



OFFICE OF THE RAMSEY COUNTY ATTORNEY  
JOHN J. CHOI, COUNTY ATTORNEY

TO: John Choi, Ramsey County Attorney

FROM: John Kelly, First Assistant Ramsey County Attorney *JK*  
Hao Nguyen, Trial Division Director *H.N.*

DATE: May 13, 2022

RE: *In the Matter of the Death of Noah Douglas Kelley*  
RCAO File Nos. 62-0451923 (Officer John Thomas)  
62-0451925 (Sergeant Michael Hanson)  
BCA File No. 2021-872

**I. Introduction**

On the evening of November 28, 2021, Officer John Thomas of the New Brighton Police Department (“NBPD”), and Sergeant Michael Hanson of the Mounds View Police Department (“MVPD”) used deadly force during an incident in Mounds View, Minnesota that resulted in the death of Noah Douglas Kelley. The Minnesota Bureau of Criminal Apprehension (“BCA”) conducted the investigation of the circumstances regarding the death of Mr. Kelley and presented its investigative file to the Ramsey County Attorney’s Office (“RCAO”). The RCAO reviewed the BCA’s investigative file to determine the lawfulness of the deadly force used by Officer Thomas and Sergeant Hanson against Mr. Kelley.

This Memorandum contains a description of the relevant evidence gathered by the BCA during its investigation of the shooting of Mr. Kelley. As set forth below, the evidence gathered by the BCA includes statements given by law enforcement officers and other witnesses; physical, DNA and ballistics evidence; and audio and video recordings taken from private business security cameras and the body worn cameras (“BWCs”) worn by the officers involved in the incident, including Officer Thomas and Sergeant Hanson.

**TRIAL DIVISION**

Based on our review of the evidence presented to us by the BCA, and for the reasons explained in this Memorandum, it is our opinion that the use of deadly force by Officer Thomas and Sergeant Hanson in this incident was justified by Minn. Stat. § 609.066, subd. 2(1) and (2). Accordingly, we recommend that no criminal charges be brought against those officers related to this incident.

## **II. Case Summary**

### **A. Summary of Facts**

Mr. Kelley lived with his fiancé D.T., and their infant child, in an apartment located at 2300 County Road I, in Mounds View. On the evening of November 28, 2021, after a day of heavy drinking and marijuana use in their apartment, Mr. Kelly began to argue with D.T. As the argument became more intense, D.T. told Mr. Kelley that she and their baby were going to leave until he sobered up. Noah became angry and told D.T. that he would steal her vehicle. In response to this she hid her keys from him. Not having access to the car, Mr. Kelley left the apartment on foot, walking towards the Mounds View Square, a strip mall that is located about a ten-minute walk from their apartment.

At about that same time, M.P. and his family were getting groceries at Aldi, a grocery store located in the strip mall. M.P. had just let his wife and one of their children out of the vehicle to shop, while he waited in the vehicle with their 3-year-old son who was asleep in a car seat located at the back of the vehicle. While M.P. waited for them to finish shopping, Mr. Kelley walked up to M.P.'s vehicle and knocked on the window. M.P. did not want to open the window but did so when Mr. Kelley drew a handgun. M.P. unlocked the door and Mr. Kelley got into the front passenger seat, cocked his gun, and pointed it at M.P. M.P. offered to let Mr. Kelley take the vehicle but asked if he could get his toddler out of the back seat first. It was at this point that Mr. Kelley turned around, faced the back seat and pointed the gun at M.P.'s son. M.P. asked Mr. Kelley to lower his weapon.

Mr. Kelley then demanded M.P. drive him to a liquor store where M.P. would then have to buy him alcohol. M.P. drove him to Merwin Liquors which was located just across the parking lot from Aldi. Once they arrived at the liquor store, Mr. Kelley got out of M.P.'s vehicle, and shot the front glass entrance door to the liquor store. Mr. Kelley then pointed a gun at a liquor store employee. M.P. took the opportunity to flee back to Aldi to get his wife and other child.

At approximately 6:15 p.m., R.R. an employee at Merwin Liquors, had allowed two other employees to end their shift and leave work early, while he stayed behind to shut the store down by himself. While counting the day's cash receipts, R.R. heard two loud gunshot noises coming from the front of the business. R.R. went outside and saw Mr. Kelley jump out of a vehicle, Mr. Kelley was armed with a gun and aimed it directly towards him as he approached. R.R. said Mr. Kelley wanted liquor and was "ranting and raving" and described him as being "just un lucid." R.R. said he told Mr. Kelley that "I got nothing for you."

