

Wisconsin DOJ Division of Criminal Investigation

ACISS Investigative Report 11-1085/150

Report Date: 09/15/2011

<b>Primary Information</b>	
Report Number:	11-1085/150
Report Date:	09/15/2011
Type Of Report:	Investigative
Description:	Correspondence: Fond du Lac County District Attorney Kaminsky
Occurrence From:	09/13/2011 00:00
Occurrence To:	09/13/2011 00:00
Dissemination Code:	Agency
Reporting LEO:	Wilson, Lisa A (Madison Special Assignments DCI / Wisconsin Department of Justice DCI)
Approval Status:	Approved
Approved Date:	09/19/2011
Approved By:	Powell, Robert C (DCI Madison Field Office / Wisconsin Department of Justice DCI)

<b>Synopsis</b>	
<p>On Tuesday, September 13, 2011, SA Lisa A. Wilson received correspondence from Fond du Lac County District Attorney Daniel Kaminsky regarding his review of this investigation. According to DA Kaminsky, he completed his review of investigative reports for this case, 11-1085, and concluded that all involved officers acted within legal requirements in entering the home at 24/26 South Lincoln, Fond du Lac, WI, and in using deadly force in response to James Cruckson firing upon officers. Additionally, SA Wilson received the press release by DA Kaminsky.</p> <p>This correspondence and press release was provided to the main case file.</p> <p>Additional note by SAIC Robert Powell:</p> <p>No further activity is required on this investigation. As a result, this case file will be officially closed by SAIC Powell on 09/19/11.</p>	

<b>Related Documents</b>	
<u>Document</u> One-page correspondence, DA Kaminsky Press Release	

<b>Record Status Information</b>	
Record Origination Operator:	Wilson, Lisa A (Madison Special Assignments DCI / Wisconsin Department of Justice DCI)
Record Origination Date:	09/15/2011 15:56
Last Update Operator:	Powell, Robert C (DCI Madison Field Office / Wisconsin Department of Justice DCI)
Last Update Date:	09/19/2011 16:37

Reporting LEO	Date	Supervisor	Date
Wilson, Lisa A (Madison Special Assignments DCI / Wisconsin Department of Justice DCI)		Powell, Robert C (DCI Madison Field Office / Wisconsin Department of Justice DCI)	9/20/2011



# Fond du Lac County

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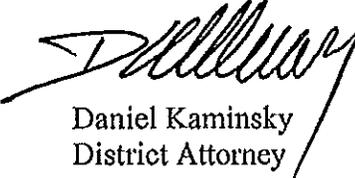
Ms. Lisa Wilson  
Division of Criminal Investigation  
W6228 Communications Court  
Appleton, WI 54914

Re: March 20, 2011, shooting in Fond du Lac  
Agency No. 11-1085

Dear Ms. Wilson:

I have completed my review of this matter and have concluded that all involved officers acted within legal requirements in both entering the home at 24/26 South Lincoln and in using deadly force in response to Mr. Cruckson firing upon officers. I do not believe any further investigation into this matter is required. I wish to thank and commend both yourself and S/A Kyra Schallhorn for such a professional and thorough investigation, as well as the remaining DCI and DOJ staff who contributed to this effort. If you have any questions, as always please feel free to contact me.

Sincerely,



Daniel Kaminsky  
District Attorney

DK/dn



# Fond du Lac County

OFFICE OF THE DISTRICT ATTORNEY

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**PRESS RELEASE**

September 12, 2011

**FOR IMMEDIATE RELEASE**

Contact Dan Kaminsky

(920) 929-3048

**DA SUMMARY AND FINDINGS ON 3/20/11 SHOOTING**

The events of March 20, 2011 will forever stand as a tragedy for the Fond du Lac community. The life of young Officer Craig Birkholz was lost. He died serving this community and rushing to the aid of fellow officers. We have a duty as citizens and human beings to honor his memory, to thank his family, and to respect their loss.

