



OFFICE OF THE DISTRICT ATTORNEY
Milwaukee County

JOHN T. CHISHOLM • District Attorney

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August 15, 2022

Chief James MacGillis
Wauwatosa Police Department
1700 N 116th Street
Wauwatosa, WI 53226

Dear Chief MacGillis:

I reviewed the Milwaukee Area Investigative reports related to the use of force incident that occurred on April 5th, 2022 at 9131 West Congress Street in the City of Milwaukee where Wauwatosa Police Officer's Dexter Schleis and Evan Olson discharged their firearms at Damiso Lee. Mr. Lee sustained non-life threatening injuries during this encounter, most of which was captured on recorded video from the officer's body worn camera systems and squad cameras.

The case was investigated by the Milwaukee Police Department pursuant to the Milwaukee Area Investigative Team protocol. Detectives from the Milwaukee Police Department spoke to Officer Olson. According to Olson, the incident began when he was on routine patrol in his marked police squad. He was parked on the east side of North 92nd Street facing north in the parking lane just south of Congress. Olson's squad car is equipped with an Automated License Plate Reader (ALPR), which is a system that consist of cameras with software that is capable of detecting and reading license plates, then converting the information on the license plate into a digital format and sending the results to a processing system in the mobile data computer (MDC) inside of the squad car. Olson stated while still parked, a silver automobile passed him and he received an ALPR high alert which is indicative of a vehicle connected to a possible felony offense, such as a stolen automobile.

Olson stated he checked his MDC to confirm the photo captured by ALPR matched the plate listed on the passing vehicle and he confirmed it did. Olson then radioed the dispatcher the plate information and the dispatcher responded back stating the vehicle was stolen out of Milwaukee and it listed to a silver Pontiac. This vehicle matched the silver sedan that Olson just observed traveling northbound, when the ALPR high alert notification responded. Olson then said he observed the silver sedan turn east into an alley and park in a parking spot with the vehicle facing north. Olson stated the parking space was associated with an apartment complex that was located on the southeast corner of West Congress Street. Olson continued to monitor this vehicle and he observed the vehicles headlights were still on. Olson stated he then radioed the dispatcher and requested additional details on the stolen vehicle. The dispatcher responded by informing Olson that the vehicle was reported stolen in February of 2022 by two (2) known actors. The dispatcher then gave approximate ages of the subjects and gave the initials of "RJ" or "TJ" or something similar for the individuals. Olson stated he then asked the dispatcher for the listed address of the vehicle and it listed to an address in a different area of Milwaukee. Olson checked his MDC to see if there were any squads in the area and he observed that Wauwatosa Police Officer Dexter Schleis was west of him in the area of Grantosa Drive. Olson then stated he radioed PO Schleis requesting

assistance and instructed PO Schleis to travel eastbound on W Congress St, and when he gets to N 91st St. then travel south and turn west into the first alley to prevent the vehicle from fleeing westbound when he decides to attempt to make contact with the vehicle. Olson stated he maintained his same position keeping his eyes on the vehicle. Olson then said he observed the silver sedans driver's door open and then closed without anyone exiting the vehicle.

Olson then radioed to PO Schleis that the subject may be looking to exit the vehicle soon, and then he observed the silver sedan lights extinguish. Olson stated he then observed the front driver's door of the silver sedan open up and stay open. Olson also observed the rear entrance door to the apartment complex which was facing the alley, was one parking space over from where the silver sedan was located occupied by the suspect. Olson stated he then relayed to responding squads and PO Schleis over the radio something similar to the subject was exiting the vehicle move in.

Olson stated he then traveled northbound on N 92nd St and while making his approach into the alley he observed the driver's door to the silver sedan close. Olson then stated he was about a half a block before the alley when he activated his emergency lights on his fully marked squad. Olson then said as he entered into the alley he observed PO Schleis activate his emergency lights and traveling westbound in the alley. Olson then stated once in the alley he observed the silver sedan matching the description given by the dispatcher. Olson then positioned his marked squad on a northeast angle about a foot away from the suspect's rear driver's side corner bumper. Olson stated he now was less than a car length away from the silver sedan when he activated his squad's lights and LED lights which allowed him to observe the suspect through the tinted windows.

