

Legal Standard – Police Use of Deadly Force

In order to bring charges against a police officer for using deadly force, the State must be able to prove beyond a reasonable doubt that the officer's use of deadly force was not justified. This legal standard remains the same, regardless of whether the factual determination is made by a county attorney or a grand jury.

In order to charge second-degree manslaughter, the State must be able to prove beyond a reasonable doubt that the accused person acted with "culpable negligence" in creating an unreasonable risk of death or great bodily harm. "Culpable negligence" has been defined by Minnesota courts to mean acts that are grossly negligent combined with recklessness.

In order to charge second-degree murder, the State must be able to prove beyond a reasonable doubt that the accused intended to cause the death of the victim. In order to charge first-degree murder, the State must be able to prove beyond a reasonable doubt not only that the accused intended to cause the victim's death, but also that the action was premeditated. Those are the standards society recognizes when it comes to holding one criminally responsible for killing another.

The statute authorizing a police officer's use of deadly force in self-defense or defense of others is similar to that for civilians. However, courts have interpreted the provisions for law enforcement in a way that sets a high bar for obtaining a criminal conviction against a police officer for his or her use of force.

Under Minnesota Statute § 609.066, subdivision 2, police officers in Minnesota are justified in using deadly force in the line of duty when it is necessary to protect the officer or another person from apparent death or great bodily harm. This statute provides a significant defense to criminal charges against an officer for use of deadly force.

In *Graham v. Connor*, the United States Supreme Court held that the use of deadly force by a police officer must be evaluated from the perspective of a reasonable police officer on the scene and in the same circumstances. Reasonableness of police use of force cannot be evaluated from the perspective of a civilian nor can it be evaluated with the more clear vision afforded by 20/20 hindsight under *Graham*. The Court further stated that the fact that law enforcement officers often are required to react quickly in tense, uncertain, and rapidly evolving situations needs to be taken into account in determining reasonableness. Since *Graham*, the Supreme Court has narrowed the analysis to focus on the exact moment that the force was applied.

If the evidence in a particular case shows that the officer's use of deadly force was justified by the statute and under the *Graham* analysis, criminal charges against that officer for manslaughter or murder cannot be brought. The only time manslaughter or murder charges can be filed against a police officer, regardless of who makes the charging decision, is when the use of deadly force is not justified.

To repeat, the evidence must show unreasonable conduct by the police utilizing the perspective of a police officers and that the use of deadly force was not necessary to protect the officer or the public from a threat of great bodily harm or death.