

SPEECH
INTRODUCTION OF DECISION
Michael O. Freeman
Hennepin County Attorney

Good morning. We have a good deal of very important information to share and I ask for your patience and cooperation during the next 30 minutes.

First, I want to extend my personal condolences to the Clark Family. Jamar Clark deserved an opportunity for a full, and productive life. We are saddened that this tragic incident means he will not have that chance.

Second, let me thank the BCA for a very thorough and professional investigation. Along with help from the FBI, this is a very complete job done in an expedited time frame of four months.

After this introduction, I'll share a brief summary of the legal standard by which we must evaluate the evidence in this or any other homicide.

Second, I'll share a chronology of the events that occurred the night of November 14 and the morning of November 15, 2015. This will be followed by a detailed review of the evidence concerning, **A**) whether or not Jamar Clark was handcuffed and **B**) the evidence surrounding the use of force by the police.

Third, I will announce my decision whether there is probable cause to criminally charge Officers' Ringgenberg and Schwarze.

Fourth, we will then show key parts of the relevant videos.

Fifth, I'll take questions.

As you depart, you may obtain a hard copy of my remarks. In the interest of transparency, by later today our website www.hennepinattorney.org will post all information related to this case that can legally be made available. It will include my remarks, a report detailing a factual analysis of this case, various video recordings, and copies of citizen interviews and police reports. This way, you can review virtually all the evidence we reviewed before making our charging decision and draw your own conclusions. This level of transparency is unprecedented.

And finally - Every governmental entity, especially those in public safety and justice, must continually evaluate their procedures to make sure they meet the challenges of today and not merely reflect how we have done things in the past. This office has undertaken such an analysis in our in-depth review and decision not to use the grand jury in police-involved shootings. By making this tough charging decision ourselves, we are increasing the level of accountability and transparency our community deserves from us.

Police have a very difficult job. They are often required to make split-second judgements in circumstances that are tense, uncertain and rapidly evolving. Nationally, this job has only become more challenging due to the lack of trust between community members and the police. That is why I believe police departments must regularly review their practices and procedures to make sure they are more effective and just in serving all of our communities.

In late January, police chiefs from the major cities across this country, including Minneapolis, gathered in Washington, D.C. at the Police Executive Research Forum. In their own words, they called for “drastic change” in training and policies within police departments in order to dramatically cut the number of officer-involved fatal shootings. I support the efforts of the Minneapolis Police Department to review their past practices and strive for improvement through enhanced training and revised procedures.

This case and the other recent police shooting cases around the country reinforce my belief that revised police training and practices must emphasize the de-escalation of disruptive situations by non-lethal means whenever possible. Police must use discussions, negotiations and peaceful interventions first. They must be willing to tactically withdraw and slow down volatile situations. And, if force is necessary, use the lowest level first – physical restraint, mace or tasers for example – before threatening to use or actually using deadly force. We simply must reduce the number of situations where guns are discharged by police. This will not only save the lives of members of our communities but save the psychological lives of officers, who are forever changed and haunted when they take a life.

I want to be clear that these remarks are not a reflection upon the actions of Officers Ringgenberg and Schwarze on November 15, 2015. This case is not at all similar to some of those seen around the country in Chicago, Cleveland or North Charleston, South Carolina. These officers were called to respond to a person who had assaulted his girlfriend and interfered with paramedics caring for the girlfriend. These officers did not have the opportunity to negotiate or tactically withdraw.

Finally, all of us have a role to play in reducing community violence. This responsibility rests with us individually and collectively. We know that violence only begets violence. The genius of Mahatma Gandhi and Martin Luther King is they saw the old ways did not work, that only non-violence could defeat violence. We all must stop using violence against those we love and against those we do not love. We must be more civil when we speak to each other and this includes interactions between the community and the police. Please--lower the volume. Let us show respect towards every person, no matter how much we may dislike them. All of us--prosecutors, police and the community--have much work to do to reduce the violence that plagues us. Only by working together can we accomplish this critical goal.

