

Office of the District Attorney
Menominee and Shawano Counties
Gregory A. Parker
District Attorney

Assistants

Catharine D. White
Scott E. Niemi

Victim-Witness Specialist

Stacy L. Bohm
(715) 526-4608



Office: (715) 526-2166
Fax: (715) 526-3071

311 N. Main Street
Shawano, WI 54166

Sheriff Adam Bieber
Shawano County Sheriff's Department
405 North Main Street
Shawano, WI 54166

July 19, 2017

**RE: Officer Involved Shooting – Daniel W. Onesti
Shawano County DA Case No. 2017SH000226;
Wisconsin Department of Criminal Investigation Inc. No. 17-1021;
Shawano County Sheriff's Department Incident No. S17-01608**

Dear Sheriff Bieber:

I am writing to provide you with the conclusion found by this office in regard to the officer involved shooting of Daniel W. Onesti, d.o.b. 03-05-1964, by Shawano County Sheriff Deputies Spencer Russ and Chase Mason on or about February 17, 2017. I place a high priority on a thorough investigation of critical incidents, and I wish to express my deep appreciation to you and your staff for the professionalism and cooperation displayed through this difficult occasion and can indicate that your investment in the training and equipment to respond to this crisis was evident. I also note that your prompt action in obtaining the assistance and in relinquishing this investigation to the Wisconsin Department of Justice, Division of Criminal Investigation, satisfies any doubt that this matter was fairly and impartially investigated so that a decision could be rendered in the tragic incident which occurred with your deputies and Mr. Onesti.

This correspondence represents the Shawano County District Attorney's Office decision on the issue of the privileged use of deadly defensive force in this incident. After

consideration of all of the facts and evidence presented by your office and the Department of Criminal Investigation, I have concluded that there is no basis to conclude that Deputy Spencer Russ and Deputy Chase Mason committed any crime when they shot Daniel Onesti. In order to provide a complete understanding of my decision, I have summarized the evidence and analyzed the facts as presented to me as a result of this investigation.

INFORMATION REVIEWED

This decision is based upon my review of the police reports submitted by officers of the Shawano County Sheriff's Department, Stockbridge Police Department, City of Shawano Police Department and the Department of Criminal Investigation, interview of Mr. Onesti, CAD reports of the Shawano County Sheriff Dispatch, medical records of Mr. Onesti, body camera video of deputies Russ and Mason, diagrams, sketches and computer overview evidence of the Wisconsin State Patrol TRU; the interviews of citizen witnesses including family members; crime scene photos of the Shawano County Sheriff's Department and the Department of Criminal Investigation (DCI), drone/UAV video of the Shawano County Sheriff's Department, the Wisconsin Jury Instructions, Wisconsin Statutes Annotated and Wisconsin Case Law.

The reports and interviews of the following officers were specifically referred to for this decision. The interviews were conducted by DCI Special Agents. Lt. Kitzman, Deputy Rogers, Deputy Russ and Deputy Mason of the Shawano County Sheriff's Department. Officer Stange and Officer Atkinson of the City of Shawano Police Department. Both of these officers are members of the Special Response Team. The CAD notes from the Shawano County Sheriff's Department. Interview of Daniel Onesti.

ISSUES

The primary issue presented is whether there is evidence that would support a conclusion that the shooting of Mr. Onesti by the deputies involved criminal conduct. Wisconsin Statute Section 939.45(3) provides police officers with a defense to criminal charges when the conduct "Is in good faith and is an apparently authorized and reasonable fulfillment of any duties of a public office". In addition, deputies have the right to use force in defense of himself or herself or of others in appropriate circumstances pursuant to Wisconsin Statute Section 939.48. This statute provides that a person is privileged to

threaten or use force against another: (1) *To prevent or terminate what the person believes to be an unlawful interference with their person*, (2) *that such belief must be subjectively reasonable*, and (3) *may intentionally use only such force as the person reasonably believes is necessary*. Furthermore, a person may not use force intended or likely to cause death or great bodily harm unless: (1) *The person believes such force is necessary to prevent imminent death or great bodily harm to himself or herself*, (2) *that such belief must be objectively reasonable based upon the totality of the circumstances*, (3) *a person is privileged to defend a third party from real or apparent unlawful interference by another*, (4) *If that person reasonably believes that the third party would be privileged to act in their own self-defense*, (5) *that person reasonably believes that intervention is necessary for the protection of the third person*.

With respect to the use of deadly force, there is a two-part test:

(1) Subjective Test: Did the officer actually believe that use of deadly force was necessary to prevent imminent death or great bodily harm to himself/herself or of another?

(2) Objective Test: Would a reasonable officer of ordinary intelligence or prudence have believed that in the position of the officer at the time that deadly force was necessary to prevent imminent death or great bodily harm to himself/herself or another?

The application of the statutes and case law will be considered with the following facts and circumstances as it relates to this investigation.

FACTUAL SUMMARY

During the course of this investigation DCI S/A Jay K. Yerges received material and information from the SHSO - a disc containing telephone calls and radio traffic recorded on the night of February 17, 2017. S/A Kyra M. Schallhorn reviewed that disk for information relevant to this incident. The following is the summary of information contained in two calls that Daniel Onesti had with dispatch and Lt. Kitzman of the Shawano County Sheriff's Department. This information is offered to show Mr. Onesti's state of mind and his actions

regarding the events that occurred and led to the deputies having to use their firearms to stop and eventually apprehend Mr. Onesti.

