

JANUARY 17, 2019



**REPORT OF THE HENNEPIN COUNTY
ATTORNEY'S OFFICE REGARDING THE
SHOOTING OF JAMAR WINSTON HOLLINS ON
MAY 23, 2018**

STATEMENT OF RELEVANT FACTS

On May 22, 2018, a Hennepin County District Court judge issued an Emergency *Ex Parte* Order for Protection (OFP) after reviewing the petition of Chanci Roniche Rankin alleging acts of domestic violence/abuse by Jamar Winston Hollins. The OFP stated, among other things, that Jamar Hollins was not to go to or enter the residence of Ms. Rankin located at 3608 Colorado Avenue North, Crystal, Hennepin County, Minnesota. The OFP also directed the Hennepin County Sheriff (HCSO) and/or the Crystal Police Department to locate and serve Jamar Hollins with the OFP. The OFP stated that it was effective until May 22, 2020 unless modified or vacated at a hearing.

The OFP was sent, following regular procedure, to the HCSO and was received at 4:20 pm on May 22, 2018. The information sent to the HCSO, beyond that in the order itself, is contained on a face sheet which listed Mr. Hollins's identifying information, phone number, car, etc. An "X" appears in a box next to the statement: "May Carry A Weapon." Attached to the order was the Petitioner's Affidavit which stated in part that Hollins carried a pocket knife at all times, waved the knife at Ms. Rankin and her minor children, and had recently barricaded himself in a room for almost two days.

Deputy Allen Magelssen has been a licensed deputy with the HCSO since 2006. In May, 2018, Deputy Magelssen worked a patrol shift from 6:00 pm until 6:00 am. It is common for HCSO deputies to serve civil paperwork during that shift as well as execute warrants and perform traffic patrol duties. On May 23, 2018, Deputy Magelssen's sergeant, Norman Lindsay, informed Magelssen at roll call that there was an OFP to serve during his shift. More specifically, this was an OFP where both the petitioner (Ms. Rankin) and respondent (Mr. Hollins) lived in the same residence so the OFP required that Hollins vacate and leave the property if he was there. When serving such an OFP under ordinary circumstances, Deputy Magelssen would serve or give the respondent the order, escort him off the property and collect any keys or garage door openers. The deputy would give a respondent 10-30 minutes to gather personal belongings for the short term and help make arrangements for a police escort at a future date to retrieve other belongings.

Sergeant Lindsay volunteered to assist Magelssen in serving the OFP and they drove separately to 3608 Colorado Avenue North in Crystal from their office in Brooklyn Park. They arrived around 7:00 p.m. Deputy Magelssen called Ms. Rankin and told her he would be at her residence soon and Ms. Rankin told him she was at the hardware store picking up new locks for the house. Ms. Rankin also told Deputy Magelssen that Mr. Hollins would not open the door if he saw police there. Deputy Magelssen and Sergeant Lindsay arrived at 3608 Colorado at nearly the same time. Magelssen checked to see if Hollins had any warrants and he did not. He ran the plates of a car in the driveway and it registered to Jamar Hollins. Deputy Magelssen made note of the photo on the registration so he would know who he was looking for when he went to the house.

Magelssen and Lindsay went to the door and rang the doorbell. A dog barked but no one answered. The home is a split level and the officers went down toward the garage so that the

person inside would not necessarily know officers were at the door and choose not to answer because of that. After several minutes with no answer, Deputy Magelssen called Ms. Rankin again and she said she would be home in a few minutes. Ms. Rankin arrived and opened the door with her key. Ms. Rankin put the dog in a separate area and directed the officers to the back of the top level of the house where there was a bedroom with a small attached bathroom that can be entered from the bedroom only.

