

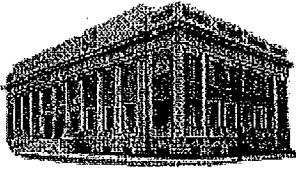
Equal Justice for All

Lewis County
Prosecuting Attorney's Office

INTEROFFICE MEMORANDUM

TO: PRESS
FROM: JONATHAN L. MEYER, PROSECUTING ATTORNEY
DATE: NOVEMBER 21, 2012
RE: OFFICER INVOLVED SHOOTING ON NOVEMBER 1, 2012

Attached to this release is the investigative findings by the Lewis County Prosecuting Attorney's Office.



Lewis County
Prosecuting Attorney's Office

Equal Justice for All

November 21, 2012

Detective Cameron Simper
Thurston County Sheriff's Office
2000 Lakeridge Dr. SW
Olympia, WA 98502-6045

RE: Officer Involved Shooting of November 1, 2012

Detective Simper:

In the early morning of November 1, 2012, I was contacted at my home by Lewis County Sheriff's Office Patrol Commander Steve Aust. Commander Aust informed me that at approximately 0015 hours Patrol Deputy Matt Wallace was involved in a shooting that resulted in the death of Gregory S. Kaufman.

I responded to the scene, arriving at approximately 0045 hours. Upon my arrival, I was given a brief overview of the situation by Detective Sergeant Dusty Breen, Sheriff Steve Mansfield, Commander Aust and Chief Criminal Deputy Gene Seiber. The scene had been secured and Mr. Kaufman was still on scene, deceased. It should be noted that at the time I arrived, Deputy Wallace was no longer at the scene and I have not had contact with him since this incident.

The briefing I was provided indicated that the investigation was the responsibility of the Regional Sheriffs' Critical Incident Investigation Team. As you know, this team is comprised of law enforcement personnel from surrounding counties that are tasked with investigating incidents such as these. When the team is activated, the agency involved is excluded from the investigation. This allows an independent investigation to be conducted. Also during the briefing, I was informed that you were designated as the lead investigator of this officer involved shooting.

In addition, I attended the autopsy of Mr. Kaufman, and attended the briefing conducted by you at the Lewis County Sheriff's Office. I have reviewed your Team's reports, statements of the people interviewed, the radio traffic from the incident, photographs and reviewed the matter with my Chief Criminal Deputy, J. Bradley Meagher, and Senior Deputy Prosecuting Attorneys Sara Beigh and William Halstead. Finally, I have reviewed applicable statutory and case law.

In doing so, I have concluded that Deputy Wallace's use of Deadly Force on the morning of November 1, 2012 was justified. This opinion has been reviewed by my Chief Deputy and my Criminal Senior Deputies who all concur in this conclusion.

What follows is a factual summary outlining the facts known to Deputy Wallace at the time of the shooting, evidence uncovered since the shooting, as well as relevant information, a legal analysis outlining the relevant legal authority and, finally, a conclusion that outlines, in detail, my decision to not pursue criminal charges against Deputy Wallace in this matter.

Some of the items included do not appear to have been known to Deputy Wallace at the time of the shooting, but are relevant to the analysis of this matter to help explain the actions of Mr. Kaufman. However, this document is not intended to fully explain the reasons for Mr. Kaufman's actions on the morning of November 1, 2012. Rather, this document is intended to review Deputy Wallace's actions on the morning in question.

FACTUAL SUMMARY

EVENTS OF OCTOBER 29, 2012

On October 29, 2012, Gregory Kaufman's girlfriend of approximately two (2) years¹, Vicky Lynne Henthorn, contacted Lewis County Dispatch via 911². Ms. Henthorn alleged that Mr. Kaufman was intoxicated and became physically violent with her.³ Deputies from the Lewis County Sheriff's Office responded to the 911 call. One of the deputies that responded on that day was Deputy Wallace.⁴ As a result of that contact, Mr. Kaufman was arrested and charged with Assault in the Fourth Degree-Domestic Violence.⁵ As a result of the charge, a Domestic Violence No-Contact Order was entered preventing Mr. Kaufman from contacting Ms. Henthorn.⁶ The defendant was then released from custody on October 30, 2012.⁷

¹ See Bates Stamp pages 12-6032/000050, 12-6032/000106, 12-6032/0000142.

