

Policy Index

311.3 Search and Seizure

412.2(e) Rapid Response and Deployment in Dealing with a Crisis

300 Use of Force

- 300.1.1 Definitions
- 300.2.1 Duty to Intercede and Report
- 300.2.2 Perspective
- 300.3 Use of Force
- 300.3.1 Alternative Tactics-De-Escalation
- 300.3.2 Use of Force to Affect an Arrest
- 300.3.3 Factors Used to Determine the Reasonableness of Force
- 300.4 Deadly Force Application
- 300.4.1 Imminence
- 300.4.2 Target Requirements

Introduction

This administrative review will examine the facts pertaining to the officer involved shooting of Thomas Burback. This document contains the facts of the case which includes Officer Ariana Down-Larson's decisions to use deadly force.

The facts were gathered from officer reports, Axon Audio and 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 Down-Larson and whether Officer Down-Larson's actions were appropriate under the circumstances and within policy. These details will be examined in the Findings portion of this review.

This administrative review concludes that Officer Down-Larson's actions were appropriate and within the guidelines of the Wisconsin Department of Justice Defensive and Arrest Tactics (DAAT), and Eau Claire Police department policy.

Summary of Incident

During the evening of May 24, 2024 at approximately 2150 hours Officer Ariana Down-Larson responded to a domestic disturbance call at 2228 2nd Street in the city of Eau Claire. As she was speaking with those involved her attention was drawn to 2232 2nd Street as she heard a male yelling from the residence. Believing there was a domestic disturbance at that residence which required her attention, she walked towards that same location. As she did so she saw two

children outside the residence, one of which was identified as the granddaughter of the resident, [REDACTED]. The granddaughter told Officer Down-Larson she was outside of the residence because an adult male (later identified as Thomas Burback) had started a fight with her grandmother ([REDACTED]) and he was “kinda drunk” and she didn’t know what to do. Officer Down-Larson removed the children from the situation, taking them to [REDACTED] 2nd Street. After the children were secured at the neighboring address Officer Down-Larson returned to 2232 2nd Street to address the domestic disturbance.

As Officer Down-Larson re-approached, a male can be heard yelling from 2232 2nd Street. As she does so she radios the Communication Center advising what she believes to be “an active domestic in progress” and requests additional police officers. A male voice can be heard stating “they can’t fuckin’ touch me”, “C’mon Johnny, let’s go.” “Where are my fuckin’ keys”, “Get the fuck out of here”, and “Johnny you better step the fuck back”.

Officer Down-Larson shined her hand-held flashlight towards the front door of the residence and relayed over her radio that the disturbance is coming from 2232 2nd Street. She announced her presence to the male by saying “Police Department” followed momentarily by radioing the following: “he’s got a gun, step it up”. At that moment Officer Down-Larson saw Burback point a revolver style handgun at her. She changed her position slightly and appears to stow her handheld flashlight in her vest.

At that point she drew her service handgun and utilized the flashlight mounted on her handgun to illuminate the fire escape where Burback was standing. Moments later Officer Down-Larson exclaimed “Hey!” and then fired two rounds from her department issued handgun as he turned to walk into the apartment striking Burback. It was at that moment Officer Down-Larson believed Burback was entering the residence to shoot or kill the female inside [REDACTED]. Burback entered the interior of the apartment from the fire escape. Moments after Officer Down-Larson moved toward the back of the residence where she observed a female at the top of the stairs. Officer Down-Larson directed the woman to walk down the steps and away from the residence to a position of safety.

Burback refused to exit the residence and was ultimately taken into custody by the Eau Claire County Regional SWAT Team. Officer Down-Larson’s Axon body worn camera was activated for the entirety of the event.

Initial Response and Subsequent Approach

Facts

Officer Down-Larson approached 2232 2nd Street because she could hear what appeared to be a domestic disturbance in progress. She radioed Dispatch of the disturbance and requested additional officers. As she approached the home she learned from [REDACTED] granddaughter that [REDACTED] was still in the home. She also told Officer Down-Larson that Burback

was “kinda drunk” and started a fight with her grandmother. After escorting the children to a neighboring residence Officer Down-Larson re-approached 2232 2nd Street.

1. Officer Down-Larson responded to a domestic disturbance at 2232 2nd Street
2. Officer Down- Larson informed Dispatch and officers of her observations and requested additional officers
3. Officer Down-Larson finds two children who appear to be hiding alongside the residence at 2232 2nd street, one of whom was [REDACTED] granddaughter
4. Officer Down-Larson spoke to [REDACTED] granddaughter who told her a male (Burback) was “kinda drunk” and started a fight with her grandmother
5. Officer Down-Larson found a safe place for the children prior to returning to the scene of the disturbance

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 First Response

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 reduce, prevent, or 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.

