



CITY OF MADISON POLICE DEPARTMENT



INTRA-DEPARTMENTAL CORRESPONDENCE

DATE: September 11, 2019

TO: Michael Koval, Chief of Police
FROM: Lieutenant Tim Radke
SUBJECT: **Officer Andrew Slawek, Sergeant Joe Engler, 2019PSIA-0091**

Initial Information

On 6/4/19 Lieutenant Mike Hanson entered the following complaint into the BlueTeam software, which was subsequently assigned PSIA tracking number 2019PSIA-0091:

Officers were dispatched to [REDACTED] for a 17 year-old male [REDACTED] needing a Chapter 51 intake return. As outlined in reports, force was used by Madison Police in taking the 17 year-old into custody. Shortly after 1 p.m. [REDACTED], the foster parent for the subject taken into custody, came to West PD with concerns regarding the video inside his home that captured the use of force. In meeting with [REDACTED] I reviewed the two videos he showed me. [REDACTED] told me he had concerns with Officer Slawek taking [REDACTED] into custody. [REDACTED] then showed me another video in which Sgt Engler punches [REDACTED] three times to the head area. I asked [REDACTED] to send me the video via email, to which he entered my email address and I never received it. Later, I had Sgt Hannah talk with [REDACTED] in order for the video to be mailed to her, which she was able to accomplish. [REDACTED] told me that he worked at [REDACTED] and in [REDACTED] and believed the force used by Sgt Engler was too much and unnecessary. [REDACTED] wanted to speak with a Supervisor about the force used. [REDACTED] told me he would like me to review this use of force on his foster son. [REDACTED] I also had Captain Patton come into the Community Room where I was meeting with [REDACTED] so he could hear from [REDACTED] the complaint and review the video. I did this for another witness to the video should there be any complications in sending it/retrieving it for MPD. I explained to [REDACTED] that I would be complete an entry fielding his complaint, that the Madison Police Department was transparent and that I would continue communication with him during this investigation should there be questions. I explained an outcome would be further explained.

I subsequently spoke with Lieutenant Hanson via phone and in person, and I was later provided copies of the video in question by Captain Tim Patton. As the received videos appeared to be segmented portions of a longer video, I requested Lieutenant Hanson attempt to retrieve the full video. I requested records staff to restrict access to the case file to avoid others from accessing the reports, eventually allowing access to this case to only me, records staff, Chief Koval, the assistant chiefs, Captain Patton, Lieutenant Esser, Lieutenant Hanson, and Sergeant Doberstein (PSIA).

Complaint Summary

In my discussions with [REDACTED] (documented later in this memo) he articulated three specific concerns he had with the police response as captured on his home video system:

1. [REDACTED] felt that the use of force in pushing [REDACTED] up against the wall and subsequently down to the couch was unnecessary. [REDACTED] stated that he and Officer Joswiak were upstairs when he heard Officer Slawek yell "stop resisting." [REDACTED] said that and Officer Joswiak both came downstairs and only then observed Slawek going hands-on, believing there was no resistance at the time Slawek initially yelled "stop resisting."
2. [REDACTED] stated that video showed Officer Slawek firmly pressing a pillowcase down with both arms across [REDACTED] face, and believed this was unnecessary and inappropriate.

- 3. [REDACTED] believed that Sergeant Engler's use of strikes to [REDACTED] was excessive as officers were holding [REDACTED] down at the time of the strikes. [REDACTED] described [REDACTED] as "unable to move," and that he was only capable of "squirming" when these strikes occurred, referring to them as "cheap shots."

Second Complaint

On 6/6/19, I received an email, a video, and later a memo from Sergeant Shannon Blackamore which stated that a Demesha D Miller wished to file a complaint regarding a video she observed on Facebook, which shows the incident in question. According to Sergeant Blackamore's memo, Ms. Miller had no additional information regarding this video, the incident, or the individual involved, other than to state it was [REDACTED] and that she was concerned about what the video showed. I reviewed the video, which appeared to be retrieved from the Facebook page of a [REDACTED]. This video appeared to be one of the same that I received from Captain Patton, so this information was added to this initial complaint entry within IAPro. I was also made aware that this video was being distributed via social media platforms and that the Public Information Office was fielding phone calls regarding this video as well.

Telestaff roster for 1st detail West District on June 3, 2019.

Patrol 7a-3p		ENGLER, JOSEPH L. (1234)	3999
SGT. West 1st			
SGT WEST 2			

Patrol 6a-2p			
TA1	124-122 131-132	ACKER, JOSHUA A. (12A1/A)	2516
TA3		FONDREK, THEODORE J. (W/R)	3123
TA4	115-116	STRANK, ANGELAM (W/R)	4370
TA2	117-122 130-135	BLAWIEK, ANDREW B.	2545
Patrol 7a-3p			
TA3	115-116	LUDYKE, KRISTA S.	2869
TA2	114-123 129-133-134	LOGSWAN, CHAD V. (11A2/A3)	2945
West Relief	1A20	FONDREK, THEODORE J. (W/R)	3123
West Relief	1A22	STRANK, ANGELAM (W/R)	4370

Dane County Records Request

I requested through the Dane911 website "all dispatch records, original call recording, CAD notes, and all radio traffic stemming from 2019-201976 at [REDACTED]" On 6/5/19 at 2:35pm I received confirmation of that request via email.

I received the fulfilled records request on 6/6/2019, and I reviewed all documents and audio. I received the following from this request:

- 19-201976 CAD RECORD.pdf: full CAD Incident Detail Report
- 19-210976 TMR1.wav: audio of SRO Creech generating the call for service
- 19-210976 LAW RADIO.wav: audio of radio traffic of dispatch and responding PO's

The initial audio I received was a single condensed file of radio traffic from this incident merged together, and subsequently not in real-time. I made contact with the dispatch supervisor and requested this same information, unedited, as I needed the captured audio in real-time. I received a file containing this at 1:12pm on the same date June 6, labeled:

- 19-210976 LAW RADIO REALTIME 110702-113439.wav

I reviewed this audio and noted that it appears to contain all radio traffic during this timeframe, including radio traffic which is not related to this investigation. Only the radio traffic related to this incident and investigation is noted below. Times noted below are representative of the times from the beginning of the audio recording, not actual time of day. As a reference, CAD data shows Adam 2 and Adam 4 assigned at 11:07:02.

00:00 – Adam 4 and Adam 2 dispatched to [REDACTED] Dispatch airs [REDACTED] Baker 62 stated they had contacted [REDACTED] who, by the way, we entered as missing this morning... is there and acting threatening towards his foster father. Journey is aware that we are headed over there, they want his welfare checked. He's got mental health issues, he's off his medication. He needs to be detained and taken to the hospital per them, and if he's located Baker 62 wants phone contact. [REDACTED]

00:58 – Adam 4 and 2 "we copy"

01:08 – Adam 41 airs "Info for that call"

01:12 – Dispatch airs "Adam 41 go ahead"

01:18 – Adam 41 states "I believe [REDACTED] is under a chapter 51" and usually "calms down... when he sees Officers, so they should be fine"

01:33 - Dispatch airs "Adam 41... Adam 4 copy"

01:40 – Unnamed Officer replies "Copy direct". Voice appears to be PO Slawek.

01:46 – Baker 62 airs "Baker 62"

01:52 – Dispatch airs "Baker 62"

01:58 Baker 62 airs "And just FYI, I don't know if you stated to the officers as well, the chapter 51 return is in the works, so Dale from Journey is plugged in and she's aware, so yeah."

12:01 – Adam 2 airs "Adam 2 we need another here"

12:10 – Dispatch airs "Adam 2 copy"

12:22 – Dispatch airs "Adam 1 start for [REDACTED]"

12:29 – (unintelligible)

12:35 – Dispatch airs "1234 you want to start for [REDACTED]"

12:42 – Dispatch airs "1234"

12:49 – 1234 airs "go ahead"

12:55 – Dispatch airs "(will) you start for [REDACTED]"

13:02 – 1234 airs "affirm"

13:09 – Dispatch airs "Adam 2 do you need the air restricted"

13:16 – Officer (Adam 4) airs "2 units... restrict the air, 2 units"

13:24 – Dispatch airs "I got two coming... channel 1 is restricted to emergency traffic only"

13:32 – emergency marker begins

13:51 – Dispatch airs "routine traffic on channel 3, emergency traffic only channel 1"

14:00 – Adam 4 airs "10-4 we are in the basement"

14:06 – Dispatch airs "Adam 1, 1234, go directly to the basement [REDACTED]"

14:29 – Dispatch airs "Adam 3 your status can you break and head over to [REDACTED]"

14:37 – Adam 3 airs "doing that right now"

14:49 – Adam 2 airs "Adam 2 we're stable, we just need people here so we can handcuff him"

14:58 – Dispatch airs "copy, you've got 3 headed your way"

15:17 – Adam 1 airs "Adam 1's out"

15:24 – Dispatch airs "Copy, Adam 1 on scene"

16:26 – Dispatch airs "Adam 2, the other two are still coming in hot... status check"

16:34 – Adam 2 airs "(unintelligible) struggle... trying to handcuff"

16:41 – Dispatch airs "sorry couldn't copy that... you got him restrained now?"

16:56 – Dispatch airs "1234, Adam 3 continue in"

17:03 – 1234 airs "1234... I'm already 23, and we're putting him in cuffs, you can take the air and get us back on routine"

17:16 – Dispatch airs "Copy Adam 3 is still coming in, and routine traffic... Adam 3 you can continue in, slow it down, normal traffic back to channel 1."

17:30 – Adam 3 airs "Adam 3, can you mark a 95"

17:38 – Dispatch airs "95 at 1128"

17:44 – 1210 airs "1210 We're out on [REDACTED] (Lt Hanson)"

17:52 – Dispatch airs "copy 1210"

17:59 – Adam 4 airs "Adam 4, do you copy my portable?"

18:06 – Dispatch airs "Adam 4 I do... go ahead"

18:12 – Adam 4 airs "I was just checking cuz in the initial fight I was calling it out but nothing responded"

18:23 – Dispatch airs "Initially I didn't copy you until that very last one... I copied Adam 2 but none of yours"

18:32 – Dispatch airs "I do now. You have a 95 at 1128"

18:40 – Baker 62 airs "Baker 62"

18:48 – Dispatch airs "Baker 62"

18:54 – Baker 62 airs "Can you assign me to [REDACTED] I'll add a note in there".

19:01 – Dispatch airs "copy"

19:08 – 1234 airs "1234"

19:14 – Dispatch airs "1234"

19:20 – 1234 airs "If you could do me a favor and pull Adam 4 and put him on a significant exposure case, that would be great and we'll be enroute to Meriter"

19:37 – Dispatch airs "Copy, Meriter. Be advised he was entered as a runaway earlier today, so data needs to cancel him as well, and I'll put Adam 4 on... do you want to be put on Adam 4's call as well"

19:47 – 1234 airs "I'll jump over to data to make sure the cancellation goes through... he's a little feisty so if I could get Baker units, 1 or 2 at least started just in case"

20:01 – Dispatch airs "Copy. Baker 2, Baker 4... Meriter"

(END OF RECORDING)

CAD records also included the Incident Detail Report, which is saved within this IA incident folder. The following is a portion of that record, showing which Officers were assigned to this call and at what times.

Incident Detail Report

Data Source: Data Warehouse
 Incident Date: Closed
 Incident Number: 19-210976
 Case Numbers:
 Incident Date: 6/3/2019 11:05:25
 Report Generated: 6/9/2019 09:57:14

Incident Information Incident Type: D-Data-Law Priority: Data Determinant: Base Response: Confirmation#: R-Report Taken By: R-Report Response Area: R-Report Disposition: R-Report Cancel Reason: Incident Status: Closed Certification: Longitude: E9FC3863	Alarm Level: 1 Problem: Disturbance Agency: Law Enforcement Jurisdiction: MADP-Madison (City) Division: Madison West Station: Madison West Response Plan: MADP-121-Data Command Ch: Primary TAC: Secondary TAC: Delay Reason (if any): Latitude: 43028497
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Incident Location Location Name: Address: Apartment: Building: City, State, Zip: MADP-Madison City WI 53703	County: Dane Location Type: Cross Street: Map Reference: MPX:121
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Call Receipt Caller Name: B02 Method Received: Caller Type:	Call Back Phone: Caller Location:
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Time Stamps <table border="1"> <thead> <tr> <th>Description</th> <th>Date</th> <th>Time</th> <th>User</th> </tr> </thead> <tbody> <tr><td>Phone Pickup</td><td>6/3/2019</td><td>11:04:16</td><td></td></tr> <tr><td>1st Key Stroke</td><td>6/3/2019</td><td>11:04:16</td><td></td></tr> <tr><td>In Waiting Queue</td><td>6/3/2019</td><td>11:06:25</td><td></td></tr> <tr><td>Call Taking Complete</td><td>6/3/2019</td><td>11:06:25</td><td>Riggs, Tammy M</td></tr> <tr><td>1st Unit Assigned</td><td>6/3/2019</td><td>11:07:02</td><td></td></tr> <tr><td>1st Unit Enroute</td><td>6/3/2019</td><td>11:13:10</td><td></td></tr> <tr><td>1st Unit Arrived</td><td>6/3/2019</td><td>11:13:11</td><td></td></tr> <tr><td>Closed</td><td>6/3/2019</td><td>20:30:24</td><td>NewWorld Mobile</td></tr> </tbody> </table>	Description	Date	Time	User	Phone Pickup	6/3/2019	11:04:16		1st Key Stroke	6/3/2019	11:04:16		In Waiting Queue	6/3/2019	11:06:25		Call Taking Complete	6/3/2019	11:06:25	Riggs, Tammy M	1st Unit Assigned	6/3/2019	11:07:02		1st Unit Enroute	6/3/2019	11:13:10		1st Unit Arrived	6/3/2019	11:13:11		Closed	6/3/2019	20:30:24	NewWorld Mobile	Elapsed Times <table border="1"> <thead> <tr> <th>Description</th> <th>Time</th> </tr> </thead> <tbody> <tr><td>Received to In Queue</td><td>00:00:20</td></tr> <tr><td>Call Taking</td><td>00:00:38</td></tr> <tr><td>In Queue to 1st Assign</td><td>00:01:37</td></tr> <tr><td>Call Received to 1st Assign</td><td>00:02:47</td></tr> <tr><td>Assigned to 1st Enroute</td><td>00:04:04</td></tr> <tr><td>Enroute to 1st Arrived</td><td>00:02:01</td></tr> <tr><td>Incident Duration</td><td>09:29:09</td></tr> </tbody> </table>	Description	Time	Received to In Queue	00:00:20	Call Taking	00:00:38	In Queue to 1st Assign	00:01:37	Call Received to 1st Assign	00:02:47	Assigned to 1st Enroute	00:04:04	Enroute to 1st Arrived	00:02:01	Incident Duration	09:29:09
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Resources Assigned											
Unit	Flag	Assigned	Disposition	Enroute	Staged	Arrived	At Patient Avail	Complete	Odm. Enroute	Odm. Arrived	Cancel Reason
1A4	Y	11:07:02		11:11:10		11:13:11		11:34:12			
1A2	N	11:07:02		11:13:20		11:13:20		14:16:42			
1A1	N	11:07:02		11:20:05		11:20:05		14:02:42			
1234	N	11:23:32	R-Report	11:28:04		11:28:04		18:27:55			
1A3	N	11:25:05		11:28:23		11:28:23		12:10:20			
1210	N	11:30:16	N-No Report	11:30:20		11:30:20		14:07:57			
1310	N	11:30:16	N-No Report	11:30:19		11:30:19		12:14:25			
B02	N	11:33:08						15:33:12			
1B4	N	11:35:37						12:05:45			
1B1	N	11:41:17						12:35:22			
2D11	N	13:29:31		13:29:59		14:34:42		20:30:24			
2F12	N	13:29:35				13:30:42		20:29:58			

Personnel Assigned	
Unit	Name
1A4	Stavel, Andrew (PCAB5)
1A2	Jabawa, Chad (FDCVJ)
1A1	Ford, Theodore (PDTJF)
1234	Engler, Joseph (FDBAE)
1A3	Spika, Angela (FDBAF5)
1210	Hanson, Michael (FDMVH)
1310	Wells, Charles J (FDCJW)
B02	Creech, Justin (FDJJC)
1B4	Hamm, Jesse (FDLLM)
1B1	Vanderweert, Brian (FBETV)
2D11	Quinn, Monique (PDMN4)

Initial Surveillance Video Review

As stated earlier, I received a total of four video clips from Captain Patton, and saved them to the Professional Standards folder on the server under this incident number. Two of the four videos appeared to be identical copies of each other, resulting in three different videos, each approximately 30 seconds long, none of which contained any audio.

Name	Date modified	Type	Size
1800843367_received_2366125617045728_...	6/3/2019 6:47 PM	VLC media file (.m...	3,461 KB
received_674216573022512.mp4	6/3/2019 6:47 PM	VLC media file (.m...	3,170 KB
received_2298157197063567.mp4	6/3/2019 6:47 PM	VLC media file (.m...	4,681 KB
received_2366125617045728.mp4	6/3/2019 6:47 PM	VLC media file (.m...	3,461 KB

In the above list of received videos, the top and the bottom videos are the two duplicate copies. A summary of the video contents follows below. At the bottom of each video still is a time stamp, indicating how much time has gone by with each video still.

Video labeled “received 674216573022512.mp4”

The first video in chronological order appears to be the 2nd video on the above list, labeled “received_674216573022512.mp4.” In this video, the subject determined to be [REDACTED] is seen walking towards the camera in the lower level of the [REDACTED] address, with Officers Slawek and Joswiak visible on camera as well.



██████████ retrieves an object (phone), and then turns to walk back toward the Officers.



██████████ walks past Officer Slawek towards Officer Joswiak ██████████ is seen in the background, behind Officer Joswiak.



Officer Slawek is seen attempting to take hold of [REDACTED] arms as he nears Officer Joswiak, and Officer Slawek and [REDACTED] move forward, into a wood door with horizontal slats. There is a small white object, later determined to be a fan, on the back of this couch.



Within a few seconds, [REDACTED] and Officer Slawek both fall onto a couch which is immediately adjacent to the door.



Officer Slawek struggles with [REDACTED], and can be seen attempting to use his radio as Officer Joswiak gains control of [REDACTED] feet.



[REDACTED] can be seen near [REDACTED] feet at this point, with Officer Slawek positioned near [REDACTED] upper body, and Officer Joswiak positioned near his lower body. Officer Slawek and [REDACTED] appear to be struggling with each other throughout the remaining approximately five seconds of this video.



Video labeled "received_2366125617045728.mp4"

Chronologically, the second video is the video of which there are two apparently identical copies, named "1800843367_received_2366125617045728_3543892.mp4" and "received_2366125617045728.mp4." This video begins with [REDACTED] Officer Slawek and Officer Joswiak positioned in much the same position as the first video. [REDACTED] is no longer positioned within view of the camera, and Officer Ted Fondrk is now also present, positioned near [REDACTED] left arm. There appears to be a white cloth of some type over [REDACTED] lower face, with his eyes and nose visible. Sergeant Joe Engler is approaching from behind PO Officer Joswiak.



Sergeant Engler positions himself near the head of [REDACTED] and after a few seconds reaches into his left cargo pants pocket and retrieves an item (later determined to be a spit hood).



Sergeant Engler takes a few seconds to open and organize the spit hood, and can be seen attempting to place the hood on [REDACTED], who is still laying on his back, with Officer Slawek above his upper body, directly in front of Officer Fondrk, who is still positioned on the left side of [REDACTED]



There appears to be a struggle of some level as officers attempt to place the spit hood on [REDACTED]



Officer Slawek suddenly pulls back and appears to wipe his face with his right hand, which was previously positioned down towards [REDACTED]



Officers are seen apparently struggling in attempting to roll or otherwise reposition [REDACTED] as he is on the couch. Officer Straka can be seen on video entering the room from behind Officer Joswiak.



Sergeant Engler can then be seen delivering what appears to be closed fist strikes as Officer Joswiak, Officer Slawek and Officer Fondrk remain in physical contact with [REDACTED] on the couch. Officer Fondrk is in very close proximity to Sergeant Engler as these strikes are delivered. The video does not show where these strikes land, but Sergeant Engler is positioned at the head area of [REDACTED]



Sergeant Engler can clearly be seen delivering one initial strike with a short pause immediately following, then a second with another short pause, then a third. All three strikes occur within a three second timeframe. The video then ends immediately after the third strike.

Video labeled "received_2298157197063567.mp4"

The third video (chronologically) is labeled "received_2298157197063567.mp4." This video shows [REDACTED] in handcuffs, on his chest on the floor immediately in front of the couch. Sergeant Engler, Officer Joswiak, and Officer Fondrk are positioned around him. [REDACTED] is not resisting, and other than handcuffs, Officers are not using any recordable force during the duration of this clip. [REDACTED] can be seen walking from the back of the room to the front, immediately in front of and under the camera.



Officer Ted Fondrk Interview

Officer Ted Fondrk was present during the strikes that were delivered by Sergeant Engler, but arrived on scene after Officer Slawek had initially attempted to take [REDACTED] into custody. [REDACTED], Officer Slawek, and Joswiak were already positioned on the couch upon his arrival. It came to my attention that Officer Fondrk was going to be off duty from 3pm on June 4, through June 26. In an effort to avoid significant delay during this investigation, I did request to interview Officer Fondrk on 6/4/19 prior to his previously scheduled time off. Although I only had preliminary knowledge of the incident and the complaint at that time, I did feel it appropriate to interview him regarding his observations and actions at that time. Officer Fondrk readily agreed, and waived the offer of having a union representative or other support person present during this interview. This interview was not recorded.

Officer Fondrk told me he was nearby on another call with he heard the request made by officers on scene for emergency backup. He stated he responded accordingly and immediately. Upon arrival, he stated that the foster parent allowed him inside and directed him downstairs. As he entered downstairs, he stated that the room was on the left and he could see the subject [REDACTED], Officer Slawek, and Officer Joswiak already on the couch. Fondrk described [REDACTED] as being on his back, facing up, with Officer Slawek "on top, sort of straddling" [REDACTED] with his arms holding [REDACTED] arms. Fondrk told me that Officer Joswiak was securing [REDACTED] legs, and he could hear Slawek repeatedly giving commands to "stop resisting" as [REDACTED] was yelling something about being a Native American and that Officers couldn't touch him.

Fondrk said that upon his arrival, he attempted to help hold [REDACTED] in the best way possible, but he added that there wasn't much room to grab him considering the location of the other officers. Fondrk stated that he was able to assist by standing to the right side of [REDACTED] near his right arm, and the three

Officers began discussing how to best proceed. It was decided that they would standby and not attempt to place him in handcuffs until they had another officer present, but [REDACTED] then spit at Officer Slawek. Fondrk wasn't certain if it hit Slawek or not, but that Slawek then asked for a piece a cloth of some type to place over [REDACTED] mouth to attempt to prevent him from spitting, which [REDACTED] provided. Fondrk told me that this wasn't working well, and [REDACTED] then spit again at Slawek, and although Fondrk wasn't certain he believed that this time the spit struck him based on Slawek's visible reaction to the spit. Fondrk said that they again decided to wait for more officers to arrive before attempting to move or take further action on [REDACTED].

Fondrk told me that Sergeant Engler arrived and attempted to apply a spit hood onto [REDACTED] head. As they did so, [REDACTED] spit again at Officer Slawek as they attempted to roll him to the side to avoid being spit on again. Fondrk again reiterated he was not in a good position to assist due to the position of other officers. Fondrk stated that as they attempted to roll him [REDACTED] began to resist and they lost some control of him. Fondrk stated at this point Sergeant Engler, who was positioned at [REDACTED] head, delivered strikes to [REDACTED] but Fondrk was not certain how many. I asked Fondrk for an estimate, and Fondrk again stated he wasn't certain, but believe it was "two or so".

