December 20, 2014

Report on the Officer Involved Fatality Involving Milwaukee Police Officer Christopher Manney and Dontre Hamilton

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I. INTRODUCTION

On April 30, 2014 Milwaukee Police Officer Christopher Manney encountered Dontre D. Hamilton at 920 North Water Street, the location of Milwaukee County's Red Arrow Park. During the encounter a physical struggle occurred between Officer Manney and Mr. Hamilton. During this struggle Officer Manney discharged his firearm approximately 14 times, resulting in the death of Mr. Hamilton.

Pursuant to recently enacted legislation under Wisconsin Statute §175.47, the lead investigative agency for this investigation is the Wisconsin Department of Justice Division of Criminal Investigation. The lead investigator in the case is Special Agent Gilbert Hernandez and the Special Agent in Charge who filed the summary of the investigative report is SAC David Klabunde. The summary was completed and the reports of the investigation were filed with me on August 8th,2014. I base this review upon that investigation as well as information obtained from interviews of citizen witnesses, the Milwaukee County Medical Examiner's report, analysis from the Wisconsin Crime Lab, an independent assessment of the use of force by a State certified use of force instructor, and a review by an independent national use of force expert. I have also provided the DCI summary to the United States Attorney's Office for the Eastern District of Wisconsin and have consulted with Mr. Hamilton's family and their attorneys.

In the following sections, I will provide a summary of the investigation as provided by DCI, analyze the statements of the relevant citizen witnesses, and provide my legal assessment of the case.

II. SCENE LAYOUT

Figure 1 is a picture taken from a cell phone camera by a citizen witness from the high-rise office building at 1000 North Water Street. The witness took the picture shortly after the shooting incident. I include it because it provides a nearly contemporaneous view of the scene. The picture depicts a south-facing view of Red Arrow Park, with the ice rink at the north end (bottom of picture), the Starbucks "kiosk" in the center-left of the picture, Water Street to the west (right of picture), the MGIC offices to the east (left side of picture) and City Hall to the south (top of picture). The majority of witnesses describe action that occurred where the officers are standing, seen to the west (right) and slightly south (above) the kiosk in Figure 1.

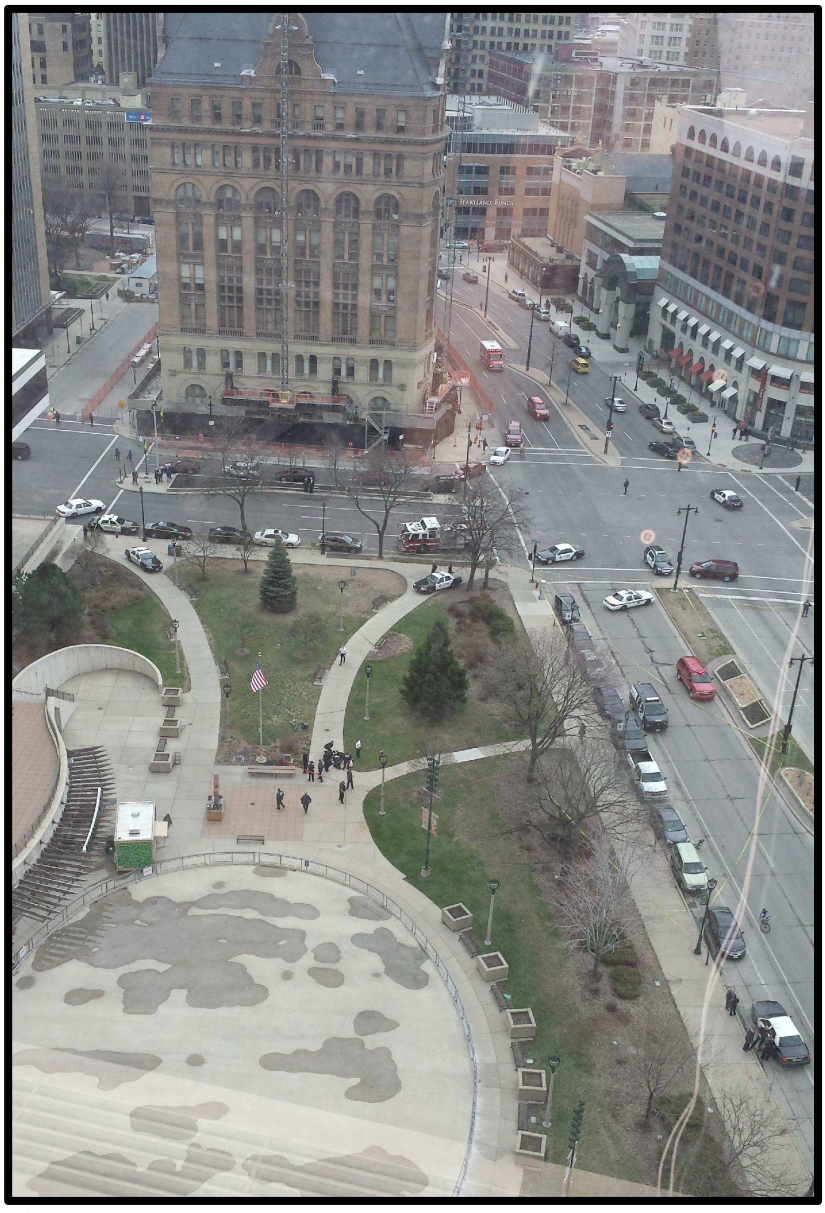

Figure 1

Detailed schematics of the scene were also created. See Figure 2 below. The reader should note that, on Figure 2, North is at the top of the diagram, whereas North is at the bottom of Figure 1.

