



## Madison Police Department

Michael C. Koval, Chief of Police

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City-County Building  
211 S. Carroll Street  
Madison, Wisconsin 53703-3303  
Phone: (608) 266-4022  
Fax: (608) 266-4855  
[police@cityofmadison.com](mailto:police@cityofmadison.com)  
[www.cityofmadison.com/police](http://www.cityofmadison.com/police)

June 3, 2015

To whom it may concern:

The Madison Police Department has concluded its administrative review of the March 6, 2015, officer involved shooting at 1125 Williamson St. involving Mr. Tony Robinson, and has prepared the complete document for release.

The document is being provided with specific information redacted in accordance with redactions to related investigative materials previously released by the Division of Criminal Investigation. Please refer to the May 12, 2015, cover letter authored by the Division of Criminal Investigation for explanation regarding redactions to these records. We have reviewed the determinations in that letter and have incorporated the logic and decisions set forth therein as to the records we are providing today. A copy of that letter is attached herein.

Sincerely,

Anthony Bitterman, Lieutenant of Police



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

BRAD D. SCHIMMEL  
ATTORNEY GENERAL

Andrew C. Cook  
Deputy Attorney General

17 W. Main Street  
P.O. Box 7857  
Madison, WI 53707-7857  
www.doj.state.wi.us

Kevin C. Potter  
Deputy Administrator  
Division of Legal Services  
Public Records Custodian  
potterke@doj.state.wi.us  
608/266-0929  
TTY 1-800-947-3529  
FAX 608/266-1656

May 12, 2015

To Whom This May Concern:

The enclosed records have been prepared in response to numerous public records requests received by the Wisconsin Department of Justice for copies of records related to the investigation conducted by the Division of Criminal Investigation (DCI) into the March 6, 2015 shooting by Madison (Wisconsin) Police Officer Matthew Kenny that resulted in the death of Tony T. Robinson, Jr.

The DCI case in question is *15-1188: Madison PD OIS – Williamson St.* That case file has been reviewed in preparation for public release, and a copy of the file has been made available on the Wisconsin Department of Justice's website at [www.doj.state.wi.us/dci/officer-involved-critical-incident](http://www.doj.state.wi.us/dci/officer-involved-critical-incident).

Certain information has been redacted from the records, either because specifically required by law or pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. These redactions are described below. In addition, I have been mindful in preparing these records for release that the purpose of the Wisconsin public records law is to shed light on the workings of government and the acts of public officers and employees in their official capacities. *Building and Constr. Trades Council v. Waunakee Comm. Sch. Dist.*, 221 Wis. 2d 575, 582, 585 N.W.2d 726 (Ct. App. 1998). The public records law is not intended to provide the public with access to information that otherwise would be private or to provide a mechanism to satisfy public curiosity about matters that do not involve the operation of government.

Well-established public policy recognizes the privacy rights of a deceased person's surviving loved ones. *Cf. National Archives and Records Admin. v. Favish*, 541 U.S. 157, 168, 171-72 (2004). In preparing these records for release, I applied the Wis. Stat. § 19.35(1)(a) public records balancing test and determined that the public policies requiring that surviving loved ones of the deceased be treated with respect for their privacy and dignity outweighed any legitimate public interest in disclosure of the following information:

- Graphic photographs taken of Tony Robinson while he was being treated at UW Hospital and during his subsequent autopsy

- Bloodstained records (MGE envelope as documented in report *15-1188/1* and TracFone records documented in *15-1188/38*) that were removed from Mr. Robinson's person
- Graphic photographs taken at the scene of the shooting at 1125 Williamson Street
- Graphic details of Mr. Robinson's injuries as described during witness interviews

In applying the balancing test, I found that the privacy interests of Mr. Robinson's surviving loved ones outweigh any public interest in disclosure of this graphic information, and therefore certain narrative portions of reports prepared for public release in this case have been redacted from the response accordingly, along with certain video and photographic records.

In preparing these records for release, I also determined by application of the public records balancing test that the public interest in protecting the ability of law enforcement to gather information when conducting sensitive investigations, and in protecting the privacy of citizens involved in those investigations, outweighs any legitimate public interest in disclosure of identifying information that could identify witnesses and other individuals referenced by witnesses. *Cf.* Wis. Stat. § 19.31; *Linzmeier v. Forcey*, 2002 WI 84, ¶¶ 30, 32, 39, 41, 254 Wis. 2d 306, 646 N.W.2d 811. Due to the sensitive and sometimes controversial nature of officer-involved shooting incidents, public disclosure of the full names of individuals interviewed or mentioned during interviews could expose these individuals to unwanted public scrutiny, criticism, or pressure from outside sources, which could have a chilling effect on future witnesses' willingness to come forward and cooperate with law enforcement in investigations of similar incidents. Accordingly, the following information has been redacted from the records prepared for release:

- Names of victims, family members, witnesses and other people mentioned by these individuals, with the exception of Mr. Robinson. (First initials of first and last names were not redacted.)
- Other information that would identify these individuals, such as dates of birth, addresses and telephone numbers, employment or grade in school, and detailed vehicle information.
- Audio recordings of witness interviews, which reveal the voices of the witnesses and could be used as a means of identifying specific individuals.
- Photographs taken of specific victims and witnesses during this investigation, and photographs and diagrams depicting the interior of witnesses' residences, release of which could jeopardize the security of these residences and the safety of the people who live there. (A small number of photographs of the staircase inside the residence at 1125 Williamson Street, which do not include any graphic content, were left unredacted because it was determined the public interest in these photos of the scene outweighs the privacy and security concerns of exposing this small area of the residence, which does not include any views of the private living quarters.)

- Content describing the emotions of one witness on learning of the death of his friend, Mr. Robinson, which was described by the officer who was interviewing that witness at the time, has been redacted out of respect for the privacy of that witness. Similarly, specifics regarding the suicide of a friend referenced by several of the young people interviewed in this case were redacted to protect the privacy of that individual and the individual's surviving family members.

A small number of exceptions to the general redactions related to witnesses as described above were made pursuant to the balancing test. Where the individual interviewed or mentioned is a public official, the names were still redacted except for initials, to provide the individuals with a degree of privacy; however, references to the individuals' public employment were not redacted. Where employees of the gas station and the restaurant across the street from the shooting scene were interviewed, their employment information was not redacted because their employment was the reason for the interview; however, the full names of these individuals were redacted from the records instead, to protect their privacy. Where maps and other records include license plate information without identifying a specific related individual, this vehicle description information has been redacted to prevent identification of witnesses and exposure of these individuals to unwanted public scrutiny.

DCI agents obtained three search warrants in connection with this investigation, covering the scene of the shooting at 1125 Williamson Street and cell phones seized from Tony Robinson's pocket and from a witness connected with the investigation. All three search warrants were sealed for the duration of the investigation; however, arrangements were made to have those seals expire upon conclusion of the district attorney's review of this matter, and an announcement of his prosecutorial decision in the case. Therefore, release of the records related to the three search warrants is no longer restricted by the search warrant seals, and related records have been included in the release, with one exception.

Pursuant to the search warrant, the contents of the witness's cell phone were acquired by the assigned DCI analyst, as documented in DCI reports numbered *15-1188/18* and *15-1188/125*. Subsequently, a DCI agent reviewed the cell phone contents pursuant to the search warrant, including contact names and text messages for the specified period related to the shooting death of Mr. Robinson. That records examination is documented in DCI report number *15-1188/133*, and the reviewing agent included copies of the contents of those portions of the cell phone's contacts section and text messages that he reviewed within his report. In preparing this report for release, I determined by application of the public records balancing test that the public interest in protecting the ability of law enforcement to gather information when conducting sensitive investigations, and in protecting the privacy of citizens who become involved in those investigations, outweighs any legitimate public interest in disclosure of the private contacts list and text messages obtained from this witness. *Cf. Wis. Stat. § 19.31; Linzmeyer, 254 Wis. 2d 306, ¶¶ 30, 32, 39, 41.* Again, due to the sensitive and sometimes controversial nature of officer-involved shooting incidents, public disclosure of personal records obtained from cooperating witnesses could expose these individuals to unwanted public scrutiny, criticism, or pressure from outside sources, which could have a chilling effect on future witnesses'

willingness to come forward and cooperate with law enforcement in investigations of similar incidents.

Specific information that describes the make, model, capacity and serial numbers of weapons assigned to Madison Police Department law enforcement personnel, as well as the number of rounds carried by officers, specific details regarding the locations where weapons are stored, and information that identifies which personnel are assigned to specific positions on Madison's SWAT team have been redacted to preserve the security and effectiveness of the law enforcement officers. In performing the public records balancing test pursuant to Wis. Stat. § 19.35(1)(a), I determined that the public interests in effective investigation of crime and protection of public safety, including protecting the ability of law enforcement to respond in emergency situations, without jeopardizing officer safety or undermining officer effectiveness by revealing their equipment and techniques, outweighs any public interest in disclosure. Cf. Wis. Stat. § 19.31; *Linzmeier*, 254 Wis. 2d 306, ¶¶ 30, 32, 39, 41. Content within the reports that reveals the location, retrieval process and make, model and serial number of the squad video hard drives contained within the officers' vehicles also has been redacted for the same reasons.

Some of our agents' narrative reports prepared for release to the public in redacted form correspond to records in more complicated original formats that have not been prepared for release at this time. Relevant information from the original format records was included by our agents in their case reports, which can be reviewed and redacted as necessary more quickly than the original format records. Rather than delay release of our case file to perform those more complicated, time-consuming reviews and redactions of duplicative original format records, we have prepared our agents' corresponding narrative reports and transcripts for release at this time.

The following portions of the files prepared for release to you involve original format records not prepared for release at this time, for the reasons explained above.

DCI case reports *15-1188/11* and *15-1188/19* document the receipt of video recordings and photographs related to this investigation that were taken by witnesses and provided to DCI. The content of these photographs and brief video recordings are documented in the related reports.

DCI case report *15-1188/28* documents the receipt of video surveillance recordings provided to DCI by the gas station across from 1125 Williamson Street for a four-hour time period surrounding the shooting incident. Report number *15-1188/106*, which documents DCI's review of these recordings, includes specific details regarding those portions of these video recordings that were of interest in connection with DCI's investigation.

DCI case reports *15-1188/42* and *15-1188/138* document video recordings and photographs taken by the Madison Police Department and the Crime Scene Response team related to examination of the scene at 1125 Williamson Street. These scene examinations are documented in detail in these two reports.

Case reports *15-1188/40* and *15-1188/45* document interviews of Officer Kenny and Officer Christian, respectively. Both of these interviews were audio recorded; redacted versions of these two audio recordings have not been prepared for release at this time. These interviews were thoroughly summarized in the narrative portion of the related reports, and those reports are included with the records produced for release with minimal redactions made. In addition, DCI prepared a transcript of the audio recording of the interview with Officer Kenny, and that transcript is included for release with report number *15-1188/146*, again with only minimal redactions made for reasons set forth elsewhere in this letter. In addition, some minimal information provided by Officer Kenny during this interview, regarding his family pet, was redacted pursuant to the public records balancing test to protect the privacy of the officer's family.

DCI case report *15-1198/73* documents receipt by DCI of squad video recordings obtained from the vehicles operated by Officer Matt Kenny, Officer John Christian and Sergeant Jamar Gary on the evening of March 6, 2015. That report and DCI reports numbered *15-1198/74* and */75* document DCI's review of these recordings, along with review of an enhanced version of the audio recording obtained from Sergeant Gary's squad car, as documented in report *15-1188/74*. The squad video recordings obtained from Officer Kenny's vehicle do not contain any audio, and therefore, as documented in DCI report number *15-1188/109*, a DCI analyst was assigned to create a review copy of the squad recordings that synced the enhanced audio content from Sergeant Gary's squad with the video content from Officer Kenny's squad, and a review of this newly-created record is documented in DCI report number *15-1188/115*. Transcripts of the portions of these recordings that were of interest to DCI's investigators are included within the narrative portions of the DCI reports numbered *15-1188/73*, *15-1188/74* and *15-1188/75*.

DCI case report *15-1188/93* documents receipt and review by our agent of audio recordings capturing radio dispatch communications for the time period surrounding the shooting incident on March 6, 2015, as well as audio recordings of five 911 calls received by the Dane County Public Safety Communication Center during that time period, along with transcripts of those audio recordings that had been prepared by the Madison Police Department. These recordings would require substantial redactions before they could be released to the public, to protect the identity of witnesses for the reasons set forth above. The DCI agent's review of these audio recordings confirmed the accuracy of the transcripts as prepared, and copies of the transcripts are included with DCI report *15-1188/93*.

Attached to DCI case report *15-1188/149* is a copy of Madison Police Department reports related to the shooting incident which were provided to DCI for review in connection with DCI's investigation. It should be noted that some of these Madison Police Department records are referenced in and attached to other DCI investigative reports, where relevant; nonetheless, the full report copy as provided to DCI by the Madison Police Department is included again with report *15-1188/149*, for clarity, with just one exception. These Madison Police Department records included a printout of Mobile Digital Computer ("MDC") transmissions for Officer Kenny from March 6, 2015, as documented in Madison police report number 087. The majority of these MDC records pertain to Officer Kenny's work assignments

earlier in the day on March 6, 2015, and relate to local law enforcement activity unconnected with the events that are the subject of DCI's investigation *15-1188*. A copy of a page containing a text message exchange, which is referenced in the reviewing officer's report, is included with the Madison Police Department records attached to DCI report number *15-1188/149*, as is the first page of the other referenced print log and all pages from within that log that contain information from the time period surrounding the shooting. The remaining pages, which contain information formatted and coded in ways that will be difficult for most readers to understand, and which was of no relevance to the DCI investigation, has been redacted from the release because it does not disclose any information pertinent to DCI's investigation. Witness names and other information within the released pages that would identify witnesses have been redacted from the MDC transmission pages being released for the reasons set forth elsewhere in this letter. An access pass code assigned to Officer Kenny also has been redacted from the MDC transmission pages being released to protect the security of the MDC system, which would be compromised by public disclosure of this information. Pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, therefore, I have determined that the public interests in protecting the security of this police communication system outweighs any public interest in disclosure of the officer's pass code. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 25-26, 30, 41.

Similarly, some of the photographs referenced within this investigative file have been identified for redaction from any public release of the file for the reasons set forth elsewhere in this letter. Other photographs may be made available for public release upon further review, in response to specific requests. Should you wish to request copies of specific photographs referenced within DCI reports, please provide me with a public records request detailing which records you seek, so that we can initiate a review of those records and provide you with a response to your specific request.

In addition to the overall redactions set forth thus far, certain other specific types of redactions have been made from the records prior to public release, for the reasons explained below.

Birthdates, Social Security numbers and driver's license numbers of individual persons have been redacted to protect against identity theft or other unauthorized use following any redisclosure. In performing the public records balancing test pursuant to Wis. Stat. § 19.35(1)(a), I concluded that the public policy in favor of protecting the confidentiality of this economically valuable individually identifiable information and preventing its misuse upon any redisclosure outweighs any public interest in disclosure of the dates of birth, Social Security numbers or driver's license numbers of individual persons. Photographs taken of an individual Social Security card, as referenced in case reports, also have been redacted for the same reason. Birthdates of law enforcement officers and other public employees have been redacted pursuant to Wis. Stat. § 19.36(10)(a).

Home addresses and personal telephone numbers have been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. In performing the balancing test, I determined that the public interest in disclosure of this information is outweighed by the expectation of privacy on the part of individuals in their personal lives and by the public interests in protecting the

sources of law enforcement information and in encouraging citizens to cooperate with law enforcement investigators without undue concern that their private lives will become public matters. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 31-32. Two exceptions were made. First, the address where the shooting occurred, at 1125 Williamson Street, has not been redacted because that address has been widely publicized, and pursuant to the balancing test I have determined that public interest in disclosure of that address outweighs the privacy interests of the landlord and tenants of that property. Secondly, where investigators conducted interviews of neighbors up and down the street in the area of the shooting, only street numbers and apartment numbers of those interviewed have been redacted, because the reports make clear this was a neighborhood canvass of addresses on Williamson Street. Where investigators spoke with people at business addresses, the street number is not redacted.

The non-public direct desk and cell telephone numbers assigned to DCI special agents have been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test because these numbers must remain confidential for purposes of effective law enforcement. In applying the public records balancing test to these phone numbers, I concluded that the strong public policies favoring effective investigation and prosecution of criminal activity outweigh any public interest in disclosure of these direct telephone numbers of law enforcement officers. Allowing these non-public law enforcement telephone numbers to become publicly known would have an adverse effect on DCI's future ability to investigate criminal activity, because these phones are used for undercover calls and other investigative business where it is essential to prevent a caller from recognizing the number as belonging to law enforcement in order to protect the safety of law enforcement personnel, informants, and others involved in an investigation. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39, 41. General use, publicly available law enforcement telephone numbers have not been redacted from the records.

Similarly, the non-public direct and cell telephone numbers for police and fire department personnel and emergency medical personnel who responded to the scene in connection with the events in question have been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. Given the availability of public numbers for these personnel, I have determined that public policy favoring effective protection of public safety and effective emergency response capacity outweighs any public interest in disclosure of individual direct and cell telephone numbers, in order to prevent unnecessary interruption of these persons and disruption of their important official responsibilities if their non-public direct and cell telephone numbers were to become public.

The non-public direct telephone numbers for an attorney with the University of Wisconsin and for an employee of the Dane County Medical Examiner's office also have been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. The general office numbers for these employees are publicly available. I therefore have determined that the public policy of facilitating efficient and effective work by public employees is furthered by preventing unnecessary interruption and disruption of these employees' important official responsibilities if their non-public direct telephone numbers were to become public, and that that public policy outweighs any public interest in disclosure of their direct telephone numbers.



Similarly, the non-public direct and cell telephone numbers for a City of Madison parking garage attendant, which are listed in the printouts of police calls that occurred at around the same time as the shooting, but which are not related to this investigation, also have been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. General contact information for the city's Parking Utility is publicly available, and I have determined that public policies disfavoring potential disruption to execution of the parking attendant's job responsibilities if direct telephone numbers became common knowledge outweighs any public interest in disclosure of these non-public direct and cell telephone numbers which were unrelated to this investigation.

Personal email addresses of individuals have been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. In performing the balancing test, I determined that the public interest in disclosure of this information is outweighed by the expectation of privacy on the part of individuals in their personal contact information and by the public interests in protecting the sources of law enforcement information and in encouraging citizens to cooperate with law enforcement investigators without undue concern that their private lives will become public matters. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30-32. Serial numbers and pass codes for individuals' cell telephones, electronic devices and other private property have been redacted in consideration of the same privacy expectations on the part of individuals who cooperated with the investigation, and because this potentially economically valuable property identification information was not connected with the purpose of the investigation.

Bank account numbers and partial bank account numbers of individuals have been redacted from gas station receipts that were reviewed during this investigation, pursuant to Wis. Stat. § 19.36(13).

Wisconsin State Crime Laboratory records have been redacted pursuant to Wis. Stat. § 165.79(1) and (2). In accordance with that statute, details obtained from Crime Lab records documenting what analysis was conducted and the results of that analysis also have been redacted where present in DCI case reports. It should be noted that release of information pertaining to the activities of the Crime Lab's Crime Scene Response Team is not restricted by this statute, and therefore information documenting processing of the scene and collection of evidence items for analysis by the Crime Lab has not been redacted.

DCI case report *15-1188/40* references a personal patient health care record provided to DCI agents by Officer Kenny. This record has been redacted pursuant to Wis. Stat. § 146.82(5)(c). Well-established public policy also recognizes the confidentiality and privacy of personal medical information as expressed in Wis. Stat. §§ 146.82 and the federal HIPAA laws, which supports redaction of this record pursuant to the Wis. Stat. § 19.35(1)(a) balancing test.

DCI case reports *15-1188/153* and *15-1188/154* document the receipt by DCI of patient health care records for Officer Kenny provided to DCI by Officer Kenny's attorney. Along with these records, Officer Kenny's attorney also provided the Department of Justice with a waiver form pursuant to Wis. Stat. § 146.81(2), signed by Officer Kenny, which authorizes the Department to redisclose these medical records. Therefore, the patient records attached to

DCI case reports *15-1188/153* and *15-1188/154* have not been redacted from the materials produced for release. Officer Kenny's date of birth has been redacted from these patient records pursuant to Wis. Stat. § 19.36(10)(a). Officer Kenny's medical account number and medical record number have been redacted from these records pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. In applying the balancing test, I decided that the public policy of protecting the confidentiality and privacy of personal health information, which underlies Wis. Stat. §§ 146.82 and federal HIPAA laws, although not directly governing the redacted medical record account information, outweighs any public interest in disclosure of Officer Kenny's medical account number and medical record number, notwithstanding his waiver pursuant to Wis. Stat. § 146.81(2). I further concluded that public policy in favor of protecting the confidentiality of economically valuable individually identifiable information, such as account numbers, and preventing its misuse upon any redisclosure, also applies to these numbers and outweighs any public interest in disclosure of Officer Kenny's medical account and medical record numbers.

Information about medications taken by Mr. Robinson or medical conditions or medications associated with other individuals has been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. None of this information was material to the subject matter of the DCI investigation. Well-established public policy recognizing the confidentiality and privacy of personal medical information is expressed in Wis. Stat. §§ 146.82 and the federal HIPAA laws. Although those privacy laws do not directly govern the redacted health information, I find that the same underlying public policy of protecting the confidentiality and privacy of personal health information outweighs any public interest in disclosure of this information. Opinions offered by witnesses regarding another's medical or mental health have not been redacted. References to various individuals taking Xanax have not been redacted because investigators were informed this was procured as a street drug and taken without prescription by the individuals referenced.