Now, let me turn to the law that controls a prosecutor’s review of this or any other homicide. I will begin with the controlling Minnesota Statutes and case law.

Legal Standard – Police Use of Deadly Force

In order to bring charges against a police officer for using deadly force, the State must be able to prove beyond a reasonable doubt that the officer's use of deadly force was not justified. This legal standard remains the same, regardless of whether the factual determination is made by a county attorney or a grand jury.

In order to charge second-degree manslaughter, the State must be able to prove beyond a reasonable doubt that the accused person acted with "culpable negligence" in creating an unreasonable risk of death or great bodily harm. "Culpable negligence" has been defined by Minnesota courts to mean acts that are grossly negligent combined with recklessness.

In order to charge second-degree murder, the State must be able to prove beyond a reasonable doubt that the accused intended to cause the death of the victim. In order to charge first-degree murder, the State must be able to prove beyond a reasonable doubt not only that the accused intended to cause the victim's death, but also that the action was premeditated. Those are the standards society recognizes when it comes to holding one criminally responsible for killing another.

The statute authorizing a police officer's use of deadly force in self-defense or defense of others is similar to that for civilians. However, courts have interpreted the provisions for law enforcement in a way that sets a high bar for obtaining a criminal conviction against a police officer for his or her use of force.

Under Minnesota Statute § 609.066, subdivision 2, police officers in Minnesota are justified in using deadly force in the line of duty when it is necessary to protect the officer or another person from apparent death or great bodily harm. This statute provides a significant defense to criminal charges against an officer for use of deadly force.

In *Graham v. Connor*, the United States Supreme Court held that the use of deadly force by a police officer must be evaluated from the perspective of a reasonable police officer on the scene and in the same circumstances. Reasonableness of police use of force cannot be evaluated from the perspective of a civilian nor can it be evaluated with the more clear vision afforded by 20/20 hindsight under *Graham*. The Court further stated that the fact that law enforcement officers often are required to react quickly in tense, uncertain, and rapidly evolving situations needs to be taken into account in determining reasonableness. Since *Graham*, the Supreme Court has narrowed the analysis to focus on the exact moment that the force was applied.

If the evidence in a particular case shows that the officer's use of deadly force was justified by the statute and under the *Graham* analysis, criminal charges against that officer for manslaughter or murder cannot be brought. The only time manslaughter or murder charges can be filed against a police officer, regardless of who makes the charging decision, is when the use of deadly force is not justified.

To repeat, the evidence must show unreasonable conduct by the police utilizing the perspective of a police officers and that the use of deadly force was not necessary to protect the officer or the public from a threat of great bodily harm or death.

SPEECH
PRESS CONFERENCE
Chronology

The events leading up to the death of 24-year-old Jamar Clark in the early morning hours of November 15, 2015 occurred near 1611 Plymouth Avenue in North Minneapolis. The addresses on the south side of this block consist of an apartment building attached by a breezeway to townhomes. The Elks Lodge is located across the street from 1611 Plymouth, on the north side of the block. November 15th was a warm night and many residents were out on the balconies on the south side of Plymouth Avenue. Patrons of the Elks Lodge, a social club, were starting to leave the establishment.

Party for Nekelia Sharp

On the evening of November 14, 2015, a number of friends and family were hosting a birthday party for Nekelia Sharp, age 39, in apartment 103 at 1611 Plymouth Ave. Jamar Clark was present with his girlfriend, RayAnn Hayes, age 41, and a number of his relatives. Late in the evening, Sharp and her husband started arguing in the hallway. RayAnn Hayes attempted to break up the argument and Jamar Clark grabbed Hayes. Hayes and Clark fought as well and Hayes injured her ankle in the fight. During this altercation both Clark and Hayes suffered facial wounds which bled.

