



**OFFICE OF DISTRICT ATTORNEY
EAU CLAIRE COUNTY, WISCONSIN
PETER J. RINDAL, DISTRICT ATTORNEY
ANGELA L. BERANEK, DEPUTY DISTRICT ATTORNEY**



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Contact: Eric.Huse@da.wi.gov

Officer Involved Death November 03, 2021

Eau Claire, Wis. — The Eau Claire County District Attorney's Office has determined that the actions of City of Eau Claire Police Officer Kristopher O'Neill on November 3, 2021, in the course of his law enforcement duties in the City and County of Eau Claire, Wisconsin, were reasonable acts of self-defense and defense of others.

LEGAL STANDARD

Wisconsin law contemplates that all citizens, including police officers, may use deadly force in an act of self-defense or defense of others. With specific respect to police officers, when an officer reasonably believes other alternatives have either been exhausted or would be ineffective, the officer is allowed to use deadly force to stop behavior which causes or imminently threatens to cause death or great bodily harm to the law enforcement officer or another person. Generally, the law of self-defense or defense of others requires all of the following:

- The officer believed that there was an actual or imminent unlawful interference with the officer or another person;
- The officer believed that the officer himself or the other person was entitled to use force in self-defense;
- The officer believed the amount of force used was necessary to prevent or terminate the interference with the officer or to protect the other person; and
- The officer's beliefs were reasonable.

The officer may intentionally use force which is intended or likely to cause death or great bodily harm if the officer reasonably believed the force used was necessary to prevent imminent death or great bodily harm to himself or another person.

FACTUAL SYNOPSIS

The Eau Claire County District Attorney's Office has received and reviewed numerous reports and recordings from the Wisconsin Department of Justice – Division of Criminal Investigation, who was the lead investigators of this incident. According to those materials, the Eau Claire County Communications Center received a 911 hang-up call on November 3, 2021 at approximately 2:39 PM. When the call disconnected before any sound or background noise could be heard, dispatchers called the number back and reached a female (JL), who confirmed that there was an emergency occurring at their location on Selma Street in Eau Claire. Whispering, JL reported that she and her friend (AK) were hiding in AK's bedroom with the door locked because AK's ex-boyfriend (eventually identified as LeKenneth Miller) had come to the residence. JL reported that Miller had strangled AK a week prior. Dispatchers relayed this information to Officer Kristopher O'Neill, including that

ASSISTANT DISTRICT ATTORNEYS

Kelly Ronquist | Andrew J. Gunderson | Afton B. Lewis | Robert Stoiber
Tiffany M. Winter | Emmeline Lee | Monica Fallon | Trenton J. Piltz | Matthew Z. Kirkpatrick

Miller was in the house and had a history of violence. Dispatchers also directed Officer Jason Kaveney to respond.

JL continued whispering to dispatchers, reporting that she did not know how Miller had gotten into the house and that Miller was now trying to get the bedroom door open. When she was asked, JL indicated that she and AK could not escape through a window. This information was relayed to responding officers, more of whom began to travel to the residence.

At approximately 2:47 PM, JL whispered to dispatchers that Miller had now gone to the kitchen and obtained a knife to attempt to pry open the bedroom door. This information was relayed to responding officers. Shortly thereafter, Officer Kaveney and then Officer O'Neill arrived on scene and began approaching the house on foot. Dispatch advised JL that officers had arrived and confirmed that Miller was still in the house.

At approximately 2:48 PM, dispatchers heard sudden and repeated screaming, including screams of, "No! Stop! Kenny! No! Stop! No! No! No! No! No! Stop!" Dispatchers relayed to officers, "He's inside. I can hear screaming." Dispatchers then broadcast that all available officers should respond to the residence based on the emergency.

Once the screaming was heard from inside the house, Officers O'Neill and Kaveney drew their service weapons, ran toward the house, and attempted to access the locked front door by kicking it in. Unsuccessful, they ran to a side door where they were met by JL, who was running out of the house and hysterically screaming that the male (Miller) was in the bathroom and "he's stabbing her [AK]!"

