

**OFFICER-INVOLVED
SHOOTING OF
JACOB BUBB**

Summary and Conclusions

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INTRODUCTION

On Sunday, May 17, 2020, at approximately 7:11 p.m., Oconto County Sheriff's Deputies Kevin Christensen and Sgt. Benjamin Schindel shot and killed Jacob Bubb at a residence located in the Town of Bagley, Oconto County, Wisconsin. Agents with the Wisconsin Department of Justice, Division of Criminal Investigation (DCI), investigated the incident and compiled a case file detailing their investigation. DCI subsequently provided the report to our office to determine if any criminal charges would be filed against Deputies Sgt. Schindel and Christensen for this incident. Our office received the complete case file on or about Tuesday, June 16, 2020. Our office spent considerable time carefully reviewing the detailed reports from all the investigators who assisted in this investigation. The State also waited to file this report to receive the autopsy for Bubb, which we received on or about August 19, 2020.

This report details what occurred on May 17, 2020, and the conclusions reached by this office in regard to the death of Jacob Bubb.

The purpose of our offices review was to determine whether Deputies Christensen and Schindel would be charged with homicide in connection with the shooting death of Bubb. There is not any dispute that either Deputy Sgt. Schindel, Deputy Christensen, or both, caused the death of Bubb on May 17, 2020. To make a decision as to whether to charge either Deputy with homicide, we must also consider statutory defenses to criminal liability. Specifically, Wisconsin law provides defenses to criminal liability if the actor validly acts in defense of himself or in defense of others, see Wis. Stat. §939.48(1), (4).

After careful consideration of all the evidence and circumstances surrounding the incident, this office concludes that Deputy Sgt. Schindel acted while lawfully exercising a privilege to use deadly force. We likewise conclude that Deputy Christensen acted while lawfully exercising the same privilege. We conclude that Bubb was armed and posed an imminent threat of death or great bodily harm to Deputies Sgt. Schindel, Christensen, Sokolski, Investigator School and other officers and civilians on scene. As a result, the State of Wisconsin will not prosecute either Deputy Sgt. Schindel or Christensen

In order to provide a complete understanding of our decision, this report will summarize and analyze the facts as discovered during the investigation conducted by DCI. This report also relates those facts to the relevant legal standard that our office applied in this case.

MATERIALS REVIEWED

As is required in officer-involved shooting, investigators from an outside agency were assigned to conduct the investigation in this case. Agents from the Wisconsin Department of Justice, Division of Criminal Investigation (DCI), investigated the incident and provided our office with a voluminous amount of material to review. DCI Special Agent ("S/A") Tami Sleeman was

assigned as the primary lead investigator, with S/A Carl Waterstreet assisting as the second lead investigator. In addition to the reports of S/A Sleeman and S/A Waterstreet, our office also reviewed reports from S/A Jeremiah Winscher, S/A Ryan Dobbs, S/A Schallhorn, S/A Messerschmidt, S/A Jed Roffers, S/A Justen Ragen, and S/A Lourdes Fernandez. These reports detailed the overall investigation as well as specific interviews with officers from the Oconto County Sheriff's Department, and civilian witnesses, one of whom was present on May 17, 2020 at the residence in the Town of Bagley, Oconto County.

In addition to these reports, this office also reviewed various images of the interior of the residence, a map of the interior of the basement area where the shooting occurred.

No video files were reviewed. No Deputy utilized a body camera, nor were any squad cars equipped with cameras. The only audio files reviewed pertaining to the incident were radio calls before and after the incident. There is no audio recording of the incident.

Also reviewed was an autopsy report completed by Dr. Vincent Tranchida, which our office received on or about August 19, 2020. Dr. Tranchida ruled the cause of death a homicide, meaning that another human being caused the death of Jacob Bubb. The conclusion the death was a homicide is not a legal ruling and has no bearing on our Office's decision not to prosecute.

