

AUGUST 5, 2020



**REPORT OF THE HENNEPIN COUNTY
ATTORNEY'S OFFICE REGARDING THE
POLICE USE OF DEADLY FORCE ON KOBE
DIMOCK-HEISLER ON AUGUST 31, 2019**

INTRODUCTION

The evidence in this case does not support the filing of criminal charges against Officers Cody Turner or Brandon Akers for the fatal shooting of Kobe Dimock-Heisler. At the time Officers Turner and Akers shot Mr. Dimock-Heisler, he was attempting to harm their partner, Officer Joseph Vu, with a knife. The officers responded to a 911 call for a domestic assault in which Mr. Dimock-Heisler threatened his grandfather with a knife and hammer. Mr. Dimock-Heisler admitted the assault to the officers, stated he had suicidal tendencies, and showed the officers scars on his body from recent and past self-harm.

While speaking with the officers from a seated position, Mr. Dimock-Heisler suddenly rushed the officers, grabbed a knife he had hidden between couch cushions, and attacked them. Officers first used their tasers on Mr. Dimock-Heisler, to no avail. Mr. Dimock-Heisler did not submit or surrender, was still armed with the knife, and tried to stab Officer Vu with the knife. Officers Turner and Akers then each shot Mr. Dimock-Heisler three times, killing him nearly instantaneously. Because a reasonable police officer in the same situation would have an objectively reasonable perception of fear of death or great bodily harm, Officers Turner and Akers' use of deadly force was lawful.

Mr. Dimock-Heisler was on the autism spectrum and had a history of mental illness. The officers who interacted with him were aware of his condition. They spoke with him respectfully and empathetically, clearly attempting to de-escalate the situation. While this incident ended tragically, the officers involved made every attempt to resolve the situation peacefully before resorting to the use of deadly force.

STATEMENT OF RELEVANT FACTS

Overview

On August 31, 2019, at approximately 4:20 p.m., Officers Cody Turner and Brandon Akers were on patrol in separate squad cars when they responded to a 911 call at 5918 Halifax Avenue North in Brooklyn Center. Dispatch advised the officers over the radio that they were responding to a 21-year-old fighting with his grandparents and described the call as a "domestic involving a hammer and a knife." The 21-year-old was later identified as the deceased, Kobe Edgar Dimock-Heisler. The 911 caller, Mr. Dimock-Heisler's grandfather, is referred to herein as "Victim." Officers Turner and Akers both activated their body worn cameras (BWCs) before responding.

Officer Turner had previously responded to a domestic assault call at the residence on March 11, 2019. In that incident, Mr. Dimock-Heisler had stabbed himself in the stomach and officers had placed him on a 72-hour hold.¹ Officer Turner told Officer Akers about the previous call when they arrived at the residence.

¹ Under Minn. Stat. § 253B.05, a peace officer may take a person into custody and transport them to a licensed treatment facility for 72 hours if the person is mentally ill and in danger of injuring themselves or others.

Officers Joseph Vu and Stephen Holt also arrived at the residence with Officers Turner and Akers, and likewise had their body worn cameras running.² As the officers were walking up to the front door, Victim came outside and spoke with the officers. Victim told the officers that he, his wife (referred to herein as “Witness”), and his grandson (Mr. Dimock-Heisler) were in the home and that everything was okay now. Officer Akers told Victim they would still need to check on the safety of everyone inside the home.

The four officers walked through the front door into the living room and saw Mr. Dimock-Heisler and Witness sitting on two separate couches. Officer Vu searched Mr. Dimock-Heisler’s clothing (gym shorts and a button-up shirt) and found no weapons, then directed him to sit in a nearby chair in the living room. Near where Mr. Dimock-Heisler was now sitting, Officer Holt noticed a knife sitting on the TV stand and moved it behind the TV, out of Mr. Dimock-Heisler’s reach.

Mr. Dimock-Heisler told Officers Vu and Holt that he had pointed a knife at his grandfather and told him to, “Fucking apologize.” While Officers Vu and Holt spoke with Mr. Dimock-Heisler, Witness sat on a couch approximately four feet away. Witness said she had the knife Mr. Dimock-Heisler had used. She picked up a bag near her feet, took the knife out and provided the knife to Officer Turner, who took it outside and confirmed with Victim it was used during the assault. Officer Turner then returned to Witness inside the house, and Witness gave him a hammer and a wrench.