Officers then entered the residence. Officer O'Neill entered first, followed by Officer Kaveney. Immediately upon entering the residence and while continuing to hear a female's (AK) screams from somewhere inside the house, officers encountered Miller in the kitchen, approximately 10 – 12 feet from them. Officers reports that they observed Miller arming himself with another knife and immediately upon officers' entry, Miller turned to look at officers as he raised the knife in his right hand. Officer O'Neill ordered Miller to drop the knife, but Miller shifted his weight and began moving toward officers with the knife in his hand, whereupon Officer O'Neill discharged his service weapon, striking Miller six times. Miller still did not drop the knife so Officer O'Neill started to reload while officers yelled for Miller to get on the ground. As Officer O'Neill finished his reload, Miller started to drop to the ground and the knife began coming out of his hand. Officer O'Neill did not shoot again.

After Miller fell to the ground, officers proceeded further into the residence. Officer Kaveney remained with Miller while Officer O'Neill called out to AK, ultimately finding her in the bathroom with multiple stab wounds to her face, left eye, hand/arms, and leg. Officer Kaveney related to dispatch that shots had been fired and requested multiple ambulances. AK was ultimately air-lifted to Mayo Hospital in Rochester, Minnesota to be treated for her injuries. Despite first aid efforts, Miller died on scene as a result of his gunshot wounds.

After the incident, both JL and AK were eventually interviewed. AK confirmed that she had a previous relationship with Miller and he had been violent with her in the past. Specifically, she indicated that Miller had battered and strangled her the week prior. AK and JL both indicated that on November 3, 2021, Miller had arrived at the residence, somehow gained entry, and eventually pushed in the locked door to the bedroom in which they were hiding. They reported that upon entering the bedroom, Miller initially approached JL while AK escaped the bedroom, but Miller then left turned to pursue AK out of the bedroom. AK reported that as she fled, Miller grabbed her hoodie and spun her around, whereupon she was partially in the bathroom. AK reported that Miller, who was armed with a knife, stabbed her in the left eye. AK then raised her left hand up to

protect her face, at which time Miller stabbed AK in the left hand. AK fell to the floor, whereupon Miller stabbed her again in the right arm. Unable to see clearly, AK began kicking both legs at Miller and was cut on the left knee/leg as she yelled to JL that she was blind and could not see Miller. JL reported that as she left the bedroom, she observed AK's legs on the bathroom floor with Miller standing over her, swinging his arm toward AK several times. JL approached Miller but when he turned to face her with the knife in his hand, she fled the residence. AK indicated that when Miller turned toward JL, she was able to shut and lock the bathroom door. AK indicated that when she heard the gunshots, she feared that Miller had a gun and had shot JL. JL indicated that when she encountered officers just outside the residence, she yelled that Miller was killing AK. While she did not initially remember, JL eventually confirmed that she had heard officers yell commands at Miller prior to discharging the firearm.

Scene investigators subsequently located a broken knife in the bathroom with the handle in one location and the blade in another. Another knife was located in close proximity to where Miller fell in the kitchen after being shot.

OFFICER O'NEILL'S ACTIONS WERE REASONABLE GIVEN THE TOTALITY OF THE CIRCUMSTANCES

Based on a review of the investigation completed by the Wisconsin Department of Justice – Division of Criminal Investigation, the Eau Claire County District Attorney's Office has concluded that the use of deadly force against LeKenneth Miller on November 3, 2021 was reasonable given the totality of the circumstances. The analysis leading to this decision includes, but is not limited to, the following information:

