



## **USE OF FORCE INCIDENT REVIEW**

**MPD Case Number: 2019-00210976**

Reviewed and prepared by the UW-Madison Police Department  
upon the request of the City of Madison Police Department.

August 26, 2019

## Introduction

When vesting police officers with the lawful authority to use force to secure and protect the public, a careful balancing of all human interests is required. Police authority to use any force, as well as the degree of force they may employ, is governed by the United States Constitution, Wisconsin statutes, case law, and Department policy. The United States Supreme Court in Graham v. Connor ruled that the use of force by police officers must be “objectively reasonable” and that the decision to use force “requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officer or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.”

In addition, the evaluation as to whether or not force is justified is based on what was reasonably believed by the officer, to include what information others communicated to the officer at the time the force was used and “upon what a reasonably prudent officer would use under the same or similar circumstances.” The decision to employ force may be considered excessive by law and agency policy or both, if it knowingly exceeded a degree of force that reasonably appeared necessary based on the specific situation. It is important to note that in Graham, the U.S. Supreme Court recognized that law enforcement officers do not need to use the minimum amount of force in any given situation; rather, the officer must use a force option that is reasonable based upon the totality of the circumstances.

The State of Wisconsin’s Department of Justice Training and Standards has established the Disturbance Resolution Model to guide officers in the application of force to achieve lawful objectives. The Disturbance Resolution Model outlines the various tactics officers are allowed to use to respond to corresponding levels of resistance they encounter. While the State of Wisconsin Law Enforcement Standards Board (LESB) has established minimum standards required for officer certification to include Defense and Arrest Tactics (DAAT), specific training, standard operating procedures, and use of force policies necessarily vary across police agencies though minimally, all department training, procedures, and policies must adhere to the Wisconsin LESB standards, Wisconsin statutes, and the United States Constitution.

The above legal standards point to existing case law and state authorized training, as the accepted measures to determine whether or not a particular use of force was objectively reasonable. While using these measures provides a legally supported and standardized process by which to review and assess police use of force, by design and for the purpose of making a determination as to reasonableness, they do not require or include consideration of community reaction to or community acceptance of the specific force that was used. As a result, the potential often exists for conflict to arise between police agencies and the communities they serve in situations where use of force that is objectively reasonable under the law does not align with community expectation and understanding. For this reason, it is imperative that law enforcement agencies operate with transparency, engage their communities in conversations around use of force, establish mechanisms for community input to guide training and policy development where and when appropriate, and acknowledge that each use of force incident – even those that are determined to be within training, policy, and the law – offers opportunities for improvement.

## **Reviewer: Lt. John McCaughtry**

- Currently assigned as the Personnel and Professional Standards Lieutenant for the University of Wisconsin-Madison Police Department
- Fifteen years as a sworn police official
- Certified in Defense and Arrest Tactics (DAAT) since 2014 and head of the University of Wisconsin-Madison Police Department (UWPD) DAAT training cadre, tasked with developing and providing police use of force training to agency personnel.
- Head of the University of Wisconsin-Madison's use of force review team, which has conducted 89 use of force reviews of UWPD officers since 2017

## **Scope of Review**

My evaluation included a review of all Madison Police Department (MPD) incident reports for case number 2019-00210976, Professional Standards and Internal Affairs officer interview transcripts for PO Andy Slawek, PO Chad Joswiak, PO Ted Fondrk, PO Angie Straka, and Sgt. Joe Engler, transcripts and audio recording of incident radio traffic, and three short clips of video fragments captured by in-home cameras that showed only portions of activity that transpired during the incident. In addition, I reviewed relevant MPD written standard operating procedures updated and issued annually to all MPD officers.

My evaluation did not include a review of relevant officer training records, such as use of force and mental health training that involved officers may have received, and did not include any independent officer or complainant interviews or follow-up questions.

Additionally, my evaluation is grounded in my background, training, and experience as a state certified DAAT instructor, University of Wisconsin-Madison Police Department (UWPD) Professional Standards Lieutenant, and use of force reviewer for the UWPD. Given that I am not a member of the Madison Police Department (MPD) and do not directly serve the Madison community, my evaluation does not endeavor to determine whether or not the officers' actions in this incident are consistent with MPD policy, department specific training, or Madison community expectations; rather the scope of my review is limited to a determination as to whether or not the officers' actions were objectively reasonable. In addition, MPD requested that I include recommendations for alternative actions, considerations, and training, regarding the incident.

