



Racine County Sheriffs Office (RASO) Incident Report

Incident:
Election Laws

Incident Report Number: 20-061588	Between: Date - Time 3/16/20	00:00	And/At: Date-Time 11/3/20	23:59
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Incident Location:
1 Racine County, Racine, WI, 53403

CFS Code-1: 5999	CFS Code-2:	CFS Code-3:	Offense Code-4:
CFS Code-5:	CFS Code-6:	CFS Code-7:	CFS Code-8:

MEN	Name (Last, First, Middle) [REDACTED]	DOB: [REDACTED]	Race/Sex [REDACTED]
Address: (Address, City, State, Zip) 3205 Wood Rd, Racine, WI, 53406			Phone 1 [REDACTED]

Employer	Phone 2
Employer Address	Work Phone #

MEN	Name (Last, First, Middle) Firkus, Jill	DOB:	Race/Sex W/F
Address: (Address, City, State, Zip) 8811 Campus Dr, 2, Mount Pleasant, WI, 53406			Phone 1 (262) 664-7800

Employer	Phone 2
Employer Address	Work Phone #

NAMES

Mentioned-1

[REDACTED] Racine, WI, 53406
 DOB: 02/24/1969
 Phone 1: (262) 554-2256

Mentioned-2

Kohlhagen, Stephanie W/F of 8811 Campus Dr, 2, Mount Pleasant, WI, 53406
 Phone 1: (262) 664-7800

Vehicle Information: (Year, Make, Model, Style, Color)

License Number:	State:	Expiration Year:	Vin:	Insurance Company:
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Other Vehicle Information:	NCIC#
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Reporting Officer(s): Luell, Michael J.	Payroll Number : 10511	Report Date: 12/11/2020
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Time Received: 10:40:59	Time Cleared: 10:41:25	Unit(s) Assigned: 5076, 5077	Pages: 1 Of 23
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Reviewed by: Schmidt, Aaron	Payroll Number : 7688	Copy To
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Other

Ridgewood Care Center of 3205 Wood Rd;MP,Racine,WI,53406

Mentioned-3

Scott, Myers L [REDACTED] of 3205 Wood Rd, Racine,WI,53406
[REDACTED]
[REDACTED]

Deceased

Westphal, Shirley M [REDACTED], 53406
[REDACTED]

Complainant

Westphal-Mitchell, Judy [REDACTED], 53142
[REDACTED]
[REDACTED]

Mentioned-4

[REDACTED] [REDACTED] 53402
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]

NARRATIVE

On Tuesday, December 8, 2020, I, Investigator Michael J. Luell #10511, was assigned to investigate an election complaint that was filed by Judy A. Westphal-Mitchell [REDACTED] to the Wisconsin Election Commission ("WEC"). In a notarized statement, Judy alleged the following:

Carey Manor prior/present Ridgewood Care Center took advantage of my mothers diminished mental capacity [REDACTED] and filled out ballot(s) in her name. I

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had to file a letter of incapacitation in 2012 to become her POA for Health/Finance because she was unable to do for herself [REDACTED].

When we were permitted to visit in person early 2020 prior to covid, I noticed her that along with her teeth gone missing, her glasses were broken, and she was not interested in getting them replaced, as she told me, there was nothing she needed to read. She had lost all interest in TV or newspapers years prior and was not up to date on news or current events.

As to her mental capacity, she sometimes could not recognize me, remember what her last meal was or what day it even was. She would also tell me of helicopters and other flying objects landing either in the parking lot or just over/behind the trees out the 2nd story window where she would sit regularly and lookout/nap during the day. There is no airport or facility that a helicopter could or would land.

Prior to contacting Ridgewood directly, I contacted the Mt. Pleasant Clerk Kohlhagen, and she state that they cannot deny anyone a ballot and any determination of mental incapability would have to come from the care facility.

I contacted the manager at Ridgewood Care Center, Scott Myers (sp?) with my concerns of ethicality, legality of my mother's eligibility/ability to vote.

I inquired who had requested a ballot for her and had access to her to assist her in filling out the ballot as I have not been able to visit her personally for months. He never gave me an answer on how she even received a ballot. He told me that in the age of covid, the WEC gave facility activity director/social worker the authority to help residents fill out their ballots. I inquired how she was even able to receive a ballot in her diminished mental capacity, his reply was "that they cannot deny anyone a ballot and [REDACTED], they legally allowed her to participate". I also inquired to how they made her choice without any knowledge of current events or news? He told me "they ask the residents who they had voted for in the past, and following party lines, that would be their choice". I asked, "so if she could only recall JFK as president, Democrat would be the choice"? He replied, "yes". Asking him about the broken glasses (impaired vision), how could she be sure that whomever "assisted" would fill ballot out to her choice? He said, "he hoped that those that assisted were honest".

I am writing this, as I feel my mother was taken advantage of in her mental state. Parents and loved ones should be protected not exploited for an ink mark on a piece of paper and a questionable agenda.

I have also phoned WEC 11/11/2020 and left VM for Nathan Judnick (sp?), have

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not received any call back to date.

The Complaint Form was signed and notarized on November 24, 2020.

I was able to review an Email Judy sent to Racine County District Attorney Patricia Hanson where she relied her concerns about her mother, Shirley, voting while she was a resident at Ridgewood Care Facility. I also reviewed an Email sent by WEC Staff Attorney [REDACTED] to DA Hanson relying Judy's concerns about Shirley voting.

I researched the November 3, 2020, election. I was able to determine that voters in Racine County were able to vote in the race for President of the United States, United States Representative for the First District of Wisconsin, Racine County District Attorney, Racine County Treasurer, Racine County Clerk, and Racine County Register of Deeds.

