

July 21, 2023

Chief Alex Ramirez  
Racine Police Department  
730 Center Street  
Racine, WI 53403

Chief Matt Soens  
Mount Pleasant Police Department  
8811 Campus Drive  
Mt. Pleasant, WI 53406

RE: Department of Criminal Investigations Case 23-4039  
Officer Involved Death of Timothy Burgess May 22, 2023

Dear Chiefs,

When there is a use of deadly force by a police officer, Wis. Stat. sec. 175.47(5) requires that the District Attorney review the incident and determine whether a privilege under Wisconsin Law applies. If the use of deadly force was privileged, no charges are filed. If it was not privileged, a decision should be made to charge the officer criminally.

Wis. Stat. sec. 175.47(5)(a) The investigators conducting the investigation under sub. (3) (a) shall, in an expeditious manner, provide a complete report to the district attorney of the county in which the officer-involved death occurred. (b) If the district attorney determines there is no basis to prosecute the law enforcement officer involved in the officer-involved death, the investigators conducting the investigation under sub. (3) (a) shall release the report, except that the investigators shall, before releasing the report, delete any information that would not be subject to disclosure pursuant to a request under s. 19.35 (1) (a).

The privilege to use force is governed by legal standards set forth in the 4<sup>th</sup> Amendment and subsequent case law from the United States Supreme Court. That case law has been adopted by Wisconsin at Wis. Stat. sec. 939.45 (2017-2018).

**§939.45 Privilege**

“The fact that an actor’s conduct is privileged, although otherwise criminal, is a defense to prosecution for any crime based on that

conduct. The defense of privilege can be claimed under any of the following circumstances:

1. When the actor's conduct occurs under circumstances of coercion or necessity so as to be privileged under §939.46 or §939.47; or
2. When the actor's conduct is in defense of persons or property under any of the circumstances described in §939.48 or §939.49; or
3. When the actor's conduct is in good faith and is an apparently authorized and reasonable fulfillment of any duties of a public office; or
4. When the actor's conduct is a reasonable accomplishment of a lawful arrest."
5. *(sic)* Parental Privilege
6. When for any other reason the actor's conduct is privileged by the statutory or common law of this state.

It is within these legal standards that I will examine the facts presented to me in this case to determine if on May 22, 2023, the conduct of the 8 officers who discharged their firearms that led to the death of Timothy Burgess, was a privileged use of force under one of the reasons outlined above. If not a privileged use of force, should the officers be charged with a crime.

## **USE OF FORCE AND OFFICER TRAINING**

In Wisconsin, every new police officer must go through the same training at an approved police academy. The Wisconsin Department of Justice develops and approves the curriculum for these academies via the Wisconsin Law Enforcement Standards Board.

Defensive and Arrest Tactics (DAAT) is a training used Nationally and in Wisconsin to instruct officers on how to protect suspects, themselves, and others by encouraging voluntary compliance with lawful commands. The first paragraphs of the training manual describe the purpose of the method.

As a law enforcement officer, you will come in contact with people in a wide variety of contexts. Some encounters are much like ordinary social or business contacts. In some situations, however, your duties may require you to exert control over people by giving them orders, directing their movement, or even taking them into custody. Your goal always is to get

subjects to comply voluntarily. If they do, you will have achieved your objective without making the encounter unnecessarily adversarial and without any risk of injury to officer or subject.

Unfortunately, even the best efforts of the most skilled officer to gain voluntary compliance do not always work. Sometimes you will have to use physical force to achieve control and accomplish your legitimate law enforcement objective. In Defensive and Arrest Tactics (DAAT), you will learn when and how to use physical force to control people. DAAT techniques are psychomotor skills, which mean that they involve both the brain and the muscles. For that reason, you will spend much of your time in DAAT actually practicing the techniques—learning the skills first in isolation, and then eventually applying them in simulations. But before you learn how to use force, you must learn when it is appropriate to use force. *Defensive and Arrest Tactics: A Training Guide for Law Enforcement officers. Wisconsin Department of Justice Law Enforcement Standards Board, June 2017, Page 1.*

