

**OCTOBER 31, 2017**



**REPORT OF THE HENNEPIN COUNTY  
ATTORNEY'S OFFICE REGARDING THE  
SHOOTING OF KHALEEL THOMPSON ON  
MAY 24, 2017**

## STATEMENT OF RELEVANT FACTS

### Background and history:

On March 20, 2015, Khaleel Thompson, DOB 3/26/99, was at the Edina Prairie Care treatment center for help with mental health issues. Staff called the police because Thompson, then six days shy of his 16<sup>th</sup> birthday, was suicidal. Thompson told Edina police officers that he was not safe and had thoughts of harming himself and others for the past week. He was placed on a mental health hold and brought to the Maple Grove Prairie Care facility.

In October 2015 St. Louis Park police were called to a report of a man in the street holding an axe. There they encountered 16-year-old Thompson, who said he was depressed and “people were going to die.” He said if anyone got involved he would commit suicide. Police convinced him to drop the axe. They placed a mental health hold on him and took him to Fairview Riverside Hospital. Medical records connected to these events state that Thompson called 911 “hoping to be shot by the cops.”

In June 2016 St. Louis Park Police were called to 17-year-old Thompson’s home because someone reported he was posting suicidal thoughts on Facebook. Police placed a mental health hold on him and took him to Fairview Riverside Hospital. Medical records from early July 2016 state that Thompson “endorses suicidal ideation with the plan of ‘death by police.’”

In November 2016 Thompson was admitted to Fairview Riverside and records state that prior to admission he endorsed plans to commit suicide by several means, including “death by police.”

In January 2017 police were called to a St. Louis Park home where Thompson was outside threatening police with a knife and threatening suicide. Thompson’s mother and sister told the police Thompson had recently returned home after being hospitalized 30 days. During an extended negotiation, Thompson said to the police, “Just shoot me,” “I’ve been planning this for two days,” and “I guess I’ll just harm you and then you’ll shoot me.” A negotiator eventually persuaded Thompson to drop the knife and agree to go by ambulance to a hospital. Medical records from that time show that after the standoff, Thompson reported that he “was hoping to die by taunting the police to shoot him.” Discharge notes from January 30<sup>th</sup> stated, “He is determined to commit suicide when he leaves the hospital. He explicitly stated that he would not tell anyone his plan, but he did say, ‘Maybe I’ll just get a gun next time...’ He is angry that his previous suicide attempt was not successful and looks forward to successfully committing suicide.”

Khaleel Thompson left the Twin Cities for California in May 2017. He was 18 years old. He was admitted to Las Encinas Aurora Behavioral Health Care for an attempted overdose and discharged on May 17, 2017. Records show that Thompson was discharged to a shelter, Youth ACT at 2120 Park Avenue in Minneapolis, and left by bus. He was diagnosed with paranoid schizophrenia and found to have moderate to severe functional impairment. Records also show that at the time of discharge there were no suicidal ideations and auditory hallucinations had decreased. He was prescribed Navane, an anti-psychotic drug, and Vistaril, an anti-anxiety drug.

Khaleel Thompson's adult sister is Aviance Thompson. She spoke to Thompson after he returned from California. She would later tell police she was aware that her brother attempted suicide multiple times. She recalled an argument Thompson had with their mother when he threatened to harm the police with a knife and their mother told him, "If the police were there with guns you wouldn't do anything." She recalled that her brother did pull a knife and was in a standoff with St. Louis Park Police, who took him to a hospital after a three-hour negotiation.

After returning from California, Thompson stayed at the home of his friend, Thomas Bunkers, in Golden Valley. Thomas lived at the home with his father, John Bunkers. On May 23<sup>rd</sup>, Thomas was at work at Cinema Grill, and Justin Breth, a friend, came to Cinema Grill to report that Thompson texted Hannah Klemmer, a friend of Thompson's in Morris, Minnesota, that he (Thompson) was suicidal. Justin and another friend, Bella Heidenreich, had picked up Thompson in Burnsville when he arrived by bus from California on Monday, May 22<sup>nd</sup>. The friends called the police, who came to the Bunkers's home.

