




**J. Hanley**

WINNEBAGO COUNTY STATE'S ATTORNEY

DATE: June 28, 2024  
TO: The People of Winnebago County  
FROM: J. Hanley, State's Attorney 

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**POLICE INVOLVED SHOOTING DECISION MEMORANDUM  
DECEASED PARTY: Patrick Kirby**

**I. Introduction**

On December 24, 2023, at approximately 12:11 a.m., a resident of an apartment at 1309 Charles St. called 911 to report that her neighbor in another apartment was in distress. Rockford Police Officers Rhein and Heitter responded to the location. After arriving on scene, the officers could not immediately gain entry and called the landlord to gain access to the common area stairwell. Upon gaining access to the apartment door and knocking on it. The officers encountered Patrick R. Kirby at the door of his apartment. Kirby had a knife and a boxcutter in his hands. Officers gave commands for Kirby to drop the knife. Kirby advanced towards Officer Rhein, refusing to drop the weapons. Officer Rhein fired three rounds at Kirby, two of which struck him in the head. Kirby died as a result of his gunshot wounds.

The Winnebago-Boone County Integrity Task Force ("Task Force") conducted the investigation of the shooting of Kirby. During the course of their investigation, investigators interviewed civilian witnesses and reviewed body worn video footage, photographs of the scene, and police reports. The Task Force provided the Office of the Winnebago County State's Attorney its final report of investigation.

The purpose of this memorandum is to provide the community with an explanation of the facts of the incident, the legal principles involved, and this Office's decision as to whether Officer Rhein should be charged criminally for his actions that day.

As detailed below, I find that Officer Rhein's use of force was justified as he acted reasonably and lawfully. Therefore, no criminal charges are warranted.

**II. Review of Officer Involved Shootings**

When an officer-involved shooting occurs in Winnebago County, the Task Force is called in to investigate. The Task Force is comprised of all law enforcement agencies in Winnebago and Boone County. The Task Force is headed by a commander from the Illinois State Police. The

sheriffs and police chiefs maintain authority to activate the Task Force when an officer involved shooting or other use of deadly force occurs. If the law enforcement agency has an officer that is the subject of the investigation, that agency's officers are excluded from participating in the investigation. As with all criminal cases, it is the primary responsibility of the investigating agency to collect all available evidence of a potential crime so that a determination of the facts can be made. The State's Attorney then reviews the evidence and makes the decision of whether criminal charges should be brought against the officer involved. The State's Attorney does not make any determinations regarding whether an officer may have violated police department policy or civil (non-criminal) laws.

### **III. Prosecutorial Standard for Filing Criminal Charges**

#### **A. Generally**

In making a charging decision, the State's Attorney makes a determination of whether there is sufficient admissible evidence to prove each element of an offense beyond a reasonable doubt. This analysis is consistent with the American Bar Association Criminal Justice Standard 3-4.3 which provides: "A prosecutor should seek or file criminal charges only if the prosecutor reasonably believes that the charges are supported by probable cause, that admissible evidence will be sufficient to support conviction beyond a reasonable doubt, and that the decision to charge is in the interest of justice."

This is the same standard that the Winnebago County State's Attorney's Office applies to all criminal prosecutions. This analysis also requires the State's Attorney to evaluate whether there is sufficient evidence to overcome any affirmative defense that the accused is likely to raise.

#### **B. Use of Force**

In most cases involving an officer's use of force, whether lethal or not, the primary question to be decided is whether the officer was justified in the use of the force employed. As with any citizen, an officer may use force in defense of himself or another from bodily harm. The Illinois Use of Force in Defense of Person statute provides in relevant part:

A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force. However, he is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or another, or the commission of a forcible felony.

720 ILCS 5/7-1 (a).<sup>1</sup>

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<sup>1</sup> The elements justifying the use of force in defense of person are that (1) force is threatened against a person; (2) that the person threatened is not the aggressor; (3) that the danger of harm is imminent; (4) that the force threatened is unlawful; (5) that the person threatened must actually believe that a danger exists; (6) that the use of force is necessary to avert the danger; (7) that the kind and amount of force which he uses is necessary; and (8) that such

In the context of defense of person, Illinois law is well-established that “[j]ustifiable use of force is a defense in a murder prosecution when the person’s belief is reasonable even if it is mistaken.” *People v. Lockett*, 82 Ill. 2d 546, 550 (1980). “Consequently, the law does not charge a person, when he has reasonable grounds to believe himself in apparent danger of losing his life or suffering great bodily injury, to use inerrable judgment. It would be unreasonable to require such an exacting decision to be made in the space of a few seconds while one is fearful and under great stress.” *People v. White*, 87 Ill. App. 3d 321, 323 (1st Dist. 1980) (citing *People v. Motuzas*, 352 Ill. 340, 346 (1933)). See also *People v. Keefe*, 209 Ill. App. 3d 744, 751 (1st Dist. 1991) (“The privilege of using deadly force to protect oneself from another, if one reasonably believes he is in imminent danger of death or great bodily harm, exists even where one is mistaken or the danger is only apparent.”)

