

NOVEMBER 7, 2016



**REPORT OF THE HENNEPIN COUNTY
ATTORNEY'S OFFICE REGARDING THE
SHOOTING DEATH OF RAUL MARQUEZ-
HERALDES ON APRIL 4, 2016**

STATEMENT OF RELEVANT FACTS

Raul Heraldes and Gloria Mestizo:

Raul Heraldes¹ was married to Gloria Mestizo. According to Ms. Mestizo, Raul started to become troubled or paranoid late in 2014 when a family member who worked for a law firm spoke to him about “confiscating” some cars belonging to a drug dealer. After that, some people began to follow Raul and confront him about the missing cars. Raul told Ms. Mestizo those parties threatened to kill him. Sometime after that, Ms. Mestizo reported to the police she was also being followed.

Raul was on medication for a shoulder injury from a car accident. The injury caused him to lose his job as a painter. Ms. Mestizo reported that Raul overdosed on the medication twice and that led to panic attacks and two hospitalizations in November 2014 and March 2015. Raul told Ms. Mestizo he was going to a “recovery center” but stopped going because he was feeling better. Raul took his medication with him on the night of April 3, 2016.

Raul had been panicked since Friday, April 1st. Ms. Mestizo called Raul’s mother to try to calm him down but nothing worked. On Saturday, April 2nd, Ms. Mestizo told Raul he had one more chance and then she was going to take him to the hospital. She told Raul that for his sake and their children’s sake he needed to go somewhere he would feel safe. On April 3rd, Raul asked Ms. Mestizo to drop him off at his friend’s house. He was afraid something was going to happen to him and he was acting very nervous. He told Ms. Mestizo a car was following him and the occupants wanted to kill everyone, meaning his family. At about 7:00 p.m. Ms. Mestizo and the children drove Raul to an apartment building at 2120 Minnehaha where Raul’s friend lived. Raul said he needed help and Ms. Mestizo said she would pick him up at 8:00 the following morning and they would get help for him.

After she dropped him off, Raul called Ms. Mestizo several times. After one call, Ms. Mestizo went to the ATM at Cub Foods to get money for Raul and delivered it to him at the apartment building. He called at 1:30 a.m. and asked to speak to the children. Ms. Mestizo told him they were asleep and could not talk. Raul told Ms. Mestizo there were people inside her house. She told Raul she was not going to discuss it anymore. At 2:54 a.m. Ms. Mestizo received a call from Raul’s phone, which she did not answer.

2120 Minnehaha Avenue and the Events of April 4, 2016

2120 Minnehaha Avenue in Minneapolis is a small building with 12 apartments. Residents and occupants included Manuel Sanchez, resident of apartment #1; George Wukotich, a homeless man staying with Alan Coleman, the resident of apartment #2; Terry Haigler, the

¹ Mr. Heraldes is referred to as Raul Heraldes in police/BCA reports and some documents. He is also referred to as Raul Marquez-Heraldes in some documents, including the report of the Hennepin County Medical Examiner. Both names are used in this report.

apartment caretaker and resident of apartment #3; and Tricia Kapaun, resident of apartment #8 on the second floor.

Manuel Sanchez lived in apartment #1 for the preceding two years. He met Raul sometime earlier at a program both men attended at a place called La Brencha. Sanchez did not know Raul's last name. Raul came to his apartment around 8:00 p.m. on April 3rd and asked to stay the night and said his wife was cleaning the house in preparation for the family to move. Sanchez had never met Raul's wife, who dropped off Raul off that night. Raul gave Sanchez \$10 he said his wife just gave him to pay him for staying the night. Raul told Sanchez he wanted to drink, but Sanchez told him liquor stores were closed on Sunday so he could not. Raul had been to Sanchez's apartment approximately 12 times in the previous year.

Raul was pacing a lot which woke Sanchez up during the night. Sanchez told Raul to be quiet or else the manager would come. Sanchez did not believe Raul was drunk or high. At 2:00 or 3:00 in the morning, Raul went out the hallway and Sanchez went outside to get him. Told to come inside, Raul just stared at Sanchez. Sanchez reported that although he knew Raul to be a drinker, he did not do drugs. He said "that day [Raul] was very lost. He was in another world. Death loomed over him."

Back inside the apartment, Raul pushed Sanchez in the chest. Sanchez responded by opening the door and throwing Raul out. The manager, Haigler, came to the door and told Raul he had to leave because he did not live in the building. Haigler recognized Raul as a man who visited Sanchez before. He told Raul to keep it down and Raul came out of apartment #1 saying he needed help. In broken English he said that someone was trying to kill his wife. He said two men were outside the building in a van and one had a rifle. Raul wrote a note (attached at end of report) stating where he lived and his phone number. The note also said he needed a lawyer and wanted to call police. Haigler went to his apartment and got a flashlight. He checked into Raul's claims of people in the van outside and found no one inside. He went back to apartment #1 and told Raul no one was outside. Raul insisted there were men with a rifle in the van.

