



March 26, 2024

Via electronic mail only

Dianna Luce
5th Judicial District Attorney
100 N. Love St. Suite 2
Lovington, New Mexico 88260
dluce@da.state.nm.us

Dear District Attorney Luce,

Pursuant to your request, the New Mexico Department of Justice has conducted a review of the fatal shooting of David Luis Aguilera by Sheriff's Deputies Joshua McKelvey and Benjamin Conklin that took place on March 27, 2022 at Sideline Dairy, Lake Arthur, NM. We comprehensively reviewed all available evidence including police reports, videos, and photographs.

Furthermore, we sought assistance from Michael Brave, a nationally recognized expert in police use of force investigations. Mr. Brave is a former state and federal law enforcement officer who later obtained a master of science degree and law degree. Moreover, Mr. Brave has been retained as an expert in over 300 officer involved cases in both federal and state cases. He has evaluated thousands of use of force incidents and has rendered opinions both for and against police officers.

New Mexico evaluates whether an officer's use of force is excessive under the standard articulated by the United States Supreme Court in *Graham v. Connor*, 490 U.S. 386 (1989). *See State v. Ellis*, 2008-NMSC-032, ¶ 25; *see also* NMSA, 1978, § 30-2-6 (1989) (defining justifiable homicide by a public officer). As confirmed by Mr. Brave, the officers' actions were consistent with a lawful use of force because a peace officer may justifiably use deadly physical force when threatened with serious harm or deadly force. This inquiry is an objective standard, viewed from the perspective of the officer at the time of the incident with the understanding that officers often must make split-second decisions in difficult situations about what type of force is necessary. To hold an officer accountable for the use of excessive force, the State would be required to disprove beyond a reasonable doubt that a reasonable officer would have acted as the officer did under the totality of the circumstances. UJI 14-5173 NMRA.

Mr. Brave submitted a twenty-nine-page report on this incident and provided a thorough analysis of the deputies' actions viewed under the lens of federal and state law. Mr. Brave concluded that the use of force employed by these deputies was consistent with accepted law

enforcement practices and training and was ultimately reasonable based upon all of the facts and circumstances surrounding this incident.

Notably, Mr. Brave indicated that Deputies McKelvey and Conklin had great difficulty getting Mr. Aguilera to comply with commands. Mr. Brave noted that “[f]or approximately ten minutes Dep. McKelvey attempted to control, restrain, and handcuff the actively resisting and assaulting Subject.” During the struggle, Deputy Conklin deployed a TASER Conducted Electrical Weapon in touch/contact stun mode for two minutes in order to get Mr. Aguilera into custody with hand cuffs. After Mr. Aguilera had been hand-cuffed and detained in the back of a patrol car, Mr. Aguilera escaped from his handcuffs and gained control of the patrol car in the driver’s seat. That patrol vehicle had readily accessible firearms inside to include a police assault rifle. Mr. Aguilera had placed the vehicle in drive and was moving forward, towards a third deputy on scene while pulling Deputy Conklin along with him from the front driver’s side door. Meanwhile, Deputy McKelvey entered the vehicle from the passenger side front door. Mr. Aguilera swatted Deputy McKelvey’s weapon away while Deputy McKelvey was trying to stop Mr. Aguilera. Deputy Conklin then walked alongside the vehicle once he got his feet under him. Both Deputies fired their weapons at Mr. Aguilera simultaneously as he continued to drive the vehicle. As part of the autopsy of Mr. Aguilera’s body, it was determined that Mr. Aguilera sustained multiple gunshot wounds. Mr. Aguilera also had an incredibly high level of methamphetamines in his blood as indicated by the toxicology report. Mr. Brave concluded that the uses of force by Deputies were “objectively reasonable, under the Fourth Amendment standard, as reasonably perceived by the Deputies as the incident occurred” and “uses of their firearms were justified under NM Stat. Ann. §30-2-6.”

For the reasons explained in Mr. Brave’s report, which is attached to this letter, the State would be unable to meet this standard of proof under the circumstances of this case. Therefore, we have determined that no criminal charges can be sustained under these circumstances. As such, the New Mexico Department of Justice considers this matter closed. However, our review is limited to potential criminal liability and does not address any potential disciplinary and/or civil liability issues.

Thank you for contacting the New Mexico Department of Justice.

Sincerely,

/S/ R. John Duran

R. John Duran

Director of Special Prosecutions

New Mexico Department of Justice

cc: Chaves County Sheriff Mike Herrington: mike.herrington@chavescounty.gov

Roswell Police Department Deputy Chief Alberto Aldana: a.aldana@roswell-nm.gov

Summary Use-of-Force Analysis Report^{1,2}

[March 27, 2022, Sideline Dairy, Chavez County (NM) Sheriff's Office and Mr. David Luis Aguilera]
by Michael Brave

Abbreviated Conclusions Summary Overview:

Regarding the March 27, 2022, Sideline Dairy, Lake Arthur, NM, incident involving Mr. David Luis Aguilera (Mr. Aguilera or Subject) and Chavez County (NM) Sheriff's Office (CCSO) Sheriff's Deputies Joshua McKelvey (Dep. McKelvey), Benjamin Conklin (Dep. Conklin), and Cody Smothermon (Dep. Smothermon), the Deputies':

1. uses of force were not objectively unreasonable, under the Fourth Amendment standard,^{3,4} as reasonably perceived⁵ by the Deputies as the incident occurred;
2. uses of force were objectively reasonable, under the Fourth Amendment standard,^{3,4} as reasonably perceived⁵ by the Deputies as the incident occurred;
3. did not violate "clearly established law;"⁶
4. are entitled to qualified immunity for their actions, uses of force, including the uses of their firearms, and other related decisions and actions;⁷
5. had probable cause the subject threatened themselves [the Deputies] and others with serious harm or deadly force while they were performing their lawful duties;
6. [Conklin/McKelvey] gave the Subject multiple warnings prior to using deadly force;
7. uses of their firearms were justified under N.M. Stat. Ann. § 30-2-6. Justifiable homicide by public officer or public employee;⁸
8. uses of force were consistent with accepted law enforcement practices;
9. uses of force were consistent with accepted law enforcement training; and

Also, the Subject was not entitled or authorized to use self-defense in response to the Deputies' actions.

Respectfully submitted: March 16, 2024



Michael Brave

Documents, Materials Integrated and/or Attached:

- Integrated (not attached) all documents, recordings, materials, etc. received.
- Integrated (not attached) Michael Brave Curriculum Vitae.
- Included (attached) Michael Brave Qualifications Narrative.

¹ This document, summary, statements, and opinions are solely from a law enforcement use of force perspective, and are not legal opinions, legal advice, the practice of law, or any aspect of an attorney-client relationship.

² All statements and opinions are to a reasonable, or higher, degree of professional certainty or probability.

³ Brave, M. (2023). Constitutional Force Recipient Status Matrix (2019-2023).

⁴ Brave, M. (2019). Use of Force Constitutional Standards Timeline (1997, 2008, 2019).

⁵ *Lombardo v. City of St. Louis, Missouri*, 594 U.S. 464, 467 & 468, 141 S. Ct. 2239, 2241, 210 L. Ed. 2d 609 (2021).

⁶ Brave M (2023, October 15). Clearly established law and qualified immunity outlines. 1-3.

⁷ Brave M (2023, April). Basic partial law enforcement qualified immunity reference table. 1-13.

⁸ Also see, New Mexico State Court Rules (NMRA), Criminal (Crim). Uniform Jury Instructions (UJI) 14-5173. Justifiable homicide; public officer or employee. [NM R CR UJI 14-5173].

CCSO Deputies McKelvey and Conklin Explained Why They Shot the Subject

Dep. McKelvey made the decision to shoot the Subject when the patrol unit started moving. Dep. McKelvey reported that he was in fear for:

- Dep. Conklin's life, as Dep. McKelvey was worried for Dep. Conklin initially because at that point Dep. Conklin was outside of vehicle, walking with it, almost essentially being dragged by the vehicle;
- Dep. Smothermon who was out there literally in the direction that the vehicle was going, in the vehicle's path;
- the Subject was not secured;
- there were Dairy workers out there;
- the Subject could have killed any of them;
- the Subject could have run any of them over;
- the Subject could have killed him if the Subject had hit something;
- he was in fear for everybody out there, including himself;
- anybody who may have gotten into contact with the Subject on the highway, had he made it to the highway in the patrol unit;^{9,10} and
- the Subject had access to the weapons in the patrol vehicle, especially the rifle in the front compartment.

Dep. Conklin reported he shot the Subject because:

- he was terrified;
- the Subject had already dragged him fifteen–twenty feet;
- Dep. McKelvey was in the passenger's seat with his knee on the seat trying to assist in getting the Subject out of the unit;
- there were Dairy workers all over;
- Deputy Smothermon was walking back to his patrol unit in the general area right in front of the Subject;
- the Subject pushed on the gas and was accelerating;
- he had parked over a curb and to get over that curb the Subject would have had to accelerate and did go over the curb;
- he was convinced the Subject was going to kill somebody. The subject was either going to cause greatly bodily harm to somebody or kill somebody. Dep. Conklin was terrified for himself and everyone around him;
- the Subject grabbed his [Dep. Conklin's] CEW [TASER® Conducted Electrical Weapon], was fighting him, had a weapon at one point, and tried to grab his gun. Dep. Conklin believed the Subject was a threat to his life and everyone else's life who was there and he believed he made the right choice;
- he [Dep. Conklin] believed the Subject intended to harm somebody or he [the Subject] intended to escape, and he didn't care who he harmed in the commission of that or how bad he harmed them;
- he was sure that the Subject would have tried to get out on the highway;

⁹ *Plumhoff v. Rickard*, 572 U.S. 765, 134 S. Ct. 2012, 188 L. Ed. 2d 1056 (2014) [vehicle operator "a grave public safety risk"].

¹⁰ *Scott v. Harris*, 550 U.S. 372, 127 S. Ct. 1769, 167 L. Ed. 2d 686 (2007).

- the Subject would have presented an incredible danger to the public, by the way the Subject was acting Dep. Conklin did not believe the Subject would have been able to drive, and he would have hit somebody, hurt somebody, killed somebody. The Subject would have been even more of a danger to people on the county roads, because people hug the center line; and
- he was in fear for:
 - himself;
 - Dep. McKelvey;
 - the Dairy workers;
 - Dep. Smothermon; and
 - if the Subject had gotten away and gotten onto the highway he would have killed somebody.

Additional Points:

- The Subject was a convicted felon.
 - The Subject was first sentenced to 84 months in federal incarceration.
- There were long weapons, rifle and shotgun, inside the patrol unit.
- The Subject was under influence of methamphetamine during the incident.

Note: Recordings & Reasonableness in the Moment, not 20/20 Hindsight^{11.12}

Avoid using recordings (video and audio) in a way that constitutes “20/20 vision of hindsight”¹³ to deny a law enforcement officer (LEO) qualified immunity (QI). “The ‘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.”

Reviewing a recording in “20/20 vision of hindsight” to deny a LEO QI, is not the same as using such recordings supporting consistency with LEO’s perceptions and statements. Generally, focus on the importance of reviewing a recording of an incident from the perspective of the LEO on the scene.

Be cautious in using “20/20 vision of hindsight,” e.g., screen shots, still frames, multiple viewing angles, slow motion, or the ability to pause, rewind, and zoom when assessing the objective reasonableness of a LEO’s actions, especially to deny a LEO QI. Also consider careful, thorough analyses of applicable human factors concepts, issues, and limitations related to the totality of the circumstances of the incident.

See *Scott v. Harris*, 550 U.S. 372, 380-81 (2007) (“When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment. . . . [a court should] vie[w] the facts in the light depicted by the videotape.”).¹⁰

¹¹ See Brave M. (2021-2023) Recordings and Reasonableness in the Moment, not 20/20 Hindsight.

¹² See, Brave, M., Blake, D. and Bloodgood, M. (2023). Human Factors (HF), Reaction Time (RT), Perception Response Time (PRT), Total Response Time (TRT), Generalizability.

¹³ *Graham v. Connor*, 490 U.S. 386, 396, 109 S.Ct. 1865, 1871, 104 L.Ed.2d 443 (1989). “The ‘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.”