The DAAT Training Manual teaches intervention options for Law Enforcement officers who are involving themselves in a lawful stop or arrest. They are divided into five modes, each reflecting the need for an increased level of force to gain control. Although the intervention options are divided into five modes, an officer can begin with any mode and move from one mode to any other mode as appropriate—intervention options are not necessarily a sequential progression. officers are authorized to use the amount and level of force that is reasonably necessary to control a subject. If dialog—talking with a person—is enough to control him or her, then an Officer need not use more force. On the other hand, some situations may be so extreme that an Officer needs to use deadly force. The five modes each serve a different purpose and include different tactics and techniques. *DAAT Training Manual at Page 13:*

1. Presence

The first mode, Presence, reflects the fact that sometimes all that is needed to control a situation is the presence of an officer. The purpose of this mode is to "present a visible display of authority."

2. Dialogue

The second mode, Dialogue, covers the range of tactical communication from very low-level questioning to very directive commands. The purpose of dialogue is to persuade subjects to comply with an officer's lawful directives.

3. Control Alternatives

The third mode, Control Alternatives, includes a wide range of tactics and tools for controlling subjects. These are divided into four groups: escort holds,

compliance holds, control devices, and passive countermeasures. This mode includes both empty-hand techniques such as applying an escort hold or directing a subject to the ground and tools such as Oleoresin Capsicum (OC) spray, commonly called “pepper spray,” and electronic control devices (ECDs) also known as Tasers. The common thread is that all these tactics and tools are used to control subjects who are resisting or threatening to resist.

4. Protective Alternatives

The fourth mode, Protective Alternatives, include tactics and tools to protect an officer while also overcoming continuing resistance. The tactics include focused strikes that temporarily disrupt a subject’s ability to continue to resist or assault, a diffused strike that can cause an immediate—though temporary—cessation of a subject’s violent behavior and the use of baton strikes to impede a subject. The difference between Protective Alternatives and the Control Alternatives category just discussed is that with Protective Alternatives the purpose is not only to control the subject, but also to protect the officer.

5. Deadly Force

The fifth mode, Deadly Force, represents the highest level of force available to law enforcement officers.

There are five key rules for use of force, *DAAT Training Manual at Page 11*:

1. The purpose for use of force is to gain control in pursuit of a legitimate law enforcement objective. If verbalization is effective in gaining control, it is always preferable to physical force.
2. You may initially use the level and degree of force that is reasonably necessary to achieve control. You need not escalate step-by-step through the intervention options.
3. At any time, if the level of force you are using is not effective to gain control, you may disengage and/or escalate to a higher level of force. This involves transitioning to a different level of force or different tactics based on the totality of circumstances.
4. Once you have gained control of a subject, you must reduce the level of force to that needed to maintain control.
5. You must always maintain a position of advantage.

## **STATEMENT OF FACTS**

On May 21, 2023, at 22:10, Mt. Pleasant Police were dispatched to a home on Willow Road to a report of shots fired and family trouble. Upon arrival, officers learned

from family members that Timothy Burgess, dob 9/19/84, and his wife, LLB, were arguing in the kitchen. LLB ran outside of the house to the end of the driveway and Burgess followed, armed with a handgun. Burgess raised the gun and pointed it at LLB as she ran and fired multiple times in LLB's direction. LLB screamed and ran into the backyard and several more shots were heard. Burgess left the house in a green Range Rover listed to LLB, after saying he was going to his mother's house. Two .40 caliber shell casings and an unspent round were found outside the house and there were two bullet holes in another vehicle parked in the driveway and fresh damage to the siding on the house.

Following the incident on Willow Road, a bulletin went out to Racine County Law Enforcement to be on the look out for Burgess and the green Range Rover with its specific license plate. Officers were warned that Burgess was believed to be armed with a handgun. Flock cameras began locating the Range Rover via license plate within the City of Racine.

At 23:57, Officer Golden from the Racine Police Department located the Range Rover traveling westbound on 6<sup>th</sup> Street. Officer Golden was able to get behind the vehicle as it drove behind an apartment building on Howland Avenue. Officer Golden activated his emergency lights and siren and as soon as the Range Rover came to a stop, the driver's door came open and Burgess immediately fled on foot. Officer Golden gave chase and a citizen advised him that Burgess had run through a yard and was armed with a gun. A second citizen advised officer Golden that Burgess had gone into another yard and jumped over a fence that led to Clayton Park, in the City and County of Racine. Officer Golden lost sight of Burgess after he made it to the park.