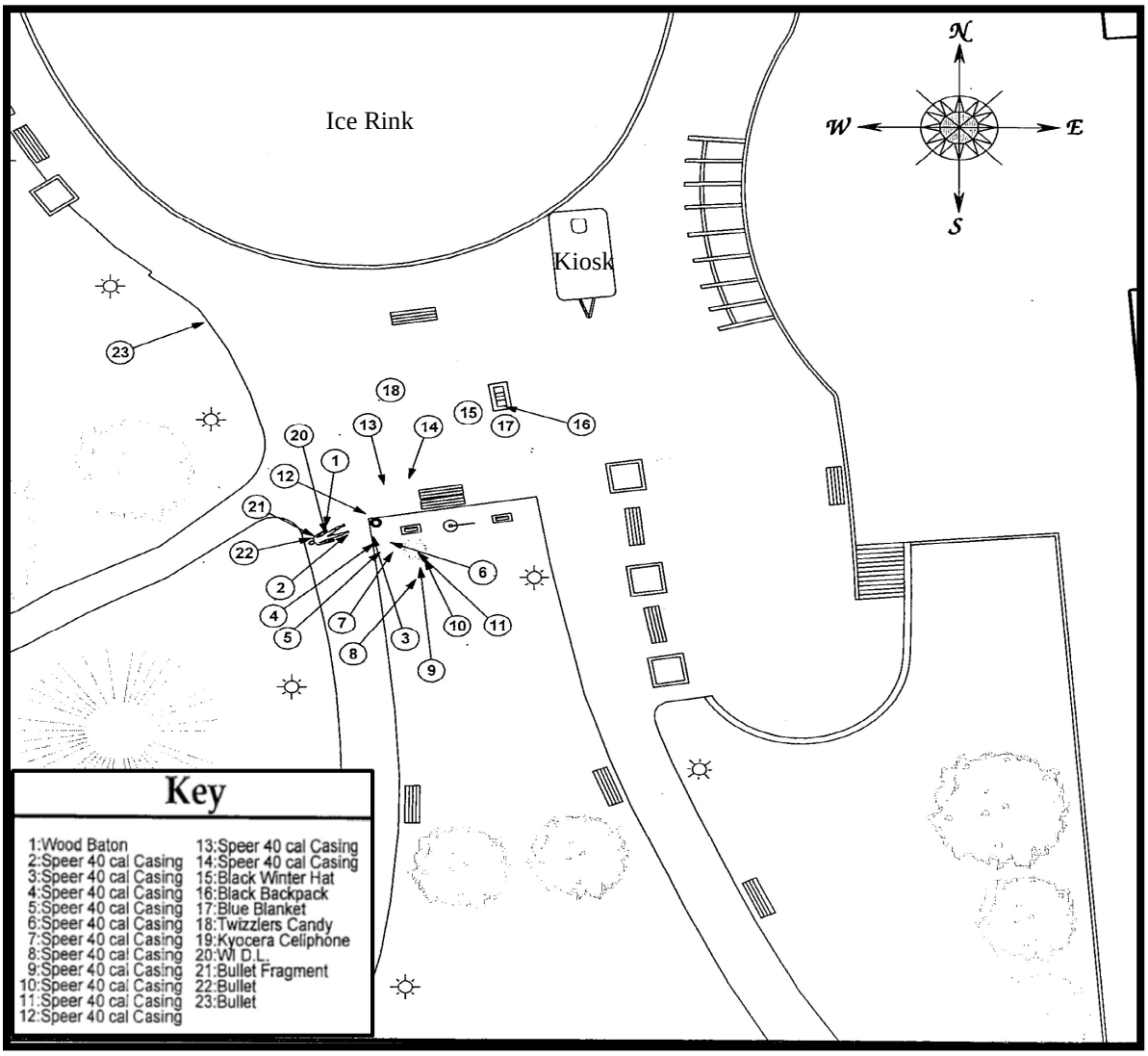

Figure 2

Investigators conducted an extensive canvass of all the buildings and businesses adjacent to and surrounding the park for witnesses and video surveillance that possibly captured the incident. They also made inquiry of citizen witnesses for mobile camera footage and they reviewed squad car surveillance footage. No recovered video captured the incident as it unfolded. One security camera mounted on the north-west corner of the MGIC building was capable of recording the incident, but it was operating in an automatic panning mode and was directed to the northeast as the incident occurred. The Marcus PAC camera facing Water Street was oriented to the north during the time of the encounter, and the Intercontinental Hotel did not have any cameras that covered the incident area.

III. INITIAL DISPATCH AND POLICE RESPONSE

According to dispatch records maintained by the Milwaukee Police, a request for assistance was placed at 1:52pm on April 30th and it was entered into the record as a welfare check. The call was made by a Starbucks employee at Red Arrow Park at 920 North Water Street asking for assistance with a person sleeping near the Starbucks kiosk. Officer Keith Cameron, who was acting as Desk Sergeant, called Officer Manney on his cell phone and left a message. He told Manney there was "a homeless guy sleeping alongside the trailer" and asked him to respond. Investigators obtained a copy of the phone message and confirmed the instructions given to Officer Manney. At the time the message was left, Officer Manney was handling a separate incident and did not immediately listen to the message. Because Manney did not respond immediately, the request for service was given to a dispatcher, who in turn contacted Squad 1141, Officers Fuerte and Fitchett.

Both Fuerte and Fitchett went to Red Arrow Park and made contact with Dontre Hamilton. Officer Fitchett was the senior officer and was acting as Fuerte's field training officer that day. Fitchett stated that he was dispatched at 1:54p.m. to Red Arrow Park for what he described as a welfare check, and when he arrived he observed a person, later identified as Dontre Hamilton, laying on his back on the sidewalk. According to Officer Fitchett, Mr. Hamilton was located next to the Red Arrow statue in the center of the park. Hamilton had his eyes closed, and when Fitchett nudged him to get his attention, Hamilton appeared groggy but was cooperative. Hamilton said he was taking a nap. He stood and provided Officer Fitchett with his name and identification. Fitchett asked if he was okay and if he needed anything. Hamilton indicated he was fine. Based on his observations, Fitchett did not believe Hamilton was in need of any services. Since Hamilton was not disturbing anyone, he and Fuerte went back to their squad. A short time later they received another call related to Hamilton from the Starbucks employees. This time, they returned to the park and spoke to the Starbucks employees and explained that Hamilton was not doing anything wrong. They left the scene at approximately 3:00 p.m.

In their interviews, Starbucks employees KB and JK confirmed they called Milwaukee Police because of their concern about Mr. Hamilton. They further stated they observed the first police contact with Hamilton and confirmed they placed a second call after Hamilton remained in the area. The employees confirmed that Officer Fitchett returned and explained that Hamilton was not doing anything wrong and could sleep in the park if he desired. Both indicated they were familiar with Officer Manney who was regularly assigned to the area.

Officer Manney listened to the voice mail message from Acting Sergeant Cameron at approximately 3:30 p.m. and called dispatch to ask if there was an assignment related to Red Arrow park. When told there was not, he requested that he be recorded as responding to a trouble with subject at that location, resulting in the encounter with Hamilton.

The following is a summary of the timeline:

- Officer Cameron received a call for police service at the Starbucks in Red Arrow Park on or about 1:50 p.m. on April 30, 2014.
- Officer Cameron left a message on Officer Manney's cell phone regarding the assignment.
- Officer Cameron gave the assignment to dispatch at 1:52 p.m.
- Officers Fitchett and Fuerte responded to the assignment, had contact with Donte Hamilton and left the scene with no further action.
- Starbuck employees called Milwaukee Police again at 2:09 p.m. and report that the individual "was back."
- Officers Fitchett and Fuerte returned and spoke to the Starbucks employees. The assignment was then cleared at 2:53 p.m.
- Officer Manney listened to the cell phone message from P.O. Cameron at 3:28 pm, called dispatch and asked if there was an assignment for Red Arrow Park. When told there was none, he asked that an assignment be created for him and went to Red Arrow Park.
- Manney contacted Hamilton resulting in the altercation and shooting.

It should be noted that while a reasonable determination was made by Officers Fuerte and Fitchett not to intervene further, a County Ordinance prohibits sleeping in a County Park. Section 47.25 of the County Code provides:

> No person shall sleep, or camp, or lodge in any park or parkway except in such places as designated for such purposes as overnight, or tourist, or trailer camps, and then only subject to the rules and regulations of the department of parks, recreation and culture governing the use of such areas…
>
> Any person violating any of the provisions of chapter 47 of the Code, excepting sections 47.06(6), 47.10(9), 47.14(5), 47.141 and 47.16(1), shall for each offense forfeit a penalty of not less than ten dollars ($10.00) nor more than two hundred dollars ($200.00), together with the taxable costs in said action, in the discretion of the court, and in default of payment thereof, shall be imprisoned in the county jail or in the house of corrections of the county for a period not to exceed ninety (90) days, in the discretion of the court . . . .
>
> . . . [A]ny peace officer of the county, or any of its municipal subdivisions, may without a warrant arrest any offender whom he/she may detect in the violation of any of the provisions of this chapter, and take the person so arrested forthwith before a magistrate having competent jurisdiction, and he/she shall have at all times the right to enter the premises of any building, structure or enclosures in any park or parkway, including such grounds, buildings, structures or enclosures which may be leased or set aside for private or exclusive use of any individual or

> group of individuals, for the purpose of arresting violators hereof, and may use all necessary means to attain that end.

A copy of the dispatch log is included in ***Appendix A*** at the end of the report.

