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Review and Report of Officer Involved Shooting

Date of Incident – November 11, 2018

**Officer Involved – Nicholas Grivna,
Virginia Police Department.**

Reviewer Background

I have been licensed to practice law in Minnesota since 1978. During those 40 years I have practiced primarily in the field of criminal prosecutions for Ramsey County, Washington County, and from 1981 until April, 2010, with the St. Louis County Attorney's Office. Since my retirement from public employment in April, 2010, I have maintained a private law practice, centered primarily on providing consultation and backup support for county attorneys offices, including St. Louis County, Cook County, and Carlton County.

During my years as a public prosecutor I was called upon to review and evaluate dozens of use of force incidents. Since I began my private practice in 2010, I have been called upon to review, evaluate, and provide written reports in at least 5 prior officer involved shooting cases.

In reviewing this November 27, 2018, incident, I can indicate that I am not personally or professionally acquainted with any of the involved officers or other witnesses. I was able to review the evidence objectively, with no pre-formed opinions or bias. I am also very

bias. I am also very familiar and knowledgeable with the related statutory law, as well as Federal and State case law on the subject of use of deadly force by law enforcement officers.

Synopsis

At approximately 5:00 pm on November 27, 2018, J. Scot Alan Widmark forced his way into a parked car occupied by June Marie Ebnet. Unsure of what was happening and terrified, Ms. Ebnet ran from the car and called 911 as she flagged down a passing motorist, Wade McBride. Mr. McBride allowed Ms. Ebnet into his car and then pulled up behind the car that she had been sitting in. J. Scot Alan Widmark still occupied that car. Almost simultaneously, Lt. Matthew Kelly, who was responding to the 911 dispatch, pulled his marked squad behind the McBride vehicle.

Widmark got out of the Ebnet vehicle, removed a large knife from somewhere in or on his clothing and began to approach the McBride vehicle and Lt. Kelly. He suddenly turned and began running the opposite direction. Lt. Kelly gave chase. A short distance away, a citizen was walking along, unaware of what was happening. Widmark approached the man from behind, put the man in a headlock, brandished his knife and held the man as a hostage and human shield. Other officers arrived at the scene, including Nicholas Grivna, who was armed with a police rifle as requested by Lt. Kelly over his police radio as the situation was fast developing. By now, in addition to Lt. Kelly and Officer Grivna there were several officers on scene and essentially surrounding Widmark and his hostage who had backed up to a nearby garage door, still holding his hostage as a shield and making stabbing motions with his knife towards the unfortunate hostage. For well over a minute Officer Grivna attempted to de-escalate the situation and convince Widmark to drop the knife. Widmark did not verbally respond, but rather increased his stabbing-like motions towards the hostage. When all else failed, and Officer Grivna was convinced that the life of the hostage was in imminent danger, he fired one shot from his rifle fatally striking J. Scot Alan Widmark in the head.

Legal Authority

Minnesota Statutes 609.06 - Authorized Use of Force

Subdivision 1. 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:

(1) when used by a public officer ...

(a) in effecting a lawful arrest; or

(d) in executing any other duty imposed upon the public officer...

Minnesota Statutes 609.065- Justifiable Taking of Life

The intentional taking of the life of another is not authorized by section 609.06, except when necessary in resisting or preventing an offense which the actor reasonably believes exposes the actor or another to great bodily harm or death, or preventing the commission of a felony in the actor's place of abode.

Minnesota Statutes 609.066- Authorized Use of Deadly Force by Peace Officers

Subdivision 1. Deadly force defined

Subdivision 2. Use of deadly force.

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

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

Graham v Connor, 490 U.S. 386 (1989)

This case establishes the "reasonable officer" standard in evaluating the use of force, deadly or otherwise, by law enforcement officers when effecting an arrest or other lawful duties. Essentially the actions of a police officer should be evaluated using a totality of the circumstances test from the perspective of the "reasonable officer" on the scene.

"The calculus of reasonableness must embody allowances 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".

Hyek v City of St. Paul, 488 F2d 1049 (8th Cir. 2007)

Police officers may use deadly force against another when the officers reasonably believe that person constitutes a direct and imminent threat of death or great bodily harm to the officers or others.

Mumm v Mornson, 708 N.W. 2d 475 (Minn 2006)

This case adopts for Minnesota the *Graham* standard for evaluating police officer use of deadly force analysis.