## **Summary**

Given that officer training, department expectations, and organizational culture vary widely across police agencies, outside reviews such as this are narrow in scope and provide a limited context within which the reviewer must evaluate actions that officers did or did not take. As was stated earlier, upon review, certain officer actions can be determined to have been legal and within the scope of department policy yet actions/inactions in part or in whole may fall short of community expectations and/or agency-desired best outcomes. In these cases, it is the practice of many departments, including my own, to identify such gaps and provide officers involved with direct feedback, additional coaching and training, clarify expectations for future situations, and implement equipment and policy improvements as warranted.

In this case, as a State of Wisconsin certified DAAT instructor and use of force subject matter expert, it is my conclusion that the tactics MPD officers used were legally justifiable in response to the particular resistance they faced and fell within Wisconsin LESB use of force standards. That said, I do not believe that the officers' actions yielded the best possible outcome, rather it is my position that officers missed opportunities (which will be outlined later in this report) as the incident unfolded to make different decisions that *may* have led to a different and more desirable outcome. Such cases provide an opportunity to learn and develop new training and procedures to improve quality of service and outcomes for future incidents.

## **Incident Overview**

Officers were dispatched to the home of a 17-year-old male subject in order to take him into protective custody to effect an emergency detention under Wisconsin State Statute 51.15. The case was initiated by MPD's Madison West High School Resource Officer, PO Justin Creech, who had been advised of threatening behavior on the part of the subject both at Madison West High School and then at his foster home, located in the City of Madison. In his incident report, PO Creech stated that upon his arrival home, the subject "was actively threatening, cursing, and yelling" at his foster father, who initiated contact with MPD to request assistance. PO Creech stated in his report that during his phone call with the foster father, he could hear the subject in the background "yelling about 'not giving a fuck' and other verbal obscenities." PO Creech reported that the foster father told him the subject "'was out of his mind' and that he had been threatened by him approximately 15-20 times since he'd been home." PO Creech further reported that the foster father told him he needed police assistance at his home. PO Creech consulted with Dane County Crisis and determined an emergency detention was required. PO Creech contacted the Dane County Communications Center to request officers be sent to the subject's current location at his foster home to place him into protective custody.

PO Slawek and PO Joswiak responded to the foster home. When dispatched to the call, the officers had access to the CAD notes on the case, which stated the subject was "OFF HIS MEDS AND ACTING THREATENING TOWARDS FOSTER DAD (HAPPENING NOW)." PO Slawek stated in his report that he had been in the home in question previously, and was thus familiar with its layout. PO Slawek's report did not note if he was also familiar with the foster father, the subject in question or what the nature of these prior calls to the house had been. PO Joswiak did not note any prior experience with the residence or the subject in either his report or his follow-up interviews.

## **Additional Units**

In his interview, Sgt. Engler stated he initially reported to the scene because he was nearby and was familiar with the subject from prior police interactions where the subject had fought with police officers. However, Sgt. Engler said he was "waived off" by PO Slawek upon arrival. Sgt. Engler stated in his report and follow-up interview that he then left the scene to go eat lunch at a nearby restaurant because PO Slawek was a veteran officer and he trusted his judgement of the situation. Given the fact that officers knew the subject was experiencing a mental health crisis, behaving threateningly, and had a prior history of resisting police, I believe PO Slawek should not have waived off Sgt. Engler and that Sgt. Engler should not have accepted the waive off but

continued to respond or at least remain close by in case needed. If officers did not want to escalate the situation by having too many police officers present at the initial contact then the option exists that they could stage nearby in the event they become urgently needed. The delay of backup units to respond to assist may have been contributing factors to the escalation of resistance in this case.

In the materials I was provided, I saw no other mention of additional units being requested until the subject resisted officers. One of the documents I reviewed was MPD's Standard Operating Procedure governing Mental Health Incidents/Crises. This document includes a section about Mental Health Officers (MHO) and states, "when possible the MHOs will respond into the field to address mental health related calls, particularly Emergency Detentions." I saw no mention as to whether any of the MPD officers involved in this case either requested or were MHOs, and I do not know if any MHOs were available at the time.