Fondrk told me that after the strikes were delivered, they were able to complete putting the spit hood on [REDACTED] and were able to move him to the ground without further spitting or other physical resistance. I asked Fondrk if the strikes were "successful," and Fondrk stated that they did appear successful, as [REDACTED] ceased resisting and spitting and they were able to successfully move him to the floor, secure the spit hood, and place him in handcuffs immediately after.

Fondrk said that immediately after [REDACTED] was secured and ceased his resistive efforts, Sergeant Engler directed Officer Slawek to disengage and clean himself off due to [REDACTED] spitting. Fondrk was not certain as to when Officer Straka arrived on scene, nor was he certain exactly when [REDACTED] foster parent [REDACTED] was present during this altercation, but stated that he had not heard [REDACTED] express anything of concern over the Officers' actions during this altercation.

On 7/10/19 at 1:22pm, I spoke again with Officer Fondrk. Officer Kelly Powers was present as well, and this interview was recorded.

Fondrk again was clear that he assisted during this altercation, but due to other officers' positioning, he was unable to fully assist in a manner he wished to.

Well Officer Slawek was directly on top of him and was, had, you know, each of his arm, he was holding the subject down like his right with his left arm, his left arm with his right arm, directly over the top of him. So it looked to me like Andy, Officer Slawek was using his full force and weight to, to try to hold him down and I, I, you know, kind of tried to start trying to control the person or the subject's right arm but there wasn't a really initially a great spot for me to go because of Officer Slawek being directly on top of him with both of his arms holding the other subject's arms down.

Officer Fondrk confirmed that Sergeant Engler arrived approximately one minute after he had, and answered questions about whether he perceived whether [REDACTED] was "under control" at this time.

Q: Okay. So at that point, did you consider, you guys had him fully in control, not in control, how would you classify your control level over him at that point?

A: I would say not in control.

Q: Could you explain that?

A: Well Officer Slawek was appeared to be having to use his full body weight to hold him down and he was also still spitting and had hit Officer Slawek with, with the, with spit right in his face.

Q: When you saw Slawek was using his whole body weight, was it clear he was moving him a little or was Slawek steady on top without like further motion?

A: mean, I mean, you know, with using the full force of him being on top of him and it, you know, he appeared to be using his full pressure to hold him down, you know, they, they appeared to be struggling still.

Fondrk recalled radio traffic being held prior to his arrival at the residence, but did not recall when dispatch went back to routine traffic, or whether anyone on scene was able to provide radio updates.

When I asked Fondrk about [REDACTED] level of resistance when the spit hood was applied as compared the just minutes prior, Fondrk reiterated that he did not have a good grasp on [REDACTED] was "not directly involved" at the start of the incident, and did not feel it would be fair for him to attempt to compare the two.

Fondrk stated he observed no active countermeasures delivered other than Sergeant Engler's strikes, and stated the he never considered delivering them himself, stating:

I just, I didn't have a good position.

We concluded the interview at 1:38pm.

Officer Andy Slawek Interview

I was informed that Officer Andy Slawek was going to be out of the office after June 6 until late June as well. For this reason, I also expedited an initial interview of Officer Slawek. This interview was conducted on 6/6/19 at 8:11am at the West Police District, and was attended by Officer Slawek, and WPPA Business Agent Luann Alme. I provided Officer Slawek with a "Cooperation with Investigation Required" memo, indicating the statement he was providing was a compelled statement, which both he and Luann Alme signed. I provided him with a copy and scanned the document in to be attached to this investigation. This interview was recorded.

Officer Slawek stated that he had been dispatched reference a "51 commitment" that School Resource Officer Justin Creech was working on, stemming from an incident that occurred at West High School. Slawek and Officer Chad Joswiak responded, and made contact with the foster dad [REDACTED]

Slawek recalled that [REDACTED] told him that [REDACTED] was in the shower, but was talking in a manner that "wasn't making sense." [REDACTED] told him that [REDACTED] had threatened their contractor, saying he [REDACTED] was going to kill the contractor (later identified as Zachary Wisnart).

Slawek told me that he spoke with Wisnart, who told Slawek that he was just getting out of his car that morning when [REDACTED] approached him and said, "hey bitch...I could fuck you up." Wisnart said he didn't know who the kid was or where he lived, and thought he was "just a kid skateboarding on the sidewalk," until he started walking towards the home with [REDACTED] following him inside. Slawek said Wisnart told him that he wasn't bothered by the comment, which led Slawek to determine there were no charges applicable from comments made by [REDACTED] towards Wisnart.

Slawek told me that [REDACTED] came out of the shower and was arguing with [REDACTED] over where his socks were. Slawek stated that he and Joswiak were positioned upstairs so [REDACTED] could not see them, and [REDACTED] walked downstairs to get his socks. Slawek stated that when he did so, [REDACTED] motioned for them to follow [REDACTED] downstairs:

"[REDACTED] went down and [REDACTED] kind of pointed like we should go down and also I knew we had to go down because if [REDACTED] thought that we were there to take him, he would go out the patio door."

Slawek confirmed that [REDACTED] pointed at him, inferencing that he needed to go downstairs as well at that time. Slawek continued with his observations:

"So I went down ahead of Officer Joswiak and [REDACTED] was saying something I couldn't understand it. Then I heard him call us all racists. Then he was like going to the end of the living room closest to the patio door like looking for something and I said did you find your shoes and he was still mumbling something I couldn't understand and he turned around and he said that he could, he has enough power in his little pinky that he could fuckin', that you could, I could kill you and at that point, he just gave what we're trained with was that thousand yard stare, like he was gonna go right through me like right into me and as he came towards me, I stepped aside and I noticed in his hands

something he had picked up but what I noticed was his, his muscles were flexing, you know, gettin' tense and at that point, I thought that he was either gonna challenge Officer Joswiak or I didn't know where he was going to. I didn't if he was going to barricade himself in his room so at that point, I was gonna do a protective custody of him and I grabbed his right arm to put him into handcuffs and arrest him for protective custody."

Slawek told me that as he grabbed [REDACTED] right arm, [REDACTED] then brought his arm up and tensed them, and Slawek was unable to grasp his left arm. (video appears to show a flashlight or similar object in Slawek's left hand at this time). Slawek describes what happened next:

He began to resist by bringing his arm up and tensing it. I couldn't get to his left arm. He was trying to turn to his right because I was behind him. I attempted a wall stun on him by pushing him up against a wall to keep him there so that Officer Joswiak could assist so I pushed him up against a wall. He still wasn't bringing his arms back, [cough] excuse me, and all of a sudden we fell to the left. I didn't push him down because I know not to go to the ground is what Kimba teaches you. I don't go to the ground with people. I thought that Officer Joswiak had actually maybe grabbed all of us and kind of pushed us down 'cause it didn't feel like the suspect was pulling me down. Once we started going down, he was grabbing for items on my chest and belt area [REDACTED] was and I kept yelling quit resisting, quit resisting and he just kept grabbing at me so I was dealing with his hands throughout this whole time trying to pin 'em down to the side of his head or down to his side which maybe [cough] which maybe was down to either side of him. He was face up with us. He then threatened that he was gonna spit at us and I kept yelling at his dad to go get a towel or a shirt I think.

Slawek said that [REDACTED] was threatening to spit on him, though he hadn't yet at this point. Slawek described [REDACTED] resistive actions as "kind of like a bucking bronco," with Slawek across the upper part of [REDACTED] body. Slawek stated he tried to call out for assistance on the radio, but [REDACTED] hands would come up towards his face area and he was unable to make the call. He later learned that his radio had been turned off, and he believed the [REDACTED] had done so.

Slawek told me that they continued to struggle, and he and Joswiak were telling [REDACTED] to quit resisting. Slawek could not recall what [REDACTED] was saying, other than to say he was "mumbling a lot." Slawek asked [REDACTED] to get something to put over [REDACTED] mouth, but that instead [REDACTED] stood by, trying to calm [REDACTED] down by saying, "[REDACTED] calm...relax." Slawek again asked for a towel believing that [REDACTED] was going to spit and believes that [REDACTED] say [REDACTED] approaching, and then spit at Slawek striking Slawek in his right eye.

Slawek said that he was directing [REDACTED] to place the towel down on [REDACTED] face when he spit the 2nd time, with the spittle landing inside his mouth. Slawek described attempts to position the towel over [REDACTED] mouth by both he and Officer Joswiak. I clarified how this towel was positioned:

A: So Joswiak reached around me and attempted to move it up and I think I did to by pinning his hand down with my left hand on his left and my right hand on his, Joswiak reached over and we just got it over the bottom part of his, his nose and mouth area, the towel. At that time, I was able to get...

Q: And is ...

A: Yeah, go ahead.

Q: The towel wasn't pinned to him. It was just resting [inaudible].

A: No, it was just resting on his head. Yeah, it was a towel or shirt or something. It was just resting on his head. Yeah.

Q: Okay. Okay.

A: I remember that and this is in my report but I remember that he, his head was suck in, there were like big poofy pillows and his head was sunk into the pillows pretty good and the towel was laying across so it was like maybe not on him but across the top, you know, between, like how your head imprint goes in and the towel lays across it so

I asked Slawek if [REDACTED] was still on his back during this, which Slawek confirmed. Slawek was clear that the back of [REDACTED] head was against the cushion, not his face, and he continued describing the altercation:

Nope, the back of his head is in the pillow. He continued resistive tension and then all of a sudden he calmed down a little bit but we're still, then started saying go ahead, pepper spray me, tase me, shoot me and he kept saying that and you'd start what we refer to as target glancing at my taser and he'd try with his left hand then to, to what I would assume would be to go for it. He never touched it but I had to use more force to keep him down. At this point, my right hand was hurting, which I later learned was injured and I was trying to whenever I could flex my hand open to release my grip because it was cramping up. He would then repeat his phrase and he would look at my gun hand, or my gun on that side and start moving his right arm as if he was gonna go for it.

...

So now I was struggling to try to keep both those down. I was able to get my left knee up onto his left, no that wasn't then. We were I think Fondrk then arrived, Officer Fondrk then arrived and was able to take control of his left hand. I was able to reach back to my radio and turned it on and was trying to figure out why it wasn't working. I was getting nothing and found out that it was turned off. I was able to turn it on, heard the tone alerts, heard a lot of sirens coming. I said we only needed two more officers and that's it 'cause he was, he was there, he was down.

Q: Okay so he wasn't going anywhere but he still wasn't in control?

A: No, he still wasn't into control. Nope, still was not in control. He would give resistive tension, try to buck me off his chest, would be moving either his left or right arm. I don't know how Fondrk secured his left arm but now with my right hand hurting, I was able to get my body across the upper body of [REDACTED] and hold his right arm down with two hands.

I also asked for clarification on Slawek's description of [REDACTED] focus on Slawek's handgun.

Q: Was he clearly going for your gun or was his hand going that direction and your concern was that he was going towards your gun?

A: Yes, my concern was that he was going for my gun because he would keep his glance on that area. It wasn't lookin' at my me, it was lookin' at my gun and he would, in my opinion, he was attempting to go for the gun.

Slawek continued, stating that Officer Fondrk and Sergeant Engler arrived, and Sergeant Engler asked if [REDACTED] was spitting, to which Slawek answered that he was, and that Slawek was exposed to it. Slawek said that Engler took out his spit hood and was placing it on [REDACTED] when he "started to resist really, really, bad." I asked him to explain that resistance:

Really using his body to try to get all of us off using both hands to attempt to get up or towards us. I know his grip broke from me on. I'm on the right side and he grabbed and my vest and shirt and was like trying to pull me down towards him. He ripped off my name tag that I learned later but he just constantly kept grabbing trying to grab my shirt and my vest with his right hand because I was crossed over with the one left hand and my right hand was sore. At that point, I noticed something going by [REDACTED] head to the right of him. I thought it was people trying to tuck the hood down more onto him. Then all of a sudden [REDACTED] stopped resisting and said are you trying to hit me or are you trying to punch me and I looked at him like what are you talking about. I didn't say that but in my mind I was thinking what are you talking about then he was totally, he was totally relaxed.

Slawek stated that at the time, he was uncertain what that motion near [REDACTED] head was and initially thought someone was trying to "tuck the hood down more," but he later learned that Sergeant Engler had delivered strikes, and only later realized that this was the motion he had observed.

A: I didn't see it 'cause my body was left across it. I thought that they were trying to tuck the, tuck the hood down more.

Q: Okay. Do you now know what that motion was?

A: I do know, I do know.

Q: And how do you know what that motion was?

A: Yep, because before I found out about this investigation I read reports and I read Engler's report that he had done four arm strikes to the subject but seeing how that motion was, I'd say he hit the pillow more than him.

...

I thought he was just ranting when he said are you trying to hit me or something, thinking I was trying to hit him.

I asked Slawek to go back to what he saw and experienced, rather than what he heard from others, and he said he saw "two or three" motions near [REDACTED] head. I then asked him, believing that these motions were in fact strikes, if they were effective in causing [REDACTED] to cease his resistive behavior:

Q: Was that effective?

A: Yes.

Q: Okay. Explain, explain that.

A: He was, as I said [REDACTED] was just fighting after we started getting the hood on, he was constantly resisting us and, and trying to reach for us and bucking his body up best he could and giving a lot of resistive tension.

Q: Okay and then when the strikes occurred what happened then?

A: He stopped and that's when he said what are you trying to hit me or are you trying to punch me and I did not include that in my report because I didn't think it was relevant but now I have to put it in because now I realize that it was.

Q: Explain that please.

A: What do you mean?

Q: Explain that at the time didn't think it was relevant.

A: Because I didn't know they were, they were strikes. I thought they were trying to adjust the pillow or the hood. I didn't know they were strikes.

Q: Understood.

A: And I thought that with his ranting and raving with me struggling with his, with his left arm that with my hands being close to his face, he thought that I was hittin' him.

Q: Okay.

A: So I didn't, I just thought it was a rambling by him.

Q: Okay. All right so now he stopped

A: Stopped everything, was non-combative. We had enough people there at that time. I don't know what other officer showed up, if it was Straka or I don't know another one showed up. We were able to now he complied and went down the ground.

Q: And to the ground you mean?

A: Onto the ground right next to the sofa.

Slawek told me that once [REDACTED] was on the floor, Sergeant Engler directed him to "decontaminate," so he left the residence and used the rest of his water bottle to rinse out his face and mouth area, and later responded to Meriter hospital for medical attention to his injuries and potential significant exposure. He explained that as time progressed, his shoulder began hurting more as a result of the incident, so he returned to the emergency room a day later for the following diagnosis:

they said there is a possible tear in the rotor cuff and I have muscle strain in the shoulder and neck area and I need to keep my arm in a sling and I was given initially a brace for my wrist and my thumb

I next asked Slawek if we could spend some more time on his decision to use force, and Slawek explained his decision beginning from his first contact with [REDACTED]

Q: So he's, you're not certain if he's gonna voluntarily go or not at this point?

A: Yes.

Q: Okay. Do you believe that he's aware he's going or at least the cops are there?

A: I believe at that time, he is, yeah mad that the police are there.

Q: And what made you think that?

A: How he was talking gibberish as we, as we were walking away and he was just, I think the biggest thing was when he turned around in the basement and came towards me and made that statement, just the look in his eye was, was, he was on a mission. I don't know what he was to do.

Q: Okay.

A: And I don't know if there are weapons in the house. I don't know if he's gonna go back into his bedroom and I don't know the basement, excuse me, the basement area.

Q: Okay and that's why you decided that you were going to place in cuffs at that point?

A: Yes and also because of the, I could see him tensing up in his arms like how you tense up like you're about ready to fight and from the backside, I could see his muscles tensing up.

Q: In his arms?

A: In his arms, yes.

Q: Okay. Okay. So you said you grabbed his right arm.

A: Yep.

Q: Can you describe what you felt in his right arm?

A: He flexed even more meaning really, got his rock hard and kept, wouldn't let me bring it back. I tried to bring it back. I couldn't bring it back. I went to go for his left arm but I think by then since I knew his right arm was, was tense and he wasn't going along with the program at that time, I tried the wall stun and I still couldn't get his right arm back at all or his left arm back.

I asked Slawek why he chose to move [REDACTED] up against the wall:

To do, to do a wall stun, also to keep him up against the wall and not fall down to the ground or try to break away and run up the stairs so he'd have nowhere to go so we had him squared up against the wall and easier to contain.

I then asked why they subsequently ended up going down to the couch:

Q: Why did you end up going down to the couch?

A: I have no idea.

Q: Okay.

A: I didn't, I didn't push him down. I didn't, you know you can feel when someone pulls you, I didn't feel a pull. We just, we went down. I mean as I said before, I thought Joswiak had grabbed both of us and, and had pushed us down.

Q: Okay.

A: I mean I have, I was not going to go to the ground with him because it would not be good.

Q: Okay. Describe that. Why, why did you feel that it would not be good?

A: From our training, being on the ground is not a good position to be in with a, with a subject.

Q: Okay.

A: You know, he could have rolled and then been on top of me and then I'm, I'm stuck that way with all the weight and stuff but yeah I never like to go on the ground with a subject.

Q: Okay. So that's a tactical decision that you ...

A: Tactical decision by me that I've always used and also trained that being on the ground is not the best way.

Q: Okay. So it wasn't a matter of you seeing the couch and thinking hey here's a soft place we can go.

A: I didn't even, no, no, no, I didn't even know the couch, to be honest, my whole time I was focused on him and his body when he was walking through there. I didn't even know the couch was there.

I continued by asking Slawek how he was positioned on top of [REDACTED] and Slawek confirmed that [REDACTED] was on his back, face up on the couch, with Slawek holding his arms on the upper half of his body. Slawek said he was "kind of half, I'm on, my two legs are on the ground so I'm like leaning across his body, his upper body."

Slawek also stated that he was spit on twice, and confirmed that both times to his recollection were prior to Sergeant Engler arriving. When Sergeant Engler arrived, he asked Slawek if [REDACTED] was spitting, and then Sergeant Engler prepared the spit hood when Slawek told him that [REDACTED] was. Slawek then again explained what happened after that:

A: No. He asked either did he spit or has he been spitting.

Q: Okay. Said yes and then that's when he ...

A: Applied the hood, yeah, from the top, from, so that, we were at the end of the couch so he applied it from the end.

Q: Okay.

A: So he was laying down, he would have been at [REDACTED] top of his head area.

Q: Okay. Did, was the spit hood on completely, partially?

A: I think it was only down to, you know, just covering his, just the lower part of his jaw. That's why I thought the three motions I saw was someone actually trying to like shove it down farther, put it down farther. That's why I did not, I did not think they were punches.

Q: Okay.

A: I did not think they were punches at all that's why I didn't put it in my report.

Q: At the time.
A: Yeah, at the time.
Q: Okay. So the spit hood is going on him. It's to the lower part of the jaw.
A: Uh huh.
Q: And is that when I think you said that he escalated his resisting or ...
A: Yeah, he started escalating right as we attempted as Engler attempted to get it on his head.
Q: Okay.
A: So right when he started from the crown of his head on, he started fighting.
Q: Can you describe that fighting resisting again?
A: Yes. He was really trying to, I can only put it as bucking, lift his mid-section up, try to get his hands up towards us. I don't know if he was doing his head, shaking his head, you know, left and right to try to resist the hood because I was across his body now trying to hold onto his left hand or, yeah, his left hand with my left and right hand.
Q: So you had all of one hand at this point to your recollection?
A: I only had one hand, yep. Yeah, because Fondrk had his left, Fondrk had his right hand, I had his left hand and I was laying across his body.
Q: Okay. When that resisting and bucking as you put it occurred where his hands, did his hands become freed ...
A: Um.
Q: Or was he still ...
A: I think it was either then or previously his hand became free and grabbed my shirt and vest area as if to pull me closer or to help himself, you know, get up like you have something now and you're trying to get up.
Q: Okay. Pulling, so either pulling you towards him or trying to pull himself up?
A: Yes and I was able to break that but I'm left, I'm right handed and my right hand was hurting so I put the hand back down and, and that's when I noticed that it looked like they were trying to put the hood down more or I thought they were trying to put the hood down more.
Q: Okay.
A: But they were as you said, I later learned they were strikes.
Q: Okay. What did you hear when those, that motion?
A: I didn't, just something hittin' a pillow.
Q: Just a, so silent ...
A: Silent. It wasn't a thud. There was no thud. It just sounded like a hand hittin' a pillow and I can't tell you what part of anatomy the sergeant used. I can't tell you it was fist. I can't tell you it was the forearm. I just saw a motion.
Q: Okay. And you saw that motion you said two to three times?
A: Uh huh.
Q: Okay. Okay. So you saw, you saw that motion.
A: Uh huh.
Q: You believed it was Sergeant Engler but it was someone up in that head ...
A: I thought it was either Sergeant Engler as I said before trying to put the spit hood down or it was Fondrk may be trying to adjust his knee to put his knee across [REDACTED] right arm or something like that, you know, 'cause his arm was up by his head too as far as I knew and so that's the two motions I thought were happening. I did not think at that time they were punches.
A: Okay. And remind me when did you kind of realize they were punches?
Q: After I read the reports and after Engler in briefing had mentioned that he had done strikes to him but right after those [REDACTED] calmed down.
Q: Okay and by briefing, did you guys have a debrief afterwards or just ...
A: No. It was briefing our normal time.
Q: Okay.
A: Seven o'clock, the, the.
Q: The next day.

I then again asked Slawek to describe [REDACTED] actions immediately following the strikes:

Q: But immediately after that motion, you described again [REDACTED] actions.
A: He stopped resisting and he said, he said either are you trying to hit me or are you trying to punch me and I thought he was again thinking it was me or just, or just you know speaking out again, you know, how he was talking gibberish before.
Q: Okay.
A: So, yeah.
Q: So when he said that you kind of confused and didn't ...

A: I just blew it off as, as what does he mean. Yeah.

Q: So in that aspect, you believed that those strikes were effective and that there was no more spitting and no more resisting after that.

A: Yes.

Q: And immediately after he was in custody or under control, he had calmed down and was no longer resisting, that was when Sergeant Engler directed you to go take care of yourself?

A: Yes.

I also asked Slawek if he had viewed the videos of the incident, which he stated that he had. He stated that his wife had located the video segments online and told him about them, and that he did not view them on any MPD internal computer system or utilize city resources to look them up. He was clear that his wife had located them via online open source means, which is how he viewed them. When I was asking him how he viewed them for the purpose of ensuring he had not used internal MPD sources to view this video, Slawek was clear that "I know not to do that."

I instructed Slawek to not discuss his responses or other details of this investigation to others, which Slawek understood, adding, "I've been silent ever since you called."

We ended the interview at 8:50am on 6/6/19. We met again on 7/11/19 at approximately 9:58am, along with Officer Emily Samson, and WPPA Business Agent Luann Alme (included via speaker phone). This interview was also recorded.

Officer Slawek confirmed that Sergeant Engler initially arrived at the residence shortly after Slawek and Joswiak arrived. Slawek confirmed that he visually disregarded Sergeant, not anticipating any troubles with taking ██████████ to custody, particularly due to the fact that Officers on the radio stated he had a history of being cooperative with people in uniform.

Slawek then provided me with further information regarding his decision to deploy a vertical (wall) stun:

Because he was attempting to turn right like back against me. Joswiak was straight ahead and this way it would give it nowhere to run because if he was trying to break free, I don't know what else is in that basement and so I attempted a wall stun on him so that way he would, you know, they explain that it, you know, knocks people, redirects some things, oops and we could handcuff him easier.

He then describes the amount of resistance that ██████████ is exhibiting:

A: It's enough where I, I couldn't even let go to grab my radio. He immediately started reaching for things on me and saying I want to tase you, I want to or shoot me, tase me or spray me I think is what he said or pepper, one of the two, I forget, spray me. So it's enough for me to keep both my hands on him, on his hands, arms.

