



MPD INTERNAL AFFAIRS FORCE REVIEW OVERVIEW

PURPOSE OF THIS DOCUMENT

This document addresses the major Minneapolis Police Department policy issues raised by the MPD Internal Affairs Force Review of officer conduct related to the officer-involved death of Jamar Clark on November 15, 2015. It does not address all aspects of the review. The Department is limited from providing any additional information at this time by the Minnesota Government Data Practices Act.

The evidence gathered by the Minnesota Bureau of Criminal Apprehension and reviewed by the MPD Internal Affairs Unit investigators is available at: <http://www.hennepinattorney.org/news/news/2016/March/jamar-clark-decision>

INVESTIGATION PROCESS

Following a Critical Incident as defined by Minneapolis Policy below,

7-810.01 CRITICAL INCIDENT POLICY DEFINITIONS

The following terms as used in this policy shall have the following meanings:

Critical Incident: An incident involving any of the following situations occurring in the line of duty:

-The use of Deadly Force by or against a Minneapolis Police Officer

The MPD Internal Affairs Unit (IAU) conducts a force review to examine the force used by officers to determine whether the force used by the officer(s) was in compliance with MPD policy. As part of the review, IAU will also examine the incident to determine if other MPD policies may have been violated.

Typically, as in this case, the IAU investigation occurs after the conclusion of the criminal investigation of the Critical Incident. In this case, there were two criminal investigations conducted, both by independent law enforcement agencies. One was conducted by the Minnesota Bureau of Criminal Apprehension (BCA) and one by the United States Department of Justice and the FBI.

Two IAU investigators were assigned to conduct the force review in this case. The IAU investigators reviewed all evidence in the BCA criminal investigative file, including all videos, witness statements, police reports and supplements, Minneapolis Emergency Communications Center (MECC) records, Hennepin Emergency Medical Services (EMS) Dispatch, the Report of Hennepin County Attorney Mike Freeman, the Hennepin County Medical Examiner Autopsy Report, and the BCA Laboratory Report. (The FBI, as per FBI procedure, declined MPD's request for the FBI's investigative file). The investigators reviewed all aspects of the incident and evaluated the

evidence against all potentially relevant MPD policies and procedures.

In accordance with MPD procedure, after the investigators completed their investigation, the case was presented to the IAU Commander for review of completeness and accuracy of the investigation. Once approved by the IAU Commander, the case was then forwarded to the Chief's Office for review by a four person panel comprised of the Assistant Chief and three Deputy Chiefs, including Assistant Chief Arneson, Deputy Chief Arradondo, Deputy Chief Folkens and Deputy Chief Glampe. The review panel made a preliminary recommendation to the Chief of Police. The Chief of Police made the final determination on the case.

POLICY REVIEW

1. INITIAL RESPONSE OF SQUAD TO THE SCENE

- At the time the call was aired by dispatch, Officers Schwarze and Ringgenberg, assigned to squad 424, were inside the Fourth Precinct, approximately three blocks from the site.
- Hennepin Emergency Medical Services (EMS) Dispatch is operated and staffed by Hennepin County, not the City of Minneapolis.
- Minneapolis Emergency Communications Center (MECC) is a separate City of Minneapolis department. MECC is not operated by or staffed by the Minneapolis Police Department.
- MECC Dispatch notified squad 424 via radio to "assist EMS at 1611 Plymouth apartment 204" – "looks like there's a possible party related to an earlier fight out in front of the ambulance – no current description." This was acknowledged by the officer.
- "Assist EMS" is a routine dispatch and is not treated as an incident where officers typically respond with lights and siren. There was conflicting information between Hennepin EMS Dispatch and MECC Dispatch. The HCMC Paramedic had made a request to Hennepin EMS Dispatch for a "code 3" response because Mr. Clark was interfering with the care the paramedics were trying to provide to Ms. Hayes. A "code 3" response is a request for emergency services where officers would activate lights and siren. The Hennepin Paramedic, however, stated "no" when asked by Hennepin EMS Dispatch if he wanted help although he requested a code 3 response. This conflicting request may have contributed to the loss of information between dispatch centers.
- If the call had been communicated ("toned") as a "paramedic needs help" call, as opposed to "assist EMS," there would have been an emergency response with response from multiple squads. Calls "toned" as "paramedic needs help" receive the same type of response as calls "toned" as "officer needs help."
- Although the Visinet reports (Visinet is the computer system that stores the data generated as a result of police, fire or EMS calls) contained an event that is identified as "paramedics need help", this event was generated after the shooting and was in reaction to the paramedics stating that shots had been fired.
- The location of the incident, 1611 Plymouth Avenue North, is three blocks from the Fourth Precinct station at 1925 Plymouth Avenue North. The officers indicated there