IV. WITNESS ACCOUNTS OF THE INCIDENT

The following witnesses were located and interviewed. They reported they saw the majority of the confrontation, observed Mr. Hamilton with the police baton, heard the officer give verbal commands, and/or saw the officer fire shots at Hamilton. The paragraphs below are summaries of the witnesses' accounts as provided in their interviews:

GJ: Mr. GJ indicates that he works in the City building at 809 N. Broadway and that, at approximately 2:40 p.m., he was walking through Red Arrow Park during his lunch break. At this time, he observed an individual lying on the ground. Approximately an hour later, he was returning to work when he heard someone yell, "Get on the ground!" The person repeated this over and over again. GJ then observed a police officer and a second person circling each other. He suddenly noticed that the person facing the officer had a black stick in his hand and that he was holding it "menacingly." This individual appeared to be advancing on the officer. The officer produced a firearm and fired several shots at the individual, who fell to the ground. The officer did not fire further shots at this time. *(Mr. GJ made his observations from a point north-east of the incident at ground level).*

JK: Mr. JK states that he works at 330 W. Kilbourn Avenue. He states that he walked to the Starbucks in Red Arrow Park to purchase a cup of coffee and observed an individual lying on the cement walkway in the park. JK states that he started walking south, away from the Starbucks trailer, and then passed a uniformed Milwaukee police officer, who was walking northbound toward the individual JK had observed lying on the pavement.

When he heard yelling from behind him, JK turned and observed that the officer was yelling commands at the individual who had been on the ground; that individual was now on his feet and facing the officer. JK observed physical contact between the officer and the individual, and observed the officer withdrawing his baton from his belt. He states that the officer continued to give commands and observed the officer strike the individual at least twice, striking the back and shoulder area. He states that the individual grabbed the officer's baton and pulled it out of the officer's hands. JK indicates that once the individual had the officer's baton, he hit the officer one or two times. JK believes that the individual hit the officer on his upper body, back and shoulder area. He states that, after being struck, the officer was able to step back a short distance. JK observed the officer draw his handgun and noticed that the individual still had the baton and was in an aggressive posture. He states that he then heard approximately five or six shots and the individual then went down to the ground. He then observed numerous officers arrive a short time later. *(Mr. JK was to the south of the incident at ground level).*

SF: Ms. SF works at 270 E. Kilbourn Avenue and took a coffee break around 3:05 p.m. She observed an individual lying down on the ground in the park area. SF ordered coffee and sat down on a bench east of the Red Arrow statue. She called her husband and was having a conversation with him when she saw a police officer, who approached the individual and crouched over the individual. The officer assisted the individual to his feet; the individual was facing away from the police officer. SF observed that the officer began a pat-down of the individual.

SF states that, at this point, she observed the police officer and the individual in a scuffle; she described the individual as attempting to break the grasp of the police officer, and heard the police officer yelling commands at the individual. She observed the individual to be holding a "smooth stick," and stated that he was in an aggressive position. She observed that the individual took steps toward the officer while holding the stick, and that the officer backed up. SF heard the officer say, "So you want to fight?" SF then observed the individual's body being impacted by shots, as if the individual were being struck in the chest and right shoulder area, because his body moved backward from the impacts. She stated that there were an additional two shots. SF believes that there were a total of six (6) to seven (7) shots total. She observed the individual fall to the ground after the last shot was fired. *(Ms. SF was to the east of the incident at ground level).*

RB: Mr. RB works in the second floor of the Milwaukee City Hall and was in his office when he heard gunshots. He grabbed his binoculars and went to his window, and observed a Milwaukee police officer standing in the park with his gun drawn. RB states that the police officer was pointing his gun toward an individual, and he observed the officer firing his gun at that individual. He states that he heard and saw the officer fire five (5) to seven (7) shots until the gun emptied and its slide went back into the lock position. RB observed the individual's arms come up as he fell to the ground, and said that the individual landed on his back. When he looked more closely at the individual on the ground, RB noticed that the individual was clutching a black rod that could have been a police baton. After the shooting, the police officer put his hands on his head and went down on one knee, at which time other officers arrived and began performing CPR on the individual on the ground. *(Mr. RB was to the south of the incident in an elevated position).*

PT: Ms. PT states that she works at 270 E. Kilbourn and that she was in a break room, talking on the phone, when she observed a police officer trying to catch up to a male individual, who was walking away from the officer. The officer had a police baton in his right hand and hit the individual approximately four times. PT states that the individual was able to get the baton away from the police officer and, as soon as he seized it, swung it at the officer about two to three times. She was not sure if the individual actually struck the officer, who was backing up. The individual continued to advance toward the officer with the baton in his right hand. The officer drew his handgun and fired two (2) or three (3) shots toward the individual, continuing to fire shots until the individual fell backward. She observed the officer kneeling after the shooting,

and observed other officers arrive; these officers began to administer CPR to the individual on the ground. *(Ms. PT was at a point to the north-east of the incident from an elevated position).*

KB: Ms. KB, one of the two Starbucks employees mentioned above, told investigators that she works at 920 N. Water St. and that her coworker, JK, had told her that she (JK) was going to call police because there was a "homeless" man sleeping by the arrow statue located in the park. She stated that two police officers responded to JK's call, and observed the officers speak to the individual and then leave. When she returned from her break, JK told her that she was again calling the police because the individual was still in the park. A few moments later, the officers returned and spoke to JK, telling her that the individual was not causing any problems and was allowed to be in the park. KB stated that, at approximately 3:30 p.m., she heard Officer Manney (whom she knows from previous encounters) speaking to the individual and telling the individual to "sit down, relax." KB stated that, when she shifted her position inside the Starbucks kiosk, she saw the individual standing with Officer Manney's baton raised in his right hand, with his left hand held up in a defensive posture. She observed Officer Manney attempt to get his baton back from the individual and then observed Officer Manney remove his gun from his holster. KB stated that she then stepped back and did not see what happened next, but stated that she heard approximately ten to fifteen gunshots. When she looked outside, she saw police officers administering CPR to the individual. KB later wrote an online account of the incident, which was posted on May 3, 2014. *(Ms. KB was located inside the kiosk north of the incident at ground level).*

LM: Mr. LM works at 270 E. Kilbourn and states that, at approximately 3:30 p.m., he walked to the corner of State and Water St. He states that, while standing at the corner, he heard a commotion; he describes this commotion as male voices shouting. He turned and saw a Milwaukee police officer confronting an individual and states that they were face-to-face with one another, and that the police officer had ahold of the individual at that point. LM observed the officer draw his baton and strike the individual four to five times to the individual's left hip area. He said that the police officer and the individual were "dancing around" and observed the individual seize the baton from the police officer. LM observed the individual swing the baton at the police officer approximately two to three times, using an overhead motion, but was uncertain as to whether the individual struck the officer. He then observed the individual lunge at the police officer; they appeared to have ahold of each other. At this time, he observed the officer push the individual away and draw his gun. LM heard the officer order the individual to "drop the baton" and says that the individual still had the baton raised in an overhead position, and did not drop it. He observed the police officer fire two shots, which caused the individual to flinch and jump back. LM observed the police officer fire an additional six to eight shots at the individual, as the individual was still standing, and observed that the individual was turning his body back and forth. LM observed the individual fall to the ground as the shots continued to be fired, and believes that there may have been one to two shots fired by the police officer as the person was falling to the ground. Once the individual was on the ground, the firing stopped. *(Mr. LM was north-west of the incident at ground level).*

