

OFFICE OF THE DISTRICT ATTORNEY
BROWN COUNTY

300 E. WALNUT STREET, P.O. BOX 23600
GREEN BAY, WI 54305-3600
PHONE (920) 448-4190, FAX (920) 448-4189



DAVID L. LASEE
DISTRICT ATTORNEY

DEPUTY DISTRICT ATTORNEYS
Dana J. Johnson
Mary M. Kerrigan-Mares
Wendy W. Lemkuil

VICTIM WITNESS COORDINATOR
Kim Pansier
(920) 448-4194

SPECIAL PROSECUTOR
Jessica R. Petras

ASSISTANT DISTRICT ATTORNEYS
John Luetscher
Amy R. G. Pautzke
Kevin C. Greene
Eric R. Enli
Kari A. Hoffman
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Kimberly A. Hardtke
Caleb J. Saunders
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Jill L. Vendetti
J. Foss Davis
Jonathan J. Gigot
Aaron Linszen

August 10, 2021

Special Agents Tami Sleeman and Brian Messerschmidt
Wisconsin Department of Justice
Division of Criminal Investigation

Acting Chief James Runge
Green Bay Police Department
307 S. Adams Street
Green Bay, WI 54301

RE: Officer Involved Death of Bruce Pofahl
DCI Case No: 21-3369

Dear Special Agents Sleeman and Messerschmidt & Acting Chief Runge:

Please accept this letter as my review and analysis of the May 1, 2021, incident involving the death of Bruce Pofahl, who died after he was shot by officers of the Green Bay Police Department. Based on Wisconsin Law, and upon the request of the Green Bay Police Department, your agency was asked to direct the investigation of Mr. Pofahl's death and you have forwarded the results of that investigation to my office for a review to determine if there was any criminal wrongdoing on the part of the Green Bay Police officers. Based upon my review of the materials provided by the State of Wisconsin Department of Justice-Division of Criminal Investigation (DCI), I find no evidence to suggest criminal conduct on the part of any Green Bay Police officers, as the facts and circumstances of the incident created a situation where the involved officers were privileged to utilize deadly force against Mr. Pofahl. Therefore, there is no basis to issue criminal charges against the officers related to Mr. Pofahl's death.

Materials Reviewed

The Division of Criminal Investigation prepared a thumb drive that included a complete copy of all of their investigative materials. That thumb drive includes the investigative reports of the Division of Criminal Investigation agents, reports and statements from Green Bay Police Department officers, Oneida Police Department officers, CAD notes of radio traffic between law enforcement officers and dispatch, audio and video recordings captured by body cameras worn by GBPD officers, surveillance videos from the Radisson Hotel and the Oneida Casino, scene photographs, videos and diagrams from the Wisconsin State Crime Laboratory and officers, autopsy photos and a preliminary finding for Mr. Pofahl, as well as an extract downloaded from Mr. Pofahl's phone.

Significant portions of this incident were captured on Green Bay Police Department body cameras and audio equipment, as well as the security/surveillance video provided by the Oneida Casino and Radisson Hotel. It appears that most if not all aspects of the incident, as reported by the officers involved, are corroborated either by witness officers, citizen witnesses and audio/video recordings.

Summary of Facts

Shortly before 7:30 p.m. on May 1, 2021, Green Bay Police Officers, along with numerous law enforcement officers from law enforcement agencies throughout Brown County, were dispatched to the Radisson Hotel and Oneida Casino for a report of an "active shooter" present on that scene. The Oneida Casino is located at 2020 Airport Drive in the Village of Ashwaubenon, Brown County, Wisconsin. When officers arrived on scene, it was somewhat chaotic and it was not clear where the shooting suspect was located. A group of officers reported to the Radisson Hotel and the Duck Creek Kitchen and Bar where they observed injured parties, who later were determined to be deceased. Another group of officers arrived and staged near the parking ramp to the Oneida Casino on the east. Various officers from virtually every law enforcement agency in Brown County responded to the scene and set up or joined with other officers at various location throughout the Radisson and Oneida Casino complex.

The Green Bay Police Department Officers who were ultimately involved in the shooting death of Bruce Pofahl responded to the front of the parking garage attached to the Oneida Casino. Those four officers, Sergeant Brian Jordan, Officer Benjamin Snyder, Officer MaKayla Wolfe and Officer Grant Fischer, began to approach the scene tactically and with their weapons drawn. As they made their way through the parking garage, they were listening to police radios, were aware that there was an active shooter and had reason to believe that the suspect may have been and may still be at the Duck Creek Kitchen inside the Radisson and they were planning to cut through the casino to make their way toward the restaurant. Officers were aware of a basic description of the suspect and were aware that there were potentially multiple casualties.

