

# EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN

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NANCY BROWN, Individually and as  
Special Administrator for the Estate of  
JOHN BROWN, Deceased,

Plaintiff,

Case No. 13-CV-511

WISCONSIN DEPARTMENT OF HEALTH  
SERVICES, a division of the State of Wisconsin  
and a Wisconsin group medical benefits program  
Representative of Estate of JOHN BROWN,  
Deceased,

Involuntary Plaintiff,

v.

WAYNE BLANCHARD,  
CHRISTOPHER SUCH,  
and WALWORTH COUNTY, WISCONSIN,

Defendants.

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**AFFIDAVIT OF SHERIFF DAVID GRAVES**

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STATE OF WISCONSIN                    )  
  ) SS.  
COUNTY OF WALWORTH                )

DAVID GRAVES, being first duly sworn on oath deposes and states as follows:

1. I am an adult resident of the State of Wisconsin. I make this Affidavit based on my own personal knowledge.
2. I am currently employed as Sheriff for the Walworth County Sheriff's Department (hereinafter, "the Department").

3. I was employed as Sheriff for the Department on May 4, 2012 and on May 5, 2012 (hereinafter “the date of the incident”) and on all other dates relevant to this lawsuit.

4. On May 5, 2012, the Department asked the Wisconsin Division of Criminal Investigation to investigate Walworth County Deputy Wayne Blanchard’s use of deadly force against John Brown on May 5, 2012.

5. On the date of the incident, the Department had written policies and procedures regarding the use of force and the use of deadly force, and on rendering medical assistance.

6. On the date of the incident, the Department had written policies requiring all officers to be trained in the appropriate use of force.

7. Attached as Exhibit A is a true and correct copy of the July 2, 2012 letter sent by Walworth County District Attorney Phillip A. Koss regarding the John Brown death investigation.

8. Attached as Exhibit B is a true and correct copy of the Department’s written policies regarding the use of force and the use of deadly force, which were in effect on the date of the incident.

Pursuant to 28 U.S.C. Sec. 1746 I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on the 17th day of January, 2014.

/s/ David Graves  
SHERIFF DAVID GRAVES



July 2, 2012

District Attorney

James C. Holmes, Special Agent  
Wisconsin Department of Justice  
Division of Criminal Investigation  
P.O. Box 7857  
Madison, WI 53707-7857

Philip A. Ross  
District Attorney

Joshua P. Gruber  
Deputy District Attorney

RE: John Brown Death Investigation  
DA Case No. 2012WL1639

Drew H. Douchet  
Zella S. Wisniewski  
Betsy J. Ross  
Assistant District Attorneys

Dear Special Agent Holmes:

Lorena N. Meisel  
Treasurer/Wisconsin Services

Please be advised that I have reviewed all the reports from the Walworth County Sheriff's Department and the reports from your agency, the Wisconsin Department of Justice, Division of Criminal Investigation. I also visited the scene, and spoke to a number of the officers who were present at the time. It is my opinion, based on all the information provided to me so far, that the shooting of Mr. Brown by Walworth County Deputy Sheriff Wayne Blanchard was privileged and in the use of either self defense or defense of others, pursuant to section 939.45 and 939.48, Wisconsin Statutes. Please let me explain.

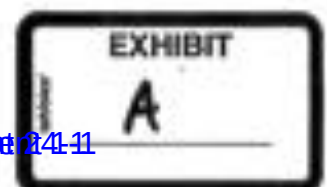
I know from the reports that Deputy Blanchard, along with Deputy Chris Such responded to Mr. Brown's residence at the request of his mother, Nancy Brown, who called 911 and told them: "I have a son who's trying to commit suicide."

I think it is important to provide a short time line of that evening. These facts are based on reports your agency has compiled, so please refer to them for complete details.

We know that Mr. Brown had been drinking that night with a friend. That friend said that Mr. Brown seemed "down" about a lot of things. Mr. Brown was there from about 8:00 p.m. to about 10:30 p.m. The autopsy stated Mr. Brown's blood alcohol level was .182%.

We know that Mr. Brown engaged in a number of text messages with a former girlfriend and her current boyfriend. These messages went back and forth from 9:37 p.m. until 10:57 p.m. In those messages Brown expresses anger with both of them.

