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January 3, 2019

Special Agent In Charge Mike Sasse
Wisconsin Department of Justice- Division of Criminal Investigations
Appleton Office

Re: Officer Involved Shooting of Bruce A. Smith
DCI Case Number 18-6737

Dear Special Agent In Charge Mike Sasse,

This letter is to inform you of the conclusion reached by my office regarding the review of the officer involved shooting which occurred in the City of Manitowoc on September 16, 2018 and which resulted in the death of Bruce A. Smith. The purpose of my review was to determine whether there existed evidence to support a conclusion that the actions of Officer Clark involved criminal conduct, and if so, to then request the appointment of a Special Prosecutor to review the evidence and consider any appropriate charges. After consideration of all of the evidence and circumstances surrounding the incident, this office concludes that Officer Fielder Clark of the Manitowoc Police Department shot Bruce A. Smith while exercising a privilege to use deadly force and that there is no probable cause to believe that Officer Clark committed any criminal offense.

Prior to reaching a conclusion, I reviewed all available investigative reports from law enforcement agencies, including the Wisconsin Department of Justice – Division of Criminal Investigations (DCI) and the Manitowoc County Sheriff's Office (MTSO). The investigative reports included interviews of citizen witnesses, officers present at the scene, fire department personnel, and Officer Clark review of the scene, a diagram of the scene, photographs, the autopsy report and toxicology report, and other various items of physical evidence. I have summarized the investigative reports below.

On September 16, 2018 at approximately 4:43 a.m., City of Manitowoc Fire Department and City of Manitowoc Police Department were dispatched to an apartment complex located at 1551 South 35th Street in the City of Manitowoc for an active fire alarm call. A responding firefighter reported that there was a "suspicious looking individual" in the area. The firefighter indicated that the individual was "sweating profusely" and "acted strangely" with an "altered state." Officer Fielder Clark responded and attempted to locate the individual. As he searched the

grounds of the apartment complex, Officer Clark observed a small safe and cellular telephone laying in the grass which appeared unusual. A firefighter then alerted Officer Clark to the location of the suspicious male in a grass area behind the apartment complex.

Officer Clark utilized a flashlight to illuminate the individual who he then recognized as Bruce A. Smith. Officer Clark observed Bruce Smith walk to the fence at the property line, and then walk into a cover area in the northwest corner of the property. This area was a very poorly lit area of the apartment complex. Officer Clark observed Bruce Smith reach over the gate with his left hand. Officer Clark backed up to create distance between the two because he did not know if Bruce Smith was reaching for something. Bruce Smith then walked towards Officer Clark and produced a lighter. He lunged at Officer Clark with the lighter lit out in front of him. Because of the fear of being burned Officer Clark deployed his Taser into Bruce Smith. The Taser did not have an effect on Bruce Smith. Officer Clark called for back-up. Bruce Smith came at Officer Clark a second time. The Taser was deployed a second time and did not have an effect. Bruce Smith ran in a southerly direction and Officer Clark ran after Bruce Smith. At a point during the foot chase, Bruce Smith stopped, spun around and came toward Officer Clark with an object which Officer Clark perceived was a "knife." Bruce Smith advanced towards Officer Clark and Officer Clark dropped his flashlight and transitioned to his duty weapon due to the threat of a "knife." Officer Clark shouted commands at Bruce Smith to drop the knife. Officer Clark proceeded to discharge his duty pistol at Bruce Smith to stop Bruce Smith from stabbing him. Officer Clark continued to discharge his duty weapon at Bruce Smith because he believed his shots were perhaps ineffective. Officer Clark also feared Bruce Smith would attack people who were evacuating from the apartment complex, his arriving back-up officer and the fire fighters that were on scene. Officer Clark observed Bruce Smith collapse in the back of the apartment complex. Officer Clark removed an object from Bruce Smith's right side which the officer discovered was a metal "paint scraper." Officer Clark also summoned medical assistance for Bruce Smith. Bruce Smith was pronounced dead at the scene. An Autopsy was performed on Bruce Smith at the Milwaukee Medical Examiner's Office. The cause of death was gunshot wounds to the chest and abdomen. It was also determined that Bruce Smith had methamphetamine and amphetamine in his blood stream.

Under Wisconsin Law, a law enforcement officer has a legal privilege to use deadly force to protect himself or others where the officer reasonably believes that there is an actual or imminent unlawful interference directed at himself or another person and reasonably believes that such force was necessary to prevent imminent death or great bodily harm to himself or another Wisconsin Statute 939.48(4); Wisconsin Jury Instructions-Criminal 830. When determining the appropriate use of the law enforcement privilege, the reasonableness of the officer's conduct 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 the facts and circumstances that existed at the time. Wisconsin Statutes 939.45 (3) and (4) provide 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 officer" or when the conduct "is a reasonable accomplishment of a lawful arrest."

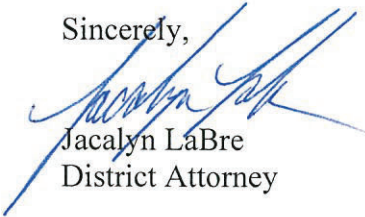
Under Wisconsin law, police officers are lawfully allowed to use deadly force when they have objectively reasonable belief that such force is reasonably necessary to protect themselves or

others from the risk of serious bodily injury or death. Police officers are provided continuing training regarding the use of force and Officer Clark has received such training. Given the circumstances Officer Clark was presented with, he had an actual and reasonable belief that deadly force was necessary to prevent imminent death or great bodily harm to himself or others and therefore was privileged to fire his weapon at Bruce Smith. Officer Clark was given very little time to make the decision to use deadly force. He made previous, unsuccessful attempts to gain control of Bruce Smith through less than lethal methods. Officer Clark had used verbal commands and a Taser twice with no effect. Despite Officer Clark's efforts he was faced with an individual who was coming towards him armed with a bladed object that appeared to be a knife. Officer Clark's split second decision to use deadly force under those circumstances appears consistent with his training and experience. Therefore, I conclude that Officer Clark's conduct was lawful.

The facts presented demonstrate that Officer Clark acted in a manner consistent with the law and consistent with their training as law enforcement officers and therefore their conduct was privileged by the privilege of self-defense and the privilege of a police officer to use deadly force to accomplish an arrest and/or prevent an escape. Thus it is the opinion of this office that Officer Clark did not commit any criminal wrongdoing and that he was justified to use deadly force. I therefore conclude that the shooting, although regrettable and tragic, was in fact justified under the circumstances, and no criminal charges will be brought against Officer Clark.

If you have any questions please do not hesitate to contact me.

Sincerely,



Jacalyn LaBre
District Attorney