- **Call 1:** call from an SHSO dispatcher to Onesti, call then transferred to SHSO Lieutenant Kurt Kitzman, total duration of call 7:25. Onesti answered the call, stating to the dispatcher, "I don't fucking care" and telling the dispatcher to "fuck off." Onesti stated that he was in the house, upstairs, with three guns, one of them a high powered rifle. He stated, "The first fucking cop I see, I'm shooting." Onesti continued to yell and swear at the dispatcher, with his words sometimes being unintelligible. The call was transferred to Lt Kitzman, and Onesti answered the call by stating, "Fuck you." Lt Kitzman asked Onesti if they could help him. Onesti stated, "When you see that white fucking coming, start putting fucking bullets in the windshield." He also stated, "I want suicide by cop." Later in the call, Onesti stated, "If they crowd me, I will shoot at them."
- **Call 2:** call back to Onesti from Lt Kitzman after the first call was disconnected, total duration of call 20:54. Throughout the call, Lt Kitzman tried to get Onesti to come out of the house to talk to officers and talked to Onesti about getting him some help. Onesti said he would not come out, and stated near the beginning of the call that if "you come up the steps, I'm going to start shooting." Throughout the call, Onesti talked about problems he was having in his life, such as issues with his kids and/or grandkids, not making enough money, problems in his relationship with his wife, and the fact that he is fed up and done with life. He said that he had stopped taking his medication for depression for the last two weeks. Onesti stated that he is not willing to talk, and there is not a simple solution for his problems. At times throughout the call, Onesti's cell phone had bad reception and/or he was difficult to understand. Toward the end of the call, Onesti stated that his phone only had 2% battery.

Lieutenant Kurt Kitzman

On Friday, February 17, 2017, Lt. Kurt Kitzman was the patrol-supervisor working the 3:00 p.m. to 11:00 p.m. shift. Kitzman reports that he was in the supervisor's office at the sheriff's department when he heard radio traffic over the police radio of a person making suicidal threats. He also heard information regarding a gunshot or gunshots on the radio. Kitzman reports that this call came in approximately 4:58 p.m. and that a two officer squad with Deputy Spencer Russ and Deputy Chase Mason was being dispatched to handle this incident. Kitzman reports that deputies Russ and Mason were working the west area of the Shawano County and that is where the call regarding the suicidal person was located. In addition, Deputy Dave Rodgers was working as a floating squad and he was also responding to the area of the call regarding the suicidal person. Kitzman went into the

dispatch center located within sheriff's department building to get more information about this incident. Kitzman was informed that the complaining person was reporting that a man by the name of Dan Onesti was firing shots on land near County Highway D between Old County D Road and Regina Road. At first Kitzman thought the person was Daniel Onesti Jr. but learned that through a call back to the complainant that the suicidal subject was Dan Onesti Sr. SHSO dispatchers knew that Dan Onesti Sr. is the husband of Denise Onesti who is a Sheriff's Dispatcher for Langlade County, WI. Dispatchers obtained Dan Onesti Sr.'s cell phone number from their in-house records. Dispatcher Klosterman of SHSO called the number to see if Dan Onesti Sr. was ok. When Dan Onesti Sr. answered his cell phone he immediately began yelling, "Fuck you, Fuck You!" to Klosterman. Onesti continued yelling at her and then terminated contact.

Phone contact was again established with Onesti. Lt. Kitzman reports that he began talking to Onesti, that he was very angry and was yelling into the telephone. Onesti began telling Kitzman that the year 2017 was the worst year his life. He said his life was shit and "you have no idea". Onesti told Kitzman that he wanted to die many times during this conversation. Onesti complained that he was abused by his father when he was a kid, that his own kids don't listen to him and his grandkids are disrespectful to him too. At the time Kitzman believed that Onesti was at his residence during the phone call. Onesti told Kitzman that he was afraid to have handcuffs put on him and he did not want to go to jail. Kitzman reports that he asked Onesti if he would talk to him in person and Onesti replied "No". Kitzman reports that Onesti told him that if you come up to my door I'm going to start shooting and that he, Onesti wanted "Suicide by Cop".

At this point in time Kitzman had the sheriff's department Special Response Team (SRT) summoned to respond to the incident by meeting at the Almon Town Hall to make a Command Post (CP). Kitzman reports that at this time he notified the Sheriff, Chief Deputy and Captain of the situation. Kitzman reports that he communicated by radio to officers that had responded to the Onesti residence to move away from the residence and to set-up a perimeter around the area of Onesti's residence. He further ordered that officers should not approach Onesti's house. While this occurred Kitzman continued talking to Onesti over the phone. Onesti's demeanor had not changed and he continued to yell into the phone and the phone call was muffled and it sounded like Onesti was moving around a lot.

Lt. Kitzman reports that it was approximately 5:32 p.m. when he looked at the clock while Onesti said, "Just so you know my phone is on 2% battery power so it's probably going to die soon." Kitzman asked Onesti to plug the phone in to let it stay charging while they continued talking. Onesti replied, "I can't plug it in". Kitzman reports that he asked Onesti if he was outside of his residence in the barn and Onesti answered, "You figure it out". At that point in time the phone call ended and Kitzman did not have any further verbal contact with Onesti. Kitzman then transmitted to the officers on scene by radio that Onesti could possibly be outside of his residence. At this time, deputies Spencer Russ, Chase Mason and Dave Rogers were posted outside of Onesti's main residence/farm monitoring the situation.

The Dispatchers contacted Onesti's wife Denise by phone and she told them that before she left for work Dan (Sr.) was agitated and really upset. Denise Onesti advised that he really started getting mad when she told him that she did not like the potatoes that he had made for them to eat. Denise was asked if Dan had access to firearms and she said that he had long guns but did not own any handguns. Lt. Kitzman advised that he briefed his command staff and the SRT Commander (Lt. Justin Hoffman) regarding the status of this incident.

Officer's on scene at the Onesti residence were given information by a family member who drove up to them informing them that Onesti was not at his residence. They were told that Onesti was not at his residence but at his trailer/cabin on his land located away from his residence/farm and to the rear area of the original complainant's property. This property is approximately one mile from his residence and in the immediate area of the complainant's residence. Officers had also learned that Onesti was operating a white Dodge Ram pick-up truck with black markings. Sometime later Deputy Rogers left the Onesti residence to go over to his land where Onesti was now believed to be at. Sometime later deputies Russ and Mason (who were riding together in a squad) left Onesti's residence and travelled to this same location.

After Kitzman learned that Onesti had land separate from his residence in the general area and that he was likely to be there, he decided to go out to the area where Onesti was now believed to be to use the UAV to fly over Onesti's land in an attempt to locate him. Kitzman has training in operating the department's UAV (Flir brand Drone). Kitzman went to the original complainant's residence in the area of County Highway D just

north of Old County D Road where he met with Deputy Rogers and Deputy Rekoske who were both monitoring the situation at that time.