Telephone conversation with Judy Westphal-Mitchell

I had telephone contact with Judy during the morning of December 10, 2020. Judy confirmed the allegations she swore to when she completed the WEC's Complaint Form. Judy informed me that her mother, Shirley, died on October 9, 2020, before the most recent election - an election where Shirley's vote was cast in. Shirley Emailed me copies of the documents declaring her Power of Attorney over Shirley's Finances and Property, signed December 30, 2012, and Power of Attorney for Health Care, signed February 22, 2013. Judy also sent me a Death Certificate for Shirley which confirmed her date of death to be October 9, 2020.

On December 10, 2020, at approximately 3:00 p.m., Inv. Johnson and I went to the Mount Pleasant City Hall and made contact with Village Clerk/Treasurer Stephanie Kohlhagen and Deputy Clerk/Treasurer Jill Firkus. The conversation was recorded by Inv. Johnson using the Axon Capture app on his department issued cell phone. This report is a summary of our conversation, please see the recording for exact details of the conversation.

Meeting at Mount Pleasant Village Hall

I explained to Clerk Kohlhagen and Deputy Clerk Firkus that we were investigating the complaint Judy Westphal-Mitchell made about the practices at the Ridgewood Care Center concerning voting, specifically her mother, Shirley Westphal, voting in the most recent election on November 3, 2020. I informed them that I was interested in locating Shirley's ballot to verify her signature and identify the witness to her vote. They informed me that the envelop for the ballot was being held by "the county" and they would be able to get me a copy of the ballot. They stated that the ballot would contain Shirley's signature and the signature of the witness. Clerk Kohlhagen stated to me that unless they have an order signed by a judge that an individual has been deemed

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incompetent and their voting rights have been taken away, the village has to issue that person a ballot. Clerk Kohlhagen stated that she also explained this information to Judy.

I requested a list of all the times Shirley had voted since 2012, because that was the time that Shirley suffered significant physical/mental difficulties and signed the Power of Attorney to Judy. I was provided with a list of Shirley's voting history which showed she voted two times while she lived at the Ridgewood Care Center in the Village of Mount Pleasant. The records showed that Shirley voted in the 2020 Spring Election/Presidential Preference Vote, which was held on April 7th, 2020, and the 2020 General Election, which was held on November 3, 2020. Shirley also voted in the past when she lived in Kenosha County. Shirley voted four times in 2016, one time in 2015, three times 2014, one time in 2013, and six times in 2012. In all of these elections, Shirley voted with an absentee ballot.

Clerk Kohlhagen stated that they were informed "that our special voting and registration deputies were not allowed into nursing homes because of COVID". Clerk Kohlhagen stated that they normally send two special voting deputies into nursing homes to collect the vote, but they did not follow this procedure this time. Clerk Kohlhagen stated they received this information about not being allowed into retirement homes in April of 2020. Clerk Kohlhagen stated she believed the WEC sent the clerks a notification letter. I requested a copy of that letter, but I was not provided with the copy during this meeting.

I told the clerks that I was informed that people can be signed up to be sent an absentee ballot for every election. Clerk Kohlhagen informed me that if someone is "indefinitely confined", they would be sent an absentee ballot for every election. Clerk Kohlhagen stated there is a part of the application where "you are signing under oath that you had a condition". Clerk Kohlhagen stated, "The only reason we mailed the ballots this time, those ballots, to the nursing home, was because we were on lockdown with COVID and we could not go in there; therefore, we're obligated then to mail them. Otherwise, our special registration and/or voting deputies would actually physically have the ballots on them, be in the presence of that voter while they're voting, but that obviously did not happen. They're typically not mailed to the nursing home. It's just during COVID we had that."

Clerk Kohlhagen explained to me that the special registration deputies and the special voting deputies are different functions but the same people. Clerk Kohlhagen explained that they send the two people to the nursing home first to register people and then a week, or so, later they will send the two people out with the ballots to collect the vote. Clerk Kohlhagen stated that they normally post notices at the nursing homes as to when the special voting deputies are going to be at the facility, and she provided me copies of previous notices. Clerk Kohlhagen stated the patients' family members are supposed to pay attention to the notices when they are at the facility so that

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they have notice of when the voting is going to occur. Clerk Kohlhagen confirmed that no notice of voting was posted for the two most recent elections "because of COVID".

Deputy Clerk Firkus stated that the woman who worked at Ridgewood Care Center, and would coordinate the voting, just started when the COVID-19 shutdowns of nursing homes started in the spring of 2020. Deputy Clerk Firkus believed the woman's name was "Jennifer".

I was provided with a list of all the individuals that were registered to vote at Ridgewood Care Center. I was provided with a list of 53 people, 44 of the people voted in the November 3, 2020, election. The list included Shirley's name as a person who voted. I was provided with a booklet entitled "Absentee Voting in Residential Care Facilities and Retirement Homes" that was dated October 2018. I was informed that this booklet was previously provided to the Ridgewood Care Center and other facilities in the Village of Mount Pleasant. I requested information as to who was the witness(es) to the 44 votes that were cast from the Ridgewood Care Center. I requested the application that Shirley would have filled out to get an absentee ballot and/or oath of being indefinitely confined. I was informed the clerks would never be able to identify Shirley's exact ballot, but they would be able to identify Shirley's absentee ballot envelope.

Review of documents provided by the Village of Mount Pleasant

On December 10, 2020, at 6:03 p.m., I received an Email from Clerk Kohlhagen which contained the Wisconsin Application for Absentee Ballot that was filed out for Shirley and contained a signature consistent with Shirley Westphal. The majority of the form is completed in blue ink. The person who used the blue ink, later determined to be [REDACTED], wrote down Shirley's name, date of birth, telephone number and address. [REDACTED] checked the box citing Shirley's preference to receive a ballot by mail. In the next section, which was section 6, it stated, "I REQUEST AN ABSENTEE BALLOT BE SENT TO ME FOR: (mark only one)". [REDACTED] marked the box before the statement, "The election(s) on the following date(s):" and no election date was written on the following line. A person using red ink put an "X" in the box before the fourth statement: "For indefinitely-confined voters only: I certify that I am indefinitely confined because of age, illness, infirmity or disability and request absentee ballots be sent to me automatically until I am no longer confined, or I fail to return a ballot. Anyone who makes false statements in order to obtain an absentee ballot may be fined not more than \$1,000 or imprisoned not more than 6 months or both. Wis. Stat. sec. 12.13(3)(i), 12.60(1)(b)."

