

JUNE 8, 2016



**REPORT OF THE HENNEPIN COUNTY
ATTORNEY'S OFFICE REGARDING THE
SHOOTING DEATH OF DEREK WOLFSTELLER
ON JULY 23, 2015**

I. STATEMENT OF RELEVANT FACTS

On July 23, 2015, at approximately 8:28 p.m., Plymouth Police Officer Amy Therkelsen shot Derek Wolfsteller (Wolfsteller) after the officer responded to a psychiatric issue call at the Arby's, 10205 6th Avenue in Plymouth. Therkelsen tried talking with Wolfsteller, then tried Tasing Wolfsteller, and ultimately wrestled with Wolfsteller in an attempt to handcuff him. During the struggle Wolfsteller attempted to remove Therkelsen's gun – defeating two of the three safety features in the holster. Therkelsen was able to gain control of her gun and shot Wolfsteller twice in the head.

A. Derek Wolfsteller's actions on July 22, 2015

On July 22, 2015, at approximately noon, Derek Wolfsteller showed up at the home of his grandparents.¹ The grandfather said that Wolfsteller had struggled with drug use and mental illness for a number of years. The grandparents had allowed Wolfsteller to stay with them intermittently. Wolfsteller, who was often paranoid, felt safe in his grandparents' home. On July 22, Wolfsteller asked his grandfather to take him to apply for a job. On the way, Wolfsteller changed his mind and asked to be taken to Wolfsteller's home. As they sat in the car Wolfsteller wrote a note asking if his grandfather would help him OD (Overdose). The grandfather said "no" and they returned to the grandparents' home. At some point during the day, Wolfsteller asked his grandmother about sleeping pills.² Wolfsteller also kept telling his grandmother that he loved her which was not normal for Wolfsteller. To the grandfather it seemed as if Wolfsteller was saying his goodbyes.

As they all got ready for bed on the night of July 22nd, Wolfsteller grabbed two steak knives and said he was taking them to bed to protect himself. The grandfather became concerned and called the police.

Once the police arrived at approximately 11:36 p.m., Wolfsteller went back and forth about whether he wanted help. An ambulance was called but ultimately Wolfsteller refused help.³ The grandfather offered to take Wolfsteller home. As they drove Wolfsteller vacillated about where he wanted to go. Ultimately, Wolfsteller told his grandfather to take him to West Health and Wolfsteller said he would check himself in through the emergency room. When they arrived at West Health, the grandfather saw Wolfsteller walk towards the ER door but doubted that he ever went in.

B. Derek Wolfsteller arrived at Arby's on July 23, 2015

The next evening, Derek Wolfsteller arrived at the Arby's, 10205 6th Avenue, Plymouth, Minnesota, at approximately 8:15 p.m. Wolfsteller looked "very nervous" according to the Arby's manager Trenton Dechmann.⁴ Wolfsteller went to a cabinet near the drink machine and

¹ Statement of Roger Wolfsteller to HCSO dated July 23, 2015.

² Statement of Maria Wolfsteller to HCSO dated July 23, 2015.

³ Plymouth Police Incident Report, ICR#15034434, Off. Schick dated July 22, 2015.

⁴ Transcript of Statement of Trenton Dechmann to BCA/HCSO dated July 22, 2015.

then came to the counter. Wolfsteller asked for a cup for water and then asked to use the phone. Dechmann gave Wolfsteller the store's cordless phone. Wolfsteller went outside to make a call.

C. Derek Wolfsteller called 911

At 8:19 p.m., Wolfsteller called 911 and said, "Hey coppers come and get me."⁵ Wolfsteller initially said he wanted an ambulance to take him to the hospital. Wolfsteller was not sure if he wanted to hurt himself and was not sure if he would fight with the police when they arrived. Wolfsteller initially said he had a couple of knives on him then later said he did not.

Wolfsteller went back into the Arby's. Wolfsteller told Dechmann that several people who just left the restaurant were, "tryin ta get me."

