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DANE COUNTY, WI
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Assign to Branch

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

STATE OF WISCONSIN
Plaintiff,

Ref. Agency: Dane County Sheriff's Office
DA Case No.: 2022DA008379
Assigned DA/ADA: Ismael R. Ozanne
Agency Case No.: DCSD 22-41819

vs.

Court Case No.: **2022CF** _____
ATN:

For Official Use

MARK WAGNER
309 N Water Street #215
Milwaukee, WI 53202
DOB: 12/16/1972
Sex/Race: M/W
Eye Color: Brown
Hair Color: Black
Height: 5 ft 10 in
Weight: 240 lbs
Alias:

CRIMINAL COMPLAINT

Defendant,

The below-named complaining witness being first duly sworn states the following:

Count 1: SECOND DEGREE RECKLESSLY ENDANGERING SAFETY, USE OF A DANGEROUS WEAPON

The above-named defendant on or about Thursday, February 3, 2022, in the City of Madison, Dane County, Wisconsin, did recklessly endanger the safety of QLW, contrary to sec. 941.30(2), 939.50(3)(g), 939.63(1)(a) Wis. Stats., a Class G Felony, and upon conviction may be fined not more than Twenty Five Thousand Dollars (\$25,000), or imprisoned not more than ten (10) years, or both.

And further, invoking the provisions of sec. 939.63(1)(a) Wis. Stats., because the defendant committed this crime while using a dangerous weapon, the maximum term of imprisonment may be increased by not more than 6 months.

FACTS:

Your complainant is a Court Officer with the Dane County Sheriff's Office and for this complaint is relying on the written report(s) submitted by Dane County Sheriff's Deputy(ies) Greg Leatherberry, James Plenty, and Detective(s) Megan Berndt, Anthony Hamilton, Chris Grunewald, Daniel Feeney, Cheryl Patty, William Hendrickson, and George Mayerhofer.

INITIAL INFORMATION

On February 3, 2022, around 7 AM CST, a briefing was held at the field offices of the Division of Criminal Investigation (DCI), in the City of Madison, Dane County, Wisconsin. Members of DCI lead the briefing for the operation which had the goal of arresting a subject, who was wanted on an outstanding valid warrant through the Wisconsin Department of Corrections. The subject was later fully identified via Spillman records but for the purpose of this complaint will be identified by his initials as QLW. A multi-jurisdictional group of law enforcement officers,

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known as the Joint Tactical Response Team, were present and were participating in the operation. A Subject In Custody (SIC) maneuver was one of the two potential apprehension strategies discussed at the briefing. A SIC maneuver is a "vehicle containment" in which law enforcement pins a subject's vehicle between two law enforcement vehicles, with the goal of taking the subject into custody from the vehicle.

Just after 8 AM, the Joint Tactical Response Team located QLW and successfully executed a SIC maneuver pinning QLW's vehicle between two DCI vehicles in the area of Eastpark Boulevard and American Parkway, in the City of Madison, Dane County, Wisconsin. Law enforcement approached the vehicle from the rear on the driver's side. DCI Special Agent (SA) Mark Wagner (the defendant, "WAGNER" hereinafter, ID'd verbally), was carrying a ballistic shield with the letters "POLICE" across the front, and had his handgun drawn. SA Peskie was behind SA Wagner, carrying a rifle. SA Hawley was third, carrying a halligan tool. Law Enforcement were actively giving orders to QLW to show/raise his hands. SA Hawley utilized the halligan tool to break out the rear driver's side window in an attempt to allow more light to enter the interior and assist with visibility into the vehicle. QLW, who was the sole occupant of the pinned vehicle, was revving the engine and smoke was coming from the right front tire spinning. Shots were heard, SA Wagner was seen falling backwards, more shots were heard, and when the shooting stopped QLW was laying across the front console with his head and hands toward the passenger side door. QLW was hit in the lower back by 5 metal fragments from one fired bullet that entered through the "B" pillar of his vehicle. The "B" pillar on the vehicle is one of two support posts that connect a vehicle's roof to its body at the rear of the front driver's side door.