MP: Ms. MP is employed at 841 N. Broadway. She left work at about 3:28 p.m. and observed a Milwaukee police officer walking into Red Arrow Park. She indicates that she observed the officer approach an individual lying in the park, and saw the officer motion to the individual that he (the individual) should approach the officer. MP indicates that the individual got up from the ground and walked toward the officer; as he approached the officer, the individual raised his hands in the air. MP observed the officer begin a pat-down of the individual and heard what sounded like a scuffle. She looked back to where she last saw the officer, and saw that the individual had the officer's baton raised in his right hand above his (the individual's) head. She observed the individual charge at the officer and saw the officer remove his weapon, at which time she hid behind a corner of the building. MP states that she then heard six to eight shots. *(Ms. MP was located to the north-east of the incident at ground level).*

CB: Ms. CB states that she was on the traffic island between the bus lane and the main portion of N. Water Street. She states that she was looking east toward the Starbucks in Red Arrow Park when she noticed a police officer with his arm extended and his firearm pointed to the north. She then observed an individual running toward the police officer, and she heard the police officer fire his weapon at least ten times. *(Ms. CB was located to the west of the incident at ground level).*

GS: Mr. GS was working in his cubicle in the MGIC building when he heard commotion in Red Arrow Park, heard a police officer issue the command "drop it," and then heard eight to ten gunshots. *(Mr. GS is located to the east of the incident at an elevated level).*

SB: Ms. SB works at the 1000 N. Water office building on the ninth floor. She states that she was looking south toward Red Arrow Park and observed an individual walking slowly northbound, followed by a police officer. She observed that, as the officer neared the individual, the individual appeared combative and was raising up his arms. SB indicates that the encounter between the officer and the individual became physical, and that the individual pushed the officer in his chest. She states that the individual was swinging his arms at the officer, and that she believes that the individual hit the officer. She observed the officer defending himself and saw him remove a baton, which he swung at the individual. SB believes that the officer struck the individual at least one time. She indicates that she turned away for a short time; when she looked back, she saw that the individual had the officer's baton. She believes that the officer was hit high, around his arms. She indicates that the officer had his arms in front of him and that the officer was in a defensive position. SB saw the officer raise his hands and noticed that he had a gun pointed at the individual; she believes that she heard eight to twelve gunshots in rapid succession. She indicates that she thought that the officer and the individual were two to three feet apart when the shooting started and that, after the shots were over, the individual fell to the ground. She observed the officer go down to his right knee and then place his head in his hands. She then observed other officers arrive on scene. SB began recording the incident on her cellphone, several seconds after the shots were fired. *(Ms. SB is located to the north of the incident at an elevated level).*

JK: Ms. JK works at 920 N. Water Street at the Starbucks location in Red Arrow Park and is the second of the two employees mentioned above. She indicates that she observed an individual lying on his back in Red Arrow Park; she then contacted the Milwaukee Police Department's non-emergency number. She observed two police officers arrive at the park and approach the individual, then depart the scene. After the police officers left, she observed that the same individual continued to lie in the park and she made another call. The same officers returned and told her that the individual was allowed to be there. JK states that, later, she was standing inside the Starbucks kiosk when she heard yelling to the south of her window. She then observed that Officer Manney, whom she knows from previous encounters, had his arms around the individual who had been sleeping. A short time later, the officer and the individual separated and she observed Officer Manney take out his nightstick and strike the individual two times. At this time, the individual somehow seized the nightstick from Officer Manney, who backed away from the individual. JK observed that the individual was brandishing the nightstick and approaching Officer Manney. She states that, when the officer and the individual were approximately five feet away from each other, she heard five to seven shots. *(Ms. JK is located to the north of the incident at ground level).*

The following witnesses reported seeing the last 1 – 2 gunshots fired by the officer when Hamilton was down on the ground:

KL: Mr. KL indicates that he was driving south on N. Water Street and that, when he came to the intersection of Water and E. Kilbourn Avenue, he heard approximately ten shots in quick succession. He glanced over his shoulder and observed a police officer pointing a gun toward an individual on the ground. KL states that he saw the officer fire one additional shot. He states that he then got out of his car and walked toward the police officer and the individual; he observed the officer talking into a radio or a cellphone. KL states that numerous police officers arrived on scene at this point.

EM: Ms. EM was in a motor vehicle driven by citizen witness KL, her husband. She heard at least five shots and heard her husband say that a police officer just shot a man. She states that she and her husband got out of the vehicle; at this time, she observed a police officer standing over an individual, holding a gun. She states that she observed the police officer shoot the man on the ground one time.

TN: Mr. TN was in the rear seat of the motor vehicle driven by citizen witness KL when he heard six to eight gunshots. He states that he looked over to Red Arrow Park and observed an officer holding a gun in two hands; TN states that he could see an individual lying on the ground. He states that he saw the officer shoot once, pause, and shoot a second time. TN says that he then got out of the car with his mother and father and used his cellphone to record what was happening afterward.

MM: Ms. MM was in the MGIC office building, heard 4 gunshots, looked out the window and observed the officer fire 2 more times at the subject who was lying on the ground. She reports

that all 6 gunshots she heard were consecutive. She also states she heard a co-worker state "Why is he still shooting?"

KL: Ms. KL was in the MGIC office building with MM, heard 4 gunshots and looked out the window, reported seeing a person (Hamilton) on the ground and observed the officer lunge forward and fire 2 more shots. KL reported screaming "Why is he shooting him, he is on the ground".

VW: Ms. VW states she was in the MGIC office building, heard 4 gunshots, went to the next office cubicle and observed the officer fire 2 gunshots at a person (Hamilton) who was on the ground. That person (Hamilton) had an object in his hands like a shotgun or barrel.

LC: Ms. LC was in the MGIC office building and heard 4 – 5 gunshots, looked out the window and saw officer fire 2 more shots, looked and observed a person (Hamilton) on the ground.

BH: Mr. BH was at the intersection of Water Street and Kilbourn when he heard 2 – 3 gunshots, saw the officer fire 2 shots at subject (Hamilton) who had his arms up and was falling to the ground. He reported that the last shot appeared to have been fired while the person (Hamilton) was on the ground.

RH: Mr. RH was located in an office at 1000 North Water when heard gunshots, went to his window and observed the officer fire the last shot as the subject (Hamilton) was falling to the ground.

There were sixteen (16) witnesses interviewed who reported that they did not observe the entire incident; however at the conclusion of the incident they observed a "police baton," a "tube," a "stick," a "long object" or a "brown object" in Mr. Hamilton's hands, across his chest, at his right arm or in close proximity of Mr. Hamilton. Five of those witnesses were responding police officers.

SH: SH observed a black tube across the chest of the person on the ground (Hamilton) after hearing shooting.

MM: MM heard shots, looked out and saw a person (Hamilton) down with baton across his chest.

Officer Newport – Officer Newton arrived on scene and observed a baton under the subject's (Hamilton's) right arm.

Officer Swiercz – Officer Swiercz arrived on scene and observed the subject (Hamilton) down on the ground with a baton across his body.

Sergeant. Lintonen – Sergeant Lintonen heard gunshots and responded to scene, whereupon he observed the subject (Hamilton) down on ground clutching police baton.

P.O. Bjorkquist – Officer Bjorkquist arrived on scene and observed the subject (Hamilton) down on the ground with a baton under his right arm.

P.O. Schroeder – Officer Schroeder arrived on scene and observed subject (Hamilton) down on the ground with a baton across his chest.

SE: SE heard gunshots and saw the subject (Hamilton) down with baton across his torso.

KJ: KJ looked out at scene and observed baton near the subject (Hamilton).

JR: JR heard gunshots, looked out and saw the subject (Hamilton) on ground with baton across his chest.

AR: AR heard gunshots, looked out and saw the subject (Hamilton) on the ground. AR observed the officer approach, and no additional shots were fired. AR observed a long object on the ground east of the subject (Hamilton).

LK: LK heard gunshots, looked out, saw the subject (Hamilton) on the ground, and observed a brown object near him.