Accordingly, “it is the [person]’s perception of the danger, and not the actual danger, which is dispositive” (*People v. Sawyer*, 115 Ill. 2d 184, 193 (1986) (citing *People v. Johnson*, 2 Ill. 2d 165, 171 (1954)), and the “test is what the defendant, as a reasonable man, believed under the circumstances.” *People v. Willis*, 217 Ill. App. 3d 909, 922 (1st Dist. 1991); see also *People v. Rodriguez*, 187 Ill. App. 3d 484, 489 (1st Dist. 1989).

In addition to defense of person, a determination must also be made as to whether the officer’s actions were justified under 720 ILCS 5/7-5. That statute provides in pertinent part:

(a) A peace officer, or any person whom he has summoned or directed to assist him, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he reasonably believes, based on the totality of the circumstances, to be necessary to effect the arrest and of any force which he reasonably believes, based on the totality of the circumstances, to be necessary to defend himself or another from bodily harm while making the arrest. However, he is justified in using force likely to cause death or great bodily harm only when: (i) he reasonably believes, based on the totality of the circumstances, that such force is necessary to prevent death or great bodily harm to himself or such other person; or (ii) when he reasonably believes, based on the totality of the circumstances, both that: (1) Such force is necessary to prevent the arrest from being defeated by resistance or escape and the officer reasonably believes that the person to be arrested is likely to cause great bodily harm to another; and (2) The person to be arrested committed or attempted a forcible felony which involves the infliction or threatened infliction of great bodily harm or is attempting to escape by use of a deadly weapon, or otherwise indicates that he will endanger human life or inflict great bodily harm unless arrested without delay.

720 ILCS 5/7-5(a). See also, *Tennessee v. Garner*, 471 U.S. 1, 11 (1985) (“[I]f the suspect threatens the officer with a weapon, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.”)

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beliefs are reasonable. *People v. Everette*, 141 Ill. 2d 147 (1990); *People v. Belpedio*, 212 Ill. App. 3d 155 (2nd Dist. 1991); *People v. Swanson*, 211 Ill. App. 3d 510 (1st Dist. 1991).

Moreover, “[t]he ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. . . . The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.” *Graham v. Connor*, 490 U.S. 386, 396-7 (1989). *See also* 720 ILCS 5/7-5(f). In evaluating whether an officer’s actions were reasonable, the Supreme Court has stated courts must pay “careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.” *Graham* at 396.

#### **IV. Facts**

Unless otherwise noted, the following recitation of the facts is derived from reports of law enforcement officers involved in the incident, video footage, and witness interviews.

On Sunday, December 24, 2023, at approximately 12:11 a.m., Rockford Police Department officers responded to 1309 Charles Street, Apartment #4 for a welfare check. The neighbor, who resided in apartment #3, had called 911 because she had heard, through her air vents, the tenant in apartment crying and calling out “help me” and “kill me, kill me.” The neighbor said that this went on for about twenty minutes prior to her calling 911.

City of Rockford Police Officers Rhein and Heitter arrived and met with the neighbor, who told the officers why she had called 911. The officers intended to make contact with the occupant of apartment #4 but were unable to access a rear door which would have allowed them to knock on the door of apartment #4.

At the officers’ request, the neighbor called the owner of the building to have him come and open the back door which would allow officers to knock on the door of apartment #4. The landlord arrived and he, Officer Rhein, and Officer Heitter proceeded to the landing outside of apartment #4.

The doorway has a small landing area, approximately four or five feet, at the top of the stairs. Officer Rhein and the landlord moved onto this landing while Officer Heitter remained in the stairwell adjacent to the door. The officers knocked on the door stated: “Kirby. It’s the police. We’re just checking on you.” Shortly thereafter, Kirby emerges into view and is holding two knives. Officers Rhein and Heitter observe what appeared to be blood on Kirby’s neck.

Kirby had a detached and emotionless expression on his face and slowly advanced towards Officer Rhein. The landlord retreated down the stairs when Kirby was first seen with the knives in the doorway. Officer Rhein shouts orders to drop the knife. Officer Heitter also calls out to Kirby to get him to stop and listen. Kirby does not respond and his gaze is fixed on Officer Rhein. Officer Rhein shoots Kirby at the moment when both of Kirby’s feet have crossed the threshold into the carpeted landing. Kirby was holding the knives down at his sides when he

advanced towards Officer Rhein and was shot. Kirby was shot three times. A kitchen knife with a black handle and a box cutter were recovered near Kirby's body.