Officers Akers and Turner spoke with Victim outside the house and Victim told them Mr. Dimock-Heisler was autistic and upset. Mr. Dimock-Heisler was on medication and had been in a treatment program but had recently quit because his health insurance no longer covered it. Victim also said that Mr. Dimock-Heisler cut himself superficially before the police arrived. Officers Turner and Akers explained that based on the violent nature of the current call and Mr. Dimock-Heisler’s history of self-harm, Mr. Dimock-Heisler would be going to the hospital.

Back inside the home, Officers Holt and Vu were still speaking with Mr. Dimock-Heisler. Mr. Dimock-Heisler told the officers he was not currently feeling suicidal, but said he had in the past, and had cut his own chest with a kitchen knife before the police arrived. He showed Officers Holt and Vu cuts on his body, stating that he cut himself after he knew his grandfather called the police because he did not want to be committed again. Mr. Dimock-Heisler explained that he had a “strained relationship” with his grandparents and had been civilly committed before. He then began to cry with his head in his hands.

Approximately 15 seconds later (approximately 9 minutes after first speaking with officers), Mr. Dimock-Heisler abruptly leapt out of his chair, moving past the officers and toward his grandmother on the couch in front of him. Officers Holt and Vu tried to stop him.

Outside, Officers Turner and Akers heard the commotion and rushed inside the home. They saw Officers Holt and Vu struggling with Mr. Dimock-Heisler and yelling at him to get on

² Officer Sara Fry was also on scene and approached the back of the home, as is standard procedure. She left when the situation seemed to be under control and returned when she heard officers air that shots had been fired.

the ground. During the struggle, Mr. Dimock-Heisler collided with the couch nearest the front door (not the one his grandmother was sitting on), which tipped over backwards. Officer Vu tried to hold Mr. Dimock-Heisler while Officers Holt and Turner fired their tasers. Their tasers hit Mr. Dimock-Heisler but had no effect on him.

At this point, Mr. Dimock-Heisler grabbed a knife that had been hidden between the couch cushions and attempted to stab Officer Vu, who was still locked in a struggle with Mr. Dimock-Heisler. Officer Turner saw this and yelled, “Knife, knife, knife!” Officers Turner and Akers both fired their handguns at Mr. Dimock-Heisler, striking him six times in total. After removing the knife from Mr. Dimock-Heisler’s hand and handcuffing him, officers and medical personnel attempted to save his life, but he had no pulse and died at the scene.

Officers from the Brooklyn Center, Brooklyn Park, Crystal, and Maple Grove police departments, as well as deputies from the Hennepin County Sheriff’s Office, responded to the scene. Officer Kim Potter, a police officer with the Brooklyn Center Police Department (BCPD) for 24 years, was among the first to arrive. As she arrived, officers were still securing the scene so that Mr. Dimock-Heisler could receive medical treatment. Officer Potter instructed Officers Turner and Akers to exit the residence, get into separate squad cars, turn off their body worn cameras, and to not talk to each other.

The BCPD notified the Minnesota Bureau of Criminal Apprehension (BCA) of the incident and asked that they investigate the use of deadly force. Officers Turner, Akers, Holt, and Vu were separately escorted to the BCPD, where they were monitored until the BCA collected their uniforms and equipment, photographed them, and collected blood samples. The involved officers did not discuss the incident with each other, or anyone else, until the BCA formally interviewed them.

STATEMENTS OF THE INVOLVED OFFICERS

Officer Cody Turner

On September 1, 2019, Officer Cody Turner provided a voluntary statement to investigators from the BCA. His attorney was present during the interview.³ Officer Turner watched his body worn camera footage twice before providing the statement.⁴

Officer Turner has been a fully trained Brooklyn Center police officer since 2009. Personnel and training records obtained during this investigation show that he is a fully trained and competent police officer.⁵ Officer Turner has held various assignments within BCPD,

³ Officer Turner’s attorney also represented Officer Akers in this matter.

⁴ The BCA defers to the originating agency’s policy on whether officers can review their BWC footage before providing a statement. The BCPD allows officers to review it first.

⁵ The Hennepin County Attorney’s Police Use of Deadly Force Protocol requires investigating agencies to acquire complete and comprehensive officer personnel and training records for every officer who used deadly force. In this case, the BCPD first provided incomplete records for all four BCPD officers involved in this incident. The

including the Special Weapons and Tactics (SWAT) team and serving as a use of force instructor for BCPD, specifically in the area of firearms.

Officer Turner said that on August 31, 2019, he was on routine patrol when he heard dispatch air that a grandson threatened his grandfather with a knife and a hammer at 5918 Halifax Avenue. As Officer Turner was responding to the call, he heard Officer Brandon Akers air that there had been a stabbing at that address earlier in the year. Officer Turner used his squad computer to look up prior police calls to the address. When he found the notes regarding the previous stabbing, Officer Turner realized that he had responded to that call, that it had involved the grandson stabbing himself in the stomach, and that the grandson had been placed on a 72-hour hold.