² See Bates Stamp pages 12-6032-000051, 12-6032/000147, 12-6032/000106.

³ See Bates Stamp pages 12-6032/000051, 12-6032/000147-126032/000149, 12-6032/000106.

⁴ See Bates Stamp page 12-6032/000133. Deputies Zimmerman and Almond also responded (12-6032-000129).

⁵ See Lewis County District Court Cause Number 2Z0784264.

⁶ *Id.* This document was entered on October 30, 2012.

⁷ *Id.*

EVENTS OF OCTOBER 31, 2012⁸

On October 31, 2012, at approximately 1514 hours, Chehalis Police responded to a call from Ms. Henthorn alleging a Violation of the No Contact Protection Order.⁹ Officer Taylor responded to the call.¹⁰ Ms. Henthorn indicated that when she left work on October 31, 2012, there was a note from Mr. Kaufman on her car.¹¹ Ms. Henthorn recognized Mr. Kaufman's handwriting on the note.¹² Ms. Henthorn indicated that she feared for her safety and began carrying mace.¹³ The officer attempted to contact Mr. Kaufman, but was unable to locate him.¹⁴ The officer was eventually able to speak to Mr. Kaufman via telephone on that same evening.¹⁵ Mr. Kaufman admitted to leaving the note.¹⁶ Mr. Kaufman then asked the officer if the officer was going to arrest him and put him in a jail cell.¹⁷ The officer replied "yes" and told Mr. Kaufman that he needed to come to the Chehalis Police Department to talk further.¹⁸ Mr. Kaufman never appeared at the Chehalis Police Station.¹⁹

EVENTS OF NOVEMBER 1, 2012

Deputy Wallace was on routine patrol in the early morning hours of November 1, 2012.²⁰ Deputy Wallace was driving a fully marked patrol vehicle and was in full uniform.²¹ While patrolling on Highway 6, heading west, within the boundaries of Lewis County, Deputy Wallace saw a vehicle pulled off onto a gravel pull out of the east bound lane.²² Deputy Wallace turned his vehicle around and pulled in behind the vehicle.²³ Of note is that Deputy Wallace indicates that he illuminated the vehicle with his spotlight²⁴, but Deputy Almond, the first deputy to respond after shots were fired, indicated in his statement that Deputy Wallace's spotlight was not on²⁵; however, various photographs clearly show the spotlight of Deputy Wallace's vehicle on. Regardless, this anomaly does not change the analysis in this matter.

⁸ It is unclear how much Deputy Wallace knew of the events of October 31, 2012.

⁹ See Bates Stamp page 12-6032/000099.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* During an interview subsequent to the shooting, Ms. Henthorn indicated that Mr. Kaufman had threatened to kill himself and kill her (12-6023/000146).

¹⁴ See Bates Stamp page 12-6032/000100.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See Bates Stamp page 12-6032/000133.

²¹ See Bates Stamp page 12-6032/000138. Evidence of this is also present in various photographs included with the investigative report.

²² See Bates Stamp page 12-6032/000133.

²³ See Bates Stamp page 12-6032/000133.

²⁴ See Bates Stamp page 12-6032/000133.

²⁵ See Bates Stamp page 12-6032/000129.

