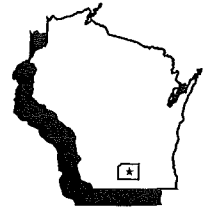




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Date: July 14, 2016  
To: Michael C. Koval, Chief of Police, Madison Police Department (MPD)  
From: Kelly D. Rehwoldt, Deputy Sheriff III  
Dawn E. Brooks, Deputy Sheriff III  
Subject: Use of Force Review, MPD Incident Case # 2016-211321

**Introduction of Kelly D. Rehwoldt:**

Currently a Wisconsin certified Law Enforcement Officer (24 years) and Law Enforcement Instructor (20 years). Wisconsin Law Enforcements Standards Board (LESB) certified to instruct Defense and Arrest Tactics (DAAT), Emergency Vehicle Operations and Control (EVOC), Handgun and Rifle, Vehicle Contacts, Professional Communications Skills (PCS), Tactical Response, and other General Law Enforcement topics. Certified TASER instructor. Member of the Dane County Sheriff's Office Use of Force Committee, which is responsible for reviewing significant agency use of force incidents, and member of the State of Wisconsin Tactical Skills Advisory Committee. Former Master Instructor for Firearms and Vehicle Contacts for Madison College.

**Introduction of Dawn E. Brooks:**

Currently a Wisconsin certified Law Enforcement Officer (19 years) and Law Enforcement instructor (14 years). Wisconsin LESB certified to instruct DAAT, Vehicle Contacts, EVOC, Handgun and Rifle, PCS, Ethics and other General Law Enforcement topics. Certified TASER instructor. Member of the Dane County Sheriff's Office Use of Force Committee. Certified by Force Science Institute to analyze use of force incidents and former Master DAAT instructor for Madison College.

**Purpose:**

The purpose of this report is to review the use of force by MPD Officers Richard Friday and Andrew Muir from the perspective of the United States Constitution, Wisconsin State Statutes, MPD Use of Non-Deadly Force policy, Wisconsin LESB standards, and the DAAT System.

**Summary:**

We have reviewed all of the incident reports, in-squad audio/video footage, officer audio (captured from officer worn microphones), and cellphone video provided by MPD, as well as a cellphone video of the incident that was posted to YouTube. We have concluded that, based on the totality of the circumstances confronting each officer at the time force was used, the actions of Officers Friday and Muir were objectively reasonable and consistent with MPD policy and training provided by the state of Wisconsin.

**Objectively Reasonable:**

The United States Supreme Court, specifically the Court's interpretation of the Fourth Amendment in *Graham v. Connor*, sets the legal standard for the use of force in the United States. All force must be objectively reasonable, which is measured in part by the following factors:

1. Does the suspect pose an immediate threat to the safety of officers or others?
2. Is the suspect actively resisting arrest?
3. Is the suspect attempting to evade arrest by flight?
4. What is the severity of the crime(s) at issue?

The Court stated that reasonableness should be judged under the totality of the circumstances from the perspective of a reasonable officer at the scene with similar training and experience. The Court also noted that officers must frequently make split-second decisions.

**911 Call / Officers Dispatched:**

At approximately 5:15 p.m. on June 21, 2016, the Dane County Communications Center received a 911 call from East Towne Mall security officer Nicholas Bauer advising that a female subject "threatened myself and my other officer" in a corridor behind the food court. Bauer requested that an officer "come to remove her". Bauer identified the female as light skinned, wearing black pants, a gray/red shirt, white "badger hat", and a brown backpack. Bauer further reported that the female, which can be heard screaming in the background, was "mad" because she thought an employee at the Taco Bell had taken her phone. There was only one 911 call for this incident.

At 5:16 p.m., dispatch requested "Frank 4" (F4) and F1 (Muir) to respond to the food court at 89 East Towne Mall for a disturbance. Dispatch advised that mall security was behind the food court with a female out of control and making threats. Dispatch described the female as light skinned, wearing black pants and a grey and red shirt with a backpack. Dispatch further advised that the female was screaming at security over the possible theft of her cellphone from Taco Bell and was refusing to leave. F6 (Friday) advised dispatch that he was closer to the call than F4 and to assign him instead.

Friday arrived on scene first and observed Bauer and another mall security officer, identified as Rosemary Skarski, standing outside of the entrance to the food court. When reviewing the video, a female matching the description given by dispatch can be seen speaking with two other females standing approximately 30 feet away from the security officers. She was standing off of the side walk just on the parking lot driveway. According to Friday's report he made contact with Bauer, and Bauer pointed out the female that had caused the disturbance. The female was later identified as Genele Laird.