Walworth County  
9000 County Road 700  
PO Box 1001  
Elkhart, WI 53121  
262.741.7100 ext  
262.741.7200 fax



Brown claims to want to fight the boyfriend. He also texts both of them, in multiple messages, saying he hopes their child "dies." The girlfriend was so concerned that at 10:50 p.m. she called the Burlington Police Department to file a complaint. The department then called Brown to tell him to stop.

Mr. Brown called a friend at 11:13 p.m. and left a voicemail stating that he loved him and would be "looking down" and "bye."

At 11:30 p.m., Brown called another friend and left a voicemail saying "I just want it to be done, please tell everyone I love them..."

At 11:41 p.m., he called a friend. During this phone call, Brown stated he had cut himself and blood was everywhere. He also said "I'm ending it tonight." The friend told him she was calling his mother, Nancy Brown. The friend and Brown also exchanged text and Facebook messages. One message said "I love you... I won't be able to tell you tomorrow." He sent the friend a series of texts that stated:

*I'm saying goodbye, I'm sorry, but I can't do this anymore.*

*Too late.*

*Good bye.*

*Leave me alone, it'll make it easier.*

*Just accept it.*

*I won't (sic) be able to remember or forget in a little while." This last text was*

at 11:17 p.m.

At 11:50 p.m., this friend called Mrs. Brown, who lived with her son. Mrs. Brown called 911 at 12:03 a.m., as described above. She also said he had a knife that she was unable to take away and was locked in his room.

At 12:07 a.m., Brown posted on Facebook "I am so tangled in my sins that I can not (sic) escape"

Deputy Such arrived at 12:10 a.m., and Deputy Blanchard shortly thereafter. Both are experienced, highly-trained deputies.

Such stated that Mrs. Brown told him what was going on, and that he went down the hallway to talk to Mr. Brown. The Browns lived in a mobile home that has a very narrow hallway leading to Mr. Brown's bedroom. The hallway is only 2.6' wide. Such announced himself to Brown as a deputy, but received no response. Such then asked Brown if he remembered Such from a prior contact, and Brown replied: "Fuck you."

After Blanchard arrived, they decided Such would go outside to Brown's bedroom window. Blanchard remained inside the residence to cover the bedroom door. Deputy Blanchard then opened the bedroom door by kicking it, rather than using the keys given to him by Mrs. Brown. Blanchard's reason was, given that Brown was armed, that Blanchard did not want Brown to know that he was opening the door, thus preventing Brown from being prepared to hurt anyone. This seems very reasonable under the circumstances. This is especially true given that Blanchard heard Mrs. Brown say "why aren't you guys doing anything? My son could be killing himself in there."

When Blanchard opened the door, he observed Brown in the room. He told Brown to show his hands, but Brown did not. Blanchard could see Brown had a knife in his right hand. Brown slammed the door shut. Such returned to the house and was behind Blanchard. Such, too, had taken out his handgun, but when he saw Blanchard had his gun, Such switched to his taser. Blanchard opened the door a second time and ordered Brown to drop the knife. Brown refused and said words to the effect that "you're going to have to shoot me." This was heard not only by the deputies, but Mrs. Brown, as well.

Brown then approached Blanchard with the knife moving in an upright position. Both Deputies describe Brown having a "1,000 yard stare." Brown still advanced on the officers and was within five (5) to six (6) feet when Blanchard fired two shots that mortally wounded Brown. The knife was found by Deputy Timothy Ruszkiewicz under Brown's body and fully extended. He described it as a "SWAT" type knife, and I have seen it, as well and agree.

I reviewed the scale diagrams prepared by the Wisconsin State Patrol of the scene. I know that the distance from Brown's computer chair to the door is only about eight (8) feet. The distance from where Mr. Brown was shot and where Blanchard was standing is significantly less.

I have reviewed Mr. Brown's writings as well. They do not greatly factor into what happened because one cannot tell when they were all written. Suffice it to say they were dark and spoke of death, including how he will feel with a bullet inside him, and another that speaks of him being the trigger on the gun.

