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TO: Special Agent Shannon Jones  
Special Agent Ann Shaw  
Department of Justice Division of Criminal Investigation

FROM: Adam Gerol *AG*  
District Attorney

DATE: December 14, 2023

Wis. Stat § 175.47 Review of deaths involving officers, requires an outside agency to investigate and examine the circumstances of any law enforcement conduct that results in the death of another. Here, the Wisconsin Department of Justice, Division of Criminal Investigation conducted the investigation and tendered their file to the Ozaukee County District Attorney for review. I have examined those materials and conclude that there is no basis to consider or issue criminal charges against any of the law enforcement officers involved in this incident.

A law enforcement officer may use deadly force where he has probable cause to believe that an armed suspect poses a threat of serious physical harm, either to the officer or to others. Siler v. City of Kenosha, 957 F.3d 751 (7th Cir. 2020), citing Muhammed v. City of Chicago, 316 F.3d 680, 683 (7th Cir. 2002). This is an objective assessment, viewed from the perspective of a reasonable officer on the scene and in light of the totality of the circumstances. Graham v. Connor, 490 U.S. 386, 396, 109 S. Ct. 1865, 104 L.Ed.2d 443 (1989). When an officer believes that a suspect's actions place him, his fellow law enforcement officers, or those in the immediate vicinity, in imminent danger of death or serious bodily injury "the officer can reasonably exercise the use of deadly force." Muhammed, 316 F.3d at 683.

The circumstances that lead to the death Thomas Sewell began with an incident two days earlier. Deputy Jamison Tauer had been dispatched to 1034 Lakefield Road on October 30, 2023. This is a multi-unit apartment building in the Town of Grafton. The original report was that a man from Apartment 2 confronted the people from Apartment 6, threatened them and brandished a hand gun. When Deputy Tauer arrived he spoke with Nubian Katasha Williams, who stated that she lives at the apartment with her three children. She told the deputy that there was no one else in the apartment. and that she had an ongoing issue with the people in Apartment 6. Williams

denied that there were any threats made and denied that any man had gone to Apartment 6 with her.

Deputy Tauer went to Apartment 6 and spoke to JR and KS. JR stated that there was loud music coming from Apartment 2 which is directly below them. JR stated that he banged his foot on the ground several times to get the residents to turn down the music. A short while later there was a knock on the door and a man they recognized as an occupant of Apartment 2 attempted to enter their apartment. KS attempted to close the door, but the man pushed or kicked the door with his foot and entered the apartment without their consent. He was also armed with a firearm. JR raised his hands and told the man that "It wasn't that serious." The man then said "I will smoke you in your own crib." JR stated that the man would continuously put the gun in his sweatshirt pocket and take it back out again. KS stated that the man pointed the gun directly at her during the confrontation. JR did not believe the gun was ever pointed directly at him, but it was pointed in his vicinity. Neither victim knew the man's name but reported that they had seen him in Apartment 2 frequently. They described the man as a black male with dreads, and wearing a gray hooded sweatshirt.

Deputy Tauer spoke to the occupant of Apartment 7 who provided Ring video footage of Williams and a male subject walking away from Apartment 6 following the confrontation. The male subject matched the description provided by JR and KS, but his face was not observable due to his hood being up. The male had his hand in the pocket of his gray hoodie sweatshirt. The male yelled "fuck these people, I'm a G. Anyone can get it out here." Deputy Tauer knew the term 'G' to refer to 'Gangster.'

Deputy Tauer learned that Nubian Williams had an injunction order against Christopher Thomas Sewell (DOB: 08/26/1994). Sewell matched the description of the man in the video. Sewell also had multiple arrest warrants out of Milwaukee and Kenosha Counties. Deputy Tauer again went to Apartment 2 and spoke to Williams. Even after being confronted with the video evidence, Williams again denied going with anyone else to Apartment 6. Williams refused access to her apartment and repeatedly stated that the male subject was not in her apartment.

On October 30, 2023, at 7:40 PM, Sgt. Justin DeSmidt conducted a separate photo array identification procedure with both JR and KS. Both victims identified Christopher Sewell as the male subject who entered their apartment and brandished a firearm. JR stated that he was 68% certain and KS stated she was 70% certain.