Mr. Kelley then forced R.R. to walk back into the liquor store. When the two men entered the area near the store's vestibule, R.R. attempted to wrestle the gun away from Mr. Kelley. Following an ensuing struggle, Mr. Kelley put the gun up to R.R.'s head and pulled the trigger twice, trying to kill him, but the gun didn't go off. R.R. said Mr. Kelley "then went on a tirade" and began running around the store breaking bottles of alcohol. R.R. took the opportunity to call 911 for help and exited the building. R.R. was told that officers were already on scene located outside in the parking lot.

At approximately 7:10 p.m. Officers John Thomas, Ian Craig, Alex Aase, and Sergeant Michael Hanson arrived on scene to Merwin Liquors. The officers encountered R.R. in the parking lot and learned from him that Mr. Kelley may still be inside the liquor store and was armed with a handgun. The officers also learned that the back door to the store was propped open, so they were not sure if anyone was still inside the store or not.

The four officers approached the entrances to the liquor store. For tactical reasons, the officers decided to enter the dimly lit store in a vertical line. Officer Craig, who was carrying a ballistic shield, was the first officer in the line. He was followed by Officer Aase. Sergeant Hanson followed Officer Aase, while Officer Thomas assumed the fourth and final spot behind Sergeant Hanson. All four officers were armed and had their weapons drawn.

As the officers approached the front vestibule to the business, the officers made a loud, clear announcement of "Mound's View Police Department, if you're in the store announce yourself now!" The announcement was repeated. No one from inside the store acknowledged the commands or announcements from the four officers.

As the officers entered the business, they saw Mr. Kelley walking towards them with a handgun drawn. The officers gave loud commands of "police drop the gun, drop the gun, drop the gun, drop the gun!" Mr. Kelley was holding the gun with both hands in a

manner resembling a shooting position, while advancing towards the officers. Believing that Mr. Kelley was about to use deadly force against them, and their partners, Sergeant Hanson and Officer Thomas fired their weapons at Mr. Kelley, striking him in the left side of his neck and his left wrist, causing him to fall to the floor. The officers quickly approached Mr. Kelley and kicked a black .380 semiautomatic Ruger handgun away from his left hand, and then immediately began to render medical aid to Mr. Kelley. Paramedics arrived and assumed rendering medical assistance to Mr. Kelley, before transporting him to Hennepin County Medical Center where he was declared dead upon arrival.

On January 10, 2022, the Hennepin County Medical Examiner's Office found that Mr. Kelley's death was caused by the two gunshot wounds.

### **III. Evidence**

#### **A. Interviews of Lay Witnesses and Written Statements of Police Witnesses**

##### **1. Interview of D.T.**

D.T. told investigators that on November 28, 2021, Mr. Kelley was drunk and had been verbally abusive towards her. The two of them got into an argument. D.T. told Mr. Kelley she was going to leave and take the baby with her for the night and would return the next day when he was sober. They argued over the car keys, she didn't want Mr. Kelley to drive. Mr. Kelley left the house on foot and walking towards the strip mall. She told investigators that Mr. Kelley owns a handgun, he purchased the gun for protection and carries it with him often.

Shortly after leaving, D.T. got a call from Mr. Kelley, who told her that if she didn't come to the liquor store to pick him up, he would "set off a gun shot." She told him she would not come pick him up. After telling him no, she heard a gunshot and hung up the phone. She then packed her bags and drove away from the house. When she drove by the liquor store, she saw squad cars in the liquor store parking lot. She drove into the parking lot and saw officers entering the business and heard gunshots go off.

## 2. Interview of M.P.

M.P. told investigators that he and his family were driving home from Minneapolis when they decided to stop at Aldi to buy some groceries. Once they arrived at the store, M.P.'s wife and their four-year old child exited the SUV and went into the store, while M.P. waited in the vehicle with their three-year old son who was sleeping in a rear car seat.

M.P. said that while he was waiting, a man, who was subsequently identified as Mr. Kelley, approached the SUV and banged on the window of the front passenger side door. The man had a gun and demanded to be let inside the vehicle. M.P. said he didn't want to let the man in but did so because the man was armed. Once inside, the man cocked his gun and pointed it at M.P. M.P. told the man that he would give him anything he wanted, money and the car but begged the man to let him get his 3-year-old son out the back seat. The man then turned and pointed the gun at M.P.'s three-year-old son and demanded that M.P. drive him across the parking lot to the liquor store. Once at the liquor store, the man jumped out of M.P.'s SUV and pointed the gun at a man standing outside the liquor store, who was subsequently identified as R.R. M.P. then fled from the area in the SUV with his son.

## 3. Interview of R.R.

R.R. told investigators on the night of November 28, 2021, that he was responsible for closing the Merwin Liquors store down for the night. At about 6:15 p.m., R.R. allowed the only two other employees working with him to end their shifts. While counting receipts from a cash register, R.R. said he heard two loud gunshots coming from the front door of the business. He went to the front door and saw the door had been shot through. He saw a white male jump out of a vehicle. The male pointed a gun at him and forced him back into the business. R.R. said Mr. Kelley wanted liquor and was "ranting and raving" and described him as being "just unclucid." R.R. said he told Mr. Kelley that "I got nothing for you."