While understanding the factual details of what happened that day is important and necessary for the community, I believe we must do so respectfully and with due regard to the emotional and privacy concerns of those involved. To that end, I am providing below what I believe is an accurate, matter-of-fact summary of the relevant events that day. I implore those that read and report on these details, to use judgment, discretion, and decorum.

**SUMMARY OF FACTS ON 3/20:**

At 5:45 a.m. Josephine Warner called the police from her vehicle in the parking lot of the Fond du Lac Police Station. When an officer responded to her vehicle she was visibly shaking and crying and reported that she had been sexually assaulted by James Cruckson. She reported that she was scared because Cruckson had threatened that if she went to police, he would kill her, kill her daughter, and then kill himself.

Warner's 6-year old daughter from a prior relationship had been in Cruckson's custody while she had been on spring break vacation in Florida. She had driven back and arrived at her home at 24 S. Lincoln at approximately 4:40 a.m. that morning from Florida. She was met by Cruckson in the driveway. His contact with her was constant from the time she arrived home until the sexual assault occurred shortly after they went inside. During that time she had been unable to regain custody of her daughter who she believed was asleep and still in the home with Cruckson.

Warner reports that upon arriving at home Cruckson began making advances towards her. When she rebuffed those advances, he became angry and the sexual assault occurred. She stated that after the assault, she attempted to arm herself with scissors and small dumbbell weights. Cruckson was able to take those items away from her. She then negotiated her way out of the home by promising that she would not go to police, but instead to her mother's home.

Corroborating Warner's description of events, police later found that her suitcase was just inside the front door, that there was evidence of a physical struggle inside her home, and that there were scissors and small, blue dumbbell weights strewn on the floor. More directly, Cruckson left several recorded voice messages on her telephone that morning after the shooting began. In these recorded messages Cruckson stated that she should have gone to her mother's as promised, that they got into a fight when she got home, that he raped her, and that he blamed her for his shooting of police officers. He specifically said she was at fault for cheating on him with a foreign exchange student that he regularly referred to either by name or as the "foreigner." That individual's name will not be released.

At 5:45 after Warner made her initial report, City Police Officers Ryan Williams and Zachary Schultz were dispatched to her home at 24 S. Lincoln. Warner was taken to the hospital for a SANE (Sexual Assault Nurse Examiner) exam. Warner provided to police a drawing of her home and pleaded to have police take her there to negotiate with Cruckson to get her daughter back.

Schultz and Williams were getting no response to knocks on Cruckson's door. Cruckson and Warner resided in a duplex at 24 and 26 S. Lincoln, but a light was seen on in the Cruckson side of the residence. This is a single family home that appears to have been converted into a duplex. The home has two entrances but shares a common basement. Warner and Cruckson lived separately in the duplex, with her side having clear bedrooms for Warner and her daughter, and Cruckson's side of the duplex having different décor and his bedroom.

Officer Becky Kollmann then arrived on the scene.

At approximately 6:15 a.m., Cruckson sends a text message to his father stating "Bye dad i am finally checking out."

At approximately 6:18 Captain Jon Gutzmann arrived, and Lieutenant Jason Lariden arrives with a key from Warner and consent to enter her side of the duplex. A decision is then made to enter the home to look for Warner's daughter. Captain

Gutzmann along with officers Schultz and Williams make up the entry team. Extra tactical vests are procured by Schultz and Williams.

At approximately 6:26 a.m., entry is made into 24 S. Lincoln. Officers announce their presence shouting "police" as they move into and throughout the home. The officers repeatedly announce their presence as they cleared the residence. After clearing the basement, the officers realize that it also leads into Cruckson's side of the duplex. Again a decision is made to continue to search for the girl on that Cruckson's of the duplex. The officers again announce their presence as they clear the first floor.