When Officer Turner arrived, he discussed the prior call with Officer Akers, recalling and saying that the previous incident involved a “pretty brutal stab wound.” As Officers Turner and Akers walked up to the house, Victim stepped outside and spoke with them. Officer Turner could see through the front window that Mr. Dimock-Heisler was aware the officers were there.

Officers Holt and Vu joined Officer Turner inside the home while Officer Akers spoke with Victim outside.⁶ Officer Turner stayed near the open front door, where he saw Officer Vu search Mr. Dimock-Heisler for weapons. He then saw Officers Vu and Holt sit Mr. Dimock-Heisler down in the living room and speak with him.

Officer Turner also saw Witness, who was not able to get up or walk without assistance, sitting on a couch across from and facing Mr. Dimock-Heisler. Witness said she had the knife Mr. Dimock-Heisler used to cut himself that day and she produced an approximately 12-inch orange knife with blood on the end of it.

Hennepin County Attorney’s Office requested complete information, specifically records of pre-hire psychological evaluations, and the BCPD refused to provide those records. The Hennepin County Grand Jury issued a subpoena for the BCPD to turn over complete and comprehensive training records on June 18, 2020. The BCPD complied with the subpoena and provided complete records.

⁶ It is the common practice of BCPD officers to separate family members involved in a domestic assault and speak to them individually.



Officer Turner took the knife and Victim confirmed it was the knife that Mr. Dimock-Heisler used to threaten him. Victim stated that during the assault, he ran into a back bedroom to hide from Mr. Dimock-Heisler.

Officer Turner heard Mr. Dimock-Heisler tell Officers Holt and Vu that he had threatened his grandfather with the knife and planned to hurt his grandfather if he (Victim) did not apologize. Victim told Officer Turner that Mr. Dimock-Heisler cut himself across his (Mr. Dimock-Heisler's) chest, and Mr. Dimock-Heisler confirmed this with Officers Holt and Vu. Victim also told Officer Turner that he was not at home when Mr. Dimock-Heisler stabbed himself in March and that he was not sure he should have called police this time. By this point, Officer Turner had made the decision to arrest Mr. Dimock-Heisler.

Officer Turner went back inside and overheard discussion about a hammer being used in the assault. Witness gave Officer Turner the hammer, and he took it outside and placed on a ledge near the front door.⁷ Officer Turner did not air "code 4" to dispatch, but instead had Officer Vu request an ambulance.⁸

⁷ Officer Turner's BWC also shows Witness providing Officer Turner with wrench but saying she did not think it was used in the assault.

⁸ "Code 4" means that officers are safe and the scene is secure.

While still outside, Officer Turner heard a struggle inside the house, including a “fast movement” and someone yelling “something like no-no-no.” Officer Turner ran back into the house and saw Mr. Dimock-Heisler in a sprint and jumping over the empty couch, which was tipping over. As Officer Turner ran past the tipping couch, he heard a taser discharge and saw that Mr. Dimock-Heisler did not react from the taser. Officer Turner drew his taser and discharged it on Mr. Dimock-Heisler’s upper back and shoulder, but again saw no reaction and no compliance. He then heard a third taser deploy. Mr. Dimock-Heisler pushed himself off the couch and started to run away. Officer Turner then attempted to use his taser to “drive stun” Mr. Dimock-Heisler but was unable to catch him.⁹ Mr. Dimock-Heisler went to the ground, either from being tackled or tripping. During the struggle, Officer Turner dropped his taser.

At that point, Officer Turner saw Mr. Dimock-Heisler holding a red knife in his right hand and trying to stab Officer Vu in the head. Officer Turner had not seen this knife anywhere in the residence before seeing it in Mr. Dimock-Heisler’s hand.



Officer Turner yelled, “Knife, knife, knife!” as he drew his gun. Officer Turner said he thought his only option was to shoot Mr. Dimock-Heisler because the tasers did not work, the other officers were still nearby, Witness was still on the couch, and Mr. Dimock-Heisler continued to make thrusting motions with the knife. Officer Turner fired his gun at Mr. Dimock-

⁹ A “drive stun” involves using the prongs on the end of the taser, rather than the projectile, to stun the suspect.

Heisler's center mass and simultaneously heard another officer firing. Mr. Dimock-Heisler went to the ground and Officer Turner aired "shots fired."

