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April 9, 2019

**REPORT ON OFFICER INVOLVED DEATH OF TED C. SCHMITZ**

I have now completed my review of the investigation into this incident occurring on February 10, 2019, at approximately 12:39 am in the City of Waukesha during which time Officer Bradley Condon used deadly force against Ted Schmitz. I conclude that Officer Condon was privileged to use deadly force based on his reasonable belief that such force was necessary to prevent imminent death or great bodily harm to himself.

The events began when Officer Condon attempted to locate Schmitz. Schmitz was aware that the Waukesha Police Department wanted to talk to him about an ongoing burglary investigation. Police had been to his home a few times to try and find him. On February 3, 2019, Schmitz had telephoned the Waukesha Police Department and left a voicemail for Officer Stern. In this call, Mr. Schmitz sounded angry and agitated.

On February 10, 2019, Officer Stern spoke with Schmitz by telephone. Officer Stern asked Schmitz to turn himself in. Officer Stern observed that Schmitz's speech was slurred and he was mumbling incoherently at times. Schmitz's tone of voice changed throughout the conversation; he would go from calm to loud and upset and was growing increasingly agitated. Schmitz was unfocused and becoming incoherent. Officer Stern heard Schmitz say something about slitting his wrists, but Officer Stern was not sure if he was talking about a future act or a past act. He asked Schmitz further and Schmitz replied something to the effect of, "I'm going to slit my wrists. I'm not afraid to do it! I'll do it right here in the street. I'm not afraid!" Schmitz did agree to meet with police and advised he was in Waukesha on School Drive.

Officer Condon responded to the area. As Officer Condon was driving west on School Dr., he observed a person with a large build on the south side of the street near a parked van. Officer Condon stopped his squad car and got out. He could see this person was Ted Schmitz. Schmitz was approximately 30-40 feet away on the sidewalk still walking towards Officer Condon. Officer Condon said he could see an object in Schmitz's hand was a knife with about a four inch blade. Officer Condon pointed his service weapon at Schmitz and ordered him to drop the knife. Schmitz continued to walk toward him and said something to the effect of "you will have to shoot me." Officer Condon continued with orders like; "Stop", "Don't move", and "Drop the knife." Schmitz ignored these commands and continued to walk towards Officer Condon with the knife still in his hand. Schmitz stated something to the effect of "Shoot Me!" Schmitz was yelling

and appeared upset. Schmitz then turned off of the sidewalk and walked on an angle towards the front of Officer Condon's squad.

Schmitz was approximately 10 feet away from the front of the squad car when he moved the knife to his right hand, held the blade to his left wrist and stated, "You will have to shoot me". Officer Condon told him to put the knife down. He did not. Schmitz then moved the blade of the knife to the right side of his neck and said something before throwing the knife to the ground with force.

Schmitz walked forward and stood at the front of the squad and reached his right hand behind his back towards his waist to the point where Officer Condon could not see what he was doing or reaching for. Officer Condon yelled, "Let me see your hands" and "Stop!" Schmitz again said something to the effect of, "You will have to shoot me" and something about having more weapons. Schmitz then quickly removed rolled up newspapers from his back waistband and threw the newspapers towards Officer Condon with two hands. He appeared angry at this time.

Schmitz was still standing near the hood of the squad car when he reached with his right hand towards his waistband again and Officer Condon lost sight of his hands. Schmitz quickly pulled out a four inch white knife that upon later inspection appeared to be made of a hard polymer. Schmitz threw the white knife in the general direction of Officer Condon. Officer Condon yelled, "Stop, don't move!" Schmitz disobeyed this command and aggressively walked towards Officer Condon who was still standing at the driver's side door of the squad car. Officer Condon had to create some distance and backpedaled towards the rear of his squad car.

Schmitz was yelling at Officer Condon something to the effect, "You will have to shoot me!" "Shoot me!" Officer Condon told Schmitz not to move or he would shoot him. Schmitz yelled, "Shoot" as he was coming at Officer Condon. Schmitz was 4-6 feet away at this point. The last command Officer Condon gave to Schmitz was something to the effect, "If you don't stop, I will shoot!" Schmitz kept walking toward Officer Condon.

Officer Bradley Condon stated he feared that if Ted Schmitz got a hold of him, he would be seriously harmed or killed and felt his only option at this point was to shoot and use deadly force. Officer Condon fired his service weapon 4 times, striking Schmitz in the chest. Emergency medical assistance was provided to Schmitz as soon as it was safe to do so. Schmitz was transported to the hospital but pronounced dead on arrival. Waukesha County Medical Examiner Dr. Lynda Biedrzycki determined cause of death to be multiple gunshot wounds. Toxicology testing determined that Schmitz had Delta-9 THC in his blood, the active ingredient in marijuana.

The majority of the events described above were recorded by Officer Condon's squad camera. All of the audio throughout the event is captured and clear to understand except when Schmitz was inarticulate. At all times, Officer Condon gave loud, clear commands to Schmitz. Schmitz did not obey any commands but kept reaching for objects and kept advancing toward Officer Condon. The video recording does not show the shooting itself but does depict all of the events up to point in time when Schmitz leaves the area of the front of the squad and advances toward Officer Condon. Officer Condon's statement was consistent with the recording.

Officer Condon provided a statement indicating he feared for his own personal safety during this encounter and fired at Schmitz to terminate the threat he posed to Officer Condon. It should be noted the entire incident was very brief in duration (less than a minute) and that Officer Condon was the only officer on scene at the time of the shooting.

Use of deadly force by a law enforcement officer is analyzed in the same manner as the use of deadly force by any person. Under Wisconsin law, a law enforcement officer has a legal privilege to use deadly force to protect themselves or others where the officer reasonably believes that there is an actual or imminent unlawful interference directed at themselves or another person and the officer actually and reasonably believes that such force is necessary to prevent imminent death or great bodily harm to themselves or the other person. Wis. Stat. § 939.48(4); Wisconsin Jury Instructions-Criminal 830. Under this privilege, the reasonableness of the officer's actions is to be judged from the standpoint of an ordinary, prudent, and reasonably intelligent person in the officer's position, having the knowledge and training that the officer possessed, and acting under the circumstances that existed at the time.

Under the circumstances stated above, I conclude that any reasonable person in the position of Officer Condon would have determined that there was an imminent danger of death or great bodily harm to himself and possibly others. This is based on Schmitz's repeated refusal to stop and obey the officer and the gestures made by Schmitz and his rapid approach toward Officer Condon. A reasonable person would have concluded, as Officer Condon did, that he was about to suffer death or great bodily harm. Use of deadly force was objectively warranted.

A handwritten signature in blue ink, appearing to read "S. Oppen", written over a horizontal line.

Susan L. Oppen  
District Attorney  
Waukesha County