Crystal Police Sergeant Adam Harrer responded to the Bunkers's home on May 23<sup>rd</sup> with Golden Valley Police. Sergeant Harrer observed that Thompson appeared neither drunk nor high. Thompson said he was okay and did not need help. He said that he had recently been in California where he was treated for a mental illness and showed Sergeant Harrer his medical records. Thompson told Sergeant Harrer he was taking his medications and was not suicidal. After this conversation, Sergeant Harrer concluded that Thompson was not suicidal and did not present a danger to himself or others. He found no basis to place Thompson on a mental health hold and have him involuntarily transported to a hospital.

Thomas Bunkers would later tell police he knew Thompson suffered from schizophrenia and heard voices from two different personalities. Thomas also told the police that an airsoft BB gun was missing from his house on May 24<sup>th</sup> and that the gun "used to have an orange tip."

Hannah Klemmer reported to police that she was making arrangements for Thompson to stay with her in Morris and he was becoming frustrated with her. On May 23<sup>rd</sup> he texted her that if she continued to ignore him he would kill himself. Hannah called Justin Breth, who reached Thomas Bunkers. She spoke to Thompson later that night and was very angry when Thompson asked her, "Did it get your attention?" Ms. Klemmer said she read Thompson's discharge papers from California when he arrived back in Minnesota. She said he woke up on a beach in California and was hospitalized. She was aware of 3 or 4 prior suicide attempts by Mr. Thompson.

John Bunkers reported that during the days he stayed at their home Thompson would take the Bunkers' family dog to the Frisbee golf course at Bassett Creek Park. After the police came on May 23<sup>rd</sup>, John Bunkers told Thompson he had to leave. At 8:30 in the morning on May 24<sup>th</sup>, John Bunkers checked and it appeared Thompson had "cleared out."

## Events of May 24, 2017:

### Police officer accounts:

Officer Kathleen Gomez has been a Crystal Police Officer for 20 years. On May 24<sup>th</sup>, she was working in full uniform and carrying a 9mm handgun. Dispatch reported that there was a man with a gun in Bassett Creek Park. Over the radio, Officer Gomez could hear officers Elfstrom and Barland giving commands, and she could tell the man was not complying. She arrived at the park and removed her long gun from the squad car. The man was standing on a hill and aiming a handgun at them. Officer Gomez screamed at the man, “Don’t!” “What are you doing?” and “What are you thinking?” The man was expressionless and “shut down.” Officer Gomez believed she and the other officers were going to be shot.

As the man continued to point the gun, Officer Gomez heard rounds coming from Officer Elfstrom’s gun. She pulled the trigger on her long gun and nothing happened. She realized she had not charged her gun so she charged it and pulled the trigger again. The man on the hill brought his gun down and then raised it again, pointing it directly at the officers.

Officer Gomez pulled the trigger again and then the man was down. He lay motionless on the hill, but because the officers could not see his gun, he remained a danger. She aired that shots had been fired and pulled her squad car toward the man near a tree. She could see that the man was moving. She approached him and told him to get his hands out where she could see them. Another officer said he could see the gun. They could not tell whether the gun was real. Paramedics and State Patrol officers arrived, but they still had not yet recovered the man’s gun.

Officer Txheng Vang had been with the Crystal Police Department for three months and was nearing the end of his training. His Field Training Officer (FTO) was Officer Barland, and the two were working in the same squad car. Officer Vang carried a 9mm handgun. Vang and Barland heard the call of a man with a gun in Bassett Creek Park on the Frisbee golf course. They went to the park and Officer Elfstrom was already there. Vang heard Elfstrom tell the man multiple times to drop the gun. Officer Barland told Vang to take cover and Barland removed his less lethal shotgun from their squad.

Officer Vang saw the man on the hill smoking a cigarette. He did not drop his gun and instead raised it and pointed it directly at Officer Barland and at Officer Vang. Officer Vang backed up and fell down. He got back up and fired his gun an unknown number of times until there was no further threat. The man went to the ground and Vang changed his magazine. When they could finally see both of the man’s hands, Vang rushed in with the others.

Officer Mason Barland has been a Crystal Police officer for 13 years, and carried a 9mm handgun. He was Officer Vang’s FTO. They went to the call of the man in Bassett Creek Park with a gun with lights and sirens on. Officer Elfstrom was already there. Officer Gomez arrived in her squad ahead of Barland and Vang. Barland saw the man on the hill approximately 100 feet away from them. He used their car as cover for Officer Vang. The man was holding a black semi-automatic handgun.

