

**MARCH 30, 2016**



**REPORT OF THE HENNEPIN COUNTY  
ATTORNEY'S OFFICE REGARDING THE  
SHOOTING DEATH OF JAMAR CLARK ON  
NOVEMBER 15, 2015**

## **I. STATEMENT OF RELEVANT FACTS**

The events leading up to the death of Jamar Clark in the early morning hours of November 15, 2015, occurred near 1611 Plymouth Avenue in North Minneapolis. The address consists of an apartment building attached by a breezeway to townhomes. On the north side of that block, across the street from 1611 Plymouth, is the Elks Lodge, a social club.

### **A. 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 in apartment 103 at 1611 Plymouth Ave. Jamar Clark, age 24, was present together with his girlfriend, RayAnn Hayes age 41, and a number of Clark's 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. Several people saw Hayes slam Clark's head into a door during this fight.

### **B. Call for Ambulance**

RayAnn Hayes called 911 and asked for paramedics. Hennepin County Medical Center (HCMC) paramedics<sup>1</sup> Haskell and Thompson responded to the call. They parked their ambulance on the south side of Plymouth Avenue in front of 1611 Plymouth. They went to the second floor apartment where they found Hayes who was intoxicated. The paramedics put Hayes into a "stair chair" to carry her down the stairs. As the 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."<sup>2</sup> This was Ms. Hayes's first statement to authorities regarding how she received her injuries.

### **C. Call for Police Backup**

Paramedic Tyler Haskell gave a statement to MPD on Nov. 15, 2015. He stated 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 called paramedic Thompson a "pussy" and "bitch" and told Hayes that he was going to come see her. Thompson and Haskell loaded Hayes into the ambulance, got inside with her, locked the doors, and via dispatch requested police at the scene. Haskell stated that Clark continuously knocked on the back window of the ambulance and tried to get in. Ambulance video shows Clark at the back of the ambulance for over five minutes.

### **D. EMS Supervisor Arrives**

Shortly after Hayes and the paramedics got into the ambulance, EMS Deputy Chief Michael Trullinger, who was aware of the call for the ambulance for Hayes, arrived on the

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<sup>1</sup> Also sometimes referred to as EMS (Emergency Medical Services).

<sup>2</sup> Transcript of Statement of Tyler Haskell (EMS) to MPD; Nov. 15, 2015.

scene.<sup>3</sup> Trullinger saw Clark tapping on the back of the ambulance, saying his mother was in there. Clark said his name was “Darious” or “Tyrious” or “something like that.” 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 and Clark moved a few steps away but kept fidgeting and putting his hands in his pockets. 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 getting out of the side or back of the ambulance. In other words, the ambulance carrying Ms. 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.

#### **E. MPD Officers Arrive**

MPD Officers Schwarze and Ringgenberg arrived on the scene from the 4<sup>th</sup> Precinct stationhouse, which is only 3 blocks away, and parked behind EMS Supervisor Trullinger’s Suburban.<sup>4</sup> Because they were so close to 1611 Plymouth and the call was for ambulance assistance, the officers 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 interfering with the paramedics. Trullinger then went to the ambulance to talk with the paramedics and Hayes.

Ringgenberg and Schwarze approached Clark at 0049:16<sup>5</sup> and noticed his hands were in his pockets and told him to take his hands out. Ringgenberg took his gun out and held it down in front, not pointing at Clark. Clark started yelling, “What’s the pistol for?” The officers again and repeatedly told Clark to take his hands out of his pockets and he did not comply. Ringgenberg put the 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.

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 at 0049:29.<sup>6</sup> Ringgenberg landed on his side on top of Clark, who was on his back.

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<sup>3</sup>Transcript of Statement of Interview of Michael Trullinger (EMS) to MPD; Nov. 15, 2015.

<sup>4</sup> Transcript of Statement of Officer Mark Ringgenberg (MPD) to BCA; Nov. 17, 2015 and Statement of Officer Dustin Schwarze (MPD) to BCA; Nov. 17, 2015.

<sup>5</sup> Hayes ambulance video, note actual time stamp on video shows GMT, six hours ahead of CST.

<sup>6</sup> Hayes ambulance video.

## **F. Clark Grabs for Ringgenberg's Gun**

Ringgenberg said he tried to move away from Clark to get in position to handcuff him.<sup>7</sup> 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."<sup>8</sup> 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 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.

## **G. Trullinger Goes to Clark's aid**

Trullinger had gone into the ambulance containing Hayes and the other paramedics when the police first arrived. He asked Hayes if the person outside was her son and she said he was not; he was her boyfriend and he beat her up.

Trullinger heard the gunshot. Trullinger hit the floor for a moment 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. One of the paramedics got out of the rear compartment and went to the driver's seat. The ambulance with Hayes then left for North Memorial Medical Center and Trullinger called for another ambulance. Trullinger rushed to Clark, checked Clark's pulse, then ran to his truck and retrieved his trauma bag. Trullinger noticed a pair of handcuffs on the ground near Clark, somewhere around Clark's hips.<sup>9</sup>

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<sup>7</sup> Transcript of Statement of Officer Mark Ringgenberg (MPD) to BCA; Nov. 17, 2015.

<sup>8</sup> Transcript of Statement of Officer Dustin Schwarze (MPD) to BCA; Nov. 17, 2015.

