

APRIL 3, 2020



**THE HENNEPIN COUNTY ATTORNEY'S OFFICE
REPORT REGARDING THE POLICE USE OF
DEADLY FORCE ON MATTHEW NEIL
TUHKANEN ON JANUARY 19, 2019**

INTRODUCTION

The evidence in this case does not support the filing of criminal charges against Officer Samuel Heffernan for the fatal shooting of Matthew Tuhkanen. Mr. Tuhkanen was unwilling to leave M.W.'s residence as she asked and posed a significant risk of harm to M.W., her child, other civilians, and the police. Mr. Tuhkanen created a domestic violence situation and ran from the police when they tried to talk to him. He was on parole, had active warrants for his arrest, and refused to surrender or comply with officers' commands despite being held at gunpoint. Facing the potential use of deadly force by police and defying officers' commands, Mr. Tuhkanen suddenly reached toward a blind spot, causing the officers to reasonably believe that he was reaching for a gun or other concealed weapon. Accordingly, Officer Heffernan had an objectively reasonable belief that Mr. Tuhkanen posed an apparent threat of great bodily harm or death to multiple people.

All officers who responded to the 911 calls and subsequent events gave voluntary statements to investigators from the Hennepin County Sheriff's Office (HCSO)¹, with the exception of the shooter, Officer Heffernan. At the time, SLPPD officers did not wear body worn cameras. There is no squad or body worn camera video or any audio of the events that took place. In the absence of such evidence, the statements of the responding officers, along with statements of civilians and other materials gathered as part of the investigation, are the primary sources of information about the officers' actions.

After the shooting, Officer Heffernan made several choices, fully within his constitutional rights, which limited the ability to answer certain questions about this event. Officer Heffernan chose not to provide samples for toxicology testing, chose not to be interviewed by investigators to assist in this investigation, and chose not to provide access to the personal cell phone he possessed at the time of the shooting. While it is clear from the other evidence in the case and, significantly, the other officers' actions and statements, that Officer Heffernan's action in using deadly force was objectively reasonable, Officer Heffernan's cooperation would have resulted in a more complete investigation and would have permitted additional specific findings about this event.

STATEMENT OF RELEVANT FACTS

911 Calls #1 and #2

On January 19, 2019 at 5:02 p.m., a known adult female, referred to in this report as M.W., called 911 and said she wanted the police to come get her child's father, who she identified as Matthew Neil Tuhkanen. M.W. said that Mr. Tuhkanen had three warrants for Anoka County parole violations. M.W. said that she and Mr. Tuhkanen "argue and she could not deal with it." When asked by the 911 call taker whether this was a "verbal altercation," she said,

¹ The Chief of the St. Louis Park Police Department asked the Hennepin County Sheriff's Office to investigate the use of deadly force by Officer Heffernan.

“Yeah, he didn’t hurt me or anything.” She said he was in the parking lot of her building at 2760 Louisiana Court and that she lived in apartment #7. M.W. said that Mr. Tuhkanen slept at her apartment the past couple of nights and had nowhere else to go, but that she wanted police to get him. The call taker told M.W., “We’ll get somebody over there.”

Dispatch initially contacted St. Louis Park Police (SLPPD) Officers Samuel Heffernan and Maurice Smith, who were working in separate squad cars. Officer Heffernan had been a police officer for six years, three years with SLPPD and three previous years with another agency. Officer Smith had been a police officer for 15 months at the time of this incident. The dispatcher, who was also the 911 call taker, said:

I have a verbal domestic 2760 Louisiana Court number 7, between RP [reporting party] and her child’s father. She says he’s outside at this time, not do the full verbal only, no weapons. She also says he had warrants, I did pull up a few for Anoka County, it also states in here he is a suicide risk and mental deficiency.

Officer Heffernan acknowledged this information and asked, “Does it say what the warrants are for?” and the dispatcher replied, “Trespass . . . it does state in here multiple warrants and then later on it says violent tendencies.” Both officers acknowledged this information.

Seven minutes later, at 5:09 p.m., M.W. called 911 a second time and asked if the officers were on the way to her house. She said Mr. Tuhkanen was outside her door and pounding on it. The call taker said the police were on their way.

Police Response to 911 calls #1 and #2

SLPPD Community Service Officer (CSO) Kennedy Gorder was riding along with Officer Heffernan on his shift as they arrived at the Louisiana Court location. The apartment buildings that make up this complex provide transitional housing for women and children, some of whom have been in abusive relationships. The residences are managed by a non-profit corporation. The residence manager, Yolanda Ferris, was on site that day.

