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**LEGAL OPINION REGARDING OFFICER INVOLVED SHOOTING ON OCTOBER 7, 2023 RESULTING IN  
THE DEATH OF KENNETH BLEVINS**

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**BRIEF SUMMARY**

On October 7, 2023 at approximately 10:20 am, the Menasha Police Department investigated an incident of domestic violence where CF came to the Menasha Police Department to report the incident. CF was very upset, was crying, and had what appeared to be blood smeared on her forearms and face. CF was also holding a tissue against her nose. CF stated that her boyfriend Kenneth Blevins, D.O.B. 07/13/1980 caused her injuries when he hit her in the face multiple times. CF stated that the argument between her and Blevins actually started the night before, and it continued into the morning of October 7, 2023. CF stated that during the argument, Blevins hit her in the face causing a bloody nose. CF stated that Blevins was a heavy drug user, and he was de-toxing from drugs in the days leading up to the incident. CF stated that after Blevins hit her, she quickly grabbed her belongings and left. CF stated that Blevins told her if she spoke to the police she would be signing his death warrant. CF stated that she did not consent to being hit by Blevins and she was scared for her safety. The incident between CF and Blevins occurred at their residence in the 1100 block of Geneva Road in the City of Menasha, Winnebago County, Wisconsin.

Officers from the Menasha Police Department conducted an interview of CF concerning the incident and they also had her transported to a hospital for a medical evaluation. Afterwards, officers from the Menasha Police Department attempted to locate Blevins at the residence he shared with CF. This occurred at approximately 2:06 pm on October 7, 2023. However, contact was not made with anyone at the residence.

Shortly after 3:00 pm on October 7, 2023, CF called 911 and advised that Blevins was back at the residence. CF stated that when she returned home, she entered her residence and was surprised to see Blevins there. CF stated that she decided to leave again, and was in the process of loading the dogs into her vehicle when Blevins saw her wristband from the hospital. CF stated that she thought Blevins felt that he would be going to jail. CF stated that Blevins started to punch her inside the house and said he was not going back to jail. CF stated that she called 911 when she was exiting the house. CF stated that as she was exiting, Blevins was punching her, causing her to fall to the ground. CF stated that when she was on the ground, Blevins was kicking her and stomping on her. CF stated that she eventually made it out of the house and went into her vehicle. CF stated that the police arrived at about that time.

At approximately 3:10 pm on October 7, 2023, Menasha Police Officer Derrick Rotta arrived and exited his marked squad car. Around that same time, Blevins exited the residence. Officer Rotta called over the radio that the “male was coming outside with a knife in his hand.” Officer Rotta drew his police duty handgun and pointed it at Blevins as Blevins advanced towards Officer Rotta. It became apparent as he approached that Blevins was armed with two knives, one in each hand. Officer Rotta gave commands to Blevins and told Blevins to “stay back.” Blevins continued to advance towards Officer Rotta and made comments such as “whatcha gonna do” and “come on mother fucker” “shoot me mother fucker.” Officer Rotta continued to give commands to Blevins and kept instructing him to “stay back.” Officer Rotta also stated “I don’t want to shoot you.” Blevins continued to advance towards Officer Rotta. At one point, Blevins started sprinting towards Officer Rotta with his hand raised in a stabbing position. Officer Rotta discharged two rounds from his handgun. Blevins then fell to the ground.

Medical attention was provided to Blevins on scene. However, Blevins was pronounced deceased on scene. After carefully examining all of the evidence in this case, I conclude that Officer Rotta’s use of deadly force was justified. The summary and analysis of the facts supporting this conclusion are as follows:

### **INVESTIGATION**

The Wisconsin Department of Justice Division of Criminal Investigation (DCI) was brought in to conduct the investigation into the officer involved shooting. Special Agent (SA) Justen Ragen was assigned as the case agent. SA Ragen was assisted by other agents and personnel from DCI as well as other agencies such as the Wisconsin State Patrol. SA Ragen prepared a report and also provided copies of all media, such as photographs and body worn cameras, as well as other evidence for my review. All of the evidence was examined for purposes of this analysis.

### **FACTS AND TIMELINE OF EVENTS**

Officer Vassar of the Menasha Police Department was one of the investigating officers of the domestic violence incident between Blevins and CF and he was interviewed during the course of the investigation. Officer Vassar stated that CF came to the police department and was initially apprehensive about cooperating with law enforcement. Officer Vassar stated that he was able to build a rapport with CF, and he was able to interview her regarding the incident. Officer Vassar stated that while CF was at the police department, it was determined that she would need to seek medical attention for the injuries she sustained from Blevins in the incident. Officer Vassar stated that CF was transported by ambulance to ThedaCare Regional Medical Center – Neenah. Officer Vassar stated that he followed CF to the hospital. Officer Vassar stated that when CF was released, he offered to accompany her back to her residence to ensure that Blevins was no longer there. Officer Vassar stated that CF declined the offer and said that Blevins usually left when something happened. Officer Vassar stated that CF requested that he go to her residence and knock on her door. Officer Vassar stated that CF explained to him that if the dogs barked when he knocked on the door, it meant that no one was home, but if the dogs didn’t bark, it meant that someone was home and they were comfortable.

