at people. What are you going to do about it?” Zank then relates that he is inside of the hotel and sees this from the window. When asked what the individual is wearing, Zank says “blue pants and a and a light tan jacket.” Zank confirms that the man is pointing the gun at people and cars and that he is across from the Kwik Trip. Zank then provides his first and last name to the 911 operator and states he is in Room 202. Zank again explains to the 911 operator that the guy “is aiming the gun at vehicles and at cars. What are you going to do about it?” After additional discussion, Zank states repeatedly “I have to go” and eventually hangs up on the 911 call. The 911 call ends at 07:22:15.

The Communication Center log reflects the following information starting at 7:18:07: (long single tone) I have a report of a man with a gun. The Scottish Inn. 1135 West MacArthur. 1135 West MacArthur report of a man with a gun, pointing a gun at people and cars. Described as a male white wearing blue pants and a tan jacket.

### **Kwik Trip Video**

As part of the investigation, video footage was obtained from Kwik Trip located at 1130 West MacArthur Avenue. One camera shows Matthew Zank walking east across the upper balcony, near his room #202 at 07:22. Zank is observed walking towards the stairs on the east side of the Scottish Inn. He appears to be wearing a tan/brown jacket and dark colored pants.

Another camera at the Kwik Trip shows the squad car of Officer O’Neill arriving in the area of 1135 West MacArthur Avenue with his red and blue lights on at 07:22:21.

Officer O'Neill pulls into the parking lot of the Scottish Inn at 07:22:30. At 07:22:31, Matthew Zank is observed walking from the east side of the Scottish Inn towards Officer O'Neill. At 07:22:45, Zank has stopped walking and is standing still. At 07:22:50, Zank starts walking toward Officer O'Neill and the squad car. At 07:22:51, Zank is no longer walking towards Officer O'Neill and cannot be seen.

A third camera from Kwik Trip also captured relevant footage. At 07:22:54, the footage shows Matthew Zank lying on his back, with his arm up in the air in a pointing manner, slowly falling towards the ground at 07:22:56.

### **Squad Video Review**

The squad video of Officer O'Neill was reviewed as part of the investigation. The squad video confirms a long single tone heard over the radio referencing a man with a gun at 1135 West MacArthur Avenue. While the squad video does not display Officer O'Neill or the suspect at the time shots were fired, the squad video does capture the verbal commands provided by Officer O'Neill. When Officer O'Neill exits the squad car, the first thing he said was "Drop the gun!" After this command, Officer O'Neill is heard giving the following six commands before shots are fired: "Drop the gun, drop the gun, put it down, put the gun down, drop it, drop the gun!" After the shots were fired, Officer O'Neill provides multiple radio transmissions to dispatch of "Shots fired!" Officer O'Neill also requests an ambulance.

### **Officer Kristopher O'Neill Interviews**

As part of the investigation, Captain Kudron had contact with Officer O'Neill on January 28, 2017. This contact included returning to the scene to conduct an initial walk-through of the scene. During this walk-through, Officer O'Neill explained that when he approached the Scottish Inn, he did not see anyone at the front of the building and knew there was a second driveway entrance on the east side of the building. Officer O'Neill proceeded to the second driveway entrance and immediately identified a possible suspect. The suspect came from behind a white box truck near the building and started walking toward him. The suspect had his hands at his sides and had a black handgun in his right hand. Officer O'Neill responded by getting out of his squad car with his long gun. When Officer O'Neill stepped out of the vehicle, he placed himself by the driver's side door and re-observed the suspect. At this time, the suspect was pointing the handgun at him and was continuing to walk towards him.

Officer O'Neill pointed his long gun at the suspect and gave him several commands to "drop the gun" as the suspect continued to walk towards him. Officer O'Neill fired at the

suspect until the suspect stopped. Officer O'Neill believed he fired three times. Upon firing the rounds, the suspect fell in a backward motion. When the suspect fell on his back, the gun fell from the suspect's hand, falling near his feet. Officer O'Neill used his portable radio and notified dispatch two different times that shots had been fired. Officer O'Neill then approached the suspect. When he approached the suspect's gun, Officer O'Neill kicked the suspect's gun away from the suspect and toward the squad car. Officer O'Neill covered the suspect until Sergeant Slaggie and Officer Zurbuchen arrived.