were no red lights or intersections to clear and they, therefore, did not activate their lights or sirens.

- MPD policies state that officers shall immediately respond to events (7-200, 7-300, 7-900, 2-100). However policies do not dictate when an officer must or shall engage in emergency driving. The act of emergency driving is a technique taught to officers and left to the discretion of the officer.

2. SQUAD DVR/ WIRELESS MICROPHONE POLICIES

- The MPD Manual 4-218 Mobile and Video Recording Policy required officers to perform an equipment test at the beginning of their shift. The check was performed prior to the incident in question. (CAPRS Supplement 61 – Sgt. McBride).
- The MPD Manual in 4-218 provides:

IV. PROCEDURES / RULES / REGULATIONS

A. Conditions of Use (Digital and VHS Systems) (05/25/04) (09/19/08) (08/01/11)

4. The driver shall wear the wireless microphone, verify that it is turned on and shall be responsible for ensuring that it is working properly throughout the shift. (07/11/07) (08/01/11)

- The common practice at the time was to store the wireless microphones in the squad. The microphones would be activated in the situations set forth below:

4-218 MOBILE AND VIDEO RECORDING (MVR) POLICY (05/25/04) (9/19/08) (08/28/09) (08/01/11)

IV. PROCEDURES / RULES / REGULATIONS

A. Conditions of Use (Digital and VHS Systems) (05/25/04) (09/19/08) (08/01/11)

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6. MVR equipment shall be in Record Mode: (08/01/11)

- For every stop/contact where a motor vehicle is involved and shall record the stop/contact in its entirety. (04/11/07) (08/01/11)
- For domestic abuse incident interviews conducted inside or in close proximity to an MVR equipped vehicle. (08/01/11)
- Any time a person is transported in a squad, regardless of the destination. This does not apply when an authorized ride-along is the only other person in the squad. When practical, officers shall begin recording when the person is placed in the squad, regardless if transportation begins immediately following activation. (06/09/15)

- Since the incident did not involve a motor vehicle stop or contact, a domestic abuse interview, or a transport in a squad, activation of the MVR equipment was not required under MPD policy in effect at the time. Activation of the MVR equipment is required for domestic assault interviews, not for the initial response or arrest.

NOTE: With the deployment of **body worn cameras**, this issue has become obsolete going

forward. The body worn camera policy requires all officers to wear the camera at all times during their shift and the type of call involved in this incident would require the officers to activate their body worn cameras.

- The Body Worn Camera Policy in the MPD Policy Manual (4-223) requires officers to activate their cameras in the following situations:
 - Traffic stops.
 - Suspicious Person stops.
 - Suspicious Vehicle stops.
 - Any vehicular response requiring emergency driving as defined by MPD P/P 7-402, or emergency response as defined by MPD P/P 7-403.
 - Vehicle pursuits.
 - Work-related transports not involving a ride-along or another City employee in their official capacity as a City employee.
 - Any search, including but not limited to searches of vehicles, persons, and buildings.
 - Any contact involving criminal activity.
 - Any contact involving physical or verbal confrontations.
 - Any contact that is, or becomes, adversarial.
 - When advising a person of their Miranda rights.
 - When ordered by a supervisor.
 - Prior to any use of force. If a BWC is not activated prior to a use of force, it shall be activated as soon as it is safe to do so.
 - Any tactical entry or forced entry into a building, unless a supervisor has determined in advance that the video or audio data could result in the disclosure of operational or tactical information that would compromise the effectiveness of future actions or jeopardize officer safety.

