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LEGAL OPINION REGARDING OFFICER INVOLVED SHOOTING ON NOVEMBER 14, 2019 RESULTING IN THE DEATH OF MICHAEL A. JOLLY

BRIEF SUMMARY

On November 14, 2019, Winnebago County dispatch received a call that a subject was in possession of a shotgun and was threatening to kill himself. Officer Dylan Young of the Fox Crossing Police Department was the initial officer dispatched to the incident. Officer Young learned that the reporting party was the subject's wife, the male subject involved was in possession of ammunition, and he was in the basement of the residence. Officer Young was given the address of 975 Clover Street in the Village of Fox Crossing, Winnebago County, Wisconsin as the location of the call, and he responded in an emergency fashion. When Officer Young arrived on scene, he learned that the subject's wife and two children were in the residence. Dispatch was on the phone with the subject's wife instructing her to exit the residence with the children. Officer Corey Colburn of the Fox Crossing Police Department arrived on scene and drove his squad car up to the residence. The subject's wife and children got into the squad and Officer Young drove them away from the scene. Officer Young then returned to the residence, and at this point, other officers had arrived on scene as well.

One of the other Officers who had arrived on scene was Lieutenant Matthew Spiegel of the Menasha Police Department. Lieutenant Spiegel heard dispatch advise of a weapons complaint on Clover Street in the Village of Fox Crossing. Lieutenant Spiegel confirmed the address involved, and was aware that this was the address of Michael A. Jolly. Lieutenant Spiegel was familiar with Michael Jolly as he had just arrested him at approximately 2:11 am for an OWI, when he observed Michael Jolly driving westbound in the eastbound lane of Plank Road just east of Beach Road. When Michael Jolly exited his vehicle during this stop, he told Lieutenant Spiegel that he was in a bad place. Michael Jolly was processed for the OWI and he tested at a .27 BAC (blood alcohol concentration). During this incident, Michael Jolly had been extremely cooperative, and Lieutenant Spiegel released him to his wife at approximately 4:00 am.

When Lieutenant Spiegel arrived at the Clover Street address he used his squad phone to establish contact with Michael Jolly (hereinafter in this section Jolly). Jolly again stated that he was in a bad place and it was because his grandfather passed. Lieutenant Spiegel had learned that Jolly's grandfather died five years prior. Jolly told Lieutenant Spiegel that he screwed up, and he didn't want to come out of his basement and go to jail. Jolly told Lieutenant Spiegel that he wanted to stay by his guns and he wasn't going to come out. Jolly asked Lieutenant Spiegel to come into the house and when he (Jolly) pointed a gun at him, he told Lieutenant Spiegel that he (Lieutenant Spiegel) should shoot him. Jolly told Lieutenant Spiegel that he had cut the trigger locks off his guns and he had a rifle and a shotgun. Lieutenant Spiegel was on the phone with Jolly for approximately 30-45 minutes. At one point, Jolly told Lieutenant Spiegel that he was coming out with his guns and he said "see you on the flip side" and hung up the phone. Lieutenant Spiegel advised officers that Jolly said he was coming out of the residence with two guns.

During this time frame, Officer Colburn was in position in the back of the residence, near the north side corner of the garage. Officer Colburn could see the back door of the residence from that vantage point. Officer Colburn could also hear Lieutenant Spiegel conversing with Jolly and the conversation was not going well. Officer Colburn was then joined by Neenah Police Department Officer Austin Riska in the back of the residence. Lieutenant Jason Severson of the Fox Crossing Police Department advised both Officer Colburn and Officer Riska that Jolly was downstairs in the window, and he advised them to be careful. At that point, Officers Colburn and Riska moved farther away to the back of the house next door. Officer Colburn then heard that Jolly was going to be coming out of the house with a rifle. Officer Colburn saw the back door to the house open, and he saw Jolly come out of the house and onto the porch. Officer Colburn had his firearm drawn and he moved towards the back door. Officer Colburn saw Jolly walk towards him and Officer Riska with the barrel of a long gun pointed towards them. Jolly was looking at Officers Colburn and Riska with a "1000 yard stare" and he was not saying anything.