Ozaukee County Sheriff's deputies learned that Christopher Sewell had previously been released on bail in Milwaukee County case number 2022CF3846, Kenosha County case number 2022CF0886, and Kenosha County case number 2022CF0339 after having been charged with a felony in each case and was subject to bail conditions in each case that included he commit no crimes and not possess firearms. Prior this incident, Christopher Sewell had also been convicted of a felony offense in the State of Wisconsin and was prohibited from possessing a firearm.

On November 2, 2023, the Ozaukee County Sheriff's Office (OCSO) continued surveillance at 1034 Lakefield Road, in an attempt to locate Sewell and take him into custody for this incident as well as for outstanding warrants for his arrest. At approximately 11:00AM, OCSO law

enforcement officers observed Sewell leaving in a red Oldsmobile Bravada. Officers followed the vehicle as it drove eastbound on Lakefield Road, then southbound on Lakeshore Road. As Sewell drove southbound on Lakeshore Road (Hwy C), OCSO Deputy Michael Zilke, then operating a fully marked squad car, attempted a traffic stop by activating his emergency equipment. Sewell failed to yield for him, instead fleeing southbound on Lakeshore Road, then westbound on Pioneer Road. Sewell then turned northbound onto Preserve Court which is a dead end. Sewell turned around, now driving southbound on Preserve Court towards Deputy Zilke's squad. Deputy Michael Ganey, who was following the pursuit of Sewell, deployed a tire deflation device on Preserve Court just north of Pioneer Road. As Sewell continued fleeing southbound, he drove over the tire deflation device but continued to flee on his now visibly deflated tires. This continued eastbound on Pioneer Road, then northbound on Lake Shore Road. As Sewell fled westbound on Lakefield Road, he lost control of his vehicle, and went off the road to the north side of Lakefield Road, just east of a gravel driveway leading to 946 Lakefield Road.

Sewell then exited the driver's seat and fled on foot westbound to the gravel driveway of 946 Lakefield Road. Deputy Zilke pursued Sewell on foot as the chase lead into a wooded area and farm field. Sewell ran westbound into the wooded area then stopped and turned towards Deputy Zilke. As Sewell was turning, he was holding a handgun (later determined to be a Tara Aerospace 9mm pistol, loaded with thirteen 9mm unfired 'Blazer' cartridges in the magazine) in his right hand. Deputy Zilke fired his service weapon striking Sewell, who then fell. Another responding deputy attempted life-saving measures and CPR on Sewell until paramedics with the Grafton Fire Department arrived. However Sewell died as a result of his wounds. A handgun had been found immediately underneath Sewell.

The incident scene was secured, and agents from the Department of Justice, Division of Criminal Investigation (DCI) were asked to investigate the incident. The District Attorney was alerted, who also responded to the location. Troopers from the Wisconsin State Patrol, an ATF Agent, Mequon Police Detectives, Crime Scene Response Specialists from the State Crime laboratory and an ATF Agent also assisted. Evidence was recovered from the scene including the vehicles, squad and body cameras, cell phones belonging to Sewell and the duty weapons and uniforms of the deputies that were involved in the pursuit.

In the immediate area of Sewell's body the investigators found a cell phone, and a handgun a short distance away. Responding deputies reported that they had distanced the handgun from the body during the initial response. That handgun was bloody and contained 13 unfired Blazer 9mm cartridges. These were of the same brand as those found in Sewell's bedroom during a later search. Sewell's body was removed by the Medical Examiner. Property was recovered from the body including a debit card belonging to Nubian Williams, a bag containing suspected cocaine base retrieved from his left sock, and more corner cuts of suspected cocaine base recovered from his right sock.

An autopsy was later performed by Dr. Brian Peterson that revealed 7 bullet wounds. The point of impact was the front of Sewell's body and his forehead. The trajectory of all the bullets was generally front to back, with some in a slight downward path. Several of these wounds could constitute the proximate cause of Sewell's death. All of the bullets recovered from the body, and

the spent brass recovered from the scene were consistent with rounds fired from Deputy Zilke's service weapon. In total, Deputy Zilke appears to have fired 9 shots.

