

**GRANT F. LANGLEY**  
City Attorney

**RUDOLPH M. KONRAD**  
**LINDA ULISS BURKE**  
**VINCENT D. MOSCHELLA**  
Deputy City Attorneys



**THOMAS O. GARTNER**  
**BRUCE D. SCHRIMPF**  
**ROXANE L. CRAWFORD**  
**SUSAN D. BICKERT**  
**STUART S. MUKAMAL**  
**THOMAS J. BEAMISH**  
**MAURITA F. HOUREN**  
**JOHN J. HEINEN**  
**MICHAEL G. TOBIN**  
**DAVID J. STANOSZ**  
**SUSAN E. LAPPEN**  
**JAN A. SMOKOWICZ**  
**PATRICIA A. FRICKER**  
**HEIDI WICK SPOERL**  
**KURT A. BEHLING**  
**GREGG C. HAGOPIAN**  
**ELLEN H. TANGEN**  
**MELANIE R. SWANK**  
**JAY A. UNORA**  
**DONALD L. SCHRIEFER**  
**EDWARD M. EHRLICH**  
**LEONARD A. TOKUS**  
**VINCENT J. BOBOT**  
**MIRIAM R. HORWITZ**  
**MARYNELL REGAN**  
**G. O'SULLIVAN-CROWLEY**  
**KATHRYN M. ZALEWSKI**  
**MEGAN T. CRUMP**  
**ELOISA DE LEÓN**  
**ADAM B. STEPHENS**  
**KEVIN P. SULLIVAN**  
**BETH CONRADSON CLEARY**  
**THOMAS D. MILLER**  
Assistant City Attorneys

September 11, 2007

To the Honorable Common Council  
of the City of Milwaukee  
Room 205 - City Hall

Re: Communication from Attorney Laurie A. Eggert, Eggert Law Office, S.C.  
for legal fees for Police Officers John Wallace and Jasmine Lewis  
C.I. File No. 04-S-457 EC 2131

Dear Council Members:


Returned herewith is a document filed by Attorney Laurie Eggert for attorney's fees for representing Police Officers John Wallace and Jasmine Lewis. The claim is in the amount of \$2,769.00 including \$8.00 in disbursements for 25.10 hours of service billed at the rate of \$110.00 per hour. We ask that this matter be introduced and referred to the Committee on Judiciary & Legislation.

We have reviewed this claim and advise that in our opinion, the time spent was reasonable. Legal representation was occasioned by a criminal investigation. No criminal charges were brought against the Police Officer on whose behalf this claim was filed.

As we have advised you under similar circumstances in the past, the Common Council has discretion to reject this claim or to pay it in whole or in part. Wis. Stat. § 895.35, *Bablitch and Bablitch v. Lincoln County*, 82 Wis. 2d 574 (1978).

Very truly yours,

  
**GRANT F. LANGLEY**  
City Attorney

  
**JAN A. SMOKOWICZ**  
Assistant City Attorney

JAS:amp  
Enc.

1032-2004-3292:122855v1

MILWAUKEE POLICE DEPARTMENT

MEMORANDUM

January 24, 2005

TO: P.O. JASMINE LEWIS  
DISTRICT: PROPERTY CONTROL

RE: Receipt of Legal Services from Law Firm of  
Attorney

Attorney Laurie Eggert has made a claim with the City, indicating the attached was provided with legal services arising out of one of the following situations:

- 1) An incident occurring on AUGUST 25, 2003
- 2) A citizen's complaint made by GREGORY GRIFFIN
- 3) A police shooting incident occurring on N/A

Is this information correct? YES  NO

Did you receive legal representation in this matter? YES  NO

Your signature: P.O. Jasmine Lewis  
Print your name: P.O. Jasmine Lewis

Upon completion, please return this memorandum to the Professional Performance Division at the Police Academy (Room 325) as soon as possible.