<sup>9</sup> Transcript of Statement of Michael Trullinger (EMS) to MPD, p. 10-12; Nov. 15, 2015

## H. Backup Officers and Paramedics Arrive

Officer Hedberg was among the first officers to arrive after the shooting.<sup>10</sup> She saw Clark lying on his back with his hands at his sides and Trullinger providing aid to Clark. She noticed a pair of handcuffs with the clasps open on the ground near Clark's right side. Hedberg stayed near Clark for a short time then helped with crowd control.

## I. Second Ambulance Responds

HCMC paramedics Mari Hill and Tyler Lupkes responded to the scene, arriving at 0054:49<sup>11</sup> and saw Trullinger assisting Clark. Hill asked MPD Officer Reimer for help checking Clark for weapons. As 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.<sup>12</sup> Clark was loaded onto the stretcher and then quickly into the ambulance and taken to Hennepin County Medical Center (HCMC).



## J. Ringgenberg and Schwarze Taken to 4<sup>th</sup> Precinct

Off. Sworski arrived at the scene within minutes of the shooting.<sup>13</sup> 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 4<sup>th</sup> 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.

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<sup>10</sup> Transcript of Statement of Officer Anna Hedberg (MPD) to BCA/FBI p. 1, Nov. 24, 2015.

<sup>11</sup> Clark ambulance video.

<sup>12</sup> Transcript of Statement of Tyler Lupkes (EMS) to MPD; Nov. 15, 2015; BCA ACISS Investigative Supplement 2015-648/117; Interview date Dec. 10, 2015.

<sup>13</sup> Report of Off. Sworski, Supplement 39; Nov. 15, 2015.

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

### **K. Crime Scene Processing – Video Evidence**

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

At the request of Sgt. Chris Karakostas, MPD crime lab personnel also went to HCMC and photographed Clark including photos of Clark's wrists.<sup>14</sup>

The ambulance used to transport Hayes was taken to the MPD Forensic Garage. The ambulance was processed for fingerprints and DNA.

Several items of video evidence were recovered. 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 4<sup>th</sup> Precinct;
- video from Danny Braylock;
- video from a known adult female;
- video from the Elks Lodge camera.<sup>15</sup>

### **L. Initial Interviews by MPD**

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.

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<sup>14</sup> A number of persons at the scene shouted that Clark had been handcuffed. Photos were taken to document the appearance of Clark's wrists.

<sup>15</sup> The Elks Lodge video camera was not functional. No video evidence was found on the device.

### **M. Autopsy of Jamar Clark**

Jamar Clark died on November 16, 2015, at 9:32 p.m. An autopsy was conducted by Hennepin County Chief Medical Examiner, Dr. Andrew Baker, on Nov. 17<sup>th</sup>.<sup>16</sup> The cause of death was a gunshot wound to the head. Toxicology examination showed that Clark had a blood alcohol concentration of .09 and also had THC<sup>17</sup> in his system.

Dr. Baker carefully examined Clark's wrists, externally and then internally, for signs of trauma and determined that there were "no occult contusions (bruises), or other injuries suggestive of restraint."

### **N. BCA and U.S. Department of Justice Investigation**

Early on the morning of November 16, 2015, 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. As a result, attorneys from the DOJ Office of Civil Rights, agents from the FBI and United States Attorney Andrew Luger worked jointly with agents from the BCA to conduct their extensive investigations into the death of Jamar Clark.

BCA, FBI and Justice Department personnel interviewed approximately 110 witnesses. In addition, the BCA lab reviewed and/or analyzed 141 items submitted and produced 21 lab reports, including DNA and blood spatter reports.

### **O. 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, 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 three senior prosecutors and on March 30, 2016, issued this report.

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<sup>16</sup> HCME Autopsy Report ME NO: 15-6355 dated Dec. 14, 2015.

<sup>17</sup> THC is the active ingredient in marijuana.

## **II. 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 so 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. It is not unusual after a traumatic event to have differing and often contradictory eyewitness accounts. The fact that statements are contradictory does not mean the witnesses are lying. In such cases prosecutors look to forensic and other objective evidence to determine what occurred. Here, the forensic DNA, photographic, and autopsy evidence clearly establishes that Jamar Clark was not handcuffed at the time he was shot.

### **A. Forensic Evidence Establishes Clark Was Not Handcuffed**

The forensic evidence clearly establishes that Clark was not handcuffed when he was taken to the ground and later shot.

#### **1. 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 Officer 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 mentioned a DNA transfer onto his gun. Lenway then collected Ringgenberg's duty belt as well.<sup>18</sup>

DNA swabs, to be used as known samples, were collected from Ringgenberg and Schwarze as well as other first responders at the scene.<sup>19</sup> A known DNA sample was also collected from Jamar Clark.<sup>20</sup> Those DNA samples together with the two firearms and Ringgenberg's duty belt were submitted to the BCA laboratory for forensic examination.

##### *a. Ringgenberg's duty belt.*

Ringgenberg's duty belt was swabbed to determine whether there was DNA on it for testing. That testing showed DNA profiles and did not detect blood. Forensic DNA testing of Ringgenberg's duty belt showed mixtures of DNA in several areas.

Jamar Clark's DNA matched the major profile on Ringgenberg's holster and mace holder.<sup>21</sup> This DNA profile would not be expected to occur more than once among unrelated individuals in

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<sup>18</sup> MPD Case MP-15-423384 Supplement 83.

<sup>19</sup> BCA ACISS Investigative Supplements 2015-648/11 and 14.

<sup>20</sup> HCME Evidence Receipt Case #2015-6355 dated 11/19/2015 01:33 PM.

<sup>21</sup> BCA Lab. No. S15-14003 Report No. 6.



the world population. This is extremely strong evidence that Clark was grabbing at Ringgenberg's gun and therefore that he was not handcuffed at the time he was shot.