By this time, numerous other officers had responded to the area and began searching the park. Upon parking his fully marked RPD squad SUV within the park, Investigator Lauer turned on his overhead squad flood lights to illuminate the tree line on the west side of the park where other officers had been walking along the tree line looking for the suspect. Investigator Lauer explained he also walked the tree line for about 15-20 minutes with other officers looking for the suspect. During this period, a Drone Operator with the RPD was present at the scene and had deployed a drone in an effort to locate the suspect. The drone operator alerted officers that the drone recognized a heat signature in an area of the tree line on the west side of the park with 3 to 4 foot tall

overgrown grass and weeds. Investigator Lauer indicated he then moved his squad and turned the squad video camera to the area where they believed the suspect to be.

The officers then focused their attention to this area and Investigator Lauer began giving verbal commands using his squad PA system. Multiple officers then saw Burgess appear in the overgrown grass area. This was reported to dispatch at 00:13. Investigator Lauer continued to attempt to communicate with Burgess and gave numerous commands over the next 20 minutes. Those commands included phrases such as:

- Timothy, you're under arrest
- We know you have a gun
- Show us your hands
- Crawl out
- Come out from there
- We will get you medical attention if you crawl out
- Come out or we will send the dog in for you

During this time, Investigator Lauer and other officers could see movement in the overgrown grass. Burgess would at times respond to officers. Burgess would show one hand at a time, but never both of his hands at the same time. Burgess stood up for a brief period of time but then sat back down hiding himself. Burgess told officers that his leg was broken, so Investigator Lauer then asked him to crawl out of the grass. Burgess also stated that his arm was broken, only raising his left hand but not his right hand. He expressed a fear of the dog and even briefly made movements towards revealing himself, only to retreat back into the weeds. Despite receiving constant commands, persuasive appeals, and even the threat of a K9, Burgess persistently refused to comply with the officers' orders and did not cooperate in being safely taken into custody.

At 00:25, Sergeant Sell, from RPD, called out that he was coming to the scene with a ballistic shield so that a plan for a safe approach to Burgess could be made. An Initial Approach Team made up of RPD officers, in the shape of a diamond, was the plan for the approach. Sergeant Sell was carrying the ballistic shield at the top of the diamond, Officer Vela carried a duty rifle on the left, Officer Trousil carried his duty rifle on the right, and Officer Golden carrying a handgun was prepared for handcuffing at the bottom of the diamond. Sturtevant Police Department (SVPD) K9 handler Officer Purtee was also lined

up to accompany the Initial Approach Team toward Burgess with her K9 partner and carrying her handgun.

This Initial Approach Team made its way towards Burgess in the brush, continuing to shout commands. When the Team was within 10-15 feet of Burgess, shots began firing. A muzzle flash can be seen from the area where Burgess was and multiple officers discharged their weapons. At 00:29, officers called out to dispatch that shots were fired. The five members of the approach team all fell back into one another and were all on the ground for a short time. All five officers were able to get back up and retreat to a place of cover. At 00:30, all officers were accounted for and uninjured. Burgess remained in the brush line and was unresponsive to officers who continued calling out to him.

The RPD Drone Operator was still on scene with the drone and could see that Burgess had gone from sitting up to laying down and was not moving. It was believed that Burgess had been struck by gunfire at this point, but his right hand still could not be seen. No attempt to approach Burgess was made until SWAT and an armored vehicle were on scene to provide protection for officers as they approached. Once contact was made with Burgess, it was discovered that Burgess had succumbed to his injuries. The Wisconsin Department of Criminal Investigations (DCI) was contacted and took over the investigation.

## **VIDEO EVIDENCE**

All officers on scene from the Racine Police Department (RPD), Mt. Pleasant Police Department (MPPD), Sturtevant Police Department (SVPD) and the Racine County Sheriff's Office (RASO) were wearing body worn camera. All of the RPD squad cars in the park were equipped with squad video recorders. The drone also had an on board recording system. Of the many body worn cameras on scene, audio recordings were captured from several different locations. There were few body worn cameras that actually captured the incident. Officers were in the ready position with their firearms and blocked the view of their cameras. Most helpful in the analysis of what happened was Investigator Lauer's squad video from RPD Squad R12, and the drone video.