Officer Turner said he and his colleagues did not immediately give medical aid to Mr. Dimock-Heisler because he was still holding the knife. Instead, they waited for an officer with a bunker to arrive to shield them from any potential attack while they retrieved the knife and handcuffed Mr. Dimock-Heisler. When Officer Turner realized a bunker would not arrive soon enough, he chose to keep Mr. Dimock-Heisler at gunpoint while Officer Akers used his baton to move the knife away from Mr. Dimock-Heisler. After that, Officer Turner helped handcuff Mr. Dimock-Heisler and told Officer Vu to get a medical bag. As other officers arrived and provided medical aid to Mr. Dimock-Heisler, Officers Turner and Akers left the residence. No other responding officers or supervisors asked Officer Turner any public safety questions.¹⁰

Officer Turner's BWC footage is consistent with his statement in all relevant respects.

Officer Brandon Akers

On September 1, 2019, Officer Brandon Akers provided a voluntary statement to BCA investigators. Officer Akers's attorney was present for the interview. Officer Akers had watched his body worn camera footage once before giving a statement.

Personnel and training records obtained as part of this investigation show that Officer Akers has been a competent and fully trained BCPD police officer for 8 years. On August 31, 2019, Officer Akers was on routine patrol when he responded to 5918 Halifax Avenue for a domestic disturbance between a grandfather and a grandson involving a hammer and a knife. Officer Akers also heard that the 911 caller told dispatch "forget it" and hung up the phone, which happens commonly. Officer Akers checked his squad computer for previous calls to the address and noted a stabbing from March of 2019. He aired this to responding officers. Officer Akers was the first to arrive and parked a block south until backup arrived.

As Officer Akers walked up to the house, Victim came outside. Victim told Officer Akers there had been a disturbance in which his grandson was in possession of a hammer and a knife. Officer Akers felt that Victim was minimizing what had occurred. Officer Akers asked who was in the residence and told Victim that officers needed to check the house to make sure everyone was okay. Akers went inside and asked Witness what happened, and she said there was an "angry argument involving her grandson."

Officers Holt and Vu searched Mr. Dimock-Heisler for weapons while Officer Akers spoke with Victim outside. Victim said the argument started while they were at a Wendy's restaurant getting food. There, Mr. Dimock-Heisler became angry that Wendy's got their order wrong, and Victim had told him to stop yelling at people. Mr. Dimock-Heisler demanded to get

¹⁰ 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).

out of the car, so Victim let him out and told him to walk home. When Mr. Dimock-Heisler returned, he got a knife and a hammer and threatened Victim with them, telling Victim he had better apologize. Victim had then retreated into a back bedroom and called 911. Mr. Dimock-Heisler then cut his own chest and arm.

Victim also told Officer Akers that Mr. Dimock-Heisler has autism and had recently been removed from a treatment program. Victim said that he probably should not have called police, but he was scared. In Officer Akers's experience, victims of domestic violence often call the police "in the heat of the moment," and then after cooling off, fail to realize how dangerous the situation is.

While Officer Akers was speaking with Victim, he noted that Officer Turner collected a hammer and knife from inside the home. Officer Akers believed they were going to transport Mr. Dimock-Heisler by ambulance to a mental health hold.

At that point, Officer Akers heard a "commotion" from inside the house and one of his partners yelling "stop" or "no." Officer Akers dropped his notepad, ran inside, and saw Officer Vu struggling with Mr. Dimock-Heisler on top of a couch that was flipping over. Officer Akers looked down and saw a knife in Mr. Dimock-Heisler's right hand. He had no idea where the knife came from. Officer Akers drew his taser and fired it but saw that it had no effect on Mr. Dimock-Heisler.

Mr. Dimock-Heisler was able to get up and move in the direction of Officer Turner and Witness with his hands out in front of him. Officer Akers heard Officer Turner shout, "Knife, knife!" Officer Akers was scared for the safety of Witness and Officer Turner, so he drew his handgun and fired. Mr. Dimock-Heisler went to the ground.

With Mr. Dimock-Heisler down, Officer Akers helped Witness stand up and use a walker to leave the house. He then used his collapsible baton to remove the knife from Mr. Dimock-Heisler's hand. Once EMTs arrived, at the direction of Officer Kim Potter, Officer Akers went outside, sat in his squad car, and deactivated his body worn camera. Officer Akers did not give a full public safety statement, nor was he asked to, but did tell a sergeant that there was an unsecured knife at the scene.

Officer Akers' BWC footage is consistent with his statement in all relevant respects. In the slowed down, zoomed in version of Akers' BWC done by the BCA, at the point where Mr. Dimock-Heisler is toppling over the empty couch, Mr. Dimock-Heisler is pulling the knife from between the couch cushions.

