

**REPORT OF THE WASHINGTON COUNTY DISTRICT ATTORNEY'S  
OFFICE REGARDING THE SHOOTING OF MR. BO MORRISON ON  
MARCH 3, 2012.**

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On March 21, 2012 Washington County District Attorney Mark Bensen announced the following decision in regards to the March 3, 2012 shooting in Slinger, Wisconsin.

I. INTRODUCTION AND SUMMARY

A. Review Process by District Attorney's Office

Since the shooting of Mr. Bo Morrison on March 3, 2012, this office has worked diligently with law enforcement and other agencies to obtain and review the facts surrounding the shooting and review the applicable law. After a careful review of the facts and the law the Washington County District Attorney's Office has reached a decision in the shooting death of Mr. Bo Morrison.

This office has treated its review of this case with the care and deliberation. This is one of the most important and difficult decisions that a prosecutor can make. On the one hand, an individual, Mr. Bo Morrison, was shot and killed. Mr. Morrison and his family deserve a proper consideration of all of the evidence in this case by our office. If the person who shot Mr. Morrison did not act lawfully, then this person should be prosecuted with a crime – possibly First Degree Intentional Homicide (the most serious crime in Wisconsin) or potentially, First Degree Reckless Homicide (probably the second most serious crime in Wisconsin). On the other hand, if the person who shot Mr. Morrison did act lawfully in self defense, this person should not be charged by the State of Wisconsin and subjected to possible imprisonment for the rest of his life. In other words, the stakes could not be any higher.

This office also requested that follow up investigation be conducted– including the interviews of some witnesses, and obtaining the results of blood analysis for both the homeowner who shot Mr. Morrison and Mr. Morrison. In addition, there were other items that needed to be reviewed and analyzed, in particular an analysis by the Wisconsin State Crime Lab of the weapon used to shoot Mr. Morrison as compared to the spent round which was recovered from the scene.<sup>1</sup>

The review of this case was also complicated as this appears to be the first case in Wisconsin where the newly created presumption of the use of force, often referred to as the “Castle Doctrine,” could apply. The review of this case by the Washington County District Attorney's Office (further summarized below) consists of a dual analysis of self defense – considering this

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<sup>1</sup> Because of the nature of this case, our office asked various entities to expedite their analysis so that a timely decision could be made in this case. The Washington County District Attorney's Office wishes to thank the Wisconsin State Crime Lab, the Waukesha County Medical Examiner's Office, and the other law enforcement agencies who took the extra step in providing information to our office on an expedited basis.

case both with and without the application of the “Castle Doctrine.”<sup>2</sup> Since our office has concluded that the privilege of self defense does apply to the facts of this case, and since it appears that this is the first case in Wisconsin involving the applicability of the Castle Doctrine, our office took the additional step of consulting with the Wisconsin Attorney General’s office.

The Washington County District Attorney’s office is well equipped to deal with and analyze homicide cases involving allegations of self defense. In fact, in the fall of 2011, the Washington County District Attorney’s office successfully prosecuted George Trinkka with the crime of First Degree Reckless Homicide while Using a Dangerous Weapon (Washington County Case No. 2010-CF-232). In that case, Mr. Trinkka presented several defenses, including that he was acting in self defense when he fired a single shot from a revolver which resulted in the death of another human being – Steven Szerbowski, a 39 year old father of four children. Our office concluded that Mr. Trinkka’s allegation of acting in self defense was not well founded based upon our review of the facts of that case. We charged Mr. Trinkka with killing Mr. Szerbowski. During the week long trial, Mr. Trinkka presented his defense to the jury – which included, in part, that he acted in self defense. The State argued that Mr. Trinkka did not act in self defense. After the case was presented to the jury, the jury convicted Mr. Trinkka of the crime of First Degree Reckless Homicide while Using a Dangerous Weapon. Mr. Trinkka is now serving a lengthy sentence in the Wisconsin prison system.

#### B. Law Enforcement Investigation

Since the shooting in this case on March 3, 2012, the Washington County District Attorney’s Office has worked with various investigative agencies, including the Village of Slinger Police Department, the Washington County Sheriff’s Department, the Village of Jackson Police Department, the Washington County Medical Examiner’s Office, the Waukesha County Medical Examiner’s Office, the Wisconsin State Crime Laboratory, and other investigative agencies. We have reviewed many different investigative documents and evidence, including, but not limited to, witness statements, photographs, videotapes, diagrams, and various Crime Lab reports. In addition, a member of our office personally went to the scene of the shooting in the early morning hours of March 3, 2012.

Our office wishes to thank the above agencies as well as other agencies that assisted in the investigation of this matter for their hard work in piecing together the evidence in this case so that it could be reviewed in a timely manner. In addition, our office wishes to thank those agencies that expedited (at our request) the analysis and preparation of reports so that a decision could be made as soon as practicable. Our office wishes to thank the attorneys from the Wisconsin Attorney General’s office who consulted with our office on various matters related to this case and other prosecutors, including the Captain of the of the Homicide Unit of the

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<sup>2</sup> The reason for this dual analysis is because even if the Castle Doctrine did not apply in this case, under the laws of the State of Wisconsin, in certain limited circumstances an individual does have the right to use lethal force in self defense – whether or not the incident takes place in a home, and whether or not the technical precursors of the Castle Doctrine have been met. In other words, even if the Castle Doctrine was not applicable to the facts of this case, an analysis of the Wisconsin law of self defense was warranted.

Milwaukee County District Attorney's Office. Finally, our office wishes to thank the several prosecutors from outside our office who were consulted regarding various aspects of this case.

C. Summary of Decision: No Criminal Charges Will be Filed against the Homeowner

The ultimate question in this case was whether or not the homeowner who shot Mr. Morrison acted lawfully in self defense. After careful review of the evidence in this case, and for the reasons discussed below, the Washington County District Attorney's Office has determined that the homeowner who shot Mr. Morrison on March 3, 2012, when Mr. Morrison was inside the homeowner's residence, acted lawfully in self defense.

Therefore, the Washington County District Attorney's Office has decided that no criminal charges will be issued against the homeowner<sup>3</sup> who shot Mr. Morrison<sup>4</sup> on March 3, 2012 in the Village of Slinger, Washington County, Wisconsin.

Under a reasonable view of the evidence the homeowner acted reasonably in his use of force based on the facts and circumstances of which he was aware when he encountered an unknown intruder (Mr. Morrison) in his residence at 2 a.m. on March 3, 2012. Therefore, the homeowner acted lawfully in self defense when he fired a single shot at Mr. Morrison. In addition, our office recognizes that the presumption of reasonable use of force under the Castle Doctrine only applies in a limited number of situations. Under the facts of this case, it appears that all of the requirements have been met. Therefore, our office concludes that the presumption of the reasonable use of force would apply in this case. If the homeowner had been charged in this case and a trial ensued, the homeowner would have been entitled to a jury instruction on the presumption. While the State could seek to overcome that presumption if sufficient facts existed, in this case, our office concludes that there are no facts which could be utilized to overcome the presumption. Since there are no facts in this case to overcome the presumption in this case, no reasonable jury could convict the homeowner of any crime for his actions on March 3, 2012.

A prosecutor has an ethical obligation to only charge an individual with a crime that the prosecutor believes could be proven by admissible evidence beyond a reasonable doubt at trial. Since no reasonable jury could convict the homeowner of any crime for his actions on March 3, 2012, it would not be ethical for our office to file any charges against the homeowner.

Therefore, after considering all of the available facts and applying the applicable law, and for the reasons discussed in this report, no criminal charges will be filed against the homeowner for the death of Mr. Bo Morrison. The death of Mr. Morrison is a tragedy. The evidence indicates that after law enforcement was called to a noise complaint involving an underage drinking party, Mr. Morrison left that residence and then entered, by opening two exterior doors, a fully enclosed

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<sup>3</sup> Since the individual who shot Mr. Morrison is not being charged, his name is not included in this report. He will be referred to throughout this report as the homeowner.