Officer Rhein statements regarding the incident are as follows:

I knocked on the door to apartment #4, called out to Kirby by name, and announced myself. I heard a shuffling sound originating from inside the apartment, as if an individual had quickly moved. I then turned the doorknob to the door to inspect if it was secure. I found the door was unsecured. I lightly pushed the door open and called out to Kirby again.

Kirby then opened the door, allowing me a clear view of the entire anterior portion of his body. I observed Kirby was holding a serrated-edged steak knife in his right hand. I saw there was apparent blood on the blade of the knife itself and on his right hand. Upon observing this knife, I withdrew my department-issued service pistol and pointed it directly at Kirby. I commanded Kirby to drop the knife. Kirby did not respond to me nor comply with my command. I then began walking backwards to create distance between myself and Kirby while simultaneously ordering the landlord to move out of the landing and onto the stairwell behind Officer Heitter.

Kirby then advanced towards me with the knife still in hand from the interior of the apartment into the doorway. I responded to Kirby's actions by ordering him to stop while continuously pointing my service pistol at him. Kirby, again, did not respond to me nor comply with my command. Kirby then fully exited the apartment and moved onto the landing. Kirby then continued to advance towards me. I attempted to create more distance between myself and Kirby by walking backwards, but I found I had reached the extent of the landing's length. This placed me between the interior wall and Kirby himself. Therefore, I could not move backwards any further during the encounter.

Given the circumstances, I believed Kirby intended to utilize the knife in question against me to inflict either serious injury or death. I also noted Officer Heitter and the landlord were in extremely close proximity to me and Kirby at this point during the incident. I believed this created a substantial safety risk for Officer Heitter and the landlord as well. I feared for my life, the life of Officer Heitter, and the life of the landlord. I then aimed my service pistol at Kirby's upper torso region and discharged my weapon several times. Kirby immediately fell onto the ground within the doorway of the apartment and became unresponsive.

The statements of Officer Rhein and the landlord were consistent with Officer Rhein's body worn camera footage. Of note, Officer Rhein and the landlord each stated that they only saw Kirby holding a knife in his right hand. Body worn camera footage shows that Kirby was also holding a sharp object in his left hand. This was later determined to be box cutter.

The landlord told police that he observed Kirby come to the door after it opened and stated that Kirby was holding a small knife. Further, that he saw blood on his Kirby's neck and his shirt. At this point, the landlord proceeded down the stairs. As this was happening, he heard Officer Rhein

tell Kirby to drop the knife three times with increasing volume each time. The landlord then heard three, possibly four, gunshots. He did not see what happened as he was walking down the steps, away from apartment #4.

Kirby was shot once in the neck/shoulder area, once in the face, and once behind the ear. The gunshot behind the ear was the fatal wound and appeared to occur last. Kirby was provided emergency medical care by responding officers, but based upon his wounds, that assistance was futile.

An autopsy identified stippling on Kirby's fatal gunshot wound which indicated that he was in close proximity to the weapon when it was fired. The cause of Kirby's death was attributed to a gunshot wound to the head.

## **V. Application of the Facts to the Legal Standard**

A criminal prosecution for either first or second degree murder would require proof beyond a reasonable doubt that Officer Rhein was not legally justified in using deadly force against Kirby. In other words, a judge or jury would need to conclude that Officer Rhein did not reasonably believe that he or others were in imminent danger of great bodily harm from Kirby.

Based upon the totality of the circumstances, Officer Rhein's belief that shooting Kirby was necessary to protect himself and others from great bodily harm was reasonable.

Officer Rhein observed Kirby appear in his doorway with a knife in his right hand. Kirby ignored Officer Rhein's repeated commands to drop the knife. Kirby then stepped out of his doorway onto the landing and moved towards Officer Rhein with two knives in his hand, one of which Officer Rhein observed. During the encounter, Officer Rhein was in a very confined space – a landing of about four to five feet and as Officer Rhein stated, he "had reached the extent of the landing's length...and could not move backwards any further." Additionally, this happened quickly, the encounter at the doorway and on the landing lasting just seconds.

At the moment Kirby ignored Officer Rhein's commands to stop and stepped towards Officer Rhein with a knife in his hand in that confined space, Officer Rhein believed that Kirby would use the knife against him and that he was in imminent danger of great bodily harm. Certainly, a knife can cause great bodily harm. Officer Rhein's belief was reasonable and his use of deadly force was justified.

## **VI. Conclusion**

Based upon the evidence reviewed and the applicable legal standards, Officer Rhein's use of deadly force was justified and thus, no criminal charges will be filed in this case.