

**FEBRUARY 10, 2020**



**REPORT OF THE HENNEPIN COUNTY  
ATTORNEY'S OFFICE REGARDING THE USE OF  
DEADLY FORCE ON BRIAN JESUS QUINONES-  
ROSARIO ON SEPTEMBER 7, 2019**

## **INTRODUCTION**

The evidence collected and analyzed in this investigation does not support the filing of criminal charges against Edina Police Officers Nicholas Pedersen and Benjamin Wenande, nor Richfield Police Officers Dylan Schultz, Macabe Stariha, and Joseph Carroll for the fatal shooting of Brian Quinones-Rosario (hereinafter “Mr. Quinones”). At the time he was shot, Mr. Quinones was wielding a knife he produced immediately upon getting out of his car at a traffic stop he caused by fleeing from police. The evidence shows that Mr. Quinones intentionally committed traffic violations to cause police to follow and stop him. Video evidence from Mr. Quinones’s Facebook Live stream shows that Mr. Quinones was aware the police were following him and grabbed his knife before getting out of his car to confront Edina Police Officer Nicholas Pedersen.

While the events transpired quickly, it is clear that Pedersen and other responding officers ordered Mr. Quinones to drop the knife before any shots were fired. Mr. Quinones did not drop the knife until he was shot and on the ground. Prior to being shot, Mr. Quinones moved aggressively toward the officers with the knife in his hand, creating an immediate and apparent threat of death or great bodily harm to the five officers. Mr. Quinones went aggressively toward Officers Schultz, Carroll, and Wenande in particular. One attempt to use a Taser to resolve the situation failed. Officers Pedersen, Stariha, Schultz, Carroll, and Wenande fired to protect themselves and each other, acting out of fear of an objectively apparent threat of great bodily harm or death. Under the totality of the circumstances, their use of deadly force was necessary, proportional to the threat, and objectively reasonable.

## **STATEMENT OF RELEVANT FACTS**

### **I. Accounts of Officers**

#### **Edina Police Officer Nicholas Pedersen**

Edina Police Officer Nicholas Pedersen had been employed by the Edina Police Department for seven and a half years at the time of this incident. Personnel and training records obtained as part of this investigation show that Officer Pedersen was a properly trained and competent police officer.<sup>1</sup> On his patrol shift on September 7, 2019, he was accompanied by a ride-along, Heidi Lee, who is the Race and Equity Coordinator for the city of Edina. At just after 10:00 p.m., Officer Pedersen was at Normandale Frontage Road and 77<sup>th</sup> Street in the center lane

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<sup>1</sup> 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 Edina Police Department first provided incomplete, and then redacted, records for both Edina Police officers who fired shots at Mr. Quinones. After the Hennepin County Attorney’s Office made subsequent requests for this information, the Edina Police Department refused to provide unredacted and complete personnel and training records for its officers. The Hennepin County Sheriff’s Office, the investigating agency in this case, refused to seek a search warrant for the records, despite having obtained three other search warrants in this case. The Hennepin County Grand Jury issued a subpoena for the Edina Police Department to turn over complete and comprehensive training records on January 16, 2020. The Edina Police Department complied with the subpoena and provided complete records. The Richfield Police Department provided full and complete training and personnel records early in the investigation.

at a stop light. A gray car approached on his right and made a right turn against the light at a speed above the speed limit. Officer Pedersen turned on his squad camera and began following the car. Edina police officers do not wear body worn cameras. Officer Pedersen saw that the driver and sole occupant of the car was a man holding a cell phone to his face. The car continued speeding slightly higher than the speed limit and made a left turn without using a signal. Officer Pedersen then turned on his emergency lights and siren.

Officer Pedersen ran the license plate on his squad computer and saw that the car registered to a woman. The car continued at 10-15 mph over the speed limit without stopping or pulling over and occasionally crossing the center line. Officer Pedersen, assuming the driver was drunk, called dispatch to air that he had “one not stopping.” Two other Edina police officers acknowledged Pedersen’s call. Upon crossing the intersection at 76<sup>th</sup> and Xerxes, they entered the city of Richfield. At 77<sup>th</sup> Street, Officer Pedersen waited for another squad car to join him so they could make a felony stop of the car.

At Portland Avenue, a white SUV driven by a woman came alongside Pedersen’s car, very near the car he was following, and suddenly braked. Pedersen and the gray car went through the red light. Pedersen then attempted a PIT maneuver, which involves bumping the rear of a suspect car with a special bar on the front of the squad car to get the car to stop. Pedersen missed the car and before he could try again, the driver of the gray car suddenly slammed on the brakes. This abrupt action by the driver made Pedersen question whether he was dealing with something other than a drunk driver.