Officer Colburn told Jolly "show me your hands." Officers Colburn and Riska kept repeating "show your hands" to Jolly. Jolly kept walking towards them with the long gun pointed towards Officer Colburn and Officer Riska. Officer Colburn then stepped back behind the concealment of the edge of the house next door behind Officer Riska. Jolly continued to have the long gun and he had cover behind his truck. Officer Riska had a less lethal option at first, but transitioned to his firearm. According to Officer Colburn, Officer Riska then fired several rounds with his firearm but he (Officer Colburn) was not in a position to be able to fire. Officer Colburn then stepped out from behind Officer Riska and he saw that Jolly was continuing the threat. Officer Colburn then fired one or two rounds at Jolly. Officer Colburn then saw Officer Riska jump back and he (Officer Colburn) didn't know if Officer Riska had been shot or if he had been too close to Officer Riska. Officer Colburn then moved back to a position of concealment to reassess the situation. According to Officer Colburn, Officer Riska fired several more shots and Jolly went down.

Officer Riska was at the Clover Street residence after Fox Crossing Police Department requested less-lethal munition operator assistance from Neenah Police Department for the incident. When Officer Riska arrived he was directed to the back of a residence adjacent to the subject residence. Upon arriving in the backyard area Officer Riska was partnered with another officer that he later learned was Officer Colburn. Officer Riska was briefed by Officer Colburn concerning the location of the doors and windows of the subject residence. Officer Riska then ran to the back side of a shed that was in the area to try and obtain a better view or angle on the subject residence. However, any location behind this shed was not a better location so Officer Riska and Officer Colburn decided to move to behind the adjacent residence near the shed so they could have a better angle on the subject residence.

Once in position, Officer Riska started to monitor via portable radio that the subject was “hanging up.” The subject (Jolly) had already repeatedly stated that he was going to come out with a gun. Officer Riska observed Jolly appear from the doorway in the back of the residence and Jolly looked to the left and to the right. Officer Riska then observed Officer Colburn draw his duty pistol and when this occurred, Officer Colburn activated a flashlight towards Jolly. Jolly then fully exited the doorway and turned towards Officer Riska and Officer Colburn. Officer Riska yelled to Jolly “Show your hands.” Officer Riska could see Jolly raise something but at first he could not see what Jolly had. Officer Riska then yelled “put your hands above your head.” At this point, a garage light illuminated the area where Jolly was and then Officer Riska realized that Jolly had a long rifle/shotgun. Jolly then raised the gun into Officer Riska’s line of sight as he (Jolly) was behind a red Ford truck in his driveway. Officer Riska yelled “he has a gun” and then Officer Riska ducked behind the wall that he was behind. When this occurred, Jolly moved towards the front of the cab of the pick-up truck, raised the gun towards Officer Riska, and held the gun in both of his hands in a stance similar to a “Vietnam” or “Gangster pose.”

Officer Riska then transitioned from his less-lethal launcher to his duty pistol while Jolly continued to point the gun at Officer Colburn and himself. Officer Riska directed Jolly to drop the firearm. Jolly stared at Officer Riska and shook his head in a negative manner. Officer Riska then discharged his duty pistol 3-4 times. Officer Riska stopped firing to reassess the situation but nothing changed, Jolly was still pointing the gun at Officer Riska. Officer Riska thought Jolly was going to start shooting back at him at any moment because his (Officer Riska’s) first round of shots was not effective. Officer Riska then discharged a second volley of shots from his duty pistol. Jolly then dropped out of view after these shots were fired. Officer Riska then communicated on his portable radio “N103 shots fired, one down, I’m alright, start EMS.”