Emergency Medical Services (EMS) personnel from the Madison Fire Department responded to the shooting scene to provide medical care for Mr. Robinson. Wis. Stat. §§ 256.15(12) and 146.82(5)(c) restrict the release of treatment information from ambulance reports, except for specific information as authorized for release by Wis. Stat. § 256.15(12)(b). Although the DCI case file does not contain ambulance reports, equivalent information was obtained from the EMS personnel during interviews conducted by DCI. Pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, I have determined that the sections of EMS interview reports that document EMS observations regarding the condition of Mr. Robinson and detail the emergency treatment provided for him should be redacted pursuant to Wis. Stat. §§ 256.15(12), because the information obtained during those interviews of EMS personnel is analogous to the ambulance report information restricted by that statute.

DCI report number *15-1188/151* documents DCI's receipt of the autopsy and toxicology records for Mr. Robinson, provided by the Dane County Medical Examiner's office. The DCI report has been included with the released records; however, the attached records, provided by the medical examiner's office, have been wholly redacted from the release. Those records were provided to DCI by the Dane County Medical Examiner's Office on the condition that the reports would not be shared with any person outside the criminal

investigation, and the medical examiner's office would not provide the reports to DCI without DCI's agreement to those conditions. Redisclosure of these records by DCI in violation of those conditions would preclude future report-sharing and significantly impair cooperative law enforcement efforts between DCI and the Dane County Medical Examiner's Office. In performing the public records balancing test pursuant to Wis. Stat. § 19.35(1)(a), I have concluded that the public interest in honoring the conditions under which the medical examiner's records were provided to DCI, so as to protect the current and future joint law enforcement efforts of our agencies, outweighs any public interest in disclosure by DCI of these records. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39. An excerpt from the medical examiner's records, quoted within DCI report *15-1188/151*, has been redacted for the same reasons. If desired, the medical examiner's records may be requested directly from the Dane County Medical Examiner's Office records custodian.

A firearms trace report provided confidentially to DCI by the federal Bureau of Alcohol, Tobacco, and Firearms ("ATF") has been redacted from case report *15-1188/141*. ATF provides firearms trace reports to DCI for its internal use only, on the condition that firearms trace reports remain the property of ATF, and may not be redistributed outside DCI without express authorization from ATF. ATF would not have provided this report to DCI without DCI's acceptance of those conditions; unauthorized redisclosure by DCI would impair DCI's future ability to obtain firearms trace information from ATF and significantly impair other cooperative law enforcement efforts between DCI and ATF. ATF does authorize DCI to release any substantive information obtained via DCI's review of the firearms trace report, and that information is included in the narrative portion of case report *15-1188/141*, except for redactions made as explained elsewhere in this letter, and redaction of the name of the ATF special agent mentioned within DCI's report, which was also done pursuant to DCI's agreement with the ATF. I have concluded, in performing the Wis. Stat. § 19.35(1)(a) balancing test, that public policies favoring effective investigation of crime and effective law enforcement, which are furthered by honoring the conditions under which the ATF firearm trace report was provided to DCI and the names of specific special agents within ATF, so as to protect the current and future joint law enforcement efforts of our agencies, outweighs any public interest in disclosure by DCI of the ATF firearms trace report itself or the name of the ATF agent involved. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39.

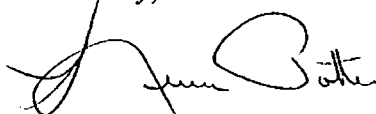
Pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, I have redacted Facebook and other social media page printouts included in the DCI case file as referenced in DCI report number *15-1188/83*. These pages were reviewed by a DCI agent during DCI's investigation into Mr. Robinson's death, and the results of that review are documented in the related DCI report. Although social media records frequently are publicly accessible, pursuant to the balancing test I have determined that these pages should be redacted in deference to the privacy interests of the individuals referenced in these records, most of whom are wholly unconnected with DCI's investigation. Further, I have determined that the public interest in respecting the privacy of the Robinson family and of Mr. Robinson's friends and social networking contacts outweighs any public interest in disclosure of the redacted social media pages, especially because these pages were not deemed to be pertinent to DCI's investigation.

Finally, it should be noted that DCI report number *15-1188/134* explains that files generated by an analyst assigned to assist in this investigation were stored on LTO Tape Media. The content of the LTO Tape Media records duplicates the records already documented earlier in the case file under DCI reports numbered *15-1188/18* and *15/1188/125*, and we are declining to provide copies of the referenced LTO Tape Media archive copies of these same records for the reasons set forth above.

The Department of Justice normally charges \$.15 per page for duplication of records provided in response to public records requests. Under Wis. Stat. § 19.35(3)(f), the Department is authorized to require prepayment by a requester of records of any fee or fees imposed if the total amount exceeds \$5. In this instance, however, our normal fees are being waived, and therefore the records are being made available online at this time without any payment required.

Pursuant to Wis. Stat. § 19.35(4)(b), this determination is subject to review by mandamus under Wis. Stat. § 19.37(1) or upon application to a district attorney or the Attorney General.

Sincerely,



Kevin C. Potter  
Assistant Attorney General  
Deputy Administrator, Legal Services Division  
Public Records Custodian

KCP:kas

Enclosures

**City of Madison**  
**Intra-Departmental**  
**Correspondence**

**Date:** May 26, 2015  
**To:** Michael C. Koval, Chief of Police  
**From:** Cory Nelson, Lieutenant of Police  
**Subject:** Administrative Review- 2015-PSIA-0003

**Initial Information**

On March 6, 2015 at approximately 7:15pm, I received a phone call at home from Sgt. Radke who advised that an officer involved shooting had occurred at 1125 Williamson St. He further advised that Officer Matthew Kenny was the lone officer involved in the incident. He said the suspect appeared to have been using drugs and was “acting crazy” running into traffic and jumping on cars in the area. The case number of this incident is #2015-71913.

I responded to the East District to pick up my squad then immediately responded to the scene on Williamson St where I made contact with OICI Supervisor Lt. Skenandore at approximately 8:00pm, who briefed me on what he knew at that point. Lt. Skenandore advised that the WI Division of Criminal Investigation (DCI) had been notified and they were enroute but would not arrive for 30-45 minutes.

The area had already been cordoned off with crime scene tape and officers were spread out around the perimeter.

Shortly thereafter Sgt. Kane responded with Command Vehicle One (CV-1) that was parked across the street from 1125 Williamson St. in the gas station parking lot.

A short time after that, DCI SAC Jim Engels arrived along with DCI S/A Pertzborn, Holmes, Delarosa and Fernandez arrived.

During the time I was on scene, there were a group of very vocal black males and females standing on the north side of Williamson St. near the gas station area that were screaming at us that we were racists and they were going to get justice by killing us. Approx. 4 black males walked into the area from the north from behind the gas station in the 1100 block and were screaming they were going to “Shoot the fucking pigs!”

They then began tearing down the crime scene tape that was along the sidewalk on the north side of the street. Capt. Gloede, Sgt. Doberstein, several officers and I immediately went to that area to ensure that they did not encroach into the crime scene area. It was very tense with a lot of shouting and threats from the protesters as we put the crime scene tape backup.

A short time later Sgt Gary was brought to CV-1 to provide a snapshot of the information that he obtained from Off. Kenny at the scene. Sgt. Gary advised us that he was on scene just after Off. Kenny had fired his weapon. He parked his squad just to the west of the scene and came around to the east side of 1125

Williamson St. where he found Off. Kenny and a male on the ground bleeding just inside the doorway to 1125 Williamson St. #2. This door is on the east side of the building. He said that he asked Off. Kenny if he was OK and he said he was. Sgt. Gary then proceeded to walk up the stairs to the upstairs apartment and cleared it. He did say he recalled walking through the blood in the entry way and that he may have tracked blood upstairs.

He said after the residence was cleared, he came downstairs and saw Off. Kenny providing first aid to the suspect. Off. Kenny was relieved by another officer and Sgt. Gary got a snapshot from Off. Kenny. He said Off. Kenny thought he heard fighting in the residence so he decided to enter. As he did, the suspect came down the stairs and attacked him, punching Off. Kenny in the head or face area. Sgt. Gary said that Off. Kenny began falling backwards and consciously made the decision to shoot the suspect. Sgt. Gary said that Off. Kenny was clear that he did not unintentionally fire his weapon as he was falling.

Sgt. Gary said a short time later, Off. Kenny was paired up with Sgt. Finnegan and transported to St. Mary's hospital.

As I walked out of CV-1 a large group of protesters was assembling to the east of the scene on Williamson St. screaming at us and threatening the officers.

I requested that Officer Baker move his squad which was near a group of the protesters, so it was facing them and turn on his camera so their actions could be captured.

I was told that S/A Pertzborn would be writing a warrant for the residence. District Attorney Ismael Ozanne was also present in CV-1. I requested to do a scene walkthrough with DA Ozanne after the warrant was signed to which DCI SAC Engels agreed to.

I then responded to the central command post. I was advised that DCI S/A Delarosa was going to be the lead agent in this case. He requested the MDC traffic for Off. Kenny from the start of his shift to the time of the incident. I found that Off. Kenny was riding D-8 this evening and started at 14:00. I did email the MDC traffic request to Tom Dull and told S/A Delarosa that I would forward him the results.

At approx. 1:30am, I was contacted by Lt. Strasburg who said the scene walk through would be occurring soon. I responded back to the scene however found the warrant had not been signed yet. I waited there with DA Ozanne until S/A Pertzborn arrived with the signed warrant. At approximately 02:50am, DA Ozanne, S/A Holmes, S/A Pertzborn and I did enter the driveway area of the crime scene to view the entryway to apartment #2. We were able to view the area where the incident occurred from the driveway area.

Personnel from the WI State Crime Lab were processing the scene and pointed out several scattered shell casing both on the landing outside the door, on the ground and just inside the doorway. The single exterior door appeared to have recently been forced open as the door jamb was broken and a small piece of wood and the strike plate were laying on the fourth step up the stairs. There appeared to be fresh damage to the drywall approx. chest high just beyond the door. There appeared to be more fresh damage to the drywall on the right side of the staircase toward the top of the stairs. Crime Lab personnel advised the damage appeared to be fresh since drywall dust had fallen on top of some shoes on the stairs.

There appeared to be a bullet hole in the wall up on the second floor right at the top of the landing as well as a crease mark from a bullet along the left side of the wall near the railing. Further descriptions could not be obtained from where we were standing in the driveway.

S/A Holmes did tell me that according to the downstairs resident in that building, an unknown person had forced the door to apartment #2 open prior to the shooting incident. He further advised that this same resident also heard what sounded like fighting upstairs in apartment #2, 30-40 minutes prior to the incident.

**Squad Video**

Off. Kenny was driving squad C1824, a marked Ford sport utility vehicle and Sgt. Gary was driving unmarked squad #1899, also a Ford SUV.

I was advised by Capt. Gloede that Off. Kenny initially pulled his squad into the driveway near the scene upon his arrival.

On 03/10/15, I reviewed Off. Kenny's squad video and Sgt. Gary's squad video, here is the timeline of events:

18:36:28	Off. Kenny activated emergency lights on Williamson St. (significant traffic in area)
18:36:49	Kenny turns emergency lights off
18:37:17	Kenny pulls squad into driveway at 1125 Williamson St.
18:37:27	Headlights on Kenny's squad turned off
18:37:30	Kenny walks along drivers side, to back of squad, seen in side view of rear seat camera
18:37:43	Kenny walks from rear of squad, along passenger side towards side door of 1125 Williamson St., he walks to rear of building looking up at second floor, then walks along the side, still looking up
18:38:06	Kenny steps up on small porch area (approx. 3'x4' wide), talking on radio, he is looking up the stairs through what appears to be an open side door leading up to apartment #2
18:38:14	Kenny places right hand on duty weapon that is still in holster on gunbelt while talking on the radio while he is looking upstairs
18:38:19	It appears from Off. Kenny's rear seat camera that a squad pulls up on Williamson St. near the driveway, emergency lights can be seen, believed to be Sgt. Gary's squad. Off. Kenny does not appear to be aware of this. Where Sgt. Gary pulled up is not in Off. Kenny's view. Below is a screen shot from Sgt. Gary's squad as he pulls in, the scene is the left side of the house with the white porch in front of the squad:



03/06/2015 18:38:17

M LB



18:38:21

Kenny enters what appears to be an open doorway leading up to apartment #2, duty weapon is still in his holster, off camera view at this point.

03/06/2015 18:38:21





18:38:40


Sgt. Gary exits squad and is seen on camera heading towards scene

18:38:43

Kenny is backing out of doorway and stumbles; he appears to stumble over the leg of suspect whose foot you see briefly on the video. Off. Kenny appears to lean forward to catch himself, his upper body is obscured by the doorway and he appears to fire a round just as he is backing out of the doorway. It appears as though the suspect is in the same physical vicinity that Off. Kenny is since his foot is in the same location as Off. Kenny's foot.



	
18:38:45	<p>Kenny rights himself and as he is backing up on porch, he fires one round towards lower stairway area (presumably where the suspect is), he then takes one step back and steps off the porch (approx. 2' drop)</p> 
18:38:45	Off. Christian is seen on Sgt. Gary's squad video running down sidewalk towards scene, Sgt Gary is telling dispatch, "Shots fired, shots fired"
18:38:47	Kenny activates handgun mounted light as he is aiming handgun at the stairway area, He is yelling, "Stop right there, don't move!" (From Sgt. Gary's audio)

	
18:38:49	Sgt. Gary and Off. Christian arrive on the scene, Sgt. Gary approaches Kenny and talks to him while Kenny is covering suspect. At one point, Kenny reaches up to forehead area to rub it as though it may be painful.
18:38:58	From Sgt. Gary's audio- there is talk that someone may be upstairs
18:39:10	Off. Christian runs towards Williamson St.
18:39:24	Kenny re-holsters his weapon
18:39:32	Kenny finding gloves and putting them on
18:39:34	Off. Christian returns with medical kit
18:39:54-18:49:20	Kenny enters door way and out of view to administer first aid
18:41:28	From Sgt. Gary's audio- Off. Kenny is saying "Come on, Come on!" sounds like he is administering first aid to the suspect. Kenny later is saying, "Stay with me, stay with me!" They are also discussing the location of the wounds on the body. Kenny tells someone to place a piece of plastic in his hand.
18:42:57	Three EMT's arrive and take over resuscitation efforts shortly thereafter
18:45:03	From Sgt. Gary's audio- Kenny says, "He hit me once in the head."
18:45:13	From Sgt. Gary's audio- (taken from DCI S/A Holmes report) - Kenny says, "There was a male white, flagged me down. He was at the gas station and he said he ran in here. The door was open. I could hear shouting. I thought I heard more than one person shouting. The door was open. And I went up to the top of the, ah, to the top of the stairs, yelled out "Madison Police" and he came around the corner and charged me. He hit me once in the head. I was falling down. I pulled my gun out. He was yelling and he came swinging at me, and I fell back on the stairs, and I made the decision at that point to shoot." <i>Sgt Gary then responds "OK"</i> and Kenny continues, " It was not an accidental discharge because I was falling ( <i>unintelligible</i> )
18:46:35	EMT's remove Tony Robinson on a stretcher to ambulance

There were a total of 7 rounds fired between 18:38:41-18:38:44 by Off. Kenny. These rounds were fired in a quick 3 round succession then a pause, then three more are quickly fired, then a short pause, then one final round is fired. All of the rounds were fired within 3 seconds.

Off. Kenny is out of camera view inside the doorway to Apartment #2 from 18:38:21 to 18:38:43, a total of 22 seconds.

**Review of video from Spirit Gas Station at 1130 Williamson St.**

According to DCI S/A Van Schoyck, she reviewed the video from the gas station across the street from the incident. She advised that at approximately 16:55:15, a dark colored sport utility vehicle pulled into the gas station lot and 4 individuals were in the vehicle. At least two of the occupants walked away from the vehicle towards Williamson St. From the clothing description of Robinson given later by R [REDACTED] S [REDACTED] it is believed by S/A Van Schoyck that Robinson was one of the people who got out of the SUV and walked towards Williamson St. The SUV then left the area at approximately 16:57:28.

**911 calls**

MPD Det. Dahlen transcribed the Channel 1 dispatch traffic. I also listened to the 911 calls.

Please see Det. Dahlen's report for the full transcript. Below are relevant snippets from Det. Dahlen's transcript:

	6:31:28 PM	Dispatch	3D8, 3D7. For a check person. 1125 Williamson. Look for a M/B, light skin, tan jacket and jeans. Outside yelling and jumping in front of cars. 19 years of age. Name is Tony Robinson. Apparently he lives in MaFarland.
7738439	6:32:04 PM	Dispatch	D8, D7. Our 17 is no longer at the scene. Apparently Tony hit one of his friends. No weapons seen.
	6:35:21 PM	Dispatch	D8. Another caller, name of [REDACTED] Apparently he's the victim. He'll be waiting at the restaurant at 1146 Willy St. Suspect's currently at the gas station near the area. No shirt on right now.
7738458	6:36:10 PM	Dispatch	D8, D7. Got another call for this same suspect. He went inside 1125 Williamson St. Tried to strangle another patron.

	6:36:53 PM	Dispatch	Copy D3. And clarification for D3, D7, D8. He went inside 1125.
	6:37:03 PM	Kenney	D8 Copy. Is that the gas station?
7738463	6:37:14 PM	Dispatch	1125 seems to be a residence.
7738464	6:38:05 PM	Kenney	D8. Start me another.....1125 upstairs apartment.
	6:38:09 PM	Dispatch	Copy, 1125 upstairs apartment.
	6:38:13 PM	Dispatch	3D7 copy?
	6:38:16 PM	Kenney	....23
	6:38:17 PM	Dispatch	Copy.
	6:38:18 PM	Kenney	D8. I'm going to have to enter.
	6:38:22 PM	Dispatch	Copy 3D8.
	6:38:25 PM	Gary	1247 out on Willy St.
	6:38:28 PM	Dispatch	Copy 1147
7738466	6:38:44 PM	Gary	1247. Shots fired. Shots fired.

	6:38:48 PM	Dispatch	Emergency traffic channel 1.
	6:38:52 PM	Kenney	1125 shots fired.
	6:38:55 PM	Dispatch	Copy. 1125 shots fired.
	6:39:03 PM	Kenney	1125. Start an ambulance....at least one.
	6:39:11 PM	Dispatch	1125 starting EMS.
7738469	6:39:25 PM	Gary	1247. Clearing the residence.
	6:39:28 PM	Dispatch	Copy 1247.
7738470	6:39:40 PM	UNK	....5. We need additional units.
	6:39:47 PM	Baker	D11 en route
	6:39:49 PM	Dispatch	Copy F11
	6:39:58 PM	Hill	2E10.....
7738473	6:40:23 PM	Dispatch	3E3 and 2E10.
	6:40:26 PM	Hill	E10. En route.

Det. Dahlen also transcribed the calls that came into 911 reference this incident. Here are snippets from a call from Tony's friend J [REDACTED] L [REDACTED] who lives at 1125 Williamson St. #2 who called at 06:28:01pm:



Speaker	Conversation
Munley	What's the address of the emergency
L [REDACTED]	On Willy St.
Munley	Where on Willy St?
L [REDACTED]	Across from the gas station.
Munley	Ok. Which gas station?
L [REDACTED]	American Spirit.
Munley	Ok.
L [REDACTED]	This guy's tweakin. He's chasing everybody and fuckin yellin, and I don't know. He's tweakin on some shit....he's really outrageous right now. He fuckin scared me and my girlfriend.
Munley	What....what...hold on. What's the phone number you're calling me from?
L [REDACTED]	[REDACTED]
Munley	What's your name?
L [REDACTED]	J [REDACTED] L [REDACTED]
Munley	And are you one of the customer's there? Are you just driving through the area....what's going on?
L [REDACTED]	No, I'm a resident, but I live across the street.
Munley	Ok, so what's your address?
L [REDACTED]	1125 Williamson St, apt 2.
Munley	Just a moment....and this guy's outside?
L [REDACTED]	Yea.
Munley	Just a second.....what does he look like?
L [REDACTED]	He's light skinned. He has a faded up haircut....He has on like a.....
Munley	Is he white, black, hispanic?
L [REDACTED]	He has an afro. He's African American....light skinned.
Munley	And what color shirt is he wearing?
L [REDACTED]	I don't think he's wearing a shirt right now.
Munley	No shirt on?
L [REDACTED]	Yea. He has a jacket on but no shirt.
Munley	Ok, what color is his jacket?
L [REDACTED]	It's like tan.
Munley	Tan jacket. Jeans, sweatpants, what?
L [REDACTED]	Jeans, yes.
Munley	Ok, does he have any weapons?
L [REDACTED]	I don't think so, no. He just jumped in front of a car that was going, and just fell..jumped on to his, like, face on the ground.
Munley	Is he injured?
L [REDACTED]	No, he just got up, kept going.
Munley	Is he still standing outside?
L [REDACTED]	I don't know. I drove off. I took off, he started running after us.
Munley	So you're not there anymore?
L [REDACTED]	No. I can't. I wasn't going to stay there. I'm sorry.