Pedersen parked in front of the gray car, got out, drew his gun, and saw that the man, Mr. Quinones, was now standing outside of his car. Pedersen saw Mr. Quinones holding a knife in his hand with the blade pointed up. Pedersen either radioed “gun” to other officers or said the word “gun” aloud, but quickly realized he needed to correct it to “it’s a knife.” Pedersen yelled at Mr. Quinones to drop the knife. Mr. Quinones responded by flexing his upper body and coming towards Officer Pedersen, getting as close as six to ten feet from him. Mr. Quinones clenched his teeth and said, “Do it! Do it!” as he walked back and forth in front of Officer Pedersen.

As Pedersen watched Mr. Quinones, he noticed that Mr. Quinones became distracted by something to Mr. Quinones’s right and Pedersen’s left and moved in that direction. Pedersen had not yet realized that other officers were responding. Pedersen fired his gun three or four times and stopped when he saw another officer approaching Mr. Quinones. Mr. Quinones went to the ground and Pedersen saw other officers pointing their guns at him. Pedersen went to Mr. Quinones, grabbed his arm, and flipped him over while other officers handcuffed him. Pedersen went back to his squad car to check on Ms. Lee, who was distraught and fearful.

Pedersen was removed from the scene and assigned an escort officer. The ranking Edina Police Department Sergeant on duty arrived at the scene and asked Pedersen some public safety questions<sup>2</sup> from the Edina Police Department manual.

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<sup>2</sup> 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).

Officer Pedersen gave a voluntary statement to Hennepin County Sheriff's (HCSO) investigators on September 11, 2019. He did not review any video of the event prior to his interview.<sup>3</sup> The HCSO Crime Lab examined his gun which showed that he fired four shots.

### **Richfield Police Officer Dylan Schultz**

Richfield Police Officer Dylan Schultz had been a police officer with the Richfield Police Department for just over two years at the time of this incident. Personnel and training records obtained as part of this investigation show that Officer Schultz was a properly trained and competent police officer. Officer Schultz was at the Richfield Police Station at 6700 Portland Avenue when he heard Edina Police Officer Pedersen air that he was in pursuit of a car crossing from Edina into Richfield. The car was running red lights and not following traffic laws. Edina and Richfield Police Departments share a radio channel and commonly assist on each other's calls. Richfield police officers also do not wear body worn cameras. Schultz left the police station with his squad video activated to intercept the fleeing car at 77<sup>th</sup> and Portland with "stop sticks," which are tire deflation devices. Schultz heard Pedersen air that Pedersen was going to attempt a PIT maneuver at 77<sup>th</sup> and Nicollet. Schultz encountered Pedersen and Mr. Quinones's car at 77<sup>th</sup> and Portland. The car had not yet been stopped and ran the red light. Schultz followed a few blocks behind and saw Mr. Quinones's car suddenly stop.

As Schultz pulled up, he saw a man get out of the driver's side of the car and go directly toward Pedersen's squad car. Schultz aired that "one was out of the car" and immediately after, he heard Pedersen both on the radio and in person say, "Drop the knife!" He saw Pedersen with his gun drawn and Pedersen and Mr. Quinones were moving across the median into westbound traffic on 77<sup>th</sup>. Mr. Quinones had a knife with a silver blade in his right hand. At that point, the distance between Mr. Quinones and Pedersen was increasing and Schultz saw an opportunity to use a Taser. He unholstered his Taser and armed it (turned it on). Mr. Quinones was in the middle of the westbound lanes of traffic and as Schultz discharged the Taser, Mr. Quinones started charging at him with the blade of the knife pointed at him. Mr. Quinones yelled, "Kill me, kill me!" as Schultz stepped backwards. Other officers began firing at Mr. Quinones. Mr. Quinones got within five feet of Schultz and Schultz dropped his Taser and unholstered his gun.

Mr. Quinones stopped for approximately a second near a tree in the median and the shooting stopped. Officers told Mr. Quinones to drop the knife, but he did not. He started making a slashing motion with the knife and moved in the direction of other officers. Schultz fired his gun once and Mr. Quinones fell to the ground, dropping the knife. Schultz then went to secure Mr. Quinones's car with Richfield Officer Joseph Carroll. Once the car was cleared of any threat, Schultz, a SWAT Team medic, retrieved his medical kit and rendered aid to Mr. Quinones before paramedics arrived. Officer Schultz was separated from other officers and assigned an escort officer. No one asked Officer Schultz any public safety questions.

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<sup>3</sup> Both the Edina and Richfield Police Departments allow an officer involved in a deadly force incident to review video evidence from the event prior to giving a voluntary statement. The Hennepin County Sheriff's Office, the investigating agency, defers to the policies of the originating agencies on whether an officer can watch video evidence prior to giving a statement.