Mary K. Hoerig  
MARY K. HOERIG  
Captain of Police  
Professional Performance Division

MKH:kjs

MILWAUKEE POLICE DEPARTMENT

MEMORANDUM

January 24, 2005

TO: P.O. JOHN WALLACE  
DISTRICT: FIVE

RE: Receipt of Legal Services from Law Firm of  
Attorney

Attorney Laurie Eggert has made a claim with the City, indicating the attached was provided with legal services arising out of one of the following situations:

- 1) An incident occurring on AUGUST 25, 2003
- 2) A citizen's complaint made by GREGORY GRIFFIN
- 3) A police shooting incident occurring on N/A

Is this information correct?

YES X NO \_\_\_\_\_

Did you receive legal representation in this matter?

YES X NO \_\_\_\_\_

Your signature: *P.O. John Wallace Jr*

Print your name: John Wallace Jr

Upon completion, please return this memorandum to the Professional Performance Division at the Police Academy (Room 325) as soon as possible.

*Mary K. Hoerig*  
 MARY K. HOERIG  
 Captain of Police  
 Professional Performance Division

MKH:kjs

05 JAN 28 11:19:56  
 RECEIVED

**EGGERT & CERMELE, S.C.**

---

*Attorneys at Law*

Laurie A. Eggert  
Jonathan Cermele  
Rachel L. Pings

1840 North Farwell Avenue  
Suite 303  
Milwaukee, Wisconsin 53202  
(414) 276-8750  
FAX (414) 276-8906

December 23, 2004

Mr. Ronald D. Leonhardt  
Milwaukee City Clerk  
800 City Hall  
200 East Wells Street  
Milwaukee, WI 53202

**RE: MPD Criminal Investigation of POs John Wallace and Jasmine Lewis  
Allegations Regarding Mr. Gregory Griffin  
Date of Incident: August 25, 2003  
Location of Incident: 4612 North 24<sup>th</sup> Place  
EC No.: 2131**

Dear Mr. Leonhardt:

The above-named police officers have retained us to represent them in connection with the above-referenced matter. Consistent with its policy, the City Attorney's Office has refused to represent them, and as they were performing the duties of their office at the time of the events giving rise to the incident, the claim is hereby made on their behalf for the indicated legal fees. This incident involved a shooting.

The MPD conducted a criminal investigation and investigated the matter as a critical incident. IAD compelled POs Wallace and Lewis to give statements after issuing PI-21s. Later, AAG Roy R. Korte concluded that no charges will be issued. Attached is a copy of AAG Korte's letter and an itemization of the time and services rendered.

Sincerely,

EGGERT & CERMELE, S.C.



Laurie A. Eggert  
Attorney at Law

LAE/ldl  
attachment  
WALLACE LEWIS

**EGGERT & CERMELE, S.C.**

*Attorneys at Law*

Laurie A. Eggert  
Jonathan Cermele  
Rachel L. Pings

1840 North Farwell Avenue  
Suite 303  
Milwaukee, Wisconsin 53202  
(414) 276-8750  
FAX (414) 276-8906

December 24, 2004

Mr. Ronald D. Leonhardt  
Milwaukee City Clerk  
800 City Hall  
200 East Wells Street  
Milwaukee WI 53202

RE: MPD Criminal Investigation re: Mr. Gregory Griffin  
Regarding: POs John Wallace and Jasmine Lewis  
Date of Incident: August 25, 2003  
Location of Incident: 4612 North 24th Place  
Professional services

	<u>Hours</u>
8/25/2003 Telephone call from Wallace; telephone call to Detective Bureau; travel; conference with clients; memo to file; statements to detective; statements to DA; PI-21 statements; open file.	5.30
8/29/2003 Telephone call from DDA Kenney; telephone call to clients; memo to file.	0.70
9/5/2003 Review of file; telephone call to Wallace; memo to file; telephone call to Det.	0.80
9/8/2003 Multiple telephone calls from and to Department of Justice investigator; memo to file; review notes of prior statements.	2.10
9/9/2003 Multiple telephone calls from and to investigator; telephone call to Lewis and Wallace; memo to file.	1.20
9/10/2003 Telephone call to and from Wallace; telephone call to and from Department of Justice investigator; review PI-21 taped interview; memo to file.	2.30
9/15/2003 Conference with Wallace; preparation for and appearance at statement to Department of Justice investigators; review documents from Department of Justice; telephone call to Lewis; telephone call to investigator.	3.30
9/17/2003 Review of file; telephone calls to and from Lewis; telephone calls to and from Department of Justice investigator.	2.20