Officer Heffernan and Officer Jacob Erickson, who had just over two years’ experience as a police officer, arrived on scene first. Officer Erickson aired over the radio that a man ran out the back door of the building. Officer Heffernan then yelled, “Police stop!” and the man ran back into the building and up to the third floor. Officer Smith arrived and went in the building. He checked the basement level to find locked doors and an empty laundry room. Other officers began to arrive, including Troy Peek, who had been a SLPPD officer for 19 years, and Anthony Pacholke, who had been with the department for 17 years. Knowing that the man had not left the building, the officers concluded that he was in an apartment on the third floor. M.W.’s apartment #7 was one level below, on a floor up one flight of stairs as one enters the building. The officers knocked on the third-floor apartment doors and announced that they were police. Although they could hear people inside some of the apartments, no one answered their doors.

Expecting that the man would return to M.W.'s apartment, Officers Peek and Heffernan decided that Officer Heffernan would park out of sight of people in the building but in an area where Heffernan could observe the staircase through a large window. Other officers left the scene. Eventually, Officer Heffernan was dispatched to another call on the other side of the city.

911 Call #3

At 5:56 p.m., Jessica Stillday, the resident of the apartment #8, across the hall from M.W.'s, called 911 and said that she knew police had been there before and that the man was "in the lady's apartment again." Ms. Stillday said she watched through her peep hole as the woman in apartment #7 went upstairs, got the man, and brought him back to apartment #7. She gave a physical description of Mr. Tuhkanen.

Dispatch advised officers that the resident of apartment #8 called and had seen the man from the prior calls go into apartment #7. Officers Heffernan and Smith replied that they were on their way back to the apartment complex. Officers Peek and Pacholke were in the area and self-assigned to respond to the call.

Police Response to 911 Call #3

SLPPD records show that Officer Peek arrived first, at 6:04 p.m., with Pacholke, Heffernan, and Smith arriving just after him. As Officer Peek got to the second floor, Ms. Stillday came out and said she saw the man go into apartment #7 and he was still in there. The officers knocked on the door and eventually M.W. came out. Officer Peek observed she was "white as a ghost," had watery eyes, and was trembling. M.W. whispered, "He's back there," he's back there." A small child came out of the apartment with M.W. CSO Gorder stayed outside the apartment with M.W. and the child.

Officers Peek, Heffernan, Pacholke, and Smith were "stacked," or lined up, as they entered the apartment. Officer Peek said, "Police – Matthew show yourself" numerous times while they were in the empty living room. The officers found no one in the living room, kitchen, or bathroom. Officer Pacholke drew his Taser while they were in the living room. One bedroom had a closed door and Officer Peek, who also had his Taser out, opened it. Peek got on the ground and yelled, "Matthew show yourself, it's the police." There was only a bed and a dresser in the room and the light was on. Peek looked under the bed and saw nothing. Peek thought he saw a pile of clothes in the corner, but when it moved, he realized it was a man. Peek yelled, "He's in the corner!"

The officers formed a line facing Mr. Tuhkanen so that he could not run out of the room. Peek stood on the bed. Smith and Pacholke had their Tasers out and Heffernan had his firearm

drawn but pointed down at his side in the low-ready position. As the officers said, “Show us your hands, show us your hands,” Mr. Tuhkanen popped up very quickly like a “jack in the box.”

Mr. Tuhkanen was in a small, open space between a dresser and the bedroom wall, alternating between standing and crouching. He was approximately eight to ten feet from the officers at all times during this event. He wore a zip-up sweatshirt jacket, a sweatshirt underneath, and sweatpants. He took his jacket off and threw it on the floor and was moving his hands. At various times during the event, Mr. Tuhkanen’s left hand and whole left side were not visible to the officers. He brought his left hand up and had an object in it; when the officers commanded him to drop the item, he said, “I don’t have anything in my fucking hand, it’s a lighter.” Mr. Tuhkanen stood up and put the lighter on the dresser.

Officers heard Mr. Tuhkanen repeatedly say things such as, “Fuck it, shoot me, shoot me,” and “I want to die.” At times, he was yelling and extremely agitated. Officer Heffernan’s gun, as well as the other officers’ tasers, had laser sights creating visible red and green dots on Mr. Tuhkanen’s chest. Mr. Tuhkanen was “playing with” the lights on his chest while saying that he wanted the police to use “live rounds” on him. Mr. Tuhkanen then grabbed a cigarette from somewhere and lit it as he spoke to the officers. The officers calmly said, “Matthew you are under arrest, you are going to jail,” several times, with only one officer speaking at a time. Mr. Tuhkanen asked why he was under arrest and the officers replied that he had outstanding warrants and also fled the police after the first 911 call. Mr. Tuhkanen replied that the police had no right to be in the apartment, which belonged to the mother of his child. The officers told Mr. Tuhkanen that M.W. called them and asked them to come.

At some point during the encounter, Officer Pacholke re-holstered his Taser, noting that the other officers had Tasers at the ready and Officer Heffernan had his handgun out. Pacholke later said that he did so intending to be the one to approach Mr. Tuhkanen and go “hands on” and arrest him should Mr. Tuhkanen decide to comply with the officers’ commands.