<sup>4</sup> Mr. Morrison's name will be used in this report because his name was previously disclosed to the news media as the individual who was shot and killed on March 3, 2012 and because his name has been utilized and mentioned in various news reports about this shooting.

porch or three season room of a neighboring residence where he hid, presumably from police. His actions awakened the owner of the residence who armed himself and entered the room. During the encounter with the homeowner Mr. Morrison was shot and killed with a single shot.

#### D. Consultation with the family of Mr. Bo Morrison

The Washington County District Attorney's Office wishes to express our sympathy to the family and friends of Bo Morrison, an individual who despite having made some mistakes in his life, certainly had accomplished much and touched the lives of many of his friends and family. Our office has met with Mr. Morrison's family and we have expressed our condolences to his family on behalf of our office and on behalf of law enforcement. We have also explained the reasons for the decision in this case to not issue criminal charges against the homeowner in this case.

Mr. Morrison was a 20 year old resident of West Bend. He graduated in 2010 from West Bend East High School. He played football, baseball and wrestled. He was also a snowboarder. Upon graduating from high school, he began attending MATC in Milwaukee and graduated with a certificate in Carpentry. Mr. Morrison had many, many friends, who, in addition to his family, loved him very much.

The remaining portion of this report presents, in some detail, some of the facts of this case, our office's review of the law of self defense as applied to the facts of this case, as well as the basis for the conclusion that no criminal charges will be filed against the homeowner in this case.

## II. FACTS OF THE CASE

The events that took place in the early morning hours of March 3, 2012, in the Village of Slinger, were a perfect storm of events which, coupled with some poor decision making by Mr. Bo Morrison (including his decision to drink alcohol, his decision to run from the police, and his decision to enter the dwelling of another individual), led to the shooting which ultimately resulted in the tragic loss of his life.

### A. General background

On the night of March 2 through March 3, 2012, on Kettle Moraine Dr. in the Village of Slinger, Washington County, Wisconsin, Mr. Bo Morrison, a 20 year old male, was at a party with several other individuals. The primary location of the party was in the detached garage which was located to the rear of the residence – hereinafter referred to as “NEIGHBOR”.<sup>5</sup> It appears that approximately 20 young adults (some of whom were younger than age 21 and some of whom were above age 21) were present in NEIGHBOR’S detached garage in the early morning hours of March 3, 2012. It also appears that there was alcohol present at this party and that several of the individuals – both below age 21 and over age 21 had consumed alcohol.

The residents of NEIGHBOR’S house include a husband (who was inside the main part of NEIGHBOR’S residence asleep), a wife (who was at work during the early morning hours of March 3, 2012), and at least two of their daughters who were present at the party in their detached garage.

Next door to the NEIGHBOR’S residence (to the west) is the home of the homeowner (the individual who shot Mr. Morrison).

The homeowner’s residence contains a detached garage and is a single family dwelling with two floors. The homeowner is married and has two children under the age of ten. In addition, on the night of March 2 through March 3, 2012, one of the homeowner’s children had a friend sleeping over. Therefore, in addition to the homeowner and the homeowner’s wife, there were three children under the age of ten who were sleeping at the homeowner’s residence on the night of the shooting.

### B. Description of Night – First Incident; Noise Complaint

The homeowner had gone to bed in the evening hours of March 2, 2012, and a few minutes prior to 1 a.m. on March, 3, 2012, he had been awakened by loud music from the house located immediately to his east – the location of the party at NEIGHBOR’S residence. The homeowner

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<sup>5</sup> For the purpose of this report, this site of the party will be referred to as “NEIGHBOR”.

stated that he walked out the back door of his house through the three season room / porch of his home<sup>6</sup> to the residence next door and heard music coming from a car that was located in the driveway of NEIGHBOR. The homeowner then pounded on the window and asked the person who was seated in the driver's seat, a female, to turn the music down. The homeowner stated that the female did turn down the music but there was a verbal confrontation between him and others that were in the car but he did not remember exactly what was said. The homeowner also indicated that there was a male that was in the vehicle as well. Interviews with other witnesses have confirmed that there was a verbal confrontation between the homeowner and individuals in this vehicle. These witnesses have also confirmed that the male individual who was in the car was not Bo Morrison, but another male who was present at the party.

The homeowner indicated that after he spoke with the individuals on the NEIGHBOR'S driveway about the noise, he walked back to his residence and called the police non-emergency number to report loud music at NEIGHBOR'S residence. The homeowner also indicated that he believed that the male individual that was inside the car when he made the loud noise complaint heard him make the phone call to police regarding the loud noise complaint.

The homeowner indicated that when he went back inside his house (after he spoke with the individuals on the NEIGHBOR'S driveway about the noise) he entered the back door to his residence – through the double doors from the outside of the residence into the three season room / porch of his home. The homeowner stated that he thought he locked the second back door (the white, insulated steel door which separates the outside of the residence from the three season room / porch) when he went inside, but he did not specifically recall locking the door to his

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<sup>6</sup> Description of Three Season Room / Porch

The area where the shooting took place is a fully enclosed and insulated three season room / porch which is located at the rear of the homeowner's residence. This room is approximately 11 feet 3 inches wide and 7 feet 6 inches deep. The walls of this room contain tongue and groove paneling as well as insulation. If one was entering this room from the exterior rear of the homeowner's house (which is the direction from which it is believed that Mr. Morrison entered this room) one would enter through two doors. The first door is a white storm door/screen door. The second door is a white insulated steel door with a window in the top half of the door. (The storm door did not appear to have any specialized locking mechanism – it had what appeared to be a typical lock and door handle on a storm door. The white insulated steel door had no deadbolt, but had a standard lock and door handle).

These doors are located on the northerly portion of the homeowner's residence. Once an individual enters this room from the outside, one would walk approximately 7 ½ feet to another door which separates the three season room / porch from the kitchen (and the remaining portion of the homeowner's house). This door is a wooden door with windows on the top half of the door. A white curtain hangs on this door on the opposite side of the three season room / porch. This door opens to the east – towards the direction where Mr. Morrison was later observed by the homeowner.

There are several items located within the three season room / porch area of the homeowner's residence. These items include a full refrigerator and dresser which are located on the eastern part of this room (on the side nearest to NEIGHBOR'S residence). As indicated above, the wooden door which separates the three season room / porch from the remaining portion of the house opens to the east -- towards the refrigerator and dresser. There is an approximate 19 inch gap between the dresser and the refrigerator. In addition, this room also contained a stand alone freezer, a chair and a trash can which were located on the western part of the room.

residence when he went back inside his home. The homeowner also indicated that he usually locks this door to his residence.

The homeowner also indicated that he does not have a key for the wooden door which separates the three season room / porch from the rest of the house, and therefore he does not lock this door. Instead, he typically locks the white, insulated steel door which separates the outside of the residence from the three season room / porch.

### **C. Investigation of Noise Complaint**

On March 3, 2012, at approximately 12:59 a.m. the homeowner called the police non-emergency number to make a loud noise complaint about noise coming from the NEIGHBOR'S property. At approximately 1:05 a.m. two Slinger police officers arrived at the NEIGHBOR'S property on Kettle Moraine Dr. for the loud noise complaint. Upon exiting their vehicles, these officers could hear loud noise coming from NEIGHBOR'S residence and they observed a male individual standing outside, who observed the Slinger Police Officers and immediately entered the NEIGHBOR'S detached garage and locked the door.

Outside the garage officers observed numerous beer cans. From outside the garage, Officers also could smell the strong odor of marijuana mixed with wood smoke, which led officers to believe that marijuana had been disposed of in the wood burning stove (located inside the garage) upon their arrival on the scene.

Officers observed that the noise level that had been coming from NEIGHBOR'S detached garage immediately dropped. From inside the garage Officers could hear people yelling something to the effect of "shut up the police are here" and multiple people yelling "Shhhh". Officers also noted that after several moments the lights went off and they could hear people inside the garage giggling and laughing.

Officers repeatedly knocked on the door announcing their presence and requested to speak with a female who resided at the residence. No one answered the door. Officers indicated that they continued to try to make contact with the individuals in the detached garage to no avail. The first Slinger Police Officer reported that he knew the female NEIGHBOR (who was the mother of the young women who were believed to be hosting the party) and called her at work. She was cooperative and indicated that she would attempt to make contact with her daughters who were believed to be in the detached garage. Officers indicated that after multiple phone contacts with the female NEIGHBOR (who was at work), that no one came to the door or came outside the garage.

