

December 16, 2020

Michael D. Graveley

912 56th Street

Molinaro Building

Kenosha, WI 53140

Re: Independent Evaluation of Jacob Blake Shooting

Dear Mr. Graveley,

I am writing to provide my report in the above referenced matter. I was contacted by the Attorney General of Wisconsin, Josh Kaul, in early September of 2020 about providing expert assistance to the State of Wisconsin about the Jacob Blake shooting. Subsequent to my discussions with the Attorney General's Office, you and I spoke on September 20, 2020, about my specific role in possibly evaluating this case. I asked you if you had already reached a decision in this case. You said that you had not. You also told me that I would be free to reach whatever conclusion I might come to without any influence from you or your office.

The Division of Criminal Investigation (DCI) would make available to me any information I might need to do my work. We met for the first time at a joint process conference in Kenosha, Wisconsin on September 21, 2020 with the Wisconsin Attorney General.

I was asked to evaluate the Jacob Blake case from the perspective of a law enforcement executive in the State of Wisconsin and someone that has been involved in police reform at the national level, where use of force is one of the driving issues.

Based on those assurances, I reviewed written materials provided by DCI, which totaled over a thousand pages. I reviewed reports from several agencies involved in the investigation. This included medical information, squad video, social media information, audio recordings of radio traffic, scene evidence and photographs, statements and photos of primary responding officers, witness interviews, recordings of 911 calls, phone records, media reports, video, and witness affidavits.

I reviewed a number of Kenosha Police Department Policy and Procedures including 1.3 Use of Force, 53.4 Firearms Discharge, and other use of force investigations. I also reviewed Wisconsin Department of Justice Law Enforcement Training Guide for Law Enforcement Officers the DAAT (Defense and Arrest Tactics) Handbook.

I rely on my 37 years working in the law enforcement field with close to 30 years with the City of Madison Wisconsin Police Department and 10 years as Chief of Police. During my tenure as a police officer, I was involved in use of force incidents including deadly force situations (though I never discharged a firearm). I have supervised and managed use of force investigations. As an Assistant Chief and Chief of Police, I have had to make recommendations and render decisions on use of force up to and including deadly force. During my tenure at the Madison Police Department, I estimate being directly involved in the investigation of 15-20 officer-involved shootings. As Chief of Police of the State's 2nd largest police agency in the State of Wisconsin, we were requested to assist with a number of deadly force investigations with smaller agencies. The Madison Police Department is one of three agencies in the State of Wisconsin that had their own preservice and in-service training academies. This necessitated MPD to develop and train officers in use of force policy and procedure, and at times, served as the prototype for the entire state.

My state and national approach to issues surrounding use of force is to approach it from a holistic manner, understanding that African Americans are disproportionately impacted by deadly force encounters. I bring the following experience to these issues:

- I was an instructor for the University of Massachusetts - Lowell Police Leadership from 1997-2004.

- I have also been a consultant for the Police Foundation in late 1990s, Blueprint Internal Inspections and Investigations, National Consultant, State of Wisconsin Commission Reducing Racial Disparities in Criminal Justice System 2007-2008.
- I was invited to the 2011 National Executive Session on Policing and Public Safety, Harvard Business school, Executive National Consultant for "Blue Courage" 2012, Executive Consultant National Consultant at Fair and Impartial Policing 2012-present, Deputy Monitor of Cleveland, Ohio for consent decree 2015, Consultant Procedural Justice Law Enforcement Agencies, The Center for Public Safety and Justice the University of Illinois 2015, United States Department of Justice Implementing 21st Century recommendations nationwide.
- As a presidential appointee in the Obama Administration, I served as head of Police Practices and Accountability 2016, Implementation of Collaborative Reform in several cities including Milwaukee, San Francisco, Memphis, etc., 2010, Office of Community-Oriented Policing, Advisor to Police Executive Research on implementing an integrated approach to communicating tactics and use of force (ICAT) 2016. I have attached my resume for additional relevant information regarding my background.

Incident Summary

On August 23, 2020 at 5:10 p.m. (complainant) LB called Kenosha Police Department (KPD) requesting assistance in getting her keys back for her rental car from Jacob Blake. She made a number of comments about Blake and the kids. She informed the 911 operator that Jacob Blake was not supposed to be at her location and provided dispatch with a plate number of the vehicle that Blake was leaving in. The police dispatcher contacted Officers Rusten T. Sheskey and Brittany Meronek, who were assigned to a two-officer squad on this date, and Officer Arenas as backup to respond. The officers were dispatched to 2805 40th Street for family trouble and were provided the following information prior to arrival:

- Jacob Blake was not supposed to be at this address.

- Blake had taken the complainant's car keys and was refusing to give them back.
- Blake had a felony warrant for his arrest.
- Blake was trying to leave.
- Children were involved. P.O. Sheskey was able to obtain Blake's physical description.

P.O. Sheskey and P.O. Meronek arrived at approximately 5:13 p.m., and P.O. Arenas arrived seconds later. Upon arrival, P.O. Sheskey walked directly towards the subject he believed was Jacob Blake, and as he approached him, Sheskey could hear LB screaming "It's him, it's him, he has my keys! It's my car! It's registered to me!" At that time, P.O. Sheskey also recalled Blake saying, "I'm taking the kid, and I am taking the car." P.O. Sheskey contacted Blake saying, "Let's talk about this." Blake proceeded to put the young child in the back seat of the vehicle and turned to face P.O. Sheskey. As P.O. Sheskey and Blake were standing by the rear passenger door of the grey SUV, P.O. Sheskey observed Blake glancing north and south looking for an escape route to flee. At this time, P.O. Sheskey was confident that it was Blake that was standing in front of him. P.O. Sheskey thought to himself, "Blake is going to run at any moment." So he grabbed his arm to prevent escape and to place him under arrest for his warrants. P.O. Sheskey grabbed Blake's right wrist and moved it behind Blake's back. Blake stated, "Don't do this bro, don't do this!" P.O. Sheskey attempted to place handcuffs on Blake, but he tensed up, and P.O. Sheskey pushed him against the vehicle. Blake then yanked his arm away and started to actively resist. P.O. Sheskey noticed that Blake reached into his "waistline" area with his left hand. Based on P.O. Sheskey's experience, he believed that Blake was trying to reach for a weapon. So P.O. Sheskey yelled "hands, hands, hands" to alert officers. P.O. Meronek also reported observing Blake going for his "waistband" area. P.O. Sheskey started to feel that Blake was much stronger than he was and realized that he could not control Blake's hands.