	<u>Hours</u>
9/18/2003 Review taped interview; conference with client; memo to file; statement to Department of Justice investigator; review of file.	2.30
9/26/2003 Review of file; telephone call to Asst. Atty. General Korte; memo to file; telephone call to Wallace.	0.60
10/31/2003 Conference with Det. Bureau.	0.30
11/5/2003 Review of file.	0.20
12/23/2003 Telephone call to Det. Bureau; review of file; telephone calls to client.	0.80
12/28/2003 Telephone call to client.	0.10
12/31/2003 Review message from client; telephone call to client.	0.30
1/9/2004 Review of file.	0.20
3/5/2004 Review message from Korte; telephone call to Korte.	0.20
3/8/2004 Telephone call from Korte.	0.10
3/9/2004 Telephone call to Korte; memo to file; telephone call to MPD.	0.60
7/28/2004 Review memo to file.	0.10
9/6/2004 Conference with O'Keefe.	0.10
9/7/2004 Review of file; telephone call to O'Keefe.	0.10
9/8/2004 Telephone call to O'Keefe.	0.10
10/19/2004 Telephone call from O'Keefe; memo to file.	0.20
11/1/2004 Review document from Department of Justice; review of file; correspondence to clients; memo to file; close file.	0.90

Mr. Ronald D. Leonhardt

Page 3

	<u>Hours</u>	<u>Amount</u>
For professional services rendered	25.10	\$2,761.00
Additional charges:		
8/25/2003 Parking		8.00
Total costs		<u>\$8.00</u>
Total amount of this bill		<u>\$2,769.00</u>
Balance due		<u><u>\$2,769.00</u></u>



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

PEGGY A. LAUTENSCHLAGER  
ATTORNEY GENERAL

Daniel P. Bach  
Deputy Attorney General

RECEIVED

OCT 30 2004

EGGERT & CERMELE, S.C.

17 W. Main Street  
P.O. Box 7857  
Madison, WI 53707-7857  
www.doj.state.wi.us

Roy R. Korte  
Assistant Attorney General  
korterr@doj.state.wi.us  
608/267-1339  
FAX 608/267-2778

October 29, 2004

District Attorney E. Michael McCann  
Milwaukee County District Attorney's Office  
Safety Building, Room 405  
821 West State Street  
Milwaukee, WI 53233-1485

Re: *Milwaukee Police Shooting of Gregory Griffin*

Dear Mr. McCann:

I am writing to provide you with the conclusions reached by this office in regard to the non-fatal shooting of Gregory Griffin by Milwaukee Police Officer John Wallace. This office agreed to act as special prosecutor in this matter at your request. After consideration of all the facts, I have concluded that there is no basis to conclude that Officer Wallace committed any crime.

In order to provide a complete understanding of my decision, I will summarize and analyze the facts as discovered during the course of the investigation.

#### INVESTIGATIVE ACTIVITIES

Special Agents Robin Broeske and Mark Banks of the Division of Criminal Investigation assisted in this matter. All of the interview and investigative reports prepared by the Milwaukee Police Department and District Attorney's Office were collected and reviewed. Several pieces of evidence were examined and tested by analysts at the Wisconsin Crime Laboratory in Milwaukee. Agents Broeske and Banks interviewed Officer Wallace in the presence of his attorney, and also conducted interviews of Officer Jasmine Lewis, Mrs. Wilda Hogans-Griffin, and Mr. Griffin and other witnesses. Agents Broeske and Banks also examined the scene of the shooting and took photographs. The photographs of the scene were obtained and reviewed. All of this information was reviewed for the completion of this report.