...

by the way I was propped across his body, he was just target glancing as I said in the first interview at, at my weapon and my taser area.

...

So and he was strong. I gotta say he's strong.

Q: Okay. In your opinion, what, was he giving 100 percent effort against you?

A: 110.

Q: 110. Okay. Okay. At that point, were you able to control him?

A: No, 'cause he was still, he was still trying to lift his body up, lift his arms up. I don't know what Chad was doing but I felt him a few times moving around in the lower extremities so I thought he was still attempting to get up.

Q: Okay.

A: Yes. At that point, was disengaging an option?

Q: No. Why not?

A: And the reason being is that finding out that he was, you know, threatening to kill staff at the school and also students, I didn't know where his mindset would be and also being in the basement, I don't know if there are any weapons anywhere. I don't know what he might have used as a weapon down there.

Slawek did state that if they were outside, or not concerned about weapons that he would have disengaged. He also stated that he did consider further active countermeasures as he struggled with [REDACTED] on the couch:

Q: Did you consider at that point using any further active countermeasures apart from the wall stun?

A: Yes, I would have thought of knee strikes.

Q: Okay and why weren't those delivered?

A: The way he was, you know, to be honest, I don't know, to be honest, I think the way my body was propped against him, losing footing, it might have made him escape or get free is what I was thinking.

...

Q: So you feel that at the level that knee strikes would have been appropriate?

A: I believe so, yes.

Q: And that's based on what?

A: Resistive Tension, not going along with resisting to redirect him to comply

Slawek then again spoke about his trying to air information on the radio, but it was turned off. I asked him about what communication he was attempting to air via the radio.

Q: Okay. So when you reached for your radio...

A: Yep.

Q: What was your intention to air?

A: They were calling for, I heard it from other people's radios that you could hear a lot of people coming and I expressed that I, we only need two more from here. We don't need half the city here.

Q: Okay. So you're looking to, okay. Were you intending to go off emergency traffic at that time?

A: No.

Q: No, why not?

A: I, I was too busy with him. I just called for two more.

Slawek was not able to estimate the amount of time it took from the time he and [REDACTED] went to the couch until the time that Fondrk and Engler arrived, saying, "I would be lying if I said 4 minutes, I'd be lying if I said two. I don't know."

Slawek also again spoke of his recollection as to [REDACTED] resistance as the spit hood was applied:

Q: Okay. So Engler arrived, the spit hood was applied or began to be applied. Can you describe the subject's resistive efforts from that point forward?

A: He's still resisting with his hands that I had down. I think he was trying to, I'm trying to recall, I think he was trying to thrash his head, you know, move it left and right like didn't, not wanting it on and they got it down to just below his, like right onto his chin area, not low enough and then someone else grabbed and just tugged it down a little bit farther.

Q: Okay. Was he a hundred percent resisting this entire time? Did it kind of ebb and flow?

A: It would ebb and flow but I'd say the majority of the time, he was consistently trying to, how can I say it, buck us off is the best way I can say it, you know, like use his body, 'cause my body was across his and I could feel him attempting to like lift up.

Q: Okay. Did that get worse, the same or less when, once the spit hood was attempted to be applied?

A: It applied the same.

Slawek told me that he did not notify Sergeant Engler about his attempted wall stun, stating that no one asked him about it, and he was pre-occupied with his hand injury and the significant exposure concern. I asked Slawek if he was aware that a wall stun is considered an active countermeasure and therefore recordable force, and Slawek stated he wasn't aware of that at the time of the incident, but he was now aware at the time of this interview.

We concluded this interview at 10:10am.

I spoke with [REDACTED] foster dad on June 6. The interview began at 11:03 am in an office at the West Police District. Lieutenant Mike Hanson was present, and the interview was recorded via the Winscribe app on my department issued cell phone. During this interview, at approximately 11:31 am, I did receive a phone call (later determined to be from [REDACTED] biological mother). While I did not pick up this phone call, it appeared as though this incoming call paused the recording on [REDACTED] interview. I did not recognize this until approximately 11:44, the end of the interview, when I attempted to stop the recording, therefore the last approximately 13 minutes of this interview was not recorded. I pointed this out to [REDACTED] to which he nodded his head to signify that he understood.

[REDACTED] confirmed that there was a disturbance at the school earlier in the day on June 3, and told me the following:

I was notified of it by one of the deans at school called me and said that [REDACTED] was having some issues. He claims that he hadn't been home all night. He was riding a skateboard around in the building. They figured he would be able to put his skateboard away as usual and then come on in and talk, you know, so I said well keep me posted. I'm gonna get ahold of Journey Mental Health, let them know that he is at school

He stated that the plan was for [REDACTED] to put his skateboard away so the situation would be rectified. [REDACTED] confirmed that the school resource officer, Officer Justin Creech, became involved.

A: Justin called me and he said that [REDACTED] was still having a little difficulty. He had threatened the dean with his skateboard. Officer Creech intervened [REDACTED] calmed down. He said he was gonna go into nurse's office and take a nap.

Q: Okay.

A: So he would calm himself down.

Q: And that's kind of normal practice that works for him?

A: Yes.

Q: Okay.

A: Yes.

Q: And my understanding is that pretty much worked.

A: Yes.

Q: And then he woke up and decided just be best to go home?

A: Yes. He said he wanted to go home, take a shower, take a nap, start his day all over again.

Q: Okay. And, again when I'm saying this, I'm not putting words in your mouth so if I say something

...

A: No.

Q: Wrong please just tell me...

A: Sure.

Q: So, so he wanted to go home and just kind of start anew?

A: Yes. So Officer Creech called me and he said [REDACTED] just left. He's probably on his way home, at least he says he's on his home. A student gave him a bus ticket so let me know if he gets there, what his mood is like, etc., etc.

[REDACTED] continued that he expected [REDACTED] to be coming home later that morning. He realized [REDACTED] was home when later that morning [REDACTED] was on the phone when he heard his wife speaking with a contractor who was doing some work for them, and heard the contractor explaining an interaction he had with a person in front of their home, later determined to be [REDACTED] explained [REDACTED] behavior:

I heard my wife talking to someone on the stairs and it was our contractor was coming to talk some work that we're having done at the house and he said that some kid, you know, had just started talking to him, called him a bitch, you know, got kind of confrontive with him just talking, you know, and the contractor said well you know what, I'm gonna go to work so he just kind of ignored him and walked into the house and shortly thereafter like a couple minutes, [REDACTED] walked in to the house and my wife was talking to him and asking him hey what's gonna on, you know, and he was kind of

agitated and he was, you know, swearing a little bit at her and everything about his day and everything and so then I came into the picture and I said [REDACTED] what's going on, how are you doing and he said F this, F that, you know, everybody's in my business, everybody's in my, you know, in my life trying to steal from me and so on and so on and he said I'm just trying to get some water, you know, get the F out of my face so I said okay, get your water. He went downstairs shortly afterwards saying that someone stole his chips. I said where are your chips, [REDACTED] where were they. He said on my bed stand right here and I was standing in his room with him and he picked up a shirt and I happened to see the chips laying on the floor and I said [REDACTED] your chips are right there and he just kind of went oh, picked the chips up and then he was agitated again where the fact that he says well everybody's still trying to bother me and this and that. Some guy down on State Street hit me in the back of the head, you know, where he was with his girlfriend and everything and so I picked my skateboard up and I kind of, you know, looked at him with it and said why you'd hit me and everything and the guy kind of smirked at him and walked away, you know. I said well what does that got to do with me. I said you know, you just came home, I said I haven't done anything to you or said anything to you, why are you taking all this out on me and he said I'm just, you know, I'm just mad. You know how I am when I get mad. I said but that's not the right way to, to take it. I said just calm down and I walked out of the room and I was standing like right on the edge

[REDACTED] stated that he then notified Officer Creech, who offered assistance.

I called Creech to let him know that [REDACTED] was home and I said hey, I said [REDACTED] home, you know, he's here, he's gonna take a shower, he said he's gonna take a nap and then [REDACTED] started swearing, you know, started swearing at, he didn't know who I was talking to, he was just swearing at the phone, at whoever, you know, and I said [REDACTED] calm yourself down and just let me talk on the phone and Creech says do you need me to make a phone call and I said yeah, you probably should.

Immediately after the phone call, [REDACTED] then described [REDACTED] as calming down, and requesting a "fist bump" with [REDACTED] apparently acknowledging that he was being out of line by stating "my bad," so [REDACTED] gave him a fist bump. [REDACTED] then asked for a better fist bump, and [REDACTED] gave him another one. [REDACTED] then indicated he was going to take a shower and a nap, and then return back to school.

When [REDACTED] was in the shower, police officers arrived at the door. [REDACTED] described that contact.

He went into the shower. While he was in the shower, the two police officers showed up and he came in, I said [REDACTED] here. He's taking a shower. He's calmed down. He's, wants a, you know, take a nap afterwards, you know, and I told them what I just told you and they said okay and they said does he know that we're coming and I said no. I said just wait upstairs here on the stairs 'til he gets done, you know, and then I'll tell him to come on up and, you know, he's got to go to Journey, etc., etc...

[REDACTED] clarified that he believed the Officers were already aware that [REDACTED] had to go to Journey, based on the fact that Officer Creech had called, and that police were subsequently sent to the house. He continued, explaining what happened next.

So, so [REDACTED] came out of the shower. I was talking to the officers. [REDACTED] came out of the shower and I said oh here he comes, hang on a second and he came to the bottom of the stairs and he said can I get a pair of socks and I said [REDACTED] I just gave you three pair of socks, you know, plus you just washed a couple of days ago so you should have some socks and then he looked up and saw the officers and he says well I'll go get the socks, put 'em on. I guess I'm going with these guys and I said yeah and he goes all right that's fine and he walked away and when he walked away, the closest officer that was to me I think is Slaweky, Slawek or whatever his name was, I said should probably just kind of keep an eye on him in case he decides to go out the back door so he walked past me down the stairs and it was quiet. I was talking to the other officer who I knew from the school district, worked with him in the school district and we were talking for a second and it was pretty quiet, pretty calm and all a sudden I hear stop resisting, don't resist and I hadn't heard anything until that and so both of us, you know, walked down the stairs and he walked in front of me, walked past me down stairs and I was right behind him and as we get downstairs, we see [REDACTED] kind of walking towards us and the other officer was behind him, all of a sudden the other officer just grabs him and, you know, slams him into this door, you know, doorway for my furnace room and then the next thing you know they're both, you know, he pulls him down over the couch, you know, the officer pulls him down over the couch and the other officer walked over towards him to grab his feet so he wasn't kicking and everything and I went to pick up the ceiling fan from my bathroom that was sitting on the couch. I

didn't want anybody to get hurt by it or the thing to break so I picked it up and moved it and [REDACTED] started yelling and, you know, get off me, get the fuck off me, you know, why are you on me, get off me, you know, fuck you, fuck you, blah, blah, blah and I kept telling [REDACTED] shut your mouth just calm down, you know, just calm yourself down and he was, you know, still agitated because the officer was, was on him and he was still yelling and I just kept saying [REDACTED] calm down, calm down. The other officer called for backup, the one that was on top of him. He had his mic right there, he's holding him down and he called for backup and a few seconds later, I could hear the cars coming because they had the sirens on so I went up to show them the way in and the officers came in and I came downstairs and just as I came downstairs, I heard another car so I turned and I went back upstairs to let them in. I could hear [REDACTED] you know, saying, you know, I'll kill you, I'll blow your station up, blah, blah, blah, you know, maybe he was just really heightened at that time. I kept trying to tell him to calm down, you know, just, you know, stop talking, be quiet, calm down. Another officer, I hear another car, you know, coming up so I left and went out and when I came back downstairs with that officer, they were moving him over from a couch onto the floor to handcuff him

[REDACTED] then confirmed that he had attempted to calm [REDACTED] down, and had returned back upstairs when he heard the sirens from additional squads arriving to let them in the residence. He returned back downstairs, and then again went back upstairs as another officer arrived.

Q: Okay. Understood. So and then you had heard the sirens, you saw the officer request back up. Heard the sirens, you went outside. The next time you came back down, he was being moved onto the floor off the couch.

A: Well next time I came back down, the other officers were, more officers were on top of him when I came back down and then I just kept saying [REDACTED] you know, stop talking, be quiet because he was making a lot of threats.

Q: Okay.

A: And I kept trying to tell him to just be quiet, to stop, you know, and then another car was coming, I could hear the other car coming so then I left the room again and as I left the room, the other officers, I guess had come in, the one with the bag and everything had come in and then when I came down again, that's when they were starting to handcuff him.

[REDACTED] also clarified that it was this time going upstairs that Sergeant Engler had arrived. [REDACTED] stated that he was not aware that [REDACTED] was struck until after [REDACTED] had left with the officers. [REDACTED] said that he discussed the incident briefly with Officer Straka, and then after she had left he sat down after he had checked and locked all the doors he decided to check the footage on his surveillance camera. He stated that the camera does not record in a long, continuous recording, and explained that the three video clips that MPD received was the entire video that the camera recorded.

And then I was checking all the doors, locking the doors and everything back and I said I have a camera right there so I went upstairs and I looked at the footage on the camera to see if it captured anything at all because sometimes it does, sometimes it doesn't and then certain, you know, it only does so much and then so much and then so much. That's why it wasn't a long continuous ... thing. It filmed, I gave you exactly what it filmed. I didn't take anything out. I didn't edit any, that's all, everything that it had filmed

Later in the interview, I asked for some clarification on the videos, as I had found significant gaps between each of the three copies I had viewed. I also explained the three videos that I had observed, and [REDACTED] confirmed that these were the same videos.

Hanson: Why does that video cut? Does it only...

A: It only does so much.

Hanson: Like ...

A: At a time I guess.

Hanson: Right now if it's running, does it go two minutes on or three minutes on, whatever, takes a break to store it or whatever the technology would be and then starts up on its own again?

A: It would do, it would be on but it won't be recording anything until something comes into it, into view.

Hanson: Oh is it motion activated?

A: Yeah. Yeah.

Hanson: Oh I see.

A: It's like a motion activated and it'll only do so much at a time.

Hanson: Gotcha. Okay. That's helpful.

Q: So again those, I've seen the three snippets. Again, I didn't slow mo them or anything like that so, you know, I vaguely aware but not to the point I'm going to be eventually.

A: I have them right here if you want to ...

Q: I have, I have the three but I just want to confirm. One shows [REDACTED] walking past the officer and the officer grabbing hold and ending up against the wall and on the couch and then it cuts off a short time later.

A: Yeah.

Q: The next one is when that, the officer who delivered the strikes kind of comes in, the officers are holding him down and then that whole process and then after a third strike it cuts off immediately.

A: Uh huh.

Q: And then the third video I've seen has rather non-eventful officers on the floor handcuffing.

A: Yeah.

Q: And that's everything you have to confirm.

A: Yeah.

Q: Okay. I did see on one of the Facebook posts an individual said she's seen the whole video.

A: That's what she means. She's seen the whole video.

Q: She's seen those three.

A: Yeah, because nobody's seen anything that you haven't seen.

Q: Okay.

A: No one has seen anything else.

Q: Okay.

[REDACTED] described his observations of the videos:

A: ...so I was looking at it and I watched the other officer and [REDACTED] and remember I told you he said he was gonna go his socks. Well if he's going somewhere, most kids want to grab their cell phone so before that [REDACTED] had plugged his cell phone in, before he went into the shower, he plugged his cell phone in because I saw that on the film because he was wearing the different clothes that he was talking to me in originally, went and plugged his cell phone in, then he went in to take the shower. The officer when you see the footage, the officers came in, [REDACTED] was wearing different clothes. He walked downstairs after he said I'm gonna go put some socks on and then I'm gonna go with these guys. So he went into the living room down there. He picked up his cell phone. He turned. He was walking back towards his bedroom in the area towards his bedroom and the officer came in and let him pass and he walked past and you could tell there was no dialog 'cause we would have heard the dialog at the top of the stairs. There's no dialog between 'em or anything. [REDACTED] never broke gait, never turned either way. The officer never turned either way or was startled by any, any tones or anything and all of a sudden he just grabs him and throws him into the wall just as we were coming around the corner, you know, we could see this where he just said, you know, you could hear him say don't resist, stop resisting and then, you know, he's into the wall and then he's onto the couch just to ...

Hanson: So just for clarification 'cause I'm, I'm trying figure this out as well.

A: Uh huh.

Hanson: Are you upstairs when you hear stop resisting?

Yeah, I'm at the top of the first set of stairs.

Hanson: First set of stairs.

A: Yeah.

Hanson: So it's a split level?

A: Yes.

Hanson: Okay.

A: You walk [inaudible].

Hanson: So you're at the split level. You hear stop resisting and you run down, do you walk down?

A: I started walking down and I told the other officer, the other officer came with me and then he went past me and we both enter the hallway almost at the same time, the narrow hallway downstairs and we don't see any resisting. We don't see any, any kind of anything. No, no, you know, aggravation, no nothing. No sudden movement. No jerkiness. Nothing. [REDACTED] just walking past like he's going towards his room and that's when like I said that's when the officer grabs him and, you know, puts him into the wall.

Q: Okay so can you give me, I know it's difficult if not impossible, you hear it from that time you hear stop resisting to the time you're downstairs and see him push him against the wall, what's that timeframe?

A: Probably one second maybe two seconds at the most, however it takes to go from six steps down.
Hanson: Did you run or did you walk?

A: No, no, no. I walked, you know, just kind of quickly and everything, you know, just walked down.

Q: Okay.

A: Didn't run down, you know, just walked and.

Q: Okay so then you saw that on video and then what's the next thing you saw that concerned you?

A: Well the next thing that I had seen on the video was they had him, they had [REDACTED] pinned down. I had given the officer like he kept yelling, he said give me a shirt, give me a shirt, the officer that was on him, the original officer that was on him and pinning him. He kept saying give me a shirt, give me a shirt. Well I didn't have any shirts right there but I had a pillow case sittin' right there from some laundry and I had put it on the couch right next to him so they could use it for where he needs to use it, you know, [REDACTED] was spitting at him.

Q: Did you see him spitting or you just heard it?

A: I didn't see him spit. I didn't see him spit. I was a little spit on [REDACTED] face but I didn't see him spit, you know.

[REDACTED] then stated that officers continued to hold [REDACTED] down, and a pillowcase that [REDACTED] had provided was placed over his mouth. I did ask if the pillowcase was positioned in such a manner as to impeding his breathing, but [REDACTED] stated he could not tell. He was clear that there were 3 officers holding him down at this point, adding that [REDACTED] was able to "squirm", but otherwise could not move:

He definitely, he couldn't move, he couldn't move anything, you know, he could squirm a little bit but that was it. He couldn't move.

[REDACTED] provided the following description of what he observed next, describing Sergeant Engler's actions:

But and like I said when I was watching the video again or for the first time I should say I was watching it, that's when I noticed the guy who I had let in, you know, and he walked, I went upstairs, he had walked downstairs, he walked in to the video into the scene, pulled the bag out of his pocket, put the hood over his head and [REDACTED] you could see him clearly start to squirm a little bit 'cause he was, you know, putting the bag over his head and then the guy just started punching him, you know, and I said if [REDACTED] wasn't fighting back with his hands or anything else, he couldn't because he was, you know, he had the other officers on top of him and so the guy just started taking a few cheap shots, you know, he took like three shots at him and then just as he threw the third one, then Straka comes down the hallway. You could see her come down the hallway and then he stopped and then the video cut right at that point.

I then told [REDACTED] that I wanted to make certain that we were addressing all of his concerns during this investigation, and asked to clarify with him each individual concern he had. I told him that I was aware of his concern with the initial contact with [REDACTED] which resulted in him being up against the wall and subsequently down on the couch. I also was aware of his concerns with Sergeant Engler striking [REDACTED] [REDACTED] also captured on video. [REDACTED] then also stated he was concerned that the white cloth object (believed to be a pillowcase) was held down over [REDACTED] face tightly. He described this as follows:

Mainly those two things and probably when the officer's holding the thing over his face, over his mouth, you know, he's just like got all this weight on and he's just like pressing down, you know, you can see it in the video where he's like sitting there with the pillowcase over his face, not over his nose but you could see where it's the division, he has it over his mouth and he's just like, just got all this weight over him.

At this point in the interview, as previously mentioned, the recording ended apparently due to the incoming phone call. The following information was documented directly from the notes I took during this interview, but was not captured on audio recording.

As we discussed these three areas of concern [REDACTED] described the strikes that Sergeant Engler delivered as "cheap shots," believing that [REDACTED] was being held down by other officers and was unable to get free. He pointed out that the strikes ended just as Officer Straka came down the stairs and neared the group on the couch.

[REDACTED] also made it clear that [REDACTED] and Officer Justin Creech "have a great relationship," and that [REDACTED] generally gets along with officers. [REDACTED] believed that [REDACTED] was not upset and was willing to go with police immediately prior to walking downstairs to get his socks and cell phone. [REDACTED] described his demeanor at that point as [REDACTED] being "fine... he wasn't upset he was going with them." [REDACTED] also said that he was close enough that he would have heard any discussion between Officer Slawek and [REDACTED] but heard nothing – no comments, no arguing, saying the first thing he heard was "stop resisting" or "don't resist" or something similar. He stated that it was at this point that he and Joswiak went down the stairs and observed [REDACTED] walking with Officer Slawek behind him, then [REDACTED] being pushed up against the wall. [REDACTED] stated that there was "nothing to indicate he was about to do anything."

He further told me that [REDACTED] was in the process of transitioning to different [REDACTED] a [REDACTED] [REDACTED]. He was still presently required to take his [REDACTED] in the meantime, but he hadn't been home the night before this incident, so he subsequently had [REDACTED]

[REDACTED] also told me that once [REDACTED] was out of [REDACTED] he would likely be returning to his residence.

I asked [REDACTED] if he observed any injuries, or complaint of injuries by [REDACTED] as they left the residence. [REDACTED] was "unsure" of any injuries, but said that spit hood was on him so he could not see if there were any facial injuries, and said that he didn't hear [REDACTED] speak of any injuries or being hurt during the incident. He said that [REDACTED] was not yelling or screaming as they left the address, nor did he hear any yelling or screaming from [REDACTED] from the time he was in handcuffs on the floor in front of the couch in the downstairs area of his house.

Officer Chad Joswiak Interview

I spoke with Officer Joswiak on 6/12/19 at approximately 7:37am at the West Police District. MPPOA Union representative Kelly Powers was present as well, and the interview was recorded.

I confirmed we were investigating the incident on [REDACTED] where a 17 year old male was taken into custody for a Chapter 51 return, and Joswiak stated that he recalled the incident. I asked Joswiak to provide me an overview of the call.

Joswiak told me that dispatch had sent officers to that address after Officer Creech had called, saying that there was a problem at that address and that there was going to be a Chapter 51 return. Officer Slawek and Joswiak arrived at the same time and entered the residence consensually after [REDACTED] foster dad [REDACTED] had met them at the front door. Joswiak said that [REDACTED] was downstairs in the shower, and that [REDACTED] thought [REDACTED] would be fine when he came out and that he would calm down in the shower. [REDACTED] had told the officers they could wait upstairs, and Slawek asked [REDACTED] if he thought [REDACTED] would "take off out of the shower," and [REDACTED] told them that they would be "fine."

Slawek had made contact with a woman and a contractor upstairs, and received information from [REDACTED] that the contractor had an altercation with [REDACTED] in the driveway earlier that day. Slawek spoke with the contractor, and Joswiak overheard some of this conversation.