All three officers, at the back passenger side of the car, as they tried to control Blake's arm, were having a difficult time controlling him. P.O. Arenas reported seeing the knife in Blake's left hand near his groin area. He described the knife as

black in color, six inches long in total, with a razor blade shape, approximately two or three inches long.

At this point, P.O. Sheskey decided to disengage from Blake and unholster his taser to deploy it. P.O. Sheskey tased Blake approximately "five feet" away. P.O. Sheskey observed that the taser probes hit Blake in the chest area having minimal effect. So P.O. Sheskey decided to re-engage physically with Blake. P.O. Sheskey also noticed Blake pulled the wires from the taser probes, and he stated in his report that "he had never seen anyone do that before." Blake continued to actively resist all three officers. Throughout the incident, the officers were shouting verbal commands, "stop resisting" and "drop the knife!"

P.O. Meronek realized that Blake was taller and clearly stronger than she was. She became exhausted from struggling with Blake in the "summer afternoon heat." She decided to request dispatch to send more squads to assist. Officers were now struggling with Blake at the rear of the grey SUV. P.O. Sheskey continued to be the primary officer engaged with Blake. In an attempt to control Blake, he used a number of counter measures. P.O. Sheskey and Blake, at one point, had each other in headlocks. P.O. Sheskey tried to gain control of Blake by taking him to the ground, a technique known as "decentralizing" (this technique is used to gain leverage and control and reduce a person's mobility). He delivered (2) blows to Blake's stomach as a diffusing technique (this is intended to interrupt a mental and physical pattern of resistive behavior to gain control). He also used his taser in "drive stun" mode by deploying the front end of the taser directly to Blake's neck/back area. None of these force options were successful at stopping Blake from actively resisting.

Eventually, Blake broke free again, and the struggle moved back to the rear passenger side of the SUV, where Blake was tased again by P.O. Arenas. The taser probes made contact with Blake's upper torso, but, again, it did not have "any effect." After this taser deployment, P.O. Sheskey and Arenas again tried to physically control Blake. Blake was able to struggle and get free from the two officers. P.O. Meronek yelled out, "Knife! Knife! He has a knife!" All three officers stepped back towards the sidewalk to create distance from themselves and Blake. They all begin to shout, "drop the knife," and "show your hands." Blake was walking towards the front of the vehicle at a normal but determined

pace, according to P.O. Sheskey. As Blake turned left in front of the vehicle, Sheskey could see the knife in Blake's left hand.

P.O. Sheskey reported thinking the following to himself:

Blake "had not threatened anyone with the knife, which was the reason he did not shoot him at this time. I do not know what he is going to do. Is he going to hurt the kid? Is he going to take off in the vehicle? Will we have to pursue the vehicle with a child inside of the car? Is he going to hold the child hostage? Are his actions going to put others at risk?" P.O. Sheskey was aware of "at least one child being inside of the vehicle at this time, and he did not know if it was Blake's child."

He then "decided that he could not let Blake get back into the car because of all the factors 'cited above'." P.O. Sheskey and P.O. Arenas closed distance between themselves and Blake as he reached the driver's side door. It was clear to P.O. Sheskey that even allowing Blake, "armed with a knife," to get into the vehicle would be "dangerous for the public and the child." P.O. Sheskey concluded that the distance of two feet did not allow the reaction time for him to take evasive action. This, therefore, placed him in jeopardy of death or great bodily harm. P.O. Sheskey grabbed Blake's shirt as Blake was reaching in the car. According to P.O. Sheskey, "Blake turned his torso from right to left towards him (P.O. Sheskey)." P.O. Sheskey could see that the knife was now in Blake's right hand under Blake's chest and coming towards him under Blake's left arm. Blake's left shoulder came up slightly while his right shoulder dipped. P.O. Sheskey indicated that the knife was approximately two feet away, and based on his training, he was "under 21-feet" distance, which meant he would not have enough reaction time to take evasive action. P.O. Sheskey stated "Blake, for the first time, showed intent to harm by driving the knife toward his (P.O. Sheskey's) torso." P.O. Arenas also said "at that moment, he feared the armed subject (Blake) was about to stab P.O. Sheskey." He (P.O. Arenas) would have tried to stop Blake's advances with the knife, but "he did not have a clear shot due to positioning of the door." P.O. Sheskey "feared that Blake was going to stab him, and he could not retreat because the child could be harmed, taken hostage, or abducted by Blake." "For these reasons, he discharged his firearm towards Jacob Blake." He stated that he later determined that he shot (7) shots and did not stop until Blake dropped the

knife. When P.O. Sheskey saw the knife drop, he and the other officers stated, they immediately provided first responder medical aid to Blake.

Pertinent Facts:

Officers Arenas, Meronek, and Sheskey were on duty in uniform and were readily identifiable at the time of the incident. Officers Sheskey, Arenas, and Meronek were within the scope of their employment as police officers and were responding to a report of "family trouble." They were also informed that Jacob Blake had a felony warrant. When the officers arrived, P.O. Meronek contacted the complainant, and P.O. Sheskey contacted Blake (P.O. Sheskey got a physical description of Blake prior to arrival). Prior to discharging his firearm, P.O. Sheskey and other officers gave repeated verbal commands to Blake to "drop the knife." P.O. Sheskey decided, prior to Blake getting to the driver's door, that he was not going to let him get into the vehicle. P.O. Sheskey thought to himself "it is dangerous for the public and the child in the car to let Blake go." As Blake was leaning into the vehicle, P.O. Sheskey grabbed his (Blake's) shirt to prevent him from getting into the vehicle. At that time, P.O. Sheskey believes that Blake was moving the knife towards him.

