



Barron County District Attorney

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December 3, 2018

District Attorney Mark Fruehauf
Douglas County District Attorney's Office
1313 Belknap Street, Room 201
Superior, WI 54880

**RE: Report Regarding the Officer Involved Shooting of Joshua M. Farmer
In Douglas County, Wisconsin on October 5, 2018**

Dear District Attorney Fruehauf:

I have completed my review of the investigatory file that was prepared by the Wisconsin Department of Justice Division of Criminal Investigation following the officer involved shooting (OIS) of Joshua M. Farmer on October 5, 2018. My review of the investigatory file included a review of all of the interviews, records, and investigative reports prepared by the Division of Criminal Investigation (DCI), the police reports of officers with the Superior Police Department and medical records for Mr. Farmer. I also reviewed photographs and diagrams of the scene, body cam and squad dash cam videos, and statements from direct and secondary witnesses who were canvassed after the shooting. Additionally, I personally viewed the scene where the shooting occurred.

After consideration of all of the available evidence, I have concluded that there is no basis to believe that any law enforcement officer who shot at Mr. Farmer, whether or not the respective rounds they each fired struck Mr. Farmer, committed any crime. The summary and analysis of the facts discovered during the course of the investigation, which forms the basis for my opinion, are set forth below.

INVESTIGATION AND REVIEW

An independent police investigation was conducted by DCI at the request of Superior Police Chief Nicholas Alexander immediately after the shooting. Douglas County District Attorney Mark Fruehauf requested the assistance of a district attorney from another county to review whether the officers' actions were justified. While any officer involved shooting warrants detailed scrutiny, the

opinions and conclusions I have reached are removed from any knowledge I have about Mr. Farmer, or any of the involved officers other than the information I reviewed in the DCI investigatory file.

PURPOSE

The purpose of my review of this incident was to determine if there is evidence that would support a conclusion that the shooting of Mr. Farmer involved criminal conduct by any law enforcement officer. My review of this incident is that there is no evidence of criminal conduct by any of the involved officers.

The officers acted in reasonable self-defense and defense of others when they used force that was intended to or likely to cause death or great bodily harm. Section 939.48(1), Stats., provides that a person is privileged to threaten or intentionally use deadly force if the person reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or to others.

FACTUAL SUMMARY

On Friday, October 5, 2018, shortly after 11:00 AM, Ofc. Christopher Woolery, who has worked as a police officer for the Superior Police Department for almost nine years (hire date January, 2010), was dispatched to the Dollar General Store, located in the 200 block of Belknap Street, in the City of Superior, Douglas County, Wisconsin, for a shoplifting complaint. The caller, who was later identified as Michael A. Manteuffel, and is a manager at Dollar General, described a male, wearing a dark shirt with hoodie sweatshirt over the top of the shirt, who had left the store and was holding an alcoholic drink in his hand. Dispatch advised that the subject was walking toward the baseball fields, which are located to the southeast of the store.

Ofc. Woolery was the first officer to arrive in the area of the Dollar General Store. He called on the radio that he was in the area. Officer Woolery didn't observe anyone in the parking lot of the Dollar General Store. He drove to the rear of the Dollar General Store, so he could look toward the baseball fields, but did not see anyone. Ofc. Woolery then proceeded south on Elm Street. As Ofc. Woolery was looking down the street of Hayes Court C, he observed a person walking south onto Hill Avenue. Officer Woolery informed dispatch on the radio where he observed the subject walking and that he would be attempting to make contact with the subject. Ofc. Woolery activated his body camera at approximately 11:14 AM.

Ofc. Woolery made contact with the subject, who was later identified as Mr. Farmer, at approximately 11:15 AM, as he was walking on the sidewalk on East 9th Street just off from 3rd Avenue East. Ofc. Woolery observed that Mr. Farmer was wearing a hooded sweatshirt, blue jeans, tennis shoes, and had a 40 ounce silver can of alcohol in his right hand. Of immediate concern to Ofc. Woolery was that Mr. Farmer had his left hand in his pocket. Ofc. Woolery's

concerns were heightened when he observed Mr. Farmer's face and the way in which Mr. Farmer stared at him.

