

Administrative Review of Officer Involved Shooting/Death

Eau Claire Police Department Case # 21PD21280

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Executive Summary

Introduction

This administrative review will examine the facts pertaining to the officer involved death of Lekenneth Quan Miller. This document contains the facts of the case, which includes Officer Kristopher O'Neill's decision to use deadly force.

The facts were gathered from officer reports, L3 audio and video, Ring video, documents submitted by the Wisconsin Department of Justice-Division of Criminal Investigation (DCI), and the subsequent review conducted by Eau Claire County District Attorney Peter Rindal.

This administrative review will identify specific policies relevant to the use of deadly force by Officer O'Neill, whether Officer O'Neill's actions were appropriate under the circumstances and within policy will be examined in the "findings" portion of this review.

This Administrative review concludes that Officer O'Neill's actions were appropriate and within the guidelines of the Eau Claire Police Department policy manual based on the totality of circumstances. The entry into [REDACTED] residence, based on exigent circumstances along with the amount of force used to stop the attack was necessary and objectively reasonable.

Summary of Incident

On November 3, 2021 at 1440 hours, the Eau Claire County Communications Center received a 911 hang up call from [REDACTED]. On the third call back, Telecommunicator Benjamin Williams spoke with [REDACTED]. [REDACTED] was whispering into the phone that she was calling on behalf of her friend, [REDACTED]. The two of them were reported to be hiding in a bedroom at [REDACTED] Selma St. [REDACTED] explained that [REDACTED] ex-boyfriend had arrived at their location and had a history of violence, including "strangling" [REDACTED] about a week prior. The ex-boyfriend was identified as Lekenneth Q. Miller. [REDACTED] stated that they could hear Miller inside of the house and that he was trying to open

the door to the bedroom they were hiding in. Prior to Officers arrival, ██████████ stated she thought she heard Miller retrieving a knife of some sort from a kitchen drawer. Shortly thereafter, and around the time that officers were pulling up to the residence, incoherent screaming could be heard on the 911 open line.

This screaming coincides with the 1448 arrival of Officers O'Neill and Kaveney. As they approach the residence, screaming could be heard on the open line and the officer's L3 microphones. Frantic screaming of, "No! Stop! Kenny! No! Stop! No! No! No! No! No! Stop!...." could be heard. Officer Kaveney and Officer O'Neill each attempted to manually breach (kick) open the front door, but were unsuccessful. A neighbor redirected them to the east door of the residence, adjacent to the driveway. At this location, officers were met by ██████████, who was fleeing the residence from the same east door that they were about to enter. ██████████ screamed, "He's stabbing her! He's stabbing her in the face!" A female could be heard screaming from inside of the residence. After negotiating a small chain link fence next to the driveway, Officers O'Neill and Kaveney made entry. The entry leads to a small landing to the north and east of the kitchen. This small landing prevented officers from making simultaneous entry. Officer O'Neill was in front of Officer Kaveney when visual contact was made with Lekenneth Miller. Due to the confined space and speed with which this incident unfolded, Officer Kaveney was never in a suitable position to engage the threat.

From an estimated distance of 9 feet, Officer O'Neill observed Miller holding a large knife in his hand. Officer O'Neill gave Miller commands to drop the knife. Miller raised the knife, shifted his weight, and began advancing towards Officer O'Neill. Officer O'Neill reported that he feared Miller was going to kill him. Officer O'Neill then discharged his service weapon multiple times in order to stop the threat posed by Miller. Miller fell to the ground and the knife came out of his hand.

Officer O'Neill conducted a "tactical" or in-battery reload. Officer O'Neill then entered further into the kitchen and began calling out for the female. Safety priorities first required that they locate the female. While Officer Kaveney held Miller at gun point, Officer O'Neill located ██████████. ██████████ had sustained serious life threatening stab wounds. Officer O'Neill evacuated ██████████ to the front yard. Once it was safe to do so, Officer O'Neill and other officers provided medical aid to both Miller and ██████████ until an Eau Claire Fire Department Medic Unit arrived. ██████████ was transported to Mayo Hospital, and eventually, Mayo Rochester. Despite live saving efforts, Miller was pronounced deceased on scene.