[REDACTED] signed on the line entitled "Agent Signature" and dated the form "3/16/20". It should be noted that the information above the "Agent Signature" line stated, "I certify that the application is made on request and by

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authorization of the named elector, who is unable to sign the application due to physical disability." On the line entitled "Voter Signature" the apparent signature of Shirley Westphal was written in black ink. The date after Shirley's signature was written by [REDACTED] as "3/16/20". [REDACTED] wrote the last four digits of Shirley's social security number on the form. The apparent signature of Shirley was on the "Voter Signature" line certifying, amongst other things, that "all statements on this form are true and correct" with the penalty for providing false information being a "fine or imprisonment under State and Federal laws" The "Assistant Signature" line was signed by [REDACTED]. It should be noted that the sentence below the word "Assistant" stated, "If someone assisted you by signing this form, they must complete this section."

The last part of the document was entitled "This Section for Official Use Only". The section is filled out in red ink and it contains the apparent signature of "Jill M. Firkus". The red ink was used to write the date of completion as "3/16/2020". Therefore, it appears that Deputy Clerk Firkus marked the box certifying that Shirley was indefinitely confined after Shirley signed the form, and Shirley certified the document under penalty of "fine or imprisonment under State and Federal laws".

Review of applicable law

I researched some of the law surrounding elections. I observed that it stated in Wis. Stat. sec. 6.84(1) "LEGISLATIVE POLICY. The legislature finds that voting is a constitutional right, the vigorous exercise of which should be strongly encouraged. In contrast, voting by absentee ballot is a privilege exercised wholly outside the traditional safeguards of the polling place. The legislature finds that the privilege of voting by absentee ballot must be carefully regulated to prevent the potential for fraud or abuse; to prevent overzealous solicitation of absent electors who may prefer not to participate in an election; to prevent undue influence on an absent elector to vote for or against a candidate or to cast a particular vote in a referendum; or other similar abuses."

I observed Wis. Stat. sec. 6.875 which is entitled, "Absentee voting in certain residential care facilities and retirement homes". Wis. Stat. sec. 6.875(2)(a) stated, in part, Absentee voting in person inside [retirement homes] shall be conducted by municipalities only in the manner prescribed in this section" and "At any [retirement home] where a municipality dispatches special voting deputies to conduct absentee voting in person under this section, the procedures prescribed in this section are the exclusive means of absentee voting in person inside that facility . . .".

I observed that in Wis. Stat. sec. 6.875(4)(a) it stated, in part, ". . . the municipal clerk . . . of each municipality . . . shall appoint at least 2 voting deputies for the municipality"; that the two voting deputies shall be

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dispatched to the retirement home "for the purpose of supervising absentee voting"; and that "The 2 deputies . . . shall be affiliated with different political parties " when available.

I observed that in Wis. Stat. sec. 6.875(4)(at) it stated, in part, that the clerk "shall give the absentee ballot to the special voting deputies who shall personally deliver the ballot to the elector . . .". I observed that in Wis. Stat. sec. 6.875(4)(b)(b) it stated, in part, "No individual who is employed or retained, or within the 2 years preceding appointment has been employed or retained, at a [retirement home] . . . may be appointed to serve as a deputy."

I observed that in Wis. Stat. sec. 6.875(5) it required that the special voting deputy take an oath. It further stated, in part, "the individual shall swear that he or she is qualified to act as a deputy . . . that he or she has read the statutes governing absentee voting, that he or she understands the proper absentee voting procedure, that he or she understands the penalties for noncompliance with the procedure under s. 12.13 [Voter Fraud], that his or her sacred obligation will be to fully and fairly implement the absentee voting law and seek to have the intent of the electors ascertained. In addition, the oath shall state that the individual realizes that any error in conducting the voting procedure may result in the invalidation of an elector's vote under s. 7.51(2)(e) and that the individual realizes that absentee voting is a privilege and not a constitutional right."

I observed that in Wis. Stat. sec. 6.875(6)(a) it required that municipal clerks post when the special deputies are going to be at the retirement homes to administer the absentee ballots. In Wis. Stat. sec. 6.875(6)(b), it is required that the municipal clerk provide the deputies with a sufficient number of ballots as it relates to the number of valid applications and it also requires the deputies to return to the clerk every ballot issued to them.

I observed that in Wis. Stat. sec. 6.875(6)(c)1. it stated, in part, "The deputies shall each witness the certification and may, upon request of the elector, assist the elector in marking the elector's ballot. The deputies shall not accept an absentee ballot submitted by an elector whose ballot was not issued to the elector by the deputies. All voting shall be conducted in the presence of the deputies. Upon request of the elector, a relative of the elector who is present in the room may assist the elector in marking the elector's ballot. No individual other than a deputy may witness the certification and no individual other than a deputy or relative of an elector may render voting assistance to the elector."

I observed that in Wis. Stat. sec. 6.875(6)(d) the deputy is required to place the ballot inside a sealed envelope, sign their name on the seal, have the elector sign the envelope, place the envelope in a ballot bag, and deliver the ballot bag to the clerk within 18 hours.

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I also reviewed the United States Constitution, specifically Article I, Section 4, paragraph 1, where it stated, "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators." (Emphasis added). It is also stated in the United States Constitution, specifically, Article II, Section 1, paragraph two, (concerning how the Electoral College will select the President of the United States), "Each State shall appoint, in such Manner as the Legislature thereof may direct . . ." (Emphasis added).