Officers then arrive at a stairwell to the 2<sup>nd</sup> floor. It is still dark outside and inside the home. The stairwell leading to the second floor has two steps to a landing, then turns 90 degrees to the right and ascends into the second floor. It is a narrow, unfinished stairwell. Williams announces "police officers" and leads the team up that stairwell followed by Schultz and then Gutzmann. About halfway up the stairs, two muzzle flashes are seen and gunshots are heard. The shooter is not seen. Williams is knocked back against Schultz and both fall into the landing of the stairwell. The "shots fired" call goes out at approximately 6:30 a.m.

Gutzmann, who cannot see around the corner and up the stairwell attempts to cover the stairwell with his firearm and help pull Schultz and Williams off the landing. Williams had been shot once in each shoulder and is bleeding, and Schultz injured his arm during the fall. Williams is for the moment able to stand on his feet.

Gutzmann commands Schultz to get Williams out for medical attention. He remains inside to ensure the shooter's location remains known. He communicates with Cruckson and yells to 'stop, you just shot a cop.' Gutzmann asks Cruckson where the girl is and Cruckson states "fuck you, you're not getting her."

Gutzmann then hears a barrage of loud gunfire from the second floor. He is unsure where the gunfire is targeted or if bullets would be coming through the floor. Cruckson also throws various items, including boxes and a toilet down the stairwell lodging into the landing where Williams and Schultz had fallen. This makes it nearly impossible to traverse the stairwell without becoming an immediate target. In addition, one of the items happens to pin what is believed to possibly be a flashlight in the stairwell, turning it on and illuminating Gutzmann in the darkness. Gutzmann takes up a position near the kitchen to safely secure the inside of the residence and ensure Cruckson's whereabouts remain known. Schultz also returns inside and assists along with Kollmann. Eventually they take a position in the basement and later in Warner's residence from where they are later extracted from the scene by the armored vehicle.

Outside, Officer Raddatz is the first to arrive in squad #18 from the south on Lincoln. Upon parking a few houses south of Cruckson's home on the opposite side of the street, he immediately realizes he is taking rounds into his squad. He is able to move through the squad and exit the passenger side. He takes cover behind the right rear wheel and quarter panel. At approximately 6:33 a.m. he calls out that he is taking fire. Later view of his squad reveals numerous bullet holes in the drivers side from the front to the back. There were several near misses, including one bullet that traveled through the driver's side door/front quarter panel and into the front seat.

Officer Birkholz is one of the next to arrive. He raced to the scene in squad #2 and positioned his squad on the north side of the scene facing the southeast corner of the intersection of Lincoln and Division to match another squad angled on the southwest corner of that intersection. Together these vehicles blocked off the north side of Lincoln to secure the perceived perimeter of the scene. It is only moments before he arrives that Raddatz's call is heard that officers are taking fire and there is a sniper.

Birkholz grabs his rifle and begins to run southbound along the west wall of the D&D Tavern parking lot. It is still dark outside. None of the officers outside have yet identified where shots were coming from. Birkholz has no idea he is running down an unobstructed sightline from James Cruckson's window 75-80 yards to the south and on the west side of the Lincoln. At 6:34 Birkholz is shot. The first rifle shot is heard and Birkholz falls forward. He is fatally struck in the abdomen below his vest. Two seconds later another rifle shot is heard. The second bullet strikes Officer Birkholz, now prone on the ground, in the upper chest hitting the top of his vest. The bullet partially fragments on the vest, but the major fragment fatally continues downward into his torso.

Cruckson continues firing at sounds and objects outside his home. In total he fires approximately 48 rounds, 16 from a .308 hunting rifle, 26 from a .45 handgun, and 6 from a police tactical shotgun Cruckson obtained from inside the residence when Williams was shot. None of Cruckson's ammunition was specialized in any way but was normal sporting ammunition available at any sporting goods retailer.

During the incident, Cruckson left two messages on Warner's phone. Cruckson admits to raping Warner and blames her for the shooting. He states he should not have let her go and it's her fault for not going to her mother's like she promised. He blames her for cheating on him with the foreign exchange student.