Lt. Kitzman activated the UAV and flew it over Onesti's property. He reports that he observed a cabin or trailer north of the complainant's residence and he saw a pickup truck parked by it. Kitzman did not see a person at that location. Kitzman reports that he moved his location approximately one-half mile to the west from Old County D Road on County Highway D because there was wide open land without trees and he could fly the UAV without obstructions. Kitzman flew the UAV to the east towards the trailer to get a better look at the truck and did observe that the vehicle was a pick-up truck and believed it to be Onesti's truck. Kitzman hovered the UAV for approximately 20 minutes and did not see Onesti. Kitzman had to return the UAV back because the battery power was getting low. Kitzman intended to recharge the battery to the UAV but while he was doing this Deputy Rekoske told Kitzman that Onesti's truck was coming out and driving in their direction towards the road. Earlier deputies had placed spike strips in the path of where they anticipated that Onesti's vehicle would travel if he left this area. While officers were at this location Onesti did drive down the path near the complainant's house and drove over the spike strips flattening his tires on the passenger side of his truck. Lt. Kitzman and Deputy Rekoske both report that Onesti was operating his pick-up truck with only its parking lights activated as he emerged from the wooded area and out onto County Highway D. All officers on scene then engaged in the pursuit of Onesti from this area. Kitzman reports that Onesti drove out onto County Highway D and travelled southbound. Kitzman had turned on his red and blue lights and siren and started to chase Onesti who was fleeing from the area at approximately 53 to 55 MPH. Kitzman reports that the other squads at that location also turned on their red/blue lights and sirens and began to pursue Onesti as he fled from the area. Lt. Kitzman reports that the order of police vehicles following and pursuing Onesti were as follows: Deputies Russ and Mason, riding together in the first squad, Sheriff Bieber in second position, Kitzman himself in the third position. Deputies Rekoske and Rogers were also in pursuit. Kitzman described Onesti's vehicle as a white Dodge Ram pickup truck. At some point Kitzman passed by Sheriff Bieber and was behind Russ and Mason. Kitzman got into position to broadcast the chase so Russ and Mason did not have to. Kitzman reports that during the pursuit he could smell burnt rubber coming from Onesti's vehicle because of the tires that were flattened from going over the

spike strips. Kitzman reports that the pursuit of Onesti went approximately one and a half (1 ½) miles and that Onesti lead them back to his residence and barn yard located at N7914 County Road D, in the Town of Almon, Shawano County.

During the pursuit Kitzman reports that he ordered the pursuing squads via his radio, to give more distance between them and Onesti's vehicle because of the threats made earlier by Onesti. When Onesti got to his residence he continued to drive into his barn yard area. Kitzman reports that Onesti drove his vehicle behind the barns on his property. Kitzman reports that the order of the squads in this part of the pursuit had changed and that the squads pursuing Onesti at this time were now as follows: Deputies Russ and Mason (same squad) first, Lt. Kitzman second, Deputy Rekoske third and Deputy Rogers fourth. Kitzman reports that Onesti then drove in a circle around the barns and silage bails. (See attached UAV overhead image of Onesti residence and barnyard). Lt. Kitzman did not see where Onesti went after the first circle and he broadcast over the radio for the squads to stop circling the area and set up at different points in the area of the barns and silage bags. Kitzman reports that he heard Deputy Russ transmit that "He [Onesti] is reversing coming back at us!" Kitzman saw Rogers stop his squad and set-up at the end of one of the silage bags. Kitzman continued to drive around a silage bag southbound next to a barn. At this time Kitzman reports that he heard Deputy Rogers transmit on his radio that Onesti rammed his squad. Shortly after Rogers' transmission of being rammed Kitzman heard Russ transmit, "He's coming towards us" or something like that. Kitzman stated that shortly after Russ' transmission he heard numerous gun shots. He could not see who was firing or from where the shots were coming from. At 7:33 p.m. Kitzman broadcast over the radio that shots were being fired. Kitzman reports that he drove around a silage bag and saw Russ and Mason's squad with its red and blue lights still on facing east. He saw Russ and Mason near the rear of their squad both with their guns drawn and pointing eastbound. Kitzman could not see where Onesti's truck was at this time. Kitzman said that the large silage bags in the barn yard prevented him from seeing the officers firing their pistols.

Deputy Dave Rogers

Deputy Rogers was working as the on February 17, 2017 from 3:00 p.m. to 1200 a.m. Rogers was aware that Deputy Russ and Deputy Mason were working together and riding in the same squad for this shift. Rogers was in the area of the west side of the county when the call came regarding the suicidal person Dan Onesti. Rogers knew who Onesti was from previous contacts while working in his capacity as a patrol officer for the sheriff's department. Rogers reports that he had previous contact with Onesti regarding Chapter 51 case approximately three years ago, after Onesti was in a bar fight and was suicidal. Rogers responded to the call regarding Mr. Onesti in this matter on February 17, 2017 at about 5:00 p.m. Rogers reports that it was his understanding that the complainant stated that Dan Onesti was out of control and had made suicidal comments. Rogers was also aware of the complainant's comment that she heard Onesti fire a gun and that information from a second call from complainant was that she said it might not have been a gunshot, but that Onesti may have hit a mailbox instead with his vehicle. Rogers responded to the call with lights and siren activated. Rogers said the information he first had was that Onesti was driving a black, Dodge Ram, but he later learned the vehicle was white.