Officer Joseph Vu

On September 2, 2019, Officer Joseph Vu gave a voluntary statement to BCA investigators. Officer Vu did not have an attorney with him when he gave his statement, but Officer Kim Potter, who is also the police union president, was present. Officer Vu watched his body worn camera footage once before being interviewed.

At the time of the incident, Officer Vu was a probational officer and had been hired approximately 2-3 months prior. He had completed a two-week in-service training, active shooter training, and firearms training. Personnel and training records obtained as part of this investigation show that Officer Vu had completed all required training up to that point in his career.

On August 31, 2019, Officer Vu was working with a field training officer, Officer Steve Holt, with whom he had been working for 2-3 weeks. Like Turner and Akers, they were on routine patrol when they responded to the domestic involving a knife and a hammer at 5918 Halifax. While en route, Officer Vu noted that the reporting party called back saying they no longer wanted the police to come because the suspect was “fine or okay.”

Upon arriving, Officer Vu met briefly with Victim outside the residence and then went inside and met Mr. Dimock-Heisler. Officer Vu searched Mr. Dimock-Heisler for weapons, and finding nothing except a phone, had him sit in a chair in the corner of the living room. Officer Vu said he spoke with Mr. Dimock-Heisler for about five to ten minutes, during which time Mr. Dimock-Heisler admitted he threatened his grandfather with a kitchen knife and a hammer and then cut himself with the knife. Officer Vu had Mr. Dimock-Heisler lift his shirt and Officer Vu saw knife wounds on Mr. Dimock-Heisler’s chest and stomach. Mr. Dimock-Heisler said he had cut himself because he had been committed for 30 days before and did not want to be committed again. Mr. Dimock-Heisler was calm during this conversation and Officer Vu said it “didn’t seem like anything was going to happen.” While speaking with Mr. Dimock-Heisler, Officer Vu saw Officer Holt move a silver knife that was on a TV stand near Mr. Dimock-Heisler so that it was no longer within arm’s reach of Mr. Dimock-Heisler.

Officer Vu radioed North Memorial Hospital for medics and told Mr. Dimock-Heisler that an ambulance would be arriving to check on his wounds. Mr. Dimock-Heisler said that he (Officer Vu) was lying and was just trying to commit him again. Officer Vu said he and the other officers were “still in the decision-making process” about whether Mr. Dimock-Heisler would actually be committed. Officer Vu never told Mr. Dimock-Heisler he would indeed be committed; rather he tried to de-escalate and “downplay” it to keep Mr. Dimock-Heisler’s mind off the topic. Mr. Dimock-Heisler “started to break down” at this point and he put his head down. He was rocking back and forth while saying he did not want to go with the ambulance.

Suddenly, Mr. Dimock-Heisler got up and started to run away in the direction of the area between the couches. Officer Vu grabbed him and heard Officer Holt call for Officer Turner. Mr. Dimock-Heisler was bigger than both Officer Vu and Officer Holt, and they could not get a proper grip on him. The struggle led to the empty couch, which then fell backwards with Officer Vu on top of Mr. Dimock-Heisler. Officer Vu heard tasers being deployed as he grabbed Mr. Dimock-Heisler’s legs. Just after that, Officer Vu heard “knife, knife, knife,” then heard gunshots. Officer Vu could not see Mr. Dimock-Heisler’s hands, did not see a knife, and did not know until later that Mr. Dimock-Heisler was trying to stab him. He did not fire his taser or his gun. Once he got to his feet, he aired “shots fired.” Officer Vu later noticed an abrasion on his arm.

Officer Vu went to grab a medical bag from his squad as the North Memorial ambulance was arriving. Officer Vu told the paramedics the scene was not yet secure and went back inside to help the other officers secure the scene. He helped escort Witness, who had extreme difficulty walking, out of the residence. He then returned and kept Mr. Dimock-Heisler at gunpoint while other officers handcuffed him and removed the knife from his hand. Officer Kim Potter escorted Officer Vu from the scene and back to the police station.

Officer Vu's BWC footage is consistent with his statement in all relevant respects. It shows that Officer Vu spoke with Mr. Dimock-Heisler for just over ten minutes, and that Officer Vu was calm and empathetic as he attempted to de-escalate the situation. It also shows just how suddenly Mr. Dimock-Heisler's behavior changed and how abruptly he got up from the chair and retrieved the knife. Once that happened and the struggle began, Officer Vu's BWC was knocked loose from his body and fell face down on the floor. Officer Vu picked it up and attempted to reattach it, but it fell again, this time face-up.