Officers indicated that the female NEIGHBOR was cooperative and indicated that it was her daughters who were inside the garage having a party. Officers indicated that the female NEIGHBOR (who was still at work) indicated that law enforcement could twist the knob to the service door of the detached garage until the door opened. The first Slinger officer reported that it appeared that the door was locked and that it appeared that individuals (inside the garage) were pushing against the door so as to prevent police officers from entering the garage. Slinger



Officers indicated it appeared to them that they were unable to gain entry into the garage without damaging the door.

Slinger officers indicated that it was decided that they would not escalate the situation any further. Slinger Officers indicated that it was decided that municipal citations would likely be issued to the daughters of the owner of the residence. Slinger Officer Officers indicated that they then cleared from the NEIGHBOR'S residence and parked a short distance away. Slinger officers indicated that they were on scene at NEIGHBOR'S residence for approximately 40-45 minutes – until approximately 1:45 a.m.<sup>7</sup> The second Slinger Police officer drove to a parking lot behind NEIGHBOR'S residence and located a few hundred feet north of NEIGHBOR'S residence.

#### **D. Phone call from Slinger Officer to the homeowner regarding Noise Complaint**

The first Slinger Officer indicated that after he left NEIGHBOR'S residence he parked approximately ½ block to the east in a restaurant parking lot. From that location the first Slinger Police Officer indicated that he made telephone contact with the homeowner – at approximately 1:50 a.m. The purpose of the phone call was to provide an update to the homeowner and to see if the homeowner wanted to provide a written statement about the noise complaint the next day. The first Slinger Officer who called the homeowner indicated that it sounded like he had woken up the homeowner.

The phone call lasted approximately four and a half minutes and during the conversation the homeowner was told that Slinger officers were not able to make contact with individuals in the NEIGHBOR'S garage. The homeowner was also told that Slinger police officers had cleared the scene and had left the NEIGHBOR'S residence. The homeowner appeared to be appreciative of the fact that Slinger Police had investigated the noise complaint and he indicated that he would follow up and provide a written statement the next day regarding the noise complaint.

#### **E. Attendees at Party Run**

The first Slinger Officer indicated that after he made telephone contact with the homeowner, he made telephone contact with female NEIGHBOR (who was still at work) to tell her that her children were uncooperative and that citations would most likely be issued. The first Slinger officer indicated that the female NEIGHBOR stated that she was able to get into contact with her husband (male NEIGHBOR) and that he would come downstairs from his residence. The first Slinger Officer requested that the female NEIGHBOR tell her husband to meet officers in the driveway and not to make contact with anyone in the garage area. (The first Slinger Officer indicated that he made this request to the female NEIGHBOR to prevent the type of situation where individuals would be given the opportunity to run from the premises.)

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<sup>7</sup> Slinger Officers indicated that the female NEIGHBOR (who was at work) stated that her husband (male NEIGHBOR) was home in the house and was probably sleeping. Later, she indicated that she tried calling him but could not wake him up. The first Slinger officer indicated that he knocked on a door to the residence but was unsuccessful in his attempts to wake up the male NEIGHBOR.

At some point prior to 2:00 a.m., the female NEIGHBOR (the mother of the girls who were hosting the party) made telephone contact with her husband (male NEIGHBOR) who had apparently been asleep in the main part of the residence. The male NEIGHBOR (the father of the girls who were hosting the party) then left the main part of the residence and went out to the service door to the detached garage, kicked in the door and yelled at individuals inside the garage to get out of the garage. He also told the individuals inside that the police had the place surrounded.

There were approximately twenty people at this party. The investigation later revealed that several of the individuals at the party were under the age of 21 and had been drinking alcohol. The investigation also revealed that Bo Morrison, among others, was inside the detached garage when the announcement was made by the male NEIGHBOR to leave and that the place was surrounded by police.

After the male NEIGHBOR ordered the party attendees to leave several individuals ran out of the detached garage including Bo Morrison. Numerous other individuals stayed in the garage – some of whom hid in the garage. Some witnesses observed Mr. Morrison run towards the back of the homeowner's house, but no witnesses actually observed Mr. Morrison enter the homeowner's residence.

#### **F. Reason Mr. Morrison entered the Homeowner's Residence**

While no one will ever know for certain precisely why Mr. Morrison entered the residence of the homeowner, a reasonable conclusion why Mr. Morrison was inside of the homeowner's residence was because he had consumed alcohol<sup>8</sup>; he was running from the police<sup>9</sup>; and he went into the homeowner's three season room / porch to hide from police.

#### **G. Actions of the Homeowner after receiving phone call from Police**

The homeowner stated that after receiving the phone call from the Slinger police officer he went back to bed and spoke with his wife. He then heard a loud noise. The homeowner stated that he heard banging coming from the back of his house and he was not exactly sure what it was.<sup>10</sup>

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<sup>8</sup> The evidence in this case reveals the Mr. Morrison's blood alcohol level at the time of his death was .190.

<sup>9</sup> Mr. Morrison likely had several reasons for running from the police on the night of March 3, 2012. Not only did he not want to receive an underage drinking ticket, but he was likely aware that he had two pending criminal cases in Washington County and a condition of the bond in those cases was that he maintain absolute sobriety. He also had pending criminal cases in Milwaukee County and Dane County. In the Dane County case, a condition of his bond was that he not consume alcohol. He was likely aware that if he was caught by the police with alcohol in his system, he would have been in violation of the bonds in his pending criminal cases, and he would likely have been charged with the crime of Bail jumping for violating a condition of his bond.

<sup>10</sup> During the investigation, the homeowner spoke at various times with several different law enforcement officers. According to the law enforcement officers who took statements from the homeowner, he showed no signs of deception. The homeowner's statements to officers were generally consistent as to his recollection of events.

The homeowner also indicated that he was concerned that someone may be climbing on the back portion of the three season room in order to gain access to the upper part of his residence. The homeowner's bedroom is on the main/ground level and that his children sleep on the second floor / upper level of his residence.

The homeowner also stated that he was scared because he had contacted the police earlier in the evening and he was afraid of retaliation from people who were next door at the party because he believed that the people next door (at NEIGHBOR'S detached garage) were aware that he called police to complain about the party earlier in the night.<sup>11</sup>

The homeowner indicated that because he was concerned that someone may be trying to enter the house, he went to his closet and removed his handgun which was secured in a plastic case with snaps on the top shelf. The homeowner indicated that he opened the case, loaded the handgun with six rounds and went to check his home.<sup>12</sup>

#### **H. Sequence of Events Just Prior to the Shooting and the Shooting**

The homeowner stated that he went and checked the front door of his residence and it was locked and then went back to the back door of the house to make sure that it was locked. The homeowner stated that he walked through the door located between the kitchen of the house and the three season room / porch, which did not have any lights on. When he went into this room, he planned to turn on the light in that room. The homeowner stated that as he entered the three season room / porch he smelled something weird in the back room – a wet smoky smell.

The homeowner stated that he entered the three season room / porch and as he did so he did not observe anyone initially in the three season room / porch or outside.<sup>13</sup> The homeowner indicated that he took a few steps into this room and as he walked into this room, out of the corner of his eye, he saw someone stand up from the area between the refrigerator and the dresser that would

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However at various times during the statements to officers he recalled different details of the events on March 3, 2012. This is not necessarily unusual especially in light of the stressful nature of the events. None of the differences in statements have materially affected the decision in this case.

<sup>11</sup> Witness statements from individuals who were present at NEIGHBOR'S residence indicate that individuals at the party in the garage were aware that the homeowner had earlier in the night gotten into a verbal discussion with individuals who had been in a vehicle parked in the driveway of NEIGHBOR'S residence – which was the reason why Slinger Police had initially be dispatched to NEIGHBOR'S residence.

<sup>12</sup> The homeowner stated that he does not keep the firearm loaded when he is in the house and keeps it in the closet and he knows how to load it easily. The homeowner indicated that he shoots his firearm quite often for target practice as well as for hunting.