Clark also could not be excluded as a contributor to the mixture of DNA on two other areas of Ringgenberg's duty belt.

b. *Ringgenberg's gun.*

DNA testing was also found on Ringgenberg's SIG Sauer firearm. Testing did not reveal the presence of blood.<sup>22</sup> There was a mixture of DNA from four or more individuals on the grips of Ringgenberg's gun. Importantly, neither Ringgenberg nor Clark could be excluded from being contributors.<sup>23</sup> 87.5% of the general population could be excluded from contributing to this mixture. This is strong evidence that Clark's hand was on Ringgenberg's gun.

2. 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 went to see 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.<sup>24</sup> 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. 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.<sup>25</sup>

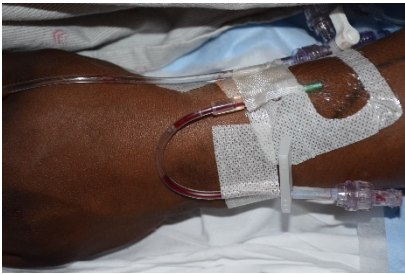
<sup>22</sup> BCA Lab. No. S15-14003 Report No. 3.

<sup>23</sup> BCA Lab. No. S15-14003 Report No. 7.

<sup>24</sup> MPD Case MP-15-423384 Supplement 91.

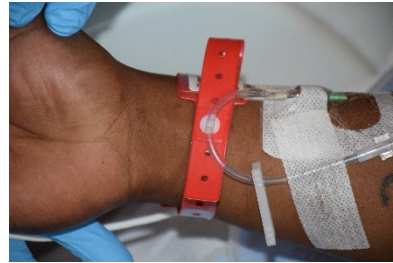
<sup>25</sup> MPD Case MP-15-423384 Supplement 67.

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 or marks hours after the incident is important evidence that Clark was not handcuffed at the time he was shot.

### 3. Autopsy Showed No Handcuff Injuries on Clark

The evidence from the autopsy is compelling. Chief Hennepin County Medical Examiner, Dr. Andrew Baker, performed an autopsy on Jamar Clark on November 17, 2015.<sup>26</sup> Dr. Baker carefully 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.

### 4. Forensic Examination of the Handcuffs

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



<sup>26</sup> Autopsy report of Jamar O'Neal Clark, Nov. 15, 2015, p. 7.

The handcuffs were recovered by MPD Forensic Scientist Nicole Lenway and ultimately taken to the BCA for forensic testing.<sup>27</sup>

a. *Inside and outside edges of the handcuffs.*

The inside and outside edges of the handcuffs were swabbed and examined for DNA. There was no blood on the inside or outside edges of the handcuffs.<sup>28</sup> There was “insufficient genetic information” to determine the source of any DNA.<sup>29</sup> The absence of Clark’s DNA on the inside of the handcuffs is strong evidence that Clark was not handcuffed.

b. *Edge opposite side of keyholes.*

Clark’s blood was found on the side of the handcuffs facing up in the photograph above.<sup>30</sup> The BCA lab conducted blood stain pattern analysis on the handcuffs.<sup>31</sup> The blood stain pattern analysis revealed “ten spatter stains all less than 1mm in diameter” on the handcuffs together with several other “indeterminate” types of bloodstains.

One question raised is whether the spatter stains could have been produced with Clark handcuffed either behind or in front of him. Such a hypothesis is inconsistent with the DNA evidence from Ringgenberg’s duty belt and pistol grips as well as the lack of handcuff injuries in the photo evidence and autopsy findings.

Moreover, the blood stain analyst reviewed the forensic crime scene video together with the crime scene photos – like the one above- and noted that the handcuffs were surrounded by a number of other items containing bloodstains.<sup>32</sup> “Located partially covering the handcuffs were a leaf and an Avant Gauze sponge wrapper with spatter stains...less than or equal to 1mm in size.” The fact that the spatter on the handcuffs and medical items was all on the same side and facing up is strong evidence that the spatter on the handcuffs was produced sometime after medical intervention began.

## **B. Paramedic and Police Witnesses Saw No Handcuffs on Clark**

There were 10 paramedic and law enforcement witnesses who observed Clark immediately after the shooting. None of these witnesses saw Clark handcuffed which further corroborates the DNA, photographic, and autopsy evidence that Clark was not handcuffed.

### **1. EMS Deputy Chief Michael Trullinger**

Deputy Chief Trullinger was in the ambulance with Hayes and the paramedics for about 30 seconds when he heard the shot.<sup>33</sup> Trullinger hit the floor of the ambulance and was there for only 5-10 seconds to make sure there were no more shots. Trullinger then looked out the window

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<sup>27</sup> MPD Case MP-15-423384 Supplement 83.

<sup>28</sup> BCA Lab. No. S15-14003 Report No. 3.

<sup>29</sup> BCA Lab. No. S15-14003 Report No. 6.

<sup>30</sup> BCA Lab. No. S15-14003 Report No. 6.

<sup>31</sup> BCA Lab. No. S15-14003 Report No. 16.

<sup>32</sup> BCA Lab. No. S15-14003 Report No. 16, p.3.

<sup>33</sup> Transcript of Statement of Interview of Michael Trullinger (EMS) to MPD; Nov. 15, 2015.

and saw the officers facing the crowd and Clark on the ground bleeding. Trullinger got out of the ambulance, told the paramedics to go, then ran to Clark.