P.O. Sheskey thought he could not retreat because the child was in the car and could be harmed.

P.O. Sheskey intentionally fired 7 rounds from his duty weapon, striking Blake and causing serious injury.

P.O. Sheskey reported that when he discharged his firearm, he shot in a down and forward direction because he did not want to put the child seated in the back seat or civilians in danger.

P.O. Sheskey's use of force stopped Blake's threat to him and the public.

P.O. Sheskey provided medical first aid to Blake.

**The Standard of Use of Force: The officers action objectively reasonable
(Weapon, Opportunity, Intent)**

This standard is set forth in the United States Supreme Court's decision in *Graham v. Connor*, 490 U.S. 386 (1989). As a result of this Supreme Court decision, officers must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight and that the calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving about the amount of force that is necessary in a particular situation.

Wisconsin State Statutes also address use of force and issues of reasonableness as you can see below.

Section 939.48 of the Wisconsin Statutes, "Self-defense and defense of others," sets forth the legal standard for justifiable use of deadly force in self-defense, as follows:

...The actor may intentionally use only such force or threat thereof as he reasonably believes is necessary to prevent or terminate the (attack). He may not intentionally use force which is intended or likely to cause death or great bodily harm unless he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself.

All officers in the State of Wisconsin must meet certain training standards related to use of force. These standards are articulated in "A Training Guide for Law Enforcement Officers" that provides instruction for officers on what are the "defensive and arrest tactics" (DAAT) for the State of Wisconsin. These are established by the Wisconsin Department of Justice Law Enforcement Standards Board. Inherent in the training guide are constitutional principles and statutory expectations that all State of Wisconsin Police Officers should adhere to when exercising their duties with use of force.

KPD policy and procedure also has a section providing guidance on *Graham v. Connor* use of deadly and non-deadly force. All KPD officers are expected to know policy and procedure analysis and discuss.

POLICY: Kenosha's Police Department's Policy and Procedure, states in part:

The U.S. Supreme Court in *Graham v. Connor* cited factors in determining whether force was "objectively reasonable" including:

The severity of alleged crime at issue.

Whether the suspect poses an imminent threat to the safety of officers and/or others; and

Whether the suspect is actively resisting or attempting to evade arrest by flight.

Responding officers and others are trained to assess these factors based on the totality of the circumstances at the time of a use of deadly force incident. Totality of the circumstances is a given set of circumstances that the officer is presented with at the time of the incident. It is what an officer reasonably believes to be true at the time of the deadly force incident. A hypothetical example of this would be, a police officer encounters a robbery in progress, and the suspect has a fake toy gun that looks real. The suspect points the gun in the direction of the officer, and the officer gives verbal commands to drop the gun and discharges his weapon. The officer later finds out that the gun was fake. The officer's actions would likely be justified because it would be difficult to determine if the gun were fake or not in a split-second rapidly evolving situation where the officer is reasonably in imminent danger.

The "objectivity reasonable" standard is the same with multiple officers involving a deadly force incident. However, each officer will make their independent assessments in light of the facts and circumstances confronting them. In most cases, the individual officer can assess if he or she is in imminent danger. It is still important to communicate and coordinate with officers on the scene.

Also, officers are allowed to take wanted persons into custody in accordance with Wisconsin State Statute 968.07 arrest by law enforcement. KPD policy and procedure provides officers with the direction on the amount of discretion in

serving this type of warrant. Kenosha's Police Department's Policy and Procedure states, "Serving an Arrest Warrant: The gravity of offense, potential for escape, and for doing further damage should be considered. If a person named in a valid warrant is contacted intentionally or by coincidence there is no discretion regarding service of warrant."

WEAPON: The subject has the means and capacity to cause harm.

In this case, Jacob Blake could inflict harm with a knife he had in his possession. There is no dispute that Blake had a knife during this encounter with Kenosha Police Department (KPD).

Evidence that Jacob Blake had a knife:

1. In the interviews with the DCI investigators, Blake states that he was in possession of a knife during the incident on August 23, 2020. He states that at one point during the struggle, he drops and/or loses the knife and picks it back up. Blake also acknowledges having the knife at the time he is entering the driver's side door of the grey SUV.
2. All three responding officers report seeing Blake in possession of the knife at various times during the incident. P.O. Sheskey and P.O. Arenas observed Blake with the knife at the time he was shot.
3. There are several photos taken at the scene and location where the vehicle was processed for forensic evidence. The photos showed the knife with the blade open on the floorboard of the driver's seat.
4. Cellphone video enhancement shows Blake in possession of a knife in his left hand when walking around the front of the grey SUV.
5. Witness RW has cell phone video with officers giving verbal commands for Blake to, "drop the knife!"
6. A number of witnesses that were at the scene heard officers shouting, "drop the knife" to Blake.

OPPORTUNITY: Surrounding conditions with respect to an officer or citizen in proximity to a subject capable of causing harm.

Officer's and suspect's size, strength, age, and other factors can have an impact on an officer's use of force options. These factors, including proximity to the subject, can have an effect on the level of harm or jeopardy an officer is in. For example, an 80-year-old person in a wheelchair, 20 feet away, threatening an officer with a knife probably provides an officer with different use of force options than a 25-year-old, not in a wheelchair, making the same threat. In this case, Blake's strength and conditioning had an impact on the officer's inability to control him. The officer's close proximity also created some challenges. Sheskey stated that during the earlier part of the struggle, Blake had him in a headlock and he (P.O. Sheskey) feared for his life because Blake had access to his (P.O. Sheskey's) weapon, and Blake had the physical advantage. P.O. Sheskey and other officers used close physical counter measures like strikes to the stomach, physically directing Blake to the ground, empty hand control, etc. While this part of the struggle was taking place, P.O. Meronek and P.O. Arenas were shouting out that they saw Blake with a knife. In my view, Blake's proximity to the officers put him in a position of being capable of causing harm.