<sup>13</sup> The investigation revealed that the door which separates the main interior of the house to the room where the shooting occurred opens to the east – towards the direction of where Mr. Morrison was later observed by the homeowner. The direction that the door swings could have obscured the homeowner's vision and been a factor in why the homeowner did not observe Mr. Morrison when he first walked into this room.

have been off to his right. The homeowner stated that the next things that occurred were hard to place in chronological order but he believes he stated something to the person. During the interviews with law enforcement the homeowner indicated that he said something like "Who are you?", "Why?" or "What are you doing?" to the person in the three season room/porch of his residence.

The homeowner stated that the light was still off and he could not see what the subject was doing but at this time the subject raised a hand towards the homeowner and took a step towards the homeowner. The homeowner stated that at this point he already had his firearm straight out in front of him with his arm extended and aimed at the individual. The homeowner stated that when the subject took a step towards him, that the homeowner shot him once.

A Washington County Sheriff's Deputy who questioned the homeowner asked if the subject ever stated anything to him and the homeowner stated that the subject never said anything but he heard mumbling coming from him. The homeowner indicated that after he turned on the lights he believes he yelled out for his wife to call 911.

A Sheriff's Deputy also asked the homeowner why he shot the individual and what made him do it. The homeowner stated that he did not think about it, he just reacted. The Deputy indicates that he asked the homeowner if he was afraid of the person that had stood up and the homeowner again stated that he just reacted. The Deputy indicated that the homeowner later remembered that the person in the back room in the dark had stepped forward at him with one hand extended.

The homeowner also indicated to law enforcement officers during the investigation that he was scared because he had contacted the police earlier in the evening and he was afraid of retaliation from people who were next door at the party because he believed that the people next door (at NEIGHBOR'S detached garage) were aware that he called police to complain about the party earlier in the night. In addition, as previously noted, the homeowner indicated that after hearing the sound from the back of his house he was concerned that someone may be trying to enter the house, so he went to his closet and removed his handgun which was secured in a plastic case with snaps on the top shelf. The homeowner indicated that he opened the case, loaded the handgun with six rounds and went to check his home. It is reasonable to believe that a person who goes through the steps of obtaining a handgun and loading it, after hearing a noise coming from the back of his house, was afraid for his safety and others who are in the house.

During the investigation the homeowner indicated that after he had gone out of his residence to confront the individuals by the car (regarding the noise complaint), he thought he locked the back door (the white, insulated steel door which separates the outside of the residence from the three season room / porch) but he did not specifically remember whether he did so. The homeowner indicated that he usually does lock that door.

The homeowner also told law enforcement officers that he does not have a key for the wooden door which separates the three season room / porch from the rest of the house, and therefore he does not lock this door. Instead, he typically locks the white, insulated steel door which separates the outside of the residence from the three season room / porch.

## **I. The Homeowner's Wife's Statements**

The homeowner's wife indicated that earlier in the evening she had been at a play in Milwaukee with her daughter and her daughter's friend and they arrived home around midnight. She indicated that she heard a loud bass from car stereos from a party next door at NEIGHBOR'S residence. She indicated that the homeowner had been outside and back inside the residence and the Slinger Police arrived on scene. She indicated that when Slinger Police arrived that she and her husband were inside the residence.

The homeowner's wife indicated that later that night, at around 1:50 a.m., her husband received a phone call (from Slinger Police), and after he hung up, he came into the bedroom and stated that he heard some type of banging on the back side of the house, possibly from the three season room / porch. She indicated that she confirmed that she could hear a noise as well.

The homeowner's wife indicates that after hearing the noise her husband retrieved his gun and loaded it. She indicated that she did not go with him when he went through the kitchen to the back door of the residence. She indicated that she heard her husband say, "What are you doing in my house?" two times and that he was yelling this. She stated that she also heard him say "Stay where you are," and then she heard a single shot fired. She indicated that after the shot, she was trying to call 911 and that her husband yelled to her "I shot him". She stated that her husband yelled for her to get an ambulance. She indicated that she called 911 and stayed on the line until police arrived on scene.

## **J. No Other Eye Witnesses To The Shooting**

Law enforcement interviewed numerous individuals who were at the party next door and made attempts to locate and interview all individuals known to be at NEIGHBOR'S party and any other possible witnesses. Law enforcement could locate no individuals (other than the homeowner) who were eye witnesses to the shooting.

## **K. After The Shooting**

The investigation revealed the homeowner told his wife to call 911 immediately after he fired the shot at Mr. Morrison. The investigation revealed that his wife did call 911 and it appears that she was located in a separate part of the residence from the homeowner as they awaited law enforcement officers to arrive on scene. The investigation revealed that the homeowner remained in the three season room / porch area until officers arrived on scene and the homeowner's wife was in another room of the residence.

The investigation revealed that law enforcement officers were located in close proximity to the homeowner's residence when they initially got the call that someone had been shot, but initially were directed to a location approximately a block away. Officers then returned and went to the

homeowner's residence. The investigation revealed that approximately 5 minutes after the homeowner's wife contacted police that officers were on scene in the three season room / back porch area where the homeowner was located as well as Mr. Morrison.

The homeowner followed all directions to place the gun down, and to keep his hands up when officers arrived on scene.

#### **L. The Homeowner's Initial Statement To Officers**

One of the first Sheriff's deputies who arrived on scene indicated that when he made contact with the homeowner that he stated "I thought the doors were locked. How'd he get into the house?" In addition, he stated multiple times during this time frame that he could not believe what was going on and he was visibly shaking. He appeared to be in a state of disbelief or shock.

#### **M. Position of Mr. Morrison & cause of death**

Responding officers on scene indicated that initially when they arrived that Mr. Morrison was located in a crouched position (like a catcher in baseball) in the area on the eastern part of the porch area between the full refrigerator and the dresser. The investigation also showed that the dresser was open and items were sticking out of the drawer. Mr. Morrison was observed to have a cellular telephone in his left hand.

Officers on scene observed that Mr. Morrison was making some noise and they moved him from the location he was in to the ground where they performed life saving techniques on Mr. Morrison. The investigation revealed that an ambulance came to the scene as well and EMTs attempted life saving techniques. Ultimately these efforts were not successful and Mr. Morrison died in the early morning hours of March 3, 2012.

The autopsy of Mr. Morrison was performed by the Waukesha County Medical Examiner's Office (who contract with Washington County to perform autopsies). Mr. Morrison died of a single gunshot wound to the chest. The investigation indicated that he was shot in the front and that there was an exit wound in his back. He was shot through the heart and lung. A bullet was not recovered inside Mr. Morrison because it appeared that the bullet went completely through his body. He had a large quantity of blood in his inner chest cavity. After he was shot, Mr. Morrison essentially bled to death.

The autopsy also revealed that Mr. Morrison had a blood alcohol level of approximately .190 at the time he died. He had no other drugs in his system.

Mr. Morrison was wearing dark colored clothes at the time he was shot.

## **N. Recovery Of Bullet And Firearm**

A bullet was recovered in the eastern wall of the three season room / porch located at a height of approximately 49 inches<sup>14</sup> and located in between the refrigerator and the dresser on that eastern part of the wall. Law enforcement officers were able to recover this bullet by digging into the wood paneling and wall, and in doing so they located insulation in the wall of the porch area.

The firearm which the homeowner used was located on the freezer of the three season room / porch which is where the homeowner placed the firearm prior to police arriving on scene. It was identified as a 45 Colt caliber revolver. Five unused rounds of ammunition were located inside the revolver.

The Wisconsin State Crime Lab performed an analysis of the bullet which was recovered from the wall of the three season room / porch of the homeowner's residence as well as the firearm. The firearm was found to be mechanically functional and the bullet that was recovered from the scene was determined to have been fired from the 45 Colt caliber revolver which was recovered on scene.

The Wisconsin State Crime Lab also analyzed the clothes that Mr. Morrison was wearing at the time of the shooting. No gunpowder residues were observed on Mr. Morrison's clothing. In addition the firearm was test fired. It was the opinion of the expert from Wisconsin State Crime Lab that, at the time of the shooting, the muzzle of the firearm was held at a distance of three feet or further from Mr. Morrison's clothes when the firearm was discharged. In other words, Mr. Morrison was at least 3 feet from the muzzle of the firearm when it was fired.