At that time, Haigler recalled that he had spoken to Raul on a previous occasion when Raul was visiting the building. On that earlier date Raul was hallucinating and saying he saw people who were not there. At this point, Haigler called 911 and reported that he thought Raul might want to fight him. While Haigler waited outside the building for police, tenant Tricia Kapaun came to him and reported that when Haigler went to get his flashlight she saw that Raul had a knife. (Photos of knife attached at end of report). Haigler had also seen the knife but Raul did not threaten him with it; Haigler believed Raul was seeking help from Haigler and did not want to hurt him. Haigler told Tricia to go back to her apartment and close the door.

Haigler then went back inside and called 911 to alert law enforcement that Raul had a knife. He went back outside and met the police. He let them in the building and they knocked on the door to apartment #1. Haigler saw Raul open the door and come at the police with the knife. The police retreated out the front door of the building. Haigler went back inside his apartment. Once he was inside he opened the door to see Raul holding the knife and crawling on his belly "like in the military" towards Haigler's apartment door. He shut his door completely and then

heard knocking on Coleman's door, apartment #2. From inside apartment #2 Raul asked the police to get his wife on the phone and the police said they needed the phone number. Haigler opened his door and saw the police kick the apartment door in. Two or three officers rushed in. The police, Coleman, and Raul were all yelling. Then there were 3-5 gunshots. After the shots were fired Haigler heard the police saying "turn over" and "stop resisting

From apartment #1, Sanchez watched as Raul went and knocked on Haigler's door and then on the door of apartment #2. Sanchez saw Coleman open the door and Raul pushed his way inside and locked the door. Raul had something in his hand, but Sanchez later said he was not paying attention to what it was and it might have been a brown comb. Sanchez went back inside his apartment and the police told him to keep the door closed, which he did.

George Wukotich was in apartment #2 on the first floor. He awoke to the sound of women screaming in the hallway and saw Coleman was at the apartment door. Wukotich told Coleman not to open the door, but Coleman did and a Hispanic man Wukotich had never seen before came inside wielding a hunting knife or a big buck knife with a six-inch blade. The man threatened to kill Wukotich and Coleman, saying, "I'll kill you both" repeatedly. He was repeating names and his other statements did not make sense. The man took Coleman into the bathroom at knifepoint. Wukotich went into the bedroom and escaped out the window. Wukotich saw the police go inside the building and heard gunshots.

Tricia Kapaun, the resident of apartment #8 upstairs, heard pounding and went downstairs. She saw Haigler outside Manuel's door at apartment #1. No one inside Manuel's apartment would open the door and Kapaun heard banging, screaming, and yelling, "They're going to kill my family." A man unknown to Kapaun and later identified as Raul came out of the apartment and handed Haigler a note written on yellow paper. When Raul went back into Manuel's apartment, Kapaun noticed a knife handle sticking out Raul's back pocket. She told Haigler about the knife and he told her to go back to her apartment. Instead, Kapaun sat on the stairs and heard Raul say "they're gonna kill me; they're outside with a shotgun in that van." Kapaun saw Coleman come out of his apartment and go to the mailbox. Coleman told Raul he was not the caretaker and could not help him and then Coleman went back in his apartment. Kapaun heard a noise and came back down the stairs. She saw Raul holding the knife and enter Coleman's apartment. Kapaun went back up the stairs and heard the police telling Raul, "let's call your wife," "we're dialing the number," "what's her name?" and "put the knife down." An officer also said, "She's dead? How are we going to call her if she's dead?" Kapaun went back into her apartment and she estimated 30 seconds later she heard a gunshot.

Alan Coleman was at home and his friend George was over for the night. A Mexican man who was friends with the man in apartment #1 was knocking on his door. Coleman opened the door and the man pushed his way inside. He was in the apartment for about 20-25 minutes and grabbed Coleman and ordered him around. The man was angry and started sticking Coleman with his knife in Coleman's back. He was talking about his wife and kids and would not let Coleman leave. Coleman also suffered injuries to his hand and head during the struggle. The police came in when the man was stabbing Coleman in the back in the bathroom.

Police officer accounts

Officer Jesse Trebesch is a five-year police officer with the Minneapolis Police Department (MPD). On April 4th he was working in full uniform and armed with his handgun, a Sig Sauer P220. He also carried a magazine pouch with three magazines, mace and a taser. At 5:00 a.m. he was at the precinct and heard on the radio that squad 311 was going to 2120 Minnehaha Avenue South on an “unwant call.” The call changed to a “person with weapon” call and reported that a man had a knife. Shortly thereafter, Squad 311 radioed that there was a male in a hallway with a knife and they needed more squads. Trebesch and his partner, Officer Stewart, went to the Minnehaha address and saw Officer Perkins from squad 311 holding the front building door shut. Officer Perkins had a worried look on his face and told Officer Trebesch that a male inside was holding a large knife that looked like a butcher knife. Officer Trebesch had the impression the male was emotionally disturbed, high, or both. Officer Perkins requested a Crisis Intervention Team (CIT) officer at the scene. While Perkins was holding the door, another resident of the building came to the door and pressed his body against the door trying to get out. The police opened the door and that resident said that the man with the knife got into someone’s apartment.