[REDACTED]	He started chasing my car.
Munley	Do you know who he is?
[REDACTED]	Yea, he's one of my friends.
Munley	What's his name?
[REDACTED]	Tony. Tony Robinson.
Munley	Where does he live?
[REDACTED]	I'm not sure. Somewhere in McFarland.
Munley	Ok, how old is he?
[REDACTED]	Uh...I think he's 19.
Munley	Do you know if he took anything today?
[REDACTED]	No, not really. He just came to my house...I was chillin' with my girlfriend and he just walked in. He's just going off. He was like, punching one of my other friends, so I just wanted to go outside, and I locked the door.
Munley	Hold on....he did what to one of your other friends?
[REDACTED]	He punched one of my friends.
Munley	Ok, where's that guy at?
[REDACTED]	I don't know. I think he left too. We just kind of dispersed out of the area because it was really bad.
Munley	The guy he punched....what's his name?
[REDACTED]	Uh...S...um yea.
Munley	What do you mean?
[REDACTED]	Uh, wait, no....
Munley	Is his name S...?
[REDACTED]	Yea. That's how I know his name is S...
Munley	Ok, so last you knew, Tony was out in the street in the 100 block of Willy St., jumping in front of cars.
[REDACTED]	He jumped in front of cars. He's going crazy. Yes, Maam.
Munley	Ok, no weapons though?
[REDACTED]	No.
Munley	Does he normally carry weapons?
[REDACTED]	No, not at all.
Munley	Do you know what he took today?
[REDACTED]	Uh...not really...I... "shrooms" or something...some type of strong drugs. I didn't...I couldn't talk to him...I couldn't get through to him.
Munley	He wouldn't tell you, or you don't know what he took?
[REDACTED]	He wouldn't tell me.
Munley	Ok.
[REDACTED]	He's acting really insane right now, and it's scaring the living shit out of me right now. (at 6:32:00) Sir. We've got officers being sent over there, so we'll have someone go check on him, ok?
Munley	Thank you.
Munley	Yep. Bye-bye.

Below are snippets from caller [REDACTED] Y [REDACTED] at 06:31:47pm:

Speaker	Conversation
Wissinger	911. What's the address of the emergency?
Y	Uh... William St. I don't know that number...1146, and uh....
Wissinger	1146 what, Sir?
Y	Williams....Williams....
Wissinger	Williamson St?
Y	Yea.
Wissinger	Is there a restaurant there?
Y	Yea, there's a man there....atacking the pedestrians.
Wissinger	Attacking the pedestrians?
Y	Yea, he punched my face
Wissinger	He punched you in the face?
Y	Yea.
Wissinger	Can you give me a description of him? What race is he?
Y	Uh... he's not white, and he's not black.
Wissinger	So he's light skinned....is he wearing a tan jacket?
Y	Yes, he has a jacket.
Wissinger	Is it tan, Sir?
Y	He's naked inside.
Wissinger	He's naked now?
Y	With the jacket.
Wissinger	So he's inside the restaurant now...Sir, that is what I'm asking.
Y	I'm at the restaurant.
Wissinger	Ok, so he is inside the restaurant.
Y	No, he's on the street.
Wissinger	Ok, so he hit you.
Y	Yea.
Wissinger	What is your name?
Y	He's naked right now, and walking on the street.
Wissinger	He's naked and walkng the street?
Y	He's trying to attack other people right now.
Wissinger	Do you need an ambulance, Sir?
Y	(No response)
Wissinger	Listen to me carefully. Do you need an ambulance?
Y	No, I think I'm all right.
Wissinger	ok.
Y	He's still here....he's down by the gas station.
Wissinger	He's near the gas station?
Y	He's near the gas station, and still on the street.
Wissinger	He took all of his clothes off?
Y	Just the upper....
Wissinger	So he's not naked, he just doesn't have a shirt on still.....
Y	Yea, he still has pants.

Below are snippets from caller [REDACTED] at 06:32:48pm:

Speaker	Conversation
Riggs	911. What's the address of the emergency?
T [REDACTED]	uh, hi. I'm across from the BP, uh Spirit, gas station on Willy St. Uh, 1124. No, I'm sorry. 1126....It's right next to 1123 Williamson St. There's just a guy....kind of crazy...he came up and tried to choke me. I think he tried breaking into the house. He's got his shirt off. He's just kind of roaming around, blocking traffic.
Riggs	Ok, hold on. Which address are you in front of....1123?
T [REDACTED]	Uh, it's right next to 1123. I can't see the address, but it's right across the street from the Spirit gas station on Williamson st.
Riggs	Is it across from the BP? Ok. What is the phone number that you are calling from?
T [REDACTED]	I'm sorry, what is that?
Riggs	What is the phone number that you're calling from?
T [REDACTED]	[REDACTED]
Riggs	And what is your name?
T [REDACTED]	T [REDACTED]
Riggs	D?
T [REDACTED]	T "T" as in T [REDACTED]
Riggs	Spell your last name for me, T [REDACTED]
T [REDACTED]	T [REDACTED]
Riggs	Ok, is he black, white or Hispanic?
T [REDACTED]	He's a darker colored skin. I want to say African American.
Riggs	About how old does he look?
T [REDACTED]	Uh, he could be anywhere from 22 to 28 maybe. Maybe 30. I don't know. I can't get a good view of him right now. He's trying to get into this house, and I don't know if he's getting in or not.
Riggs	What is he wearing?
T [REDACTED]	Um... I want to say it was camo pants, and no shirt.
Riggs	Ok, what house is he trying to get into?
T [REDACTED]	It's the one right next door to 1123. I can't see the address here. See if I can get a little closer....It's gotta be 1125 or...
Riggs	Is it inbound or outbound? Which side of 1123?
T [REDACTED]	Uh....I would say, um....shit. East side of 1123.
Riggs	So he's trying to get into a house?
T [REDACTED]	Yea, he might be getting in...it looked like apartment #2. He kept slamming the door. I don't know if he got in or not. I don't know if anyone's inside.
Riggs	Ok, tell me exactly what's going on.
T [REDACTED]	I was at this gas station, and he was screaming across the street. He came up and tried to choke me, but I got him off me. And then he tried to assault 2 people on the sidewalk. He was just running back and forth on the street....and now he's trying to get in this house. I don't know if he's in or not though. I don't know if it's his house or not, but....
T [REDACTED]	Call continued on Call ID # [REDACTED] (3/6/2015 @ 6:35:31PM)
T [REDACTED]	I just don't know if this guy's all right, or is he's not on his meds or something.
Riggs	All right, ok. You think he's trying to get into apartment 2 at this address?



T [REDACTED]	Yea...apartment 2.
Riggs	Are these outdoors?
T [REDACTED]	He...he looks like he's inside now.
-	Call continued on Call ID # [REDACTED] (3/06/2015 @ 6:35:56)
Riggs	Looks like he forcefully got in, or.....?
T [REDACTED]	I heard a door slam....I don't know if it broke. I don't know if I want to go up to the door.
Riggs	No, don't do that. Stay back...a safe distance.

Below are snippets from caller B [REDACTED] B [REDACTED] at 09:14:46pm:

Speaker	Conversation
Fisher	Dane County Communications.
B [REDACTED]	Uh, yes. I was calling....I just got out of a get together with friends, and I heard about the shooting on Willy St. I was actually in the area, and there was a person who ran, essentially at full speed, into the back of my car....around 6:30. And I don't know anything about the timing, or any of the specifics about the shooting, I just know that it happened in the area that is now blocked off. He ran, essentially smack dab into the back, right area of my car, and I don't know if it's something that the police would want to take a look at, if it was the suspect. I don't know, it was just a very bizarre thing to happen, apparently around the same time that things were going on.
Fisher	Yea, I understand. Is it ok if I have an officer call you about it?
B [REDACTED]	Yea, that would be fine.
Fisher	Thank you very much, and what's your name, please?
B [REDACTED]	My name is B [REDACTED] (spells first name) B [REDACTED] spells last name).
Fisher	What phone number can you be reached at?
B [REDACTED]	[REDACTED]
Fisher	Do you remember what the person looked like that ran into your car?
B [REDACTED]	I didn't get a look at the face. It was a lanky....and I don't know if he was....he wasn't African American, but I don't know if he was caucasian or some other lighter skinned individual.
Fisher	Do you remember what he was wearing...anything at all?
B [REDACTED]	There was something orange on top. It was just such a bizarre thing....
Fisher	Did he damage your car?
B [REDACTED]	Yes, the car is damaged.
Fisher	Ok, from his body, right? From running into it?
B [REDACTED]	Yea.
Fisher	What's the location you're at?
B [REDACTED]	I'm actually just a few blocks away right now. I just got done with my meeting, and I was heading home, and I talked to a friend about what I should do, because I didn't know anything about the shooting and I thought what a random thing for this guy to run into my car.
Fisher	Yea. What's the address you're at?

### MDC Traffic

Tom Dull checked MDC chat messages from Off. Kenny from the start of the shift until the incident. There was one message sent at 16:34 from Off. Naylor to Off. Kenny that was unrelated to this case. He said, "You were right about [REDACTED]"

Off. Kenny replied to him at 16:42 and said, "How so?"

That was the end of the chat messages.

I spoke to Off. Naylor about his message and he advised that [REDACTED] was a mentally ill person who lived in the district. Off. Naylor is the Mental Health Officer for the district and he said that Off. Kenny had talked to him recently about his concerns with [REDACTED] and her mental illness. Off. Naylor advised that [REDACTED] had recently been placed under Emergency Detention and that was what his message was about.

### Sgt. Gary's report

Sgt. Jamar Gary was the first on the scene after Off. Kenny arrived. From squad video records, it appears as though Sgt. Gary arrived at the scene and activated his emergency lights at approximately 18:38:17 (according to Sgt. Gary's squad camera) This was just seconds before Off. Kenny makes entry at 18:38:21 (according to Off. Kenny's squad camera).

The door that Off. Kenny enters is on the east side of 1125 Williamson St. and Sgt. Gary arrives and parks on Williamson St. to the west of the building at 1125 Williamson St. It does not appear as though Off. Kenny would have been aware or able to see Sgt. Gary's arrival, nor could Sgt. Gary could have seen Off. Kenny's actions on the east side of the building. Off. Kenny calls out that "I'm going to have to enter" at 18:38:18. Sgt. Gary calls out that he is on Williamson St. at 18:38:25. These times are taken from 2 different squad videos as well as the time registered in the dispatch center. It appears as though the accuracy of times in the squad videos are within a second or two a part.

From Sgt. Gary's report, he says:

PO Matt Kenny was dispatched to the call and I heard him ask Dispatch if the complainant was going to remain on scene. Dispatch advised that the complainant was not going to remain on scene. PO John Christian was also dispatched to the call. The next transmission that I heard from Dispatch was that the same suspect strangled someone or attempted to strangle someone. I had already started to travel in the direction of Williamson St. after hearing the battery information.

The next transmission that I heard from Dispatch was that the suspect was at the gas station on Williamson St. and he was not wearing a shirt. Dispatch then aired that the suspect was at 1125 Williamson St.

As I was about to park my squad (1899) in the 1100 block of Williamson St., I observed PO Kenny's squad parked in the driveway of 1125 Williamson St. I later determined that 1125 Williamson St. was a house with two apartments. I heard PO Kenny air that he was attempting entry to the apartment. I exited my squad and began walking toward 1125 Williamson St. As I was walking toward the residence, I heard multiple shots fired. I do not recall how many total shots were fired, but I remembered hearing at least three shots. At the time of this incident, I was wearing a microphone that was synchronized to the Arbitrator recording system in squad 1899. The microphone was stored in my left breast pocket of my uniform shirt and I was wearing a jacket over that.

He later says:

As I heard the shots fired, I called out to Dispatch that shots had been fired. At that time I was in front of 1125 Williamson St. and I could not see PO Kenny. I could hear PO Kenny giving verbal instructions to the suspect. On the audio from my microphone I heard PO Kenny yell, "Stop right there. Don't move," after the shots were fired. I turned around the corner from the front of the house as it faces Williamson St. onto the left side of the house as you are facing the front.

I observed PO Kenny standing underneath an awning with his gun drawn and pointed at the suspect, identified by the complainant via Dispatch as Tony Robinson. I drew my service weapon. Based on where I observed PO Kenny and where the suspect was positioned, the shots had been fired toward the staircase. The post underneath the awning had the numeral two on it.

He later says:

I quickly glanced over PO Kenny and did not observe that he was bleeding or had an obvious injury. I asked PO Kenny if there was a knife or a gun. He told me that there was neither. I could not make out exactly what PO Kenny said over the recorded audio. I observed the area on the floor where the suspect was lying, the staircase, and on the porch area below the awning. I did not locate any type of weapon.

He later says:

I asked PO Kenny if he was okay. PO Kenny stated that he was hit in the head. PO Kenny stated that someone told him that the suspect ran into 1125 Williamson St. PO Kenny stated that he thought that he heard more than one voice in the apartment. He stated that the door to the apartment was open. PO Kenny stated that he went up. PO Kenny stated that he announced Madison Police and the suspect came around the corner and charged him. PO Kenny stated that the suspect hit him. PO Kenny stated that he was falling backwards, and he shot him. PO Kenny emphasized that it was not an accidental discharge, that he made the decision to shoot him. I consulted my department-issued MPD OICI "Snap Shot" card after speaking with PO Kenny.

Sgt Gary later says:

PO Matt Magolan advised me that he was in contact with someone named A [REDACTED] that lived at 1125 Williamson St. #2. PO Magolan advised me that A [REDACTED] told him that the suspect had consumed Xanax and "mushrooms" earlier that day. I instructed PO Magolan to ask A [REDACTED] for consent to search the residence and ask him if he was willing to go to the CCB to be interviewed.

**Off. Scott Templeton's report**

Officer Templeton responded to St. Mary's hospital to assist with Off. Kenny. Below is an excerpt of his observations of Off. Kenny:

I observed that Officer Kenny had blood on his face and his hands and arms. He also had a large amount of blood on his pants, most of which began at the knee then went further down the front. The emergency room physician asked Officer Kenny if he was injured in any way. Officer Kenny advised that he had been punched with a closed fist in an overhand fashion which struck him on the left side of his head, above and behind the eye area. Officer Kenny made a motion with his hand of this area. I observed a bloody contusion on Officer Kenny's scalp where he indicated he had been punched. The contusion appeared to be approximately two to three inches in length and width and was in his scalp area. The area also appeared to be swelling. The emergency room physician asked if he was injured anywhere else, and Officer Kenny advised that he was hurt in his back where he was pushed back into a railing or banister or part of the stairs.

**Sgt. Matt Schroedl's report**

Sgt. Schroedl spoke to Off. Kenny the day after this incident and Off. Kenny reported that he now felt knee pain as a result of this incident. Below is a portion of Sgt. Schroedl's report:

On 03/07/2015, at approximately 12:56 p.m., I spoke with Police Officer Matt Kenny, and he informed me that he was having some pain in his left knee as a result of a physical altercation that he had with Tony T Robinson on 03/06/2015 at 1125 Williamson St. Police Officer Kenny told me that he did not initially notice the pain in his knee until he woke up on 03/07/2015, where he began feeling the pain in his knee which was causing him to limp. Police Officer Kenny told me that his other injuries that he sustained as a result of the altercation were reported to other police personnel the night of the incident, and he had already received medical treatment for those injuries.

**J [REDACTED] L [REDACTED] Interview from Det. Bradley Ware's report**

Det. Ware interviewed J [REDACTED] L [REDACTED] who was a resident at 1125 Williamson St. #2. Below are excerpts of his report:

J [REDACTED] L [REDACTED] said that shortly after 3 PM, while he and A [REDACTED] were lying on his bed in his bedroom, he observed Tony Robinson enter his apartment and go into his brother, A [REDACTED] L [REDACTED] bedroom.

█ said this was unusual for Robinson to just show up and enter the apartment, but said he knew Robinson and wasn't concerned about it.

█ said he went to A █ bedroom and opened the door, where he found Robinson "balled up on the bed in the corner." █ described Robinson as lying on his side on the bed, with his arms crossed on his chest and both knees bent up towards his chest.

█ said that Robinson shouted, "Fuck you, Dad!" █ said that Robinson also shouted, "Where's my father? Where's my mother? Don't call the police!" █ said that Robinson also yelled, "Fuck you." █ described that Robinson was yelling at his father who "was not there." █ told me, "It was out of control." █ also told me, "This was not my Tony."

█ told me he was "trying to control him," referring to Robinson, and said he told Robinson that he had to leave. █ said that Robinson then stood up and walked into the living room. █ said upon entering the living room, Robinson took off his shoes and threw them on the ground. █ said Robinson also took off his dark colored tee shirt, threw it on the ground, then put his tan outer jacket back on, over his bare chest. █ described Robinson as "smelling like sweat" and said Robinson had a "sheen" of sweat on his body, but was not "dripping" sweat.

█ said as this was happening, Robinson continued to shout about his "father" and sat down in a living room chair. █ said he told Robinson, "Tony, you got to get out. You're out of control." █ said he put Robinson shoes on the floor in front of him as well. █ said Robinson remained in the chair. █ then told me, "He was getting so physical with me that I had to get him out of my house." █ said that he told Robinson that he had to leave and extended his hand to Robinson, to help him up. █ said Robinson gripped his hand and started to pull him, █ towards him on the chair. █ said he then grabbed Robinson's arm and attempted to lift him out of the chair. █ told me, "He completely went crazy." █ said that he attempted to physically control Robinson and get him out of the house, but he sat back down in the chair.

█ said he again told Robinson that he had to leave and tried approach █ to get him out of the chair. █ said Robinson then grabbed the front, crotch area of his shorts and stated, "Let me suck your dick." █ said this statement was out of character for Robinson because they are not in a relationship and Robinson was not homosexual. █ said that Robinson grabbed his athletic shorts and tore a hole in the front of his shorts, which I observed and was later photographed.

█ said he tried to grab Robinson and "control him" by his hand or arm again, in an attempt to get him out of his apartment. █ said it was during this second attempt that he tried to force Robinson's arms behind his back, but due to Robinson's strength, ended up wrapping his arms around him, from behind, in a bear-hug fashion. █ said while this was happening, his girlfriend, A █ then "ran to the truck" because she was "so scared." █ said that he also had to control Robinson several times by pushing his hand on Robinson's chest to push him back. █ told me, "I thought he was hyped out." █ told me Robinson was "so strong" and wouldn't move him. █ told me he was worried Robinson was going to hurt him or his girlfriend, A █

█ said when he realized he could not get Robinson out of his apartment: he decided to exit his own apartment. █ told me, "He fucking looked crazy on me sir. █ also told me, "I literally was scared for my own safety."

L [redacted] said he went down his apartment stairs, which he said contained 12 steps, and said Robinson followed him. L [redacted] described that Robinson as running towards the door without acknowledging the stairs. L [redacted] said Robinson stepped off the top stair without looking and continued to the door. L [redacted] said Robinson did not fall, but appeared to run down the stairs and caught himself on the railing before falling. L [redacted] said Robinson "kind of caught himself and kind of didn't." L [redacted] described the jump as "like super human."

L [redacted] said after Robinson exited the residence, he lay down on the driveway. L [redacted] said he ran to talk to his girlfriend, A [redacted] who was in her truck parked across the street on Williamson Street. L [redacted] said he then observed Robinson walk to the sidewalk and sit on his bottom, with his hands on his knees.

L [redacted] said while he talked with A [redacted] at her truck, he observed Robinson run in front of a car traveling EB on Williamson Street. L [redacted] described that Robinson ran, then jumped so that his body was in a horizontal position in the air with his left elbow under his chin. L [redacted] said that Robinson landed in the street, in the path of the car, and that when Robinson landed, the car stopped 1 ft. to 1.5 ft. short of Robinson. L [redacted] said the vehicle's tires squealed "a little bit" when stopping.

L [redacted] said he went to see if Robinson was hurt, at which point Robinson "popped up" and "monkey walked" on his feet and hands back to the sidewalk near 1125 Williamson Street, where he again sat down. L [redacted] said that Robinson "seemed fine" and uninjured. L [redacted] said he then ran to A [redacted] truck, entered the truck, and told her to "just go." L [redacted] said they wanted to "get away from here" and get to the basketball game. L [redacted] said as A [redacted] drove WB on Williamson Street, Robinson then chased after the truck in the street "fast," and said A [redacted] was scared. L [redacted] said he directed A [redacted] to make the first right turn and drive towards East High School.

L [redacted] said he dialed 911 as soon as he got in A [redacted] truck and recalled that dispatch heard him telling A [redacted] to turn right, off of Williamson Street. L [redacted] said he also recalled dispatch telling him to calm down. L [redacted] said he told dispatch his friend "went crazy." L [redacted] told me he was concerned for his safety and the safety of his girlfriend, A [redacted]. L [redacted] told me Robinson is not normally dangerous, but "something was wrong today." L [redacted] said Robinson's behavior was what concerned him, but said Robinson did not make any threats to him personally.

**J [redacted] L [redacted] interview with DCI S/A Fernandez**

Below are excerpts from S/A Fernandez's report:

I [REDACTED] said that the outer door to the apartment was unlocked and Robinson just walked in to the apartment. He added that he was not surprised by the visit since Robinson is friends with A [REDACTED].