**Initial Physical Contact / Handcuff Attempt:**

According to Friday and witness accounts, Laird approached Friday and told him that she wanted to leave. Friday advised Laird that she was not free to go, but Laird told Friday that she was going to leave. Friday stated in his report that it was “at that point I told Laird to put her hands behind her back, and my intent was to detain Laird due to my investigation of a possible disturbance with threats being made.”

The Wisconsin LESB trains, and MPD Non-Deadly Force Policy authorizes, an officer to use force when it is needed to achieve control in the following situations:

1. To achieve and maintain control of resistive subjects.
2. To detain persons reasonably suspected of unlawful/criminal behavior.
3. To make an arrest.
4. To defend themselves or others.
5. To prevent escape.
6. To maintain order.

Laird did not comply with Friday’s numerous requests to place her hands behind her back so that she could be handcuffed and thereby detained while he continued to investigate the disturbance. When an officer has made no progress in getting a subject to verbally comply with directions, Wisconsin LESB training teaches an officer that they have the option to escalate to a physical intervention. In this case Friday escalated from verbal directions to physical contact in order to gain control of Laird.

Friday initiated physical contact by grasping Laird’s right wrist area with his right hand and moving to a position behind Laird. In the DAAT System officers are trained to always be in a position of advantage relative to the subject. By moving from his position in front of Laird to a position behind her, Friday was less likely to be kicked or punched by Laird.

As Friday grasped Laird’s right hand, Laird moved her left arm to the front of her body “to move it away from (Friday’s) grasp.” Friday grasped Laird’s upper left arm with his left hand and moved his hand down to her wrist area in attempt to place her left hand behind her back. As Friday attempted to control Laird he continued to tell her to place her hands behind her back. At this point the citizen cell phone recording, which had been focused on the citizen’s attention to one of the females Laird had been speaking to and not on the police contact with Laird, changes focus to the police contact with Laird. The citizen doing the recording can be heard saying, “Look, look” at which point he focuses the camera on Laird and Friday. When the camera focuses on the contact, you can see that Laird and Friday are now standing near a large cement planter near the entrance to East Towne Mall food court. You can hear Friday telling Laird to put her hands behind her back and to, “stop screwing around.” At this point, after making initial physical contact with Laird, Friday does not have control of her.

**Active Resistance:**

Friday stated in his report that “Laird was continually exerting energy in an effort to pull her arms away from my grasp”. Both cellphone videos show Laird attempting to pull herself away from Friday by flailing her arms and body around. In the video you can see Laird moving her feet in what appears to be an attempt to step away from Friday. Because Laird is stepping forward and at times sideways, she and Friday are now standing approximately 6 feet from where the initial contact was made.

The Wisconsin LESB trains officers to recognize active resistance and to understand continued resistance. Active resistance is defined as “behaviors that physically counteract an officer’s attempts to control a subject and which pose a risk of harm to the officer, subject, or others.” Continued resistance means that an individual is maintaining a level of counteractive behavior that is not controlled with the officer’s current level of force. Laird continued to resist Friday’s efforts to place her hands behind her back, and began to pose more of a potential threat as her level of tension and agitation increased. It is evident in the video that Laird is still not under control.

**Officer Friday’s Attempt to Decentralize:**

As the struggle with Laird continues, it is apparent that Friday is not able to gain control of Laird with his current level of force. Because of this, Friday said that he, “attempted to decentralize Laird unsuccessfully”. He did this by moving to the left side of Laird, extending his right leg out in front of Laird’s left leg, and then “exert(ing) energy to force Laird forward” across his leg to take her off balance and direct her to the ground. As he did this he verbalized to Laird to “get on the ground!” You can see Laird step forward with her right foot, drop her hips and bend her knees to avoid being decentralized. In the video Laird can be heard telling Friday that she is not getting on the ground until she gets something. She asks Friday, “you know that, right?” and she tells him that she is just going to get, “madder.”

Wisconsin LESB training teaches officers to use a passive countermeasure (decentralization) to direct a subject to the ground when they reasonably believe that they will be unable to achieve control of a standing subject. A subject is directed to the ground so that they can be stabilized. Stabilization refers to a subject's ability to resist or attack (i.e. use force against an officer). A standing subject is in a much better position to be able to deliver force against an officer than a subject who is prone on the ground.

Also, it should be noted that although the front leg sweep that Friday used in an attempt to decentralize Laird is not a technique taught in the DAAT System, it is justifiable under the circumstances. According to Wisconsin LESB training, when an officer uses force it must fit into one of the following categories:

1. A trained technique.
2. A dynamic application of a trained technique (i.e. not quite the classroom model, but as close to it as possible under the circumstances).