As R.R. and the male entered the entrance area of the store, R.R. attempted to wrestle the gun away from the male. The male then put the gun to R.R.'s head and pulled the trigger twice, but the gun didn't go off. R.R. said Mr. Kelley "then went on a tirade" and began running around the store breaking bottles of alcohol. R.R. then called 911 for help and exited the building, where he was temporarily detained and

questioned by the officers. R.R. told the officers that the male had a gun and that he was still inside.

4. Written Statement of Officer John Thomas

On November 28, 2021, at approximately 7:06 p.m. Officer Thomas wrote that he arrived at Merwin Liquors to assist Mounds View police officers on a reported robbery call. When he arrived, he parked next to a parked Mounds View Police squad car. He saw that officers already had one person detained. He was told by Officer Aase there was still one male left inside the business and that male was armed with a handgun. Dispatch then informed officers that the male inside had been involved with an armed carjacking. Officer Thomas wrote that he obtained his department issued rifle.

Officer Thomas wrote that he and three other officers approached the front of the store. He reached the front of the store first and then opened the door for the three others to enter. He heard Officer Aase give loud verbal commands to the suspect inside that they were police officers and that the suspect needed to make himself known. The announcement was made several times without a reply from the suspect.

Officer Thomas wrote that Officer Craig then went inside the dimly lit store. When he entered, he scanned the northside of the store, he then heard an officer yell "oh shit," he turned his attention to the west side of the store and saw that a male suspect was taking a position of cover. An officer placed a flashlight on the suspect, the suspect then emerged from the front counter. Sergeant Thomas then heard an officer say, "gun gun gun" He then saw a white male holding a handgun with two hands. The male was pointing the gun at Sergeant Hanson. The male was taking aim and focused on Sergeant Hanson, the male's gun also had a laser guided sight equipped on it. Officer Thomas stated at this moment he was in fear of immediate death or great bodily harm to himself and Sergeant Hanson as well as the other officers on scene. He heard a gunshot and saw a bottle explode. He immediately fired one round from his rifle at the suspect. The male was still standing with the gun drawn at officers. Officer Thomas said he fired a second round and the suspect fell to the ground.

5. Written Statement of Sergeant Michael Hanson

On 11/28/2021 at about 6:54 p.m., Sergeant Michael Hanson wrote that he and Officer Aase were dispatched to Mounds View Square, which is a strip mall located at 2565 County Road I. The dispatcher informed officers that the 911 caller stated two shots had been fired.

According to Sergeant Hanson's written statement, while on scene dispatch updated officers that a complainant called and stated the suspect had taken her husband at gun point from Aldi, had her husband drive the suspect to Merwin Liquors. Dispatch informed officers that the husband was back with his wife. Officers were given a description of the suspect as white, male, about twenty-five years old. Sergeant Hanson spoke to the driver who was taken at gun point. The driver told him that the suspect had pointed a gun at him and pointed a gun at his son who was in the back seat. The driver told Sergeant Hanson that he was made to drive the suspect to the Merwin Liquors store.

Given this information he went to Merwin Liquors store, there he encountered a male exiting the store. This male was later determined to be an employee. Other officers arrived on scene to assist. The employee told officers the suspect was inside and had a gun. He along with Officer Ian Craig, Officer Thomas, and Officer Alex Aase decided to approach the store to clear it. Officer Craig was the first inside and equipped with a ballistic shield, followed by Officer Alex Aase. He was behind Officer Alex Aase while Sergeant Thomas held the rear. He was armed with his department issued handgun. The inside of the store was dimly lit. While officers entered the vestibule area of the store, he heard Officer Alex Aase announce, "Mounds View Police if anyone is in here announce yourself now." Officer Alex Aase made the announcement twice. Officers proceeded into the store, he was looking at the north part of the store when he heard an officer yell "oh shit," he turned and looked in the officer's direction.

He saw Officers Ian Craig and Alex Aase quickly move to their left out of the path of danger. He turned his attention toward the checkout lane and saw the suspect. The suspect had both arms fully extended in an outward direction facing towards he and other officers. The suspect was gripping a dark colored handgun. It was at this point that he decided to raise his department issued Glock handgun and pointed the gun at the suspect as all officers at that moment were in the line of the suspect's fire. He feared that if he did not act at that very moment, his life, Officer Alex Aase's life, and

Officer Ian Craig's life were all in danger. He began backing up and yelled for the suspect to "drop it" as the entrance vestibule area was tight making it difficult for officers to retreat and find cover.