Officers Trebesch, Stewart, Perkins, Malmberg (a CIT officer), and Robins entered the building. Trebesch heard yelling in apartment #2. Trebesch was behind 4 officers when he pulled out his Taser as did Officer Stewart. Officers Malmberg and Robins pulled their handguns out. Trebesch pulled his taser to have non-lethal coverage in addition to the lethal coverage used by the other officers. The police tried to make contact with the people in apartment #2. Officer Trebesch heard a man identify himself as Raul and felt he sounded distressed. Raul said, “I’m gonna kill him” several times. The other man in the apartment was identified as Al. Officer Malmberg asked Al if he was free to come out and Al said he was not. Raul said he wanted to call his wife Gloria. An officer Trebesch did not know tried to call Gloria with the number Raul gave them. After two tries the police left a voicemail for Gloria. Raul said he would not come out of the apartment. He also said his wife’s name was Rosita Cruz and that she was dead.

Trebesch recognized the name Rosita Cruz from an earlier call that night at 3816 Portland. A man called police to say Cruz was part of the Mexican mafia and in a fight with his family. Trebesch had responded to that earlier call and the residence was dark and there was no fight.

The sergeant on duty requested a hostage negotiator through dispatch while the officers were in the hallway. Inside the apartment, Al began screaming and Trebesch feared for Al’s life. Officer Stewart began kicking at the apartment door and Robins joined him until the door opened. Malmberg and Robins went in first with Stewart and Trebesch behind at the doorway. Malmberg and Robins fired their duty weapons. Because it was a deadly force encounter at that point, Trebesch re-holstered his Taser. Trebesch heard 5-6 shots but could not see the shooting. When the shots stopped, Trebesch went inside the doorway and saw a man walk toward him with a knife in his back. Trebesch helped the man, Alan Coleman, out into the hallway to get help from other officers. Inside the apartment Trebesch saw Raul laying in the bathtub. He could not

tell if Raul was injured. Trebesch, Stewart, Malmberg, Robins, and Officer Oachs went into the bathroom to detain Raul in case he had more weapons. Trebesch grabbed Raul's right arm and Raul rose from the tub growling and swinging his arms. Trebesch held Raul's right arm with both hands as hard as he could but Raul kept swinging. Other officers tried to control Raul's body and his other arm. Eventually the officers were able to handcuff Raul after an "incredibly violent" struggle that involved the toilet coming off the floor and moving across the bathroom. Trebesch and Stewart checked Raul to see if he was injured and Trebesch observed bullet hole in his leg. Stewart found another bullet wound in Raul's chest, cut Raul's shirt, and applied a chest seal to the wound. They radioed that they needed additional paramedics. Raul calmed down and the handcuffs were removed. Paramedics took Raul to HCMC.

Officer Joshua Stewart has been a patrol officer with MPD for six years. He carried a Sig Sauer 9mm handgun, two magazines, mace, a Taser and a backup Smith and Wesson .38 caliber snub nose revolver. Stewart rode with Trebesch as he drove to the call at 2120 Minnehaha. The squad microphone and camera were not on during the call. Squad 311 was already there with Officer Perkins and Officer Graupner. Perkins was holding the apartment building door closed from the outside with his weapon drawn and pointed toward the ground. Perkins said there was a person acting "manic" (Stewart's word) with a large knife inside. Perkins had requested CIT officers and Officers Malmberg and Oachs arrived. Because Perkins had his firearm out, Stewart told Perkins he would use less lethal force and Stewart pulled out his Taser. Stewart knew Perkins did not have a Taser. Stewart knew Perkins to be an officer with 28 years of experience who is very calm. For Perkins to call for more officers and the CIT was unusual and signified to Stewart that this was an extremely dangerous call.

Officers heard the suspect go into an apartment different from the one he was originally in and lock the door. With his Taser out, Stewart asked for lethal cover and Malmberg stood beside Perkins with Robins behind Stewart. Robins put his firearm over Stewart's shoulder and said he was "with him." Stewart reached behind to make sure Robins was there and pulled Robins close to him as they entered the building and moved down the hallway. Stewart turned his Taser on the door of apartment #2.

Hearing nothing in the apartment at that point, the officers took cover in case the suspect was to come out, with Stewart's taser covering the doors with Robins and Malmberg covering it at gunpoint. The officers yelled, "Who is in the apartment? Please come out!" There were two voices responding. One was a man saying he was not going to come out and was going to kill everyone. Another was a man saying he was very afraid and could not come out. That man kept repeating that he could not come out and asking the officers to come in. The first man said that if the police came in he would kill the other man.

Stewart later said they needed to create an Operation 100 (hostage negotiation) with the Swat team. Someone else requested a negotiator. In the meantime, Malmberg took over as the CIT officer. They learned the hostage's name was Al. The other man said he needed to speak with his wife. Police said they would get in touch with the man's wife and called a number which was not in service. Another officer took the number down again. A second call was made and they got voicemail. They told the man they could not get in touch with his wife. The

officers said they would find the man's wife and bring her to him if he would put the knife down and come out.

The suspect then brought up the name of a woman, Rosita Cruz, which Stewart remembered from a prior call that night at 3816 Portland. The call was about a woman who had been killed by the mafia. Stewart had been on that call and there were no such events. The fact that the man brought that up concerned Stewart and he felt the man was not thinking straight.

