

**Administrative Review of
Officer Involved Shooting**

*Eau Claire Police Department
Case #17-6866*

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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/procedure.

Summary of Incident Events

On April 8, 2017 at 1051 hours a female caller contacted the Eau Claire County Emergency Center reporting a male was in the hallway yelling and banging on her door at the Westwinds Apartments, 2214 Peters Drive. Telecommunicator (TC) Theresa Johnson received the initial 911 call. At 1052

hours TC Mary Kruschke dispatched the call to Officer James Konkel. TC Kruschke recognized she needed a second officer based on reported statements of the male and diverted Officer Kevin Putzy from a previously dispatched call to Peters Drive at 1053 hours.

At 1053 hours the Communication Center provided a partial description of the suspect based on the caller's description. At 1054 hours the Communication Center provided information that the male was no longer inside the apartment building and was now yelling outside the building. At 1056 hours the Communication Center provided information that the male may be in the parking lot off of Peters Drive and the caller could still hear him yelling.

At 1058 hours, Officer Konkel arrived at the Westwinds Apartments in a fully marked police vehicle. He entered the driveway leading to the south parking lot from Peters Drive and was able to observe the male subject in the parking lot. Officer Konkel noted that the subject was pacing in the lot near a vehicle. Officer Konkel also noticed that the subject appeared to have a large knife in his hand.

Officer Konkel advised the Communication Center and other officers that the subject was armed with a knife and requested any arriving unit to prepare less lethal rounds. Officer Konkel removed and readied his squad rifle and continued to observe the subject from a distance.

Officer Putzy arrived on scene and observed the subject in the parking lot. Officer Putzy removed his squad shotgun and began to transition from lethal ammunition to less lethal bean bag rounds. As he exchanged the rounds he briefly lost sight of the subject. The subject reappeared at the front driver's door of Officer Putzy's squad car. The subject began yelling at Officer Putzy while holding his knife up around his shoulder level, and tried several times to pull the driver's door open. The subject could not open the locked door and moved to the rear driver's side door. The subject made several attempts to open this door but it was also locked. Officer Putzy drove away from the suspect to the southwest corner of the parking lot.

Officer Konkel and Officer Putzy were able to come together and Officer Putzy completed his transition to less lethal. Officer Olson and Deputy Sommers arrived on scene. Officer Olson responded to Officer Putzy's squad car where Officer Konkel and Officer Putzy were staged.

The subject walked toward officers from the northwest corner of the parking lot. The subject was walking through a row of pine trees making it difficult for officers to keep a constant watch on him. The subject walked out of the row of pine trees and made his way directly toward officers. The suspect still had the knife in his right hand. The subject was approximately 20 feet from officers at this time.

Officer Konkel verbally indicated to Officer Putzy to deploy a less lethal round. Following several commands from Officer Putzy to "drop the knife" Officer Putzy delivered the first less lethal round. After the first shot additional commands were given to the subject to "drop the knife" or "drop it" but the subject did not comply. A second less lethal round was delivered.

The subject went down to a knee but still held onto the knife. Officer Olson stepped forward and deployed his electronic control device (Taser). The Taser struck the subject in the area of his right arm

but had no effect. The subject began standing back up and a third less lethal round was delivered along with additional commands to drop the knife.

The subject turned toward Officer Putzy and raised the knife from waist level to shoulder level. The subject started to move at Officer Putzy at a hurried pace. Officer Putzy delivered a fourth less lethal round and began to disengage from the subject. As Officer Putzy disengaged away from the subject he moved away from his squad car as well.

Officer Konkel was providing lethal cover at the time with his squad rifle. Officer Konkel fired two rounds as the subject advanced on Officer Putzy. Officer Konkel reported that he “feared for Officer Putzy’s safety and life, knowing Officer Putzy did not have any cover or concealment to get away from the suspect.” In total officers gave at least 18 different commands to “drop the knife” or “drop it” prior to Officer Konkel shooting the subject.

After the subject was shot, Officer Olson immediately called “shots fired” over the radio. EMS had already been dispatched to stage in the area. Officers requested that EMS respond directly to the scene in emergency mode. Officers were able to lift the subject and remove the knife that was lying beneath him. Officer Olson began chest compressions and continued until he was relieved by EMS. Officer Vang searched the subject for any additional weapons. The subject was pronounced deceased at the shooting scene. The subject was identified as Gregory Kever.

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. In addition interviews were conducted with Kever’s family members and friends to obtain background information on him.

Criminal and Administrative Review

Investigators from the La Crosse Police Department completed the investigation into the legality of Officer Konkel’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 Konkel’s use of deadly force was appropriate. District Attorney King exonerated Officer Konkel of any criminal wrongdoing.

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

Eau Claire Police Department Lieutenant Greg Weber completed the administrative review of this incident, as is required by Wisconsin State Statute. It is the conclusion of this administrative review that the decision making and actions of Eau Claire Police Department personnel regarding the use of force were appropriate and compliant with the Eau Claire Police Department policies and procedures.

Conclusions

The administrative review of the incident and follow through actions determined that the actions of Eau Claire Police Department personnel regarding the use of force were appropriate and consistent with policy and procedures.

The most significant area of inquiry was Officer Konkel's use of deadly force. The administrative review of this shooting incident determined Officer Konkel's use of deadly force was objectively reasonable and compliant with Eau Claire Police Department policy and procedure. Officer Konkel believed he and others were faced with an imminent threat of death or great bodily harm based on the following facts:

- Nature of the initial call from [REDACTED] [REDACTED] to the Eau Claire Communications Center.
- The immediate area of the incident included a large communal parking lot for the apartment building tenants.
- An active grocery store with uninvolved citizens located a short distance away.
- The atypical behavior demonstrated by Kever while Officer Konkel observed him in the parking lot.
- Kever's aggressive attempts to enter Officer Putzy's squad car while yelling and armed with a knife.
- Verbal accounts by Officer Konkel, Officer Putzy, Officer Olson, Deputy Sommers and independent witnesses describing Kever's erratic behavior and advancing on Officer Putzy while holding a knife.
- Cellular Phone Video of Kever advancing on Officer Putzy.
- Audio/video footage that Kever disregarded numerous verbal commands made by Officer Konkel, Officer Putzy and Officer Olson to drop his knife.
- Kever was struck at least 3 times with less lethal bean bag projectiles in desired target areas but did not drop his knife and continued to advance on Officer Putzy.
- An electronic control device was deployed striking Kever in the arm and Kever kept hold of his knife and continued to advance on Officer Putzy.
- When provided with these verbal commands and less lethal interventions Kever responded by accelerating his advance toward Officer Putzy with his knife raised in a threatening manner.

The results of the Administrative Review identified several recommendations to enhance the Police Department's response to critical incidents and compliance with departmental policy. The recommendations include the following:

- Transition from dual purpose shot guns in the patrol cars to single purpose kinetic weapons(Less Lethal). This will ensure there is no delay in deploying less lethal options at critical incidents.
- Provide training on Policy 305-Officer Involved Shootings or Deaths with Patrol Division Supervisors to review supervisor tasks and responsibilities as the first supervisor on scene.
- Provide training on Policy 308-Officer Response to Calls with responding officers to review procedures on responding safely to emergency calls.

- Provide training on Policy 422-Mobile Video Recording(MVR) System with responding officers to review the proper activation of the MVR system.

Contents of Review

The following narrative contains a detailed comprehensive administrative examination of the supervisors' and officers' decision making and actions. Facets of this incident that were reviewed include the initial 911 call made by [REDACTED] [REDACTED] the officers' response, the use of less lethal and deadly force and follow through after the shooting. In addition it will include general background information on Gregory Kever. There were no prior calls for service involving Gregory Kever and the Eau Claire Police Department.

Attached to this report are three documents:

- Appendix A: Eau Claire District Attorney Gary King's document

Background Information on Gregory Kever

The Eau Claire Police Department had no prior police contacts with Kever. La Crosse Investigators were able to identify and interview several of Kever's family members and friends to obtain background information on him. Those interviewed by La Crosse Investigators included [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] and [REDACTED] [REDACTED]. In addition, La Crosse Investigators requested Wyoming Division of Criminal Investigation agents interview Kever's former roommate, [REDACTED] [REDACTED]. The following is a synopsis of the background information obtained from the interviews.

Kever spent his younger years living in numerous locations as his father was in the military. Kever lived in Arizona from 1995 through 2003, with his parents divorcing in 1997. In 2003 Kever moved to International Falls, MN where he attended middle school and began high school. While in middle school Kever met [REDACTED] and the two became friends. [REDACTED] said he and Kever were both "kind of loner kids who did not have a lot of friends." [REDACTED] said he and Kever both began to use marijuana toward the end of middle school or beginning of high school.

In 2006 Kever moved to New Mexico due to his mother's job and graduated from high school in 2009. Following high school Kever attended the University of Indiana in Ft. Wayne, Indiana. Kever lived with his father while attending college and graduated in 2013. In 2014 Kever moved back to International Falls after receiving a job at Menard's. While there, Kever reconnected with [REDACTED] and the two "hung out" on a regular basis. Kever was only in International Falls for a short period of time before being transferred to Gillette, Wyoming to manage a Menard's store.

Kever lived in Gillette from 2015 until March of 2017. While in Gillette, Kever lived with [REDACTED] who also worked at Menard's. Kever was not happy living in Gillette and was transferred to Menard's

Headquarters in Eau Claire in March. Kever had been working in Eau Claire for approximately two weeks prior to the incident on 4/8/2017.

Kever's mother, father and sister were all aware Kever used marijuana and believed his use started around high school. Kever's mother was also aware he had used hallucinogenic drugs in the past. [REDACTED] and [REDACTED] had more insight into Kever's drug use. Both indicated Kever used marijuana on a daily basis. [REDACTED] reported Kever would use hallucinogenic drugs nearly every weekend. [REDACTED] said Kever would use LSD, acid or hallucinogenic mushrooms. [REDACTED] described Kever as "very experienced in using and the knowledge of LSD, acid, hallucinogenic mushrooms, and marijuana" and knew how to manage his drug use.

Kever's typical day was described as waking up, going to work, coming home and playing World of Warcraft, an online simulated fighting game. Kever was described as a daily marijuana user. Additionally, it was reported that Kever used hallucinogenic drugs on every weekend. Kever did not appear to have much of a social life outside of talking to [REDACTED] or others while gaming. Kever was not married, did not have a significant other and did not appear to have any close friends in Eau Claire.

Check Person

Eau Claire Police Department Case #17-6866

Dispatch and Response to Westwinds Apartments

Facts:

Several Eau Claire Police Department officers and telecommunicators were interviewed by La Crosse Police Investigators Captain Shawn Kudron, Sergeant Mike Blokhuis, Sergeant Tim O'Neill and Investigator Tom Hanson regarding this incident. Several Eau Claire County Sheriff's Deputies and witnesses were also interviewed. In the following paragraphs, many of the quotes attributed to the respective officers were derived from those reports.

The officers and telecommunicators interviewed by La Crosse Police are as follows: Officer James Konkel, Officer Kevin Putzy, Officer Jacob Olson, Sergeant William Slaggie, Officer Mark Vang, Officer Steven Lawrence, Officer Kyle Anderson, TC Mary Kruschke and TC Theresa Johnson. 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.

Dispatch

On April 9, 2017 Sergeant Blokhuis and Captain Kudron interviewed Eau Claire Communications Center TC Mary Kruschke and TC Theresa Johnson at the Eau Claire Police Department at 1527 hours and 1545 hours respectively. TC Kruschke and TC Johnson were working in the Communication

Center on April 8, 2017 for the officer involved shooting incident. Kruschke was the dispatcher and Johnson was the 911 call taker.

Theresa Johnson Activity

TC Theresa Johnson was working on April 8, 2017 in the Communication Center. TC Johnson was assigned to work as UWEC campus and EC fire dispatch, as well as answering phone calls. TC Johnson answered a 911 call from [REDACTED] [REDACTED] at 1050 hours regarding a male in her hallway acting strange. Specifically [REDACTED] reported the male was in the hallway yelling, "Why am I still alive? Why am I still here? Why am I the only one alive?" [REDACTED] also stated that the male tried to get into her apartment. TC Johnson discussed this point further with [REDACTED] and learned the male had banged on her door, but it was unclear if this was an attempt to make entry or not.

TC Johnson attempted to establish the identity of the male but [REDACTED] did not know who he was. TC Johnson was able to obtain physical descriptors of the male from [REDACTED]. The descriptors included the male was white, younger (possibly 15 to 20 years old) and was wearing green headphones. [REDACTED] told TC Johnson that she didn't get a good look at the male. TC Johnson continued talking with [REDACTED] regarding the current location of the male and how officers could make contact with her as the building was known to be secure. [REDACTED] gave TC Johnson several locations she thought the male may have gone. [REDACTED] could not see the male but could still hear him yelling. [REDACTED] told TC Johnson that she believed the male was now in the parking lot with access off of Peters Drive.

TC Johnson kept [REDACTED] on the 911 phone line until Officer Konkel had located the male in the parking lot. TC Johnson obtained contact information for [REDACTED] and advised her to stay available at her phone number if possible. The duration of the 911 call was approximately nine minutes.

Mary Kruschke Activity

TC Mary Kruschke was working on April 8, 2017 in the Communication Center. TC Kruschke reported there were a total of three dispatchers working in the Communication Center at the time of the incident. TC Kruschke's primary duty was to dispatch for the Eau Claire city police.

TC Kruschke said TC Johnson received the 911 call from [REDACTED]. TC Kruschke said as TC Johnson received information from [REDACTED] she repeated what [REDACTED] had said out loud for other dispatchers to hear. TC Kruschke heard TC Johnson repeat the comments, "Why am I here? Why am I still alive?" TC Kruschke said based on those comments she felt that she immediately needed to dispatch two officers to the call. TC Kruschke dispatched Officer Konkel to the call and provided the initial information she had to him. TC Kruschke had dispatched Officer Putzy to a theft from vehicle case approximately 6 minutes prior to the 911 call from [REDACTED]. Officer Putzy had not arrived at the theft from vehicle case when Officer Konkel was dispatched to Peters Drive. TC Kruschke asked Officer Putzy if he would be able to divert from the theft case to Peters Drive and he acknowledged he would.

As Officer Konkel and Officer Putzy responded, TC Kruschke described the person officers were looking for as male, white, possibly underage, wearing green headphones. Officer Konkel was the first

officer to arrive on scene. Moments later Officer Konkel advised the male was in the parking lot and was carrying a large knife. TC Kruschke acknowledged Officer Konkel's radio traffic and radioed back stating she would send more officers to the scene.

TC Kruschke said the next patrol shift was just coming on duty and a number of officers radioed they were en route to the call. Officer Olson, Officer Vang, Sergeant Slaggie and Officer Anderson all volunteered to respond to the call and were acknowledged by TC Kruschke. TC Kruschke said TC Johnson suggested restricting the primary city radio frequency to her. TC Kruschke announced over the radio that all units not associated with Peters Drive were to use the secondary city frequency. TC Kruschke advised Officer Konkel that his frequency was restricted, and Officer Konkel acknowledged.

Officer Konkel contacted dispatch and made a request for EMS to respond and stage in the area. TC Kruschke clarified where to have EMS stage with Officer Konkel and they were dispatched. Prior to EMS arrival Officer Olson radioed that shots were fired and the suspect was down. TC Kruschke asked over the radio if EMS should respond to the scene in emergency mode instead of staging in the area. Officer Konkel answered that EMS should respond to the scene in emergency mode. EMS was dispatched to the scene.

Policy:

308.4 COMMUNICATIONS RESPONSIBILITIES

A dispatcher shall ensure acknowledgement and response of assisting units when an officer requests emergency assistance or when the available information reasonably indicates that the public is threatened with serious injury or death and an immediate law enforcement response is needed. The dispatcher shall:

- (a) Attempt to assign the closest available unit to the location requiring assistance.
- (b) Confirm the location from which the unit is responding.
- (c) Notify and coordinate outside emergency services (e.g., fire and ambulance).
- (d) Continue to obtain and broadcast information as necessary concerning the response, and monitor the situation until it is stabilized or terminated.
- (e) Control all radio communication during the emergency and coordinate assistance under the direction of the supervisor.