Medical attention was provided to Jolly by law enforcement until Gold Cross Ambulance Service arrived on scene. Jolly was then transported to Theda Care Regional Medical Center – Neenah where he was pronounced deceased by Dr. Douglas Hanneman at 6:15am. An autopsy was conducted on November 15, 2019 by Dr. P. Douglas Kelley, Deputy Chief Medical Examiner with the Milwaukee County Medical Examiner’s Office. Dr. Kelley determined that Michael Jolly’s cause of death was one singular gunshot wound to the chest. During the course of the investigation testing was completed, and it was determined that the fatal shot was fired from Officer Riska’s firearm. After carefully examining all of the evidence in this case, I conclude that Officer Riska and Officer Colburn’s use of deadly force was justified. The summary and analysis of the facts supporting this conclusion are as follows:

INVESTIGATION

The Wisconsin Department of Justice Division of Criminal Investigation (DCI) was brought in to conduct the investigation into the officer involved shooting. Special Agent (SA) Jay K. Yerges was assigned as the lead investigator. SA Yerges was assisted by other agents and personnel from DCI as well as other agencies such as the Wisconsin State Crime Lab. SA Yerges prepared a report and also provided copies of all media, such as body worn cameras, as well as other evidence, such as cell phone extractions and CAD reports, for my review. The evidence was examined for purposes of this analysis.

FACTS AND TIMELINE OF EVENTS

During the early period of the investigation, Mrs. Jolly spoke with Special Agent Jed Roffers of the Wisconsin Department of Justice Division of Criminal Investigation (DCI.) Mrs. Jolly stated that her and Michael Jolly had been married for approximately 16 years. Mrs. Jolly stated that they lived at the 975 Clover Street address for approximately 10 years and they had two children. Mrs. Jolly stated that Michael had been deeply depressed for the past 2-3 months. Mrs. Jolly stated that November was always a difficult time for Michael because it was the anniversary of his grandfather's death. Mrs. Jolly stated that Michael's grandfather passed away 4-5 years prior, and his grandfather was instrumental in Michael's upbringing. Mrs. Jolly stated that when Michael was depressed he could become withdrawn, isolated, and he would lack motivation. Mrs. Jolly stated that Michael's depression and anxiety would typically be compounded by alcohol abuse and it was "all or nothing" for him when it came to drinking. Mrs. Jolly stated that Michael knew he had a problem with controlling his alcohol use, which was why absolute sobriety was necessary. Mrs. Jolly stated that Michael had exhibited suicidal behavior and made self-harm statements in the past. Additionally, Mrs. Jolly stated that Michael attempted suicide on at least one occasion.

Mrs. Jolly stated that over the last year and a half Michael's struggles with depression, anxiety and alcohol abuse was particularly pressing. Mrs. Jolly stated that in the summer of 2018, they were camping and she left to go pick up some items from the store. Mrs. Jolly stated that when she got back, Michael was heavily intoxicated and interested in going swimming. Mrs. Jolly stated that Michael said he wanted to see "how far out" he could swim. Mrs. Jolly stated that she considered Michael's behavior and comments to be suicidal and she called his sister in an attempt to de-escalate the situation. Mrs. Jolly stated that she also contacted law enforcement and they responded to help calm Michael down.

Mrs. Jolly stated that in early August of 2019, she found Michael passed out and unresponsive outside of their house. Mrs. Jolly stated that she discovered that Michael had taken a large amount of prescription medications mixed with alcohol. Mrs. Jolly stated that Michael was prescribed a number of medications for depression and anxiety. Mrs. Jolly stated that she called 911 and Michael was transported to Theda. Mrs. Jolly stated that following this, did obtain treatment. Mrs. Jolly stated that Michael successfully completed treatment and he had been doing well initially.