Call for Ambulance

At 12:20 a.m. on November 15th, RayAnn Hayes called 911 and asked for paramedics to come to her daughter's apartment. EMS paramedics Tyler Haskell and Wesley Thompson responded to the call. They parked their ambulance on the south side of Plymouth Avenue in front of 1611 Plymouth. The paramedics entered the building and went to Apartment 204, where they found Hayes. She was intoxicated and unable to walk. Her lip was split, she had bruising on her left eye, and an abrasion on her nose.

The paramedics put Hayes into a "stair chair" to carry her down the stairs. As paramedics carried Hayes out of the building, they saw Clark standing outside crying and "acting kind of odd." As they walked past Clark, Hayes said "that's the guy who did this to me."

Call for Police Backup

The paramedics radioed for police back up because the apparent assailant was on the scene. As the paramedics were transferring Hayes to a stretcher to load her into the ambulance, Clark approached them saying he was her son. Hayes said he was not her son. Clark then began calling paramedic Thompson a "pussy" and "bitch" and told Hayes that he was going to come see her. The paramedics loaded Hayes into the ambulance and locked the doors. Thompson and Haskell were very afraid at this point.

Clark began knocking on the ambulance doors and trying to get into the ambulance.

EMS Supervisor Arrives

Shortly after Hayes and the paramedics locked themselves in the ambulance, EMS Deputy Chief Michael Trullinger, who was aware of the paramedics' call for police assistance, arrived on the scene. Trullinger saw Clark tapping on the back of the ambulance, saying his mother was in there. Clark said his name was Darius. Clark alternated between throwing his hands in the air and putting his hands in his pockets. Trullinger, a Marine veteran, was concerned by Clark's body language. Trullinger asked Clark to step aside; Clark moved a few steps away but kept fidgeting

and putting his hands in his pockets. Clark was wearing a long-sleeved sweatshirt and a jacket. Trullinger noted that Clark was crying at times and his emotions appeared to be rapidly changing. Because of new security features in the ambulance, the paramedics could not move from the patient area to the driver's area without first getting out of the side of the ambulance. In other words, the ambulance carrying Hayes could not leave for the hospital because the driver was effectively trapped in the rear and they felt they could not exit safely while Clark remained at the back of the ambulance.

MPD Officers Arrive

MPD Officers Schwarze and Ringgenberg arrived on the scene from the 4th Precinct stationhouse, which is only 3 blocks away. They parked behind EMS Supervisor Trullinger's Suburban. Because the officers were so close to 1611 Plymouth and the call was for ambulance assistance, they did not activate lights and sirens which, in turn, means that their squad's video cameras were not automatically activated. Trullinger met the officers and told them that the person in the ambulance was assaulted by the person up on the curb who was also interfering with the paramedics.

At 12:49 a.m. on November 15th, Officers Ringgenberg and Schwarze approached Clark and noticed his hands were in his jacket pockets. They told him to take his hands out of his pockets. He refused. Ringgenberg then took his gun out and held it down alongside his leg with the barrel pointing to the ground. He did not point it at Clark or anyone else. Clark started yelling, "What's the pistol for?" The officers again and repeatedly told Clark to take his hands out of his jacket pockets. Clark continued to refuse to do so. Ringgenberg put his gun back in his holster and grabbed Clark's right wrist while Schwarze grabbed Clark's left hand. Schwarze had his handcuffs out but said he was never able to get them on Clark. In the ensuing struggle, Schwarze dropped his handcuffs.

Ringgenberg had been trained in his prior work as a police officer in San Diego to take a suspect to the ground when he or she resisted being handcuffed because it was believed to be safer. After Clark resisted being handcuffed, Ringgenberg quickly reached his arm around Clark's chest and neck and took him to the ground. This occurred at 12:49:29 a.m. Ringgenberg landed on his side on top of Clark, who was on his back.