Schultz gave a voluntary statement to HCSO investigators on September 13, 2019. He reviewed all Richfield Police squad car video, including that of other officers, before giving his statement. The HCSO Crime Lab examined his gun and confirmed that he fired one shot. A summary of Schultz's video, the video that best captures the incident, appears later in this report.

### **Richfield Police Officer Macabe Stariha**

Richfield Police Officer Macabe Stariha had been a police officer for two years and three months at the time of this incident. Personnel and training records obtained as part of this investigation show that Officer Stariha was a properly trained and competent police officer. While on patrol, he heard Officer Pedersen air that he was in pursuit of a car crossing from Edina into Richfield. Officer Stariha activated his squad camera. The car passed Stariha on 77<sup>th</sup> at Wentworth Avenue, as did Pedersen's Edina squad car. Stariha began to follow at 50-60 feet behind and saw Mr. Quinones's car run the red light at 77<sup>th</sup> and Portland. Stariha saw the car and the Edina squad slow or stop and heard Richfield Officer Dylan Schultz air on the radio that "one was out of the vehicle." Stariha parked behind Schultz's Richfield squad and got out of his car. He heard Pedersen air on the radio, "Drop the knife! Drop the knife! Drop the knife!" and heard Pedersen yelling the same as he approached.

Stariha unholstered his gun and ran toward Pedersen. Pedersen had Mr. Quinones, who was circling Stariha, at gunpoint in the street. Mr. Quinones went onto the median between lanes of traffic and Stariha continued to approach saying, "Let me see your hands!" twice. Stariha saw Mr. Quinones holding a silver knife in his right hand in an aggressive manner. Mr. Quinones turned back toward Pedersen and Schultz and suddenly ran toward Schultz, coming within ten feet of him. Believing that Mr. Quinones was either going to kill Schultz or another officer, Stariha fired five shots at Mr. Quinones. Mr. Quinones came back onto the median from the westbound lane of traffic and Stariha saw another officer, Joseph Carroll from Richfield, to his right and within five to ten feet of Mr. Quinones.

Stariha saw Mr. Quinones raise his arms toward his midsection and drop his head. He made a slashing motion with the knife and either leapt or stepped forward toward Carroll. Stariha then fired three more times. The light from Stariha's gun was on during the entire incident. Mr. Quinones went to the ground and Stariha re-holstered his gun. He handcuffed Mr. Quinones and helped officers turn him over to assess his injuries. Stariha cut Mr. Quinones's shirt off and other officers brought medical supplies. Paramedics arrived quickly and Officer Stariha was removed from the scene. No one asked Officer Stariha any public safety questions.

Officer Stariha gave a voluntary statement to HCSO investigators on September 13, 2019. He reviewed all Richfield squad video, including that of other officers, of the event prior to giving his statement. He explained that although he had a Taser, he did not draw it because of "the circumstance, the amount of time [he] had and the 'rapidly-evolving situation.'" A forensic examination of his gun showed he fired eight shots.

## **Richfield Police Officer Joseph Carroll**

Officer Joseph Carroll had been a Richfield police officer for six years and had prior experience with the city of Winona. Personnel and training records obtained as part of this investigation show that Officer Carroll was a properly trained and competent police officer. While on patrol that evening, he heard an Edina police officer radio that he was following a car that was either not stopping or was slow to stop. Carroll heard the Edina officer say the car was heading into Richfield at 76<sup>th</sup> Street, the car had one occupant, and he was attempting to pull the car over for a traffic violation. Carroll left the Richfield Police Department at 6700 Portland Avenue with lights and squad camera activated.

On West 77<sup>th</sup> Street in Richfield, Carroll saw the Edina squad following a gray car. Carroll turned his car around and followed at a safe distance. Over the radio, he heard the Edina officer say he was going to attempt a PIT maneuver because it was unsafe to continue to chase the car. Carroll followed from four to five blocks away believing he would be needed in a high-risk stop or detention scenario. He heard an officer say, “One out of the vehicle” on the radio followed by, “Drop the knife! Drop the knife!”

Carroll pulled up at the scene and saw the squad, the gray car he saw earlier, and Mr. Quinones running in or near the westbound lanes of 77<sup>th</sup> Street. Mr. Quinones ran toward another Richfield officer (Dylan Schultz) and Carroll could see a silver knife in Mr. Quinones’s right hand. Carroll observed that Mr. Quinones had an “emotionless look” on his face as though he was staring through Officer Schultz. As Mr. Quinones moved quickly toward Schultz, Carroll heard multiple gunshots and saw Mr. Quinones keep moving. To prevent Schultz from being injured or killed, Carroll went onto the median, but then saw Mr. Quinones running directly at him with the knife in his hand. Mr. Quinones was screaming incoherently and had an angry look on his face. Having already unholstered his gun when he heard the first shots, Carroll brought it up and pointed it at Mr. Quinones as he continued to approach with the knife pointed at Carroll. With Mr. Quinones fewer than ten feet from Carroll, Carroll fired at Mr. Quinones’s center mass until he believed Mr. Quinones was no longer a threat and Mr. Quinones fell to the ground.

