



OFFICE OF THE SAINT LOUIS COUNTY ATTORNEY

MARK S. RUBIN COUNTY ATTORNEY

NEWS RELEASE

April 20, 2016

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FOR IMMEDIATE RELEASE:

**Officer Involved Shooting on February 11, 2016
regarding Kristen Kelly Johnson**

Accompanying this release, is a memorandum from Gary W. Bjorklund, Criminal Division Head-Duluth Courthouse.

I have reviewed the memorandum prepared by Mr. Bjorklund. I have also reviewed accompanying reports and exhibits which are not yet available for release to the public until the investigation and charging decision on the related matter of any culpability on the part of Kristen Kelly Johnson is concluded.

Regarding the conduct of Hermantown Police Officer K. Hansen and Minnesota State Trooper G. Gomez, I concur in the opinion of Mr. Bjorklund that the officers who used deadly force in the line of duty in the form of shooting Kristen Johnson while she was brandishing a 9 mm handgun in the direction of officers, were justified in acting to protect themselves, other officers, and even Ms. Johnson herself, from apparent death or great bodily harm.

This is a tragic incident for all involved. Thankfully, there was no loss of life.

No additional comments will be made until the related investigation is concluded.

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TO: MARK S. RUBIN
St. Louis County Attorney

FROM: GARY W. BJORKLUND 
Criminal Division Head-Duluth Courthouse

RE: Review of investigative reports involving events up to and including the officer involved shooting of Kristen Kelly Johnson

DATE: April 12, 2016

I have reviewed the investigative reports submitted to our office by Special Agent Jerome Koneczny of the Minnesota Bureau of Criminal Apprehension related to the above matter. It is my conclusion that the use of deadly force by Hermantown Police Officer K. Hansen and Minnesota State Trooper G. Gomez was justified under the law and the particular facts of this matter.

FACTS

The facts will be a narrative of the events of February 11-12, 2016 that led to the officer involved shooting of Kristen Kelly Johnson. This memo will be in narrative form, and you can assume all facts stated are supported by evidence in form of witness statements or physical or forensic evidence. Any suppositions or opinions of investigators will be so noted.

At approximately 10:50 p.m. on February 11, 2016, 911 received call from Maggie Lee Barnes who reported that her mother, Kristen Kelly Johnson, was at the Augustana Lutheran Church and was threatening to shoot herself. Barnes reported she had spoken with her mother on the phone and had also seen pictures that her mother had posted on Facebook. She reported the pictures included her mother pointing a gun at her head. Barnes reported that her mother is bipolar and may be intoxicated. She also reported that her mother had not been on her meds for several weeks. It was reported that Johnson had threatened suicide before. Johnson was reportedly driving a red car and was at Augustana Lutheran Church because her father had died the previous week and was buried there. She reported that Johnson had taken the death of her father very hard and had stated that she wanted to be with him.

Officers from numerous agencies responded to the call. Augustana Lutheran Church is located at 3169 Midway Road in Midway Township. Officers staged at two locations. Deputies Haselow and Kennedy staged south of the church at the intersection of Midway Road and North Cloquet Road. Other officers staged north of the church at the intersection of Midway Road and Stark Road. The plan included that Deputy Taggart would lead the squads into the location at the church. If there was a vehicle at the church, the plan was to conduct a felony-style approach of the vehicle using squads as cover and

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spotlights to light up the vehicle. If Johnson was located in the vehicle, the plan was for Deputy Bruggman to negotiate with her in attempt to gain a peaceful resolution.

At approximately 11:12 p.m. the deputies approached the church and noted a red passenger car with its lights on, parked in the lot. The squads entered the lot with Deputy Taggart positioning himself behind the vehicle, offset to the left. Sergeant Silgjord pulled in behind Deputy Taggart's squad car. Officer Hansen of the Hermantown Police Department, pulled in after him and parked to the left of the Sergeant's squad car. Other squad cars also entered the parking lot. All the squads activated their emergency lights and illuminated Johnson's vehicle with their spotlights. The officers immediately noticed Johnson sitting in the driver's side of the vehicle. Shortly after pulling into the parking lot, Johnson raised her left hand up and the officers could see her put a handgun to the side of her head. St. Louis County Dispatch was then asked to stage EMS personnel at that time.