Request for additional information from the Village of Mount Pleasant

On Friday, December 11, 2020, I Emailed Clerk Kohlhagen and Deputy Clerk Frikus. In the Email, I documented my previous requests of a copy of Shirley's Application for Absentee Ballot (already received), a copy of the envelope that contained Shirley's absentee ballot, and a list of the witness(es) for the other ballots that were cast absentee from the Ridgewood Care Center. I also requested any documentation provided by the WEC to the Village of Mount Pleasant notifying the municipal clerks that the numerous requirements of Wis. Stat. sec. 6.875 need not be followed.

Review of additional information provided by the Village of Mount Pleasant

On Thursday, December 17, 2020, I received multiple Emails from Clerk Kohlhagen which contained the following:

A sample voting notice for the Ridgewood Care Center from April of 2020

(1) A letter dated March 12, 2020, from the WEC to Wisconsin Municipal Clerks (et al.) ordering municipalities to not use special voting deputies in the Spring Election and Presidential Preference Primary and the Special Election in the 7th Congressional District. The municipalities were ordered to mail the ballots to the facilities. The municipalities were authorized to relocate polling places. In the letter it is stated that the WEC would be providing future training material. The basis for the WEC's orders appeared to be where it is stated in the letter: "[Governor Evers Executive Order #72] designates the Department of Health Services as the lead agency in responding to the public health emergency and directs all state agencies to assist in the State's ongoing response to the emergency. In light of Executive Order #72 and directives to the Department of Health Services, the Wisconsin Elections Commission held a special Commission meeting concerning Special Voting Deputy voting in care facilities and the relocation of polling places located in care facilities for the upcoming [elections]." The letter is from WEC Administrator Meagan Wolfe.

(2) A letter dated September 25, 2020, from the WEC to Wisconsin Municipal Clerks (Et al.) from Administrator Meagan Wolfe and Assistant Administrator

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Richard Rydecki with the subject being: "Absentee Voting at Care Facilities Information Documents". In this letter, it is stated: "The Wisconsin Elections Commission determined on June 24, 2020 and reaffirmed the decision on September 16, 2020 that Special Voting Deputies (SVDs) will not be dispatched to nursing homes and facilities to administer voting for the remaining elections in 2020. Residents of facilities normally served by SVDs will instead be mailed absentee ballots for each remaining 2020 election. Many nursing home and care facility residents rely on assistance from others to vote. Because most nursing homes and care facilities are not allowing guests at this time, some voters may require assistance from care facility staff to vote. Facility administrators and staff are able to assist residents in filling out their ballots or certificate envelopes and assist in completing voter registration forms and absentee requests, witness ballots, or sign a special certificate envelope (EL-122sp) if necessary." It is then stated that the WEC created and attached two training documents.

(3) Scans of the Certification of Voter envelope that were signed by the voter and the witness for people who resided at the Ridgewood Care Center. These people included:

(a)

[REDACTED]

(b) According to the list provided by Deputy Clerk Firkus of registered voters at Ridgewood Care Center, the registered voters who did not vote included:

[REDACTED]

Search warrant for the Ridgewood Care Center

I drafted a Search Warrant to be served at the Ridgewood Care Center. The

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items that I was seeking to seize included: (1) Shirley's resident/patient file and (2) the contact information for the Power of Attorney, designated family member(s), and/or other responsible party for the above stated individuals who voted in the November 3, 2020, election. The Search Warrant was reviewed by District Attorney Patricia Hanson and authorized by Judge Wynne Laufenberg.

Execution of search warrant and interview of Executive Director Scott L. Myers

On Friday, December 18, 2020, at approximately 12:30 p.m., Inv. Andersen, Inv. Srnka, and I served the search warrant on the Ridgewood Care Center. We met with Executive Director Scott L. Myers [REDACTED] and interviewed him in his office. This interview and the following interview were recorded using Inv. Anderson's body Worn Camera. Please see that recording for exact details of the interviews. This report is a summary of the interviews.

I explained to Director Myers the nature of the investigation and the Search Warrant. I requested to be allowed to make copies of Shirley's complete file and to get the contact information for the family members or responsible parties for the people who voted in the November 3, 2020, election. Director Myers stated he would arrange to provide us with that information. Inv. Srnka was taken to a records room where the requested documents were copied.

I asked Director Myers to explain the process of how a resident would request an absentee ballot and then vote absentee. Director Myers stated I could speak with the Director of Recreational Therapy, [REDACTED], to get more information about the voting process. Director Myers gave a general statement that [REDACTED] would determine who was eligible to vote and who was interested in voting. Director Myers stated absentee ballots would be requested for those residents. Director Myers stated Director Heesch was in contact with the "election committee board" several times to make sure she had what she needed.

I informed Director Myers that Judy had sent a sworn affidavit to the WEC documenting her concerns about her mother, Shirely, voting in the November 3, 2020, election. I informed Director Myers that Judy had stated in her affidavit that she asked him how the staff determined who the resident wanted to vote for and he allegedly stated that the staff would ask how the resident voted in the past, and if they stated democratic, the staff would vote party lines on the ballot for the resident. Director Myers stated that statement was "not from me". Director Myers gave an example that if a resident stated they only vote republican and that is what they wished to do, the ballot would be marked as the resident wished. I paraphrased to Director Myers Judy's statement of: Well if the only thing my mother can remember is JFK, is the person assisting her going to vote democratic and the answer was "yes". Director Myers stated he was not familiar with anyone saying that and he stated the previous statement seemed "a bit simplistic". I confirmed with Director

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Myers that he was "Scott Myers" and I informed him that Judy stated in her sworn affidavit that the person making these statements was him. Director Myers stated "that's definitely not the case". I explained to Director Myers that Judy took the time to place his alleged statement in her sworn affidavit, and that if she is lying it is a crime. Director Myers responded, "I do not recall talking with that." Director Myers stated he did discuss some examples and he did give Judy information on how to file a complaint.