Material Reviewed

- . All written BCA reports
- . Recorded interview of June Ebnet.
- . 911 Audio
- . Virginia 911 CAD report

- . Grivna squad video & audio
- . Virginia PD radio traffic audio recording
- . Grivna training records
- . Recorded interview of Nicholas Grivna
- . Recorded interview of SLCS Deputy Joshua Hughes
- . Video recorded by neighbor Justin Keith
- . Preliminary Summary of Medical Examiner, Dr. Asch-Kendrick
- . Medical Examiner's Final Summary
- . Recorded interview of CWM
- . Transcript of Lt. Matthew Kelly interview
- . Transcript of Wade McBride interview
- . Street map and satellite view of the City of Virginia

Narrative

The following is a narrative of the shooting incident that occurred in the City of Virginia, MN, at approximately 5:09 p.m. on November 27, 2018, that resulted in the death of J. Scot Alan Widmark, d.o.b, 03/12/1977. The reader can assume that all facts stated in this narrative are supported by evidence that would be admissible in a court of law, pursuant to the Minnesota Rules of Evidence and current federal and state case law. I have attempted to the extent possible to report the facts in sequential order of their happening to assist the reader in understanding the events as they happened. During the investigative interviews, many of the witnesses were not aware of the names of the parties involved. During the interviews the witnesses would refer to “a man”, or “a police officer”, “an individual” or perhaps “two men”. The identities of the parties involved were of course established during the investigation. During this narrative I will use the actual names or identities of the parties referred to so as to assist the reader in understanding the events as they occurred. J. Scot Alan Widmark will be referred to as Widmark. The man who was taken hostage will be referred to as CWM to afford him some measure of anonymity. His name is, of course, fully disclosed in the investigation reports.

The area of the City of Virginia in which the incident took place is bordered to the north by 1st St. South, to the south by 4th St. South, to the west by 4th Ave. West and to the east, by 2nd Ave West. For reference points, the **streets** run roughly east/west, the **avenues** run north/south. The shooting occurred just south of the intersection of 3rd Avenue and 3rd St.

The first call to 911 dispatch was logged at 17:01:50. The first officer arrived on scene, believed to be Lt. Matthew Kelly, at 17:07:10. Lt. Kelly notified dispatch the incident was a “hostage” situation at 17:07:30. “Shot fired” was logged in at 17:09:09.

June Ebnet is a public health nurse for St. Louis County. When making house calls she uses a county owned vehicle. On November 27th that happened to be a Chevrolet Impala. She had parked her own 2005 Subaru vehicle on 3rd Ave. West, just south of 2nd Street S.,

facing south, when she left for her daily travels on county business. She returned from her work related rounds shortly before 5:00 p.m. on the 27th, and pulled the county car behind her own Subaru. Due to the cold weather Ms. Ebnet started her Subaru and then returned to sit in the county car while her car warmed up. She was looking at her phone, and seems to recall seeing a man walking northbound on 3rd Avenue, but paid little mind of him. Suddenly the passenger door was opened by a male, whom Ms. Ebnet described as somewhat disheveled and told Ms. Ebnet “get out of your car”. To which she responded, “No”. The man then entered the passenger side of the car and again demanded of Ms. Ebnet that she get out of the car. Her response this time was, “Why?”. At this point the man, whom we now know was J. Scot Alan Widmark, began to reach towards Ms. Ebnet. Thinking quickly, Ms. Ebnet turned off the ignition on the county car, removed the keys, grabbed her purse, jumped out of the car, and began to run northbound toward the intersection of 3rd Avenue and 2nd Street.

As she neared the intersection, a maroon Chevrolet Cobalt traveling eastbound on 2nd St. stopped at the stop sign at 3rd Avenue. This car was driven by Wade McBride. Mr. McBride observed Ms. Ebnet approach his car and seemed to be waving him down. He would describe her demeanor as obviously in fear of something. It appeared to him that she had her phone to her ear and was making a call. Ms. Ebnet was indeed now in the process of notifying 911 emergency dispatch what was transpiring. At the same time she ran to the driver’s side of the car and as she was trying to provide information to the 911 operator, she was simultaneously attempting to explain to Mr. McBride what was happening. At this point Mr. McBride told Ms. Ebnet to get into his car, at which time she got into the passenger side front seat. She had been informed by 911 dispatch that a squad would be dispatched.

As this was happening Widmark was still in the county Impala. Mr. McBride then pulled southbound onto 3rd Avenue and stopped behind the Impala. They, McBride and Ebnet, could see that the door to the Impala was partially open and Widmark was still in the car, but they could not determine what he was doing. The investigation was never able to determine what Widmark’s motive was for forcing himself into the car.