Deputy Wallace radioed dispatch and requested that they run the license plate.²⁶ The description given by dispatch matched the vehicle observed by Deputy Wallace.²⁷ The registered owner was listed as Gregory Kaufman.²⁸ Deputy Wallace recognized the name as having had contact with him two (2) days prior.²⁹ Deputy Wallace advised dispatch that he would be out of his car contacting the vehicle.³⁰

As Deputy Wallace approached the vehicle, he noted that the windows were tinted, preventing him from seeing inside until he reached the driver's side door.³¹ Upon arriving at the driver's side door, Deputy Wallace noticed condensation on the window leading him to believe there was someone inside.³² Through an opening in the condensation, Deputy Wallace was able to observe a male sitting in the reclined passenger seat.³³ Deputy Wallace knocked on the window and the person in the passenger seat looked at Deputy Wallace; at that point, Deputy Wallace recognized the man as Gregory Kaufman.³⁴

Deputy Wallace asked Mr. Kaufman if he was ok.³⁵ Deputy Wallace indicated that Mr. Kaufman waived his hand in a dismissive fashion.³⁶ When Mr. Kaufman did this, Deputy Wallace saw cut marks and, what appeared to be, dried blood on Mr. Kaufman's left wrist.³⁷ Deputy Wallace also observed, what appeared to be, fresh blood stains where Mr. Kaufman's wrist touched his abdomen.³⁸ When asked, Mr. Kaufman indicated that he was fine and just had a nose bleed.³⁹ Deputy Wallace observed Mr. Kaufman's mustache and observed no blood on his mustache.⁴⁰

Deputy Wallace pointed out to Mr. Kaufman that he did not believe that he had a nose bleed.⁴¹ Deputy Wallace asked Mr. Kaufman if he had been cutting

²⁶ See Bates Stamp page 12-6032/000133. This is also confirmed by listening to the exchange between Deputy Wallace and dispatch.

²⁷ See Bates Stamp page 12-6032/000133. This is also confirmed by listening to the exchange between Deputy Wallace and dispatch.

²⁸ See Bates Stamp page 12-6032/000133. This is also confirmed by listening to the exchange between Deputy Wallace and dispatch.

²⁹ See Bates Stamp page 12-6032/000133 and 12-6023/000137.

³⁰ See Bates Stamp page 12-6032/000134. This is also confirmed by listening to the exchange between Deputy Wallace and dispatch.

³¹ See Bates Stamp page 12-6032/000134.

³² See Bates Stamp page 12-6032/000134.

³³ See Bates Stamp page 12-6032/000134.

³⁴ See Bates Stamp page 12-6032/000134.

³⁵ See Bates Stamp page 12-6032/000134.

³⁶ See Bates Stamp page 12-6032/000134.

³⁷ See Bates Stamp page 12-6032/000134.

³⁸ See Bates Stamp page 12-6032/000134.

³⁹ See Bates Stamp page 12-6032/000134.

⁴⁰ See Bates Stamp page 12-6032/000134.

⁴¹ See Bates Stamp page 12-6032/000134.

himself.⁴² Mr. Kaufman nodded indicating that he had cut himself.⁴³ Mr. Kaufman then turned his head and pointed to a neck wound.⁴⁴ Deputy Wallace could see that the skin was open and could also see the tissue inside the wound and a small amount of blood.⁴⁵ At that point, Deputy Wallace contacted dispatch and requested that aide be summoned because he believed the wounds observed were self-inflicted.⁴⁶

Deputy Wallace attempted to open the driver's side door, but the door was locked.⁴⁷ When asked to unlock the door, Mr. Kaufman used his right hand to activate the power locks and unlock the door.⁴⁸ With the door open, Deputy Wallace was able to observe a small notebook on the driver's seat.⁴⁹ Deputy Wallace again asked Kaufman if he was ok.⁵⁰ At that point, Mr. Kaufman became emotional and told Deputy Wallace that he had left a note for "Vicky" and was concerned about violating the no-contact order.⁵¹ Deputy Wallace tried to reassure Mr. Kaufman that he was not concerned with the violation, but only with getting him some help.⁵²

