

# Randall L. Revling

Litigation Consultant

Phone: 920-362-5412

E-mail: rrevling@aol.com

12-05-2012

Officer Ruha  
Kenosha, WI Police Department  
Incident #12-102556 July 7, 2012

Dear Chief Morrissey:

At your request I have concluded my preliminary review and analysis of the materials provided to me in the matter of Kenosha Police Department Incident #12-102556 July 7, 2012. The findings and opinions contained in this report are based upon the materials listed.

My opinions in this matter are also based upon the totality of my training and experience as detailed in my Curriculum Vitae, which I attach as part of this report. My curriculum vitae document the majority of my formal education, professional teaching, training and law enforcement experience.

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## **Qualifications:**

I am a retired Captain and 28-year veteran of the Brown County Sheriff's Department in Green Bay, WI where I served as Captain and Director of the Professional Standards and Training Division. Also I have served as Captain – Patrol Division Director, and as Lieutenant in Patrol assigned as Shift Commander. Also, as the Team Leader of the Emergency Response Unit (S.W.A.T.), Department Training Sergeant and Patrol Officer assigned to Patrol and Jail.

I am currently an instructor of law enforcement and criminal justice at Northeast Wisconsin Technical College ("NWTC") in Green Bay, Wisconsin. I have been employed full-time in that capacity for the past ten years. As an instructor in the Law Enforcement Academy and an Instructor Trainer at NWTC I instruct future and current law enforcement officers and law enforcement instructors.

Previous to that, I was an adjunct faculty member at NWTC as well as at Fox Valley Technical College, and a guest instructor at many other Wisconsin Technical Colleges since about 1981. At Northwestern University, Center for Public Safety in Evanston, IL, I served as a Consultant and Training Specialist, instructing on campus, and in the Field Services division throughout the U.S. and Canada for about twelve years.

I have earned Associate and Bachelor's Degrees in Criminal Justice. I am a graduate of the FBI National Academy, 189<sup>th</sup> Session, in Quantico, Virginia. Currently I am completing coursework toward a Masters Degree in Education.

In 1986 I developed and continue to teach the 40 hour Firearms Instructor Course for Handguns. Since, the Police Shotgun, Tactical Rifle, and Submachine Gun courses were developed and I continue to instruct them. I serve as a Master-Instructor in Firearms for the Wisconsin Department of Justice, and on the Department of Justice Tactical Advisory Board as a Member Emeritus.

At NWTC I developed, and now provide the Multimedia Simulation Instructor training used to train and evaluate Officers response to threat under high stress conditions simulating actual street confrontations. Also, I wrote and taught the Unified Tactical Instructor updates in Use of Force for the WI Department of Justice, instructing 1700 Tactical Instructors in each year of 2004, 2006 and 2009.

I developed and continue to instruct three levels of Civilian Firearms training. Each level is a sixteen hour course. These courses prepare civilians to safely handle, maintain, shoot and store firearms. Civilian Firearms Level III culminates in reality based

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scenarios that focus on the legal and ethical defense of persons in their homes, travel and business.

In the Wisconsin Department of Justice' 32-hour Instructor Development Course (IDC) I am a Master-Instructor. Having developed the majority of the curriculum, I continue to instruct it to law enforcement instructors statewide for the WI DOJ. The IDC curriculum emphasizes the use of learner-centered problem based learning, utilizing scenario teaching and testing of law enforcement knowledge, skills and abilities.

For the Wisconsin Department of Safety and Professional Services (DSPS) I instruct Security Officers in firearms handling, use of force, maintenance and storage of firearms. As a Wisconsin Law Enforcement Standards Board certified instructor I re-certify Firearms Proficiency Certifiers. These Certifiers provide instruction, certification and re-certification to armed private security officers.