#### Interview of Sgt. Becky Ronan.

DCI Agents interviewed the responding deputies. Sgt. Ronan stated that she had been wearing a body camera but that it had not adequately charged and was not functioning after she exited her squad during this incident. Sgt. Ronan stated that she deployed the stop-sticks at a different location in an attempt to stop Sewell's vehicle. She stated that when she learned that the pursuit had lead in a different direction, and that her K-9 may be needed in the pursuit, she threw the stop sticks in a ditch and responded. As she was nearing the location she heard the radio call that shots had been fired, exited her squad to proceed to that location. She observed Sewell's car with its shredded tires, saw Deputy Ganey's squad parked near the edge of the driveway leading to the grass in the direction of the foot pursuit, and came upon Deputy Zilke handcuffing the suspect. There she observed a great amount of blood, and opened his shirt to begin rescue efforts. After Sewell stopped breathing she began CPR, at which point she could see more blood coming from a specific bullet wound. When the rescue squad arrived she grabbed the suspects gun so it would not be disturbed by them.

#### Interview of Investigator Joseph Milczarek

Investigator Milczarek was interviewed and stated that he was performing surveillance on the apartment when he saw a man walk toward an older SUV that he believed to be the suspect from the earlier incident who had confronted a neighbor with a gun. He radio this information and was told that Deputy Zilke would be attempting to stop the vehicle. He continued so as to assist Deputy Zilke who might otherwise be alone. He heard when Deputy Zilke ran the license plate of the vehicle, and could see what was occurring when Deputy Zilke called out the traffic stop. Investigator Milczarek stated that it looked like the red SUV started to pull over to the side of the road, but then it took off southbound on CTH C.

Investigator Milczarek stated he drove at normal speeds and followed the pursuit. Investigator Milczarek stated at the curve of the road, which turns into Pioneer Road, he saw Deputy Michael Ganey behind him with his lights and siren activated. Investigator Milczarek stated he heard on the radio that Deputy Zilke was following the vehicle northbound on Preserve Ct. Investigator Milczarek stated Preserve Ct. is a dead end and he stopped where Pioneer Rd. and Preserve Ct. intersect. He saw that Deputy Ganey was on Preserve Ct., north of Pioneer Rd. and had deployed his stop sticks. He observed Deputy Ganey on the right side of the road and deployed the stop sticks across Preserve Ct. Investigator Milczarek observed the suspect vehicle, the red SUV southbound on Preserve Ct. and it appeared the operator tried to avoid the stop sticks and the vehicle almost struck Deputy Ganey and his squad car. The SUV then drove over the stop sticks. Deputy Zilke continued to pursue the vehicle eastbound onto Pioneer Rd and northbound onto CTH C, the same way they came from. Deputy Zilke called out over the radio that the vehicle was smoking while northbound on CTH C. Deputy Zilke called out over the radio that he believed the subject was returning to the apartment on Lakefield Road.

Investigator Milczarek stated that he was about a tenth of a mile away when he saw Deputy Zilke stop his squad near the red SUV, and then saw the same male black subject he had observed originally enter the vehicle in the parking lot run westbound on Lakefield Rd. Deputy Zilke was pursuing the subject on foot. Investigator Milczarek observed the subject enter a gravel driveway on the north side of Lakefield Rd. and then run into a wooded area with Deputy Zilke following. Investigator Milczarek parked his squad and within seconds heard Deputy Zilke yelling commands at the subject, and then heard multiple gunshots. Investigator Milczarek was not able to see them in the wooded area. He immediately got on the radio and aired that shots were fired. He stated while he was doing this Deputy Ganey arrived and parked his squad car behind him and immediately ran past him into the wooded area.

Investigator Milczarek stated he went up to where Deputy Zilke and Deputy Ganey were and observed a male black subject laying on the ground. Deputy Zilke and Deputy Ganey had their guns out directed at the subject.