Officer Vassar stated that since law enforcement did not know where Blevins was, an attempt to locate message was sent out to the surrounding law enforcement agencies requesting that Blevins be arrested on charges related to the domestic violence incident if he was located. Officer Vassar stated that the Menasha Police Department would have attempted to locate Blevins over the next 72 hours. Officer Vassar stated that he and Officer Groeschel of the Menasha Police Department went to CF’s residence

and knocked on the door. Officer Vassar stated that the dogs barked, which according to CF, meant that no one was home so they left.

Officer Vassar stated that at approximately 2:30 pm, he and Officer Groeschel were dispatched to CF's residence. Officer Vassar stated that dispatch advised that CF was calling and Blevins was back at the residence hitting her. Officer Vassar stated that he, Officer Groeschel and Lieutenant Albrecht all left the police department and responded with their emergency lights and sirens. Officer Vassar stated that Officer Rotta called out that he was close to the call location and he put himself on the call. Officer Vassar stated that as he was responding to the call, dispatch informed officers that Blevins had armed himself with knives. Officer Vassar stated that a short time later, he heard Officer Rotta call out on the radio that he was "out with the male." Officer Vassar stated that there was additional radio traffic from Officer Rotta but he wasn't able to make out what he was saying. Officer Vassar stated that when he was approximately four blocks away from CF's residence, he heard Officer Rotta call out "shots fired" on the radio. Officer Vassar stated that he arrived an scene a short time later and he observed Officer Rotta had his handgun drawn and it was pointed at a male on the ground. Officer Vassar stated that the male was later identified as Blevins. Officer Vassar stated that he observed a large multicolored knife lying on the ground approximately three feet away from Blevins' head. Officer Vassar stated that he obtained a medical bag from his vehicle and he and other officers began to assess Blevins for wounds. Officer Vassar stated that Gold Cross Ambulance Service arrived and paramedics began life saving measures, which were eventually discontinued.

Officer Dominick Texeira of the Fox Crossing Police Department was one of the first officers on scene after Officer Rotta discharged his weapon and he was interviewed during the course of the investigation. Officer Texeira stated that on October 7, 2023, he was in the area of Fox Crossing Fire Department Station 41 when he heard Menasha Police Department officers get dispatched to a disturbance call in the 1100 block of Geneva Road. Officer Texeira stated that he drove closer to the area and requested a vehicle description for the suspect in case the suspect left the scene of the disturbance. Officer Texeira stated that there was no description provided. Officer Texeira stated that while driving to the area, he heard a Menasha officer transmit over the radio that a male was exiting and approaching him with a knife. Officer Texeira stated that he was close to turning onto London Street from Lucerne Drive when he heard a Menasha officer transmit over the radio something about the male having two knives. Officer Texeira stated that shortly after that transmission, a shots fired transmission came over the radio.

Officer Texeira stated that he arrived on scene and observed Officer Rotta at the intersection of London Street and Geneva Road with his handgun out. Officer Texeira stated that the handgun was pointed at Blevins and Blevins was laying in the roadway. Officer Texeira stated that he observed two large knives, one to the right of Blevins and the other near his side. Officer Texeira stated that there was a female, identified as CF in the roadway and she was very emotional. Officer Texeira stated that she was getting closer to Blevins in the road and he ordered her to back away. Officer Texeira stated that other officers began to arrive and administer first aid to Blevins. Officer Texeira stated that at some point he picked up both knives that were near Blevins and placed them in a brown paper evidence bag.

CF was also interviewed during the course of the investigation and she stated that she observed Blevins exit the door of the residence with large knives in each hand. CF stated that Blevins was moving towards the officer screaming at him to shoot him. CF stated that she didn't know where the knives came

from and she described one of them as a machete. CF stated that the officer told Blevins to stop and then the officer shot Blevins two times.

Officer Rotta was also interviewed during the course of the investigation. Officer Rotta stated that when he arrived for his shift at approximately 2:10 pm on October 23, 2023, he checked in with the Shift Commander Lieutenant Albrecht. Officer Rotta stated that he was advised about the earlier domestic disturbance in the 1100 block of Geneva Road where the male suspect fled the scene and there was probable cause to arrest him for domestic violence related charges. Officer Rotta stated that the male was identified as Blevins and he was advised that Blevins also had active warrants out for his arrest. Officer Rotta stated that he was familiar with the neighborhood, but didn't remember having any prior direct dealings with either Blevins or CF.