FACTUAL SUMMARY

Oconto County Sheriff's Deputies attempted to arrest Jacob W. Bubb for a warrant issued by the Oconto County Circuit Court. Bubb failed to appear for a court hearing on February 13, 2020. The warrant was entered on February 19, 2020.

Bubb was charged with among other things, Substantial Battery while armed (brass knuckles) and Carrying a Concealed weapon (Pistol) and Going Armed While Intoxicated.

Bubb had made statements in March of 2020 that he would never go back to jail.

On May 15, 2020 Bubb was a passenger in a vehicle that was pulled over for a traffic offense by Oconto County Sheriff's Deputies. Deputies attempted to take Bubb into custody for the warrants. Bubb fled the scene on foot and a search ensued. The search was called off due to other, more urgent, calls coming in and Bubb was not taken into custody.

On May 17, 2020 Investigator Nicholas School of the Oconto County Sheriff's Department had information that Bubb may be staying at a residence in the Town of Bagley, Oconto County. Deputies Sgt. Ben Schindel, Kevin Christensen, Mitch Sokolski, Andrew Lefevre, Jacob Kasten, along with Investigator School planned to take Bubb into custody on the outstanding warrants at that address. It was decided that Deputies Sgt. Schindel, Christensen, Sokolski as well as Investigator School would enter the home to search for Bubb. Deputies Lefevre and Kasten would secure the perimeter of the building.

Deputy Lefevre positioned himself on the Northwest Side of the residence where he could see the entry door and the entire west side of the house. He could also see a small basement window from his position, but could not see into it.

Deputy Kasten positioned himself on the Southwest side of the home initially taking cover behind a tractor. After hearing someone yell "gun" Kasten repositioned himself such that he was looking down into a small basement window on the Southwest side of the residence.

Contact was made with the homeowner who gave Deputies consent to enter his home and search for Bubb. The homeowner believed he was alone in the home. He told the Deputies if Bubb was in the house, he would be in the basement in a room off to the right of the stairwell covered by a sheet or blanket.

Prior to entering the residence the Deputies and Inv. School made no attempt to conceal their presence while at the home. All law enforcement officers present except Inv. School were in marked squad cars with Deputy Lefevre's squad having been parked on the highway in front of the home with its emergency lights activated.

The entry team entered the home through the North entrance. The entrance to the basement was directly in front of them as they entered the residence. The Deputies formed a "stack" which is a tactical formation, upon entering into the stairwell leading to the basement. Sgt. Schindel led the entry team into the basement with Deputy Christensen behind him, Deputy Sokolski followed Christensen. Investigator School stayed at the top of the stairs with the homeowner. At all times the entry team announced their presence by shouting Sheriff's Department come out. No one responded.

At the foot of the stairs, there was an area to the right with a blanket closing off a portion of the basement. As he entered, Sgt. Schindel noticed another room straight ahead. Sgt. Schindel then moved to secure that room, as he moved deeper into the basement he looked to his right and through a gap in the blanket, he saw Jacob Bubb seated on a couch with a handgun to his head. Christensen and Sokolski were at the foot of the stairs. School was still at the top of the stairwell when Sgt. Schindel yelled gun.



Figure 1. DCI Case no. 20-3765/Scene Photos/#105/Camera Angle South Landing Area Base of Stairway

Figure 1. Shows the area where Sgt. Schindel, Deputies Christensen and Sokolski were located. As Schindel descended the steps he continued South, into the basement to clear the room where the soccer ball is located. Christensen and Sokolski stayed near the base of the stairway with Christensen taking cover near the furnace on the right. Jacob Bubb was located in the area to the right. The blanket completely covered the area to the right when law enforcement personnel first entered the basement. Investigator School remained at the top of the stairs.

After the alert by Sgt. Schindel entry team repeatedly commanded Bubb to drop the weapon. Bubb repeatedly told Deputies “I’ll do it, I’ll do it” with the gun still pointed at his head. The homeowner, who remained upstairs, characterized the tone the Deputies used as “pleading” with Bubb to drop the gun.