Officers were able to create separation while deploying the taser in the "distance" mode at approximately "5 feet." A taser deployment is most effective when the taser probes are 12 inches apart upon making contact with a person's body. If the officer is too close, the probes will not be able to spread out on contact and are less effective at immobilizing the person. In this incident, officers believed that the distance for the taser deployments was in range for an effective deployment. They were surprised that all three deployments seemed to have no effect on Blake. It is important to note that many large police departments keep their taser database. Most departments report an approximately 60-70% deployment success rate.

Officers were also able to create distance from Blake when they drew their firearms. Creating distance from an armed person is consistent with (PERF's) Police Executive Research Forum "Critical Decision-Making Model" and the State of Wisconsin DOJ (DAAT) where you create distance to enhance your options.

The underlying principle is you create distance, you may be able to have more time to possibly dialogue with the armed person and deescalate the situation. Distance and time may also give you more opportunity to take in more information to assess the threat or seek cover. Unfortunately, in this situation, officers did provide verbal commands to “drop the knife” but were never able to establish a dialogue with Blake.

INTENT: An Individual through acts or words shows intent to do bodily harm.

According to P.O. Sheskey, Blake, for the first time, showed intent to harm by driving the knife toward him. P.O. Sheskey believed that Blake had the opportunity because Blake was within “21 feet” (In fact, Blake was within 2 feet of P.O. Sheskey). Although Blake did not say anything to P.O. Sheskey, at this moment, his actions led P.O. Sheskey to believe he had the intent to harm him. P.O. Sheskey’s police training informed him that, at that moment, he did not have enough distance to take evasive actions. Regardless, if Blake drove the knife forward or not, a reasonable officer could view himself as being in imminent danger. P.O. Sheskey was literally holding on to Blake’s shirt, and Blake had a knife in his hand, actively resisting, attempting to get into the vehicle. This circumstance is only compounded with the kids being in the vehicle.

Officers are confronted with similar situations nationwide. *The Washington Post* has maintained a database on officer-involved shootings since 2015. They estimate that approximately 1,000 incidents occur in the United States on an annual basis. Of those 1,000 involving use of deadly force by officers, approximately 170-200 involved knives or edge weapons. FBI Uniform Crime Report did an analysis in 2014 involving 66% of the nation’s 17,000 law enforcement agencies. The focus of the analysis was, officers assaulted on duty on an annual basis. Their analysis revealed that 48,315 assaults occurred resulting in 13,654 injuries requiring medical treatment. Of the officers that were assaulted, 1,950 involved firearms, and 951 involved cutting instruments like a knife or sword.

Deadly Force Decision

The use of deadly force during this incident had three decision points.

1. The officer's decision to unholster the weapon and point it at Blake when all could see the knife. This action by the officers is consistent with the nationwide training for law enforcement to create distance when there is a person threatening with a knife. The purpose of this is to provide more time to react or stop the threat. It is commonly referred to as the "Reactionary gap" or "21 Rule." This topic is also covered in the Wisconsin DOJ Handbook (DAAT).
2. Officer Sheskey had determined that it was dangerous for the public and the child in the car to let Blake go. P.O. Sheskey felt he could not retreat once he made the decision that harm could come to the kids or to the public. I found Officer Sheskey's analysis was reasonable based on the limited information he had at the time. Officer Sheskey did not know the relationship between Blake and the child. I am not sure if it makes much difference. The U.S. Department of Justice reports in 2010 that 200,000 kids are abducted mostly by a family friend or parent. Blake's severe resistance to being taken into custody would lead a reasonable officer to believe that he would engage in a high-speed pursuit.
3. Officer Sheskey also concluded, as he was trying to pull Blake back out of the vehicle, that Blake intended to cause him great bodily harm. Blake's actions by "driving the knife towards P.O. Sheskey" placed P.O. Sheskey in imminent danger and gave him no other choice than to respond with deadly force. This statement takes into account the totality of the circumstances at the time of discharging his weapon. Within the DAAT system, you may use deadly force in response to a suspect's behavior, but

only if no other reasonable option is available. This concept is called preclusion. P.O. Sheskey shot at Blake seven times. Some may ask, why so many times? Again, consistent with WI DOJ DAAT training guide and instruction, officers are trained to continue shooting until they stop the threat. P.O. Sheskey indicates that, "he believes that he fired six shots," as he did not stop firing until Blake dropped the knife.

Jacob Blake's Decision Points in this Incident:

Jacob Blake had several options available to him that would lead to different outcomes. Blake was aware that officers had been called on him, and he was trying to leave before the officers arrived. He also stated LB "called the police on him and was telling all about the sexual assault stuff." This indicates that Blake was aware that there was a pending issue with a sexual assault investigation prior to the officers' arrival. Blake could have decided to ask the officers the status of the investigation when they arrived. Blake could have allowed the officers to pat him down for weapons, or he could have informed the officers that he had a knife. Blake could have complied with P.O. Sheskey's intent to take him into custody.

Blake could have made the decision not to actively resist. By deciding to resist on contact by P.O. Sheskey, Blake obstructed Sheskey's ability to do a proper investigation. If a proper investigation were allowed, a lower level of force may have resolved the situation. Blake should not have picked up the knife the second time. By doing so, he escalated the incident to a deadly force encounter. Blake even admits in an interview that he would "instantly give them (Police) a defense if I am armed with a knife." Blake could have also decided not to enter the vehicle. By doing so, Blake exposed the kids seated in the back of the vehicle to a deadly force situation. Finally, Blake should not have decided to "drive the knife toward" P.O. Sheskey. According to P.O. Sheskey, this action by Blake placed him in imminent danger of "great bodily harm or death" which caused P.O. Sheskey to discharge his firearm.

Officers Reactions During Stressful Events

In examining this incident, I noticed that there was some variation with how the three primary officers recalled the sequence of events. While reviewing the police reports, I found they all had the same basic understanding of what occurred, but there were some clear differences in the precise sequence of events and location of other officers. As someone who has reviewed thousands of police reports and having debriefed officers after critical incidents, I find this is not uncommon.