#### Interview of Deputy Michael Ganey

Deputy Michael Ganey provided a statement. On November 2, 2023, he had been wearing his body camera, and had been operating a squad car that was also equipped with a camera. Deputy Ganey had been alerted that Sewell was living in the apartment at the Lakefield Rd. location with his girlfriend, who was possibly pregnant, and children. He was advised that Sewell had felony warrants, was in violation of a restraining order by living with this girlfriend, was being investigated for a felon in possession of a firearm case and had recently threatened a neighbor with a firearm a couple of days earlier. Because of Sewell's history of violence and firearms, investigators wanted to separate Sewell from his girlfriend and children to take him into custody. A plan was discussed to have Deputy Zilke patrol near the area of the apartment building and an investigator along with an undercover officer in the parking lot of the building watching for Sewell to leave. Two patrol cars would then conduct a traffic stop down the road in the event Sewell was observed leaving the building. If Sewell were to attempt to flee, deputies were to utilize the tire deflation devices (stop sticks).

Deputy Ganey stated that at one point he was about a mile behind Deputy Zilke as the pursuit was occurring. Given the location, and the radio updates he was receiving, he believed he was in a good location to deploy the stop sticks. He retrieved and deployed them, now observing that Sewell had passed by Deputy Zilke on Preserve Ct. heading towards Pioneer Road. Deputy Ganey observed Sewell swerve his vehicle towards Deputy Ganey, as if he was attempting to avoid the tire deflation device. Sewell drove his vehicle over the device and continued to drive away. Deputy Ganey pulled the device in, and attempted to catch up to Deputy Zilke. Through radio traffic he learned that Sewell may be attempting to get back to the apartment, but then heard that the vehicle had crashed.

As Deputy Ganey turned westbound on Lakefield Road, he could see Deputy Zilke on foot chasing the suspect, who was also on foot. As Deputy Ganey pulled up to that area he saw Deputy Zilke on a driveway on the north side of Lakefield Rd. Deputy Ganey drove past the suspect's vehicle and onto the driveway where he had last observed Deputy Zilke who had disappeared from view as he was chasing the suspect. Deputy Ganey exited his squad and ran

after Deputy Zilke, who was standing in a clearing just outside of a wooded area. Deputy Ganey could see that Deputy Zilke had his firearm drawn and was yelling commands. Deputy Ganey also had his gun drawn and ran towards Deputy Zilke. While approaching he heard multiple gunshots, but could not recall how many. Deputy Ganey ran to Deputy Zilke's right side and observed the Sewell lying on his left side. Deputy Ganey and Deputy Zilke maintained lethal cover and approached the suspect. Deputy Ganey could see the suspect's hands crossed in front of him, could see a black cell phone in one of the suspect's hands but could not recall which. As Deputy Ganey got closer, he observed a black handgun lying under the hands and arm of the suspect. Once Deputy Ganey could see the firearm and knew the suspect's hands were not on it, he and Deputy Zilke moved up to the suspect. Deputy Ganey maintained lethal cover while Deputy Zilke handcuffed the suspect. Sgt. Ronan then arrived and began life saving measures.

#### Interview of Deputy Michael Zilke

Deputy Zilke was interviewed. DCI Agents collected historical and biographical information and learned that Deputy Zilke had been a deputy sheriff since 2018. He had specialized training as a Field Training Officer, he was a member of the Special Response Team, and had received other SWAT Training. He had completed all necessary Law Enforcement Standards training hours, including department in-services and firearms qualifications courses.

Deputy Zilke stated his shift is from 12:00AM – 8:00AM and was uneventful. He was given permission to hold over onto dayshift in order to attempt to take Christopher Sewell into custody. He had been briefed earlier in the week by Lieutenant Brad Arndt regarding an incident that occurred at an apartment on Lakefield Road, and was aware of the allegation that Sewell had confronted two neighbors, made threats to them and pointed a firearm at them. Lt. Arndt discussed with him how the department would like to handle the situation and they did not want a SWAT call or direct approach to the residence. This was due to the likely presence of children in the apartment. This was considering both the potential danger to the children and the potential for a hostage situation. Deputy Zilke knew that Sewell had warrants for Battery and Felony in Possession of a Firearm through Milwaukee County and also open cases in Kenosha County. Deputy Zilke was aware of what Christopher Sewell looked like.