Officers from other agencies including Proctor Police Department, Minnesota State Patrol, and the Carlton County Sheriff's Department also responded to assist. Deputy Bruggman moved up to use the P.A. system on Officer Hansen's vehicle. The deputy could not initially hear if the female was giving responses to him because of the distance from her vehicle. The deputy eventually asked Johnson to indicate to him that she could hear his attempts to communicate with her by rolling down her window and waving her hand. Johnson immediately replied with this request and did so. Johnson indicated to the deputy that she had a cell phone and the deputy then called the cell phone number that had been provided to him by dispatch. A very quiet female answered the phone and acknowledged that she was Kristen Johnson. Johnson began the conversation by asking why the officers were there and she was informed that they were there to help her. She was informed that a family member had called 911 and reported her suicide threats. Johnson, who sounded emotionally distraught to the deputy, stated she did not want to hurt anybody. When asked to set her gun down on the passenger seat and step out of the vehicle, she emphatically replied "no." Shortly after arriving at the scene, Officer Hansen of the Hermantown Police Department activated the camera on her squad car and directed it at Johnson's vehicle. Sergeant Marsolek of the Hermantown Police Department also positioned his vehicle further back from the other squads but also directed his squad's camera at Johnson's vehicle. Johnson demanded that the squads turn off their emergency lights and stop shining the squads' lights on her vehicle. A decision was made to turn off the emergency lights on the squad cars, but Johnson was informed that the spotlights would remain on so that the officers could clearly see her vehicle.

After speaking with Johnson for a few minutes, she demanded that the deputy contact a man named John Marshall. It was explained that John Marshall was the leader of the military honor guard that assisted with her father's funeral the previous week. When the deputy advised Johnson that because of the late hours, he was not sure he could get a hold of Marshall, she became upset and demanded several times to speak with Marshall. The deputies were able to obtain a cell phone number for John Marshall, however, when the number was called it went directly to voice mail. When Johnson was informed of this fact, she became verbally confrontational and accused the deputy of lying to her. She then informed the deputy that she did not want to speak with anyone but Marshall. She also reiterated that she was not going to hurt anyone but herself.

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A Duluth squad was then dispatched to Marshall's residence in an attempt to locate him. During that time, Deputy Bruggman continued to speak with Johnson, reminding her of her family and how difficult it would be for them to lose both their grandfather and their mother within a one week's time. Eventually Johnson stated she did not want to talk with Deputy Bruggman anymore and Sergeant Silgjord continued the conversation with Johnson. At 11:44 p.m., dispatch was able to provide the deputies with a second number for Marshall. Sergeant Silgjord did make contact with him and informed him of the situation. Marshall was told that the deputies' attempt to negotiate with Johnson had failed and she kept requesting to speak with him. The deputies explained to Marshall that the goal was to have a peaceful resolution of the situation. Marshall agreed to help any way that he could and agreed to speak with Johnson. Marshall was requested to speak with Johnson over the phone and to wait until the Duluth police squad arrived with him before he made the call. Sergeant Silgjord relayed this information and other important information on the call over his radio to the other squads at the scene.

Johnson next opened her car door and put her legs out. Sergeant Silgjord then called her back and informed her that she would be hearing from Marshall shortly. This was in an attempt to keep her from exiting her car with the gun in her hand. Johnson told the deputies several times that she just wanted to come out of the car shooting so that the officers would have to shoot her. Johnson continued to tell the deputy that she just wanted the officers to shoot her and she was going to make that happen. Johnson was told several times that the officers were there to help her and to not want to shoot her. Once the Duluth squad arrived at Marshall's residence, the deputy advised Johnson that Marshall would be calling her and asked her if she would be willing to take the call from him. At approximately 11:59 p.m., Marshall made phone contact with Johnson.

During the next several minutes Johnson remained inside her car with the officers positioned behind her. Due to the cold temperatures, officers would rotate from the front positions back to squad cars to stay warm. During this time, Johnson could be seen inside her car. At times she would place the gun to her head and at other times she would point the gun back towards the officers through her back window. At 12:14 a.m., Sergeant Silgjord requested that Deputy Taggart who had less lethal equipment in his squad car to get his less-lethal launcher ready. Two minutes later, deputies on the front line reported that Johnson was pointing the gun at deputies from inside her car. Sergeant Silgjord then briefly moved up to the front row of the squad cars, bringing a ballistic shield for extra protection. He also moved Minnesota State Trooper Gomez next to Deputy Taggart while he manned the less-lethal launcher. He also placed a Carlton County Deputy to the passenger-side of Deputy Taggart's vehicle in an attempt to assist and cover him. Sergeant Silgjord then moved back to the rear perimeter to see how negotiations were going with Johnson.