Findings:

TC Johnson and TC Kruschke were two of three dispatchers assigned to work in the Communication Center when the initial 911 call was received. TC Johnson received the 911 call and talked with the caller for nearly 9 minutes obtaining a brief description of the suspect, the caller's information and updated information on the location of the suspect. TC Johnson communicated the information to TC Kruschke.

TC Kruschke was assigned as the city dispatcher during the incident. TC Kruschke recognized two officers were initially needed. TC Kruschke diverted Officer Putzy from a previously dispatched theft from auto case as he had not arrived on scene and was the nearest squad to the 911 incident. After

hearing the suspect was holding a knife TC Kruschke recognized more officers would be needed. As additional officers checked on for their shift or became available they were dispatched to the scene. The primary city radio frequency was restricted and EMS services were requested and dispatched.

Throughout the incident TC Johnson and TC Kruschke maintained control of communications, gave timely updates of information, and assisted in getting responding officers and EMS to the correct incident location. TC Johnson and TC Kruschke followed through with their communication responsibilities and were within the guidelines of this policy.

Officer Response

Officer James Konkel Response

Officer Konkel was working the day shift in the west district on April 8, 2017. Officer Konkel had been dispatched to and cleared two calls prior to the incident. At approximately 1052 hours Officer Konkel was dispatched as the primary officer to a “check persons” call at the Westwinds Apartments, 2214 Peters Drive. Officer Konkel was near the intersection of Menomonie Street and North Clairemont Avenue when he received the dispatch. Officer Konkel responded to the call in non-emergency mode taking the following route:

- North on North Clairemont Avenue
- East on Moholt Drive
- North on Robert Road
- West on Peters Drive
- North into the Peters Drive parking lot

Officer Konkel arrived on scene and observed a male in the parking lot that he believed matched the suspect’s description. Officer Konkel noted that the male was white, about 20 to 25 years old, had a medium build and was wearing green headphones. Officer Konkel remained in his squad and observed the male from an estimated distance of 175-200 feet away. Officer Konkel reported that the male was acting in a “strange manner.” Officer Konkel described the behavior of the male as making rapid body movements, head bobbing in a jerking motion, yelling, possibly talking to someone who was not there and clenching his fist with his left hand. Officer Konkel reported that the male appeared to be mad or angry and was continually yelling. Officer Konkel said he could not hear what the male was yelling because he was still inside of his squad with the windows rolled up. Officer Konkel activated his squad video around this time and continued to observe the male from a distance.

Officer Kevin Putzy Response

Officer Putzy was working the day shift in the west district on April 8, 2017. Officer Putzy was dispatched to a theft from auto case at 1044 hours. Officer Putzy was still driving to the theft call when TC Kruschke asked if he was able to divert and respond to Peters Drive. Officer Putzy acknowledged the request and responded to the Peters Drive call from the area of Oxford Avenue and Platt Street in non-emergency mode taking the following route:

- West on Platt Street
- North on 3rd Street
- West on Truax Boulevard
- South on Epiphany Lane
- South through the north Westwinds Apartments parking lot
- South to the south Westwinds Apartments parking lot

Officer Konkel arrived on scene and Officer Putzy radioed that he was about 30 seconds away. Officer Konkel radioed that the suspect was in the parking lot and carrying a large knife. Officer Putzy arrived on scene and drove through the north parking lot into the south parking lot looking for the suspect. Officer Konkel radioed Officer Putzy and asked him to “load up some less lethal.” Officer Putzy acknowledged the request. A few moments later Officer Putzy observed the suspect “milling around” in the parking lot. Officer Putzy noticed that the suspect matched the description given by TC Kruschke. Officer Putzy heard the suspect yelling, but could not hear what he was saying because his squad windows were up. Officer Putzy observed the suspect had a knife in his hand. Officer Putzy did not have his squad MVR active at this time. The MVR was not activated until later in the incident.

Officer Jacob Olson Response

Officer Olson was in patrol briefing when the initial “Check Person” call was dispatched to Officer Konkel and Officer Putzy. Officer Olson said he did not recall the particulars because it was initially deemed as not a “major” call by him. After briefing Officer Olson was preparing his squad when he heard over the radio that Officer Konkel was out with someone with a knife. Officer Olson said he self-dispatched himself to the call and left the police department with Eau Claire County Sheriff’s Deputy Sommers following him.

Officer Olson activated his emergency lights and siren and took the following route to the scene:

- North on Oxford Avenue
- West on West Madison Street
- West on Cameron Street
- North on North Clairemont Avenue
- East on Moholt Drive
- North on Jodi Drive
- East through the Gordy’s parking lot to the scene

Officer Olson turned his siren off after turning onto North Clairemont Avenue from Cameron Street. Officer Olson reactivated his siren at the intersection of North Clairemont Avenue at Vine Street while negotiating a red light for northbound traffic. Once clearing that intersection Officer Olson turned off his siren once again and did not reactivate it. Officer Olson had his emergency lights activated the duration of his response. Officer Olson advised he deactivated his siren when nearing the scene to avoid escalating the suspect’s behavior.

Officer Olson's response was captured on his squad MVR, with both the in-car audio and wireless microphone functioning properly.

Officer Mark Vang Response

Officer Vang had just completed patrol briefing when he heard Officer Konkel tell the Communication Center the subject had a knife and recalled Officer Konkel ask for less lethal. Officer Vang advised he hurried to his squad car, completed his squad check and proceeded to the call. Officer Vang dispatched himself to the call.

Officer Vang took the following route to the scene:

- North on Oxford Avenue
- West on Platt Street
- North on 3rd Street
- West on Truax Boulevard
- West on Folsom Street
- South on Robert Road
- West on Peters Drive
- North into the Gordy's parking lot
- East through the Gordy's parking lot to the scene

Officer Vang activated his lights and siren on Oxford Avenue after passing through the intersection of West Madison Street. He continued operating in full emergency mode until turning onto Robert Road. At this time he turned off his siren with emergency lights still active. Officer Vang responded to the scene with his window down on his squad. As Officer Vang turned into the Gordy's parking lot shots can be heard on the in-car audio followed by Officer Olson calling out shots fired on the radio.

Officer Vang's response was captured on his squad MVR. The in-car audio was functioning, but his wireless microphone was not.

Sergeant William Slaggie Response

Sergeant Slaggie was in the commanding officer vehicle near the police department when the initial "check person" call was dispatched. Sergeant Slaggie recalled dispatch information that a male was banging on doors and made statements similar to, "Why am I still here? Why am I still alive?" Sergeant Slaggie was in the area of State Street and Summit Avenue when Officer Konkel radioed the male had a large knife and was in the parking lot. Sergeant Slaggie said he responded to the scene in emergency mode.

Sergeant Slaggie activated his emergency lights and siren and took the following route to the scene:

- South on State Street
- East on Lexington Boulevard
- North on Patton Street
- West on West Clairemont Avenue
- North on North Clairemont Avenue
- East on Moholt Drive
- North on Robert Road
- West on Peters Drive
- North into the Gordy's parking lot
- East through the Gordy's parking lot to the scene

Sergeant Slaggie arrived on scene just under 2 minutes after Officer Olson called out "shots fired." Sergeant Slaggie parked his squad to the west of the incident facing east. Sergeant Slaggie positioned his squad camera toward officers performing life saving measures on Kever.

Sergeant Slaggie's response was captured on his squad MVR although he had not logged in at that time. Because of this the in-car audio was functioning, but his wireless microphone was not.

Officer Kyle Anderson Response

Officer Anderson was working the day shift and was at the police department when the "check person" call was dispatched. Officer Anderson heard Officer Konkel dispatched to the call. A short time later Officer Konkel advised over the radio the suspect had a knife and requested additional officers. Officer Anderson got into his squad and responded to the scene in emergency mode.

Officer Anderson activated his emergency lights and siren and took the following route to the scene:

- North on Oxford Avenue
- West on West Madison Street
- West on Cameron Street
- North on North Clairemont Avenue
- East on Moholt Drive
- North on Robert Road
- East on Peters Drive
- North into the Peters Drive parking lot to the scene

Officer Anderson arrived on scene at the same time as Sergeant Slaggie. Officer Anderson parked his squad south of the incident, facing north. Officer Anderson's squad camera was facing toward officers who were performing life saving measures on Kever.

Officer Anderson's response was captured on his squad MVR, with both the in-car audio and wireless microphone functioning properly.

Officer Steven Lawrence Response

Officer Lawrence had just finished the afternoon shift briefing when Officer Konkel advised over the radio there was a subject with a knife. Officer Lawrence advised that based on the tone of Officer Konkel's voice he felt the matter was serious and prepared to respond and assist. Officer Lawrence told the Communication Center he was responding to the call. Officer Lawrence left the police department just after Officer Chapin and followed Officer Chapin to the scene.

Officer Lawrence took the following route to the call:

- North on Oxford Avenue
- West on West Madison Street
- West on Cameron Street
- North on North Clairemont Avenue
- East on Folsom Street
- South through the north Westwind's Apartments parking lot to the scene

During the response Officer Olson can be heard on in-car audio stating for the second time that shots were fired. Officer Lawrence was on Cameron Street near Whipple Street at this time. Following the radio transmission Officer Lawrence activated his emergency lights and siren. Officer Lawrence operated in emergency mode for the remainder of his response. Officer Lawrence arrived and positioned his squad to the north of the scene facing southeast.

Officer Lawrence's response was captured on his squad MVR, with both the in-car audio and wireless microphone functioning properly.

Officer David Chapin Response

Officer Chapin had just finished the afternoon shift briefing when he heard the incident developing and responded from the police department. Officer Chapin started his response in non-emergency mode. As Officer Chapin was driving west on Cameron Street near Whipple Street Officer Olson is heard calling out "shots fired" over the radio. Officer Chapin activated his emergency lights and siren and proceeded to the call in emergency mode.

Officer Chapin took the following route to the call:

- North on Oxford Avenue
- West on West Madison Street
- West on Cameron Street
- North on North Clairemont Avenue
- East on Folsom Street
- South through the north Westwinds Apartments parking lot to the scene

Officer Chapin's response was captured on his squad MVR, with both the in-car audio and wireless microphone functioning properly.

Officer Michael Glennon Response

Officer Glennon was at the intersection of Bellinger Street and West Madison Street when “shots fired” was announced over the radio. Officer Glennon responded in emergency mode to the scene taking the following route:

- North on Bellinger Street
- West on Platt Street
- North on 3rd Street
- West on Truax Boulevard
- West on Folsom Street
- South through the north Westwinds Apartments parking lot to the scene

Officer Glennon’s response was captured on his squad MVR. The in-car audio was functioning, but his wireless microphone was not.

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 judgement 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, officer 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 judgement, 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 the Communication Center. An officer shall also discontinue and 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 the Communications Center of their

determination. Any subsequent change in the appropriate response level should be communicated to the 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 and 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.

422.1 PURPOSE AND SCOPE (MOBILE VIDEO RECORDING SYSTEM)

The Eau Claire Police Department has equipped marked patrol cars with Mobile Video Recording (MVR) systems to provide records of events and assist officers in the performance of their duties. This policy provides guidance on the use of these systems.

422.3 OFFICER RESPONSIBILITIES (MOBILE VIDEO RECORDING SYSTEM)

Prior to going into service, each officer will properly equip him/herself to record audio in the field. At the end of the shift, each officer will follow the established procedures for providing to the Department any recordings or used media and any other related equipment. Each officer should have adequate recording media for the entire duty assignment. In the event an officer works at a remote location and reports in only periodically, additional recording media may be issued. Only Eau Claire Police Department identified and labeled media with tracking numbers is to be used.

At the start of each shift, officers should test the MVR system's operation in accordance with manufacturer specifications and department operating procedures and training.

System documentation is accomplished by the officer properly logging in at the start of their shift and properly logging out at the end of their shift. If the system is malfunctioning, the officer shall take the vehicle out of service unless a supervisor requests the vehicle remain in service.

422.4 REQUIRED ACTIVATION OF THE MVR

This policy is not intended to describe every possible situation in which the MVR system may be used, although there are many situations where its use is appropriate. An officer may activate the system any time the officer believes it would be appropriate or valuable to document an incident.

In some circumstances it is not possible to capture images of the incident due to conditions or the location of the camera. However, the audio portion can be valuable evidence and is subject to the same activation requirements as the MVR. The MVR system should be activated in any of the following situations:

- All field contacts involving actual or potential criminal conduct within video or audio range:
 - Traffic Stops (to include, but not limited to, traffic violations, stranded motorists assistance and all crime interdiction stops)
 - Priority responses

- Vehicle pursuits
- Suspicious vehicles
- Arrests
- Vehicle searches
- Physical or verbal confrontations or use of force
- Pedestrian checks
- OWI investigations including field sobriety tests
- Consensual encounters
- Crimes in progress
- Responding to an in progress call
- All assigned cases and officer initiated cases as you arrive on scene
- All self-initiated activity in which an officer would normally notify the Communications Center
- Any call for service involving a crime where the recorder may aid in the apprehension and/or prosecution of a suspect
 - Domestic abuse calls
 - Disturbance of peace calls
 - Offenses involving violence or weapons
- Any other contact that becomes adversarial after the initial contact, in a situation that would not otherwise require recording.
- Any other circumstance where the officer believes that a recording of an incident would be appropriate.
- Failure to comply with the required activations of the MVR may result in discipline.

422.8 SYSTEM OPERATIONAL STANDARDS (MVR)

- (a) MVR system vehicle installations should be based on officer safety requirements and vehicle and device manufacturer recommendations.
- (b) The MVR system should be configured to minimally record for 30 seconds, prior to an event.
- (c) The MVR system may not be configured to record audio data occurring prior to activation.
- (d) Unless the transmitters being used are designed for synchronized use, only one transmitter, usually the primary initiating officer's transmitter, should be activated at a scene to minimize interference or noise from other MVR transmitters.
- (e) Officers using digital transmitters that are synchronized to their individual MVR shall activate both audio and video recordings when responding in a support capacity. This is to obtain additional perspectives of the incident scene.
- (f) Officer shall not erase, alter, reuse, modify or tamper with MVR recordings. Only MVR technician or other authorized designee may erase and reissue previous recordings and may only do so pursuant to the provisions of this policy.
- (g) To prevent damage, original recordings shall not be viewed on any equipment other than the equipment issued or authorized by the MVR technician.

Findings:

Officer Konkel and Officer Putzy were the initial officers assigned to the case and responded in non-emergency mode. They both immediately responded to the call when dispatched and took a reasonable route to the scene. The non-emergency response was appropriate based on the information known at the time. Prior to arriving at the south parking lot Officer Konkel activated his squad MVR. The MVR and wireless microphone were both functioning properly. Officer Putzy did not activate his squad MVR when he initially arrived on scene. He would later activate the system with both the MVR and wireless microphone functioning properly. The purpose of activating the MVR is to provide records of events and to assist officers in the performance of their duties. The MVR policy states that the squad MVR system should be activated at all assigned cases as the officer arrives on scene. Due to the late activation of the system there were events in this incident that were not captured on video or audio that otherwise would have. Officer Putzy should have activated his MVR prior to or as he arrived on scene.

Officer Olson, Officer Vang, Sergeant Slaggie and Officer Anderson volunteered to respond to Peters Drive over the radio and were acknowledged by the Communication Center. They all responded in emergency mode which was appropriate based on the information that the suspect was armed with a knife and displaying atypical behavior. They all took appropriate routes to the scene. The MVR system for each squad was activated when the individual officers activated their emergency lights. Squad video was reviewed from the start of the camera activation until each officer arrived on scene.

Wisconsin Law identifies rules for vehicle operation when operating in emergency mode. Wis. Stat. § 346.03 states that officers responding to an emergency as an emergency response shall continuously operate emergency lighting equipment and shall sound the siren as reasonably necessary. It further states that after giving a visual and audible siren, officers may exceed any speed limits provided this does not endanger life or property. Wis. Stat. § 346.03(4) provides special circumstances regarding emergency responses and lists the circumstances when it may be appropriate for officers to exceed the speed limit without the use of a visual and audible signal. Among the reasons is when the use of emergency lights or siren would endanger the safety of a victim or other person.