Brief Executive Summary:

On Sunday March 27, 2022, an unknown subject [after the incident identified as Mr. David Luis Aguilera (“Mr. Aguilera” or “Subject”)] trespassed onto Sideline Dairy, 8655 Spence Road, Lake Arthur, New Mexico (NM) 88253 (“Dairy”). Dairy workers reported the Subject acting crazy, erratically, visibly intoxicated on an unknown substance [later determined to be methamphetamine], and attempting to operate a tractor, including that he was able to start and move the tractor. Dairy workers removed the keys from the tractor, called law enforcement, and surrounded the Subject.

Chavez County (NM) Sheriff’s Office CCSO) Sheriff’s Deputies Joshua McKelvey (“Dep. McKelvey”), Benjamin Conklin (“Dep. Conklin”), and Cody Smothermon (“Dep. Smothermon”) responded to the Dairy and were engaged in the incident. Deputies Conklin and McKelvey discharged their firearms resulting in the Subject’s death.

Part 1: Dep. McKelvey Arrived to Subject Placed in Back of Squad (15 min, 24 sec)

Dep. McKelvey was the first CCSO deputy to arrive on scene, saw the Subject on the tractor, approached the Subject, told him to turn around and the Subject complied.

When Dep. McKelvey attempted to handcuff the Subject, he (the Subject) actively resisted. For approximately ten minutes Dep. McKelvey attempted to control, restrain, and handcuff the actively resisting and assaulting Subject. During that time, the Subject escaped and fled from Dep. McKelvey twice. During this time, Dep. McKelvey gave the Subject many verbal commands, warnings, attempted hands-on physical restraint, grounding, and a TASER® Conducted Electrical Weapon (CEW) in probe deployment mode, re-energizing the CEW several times.

After approximately ten minutes, Dep. Conklin arrived on scene. Deputies McKelvey and Conklin took the continuing to resist Subject to the ground. Dep. Conklin used a CEW in touch/contact stun to the Subject’s back. After approximately two minutes the Deputies were able to complete handcuffing of the actively resisting and assaulting subject.

The Deputies walked the Subject to a patrol unit, searched him, and placed him in the back of the unit.

Part 2 – Subject in Back of Patrol Unit through Shooting

The Subject was going nuts in the back of his patrol unit, was slapping the cage and he head-butted the cage at one point. The Deputies noticed that the Subject had escaped from one of the handcuffs. Dep. Conklin was at the rear door, on the driver’s side, of the patrol unit and Dep. McKelvey on the passenger side. Dep. Conklin attempted to use his CEW on the Subject.

As Dep. Conklin attempted to use the CEW on the Subject in the back seat of the patrol unit, the Subject turned, pushed him, and got out, and that the Subject reached and grabbed the front of his CEW. Dep. Conklin tore the CEW out of the Subject’s hand and threw it on the ground.

As Dep. Conklin attempted to use his CEW, the Subject escaped from the patrol unit and fled. Both Deputies chased the fleeing subject for approximately one minute.

Subject Entered Driver's Compartment of Patrol Unit

While fleeing from the Deputies, the Subject ran in a wide circle back to the patrol unit and entered the driver's compartment on the driver's side where he continued actively resisting and began to operate the patrol car.

Dep. Conklin approached the patrol unit's driver's door as Dep. McKelvey approached the front passenger-side door. Both Deputies had their firearms drawn. Dep. Conklin ran up and told the Subject "if you don't get out of the car right now I will fucking shoot you." Dep. McKelvey told the Subject "do you want to get fucking shot, get out of the goddamn car right now." The Subject responded "okay" multiple times but did not exit or comply. The Deputies unsuccessfully attempted to get the Subject to submit to arrest and to cease trying to drive away.

The Subject was looking around trying to grab stuff as Dep. Conklin kept telling the Subject to get out of the car, "get out of the car or you will get shot." The Subject looked, saw the rifle, and began looking at the buttons on the control panel. Dep. Conklin was convinced that the Subject was trying to figure out how to gain access to the rifle and trying to find the gun lock. The Subject started hitting the steering wheel and saying "fuck, fuck I'm sorry."

Dep. Conklin grabbed the Subject and tried to pull him out of the patrol unit, and the Subject was again able to push him [Dep. Conklin], and the Subject then grabbed the door and tried to close it. Dep. Conklin reached for the door and threw it back open and grabbed back onto the Subject again, and that is when the Subject started driving the patrol unit when he (Dep. Conklin) started being dragged.

Before he was dragged [a hurried strafe, a sideways walk trying to keep up, having unstable footing] the Subject reached over for Dep. Conklin's gun. Dep. Conklin pulled back and told the Subject "don't touch my gun." When Dep. Conklin drew out the Subject reached for Dep. Conklin's weapon. Dep. McKelvey saw the Subject swatting away at Dep. Conklin's weapon. The Subject had already tried to disarm Dep. Conklin of his CEW.

Dep. McKelvey Entered Patrol Unit Front Passenger Seat

Dep. McKelvey entered the front passenger seat facing the driver's area and was telling the Subject to get out of the car and continuing warning the Subject: "I will fucking shoot you." Dep. McKelvey saw the Subject lift his foot and put it inside by the pedals. Dep. McKelvey saw the Subject flip the gear shift.

The Subject flared his arm or swatted and almost knocked Dep. McKelvey's weapon out of his hand. The Subject may have been trying to take it, but Dep. McKelvey was able to maintain control of it.

Dep. McKelvey directed Dep. Conklin to move. Dep. McKelvey had one knee up on the seat and the other leg was hanging out, so he was also being dragged. Dep. Conklin reported that at that point he knew that he had to back up, and he had to stop the threat before the Subject injured Dep. McKelvey or anyone else there.

The Subject put the patrol unit in drive and started moving forward. The Subject kept driving forward. At this point in time, Dep. McKelvey was on the passenger side of the vehicle and Dep. Conklin was on the driver side.

Dep. McKelvey yelled to Dep. Conklin to move out of the way so that Dep. McKelvey could have a clear shot.

Deputies Conklin and McKelvey Simultaneously Fired

Dep. Conklin reported that he let go and took one step back and then he fired. Dep. Conklin reported that as he stepped backward being dragged, he got his feet under him.

Dep. Conklin reported that the Subject "... reached for my Taser, ... reached for my gun, ... threw that vehicle in drive with a Deputy in the seat giving him commands and ... dragged both of us." Dep. Conklin reported that he was holding onto the subject and the vehicle started moving and he [Dep. Conklin] was trying to keep his feet, "to me that's being dragged."

Dep. Conklin was trying to walk alongside the unit and tried to pull the Subject out of the vehicle. The subject was acting insane and Dep. Conklin believed that the Subject had some type of excited delirium because the Subject had more strength than he should have.

Deputies Conklin and McKelvey virtually simultaneously, especially for human performance factors analyses purposes, shot the Subject stealing, operating, and driving the patrol unit. After being shot the Subject rolled out onto the ground and the patrol unit continued forward.

Primary Incident Participants and Related Information Include:

CCSO - Chavez County Sheriff's Office, 1 St. Mary's Pl. #130, Roswell, NM 88203

Deputy McKelvey - CCSO Deputy Joshua McKelvey (age 32)

Deputy Conklin - CCSO Deputy Benjamin Conklin (age 25)

Deputy Smothermon - CCSO Deputy Cody Smothermon

Subject or Mr. Aguilera – Mr. David Luis Aguilera (age 34)

Mr. Torres – Mr. Rodrigo Ivan Torres, Manager, Sideline Dairy

Dairy – Sideline Dairy, 8655 Spence Rd., Lake Arthur, NM 88253.

Date – Sunday March 27, 2022

RPD – Roswell (NM) Police Department

[Patrol Unit #934] Dep. Conklin's CCSO Patrol Unit

Timelines from Recordings

Part 1: Dep. McKelvey Arrived to Subject Placed in Back of Squad (15 min, 24 sec)

Ref	Time (mm:sec.recording)		Event
	Running ¹⁴	Reference	
1	00:00	00:32.852	Dep. McKelvey arrived on scene
2	00:14	00:46.592	Dep. McKelvey, "turn around for me okay"
	Subject Resisting Handcuffing, Assaulting Dep. McKelvey		
3	00:24	00:56.695	Subject resisting handcuffing
4	00:49	01:21.945	Subject to the ground
	Subject Fled 1st: Breaks Away, Moves Away, Dangling Handcuff		
5	01:12	01:44.859	Subject breaks away, dangling handcuff
6		02:28.859	Dangling handcuff
	TASER[®] Conducted Electrical Weapon (CEW) Deployed		
7	03:55	04:28.135	Dep. McKelvey CEW deployed
8		04:56.334	Subj. keeps trying to get up
9		07:08.196	Dep. McKelvey tries going hands on to handcuff
10		07:59.266	Dep. McKelvey tries going hands on to handcuff
11		08:44.066	hey, what are you come here
12	08:48	09:21.302	Dep. McKelvey tries to go hands on to handcuff
	Subject Fled Again (2nd time)		
13	09:06	09:38.546	Subj. fled again
14		10:12.596	Subj. refusing to obey - get on the ground
15		11:00.496	Subj. continuing to resist, handcuff dangling
	Dep. Conklin Arrived		
	Deputies McKelvey and Conklin Take Subject to Ground		
	10:33	11:05.940	Deputies McKelvey and Conklin and Subj. to ground
		11:39.753	[422] Dep. Conklin "TASER TASER TASER"
16		12:01.223	CEW (touch/contact) to Subj back, continuing to resist
	Subject Detained		
	12:17	12:49.787	Dep. McKelvey - "427 1 detained"
	13:33	14:06.347	Subj. stood up
	Subject Placed in Back of Patrol Unit		
17	15:24	15:56.628	Subj. placed in back of patrol unit

¹⁴ All times are approximate, most as taken from media-recordings frames, utilizing AVS Video Editor software.

Part 2 – Subject in Back of Patrol Unit through Shooting (1 min, 29 sec)

Ref	Time (mm:sec.recording)		Event
	Running	Reference	
Subject in Back of Patrol Unit, One Handcuff Off			
1	00:00	00:00.000	Subj. in back of patrol unit, one handcuff off
2	00:21	0:21.380	Handcuff dangling
Subject Escapes from Patrol Unit, CEW Arcing Sound			
3	00:50	00:49.610	Subj. escapes from patrol unit, CEW arcing sound
4	00:52	00:52.050	Subj. fleeing
5	00:56	00:56.140	Subj. fleeing
Subject Getting into Driver's Seat of Patrol Unit			
6	01:05	01:04.880	Subj. getting in patrol unit driver's compartment
7	01:25	01:25.120	Dep. Conklin in door - Subj getting in patrol unit
8	01:25	01:25.422	Dep. McKelvey [in passenger seat], "Conklin move"
Shots Fired by Deputies Conklin and McKelvey			
	01:28	01:27.832	First shot
	01:29	01:29.415	Last shot
Patrol Unit Moving Past Tractor			
	01:31	01:31.116	Open door moving patrol unit moving past tractor

Selected Incident Details:

Background

On Sunday March 27, 2022, an unknown subject [after the incident identified as Mr. David Luis Aguilera (“Mr. Aguilera” or “Subject”)] trespassed onto Sideline Dairy, 8655 Spence Road, Lake Arthur, New Mexico (NM) 88253 (“Dairy”). Dairy workers reported the Subject acting crazy, erratically, visibly intoxicated on an unknown substance [later determined to be methamphetamine], and attempting to operate a tractor, including that he was able to start and move the tractor. Dairy workers removed the keys from the tractor, called law enforcement, and surrounded the Subject.

Chavez County (NM) Sheriff’s Office CCSO) Sheriff’s Deputies Joshua McKelvey (“Dep. McKelvey”), Benjamin Conklin (“Dep. Conklin”), and Cody Smothermon (“Dep. Smothermon”) responded to the Dairy and were engaged in the incident. Deputies Conklin and McKelvey discharged their firearms resulting in the Subject’s death.

Original Call to Dairy

Dep. Conklin reported that the original call was for a disorderly subject. Dep. Conlin reported that he learned that there was a Subject at the Dairy acting crazy, trying to take a tractor, and was hitting stuff with a pipe.