As Sgt. Jordan and Officers Snyder, Wolfe and Fischer began entry into the casino, they heard an additional gunshot that was fired in close proximity to their location and they changed directions and began to move toward the back of the parking lot toward the direction of the recently fired gunshot(s). Officers Snyder, Wolfe and Jordan were out in front, while Officer Fischer was tasked with ensuring that officers were protected from behind. As the officers made their way to the north, along the west side of the parking ramp, they were able to observe the person who had just been shot, lying in the parking lot with an apparent injury, and with blood all around him. Sgt. Jordan called out to other people who were in the area, asking them to tell him the location of the shooter. The people pointed toward the northwest corner of the parking ramp. As officers reached the northwest corner of the ramp and looked around the corner, they were able to observe Pofahl, who obviously matched the description they had been provided. He was standing in close proximity to the officers in a grassy area near two electric transformers to the north of the parking garage.

Very shortly after the officers observed Pofahl, they saw that he possessed a handgun, and he pointed the gun at them. Officers believed that Pofahl was the individual who was the “active shooter” who had just shot and injured another person in the parking lot, after shooting other people inside the restaurant. They believed that he continued to pose a threat to others, and to themselves, and therefore, after seeing Pofahl raise his gun, Officer Snyder, Sgt. Jordan and Officer Wolfe all fired their weapons at Pofahl.

It appears from video footage and from statements, that Officer Snyder was the first to fire his weapon, but that all three officers attempted to fire their weapons at approximately the same time. Initially, when Sgt. Jordan attempted to discharge his rifle, it did not fire. He performed a malfunction check while observing Pofahl. Officer Snyder discharged his rifle several times, while Sgt. Jordan was checking his rifle. Officer Wolfe indicated that she discharged her rifle 2-3 times. Sgt. Jordan had observed that the safety selector on his rifle was set to safe. He moved the selector to fire and observed that while shots had already been fired, he believed Pofahl still had a line of sight to innocent bystanders and still presented a threat to them. When he observed Pofahl come out from behind one of the transformers, he pointed his rifle at Pofahl, he continued to fire at Pofahl even after he had fallen to the ground, until he was sure that Pofahl no longer presented a threat. Sgt. Jordan or Officer Snyder then yelled, “hold, hold, hold,” to indicate that officers could then cease firing.

Shortly after officers ceased firing, they checked themselves to ensure they were uninjured and then Officer Snyder began giving commands to Pofahl as other officers on scene, both from the Green Bay Police Department and the Oneida Police Department, approached Pofahl to secure him in handcuffs and to ensure the scene was safe. Officers did place Pofahl in handcuffs and they secured the handgun that Pofahl had in his possession. Once Pofahl was secured, officers began to perform lifesaving measures. Those attempts were unsuccessful, and Pofahl was later pronounced dead at the scene as a result of gunshot wounds to his head and torso.

As indicated above, each officer who discharged their weapons at Pofahl, Sgt. Jordan, Officer Snyder and Officer Wolfe, provided a scene walkthrough and agreed to an extensive interview with DCI investigators. The statements of the officers are substantially consistent with each other, and consistent with the information provided by other officers on the scene, and consistent with audio and video footage obtained from body cameras and Oneida Casino surveillance footage. The body camera footage does not provide a fully clear view of the initial encounter between Pofahl and the officers, but the footage is clear enough to confirm officers’ accounts of what took place and to provide the necessary context. Surveillance video from the casino is clear enough to show that Pofahl had just shot an individual in the parking lot, in very close proximity to the encounter with law enforcement, less than a minute before officers engaged him. Surveillance footage likewise shows that Pofahl raised his gun, pointed it at officers, immediately before he was shot.

