



OFFICE OF THE DISTRICT ATTORNEY  
*Milwaukee County*

**JOHN T. CHISHOLM • District Attorney**

Chief Deputy Kent L. Lovern, Deputies Lovell Johnson, Jr., Jeffrey J. Altenburg  
Karen A. Loebel, Elisabeth Mueller, Matthew J. Torbenson, Bruce J. Landgraf

February 18, 2020

Chief Alfonso Morales  
Milwaukee Police Department  
749 W. State Street  
Milwaukee, WI 53233

Re: Critical incident involving the non-fatal shooting of Tari Davis

Dear Chief Morales:

This letter summarizes the conclusions of my office regarding the September 8, 2019 discharge of firearm by Officer Nikolas Zens, which wounded Milwaukee resident Tari Davis. For the reasons indicated below, I find that Officer Zens did not act unreasonably under the circumstances of this incident.

During the early morning hours of Sunday, September 8, 2019, City of Milwaukee police officers attempted to stop the vehicle driven by Kevin Brown. Rather than pulling over, Brown fled in his vehicle through residential neighborhoods on Milwaukee's north side, resulting in numerous police squads responding in order to apprehend Brown. Brown fled from police for twenty minutes, travelled nearly fourteen miles and reached speeds in excess of eighty miles per hour on residential city streets. Zens was one of the officers in pursuit of Brown, who abandoned his vehicle near 27<sup>th</sup> Street and Auer Avenue after striking an MPD squad car and nearly hitting another officer standing outside a squad car. Zens observed Brown running through the neighborhood and chased him on foot. Zens loudly ordered Brown to stop and show his hands. Zens later reported that Brown ran in a manner that concealed his hands in his front waist area, which is consistent with a person running while concealing or drawing a handgun. Zens also reported that Brown briefly turned back toward him in a manner that made Zens believe that Brown was measuring Zens as a potential target. Brown refused to obey Zens' orders to stop and show his hands and instead rushed toward the back door of the residence occupied by Tari Davis and his family, which is located at 3222 N. 26<sup>th</sup> Street. Zens reported that as Brown attempted to enter the back door, Zens saw Brown raise his arms in a manner Zens perceived to be aiming a handgun toward him. Zens fired one shot toward Brown, which struck Davis in the upper leg area. Brown and Davis immediately went down, and no further shots were fired.

There is body camera evidence in this matter that confirms Zens' foot pursuit of Brown and his repeated orders of Brown to stop and show his hands. Body camera footage confirms Zens firing one shot toward the back door of Davis' residence as Brown

Steven H. Glamm  
John M. Stoiber  
Thomas L. Potter  
Rayann Chandler Szychinski  
Carole Manchester  
Brad Vorpahl  
Paul Tiffin  
Dennis P. Murphy  
Dennis J. Stengl  
Patricia A. McGowan  
Irene E. Parthum  
Kanne O'Byrne  
Kurt B. Benkley  
James C. Griffin  
William P. Pipp  
Shawn Pompe  
Kevin R. Shomin  
Beth D. Zingibel  
Karen A. Vespalec  
David T. Malone  
Kelly L. Hedge  
Rachael Stencel  
Kathryn K. Sarnier  
Joy Hammond  
Grant J. Huebner  
Stephan Edward Nolten  
Claire Starling  
Rebecca A. Kiefer  
Katryna Childs Rhodes  
Anthony White  
Nicole D. Loeb  
Erin Karshen  
Michael J. Lonski  
Paul M. Hauer  
Sara Beth Hill  
Jenni Spies Karas  
Renee Hohensee  
Karl P. Hayes  
Holly L. Bunch  
Megan M. Newport  
Sarah Sweeney  
Kimberly D. Schoepp  
Dax C. Odum  
Patricia J. Daugherty  
Marissa Luz Burtch  
Meghan C. Lindberg  
Ann M. Lopez  
Randy Sitzberger  
Nicolas J. Heltman  
Chad Wozniak  
Francesco G. Milne  
Hanna R. Kolberg  
Joshua M. Matby  
Nicole J. Sheldon  
Antonella Aleman  
Jessica A. Ballinger  
Matthew R. Westphal  
Cecelia A. Ringersma  
Sara Volden Schroeder  
Abbey M. DeSisto  
Molly M. Schmidt  
Danielle E. Chojnacki  
Michael Schindhelm  
Brittany C. Grayson  
Nathaniel E. Adamson  
Sarah J.S. Waldschmidt  
Ryan T. Sanson  
Jeremy R. Ann  
Brandon A. Wigley  
Zachary A. Wittchow  
William T. Berens  
Patrick J. Anderson  
Alex Mueller  
Owen Piotrowski  
Alyssa Schaller  
Brittany S. Kachingwe  
Elizabeth A. Longo  
Katherine M. Halopka-Ivery  
Porchia S. Lewand  
Kelly J. O'Neill  
Katherine Ann Seelow  
Stephanie M. Chiarelli  
Jennifer L. Pickett  
Taylor L. Kraus  
Jessica Bellows  
Jan F. Vance-Curran  
Daniel G. Murphy  
Joshua A. Dryak  
Angela D. Cunningham  
Jennifer Lindeke Tate  
Charles D. Kregger  
Edward F. O'Brien  
John Flynn  
Christine M. Quilen  
William G. Davidson  
Gilbert F. Urfer  
Kathryn Ginsberg  
Alicia H. Kort  
Patrick W. O'Keefe  
Kristyn R. Kuzniar  
Andrea L. Lendry  
Elaine Fehrs  
Lara Parker  
Samuel Tufford  
Thaddeus McGuire  
Morgan T. McCrory  
Kenneth Olsinski  
Kyle E. Johnson  
Chelsea C. Pierski  
Elizabeth Larson  
Alexandria S. Carlson  
Leonard Anthony Jackson  
Daniel T. Flaherty  
Stephanie A. Krueger  
John J. Rejowski