Officer Rotta stated that when he heard the dispatch of a male suspect physically assaulting a female in the 1100 block of Geneva Road he was parked in the 800 block of Arthur Street. Officer Rotta stated that he responded with his emergency lights and sirens activated. Officer Rotta stated that as he approached the area of the incident, he shut off his lights and sirens to provide a tactical approach to the incident. Officer Rotta stated that he exited his patrol vehicle and observed a male, later identified as Blevins, exit an apartment. Officer Rotta stated that Blevins immediately started approaching him. Officer Rotta stated that Blevins had two large bladed weapons, one in each hand. Officer Rotta stated that as Blevins approached him, he remembered giving Blevins verbal commands, but he could not remember what those commands were. Officer Rotta stated that he removed his duty handgun from his holster into the low ready position while continuing to backpedal. Officer Rotta state that he did this to create distance as quickly and safely as possible. Officer Rotta stated that he remembered telling Blevins "I don't want to shoot you." Officer Rotta stated that Blevins was swinging the knives around and continuing towards him. Officer Rotta stated that he was afraid for his safety and the safety of others. Officer Rotta stated that Blevins then began to increase his speed towards him. Officer Rotta stated that is when he fired his handgun at Blevins. Officer Rotta stated that he wasn't exactly sure how many times he fired.

Officer Rotta stated that running away or using a different intervention option wasn't feasible because he was alone on scene. Officer Rotta stated that there was a female victim in the area as well. Officer Rotta stated that when he fired at Blevins, no other officer was on scene. Officer Rotta stated that his attempts at de-escalation failed. Officer Rotta stated that he felt that Blevins would have likely killed him if he had not fired at Blevins.

Officer Rotta was equipped with an operational body worn camera during the incident. The body camera captured the critical incident. The following are the approximate times of the incident according to Officer Rotta's body camera:

15:10:25: Dispatch advises that the male is reported to have a knife

15:10:33: Officer Rotta exits his squad car

15:10:39: Officer Rotta is closing his squad car door. At the same time, Blevins exits an apartment. Officer Rotta calls on his radio "seventy, male is coming outside with a knife in his hand, he's approaching me." Officer Rotta draws his handgun and points it at Blevins who is advancing. Officer Rotta states "Hey man, stay back, stay back, do it now."

15:10:45: Officer Rotta tells Blevins “stay back.” Blevins continues advancing towards Officer Rotta and is stating “whatcha gonna do” while waving his arms up and down rapidly. Blevins has a knife in each hand.

15:10:48: Officer Rotta backs up while continuing to give commands “stay back” “I don’t want to shoot you.”

15:10:49: CF exits her vehicle while Blevins is between the white vehicle and Officer Rotta’s police squad

15:10:53: Blevins states “come on mother fucker” and “shoot me mother fucker.” Officer Rotta continues to give Blevins commands “Stay back” “I do not want to shoot you.” Officer Rotta continues to back up while giving commands. Blevins continues to advance towards Officer Rotta.

15:10:56: Officer Rotta transmits on his radio “seventy he is walking towards me with two knives.” Blevins continues to advance towards Officer Rotta and increases his speed.

15:10:58: Blevins starts to sprint towards Officer Rotta with his right arm raised up in a stabbing position. Officer Rotta fires two rounds from his firearm.

15:10:59: Blevins falls to his knees and then falls face down. He immediately rolls over onto his back. Officer Rotta commands Blevins to “stay on the ground” and calls out “shots fired.”

The knives that Blevins had in his hands were located by Blevins on the roadway and were collected as evidence.

The business Amusement Devices, Inc. is located in the vicinity of where the critical incident occurred and its surveillance system captured video of the critical incident. There is no audio. The video mirrors what is seen on Officer Rotta’s body camera and captures how close the distance gap was between Blevins and Officer Rotta when Officer Rotta fired his weapon.

Medical aid was rendered to Blevins by law enforcement personnel as well as Gold Cross paramedics. Blevins was pronounced deceased on scene. An autopsy was performed by Dr. Brian Peterson of the Walworth County Medical Examiner’s Office. Dr. Peterson opined that the cause of death was a gunshot wound to the abdomen. A urine screen was conducted as part of the autopsy. There were positive indications for the presence of fentanyl, THC, buprenorphine, cocaine, and benzodiazepines.