### **Foster Father Statement**

PO Slawek and PO Joswiak arrived on scene and made contact with the foster father, who told them that the subject was home but was downstairs in the shower. Officers decided to wait while the subject finished showering to make contact with him and while doing so interviewed the foster father, who advised that the subject was "not making sense" and "behaving threateningly." PO Slawek's report stated that the foster father told him the subject was upset because he thought someone stole his bag of chips, even though they were still there in his room. PO Slawek's report stated the foster father told him that the subject threatened, "I am going to fuck someone up, I'm going to fuck them up." PO Joswiak in his report made no mention of any statements he heard the foster father make. PO Slawek and PO Joswiak were both interviewed later and I was provided transcripts of those interviews. The transcript of PO Slawek's interview had no new information about the threatening behavior or statements of the subject towards the foster father. In the transcripts of PO Joswiak's interview, he stated he overheard PO Slawek's interview with the foster father and heard him tell PO Slawek that the subject told him "I'm Native American, can't touch me, I'll kill you, stuff like that so I guess that's when the foster dad called Officer Creech."

### **Contractor Statement**

Also present was a contractor performing work on the house. In PO Slawek's report, he stated during his interview with the foster father that the contractor informed PO Slawek the subject had threatened him as well upon returning home. In his follow-up interview, PO Slawek stated that the foster father told him the threat made to the contractor was "something to the effect of killing him."

Officers then also briefly interviewed the contractor while they were waiting and he told officers the subject had just threatened him shortly before their arrival. PO Slawek's report stated the contractor told him the subject was "yelling curse words at him." When PO Slawek asked the contractor what the subject was saying, he informed PO Slawek that the subject "was using curse words and saying 'Hey, bitch, fuck you, I'm going to fuck you up, I am Native American'." PO Joswiak did not mention the contractor in his report but in his follow-up interview he stated he overheard PO Slawek's interview with the contractor and heard him tell PO Slawek that the subject told the contractor, "I'm Native American, I'll fuck you up, I'll kill you, you can't hurt me."

## Contact with Subject

Approximately 10 minutes after MPD officers arrived, the subject completed his shower. The foster home is a split level house with the subject's room and bathroom/shower in the lower level at the bottom of a short flight of stairs. After his shower, the subject went up the stairs and made contact with his foster father and at that time saw the officers and learned that they intended to take him into protective custody. The officer reports and interviews are not clear about what exactly was said between the subject, the foster father, and the officers but all agreed the subject knew he was to go with the officers and upon arriving at this realization, the subject walked back down the stairs in order to get his socks and shoes. PO Slawek stated he was already familiar with the house and understood the downstairs area had a patio door and windows by which the subject could flee. For this reason, PO Slawek said he followed the subject down the stairs to observe him to ensure he did not try to flee. PO Slawek and PO Joswiak both also stated the foster father gestured towards them at this point to indicate the officers should follow the subject down the stairs. The officer reports and follow-up interviews made no mention of what, if any, dialogue the officers attempted to have with the subject. Verbalization with subjects helps to establish rapport and creates time and opportunity for officers to assess subject cooperation, work toward voluntary compliance, and best direct the interaction toward desired outcomes. It is recommended that officers attempt to first engage subjects in dialogue for the reasons cited here and document these attempts/dialogue in their reports.

PO Slawek said while doing so, he heard the subject threaten him and saw the subject tense his arms. In his report, PO Slawek stated he also heard the subject talking to himself. PO Slawek stated he did not understand everything the subject said but heard him say, "I have my own police, I can take you out." PO Slawek reported the subject also called the officers "racists." In his report, PO Slawek stated the subject ignored his questions and walked past him, saying as he did so "I can take you out with a pinkie finger, I could kill you." In his follow-up interview, PO Slawek repeated that he'd heard the subject make these statements to him and also stated that as he did so, the subject "just gave what we're trained with was that thousand yard stare, like he was gonna go right through me like right into me and as he came towards me, I stepped aside and I noticed in his hands something he had picked up but what I noticed was his, his muscles were flexing."