The location where Ofc. Woolery observed Mr. Farmer walking is in a residential area commonly known as the Central Park Neighborhood. The 300 block of East 9th Street, where the shooting occurred, is lined with residential homes on both the northeast and southwest sides of the street. The 300 block of East 9th Street consists of concrete sidewalks with curb and gutter on both sides of the street and a public two lane roadway that travels northwest and southeast between 3rd Avenue East and 4th Avenue East. Mr. Farmer was walking southeast on the sidewalk on the northeast side of the street in the direction of Central Park.

Ofc. Woolery parked on the northeast side of the roadway and exited his squad car. Mr. Farmer immediately said something like, "No" and then something like, "I'm not going to do it," or "This isn't going to happen." Officer Woolery responded by telling Mr. Farmer that he had some questions for him. Ofc. Woolery asked Mr. Farmer if he was at the Dollar General Store. Mr. Farmer responded, "No." Mr. Farmer continued to keep his left hand in his pocket. Ofc. Woolery repeatedly asked Mr. Farmer to take his left hand out of his pocket. Mr. Farmer replied that, "He wasn't going to do that." By this time, Mr. Farmer had stopped walking. Ofc. Woolery radioed that he needed Ofc. Gothner, who was in route, to "step it up" because Mr. Farmer refused to remove his left hand from his pocket.

Ofc. Woolery drew his duty pistol to the low-ready position. At approximately 11:16 AM, Ofc. Woolery moved from the driver's side door to the rear of his squad and eventually to the front passenger side of the squad because he wanted to get distance and cover between him and Mr. Farmer.

At approximately 11:17 AM, Ofc. Michael Kendall and, then, Ofc. George Gothner, arrived on scene. Ofc. Kendall has worked as a police officer for the Superior Police Department for twelve and one-half years (hire date May 2006). Ofc. Gothner has worked as a police officer for the Superior Police Department for 20 ½ years (hire date May 1998).

As he approached the area of 3rd Avenue East and East 9th Street, Ofc. Kendall could see Ofc. Woolery's squad stopped in that location. Just before Ofc. Kendall parked his squad, he heard Ofc. Woolery indicate on the radio that the subject was acting strangely. Ofc. Kendall parked his squad behind Ofc. Woolery's squad, exited the squad and stood near a tree on the strip of grass between the sidewalk and roadway on the northeast side of the street. Ofc. Kendall observed that Mr. Farmer had his left hand in his pocket and was carrying something to drink in his right hand. Ofc. Kendall drew his duty pistol and stood in the high-ready position.

Ofc. Gothner arrived on scene shortly after Ofc. Kendall. Ofc. Gothner activated his squad camera as he was in route to Ofc. Woolery's reported location. As Ofc. Gothner turned onto East 9th Street, he observed two squads

parked on the left side of the street. Ofc. Gothner parked on the right side of the street and exited his squad. As Ofc. Gothner exited his squad, he left his driver's door open. Ofc. Gothner observed Mr. Farmer standing on the sidewalk with his left hand in his pocket holding a drink in his right hand. Ofc. Gothner heard Ofc. Woolery and Ofc. Kendall speaking to Mr. Farmer. Ofc. Gothner drew his duty pistol and initially went to the left of Ofc. Kendall's location, but realized he didn't have any concealment or cover where he was standing, so he moved to the rear of Ofc. Woolery's squad.

Ofc. Woolery and Ofc. Kendall both repeatedly directed Mr. Farmer to take his hand out of his pocket. Mr. Farmer refused to do so. Mr. Farmer said he wasn't going to be arrested. Ofc. Woolery told Mr. Farmer that he wasn't necessarily going to be arrested and he would probably just be given a ticket for shoplifting. Ofc. Woolery again told Mr. Farmer to get his hand out of his pocket. Mr. Farmer stated, "He wasn't going to do that," and that we all know what's going to happen when I take my hand out of my pocket. Mr. Farmer was taking slow sips from the drink he was holding in his right hand and, as he was taking the sips from his drink, told the officers when he was done, "You know what is going to happen." Mr. Farmer stated he was on probation and wasn't going to jail.