Deputy Magelssen and Sergeant Lindsay went to the threshold of the open bedroom door, identified themselves, and said they had paperwork for Mr. Hollins. They asked where Mr. Hollins was and Hollins said, "I'm here." From where Magelssen and Lindsay were standing, they could not see Mr. Hollins but could see an open pocket door to the bathroom from where the voice was coming. Magelssen repeatedly said that he needed to serve Mr. Hollins with an order for protection and that Hollins could set up a future court date to respond. Mr. Hollins responded that it was his house and he was not going to leave. Mr. Hollins told the officers numerous times that they were trespassing. After a several-minute stalemate with Mr. Hollins refusing to come out of the bathroom, Deputy Magelssen radioed for more squad cars in the event police would have to physically remove Mr. Hollins from the residence.

Police officers from Crystal and Robbinsdale responded to the home. It is common for officers from several north metro departments to monitor and respond to other departments' calls when they can help. Two responding Crystal officers wore and activated body-worn cameras. No HCSO deputies wear body-worn cameras under any circumstances. The officers repeatedly asked Mr. Hollins to come out and he refused. They informed Mr. Hollins that by staying in the house he was violating the court's order. Mr. Hollins said the only way the situation would resolve was if the officers left. The officers explained that they could not, and would not, do that until the situation was safe, meaning that they could see Mr. Hollins, make sure he was unarmed and posed no threat to anyone's safety, and remove him from the property in accordance with the OFP.

Sergeant Lindsay went into the bedroom and climbed over the bed to be able to see into the bathroom and saw that Mr. Hollins was holding a knife. Sergeant Lindsay ordered Mr. Hollins several times to drop the knife. Hollins refused every time and told Lindsay to get out. Sergeant Lindsay came out of the bedroom and told the others about the knife, describing it as a tactical knife with a serrated edge.¹

¹ The brand and type of the knife is Smith and Wesson, Black Ops.



Officers from HCSO, Crystal, and Robbinsdale attempted to negotiate with Mr. Hollins and resolve the situation but Hollins's refusals continued with him going so far as to demand that the judge who issued the order come to the house to speak to him personally. Sergeant Rick Waldon, an experienced negotiator from HCSO, was unsuccessful in getting Mr. Hollins to drop the knife and come out.

At one point, Mr. Hollins's son, Jason Hollins, arrived at the scene. He said very little to law enforcement at the scene, but provided his name, his date of birth (2-7-2000), and his father's cell phone number. Jason Hollins removed the family dog from the backyard so that a canine officer could be brought to the scene.

Mr. Hollins had a call phone and called a nephew, Jovan Sallet, who came to the scene. Officers permitted that person to come to the bedroom door and try persuade Mr. Hollins to come out (they could not let him in the room because of the knife Mr. Hollins had) but that effort failed. As time went on, the situation became more and more tense with Hollins making the occasional remark, "I gotta do what I gotta do."

About three hours passed from the time Deputy Magelssen first arrived. The officers, led by Watch Commander Lieutenant Bakke of the HCSO, began to devise a plan to extract Mr. Hollins from the room and the home if necessary. The team considered several options, including one to put a large can of pepper spray used to disperse crowds in the bedroom. This option was rejected

because that method is meant to be used in a large, open environment versus the small confined quarters of the bedroom and bathroom. There were also concerns about pepper spray being flammable in the event Tasers were also used. The team ultimately rejected a plan to use a “less-lethal” beanbag shotgun because, they reasoned, at a short distance like that in the bathroom, a less lethal shot can actually be lethal. Although the North Metro SWAT team was out of town at training, at least one other SWAT team was available, but the team on site decided not to call them in.

Ultimately, Lieutenant Bakke and Sergeant Lindsay devised the plan they would use to remove Mr. Hollins from the house. They would use a “stack” of six officers, one behind the other. Deputy Kelly Howe was to enter first with a bunker and a Taser. Deputy Terry Bean would follow, providing cover with his handgun out. Sergeant Rick Rehman would follow with a Taser. Following them would be Sergeant Magelssen, Sergeant Lindsay, and Deputy Kipka.

Sergeant Rehman stood at the bedroom door, loudly speaking to Mr. Hollins. On the command of “Red-Red-Red” HCSO Officer Kromvig was to break the bedroom window with a baton to distract Mr. Hollins while other officers entered with bunkers, shields, Tasers, and a gun. At the time of the command, however, body-worn camera video shows that Officer Kromvig was still inside the house in the kitchen, so there was some delay.