It is clear from the evidence that Mr. Morrison was shot when he was located inside the homeowner's three season room / porch.

## **O. Cooperation Of The Homeowner**

Throughout the investigation both the homeowner and his wife cooperated with law enforcement officers. He asked his wife to call 911 immediately after firing the single round. She did so. After she called 911, she was on the phone with dispatch until officers arrived on scene (approximately five minutes after she called 911). The homeowner followed directions to put the gun down prior to officers arriving on scene and followed directions to have his hands in the air when officers arrived on scene. The homeowner and his wife were separated from each other as soon as law enforcement officers arrived at the homeowner's residence. It appears from the evidence that the homeowner's wife was on the phone with the 911 operator until officers arrived.

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<sup>14</sup> The height of the bullet hole in the wall suggests that Mr. Morrison was in an upright or close to upright position at the time he was shot, and was not in crouched position at the time he was shot.

The homeowner showed no signs of intoxication or impairment and he voluntarily provided a blood sample to law enforcement. This sample was tested by the Wisconsin State Crime Lab. The results showed that the homeowner had no alcohol in his system.

The homeowner also provided voluntary statements to law enforcement officers and he agreed to be transported to the Slinger Police Department for a statement. Neither the homeowner nor his wife showed any signs of deception when they voluntarily provided statements to law enforcement officers. The investigation also revealed that the homeowner has no prior criminal record.

### III. ANALYSIS OF SELF DEFENSE ISSUES

The ultimate question in this case is whether or not the homeowner acted lawfully in self defense when he shot Mr. Morrison on March 3, 2012. The law of self defense has existed in Wisconsin since Wisconsin became a State. Prior to the adoption of the Castle Doctrine, an individual always had the right to use lethal force against another if the individual reasonably believed that the force was necessary to prevent imminent death or great bodily harm to himself or a third person. In fact, prior to the adoption of the Castle Doctrine, there have been numerous cases in Wisconsin where an individual shot and killed a home intruder, and the individual was NOT charged with any crime because the individual was determined to have acted in lawful self defense.

The adoption of the Castle Doctrine did not change the general law of self defense in Wisconsin. It simply created a presumption which exists in certain limited situations. If the prerequisites of the Castle Doctrine have been met, an individual is presumed to have reasonably believed that the force he or she utilized was necessary to prevent imminent death or great bodily harm to himself. Even when the Castle Doctrine applies, it is NOT a complete bar to prosecution. It simply creates a presumption -- a presumption that the individual reasonably believed that the force he or she utilized was necessary to prevent imminent death or great bodily harm to himself. In certain situations (which do NOT exist in this case) a prosecutor could still charge an individual with a crime even if the Castle Doctrine applies. However, the prosecutor would have to be aware of facts and circumstances which could overcome the presumption.

#### A. Summary

In looking at this case, the Washington County District Attorney's Office first analyzed this case by considering the general law of self defense – without applying the Castle Doctrine presumption. We also analyzed this case by considering the Castle Doctrine. After carefully reviewing the facts and the law, no criminal charges will be filed against the homeowner.

First, the Washington County District Attorney's Office concludes that under the law of self defense which exists in Wisconsin (independent of the Castle Doctrine) that there is a basis to conclude that the homeowner reasonably believed that the force he utilized against Mr. Morrison was necessary to prevent imminent death or great bodily harm to himself; and he therefore acted lawfully in self defense when he shot Mr. Morrison.



Second, our office concludes that no reasonable jury could convict the homeowner of any crime for his actions on March 3, 2012. A prosecutor has an ethical obligation to only charge an individual with a crime that he or she believes could be proven by admissible evidence beyond a reasonable doubt at trial. Since no reasonable jury could convict the homeowner of any crime for his actions on March 3, 2012, it would not be ethical for our office to file any charges against the homeowner.

Third, our office concludes that the Castle Doctrine would apply in this case. Therefore, if the homeowner had been charged in this case and a trial ensued, the homeowner would have been entitled to the presumption of the Castle Doctrine – specifically the presumption that he “reasonably believed that the force was necessary to prevent imminent death or great bodily harm to himself” when he shot Mr. Morrison. In this case, our office concludes that this presumption – that the homeowner exercised “reasonable force” – is a valid presumption under the facts of this case. Therefore, in this case, the homeowner acted lawfully self defense when he shot Mr. Morrison.

Fourth, our office concludes that there are no facts in this case which would overcome the presumption that the homeowner acted reasonably when he shot Mr. Morrison.

Fifth, a prosecutor has an ethical obligation to only charge an individual with a crime that he or she believes could be proven by admissible evidence beyond a reasonable doubt at trial. Since there are no facts in this case which would overcome the presumption that the homeowner acted reasonably when he shot Mr. Morrison, no reasonable jury could convict the homeowner of any crime for his actions on March 3, 2012. Therefore, it would not be ethical for our office to file any charges against the homeowner.

## **B. Analysis Of Self Defense Law**

As discussed above, the major issue in the review of this case is self defense. That is, was the homeowner in this case privileged to use self defense in shooting Mr. Morrison? Even if the Castle Doctrine did not apply in this case, the basic law of self defense (applicable in all cases whether or not an incident occurs in a “dwelling”) may apply. Certainly, if criminal charges were filed, the homeowner would raise self defense. The State would have to prove beyond a reasonable doubt at trial that the homeowner did not act lawfully in self defense.

### **1. Elements of self defense**

Wisconsin Criminal Jury Instruction 805 sets forth the elements for the privilege of self defense and therefore incorporates Wisconsin Statute 939.48.

With regard to self defense, the law allows an individual to threaten or intentionally use force against another only if:

1. the defendant believed that there was an actual or imminent unlawful interference with the defendant’s person;

2. the defendant believed that the amount of force the defendant used or threatened to use was necessary to prevent or terminate the interference;
3. the defendant's beliefs were reasonable.

With regard to lethal force, the Wisconsin law of self defense states that an individual may intentionally use force which is intended or likely to cause death or great bodily harm only if the individual reasonably believed that the force used was necessary to prevent imminent death or great bodily harm to himself.

A belief may be determined to be reasonable even though the individual is mistaken.

The law in Wisconsin is that a belief may be reasonable, even though mistaken<sup>15</sup>. That is, even if HOMEOWNER was mistaken in some aspect of why Mr. Morrison was in his residence, his belief as to Mr. Morrison's presence may have been reasonable.

## **2. Determining whether beliefs are reasonable.**

In determining whether a person's beliefs were reasonable, the standard is what a person of ordinary intelligence and prudence would have believed in the person's position under the circumstances that existed AT THE TIME of the alleged offense. The reasonableness of the person's beliefs must be determined from the standpoint of the individual at the time of the person's acts and not from 20 – 20 hindsight.

In other words in analyzing this case, one needs to put himself in the position of the homeowner at the time of the shooting. What is learned after the fact is NOT relevant in determining whether the homeowner's believed that the force used was necessary to prevent imminent death or great bodily harm to himself.

In addition, a belief may be reasonable even though mistaken. In other words, an individual who utilizes self defense who turns out to have been mistaken in his belief that the amount of force that he used was necessary to prevent or terminate the interference can still be found to have acted lawfully in self defense provided that his belief (at the time of the incident) was reasonable.

Therefore, in this case, if the homeowner honestly was mistaken about the imminence or necessity prong of the self defense test – if he thought he was under attack when he was not or he thought he needed to use deadly force when he did not – and his mistake was reasonable, he gets the complete defense and his actions are excused.

In criminal trials in Wisconsin all individuals at the start of the trial are presumed innocent. In addition, once an individual raises the issue of self defense<sup>16</sup>, the burden is on the prosecution to

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<sup>15</sup> Wisconsin Criminal Jury Instruction 805.