The R12 squad was pointed directly at the brush line on the west side of the park where Burgess was concealed from officers. The video captures what is mentioned above in the Statement of Facts and a significant amount of audio, in and around the squad car. The R12 squad video is consistent with what the Initial Approach Team and secondary officers reported in their interviews with DCI. It should be noted that the officers on scene were not allowed to view any video before giving their interviews.



The drone video was critical in this analysis. Initially, it gave officers a specific location where Burgess could be found, marking it for officers to maintain a visual on Burgess's location. The drone remained just above Burgess as the Initial Approach Team neared his location and recorded the events that could not be seen by officers. Burgess can be seen in a sitting position during the approach by officers to take Burgess into custody before the shooting. The drone video recording shows that Burgess was moving his left and right arms and hands back and forth between his legs before reaching underneath his right leg area with his right hand and pulling out a black handgun. A moment later, Burgess is seen raising the gun to his chest level and firing at least two gunshots in a direction in front of him. After firing at officers, additional gunfire is quickly but subsequently seen as it appears that Burgess is shot and falls into a lying position.





After the shooting incident, Burgess's chest continues to rise and fall and he continued to show a heat signature. The drone once again became a marker for the second approach so that SWAT members were guided to Burgess's location. SWAT members utilized a non-lethal flash bang device that gave out 5 small explosions upon their approach. A "flash bang" is used by police officers as a less-lethal option to temporarily disorient an individual's senses to safely approach an individual, especially when weapons are known or believed to be present.

Close-up video from the drone before the gunfire shows that Burgess is very agitated and seems troubled, struggling with his emotions.

### **PHYSICAL EVIDENCE**

Evidence collection in this incident was conducted by the Wisconsin State Crime Laboratory. All weapons that were discharged at the scene by Burgess and the officers were collected by DCI and inventoried as a part of the investigation. Officers involved who fired their weapon were as follows: RPD – Officers Kach, Vela, Kuiper, Schuls, Golden, Tousil and Sergeant Sell; MPPD Officer Smetana.

As SWAT made its approach to Burgess, located in his hand was a Glock 22, .40 caliber handgun. There was one round in the chamber and three unfired rounds in the magazine. Two .40 caliber casings were found on the hill near Burgess. The original purchaser of the handgun was Burgess' wife, LLB.



Wisconsin State Crime Laboratory - Case # R23-1483 / D.C.I. - Milwaukee Major Crimes - Case # 23-1028  
 Crime Scene Resources Unit Photographs  
 Prepared on 05/11/23 by Wisconsin State Crime Laboratory



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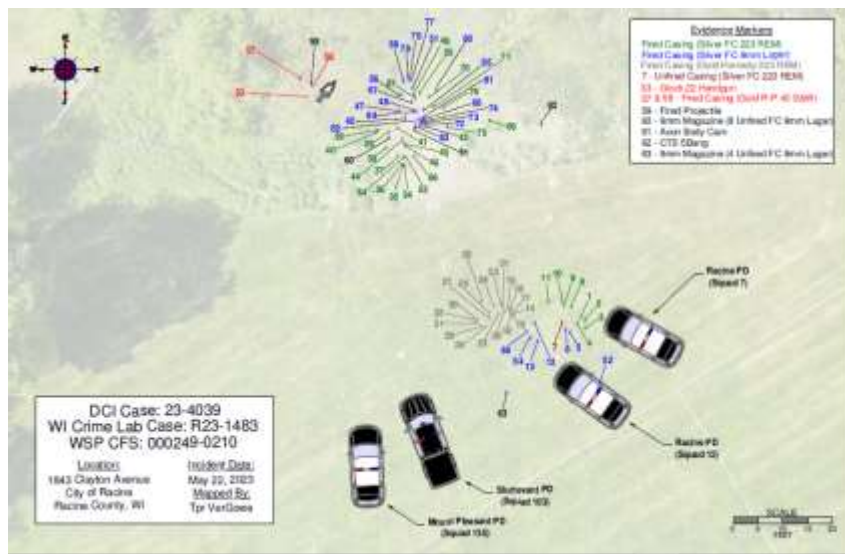
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Three projectiles were removed from Burgess's body at autopsy.