Clark Grabs for Ringgenberg's Gun

Ringgenberg said he tried to move away from Clark to get in position to handcuff him.¹ Ringgenberg felt his gun go from his right hip to the small of his back and told Schwarze, "He's got my gun." Ringgenberg said he reached back to the top of his gun and felt Clark's "whole" hand on the gun. Ringgenberg repeatedly told his partner Schwarze, "He's got my gun, he's got my gun." Ringgenberg recalled hearing Schwarze tell Clark to let go of the gun or Schwarze would shoot. Ringgenberg heard Clark say, "I'm ready to die." Ringgenberg said, "That was the worst feeling ever because, it just, my heart just sank." Ringgenberg believed he was going to die at that point because he had no control over his gun. Ringgenberg felt that Clark didn't care what happened to him and remembered thinking that he didn't want his partner to die with his gun. After Ringgenberg heard the round go off he remembered being able to roll away.

Schwarze said that as the officers approached Clark he had "this thousand yard stare."² Schwarze said that after Ringgenberg used the takedown maneuver, Schwarze maintained control of Clark's left hand and was waiting for Ringgenberg to turn Clark over so they could

¹ Transcript of Statement of Officer Mark Ringgenberg (MPD) to BCA; Nov. 17, 2015.

² Transcript of Statement of Officer Dustin Schwarze (MPD) to BCA; Nov. 17, 2015.

handcuff him. Schwarze heard Ringgenberg say, “He’s got my gun” in a very “stern, excited like very serious” tone. Schwarze, who had his handcuffs out, then dropped the handcuffs on the ground and took out his gun. Schwarze said he put the gun to the edge of Clark’s mouth and said, “Let go or I’m gonna shoot you.” Schwarze recalled Clark looking directly at him and saying, “I’m ready to die.” Schwarze said the “only thing I could think of to do was to save our lives and anyone else in the immediate area so I pulled the trigger.” Schwarze said the gun did not fire because the slide was partially pulled back. Schwarze heard Ringgenberg saying “Shoot him” in a panicked voice so Schwarze pulled the trigger again and the gun fired. Clark was shot approximately 61 seconds after first being confronted by the officers.

EMS Activity after Officers’ Arrival

Trullinger briefed the officers on the situation. Trullinger then went into the ambulance containing Hayes and the other paramedics. When the police first arrived. He asked Hayes if the person outside was her son. She said he was not, he was her boyfriend and that he had beaten her up. Trullinger and the paramedics then heard the gunshot. They hit the floor momentarily and then Trullinger looked out to see the officers standing up and spread apart. Trullinger saw Clark was on his back on the ground bleeding with his arms to the side and Trullinger called for another ambulance. The ambulance with Hayes then left for North Memorial Medical Center.

Trullinger rushed to Clark, checked his pulse and then ran to his truck to retrieve his trauma bag. Trullinger noticed a pair of handcuffs on the ground near Clark, somewhere around Clark’s hips.

Additional Ambulance Response

HCMC paramedics Mari Hill and Tyler Lupkes responded to the scene, arriving at 12:54:49 a.m. and saw Trullinger assisting Clark. Hill asked MPD Officer Reimer for help checking Clark for weapons; no weapons were found. As EMS paramedics Hill and Lupkes went to move Clark to a stretcher, they noticed open handcuffs in the grass near Clark’s right side. Lupkes grabbed the handcuffs by the hinge and moved them out of the way so the paramedics could get Clark on to the stretcher.



Clark was loaded onto the stretcher and then quickly into the ambulance and taken to Hennepin County Medical Center (HCMC).

Ringgenberg and Schwarze Taken to 4th Precinct

Off. Sworski of the 4th Precinct, arrived at the scene within minutes of the shooting. The scene had become very chaotic with 50-60 people in the immediate area, many yelling at the police. With other officers arriving to take control of the scene, Sworski was concerned for the safety of Schwarze and Ringgenberg so he removed them from the scene. Sworski took possession of Schwarze’s firearm and moved Schwarze and Ringgenberg to his squad. Schwarze was placed in the front seat and Ringgenberg in the back. They did not discuss the shooting on the short ride to the 4th Precinct.