Carroll went to the gray car to make sure there were no other active threats. Seeing none, he re-holstered his gun and went back to Mr. Quinones to give medical assistance. He was taken from the scene and assigned an escort officer. No one asked him any public safety questions.

Carroll gave a voluntary statement to HCSO investigators on September 13, 2019. He reviewed two videos from Richfield squad cars prior to giving his statement, including his own. He said that although he had a Taser, the distance between him and Mr. Quinones closed so quickly he would not have been able to defend himself against the knife with the Taser. A forensic examination of his gun revealed he fired four shots.

## **Edina Police Officer Benjamin Wenande**

Officer Benjamin Wenande had been an Edina police officer for four and a half years at the time of this incident. Personnel and training records obtained as part of this investigation show that Officer Wenande was a properly trained and competent police officer. On September

7, 2019, he was working the Edina Police Department's "DWI car," which is an extra patrol car for traffic enforcement. He heard Officer Pedersen air his traffic stop near Park Lawn Avenue in Edina; prior experience told Wenande that meant Pedersen needed help or something was unusual. Wenande drove toward Pedersen's location, turning on his emergency lights and squad video. At 76<sup>th</sup> and York Avenue, Wenande saw Pedersen's squad car about 10 blocks ahead. Wenande listened to Pedersen's radio transmissions about the pursuit and noted there was one person in the car Pedersen was following.

Wenande continued to follow and at 77<sup>th</sup> and Portland three Richfield squad cars pulled in front of him. Wenande heard Pedersen air that the car was not stopping at red lights and that Pedersen was going to attempt a PIT maneuver. Pedersen then aired, "The car's stopping. He's got a knife, he's got a knife. Drop the knife." Wenande was pulling up and putting his car into park at this time and as he got out of the car, he heard officers say, "Drop the knife! Drop the knife! Drop the knife!" Wenande then heard several gunshots but was unable to see what was happening because of the squad cars in front of him.

Wenande approached the scene and got onto the median. He saw a man bracing himself on the north side of a tree with his open left hand and his closed right hand at his side. Mr. Quinones locked eyes with Wenande and stared at him. Mr. Quinones moved toward Wenande with clenched hands as others yelled, "Drop the knife." As Mr. Quinones came closer to Wenande and another Richfield officer standing nearby, Wenande thought "Oh my God, he's gonna kill us." Wenande fired one shot and Mr. Quinones went to the ground. Wenande re-holstered and he and Pedersen handcuffed Mr. Quinones. Wenande asked if the other officers were okay, checked Mr. Quinones for a pulse, and called for medical aid. Wenande checked on Officer Pedersen and Ms. Lee while others provided medical aid to Mr. Quinones. Wenande asked whether any of the officers knew where the knife was, and he was directed to the westbound lane of 77<sup>th</sup> Street where he saw the silver knife.

In an effort to assist a Richfield Police supervisor on scene, Wenande went back to where the officers were trying to help Mr. Quinones and asked the officers who were involved to raise their hands. Pedersen, Stariha, Carroll, and Schultz all raised their hands. Wenande then assisted the paramedics by taking the stretcher out of the ambulance. An escort officer removed Officer Wenande from the scene and a supervisor from Edina came to ask public safety questions from their policy manual.

Wenande gave a voluntary statement to HCSO investigators on September 11, 2019. He did not review any squad video prior to giving his statement. A forensic examination of his gun revealed he fired one shot.

## **II. Evidence From the Scene and the Investigation**

Richfield Police Officer Hailey Quanbeck had been with the department about two years. Officer Quanbeck was on duty and drove toward the scene after hearing the radio transmissions. She arrived just after hearing that shots had been fired. Quanbeck parked behind a white SUV that was behind the squad cars. A woman got out of the SUV and was screaming. Quanbeck went to her and learned she was Mr. Quinones's wife, Ashley Quinones. Ms. Quinones told Quanbeck that she had been following her husband, Brian Quinones, and that she believed he

was suicidal. Ms. Quinones said she did not know how the police became involved because she had not called them.

As Quanbeck spoke with Ms. Quinones, other members of the Quinones family arrived at the scene. Quanbeck brought Ms. Quinones to those family members and had them step outside the scene as other officers were setting up a perimeter.