First Deputy – Dep. McKelvey Arrived First

As Dep. McKelvey arrived at the Dairy, the Subject was getting out of a large tractor and several [at least five] Dairy workers were around the Subject.



Still Image Dep. McKelvey arrived on scene.

Dep. McKelvey got out of his patrol unit and asked the Subject if he has any weapons or knives on him; the Subject replied "no." Dep. McKelvey told the Subject to turn around and put his hands behind his back. The Subject said, "yes sir" and did as ordered.



Still Image Dep. McKelvey hands on with Subject.



Subject Resisted

Dep. McKelvey – Subject Resisted

Dep. McKelvey attempted to handcuff the Subject and the Subject actively resisted (including pulling away, trying to put his hands in his pockets, trying to turn around, moving, struggling, not following orders).



Dep. McKelvey Grounded the Resisting Subject

Dep. McKelvey used hands-on physical control attempts to ground the Subject, as the subject continued struggling and actively resisting. Dep. McKelvey ordered the Subject several times to stop moving and stop resisting.



Still Image Dep. McKelvey going to the ground with the Subject.

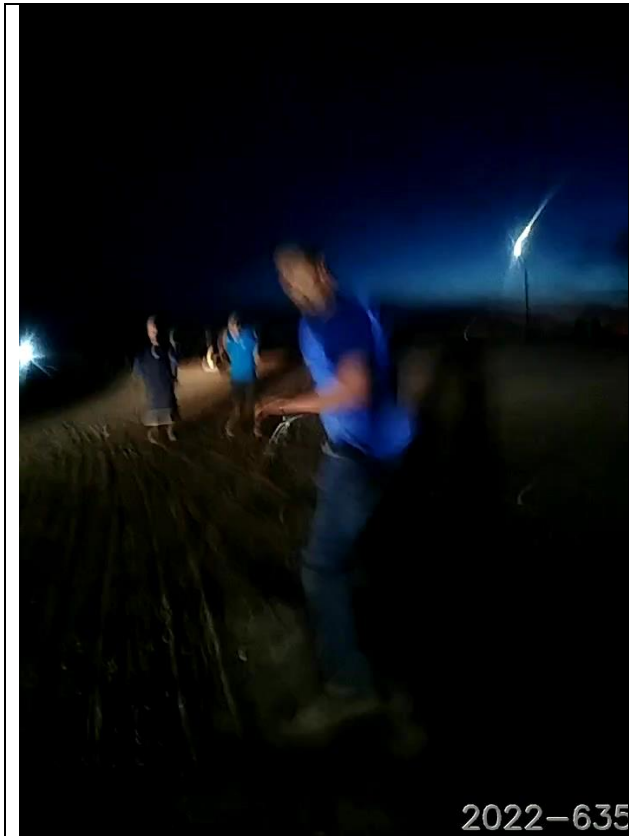
Subject Fled from Dep. McKelvey – First Time

Subject Got Back Up to His Feet, Moved Away

The subject got back up to his feet and moved away from Dep. McKelvey. The Subject had one cuff on his left wrist, with the other cuff open and dangling. Dep. McKelvey ordered the Subject to get on the ground. The Subject failed to comply.



Still Image Subject broke away from Dep. McKelvey.



Still Image Subject fled, cuff dangling.



Still Image Subject, handcuff dangling.

Dep. McKelvey Drew his TASER® Conducted Electrical Weapon (CEW)

As Dep. McKelvey drew his CEW the Subject had one handcuff on his left wrist and his cell phone in the other hand. The Subject failed to comply with Dep. McKelvey's commands.

Dep. McKelvey Ordered the Subject to Cuff Himself – Subject Did Not

The Subject was partially cuffed (one cuff open and dangling), moving around erratically, and failing to obey or comply with Dep. McKelvey's many orders.

TASER® CEW Deployed

Dep. McKelvey [Probe Mode] Deployed his CEW

As the Subject continuously actively resisted and failed to comply he kept repeating "fuck man" and "what did I do." The Subject kept taking steps backwards away from Dep. McKelvey, and Dep. McKelvey deployed his CEW.

The subject went to the ground as Dep. McKelvey continued commands. The subject failed to comply with commands and kept trying to get up. As the Subject tried to get up, Dep. McKelvey re-energized the CEW several times to attempt to keep him [the Subject] grounded.





Dep. McKelvey's Attempted to Handcuff the Subject

Dep. McKelvey attempted to place the second cuff on the Subject. The Subject continued to resist. Dep. McKelvey yelled over to Dairy workers for assistance.

Subject Rolled Onto His Back

The Subject rolled onto his back and was given multiple orders to roll over. After the Subject continued to actively resist and fail to comply, Dep. McKelvey again re-energized the CEW.

Subject Fled from Dep. McKelvey – Second Time

The Subject Got up Again and Ran From Dep. McKelvey

The Subject ran from Dep. McKelvey a second time. Dep. McKelvey told the Subject "do you want to get fucking shot." After a short chase, Dep. McKelvey caught up to the Subject. The Subject continued to say sorry but continued to actively resist and fail to comply. Dep. McKelvey told the Subject "I'm going to shoot you, lay on the ground." Dep. McKelvey continued to tell the Subject to lay on the ground, without compliance.



Dep. Conklin Arrived

The second Deputy arrived, Dep. Conklin.

Deputies McKelvey and Conklin Grounded the Subject

Deputies McKelvey and Conklin grounded the Subject and attempted to handcuff him. The Subject continued to yell that he was sorry as he continued to actively resist, including failing to give his hands for cuffing, and failing to comply with the Deputies.

Dep. Conklin Touch/Contact Stunned the Subject in the Back

Continuing to attempt to gain the Subject's compliance and handcuff him, Dep. Conklin applied the CEW to the Subject's back in touch/contact stun mode. The Deputies continued ordering the Subject to stop resisting. The subject assaulted Dep. Conklin.



Dep. McKelvey - After Twelve Minutes – Subject Detained

After approximately twelve minutes Dep. McKelvey reported that the Subject was detained.

Subject Taken to Dep. Conklin's Patrol Car

Deputies Walked the Subject to Dep. Conklin's Patrol Unit

The Deputies walked the Subject back to Dep. Conklin's patrol unit, searched him, and placed him in the back of the patrol unit.

Dep. Conklin: The Subject Was Going Nuts in the Back of the Patrol Unit

Dep. Conklin reported that the Subject was going nuts in the back of his patrol unit, was slapping the cage and he head-butted the cage at one point.

Part 2 – Subject in Back of Patrol Unit

Deputies Noticed the Subject has Escaped from One of His Handcuffs

Dep. Conklin is at the rear door, on the driver`s side, of the patrol unit and Dep. McKelvey on the passenger side. The Deputies open the back of Dep. Conklin`s patrol unit and noticed that the Subject had escaped from one of the handcuffs.

Time Table: Part 2 Subject in Back of Patrol Unit through Shooting (1 min, 29 sec)

Ref	Time (mm:sec.recording)		Event
	Running	Reference	
Subject in Back of Patrol Unit, One Handcuff Off			
1	00:00	00:00.000	Subj. in back of patrol unit, one handcuff off
2	00:21	0:21.380	Handcuff dangling
Subject Escapes from Patrol Unit, CEW Arcing Sound			
3	00:50	00:49.610	Subj. escapes from patrol unit, CEW arcing sound
4	00:52	00:52.050	Subj. fleeing
5	00:56	00:56.140	Subj. fleeing
Subject Getting into Driver's Seat of Patrol Unit			
6	01:05	01:04.880	Subj. getting in patrol unit driver's compartment
7	01:25	01:25.120	Dep. Conklin in door - Subj getting in patrol unit
8	01:25	01:25.422	Dep. McKelvey [in passenger seat], "Conklin move"
Shots Fired by Deputies Conklin and McKelvey			
	01:28	01:27.832	First shot
	01:29	01:29.415	Last shot
Patrol Unit Moving Past Tractor			
	01:31	01:31.116	Open door moving patrol unit moving past tractor



[1] Subject in back of patrol unit.

[2] Subject with cuff dangling.

Dep. Conklin Attempted to Use CEW on the Subject

Dep. Conklin: The Subject Raised a Tire Iron to Dep. Conklin

Dep. Conklin reported that when he first opened the patrol unit's door, the Subject was detained in, the Subject raised up a tire iron. Dep. Conklin reported that he told the Subject that he needed to drop. Dep. Conklin reported that he took the tire iron out of the subject's hand and threw it behind him (Dep. Conklin).

Dep. Conklin: The Subject Grabbed Dep. Conklin's CEW

Dep. Conklin reported that when he attempted to use the CEW on the Subject in the back seat of the patrol unit, the Subject turned, pushed him, and got out, and that the Subject reached and grabbed the front of his CEW. Dep. Conklin reported he tore the CEW out of the Subject's hand and threw it on the ground.

Dep. Conklin: The Subject's Actions Were a Threat

Dep. Conklin reported that he believes by the Subject's actions that the Subject had threatened to harm him (Dep. Conklin) by reaching for his [Dep. Conklin's] gun and CEW.

Deputies Continued Commands and Again Attempted to Detain the Subject

The Deputies giving the Subject commands and again attempted to control and detain him. The Subject is again actively resisting and failing to comply with commands. Dep.

Conklin's CEW is discharged [arcing heard on recording] as it appears that Dep. Conklin was holding the CEW to the Subject's left side.

Subject Escaped from Patrol Unit and Fled

As Dep. Conklin attempted to use his CEW, the Subject escaped from the Patrol unit out of the driver's side backseat [rear door].



[3] Subj escaping over Dep. Conklin

[4] Subj escaped and fleeing

The Subject Fled from the Patrol Unit and the Deputies

The Subject fled, running from the patrol unit and the deputies.

Both Deputies Chased the Fleeing Subject

Both Deputies chased the fleeing subject.



Subject In Driver's Compartment of the Patrol Unit

The Subject Circled Back Entering the Driver's Compartment of the Patrol Unit

While fleeing from the Deputies, the Subject circled back to the patrol unit and entered the driver's compartment on the driver's side.

While Deputies followed the subject as he ran in a wide circle and then returned back to the patrol car. The Subject entered the driver-side where he began to operate the patrol car while Deputies unsuccessfully attempted to get him to submit to the arrest and to cease trying to drive away.

Patrol Unit Weapons

This front passenger compartment of the patrol vehicle had a firearm [AR-style rifle] visible to the Subject inside of it during the Subject's attempted operation of it. The Subject was repeatedly warned by Deputies McKelvey and Conklin that he would be shot if he did not get out of the seat.

Dep. McKelvey reported that the patrol unit had two weapons: (1) an AR-style rifle in the front console and (2) a shotgun in the back (cargo area).

Dep. McKelvey reported that the Subject was looking around at the buttons, including a button that was very clearly labeled "gun lock." Dep. McKelvey reported that "you press that button and you'll hear the click and all you need to do is pull the rifle out." Dep. McKelvey reported that the weapon being there was definitely one of the dangers that

went through his mind. Dep. McKelvey reported that he saw the Subject looking around the driver's compartment.

Subject in Driver's Seat – Deputies Approached the Patrol Unit

Dep. Conklin approached the patrol unit's driver's door as Dep. McKelvey approached the front passenger side door. Dep. McKelvey told the Subject "do you want to get fucking shot, get out of the goddamn car right now." The Subject responded "okay" multiple times but did not exit or comply.

Dep. Conklin: Subject in the Driver's Seat of Patrol Unit

Dep. Conklin reported that when the Subject got into the driver's seat of the patrol unit, he [Dep. Conklin] ran up and told the Subject "if you don't get out of the car right now I will fucking shoot you."

Deputies Had Their Firearms Drawn

Both Deputies had their firearms drawn.

Dep. Conklin Saw The Subject in the Driver's Seat

Dep. Conklin reported that he saw the Subject when he [the Subject] got into the patrol vehicle seat, "he looked, he saw my rifle, and he began looking at the buttons on the control panel." Dep. Conklin reported that he was convinced that the Subject was trying to figure out how to gain access to the rifle, and he was trying to find the gun lock.