Officer Malmberg was telling the man they would work with him and help him, saying "Please put the knife down." Then the other man screamed in terror. Stewart was afraid the man was being killed. They had no choice but to cease negotiations and enter the apartment to prevent the man from being killed. Stewart, Malmberg, and Robins were in the front. Stewart attempted to re-holster his Taser but dropped it. He kicked the door open with one or two kicks. Stewart attempted to draw his gun and fell down from the force of his kicking. Others entered ahead of him. Stewart could see the victim being stabbed inside the apartment, stood up, drew his gun, and went inside. As he was doing so, he heard gun shots.

The victim came running out of the apartment with the knife sticking in his back. The suspect was in the bathtub bleeding. Stewart held the suspect at gunpoint in case he had another knife. Seeing none, he re-holstered his gun and tried to handcuff the suspect. Stewart felt a bullet hole in the man's right wrist. The man leapt out of the tub and attacked Stewart. They fell onto the bathroom floor and other officers intervened in the violent confrontation. The toilet came loose and slid across the bathroom floor. The man refused to be handcuffed and was growling and screaming. Several officers assisted as they forced the man to his stomach to handcuff him with Stewart's handcuffs.

The officers pulled the man into the hallway and checked on him. He had a pulse and shallow breathing. Stewart checked for injuries and saw a gunshot wound to the wrist, a gunshot wound to the ankle, and one to the chest. He was wearing a knife holster. Because he was no longer a threat, Stewart removed the handcuffs. Stewart cut the man's shirt off and bandaged the chest wound. Stewart told the paramedics about the man's injuries.

Stewart experienced sore shoulders and a sore back from the fight. He hit his head several times and his glasses were knocked off, causing pain in one of his eyes.

Officer Lucas Oachs had been a patrol officer with MPD for a year and a half at the time of the incident. Oachs carried a Smith and Wesson 9mm loaded with 18 rounds and three magazines. He did not carry a Taser. Oachs was working an overtime shift with his partner Officer Cape and was at the precinct when he heard the call that additional officers were needed at 2120 Minnehaha because there was a person with a knife. Oachs and Cape went to the building with lights, sirens, and squad video activated. Oachs saw Officer Perkins holding the front door closed. Oachs and another officer went to the rear of the building and the door was open. Oachs looked inside and approached apartment #3, which had its door slightly open. Oachs entered the apartment and saw no one in apartment #3 except the resident's dog. Aware that events were occurring in apartment #2, Oachs remained in the doorway of apartment #3 and pulled his duty weapon. Officer Malmberg, who was down the hall, was already engaged with

the man with the knife, Raul, inside apartment #2. Malmberg was asking Al, the resident, if he was okay and telling Raul to drop the knife and come out with his hands up. Al said he was being held and could not come out. Malmberg said he would get help for Raul. Raul said multiple times that he was going to kill Al. Oachs sensed from the tone of Raul's voice that "something wasn't right." Raul said he wanted to talk to his wife Gloria and other officers tried to get a phone number from him and tried to call Gloria. When the other officers told Raul they could not reach Gloria he said his wife was dead and mentioned some other names. Oachs noticed Taser lights on the door but does not know which officer was pointing a taser at the door.

Oachs let Haigler back into the building and Haigler gave Cape the notes (attached at end of report) Raul wrote about someone being outside the building with a rifle. Suddenly, Al gave a "death scream" from inside apartment #2. Other officers moved in and started kicking the door. Malmberg, Robins, and another officer went in ahead of Oachs. Once inside Oachs saw Al in a seated or crouching position and Raul put the knife in Al's back. Oachs, concerned that he would shoot another officer in the back if he fired, started to re-holster his gun. Oachs next heard gunshots and saw casings flying in front of his eyes. Raul fell down and Al ran out of the apartment with the knife still stuck in his back. Other officers moved in toward Raul, who came directly at one of the other officers and started fighting. Oachs grabbed Raul's left hand. During the fight the toilet came off the hinges. Oachs noticed a bullet hole in Raul's wrist as Raul fought Oachs. Officer Stewart began to give commands and they all pulled Raul onto his stomach to handcuff him. Oachs and Stewart pulled Raul out of the bathroom and checked for injuries. Oachs noticed a knife sheath on the front of Raul's pants. He took the sheath off, placed it on the floor, and pat searched Raul for other weapons, finding nothing. As Stewart assessed Raul's breathing, Raul continued to struggle and try to fight with the officers. When the officers realized Raul had a gunshot wound to the chest Oachs took the handcuffs off and either handed them or threw them to another officer. Stewart took his duty knife, cut Raul's shirt, and applied his chest patch seal. Paramedics arrived and took over.

Officer Charles Cape has been a patrol officer with MPD for nearly four years. He and Oachs arrived shortly after Officer Perkins and Officer Graupner. He and Oachs entered through the back door of the building and went inside apartment #3. Other officers arrived. Cape heard a man yelling that his wife was in trouble and he need to call her. Officer Malmberg was trying to negotiate with the man, who was agitated and yelling. The man was threatening kill another man in the apartment with a knife. Officer Oachs had his handgun trained on the door to the apartment where the man was. Cape had his Taser out as a less lethal option. Cape did not know whether other officers had weapons or Tasers out.