The Chiefs of the Edina and Richfield Police Departments asked the HCSO to investigate this incident, and HCSO investigators and Crime Lab personnel quickly arrived. HCSO investigators were briefed on events. Very soon after the shooting, law enforcement became aware that Mr. Quinones had been live streaming himself on Facebook while being followed by police and that Mr. Quinones's phone was still streaming on Facebook while they were at the scene. Investigators later obtained a search warrant to acquire records from Facebook which show not only the events recorded by Mr. Quinones, but several other posts and messages from September 7, 2019, that are relevant to the shooting.<sup>4</sup>

FB Message to Joshua Omi 9-7-2019, 9:18:37 p.m.:<sup>5</sup>

I'm so sorry

FB Message to Merry Rosario 9-7-2019, 9:19:22 p.m.:

I'm so sorry

FB Post by Brian Quinones 9-7-2019, 9:23:57 p.m.:

So Sorry

FB Message to Brian Quinones from Joshua Omi 9-7-2019, 9:25:28 p.m.:

Sorry of what bro

FB Message to Brian Quinones from Joshua Omi 9-7-2019, 9:36:41 p.m.:

Joshua called you.

FB Post by Facebook 9-7-2019, 10:07:40 p.m.:

Brian J Quinones was live.

FB Message to Brian Quinones from Joshua Omi 9-7-2019, 10:12:18 p.m.:

Where are you bro

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<sup>4</sup> Relevant Facebook records are in the public materials disclosed by the Hennepin County Attorney's Office in connection with this report. Those materials contain some posts before the shooting on September 7, 2019. The context of some of the messages prior to the shooting relate to Mr. Quinones, who was a musician, releasing new music.

<sup>5</sup> In this report, the time stamps associated with this content are adjusted to reflect time in Richfield, MN. Facebook records are issued with reference to GMT (Greenwich Mean Time), which was five hours ahead on September 7, 2019.



FB Message to Brian Quinones from Joshua Omi 9-7-2019,  
10:12:24 p.m.:

We're at your house

HCSO investigators interviewed Donald Williams at the scene just after midnight on September 8, 2019. Mr. Williams is Ashley Quinones's grandfather and Mr. and Ms. Quinones's juvenile son often stayed at Mr. Williams's home. Mr. Williams told investigators that Mr. Quinones had been with his son during the day of September 7<sup>th</sup> and dropped the child back off at Mr. Williams's home. Mr. Quinones came back a couple of hours later and went into the child's bedroom to talk to him. After that, Mr. Quinones gave Mr. Williams a hug and said, "Thank you for showing me how to be a man." Mr. Quinones walked away, turned toward Mr. Williams and his son, looked at them, and walked out the door. Mr. Williams said that this was unusual behavior for Mr. Quinones and both he and the child were concerned and ran after Mr. Quinones.

Mr. Quinones got in his car and sped off, squealing the tires. Mr. Williams and the child got into Mr. Williams's car and drove to Mr. Quinones's nearby house, where they found the garage door open and no car inside it. Mr. Williams began to drive back home when a police car came up behind him with its lights on. Mr. Williams pulled over and saw Mr. Quinones driving through an intersection ahead with a squad car with its lights on following him. Mr. Williams followed those cars to the scene. When they arrived, Ms. Quinones was calling her son on his phone and they heard gun shots, screaming and yelling.

HCSO investigators interviewed Ashley Quinones on September 17, 2019. Ms. Quinones said that other family members called her and told her Mr. Quinones was live on Facebook and that he might be pulled over by the police. Ms. Quinones was on her way home from work near the airport. She used a GPS family location app on her phone to locate Mr. Quinones and went to look for him. She did not look at the Facebook Live feed. At the time, Ms. Quinones feared that Mr. Quinones would be in an accident with her car, which is what he was driving, or that he might have a negative interaction with the police.

Ms. Quinones saw Mr. Quinones in his car and the squad cars on 77<sup>th</sup> Street and followed them. She stopped her car behind the stopped squad cars. She saw police running everywhere and Mr. Quinones running across the street. Ms. Quinones said that she did not hear the officers or Mr. Quinones say anything. She did not see a knife. She heard more than ten gun shots.

In her interview with investigators, Ms. Quinones said that she saw Mr. Quinones early that morning and that he was fine and happy. She understood from other communication that day that Mr. Quinones had had a good day. Around 10:00 p.m., Ms. and Mr. Quinones's son called Ms. Quinones to say his father had just left Ms. Quinones's grandfather's house (where the child was) and that Mr. Quinones seemed angry.

The Hennepin County Medical Examiner conducted an autopsy on Mr. Quinones and found that he had seven gunshot wounds and died as a result of those injuries. Toxicology testing revealed no alcohol or drugs of any kind.

In addition to giving voluntary statements to HCSO investigators some days after the incident, all five officers agreed to voluntary toxicology testing the night of the shooting. Test results show that none of the officers was under the influence of any substances.

