



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



For Immediate Release: December 02, 2022

Contact: Eric.Huse@da.wi.gov

Officer Involved Critical Incident on September 04, 2022

Eau Claire, Wis. — The Eau Claire County District Attorney's Office has determined that the actions of City of Eau Claire Police Officers Sam Sperry and Tre Johnson on September 4, 2022, in the course of their 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 investigative agency for this incident. According to those materials, the Eau Claire County Communications Center received a 911 call on September 4, 2022 at approximately 11:38 PM from an Identified Citizen (hereinafter, "IC-1"). IC-1 reported that he heard a gunshot about twenty minutes prior coming from a residence in the neighborhood. IC-1 advised that a male at the residence (eventually identified as Clayton Livingston) was arguing with his wife in their garage and was "waving guns around at other houses." IC-1 advised that Livingston's wife had gone back into the residence, but it was "very clear" that Livingston was "distressed out there. He's waving around guns..." IC-1 said the garage door at Livingston's residence was open, the lights were on, and Livingston was

ASSISTANT DISTRICT ATTORNEYS

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

still in the garage. IC-1 relayed that Livingston might be intoxicated and said that Livingston had a handgun which IC-1 described as "like a Glock."

IC-1 said that after hearing the gunshot from Livingston's residence about twenty minutes prior, IC-1 had gone to lock his door and had seen Livingston hand his wife a shotgun. IC-1 indicated that although Livingston's wife was now inside the residence, IC-1 had seen her since hearing the gunshot. IC-1 indicated that Livingston was still waving the handgun around and was pacing back and forth in the garage.

Based on the disturbance, Officers Sam Sperry and Tre Johnson were dispatched to the area. Dispatch advised officers that two people had reportedly been arguing in the garage and a gun had been pointed at the house from which the caller had contacted dispatch.

Dispatch eventually connected IC-1 directly to officers as officers were arriving in the neighborhood. While approaching the residence on foot, officers spoke to IC-1, who relayed his observations directly to them. Officers asked IC-1 specifically what he had seen earlier. IC-1 relayed to officers that he heard a gunshot and looked outside, whereupon he saw Livingston in his yard, "clearing" the yard in a "military-style" movement. Officers were advised that Livingston's wife then came out of the residence and Livingston turned a shotgun over to her and she went back inside. Officers were advised that at one point, Livingston had pointed the gun at the house from which IC-1 was calling. Officers were advised that Livingston was still in the garage and was leaning against a car with a handgun located on top of the car. Officers remained at their positions to this point.

Then, in real-time, IC-1 described further developments at Livingston's residence. Officers were advised that Livingston was now walking deeper into his garage toward the house. Officers were advised that Livingston's wife was now in the doorway of the garage talking to Livingston. Officers were then advised that Livingston had the gun in his hand, had "racked the slide" of the gun, and was pointing the gun. Officers began a straight-line approach towards Livingston's residence at this time, armed with service rifles. While doing so, they were advised that Livingston was "looking down the barrel" and was again "racking the slide" of the gun. Although this information was relayed by IC-1 directly to Officer Johnson, Officer Johnson verbally repeated it entirely to Officer Sperry, making both officers aware of the circumstances.

When officers were about ten feet outside Livingston's garage, they stepped onto the pavement, illuminated the garage with a light, and announced themselves to Livingston by stating, "Police Department, put the gun down now!" Simultaneously, Livingston turned toward officers, raised the handgun in his hand up, clasped it with both hands, adopted a "shooting stance," and pointed the gun at officers while "pushing the gun out towards" officers. Officers then fired multiple rounds at Livingston. Livingston sustained multiple gunshot injuries and was transported from the scene by ambulance. He survived. Livingston's wife was found unharmed inside the residence.

As part of the investigation of this incident, both officers were interviewed. Officer Sperry stated he believed as he approached the garage that Livingston was armed, potentially intoxicated, and pointing a handgun at his wife while racking the slide. Officer Sperry said when he encountered Livingston pointing his handgun at officers, Officer Sperry feared for his life and Officer Johnson's life. Thus, he fired his rifle to stop the threat posed by Livingston. Officer Johnson indicated during his interview that he had concluded that officers needed to intervene in the events occurring in the garage. Officer Johnson said that after announcing officers' presence, he saw Livingston raise the handgun and appear to look right down the barrel at officers. Officer Johnson said he fired shots because Livingston was pointing the gun directly at him and he thought Livingston

was going to shoot and kill officers. Officer Johnson said he believed officers' lives were in danger and there was no other option but to use deadly force.

Upon searching the scene, officers located numerous firearms throughout Livingston's residence, garage, and vehicles. Toxicological analysis showed that Livingston's blood alcohol concentration at the time of the incident was 0.216 g/100mL. Livingston declined to be interviewed.