He shot two rounds at the suspect to stop the immediate threat the suspect presented. He heard additional gunfire which he thought came from Officer Thomas' weapon. After firing at the suspect, he radioed to dispatch that shots had been fired. The suspect fell to the ground. He approached and saw a black handgun on the floor next to the suspect's left hand. He kicked the gun away from the suspect's hand. He saw the suspect had suffered injury to his neck and was bleeding. He told Officer Alex Aase to apply pressure to the wound. He contacted dispatch and requested Allina EMS telling them that a male had been shot. He ran to his squad to get a medical bag, when he returned Officer Alex Aase told him there was no pulse. He asked officer Alex Aase to do CPR and he took over applying pressure to the suspect's neck injury. A short time later Allina medics arrived and took over life saving measures.

## **B. Crime Scene, Evidence Collection and Analysis**

### Merwin Liquors Store Surveillance Video Footage

Three cameras were identified as being relevant to the investigation. CH02 was from a camera capturing the vestibule, facing the entrance and exit doors to Merwin Liquors. CH03 was a camera view from the vestibule area facing the checkout counter. CH04 was a camera view of the rear door in the back storeroom area of Merwin Liquors. An analysis of the time stamps reported on Merwin Liquors' store cameras showed a difference of about 47 minutes when compared to other verified time indicators of events. The listed date is consistent with other events.

1. CH02 (Camera capturing the vestibule, facing the entrance and exit)  
Date 11/28/2021 Time 19:44:59 through 19:56:37

R.R. walks into the vestibule and looks at the entrance door in which the lower glass panel is shattered. A short time later Mr. Kelley can be seen outside the entrance, he walks up to the employee who is seen trying to lock the automatic door. Mr. Kelley is trying to enter the business; he pushes the employee against a wall and puts hands around the employee's throat. The employee pushes Mr. Kelley trying to get free, and the two men end up on the floor of the store. Mr. Kelley is seen holding a



black handgun in his hand. Mr. Kelley gets up and walks out of the entrance and into the store.

2. CH03 (Camera view from vestibule area facing checkout counter)

Date 11/28/2021 Time 19:45 through 19:56:41

Mr. Kelley is seen holding a handgun with both hands and pointing it towards the store employee. The two men make contact. Mr. Kelley lets go of the gun with his left hand and continues to hold it with his right hand. Mr. Kelley then begins to punch the store employee while holding the gun in his right hand. The two men separate with Mr. Kelley backing up towards the checkout counter. Mr. Kelley again aims his gun at the store employee. Mr. Kelley leaves the front counter area and heads towards the backroom of the store. The store employee uses the phone to call 911.

3. CH04 (Camera view of the rear door in the back storeroom)

Date 11/28/2021 Time 19:57:01 through 20:02:07

Mr. Kelley enters the back storage room, he runs towards the exit and opens the door to the outside. He stops and turns around pointing his gun and aiming it towards the direction he came from. He lowers his gun and begins to throw several glass liquor bottles towards the direction of the main area of the store. He pauses then aims his gun again. He stops aiming his gun and continues to throw and break more bottles. At one point the magazine in his gun falls to the ground. He picks it back up and inserts it back into the gun. He is seen pulling the slide of the gun. He takes aim at the main area of the store and begins to walk back into the main area of the store with his gun in his hand.

4. CH02 (Camera capturing the vestibule, facing the entrance and exit)

Date 11/28/2021 Time 20:04:16 through 20:05:19

An officer with ballistic shield with large letters "POLICE" enters the exterior exit area. Three officers follow behind him. All officers make their way through the exit door of the vestibule into the store leaving the vestibule empty. An officer holding a rifle quickly backs up into the vestibule while pointing the rifle towards the inside of the store. One officer with a handgun also backs up while continuing to aim towards the inside of the store. These two officers were the only ones visible inside the vestibule. The officer holding the handgun fires a round towards the inside of the

store. The officer holding the rifle fires two rounds. Both officers then immediately reenter the store leaving the vestibule empty.

5. CH03 (Camera view from vestibule area facing checkout counter)

Date 11/28/2021 20:04:19 through 20:06:26

An officer with a ballistic shield holding a handgun enters the store from the vestibule area. Mr. Kelley is at the front counter area of the store and is walking directly towards the officer. The officer is seen looking towards his right towards the larger area of the store away from the direction of Mr. Kelley. The officer is seen turning towards the direction of Mr. Kelley. Mr. Kelley is seen holding a handgun with both hands, advancing, and pointing the gun at the officer. The officer is seen moving to the left trying to hide as Mr. Kelley continues to hold his gun, pointed towards the remaining officers in the vestibule area. Mr. Kelley is shot and falls to the ground. The gun drops from his left hand. Three officers enter the view of the camera, move towards Mr. Kelley, and begin to render aid. One officer runs out of the store then comes back holding a medical bag. Officers continue to provide medical aid.