D. Officer Therkelsen arrived at the Arby's

Officer Amy Therkelsen responded to the 911 dispatch call of a "psych issue" and arrived at the Arby's at approximately 8:26 p.m.⁶ The text on the CAD screen gave Officer Therkelsen details of Wolfsteller's call to 911 including his statement "coppers come and get me," Wolfsteller's uncertainty as to whether he would fight with the officers, and his conflicting statements about possessing a knife.⁷ Officer Therkelsen also received the description of Wolfsteller as a white male with short brown hair wearing a baseball hat, white t-shirt, and jeans. Officer Therkelsen pulled up to the north side of the Arby's and could see Wolfsteller through the windows.

Plymouth training records show that in addition to annual use of force training, Officer Therkelsen received at least three trainings on managing situations involving mental health crises or emotionally disturbed citizens.⁸

Officer Therkelsen got out of her squad and could see Wolfsteller through the windows. Officer Therkelsen motioned for Wolfsteller to come outside but he refused.⁹ Officer Therkelsen stated she saw Wolfsteller lifting up his shirt and she could not tell what he was reaching for.¹⁰ Officer Therkelsen entered the Arby's through the east vestibule and Wolfsteller went towards the door leading to the west vestibule. Therkelsen initially took out her handgun but holstered it and transitioned to her Taser as Wolfsteller moved toward the other door.

⁵ HCSO Computer Aided Dispatch (CAD) Printout for call number P152041408/911 Audio.

⁶ HCSO Computer Aided Dispatch (CAD) Printout for call number P152041408/911 Audio.

⁷ Transcript of Statement of Officer Amy Therkelsen to BCA dated July 24, 2015.

⁸ Plymouth Police Department Training Log for Officer Amy Therkelsen. According to the log, Officer Therkelsen attended trainings related to mental health crises and emotional disturbance in September 2008, November 2012, and April 2013.

⁹ Transcript of Statement of Officer Amy Therkelsen to BCA dated July 24, 2015/ Transcript of Statement of Trenton Dechmann to BCA/HCSO dated July 22, 2015.

¹⁰ Transcript of Statement of Officer Amy Therkelsen to BCA dated July 24, 2015.

E. Derek Wolfsteller struggled with Arby's employees

When Wolfsteller ran toward the door leading to the west vestibule of the Arby's, he ran into the manager Trenton Dechmann.¹¹ A known juvenile, who was working the drive-thru, went to help the manager and grabbed Wolfsteller around the waist.¹² According to the known juvenile, Officer Therkelsen told Wolfsteller to "put his hands up and get on the floor." Dechmann also heard Officer Therkelsen telling Wolfsteller to put his hands up.

F. Officer Therkelsen attempted to Tase Derek Wolfsteller

When Wolfsteller continued to struggle with the Arby's employees, Officer Therkelsen deployed her Taser. Dechmann, who had a hold of Wolfsteller, felt the current from the Taser. Officer Therkelsen, Dechmann, and the known juvenile, all noticed that the Taser was not effective in stopping Wolfsteller from struggling.

Officer Therkelsen attempted to "drive-stun" Wolfsteller with her Taser by putting it right up to him and again the Taser was not effective. In the process of attempting to drive-stun Wolfsteller, Officer Therkelsen drove her weight into Wolfsteller and the two of them through the door onto the floor of the west vestibule.

G. Derek Wolfsteller attempted to grab Officer Therkelsen's gun

As Officer Therkelsen and Wolfsteller were on the ground struggling, Wolfsteller dropped the phone. Dechmann got the phone and called 911 for more police. When Officer Therkelsen said she needed help, the known juvenile got on top of Wolfsteller and another employee, Arturo Montiel-Ramales, grabbed Wolfsteller's legs.¹³

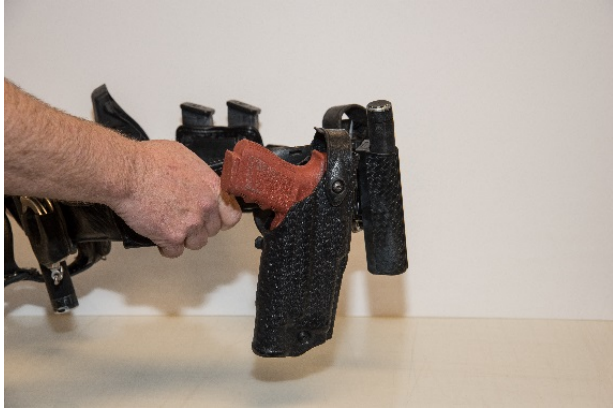
Officer Therkelsen said that as they were on the ground, she wrestled with Wolfsteller and he tried to grab her gun.¹⁴ Therkelsen said she got "on the radio at one point and told my partners I'm, I'm fighting with him, he's goin' for my gun." Wolfsteller grabbed for her gun with both of his hands. Officer Therkelsen's holster has a "2+" process for releasing the firearm illustrated in the photos below.

