



**DANE COUNTY  
DISTRICT ATTORNEY  
ISMAEL R. OZANNE**



**PRESS RELEASE  
For Immediate Release**

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**NO CRIMINAL LIABILITY FOR LAW  
ENFORCEMENT OFFICERS INVOLVED IN  
SHOOTING OF PAUL HEENAN ON 11-9-2012**

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After extensive briefings by detectives, an inspection of the scene shortly after the incident, a review of summary reports from law enforcement, the Wisconsin State Crime Lab, and Medical Examiner's Office, diagrams, photographs and other evidence, the Dane County District Attorney's Office concluded Wednesday, December 26, 2012, that there is no potential criminal court liability for the City of Madison police officers involved in the shooting of Paul Heenan on November 9, 2012.

"Officers responded to the call of a burglary in progress. The first officer on the scene observed the front door of the residence was open and two individuals in a physical struggle on the sidewalk. As the officer approached he observed one person fitting the description of the caller's husband. The officer had his duty weapon drawn. The two individuals separated as the officer gave loud verbal commands to get on the ground. The unknown suspect, later identified as Heenan, advanced quickly on the officer in an aggressive manner. A brief struggle ensued in which the officer believed the suspect was attempting to disarm him. The officer was able push the suspect back and create separation between them, at which point the officer fired three shots." said Dane County District Attorney Ismael Ozanne. "Responding to a physical threat to be disarmed with deadly force may be reasonable under the law."

At approximately 2:45 AM on November 9, 2012, 911 dispatch received a call of a possible burglary in progress at 513 S. Baldwin Street in the City of Madison. The caller had been in bed when she heard someone entering her residence through the front door. The caller woke her husband and he had gone downstairs to see what was happening. While her husband was downstairs, the caller dialed 911 to have officers respond. At approximately 2:49 AM, the caller gave dispatch a description of the clothes her husband had on and that he was a 38 year old white male. Just before 2:50 AM, three gunshots are heard on the dispatch tape in quick succession.

At approximately 2:47 AM, City of Madison police officers were dispatched to a possible burglary in progress. Two officers arrived on scene relatively close in time to each other. The first officer, PO Stephen Heimsness, moved across the street towards 513 S. Baldwin St. from the direction of Spaight Street, where he took cover momentarily behind a tree on the apron of the road near 513 S. Baldwin. From his position, PO Heimsness could see the front door of 513 S. Baldwin standing open. Having received a description of the homeowner's husband, at approximately 2:49 AM, he stepped from behind the tree with his duty weapon drawn and could see two males in a physical struggle on the sidewalk. He approached the two males and gave loud verbal commands to get on the ground. As he was giving verbal commands, the two men disengaged from each other and the male fitting the description of the caller's husband, later identified as Kevin O'Malley, moved back and away with his hands raised. The second male, later identified as Heenan, did not comply with PO Heimsness' commands to get on the ground and he advanced on the officer.

PO Heimsness stated that Heenan closed the distance between them rapidly, grabbing onto the officer's outstretched left hand with his right hand. With his left hand, Heenan reached across PO Heimsness' body towards his duty weapon. PO Heimsness stated he believed Heenan was attempting to disarm him and that his life was in danger. In canvassing the area shortly after the incident, neighbors reported hearing someone yelling loudly "get down, get down," just before hearing three shots very close together.

Kevin O'Malley stated on November 9, 2012, he was woken by his wife, who told him someone had opened their door and entered their house. O'Malley went to the top of the stairs where he saw a man at their front door, which was open. He proceeded down the steps and confronted the male. O'Malley recognized the man as a neighbor that he had met a week prior. O'Malley asked if the man's name was Paul and attempted to locate his (O'Malley's) keys, which he believed were used to open the front door. O'Malley's wife yelled down to ask if she should call 911, to which O'Malley yelled back "no."

O'Malley stated he believed Heenan was intoxicated and when he could not find his keys, he attempted to take Heenan to his residence a few doors down towards Jenifer Street. O'Malley stated he was not able to get Heenan into his house, as Heenan was not cooperating. O'Malley asked Heenan if he had been at the bar, to which Heenan responded "why?" O'Malley told Heenan that he had entered his home and he could have called the police.

O'Malley stated Heenan said "okay, you wanna get weird?" and then came at him. O'Malley stated Heenan grabbed onto his arms in an aggressive manner and in response he grabbed onto Heenan's coat collar. O'Malley stated Heenan was pushing him backwards and he had to hold onto Heenan's collar to fend him off. O'Malley stated he was thinking things had turned ugly and he was going to have to call for help. O'Malley also stated he was thinking of how he was going to get out of this situation. O'Malley stated he heard someone come from behind. O'Malley stated he recognized the person to be a police officer and his handgun was drawn.

O'Malley stated the officer yelled very loudly "get down, get down!" O'Malley stated that once the officer yelled, Heenan's attention was then directed at the officer. O'Malley stated Heenan then went at the police officer. O'Malley stated Heenan and the officer had a physical struggle then separated very briefly, at which time the officer shot Heenan two to three times. O'Malley noted a second officer appeared on scene just before or at the time shots are fired. O'Malley estimated the officer and Heenan were approximately 5-6 feet apart when the officer shot Heenan. The estimated distance is consistent with the Wisconsin State Crime Lab's gunshot residue findings, which places the gun 24 to 42 inches from Heenan when fired, taking into account arm length and gun barrel length.

In a subsequent statement, O'Malley minimized whether he felt threatened by Heenan's physical engagement with him. O'Malley did not rescind his description of the physical nature of his encounter with Heenan or Heenan's physical encounter with PO Heimsness.

Relevant evidence includes statements of witnesses on the scene, officers at the scene, the location of physical evidence at the scene, the Wisconsin State Crime Lab's findings, and the Medical Examiner's findings, which are consistent with each other.

Under Wisconsin law, which applies equally to members of law enforcement and to those who are not, any person may use deadly force to respond to a genuine fear of deadly force to that person or any other person. In this case, the officer felt compelled to use deadly force when he believed he was going to be disarmed by a suspect from a potential burglary.

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The role of the District Attorney's Office in a case of this type is limited to a review of the facts to determine whether further investigation is merited and, after all available evidence is obtained, whether criminal charges could be merited for any individual who has survived the incident. Police executives and supervisors have the exclusive responsibility of establishing appropriate training and protocols for use in response to crisis events, and of selecting from among the tactical options available to police in responding to particular events.

In this case, the City of Madison Police Department appears to have conducted a very thorough, objective investigation that is ongoing. The determination by this office that no criminal liability is possible is warranted based on the consistent evidence that has been assembled since the shooting.

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