Initial Response and Subsequent Entry

Facts:

On November 3, 2021 at approximately 1439 hours, telecommunicator Benjamin Williams received a 911 hang up call from ██████████. On the 3rd call back, Telecommunicator Williams contacted a female who was whispering into the phone. When asked if she had an emergency, the female stated, "Ugh yes we do". The caller, ██████████, provided information that she was with her friend, ██████████, and the two of them were hiding in a bedroom because ██████████ ex-boyfriend was there. ██████████ provided the name of Lekenneth Miller. She also stated that Miller had recently strangled ██████████. Officer O'Neill and Officer Kaveney were detailed to this call. Outside of this incident, neither officer was familiar with Lekenneth Miller or his criminal history. Officer O'Neill had actually met

Miller exactly one year prior, when Miller reported harassment by ██████ ex-husband. Officer O'Neill did not recall the prior incident nor would it have had any bearing on his decision making in this instance. As the Officers responded to this call, the following information was provided and known to them:

- The incident was dispatched as a "Domestic" incident
- The location of the incident was ██████ Selma St., which is in the city of Eau Claire
- The caller was advising that her friend's ex-boyfriend had broken into the home
- The caller and ex-girlfriend were hiding in a bedroom
- The suspect had been "bothering" her (██████)
- The suspect had a history of violence
- The suspect was trying to get the locked bedroom door open
- The caller and ex-girlfriend were unable to self-evacuate
- The suspect arrived in a green Jeep Wrangler
- The suspect had gone to the kitchen to retrieve a knife to open the bedroom door

Officer O'Neill and Officer Kaveney arrived from opposite directions and the same time. As they were making their way to the residence, both of them reported hearing screaming coming from inside of ██████ Selma St. In addition to the dispatched facts of this case, Officer O'Neill began receiving additional information that further supported his decision making:

- Screaming could be heard coming from inside of the home
- As ██████ fled the home, she frantically screamed to Officer O'Neill, "He's stabbing her in the face, he's in the bathroom, he's stabbing her!"

POLICY 311-SEARCH AND SEIZURE

311.1 PURPOSE AND SCOPE

Both the United States and the Wisconsin Constitutions provide every individual with the right to be free from unreasonable searches and seizures. This policy provides general guidelines for Eau Claire Police Department personnel to consider when dealing with search and seizure issues.

311.2 POLICY

It is the policy of the Eau Claire Police Department to respect the fundamental privacy rights of individuals. Members of this department will conduct searches in strict observance of the constitutional rights of persons being searched. All seizures by this department will comply with relevant federal and state law governing the seizure of persons and property.

In accordance with the Training Policy, the Department will provide relevant and current training to officers as guidance for the application of current law as well as local community standards and prosecutorial considerations to specific search and seizure situations as appropriate.

311.3 SEARCHES

The U.S. Constitution generally provides that a valid warrant is required in order for a search to be valid. There are, however, several exceptions to the rule that permit a warrantless search.

Examples of law enforcement activities that are exceptions to the general warrant requirement include, but are not limited to, searches pursuant to the following:

- Valid consent
- Incident to a lawful arrest
- Legitimate community caretaking interests
- Vehicle searches under certain circumstances
- Exigent circumstances
- Statutory authority

Certain other activities are recognized by federal and state courts and by certain statutes as legitimate law enforcement activities that also do not require a warrant. Such activities may include seizure and examination of abandoned property and observations of activities and property located on open public areas.

Because case law regarding search and seizure is constantly changing and subject to interpretation by the courts, each member of this department is expected to act in each situation according to current training and his/her familiarity with clearly established rights as determined by case law.

Whenever practicable, officers are encouraged to contact a supervisor or other available resource to resolve questions regarding search and seizure issues prior to electing a course of action.

POLICY 412-RAPID RESPONSE AND DEPLOYMENT

412.1 PURPOSE AND SCOPE

Violence in schools, workplaces and other locations by any individual or group of individuals presents a difficult situation for law enforcement. The purpose of this policy is to identify guidelines and factors that will assist officers in implementing rapid response and deployment to such situations.