Trullinger first checked Clark for a pulse, then ran to his truck to get his medical bag. Trullinger viewed Clark as his patient and began treating Clark. Trullinger noticed a pair of handcuffs in the grass and was certain the handcuffs were not on Clark.

## 2. Paramedic Tyler Lupkes

Paramedic Tyler Lupkes and his partner Mari Hill responded with an ambulance to treat Jamar Clark.<sup>34</sup> When they arrived they saw Clark on the ground with his hands at his sides and Trullinger administering aid to Clark. Due to the large and hostile crowd, Lupkes indicated that it was important to load Clark into the ambulance quickly. Lupkes noticed a pair of handcuffs in the grass next to Clark and he grabbed the hinged area to move the handcuffs out of the way so the paramedics could get Clark onto a stretcher.

## 3. Paramedic Mari Hill

Paramedic Mari Hill was with Lupkes in the ambulance sent to assist Clark.<sup>35</sup> When they arrived she saw Trullinger helping Clark breathe. Clark was laying on his back, not handcuffed. Hill noticed her partner Lupkes move a pair of handcuffs that were on the ground out of the way as they went to put Clark on a stretcher. Hill noticed that the handcuffs were not under Clark and were not attached to him in any way. As they put Clark on the stretcher, Clark's arms "kind of fell to the side." Hill was very clear that Clark "was never handcuffed in my presence."

## 4. Firefighter Chris Husnick

Minneapolis Fire Department Captain Chris Husnick responded to the scene after Clark was in the ambulance with a breathing apparatus on his chest. Husnick rode with Clark to HCMC and assisted in treating him in the ambulance. Husnick noticed that Clark's hands were not restrained in any way.<sup>36</sup>

## 5. Officer Gabriel Grout

MPD Officer Gabriel Grout was among the first police officers to arrive after Clark was shot. Grout saw Schwarze and Ringgenberg keeping the large crowd back and Clark lying on his back. Grout later saw a pair of handcuffs lying in the grass.<sup>37</sup>

## 6. Officer Anna Hedberg

MPD Officer Anna Hedberg arrived approximately 30-45 seconds after the call for help following the shooting.<sup>38</sup> When she ran up to Clark's feet she saw Clark lying on his back with

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<sup>34</sup> BCA ACISS Investigative Supplement 2015-648/117. Interview date 12-10-15.

<sup>35</sup> Transcript of Statement of Mari Hill to BCA/FBI dated 11-23-15.

<sup>36</sup> Transcript of Statement to Jerry Johnson, civilian investigator, dated Nov. 25, 2016.

<sup>37</sup> Transcript of Statement of Officer Gabriel Grout (MPD) to BCA; Mar. 22, 2016.

<sup>38</sup> Transcript of Statement of Officer Anne Hedberg (MPD) to BCA/FBI dated 11-24-15.

his arms at his sides. Hedberg said Clark did not have handcuffs on either wrist. She then helped control the large crowd that was gathering near the townhomes.

7. Officer Griffin Hilbo

MPD Officer Griffin Hilbo arrived on the scene a minute or two after the call to assist officers.<sup>39</sup> Hilbo walked a few feet from Clark and saw Clark lying on his back with his hands at his sides. Hilbo said there were no restraining devices on Clark's hands.

8. Officer Chad Conner

MPD Officer Chad Conner arrived when there were only "one or two" squad cars present.<sup>40</sup> Conner saw Clark on his back. Conner did not notice Clark's hands but believes he would have noticed if Clark had been handcuffed.

9. Officer Jason Reimer

MPD Officer Jason Reimer arrived after several squads were at the scene and officers were controlling the large crowd.<sup>41</sup> The paramedics asked Reimer to help make sure that Clark did not have weapons so Reimer checked Clark. Reimer noted that Clark was on his back with his arms at his sides. Reimer said Clark "never had handcuffs on."

10. Officer Benjamin Badowich

MPD Officer Benjamin Badowich was one of the first officers to arrive on the scene after Clark was shot.<sup>42</sup> He saw Clark laying on his back and saw that Clark was not handcuffed. Once Clark was loaded into the ambulance, Badowich accompanied the ambulance to the hospital.

**C. There Were Conflicting Civilian Witness Statements**

There were 20 civilian witnesses interviewed who provided information regarding handcuffs; 2 said that Clark was definitely not handcuffed; 12 were certain that one or both of Clark's hands were handcuffed; and 6 did not know if Clark was handcuffed. The civilian witnesses were either outside of the Elks Lodge or across the street near the Apartment/Townhouse complex at 1611-1617 Plymouth. The crime scene diagrams indicate that the distance from 1611 to the place where Clark was shot is approximately 40-50 feet. The distance from the front of the Elks Lodge to where Clark was shot is approximately 80-90 feet.

1. Elks Lodge – No Handcuffs

There were two witnesses across the street at the Elks Lodge who gave statements and reported that Clark was not handcuffed.

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<sup>39</sup> Transcript of Statement of Griffin Hilbo to BCA/FBI dated 11-23-15.

<sup>40</sup> BCA ACISS Investigative Supplements 2015-648/118.

<sup>41</sup> Transcript of Statement of Jason Reimer to BCA/FBI dated 11-25-15.