Deputy Rogers reports that as he was arriving on scene, dispatch had telephone contact with the caller who stated that Onesti had left his original location and was possibly going to his home address on County Rd D. Rogers found out later that Onesti had made threats that he would shoot the first cop on scene. Rogers pulled into the driveway at Onesti's residence on County Rd D, and he did not see any vehicles there. Rogers knew Onesti was married and that he had dealt with Onesti's wife before. Rogers said deputies tried to make contact with anyone possibly at Onesti's house but found that no one was there. At this time, Lieutenant Kitzman was talking with Onesti on the phone from the sheriff's department and information was relayed over the radio that Onesti was upstairs at the residence. Rogers' understanding of the information being given by radio was that Onesti had multiple weapons and that he will shoot whoever came to the door. Rogers said that he was with Deputies Russ and Mason on scene at this point. He said they took up perimeter positions and took cover on the west side of a shed on the property. Rogers said they believed Onesti was upstairs in the house. Rogers stated that Dan Onesti, Jr. came upon the scene in his truck and told them his dad was not there. In addition, another

individual identified as Jordan Onesti, Dan Onesti's nephew, drove up to them at Onesti's residence and told deputies that Onesti was back at the original address on Old D Road at his hunting trailer. Deputy Rogers left Onesti's residence/farm and followed Jordan back to the area where the trailer was located. Deputies Russ and Mason stayed at the Onesti residence at this time. Rogers stated that he spoke to the neighbor to the south of the property where Onesti's trailer was at and told her to leave the area. The neighbor said she saw Onesti's white truck go into the property about 15 minutes prior but it had not come back out yet.

Deputy Rogers stated that he talked to Jordan and asked what had happened with Onesti that day. Jordan said that he and Onesti were drinking at a bar earlier and talking about a family member who had died. Onesti was upset that he was the last to find out about that person dying. Jordan stated that Onesti tried to start a fight in the bar and Jordan had to break up the fight. Jordan stated that Onesti only fights when he is really drunk. Jordan also stated that Onesti was making suicidal comments earlier at the bar. Jordan provided information that Onesti had a .308 caliber rifle.

Deputy Rogers said that officers were just waiting at this point and that the SRT (special response team) had been paged out for the incident. Rogers said that Deputy Rekoske arrived at the scene and Lt. Hoffman came to the scene briefly. Rogers said that he called for the drone to be used at the scene to see if Onesti's truck could be found on the property.

Rogers said Lt. Kitzman arrived on scene. (Kitzman is trained to operate the drone or UAV). Deputy Rogers stated that the SRT was set up nearby in a Bearcat armored vehicle that was brought over under mutual aid by Marathon County Sheriff. The deputies on scene set up their squads on all roads leading out of the property. They also set out spike strips on the snowmobile route at the exit onto Old D Rd. Deputy Rogers stated that Kitzman flew the drone in the area and they were able to determine Onesti's vehicle was driving circles in the field. The vehicle was then parked on the east end of the field, at the west end of a line of trees. Deputy Rogers stated that was the last known location of Onesti's vehicle. Deputy Rogers stated that he saw the headlights of Onesti's truck coming up the road. He said Onesti hit the gas as he drove up a hill. Onesti hit the spikes in the road and kept going. Deputy Rogers said both of Onesti's passenger tires had hit the spikes and Onesti was driving on the rims of the tires by the end of the incident.

Rogers stated that Onesti drove west on Old D Rd and the squads followed him. Deputy Rogers stated that Onesti turned south off Old D Rd, onto County Rd D. Deputy Rogers stated that the order of squads pursuing Onesti was: Deputies Russ and Mason in a marked squad directly behind Onesti, then Lt. Kitzman in an unmarked squad, and then Sheriff Bieber in an unmarked squad. Behind them were Deputy Rekoske and then Deputy Rogers. Rogers stated that Onesti turned off County Road D into his own driveway next to the house and then the first three squads all followed behind him. Rogers stated that he continued to the driveway farther south and entered the property using that second driveway. Rogers said that he heard Deputy Russ, over the radio, say that Onesti was going south through the bags of feed on the property.

Deputy Rogers stated that he had stopped his squad on the south side of the bags of feed, but he had given Onesti at least 20-30 feet on the side of him as an exit route. Rogers stated that he saw Onesti look right at him, turn his truck in the direction of his squad, accelerate his truck directly toward him and then intentionally ram into the front of his squad. Rogers said Onesti's truck rammed his squad at full force and pushed him and his squad approximately thirty (30) to thirty-five (35) feet backward and into the field. Rogers stated that he called out over the radio something such as "he just hit my squad, he hit my squad." NOTE: CAD Notes reflect that at 19:33:37: Deputy Rogers transmitted, "He just rammed my squad."

Deputy Rogers stated that after Onesti rammed his squad that Onesti turned back around and started heading back around the feed bags from the direction that he had come. Rogers lost sight of Onesti at that point. Rogers pulled his squad back up into the middle of the feed bags. He then got out of his squad and drew his pistol. Rogers said at that point he heard shots being fired. He heard Lt Kitzman transmit that shots were fired. Rogers was not sure who was shooting or how many shots were fired. Deputy Rogers stated that he took cover because he did not know if Onesti was shooting or not. At that point the Bearcat armored vehicle pulled up and he could hear officers from the Bearcat giving commands to Onesti, "show me your hands" and "open the door." Rogers stated that he heard Onesti say that he was injured and that he could not open the door. Rogers saw Onesti push the door open with his right hand. Onesti got out of his truck and followed the commands that the officers gave him. Rogers saw that Onesti had injuries to his shoulder and to his head. Officers began providing first aid to Onesti. Rogers went

back to his squad, he left the squad on scene parked where it was when he had gotten out of it. He said the squad was smoking after having been rammed by Onesti so he turned it off.

Deputy Spencer Russ

Deputy Russ was interviewed by S/A Yerges regarding his recollection of the incident involving the shooting of Mr. Onesti. The following is a summary of the information provided by Deputy Russ.

Deputy Russ was working patrol and was the field training officer (FTO) for Deputy Chase Mason on February 17, 2017. At approximately 5:00 p.m., Russ and Mason were in the area of Marion when they were dispatched to the incident regarding Mr. Onesti. Russ' understanding of the call was that an adult male who was suicidal and had taken off in a truck. Russ also received the information that a nearby neighbor had heard a gun go off. Russ deemed the call an emergency situation and he and Mason responded. Mason activated the patrol vehicle's emergency lights and audible siren. Russ stated the dispatch center updated them with information and informed them that the gunshot that may have been heard by a neighbor could have also been a mailbox that had been struck by Onesti while driving his pick-up truck. Russ also believed that they were given information that Onesti may be intoxicated.