<sup>16</sup> At a minimum there must be some basis in the facts of case before someone could argue self defense. However, in this case, clearly there is more than sufficient evidence for the homeowner to argue that he acted in self defense.

prove beyond a reasonable doubt<sup>17</sup> that the person charged did NOT act lawfully in self defense. Therefore in this case, if criminal charges were filed, the prosecution would have to prove beyond a reasonable doubt that the homeowner did NOT act lawfully in self defense.

### C. Factors Supporting Self Defense

Below is a list of some of the factors which show that the homeowner acted lawfully in self defense on March 3, 2012 – even if the Castle Doctrine presumption did not apply in this case. These factors existed from the point of view of the homeowner at the time of the shooting, and show that the homeowner reasonably believed that the force he utilized on March 3, 2012 at 2 a.m. inside his residence (when he fired a single shot towards an unknown intruder) was necessary to prevent death or great bodily harm to himself. These factors include:

- Time of day of the shooting – 2 a.m.
- Location of shooting – inside the homeowner’s house.
- When the homeowner walked into the room, he initially did not see anyone. As he walked further in the room, he saw something out of the corner of his eye. He was startled to see someone in his house at that hour.
- The small size of room where shooting took place – 11 feet 3 inches by 7 feet 6 inches, indicates that Mr. Morrison was in close proximity to the homeowner -- within several feet at the time of the shooting.
- Lighting conditions of room of shooting – dark (the lights had not been turned on).
- The clothes Mr. Morrison was wearing were dark – making it harder for him to be seen.
- Reason the homeowner went into the room – he heard a noise and thought someone might be breaking into his house.

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<sup>17</sup> Wisconsin Criminal Jury Instruction 140 describes the presumption of innocence and “reasonable doubt”. In relevant part this Jury Instruction indicates:

States Burden of Proof

The burden of establishing every fact necessary to constitute guilt is upon the State. Before you can return a verdict of guilty, the evidence must satisfy you beyond a reasonable doubt that the defendant is guilty.

Reasonable Hypothesis

If you can reconcile the evidence upon any reasonable hypothesis consistent with the defendant’s innocence, you should return a verdict of not guilty

Meaning of Reasonable Doubt

The term “reasonable doubt” means a doubt based upon reason and common sense. It is a doubt for which a reason can be given, arising from a fair and rational consideration of the evidence or lack of evidence. It means such a doubt as would cause a person of ordinary prudence to pause or hesitate when called upon to act in the most important affairs of life.

A reasonable doubt is not a doubt based upon mere guesswork or speculation. A doubt which arises merely from sympathy or from fear to return a verdict of guilt is not a reasonable doubt. A reasonable doubt is not a doubt as may be used to escape the responsibility of a decision.

While it is your duty to give the defendant the benefit of every reasonable doubt, you are not to search for doubt. You are to search for the truth.

- Protection of other people in house – his wife and a total of three children under the age of 10 (2 children of his own and one child guest) were inside his house.
- The homeowner's handgun was loaded with 6 shots and he only fired one time.
- The investigation revealed that the door which separates the main interior of the house to the room where the shooting occurred opens to the east – towards the direction of where Mr. Morrison was later observed by the homeowner. The direction that the door swings could have obscured the homeowner's vision and been a factor in why the homeowner did not see Mr. Morrison when he first walked into this room.
- After the homeowner spoke to Mr. Morrison (who he could not clearly see), Mr. Morrison raised his hand and took a step towards the homeowner.
- When the homeowner first encountered Mr. Morrison, he stood up – another startling event. From a homeowner's perspective, someone who is crouched down and possibly hiding in one's house is potentially a greater danger than someone who is observed standing up in one's house because a homeowner has even less knowledge of what the person is doing in their home, and therefore is potentially a greater threat to a homeowner.
- The homeowner had very little time to react to the situation due to the sudden nature of the contact with Mr. Morrison prior to the shooting.
- When the homeowner first walked into the room where the shooting occurred, he smelled something unusual – a wet, smoky smell – which was an unusual smell for that room; and which would have been a cause for further alarm.
- The homeowner was aware that Police had earlier been at the NEIGHBOR'S residence and were not able to make contact with those persons in the garage. The homeowner believed that the individuals at the party knew that the homeowner had contacted police and he feared that they might retaliate against him for having called the police on them.
- The homeowner believed that he locked the doors to the residence – therefore he believed that anyone in the room where the shooting occurred would have had to have broken into his house.
- At the time when the homeowner fired the round at Mr. Morrison, Mr. Morrison was likely closer to the interior portion of the residence than the homeowner was – and the homeowner's wife and children were located in the interior portion of the residence.
- The room where the shooting occurred had many items in it including a refrigerator, a dresser, a stand alone freezer, a chair and a garbage can which means that there was even less room for two adult males to be in.
- The homeowner never met Mr. Morrison and never invited Mr. Morrison or anyone from the party next door to come inside his residence.
- The homeowner had absolutely no idea who could possibly have been inside his home at 2 a.m.
- The homeowner indicated that after hearing the sound from the back of his house he was concerned that someone may be trying to enter the house, so he went to his closet and removed his handgun which was secured in a plastic case with snaps on the top shelf. He opened the case, loaded the handgun with six rounds and went to check his home. It is reasonable to believe that a person who goes through the steps of obtaining a handgun and loading it, after hearing a noise coming from the back of his house, was afraid for his safety and others who were in his house, including his wife and children.

- The homeowner was not under the influence of any alcohol or drugs. The homeowner's blood result indicated that he had no ethanol/alcohol in his system. Therefore, the homeowner was thinking as clearly as he could under the circumstances – at 2 a.m.

After the shooting, several of the actions of the homeowner, also indicate that the homeowner acted lawfully in self defense. These include:

- After the homeowner fired the single shot, he asked his wife to immediately call 911 and within minutes officers were on scene.
- The homeowner cooperated in all aspects of the investigation including submission to a blood test and providing voluntary statements to law enforcement officers about the shooting.
- Neither the homeowner nor his wife showed any signs of deception when they voluntarily provided statements to law enforcement officers.
- When officers arrived on scene, the homeowner appeared to be in a state of disbelief or shock.

Another noteworthy factor that our office considered in this case was that the homeowner is a law abiding citizen with no prior criminal record.

These factors all indicate that event without consideration of the Castle Doctrine, that the homeowner, under the facts of this case, reasonably believed that the force he utilized on March 3, 2012 was necessary to prevent imminent death or great bodily harm to himself. Therefore, the homeowner acted lawfully in self defense and no criminal charges will be filed against the homeowner.

In addition, based on the available facts, it is our office's conclusion that no reasonable jury could convict the homeowner of any crime for his actions on March 3, 2012. Since no reasonable jury could convict the homeowner of any crime for his actions on March 3, 2012, it would not be ethical for our office to file any charges against the homeowner, and no criminal charges will be filed against the homeowner.

#### **D. No Duty To Retreat**

In self defense cases in Wisconsin there is no duty to retreat.<sup>18</sup> However, in determining whether an individual reasonably believed the amount of force used was necessary to prevent or terminate the interference, a jury may consider whether the defendant had the opportunity to retreat with safety, whether such retreat was feasible, and whether the defendant knew of the opportunity to retreat.

In this case, from the homeowner's perspective, retreat was not a practical consideration. First of all, the homeowner was inside of his home. Second, even to the extent that one could consider his ability to retreat to safety, in taking into account where this shooting actually occurred, it

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<sup>18</sup> Wisconsin Criminal Jury Instruction 810.

appears that the homeowner actually walked past Mr. Morrison in the three season room / porch, saw Mr. Morrison out of the corner of his eye, and turned back toward Mr. Morrison. In other words, at the time of the shooting, in all likelihood, Mr. Morrison was closer to the interior of the house than was the homeowner. The homeowner had an exit, but that exit was the exit from the three season room / porch to the backyard. If the homeowner would have exited through the doors separating the three season room / porch and the backyard, Mr. Morrison would have been left inside the residence along with the homeowner's wife and children. Therefore, even though there was no duty to retreat – retreat was not even a practical option in this case.<sup>19</sup>

## **E. Application Of The Castle Doctrine**

The Castle Doctrine (set forth in Section 939.48(1m)(ar) Wis. Stats.) is an additional avenue that an individual can utilize in a defense if they are charged with a crime and they seek to utilize the law of self defense. It only applies in certain limited circumstances.