However, Mrs. Jolly stated that recently Michael was arrested for Operating while Intoxicated twice within about a week. Mrs. Jolly stated that the first arrest occurred in the early morning hours of November 4, 2019 in Calumet County. Mrs. Jolly stated that she drove to Calumet County to pick Michael up. Mrs. Jolly stated that the next arrest was on November 14, 2019. Mrs. Jolly stated that she got a call at approximately 4:00 am and was told that Michael had been arrested by the Menasha Police Department. Mrs. Jolly stated that she went to pick Michael up at the Menasha Police Department.

On the night of November 13, 2019, leading up to Michael's arrest, Mrs. Jolly stated that she and Michael had dinner at home with their children. Mrs. Jolly stated that after dinner Michael started drinking alcohol. Mrs. Jolly stated that Michael was scheduled to be off work the next day, but she went to bed early because she was not feeling well. Mrs. Jolly stated that she woke up around midnight when she heard Michael talking loudly on the phone. Mrs. Jolly stated that she talked to Michael, and he told her that he was getting picked up by a co-worker to go out. Mrs. Jolly stated that she tried to get Michael to stay home but he didn't want to. Mrs. Jolly stated that Michael was picked up around 12:15 am. Mrs. Jolly stated that she went back to bed. Mrs. Jolly stated that the next time she woke up was when she

received the call about Michael getting arrested. Mrs. Jolly stated that she then discovered that at some point in the night Michael came home and took her minivan.

Mrs. Jolly stated that she picked Michael up at the Menasha Police Department and brought him home. Mrs. Jolly stated that they got back home sometime around 5:00 am. Mrs. Jolly stated that she went back to bed to get more sleep before work, but soon after she laid down she heard Michael attempting to get something from the attic. Mrs. Jolly stated that she knew that this was where the black hunting rifle was located. Mrs. Jolly stated that the rifle had a safety lock on it and she had hidden the keys for it. Mrs. Jolly stated that once Michael located the rifle he yelled "where are the bullets, where are the keys!?" Mrs. Jolly stated that during this time, she took the ammunition for the rifle and hid it underneath some clothing inside a dresser. Mrs. Jolly stated that she did this because she was afraid that Michael was suicidal. Mrs. Jolly stated that she then called 911 and told the dispatcher that her husband was suicidal, intoxicated and he had a gun. Mrs. Jolly stated that she and their two children then left the home. Mrs. Jolly stated that once she was outside, she made contact with officers and gave them Michael's cell phone number. Mrs. Jolly stated that she and the children were escorted away from the house by a police officer. Mrs. Jolly stated that after about 10-15 minutes one of the officers came over to them to provide them with an update. Mrs. Jolly stated that she was told that officers were speaking to Michael over the phone and they were trying to "calm him down." Mrs. Jolly stated that she later heard yelling and gunshots and soon after this, an ambulance arrived.

Special Agent Yerges and Special Agent Roffers identified the co-worker who picked Michael Jolly up on November 14, 2019 as J.B., and they made contact with him to interview him about the events of the evening. JB stated that he knew Michael Jolly (hereinafter Jolly) through his previous employment. JB stated that he had worked with Jolly from February 2014 through March 2018. JB stated that on November 13, 2019, Jolly texted him at approximately 11:22 pm and expressed an interest in going out for drinks. JB stated that after the text, he and Jolly talked on the phone for a couple minutes and arranged for JB to pick up Jolly from his house in Menasha between 12:00 and 12:30 am. JB stated that when he picked Jolly up he could tell that Jolly had been drinking because he could smell an odor of intoxicants. JB stated that he and Jolly first went to a bar in Menasha named Tonic. JB stated that while they were at Tonic, he and Jolly had about 2-3 drinks each. JB stated that when they were at Tonic, Jolly commented that he didn't need his pickup truck anymore and he was going to sell it. JB stated that he didn't know what Jolly meant by this because he knew Jolly loved that truck.