DB: DB heard gunshots, looked out, saw the subject (Hamilton) on the ground, and observed a "stick" near him.

BJW: BJW observed a baton across the subject's (Hamilton's) chest and the officer appeared to be in shock.

RR: RR heard gunshots and saw the subject (Hamilton) on the ground holding a black object.

WE: WE heard gunshots, looked out the window and observed the subject (Hamilton) had a Police Officer's baton.

Seventeen (17) witnesses interviewed reported that they observed the officer "in shock," "upset," "distraught," "injured," "stunned" and/or "went down on one knee" immediately after the incident.

JC: JC heard the gunshots, looked and saw the subject (Hamilton) on the ground, and stated the officer looked "distraught."

JW: JW heard the gunshots, looked out and saw the officer on one knee, who appeared to be in "distress".

JH: JH heard the gunshots, looked out and saw the officer being led away, who appeared to be "shaky".

SR: SR observed the officer after the incident, who appeared "disheveled" or "out of sorts".

SB: SB observed the officer after the incident and reported him to appear "in shock."

JK: JK observed the officer, who appeared "very distraught," being led away from the scene.

LW: LW observed the officer after the incident on one knee, and he looked "distraught".

LK : LK observed the officer after the incident, down on one knee, looking "upset".

DKl: DKI observed the officer down on one knee as if catching his breath.

BH: BH observed the officer go down on one knee after the incident, and it appeared that he was injured.

SL: SL observed the officer down on one knee after the incident, possibly taking recovery breaths.

JA : JA observed the officer down on one knee after the incident.

DB: DB heard the gunshots, looked outside and observed that the officer appeared "stunned" or "in shock."

BJW: BJW observed the officer after the incident, and he appeared "in shock".

SH: SH observed the officer after the incident, and he appeared "wobbly".

RR: RR observed the officer after the incident, dropped to one knee, who appeared upset.

WE: WE observed the officer drop to one knee and appear "quite upset."

V. STATEMENT OF OFFICER MANNEY

Officer Manney agreed to make a statement in the presence of his attorney, DCI investigators, District Attorney's Office investigators and myself. He made this statement several hours after the incident, after he had been treated for injuries sustained in the encounter. The following is taken from the statements of Officer Manney.

During this encounter, Officer Manney was attired in his official City of Milwaukee Police Department uniform, which included a ballistic vest, his duty holster, a .40 caliber semiautomatic pistol (loaded with fourteen (14) rounds), his wooden baton, and OC spray.

Officer Manney states that he first became aware of the request for a police response to Red Arrow Park after he completed an assignment in downtown Milwaukee near the River Walk. He first listened to his voicemail, contacted dispatch, and asked if the assignment was open. Although told that there was no assignment awaiting dispatch at the park, he assumed that no one had responded to the Starbucks employees' first call. He then proceeded to Red Arrow Park and observed Mr. Hamilton lying on the ground, face up, with his arms at his side, his eyes closed, and one leg flat and the other leg bent with the knee pointed up. That leg was moving back and forth. Manney intended first to contact the Starbucks employees and talk to them, but as he was walking to their kiosk Mr. Hamilton's eyes snapped open and focused on Manney. Manney's first impression, based on his experience, was that Hamilton might be under the influence of drugs or alcohol or that he may have mental health issues. Consequently, he approached Hamilton, asked him to stand and began asking him questions. At that time, Mr. Hamilton stood up and turned his back to Officer Manney, who began a pat-down frisk of Mr. Hamilton.

As he attempted to place his hands on Hamilton, Hamilton trapped Manney's hands between his arms and body. Mr. Hamilton then twisted away from Manney so that he directly faced Manney and had his right hand balled in a fist. Officer Manney states that he tried to disengage and told Hamilton it was not worth it. At that point, Hamilton lunged at him and tried to strike him with a fist. Officer Manney blocked the punch and struck Hamilton with an open palm to the chin. This had no immediate effect on Hamilton. Hamilton then grabbed Manney in the shoulder area, pulled him towards him and struck him (Manney) in the right head area. Manney felt he was losing control and decided to escalate to his intermediate weapon, a wooden baton. Manney indicates that he chose the baton and not his OC spray because the OC spray was located on the right side of his belt and he was using his right arm to protect himself from strikes. While doing so he was issuing commands to Hamilton to stop resisting. Manney separated from Hamilton, removed his baton with his left hand and transferred it to his right hand. When Hamilton continued to be aggressive, Manney struck him once in the rib area with the baton. Manney states that Hamilton trapped his baton between his arms and his torso and spun away from Manney. Manney attempted to retain control of his baton but could not.

Manney then attempted to disengage with Hamilton and attempted to hit the emergency button on his radio but could not because of the on-going struggle. Manney states that he felt he was out of options and that he had to escalate to drawing his weapon in the hope that Hamilton would stop. Manney states that he pushed away from Hamilton and was trying to draw his weapon when he felt a baton blow from Hamilton to his right neck area. Hamilton continued to advance on Manney, and Manney pushed away from Hamilton with his left arm and pointed his firearm with one hand at Hamilton's chest area. As Hamilton continued to approach with Manney's baton, and as Manney had his weapon drawn and pointed at Hamilton, Manney states that he feared Hamilton would attack him with the baton and that he "would be dead" as a result.

Manney fired his weapon but it did not seem to have any effect on Hamilton, so he continued to fire while walking backwards from Hamilton. Hamilton fell forward and Manney continued to fire because he perceived Hamilton still to be a threat. He stopped firing when Hamilton was completely on the ground.

Officer Manney agreed to release to me medical records related to treatment for injuries suffered during the incident which reveal that he was diagnosed with a laceration to his right thumb (bite injury), a right neck strain and a contusion to the right side of his neck. He was later diagnosed and treated for post-concussion syndromes and mild traumatic brain injury as well as physical therapy for bicep and rotator cuff injuries.

VI. EMERGENCY MEDICAL RESPONSE AND MEDICAL EXAMINER'S REPORT

Milwaukee Police officers responded immediately to the scene, as a number of squads were in the area. Officers Schroeder, Bjorkquist, Kroes, and Ptaszek began immediate lifesaving measures on Mr. Hamilton and were eventually replaced by Milwaukee Fire Department emergency responders. The Milwaukee County Medical Examiner's Office responded to the scene, made initial observations, and pronounced Mr. Hamilton dead shortly after 5:00 p.m.

An autopsy was conducted the morning of May 1, 2014 by Dr. Wieslawa Tlomak. The autopsy was attended by members of the State Division of Criminal Investigation, MPD and myself. The most significant findings were that a total of twenty-one (21) gunshot wounds were noted in the body of Dontre Hamilton, totaling fifteen (15) entry wounds and six (6) exit wounds:

- Five (5) of the gunshot wounds noted were to the chest area of Dontre Hamilton and caused significant damage to internal organs, including the right lung, pericardial sac, heart, aorta, left lung, diaphragm, liver and spinal cord, causing his death.
- One (1) gunshot wound was identified to have entered and travelled across Mr. Hamilton's back, but the bullet was recovered only a few centimeters under his skin and was not considered a fatal round.
- Eleven (11) deformed copper jacketed bullets were recovered from the body of Dontre Hamilton
- Seven (7) wounds, including three (3) exit wounds, were to the arms and left thumb.

It must be noted that the Medical Examiner cannot render an opinion related to the order in which the wounds were created, *i.e.*, the Medical Examiner cannot identify which bullets struck Mr. Hamilton in what order. The numbers used in the autopsy report are for reference only and do not correspond to discharges from the firearm. This is relevant because of the number of rounds discharged. As will be closely examined in the independent examination of the use of force, officers are trained, when confronted by a circumstance presenting a risk of death or great bodily harm, to employ force until the risk is ended. The wound to Mr. Hamilton's extremities may not have stopped the threat immediately, resulting in additional shots being fired.