Cape then heard another man scream in pain. Officers kicked the apartment door in. Cape could not see anyone inside from where he was standing but still hear the man screaming in pain. Cape saw other officers fire their weapons. A man came out of the bathroom with blood all over his back and ran out of the building.

Cape went into the apartment where other officers were still yelling commands at another man. There was blood everywhere. Cape cleared the apartment with Lieutenant Fossum. As they did that, Cape heard officers yelling at the man to put his hands behind his back, show his

hands, and stop resisting. Officers eventually handcuffed the man and they moved him to a more open space to render aid to him. Fire and paramedics soon arrived.

Officer Jeffrey Perkins, an officer with MPD for 28 years, was working as a field training officer, with Officer Graupner, on April 4th. He was at the station when he got the call that there was an unwanted person at 2120 Minnehaha. Squad 341 with Officers Malmberg and Robins was dispatched and Perkins followed in squad 311, but Perkins arrived first. His squad video was not activated. Perkins knew that the unwanted person came from apartment #1 and was not a resident. The person was trying to fight with the 911 caller, was intoxicated, and had a knife he had not yet produced. Dispatch also reported that the man lived on Portland Avenue and said someone was trying to kill his family. Perkins recognized the 3816 Portland address and had been out there earlier in the night and found it all quiet. Perkins also know the unwanted person was named Raul and that Raul was the 911 caller on the Portland call earlier.

Perkins and Graupner arrived and met the caretaker who told them the man was in apartment #1. All of a sudden the door to apartment #1 opened and a man stepped out. Asked to show his hands, the man pulled out a knife, started yelling about the “Mexican mafia,” and came toward the police. Perkins got outside the building and pulled the door shut so the man could not come out. The man pushed at the door. Perkins kept pulling on the door and radioed for more help. In about a minute more officers came and they went inside the building again. The caretaker said the man went down the hall and was now in apartment #2. Officer Malmberg, who is a CIT officer, started a dialogue with the man. Perkins ordered an ambulance to stand by in case it was needed.

The man told Malmberg he was concerned someone was going to harm his wife, Gloria, and that he needed to call her. They got a phone number and someone tried to call, but the call did not go through. Then the man said his wife was dead. Perkins thought the man was having a psychotic episode. Malmberg asked the other man in apartment #2, Alan, if he could come out and he said he could not. As Malmberg continued negotiating with the man, Perkins could hear the sounds of Alan being assaulted and the decision was made to forcibly enter the apartment. Other officers kicked the door in. Perkins heard an unknown number of shots and did not know who was firing. Alan came out of the apartment and Perkins brought him to the ambulance. One of Alan’s hands was bleeding profusely and there was a knife in his back.

After getting Alan to the ambulance, Perkins went back in the building and saw the man on the ground with a gunshot wound to the chest. He was unconscious, but breathing. He was handcuffed.

Officer Brian Graupner was working with Field Training Officer Perkins and had been with MPD for four months. He carried a Sig Sauer P320 9 mm with a tactical light on it which was loaded with 17 rounds. He carried two extra magazines. Graupner was working with Officer Perkins in Squad 311 and they were the first to arrive at 2120 Minnehaha. From the outside of the building he saw someone open and close an apartment door. A man opened the building door and said, “the guy just went into apartment one.” Graupner was aware they were there for an unwanted person with a knife and Graupner had his gun out down and by his right

leg. A Hispanic man opened the apartment door and Graupner ordered him to show his hands. The man raised his hand and with it a large knife. He came toward Graupner, who put his finger on the trigger and told the man to drop the knife. Perkins pulled Graupner away as the man charged him.

They got outside the building and Perkins held the door closed. The man was punching against the door and Perkins radioed for more squads to come Code 3. Graupner heard the man saying things about killing his wife. Graupner went to the south side of the building. The man they first encountered (the caretaker) came out the south side where Graupner was, offered his keys, and said the man was laying on the floor with the knife.

Graupner went into apartment #3 with Officers Cape and Oachs. Graupner took the caretaker's dog and secured it. He then acted as security for the other officers. He also updated Sergeant Rivard when she arrived. The caretaker gave Graupner notes the man had written about his wife. One note had a phone number on it and Oachs tried to call it but it went to voicemail. Graupner watched as the situation went from officers negotiating with the man to the victim screaming in apartment #2. Malmberg and Stewart kicked the door. Officers went in and told the suspect in the bathroom to drop the knife. Graupner then heard shots. He reholstered his gun and observed the other officers fighting with the suspect. He assisted in clearing the apartment. He was there when the suspect left with the paramedics.

Lieutenant Michael Fossum responded after hearing Officer Perkins on the air asking for help. Sergeant Rivard let him in the building and there were approximately nine other officers in the hallway, with others on the perimeter. Fossum learned the suspect had been in apartment #1 and was now in apartment #2. The officer negotiating with the suspect was Officer Malmberg. The man said, "I want you to call my wife" repeatedly and gave a phone number. Fossum called that number, as did Sgt. Greaves, and it went to voicemail. The suspect said his wife had been killed by Mexican mafia and was not making any sense. This went on for 10 minutes. The suspect then became quiet and stopped responding to Malmberg. Suddenly another voice screamed and told officers to kick in the door. Malmberg went first, then Robins, then Stewart. The man was still screaming. Stewart and Malmberg kicked the door 5-6 times. Malmberg and Robins went in and within seconds Fossum heard gunfire. Fossum went in as the victim came out covered in blood. Someone took him to the ambulance. Malmberg, Robins, Stewart, and Trebesch were in the apartment with the suspect who was fighting and resisting. Fossum and Cape cleared rest of apartment.