This phenomenon is probably the result of being involved in a stressful situation and how the body responds to it. In stressful events, officers can have biological and physiological reactions commonly referred to as the “Fight or Flight” response. This affects what officers hear, see, and how they perceive the event occurring. There is an extensive body of research on police-related stressful incidents. Police agencies try to incorporate the stress reaction to critical events to minimize some of the adverse effects. Wisconsin DOJ Training also assists officers in understanding the human reaction to stressful events in their training.

There are three common changes in our perception, cognitive, and physical abilities during stressful events.

Auditory Exclusion: A stress induced temporary loss of hearing occurring under high stress.

Tunnel Vision: A reduction in peripheral vision and intense focusing in on objects, person, or a situation in a stressful situation.

Distortion of Time: A distortion in time and/or the distortion of memory under a critical incident or high-stress situation.

Researchers Solomon and Horn (1986) found that 83% of officers who had been in a police shooting experienced a time distortion, 67% had auditory exclusion,

and 56% had visual disturbance. This research has been replicated a number of times with similar results.

In the case involving Blake, a potential example of tunnel vision was the fact that P.O. Sheskey was physically struggling during most of the encounter, but he never saw the knife until seconds before Blake attempted to enter the vehicle. The other two officers who were not as physically involved with Blake reported seeing the knife earlier. P.O. Sheskey was probably in the position to have seen the knife; however, he may have focused more on trying to control Blake's entire body. P.O. Sheskey also reported not seeing the other officer, P.O. Arenas, during the struggle, but Arenas was clearly involved in the struggle based on officer reports. It is important to note that biological and physiological reactions to stress are something that affect all humans, not limited to police officers. Blake and others directly involved in this incident can also have a stressful reaction to what they could hear, see, and perceive.

Witness Accounts and Perspective

This incident occurred on Sunday, August 23, with a reported temperature of 87 degrees. The location at 2805 40th Street is in a densely populated neighborhood. The officer-involved shooting took place just after 5:00 p.m., and there were a lot of people out and about. Two women who were reportedly connected to the Blake case were involved in a dispute that created a disturbance. This disturbance captured the attention of the witnesses prior to the Blake case. Other witnesses reported focusing in when they saw the officers arrive. There were multiple witnesses to this incident, and a few even provided video of the incident to the investigators. Some of the witnesses were related, directly (relatives) to this incident, and others were neighbors. Investigators were able to get statements from a number of witnesses in close proximity to the incident when it occurred. A number of witnesses actually saw P.O. Sheskey discharge his firearm at Blake. Many of the witnesses could only see portions of the incident because the grey SUV obstructed their view.

Many of the witnesses heard yelling by the officers giving verbal commands to Blake. Some witnesses heard Blake make comments to officers at the beginning of the encounter. Some witnesses reported just hearing gunshots or a “popping sound” as they were inside or lived further away. One of the challenges investigators had was that this event quickly received a great deal of social media and national news attention. They (investigators) needed to get witnesses to give a pristine account of what witnesses saw and heard.

This case, just like most cases that I have experienced, had varying accounts by witnesses on what they believed happened. One reason for this has to do with what I discussed earlier regarding reactions to stress. Witnesses can experience many of the same reactions, such as tunnel vision, auditory exclusion, or memory and time distortions. This can also cause witnesses to give varying or different accounts of the same incident. For instance, if a gun is involved in an incident, a witness may become stressed and get tunnel vision on the gun. This may cause a lot of other details about the event to be missed.

Attentional Bias can have an impact on witness statements by causing him or her to focus on an individual or group. As a national consultant in the area of implicit bias in policing, I have had police officers observe or experience the impact of attentional bias. The research on implicit bias suggests that stereotypes and life experiences impact our visual attention. In other words, whom do we look, listen, and pay attention to first and the longest? As a hypothetical example, a store that you frequent has a history of shoplifting. Your stereotypical view of shoplifters is young African American males. Every time you go to this store, you pay attention to African American males. One day, in a brief conversation with the store attendant, you are surprised to find out that senior citizens are doing the majority of the shoplifting. This example illustrates that with attentional bias, it is not just what you pay attention to, it is what you miss.

Other factors that could produce varying accounts of witness statements are the following: lighting, location, point of view, activities before or during event, time of day, and witness’s relationship to people involved.

Why So Many Shots?

The reaction to a number of officer-involved shootings from family and community members is, why did you have to shoot so many times? The response by law enforcement officials, state and nationally, is that officers are trained to continue shooting until the perceived threat is stopped. Many times, what really is being asked is a two-pronged question, was the shooting objectively reasonable, and were the actions excessive? The first question we have discussed earlier, but the second question is at the heart of, why did you have to shoot so many times? There is research that suggests the number of shots may be based on human capacity limitations on the part of the officers. As explained, officers are trained to continue shooting until the perceived threat is stopped. Specifically, the officer is looking for the subject to stop advancing, drop the weapon, or stop struggling. The officer must use all his senses, what he hears, sees, and physically feels, to perceive the threat has stopped and then translate what he perceives into a physical reaction to stop shooting. The time it takes for an officer to perceive a threat stopped and stop shooting generally ranges from .7 to 1.5 seconds according to experts at Force Science Institute. In the .7 to 1.5 seconds, the officer may shoot 1 or 2 more rounds. The research also indicates that officers stress level, physical state, and experience can impact his processing during the “perception reaction time” cycle.

Probably to a lesser degree, law enforcement transition to semiautomatic handguns may have contributed to the increase in rounds fired in officer-involved shootings. Nationwide, most departments transitioned to semiautomatic guns in the last three decades. One would have to intuitively think that the transition from revolvers to semiautomatic guns has increased the number of rounds in officer-involved encounters. With revolvers, officers round capacity was six shots before they had to reload. Today, most officers are carrying semiautomatic handguns, which far exceed the round capacity of revolvers.

In the Blake case, people want to know, was seven shots necessary to stop the threat? This is a difficult question to answer. First of all, stopping the “perceived” threat generally rests with the officers discharging their firearm, based on the totality of what they see, hear, and physically feel, usually in a split-second stress-induced situation.