Cruckson also spoke with the Fond du Lac Police Department Negotiator, Detective Steve Kaufman, on a recorded line numerous times during the incident. Cruckson admitted to raping Warner, stated he was going to kill himself, stated he knew

he killed a police officer (although it appears he may have believed he killed Williams inside the home, not Birkholz), and states he is not going to prison. Cruckson states to Kaufman that he is going to kill himself, that people die all the time, and cannot be consoled or convinced to put down his weapon and surrender.

Throughout the morning Cruckson also spoke with numerous relatives by phone. His relatives all gave statements to investigators. Each tried vigilantly to convince him to stop the shooting and surrender. He was inconsolable and repeated similar consistent comments with his relatives.

At approximately 7:40 a.m. with more visible light, Officer Raddatz, who had made his way from being pinned down by gunfire behind his vehicle on the east side of Lincoln to a safe spot behind a tree on the west side of the street, was able to see two screens on the front lawn. He then identified where Cruckson was located and saw Cruckson sticking the rifle out the window. He was able to take aim with his rifle on that spot and fired two shots at Cruckson the next time Cruckson stuck the rifle out the window. He was the only officer to report getting a clear visual shot at Cruckson. Cruckson stated to one of his relatives that morning that he was shot, and later examination revealed what appeared to be a gunshot wound to a finger on Cruckson's left hand. His finger was fractured with a graze wound across the finger. There appears to be no reported gunshots from Cruckson's window after that time.

Prior to being extracted, officers inside Warner's residence report hearing a single gunshot and a thud that sounded like a person hitting the floor. Cruckson was later found dead with his .45 caliber handgun near his hand and a self inflicted gunshot wound in his head. Cruckson had no drugs or alcohol in his system.

Cruckson is found to have placed an unhinged door on its side next to his bed near the second story windows from where he fired all the gunshots. Two shell casings are found in a loft within the bedroom, with numerous others inside the bedroom and outside in the front yard below the windows. There was some additional ammunition remaining in Cruckson's bedroom, but nothing to indicate any type of stockpiling. There was a military vest and helmet located, but not on Cruckson at the time he was found. There were some military medical supplies found on the first floor of Cruckson's home which he may have accessed during the incident.

Warner's daughter was located in the home of Cruckson's relatives a few houses away.

The foreign exchange student denies having a romantic relationship with Warner. That student told investigators that while he was on Spring Break, he did not go with Warner, was not staying with her, and only ran into her once during the trip.

#### **BACKGROUND EVENTS:**

Josephine Warner and James Cruckson had dated on and off for 3-4 years. Their relationship has been described as volatile, with both accusing each other of, and often admitting to, having been unfaithful. They were not together at the time of the shooting incident. They were living in separate sides of the duplex with Cruckson's side under renovation. Cruckson's friends and family report that it was his intention to give her notice to move out upon her return from Florida.

Cruckson did have one domestic violence conviction for which Warner was the victim. Warner also reports that there were many other incidents that went unreported, including one in which she suffered a fracture in her foot. Cruckson also spoke of unreported domestic incidents against him.

While Warner was in Florida, she and Cruckson exchanged numerous text messages. Of note are text messages from March 16 through the 20<sup>th</sup>.

Cruckson's lifelong friend reported to investigators that on March 16<sup>th</sup>, Cruckson told him that Warner admitted to cheating on him with a foreign exchange student. Cruckson was upset because he believed she was with that person while on Spring Break in Florida. The text messages from Cruckson to Warner on March 16<sup>th</sup> illustrate his emotional state at that time. Those messages include a series of photographs he took depicting a stuffed animal and some boots that had sentimental value to Warner. His hands are seen holding these items with a large kitchen knife up to the throat of the stuffed animal. The next pictures show the items cut to pieces on the floor.

The texting between Cruckson and Warner detail a final break up and harsh words between the two. However, from the 19<sup>th</sup> through the 20<sup>th</sup>, they also detail Cruckson's efforts to salvage the relationship. Some excerpts are:

Warner: "Why did u lie to me? ... why her? are u still in love with that? i don't get it. i will be leaving the duplex as soon as humanly possible. please dont make things worse." 3/19 12:03 a.m.