### **1. What is the Castle Doctrine?**

The Castle Doctrine essentially provides extra protection to individuals who utilize self defense in their “dwellings”.<sup>20</sup>

If it applies in a case, the Castle Doctrine states that:

“the Court may not consider whether the actor had an opportunity to flee or retreat before he or she used force and shall presume that the actor reasonably believed that the force was necessary to prevent imminent death or great bodily harm to himself or herself”

This means that a jury cannot consider whether the individual had an opportunity to flee or retreat. In addition, it also means that a person charged with a crime was presumed to have reasonably believed that the force was necessary to prevent imminent death or great bodily harm to himself or herself. Since the State has the burden of proof, such a “presumption” would be a significant additional hurdle that the State would need to overcome in convicting someone of a crime.

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<sup>19</sup> As Justice Benjamin Cardozo stated in *People v. Tomlins*, 213 N.Y. 240, 107 N.E. 496 (1914), “it is not now and never has been the law that a man assailed in his own dwelling is bound to retreat. If assailed there, he may stand his ground and resist the attack. He is under no duty to take to the fields and the highways, a fugitive from his own home . . . Wither shall he flee, and how far, and when may he be permitted to return?”

<sup>20</sup> Dwelling has the meaning as is given in Sec. 895.07(1)(h), Wis. Stats. This section indicates that “dwelling” means any premises or portion of a premises that is used as a home or a place of residence in that part of the lot or site on which the dwelling is situated that is devoted to residential use. “Dwelling” includes other existing structures on the immediate residential premises such as driveways, sidewalks, swimming pools, terraces, patios, fences, porches, garages, and basements. It is clear in this case that under whatever word one wishes to describe the room where the shooting took place – porch, three season room, etc. – that this room was part of the homeowner’s “dwelling” as defined by Wisconsin Statute.

The Castle Doctrine is **NOT** a complete bar to prosecution. Even when the Castle Doctrine applies, a prosecutor could still choose to prosecute someone with a crime if the prosecutor believed that the additional facts and circumstances of the particular case could overcome the “presumption” that the defendant “reasonably believed that the force was necessary to prevent imminent death or great bodily harm to himself”. However, as a practical matter, it would be difficult to overcome such a presumption.

## 2. Does the Castle Doctrine apply in this case?

Our office has determined that the Castle Doctrine would apply to the facts of this case. The Castle Doctrine (which went into effect on December 20, 2011) can only be utilized in certain circumstances. Our office has analyzed the Castle Doctrine, and our analysis indicates that in order for the Castle Doctrine to apply in any case, a seven part test which must be met.

1. The person against whom the force was used was in the actor’s dwelling, motor vehicle or place of business.
2. The person against whom the force was used must have unlawfully entered the dwelling.
3. The person against whom the force was used must have forcibly entered the dwelling.
4. The actor was present in the dwelling at the time of the incident.
5. The actor knew or reasonably believed that the person against whom the force was used had unlawfully and forcibly entered the dwelling.
6. The actor was not engaged in criminal activity or was using his or her dwelling to further criminal activity at the time.
7. The actor against whom the force was used was NOT a public safety worker.

Our analysis of the facts of this case indicates that all seven parts of the Castle Doctrine have been met. Therefore, it is the belief of the Washington County District Attorney’s Office that the homeowner would have the additional protections of the presumption under the Castle Doctrine.

1. The person against whom the force was used was in the homeowner’s dwelling. By definition in the Wisconsin Statutes, “dwelling” clearly includes all parts of a house including a three season room and including a porch.
2. The person against whom the force was used must have unlawfully entered the dwelling. Clearly, Mr. Morrison did not have permission to be in the homeowner’s residence on March 3, 2012. He had never been invited to come into the residence and he did not know the homeowner. At a minimum he was trespassing and was therefore on the porch unlawfully.<sup>21</sup>

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<sup>21</sup> Section 943.14 Wisconsin Statutes indicates that “Whoever intentionally enters the dwelling of another without the consent of some person lawfully upon the premises, under circumstances tending to create or provoke a breach of the peace, is guilty of a Class A misdemeanor”. Here, it appears that Mr. Morrison’s entered a room of the homeowner’s residence (presumably to hide) at 2 a.m. without permission. That conduct was conduct likely to create or provoke a breach of the peace.

3. The person against whom the force was used must have forcibly entered the dwelling.
  - o The meaning of “forcibly” is not totally clear and is analyzed in more detail below (pages 23-25).
  - o Based on our offices review of the evidence in this case and based upon our analysis of the meaning of “forcibly”, our office believes that Mr. Morrison “forcibly” entered the homeowner’s residence. At a minimum, he utilized some degree of force in opening two doors to get inside the homeowner’s residence and make an unlawful entry.
4. The actor was present in the dwelling at the time of the incident. Clearly, the homeowner was inside his residence when the shooting took place.
5. The actor knew or reasonably believed that the person against whom the force was used had unlawfully and forcibly entered the dwelling. He had not invited anyone into his residence at 2 a.m., so it would be reasonable for the homeowner to believe that anyone present in his house at that time would have been there unlawfully. Moreover, it was reasonable for the homeowner to believe that the person present in the room of his house had “forcibly” entered his residence because the homeowner believed he had locked the back door from the outside of the residence to the three season room / porch. That was his usual practice. Furthermore, the homeowner had earlier exchanged some words with some of the party goers on the driveway at NEIGHBOR’S residence. Thus, the homeowner had an additional reason to believe that he would have locked the door to the back of his residence. Therefore, it would be reasonable for the homeowner to believe that any person in his three season room / porch at 2 a.m. was there only after the person had unlawfully and forcibly entered his residence.
6. The actor was not engaged in criminal activity or was using his or her dwelling to further criminal activity at the time. The homeowner is a law abiding citizen with no criminal record who resides at his residence with his wife and two children. He was not engaged in criminal activity at the time of the shooting. He had been sleeping and was simply trying to investigate a disturbance in his own home.
7. The actor against whom the force was used was NOT a public safety worker. There is no issue here -- Mr. Morrison clearly was not a public safety worker at the time he entered the homeowner’s residence.

### 3. **What does “forcibly” mean?**

Unfortunately, the self defense statute does not define “forcibly”.<sup>22</sup> Not all words in criminal statutes or in jury instructions are given specific definitions. During deliberations in a jury trial,

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<sup>22</sup> No jury instruction for the Castle Doctrine has yet been approved by the committee which prepares and drafts proposed jury instructions for courts to use in criminal cases.



it is not uncommon for a jury to submit a question to the presiding judge and ask for a specific word or term to be defined. When that occurs, the presiding judge will consult with the attorneys for both sides. Sometimes a judge will provide the jury a definition of the term from the dictionary.<sup>23</sup> However, more often than not, a judge (in response to a question about the meaning of a specific word) will instruct a jury to give the word the common meaning of the word as understood by the jury. In those cases, in actuality the jury is providing the meaning to the term.

#### 4. “Forcibly” in the Robbery Statute

Even though the definition of “forcibly” is not crystal clear, the common law of Wisconsin (case law) does provide a clue as to what “forcibly” means.

The word “forcibly” is utilized in the Wisconsin robbery statute, section 943.32(1)(a) Wis. Stats. The robbery Jury Instruction (*Wis Criminal Jury Instruction 1479*) indicates that “forcibly” means that the defendant actually used force against the victim with the intent to overcome or prevent his or her physical resistance or physical power of resistance to the taking or carrying away of the property.

In *Wittaker v. State*, 83 Wis.2d 368, 376 (1978), the court stated “evidence of physical violence is not required to establish a forcibly taking” (citing *Walton v. State*, 64 Wis.2d 36, 41 (1974)). The *Walton* case involves a purse snatching situation where the defendant snatched or pulled a pouch out of the victim’s arms without touching her. In the *Walton* case, the Court held that “under any reasonable view of the evidence, force was used against the victim with intent to overcome her physical resistance.” *Walton* at 44.