**B. Toxicology**

Toxicology and analysis showed Mr. Kelley's blood contained 11-Hydroxy Delta 9 (3.8 ng/ml), and Delta-9 Carboxy THC (45 ng/ml). Further analysis also revealed that Mr. Kelly had a blood alcohol concentration of .191 g/100 ml. Mr. Kelly's urine contained cannabinoids.

**C. DNA**

Swabs were taken from the Ruger LCP II .380 pistol that Mr. Kelley was seen wielding. A major profile within the mixtures of the textured grip and slide of the handgun along with a profile mixture located on the magazine matched a known DNA profile from Mr. Kelley. Analysis of a blood stain swab taken near the front counter of Merwin Liquors showed a single source DNA profile that match Mr. Kelley and would not be expected to occur more than once among unrelated individuals in the world population.

## D. Body-Worn Camera Evidence

### 1. Officer Ian Craig Body-Worn Camera

At 7:11 p.m. Officer Craig parks his squad car on the outer parking area of Merwin Liquors. He takes a ballistic shield from his vehicle and meets with other officers near a squad car parked in the lot. Officers are talking about a person who may still be in the business, there is discussion that the person may be armed with a gun. A description of the person is white male, in his 30's with a scruffy beard and sweatshirt. There is discussion that the back door to the store was open and if there was someone still inside the store.

At 7:15:30 p.m. Officer Ian Craig lifts his ballistic shield, the camera is mostly blocked, however, the audio is continuing to record as expected. When officer Ian Craig and the others reach the vestibule area of the store an officer is heard saying "open left," Officer Ian Craig responds that he was going left.

At 7:15:45 p.m. an officer is heard yelling loudly and clearly, "Mounds View Police Department, if you are in the store announce your now." The command was repeated. Another officer is heard yelling "Police Department, oh shit" several officers are heard yelling "police, drop the gun, drop the gun, drop the gun, drop the gun."

At 7:15:58 p.m. five gunshots were heard, the ballistic shield continues to block the view of the camera, officers continue to give the command to drop the gun. One officer is heard saying that the suspect no longer had the gun.

At 17:16:09 p.m. an officer is heard airing on radio, "shots fired, suspect down, start Allina."

At 17:20:30 p.m., after Officer Ian Craig cleared the backroom for remaining suspects, he is heard speaking to another officer, his breathing is heavy and deep. He is trying to get his breath under control. He tells sergeant Kresbach that when the officers started firing, he had to bail. He then said, "He had the gun pointed at us."

## 2. Officer Alex Aase Body-Worn Camera

Officer Alex Aase's body-worn camera video is 54 minutes and 30 seconds long, the video date is 11/28/2021 and the video time begins at 7:07 p.m. His body-worn camera video was not time stamped but showed the minutes and seconds elapsed.

At 01:02 minutes Officer Aase exits his squad and approaches another officer who is parked just outside Merwin Liquors.

At 02:07 minutes, radio traffic from 911 dispatch stated a male was coming out of the store. Officer Aase and another officer had the male at gunpoint. The male told the officers that the person they were looking for was inside the store. Officer Aase placed the male inside of a squad car.

At 04:46 minutes, Officer Aase and other officers discuss their approach and confirmed that the subject's description was a younger, short, white male with a scrubby beard and in a dark colored hoodie. The male who Officer Aase put into the squad car told officers that the person they were talking about was the only person inside the store and said the person had a gun. This information was passed along to other officers.

At 08:37 minutes officers approached the entrance and exit of the store. One officer armed with a rifle is seen looking at the store from the right side of the entrance door, that officer is heard saying "open left." There was one officer directly in front of Officer Aase as all officers approached with guns drawn while they entered the vestibule area of the store. Officer Aase is heard yelling loudly and clearly, "Mounds View Police, if you're in the store, announce yourself now." The command was repeated. The officer in front of Officer Aase was seen moving to the left out of Officer Aase's camera view as Officer Aase was looking towards the back of the store from the entrance.

At 08:52 minutes, an officer is heard saying "Police Department, Oh Shit." Officer Aase turned quickly in the direction of the officer's voice. Several officers are heard yelling "gun" numerous times. As Officer Aase backed up, one officer was to the right of him, while two officers were still in the exit side of the vestibule retreating backwards. Several shots are fired. The officer to the left ducked low to the counter. All officers are seen quickly converging towards the location of the suspect, telling him to drop the gun. As officers approached, a male was visible laying face up on the

ground, his feet in the direction of the officers, a black handgun was visible in the subject's left hand as officers approached, they kicked the gun away from his hand.