They were further informed that Onesti was traveling to his residence located at N7914 CTH D. Russ reports that no one knew exactly where Onesti was located. Russ and Mason went directly to Onesti's residence located at N7914 CTH D. When they arrived at the farm and residence they parked in front of the residence on CTH D on the road. While sitting along the roadside in front of the residence, Russ said that a pick-up truck pulled up alongside them which alarmed Russ. Russ said that the person driving this pick-up truck informed them that Onesti's pick-up truck was in a field to the north of their location. While Russ was talking to the driver of the truck Deputy Rogers was on scene and had been attempting to make contact with anyone that he could at the Onesti residence. Russ said that dispatch informed all responding units that Onesti was in the upstairs of his residence with a gun. Russ said that because the deputies were in the "wide open," they immediately ran for cover toward a shed located to the south of the residence since they were told that Onesti had a firearm and that he was on the second

level of his residence. Russ said that the deputies stayed behind cover at this time and did not approach the residence. Russ said that Rogers directed that he, Russ and Mason should secure the area and take perimeter positions around the house.

Russ was concerned for his safety because he was out in the "open" on the perimeter and feared for his safety in the event that Onesti had a gun and was situated on the second story of his residence. Russ said that while they continued to wait and observe the area a truck was "just screaming" (operating fast) coming down CTH D and getting closer to the residence. Russ said the truck stopped at the Onesti residence and the driver of the truck told the deputies that Onesti was up by a trailer on property located on Old D Road. Russ said that Deputy Rogers took the initial information from the operator of the truck. Russ said that the driver of the truck was a family member of Onesti.

At about the same time Russ contacted Lt. Kitzman and asked where he wanted him and Deputy Mason to go as a result of the new information that Onesti was not at his residence. Russ learned that Kitzman was on the phone with Onesti. Russ said that in light of this information, he and Mason and Rogers had waited a long time on their perimeter positions and estimated they waited for over one hour. Russ subsequently learned that Onesti's pick-up truck was described as a white-colored Dodge pick-up truck, which had a black stripe near the tailgate. Russ heard the radio transmission that the SRT team was staging in the area of the Town of Almon Town Hall.

Eventually Russ, Mason and Rogers all left the Onesti residence and proceeded later to the Old County Road D area where the original complaint came in. *Russ recalls reading the call notes on his computer which showed that Onesti suffered from "depression," that Onesti was "angry" and that he wanted to "shoot cops." Russ also read that Onesti had said "fuck you," and something about "upstairs."*

After Russ and Mason went to the Old D property where it was believed that Onesti was located, they were present when Lt. Kitzman arrived with the UAV. Russ remembers looking at the UAV screen and he observed "white movement" on the screen of the UAV. Russ explained the visual that he had of the movement was described as "heat" and it resembled a vehicle that was moving. Russ said that Lt. Kitzman stated, "He's mobile!" Russ said that Mason drove their patrol vehicle that night and Russ was in the passenger seat. Russ heard over the radio that the pick-up truck ran over the spike strip system. Russ said that he then saw the white-colored Dodge pick-up truck travel west on Old D

Road and then turned south onto CTH D. Russ recalled that Mason had activated their patrol vehicle's emergency lights and later the audible siren as they followed immediately behind Onesti's pick-up truck. Russ said as the truck went by their squad he saw that the two right side pick-up truck tires were deflated. Russ said the pick-up truck traveled onto the shoulder of the road and kicked up gravel. Russ recalled how the deflated tires made an odor that smelled like "burnt rubber." Russ said that after Mason activated the siren Onesti did not stop his vehicle and continued to drive away. Russ said that Lt. Kitzman called out the speeds of the chase. Russ said, as Lt. Kitzman called out the speeds of the chase, Russ looked at their patrol vehicle's speedometer and observed that they were traveling between "50 and 55" miles per hour. While in pursuit Russ instructed Mason, not to get too close to Onesti on about three occasions. Russ said Onesti drove down the road and turned into the driveway of his residence which led into the farm area of the property. Russ said that the white-colored Dodge pick-up truck turned left into the driveway of the farm property. Russ observed the black horizontal stripe at the rear of the vehicle, back toward the taillight.

Russ said that when Onesti drove into the barnyard area on his property, that Onesti travelled in an easterly direction toward a barn and then in a northerly direction along the barn. Russ said that barn yard had extremely rough terrain. Russ said that there were white plastic sheathed silage feed bags in the barnyard area. There was snow piled up in the easterly direction upon the property. He said that as they continued to pursue Onesti in a circle around the barnyard, Russ observed the Bearcat (armored vehicle) driving up the drive toward the chase location. Russ said that as Onesti turned a second time to make another circle around the barnyard area, Deputy Mason parked on the northwest side of the silage bags near the barn. Russ said that they came to a complete stop and waited. Russ said that Onesti was "really moving." Russ could see that the two right tires on Onesti's truck were completely shredded. Russ said that Onesti was driving behind a long row of silage bags. He could see the illumination of headlights from Onesti's truck behind the feed bags but he could not physically see Onesti's truck. Russ said that the next thing he heard via the radio was "he just rammed my squad." Russ recalls hearing this comment come over the radio on at least two occasions but he did not know which officer at the scene made those comments.

Russ said that after he heard "He just rammed my squad" a second time, him and Deputy Mason got out of their squad and went to the back driver's side corner of the squad. At this point Russ said that both he and Mason drew their duty pistols as they recognized that this situation had become a deadly force situation. Russ believed that if Onesti drove at them or attempted to ram their squad that they were to use "deadly force". Russ informed Mason that the situation had now become a deadly force situation. Russ said that he continued to see lights moving behind the feed bags and the lights began to come back along the north side. Russ said that at the time this was occurring that he feared for his safety, the safety of Deputy Mason, and the safety of all of the deputies involved in the incident. Russ said, "I thought he was going to kill someone," and "I thought I was going to get run over."

As Russ watched Onesti's pick-up truck lights traveling north, he sensed that deputy Mason was on his right side. At this point Russ saw Onesti's pick-up truck come around the corner of a silage feed bag, it was "bouncing" through the rough terrain of the barnyard. Russ said he saw a "silhouette" in the "driver's seat." Russ said the truck was not stopping and it was not slowing down as it began to come around the end of the silage bag. Russ believed that the manner in which Onesti was driving Russ feared that Onesti would ram through them to escape out of the barnyard area. [Note: Russ had already heard two times over the radio from another officer that his squad was rammed by Onesti].