Twenty eight .9mm casings were located at the scene. Forty nine .223 casings were recovered at the scene.



One “CTS 5 Bang” spent flash bang device was recovered.



Burgess’s cell phone was recovered and the data was extracted. Burgess was involved in the domestic disturbance in Mt. Pleasant on May 21, 2023, at approximately 10:10 p.m. The following calls surrounded the disturbance time on his phone:

- 10:00 p.m. to the saved contact named Sugg.
- 10:13 p.m. to the saved contact named My Wife (emoticons of hearts).
- The last attempted phone call was to the saved contact named My Son (emoticons of two flexing arms) on May 21, 2023, at 11:29 p.m. (CST). The call duration was one second.

The Racine Police Department initiated the traffic stop on Burgess in the 2021 Range Rover on May 21, 2023, at approximately 11:57 p.m. There were outgoing, incoming, and missed phone calls on May 21, 2023, between 10:00 p.m. and 11:29 p.m. (CST) involving the following saved contacts:

- My Son (emoticons of two flexing arms)
- My Baby Girl (emoticons of hearts)
- My Wife (emoticons of hearts)
- My Daughter (emoticons of hearts)
- My Daughter (emoticons of hearts) – *a different phone number*
- Sugg

On May 21, 2023, at 10:30:39 p.m. (CST), the user of this device, Burgess, sent a text message to the saved contact named My Baby Girl (emoticons of hearts) that stated, *“No you don’t. I love you. I’m sorry I can’t go back to Jail baby”*. Burgess had in his wallet a card from a Federal Probation Officer and it was reported that he had been released from prison in October 2022 after having served a thirteen year sentence.

## **AUTOPSY RESULTS**

An autopsy was conducted and preliminary results indicate cause of death as gunshot wounds. A final determination will not be made until toxicology results are received. Of significance, is no mention of any injuries to Burgess’ right hand, arm or legs, other than wounds from the gunshots. During the autopsy, Dr. Lelinski from the Milwaukee County Medical Examiner’s Office pointed out the locations of Burgess’s injuries.

### **I. Multiple (11) gunshot wounds, all indeterminate range**

- A. Perforating gunshot wound of the head: left face (#1) to right neck (#2), path includes soft tissue; left-to-right, front-to-back, and downward
- B. Penetrating gunshot wound of the anterior torso: central abdomen (#5 to #4 to #3) to projectile in lower right chest wall (53 gn); path includes soft tissue; left-to-right, front-to-back, and upward
- C. Penetrating gunshot wound of the torso: left flank (#6) to projectile in right chest (54 gn); path includes intestines, stomach, pancreas, liver, and right lung; left-to-right, front-to-back, and upward
- D. Penetrating gunshot wound of the left arm and back: lateral left upper arm (#8) to projectile in upper left back (36 gn), path includes left humerus and soft tissue; left-to-right and front-to-back
- E. Penetrating gunshot wound of the right arm: medial right upper arm (#7) to numerous minute projectile fragments (not recovered), path includes right humerus and soft tissue; left-to-right and front-to-back

F. Perforating gunshot wounds (2) of the right leg: two entrances on knee and proximal lower leg (#11 and #12) to two exits on thigh and knee (#9 and #10), path includes tibia/fibula and soft tissue; upward

G. Graze gunshot wound of the right great toe (#13), trajectory indeterminate

H. Perforating gunshot wound of the anterior left thigh (#16 to #14 to #15), path includes soft tissue; left-to-right and upward