3. TAKEDOWN MANEUVER

- The Minneapolis Police Department teaches that the ultimate purpose in using a takedown technique is to quickly bring a person to the ground because it is the most effective position to gain control. MPD Officers are instructed in specific takedown techniques such as the straight arm bar takedown or a controlled neck restraint.
- Authorized takedown techniques are not limited to those specifically identified or trained on by the Minneapolis Police Department.
- **The MPD Manual provides:**

5-303 AUTHORIZED USE OF FORCE (10/16/02) (08/17/07)

Minn. Stat. §609.06 subd. 1 states, "When authorized...except as otherwise provided in subdivision 2, reasonable force may be used upon or toward the person of another without the other's consent when the following circumstances exist or the actor reasonably

believes them to exist:

When used by a public officer or one assisting a public officer under the public officer's direction:

- In effecting a lawful arrest; or
- In the execution of legal process; or
- In enforcing an order of the court; or
- In executing any other duty imposed upon the public officer by law."

In addition to Minn. Stat. §609.06 sub. 1, MPD policies shall utilize the United States Supreme Court decision in *Graham vs Connor* as a guideline for reasonable force.

The *Graham vs Connor* case references that:

"Because the test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application, its proper application requires careful attention to the facts and circumstances of each particular case, including:

- The severity of the crime at issue,
- Whether the suspect poses an immediate threat to the safety of the officers or others, and;
- Whether he or she is actively resisting arrest or attempting to evade arrest by flight.

The "reasonableness" of a particular use of force must be judged from the perspective of the reasonable officer on the scene, rather than with the 20/20 vision of hindsight.

The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments - in circumstances that are tense, uncertain, and rapidly evolving - about the amount of force that is necessary in a particular situation."

Authorized use of force requires careful attention to the facts and circumstances of each case. Sworn MPD employees shall write a detailed, comprehensive report for each instance in which force was used.

- Officer Ringgenberg did not use a "choke hold" technique. Officer Ringgenberg stated that he grabbed Mr. Clark around the upper chest to bring him to the ground. (Ringgenberg statement BCA).
- A choke hold is defined in MPD policy 5-311 "as applying direct pressure on a person's trachea or airway (front of the neck), blocking or obstructing the airway."

- Officer Ringgenberg did not state that he used a take-down technique he learned while he was an officer in San Diego. Officer Ringgenberg stated that while he was a police officer in San Diego he was taught “anyone who resists you take them to the ground. It’s safer for everyone”. (Ringgenberg statement BCA).
- Grabbing a suspect around the upper chest as a means to take the person to the ground, although not specifically trained by the MPD, is not an unauthorized technique. Any technique reasonable under the totality of the circumstances is an authorized use of force.
- An officer is not required under MPD policy to inform an actively resisting suspect they are under arrest before using force.
- It is within policy and training to seek to handcuff a suspect who has been acting in an aggressive and irrational manner.
- The evidence demonstrates, however, that at no time was Jamar Clark handcuffed during the incident.

4. USE OF DEADLY FORCE

- The MPD Manual provides:

5-305 AUTHORIZED USE OF DEADLY FORCE (08/17/07)

Minn. Stat. §609.066 sub. 2 – “The use of deadly force by a peace officer in the line of duty is justified only when necessary:

- To protect the peace officer or another from apparent death or great bodily harm;
- To effect the arrest or capture, or prevent the escape, of a person whom the peace officer knows or has reasonable grounds to believe has committed or attempted to commit a felony involving the use or threatened use of deadly force, or;
- To effect the arrest or capture, or prevent the escape, of a person who the officer knows or has reasonable grounds to believe has committed or attempted to commit a felony if the officer reasonably believes that the person will cause death or great bodily harm if the person’s apprehension is delayed.”