Deputy Lefevre reported hearing commands to drop the gun from his location. Deputy Kasten heard what he believed were commands from the entry team, but couldn’t make out the actual words.

The homeowner indicated he heard the entry team continue to yell “drop the gun” for about 20 seconds. There was then a short pause and he heard what he believes was a shot gun “racking” a shell into the chamber. He then heard the same sound again. Shortly after hearing the sound the

second time, the homeowner heard multiple gunshots. It is believed the sounds the homeowner heard were Sgt. Schindel and Deputy Sokolski discharging their Tasers.

Sgt. Schindel reported after Bubb failed to comply with commands to drop the weapon, he yelled Taser, Taser! Schindel discharged his Taser from his left hand. He had his duty weapon in his right hand. Sokolski holstered his firearm, drew his Taser and deployed it. Neither Schindel nor Sokolski noticed any effect the Taser shots may have had on Jacob Bubb.

Sgt. Schindel indicated that Bubb stood up and moved the gun from his temple and pointed it in the direction of the Deputies present. Schindel indicated he was in extreme fear for himself or his fellow officers being shot and he discharged his firearm at Bubb.

Deputy Christensen attempted to deploy his Taser as well when he noticed a change in Bubb's demeanor after the Tasers were deployed. Christensen dropped his Taser. He described Jacob as looking at him very angrily. Bubb stated "I'll do it! I'll do it!" then pointed the firearm in the Deputies direction. Deputy Christensen fired his duty weapon at Bubb. Christensen stated he was in fear for his own life and those of his fellow deputies when he discharged his firearm.

Deputy Christensen retrieved the firearm from Bubb and placed it on the couch where Bubb had been seated. Christensen noted his weapon was set to fire and appeared to be loaded.

Deputy Sokolski reported that after he deployed his Taser Jacob Bubb stood up and moved the pistol down and toward the Deputies. He then heard shots fired in rapid succession and Bubb slumped forward.

Deputy Kasten had a view from above where Jacob Bubb was seated on the couch. From his vantage point he could see Jacob with the pistol in his hand pointed at the side of his head. He could see the lower extremities of the Deputies in the basement as well. He could not hear what was being said. At some point Mr. Bubb began to stand up. Bubb had repositioned the firearm, extending his arm in the direction of the Deputies. Deputy Kasten heard a rapid series of shots then saw Mr. Bubb slump forward.



Figure 2. DCI Case no. 20-3765/Scene Photos/#123/Camera Angle Southwest Living Room Area in Basement (Redacted).

Figure 2. Shows the area where Jacob Bubb was seated on the couch. Bubb was seated on the far left end of the couch under the window. The window above the couch is where Deputy Kasten was positioned looking down. Sgt. Schindel was on the left hand side of where the soccer ball is located. Deputies Christensen and Sokolski were on the right side where the blanket is hanging near the furnace. Bubb's head was positioned towards where Deputies Sokolski and Christensen were located. His feet were pointed toward the couch. (NOTE: Figure 2. has been redacted to eliminate graphic depictions).

AUTOPSY

Dr. Tranchida of the Brown County Medical Examiner's Office indicated that Jacob Bubb died from multiple gunshot wounds to the head torso, and lower extremities. As indicated above, the cause of death was homicide.

According to the autopsy, Jacob Bubb was struck 11 times by projectiles.

As is customary in the autopsy process, Dr. Tranchida also reviewed Jacob Bubb's toxicology report. Dr. Tranchida noted an "acute intoxication due to methamphetamine."

LEGAL ANALYSIS

Based upon the materials our office has reviewed, there are very few factual issues that could be in dispute in this case. There does not appear to be any significant follow-up investigation that would need to be done prior to making a charging decision.