Ofc. Kendall asked Mr. Farmer what he had in his hand. Mr. Farmer responded, "You know what I got." Ofc. Kendall asked Mr. Farmer if he had a gun. Mr. Farmer responded, "Yes." Ofc. Kendall asked Mr. Farmer what he was going to do with the gun. Mr. Farmer told the officers that he was going to shoot them or they were going to shoot him. One of the officers asked Mr. Farmer why he wanted to die and Mr. Farmer said he was not going back to jail. Ofc. Kendall continued to tell Mr. Farmer to show his hands and "It didn't need to be like this." Ofc. Gothner observed the outline of an object in Mr. Farmer's left jacket pocket. The object appeared to Ofc. Gothner to be the shape of a gun.

Mr. Farmer then said, "Sorry to ruin your day guys." Mr. Farmer turned himself away from Ofc. Gothner and turned facing toward Ofc. Woolery's location. Mr. Farmer then made a rapid movement with his left hand and pulled a metal object out of his pocket. Mr. Farmer had one finger pointed toward the front of the object and the other finger in a rear position, like he had a gun. He pointed the metal object at the officers.

All three of the officers believed the metal object was a gun. All three of the officers feared for their lives and the lives of their fellow officers. All three of the officers fired their duty weapons at Mr. Farmer. Mr. Farmer remained on his feet and started to spin toward the officers. He bent forward slightly and then raised the metal object toward the officers as he moved toward them. Ofc. Kendall fired his duty weapon and Mr. Farmer fell to the ground. After falling to the ground, Mr. Farmer rose to a sitting position, and, with his heels on the ground and still not showing his hands, appeared to the officers like he was going to shoot. The officers fired their duty weapons again and, this time, he fell flat to the ground.

Only after Mr. Farmer was on the ground did the officers determine that he did not have a gun. As soon as the officers could see that he did not have a weapon in his hands, they undertook life saving measures which, along with the emergency response by medical personnel, averted Mr. Farmer becoming a fatality. Ofc. Marc Letendre was one of the officers who performed life saving measures after Mr. Farmer was shot. Mr. Farmer who remained alert and oriented told Ofc. Letendre to stop performing care and let him die. It was later discovered by DCI investigators who obtained data from Mr. Farmer's cell phone that he had made numerous searches on how to commit suicide, several of which were made on October 5, 2018.

In total, Ofc. Woolery fired three rounds from his duty weapon. Ofc. Kendall fired 13 rounds from his duty weapon. Ofc. Gothner fired 15 rounds from his duty weapon. Mr. Farmer had gunshot wounds to his face, left chest, right elbow, right thigh, left calf and both feet. Mr. Farmer was transported to St. Luke's Hospital for treatment of his injuries. The metal object that the defendant pulled out of his pocket was a silver 8" drop forged adjustable wrench.

Superior Fire Fighter Jeremiah Glonek, who was one of the emergency responders, observed Ofc. Letrandre and Brad Kessler providing patient care to Mr. Farmer when he arrived. Mr. Glonek retrieved a back board and cot from the paramedics and took them to where Mr. Farmer was located on the ground. Mr. Glonek stood by until Mr. Farmer was loaded into the ambulance. Mr. Glonek observed a wallet, a crescent wrench, and a can of beer or liquor lying on the ground near Mr. Farmer. Mr. Glonek estimates the crescent wrench was approximately four feet from Mr. Farmer's head.

FACTUAL ANALYSIS

The video and audio recordings from the dash cam and body camera are consistent with the description of the incident provided by the involved officers. The officers were presented with the immediate threat of being shot by Mr. Farmer who made it clear to them by his statements and actions that he had a gun and he was either going to be dead or the officers were going to be dead. The officers reacted reasonably in their split second decision to fire upon Mr. Farmer when he rapidly pulled the wrench out of his pocket and pointed it at the officers, like he had a gun. The officers reacted reasonably when they continued to fire at Mr. Farmer when he came toward them still holding what appeared to the officers to be a gun. Finally, the officers reacted reasonably when additional shots were fired after Mr. Farmer raised himself to a seated position and officers could still not see what was in his hands.