I [REDACTED] said that when he first saw Robinson in the apartment that he looked "out of it." He explained that Robinson did not seem like his "normal" self. Robinson looked directly at I [REDACTED] without saying anything, and then walked into A [REDACTED] bedroom.

I [REDACTED] then described for agents how he saw Robinson staring at a wall in A [REDACTED] bedroom, while simultaneously saying "Oh my god!" as he reached for the wall. He said that Robinson reached so hard and fast that he caused a hole in the wall. As this was occurring, I [REDACTED] was pleading loudly with Robinson to tell him what was wrong, but Robinson was not replying. He said that Robinson did not even look in his direction. I [REDACTED] recalled that Robinson was yelling for his dad, as he walked into the living room. I [REDACTED] said this was really out of character for Robinson and he started to believe something was seriously wrong with him.

I [REDACTED] stated that he was yelling "Tony" at the top of his lungs, but Robinson did not seem to hear him. After a few seconds of shouting "Tony, Tony, Tony", Robinson finally replied "J [REDACTED] bro". Robinson then began yelling "Fuck you, Dad" in the air repeatedly. I [REDACTED] said he had never seen Robinson like this before, and he thought Robinson was on some type of drug.

I [REDACTED] said he called 9-1-1 because Robinson was out of control and getting more violent. I [REDACTED] was afraid Robinson was going to "snap" and he could not control Robinson. I [REDACTED] was afraid if he did not call police, Robinson would hurt A [REDACTED] or somebody else.

I [REDACTED] said after calling 9-1-1, he called A [REDACTED] and told him something was wrong with Robinson, he told him Robinson was punching holes in the walls at their apartment and "going crazy."

It should be noted that S/A Fernandez also noted that there was a hole in I [REDACTED] shorts that he said was made by Robinson.

#### Follow Up Interview on May 4, 2015 with J [REDACTED] I [REDACTED]

A follow up interview was done with I [REDACTED] on 05/04/15 in the Dane County DA's office with DA Investigator Kohlmeyer-Searls, DCI S/A De La Rosa, DA Ozanne and Atty. Schulenburg. Below is an excerpt from Inv. Kohlmeyer-Searls' report:

J [redacted] said that Tony Robinson Jr stayed at J [redacted] place sometimes, but didn't live there full time. J [redacted] said on the evening on March 6<sup>th</sup> 2015 his downstairs door was unlocked when Tony arrived. DA Ozanne asked J [redacted] if anyone had permission to be in J [redacted] residence after J [redacted] and all the rest of the people in J [redacted] residence had left and J [redacted] had locked the door. J [redacted] said no one else would have had a key. J [redacted] said at the time he decided to leave and lock the door, he was worried about his girlfriend's safety and others that were there in the residence with Tony. J [redacted] said while Tony was there, "he broke through my wall". DA Ozanne clarified with J [redacted] that J [redacted] meant Tony had broke through the wall in J [redacted] brother's room. J [redacted] said Tony would always be welcome in J [redacted] house on a normal day, and J [redacted] wouldn't have minded that Tony broke through a door to get in. DA Ozanne clarified by asking "If Tony entered, it would have been by force?" J [redacted] said, "Yes". J [redacted] added, "If he needed to go back there for safety, he could, but I'd have had a super messed up house, but I would have preferred that". J [redacted] said he had seen Tony doing damage to J [redacted] house before J [redacted] left and locked the door with Tony outside the locked door.

#### K [redacted] A [redacted] interview from Off. Andrew Naylor's report

Off. Naylor interviewed K [redacted] A [redacted] who is the girlfriend of J [redacted] I [redacted]. Below are excerpts of his report:

I asked A [redacted] to describe what happened and A [redacted] stated that she and J [redacted] went to J [redacted] residence which is 1125 Williamson Street after school today. A [redacted] stated that at approximately 6:00 p.m., an individual known only to her as Tony, came to the residence to visit J [redacted]. A [redacted] stated that she did not know Tony very well but had seen him on several past occasions at J [redacted] residence. A [redacted] stated that this particular evening, Tony was "tripping." I asked A [redacted] what that meant and she stated that Tony was "freaking out." I asked A [redacted] if she could further describe Tony's behavior and A [redacted] stated that Tony was saying, "Oh my god, am I gonna come back?" A [redacted] stated she did not know what that meant, but also that Tony had mentioned something about taking mushrooms earlier in the evening and that Tony was likely acting differently due to him taking the mushrooms.

A [redacted] stated that there were several other people inside the residence besides herself, J [redacted] and Tony. A [redacted] stated that at one point, Tony tried to fight with one of J [redacted] other friends. I asked A [redacted] if she could describe that and A [redacted] indicated that Tony would have fought with another friend of J [redacted] but that other people were holding Tony back so that he was not able to fight the other friend. A [redacted] stated that after that, the rest of the people left the residence and it was just herself, J [redacted] and Tony. A [redacted] stated that after that Tony said to her, "Come over and hop on this dick." A [redacted] stated that after Tony said that, she went into J [redacted] bedroom to get away from Tony and that Tony later followed her into the bedroom and grabbed both of her shoulders, facing her, and told her that, "It's okay." At that point, A [redacted] stated that she left the residence and went out to her vehicle which was parked across the street at the Spirit gas station.

A [redacted] stated that after J [redacted] entered her vehicle, she observed Tony exit the residence as well and begin running after vehicles that were on Williamson Street. A [redacted] stated that she then decided to leave the area and that as she was leaving the area, she observed Tony begin running after her vehicle as well. A [redacted] stated that is when J [redacted] called the police.

#### K [redacted] A [redacted] Interview with DCI S/A Fernandez



A [REDACTED] was later interviewed by S/A Fernandez, A [REDACTED] was referring to J [REDACTED] friend that was over as S [REDACTED] D [REDACTED]. Below are excerpts from her report:

A [REDACTED] said she was looking out into the living room when she saw D [REDACTED] falling backwards into a chair. She said she came out of J [REDACTED] bedroom and saw that it was Robinson who had pushed D [REDACTED]. A [REDACTED] said Robinson was trying to fight D [REDACTED] over nothing. She said that D [REDACTED] was trying to leave, but Robinson "got all in his face and tried to hit him". J [REDACTED] was telling Robinson to stop, and asking him to leave. A [REDACTED] said she saw J [REDACTED] standing behind Robinson attempting to hold him back, because Robinson was trying to get D [REDACTED] to fight with him. She said it appeared to her as if Robinson had struck D [REDACTED] because D [REDACTED] got angry and as soon as he could get up from the chair, he left the apartment. A [REDACTED] later learned from J [REDACTED] that Robinson had not struck D [REDACTED].

A [REDACTED] told investigators that as Robinson sat in a chair in the living room (the same one that he pushed D [REDACTED] into), he tapped his lap and said, "Its okay K [REDACTED] you can hop on this stick."

A [REDACTED] said she went to J [REDACTED] bedroom to get away from Robinson, but Robinson followed her into the bedroom. Robinson was telling her "Its ok, K [REDACTED]", as he grabbed her by both of her wrists. A [REDACTED] said she was able to pull her right wrist away from Robinson, but he still had control of her left wrist when J [REDACTED] came into the bedroom. A [REDACTED] then pulled her left wrist out of Robinson's grip and she started to leave. As she was putting on her shoes, she yelled for someone to get her coat because she was leaving.

#### D [REDACTED] R [REDACTED] interview from Off. Naylor's report

Off. Naylor then interviewed D [REDACTED] R [REDACTED], who was with Robinson earlier inside 1125 Williamson St. He referred to Robinson as "TT", below are excerpts from his report:

R [REDACTED] stated that three of them went inside the residence at 1125 Williamson Street, but that J [REDACTED] stayed behind in the vehicle. R [REDACTED] stated that he saw an individual inside the residence who he only knows as "TT". R [REDACTED] stated that he arrived at 1125 Williamson Street at approximately between 6:30 p.m. and 6:45 p.m. R [REDACTED] described "TT" as an acquaintance and that he did not know much about "TT" beyond that.

R [REDACTED] stated that while inside the residence, he observed that "TT" was acting strangely and "trying to hit people." R [REDACTED] described "TT" as not "all the way there." I asked R [REDACTED] to describe what he meant by that and R [REDACTED] stated that there was something wrong with "TT". R [REDACTED] stated that he did not observe "TT" ingest any drugs or alcohol while inside the residence and that at one point, he observed "TT" run outside and jump in the air and land on his face on the ground. R [REDACTED] stated that "TT" then sat up for approximately 2 minutes and then began running after cars in the street on Williamson Street near the residence. I asked R [REDACTED] if he heard "TT" saying anything while "TT" was acting strangely and R [REDACTED] stated he observed "TT" say, "Where's my dad?" several times.

R [REDACTED] stated that he has never seen "TT" in this state before and that he knew that obviously something was wrong with him.

A [REDACTED] L [REDACTED] interview from Off. Matt Magolan's report

Off. Magolan interviewed A [REDACTED] L [REDACTED] who also lived at 1125 Williamson St. #2 with his brother J [REDACTED] L [REDACTED]. Below are excerpts from his report:

A [REDACTED] stated that his brother had called him a short time before A [REDACTED] had gotten the call from J [REDACTED] and told A [REDACTED] that Tony was "Tweaking out." A [REDACTED] stated that J [REDACTED] told A [REDACTED] that Tony was punching holes in the walls of the apartment and was "going crazy."

A [REDACTED] stated that J [REDACTED] told A [REDACTED] that J [REDACTED] was having trouble controlling Tony and that J [REDACTED] needed to call police because Tony was, "So out of control." A [REDACTED] stated that eventually, J [REDACTED] told A [REDACTED] that J [REDACTED] had gotten Tony out of the house and had left to go to the East High School basketball game. A [REDACTED] stated that he and Tony had smoked some marijuana prior to A [REDACTED] leaving for work and that he knew that Tony was commonly using Xanax that Tony bought on the street without a prescription. A [REDACTED] also stated that Tony was arranging to buy mushrooms when A [REDACTED] left for work, then A [REDACTED] indicated that Tony had sent a "snap chat" image of the large quantity of mushrooms and that A [REDACTED] wasn't sure how many of the mushrooms Tony had ingested. I asked A [REDACTED] if it was common for Tony to act this way when he had mixed several types of drugs, and A [REDACTED] stated that he had never seen Tony act the way that J [REDACTED] had described before. A [REDACTED] stated that J [REDACTED] had told him that Tony was, "Punching holes in the walls."

I took the keys to Sgt. Gary and was then tasked by Sgt. Shimko to assist PO Retlick and PO Swanson with the secondary clear. The porch and entryway to apartment #2 were covered in a fair quantity of blood and discarded medical equipment, so entering the apartment was done gingerly. Once inside, I did clear the apartment, not locating any more suspects, victims, or witnesses. I did observe a large hole in a wall that appeared to have been put up over a brick chimney. I saw another fist sized hole in a wall of a bedroom that corroborated the information that A [REDACTED] had stated had been passed to him by J [REDACTED]. I also noted some drug paraphernalia and a large gallon sized bag with multiple small gem packs with marijuana inside on a chair in the bedroom. I observed a samurai sword in a sheath on the floor of the bedroom with the holes in the wall.

A [REDACTED] L [REDACTED] Interview with DCI S/A Ben Poller

A [REDACTED] was later interviewed again by S/I Poller, below are excerpts from his report:

L [redacted] said they smoked a "blunt" when he and Robinson first got up in the morning, then around noon they had another one. I [redacted] said it was pretty strong marijuana, but it was nothing Robinson could not handle. Robinson told I [redacted] he wanted to "trip on shrooms" today. To I [redacted], that meant Robinson wanted to take mushrooms and get the full effect. I [redacted] said he knew that did not mean Robinson wanted to take mushrooms and get shot by police.

I [redacted] said he has done mushrooms with Robinson before, and that they make you "see shit". I [redacted] was going to do some mushrooms with Robinson tonight after he got off work. I [redacted] said mushrooms have never affected Robinson negatively, and that there was always giggling and laughter when Robinson took them.

I [redacted] stated today he woke up around 6:00AM with Robinson, and they both started smoking marijuana shortly after they woke up. I [redacted] said he then drove them to McDonald's on East Washington Ave, across from East Town Mall to get some breakfast. I [redacted] stated Robinson had also taken a Xanax pill that morning. I [redacted] knew what Xanax pills were, and he described as being a "little yellow pill".

The last time I [redacted] saw Robinson was at M [redacted] house at around 2:40 PM when I [redacted] left. I [redacted] did not have any phone contact with Robinson because Robinson had just purchased a cell phone that did not have any minutes. J [redacted] called I [redacted] from his cell phone, which I [redacted] provided as: [redacted]. J [redacted] told I [redacted] that Robinson was "tweaking" and Robinson broke the blinds and he was breaking the walls in his room. J [redacted] told A [redacted] he locked the doors, called the cops, and left to go to a basketball game. J [redacted] also said Robinson was chasing cars down the street.

I [redacted] said he did not think J [redacted] knew that Robinson had been using mushrooms, or that Robinson had ever used mushrooms. I [redacted] stated S [redacted] D [redacted] was at I [redacted] house and called I [redacted] to tell him that Robinson had tried to punch him a couple times by "taking a swing" at him. Robinson was acting weird and really aggressive according to D [redacted] trying to fight him.

[redacted]

DCI also obtained text messages from A [redacted] phone related to Tony's behavior around 18:44, see below:

03/06/2015 18:43:10 CST	Message to [REDACTED]: Nigga find that nigga tony
03/06/2015 18:43:16 CST	Message to [REDACTED]: He is fucking tweaking bro
03/06/2015 18:44:06 CST	Message to [REDACTED]: He destroyed my house im about to beat his fucking ass
03/06/2015 18:44:48 CST	Message from [REDACTED]: ?
03/06/2015 18:44:48 CST	Message from [REDACTED]: How?
03/06/2015 18:44:48 CST	Message from [REDACTED]: [REDACTED]: A [REDACTED] supposedly some shit just went down at your crib.

And again around 21:11

03/06/2015 21:11:26 CST	Message to D [REDACTED]: He took those shrooms and started tweaking hard core bro /:
03/06/2015 21:11:52 CST	Message to D [REDACTED]: Like he was in my house breaking shit and the cops were called
03/06/2015 21:12:02 CST	Message to D [REDACTED]: Someone said he tried fighting the cops bro

**[REDACTED] B [REDACTED] interview from Off. Daniel Swanson's report**

Off. Swanson interviewed one of the callers to the 911 center identified as B [REDACTED] B [REDACTED]. Below is an excerpt from his report:

B [REDACTED] stated on this date, at what he believed to be about 6:20 PM to 6:30 PM, he was driving eastbound in the 1100 block of Williamson St. B [REDACTED] stated he was across from the Spirit Gas Station, when suddenly an unknown man came out of nowhere and was running from the south side of the street. B [REDACTED] stated this subject ran right into the rear passenger side of his car, causing a minor dent. B [REDACTED] told me the subject then fell backwards on his back, then got up and continued to run northbound. B [REDACTED] could only describe the subject as a tall male, approximately 6'00" or taller, wearing an orange coat. B [REDACTED] further stated the subject had dark curly hair. B [REDACTED] did not know the race of the subject or any other details. B [REDACTED] stated he did not see any other disturbances taking place and did not see any squad cars or other emergency vehicles or workers at the time this happened. B [REDACTED] stated he just felt this was an odd occurrence and wanted to make sure police knew about it since he had heard about the critical incident afterwards.

**[REDACTED] B [REDACTED] interview with DCI S/A Orn**

S/A Orn met with B [REDACTED] and did document "three distinct dents on the rear passenger side of the vehicle" that B [REDACTED] was driving the night of the incident. S/A Pertzborn did later respond and did take photographs of this damage.

**[REDACTED] D [REDACTED] interview from Off. Hector Rivera's report**

Off. Rivera interviewed J [REDACTED] D [REDACTED] who was a friend of Tony Robinson's. He witnessed some strange behavior that Tony was engaged in just prior to the shooting. Below is an excerpt from Off. Rivera's report.

D [redacted] told me the following:

D [redacted] group went to the gas station near 1100 Williamson St., to which D [redacted] pointed. D [redacted] and D [redacted] got out of D [redacted] vehicle and went into the convenience store. At this point, D [redacted] family friend "Tony" was acting normally. D [redacted] described "Tony" as wearing a gray/green hoodie with camouflage pants. When D [redacted] and D [redacted] returned to the vehicle, "Tony" was "freaking out" in the parking lot of the gas station near the air pumps closest to the sidewalk. D [redacted] watched as "Tony" jumped in front of a moving vehicle. The vehicle braked and was able to stop before striking "Tony."

The vehicle then proceeded to drive around "Tony" leaving the area. D [redacted] described "Tony" as jumping 5 feet in the air and "diving" in front of the vehicle, landing on the roadway with his shoulder. "Tony" made no effort to cushion his fall. D [redacted] group then left the area in D [redacted] vehicle. As the group left the area, they observed multiple police vehicles coming into the area. This led them to believe something had happened to "Tony," and they returned to the area.

#### S [redacted] D [redacted] Interview with DCI S/A Pertzborn

DCI S/A Pertzborn spoke to D [redacted] on 03/24/15. D [redacted] was a friend of Robinson's who was with Robinson shortly before the incident. Below are excerpts from his report:

D [redacted] then walked up the stairs to D [redacted] apartment where he visited with D [redacted] and L [redacted] girlfriend, K [redacted] A [redacted] in the living room of the apartment. D [redacted] informed agents that the living room of the apartment is located at the top of the staircase and that the living room has a large bed located in it. D [redacted] told agents that he talked with L [redacted] and A [redacted] for approximately three minutes at which time, Robinson suddenly walked into the living room. D [redacted] stated that immediately after Robinson entered the living room Robinson told D [redacted] to come over to him, at which time Robinson gave D [redacted] a hug. D [redacted] stated that as he disengaged from Robinson's hug, Robinson suddenly threw a punch in the direction of D [redacted] chest. D [redacted] told agents that he deflected Robinson's punch with his hand but that the momentum of the punch caused D [redacted] to take a step back. D [redacted] stated that when he took the step back he tripped over the corner of the bed and fell into a chair that was located behind him. D [redacted] told agents that he does not know why Robinson threw the punch at him and that Robinson did not say anything prior to doing it. D [redacted] told agents that he did notice that Robinson's pupils were dilated so he assumed that Robinson was on drugs. D [redacted] told agents that after he fell into the chair he immediately stood up and said to Robinson, "Bro calm down, what are you doing". D [redacted] told agents that L [redacted] then told D [redacted] to, "just leave". D [redacted] told agents that he then walked out of the apartment and walked across the street to where his vehicle was parked.

#### I [redacted] D [redacted] Interview from Off. Kristin Parks report

Off. Parks interviewed I [redacted] D [redacted] who witnessed strange activity. Below is an excerpt from Off. Parks' report:

D [REDACTED] told me that at approximately 6:30 pm, he started to leave his apartment to go get some groceries at the Willy Street Co-op. He stated that he observed a truck with a cab on the back, gray or beige in color that was pulling out of the driveway next door at 1125 Williamson Street. He said that he observed a male subject running after the truck and yelling at the occupants. He observed the truck heading inbound on Williamson Street and then take a right onto Ingersoll Street. He said that after the truck turned onto Ingersoll, the male subject on foot stopped, turned around and proceeded to run back to the house. He observed him go back into the house.

**K [REDACTED] V [REDACTED] Interview with DCI S/A Augsburger**

V [REDACTED] was driving with her boyfriend on Williamson St. just before the incident and witnessed Tony Robinson hit someone on the sidewalk. Below is an excerpt from S/A Augsburger's report:

As V [REDACTED] and K [REDACTED] continued to drive by slowly, V [REDACTED] kept watching the male. V [REDACTED] stated the male "did not look right of mind". V [REDACTED] noted two Asian people (one male and one female) walking on the south side of Williamson Street walking eastbound.

The male approached the two people walking and V [REDACTED] advised that the male was approximately one foot taller than the two people walking on the sidewalk. As the male approached the two people who were walking, V [REDACTED] noticed the male raise his right hand and make a "swinging" motion towards the two people on the sidewalk. V [REDACTED] advised that she was looking back at them and towards them as they drove down the street. V [REDACTED] said that they stopped because V [REDACTED] could not tell if the male was "swatting" at the people walking on the sidewalk. V [REDACTED] stated that several other people started walking towards the male and the couple on the sidewalk. V [REDACTED] and K [REDACTED] decided to continue driving since other people arrived to see what was going on. V [REDACTED] advised that she did not hear anything because they had the music on in the vehicle.

V [REDACTED] advised that on Saturday, March 7, 2015, at approximately 10:30PM, V [REDACTED] observed postings on Facebook about the shooting and recognized the picture of Tony Robinson to be the person that she observed walking in the street on Williamson Street on Friday, March 6, 2015 at approximately 6:30PM.