I informed Director Myers that Judy was alleging that, given her mother's vision problem and broken glasses, how they could know the person assisting a resident was marking the correct vote and he stated he "hoped" they were honest. I informed Director Myers that Judy even put the statement in quotation marks. Director Myers stated he was trying to remember the conversation, but he could recall that Judy was "very upset". Director Myers stated there "were several things we discussed" and he "tried to reassure her as far as what our understanding was from our guidance and I spoke to the guidance and what we are charged with is to assist." Director Myers stated his statement was not quite like what Judy wrote. Director Myers stated, he stated, "Well I would hope that people were honest with what we are doing and that we are not doing something that we are not supposed to do." Director Myers stated, "We are charged with something we take very seriously." Director Myers stated if someone has the "desire" to vote and the "ability" to do so, then they would be given the opportunity to vote.

I explained to Director Myers that I would like to talk about a resident having the "desire" to vote, because Judy's position was that Shirley would not have had the ability, desire, or interest to vote. I explained that Judy probably knew her mother better than anyone, and Judy had concerns because Shirley had such cognitive difficulties that Shirley could not remember what she ate for lunch; she did not recognize her own daughter; and she was seeing airplanes and helicopters outside of her window that were not there. I told Director Myers that it was difficult to understand how someone like Shirley would express a desire in obtaining an absentee ballot. I explained to Director Myers that Judy was stating that Shirley did not keep up with current events; she did not care that her glasses were broken because she did not want to read anymore; and she spent most of her time gazing out the window. I explained to Director Myers that the last time Shirley voted was in 2016. I stated to Director Myers that for four years Shirley expressed no desire to vote and she was suffering from severe cognitive limitations, but Director Myers was now representing that Shirley articulated a desire to vote and who to vote for. Director Myers stated he could not attest to what Shirley said because he was not there. I explained to Director Myers that he was representing that the procedures of the facility are that Shirley would have had to express a desire to vote. I informed Director Myers that we do know that Shirley signed the request for an absentee ballot and then she voted. I stated to Director Myers that, to many people, this would seem troublesome. Director Myers responded, "Well, I can understand that".

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totally up to them". Director [REDACTED] stated if the resident can only point, her staff will file in the dot. Director [REDACTED] stated once the ballot is out on the floor with her staff, she does not have much to do with the voting. Director [REDACTED] stated her staff will bring the ballot and the envelope back to her and "I seal the envelope, stamp it, and send it on its way."

I informed Director [REDACTED] that Judy's concerns about Shirley casting a vote were because Shirley had such cognitive difficulties that Shirley would often times not recognize Judy; that Shirley would often times not remember what she had for lunch that day; that when Shirley's eye glasses broke prior to March of 2020, she did not have any interest in having the glasses fixed because there was nothing she wanted to read; and that Shirley had no interest in the news, watching television, or keeping up on current events. I asked Director [REDACTED] to compare and contrast the description of Shirley I just described to her with Director [REDACTED]'s position that Shirley informed staff that she wanted to vote and that she knew who she wanted to vote for. Director [REDACTED] interjected, "Or we left it blank."

Director [REDACTED] stated Shirley wanted to vote. I asked Director [REDACTED] how Shirley communicated to her that she wanted to vote. Director [REDACTED] stated Shirley did not communicate directly to her, but she communicated to the staff. I showed Director [REDACTED] Shirley's "Wisconsin Application for Absentee Ballot" which contained both of their signatures. Director [REDACTED] stated she filled out the entire form and her staff "does all the footwork". Director [REDACTED] stated her staff takes the form to the resident and has the resident sign the form. Director [REDACTED] informed me that after the list was made, she did not ask the resident if they want to vote or assist them in voting. I asked Director [REDACTED] who asked Shirley if she wanted to vote, and Director [REDACTED] stated it would have been Activities Aides [REDACTED], [REDACTED], or "[REDACTED]". I explained to Director [REDACTED] that she signed on the line entitled "ASSISTANT DECLARATION/CERTIFICATION" and on the line entitled "Assistant". Director [REDACTED] stated that she filed out the paperwork and signed everything so her staff did not have to do that extra work.

Director [REDACTED] reiterated that it does not say anywhere in Shirley's paperwork that she cannot vote. I agreed, but added that Shirley had to have the desire to vote. I stated that Director [REDACTED] signed the form stating Shirley did express a desire to vote, but Director [REDACTED] did not know if Shirley expressed that desire. Director [REDACTED] stated that she personally did not know that information, but she could ask her staff.

I asked Director [REDACTED] about the last four digits of Shirley's social security number having been written on the form, and she agreed she wrote the digits on the form. Director [REDACTED] stated she wrote the last four digits of the social security number on all of the forms. Director [REDACTED] explained, "because, of course, a lot of people are not going to remember that". Director [REDACTED]

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confirmed that she wrote all of the writing in the blue ink and that was her signature on the form. Director [REDACTED] confirmed that she checked the box on the form that Shirley was requesting an absentee ballot for the following elections and no date was filed in. Director [REDACTED] agreed neither Shirley nor herself checked the box certifying that Shirley was indefinitely confined, which was done in red ink. Director [REDACTED] agreed that the red ink was most likely written by Deputy Firkus at the Mount Pleasant Village Hall. I summarized that Shirley did not actually declare, when she signed the form, that she was indefinitely confined and that falsely making that declaration is a crime punishable by up to \$1,000, 6 months in jail, or both. Director [REDACTED] responded, "I think there is a lot more to it." and I invited her to explain it to me.

Director [REDACTED] stated Shirley had the right to vote and I agreed. I added to that statement that Shirley had to express her desire to vote and Director [REDACTED] signed the form representing that Shirley expressed the desire to vote. I stated to Director [REDACTED] that she did not actually know if Shirley expressed the desire to vote and Director [REDACTED] did not know who allegedly communicated with Shirley. I further explained to Director [REDACTED] that Shirley had not voted since 2016, which meant Shirley did not want to vote in 2017, 2018, or 2019. I told Director [REDACTED] that it appeared that her position was: when Shirley moved into the Ridgewood Care Center, while she was experiencing significant cognitive issues, was not interest in the news or current events, and was two weeks away from her death, she expressed a desire to vote and did in fact vote -- but we do not know who she communicated this desire to or what was said. Director [REDACTED] stated, "I go off what my staff says" and "they said, she can have moments of clarity."