<sup>42</sup> Transcript of Statement of Benjamin Badowich to BCA/FBI dated 11-24-15.

a. *Tameisha Byrd*

Tameisha Byrd drove to the Elks Lodge to pick up her aunt and some of her aunt's friends.<sup>43</sup> Byrd pulled up in front of the Elks Lodge and was waiting when she saw officers approach Clark across the street from where she was parked. Byrd said that at first the three people were standing up. Byrd said that the officers "had a hold on him, and he was fighting back tryin' to get away." Byrd did not see any handcuffs and believed that Clark was not handcuffed because she "seen his hands moving...in front of his body."

b. *Jerome Copeland*

Jerome Copeland arrived at the Elks Lodge just before the shooting.<sup>44</sup> He was standing right in front of the Elks Lodge doors and his attention was drawn to the ambulance because he heard Clark yelling "mutha fuck you" to the paramedics. Copeland saw the officer who he described as the bigger officer come behind Clark and "put a choke hold on him." Copeland was certain that at the time the officer put a choke hold on Clark that Clark was not handcuffed. Copeland heard the officers telling Clark to stop resisting but he (Copeland) believed Clark was not resisting.

2. Elks Lodge - Handcuffs

There were five witnesses across the street at the Elks Lodge who gave statements that Clark was handcuffed.

a. *Lavell Bible*

Bible said that he was leaving the Elks Lodge with several other people when he saw the officers turned Clark around and then "cuffed em."<sup>45</sup>

b. *Danny Braylock*

Danny Braylock had been in the Elks Lodge and was leaving when he saw the ambulance across the street.<sup>46</sup> He said there was one police officer sitting on the man, later identified as Clark, and one officer kneeling down. Braylock said that immediately after the shooting he noticed handcuffs on Clark. Braylock thought the officer was sitting on Clark for "a good four minutes." Braylock did not see anyone remove handcuffs from Clark but believed it must have occurred as the ambulance was pulling up because he saw "they were bending over the guy." Braylock was taking video after the shooting and provided that to investigators.

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<sup>43</sup> Transcript of Statement of Tameisha Byrd to BCA/FBI 11-18-15.

<sup>44</sup> Transcript of Statement of Jerome Copeland to BCA/FBI 11-18-15, p.6.

<sup>45</sup> Transcript of Statement of Lavell Bible to BCA/FBI dated 11-18-15, p.2.

<sup>46</sup> Transcript of Statement of Danny Braylock to BCA/FBI 11-17-15, p.1.

c. *Felisha Burns*

Felisha Burns was leaving the Elks Lodge with Danny Braylock and noticed the man, Clark, only once the officers had him on the ground.<sup>47</sup> Burns heard a shot and said the officer with the light blue uniform shot Clark as opposed to the one with the dark top.<sup>48</sup> Burns said she saw Clark wearing handcuffs after he was shot. Burns said that paramedics did not treat Clark right away and that someone took handcuffs off but she did not see who took them off.

d. *Dennis Cherry*

Dennis Cherry had been at the Elks Lodge with 15-20 people.<sup>49</sup> Cherry says he saw a man on the ground on his stomach with his “arms pinned to his sides, hands were cuffed.” Cherry said that the man was not moving and there was an officer sitting on top of the man bouncing so much his utility belt was “floppin’ around.” Cherry said the officer was trying to “mash this man into the earth.” Cherry said he went to the middle of the street to get a better look and the shot went off which frightened the officer who was sitting on him. Cherry said he made a voice recording which he gave to the FBI.

e. *Tonda Thompson*

Tonda Thompson said he was coming out of the Elks Lodge when he saw two police officers and a man near an ambulance across the street.<sup>50</sup> Each officer had one of the man’s arms and Thompson thought the man was staggering. Thompson said that the officer in dark clothes handcuffed Clark’s left hand but the officer in blue lost Clark’s right hand and that’s when they went to the ground. Thompson thought that Clark was “cuffed in front.” Thompson said that once they went to the ground Clark was on his back and the officer in light blue was laying on top of Clark. There was “something goin’ on with the arm.” Thompson said that Clark was handcuffed with his hands in front of him.

3. Elks Lodge – Not Sure About Handcuffs

There were three witnesses out in front of the Elks Lodge who saw the incident and were not sure whether Jamar Clark was handcuffed.

a. *Charesse Douglas*

Charesse Douglas was one of the security officers at the Elks Lodge. He signed a written “Incident Report” on November 21, 2015. Douglas indicated in the Incident Report that he observed a struggle across the street between a black male and two officers.<sup>51</sup> Douglas was trying to get customers to go to their cars when he saw a muzzle flash and heard a shot. He saw

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<sup>47</sup> BCA ACISS Investigative Supplements 2015-648/32. Interview date 11-17-15.

<sup>48</sup> Video evidence shows that Ringgenberg was wearing a light blue uniform and Schwarze was wearing a dark blue uniform.

<sup>49</sup> YouTube Statement of Dennis Cherry published 2-26-16.

<sup>50</sup> Transcript of Statement of Tonda Thompson to BCA/FBI 11-17-17, p.1.

<sup>51</sup> Incident Report of Charesse Douglas dated 11-21-15 p.1.

Clark laying not moving and the way he was “lying on his side it appeared the male was handcuffed.” Douglas did not see anyone put handcuffs on Clark or take them off.

Douglas gave a statement to agents from the BCA and FBI on December 7, 2015.<sup>52</sup> During that interview Douglass said he heard Clark repeatedly tell the paramedic (Trullinger) “I don’t have to go no fucking where.” Douglas heard Trullinger tell Clark to stand back, saw the officers approach and saw one of the officers grab Clark and throw him to the ground. Douglas saw Clark on the ground after the shot was fired. Douglas said, “I saw Mr. Clark laying there motionless on the ground and the way his arms was it appeared that he was handcuffed.” However, Douglass also said, “I can’t say if he was handcuffed or not.”