Joswiak heard the contractor tell Slawek that he had pulled up in the driveway when [REDACTED] approached him on a skateboard as he was stepping out of his van, and said something similar to, "I'm Native American. I'll fuck you up. I'll kill you" and "you can't hurt me." The contractor came inside and told [REDACTED] that a neighborhood kid had done this, not realizing that the individual was [REDACTED] foster son. The Contractor said that [REDACTED] addressed [REDACTED] actions and told the contractor that [REDACTED] was the same way with him when he got home, saying similar things as "I'm Native American... you can't touch me... I'll kill you."

I asked Joswiak if this "kind of amped your emergency level," and Joswiak stated that it did "a little bit," but also stated that an officer (later determined to be Officer Rayvell Gillard) got on the air prior and said that [REDACTED] has been out of control in the past but usually calms down when officers arrive, so Joswiak said "that kind of reassured us more than if we hadn't heard that."

Joswiak told me what happened next as [REDACTED] exited the shower and came upstairs:

Then we were up on top so it's like a split level so [REDACTED] came up to the middle part where the front door is and I was standing up on the top and I guess I'm not sure if [REDACTED] saw me. I mean I'm assuming he did 'cause I was standing kind of off to a side but I don't know but I heard the foster dad look at him and say what are you doing, you don't have any socks and shoes on, go get something on and [REDACTED] said all right I'll get some socks and then I'll go with them and so then [REDACTED] went back downstairs. At that point, the foster dad looked at me and Officer Slawek and was like you might want to go down there now. He might, maybe he'll bolt out of one of the doors or something now, you know, so maybe you better make...

I confirmed that [REDACTED] was directing Officers to follow [REDACTED] downstairs, concerned that he may try to leave.

Q: I'm sorry that was the foster dad directed you guys that ...

A: Yeah.

Q: He may bolt.

A: Yeah. He kind of looked at us after [REDACTED] went down and I was thinking still everything was gonna be fine or he thought but then he looked at us and said ah there's a door down there or windows, maybe he will take off, maybe you better go check on him.

Joswiak continued, telling me what he observed next.

So then Officer Slawek went down first, went around the corner into the basement to the left. I was behind a little ways and so as I'm coming downstairs, I can hear [REDACTED] tell Officer Slawek I gotta get my phone before we go and so then when I get down the stairs and turn to the left, [REDACTED] bedroom, I'm assuming I think was the first door right away on the left and then it opens past that into like a bigger living area and when I go down there, I can, I don't see them yet but I can hear [REDACTED] yell a couple things at Officer Slawek saying something about you're a racist or you're only doing this because you're racist and so when I turn the corner, they're in the far corner of the living area and they both have their backs to me and [REDACTED] is getting something. I'm assuming his phone and turns around and starts walking back towards me so then I'm standing kind of right outside his bedroom door in the hallway. [REDACTED] in between us walking towards me and Officer Slawek is right behind [REDACTED] Well let me back up a second too so when we were upstairs and we kind of heard all this contractor, foster dad stuff, Officer Slawek said to me just so you know based on everything I heard here, we're gonna be putting him in handcuffs before we take him out to the squad and I said yep I'm on the same page. So fast forward back to when [REDACTED] walking towards me, Officer Slawek is behind him. Officer Slawek says I'm puttin' you in handcuffs, you're under arrest and grabs ahold of [REDACTED] arms from behind. [REDACTED] pulls his, I mean his arms are at his side, he pulls his, bends his elbows up 90 degrees so his hands are kind of stickin' straight out from his body. I can see the muscles in his biceps and forearms bulging out like he's, you know, trying to get away and Officer Slawek and him go crashing into the wall in the basement there in the living area. So when Officer Slawek says I'm placing you in handcuffs to when he grabs him to when they go flying into the wall happened in like 2 seconds. The spot where they went into the wall was actually a doorway and it was an older door with like those thin louver type wooden slats.

...

The real thin ones that are kind of angled and so when, he, they kind of went crashing into that I mean [REDACTED], it kind of bowed and [REDACTED] kind of disappeared into the wall door thing and Andy's behind him saying stop resisting and so I couldn't really see or grab ahold of anything or [REDACTED] at that point 'cause he kind of disappeared from view as he got smushed in there, the slats and so then a second later, Andy's still kind of behind him [inaudible] tussling and they go flipping down onto the couch which is on the other side of the door for me and so [REDACTED] falls onto his back. Andy falls on top of him so they're face to face. Andy's face down like from his waist up. I think Andy has a hold of one of his, you know, each of his hands for they're both engaged. It's pretty much a 50/50 standoff. I mean [REDACTED] looks like he's trying to pull his arms or get his arms away from Andy and Andy's trying to hold on and they basically in a stalemate. And so [REDACTED], you know, kind of was kicking out with his legs so at that point, his legs from what I could see and had available so I took a hold of his ankles

and legs and held those so he couldn't kick or do anything with his legs and then I got on the air and said we need some other to assist.

...

And so at that point, you know, Andy was yelling stop resisting to [REDACTED] was yelling and trying to pull away. There was once or twice, he spit or you know it sounded like a spitting sound and Andy said he, you know, he spit at me. Then we kind a reached a point where like everybody, Andy, [REDACTED] pretty much tired out and so we were just kind of all sitting there doing nothing for a little bit waiting for everybody else to get there and I had asked Andy, you know, a couple times do you want a, should we try to flip him over, do you want to put him in handcuffs, do you want to get him on his stomach or Andy said nope I just, let's wait here, I want to wait 'til some other people get here before we try anything and I said okay and so then I think Ted, well I'm not sure who got there next but eventually Officer Fondrk and Sergeant Engler show up. Officer Fondrk gets ahold of [REDACTED] right arm, right wrist or hand and Andy takes, keeps ahold of his left hand at that point and then Sergeant Engler's there and Officer Slawek tells Sergeant Engler somebody get a spit hood, he's been spitting and so Sergeant Engler had a spit hood on him in his pocket and so he pulled that out and went to try to put it on [REDACTED] head. At that point, while he was trying to get it on, [REDACTED] was kind of moving his head, making it difficult to get on and then I heard him, the spitting sound again and Officer Slawek pulled back real fast and said he spit right in my face, in my eyes and my mouth and then I saw Sergeant Engler deliver some strikes to [REDACTED] upper shoulder, head, neck area and then he got the spit hood on after that. When Sergeant Engler delivered the strikes, [REDACTED] said are you hitting me or stopping me something like that. I think he said are you hitting me and then after the spit hood was on, handcuffs were placed on his, we got him turned over. Kind of while we were doing that, [REDACTED] said are you gonna shoot me or just shoot me or are you gonna shoot me and I said [REDACTED] stop it, we're not, we're not doing that and he was, said something to then I think about the Native American, you can't hurt me and so then we were gonna stand him up to take him out the way we came, up the stairs to the split level but then the foster dad came down and said no I think it's quicker just to get him out the patio door in the basement so he got that unlocked and things out of the way and we went out that way and walked outside and put him in the back of my squad car

I asked Joswiak if Slawek had said anything prior to attempting to place [REDACTED] into custody, and Joswiak recalled Slawek saying "I'm gonna put you in handcuffs, you're under arrest." He also confirmed that the first time he heard Slawek say "stop resisting" was after Slawek "grabbed on (to [REDACTED]) and I could see [REDACTED] arms come up and all the muscles stand out," and that Slawek "said it a lot."

And Andy, Andy said it a lot. I mean he said it at that point, he said it when they were in the wall, he said it when they were on the couch over and over.

I then specifically asked Joswiak about [REDACTED] statement as to when Slawek first said "stop resisting."

Q: I spoke with the foster dad and he believes that stop resisting was being said before there was any hands on, before any of that altercation taking place, is that your recollection?

A: No.

Q: Okay. Certain of that?

A: Yes

Joswiak confirmed that [REDACTED] was walking past Slawek, when Slawek turned and approached him from behind, and then attempted to place him in handcuffs. Joswiak said he could not speak to what Slawek was perceiving, but Joswiak confirmed that he agreed that [REDACTED] should have been placed in handcuffs:

"...based on the way [REDACTED] was acting that morning... based on the call we got sent because he was causing a problem with the foster dad and then hearing what the contractor said".

Joswiak then again stated that when [REDACTED] was walking back towards him, that's when Slawek stated that he was going into handcuffs and was under arrest. Joswiak then again addressed my previous question as to [REDACTED] recollection of "stop resisting" being said prior to contact:

Andy grabbed his arms. They pulled up. Andy says stop resisting. I mean maybe the foster dad, I don't know if he was around the corner and was listening or if he was behind me and watching, I don't know but you know maybe when Andy said you're going in handcuffs, you're under arrest and he grabbed his arms and he resisted, I mean there was maybe no noise and when Andy said stop resisting then maybe a second later he hears the crash into the wall and thinks that.

Joswiak again told me that Slawek continued to instruct [REDACTED] to "stop resisting," and that [REDACTED] was yelling back, but Joswiak could not remember exactly what [REDACTED] was saying.

I asked Joswiak if Slawek had grabbed [REDACTED] by both arms or only one, and he replied:

Yeah. I think, I assume, I guess I couldn't see what he grabbed but I assume it was both just the way [REDACTED] reacted like both arms reacted the same like they bent 90 degrees so it seemed like to me Andy had both arms or else he would have had one flopping free or could have grabbed or done something but both were like constricted at his side from the elbow up and you know they were 90 degrees out in the front so it seemed to me like Andy would have had a hold of both.

Yeah. I mean I could see the, Andy's right hand had a hold of his right arm but the left, you know the way he has turned a little, I couldn't see if he actually had a hold of it but...

Joswiak estimated the time from Slawek first touching [REDACTED] until the time he was up against the wall was perhaps two seconds.

Joswiak said that he secured [REDACTED] legs to prevent kicking, and explained again what he heard concerning [REDACTED] spitting on Slawek.

Q: You did hear what sounded like spitting a couple times before and then as they're attempting the spit hood, I believe you said you heard another one and Andy made a comment about he spit in my eyes or something.

A: Yes.

Q: Okay.

A: And when I heard the spitting noises before anybody else got there, you know, I could see Andy moving his head side to side because they were pretty close face to face, you know, they were probably less than a foot from each other face to face and so I, before anyone got there, I could see Andy, you know, moving his head or trying to maybe get his head out of the direct front view of [REDACTED] and then when, when Sergeant Engler was there and Andy said that, I mean when I heard the noise, I mean Andy's head noticeably jerked back to try to get out of the way.

Q: Okay. And that was immediately prior to the strikes?

A: Correct.

Q: Okay. So if my count is correct, that was perhaps three times he was spitting. You said a couple before and then one, one while he's attempting to put the spit hood on.

A: Right.

Joswiak confirmed that he saw no active countermeasures delivered during the altercation by anyone prior to Sergeant Engler delivering the strikes as shown on video.

Joswiak also confirmed that officers spent time discussing how to proceed while [REDACTED] was actively being held on the couch, and that the ultimate decision was to wait for more officers. He also described how the pillowcase was utilized in attempts to prevent [REDACTED] from spitting:

Q: Okay. At some point, my understanding is there was a makeshift spit hood either a pillow case or a t-shirt, can you describe ...

A: Yes.

Q: How that came into play.

A: So while, yes, before everybody got there, when the first, when he spit the couple times, once or twice, then the foster dad was down there with us and Andy said, was talking to the foster dad something about get his shirt, I thought he was saying get a shirt or get the towel or something and so then the foster dad brought over a towel and it was placed on [REDACTED] face just laid on top so that

he couldn't be spitting and there was, there was once I think it did slide off at some point before everybody got there and then I thought he was maybe gonna spit again so I think when I was laying over holding his legs since I had my, a hand free I think, I think I placed it back over his head or maybe I tried to hold him more still and Andy put it back up over but I know it was on for a little while and then he was thrashing around and then it did slide off his mouth so that he would have been able to spit again and then Andy or I did put it back on, moved it back up over his face. I think I did that.

Q: To your recollection, was it always just laying over his face or was anybody physically holding it on his face?

A: No it was laying on his face.

Joswiak also recalled ██████████ resisted multiple times as Slawek was holding him down on the couch. Joswiak described how there would be a "lull," and then the resisting would continue again:

Q: You said there was the initial trying to get away when he's on his back on the couch and Andy's on top of him holding his arms. You mentioned there was at some point, it appeared they both kind of got tired because that resisting stopped?

A: Right.

Q: Okay. Any prior to then when Sergeant Engler arrived, did that continue or ...

A: It did start up, you know, there was the lull and then it seemed like maybe there were a couple times where it was gonna start up because, you know, Andy wouldn't say anything, ██████████ wasn't saying anything. We're just kind of sitting there and then Andy would say stop resisting. He'd start yelling again. I mean I don't know if he felt like ██████████ trying to pull his arms away again or something. I mean I didn't really noticed a whole lot happening but again it was the stalemate where I think ██████████ had moved to get away and Andy couldn't move him to get him to do anything else and it was just.

Q: Okay.

A: They were locked up and then I don't know if Andy, if he relaxed and then Andy felt something and then would yell that again but yeah, there were, it would lull and then a couple times it would start up.

Joswiak also described his observations when Sergeant Engler delivered strikes during this altercation:

A: When, when he was trying to get the spit hood on, it seemed like as far as Engler was having a tough time trying to get it on. ██████████ was moving his head around and, you know, I'm not sure if Sergeant Engler was trying to move his head to get it around or if ██████████ was, you know, the one resisting trying to prevent it from happening but there was some thrashing and struggling up by his head.

Q: Okay, could you feel that down by his feet too or was it simply his head?

A: I mean I guess I could feel his legs. I mean I have, you know, I was laying on his shins and I had a hold of his ankles so I mean his legs were pretty secure.

Q: Okay. So his legs weren't going anywhere but you could feel that resisting in his whole body when he's trying to [inaudible].

A: Yes, I could.

Q: Okay. How many strikes did you observe Engler deliver approximately?

A: Two or three.

Q: It might be an odd question, could you hear the strikes? Did you hear like slapping or smacking from the punches or ...

A: I'd probably just say more like a dull, dull sound.

Q: Okay.

A: Not much of a sound really.

Q: Immediately after those strikes, you said that ██████████ said what are you trying to hit me or something similar.

A: I think it was like yeah almost during or yeah.

Q: Okay.

A: That he said are you hitting me or stop hitting me or you're gonna hit me or something along those lines.

Q: What happened immediately after those strikes were delivered? Did he continue to resist? Did he continue to move his head out of the way?

A: Not really, it seemed like he was either shocked or yeah realized that he needed to stop and then the spit hood was placed on right after that.

Q: So he did stop after the strikes were delivered?

A: He did stop the resisting?

Q: Yeah. That's what I'm asking.

A: I would say so, yeah.

Q: Okay. And able to get the spit hood on?

A: Right.

Q: Any more spitting after that that you observed?

A: I don't think so.

Q: Okay. You said he was placed in handcuffs. At some point, he was moved to the floor?

A: Right.

Q: Okay. And you assisted with that?

A: Yes.

Q: Okay. And any problems getting him down to the floor with him resisting or flailing or bucking or anything like that?

A: No, I think it was just a discussion between all of us, you know, what are we gonna do here, are we gonna turn him over on the couch or do we want to get him to the floor, stand him up, what are we gonna do and then I guess we, it was decided, I mean it was kind of more between us or Fondrk, Officer Slawek and Sergeant Engler because they were up top with his hands in his head and stuff that you know, we were gonna roll him onto the floor onto his stomach and then handcuff him there.

Q: Okay. And again that was done without resistance by him, by [REDACTED]

A: Yes.

Q: So no more problems, were there any more problems with him after the strikes were delivered?

A: Are you talking physically [inaudible].

Q: Yeah and I understand. Any, any further resistance or safe, officer safety concerns or anything like that after the strikes? Essentially I'm asking were the strikes successful? The strikes were used, did the, his actions cease?

A: Yeah. Yeah. I would say so. I mean we got him to the floor fine and handcuffed him and I mean it was just the comment on the floor about shoot me now or are you gonna shoot me but then in terms of standing him up and walking him out, I mean he did that fine and we got him in the car and then he asked for his shoes and on the way up, you know, he seemed fine with me so.

I asked Joswiak if [REDACTED] had expressed any complaints to him, or complained of any injuries, and Joswiak did describe old wounds on his elbows that had been scabbed over, but had peeled off during the altercation.

Q: Okay. Any complaints? Did he complain of any injuries?

A: No. I mean, so he had a bunch of scabs, you know, like thick scabs on his arms which I think he had said was from, he got skateboarding and during this tussle, I mean there was a lot of blood down in the basement too so I think during this tussle, those scabs got ripped off so when we got to the hospital, he was bleeding. The scabs were hanging off and, you know, he asked the hospital staff, hey can I get something to stop this bleeding and so they came in and bandaged all the, those scabs that had pulled off.

Q: Okay. Any other injuries or any other statements by him about being injured or sore or did you notice any bruising or swelling or anything like that?

A: No, I didn't.

Joswiak further explained that [REDACTED] was in his vehicle when he was transported to the hospital, but there were no statements made regarding the use of force. [REDACTED] continued making odd statements at the hospital once he arrived there, however.

Q: Okay. Did he make any other comments worthy of note at the hospital while you were assisting him?

A: He had said a few times about being Native American again that you know, we couldn't kill him when we were, after we checked him in, we were in a HazMat room. He said I think you should shoot me right in the heart, I think you should do that. He said I'm Native American. He goes I think I could survive it. I think I could get through that and I said [REDACTED] I've been doing this a long time, I've never seen that happen. I don't think that would be a smart thing to want to do and that was.

Q: Okay. Anything additional that we should know for this internal investigation?

A: I mean at the hospital he was, when Officer Fondrk and I were there, he seemed fine with us. He got along fine. He did what we asked. He cooperated totally but he was up and down, you know, the Journey person, Teegan, got there and, you know, we were, hospital staff were trying to get certain tests done and Sergeant Engler was wanting him to sign the significant exposure form which to me I think he would have before Teegan got there but for some reason when she got there, he just was

really angry again. He's, you know, she didn't even say anything to him and he's looking out the door into the hallway saying fuck you, I'm not gonna talk to you, you fuckin' bitch and he got really amped up again so he was up and down, you know, and then she would leave and for the most part, you know, he would kind of calm down but then he didn't want to sign that form then, you know, and sometimes it seemed like a certain staff person would come in that he didn't like. Yeah, just kind of up and down still at the hospital

Joswiak concluded by telling me that [REDACTED] was "fine" with him and Officer Fondrk, as they talked to him about skateboarding until relieved by Officers Hanson and Erickson.

We concluded the initial interview at 8:11 am.

I met again with Officer Joswiak on Wednesday July 10 at 2:23pm at the West Police District. This interview was also recorded and Officer Kelly Powers was present during this interview.

I asked more specific questions as to his observations of [REDACTED] level of resistance. Joswiak described the following:

A: He was, he was trying to yeah kick out with his legs and I could see Andy on his stomach area and Andy had, you know, Andy's left hand had a hold of his right and Andy's right had a hold of his left and it was basically a standoff like Andy was trying to move or get his hands down or somewhere where he could control him better and [REDACTED], you know, was trying to move them away. It looked like they were both using their fully strength to try to get the other to do something but nobody was moving.

Q: Okay. What could you feel in his feet, when you were at his feet or legs?

A: I mean he was trying to, you know, kick 'em out and stuff but I mean I was laying with my weight over his shins and I had one arm, you know, kind of underneath so he couldn't pull them out from under so there wasn't, you know, a lot of moving he could do but, you know, I could feel every once in a while like he'd try to pull 'em or do something with them.

Joswiak continued, describing the amount of effort that [REDACTED] and Officer Slawek were exerting during this altercation:

I mean to me it looked like Andy was trying his full strength to get [REDACTED] arms behind him and [REDACTED] looked like he was going full strength to try to get 'em away.

Joswiak further described the altercation as being "in a hold pattern," and a "stalemate." He also told me that he did not attempt to provide radio updates due to [REDACTED] resistance and not yet being under control:

Q: ...Why, why you didn't make radio traffic?

A: Well because I was trying to keep control of his legs and you know, I guess when he spit at Andy and then, you know, at one point trying to get the washcloth came off of his face and we were trying to get that back on and then, I mean it was hard to me to really, I was in a tougher spot because I was laying on his shins and then Andy was kind of laying on his stomach and then [REDACTED] was kind of up above so I couldn't really totally see what was happening or, you know, I didn't want to go to the radio and start thinking about something else and then have him slip away from Andy or something.

Joswiak also was clear that he recalled [REDACTED] spitting as Sergeant Engler attempted to place the spit hood on his head:

He got the spit hood out and then as he was getting it over [REDACTED] head, I think he got it about halfway on and then [REDACTED] pulled his head away and that's when he did like the big spit in Andy's face.

...

Well he was struggling, it seemed like to try to not get it put on his head as it was happening and he was trying to pull his arms away and move his head.

Joswiak answered, "I don't think he was. No." when I asked if [REDACTED] was able to get his arms free, but was also clear earlier in the interview that he was positioned by [REDACTED] feet and not able to fully see what was occurring in front of Officer Slawek:

I was in a tougher spot because I was laying on his shins and then Andy was kind of laying on his stomach and then [REDACTED] was kind of up above so I couldn't really totally see what was happening

Officer Joswiak did articulate that he was able to prevent [REDACTED] from kicking him back or pushing him off while he resisted, but stated that they were still not fully in control of him:

Q: Okay. At any point was he able to like kick you off or push you back while he was doing that?

A: No.

Q: Okay. So again it wasn't more difficult to hold his legs, it was just the continued resistance by him pretty much the entire time?

A: Well there were times where it, you know, stopped or slowed down. Like I said there was a period during, in the middle of the whole thing and we were waiting for people that, you know, it seemed like he and Andy kind of relaxed and maybe they were still going full power and it was just that they, no one could move but it seemed like there was a time where [REDACTED] kind of took a breath and was just like and we're all sitting there waiting, you know, for the next thing to happen or somebody to get there and then, you know, it seemed like [REDACTED] and he would do a move to try to pull his feet or get his arm out or something and then it would relax again.

Q: Okay. He was not in handcuffs at this point, correct?

A: No.

Q: Can you explain why he was not yet in handcuffs?

A: Andy couldn't get control of his arms, I guess. I mean both of his arms were out at his side, you know, kind of up, you know, maybe up from his body a little bit but yeah, from what I saw, Andy was trying to move his arms and [REDACTED] arms weren't being moved so.

Joswiak also again confirmed that [REDACTED] level of resistance increased when the spit hood was initially attempted to be placed on his head, and that this level of resistance ceased once the strikes were delivered:

When he got the spit hood out and tried putting it on, there was more resistance it seemed like trying to get away from it or out of it. When he got it on, it seemed like it was somewhat less because, you know, after the strikes and everything, I mean it was, the spit hood was on and he had said stop hitting me.

I asked Joswiak if he observed any other active countermeasures during this incident other than Engler's strikes and Slawek's vertical stun, and he confirmed that he did not. I asked him if he considered delivering active countermeasures during this, and Joswiak described why he did not initially provide active countermeasures immediately after the attempted vertical stun:

Well for me, I mean you know, Andy's back, I mean Andy was on his side kind of, you know, I guess I was looking up towards [REDACTED] head. Andy's back was on like his stomach and so I, I mean all I had available to me were the legs I guess and Andy seemed like he had control of his arms. I mean I could have delivered strikes I guess to his leg or something but I just had control of his legs...

We ended the 2nd interview at 2:34pm.

Office Angela Straka Interview

I interviewed Officer Angela Straka at the West Police District on 6/21/19 at approximately 8:00am. She stated did not require a union representative, and this interview was not recorded.

Straka told me that she was not aware of which officers were at the incident on [REDACTED] initially, as she was on another call at the time. She stated that while she was on the other call, she heard officers request

emergency traffic and the air was held so she began heading that direction. A short time later Dispatch assigned her, to which she replied she was already in route.