Officer Aase put on gloves and began applying pressure to the suspect's neck. Officer Aase is heard telling another officer to go get a medical bag. Officer Aase is heard saying to the suspect "hey, stay with me buddy, come on." The camera continues to record showing officers and paramedics while they attempt to provide the suspect with medical aid.

### 3. Officer John Thomas Body-Worn Camera

Officer John Thomas body worn camera footage was date 11/28/2021 with a duration of 13 minutes and 54 seconds.

At time stamp 19:11:02, Officer John Thomas arrived at Merwin Liquors' parking lot and quickly exited his squad. He walked to another squad in the lot where Sergeant Hanson was using his vehicle as cover and looking towards Merwin Liquors. He went back to his squad to grab a ballistic shield, and when he returned asked for the suspect's description, which was given as a white male, with a scruffy beard and wearing a sweatshirt.

At time stamp 19:15:22: Officer Thomas, and three other officers approached the entrance and exit doors to the store. Once at the door the three other officers entered in front of him.

At time stamp 19:15:45: An officer could be heard yelling loudly and clearly, "Mounds View Police, if you are in the store, announce yourself now." The command was repeated and then an officer said, "Police Department, oh shit." As this occurred, Officer Thomas' body worn camera showed Sergeant Hanson directing his attention to the interior of the store, in the central area.

Officer Thomas stepped back and from the view of the body worn camera, had a clear visual of the checkout counter and the suspect. Five gunshots could be heard in quick succession. Officers immediately approached, yelling commands. Officers were yelling for the subject to drop his gun.

At time stamp 19:16:09: Officer Thomas announced on the radio, "8197, shots fired, suspect down, start Allina." As officers approached, they were giving commands to not reach for the gun to the male subject who was laying on the floor.

Sergeant Hanson used his foot to kick the gun in a safer direction towards the open front coolers. Officers immediately began donning gloves and starting medical aid. At time stamp 19:16:48: Officer Thomas ran to his vehicle and obtained his medical bag from his squad and then ran back to the subject.

#### 4. Sergeant Michael Hanson Body-Worn Camera

Sergeant Michael Hanson body worn camera footage did not have a time stamp but displayed a timeline on the video. The video date is 11/28/2021 with total capture of 53 minutes and 34 seconds.

At 01:15 minutes, a voice of an officer could be heard indicating a person was exiting the store. Sergeant Hanson gave loud verbal commands to the person exiting the store, while he was assisted by Mounds View Police Officer Aase, who eventually handcuffed the male and placed him into his squad car. The male said the guy they were looking for was in the store.

At 03:41 minutes, as other officers arrived on scene, Sergeant Hanson provided direction. Sergeant Hanson asked questions of the male in the squad and was told the suspect's phone was possibly laying by the curb and the suspect was last seen in the back of the store. The male tells the police that the person has a gun and tried to shoot him with it.

At 07:52 minutes, the officers all approached the entrance and exit doors of the store. The first officer, Alex Asse, held a ballistic shield, the second officer, Ian Craig, was holding his handgun and the third officer, New Brighton Public Safety Department Officer Thomas, who was in front of Sergeant Hanson, was holding a rifle. The officers approached and entered the vestibule through the exit door. Upon entry, an officer yelled loudly and clearly, "Mounds View Police, if you are in the store, announce yourself now." The officer repeated the command, another officer said, "Police Department. Oh Shit."

Sergeant Hanson's body worn camera was viewing Officer Thomas as he retreated into the vestibule, Officer Thomas raised his rifle toward the checkout area of the

store. Shots could be heard, and Sergeant Hanson said shots fired, shots fired as he entered the store. The officers were visible in front of him, giving commands to “drop the gun.” Sergeant Hanson walked toward a male subject on the floor. A black handgun was visible by his left hand. Sergeant Hanson approached the male and kicked the gun away from him, in the direction of the cooler.

At 08:47 minutes, officers applied gloves and began administering first aid. Sergeant Hanson took a pair of jeans on the floor and gave it to the officer near the male’s head and told him to apply pressure.” Sergeant Hanson ran outside to his squad and retrieved his medical bag and ran back into the store. Another officer indicated there was no pulse and started CPR. Sergeant Hanson’s camera was obscured by his position, but an officer could be seen doing chest compressions.

At 12:35 minutes, officers continued to provide medical care and Allina EMS arrived on scene. Sergeant Hanson and other officers, along with Allina EMS provided medical aid.

#### **E. Firearms and Ballistics Evidence**

Mr. Kelley was found with a Ruger LCP II .380 caliber pistol. He was the only person on scene who had this type of handgun and .380 caliber rounds. Two .380 caliber cartridges were located in the front parking lot of Merwin Liquors. A bullet projectile and bullet fragment were located in the vestibule entrance areas of the business near the broken glass door. Ballistic testing of the cartridges, bullet and bullet fragments were identified as having been fired from Mr. Kelley’s gun. A cellphone belonging to Mr. Kelley was also located from the front parking lot of the business.