In addition, the autopsy describes the trajectory of the bullet wounds from point of entry to where the bullet was located (if located) during the autopsy. The Medical Examiner cannot state exactly where Hamilton and Manney were in relation to each other during the encounter. Wound trajectory provides some insight but must be assessed in the context of other evidence, including witness statements. The encounter was dynamic and fluid. The autopsy report of the downward trajectory of wounds 5-8, for example, could be consistent with the rounds being discharged while Hamilton was still standing. A downward trajectory may be explained by a difference in height between the two subjects. Manney is approximately 5'11" and Hamilton is approximately 5'7". Moreover, a downward trajectory is not evidence that Manney fired at Hamilton while Hamiliton was on the ground. If Hamilton were lying on the ground as Manney fired from a position near Mr. Hamilton's feet, the rounds would have an apparent "ascending" trajectory through the body.

There is no conclusive autopsy evidence that any of the rounds were discharged while Hamilton was in a prone position.

See figure 3 and ***Appendix B*** for a diagram of the wounds and the Medical Examiners report.

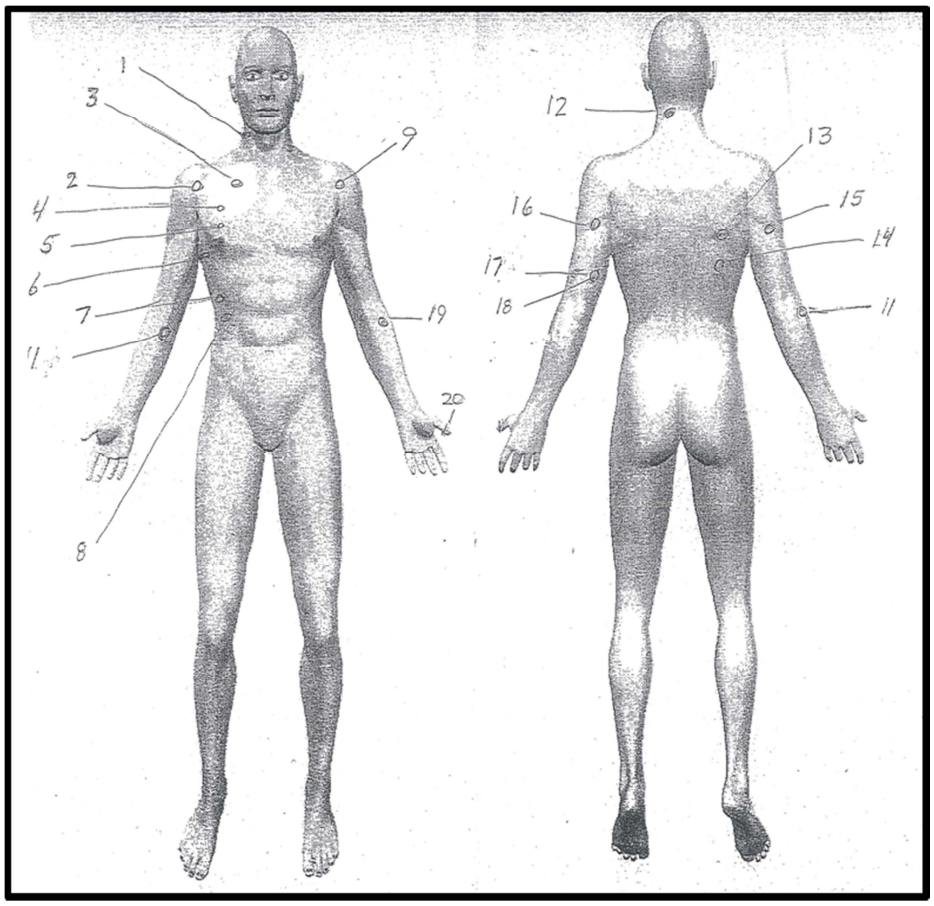

Figure 3

VII. SCENE EVIDENCE AND WISCONSIN CRIME LAB RESULTS

Special Agent David Klabunde reviewed the confidential report of laboratory findings for DNA evidence in this case. The findings show that DNA evidence was located on the "short end" of the police baton, *i.e.*, the end controlled by the hand. The police baton is a black wooden stick that has a rubber stopper placed on it in order to carry the baton on a ring on an officer's gun belt. The rubber stopper is placed closer to the "short" end of the baton as it is carried in the belt, creating a long end that hangs along the officer's leg, and a short end that stays above the ring carrier.

The DNA evidence recovered from the short end of the police baton was compared against a DNA sample collected from Dontre Hamilton at autopsy and a DNA sample collected from Officer Manney. The DNA sample on the short end of the police baton matched the DNA sample of Dontre Hamilton, with the match being rarer than 1 in 7 trillion individuals. Officer Manney was excluded as the source of the DNA on the short end of the police baton. ***See Appendix C.***

The report of laboratory findings for the Firearms and Tool Marks examination was reviewed by SAC Klabunde. The findings show that the 13 recovered .40 caliber cartridge casings were fired from the .40 caliber Smith & Wesson semi-auto pistol of P.O. Manney.

The 11 fired jacketed bullets recovered from the scene and from the body of Dontre Hamilton were fired from the .40 caliber Smith & Wesson semi-auto pistol recovered from Officer Manney.

Examination of the American Eagle Outfitters brand nylon zipper front jacket revealed a large hole in the back of the jacket. The Wisconsin State Crime Lab firearms/tool marks examiner, Mark Simonson, stated that this hole in the lower back portion of the jacket was ripped from right to left. This location and the nature of this rear tear is consistent with the non-fatal gunshot wound noted by Dr. Tlomak which entered Hamilton's back and lodged under his skin.

VIII. USE OF FORCE EXPERT OPINIONS; LAW ENFORCEMENT TRAINING STANDARDS

Investigative materials and forensic evidence were provided to law enforcement training experts and to use of force experts at both the state and national level. The only condition placed on the experts was that they render an opinion based on their professional opinion without influence from the respective law enforcement agencies involved in the case or from my office.

I first consulted with Lt. Patrick Martin of the Greenfield police Department. He is a certified use of force instructor for the State of Wisconsin and he trains police officers at the Milwaukee Area Technical College. His report, included in ***Appendix D,*** details his assessment of the case. I will

not recite the entire report and the reader may refer to the attachment for his complete review. His conclusion in reviewing the incident is as follows:

> "This was not a passive pushing and pulling between Mr. Hamilton and Officer Manney, but violent struggle and a dynamic assault against Officer Manney. Using court cases, state statutes and the training guides as overall basis for determining the justification for the use of force by Officer Manney against Mr. Hamilton; and going through the incident step by step, there is only one conclusion to draw: Officer Manney's use of force throughout the entire incident, up to and including deadly force, is justified".

Lt. Martin encouraged further consultation with a national use of force expert.

I agreed with Lt. Martin's recommendation. I then consulted with national use of force experts who identified Emanuel Kapelsohn of the Peregrine Corporation as a leading national expert in use of force reviews.

I contacted Mr. Kapelsohn who agreed to review the case and render an opinion based on his 35 years of experience in the field of firearms training and instruction. Mr. Kapelsohn has served as an expert in nearly 300 cases and testified over fifty times in state and federal courts throughout the United States.

I highlight the fact that Mr. Kapelsohn has testified both for and against police officers and police departments based on his professional experience. Dated December 17, 2014, his complete report is attached as ***Appendix E***.