The Subject Started Hitting the Steering Wheel

Dep. Conklin reported that the Subject started hitting the steering wheel and saying "fuck, fuck I'm sorry."

Dep. Conklin reported that the Subject was looking around trying to grab stuff as Dep. Conklin kept telling the Subject to get out of the car, "get out of the car or you will get shot."

Dep. Conklin Tried to Pull Subject Out of Unit

Dep. Conklin Tried to Pull the Subject Out of the Patrol Vehicle

Dep. Conklin reported that he grabbed the Subject and tried to pull him out of the patrol unit, and the Subject was again able to push him [Dep. Conklin], and the Subject then grabbed the door and tried to close it.

Dep. Conklin Threw the Door Back Open

Dep. Conklin reported that he reached for the door and threw it back open and grabbed back onto the Subject again, and that is when the Subject started driving the patrol unit when he (Dep. Conklin) started being dragged.

Dep. Conklin: Subject Reached Over Dep. Conklin's Gun

Dep. Conklin reported that before he was dragged [a hurried strafe, a sideways walk trying to keep up, having unstable footing] the Subject reached over for his (Dep.

Conklin`s) gun. Dep. Conklin reported that he pulled back and told the Subject "don`t touch my gun."

The Subject Reached for Dep. Conklin`s Weapon

Dep. Conklin reported that when he drew out, the Subject reached for his [Dep. Conklin`s] weapon. Dep. Conklin reported that the Subject had already tried to disarm him [Dep. Conklin] he had his CEW.

Dep. McKelvey Entered Patrol Unit Front Passenger Seat

Dep. McKelvey entered the front passenger seat facing the driver`s area. Dep. McKelvey reported that he was in the passenger seat and telling the Subject to get out of the car and continuing warning the Subject: "I will fucking shoot you."

Dep. McKelvey Saw the Subject Put His Foot Inside by the Pedals

Dep. McKelvey reported that he saw the Subject lift his foot and put it inside by the pedals. Dep. McKelvey reported that he saw the Subject swatting away at Dep. Conklin`s weapon.

Dep. McKelvey: Subject Flipped the Gear Shift

Dep. McKelvey reported that both he and Dep, Conklin had their firearms drawn on the Subject. Dep. McKelvey reported that he saw the Subject looking around, looking at the center console where all the buttons are, and where the gun lock is. Dep. McKelvey reporting seeing the Subject flip the gear shift.

The Subject Almost Knocked Dep. McKelvey`s Firearm Out of His Hand

Dep. McKelvey reported that at one point the subject flared his arm or swatted and almost knocked his (Dep. McKelvey`s) weapon out of his hand, the Subject may have been trying to take it, but Dep. McKelvey was able to maintain control of it.

Dep. Conklin: Dep. McKelvey Told Him To Move

Dep. Conklin reported that Dep. McKelvey told him to move, and Dep. McKelvey had one knee up on the seat and the other leg was hanging out, so he was being dragged as well. Dep. Conklin reported that at that point he knew that he had to back up, and he had to stop the threat before the Subject injured his Deputy or anyone else there.



The Subject Put the Patrol Unit in Drive, and it Began to Move Forward

The Subject put the patrol unit in drive and started moving forward.

The Subject kept driving forward. At this point in time, Dep. McKelvey was on the passenger side of the vehicle and Dep. Conklin was on the driver side. Dep. McKelvey yelled to Dep. Conklin to move out of the way so that Dep. McKelvey could have a clear shot.

Dep. Conklin Let Go, Took One Step Back, and Fired

Dep. Conklin reported that he let go and took one step back and then he fired. Dep. Conklin reported that as he stepped backward being dragged, he got his feet under him.

Dep. Conklin reported that the Subject "... reached for my Taser, ... reached for my gun, ... threw that vehicle in drive with a Deputy in the seat giving him commands and ... dragged both of us." Dep. Conklin reported that he was holding onto the subject and the vehicle started moving and he [Dep. Conklin] was trying to keep his feet, "to me that's being dragged."

Dep. Conklin reported that he was trying to walk alongside the unit and tried to pull the Subject out of the vehicle. Dep. Conklin reported that the subject was acting insane and he [Dep. Conklin] believed that the Subject had some type of excited delirium because the Subject had more strength than he should have.

Deputies Conklin and McKelvey Shot the Subject

Both Deputies almost simultaneously began discharging their handguns on the Subject, especially for human performance factors analyses purposes, shot the Subject. After being shot, the Subject rolled out onto the ground and the patrol car continued forward.



Brief Summary: Dep. Smothermon

Deputy Smothermon reported that he was not the third Deputy to arrive on scene. He was dispatched to a remove subject call. When he arrived Deputies McKelvey and Conklin were already on scene. Deputy Smothermon learned through Dispatch that there was a subject who was there, the subject might have been intoxicated off of something, and that the subject was trying to steal a tractor. Via radio traffic Dep. Smothermon heard that Dep. McKelvey told responding Deputies to step it up.

When Dep. Smothermon arrived he said he was parked pretty far away so he ran up. He noticed a [TASE CEW] on the ground as he was running up. Dep. Conklin was on top of the Subject and they already had him handcuffed. They raised the Subject to his feet and escorted him to Dep. Conklin`s unit.

The Subject was still resisting. Somebody patted the Subject down but he [Dep. Smothermon] is not sure who. They tried to put the Subject in the back of Dep. Conklin`s vehicle but the Subject would not get in. Dep. Conklin went around to the

other side and grabbed the Subject from the top and Dep. Smothermon grabbed the Subject from the bottom and put him in the unit and closed the doors.

After the Subject was detained and secured in the back of Dep. Conklin`s unit, the Deputies interviewed the manager of the Dairy, Dep. Smothermon took pictures of the tractor that the Subject tried to steal.

After that, Dep. Smothermon started to walk back to his patrol unit. He said that he was parked pretty far from the actual scene. He was almost back to his unit when he heard one of the other Deputies start yelling commands. Dep. Smothermon started heading back to them after hearing that.

Subject Escaped From Unit, Ran, Turned Around, and Ran Back to Driver`s Seat

Dep. Smothermon reported that the Subject escaped from the patrol Unit`s backseat, running past Dep. Conklin

The Subject ran from the patrol unit, then turned around and ran back to get into the unit`s driver`s seat.

Dep. Smothermon reported that there was a Deputy on each side of the unit when he began to see the unit move forward about one hundred (100) feet.

Subject Inside Patrol Unit`s Driver`s Compartment

The two (2) Deputies were on each side of the unit when it began to move forward. Dep. Conklin, on the driver`s side, was trying to take the Subject out of the driver`s seat and when the unit began to move forward is when Dep. Smothermon heard the shots fired and the male fall out of the unit. Dep. Smothermon reported that he believed he heard about two (2) to three (3) shots fired, but he was not sure because everything happened so fast.

Vehicle Was Moving Toward Dep. Smothermon

Dep. Smothermon saw the patrol unit start to move and he heard some gunshots. That`s when he drew his weapon and kept heading their way. The vehicle was heading towards him. He said it registered to him that a deputy wouldn`t be in that unit if they were fighting this Subject. He ducked behind a metal object for cover. The patrol unit came to a stop and he saw Dep. McKelvey coming up behind it. Dep. Smothermon yelled "where`s he at, where`s he at?"

Dep. Smothermon started going back toward where the original scene was and saw Dep. Conklin on top of the Subject applying pressure. Dep. Smothermon assisted with applying pressure. They then turned the Subject over, took his shirt off, and started doing chest compressions all the way up until Emergency Medical Services arrived. Dep. Smothermon reported that he could not see if anyone was in the driver`s compartment when he observed the unit coming toward him. He said it started veering off and was traveling very slowly until it came to a stop. Afterwards he learned that the unit was unoccupied.

[Regarding the Subject] Dep. McKelvey reported that

- when he [Det. McKelvey] arrived on scene the Subject was “acting crazy;”
- the whole time the Subject continued to act “crazy;”
- the only time the Subject was compliant was when he [Dep. McKelvey] first made contact with him [the Subject];
- the Subject was very unpredictable with what he might do next;
- the patrol unit itself was a weapon; and
- when the Subject got into the patrol unit and was getting ready to try to drive it off, he [Dep. McKelvey] had no way to know what he [the Subject] might do including hitting other officers.

Dep. McKelvey: Potential Criminal Charges on the Subject

Dep. McKelvey reported that the Subject would have been charged with:

- attempted unlawful taking;
- disorderly conduct;
- resisting arrest; and
- assault and battery on a peace officer [in relation to the Subject fighting him [Dep. McKelvey], swatting at him, and kicking Dep. Conklin, Dep. McKelvey reported that the Subject was on the ground, he had been cuffed, and he [the Subject] was kicking back at Dep. Conklin.

Toxicology Results

Toxicology results were reported by Report Issued 03/23/2023 14:31 (“Tox. Report”), and included that Mr. Aguilera had amphetamine (100 nanogram per milliliter (ng/mL) and methamphetamine (1400 ng/mL) in his femoral blood.

The Tox. Report includes that “[b]lood levels of 200-600 ng/mL have been reported in methamphetamine abusers who exhibited violent and irrational behavior. High doses of methamphetamine can also elicit restlessness, confusion, hallucinations, circulatory collapse and convulsions.”

Prior Federal Criminal Charges Include - Mr. David Luis Aguilera:

[Mar. 9, 1988] Mr. Aguilera’s date of birth

[Apr. 29, 2004] Incident: On or about 29th Day of April, 2004, in Eddy County, New Mexico - Mr. Aguilera’s age - 16 years 1 months 20 days

[Oct. 22, 2004] Indictment. USA v. David Aguilera, Case 2:04-cr-02116-RB Doc 1 Filed 10/22/04: 21 U.S.C. § 841(a)(1), 21 U.S.C. § 841(b)(1(A):Distribution of 50 grams and more of Methamphetamine, its Salts, Isomers, and Salts of its Isomers; and 18 U.S.C. § 2: Aiding and Abetting

UNITED STATES OF AMERICA, Plaintiff/Appellee, v. David A. (A JUVENILE), Defendant/Appellant., 2005 WL 735505, Appellee’s Answer Brief [Jan. 24, 2005]

October 6, 2006 – Judgment – Distribution of meth (84 months)

- Mr. Aguilera’s age - 18 years 6 months 28 days

March 4, 2010 – Judgment – Escape (4 months, 3 years supervised release)

Also, see: *United States v. David A.*, 436 F.3d 1201 (10th Cir. Feb. 3, 2006).

Michael Brave Qualifications Narrative
16 March 2024
Table of Contents

Section 2(a): FRCP 26(a)(2)(B)(iv) Witness's Qualifications Include 1

- Introduction:..... 1
- Formal Education: 1
- (Part-Time (PT)) Sworn Law Enforcement Officer 2
- (Full-Time (FT)) Sworn Federal Official/Officer 2
- EVOC, Pursuit, PIT, Roadblock, Interventions, Controlled Deflation Devices..... 2
- Law Enforcement Force Option Training Certifications 3
- Human Performance, Factors, Behaviors, and Limitations: 3
- Law Enforcement Organizations 4
- Law Enforcement Training Programs Presented 5
- Policy/Procedures 6
- Standards Participation (less lethal, CEW, etc.) 6
- Force Option, Electronic Weapons 7
- Experience with TASER, Axon..... 7
- Electronic Weapons Research Monitoring, Effects, Risk Analysis, and Warnings 8
- Subject Matter Expert (SME) Initiative Participation 9
- Electronic Weapon Related Patent 9
- CEW-Paper Invited Peer-Reviewer..... 10
- Force Continuums Articles Published 10
- Temporal Officer-Associated Deaths (TO-ADs) Experience 10
- Additional Electronic Weapon Knowledge, Skill, Experience, Training, Education 10
- Canine 11
- Additional Areas of Law-Enforcement Related Research, Writings, and Presentation 12
- Law Enforcement Publications Authored 12

Section 2(b) FRCP 26(a)(2)(B)(iv) publications 13

- Publications authored or co-authored in the previous 10+ years..... 13
- Recent Webinars presented include 16

Section 2(c): FRCP 26(a)(2)(B)(v) 4 years of cases with trial/deposition testimony 17

Section 2(a): FRCP 26(a)(2)(B)(iv) Witness's Qualifications Include¹

Introduction:

I have a very broad and great depth of training, experience, skill, and education, and possess specialized, scientific, and technical, knowledge, in law enforcement, criminal procedure, criminal law, law enforcement temporal officer-associated deaths (TO-ADs), in-custody deaths, off-duty employment and authority, jurisdictional concepts and issues, vehicle operations (including pursuits, road blocks, PIT (Precision Immobilization Technique), controlled deflation devices (e.g. Stop Sticks[®]), roadblocks, and pursuit termination), law enforcement force option areas including, use of force, force options, law enforcement practices, frequencies, expectations and effects of force options, specifically including electronic weapons, including the TASER International, Inc. (TASER[®]), since April 5, 2017 Axon Enterprise, Inc. (Axon), conducted energy weapons or energy weapons (changed by Axon on October 7, 2018) (formerly Conducted Electrical Weapons) (CEWs), and specifically including the TASER X26E™ CEW, TASER M26 CEW, TASER C2 CEW, Pulse CEW, Bolt CEW, Stinger, TASER X3 CEW, TASER X2 CEW, TASER X26P CEW, TASER X7 CEW, and TASER X10 CEW.