3. A technique not trained, but justifiable under the circumstances.

Because of the threat that Laird posed, Friday felt that he could not release either of her arms so he said that he, "had to lean my chin down onto the shoulder mic of my radio and activate the mic in order to be able to speak to dispatch. I advised dispatch that there was a fight in progress." In a taped recording of the radio traffic, Friday is heard stating, "10-10" on the radio which is the Law Enforcement ten code for a fight in progress. At that point the dispatcher is trying to discern what Friday said and advises listening units that he believed what he said was, "10-23." Muir advises dispatch that Friday said, "10-10" and lets dispatch know that he is now on scene with Friday and asks them to restrict radio traffic.

#### **Arrival of Officer Muir:**

Muir arrived on scene moments after Friday advised dispatch that he had a "fight in progress". At this point in the video, you can hear Muir's squad siren and you see a female in a yellow shirt approach Laird and Laird attempting to hand her what appears to be a cell phone. Friday sees this and steps back with Laird and Laird then tosses the item on the ground and the female picks it up and steps away. Laird then starts stepping forward, sideways and at times pushes back against Friday to the extent that they were standing to the right of the doors to the food court approximately 50 feet from where they started when Muir is first seen on video.

Upon his arrival, Muir said he observed Friday "actively struggling and fighting to take her (Laird) into custody". As Muir pulled up in his squad, Friday was telling Laird to put her hands behind her back and Laird screamed, "Arrest me then bitch!"

Immediately after exiting his squad, Muir moved to an escort position on Laird's right side, placed both of his hands on Laird's right arm, and attempted to place Laird's right hand behind her back so that she could be handcuffed.

Muir stated that, "as soon as I made contact with her arm, I felt rigid muscle tone," and "I also felt her tugging away from my grasp". Laird was able to move her right arm to the front of her body and Muir saw that her right hand was clenched in a fist. It was at this same moment that Laird pulled her left arm to the front of her body and Friday, who was in an escort position on Laird's left side, observed that "Laird's hands were in fists". While this is happening you can hear Laird screaming, "You guys are so fucking forceful for no fucking reason" and see her twisting her body side to side and stepping forward pulling Friday and Muir with her as they are attempting to maintain contact with her.

Wisconsin LESB training teaches officers to recognize clenched fists as a "pre-attack posture" that may indicate that a subject is about to attack. Laird's clenched fist lead Muir to believe that she presented a "further threat of ongoing resistance or violence toward Friday and I". In response to Laird's "continued, active resistance", Office Muir attempted to decentralize her by "sweeping my right leg along her right leg". This attempt to control Laird was not successful,

and Laird “remained standing and continued thrashing”, and was able to continue to bring her closed fists to the front of her body.

**Focused Strikes:**

Muir said that, “at this point, I was forced to respond to her continued and escalating resistance and protect myself from her increasingly assaultive behavior by escalating my use of force”. Muir did this by delivering two knee strikes to Laird’s abdomen while simultaneously yelling loudly, “get on the ground, get on the ground now!” When Muir delivers the knee strikes, Laird yells, “Bitch, you kicked me!”

As the term implies, a focused strike in the DAAT System is a strike to a particular target area in an attempt to “create dysfunction and disrupt the subject’s ability to continue resistive or assaultive behavior”. Muir’s “knee strikes” are known as strong angle knee strikes in the DAAT System. Officers are taught to specifically target the subject’s leg or lower abdomen area in order to create a temporary dysfunction that will allow an officer to decentralize a subject in order to gain control.

As Muir delivered the knee strikes, Friday again placed his right leg in front of Laird’s left leg, and used his right hand to “direct Laird’s left shoulder area toward the ground”. Laird was “directed to the ground in a controlled manner,” where she repeats, “bitch, you kicked me!” and both officers went down to their knees on each side of Laird.

After being decentralized, Laird continued to struggle, trying to pull her arms away from each officer’s grasp. Officers Muir and Friday were still unable to control Laird’s arms for handcuffing. In a further attempt to stabilize Laird, Muir placed his left knee over Laird’s legs, his right hand on Laird’s upper right arm, and his left hand on her right hand. Muir said that he could feel “her legs pushing against my knee” and he was “afraid she would be able to kick me”.