At this point, Director [REDACTED] left the room to get Aid [REDACTED] and Aid [REDACTED] to join the meeting. I asked Aid [REDACTED] how Shirley expressed to her that Shirley wanted to vote absentee. Aid [REDACTED] stated she did almost 500 hundred voting ballots and she did not remember them all specifically. Aid [REDACTED] stated that if the resident tells her that they are a democrat or republican, she will read off all of the choices, tell them which person is a democrat or republican, and mark their response. Aid [REDACTED] stated that the residents will say things to her like: "where is my ballot" or "I didn't get anything." Aid [REDACTED] stated they will then get the resident registered to vote and assist the resident in voting.

I explained to Aid [REDACTED] that the information I had on Shirley is that she had a significant cognitive decline; she had no glasses and was uninterested in reading; and she had no interest in the news or current events. I informed Aid [REDACTED] that based upon Shirley's condition, her daughter, Judy, found it highly unlikely that Shirley would express an interest in getting an absentee ballot. Aid [REDACTED] stated she would not have done a voting ballot if Shirley had no interest in voting. I asked Aid [REDACTED] if she had a specific recollection as to her conversation with Shirley, and Aid [REDACTED] stated she

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did not because she assisted so many people. I asked Aid [REDACTED] if she had a specific recollection about when she assisted Shirley in voting, and Aid [REDACTED] could not remember the exact conversation because she would do about "50 ballots a day".

Aid [REDACTED] explained to me that if a resident wanted to vote, they would get registered (if they were not already), and an absentee ballot would be sent to the facility. Aid [REDACTED] stated that once the ballot was received, she would go to the resident's room and ask if they were still interested in voting. If the resident said yes, Aid [REDACTED] would assist the resident in voting. If the resident did not want to vote at that moment, Aid [REDACTED] stated she would come back at a later time to see if they then wanted to vote. Aid [REDACTED] stated after going back to the resident, if they still did not want to vote at all, she would return the ballot to Director [REDACTED], who would send the ballot back to the Mount Pleasant Village Hall.

I asked Aid [REDACTED] how the residents would express who they wanted to vote for, and she stated her process was pretty "uniform". Aid [REDACTED] stated she would come into the room and say "hi" and ask the resident if they vote democrat or republican. Aid [REDACTED] stated she would read off the list of the candidates. Aid [REDACTED] stated she would tell the resident which candidate was a democrat and which was a republican. Aid [REDACTED] stated the resident would make their selection and she would mark the ballot. Aid [REDACTED] stated even if a resident stated they wanted to vote democrat or republican across the ballot, she would still ask the resident about their choice for every race.

I questioned Aid [REDACTED] about the Application for Absentee Ballot that was signed by Shirley. I asked Aid [REDACTED] that would it not have been move proper for her to sign the form as the witness to Shirley requesting an absentee ballot as opposed to Director [REDACTED] signing the form. Aid [REDACTED] stated when she would execute the form with a resident, she would sign the form as the witness. Director [REDACTED] interjected and stated she would fill out the form to assist her staff. I informed Aid [REDACTED] and Director [REDACTED] that their statements were inconsistent with each other.

The two women talked it out and then agreed that Aid [REDACTED] did some of the Application for Absentee Ballot forms and Aid [REDACTED] did most of the voting ballots with the ballot envelopes. However, Aid [REDACTED] still maintained that if she executed the Application for Absentee Ballot form, she would have signed as the witness. I then asked Aid [REDACTED] if she executed the Application for Absentee Ballot with Shirley, and Aid [REDACTED] stated "no" because Director [REDACTED] signed the form. Based upon the statements of Director [REDACTED] and Aid [REDACTED], I am unable to determine who executed the form with Shirley. I informed Director [REDACTED] that her signing the form as the witness prior to the form being executed and with her having no contact with the actual voter was problematic.

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Director Myers explained that the staff would get "guidance" of the residents "capabilities" from social services. I asked if this information would be documented in Shirley's file, and he stated that he had not reviewed Shirley's file. Director Myers directed me to contact the Director of Social Services, "Erin Luna-Blanco".

At this point,, Director Myers took Inv. Srnka to the records department, and Inv. Andersen and I waited to see if Director Heesch would be available for an interview. Director Meyrs came back into the room and worked at his desk while we waited for Director [REDACTED]. During our conversation, I asked Director Myers if the Ridgewood Care Center had any procedure to notify the municipality or voting clerk when someone dies at the facility. Director Myers stated that they notify the "coroner" and the family, but they do not notify the municipality. I informed Myers that one of the issues with Shirley's case, is that she voted on September 22, 2020, but the election was not until November 3, 2020 - and her vote was still cast and counted. I suggested that someone at Ridgewood may want to look into this problem so that it does not happen in the future.

Execution of search warrant and interview of Director of Recreational Therapy [REDACTED], Activities Aid [REDACTED] and Activities Aid [REDACTED]

At approximately 1:45 p.m., Inv. Andersen and I began to interview Director Heesch. I began to explain that I was investigating some concerns about the absentee voting at the facility. I told Director [REDACTED] that I was contacted by a resident's daughter, and Director [REDACTED] interjected and stated, "A [REDACTED] [REDACTED]". I told Director [REDACTED] that A [REDACTED] was not the person who made the complaint that I was assigned to investigate. I told Director [REDACTED] that the complaint was from Judy Westphal-Mitchell and it was about her mother, Shirley Westphal.