## ISSUES

The primary issue presented is whether there is evidence beyond a reasonable doubt that the shooting of Mr. Griffin by Officer Wallace involved criminal conduct. Wisconsin Stat. § 939.45(3) and (4) provides police officers with a defense to criminal charges when the conduct "is in good faith and is an apparently authorized and reasonable fulfillment of any duties of a public office" or when the conduct "is a reasonable accomplishment of a lawful arrest." In addition, Officer Wallace had the right to exercise self-defense pursuant to Wis. Stat. § 939.48. Furthermore, based on the facts presented, I will analyze whether the conduct of Officer Wallace in shooting Mr. Griffin was criminally negligent or reckless.

## FACTUAL SUMMARY

In March of 2000, Gregory Griffin married Wilda Hogans. Over the course of the marriage, Mr. Griffin would regularly use cocaine. In March of 2003, Mr. Griffin was arrested for battery to his wife after an argument regarding Mr. Griffin's cocaine use. Mrs. Hogans-Griffin obtained a 48-hour domestic violence no-contact order in April of 2003, but did not pursue an injunction. On July 14, 2003, Mr. Griffin was convicted of disorderly conduct and sentenced to two years probation with a condition of no contact with Mrs. Hogans-Griffin (Milwaukee County Circuit Court, Case No. 03-CM-2441). Despite this order, Mr. Griffin continued to live with Mrs. Hogans-Griffin. Mr. Griffin admits he was aware of the probation condition. Mr. Griffin has an extensive criminal record including fourteen (14) arrests and at least nine (9) criminal convictions. Several of these offenses involved the use of force or violence.

On August 25, 2003, at approximately 2:35 a.m., Milwaukee Police Officer John Wallace and his partner, Officer Jasmine Lewis, were dispatched to 4612 North 24<sup>th</sup> Place in the City of Milwaukee on a report of a domestic restraining order violation with a suspect on the scene. Upon arrival at the location at approximately 2:41 a.m., the officers encountered Mrs. Hogans-Griffin who had been waiting for the officers in her car outside of the residence. Mrs. Hogans-Griffin advised the officers that she had been away from home all day and recently returned to find whom she described as her ex-boyfriend, later identified as Gregory Griffin, in the house smoking crack cocaine. Mrs. Hogans-Griffin also advised officers that she had a restraining order that prohibited Mr. Griffin from being on her property and wanted him removed. Mr. Griffin admits that he had been using crack cocaine throughout the day on August 24 and 25, 2003. After the incident, law enforcement officers found drug paraphernalia and crack cocaine in the residence. Mr. Griffin further admits that he overheard Mrs. Hogans-Griffin call the police from inside the residence.

After Mrs. Hogans-Griffin advised the officers that there was a restraining order against Mr. Griffin, that he had been smoking crack cocaine and refused to leave the residence, and that she wanted him removed, Officer Lewis remained with Mrs. Hogans-Griffin to obtain additional information and to verify the existence of the injunction. Officer Wallace proceeded into the

residence in order to locate Mr. Griffin. It was not until after Officer Wallace entered the residence that Officer Lewis discovered that there was no injunction. However, Mr. Griffin was still in violation of his probation no contact order and subject to arrest.

Officer Wallace has stated that he entered the residence as he wanted to locate and detain Mr. Griffin, pending confirmation of the injunction, before Mr. Griffin could leave. Officer Wallace entered the residence through the front door and shouted, "Milwaukee police." Officer Wallace proceeded to search the first floor area of the residence, which was illuminated, and did not locate Mr. Griffin. As Officer Wallace moved through the home, he repeatedly identified himself as a Milwaukee police officer and asked Mr. Griffin to come out. Mr. Griffin states that he heard Officer Wallace enter the residence and repeatedly announce his identity and request Mr. Griffin to come out. Mr. Griffin was originally in a second floor bedroom when Officer Wallace entered the house and then proceeded to hide behind a shower curtain in the second floor bathroom. Mr. Griffin also stated that as he heard Officer Wallace searching the first floor he became scared and paranoid about his job situation and about the fact that he would be going to jail for violating the no-contact condition. Mrs. Hogans-Griffin also advised investigating officers that Mr. Griffin "begins acting weird when smoking crack."