Officer O'Neill was again interviewed on January 31, 2017. Officer O'Neill advised that he has been a police officer with the Eau Claire Police Department for 19 years and was assigned to the Patrol Division on January 28, 2017. In addition to his work as a full-time police officer, Officer O'Neill also has been assigned to various specialty units, including the Crime Scene Unit and Tactical Unit. While assigned to the Tactical Unit, Officer O'Neill's assignments included those of sniper as well as perimeter duties. As to his current patrol work, Officer O'Neill is assigned to day shift patrol from the hours of 6:30 a.m. to 5:00 p.m. Officer O'Neill works a 4-day work rotation and January 28, 2017 was the fourth day of the current rotation. Officer O'Neill advised that on the evening of January 27, 2017, he slept approximately eight hours. Officer O'Neill did not consume any alcohol on January 27 or January 28, 2017.

On January 28, 2017, Officer O'Neill arrived at the Eau Claire Police Department at approximately 6:10 a.m., dressed in his full uniform, and participated in the briefing. Following briefing and a squad check, he called in service with dispatch, ready for service. While dispatched to a domestic matter, a single alert tone came across the radio. Officer O'Neill advised this single alert tone means the next radio transmission is important and usually pertains to a serious incident/call. Officer O'Neill stated dispatch gave information over the radio that there was a man with a gun, pointing the gun at people and cars in the area of 1135 West MacArthur Avenue. Officer O'Neill advised dispatch that he would be responding to the call and initiated his overhead emergency red and blue lights. Officer O'Neill advised he used to work the district where the Scottish Inn and Suites is located, so he had knowledge of this location.

Upon arrival, Officer O'Neill notified dispatch that he was on location. He did not see anyone at the front of the building and proceeded to a second driveway entrance east of the building. When he entered this second driveway, Officer O'Neill immediately recognized the possible suspect, as dispatch had described the suspect as a male wearing blue pants, a tan jacket, and that the male had a gun. The suspect came from behind a white box truck and started walking toward him with his hands at his sides and a black handgun in his right hand. Officer O'Neill stepped out of his squad car with his

long gun. At this time, Officer O'Neill saw the suspect pointing a handgun at him while walking towards him. Officer O'Neill pointed his long gun at the suspect and gave the suspect several commands to "Drop the gun!" The suspect continued to walk towards him. On the last command for the suspect to drop the gun, the suspect verbalized back to him, "No I will not." Given this, and the fact that the suspect was still pointing the gun and walking toward him, Officer O'Neill believed the suspect was "intent on killing me." Officer O'Neill fired his long gun at the suspect and fired his weapon until the threat was stopped, believing he fired three times. After the rounds were fired, the suspect fell in a backward motion. Officer O'Neill notified dispatch twice that shots were fired. Officer O'Neill approached the suspect and kicked the gun away from the suspect and towards the squad car. Officer O'Neill covered the suspect until other officers arrived. The suspect did not say anything during this time. Sergeant Slaggie and Officer Zurbuchen arrived on scene. Officer O'Neill was removed from the scene while other officers attended to the suspect.

Officer O'Neill was asked if he thought he had any other options in dealing with the suspect. Officer O'Neill responded, "No, he was going to kill me or someone else. I couldn't let him walk away. He did not listen to commands, he did not lower his gun and he verbalized that he would not." When Officer O'Neill was advised of the suspect's identity, Officer O'Neill confirmed that he did not recognize or know Matthew Zank.

### **Other Officer Interviews**

Sergeant Gary Axness was interviewed as part of the investigation. Sergeant Axness advised he was approximately two blocks away from the scene when he heard Officer O'Neill state that shots were fired. Sergeant Axness advised he pulled into the parking lot and subsequently observed the suspect bleeding from his mouth and chest. Sergeant Axness said he then returned to his squad car to obtain a clotting agent for the suspect's wound. Sergeant Axness said he also started chest compressions on the suspect and continued until EMS arrived and took over for him. Sergeant Axness confirmed that dispatch advised that the suspect was a white male, wearing a tan jacket, blue pants, and was holding a gun. Sergeant Axness confirmed this was the person he observed lying in the parking lot

Officer Jesse Zurbuchen was interviewed as part of the investigation. Officer Zurbuchen stated he responded to the scene at 1135 West MacArthur Avenue after a report of a man waving a gun around. Officer Zurbuchen said he entered the Scottish Inn at the driveway located on the west end. A very short time after advising he had arrived, Officer Zurbuchen heard what he believed were three gun shots from the direction on the other side of the hotel. Within seconds of this, Officer Zurbuchen heard



a transmission via radio from Officer O'Neill that shots had been fired. Officer Zurbuchen ran across the parking lot towards Officer O'Neill. Officer Zurbuchen observed Officer O'Neill covering the person lying on the ground. Officer Zurbuchen said he and Sergeant Axness attempted to make verbal communication with the person on the ground. Officer Zurbuchen said no response was received and that it was obvious the suspect was severely injured. Officer Zurbuchen confirmed that Sergeant Axness did perform CPR on the suspect. Officer Zurbuchen said he assisted Sergeant Axness until paramedics arrived to take over. Officer Zurbuchen estimated this to be within minutes of the shooting.