Michael Brave serves as:

- Manager/sole Member of LAAW International, LLC.,
- Senior Director-Legal Counsel, Director: CEW Legal of Axon Enterprise Inc., and
- [Of Counsel] Partner, Phoenix office of Manning & Kass, Ellrod, Ramirez, Trester LLP, as a member of the Government Entity Liability team

Formal Education:

I have earned a Bachelor of Science degree (B.S.) in Business Administration, Master of Science degree (M.S.) in Management Technology, All But Thesis (ABT) Master of Science in Safety and Industrial Loss Control, and Juris Doctor (J.D.) degree. I have attended other classes in other degree programs. I am a licensed attorney in Minnesota, Wisconsin, and (limited in-house) in Arizona, including being admitted to numerous federal district courts, federal courts of appeal, and the United States (U.S.) Supreme Court (SCOTUS). I have been admitted *pro hac vice* in numerous court proceedings and have participated in coroners' inquests as a company representative or expert in Canada and the United Kingdom (England). I have been involved in 100s of law enforcement related civil litigations, also criminal prosecutions, inquests, and others.

¹ See current Curriculum Vitae for further details and specifics. My curriculum vitae containing details of my relevant or related knowledge, skill, experience, training, education, publications authored; my scientific, technical, and other specialized knowledge; and a listing of any cases in which testimony (deposition and/or trial) as an expert has been given is attached hereto and made an integral part hereof. Also see direct qualification testimony PowerPoint deck.

(Part-Time (PT)) Sworn Law Enforcement Officer:

I have served as a sworn PT Wisconsin (WI) law enforcement officer from 1980 to retiring in good standing on May 4, 2022. I began as a PT deputy sheriff, jail officer, and dispatcher. My experience includes serving as a PT Patrol Captain, Lieutenant, Field Training Officer (FTO), training officer, patrol officer, and legal advisor. I have responded to, observed, and investigated criminal activities and have detained, arrested, restrained, and handcuffed > 1,000 people; including > 100 arrests for operating a vehicle while intoxicated. For over a decade as a Wisconsin law enforcement trainer I was certified to instruct up to twenty-two (22) subject areas.

(Full-Time (FT)) Sworn Federal Official/Officer:

At the United States (U.S.) Department of Justice (DOJ) I served as Chief, Intelligence and Investigative Operations Unit, and the Deputy Director, Federal Witness Security Program, International Operations, Office of Enforcement Operations (OEO), Criminal Division, Washington, D.C. (5/97 - 1/02); also, a Division Security Officer and Watch Officer; OEO Firearms Training Officer; and an Occupancy Evacuation Coordinator. National Security Information (NSI) security clearance level was above Top Secret, including courier credentials. Also, Special Deputy United States Marshal, United States Marshals Service.

EVOC, Pursuit, PIT, Roadblock, Interventions, Controlled Deflation Devices:

My training, experience, skill, and education, and specialized, scientific, and technical, knowledge, includes emergency vehicle operations, pursuits, PIT, controlled deflation devices, roadblocks, interventions, escape and evasion driving, anti-terrorist, decision making, policies, procedures, guidelines, and occupant restraint risk management. Attended training programs, researched, co-authored articles on pursuit driving, controlled deflation devices, commentator on the Law Enforcement Television Network (LETN), etc. Presented pursuit vehicle policy, procedures, decision making and operations law enforcement and risk management training, and occupant restraint risk management programs. Have engaged in numerous vehicle emergency operations, including pursuits as a riding (backup) officer, the primary officer, as a secondary officer, and as a supervising officer. Corporate Officer in a corporation that distributed Stop Sticks in the State of Wisconsin, including providing training, demonstrations, sample policies, procedures, etc. Served as an expert or consultant in numerous pursuits, roadblock, vehicle operations involved legal proceedings, including *Scott v. Harris*, 550 U.S. 372, 127 S.Ct. 1769, 167 L.Ed.2d 686 (2007). Also, as a firearms instructor have presented numerous law enforcement firearms programs that included using firearms on various motor vehicles and demonstrating intervention and stopping capabilities and force options. I am a member of (ALERT) Association of Professional Law Enforcement Emergency Vehicle Response Trainers International; formerly (National A.L.E.R.T.) National Association of Professional Law Enforcement Emergency Vehicle Response Trainers.

Law Enforcement Force Option Training Certifications:

My training as a law enforcement force-options instructor began in the late 1970s. The instructor programs initially attended, and certifications attained, included firearms (handgun, shotgun, rifle, submachine gun, and impact projectiles). I held a Class III Alcohol, Tobacco, and Firearms, U.S. Department of the Treasury firearms dealer's license (including Class III) (Specialized Weapons Systems, Inc) for several years. Firearms instructor certifications from the Wisconsin Department of Justice, Smith & Wesson Academy, Defense Training International (DTI), and others. I served as a firearms instructor for about three decades, including in part as a Wisconsin Certified Instructor, for DTI, and Executive Security International, Inc. (ESI) in Aspen, Colorado. I have also participated in sniper training. I am a member of IALEFI (International Association of Law Enforcement Firearms Instructors) and have presented at an IALEFI Annual Conference.

From 1993 to 2004 I served as President of a small Wisconsin company (Personal Defense Systems, Inc.) that marketed products including chemical weapons, force options, and Stop Sticks.

Over the years I have participated in force-options instructor programs, and received instructor certifications in, force options including: baton/impact force options (Monadnock® PR-24, Pneu-Gun Ballistic Baton, Tactical Baton, Tactical Glove); Psycho-Motor Skill Design Instructor (PSDI); Lateral Vascular Neck Restraint (LVNR®); chemical and inflammatory agents (Captsun II, oleoresin capsicum (OC), chloroacetophenone (CN), orthochlorobenzalmalonotrile (CS), Defensive Tactics Institute (DTI), Defense Technologies, Inc., Aerosol Subject Restraint, Mace Security International, PepperBall®, SABRE OC Aerosol Instructor); distractionary munitions (special purpose low lethality anti-terrorist munitions (SPLATTM), distractionary devices); defensive tactics; spontaneous knife defense; handcuffing and restraint (DTI, RIPP® Restraints, WRAP); and various electronic weapons. I am an International Association of Directors of Law Enforcement Standards and Training (IADLEST) Nationally Certified Instructor (INCI), Charter INCI #000022. IADLEST International Certified Instructor (IICI). Train-the-Trainer ICAT (Integrating Communications Assessment and Tactics) Certified, Police Executive Research Forum (PERF).

Human Performance, Factors, Behaviors, and Limitations:

Have presented human factors and use of force subjects for over 22 years, and have presented presentations and training programs at several conferences. Have attended several human factors, limitations, investigations, etc. programs. Human factors certifications include Force Science Analyst Certifications (Scottsdale, AZ, and Mesa, AZ), and Advanced Force Science Specialist Certification. Member of the Human Factors and Ergonomics Society (HFES), including Forensics Professional Technical Group, Training Technical Group, Perception and Performance Technical Group, Individual Differences in Performance Technical Group, and Safety Technical Group.

Law Enforcement Organizations:

My experience includes formerly serving as a faculty member for the Americans for Effective Law Enforcement (AELE), Law Enforcement Legal Center; Legal Advisor and an Advisory Board, as well as a Charter, member of the International Law Enforcement Educators and Trainers Association (ILEETA); former Board member and Legal Advisor to the Institute for the Prevention of In-Custody Deaths (IPICD); former Board Member of the Scientific Combatives Group International. Additionally, I have served on the National Advisory Boards of the Police Law Institute, the Jail Law Institute, and DTI; former member of the Executive Board of American Society for Law Enforcement Trainers/Training (ASLET); Executive Committee Member of the Legal Officers' Section (LOS) of the International Association of Chiefs of Police (IACP) [IACP Life Member and LOS, Police Physicians' Section PPS), and Police Research Advancement Section (PRAS) member]; and as a consultant, author, and part owner to the Law Enforcement Legal Defense Manual. Also hold memberships in other organizations including, but not limited to, IADLEST, American Jail Association (AJA)(Life Member), IPICD (Institute for the Prevention of In-Custody Deaths) Charter Member, the International Association of Law Enforcement Firearms Instructors (IALEFI) and International, National, ALERT, National Tactical Officers Association (NTOA), National Sheriff's Association (NSA Life Member), and International Police Association (IPA Life Member); and formerly Law Enforcement Training Officers Association (LETOA) of Wisconsin,. Also, a Senior Member, Institute of Electrical and Electronics Engineers (IEEE), Engineering in Medicine and Biology Society (EMBS).

Life Memberships
(ILEETA) International Law Enforcement Educators and Trainers Association, Legal Advisor, and Member of Advisory Board.
(IACP) International Association of Chiefs of Police (Life Member). - (LOS) Legal Officers Section member. - 1991-1992 - Member of LOS Executive Committee - Officer at Large.
(NSA) National Sheriff's Association (Life Member).
(ILET) International Law Enforcement Training Network, Founding Member (Life Member).
(ACJS) Academy of Criminal Justice Sciences (Life Member).
(AJA) American Jail Association (Life Member).
(IPA) International Police Association (Life Member - number 25020).
Other Current Memberships/Relationships
IPICD Charter Member [Institute for the Prevention of In-Custody Deaths
(IADLEST) International Association of Directors of Law Enforcement Standards and Training. - IADLEST National Certified Instructor (INCI), member #000022. - IADLEST International Certified Instructor (IICI). - IADLEST Member of Legal Group.
(IALEFI) International Association of Law Enforcement Firearms Instructors.
(ALERT) Association of Professional Law Enforcement Emergency Vehicle Response Trainers International; formerly (National A.L.E.R.T.) National Association of Professional Law Enforcement Emergency Vehicle Response Trainers.
(PERF) Police Executive Research Forum.
(NTOA) National Tactical Officers' Association.
(AFI) Association of Force Investigators.