I am also aware, from prior experience, and from an inquest I conducted on a previous shooting of an individual with a gun, that officers are trained that being within 21' of an individual with a knife is a deadly zone. While that inquest's verdict that the officer committed no crime is not binding here, I believe it reflects the reasonableness of what the deputies did here.

I further believe the fact that two separate deputies reached the same conclusion, that deadly force was necessary, corroborates the reasonableness of Deputy Blanchard's acts. I saw that the Deputies were interviewed independently and by different Special Agents.

I believe that there is no other reasonable conclusion other than Deputy Blanchard was attempting to prevent himself or Deputy Such from being attacked with deadly force. Therefore either Deputy would have been justified to use deadly force in return. I believe that no reasonable juror could conclude otherwise. A taser is less lethal and not effective with an armed person coming at an officer at that short distance. Therefore, not only do I believe that the officer's acts were appropriate, I do not believe that any inquest is necessary in this case.

I know this is a tragic situation. I appreciate the work your agency did on this case, and the sensitivity you have shown to Mrs. Brown, as well. No one involved fails to understand the seriousness of the events of that day. Thank you for your attention to this matter. You may share this letter as you deem appropriate.

Sincerely,



Phillip A. Koss  
Walworth County District Attorney

c: Sheriff David A. Graves

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Subject Use of Force	Date Effective 8-30-07	Policy # 5-200.1
Attention All Sworn Employees	Accreditation #	Cancel # 5-200

**PURPOSE:**

The purpose of this document is to establish a policy for the use of force by sworn deputies to effect an arrest or control a person. Proper use of force decisions, based on reasonableness, ensure due process for citizens as well as provide protection for the deputy and the department.

This policy is based on the Defense and Arrest Tactics (DAAT) program of the State of Wisconsin as developed by the Training and Standards Board (Department of Justice – Law Enforcement Standards Board).

**POLICY:**

It is the policy of the Walworth County Sheriff's Department that deputies shall use only that amount of force that is reasonably necessary to achieve a lawful objective. The force used by a deputy should only be the amount reasonably required to overcome the resistance being offered by an offender or the person the deputy is trying to control.

**DEFINITIONS:**

- A. Defense and Arrest Tactics (DAAT): This is a system of verbalization skills coupled with physical alternatives. It is the specific system formulated, approved, and governed by the State of Wisconsin Training and Standards Board.
- B. Intervention Options: An element of the Disturbance Resolution Model in DAAT containing five modes in which an officer can intervene with a subject.
- C. Reasonable Force: A physical act by a deputy sheriff in the performance of duty when it is used to accomplish a legitimate law enforcement goal and the level of force used is reasonable considering all the facts and circumstances known to the deputy at the time of the incident.
- D. Objectively Reasonable Standard: This standard establishes that reasonableness should be judged under the totality of the circumstances from the perspective of a reasonable deputy at the scene with similar training and experience. Three elements of the standard are:
  - 1. The severity of the alleged crime at issue.



Authorization \_\_\_\_\_ Lindensheriff Karl Picksell \_\_\_\_\_ Date 8-30-07  
Type Initial

By Lt. Dave Gerber





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2. Whether the suspect poses an imminent threat to the safety of deputies and/or others.
  3. Whether the suspect is actively resisting or attempting to evade arrest by flight.
- E. Reasonably Believes: Means that an ordinary, prudent and reasonably intelligent deputy sheriff believes that a certain fact situation exists and such belief is reasonable under the circumstances known to the deputy at the time the deputy acted.
- F. Great Bodily Harm: Bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or any other serious bodily injury.
- G. Non-Deadly Force: Any use of force other than that which is considered deadly force. This includes any physical effort used to reasonably control or restrain another, or to overcome the resistance of another.
- H. Conducted Energy Weapon: A less lethal force weapon utilized by trained personnel that causes Neuro-Muscular Incapacitation (NMI) to a combative or potentially combative subject. The use of this device is intended to incapacitate the subject with a minimal potential for causing death or great bodily harm.
- I. Less-Lethal Force Philosophy: A concept of planning and force application, which meets operational objectives, with less potential for causing death or great bodily harm than conventional police tactics.
- J. Deadly Force: The intentional use of a firearm or other instrument, the use of which would result in a high probability of death.
- K. Passive Resistance - Non compliant and non-threatening behavior.