Lt. Matthew Kelly of the Virginia police department was at the law enforcement center on 1st Street about 2 blocks from where the incident was occurring when he monitored the 911 call. He immediately left the law enforcement center, got into his squad car and headed to the scene. As the 911 call goes out on the air, other officers out on patrol either in marked or unmarked cars begin to respond, but as it was not yet known the exact nature of the situation, it was at the moment not viewed as an emergency situation.

Virginia Police Officer Nicholas Grivna was also at the law enforcement center and heard the first 911 dispatch, but did not immediately respond as he was assisting county staff restrain a difficult arrestee.

Lt. Kelly traveled first to 4th Ave West, then southbound two blocks to 3rd St., east on 3rd

Street to 3rd Avenue W. and then northbound which would bring him to the location of the disturbance involving Widmark, the county car, and the present location of the McBride car. As he traveled northbound on 3rd Avenue he observes Ebnet's Subaru, with the county Impala parked behind it with the driver door partially opened, and then McBride's maroon Cobalt behind the Impala. As he passed the Impala he observes Widmark in the driver's seat looking directly at Kelly. Although Lt. Kelly does not know Widmark, he becomes uneasy. He then pulls his squad car, light bar still activated, perpendicular to the street, behind the Cobalt.

After stopping his squad car, Lt. Kelly got out and started to position himself behind the left rear of the Cobalt. As he did so, Widmark got out of the Impala and looked directly at Kelly. Kelly would explain later that for some inexplicable reason, he got the feeling that Widmark had been awaiting for police arrival. Because of his initial uneasy feeling upon passing the Impala, Lt. Kelly had unholstered his service firearm as he got out of the squad. He did not point it at Widmark or anyone else initially.

As Widmark got out of the Impala he withdrew a large knife from his coat and began to advance in the direction of the McBride vehicle. Wade McBride and June Ebnet both believed he was advancing toward them personally with intent to do harm. They saw him waving the knife around in a very threatening manner. At the same time, Lt. Kelly believed Widmark was advancing directly upon him. Lt. Kelly announces over the police radio network that this was now a man with a knife situation. Lt. Kelly ordered Widmark to stop and drop the knife, but Widmark did not comply with either command. Kelly would later explain to investigators that the thought ran through his mind that Widmark was intentionally trying to provoke Kelly into shooting him. Lt. Kelly explained that as Widmark advanced, Kelly did not want to shoot him, so he began to retreat as he had room to safely do so, and simultaneously continued to order Widmark to drop the knife.

Without warning or any discernable reason, Widmark turned and began to run southbound on 3rd Avenue. Lt. Kelly now gave chase. As Lt. Kelly chased Widmark south on 3rd Avenue he observed a man, CWM, walking on 3rd Avenue. Lt. Kelly shouted a verbal warning for CWM to run away, but CWM appeared not to hear the warning. Suddenly, Widmark approaches CWM and puts CWM in a "headlock" with his left arm, while continuing to brandish the knife with his right arm. He then turns to face Lt. Kelly, with CWM held basically as a human shield between himself and Lt. Kelly. It is at this point that Lt. Kelly reports over the air that this has now developed into a hostage situation, and requests an officer with a rifle to respond. A mere 20 seconds has elapsed since Lt. Kelly arrived on scene and got out of his car.

Officer Nicholas "Nick" Grivna who had remained in the jail responded to the call once he heard over the police net that Lt. Kelly had arrived on scene and it was now an armed, and obviously dangerous, situation. Officer Grivna's squad car is equipped with a squad video camera. A review of the squad video recording begins a few seconds prior to Officer Grivna getting into the squad, which is parked outside of the law enforcement center. Grivna arrives at the intersection of 3rd Avenue and 3rd Street, 26 seconds after he

enters his squad car at the law enforcement center. The video clearly shows Widmark with his hostage standing in the middle of the intersection. Officer Grivna gets out of his squad car and begins to advance on Widmark, rifle in ready position, and begins to give command orders to Widmark to drop the knife. Widmark, keeping his hostage in a shield position to reduce his own target signature, begins to back away from Grivna and out of the view of the camera. Another officer comes into view approaching from the north to south. Approximately 15 seconds after Grivna's exit from the squad car Widmark is out of video capture. Officer Grivna is equipped with an audio recording device synced with the squad video so the viewer can continue to monitor the incident as it occurs.

For the next 1 minute and 11 seconds Officer Grivna is heard to attempt to de-escalate the situation. Officer Grivna believes he recognizes Widmark as a person that Grivna has dealt with previously named Adam. He therefore begins to refer to Widmark as "Adam", and attempts to talk Widmark down from the crises situation. Grivna reduces the volume of his voice level and directs remarks to Widmark including "Adam, its me Grivna, you know me", "put the knife down, its not worth it", "Put the knife down, I'll stop", and repeating these phrases many times.