JB stated that he and Jolly left Tonic at approximately 1:00 am. JB stated that at this point, Jolly was intoxicated. JB stated that he intended on bringing Jolly home, but while they were on the way back, Jolly told JB to turn and go to Blu Sapphires Gentleman's Club in Menasha. JB stated that he reluctantly agreed and they got there around 1:15 am. JB stated that he drank water at the Club but Jolly continued to drink alcohol. JB stated that Jolly was heavily intoxicated and was often spilling his drink. JB stated that they stayed until bar close. JB stated that Jolly was stumbling and "walking sideways" as they left the Club.

JB stated that when they were on their way back to Jolly's house, Jolly again told him to go to another bar but JB explained that all of the bars were closed and it was time to go home. JB stated that when he dropped Jolly off, he stayed parked on the street for a while to keep an eye on Jolly. JB stated that he saw Jolly open the front driver's side door of a minivan parked in the driveway. JB stated that he assumed Jolly was getting something from the car like a key or garage door opener. JB stated that he did

not see Jolly get into the vehicle. JB stated that he did see the red glow of the minivan's tail lights as he drove away but he assumed that Jolly had accidentally put his foot on the brake. JB stated that he stopped his car for a little bit to wait and see what Jolly was doing, but he left when he didn't see anything else. JB stated that he woke up to a text message sent by Jolly at 3:51 am that said "should not have went out."

After Jolly was dropped off by JB, he drove back into the City of Menasha. This is evidenced by Jolly's OWI arrest at approximately 2:11 am by Lieutenant Matthew Spiegel of the Menasha Police Department. Lieutenant Spiegel stated that on November 13-14, 2019, he was working the night shift. Lieutenant Spiegel stated that he observed Jolly driving westbound in the eastbound lane of Plank Road just east of Beach Road in the City of Menasha, Winnebago County, Wisconsin so he initiated a traffic stop. Lieutenant Spiegel stated that when Jolly exited his car, he said that he was "in a bad place." Lieutenant Spiegel stated that Jolly was "extremely cooperative" during the arrest and processing. Lieutenant Spiegel stated that he tested Jolly, and he came back at a .27 BAC (blood alcohol concentration.) Lieutenant Spiegel stated that after Jolly was processed he was released to his wife. Lieutenant Spiegel stated that this occurred in the lobby of the Menasha Police Department at approximately 4:00 am.

During the course of the investigation, Special Agent Kyra Schallhorn of DCI received a DVD containing audio of the 911 call placed by Mrs. Jolly during the incident, as well as multiple CAD (computer aided dispatch) reports from the various law enforcement agencies that responded. Special Agent Schallhorn reports that the 911 call came in at 4:25 am and the length of the call was 12:52 minutes. Special Agent Schallhorn reports that during the call, Mrs. Jolly provided information that Michael Jolly had a shotgun/rifle and he was highly intoxicated. During the call Mrs. Jolly also stated that she had hidden the bullets and there was two children in the house. Agent Schallhorn reports that dispatch advised Mrs. Jolly to leave the house with the children after information was received that Jolly had gone into the basement of the home.

Lieutenant Spiegel was one of the officers who responded to the Clover Avenue address after the 911 call was placed by Mrs. Jolly. Lieutenant Spiegel attempted to negotiate with Jolly on the phone. During the incident, Lieutenant Spiegel's body camera captured his portion of the conversation with Jolly. Jolly's end of the conversation could not be clearly heard on the body camera. The following are portions of Lieutenant Spiegel's conversation with Jolly (times are approximate):

4:41 am: Lieutenant Spiegel tells Jolly to leave the gun in the basement and come out so Lieutenant Spiegel and Jolly can talk in person. Lieutenant Spiegel advises Jolly that he is not in trouble and he would not be arrested. Lieutenant Spiegel also asks "the gun is not loaded?" Lieutenant Spiegel talks to Jolly about Jolly being upset over his grandfather passing away. Lieutenant Spiegel keeps talking to Jolly about not wanting him to be in the basement with a gun and he asks Jolly multiple times to come out of the house and leave the gun in the basement.