Moreover, there is little objective information to evaluate if the shots were excessive. P.O. Sheskey was not wearing a body camera. The shots were fired in a confined space, which was obstructed by the driver’s door on the left and passenger compartment on the right. The officer was pulling on the shirt of Blake and took just over 2.5 seconds to fire seven rounds. The good news is that Blake lived, and medical staff focused their attention on sustaining his life.

The scarcity of objective information limits the forensic and medical evidence to help bring clarity to this incident. In the end, we are left with P.O. Sheskey’s statement that, “he did not stop firing until he saw Blake drop the knife.”

Proportionality Force Continuum

In evaluating use of force, it is important that the issue of proportionality is discussed directly. Proportionality is determining whether the type and amount of force used is proportional to the officer’s perceived threat. Moreover, did the officer apply the correct force option to the set of circumstances he or she is dealing with? First of all, proportionality requires that you assess the type of force used by the officer. As discussed earlier, P.O. Sheskey and other officers used every “Intervention Option” on the use of force continuum. I found that they applied the correct force option to each situation to mitigate threat and stop the active resistance on the part of Blake. Secondly, proportionality requires that the officer applies the correct amount of force. The question here is, was the amount of force excessive or not enough on the part of officers? These two extremes can create unsafe outcomes for all involved. The objective for officers is to fall within an acceptable range for the amount of force. The guidance for the acceptable range is, was the amount of force used objectively reasonable? I found that the amount of force used by P.O. Sheskey was within the acceptable

range. It is important to note that P.O. Sheskey and other officers did dialogue by giving verbal commands. The other purpose of dialogue is to establish a rapport for voluntary compliance. I will acknowledge this is difficult in a rapidly evolving incident like this. However, there may have been an opportunity for P.O. Sheskey, in his initial contact with Blake, to establish a rapport. With that said, given the totality of circumstances, I still feel P.O. Sheskey was within the acceptable range of proportionality.

In a Police Executive Research Forum 2016 publication "Guiding Principles on Use of Force" they discuss another "Test" for proportionality. "Will my actions be viewed as appropriate by the general public?" This case ignited public protest and was a catalyst for national discourse on issues of race and social justice in America. It added focus to the widening gap between how police believe they should use force and public expectations. Adding to the complexity is the history of racial bias in American policing. As a national consultant on implicit bias in policing, I understand that it exists both systemically and individually, but it is also difficult to prove. I also had major concerns when I first saw this officer-involved shooting in media reports. I know more now, and I am committed to my conclusions, but the policing field must continue to focus on the sanctity of human life in dealing with deadly force.

Conclusion

Based on the information in reports provided to me, discussed above, it is my opinion, to a reasonable degree of professional certainty in my fields of expertise, that the use of force by P.O. Rusten Sheskey during his encounter with Jacob Blake on August 23, 2020 was justified, in keeping with Wisconsin Law and in keeping with Kenosha Police Department use of force training and policy and widely accepted law enforcement use of force standards.


Retired Chief of Police Noble Wray

NOBLE L. WRAY

LAW ENFORCEMENT OFFICIAL

Dedicated law enforcement officer with over 30 years of successive experience in planning, managing investigations, security, law & order, public service, law enforcement training and police force activities. Profound knowledge in internal investigations, city council presentations, public safety programs, emergency response, policy & procedure development, budget planning & management and media & public relations. Led the Madison Police Department with an emphasis on building trust both inside and outside of the organization. Strategic leader with hands-on experience spearheading community initiatives and large cross-functional teams. Based on life and work experience, Unique insight and understanding of the challenges facing police on race relations and the criminal justice system. A deep understanding of the powerful role that police play as the guardians of a democratic culture which must balance protecting rights of the individual with protecting communities.

Core competencies/areas of expertise include:

- | | |
|--|---|
| ✓ Community Policing | ✓ Collaborative Problem Solver |
| ✓ Crisis Communications | ✓ 25 Years National Police Trainer/Consultant |
| ✓ High-performing Team Development | ✓ Collaboration with external constituents |
| ✓ Value-driven, inspirational leadership | ✓ "Trust-based Policing" |
| ✓ Emergency Response | ✓ Nonprofit Governance |

PROFESSIONAL EXPERIENCE

2010 to Present

CONSULTANT, Nationwide

Worked with over 200 law enforcement agencies focusing on contemporary issues facing their communities during a seminal time in the profession. The topic areas include: Fair and Impartial Policing (FIP) - helping police understand implicit bias and how to reduce the impact on their work; "Blue Courage" - focusing on improving police culture and leadership; Police Legitimacy and Procedural Justice - focusing on building key police internal and external relationships based on trust, dignity and respect; and the "Nobility of Policing" - focusing on the purpose of policing in a democratic society. The last two years have been a critical time for the policing profession and I have been a trainer/consultant in many of the Police departments that have been at the forefront of the contemporary issues facing the policing profession.

Selected Achievements:

- In conjunction with COPS Office, Strategic Planning and Training with citizens and police in Ferguson, MO on the topic of FIP (Fall 2014).
- With the support of the COPS Office, training NYPD Blue Courage focusing on cultural transformation (Fall 2013 and 2014).
- Baltimore PD FIP training (Spring of 2014) & Baltimore County Blue Courage (Spring 2015).
- Received 2010 COPS fellowship award for project/publication on "Reaching Out To The Private Sector".

2014

URBAN LEAGUE OF GREATER MADISON, Madison, WI *Interim CEO*

Outstanding Service award from Urban League of Greater Madison (ULGM) in 2014 for work as President and CEO of the Urban League of Greater Madison. Asked to lead (ULGM) at a time when the agency was facing tremendous leadership and fiscal challenges. By utilizing crisis management skills and 30 years of leadership experience, was able to fiscally stabilize the agency. Making some difficult strategic decisions, refocused the agency administratively and re-aligned the Board and agency with its core mission.