In his report, PO Joswiak stated that the subject and PO Slawek were ahead of him and around a corner in a separate room when he could hear the subject then "made a comment to Officer Slawek along the lines of being racist." PO Joswiak reported that the subject then began to walk back towards him. In his report, PO Joswiak made no mention of overhearing threats the subject made. In his follow-up interview, PO Joswiak described the scene as follows:

*"So then Officer Slawek went down first, went around the corner into the basement to the left. I was behind a little ways and so as I'm coming downstairs, I can hear [REDACTED] tell Officer Slawek I gotta get my phone before we go and so then when I get down the stairs and turn to the left [REDACTED] bedroom, I'm assuming I think was the first door right away on the left and then it opens past that into like a bigger living area and when I go down there, I can, I don't see them yet but I can hear [REDACTED] yell a couple things at Officer Slawek saying something about you're a racist or you're only doing this because you're racist and so when I turn the corner, they're in the far corner of the living area and they both have*

*their backs to me and [REDACTED] is getting something. I'm assuming his phone and turns around and starts walking back towards me so then I'm standing kind of right outside his bedroom door in the hallway. [REDACTED] in between us walking towards me and Officer Slawek is right behind [REDACTED]*

As the two officers and subject entered the downstairs room, the first video recording fragment began and captured a video of their interaction but without any audio.

PO Slawek stated at this point he determined he would place the subject into protective custody and handcuff him due to the threatening behavior towards himself and others. At the time, PO Joswiak was standing at the entrance to the basement room with the subject walking towards him and PO Slawek was walking behind the subject. PO Slawek stated he grabbed the subject's arms and tried to place them behind his back in order to handcuff him. PO Joswiak stated he heard PO Slawek tell the subject he was under arrest and that he was going to put handcuffs on him. The reports of PO Slawek and PO Joswiak both state the suspect tensed up his arms and tried to pull away from PO Slawek's grasp. The video fragment I viewed verified this description and showed the subject actively resisting PO Slawek's hold of his arms. PO Slawek stated he then verbalized to the subject to stop resisting. PO Slawek stated he was unable to control the subject's arms due to his continued active resistance. PO Slawek made no mention in his report or follow-up interview that he communicated with PO Joswiak his intent to place the subject in handcuffs. PO Joswiak also made no mention that he communicated with PO Slawek at that point. PO Joswiak mentioned in his follow-up interview that he and PO Slawek decided ahead of time that they would handcuff the subject at some point before leaving the house, but in the video footage, PO Joswiak flinched, and was notably delayed in his response, seemingly surprised by PO Slawek's move to take hold of the subject's arms for handcuffing at that particular moment. When multiple officers take a subject into physical custody, they should attempt to coordinate their activities and communicate before and during the contact whenever possible so that they can act as a team and manage the subject smoothly. Lack of communication between officers at this point may have prevented them from working effectively as a team and thus allowed the situation to escalate.

#### **Protective Alternatives/Active Countermeasures: Vertical Stun**

PO Slawek stated he decided to overcome the subject's active resistance by using a vertical stun technique. To execute this DAAT-trained and approved technique, PO Slawek pushed the subject forward against one of the room's walls. The incident reports and follow-up interviews I reviewed made no mention of the officers communicating with each other prior to or at the time the technique was applied. The absence of any prior communication about PO Slawek's intention to initiate the vertical stun technique is supported by the video footage I reviewed in which it appeared as if PO Joswiak was surprised by PO Slawek's sudden execution of the technique.

The use of a vertical stun is categorized as an "active countermeasure", which is one of the protective alternatives taught by the State of Wisconsin's Department of Justice Training and Standards. Protective alternatives are meant to overcome continued resistance, assaultive behavior, or their threats. Continued resistance is defined as "maintaining a level of counteractive behavior that is not controlled with the officer's current level of force." Assaultive behavior is defined as "direct actions or conduct that generates bodily harm to the officers and/or another person."

Wisconsin State Statue 939.22(4) defines bodily harm as “physical pain, injury, illness, or any impairment of physical condition.” The officers’ reports and video fragments showed that the suspect displayed continued resistance towards PO Slawek by physically struggling against the officer’s hold to prevent being handcuffed. The subject threatened assaultive behavior towards the officers verbally. As such, PO Slawek’s use of a vertical stun in response to the subject’s behaviors outlined above is a trained and permissible option to overcome the level of resistance the officer faced.