4:46 am: Lieutenant Spiegel is heard asking "why would you want to do that to me and make me live with that for the rest of my life?" Lieutenant Spiegel can also be heard saying "you're not a bad person." Lieutenant Spiegel continues to mention that Jolly has to leave the weapons in the basement. Lieutenant Spiegel asks Jolly how many weapons are in the house and states "just the one shotgun." Lieutenant Spiegel can be heard saying "now you have a rifle." Lieutenant Spiegel continues to speak with Jolly and talks

to Jolly about Jolly going through a rough time. During this time frame, Lieutenant Spiegel also tells Jolly that there is no reason to arrest him and he didn't do anything wrong.

4:59 am: Lieutenant Spiegel can be heard saying "you're cutting the trigger lock off?" Lieutenant Spiegel asks Jolly if he has ammunition for the gun and states "Michael, I wish you'd think about this."

5:00 am: Lieutenant Spiegel can be heard saying "Michael don't load that gun!" and "you got it off, you got the trigger lock off."

5:01 am: Lieutenant Spiegel can be heard saying "I'm not going to do that, that's not going to happen, this is not going to happen tonight." Lieutenant Spiegel can also be heard telling Jolly that 95% of the time there is no insurance money that comes of this. Lieutenant Spiegel asks Jolly if the trigger guard is off and you can hear Lieutenant Spiegel say "you took it off both."

5:07 am: Lieutenant Spiegel can be heard asking Jolly "do you really want your kids growing up without a dad?" Lieutenant Spiegel tells Jolly to walk up the stairs and come out the back door with his hands up so they can be seen and he asks Jolly not to bring any weapons.

5:12 am: Lieutenant Spiegel can be heard saying "you're going to be up soon" and he tells Jolly to leave the weapons downstairs.

5:13 am: Lieutenant Spiegel can be heard saying "you just loaded the gun, which one? The rifle" and "you don't want to do that to us." Lieutenant Spiegel advises Jolly not to come out of the house with a weapon.

5:31 am: Lieutenant Spiegel can be heard saying "I don't think that's a good idea, you need to leave those guns downstairs. You can't come out the back door like that."

5:35 am: Lieutenant Spiegel can be heard saying "You have to leave them downstairs." Lieutenant Spiegel can then be heard saying "You're coming up right now, Michael don't do that, are you still downstairs? Leave both weapons down there and come upstairs. You're going to leave both weapons downstairs and come out the back door. You have to make sure that you keep your hands up in the air so we can make sure you have no weapons in your hands. Where are both guns right now? Can you put them down for me? You can. You just said you could. You have to leave them in the basement, you can't come out with them. I know you want to, but you can't. You have to leave them downstairs."

At that point, Lieutenant Spiegel advises officers on police radio that he lost connection with Jolly and Jolly said he was coming out with both weapons.

Officer Riska and Officer Colburn's statements concerning the events of November 14, 2019 were detailed in the Brief Summary section of this opinion. However, Officer Riska was also equipped with a body camera on the night of the incident. The following are the relevant events that were captured by Officer Riska's body camera (the time depicted is the time elapsed on the body camera and it is approximate. Additionally, because of Officer Riska's proximity to Officer Colburn, Officer Colburn's voice is likewise depicted on parts of the body camera):

11 minutes 15 seconds: Officer Riska: "He's peeking out, be careful."

11 minutes 17 seconds: Officer Colburn: "Show me your hands."

11 minutes 20 seconds: Officer Colburn: "Show me your hands." Officer Riska can also be observed raising the less lethal launcher and a backyard light behind 975 Clover Street lights up the backyard area

11 minutes 23 seconds: Officer Riska: "Put your hands above your head."

11 minutes 25 seconds: Officer Colburn: "Put your hands above your head."

11 minutes 26 seconds: Officer Riska: "Drop it."

11 minutes 29 seconds: Officer Riska: "He's got a gun."

11 minutes 34 seconds: Officer Colburn: "549. He's got a gun."