After that, Fossum went back to bathroom and the officers were still struggling with him. They brought him to hallway and he stopped resisting. Within 60 seconds ambulance crew came in. Fossum saw one gunshot wound to middle of the suspect's chest. More than 4 rounds were fired by the police. Stewart was covered in blood. Fossum took photos at the scene.

Officer David Robins has been a patrol officer with MPD for a year and a half. He carried a Smith and Wesson 9mm handgun and mace, along with two magazines each loaded to 17 rounds. He was working squad 341 with Officer Malmberg. While on their way to the call they heard Officer Perkins yell, "He's got a knife! He's in the apartment." Malmberg

accelerated so they could get there faster with lights and sirens. After some confusion over the address, Robins heard Perkins say, "I need more squads here Code 3." Robins and Malmberg arrived and learned from Perkins that a man with a large knife ran at him and Perkins closed the outer door to protect himself. Stewart had his Taser out. Robins backed up Stewart because the Taser is not one hundred percent effective and there is little time to change from less lethal to lethal force.

Robins learned that Alan was the hostage in the apartment. He, Stewart, and Malmberg went toward the apartment. Stewart asked for support and Robins tapped him on the shoulder and said, "I have your lethal, it's okay....just keep the Taser up...if he charges you then discharge the Taser and if it fails, I got your back." Stewart seemed reassured. Malmberg told everyone to slow down and said they were going to try to talk the suspect out of the apartment. Malmberg said they did not need to charge the door yet.

The officers stopped and agreed that if the man started killing the hostage they would have a situation akin to an active shooter and would have to neutralize the threat. A sergeant arrived and asked if anyone was CIT and Malmberg said that he was. Malmberg went to the front of the door and tried to communicate with the suspect. The man said his name was Raul and that he was going to kill the man in the apartment. He said this multiple times and asked for a lawyer. Malmberg told the man to come out and that they were going to help him. He told Raul to put the knife down. Raul told the police to shut up, said "fuck you," and said he wanted his lawyer.

A Spanish-speaking officer responded but was unable to establish a rapport with Raul. Eventually Raul told Malmberg he wanted to talk to his wife. Malmberg got a phone number and gave it to Sergeant Greaves, who was behind them in the hallway. The number was out of service. They tried again and got a voicemail message from a woman named Gloria, which was the name Raul gave them. Sergeant Greaves left a voicemail message.

Malmberg told Raul they left a message for Gloria. Raul's tone changed and he said, "I'm gonna fuckin' kill this guy." Robins felt that something was not right and then heard the sounds of a scuffle. Then he heard the other man scream for help.

Robins ran toward the door, getting there first. He kicked once, Malmberg kicked, and on the third kick the door opened. Robins went in and saw the victim sitting on the vanity with the suspect near the toilet. The suspect was over the victim's back holding a knife handle and there was blood everywhere. The victim looked at Robins with a look of "horror and like inevitable death." Robins had his firearm out and as Raul shifted his gaze from the knife to Robins he fired possibly three times. Raul leaned back and separated from the victim who tried to run out. Robins heard "BANG" behind him and knew Malmberg fired.

Raul fell into the bathtub. Robins reholstered his gun. Robins guided the victim out of the bathroom and saw the wood handle of the knife in his back. Thinking it might just be in his clothes, Robins tried to pull the knife away but realized it was deep into the victim's back. The victim was led away and Robins turned back to Raul. Raul's eyes "jolted open and it was like he was hit with a lightning bolt." He sat up and attacked either Malmberg or Stewart. Raul and

Stewart fell to the floor and Raul was “fixated” on attacking Stewart. Robins intervened to push Raul’s face back and felt his hand break. Nevertheless, he punched Raul in the face to protect Stewart and try to get him handcuffed. Raul fought back like “Superman” and was “super strong.” Trebesch pulled on his right arm and somehow Raul’s left arm was also secured.

No longer a threat, the officers rolled Raul onto his stomach and handcuffed him. Officer Cape brought Robins outside where he told Sergeant Rivard that he fired shots and he also thought he broke his hand. The Sergeant proceeded with MPD’s critical incident policy. She took Robins to the hospital where he was diagnosed with a severe break to his pinky finger.

Officer Eric Malmberg has been a patrol officer with MPD for three years and served on the Crisis Intervention Team. He was carrying mace and his firearm, a Sig Sauer P320 .45 caliber with a Sure Fire Tactical Light on it. He did not carry a Taser. His gun had ten rounds in the magazine and he carried two more magazines. He and Officer Robins were at the precinct when they heard the call from Squad 311 and Officer Perkins that he needed assistance. Malmberg drove squad 341 with lights and sirens on. There was some confusion as to the correct address but they arrived quickly and saw Officer Perkins and Officer Graupner outside the apartment building with Perkins holding the door closed with his gun drawn and pointed to the ground. Perkins said there was a man inside with a knife who went into an apartment different from the one he was originally in.