After putting on protective gloves to prevent blood transfer, Deputy Wallace asked Mr. Kaufman where the knife was.⁵³ Mr. Kaufman reached to his right side and brought up a knife with a blade of approximately five (5) inches.⁵⁴ Deputy Wallace asked Mr. Kaufman to put the knife on the dash.⁵⁵ Although it looked as if he was going to comply, Mr. Kaufman then looked at the knife, looked at Deputy Wallace, reached over, opened the door and exited the vehicle with the knife still in his hand.⁵⁶ At this point, Deputy Wallace drew his weapon.⁵⁷

Deputy Wallace held his weapon low and repeated commands to Mr. Kaufman to drop the knife as he began to advance on Deputy Wallace.⁵⁸ Mr. Kaufman held the knife in his right hand, arm bent, so the point of the knife was aiming at

⁴² See Bates Stamp page 12-6032/000134.

⁴³ See Bates Stamp page 12-6032/000134.

⁴⁴ See Bates Stamp page 12-6032/000134.

⁴⁵ See Bates Stamp page 12-6032/000134.

⁴⁶ See Bates Stamp page 12-6032/000134. This is also confirmed by listening to the exchange between Deputy Wallace and dispatch.

⁴⁷ See Bates Stamp page 12-6032/000134.

⁴⁸ See Bates Stamp page 12-6032/000134.

⁴⁹ See Bates Stamp page 12-6032/000134. This notepad was later examined. It contained a note to Ms. Henthorn. On another page, there was a document entitled "Last Will and Testament". Deputy Wallace was unaware what the writing on the notebook contained (See Bates Stamp page 12-6032/000134).

⁵⁰ See Bates Stamp page 12-6032/000135.

⁵¹ See Bates Stamp page 12-6032/000135.

⁵² See Bates Stamp page 12-6032/000135.

⁵³ See Bates Stamp page 12-6032/000135.

⁵⁴ See Bates Stamp page 12-6032/000135.

⁵⁵ See Bates Stamp page 12-6032/000135.

⁵⁶ See Bates Stamp page 12-6032/000135.

⁵⁷ See Bates Stamp page 12-6032/000135.

⁵⁸ See Bates Stamp page 12-6032/000135.

Deputy Wallace.⁵⁹ Deputy Wallace began retreating from Mr. Kaufman, repeating his commands to drop the knife.⁶⁰ As Mr. Kaufman continued to advance, Deputy Wallace radioed to dispatch that Mr. Kaufman was coming at him with a knife.⁶¹ Deputy Wallace continued to retreat towards the area of Highway 6.⁶² As he was doing this, Deputy Wallace continued to give verbal commands to Mr. Kaufman, who was now walking faster towards Deputy Wallace with the knife still in his hand.⁶³ Mr. Kaufman did not respond or acknowledge the commands and just continued to advance with the knife.⁶⁴

Deputy Wallace knew that he could not retreat onto Highway 6 on a dark and rainy night and risk his life beyond the threat that Mr. Kaufman was posing.⁶⁵ Deputy Wallace continued to give commands to drop the knife only to have Mr. Wallace continue advancing.⁶⁶ At that point, Deputy Wallace fired two (2) shots and Mr. Kaufman immediately fell to the ground.⁶⁷ Deputy Wallace informed dispatch that there were shots fired.⁶⁸

Deputy Wallace estimated that approximately 20 to 30 seconds later a private vehicle arrived on the scene.⁶⁹ The occupants identified themselves as EMT/fire personnel.⁷⁰ The responders were hesitant to begin working on Mr. Kaufman because he was still clutching the knife in his hand.⁷¹ To allow them to work on Mr. Kaufman, Deputy Wallace placed his foot on Mr. Kaufman's wrist to secure the knife.⁷²

Shortly after this, Deputy Almond arrived on scene.⁷³ Deputy Almond took several pictures of the scene to preserve the record.⁷⁴ After a picture was taken with the knife still in Mr. Kaufman's hand, the knife was removed.⁷⁵ Deputy Almond asked Deputy Wallace to estimate where he was standing when the shots were fired.⁷⁶ Deputy Wallace placed a water bottle at the approximate

⁵⁹ See Bates Stamp page 12-6032/000140

⁶⁰ See Bates Stamp page 12-6032/000135.