LEGAL ANALYSIS

The information gathered in the investigatory file leads to only one conclusion. Ofc. Woolery, Ofc. Kendall and Ofc. Gothner acted in self-defense to protect themselves and their fellow officers from what they reasonably believed was an actual and imminent threat of death or great bodily harm they faced if Mr. Farmer carried through on his threat that he had a gun and that either he or they

were going to die. Under Wisconsin law, a law enforcement officer has a legal privilege to use deadly force to protect himself or herself, and others when the officer reasonably believes that such force is necessary to prevent imminent death or great bodily harm to the officer or another person. Under this privilege, the reasonableness of the officer's actions is to be judged from the standpoint of an ordinary, prudent, and reasonably intelligent person in the officer's position, having the knowledge and training that the officer possessed, and acting under the circumstances that existed at the time.

The officers had no reasonable opportunity to use other alternatives. They were faced with a man who insisted he had a gun and was going to use it. The reasonableness of the officers' actions in this case is not diminished by the fact that Mr. Farmer was bluffing when he said he had a gun. There was no way for the officers to know that what he said was a gun was actually a wrench. Officer involved shootings such as this are not movies or television. They are real-life stressful events involving real people.

Even the regular firearms training by law enforcement cannot fully reflect the realities of being faced with the threat of death or serious injury when confronted by someone who credibly claims to be armed with a gun with the intent to shoot the officers before he will return to jail. As in every real-life situation, various factors such as distance, obstacles, stress, etc. impact how weapons are fired. Officers are trained to shoot to terminate the threat to themselves or others. The officers, in this case, responded as they were trained and did so reasonably.

Officers are also not required to wait to be fired upon or to be shot before taking action. The law, rightfully and reasonably, allows them to preempt the risk of death or serious bodily injury in appropriate circumstances and act to protect themselves and others. Were it otherwise, there would likely be few people willing to serve in such a dangerous profession.

I also conclude that the conduct of the officers was professional and clearly intended to try and resolve the incident without injury to Mr. Farmer. The officers repeatedly asked him to remove his left hand from his pocket, and to show them his hands. When Mr. Farmer said he wasn't going to be arrested, Ofc. Woolery told him that he wasn't necessarily going to be arrested and he would probably just be given a ticket for shoplifting. When Mr. Farmer said he had a gun, Ofc. Kendall told Mr. Farmer that, "It didn't need to be like this."

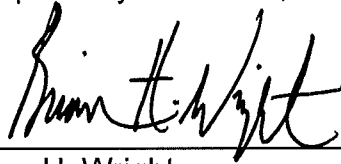
The officers tried to engage Mr. Farmer in conversation. They were as calm as possible under the circumstances and exercised patience. It was only the decisions and conduct of Mr. Farmer that made it imperative for the officers to use deadly force to protect themselves and their fellow officers. The decision by the officers to shoot Mr. Farmer to protect themselves and their fellow officers was reasonable under the facts and circumstances that existed, and, therefore, not criminal in any way. Such actions were a reasonable fulfillment of the lawful duties of the officers under the situation that existed at the time.

CONCLUSION

Law enforcement officers are lawfully allowed to use force, including deadly force, when they have an objectively reasonable belief that such force is reasonably necessary to protect themselves or others from the risk of serious bodily injury or death. Police officers are provided continuing training regarding the use of force. The issue is whether the officers in this case acted appropriately and consistently with legal principles governing the use of deadly force by law enforcement officers.

Based on the total facts and circumstances, it is my legal conclusion that the conduct of the involved officers on October 5, 2018, was in the performance of their duties and there is no basis to conclude that any of their conduct was criminal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Brian H. Wright", written over a horizontal line.

Brian H. Wright
Barron County District Attorney