Authorization Undersheriff Kurt Picknell Date 8-30-07  
Type Initial

By Lt. Dave Gerber  
Type

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- L. Active Resistance – Behavior which physically counteracts an officer’s control efforts and which creates risk of bodily harm to the officer, subject, and/or other person.
- M. Bodily Harm – Bodily harm is defined by ss. 939.22 (4) Wisconsin Statutes. It is “...physical pain or injury, illness, or any impairment of physical condition.”
- N. Preclusion: You may use deadly force to respond to behavior, but only if no other reasonable option is available. In other words, deadly force is a last resort. You must be able to articulate that, if possible, you attempted to escalate through other modes and tactics, and that all options except deadly force were closed.

**PROCEDURE**

A. General Guidelines

- 1. Deputies shall use only that amount of force that is objectively reasonable to control a situation, effect an arrest, control a person, or to protect the deputy or others from physical harm. The deputy’s decisions shall be based on the Disturbance Resolution Model.
- 2. Deputies shall only use that amount of force that is reasonably necessary to maintain control once the subject has stopped resisting and control of the subject has been established.
- 3. Once control has been established the deputy shall be responsible for monitoring the subject’s condition and welfare. Unless circumstances dictate otherwise, all persons arrested will be handcuffed, searched, and then transported in a police vehicle. Follow-Through Considerations found in the Disturbance Resolution model shall be followed.

B. Oleoresin Capsicum (O.C.) Spray

- 1. O.C. may be used by trained personnel when a subject is threatening to actively resist or is actively resisting a deputy or other officer and the subject poses an articulable threat of harm to a deputy or another person.



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- a. Deputies may also include in the decision to use this force option, information known to the deputy at the time of the incident, including conduct or statements of the subject or prior history of resistive or assaultive behavior.
  - b. Passive resistance without posing an articulable threat of harm to deputies or others does not permit the use of O.C.
- 2. Generally, O.C. should not be sprayed at a person from a distance of less than 3 feet.
- 3. Deputies who use O.C. against a person shall ensure the person is decontaminated as soon as practical after he or she is under control. If circumstances permit, and it can be done without endangering department personnel, reasonable efforts to decontaminate animals should be made or the decontamination information conveyed to the animal's owner.
- 4. Deputies shall carry department approved and issued O.C. while on duty. Plain-clothes deputies who are assigned to administrative office duties or undercover deputies are not required to carry O.C., but it is highly encouraged. Specific exemptions may be granted by the Sheriff or Undersheriff.
- 5. A deputy shall not brandish, display, or threaten the use of O.C. unless he or she can reasonably conclude its use may become justified and anticipated.
- C. Conducted Energy Weapon: (Units approved by the Sheriff or Undersheriff)
  - 1. A Conducted Energy Weapon may be used by trained personnel when a subject is threatening to actively resist or is actively resisting a deputy or another officer and the subject poses an articulable threat of harm to a deputy or another person. It may also be used when the subject poses a threat of harm to himself or herself of a serious self-inflicted injury or suicide attempt.



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By L. Doug Garber

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- a. Deputies may also include in the decision to use this force option information known to the deputy at the time of the incident, including conduct or statements of the subject or prior history of resistive or assaultive behavior.
  - b. Passive resistance without posing an articulable threat of harm to deputies or others does not permit the use of a conducted energy weapon. Generally, Conducted Energy Weapons should not be used against verbal aggression; people who are running away; children and elder persons; and/or persons engaged in peaceful civil disobedience, unless you can articulate a reasonable threat to the safety of self or others.
2. A deputy shall not brandish, display or threaten the use of a conducted energy weapon unless he or she can reasonably conclude its use may become justified and is anticipated.
  3. In each instance when a conducted energy weapon is deployed on an incident, a determination will be made regarding the need for lethal cover.
    - a. Lethal cover shall be required in all cases in which the subject possesses a firearm.
  4. Deputies who use a conducted energy weapon against a person shall ensure the person is monitored for injury as soon as practical after the person is under control.
  5. If an adverse reaction to the conducted energy weapon occurs, or if requested by the subject, transport to a medical facility shall be arranged.
  6. If the probes are imbedded in sensitive tissue areas, i.e. neck, face, groin, or the breast of a female, the deputy shall arrange transport to a medical facility for removal. Tactical emergency medical physicians contracted by this department during SWAT operations may be used for this purpose, and the requirement for transportation to a hospital will be left to the



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physician's discretion. If the probes are imbedded in other non-sensitive tissue areas, a trained deputy may remove them according to trained procedures.