Sergeant Bill Slaggie was interviewed as part of the investigation. Sergeant Slaggie confirmed that he responded to a report of a man with a gun in the area of the Scottish Inn parking lot. Sergeant Slaggie said he was on the southwest end of the property when he heard gun shots. Sergeant Slaggie said he and Officer Zurbuchen ran across the parking lot and that he heard Officer O'Neill give a radio transmission of shots fired. Sergeant Slaggie said he saw Sergeant Axness providing life saving measures. While that assistance took place, Sergeant Slaggie stayed with Officer O'Neill.

### **Citizen Witness Interviews**

J.S. was interviewed as part of the investigation. J.S. was at the Kwik Trip on West MacArthur Avenue at the time of the shooting, along with her mother and a friend. While at the Kwik Trip, J.S. heard her friend state "Oh my god!" while pointing at the hotel. J.S. said that in response to this, she looked up and observed a guy holding and pointing a gun at a police car in the parking lot next to the hotel. J.S. said she could not see the police officer but the guy was pointing a gun and walking towards the police car. J.S. said she heard at least one gun shot and then observed the guy lay down on his back in the parking lot. J.S. further described the manner in which the guy held the gun, stating "It kind of seemed like he was about to shoot someone."

R.B. was interviewed as part of the investigation. R.B. was at the Kwik Trip on West MacArthur Avenue at the time of the shooting, along with his son, W.B. R.B. advised that he was in the process of getting out of the car when his son, W.B., stated "Dad that guy has a gun." R.B. advised that he got back into his vehicle. R.B. said he saw the individual who was pointing a gun walking right towards the police car. R.B. said he decided to move his vehicle to a safer place. R.B. said that as he started the vehicle and was turning, he heard the gun shots. R.B. demonstrated how the person was holding the gun and also described the situation in the following manner: "To me the individual was walking directly towards the police vehicle and it seemed like he was talking or yelling at him, holding the gun and then heard the gun shots."

## **Zank Wallet Contents**

As part of the investigation, the contents of Matthew Zank's wallet were logged. Among the contents were a credit card and a piece of paper folded several times. The piece of paper contained a handwritten note. The note read: "TO THE COP THAT SHOOT ME I AM SORRY THAT I MADE YOU DO IT DO NOT FEEL BAD MY LIFE WAS WORTHLESSLES." The handwritten note also contained the name and address of a sibling.

## **Zank Room Search**

As part of the investigation, the room of Matthew Zank at the Scottish Inn and Suites, Room 202, was searched. Among the contents located were six different prescription pill bottles, paper and documentation providing Matthew Zank's information on them, and seven empty Hurricane High Gravity 40 oz. malt liquor bottles.

## **Paramedic / EMS Interviews**

Paramedic Steven Patten was interviewed as part of the investigation. Paramedic Patten advised that when he arrived on scene at 1135 West MacArthur Avenue, he observed a person lying on their back and appeared to be receiving CPR from City of Eau Claire police officers. Paramedic Patten stated he obtained life rescuing equipment and went over to the patient. Upon making contact with the patient, other firefighters took over CPR for the police officers. Paramedic Patten checked the patient and found no pulse and continued on with compressions. Paramedic Patten said the patient was placed on a longboard. Paramedic Patten advised that three leads were put on the patient and found the patient to be pulseless, his eyes dilated, and in a lifeless state. Paramedic Patten advised that Paramedic Robinson called a doctor in reference to this situation. Paramedic Patten said the patient was declared deceased at 07:33 a.m.

Paramedic Andrew Robinson was interviewed as part of the investigation. Paramedic Robinson said that lifesaving measures were used for approximately five to ten minutes or more. Paramedic Robinson confirmed the consultation with the doctor. Ultimately, lifesaving techniques ceased and the patient was declared deceased. Paramedic Robinson said the patient did not say anything during treatment of the patient.