Meanwhile the officers entered the bedroom and bathroom on the command. Before the window broke, Deputy Howe got to the threshold of the very small bathroom door and dropped to one knee. Magelssen put his arm around the corner and fired his Taser into the bathroom before dropping it. Deputy Howe and others ordered Hollins to drop the knife. Hollins did not drop the knife. Howe fired his Taser. It is unknown whether Howe or Magelssen fired his Taser first. Sergeant Rehman, after hearing the first Taser fire, saw Hollins flailing his arms and continuing to resist so he fired his Taser. Mr. Hollins was standing up, backed into the shower. Deputy Howe ordered Hollins several more times to drop the knife. Others ordered Hollins to show his hands. Howe shouted, “Taser ineffective!” and saw the knife in Hollins’s right hand.

Deputy Magelssen pulled his gun and saw Hollins trying to pull wire leads from the Tasers out of his body. He saw an object in Hollins’s right hand. Deputy Magelssen then saw Hollins’s right hand come up and swipe what he now clearly saw as a knife back and forth. In the small bathroom, Hollins was mere feet or an arm’s length away from Magelssen and Howe. Because the other members of the stack were also in the bathroom, Magelssen and Howe could not back out. Deputy Magelssen pointed his gun and fired at Hollins, at first unsure whether the bullet hit Hollins. Howe saw Hollins drop to the floor and the knife fell from his hand.

Almost immediately thereafter, the deputies backed out of the bathroom. Deputy Magelssen realized he shot Mr. Hollins and told that to Chief Deputy Sheriff Storms. Magelssen said, “He was waving a knife at Howe and I shot him.” Magelssen went to his car and was assigned an escort office in accordance with procedure.

Meanwhile, deputies removed Hollins, who had been shot in the abdomen, from the bathroom. Paramedics were on site during the negotiation and they came in and transported Mr. Hollins to North Memorial Medical Center. Mr. Hollins underwent treatment for injuries related to his

gunshot wound and was discharged on June 21, 2018. BCA agents went to the hospital twice during Mr. Hollins's hospitalization to attempt to speak to him about the events of May 23, 2018. The first time, Mr. Hollins said he would be willing to speak to the agents but asked that they return another time. The second time, Mr. Hollins stated that he did not wish to speak to the agents about the incident.

HENNEPIN COUNTY ATTORNEY'S OFFICE REVIEW

The BCA submitted its report to the Hennepin County Attorney's Office on August 24, 2018, for consideration of possible criminal charges.

On March 16, 2016, Hennepin County Attorney Mike Freeman announced that officer involved use of deadly force cases reviewed by the Hennepin County Attorney's Office would no longer be submitted to a grand jury. Instead, the County Attorney would make the charging determination as is done with all other criminal cases submitted to the office.

The Hennepin County Attorney reviewed the case with a senior prosecutor, and on November 8, 2018, issued this report.

LEGAL ANALYSIS REGARDING THE USE OF DEADLY FORCE

The evidence detailed above does not support the filing of criminal charges against Deputy Allen Magelssen for the non-fatal shooting of Jamar Hollins. At the time he was shot, Hollins was pointing a tactical knife he had been holding and refusing to drop for several hours. When the officers entered the bathroom, they Tased Hollins who not only did not drop the knife, he raised and swung it at the deputies. Deputy Magelssen fired to protect himself and the other deputies in the room, acted out of fear of great bodily harm or death, and his use of deadly force was justified.

A. Legal Standard

To bring charges against a peace officer for using deadly force in the line of duty the State must be able to prove beyond a reasonable doubt that the use of force was not justified.² Minnesota law provides that a peace officer may use deadly force when necessary "to protect the peace officer or another from apparent death or great bodily harm."³ The intentional discharge of a firearm constitutes deadly force.⁴

The United States Supreme Court has recognized the use of deadly force by a peace officer is justified where the officer has "probable cause to believe that the suspect pose[s] a threat of serious bodily harm either to the officer or to others."⁵ The Court also addressed the use

² *State v. Basting*, 572 N.W.2d 281, 286 (Minn. 1997).