I again emphasize that the only condition of his review – to which we both agreed – was that Mr. Kapelsohn was to render an expert opinion on Officer Manney's actions without any influence from local law enforcement or from me. Moreover, I understood and agreed that Mr. Kapelsohn's report would be made public, *regardless* of the opinion he rendered.

I note that all of the opinions that I obtained are included in this report. I have neither contacted nor consulted with any other experts, besides those identified and included in this report.

Because the Kapelsohn review is a thorough 28 page report authored by a subject matter expert, I place a great deal of weight on his assessment. Key points in the report are as follows:

- Mr. Kapelsohn was given access to all materials that he requested in order to make his determination. He visited Milwaukee in person on November 15th and 16th to conduct his review. At that time, he examined the scene and questioned investigators. He examined all the evidence and reports, and he spent several hours with the Milwaukee Medical examiner. He also interviewed Officer Manney. See Kapelsohn Report pages 1-2.

- His experience in the field of firearms training and use of force is extensive and well documented. **He has qualified as an expert in every matter in which he has testified, and he has been used as an expert both by law enforcement and against law enforcement in state and federal cases.** See Kapelsohn Report pages 2-3. I am not aware of any independent assessment done in the state that has used an outside expert with his qualifications.

- The Supreme Court's standard for assessing police officer force is the "objective reasonableness" test. It is codified at Wisconsin Statute Section 939.48 and it is reflected in the Milwaukee Police Department's standard operating procedure for use of force. That standard is "[f]orce that is intended or likely to cause great bodily harm or death may only be used if reasonable under all the circumstances then existing to prevent great bodily harm or death to the officer or a third party." Kapelsohn Report pages 6-7.

- Unlike a private individual in some circumstances, an officer does not have a duty to retreat and often has an obligation to effect an arrest. **"In this case, P.O. Manney would have been in dereliction of his duty had he run away from the baton-swinging Dontre Hamilton."** Kapelsohn Report page 7.

- Police officers are trained to employ the "force option continuum" from least force to greatest force. **"The Dontre Hamilton incident is quite unusual in that P.O. Manney appears to have tried every level of force on the Force Option Continuum before resorting to deadly force."** Kapelsohn Report page 9.

- Although Officer Manney was equipped with OC spray, it was unlikely that he could have deployed it successfully based on the close-quarters grappling. He was not equipped with a Taser but **"[o]nce Hamilton had succeeded in taking P.O. Manney's baton and attacking him with it, neither pepper spray nor a Taser . . . would have been an appropriate weapon of choice."** Kapelsohn Report page 10.

- Police officers use a baton as an intermediate control device but in the hands of a non-law enforcement attacker it is a deadly weapon. Kapelsohn Report pages 10-11.

- MPD officers are trained above and beyond the national standard for firearms qualification and are trained – consistent with the national standard – that, when required to fire, they fire to stop the threat. **"This means that the officer's purpose (intent) is neither to wound or to kill the subject, but rather to stop the subjects life-threatening actions that have required the officer to fire."** Kapelsohn Report page 12. In addition, officers are trained to fire at the central nervous system because, even with direct hits, the attacker may not be stopped for 14-30 seconds. Kapelsohn Report pages 12-13.

- Mr. Kapelsohn reviewed Manney's actual training records and documented his correct answer to the question of how many times one shoots in defense of his life. The answer: "As many times as it takes to stop their actions." Kapelsohn Report page 13.

- The firearm Officer Manney employed can discharge 14 rounds in under three seconds. **"Taking all factors into consideration, it is reasonable to estimate that this entire shooting took between about 3.0 to 4.0 seconds from first shot to last"** (Kapelsohn Report page 14), which is fairly common in similar situations
- The number of shots fired in a short time is not inconsistent with the amount of time needed to incapacitate a subject. Kapelsohn Report page 17.
- High stress situations commonly lead to limited or distorted perceptions that affect the recall of an incident (Kapelsohn Report pages 18-21) and this affects witnesses as well as the combatants. **"I note that almost none of the witnesses accurately perceived the number of shots fired."** In addition, the speed of sound, the distances between the incident and the witness and other conditions would have contributed to the perception by many witnesses that shots were fired after Hamilton was down, contrary to those witnesses who stated that the last shot was fired while Hamilton was still standing. Kapelsohn Report pages 21-27.
- **The autopsy does not support a conclusion that Dontre Hamilton was shot when he was on the ground** (page 27).

Mr. Kapelsohn concludes as follows:

> After reviewing all the evidence, I believe there can be little serious doubt that P.O. Manney was justified in firing at Dontre Hamilton, who was attacking him with a deadly weapon (baton). The more difficult issue is whether P.O. Manney fired more shots than necessary, or continued firing after he could reasonably perceive that Hamilton was clearly no longer a threat.
>
> Police officers in Milwaukee and throughout the United States are trained to fire to "stop the threat". The 13 or 14 shots fired by P.O. Manney would, in all likelihood, have been fired in roughly 3 to 4 seconds total elapsed time, from first shot to last. The wound locations and wound paths through the deceased's body are consistent with shots fired at an attacker who is first advancing toward the officer, then turning and falling. While, as can be expected, the many witnesses to this event give varying accounts of what they saw and heard, several witnesses with the best, closest views of what occurred have stated that P.O. Manney stopped firing when Hamilton fell to the ground, and Manney did not continue firing after that point. This is consistent with P.O. Manney's own statement of what occurred. I find no physical evidence to prove otherwise, including information from the autopsy report, as confirmed by my own meeting and discussions with the doctor who performed the autopsy. Reaction time is needed to for an officer to stop firing a rapid series of shots when the officer perceives that an attacker has been "stopped" and then is falling. It does not appear to me, based on all the evidence I have reviewed, that P.O. Manney continued firing after the point in time when a hypothetical "reasonable officer at the scene" under the

> totality of the circumstances existing in this case, would have stopped firing. The use of deadly force against Dontre Hamilton was not a choice P.O. Manney made voluntarily, but was instead a defensive action forced upon him by Dontre Hamilton's deadly attack with a police baton."

Kapelsohn Report page 28.

IX. LAW OF SELF DEFENSE

In Wisconsin the legislature, like many other jurisdictions, has created numerous affirmative defenses to criminal conduct. An affirmative defense is asserted by a person whose conduct fulfills all of the elements of a crime and would otherwise in fact be criminal but for circumstances that render the conduct justifiable. Self-defense is such an affirmative defense.

The privilege of self-defense allows a person to protect himself, herself, or another person from real or perceived harm when there is no other reasonable option. Under Wisconsin law, a person may resort to force in self-defense in limited circumstances, such as to prevent or terminate an "unlawful interference" with his or her person. In other words, if a person reasonably believes his life is in danger, or that he is likely to suffer great bodily harm, then he has a right to defend himself in such a way and with such force as he reasonably believes is necessary under the circumstances to save his life or protect himself from bodily harm.

Under Wisconsin Statute Section 939.48, self-defense is a privilege that can be claimed as an affirmative defense to prosecution for any crime based on an actor's conduct when the conduct is in defense of oneself or other persons. To support a self-defense claim, a defendant "has the initial burden of producing evidence to establish [that] statutory defense" and must show that:

1) He or she believed there was an actual or imminent unlawful interference with his or her person;
2) He or she believed that the amount of force used or threatened was necessary to prevent or terminate the interference; and
3) His or her beliefs were reasonable.

The prosecution has the burden of proving beyond a reasonable doubt that the defendant was not acting lawfully in self-defense.

The standard to determine whether the person's beliefs were reasonable is what a person of ordinary intelligence and prudence would have believed in the person's position under the circumstances that existed at the time of the incident, determined from the standpoint of the actor at the time and not from the jury's viewpoint. "The reasonableness of the belief is determined by the standard of a person of ordinary intelligence and prudence under all the circumstances existing at the time of the offense, including the right of such person to act upon appearances."