At the precinct, Schwarze and Ringgenberg were placed in separate offices. Each officer was later read a public safety statement which is meant to determine whether there is a weapon missing or other immediate safety concern related to the use of force. Schwarze said that he fired his weapon and that his handcuffs were missing.

Crime scene technicians later took photos of Schwarze and Ringgenberg, collected their firearms, as well as Ringgenberg's duty belt for forensic examination. Their uniforms were not collected at that time, but were collected later.

Crime Scene Processing

After Clark was transported by ambulance and the scene was secured, crime scene technicians examined the area where Clark was shot. They recovered a pair of handcuffs with the clasps open, medical items, and car keys from the Schwarze/Ringgenberg squad.

The ambulance used to transport Hayes was taken to the MPD Forensic Garage. The ambulance was processed for fingerprints and DNA and the video was recovered. The video from the second ambulance used to transport Clark was also later recovered.

MPD crime lab personnel also went to HCMC and photographed Clark including photos of Clark's wrists.

A number of witnesses were identified at the scene. Those witnesses were transported to the homicide unit at the Minneapolis Police Department where homicide investigators conducted audio recorded interviews.

Several items of video evidence were also obtained. These include:

- video from the back of the ambulance in which RayAnn Hayes was transported;
- video from the back of the ambulance in which Jamar Clark was transported;
- video from a public housing camera;
- video from a police pole camera;
- video from 54 squad cars that responded to the scene after the fact;
- video and audio from a squad car in which Officers Ringgenberg and Schwarze were transported to the 4th Precinct;
- video from Danny Braylock;
- video from a known adult female; and
- hard drive from the Elks Lodge camera later determined to be inoperable.

Autopsy of Jamar Clark

Jamar Clark died on November 16, 2015 at 9:32 p.m. The next day, November 17, 2015, an autopsy was conducted by Hennepin County Chief Medical Examiner Dr. Andrew Baker. The cause of death was a gunshot wound to the head. A toxicology examination showed that Clark had a Blood Alcohol Content of .09; he also had THC in his system.

Dr. Baker carefully examined Clark's wrists externally and internally and determined that there were "no occult contusions [bruises], or other injuries suggestive of restraint."

In other words there was no evidence of injuries from handcuffs.

BCA and U.S. Department of Justice Investigation

Early on the morning of November 16th, pursuant to a recently adopted MPD policy, the Minnesota Bureau of Criminal Apprehension (BCA) took over the investigation into the death of Jamar Clark. Later that same day, Minneapolis Mayor Betsy Hodges asked the United States Department of Justice (DOJ) to join the investigation into the death of Jamar Clark. That investigation included 121 BCA reports totaling 1370 pages, an autopsy, 21 DNA lab reports and 97 MDP supplemental reports. There are additional federal reports as well.

Hennepin County Attorney's Office Review

The BCA submitted its report to the Hennepin County Attorney's Office on February 10, 2016 for consideration of possible criminal charges. As is common practice, the HCAO requested additional investigation, which the BCA promptly completed.

On March 16, 2016, I announced that the charging decision on 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 that determination as is done with all other criminal cases submitted to the office.

I have reviewed this case together with three senior prosecutors and on March 30, 2016 issued this Report.

THE EVIDENCE SHOWS THAT JAMAR CLARK WAS NOT HANDCUFFED WHEN HE WAS SHOT

One of the primary issues in this case, and an important focus of the BCA and FBI investigation, is whether Jamar Clark was handcuffed. There is no dispute that Officer Ringgenberg took Clark to the ground. It is also clear that Ringgenberg was on top of Clark after they went to the ground and remained there until Clark was shot. The question is whether Clark was handcuffed at the time he was taken to the ground and shot.