Det. Grunewald was present during an initial walk-through of the scene with SA Mansavage. SA Mansavage stated he approached the scene and saw a cloud of smoke coming from the area of the takedown and remembered hearing "tires squealing." SA Mansavage reported seeing SA Wagner holding a shield with his handgun out and he was on the driver's side area of the silver vehicle driven by QLW. SA Mansavage saw SA Wagner backing up from QLW's vehicle and falling backwards over the curb in the roadway. SA Mansavage saw SA Peskie pointing his rifle toward QLW's vehicle. SA Mansavage stated he heard shots and indicated it appeared the shots were going through the window of QLW's silver vehicle. SA Mansavage saw rifle casings on the pavement and he also saw handgun ammunition beyond the curb and on the ground which was the roadway for eastbound traffic on Eastpark Boulevard. The casings were in an area located on the driver's side area of QLW's vehicle. SA Mansavage stated after the shots were fired, he approached the vehicle and saw QLW with his hands over his head and lying across the console and into the passenger seat area.

Later in the investigation, Det. Hendrickson met with SA Mansavage and asked him if he saw a firearm in QLW's vehicle while he (SA Mansavage) was in the vehicle immediately following the shots and he said no.

STANDARDS FOR SHOOTING

939.48 Self-defense and defense of others

(1) A person is privileged to threaten or intentionally use force against another for the purpose of preventing or terminating what the person reasonably believes to be an unlawful interference with his or her person by such other person. The actor may intentionally use only such force or threat thereof as the actor reasonably believes is necessary to prevent or terminate the interference. The actor may not intentionally use force which is intended or likely

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to cause death or great bodily harm unless the actor reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself.

DCI Use of Force Policy & Procedure dated September 13, 2021

Use of Deadly Force

- A. An agent may use deadly force only when the agent reasonably believes they are facing an imminent threat of death or great bodily harm to themselves or others. Even with such justification, the agent shall only apply deadly force if non-deadly force options have proven ineffective or would clearly be ineffective in the situation based upon the agent's training and experience.
- B. Before using deadly force, agents should identify themselves (if reasonable), order the subject to stop their unlawful activity, and threaten to use deadly force. An agent may threaten the use of deadly force only if authorized to use such force under the terms of this policy.
- C. An agent may not use deadly force:
 1. Solely in defense of property.
 2. Solely to execute a lawful search.
 3. Solely to effect an arrest for a felony against property (e.g., car theft, burglary, etc.)
- D. Target-Specific Directed Fire: Target-specific directed fire is an application of deadly force that may be appropriate in certain limited situations. It is purposeful, controlled, sustained fire directed at a perpetrator who has caused or imminently threatens to cause death or great bodily harm to you or others, BUT whom you may not be able to clearly observe. The purpose of target-specific directed fire is to stop the threat when no other reasonable course of action would allow officers to perform a rescue, escape from danger, or otherwise prevent death or great bodily harm.
 1. Before using target-specific directed fire, agents must meet imminent threat criteria (intent, weapon, delivery system) and the preclusion requirement.
 2. Agents must achieve target acquisition, identification, and isolation OR satisfy the greater danger exception before shooting
 - a. Agents must ACQUIRE a specific target (i.e., the identified subject's firing point, such as a window, door, etc.)
 - b. Agents must IDENTIFY the target as the correct target by observing clear indicators of the subject's location, although they may not be able to observe the subject.
 - c. Agents must ISOLATE the target by knowing the subject is alone in the location OR that other people are not at risk from shots fired OR must satisfy the greater danger exception.
 3. When these criteria are met, agents may deliver sustained fire at the subject's location for the duration of time necessary to perform a rescue or other task, thereby stopping the threat (or at least preventing the subject from firing at agents.)
 4. Agents shall utilize carefully aimed shots directed at the subject to stop the threat, and only when the subject's actions justify the use of deadly force.

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SEQUENCE OF EVENTS

Interview with DCI Special Agent (SA) Leck

Det. Hamilton reports on February 3, 2022, at approximately 3:10 PM, he, along with Det. Seltzner met with DCI Special Agent (SA) Leck regarding the shooting that occurred on the morning of February 3, 2022. SA Leck has over 20 years of professional law enforcement experience.