Officer Olson began his response northbound on Oxford Avenue. Officer Olson clearly travels over the posted speed limit without his emergency lights or siren activated. Officer Olson caught up to another vehicle traveling north on Oxford Avenue and started to overtake it before activating his emergency lights and siren. Officer Olson should have activated his emergency lights and siren as soon as the decision to exceed the speed limit was made. The remainder of Officer Olson's response was appropriate.

Officer Vang began his response northbound on Oxford Avenue. Officer Vang clearly travels over the posted speed limit without his emergency lights or siren activated. Officer Vang continued driving in this manner through the intersection of Oxford Avenue and West Madison Street. The traffic light for his direction of travel was yellow at the time. Officer Vang caught up to another northbound vehicle on Oxford Avenue just south of Platt Street. Officer Vang activated his emergency lights and siren and proceeded to the scene in emergency mode. When Officer Vang's squad MVR was activated his wireless microphone was not turned on. Officer Vang should have activated his emergency lights and siren as soon as the decision to exceed the speed limit was made. Officer Vang should have also

activated his emergency lights and siren prior to driving through the intersection above the speed limit with a yellow traffic signal. Officer Vang should have ensured his wireless microphone was turned on and synchronized to his MVR prior to going into service. The remainder of Officer Vang's response was appropriate.

Sergeant Slaggie had not logged into his MVR system prior to his response to the scene. As he began his emergency response the MVR system activated, but the wireless microphone did not. Sergeant Slaggie should have logged into the MVR system and ensured his wireless microphone was turned on and synchronized to his MVR prior to going into service. The remainder of Sergeant Slaggie's response was appropriate.

Officer Anderson's entire response to the scene was appropriate.

Officer Chapin, Officer Lawrence and Officer Glennon responded to the scene without being dispatched or notifying dispatch. They all responded in emergency mode after Officer Olson radioed "shots fired." The emergency response was appropriate for this group of officers as the circumstances involving the shooting were still unknown. They all took appropriate routes to the scene. The MVR system for each squad was activated when the individual officers activated their emergency lights. Squad video was reviewed from the start of the camera activation until each officer arrived on scene.

Officer Chapin and Officer Lawrence travelled the same route to the scene, with Officer Chapin in front of Officer Lawrence. Both drove at relatively high speeds while on Cameron Street and North Clairemont Avenue. Both were traveling in emergency mode with emergency lights and sirens activated so they are allowed to exceed any speed limits. However, state law states officers may exceed any speed limits provided this does not endanger life or property. There is no specific speed that must be obtained to reach the threshold of endangering life or property. Each individual response is different based on any number of factors. What is clear is that the faster a vehicle travels, the more likely significant injury or property damage will happen should unforeseen events occur. Based on this evaluation Officer Chapin and Officer Lawrence should have proceeded more slowly to the scene. The remainder of their response was appropriate.

Officer Glennon began his response traveling northbound on Bellinger Street. Officer Glennon activated his emergency lights but not his siren while exceeding the speed limit on Bellinger Street. Officer Glennon activated his siren once on Platt Street. When Officer Glennon's squad MVR was activated his wireless microphone was not turned on. Officer Glennon should have had his emergency lights and siren on for the duration of his emergency response. Officer Glennon should have ensured his wireless microphone was turned on and synchronized to his MVR prior to going into service.

All officer videos are copied and included in their electronic format with this report.

Contact at Westwinds Apartments

Facts:

At 1050 hours TC Johnson received a 911 call from a female indicating there was a man in the hallway outside of her apartment acting “strange.” The caller said she was calling from 2214 Peters Drive (Westwinds Apartments) apartment # [REDACTED]. The caller said the man was yelling, “Why am I still alive? Why am I still here? Why am I the only one alive?” The caller described the man as a white male, wearing green headphones, possibly 15-20 years old.

As TC Johnson continued to talk with the caller, TC Kruschke dispatched the information and assigned officers to the call. Officer Konkel was dispatched as the primary officer. Officer Putzy was diverted from a prior call and was dispatched as the secondary officer. Information was developed through the caller that the suspect may be in the south parking lot for the Westwinds Apartments, which is accessed off of Peters Drive.

Officer Konkel was the first officer on scene and notified the Communication Center. Officer Putzy notified Officer Konkel that he was about thirty seconds away. Officer Konkel turned off of Peters Drive onto the driveway leading to the south parking lot for the apartment complex. Officer Konkel activated his squad video about this time.

Officer Konkel observed a subject in the parking lot that he described as a male white, 20-25 years old, medium build and wearing green headphones. Officer Konkel believed this was the same subject that the caller had described.

Officer Konkel observed the suspect for a short time while still inside his squad car. Officer Konkel estimated he was 175 to 200 feet away from the suspect. Officer Konkel described the suspect’s behavior as “strange.” Officer Konkel observed that the suspect was making rapid body movements, bobbing and jerking his head, clinching his left fist, yelling and appeared to be talking to someone who was not there. Officer Konkel observed that the suspect appeared to be mad or angry. Officer Konkel could not hear what the suspect was yelling at that time as his squad windows were rolled up.

The suspect walked back and forth in the parking lot, spinning around a few times. As the suspect spun around Officer Konkel observed a large knife or small machete in the suspect’s right hand. Officer Konkel described the knife as 14 to 15 inches long in total length. Officer Konkel radioed that he located the suspect in the parking lot carrying a large knife. TC Kruschke advised that she would get more officers dispatched to the scene.

Officer Olson checked on for duty and advised he would respond to Peters Drive. Officer Vang checked on for duty and also volunteered to respond to Peters Drive. Officer Konkel continued to observe the suspect from a distance. Officer Konkel released his squad rifle from the rack and charged it, making the rifle “call ready.” The suspect continued to pace back and forth in the parking lot as Officer Konkel waited for backup to arrive.

The suspect continued to talk and yell out loud while pacing through the parking lot. At times the suspect would thrust the knife forward and wave it around, as if he was having a knife fight with someone in the parking lot. The suspect also made motions with the knife as if he was stabbing somebody. Officer Konkel became concerned at this time and believed that the suspect was having a drug hallucination, an “out of body experience” or a mental health issue.

Officer Putzy arrived on scene and Officer Konkel asked him to “load up some less lethal.” Officer Putzy acknowledged as he parked his squad in the northwest side of the south parking lot. Officer Putzy observed the suspect in the center of the parking lot. Officer Putzy noted that the suspect was male white, wearing green headphones and was yelling something. Officer Putzy also noted that the suspect was carrying a knife that he described as large, shiny, and had a silver blade.

The suspect appeared to be walking back and forth to a vehicle parked in the lot and was looking in the windows. Both Officer Konkel and Officer Putzy observed this from different locations in the parking lot area. Officer Konkel was able to see the suspect was opening and slamming shut the driver’s side door of the same vehicle. The suspect walked away from the car for a moment but then returned and did the same thing.

It did not appear there was anyone else in the car but Officer Konkel said he was not positive due to the glare of the sun reflecting off of the windows. Officer Konkel was concerned that there could be another person inside the vehicle that was in danger. Officer Konkel exited his squad with his squad rifle and changed his position on foot to get a better view into the vehicle. Officer Konkel was able to see into the vehicle and was confident no one else was inside. Officer Konkel scanned the rest of the parking lot for other people but did not see any.

Officer Konkel radioed an updated location of the suspect to responding units and advised the suspect still had a knife. About the same time the suspect appeared to notice Officer Putzy and began to quickly and aggressively walk toward Officer Putzy’s squad car. The suspect was still holding the knife in an upward position near his waistline. Officer Konkel noticed this and moved on foot toward the southwest corner of the parking lot.

Officer Putzy observed the suspect was walking toward his squad and began to prepare his squad shotgun for less lethal bean bag rounds. Officer Putzy removed his shotgun from the rack and began removing the lethal rounds from the gun. Officer Putzy was trying to keep an eye on the suspect as he prepared his shotgun, but momentarily lost sight of him as he removed his less lethal bean bag rounds from his squad bag and loaded them into his shotgun.

The suspect made his way to the front driver’s side door of Officer Putzy’s squad and began yelling at Officer Putzy through the closed window. The suspect raised the knife from his waistline area up toward his shoulder. The suspect attempted to open the driver’s door several times but was unsuccessful as the doors were locked. The suspect was aggressively pulling on the door handle as he tried to open the door. The suspect then moved to the rear driver’s side door and aggressively tried opening that one several times without success. Officer Putzy accelerated forward and drove to the southwest corner of the parking lot leaving the suspect behind.

Officer Putzy exited his squad car and activated his squad camera at this time. The suspect was walking west through a grassy area with pine trees and Officer Putzy temporarily lost sight of him. Officer Konkel made his way to Officer Putzy’s squad car and met up with him there. The suspect was still walking west next to Gordy’s grocery store. Officer Konkel was concerned that the suspect was making his way toward the store which was open and busy at this time of day. Officer Konkel

paralleled the suspect and yelled at him to, "Put down the knife." This was the first time officers verbally engaged the suspect.

The suspect did not appear to acknowledge officers and made comments such as, "What the fuck is this?" and "Why?" The suspect made a number of other loud comments that were undiscernible on squad audio. Officer Konkel radioed the Communication Center and requested to have EMS dispatched to the scene and stage nearby. Officer Konkel requested that EMS stage in the parking lot near Gordy's and RCU.

Officer Olson and Deputy Sommers arrived on scene in emergency mode. The suspect appeared to notice this and started walking east back to the grassy area with pine trees. Officer Olson had heard Officer Konkel request "less lethal" and began to prepare his squad shotgun. Deputy Sommers contacted Officer Olson and advised she had a shotgun already prepared with less lethal rounds. Officer Olson left his squad shotgun in his squad and proceeded towards Officer Putzy's squad car.

The suspect continued to talk out loud and was heard saying, "I'm right here dude" and "Why?" Officer Konkel asked Officer Putzy if he had less lethal loaded and Officer Putzy confirmed that he did. Officer Putzy ordered the suspect to drop the knife. The suspect responded by saying "hey man." Officer Putzy again told the suspect to drop the knife, which he did not.

Officer Konkel took a position at the front of Officer Putzy's squad car covering the suspect with his squad rifle. Lieutenant Golden announced over the radio to Officer Putzy that before he deployed less lethal rounds from the shotgun that another officer needed to examine it. During the radio transmission the suspect said something similar to, "Hey dude, what are we fighting against?" Officer Putzy showed the shotgun to Officer Konkel who confirmed all lethal rounds had been removed.

The suspect was walking south through the pine trees toward Officer Putzy's squad car. Officer Olson arrived at Officer Putzy's squad car and removed his handgun from the holster. Officer Putzy took up a position near the rear driver's side door of his squad while Officer Konkel and Officer Olson remained near the front of the squad. The suspect continued walking toward the squad still grasping the knife.

Officer Konkel verbally indicated to Officer Putzy to shoot the suspect with the less lethal bean bag rounds. Officer Putzy again shouted, "Drop the knife" and fired a less lethal round at the suspect. The suspect groaned when struck but did not drop the knife. Officer Putzy ordered the suspect to drop the knife again and fired a second less lethal round. The suspect went down to the ground but did not let go of the knife. Officer Putzy continued yelling for the suspect to drop the knife along with Officer Konkel and Officer Olson. The suspect began getting up off the ground, back to a standing position and Officer Putzy fired a third less lethal round. The suspect did not drop the knife.

At some point between when the suspect went down to the ground and the third shot Officer Olson holstered his firearm and drew his Taser. Officer Olson deployed his Taser after Officer Putzy's third shot and struck the suspect in the right arm. The Taser did not appear to have any effect on the suspect.

The suspect got back to a standing position and turned to face Officer Putzy. Officer Putzy fired a fourth less lethal round at the suspect while all officers continued to yell commands to “drop the knife” and “drop it.” The fourth less lethal round had no effect on the suspect. Officer Konkel reported that the fourth shot “appeared to make the suspect very angry.” The suspect raised the knife from his waistline to his shoulder area and pointed the knife at Officer Putzy. The suspect began to quickly walk or run directly at Officer Putzy. Officer Putzy began to disengage as the suspect quickly moved toward him.

Officer Putzy advised at that time he felt “imminent threat or great bodily harm caused by the actions of the suspect coming at him with the knife.” Officer Olson reported as the suspect moved toward Officer Putzy with the knife, the tip of the blade was pointed up in an aggressive attack style grip. Officer Olson advised that he believed the suspect intended to cause Officer Putzy death or great bodily harm.

Officer Konkel advised the suspect moved within 20 to 25 feet of Officer Putzy who began trying to disengage. Officer Konkel reported that he “feared for Officer Putzy’s safety and life, knowing Officer Putzy did not have any cover or concealment to get away from the suspect.”

Officer Konkel fired two rounds from his squad rifle. The suspect immediately dropped to the ground landing on his front side and did not move. Within about 3 seconds both Officer Putzy and Officer Olson announced over the radio that shots were fired. Only Officer Olson’s transmission was heard over the radio frequency. About ten seconds later Officer Olson again announced over the radio that shots had been fired, the suspect was down and officers were okay. The Communication Center was advised to have EMS respond directly to the scene and not stage in the parking lot.

Officers observed the suspect’s knife lying underneath the suspect’s right side with the handle exposed. Officer Konkel continued to cover the suspect with his rifle and Officer Putzy covered the suspect with his shotgun. The suspect was partially moved and Deputy Sommers moved the knife away from him.

Policy/Procedure:

300.3.1 USE OF FORCE TO EFFECT AN ARREST

State

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

300.3.2 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

Federal

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

- (a) Immediacy and severity of the threat to officers or others.
- (b) The conduct of the individual being confronted, as reasonably perceived by the officer at the time.
- (c) Officer/subject factors (age, size, relative strength, 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.

303.9 KINETIC ENERGY PROJECTILE GUIDELINES

This department is committed to reducing the potential for violent confrontations. Kinetic energy projectiles, when used properly, are less likely to result in death or serious injury and can be used in an attempt to de-escalate a potentially deadly situation.

303.9.1 DEPLOYMENT AND USE OF KINETIC ENERGY PROJECTILES

Only department-approved kinetic energy munitions shall be carried and deployed. Approved munitions may be used to compel an individual to cease his/her actions when such munitions present a reasonable option.

Officers are not required or compelled to use approved munitions in lieu of other reasonable tactics if the involved officer determines that deployment of these munitions cannot be done safely. The safety of hostages, innocent persons and officers takes priority over the safety of subjects engaged in criminal or suicidal behavior.

Circumstances appropriate for deployment include, but are not limited to, situations in which:

- (a) The suspect is armed with a weapon and the tactical circumstances allow for the safe application of approved munitions.
- (b) The suspect has made credible threats to harm him/herself or others.
- (c) The suspect is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers.
- (d) There is probable cause to believe that the suspect has already committed a crime of violence and is refusing to comply with lawful orders.

303.9.2 DEPLOYMENT CONSIDERATIONS

Before discharging projectiles, the officer should consider such factors as:

- (a) Distance and angle to target.
- (b) Type of munitions employed.
- (c) Type and thickness of subject’s clothing.
- (d) The subject’s proximity to others.
- (e) The location of the subject.

- (f) Whether the subject's actions dictate the need for an immediate response and the use of control devices appears appropriate.

A verbal warning of the intended use of the device should precede its application, unless it would otherwise endanger the safety of officers or when it is not practicable due to the circumstances. The purpose of the warning is to give the individual a reasonable opportunity to voluntarily comply and to warn other officers and individuals that the device is being deployed.

Officers should keep in mind the manufacturer's recommendations and their training regarding effective distances and target areas. However, officers are not restricted solely to use according to manufacturer recommendations. Each situation must be evaluated on the totality of circumstances at the time of deployment.

The need to immediately incapacitate the subject must be weighed against the risk of causing serious injury or death. The head and neck should not be intentionally targeted, except when the officer reasonably believes the suspect poses an imminent threat of serious bodily injury or death to the officer or others.