### **III. Summary of Brian Quinones's Facebook Live Video**

Mr. Quinones's Facebook Live video ran for one hour, 49 minutes and 48 seconds.<sup>6</sup>

6:26: Camera moves from recording out of windshield to facing Mr. Quinones. Camera moves inside car.

7:33: Camera focuses on Mr. Quinones with police car emergency lights visible through back windshield.

8:37: Mr. Quinones steers car with left hand,<sup>7</sup> lifts right hand to his face while holding a silver object in his right hand.

12:06: Mr. Quinones stops and puts his car in park.

12:07: Mr. Quinones gets out of the car with an object in his right hand.

12:20: One police officer passes Mr. Quinones's car on the driver's side.

12:24: Voices shout and shots are fired.

12:27: Another police officer passes the car.

12:29: More police pass the car; more shots are fired.

The video continues to run with periodic chimes indicating Facebook activity.

1:49:48: HCSO Crime Lab personnel enter car and turn off recording.

### **IV. Summary of Officer Schultz Squad Car Video**

22:17:15: Squad car backs out of a garage.

22:17:32: Sound begins.

22:19:44: Squad passes white SUV on right side; Schultz advises he is in the area.

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<sup>6</sup> Times cited for Facebook video refer to the time on the video, not the time of day.

<sup>7</sup> The video received from Facebook is reversed, i.e. a mirror image. The text above reflects what Mr. Quinones was actually doing, not "left" and "right" as it appears on the video. Video released in connection with this report is corrected to show proper perspective.

22:19:58: Schultz airs “one out of the car” with squad behind and slightly to the center/right of the gray car. The door to the gray car was open. Another squad is to the right of Schultz’s squad with the driver’s door ajar. Another squad car is in front and to the right of the gray car.

22:20:05: Mr. Quinones appears on the middle left of the camera view wearing a gray shirt and blue jeans. Mr. Quinones moves from the right side of the screen to the left across the boulevard. Pedersen faces Mr. Quinones, who walks to Pedersen’s left across the boulevard.

22:20:08: Radio transmission “one with a knife.”

22:20:09: Schultz approaches Mr. Quinones from the left side of the screen and moves toward Mr. Quinones. Carroll’s squad enters the screen on the right. Mr. Quinones moves to his right, turned mid-stride and raised his right arm. Mr. Quinones moves toward Schultz, his right arm rising and falling at least twice. Mr. Quinones continues toward the left of the screen, where Stariha entered from the left edge of the frame.

22:20:11: The first shot is fired.

22:20:12: Mr. Quinones moves toward officers and around a tree as more shots are fired. Schultz’s Taser drops.

22:20:13: Schultz backs up toward the gray car, Pedersen moves in from his squad car, and Carroll shifts to his left. Stariha backs up and moves left as Mr. Quinones rounds the tree. Mr. Quinones and Carroll are face-to-face.