Subsequent investigation conducted by the Division of Criminal Investigation, as well as other law enforcement agencies, which included a review of the scene, surveillance footage, as well as numerous witness statements confirms that Pofahl had been employed previously at the Duck Creek Kitchen and Bar. Pofahl’s employment was terminated in early 2021 based on performance and other concerns related to his conduct toward employees at that restaurant. Pofahl had engaged in behavior following the termination of his employment that was consistent with stalking or harassing former co-workers at the Duck Creek Kitchen and Bar. Pofahl returned to the Duck Creek Kitchen and Bar at the Radisson Hotel/Oneida Casino where he shot and killed two employees at the restaurant, in front of numerous customers, shortly after 7:00 p.m. on May 1, 2021, creating the active shooter situation resulting in the police response. After exiting the building and walking through the parking lot to the north of the Casino, Pofahl was confronted by another former co-worker whom he shot in the head, and significantly injured, immediately before Pofahl was located by police and killed.

Legal Analysis

The purpose of my review, and the legal analysis involved in this decision is limited to determining whether there are any facts or evidence that would support a conclusion that the Green Bay Police Department officers involved in this incident engaged in any criminal conduct which caused the death of Mr. Pofahl. Based on my review of the materials provided, I find no evidence that suggests any criminal wrongdoing on the part of the officers involved.

There is no question that Officers Snyder and Wolfe and Sgt. Jordan in fact intended to utilize deadly force when they shot and killed Bruce Pofahl on May 1, 2021. However, the officers' use of force in this instance was justified and permitted by both the privilege of self-defense and defense of others outlined in §939.48(1), Wis. Stats., and the public officer privilege outlined in §939.45, Wis. Stats. Each of these privileges will be addressed separately.

I. Self Defense and Defense of Others

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 is necessary to prevent imminent death or great bodily harm to himself or another, pursuant to Wis. Stat. §939.48(4); and Wisconsin Jury Instructions-Criminal 830.

Wis. Stats. § 939.48(1) describes the privilege of self-defense:

A person is privileged to threaten or intentionally use force against another for the purpose of preventing or terminating what the person reasonably believes to be an unlawful interference with his or her person by such other person. The actor may intentionally use only such force or threat thereof as the actor reasonably believes is necessary to prevent or terminate the interference. The actor may not intentionally use force which is intended or likely to cause death or great bodily harm unless the actor reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself.

A person is furthermore privileged to use force to defend others under the same conditions and by the same means as they would use to defend themselves, assuming there is a reasonable belief that the other person or persons would be privileged to act in self-defense. See Wis. Stat. §939.48(4).

There are essentially two components to analyze whether Officers Snyder and Wolfe and Sgt. Jordan engaged in actions on May 1, 2021, that were legally permissible as self-defense or defense of others, both of which involve subjective and objective elements. First, the officers must have "reasonably believed that he...was facing a threat of 'imminent death or great bodily harm.'" *State v. Jackson*, 2014 WI 4, ¶ 59, 352 Wis. 2d 249, 841 N.W.2d 791 (quoting Wis. Stat. § 939.48(1); Wis. JI—Criminal 805). Second, officers must have "reasonably believed that the amount of force used was 'necessary to prevent' the threat." *Id.* In an instance like this case where Officers Snyder and Wolfe, and Sgt. Jordan used force likely to cause death or great bodily harm, they can only use that force if they reasonably believed the force used "was necessary to prevent imminent death or great bodily harm" to themselves or others. Wis. JI—Criminal 805.

The evidence in this case is clear that Sgt. Jordan and Officers Snyder and Wolfe appropriately exercised their privilege to defend themselves and others by use of deadly force. The first inquiry, whether they reasonably believed that there was an imminent threat of death or great bodily harm, is clearly satisfied. These officers bravely responded to an active shooter situation, where they had received information that Mr. Pofahl and shot and potentially killed multiple people inside of one of the restaurants located at the Radisson Hotel and Oneida Casino. Very shortly after arriving on scene,

the officers involved could clearly hear another gunshot and ran toward the location where the gunshot was heard. The officers then observed the victim of Mr. Pofahl's most recent gunshot lying on the ground, bleeding, in the parking lot, very near where Pofahl was located. The officers also observed numerous innocent bystanders in the parking lot, taking cover and directing them toward Pofahl. Officers then engaged Pofahl and saw that he still had a handgun, which he subsequently pointed at them immediately prior to officers discharging their weapons.

The officers involved uniformly stated their subjective belief that Pofahl posed an imminent risk of death or great bodily harm to them and to the many bystanders present on scene. Their subjective belief is confirmed by the audio/video recordings from the body cameras, as well as the surveillance video, as well as subsequent investigation confirming that Pofahl had just shot and killed two individuals inside the restaurant and shot and wounded a third person immediately prior to the officers' confrontation with him. In light of Pofahl's actions that day, the officers' subjective beliefs were likewise objectively reasonable.