Upon her arrival, [REDACTED] was outside and directed her to the basement. Straka stated she walked down the stairs as she had heard someone previously air over the radio something similar to, "We have him restrained, we just need someone here to help handcuff." She stated that this comment resulted in her slowing her response down slightly.

Upon entering the basement, Straka stated she did recall someone stating "stop resisting" at least one time. She also recalled the individual on the couch [REDACTED] yelling, but she could not understand or remember what he was yelling. She did state that she noticed Officer Joswiak on one end of the couch, Officer Slawek next, then Officer Fondrk, and Sergeant Engler at the far end. She stated she could not tell which direction [REDACTED] was facing, however, due to officers obstructing her view. Straka stated that she observed Sergeant Engler deliver three strikes, but was not certain where they landed nor could she tell how [REDACTED] was positioned on the couch. She again said she heard an officer saying "stop resisting" at this time.

Straka stated that she was thinking "what should I do?" then immediately returned back upstairs and outside to obtain her "hobbles" (kickstop leg restraint), and then returned back down stairs. As she returned back downstairs, she stated that [REDACTED] was already on the floor in front of the couch. She stated that he was continuing to yell "like before," yelling "Fuck you!" and comments about being Native American. She stated he was not kicking or resisting at this point, describing him as "just yelling," and added that he appeared to be "under control" at that time.

Straka then stated that she focused on how Officers would safely get [REDACTED] out of the residence and into a squad car. She again exited the residence and pulled a squad car up closer to the building, and as she did she saw that officers were then escorting [REDACTED] out of the house. She believes that they exited via the downstairs doors, but wasn't certain. Officers placed [REDACTED] into a squad car and most officers left the scene. Sergeant Engler asked her to take a statement from [REDACTED] as to her knowledge a full statement had not yet been taken. She took the statement from [REDACTED] and documented this via police report.

I asked if she heard any officers talking about the use of force, or making any inappropriate comments, to which she replied she did not. She described the officers as appearing "disheveled" after the incident. She stated she completed her report and went back into service.

Recordable Use of Force entry

I checked BlueTeam/IAPro records, and noted that a recordable use of force entry was entered under this case number by Sergeant Matt Baker on 6/3/19 at 3:33pm, under the case number 2019-210976. This Use of Force entry was assigned tracking number 2109UOF-0126, and listed Sergeant Joseph L Engler as delivering active countermeasures listing [REDACTED] as the citizen involved at [REDACTED]. This entry appears to have been made properly and according to MPD SOP.

The IAPro usage log date and time stamps all entries made into the system, which shows that the use of force entry was made on the same day as the incident, per SOP.

Writers	Activity	User
21 Jun 3, 2019 15:33	Use of force incident created	Baker, Matthew R SGT [4871]
21 Jun 3, 2019 15:36	Searches for systems: DAVG	Baker, Matthew R SGT [4871]
21 Jun 3, 2019 15:36	Resistance used: Active linked to David Cash-Miser	Baker, Matthew R SGT [4871]
21 Jun 3, 2019 15:36	Resistance used: Active linked to David Cash-Miser	Baker, Matthew R SGT [4871]
21 Jun 3, 2019 15:36	Resistance used: Continued linked to David Cash-Miser	Baker, Matthew R SGT [4871]
21 Jun 3, 2019 15:36	Charge of Felony linked to David Cash-Miser	Baker, Matthew R SGT [4871]
21 Jun 3, 2019 15:37	Charge of Emergency Detention added to David Cash-Miser	Baker, Matthew R SGT [4871]
21 Jun 3, 2019 15:37	Injury: No injuries noted or visible linked to David Cash-Miser	Baker, Matthew R SGT [4871]
21 Jun 3, 2019 15:37	SOT Joseph Engler linked as Officer	Baker, Matthew R SGT [4871]
21 Jun 3, 2019 15:38	Force type used: Active Counter Measures linked to SOT Joseph Engler	Baker, Matthew R SGT [4871]
21 Jun 3, 2019 15:38	Injury: No injuries noted or visible linked to SOT Joseph Engler	Baker, Matthew R SGT [4871]

A copy of this Use of Force Entry has been saved to the case file within the Professional Standards folder on the F: drive, by the name of 2019PSIA-0091 Use of Force Entry.pdf, and appears as follows:

**Madison Police Department
Use Of Force Report**

Incident Entered By: SOT Matthew Baker - 1628
Assigned Investigator: SOT Mark Cox - 1628

Incident Details

Date Received	Date of Occurrence	Time of Occurrence
6/20/19	6/20/19	11:13
Report ID #	Case #	Tracking #
6407	2019-215076	20190621026

Date/Time Entered: 6/20/19 15:33

Incident Summary

See Sp Report

Incident Location

[Redacted] Madison, WI 53711 - Location of Occurrence: West District - Precinct: 131

Categories

Use of Force Specific Information

Reason for Use of Force	Reason Being Resolved	Distance to Citizen
Armed	Dispatched to aid	a. 0-2 feet
Weather Condition	Lighting Condition	Citizen Arrested
Clear	Indoor/Outdoor	Yes
Citizen Escaped	Citizen Taken to Hospital	Yes
No	Yes	
How Many Citizens Involved	Citizen's Height	
1	5'00" to 6'00"	
Citizen's Build	Employee Assessment of Citizen Condition During Incident	
Medium	Mental Health/Injured etc. or unaided	
Employment(s) Injured	Employee(s) Taken to Hospital	
no	no	

Reporting/Involved Citizen Information

DOB: [Redacted] Sex: Male Ethnicity: Gender: Male
[Redacted] Madison (City), WI 53711

Species of Resistance Citizens Used Against Employee(s)
 Active
 Escalation
 Continued

Injuries sustained by this citizen

Injury	Region	Injury Location
None noted or visible		

Charges against this citizen
 Felony
 Emergency Detention

Involved Employees

SOT Joseph Engler - Muns
 Assignment at time of incident: 1051 SOT Patrol Sergeant/Sp. 1104/Sp. West 104/Patrol 104/Sp

Yellow Footage: [No Footage]
 None

Force used by this employee against the citizen
 Active Counter Measures - Was force effective? Yes

Force Used	Effective?	Regions	Points of contact
Active Counter Measures	Yes	1	1

FRONT **BACK**

Injury

Request submitted by this officer

Tasks

Running Sheet Entries

Attachments

Date Attached	Attachment Description	Attachment Type
4/2/2019	2019-210974 Engler.jpg	pdf
4/2/2019	2019-210974 Slawek.jpg	pdf
4/2/2019	2019-210974 Slawek.jpg	pdf
4/2/2019	2019-210974 Slawek.jpg	pdf
4/2/2019	2019-210974 Slawek.jpg	pdf
4/2/2019	2019-210974 Slawek.jpg	pdf

Assignment History

Serial #	From	To
4/2/2019	Sergeant Michael Taus	(None Specified)
Assignment notes Field status changed in IAP from To IA to Released		
Email sent to receiver No email sent		
4/2/2019	Sergeant Michael Taus	(None Specified)
Assignment notes Released back to IAP		
Email sent to receiver No email sent		
4/2/2019	Sergeant Michael Taus	(None Specified)
Assignment notes Field status changed in IAP from Released to Field assigned		
Email sent to receiver No email sent		
4/2/2019	Sergeant Michael Taus	Sgt Mark Due Taus
Assignment notes IAPro assigned		
Email sent to receiver No email sent		

Chain of Command History

Routing #1

Sent From:	Sgt Mark Due Taus
Sent To:	Sgt Mark Due Taus
CC:	(None)
Sent Date/Time:	4/2/2019 11:03 AM
Instructions from Sgt Mark Due Taus to Sgt Mark Due Taus:	
Comments/Responses from Sgt Mark Due Taus:	
Comments:	(None)

Assigned Investigator Signature Line

Sgt Mark Due Taus

There was no recordable force entry located within IAPro for Officer Slawek's use of force.

Squad Video Review

I reviewed arbitrator squad video for the purposes of this investigation. Officer Fondrk's squad video showed only his emergency response to the address, stopping his vehicle in the front of the residence at 11:25:26. Sergeant Engler's squad video also shows his emergency response to the address, stopping his vehicle in front of the residence at 11:26:22, approximately 46 seconds after Officer Fondrk's arrival. Squad video review does show that Sergeant Engler's microphone was apparently not synced to his squad arbitrator system. PO Slawek had no recorded video, as he responded to the address without emergency lights activated, and left the address in non-emergency mode as well.

Officer Joswiak's squad video showed his conveyance of [REDACTED] to Meriter hospital after he was taken into custody. [REDACTED]

Officer Straka's squad video captured her emergency response to the address. At approximately 11:27am she appears to arrive on scene and her synced microphone captures some muffled audio, which is difficult to understand. It does sound like someone is captured on audio saying "quit resisting" twice, as well as other words that I could not understand.

I also reviewed Officer Michelle Hanson's squad video from squad 1824, reflecting her transport of [REDACTED]. This conveyance was made by Officer Hanson and Officer Elizabeth Erickson, both female officers. [REDACTED]

Upon observing the video, I did request that Sergeant Stephanie Drescher attempt to locate squad 1824 and take it out of service in [REDACTED]. On Friday, June 7, Officer Steven Mackesey informed me that he had located that squad, and took it to Triton Car Wash [REDACTED]. Upon completion he brought the squad back to the CCB where it was placed back into service.

I emailed Officer Michelle Hanson pm 6/7/19, who was driving the squad during this conveyance, asking her to contact me at her earliest convenience as I saw she was on her RDO (Regular Day Off). She subsequently called me, and stated that she was unaware that [REDACTED] had been doing this, stating she was monitoring him via the rear view mirror in which she could only view from approximately his chest up, and thought he was sleeping for most of the transport. I did request she complete a supplemental police report, indicating that it was brought to her attention that this occurred and was captured via the rear-facing squad camera.

I noted that Lieutenant Hanson requested this video be tagged as to not be distributed via his supplemental police report, and I confirmed that this had been properly flagged by Catherine Van Hove, due to the sensitive nature of the video.

I also re-contacted [REDACTED] on 6/12/19, informing him of this information that the squad video had shown. I told him that at this point I was not concerned about this behavior as a criminal matter, but that I wanted [REDACTED] to be aware of [REDACTED] actions in case it was important for [REDACTED] or of other importance for him as his caretaker. I did tell him specifics as to what the video showed, including the fact that both officers in the front seat during this conveyance were female.

Mickey Hedtke Interview

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

contact

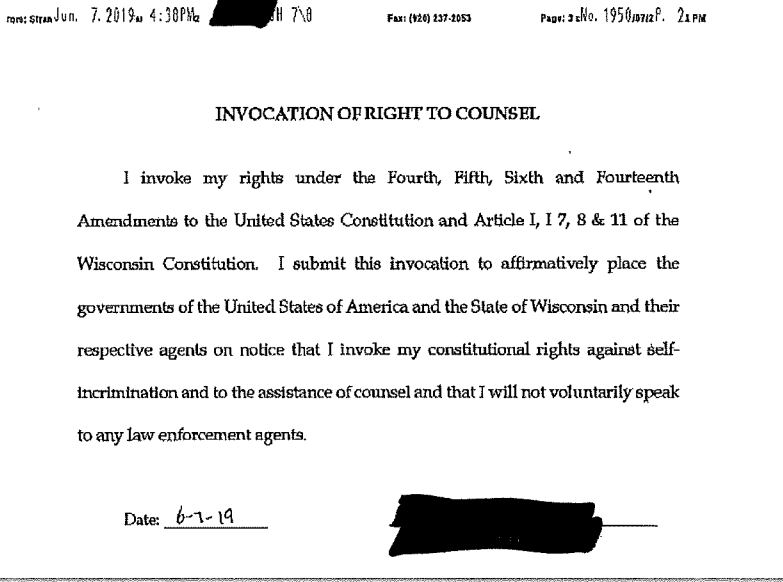
I spoke with [REDACTED] by telephone [REDACTED] on June 7, 2019 at approximately 12:47pm. I explained to her that I had received her voicemail, and that MPD was going to respect her wishes to have no contact with her son. I explained to her the reasons why we wished to do so (to document any injury), but that we did not attempt to do this after I had received her voicemail the previous day. [REDACTED] confirmed me that she did not want us to talk or photograph her son at all, particularly without his lawyer present, and that she would provide his lawyer with my contact information. I did provide her with my full

name and phone number, and told her that she could contact me with any questions she may have and I would try to answer them if I was able.

John Bradley communication

I received a phone call from an individual identifying himself as John Bradley on 6/11/19 at approximately 12:47pm. Bradley stated that he was representing [REDACTED] who had signed an "Invocation of Right to Counsel." Bradley advised that [REDACTED] would not speak with any law enforcement agents, and he would be emailing me a copy of this signed statement. I provided Bradley with my email address and contact information and explained that I was conducting the internal investigation, while the West Police District was investigating potential criminal acts by [REDACTED] and provided him with Captain Tim Patton's phone number as well. Bradley stated he would email me the paperwork.

On 6/17/19 I called Bradley to inform him that I had not received the paperwork, as I wanted to ensure that he had my proper contact information. Bradley stated he had not yet sent it, but that he would send it to me yet that day. I received that documentation approximately one half hour later, saved it under this internal tracking number, and forwarded a copy to Captain Patton, Chief Koval, and Assistant Chiefs Wahl, Patterson, and Valenta, along with Bradley's contact information. That document appears as follows:



Officer Justin Creech Interview

I spoke with Officer Justin Creech on 6/17/19 at approximately 2pm. This interview was not recorded.

Creech said that he first became aware of a disturbance at the school by reading his email at approximately 8am on the morning of June 3. He stated that he read an email thread started by Chad Worrall describing an altercation that happened earlier in the day when a student (later determined to be [REDACTED]) had threatened him. Officer Creech forwarded that email string to me, and Worrall's initial email read as follows:

Good morning Karen and Chad,

I am at West High School writing this. I just had an encounter with a young man at the Ash Street doors at 6:55 or a little after. I was looking g at the 2 entry doors at the top of the stairs and pulled my phone out to take a picture when someone from behind me asked "What are you doing bitch?" I did not turn around or respond. Again he made a comment and was getting closer. When I turned and proceeded up the steps he was by the mailroom on a skateboard coming towards me. He continued to say something about being Native American Cherokee and he'll Fuck me up right

now. He then turned and went North up the hallway on his board swearing and threatening me. I contacted Rico by phone as I left and he said security wasn't here yet and he saw the kid too. I am guessing he is on something after Rico said the kids is or used to be a good kid. I am leaving now. If you need to you, can call me [REDACTED]

Chad Worrall
Carpenter MMSD

The email thread continued with school staff ensuring that the situation was investigated, and updating staff to the status of [REDACTED] later in the day, having been provided treatment via [REDACTED]

Creech told me that he next attended a weekly meeting, attended by student services, social workers, and other administration where they talked further about the incident, making certain all were aware of the situation and of the email. Creech said that Shari Weinstein informed everyone that [REDACTED] was presently taking a nap in the nurse's office and they would reevaluate once he awoke. Creech told me he also contacted Journey Mental Health and spoke with "Dale," who agreed that they would reevaluate once [REDACTED] awoke.

Creech said that the nurse's assistant "Patty" informed him at approximately 9:30am that [REDACTED] had awoken and appeared to be more of his normal self, was more talkative, less lethargic, not combative and not threatening at that point in time.

Creech again contacted Journey Mental Health, who requested that Creech make direct observations of [REDACTED] prior to any further decisions being made. Creech told me that he then attempted to locate [REDACTED] again and made contact with Patrice Hutchins, Dean of Students. Hutchins reportedly told Creech that [REDACTED] was again making threats and comments as to, "I'm Native American, I'll fuck you up." Creech said that he then located [REDACTED] on the 1st floor of the building. Creech recalled [REDACTED] telling him something similar to "Creech, I know what I'm doing, leave me alone. I want to skate." Creech continued to engage [REDACTED] in conversation, and [REDACTED] acknowledged that he shouldn't have said those things, and asked to leave the building and go home. He did not appear elevated or excited to Creech, and Creech agreed that this may be a good resolution. Creech was very clear that neither he nor school staff "kicked him out" of school, told him to leave, or requested he leave, but that it was [REDACTED] request to do so. [REDACTED] obtained a bus pass (possibly from another student), and asked to leave the building, stating he wanted to shower and calm down at home. As [REDACTED] was having "peaks and valleys," Creech felt this was in his best interest. Creech apprised Mental Health Unit supervisor Sergeant Sarah Shimko at approximately this time.

Creech then explained that he has a relatively good working relationship with [REDACTED]. He knows him professionally, and said that he has a very tranquil disposition when he [REDACTED] and doing well. He is normally very calm, which is why Creech was concerned when it sounded like [REDACTED] was having such a negative day.

Creech told me that he communicated with foster dad [REDACTED] throughout the day, and called him when [REDACTED] was on his way home with his skateboard. He explained that he felt this would allow [REDACTED] to de-escalate by heading home. Both [REDACTED] and Officer Creech were also in contact with Journey Mental Health, and he believed everyone was kept well up to date to what was going on throughout the morning.

[REDACTED] called Creech back approximately 30-50 minutes later, and had mentioned that [REDACTED] had made multiple threats to him and a contractor, saying things like "I'll fuck you up, I'm Native American Cherokee...you can't touch me" and similar statements. Creech also said that he could audibly hear [REDACTED] cussing and obviously elevated in the background as he spoke with [REDACTED]. Creech told me that he has had multiple contacts with [REDACTED] in the past, and felt through [REDACTED] tone of voice in this instance that he clearly appeared to be more bothered than he was in the past.

[REDACTED] asked [REDACTED] if he would like police assistance, and [REDACTED] responded that he would. Creech said that he then called Journey with the update, and they said that they would issue the Chapter 51 return, so he then contacted dispatch and requested they send officers to the [REDACTED] address, and dispatch generated a CFS (Call for service) accordingly.

I asked Creech if he could contact Weinstein and Hutchins and ask them to contact me for a statement. He did, and I successfully arranged for these interviews as a result.

Attempt to contact Zachary Wisnart

According to MPD reports completed regarding this incident, Zachary Wisnart is the contractor who was reportedly threatened at the [REDACTED] address. I attempted to contact him and left a voicemail message for Wisnart on 6/18/19 at approximately 10:16am, requesting he call me back and providing my contact information. I called and left another message on his phone on 6/25/19 at 11:51am. As of the date of this document, I have not yet successfully contacted him to speak with him about the incident.

Wisnart did provide a statement to Detective McCoy, which was documented under the original case number of this incident with LERMS with a report date listed as 6/14/2019. That report reads as follows:

CONTACT WITH ZACHARY WISNART

On 06-14-19 at approximately 9:10 AM, I spoke to Wisnart by phone. I had left a message on his voice mail on 06-13-19 at 11:04 AM, asking that he return my phone call. I identified myself to Wisnart and asked if he had gotten my phone message, and he indicated he had. I asked Wisnart if I could talk to him about what happened on 06-03-19 when he had been at the residence at [REDACTED] and he told me he was willing to speak with me.

I asked Wisnart if that was the first day at the house, or if he had been there before. Wisnart said he had been working at this residence for several days, as he was repairing water damage in the kitchen and basement area. I asked what time he got to the residence, and Wisnart said he got there between 10 and 11 AM, as he had an appointment with [REDACTED] who he indicated is the wife of [REDACTED].

I asked Wisnart if he had met [REDACTED] before that day, and he said he had not. I asked him to tell me about the exchange between he and [REDACTED] and Wisnart told me he pulled his vehicle up and parked, and he observed a male, later identified as [REDACTED] on a skateboard on the sidewalk going in the same direction as his car was parked. Wisnart stated he was changing his shoes and getting equipment out of the car, and [REDACTED] said to him, 'bitch, I'll kick your ass. I'm native American.' I asked what he felt when [REDACTED] said this to him, and he replied, "I thought he was kidding." I asked Wisnart if he felt threatened, and he replied, "Not really. He didn't seem mad, he was just a kid. I didn't think too much of it." Wisnart indicated he believes that most people would feel threatened by what [REDACTED] said to him, however he had grown up in Milwaukee and that he was not afraid.

Wisnart told me he then began walking down the driveway of the residence, and that he knows [REDACTED] and [REDACTED] have foster children. Wisnart said he noticed [REDACTED] was walking down the driveway behind him, and he assumed [REDACTED] was one of the foster children who lives in the home.

Wisnart stated [REDACTED] came out and asked him if [REDACTED] had said something to him, and he told her he had. Wisnart stated [REDACTED] seemed to want the "specifics" so he told [REDACTED] what [REDACTED] said to him. Wisnart stated [REDACTED] asked [REDACTED] if he wanted to take a shower, and [REDACTED] went down into the basement. Wisnart stated he and [REDACTED] were in the kitchen talking and she "warned him." I asked Wisnart about this, and he said [REDACTED] told him that she had called the police and she thought there was some [REDACTED] going on with [REDACTED] and the officers are going to come and "take him away."

Wisnart said the officers came, and they went down into the basement where [REDACTED] was. I asked Wisnart where [REDACTED] was, and he said [REDACTED] had been by the front door, and when the officers showed up, he went down the stairs with them. I asked if he knew when [REDACTED] came back up the stairs, and Wisnart said he did not notice when [REDACTED] came back up from the basement. Wisnart told me that [REDACTED]

stayed in the kitchen and he stayed with her stating, "I got the impression that she felt threatened and didn't want to be alone."

I asked what happened next and he indicated when officers went down into the basement, "he didn't react well." I asked Wisnart more about that and he said he believes [REDACTED] resisted arrest." I asked if he could hear what was going on down in the basement, and Wisnart said he heard the officers yell "stop resisting" multiple times. I asked if he could hear one officer's voice or more than one officer's voice, and he stated he did not know. I asked Wisnart if he heard [REDACTED] saying anything and he said he heard [REDACTED] yell, "Shoot me dead." I asked Wisnart if he heard [REDACTED] state that more than one time, and Wisnart said he did not know if he had said it more than once, but he himself only heard it one time.

I asked how long he thought the struggle between officers and [REDACTED] lasted, and he stated it seemed like 10 minutes however it was probably about 5 minutes. I asked Wisnart if he had seen [REDACTED] after the officers arrived, and he told me his timing was bad as he had gone out the front door of the residence as the officers were walking [REDACTED] around the back of the house towards the front. I asked if he had looked at [REDACTED] face, and he said he had. I asked if he saw any injuries, and he stated he could not see [REDACTED] face as he had some type of a protective mask over his face. Wisnart stated he thought that this mask was put on because [REDACTED] had been spitting as he heard one of the officers say "put a towel over his face." Wisnart said he assumed this was because [REDACTED] had been spitting at the officers.

I asked Wisnart if [REDACTED] had made any comments to him as he was walking to the squad car and he said [REDACTED] had not. I asked if there was any interaction between he and [REDACTED] besides the comment that [REDACTED] made when he had gotten out of his truck and he said he had not.

I asked Wisnart if there was anything else that he thought I should and he said he could not think of anything.

Det Clare McCoy 2305/mak

Patrice Hutchins Interview

On 6/18/19 I directed Sergeant Daryl Doberstein to contact Dean of Students Patrice Hutchins to interview her about the incident. Sergeant Doberstein completed that request, and provided me with the following memo summarizing that conversation on 6/20/19.