#### **F. Autopsy**

Deputy Hennepin County Medical Examiner Anna K. Tart, M.D. performed the autopsy on the body of Mr. Kelley. Dr. Tart determined that Mr. Kelley died as a result of multiple gunshot wounds. One shot entered Mr. Kelley’s neck from the front left side and traveled in a downward direction stopping at the right upper back. A single mushroomed jacketed bullet projectile measuring 0.6 centimeters was recovered in the musculature tissue of this area. Two gunshots entered and exited Mr. Kelley’s left hand. The gunshot wound to the neck was fatal.

## IV. Legal Analysis and Recommendation

### A. Legal Standard

Under the applicable law at the time of this incident<sup>1</sup>, the use of deadly force by a peace officer acting in the line of duty is justified only, when necessary, in defense of human life or to prevent great bodily harm. Specifically, the version of Minn. Stat. § 609.066, subd. 2 that applies to this incident provided that “the use of deadly force by a peace officer in the line of duty is justified only when necessary:

- (1) to protect the peace officer or another from apparent death or great bodily harm;
- (2) to effect the arrest or capture, or prevent the escape, of a person whom the peace officer knows or has reasonable grounds to believe has committed or attempted to commit a felony involving the use of deadly force; or
- (3) to effect the arrest or capture, or prevent the escape, of a person whom the officer knows or has reasonable grounds to believe has committed or attempted to commit a felony if the officer reasonably believes that the person will cause death or great bodily harm if the person’s apprehension is delayed.”

The United States Supreme Court has recognized in the case of Tennessee v. Garner, 471 U.S. 1 (1985) that the use of deadly force by a peace officer is justified where the officer has probable cause to believe that the suspect poses a threat of serious bodily harm either to the officer or to others. In Graham v. Connor, 490 U.S. 386 (1989), the Court further held that an objective reasonableness standard should be used to

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<sup>1</sup> In 2020, the Minnesota Legislature enacted certain amendments to Minn. Stat. § 609.066, including adding language to require law enforcement officers to articulate with specificity, the reason they used deadly force. The amendments became effective on March 1, 2021 (the “March 1, 2021, amended law”). A lawsuit was subsequently commenced challenging the constitutionality of the March 1, 2021, amended law. On September 13, 2021, Ramsey County District Judge Leonardo Castro stayed the March 1, 2021, amended law pending his consideration of the merits of the lawsuit, resulting in the reinstatement of the use of deadly force statute that was in place before March 1, 2021.

On December 17, 2021, Judge Castro entered a final order finding that only one of the amended provisions of the March 1, 2021, amended law was unconstitutional, but that the remaining amendments were constitutional. Since this incident occurred on November 28, 2021, the pre-March 1, 2021 version of Minn. Stat. § 609.066 provides the governing legal framework for our review in this case. Moreover, it should also be noted that even if the March 1, 2021, amended law was applicable, the amendment found to be constitutional by Judge Castro would not affect or change in any way, our ultimate legal determinations made in this case.



evaluate an officer's use of force. The determination of reasonableness requires "careful attention to the facts and circumstances of each particular case."

In Graham, the Court outlined a non-exhaustive list of factors for balancing an individual's rights versus an officer's rights. Among the factors identified by the Court include: 1) the severity of the crime at issue; 2) whether the suspect poses an immediate threat to the safety of the officers or others; and 3) whether he is actively resisting arrest or attempting to evade arrest by flight. The Court also made clear that whether an officer used reasonable force "must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." The Court held that allowance must be made for the fact the law enforcement officers are often required to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving. See also, City and Cnty. of San Francisco, Calif. v. Sheehan, 575 U.S. 600, 135 S. Ct. 1765, 191L. Ed. 2d 856 (2015).

When taken together, Minn. Stat. § 609.066 and the above-referenced constitutional standard, establish that if the officer's use of deadly force was objectively reasonable in the face of the danger of death or great bodily harm, no criminal charges can be brought against the officer. In order to bring charges against a peace officer for the use of deadly force, the State must be able to prove beyond a reasonable doubt that the use of deadly force was not justified.

**B. Analysis and Recommendation – The Use of Deadly Force by Sergeant Hanson and Officer Thomas Against Mr. Kelley Was Justified Under Minnesota Law**

After carefully considering the evidence presented in this case and the objective legal standard recognized by the U.S. Supreme Court and Minnesota law, we believe for the following reasons, that the use of deadly force by Sergeant Hanson and Officer Thomas against Mr. Kelley was objectively reasonable, necessary, and therefore justified, under each of the three situations set forth in Minn. Stat. § 609.066, subd. 2(1)-(3).

