



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 Shooting May 24, 2024

Eau Claire, Wis. — The Eau Claire County District Attorney's Office has determined that the actions of City of Eau Claire Police Officer Ariana Down Larson on May 24, 2024, in the course of her 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 herself 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 herself or another person.

FACTUAL SYNOPSIS

The Eau Claire County District Attorney's Office has received and reviewed numerous reports and recordings compiled by the Wisconsin Department of Justice – Division of Criminal Investigation, who was the lead investigative agency for this incident. According to those materials, on May 24, 2024, just after 9:51 PM, Eau Claire Police Officer Down Larson was clearing from an unrelated call at a residence in the City of Eau Claire when she heard a male voice shouting from a nearby residence. Officer Down Larson approached the residence and heard the shouting continue. She contacted dispatch and requested that additional officers be dispatched because the situation sounded like an active domestic disturbance in progress.

As she got closer to the residence, Officer Down Larson observed two small children in the yard outside the residence. Officer Down Larson called the children to her and asked what was happening at the residence. One of the children confirmed that she was staying at the residence and that the male had started to fight with

ASSISTANT DISTRICT ATTORNEYS

Kelly Ronquist | Andrew J. Gunderson | Trenton J. Piltz | Jansen Van Daalwyk
Dustin Rockow | Ellen M. Anderson | Holly E. Rockow | Joseph H. Detrick

721 Oxford Avenue, Suite 2570

Eau Claire, WI 54703

SPECIAL PROSECUTOR

Danny Garcia

715-839-4828 | 715-831-5818 Fax

the child's grandmother. The child said the male was "kind of drunk." The child identified her grandmother at the residence as SC. The male who was shouting was eventually identified as Thomas H. Burback (dob 3/5/1971).

The child indicated she did not know what to do and was trying to stay away from them. While Officer Down Larson gathered information from the children, Burback continued shouting from the upstairs apartment of the residence. The volume and aggressiveness of the shouting increased, with Burback using phrases including, "they can't fucking touch me," "...my fucking keys, where are they?," "you don't have to find shit," and "...that fucking cunt ain't coming," among other profanity-laced statements. Officer Down Larson relocated the two children to a neighboring residence to remove them from the situation.

Officer Down Larson then re-approached the residence. Burback continued to shout, ultimately yelling, "...you better step the fuck back! Get the fuck back!" Using her flashlight, Officer Down Larson illuminated an upper-story exterior balcony, where Burback was located, and announced herself by stating, "police department." Burback immediately responded, "no, FUCK YOU, I got the police department," along with other, continued comments. At this time, Officer Down Larson observed Burback pointing a revolver-style handgun at her. Officer Down Larson immediately communicated to dispatch that Burback had a gun and asked that other officers expedite their response. Officer Down Larson slightly modified her position and pointed her own service weapon at Burback. At this time, she observed Burback begin to enter the residence from the balcony with the handgun in his hand, now being held near the right side of his head with the handgun pointed directly up in the air. At this time, Officer Down Larson yelled to Burback and fired two shots at him. Burback entered the residence, continuing to yell and indicating that he had been shot in the back.

Officer Down Larson relayed the situation to dispatch and ran around the residence towards the stairs leading to the main point of entry. There, she could see a female (SC), looking down from the entry to the residence. Officer Down Larson confirmed to dispatch that there was another person in the house (SC). Multiple other officers arrived around this time. SC was directed to descend the stairs and get behind officers, which she did. SC confirmed there was no one else inside the apartment. Officer Down Larson relayed to dispatch that Burback may be shot in the back. Burback continued to yell from inside the apartment. While maintaining her vantage point, Officer Down Larson asked SC, "he has a gun, correct?" SC responded, "yes." During this time, Burback continued to shout from inside the apartment, including yelling, "bring it on!"

Burback barricaded himself in the apartment for the next several hours. Burback spoke with officers attempting to negotiate with him, indicating that he was not coming out and that officers would have to come and get him. Burback was highly agitated during this time, yelling at officers and indicating that he would not come out because he believed officers would shoot him again. Officers speaking to Burback believed, based on his demeanor, that he was intoxicated. While in the residence, Burback paced, yelled, and eventually removed all of his clothing, at which point officers could see that Burback appeared to have some sort of injury on his back. After negotiation and the deployment of less-lethal means, officers were eventually able to get Burback to exit the residence, whereupon he was taken into custody at approximately 2:05 AM.

Once out of the residence, it was confirmed that Burback had a gunshot graze wound on his back, as evidence by an approximately 3-4 inch laceration on his back which required minimal medical treatment. Burback was transported to Mayo Hospital for medical clearance and a blood draw, after which he was taken to the Eau Claire County Jail. It was eventually confirmed that Burback's blood alcohol concentration was 0.089.