DATE: June 19, 2019

TO: Tim Radke, Lieutenant of Police

FROM: Daryl A Doberstein, Sergeant

SUBJE **2019PSIA-0091; Interview with Patrice Hutchins**

CT:

On 06/18/19, I was directed by you to interview West High School Dean of Students Patrice Hutchins regarding this case. The focus of this interview is on the events foreshadowing the request for officers to take [REDACTED] into custody for a Chapter 51 return on 06/03/19 under case # 19-210976. I spoke with Hutchins by phone on 06/19/19 at 1:07pm. The following is a summary of that conversation:

INTERVIEW WITH PATRICE HUTCHINS

Hutchins stated that she is the current Dean of Students at West High School and that she has previous experience as a social worker before taking on this position. She stated that she has regular contact with [REDACTED] and that "we usually have a really great rapport." Hutchins described [REDACTED] as an avid skateboarder and that [REDACTED] has one of the greatest smiles (pause) he can light up a room." Its [REDACTED] skateboarding that appears to be the catalyst to their [REDACTED] [REDACTED] loves skateboarding, sometimes in school." The routine is that [REDACTED] drops his skateboard off in her office

in the morning and then she sees him again at the end of the day when he returns to pick it up prior to leaving school. They usually engage in some small talk and end these meetings with pleasant salutations. Hutchins has also worked with [REDACTED] when he was having more troubled days. She stated that she can usually connect with [REDACTED] and "redirect" him off of his skateboard, other behavior, or attention to align with school rules or standards. She explained: "humor works, we can laugh" or that she is able to reason with him. Hutchins added that "even the week before", when [REDACTED] was [REDACTED] [REDACTED] she was able to connect with and reason with [REDACTED]. However on the morning of June 3rd, "he was not redirectable."

JUNE 3, 2019 OBSERVATIONS

Hutchins stated that she arrived at West HS around 7am and that [REDACTED] was already there. [REDACTED] was observed skateboarding in school and Hutchins went to contact [REDACTED] as she had successfully done so in the past. Hutchins stated that [REDACTED] is "very cognizant" of his appearance. His hair is always styled well and he wears "Supreme" brand clothes. However, on this day, he "looked disheveled." [REDACTED] "curls were all over the place" and his clothes looked like he had "worn for a few days."

Hutchins stated "I don't know of [REDACTED] to be violent" based on her past experiences with him. However, during our conversation she mentioned several times that she stayed "10 feet" away from [REDACTED] due to what she was observing both verbally and visually. Hutchins stated that [REDACTED] told her "Shut the fuck up talking to me," "Talk shit get hit," and "that he was Native American, he made the land." [REDACTED] also verbally threatened Hutchins a "couple of times" with "I'll hit you with my skateboard." Hutchins described [REDACTED] as "clearly upset" and that "he looked tense." She stated that [REDACTED] torso was bare as he just had his shirt around his neck. She has seen him skateboarding a couple of times before in this similar shirtless manner. What struck her during this contact was that he didn't look as relaxed as in her previous contacts. "He looked tense." She explained that the muscles in [REDACTED] torso and arms were contracted or flexed but didn't notice whether [REDACTED] had made a fist or not. Hutchins made specific note of [REDACTED] demeanor during her contact with him. She stated "When I looked at him, I felt like he wasn't seeing me. In his eyes." She stated that [REDACTED] "was staring directly at me and wouldn't, couldn't process who I was, ... where he was, or what was going on." "It was just a blank stare." I asked Hutchins if she ever heard of or would liken this to the phrase "a thousand yard stare." Hutchins immediately responded, "yes!" It was at this point where Hutchins spoke fondly of her routine interaction with [REDACTED] contrasting with this date's events. She spoke of being able to connect with him, redirect him when needed, and the emotion that [REDACTED] expresses with his smile. On this date, Hutchins claims "there wasn't any emotion behind his looks or threats." He "was not in a place where he's thinking rationally, right now." "He was not redirectable." For her safety and [REDACTED] safety she maintained that 10 foot buffer and radioed for the Principals. She stated that she advised [REDACTED] "not in a good place" and then later telephoned [REDACTED] foster parent [REDACTED]. Hutchins also spoke with [REDACTED] social worker Shari Weinstein and together they spoke with [REDACTED]. [REDACTED] eventually went to the nurse's office to nap and around 9:30-10am woke and wanted to go home to shower. [REDACTED] then came to get the skateboard from Hutchins. Hutchins went into her office to retrieve it and was startled when she turned around and [REDACTED] "fight there" with a similar blank stare as earlier. Hutchins stated that normally she and [REDACTED] exchange some type of salutation at these times. On this date, that did not happen. "He just took it" and left. Hutchins stated that [REDACTED] was called to inform him that [REDACTED] was on his way home from school early.

I asked Hutchins if she had ever seen [REDACTED] like this before. She stated, yes. She described that early in the year there was an incident in school where [REDACTED] created a disturbance in a class and left. The students closed the door [REDACTED]. She also described another incident since that 1st one where it was able to be handled between the school and [REDACTED]. I asked Hutchins: Of the 3 incidents I was now made aware of, which was the most concerning. Hutchins stated that the previous incidents, [REDACTED] were not as concerning from a public safety standpoint. Clearly [REDACTED] needed help in those incidents. However, the June 3rd incident was the most concerning in that [REDACTED] was "more angry", "more threats" were made, and Hutchins was not able to redirect him at all. I asked whether it was staff or students who were being threatened by [REDACTED]. Hutchins stated that the threats were made to anyone who crossed paths with him. Hutchins also advised that she was approached by one staff member who was upset over this incident but did not want share the person's name. She stated that "a teacher told me, I don't come to work to get threatened."

Hutchins stated that she had no further information regarding events following [REDACTED] departure from school on June 3, 2019.

Chad Worrall Interview

I called the number provided by Chad Worrall in his email, and left a message at 10:17am on 6/18/19. He called me back later that same day, and we spoke of the incident. This conversation was not recorded.

Worrall told me that he is employed by the MMSD as their carpenter. On the date in question he was working on the Ash Street doors taking measurements at approximately 6:50 or 6:55 in the morning, as two of those doors were not working. He stated that an unknown male student (later determined to be [REDACTED]), described as a thin, young black male with no shirt and disheveled hair began yelling behind him. Worrall heard this male yell something similar to "What are you doing to my doors? I'll beat your ass motherfucker." Worrall stated he tried to appear unphased by the yelling, but the student again yelled "Get away from my doors, motherfucker... I'll kick your ass right now."

Worrall stated he then turned and observed the young male approaching him from about halfway down the hall on a skateboard in the school. He watched as the student approached him, and said that he thought the student was going to ride his skateboard directly into him while saying, "I'm Native American Cherokee mother fucker... I'll kick your ass right now." Worrall said the student then veered off and rode his skateboard down the hall.

Worrall told me that when he initially turned around to view the student, he made direct eye contact, and described his observations as "the kid was gone." I asked for clarification on what he meant by this, and Worrall told me that the student was "looking right through me... there was no connection whatsoever." I then asked him if he had ever heard of the term a "thousand yard stare," and Worrall immediately replied "yes" and indicated that this was what he observed.

Worrall said that when the student left, he went to the north down the hall, and Worrall tried to appear as though he was on his phone to avoid further eye contact or otherwise engage the student, who yelled again at him something similar to "Put away that phone and stop taking pictures of my shit."

Worrall then called the custodian and asked if security was in the school, and was told they were not yet. He then told the custodian that a student was in the halls, and had threatened him, and he was concerned for the safety of others in the school. The custodian told Worrall that they were aware of it, and were dealing with it. Worrall said he then followed this up with an email to appropriate parties. I read the beginning of the email that was forwarded to me by Officer Creech, and Worrall confirmed that this was the email that he had sent.

Worrall had no further contact on that morning with [REDACTED], and had no further information.

Shari Weinstein Interview

On 6/19/19 at 3:00pm, I spoke with Shari Weinstein at the Midtown Police District after she agreed to meet and speak with me. Weinstein is Social Worker assigned to West High School. This interview was not recorded.

Weinstein told me that she is [REDACTED] "assigned social worker," and that she is very familiar with him. She told me that on the day in question, Dean of Students Patrice Hutchins contacted her very early in the school day, at approximately 7:45am, with concerns over [REDACTED] behavior and mental state. Weinstein told me that she made all the appropriate phone calls for proper notifications immediately that morning, prior to the morning meetings.

Weinstein said that she saw [REDACTED] at approximately 8am with other staff members, and recalls that he appeared very "frustrated," and "not in a good place." She spoke with him and discovered he had not been home the night before, and was tired and "irritable." Weinstein also told me that [REDACTED]

I asked her what she meant when she told me it was [REDACTED]. She told me that he normally avoids conflict and confrontation, and prides himself on his appearance. She described him as "mellow in general, likeable, and enjoys conversation." She said he really likes a specific brand of clothing, and normally keeps his hair nice, but on the day in question his hair was messy and he was in the halls of the school with his shirt off and hanging around his neck. She also said that [REDACTED] not doing well.

Weinstein said that she escorted [REDACTED] to the nurse's office, and although the nurse wasn't present, Patty Blazeovich (ph), the nurse's assistant, was and allowed [REDACTED] to lie down in the office and take a nap.

Weinstein reports she then attended a weekly meeting at 8:15 that involves much of the staff, including Deans, Principals, Officer Creech and others, and they discussed [REDACTED] actions that morning. Ms. Weinstein was aware of the email that the carpenter had sent (but did not recognize his name), and this was all discussed at the morning meeting.

After the meeting ended she had another meeting from 9:15-10:15 that morning, and she stated that this was when Officer Creech had contact with [REDACTED] which resulted in [REDACTED] asking to go home and shower in order to calm down.

Ms. Weinstein was clear that [REDACTED] was not irritable directly toward her at all on that day, but he did appear to be frustrated and not doing well. She again told me that [REDACTED] usually avoids aggression, and that it was her belief that his statements regarding hitting someone with his skateboard or similar statements were his way of saying that he wanted to be left alone. Ms. Weinstein also stated that Patrice Hutchins either witnessed or was aware of most of [REDACTED] interactions that day, and suggested we speak with her. She had no further information regarding [REDACTED] actions on that day, and I thanked her for her time.

Patti Blazeovich Interview

On 6/26/19 I located a phone number via open source of [REDACTED] for Patti Blazeovich, the nurse's assistant who was assigned at West High School on 6/3/19. I did call this number at approximately 11:05am, and the voicemail message stated that this number was the "Blazeovich's." I left a message requesting Patti call me back. I also called and left a message for MMSD Security Director Joe Balles, asking for his assistance in contacting Blazeovich immediately thereafter as well.

On 6/27/19 at approximately 9:08am I received a call back from Blazeovich, stating she had time to speak with me. Blazeovich told me that she did recall the incident, and added that [REDACTED] does regularly take rests in the nurse's office, and that he did so on June 3 as well.

Blazeovich told me that her notes indicated that [REDACTED] was brought to the health office at 8:21am on that morning by his social worker Shari Weinstein, asking if he could sleep. [REDACTED] did rest in that office from 8:21 until approximately 9:30 when he asked to leave. Blazeovich told me that she did not witness him causing any disturbance, nor did she witness him ever making any comments as to him being Native American or otherwise acting oddly.

Blazeovich had no further information relevant to this investigation. I thanked her for her time and ended our contact.

[REDACTED] Interview

I called [REDACTED] on 6/26/19 at approximately 2:56pm, receiving a voicemail message. I left a message on this line with my contact information, and received an email back from her on 6/27/2019. I arranged for a phone interview with [REDACTED] on Monday, July 1st at 1:30pm.

I called [REDACTED] at 1:30pm on Monday July 1st. I explained to her that I was aware that it was likely that she had viewed the video in question, and had likely spoken to [REDACTED] about what he saw on that day

as well, however I wanted to focus only on what she saw and heard herself firsthand. [REDACTED] stated she understood.

I told her I was aware that [REDACTED] was involved in some disturbance(s) at school, and came home early from school, which she confirmed. She told me that she was home on June 3rd, and at one point that morning opened door to greet "Zach," their contractor who was going to do work on their home. She said that when she opened the door, Zach was approaching the door and pointed out [REDACTED] who was still outside. [REDACTED] told me that Zach said something to her about "that kid just threatened to beat my ass," and then [REDACTED] told him that "that kid" was her foster son. Zachary apologized, but told her that [REDACTED] had said to him that he was "Native American" and would "beat (his) ass." [REDACTED] said that she invited Zach inside and asked if he was ok, and Zach told her that he was and had experienced similar behavior before. Joann said she explained to Zach that [REDACTED] was not normally like this, and that they were working to get him some help "probably very quickly."

[REDACTED] told me that she directed the contractor upstairs and then let [REDACTED] in the house. She said that [REDACTED] was very calm when he came inside, and she asked him "what's up". [REDACTED] told [REDACTED] he was "OK," and then began asking who stole his "Michael Jackson coat," as she stated that he owns a coat that he believes makes him look like Michael Jackson. She assured him that no one stole his coat, and that it was probably in his bag in his room. [REDACTED] replied something like "You know someone stole it," but she didn't engage him any further in this conversation. [REDACTED] stated she directed [REDACTED] downstairs, and she returned upstairs to finish with the contractor. [REDACTED] was downstairs, engaging with [REDACTED]

[REDACTED] stated that at one point, [REDACTED] came back upstairs to get a drink of water, but was calm. She said that [REDACTED] cussed at one point in front of her and Zach, and Zach replied with a comment similar to "You watch your mouth," but there was no further altercation or discussion.

[REDACTED] told me that she continued discussion with the contractor upstairs going over the details of their project and did not engage [REDACTED] much after that. She explained to Zach that they were working on getting [REDACTED] some help "probably quickly," and officers arrived at approximately that time.

An unknown amount of time elapsed when she and Zach both heard officers state, "don't resist" or "quit resisting" multiple times. She estimated she heard officers say this "eight, nine or ten" times. She said that this was very loud and they could clearly hear it, but she did not hear anything else. She did not hear [REDACTED] yelling or other commotion other than the officers yelling this, and sirens and other officers arriving over the course of the next several minutes.

She said she asked Zach if he was OK during this, and Zach told her that he was, but that he was not used to it, adding something about "this could raise the blood pressure." She said that she next saw [REDACTED] being escorted out to the squad car with the spit hood on his head. She explained that she used to work in the mental health field and has been a foster parent for "a lot of years" and was "pretty used to chapter 51's," but was clear that this whole situation was "sad."

I asked her if she ever heard officers saying anything inappropriate, and she said she did not. She also told me that she did not see or hear anything unprofessional or out of the ordinary as officers escorted [REDACTED] out to the squad car.

[REDACTED] told me that she "didn't hear much else," and had no further information regarding the incident. I told her she could call me with any questions she may have and I would attempt to answer them, and she told me to call her with any other questions as well, as I ended our contact.

Email Logs

I contacted City IT and requested all emails sent from Officer Slawek and Sergeant Engler's city email accounts between June 1st and June 6th (approximately 3 days before and after the incident in question). I received files from IT contact James Ferguson, and upon reviewing them I found no emails of concern as related to this investigation or to other MPD SOPs.

MDC Chat logs

I also requested from MPD IMAT all MDC messages originating from or received by Sergeant Engler and Officer Slawek between June 1st and June 5th. I received documents from Daniel Haueter containing these messages as requested. Upon review, I found no chat messages of concern as related to either this investigation or other MPD SOPs.

Sergeant Joe Engler Interview

I met with Sergeant Joe Engler at the MPD Training Center on 7/3/19 at approximately 9am and provided him with an interview notice, scheduling our interview for 7:30am on 7/9/19. Sergeant. Engler had no questions and understood the interview notice.

I met with Sergeant Engler on 7/9/19 at the MPD Training Center. Also present for the interview were PS&IA Sergeant Daryl Doberstein, MPPOA President Kelly Powers, and WPPA Business Agent Luann Alme. This interview was recorded, and Engler was provided a "Cooperation with Investigation Required" memo, indicating the statement he was providing was a compelled statement.

Engler recalled the incident in question, and told me that he had already seen the surveillance videos at the West District Sergeant's room with Sergeant Jen Hannah. He told me that his initial thoughts when seeing this video was, "Oh good, video matches my report, what I remember." He also later told me that he reviewed his DAAT manual after he completed his report, but before our interview. He stated that he was "very much so" aware of the thresholds for active countermeasures prior to this review.

Engler further stated on the day in question he had heard that Officer Creech was working with the subject in question, [REDACTED] regarding some incident at the school, he was previously listed as missing, and he was back at the foster parent's house creating a disturbance. Engler also stated he has had "limited exposure" to [REDACTED] in the past, but was aware of other officers having to struggle with him in other districts and on other shifts.

Engler proactively responded to the address, stating he did so because he knew this was a "51 return [REDACTED] [REDACTED] believing he could assist. Upon arrival, Officer Slawek waved him off. Engler told me he that he left in order to avoid escalating the situation:

I know that dealing with mental health or just experiences in dealing with mental health cases and people in crisis, sometimes more uniforms don't help the matter, having a, you know, having a passel of cops there can tend to escalate situations so when I was waved off by Andy, J, you know, I had just switched over to first detail, I figured here's a veteran officer, here's a field training officer with Officer Joswiak, obviously the situation is controlled based on their threat assessment. You know I don't want to my, by my presence escalate the situation so I trusted them and figured they could handle it _____ 51 return and so then I left to go get some lunch.

Engler told me that while at a restaurant (Chang Jian on Raymond Rd, 1.5 miles and 4 minutes away per Google Maps), he heard "radio traffic indicating a struggle. It was the intense kind of garbly, we're in a fight type of radio traffic." Dispatch sent him and other officers to the address, placed the emergency marker on the channel, and Engler responded to the address, noting there were no updates from officers on scene. Engler stated that all routine traffic was sent to channel three, and emergency traffic held on channel one. He told me that it "can be a bad day" when updates aren't being provided on the radio, and he remembers thinking that officers were still actively in a struggle and/or couldn't get to their radios.

Engler shut down his siren as he neared the address, not wanting to escalate the situation further, and upon arriving saw [REDACTED] outside. He asked if [REDACTED] was OK, who replied he was. Engler asked him if he needed medical attention and he stated that he didn't. Engler said he told [REDACTED] he was "sorry about this, you know, that it's going like this" and he was directed downstairs.

Engler described the split level house, and the location of the officers as being downstairs to the left, and described seeing officers in a living room area struggling with [REDACTED]. Engler noted that [REDACTED] wasn't in handcuffs, and was still fighting with officers as they were "just kind of holding him down and he's fighting against them." Engler also noted a cloth laying across [REDACTED] face, describing it as "a t-shirt or something." He was told that the [REDACTED] was spitting, so officers placed it over his face.

Engler then described that he felt a t-shirt on [REDACTED] face was ok to use as a temporary fix, but that he wanted to get "an appropriate garment" over him to prevent him spitting. Engler described that he was concerned over the breathability of the cloth over [REDACTED] face and wanted to replace it with his spit hood that he regularly carries in his pocket as it would stay in place on its own and make for easier breathing for [REDACTED]. Engler later spoke as to how he has since used this incident to initiate discussion with his platoon members to encourage them to carry a spit hood as well. I revisited this topic more than once during this interview, and Engler was very clear each time that he felt the spit hood was a safer, more appropriate option than a piece of cloth.

We're exerting energy and now we're putting cloth over his face, a cloth barrier over his face. Yep, it's a barrier. Yep, it'll stop, it'll stop the spit but it's not ideal, you know, it can restrict, I think it can restrict airflow. We're not trained to use that type of thing. We don't put t-shirts over kid's faces. We don't put wrap or pants or shirts over people's faces when they're spitting on us. That's not something that we do and, you know, it doesn't seem like that, you know, I worry airflow. I worry about the subject being able to breathe readily and spit hoods are just that nice fine mesh material that don't restrict airflow. They can spit all they want. It doesn't get to the cops. It doesn't impede them talking. It doesn't impede them breathing. It barely limits their sight. It's something that I've seen applied at the hospital by nursing staff. It's something I've seen applied by jailers, deputies at the jail. I've applied spit hoods. I've seen spit hoods applied, you know, just in the course of my career and it's just a better tool and not only that because it does have that lightly stretched elastic at the end, it's able to be secure so we don't need to keep somebody mashing up shirt into somebody's face. We don't need to tie a shirt restrict anything like that. You can put the spit hood on and be done with it. It's gonna stay, it's gonna stay contained on their head. They're not gonna, hopefully not gonna be able to get it off and it's gonna stay put and prevent the further expectorating

He described telling Officer Joswiak after this incident that he should carry a spit hood with him from now on:

*...the t-shirt thing, fine but I mean you gotta think you're restricting someone's airway. Is that causing them to fight 'cause they can't breathe. I don't know. That's why we have the spit hood that allows airflow, you know, will this calm him down because now he doesn't have anything over his face so yeah I'm fine with a t-shirt but that's, we, no, we gotta, we have equipment, we're trained to use this for a reason, let's utilize it so and let's start carrying our equipment**.*

Engler told me that as he placed the spit hood on [REDACTED], [REDACTED] continued to struggle and was saying "I'm gonna keep spittin' on you," and did spit. Engler felt the spit on his face, but continued to try to get the spit hood on properly as [REDACTED] was still able to get a couple in," referring to his spitting.

Engler told me that [REDACTED] continued to actively struggle," and described officers' positioning around [REDACTED]. Engler stated he was up by [REDACTED] head with the spit hood, and he noticed that [REDACTED] left arm was "completely unrestrained," and described this as follows:

A: He only had it kind of pressed up against the back of the couch from what I can recall and he was continuing to fight. He was shouting at us saying he was gonna spit on us.

Q: Can I interrupt, you said his left arm was completely unrestrained up against the back of the couch, someone was holding it against the couch?

A: No, it was just like how he was laying on the couch. It was just pressed up against it from what I could tell.

Q: Okay.

Q: It didn't seem like anybody had their hands on or around it and I could see Officer Fondrk struggling to maintain control of his right hand, you know, [REDACTED] was continuing to pull it away, you know, just Ted was trying to just continue to restrain it or attempt to control and restrain it while [REDACTED] shouting at us saying he's, something about being a Native American, that he's gonna

get us, kill us or something like that so quickly after I put the spit hood on, he bucks up and rears up and is continuing to struggle. I see officers kind of float backwards on him. I see Joswiak who is down by his feet, kind of buck over. I see Ted to my right, you know, continuing to struggle with his arm and almost breaking free plus I'm kind of, 'cause I'm over the guy putting on the spit hood, I see that left hand, you know, right there in my face so, you know, he's still fighting. We, you know, we have three cops actively struggling with this guy and he's still not contained. He's still not detained. He's still not under control. We do not have him under control. He's still fighting us. So that's when I delivered my first strike. It was a closed fist strong handed right hand strike against the knotty right side of his forehead not a great target area, not, not ideal, not what we, you know, train on per se but it was there. Jos is kinda on his feet struggling. I got Andy kind of overhead who's kind of in the game, kinda out of it so I can't really get to his chest area. I got Ted right there so it was just one of those things where this is what I got and we need to stop this now. We need to get this kid under control. So I gave him the strike, didn't have any effect on him. He continued to struggle, you know, immediately once I hit him, I mean he was continuing to fight so I didn't want to injure myself by another closed fist strike nor, you know, because it's not a good target area I didn't want to create any more damage to him potentially so I then delivered an additional forearm strike kind of using the meatier part of my forearm above the elbow and below that wrist to, you know, protect myself but also try to, you know, minimize any significant injuries to him and I delivered two additional to the right side of his head. At which point, he responded and responded appropriately by stopped fighting, he looked up and said something to the fact of oh you're hitting me or are you hitting me, now you're hitting me and he stopped fighting. We were able to, was able to grab his right arm, we're able to slowly lower him off the couch. We kind of rolled him off the couch, an officer grabbed his left hand at that point and we were able to get on the couch. I took full control of his right arm from Fondrk. I was able to bring it behind his back, the left hand was there and he was placed into handcuffs.

I later asked for clarification on his strikes:

Q: And there was a, I think you mentioned a pause between the fist and the forearms?

A: If it was, it was very brief. It was fist, zero reaction, man I don't want to break my hand, man I really don't want to break his face, that's no. So it was one and then, you know, forearm, forearm.

Engler gave further clarification later in his interview

Q: Okay. Um, so why three strikes?

