

**DECEMBER 7, 2018**



**REPORT OF THE HENNEPIN COUNTY  
ATTORNEY'S OFFICE REGARDING THE  
SHOOTING OF DeWAYNE BURLINGHAM ON  
FEBRUARY 7, 2018**

## FACTS

On February 7, 2018, officers from the Maple Grove Police Department were dispatched to a residence on Trenton Lane for a call for assistance. Officer Jeffrey Albers and Officer David Anton responded to the call. Upon arriving at the address, Officer Albers and Officer Anton discussed that officers had been at the residence in the past for a mental health crisis. The two officers made contact with DeWayne Burlingham, the sole occupant of the residence.

Officer Albers and Officer Anton entered the residence to talk with Mr. Burlingham. Officer Anton went to the upper level of the home with Mr. Burlingham while Officer Albers went to the lower level to conduct a protective sweep to locate any others who may have been present. At that time, Officer Albers heard Officer Anton call for him. Mr. Burlingham had become agitated and moved toward the kitchen. There, Mr. Burlingham produced a kitchen knife and began to poke at his eye with the knife tip. Officer Albers drew his handgun and ordered Mr. Burlingham to drop the knife. Officer Anton drew his Taser and deployed it, which caused Mr. Burlingham to fall to the kitchen floor. Through this, Mr. Burlingham maintained possession of the knife. Officer Anton again activated his Taser, but Mr. Burlingham remained out of control. Officer Anton then took the Taser from Officer Albers' duty belt and deployed that at Mr. Burlingham. Again, the Taser did not control Mr. Burlingham who began to cut himself on the stomach with the knife.

Officers Albers and Anton noted that Mr. Burlingham was asking them to "kill me" and proceeded to advance at Officer Albers while holding the knife. Officer Albers noted that he began to back up, but was in a confined space. Audio captured from the Taser and squad camera audio detail numerous orders by officers to Mr. Burlingham to stop his behavior and drop the knife. Officer Albers reported that he was fearful that Mr. Burlingham would stab him and fired two rounds at Mr. Burlingham.

Despite being shot, Mr. Burlingham remained on his feet and began to stab himself in the throat with the knife. Mr. Burlingham had stopped advancing and Officers Albers and Anton maintained their position until further support could arrive.

Officer Adam Marinello arrived on scene and tried to talk with Mr. Burlingham to gain compliance. Other officers arrived and got into position to assist. This included Officer Darren Struckmann, who had another Taser. Officer Marinello's attempts to de-escalate Mr. Burlingham were not making progress, so Officer Struckmann deployed his Taser. This time, the Taser was effective and officers moved in to disarm and detain Mr. Burlingham. Officers began providing first aid to Mr. Burlingham until paramedics arrived. Mr. Burlingham was brought to the hospital for treatment. Mr. Burlingham survived his wounds. The investigation revealed that Officer Albers fired twice, yet Mr. Burlingham had wounds to his abdomen, right forearm, and right leg.

Agents from the Minnesota Bureau of Criminal Apprehension were notified of the incident and commenced an investigation.

## HENNEPIN COUNTY ATTORNEY'S OFFICE REVIEW

The Minnesota Bureau of Criminal Apprehension submitted its final reports to the Hennepin County Attorney's Office in late May 2018. The case was reviewed for any charges for which the Hennepin County Attorney would have jurisdiction. The final charging determination was made by Hennepin County Attorney Mike Freeman following his and two Assistant County Attorneys' review of the evidence.

### LEGAL ANALYSIS REGARDING THE USE OF DEADLY FORCE

#### 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.<sup>1</sup> 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."<sup>2</sup> The intentional discharge of a firearm constitutes deadly force.<sup>3</sup>

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."<sup>4</sup> The Court also addressed the use of force by a peace officer in its 1989 decision, *Graham v. Connor*.<sup>5</sup> 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.<sup>6</sup>

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.

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<sup>1</sup> *State v. Basting*, 572 N.W.2d 281, 286 (Minn. 1997).

<sup>2</sup> Minn. Stat. § 609.066, subd. 2.

<sup>3</sup> Minn. Stat. § 609.066, subd. 1.

<sup>4</sup> *Tennessee v. Garner*, 471 U.S. 1,11 (1985).

<sup>5</sup> *Graham v. Conner*, 490 U.S. 386 (1989).

<sup>6</sup> *Graham* at 396-397.

### The Use of Deadly Force Against DeWayne Burlingham Was Authorized

The evidence detailed above as applied to the applicable law does not support the filing of criminal charges against Officer Albers, or any of the other officers involved in this case. The BCA investigation revealed Mr. Burlingham had a previous history of calls for service when he was in crisis. Furthermore, Agents met with Mr. Burlingham's former spouse, who noted that Mr. Burlingham would use methamphetamine, hallucinate, and arm himself with a knife based on a drug induced fear of others. Audio and video captured of the incident detail repeated attempts by officers to de-escalate the situation short of using deadly force. All reasonable attempts at doing so were unsuccessful and officers found themselves in a confined space with a person advancing on them with a knife. Officer Albers acted out of a reasonable fear of great bodily harm or death to himself and Officer Anton, and his use of deadly force was justified.

### **CONCLUSION**

The use of deadly force was objectively reasonable in the face of death or great bodily harm. Officer Anton twice deployed a Taser to stop Mr. Burlingham. Officer Albers fired two shots from his handgun to stop the threat posed. Once the threat was reduced (i.e., Mr. Burlingham stopped his advance), Officer Albers did not fire again and both officers maintained their position until additional support could arrive to once again end the situation short of additional deadly force. Criminal charges are not supported by evidence or appropriate under law in this case.