



OFFICE OF THE DISTRICT ATTORNEY
Milwaukee County

JOHN T. CHISHOLM • District Attorney

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March 12, 2020

Chief Alfonso Morales
Milwaukee Police Department
749 W. State St.
Milwaukee, WI 53233

Dear Chief Morales:

I reviewed the incident involving the use of force by City of Milwaukee Police Officer Andrew Langer from December 15th, 2019 and find the use of force to be legally privileged.

Summary of Facts

On December 15th, 2019, the Milwaukee Area Investigative Team (MAIT) was called out to investigate an officer involved shooting death in the 4800 block of N. 47th St. in the City of Milwaukee pursuant to Wisconsin State Statute 175.47. The request was made by the Milwaukee Police Department (MPD). The deceased was subsequently identified as Kean J. Walker.

The Wauwatosa Police Department was designated as the lead agency for the investigation. Additional agencies participating in the investigation were: Franklin Police, Glendale Police, Greenfield Police, Oak Creek Police, South Milwaukee Police, City of Waukesha Police, West Allis Police, West Milwaukee Police, Wisconsin State Patrol, and the Wisconsin State Crime Lab.

Milwaukee Police Department Officers Andrew Langer (driver) and Robert Guetchidjian (passenger) were working as a two-man car in MPD marked squad #507. Officers Langer and Guetchidjian are assigned to the MPD District 7 Anti-Gang unit and assigned as Squad #7282. On December 15th, 2019 at approximately 8:00pm, PO's Langer and Guetchidjian were stopped on W. Villard Ave. at N. Sherman Blvd. when they observed a silver Acura traveling southbound on N. Sherman Blvd. The Acura was traveling an estimated 60-70 mph when the vehicle disregarded the red traffic control light.

PO Langer stated he attempted to conduct a traffic stop on the Acura due to the reckless driving. PO Langer activated the squad's emergency lights and siren, however the Acura failed to pull over and a pursuit was initiated. The pursuit lasted approximately two minutes and ended after the Acura struck a parked vehicle in the 4600 block of W. Hampton Ave. The Acura then struck

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Brittany C. Grayson
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Ian F. Vance-Curzan
Daniel G. Murphy
Joshua A. Dryak
Angela D. Cunningham
Jennifer Lindeke Tate
Charles D. Kregger
Edward F. O'Brien
John Flynn
Christine M. Quinn
William G. Davidson
Gilbert F. Urfer
Kathryn Ginsberg
Alicia H. Kort
Patrick W. O'Keefe
Kristyn R. Kuzniar
Andrea L. Lendry
Elaine Fehrs
Lara Parker
Samuel Tufford
Thaddeus McGuire
Morgan T. McCreary
Kenneth Olsinski
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a sign and fire hydrant on the northeast corner of N. 47th St. and W. Hampton Ave. The Acura came to rest facing northbound in the 4800 block of N. 47th St.

PO Langer stopped next to the Acura and exited his squad car, believing he and PO Guetchidjian were going to engage in a foot chase with the driver. PO Langer observed Walker running northbound away from the Acura. As Walker was running away, PO Langer saw Walker rotate his right shoulder back and extend his arm toward PO Guetchidjian, who was also giving chase on foot. PO Langer heard five or six shots and observed muzzle flashes from Walker's hand. PO Langer saw PO Guetchidjian chest and shoulders moving back and forth as he fell backward, which made PO Langer believe PO Guetchidjian had been shot and killed.

PO Langer drew his handgun and fired at Walker as he ran in the 4800 block of N. 47th St. PO Langer stated he believed the suspect had just killed his partner and PO Langer knew that because of the pursuit, responding officers were in the area. He did not want the suspect to come upon an officer in the area or on the perimeter, because he believed the suspect would try to kill them.

PO Langer stated he followed the flight path of the suspect, and saw the suspect lying on the ground next to an apartment building (47██ W. Hampton Ave.) PO Langer stated the suspect was still holding a gun. PO Langer turned on his flashlight and told responding officers that the suspect had a gun. PO Langer gave several verbal commands for the suspect to "drop the gun." PO Langer stated he saw the suspect's handgun rise towards him and the suspect's head began to lift off of the ground. PO Langer stated based upon those actions, he had no doubt the suspect was going to shoot and try to kill him. PO Langer fired several times at the suspect at which time the suspect rolled to his left side and cease moving.

PO Guetchidjian stated he was the passenger in a two-man car with PO Langer. PO Guetchidjian stated a silver Acura caught PO Langer's attention and a pursuit was initiated. PO Guetchidjian broadcast the pursuit over the police radio while PO Langer drove. PO Guetchidjian stated near the conclusion of the pursuit the Acura struck several objects and came to a stop on N. 47th St. just north of W. Hampton Ave. PO Langer stopped their squad car behind the Acura and PO Guetchidjian exited the squad anticipating a foot chase. As PO Guetchidjian exited the squad, his body worn camera was knocked off his shoulder mount.

PO Guetchidjian observed a head pop out from the driver's door of the Acura and the suspect run toward the front of the vehicle. PO Guetchidjian began to run toward the suspect in an attempt to take him into custody. As PO Guetchidjian ran by the front of the Acura, he began to hear gunshots and see muzzle flashes. PO Guetchidjian saw the suspect with a black handgun in his right hand firing shots at him. PO Guetchidjian stated he turned sideways to present less of a target to the suspect and began to move laterally to get out of the line of fire. As he moved off of the road onto the grass, he fell to the ground. PO Guetchidjian was able to remove his service

pistol and return fire at the suspect. PO Guetchidjian saw PO Langer and PO Hauser in foot pursuit of the suspect so he stopped firing.