Officer Barland unlocked his less lethal/beanbag shotgun from his squad car and pulled it out. He went to his knee with the shotgun. Barland yelled at the man and warned him, saying “Drop the gun!” “We are going to shoot!” and “We don’t want to shoot!” The man on the hill had the gun pointed at the ground in his left hand and raised it, pointing it right at Officer Barland. He was smoking a cigarette.

Officer Barland fired, striking the man with his second beanbag shot. The man went to his knees, but still held the gun in his left hand. Other officers opened fire. Officer Barland ducked and radioed that shots were being fired. He dropped his less lethal gun and took his handgun from his side. Officer Barland then moved away from the car they were using as cover and fired 4-6 times. Eventually the man went down. At no time did Officer Barland see the gun drop.

Officer Elfstrom got in the passenger side of Officer Gomez’s squad and they moved up the hill with Barland and Vang following. When they got close to the man, Officer Barland could see one, but not both, of the man’s hands. He saw a pack of cigarettes on the ground but no gun. Officer Barland told the man, “We want to help you but we can’t until we see your hands.” As they got closer, Officer Barland could see the black gun under the man. The man had a gunshot wound to the abdomen. Someone handcuffed the man. Paramedics and an Emergency Department doctor from North Memorial arrived. The doctor wanted the handcuffs removed and one of the responding State Patrol officers did that.

Officer Bryan Elfstrom had been with the Crystal Police Department three and a half years. Right before 9:00 a.m. he heard the dispatch of a black male with a handgun at 29<sup>th</sup> Place and Brunswick. Shortly thereafter, the call was updated to the Frisbee golf course in Bassett Creek Park. Elfstrom arrived first with his lights on, and he drove over the curb and onto the grass. He could see a man on the hill walking back and forth with a black handgun in his right hand. The gun was pointed down by the man’s right leg.

Officer Elfstrom got out of his squad car and said to the man, “Drop the weapon!” He removed his own 9mm handgun from his holster and had it in the “low ready” position. The man raised his gun and pointed it in the direction of Officer Elfstrom, but not directly at him. He said to the man, who was about 100 feet away, “Drop the gun!” three more times. The man replied, “Not today” or “I can’t today.” Officer Elfstrom went to the rear of his squad car and opened the passenger door for more cover. He told the man approximately seven more times to drop his gun.

The man moved to the top of the hill and lit a cigarette, moving the gun from his right hand to his left hand. He threw the cigarette box to the ground. Officers Barland and Vang arrived. Elfstrom told someone to grab a rifle because of the 100-foot distance. Barland grabbed his less lethal gun and went behind a tree. Officer Gomez was there and all four officers were yelling, “Drop the gun!” Officer Barland fired 2 or 3 less lethal rounds and one hit the man, causing him to go to his knees. He quickly got up, lifted both of his arms, put both hands on the gun, and pointed it in Officer Elfstrom’s direction, but directly at Officer Barland. Officer

Elfstrom fired 12-15 shots from behind the door of his squad. Other officers were also shooting. The man went to his knees again and pointed the gun at the officers three more times.

The man eventually went to the ground, and Elfstrom rode in the passenger side of Officer Gomez's car toward the man and called for a K-9 and/or a bulletproof shield. He got near the man and pointed his gun at him saying, "Let me see your hands!" Eventually Elfstrom could see both hands and he and another officer handcuffed the man. The Crystal Police Department's Deputy Chief arrived. Elfstrom told him he fired his gun and the Deputy Chief removed him from the scene.

Minnesota State Trooper Sara Evans was at the nearby Golden Valley State Patrol Headquarters when she heard the dispatch calls and responded. When she arrived at the park she saw two officers taking cover behind a squad door, and a black male laying on his stomach on the grass. She joined the officers in telling the man to show his hands. She pointed her gun at the man and one of the Crystal officers grabbed the man's arms. The gun was partially underneath the man's left leg and Evans grabbed it and moved it 10 feet from where the man lay. There was also a knife on the ground and she dragged the knife with her foot to the same location as the gun.