303.9.3 SAFETY PROCEDURES

Officers who must transition from conventional ammunition to kinetic energy projectiles will employ the two-person rule for loading. The two-person rule is a safety measure in which a second officer watches the unloading and loading process to ensure that the weapon is completely emptied of conventional ammunition.

304.5 USE OF THE EMDT DEVICE

The TASER Device has limitations and restrictions requiring consideration before its use. The TASER Device should only be used when its operator can safely approach the subject within the operational range of the device. Although the TASER Device is generally effective in controlling most individuals, officers should be aware that the device may not achieve the intended results and be prepared with other options.

304.5.1 APPLICATION OF THE EMDT DEVICE

The TASER Device may be used in any of the following circumstances, when the circumstances perceived by the officer at the time indicate that such application is reasonably necessary to control a person:

- (a) The subject is violent or is physically resisting.
- (b) The subject has demonstrated, by words or actions, an intention to be violent or to physically resist, and reasonably appears to present the potential to harm officers, him/herself or others.

Mere flight from a pursuing officer, without other known circumstances or factors, is not good cause for the use of the TASER Device to apprehend an individual.

304.5.3 TARGETING CONSIDERATIONS

Reasonable efforts should be made to target lower center mass and avoid the head, neck, chest and groin. If the dynamics of a situation or officer safety do not permit the officer to limit the application of the TASER Device probes to a precise target area, officers should monitor the condition of the subject if one or more probes strikes the head, neck, chest or groin until the subject is examined by paramedics or other medical personnel.

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:

- (a) Situations where the officer reasonably anticipates an armed encounter.
- (b) When an officer is faced with a situation that may require the delivery of accurate and effective fire at long range.
- (c) Situations where an officer reasonably expects the need to meet or exceed a suspect's firepower.
- (d) When an officer reasonably believes that there may be a need to deliver fire on a barricaded suspect or a suspect with a hostage.
- (e) When an officer reasonably believes that a suspect may be wearing body armor.
- (f) When authorized or requested by a supervisor.

Findings:

Officer Konkel arrived at the Westwinds Apartments and located Gregory Kever in the south parking lot. Kever was demonstrating atypical and potentially violent behavior and was observed holding a large knife. Officer Konkel did not immediately contact or approach Kever but watched him from a distance waiting for additional officers to arrive. Officer Konkel readied his squad rifle as he observed Kever. Squad rifles may be deployed by officers in a number of circumstances including situations where the officer reasonably anticipates an armed encounter. Based on the observed behavior of Kever and the fact Kever possessed a knife, it was appropriate for Officer Konkel to deploy his squad rifle.

Officer Konkel recognized the situation could result in an armed confrontation and advised Officer Putzy to prepare less lethal bean bag rounds. The Eau Claire Police Department is committed to reducing the potential for violent confrontations. Kinetic energy projectiles, when used properly, are less likely to result in death or serious physical injury and can be used in an attempt to de-escalate a potentially deadly situation. The approved kinetic energy projectile munition for the Eau Claire Police Department is the drag stabilized bean bag round. The deployment of this weapon was appropriate as Kever was armed with a knife and had demonstrated potentially violent behavior.

The two initial factors causing the highest level of concern for officers were the knife Kever possessed and his atypical behavior.

The post incident investigation identified the knife Kever possessed was made by Chipaway Cutlery. The knife had an 11 inch blade that was silver in color, a 3 inch handle that was brown and off white in

color, and a 1 ¾ inch end that was bronze in color. The knife was large enough that it was observed by Officer Konkel at a distance of up to 200 feet away. A knife of this size could clearly cause death or great bodily harm to a person should it be used against them. A photograph of Kever's knife is contained below in Figure 1.



Figure 1.

The atypical behavior demonstrated by Kever was both erratic and increasingly violent. Some of the initial behaviors noted by Officer Konkel included rapid body movements, pacing, walking in circles, fist clinching, yelling and simulated stabbing motions with the knife.

The violent behavior became more apparent following Officer Putzy's arrival on scene. Kever attempted to forcefully open Officer Putzy's squad door while yelling and displaying the knife in an aggressive manner. Officer Putzy was able to disengage away from Kever, but a short time later he again moved toward officers while still armed with the knife. Kever disregarded numerous commands to drop his knife and continued his armed approach toward officers even after less lethal options were utilized.

A number of witnesses were identified and provided details about their observations. While not all witnesses had the same details, cumulatively the observations showed the same erratic and violent behavior as observed by officers up to the time Kever was shot. The witnesses interviewed by La Crosse Investigators were [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] and [REDACTED] [REDACTED]. The observations of Deputy Melissa Sommers were also included as she was an involved officer but not an employee of the Eau Claire Police Department.

Observations

[REDACTED] said she was in her apartment with her boyfriend when she heard someone yelling. [REDACTED] said she was unsure where the yelling was coming from as she was deaf in one ear. [REDACTED] said she thought she heard the person yell something similar to, "this is happening again." A few moments later [REDACTED] said she thought the person was right outside her door. She said she thought the person either attempted to open her door or bumped into it.

[REDACTED] said she looked out her peephole and observed the suspect was in the hallway walking in circles. [REDACTED] said the suspect was yelling, "Why am I still alive? Everyone's dead. They killed

everybody. Why am I still alive?" [REDACTED] said she thought the person was having "a psychotic break." [REDACTED] described the person as acting like he was trapped, just walking in circles.

[REDACTED] said she decided to call 911 and report the incident. While she was on the phone she determined the suspect had moved outside. [REDACTED] said she and her boyfriend could hear the suspect yelling outside. [REDACTED] said her boyfriend thought the suspect was in the south parking lot. This information was relayed to the 911 operator. [REDACTED] said she never got a good look at the suspect but knew he had green headphones on. [REDACTED] ended the call shortly after officers arrived on scene.

[REDACTED] said after she ended the 911 call she observed a group of children walking toward the incident. She left her patio area in an attempt to direct the children away from the scene. The children turned around and walked away from the incident. [REDACTED] said she was now in a position to observe police dealing with the suspect. [REDACTED] said she took her phone out and began to record the incident.

[REDACTED] said she could hear officers trying to talk with the suspect, but the suspect still appeared to be walking in circles. [REDACTED] said she saw the suspect start walking toward one of the officers and then heard a "pop." [REDACTED] said the suspect appeared to fall down. [REDACTED] said the suspect got up and lunged at the officer. [REDACTED] described "lunged" as running or moving quickly toward the officer. [REDACTED] said the suspect appeared to get very close to the officer when she heard two pops and saw a flash, and the suspect dropped to the ground. [REDACTED] said she observed officers attempt to resuscitate the suspect before returning to her apartment.

[REDACTED] said she did not think she had ever seen the suspect before. [REDACTED] said she could not see if the suspect was holding a knife from where she was standing. [REDACTED] said from what she observed, she believed police officers did everything they could have done.

[REDACTED] Observations

[REDACTED] was cleaning her second floor apartment prior to the incident. [REDACTED] said she had her patio door open with the screen shut. [REDACTED] said she heard someone yelling and initially thought it could be some sort of domestic dispute. [REDACTED] did not immediately seek out the source of the yelling.

As the yelling continued [REDACTED] looked out the window and observed an individual, who was wearing green headphones and had a knife in his hand. [REDACTED] described the knife as a large kitchen knife. [REDACTED] said the individual was pacing back and forth in the parking lot yelling, "Why am I even here? What is this even? I'm a good guy." [REDACTED] said the individual was repeating the statements over and over. [REDACTED] said the subject sounded angry and seemed very upset about something. [REDACTED] said she was just about to call police when she noticed police had arrived.

Prior to police arrival, [REDACTED] observed the individual near the grassy area next to the parking lot. [REDACTED] said the individual held his left arm up, as if he was holding somebody up by the shoulders or upper body. [REDACTED] said the individual then started stabbing the air toward the area where it looked like he was trying to hold somebody up. [REDACTED] said she believed the subject was seeing things.

[REDACTED] said all the pacing appeared to be near a small silver car in the parking lot. [REDACTED] said she observed the subject look inside the car on a few occasions. [REDACTED] said at one point she thought the

individual may be upset due to having car trouble. [REDACTED] said the individual would be very upset, then calm down, get very upset again, and then calm down. [REDACTED] said all this occurred while he was pacing. [REDACTED] said the individual was also making “frustrating groans.” [REDACTED] said she had never seen anyone act like this in her life.

[REDACTED] said she observed the officer’s interaction with the individual. [REDACTED] said she heard officers telling the individual to put the knife down, but the individual refused. [REDACTED] said she saw the individual running at a police officer. [REDACTED] said she had never seen the individual before.

[REDACTED] [REDACTED] Observations

[REDACTED] was inside his second floor apartment when he heard what he described as yelling or growling in the parking lot. [REDACTED] said the growl noises sounded aggressive to him. [REDACTED] said as he got up to look out the window he heard, “pop, pop, pop.” [REDACTED] said once he looked out the window he observed several police officers. [REDACTED] said he did not see any of the incident until after he heard the shots.

[REDACTED] [REDACTED] Observations

[REDACTED] was inside of her third floor apartment when she heard some yelling outside. [REDACTED] said she initially did not think much of the yelling and thought it may be her neighbors. [REDACTED] said about five minutes later she heard additional yelling outside. [REDACTED] said she looked outside into the parking lot and saw an individual walking around cars wearing a large set of green earphones. [REDACTED] said as the subject was walking around the parking lot he looked very angry. [REDACTED] said it looked like the individual was holding a silver knife that looked very big in his hand.

[REDACTED] said she continued to watch the subject in the parking lot and saw a police officer arrive near the parking garage. [REDACTED] saw the individual walk toward the police officer’s vehicle and the officer backed up. [REDACTED] said the individual again walked toward the police officer’s vehicle. [REDACTED] said the police officer pulled forward and then backed up again. [REDACTED] said it looked like the officer was trying to avert the individual.

[REDACTED] said as the individual moved within the parking lot she could see there was something in his hand. [REDACTED] said she observed another police vehicle enter the parking lot from the west side. [REDACTED] said she observed the individual move toward that vehicle. [REDACTED] said a short time later she heard shots.

[REDACTED] [REDACTED] Observations

[REDACTED] was inside his second floor apartment when he heard someone shouting outside. [REDACTED] said it sounded like the subject was shouting the same statement over and over again. [REDACTED] said he looked outside and observed the individual wearing a green headset and carrying something shiny. [REDACTED] said he could not make out what the individual was saying at that time. [REDACTED] thought the subject may have made statements similar to, “Who am I even talking to? I am a good person. I don’t even know why I’m here.” [REDACTED] said that due to the headset the subject was wearing he thought the individual may be involved with some type of portable gaming.

██████████ said he stopped observing the subject but continued to hear him yelling. ██████████ estimated the yelling went on for ten to fifteen minutes. ██████████ looked outside again and saw police had arrived. ██████████ saw several squad cars around the parking lot and heard multiple officers shout, "Put down the knife." ██████████ said the subject did not appear to acknowledge the officers and continued stalking around the parking lot. ██████████ said he heard the subject shouting, "Who am I even taking to?" and "I can't believe I'm even still here." ██████████ said he was unsure if the subject was talking to someone or to someone in his own head.

██████████ said the subject began walking toward where police vehicles were parked. ██████████ saw an officer near the rear of the vehicle and could hear police continue to shout, "Drop the knife." ██████████ said the subject did not appear to say anything or respond to officers. ██████████ said he observed the subject get hit in the stomach with what he believed were rubber bullets and then heard three to six shots. ██████████ said he had never seen the individual before.

██████████ Observations

██████████ was inside her first floor apartment when she heard someone yelling outside. ██████████ had her shades shut but had her door cracked at the time. ██████████ described the yelling she heard as somebody possibly fighting with someone else.

██████████ looked outside and observed a person, "ranting and raving and pacing in the parking lot." ██████████ described the person as being really agitated. ██████████ said the subject was walking back and forth in the center of the parking lot where vehicles were parked. ██████████ said the subject kept saying something similar to who and why. ██████████ described the subject as "growling like a wild person."

██████████ observed a squad car arrive and saw the subject walk in the direction of the squad car. ██████████ said as the subject continued to walk around she observed something shiny in his hand. ██████████ said additional squad cars arrived and the subject walked toward them. ██████████ said the subject was still ranting and raving. ██████████ said she heard what she described as popping and that was the end of the incident. ██████████ said she had never seen the subject before. ██████████ said the subject was "just totally wild."

Deputy Melissa Sommers Observations

Deputy Sommers was in her squad in the Law Enforcement Center parking lot when she heard radio traffic regarding a male with a knife. Deputy Sommers said Officer Olson was getting his squad prepared near her and asked him where the call was at. Officer Olson told her the call was on the west side of town and left the parking area. Deputy Sommers observed Officer Olson activate his emergency lights and siren. Deputy Sommers said she followed Officer Olson to the call in emergency mode as well. Deputy Sommers said when they arrived they parked in the Gordy's parking lot. Deputy Sommers said she was parked behind Officer Olson.

Deputy Sommers got out of her squad and observed the suspect had green headphones on. Deputy Sommers said she observed the suspect had a knife in one of his hands. She described the knife as having a silver blade approximately 12 inches long, and it appeared serrated on one end. Deputy

Sommers briefly discussed getting her department issued less lethal gun as it was already loaded with less lethal rounds. Deputy Sommers retrieved the less lethal gun from her squad and moved towards Officer Putzy's squad car.

Deputy Sommers said as she rounded the corner of some pine trees she observed the suspect run directly at Officer Putzy. Deputy Sommers said she heard gunshots and observed the suspect fall to the ground. Deputy Sommers said she did not recall how many gunshots she heard or know who fired them. Deputy Sommers said she could see the knife was partially under the suspect and was pinned to the ground. Deputy Sommers said Officer Konkel used his foot to partially lift the suspect so she was able to remove the knife. Deputy Sommers said she put the knife on the hood of Officer Putzy's squad. The knife remained on the hood until she received permission from Officer Anderson to secure the knife in his squad car.

Deputy Sommers said Officer Olson began doing chest compressions on the suspect. Deputy Sommers said she asked Officer Olson if he wanted her to hook up her AED. Officer Olson told her that it appeared the suspect had been shot in the head.

Deputy Sommers assisted in securing the scene. She said she was advised by Sergeant Pieper that she needed to go to the police department along with Officer Konkel, Officer Putzy and Officer Olson. Deputy Sommers said she drove Officer Olson to the police department and did not talk about the incident with him. Deputy Sommers said she left her squad video on so that any conversation in the squad would have been captured.

Deputy Sommers told investigators she believed the suspect was a danger because the knife was up and he ran straight for Officer Putzy.

Findings:

Officer Putzy was able to disengage after Kever attempted to open his squad car doors. Officer Putzy put distance between Kever and himself and was able to team up with Officer Konkel. Officer Olson and Deputy Sommers arrived on scene a short time later and Officer Olson was able to join the group as Deputy Sommers retrieved her less lethal gun from her squad car.

Kever made the choice to again approach officers still armed with a knife. The only cover officers had at this time was Officer Putzy's squad car. Officers began planning for action at the front of Officer Putzy's squad car. Kever was approaching officers from a row of pine trees walking toward the rear of the squad car. Officer Konkel estimated Kever was 7 to 12 yards (21 to 36 feet) away as he began his approach toward them.

Officer Putzy had already loaded his squad shotgun with less lethal beanbag rounds following the initial request from Officer Konkel. Officer Putzy removed the weapon from his squad and had it in his possession as Kever approached. Lieutenant Golden radioed to Officer Putzy and told him that another officer needed to check the weapon prior to discharging any rounds. Officer Konkel checked the shotgun and observed it was loaded with less lethal bean bag rounds.

Policy states that officers who must transition from conventional ammunition to kinetic energy projectiles will employ the two-person rule for loading. The two-person rule is a safety measure in which a second officer watches the unloading and loading process to ensure that the weapon is completely emptied of conventional ammunition. No other officer observed officer Putzy unload his conventional ammunition or load his bean bag rounds. Officer Konkol only checked the weapon after it was prepared for use. Under ideal conditions Officer Konkol or another officer should have watched Officer Putzy ready his shotgun.