Around 11:00AM, on November 2, 2023 he heard Investigator Milczarek ask again for the physical description of Sewell. He then learned that Investigator Milczarek believed that Sewell had entered a different red SUV in the apartment parking lot and not the Jeep that they were alerted to earlier. Investigator Milczarek described the vehicle as an Oldsmobile Bravada, red in color. Investigator Milczarek stated the vehicle left the parking lot and went eastbound on Lakefield Rd. As the vehicle came closer to Deputy Zilke, he was able to see the driver and the subject matched the description of Sewell. He also queried the license plate, and it came back to Nubian Williams, who he knew was the listed owner of the vehicle they had earlier been watching for and who also had a temporary restraining order against Sewell.

Deputy Zilke decided he would initiate a traffic stop and followed the vehicle after it turned southbound on to CTH C. Deputy Zilke radioed to Deputy Ganey to see how far he would be for back-up. He determined Deputy Ganey was approximately 1 mile away. Deputy Zilke activated his emergency lights to initiate the traffic stop on the red SUV. He stated the vehicle took a long

time to pull over and the vehicle stopped partially in traffic. Deputy Zilke waited a few moments for Deputy Ganey to get to his location. Deputy Zilke planned to conduct a non-approach or high-risk stop based on his knowledge that this subject had been armed with a gun during the neighbor dispute, and also had a history of weapons violations. However, the driver suddenly accelerated southbound and the pursuit continued with the suspect vehicle's engine revving, at points almost losing control and eventually heading into a road that was a horseshoe without a direct exit.

As the vehicle came back south towards his squad, Deputy Zilke stated he positively identified the driver as Sewell and radioed that information to Deputy Ganey. Deputy Ganey stated he was setting up spike strips on Preserve Court, just north of Pioneer Drive. Shortly after Sewell passed Deputy Zilke, Deputy Ganey radioed the spike strips were good. Deputy Zilke continued to pursue the vehicle as it turned left, eastbound onto Pioneer Road. Deputy Zilke could see the spike strips were effective, as the vehicle was leaning towards the passenger side.

The vehicle continued northbound onto Lake Shore Road from Pioneer Rd. and nearly struck a southbound vehicle as the driver negotiated the curve in the road. Deputy Zilke could see the passenger side tires were flat and they were smoking. He stated the vehicle continued northbound at about 55-60 MPH. Deputy Zilke described the vehicle as fish tailing back and forth while on Lakefield Road, and at a point almost going into a ditch. To avoid the ditch the driver overcorrected and the SUV did a 180, came to a stop and was now facing Deputy Zilke.

Deputy Zilke stated he radioed that the vehicle had crashed. He put his squad in park and exited his squad, he stated he was concerned that Sewell might shoot through the windshield of his vehicle and needed to find cover. Deputy Zilke stated that he pulled his handgun out as he exited his squad. He then saw the driver's side door of the red SUV swing open, he then lost visual of the driver for a moment, but then saw Sewell run westbound on Lakefield Road. Deputy Zilke believed that Sewell was armed due to his extensive history of weapons related offenses. He stated he called out on the radio that he was in a foot pursuit and gave the direction of travel. Deputy Zilke stated his radio had fallen off his belt and was dragging behind him which slowed him a bit. Deputy Zilke stated while he was in foot pursuit he was yelling loud verbal commands at Sewell, telling him to stop and to show him his hands. He stated he did not remember his exact commands. Deputy Zilke stated he got no response from Sewell and Sewell continued on foot westbound.

As Sewell was running, Deputy Zilke was maintaining his distance and jogging behind him. He stated Sewell then ran into a driveway and Deputy Zilke followed and continued to give verbal commands. Deputy Zilke stated he saw an address marker that displayed "946" and he stated he tried to broadcast that on the radio. He stated after Sewell entered the driveway, Sewell immediately went left (west) along the tree line.