Director [REDACTED] stated that she started working at Ridgewood Care Center March 2, 2020, right when the COVID-19 restrictions were going into affect. I asked Director [REDACTED] what her opinions were of Shirley's cognitive limitations. Director [REDACTED] stated that she did not know everyone at the facility. Director [REDACTED] stated that she instead wanted to talk about the "process that we take". Director [REDACTED] stated that she generates a list of residents. Director [REDACTED] stated that "we go around" and ask everyone on that list if they want to vote. Director [REDACTED] stated in Shirley's case, she could still vote because it was not specifically stated in her file that she could not vote. Director [REDACTED] stated that she had her "ladies, if they want to vote, I register them". Director [REDACTED] stated once the ballot comes to the facility, her staff will take the ballot to the resident's room. Director [REDACTED] stated if the resident cannot answer the question or they do not want to vote, "that's

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I read to Director [REDACTED], Aid [REDACTED], and Aid [REDACTED], the quotations Judy wrote in her affidavit that she was alleging was stated by Director Myers about how the voting was conducted. Aid [REDACTED] and Aid [REDACTED] stated that description was not the way they conducted the vote. I asked if they believed there were other residents at the facility that had similar cognitive issues as did Shirley. Aid [REDACTED] stated that if some people do not respond, they would return the blank ballot to Director [REDACTED]. I confirmed with everyone in the room that they were stating that the procedure would be if the resident voted or did not vote, they would return the ballot to Director [REDACTED], Director [REDACTED] would seal up the envelop, and Director [REDACTED] would then send the envelop to the Mount Pleasant Village Hall. Director [REDACTED] Aid [REDACTED] and Aid [REDACTED] all agreed that this was the procedure they followed.

I informed them that this procedure was also problematic. I informed Director [REDACTED], Aid [REDACTED], and Aid [REDACTED] that after the ballot was executed, the ballot should be placed in the envelop, the envelop should be sealed, the voter should sign the form, and the witness should sign the form - in that order. This procedure is clearly described on the Absentee Ballot Certification Envelope in five clearly marked steps that begin with the instructions "Voter: Please complete steps 1 through 5, in the presence of your witness." Aid [REDACTED] admitted that she would collect the ballots that were either completed or blank and she would not seal the envelops.

Inv. Andersen asked how it was handled if a resident did not know the difference between a Democrat and a Republican. Inv. Andersen asked if they would explain to the residents what each candidate stood for on various issues. Inv. Andersen asked if there was a sheet that the Aid's would read to explain the issues in the election. Aid [REDACTED] stated there was no sheet, but she would ask the resident if they wanted her to set up a news channel on their television and then come back the next day. Aid [REDACTED] stated that the news, at that time, was constantly covering the election. Aid [REDACTED] stated she would leave the news channel on for a day or two and then she would come back to the resident. Aid [REDACTED] stated she would ask the resident, "Hey, did you ever get a chance to research that? and if they said 'yeah, this is what I want' or 'no, I don't really feel like voting' however way. If they didn't feel like voting. If they didn't see that there was an elector that was fit for it, I wouldn't have them vote. But if they looked at it and said 'yes, this is what I want', then that is what I would do." I asked Aid [REDACTED] if she would leave the ballot with the resident while they were deciding if they wanted to vote, and she stated "no" and that she would keep the ballots in her desk until she returned.

I asked Director [REDACTED], Aid [REDACTED], and Aid [REDACTED] if they received any training information, pamphlets, or videos on how to administer the vote at the facility. All three ladies shook their heads in the negative and stated they received no training on this issue. Director [REDACTED] stated, "I kept calling the village, but we can't get through there. I leave messages, please call me,

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please call me, please!" Aid [REDACTED] stated all that she was told was what Director [REDACTED] told her, and Director [REDACTED] received that information from Director Myer.

I provided Director [REDACTED], Aid [REDACTED], and Aid [REDACTED] with my business card, and I encouraged them to contact me if they had any questions, concerns, or additional information.

Inv. Srnka, Inv. Anderson, and I left the Ridgewood Care Center.

Telephone conversation with Aid [REDACTED]

On Monday, December 21, 2020, at approximately 2:40 p.m., I made telephone contact with Aid [REDACTED]. I asked Aid [REDACTED] where she stored the ballots and envelopes when she was giving the residents more time to decide if they wanted to vote. Aid [REDACTED] stated she placed the ballots and envelopes inside the bottom drawer on the left side of her desk. Aid [REDACTED] stated she placed the ballots and envelopes in the back of the drawer. Aid [REDACTED] stated there is no lock on the drawer. Aid [REDACTED] stated her desk is in the Life Enrichment Room. Aid [REDACTED] stated the room is "locked at all times", but the following people have keys to the room: Director Myer, Director [REDACTED], Aid [REDACTED], Aid [REDACTED], and herself.

I reminded Aid [REDACTED] about her statement that if the resident did not want to vote at a specific time, she would turn on a news channel and leave the news on the television for a day or two. Aid [REDACTED] stated she remembered the statement. I asked Aid [REDACTED] what channel she would put on for the resident, and she informed me that the residents, at times, have a list of preferred channels. Aid [REDACTED] stated if the resident did not have a list, she would normally put "NBC" on the television.

Meeting with Clerk Stephanie Kohlhagen at Mount Pleasant Village Hall

On Wednesday, December 23, 2020, at approximately 9:30 a.m., Inv. Andersen and I made contact with Clerk Kohlhagen at the Mount Pleasant Village Hall. Clerk Kohlhagen provided me with copies of the Application for Absentee Ballot from the other registered voters at Ridgewood Care Center. Clerk Kohlhagen stated there were three or four names on the list that were older and would require more effort to locate. I informed Clerk Kohlhagen that she could hold off on looking for those additional applications. I added the information to the spreadsheet I had already created. It should be noted that it appeared that there were eight occasions (including Shirley Westphal) where it appeared that an employee of the Village of Mount Pleasant checked the box, after the voter signed the document, certifying, under penalty of law, that the voter was indefinitely confined.