Mr. Tuhkanen’s behavior required the officers to remain focused on him and thus they were unable to search the room, or Mr. Tuhkanen, for weapons. Mr. Tuhkanen began to repeatedly request and insist that the police bring M.W. to him. The officers told Mr. Tuhkanen they would not do that.² Throughout the encounter, Mr. Tuhkanen repeatedly put his left hand in his pocket and took it out. He refused commands to stop and show his hands. He continued to smoke the cigarette, discarding the ashes in his hand. The officers said again, “Matthew, show us your hands, you are going to jail.” Officer Heffernan told Mr. Tuhkanen that if he did not comply, he would be shot. Officer Peek told him to turn around and put his hands behind his back.

² Officer Peek explained in his statement that they did not consider bringing M.W. into the apartment because they were in a dangerous situation and they had no idea how Mr. Tuhkanen would have reacted to M.W.’s presence. Officer Peek thought the situation was particularly dangerous because there was a domestic dispute and Mr. Tuhkanen could have tried to harm M.W., or M.W. could have turned on the police.

Instead of showing his hands, Mr. Tuhkanen crouched down and turned inward toward the dresser with a hand on his waistband. Suddenly, he made a jerking movement with his left hand, crouched down, and leaned into a blind spot the officers could not see. Officer Smith “tensed up” on his Taser and took a step forward. None of the officers could see behind Mr. Tuhkanen or see the area in the corner behind the dresser. All of the officers later stated they believed Mr. Tuhkanen was going to pick something up from the concealed area.

Officer Heffernan fired several shots. Mr. Tuhkanen fell toward the wall and the officers continued to yell, “Show us your hands!” Officer Smith could hear Mr. Tuhkanen breathing faintly. Officer Heffernan aired “shots fired” at 6:16 p.m. and called for paramedics and fire. The other officers put on gloves and began to render aid to Mr. Tuhkanen while also handcuffing him. Eventually, officers were able to examine the space where Mr. Tuhkanen had been and they found no weapons.³ Mr. Tuhkanen died at the scene.

Officer Erickson arrived while officers were still attempting to handcuff Mr. Tuhkanen. He asked who fired, and Officer Heffernan replied that he did. Officer Erickson removed Officer Heffernan from the scene and Heffernan said, “I thought he was going to kill me.” Erickson escorted Officer Heffernan back to SLPPD headquarters. Sergeant Aaron Balvin, who also had responded to the first 911 call, arrived after the shooting. When he arrived, he asked who had fired shots and learned that Officer Heffernan had. In accordance with SLPPD policy, he asked Officer Heffernan public safety questions⁴ from a card supplied by the SLPPD. Officer Erickson told Sergeant Balvin that Heffernan had said, “I thought he was going to kill me.”

Asked later why he did not use his Taser, Officer Peek said that he was aware Mr. Tuhkanen was wearing loose fitting and thick clothes and was moving a lot. In Officer Peek’s experience a Taser would have been unlikely to subdue Mr. Tuhkanen and would have agitated him further.

Officer Smith spoke with M.W. after the shooting; she was in Ms. Stillday’s apartment. M.W. told Officer Smith she regretted going to the third floor to bring Mr. Tuhkanen back down. Ms. Stillday said, “He should have listened, he should have listened.”

INVESTIGATION

Later that night, HCSO investigators spoke with M.W. She and Mr. Tuhkanen had been in an on-and-off relationship for five years and had a four-year-old child in common. On

³ HCSO Crime Lab personnel photographed the scene and numerous photos are released in connection with this report. A small toy hammer is visible on the bedroom floor in some photos. A child’s play tool set with toy tools matching the hammer was in another bedroom. The toy hammer was not used by Mr. Tuhkanen in this incident and none of the officers mentioned it during the investigation.

⁴ When police respond to a scene such as a shooting where there is an immediate threat to public safety, officers may ask involved parties/shooters questions necessary to protect the public or themselves before giving a Miranda warning. *New York v. Quarles*, 467 U.S. 649 (1984); *State v. Caldwell*, 639 N.W.2d 64, 68 (Minn. Ct. App. 2002).

January 19th, M.W. returned home in the afternoon to find Mr. Tuhkanen had been drinking, which he was not supposed to do, and M.W. became angry with him. The two argued and M.W. called the police because she wanted Mr. Tuhkanen to leave. She was concerned for the safety of her child, and was also afraid she would lose her apartment because Mr. Tuhkanen was there and causing trouble. She also told the 911 call taker about Mr. Tuhkanen's warrants.

M.W. said Mr. Tuhkanen ran to an upstairs apartment and hid from the police. After the police left, she went upstairs and found another man fighting with Mr. Tuhkanen and brought Mr. Tuhkanen back to her apartment. Mr. Tuhkanen said, "Babe why did you call the cops on me?" Within minutes, the police were at M.W.'s door and Mr. Tuhkanen told her not to answer it. M.W. later told the investigators she opened the door because she was concerned for her child. As the police entered her apartment, she went up the flight of stairs while CSO Gorder stayed with her. M.W. heard four shots and went to Ms. Stillday's apartment.