After clearing the first floor of the residence, Officer Wallace proceeded to the second floor, which consisted of two bedrooms and a bathroom. According to Officer Wallace, his service weapon was not drawn and he had a flashlight in his left hand. The second floor hallway was illuminated but the rooms were dark. While the exact sequence of the search of the second floor is somewhat unclear, Officer Wallace conducted a search using his flashlight, first checking a bedroom. Officer Wallace repeatedly identified himself as a police officer and asked that Mr. Griffin come out. Mr. Griffin admits that he heard Officer Wallace's commands but did not respond.

After searching one or both bedrooms, Officer Wallace then proceeded to the bathroom. The bathroom was small with a measurement of 4 ft. 9 in. by 6 ft. 10 in. A shower/tub was located along the entire length of the back wall. The tub was approximately 3 ft. by 10 in. long. Additional space was taken up by a toilet and sink. The bathroom was dark and the shower/tub was covered by a dark shower curtain. The curtain extended the length of the tub area. Officer Wallace shined his flashlight into the bathroom and announced, "Milwaukee police, Milwaukee police, come out with your hands up." Officer Wallace has stated that he sensed that Mr. Griffin was hiding in the bathroom. Mr. Griffin admits that he saw Officer Wallace shine the flashlight into the bathroom and tell him to come out but that he did not respond.

The subsequent events which occurred in the bathroom, where Mr. Griffin was shot in the right arm by Officer Wallace, are subject to some dispute.

Officer Wallace states that after identifying himself and asking that Mr. Griffin come out, he stepped into the darkened bathroom with his flashlight in his left hand. As he started to approach the completely closed shower curtain with his flashlight, with the intent of pulling open the curtain, the curtain was suddenly pulled back and he saw something dark coming down towards his head. Officer Wallace states that he then stepped back, brought his flashlight down, drew his service weapon and fired once at what he saw. Officer Wallace states that this all occurred in a "split second." After firing one shot, Officer Wallace stated that he was able to see Mr. Griffin standing in the bathtub with a wound to his upper right arm. Officer Wallace states that after shooting, he realized that the dark object was actually Mr. Griffin's arm. Mr. Griffin was shot in the upper right arm with the bullet entering the front of his arm and exiting into the bathroom shower wall. Officer Wallace states that he then asked Mr. Griffin why he hadn't said anything and that Mr. Griffin responded, "I'm sorry." It is undisputed that Mr. Griffin was not armed. Officer Wallace states that he feared that he was going to be hurt by the object he saw coming towards his head and fired to protect himself. Officer Wallace states that he now believes that the object he saw approaching him was Mr. Griffin's arm.

Mr. Griffin states that Officer Wallace entered the bathroom and used his left hand, which contained a flashlight, to open the shower curtain. Mr. Griffin states that as the curtain was pulled back, about half of Griffin's body was exposed and he was partially illuminated by the flashlight. Mr. Griffin states that he then saw a gun in Officer Wallace's right hand at which time Officer Wallace said, "Oh shit" and shot him one time as Officer Wallace moved backwards. After the shot was fired, Mr. Griffin states that Officer Wallace stated, "Look what you made me do." Mr. Griffin stated that he did not move prior to Officer Wallace opening the shower curtain and did not move after the shower curtain was opened. Mr. Griffin also states that his hands remained at his side during the encounter and that he was not holding anything in his hands. Mr. Griffin is of the opinion that Officer Wallace was startled to see him and as a result shot him accidentally.