¹¹ Transcript of Statement of Trenton Dechmann to BCA/HCSO dated July 22, 2015.

¹² Transcript of statement of Known Juvenile to HCSO dated July 24, 2015. The name of the known juvenile has been redacted pursuant to Minn. Stat. 13.82, subd. 17.

¹³ Statement of Known Juvenile to HCSO dated July 24, 2015; Statement of Arturo Montiel Ramales to HCSO dated July 23, 2015.

¹⁴ Transcript of Statement of Officer Amy Therkelsen to BCA dated July 24, 2015.



Therkelsen said that Wolfsteller was able to “rock the top hood of the holster forward” and that he had both hands on the “gun trying to pull it out of my holster.”

Trenton Dechmann saw Wolfsteller grabbing for Officer Therkelsen's gun in the holster and heard Officer Therkelsen yell "he's tryin' to get my gun."¹⁵

Likewise, the known juvenile saw Wolfsteller reaching for and grabbing Officer Therkelsen's gun.¹⁶ The known juvenile said that Wolfsteller almost got the gun out of the holster. The known juvenile male told Wolfsteller "don't do it, don't do it bro." The known juvenile said that although Wolfsteller appeared to not resist as much he never seemed to stop grabbing Officer Therkelsen's gun. The last time the known juvenile noticed, Wolfsteller did not have his hand on Officer Therkelsen's gun but Wolfsteller was still resisting and struggling.

H. Officer Therkelsen used deadly force

Officer Therkelsen said that even though Wolfsteller had been tased and there were three people trying to gain control of him, he continued to keep grabbing at her gun and "his fingers were wrapped around the hood of my gun." As the struggle with Therkelsen and the others wore on, Wolfsteller pulled so hard that Therkelsen's utility belt was completely sideways with the gun pulled around to her stomach. Officer Therkelsen said that during the fight to get control of both her firearm and of Wolfsteller she became exhausted and "I thought I was gonna die if he got that gun out." Officer Therkelsen said she was certain that if Wolfsteller had gotten the gun out of her holster he would have killed her and the Arby's employees and then himself. She said, "it was the scariest thing I've experienced."

Finally, Officer Therkelsen was able to pry Wolfsteller's hands off of the gun but he still had hold of the holster. Wolfsteller never relinquished his grip. At that point, Therkelsen was able to regain control of her gun, remove it, and fire it. She fired twice at Wolfsteller's head, killing him.

I. Other officers respond

A known officer 1 also responded to the initial call.¹⁷ As the known officer drove towards the Arby's they heard Officer Passig on the radio saying that an officer was fighting with someone who was trying to grab the officer's gun. The known officer arrived at the Arby's just as two shots were being fired. The known officer heard Officer Therkelsen saying, "He's trying to get my gun, he's trying to get my gun." The known officer removed the known juvenile and Mr. Montiel Ramales from the vestibule. Once Officer Janson arrived they handcuffed Wolfsteller and made the call of shots fired.

J. Investigative response

Numerous squads from the Plymouth Police Department responded to the scene. In addition, officers from Golden Valley, Crystal and New Hope arrived to assist. Within thirty minutes of the shooting, Chief Goldstein called the BCA and asked for investigative assistance

¹⁵ Transcript of Statement of Trenton Dechmann to BCA/HCSO dated July 22, 2015.

¹⁶ Statement of Known Juvenile to HCSO dated July 24, 2015.

¹⁷ Transcript of Statement of Known Officer to BCA dated July 24, 2015. The officer's name has been redacted pursuant to Minn. Stat. § 13.82, subd. 17.

regarding the shooting.¹⁸ Investigators from the Hennepin County Sheriff's Office assisted BCA agents with interviewing civilian witnesses at the scene.