Investigators spoke with Jessica Stillday. Ms. Stillday reported that she heard Mr. Tuhkanen and M.W. arguing and M.W. telling Mr. Tuhkanen to leave. Mr. Tuhkanen went out to the parking lot to speak to some men in a car then came back in the building. He pounded on M.W.'s door saying, "Let me in Babe" and "I love you." When the police came, Mr. Tuhkanen ran into an apartment upstairs.

Ms. Stillday said that after the police left, M.W. went upstairs and brought Mr. Tuhkanen back to her apartment. Ms. Stillday called 911 because she knew the police were looking for Mr. Tuhkanen. Through her peep hole, Ms. Stillday saw M.W. open her door for the police and point inside. She said M.W. and the child ran upstairs and five minutes later she heard, "boom, boom, boom, boom, boom." She opened her door and let M.W. and her child inside.

Later that night, HCSO investigators attempted to obtain Officer Heffernan's SLPPD cell phone and his personal cell phone, both of which he possessed during the incident and immediately afterwards. HCSO detectives and Officer Erickson went to Officer Heffernan's residence. Initially, Officer Heffernan agreed to turn the phones over to the detectives and provided the passcodes for both phones. Officer Heffernan asked if he could call his attorney and the HCSO detective agreed. After that phone call, Officer Heffernan said that on the advice of his attorney, he would not consent to providing either phone to investigators.

Early in the morning of January 20, 2019, HCSO investigators got a search warrant for Officer Heffernan's personal cell phone. Officer Heffernan turned over his personal cell phone. Somehow, Officer Heffernan's work phone had been returned to the SLPPD, which then provided it to HCSO investigators on January 22, 2019. The HCSO sent both phones for forensic analysis and on February 5, 2019, learned that both phones were passcode-protected and inaccessible without the passcodes. Eventually, it was possible to extract information from Officer Heffernan's work phone and it showed no calls, messages, emails, or texts from the date of the shooting or from any other date which related to the shooting. Without receiving the passcode from Officer Heffernan, further analysis of his personal phone was not possible.

Investigators interviewed Yolanda Ferris on January 30, 2019. Ms. Ferris is a recovery coach for the women who live in the Perspectives Support House, which is the apartment complex where this took place. She was in her office on-site when she heard a commotion and went upstairs to find the police. She recognized two of the officers as Officer Maurice and Officer Sam. The police told her they got a call about a domestic dispute and that the man was in someone's apartment. Ms. Ferris assisted the police by knocking on the doors and calling out the women's names. When no one answered, they went to apartment #7. M.W. was relatively new to the building and other than being introduced, had had no interactions with Ms. Ferris. Ms. Ferris had never seen Mr. Tuhkanen before. M.W. was anxious and trying to control her child.

After the police left, Ms. Ferris went to lock her office and then went to her own apartment in a separate building in the complex. She said that she had no reason to be particularly concerned for M.W. or the child's safety; otherwise she would have brought them to her apartment. From her balcony, she saw that the police had returned and Officer Sam was with them, but the other officers would not let her speak to him.

The HCSO Crime Lab collected and analyzed evidence from the scene. Lab personnel collected four discharged cartridge casings in the bedroom. The cartridges were found to have been fired from Officer Heffernan's Glock 9mm handgun, which was also tested and determined to be fully functional.

The Hennepin County Medical Examiner conducted an autopsy on Mr. Tuhkanen. He had four gunshot wounds—two to his torso and two to his right arm. Mr. Tuhkanen's blood tested positive for alcohol at .103 g/DL, methamphetamine at .33 mg/L, and methadone at .01 mg/L, as well as a smoking cessation medication.

Personnel and training records, along with department policies and use of force curriculum materials obtained in the course of this investigation, show that Officer Heffernan and the other officers involved in this incident were properly trained and competent police officers.

HSCO investigators interviewed Jeffrey Stoll, who was Mr. Tuhkanen's parole and probation officer. Mr. Stoll said that he had been supervising Mr. Tuhkanen on probation for one year, but that Mr. Tuhkanen had violated his probation and gone to prison for nearly a year. He was released from the Department of Corrections in the summer of 2018 and was on parole for felony fifth-degree assault. Mr. Tuhkanen had been meeting with Mr. Stoll once a week in person, but had accrued four parole violations between August 2018 and January 2019. He had warrants from Anoka County for trespass and failing to appear at a court hearing. Mr. Tuhkanen's parole would have expired in July 2019 had he not violated it.