If a suspect is actively engaged in the infliction of great bodily harm or other life-threatening activity toward others, officers should take immediate action, if reasonably practicable, while requesting additional assistance.

Officers should remain aware of the possibility that an incident may be part of a coordinated multi-location attack that may require some capacity to respond to other incidents at other locations.

When deciding on a course of action, officers should consider:

- (a) Whether to advance on or engage a suspect who is still a possible or perceived threat to others. Any advancement or engagement should be based on information known or received at the time.
- (b) Whether to wait for additional resources or personnel. This does not preclude an individual officer from taking immediate action.
- (c) Whether individuals who are under imminent threat can be moved or evacuated with reasonable safety.
- (d) Whether the suspect can be contained or denied access to victims.
- (e) Whether the officers have the ability to effectively communicate with other personnel or resources.
- (f) Whether planned tactics can be effectively deployed.
- (g) The availability of rifles, shotguns, shields, breaching tools, control devices, and any other appropriate tools, and whether the deployment of these tools will provide a tactical advantage.

In a case of a barricaded or trapped suspect with no hostages and no immediate threat to others, officers should consider covering escape routes and evacuating persons as appropriate, while summoning and waiting for additional assistance (e.g., special tactics and/or hostage negotiation team response).

Findings

Officer Down-Larson's initial approach and subsequent approach was proper and falls within the guidelines of Eau Claire Police Department policy. Officer Down Larson made the determination to approach 2232 2nd Street because she heard a domestic disturbance originating from the second story of that residence. As events unfolded in rapid succession Officer Down-Larson was

obligated to quickly respond to the disturbance she heard from 2232 2nd Street. As she responded she communicated over the radio to dispatch and fellow officers of the disturbance and requested additional officers for assistance.

As she made her way towards the disturbance she found two children standing outside the residence at 2232 2nd Street. She learned from one of the children, [REDACTED] granddaughter that [REDACTED] was in the apartment with Burback. Due to the nature of the disturbance, the information she gathered from [REDACTED] granddaughter, and her own observations, withdrawal from the situation was not an option for Officer Down-Larson.

Contact with Thomas Burback and Deadly Force Determination

Facts

The decision to contact Burback and to use deadly force was reasonable, and falls within the guidelines of Eau Claire Police Department policy. After finding a safe place for the children, Officer Down-Larson returned to 2232 2nd Street. As Officer Down-Larson re-approached, she identified herself by stating “police department”. She shined her hand-held flashlight at the residence and radioed the address to Dispatch and responding officers. Officer Down-Larson stowed her hand-held flashlight and drew her service weapon. As she does she illuminates Burback with her gun mounted flashlight and announced “police department” as he was standing on the fire escape. Burback responded by uttering “fuck you”.

Officer Down-Larson moved her position around a tree in the yard of 2232 2nd Street. Moments later, Officer Down-Larson saw a revolver style handgun in his right hand and transmits over her radio “He’s got a gun, step it up”. Officer Down-Larson saw Burback point the gun at her. Burback immediately turned to enter the residence from the fire escape with the gun remaining in his hand. Officer Down-Larson fired two rounds from her service weapon in an attempt to stop the deadly threat posed by Burback. Officer Down-Larson announced over the radio “shots fired” and Burback retreated to the interior of the apartment.

1. Officer Down-Larson identified herself as “Police Department” to Burback
2. Officer Down-Larson heard him say “they can’t fuckin touch me” and “Johnny you better step the fuck back” among other utterances
3. Officer Down-Larson saw Burback holding a revolver in his hand pointed in her direction and she believed he posed an imminent deadly threat to her
4. Officer Down-Larson saw Burback turn to enter the apartment with the revolver in his right hand near his head. The manner in which Burback was holding the gun would have enabled him to rapidly discharge the weapon
5. Officer Down-Larson believed there was another person in the apartment and Burback posed an imminent deadly threat to that person
6. Officer Down-Larson discharged her handgun at Burback to stop the deadly threat

After Officer Down-Larson utilized deadly force she immediately moved toward the back of the residence where she observed a female at the top of the stairs. Officer Down-Larson directed the woman to walk down the steps and away from the residence to a position of safety. Following the evacuation of [REDACTED] Burback remained in the apartment. A perimeter was established around the residence. Burback remained in the residence until he surrendered some time later.

Policy 300-Use of Force

300.1 Purpose and Scope

This policy provides guidelines on the reasonable use of force (Wis. Stat. § 66.0511(2)).

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 circumstances, and when time and circumstances permit, officers shall prioritize de-escalation tactics in order to reduce the need for force.

In addition to those methods, techniques, and tools set forth below, the guidelines for the reasonable application of force contained in this policy shall apply to all policies addressing the potential use of force, including but not limited to the Control Devices and Techniques and Conducted Energy Device policies.