**K [REDACTED] B [REDACTED] Interview from Off. Sarah Boespflug's report**

Off. Boespflug interviewed the downstairs resident of 1125 Williamson St. in apartment #1 identified as K [REDACTED] B [REDACTED]. Below are excerpts from her interview:

B [REDACTED] told me that approximately 30 minutes prior to police arriving at this address; she heard what sounded like several male voices in Apt 2. I asked B [REDACTED] exactly how many voices she thought she heard, and she stated "more than two." B [REDACTED] reiterated that it was all male voices she was hearing. B [REDACTED] told me that she heard what sounded like a physical altercation in Apt 2. B [REDACTED] told me that this fight went on for quite a while and stated that she believed it continued for approximately a half hour. B [REDACTED] told me that she then heard the side door on the east side of the residence slam shut and believed that only one person had left. B [REDACTED] stated that approximately five minutes after the person had left through the side door, she heard what

sounded like the door being kicked in. B [REDACTED] told me that it all happened very quickly, and once she heard the door get kicked in, she heard someone shout, "Nigger get up, get up, get up." B [REDACTED] told me she heard another person respond, "Why'd you do that?" B [REDACTED] told me that there was a lot of arguing that ensued thereafter and that a physical fight then began. B [REDACTED] told me the fight made the light fixture in her kitchen shake and stated that the ceiling was shaking as well. B [REDACTED] told me that this fight lasted approximately five minutes and that she then heard what she believed to be gunfire coming from the stairwell on the east side of the residence. B [REDACTED] told me she believes she heard two to three shots.

K [REDACTED] B [REDACTED] Interview with DCI S/A Holmes

B [REDACTED] was interviewed by S/A Holmes on two occasions. Below is an excerpt from S/A Holmes' report: During the second interview with B [REDACTED] B [REDACTED] verified the information that she had previously told S/A Holmes. B [REDACTED] heard fighting between individuals occurring in the upstairs apartment; she heard something breaking or being knocked over; she heard a male subject yell three times to "get up"; and she observed the light shaking in her kitchen from the fighting that was occurring in the second floor apartment. B [REDACTED] also verified that she heard someone exiting apartment #2, and that person was running down the stairs to leave the apartment. Approximately five minutes after someone had left apartment #2, she heard someone reenter the apartment by pushing the door open. B [REDACTED] clarified that she believed that the person who had pushed the door open had actually forced the door open to apartment #2. B [REDACTED] did not know if it was the same person who entered the apartment as who had previously left the apartment earlier. B [REDACTED] stated that, when the individual left the apartment, she tried to look out her kitchen window, but because of the glare, she could not see outside of her window.

B [REDACTED] stated that, about five minutes after the person returned to the upstairs apartment after forcing their way through the lower doorway to apartment #2, B [REDACTED] heard someone going down the steps and then the shooting occurred. B [REDACTED] stated that she heard wrestling noises and loud noises occurring during these five minutes before the shooting incident. B [REDACTED] heard wrestling as if something was occurring. B [REDACTED] heard someone yell "get up" three times. B [REDACTED] also heard "why'd you do that for" and then B [REDACTED] stated that she did not want to say the word that was used. B [REDACTED] then stated that she heard "why'd you do that for nat," and that she did not want to say "that word" as she did not like it. S/A Joy asked B [REDACTED] the word was "Nigger." B [REDACTED] responded "yeah." S/A Joy verified with B [REDACTED] that the statement she heard was "why'd you do that for nigger." B [REDACTED] replied, "Yeah." B [REDACTED] described the voice who said the aforementioned statement as being a male subject.

S/A Holmes discussed with B [REDACTED] how she had previously described an individual leaving the apartment and then coming back to the apartment and pounding on the door and then pushing their way through the door. B [REDACTED] informed the agents at this time that the door had been forced open. B [REDACTED] thought the door could have been kicked open as well. B [REDACTED] heard someone coming downstairs again, and then the shots were fired. B [REDACTED] and not know the police were present at the time the shots were fired. B [REDACTED] first realized the police were there when she heard a person telling another person to "hang in there" after the shots were fired.

E [REDACTED] G [REDACTED] Interview from Off. Boespflug's report

Off. Boespflug also interviewed another resident at 1125 Williamson St. #1 identified as E [REDACTED] G [REDACTED]. Below is an excerpt from her report:

I spoke with G [REDACTED] who stated that he was in the living room of B [REDACTED] apartment and that he had heard a fight in the upstairs apartment. G [REDACTED] stated that the fight had been going on for at least a half an hour. G [REDACTED] told me that during the fight, he heard what he believed to be several gunshots fired. G [REDACTED] stated he didn't know exactly where the shots were fired from and that he didn't have any further information.

E [REDACTED] G [REDACTED] Interview with DCI S/A Holmes

S/A Holmes interviewed the downstairs tenant at 1125 Williamson St. E [REDACTED] G [REDACTED]. Below is an excerpt from S/A Holmes' report:

S/A Holmes asked how long G [REDACTED] had heard the screaming, arguing and banging occurring in the upstairs apartment. G [REDACTED] thought the screaming, arguing and banging occurred for approximately 15 to 20 minutes and then it quieted down. Then the noise and commotion continued again. Then he heard the police sirens pulling up to the scene. G [REDACTED] heard more noise and he was guessing that the police were at the location. G [REDACTED] heard the noise and commotion in the upstairs apartment moving between the ceiling of B [REDACTED] bedroom, the kitchen area of apartment #1, and the living room area of apartment #1. G [REDACTED] informed the agents that B [REDACTED] was getting upset about the activity that was occurring upstairs, as the commotion was shaking the light in B [REDACTED] kitchen. G [REDACTED] believed that the bedroom door where he was located was open off and on during the commotion that was occurring upstairs.

C [REDACTED] S [REDACTED] Interview from Off. Boespflug's report

Off. Boespflug also interviewed a witness who was across the street identified as C [REDACTED] S [REDACTED]. Below is an excerpt from her report:

S [REDACTED] told me that he was standing in the parking lot of the gas station, and he then heard who he believed to be the officer shout, "Get down! Get down!" S [REDACTED] told me another Madison Police



squad had pulled up while he was hearing this, but he wasn't sure if the officer had actually gotten out of his car at that point. S [redacted] stated that he also heard who he believed to be a police officer shout, "Stop! Get down on the ground!" and then heard two series of gunfire. S [redacted] stated that he believed approximately six to seven shots were fired. S [redacted] told me at this time he got out his smart phone and began taking cell phone video. I viewed the video, and S [redacted] captured several other police units arriving on scene, and it did not appear that he captured any of the actual incident.

### L [redacted] Y [redacted] interview from Off. Boespflug's report

Off. Boespflug then interviewed L [redacted] Y [redacted] who was attacked by Tony Robinson. Below is an excerpt from her report.

Y [redacted] told me he was walking outbound on the south side of Williamson St in the 1100 block on his way to Lao Laan – Xang with his friend J [redacted] J [redacted]. Y [redacted] told me that as he was walking, he saw a black male, approximately 20 years old wearing a dark green or dark brown jacket that was unzipped and also observed that the individual did not have a shirt on under the jacket. Y [redacted] told me that this individual was acting "strange" and stated the person was walking inbound Williamson St toward him. Y [redacted] told me that this individual continued toward him and was staring at him and not moving over to the side. Y [redacted] told me the individual continued directly toward him, and just prior to them actually running into one another, Y [redacted] stuck out his right hand to stop the individual from running into him. Y [redacted] also said that he had tried to move over, but the individual kept moving with him. Y [redacted] told me that just prior to this, the individual said something about punching him. Y [redacted] told me he wasn't exactly what the individual had said, but as he stuck out his right hand, the individual used his right hand with a closed fist and punched Y [redacted] hitting his right outstretched hand and then striking Y [redacted] in the right side of the face in the area of his jaw line. Y [redacted] told me that this did cause him pain, and he did not consent for the individual to strike him. I did observe swelling in this area of Y [redacted] face. Y [redacted] told me that he then grabbed this individual by both of his arms in an attempt to stop this person from hitting him again. Y [redacted] told me that the individual was still yelling at him, but Y [redacted] could not remember specifically what the individual was yelling. I asked Y [redacted] if he thought the individual was trying to rob him, and Y [redacted] told me no. Y [redacted] told me that the individual never tried to grab anything from him and just appeared to want to fight. Y [redacted] told me that his friend, J [redacted], was screaming for help and that a man in a vehicle pulled over and appeared to be coming to their aid.

Y [redacted] told me it appeared the suspect was just looking for somebody else to fight. Y [redacted] told me that the individual started to walk toward a residence and began punching the front door. Y [redacted] stated he knows for sure this individual punched one of the front doors to a residence but couldn't remember if he had gone and done the same thing at a second house. Y [redacted] couldn't remember if the individual was saying anything.

Y [redacted] told me that after the individual punched the front door to a residence, he then walked across Williamson St to the gas station. Y [redacted] told me that the individual walked up to a vehicle parked in the gas station parking lot and attempted to open the driver side door. Y [redacted] told me the vehicle was occupied, but the doors must have been locked because the individual couldn't get it open. Y [redacted] told me that the individual began punching the window of the car. Y [redacted] told me that at this point, he didn't believe the individual was wearing the coat that he had on initially when Y [redacted] came into contact with him and stated that he believed the individual was topless.

Y [redacted] told me that he was now calling 911 and that he saw the same individual fleeing from the gas station to the opposite side of the street. Y [redacted] told me that at that time, the individual went in between houses and was out of sight. Y [redacted] told me that he then went to the restaurant and didn't see anything else.

#### L [redacted] Interview with DCI S/A Joy

S/A Joy interviewed L [redacted] Y [redacted] who was punched by an individual believed to be Robinson. Below are excerpts from S/A Joy's report:

Y [redacted] said that when he and L [redacted] were almost to the restaurant, Y [redacted] said he saw a guy walking towards him wearing a coat with no shirt on underneath. Y [redacted] said the man looked angry and mad. Y [redacted] told agents that the same man punched him one time in the face. Y [redacted] said the he lost his balance and tried to hold on to the man's arms to hold them down.

Y [redacted] told agents that, after the man hit him, the man went to a front door of a nearby residence and started hitting it. The same man then crossed the street towards the gas station and began hitting the window of one of the cars parked on Williamson Street.

Y [redacted] stated several times that the man seemed to be trying to get someone to fight. Y [redacted] further stated that the man was acting very aggressive. Y [redacted] reiterated that the man wanted to fight someone.

Y [redacted] said that he had then seen the man run across the street and then into the backyard of a residence on Williamson Street. Y [redacted] said that he lost sight of him then.

#### J [redacted] Interview from Off. Boespflug's report

Off. Boespflug also interviewed J [redacted] J [redacted] who was with her friend L [redacted] Y [redacted]. Below is an excerpt from her report:

J [redacted] described the man as a black male with a dark colored jacket and nothing underneath it. J [redacted] told me that the man was talking as if he was "drunk." J [redacted] told me she was also frightened by this individual because it appeared something was wrong with him, and he was talking to himself. J [redacted] told me that the sidewalk is very narrow, and she and Y [redacted] were trying to move out this individual's way as it appeared that he was not going to move over. J [redacted] told me that she actually walked up onto the snow bank to try to make enough room for everybody to be able to walk past one another without colliding. J [redacted] told me Y [redacted] was in front of her at this point and that she was scared by this man's behavior and was looking down at the snow to try and avoid eye contact. J [redacted] told me that she was still behind Y [redacted] when she saw Y [redacted] bend forward and grab the side of his face. J [redacted] told me that she then realized that the man walking toward them had punched Y [redacted] in the face. J [redacted] told me that now she was very scared and began screaming for help. J [redacted] told me that she grabbed Y [redacted] by the arm and said, "Let's go" as Y [redacted] was trying to grab onto the individual to try and keep him from fighting with him further. J [redacted] told me that Y [redacted] was saying something about calling 911, and J [redacted] kept telling him that they should just keep walking because she was afraid that if they called the police, the man would continue to hurt them. J [redacted] told me that while she continued to scream for help, a man in a vehicle pulled over and tried to assist them. J [redacted] told me that at this point, the man that had punched Y [redacted] walked past them, and she and Y [redacted] continued toward Lao Laan - Xang. J [redacted] told me that she didn't

look back, but she believed she heard glass breaking behind her and just continued toward the restaurant. J told me that Y then called 911.

#### J interview with DCI S/A Joy

DCI S/A Joy interviewed J who was present when L Y was punched on the sidewalk. Below is an excerpt from S/A Joy's report:

J confirmed that she and Y were walking on the sidewalk on Williamson Street with the intention of going to a restaurant near to where they had parked on Williamson Street. She said that she had seen a man walking towards her and Y. J said that they had tried walking around him, as he looked angry. She said that she had stood behind Y and tried to move out of the way by walking on the snow along the sidewalk. J stated that she turned and saw Y defending himself against the man hitting him in the face. J said she started yelling for help. She went on to say that a man in a parked car got out of his car and yelled at the man. J said she and Y kept moving toward the restaurant to get away from the man who had hit Y. J then stated that she had seen the man was trying to start another fight with someone else down the street.

#### T Interview from DCI S/A Jurci's report

T was one of the callers to 911 to report that he was a delivery driver for restaurant and had pulled into the gas station on Williamson St. to get gas for his vehicle. He reported that he had been choked by a person later identified as Robinson. Below are excerpts from S/A Jurci's report:

At one point the subject (who was later identified in this investigation as Tony ROBINSON) started to cross Williamson Street in the direction of T. ROBINSON seemed to not care about the cars as he crossed the street and there were several cars that almost struck him. ROBINSON came up to T and put his hands around T neck and started to choke him. T stated to investigators that "He looked like he was going to kill me." T described the choke as ROBINSON's arms were straight out and on his hands were on both sides of T neck. After 1-2 seconds of being choked and feeling pain, T pushed ROBINSON off of him and stated to investigators that "It could have been bad, one of us would have been hurt, or both". There might have been approximately 3-5 people at the gas station or in the area that might have witnessed the choking incident, but T was unable to provide any descriptions of the subjects.

ROBINSON then started throwing fists at an Asian couple who were walking Eastbound on the sidewalk. T ran across the street to assist the couple and started to yell at ROBINSON and get his attention, but it seemed to have no effect on him. After ROBINSON assaulted the couple it seemed like again he backed off and possibly apologized to them, but T couldn't hear what was said. T then observed ROBINSON try to get into Apartment #2 forcefully of a house and heard loud banging and yelling coming from ROBINSON. T observed a #2 on the left side of the house, but didn't know the house number. T repositioned back across the street away from ROBINSON and was observing from a distance at the gas station. The Asian couple asked T to call the police and T dialed 911 and spoke with a dispatcher. Eventually ROBINSON gained entry to the house while T was on the phone with the police.

Police arrived quickly and T flagged down the first Officer on the scene. He got the Officers attention was asked by the Officer what was going on. T stated that a guy was trying to get into this house and pointed out the house that ROBINSON was trying to break into. T moved back across the street to the gas station and heard what he believed to be Officers yelling. T couldn't make out what was being said, but then he saw another police squad or two arrive on scene. Seconds later, T heard what he thought were at least 3 gunshots, 2 shots at first then 1 shot. T did not see the shooting he only heard the gunshots.

C K Interview from Off. Boespflug's report

Off. Boespflug then interviewed C K who was a witness from across the street who saw Robinson break into 1125 Williamson by force. Below is an excerpt from her report:

C told me that she parked her car here to check on her parents that were following her to this location. C told me that when she pulled over outside of 1125 Williamson St, she saw one man acting "strange." C stated the man was wearing camouflage pants and at this time had a shirt on. C stated that the man was a black male and described him as "younger." C told me that another car had pulled on the opposite side of the driveway behind her, separating her from her parents' vehicle. C stated that the man was yelling and running toward a house and that there was another white male with him talking about calling the police.

C told me that the black male had gone to the side of the residence and began slamming his body into the side door to the residence she was parked outside of. C told me she believed the man slammed into the door with his body four times before the door broke open. C told me she believed that the whole door jamb had been damaged when the man slammed his body against it. C told me that she then went back to her parents' vehicle to check on them. C told me that the

vehicle that had parked behind her on the opposite side of the driveway was a [REDACTED] vehicle, and she did point it out to me. I later was able to see that this vehicle had Wisconsin registration [REDACTED]. C [REDACTED] told me that there was a white male whom she described as being skinny that had been operating this vehicle, and when the man saw the strange behavior from the black male, he got out of his car and ran out of the area.

C [REDACTED] told me that she and her parents walked across the street to the gas station, and she saw that another man was already on the phone with 911. C [REDACTED] told me that she looked back across the street and saw that the man who had broken into the house was now topless, on his knees, in the driveway, looking toward the backyard area. C [REDACTED] told me that this time, she and her parents continued to walk eastbound to the restaurant. C [REDACTED] told me that she didn't hear or see anything further but had heard from another person later that shots were fired.

**G [REDACTED] O [REDACTED] Interview from Off. Daniel Hamilton's report**

Off. Hamilton interviewed a citizen named G [REDACTED] O [REDACTED] who lives upstairs at [REDACTED] Williamson St. Below is an excerpt of his report:

I was approached by a female who wanted to speak with an officer. The female was verbally identified as G [REDACTED] O [REDACTED] O [REDACTED] stated she her apartment is an upstairs unit at [REDACTED] Williamson Street, facing the south side. O [REDACTED] described her covered porch door was propped open, and she heard sirens approaching from multiple directions. O [REDACTED] told me she heard a male's voice yelling. I asked O [REDACTED] what was said, and I saw her visibly shaking. O [REDACTED] told me she heard "aggressive voices." O [REDACTED] said if normal conversation was a one to three, the male voice she heard was "between a five and seven."

I asked O [REDACTED] how long she heard "aggressive voices." O [REDACTED] stated it was at least five minutes in length, followed by sirens and gunshots.

I asked O [REDACTED] if she could recall any other detail or verbiage that may have been used by the male voice. O [REDACTED] stated she had no additional information, but she agreed to contact the Madison Police Department if she recalled anything further.

**J [REDACTED] K [REDACTED] interview with DCI S/A Jurci**

S/A Jurci interviewed J [REDACTED] K [REDACTED] who was a friend of Robinson's. Below is an excerpt from his report:

Later that day, in late afternoon, K [REDACTED] received a text message from J [REDACTED] that said ROBINSON was "Flipping Shit" and that J [REDACTED] told ROBINSON to leave the house but ROBINSON broke back into the residence. K [REDACTED] took this information as ROBINSON might have had a bad reaction to mushrooms that he ingested. SA Jurci asked K [REDACTED] if he knew that ROBINSON was planning on obtaining mushrooms to get high. K [REDACTED] advised that on March 5, 2015 while hanging out at 1125 Williamson Street, that ROBINSON told K [REDACTED] he was planning on obtaining 7 grams of mushrooms to get high on Friday with J [REDACTED] and other friends. K [REDACTED] advised SA Jurci that he had seen ROBINSON taken mushrooms before and was fine.

**R [REDACTED] P [REDACTED] Interview with DCI S/A Freymiller**

S/A Freymiller interviewed R [REDACTED] P [REDACTED] who is an investigator for the State of WI Public Defender's Office. He was at the gas station putting gas into his vehicle during this incident. Below are excerpts from S/A Freymiller's report:

While outside his vehicle, pumping gas, P [REDACTED] heard a male voice yelling from across Williamson Street. At first, P [REDACTED] could not see anyone but then saw a man standing in the parking lane on the South side of Williamson Street. The man appeared to be "bouncing around" "agitated" and was "animated." The man was young and African American. P [REDACTED] is not sure what he was wearing. The man appeared to be alone.

P [REDACTED] has since seen media reports regarding the death of Tony Robinson. Based on photographs included in those reports, P [REDACTED] believes the man he saw was Robinson. Therefore, for the remainder of the report, Robinson's name will be utilized.

Robinson lowered his body and ran into a moving car; P [REDACTED] said "it was obvious he intended to do it." It was dark outside and P [REDACTED] could not see what type of car Robinson ran into.

Robinson continued running across Williamson Street toward the gas station. P [REDACTED] was concerned Robinson was running toward him so P [REDACTED] moved around his vehicle toward the driver side door to get out of Robinson's way "for safety."

Instead of approaching P [REDACTED] however, Robinson made contact with a white male with dark hair, approximately thirty years old, who was pumping gas on the other side of the same island where P [REDACTED] was. This man's vehicle was the one closer to the street, mentioned earlier in this report. P [REDACTED] could not recall what type of vehicle it was.

Robinson made physical contact with the man as he ran up to him. The contact was brief, and was an action similar to what football players do after a touchdown. It did not appear to P [REDACTED] that Robinson was trying to attack the man and that Robinson seemed disoriented. P [REDACTED] said Robinson, "Jumped up on" the man with his hands out. The body contact lasted just a few seconds.

Robinson said to the man words such as "I know it hurts." The man appeared "startled" as he pushed Robinson back and replied with words such as "Back off" or "Easy man."

Robinson then ran back into Williamson Street. P [REDACTED] is not sure where he went.

P [REDACTED] then left the area and did not see any squad cars in the area nor did he hear any gunshots.

#### D [REDACTED] S [REDACTED] Interview with DCI S/A Dobbs

S/A Dobbs interviewed S [REDACTED] who called to report abnormal behavior he witnessed by Robinson prior to the shooting. S [REDACTED] said he identified Robinson from the photos he had seen on the TV news reports. Below are excerpts from S/A Dobbs' report:

S [REDACTED] indicated at approximately 6:30 p.m. (Friday, March 6, 2015), he was driving eastbound on Williamson St. in his 2005 Toyota Camry, black in color, when he (and his wife who was a passenger in the vehicle) observed a group of three to four (3-4) subjects run across the road approximately 100 yards in front of his vehicle. At this time, S [REDACTED] indicated he slowed down. S [REDACTED] indicated when he got to the west side of the Spirit gas station, Tony "jumped" in front of his vehicle.

S [REDACTED] positively identified Tony as the subject who jumped in front of his vehicle through photographs observed on various television news sources.