Cruckson: "I dont care about her or you. ..." 3/19 12:07 a.m.

Cruckson: "You went there with another man. The foreigner. Dont lie" 3/19 12:14 a.m.

"You are in florida with him mother fucker" 3/19 12:18 a.m.

"I would've done anything for you! But that was not good enough you had all your friends hate me while you whored around with the foreigner" 3/19 12:22 a.m.

Cruckson: "Look we need to stop and just love each other. I am just done fighting. You are not leaving we are making up and making love when you come home. Gee. This is so stupid" 3/19 2:17 a.m.

Cruckson: "Just start over with me. That is it I am great and you feel it. You know it. I love you and we hate each other. There is no breaking up when you get home I will show you." 3/19 3:14 a.m.

None of Warner's responses were in the same tone that there was a possibility of reconciliation. It appears that Cruckson's frustration and emotional stress continued when Warner arrived home but did not acquiesce to his efforts to reconcile the relationship.

Media rumors that Cruckson's actions were fueled by revenge against police are traced to one person named Zachary Wettstein, who briefly went on TV the morning of the shooting. Wettstein told investigators that he casually knew a person he thought was named "Pete." He believes "Pete" was in fact James Cruckson. Wettstein told investigators that he believes on March 19<sup>th</sup> at about 11:30 pm he spoke with Cruckson nearby the D&D parking lot. Wettstein indicated he had been at the D&D and went outside. He states that he said "hello Pete" to which Cruckson said my name is Jim not Pete. He said during a casual conversation, Cruckson purportedly told him that at 6:00 the next morning he would begin shooting police officers until he found the one that slept with his girlfriend. Wettstein said he didn't take it seriously and commented that such action wouldn't solve anything.

Cruckson's family reported to investigators that they all had dinner together the evening of March 19<sup>th</sup> and were with Cruckson at least until 11:00 p.m. None reported any unique concerns or statements from Cruckson nor having seen him go to the D&D parking lot.

Wettstein is the only person investigators found that claims to have heard any such comments from Cruckson first hand. Cruckson's family reports that he had no grudge against police and had a relative who is a law enforcement officer.

In none of the recorded phone messages, recorded negotiator calls, nor statements Cruckson made to relatives during the time of the shooting did Cruckson ever state he was seeking revenge against police. To the contrary, the only motivation even described by Cruckson himself was anger at Warner for cheating with another student, fighting with

him when she got home, and lying to him about going to her mother's instead of the police.

Warner did have a friend who was a police officer. Both she and that officer report that while they had been friends for 3-4 years, their relationship did for a brief occasion turn romantic about 5 months prior to the shooting. That romance ended immediately after it started, although they remained friends. Warner had spoken by phone to that officer prior to and as she arrived home on the morning of the shooting to express concerns about Cruckson, to which she was told if there are any problems she needs to call the police. That officer was not on duty at the time of the shooting. Due to the risk of threat and harassment, including the attention local media has devoted to these rumors, that officer will not be identified.

None of the officers involved in the shooting had any type of relationship with Warner.

Warner states that she told Cruckson long ago about her relationship with an officer. She said Cruckson did not actually believe her. She said that it was a non-issue in their relationship.

#### **LEGAL FINDINGS:**

The entry into Cruckson's home was legal and proper. At the time officers had probable cause to believe the crime of sexual assault and intimidation/threat to injure a witness had occurred and was ongoing. They also had probable cause to believe a 6 year old girl was in the custody of, and being threatened by, a man who had just committed a forcible rape. Exigent circumstances existed due to the immediate safety threat.

The various officers' use of deadly force in the nature of return fire and suppression fire was legally justified. James Cruckson had shot Officer Williams, Officer Birkholz, and was continuing to shoot at officers at the scene. The officers were justified in defending themselves, extracting those trapped by the gunfire, and protecting the surrounding community from further deadly violence.

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