In 2007 I developed and continue to teach the Scenario / Simulation Instructor Course. This course provides law enforcement "Use of Force" instructors and supervisors with the ability to create and conduct scenarios. That ability enables their officers' to learn the correct response to deadly threat in realistic teaching and testing environments. In 2009 this course was presented to the Wisconsin Chapter of the FBI National Academy Associates and again to the FBI National Academy Associates National Training Conference. For three consecutive years this curriculum was presented to the International Law Enforcement Education and Training Association (ILEETA) at their national conference in Chicago, Illinois.

For TASER International I am a Senior-Master Instructor. Recently I presented the Instructor Development Course (IDC) to TASER senior executives in Scottsdale, AZ. Also, I am presenting the IDC to TASER International's Senior-Master Instructors, and to re-certifying Master Instructors and new Master Instructors at the TASER national training conferences.

As a certified facilitator for the Pacific Institute of Seattle, Washington, I have facilitated the Investment in Excellence program to several law enforcement academy sessions. Also, I am a trained (currently inactive) assessor for CALEA, the Commission on Accreditation for Law Enforcement Agencies. I continue to serve as an Expert Witness in state and federal court.

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## **Scope of testimony:**

I believe that my qualifications will allow me to formulate and articulate specific opinions and/or expertise in this matter, to help those concerned in understanding the information regarding this call, and to arrive at eventual conclusions. Specifically I focused on Officer Ruha's response to the behaviors of the subjects involved, the call as dispatched, Kenosha Police Department Use of Force Policy and the WI DOJ Use of Force training outlined in the current Defense and Arrest Tactics Manual.

## **The materials I have reviewed and/or considered in this matter include:**

1. Letter from Denise Hertz – McGrath, 10/12/2012
2. Kenosha Police Department Dispatch Log Event #002012102556 7/7/12 @ 0434
3. KPD Investigative Report #2012 – 102556
4. KPD Supplemental Report #12-102556, written by Officer Ruha #543
5. KPD Supplemental Report #12-102556, written by Officer Niebuhr #534
6. Kenosha County Probable Cause Statement #12- 102556
7. KPD Warrant Summons Checklist Case #12-102556
8. KPD Request for Criminal Complaint 7/9/12 Tamirius D. Gaston
9. KPD Warrant Summons Checklist Case #12-102556
10. KPD Request for Criminal Complaint 7/9/12 Keenan L. Smith
11. Kenosha County – Take Custody Report Tamirius D. Gaston
12. Kenosha County – Take Custody Report Keenan L. Smith
13. Kenosha City & County Joint Services Cancellation Notice - Gaston Tamirius
14. Items listed on Additional Information sheet from Det. Hafke to ADA Phan
15. KPD Supplementary Report Det Hafke 9/25/12
16. Evidence Inventory Cards #157590 and #157528
17. Cancellation of Warrant 10/18/2012 Tamirius Gaston
18. Kenosha County Bench Warrant for Tamirius Gaston #2012CM001064
19. Items listed on Additional Information sheet from Det. Niccolai to ADA Phan
20. KPD Booking forms of 7/7/2012 for Keenana Smith and Tamirius Gaston
21. KPD Use of Force Policy Effective June 1, 1999
22. KPD Firearms Discharge and other Use of Force Investigation Policy Effective April 25, 2005
23. DVD of Squad Video #3084 07/07/2012 @ 4:40:50 a.m. Case #12-102556
24. DVD "911" Copy - Date 11/20/2012 Case #12-102556
25. DVD "911 Radio" Copy Date 11/20/2012 Case #12-102556
26. Defensive and Arrest Tactics A Training Guide For Law Enforcement Officers Wisconsin Department of Justice Law Enforcement Standards Board. August 2007 (current manual)