A review of SLPPD reports revealed that on December 10, 2018, Officers Smith and Todd Hinz responded to a previous 911 call at apartment #7. They met with M.W. who said Mr. Tuhkanen had recently been released from prison and he had been staying with her but she wanted him to leave. She was crying, said Mr. Tuhkanen had a knife, and said she was afraid he would harm himself or her. Mr. Tuhkanen was not at the apartment building and officers did not locate him on that date.

HCSO Detectives attempted to verify that Officer Heffernan had actually checked MN Bureau of Criminal Apprehension (BCA) and Department of Vehicle Services records of Mr. Tuhkanen from his squad car. BCA records did not reflect that Officer Heffernan had performed such a search on January 19, 2019.

OFFICER HEFFERNAN'S STATEMENT AND RESPONSE TO INVESTIGATION

On the night of the shooting, investigators from the HCSO asked Officer Heffernan to provide blood samples for testing to determine whether he was under the influence of drugs or alcohol at the time he used deadly force. Officer Heffernan declined to do so. The HCSO sought the assistance of the SLPPD to compel Officer Heffernan to provide a sample, but the Chief of the SLPPD declined to require Officer Heffernan to submit to testing as a requirement of his employment. As such, while there are no facts suggesting Officer Heffernan was under the influence of drugs or alcohol at the time of the shooting, it is impossible to say conclusively whether any substances were in Officer Heffernan's system at the time of the shooting.

Officer Heffernan also declined to be interviewed by investigators from the HCSO in connection with this incident. Instead, ten days after the incident, on January 29, 2019, Officer Heffernan's attorney provided investigators with a nine-and-a-half-page typewritten statement signed by Officer Heffernan. When HCSO investigators had follow up questions, Officer Heffernan's attorney said his "office policy required all follow-up questions to be submitted in writing." The HCSO sent several written follow up questions on February 6, 2019 and received a response eight days later on February 14th.

In his written statement, Officer Heffernan stated that as he arrived in response to the first 911 call, he unholstered his gun out of concern for the "suspect's violent tendencies and other aired information." Officer Heffernan saw Mr. Tuhkanen coming out of the back door. When he yelled, "Police, Stop!" Mr. Tuhkanen ran back inside, and the building door closed and locked behind him. Through the door window, Officer Heffernan saw and heard Mr. Tuhkanen pounding on the door to apartment #7. Heffernan shouted, "Matthew, you are under arrest," and Mr. Tuhkanen ran up the stairs to the third floor. Another officer opened the door to the building with the firebox key and they went inside. Officer Heffernan kept his gun at his side in the low ready position while he checked the stairwells and knocked on the third-floor apartment doors with no success. Ms. Ferris asked Officer Heffernan what was going on and Mr. Heffernan asked her if it was possible that another resident would let Mr. Tuhkanen into their apartment. Ms. Ferris said it was possible.

Officer Heffernan then went to apartment #7 and spoke with M.W., whose four-year-old child was at her side. M.W. said she called the police because of Mr. Tuhkanen's inability to control his drinking and behavior. She said it was unsafe for her child and she was living at this residence to help with her own issues. She said Mr. Tuhkanen did not threaten to harm her or the child. Officer Heffernan verified that Mr. Tuhkanen did not have a key to M.W.'s apartment.

Although Officer Heffernan intended to stay in the area in case Mr. Tuhkanen returned, he was dispatched to another call. While on that call, Heffernan heard dispatch report that officers were returning to the Louisiana Court address because the suspect had returned. He returned to the apartment complex. Officer Heffernan wrote in his statement that because Mr. Tuhkanen knew M.W. called the police and was cooperating with them, and because he was likely to go to prison, this put the "situation into heightened alert."

As Heffernan arrived, Officer Peek was knocking on the door to apartment #7 and getting no response. Officer Heffernan addressed M.W. by her first name and asked her to come to the door. The door swung open and M.W. and her child stood there, obviously frightened. M.W. waved her arm wildly in the direction of the interior of the apartment to show that Mr. Tuhkanen was inside. She said nothing. The child said, "my daddy's not here."

Officer Peek went in first with his Taser drawn and Heffernan followed with his gun drawn. The written statement provided by Heffernan's attorney did not state when Heffernan drew his gun, only that the officers had "lethal and less lethal force" available. Officer Smith, who followed them in said, "Blue coming in," as they cleared the rooms of the apartment. Once inside the bedroom, Officer Peek announced, "Matthew come out with your hands up," and repeated that they were the police and that he [Tuhkanen] was under arrest."

Officer Heffernan said he first saw Mr. Tuhkanen's head and shoulders crunched into a corner behind the dresser. Heffernan saw a small dark object in Mr. Tuhkanen's hand and ordered him to drop it. Peek identified the object as a lighter and also told Mr. Tuhkanen to drop it. Mr. Tuhkanen stood up and put the lighter on the dresser. Heffernan ordered Tuhkanen to put his hands up and he refused. Mr. Tuhkanen picked up the lighter and lit a cigarette, which Heffernan characterized as "either an act of defiance, or . . . a last wish before something happened, perhaps arrest, or another event."