#### **LEGAL ANALYSIS**

When determining whether an officer was justified to use force, courts analyze the issue by conducting the legal analysis set forth in the area of excessive force claims. When there is a claim that an officer has used excessive force, deadly or not, in the course of an arrest, investigatory stop, or other seizure of a citizen, it is analyzed under the Fourth Amendment and its reasonableness standard. Graham v. Connor, 490 U.S. 386, 395, 109 S.Ct. 1865, 1871 (1989). Determining whether the force used to effect a particular seizure was reasonable under the Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the countervailing governmental interests at stake. Id. at 396, 109 S.Ct. at 1871 (quotations omitted).

Therefore, a proper analysis requires careful attention to the facts and circumstances of each particular case, including: (1) the severity of the crime at issue, (2) whether the suspect posed an

immediate threat to the safety of officers or others, and (3) whether the suspect actively resisted arrest or attempted to evade arrest by flight. *Id.* at 396, 109 S.Ct. at 1872 (citations omitted). The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. *Id.* Additionally, the calculus of reasonableness must embody an allowance for the fact that police officers are often forced to make split second decisions and judgments about the amount of force necessary in circumstances that are tense, uncertain and rapidly evolving. *Id.* at 396-397, 109 S.Ct. at 1872. Given the totality of circumstances present in this case, Officer Rotta's use of deadly force was reasonable and justified.

In terms of the severity of the crime at issue, Blevins' conduct and actions in this case were very dangerous and serious. First, there was the domestic incident in which Blevins repeatedly hit CF in the face, kicked her, and stomped on her. Part of that domestic incident occurred just moments before 911 was called and CF was in the vicinity of the critical incident when it occurred. Additionally, once police arrived, Blevins armed himself with two knives and continued to rapidly advance towards Officer Rotta. Video surveillance from Amusement Devices, Inc. shows just how close in proximity Blevins was to Officer Rotta at the time Officer Rotta discharged his weapon. Finally, not only was Blevins rapidly advancing towards Officer Rotta, but he was doing so while holding his arm up in a stabbing position. All of the behavior exhibited by Blevins was extremely dangerous and threatening and rose to the Felony level of Recklessly Endangering Safety in violation of Wis. Stat. Sect. 941.30.

Additionally, it is apparent from all of the evidence in this case, especially from the events depicted in Officer Rotta's body camera, that Blevins posed an immediate threat to the safety of officers, specifically, Officer Rotta. Officer Rotta repeatedly gave commands to Blevins to stay back. In fact, Officer Rotta told Blevins to stay back approximately seven times. Blevins ignored all of Officer Rotta's commands and continued to rapidly advance towards him with multiple weapons while saying things like "watcha gonna do" "come on mother fucker" and "shoot me mother fucker." This demonstrates that Blevins had no intention of terminating the threat he posed towards Officer Rotta that day. This conclusion is supported by the fact that Blevins actually started sprinting towards Officer Rotta while raising his arm in a stabbing motion. Had Officer Rotta not taken action, Blevins certainly would have continued to advance towards him. Blevins' behavior demonstrated that he would not have stopped until he reached Officer Rotta and harmed him. As depicted by the timing of the body camera, the entire incident from the time Blevins exited the apartment to the time shots were fired took approximately 20 seconds. Therefore, Officer Rotta had very limited time to make a decision on whether to use deadly force. As previously stated, case law makes it clear that the calculus of reasonableness must embody an allowance for the fact that officers are often forced to make split second decisions and judgments about the amount of force that is necessary in circumstances that are uncertain, tense, and rapidly evolving. Additionally, 20/20 hindsight is not allowed. Officer Rotta was forced to make a split second decision when Blevins continued to rapidly advance towards him and he used the force necessary to stop the threat. Officer Rotta had an objectively reasonable fear for his safety and his decision to use deadly force was justified.

Finally, while Blevins was certainly not attempting to flee the scene, his comments to CF about signing his death warrant and his comments on scene such as "shoot me mother fucker" clearly demonstrate that Blevins would not have terminated the threat he posed to Officer Rotta without law enforcement intervention. Blevins did not need to attempt to flee or actively resist. He verbally demonstrated his intent. Therefore, given all of the facts and circumstances, it is clear that Officer Rotta's decision to use deadly force was justified.

## **CONCLUSION**

Many lives will be forever impacted by October 7, 2023 including the lives of Officer Rotta and members of Blevins' family. No one will ever ultimately know why Blevins armed himself with two knives, disregarded law enforcement commands, and rapidly advanced towards Officer Rotta. Certainly the events of that afternoon were tragic all around. However, after careful review of all the evidence involved, the Winnebago County District Attorney's Office, through Assistant District Attorney Tracy A. Paider, concludes that Officer Rotta's use of deadly force was justified.