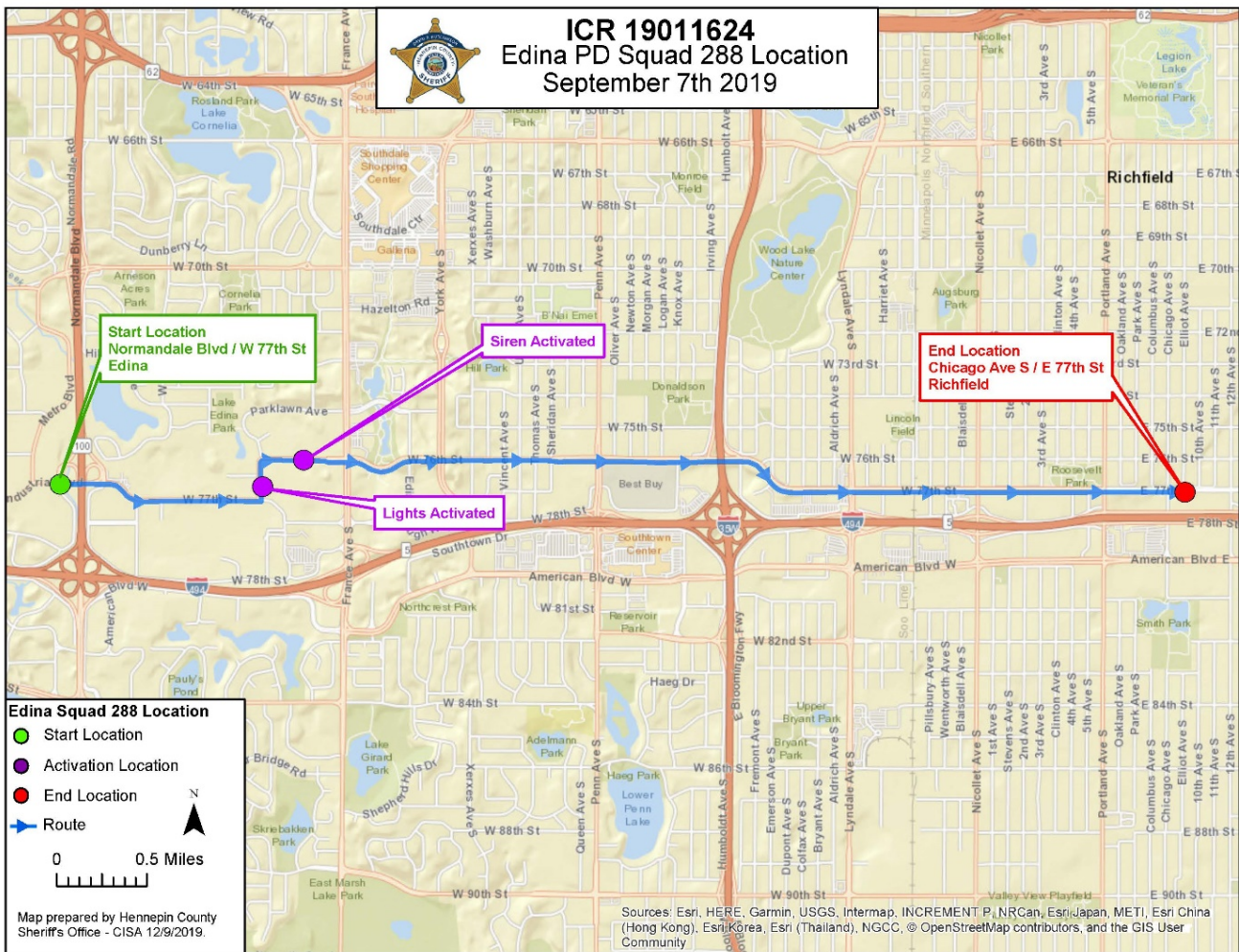
22:20:14-15: Mr. Quinones faces Schultz and Pedersen with his arms crossed on his chest. Officers yell, “Drop it!” as more shots are fired. Mr. Quinones bends at the waist and knees, his left hand drops toward the ground, and his right hand stays near his face in a grasping motion. Mr. Quinones falls to the ground on his right side. Wenande enters the frame from the left, between Stariha and Carroll. Mr. Quinones rolled on the ground with his right arm coming off ground and making a throwing motion to his left, toward Stariha and Wenande.

22:20:18: “Shots fired, shots fired, shots fired!” is aired.

22:20:35: Officers clear the gray car and move in, beginning medical care.

V. PHOTO OF KNIFE AND MAP OF RELEVANT AREA





## 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 February 10, 2020, issued this report.

### LEGAL ANALYSIS REGARDING THE USE OF DEADLY FORCE

#### A. Legal Standard

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."<sup>8</sup> The Court also addressed the use of force by a police

<sup>8</sup> *Tennessee v. Garner*, 471 U.S. 1, 11 (1985).

officer in its 1989 decision, *Graham v. Connor*,<sup>9</sup> holding that an objective reasonableness standard should be used to evaluate the use of force (as a search or seizure under the Fourth Amendment) in a federal civil rights action involving a police officer. 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.<sup>10</sup>

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, including the intentional discharge of a firearm,<sup>11</sup> 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.<sup>12</sup>

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 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

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<sup>9</sup> *Graham v. Connor*, 490 U.S. 386 (1989).

<sup>10</sup> *Graham*, 490 U.S. at 396.

<sup>11</sup> Minn. Stat. § 609.066, subd. 1.

<sup>12</sup> Minn. Stat. § 609.066, subd. 2.

the officer, without regard to the officer's own state of mind, intention or motivation.<sup>13</sup>

"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 well 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 necessary for one of the reasons specified in Minn. Stat. § 609.066, proportional to the threat facing the officer, and objectively reasonable considering the totality of the facts and circumstances, no criminal charges against any such officer is supported.

#### **B. The Officers Were Authorized to Use Deadly Force Against Brian Quinones.**

The five officers involved in this incident fired a total of 18 shots at Mr. Quinones, seven of which hit and together fatally wounded Mr. Quinones. The first officer involved in the incident was Officer Pedersen, who encountered Mr. Quinones's car and observed several traffic violations. These observations gave Pedersen lawful authority to conduct a traffic stop. Officer Pedersen had his lights and siren activated and from the Facebook Live video, it is clear those lights would have been visible to Mr. Quinones, who knew he was required to pull over. As Mr. Quinones continued to drive from Edina into Richfield without stopping, Officer Pedersen had probable cause to pull Mr. Quinones over for fleeing a police officer in a motor vehicle, a felony crime.