SA Leck was asked if he was aware of any briefing or operational plan for their operation scheduled for February 3, 2022. SA Leck stated they had a briefing at the DCI field office at 7:00 AM. SA Volenberg gave a historical briefing while SA Dilley ran the tactical takedown portion on the subject they were trying to take into custody, who was identified as QLW.

SA Leck stated surveillance units were monitoring QLW in the park and ride nearby and the decision was made to let QLW leave the park and ride in his vehicle because they did not believe it was safe to try to contain him there as there was no chance of rear containment. SA Leck stated when QLW left he was asked to get in front of the suspect vehicle, for a potential bumper lock. This is a technique known to Det. Hamilton, where the suspect vehicle is pinned between two law enforcement vehicles, one in front, and one behind, to prevent the suspect from fleeing as they attempt to arrest him. SA Leck stated he was told that as they drove, if he came to a red light that he should stop, but that if any lights were green to continue through them and they might attempt to capture QLW on Lupine Lane.

SA Leck stated they got the word from a DEA Agent that QLW was on the move and he quickly maneuvered his truck in front of the suspect vehicle. SA Leck stated he got in front of QLW, and there was a red light and he stopped. SA Leck stated someone told him to go back a little, which is a trained technique. SA Leck stated he put his truck in reverse and estimated he was approximately three to ten feet in front of the suspect vehicle. SA Leck stated he put his foot on the brake as soon as he felt contact. SA Leck stated he heard QLW honking his horn and he felt a jolt of movement that he thought was from the rear lock vehicle making contact. SA Leck stated he leaned forward in his seat toward the right to get low and he had no field of view out of the truck other than being able to see behind him through the passenger side-view mirror.

SA Leck stated heard the suspect vehicle engine revving and he could feel his truck moving and rocking and saw smoke from what he believed to be QLW's front tires spinning. SA Leck stated it was hard to hear anything over the engine and tire noise, but he heard some yelling. SA Leck stated he heard someone yell police three times and he thought he heard people yelling directions, but he could not make out what they were saying over the engine noise.

SA Leck stated simultaneously as this was happening, he saw the glass of the passenger side of QLW's vehicle blow out. SA Leck stated his initial thought was, "Holy shit! He's shooting at us!" SA Leck clarified that by "us," he meant the arrest team. SA Leck immediately realized that no agents were on the passenger side of QLW's vehicle and he thought it was the team rounds going through, and that it was the arrest team that was shooting at QLW. SA Leck stated he was worried that bullets might easily pass through the aluminum body of his truck.

SA Leck stated he stayed in his car and he could see through the passenger side view mirror. SA Leck stated he did not see the shooting happen, only heard the gunshots. SA Leck stated that QLW's car had such dark tint that he could not see inside.

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Interview with DCI Special Agent (SA) Mark Wagner

Det. Patty reports on February 9, 2022, she, along with Det. Blanke met with DCI Special Agent (SA) Mark Wagner (defendant). Wagner has over 27 years of professional law enforcement experience. Wagner was asked to describe the events on February 3, 2022. Wagner stated he was aware that an arrest operation was planned for February 3, 2022, and he arrived to the Madison DCI field office for briefing between 6:30-6:45 AM. Wagner explained the operation involved a wanted subject, who was identified as QLW. Wagner stated he had no prior interactions or knowledge of QLW before February 3, 2022. Wagner stated he knew from the operation plan and in person briefing that QLW had an extensive criminal history and was wanted on a WI Department of Corrections warrant.

Wagner described his training and experience in vehicle containment maneuvers (SIC maneuvers). Wagner described past training occurring at tow lots to accommodate training scenarios with both cooperative and uncooperative subjects. Wagner stated the SIC, or vehicle containment, involves the use of two police vehicles with one police vehicle in front and one police vehicle in back of the subject vehicle. The goal is to pin the subject vehicle so that it cannot flee, and it has to be executed perfectly for it to work. Wagner stated he has participated in 40-50 vehicle containments.