The decision of whether to file criminal charges, in any case, is extremely fact-dependent. Ethically and legally, the State can proceed with criminal charges only when the prosecutor finds the charges are supported by probable cause. In practice, however, our office commonly employs a higher standard in filing criminal charges. In addition to probable cause, our office will typically only file criminal charges if there exists sufficient evidence to support a conviction beyond a reasonable doubt. This higher threshold, commonly referred to as a “convictability” standard, is commonly utilized in prosecutors’ offices nationwide. See, e.g., American Bar Association, Fourth Edition, Criminal Justice Standard for the Prosecution Function, Standard 3-4.3(a). As part of our charging decision, our office considers not only the alleged facts which would support guilt but also potential defenses an individual may have to the charges. In a prosecution for battery, for instance, our office would be derelict in its heavy responsibilities were it not to consider evidence of provocation on the part of the alleged victim or a viable self-defense claim a defendant may have.

The State was asked to review whether Deputies Sgt. Schindel and Christensen would be charged with homicide, meaning that one or both, caused the death of another human being. There is no dispute in this case that Sgt. Schindel, Deputy Christensen, or both, caused the death of Jacob Bubb. However, consistent with our ethical obligation, the State must also consider the existence and validity of any potential defenses Sgt. Schindel and Deputy Christensen may have to criminal conduct. Our office views three statutory defenses or privileges that may be applicable under these circumstances. Our decision as to whether to file criminal charges against Sgt. Schindel and Deputy Christensen therefore hinges on the veracity of these defenses. First, Sgt. Schindel and Deputy Christensen said they used deadly force killing Bubb as an act of self-defense or in defense of the other officers and citizens in and around the dwelling. See Wis. Stat. § 939.48. The second potential defense is the “public officer” privilege. See Wis. Stat. § 939.45. We discuss each of these potential defenses in turn.

I. Self-Defense and Defense of Others

Wis. Stats. § 939.48(1) describes the privilege of self-defense:

A person is privileged to threaten or intentionally use force against another for the purpose of preventing or terminating what the person reasonably believes to be an unlawful interference with his or her person by such other person. The actor may intentionally use only such force or threat thereof as the actor reasonably believes is necessary to prevent or terminate the interference. The actor may not intentionally use force which is intended or likely to cause death or great bodily harm unless the actor reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself.

A person is furthermore privileged to use force to defend others under the same conditions and by the same means as they would use to defend themselves, assuming there is a reasonable belief that the other person or persons would be privileged to act in self-defense. See Wis. Stat. § 939.48(4). For purposes of our decision, we do not view a substantial difference in this case as to whether Sgt. Schindel and Deputy Christensen actions were in defense of himself or were also in defense of the other officers that were near them. Those beliefs were likely concurrent in Sgt. Schindel and Deputy Christensen mind, and given the substantial overlap between the self-defense law and the defense of others law, our decision will discuss both together.

There are essentially two components to analyze whether Sgt. Schindel’s and Deputy Christensen’s actions on May 17, 2020 were legally permissible as self-defense, both of which involve subjective and objective elements. First, Sgt. Schindel and Deputy Christensen must have “reasonably believed that they...were facing a threat of ‘imminent death or great bodily harm.’” State v. Jackson, 2014 WI 4, ¶ 59, 352 Wis. 2d 249, 841 N.W.2d 791 (quoting Wis. Stat. § 939.48(1); Wis. JI—Criminal 805). Second, Sgt. Schindel and Deputy Christensen must have “reasonably believed that the amount of force used was ‘necessary to prevent’ the threat.” Id. In an instance like this case where Sgt. Schindel and Deputy Christensen used force likely to cause death or great bodily harm, they can only use that force if they reasonably believed the force used “was necessary to prevent imminent death or great bodily harm” to themselves or others. Wis. JI—Criminal 805.