1984-2014

MADISON POLICE DEPARTMENT, Madison, WI***Chief of Police (2004-2014)***

Distinguished 30 year career ensuring public safety for the city of Madison, Wisconsin (population of around 250,000). Managed relationships with external stakeholders. Led and was responsible for the overall direction and operation of the department, which includes the areas of Operations including uniform patrol, investigative services, forensic services, and community policing teams. Also led Support Services, which included personnel and training, information management and technology, traffic and parking, property and evidence, budget and purchasing, and court liaison services. Areas of responsibility included providing public safety for the City of Madison, serving as a member of the Mayor's Management Team, administering of Law Enforcement activities within the city limits, and collaborating with other city agencies, community groups, and law enforcement agencies. Oversaw annual department budget totaling \$63 Million and nearly 550 personnel.

Selected Achievements:

- Co-chaired a community-wide delegation on "Poverty and Sustainability" with Chancellor Rebecca Blank of the University of Wisconsin in 2014.
- Appointed by Governor James Doyle to co-chair the State Commission on Reducing Racial Disparity in the Criminal Justice System. Nationally recognized by the National Council on Crime and Delinquency in 2008.
- Constructed and completed a regional police training facility for Madison Police Department and area Law Enforcement in 2012
- Managed numerous high profile events and incidents.

Assistant Chief of Operations (2002-2004)

Responsible for all administrative and functional matters of operations within the five Police Districts and the Investigative Services Unit.

Assistant Chief of Support (1999-2002)

Responsible for all administrative and functional matters of support in the following areas: Personnel and Training, Planning, Information Management and Technology, and Traffic and Support Services.

Captain, South District Police Station (1996-1999)

Responsible for leading a full-service police district of approximately 50 employees.

Lieutenant, Executive Section (1993-1996)

Responsible for assisting with the transition of the new Chief of Police in the Executive Section. Also assigned to the Patrol Team as the Operations Lieutenant of the South District.

Sergeant, Executive Section (1990-1993)

Given supervisory responsibilities in the Executive Section and in the Special Operations Section while maintaining duties listed below.

Police Officer, Executive Section (1989-1990)

Assigned as an Executive Officer replacing the Executive Captain. Reported directly to the Chief of Police. Duties entailed: department policy spokesperson, staff person to the Public Safety Review Board, advisor to the Chief, and member of Madison Police Department's Management Team. Also served as Department representative on the Mayor's Quality Improvement Steering Committee and Department expeditor.

Police Officer, Neighborhood Officer, Broadway/Simpson (1987-1989)

Assigned to the Neighborhood Team as the first neighborhood officer in the Broadway/Simpson (Lake Point Drive) Neighborhood. Received the Department's Outstanding Service and Life Saving Awards during tenure as neighborhood officer.

Police Officer, Patrol (1985-1987)

Assigned to Patrol Team on 3rd Detail, working primarily with UW-Madison students on State/Langdon and providing prostitution enforcement in the Main/King neighborhood.

CURRENT AND PAST COMMUNITY SERVICE

UNITED WAY OF DANE COUNTY	Board Member/Board President
GIRL SCOUTS OF WISCONSIN - BADGERLAND COUNCIL	Board Member
URBAN LEAGUE OF GREATER MADISON	Board Member
BIG BROTHERS BIG SISTERS OF DANE COUNTY	Board Member
PROJECT HUGS	Board Member/Board President
BOY SCOUTS OF AMERICA - GLACIERS EDGE COUNCIL	Board Member
BOYS AND GIRLS CLUB OF DANE COUNTY	Board Member
UNITED WAY OF DANE COUNTY FOUNDATION	Board Member

ACADEMIC CREDENTIALS

BACHELOR OF SCIENCE - CRIMINAL JUSTICE	University of Wisconsin-Milwaukee, Milwaukee, WI
WISCONSIN EXECUTIVE LEADERSHIP COURSE (FOR FUTURE POLICE LEADERS)	Wisconsin Department of Justice

AWARDS AND CERTIFICATES

OUTSTANDING SERVICE AWARD (2014)	Urban League of Greater Madison
IMAGE AWARD (2014)	Delta Sigma Theta
PAUL HARRIS FELLOW AWARD (2013)	Rotary Foundation
DISTINGUISHED COMMUNITY SERVICE AWARD (2013)	Madison Chapter Links, Inc., Madison, WI
DISTINGUISHED COMMUNITY SERVICE AWARD (2013)	100 Black Men of Madison, Inc., Madison, WI
PUBLIC SERVICE PEACE & DIALOGUE AWARD (2012)	International Niagara Foundation
TRADITION OF EXCELLENCE AS COMMUNITY	
LEADER IN PUBLIC SAFETY AWARD (2012)	Shorewood School, Milwaukee, WI
ALUMNUS OF THE YEAR (2011)	UW Milwaukee School of Social Welfare
FELLOWSHIP AWARD (2010)	International Assn. of Chiefs & Target Corp.
HERMAN GOLDSTEIN FINALIST FOR EXCELLENCE IN PROBLEM ORIENTED POLICING (2008)	Madison, WI
MADISON MAGAZINE PERSON OF THE YEAR (2008)	Madison, WI
MADISON COMMUNITY JUNETEENTH "UNSUNG" HERO AWARD (2007)	Madison, WI
NAACP SOLDIER AWARD (2004)	Madison, WI
CITY OF MADISON AFFIRMATIVE ACTION AWARD (1996)	Affirmative Action Department, Madison, WI
LIFE SAVING AWARD (1988)	Madison Police Department, Madison, WI
OUTSTANDING SERVICE AWARD (1988)	Madison Police Department, Madison, WI

CONSULTANT INFORMATION

CONSULTANT FOR THE CONSORTIUM-POLICE FOUNDATION IN COMMUNITY AND SCHOOL ENGAGEMENTS, INTERNAL INSPECTION, INVESTIGATIONS-BLUEPRINT, AND TRUST-BASED POLICING (2000-PRESENT)
 CONSULTANT FOR MASSACHUSETTS POLICE LEADERSHIP INSTITUTE (1997-PRESENT) University of Lowell, Lowell, MA
 DEVELOPED COURSE FOR POLICE MANAGERS - "PROBLEM SOLVING LESSONS LEARNED"