After briefing, the team went out to load their tools and equipment. Wagner stated he loaded a ballistic shield into SA Hale's vehicle and affixed a flashlight onto his handgun. Wagner stated QLW was on Department of Corrections GPS monitoring and Agents were conducting surveillance on him for several days. Wagner stated he was given an aerial map of the American Parkway and Eastpark Boulevard streets. While waiting, the team further discussed arrest options including a vehicle containment if everything worked out for QLW to travel from the park and ride toward the main intersection and a red light occurred. If there was no red light or if there was traffic, the team would let that option go.

Wagner stated he heard a radio transmission that QLW was leaving the park and ride. DCI SA Leck pulled into the main intersection at American Parkway and Eastpark Boulevard as the lead vehicle, and QLW's vehicle pulled behind SA Leck. SA Hale pulled his squad behind QLW's vehicle. Wagner stated he observed QLW's vehicle was a silver Hyundai SUV with darkly tinted windows.

Wagner stated SA Hale radioed the go ahead and stated something similar to "take him down" and told SA Leck to back up. Wagner stated he saw SA Leck back up his squad as SA Hale moved their squad forward. Once QLW's vehicle was pinned, Wagner stated he exited the driver's side passenger door with a ballistic shield from the DCI Office.

Wagner demonstrated how he carried his shield with his left hand and his firearm was in his right hand. Wagner stated he had his firearm drawn and positioned forward, in front of and to the right of the shield. SA Peskie was just behind Wagner on rifle. Wagner stated he began approaching QLW's vehicle and described that while approaching the car quickly, he made sure not to rush. Wagner noticed he could not see through the rear driver's side window because it had a glare. Wagner stated he began giving verbal commands for QLW's to show his hands and repeatedly yelled, "Police, Police, Police, let's see your hands, let's see your hands."

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Wagner recalled he was not in physical contact with QLW's car during his approach and he estimated he was 1.5 to 2 feet away from the side of QLW's car, approaching parallel to the car. QLW was spinning the tires and attempting to break containment, therefore he elected to stand away from the vehicle. Wagner also saw better through the tint a short distance from the vehicle. Wagner observed QLW turn his head left to look at Wagner, then QLW turned his head to the right and looked away. Wagner recalled the sound of tires squealing and thought it was QLW's vehicle.

Wagner stated he continued to look at QLW and saw him fidgeting with something in the center console area with his right hand. QLW's left arm was extended straight down between his legs, as if his left hand would be right below the seat cushion. Wagner stated he could not see QLW's left hand. Wagner stated he tried to observe if QLW's left palm was positioned in or out but he could not get a visual on QLW's left hand. Wagner stated QLW's shoulders were leaned slightly forward, but not as if he was reaching all the way to the floor. Wagner stated QLW remained seated in the driver's seat with his shoulder's leaned forward, left arm extended down, and right hand fidgeting with something on the center console, possibly trying to maneuver a gear shifter.

Wagner moved a step closer to the vehicle with his shield up to try and get a better view of QLW. Wagner was making observations through the shield viewing window. Wagner did not think the shield was tight to the driver's window and he was still 1-2 feet away from the side of the car. Wagner could only see QLW's left forearm to the left wrist but could not see his left hand.

Wagner stated as QLW continued eye contact with him, QLW's right shoulder moved forward and turned to the left as if he was squaring to the driver's door. Wagner saw QLW start to quickly move both hands up and stated, "I thought, now he has a gun."

Wagner stated he heard a gunshot and felt something hit him and push him backwards. Wagner stated his shield moved backwards and he thought, "He's shooting me." Wagner stated he pulled his handgun trigger and this all happened quickly and he thought he fired his handgun almost simultaneously with hearing the gunshot. Wagner believed he fired one round from his handgun.

Wagner was asked why he chose to fire his handgun and he stated, "I was trying to stop him from shooting me. I was trying to stop him from shooting Nate [Special Agent Peskie]." Wagner stated he believed that QLW was trying to kill them. Wagner believed QLW had a gun based on his observations.

Wagner then felt like he was falling backward and saw his handgun sights in the air. As he was falling, Wagner thought he heard three additional gunshots. Wagner recalled seeing a grouping of three holes in the lower right corner of QLW's driver door window.

Wagner landed on the ground, on his back, with his shield on top of his body.