⁶¹ See Bates Stamp page 12-6032/000135. This transmission cannot be heard on the audio obtained from dispatch. There appears to be a simultaneous call coming through from an officer from another department. It appears that Deputy Wallace's transmission was "stepped on".

⁶² See Bates Stamp page 12-6032/000135.

⁶³ See Bates Stamp page 12-6032/000135.

⁶⁴ See Bates Stamp page 12-6032/000135.

⁶⁵ See Bates Stamp page 12-6032/000135-12-6032/000136.

⁶⁶ See Bates Stamp page 12-6032/000136.

⁶⁷ See Bates Stamp page 12-6032/000136.

⁶⁸ See Bates Stamp pages 12-6032/0000127

⁶⁹ See Bates Stamp page 12-6032/000136.

⁷⁰ See Bates Stamp page 12-6032/000136.

⁷¹ See Bates Stamp pages 12-6032/000136, 12-6023/000121, 12-6023/000125.

⁷² See Bates Stamp pages 12-6032/000136, 12-6023/00128.

⁷³ See Bates Stamp page 12-6032/000136.

⁷⁴ See Bates Stamp pages 12-6032/000136, 12-6023/000128.

⁷⁵ See Bates Stamp page 12-6032/000136.

⁷⁶ See Bates Stamp page 12-6032/000136.

location.⁷⁷ The two shell casings were then located and Deputy Almond placed water bottles by them as well.⁷⁸ In speaking with a firearms expert, the area in which the shell casings landed are consistent with Deputy Wallace's estimated position at the time he fired his weapon.

From his arrival on the scene at 0011 hours, to the time shots were fired, 0016, Deputy Wallace was alone on the scene with Mr. Kaufman. Mr. Kaufman was determined to be approximately 20 feet away from his car⁷⁹ (it should be noted that he exited the passenger side door, went around the rear of the car and continued to advance on Deputy Wallace). Deputy Wallace was approximately 15 feet from Mr. Kaufman, 35 feet from Mr. Kaufman's vehicle, when he fired his duty weapon two (2) times.⁸⁰ Blood in the vehicle indicates that Mr. Kaufman had been there for some time.⁸¹ Also found in the car was an additional knife with blood on it.⁸²

AUTOPSY⁸³

On November 2, 2012, an autopsy was performed on Mr. Kaufman at the Lewis County Coroner's Office. During the autopsy, it was determined that Mr. Kaufman had multiple cuts to his wrist and neck.⁸⁴ There also were two small knife wounds to the chest.⁸⁵ It was determined that none of the knife wounds were fatal in nature. There were also two bullet wounds, one to the abdomen and one to head.⁸⁶ It was determined that fatal gunshot was the gunshot to the head. It was also disclosed during the autopsy that Mr. Kaufman suffered from Type II Diabetes, COPD and prostate cancer.

INVESTIGATIVE CONCLUSION

The conclusion reached in this matter by the lead investigator is as follows: "had Kaufman survived this encounter, I would be referring this case to the Prosecutors [sic] office for consideration of charges on Kaufman for Assault in the Second Degree."⁸⁷ Assault in the Second Degree occurs when one assaults another with a deadly weapon.⁸⁸

⁷⁷ See Bates Stamp page 12-6032/000136.

⁷⁸ See Bates Stamp page 12-6032/000136.

⁷⁹ See Bates Stamp page 12-6032/00023.

⁸⁰ See Bates Stamp pages 12-6032/000028-12-6023/000029.

⁸¹ See Bates Stamp page 12-6032/000032.