According to Muir, it was then that Laird “forcibly dug her nails repeatedly into my skin” (as evidenced by the photos of Muir’s injuries). Laird was clenching her right hand on the bottom part of Muir’s left hand, which caused an “immediate sharp pain” and continued each time Laird reapplied pressure. In response to this assault, Muir loudly verbalized to Laird, “Stop pinching me, do it now!” and delivered three knee strikes to Laird’s abdomen area. The DAAT System instructs officers to use an active countermeasure, such as a knee strike, to protect oneself and stop a subject’s assaultive behavior. According to Wisconsin LESB training, assaultive behavior on an officer occurs when a subject’s direct actions generate bodily harm. Wisconsin Statutes define bodily harm as “physical pain or injury, illness, or any impairment of the body”. After reviewing the medical reports and photographs related to Muir’s care, it is evident that Laird’s action of pinching/digging her nails into Muir did cause bodily harm to Muir.

The knee strikes proved ineffective as Laird continued “clawing at and pinching” Muir’s hand. Laird was continuing to yell and began to “forcibly twist her upper body” and “turn up to her

right” to the point where she was able to turn her face towards Muir. Muir could also feel “more tension in her legs” as she turned.

Officers are trained in the DAAT System to move to other options if their initial use of force is ineffective. Muir chose to strike Laird once in the lower abdomen with a closed right fist. Prior to delivering the strike, Muir verbalized loudly, “stop!”, and then commanded Laird to, “stop pinching me!” after the strike. In the DAAT System this is referred to as a strong hand strike, and the trained target area is the abdominal area. The purpose of this strike is to cause a “temporary respiratory dysfunction” and disrupt a subject’s actions long enough to gain control.

Again, this strike proved ineffective because Laird’s “resistance and level of violence escalated further”. Clearly seen in the cellphone videos is Muir’s description of Laird’s resistance. Muir described how she, “bucked her upper body upwards, off the ground, almost to the point of sitting upright” and, “kicked her legs against my shins”. This resulted in Muir being thrown off Laird, sliding down off the curb and into the driveway. As this was occurring, Friday had managed to place a handcuff onto Laird’s left wrist and bring her left wrist to the small of her back, but Laird was still not under control and was still pinching Muir’s hand. Muir again yelled “stop pinching me”, and Laird can be heard on the video screaming back, some of which is unintelligible, “you pushed me”, “I got this on the video”, “on the g”, “bitches”. According to the Online Slang Dictionary, “on the g” means, “literally, for real, honestly”.

As Muir is repositioning himself to try to control Laird, he is briefly straddling her and there is open space between his groin and her leg. According to Muir, Laird “attempted to knee me in the groin with her left knee”. Laird is seen in the video bringing her left knee up toward Muir’s groin, but Muir is able to control her left leg by moving his right leg over her legs and applying weight downward.

At this point Laird is able to position herself so that she is sitting on her buttocks with her torso raised up and her face toward Muir. Friday was still attempting to control Laird’s arms, but was not able to place the handcuff on Laird’s right wrist because she had pulled her right arm to the front of her body. Muir was attempting to control Laird’s right arm when Laird, “spat saliva into my face”. The saliva entered Muir’s eyes and caused a “stinging sensation”. On the video you can hear Laird spit and see Muir’s upper body recoil in reaction to it.

#### **Deployment of Electronic Control Device (ECD):**

At the moment when Muir deployed the ECD he felt that Laird’s, “steadily escalating, violent, assaultive behavior” posed a threat of harm to himself and Friday. Muir’s threat evaluation was not limited to just Laird, but also to what he observed as “numerous people moving in circles around us”, “including behind my back”. Muir also recognized that because Laird’s hands were not yet secured she had access to her waistline and to the backpack that she was wearing, which could possibly contain weapons. And lastly, by the time of the ECD deployment, Friday had been struggling to control Laird for over a minute, Muir for approximately 30 seconds, and Muir did not know when additional backup officers would arrive.

In the DAAT System, and as part of the MPD Non-Deadly Force policy, officers are trained to consider several special circumstances when assessing threat that allow an officer to raise their level of force. Amongst these special circumstances are an officer's reasonable perception of the threat; a subject's ability to escalate force rapidly (i.e. access to weapons); an officer's physical positioning relative to the subject; officer injury or exhaustion (resulting in the inability to effectively use force); and the availability of backup. Also considered in the DAAT System are subject behaviors that are early warning signs indicating a higher level of danger to officers, to include: a subject conspicuously ignoring an officer or giving an officer excessive emotional attention.

Despite each officer continually giving Laird very obvious, understandable directions to stop her continued resistance and assaultive behavior, Laird conspicuously ignored them, continued her actions, and did not comply. Laird demonstrated excessive emotional attention to the officers by continuing to scream, sometimes unintelligibly, swear, threaten, and spit at Muir and Friday who were attempting to detain her for investigative purposes.