Deputy Zilke stated that while he was running behind Sewell, he could see a cellphone in Sewell's hand. He said that the tree line was getting thicker and as it got thicker, Sewell would stop and move the brush and then continued again and stopped. Deputy Zilke stated

Sewell continued to ignore his commands. Deputy Zilke stated Sewell stopped and was facing away from him and had his hands at his waistband in the front of his body. He observed Sewell's movements and continued to tell him to show him his hands.

Deputy Zilke stated after Sewell concealed his hands, Sewell then turned his body to the right with both of his hands close to each other, near his upper chest and turned to face Deputy Zilke. He stated as Sewell turned his body, he saw the barrel of a gun in his hands. Deputy Zilke stated he knew 100% it was a gun and not a cell phone. Deputy Zilke stated he did not see what hand the gun was in but saw the barrel. Deputy Zilke stated at that moment he knew he needed to use deadly force to stop the threat; he stated it was either Sewell or himself. Deputy Zilke stated he discharged his firearm several times. He couldn't remember how many times he fired. He stated Sewell's body fell to Sewell's left side, towards the north and crumpled to the ground.

Deputy Zilke stated that it seemed as though Deputy Ganey was immediately next to him and was yelling commands. There was no movement from Sewell. He recalled Deputy Ganey saying that the gun was under Sewell's body. Sergeant Becky Ronan immediately arrived and began life saving measures. Deputy Zilke consented to a voluntary blood draw consistent with standard protocols.

All body camera, squad camera and radio traffic was reviewed. No information was gained from that review that was inconsistent with the statements by the officers and witnesses. Deputy Zilke's body camera was functioning properly and captured his direct involvement. This included all aspects of the pursuit, the foot chase and the use of force. The ultimate moment occurred at 11:15:30. Deputy Zilke is recorded yelling "Stop," however Sewell continues into a wooded area. Deputy Zilke had firearm pointed at Sewell and again yelled "Stop now, you're going to get shot, show me your hands" and "Get down now." The video shows the Sewell turn towards Deputy Zilke and there is a black object in subject's hands, consistent with a firearm. At this point 8 shots are fired in rapid succession with Sewell falling to the ground.

### Conclusion

After reviewing the complete investigation file, it is my opinion that Deputy Zilke was justified to use deadly force in this case. There simply was not a reasonable alternative available to him. Deputy Zilke was privileged to use deadly force to protect himself and others.

There was also no other effective option at the moment that Deputy Zilke fired. He was in an isolated area, pursuing someone who had existing warrants for felonies. He was known to have a firearm, and to have threatened others with it. The area presented no effective cover for the officer, nothing that could possibly shelter him if the suspect were to present a weapon. I was at that incident scene and observed it to be dense with thorn and scrubby vegetation. It was so dense that I couldn't observe the body until I was approximately 10 feet from it.

Deputy Zilke also believed that Sewell was on his way to his apartment, a location where others had been recently threatened. As such, in this exercise of his duties as a law enforcement officer it would have been unreasonable to simply discontinue his pursuit of Sewell. At this point this incident was much more than the traffic felonies that Sewell had committed while fleeing. Rather, he was known to law enforcement to be armed and potentially dangerous to others.



That said, Deputy Zilke did not use any force at all, let alone deadly force, until it became clear that Sewell was presenting a weapon. A law enforcement officer is not required to wait until they are fired upon before resorting to deadly force. Here, the public should also be confident because of the body camera footage which supports Deputy Zilke's account. We have Sewell stop, turn toward Deputy Zilke and begin presenting an object that we now know to be a firearm. It is only after that conduct, and after having been commanded numerous times to stop and comply, that Deputy Zilke fired.

I also note that Deputy Zilke had no possible option to retreat even if he had wanted to. See Wis. JI Criminal 810. Wisconsin law imposes no duty to retreat.