attempted to enter and that Brown immediately went to the ground with his hands out to be seen by officers. The lighting at the back of the house in contrast with the darkness in the yard behind the house makes it difficult to determine the actions of Brown during this incident. However, immediately after the incident, Zens exclaims on camera how Brown ran from him with concealed hands and apparently raised them as he tried to enter the residence.

There is additional corroboration of Zens' perceptions of Brown's behavior. Brown later admitted in two separate police interviews that he did in fact have his hands in his front waistband area as he ran from Zens. Although he denied having a firearm, and no firearm associated with Brown was ever recovered, Brown acknowledged that he was trying to place his phone in his front pants pocket as he ran from Zens. He also acknowledged ignoring Zens' orders to stop running. Brown tried to enter Davis' residence, because Brown's girlfriend lives there.

Davis indicated to police after the incident that Brown called him from his vehicle during his flight from police, and that Davis advised him to pull over. Davis saw Brown near his residence and attempted to keep him from entering the back door. A family member saw Davis' arms somewhat outstretched as Brown attempted to enter the back door.

Wisconsin Statutes Section 938.48(1) states as follows:

A person is privileged to threaten or intentionally use force against another for the purpose of preventing or terminating what the person reasonably believes to be an unlawful interference with his or her person by such other person. The actor may intentionally use only such force or threat thereof as the actor reasonably believes is necessary to prevent or terminate the interference. The actor may not intentionally use force which is intended or likely to cause death or great bodily harm unless the actor reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself.

This is a two-part test, with subjective and objective components.

- 1) Did the officer have an actual subjective belief that deadly force was necessary to prevent imminent death or great bodily harm to himself or others?
- 2) Was that belief objectively reasonable?

See State v. Head, 2002 WI 99, 255 Wis.2d 194, 648 N.W.2d 413.

In this incident, Officer Zens pursued Brown on foot knowing that Brown had led police on a lengthy and dangerous vehicle pursuit through residential neighborhoods. Zens later reported that in his experience, people flee in this manner in an effort to hide other criminal conduct, and that oftentimes people who flee from the police are armed with dangerous weapons. As Zens pursued Brown on foot, Brown concealed his hands from

view, a fact Brown admits, which further heightened Zens' concern that Brown was armed. Zens then perceived distinctive arm movement as Brown attempted to enter Davis' residence with Davis standing in the back doorway of the home. Zens fired the single shot with the expressed belief that Brown was raising his arms to fire a handgun toward him. Zens then perceived Brown immediately on the ground with his hands openly displayed and observed no further threat of harm by Brown.

Under the circumstances, and considering the potential legal privileges of self-defense and mistake, there is no evidence to refute Zens' perceptions of the threat level presented by Brown at the time Zens fired one shot. The existing evidence, and the lack of evidence to the contrary, support the reasonableness of this decision-making. Therefore, our office has concluded its review of this matter and will take no further action.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kent Lovern", with a long horizontal flourish extending to the right.

Kent Lovern  
Chief Deputy District Attorney

cc: Assistant Chief Michael Brunson  
Captain Thomas Casper  
Attorney Christopher MacGillis  
Attorney Thomas Napierala