11 minutes 37 seconds: Officer Riska: "Put your hands above your head. Drop the weapon."

11 minutes 40 seconds: Officer Riska: "Drop it."

11 minutes 42 seconds: Officer Riska: "Drop the weapon."

11 minutes 46 seconds: Officer Riska can be observed switching the less lethal launcher for his duty pistol and he points the duty pistol straight out.

11 minutes 47 seconds: Officer Riska: "Drop the weapon."

11 minutes 50 seconds: Officer Riska: "Drop it now."

11 minutes 52 seconds: Officer Riska: "drop" followed by four gunshots.

11 minutes 55 seconds: Officer Colburn: "It's pointed at us."

11 minutes 56 seconds: Officer Riska: "Drop the weapon."

12 minutes 00 seconds: There is a sounds of a single gunshot

12 minutes 02 seconds: Officer Riska: "Drop the gun." Jolly can also be observed standing on the driver's side of the Ford truck behind the left front wheel well and the windshield.

12 minutes 04 seconds: Officer Riska: "Drop it."

12 minutes 05 seconds: There is a sounds of a single gunshot.

12 minutes 06 seconds: Officer Riska is seen lowering his gun

12 minutes 07 seconds: Officer Riska: "Drop the gun."

12 minutes 09 seconds: There is a sound of a single gunshot and Officer Riska is seen flinching and moving behind the corner of the house

12 minutes 11 seconds: Officer Riska has his gun extended out in front of him and Jolly is still standing at the Ford truck facing the officers. Officer Riska yells "Drop it now."

12 minutes 14 seconds: There is a sounds of approximately nine gunshots. Jolly can no longer be seen in view

12 minutes 21 seconds: Officer Riska: "Drop the gun."

12 minutes 28 seconds: Officer Riska: "103 shots fired. He's on the ground now. We're alright back here. Send EMS."

As previously stated, medical attention was then provided to Jolly by law enforcement until Gold Cross Ambulance Service arrived on scene. Jolly was transported to Theda Care Regional Medical Center – Neenah where he was pronounced deceased by Dr. Douglas Hanneman at 6:15am. An autopsy was conducted on November 15, 2019 by Dr. P. Douglas Kelley, Deputy Chief Medical Examiner with the Milwaukee County Medical Examiner's Office. Dr. Kelley determined that Michael Jolly's cause of death was one singular gunshot wound to the chest, which the investigation determined came from Officer Riska's firearm.

LEGAL ANALYSIS

When determining whether an officer was justified to use force, courts analyze the issue by conducting the legal analysis set forth in the area of excessive force claims. When there is a claim that an officer has used excessive force, deadly or not, in the course of an arrest, investigatory stop, or other seizure of a citizen, it is analyzed under the Fourth Amendment and its reasonableness standard. Graham v. Connor, 490 U.S. 386, 395, 109 S.Ct. 1865, 1871 (1989). Determining whether the force used to effect a particular seizure is reasonable under the Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake. Id. at 396, 109 S.Ct. at 1871 (quotations omitted).

Therefore, a proper analysis requires careful attention to the facts and circumstances of each particular case, including: (1) the severity of the crime at issue, (2) whether the suspect posed an immediate threat to the safety of officers or others, and (3) whether the suspect actively resisted arrest or attempted to evade arrest by flight. Id. at 396, 109 S.Ct. at 1872 (citations omitted). The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. Id. Additionally, the calculus of reasonableness must embody an allowance for the fact that police officers are often forced to make split second decisions and judgments about the amount of force necessary in circumstances that are tense, uncertain and rapidly evolving. Id. at 396-397, 109 S.Ct. at 1872. Given the totality of circumstances present in this case, the use of deadly force by Officer Riska and Officer Colburn was reasonable and justified.