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## **ANALYSIS OF FACTS:**

1. On 07/07/12 at 4:34:21 a.m. the Kenosha Police Department (KPD) received a call from Frank Alia phone #909-6044. Frank states that seven males were gathered in the street at 2227 54<sup>th</sup> Street in Kenosha, and that two of the males had squared off and were fighting. On the recording Frank describes one of the fighters as wearing white boxers. The recording is blank when Frank is asked by dispatch for the description of the other fighter.<sup>1</sup>
2. At 4:35:23 KPD Dispatch sent an in-car computer message advising Officer Ruha that "Compl states that 6 M/BS across the street from here in each other's face – one is wearing no shirt with white boxers and another one in the street – Looks like they are going to fight"<sup>2</sup>
3. At 4:37:51 a.m. Officer Ruha was dispatched to that address with the dispatcher advising that the two subjects were now "in each other's face."<sup>3</sup>
4. At 4:41:19 Officer Ruha #543 and Officer Niebuhr #534 arrived approaching 54<sup>th</sup> street. The subjects were located to the right of the Officer Ruha's approaching squad. The in-squad video and recording device was activated and recorded video directly in front of the squad. The subjects were not clearly on the video until Officer Ruha turned right onto 54<sup>th</sup> street. Yet Officer Ruha's report states that he was able to observe the subjects actively fighting as he approached 54<sup>th</sup> street.<sup>4</sup>
5. Officer Ruha's report stated that he observed the subjects (Smith and Gaston) actively fighting, hitting each other with fists.<sup>5</sup> This observation is reported before the Officer Ruha's squad camera was in position to record the described events.
6. The booking photos of Keenan Smith show what appear to be recent and bloodied injuries. Tamirius Gaston appears to have abrasions on both cheeks and a swollen left eye socket.<sup>6</sup>
7. Officer Niebuhr's report described Keenan Smith's and Tamirius Gaston's behavior prior to the TASER deployment as, "they both squared up with each other and appeared as though they were ready to continue to fight." That Gaston

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<sup>1</sup> DVD "911" Copy - Date 11/20/2012 Case #12-102556

<sup>2</sup> Kenosha Police Department Dispatch Log Event #002012102556 7/7/12 @ 0434

<sup>3</sup> DVD "911 Radio" Copy Date 11/20/2012 Case #12-102556

<sup>4</sup> KPD Supplemental Report #12-102556, written by Officer Ruha #543

<sup>5</sup> KPD Supplemental Report #12-102556, written by Officer Ruha #543

<sup>6</sup> KPD Booking forms of 7/7/2012 for Keenana Smith and Tamirius Gaston

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was backing away from Smith. That Smith's arms were up looking ready to fight with Gaston.<sup>7</sup> This was prior to Officer Ruha approaching.

8. Officer Niebuhr's report describes hearing Officer Ruha giving verbal commands to the subjects to get down on the ground, and that Gaston complied.<sup>8</sup>
9. Officer Niebuhr's report describes hearing Officer Ruha continue giving verbal commands to the Smith to get down on the ground after Smith squared up toward Officer Ruha, appearing that Smith may fight with Ruha.<sup>9</sup>
10. Officer Niebuhr's report states that Officer Ruha warned Smith that he would be "tased" if he did not comply. That Smith refused to comply, and Ruha then deployed the TASER.<sup>10</sup>
11. Officer Niebuhr's report states while transporting Gaston to the Kenosha County Jail Gaston stated without questioning that Smith had verbally provoked him to fight and physically provoked him to fight by pushing him. That when he, Gaston, could not take any more, Smith and Gaston got into a fist fight in the middle of 54<sup>th</sup> St.<sup>11</sup>

## **Analysis and Opinions:**

1. On July 7, 2012 at 4:37 a.m. Officers Ruha and Niebuhr received a call from the Kenosha Police Dispatch Center of people about to fight on 54<sup>th</sup> St..
2. Officer Ruha's report is not contradictory with the squad video as he is able to observe more than the fixed camera position inside of his squad.
3. Observations of the behavior of subjects Smith and Gaston are consistent as reported by: Officers Ruha and Niebuhr in written reports and squad video from Ruha's squad car.
4. Subject Smith's behavior displayed active resistance and the threat of assaultive behavior.
5. Lessor Intervention options attempted by the responding officers such as their uniformed presence, marked patrol cars, verbal skills, drawing and display of