The law holds that a belief may be reasonable even though mistaken. In determining whether the defendant's beliefs were reasonable, the standard is what a person of ordinary intelligence and prudence would have believed in the defendant's position under the circumstances that existed at the time of the alleged offense. The reasonableness of the defendant's beliefs must be determined from the standpoint of the defendant at the time of the defendant's acts and not from hindsight, *i.e.*, the viewpoint of the jury at the time of any trial.

I asked Assistant District Attorney Mark Williams to review the facts in this case and render an opinion on the merits of a charge of homicide against Officer Manney. As is widely known, Mr. Williams has headed the Homicide Unit of the Milwaukee County District Attorney's Officer for over twenty years. Having reviewed about 750 homicide cases, including many involving claims of self-defense and having tried about 200 homicide trials, he is undoubtedly the most experienced homicide prosecutor in the State of Wisconsin. He is retiring as a Milwaukee County prosecutor at the end of this year. His assessment is as follows:

> "Wisconsin Statute 940.01(1)(a) states that in order to establish the charge of First Degree Intentional Homicide the defendant must:
>
> 1) Have caused the death of the victim;
> 2) Have acted with intent to kill; and
> 3) The State must also prove that there was no:
>   a) Adequate provocation;
>   b) Unnecessary defensive force;
>   c) Prevention of a felony; or
>   d) Coercion.
>
> The proof of absence of mitigating circumstances is required when the issue is placed in evidence by the trial evidence, and the burden of proof is on the State.
>
> The facts indicate that the absence of mitigating circumstances regarding unnecessary defensive force would be an issue. The question then becomes one of whether the force used was necessary to prevent or terminate an unlawful interference with his person.
>
> If it is found that the State cannot prove unnecessary self-defense, the question then falls into the realm of Second Degree Intentional Homicide under Wisconsin Statute 940.05(1). To prove Second Degree Intentional Homicide, there must be a showing that even though the suspect believed he was acting with proper self-defense, the reasonable man in the suspect's position would not have acted with the degree of self-defense with which the suspect acted.

> The suspect is not guilty of any charge if he believed he acted in self-defense, and the reasonable man would have acted with the amount of self-defense the suspect acted with.
>
> In looking at the facts of this case, it seems that the overwhelming evidence of independent witnesses, who verify Officer Manney's version of events, are as follows:
>
> 1) Dontre Hamilton was lying on the cement walkway of Red Arrow Park.
> 2) Officer Manney approached Dontre Hamilton and commanded him off the ground, and helped Dontre Hamilton off the ground.
> 3) Officer Manney began to frisk Dontre Hamilton, and a physical scuffle began, with Officer Manney having his baton in his hand.
> 4) Dontre Hamilton attempted to break away from the grasp of Officer Manney. Officer Manney yelled commands at Dontre Hamilton and Dontre Hamilton now had gained possession of Officer Manney's baton.
> 5) Dontre Hamilton swung the baton at Officer Manney, and continued toward Officer Manney.
> 6) Officer Manney pulled out his firearm and fired shots at Dontre Hamilton, and Dontre Hamilton fell backward.
> 7) The observations of witnesses vary after Dontre Hamilton fell to the ground. There are a number of witnesses who state that Officer Manney continued to fire after Dontre Hamilton fell to the ground. Other witnesses stated that the shooting stopped after Dontre Hamilton fell to the ground.
>
> The issue becomes under this fact scenario, would a reasonable person in Officer Manney's position, have used the amount of force he used to terminate the potential lethal interference with his person.
>
> It seems clear from almost all witnesses that Dontre Hamilton was attacking Officer Manney with the baton he had taken from Officer Manney. It seems the reasonable person in Officer Manney's position would be justified in using whatever force was necessary to stop the attack of Dontre Hamilton. The amount of force used is difficult to question when someone is being attacked by someone with a police baton".

In closing, I also note that the Wisconsin Supreme Court abrogated the common law right to forcibly resist an unlawful arrest in the case of *State v. Hobson*, 577 N.W.2d 825,218 Wis. 2d 350 (1998). The decision addressed the issue of whether a citizen has the right to forcibly resist

an arrest even if that arrest is unlawful and determined that it was in the public policy interest of the community not condone such conduct. The reasoning is that since the development of the common law right, substantial changes have occurred in policing that provide citizens with peaceful remedies to unlawful arrest, including administrative complaint processes, Riverside detention hearings, the exclusion of evidence based on unlawful arrest and Federal civil rights prosecutions.

X. Conclusion:

When I review any criminal matter I have the obligation to obtain as much factual evidence as reasonably possible and analyze those facts within the framework of Wisconsin law. I then have an ethical obligation to determine if a crime has been committed and whether the evidence supports a finding of guilt to the standard of evidence that supports a finding of guilt beyond a reasonable doubt. I rely heavily on the investigation, the professional examination of the evidence by forensic specialist, and the opinion of independent experts well versed in the field of use of force .

When determining whether a police officer has committed a crime in relation to the decision to use lethal force in the performance of his duty, it is essential to examine how the officer is trained in addition to assessing how he or she responded to a specific circumstance. As has been stated several times, when a reasonable officer in the position of officer Manney, based on all the facts occurring at that time, reasonably perceives that he is confronted with a situation exposing him to death or great bodily harm, he is allowed to use force---not to wound or kill---but to stop the threat. The overwhelming evidence in this case supports a finding that Officer Manney was confronted by such a circumstance when he encountered Dontre Hamilton on April 30th, 2014 in Red Arrow Park. The conclusion reached by Mr. Kapelsohn in his report is a sound conclusion and I adopt it. It bears repeating:

> After reviewing all the evidence, I believe there can be little serious doubt that P.O. Manney was justified in firing at Dontre Hamilton, who was attacking him with a deadly weapon (baton). The more difficult issue is whether P.O. Manney fired more shots than necessary, or continued firing after he could reasonably perceive that Hamilton was clearly no longer a threat.
>
> Police officers in Milwaukee and throughout the United States are trained to fire to “stop the threat”. The 13 or 14 shots fired by P.O. Manney would, in all likelihood, have been fired in roughly 3 to 4 seconds total elapsed time, from first shot to last. The wound locations and wound paths through the deceased’s body are consistent with shots fired at an attacker who is first advancing toward the officer, then turning and falling. While, as can be expected, the many witnesses to

> this event give varying accounts of what they saw and heard, several witnesses with the best, closest views of what occurred have stated that P.O. Manney stopped firing when Hamilton fell to the ground, and Manney did not continue firing after that point. This is consistent with P.O. Manney's own statement of what occurred. I find no physical evidence to prove otherwise, including information from the autopsy report, as confirmed by my own meeting and discussions with the doctor who performed the autopsy. Reaction time is needed to for an officer to stop firing a rapid series of shots when the officer perceives that an attacker has been "stopped" and then is falling. It does not appear to me, based on all the evidence I have reviewed, that P.O. Manney continued firing after the point in time when a hypothetical "reasonable officer at the scene" under the totality of the circumstances existing in this case, would have stopped firing. The use of deadly force against Dontre Hamilton was not a choice P.O. Manney made voluntarily, but was instead a defensive action forced upon him by Dontre Hamilton's deadly attack with a police baton."

This was a tragic incident for the Hamilton family and for the community. But, based on all the evidence and analysis presented in this report, I come to the conclusion that Officer Manney's use of force in this incident was justified self-defense and that defense cannot be reasonably overcome to establish a basis to charge Officer Manney with a crime.

Respectfully submitted,

John Chisholm
District Attorney

APPENDIX A

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E