(IEEE) Institute of Electrical and Electronics Engineers, (EMBS) Engineering in Medicine and Biology Society, Senior Member.
(ANSI) American National Standards Institute.
(ASTM) American Society for Testing and Materials.
(HFES) Human Factors and Ergonomics Society. - HFES Forensics Professional Technical Group. - HFES Training Technical Group. - HFES Perception and Performance Technical Group. - HFES Individual Differences in Performance Technical Group - HFES Safety Technical Group.
(ASEBP) American Society of Evidence-Based Policing
(IMLA) International Municipal Lawyers Association - Committees: - General Government Section - Litigation, Insurance and Risk Management Section - Telecommunication and Franchise Section - Working Groups: - Police Advisors - Ethics
(DRI) Defense Research Institute, Governmental Liability Committee.
(CALFIA) California Force Instructors' Association.
Excerpts: Past Organizations
(AELE) Americans for Effective Law Enforcement (former faculty).
(ASLET) American Society of Law Enforcement Trainers (1988-dissolution) [replaced by ILEETA] - Member of Legal Issues Committee. - Member Driving Instructors' Group (per Tony Scotti). - Legal Advisor and Committee Member to 1993 Driving Skills Contest Committee (per Scotti). - Executive Board Member (2/98 - 2/01).
(DTI) Defensive Tactics Institute, Albuquerque, New Mexico - Member – National Advisory Council
(NAFTO) National Association of Field Training Officers.
(PPCT) Pressure Point Control Tactics Training Association.
(JSTA) Justice Systems Training Association (through 1989). [replaced by ASLET].
(IAPT) International Association of Police Trainers.
(ATOM) Association of Training Officers of Minnesota.
(LETOA) Law Enforcement Training Officers' Association – Wisconsin.
(MALEFI) Minnesota Association of Law Enforcement Firearms Instructors – Advisor.
(IPITA) Illinois Police Instructor Trainers Association, Inc. (First joined, 8/95)
(NACOP) National Association of Chiefs of Police.
(PMA) Police Marksman Association.
(NAPWDA) North American Police Work Dog Association (1988 - 1995).
(USPCA) United States Police Canine Association.
(ACA) American Corrections Association.
(MSA) Minnesota Sheriff's Association.
(MPPOA) Minnesota Police & Peace Officers Association.
(ASIS) American Society of Industrial Security (1988-1994).
(ASET) Academy of Security Educators & Trainers (First joined, 1988)
(MADPA) Minnesota Association of Protective & Detective Agents (1988-1991).

Law Enforcement Training Programs Presented:

Since the early 1980s, I have presented > 1,000 of law enforcement training programs or presentations, the majority of which were force, policy, guidance, and/or risk management

related. These presentations were mostly in the U.S.; international programs included: Mexico, Canada, Panama, Austria, and the United Kingdom (U.K.). These presentations and training programs have included National and International Law Enforcement and Risk Management Conferences, including, but not limited to the IACP, ASLET, ILEETA, IPICD, IALEFI, AELE, IADLEST, LETOA, Public Risk Management Association (PRIMA), State Risk and Insurance Management Association (STRIMA), International Municipal Lawyers Association (IMLA), Force Science, and others. I have provided force training to many organizations, law enforcement agencies, and LEOs including the instructional staff at the U.S. Secret Service Academy (Maryland).

Policy/Procedures, Best and Preferred Practices, and Guidelines Development, Publications, and Training:

I have been researching, writing, editing, critiquing, teaching, presenting, commenting, and consulting on criminal procedure, law enforcement policies, practices, general orders, procedures, guidelines, and best, preferred, commonly accepted, and other practices since the early 1980s. I have authored specific language and sample guidance on various uses of force and force options, off-duty employment, vehicle operations, pursuits and related-guidance, jurisdictional and authority concepts and issues, etc. I have critiqued and commented on numerous law enforcement policies at the federal, state, county, and local levels.

I have authored several policy-related publications and have presented many training programs regarding and involving force-option and other policies, procedures, general guidelines, etc.

Model policy and best practices development participation includes, executive session participant, 2011 Electronic Control Weapons Guidelines, PERF, Philadelphia, Pennsylvania; and significant contributor, editor, peer reviewer for the March 2018 Electronic Control Weapons Model Policy, Concepts, and Issues Paper, and Need to Know. IACP Law Enforcement Policy Center, Alexandria, Virginia; and Geneva Guidelines on Less-Lethal Weapons and Related Equipment in Law Enforcement, Institute for International and Comparative Law in Africa (University of Pretoria), Centre of Governance and Human Rights (University of Cambridge, United Kingdom).

Standards Participation (less lethal, CEW, etc.):

I serve as Axon Technical Advisor on National and International CEW Standards and Standards Organizations. I was a committee participant to International Electrotechnical Commission (IEC), IEC 62792 (2015) Edition 1.0, Measurement method for the Output of electroshock weapons. I co-authored D. Panescu, M. Nerheim, M. W. Kroll, and M. A. Brave, "New Conducted Electrical Weapons: Electrical Safety Relative to Relevant Standards," *Conf Proc IEEE Eng Med Biol Soc*, vol. 39, Jul 2017, pp. 2185 - 2190. I served as ILEETA organization representative to American National Standards Institute (ANSI)/CPLSO-17-2017, Electrical Characteristics of ECDs and CEWs.10/11/2017, and serve on the five-year update. I serve as Member and Task Group Participant to American Society for Testing and Materials) (ASTM), Committee: E54 Homeland Security Applications, Subcommittees: E54.04, Public Safety Subcommittee (includes topics from

current E54.04 and E54.08), Former E54.08 Operational Equipment, including Less-Lethal Task Group, including: ASTM (draft) WK70043 Safety of Targeted Individuals During Deployment of Less Lethal Impact Devices used by Law Enforcement; ASTM (draft) Standard WK61808 New Test Method for Correct Performance of Less-Lethal Electroshock Weapons Used by Law Enforcement and Corrections; WK57087 Less Lethal Chemical Devices; and WK62829 Certification of Less Lethal Aerosol Devices Used by Law Enforcement and Corrections. Voting member of ASTM, Committee F15 on Consumer Products, Subcommittee: F15.73 Non-Projectile Stun Guns. Voting participant of the Institute of Electrical and Electronics Engineers (IEEE) P2792 Neurostimulation (EMB/Std Com/NEUROSTIM) Working Group (WG). American National Standards Institute (ANSI), United States (U.S.), National Committee (NC), Technical Advisory Group (TAG), IEC TC 85 – Measuring equipment for electrical and electromagnetic quantities (TC-85), WG 22 Waveform parameter measurements. [USNC TAG IEC TC 85 WG22, including IEC 62754, to February 2023].

Force Option, Electronic Weapons, CEW (CEWs²), Background:

My law enforcement electronic weapons instructor programs attended and certifications received include: Source (International Non-Lethal Weapons Association Academy, at Justice Systems Training Association (JSTA) PSDI Conference, 1983), Electronic Restraint Devices (DTI 1992), Compliant Technologies' Generated Low Output Voltage Emitter (G.L.O.V.E.) and E-Band instructor, Advanced TASER CEW (2003), Stinger S-200, TASER Master Instructor, TASER Technician Course, and TASER Evidence Collection and Analysis.

In addition to the CEW-related publications, I have authored, X26(E), M26, X2, X3, C2, Strikelight, X26(P), and T7 CEWs, electrical characteristics tables, appendices on basic electrical principles, how CEWs operate and function, utilization differences, how they deliver an electrical current to a subject, and numerous other Fact Sheets and other documents and materials. I have contributed to, edited, and authored TASER CEW specifications sheets and product specifications documents and materials (e.g., CEW cartridges). I am the author of Outline of Partial Selected CEW Research and Information, and Supplement, which has been updated over one hundred times. The most current version is presently available at <http://www.ecdlaw.info/1.pdf>, and it is available on <https://www.researchgate.net/>.

Experience with TASER, Axon: Experience with Axon Enterprise, Inc. (formerly – since April 5, 2017 - TASER International, Inc. (TASER)) and its Electronic Weapons:

Director, CLE Legal, Senior Director–Legal Counsel

I first presented at the 2002 TASER Annual Conference; first served as a TASER retained consultant in 2002; became National Litigation Counsel in 2003 (National/International

² Conducted Electrical Weapon (CEW) is synonymous with Electronic Control Device (ECD), Electroshock Weapon (ESW), Energy Weapon, Conducted Electrical Device (CED), and numerous other such names and acronyms for electronic weapons. See my Outline, Table 64 Electronic weapons' names, acronyms, pages 418-419.

Litigation Counsel); have been actively involved in over 330 CEW-related litigations; have worked closely with many CEW-related experts; have deposed, or been present during depositions of, many CEW-related force, medical, pathology, toxicology, scientific, electrical, engineering, and other experts; became a TASER CEW instructor in January 2003, and a TASER CEW Master Instructor in May 2003; became a part-time (32 hours per week) TASER employee in June 2005; transitioned to a full-time TASER employee in December 2005; and transitioned to part time in January 2018, member of the Axon International Training Board (ITAB); served as Legal Advisor to the TASER Training Board (TAB) from 2004 to July 2017, and serve as Legal Advisor to the TASER Scientific and Medical Advisory Board (SMAB); serve as the primary Person Most Knowledgeable (PMK) in law enforcement CEW-related depositions, inquests, and inquiries; serve as Axon's Technical Advisor on National and International CEW Standards and Standards Organizations; and serve as TASER's Director of Scientific and Medical Research Group. Provide information, summaries, papers, conceptual foundations, etc. regarding TASER CEWs; electrical concepts; operations, mechanics, scientific literature; force issues; policies, procedures, and best, preferred, commonly accepted, and other practices; etc. on a daily-to-weekly basis. As listed *supra*, I created and maintain an in-depth selected science, numbers, and legal outline related to CEWs, temporal arrest-related deaths (TOADs), excited delirium syndrome (ExDS), and selected other subjects and concepts.

TASER researches, analyzes, and provides extensive training materials, product manuals, warnings, and other materials to its law enforcement customers. TASER has trained and certified > 3,000 master instructors and > 70,000 instructors. As former legal advisor to the TAB I was deeply involved in all aspects of the TASER training programs and materials, and continue to participate, comment, and edit. I presented at most, almost all from 2004 to June 2017, Master Instructor Programs and since 2004 I have served as a primary author, contributor, and editor of TASER training materials.

Electronic Weapons Research Monitoring, Effects, Risk Analysis, and Warnings:

My training, knowledge and experience providing me with scientific, technical, and specialized knowledge includes in-depth continuous research and analysis of electronic weapons and other force options' issues, including, but not limited to electrical basics and effects, CEW use modes, risks and benefits, and many other aspects and issues of electronic weapons. I have served as a lead researcher, author, contributor, and editor on TASER CEW related training and warnings materials and documents. I have played an integral role in development, refinement, editing, etc. of TASER CEW related product warnings since 2004. From 2005 to 2018 I served as the primary point person for the product warnings and CEW risk exposure waivers.

I have played an integral role in the development, editing, etc. of TASER training program versions: Version 12 (Jan. 2005); Version 13 (May 2006); Version 14 (Dec. 2007); Version 14.2 (Aug. 2008); Version 15 (Aug. 2009); Version 16 (Nov. 2009); Version 17 (May 2010); Version 18 (July 2011); and Version 19 (Apr. 2013), Version 20 (January 2016), Version 20.2 (January 2018), Version 21 (January 2019), Version 22 (June 22, 2020), and Version 23 (May 1, 2023). I was the lead author on the TASER Training Annual User Update PowerPoints (TASER Training Versions 17 to 20).

Starting in 2002 through 2017, I presented at many TASER Annual Training Conferences; Master Instructors' Schools; and TASER Use of Force, Risk Management and Legal Strategies, For Chiefs, Sheriffs, Risk Managers and Legal Advisors programs.

I am designated by TASER as the Person Most Knowledgeable (PMK) regarding history of TASER CEWs; how TASER CEWs work; CEW related electrical concepts and demonstrations, how CEWs are operated; mechanics of CEWs, modes of operation; CEW medical, scientific, electrical, and engineering research and literature; how CEWs affect the human body; TASER CEWs generally; TASER training; TASER warnings; uses of CEWs; research and literature regarding electronic weapons, non-firearm (NF) law enforcement temporal arrest related deaths (NF-TO-ADs), etc.; effects of CEWs, CEW risk/benefits; and numerous other areas. I have testified in several civil, criminal, and coroners' inquests cases regarding electronic weapons including in the United States, Canada, and the United Kingdom. I assist with providing CEW information regularly, usually weekly, if not daily.

Subject Matter Expert (SME) Initiative Participation:

Elevate Blue Project: Subject Matter Expert (SME), Use of Force (UoF), International Associations of Chiefs of Police (IACP)'s Elevate Blue project, is a collaboration of leading law enforcement organizations including: the Fraternal Order of Police (FOP), the International Association of Campus Law Enforcement Administrators (IACLEA); the International Association of Directors of Law Enforcement Standards and Training (IADLEST); the Major County Sheriffs of America (MCSA); the National District Attorneys Association (NDAA); the National Organization of Black Law Enforcement Executives (NOBLE); and the National Organization of Women Law Enforcement Executives (NAWLEE).