Sergeant Greaves asked whether anyone was CIT and Malmberg replied that he was. Malmberg took control of the scene. Cape and Oachs were in another apartment nearby. Malmberg was aware there was a hostage situation and he began a dialogue with the suspect. To deescalate the tension, Malmberg tried to establish a rapport with the suspect. Officers Robins and Stewart were on either side of Malmberg and Malmberg placed his hands on the other officers and said, “Let’s calm this down...If he was going to kill the victim he would have done that already and I want to calm him down.” Malmberg noted the other officers were “amped up because it was a really serious situation.”

They learned the hostage’s name was Al and Stewart asked Al if he could come out. Al said he could not. Malmberg talked to the suspect who had a heavy accent, but the two were able to communicate in English. The man said he needed to talk to his wife and Malmberg said he was here to help and he would help if the man would come out. Malmberg repeatedly asked the man to put the knife down and come out and he would help him call his wife. The man said no and said the police needed to call his wife. The man gave a phone number that was incorrect when they first tried. The second number worked and Sergeant Greives left a voicemail message for the wife. Malmberg used all of the training he had as a CIT officer to resolve the situation without violence and build a rapport.

The man then repeatedly said he was going to kill the hostage. Malmberg warned him not to do that. Lieutenant Fossum was there and they were trying to reach a hostage negotiator but they were not successful. Malmberg knew it was up to him to prevent the man from harming the hostage. The man was very agitated and sounded mentally ill, as some of the things he was saying were confused. Malmberg repeatedly asked the man to come out. Then, out of the blue,

Malmberg heard a sound which sounded like the other man being killed. It was a sound Malmberg never heard before, like gurgling and calling out in pain.

Certain that he was hearing a violent assault, Malmberg did not hesitate. The next thing he knew he was inside the apartment with Robins and Stewart behind him. Malmberg believed he was the first to enter with his back to the door after kicking it twice from behind and knew both the victim and he (because his back was to the assailant) were in immediate danger. Malmberg's gun was in his left hand with his finger indexed, not on the trigger. Robins went first, further into the apartment and into the bathroom, with Malmberg behind him. Malmberg saw the victim and it looked as if he was sitting with the man standing over him. The man had his arm around the victim's neck with his other arm going downward into the victim's back, which Malmberg interpreted as the man stabbing and killing the victim.

What Malmberg saw confirmed what he heard outside the door. He was aware that this was a hostage situation and raised his arm to shoot knowing he had to be careful not to shoot the victim. He fired at the man's left side. He heard Robins shooting and continued to fire. The man went backwards into the tub and was still moving. Malmberg believed the man still had the knife and when the man moved to get up, Malmberg felt threatened and he fired two more times. The man stopped moving and Malmberg ordered him to show his hands several times. Then the man stopped moving.

Malmberg still did not see the knife and continued to order the man to show his hands. He finally showed his hands and Malmberg went toward him in the tub. He and Stewart grabbed the man and the man fought back. Officer Robins joined the struggle and the man was "fighting [them] hard" to the point where Malmberg was surprised they had so much trouble getting control of him. Malmberg was worried and Stewart yelled, "We need more cops in here!" Malmberg's gun was still in his left hand and he still did not see the knife so he held his gun downward with his finger indexed in case he had to shoot again. Robins punched the man in an effort to subdue him and Malmberg pinned the man's hand against the bathtub. Malmberg could see a gunshot wound to the man's hand. Sergeant Greaves came in and eventually they got control of the man and handcuffed him. Greaves told Malmberg to reholster his gun.

Malmberg watched the officers take the handcuffs off of the man. When his shirt was cut off they could see a gunshot wound to the upper right chest. Stewart began administering first aid. Sergeant Greaves escorted Malmberg out and the two drove in Squad 341 to the precinct.

Other relevant information

Alan Coleman was admitted to North Memorial Medical Center and had surgery to treat a gunshot wound to his hand. He suffered a collapsed lung from the stabbing. He was in ICU for three days and was ultimately discharged on April 10th.

Raul Marques-Heraldes died at Hennepin County Medical Center. His autopsy was performed by forensic pathologists at the Hennepin County Medical Examiner's Office. Heraldes died of multiple gunshot wounds including one to the chest, two to the right hip, one to

the left wrist, one to the left leg, and one to the left foot. He also had cuts on his fingers, as well as bruises and abrasions on his face, extremities, and scalp.

Toxicology testing revealed amphetamine and methamphetamine in Heraldes's system. The amphetamine was a metabolite of methamphetamine which was present in the amount of .53 mg/l. The blood tested was taken from Heraldes before his death at Hennepin County Medical Center. The amount of methamphetamine present in his blood was more than capable of producing methamphetamine-induced psychotic behavior or agitated delirium including paranoid delusions, speaking incoherently, and erratic or disturbed behavior.

HENNEPIN COUNTY ATTORNEY'S OFFICE REVIEW

The BCA submitted its report to the Hennepin County Attorney's Office on August 31, 2016, for consideration of possible criminal charges.