There are conflicting eyewitness accounts regarding the presence of handcuffs. Ringgenberg, Schwarze and 10 other paramedic or law enforcement witnesses who observed Clark at the scene have stated Clark was not handcuffed. By contrast, twenty civilian witnesses who provided information regarding handcuffs gave differing versions: two said Clark was not handcuffed, six were uncertain if Clark was handcuffed, and twelve were certain Clark was handcuffed. These twelve disagreed as to whether Clark was handcuffed with his hands in front, or with his hands behind him and several said they were attached to only one wrist.

It is not unusual after a traumatic event to have differing and often contradictory eyewitness statements. The fact that statements are contradictory does not necessarily mean that witnesses are lying. In such cases prosecutors look to forensic and other objective evidence to determine what happened.

In addition to the lack of physical injuries to his wrists, which would have occurred during a violent struggle if he had been handcuffed, other forensic evidence established that Clark was not handcuffed.

Laboratory testing found the presence of Clark's DNA on Ringgenberg's duty belt and grip of Ringgenberg's gun. The forensic evidence that Clark grabbed Ringgenberg's holster is also strong corroboration that Clark was not handcuffed behind his back, as described by several of the witnesses, because he would have been unable to grab at Ringgenberg's holster and gun if he had been handcuffed.

1. Photos At The Hospital Showed No Handcuff Injuries on Clark

On November 15, 2015, at 3:32 a.m., while the Minneapolis Police Department was still conducting the initial investigation, Homicide Sgt. Chris Karakostas visited Clark in the Intensive Care Unit at HCMC. Karakostas did not see any injuries on Clark's wrists and took photos of Clark's wrists on his department issued phone. Photographing the wrists was made difficult by the presence of the IV lines and hospital identification bracelets.

Left Wrist



HCMC 11-15-15 3:32 a.m.

Right Wrist



HCMC 11-15-15 3:32 a.m.

Sgt. Karakostas asked another sergeant to arrange for the crime lab to take additional photos with better cameras. On November 15, 2015 at 7:16 a.m., MPD Forensic Scientist Michael Schultz went to HCMC and photographed Jamar Clark with particular attention to Clark's wrists. Those photos, taken approximately 6 hours after the incident, also show no handcuff injuries on Clark's wrists.

Left Wrist



HCMC 11-15-15 7:16 a.m.

Right Wrist



HCMC 11-15-15 7:16 a.m.

The documented absence of obvious handcuff injuries hours after the incident is important corroboration that Clark was not handcuffed at the time he was shot.

2. Autopsy Showed No Handcuff Injuries on Clark

On November 17, 2015, Chief Hennepin County Medical Examiner, Dr. Andrew Baker, performed an autopsy on Jamar Clark. Dr. Baker examined Clark's wrists and determined that there were "no occult contusions [bruises], or other injuries suggestive of restraint." Dr. Baker's finding of no internal or external signs of handcuff injuries is consistent with the photos taken of Clark's wrists at the hospital.

This forensic medical evidence also strongly corroborates the statements of the officers that Clark was not handcuffed at the time he was struggling with Ringgenberg and was not handcuffed at the time he was shot.

3. Forensic Examination of the Handcuffs

Schwarze's handcuffs were found in the grass near where Jamar Clark was shot.



The handcuffs were recovered by MPD Forensic Scientist Nicole Lenway and ultimately taken to the BCA for forensic testing. The inside of the handcuffs were swabbed and examined for DNA. There was “insufficient genetic information” for any forensic comparison. Blood was found on the outside of the handcuffs and testing revealed that it was a match to Clark. The blood spatter on the handcuffs was Clark’s. All of the spatter was located on one side of the handcuffs. This is consistent with the officers’ statements that the cuffs were never on Clark. Having fallen to the ground during the struggle, one would expect blood spatter only on one side. Further, had Clark been handcuffed behind his back it seems highly unlikely blood could have spattered on to the cuffs as the entrance wound was toward the front of Clark’s head and there was no exit wound. Clark’s body would have shielded the cuffs from blood under those circumstances.