During this time, Marshall remained on the phone with Johnson and was being transported to the scene by Duluth Police Sergeant John Haataja. Marshall reported that he continued to negotiate with Johnson to surrender her weapon and to follow police orders so nobody got hurt. Marshall stated he used everything he could in trying to convince her to surrender to law enforcement including conversations about her daughter, her father's memory, and God. Marshall stated he thought things were going well until shortly after they arrived at the scene, Johnson abruptly exited her vehicle with the gun in her

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hand and pointed in the direction of law enforcement officers. Marshall later explained that he believed Johnson may have been under the influence as her speech was slow and he thought she appeared unsteady on her feet when she got out of her car. Marshall reviewed his cell phone records and noted that his call to Johnson started at 11:58 p.m. on February 11, 2016, and ended at 12:27 a.m. on February 12, 2016. Marshall stated the call ended when Johnson exited her vehicle and was shot by the police.

At 12:26 a.m., Johnson stepped out of the driver's side door of her vehicle with a handgun in her right hand. Sergeant Silgjord had earlier advised squads that Deputy Taggart had prepared his 40 mm less-lethal multi-launcher for use. The less-lethal launcher is a long gun which shoots a 40 mm foam projectile. The projectile contains a small amount of C2 gas which is released on impact and acts as an irritant. The launcher has a large cylinder which holds six rounds. The officers were aware that Deputy Taggart would try to use a less-lethal force to disable Johnson if she exited the vehicle with the gun in her hand. As Johnson got out of her vehicle with the gun in her right hand, numerous officers yelled for her to drop the gun. Johnson did not drop the gun but held it at approximately waist level pointed at the officers. Deputy Taggart then yelled, "less-lethal" and fired the less-lethal launcher at Johnson. The load apparently did not strike Johnson but instead struck the rear driver's side tail light on the vehicle. Deputy Taggart attempted to fire another round, but the launcher malfunctioned and he was unable to do so. At that time Johnson started to lower her right hand and point the handgun in the direction of the officers. Officer K. Hansen of the Hermantown Police Department and Trooper A. Gomez of the Minnesota State Patrol each fired one round at Johnson striking her in the right upper chest area and on her right arm. Johnson then fell to the ground and officers moved forward and kicked the handgun away from her reach. Medical assistance was then requested and Sergeant Silgjord applied pressure to the chest wound in attempt to stop the bleeding. Medical personnel quickly arrived at the location and tended to Johnson who was quickly transported to the emergency room at Essentia Health.

The scene was immediately secured and the Minnesota Bureau of Criminal Apprehension was called to assist in the investigation of the incident. The .223 rifle used by Officer Hansen was retained at the scene and secured by Investigator Karkkainen of the St. Louis County Sheriff's Office. The rifle was later turned over to the BCA Crime Scene Team and submitted to the laboratory for examination. Trooper Gomez's .40 cal. Glock handgun was turned over to Lt. Hansen of the State Patrol who responded to the scene after the shooting. The Glock was later turned over to Special Agent Koneczny of the BCA and submitted to the lab for examination. The handgun Johnson had in her hand at the time she was shot was a .9 mm Ruger. The magazine of the Ruger had ammunition in it and the loaded cartridge was later ejected from its chamber.

MATERIALS REVIEWED

1. Investigative reports from St. Louis County Sheriff's Deputies M. Bruggman, B. Silgjord, M. Haselow, L. Hendrickson, and E. Sathers.
2. Investigative reports from Hermantown Police Officers Marsolek and Pernu.

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3. Investigative reports from Proctor Police Officers T. Redfield and K. Gaidis.
4. Investigative reports from Carlton County Deputies French and Warnygora.
5. Investigative reports from Minnesota State Patrol Troopers E. Sjodin, S. Hollencamp, and J. Hanson.
6. Investigative reports of BCA Special Agents Konieczny, Gherardi, and Jaech.
7. Audio interviews of Trooper A. Gomez, Deputy R. Taggart, Hermantown Police Officer K. Hansen, John Marshall, and Kristen Johnson.
8. Call to 911 dispatch.
9. Photographs, videos, and reports from BCA Crime Scene Team.
10. Squad videos from Hermantown Police Officers Hanson and Marsolek
11. Essentia Health medical and lab reports for Kristen Johnson.

LEGAL ISSUE

Was the use of deadly force justified by Officer K. Hansen and Trooper A. Gomez on February 12, 2016, during their encounter with Kristen Johnson, who was armed with handgun, was in an obvious mentally unstable condition, and was threatening bodily harm to herself?

WAS THE USE OF DEADLY FORCE JUSTIFIED?

Minnesota Statute Section 609.66 authorizes police officers to use deadly force in the line of duty to:

1. Protect the officer or others from apparent death or great bodily harm;
2. To effect the arrest of a suspect that the officer knows or has reasonable grounds to believe has committed a felony involving the use or threatened use of deadly force; or
3. To effect the arrest or capture of a person who the officer knows or has reason to know has committed a felony, if the officer reasonably believes that the person will cause death or great bodily harm if the apprehension of the person is delayed.