Use of Force Training Initiative. International Association of Chiefs of Police (IACP) and International Association of Directors of Law Enforcement Standards and Training (IADLEST), as part of its Law Enforcement Training and Technical Assistance Response Center (LETTARC), funded by the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance.

Federal Project: Law Enforcement (LE) Use of Force (UoF) Simulated Experiment (SIMEX), Office for State and Local Law Enforcement, Department of Homeland Security (DHS). International Association of Directors of Law Enforcement Standards and Training (IADLEST).

Electronic Weapon Related Patent. I am the first listed Inventor on Patent 8,976,024, March 10, 2015, Systems and Methods for Electronic Control Device with Deactivation Alert.

CEW-Paper Invited Peer-Reviewer.

I served as a CEW-paper invited peer-reviewer for *Medicine, Science, and the Law*, and the Journal of the British Academy of Forensic Sciences. Also, served as invited peer-reviewer for (non-CEW) papers submitted to *Police Practice and Research: An International Journal*, and *Aggression and Violent Behavior*. I have also served as a peer-reviewer for other papers for journal publication.

Force Continuums Articles Published.

I have authored force-continuum-related articles, have included force continuums as a significant part of various training programs, and on October 3, 2009, I moderated the Legal and Practical Issues in Force Models and Continuums, Moderator, LOS Track, IACP Annual Conference, Denver, Colorado.

Temporal Officer-Associated Deaths (TO-ADs) Experience:

My experience includes three decades of reviewing, analyzing, interpreting, and commenting on 100s (well over six hundred) of TO-ADs, including autopsy reports in deaths temporal to CEW involvement. I have been involved in closely monitoring, reviewing, analyzing, discussing, commenting, and opining on 100s of TO-ADs, CEW, and other force-option temporal events. These experiences were based upon my knowledge, experience, education, training, and skills as well as my extensive studies, writings, and presentations on CEWs, intermediate weapons and force, etc., and their real and alleged effects on humans, as well as animals. Also, I have served as an expert in > 230 litigated cases involving use of force, including TO-ADs and CEWs, in addition to the above brief listing and my attached detailed CV. Also, co-authored abstract and PowerPoint® presentation for the Annual National Association of Medical Examiners (NAME) Conference, Portland, Oregon, on September 23, 2014 [Medical Examiner Collection of Comprehensive, Objective Medical Evidence for Conducted Electrical Weapons and Their Temporal Relationship to Sudden Arrest], as well as October 3, 2015: Conducted Electrical Weapons: Understanding the Basics, in Charlotte, North Carolina, and others. I have worked with many experts in many legal cases. I have analyzed opinions of and deposed numerous medical examiners, forensic pathologists, and other experts in TO-AD-related or involved legal proceedings.

Additional Electronic Weapon Knowledge, Skill, Experience, Training, Education:

I first received an electronic-weapon instructor certification almost four decades ago. I possess significant in-depth knowledge, skill, experience, training, and education, and possess scientific, technical, and other specialized knowledge regarding electronic weapons and other force options, specifically including TASER CEWs, modes of use, including possessing, carrying, brandishing, displaying, LASER painting, discharging, deploying, or otherwise use of the CEW in particular manners or circumstances. I have attended 100s of hours of electronic weapons' training, have experienced electronic weapons discharges many times, have extensively researched the medical, scientific,

modeling, technical, and epidemiological literature that exists regarding electronic weapons, have seen 100s of people exposed or experience an electronic-weapon exposure, have seen and researched the effects of electronic weapons; have presented 100s of hours of training involving CEWs; have exhaustively researched, critiqued, commented on, consulted regarding, and edited, CEW-related policies, procedures, general orders, guidelines, and best practices regarding CEW effects and appropriateness of use; demonstrating electronic weapon electrical flow, completed electrical circuit, delivered electrical charge, and effects; etc.

Canine

My experience includes being a canine handler and trainer; including training, handling, and kennel care and work in Wisconsin, Illinois, and Minnesota. Experience includes working with obedience, law enforcement, and personal protection canines, as well as others.

My experience with canines began early as I worked at a pet shop and kennel, including canine training, while in high school. Shortly after high school, I began work at LaSalle Kennels in Minnesota caring for and training German Shepherds in obedience and seeing-eye dogs for the visually impaired. After LaSalle, I interned at Willie Necker's School for Dogs in Wheeling, Illinois, caring for and training, including aggressive or vicious, customers' dogs. For several years in the 1980s and 1990s I was engaged in working with and training canines in behavior management and correction, obedience, personal protection, Schutzhund, and law enforcement applications.

I belonged to the North American Police Work Dog Association (NAPWDA) from 1988 to 1995, and the United States Police Canine Association (USPCA). I attended the USPCA Annual Training Seminar (8/11/79), the USPCA 1981 National Conference (St. Paul, Minnesota), and the Breneman-Frawley Police, Ring Sport, Personal Protection Seminar (10/29/86).

I presented several law enforcement canine programs, including *Law Enforcement Canine Use of Force - Including Constitutional Parameters*, Wisconsin Law Enforcement Canine Handler Association's Annual Conference, Eau Claire, Wisconsin (10/6/93); *Analyzing Canine Use of Force*, 1994 International Police K9 Conference, Las Vegas, Nevada (3/15/94); *Law Enforcement Canine Administrator's Liability Concerns* and *Law Enforcement Canine: Use of Force and Liability Concerns* at the International K9 Conference in Indianapolis, Indiana (9/5-9/94); Wisconsin Law Enforcement Canine Use of Force, Wisconsin Law Enforcement Canine Handlers' Association 1994 Annual Conference, Brown Deer, Wisconsin (10/4/94); and *Law Enforcement Canine Liability*, NAPWDA Annual Conference, Madison, Wisconsin, (6/19/95).

Canine-associated expert retention has included, (canine, use of force, sudden death—methamphetamine abuse) Victor Mario Seize, Jr. – Reno (Nevada) Police Department incident March 3, 1994; and (arrest, use of force, canine) Augusta Williams, Jr., and Patricia Williams v. City of Palm Bay, a municipal corporation in the State of Florida, Marshall B. Doyle, and Michael L. Viena, United States District Court for the Middle District of Florida, Orlando Division, Case Number 96-885-CIV-ORL-19; and (Deputy's shooting of attacking dog) Elizabeth and Charles Hatch and their children,

Robby, Kelley, and Katie Hatch, v. Ken Grosinger, Deputy Sheriff, Bob Fletcher, Sheriff, in their individual capacities, and as Sheriff Officials of Ramsey County (MN); County of Ramsey, and Does 1-15 inclusive, United States District Court for the District of Minnesota, Court File No. 01-1906 RHK/AJB. Incident date - June 23, 2001.

Additional Areas of Law-Enforcement Related Research, Writings, and Presentation:

My training, experience, skill, and education, and specialized, scientific, and technical, knowledge, in law enforcement and law-enforcement related areas also includes research, writings, and trainings in areas such as criminal procedure and law; off-duty law enforcement authority, actions, and liabilities; jurisdictional concepts and issues, including jurisdiction grantors, extenders, agreements, and memorandums of understanding; vehicle operations, including EVOG (emergency vehicle operations course), pursuits, road blocks, pursuit termination systems (e.g. Stop Sticks), etc.

Law Enforcement Publications Authored:

In over 3 decades, I have authored, or co-authored, 99+ periodical publications, 6 book chapters, 17 videos, 100s of training program manuals and PowerPoint® presentations, and Webinars regarding law enforcement concepts, issues, procedures, majority of which were force-option involved or related. My published articles have appeared in periodicals including the *International Journal of Legal Medicine*, the *Institute of Electrical and Electronics Engineers (IEEE) Engineering in Medicine & Biology Society (EMBS); Medicine, Science and the Law; International Journal of Case Reports and Images (IJCRI); American Journal of Forensic Medicine and Pathology, The Journal of Law Enforcement, Police Chief, American City & County, Prosecutor, Police & Security News; Public Risk; ASLET Journal; Casino Enterprise Management; the International Use of Force Journal; the Law Enforcement Legal Defense Manual, and For the Defense*. I have presented several programs on the Law Enforcement Television Network (LETN).

Also,

- I am in the top fifteen most cited authors regarding electronic weapons and related subjects on the National Center for Biotechnology Information, National Library of Medicine, National Institute of Health (NIH), www.pubmed.gov.
- Publications on which I am an author have been cited by over ninety other published works.

Section 2(b) FRCP 26(a)(2)(B)(iv) publications

Publications authored or co-authored in the previous 10+ years (Complete list in attached CV hereby fully incorporated herein and made an integral part hereof.):

- Legal Basics for the CEW, Chap 31, TASER® Electronic Control Devices: Physiology, Pathology, and Law, by Mark W. Kroll (Editor), Jeffrey D. Ho (Editor), Published 2009.
- Brave, M. O'Linn, M. Bryan v. MacPherson--A New Standard for Use of Electronic Control Devices? Chief's Counsel, *Police Chief*, vol LXXVII, no. 2. February 2010, pages 12–13.
- Legal Aspects of Conducted Electrical Weapon Injuries, Wounds, and Effects, Chap 8, 143-154, J.D. Ho et al. (eds.), Atlas of Conducted Electrical Weapon Wounds and Forensic Analysis, 1 DOI 10.1007/978-1-4614-3543-3_1, Springer Science+Business Media 2012.
- Brave, M. "Constant Constrictive Pressures to Avoid or Reduce Use of Force and the Quagmire of So-Called Best Practices," Chief's Counsel, *Police Chief*, 80 April 2013: 12–14.
- Dawes, D.M., Ho, J.D., Vincent, A.S., Nystrom, P.C., Moore, J.C., Steinberg, L.W., Tilton, A.M.K., Brave, M.A., Berris, M.S., Miner, J.R. 2013. The neurocognitive effects of simulated use-of-force scenarios. *Forensic Science, Medicine, and Pathology*, 2013, 1-9. (DOI) 10.1007/s12024-013-9510-y.
- Dawes, D., Brave, M. 'Stun gun' link to Raynaud's syndrome unconvincing. *International Journal of Case Reports and Images*. Published Online (Early View Article): 23 April 2014.
- Panescu, D., Kroll, M., and Brave, M. Transthoracic Cardiac Stimulation Thresholds for Short Pulses, Conf Proc IEEE Eng Med Biol Soc, 2014, 36, pp. 4471-4474.
- Panescu, D., Kroll, M., and Brave, M. Limitations of Animal Electrical Cardiac Safety Models, Conf Proc IEEE Eng Med Biol Soc, 2014, 36, pp. 6483-6486.
- Panescu, D., Kroll, M., Iverson, C., and Brave, M. The Sternum as an Electrical Shield, Conf Proc IEEE Eng Med Biol Soc, 2014, 36, pp. 4464-4470.
- Graham, M., Kroll, M.W., Karch, S.B., Wetli, C.V., Brave, M. Medical Examiner Collection of Comprehensive, Objective Medical Evidence for Conducted Electrical Weapons and Their Temporal Relationship to Sudden Arrest. National Association of Medical Examiners Annual Conference Abstract and PowerPoint Presentation, Portland, Oregon, September 23, 2014.
- Panescu, D., Kroll, M., and Brave, M. Cardiac Fibrillation Risks with TASER Conducted Electrical Weapons, Conf Proc IEEE Eng Med Biol Soc, 2015, 37, pp. 323-329.
- Medical Examiner Collection of Comprehensive, Objective Medical Evidence for Conducted Electrical Weapons and Their Temporal Relationship to Sudden Arrest.

Forensic Science Error Management, International Forensic Symposium, Washington, DC.