Officers Ringgenberg and Schwarze gave statements that they attempted to handcuff Clark but never succeeded which is why Schwarze’s handcuffs were out and found at the scene. The officers’ statements are strongly corroborated by the forensic evidence.

DNA Evidence Shows Clark Grabbed Ringgenberg’s Holster and Gun

After Clark was taken to the hospital, Ringgenberg and Schwarze were taken to the police station and separated. Crime lab technicians were dispatched to the police station and Forensic Scientist Nicole Lenway collected Ringgenberg’s firearm. When Lenway asked Ringgenberg the standard questions about whether there were any DNA transfers, Ringgenberg said that Clark had grabbed at his holster and his gun. Lenway then collected Ringgenberg’s duty belt as well.

DNA swabs to be used as known samples were collected from Ringgenberg and Schwarze as well as other first responders at the scene. A known DNA sample was also collected from Jamar Clark. Those DNA samples together with the two firearms and Ringgenberg’s duty belt were submitted to the BCA laboratory for forensic examination.

Forensic DNA testing of Ringgenberg’s duty belt showed mixtures of DNA in several areas. Jamar Clark’s DNA was found on Ringgenberg’s holster and mace holder. Clark’s DNA was also found on the “front left” handcuff holder and “back left” handcuff holder on Ringgenberg’s duty belt. Again, DNA testing was conducted on the grip of Ringgenberg’s gun and Clark’s DNA was found there as well.

The presence of Clark’s DNA on Ringgenberg’s duty belt and grip of Ringgenberg’s gun is strong forensic corroboration of the officer’s statements that Clark’s hand was on the grip of

Ringgenberg's gun. Clark simply could not have been handcuffed and attempting to seize Ringgenberg's gun while they were on the ground.

LEGAL ANALYSIS

The evidence detailed above does not support the filing of criminal charges against Officers Dustin Schwarze or Mark Ringgenberg for the fatal shooting of Jamar Clark. At the time he was shot, Clark was attempting to gain control of Ringgenberg's firearm. Ringgenberg reasonably believed that if Clark had succeeded in removing his firearm from his holster, Clark would have shot both officers as well as exposing third parties to danger of injury by firearm. Ringgenberg and Clark were wrestling on the ground in a position which rendered Ringgenberg unable to remove Clark's hand from his firearm. Ringgenberg communicated to Schwarze that Clark had his firearm and that Schwarze should shoot Clark. Schwarze did so. His action was reasonable given both his own observations and Ringgenberg's plea to shoot Clark.

Eyewitness testimony was contradictory on a central issue in this case: whether Clark was handcuffed at the time he was shot. Those who have stated that Clark was handcuffed are themselves contradictory, some saying one wrist, others two. Some suggesting he was handcuffed in the front of his body and some in the back casting doubt upon the statements without reference to physical evidence. Forensic evidence and video evidence both support the belief that Clark was not handcuffed at any time throughout the altercation.

THE USE OF DEADLY FORCE AGAINST CLARK WAS AUTHORIZED

When police first encountered Clark on November 15th they knew that: 1) he was the alleged assailant in a domestic assault which resulted in a need for medical attention for that victim, 2) he had interfered with EMS personnel to the degree that they requested police intervention, 3) as they approached him his hands were in his jacket pockets and he refused directives to remove them from his pockets and, 4) when they attempted to handcuff him he actively resisted, compelling the use of force to achieve their goal of handcuffing him.

When Clark was forcibly taken to the ground by Ringgenberg, Clark continued to resist by struggling with Ringgenberg. Because they had fallen with Clark on his back and Ringgenberg's back to Clark's front, Clark was able to reach the grip of Ringgenberg's firearm on which Ringgenberg could feel Clark pulling. Ringgenberg was aware Clark had his hand on the grip of the weapon as he (Ringgenberg) was able to reach behind and feel Clark's hand on the grip. He was unable to remove Clark's hand from the grip.