However, the portion of wall that PO Slawek pushed the subject into was not a solid wall but a folding door that bent inward under the pressure and then rebounded back, pushing the subject and PO Slawek off balance. Subsequently, PO Slawek and the subject fell together to their left onto a couch located beside them. PO Slawek stated he did not intend to decentralize the subject at that point or to move onto the couch and the video fragment I watched supported this statement. A brief struggle between PO Slawek and the subject ensued as they fell toward the couch and PO Slawek scrambled to position his body on top of the subject in order to avoid getting pinned under the subject when they landed. They ultimately came to a rest with the subject lying on his back on the couch and PO Slawek on top of him, at which time PO Slawek used both of his hands to maintain control of both of the subject’s arms. PO Joswiak then placed his body on top of the subject’s legs to hold them down so the subject would not be able to kick them. PO Slawek stated he ordered the subject multiple times to stop resisting. The first video fragment of the incident ends at this point. Although the subject is only 17 years old, he appeared to be of sufficient size and strength to effectively struggle against the officers, thus posing a threat to them. It appeared both officers had to exert significant physical effort in order to gain and maintain control of the subject and prevent him from breaking away from their holds.

### Control Alternatives

PO Slawek and PO Joswiak both stated they held the subject in that position while they radioed for additional officers to assist them in handcuffing the subject in order to place him in protective custody. As they waited in this position, PO Slawek said the subject continued to periodically struggle against him by tensing his arms and contorting his body in an attempt to break PO Slawek’s hold on his arms. PO Slawek stated that as this occurred, the subject glanced at the weapons on his duty belt and tried to reach for those weapons. PO Slawek stated the subject continued to verbally threaten the officers throughout the struggle. PO Slawek described the subject’s verbalizations and actions at his point in his report as follows:

*“The subject began to spout out stuff such as ‘Tase me, pepper spray me, go ahead and shoot me.’ I did notice that [the subject] was target-glancing at my Taser, which is located on my left hip, which would be by [the subject’s] right eye. My weapon was along the right side of [the subject], facing him, down by his chest area. Again, [the subject] continued to attempt to get up and then began to threaten to spit at us. At this time, I continued to tell [the subject] to quit resisting and he gave quite a bit of resistive tension. I had [the subject] by his left and right wrists by my left hand on his right wrist and my right hand on his left wrist. Again, as noted, [the subject] continued to tell us that he wanted to be tased to ‘shoot him.’ [The subject] would then target-glance/look at my right hip area where my weapon was and would attempt to reach for it. It should be noted that at no time did [the subject]*



*actually get his hands onto my weapon or the holster area, but whenever he was talking about being shot at, he would look at my Taser and start moving his right arm towards the Taser or start talking about my gun and shooting him and start resistive tension towards my gun side of my belt."*

PO Joswiak made no mention in his report of what the subject said to officers during this time period. In his follow-up interview, PO Joswiak stated the subject was "yelling and trying to pull away" from them but did not state exactly what the subject was yelling. PO Slawek stated that in that position, his own face was close to and directly in front of the subject's and that the subject threatened to spit on him. Both officers stated that the subject then spat into PO Slawek's face and PO Slawek stated that some of the spit landed in his eyes and mouth.

The technique taught by DOJ Training and Standards that closest resembles the officers' tactics and positioning at this point in the struggle is an attempt at a modified version of what is called "multiple officer ground handcuffing." However, the technique is taught as a protective measure that is intended to place subjects on their stomachs so that they are facing away from officers. Doing so gives the officers the tactical advantage and greatly mitigates any risk of subjects being able to spit on them or reach for officer weapons. In their decision to continue to hold the subject on his back facing towards them rather than attempt to roll him onto his stomach, officers allowed a tactical situation to develop in which the subject could continue to repeatedly spit directly into PO Slawek's face and reach for his weapons.

PO Joswiak secured the subject's legs, which is a part of the trained technique of multiple officer ground handcuffing, in order to prevent subjects from kicking or using their feet/legs for leverage. However, with this technique, securing the feet/legs are a secondary concern to securing subjects' hands/arms/torsos. In this case, the subject's hands/arms/upper body were not adequately secured and constituted the main threat towards the officers. Under such conditions, to use multiple officer ground handcuffing, officers are trained to secure the subject's body, arms, and hands with the goal of using team tactics to place the subject onto his stomach and then into handcuffs. In his follow-up interview, PO Joswiak said he suggested to PO Slawek during this point that they "flip him over" and asked "do you want to put him in handcuffs, do you want to get him on his stomach" but PO Slawek said "nope, I just, let's wait here, I want to wait 'til some other people get here before we try anything."