Officer Steve Holt

On September 3, 2019, Officer Steve Holt provided a voluntary statement to BCA investigators. Sergeant Kim Potter was also present for this interview. Officer Holt watched his BWC footage once before being interviewed.

Personnel and training records obtained as part of this investigation show that Officer Holt was a competent and fully trained police officer for five years. Officer Holt was assigned to BCPD's hostage negotiation team and, at the time of the incident, was Officer Vu's field training officer. While en route to the domestic call at 5918 Halifax, Officer Holt learned there had been a previous stabbing and suicide attempt with a knife at that residence. Officer Holt also learned that Officer Turner had responded to that prior call.

Officer Holt was with Officer Vu as he pat-searched Mr. Dimock-Heisler and sat him in a chair on the other side of the living room. Officer Holt said he did not want Mr. Dimock-Heisler to remain sitting on the couch because it had cushions between which a weapon could be concealed. He heard Mr. Dimock-Heisler admit to assaulting Victim and likewise observed Mr. Dimock-Heisler's scars from self-harm, some of which were still bleeding. He saw Witness give Officer Turner the knife and hammer Mr. Dimock-Heisler used in the assault. As Officer Vu spoke with Mr. Dimock-Heisler, Officer Holt observed a silver butter knife on the TV stand next to Mr. Dimock-Heisler. He picked it up and placed it behind the TV, out of Mr. Dimock-Heisler's reach.

At first, Mr. Dimock-Heisler had a very "calm, rational demeanor," but he became upset as the conversation continued. Mr. Dimock-Heisler knew how mental health holds work because he had previously been committed and expressed that he did not want to be taken by an ambulance. Officer Holt heard Officer Vu using de-escalation techniques with Mr. Dimock-Heisler, such as using small talk to steer away from the topic of mental health holds. As Mr.

Dimock-Heisler became more upset, he started rocking back and forth. The officers never told Mr. Dimock-Heisler he would be arrested or placed on a mental health hold.

Suddenly, Mr. Dimock-Heisler sprung out of his chair “like a track runner ... coming out of the sprinting blocks” and as Officer Holt tried to restrain him, they “hit hard.” Officer Holt tried to hold Mr. Dimock-Heisler, particularly to prevent him from retrieving any weapons from the kitchen. Officer Holt yelled, “Cody!” (Officer Turner’s first name) as he struggled with Mr. Dimock-Heisler. They tumbled over the couch and Officer Holt heard a taser deploy.

Officer Holt stood up and had a direct line of sight to Mr. Dimock-Heisler’s back. He drew and deployed his taser at Mr. Dimock-Heisler, saw that it had no effect, then heard six to seven gunshots. Officer Holt heard his partners call out shots fired and holstered his taser. He drew his firearm and pointed it at Mr. Dimock-Heisler, who was on the living room floor. He kept Mr. Dimock-Heisler at gunpoint while the other officers escorted Victim out of the living room and figured out the best way to disarm and handcuff Mr. Dimock-Heisler. Officer Holt did not fire his gun during the incident.

Officer Holt retrieved a medical bag from Officer Vu and attempted to save Mr. Dimock-Heisler’s life. Mr. Dimock-Heisler did not have a pulse. Once North Memorial medics were cleared to enter the house, Officer Holt let them take over and left the residence.

As he exited the house, Officer Holt encountered Sergeant Shawn Watson from the Maple Grove Police Department, and later, BCPD Sergeant Troy Peasley who was the duty supervisor. He told these officers that he had not fired his gun. Officer Holt is unfamiliar with the term “public safety statement” but does not recall giving a statement of any kind at the scene. Officer Jon Bueckers from Maple Grove drove Officer Holt back to the station; they did not discuss the incident.

Officer Holt’s BWC footage is consistent with his statement in all relevant respects. At the point in which Mr. Dimock-Heisler lunges out of his chair and struggles with Officers Vu and Holt, the lens of Officer Holt’s camera is blocked by their bodies. The camera is then knocked off Officer Holt’s body and lands face-down on the floor. The ensuing taser deployments can be heard, as well as Officer Turner yelling “knife, knife, knife” and the gunshots, but nothing after is visible.

THE INVESTIGATION

The Hennepin County Medical Examiner performed an autopsy on Mr. Dimock-Heisler and found seven gunshot wounds, one of which was a graze wound. The Medical Examiner recovered six intact bullets from Mr. Dimock-Heisler’s chest, neck, and abdomen, as well as some bullet fragments from his head. The autopsy also revealed numerous scars suggestive of self-injury with a knife on Mr. Dimock-Heisler’s chest, abdomen, and left arm. Toxicological testing found no controlled substances in Mr. Dimock-Heisler’s blood, but there was THC in his urine.