412.2 POLICY

The policy of this department in dealing with a crisis situation shall be:

- a. To obtain and maintain complete operative control of the incident.
- b. To explore every reasonably available source of intelligence regarding the circumstances, location and suspect in the incident.
- c. To attempt, by every means available, to attain any tactical advantage over the responsible individual.
- d. To attempt, whenever practicable, a negotiated surrender of the suspect and release of the hostages through the expertise of the members of this department and others.
- e. When an emergency situation exists, to neutralize the threat as rapidly as reasonably possible to minimize injury and loss to life.

Nothing in this policy shall preclude the use of necessary force, deadly or otherwise, by members of this department in protecting themselves or others from death or injury.

412.3 PROCEDURE

If there is a reasonable belief that acts or threats by a suspect are placing lives in imminent danger, first responding officers should consider reasonable options to immediately eliminate the threat. Officers must decide, often under a multitude of difficult and rapidly evolving circumstances, whether to advance on the suspect, take other actions to deal with the threat or wait for additional resources.

When deciding on a course of action officers should consider:

- a. Whether sufficient personnel are available on-scene to advance on the suspect. Any advance on a suspect should be made using teams of two or more officers whenever reasonably possible.
- b. Whether individuals who are under imminent threat can be moved out of danger with reasonable safety.
- c. Whether the officers have the ability to effectively communicate with others in the field.
- d. Whether planned tactics can be effectively deployed.
- e. The availability of rifles, shotguns, shields, control devices and any other appropriate tools, and whether the deployment of these tools will provide a tactical advantage.
- f. In a case of a barricaded suspect with no hostages and no immediate threat to others, officers should consider summoning and waiting for additional assistance (special tactics and/or hostage negotiation team response).
- g. If a suspect is actively engaged in the infliction of serious bodily harm or other life-threatening activity toward others, the officer should take immediate action, if reasonably possible, to stop the threat presented by the suspect while calling for additional assistance.

Findings

Officer O'Neill's warrantless entry into [REDACTED] residence constituted a search. In order for a search to be valid, generally, law enforcement must first obtain a warrant. One of the judicially recognized exceptions to the warrant requirement is exigent circumstances. The information known to Officer O'Neill at the time of his entry clearly constituted exigent circumstances. Additionally, entry by Officer O'Neill was likely permitted by consent, given that the original call for help was coming from inside of the home.

In addition, Officer O'Neill did not have time to wait and gather additional information prior to acting. His decision to act during this emergency situation was in an effort to minimize injury and loss to life.

Officer O'Neill's decision to immediately act and make entry was reasonable and within the guidelines of policy.

CONTACT WITH LEKENNETH MILLER and DEADLY FORCE APPLICATION

Facts

Moments before making entry, Officer O'Neill was told that "he's stabbing her....". [REDACTED] statement made it clear that the stabbing was happening **at that moment**.

As has already been established, Officer O'Neill was lawfully present in the home at the time that he contacted Miller.

In the tight confines of the east landing, Officer O'Neill took one step and was at the threshold to the kitchen. He immediately saw Miller. The distance, or reactionary gap between the two of them was approximately 9 feet. Officer O'Neill saw Miller standing at an open kitchen drawer and saw a large knife in his hand. Officer O'Neill ordered Miller to drop the knife. Miller instead raised the knife, with the blade pointing upwards, turned, and began closing the distance with Officer O'Neill. It is reported that Officer O'Neill ordered Miller to drop the knife two times, but only the second such command can be heard over ██████████ and ██████████ screams. When Miller did not comply, Officer O'Neill stated that he feared Miller was going to kill him and Officer Kaveney, so he fired his service weapon at Miller to stop the threat. In viewing the Ring camera footage, the amount of time that lapsed from the moment that Officer O'Neill cleared the chain linked fence on the East side of the home (after the failed front door breach) to the moment that shots were heard was about 3 seconds. Officer O'Neill fired 6 shots in approximately 1.5 seconds until the threat was stopped. Following the shots being fired, Officers can be heard giving commands of, "on the ground!" multiple times. Including the front door failed breach, Officer O'Neill is on scene for approximately 24 seconds before the shots are fired.