I am not aware of any technique trained by DOJ Training and Standards where officers intentionally hold a subject on his back facing up at them in such a manner as seen in the video and described by the officers. My conclusion then is that the officers engaged in a tactic that was not a trained technique but that they believed was justified under the circumstances. Using untrained techniques in fluid and dynamic situations such as this is not uncommon, nor is it inherently problematic. Often times, untrained techniques born of necessity lead to the best possible outcomes. In this case, however, by leaving the subject on his back, officers created a situation that led to another modified technique in the application of the spit hood later in the incident, which in turn created circumstances in which Sgt. Engler determined an increased level of force was necessary in order to safely take the subject into custody.

As PO Slawek and PO Joswiak awaited the arrival of additional officers, they continued to hold the subject on his back on the couch, and during this time the subject's foster father came into the room. PO Slawek stated he ordered the foster father to get him something that he could use to cover the subject's mouth in order to block him from continuing to spit in his face. PO Slawek said the foster father complied and eventually retrieved a towel which he handed to the officers, who then used the towel to cover the subject's mouth. Officers stated that they placed the towel loosely over the subject's mouth without a need to hold it in place. The use of such a tactic is not a trained technique, however, as was mentioned earlier, using a cloth or towel to temporarily protect themselves against spitting under the circumstances is not unreasonable. That said, I recommend officers refrain from using an unfamiliar item for such a purpose to avoid the chance of obstructing a subject's airway and instead focus on stabilizing the subject and positioning themselves in relation to the subject so as to reduce the likelihood of being spit on.

In response to the officers' request for further back-up support, PO Theodore Fondrk, Sgt. Engler, and PO Angela Straka subsequently arrived at the foster home to assist. PO Fondrk was first to arrive on scene and assisted by holding the subject's right arm and upper torso down against the sofa. Sgt. Engler then arrived on scene and noticed the officers holding the towel over the subject's mouth. The second video fragment I reviewed begins when Sgt. Engler walked into the room. There was no audio with this video fragment. As this video clip begins, the subject is still lying on his back on the couch while facing the officers positioned directly above him. It appeared PO Slawek was using both of his hands to hold the towel down firmly over either side of the subject's mouth. PO Fondrk appeared to be standing over the subject and using both of his hands to hold down the subject's right hand/wrist. PO Joswiak was kneeling atop the subject's legs and using both his arms to help hold them down.

Sgt. Engler stated that upon his arrival, he asked the officers if the subject had been spitting and was told that he had. Sgt. Engler stated he then took out a spit hood that he routinely carries on duty and tried to place it over the suspect's head as the subject was lying on his back on the couch while being held by the other officers. Sgt. Engler said he did this because he was concerned the towel blocking the subject's mouth may restrict his breathing and the use of a spit hood, specifically designed to prevent spitting without obstructing breathing, was a preferable alternative. In his follow-up interview, Sgt. Engler stated he could not recall any particular policy, procedures, or training he had received regarding use of a spit hood. It is my recommendation that officers be given basic training in the application of spit hoods and issues involved with applying them to subjects. In particular, it is recommended that subjects be firmly stabilized, preferably in handcuffs, before making an attempt to place a spit hood over their heads. The urge to resist something being placed on the head/neck area is a strong instinct, especially in subjects in an altered mental state due to intoxication or a mental health issues.

#### **Protective Alternatives/Active Countermeasures: Focused Strikes**

As Sgt. Engler placed the spit hood over the subject's head, the subject began to struggle violently against the officers and PO Slawek subsequently lost control of the subject's left arm. Sgt. Engler then delivered three strikes with his right hand/arm to the area of the suspect's head. PO Straka can be seen in the video fragment entering the room just as Sgt. Engler delivered the strikes. Sgt. Engler described the strikes as the first strike using his closed fist and the second and third strikes

using his right forearm. From the angle of the video I was unable to see where the strikes landed, but they appeared to be directed at the head area of the subject, consistent with Sgt. Engler's description. After the third strike, the video fragment ended. The officers all stated that immediately after Sgt. Engler's strikes, the subject ceased struggling and Sgt. Engler was able to complete the application of the spit hood.