Olson then said as he begins to exit his squad car, he observed what appeared to be a male seated in the driver's seat of the silver sedan and he believed the driver's door to the individual's vehicle was still closed. Olson stated he then observed the person look over his left shoulder directly at the marked squad with its emergency lights activated and then looked at him. Olson then observed the person look over his right shoulder out of the rear windshield of his vehicle. Olson said he observed the individual continue to look over both of his shoulder several times. Olson stated he then observed the person's right shoulder dip down as though he was reaching towards the floorboard, while still continuing to look over his shoulders. Olson continues to observe these same motions repeatedly and then observed the subject open the driver's door and exit the vehicle. Olson described this person as wearing a black hooded sweatshirt what had a "Glock" logo on the front of the sweatshirt with a big "G" followed by the letters "LOCK", with a front pocket and he was wearing pants.

Olson stated he then drew his service weapon. He articulated his reasons as being that this was a felony stop for a potential stolen vehicle, and the suspect's furtive movements prior to exiting the vehicle. Olson said he observed in one of the suspects hand what he described as a white clam shell food container, and then observed what appeared to be the outline of a semi-automatic firearm in the form of an "L" shape in the front pocket of the suspect. Olson stated based on his training and experience he knew this "L" shape form to be a firearm. Olson then stated to the suspect that he saw the firearm in his pocket and then ordered the person by saying "don't reach for the firearm" or "drop the gun" or phrases similar to that.

Olson stated the suspect then dropped the food container he was holding while simultaneously starting to flee on foot, running southbound along the driver's side of the silver sedan and Olson stated he then yelled "Gun, Gun, Gun" over the radio while also alerting PO Schleis. Olson said

once the suspect reached the rear driver's side bumper of the silver sedan, the suspect started running southeast, then made an abrupt change of direction and then ran southwest along his marked squad. Olson stated he presumed PO Schleis was to the east of him in the alley. Olson also stated while the suspect was running he observed the suspect attempting to retrieve the firearm from his front pocket on the hooded sweatshirt. Based on Olson's training and experience the suspect was not reaching in a manner to secure the firearm but was attempting to pull the firearm out of his pocket. Olson then stated when the suspect reached the passenger side of his squad he believed he observed the grip of the suspect's firearm.

Olson stated he then changed his positioning and positioned himself to the rear driver's side of his marked squad and then metered around the rear of his squad. Olson stated he then observed a firearm in the hand of the suspect. Olson then said he then felt that the suspect was about to try to kill him or his partner by stating the suspect had already disobeyed all of his verbal commands and was retrieving the firearm, then brandishing the firearm, while continuing to run towards both officers. Olson stated he then observed the suspect's torso in a forward, down position as if the suspect was losing his footing and falling forward towards the ground. Olson stated it was dark in the alley but it appeared the suspect started to bobble the gun, and the suspect's arms were almost touching the ground. Olson stated he believed he heard scraping like metallic on concrete as if a gun was scraping the ground.

Olson stated he was still giving commands to the suspect something similar to "Don't reach for the gun" and he then observed the suspect almost come to a complete stop. Olson then observed the suspect reach towards the ground and make contact with what appeared to be a black semi-automatic gun that was on the ground in a sweeping motion, while canted and almost completely facing him. Olson stated he again at that point thought the suspect was going to try and shoot and kill him when he retrieved the gun off of the ground. Olson then said he observed the suspect to have a thousand yard stare while looking towards him as if he felt cornered by officers. Olson stated based on the imminent threat of great bodily harm or death to himself, he refocused his eyes towards the suspect's upper torso and discharged his firearm approximately three (3) to four (4) times to stop the imminent threat. Olson said he aimed at the suspect's center mass or torso, while moving to a position of cover and concealment. Olson stated while discharging his firearm he could hear the sound of gunfire in between his shots and was unaware of where those shots were coming from.