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<sup>7</sup> KPD Supplemental Report #12-102556, written by Officer Niebuhr #534

<sup>8</sup> KPD Supplemental Report #12-102556, written by Officer Niebuhr #534

<sup>9</sup> KPD Supplemental Report #12-102556, written by Officer Niebuhr #534

<sup>10</sup> KPD Supplemental Report #12-102556, written by Officer Niebuhr #534

<sup>11</sup> KPD Supplemental Report #12-102556, written by Officer Niebuhr #534

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TASER ECD failed to gain control of Smith's behaviors. Although Gaston complied with the initial verbal controls.

6. Officer Ruha's responses to Smith's behaviors were consistent with the Kenosha Police Departments Use of Force Policy.<sup>12</sup>
7. Specific steps articulated in the Kenosha Police Departments use of Force Policy indicate that an officer shall follow the policy guidelines unless the totality of the circumstances requires more assertive measures.<sup>13</sup> Those are:
  1. *Consider reasons for interacting with the subject* – Officer Ruha was dispatched and observed subject's violation of state law.
  2. *Observe subjects action before involvement / approach* – Officer Ruha observed as he drove up and while walking toward the subjects.
  3. *Address subjects courteously.* - Officer Ruha did this.
  4. *Use proper dialog, communicate intent to arrest* - Officer Ruha did this.
  5. *If the subject ignores your command use empty hand control* – WI DAAT and KPD Use of Force Policy indicate that with the subjects excessive, emotions, pre-attack postures, resistive tension, previous violent action, ability to escalate and opportunity for sudden assault, "Empty Hands" would have been inappropriate, but the selection of TASER was the justifiable level of force.
  6. *If the subject pulls back, continue to talk, but now apply more active physical control* - Officer Ruha followed this.
  7. *If the subject attempts to fight back, assume a self-defensive posture. Attempt to regain control, get subject stabilized and handcuff if possible.* - Officer Ruha followed this using the TASER to stabilize and Officer Niebuhr restrained the subject.
  8. *If the subject attempts to kick, punch, or strike you, assume a self-defense posture, regain control utilizing only the amount of force necessary. If the subject stops fighting, use only the amount of force necessary to obtain compliance.* Officer Ruha did this. When the Gaston was stabilized verbally no other use of force action was taken. When Smith was stabilized with the TASER ECD no other use of force action was taken.

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<sup>12</sup> KPD Use of Force Policy Revision March 9, 2007, Article VI. A. Necessary Force may be used in the subduing and restraining of an unruly, combative, or abusive person. Article VII. A. TASER ECD may be used by trained personnel when a subject is threatening to actively resist, or is actively resisting and officer and the subject poses an articulable threat of harm to the officer or another person.

<sup>13</sup> KPD Use of Force Policy Revision March 9, 2007, Article VI. A. 1-8

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## **Conclusions**

Based on my analysis of the existing materials and the application of my knowledge and experience, I believe that Officer Ruha was justified in his actions. He demonstrated an excellent and effective ability to assess warning signs, ability to select the proper use of force option, professionalism and restraint when using force and professionalism in showing calm and compassion for the subjects before and after control has been achieved.

Video and audio recording of police actions is an important and useful tool for law enforcement as it can provide: documentation of actions; feedback to reinforce desired behavior; and opportunities to monitor while providing feedback to officers. However, at times it does not provide the complete picture. The camera may not be pointed in the correct direction or be obstructed (as in this case) also the dimension of resistive tension, voice modulation and assessment opportunities may be hard to capture.

Therefore, when this incident is reviewed in its entirety the officer's actions are found to be commendable in quick assessment, decision making, and legal and ethical response.

Respectfully submitted:

Randall L. Revling