A: The first one wasn't effective like I said, didn't get that, didn't get that immediate response. I didn't get that immediately dysfunction that you, that we train for, that we hope for. First strike, he's still struggling, we're still struggling. He's actively continuing to actively go after us so then I transitioned to the forearm, you know, and give him, you know, the overloads, to set up the overloads and then at that point, it stops, he stops, we stop and we're able to get control but yeah that first one, you know, unfortunately and, you know, not embarrassingly for me but it wasn't effective. It just, yeah, I didn't whether it was target area, whether it was the power I generated, what, it didn't, it didn't have that immediate response.

Q: Okay. But after the third strike ...

A: Yep, after that third strike, oh what you're hittin' me now, now you're hittin' me and then he stopped, everything stopped. He, he, he stopped actively fighting. We were able to get, I thought, even though still not handcuffed, better control of him to the point where we were able to slowly lower again, lower him down to the floor, off that couch and you know, stabilize him on the floor and then, you know, calmly handcuff him, as calm as we could handcuff him so it was, you know, effective in that regard, in that, you know, it stopped.

Q: Did all three strikes then land in that same forehead area?

A: Yeah. I focused up there. So again I am above him. I deliver the strikes with my right hand and then right forearm on his right side of his head, forehead area and it was typically focused in the same spot. Kind of that again that hard knottier spot trying to stay away from his nose, trying to stay away from his jaw, face.

Engler then showed me where he struck [REDACTED] by tapping himself on the head:

Q: Okay, you just tapped yourself on the head.

A: Oh sorry, yes, tap myself on the right forehead area, sorry, yep, just, yep, trying to recall, yep.

Q: Where you tapped yourself is upper right forehead like right below the hairline?

A: Yep.

Q: Okay.

A: *Up there. That was, that was where I was aiming at least.*

Q: *Okay and that was, so that was your target area?*

A: *Yep.*

Q: *Again, why is that was that your target area?*

A: *That was the one that was there at the time, um, I had noted in my report and I remember just not, not a good target area.*

Q: *Why not?*

A: *Not ideal. We don't train, you know, we, you know, you'll train your reaction, side stuff, forearm strike to like the chin area but we don't typically train stuff on the head. It can cause injury. It can cause injury to us but given the dynamic nature of it and what was presented, I would have preferred an upper chest, you know, strike, an abdomen strike but where officers were positioned, where I was positioned, it was what was available. On top of that, you know, Joswiak's doing all he can from what I could tell to keep his feet or try to maintain control of his feet. Ted's doing all he can to wrestle with that right arm. Andy's kind of in the game, kind of out of it so you know, they're, they're doing what they can do and not, not well 'cause he's still out of control so it's where I was and what was presented at the time so yeah.*

I also later asked Engler if he felt there was a different threshold in delivering active countermeasures to someone's head rather than to another target area:

Q: *...active countermeasures to the head versus active countermeasures to the like an abdomen or chest. Do you think there's a different threshold for that necessity?*

A: *Like I said it's not the ideal target area but active countermeasures are active countermeasures, you know, I, you know. I felt I was justified in utilizing active countermeasures and the target weld again like I noted in my report, not ideal, (but) still necessitated active countermeasures....*

...

A: *Just, you know, again, just that active assaultive resistance that he and continued that he was displaying, you know, I have emergency radio traffic with cops in a fight not getting updates. I get there and I see three cops still unable to control this guy, still not winning the fight, still not maintaining, you know, kind of Koval's spectrum of calls take and maintain control of the scenes and subjects there in. We don't have that. This guy is out of control. We are not winning this fight. We are not, we are not establishing effective control over him and so what I saw that we were doing was ineffective. Cops were ineffective and officers were ineffective in what they were doing in maintaining and overcoming this, this gentleman's resistance so that's why I, what why I went to the level I went.*

...

I'm responding to emergency radio traffic to officers in a fight. I get there and I see officers in a fight, you know. We're called to a person in mental health crisis, who's already been ED'd, who's already a danger to themselves and others, who's not complying with treatment, who's now being ordered and forced back into more restrictive treatment, you know, who's now fighting with three cops and as much as I want to say de-escalation by the time I get there, it's, it's hard to do. De-escalating is, is stopping this is ending this, you know, I can't speak to what the officers did when I wasn't there and their attempts at that, you know, I hope options were taken but I'm responding to officers in a fight. I'm responding to officers struggling with a subject and when I get there a subject not under control who's still fighting so who we gotta get under control and I don't know as far as with somebody who's shouting, threatening to hurt us, actively hurting us what talking is going to do, you know, at that point with somebody who is out of control.

Engler and I later spoke about whether he considered his use of force "successful"

Q: *Okay. And again after the strikes were delivered, there was no further physical resistance?*

A: *Nope, he stopped, he stopped, he's like oh are you hittin' me, you're hittin' me now, awe are you hittin' me and then he stopped and we were able to lower him onto the floor. Very pleased with how we were able to transition from up on his back facing us to get him rolled over down and onto the floor and as slowly and gently as we did. That made me happy that we were able to finally establish that control of him and contain him and do that 'cause it's how do we, how do we cuff him behind his back when he's facing us on the couch, you know, but to actually get him on the floor on his stomach, you know, part object get that, you know, firm ground and then to get, you know, I just remember getting that positive control of his right hand and taking it from Officer Fondrk and putting it behind*

his back and holding it there and waiting for the left hand to join him. It was just, it was a good feeling and the fact that they were able to do it so slowly and controlled that was nice.

Q: So in that aspect would you consider your use of force successful?

A: I would, yes. I, you know, able to overcome his continued active assaultive behavior. It had positive impact in that he stopped, stopped immediately after the third strike. I stopped and we were able to get him cuffed up, detained and get him to where he needed to be, get him that medical treatment, get him that mental health treatment, you know, start doing that after care for him, start doing that after care for our cops, you know, just kind of ending the chaos.

Engler also later spoke of his considering using other methods, including a taser and pressure points:

And it's one of those things where it's like, you know, I'm thinking about it later, it's like, you know, could I have tased him. Well yeah, we would have been justified but again target area, you know, I would have had to laser his head, neck, face and that's, you know, not appropriate. I'd have to be a contact shot and then I'd have to get a large muscle group 'cause I'm at his head so I'd have to laser his head to get to his chest and then from there bring it to somewhere else for a, a, a, you know, more complete muscle group cycle to get that NMI and you know, just where the cops were, you know, it just, it was just, positioning was bad, you know, you know, I'm not lettin' a cop, you know, completely let go of him and completely lose control. I mean we already don't have control enough and we're on him so Andy you move or Ted you let go. No so that's not gonna be a good option, you know, could I have used pressure points, you know, no I've never used a pressure point in the field. We were taught them in the academy. It's not something that we do. It's not something that I've done regularly ever in my 12 years. I don't think I've ever seen it on a call in my 12 years. It's not something that we talk about. It's not something that we actively get updates on, you know and it just seems like it's, would be inappropriate. I mean it's, it's a lower use of force and this guy's already out of control. I mean, you know, pain compliance is, you know, it didn't, that, you know I think back on it now, I'm like man that doesn't, that wouldn't seem right so, you know, it just given to how close we were in close quarters like I said we gotta end this

Engler then described that there was a sliding glass door in that lower level, and they were able to get him out of that door and out to the squad car with "no real resistance once he was in cuffs." Engler then described having to "switch gears" and focus on Officer Slawek potentially having a significant exposure, and following that protocol. Engler later stated that he was not initially aware that Slawek was injured during the incident, only becoming aware after [REDACTED] was in handcuffs and in custody. He was aware he was spat upon, but not of the injury at that time.

Engler did then volunteer information regarding his turning his MPD baseball style hat around prior to contact [REDACTED]. He admitted that this "looks bad," but said he does this "on a regular occasion, especially in dynamic situations." He described how this provides him a better field of view, and prevents the bill of his cap from poking people in the face if he is close to the individual. He continued, saying "I mean that bill of that cap would have been poking him in the nose and don't want that." I later asked him if he turned it around because he was anticipating using force and he answered:

No it looked like a dynamic situation. I got four officers, or excuse me, three officers struggling with guy, who doesn't have handcuffs on so I need to get in there too so yeah I anticipate that I think we're gonna get up close and personal with him whether I need to help grab a handcuff or do whatever, you know, and just kind of where he's at so just to kind of get the hat out of the way, spin it around. But as far as immediately walking down there and thinking I'm gonna use force, no, not at all. I mean it's, I just got there for crying out loud, you know, what are we dealing with kind of thing but yeah I mean it looked dynamic 'cause it looked chaotic 'cause I got three cops on this kid and he's still fighting so.

I asked Engler about whether an officer was holding the piece of cloth over [REDACTED] face, or if it was just lying loosely on his face. Engler could not recall whether an officer was holding it or not, and when prompted again, he again stated he didn't remember. He continued:

I don't remember. I'm sorry. I, I, yeah. I know a, I know it was, it was there and I was like okay hold on let me get, let me get the spit hood on. It may have been, Andy may have been pushing down on it and again, you know, that's not the greatest so let's just, let's get that on and just kind of sneaking

it top of head and just trying to ride it underneath the cloth to try to prevent the spit obviously that didn't work much to my dismay.

Engler also spoke of having to coordinate the removal of the cloth for the deploying of the spit hood, recalling saying "okay, I'm gonna put the spit hood on now guys get ready and you know, slid it on and 'I'm gonna spit on you spit spit spit'" indicating [REDACTED] then spat at the officers.

I asked Engler if he had even been formally trained on the use of a spit hood, and he stated:

Oh my God, that's a great question. Um, we have them available in every property room. I believe we've put them in the academy or talked about them in the academy but so far as any update trainings if specifically I can't recall any.

Engler clarified that he went through MPD's pre-service academy in 2007, and does not recall having any updates to spit hood application since the academy, and again stated that he "assumed" he had trained on them in the academy during DAAT training. He did not recall anything in that training regarding the use of spit hoods on subjects who are not handcuffed or restrained. I also asked him if the subject was ever left alone once the spit hood was on, and Engler replied that he was not aware of that happening.

I also asked Engler if he was explaining to [REDACTED] what he was doing, and Engler stated that his instruction was "explaining it more to the officers. Okay, I'm gonna put the spit hood on him," but that [REDACTED] replied "I'm gonna keep spitting on you."

Engler further explained [REDACTED] actions once the spit hood was on:

A: Again, he did spit on me. I'm gonna keep spitting on you, spit, spit and as soon as the spit hood went on, that's when it kicked off again, you know, that's when he really bucked back and was really starting to get away from the officers. You know spit hood goes on, thinking okay, hopefully this calms him down. All of a sudden spit hood goes on and nope, nope, fights continuing and gettin' worse. We're not, we don't, we don't have control of this guy so.

...

Yeah so he kind of, he rears back towards me on his shoulder areas like shoulder blade areas. Is pulling away from Fondrk with his arm, with his right arm. He's kicking out with his leg and I remember, remember seeing Joswiak kind of going up and back and Ted kind of going backwards and again I was just really focused on that left arm [chuckle] that I'm staring directly at, you know, kind of over him and just no one has it, I don't have it and he's starting to pull and you know, it's, officers don't have him under control, you know.

Doberstein: So nobody had that left arm at that time?

Nobody had the left arm that I can remember and you know, we're, you know, Ted doesn't have good control of the right arm and he's, he's fighting and we don't, we don't have good control of him. We're and, in fact, we're losing control of him even with the three that were there.

I continued to ask questions, attempting to determine Engler's perception of [REDACTED] actions and of the situation.

Q: So he's being held down or attempted to be held down on the couch?

A: Yep, attempted to be held down on the couch.

Q: Would you consider his resisting and spitting as being assaultive behavior?

A: Yeah. I would based on well that radio traffic, his threats of wanting to hurt us, the spitting. He's fighting with us. He's, he's doing what he can to continue to get after us, you know and continuing to attack us, attack me, you know.

Q: Um.

A: Yeah, it, it, yeah it didn't, it wasn't passive. I mean he wasn't just laying there. I mean he's, he's bucking, he's pulling away, he's struggling, you know, cops don't have him contained. He's trying to

get away. He's not, he's not just laying there like a lump. I mean he's, this is still an active thing that's going on.

Sergeant Doberstein also asked Sergeant Engler if simply allowing [REDACTED] to get up was an option:

Doberstein: When you got into the basement and saw them holding him down and him bucking around and what not. Do you see any safe way for those officers just to have released and backed off?

A: No. I mean we're in a crowded basement area. In the end of the day, this subject has to come with us. He is, we are obligated to take him into custody and take him to a mental health facility so letting him go, we'd only have to re-engage. What little if any control we have with him right now, retreating backing everyone off and now having him wildcat and Tasmanian devil in the, in this apartment or this basement area that, I don't know what was down in there. I still can't even tell you the layout, you know, what's down there. I don't know. So I just, no I don't want to release him back into this uncontrolled environment, unsafe environment to access who knows what and like I said he's under a 51 return. Creech listed him as a missing endangered so he's clearly, I mean Journey is the one who put the hold on him so they clearly say he's a danger to himself and others, that's why he's going on the return so why give him the opportunity to hurt us further, why give him the opportunity to hurt himself, actually hurt himself further so no I don't think that's an appropriate response.

Engler denied observing any injuries to [REDACTED] after this altercation, other than scabs that were apparently pulled off during the incident. Engler told us he saw no injuries to [REDACTED] head, even after he checked in with him again at the hospital.

Again, those scabs were on his arms and Fondrk had said something about skateboarding but I saw no injuries on his head. I checked in with him. Again there was a time there where he was very pleasant. We exchanged pleasantries, sorry it had to go this way just be a gentleman to my officers. Yep, will do. Wasn't complaining of any injuries. Didn't see any swelling or anything up in his head area where I delivered strikes and I know he was seen by ER staff and checked out there but had and I didn't notice anything and it didn't occur to me to get an SI down there to take photos and you know, I, you know, the supervisors in this room, you know, you're trying to think big picture on these things, nothing tickled my fancy like oh we gotta get a picture of that to make sure we get that documented, you know, nothing, nothing peaked my interest as far as that

Engler continued, explaining his role at the hospital, checking in again with officers and with [REDACTED] at the hospital, noting that "he had calmed down significantly from our first encounter."

Sergeant Engler stated the he reviewed his use of force with Sergeant Matt Baker, who completed the BlueTeam recordable Use of Force entry for the incident. I located that entry, logged under tracking number 2019UoF-0126, entered on 6/3/19 by Sergeant Baker. I then asked if he was aware of any other recordable use of force used on that day, and Engler stated that Officer Slawek informed me that he had attempted a "wall stun," which Engler understood to be recordable force. Engler thought that he had made this entry, but a review of IAPro did not locate such a record. Engler was not certain whether anyone else was made aware of that use of force.

Q: Okay. Did any other officers report any force that they used prior to your arrival to you at the time that day?

A: Yes, Andy and I can't remember if I did a Blue Team entry or not. I didn't get notification from Kimba so I assume I did one but at that point, it was significant exposure paperwork, medical clearances, you know. I want to, you know, I'm usually very good about completing that stuff and I think I did, I hope I did but I was going through my use of or not my use, my significant exposure packet making sure I had all the proper documentation there, officer involved injury stuff there, making sure I got the Telestaff entry in just, you know, I hope I got Andy's in. I was never notified that I didn't and to do one so I assume I did it but that was such a blur that.

Q: What did Andy tell you was his use of force?

A: I think he said he, what'd he say. I think he said he wall, had to wall stun him and that they were fighting and that's when he was grabbing at him, spitting, t-shirt, yeah.

Q: Okay. So is a wall stun considered recordable force for a Blue Team entry?

A: Yes.

I also informed Sergeant Engler that I reviewed his squad video and determined that his microphone was not synced during his squad operation responding to this incident. He told me that he only very recently switched districts, shifts, color rotations, and subsequently operates a different squad (1937) as well, stating this was only day two of his new assignment. He stated that he has had difficulties logging in to that computer, and had been told that he would have to drive to a different location to log into this squad. He confirmed that he would have no way of knowing whether there were other problems with that specific squad since this squad was so new to him, but did volunteer the following.

I have had problems with that in the past. At times, I do my battery, I do keep it in the charging cradle and I know as a, as you well know as a EVOG MIT and as a supervisor, I'm big on squad synching and squad mic synching so I thought I was synched. I thought I remember seeing the blinking red light but if you're saying it wasn't then that's shame on me. I should have confirmed that.

Engler stated that he was aware that Sergeant Hannah and Sergeant Baker have both had issues with squad 1937 since this incident, however, and believes that IMAT was contacted accordingly for those problems. IMAT analyst Dan Haueter confirmed that Sergeant Hannah messaged him on 6/28/19 with a synchronization problem with 1937 on 6/28/19.

MPD Spit Hood Policy

Sergeant Minh Duc Tieu informed me that he was not able to locate records that indicated that Sergeant Engler had been trained in the use of a spit hood. He did provide me with a power point and a policy proposal that was estimated to be approved and initially trained in the academy in 2010, three years after Sergeant Engler attended the MPD Academy. The last update to this document appears to be 2015. He was unable to locate records for spit hood training prior to 2010.

Within this PowerPoint presentation is a slide that states "Subjects must be stabilized and restrained (handcuffed) before applying the hood." Again, however there is no documentation that shows that Sergeant Engler was provided this training.

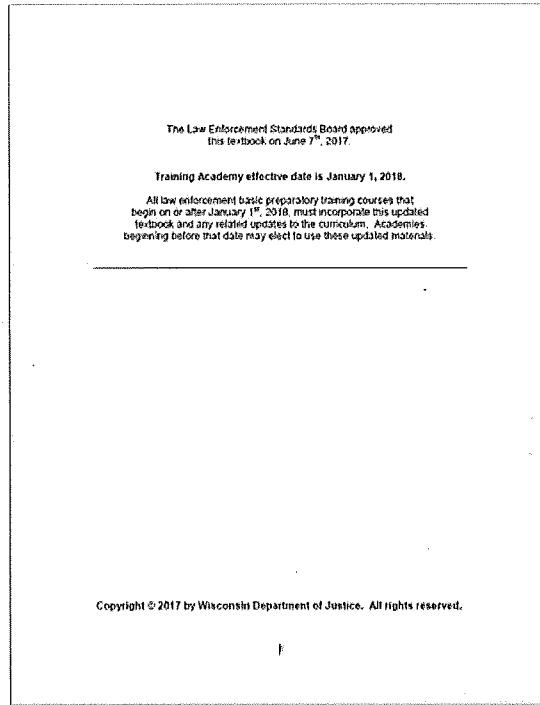
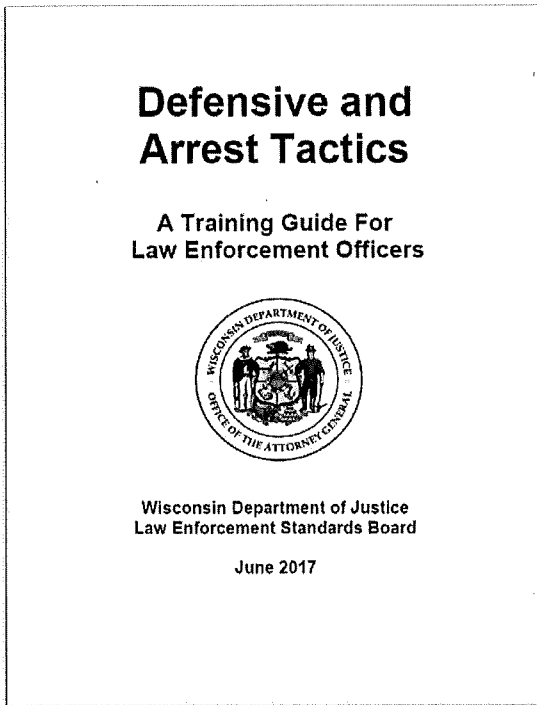
MPD Spit Hood Policy is covered under the SOP – Use of Non-Deadly Force, and reads as follows:

USE OF SPIT HOODS

1. A spit hood is a temporary protective device, which may be used on persons that display behavior or threatening behavior that pose a hazard of exposure to bodily fluids transmitted by spitting, wiping blood from their face/head, or wiping/blowing nasal discharges at or onto officers.
2. Officers should use only MPD-approved spit hoods. In an emergency situation if not readily available, officers may utilize other breathable items, such as pillowcases, surgical masks, etc.
3. Officers shall apply the spit hood in accordance with MPD training.
4. Persons wearing the spit hood must be closely monitored and shall not be left unattended.
5. Officers shall document the use of the spit hood including the circumstances requiring its use in their report of the incident. A copy of the report shall be routed to Training.

DAAT Manual Review

I reviewed the Defense and Arrest Tactics Training Guide for Law Enforcement Officers, approved by the Law Enforcement Standards Board on 6/7/17 which lists a Training Academy effective date of 1/1/18.



Page one states that Law Enforcement Officers can use force “when it is needed to achieve control” in five specific situations:

- *To achieve and maintain control of resistive subjects*
- *To detain persons reasonably suspected of criminal behavior*
- *To make lawful arrests*
- *To defend themselves or others*
- *To prevent escape.*

Page nine lists Intervention Options, including the following:

- A. Presence** *To present a visible display of authority*
- B. Dialog** *To verbally persuade*
- C. Control Alternatives** *To overcome passive resistance, active resistance, or their threats*
- D. Protective Alternatives** *To overcome continued resistance, assaultive behavior, or their threats*
- E. Deadly Force** *To stop the threat*

Page three states that when Officers use force as a part of their law enforcement duties, it must fit within one of the following categories:

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

Page eleven provides “five key rules for use of force”, which are again listed on page thirty-one as “five fundamental principles” regarding whether the level and degree of force is “objectively reasonable” (Graham v. Connor):

1. The purpose for use of force is to gain control in pursuit of a legitimate law enforcement objective. If verbalization is effective in gaining control, it is always preferable to physical force.
2. You may initially use the level and degree of force that is reasonably necessary to achieve control. You need not escalate step-by-step through the Intervention Options.
3. At any time, if the level of force you are using is not effective to gain control, you may disengage and/or escalate to a higher level of force. This involves transitioning to a different level of force or different tactics based on the totality of circumstances.
4. Once you have gained control of a subject, you must reduce the level of force to that needed to maintain control.
5. You must always maintain a position of advantage.

Page twelve defines "control" and provides the following "fighting rules:"

What is Control?

Control is a perception based on an officer's training, experience, and the fact situation. It involves the management of a subject and can be achieved through several different means that are available to an officer. The officer can control a subject with presence and dialogue by showing up and speaking to the subject. Control could also be achieved by applying a vertical stun to a combative suspect and directing him to the ground for ground stabilization. The below concepts assist an officer in understanding control:

- *Control is a perception based on an officer's training, experience, and the fact situation.*
- *Control is not a 50/50 proposition*
- *Proper police action balances safety and efficiency*

Fighting Rules

These rules assist an officer in understanding the appropriate mindset when a suspect forces an officer to apply force. These concepts can assist the officer in developing a response that will maximize on his/her personal safety and bring the encounter to a quick resolution.

1. *Be effective from the beginning.*
2. *Never spar with anyone.*
3. *Hit as hard as you can.*
4. *Attempt to create dysfunction.*
5. *Get the confrontation over quickly.*

Page thirty-one describes "control alternatives," and defines "active resistance:"

Control Alternatives

Control Alternatives are designed to control subjects who are resisting or threatening to resist your lawful orders. As always, the overall purpose is to achieve compliance from a non-compliant subject, but these techniques are specifically geared toward overcoming both passive and active resistance or their threats.

Passive resistance is defined as "non-compliant and non-threatening behavior." An example would be a person staging a "sit-in" who refuses to leave when ordered to do so. The person is not fighting with you—he or she is simply not complying with your orders. Protestors often use passive resistance as a political tactic to advance their agendas.