Furthermore, the officers' belief that deadly force was the reasonable amount of force necessary to prevent the threat is equally supported. Pofahl had shot and killed two people shortly before officers arrived and had just discharged his weapon at a third person immediately after the officers arrived on scene, but before they were able to locate him. Had officers not intervened, it's certainly likely that Pofahl would have continued to pose an imminent threat of death or great bodily harm to others. Similarly, Pofahl's actions in pointing his gun at the officers also created a reasonable belief that if officers did not use deadly force, their own lives would be at risk.

II. Public Officer Privilege

Additionally, §§939.45(3) and (4) also provide a legal defense for a law enforcement officer who is acting in good faith and in an apparently authorized and reasonable fulfillment of the duties of a public officer, or when the conduct is a reasonable accomplishment of a lawful arrest. Again, the reasonableness of the amount of force used to effectuate an arrest will be based on the facts and circumstances as they presented themselves to Sgt. Jordan and Officers Snyder and Wolfe, including the consideration of the risk that Bruce Pofahl posed to themselves and to many innocent bystanders on the evening of May 1, 2021.

This "public officer" privilege is available when one acts in accord with his duties as a public officer. The privilege has two elements. The first is that the actor acted in "good faith," meaning that the actor believed "his conduct was an authorized and reasonable fulfillment of his duties" as a police officer. Wis. JI—Criminal 870. Second, the actor's conduct was "an apparently authorized and reasonable fulfillment of the duties of a public office." *Id.* "Apparently authorized" means that a "reasonable person would believe that the defendant had the authority to act in the manner he did" and "reasonable fulfillment" means the actor's conduct was "necessary and proportional in responding to the interests at stake." *Id.* Our Supreme Court has explained the purpose of this privilege thusly:

The statutory privilege defense was intended to protect a public officer who, but for the defense provided in sec. 939.45, would be guilty of a crime if he or she were acting as a private citizen, and whose unlawful conduct has "sufficient value to society so that it ought not subject the actor to criminal liability." The statutory privilege defense is designed to provide a justification for conduct which "must be in accord with the actor's function as a public servant, and must be necessary and proportional to the protection and furtherance of the interests at stake."

State v. Stoehr, 134 Wis. 2d 66, 85–86, 396 N.W.2d 1787 (1986) (citations omitted).

I conclude that the Green Bay Police officers were acting in good faith in this instance. As the officers noted, they believe it was their duty to stop the threat that Pofahl posed to the many innocent

bystanders who had taken cover but were still quite accessible in the area immediately surrounding the scene. The officers were apparently authorized to utilize deadly force in order to stop the threat they observed. In light of the actions Pofahl had taken to shoot and kill multiple people and injure another, the use of deadly force to stop the threat he posed was a necessary and proportional response in reasonable fulfillment of their duties as law enforcement officers.

Conclusion

Police Officers are called upon to respond to the most dangerous and chaotic scenes. They are often asked to risk their lives to protect others. Such a situation is precisely what they were faced with on May 1, 2021, as they responded to a call of an active shooter at the Radisson Hotel and Oneida Casino. As with any response of this nature, officers are asked to make difficult, split-second decisions regarding the use of force necessary to defend themselves and others and to fulfill their sworn duties as law enforcement officers. On May 1, 2021, Sgt. Jordan and Officers Snyder and Wolfe were part of a full team of law enforcement officers, from many different agencies, who arrived on scene to respond to Bruce Pofahl's actions, shooting and killing two people and shooting and injuring another. When they observed Pofahl, just seconds after he had shot and injured someone in close proximity to them, they saw him, weapon in hand, with an easy line of sight to officers and to innocent bystanders. When Pofahl once again raised that weapon, all three officers were aware that he posed an imminent risk of death or great bodily harm to themselves and to other individuals, they made the decision to utilize deadly force in protection of others, and as a reasonable fulfillment of their lawful authority. Deadly force should no doubt be used only in those very limited instances when it is legally justified, however, the circumstances of this particular case present one of the clearest uses of that deadly force. Therefore, Sgt. Jordan and Officers Snyder and Wolfe were justified in utilizing deadly force, and it is not the result of any criminal wrongdoing on the part of the officers involved.

Thank you for your work investigating the matter. Should you have any question or concerns regarding my analysis or conclusions, please contact me at your earliest convenience.

Sincerely,



David L. Lasee
District Attorney

DLL/tcr