Wagner participated in an ammunition count post incident while at the Madison DCI Field Office. Wagner's firearm is a Sig Saur P320 9mm and is issued by DCI, and it was later discovered during the round count that 2 rounds were missing from his firearm.

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Interview with DCI Special Agent (SA) Peskie

Det. Grunewald reports on February 9, 2022, he, along with Det. Blanke interviewed DCI Special Agent (SA) Peskie regarding his involvement in the shooting incident on February 3, 2022, on Eastpark Boulevard near American Parkway, in the City of Madison. SA Peskie has a total of approximately 19 years of professional law enforcement experience.

Det. Grunewald asked SA Peskie to talk about the SIC maneuver. SA Peskie stated SIC stands for "Subject in Custody," and that it's a two vehicle "pin" indicating that when the method is used to contain a suspect vehicle, one squad is positioned in front of the suspect vehicle and a second squad is positioned behind the suspect vehicle. SA Peskie indicated that both squads will make contact with the suspect vehicle on the front and rear bumper and then apply vehicle accelerator pressure on the target vehicle so that it cannot move. The drivers of both vehicles remain in the vehicle as they need to continue to depress the accelerator pedal in order to keep the target vehicle contained.

After the target vehicle is contained, Det. Grunewald asked SA Peskie how the vehicle is approached in order to make an arrest. SA Peskie stated the officer assigned to the shield is directed and trained to use the shield to push up along the side of the vehicle. Physical contact is made with the shield on the driver's side window during the arrest of the driver. The officer with lethal cover accompanies the shield and stops at the B pillar of the vehicle. SA Peskie stated at that point commands are given to the suspect such as "Police," and "Put your hands on the glass." Once the shield officer observes the suspect comply, the shield officer opens the driver's side door and then the lethal coverage officer steps back in order to allow the third officer to approach and handcuff or at least secure the suspect's hands until the person can be moved from the vehicle.

SA Peskie was asked if he's ever seen a suspect vehicle get out of a SIC maneuver, and he stated he has. SA Peskie has seen suspect vehicles attempt to escape containment with spinning and squealing tires.

SA Peskie stated he was informed of the arrest operation of QLW a day or two prior to February 3, 2022. SA Peskie stated during the briefing on February 3, 2022 at 7 AM, they discussed three possible arrest scenarios. If none of these options presented themselves, then a SIC maneuver could be used if the circumstances arose for a safe operation.

At the time of the incident, SA Peskie was in the back passenger side rear seat in SA Hale's brown Dodge Ram pickup truck 1500. SA Peskie stated he heard SA Hale report that if the light was red, they were going to arrest QLW at Eastpark Boulevard at American Parkway. SA Peskie stated the traffic light at Eastpark Boulevard and American Parkway turned red and he heard SA Hale broadcast over the radio something to the effect of "go Leck, let's take him here" indicating to make the arrest of QLW. SA Hale positioned his pick-up truck behind QLW's vehicle. SA Peskie stated SA Hale's vehicles bump on the rear of QLW's vehicle wasn't a hard impact.

During the containment of QLW's vehicle, he remembered hearing a siren and he remembered seeing SA Wagner exit out of SA Hale's pick-up truck via the rear driver side passenger door. SA Peskie stated he exited the same door and had to hurry to keep up with SA Wagner. SA Peskie stated as SA Wagner approached QLW's driver side vehicle, he saw SA Wagner veer away from the vehicle. At the same time SA Peskie heard the revving of the engine of QLW's

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vehicle and the tires squealing. SA Peskie heard SA Wagner give commands such as "Stop-Police."

SA Peskie stated QLW was non-compliant as he was "violently spinning" the vehicle tires and trying to get out of the containment.

SA Peskie stated as he approached the driver side portion of QLW's vehicle, he had to lower his aim point because he had to stay back from the vehicle. SA Peskie had to move back from the vehicle by at least two feet, but not more than four to five feet, because the vehicle's tires were "spinning" and the "engine was revving."

SA Peskie stated that he and SA Wagner were shoulder to shoulder as they approached QLW's driver side portion of the vehicle. Commands were given, "Police, show me your hands," numerous times by both SA Wagner and SA Peskie.