There were a number of factors involved with this incident that prevented the proper transition from conventional to less lethal ammunition. The initial lack of police officer resources, the deployment locations of Officer Konkol and Officer Putzy, and the choice of Kever to approach officers while armed were among the most significant. By the time Officer Putzy had readied his shotgun with less lethal rounds Kever had clearly displayed unpredictable and violent behavior. The minimal check of the weapon before its use was not in accordance with policy, but it did appear to be reasonable based on the totality of circumstances.

Officer Putzy set up near the rear driver's side door of his squad car with his shotgun loaded with less lethal rounds. Kever walked toward the rear of the squad with the knife grasped in his right hand, and with his right hand held down toward his waistband area. The blade of the knife was pointed up and toward officers. Kever's approach to officers was partially obscured by a row of pine trees he was walking through. Officer Putzy estimated Kever was about 15 feet away and getting closer when he began deploying less lethal rounds. Prior to firing less lethal rounds Officer Putzy gave Kever three different commands to drop the knife. Officer Olson ordered him to drop the knife as well. Kever did not comply with any of these verbal commands.

The maximum effective range of the drag stabilized bean bag round is 75 feet. The minimum stand-off distance is 20 feet. Deployment of bean bag rounds inside of 20 feet significantly increases the possibility of serious injury. Officers recognized the need for less lethal measures in attempting to diffuse this armed encounter. The use of bean bag rounds appeared to be the best less lethal option they had access to. Kever continually closed the distance between himself and officers creating a situation where a confrontation would be inevitable. Kever's final approach toward officers was through a row of pine trees, which partially concealed his location. The approach also created a situation where Officer Putzy was unable to deploy an accurate shot with the bean bag rounds. When a clear shot was available Kever was close to or inside the 20 foot minimum range recommended by the manufacturer.

DAAT guidelines identify a minimum safe distance when dealing with a hostile subject. Guidelines state that the danger zone associated with a person armed with an edged weapon is less than 21 feet. The use of deadly force can be justifiable within that range. Officer Putzy was faced with a situation where the use of drag stabilized bean bag rounds was not within the manufacturers recommended guidelines, but the use of deadly force was likely justifiable. In this incident the use of drag stabilized bean bag rounds was an appropriate use of force despite being out of the manufacturers recommended guidelines.

An autopsy was performed by Dr. Michael Stier at the University Hospital Medical Examiner's office in Madison, WI. Results from the autopsy showed that Kever had been struck at least three times by drag stabilized bean bag rounds. Dr. Stier's report indicated Kever was struck in the left thigh, the abdomen and lower right back. Additionally, there was a fourth possible impact to the left frontal scalp over Kever's left eye, but that result was not conclusive. The three confirmed impacts were all within the desired target areas for maximum effectiveness. These impacts were also consistent with Officer Putzy's first three shots based on officer reports.

After Kever was shot with the second bean bag round he momentarily went down on one knee. Officer Olson used this opportunity to deploy his Electronic Control Device (Taser) in an attempt to gain control of Kever. Based on Dr. Stier's report it appeared that both of the Taser probes struck Kever in the right arm. It appeared that the Taser functioned appropriately but did not achieve the desired result. Officer Olson's use of the Taser was appropriate in this situation.

In total officers gave at least 18 commands of "drop the knife" or "drop it." Kever did not comply with any of these commands. It was unclear if Kever ever heard the commands made by officers. Kever was wearing headphones and was later found to have the hallucinogenic drug lysergic acid diethylamide (LSD) in his blood.

Kever never put down the knife and continually moved towards officers with the knife extended upward at his waist. The use of both kinetic energy projectiles and an electronic control device were unsuccessful. After shooting Kever with less lethal rounds Kever appeared to direct his focus on Officer Putzy and began to advance directly toward him. As Kever continued to advance he became more aggressive with the knife, raising it from waist level to shoulder level. Kever also increased the pace of his advance quickly closing the distance between him and Officer Putzy. Officer Putzy began to retreat from Kever without cover. This series of events caused Officer Konkel to believe Kever was an imminent threat of serious injury to Officer Putzy. At this point in time, Officer Konkel made the decision to shoot Kever because of the imminent threat posed by Kever.

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

The concept of **imminence** as defined by DAAT guidelines includes the following criteria: *intent*, *weapon*, and *delivery system*. Kever did not explicitly state he intended on harming officers. However, his willful refusal to drop the knife as directed numerous times, even after officers attempted to subdue him with lower levels of force, can reasonably be construed as **intent**. It was clear from all officers involved that Kever possessed a **weapon**. Officers quickly recognized that Kever had a knife in his hand and gave commands to drop the knife, which were ignored. The criterion of **delivery system** was met, as Kever was fully ambulatory and in control of his physical faculties, had the

weapon grasped in his hand, and was holding it in such a way that it could have immediately been used to strike an officer causing death or great bodily harm had he gotten the opportunity to get close enough.

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. Kever was in possession of a long bladed edged weapon and continued moving toward officers. Officers had attempted to use lesser force prior to the application of deadly force but were unsuccessful. Officer Putzy fired a total of four kinetic energy projectiles (drag stabilized bean bag rounds) at Kever, who was struck by at least three of them based on the forensic autopsy report completed by Dr. Stier. Kever appeared to be struck by the first two bean bag rounds in desired target areas and went down to the ground on a knee. Kever held onto the knife and disregarded orders to drop it. Officer Olson moved closer to Kever and deployed his electronic control device (ECD or Taser). Based on the forensic autopsy report it appeared both Taser darts struck Kever in the right arm. Officer Olson and Officer Konkel both heard the Taser cycling leading them to believe good contact was made with the probes, yet the Taser appeared to have no effect on the suspect. Kever got up from the ground and Officer Putzy fired two additional bean bag rounds at him, striking Kever at least one more time in a desired target area. Kever got to his feet, still holding the knife and advanced at a faster pace toward Officer Putzy. Finally, officers noted that Kever was within twenty one feet of them and was advancing toward them with weapon in hand and other attempts at less lethal options proved ineffective.

Therefore, the concept of preclusion in this case tells us that Officer Konkel felt Officer Putzy was imminently threatened with deadly force, lesser uses of force were attempted and was, and to use anything less than deadly force against Kever 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 Konkel were justified under the circumstances of this incident. District Attorney King identified 13 separate reasons for the justification. This document can be located in Appendix A (pages 53-70).

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

Follow Through Actions and Medical Treatment of Kever

Facts:

After Kever was shot officers immediately notified the communication center. EMS had already been requested to respond and stage nearby as officers felt the encounter could result in injury. Officers advised the Communication Center to have EMS respond directly to the scene in emergency mode. Officer Konkel held lethal cover on Kever who was not moving. Kever was on his stomach and the knife was partially visible underneath him. Officers approached Kever and rolled him onto his back. Deputy Sommers moved the knife away from Kever. Officer Olson ran to his squad car and returned with a medical bag. Officer Olson assessed Kever for visible injuries and then began CPR one minute

and thirty nine seconds (1:39) following the initial call of shots fired. While Officer Olson performed CPR Officer Vang searched Kever for any additional weapons. Officer Olson provided chest compressions on Kever for two minutes and fifty two seconds (2:52) before EMS took over. EMS arrived on scene and began life saving measures four minutes and thirty one seconds (4:31) after the initial call of shots fired. EMS continued CPR until the Mayo Clinic Health System doctor on staff told them to stop and pronounced Kever deceased.

Officers continued arriving on scene to assist. After the shooting the following officers arrived: Officer Mark Vang, Sergeant Bill Slaggie, Officer Kyle Anderson, Officer Steven Lawrence, Officer David Chapin and Officer Mike Glennon. Sergeant Slaggie was the first supervisor on scene and took over incident command. Sergeant Slaggie contacted Officer Konkel who was still in possession of his squad rifle. Officer Konkel advised Sergeant Slaggie that he had discharged his rifle. Sergeant Slaggie took possession of Officer Konkel's squad rifle. Sergeant Slaggie removed the magazine and cleared the chamber. Sergeant Slaggie received a call requesting he take possession of Officer Konkel's handgun as well. Sergeant Slaggie took possession of the handgun, removed the magazine and cleared the chamber. Sergeant Slaggie secured both weapons in the commanding officers vehicle (squad 70). Sergeant Slaggie attempted to equip Officer Konkel with his department handgun but it would not fit in Officer Konkel's holster. Officer Konkel agreed to go without a handgun for a short time. Officer Anderson was assigned to drive Officer Konkel from the scene to the police department.

Sergeant Slaggie had a short conversation with Officer Putzy on his recollection of events. Eau Claire County Sheriff's Department Sergeant Mark Provost was assigned by Sergeant Slaggie to transport Officer Putzy to the police department.

Sergeant Slaggie also obtained a brief overview of events from Officer Olson. Officer Olson had started looking up information on Kever but was instructed to stop by Sergeant Slaggie. Officer Olson passed along the information he obtained on Kever to other officers on scene and was transported to headquarters by Deputy Sommers.

Officer Konkel, Officer Putzy and Officer Olson each indicated that they did not discuss the incident with anyone while being transported to the police department. Additionally, they each indicated they did not discuss the incident with anyone while at the police department other than Wisconsin Professional Police Association representatives.

Sergeant Slaggie was contacted during this administrative review regarding the transport and staging of involved officers at the police department. Sergeant Slaggie was asked if he specifically ordered the officers not to talk about the incident with one another or other members of the department. Sergeant Slaggie said he wasn't certain, but did not think he gave any involved officer that order.

Lieutenant Tim Golden contacted Deputy Chief Chad Hoyord and Lieutenant Derek Thomas, and advised them on the incident. Lieutenant Golden then responded to the scene and was in charge of scene security. Lieutenant Thomas contacted Deputy Chief Matt Rokus and Sergeant Mark Pieper and then responded to the scene. Lieutenant Golden and Lieutenant Thomas arrived at the scene around the same time. Sergeant Slaggie remained on scene to assist with security. Sergeant Slaggie cleared

the scene at approximately 1530 hours. Prior to clearing Sergeant Slaggie turned custody of Officer Konkel's squad rifle and handgun over to Sergeant Mark Pieper.

Deputy Chief Hoyord notified Chief Jerry Staniszewski of the incident. 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, Sergeant O'Neill and Investigator Hanson were assigned by Chief Tischer to investigate the shooting.

Deputy Chief Hoyord assigned Sergeant Jesse Henning to take Officer Konkel to Mayo Clinic Health System to provide a blood sample. The blood draw was witnessed by Sergeant Henning and WPPA representative Mike Backus. The blood sample was logged in and secured in the evidence refrigerator.

Officer Vang was assigned as the scene integrity officer and documented all personnel entering and exiting the scene at 2214 Peters Drive. Additional assignments included Eau Claire Police Department Detective Art Jaquish taking photographs of Officer Konkel, Officer Putzy and Officer Olson in full uniform. Detective Jaquish then responded to the scene and took evidentiary photographs of the outer perimeter.

Eau Claire Police Department Detective Ryan Lambeseder was assigned to collect Officer Konkel's uniform.

Officer Chapin was assigned to take photographs of all the vehicles and registration plates in the parking lot. Officer Lawrence, Officer Chapin and Officer Glennon were assigned to locate the initial caller (██████████) and collect a brief statement from her. Once contacted, officers learned that ██████████ had captured some of the incident, including the shooting, on cellular phone video. Officer Chapin collected ██████████ cellular phone as evidence and turned it over to investigators. Outside of ██████████ apartment Officer Glennon located a lunch box believed to belong to Kever. Officer Lawrence was assigned to watch over the lunchbox until it was collected. Officer Chapin later took over for Officer Lawrence and maintained watch on the lunchbox until it was collected by investigators.

A team of Eau Claire Police Department Detectives were assembled to canvass the Westwinds Apartments at 2214 Peters Drive to locate additional witnesses. Detective Chaz Walton, Detective Terry Nicks, Detective Brandon Dohms, Detective Jacob Gullickson and Detective Sergeant Mark Pieper were all assigned to this detail.

Based on the nature of this incident and Gregory Kever's death there was no Eau Claire Police Department criminal investigation into the 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 ECPD officer will be the officer-in-charge and will assume the responsibilities of a supervisor until properly relieved. This officer should, as appropriate:

- (a) Secure the scene and identify and eliminate hazards for all those involved.
- (b) Take reasonable steps to obtain emergency medical attention for injured individuals.
- (c) Request additional resources from the Department or other agencies.
- (d) Coordinate a perimeter or pursuit of suspects.
- (e) Check for injured persons and evacuate as needed.
- (f) Brief the supervisor upon arrival.

305.4.2 SUPERVISOR RESPONSIBILITIES

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

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

305.4.3 WATCH COMMANDER RESPONSIBILITIES

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

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

305.4.4 NOTIFICATIONS

The following persons shall be notified:

Mandatory notifications:

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

Other notifications to consider:

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

305.4.5 INVOLVED OFFICERS

The following shall be considered for the involved officer:

- (a) Any request for legal representation will be accommodated (Wis. Stat. § 164.02(1)(b)).
 1. Involved ECPD officers shall not be permitted to meet collectively or in a group with an attorney or any representative prior to providing a formal interview or report.
 2. Requests from involved non-ECPD officers should be referred to their employing agency.
- (b) Discussions with licensed attorneys will be considered privileged as attorney-client communications.

- (c) Discussions with agency representatives will be privileged only as to the discussion of non-criminal information.
- (d) A licensed psychotherapist shall be provided by the department to each involved ECPD officer. A licensed psychotherapist may also be provided to any other affected ECPD members, upon request.
 - 1. Interviews with a licensed psychotherapist will be considered privileged.
 - 2. An interview or session with a licensed psychotherapist may take place prior to the member providing a formal interview or report. However, involved members shall not be permitted to consult or meet collectively or in a group with a licensed psychotherapist prior to providing a formal interview or report.
 - 3. A separate fitness-for-duty exam may also be required (see the Fitness for Duty Policy).
- (e) Although the Department will honor the sensitivity of communications with peer counselors, there is no legal privilege to such communications. Peer counselors are cautioned against discussing the facts of any incident with an involved witness officer.

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

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

305.5 CRIMINAL INVESTIGATION

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

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

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

- (a) Supervisory personnel should not participate directly in any voluntary interview of ECPD officers. This will not prohibit such personnel from monitoring interviews or providing the criminal investigators with topics for inquiry.
- (b) If requested, any involved officer will be afforded the opportunity to consult individually with a representative of his/her choosing or an attorney prior to speaking with criminal investigators.

However, in order to maintain the integrity of each involved officer's statement, involved officers shall not consult or meet with a representative or an attorney collectively or in groups prior to being interviewed.

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

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

305.6 ADMINISTRATIVE INVESTIGATION

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

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

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

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

305.8 AUDIO AND VIDEO RECORDINGS

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

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

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

Findings:

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

Policy 305.4.1 explains the responsibilities of uninvolved officers.

A number of uninvolved officers arrived on scene in close proximity to one another. Uninvolved officers took on multiple roles after arriving on scene. Uninvolved officers met the responsibilities listed in (a) through (f) and were in compliance with this policy.

Policy 305.4.2 explains the responsibilities of supervisors.

Sergeant Slaggie was the first uninvolved supervisor on scene. Sergeant Slaggie arrived at about the same time as other uninvolved officers, none of whom could provide an adequate overview of the situation. Sergeant Slaggie contacted Officer Konkel who was holding his patrol rifle. Officer Konkel told Sergeant Slaggie he had discharged his squad rifle. Sergeant Slaggie collected Officer Konkel's rifle and pistol and secured both as evidence. Sergeant Slaggie attempted to provide Officer Konkel with his duty weapon but it would not fit in Officer Konkel's holster. Officer Konkel agreed to go on without a weapon for a short time. Sergeant Slaggie remained with Officer Konkel until he was transported to the Eau Claire Police Department.

Sergeant Slaggie was able to obtain an overview of the situation from Officer Konkel, Officer Putzy and Officer Olson. The information he received was all given voluntarily. Sergeant Slaggie obtained this information in a group setting with the involved officers.