Olson then said once he moved to cover he was unable to see the suspect but heard the suspect yell something similar to "I don't have it anymore." Olson stated he then metered back out from cover and concealment and observed the suspect on the ground, face down facing southwest and his head facing towards him in the alley. Olson then observed the black semi-automatic firearm approximately one foot from the suspect's left hand on the ground. Olson stated he then gave the suspect commands stating repeatedly "Don't reach for the gun" while also identifying the gun to the suspect and telling the suspect to not reach for it. Olson stated he then hears people yelling and observed people in the second story window of the apartment complex. Olson said he remembers hearing "shots fired" over the radio and he then provided the updates to the dispatcher that the suspect was down, officers were ok, and to send medical. Olson stated he observed PO Martell arrive on scene While positioned at the rear of his squad.

Olson stated he observed PO Martell armed with his patrol rifle and had it pointed at the suspect. Olson also observed PO Schleis to the east of him, while also observing the citizens becoming more hostile. Olson stated he observed some of the citizens now outside at the rear door of the

apartment complex and some were still in the window. Olson then said he redirected PO Schleis to the crowd in the apartment building, while he and PO Martell focused on the suspect. Olson stated he retrieved his ballistic shield which was located in the rear of his squad because he wanted to safely approach the suspect, place him into custody, and render aid and provide medical treatment. Olson then said he asked the suspect about his known injuries to better prepare to provide him medical treatment. Olson stated him and PO Martell provided a plan for him to drag the suspect back to cover as PO Martell kept lethal cover, so they could provide medical aid to the suspect safely.

Olson then observed Sergeant Edward Tyrpak arrive on scene and take a position next to PO Martell. Olson stated they all move together and he was able to drag the suspect back to cover, place him in custody, and then asked the suspect about his injuries while turning him on his side safely. Olson said he then retrieved his trauma sheers off his vest, cut the suspects clothing off, and observed one (1) gunshot wound to his upper hip area. Olson stated he then retrieved a tourniquet and informed the suspect "I'm sorry this going to hurt" and applied the tourniquet to his leg and informed Sgt. Tyrpak to let the dispatcher know the time of application. Olson stated he then observed a second gunshot wound located on the suspects trapezius muscle and then requested more medical from responding officers, so that he would be able to provide more treatment to the suspect.

Olson stated he was able to apply a bandage to the wound and then observed other officers responding and then he was escorted away from the scene. Olson stated he has never seen or encountered the suspect before this day.

Police Officer Schleis stated he proceeded west in the alley towards Police Officer Olson and observed that Police Officer Olson was outside of his squad car near the driver's door of his squad car. Police Officer Schleis stated he observed Police Officer Olson's driver door of his squad car open and Police Officer Olson was standing behind the open driver door. Police Officer Schleis stated he observed that Police Officer Olson had his firearm drawn and pointed in the direction of the stolen motor vehicle that he recalls being a silver car.

Police Officer Schleis stated he observed a subject standing outside of the silver car, standing near the front driver's side head lamp of the silver car. Police Officer Schleis stated that he observed the silver car, stopped and parked in an angled parking spot behind the apartment building on W. Congress St. Police Officer Schleis stated the parking spot was just north of the alleyway that runs east and west behind the apartment building. Police Officer Schleis stated the front of the silver car was facing in a north / east direction with the back of the silver car facing south/ west. Police Officer Schleis observed that Police Officer Olson's squad car was positioned behind the silver car on the same angle as the silver car and just west of the silver car. Police Officer Schleis stated he accelerated west to get closer to the stop, turned his take down lights on in addition to his emergency red and blue lights that were already activated. Police Officer Schleis stated he positioned his squad car at a reasonable distance, just east of the silver vehicle with his squad car positioned slightly north/west in the alleyway. Police Officer Schleis stated as he put his squad car in park, the subject looked towards him, looking at the front windshield area of his squad car.

Police Officer Schleis recalled this subject to be a Black Male, with afro style hair, wearing a white shirt.