SA Peskie was asked about what he saw inside the vehicle. SA Peskie stated he saw QLW and his actions through the driver's side tinted windows and he saw QLW moving the gear shifter repeatedly in a forward and reverse motion. SA Peskie stated he was approximately four feet off the vehicle and QLW's car was moving back and forth with "smoking tires." During the approach on the driver's side of QLW's vehicle, SA Peskie remembered QLW looked directly at them and QLW had his right hand up in the shape of a fist and he saw a "square object" in his hand and it looked like the "muzzle of a gun."

SA Peskie stated at the exact time he saw what he believed to be QLW holding a gun, he saw a "hole punched" in the glass of the driver side window and some glass shattered outward, which looked like a gunshot coming from the inside to the outside of the vehicle toward SA Wagner. SA Peskie stated at the same time he saw SA Wagner fall down. SA Peskie thought SA Wagner had been shot and believed the bullet went through the driver side window and hit SA Wagner and killed him. SA Peskie stated he responded by firing his rifle down into QLW's vehicle. SA Peskie stated he fired three to five times down into the vehicle and all of the shots occurred within one second. SA Peskie stated QLW turned away immediately after the shots were fired and he saw QLW's body across the console into the passenger seat of the vehicle.

Det. Grunewald asked SA Peskie how far away from QLW's vehicle he was as he and SA Wagner approached the vehicle from the driver side. SA Peskie stated approximately four feet from QLW's vehicle because it was moving so much. SA Peskie stated he heard QLW's vehicle revving, the tires spinning and squealing, and there was smoke coming from the tires so he didn't want to get any closer to the vehicle. SA Peskie stated he was at least a couple feet off of QLW's vehicle when he fired his rifle, but not more than five or six feet off the vehicle.

SA Peskie reiterated that he heard glass break and saw SA Wagner fall. SA Peskie stated he saw SA Wagner go down and he responded and fired his rifle. SA Peskie stated it was a burst of shots that occurred within approximately one second.

Det. Grunewald asked SA Peskie what commands were given to QLW, and he stated he heard "Stop-Police," and he heard SA Wagner yelling, "Police, show your hands." SA Peskie stated the whole contact at the driver side portion of QLW's vehicle lasted a total of five to 10 seconds from the time he exited SA Hale's vehicle to the time he fired his weapon into the vehicle. SA

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Peskie indicated he fired his weapon and the shots all occurred within approximately one second. SA Peskie stated during this time, he remembered a siren was going and he heard an engine revving and it sounded like a NASCAR race.

Det. Grunewald asked SA Peskie about the tint on QLW's driver side window, and he stated it wasn't limo tint and he could still see through the window with the tint. SA Peskie stated he believed SA Wagner had been killed and he (SA Peskie) had no cover.

SA Peskie stated he was wearing tactical ear protection in both ears that connects to his police radio that block out sounds above a set decibel level.

Det. Grunewald asked SA Peskie if he had any idea where his shell casings went during this incident, and he stated no. Det. Grunewald asked SA Peskie if SA Wagner fired his gun, and he said that he did not know.

Det. Grunewald asked SA Peskie questions about the rifle that he used during the shooting, and he stated it's a DCI issued rifle with a military lower and it is a 5.56 and indicated it is an "Aim Point Pro" with a "collapsible stock." SA Peskie they are 30 round magazines loaded with 28 rounds each and they use Hornady rifle ammo.

Det. Grunewald asked SA Peskie when he switched his rifle safety off before firing his rifle on February 3, 2022. SA Peskie stated he was trained to flip his rifle safety switch off when he is ready to fire his weapon. SA Peskie stated after SA Wagner went down, he switched his safety off and fired his rifle at QLW and then immediately switched the rifle safety switch back on.

Interview with DCI Special Agent (SA) Jurci

Det. Berndt reports on February 3, 2022, at approximately 4:05 PM, she, along with Det. Bethel interviewed DCI Special Agent (SA) Jurci reference the shooting incident that occurred on February 3, 2022 at the intersection of Eastpark Boulevard at American Parkway, in the City of Madison. SA Jurci has a total of approximately 23 years of professional law enforcement experience.