POLICY 300-USE OF FORCE

300.1 PURPOSE AND SCOPE

This policy provides guidelines on the reasonable use of force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every member of this department is expected to use these guidelines to make such decisions in a professional, impartial and reasonable manner. When safe under the totality of the circumstances, and when time and circumstances permit, officers shall prioritize de-escalation tactics in order to reduce the need for force.

300.1.1 DEFINITIONS

Definitions related to this policy include:

Deadly force - The intentional use of a firearm or other instrument that creates a high probability of death or great bodily harm.

Feasible - Reasonably capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to the officer or another person.

Force - The application of physical techniques or tactics, chemical agents, or weapons to another person. It is not a use of force when a person allows him/herself to be searched, escorted, handcuffed, or restrained.

Imminent - Ready to take place; impending. Note that imminent does not mean immediate or instantaneous.

Totality of the circumstances - All facts and circumstances known to the officer at the time, taken as a whole, including the conduct of the officer and the subject leading up to the use of force.

300.2 POLICY

The use of force by law enforcement personnel is a matter of critical concern, both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied interactions and, when warranted, may use reasonable force in carrying out their duties.

Officers must have an understanding of, and true appreciation for, their authority and limitations. This is especially true with respect to overcoming resistance while engaged in the performance of law enforcement duties.

The Eau Claire Police Department recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation, and a careful balancing of all interests.

300.2.1 DUTY TO INTERCEDE AND REPORT

Any officer present and observing another law enforcement officer or a member using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force.

Any officer who observes another law enforcement officer or a member use force that is potentially beyond that which is objectively reasonable under the circumstances should report these observations to a supervisor as soon as feasible.

300.2.2 PERSPECTIVE

When observing or reporting force used by a law enforcement officer, each officer should take into account the totality of the circumstances and the possibility that other law enforcement officers may have additional information regarding the threat posed by the subject.

300.3 USE OF FORCE

Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose.

The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain and rapidly evolving.

Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident.

It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the tools, weapons or methods provided by this department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.

300.3.1 ALTERNATIVE TACTICS - DE-ESCALATION

When circumstances reasonably permit, officers should use non-violent strategies and techniques to decrease the intensity of a situation, improve decision-making, improve communication, reduce the need for force, and increase voluntary compliance (e.g., summoning additional resources, formulating a plan, attempting verbal persuasion).

300.3.2 USE OF FORCE TO EFFECT AN ARREST

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).

300.3.3 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

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 (e.g., age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).
- d. The effects of suspected drug or alcohol use.
- e. The individual's mental state or capacity.
- f. The individual's ability to understand and comply with officer commands.
- g. Proximity of weapons or dangerous improvised devices.
- h. The degree to which the individual has been effectively restrained and his/her ability to resist despite being restrained.
- i. The availability of other reasonable and feasible options and their possible effectiveness.
- j. Seriousness of the suspected offense or reason for contact with the individual.
- k. Training and experience of the officer.
- l. Potential for injury to officers, suspects, and others.
- m. Whether the individual appears to be resisting, attempting to evade arrest by flight, or is attacking the officer.
- n. The risk and reasonably foreseeable consequences of escape.
- o. The apparent need for immediate control of the individual or a prompt resolution of the situation.
- p. Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
- q. Prior contacts with the individual or awareness of any propensity for violence.
- r. Any other exigent circumstances.

300.4 DEADLY FORCE APPLICATIONS

When reasonable, the officer shall, prior to the use of deadly force, make efforts to identify him/herself as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.

Use of deadly force is justified in the following circumstances involving imminent threat or imminent risk:

- a. An officer may use deadly force to protect him/herself or others from what he/she reasonably believes is subject behavior which has caused or imminently threatens to cause death or great bodily harm to the officer or another person or persons.
- b. An officer may use deadly force to stop a fleeing subject when the officer has probable cause to believe that the individual has committed, or intends to commit, a felony involving the infliction or threatened infliction of great bodily harm or death, and the officer reasonably believes that there is an imminent risk of great bodily harm or death to any other person if the individual 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 that the individual has a weapon or is attempting to access one and intends to use it against the officer or another person. An imminent danger may also exist if the individual is capable of causing great bodily harm or death without a weapon, and the officer believes the individual intends to do so.