S [REDACTED] described the motion as Tony "bounding" in front of his vehicle. S [REDACTED] indicated as Tony jumped / bounded, his right shoulder hit the pavement in the middle of the eastbound lane of traffic, directly in front of S [REDACTED] vehicle. S [REDACTED] described the jump / bound as looking like a wrestling move. S [REDACTED] indicated Tony's shoulder hit the ground very hard, to the point where S [REDACTED] believed Tony could have dislocated his shoulder. S [REDACTED] indicated once Tony hit the pavement in front of his vehicle, Tony got up, pointed at S [REDACTED] and continued to the north side of the Williamson St. where his friends were. S [REDACTED] indicated Tony's friends were on the north side of Williamson St. during this entire incident. S [REDACTED] indicated Tony came from the south side of Williamson St. S [REDACTED] indicated no cars were traveling westbound on Williamson St. at the time of this incident. S [REDACTED] indicated he did not remember what clothing Tony was wearing at the time of this incident.

W [REDACTED] T [REDACTED] Interview with DCI S/A Dobbs

DCI S/A Dobbs interviewed M [REDACTED] T [REDACTED] who witnessed Robinson ingest a variety of drugs the day of the incident. Below are excerpts from his S/A Dobbs report:



M [redacted] indicated on the day of the incident (Friday, March 6, 2015) he had been with Tony, and they had been smoking weed (marijuana). M [redacted] indicated "A [redacted] and Tony (Robinson) got to his residence between approximately 12:30 p.m. and 1:00 p.m. "A [redacted] was later identified as A [redacted] L [redacted] M/B, DOB [redacted] hereinafter referred to as "A [redacted] M [redacted] indicated "V [redacted] and "R [redacted] got to his residence between 2:30 p.m. and 3:00 p.m. "V [redacted] was identified as V [redacted] A [redacted] M/A, DOB [redacted] hereinafter referred to as "V [redacted] "R [redacted] was later identified as R [redacted] S [redacted] Jr., M/B, DOB [redacted] hereinafter referred to as "R [redacted] M [redacted] indicated that while he was doing dishes and showering, A [redacted] Tony, V [redacted] and R [redacted] were hanging out in M [redacted] bedroom smoking weed and playing video games. M [redacted] indicated he was in and out of the bedroom during this time.

M [redacted] indicated Tony stated to him, "I want to get on some spiritual shit." M [redacted] interpreted this as Tony wanting to get some "shrooms," meaning psilocybin mushrooms. M [redacted] told law enforcement that Tony used M [redacted] cell phone to call a subject named "G [redacted] Z [redacted]" later identified as G [redacted] Z [redacted] M/W, [redacted] hereinafter referred to as "G [redacted]" at the phone number of [redacted] M [redacted] indicated he did not have G [redacted] phone number programmed in his phone, and Tony knew G [redacted] phone number from memory. M [redacted] indicated G [redacted] drove to Nichols Rd. and McKenna Rd. and Tony walked from M [redacted] residence to meet G [redacted] on the street for the drug transaction. M [redacted] indicated Tony purchased seven (7) grams of "shrooms" from G [redacted] that day. M [redacted] indicated he observed Tony eat an eighth (1/8) of the "shrooms," and Tony asked M [redacted] for some orange juice, because the "shrooms" did not taste good. M [redacted] told S/A Dobbs and Det. Helgren he observed Tony eat another eighth (1/8) of the "shrooms" before any symptoms set in. M [redacted] told S/A Dobbs and Det. Helgren that in addition to Tony smoking marijuana and ingesting psilocybin mushrooms, M [redacted] also observed Tony take a Xanax pill. M [redacted] told S/A Dobbs and Det. Helgren that Tony had ingested all seven (7) grams of "shrooms" at M [redacted] residence and if he would have know Tony was going to eat all seven (7) grams, he would not have let him. M [redacted] indicated using marijuana, "shrooms" and Xanax at the same time would intensify a person's symptoms. M [redacted] indicated he had personally used "shrooms" in the past and his body got a tingly feeling, like he wanted to come out of his own skin. M [redacted] indicated he could not imagine what Tony must have been feeling.

M [redacted] then told S/A Dobbs that they left his residence around 3:30-4:30pm and drove to Governors Island where they stayed for approximately 1 hour. He said they went there to play on the ice and that Robinson thought the "trees were talking to him." They then dropped off Robinson at the gas station on Williamson St.

#### R [redacted] S [redacted] interview with DCI S/A Prieve

S/A Prieve interviewed S [redacted] who admitted he was with Robinson earlier in the day on March 6, 2015. He said he was with him from 10am-4pm (approximately). S [redacted] mentioned seeing Robinson smoking marijuana that day. He did not witness other drug usage by Robinson. He did talk about mushrooms and their effect on a person:

During the interview S [redacted] made the comment something similar to, "I can't believe you guys heard of shrooms". S [redacted] indicated someone he had a conversation with commented to him the police heard mushrooms may have been involved.

While discussing the effects of psilocybin mushrooms, S [redacted] stated something similar to, "Shrooms take over, you have to control it (mushrooms) or they will control you. You have to conquer shrooms in order for it to have a good effect". S [redacted] stated he tried mushrooms once but it was a couple of years ago. S [redacted] explained mushrooms don't make you hallucinate but when you close your eyes the room can spin or while S [redacted] pointed to a television in the living room area of his residence made the comment, the TV could start moving around.

#### C [redacted] A [redacted] Interview with DCI S/A Joy

C [redacted] A [redacted] was identified as being present during a drug deal involving her boyfriend C [redacted] Z [redacted] selling mushrooms to Tony Robinson on the day of this incident, March 6, 2015. Below are excerpts from S/A Joy's report:

A [redacted] stated that on Friday, March 6, 2015, she had been with Z [redacted]. She informed S/A Joy that she had been present when Z [redacted] had sold \$50 worth of mushrooms to a male she identified as "Tony", known by S/A Joy to be Tony Terrell Robinson. A [redacted] said the transaction happened in the afternoon, in the City of Monona. She further stated that the transaction had taken place between the alternative school and library near the Dream Park.

A [redacted] told S/A Joy that on the aforementioned date, she and Z [redacted] had driven over to the area where the transaction had occurred in her vehicle, a Toyota Solara. She said that Tony had given Z [redacted] \$50 worth of mushrooms in a baggie, which he Z [redacted] had concealed in a cigarette pack. A [redacted] said that Tony had been alone during the transaction. After purchasing the mushrooms from Z [redacted] A [redacted] said that Tony had left on foot; A [redacted] was not aware of where her had gone. A [redacted] was able to recall that Tony had been wearing a hoodie (hooded sweatshirt) with the hood up. A [redacted] was not able to remember the color of the hoodie.

#### G [redacted] Z [redacted] Interview with DCI S/A Joy

S/A Joy interviewed G [redacted] Z [redacted] on March 10, who admitted to selling mushrooms to Robinson on March 6, 2015. Below are excerpts from S/A Joy's report:

Z [REDACTED] said that he felt responsible because, as law enforcement knew, he had sold Robinson "shrooms". Z [REDACTED] said it had not been his decision for Robinson to use all of the mushrooms he had bought from Z [REDACTED]. Additionally, Z [REDACTED] stated that Robinson had told him that he was going to sell the mushrooms he had purchased from Z [REDACTED]. Z [REDACTED] said that he would not have sold Robinson that much, had he known Robinson was not going to sell them, he would not have given him that much. Z [REDACTED] went on to say that "there is no reason anybody should ever take that many".

S/A Joy asked about the prior occasion Robinson had purchased mushrooms from Z [REDACTED]. Z [REDACTED] disclosed that there had been a prior occasion during which Robinson had purchased approximately the same amount (\$50/7 grams) from him. Z [REDACTED] added that Robinson had "taken it across two days". He stated that he knew this because Robinson had called him the next day informing Z [REDACTED] that "he had taken the other half".

S/A Joy asked Z [REDACTED] if the mushrooms had the same effect on Robinson as they had possibly had on Friday; Z [REDACTED] said it was different. Z [REDACTED] said that Robinson "had been on Xanax, smoked weed and then smoked mushrooms" on Friday, March 6, 2015. Z [REDACTED] went on to say that he knew that information because Robinson had told Z [REDACTED] and Anderson that he was on Xanax. Z [REDACTED] stated that he felt Robinson had probably smoked weed, because "that's what he does" and that "he's the kind that smokes all day".

S/A Joy phoned Z [REDACTED] back later on March 10 to clarify some issues;

S/A Joy asked Z [REDACTED] to explain the affects that mushrooms had on a person, such as Robinson, when ingested. Z [REDACTED] explained that with Robinson, Xanax had likely played a part in his behavior on Friday, March 6, 2015. Z [REDACTED] explained that it was not good to take other drugs when you are "tripping on Shrooms". Z [REDACTED] went on to say that "once you end up on a bad trip, there is no way back". He added that it's not good to mix mushrooms with any other drug the first time a person ingests mushrooms.

Z [REDACTED] said that different strains of mushrooms had different affects on people. He said that some strains would result in making the person "giggle". Z [REDACTED] went on to say that the kind of mushrooms he had sold Robinson were for stress relief. He added that Robinson acting out had to do with Robinson having mixed/taken other drugs. Z [REDACTED] stated that Robinson was "in his own reality" and was "maybe seeing monsters".

Z [REDACTED] was also interviewed on March 9 by S/A Dobbs. Below are excerpts of his report:

G [REDACTED] indicated on the day of the incident (Friday, March 6, 2015) he met Tony in Monona, WI by a skate park off of Nichols Rd. C [REDACTED] indicated the park was named Dream Park in Monona. G [REDACTED] indicated he met Tony between 2:00 p.m. and 4:00 p.m. C [REDACTED] indicated Tony walked from a friend's residence to meet him. G [REDACTED] indicated he thought Tony lived in McFarland, WI. G [REDACTED] told S/A Dobbs and Det. Helgren he met Tony, and they smoked weed (marijuana), talked and hung out. G [REDACTED] indicated he was with Tony for one (1) hour. G [REDACTED] indicated Tony was on Xanax and weed. C [REDACTED] indicated Tony stated to him, "I'm off the bars." G [REDACTED] indicated he knew Tony's statement to mean that Tony was on (had taken) Xanax. G [REDACTED] told S/A Dobbs and Det. Helgren he sold Tony a quarter (1/4) ounce or seven (7) grams of "shrooms," meaning psilocybin mushrooms. C [REDACTED] indicated he sold the "shrooms" to Tony for \$50.00.

S/A Dobbs again met with C [REDACTED] later that day to clarify the time frame in which Robinson purchased the mushrooms he later told S/A Dobbs that he thought he met Robinson around 2:55pm on March 6, 2015. He said Robinson took a hit off marijuana joint C [REDACTED] had and offered to trade marijuana for the mushrooms but G [REDACTED] needed the money to purchase gas for his car.

#### **DCI S/A Van Schoyck report on Social Media related to Tony Robinson**

S/A Van Schoyck reviewed publicly accessible materials on Instagram and found "Numerous images that appear to depict Robinson with what appear to be controlled substances."

#### **Off. Matthew Kenny statement to DCI**

On Monday, March 9, 2015 at approximately 11:01am, DCI Special Agent De La Rosa interviewed Off. Matt Kenny. Kenny's WPPA Attorney Roger Palek and MPD Detective Michelle Riesterer were also present. This group had completed a scene walk through shortly after 9am on that date.

The following are excerpts from selected portions of DCI S/A De La Rosa's report:

*The initial information that Officer Kenny was dispatched to was a subject running in traffic who had struck one of his associates.*

*The description was a 6 foot M/B wearing a tan coat and blue jeans. The call notes included his full name, but Officer Kenny centered in on the subject's first name of Tony. As a regular practice, Officer Kenny likes to know the subject's first name because it is more effective to yell out his first name if the subject flees. Off. Kenny also mentions that it is easier to establish rapport during negotiations and talk somebody down if you know their first name.*

*Information was given that there were reports of the subject running into traffic and had run into the gas station on the 1100 block of Williamson St. The subject was stripping his clothing to his waist and is now shirtless. Dispatch also advised that the subject had taken some type of mind altering substance. Information about erratic behavior, running into traffic and stripping down to his waist when Off. Kenny was comfortable in full uniform, Kevlar vest, and jacket led Off. Kenny to suspect the suspect's erratic behavior was due to drugs or possibly excited delirium.*

*Dispatch advised that the suspect had left the gas station and had run into a residence and was strangling someone. Officer Kenny activated his lights and siren and began driving in emergency mode and drove faster.*

As Off. Kenny approached the area:

*A M/W was waving his hand and yelling, "he went in there, he went in there" and was pointing directly across the street from the gas station.*

Off. Kenny reported that he parked in the driveway of the house because there was nowhere else to park. It should be noted this was confirmed by the squad video. As Off. Kenny exited his squad and spoke briefly to the M/W:

*Off. Kenny could hear signs of a disturbance.*

*Off. Kenny noticed a door that was completely open, and could see a narrow staircase. The sounds sounded like they were coming from the upstairs portion of the house. Officer Kenny swung around the corner to make sure he wasn't hearing an echo and that the sounds were not coming from the back yard. Officer Kenny heard sounds of incoherent yelling and screaming. Officer Kenny approached the stairwell and could hear more clearly. Officer Kenny continued to hear yelling, along with what sounded like a fist was hitting something. It didn't sound like items being thrown or pacing, it sounded like somebody was striking someone or something. Off. Kenny heard someone yelling, "What are you going to do now bitch."*

*Based on the last radio traffic Officer Kenny had heard that the subject was acting erratic and that the subject was strangling someone, Officer Kenny believed that the subject was upstairs and violently assaulting someone upstairs.*

*Off. Kenny thought the open door was unusual based on the time and weather. Officer Kenny knew officers were coming quickly but did not know how close they were. What Officer Kenny did know was that it didn't take long or much pressure to kill someone when they are strangling them and Officer Kenny believed that the subject was assaulting someone upstairs.*

*Off. Kenny radioed dispatch that there was a disturbance going on upstairs and that he was going in.*

Off. Kenny then described his entry into the building to S/A De La Rosa:

*Officer Kenny went up the stairs, drawing his Glock as he took the first step. Officer Kenny held the Glock at the low ready with both hands. The lighting at the base of the stairs was inadequate, but there was plenty of ambient lighting coming from the top of the stairs. Officer Kenny could still hear the sounds of thumping, smacking and incoherent yelling.*

*Officer Kenny stated the layout of the stairwell was very narrow with no door at the top. Off. Kenny stated in his interview:*

I'm moving forward, and there's not a lot of room to maneuver. There's very little room to maneuver. Um, essentially, I can go forward and I can go backwards. That's about it, but I'm trying to maximize whatever lateral distance I can in order to gain as much, um, of a view around that corner as I can. You know, prior to actually being in the, ah, or being on the second floor and off the stairs. Um, yeah, ideally when we're – I would have, um, continued covering to the left, and moving in increments so that I could see as much as possible what was around the corner prior to going around the corner myself. That would have evolved, ah, and that's why I was moving forward to get off the stairs as well which was an untenable position.

From S/A De La Rosa's report:

*When Officer Kenny was a few steps from the top of the stairs, Officer Kenny yelled Madison Police in attempt to shift the focus on whoever the suspect was assaulting to him.*

*Officer Kenny heard from the left while facing up the stairs, someone yell, "Well the po-lice is here," with an emphasis on the first syllable of po-lice. The tone was very aggressive, non conversational- but angry. Officer Kenny was five to six steps from the top of the stairs, continuing to move up the stairs. At that point, Officer Kenny's eye level was approximately one foot or more above the floor level. Officer Kenny continued up the stairs to the step just before the top. Officer Kenny moved to his right in order to see as much as he could towards the left, the subject immediately turned the corner and struck Officer Kenny with a closed fist on the left side of his head, knocking him back and into the wall on Officer Kenny's right.*

*Officer Kenny remembered seeing the suspect's bare torso. Officer Kenny struck the wall in the stairwell with the right side of his head and his right side.*

*The subject continued to swing at Officer Kenny at a closer distance than arms length away. Officer Kenny was rocked back, losing his balance on the stairs. The subject continued to aggress towards him. Officer Kenny was afraid to be struck again on the head and lose consciousness and the subject would take his pistol and shoot Officer Kenny and someone else, possibly whoever else was up in the apartment.*

*To prevent the subject from taking his weapon, Officer Kenny had his weapon tucked in tight to his body and was staggering backwards. Officer Kenny did not remember how many times he got hit and didn't remember where, just knew that he was going backwards down the stairs. Officer Kenny believed to have been struck more than once by the subject. Officer Kenny was afraid that the subject was either going to knock him out or Officer Kenny was going to hit his head when he fell backwards on the stairs and the subject would be in position to shoot Officer Kenny or someone else. Officer Kenny was afraid that he was going to strike his head or break a long bone or be injured to the point to be incapacitated.*

*Officer Kenny shot at the subject three times as they were fairly close to the top of the stairs. The subject was striking Officer Kenny as he came. Officer Kenny lost his balance and he didn't know how they ended up at the base of the stairs. The subject continued to aggress towards Officer Kenny. Officer Kenny shot another string of fire consisting of two to three rounds. Officer Kenny stated that he shot two rounds very fast and then was able to achieve full extension and fired one round. When Officer Kenny fired the last round, he was back on his feet and backing away. Officer Kenny did not remember being outside the home. (Officer Kenny was allowed to view his squad video of the incident before the interview)*

*Officer Kenny yelled "don't move" to the subject. The subject was lying on his back on the stairs, but the stairs were so steep that it looked like the subject was half sitting up. It was not immediately apparent if the subject had control of his body and was sitting u.*

Sgt. Gary arrived on the scene only seconds after the shooting, Off. Kenny directed him upstairs because he believed there might be a second patient upstairs.

*Once the subject was no longer a threat to Officer Kenny, he attempted to render first aid.*

Officer Kenny reported that he placed a trauma dressing on an upper torso wound and attempted to place pressure on a wound to the subject's side. He was also talking to the subject to:

*Try to motivate them and give them will to live... Officer Kenny told the subject, "Stay with me, stay with me, come on and stay with me."*

After placing another dressing on the subject's right side:

*Officer Kenny began to do chest compressions and continued to do so until paramedics arrived.*

*Once things calmed down, Officer Kenny noticed an ache on the top, left side of his head. Officer Finnegan pointed out that Officer Kenny had a lump and abrasion on the left side of his head, above the hair line.*

*Officer Kenny's left knee got wrenched during the incident. Officer Kenny went to UW Urgent care to get it checked the next day.*

*Officer Kenny stated he has had a headache since the incident and was still present.*

After a short break, DCI S/A De La Rosa asked a few more questions:

*SA De La Rosa asked Officer Kenny why he didn't retreat or disengage. Officer Kenny stated that they were on a stairwell that was very tight and didn't allow any lateral movement. Officer Kenny was unable to retreat to gain distance. The subject was on top of Officer Kenny, swinging and aggressing. Officer Kenny was already losing his balance. Officer Kenny stated that retreating was not an option. Officer Kenny stated that he would have fallen, and there would have been a great likelihood of knocking himself out or knocking the wind out of him long enough for the subject to be right on top of him and pounding away. Officer Kenny stated that he also could have dropped his weapon. Officer Kenny stated there was no way to retreat effectively. Officer Kenny stated that if he would have been on a flat surface, he would of back peddled fast, enough to create enough distance to use a different use of force option. Officer Kenny stated there was no way to access any other use of force option because he was falling backwards.*

*SA De La Rosa asked Officer Kenny if he still had the gun held in tight when he fired the first three rounds. Officer Kenny stated he did because he didn't want the subject to be able to wrestle it away from him. SA De La Rosa asked Officer Kenny if the subject tried taking Officer Kenny's gun. Officer Kenny stated that the subject may have touched it while swinging at Officer Kenny but Officer Kenny did not remember the subject trying to take it. Officer Kenny stated that he was trying to hang onto something with his left hand to prevent him from falling. When trying to grab onto something with his left hand, it didn't leave him with anything to block the subject's strikes with. Officer Kenny stated that he fired from*

*that position using the third eye concept, having the muzzle pointed directly out from his sternum, controlling the weapon and firing at very close quarters.*

*SA De La Rosa asked Officer Kenny if he shot while holding the gun with two hands. Officer Kenny stated that he thought he was using one hand at that point. He remembers trying to grab something with his left hand to prevent him from falling all the way backwards, head first, down the stairs.*

*Officer Kenny stated that he stopped shooting the when the subject stopped moving towards him and aggressing towards him.*

*SA De La Rosa asked Officer Kenny what Officer Kenny felt when the subject was striking him and before Officer Kenny used deadly force. Officer Kenny was afraid that the subject would continue to strike him as he was and that those blows would render him unconscious (ph). Officer Kenny was also afraid of falling backwards and fracturing a long bone or knocking himself out or rendering himself incapable. Because of the sudden attack from the subject, Officer Kenny felt that the subject would take his weapon and use his weapon to shoot and kill him and/or somebody else.*

SA De La Rosa went on to discuss officer subject size factors and Officer Kenny stated the subject was a "large male."

S/A De La Rosa asked about officer/subject factors to which Off. Kenny responded:

**There is an officer/subject factor, and we do train our officers to take the size difference into consideration. But we also, ah, train them in different options for use of force in order to control, you know, larger people. I would have really liked to have used one of those options if I had had the space and the time to use it, and I would have felt confident using my baton, even on the larger subject, if I had had the space and the time to access it.**

The specific sizes of both individuals are discussed below the next "Medical Records" paragraph.