Active resistance is defined as "behavior which physically counteracts an officer's control efforts and which creates a risk of bodily harm to the officer, subject, and/or other persons."

Examples of active resistance include attempting to pull away from the officer's grasp, running away, getting up after being directed to the ground, and so on.

As you learn these techniques, remember to incorporate verbalization with them. When you physically intervene to gain control of a subject, you are using force to require the subject to comply with your orders—you must always make reasonable efforts to be sure that the subject understands what it is you want him or her to do. In addition, you can use verbalization to help calm the subject once he or she is stabilized.

Page sixty-two describes "protective alternatives" and defines the term "continued resistance:"

Protective Alternatives

Protective Alternatives is the fourth mode in Intervention Options. The overall purpose is to overcome continued resistance, assaultive behavior or their threats. These interventions are designed to protect officers in situations when they face subjects continuing to resist or threatening to assault.

Continued resistance is defined as "maintaining a level of counteractive behavior that is not controlled with the officer's current level of force." Assaultive behavior is defined as "direct actions or conduct that generates bodily harm to the officer(s) and/or another person(s)."

As you learn these techniques, remember to incorporate verbalization with them. When you physically intervene to gain control of a subject, you are using force to require the subject to comply with your orders—you must always make reasonable efforts to be sure that the subject understands what it is you want him or her to do. In addition, you can use verbalization to help calm the subject once he or she is stabilized.

The mode of Protective Alternatives includes three tactics/tools:

- o Active Countermeasures*
- o Incapacitating Techniques*
- o Intermediate Weapon*

On page sixty-three, "active countermeasures" is described:

Active Countermeasures

The goal of active countermeasures is to create a temporary dysfunction of an actively resistive or assaultive subject. In essence you are interrupting the subject's ability to resist, enabling the officer to direct the subject to the ground for stabilization, handcuffing, and other follow-through procedures.

Active Countermeasures is listed as including two categories of techniques:

- Vertical Stuns*
- Focused Strikes*

Page sixty-four further describes "vertical stuns" and "focused strikes:"

Vertical Stuns

Stuns are useful in close quarters confrontations when you are grappling with a subject and have a suitably flat and sturdy vertical surface (such as a wall or vehicle) nearby. When you use a stun, you attempt to create temporary dysfunction of the subject's respiratory system and/or mental processes by forcefully directing the subject's torso into a solid vertical surface.

Unlike with focused strikes, in a stun, the impact is diffused throughout the subject's body, causing a temporary disruption of the ability to breathe and/or temporarily disrupting nerve impulses to the brain. The disruption is short-lived—about 5 to 7 seconds—during which

you can take other appropriate action, such as disengaging, decentralizing the subject for ground stabilization, or escalating to a higher level of control, as needed.

...

Focused Strikes

Like stuns, focused strikes are intended to create dysfunction and disrupt the subject's ability to continue resistive or assaultive behavior. Unlike stuns, however, the impact is not diffused throughout the body—it is focused in a particular target area.

Page sixty-eight describes the use of combinations and multiple strikes:

Combinations and Multiple Strikes

Active countermeasures are more effective when used in combination or delivered more than once. Multiple strikes (either of the same technique or in combination) may be required to gain control quickly of an extremely violent, dangerous subject. The term multiple strike overload refers to a series of strikes aimed at the same location—either of a single technique or more than one technique in combination. The subject's response to combinations and multiple strikes will determine when it is appropriate to reduce the level of force to maintain control.

Page ninety-nine describes “follow through considerations”, and lists those considerations as follows:

Follow-Through Considerations

As you have learned, once you have gained control of a subject, using one or more of the Intervention Options, you must initiate follow-through activities as listed under Follow-Through Considerations in Disturbance Resolution. These considerations include:

- A. Stabilize – Application of Restraints, if necessary*
- B. Monitor/Debrief*
- C. Search – If appropriate*
- D. Escort – If necessary*
- E. Transport – If necessary*
- F. Turn-Over/Release – Removal of restraints, if necessary*

External Incident Review Document

I was informed that Lieutenant John McCaughtry of the University of Wisconsin Police Department would be conducting an external review of this incident. I provided Assistant Chief Wahl with the working material I had already obtained, including the surveillance video, interview transcriptions, dispatch records, case photos, and other information, which was provided to Lieutenant McCaughtry on 7/5/19.

I emailed Lieutenant McCaughtry on 7/18/19 to provide him with my contact information should he have any questions. I provided him with the transcripts of Sergeant Engler's interview via email on 7/19/19, and a working copy of my notes and draft memo on 7/22/19, which included interview notes from non-recorded interviews. I also provided him with interview transcripts from Officers Joswiak and Slawek on 7/23/19.

On 8/5/19 I also emailed copies of the following Madison Police Department Standard Operating Procedures, as well as our Code of Conduct, and the DAAT Training Guide for Law Enforcement Officers by the Wisconsin Department of Justice Law Enforcement Standards Board dated June of 2017 that I would be referring to for this investigation.

- SOP – Back-up
- SOP – De-Escalation
- SOP – Mental Health Incidents and Crises
- SOP – Non-Deadly Force – Use of

We received the completed copy of this Incident Review Document on 8/26/19; the full document attached to the end of this memo.

Summary

The purpose of this summary is twofold. This summary is intended to provide further input for you to review in conjunction with the UWPD Use of Force Incident Review. It is also intended to provide a comprehensive overview of the discoveries of this investigation for your review, and to provide preliminary recommendations for Standard Operating Procedure and Code of Conduct compliance other than use of force.

Involved officers provided consistent descriptions of the incident, and evidentiary surveillance video provided by the complainant provides further insight into this incident.

Officers Slawek and Joswiak were dispatched and subsequently arrived at the residence after receiving information that [REDACTED] had been previously listed as missing, had made threats to staff at his school, his foster parent, and had a chapter 51 return issued for him, indicating that Journey Mental Health had received information and made the decision that [REDACTED] was to be taken into custody and brought to the hospital due to his mental health status. Upon arrival, they received more information that [REDACTED] had threatened a contractor at his residence, telling him he was going to "kick (his) ass." Joswiak recalls the threats by [REDACTED] to include "I'll fuck you up. I'll kill you."

[REDACTED] eventually walked downstairs. [REDACTED] states that it appeared that [REDACTED] was "willing to go with cops," but as he walked downstairs, [REDACTED] either motioned or told the officers to go down with him, believing [REDACTED] may try to leave via the downstairs doors. Officers followed, and Officer Slawek made the decision to place [REDACTED] in handcuffs as he walked past Slawek, towards Joswiak, and in a direction believed to be towards his own room.

In his interview, Officer Slawek described [REDACTED] having a "thousand yard stare" as he walked past Slawek towards PO Officer Joswiak. This appears consistent with descriptions provided by both Worrall and Hutchins. Both of these individuals describe similar appearance of [REDACTED] demeanor earlier in the day at West High School, and when asked both stated that the term "thousand yard stare" was an accurate description.

As Slawek grasped [REDACTED], he immediately felt resistive tension in [REDACTED] arms. Officer Joswiak confirmed that [REDACTED] arms bent in a 90 degree angle up towards Joswiak as Slawek attempted to grab them, and video shows that [REDACTED] did not cooperatively place his arms behind his back.

The first (chronologically) concern [REDACTED] explained to me was that Officer Slawek began to yell "stop resisting" as he and Officer Joswiak were both still "on the first set of stairs" of the split-level, at which point they walked downstairs to observe what was happening. [REDACTED] estimated that from the time he heard "stop resisting" to the time Officer Slawek and [REDACTED] went up against the wall was "probably one second maybe two seconds at the most, however it takes to go from six steps down."

In reviewing the surveillance video, Officer Joswiak, Officer Slawek, and [REDACTED] are already all in full view of the camera from the 0:00 mark of the video, with [REDACTED] on the same level coming into view at the 0:07 mark. Officer Slawek initiates contact at the 0:11 mark, and he and [REDACTED] are up against the wall at approximately the 0:13 mark. [REDACTED] estimate of approximately 1-2 seconds between hearing "stop resisting" and [REDACTED] being pushed against the wall appears accurate, but his recollection of his location during this time and having to come down the stairs conflicts with the video.

According to the Wisconsin DOJ LESB DAAT training guide for Law Enforcement Officers, "Presence" and "Dialog" are the first two Intervention Options available to officers. All officers involved in the incident were dressed in full military style MPD uniform. There is also no dispute as to clear directions of "stop resisting" being provided loudly and repeatedly to [REDACTED] during this incident.

In Slawek's interview, he described that he attempted a "wall stun" as [REDACTED] resisted, indicating the purpose was two-fold: to "keep him up against the wall To do, to do a wall stun, also to keep him up against the wall and not fall down to the ground or try to break away and run up the stairs so he'd have nowhere to go so we had him squared up against the wall and easier to contain." Slawek denied saying "stop resisting" to [REDACTED] prior to physically grasping his arms, and Officer Joswiak recalled Slawek saying "stop resisting" for the first time "After he grabbed on and I could see [REDACTED] arms come up and all the muscles stand out."

The DOJ LESB DAAT manual describes a "vertical stun" as being useful when an officer has "a suitably flat and sturdy vertical surface." The wall directly in front of Slawek and [REDACTED] contained a wood-slatted closet-type door which was not sturdy, and consequently the vertical stun was ineffective. Video also suggests the push up against the wall was not forceful enough to be an effective vertical stun. Regardless of the effectiveness of the technique, Officer Slawek was clear that he did attempt to do a "wall stun" (vertical stun).

The UWPD Use of Force Incident Review provides an opinion as to the reasonableness of this attempted vertical stun, stating that "PO Slawek's use of a vertical stun in response to the subject's behaviors outlined above is a trained and permissible option to overcome the level of resistance the officer faced." I agree with the opinion provided within the UWPD review that this attempt was an objectively reasonable action.

Officer Slawek was not certain how he and [REDACTED] moved to the couch, and was very clear in his interview that he neither intended to go down to the couch, nor preferred to do so. Video shows a clear struggle between [REDACTED] and Officer Slawek, with the two of them falling sideways onto the couch immediately to Slawek's left, [REDACTED] right. As the two begin to fall, it is clear that [REDACTED] right arm is free and not under control, and he forcefully brings it down on the back of Slawek's head/neck/shoulder area.



Officer Slawek was able to move from under [REDACTED] arm and into a better position on top of [REDACTED] holding him down on the couch as he continued to try to get up. Slawek described in his interview how he attempted to call for backup, but was unable to get through, which appears consistent with what is captured on video. The video ends a short time later clearly showing Officer Slawek struggling with [REDACTED]

██████████ while Officer Joswiak attempts to control his legs and feet, with ██████████ near Officer Joswiak and ██████████ feet as well ██████████ described in his interview that he was attempting to remove a fan from the couch so no one would be injured by it, and to prevent it from being damaged.

Officer Joswiak described ██████████ and Officer Slawek as both giving "100%" effort, and appearing as though they both were getting tired as the resistance level would "ebb and flow," with ██████████ appearing to become tired and relax momentarily and then continuing his resistance efforts. Slawek described similar "ebb and flow" resistance, but was clear that ██████████ was "bucking" with his entire body as Slawek attempted to restrain him. When the level of resistance decreased, officers discussed attempting rolling ██████████ over, but the decision was made to not attempt to reposition him until more Officers arrived. This ebb and flow resistance reportedly continued until the strikes were delivered by Sergeant Engler

The UWPD Use of Force Incident Review states that the decision to wait for more officers and hold ██████████ on his back until more officers arrive appears to be "not a trained technique but that they believed justified under the circumstances." I agree with this assessment and agree that this decision was justified under the circumstances, as officers were clear that they were not fully in control of ██████████ at that point of the altercation. Officer Slawek was clear that he had grasp of each of ██████████ arms while ██████████ was on his back. Turning ██████████ onto his chest would require Slawek to at least momentarily release one of his arms, and subsequently lose some level of control. For this reason, I believe it was objectively reasonable for Officers Slawek and Joswiak to hold and await more officers.

Officer Slawek and ██████████ both referred to a pillowcase or similar object being provided by ██████████ at Slawek's request for something to place over ██████████ face to prevent him from spitting. ██████████ stated that one of his concerns was regarding his observations from the video in which it appears that Officer Slawek was physically pushing the cloth over ██████████ lower face. ██████████ was clear in his interview that the cloth was not over ██████████ nose.

you can see it in the video where he's like sitting there with the pillowcase over his face, not over his nose but you could see where it's the division, he has it over his mouth and he's just like, just got all this weight over him.

Officer Slawek was clear in his interview that he does not believe he was physically doing this. I told him that the video appeared as though he may have been holding the cloth on ██████████ face, to which Slawek again stated he did not recall doing this. Officer Joswiak also spoke of both he and Officer Slawek recognizing that the cloth was not staying on ██████████ face during the struggle, suggesting that either Slawek was not holding the cloth, or there was a need to physically hold it on his face. Sergeant Engler could not recall whether Officer Slawek was physically holding the cloth over ██████████ face or not, but did recall ██████████ left arm being unsecured and free at some point. Engler also recalled having to coordinate movements in order to place the spit hood over ██████████ head while the cloth was in place. MPD SOP does clearly state "In an emergency situation, if not readily available, officers may utilize other breathable items, such as pillowcases, surgical masks, etc."

The UWPD Use of Force Incident Review briefly mentions that "It appeared PO Slawek was using both of his hands to hold the towel down firmly over either side of the subject's mouth." While Officer Slawek does not recall doing so, it does appear on the video that this did occur. However, as ██████████ breathing does not appear to be impaired, and as officers are clear that the towel being laid loosely on ██████████ face was not successful in impeding his ability to spit, it is my opinion that physically holding the cloth object on ██████████ mouth area was an objectively reasonable method of attempting to prevent him from spitting while keeping the officers' hands away from ██████████ mouth, which could impede his ability to breathe and allow him to bite an officer's hands.

Officer Fondrk stated that when he arrived he was not able to fully assist in the manner that he would have liked to. He stated more than once that the position of the other officers impeded his ability to fully assist. Officer Fondrk also recalled that after he arrived, he and other officers discussed how to proceed, and the decision was again made to wait for more officers.

Sergeant Engler stated that when he initially arrived he made the conscious decision to leave the address upon seeing two officers on scene, and non-verbally communicating with them, in order to deescalate the situation by minimizing the initial police presence.

Squad video shows that Sergeant Engler arrived approximately 46 seconds after Officer Fondrk. Sergeant Engler reports that he was made aware that [REDACTED] had spit upon officers on scene, and stated he heard [REDACTED] threatening to spit more. Sergeant Engler also stated that he recognized the make-shift spit hood on his face was not ideal, and chose to replace it with the mesh spit hood. Sergeant Engler stated he chose to do this as the mesh spit hood would stay on its own and was safer for [REDACTED] as it would not impede his breathing.

[REDACTED] was also clear in his interview that [REDACTED] was making threats as he yelled at officers, with [REDACTED] attempting to calm him down.

I could hear [REDACTED] you know, saying, you know, I'll kill you, I'll kill you, I'll blow your station up, blah, blah, blah, you know, maybe he was just really heightened at that time. I kept trying to tell him to calm down, you know, just, you know, stop talking, be quiet, calm down.

...

... and then I just kept saying [REDACTED] you know, stop talking, be quiet because he was making a lot of threats.

There is some inconsistency in the timeline of [REDACTED] spitting. Officer Slawek stated that he was spit on twice, and did not recall being spit on at all after Sergeant Engler arrived on scene. Sergeant Engler and Officer Joswiak both state that they observed [REDACTED] spitting after Sergeant Engler arrived. Joswiak described hearing a "spitting sound" when Sergeant Engler was trying to put the spit hood on [REDACTED] and stated that Officer Slawek "pulled back real fast," saying that [REDACTED] spit in his eyes and face. Video does show Slawek moving as Joswiak described, including using his arm to apparently attempt to wipe something from his face immediately thereafter, suggesting that spitting was occurring at this time.



Sergeant Engler attempted to place the spit hood on [REDACTED] head. All officers interviewed indicated that at that time, the resistance provided by [REDACTED] either escalated or at least continued. Officers described [REDACTED] actions as turning his head from side to side, spitting, and "bucking." Sergeant Engler described [REDACTED] left arm as being "free" and very near his head, and feeling moisture hit his own face as [REDACTED] continued to spit. Officer Joswiak recalls hearing a sound that sounded like someone spitting, and Slawek jerking back as though he was struck. Video appears to show [REDACTED]

sitting up and some quick motion being made near his left arm up towards Officer Slawek, as well as Slawek quickly pulling upright and wiping his face with his right hand, which he stated had previously been holding [REDACTED] left arm. This motion could be consistent with Slawek's recollection of [REDACTED] grabbing at Slawek, as well as Sergeant Engler stating that [REDACTED] left arm was free, but the video is not clear enough to identify exactly what this quick motion was.

This DAAT manual further states that Officers may use force in order to "achieve and maintain control of resistive subjects." It further describes control as "a perception based on an officer's training, experience, and the fact situation," and further describes it as "not a 50/50 proposition." Therefore, an individual is not "under control" if that individual is actively resisting the officer's attempts to place them into handcuffs or otherwise into custody.

Officer Joswiak uses the phrases "stalemate", "it's pretty much a 50/50 standoff", "holding pattern," and "it looked like Andy was trying his full strength to get [REDACTED] arms behind him, and [REDACTED] looked like he was going full strength to try to get 'em away" to describe their attempts to secure [REDACTED]. He also stated that [REDACTED] resistance level was "kind of all the same" from the time before Engler arrived, up until the time the strikes were delivered.

Sergeant Engler describes many factors that he took into consideration regarding his perception of the incident. Among those were the following:

- Voices on the radio sounded like they were "actively involved in a struggle," referring to it as "we're in a fight type of radio traffic."
- Radio traffic was held for emergency traffic only, with routine traffic re-routed to channel three
- Officers were providing no updates, which he perceived as indicating that officers could not get to their radios
- The subject was still not handcuffs upon Sergeant Engler's arrival despite the amount of time officers were on scene and requesting backup.
 - (Dispatch records indicate that the time between Adam 2 airing "Adam 2 we need another here" and 1234 airing "1234... I'm already 23 and we're putting him in cuffs, you can take the air and get us back on routine" was approximately 5 minutes and 2 seconds.)
- [REDACTED] was still struggling with officers.
- [REDACTED] had already spit on officers, was threatening to continue, and did continue to spit on officers.
- [REDACTED] left arm was free and very near Sergeant Engler's face.
- Officer Fondrk appeared to be struggling to control [REDACTED] right arm.
- [REDACTED] is continuing to yell, stating he was going to "get us, kill us or something like that."
- [REDACTED] bucks up and rears up and is continuing to struggle."
- Sergeant Engler sees officers "float backwards" on [REDACTED] referring to a perception that officers were not in as good of a position to control [REDACTED] as before.
- Sergeant Engler believed that [REDACTED] was "almost breaking free" of Fondrk.
- Sergeant Engler observed three officers actively struggling, and that [REDACTED] was still not contained. Engler stated "We do not have him under control. He's still fighting us."
- Sergeant Engler stated he believed that they "need to stop this now."

Engler states that at that point, he delivered his first strike to [REDACTED] upper right forehead, with no visible impact on [REDACTED] behavior. He said he changed his strike technique from a closed fist to striking [REDACTED] with the "meaty" part of his forearm to minimize injury potential to both himself and [REDACTED]. Engler struck [REDACTED] twice more in this manner, when [REDACTED] then reportedly asked if officers were hitting him, and then all officers on scene described him ending all physically resistive efforts. [REDACTED] also described not hearing any yelling or screaming from [REDACTED] after he was brought to the floor. [REDACTED] was then handcuffed without further incident.

There were no reports of any injury to [REDACTED], short of what was described as "old scabs" being pulled off during the altercation, which caused minor bleeding. According to MPD reports for the incident [REDACTED] told Officer Hanson that he had not sustained any injuries during the incident, and [REDACTED] staff informed me [REDACTED] documented after they completed their check in, including [REDACTED] the fact that he was struck in the head.

The UWPD Use of Force Incident Review states, "The officers' reports and video fragments showed that the suspect displayed continued resistance and threatened assaultive behavior towards the officers both verbally, by reaching for officer weapons during the struggle, and by spitting into their face where a significant exposure could result." It continues to read, "it is my conclusion that the officers' use of force falls within accepted methods and procedures currently taught by the State of Wisconsin's Department of Justice Training and Standards and is objectively reasonable."

The UWPD Use of Force Incident Review refers to use of force reviews as occurring, "After the fact, with the benefit of time to review, consider and assess without pressure or time constraints." Officers' actions must be reviewed based on the information they had at the time, recognizing the stressful conditions they are were operating under, and acknowledging the split-second decision making required during physical altercations.. For these reasons, I also conclude that both Sergeant Engler's and Officer Slawek's applications of force were objectively reasonable, and therefore fall within MPD SOP and Code of Conduct.

While I do believe that the use of force used by MPD personnel involved in this incident on scene was objectively reasonable, during this investigation I discovered what I believe to be violations of other MPD's Standard Operating Procedures.

Officer Slawek's vertical stun, while properly documented within his police report was not entered as recordable force in BlueTeam. While Slawek stated he was not aware this was considered recordable force, he also stated he couldn't recall if he had notified Sergeant Engler about this use of force. Sergeant Engler indicated that he was aware of this use of force and stated that he thought he had entered it. Sergeant Engler was understandably busy and pre-occupied with attending to Slawek's medical needs and other duties stemming from this investigation, but he was aware of this use of force and was also aware of the need to enter it, but this was never entered. MPD SOP (Use of Force Data Collection) states that the officer is responsible for notifying a field supervisor, and the field supervisor is responsible for reviewing the use of force incident with the involved officer(s) and for documenting the recordable force through the BlueTeam portal/website.

Also, video review shows Sergeant Engler's microphone was not synced to his squad car's Arbitrator system as required by SOP (In Car Video System). When asked, Engler was clear that he "thought I remember seeing the blinking red light but if you're saying it wasn't then that's shame on me. I should have confirmed that." Engler did state that he had problems logging in to the squad he used that day, and was told by others that logging in is frequently difficult and that he would need to drive to varying locations before he would be able to log in. On June 3, Sergeant Engler showed a total of four Arbitrator videos uploaded from his squad, all prior to this incident, and none of the four showed a synchronized microphone.

Thumbnail	Source	Filename	Classify	Case File #	Start Ti	Duration	Officer1	Officer2	Agency	Unit	Shift	Area	VehicleID
	In Car	mja00672_20190603T216520(2)			6/3/2019 7:16:52 AM	00:03:01	pdjle		Madison PD				1937
	In Car	mja00672_20190603T255316(6)	Non Evidence		6/3/2019 8:39:21 AM	00:20:03	pdjle		Madison PD				1937
	In Car	mja00672_20190603T424309(2)	Non Evidence		6/3/2019 9:24:30 AM	00:02:24	pdjle		Madison PD				1937
	In Car	mja00672_20190603T624309(2)	Evidence	19-210976	6/3/2019 11:24:43 AM	00:03:33	pdjle		Madison PD				1937

Engler also stated that he was informed that the squad was reported to IMAT since this incident for other similar problems. I checked with IMAT employee Dan Haueter, who confirmed that Sergeant Hannah sent him a message about a synchronization issue with squad 1937 on 6/28/19, however there were no messages to IMAT sent by Sergeant Engler reporting a mic sync issue.

Preliminary Recommendation:

Based on the information provided above, my preliminary recommendation is as follows:

Sgt Joe Engler

Code of Conduct - Use of Force *Exonerated*

SOP – Use of Force Data Collection *Sustained*

SOP – In Car Video System *Sustained*

PO Andrew Slawek

Code of Conduct – Use of Force *Exonerated*

SOP – Use of Force Data Collection *Exonerated*



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Office of Professional Standards and Internal Affairs