

Dr. Michael R. Knetzger

(920)246-3164 Knetzgermr@gmail.com

Criminal Justice Leader

Subject Matter Expert

Expert Witness

Manager

September 23, 2022

TO: Fraternal Order of Police, on behalf of SA Mark Wagner

FR: Dr. Michael R. Knetzger

RE: State of Wisconsin v. Mark Wagner, Dane County, Case No. 2022CF002481

I have had the opportunity to review the above-referenced criminal complaint related to Special Agent (SA) Mark Wagner and an officer involved shooting (OIS) that occurred on February 3, 2022. The focus of my review was to consider how camera factors (if video footage existed) and human factors may have influenced perceptions of objective reasonableness in this case. I have been advised that no camera footage exists. At the time of this writing, no other documents, such as complete law enforcement reports, were available for review. A biography related to my professional and academic credentials are included at the end.

SA Wagner approached the driver's side of the suspect's vehicle while holding a shield in his left hand and duty weapon in his right hand. The description of how the shield was held is consistent with ballistic shield training. SA Wagner gave loud commands to the suspect, "Police, Police, Police, let's see your hands, let's see your hands!" At the same time, the suspect vehicle engine was revving and tires were squealing, presumably an attempt to escape from the trained vehicle takedown technique.

SA Wagner reports the following:

- The suspect was, "fidgeting with something in the center console area with his right hand" and his "left arm was extended straight down in between his legs, as if his left hand would be right below the seat cushion."
- He could not see the suspect's left hand and his (the suspect's) "shoulders were leaned slightly forward, but not as if he was reaching all the way to the floor."
- "The suspect 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."
- As the suspect continued to make eye contact with SA Wagner, "(the suspect's) right shoulder moved forward and turned to the left as if he was squaring to the driver's door."

- The suspect moved both hands quickly up and SA Wagner believed, “I thought, now he has a gun.” SA Wagner, “heard a gunshot and felt something hit him and push him backwards,” including his shield. SA Wagner believed, “He’s shooting at me.” SA Wagner fired his handgun “almost simultaneously” and believed he had fired one round” (It was later discovered that SA Wagner had fired two rounds).
- SA Wagner fired his handgun because he, “was trying to stop him from shooting me...[and] from shooting” other agents. Another special agent standing next to SA Wagner reported that he saw the suspect, “...looked directly at them...had his right hand up in the shape of a fist and he saw a square object in his hand that looked like a muzzle of a gun...he saw a hole punched in the glass of the driver’s side window and some glass shattered outward, which looked like a gun shot coming from inside to the outside of the vehicle...at the same time he saw SA Wagner fall down...and believed the bullet went through the driver’s side window and hit SA Wagner and killed him.” This other SA also perceived the suspect was shooting at SA Wagner (and others),
- SA Wagner believed the suspect, “was trying to kill them...[and] had a gun based upon his observations.”

Human factors (HF) are the impact of the environment upon the human system, which can help explain behavior and must be part of the objectively reasonable analysis. The impact of HF upon performance within high-risk industries have been used by the U.S. Military, NASA, airlines, transportation, and law enforcement to better understand “why,” improve performance, and reduce error. Well-documented human factors associated with law enforcement officers use-of-force are perceptual impairments, cognitive (i.e., memory) impairments, and physiological impairments that affect fine motor skills due to the body’s response to adrenaline. Law enforcement perceptual distortions include slow motion time, diminished sound, tunnel vision, enhanced visual detail, intensified sound, memory loss, fast motion time, and memory distortion (e.g., seeing, hearing, or experiencing something that did not occur). We must also consider the training and experience of the law enforcement officer(s) involved, which can only be surmised along with the potential HF, which may have played a role in this incident.

Intensified Sounds

During this high stress and dangerous incident, SA Wagner’s attention was divided between the loud sounds (e.g., squealing tires, revving engine, loud commands, etc.), his observations of the suspect, and tactical decision-making. This perceptual high-risk stress can create amplified hearing, which may cause sounds to be louder than normal. Might one of the sounds caused by the suspects attempt to escape been mistaken for a gun shot? Then, if not but for the suspects attempt to escape, any loud sounds would not have been misperceived.

Tunnel Vision & Visual Detail

Tunnel vision or perceptual narrowing occurs when people experience perceived threats of death or great bodily harm to themselves. The higher risk of perceived danger the more narrow vision becomes, and focuses on the actions or objects of what is perceived to be most threatening (e.g., a suspects hands, actions, or objects). SA Wagner’s vision was

also “narrowed” by viewing the incident through the shield viewing window). SA Wanger was likely “laser focused” on the suspect’s actions, which were perceived as dangerous and influenced by his training and experience.

Pattern Recognition

The visual and human system is exquisitely sensitive to the patterns that are most important (or dangerous) to an officer. Without knowing more about SA Wagner’s background, it is surmised that he has been exposed to armed encounters in the field and has attended scenario based or decision-making training. SA Wagner’s presumed experiences have exposed him to pattern recognition training or experiences. Threatening suspect patterns (e.g., movements indicative of being armed with a handgun) by the suspect and perceived as dangerous to SA Wanger include attempting to escape, not complying with lawful orders, reaching in between his legs and below the driver’s seat, fidgeting with something by the center console, turning towards SA Wagner by squaring up to the driver’s side door, and quickly moving both hands up. It would be reasonable to conclude that these suspect patterns or actions would lead a reasonable officer to believe the suspect had a gun.