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

The Hennepin County Attorney reviewed the case together with two senior prosecutors and on November 7, 2016, issued this report.

LEGAL ANALYSIS REGARDING THE USE OF DEADLY FORCE

The evidence detailed above does not support the filing of criminal charges against Officer Eric Malmberg and/or Officer David Robins for the fatal shooting of Raul Heraldes. At the time he was shot, Heraldes was actively stabbing Alan Coleman in the back. Heraldes repeatedly ignored commands to stop and, prior to that, charged at Officers Perkins and Graupner with the same knife. Officers Malmberg and Robins fired to protect Officers Perkins and Graupner and Alan Coleman, acted out of fear of great bodily harm or death to Alan Coleman and themselves, and their use of deadly force was justified.

A. Legal Standard

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

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

³ Minn. Stat. § 609.066, subd. 2.

⁴ Minn. Stat. § 609.066, subd. 1.

The United States Supreme Court has recognized the use of deadly force by a peace officer is justified where the officer has “probable cause to believe that the suspect pose[s] a threat of serious bodily harm either to the officer or to others.”⁵ The Court also addressed the use of force by a peace officer in its 1989 decision, *Graham v. Connor*.⁶ Graham held an objective reasonableness standard should be utilized to evaluate an officer’s use of force. The assessment of reasonableness requires “careful attention to the facts and circumstances of each particular case.”

The Court then outlined a non-exhaustive list of factors for balancing an individual's rights vs. an officer's: 1) "the severity of the crime at issue;" 2) "whether the suspect poses an immediate threat to the safety of the officers or others;" and 3) "whether he is actively resisting arrest or attempting to evade arrest by flight." Graham made clear that whether an officer used reasonable force “must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” The Court stated allowance must be made for the fact the law enforcement officers are often required to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving.⁷

Minn. Stat. § 609.66 and the constitutional standard, taken together, establish that if the officer’s use of deadly force was objectively reasonable in the face of the danger of death or great bodily harm, no criminal charges against any such officer is supported.

B. The Use of Deadly Force Against Raul Heraldes Was Authorized.

Officers Malmberg and Robins both fired shots at Raul Heraldes and Heraldes died from those wounds. The first information conveyed to both officers in the dispatch call to 2010 Minnehaha Avenue was for a person with a weapon. When they arrived, Officer Perkins, an officer known for his calm demeanor, was managing the crisis and holding the door to the apartment building closed. Malmberg and Robins learned that Heraldes had charged at Perkins and Graupner with his very large knife.

After a significant period of attempted negotiation with Heraldes, Heraldes began to assault and stab Coleman, actions which the officers could clearly hear from outside the door to apartment #2. Not only did Heraldes refuse to come out, Coleman pleaded for the officers to enter and rescue him. The use of deadly force against Heraldes was necessary to prevent further harm and death to Coleman and to prevent harm to other officers and residents of the building.

Malmberg and Robins’ use of deadly force under these circumstances was reasonable as demonstrated by applying the *Graham* factors to this case.

1. The severity of the crime at issue: Heraldes was stabbing Alan Coleman in the back with his knife. Heraldes said repeatedly that he was going to kill Coleman. He refused

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

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

⁷ *Graham* at 396-397.

to stop or to leave the locked apartment. Heraldes was in the act of attempted murder and assault in the first and/or second degrees, very serious felony crimes. Additionally, Heraldes had earlier rushed at Officers Perkins and Graupner with his knife, also an assault in the second degree.

2. Whether the suspect poses an immediate threat to the safety of the officers or others: Heraldes posed a clear and immediate threat to Alan Coleman during the stabbing. The facts that he was also a threat to officers is demonstrated not only by the earlier threat with the knife but by his combative and assaultive conduct with the police after he was shot.
3. Whether he is actively resisting arrest or attempting to evade arrest by flight: Heraldes refused to surrender himself, release Coleman, or open the locked apartment door at the police's command. His actions clearly communicated to the officers that he would not voluntarily end the conflict.

Judging, as *Graham* requires, whether the officer's use of force was reasonable from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight, leads to the conclusion that Officers Malmberg and Robins acted reasonably. The scene and danger at 2120 Minnehaha was rapidly evolving and dramatically escalating. Heraldes had been acting unusually and erratically and went from a problem visitor in an apartment building to a man in the act of attempted murder in less than an hour. The officers attempted to placate and negotiate with Heraldes by calling his wife and repeatedly offering help. Heraldes remained locked in the apartment with Coleman, who was a hostage. When the officers were able to forcibly enter the apartment, they saw Heraldes stabbing Coleman, who ran from the apartment with the knife still in his back. There was no way to stop Heraldes from further harming Coleman other than to use lethal force.

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

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FAMILY MARQUEZ WIFE AND
CHILDREN NEED HELP PLEASE

ROSY CRUZ AND CRISTIAN
LOWYERS METRO LOW GROUP

KILL MY FAMILY

PLEASE NEED HELP

NUMBER WIFE



AND HOP ACADEMY
WORK MY WIFE IS
COMPLY CITY

MR GREG PRINCIPAL MANAGER

3816 AV PORTLAN

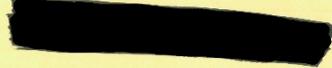
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