I questioned Clerk Kohlhagen about Judy's Application for Absentee Ballot. I

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informed Clerk Kohlhagen that it appeared that Deputy Clerk Firkus checked the box certifying, under penalty of law, that Judy was indefinitely confined. I stated that this certification would have occurred after Judy signed the form and it was delivered to the Village of Mount Pleasant. I added that the original document appeared to be incomplete because the only box that was checked was the request for an absentee ballot on "The election(s) on the following date(s):" with no dates listed. Clerk Kohlhagen admitted that the correct procedure would be to have the voter check the "indefinitely confined" box, but the clerks just "corrected" the error.

I asked Clerk Kohlhagen if the WEC provided any training information for the municipalities and/or the employees at the retirement homes. Clerk Kohlhagen stated she did not believe the WEC provided any training material. Clerk Kohlhagen stated the WEC may have put out a Webinar. Clerk Kohlhagen stated the Ridgewood Care Center would have previously been provided with the booklet entitled "Absentee Voting in Residential Care Facilities and Retirement Homes" dated October of 2018.

Clerk Kohlhagen stated the rate of new people registering to vote and the number of people voting at the Ridgewood Care Center was unusually high in the November 2020 election. Clerk Kohlhagen stated for most previous elections at the Ridgewood Care Center, including presidential elections, the number of people voting would be approximately ten. Clerk Kohlhagen stated the number of people registering as a new request for an absentee ballot would be around zero to two people. Clerk Kohlhagen stated that she would usually be informed that a few people were no longer at the facility.

Clerk Kohlhagen stated that prior to the November 2020 election, Director [REDACTED] would call her and tell her that she had "80 people" who were newly requesting absentee ballots. Clerk Kohlhagen stated she would question Director [REDACTED] on why the number was so high, and Clerk Kohlhagen would only state that this was the number of people she had that wanted an absentee ballot. Clerk Kohlhagen stated that the other retirement homes in the Village of Mount Pleasant did not show any unusual increases in applications for absentee ballots nor casting of absentee ballots - she stated the other facilities averaged around zero to two applications for absentee ballots and approximately ten absentee ballots cast per facility. According to the documentation from Ridgewood Care Center, in the Spring election of 2020, nine new people submitted an application for an absentee ballot, and, for the Fall election, 27 new people submitted an application for an absentee ballot. Furthermore, 43 residents of the Ridgewood Care Facility voted in the Fall election.

Review of Shirley Westphal's resident records at the Ridgewood Care Center

On Monday, January 4, 2021, I reviewed the documents that were copied from Shirley Westphal's resident file from the Ridgewood Care Center.

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In a document dated September 23, 2020, Nurse Practitioner [REDACTED] stated she was writing a report in accordance with the federally mandated visit she performed for acute and chronic medical conditions. NP [REDACTED] summarized Shirley's history as follows:

She has a history of disability for years. [REDACTED]

In a document entitled "Hospital Admission History and Physical", which is dated December 28, 2017, Physician [REDACTED] DO summarizes Shirley's admission to the hospital as follows:

92-year-old white female [REDACTED]

Patient's daughter was contacted who is her healthcare power attorney. She was updated [REDACTED]

Shirley was admitted to the Ridgewood Care Center on June 13, 2019. The following information is from passages contained within the Ridgewood Care Center Progress Notes:

(1) Effective date: 12/17/2019 [REDACTED]

(2) Effective date: 12/26/2019 [REDACTED]

(3) Effective date: 3/26/2020 [REDACTED]

(4) Effective date: 6/29/2020 [REDACTED]

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(5) Effective date: 8/16/2020 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(6) Effective Date: 9/29/2020 [REDACTED]

[REDACTED]

On October 2, 2020, Shirley was transferred [REDACTED] for hospice care. Shirley died on October 9, 2020.

Explanation of the Brief Interview for Mental Status (BIMS) Test

I researched the BIMS test on the website "MDApp". I learned that the general purpose of the BIMS test is to evaluate cognitive impairment [REDACTED]. The BIMS test is scored from 0 to 15 points. The BIMS test has three parts.

Part One is the repetition of three words. The questioner is to inform the resident that the questioner is going to say three words and the resident needs to remember the words and repeat them back when requested to do so. The questioner then states the words: sock, blue, and bed. The questioner then asks the resident to reproduce the three words and the results are scored as follows:

- (1) No word repeated (0 points)
- (2) One word repeated (1 point)
- (3) Two words repeated (2 points)
- (4) All three words repeated (3 points)

Part Two is temporal orientation. The following questions are to be asked of the resident:

(1) Ask the resident what year it is right now and score their answer as follows:

- a. Missed by more than five years or no answer (0 points)
- b. Missed by two to five years (1 point)
- c. Missed by one year (2 points)
- d. Correct (3 points)

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(2) Ask the resident what month we are in at the moment and score their answer as follows:

- a. Missed by more than one month or no answer (0 points)
- b. Missed by six days to one month (1 point)
- c. Accurate within five days (2 points)

(3) Ask the resident what day of the week it is today and score their answer as follows:

- a. Incorrect or no answer (0 points)
- b. Correct (1 point)

(4) Part Three is recall. The questioner is to tell the resident they were going to go back to the earlier question and the questioner is to ask the resident to say the words they were asked to repeat earlier. If the resident is unable to remember a word, the questioner is to provide a cue to help the resident remember the word. The resident's responses are graded as follows:

- a. Able to recall "sock"
 - 1. No, could not recall (0 points)
 - 2. Yes, after cueing "something to wear" (1 point)
 - 3. yes, no cue required (2 points)
- b. Able to recall "blue"
 - 1. No, could not recall (0 points)
 - 2. Yes, after cuing "color" (1 point)
 - 3. Yes, no cue required (2 points)
- c. Able to recall "bed"
 - 1. No, could not recall (0 points)
 - 2. Yes, after cuing "a piece of furniture" (1 point)
 - 3. Yes, no cue required (2 points)

The results of the BIMS are interpreted as follows:

- (1) 0-7: Severe cognitive impact
- (2) 8-12: Moderate impairment
- (3) 13-15: Intact cognitive response

Investigation to continue.

Respectfully submitted:

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