The bullet which struck Mr. Griffin in the front of his upper right arm exited into the wall behind Mr. Griffin. The bullet entry into the wall was a little more than half way down the length of the bathtub and 3 feet 11 inches from the floor. The location of the gunshot wound indicates that Mr. Griffin had his right arm at his side when he was shot.

Additional facts will be discussed elsewhere in this report.

#### CASE ANALYSIS

The only two witnesses to the shooting, Officer Wallace and Mr. Griffin, have given differing accounts of the key details of the shooting. Therefore, I will analyze the facts of both scenarios. However, some basic facts are not subject to dispute.

District Attorney E. Michael McCann

October 29, 2004

Page 5

The events leading up to the shooting are undisputed. Officers Wallace and Lewis were responding to a call of a domestic disturbance in the early morning hours. Based on the information available to them, they believed Mr. Griffin was violating a restraining order by being at the residence. Mr. Griffin had been using crack cocaine for a period of time and was under the influence of such drug. Mr. Griffin admits to becoming scared and paranoid after Officer Wallace entered and feared being arrested for violating his probation condition of no contact with his wife. The presumed existence of a restraining order would lead a reasonable officer to conclude that Mr. Griffin might be violent. Officer Wallace repeatedly identified himself as a law enforcement officer and commanded that Mr. Griffin come out from wherever he was hiding. However, although Mr. Griffin was aware that the police had been called to the residence and heard the statements and commands of Officer Wallace, he failed to respond to Officer Wallace and chose to hide behind a shower curtain in a darkened bathroom. When Officer Wallace responded to the 911 call he was lawfully performing his duties, had an obligation to pursue Mr. Griffin, and had a basis to arrest Mr. Griffin. Officer Wallace acted reasonably in conducting a search of the residence for Mr. Griffin. He repeatedly announced his presence and commanded that Mr. Griffin come out. Mr. Griffin heard these commands but decided not to comply.

The key facts surrounding the actual shooting are disputed. However, I have concluded that, for a variety of reasons, Officer Wallace's account is credible and not directly contradicted by the available evidence. Officer Wallace, an experienced police officer, was expecting to find Mr. Griffin in the home and in particular, hiding in the shower. This reduces the likelihood that Officer Wallace was startled by the presence of Mr. Griffin. Mr. Griffin's version, although somewhat plausible, also has several problems. Mr. Griffin states that Officer Wallace used his flashlight in his left hand to pull back the shower curtain and that Officer Wallace had a gun in his right hand. However, in order to do this Officer Wallace would have had to move his left hand and arm in front of his body, thus blocking or obstructing his right hand. This would have placed Officer Wallace in a difficult position to use a drawn weapon being held in that hand. Officer Wallace states that his gun was not drawn. Both Officer Wallace and Mr. Griffin state that Officer Wallace took a step back before shooting. This also lessens the likelihood of a shooting based on Officer Wallace being startled. Under Mr. Griffin's version, Officer Wallace slowly pulled back the shower curtain about three-fourths of the way. If true, this would have given Officer Wallace more time in which to observe Mr. Griffin and thus reduce any surprise.

Officer Wallace's statements are consistent and are not directly contradicted by the physical facts. Although the wound to Mr. Griffin's arm indicates that his right arm was lowered when shot, that does not establish that he had been motionless in the bathtub. It is equally plausible that Mr. Griffin could have used his left hand to pull back the shower curtain and his right arm could have remained down. In addition, certainly there would also have been time, based on the fact that Officer Wallace took a step back, for Mr. Griffin to also have stepped back or moved his right arm down.