OFFICERS' 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 Clayton Livingston on September 4, 2022 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, both Officers Sperry and Johnson received information from the communication center that Livingston and his wife were arguing and that a shot had been fired from Livingston's residence. They were advised that Livingston had been in possession of a shotgun and a handgun, although the shotgun had since been taken into the house by Livingston's wife. Officers were also advised that Livingston was still in possession of the handgun and was "waving it around" and pointing it at another residence in the area. This information regarding the erratic handling of firearms, described in the context of a reportedly intoxicated argument, created a reasonable belief that there was significant possibility of harm. Officers' perception of this risk was consistent with IC-1's perception, as IC-1 told investigators that when he initially heard the gunshot at Livingston's residence, he locked his door and went to his basement out of fear. Given Livingston's blood alcohol concentration, the investigation also determined that IC-1's description of Livingston as potentially intoxicated was, in fact, accurate.
- After arrival at the residence and as Officers Sperry and Johnson began approaching on foot, they communicated directly with IC-1, who reiterated to officers what he already described to dispatch. IC-1's reiteration of what he previously told dispatch was consistent with what officers had been told by dispatch. Thus, it was reasonable for officers to conclude that IC-1 was providing credible information.
- IC-1 then provided real-time updates about what was occurring in Livingston's garage. He first indicated that Livingston was still in the garage with the handgun. IC-1 then advised officers that Livingston's wife had returned to the garage. IC-1 then described that Livingston had the gun in his hand and had racked the slide, which officers construed as evidence that the gun was loaded. This chain of events bolstered officers' concern of imminent and serious danger. The investigation ultimately determined that the gun was, in fact, loaded.
- IC-1 then described that Livingston was pointing the gun and was "looking down the barrel." While it is unclear whether Livingston's wife was actually in the garage at this time, it was reasonable for officers to conclude, given the information that had been conveyed to them to this point, that the witness was reporting that Livingston was pointing the loaded gun at his wife. Officer Sperry confirmed during his interview that this was his interpretation of the information. The conclusion that Livingston was pointing the loaded gun at his wife further supports officers' belief that there was a legitimate and increasing danger of death or great bodily harm to another person.
- Upon arriving approximately ten feet from Livingston's garage, officers observed Livingston inside the garage with the gun in his hands, consistent with what had been described to them. Officers announced themselves as police and ordered Livingston to put the gun down. Livingston instead

raised the handgun up, clasped it in both hands, adopted a “shooting stance,” and pointed the gun at officers while “pushing the gun out towards” officers. Officers each described Livingston’s actions consistently, and their descriptions are corroborated by video evidence of the confrontation obtained during the investigation. This evidence that Livingston pointed his handgun at officers supports each officer’s reasonable belief that Livingston posed an actual risk of death or great bodily harm to both officers.

- Officer Sperry has been employed as an Eau Claire Police Officer for 5 ½ years, maintains Wisconsin Department of Justice certification as a Firearms Instructor and a Defense and Arrest Tactics instructors, and has served as a sniper on the ECPD Tactical Response Team for at least the past two years. Officer Sperry told investigators that given the situation, he feared for his life and Officer Johnson’s life, so he fired his rifle to stop the threat. Under the circumstances that existed at the time Officer Sperry arrived at Livingston’s garage and based on his training and experience, it was reasonable for Officer Sperry to conclude that alternatives other than deadly force were not reasonably available to terminate the threat he was facing.
- Officer Johnson has been employed as an Eau Claire Police Officer for over two years at the time of this incident. Prior to his employment at ECPD, he served six years with the Army National Guard. Officer Johnson joined the ECPD Tactical Response Team approximately five months prior to this incident. Officer Johnson specifically told investigators that given the situation, he thought Livingston was going to shoot and kill officers since Livingston was pointing the gun directly at them. Officer Johnson said it was his conclusion that deadly force was the officers’ only option. Under the circumstances that existed at the time Officer Johnson arrived at Livingston’s garage and based on his training and experience, it was reasonable for Officer Johnson to conclude that alternatives other than deadly force were not reasonably available to terminate the threat he was facing.
- As noted, both experienced officers assessed the information available to them at the time of the incident and concluded that deadly force was necessary. This consistent conclusion by two separate officers bolsters its reasonableness.

CONCLUSION

Under the circumstances of this case, the Eau Claire County District Attorney’s Office concludes that the use of deadly force Eau Claire Police Officers Sam Sperry and Tre Johnson 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.

###

*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.eauclairecounty.gov or go to our Facebook page at www.facebook.com/EauClaireCounty.*