#### Other relevant information

Police collected a cell phone from the hill. The phone was analyzed and records show a 911 call lasting 359 seconds on May 24<sup>th</sup>, from 8:53:03 a.m. to 8:59:04 a.m. The 911 call recording is a man saying he was James Young and reporting a man with a gun in the park. Police played the recording to Thomas Bunkers, who confirmed that the caller's voice was that of Khaleel Thompson. The responsible party on the Sprint account for this phone is Thompson's mother.

On a bench near Thompson was his wallet, \$41.00 in cash, and a bottle of "Chic Merlot" nail polish. Fresh nail polish was on the concrete in the immediate area. A backpack was found near Mr. Thompson, which contained, among other things, a broken, empty Jose Cuervo Tequila bottle. The backpack was not wet and did not smell of alcohol.

One bullet was recovered from Mr. Thompson's body; the bullet from the gunshot wound to the head. Testing was done on the bullet, comparing it to the four guns collected from the Crystal officers who fired. The bullet was matched to Officer Elfstrom's gun.

DNA testing was performed on the gun found under Thompson's left leg, which was determined to be an airsoft BB gun.



Relevant test results are as follows:

1. Grips of the BB gun: a mixture of four or more individuals. Khaleel Thompson is not excluded. 98.2% of the general population is excluded from being the source of this DNA.
2. Slide, hammer, and safety of the BB gun: a mixture of three or more individuals. Khaleel Thompson is excluded. Sara Evans is not excluded. 92.8% of the population is excluded from being the source of this DNA.
3. Magazine of the BB gun: mixture of three or more individuals. Khaleel Thompson is excluded. Sara Evans is excluded.

Testing was also done on dark red/burgundy paint found on the gun. An analyst compared that paint to the “Chic Merlot” nail polish found at the scene and concluded that “the questioned paints could have come from the known bottle of nail polish,” and that there was a “Type 3 Association,” which is “an association in which items correspond in all measures physical properties, chemical composition and/or microscopic characteristics and could have originated from the same source. Because it is possible for another sample to be indistinguishable from the submitted evidence, an individual source cannot be determined.”

Khaleel Thompson was taken from the scene to North Memorial Medical Center where he was admitted with a gunshot wound to the forehead and a gunshot wound to the right flank. His blood alcohol content was .15, which, as noted in the admission record, was “high.” He had emergency surgery to remove his right kidney and repair other abdominal injuries. He then had surgery to repair the damage to his head and brain, and the bullet was removed from his head. A bullet located near Thompson’s spine was not removed.

BCA agents interviewed Khaleel Thompson at North Memorial Medical Center on June 26, 2017. Thompson was alert and coherent. Thompson reported that he had no memory of the events with the police in the park on May 24<sup>th</sup>. He recalled the one-week hospitalization in California, coming back to Minnesota, moving into the Bunkers’s home, and taking the airsoft BB gun from the house. He did not recall altering the tip with nail polish or calling 911. He said that while he did not remember exactly what he texted Hannah Klemmers the night before, “it probably did sound very...destructive.” Thompson recalled a couple-hour standoff with police during the winter of 2017 when he had a knife and police took him to the hospital. He stated that he heard voices from two different personalities.

Khaleel Thompson was discharged from North Memorial Medical Center on July 5, 2017. Hospital personnel, citing privacy concerns, did not tell BCA agents where Khaleel Thompson went when he was discharged.



## HENNEPIN COUNTY ATTORNEY'S OFFICE REVIEW

The BCA submitted its report to the Hennepin County Attorney's Office on August 3, 2017, 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 October 31, 2017, 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 Kathleen Gomez, Officer Txheng Vang, Officer Mason Barland, and/or Officer Bryan Elfstrom for the non-fatal shooting of Khaleel Thompson. At the time he was shot, Thompson was pointing what appeared, very credibly, to be a semi-automatic handgun at the officers, particularly Officer Barland. Thompson repeatedly ignored commands to drop his gun and ignored the officers' statements that they did not want to, but would, shoot if Thompson did not drop his gun. Officers Gomez, Vang, Barland, and Elfstrom fired to protect themselves, acted out of fear of great bodily harm or death, and their use of deadly force was justified.