## **Matthew Zank Autopsy Report**

As part of the investigation, an autopsy was performed by Dr. Vincent Tranchida. Dr. Tranchida concluded that it is his "medical opinion that Matthew C. Zank died following

a rifle gunshot wound of the torso with ensuing devastating internal visceral injuries and internal hemorrhaging.” The cause of death listed in the autopsy is “gunshot wound of torso.” The autopsy also found Matthew Zank had a blood ethanol concentration of 0.137.

### **Zank Weapon Purchase Details**

As part of the investigation, law enforcement subpoenaed bank record information for Matthew Zank. One transaction noted on the bank records was a purchase at Walmart in Eau Claire on January 25, 2017 for \$31.62. Law enforcement obtained video surveillance from Walmart on January 25, 2017. Video surveillance shows Matthew Zank placing a Daisy brand BB pistol on the counter. Zank is observed removing a credit card and paying for the pistol. In the video footage, Zank is wearing black shoes, blue pants, and a tan/green jacket. Follow-up with Walmart confirmed a single transaction at 7:47 a.m. on January 25, 2017 with the last four digits of Zank’s credit card. The transaction was for a Daisy Powerline Model 415 CO2 powered semi-automatic BB pistol.

### **Zank Sibling Interview**

Matthew Zank’s sibling, M.A.Z. was interviewed on January 28, 2017 as part of the investigation. M.A.Z. advised seeing Matthew Zank about a week prior. Matthew Zank had stopped by the residence and asked to stay there. M.A.Z. advised Matthew Zank that he could not stay at the residence. M.A.Z. advised being afraid of Matthew Zank. M.A.Z. indicated that Matthew Zank was not stable. M.A.Z. advised of contact with Eau Claire County workers. M.A.Z. was advised to contact police if Matthew Zank showed up and to keep the doors locked.

### **Use of Force Justified**

After a review of the investigation performed by the City of La Crosse Police Department, I have concluded that City of Eau Claire Police Officer Kristopher O’Neill was justified in the use of lethal force on January 28, 2017 during the incident that resulted in the death of Matthew Zank. The totality of circumstances shows that the use of lethal force was justified. The analysis of those reasons includes, but is not limited to, the following information:

1. Matthew Zank called 911 on January 28, 2017 to report a man in the parking lot at the Scottish Inn and Suites who was waving a gun at people and vehicles. Matthew Zank made this call to 911 in an effort to get law enforcement to respond to that location.

2. Matthew Zank was brandishing a weapon in the parking lot of the Scottish Inn and Suites when Officer O'Neill arrived at the parking lot in his squad car.
3. Officer O'Neill was provided information while en route by dispatch that a man was waving a gun at people and vehicles in the parking lot of the Scottish Inn and Suites.
4. Upon arrival at the scene, Officer O'Neill immediately recognized the suspect based on the information provided by dispatch, including the suspect's clothing and the fact that the suspect was holding a gun.
5. When Officer O'Neill exited his squad car, he gave no fewer than seven commands to Matthew Zank to drop the weapon.
6. In response to the verbal commands by Officer O'Neill, Matthew Zank did not drop the weapon and continued to walk toward Officer O'Neill while brandishing the weapon. After the last verbal command to Zank to drop the gun, Zank verbally stated he would not drop the weapon.
7. Multiple independent citizen witness accounts corroborate that Zank was brandishing the weapon and walking toward Officer O'Neill.
8. When interviewed, Officer O'Neill was clear that he believed his life was in danger, given the actions of Matthew Zank and that he felt Matthew Zank was going to kill him or someone else.
9. Matthew Zank made multiple statements regarding an intent to commit suicide in the days and weeks leading up to January 28, 2017. Matthew Zank specifically acknowledged a suicide attempt in December of 2016.
10. The plain meaning of the note found in Matthew Zank's wallet after he was shot makes it clear that Zank intended to have an officer shoot him and end his life. The actions Matthew Zank took on January 28, 2017 prior to getting shot corroborate his plan to end his life.

I would like to thank Captain Shawn Kudron and the City of La Crosse Police Department for performing a comprehensive investigation into the incident that took place on January 28, 2017. The materials submitted as part of the investigation included hundreds of pages of police reports, transcripts, photographs, videos, recorded interviews, scene reconstruction reports, ballistic and autopsy results, as well as other miscellaneous information. The information provided in the investigation

supports the conclusion that City of Eau Claire Police Officer Kristopher O'Neill was justified in the use of lethal force under the totality of circumstances on January 28, 2017.

Thank you for your time and consideration of this information.

Gary King  
District Attorney  
Eau Claire County