7. After the probes have been removed they shall be handled as a biohazard and packaged according to the trained procedure.
8. Trained deputies shall complete a refresher course and pass a written examination at intervals recommended by the manufacturer concerning the use of the approved conducted energy weapon.

**D. Intermediate Weapons/Impact Weapon**

1. Uniformed deputies shall be required to have a Walworth County Sheriff's Department approved impact weapon available to them while on duty. Due to space issues, if an approved conducted energy weapon is carried on the duty belt, the baton does not need to be carried on your belt, but must be available for use.
2. The use of authorized batons is permitted against an actively aggressive person when the deputy reasonably believes that lesser force options would be ineffective or would subject the deputy to bodily harm.
  - a. Deputies may also include in the decision to use this force option information known to the deputy at the time of the incident, including conduct or statements of the subject or prior history of resistive or assaultive behavior.
  - b. Passive resistance without posing an articulable threat of harm to deputies or others does not permit the use of an intermediate/impact weapon.
3. A deputy shall not brandish, display or threaten the use of an impact weapon as a threat unless he or she can reasonably conclude its use may become justified and is anticipated.



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E. Use Deadly Force

1. The use of deadly force is permissible under the following circumstances:
  - a. As a last resort, in the defense of one's self when the deputy reasonably believes he or she is in imminent danger of death or great bodily harm.
  - b. As a last resort, in the defense of another person who the deputy reasonably believes is in imminent danger of death or great bodily harm and whom the deputy believes is entitled to self-defense.
  - c. As the final alternative, to effect an arrest or prevent the escape of a fleeing felon whom the deputy reasonably believes has committed a felony involving the actual or threatened use of deadly force. The deputy shall also have probable cause to believe the suspected felon poses a significant threat of death or great bodily harm to the deputy, or others, if not immediately apprehended.
  - d. As the last resort, to euthanize an animal that represents an imminent threat to public safety or one that is so seriously injured that humanity dictates its removal from suffering, but only after careful consideration is given to the public's safety and whether other dispositions may be feasible.
2. A deputy shall not brandish, display or threaten the use of a firearm unless he or she can reasonably conclude its use may become justified and anticipated.
3. Before using a firearms and when feasible, deputies shall identify themselves and issue a verbal challenge.
4. Generally, warning shots should not be fired, however warning shots may be fired if a deputy is authorized to use deadly force and only if the deputy



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reasonably believes a warning shot can be fired safely in light of all circumstances of the encounter.

5. Deputies shall not fire any weapon from or at a moving vehicle except as a last resort to prevent imminent death or great bodily harm to the deputy or another person and where **deadly force** would otherwise be justified.

**F. First Aid and Medical Assistance**

1. Whenever a person is injured as a result of force applied by a deputy, the deputy or other deputies on the scene will immediately provide first aid and request medical assistance, if necessary, for the injured person as soon as the scene is secure.

**G. Training**

1. Deputies shall receive use of force training as needed to maintain competency. The current Wisconsin Law Enforcement Standards Board Guidelines will be used to determine competency.

**H. Use of Force Report**

1. A use of force report shall be completed for any use of force listed on the form. The deputy shall complete a narrative report documenting the incident, excluding the euthanization of deer as a result of a car/deer crash. The narrative report documenting the Use of Force may be part of the overall incident and/or criminal report. The deputy is responsible for attaching a copy of the Use of Force Report Form to the narrative report. The reports shall be forwarded to your supervisor who will approve and sign the form and place in the Lieutenant of Training bin in central records. The Lieutenant of Training will review each use of force incident.



Authorization Undersheriff Kurt Pickrell Date 8-30-07  
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By L. Dave Gerber  
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