Deputy Russ said that as soon as he saw the wheels of Onesti's truck turn "left" [toward he and Mason], he fired his pistol at the driver of the pick-up truck. Russ believed that he began firing first and then he heard Mason's gun fire. Russ said that there was a rapid succession of gunfire by himself and Mason. Russ said that as soon as Onesti's truck stopped moving he immediately stopped firing. He said that he heard Mason stop firing simultaneously after the truck stopped moving. Immediately after they had discharged their weapons Russ said that he called out "shots fired" on over his radio. Russ said that immediately after they fired their pistols the Bearcat drove past them within seconds.

Deputy Chase Mason

Deputy Mason was interviewed by S/A Yerges regarding the incident involving the shooting of Mr. Onesti. The following is a summary of that interview.

Deputy Mason was directly involved in the shooting incident with Onesti that occurred on February 17, 2017 at Onesti's residence and farm property located at N7914 County Road D in the Town of Almon in Shawano County. At the time of this incident Mason was on field training with Deputy Russ. (Mason started field training on January 1, 2017). On February 17, 2017, Mason said that he and Russ were in the area of Tigerton when they were dispatched to the complaint regarding Mr. Onesti. Mason recalls that dispatch advised that Onesti wanted to harm himself and that he had a weapon. Mason and Russ responded to the call and when they arrived in the general area of where Onesti's residence was located they met with Deputy Rogers. Rogers was talking to dispatch at this time receiving an update that Onesti was believed to be driving a white pick-up truck. Dispatch advised that the complainant said that she heard a shot and then said that the sound may have been from Onesti colliding with a mailbox. Deputy Rogers asked Mason and Russ to patrol the area of Regina Road in an attempt to locate Onesti. Rogers was going to proceed directly to the Onesti's residence on County Road D. Mason said that he drove on Regina road and was approached by a grey GMC pick-up driven a person that he believed was as a relative of Onesti's. This man told the deputies that Onesti's truck was northwest of the house near a snowmobile trail. When they received this information Deputies Rogers, Mason and Russ were still at the Onesti residence on CTH D. At the same time, dispatch advised the deputies that Onesti was believed to be in his house, upstairs with a weapon. When they learned of this Mason, Rogers and Russ all ran for cover near an out-building (shed) south of the house. Lt. Kitzman was monitoring the situation and advised the deputies not to approach the house. Mason recalls that Russ moved their squad to the shed where the deputies were taking cover. While they were in this location a red Ford pick-up truck came upon the scene where the deputies were at and the male in this truck said, "He's not in the house". The person stated that Onesti was in a trailer that Onesti owned and that it was down the road from his residence and farm. Mason relayed this information to dispatch and Rogers left Onesti's residence to go to the location given by the male that stopped by to tell them where Onesti was at.

Mason recalls further information from dispatch informing them that Onesti's wife was contacted and that she said that Onesti had "gone off the deep end" and that he was upset and threatened to "shoot the first cop he saw". Mason recalls that Rogers requested that the Special Response Team (SRT) be activated for this incident. Mason and Russ

stayed at the home address to wait for Onesti's wife. At this point Lt. Justin Hoffman arrived at the Onesti residence to take over the situation. Since the deputies had the new information that Onesti was at another location (snowmobile trail) and was not in the house, Lt. Hoffman instructed Mason and Russ to go to the area of the snowmobile trail where Onesti was now believed to be at. Mason and Russ went to that area and met with Lt. Kitzman.

While Lt. Kitzman was operating the UAV Mason watched the screen and saw what looked like a pick-up truck moving in the field. Mason said the truck had stopped moving and Lt. Kitzman had to retrieve the UAV to replace the batteries. Kitzman re-deployed the UAV and Mason again saw the truck in the field on the UAV's screen. Lt. Kitzman again retrieved the UAV. Another officer on SRT then reported seeing a truck moving in the field. Deputy Rogers had set up spikes on the end of the driveway in the area that it was anticipated that Onesti may exit the area. Shortly after observing the truck moving Daniel Onesti drove his pick-up truck out of the driveway, ran over the spikes and then drove onto the road. Mason saw Onesti's truck and identified it as the suspect vehicle and watched it travel over the spikes. Tires were flattened on the truck and Onesti was driving on rims that were throwing sparks as he traveled on the roadway. Mason and Russ began pursuit and turned on the lights and siren. Mason said that Onesti accelerated to 50 mph. Mason said that he could smell burning rubber and asphalt while Onesti drove on the road. Mason and Russ were the first squad directly behind Onesti along with other officers in pursuit behind them. Onesti fled down County Road D to the area of his residence and farm. He turned into his driveway and then drove to the rear of the buildings past silage bags that were in the area of the barn and other outbuildings. Mason followed Onesti as he made two loops around the barn and silage bags. When Mason was following Onesti around the second loop he saw the SRT Bearcat approaching. Mason estimated that the Bearcat was too far away to take over the pursuit so Mason continued to follow Onesti's vehicle. After Onesti made the second loop Mason attempted to turn and follow Onesti when his squad got "hung up". Mason said that Onesti backed his truck toward the squad. Onesti then drove away from him and back around the silage bags and he attempted to follow but stopped. He and Russ exited their squad and drew their pistols.

Soon after Onesti left their sight, Onesti again came around the silage bags and stopped then backed up, turned his front wheels to the left in the direction of Mason and

Russ and "floored it" to drive toward them. Russ began shooting first, then Mason fired. Mason said he began shooting because of the threats made by Onesti which made Mason fear for his life, Russ' life and the lives of other officers on the scene. Mason said that he also took into consideration other information that he was already aware of previously from when the incident first began developing, that is, Computer Aided Dispatch notes he observed in which Onesti stated "Fuck off, 2017 sucks, I'm a crack shot, I'm going to shoot the first cop I see". Mason fired his pistol at least four to five times and stopped shooting when he heard the engine of Onesti's truck let-off and saw the truck stopped. Mason could see Onesti's head and chest area and he aimed at these areas when he fired. He estimated the distance between Onesti and his location to be about fifteen (15) to twenty (20) yards when he shot. Mason said that he radioed, "Shots fired!" and then shouted commands to Onesti, "Let me see your hands!" At this time the Bearcat moved in alongside Mason's squad and the SRT exited both sides of the Bearcat approaching Onesti's truck. SRT members started giving Onesti commands at this point. Mason and Russ backed off.