S/A De La Rosa then discussed specific injuries to Off. Kenny from this incident. Off. Kenny advised that he noticed the next day that he was still experiencing headaches on the date of the interview which was March 9, 2015, that he suffered from the blow to the head from Robinson. He said he had a lump and abrasion above the hairline He also sought medical attention for left knee pain at UW Urgent Care the next day that was diagnosed as a muscle strain.

#### **Officer Kenny Medical records**

I reviewed the Patient Discharge Instructions dated 03/06/15 for Off. Kenny after he was seen at St. Mary's Hospital by Dr. Christian Rickman. His initial diagnosis was "Head Injury, Initial Encounter"

I reviewed Off. Kenny medical records dated 03/07/15, given by PA-C Jason Wray at East Towne Urgent Care. His report states,



#### Patient Instructions

Based on your injury and exam there is no fracture or evidence of ligament damage to the knee. Suspect you strained the lower quad muscles and tendons. Continue to take 400mg of ibuprofen every 6 hours as needed. Ice it for 10 minutes today every couple of hours. The work comp forms have been completed. If after two weeks are not improving significantly get seen by your PCP.

I reviewed a City of Madison Medical Status Report for Off. Kenny dated 04/30/15 from the Arboretum Family Medicine Clinic signed by a person whose handwriting I cannot decipher. In that report, under diagnosis, it lists, "Sprain of R 3<sup>rd</sup> finger; concussion; L knee pain." The report says that he was being seen for "follow up care for a previously reported injury/illness" and that he is "discharged from care." The report also says that Off. Kenny can "Return to full duty, if symptoms return may need re-evaluation."

DCI S/A De La Rosa reported on April 30, 2015, he spoke to Off. Kenny's attorney Roger Palek;

On Thursday, April 30, 2015, DCI SA Rafael De La Rosa received a phone call from Wisconsin Professional Police Association (WPPA) Attorney Roger Palek. Atty Palek advised SA De La Rosa that Atty Palek had a doctor's note, releasing Madison Police Officer Matthew Kenny back to work in a full duty status. Atty Palek advised SA De La Rosa that Officer Kenny had suffered a concussion during the incident on March 06, 2015. SA De La Rosa advised Atty Palek that SA De La Rosa was not aware that Officer Kenny had suffered a concussion. Atty Palek advised SA De La Rosa that Officer Kenny was voluntarily waving his right to confidentiality regarding the document from Officer Kenny's physician, which stated that Officer Kenny could return to work in a full duty status after follow up visits regarding a sprain of his third finger in his right hand, concussion and pain to his left knee.

#### Physical Size Difference

According to the DCI investigation, Off. Matt Kenny advised during his interview that he is **5'10" 168lbs.** Kenny is **45 years old.**

Dane County Chief Medical Examiner, Dr. Tranchida, performed the autopsy on Tony Robinson Jr. and advised he was **19 years old** and was measured at **6'3" and 239 lbs.**

This means that Robinson was **5 inches taller** and **71 pounds heavier** than Off. Kenny.

#### Evidence at the Scene

DCI S/A Holmes advised in his scene report that 7 shell casings believed to be from Off. Kenny's weapon were found at the scene.

The door appeared to have been forced open because the door jamb was freshly broken and a piece of the wooden jamb with the metal strike plate was located on the 4th stair up in the stairwell.

There did appear to be physical damage to the drywall in the stairwell from the struggle between Off. Kenny and Robinson. There appeared to be damage to wall on the north side of stairwell just a little short of the top of the staircase. There was also damage on the wall on the south side of the stairwell near the hand railing. From the photo's, this appears as though it may have been damaged from a gunshot. There was more damage on the north side of the stairwell near the bottom of the stairs. From the WI State

Crime Lab (WSCL) photos, it appeared as though there was fresh drywall dust that had fallen on top of some of the shoes that were stored on the stairwell near these areas of damage. This would infer that the damage to the drywall was fairly recent. There was other what appears to be fresh damage near the bottom of the stairwell with fresh drywall pieces scattered about.

From the photos, there appears to be fairly fresh damage to the window shade in the kitchen which could have also been seen outside the residence from the street.

There also appeared to be fresh damage to the drywall in a bedroom where a hole was punched into the wall near some graffiti written on the wall. Again, what appears to be fresh drywall dust and particles are scattered about the floor nearby.

There also appears to be fairly freshly broken what appears to be glass that is lying on top of the couch in the bedroom. It is located on the armrest area and sitting area of the couch.

There was also evidence of drug dealing/use located in the upstairs apartment of 1125 Williamson St, including multiple gem packs (9) of what appeared to be marijuana. Empty gem packs were also located in a jacket pocket. Several smoking devices also were located in the apartment.

There was also a 20 gauge shotgun and 7 shotgun slugs found in the apartment as well. The shotgun was purchased in 1994 by [REDACTED] who had a last known address of [REDACTED]

There also appeared to be gang related graffiti written on the walls of one of the bedrooms.

### **WI State Crime Lab Report Findings**

The WSCL report documented 7 shell casings were found at the scene. All of the casings were located either at the bottom of the stairs on the landing deck, on the entry deck outside the doorway or on the ground directly outside the doorway where the shooting incident occurred.

WSCL Forensic Scientist [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] See [REDACTED]  
[REDACTED] *Confidential Report of Laboratory Findings, dated March 30, 2015, for the results of the DNA testing of this item.*<sup>1</sup>

[REDACTED]

Autopsy Results

Robinson's autopsy was conducted by Dane County Chief Medical Examiner Dr. Tranchida. He reported

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

### **Off. Kenny blood test result**

On 03/24/15, I received Off. Kenny's blood test results from Det. Riesterer. The AIT lab report indicated there were no positive drug or alcohol tests.

### **Rendering First Aid**

Numerous officers who have authored reports in this incident reported that they witnessed Off. Kenny providing first aid including CCR to Tony Robinson immediately after the shooting. Officer Kenny himself described the first aid attempts he made to revive Robinson.

### **Photos**

There appears to be several gem packs containing a green leafy substance that appears from my training and experience to be packaged marijuana buds in one of the photos with Tony Robinson's social security card next to them. They appear to be on top of some camouflage clothing pants that Robinson may have been wearing at the time of the incident.

There are a number of photos of Off. Kenny and it appears as though he has redness on the left side of his forehead/face area. There is also some blood near Off. Kenny's hairline in the center of the forehead. According to DCI S/A De La Rosa, his report states:

*"SA De La Rosa noticed an injury to the top left part of Off. Kenny's head. The injury appeared to be an abrasion.*

I later spoke to Off. Kenny on 04/06/15, to clarify what was an injury and what was blood in the photos.

Off. Kenny later advised that he also a small abrasion inside his lip on the right side, a swollen right hand, twisted left knee and a concussion, all as a result of the incident.

### **Criminal History**

From a check of CCAP records, I found that Robinson was convicted of armed robbery on 10/20/2014; he received 120 days in jail and was currently serving 3 years probation for this offense. See the below CCAP entry:

**State of Wisconsin vs. Tony T Robinson**

[Printable Version](#)

**Dane County Case Number 2014CF000781**

**Charge(s)/Sentence(s)**

**Charge Detail**

The Defendant was charged with the following offense:

Count No.	Statute Cite	Description	Severity	Offense Date	Plea
1	943.32(2)	Armed Robbery	Felony C	04-25-2014	Guilty on 10-20-2014

**Charge Modifier(s)**

Statute Cite	Description
939.05	PTAC

On 10-20-2014 there was a finding of:

Action	Court Official
Guilty Due to Guilty Plea	Reynolds, Josann M.

On 12-18-2014 the following was ordered:

Sentence	Time	Begin Date	Notes
Probation, Sent Withheld	3 Years		
<b>Condition</b>	<b>Time</b>	<b>Notes</b>	
Jail time	120 Days	Stayed for use by agent.	
Restitution		DA has 90 days to prepare/submit order.	
Costs		\$250 DNA surcharge remitted. \$278 to be collected by the Dept of Corrections. Court financial obligations shall be paid at the rate of 25% of the prison wages and work release funds. Restitution shall be paid pursuant to separate court order. The balance remaining at release from prison be paid as a condition of extended supervision or parole at a rate determined by the supervising agent.	
Other		Defendant shall complete a risk and needs assessment and comply with care plan goals related to prioritized need areas identified. Defendant advised of requirement to provide DNA sample. Any other conditions DOC, Probation/Parole Department may impose.	

**Number of people victimized by Robinson prior to Off. Kenny intervention**

1. J [REDACTED] L [REDACTED] He was involved in a physical altercation with Robinson in his own apartment, he told Det. Ware on scene, "I literally was scared for my own safety." Both J [REDACTED] and A [REDACTED] L [REDACTED] later tell investigators that Robinson was punching holes in the walls of the apartment and broke the blinds in a bedroom.
2. K [REDACTED] A [REDACTED] He implied to [REDACTED] in the apartment that he wanted to have sex with her and grabbed her by both wrists before she pulled free.
3. B [REDACTED] B [REDACTED] He was driving down the street when a person presumed to be Robinson ran into the street and struck the passenger side of his car with his body leaving 3 dents in his vehicle and what appeared to be saliva before running off.
4. S [REDACTED] D [REDACTED] He was in the apartment with Robinson and Robinson tried to punch him in the chest, D [REDACTED] was able to deflect the blow but did fall down. He told Robinson to calm down before he left the apartment.
5. I [REDACTED] Y [REDACTED] He was walking down Williamson St. going to a restaurant with a female friend when a person presumed to be Robinson randomly attacked him and punched him in the head.
6. T [REDACTED] T [REDACTED] He was at the Spirit gas station filling his car with gas when a person whom he later identified as Robinson randomly approached him and started choking him which T [REDACTED] said caused him pain. He was able to push Robinson off him.

### **Use of Force Expert Review**

During this review, I requested the assistance of Off. Kipp Hartman, who is assigned the MPD training unit. He holds Master Instructor level certification through the State of Wisconsin Dept. of Justice Law Enforcement Standards Bureau in Defensive and Arrest Tactics (DAAT), Firearms and Tactical Response. He holds Instructor level certification in Professional Communications and Vehicle Contacts.

I asked Off. Hartman to review this incident to get his expert opinion about Off. Kenny's actions. Below is his memo to me dated 05/12/15.

To: Corey Nelson, Lieutenant of Police - Professional Standards & Internal Affairs

From: Kipp Hartman, Police Officer – Personnel & Training Team

Re: Use of Force / Officer Involved Shooting Review of Officer Matt Kenny; DCI Case #15-1188  
MPD Case #2015-71913

Date: 5/12/15

#### **Purpose:**

I was asked by PSIA Lt. Corey Nelson to conduct a review of the use of force / deadly force utilized by Officer Matt Kenny MPD case # 2015-71913. I have reviewed all of the DCI and Madison Police Department reports provided to me from Lt Cory Nelson. While many of these reports give the "whole picture" of events and actions leading up to the shooting I will be focusing on only the information known to Officer Kenny at the time. In dissecting the incident I will use the legal standard set forth in Graham v. Conner 490 US 386, 109 S. Ct 1865 (1989) for use of force by law enforcement officers. Any police use of force must be "objectively reasonable," according to the US Supreme Court case, Graham v. Connor. Objective reasonableness is measured, in part, by the following questions:

- Is the suspect an immediate threat to officers and/or others?
- Is the suspect actively resisting seizure?
- Are the circumstances tense, uncertain, and/or rapidly evolving?
- What is the severity of crime(s) at issue?

The US Supreme Court advised that the "reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight....and must embody allowance 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."

Having said that, I will focus my review to the following points during the encounter

- Drawing the handgun
- Use of Deadly Force

**Initial Information at 1125 Williamson St #2:**

Before discussing the use of force utilized by Officer Kenny more background is needed to better demonstrate the circumstances that led to the decisions to use that force. Officer Kenny states that he was dispatched to a subject running in traffic who had struck another person. While responding to the call Officer Kenny received, and acknowledges, that the subject was approximately 6', light skinned male black, with the first name of Tony (Robinson). Officer Kenny states that he received further information that the subject was stripping clothing off and had taken some sort of mind-altering substance. With the erratic behavior information gained from dispatch, his knowledge of current weather temperatures, and the information on Robinson taking mind altering drugs, Officer Kenny states that he believed Robinson may be experiencing excited delirium. It should be noted that MPD Officers are trained in dealing with subjects suffering from excited delirium. Excited Delirium is caused when a subject ingests drugs or substances that cause their body temperature to rise. Subjects typically exhibit erratic behavior, violent behavior, delusions, and exhibit "superhuman strength". Officers are cautioned that this increases the likelihood of a volatile situation and subjects exhibiting this behavior calls for emergency medical help as well as law enforcement resources. (WI LESB DAAT Manual) Officer Kenny further received information that Robinson had run from the gas station, into a residence, and was now strangling someone. Officer Kenny further acknowledges that it does not take a lot of pressure to kill someone if they've got their hands around a person's throat and are strangling them. After arriving on scene Officer Kenny gains information from a witness that the subject went upstairs into 1125 Williamson St #2. Officer Kenny did survey the immediate area. While conducting his tactical evaluation of the scene, Officer Kenny states that he heard sounds of a commotion (thumping, smacking sounds, and incoherent yelling.) More specifically the statement "What are you going to do now bitch?" Based on all of the information that Officer Kenny had been given up to that time Officer Kenny makes the decision to enter the residence and draws his firearm out. The following is from the Madison Police Departments Standard Operating Procedures on drawing of the handgun.

#### **MPD Standard Operating Procedure Drawing the Handgun and Confronting A Threat**

1. *A handgun may be removed from its holster in the performance of duty under the following circumstances and only with the finger outside the trigger guard:*
  - a. *When an officer reasonably believes that the potential for the authorized use of deadly force may exist*
  - b. *When it is necessary to secure in a safe place or check on the serviceability of the weapon.*
  - c. *At an approved range.*
2. *Confronting suspects with a drawn handgun*
  - a. *The finger will remain outside the trigger guard until such time as circumstances exist which reasonably indicate a danger to life or of great bodily harm.*
  - b. *If applicable to the officer's particular weapon system, the pistol will be in double action mode, and the weapon will not be cocked.*
  - c. *If applicable to the officer's particular weapon system, after being fired, a semiautomatic pistol may remain in the cocked/single action mode until such time as the immediate threat of death or great bodily harm has been neutralized. The weapon will then be restored to double action mode by use of the decocking lever.*

Officers are, in fact, trained to treat certain situations, as "high risk" and confronting suspects at gunpoint in these situations is often warranted. Examples of these high risk situations include, but not limited to: building clearing, burglaries in progress, stolen vehicles, armed robberies, home invasions disturbances where weapons may be involved or the threat of death or great bodily harm is likely. In the situations described, the level of intrusiveness required to commit these offenses infers or implies a



greater potential for danger from the suspects. Officers are further trained and that suspects inside of residences have further access to weapons (knives and guns) and instruments that may be used as nontraditional weapons (baseball bats, screw drivers, hammers, etc.) It would be reasonable for an officer to confront suspects in these situations at gunpoint until the status of the suspect can be safely confirmed as unarmed. It would have been reasonable for Officer Kenny to draw his firearm while entering into the residence to confront Robinson, as he did not know the exact circumstances that would happen as he entered.

Once Officer Kenny enters the residence he is forced to go up a flight of stairs. Officer Kenny states that he moved up towards the top of the stairs but did not step on to the landing. At this point Officer Kenny states that he did give a verbal command and acknowledged that he was an MPD Officer. In his report Officer Kenny states that the suspect, later determined to be Tony Robinson, acknowledges and verbally responds to Officer Kenny. At this point it is entirely possible that Robinson could have stopped his behavior and obeyed any further commands from Officer Kenny. We know that at this point Officer Kenny is suddenly attacked and struck in the head by Robinson. Officer Kenny states that the strike was hard enough to knock him back into the wall. The State of Wisconsin trains officers in Defensive and Arrest Tactics (DAAT) to maintain a "Position of advantage". Given his relative positioning Officer Kenny was at this point in a position of disadvantage, near the top of a stairwell, back to the wall, and a large subject over him striking him in the head. The stairwell is an environmental hazard to Officer Kenny. Based on Robinson's physical size he has an advantage over Officer Kenny's smaller size. Given Robinson's position over top of Officer Kenny who was lower on the stairs creates a superior advantage to Robinson. Officer Kenny's only escape route is back down the stairs but in order to protect himself from the sudden attack he has to face toward his attacker. Officers are trained to disengage if tactically appropriate but are also trained in the dangers of turning their backs to subjects in close quarters during a physical struggle. In doing so exposes the back of their head to strikes, the neck, and other attack options such as "rear naked chokes". Also turning his back at this juncture would cause Officer Kenny to lose sight of his attacker and make it harder to defend himself or others. At this point Officer Kenny states that his concerns were that he would be rendered unconscious from being struck in the head or that he would fall down the stairs and be in a position to lose his gun to the subject attacking him. Furthermore Officer Kenny states that if he loses his gun the gun could be used against him or others. The following is from the MPD Code of Conduct on Use of Force.

***Code of Conduct # 12. Use of Force***

*It is the policy of this Department that officers, while in the performance of legal duties, shall always employ force in a manner that is objectively reasonable based on the totality of the circumstances, Graham v. Connor, 490 U.S. 386 (1989). The reasonableness test is an objective one and must be judged from the perspective of a reasonable officer at the scene. Members of the Department shall act at all times within the standards for use of force established in the Use of Force procedures.*

*Recognizing our legal and moral obligation to use force wisely and judiciously, it is the policy of this Department that deadly force will never be resorted to unless an officer reasonably believes that a lesser degree of force would be insufficient to defend the life of another, one's self, or in limited situations, to apprehend a dangerous felon, or control an animal.*

In light of the information that Kenny had at this moment it would be reasonable for him to conclude that his life was in danger of death or great bodily harm from the attack and the physical position he was in. Furthermore, his belief based on the information given by dispatch and the information gained by

Officer Kenny on the scene, it would be reasonable for him to believe that others were still in danger of Tony Robinson and if not immediately stopped would further cause physical harm to Officer Kenny or others.

**Conclusion:**

I believe, in light of the facts and totality of circumstances confronting Officer Matt Kenny in this incident, that the actions of Officer Matt Kenny were objectively reasonable. I further find that Officer Matt Kenny's use of deadly force was appropriate, justified, and within MPD Policy and training.

Respectfully submitted,

PO Kipp Hartman #3820

***Training and Experience of PO Kipp D. Hartman***

*I am a certified Wisconsin Law Enforcement Officer and graduated the Madison Police Academy in 2005. I am currently a Wisconsin Department of Justice Law Enforcement Standards Bureau Certified Instructor. I hold several unified tactics instructor certifications to include; Defensive and Arrest Tactics Instructor (DAAT) (96 hours), Firearms Instructor (40 hours), Tactical Response Instructor, Professional Communications, and Vehicle Contacts Instructor. I currently hold a Master Instructor Trainer in DAAT, Tactical Response and Firearms. My responsibilities as an instructor include teaching use of force in the Madison Police Department Academy, DAAT, Firearms, TASER Instructor, Less Lethal Shotgun Instructor, Tactical Response, and use of Deadly Force.*

**FBI Officers Killed Statistics**

In S/A De La Rosa's report, Off. Kenny expressed what he felt may have occurred if he did not use deadly force:

SA De La Rosa asked Officer Kenny what Officer Kenny felt when the subject was striking him and before Officer Kenny used deadly force. Officer Kenny was afraid that the subject would continue to strike him as he was and that those blows would render him unconscious. Officer Kenny was also afraid of falling backwards and fracturing a long bone or knocking himself out or rendering himself incapable. Because of the sudden attack from the subject, Officer Kenny felt that the subject would take his weapon and use his weapon to shoot and kill him and / or somebody else.

According to the FBI statistics about officers killed from 2002-2011, there were 543 officers who were killed during this time period. Of those, 46 of them were killed with their own weapons. See below:

**Table 13**

**Law Enforcement Officers Feloniously Killed**

Victim Officer's Weapon Stolen<sup>1</sup> by Offender, 2002-2011

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Victim officer		Total	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
<b>Number of victim officers</b>	<b>Total</b>	543	56	52	57	55	48	58	41	48	56	72
<b>Weapon stolen</b>	Total	68	8	11	8	9	4	4	5	7	7	5
	Killed with own weapon	28	3	7	4	5	0	2	1	1	4	1
	Killed with other weapon	39	5	4	4	4	4	2	4	5	3	4
	Killed with weapon information not reported	1	0	0	0	0	0	0	0	1	0	0
<b>Weapon not stolen</b>	Total	470	48	41	48	46	43	53	35	41	48	67
	Killed with own weapon	18	1	4	3	1	1	0	3	1	2	2
	Killed with other weapon	452	47	37	45	45	42	53	32	40	46	65
	Killed with weapon information not reported	0	0	0	0	0	0	0	0	0	0	0
<b>Weapon stolen information not reported</b>	Total	5	0	0	1	0	1	1	1	0	1	0
	Killed with own weapon	0	0	0	0	0	0	0	0	0	0	0
	Killed with other weapon	2	0	0	0	0	0	1	0	0	1	0
	Killed with weapon information not reported	3	0	0	1	0	1	0	1	0	0	0

<sup>1</sup>The term "stolen" indicates the weapon was taken from the scene of the incident.