SA Jurci stated he was present for briefing the Operation Plan (Op) that had taken place on February 3, 2022, at 7 AM, and identified the suspect/target of the Op as QLW. SA Jurci stated he was on Arrest Team #3 and the responsibility of his team was to contain QLW, whether he was in a vehicle or on foot, and take him into custody.

SA Jurci stated when his team left the briefing they had been provided information that QLW was "mobile." SA Jurci stated once QLW left the park and ride in his vehicle, SA Leck positioned himself in front of QLW's vehicle. SA Jurci observed the location of QLW's vehicle and the vehicle operated by SA Leck and believed it was a good position for a "pin." SA Jurci stated that is when he heard on the radio, "take down occur." SA Jurci described his position and stated the 1st vehicle was operated by SA Leck, the 2nd vehicle was operated by QLW, 3rd vehicle was operated by SA Hale, and the vehicle he was in that was operated by SA Berkley was the 4th in line.

SA Jurci stated while the vehicle operated by QLW was "pinned," he heard what sounded like a "crashing of bumpers." SA Jurci stated it was slow moving. SA Jurci stated after the vehicle had been pinned he exited the vehicle and went around to the driver's side. SA Jurci stated

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while on the driver's side of the vehicle he noticed that the wheels on QLW's vehicle were spinning and he heard what sounded like the car accelerating and he observed smoke coming from the tires. At this time, SA Jurci heard someone saying, "Police, show me your hands."

SA Jurci stated as he approached the driver's side of the vehicle operated by QLW, flanked to the left side, and behind agents attempting to make contact, he heard multiple shots. SA Jurci stated he noticed SA Wagner was holding a ballistic shield near the driver's side door of QLW's car. SA Jurci noticed that SA Wagner had moved backwards and then fell down and immediately he thought SA Wagner had been shot. SA Jurci stated due to the smoke from the tires it was difficult to see and he could only see silhouettes of people.

SA Jurci stated as he approached QLW's vehicle, he observed dark tint on the windows.

SA Jurci was asked about the shooting and he stated "It happened really fast." SA Jurci was asked if he saw QLW shoot, and he stated "No." When asked if he observed law enforcement shoot, SA Jurci replied, "I saw rifle casings." SA Jurci stated he heard what he believed to be 3-5 shots.

SA Jurci stated he observed SA Wagner take his ballistic vest off and SA Jurci conducted a " cursory search" of the shield that SA Wagner was holding and stated "I didn't see anything."

Interview with JJT (third-party witness)

Det. Feeney reports on February 18, 2022, he spoke with a witness, whose name forms the initials JJT (identified verbally). JJT stated on February 3, 2022, he was in the front passenger seat of his work vehicle facing in an easterly direction in the left hand turn lane at the stoplight of Eastpark Boulevard and American Parkway as the incident unfolded. JJT stated what initially caught his attention was a large amount of smoke billowing from the front of a gray SUV vehicle that was behind a truck. JJT stated he then realized that the vehicle was not on fire, as he observed multiple officers approaching both sides of the vehicle on foot with their guns drawn. JJT stated he observed at least one officer with a shield that read, "Police" on it. JJT stated officers got to the front of the gray vehicle and at this point he heard a number of shots. JJT was unsure how many shots he heard at this time, but almost simultaneously after hearing the shots, he observed an officer outside the driver side of the vehicle falling down. JJT believed that the officer falling down was holding a shield. JJT stated immediately after the officer was falling, he heard additional shots. JJT believed that officers had fired their guns, but he was unsure how many officers fired or how many times guns were fired. JJT stated this entire incident lasted only a few seconds.

QLW'S INJURIES

QLW had no firearm in his possession when he was removed from the vehicle, and was then taken to UW-Hospital. In a review of QLW's medical records authored by Dr. Mary Westergaard, it is noted QLW was hit in the lower back by 5 metal fragments from one fired bullet. It is further documented that bullet fragments are partially lodged within the posterior aspect of the left L3 lamina [roof of spinal canal] and pedicle and the left L2-3 facet, with smaller bullet fragments scattered throughout the overlying paraspinal musculature but does not extend into the spinal canal. An additional larger fragment is posterior to the sacrum on the right within the subcutaneous tissues.