The BCA interviewed the involved officers, as well as every officer that responded to the scene from all departments. They also interviewed Victim, Witness, and their neighbors. The neighbors provided no relevant information except that they knew the police had responded and there had been gunshots.

Victim reported that Mr. Dimock-Heisler has lived with him and Witness since he was 6 years old. Mr. Dimock-Heisler has autism and is generally not violent but has hurt himself in the past by cutting. Victim reiterated the account of going to Wendy's, Mr. Dimock-Heisler becoming upset, and his then later threatening Victim with a knife and hammer. He then called the police and the previously described events occurred.

Witness reported that Mr. Dimock-Heisler has Asperger's Syndrome and corroborated that he has hurt himself before, including coming close to jumping off a bridge. She observed Mr. Dimock-Heisler come home after the Wendy's incident and heard him tell Victim to "fucking apologize." When Victim did not apologize, Mr. Dimock-Heisler retrieved the knife and hammer and threatened him. Victim then locked himself in his office and called police. Once Mr. Dimock-Heisler learned Victim called police, he began to cut himself with the knife. Witness and Victim were able to get the knife and hammer from Mr. Dimock-Heisler and wait for the officers to arrive.

The BCA also analyzed the crime scene and conducted forensic testing. Investigators found four shell casings at the scene. Three of them were fired from Officer Akers gun and matched three of the bullets recovered from Mr. Dimock-Heisler's body by the medical examiner. Only one of Officer Turner's shell casings was found; two were not located. That shell casing, along with the other three bullets recovered from Mr. Dimock-Heisler's body, were matched to Officer Turner's gun.

Investigators determined that the knife used by Mr. Dimock-Heisler during the assault of Officer Vu was moved to the kitchen by Sgt. Troy Peasley when officers responded to the shots-fired call. Sgt. Peasley's body worn camera footage shows him moving the knife. Forensic testing revealed that Mr. Dimock-Heisler's DNA was on the knife. Mr. Dimock-Heisler's DNA was also found on both the blade and the handle of the knife that Officer Turner had placed on the front patio area after receiving it from Witness. Investigators also found the hammer and the wrench, as well as the knife Officer Holt had placed behind the TV when talking to Mr. Dimock-Heisler, but did not test these items for DNA.

Both Officer Turner and Officer Akers voluntarily gave samples for toxicological testing which determined that neither officer had any alcohol or drugs in his system at the time of the shooting. The BCA obtained search warrants for each of the involved officers' department-issued cell phones and found no data relevant to this investigation.

Finally, the BCA analyzed the BWC footage of the involved officers. At normal speed, the knife obtained by Mr. Dimock-Heisler during the struggle and used against Officer Vu is not readily visible in any of the officers' BWC recordings. BCA analysts slowed the footage and zoomed in at relevant portions which revealed that Mr. Dimock-Heisler grabbed the knife. In Officer Akers's footage in particular, one can see Mr. Dimock-Heisler grabbing the knife from

between the couch cushions after the couch is knocked over. Mr. Dimock-Heisler then lunges at Officer Vu with the knife, goes past him, hits the ground, then gets up and attempts to attack the officers again before being shot.

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 August 5, 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."¹¹ In 1989, the Supreme Court again addressed the use of force by a police officer in *Graham v. Connor*,¹² 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.¹³

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;

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

¹² *Graham v. Connor*, 490 U.S. 386 (1989).

¹³ *Graham*, 490 U.S. at 396.

- (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.¹⁴

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 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.¹⁵

"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.

¹⁴ Minn. Stat. § 609.066, subd. 2.

¹⁵ *Abraham v. Raso*, 183 F.3d 279 (3rd Cir. 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.

B. Officers Turner and Akers were authorized to use deadly force against Mr. Dimock-Heisler.

Officer Turner and Officer Akers' use of deadly force against Mr. Dimock-Heisler satisfies Minn. Stat. § 609.066 because it was necessary to protect themselves and their partners from apparent death or great bodily harm. Both officers saw Mr. Dimock-Heisler attempting to stab Officer Vu with a knife. Officers Vu and Holt were trapped in a tightly confined space with Mr. Dimock-Heisler, unaware that a weapon was being used against them and unable to appropriately and proportionally defend themselves. Officers Turner, Akers, and Holt attempted to subdue Mr. Dimock-Heisler with tasers to no avail. With all less lethal options exhausted, Officers Turner and Akers were justified in resorting to deadly force. Because Mr. Dimock-Heisler could have completed a deadly attack in mere seconds, Officers Turner and Akers' use of deadly force was necessary to stop the threat. An objectively reasonable officer in the same situation would perceive that death or great bodily harm was imminent and that deadly force was necessary.