K. BCA processing of the scene

The BCA Crime Scene Team (CST) was also dispatched to the scene.¹⁹ The CST documented the scene with photographs and video. Once the scene was carefully documented, numerous items of evidence were recovered including the Taser, bullet fragments, bloodstains and Therkelsen's firearm.²⁰

Officer Therkelsen was taken to a local medical facility where a consensual blood draw was obtained for laboratory testing.²¹ Officer Therkelsen's duty belt and uniform were photographed and collected together with swabs from Officer's Therkelsen's hands.²² In addition, buccal swabs were taken from Officer Therkelsen and other officers who may have touched her firearm for DNA analysis.

BCA personnel attempted to recover video evidence of the incident however the Arby's does not have a camera system and the nearest commercial camera is from the shopping mall which is too far away to capture video of an evidentiary value. None of the witnesses inside the Arby's reported having any cell phone video of the incident.

L. Squad video

Squad video was obtained from the squads that responded to the scene. The video from Officer Passig's squad was of significant evidentiary value. At 20:28:13, the squad video picks up police radio traffic where Officer Therkelsen can be heard to say "my gun." At 20:31:21, after the incident, Officer Therkelsen is being walked outside and she is visibly upset saying, "He almost had my gun." Other squad videos were also examined but found to be of little use.

M. Autopsy

On July 24, 2015 at 9:00 a.m., an autopsy was performed on Derek Wolfsteller by the Hennepin County Medical Examiner's Office. The cause of death was a gunshot wound to the head.

¹⁸ BCA ACISS Initial Report 2015-400 dated July 24, 2015.

¹⁹ BCA ACISS Supplement 2015-400/7 dated July 24, 2015.

²⁰ Details regarding the items seized and their location together with very detailed photos and explanations are found in BCA Lab #S15-08640, Lab Report No. 3.

²¹ BCA Consent to Provide Chemical Test of Blood or Urine dated July 23, 2015; Abbott-Northwestern Request for Chemical Examination of Blood and/or Urine dated July 24, 2015 12:35 a.m.

²² BCA Evidence Receipt dated July 24, 2015.

N. BCA Laboratory Testing

The BCA laboratory performed a number of forensic tests as part of the investigation. Officer Therkelsen's blood was tested for alcohol and mood altering chemicals and those tests were negative.²³ Bloodstain pattern analysis was conducted and was consistent with Wolfsteller being shot where the Crime Scene Team found him and that the vestibule door was closed at the time the shots were fired.²⁴ The gun, magazine and duty belt were examined for fingerprints, but examination "failed to reveal any latent prints which are suitable for comparison."²⁵

Firearms testing confirmed that Officer Therkelsen's gun fired the shots that produced the two cartridge casings recovered at the scene.²⁶ The three holes in Wolfsteller's baseball cap were examined for gunshot residue. One of the holes was consistent with a gunshot at a distance "between four and twelve inches." Another hole was consistent with a "muzzle to target distance of greater than four inches." The other hole had residues but a distance could not be determined.

DNA analysis was performed on items determined to be of possible evidentiary value.²⁷ DNA from Officer Therkelsen's holster contained a mixture and Therkelsen and Wolfsteller could not be excluded but "99.7% of the general population can be excluded from being contributors." DNA from Officer Therkelsen's belt contained a mixture and Therkelsen and Wolfsteller could not be excluded but "99.995% of the general population can be excluded from being contributors."

The blood at the scene matched Wolfsteller's, the blood on Officer Therkelsen's right sleeve, the area near her badge, and her flashlight was Therkelsen's; the blood on Officer Therkelsen's left sleeve contained a mixture where Therkelsen and Wolfsteller could not be excluded as sources.

There was insufficient genetic information on the gun or magazine to make any statement regarding DNA types.

Wolfsteller's clothing was examined for the presence of Taser Probe damage.²⁸ Several of the holes were consistent with Taser probes, some were not, and others were deemed inconclusive.

Therkelsen's Taser was also examined. The Taser was taken to the Plymouth Police Department where the stored data was accessed. The Taser record showed that the Taser was deployed on July 23, 2015 at approximately 20:28:23 and that the trigger was pulled four separate times.²⁹

²³ BCA Lab #S15-08640, Lab Report Nos. 1 & 2.

²⁴ BCA Lab #S15-08640, Lab Report No. 3.

²⁵ BCA Lab #S15-08640, Lab Report No. 5.

²⁶ BCA Lab #S15-08640, Lab Report No. 6.