District Attorney E. Michael McCann

October 29, 2004

Page 6

There are some discrepancies or issues with Officer Wallace's version of events. In his initial statement after the shooting, Officer Wallace stated that when the curtain was suddenly opened he saw something dark, which he believed was a weapon, coming down toward his head and that he fired one shot at what he saw. In a later interview with DCI agents, Officer Wallace stated that he backed up, lowered his flashlight, drew his weapon and fired one round "up" and in the direction of the object. When confronted with the fact that the wound to Mr. Griffin was not in a substantial upward trajectory, Officer Wallace stated that although he meant to direct his shot upward, he might have fired his weapon immediately as he drew it from his holster. Officer Wallace was also asked why, considering that he had taken at least a step back, he did not stop to evaluate the situation before firing. Officer Wallace stated that the situation happened so fast, that he was more concerned about the object that appeared would strike him in the head and was not sure whether he raised his flashlight back up. However, Officer Wallace stated that although he was trained to fire until the threat was eliminated, he only fired once and took the time to shine his flashlight on the shower area before deciding whether to fire any additional rounds. While the bathroom light was not turned on, it was a small space and Officer Wallace had illuminated the room with his flashlight. It could also be considered unusual that Officer Wallace was searching the house alone without a weapon drawn. However, Officer Lewis states that neither she nor Officer Wallace had drawn their weapons in the preceding year and a half and that Officer Wallace was recognized as someone who was good at deescalating combative situations. Officer Lewis also stated that this incident was the first time during the previous year and a half that Officer Wallace had to clear a house in search of someone as his usual duties involve only conveying arrested persons.

As only Officer Wallace and Mr. Griffin were witnesses to the event, resolution of some discrepancies is a credibility judgment. Officer Wallace's conduct preceding the shooting, confirmed by Mr. Griffin, showed professional judgment and caution. Officer Wallace has no history of using excessive force and, at the time of the shooting, had been an officer for twenty years. It is also credible that an officer in a darkened bathroom, facing a dark shower curtain, would perceive a hand or movement pulling open the shower curtain to be an object coming at the officer requiring the need to exercise self-defense. These perceptions must be evaluated based on the situation that existed including the split second nature of the event. I must also consider the personal conduct and history of Mr. Griffin. Mr. Griffin admittedly had been using drugs for a considerable time preceding the shooting and thus his perceptions were impaired. Mr. Griffin's wife has stated that he acts "weird" when using drugs. Mr. Griffin admittedly was concerned about being arrested. Mr. Griffin also has an extensive criminal history including convictions for violent offenses. The existence of the numerous convictions, standing alone, is a relevant factor in assessing credibility. Considering the totality of the facts and the physical evidence, the weight of credibility factors favor Officer Wallace.

In addition, my purpose in reviewing this matter for criminal charges is not simply whether there is some evidence or a view of the evidence that would support criminal charges. Instead, my test is whether I can prove, beyond a reasonable doubt, that a crime has been committed. Based on the totality of the facts and circumstances, and applying the appropriate standard, I conclude that Officer Wallace's version of events, while containing some inconsistencies, is plausible. There is no substantial evidence that would refute or disprove Officer Wallace's statements.

I next turn to the issue of the appropriateness of the use of force.

Wisconsin Stat. § 939.45 provides police officers with a defense to criminal charges when the conduct "is in good faith and is an apparently authorized and reasonable fulfillment of any duties of a public office" or when the conduct "is a reasonable accomplishment of a lawful arrest." Furthermore, Officer Wallace had the right to exercise self-defense pursuant to Wis. Stat. § 939.48.

The conduct of Officer Wallace was justified under his version of events. Law enforcement officers are lawfully entitled to use reasonable force, including deadly force, to protect themselves from real or perceived threats of imminent death or injury. Officer Wallace states that after he started to approach the shower/tub in the small bathroom where Mr. Griffin was hiding, Mr. Griffin quickly pulled back the shower curtain. Officer Wallace then saw what he believed to be an object raised in the air and moving in a downward direction towards him. In response to that movement, Officer Wallace states that he feared for his safety, quickly stepped back, drew his service weapon and fired at the source of the perceived threat. Officer Wallace states he shot in order to protect himself from the apparent and immediate threat of injury or death. It must be emphasized that the events surrounding the shooting of Mr. Griffin happened in split seconds in a tense situation. An officer need not exhaust every possible lesser use of force option before resorting to the use of a firearm. Rather, the use must be judged under the totality of the circumstances. When faced with an apparent object directed at an officer, whether perceived as a firearm, a knife, or blunt object, an officer is faced with an immediate and split second decision. Officer Wallace was faced with an immediate and apparent dangerous situation in which he had limited options or time to attempt other options. Considering the confined space of the bathroom, Mr. Griffin was in a recognized zone of danger for physical assault to Officer Wallace. Under the facts as described, I conclude that Officer Wallace's reaction was justified. The fact that Officer Wallace only fired once and did not take additional steps to evaluate the situation further before shooting does not alter that conclusion. An officer's reaction must be judged from the perception of a reasonable officer in the situation and not with the benefit of hindsight.