Graham v. Connor (1989) is the landmark case we rely upon to determine if force is objectively reasonable. We must judge reasonableness from the perspective of a reasonable officer on the scene, rather than with the vision of hindsight. We must also allow for the fact that police officers are often forced to make split-second judgements – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation. This incident was tense, uncertain, and rapidly evolving and SA Wagner was forced to make a split-second decision related to preserving his life and the lives of others.

Hindsight bias can be influenced by outcome bias. Outcome bias occurs when a reviewer’s judgment of a force incident is influenced by whether the outcome is positive or negative. The tendency to judge the appropriateness of an event after learning about the outcome can have significant implications related to perceptions of reasonableness. Outcome bias may cause reviewers to believe force is not justified because of a negative outcome (e.g., the suspect was seriously injured, but was not discovered to have a weapon), but may have concluded otherwise if the outcome was less adverse (e.g., the suspect was seriously injured and HAD a weapon). The potential negative influence of hindsight bias about whether or not a weapon was found inside the suspect vehicle must be considered. Had the outcome related to the discovery of a weapon been different, would he be here today? Hindsight bias must be eliminated from the objectively reasonable analysis.

What cannot be simply explained away are the other observations made by special agents at the scene. In addition to SA Wagner’s reasonable perceptions, another special agent perceived an object (believed to be a gun), perceived a gun shot from the inside of the vehicle towards SA Wagner, saw SA Wagner fall from a perceived gun shot, and believed SA Wagner had been killed. These other perceptions tend to support SA Wagner perceptions.

Based upon the limited information reviewed within the aforementioned criminal complaint, along with a strict adherence to *Graham v Connor*, consideration of the facts, the influence of HF upon perception, and the overall perceptions of the agents involved in this case are likely to lead one to believe the officer's actions are objectively reasonable.

Sincerely,

Dr. Michael R. Knetzger

Dr. Michael R. Knetzger

Biography

Dr. Mike Knetzger served as a Wisconsin law enforcement officer for nearly 30-years and retired in 2022 as a patrol sergeant with the Green Bay Police Department (GBPD). Dr. Knetzger spent 10-years on the SWAT team as a chemical munitions operator, 15-years as a training unit member, and 20-years as a field training officer. Dr. Knetzger is a certified Department of Justice Unified Tactical Trainer/Instructor, Wisconsin Technical College Instructor, and has been teaching part-time for the past 22-years for Northeast Wisconsin Technical College (NWTC). Dr. Knetzger teaches in the criminal justice program, police academy, and specialized law enforcement topics. Dr. Knetzger is also affiliated with doctoral level programs at *CTUonline*. Dr. Knetzger has an associate degree in police science (Waukesha County Technical College), bachelor's degree in justice & public policy (Concordia University – Wisconsin), master's degree in public administration (University of Wisconsin – Oshkosh), and a doctoral degree in criminal justice management (Colorado Technical University). Dr. Knetzger's published dissertation is "A Qualitative Study Exploring Proper Management of Video Recorded Law Enforcement Use of Force Incidents" (Colorado Technical University, 2020).

Dr. Knetzger is a Subject Matter Expert (SME), author, and freelance writer who has written and/or evaluated over 30 criminal justice courses across the nation. Dr. Knetzger has authored or co-authored five books, "Investigating High-Tech Crime" (Prentice-Hall, 2008), "True Crime in Titledown, USA ~ Cold Cases" (Badger Books, 2005), "Careers in Public Safety: Cop or Correctional Officer" (Knetzger Consulting, Publishing, & Training, LLC, 2014), "Ashley's Story" (Knetzger Consulting, Publishing, & Training, LLC, 2015), and "Criminal Law" (Words of Wisdom, LLC, 2015). Dr. Knetzger has written excerpts for published works, including "An analysis of outcomes: First Step Act - the Criminal Justice Reform Act of 2018," in "Current Issues in Corrections (Cognella Academic Publishing, 2021). In memory of his 18-year-old daughter, Ashley, Dr. Knetzger is an advocate for stronger drunk driving laws in Wisconsin and social change. Dr. Knetzger is a sought-after motivational speaker and speaks regularly to law enforcement groups, members of the military, community and student groups, and others on topics of ethical protector principles, inspiration & motivation, communications skills, and crisis intervention and de-escalation. Dr. Knetzger has also testified as an expert witness in use-of-force and standard field sobriety cases. Dr. Knetzger has consulted for police chiefs, plaintiff attorneys,

and other law enforcement leaders related to use-of-force, policy and procedure, and other contemporary policing issues. Dr. Knetzger has presented throughout Wisconsin, and in Nebraska, New Hampshire, Iowa, Texas, Upper Michigan, and Florida.