I have considered the fact that nine shots were fired. I don't find that to be meaningful to my evaluation. There are very few situations in law enforcement where the use of deadly force is conducted in an ordered manner. Perhaps sharpshooters have the opportunity to choose the manner and moment. A situation like this is forced upon a law enforcement officer where their primary – and perhaps only – thought is to take immediate action to save their own life or the life of another. The officers are trained to shoot until the threat is ended. I also know that the effectiveness and accuracy of a handgun is affected by stress. That is why the essential question from my perspective is whether the use of deadly force is justified from the inception. I've also reviewed the body camera footage myself, and agree that all of these shots were taken in very rapid succession. Perhaps within a single second. The autopsy supports the conclusion that Sewell and Zilke were facing each other as the bullets impacted. I would also note that Deputy Zilke did not fire all the rounds in his weapon. However, even if he had, if they had also been fired in such rapid succession I would not have found that fact important either.

Absent any role as a police officer, an ordinary citizen may use deadly force in self-defense when they are reasonably confronted by an assault by another that would put a reasonable person in fear of their own imminent death or great bodily harm. Wis Stat § 939.48.

JI-805. PRIVILEGE: SELF-DEFENSE: FORCE INTENDED OR LIKELY TO CAUSE DEATH OR GREAT BODILY HARM - SECTION 939.48

Self-Defense

... The law of self-defense allows the defendant to threaten or intentionally use force against another only if:

- \* the defendant believed that there was an actual or imminent unlawful interference with the defendant's person; and
- \* the defendant believed that the amount of force the defendant used or threatened to use was necessary to prevent or terminate the interference; and
- \* the defendant's beliefs were reasonable.

The defendant may intentionally use force which is intended or likely to cause death or great bodily harm only if the defendant reasonably believed that the force

used was necessary to prevent imminent death or great bodily harm to (himself) (herself).

#### Determining Whether Beliefs Were Reasonable

A belief may be reasonable even though mistaken. In determining whether the defendant's beliefs were reasonable, the standard is what a person of ordinary intelligence and prudence would have believed in the defendant's position under the circumstances that existed at the time of the alleged offense.<sup>3</sup> The reasonableness of the defendant's beliefs must be determined from the standpoint of the defendant at the time of the defendant's acts and not from the viewpoint of the jury now.

Putting aside Deputy Zilke's role as a police officer, any reasonable person in his shoes would have believed that the use of deadly force was necessary in that moment to save their own life. That belief is compounded by the fact that the officers were also familiar with the recent incident where Sewell had brandished a gun and Sewell's criminal history.

There is also a common law privilege for law enforcement officers to use deadly force when making an arrest. JI Criminal 884 states:

#### JI-885. PRIVILEGE TO USE FORCE: REASONABLE ACCOMPLISHMENT OF A LAWFUL ARREST BY A PEACE OFFICER: DEADLY FORCE

##### Use of Force by Peace Officer

The use of force by a peace officer is an issue in this case. The law allows a peace officer to use force in making a lawful arrest only if:

- \* the defendant believed that it was necessary to use force to make an arrest; and,
- \* the defendant believed that the amount of force used was necessary to secure and detain the person arrested, to overcome any resistance, to prevent escape, or to protect himself from bodily harm; and,
- \* the defendant's beliefs were reasonable.

The defendant may intentionally use force which is intended or likely to cause death or great bodily harm in making a lawful arrest only if (he) (she) believed that such force was necessary to prevent the escape of (name of victim) and believed that (name of victim) posed a significant threat of death or serious physical injury to the defendant or others.

#### Determining Whether Beliefs Were Reasonable

A belief may be reasonable even though mistaken. In determining whether the defendant's beliefs were reasonable, the standard is what an ordinary, prudent, and reasonably intelligent officer would have believed in the defendant's position,

having the knowledge and training that the defendant possessed, and acting under the circumstances that existed at the time of the alleged offense.

Here, law enforcement was aware of warrants for Sewell's arrest. The use of deadly force here occurred during an effort to take him into custody. I recognize this as another justification for the use of deadly force in this case, but I am not applying this reasoning here.

After reviewing the investigation into this episode I conclude that there is no basis to prosecute Deputy Zilke. While I regret that any incident that results in the loss of life, Mr. Sewell's death was occasioned by his own behavior. It didn't have to end this way. Simply put, Christopher Sewell forced Deputy Zilke into a situation where there was nothing else he could do but protect his own life and fulfill his oath to protect the public.