Officer Heffernan heard Mr. Tuhkanen say, "if you are going to shoot me, just use live rounds." He asked what he was under arrest for and Heffernan replied that he had active warrants and had fled on foot. Mr. Tuhkanen dropped his empty left hand toward his pants pocket and Heffernan yelled, "Don't reach for anything" as he juttred his gun in the direction of Mr. Tuhkanen. Tuhkanen raised his left hand as he continued to hold the cigarette in his right hand.

The written statement provided by Heffernan's attorney states that Mr. Tuhkanen's actions caused Heffernan to believe that Mr. Tuhkanen was actively concealing something

behind the dresser and that was why he was refusing to move and comply. Heffernan also stated he believed Mr. Tuhkanen was trying to lure the officers into a situation to harm them.

Officer Heffernan stated that the red laser dots from the Tasers and the green laser dots from his gun were shining on Mr. Tuhkanen's shirt and Mr. Tuhkanen began "playing" with the dots and put them on his hands. Heffernan deactivated his laser sight and then turned it back on. At this point, Mr. Tuhkanen began to ask for M.W., which Officer Heffernan took to mean that Mr. Tuhkanen was suicidal. When he told Mr. Tuhkanen that M.W. would not be coming in the room, Mr. Tuhkanen made a quick move to his waist with his left hand. Heffernan again juttled out his gun, commanded that Mr. Tuhkanen show his hands, and said he would get shot if he reached for anything.

Officer Heffernan wrote that at this point Mr. Tuhkanen "snuffed out the cigarette in the palm of his hand," which he found "bizarre and alarming." Then, Mr. Tuhkanen abruptly looked to the floor, reached down with both arms, and crouched toward the floor. Believing he was grabbing a gun, Officer Heffernan shot Mr. Tuhkanen "three times center mass." Once other officers secured Mr. Tuhkanen, Heffernan re-holstered his gun. Officer Erickson was assigned as Heffernan's escort and Officer Heffernan told him, "I thought he was going to shoot me."

Officer Heffernan's statement conflicts with information obtained during the HCSO investigation in the following material ways:

1. Officer Heffernan said that he confirmed what one of Mr. Tuhkanen's warrants was for while he was en route to the Louisiana Court address after the first 911 call. A search of the database used by police officers to confirm warrants shows that no inquiry was made into Mr. Tuhkanen by Officer Heffernan on January 19th.
2. Officer Heffernan said that Ms. Ferris told him, "I'm afraid that if he comes back, he's going to kill her." Ms. Ferris said in her interview that she had little to no knowledge of the parties and if she had had such a concern, would have removed M.W. and her child from the apartment.
3. Officer Peek stated that he opened the bedroom door; Officer Heffernan said he opened it.
4. Mr. Tuhkanen had no burn or injury to his hand consistent with putting a cigarette out on it.
5. Forensic evidence established that Officer Heffernan shot Mr. Tuhkanen four, not three, times.

HENNEPIN COUNTY ATTORNEY'S OFFICE REVIEW

On March 16, 2016, Hennepin County Attorney Mike Freeman announced that police 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 of whether an officer's conduct in such an event constitutes a crime and whether charges are

warranted. The Hennepin County Attorney reviewed the case with two senior prosecutors, and on April 3, 2020 issued this report.

LEGAL ANALYSIS REGARDING THE USE OF DEADLY FORCE

A. Law governing police use of deadly force

In the United States, police officers are authorized to use deadly force in the line of duty to protect themselves and members of the public from death or great bodily harm. In 1985, the United States Supreme Court recognized the use of deadly force by a police 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 In 1989, the Supreme Court again addressed the use of force by a police officer in *Graham v. Connor*,⁶ holding that an objective reasonableness standard should be used to evaluate a police officer’s use of deadly force. The assessment of reasonableness requires careful attention to the facts and circumstances of each case.

The *Graham* Court outlined a non-exhaustive list of factors for evaluating an officer’s decision to use force: 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 the suspect is actively resisting arrest or attempting to evade arrest by flight.⁷

The Minnesota use of deadly force statute, Minn. Stat. § 609.066, incorporates the factors the United States Supreme Court set forth in *Graham*, and provides that an officer’s use of deadly force does not constitute a crime when the officer’s act is necessary:

- (1) to protect the 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 officer knows or has reasonable grounds to believe has committed or attempted to commit a felony involving the use or threatened 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.⁸

In addition to being necessary, the officer’s use of force must be proportional to the threat the officer faces and, therefore, not excessive. In Minnesota, the relevant language regarding proportionality is contained in the jury instructions for the affirmative defense that an officer’s reasonable use of deadly force does not constitute a crime. In April 2019, the Hennepin County District Court gave the following proportionality instruction in *State of Minnesota v. Mohamed*

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

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

⁷ *Graham*, 490 U.S. at 396.