⁸² See Bates Stamp page 12-6032/000033.

⁸³ No autopsy report has been received as of the writing of this report. The conclusions reached are based upon my conversation with the pathologist at the autopsy.

⁸⁴ See Bates Stamp pages 12-6032/000037-12-6023/000042.

⁸⁵ See Bates Stamp pages 12-6032/000037-12-6023/000042.

⁸⁶ See Bates Stamp pages 12-6032/000037-12-6023/000042.

⁸⁷ See Bates Stamp pages 12-6032/000091.

⁸⁸ See RCW 9A.36.021(1)(c).

LEGAL ANALYSIS

The controlling statute in Washington on this issue is RCW 9A.16.040. Under that statute, law enforcement officers are authorized to use deadly force when it is reasonable and necessary to arrest and/or apprehend a person committing a felony.⁸⁹ When making the decision to use deadly force, an officer must have probable cause to believe that the person "...poses a serious physical threat to the officer..."⁹⁰ "Among the circumstances which may be considered by peace officers as a threat of serious physical harm [is]...The suspect threatens a peace officer with a weapon or displays a weapon in a manner that could reasonably be construed as threatening..."⁹¹ "A public officer or peace officer shall not be held criminally liable for using deadly force without malice and with a good faith belief that such act is justifiable pursuant to this section."⁹² When the legal standard is applied to the facts at hand, it is clear that Deputy Matt Wallace was legally justified when he used deadly force against Gregory Kaufman.

At the time of the shooting, Mr. Kaufman had a knife pointed at Deputy Wallace, continued to advance towards the deputy and ignored multiple verbal warnings to drop the knife. Deputy Wallace was left with no choice but to fire at Mr. Wallace or face physical harm himself.

It should be noted that Mr. Kaufman was approximately 15 feet away from Deputy Wallace when the shots were fired. Training given to Deputy Wallace included instruction on the proximity of a threat to an officer. Based upon the multiple trainings received by Deputy Wallace, it appears that Deputy Wallace acted in compliance with that training and was justified in drawing his weapon.

The apparent reasons for Mr. Kaufman's actions as outlined above may be deemed important by those who knew him, but are not relevant to the analysis undertaken here. What is imperative to this analysis is what Deputy Wallace knew at the time of the incident. What Deputy Wallace knew was that he had a gentleman who was apparently suicidal, as evidenced by the cuts to his wrist and neck, who had been arrested two (2) days prior, was armed with a knife, advancing on the deputy and ignoring repeated commands to drop the knife.

Without question, this case is a tragedy for all involved. Although the deputy has gone through countless hours on how to deal with a situation such as was presented here, I am certain that he, and every other law enforcement officer, hopes that such training is never needed in the course of their career. In this case, that training was necessary and was followed.

⁸⁹ See RCW 9A.16.040(1)(c)(i).

⁹⁰ See RCW 9A.16.040(2).

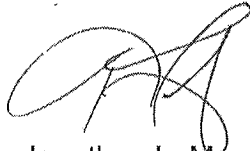
⁹¹ See RCW 9A.16.040(2)(a).

⁹² See RCW 9A.16.040(3).

In conclusion, thank you for the effort that you and your other team members put into the investigation of this matter. The detailed information was well organized and presented in a professional manner. Your briefing provided a good summation of the facts and events of November 1, 2012 and provided me the opportunity to ask questions necessary to this analysis. I also want to express my gratitude to you, your team, all law enforcement and Deputy Wallace for the dangerous work that you all do on a daily basis.

Finally, I am authorizing the return of items taken from Deputy Wallace in connection with this investigation. That includes, but is not limited to, his duty weapon, his utility belt, its contents, and his uniform. Certainly, if you have any questions, please do not hesitate to contact my office.

Sincerely yours,

A handwritten signature in black ink, appearing to be 'JL Meyer', written in a cursive style.

Jonathan L. Meyer
PROSECUTING ATTORNEY