NOTE: Weapon is inclusive of all weapon types that may be issued to a law enforcement officer.

These statistics only show that is a fairly common occurrence for suspects to be involved in presumably physical altercations who are then disarming officers and killing them with their own weapons.

**Plakas vs. Drinski 19 F.3D 1143 (United States Court of Appeals- 7<sup>th</sup> Cir. 1994)**

In this court case, Plakas was shot and killed by Off. Drinski after attacking Off. Drinski with a fireplace poker. The court rejected the argument that the officer was under a legal obligation to let the suspect escape or to effect his arrest by less provocative means. See below:

***If the actions of the suspect justifies the use of deadly force, the officer is not required to use less-than-lethal force before employing deadly force. The court noted that "...where deadly force is otherwise justified under the Constitution, there is no constitutional duty to use non-deadly alternatives first."***

*There is no precedent in this Circuit (or any other) which says that the Constitution requires law enforcement officers to use all feasible alternatives to avoid a situation where deadly force can justifiably be used.*

*The Fourth Amendment does not require officers to use the least intrusive or even less intrusive alternatives in search and seizure cases. The only test is whether what the police officers actually did was reasonable. Illinois v. Lafayette, 462 U.S. 640, 647, 103 S.Ct. 2605, 2610, 77 L.Ed.2d 65 (1983); United States v. Martinez-Fuerte, 428 U.S. 543, 556-57 n. 12, 96 S.Ct. 3074, 3082 n. 12, 49 L.Ed.2d 1116 (1976).*

*We do not believe the Fourth Amendment requires the use of the least or even a less deadly alternative so long as the use of deadly force is reasonable under Garner v. Tennessee and Graham v. Connor, supra.*

### **Det Matthew Tye Legal Research**

I requested that Det. Tye do some legal research as to prevailing case law as it pertains to police use of force issues against unarmed suspects. Det. Tye has a law degree from the University of Wisconsin Law School. Below is the information he was able to locate.

*The seminal US Supreme Court case remains **Graham v. Connor** (1989). As recently as **Plumhoff, et al., v. Rickard, et al.** (2015) the Supreme Court has reiterated that any analysis of force under the Fourth Amendment must be “viewed from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” In **Rickard** the Court specifically takes up the issue of the number of shots fired. Reasoning that as far as the 15 shots fired, “it stands to reason that, if police officers are justified in firing at a suspect . . . the officers need not stop shooting until the threat has ended.”*

Revisiting **Graham** the key language is:

*Any use of force by law enforcement officers needs to take into account the “severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.”*

*And again as stated above, “the ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.”*

*Continuing from **Graham**, the Court reasons, “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. The test of reasonableness is not capable of precise definition or mechanical application.”*

**Davenport, et al v. Causey, et al.** (6<sup>th</sup> Cir. 2008)

*This case involves an unarmed suspect attacking two police officers. The suspect was shot by one of the officers. Ultimately the Court in this case granted summary judgment to the police officers and the city, concluding that the use of force by the officer was reasonable. This case provides solid guidance for analyzing the use of deadly force against unarmed assailants. The Court here uses the **Graham** analysis. The Court also points out that, “Every new case can also present new circumstances that are relevant in determining whether that particular situation required deadly force.” And adds that “judges are to look to the ‘factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.’”*

*The Court in **Davenport** relies on previous legal precedent stating, “[T]he Fourth Amendment does not require officers to use the best technique available as long as their method is reasonable under the circumstances.” **The Court points out in regards to the specific facts of an unarmed man attacking someone, “closed-fisted blow[s] . . . may constitute deadly force.” More specifically, the Court continues explaining that a closed-fisted blow to an officer’s head is “an area where blows may well be more likely to cause serious physical injury or death.”***

*In **Davenport**, the Court mentions **Colston v. Barnhart**, (5<sup>th</sup> Cir. 1997), a case where a noncompliant larger individual knocked one officer unconscious and knocked down the other officer. In **Colston** the*

officer's use of deadly force was deemed justified. In **Davenport**, neither of the officers were knocked unconscious, however, the "officers were facing a large, violent, and angry individual who was unwilling to be brought under control by the officers." The Court, in **Davenport** continues stating that "[e]ven though when looking in retrospect . . . it may seem that serious physical injury or death was not imminent, we cannot say that a reasonable officer on the scene facing such a suspect and having to decide very quickly could not have reasonably believed it was."

***Elliott III v Leavitt MD (4<sup>th</sup> Cir. 1996)***

This Fourth Circuit case has some often cited language that is useful in deciding the reasonableness of use of force. Specifically the Court in this case states, "The Constitution simply does not require police to gamble with their lives in the face of a serious threat of harm." The facts of **Elliott III** involve a handcuffed suspect attempting to retrieve a concealed handgun. The suspect is shot and killed by the police officers. Interestingly, in the analysis, the court looks at a couple of cases in which officers fired thinking an object being retrieved by the suspect was a handgun and the object turned out not to be a handgun. The court deemed the use of deadly force by the officers in these cases to be objectively reasonable where the movements and actions of the suspects were consistent with having a gun even though the objects turned out not to be guns. The key point is that officers felt reasonably threatened by the suspect's actions.

The court also points out in **Elliott III** it is irrelevant that the officer did only a cursory search before placing the suspect in the car. Following the **Graham** decision the **Elliott III** court states that courts must "focus on the moment force was used; conduct prior to that moment is not relevant in determining whether an officer used reasonable force." **The court cites the example of failure to wait for backup is not relevant in determining if use of force is reasonable.**

**WI Dept. of Justice Law Enforcement Training Guide on Defensive and Arrest Tactics Manual (2007 edition)**

The definition of deadly force is;

- ***"The intentional use of a firearm or other instrument, the use of which would result in a high probability of death or great bodily harm"***

The act of deadly force must be **intentional** and Off. Kenny explicitly stated that this incident was not one of an accidental discharge and that he intentionally shot Robinson with his firearm.

The definition of subject behavior that justifies an officer's use of deadly force is any behavior:

- ***"Which has caused or imminently threatens to cause death or great bodily harm to you or another person or persons."***

The word imminent means "about to happen" An imminent threat is an immediate threat. For a subject's threat to be considered **imminent** it must meet three criteria:

- Intent
- Weapon
- Delivery System



In this case, Robinson clearly demonstrated intent to attack Off. Kenny. The circumstances of the attack, punching someone in the head and continuing to attack on a narrow stairwell could have certainly caused death or great bodily harm to Off. Kenny. This opinion is upheld by the previously mentioned *Davenport et al vs. Causey et al* (6<sup>th</sup> Circuit 2008)

In this case, Robinson used his personal weapons that being his hands to attack, punch and strike at Off. Kenny. Off. Kenny was also attacked in while he was in a precarious position in the narrow and steep stairwell.

Robinson's delivery systems were his fists to Officer Kenny's head. It should be noted he was much larger in physical size. Robinson was **5 inches taller** and approximately **71 pounds heavier** than Off. Kenny. He was attacking Off. Kenny in the steep stairwell, forcing Off. Kenny down the stairs.

According to the **FBI crime statistics from 2007-2011**, many hundreds of people across the nation are killed every year by "Personal weapons" described as "Hands, fists, feet, etc." At the bottom of the chart the footnote advised that "Pushed is included in personal weapons."

In this five year time period, **4,058 people were killed by "Personal weapons."** This is an average of **811 people killed per year** (over that 5 year span) **by hands, feet, fists or pushing.** This number is greater than the number of people killed each year by rifles or with shotguns or with blunt objects.

by Weapon 2007-2011

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	2007	2008	2009	2010	2011
<b>Total</b>	<b>14,916</b>	<b>14,224</b>	<b>13,752</b>	<b>13,164</b>	<b>12,664</b>
Total weapons	10,129	9,528	9,199	8,874	8,583
Handguns	7,398	6,800	6,501	6,115	6,220
Rifles	453	380	351	367	323
Shotguns	457	442	423	366	356
Other guns	116	81	96	93	97
Firearms, type not stated	1,705	1,825	1,828	1,933	1,587
Knives or cutting instruments	1,817	1,888	1,836	1,732	1,694
Blunt objects (clubs, hammers, etc.)	647	603	623	549	496
Personal weapons (hands, feet, etc.)	869	875	817	769	728
Poison	10	9	7	11	5
Explosives	1	11	2	4	12
Fire	131	85	98	78	75
Narcotics	52	34	52	45	29
Drowning	12	16	8	18	15
Strangulation	134	89	122	122	85
Asphyxiation	109	87	84	98	89
Other weapons or weapons not stated	1,005	999	904	872	853

<sup>1</sup> Pushed is included in personal weapons.

The Wisconsin Defensive and Arrest Tactics Manual describes *preclusion* and allows for deadly force to respond to behavior if no other reasonable option is available. The manual allows for deadly force if an officer does not have the time or the ability to try other options.

Preclusion is defined as *the elimination of all other viable alternatives*. In the WI Defensive and Arrest Tactics Manual, in the section on deadly force, (March 2007, page 69) it talks about the concept of “**Preclusion:**”

*Within the DAAT system, you may use deadly force to respond to behavior, but only if no other reasonable option is available.*

Off. Kenny emphasized that he felt he had no other choice other than to use deadly force in this situation. From S/A De La Rosa’s report;

*Officer Kenny moved to his right in order to see as much as he could towards the left, the subject immediately turned the corner and struck Officer Kenny with a closed fist on the left side of his head, knocking him back and into the wall on Officer Kenny’s right.*

*The subject continued to swing at Officer Kenny at a closer distance than arms length away. Officer Kenny was rocked back, losing his balance on the stairs. The subject continued to aggress towards him. Officer Kenny was afraid to be struck again on the head and lose consciousness and the subject would take his pistol and shoot Officer Kenny and someone else, possibly whoever else was up in the apartment.*

Off. Kenny states in the transcript;

We were on a stairwell that was very tight. Um, and, um, it didn’t allow any lateral movement. Um, I couldn’t, ah, effectively, ah, retreat to create distance, um, because I, he was right on top of me swinging, aggressing. Um, I was already losing my balance as I’m trying to, ah, step back. Um, retreating was not an option. I would have, ah, fallen and the-- there would have been great likelihood of either knocking myself out or even just, ah, knocking the wind out of me long enough for him to be right on top of me and, ah, pounding away, and, or if I dropped, ah, my weapon after the fall. Um, it’s, ah, it just was no way to retreat effectively. If I had been on a flat surface, um, then I would have, ah, retreated, ah, back-pedaled, ah, fast enough to create enough distance to go to a, ah, different use-of-force option. Um, you know, I had my expandable baton. Um, I would have accessed that, and then, ah, tried to disable him, ah, with a strike, ah, to the outside of his leg. Even if someone is, um, even if someone -- In my experience, even if someone is, ah, has a low -- is a high pain tolerance or if they are not feeling pain like the normally would due to, um, drugs and/or alcohol, um, you can still disable them, um, by a, um, a strike with the baton to the, ah, just above the knee to the outside of the thigh.

During his interview with S/A De La Rosa, Off. Kenny’s attorney asked “but that option wasn’t available.” to which Off. Kenny replied;

No, it's, ah, it, it was, it was not effect-- It would not have been a -- Um, there was no way to access any other use of force option, ah, because I was falling backwards.

The Wisconsin Defensive and Arrest Tactics Manual also states three target requirements must be fulfilled:

- **Target acquisition**
- **Target identification**
- **Target isolation**

#### ***Target acquisition***

In his interview with S/A De La Rosa, Off. Kenny expressed that the suspect Robinson, was the only one in the hallway at the time of the shooting. Off. Kenny was not firing blindly into a hallway but directly at Robinson who was physically attacking him.

#### ***Target identification***

In his interview with S/A De La Rosa, Off. Kenny advised that Robinson, who he was shooting at, was indeed the person who was attacking him.

#### ***Target isolation***

In his interview with S/A De La Rosa, Off. Kenny advised that Robinson was the only person in the hallway who was attacking him.

### **Electronic Control Device Policy**

At the time of this incident, March 6, 2013. The Madison Police Department was operating under the Non Deadly Force Policy 6-200. There has been an ongoing process that began early in 2014, to update our policies and procedures into Code of Conduct and Standard Operating Procedures. This policy was changed from a policy to a Standard Operating Procedure (SOP). The substantive content stayed the same. The effective date on the change was March 23, 2015.

Off. Kenny did carry an electronic control device and was trained in its use. See below for an excerpt from this policy 6-200:

***1) An approved electronic control device (ECD) may only be utilized by officers that have successfully completed training in its use. Deployment and use of the electronic control devices will be in accordance with MPD training and procedure***

***2) An ECD is not a substitute for deadly force—in cases where a subject is believed to be armed with a dangerous weapon, an officer may not arm him or herself with an ECD unless another officer at the scene has the immediate ability to deliver deadly force. Officers armed with an ECD should continuously monitor and evaluate the ability of other officers present to deliver deadly force.***



It should be noted per policy, that Off. Kenny would not have been authorized to arm himself with an ECD in this situation since he entered the residence alone. In situations where a lone officer is making an exigent entry to attempt to save someone, it would be expected that the officer would be clearing the residence with either his/her duty pistol or rifle so he/she had the ability to deliver deadly force if needed.

### **Entry into Apartment**

In the below partial excerpt, from S/A De La Rosa's report, Officer Kenny described his reasoning for entering the residence:

from the back yard. Officer Kenny heard sounds of incoherent yelling and screaming. Officer Kenny approached the stairwell and could hear more clearly. Officer Kenny continued to hear yelling, along with what sounded like a fist was hitting something. It didn't sound like items being thrown or pacing, it sounded like somebody was striking someone or something. Officer Kenny heard someone yelling "what are you going to do now bitch".

Based on the last radio traffic Officer Kenny had heard that the subject was acting erratic and that the subject was strangling someone, Officer Kenny believed that the subject was upstairs and that the subject was violently assaulting someone upstairs.

Officer Kenny knew officers were coming quickly, but didn't know how close they were. What Officer Kenny did know was that it didn't take long or much pressure to kill someone when they are strangling them and Officer Kenny believed that the subject was assaulting someone upstairs.

Officer Kenny radioed dispatch that there was a disturbance going on upstairs and that he was going in. Officer Kenny wanted responding officers to know where to find him and knew that with that information the officers would come faster and more officers would respond.

Off. Kenny was justified in entering the apartment under the community caretaker exception which is discussed below in the conclusion. It should further be noted that the door leading up the stairwell where the shooting took place was already forcibly broken open by Robinson which was witnessed by C [REDACTED] K [REDACTED] whose statement is noted previously in this report. Off. Kenny also stated he did not force entry into the apartment.

### **Madison Police Department Policy 6-100 The Use of Deadly Force**

At the time of this incident, March 6, 2013. The Madison Police Department was operating under Deadly Force Policy 6-100. There has been an ongoing process that began early in 2014, to update our policies and procedures into Code of Conduct and Standard Operating Procedures. This policy was changed from a policy to a Standard Operating Procedure. The substantive content stayed the same. The effective date on the change was March 23, 2015.

The policy states in part:

*Recognizing our legal and moral obligation to use force wisely and judiciously, it is the policy of this department that deadly force will never be resorted to unless an officer reasonably believes that a lesser*

*degree of force would be insufficient to defend the life of another, one's self, or in limited situations, to apprehend a dangerous felon, or control an animal.*

*The use of deadly force is only authorized when, under any of the following circumstances, an officer reasonably believes a lesser degree of force would be insufficient:*

- 1. In the defense of another person who the officer has reasonable cause to believe is in imminent danger of death or great bodily harm;***
- 2. In defense of oneself, when there is reasonable cause to believe one is in imminent danger of death or great bodily harm;***
- 3. To effect the arrest or prevent the escape of a suspect who the officer has reasonable cause to believe has committed, or attempted to commit, a felony involving the use or threatened use of deadly force, when a high probability exists that the suspect, if not immediately apprehended, may cause death or great bodily harm;*
- 4. To protect one's self or another from an animal which an officer reasonably believes may cause great bodily harm if not immediately controlled, or to end the suffering of an animal gravely injured or diseased after considering public view, safety, and other reasonable dispositions*

*Before using deadly force, officers shall, if reasonably possible, identify themselves and order the suspect to desist from unlawful activity.*

Officer Kenny was in full military uniform at the time of this incident and advised DCI S/A De La Rosa that when he was a few feet from the top of the stairs that he

*"Yelled Madison Police in an attempt to shift the focus on whoever the subject was assaulting to him."*

Off. Kenny then heard presumably the suspect yell back, *"Well, the po-lice is here."*

Off. Kenny told S/A De La Rosa that after Robinson punched him in the head and continued to attack him that he continued to aggress towards Off. Kenny down the stairwell. From S/A De La Rosa's report:

SA De La Rosa asked Officer Kenny what Officer Kenny felt when the subject was striking him and before Officer Kenny used deadly force. Officer Kenny was afraid that the subject would continue to strike him as he was and that those blows would render him unconscious. Officer Kenny was also afraid of falling backwards and fracturing a long bone or knocking himself out or rendering himself incapable. Because of the sudden attack from the subject, Officer Kenny felt that the subject would take his weapon and use his weapon to shoot and kill him and / or somebody else.

Officer Kenny was justified in using deadly force under paragraph #2 above.

## **Conclusion**

During this investigation, I have reviewed MPD police reports, DCI reports, WI State Crime Lab reports, WI State Patrol reports, scene photographs, autopsy photographs, MDC messages, squad video, 911 center records, 911 recordings, met with the Medical Examiner and WSCL Forensic Scientist, reviewed federal case law and walked through the scene the evening of the incident.

Upon reviewing the above mentioned federal court cases, it should be noted in the underlined and bolded portion under the Davenport et al v. Causey (6<sup>th</sup> Cir. 2008) it states:

**The Court points out in regards to the specific facts of an unarmed man attacking someone, “closed-fisted blow[s] . . . may constitute deadly force.” More specifically, the Court continues explaining that a closed-fisted blow to an officer’s head is “an area where blows may well be more likely to cause serious physical injury or death.”**

In Elliott v Leavitt MD (4<sup>TH</sup> Cir. 1996) the court points out:

**The court cites the example of failure to wait for backup is not relevant in determining if use of force is reasonable.**

In Plumhoff, et al., v. Rickard, et al. (2015):

**the Supreme Court has reiterated that any analysis of force under the Fourth Amendment must be “viewed from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.”**  
**In Rickard the Court specifically takes up the issue of the number of shots fired. Reasoning that as far as the 15 shots fired, “it stands to reason that, if police officers are justified in firing at a suspect . . . the officers need not stop shooting until the threat has ended.”**

Revisiting **Graham** the key language is:

From the seminal US Supreme Court Graham v Connor decision:

*Any use of force by law enforcement officers needs to take into account the “severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.”*

*And again as stated above, “the ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.”*

**Continuing from **Graham**, the Court reasons, “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. The test of reasonableness is not capable of precise definition or mechanical application.”**

All of these federal court decisions appear to uphold Off. Kenny’s actions in this incident.

The suspect Tony Robinson in this case had just committed a series of crimes. He was acting “strangely” He battered L [REDACTED] in the head and he tried to strangle T [REDACTED] by choking him around the neck. Strangulation can certainly cut off the airway, leading quickly to great bodily harm if not death. T [REDACTED] was able to save himself from significant bodily harm if not death, by being able to fight off Robinson. Strangulation is a class H Felony as described in the WI Statutes 940.235.

As Off. Kenny was responding he was aware of Robinson's actions from dispatch. They advised responding units that the suspect had hit one of his friends and that he "Went inside 1125 Williamson St., tried to strangle another patron."

At this point, Off. Kenny advised S/A Delarosa that he believed that the suspect was trying to strangle someone inside the residence which is why he felt the need to enter and not wait for backup. He heard sounds of what he perceived to be a struggle upstairs and the door was standing open.

In the **WI Department of Justice Law Enforcement and Standards Board Tactical Response Manual** from June of 2012, it states on page 20,

*"At the most basic level, you will have to decide whether to establish a perimeter and contain the situation, or whether ongoing violence requires you to enter and intervene."*

There is a fourth amendment exception to the search and seizure requirement known as "Community Caretaker/Exigent Circumstances" exception. This allows an officer to make entry in a situation where they believe someone may be in danger.

Off. Kenny would have been certainly justified as a Community Caretaker in making entry into the residence since he believed someone was in danger.

Due to the fact he believed a physical disturbance was occurring and he knew the suspect was just engaged in violent felony behavior outside his residence, he would have been justified in drawing his weapon and clearing the residence with his weapon out considering the high risk situation.

Using an electronic control device or any other non lethal device would not be the trained method of clearing a residence, nor would it be recommended. MPD officers are trained to clear buildings in situations such as this with their duty weapon or a rifle so they have the ability to deliver deadly force if needed.

Off. Kenny's use of deadly force in this incident was lawful and in accordance with Madison Police Department Policy. Master DAAT and Firearms Instructor, Off. Kipp Hartman, felt that Off. Kenny did not violate MPD policy on deadly force.

On May 12, 2015 Dane County District Attorney Ismael Ozanne advised there was no criminal liability on Officer Kenny's part in this incident.

**Recommended Finding**

**Officer Matthew Kenny**

- **Use of Deadly Force - EXONERATED**

Lt. Cory Nelson 2257

Cory Nelson  
Lieutenant of Police  
Professional Standards and Internal Affairs