A. Sgt. Schindel and Deputy Christensen Faced a Threat of Imminent Death or Great Bodily Harm

The first step in our self-defense analysis requires that Sgt. Schindel and Deputy Christensen “reasonably believed that they...were facing a threat of ‘imminent death or great bodily harm.’” Jackson, 352 Wis. 2d 249, ¶ 59. We conclude Sgt. Schindel and Deputy Christensen both subjectively believed they faced such a threat on May 17, but also that their belief was also objectively reasonable. We do not believe a reasonable argument can be made that Sgt. Schindel and Deputy Christensen did not subjectively believe Bubb posed a threat of imminent death or great bodily harm. Sgt. Schindel and Deputy Christensen saw Bubb had a firearm in his hand. The reports detail Bubb was non-compliant with repeated requests from officers to drop the weapon and to comply with officers. Sgt. Schindel and Deputy Christensen reported that as Bubb rose from the couch he pointed the firearm in their direction and in the direction of Deputy Sokolski.

Even though Sgt. Schindel and Deputy Christensen subjectively believed there to be a threat of imminent death or great bodily harm and that the deadly force they used was necessary to prevent that threat, their subjective beliefs must still be objectively reasonable. Reasonableness is judged from the standpoint of what “a person or ordinary intelligence and prudence would have believed in [Sgt. Schindel’s and Deputy Christensen’s] position under the circumstances that existed at the time.” Wis. JI—Criminal 805. Two points bear particular emphasis. First, the relevant analysis is not based on present retrospection. Rather, we must analyze the circumstances that existed at the time of the incident and how an ordinary, prudent, and reasonably intelligent person in Sgt. Schindel’s and Deputy Christensen’s position would react in that situation.

In light of these considerations, we conclude Sgt. Schindel's and Deputy Christensen's beliefs in this instance were reasonable under the circumstances. There can be no question that a reasonable person would conclude that when a person points a firearm in his or her direction that they were in danger of being shot and killed. Moreover, Bubb had the firearm pointed at his own head showing utter disregard for his own life before he pointed the firearm in the direction of Sgt. Schindel and Deputy Christensen and Deputy Sokolski.

In summary, we find that Sgt. Schindel and Deputy Christensen actually believed Bubb posed a threat of imminent death or great bodily harm and we find that his belief was reasonable under the circumstances.

B. Sgt. Schindel and Deputy Christensen's Reasonable Belief that the Amount of Force Used was Necessary to Prevent Imminent Death or Great Bodily Harm to Themselves or Others

The second step in our self-defense analysis requires that Sgt. Schindel and Deputy Christensen "reasonably believed that the amount of force used was 'necessary to prevent' the threat." Jackson, 352 Wis. 2d 249, ¶ 59. A person can use force likely to cause death or great bodily harm only when it is "necessary to prevent imminent death or great bodily harm" to himself or others. Wis. Stat. §939.48(1). We conclude Sgt. Schindel and Deputy Christensen both subjectively believed the deadly force he used on May 17 was necessary and that their belief was also objectively reasonable.

We do not believe a reasonable argument can be made that Sgt. Schindel and Deputy Christensen did not believe the amount of force they used was necessary. Sgt. Schindel and Deputy Christensen reported that they believed they had no other force options available to them and that they felt they had to use deadly force. Sgt. Schindel and Deputy Christensen believed that Bubb was putting their and lives of the others in danger. Sgt. Schindel and Deputy Christensen stated they shot Bubb to stop the threat and stopped shooting when Bubb was no longer pointing what the gun at them and Deputy Sokolski. Therefore, we conclude that Sgt. Schindel and Deputy Christensen subjectively believed that they needed to use deadly force to terminate the threat Jacob Bubb posed.

We similarly conclude that the amount of force Sgt. Schindel and Deputy Christensen used in this instance was objectively reasonable. Deputies attempted to try and get Bubb to disarm with verbal commands. When that failed they attempted to use a Taser on him to gain compliance and get him to drop his weapon. Deputy Christensen noted that after the Tasers were deployed he noticed a change in Bubb. Deputy Christensen said it appeared to him that Bubb appeared angry and pointed the firearm. At no point did Bubb verbalize he was going to comply with the Deputies request prior to pointing the firearm in the direction of the Deputies present.