At that point, the information available to Officer Pedersen was Mr. Quinones's driving conduct. Based on Pedersen's training and experience, he believed he was following a drunk driver. Officer Pedersen's perception changed, however, when Mr. Quinones suddenly came to an abrupt stop and parked his car, which is unusual behavior in a routine traffic stop. Both beliefs were objectively reasonable under these circumstances. Mr. Quinones immediately got out of the car, which was also unusual, and had a knife in his hand. These actions, along with Mr. Quinones's saying, "Do it! Do it!" reasonably caused Officer Pedersen to believe that Mr. Quinones intended to harm Officer Pedersen by using the knife as a weapon. Brandishing a knife to a police officer and refusing to drop it when commanded to do so constitutes an objectively apparent threat of death or great bodily harm to a police officer.

Other officers were beginning to arrive at that time and Pedersen saw Mr. Quinones start to approach another officer. Based on everything Officer Pedersen knew and observed at that time, it was objectively reasonable for him to believe that Mr. Quinones meant to harm the other officer. Pedersen was therefore authorized to use necessary deadly force to protect the other

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<sup>13</sup> *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 from Mr. Quinones. Additionally, because a knife can cause death or great bodily harm to a police officer in these circumstances, the use of a firearm was proportional to the threat each officer faced.

Officer Schultz arrived at the scene immediately after Pedersen and knew that Pedersen was pursuing a driver who had violated traffic laws. Schultz saw Pedersen following the car, saw the car run a red light, and saw the car suddenly stop in front of Pedersen's squad car. Schultz also saw Mr. Quinones get out of his car and go toward Officer Pedersen as Pedersen said, "Drop the knife." Schultz saw Mr. Quinones still holding the knife despite that command, and although the use of deadly force would have been justified given the threat to Officer Pedersen, Officer Schultz nonetheless attempted to use non-lethal force with his Taser. The effort was ineffective, however, because as Schultz fired his Taser, Mr. Quinones continued moving toward him while saying, "Kill me, kill me."

At this point, Officer Stariha, who arrived right after Schultz and witnessed the same events, fired his gun. Based on everything Officer Stariha knew and had experienced at that time, he was authorized to use necessary deadly force to protect Officer Schultz, himself, and the other officers from Mr. Quinones.

After the first shots were fired, and while he was walking backward, Officer Schultz unholstered his gun. He saw Mr. Quinones was still standing and refusing to drop the knife as the commands continued. Mr. Quinones moved the knife back and forth, came forward toward the officers, and Officer Schultz fired once. Based on everything Officer Schultz knew and experienced at that time, he was authorized to use deadly force to protect himself and the other officers from Mr. Quinones.

Officer Carroll also arrived right after Officer Schultz and saw Mr. Quinones running toward Officer Schultz with a knife in his hand. After hearing the first round of shots, Carroll saw Mr. Quinones, still holding the knife, look directly at him and run at him while screaming incoherently. As Mr. Quinones got closer, within ten feet of Officer Carroll, Carroll fired until Mr. Quinones fell to the ground. Based on everything Officer Carroll knew and experienced at that time, he was also authorized to use deadly force to protect Officer Schultz, himself, and the other officers from Mr. Quinones.

Officer Wenande was last to arrive and had the same information about the pursuit and attempted traffic stop as the other officers involved. Also, Wenande heard over the radio that Mr. Quinones had a knife and that officers were commanding him to drop it. Arriving after the first shots were fired, he saw Mr. Quinones near the tree with a closed right hand as officers yelled, "Drop the knife!" Without dropping anything, Mr. Quinones approached Wenande and a Richfield officer and Wenande fired one shot. Based on everything Officer Wenande knew and experienced at that time, he was authorized to use deadly force to protect himself and the other officers.

The HCSO's investigation obtained information that corroborates the officers' objectively reasonable belief that Mr. Quinones posed an apparent threat of great bodily harm or death to the officers and that the officers were in no way mistaken about the situation in which they found



themselves. Family members and others were concerned by Mr. Quinones's actions and Facebook posts in the hours before he led Officer Pedersen on the pursuit. The video of Mr. Quinones clearly shows him ignoring the lights of the squad car behind him and reflects that Mr. Quinones created this dangerous situation. Mr. Quinones effectively and repeatedly communicated his refusal to cooperate with police. He approached and waved the knife at the officers, which then escalated the conflict. Only after being shot did he lose his grip on the knife. Under Minnesota law, it is clear that Officers Pedersen, Schultz, Stariha, Carroll, and Wenande's use of deadly force was necessary, proportional, and objectively reasonable in the face of the apparent threat of death or great bodily harm, and no criminal charges are warranted.