300.4.1 IMMINENCE

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.

300.4.2 TARGET REQUIREMENTS

When an officer has determined that deadly force is necessary and all other reasonable alternatives having been precluded, the officer must fulfill certain "target requirements." These include the following:

- TARGET ACQUISITION: Does the officer have a target?
- TARGET IDENTIFICATION: Even if the target has been "acquired," the officer cannot shoot until the target has been identified as an individual placing the officer and/or others in "imminent danger", and;
- TARGET ISOLATION: The officer must make every reasonable effort to isolate the target from other innocent persons. An exception to the target isolation requirement arises when withholding the application of deadly force results in a greater danger than the use of deadly force itself.

Findings

The amount of force used by Officer O'Neill was necessary and objectively reasonable under the circumstances. The incident was tense, uncertain, and rapidly evolving. Officer O'Neill was forced to make a split-second decision based on the facts known to him at that time. Under these circumstances, alternative tactics or de-escalation tactics would have been fruitless. In addition, retreating or formulating a different plan was not an option given the fact that Officer O'Neill had an obligation to protect ██████████ who was actively screaming, in distress and reported to have been stabbed moments prior to the shots being fired. Officer O'Neill was dressed in a full and complete Eau Claire Police Department uniform. Based on how fast this incident unfolded, it would not have been feasible for Officer O'Neill to have identified himself prior to engaging Miller.

Officer O'Neill made contact with Miller from a distance of approximately 9 feet. From this distance, and within 3 seconds, there was an immediate need to control Miller's actions to protect not only Officer O'Neill and Officer Kaveney, but also [REDACTED]. The location in the home where [REDACTED] was critically injured was 12 feet from Miller's location at the time of the shooting. Although Officer O'Neill did not know her exact location, the tight confines of this small home only help to establish the need to act immediately. [REDACTED] comments and Miller's display of the knife clearly show intent. The large kitchen knife constituted a weapon capable of inflicting great bodily harm or death. Miller also had a delivery system, or means with which to use this weapon as evidenced by statements made by [REDACTED] in that moment, as well as Miller's advancement towards Officer O'Neill. Deadly force, or the intentional use of a firearm that creates a high probability of death or great bodily harm, was justified under the totality of circumstances.

As soon as Officer O'Neill made entry, he was able to acquire a target. Based on information that he had at that time, Officer O'Neill was able to identify Miller as the subject placing [REDACTED], Officer Kaveney and himself in imminent danger. Lastly, based on Miller's location near the south wall of the home, Officer O'Neill was able to isolate Miller from other innocent persons before discharging his service weapon.

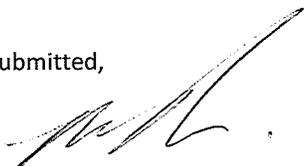
Conclusion

This administrative review is a comprehensive report intended to evaluate Officer Kris O'Neill's use of deadly force. The facts used as a basis for these findings included the Criminal Investigation case file completed and submitted by Special Agent Adam Frederick with the Wisconsin Department of Justice-Division of Criminal Investigation (DCI), Eau Claire Police Department Officer reports, L3 squad video/audio, Communication Center audio, Ring doorbell audio and video, and many other resources. Specific Lexipol policies, pertinent the use of deadly force were identified and used to evaluate Officer O'Neill's actions and decision making during this incident.

Eau Claire County District Attorney Peter Rindal conducted a criminal review of this incident and concluded that Officer O'Neill's use of deadly force was justified as a reasonable act of self defense and defense of others.

This Administrative review concludes that Officer O'Neill's actions were appropriate and within the guidelines of the Eau Claire Police Department Lexipol policy and procedure manual based on the totality of circumstances. The entry into [REDACTED] residence, based on exigent circumstances along with the amount of force used to stop the attack were necessary and objectively reasonable.

Respectfully submitted,



Lieutenant Mark Pieper

Reviewed by:

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