Here, it is reasonable to believe that a court (or the Wisconsin Criminal Law Jury Instruction Committee which promulgates proposed instructions for trial judges) would define “forcibly” under the Castle Doctrine as using some degree of “force” which links the unlawful entry and the dwelling.

In this case it is clear that even if the two doors (separating the homeowner’s backyard from the three season room / porch) were unlocked, that Mr. Morrison had to use some “force” to open these two doors when he made the unlawful entry into the homeowner’s residence.

Our office therefore concludes that “forcibly” does not require that any doors be broken in order for the Castle Doctrine to apply.<sup>24</sup>

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<sup>23</sup> The American Heritage Dictionary defines “forcibly” as “effected through the use of force.”

<sup>24</sup> It should also be noted that the Wisconsin common law has indicated that an entry into a building, obtained by fraud, is deemed a “forcible” breaking though accompanied by no actual force or violence. See *Walton v. State* 64 Wis. 2d 36, 41 (1974), which discusses *State v. Lewis* 113 Wis.391, 89 N.W.143 (1902). If entry into a building by fraud is deemed a “forcible” entry, then certainly an unlawful entry to a residence at 2 a.m. by opening two doors, would be considered a “forcible” entry.

**5. If charged, the homeowner could argue that there was evidence of a “breaking” in this case.**

Even if “forcibly” means that doors or a lock need to have been broken, in this case, a defense attorney could allege that the homeowner’s residence had been broken into. First, one officer reported that he observed some splinters on the second door which separated the backyard from the three season room / porch. This officer indicated that he was “unsure” if the door had been “forced open”. So at a minimum a defense attorney could argue that Mr. Morrison broke into the homeowner’s residence.<sup>25</sup> In addition, there was evidence that Mr. Morrison was located right by a drawer in the three season room / porch which was opened and with items in the drawer falling out. A defense attorney would certainly be able to make an argument that an open drawer right next to the location of where Mr. Morrison was observed by the homeowner is evidence that Mr. Morrison was planning on trying to steal from the homeowner (and hence that there was a “forcible” entry.<sup>26</sup>)

The bottom line is that no one cannot predict precisely how a court would define “forcibly” under the Castle Doctrine, nor can anyone predict whether a court would simply instruct a jury that the term “forcibly” should be given its common meaning as understood by the jury. However, it is clear that Mr. Morrison must have used some minimal “force” in opening two doors in order to gain access to homeowner’s three season room / porch.

**6. Castle Doctrine Presumption Applies In This Case**

While ultimately it would be up to a jury to determine whether all the prerequisites of the Castle Doctrine have been met, in this case (for the reasons set forth above) it appears that all of the seven prerequisites for the Castle Doctrine have been met in this case.

Therefore, under the facts of this case, a judge would almost certainly determine that there are sufficient facts in this case to warrant that the jury be instructed on the Castle Doctrine presumption.<sup>27</sup> Further, based upon the facts of this case, our office believes that it is likely that

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<sup>25</sup> Most of the evidence in this case does not support the view that the homeowner’s three season room / porch had been “broken” into. However, the splinters that were noted and the officer’s observation that he could not tell whether the door had been forced open, would certainly provide a defense attorney with an argument that Mr. Morrison “forcibly” entered the homeowner’s residence.

<sup>26</sup> Again, our office does not believe (based on the totality of the investigation) that Mr. Morrison was rummaging through a drawer prior to the shooting. However, a defense attorney would certainly be able to make an argument that an open drawer right next to the location of where Mr. Morrison was observed by the homeowner, was evidence that Mr. Morrison was planning on trying to steal from the homeowner.

<sup>27</sup> As indicated above, a jury instruction for the Castle Doctrine has not yet been prepared. However, other states in the U.S. have adopted similar Castle Doctrine statutes that are similar to Wisconsin’s statute. Tennessee has adopted a very similar Castle Doctrine statute. Tennessee’s Castle Doctrine jury instruction is contained in their self defense jury instruction (40.06) and states in relevant part:

“Any person using force intended or likely to cause death or serious bodily injury within his or her own residence is presumed to have held a reasonable fear of imminent peril of death or serious bodily injury to self, family, or a member of the household when that force is used against another

a jury would determine that the entry made by Mr. Morrison to the homeowner's three season room / porch was a "forcible" entry.

It is our office's conclusion that the homeowner would be entitled to the Castle Doctrine presumption in this case -- specifically the homeowner is presumed to have reasonably believed that the force he utilized on March 3, 2012, was necessary to prevent imminent death or great bodily harm to himself. This presumption would be a presumption that the State would have to overcome (if the homeowner was charged) in addition to the normal presumption in all criminal cases that an individual is "presumed innocent."<sup>28</sup>

While the Castle Doctrine presumption is NOT a complete bar to prosecution, any case in which the Castle Doctrine applies would be extremely difficult for the prosecution to prove beyond a reasonable doubt. In this case, the Castle Doctrine presumption is further strengthened by the facts of this case, particularly all the facts listed in the bullet points in the self defense portion of this report listed on pages 18-20 above.

Furthermore, there are no additional factors which exist in this case to overcome the presumption that the homeowner reasonably believed that the force was necessary to prevent the imminent death or great bodily harm to himself. Specifically, there is no indication that the homeowner tricked or lured Mr. Morrison into his residence so that he could shoot Mr. Morrison and thereby obtain the additional protections of the Castle Doctrine. In addition, there is no indication that the homeowner ever provoked or instigated Mr. Morrison. And there are no other factors which exist to overcome the presumption.

In certain cases, if such factors existed, a prosecutor could seek to try to overcome the Castle Doctrine presumption. However, those factors simply do not exist here.

## **7. Castle Doctrine Applies – No Criminal Charges Against The Homeowner**

Based upon the facts of this case, the Washington County District Attorney's Office believes the prerequisites for the application of the Castle Doctrine have been met. There is no reasonable debate that six of the seven prerequisites for the application of the Castle Doctrine apply in this case. The only debatable issue is whether Mr. Morrison "forcibly" entered the homeowner's residence.

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person, not a member of the family or household, who unlawfully and forcibly enters or has unlawfully and forcibly entered the residence, and the person using the force knew or had reason to believe that an unlawful and forcible entry occurred.

"Force" means compulsion by the use of physical power or violence.

<sup>28</sup> Prosecutors are well equipped to deal with the first presumption (the presumption of innocence). Prosecutors frequently and systematically are able to obtain convictions in criminal cases by the evidence in the case. In all criminal cases, an individual is presumed innocent of a charge – at the start of the trial. However during a trial, a prosecutor presents evidence in order to prove beyond a reasonable doubt that the charged person has committed the charged offense.

Since our office concludes that the Castle Doctrine applies to the facts of this case the homeowner would be entitled to the presumption that he reasonably believed that the force he utilized on March 3, 2012 was necessary to prevent imminent death or great bodily harm to himself. Nor is there any evidence that would refute that presumption.

Since no reasonable jury could convict Homeowner of any crime for his actions on March 3, 2012, no criminal charges will be filed against the homeowner for his actions on March 3, 2012, in the Village of Slinger, Washington County, Wisconsin.

#### IV. SUMMARY/CONCLUSION

The Washington County District Attorney's Office again wishes to express condolences to the friends and family of Mr. Bo Morrison, an individual who despite having made some mistakes in his life, certainly had accomplished much and touched the lives of many of his friends and family.

However, the unfortunate incident that took place in the early morning hours of March 3, 2012, was a perfect storm of events. Various individuals made poor decisions that night which contributed to the sequence of events which ultimately resulted in the shooting death of Mr. Morrison. In addition, Mr. Morrison made several poor decisions in the early morning hours of March 3, 2012, including drinking (in violation of his absolute sobriety condition of bond), running from the police when he believed they were on scene, and most importantly entering the residence of another individual whom he did not know at 2 a.m. without permission. Under a reasonable view of the evidence the homeowner acted reasonably in his use of force based on the facts and circumstances of which he was aware, when he shot an unknown intruder who was inside the homeowner's residence at 2 a.m.

For the above reasons, no charges will be issued against the homeowner in this case for his actions on March 3, 2012 in Slinger, Washington County.

Dated: March 21, 2012



Mark D. Bensen  
Washington County District Attorney