300.1.1 Definitions

Definitions related to this policy include:

Deadly force - Force reasonably anticipated and intended to create a substantial likelihood of causing death or great bodily harm. Deadly force includes the intentional use of a firearm or other instrument that creates a high probability of death or great bodily harm.

De-escalation - De-escalation is a concept that involves an officer's use of time, distance, and relative positioning in combination with professional communication skills to attempt to stabilize a situation and reduce the immediacy of threat posed by an individual.

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 themselves to be searched, escorted, handcuffed, or restrained.

Imminent - About to happen, impending. An imminent threat is an immediate threat.

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.

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, intervene to prevent or stop the use of unreasonable force (Wis. Stat. § 175.44).

Any officer who intervenes and/or observes another law enforcement officer or a member use force that is potentially beyond that which is objectively reasonable under the circumstances shall report these observations and/or intervention to a supervisor as soon as practicable after the occurrence of the use of force (Wis. Stat. § 175.44).

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).

300.4 Deadly Force Applications

When reasonable, the officer shall, prior to the use of deadly force, make efforts to identify themselves 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 only as a last resort when the officer reasonably believes that all other options have been exhausted or would be ineffective, and only to stop behavior that has caused or imminently threatens to cause great bodily harm

or death to the officer or others.

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 both practical and feasible.

However, an officer should not use deadly force against a person whose actions are a threat solely to themselves or property.

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.

(b)

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

Officer Down-Larson's use of deadly force was both reasonable and justified. She was lawfully and necessarily in contact with Burback due to an active domestic disturbance in progress at the home of [REDACTED]. Officer Down-Larson called for additional police resources to assist her with the disturbance. Officer Down-Larson announced her presence to Burback by saying "police department". Officer Down-Larson observed a gun in the right hand of Burback and saw him point the same gun in her direction. Furthermore, based on information obtained from [REDACTED] granddaughter she had reason to believe that the disturbance was domestic in nature and necessitated a sustained response and investigation.

As Officer Down-Larson made contact with Burback she saw a revolver in his right hand and pointed it in her direction. At this point Burback created an imminent threat of death or great bodily harm with weapon, intent, and delivery system. Additionally, as Burback turned to walk into the residence the he was still holding the handgun in his right hand. As he did so he held it in a manner which would have allowed him to readily fire the gun. Officer Down-Larson believed he posed an imminent threat of great bodily harm or death to [REDACTED] who was still inside the residence. Retreat was not a reasonable option and a lower level of force was also not reasonable because of Burback's actions which created an imminent threat to [REDACTED] and Officer Down-Larson.

Burback posed an imminent threat to both Officer Down-Larson and [REDACTED]. His intent was made apparent as he pointed his revolver in Officer Down-Larson's direction after she announced herself to him. His intent was also formulated moments later as he turned to walk into the apartment where [REDACTED] was located. Burback remained fully capable of firing the handgun throughout the duration of the contact. Being that she faced a deadly threat to herself and [REDACTED] any lesser use of force was precluded. Officer Down-Larson's use of force was both reasonable and justified. Providing medical aid to Burback was not reasonable at that time because he remained armed in the residence and did not surrender.

Conclusion

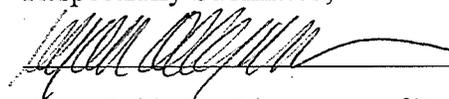
This administrative review is a comprehensive report to evaluate Officer Down-Larson's use of deadly force. The facts used as a basis for these findings included the criminal investigation completed and submitted by Special Agents Andrew Simon and David Kleinhans of the Wisconsin Department of Justice-Division of Criminal Investigation (DCI), Eau Claire Police Department Officer reports, the criminal review conducted by Eau Claire District Attorney Peter Rindal, and Axon video/audio.

Specific Eau Claire Police Department policies pertinent to police response and the use of deadly force were identified and used to evaluate Officer Down-Larson'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 Down-Larson's use of deadly force was justified as a reasonable act of self-defense and defense of others.

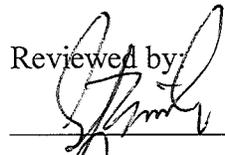
This Administrative Review concludes that Officer Down-Larson's actions were appropriate and within the guidelines of the Eau Claire Police Department's Lexipol policy and the Wisconsin department of Justice DAAT manual, based on the totality of the circumstances. The reason for contact at the residence where Burback was at (based on an in-progress domestic disturbance) was reasonable and necessary. Officer Down-Larson's use of deadly force was objectively reasonable, necessary and justified to stop a deadly threat posed to both herself and [REDACTED]

Respectfully Submitted,

 _____, Date: 9/24/24

Ryan Dahlgren, Lieutenant of Police

Reviewed by:

 _____, Date: 9/24/24

Stephen Nick, City Attorney

 _____, Date: 09/24/2024

Matt Rokus, Chief of Police