Recognizing that Clark had control of his weapon, Ringgenberg told Schwarze multiple times that Clark had his gun. Finally, Ringgenberg told Schwarze more than once to shoot Clark. Schwarze stated that Ringgenberg's voice had a tone that was "the most sincere, panicked voice I'd ever heard." Schwarze told Clark he was going to shoot him if he didn't let go; Clark responded, "I'm ready to die." Schwarze's first attempt failed but on the second trigger pull the weapon discharged, striking and fatally wounding Clark.

1. The law applied to the facts.

The use of deadly force is justified if the officer reasonably believes that death or great bodily harm to himself or another will likely result if he does not act. In this case Ringgenberg subjectively believed that Clark had or was in the process of obtaining control of his weapon and that were Clark able to remove the weapon from its holster, both Ringgenberg and Schwarze would likely be shot.

Ringgenberg's subjective belief is also objectively reasonable. First, Clark's DNA was found on Ringgenberg's holster, mace container, and his gun. Next, the keepers designed to keep Ringgenberg's utility belt in place had become unsnapped. Moreover, when Ringgenberg is free of Clark the video shows that his belt is turned such that his gun is behind his back. As he stands Ringgenberg can be seen adjusting his duty belt to return it to its normal position.

These facts corroborate Ringgenberg's belief that Clark was forcefully pulling on his belt and holding his gun and it was objectively reasonable to believe he was attempting to remove it.

Minn. Stat. § 609.504 provides that disarming or attempting to disarm a peace officer is a felony. An attempt to obtain control of the firearm of a peace officer presents a grave danger to the officer and bystanders. The attempt alone suggests a willingness to use the firearm if successfully removed from the holster. Once removed, an assailant can instantaneously begin firing the weapon. There is no time for recovery. Even if the person is not ultimately successful, an attempt to gain control of an officer's firearm creates a significant risk of injury.

Ringgenberg and Schwarze were interviewed separately. Both stated that they believed that without the use of deadly force, Clark would have obtained possession of Ringgenberg's firearm. Each stated their independent fear that they would be shot.

CONCLUSION

Accordingly, the Hennepin County Attorney's Office has concluded that criminal charges are not warranted against either Officer Mark Ringgenberg or Officer Dustin Schwarze.

VIDEO

I will now play videos from that evening. The complete videos will be on the Hennepin County Attorney's Office's website later today. Right now you will see key portions of a civilian's video and videos taken from the back of both the ambulance that treated RayAnn Hayes and the second ambulance that treated Jamar Clark. These ambulance videos have been shortened to relevant sections.

There are other police videos and civilian videos that do not show anything about the shooting incident. Again, these complete videos will be on the website. The cameras on the Elks Lodge, a social club, did not record anything.

This first video was taken by: Danny Braylock

609.066 AUTHORIZED USE OF DEADLY FORCE BY PEACE OFFICERS.

Subdivision 1. Deadly force defined.

For the purposes of this section, "deadly force" means force which the actor uses with the purpose of causing, or which the actor should reasonably know creates a substantial risk of causing, death or great bodily harm. The intentional discharge of a firearm, other than a firearm loaded with less lethal munitions and used by a peace officer within the scope of official duties, in the direction of another person, or at a vehicle in which another person is believed to be, constitutes deadly force. "Less lethal munitions" means projectiles which are designed to stun, temporarily incapacitate, or cause temporary discomfort to a person. "Peace officer" has the meaning given in section 626.84, subdivision 1.

Subd. 2. Use of deadly force.

Notwithstanding the provisions of section 609.06 or 609.065, the use of deadly force by a peace officer in the line of duty is justified only when necessary:

- (1) to protect the peace officer or another from apparent death or great bodily harm;