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EVIDENCE COLLECTED/REVIEWED AFTER INCIDENT

SA Wagner participated in an ammunition count post incident at the DCI Field Office. Wagner's firearm is a Sig Saur P320 9mm and is issued by DCI. Wagner believed his magazines were 17 round capacity and he loaded 16 rounds. Deputy Leatherberry reports he removed the rounds from the magazine, placing them into the round holder that he provided. There were 13 rounds that were in the magazine. Deputy Leatherberry observed SA Wagner slide the slide to the rear and a single round ejected from the chamber, indicating that two of the shots fired during this incident came from SA Wagner's DCI issued firearm.

Deputy Plenty collected and photographed SA Peskie's rifle, a Colt model AR-15, 5.56 (223 Remington) caliber, semi-automatic rifle. SA Peskie had previously indicated there were two 30-round rifle magazines associated with this firearm, loaded with 28 rounds each. Deputy Plenty completed a round count and there were 23 rounds present with this rifle, which included one round that was in the chamber.

Det. Hendrickson obtained a search warrant specifically targeting the vehicle QLW was driving during the incident on February 3, 2022, which was a silver 2016 Hyundai Tucson with WI registration ending in ZWE. Det. Hendrickson and Det. Grunewald conducted a cursory search of the vehicle and did not locate a firearm.

Deputy Leatherberry reports on February 4, 2022, he had been requested to assist with the execution of a search warrant on the vehicle QLW was driving during the incident. Deputy Leatherberry observed that the evidence padlock was still in place and the vehicle was still in the secured cage. Deputy Leatherberry made contact with SA Salerno and had requested assistance of him and his ATF K9 partner Sandy to search the interior of the vehicle QLW was driving. The purpose of the search using the ATF Explosives Detection K9 was to search the interior of the vehicle for any items that could not easily see that contained gunpowder or burnt gunpowder. One of the items they were looking for was the handgun that was reported to have been seen during the initial contact by the officers that was not found within the vehicle at the scene search. No additional items of evidence related to firearms were located by the K9 search.

Deputy Leatherberry reports on February 7, 2022, he returned the Dane County Sheriff's Office secure vehicle storage area for the continued processing of QLW's Hyundai Tucson search warrant. Deputy Leatherberry documented the defects to QLW's vehicle that appeared to be caused by a projectile from a firearm striking the vehicle. Located on the driver's side of the vehicle is a defect to the metal above the driver's door. Deputy Leatherberry observed a defect to the area of the driver's side door in the area of the "B" pillar. This defect is round and is consistent with a defect caused by a projectile from a firearm, and is approximately 25mm in overall diameter. Deputy Leatherberry observed a round defect to the left side "B" pillar of the vehicle. The hole is round and is indented into the "B" pillar. The hole is approximately 6mm in diameter and is consistent with being caused by a bullet. The path of the projectile continues through the "B" pillar entering into the passenger's compartment. Deputy Leatherberry observed defects to the right front passenger's door. The passenger's side exterior mirror has damage to the mirror and the mirror housing.

FIREARM

Your complainant knows that a Sig Saur P320 9mm firearm is a weapon which acts by force of gunpowder.

STATE OF WISCONSIN - VS - Mark Wagner

****THIS COMPLAINT IS BASED ON** the information and belief of your complainant, who is a Court Officer for the Dane County Sheriff's Department, and who learned of the above offense from the reports of Dane County Sheriff's Deputy(ies) Greg Leatherberry, James Plenty, and Detective(s) Daniel Feeney, Megan Berndt, Anthony Hamilton, George Mayerhofer, William Hendrickson, Chris Grunewald, Cheryl Patty, which report(s) your complainant believes to be truthful and reliable inasmuch as they were prepared during the course of the their official duties.

Further, your complainant believes the information furnished by the witnesses to be truthful and reliable inasmuch as they are citizen informant(s) and witnessed the events described.

Your complainant believes the statements of the Defendant(s) to be truthful and reliable insofar as they are admissions against penal interest.

Subscribed and sworn to before me on
09/22/22

Electronically Signed By:

Will R. Davis

Assistant District Attorney

State Bar #: 1116115

Electronically Signed By:

Brian S. Wilder

Complainant