Panama City, Panama

CONSULTANT FOR THE CULTURE OF LAWFULNESS PROJECT (2006)

CONSULTANT FOR POLICE EXECUTIVE RESEARCH FORUM PROJECT (PERF)

PROBLEM SOLVING STRATEGIES, DEALING WITH BIAS IN POLICING

Cambridge, MA (2003) & Lakewood, CO (2004)

COLLABORATIVE, MECHANICS AND SUPERVISING PROBLEM SOLVING (1997-2001)

PRESENTER AT THE NATIONAL COMMUNITY ORIENTED POLICING CONFERENCE (1998)

Portland, OR

TRAIN THE TRAINERS IN PERFORMANCE EVALUATIONS FOR POLICE DEPARTMENTS

INVOLVED IN COMMUNITY POLICING, SPONSORED BY THE LAW ENFORCEMENT CONSORTIUM (1998)

Kansas City, KS

CONSULTANT/TRAINER FOR TRAIN THE TRAINERS COURSE IN CROSS-CULTURAL COMMUNITY FOR POLICE DEPARTMENTS (1997)

Madison, WI

PRESENTER ON THE TOPIC OF "QUALITY POLICING" (TQM) AND QUALITY LEADERSHIP WITH VARIOUS PRESENTATIONS (1990-1997)

Boston, MA

PRESENTER TO THE ONTARIO ASSOCIATION OF THE POLICE SERVICE BOARDS - QUALITY POLICING IN OTTAWA (1993)

Ottawa, Canada

TRAINING

NUMEROUS TRAINING CERTIFICATES AVAILABLE ON REQUEST BELOW ARE A SAMPLE OF CERTIFICATES EARLY IN CAREER:

1996	Strategic Planning Training - While on the Board at the United Neighborhood Centers
1994	Community Policing Certificate - Michigan State University (The Trojanowicz Course)
1993	Police Leadership Training (9-week course) - State of Wisconsin, Department of Justice
1993	Civil Disorder in an Urban Setting, Washington DC, sponsored by PERF and the Police Foundation
1992	Train the Trainers Course in Alternatives to Aggression - Midwest Center for Human Services
1992	Certificate for Media Relations Training - UW-Madison
1990	Community Oriented Policing Seminars - National Black Police Officers Assoc. and National Organization for Black Law Executives
1989	Community Oriented Policing Seminar - Houston, TX
1988	Gang Prevention and Detection - Milwaukee Police Department, Milwaukee, WI
1987	Quality Improvement (Top/Mid Management Training) Trained Team Leader/Facilitator Attended several training courses in TQM

Biography Noble Wray



(Retired) Chief Noble Wray had been with the Madison Police Department for almost 30 years. He was promoted through the ranks and was appointed Chief of Police of the City of Madison in 2004. Before becoming Chief, Chief Wray received Life Saving and Outstanding Service Awards as a member of the Madison Police Department.

Chief Wray has been a very visible and active member of the Madison Police Department throughout his career. He has led the Madison Police Department with an emphasis on building trust both inside and outside of the organization; he refers to it as trust-based policing. It is a recognition that policing is a challenging profession, but it is our relationships based on trust and shared values that help us keep our communities safe and maintain police legitimacy. Wray learned this early on in his career, and in 1993 he was invited to speak on the nationally televised *Today* show as a law enforcement representative to discuss the impact of the "drug war" on communities across the United States.

Wray has also excelled as a nationally recognized consultant for law enforcement organizations such as the Police Executive Research Forum (PERF) and the Police Foundation in the areas of problem solving, community policing and trust-based policing. He has also served on staff from 1997 to 2004 at the Police Leadership Institute at the University of Lowell Massachusetts for a course police managers. Chief Wray continues to be a national presenter on topic areas like implicit bias, Blue Courage, and procedural justice. Since 2014 he has consulted in a number cities like Ferguson, Baltimore and New York on the above topic areas. He is also a certified trainer/consultant for both Steven Covey and COPS Office Fair and Impartial Policing.

In 2019, (Retired) Chief was appointed to served on Wisconsin Governor Tony Evers's Pardon Advisory Board. Chief Wray was asked in 2015 by the U.S. Department of Justice to help lead the national initiative to implement President Obama's "21st. Century Policing" recommendations. He also completed his tenure as Board President for the United Way of Dane County in 2015. In 2014 he served as Interim President and CEO of the Urban League of Greater Madison Wisconsin. In 2007 Chief Wray was asked by Wisconsin's Governor James Doyle to co-chair the State Commission on Reducing Racial Disparity in the Criminal Justice System. The Governor was nationally recognized by the National Council on Crime and Delinquency for the Commission's Report in October 2008.

Some of his Awards and Recognitions:

- 1996 City of Madison Affirmative Action Award
- 2007 Madison Community Juneteenth "UnSung" Hero Award
- 2008 Madison Magazine Person of the Year
- 2008 Herman Goldstein Finalist for Excellence in Problem Oriented Policing
- 2010 Fellowship Award by the International Association of Chiefs and Target Corporation
- 2011 UW Milwaukee Alumnus of the Year – School of Social Welfare
- 2012 Shorewood School's Tradition of Excellence as Community Leader in Public Safety Award (an Award also received by US Supreme Court Justice William H. Rehnquist)
- 2012 Public Service Peace and Dialogue Award from the International Niagara Foundation
- 2013 100 Black Men of Madison, Inc. Distinguished Community Service Award
- 2013 Madison Chapter Links, Inc. Distinguished Community Service Award
- 2013 Paul Harris Fellow Award (Rotary Foundation)
- 2014 Urban League of Greater Madison Distinguished Service Award

Chief Wray was born in Milwaukee, Wisconsin in 1960. He has lived in Wisconsin most of his life and has been married for over 38 years with two adult children. He has a Bachelor of Science degree in Criminal Justice from the University of Wisconsin-Milwaukee and is a graduate of the Wisconsin Department of Justice Executive Leadership Course for future police leaders.