Mr. Dimock-Heisler's attack also placed Witness, his grandmother, in danger. She was mere feet away from Mr. Dimock-Heisler during the entire incident and almost completely immobile. Had Mr. Dimock-Heisler redirected his attack toward Witness, which he could have done instantaneously, she would have been particularly vulnerable and unable to evade Mr. Dimock-Heisler's knife. This was a very real possibility considering Mr. Dimock-Heisler had just assaulted his grandfather and could have been angry that Witness had provided the officers with information about the assault, including handing over the weapons he had used against Victim.

The circumstances known to Officers Turner and Akers at the time of the event also support their decision to use deadly force:

1. Officers Turner and Akers knew that minutes before they arrived Mr. Dimock-Heisler assaulted Victim with a knife and a hammer, causing Victim to retreat into a back room and call 911. When the officers arrived, Mr. Dimock-Heisler fully admitted he had threatened Victim with the weapons while telling him to "fucking apologize," and admitted he intended to hurt Victim if he did not do so.
2. Officers Turner and Akers were aware of a previous police call to the address in which Mr. Dimock-Heisler had stabbed himself and been placed on a 72-hour hold. Additionally, they observed or were otherwise aware that Mr. Dimock-Heisler had cut himself on this occasion and other past occasions, all suggesting Mr. Dimock-Heisler had a propensity for using cutting instruments.
3. Officers Turner, Akers, and Holt each tased Mr. Dimock-Heisler, which failed to subdue him. This demonstrated that Mr. Dimock-Heisler would not give up and submit to the officers and would continue his assaultive behavior. Importantly, it also demonstrated that a higher level of force would be necessary to subdue Mr. Dimock-Heisler while he was armed with a knife.

4. When officers first arrived, Officer Vu searched Mr. Dimock-Heisler for weapons and found none, and Officer Holt removed the knife on the TV stand from Mr. Dimock-Heisler's reach. No other weapons were visible. Therefore, when Officers Akers and Holt observed the knife in Mr. Dimock-Heisler's hand, they knew that Mr. Dimock-Heisler retrieved it from a hidden or unseen area. An objectively reasonable officer in this situation would deduce that Mr. Dimock-Heisler hid the weapon intending to use it and that any assault was therefore planned to be deadly.
5. The overall situation suggested that Mr. Dimock-Heisler would not relent in his attack and that he fully intended to hurt the officers and/or force the officers to hurt him, making their decisions to use deadly force objectively reasonable.

The statements of Officers Vu and Holt corroborate the conclusion that Officers Turner and Akers' use of deadly force was objectively reasonable. Before assaulting Officer Vu, Mr. Dimock-Heisler was adamant that he did not want to be placed on a 72-hour hold. While Officers Turner and Akers were not present when Mr. Dimock-Heisler relayed this, when viewed in light of the other circumstances, it indicates that Mr. Dimock-Heisler ultimately resorted to the drastic measure of assaulting a police officer to avoid this outcome at all costs. Accordingly, this information corroborates Officers Turner and Akers' assessment that deadly force was necessary.

The rest of the BCA's investigation is likewise corroborative. Victim and Witness reiterated their accounts of the assault that took place before officers arrived; their accounts were consistent with the information they gave officers at the time, as well as with what Mr. Dimock-Heisler admitted. Investigators also recovered the weapons used by Mr. Dimock-Heisler in both assaults and determined that his DNA was on both the knife he used to threaten Victim with and the knife with which he attempted to stab Officer Vu.

Finally, the force used by Officers Turner and Akers was proportional to the threat Mr. Dimock-Heisler posed. Mr. Dimock-Heisler was armed with a knife, an instrument capable of causing great bodily harm or death. The fact that he just retrieved the knife from a hiding spot suggested that he intended to use it in a deadly manner and that he may have been planning to use it. Mr. Dimock-Heisler's act of making stabbing or thrusting motions with the knife in close proximity to Officer Vu's vital organs is also evidence that Mr. Dimock-Heisler intended to kill Officer Vu or cause great bodily harm.¹⁶ Because the officers faced deadly force, it was lawful for them to respond with equal or greater force, especially since their attempts at less lethal force (tasers) had been ineffective. Here, with an armed attacker in a confined space the most appropriate and proportional force was deadly force. Under these facts, the officers' decision to do so was objectively reasonable and no criminal charges against Officers Turner and Akers are supported.

¹⁶ See, e.g., *State v. Andrews*, 388 N.W.2d 723, 728-29 (Minn. 1986).