First, in terms of the severity of the crime at issue, while initially law enforcement was not dispatched to the residence for a crime, Jolly's actions upon exiting the residence were dangerous. Initially law enforcement was dispatched to the residence for a report of a suicidal, intoxicated subject with a gun. Law enforcement attempted to negotiate with Jolly and encourage him to exit the home without any weapons. Lieutenant Spiegel even told Jolly that he didn't do anything wrong, and there was no reason to arrest him. However, Jolly escalated the situation by not only telling Lieutenant Spiegel that he had cut the trigger locks off the guns and he was coming out of the residence with them, but also by actually coming out of the residence with a gun and pointing it at law enforcement. Additionally, Jolly was extremely intoxicated on the night of this incident, impairing his judgment even further. This behavior created a dangerous and threatening situation. Further, Jolly's actions were criminal in that they violated Wisconsin Statute Section 941.20(bm), Going Armed with a Firearm while Intoxicated and Felony Recklessly Endangering Safety in violation of Wis. Stat. Sect. 941.30(2).

Additionally, it is clear from all of the evidence obtained during the course of the investigation, that Jolly posed an immediate threat to the safety of officers. Jolly was repeatedly told by Officers Riska and Colburn to “drop the gun.” Jolly was also repeatedly told to show his hands and to put his hands above his head. Jolly did not respond to law enforcements commands. Rather, he shook his head no, ignored all of law enforcement’s commands, continued to stare at Officers Colburn and Riska, and continued to point a firearm at officers. Jolly had no intention of terminating the threat he posed to law enforcement that morning. A threat he created by telling law enforcement he was coming out of the home with a weapon. This conclusion is supported by the fact that Officer Riska fired shots prior to the fatal gunshot, and it did not deter Jolly from continuing to point his firearm at officers. As depicted by the timing of Officer Riska’s body camera, the entire incident from the time Jolly exited the home to the time the fatal shot was fired was approximately one minute. Therefore, both Officer Riska and Officer Colburn had very limited time to make a decision on whether to use deadly force. As previously stated, case law makes it clear that the calculus of reasonableness must embody an allowance for the fact that officers are often forced to make split second decisions and judgements about the amount of force necessary in circumstances that are tense, uncertain and rapidly evolving. Additionally, 20/20 hindsight is not allowed. Given the circumstances involved, Officers Riska and Colburn used the force necessary to terminate the threat they reasonably believed Jolly posed to the officers on scene.

Finally, while Jolly did not attempt to flee the scene, his words and actions clearly indicate that he would not have terminated the threat he posed without law enforcement intervention. Jolly was suicidal. During negotiations with Lieutenant Spiegel you could hear Lieutenant Spiegel say “why would you want to do that to me and make me live with that for the rest of my life?” Additionally, you could hear Lieutenant Spiegel tell Jolly that 95% of the time there is no insurance money that comes of this. It is clear from these statements that Jolly wanted to commit suicide through law enforcement, and while the investigation determined that Jolly’s weapon was not loaded, law enforcement did not know that. In fact, Jolly had informed Lieutenant Spiegel that he had loaded the firearms. When you consider that fact, along with the fact that Jolly shook his head no and refused to follow law enforcement commands to drop his weapon, it is clear that physical resistance was not necessary in this case. Jolly’s actions demonstrated his intent here. Therefore, given all of the facts, circumstances and evidence, it is clear that Officers Riska and Colburn’s decision to use deadly force was justified.

CONCLUSION

Depression and depleted mental health have devastating effects not only on the person suffering from those conditions, but also on their family, and anyone else who encounters the individual in a meaningful way. November 14, 2019 is a date that law enforcement and Jolly’s family will never be able to forget. This tragic incident clearly shows how individuals impacted by loss and grief can carry that sorrow with them for years, leaving them with a belief that they have no option but to escape and end their pain. This night truly was a tragedy for everyone involved. However, after careful review of all the evidence, the Winnebago County District Attorney’s Office, through Assistant District Attorney Tracy A. Pailer, concludes that Officers Riska and Colburn’s use of deadly force was justified.