#### A. Legal Standard

To bring charges against a peace officer for using deadly force in the line of duty the State must be able to prove beyond a reasonable doubt that the use of force was not justified.<sup>1</sup> Minnesota law provides that a peace officer may use deadly force when necessary "to protect the peace officer or another from apparent death or great bodily harm."<sup>2</sup> The intentional discharge of a firearm constitutes deadly force.<sup>3</sup>

The United States Supreme Court has recognized the use of deadly force by a peace officer is justified where the officer has "probable cause to believe that the suspect pose[s] a threat of serious bodily harm either to the officer or to others."<sup>4</sup> The Court also addressed the use of force by a peace officer in its 1989 decision, *Graham v. Connor*.<sup>5</sup> Graham held an objective reasonableness standard should be utilized to evaluate an officer's use of force. The assessment of reasonableness requires "careful attention to the facts and circumstances of each particular case."

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

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

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

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

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

The Court then outlined a non-exhaustive list of factors for balancing an individual's rights vs. an officer's: 1) "the severity of the crime at issue;" 2) "whether the suspect poses an immediate threat to the safety of the officers or others;" and 3) "whether he is actively resisting arrest or attempting to evade arrest by flight." Graham made clear that whether an officer used reasonable force "must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." The Court stated allowance must be made for the fact the law enforcement officers are often required to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving.<sup>6</sup>

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

### **B. The Use of Deadly Force Against Khaleel Thompson Was Authorized.**

Officers Gomez, Vang, Barland, and Elfstrom all fired shots at Khaleel Thompson, and Thompson was very seriously injured when he was struck by two bullets, one of which is known to have come from Officer Elfstrom's gun. The first information conveyed to the officers in the dispatch call to Bassett Creek Park was for a man with a handgun. Officer Elfstrom was first to arrive and saw a man in that location holding a gun at his side. At no time was it apparent that the gun was a BB gun; in fact, Thompson had very recently altered it to camouflage the orange tip that clearly identified it as a BB gun.

Thompson refused to drop the gun and his statement, "not today" or "I can't today" is clear evidence that he heard Officer Elfstrom and understood the command.

Elfstrom and other officers continued to order, request, command, and plead with Thompson to drop the gun. Rather than do so, Thompson became more aggressive, first raising the gun and pointing it in the direction of the officers and then directly at Officer Barland. After being hit with a less lethal round, Thompson raised both arms, put both of his hands on the gun, and aimed it directly at Barland. At that point it was clear that the use of deadly force against Thompson was necessary to prevent harm or death to the officers or any bystander in the area.

The officers' 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: Thompson was holding what credibly appeared to be a semi-automatic handgun, at 9:00 in the morning, in a public park, and he refused to drop the gun and comply with police. Pointing the gun at the officers is Assault in the First Degree, a serious felony crime
2. Whether the suspect poses an immediate threat to the safety of the officers or others: Thompson posed a clear and immediate threat to the Crystal Police officers by pointing his gun at them and refusing to drop it. The fact that he was a threat to officers is

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

demonstrated not only by this conduct but by what was discovered during the course of the investigation. While not known to the officers at the time, Thompson had a well-documented history of threatening the police with the goal of having them shoot and kill him. This history corroborates the other evidence obtained in this case and illustrates that Thompson was very serious about creating a violent situation with the police. In this case, that culminated in police shooting many rounds in a public park at 9:00 in the morning. Thompson thereby directly created risk to anyone else who might have been in the area. Fortuitously, no one else was injured.

3. Whether he is actively resisting arrest or attempting to evade arrest by flight: Thompson would not drop the gun, thereby preventing the officers from approaching him to arrest him. It was not safe for the officers to approach Thompson until he was effectively disarmed. His statement that he could not and would not drop his gun, along with his actions, unequivocally 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 Gomez, Vang, Barland, and Elfstrom acted reasonably. The scene and danger at Bassett Creek Park Minnehaha was rapidly evolving and dramatically escalating. Thompson's intent was clear from his words and actions, which is corroborated by his history. He was deliberately provoking the officers into shooting him by threatening them with what appeared to be a real gun. He painted the orange part of the gun to make the officers believe it was a real semiautomatic handgun. He called 911 himself, using a false name, to lure police there. He pointed the gun directly at officers and explicitly stated he would not drop it. After being hit with less lethal ammunition, he stood and again pointed the gun directly at a police officer with both hands to escalate the conflict. Only after being shot did he lose his grip on the gun. The only way to stop the threat Thompson posed to the officers was to use lethal force.

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