PO Peter Hauser stated he is assigned to the MPD District 7 Anti-Gang unit and assigned as Squad #7286. On 12-15-19, he was a one man squad driving MPD marked squad #549. PO Hauser was patrolling in coordination with PO's Langer and Guetchidjian on W. Villard Ave. when a light colored Acura caught the attention of PO Langer and PO Guetchidjian. PO Hauser stated he was driving behind PO Langer and PO Guetchidjian when they activated the squad's emergency lights and siren and initiated a pursuit.

PO Hauser joined in the pursuit until the Acura hit some objects and came to a stop on the northwest corner of N. 47th St. and W. Hampton Ave. PO Hauser saw PO's Langer and Guetchidjian stop their squad behind the Acura. PO Hauser drove northbound on N. 47th St. around those two vehicles anticipating the occupant(s) of the vehicle were going to run from the car and he would be in position to cut them off. PO Hauser observed the suspect running northbound on the sidewalk on the west side of N. 47th St. PO Hauser saw the suspect had a gun in his right hand and watched as the suspect aimed the gun at PO Guetchidjian and fire several rounds at him.

After the suspect fired, PO Hauser saw PO Guetchidjian fall to the ground. PO Hauser believed PO Guetchidjian had been shot. PO Hauser stated as he was exiting his squad car, he heard what he believed to be his squad car being struck by gunfire. PO Hauser saw the suspect running in a northwest direction from the Acura still carrying a handgun. PO Hauser fired his service weapon at the suspect and then began to chase the suspect on foot. PO Hauser stated he discharged his service weapon one time, causing the suspect to fall to the ground. PO Hauser stated the suspect was lying on the ground but was still holding the firearm. PO Hauser heard PO Langer give the suspect numerous commands to drop the gun. PO Hauser stated the suspect gave no verbal response and no physical indicators that he was surrendering or discarding the handgun. PO Hauser then heard PO Langer fire several more rounds at the suspect.

PO's Langer, Guetchidjian, and Hauser were wearing body cameras during the incident. Additionally, both MPD squad cars were equipped with squad cameras which captured the incident. The squad cameras and body cameras corroborates the officer's statement.

Mr. Walker was in possession of a Smith & Wesson Model SD9VE 9mm handgun. An ATF firearms trace conducted showed the gun was not originally purchased by Walker. The 9mm was purchased in October 2018 in West Allis, WI.

The evidence from this investigation was processed by the Wisconsin State Crime Lab and turned over to the Wauwatosa Police Department.

PO Langer, PO Guetchidjian and PO Hauser provided a formal statement as to their role in this incident.

The Milwaukee County Medical Examiner determined that Mr. Walker's cause of death was multiple gunshot wounds.

Video and Body Camera Analysis

I reviewed video footage from the liquor store adjacent to the scene of the accident and the shooting, private home security footage, squad video footage and the body cameras worn by the officers involved in the incident. The squad video from Officer Langer's car provides indisputable proof that Mr. Walker fired his weapon at close range targeting Officer Guetchidjian, who had not drawn his weapon prior to be fired upon by Walker. This evidence demonstrates a clear intent on Walker's part to inflict death or great bodily harm. The second most probative evidence comes from Officer Langer's body camera which shows Walker, at the end of the brief pursuit, and while on the ground, turning towards Officer Langer with the pistol still in his hand after not complying with the order to drop his weapon.

Legal Analysis

Under Wisconsin law, §938.48 (1) Stats, 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.

This is a two-part test, with subjective and objective components.

- 1) Did the officer have an actual subjective belief that deadly force was necessary to prevent imminent death or great bodily harm to himself or others?
- 2) Was that belief objectively reasonable?

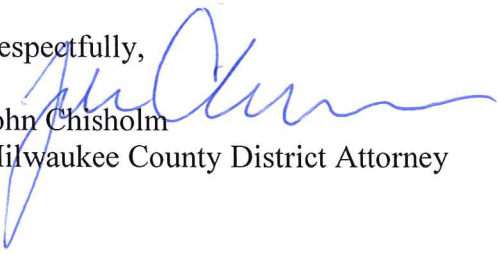
See *State v. Head*, 2002 WI 99, 255 Wis. 2d 194, 648 N.W.2d 413

In addition, Milwaukee Police follow the national standard that trains officers only to use force to stop a threat of death or great bodily harm. Milwaukee Police are trained using the Wisconsin Defensive Arrest and Tactics Manual, which offers guidance on assessing the threat level of a situation and the use of force.

The facts of this case demonstrate that the use of force by Officer Langer met both *State v. Head* criteria. Officer Langer responded to Mr. Walker's use of deadly force with an appropriate level of force in return to stop Walker from causing death or great bodily harm to Officer Langer or the other Milwaukee Police Officers attempting to effectuate a lawful arrest.

Because the use of force by Officer Langer was legally privileged, I am closing the criminal investigation into this incident and leave to your discretion any administrative decisions. All materials pertinent to my investigation are available for inspection.

Respectfully,



John Chisholm
Milwaukee County District Attorney