We also considered that a number of shots were fired, 11 of which struck Bubb. We note that numerous witnesses described the gunshots occurring "rapidly," as if they occurred in immediate succession to one another. Neither Sgt. Schindel nor Deputy Christensen paused at any point between shots, but rather, continued to fire until they no longer perceived Bubb to be a threat to himself or others. Deputy Christensen fired more rounds than Sgt. Schindel. However, Deputy

Christensen was in a more exposed position, directly in front of Bubb. Deputy Christensen also had Deputy Sokolski in an equally exposed position, with the homeowner and Inv. School at the top of the stairs. We conclude the amount of force used in this instance to be reasonable.

We also considered whether Sgt. Schindel and Deputy Christensen had the ability to retreat in this instance. In Wisconsin, an individual has no duty to make a reasonable attempt to retreat. See, e.g., State v. Wenger, 225 Wis. 2d 495, 503, 593 N.W.2d 467 (Ct. App. 1999); State v. Herriges, 155 Wis. 2d 297, 303, 455 N.W.2d 635 (Ct. App. 1990); see also Wis. JI—Criminal 810 (“There is no duty to retreat.”). However, “whether the opportunity to retreat was available may be a consideration regarding whether [Sgt. Schindel and Deputy Christensen] reasonably believed the force used was necessary to prevent or terminate the interference.” Wenger, 225 Wis. 2d at 503. We are unaware of any prior legal decision that have concluded that officers have the same duty to retreat as ordinary citizens. Indeed, it would make for poor public policy and would possibly put civilians at risk were law enforcement officers required to retreat as a first option when faced with a situation where they reasonably believed another posed an imminent threat of death or great bodily harm. In some instances, retreat may essentially amount to a dereliction of duty. In this instance, even if it were feasible for Sgt. Schindel and Deputy Christensen to have retreated, we conclude that they were not required to and were acting within the bounds of their duties as a law enforcement officer in choosing to use force sufficient to terminate the perceived threat. In any event, it is important to note Deputy Christensen was in an exposed position with Deputy Sokolski immediately to his rear and Investigator School further up the stairwell making retreat nearly impossible. Sgt. Schindel on the other hand, was located on the other side of the “blanket wall” which would require him to cross in front of Bubb to reach the stairwell to retreat.

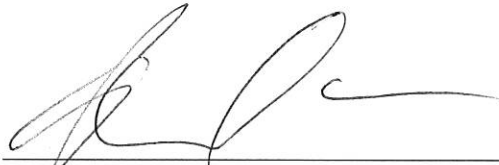
SUMMARY

The facts as they have been presented support the conclusion that Sgt. Schindel and Deputy Christensen elected to use deadly force against Jacob Bubb because of their concerns that Bubb presented a substantial risk of death or great bodily harm to officers and other individuals, which necessitated the use of deadly force. The evidence shows that Sgt. Schindel’s and Deputy Christensen’s beliefs were reasonable, and that their use of deadly force was warranted under the circumstances they faced on May 17, 2020.

CONCLUSION

Jacob Bubb’s death was a tragic event. Our office cannot pretend to offer an explanation for the choices Jacob made on May 17, 2020. Rather, our responsibility is to evaluate the actions of Sgt. Schindel and Deputy Christensen, who responded to Bubb’s actions by utilizing deadly force. Both Sgt. Schindel’s and Deputy Christensen’s actions are appropriate and consistent with the legal principles governing the use of deadly force by law enforcement officers in the State of Wisconsin. Therefore, in this office’s opinion, Sgt. Schindel and Deputy Christensen did not commit any criminal wrongdoing and were justified in using deadly force when they shot Jacob Bubb. Our office therefore concludes that Mr. Bubb’s death, while tragic and regrettable, was justified under the circumstances. Therefore, no criminal charges will be brought against either Sgt. Schindel or Deputy Christensen

Dated: September 3, 2020

A handwritten signature in black ink, appearing to read "E. D. Burke, Jr.", written over a horizontal line.

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