*b. Joseph Lane, Jr.*

Joseph Lane, Jr., was also an Elks Lodge security person. On November 15, 2015, Lane filled out an “SSPA Incident Report Form.”<sup>53</sup> In that form Lane indicated he had seen a man on the ground and that he heard a gunshot and saw one officer standing over the man (Clark) and another still on the ground.

On December 7, 2015, Mr. Lane gave a statement to agents from the BCA and FBI.<sup>54</sup> Lane described the officer being on his back and “struggling to get up off of the ground.” When asked about handcuffs Lane said, “No didn’t um see that at all.”

*c. Teto Wilson*

Teto Wilson gave a statement to investigators from the BCA and FBI on November 18, 2015.<sup>55</sup> Wilson was coming out of the Elks Lodge when he saw Clark on the ground. Wilson said Clark was face down and there was an officer on his back on top of Clark “making some really weird maneuvers...pressing down around his head or upper shoulders. Wilson didn’t think Clark was resisting. Wilson also told investigators, “I can’t determine whether or not Mr. Clark was handcuffed.”

4. 1611 Plymouth Avenue - Handcuffs

There were five witnesses outside 1611 Plymouth Avenue who were all at the same party with Jamar Clark. Four of the witnesses from the party believed Clark was handcuffed. One other witness at another apartment believed that Clark was handcuffed.

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<sup>52</sup> Transcript of Statement of Charesse Douglas to BCA/FBI dated 12-7-15.

<sup>53</sup> “SSPA” Incident Report Form of Joseph Lane, Jr. dated 11-15-15.

<sup>54</sup> Transcript of Statement of Joseph Lane, Jr. to BCA/FBI dated 12-7-15.

<sup>55</sup> Transcript of Statement of Teto Wilson to BCA/FBI dated 11-18-15.



a. *Joseph Gipson*

Joseph Gipson gave a statement to agents of the BCA and FBI on November 19, 2015.<sup>56</sup> The agents noted that Gipson smelled of alcohol and Gipson admitted he had a problem. Gipson was at Nekelia Sharp's home on Nov. 15, 2015, where there was a party attended by both Clark and Hayes. . Gipson said that after the officers put their gloves on "the first officer put the cuff around his hand and the other officer grabbed the other arm, they took him down."

b. *Known Juvenile Male No. 1*

Known juvenile male No. 1 gave a statement to agents from the BCA and FBI.<sup>57</sup> Known Juvenile Male No. 1 had been at a party for Nekelia Sharp and was outside 1611 Plymouth just before incident. Known Juvenile Male No. 1 talked to Clark outside that address for approximately 30 minutes before the ambulance came to treat RayAnn Hayes. Known Juvenile Male No. 1 saw and heard Clark arguing with the ambulance personnel. Once the police arrived he saw them put on black gloves. Known Juvenile Male No. 1 said he saw them place handcuffs on Clark's left hand but didn't "think they never got the cuff on this one (indicating right)." As the officers were attempting to handcuff Clark he heard Clark saying "fuck them, fuck them, fuck it." Known Juvenile Male No. 1 said that Clark was on his stomach initially after he was taken to the ground but was on his back when he was shot.

c. *Nekelia Sharp*

Nekelia "Kiki" Sharp gave a statement to agents from the BCA and FBI on November 19, 2015.<sup>58</sup> Sharp was hosting a birthday party at her apartment on the first floor of 1611 Plymouth. Sharp saw the EMS person ask Clark to step back from the ambulance assisting RayAnn Hayes. Sharp also saw the police arrive and put on gloves. Sharp did not see who took Clark to the ground but said she saw Clark "handcuffed on his back." She heard Clark telling the officers, "fuck you, fuck you" right before the shot.

On November 24, 2015, Sharp gave an additional statement to the Minneapolis Police Department.<sup>59</sup> Sharp again said that "handcuffs were put on him (Clark)."

d. *Kiesha Steele*

Kiesha Steele gave a statement to investigators from the BCA and FBI on November 18, 2015.<sup>60</sup> She was at the party for Nekelia Sharp and went outside when the ambulance came for RayAnn Hayes. Steele saw the EMS supervisor (Trullinger) pull up and saw the police officers arrive. Steele said that "one police officer took his (Clark's) arm, put it behind his back" and then the other officer "took his right arm [and] put it behind his back. They put the cuffs on him."

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<sup>56</sup> Transcript of Statement of Joseph Gipson to BCA/FBI dated 11-19-15.

<sup>57</sup> Transcript of Statement of Known juvenile male Known Juvenile Male No. 1 to BCA/FBI.

<sup>58</sup> Transcript of Statement of Nekelia Sharp to BCA/FBI dated 11-19-15.

<sup>59</sup> Transcript of Statement of Nekelia Sharp to MPD dated 11-24-15.

<sup>60</sup> Transcript of Statement of Kiesha Steele to BCA/FBI dated 11-18-15.

According to Steele, after the shooting, when the second ambulance pulled up “they picked him up. They released his right arm out of the handcuffs. This arm was still hanging out of the ambulance with cuffs connected to his left arm.”

e. *Known Adult Female No.*

Known Adult Female No. 1 was at her friend Corinna’s on the night of November 15<sup>th</sup>.<sup>61</sup> Corinna’s apartment looks out toward Plymouth Avenue across from the Elks Lodge. Known Adult Female No. 1 said she believed Clark’s girlfriend had gotten into a fight with someone at the Elks Lodge. Known Adult Female No. 1 claimed she heard Clark’s girlfriend yelling at police to let Clark go because he was trying to help her. Known Adult Female No. 1 said she heard Clark saying “Go help my girl, I’m trying to help my girl.” Known Adult Female No. 1 said the ambulance only had one door shut which is why she could see Clark’s girlfriend and hear her screaming. Known Adult Female No. 1 claimed that she would never forget the woman’s screaming.