However, even under the version of events provided by Mr. Griffin, the shooting was the result of Officer Wallace being startled by the discovery of Mr. Griffin in the shower. In other words, that the shooting was accidental. Even assuming the accuracy of Mr. Griffin's version, there is no basis to conclude that the shooting involved any criminal conduct on the part of Officer Wallace.

Based on the facts alleged by Mr. Griffin, the potential charges against Officer Wallace would include endangering safety by negligent operation of a dangerous weapon contrary to Wis. Stat. § 941.20(1)(a), injury by negligent handling of a dangerous weapon contrary to Wis. Stat. § 940.24, and reckless injury contrary to Wis. Stat. § 940.23.

Wisconsin Stat. § 939.25(1) defines criminal negligence as "ordinary negligence to a high degree, consisting of conduct that the actor should realize creates a substantial and unreasonable risk of death or great bodily harm to another." Similarly, Wis. Stat. § 939.24(1) defines reckless as creating "an unreasonable and substantial risk of death or great bodily harm to another human being and the actor is aware of that risk."

Officer Wallace was not acting in a criminally negligent or reckless manner. He was performing his duty and in so doing had the lawful right to carry a weapon and use it in justified circumstances. Even assuming Officer Wallace had his gun drawn when he pulled back the shower curtain, this was not an unreasonable act, and hence not criminally negligent or reckless. Such actions would be a reasonable fulfillment of his lawful duties under the situation that existed at the time. As such, Officer Wallace did not create an unreasonable risk and was not criminally negligent or reckless. Even assuming an accidental discharge, such an accident does not establish either criminal negligence or recklessness under these facts.

Therefore, I conclude that the evidence does not establish, beyond a reasonable doubt, the violation of any criminal statute by Officer Wallace in the shooting of Mr. Griffin.

### CONCLUSION

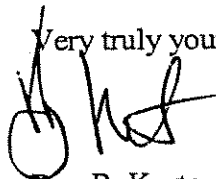
Police officers are lawfully allowed to use force, including deadly force, when they have an objectively reasonable belief that such force is reasonably necessary to protect themselves or others from the risk of serious bodily injury or death. Police officers are provided continuing training regarding the use of force and Officer Wallace underwent such training. The issue is whether Officer Wallace acted appropriately and consistently with legal principles governing the use of deadly force by law enforcement officers.

I conclude that, based on the totality of the evidence, the conduct of Officer Wallace was privileged by either or both the privilege of self-defense or the privilege of a police officer to use force to accomplish an arrest and/or prevent an escape. There is no basis to bring criminal charges

District Attorney E. Michael McCann  
October 29, 2004  
Page 9

based on negligence or recklessness even assuming Mr. Griffin's version of events is accurate. Thus, it is my opinion that Officer Wallace did not commit any criminal wrongdoing when he shot Mr. Gregory Griffin. I therefore conclude that the shooting, although regrettable, did not involve criminal conduct and therefore, no criminal charges will be brought against Officer Wallace.

If you have any questions regarding the above discussion, please do not hesitate to contact me.

Very truly yours,  
  
Roy R. Korte  
Assistant Attorney General

RRK:csy

c: Chief Nannette H. Hegerty  
Attorney Laurie Eggert  
Mark E. Banks  
Robin E. Broeske