Sergeant Slaggie assigned uninvolved officers to secure the scene. After police tape had been placed around the scene Sergeant Slaggie assigned Officer Anderson to transport Officer Konkel to the Eau Claire Police Department. Officer Putzy was transported to the Eau Claire Police Department by Deputy Sergeant Provost. Officer Olson was transported to the Eau Claire Police Department by Deputy Sommers.

During this review Sergeant Slaggie was contacted regarding his supervision of the incident. Specifically, Sergeant Slaggie was asked if he gave an administrative order to any of the involved officers not to discuss the incident with other involved officers or Eau Claire Police Department members. Sergeant Slaggie said he could not remember for sure, but he probably did not give that order.

Based on this policy Sergeant Slaggie should not have obtained an overview of the situation collectively from three involved officers. Sergeant Slaggie should have obtained an overview from only one involved officer. In the event information was needed from more than one involved officer, that information should have been obtained individually and not in a collective group. Additionally, an administrative order should have been given to the involved officers not to discuss the incident amongst themselves or with other Eau Claire Police Department Officers.

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 Slaggie was the Shift Commander and lone supervisor on scene. Lieutenant Golden was at the police department and not associated with the shift when the incident began. Following the shooting

Lieutenant Golden was able to contact Deputy Chief Hoyord and Lieutenant Thomas and notify them of the incident. Sergeant Slaggie remained in command of the scene until relieved by Lieutenant Golden and Lieutenant Thomas a short time later. Sergeant Slaggie remained on scene for security. Lieutenant Golden was the Incident Commander for about thirty minutes. Deputy Chief Hoyord arrived at the Police Department and assumed overall Incident Command.

Sergeant Slaggie fulfilled his role as shift commander until relieved by Lieutenant Golden. Lieutenant Golden fulfilled his role as shift commander until relieved by Deputy Chief Hoyord. Both were in compliance with this policy.

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 Konkel, Officer Putzy, Officer Olson and Deputy Sommers were removed from the scene as soon as reasonably possible. They were brought back to the police department and met with fellow officers and union representatives. At no time did they collectively discuss the incident or meet in a group with representatives to discuss the incident. Following the initial investigation, Officer Konkel was placed on administrative leave 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 resulted in the death of Gregory Kever. 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, Sergeant Tim O'Neill and Investigator Tom Hanson were lead investigators outside the Eau Claire Police Department.

Following the incident, Officer Konkel was given the opportunity to be with Eau Claire Police Department Officer Anderson and WPPA representative Mike Backus. Officer Konkel was also given the opportunity to contact his wife. Officer Konkel later agreed to do a walk-through of the scene at 2214 Peters Drive. Officer Konkel was accompanied by Mike Backus and La Crosse Investigators Captain Shawn Kudron and Sergeant Mike Blokhuis.

Officer Putzy, Officer Olson and Deputy Sommers were given the opportunity to remain together and were also given access to WPPA representative Mike Backus. Each agreed to complete a walk-through of the scene at 2214 Peters Drive. Officer Putzy was accompanied by Mike Backus and La Crosse Investigators Captain Shawn Kudron and Sergeant Mike Blokhuis. Officer Olson was accompanied by Mike Backus and La Crosse Investigators Captain Shawn Kudron and Sergeant Mike Blokhuis.

Officer Konkel, Officer Putzy and Officer Olson all provided voluntary statements to La Crosse Investigators. Each involved officer had a representative from the WPPA present for their respective interview. Each involved officer stated they did not discuss the incident with one another or as a group with their WPPA representative.

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

Additional interviews were conducted with Sergeant Slaggie, Officer Vang, Officer Lawrence, Officer Anderson, Deputy Sergeant Provost, TC Johnson, TC Kruschke, ECFD personnel, several witnesses, Kever's family and one of Kever's close friends.

Based on the nature of this incident and Gregory Kever's death there was no Eau Claire Police Department criminal investigation into the 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 Sergeant Henning to transport Officer Konkel to Mayo Clinic Health System for the administrative blood draw. Sergeant Henning was present when blood was drawn from Officer Konkel. The sealed blood kit was turned over to Sergeant Henning 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 Konkel was interviewed by La Crosse investigators on 4/12/2017. Prior to the interview Officer Konkel was given the opportunity to review his squad video. Officer Konkel declined the opportunity to review squad video.

Officer Putzy was interviewed by La Crosse investigators on 4/12/2017. Officer Putzy's report did not indicate if he was given the opportunity to review his squad video. During this review follow up was conducted with Officer Putzy regarding this policy. Officer Putzy said he did not recall if investigators specifically told him he could review his squad video prior to completing his report. Officer Putzy said that he did not view his video prior to completing his report and did not request to review it.

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:

The initial caller was identified and contacted as soon as reasonably possible after the incident. A second witness came forward and contacted Officer Chapin shortly after the incident. A canvass team was established and a number of other witnesses were identified.

Investigators were able to identify Kever's family members and close personal friends, none of whom lived in the state. In person interviews were conducted with [REDACTED] while telephonic interviews were conducted with Kever's [REDACTED] and [REDACTED].

All witnesses to this incident were identified promptly and provided consensual recorded interviews to La Crosse Investigators. Kever's family and friends were identified in a reasonable amount of time and appropriate interviews were conducted.

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

Conclusion:

The administrative review report of this incident was a comprehensive report which evaluated the actions and decision making of officers involved in this incident. Facts were gathered from multiple sources, to include the criminal investigation report submitted by the 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.

As a result of this review the several recommendations have been made to remedy conflicts with Departmental Policies. The following is a list of recommendations:

Policy states that officers who must transition from conventional ammunition to kinetic energy projectiles will employ the two-person rule for loading. In this case no other officer observed Officer Putzy unload his conventional ammunition or load his bean bag rounds. Officer Konkel only checked the weapon after it was prepared for use. The circumstances in this case were fluid and rapidly changing and therefore prevented the proper transition from conventional to less lethal ammunition. The minimal check of the weapon before its use was not in accordance with policy, but it appeared to be reasonable based on the totality of circumstances. It is recommended that the department purchase new single purpose kinetic energy weapons with a different ammunition size than any other current lethal weapon used by the department. This would eliminate the need for the two-person rule in the future.

There were several officers that did not have their wireless microphone turned on or "synched" at the time of the incident. Officers without their microphones on included Officer Vang, Sergeant Slaggie and Officer Glennon. It is recommended that the direct supervisors of Officer Vang and Officer Glennon review policy 422 – MOBILE VIDEO RECORDING SYSTEM with them. Sergeant Slaggie has retired since the incident so supervisory counseling is not applicable.

Officer Putzy did not turn on his squad video until after arriving on scene. Events occurred at his squad car, which were not captured on video or audio as a result. It is recommended that the direct supervisor of Officer Putzy review policy 422 – MOBILE VIDEO RECORDING SYSTEM with Officer Putzy.

A number of officers responded to the scene in emergency mode including Officer Olson, Officer Vang, Officer Chapin, Officer Lawrence and Officer Glennon. Officer Olson and Officer Vang were both observed exceeding the speed limit without emergency lights or siren activated for a portion of their response. Officer Glennon was observed exceeding the speed limit without his siren activated for a portion of the response. Officer Chapin and Officer Lawrence had all emergency equipment active during their response, but the speed at which they travelled was a cause of concern. It is recommended that the direct supervisors for Officer

Olson, Officer Vang, Officer Chapin, Officer Lawrence and Officer Glennon review policy 308 – OFFICER RESPONSE TO CALLS with them.

It is recommended that a comprehensive review of department policy related to emergency vehicle operations is completed. It is also recommended that additional emergency vehicle operations training is mandated for all sworn personnel.

Sergeant Slaggie was the first non-involved supervisor on scene. The first supervisor on scene has a number of responsibilities that need to be accomplished in short period of time. During this incident not all tasks were completed as outlined in policy and others were achieved but not in the prescribed method. It is recommended that all supervisors that may be the first supervisor on scene of an officer involved shooting get additional training on policy 305 – OFFICER INVOLVED SHOOTINGS OR DEATHS.

The recommendations that relate to individual officers should be forwarded to Deputy Chief of Patrol Chad Hoyord for follow up consideration.

Respectfully Submitted,

Greg Weber
Lieutenant of Police

Reviewed by:

Matt Rokus
Deputy Chief of Professional Standards

(Date)

Stephen Nick
City Attorney

(Date)

Gerald Staniszewski
Chief of Police

(Date)



OFFICE OF DISTRICT ATTORNEY

**Gary King | District
Attorney**

**Peter Rindal | Deputy District
Attorney**

September 5, 2017

PRESS RELEASE – OFFICER INVOLVED SHOOTING APRIL 8, 2017

On April 8, 2017, an officer-involved shooting took place in the City of Eau Claire. The incident involved City of Eau Claire Police Officer James Konkel. Officer Konkel responded to the Westwinds Apartment complex located at 2214 Peters Drive in the City of Eau Claire after receiving a dispatch report of a man yelling in the hallway and attempting to get into one of the apartments at the apartment complex. Upon arrival, Officer Konkel recognized a possible suspect given the description provided by dispatch, specifically that of a white male wearing a set of green headphones. Officer Konkel observed that the individual, later identified as Gregory Kever, was holding a weapon – specifically a large knife with a blade of approximately twelve inches. Officer Konkel communicated with other law enforcement personnel responding to the scene and specifically requested a responding officer to ready a less lethal weapon for possible use under the circumstances. Officers Konkel, Putzy, Olson and Deputy Sommers were the first law enforcement officers to respond to the dispatch report. When Gregory Kever approached the officers with the knife, officers gave repeated commands to Kever to drop the weapon. In response to these clear verbal commands, Kever did not drop the weapon. Rather, Kever continued to approach officers while holding the knife in a threatening manner. In response to the actions of Kever, law enforcement attempted multiple forms of less lethal contact to stop the threat. This included Officer Putzy firing four less lethal rounds at Kever and Officer Olson deploying a taser at Kever. In response to these less lethal actions, Gregory Kever continued to advance on law enforcement while holding the knife in a threatening manner. In response to Kever's continued approach toward law enforcement, and specifically toward Officer Putzy after deployment of the less lethal options, Officer Konkel fired two shots at Kever. Kever immediately fell to the ground as a result of the shots fired by Officer Konkel. Law enforcement personnel immediately began life-saving measures on Kever, including but not limited to chest compressions and dialogue with responding EMS staff. After EMS staff responded and took over life-saving measures, it was determined in a matter of minutes that said measures were not successful. Life-saving measures were ceased by EMS staff after consultation with medical staff at Mayo Clinic. Gregory Kever was pronounced dead at the scene.

**ASSISTANT DISTRICT
ATTORNEYS**

Meri Larson | Benjamin Webster | Loralee Clark | Ellen Anderson
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As a result of the incident on April 8, 2017, and pursuant to the laws of the State of Wisconsin, a comprehensive investigation was undertaken by an outside law enforcement agency – the City of La Crosse Police Department. The lead investigator was Captain Shawn Kudron. The investigation included hundreds of pages of narrative reports, hundreds of photographs, videos, interviews, telephone downloads, crime lab reports, a total station and scene diagram by the Wisconsin State Patrol, an autopsy of Gregory Keever, as well as other miscellaneous information.

Gregory Keever Status April 8, 2017

On April 8, 2017, Gregory Keever was residing at the Westwinds Apartment complex. He had resided in apartment complex for approximately two weeks at that point in time. As part of the investigation, law enforcement interviewed [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] advised that Keever was working at Menards in Eau Claire. Prior to working at Menards in Eau Claire, Keever had worked for Menards in both International Falls, Minnesota and Gillette, Wyoming.

As part of the investigation, law enforcement interviewed [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] advised that she had a close relationship with Keever. [REDACTED] said Keever was excited to move to and start work in Eau Claire at Menards. [REDACTED] said Keever described the job as his “dream job.” [REDACTED] advised that she spoke to Keever almost daily once he was living in Eau Claire.

911 Call Information

A resident of the Westwinds Apartments, A.M., called 911 at 10:50 a.m. on April 8, 2017. Some of the initial information relayed to dispatch by A.M. includes the following: “Yeah, someone’s in the hallway, yelling about, why am I still alive, why am I still here, why am I the only one alive. And he was trying to get into our apartment. Like, it’s like he’s trapped in the hallway. I don’t know if he’s having a psychotic break or what’s going on.” A.M. reiterated to dispatch that the subject was yelling “why am I still alive.” A.M. tells dispatch that she was too scared to open the door. A.M. described the subject to dispatch as a white male wearing green headphones. Later in the call, A.M. tells dispatch that she believes the subject might be leaving and that “it sounds like he is outside yelling.” A.M. informs dispatch that she believes the subject is in the parking lot and that she can still hear “lots of yelling.” The call with dispatch ended at 10:59 a.m.

Officer James Konkell Squad Video Review

Several squad car videos, including that of Officer Konkell’s squad car, were reviewed as part of the investigation. Officer Konkell’s squad car video shows his arrival on scene at the Westwinds Apartment complex in the south parking lot. As the vehicle stops for a moment, a white male, later identified as Gregory Keever, becomes visible walking into the camera’s view from the west.

A large knife is visible in Kever's right hand. Kever is observed walking at a hurried pace and walks in a semi-circle back to the west and out of the camera's view. A short time later, Kever enters the camera's view again from the west walking with a hurried pace still with the knife in his right hand. Kever walks near the middle of the parking lot and turns back around walking out of the camera's view. Kever is off camera for approximately ten seconds and then is observed again walking to the middle of the parking lot with the knife in his right hand. Kever then walks in a large circle and his left hand can be observed in a fist as he is seen walking in an aggressive style pace.

After completing the large circle, Kever walks to the passenger side of a smaller silver vehicle parked in the middle row of the parking lot. As Kever walks in a large circle a loud scream is heard from him, but no words can be understood. Kever appears to attempt to open the passenger-side vehicle door, then quickly walks around the rear of the car to the driver's-side of the vehicle. Kever pauses near the rear driver's-side door briefly before going back to the front driver's-side door. Kever bends over slightly looking into the vehicle. At this time, Officer Konkel's squad car moves forward approximately 30-40 feet and stops just before the grass that separates the driveway from the parking area. At the same time, Officer Putzy's squad car is observed entering the north end of the parking lot. Officer Putzy stops near the middle of the parking lot along for a brief moment before backing up to the north. Kever, still with the knife in his hand, can again be heard screaming, but the words used are not clear.

As Officer Putzy is backing up to the north, Kever is observed walking directly at him from the front driver's-side of the vehicle. Kever can be heard yelling multiple things as he is walking. The audio is difficult to understand but some of the phrases appear to be "oh yeah" and "fuck you." Kever also yells something to the effect of "what am I doing here?" Around this time, Officer Konkel provides a radio transmission for other responding officers, cautioning those officers that Kever is carrying a 12-14 inch knife. Shortly after this, Officer Putzy is observed driving forward through the west end of the parking lot. The camera angle of Officer Konkel's squad does not capture any actions at this point. A white truck parked in the parking lot blocks with view of the camera. However, audio from the squad car video continues to capture the series of events. A male voice, believed to be Kever's, is heard saying, "what the fuck is this?" Immediately after this, Officer Konkel states in a loud voice, "put down the knife." Kever is heard yelling again, "what the fuck is this" and "why." In addition to these statements, Kever also makes a growling type of noise. Kever then continues to yell but the words used are not discernible from the video. Kever is then observed walking south near the pine tree island that separates Gordy's parking lot from the Westwinds Apartments parking lot. As he is walking, Kever is yelling "what is this."

At this time, Officer Konkel is communicating with Officer Putzy as to the whether he has less lethal loaded. After confirmation, another voice is heard telling Kever to “drop the knife.” More commands are given to Kever to drop the knife. Kever is heard stating something to the effect “hey dude, we’re fighting again.” The next portion of the video has multiple voices talking at the same time. The phrase “drop the knife” or “drop it” can be heard approximately twelve times. The verbal commands are all in a stern voice and said very loud. Officer Konkel can be heard giving the command four times. Following these requests, audio of what sounds like the firing of less lethal rounds are heard. Following these sounds are the sounds of two much louder gun shots. After a short silence, a voice provides a radio transmission of “shots fired, one down.” The squad car audio then details medical assistance provided by law enforcement. As an example, Officer Olson is heard telling other officers he is going to start CPR. After Sergeant Slaggie arrives, Officer Konkel is heard talking to Sergeant Slaggie. Officer Konkel confirms that he is the shooter and provides a brief summary to Sergeant Slaggie about what happened.