In addition to Minn. Stat. §609.066, MPD policies shall utilize the United States Supreme Court decision in *Tennessee vs Garner* as a guideline for the use of deadly force.

The *Tennessee vs Garner* case references that:

“Apprehension by the use of deadly force is a seizure subject to the Fourth Amendment’s reasonableness requirement.”

“The use of deadly force to prevent the escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable.”

Sworn MPD employees shall recognize that:

- For the safety of the public, warning shots shall not be fired.
- The use of a firearm, vehicle, less-lethal or non-lethal weapon, or other improvised weapon may constitute the use of deadly force.
- This policy does not prevent a sworn employee from drawing a firearm, or being prepared to use a firearm in threatening situations.

- The video images accurately reflect the statements made by the involved officers. The video shows movement of Officer Ringgenberg (lying on top of Mr. Clark) being pulled back towards Mr. Clark as they lay on the ground. The officer can be seen twisting his duty belt back to its normal position when he is able to stand up.
- Deadly force was authorized because both officers feared for the loss of life based on the belief that Mr. Clark was either in possession of the officer’s handgun or would imminently be in possession of the officer’s handgun if not stopped.
- The Hennepin County Attorney’s Office conclusions corroborate that the use of force was authorized.

5. CRITICAL INCIDENT POLICY

- The purpose of the Critical Incident Policy (MPD Manual 8-810) is to establish investigative and administrative procedures that ensure the safety and well-being of officers while promoting public safety and confidence at Critical Incidents.
- One of several on-scene procedures at an officer involved shooting (OIS) provides:

7-810.03 CRITICAL INCIDENT POLICY PROCEDURES FOR INVOLVED AND WITNESS OFFICERS (09/21/07)

The following procedures shall apply to managing Witness and Involved Officers following a Critical Incident:

Involved Officers

At the scene:

- The MPD Incident Commander shall determine which officers are Involved Officers. The Incident Commander at the scene shall promptly assign an Escort to stay with each Involved Officer until relieved by a Homicide Investigator. One Escort shall be assigned for each Involved Officer. Whenever possible,

Escorts assigned to Involved Officers shall be of the rank of Sergeant or above and shall not be the Incident Commander. (04/21/09)

-Involved Officers shall not talk to anyone at the scene about the incident, except to the Incident Commander, Lead Investigator, a Federation representative and/or legal counsel and to provide a Public Safety Statement to the Incident Commander to enable the primary responders and Investigators to secure the scene, facilitate the investigation, apprehend suspects, and allow for officer or civilian safety at the scene.

-As soon as practical, the Escorts shall take the Involved Officers from the scene to the designated drug and alcohol testing collection site, as determined per MPD P&P 3-1001 Drug and Alcohol Testing Policy. After test samples are obtained, the Escorts shall transport the Involved Officers to Headquarters-Involved Officer's Room. Escorts shall keep the Involved Officers separate from other Involved and Witness Officers. (04/21/09) (07/21/16)

- Officers Schwarze and Ringgenberg were transported from the scene to the Fourth Precinct in a squad car. Officer Schwarze was placed in the front seat of the squad and Officer Ringgenberg was placed in the rear seat of the squad. This was done prior to the arrival of an Incident Commander and assignment of "escort officers."
- While not required to activate the squad audio recording system, the officer who drove Officers Schwarze and Ringgenberg from the scene to the Fourth Precinct activated the MVR (motor vehicle recording) system. The recording shows that there was no conversation between the officers during the escort in the squad to the Fourth Precinct.
- The decision of the officer to depart from the guidelines by transporting Officers Schwarze and Ringgenberg from the scene in a single squad prior to the assignment of "escort officers" by an Incident Commander was reasonable under the circumstances, given the rapidly evolving dynamics of the environment surrounding the event. A growing group of people were gathering near the scene and the escorting officer made the decision to remove the two officers from the scene to help de-escalate the situation. Additional escort officers or squad cars for separate transport were not available at the scene. The officer helped protect the integrity of the investigation by activating the squad's recording system during the transport.