CAD (Computer Aided Dispatch) and Radio Transmission Traffic Information

As a part of this investigation, DCI Special Agents Yerges and Schallhorn received the SHSO computer aided dispatch (CAD) report and a disk (audio) containing the radio traffic from the Onesti incident. The information was reviewed by S/A Schallhorn. A summary was provided as part of her report. The undersigned has also reviewed the notes and audio and the relevant excerpts have been included in this decision from this report.

The radio traffic recording begins with units being dispatched to the initial call and ends after EMS arrives on scene, the area has been "taped off" and a log was started. The CAD and the radio traffic information deemed to be significant with respect to this decision is as follows:

- Complainant called the Shawano County Sheriff Dispatch Center on 911. The complainant told dispatchers that Daniel Onesti is going crazy, that he says he is going to kill himself, and that she heard a gun-shot.

- A Radio Log showing times for all units dispatched, paged, enroute, arriving and completing their duties with regard to the call and incident.
- Comments, as written by dispatchers, regarding information learned during the incident.

Relevant information from the CAD notes are as follows:

- 17:15:15: In the house upstairs with 3 guns, high powered rifle, first cop I see I'll shoot.
- 17:19:03: Langlade [County] on line, [Dan] was shooting in the air and would have shootout with officer.
- 17:20:21: Says if you come up the steps he will start shooting.
- 17:31:09: Says he ran 2 people off the road, didn't want to hurt them but he wanted them to call him in.
- 17:40:06: Marathon County called for Bearcat (armored vehicle).
- 18:53:43: Spikes are laid across the snow road.
- 19:05:31: Can see a truck driving around in the field, he is mobile.
- 19:14:54: Team loading up in the Bearcat.
- 19:28:30: Truck is coming to the house.
- 19:29:09: Truck is coming out to the road on Old D.
- 19:29:41: All four tires hit.
- 19:31:46: Pulling into N7914 D.
- **19:32:46: He is reversing...coming back at us [Deputy Russ].**
- **19:33:37: He just rammed my squad [Deputy Rogers].**
- **19:33:54: Shots fired.**
- 19:34:23: He's got his hands up.
- 19:35:16: Send EMS.
- 19:36:22: States he is injured, says he cannot come out, can see both hands.
- 19:37:13: Use the Bearcat, drive up to him to check inside.
- 19:38:59: He is in custody, all officers are ok.

- 19:39:22: Injuries to shoulder and head.
- 19:42:34: 562 is rendering aid. [Officer began treating Onesti's wounds].

Officers Stange and Atkinson

Officer Stange and Officer Atkinson of the City of Shawano Police Department are members of the Special Response Team (SRT). Both officers were at the scene of the shooting incident. Officer Stange was the team leader for the SRT formation on February 17, 2017. Stange and other officers were inside the Bearcat vehicle and approached Onesti after he was shot by Deputies Russ and Mason. Stange reports that after the shooting the Special Response Team members took positions outside of the Bearcat while other officers gave Onesti commands to get out of his vehicle. Stange reports that Onesti complied with the commands and that he could see that Onesti was bleeding from gunshot wounds. Stange attended to Onesti for purposes rendering first aid. Stange said that he could smell a strong odor of an intoxicating beverage from Onesti's breath. Officer Atkinson was assisting Officer Stange while he was rendering first aid to Onesti. Onesti asked officer Atkinson if the officer in the truck (Deputy Rogers) was hurt. When Atkinson told him that he was not hurt Onesti said, "Good I didn't want to hurt him." Onesti also said, "I got what I wanted." Also, Officer Stange reports that Onesti told him, "I didn't want to hurt anyone, only myself".

Daniel Onesti Interview

On Friday, February 17, 2017, Special Agents (SA) Heiser and S/A Lenzner interviewed Daniel W. Onesti about the incident. The interview The purpose of the interview was to determine Onesti's version of the events leading up to the shooting and events surrounding the shooting. S/A Heiser explained to Onesti that he was not under arrest and that he did not have to answer any questions. Onesti said that he wanted to talk with officers.

Onesti told the special agents that he is prescribed an antidepressant medication. Onesti explained he has recently had many stressors in his life. Onesti said that he had been drinking at a couple of bars during the day on February 17, 2017 but that he did not believe that he was intoxicated.

At approximately 4:00 P.M. Onesti said that he left a bar and drove to his property that is approximately a mile and a half (1 ½) north from his residence. When he got there he drove into the cornfield and while trying to get into the corn field, he accidentally backed into the neighbor's mail box on Old County Road D. While he was parked in the corn field he was talking with a police officer on his cell phone. This discussion caused him to become more upset. Onesti said that he used vulgar language with the police officer as he wanted to be alone and not talk to anyone. Onesti said that he told the officer that he was at his residence and there were guns located within the residence. During the conversation his phone battery ran out ending the this conversation with the officer.

At approximately 7:00 P.M. Onesti said that he left the corn field, in his 2012 Dodge pick-up truck. He was going to go to his residence. When he left the corn field he said that his pick-up truck got a flat tire which "pissed" him off. Onesti estimated that the distance from the intersection of Old D (where he left the cornfield) to his residence is about one (1) mile. Onesti knew that when he was driving to his residence that he was being pursued by three (3) or four (4) officers with their lights and sirens activated. Onesti said that he drove into his yard and "like a dumb ass" did not get out of his truck. He said that he drove up to a three (3) stall barn, drove around a shop building and silage bags and that he followed the three (3) squads around the building and laughed "here I go". He said that came around the last bag and hit a squad head on. He described the squad as being a Ford Explorer and that it had its emergency lights activated. Onesti stated the reason he hit the squad was because he could not stop and never let up on the gas because he would have gotten stuck. Onesti believed a Deputy was inside of the squad at the time he struck the squad. Onesti stated that he did not know what he was planning on doing but did not want to stop. Onesti backed up and drove around the squad vehicle and went between the next silage bags. Onesti stated he was driving to the end of the lane and was fired upon by Deputies.