- At initial dispatch and while responding to the residence, Officer O'Neill received credible information from the communication center that JL and AK were frightened, hiding and trapped in the residence and that Miller had gotten inside the residence, was armed with a knife, and was trying to gain access to the bedroom where JL and AK were hiding. This situation creates a reasonable belief that there was a significant possibility of imminent harm to AK and JL.
- At initial dispatch and while responding to the residence, Officer O'Neill received credible information that Miller had a history of recent violence toward AK. JL and AK's report that Miller had strangled and battered in the recent past was subsequently corroborated by AK's October 28, 2021 report to the police. This information bolstered the reasonable belief that imminent harm may befall AK and JL.
- After arrival at the residence and as he began approaching on foot with Officer Kaveney, Officer O'Neill heard loud screaming from inside the house and dispatch confirmed that Miller had gained access to the bedroom and that screaming could also be heard through the phone connection. This information substantiated the reasonable belief that imminent harm was possible and created a new reasonable belief that the harm was now actually occurring to AK and JL. It was at this point that Officer O'Neill drew his service weapon.
- Officer O'Neill was unable to immediately access the residence, but continued to hear screaming as he rounded the side of the house. At that point, he encountered JL escaping the house, screaming hysterically that Miller was "stabbing" AK inside the house. This information gave rise to a reasonable belief that the harm occurring in the residence could cause great bodily harm or death.
- Upon entering the house, Officer O'Neill was forced into an extremely tight entryway space which presented tactical problems for the officers, including that Officer O'Neill had no choice but to step directly into the kitchen where he encountered Miller. Both officers observed Miller arming himself with another knife. Officers also continued to hear a female screaming inside the residence. Officers' observations of Miller armed with a knife under these circumstances corroborated much of what they

had learned to this point and thus bolstered the reasonable belief the great bodily harm or death were imminent.

- Officer O'Neill found himself in unplanned close proximity to Miller (10-12 feet), who was a physically large man (over 6 feet in height and over 300 pounds in weight) who officers described as having a look of rage in his eyes. Officer Kaveney could not get around or alongside Officer O'Neill given the cramped space. Officer O'Neill yelled for Miller to drop the knife, but officers report that Miller did not do so and instead, with the knife in his raised hand, shifted his weight and stepped toward Officer O'Neill. Officer O'Neill reported that at that point, he believed Miller was going to kill him and Officer Kaveney. Officer Kaveney shared this belief, reporting that he feared for Officer O'Neill's life, his own life, and the life of the victim in the house. It was under these circumstances that Officer O'Neill used deadly force.
- Officer O'Neill has been an Eau Claire Police Officer for over 24 years and has prior experience with the Tactical Response Team. Given the information available to Officer O'Neill before he entered the residence and the circumstances/timing presented to him as he encountered Miller immediately inside the residence, it was reasonable to conclude that alternatives other than deadly force were not available or effective.
- Similarly, Officer Kaveney has been an Eau Claire Police Officer for 19 years. While he was not forced to resort to deadly force, he reported that after Officer O'Neill's initial discharge of the firearm, Officer Kaveney attempted to get around Officer O'Neill in preparation for the potential use of deadly force himself because he feared for his life. Thus, while only one officer was forced to use deadly force, both experienced officers concluded that deadly force was necessary under these circumstances.
- AK's injuries constitute great bodily harm, thereby corroborating the magnitude of the threat posed by Miller's actions.

CONCLUSION

Under the circumstances of this case, the Eau Claire County District Attorney's Office concludes that Eau Claire Police Officer Kristopher O'Neill's use of deadly force was justified as a reasonable act of self-defense and defense of others. As such, further action by the district attorney's office is not warranted.

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Incorporated in 1856, **Eau Claire County's** mission is "To provide quality, innovative and cost-effective services that safeguard and enhance the well-being of residents and resources." Covering 655 square miles in northwest Wisconsin, Eau Claire County government services touch those who live in the county, visitors, and others in the Chippewa River Valley. For more information, visit our website at www.co.eau-claire.wi.us or go to our Facebook page at www.facebook.com/EauClaireCounty.