When Muir first used the ECD Laird was "thrashing and aggressively kicking with her left leg" so that when Muir pulled the trigger on the ECD to attempt a distance deployment, it "slipped off" his intended target area, which was the abdomen. This resulted in one ECD probe entering her body on her lower left side just above the belt line and the other probe striking her backpack. When the ECD was deployed Laird could be heard on the video screaming "tase me!" as she kicks out at Muir with her left leg. When the ECD was deployed officers can be heard continually directing Laird to, "put your hands behind your back, do it now! Hands behind your back!" The first ECD deployment was not effective in getting Laird to comply. The video shows that both officers are continuing to struggle with Laird to get her under control.

Officers are trained to recognize that when an ECD deployment is ineffective due to probe strike location, they should attempt to "complete the circuit" by locating the ECD at another point on the body in order to cause neuro muscular incapacitation. On the video Muir can be seen attempting to complete this circuit by moving the ECD down Laird's left leg toward her calf area. Muir has difficulty firmly indexing the ECD on Laird's leg due to Laird continuing to kick her leg. As Muir reaches Laird's left calf area the ECD completes its first 5-second cycle.

Muir then immediately indexes the ECD on Laird's left ankle and pulls the trigger again to begin another 5-second cycle as Friday continues to struggle to control Laird's arms, and Laird's left leg and entire upper body are still not under control. Laird is told by the officers to "put your hands behind your back! Do it now!" The video shows that Muir completed the circuit as Laird's left leg goes completely straight. Laird's right clenched fist opens up and you can visible see the resistive tension leave her body. After the ECD deployment Laird screams, "you tased me five fucking times". These ECD events were not individual contact deployments to cause localized pain compliance, but rather Muir's attempt to get distance from the probe and complete the ECD circuit.



**Wisconsin LESB Training / MPD ECD Policy:**

The Wisconsin LESB teaches officers that an ECD is meant to overcome active resistance or its threat. As previously stated, active resistance is behavior that physically counteracts an officers attempts to control a subject and which pose a risk of harm to the officer, subject and others. Agencies may impose stricter policies on their use of force; however, they may not impose less restrictive policies than that of the State. In this case, MPD policy is more restrictive where ECD use is concerned. MPD policy restricts the use of an ECD to the following situations:

1. To overcome violent or assaultive behavior or it's threat; if the officer reasonably believes that the subject poses an articulable threat of harm to an officer or another person.
2. To control persons in order to prevent them from harming themselves or others

In this situation, based on Muir's threat assessment and what Muir felt was Laird's "steadily escalating, violent, assaultive behavior", which he thought posed a threat of harm to himself and others, we believe his use of the ECD was appropriate.

**In-Custody:**

Once Laird has complied and is no longer resisting, Friday is able to place the handcuff on Laird's right wrist. Muir continues to index the ECD at Laird's ankle but the ECD is no longer cycling and the trigger has not been depressed. To keep Laird's legs stabilized Muir places his shins across her legs and uses his body weight. As sirens are heard nearing the officer's location Laird screams something and lifts her upper body off the ground and moves her head towards Muir. According to Muir, he believed that Laird was going to spit on him again so, he placed his open left hand on the right side of Laird's head and stabilized her head against the ground. Muir tells Laird, "Don't spit at me again." And Friday takes control of Laird's head keeping it stabilized on the ground with his left hand. Laird can then be heard telling Muir, "I will bite you, I will fucking bite you." Muir advises Laird that if she bites him, he will TASE her again. Laird then demands that they let her go because she "can't fucking breathe."

At that point additional officers arrive. At the request of Muir and Friday, they obtain a "spit hood" and place it on Laird's head covering her face and mouth. Spit hoods are made of a breathable material that can be seen through when worn, they are designed and used to prevent suspects from spitting bodily fluids onto officers. As they are waiting for the spit hood, Muir and Friday reposition Laird on to her side to make it easier for her to breathe.

When they are able to stabilize Laird and have enough officers in place Muir and Friday, with the assistance of other officers, lift Laird off the ground, supporting her legs, torso and head, and carry her to the back seat of Muir's squad car. Muir then drives Laird to a location away from the crowd to be evaluated by emergency medical personnel and eventually she is transported to the hospital and the Dane County Jail.

**Conclusion:**

It is our opinion that Officer Friday and Muir acted within the scope of their legal authority, Court decisions on the use of force, State law, MPD Use of Non-Deadly Force policy, and training provided by the State of Wisconsin. The level of force used was reasonable, necessary, and appropriate based on the totality of the circumstances outlined above. This opinion comes from our intensive review of all the materials submitted to us by MPD, as well as our extensive law enforcement education, training and experience.