S/A Heiser asked Onesti if he wanted a police officer to shoot him tonight and Onesti stated, "kind of". S/A Heiser asked Onesti if he wanted a police officer to shoot him because he could not do it himself, Onesti stated, "yep."

S/A Heiser asked Onesti why he did not stop for the police after a police officer called him on the telephone or when the squad cars were behind him. Onesti stated he wanted to get the truck to his yard. Onesti stated that when got to the yard that his train of thought

escalated. S/A Heiser asked Onesti why he did not stop after striking a squad and Onesti responded, "I don't know." S/A Heiser asked Onesti, what he believes he would have had to do to get shot by the police, Onesti responded, "if I was to run over a cop or something, ya." S/A Heiser asked Onesti if he tried running over the police officer in the squad, or any other police officer over and Onesti stated, "No". S/A Heiser asked Onesti why he did not stop after he hit the first squad car and Onesti stated he did not stop because he was pissed off.

CONCLUSION

Under Wisconsin law a law enforcement officer has the right to use force in making an arrest where the officer actually and reasonably believes that such force is necessary to secure and detain the person arrested, to overcome any resistance, to prevent escape, or to protect himself from bodily harm. Wisconsin Jury Instruction-Criminal 885. However, an officer is allowed to use force intended or likely to cause death or great bodily harm only if he believes that such force is necessary to prevent the escape of a suspect and believes that the suspect poses a significant threat of death or serious physical injury to the officer or others. Wisconsin Jury Instruction-Criminal 885. Similarly, a law enforcement officer also has a privilege to use deadly force to protect others where the officer reasonably believes that there is an actual or imminent unlawful interference directed at the other person and actually and reasonably believes that such force was necessary to prevent imminent death or great bodily harm to the other person. Wisconsin Statute section 939.48(4); Wisconsin Jury Instructions-Criminal 830. Under either 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.

Under these legal principles it is clear that Deputy Russ and Deputy Mason were privileged to fire their pistols at Mr. Onesti on February 17, 2017.. Under the privilege to use force to make an arrest, the deputies had an actual and reasonable belief that the use of force was necessary to protect themselves personally, to protect each other and to protect other officers that were in the immediate area from a significant threat of death or serious bodily injury. Deputy Russ and Mason were assigned the call by dispatch to go to

the area of the Onesti residence for a suicidal person. As the situation developed that night the Deputy Russ and Deputy Mason knew that Onesti had threatened to shoot the "first cop that he saw". They were aware that Onesti had long guns as reported by his wife. They were aware of information that was relayed to them from Lt. Kitzman regarding Onesti's phone conversation where he was belligerent, uncooperative and make threats to shoot officers and that Onesti was "suicidal". Deputy Russ stated that he remembered reading the call notes on his computer describing Onesti as suffering from "depression," that Onesti was "angry" and that he wanted to "shoot cops" and that he was exhibiting belligerent behavior. Deputy Mason said that he began shooting because of the threats made by Onesti, which made him fear for his life, Deputy Russ' life and the lives of other officers on the scene. Mason said that he also took into consideration other information that he was aware as the situation began developing, that is, Computer Aided Dispatch notes showing that Onesti stated "Fuck off, 2017 sucks, I'm a crack shot, I'm going to shoot the first cop I see". At the same time, both Deputy Russ and Deputy Mason were the officers that were leading the pursuit of Onesti in his truck as he fled the area back to his residence and farm. When they got to Onesti's residence, Onesti continued to flee from the officers into his barn yard. At one point when Mason and Russ were in pursuit, Onesti stopped and came back toward them in reverse. Russ and Mason stopped and took a position to wait to see what Onesti was going to do next. Russ and Mason heard the radio transmission that Onesti had rammed another squad car just seconds prior to Onesti appearing before them driving his truck. It was not until both Russ and Mason saw that Onesti turned the front wheels to the left which was the direction in which Russ and Mason were located from Onesti that they began firing their pistols at Onesti.

Moreover, under the privilege to use force to make an arrest, the deputies had an actual and reasonable belief that the use of force was necessary to protect the general public from significant threat of death or serious bodily injury in the event that Onesti was able to flee from the area and back into the community. Had Onesti been able to leave the area of his home/farm and travel onto the roads in the area he would have presented a further danger the public and the officers pursuing him.

Under the privilege of defense of others each deputy had an actual and reasonable belief that the force used was necessary to prevent imminent death or great bodily harm

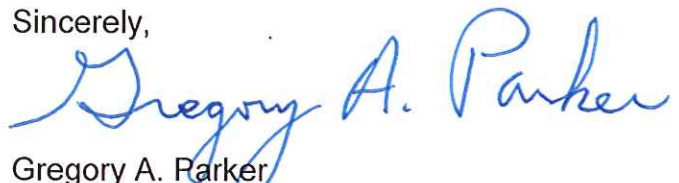
to one another at the time Mr. Onesti turned his front wheels in their direction. Therefore, the acts carried out by each deputy was privileged.

In addition, before force which is likely to cause death or great bodily harm can be used, one must reasonably believe that such force is necessary to prevent imminent death or great bodily harm to himself, State v. Mendoza (1977) 258 N.W.2d 260, 80 Wis.2d 122. Here based upon the facts and evidence reviewed and stated above the deputies had a reasonable belief that use of deadly force was necessary to prevent imminent death or great bodily harm to himself.

If a [person] believes that the intentional use of deadly force is necessary to protect himself and he uses deadly force when he could reasonably believe that deadly force is necessary, there is a complete privilege. Ross v. State (1973) 211 N.W.2d 827, 61 Wis.2d 160. Here based upon the facts and evidence reviewed and stated above the deputies had a reasonable belief that deadly force was necessary when they shot Mr. Onesti as he approached them and turned his front tires in their direction.

If you have any questions regarding the above information and decision, please do not hesitate to contact me.

Sincerely,



Gregory A. Parker
District Attorney
Menominee-Shawano-Counties