- Confirmational bias and investigation of arrest-related deaths. Forensic Science Error Management, International Forensic Symposium, Washington, DC.
- Dawes D, Heegaard W, Brave M, Paetow G, Weston B, Ho J. Body-Worn Cameras Improve Law Enforcement Officer Report Writing Accuracy. *The Journal of Law Enforcement*. 2015;4(6).
- Brave, M.A., Lakkireddy, D.R., Kroll, M.W., Panescu, D. (2016) Validity of the Small Swine Model for Human Electrical Safety Risks. Conf Proc IEEE Eng Med Biol Soc, 2016, 38, pp. 2343–2348.
- Panescu, D., Kroll, M., Brave, M. (2016) Current Distribution in Tissues with Conducted Electrical Weapons Operated in Drive-Stun Mode. Conf Proc IEEE Eng Med Biol Soc, 2016, 38, pp. 5241–5245.
- Brave, M., Kroll, M., Karch, S., Wetli, C., Graham, M., Kunz, S., Panescu, D. (2017). 'Medical Examiner Collection of Comprehensive, Objective Medical Evidence for Conducted Electrical Weapons and Their Temporal Relationship to Sudden Arrest'. World Academy of Science, Engineering and Technology, International Science Index, Law and Political Sciences, 3(1), 527. 74.
- D. Panescu, M. W. Kroll and M. A. Brave, “New Conducted Electrical Weapons: Finite Element Modeling of Safety Margins,” Conf Proc IEEE Eng Med Biol Soc, vol. 39, Jul 2017, pp. 2170 - 2176, 2017.
- D. Panescu, M. Nerheim, M. W. Kroll, and M. A. Brave, “New Conducted Electrical Weapons: Electrical Safety Relative to Relevant Standards,” Conf Proc IEEE Eng Med Biol Soc, vol. 39, Jul 2017, pp. 2185 - 2190.
- D. Panescu, M. W. Kroll and M. A. Brave, “New Conducted Electrical Weapons: Thoracic Cage Shielding Effects,” Conf Proc IEEE Eng Med Biol Soc, vol. 39, Jul 2017, pp. 2191 - 2196, 2017.
- Kroll, M.W., Brave, M.A. 2017. Chapter 13: TASER-Conducted Electrical Weapons. Pages 246-271. Guidelines for Investigating Officer-Involved Shootings, Arrest-Related Deaths, and Deaths in Custody, edited by Darrell L. Ross and Gary M. Vilke, Routledge Taylor & Francis Group, New York, and London. Available July 2017.
- Ross, D.L., Brave, M., Kroll, M. 2017. Chapter 1: Arrest-Related Deaths, Emerging Questions, and Competing Expectations in Investigations. Pages 1-18. Guidelines for Investigating Officer-Involved Shootings, Arrest-Related Deaths, and Deaths in Custody, edited by Darrell L. Ross and Gary M. Vilke, Routledge Taylor & Francis Group, New York, and London. Available July 2017.
- Ross, D.L., Brave, M. 2017. Chapter 2: Vital Statistics and Arrest-Related Deaths. Pages 19-40. Guidelines for Investigating Officer-Involved Shootings, Arrest-Related

Deaths, and Deaths in Custody, edited by Darrell L. Ross and Gary M. Vilke, Routledge Taylor & Francis Group, New York, and London. Available July 2017.

- Brave, M., Karch, S. What Medical Examiners Should Expect When They Use the Term "Arrest-Related" Inappropriately. 2017 Forensic Science Error Management, International Forensics Symposium, National Institute of Standards and Technology (NIST), U.S. Department of Commerce and Federal Bureau of Investigation (FBI), 24-27 July 2017, NIST, Gaithersburg, Maryland.
- Karch, S., Brave, M. Minimizing Errors: What is a Negative Autopsy? 2017 Forensic Science Error Management, International Forensics Symposium, National Institute of Standards and Technology (NIST), U.S. Department of Commerce and Federal Bureau of Investigation (FBI), 24-27 July 2017, NIST, Gaithersburg, Maryland. DOI: 10.13140/RG.2.2.26463.56482.
- M.W. Kroll, M.B. Ritter, E.A. Kennedy, N.K. Silverman, R. Shinder, M.A. Brave, H.E. Williams. "Eye injuries from electrical weapon probes: Incidents, prevalence, and legal implications," *Journal of Forensic and Legal Medicine*, 2018.
- Chiles, B.D., Nerheim, M.H., Brave, M.A., Panescu, D., Kroll, M.W. Electrical Weapon Charge Delivery with Arcing. *Conf Proc IEEE Eng Med Biol Soc*, vol. 40, Jul 2018, pp. 2234-2239 (2018).
- Kroll, M.W., Brave, M.A., Kleist, S., Ritter, M.B., Ross, D.L., Karch, S.B. (2018) Applied Force During Prone Restraint: Is Officer Weight a Factor? *American Journal of Forensic Medicine and Pathology*.
- Kroll, M.W., Brave, M.A., Pratt, H.M.O., Witte, K.K., Kunz, S.N., Luceri, R.M. Benefits, Risks, and Myths of TASER® Handheld Electrical Weapons. 10th European Symposium on Non-Lethal Weapons, European Working Group Non-Lethal Weapons, Brussels, Belgium, May 21, 2019.
- Kroll, M.W., Brave, M.A., Pratt, H.M.O., Witte, K.K., Kunz, S.N., Luceri, R.M. Benefits, Risks, and Myths of TASER® Handheld Electrical Weapons. *Hum Factors Mech Eng Def Saf* (2019) 3: 7.
- Kroll, M.W., Brave, M.A., Kleist, S., Ritter, M.B., Ross, D.L., Karch, S.B. (2020) Prolonging the Prone Postulate. *American Journal of Forensic Medicine and Pathology*. January 15, 2020.
- Ross, D.L., Brave, M. Assessing Use-of-Force Liability and Law Enforcement Response to the Naked Subject. *Law Enforcement Executive Forum*, March 2020, 20(1).
- Kroll, M.W., Brave, M.A. Defending Non-Firearm Arrest-Related Death Incidents. International Municipal Lawyers Association (IMLA). Conference Paper. IMLA 2020 Mid-Year Seminar, April 24-27, 2020, Washington, D.C.

- Chiles, B., Nerheim, M., Brave, M., Panescu, D., Kroll, M.W. Conducted Electrical Weapon Controlled-Charge Delivery. *Conf Proc IEEE Eng Med Biol Soc*, vol. 42, and *Conf. Of Canadian Medical and Biological Engineering Society*, August 2020.
- Brave, M. Officer Accountability: Law Enforcement Use-of-Force “Standards,” Degrees of Certainties, and Scientific Reliabilities. *Government Liability, For the Defense*, June 2020, Pages 24-30.
- Kroll, M.W., Ross, D.L., Brave, M.A., & Williams, H.E. (2021) Police shootings after electrical weapon seizure: homicide or suicide-by-cop. *Int J Legal Med*, 135(6), 2547-2554.
- Kroll, M.W., Brave, M.A., Hail, S.L., Kroll, R.M., & Williams, H.E. (2022). Pneumatic Impedance of Spit Socks and N95 Masks: The Applicability to Death Investigation. *Am J Forensic Med Pathol*, 43(1), 7-10.
- Chiles, B.D., Nerheim, M.H., Markle, R.C., Brave, M.A., Panescu, D., Kroll, M.W. (2021) Estimation of Physiological Impedance from Neuromuscular Pulse Data. *Conf Proc IEEE Eng Med Biol Soc*, vol. 43, Nov. 2021, pp. 1246-1251.
- Chiles, B.D., Nerheim, M.H., Markle, R.C., Brave, M.A., Panescu, D., Kroll, M.W. (2021) Acoustical and Electrical Analysis of Arcing with Electronic Control Devices. *Conf Proc IEEE Eng Med Biol Soc*, vol. 43, November 2021.
- Kroll, M.W., Perkins, P.E., Chiles, B.D., Pratt, H., Witt, K.K., Luceri, R.M., Brave, M.A., Panescu, D. (2021) Output of Electronic Muscle Stimulators: Physical Therapy and Police Models Compared. *Conf Proc IEEE Eng Med Biol Soc*, vol. 43, Nov 2021, pp. 1264-1268.
- Kroll, M.W., Melinek, J., Martin, J.A., Brave, M.A., & Williams, H.E. (2022) Confusion between firearms and electrical weapons as a factor in police shootings. *Forensic Sci Med Pathol*, 1-8.
- Kroll, M.W., Pratt, H., Witte, K.K., Luceri, R.M., Panescu, D., Brave, M.A., Andrews, C.J. (2023). Civilian “Stun” Guns: Neural or Aural Stimulation? *ResearchGate*, 20 April 2023. DOI: 10.13140/RG.2.2.10547.09767.
- Papers or book chapters in various stages of development, review, or in press.

Recent Webinars presented include:

- [26 May 2020 - Webinar] Brave, M. Law Enforcement Use-of-Force Accountability: Definitions, Qualified Immunity, "Standards," Degrees of Certainties, and Junk Science. Americans for Effective Law Enforcement (AELE) Certified Litigation Specialists (CLS) Futurist™ Series, AELE Webinar Series, 26 May 2020.
- [21 September 2020 - Webinar] Brave, M. Officer Accountability: Is Your Law Enforcement Agency’s Internal Affairs (IA) Process, Objective, Fair, Just, Bias-Neutralized?. [Zoom recorded on 21 September 2020.] Public Safety Discipline and

Internal Investigations Seminar. Americans for Effective Law Enforcement (AELE), September 28 - October 1, 2020.

- [April 28, 2021 - Webinar] Peters, J., Brave, M., Kroll, M. Understanding and Managing Officer's Use of Spit Masks, Institute for the Prevention of In-Custody Deaths, Inc. (IPICD), and Americans for Effective Law Enforcement. April 28, 2021.
- [May 27, 2021 - Online Training] Spit Restraint™ User-Level Qualification Program. Institute for the Prevention of In-Custody Deaths, Inc. (IPICD). May 27, 2021.
- [November 8, 2021 - Webinar] Brave, M. The Importance of Instructing & Setting Subject-Matter Expectations Using Force Exemplars, Beyond the Basics of Instructor Development. Fifteenth in a Series of Webinars for Advanced Instructor Development. International Association of Directors of Law Enforcement Standards and Training (IADLEST). November 8, 2021.
- [September 21, 2023 - Webinar] Brave, M. (2023). Revisiting Qualified Immunity and Clearly-Established Law in Force Context. Thirty-Fifth in a Series of Webinars for Advanced Instructor Development. International Association of Directors of Law Enforcement Standards and Training (IADLEST). September 21, 2023.

Section 2(c): FRCP 26(a)(2)(B)(v) 4 years of cases with trial/deposition testimony:

(Since beginning as a retained expert, retained in > 250 cases).

- 01/08/20: Depo: DeGraw v. Gualtieri, USDC MDL 8:18-cv-2116-WFJ-SPF.
- 01/17/20: Depo: Sneed v. Michael, Circuit Court of Jackson County, MO, Independence, 1816-CV25106.
- 03/18/20: Crim. Trial: Pennsylvania v. Roselle, Court of Common Pleas, County of Lehigh, 31st Judicial District, Allentown, Pennsylvania.
- 08/13/21: Depo: Gagliani v. Lexington County Sheriff's Department, USDC DSC, 3:20-cv-03737-JMC-SVH.
- 09/01/21: Depo: Dunnigan v. York County (Maine), USDC ME, 2:19-cv-00450-GZS.
- 11/10/22: *Daubert* hearing: Gagliani v. Lexington County Sheriff's Department, USDC DSC, 3:20-cv-03737-JMC-SVH.
- 12/12/22: Trial testimony: Gagliani v. Lexington County Sheriff's Department, USDC DSC, 3:20-cv-03737-JMC-SVH. Accepted as tendered expert in the areas of: (1) law enforcement practices, force-option policies, and training, (2) operations and effects of electrical weapons including benefits, risks, and myths, (3) operations and effects of chemical/inflammatory agents, including pepper spray, and (4) handcuffing and restraint.
- 08/09/23: Trial testimony: Anderson v. Vanden Avond, USDC MNDC 20-CV-1147 (DWF/LIB). Accepted as tendered expert in areas including: (1) law enforcement

practices, force-option policies, and training, (2) operations and effects of less-lethal weapons, including kinetic-impact projectiles (KIPs), (3) KIP warnings, targeting areas, frequencies of uses and severities of injuries, (4) possibilities versus probabilities of totalities of circumstances, (5) etc.

- 01/04/24: Depo: Karla M. Vasquez v. Pickens County, et al., USDC, District of South Carolina, Anderson Division, Case No. 8:22-cv-02641-DCC-KFM.