Known Adult Female No. 1 claimed that Clark was sitting on the curb handcuffed with his hands behind his back. Known Adult Female No. 1 claimed Clark’s feet were on the street and he was facing away from her towards the Elks Lodge.

Known Adult Female No. 1 said the officers were yelling at Clark and that the taller officer shot Clark. She claimed she then saw Clark laying on the ground. Known Adult Female No. 1 said she never saw handcuffs but believed Clark was cuffed based on his positioning. She also claimed that after the popping sounds an officer appeared to take the handcuffs off of Clark. Known Adult Female No. 1 believed that Clark’s contact with the police lasted 10-15 minutes before Clark was shot.

5. 1611 Plymouth – Not Sure About Handcuffs

There was one witness from the party who was unsure whether Clark was handcuffed. There were two other witnesses from 1611 Plymouth who were also unsure about handcuffs.

a. *Derrel Gross*

Derrel Gross gave a statement to agents of the BCA and FBI on November 19, 2015.<sup>62</sup> Gross was also at Nekelia Sharp’s party on the first floor of 1611 Plymouth. Gross saw the officer move behind Clark and then saw Clark on the ground. Although Gross said early in the statement, “[h]e was restrained to me,” he later clarified that “what I seen is just them puttin’ his hands behind the back. I can’t say cuffed.”

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<sup>61</sup> BCA ACISS Investigative Supplement 2015-648/119. Interview date 3-23-16.

<sup>62</sup> Transcript of Statement of Derrel Gross to BCA/FBI dated 11-19-15.

b. *Zacharia Pam*

Zacharia Pam gave a statement to agents of the BCA and FBI on November 20, 2015.<sup>63</sup> Pam also lives on the first floor of 1611 Plymouth. Pam looked out of his bedroom window and saw Clark looking into the ambulance. Pam later saw Clark and the officers on the ground. Pam said the officers were “tryin’ to handcuff him so I don’t know if they handcuff him or not cuz I couldn’t see all like that ‘cuz it too dark out there.”

c. *Chala Stroud*

Chala Stroud gave a statement to agents of the BCA and FBI on November 20, 2015.<sup>64</sup> Stroud lives on the second floor of 1611 Plymouth. Stroud came out onto her balcony after she heard the gunshot and saw Clark on the ground with one of the officers. Stroud thought Clark had handcuffs on because his arms seemed to be behind him but “didn’t see handcuffs physically on him.”

6. 1617 Plymouth – Handcuffs

There were two witnesses at 1617 Plymouth who said they saw Clark handcuffed.

a. *Tequila Dillon*

Tequila Dillon gave a statement to BCA agents on November 15, 2015.<sup>65</sup> Dillon was in the bath at the time of the shooting. Dillon said she saw Clark before they put him in the ambulance and that he was handcuffed. Dillon said that Clark was still handcuffed behind his back when the paramedics put Clark on the “little gurney thing” and that they “undid one of his hands” as they put him in the ambulance.

b. *Known Juvenile Male No. 2*

Known Juvenile Male No. 2 was interviewed on November 16, 2015, by a trained forensic child interview specialist. Known juvenile male No. 2 said that as the police approached Clark they “pull on they gloves and put him in handcuffs and choke slammed him down.” Known juvenile male No. 2 went to the ground after the shot went off and then cried. Known Juvenile Male No. 2 said Clark “was trying ta change his life around...he used to do all that dumb stuff like to hurt people.”

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<sup>63</sup> Transcript of Statement of Zachariah Pam to BCA/FBI dated 11-20-15.

<sup>64</sup> Transcript of Statement of Chala Stroud to BCA/FBI dated 11-20-15.

<sup>65</sup> Transcript of Statement of Tequila Dillon to BCA dated 11-15-15.

## **D. Video Evidence**

The video from the Hayes Ambulance indirectly shows that Clark was never handcuffed.<sup>66</sup>

00:49:15 Ringgenberg and Schwarze first contact Clark and all are standing. It is apparent that there are no handcuffs on Clark.

00:49:29 Ringgenberg takes Clark to the ground and it quickly becomes apparent that the two are struggling on the ground.

00:49:57 Ringgenberg's boot is visible kicking the ground which is indicative of a struggle.

00:50:03 Ringgenberg attempts to roll to the side and is held back involuntarily. This is consistent with Ringgenberg and Schwarze's statement that Clark was grabbing at Ringgenberg's gun and inconsistent with Clark being handcuffed. Also with Dennis Cherry

00:50:10 Ringgenberg is seen scooting away on the ground.

00:50:16 Ringgenberg is seen getting up and immediately adjusting his utility belt. It is apparent that his gun has been moved toward the small of his back. This is consistent with the statements that Clark was grabbing at Ringgenberg's gun and the DNA evidence on the holster and mace holder portions of the utility belt.

The video evidence from the Clark Ambulance video directly shows that Clark was not handcuffed.<sup>67</sup>

00:56:48 Clark is being placed into the ambulance. Clark is clearly not handcuffed as he is being wheeled up to and into the ambulance which contradicts the witness statements that Clark had handcuffs hanging off one of his arms as he was loaded into the ambulance or that handcuffs were being removed from him as he was placed into the ambulance.

## **E. Summary of Handcuff Evidence**

The question of whether Clark was handcuffed became a central concern of the investigation immediately after the shooting because the crowd at the scene began yelling that Clark had been handcuffed.