Officer James Konkel Interviews

As part of the investigation, Captain Kudron and Detective Sergeant Blokhuis had contact with Officer Konkel on April 8, 2017. A walk-through of the scene was conducted with Officer Konkel. Officer Konkel advised he was working as a patrol officer on April 8, 2017. Officer Konkel said he responded to 2214 Peters Drive in response to a report of a person yelling loudly and acting strangely at that location. Officer Konkel said as he pulled into the south parking lot, he observed a male walking around in the parking lot with a green set of headphones on. Officer Konkel said he immediately recognized that the suspect, had a knife in his hand. Officer Konkel said he advised dispatch of the knife and also asked other officers who were responding to the scene to load less lethal and use caution. Officer Konkel then parked his vehicle in the roadway entrance of the parking lot to keep others from coming into the parking lot.

Officer Konkel said as he exited his vehicle, Officer Putzy was also responding to the scene, coming to the parking lot from the north. Officer Konkel advised when the suspect observed Officer Putzy in his squad car, the suspect went to Officer Putzy’s squad and attempted to open up the driver-side front and rear doors. The suspect was unable to open the doors and Officer Putzy accelerated away from the suspect. As the suspect was again coming towards Officer Putzy’s vehicle, Officer Putzy pulled forward in a quick motion, going through three-quarters of the parking lot on the southwest side of the parking lot. Officer Putzy then exited his squad car. The suspect then began walking towards them along a pine tree area to the west of their location. Officer Konkel advised he went over to Officer Putzy and covered the suspect while Officer Putzy loaded less lethal. Officer Konkel said he was armed with an AR-15 .223 long gun. Officer Konkel advised he continued to watch the suspect, who still had a green pair of headphones on. The suspect also still had the knife and was walking towards them through the trees.

Officer Konkel said that Officer Putzy showed him the shotgun that he had loaded with less lethal. Officer Konkel advised at this same time, Officer Olson arrived from the west. Officer Konkel advised Officer Olson to draw his taser while Officer Konkel covered the suspect. Officer Konkel said the suspect started walking towards them, at which time they started yelling for him to drop the knife. Officer Konkel advised the suspect was approximately seven to twelve yards away from them. Officer Konkel advised that Officer Putzy deployed two beanbag rounds and that it appeared these were ineffective on the suspect. The suspect continued to hang onto the knife and started to move towards them and the squad car. Officer Konkel advised that Officer Olson deployed his taser and the suspect did not appear to be effected at all by the taser. Officer Konkel advised that Officer Putzy deployed two more beanbag rounds into the suspect, which caused the suspect to go down to one knee.

Officer Konkel advised the suspect got up off his knees, was still holding onto the knife, lifted the knife in an aggressive manner, and started to move quickly at Officer Putzy. Officer Konkel advised in viewing this, he deployed two lethal rounds from his .223 long gun at the suspect. Officer Konkel advised the suspect went down to the ground and did not move. Officer Konkel advised that the weapon was secured from the suspect and that Officer Olson performed CPR on the suspect until EMS arrived. Officer Konkel advised that other officers then came onto the scene and that he was relieved of his duties.

Officer Konkel was again interviewed on April 12, 2017. Officer Konkel said that he has been a police officer with the Eau Claire Police Department for approximately twenty years. Officer Konkel advised that he is currently on the Eau Claire Police Department Tactical Response Team and has been on the team for fifteen years. He is also a firearms instructor and has been since 2007. Officer Konkel is assigned to the patrol division and was working the west district on April 8, 2017, as he has done for the past three years. Officer Konkel is assigned to the day shift patrol, from 6:30 a.m. to 5:00 p.m. Officer Konkel advised he worked a normal shift on Friday, April 7, 2017, then slept a normal night's sleep. Officer Konkel said he woke up at approximately 5:00 a.m. on April 8, 2017 to get ready for work.

Officer Konkel said that on April 8, 2017, he took, responded and cleared two calls prior to the call at the Westwinds Apartments. Officer Konkel said the communications center dispatched him as the primary unit to a "check persons" call at the Westwinds Apartments and that Officer Putzy was dispatched as the secondary unit. The description of the suspect included details that the individual was a white male wearing green headphones. Dispatch advised the suspect was yelling and banging on apartment doors and made statements such as "why am I still alive." When Officer Konkel arrived on scene, he believed he observed the suspect. The suspect was 50-60 feet away from the apartment building walking to the middle of the parking lot. The suspect was a white male wearing green headphones, similar to the information received from dispatch.

Officer Konkel said in observing the suspect for a short time, the suspect was acting in a strange manner. Officer Konkel described the suspect as making rapid body movements, head bobbing in a jerking motion, yelling, and appearing to be talking to someone who was not there. Officer Konkel said the suspect was clinching his fist with his left hand and appeared to be mad or angry. The suspect continued to yell and Officer Konkel activated his squad video around this time. Officer Konkel continued to watch the suspect and observed him walking back and forth, spinning around several times. When the suspect made a spinning motion, Officer Konkel immediately observed a large knife in the suspect's right hand. The knife was a large knife and appeared to be fourteen to fifteen inches long in total length. Officer Konkel advised dispatch of the knife and requested an officer to ready a less lethal shotgun.

Officer Konkel continued to watch and monitor the suspect while releasing his AR rifle from the rifle rack. In his continued observation of the suspect, the suspect would take the knife and raise it in an upward manner, from his waist to his shoulder area and wave it around in front of him like he was having a knife fight with someone else in the parking lot. The suspect also made stabbing motions as if to be stabbing someone. Officer Konkel kept his distance from the suspect due to him being the only officer on scene at that time. At one point, the suspect walked towards a smaller silver car, walked up to the driver's side of the vehicle, and quickly and aggressively opened the door and slammed the door shut in a very angry manner. After closing the door, the suspect would walk away from the vehicle, yelling, and appeared to be angry. The suspect would walk approximately six car stalls away, spin around quickly and walk back to the silver car. This happened about two times. Each time, the suspect never put the knife down and always held onto it with his right hand in an upward aggressive manner.

Officer Konkel did not think anyone was in the silver vehicle, but he exited his squad car and moved his position to try to obtain a better view of the interior of the vehicle to make sure no one was inside it. Officer Konkel had concerns for anyone in the silver vehicle because of the actions of the suspect. The suspect continued to yell at the vehicle and was very upset, angry, and aggressive. Officer Konkel was unable to observe anyone else in the vehicle. Given the suspects actions, Officer Konkel was also concerned about other persons who could potentially be in that parking area but did not observe anyone else at that time. Officer Konkel kept his distance until other officers arrived on scene.

Officer Konkel observed Officer Putzy come into the south parking lot from the north parking lot. Officer Konkel used his radio to advise Officer Putzy of the suspect's location in the middle of the south parking lot and that the suspect still had a knife. At the same time, the suspect observed Officer Putzy's squad car and began to walk quickly and aggressively towards Officer Putzy's squad car. The suspect moved aggressively towards Officer Putzy's squad car with the knife held in an upward position near his waistline. The suspect was yelling at Officer Putzy but Officer Konkel could not make out what the suspect was saying. As soon as the suspect got near Officer Putzy's squad car, the suspect lifted the knife up above his waistline, near his

shoulders, continued to yell at Officer Putzy and aggressively tried to open the front driver-side door handle of the squad car. The suspect pulled on the door handle two or three times but was unsuccessful. While doing so, the suspect continued to hold the knife up. The suspect continued yelling and went to the rear driver-side door. The suspect grabbed that door handle aggressively and tried to lift that door handle three to four times. The suspect did not get the door open. Officer Putzy accelerated his squad forward, coming to a stop near the southwest corner of the south parking lot.

At this time, Officer Konkel observed the suspect walk between a grass and pine tree island that separated the Westwinds Apartments parking lot from the Gordy's parking lot. The suspect started to walk west along the Gordy's grocery store. Officer Konkel paralleled the suspect, continuing to cover him from the south end of the parking lot. Officer Konkel was concerned about the suspect's proximity to the front of Gordy's knowing that the store was open and busy at that time of the day. Officer Konkel yelled loudly at the suspect to "drop the knife." Officer Konkel observed Officer Olson and Deputy Sommers arrive with their emergency lights and siren. Officer Konkel said the suspect observed them and turned around and walked east back to the grass and pine tree island.

Officer Konkel then took a position near the front of Officer Putzy's squad car, attempting to cover the suspect while the suspect made his way south through the pine trees. At the same time, Officer Putzy came to the front of the squad car and showed Officer Konkel his shotgun was clear of lethal/live rounds. Officer Putzy then opened the action of the shotgun and showed Officer Konkel it was loaded with less lethal beanbag rounds. Officer Putzy then went to the rear driver-side of the squad while Officer Konkel stayed in the front passenger-side of the squad car. Officer Konkel also observed Officer Olson running towards him. Officer Konkel said he and Officer Putzy yelled at the suspect to stop and drop the knife and that this was done a number of times. The suspect refused to drop the knife and continued to approach them. Officer Konkel advised the suspect came from between the pine trees, still had the green headphones on and was holding the knife in an aggressive upward manner. The suspect also continued to yell at them. The suspect was clinching his left hand in a fist, appeared upset and mad, and was closing the distance on them.

At this time, Officer Konkel yelled to Officer Putzy to deploy less lethal several times. Officer Konkel heard Officer Putzy yell at the suspect to drop the knife. The suspect did not drop the knife and Officer Putzy did deploy less lethal beanbag rounds. These appeared to have little to no effect on the suspect, as the suspect did not drop the knife and continued to yell at them. Officer Konkel heard and observed Officer Olson deploy his taser into the suspect. Officer Konkel heard the taser cycling and believed the taser made a good hit on the suspect. However, the taser appeared to have no effect on the suspect, as the suspect did not "lock up" like most people do when they have a taser used on them.

After Officer Putzy deployed a fourth beanbag round into the suspect, Officer Konkel saw the suspect rise and turn towards Officer Putzy. The suspect raised the knife up from his waistline to his shoulder area, pointing the knife at Officer Putzy. The suspect yelled out loud and started to quickly walk/run towards Officer Putzy. The suspect appeared to be 20-25 feet from officer Putzy. All officers continued to yell and order the suspect to stop and drop the knife. Officer Putzy attempted to disengage from the suspect, but the suspect continued to go after Officer Putzy. Officer Konkel feared for Officer Putzy's safety and life, knowing Officer Putzy did not have any cover or concealment to get away from the suspect. At this time, Officer Konkel deployed two rounds from his rifle at the suspect. Upon delivering the two rounds, Officer Konkel observed the suspect immediately go down and not move any further. Officer Konkel continued to cover the suspect while other officers moved to get the knife away from the suspect.

Officer Konkel advised that Officer Olson brought a medical bag and started doing chest compressions on the suspect. Officer Vang arrived and assisted. EMS and first responders arrived and provided medical attention to the suspect. Officer Konkel then observed Sergeant Slaggie arrive on scene. Officer Konkel advised Sergeant Slaggie that he had fired his squad rifle. Officer Konkel provided Sergeant Slaggie with a quick briefing of the incident. Sergeant Slaggie assigned Officer Anderson to stay with Officer Konkel. Officer Anderson took Officer Konkel back to the Eau Claire Police Department to await further instruction.

Officer Kevin Putzy Interviews

Officer Kevin Putzy was interviewed on April 8, 2017 and again on April 12, 2017 as part of the investigation. Officer Putzy advised he was on patrol on the morning of April 8, 2017 and responded to Peters Drive. While responding, Officer Konkel advised him on the radio that there was a person in the parking lot wearing green headphones, acting strangely, and carrying a large knife. Officer Konkel also requested he would like a responding officer to load with less lethal beanbag rounds. Officer Putzy said he came onto location on Peters Drive from the north and through the north parking lot. As he approached the south parking lot of the complex, he observed the suspect holding the knife. Officer Putzy said as he drove into the main south parking lot, he observed the suspect run at him with a knife. Officer Putzy put his vehicle in reverse in an attempt to get away from the suspect. Just prior to backing away from the suspect, the suspect attempted to open his driver's-side door and then his driver's-side rear door. Officer Putzy advises all of his doors were locked and he accelerated away from the suspect. Officer Putzy said the suspect followed him while traveling backwards, so he then drove forward past the suspect to the southwest far corner of the parking lot. Officer Putzy stopped his squad car and exited with his less lethal shotgun.

Prior to exiting his squad car, Officer Putzy unloaded the shotgun and grabbed his less lethal beanbag rounds. Officer Putzy said he showed Officer Konkel the empty shotgun and then loaded the less lethal rounds. While loading the weapon, Officer Putzy observed the suspect walking through a tree line between the pines. Officer Putzy said the suspect was walking towards them between the trees. Officer Putzy advised when the suspect was approximately fifteen feet away from them and started coming towards them, they all began yelling for the suspect to drop the knife. Officer Putzy determined it was time to deploy less lethal rounds and deployed two beanbag rounds into the suspect's center mass. Officer Putzy advised it appeared the beanbag rounds had no effect. Officer Putzy advised that while he was deploying the beanbag rounds, he observed Officer Olson coming onto the scene and observed him draw his taser. Officer Putzy said Officer Olson deployed the taser into the suspect and that it appeared to have no effect on the suspect. Officer Putzy said he deployed another beanbag round in continuation with a fourth one, which appeared to put the suspect onto one knee.

Officer Putzy said the suspect continued to hold the knife, got up, and started coming at him. Officer Putzy advised when the suspect stood up, the suspect raised the knife up and came at him in a quick aggressive motion. Officer Putzy advised he felt an imminent threat of great bodily harm due to the actions of the suspect coming at him with the knife. Officer Putzy stated he started to back away from the suspect who was approximately twelve feet away from him at this time. Officer Putzy advised that Officer Konkel deployed two lethal rounds from his .223 AR long gun. Officer Putzy said the suspect stopped in motion and went immediately down to the ground. Officer Putzy advised they secured the knife, rolled the suspect over, and Officer Olson attempted to do CPR on the suspect while EMS was coming on scene.

Officer Jacob Olson Interviews

Officer Jacob Olson was interviewed on April 8, 2017 and again on April 12, 2017 as part of the investigation. Officer Olson advised on April 8, 2017, he was at the police station when he heard the call come out of a man with a knife acting strangely. Officer Olson said he responded to the parking lot of 2214 Peters Drive in emergency mode. Officer Olson said directly behind him was a squad from the Eau Claire County Sheriff's Department and that he knew it was Deputy Sommers. Officer Olson said that when he arrived on scene, he started to run towards a squad and saw Officer Putzy covering the suspect on the driver's-side rear of the squad. He also observed Officer Konkel covering the suspect at the front passenger-side of the squad car with his AR long gun. Officer Olson said he covered the suspect with his taser. Officer Olson said the suspect was wearing a green set of headphones and holding a large knife. All officers were telling the suspect to drop the knife. The suspect did not comply and started to walk towards them. Officer Olson said he observed Officer Putzy deploy two beanbag rounds into the suspect, which appeared to not have any effect. Officer Olson said he then deployed the taser into the suspect. This also appeared to have no effect on the suspect, as the suspect continued to move towards them.

Officer Olson advised that Officer Putzy deployed two more beanbag rounds and on the deployment of these rounds, the suspect went down to one knee. Officer Olson advised he observed the suspect get up to his feet, turn towards Officer Putzy, raise the knife in his hand and make a quick, active, assertive movement towards Officer Putzy. Officer Olson believed the suspect intended to cause Officer Putzy death or great bodily harm. Officer Olson advised that as soon as this happened, he heard Officer Konkel deploy rounds from his .223 long gun at the suspect. Officer Olson observed the suspect fall down to the ground and was not moving. Officer Olson advised that the officers secured the knife, rolled the suspect over, and started CPR on him. Officer Olson advised that he did chest compressions until EMS arrived.