1. Minnesota Statutes, § 609.066, Subd. 2(1)

Between the time of their arrival at the Merwin Liquors store and the time of the shooting, the evidence presented to our office shows that both Sergeant Hanson and Officer Thomas knew or observed the following:

- That they were responding to a 911 call reporting "shots fired."

- That upon their arrival at the liquor store, they were informed by R.R., that Mr. Kelley was armed with a firearm and that he attempted to shoot R.R. but failed because the gun did not fire.
- That they were also informed that shortly before their arrival, Mr. Kelley had taken M.P and his three-year old son from the Aldi grocery store at gunpoint and were forced to drive Mr. Kelley to the Merwin Liquors store.
- The officers loudly and clearly identified themselves as police officers several times before and while entering the vestibule area leading into the dimly lit liquor store.
- Mr. Kelley advances towards the four officers while raising his gun, as the officers continue to identify themselves as peace officers. The officers appear surprised by Mr. Kelley's actions.
- Sergeant Hanson described Mr. Kelley as advancing towards the officers with "both arms fully extended in an outward direction facing towards he and other officers... [while Mr. Kelley was] gripping a dark colored handgun." Sergeant Hanson observed that "all four officers at that moment were in the line of the suspect's fire."
- Officer Thomas heard an officer yell, "Gun! Gun! Gun!" He then saw Mr. Kelley holding a laser guided sight equipped handgun with two hands. He saw Mr. Kelley pointing the gun at Sergeant Hanson.
- Sergeant Hanson began backing up and yelled for Mr. Kelley to "drop it." Because the area where the officers were positioned at the time Mr. Kelley approached them, was fairly confining, it was difficult for the officers to retreat and find cover. Sergeant Hanson then shot two rounds at Mr. Kelley to stop the immediate threat Sergeant Hanson believed was presented by Mr. Kelley.
- Officer Thomas said he heard a gunshot and saw a bottle explode. He immediately fired one round from his rifle to stop the threat he believed was posed by Mr. Kelley. Officer Thomas said he saw Mr. Kelley still standing with his gun drawn towards the officers, and then fired a second round. Officer Thomas then saw Mr. Kelley fall to the ground.

None of the foregoing observations by the officers were contradicted by any known witness or other evidence. To the contrary, statements from both lay and police witnesses and physical evidence corroborate the violent and threatening behavior engaged in by Mr. Kelley both at the liquor store and outside the Aldi

grocery store. Store video corroborates R.R.'s statement that Mr. Kelley led R.R. back into the liquor store where he assaulted R.R. with a firearm.

Audio from the store video also corroborates the multiple verbal commands given by officers identifying themselves as police officers as they entered the store and ordering Mr. Kelley to come out and show his hands.

Video from both the store security system and the officers' BWCs shows Mr. Kelley moving towards the officers while holding a pistol with both of his hands in a manner resembling a shooting position. Mr. Kelley did not comply with the officers' verbal commands to drop his gun.

For all the foregoing reasons, it is our opinion that the beliefs expressed by Sergeant Hanson and Officer Thomas that Mr. Kelley posed a threat to their lives and those of their fellow officers in the immediate area, are reasonable under the facts and circumstances presented to this office. Accordingly, it is our opinion that the officers' use of deadly force in this matter was necessary and thus justified under Minn. Stat. § 609.066, subd. 2(1).

2. Minn. Stat. § 609.066, Subd. 2(2) and (3)

As previously noted, the officers were aware that Mr. Kelley had just taken M.P. and his three-year old son hostage at gunpoint, and that he had unsuccessfully attempted to shoot R.R. R.R. had also informed the officers that Mr. Kelley had fired possibly two gunshots into the front door of the liquor store.

The kidnapping of M.P. and his son at gunpoint and both his assault of R.R. and his actual discharge of his firearm into the front door of the liquor store by Mr. Kelley are felony crimes involving the use of deadly force. Those crimes were committed only a few minutes before their encounter with Mr. Kelley. Given their own later personal observations of encountering Mr. Kelley possessing and aiming a handgun towards them in a dimly lit and closed liquor store, Sergeant Hanson and Officer Thomas were reasonable in their belief that those crimes were most likely committed by Mr. Kelley.

Based on these facts, combined with the officers' own observations of Mr. Kelley's actions as they pursued him, it is our opinion that it is reasonable to consider their use of deadly force as justified to effect the arrest of a person they knew or had reasonable grounds to believe had just committed multiple felonies involving the use of deadly force. For this same reason, it was also reasonable for the officers to believe that Mr. Kelley constituted a danger to the lives of persons he could have encountered if he successfully fled from the police.

For these reasons, it is also our opinion that the use of deadly force by Sergeant Hanson and Officer Thomas in this matter was also necessary and thus justified under Minn. Stat. 609.066, subd. 2(2) and (3).