²⁷ BCA Lab #S15-08640, Lab Report Nos. 4 & 7.

²⁸ BCA Lab #S15-08640, Lab Report No. 8.

²⁹ BCA ACISS Investigative Supplement 2015-400/21; Taser EvidenceSynch Printout, Serial No. X120025XT, dated September 3, 2015.

O. Hennepin County Attorney's Office Review

The BCA submitted its report to the Hennepin County Attorney's Office on January 15, 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 has carefully reviewed the investigation together with two senior prosecutors and issued this report.

II. LEGAL ANALYSIS REGARDING THE USE OF DEADLY FORCE

The evidence detailed above does not support the filing of criminal charges against Officer Amy Therkelsen for the fatal shooting of Derek Wolfsteller. The use of deadly force by Officer Therkelsen in the line of duty was authorized because it was necessary to protect the officer and others in the immediate area from death or great bodily harm.

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.³⁰ 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."³¹ The intentional discharge of a firearm constitutes deadly force.³²

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."³³ The Court also addressed the use of force by a peace officer in its 1989 decision, *Graham v. Connor*.³⁴ 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 versus 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

³⁰ *State v. Basting*, 572 N.W.2d 281, 286 (Minn. 1997); HCAO charging policies provide that charges should only be filed "when credible admissible evidence creates a reasonable probability of obtaining a conviction at trial. This is similar to the NDAA Charging Standard 4-2.2 ("a prosecutor should file charges that...[the prosecutor] reasonably believes can be sustained by admissible evidence at trial") and the US Attorney Manual § 9-27.220 (a federal prosecution should be commenced only when "the admissible evidence will probably be sufficient to sustain a conviction").

³¹ Minn. Stat. § 609.066, subd. 2.

³² Minn. Stat. § 609.066, subd. 1.

³³ *Tennessee v. Garner*, 471 U.S. 1,11 (1985).

³⁴ *Graham v. Conner*, 490 U.S. 386 (1989).

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.³⁵

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 Wolfsteller was authorized

When Officer Therkelsen responded to the report of a mental illness issue at the Arby's she knew that Wolfsteller had said "coppers come and get me." She also knew that Wolfsteller was unsure whether he would fight with officers and that he had made conflicting statements regarding whether he possessed a knife. Officer Therkelsen first waved to Wolfsteller in an unsuccessful attempt to get him to come outside. When Wolfsteller lifted up his shirt, Officer Therkelsen had reason to be concerned that he did, in fact, possess a weapon.

As Officer Therkelsen entered the Arby's, Wolfsteller attempted to leave through a different exit and struggled with two Arby's employees. At this point, Therkelsen made the reasonable decision to attempt to subdue Wolfsteller using a Taser. Officer Therkelsen first shot the Taser toward Wolfsteller but it was ineffective and then she attempted to 'drive-stun' Wolfsteller. This is corroborated by Mr. Dechmann, who felt the current as he held Wolfsteller, and by the Taser data.

When the attempt to Tase Wolfsteller was unsuccessful, Officer Therkelsen and Wolfsteller fell into the west vestibule with Dechmann, the known juvenile and Montiel-Ramales still hanging onto Wolfsteller. Officer Therkelsen said that Wolfsteller immediately grabbed for her gun with both hands and continued to pull at the gun hard enough to twist her utility belt around. This is corroborated by Dechmann and the known juvenile who both saw Wolfsteller wrestling with Officer Therkelsen and grabbing at her gun. It is also corroborated by the fact that Wolfsteller could not be excluded as a source of the DNA mixture on Officer Therkelsen's holster.

Wolfsteller's lack of response to being Tased, his persistent attempts to take Officer Therkelsen's gun, his ability to defeat the protective hood over the gun, and his persistent wrestling with Officer Therkelsen that left her bruised and exhausted, made it reasonable for Officer Therkelsen to conclude that the use of deadly force was necessary to protect her, Mr. Dechmann, the known juvenile, Mr. Montiel-Ramales, and others in the restaurant from apparent death or great bodily harm. The evidence derived from the Officer Therkelsen's use of deadly force against Wolfsteller was therefore authorized by Minn. Stat. § 609.066 and no criminal charges against the officer are warranted.

³⁵ *Graham* at 396-397.