³ Minn. Stat. § 609.066, subd. 2.

⁴ Minn. Stat. § 609.066, subd. 1.

⁵ *Tennessee v. Garner*, 471 U.S. 1, 11 (1985).

of force by a peace officer in its 1989 decision, *Graham v. Connor*.⁶ Graham held an objective reasonableness standard should be utilized to evaluate an officer's use of force. The assessment of reasonableness requires "careful attention to the facts and circumstances of each particular case."

The Court then outlined a non-exhaustive list of factors for balancing an individual's rights vs. an officer's: 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." Graham 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 stated 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.⁷

Minn. Stat. § 609.66 and the constitutional standard, taken together, 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 against any such officer is supported.

B. The Use of Deadly Force Against Jamar Hollins Was Authorized.

Deputy Magelssen fired one shot at Jamar Hollins, and Hollins was seriously injured when he was struck in the abdomen by the bullet.

Deputy Magelssen first went to the home to serve an *ex parte* OFP on Hollins. The petitioner let him into the home. Although Mr. Hollins refused to leave the bathroom and take the order into his hands, he was effectively and legally served with the order. Once service took place, Hollins had no further legal right to be on the property. Hollins's refusal to leave on his own, coupled with the fact that Sergeant Lindsay saw that he was armed with a tactical knife he refused to put down, directly led to the three-hour negotiation and standoff.

Hollins repeatedly told officers that he would not leave. He said he was going to do what he had to do. Several officers attempted to negotiate with Hollins, and they permitted a family member into the home to assist in negotiations. All negotiation and attempts at peaceful resolution were unsuccessful.

The officers in the stack moved into the tiny bathroom first attempting to use non-lethal force, i.e., Tasers, to gain Hollins's compliance. Although three officers fired at Hollins, he continued to resist, standing in the shower, raising his right hand, and waving the knife at Deputy Magelssen. At that point it was clear that the use of deadly force against Hollins was necessary to prevent harm or death to Magelssen and the other officers in the bathroom. Only when Deputy Magelssen fired his handgun did Hollins drop the knife.

Deputy Magelssen's use of deadly force under these circumstances was reasonable as demonstrated by applying the *Graham* factors to this case.

⁶ *Graham v. Conner*, 490 U.S. 386 (1989).

⁷ *Graham* at 396-397.

1. The severity of the crime at issue: Hollins had been served with a valid order for protection requiring that he leave the property to ensure the safety of the petitioner and her children. Violation of an order for protection is a misdemeanor crime. The officers could not leave the scene until Hollins was off the property and the house was secure for the petitioner and her children to return.
2. Whether the suspect poses an immediate threat to the safety of the officers or others: Hollins held the officers at bay with a tactical knife that, in this situation, served no purpose other than to pose an on-going, immediate threat to the officers.
3. Whether he is actively resisting arrest or attempting to evade arrest by flight: refusing to leave for three hours while holding a knife to keep officers from entering is actively resisting arrest. His repeated statements that he would not come out peacefully or leave the house under any circumstances, along with his actions, unequivocally communicated to the officers that he would not voluntarily end the conflict.

Judging, as *Graham* requires, whether the officer's use of force was reasonable from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight, compels the conclusion that Deputy Magelssen acted reasonably. Although the conflict spanned over several hours, the situation became more and more tense and the opportunities for peaceful resolutions grew fewer and fewer. Hollins effectively and repeatedly communicated his refusal to cooperate. After being hit with Taser fire, he continued to stand and waved the knife at the officers which escalated the conflict. Only after being shot did he lose his grip on the knife. The only way to stop the threat Hollins posed to the officers was to use lethal force.

Applying Minn. Stat. § 609.66 and the constitutional standard together, it is clear that Deputy Magelssen's use of deadly force was objectively reasonable in the face of the danger of death or great bodily harm, and no criminal charges are supported.