The use of focused strikes is an "active countermeasure", which is one of the protective alternatives taught by the State of Wisconsin's Department of Justice Training and Standards. Protective alternatives are meant to overcome continued resistance, assaultive behavior, or their threats. Continued resistance is defined as "maintaining a level of counteractive behavior that is not controlled with the officer's current level of force." Assaultive behavior is defined as "direct actions or conduct that generates bodily harm to the officers and/or another person." Wisconsin State Statute 939.22(4) defines bodily harm as "physical pain, injury, illness, or any impairment of physical condition." The officers' reports and video fragments showed that the suspect displayed continued resistance and threatened assaultive behavior towards the officers both verbally, by reaching for officer weapons during the struggle, and by spitting into their face where a significant exposure could result. A significant exposure is when body fluids from a subject enter the body of the officer through an opening such as a cut to the skin, their eyes, or mouth. This creates a risk of a communicable disease being transferred from the subject to the officer.

The use of focused strikes to the subject such as Sgt. Engler used is a permissible option (lawful and within state standards) to overcome the level of resistance the officers faced. Ideally, the target area of the strikes would be the subject's torso but given the dynamics of the event and positioning of subject and officers, the only target Sgt. Engler had available to him at the time was the head area. The targeting of the head area of a subject greatly increases the risk of serious injury to the subject and should be avoided if possible. In this case, while permissible by law/state training standards, based on my review of the video I noted potential alternatives available to officers to address the resistance of the subject that were less risky. These included use of pressure points, decentralizations, multiple officer ground handcuffing, or one of the other officers applying focused strikes to a different available target area that would've presented less risk of serious injury to the subject.

### **Follow Through Considerations**

The officers stated they then rolled the subject off the couch onto the floor next to it so that the subject was lying on his stomach. Officers said they then completed the protective custody by using multiple officer ground handcuffing to handcuff the subject behind his back. At this point, the third and final video fragment begins and recorded 23 seconds of the subject lying on the floor on his stomach with his hands handcuffed behind his back. No further resistance is offered by the subject and no further use of force takes place by the officers. As in the other two video fragments, there was no audio with this video fragment. Officers stated that the rest of the contact with the subject proceeded without the subject providing further resistance and officers using no further force. PO Slawek was treated for injuries received during the altercation and to assess his exposure due to the subject spitting into his eyes and mouth. The subject was transported to a medical facility for medical evaluation and clearance and then transported to [REDACTED] to complete the emergency detention, authorized by WI SS 51.15.

In accordance with training and state standards, once the subject ceased his resistance, officers de-escalated in response and lowered their level of force to only that necessary to maintain control of a compliantly handcuffed subject in police custody. The officers sought medical assessment for the subject and proceeded with the remainder of the emergency detention process without incident to assure that the subject received necessary mental health treatment. The materials I was provided made no mention of injuries to the subject.

## **Conclusion**

Upon review of the documents and supporting evidence I received, and in consideration of the totality of the circumstances confronting the officers during this incident, it is my conclusion that the officers' use of force falls within accepted methods and procedures currently taught by the State of Wisconsin's Department of Justice Training and Standards and is objectively reasonable. The *Graham v. Connor* standard of objectively reasonable requires us to consider the totality of the circumstances under the conditions the officers faced at the time. This incident was a tense and uncertain situation where officers had to make quick decisions under stress and time constraints. Upon initial contact, an opportunity existed for officers to proactively engage the subject in dialogue prior to the subject deciding to go downstairs. Once the subject went downstairs, the officers were compelled to follow, which set in motion an accelerated timeframe for decision-making. This accelerated timeframe was exacerbated by the subject's actions and the confined space within which the subject resisted PO Slawek's attempt to take him into custody.

After the fact, with the benefit of time to review, consider and assess without pressure or time constraints, it is my belief that the best practices, alternative tactics, and recommendations noted throughout this report would likely have resulted in a more positive outcome. I recommend coaching and training for the officers involved in light of what this incident can teach them, with the goal of improving future responses to similar situations and to resolve them in the best way possible. This should include not only tactical/DAAT technique review, but a review as well of the unique challenges and special considerations/approaches that should be taken into account when responding to individuals experiencing a mental health crisis.