Police Officer Schleis stated this subject made an exaggerated movement as if he was going to flee on foot to the east. Police Officer Schleis stated based on the subject looking in his direction along with the exaggerated movement he noted that the subject was likely not complying with Police Officer Olson and appeared he was looking for a way to escape. Police Officer Schleis noted that he was positioned to the east of the subject and exited his squad car abruptly, running to the back of his squad car's trunk area. Police Officer Schleis stated that as he got to the back of his squad car he metered the corner believing that the subject was likely fleeing east on foot away from Police Officer Olson. Police Officer Schleis stated he immediately ran to the back of his squad car (east) in attempt to intercept and stop the subject from fleeing on foot.

Police Officer Schleis stated that as he rounded the back of his squad car, he heard Police Officer Olson yelling "Gun, Gun, Gun" at least three (3) times. Police Officer Schleis stated that he un-holstered his firearm at this time, based on hearing Police Officer Olson's yelling "Gun" and believed that the subject was armed with a firearm. Police Officer Schleis stated he ran towards the front of his squad car, towards the front passenger side quarter panel of his squad car.

Police Officer Schleis stated as the subject was running he heard three (3) gun shots. Police Officer Schleis stated he observed the subject now running southwest. Police Officer Schleis believed that the subject had just shot Police Officer Olson. Police Officer Schleis stated the subject was running in a south west direction into the alley way, towards the same area that he last saw Police Officer Olson. Police Officer Schleis believed that the subject was running towards and tracking down Police Officer Olson in attempt to kill Police Officer Olson. Police Officer Schleis stated that he discharged his firearm approximately three (3) to four (4) times at the subject in attempt to stop the imminent threat. Police Officer Schleis knew the subject was armed based upon Police Officer Olson observations and based on the fact that Police Officer Olson was yelling "Gun, Gun, Gun", alerting him to the fact that the subject was armed with a firearm.

Police Officer S stated the subject was running towards and breaching Police Officer Olson's last known location and he didn't see Police Officer Olson, believing that he may have been shot after hearing the gunfire. Police Officer Schleis stated he believed the subject was going to finish the job and kill Police Officer Olson. Police Officer Schleis felt that Police Officer OLSON's life was in imminent danger and that he needed to stop the threat and discharged his firearm to stop the threat.

Police Officer Schleis stated that he observed the subject fall to the ground and stopped firing at the subject. Police Officer Schleis stated the immediate threat had ceased at this point and observed the subject's black firearm immediately to the left side of the subject's body.

On April 6, 2022, MPD Detective Fedel interviewed Damiso Lee and he admitted to possessing the gun on April 5 in the above-described incident. He said he had his Glock Model 22 in his front sweatshirt pocket when he ran and that the gun did fall out of his pocket at one point when he ran from the police. Mr. Lee was charged with Possession of a Dangerous Weapon by a Juvenile.

The review of the body camera and squad video footage from both Officer Olson and Officer Schleis provides an objective record of the incident. A review of the evidence shows that Officer Olson clearly knew and articulated from the first seconds of the encounter that Mr. Lee was armed and ordered him multiple times to comply with his directives. Mr. Lee refused to do so and took actions that ultimately created a dangerous decision point for both officers as they attempted to investigate a possible felony offense.

Legal Analysis

Under Wisconsin law, §939.48 (1) Stats, 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 addition, the Wauwatosa Police follow the national standard that trains officers only to use force to stop a threat of death or great bodily harm. Wauwatosa police are trained using the Wisconsin Defensive Arrest and Tactics Manual, which offers guidance on assessing the threat level of a situation and the use of force.

The facts of this case demonstrate that the use of force by Officer's Olson and Schleis meets both *State v. Head* criteria. The officers were investigating a stolen automobile complaint, they recognized they were dealing with an armed operator of the vehicle, they ordered him to comply and not to arm himself, he refused and in the course of fleeing from the officers retrieved the firearm. Under such circumstances, an objectively reasonable officer could believe they faced a threat of death or great bodily harm.

Because the use of force by all the Officers was legally privileged, I am closing the criminal investigation into this incident and leave to your discretion any administrative decisions. All materials pertinent to my investigation are available for inspection.

Respectfully,



John T. Chisholm
Milwaukee County District Attorney

Enclosure

cc: Attorney Christopher J. MacGillis