⁸ Minn. Stat. § 609.066, subd. 2.

Mohamed Noor, a murder case involving the use of deadly force by a police officer and the first such case tried in Hennepin County:

[T]he kind and degree of force a peace officer may lawfully use is limited by what a reasonable peace officer in the same situation, without the benefit of hindsight, would believe to be necessary. Any use of force beyond that is regarded by the law as excessive. To determine if the actions of the peace officer were reasonable, you must look at those facts known to the officer at the precise moment he acted with force. Giving due regard for the pressures faced by peace officers, you must decide whether the officer's actions were objectively reasonable in the light of the totality of the facts and circumstances confronting the officer, without regard to the officer's own state of mind, intention or motivation.⁹

“The facts known to the officer at the precise moment he acted with force” include any and all information the officer has prior to using the deadly force. This may include, but is not limited to: (1) information the officer receives prior to arriving on scene from any source, including other officers and civilians; (2) things the officer experiences prior to arriving on the scene; (3) information learned at the scene; and (4) the officer's training and previous experience. Information unknown to the officer at the time he used deadly force but learned after the fact may be relevant to the investigation as a whole but does not directly bear upon the objective reasonableness of the officer's decision to use deadly force.

If an officer's use of deadly force was (1) necessary for one of the reasons specified in Minn. Stat. § 609.066, (2) proportional to the threat facing the officer, and (3) objectively reasonable under the totality of the facts and circumstances, no criminal charges against any such officer is supported.

B. Officer Heffernan was authorized to use deadly force against Matthew Tuhkanen.

Officer Heffernan's use of deadly force against Mr. Tuhkanen was necessary to protect the officers and M.W. from apparent death or great bodily harm. All of the information known to Officer Heffernan at the time he responded to both calls would have led a reasonable and properly trained police officer to believe they were responding to a situation that could easily escalate and become very dangerous to officers and civilians.

Officer Heffernan and the other officers were responding to one call, and then a second call, involving possible domestic violence. Domestic violence calls are particularly dangerous for police officers because they are volatile and violent and often require the officers to walk into an active crime scene. Additionally, M.W. reported, and dispatch confirmed, that Mr. Tuhkanen was currently on parole and had active arrest warrants. Persons who are on parole and have active warrants face the highly likely prospect of returning to prison for a new arrest and therefore generally pose a greater risk to police than other citizens. Dispatch also informed

⁹ *Abraham v. Raso*, 183 F.3d 279 (1999); *See also* 10 MNPRAC CRIMJIG 7.11, Authorized Use of Deadly Force by Peace Officers. The court declined to give CRIMJIG 7.11 in *Noor*, choosing the language cited above instead.

Officer Heffernan that Mr. Tuhkanen was suicidal and had violent tendencies, which are additional risk factors a reasonable police officer would take into account in responding to protect the safety of both police officers and innocent civilians.

During the first 911 call, Mr. Tuhkanen confirmed his unwillingness to cooperate by evading the police and running from the officers as soon as he saw them. He hid from the police behind another resident's locked door. When speaking with M.W., Officer Heffernan found her obviously upset as she reported that she felt unsafe and concerned for her young child.

Reasonable and competently trained police officers know that domestic violence perpetrators often return to the scene after the police leave. For that reason, Officer Heffernan attempted to stay in the area so that Mr. Tuhkanen could be apprehended when he came out of the third-floor apartment. Though Officer Heffernan was needed on another call and had to leave, Mr. Tuhkanen confirmed Officer Heffernan's reasonable assessment of the situation by returning to M.W.'s apartment, prompting Ms. Stillday to make the third 911 call.

When M.W. answered the door to her apartment after the third call, she was again obviously frightened and pointed without speaking toward the interior of the apartment. Her actions told Officer Heffernan both that Mr. Tuhkanen was in her apartment and that she was afraid to say that out loud.

Officer Heffernan and the other officers went into the apartment and went room to room announcing their presence, but Mr. Tuhkanen did not respond. Once they located Mr. Tuhkanen in the bedroom behind the closed door, they told him repeatedly to show his hands, drop the lighter, and stop moving his hands. Mr. Tuhkanen refused to comply despite the fact that three officers displayed Tasers and Officer Heffernan displayed his handgun. Mr. Tuhkanen continually moved his hands around and put his hands in his pockets in defiance of the officers' commands. His action of lighting and smoking a cigarette despite their commands communicated clearly to the officers that Mr. Tuhkanen was not taking them seriously and had no intention of complying. Mr. Tuhkanen's statements about wanting to be shot and his remark about using live rounds supported the information the officers initially received about Mr. Tuhkanen being suicidal and having violent tendencies. Mr. Tuhkanen's challenge to the officers about their authority to be in the apartment and his demands to see M.W. were equally concerning indications of his resistance.