There are conflicting witness accounts on the issue of handcuffs. Statements from Ringgenberg, Schwarze, and all of the EMS, fire and other police personnel indicate that Clark was never handcuffed.

By contrast, the statements of civilian witnesses, from in front of the Elks Lodge and 1611 Plymouth, are conflicting. Two witnesses saw no handcuffs. Twelve witnesses saw

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<sup>66</sup> Hayes Ambulance Video.

<sup>67</sup> Clark Ambulance Video.

handcuffs though they differ on how Clark was handcuffed and when. Six witness were unsure whether handcuffs were present. One witness said he was handcuffed sitting on the curb.

In resolving these conflicting accounts, prosecutors look to objective evidence – where it is available - to determine what happened. Forensic examination showing Clark’s DNA on Ringgenberg’s holster and mace holder is strong evidence that Clark was grabbing for Ringgenberg’s gun and therefore not handcuffed. The absence of Clark’s DNA on the inside of the handcuffs is similarly strong evidence that Clark was not handcuffed.

If Clark was handcuffed and thrown to the ground with Ringgenberg wrestling on top of Clark there is a reasonable expectation that there would be some internal or external injuries or marks to Clark’s wrists from the metal handcuffs. There was no such evidence. Photos taken of Clark’s wrists at the hospital do not show injuries or marks. Importantly, the forensic autopsy performed by Dr. Baker did not show any external or internal “evidence of restraint.”

Finally, the video evidence is consistent with the statements that Clark was not handcuffed and was grabbing at Ringgenberg’s gun. Taken together, the weight of the evidence clearly establishes that Clark was not handcuffed and was instead grabbing at Ringgenberg’s gun.

### III. LEGAL ANALYSIS REGARDING THE USE OF DEADLY FORCE

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. Schwarze 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. Schwarze's action was reasonable given both his own observations and Ringgenberg's plea to shoot Clark.

#### 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.<sup>68</sup> Minnesota law provide 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>69</sup> The intentional discharge of a firearm constitutes deadly force.<sup>70</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>71</sup> The Court also addressed the use of force by a peace officer in its 1989 decision, *Graham v. Connor*.<sup>72</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."

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>73</sup>

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<sup>68</sup> *State v. Basting*, 572 N.W.2d 281, 286 (Minn. 1997).

<sup>69</sup> Minn. Stat. § 609.066, subd. 2.

<sup>70</sup> Minn. Stat. § 609.066, subd. 1.

<sup>71</sup> *Tennessee v. Garner*, 471 U.S. 1,11 (1985).

<sup>72</sup> *Graham v. Conner*, 490 U.S. 386 (1989).

<sup>73</sup> *Graham* at 396-397.

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 Clark Was Authorized**

### 1. The facts preceding the shooting of Clark.

When police first encountered Clark on Nov. 16<sup>th</sup> they knew that: 1) he was the alleged assailant in a domestic assault which resulted in a need for medical attention, 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 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 greater force to achieve their goal of handcuffing Clark.

When Clark was forcibly taken to the ground by Ringgenberg, Clark continued to resist by struggling with Ringgenberg. Because they had fallen with Ringgenberg's back to Clark's front, Clark was able to reach the grip of Ringgenberg's firearm. Ringgenberg could feel Clark pull the gun toward the small of Ringgenberg's back. 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. Ringgenberg was unable to remove Clark's hand from the grip.

Recognizing that Clark had control of the 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.

### 2. 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 doesn't act. In this case, Schwarze subjectively believed that Clark had obtained control of Ringgenberg's weapon and that were he able to remove the weapon from its holster, both Ringgenberg and Schwarze would likely be shot.

Schwarze's subjective belief was objectively reasonable. Clark's DNA was found on Ringgenberg's holster and mace container and could not be excluded as a source of the DNA on the grips of the gun which is strong evidence that Clark grabbed at Ringgenberg's gun. Additionally, the video evidence shows Ringgenberg attempting to get up several times but being pulled back involuntarily by someone who can only be Clark. The video also shows that once Ringgenberg was free of Clark his utility 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 demonstrate the reasonableness of Schwarze's belief that Clark was forcefully pulling on Ringgenberg's holster and gun and attempting to remove Ringgenberg's gun.

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 to 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.<sup>74</sup>

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.<sup>75 76</sup>

Accordingly, the Hennepin County Attorney's Office has concluded that criminal charges are not warranted against either Officer Dustin Schwarze or Officer Mark Ringgenberg in the death of Jamar Clark because the use of deadly force in the line of duty was necessary to "protect the peace officer or another from apparent death or great bodily harm" pursuant to Minn. Stat. §609.066.

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<sup>74</sup> *U.S. v. Herrera*, 375 F.3d 399, 406 (6<sup>th</sup> Cir. 2004) (holding that an attempt to disarm a peace officer is a "crime of violence.")

<sup>75</sup> I thought we were gonna get shot. I, at first I thought Mark was gonna get shot...[M]aybe more people are gonna get shot there was just, there was innocent bystanders there was all these people around. There was paramedics. Schwarze statement at 9.

<sup>76</sup> I'm telling Dustin "He's got my gun." And I remember Dustin telling him to...it was something like "let go or I'm gonna shoot you." And then ah the guy said ah "I'm ready to die." And um that was the, the worst feeling ever.... I, I thought I was gonna die at that point. Um I, I had no control over my gun. This guy didn't seem to, to care what happened to him or us or anybody else. Ringgenberg statement at 8.