There are three landmark cases on the issue of deadly force by law enforcement officers. *Tennessee v. Garner*, 271 U.S. 1 (1985), and *Graham v. Connor*, 490 U.S. 386 (1989) are U.S. Supreme Court cases that established analytical guidelines and outline factors to be considered when evaluating alleged

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unlawful use of force by police officers. The reasoning of these cases was specifically adopted by the Minnesota Supreme Court in *Mumm v. Mornson*, 708 N.W.2d 475 (2006).

The Ohio Supreme Court in *Ohio v. White*, 988 N.E.2d 575 (Ohio 2013), adopted the reasoning and principles of Garner and Graham and outlined a summary of the issues to be analyzed in these cases:

Principles

1. Was the use of deadly force by the police officer a response to a perceived serious and imminent threat to the officer's safety or safety of another?
2. The perceived threat must be assessed objectively, focusing specifically on the moment the officer used deadly force and the moments directly preceding it.
3. Earlier errors in judgment by the officer do not make the use of deadly force unreasonable if at the moment the action taken was reasonable.
4. The officer need not wait until they are absolutely sure of the suspect's intent before responding with lethal force.
5. Each incident must be independently examined using a totality of circumstances test using the standard of the "reasonable police officer" rather than the "reasonable person" test.
6. In assessing the officer's decision to use force, deadly or otherwise, the finder of fact is "strictly forbidden from using the 20/20 vision of hindsight."

LEGAL CONCLUSION

The use of deadly force by police officers in the line of duty is justified when employed to prevent death or great bodily harm to the officer or others. The use of deadly force must be reasonable under the circumstances using a "reasonable peace officer" standard. While the focus is on the officer's belief that deadly force is necessary at the time it is used, it is important to look at all the facts and circumstances leading up to the decision to use deadly force.

In this, the officers showed good judgment and extreme patience in attempting to de-escalate the situation and end it in a peaceful manner for the officers and Johnson. The initial 911 call came in at 10:48 p.m. and the shooting occurred over one and a half hours later. The officers met at locations north and south of the church, out of view of Johnson, and put in place a plan with the hope of resolving the situation safely should they find Johnson at the church. The plan included the attempt to speak with her and persuade her to surrender herself from the car without the gun. The plan also included provisions to ensure the safety of all the officers involved.

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At the church the officers patiently attempted to persuade her to surrender, turned off the emergency lights as she requested, and took the time to find two phone numbers for John Marshall. A Duluth police officer also responded to the residence of John Marshall and had him transported to the scene. Plans were put into place where the officers would attempt to use non-lethal force should she exit her car with the gun in her hand. This plan was made known to the other officers at the scene. At no time did the officers attempt to hurry the situation to a conclusion, but gave Johnson all the time they hoped would be necessary to resolve the situation in a safe and peaceful manner.

Unfortunately, Johnson elected to get out of the car with the gun in her hand. Officers at the scene held gunfire and ordered her to drop the gun. A non-legal weapon option was announced and employed, however, the round did not strike her but struck the car instead. After the non-lethal launcher malfunctioned and a second round could not be employed, Johnson was lowering the gun and pointing it in the general direction of officers, Trooper Gomez and Officer K. Hansen each fired one round at her.

At the time the two shots were fired, the officers knew that Johnson was depressed, distraught, and suicidal. They also were aware that she may be under the influence of either alcohol or drugs. She had made verbal threats to commit suicide and had pointed the gun numerous times at her head and also back at the officers while inside her parked car. She had also made statements about wanting the officers to shoot her and dying in a gun battle with the officers. The two officers had every reason to believe, and correctly so, that the gun she had in her had was loaded. After Johnson ignored the verbal commands to drop the gun and the non-lethal attempt to disarm her failed, Officer K. Hansen and Trooper Gomez had a reasonable belief that deadly force was necessary to protect themselves and the other officers at the scene. Both officers expressed this belief in their later interviews. It should be noted that one of the officer's assignment was to protect Deputy Taggart who was on the front line attempting to effectuate a non-lethal option to the standoff.

In my professional opinion, the use of deadly force by Officer K. Hansen and Trooper Gomez was both legally and factually justified. It is clear that the officers' actions were reasonable and authorized by Minnesota Statute 609.66, and therefore do not justify consideration for criminal prosecution. It is also fortunate that Ms. Johnson will recover from the two gunshot wounds she sustained during this unfortunate incident.

ymk