Mr. Tuhkanen's position in the corner next to the dresser made it impossible for any of the officers to see what Mr. Tuhkanen might have concealed in the space behind him. It was also impossible for the officers to move in and search the area without Mr. Tuhkanen's compliance. His constant hand movements gave officers the reasonable impression that he was going to reach for something they could not see. Officers are trained that suspects concealing weapons or contraband often look toward or reach toward such items. Accordingly, reasonable police officers would have been justifiably concerned, given the totality of the circumstances, that Mr. Tuhkanen was not going to cooperate or surrender and that there was a substantial possibility that he would escalate the situation by obtaining a hidden weapon.

When officers told Mr. Tuhkanen that they would not bring M.W. to him in the bedroom, he made a quick motion to his waistband causing Officer Heffernan to “jut out” his gun and clearly command that Mr. Heffernan stop reaching and raise his hands. Despite this clear command and show of authority, Mr. Heffernan continued to refuse to comply and suddenly moved and crouched. A reasonable police officer in this situation would have believed that Mr. Tuhkanen was becoming more resistant to compliance, would not have been able to see what Mr. Tuhkanen was reaching for, and would reasonably fear apparent death or great bodily harm. Considering the totality of these circumstances, Officer Heffernan’s action in shooting Mr. Tuhkanen at that moment was objectively reasonable.

Even when authorized by statute, a police officer’s use of deadly force must not be excessive and must be proportional to the threat facing the officer and/or others. Again, Mr. Tuhkanen’s repeated and clear non-compliance, coupled with his movements toward the space behind him that the officers could not see, posed a real and significant threat to the officers of death or great bodily harm. Because Mr. Tuhkanen posed a threat of apparent great bodily harm or death and because he refused to comply with the officers, Officer Heffernan’s use of deadly force with a firearm was proportional to the threat.

The fact that three officers displayed, but did not use, Tasers on Mr. Tuhkanen does not directly bear on the reasonableness of Officer Heffernan’s decision to use deadly force. In a dangerous situation where it is a virtual certainty that a suspect will be apprehended, law enforcement best practices require officers to be prepared to use varying degrees of force, including lethal and non-lethal force. In rapidly evolving situations, the degree of force necessary can change from zero to non-lethal or lethal in seconds and it is appropriate for officers to be prepared for any possibility. Officer Pacholke’s action in re-holstering his Taser illustrates this point; knowing that other officers were ready to use lethal and non-lethal force if necessary, at least one of them needed to be prepared to quickly move in and “go hands on” in the event Mr. Tuhkanen decided to peacefully surrender. Further, when one officer is prepared and ready to use lethal force if necessary, it is appropriate for the others to ensure that other degrees of force are available if the situation calls for it. In a situation where officers are faced with an apparent threat of death or great bodily harm, the law does not require that officers attempt to gain compliance by non-lethal or less-lethal force before using deadly force.

When it was safe for the officers to look in the area behind where Mr. Tuhkanen was standing when he suddenly turned and crouched, they saw that Mr. Tuhkanen did not, in fact, have a weapon hidden in that area. As long as an officer’s perception of death or great bodily harm is objectively reasonable, the fact that an officer was ultimately mistaken about the need for deadly force does not make the use of deadly force unlawful. *See generally, Gardner v. Buerger*, 82 F.3rd 248 (8th Cir. 1996).

As stated above, Officer Heffernan chose not to provide samples for toxicology, chose not to be interviewed by investigators to assist in this investigation, and chose not to provide access to the personal cell phone he possessed at the time of the shooting. These decisions are within Officer Heffernan’s constitutional rights. The consequences of these decisions, however, are that it is impossible to state definitively that Officer Heffernan was not under the influence of drugs

or alcohol at the time of the shooting. It was also not possible to follow up with Officer Heffernan about other information obtained in the investigation or to allow him to explain the inconsistencies mentioned earlier in this report. While it is clear from the other evidence in the case that Officer Heffernan's action in using deadly force was objectively reasonable, Officer Heffernan's cooperation would have resulted in a more complete investigation and would have permitted additional specific findings about this event.

That notwithstanding, the investigation established that Mr. Tuhkanen was unwilling to leave M.W.'s residence as he was asked and that he posed an objective risk to M.W., her child, other civilians, and the police. He was in a domestic violence situation, refused to leave M.W.'s apartment, evaded the police, was on parole, had active warrants, refused to come out of hiding for police, refused to show his hands, refused to surrender, refused to comply in the face of the potential use of force by police, and suddenly moved his hands into a blind spot in a final act of defiance. Officer Heffernan had an objectively reasonable belief that Mr. Tuhkanen posed an apparent threat of great bodily harm or death to him and to others. Under Minnesota law, it is clear that Officer Heffernan's use of deadly force was necessary, proportional, and objectively reasonable and therefore criminal charges are not warranted.