Burback was interviewed and at first denied having any gun whatsoever. Officers subsequently conducted a search warrant at the residence and located a loaded revolver-style handgun concealed in a cabinet under the

bathroom sink among children's toys. Burback eventually admitted that he had lied and that he did, in fact, have a handgun. He continued to deny that he had the handgun in his physical possession when he had encountered Officer Down Larson.

As part of the investigation of this incident, SC was also interviewed. During her interview on-scene while Burback was still barricaded in the residence, SC told officers that she had seen Burback on the balcony with the handgun in his hand. During subsequent interviews, SC changed her story to indicate that she could not remember if Burback had the gun in his hand or in his waistband when he was on the balcony, but SC maintained through all her interviews that Burback was in possession of the handgun while on the balcony. SC also indicated that Burback had been drinking alcohol during that evening.

As part of the investigation of this incident, Officer Down Larson was also interviewed. She stated that based on the circumstances, she believed an active domestic violence incident was taking place in which Burback was yelling profanities at a female inside the residence. She believed that Burback was intoxicated based on his slurred speech. Officer Down Larson stated that initially, she observed Burback point a handgun at her which caused her to fear for her life and believe that Burback was going to shoot her. Officer Down Larson stated that Burback then started to enter the residence, now holding the handgun near his head, pointing straight up in the air. She stated that this caused her to fear that Burback was going into the residence to shoot or kill the female at whom Burback had been yelling at.

OFFICER DOWN LARSON'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 Thomas Burback on May 24, 2024 was reasonable given the totality of the circumstances. The analysis leading to this decision includes, but is not limited to, the following information:

- When Officer Down Larson first encountered this situation, she heard Burback loudly yelling profanities and encountered two small children, who credibly reported to her that Burback was drunk and fighting with another person (SC) inside the residence. The children further reported that they did not know what to do and wanted to get away from the argument. This reasonably caused Officer Down Larson to believe that an ongoing domestic violence incident involving an intoxicated suspect was occurring. This created a reasonable belief that there was a possibility of imminent harm to SC.
- Once Officer Down Larson was in a position to observe Burback, she reported that she saw him with a revolver-style handgun which he pointed at her. Her description of the handgun is consistent with the handgun found at the scene. While Burback disputes that he pointed a gun at Officer Down Larson (and even that he was ever in physical possession of a gun), his account lacks credibility since he admittedly lied to officers about even owning a gun when he was first asked. Additionally, witness statements, video evidence, and blood analysis confirm that Burback was intoxicated during this incident, calling into question both the reliability of his memory and his motivation to lie to avoid potential criminal penalties associated with the possession of a firearm while intoxicated. This is especially relevant since Burback said during an interview that he "has lied lots of times in the past to get himself out of a jam." Further, Officer Down Larson's observation that Burback had the gun in his hand on the balcony is corroborated by SC's initial statement that Burback had the gun in his hand at that time. Finally, Officer Down Larson's body camera footage showed that before firing her weapon in Burback's direction, she relayed to dispatch that Burback had a gun. This real-time report by Officer Down Larson bolsters the credibility of her statement that Burback had a gun in his hand and pointed it

at her. Based on all of these factors, it is reasonable to conclude that Officer Down Larson's account is accurate and thus, that she believed that Burbuck had a handgun and was pointing it at her. That being the case, it was reasonable for Officer Down Larson to fear that she was in imminent and serious danger of death or great bodily harm.

- After Officer Down Larson observed Burbuck point the handgun in her direction, she observed him begin to enter the residence, still holding the firearm in his hand. For all the foregoing reasons, Officer Down Larson's observation in this regard is credible. Further, she had already received credible information from one of the children that SC was in the residence and fighting with Burbuck. These facts, combined with Officer Down Larson's observation that Burbuck, while highly agitated and intoxicated had pointed the handgun at her, made it reasonable for Officer Down Larson to conclude that if Burbuck entered the residence with the handgun, there was a legitimate and increasing danger of death or great bodily harm to SC.
- The circumstances under which Officer Down Larson observed Burbuck with the handgun, including him being intoxicated and an unreachable distance away from her as he pointed the gun at her and then began entering the residence with the gun, made it reasonable for Officer Down Larson to conclude that deployment of her service weapon was the amount of force necessary to terminate the imminent danger posed by Burbuck. Burbuck himself acknowledged this, stating during one of his interviews that, "...I'd personally say it's justified. I'm in the dark, she doesn't know what I got in my hands."
- Officer Down Larson has been an Eau Claire Police Officer for 3 years and has prior experience as a Community Service Officer. She is currently assigned to the Eau Claire Police Department Crisis Intervention Team and has received training for that assignment. Against this training and experience and given the information available to Officer Down Larson at the time she fired her service weapon in Burbuck's direction, it was reasonable to conclude that alternatives other than deadly force were not available or effective at that time.

CONCLUSION

Under the circumstances of this case, the Eau Claire County District Attorney's Office concludes that Eau Claire Police Officer Ariana Down Larson'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.eauclairecounty.gov or go to our Facebook page at www.facebook.com/EauClaireCounty.*