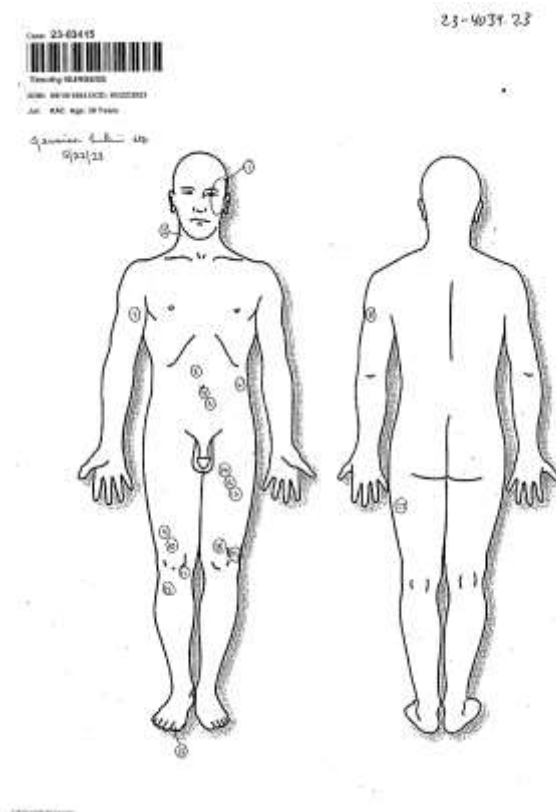
I. Penetrating gunshot wound the left thigh: lateral left thigh (#17) to small fragments in left hip (not recovered), path includes soft tissue; upward

J. Perforating gunshot wound of the anterior left knee (#19 to #18), path includes femur and soft tissue; left-to-right and upward

II. Abrasions; left flank, arms, and left lower leg

III. No significant natural disease

IV. Tox pending



## Summary

Timothy Burgess set the wheels in motion for this incident at his wife's home on May 21, 2023. There were eyewitnesses and direct evidence that Burgess had fired a handgun at his wife before fleeing from her home in her vehicle. No gun was recovered at the scene by the MPPD. Burgess was observed driving less than two hours later, and fled from the vehicle he was driving. No gun was located in the vehicle Burgess abandoned. Reports from MPPD and Burgess' flight made it reasonable for every Officer in Clayton Park to be on guard that Burgess was likely armed.

Officers on scene used their training and experience to do what they could to deescalate the situation with Burgess to avoid having to use lethal force. There were consistent orders and requests for Burgess to drop his weapon. The expectations of what Burgess needed to do were clear and repeated with no room for misunderstanding. Burgess refused to follow the commands and refused the offers for medical attention if he was to reveal himself and put his hands up for officers to see.

In addition to his refusal to follow the orders and resolve the situation peacefully, Burgess lied to police and attempted to lure the officers in for an ambush of those who would approach. He lied about being injured. His leg and arm were not broken at autopsy as he claimed. He called out for officers to come to him and provide help and medical attention when he did not need it. The only reasonable conclusion is that he meant to do them harm. Burgess could have dumped the gun after leaving his wife's home. He could have left the gun in the car when he ran. He could have dropped the gun during his flight. He could have surrendered the gun when ordered to do so. Instead, he consciously chose to keep the gun and made false claims to draw the officers in. It may be speculation, but one might conclude based on Burgess' last text message, that he made a choice to create a situation where lethal force would be necessary rather than go back to prison for violating his parole.

The conduct of Burgess escalated the situation, making less lethal choices for taking him into custody insufficient. Officers were out in the park with very little cover and with Burgess just yards from occupied homes in the area. It is clear from drone video that

Burgess was the first to fire at officers who were 10-15 feet from where he was in the weeds. Once fired upon, the eight officers who returned fire did so to stop the threat. Several involved officers described in their interviews that watching the Initial Approach Team fall back after the initial shots were fired caused them to believe that their colleagues had been shot and injured by Burgess during the approach. This reasonable belief led to their firing at Burgess to protect themselves and others who were in the park. After the first round of gunfire and after the Initial Approach Team retreated, there were no additional rounds fired on scene.

For these reasons, no charges will be filed against any officers in this case. My deepest sympathies go out to the Burgess family for their loss, but legally and ethically, this is the decision I must come to in this case. The officers in this case were privileged to use the force that they did, pursuant to Wisconsin Law, and there will be no charges filed against them.

Dated this 21<sup>st</sup> day of July, 2023.

A handwritten signature in cursive script that reads "Patricia J. Hanson". The signature is written in dark ink and is positioned above the typed name.

Patricia J. Hanson  
Racine County District Attorney