Deputy Melissa Sommers Interviews

Deputy Melissa Sommers was interviewed on April 8, 2017 and again on April 12, 2017 as part of the investigation. Deputy Sommers advised that on April 8, 2017, she was at the Eau Claire County Sheriff's Department and heard a call come out on the south side in reference to a man with a knife. Deputy Sommers advised she saw Officer Olson leaving from the Eau Claire Police Department parking lot and that she followed him to the dispatch location. As she exited her squad car at the location, Officer Olson advised her to load her less lethal shotgun with beanbags and come over to the scene.

Deputy Sommers said she obtained her less lethal long gun and started to go over towards the area where the Eau Claire officers were. Deputy Sommers said that she saw Officer Olson deploy a taser, followed by two beanbag rounds from Officer Putzy. Deputy Sommers said the suspect went to a knee, but quickly got up to his feet, raised the knife up and started making an aggressive, assertive movement towards Officer Putzy. Deputy Sommers stated she observed Officer Konkel use his .223 long gun and stopped the threat of the suspect. Deputy Sommers believed the suspect was fifteen feet or less away from Officer Putzy when Officer Konkel shot the suspect. Deputy Sommers said the suspect fell directly to the ground and did not move. Deputy Sommers advised, knowing the suspect had been hit, she quickly ran back to her squad car to obtain EMS and medical bags. Deputy Sommers advised when she came back to the scene, they secured the weapon and immediately started CPR on the suspect. CPR was continued until EMS arrived.

Citizen Witness Interviews

A.M. was interviewed as part of the investigation. A.M. is the individual who placed the call to 911 from the Westwinds Apartments. Following the 911 call, A.M. advised that she was in a position to observe the police dealing with the individual (Kever). A.M. said that it was at this time that she took her phone and began to record the incident. A.M. said she heard the officers

attempting to talk to the individual, however the individual looked like he was still walking in circles. A.M. said she then saw the individual walking toward one of the police officers. A.M. said she saw the individual lunge at one of the police officers and that is when she observed the officer shoot the individual. A.M. further stated that she had observed the individual walk toward the cop and then she heard a pop, and it looked like the individual had fallen down. It was when the individual got up that she described the individual as lunging at the officer.

A.M. clarified that she didn't know if "lunge" is the right word, but that she saw the individual run or move quickly toward the police officer. A.M. stated it looked to her as if the individual got very close to the cop. A.M. said she heard two pops and saw a flash and the individual dropped. A.M. said that officers then tried to resuscitate the individual. A.M. advised that from what she saw, the police officer did everything he could have done. A.M. did not think anything could have changed. A.M. provided her phone to law enforcement so that the video she took could be retrieved.

J.B. was interviewed as part of the investigation. J.B. resides at the Westwinds Apartments and witnessed the officer involved shooting incident. J.B. advised that she lives on the second floor and that on April 8, 2017, she heard yelling. J.B. said she ignored the yelling at first but the yelling continued and that the individual was yelling loudly and this drew her attention. J.B. said she looked outside and saw an individual wearing green headphones and that he had a knife in his hand. J.B. described the knife as a large kitchen knife. J.B. said the subject was pacing back and forth in the parking lot. J.B. said the individual was yelling "why am I even here" and "what is this even" and "I'm a good guy." J.B. said the individual was making these statements over and over. J.B. said the individual sounded very angry and seemed very upset about something. J.B. said she was about to call the police and then she noticed the police had arrived.

J.B. said the individual seemed to be interested in a small silver vehicle and seemed to be looking into the vehicle. J.B. went on to describe the individual's actions with the knife. J.B. said that when the individual started to make stabbing motions, she knew for sure that the individual was holding a knife. J.B. said that she had never seen anyone act like this in her life. J.B. said the individual seemed very mad and was making what J.B. described as frustrating groans. J.B. said she observed the officers interactions with the individual. J.B. said she heard the officers telling the individual to put the knife down but that the individual refused. J.B. eventually observed the individual running at the police officer.

C.L. was interviewed as part of the investigation. C.L. said he was inside his apartment on April 8, 2017 when he heard what he described as yelling or growling in the parking lot. C.L. said the sounds he heard were like a growl and sounded aggressive. C.L. said when he heard the yelling for the third time, he looked outside and then heard what he described as "pop, pop, pop." C.L. said he saw a police officer to the front and a police officer to the back of the vehicle.

C.L. said he also saw a female officer who was wearing brown clothing. C.L. said this officer went to a vehicle and retrieved a red bag. C.L. said this officer also moved what he thought was a shotgun and also moved what he believed was a knife. C.L. clarified that he did not look outside until after he heard the shots.

J.G. was interviewed as part of the investigation. J.G. said that on April 8, 2017, he was sitting at his desk, inside his apartment, working on his laptop, when he heard someone shouting outside. J.G. said the individual continued shouting the same statement over and over again. J.G. said he got up to look outside to see what the individual was upset about. J.G. said he observed the individual wearing a green headset and carrying something shiny. J.G. said he returned to his desk, but continued to hear the individual yelling. J.G. described the individual as stalking around the parking lot for ten to fifteen minutes and then the police arrived.

J.G. said he observed squad cars in the apartment parking lot as well as on the road behind the Gordy's store. J.G. said he heard officers shout "put down the knife." J.G. said the individual did not acknowledge the officers and continued walking in circles. J.G. said the individual continued shouting "who am I talking to?" and "I can't believe I'm even still here." J.G. said he observed the individual walking by trees and at one point walking behind a tree. J.G. said the individual began walking toward where the police vehicles were parked. J.G. observed an officer to the rear of the police vehicle. J.G. said the officers were continuing to shout "drop the knife" but the individual was not responding to the officers. J.G. said he observed the individual get hit in the stomach with what he believed were rubber bullets.

P.G. was interviewed as part of the investigation. P.G. said that on April 8, 2017 she was sitting on her couch inside her apartment when she heard someone yelling near the sidewalk ramp of the apartment complex. P.G. said she observed a person that she described was ranting and raving and pacing in the parking lot. P.G. described the person as being really agitated. P.G. said the individual kept saying something similar to who and why. P.G. described the individual as growling like a wild person. P.G. said she observed a squad car arrive and the individual began walking in the direction of the squad car. P.G. stated the individual continued to walk around and that she observed something shiny in his hand. P.G. said additional squad cars arrived and the individual continued ranting and raving and began walking toward where the other squad cars were. P.G. described the individual as totally wild. P.G. heard what she described as popping and indicated this was at the end of the incident.

Search of Gregory Kever Apartment and Vehicle

As part of the investigation, in addition to items located on Gregory Kever's person at the time of the shooting, Kever's apartment and vehicle were searched pursuant to a search warrant. While searching the first floor common hallway at 2214 Peters Drive, a cloth lunch box was located. Among the items located in the lunch box were five pieces of rainbow colored soft

candy in a tinfoil wrapper. An analysis by the State Crime Laboratory of one of the candy pieces identified the presence of Lysergic Acid Diethylamide (LSD).

Cell Phone Download

As part of the investigation, Gregory Kever's cell phone was downloaded. A review of the download shows that Kever exchanged multiple text messages and phone calls with [REDACTED] on April 7 and 8, 2017. The last text message sent by Gregory Kever was at 10:29 a.m. The content of the text message was "Acid sucks lol."

Paramedic / EMS Interviews

Daniel Lien of the Eau Claire Fire Department was interviewed as part of the investigation. Lien advised that on April 8, 2017, he responded to the scene of 2214 Peters Drive. Upon arrival, he observed an Eau Claire Police Officer doing chest compressions on a patient. The patient was lying in the parking lot. Upon exiting his vehicle, Lien said Paramedic Miller advised him to start taking over chest compressions and CPR maneuvers on the patient. Lien advised that while he was doing chest compressions, Paramedic Miller and Paramedic Linstedt were performing medical procedures on the patient. Lien advised that a short time later they stopped performing CPR measures, per the direction of the doctor at Mayo hospital. Lien advised they were on scene for approximately 15-20 minutes.

Paramedic Michael Linstedt was interviewed as part of the investigation. Linstedt advised that on April 8, 2017, he responded to the scene of 2214 Peters Drive. Linstedt advised that when he arrived on scene, he observed a member of the Eau Claire Police Department doing chest compressions and CPR on the patient. Linstedt said he went over to the patient and the police officer, at which time first responders and EMS personnel took over the life saving techniques. Linstedt said Paramedic Miller told him to connect the electrodes and determine whether or not the patient had any signs of life. Linstedt advised the patient was lifeless and he observed what appeared to be a gunshot to the patient's left eyebrow. Linstedt advised he called the Mayo doctor on staff. Linstedt provided information to the doctor and the doctor advised to stop doing life saving measures.

Paramedic Michael Miller was interviewed as part of the investigation. Miller advised that when he responded to the scene at 2214 Peters Drive, he observed an officer doing chest compressions on a subject lying in the parking lot. Miller said that when he got near the patient, he did notice that there was a large knife near the patient on the hood of a squad car. Miller also noticed the patient had two possible gunshot wounds to the head and neck area. Miller advised that upon hooking up heart monitors to the patient, he noticed that the patient appeared to be lifeless. Miller said contact was made with a doctor at Mayo hospital to determine whether or not they should continue on with life saving measures. While waiting to speak with doctors,

Miller noticed a single taser wire leading to the patient and observed the wire leading from the patient to the taser. The taser was lying on the ground near the patient. Miller also advised seeing four beanbag shell casings near the feet area of the patient. Miller advised that after contact was made with the doctor at Mayo, they were advised to cease lifesaving measures.

Gregory Kever Autopsy Report

As part of the investigation, an autopsy on Gregory Kever was performed on April 9, 2017 by Dr. Michael Stier, a forensic pathologist and the University of Wisconsin hospital in Madison. The autopsy contains a section entitled "Interpretive Statement." The section reads: "[t]his individual died during an engagement with law enforcement. He perished after sustaining a multiplicity of non-lethal injury, followed by firearm deployment. The autopsy findings support this demise as a victim precipitated homicide." Among the findings in the autopsy with respect to firearm injury include: "perforating high velocity gunshot wound to face" and "perforating high velocity gunshot wound to neck." The autopsy also found injury consistent with "non-lethal beanbag cartridge discharge" as well as taser deployment. Additional testing was also done by the Wisconsin State Crime Laboratory as part of the investigation. The results of these tests showed Kever tested positive for LSD, Cannabinoids and Caffeine. No ethanol was detected in Kever's blood at the time of death.

Interview of ██████████ ██████████

As part of the investigation, law enforcement interviewed ██████████ ██████████ on May 3, 2017. ██████████ advised that he was the best friend of Gregory Kever and that he had met Kever in seventh grade in International Falls. ██████████ said Kever moved to New Mexico in tenth grade. ██████████ said he later reconnected with Kever when Kever came back to International Falls and was working at Menards. ██████████ said he and Kever hung out a lot. Eventually, Kever was offered a job at a Menards store in Gillette, Wyoming. After Kever moved to Wyoming, ██████████ said they continued to talk daily either by phone or text message. ██████████ said he and Kever were like brothers and would talk all the time. ██████████ said they would play an online game called "World of Warcraft" and that Kever was obsessed with the game. When they would play the game online nightly, they would speak with each other on a communication system called Ventrilo or Skype. ██████████ said Kever's day usually consisted of going to work, coming home, playing World of Warcraft, and going to sleep.

██████████ was asked of any knowledge of Kever's drug use. ██████████ said he knows that Kever used marijuana usually daily. When asked about hallucinogenic drugs, ██████████ said that Kever usually preferred to use LSD, acid, or hallucinogenic mushrooms. ██████████ provided additional history as to Kever's drug use, going back to high school. ██████████ also advised as of lately, Kever was using LSD and acid on a regular basis. ██████████ advised that he had never seen Kever become aggressive while using drugs.

█████ also told law enforcement that he had contact with Kever on the morning of April 8, 2017. █████ said he received a text message around 10:30 a.m. from Kever that stated "acid sucks." █████ said he immediately texted Kever back "What?" but did not receive a response. After not getting a response, █████ said he immediately called Kever on the phone and asked what was going on. █████ said that Kever told him on the phone that no one likes him and everyone thinks he is a piece of shit. █████ said he was at work at the time and told Kever that he is not a piece of shit, that people like him. █████ told Kever he would call him back shortly and that Kever should "chill." █████ said he attempted to contact Kever a little later that morning but did not receive an answer from Kever. █████ advised that after he spoke with Kever on the phone, he felt that Kever was somewhat depressed and was not in his right state of mind. █████ said that Kever did not make sense on the phone and didn't know why Kever would think that no one liked him. In recounting the conversation, █████ became upset and blamed himself for not continuing to talk to Kever. █████ opined that what happened to Kever didn't make sense.

Use of Force Justification

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 James Konkel was justified in the use of lethal force on April 8, 2017 during the incident that resulted in the death of Gregory Kever. The circumstances that then existed make clear that the use of lethal force was justified. The analysis of this decision includes, but is not limited to, the following information:

1. Gregory Kever displayed concerning and aggressive behavior at the Westwinds Apartments on April 8, 2017, including but not limited to yelling and trying to get into the apartment of another resident. This behavior was concerning enough for the resident to call 911 and report the behavior. Another resident was also prepared to call the police but then observed police were already on scene.
2. Multiple other citizen residents reported similar conduct on behalf of Gregory Kever on April 8, 2017, including yelling and aggressive behavior.
3. The investigation revealed that Kever had a consistent history of drug use and that at the time of his death, he tested positive for LSD and Cannabinoids. In addition to the test results, Kever's last text message around mid-morning on April 8, 2017 referenced drug use.
4. Kever's best friend, █████ █████ confirmed he spoke with Kever on the morning of April 8 and that Kever seemed somewhat depressed. Kever also told █████ that no one liked him. After speaking with Kever that morning, █████ would report to law enforcement as part of the investigation that Kever did not seem to be in his right state of mind.

5. When Officer Konkel responded to the scene, he proceeded with caution and waited for back up before approaching Kever. Officer Konkel also advised other responding law enforcement to proceed with caution as Kever was armed with large knife.
6. When law enforcement responded to the apartment complex parking lot, Kever was armed with a large knife with a blade of approximately 12 inches. This weapon was clearly capable of inflicting serious bodily harm or death. In addition, Kever was repeatedly observed brandishing the weapon in an aggressive manner, including making stabbing motions, while yelling a number of comments, including but not limited to a reference to fighting.
7. When law enforcement was approached by Kever, they provided no fewer than a dozen commands for Kever to drop the knife. The commands are clear and audible in the squad car video of Officer Konkel.
8. In response to the repeated commands to drop the knife, Kever ignored the commands and failed to drop the knife. In addition to ignoring the commands, Kever continued to move closer to law enforcement while raising and holding the knife in an aggressive fashion.
9. In response to Kever's continued advancement on law enforcement, multiple less lethal options were deployed by law enforcement in an attempt to stop Kever. These included the firing of four less lethal beanbag rounds by Officer Putzy and the successful deployment of a taser by Officer Olson.
10. In response to the less lethal options, Kever continued to advance on law enforcement with the knife, and specifically at Officer Putzy in an aggressive manner. Given this observation, Officer Konkel fired two lethal rounds from his rifle at Kever.
11. At the time Officer Konkel fired his rifle, Officer Konkel feared for the life of Officer Putzy. Under the circumstances that then existed, including the less lethal options clearly being ineffective in stopping Kever, this fear was entirely reasonable.
12. The interviews of responding law enforcement personnel provided a consistent recounting of the sequence of events, most notably the exhausting of multiple less lethal options followed the by use of lethal force.
13. In addition to law enforcement accounts, other sources of information, including but not limited to citizen accounts and squad car video provide a consistent detailing of events that resulted in the death of Gregory Kever by justified lethal force.

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 April 8, 2017. The collection of materials submitted as part of the final investigation report provides a clear and transparent accounting of the events of April 8, 2017. The result of the investigation clearly supports that City of Eau Claire Police Officer James Konkel was justified in the use of lethal force under the circumstances as presented on April 8, 2017.

Thank you for your time and consideration of this information.

Gary King
District Attorney
Eau Claire County