Other officers have now arrived on scene including St. Louis County Deputy Sheriff Troy Nichols and Virginia PD Officer Joshua Hughes. These officers, as well as Lt. Kelly who has maintained visual contact with Widmark since the very beginning, make obvious attempts to defuse the situation without anyone being injured. Through it all Widmark continues to back away from the officers until he finds himself backed up to a garage at 302 3rd Ave. He continues to hold CWM in a headlock, brandishing a large knife shoulder high and pointed in the direction of CWM. A surveillance camera on a church across the street from this garage captures Widmark with his back to the garage door, holding CWM around the head and shoulders with his left arm, right arm raised to shoulder level, and a police officer, most likely Officer Grivna, rifle in the ready position, in front and slightly to the right of Widmark and his hostage, at an approximate distance of 15'.

When an obviously shaken and traumatized CWM is interviewed by investigators later that evening he relates that he was so scared throughout the incident that he recalls very few details. He recalls walking down the street minding his own business when he is suddenly grabbed from behind. He initially reports he recalls the man holding him as being armed with a knife, but later indicates he is not sure about the knife. CWM does indicate that he recalls the man pulling him backwards, the arrival of police officers giving the man commands, and coming to a stop with police continuing to give commands to Widmark. The one thing that CWM is clear about is that he believed he was about to die.

Officer Grivna would later explain to investigators that he was doing everything he could to end the situation peaceably without anyone being injured. The last thing he wanted to do was shoot Widmark. But as Grivna and other officers attempted to defuse the situation, Widmark was brandishing the knife in a manner that indicated he was prepared to injure CWM. At no time did Widmark say anything to the officers or, in response to

their entreaties for him to drop the knife.

Deputy Troy Nichols was also armed with a rifle at this point, and was positioned to the right of Officer Grivna and to the left of Lt. Kelly. Nichols recalled that he clearly observed Widmark with a large knife waving it towards CWM. Nichols was convinced that Widmark intended to and would stab CWM unless immediate steps were taken to prevent that. Deputy Nichols explained that he fully intended to shoot Widmark to prevent injury to CWM and was about two steps away from maneuvering into a position to take the shot.

At this point Officer Grivna concluded he was out of options. Widmark was not responding to orders or entreaties from the officers, and he was getting more animated in his swinging of the knife towards CWM. Officer Grivna believed that unless he ended the situation that CWM would be stabbed. Officer Grivna fired his rifle one time, striking Widmark in the head. Widmark fell to the ground and CWM was escorted to safety.

When later asked by investigators if he had considered using his Taser rather than firearm, Officer Grivna indicated that he had consciously considered that, but because the hostage was in front of Widmark, with very little of Widmark's body exposed that the use of a Taser simply was not a reasonable option.

The officers immediately approached Widmark to secure him and provide emergency medical attention. Deputy Nichols noticed that Widmark still had the knife in his hand or on his chest. Lt. Kelly who was also helping to secure Widmark recalls grabbing the knife from on or near Widmark and tossing the knife a safe distance down the driveway. (This knife was later photographed at the scene and logged into evidence.) An ambulance was called. It was found that Widmark was still breathing on his own and CPR was not needed, and with trained emergency medical responders on the way, it was decided that it was in the best interest of Widmark to allow the EMT's to provide first aid.

The neighbor directly to the south of the shooting scene, Justin Keith, hears the commotion outside and as soon as he hears the single gunshot he steps outside and begins to video what is happening. The video camera is not time and date stamped, but it does have a time counter. The video begins running as Mr. Keith is leaving the door to his house. The video reveals the officers are just beginning to approach Widmark to secure him. The video seems to be taken from approximately 40- 50' away from the prone form of Widmark, with the officers near him and applying handcuffs. This occurs at the 1:19 mark of the video. The ambulance arrives on scene at the 2:33 mark of the video. At this point Widmark is obviously still alive as he is moving and is lifting his head from the ground. EMT's have Widmark secured onto the stretcher at the 3:41 mark. The ambulance leaves the scene enroute to the hospital at the 4:31 mark of the Justin Keith home video.

These times seem to coincide with the 911 CAD report which reports shot fired at

17:09:09; EMT's on scene and checking airway on Widmark at 17:13:02; and the ambulance arrival at the hospital at 17:19:07. Therefore, it can be established that from the time of the shot, to the time of first evaluation by trained EMT's was 4 minutes or less. From the time of the shot, to Widmark's arrival at the hospital just 10:00 minutes, or slightly under, had elapsed. Unfortunately, even with emergency medical treatment provided to J. Scot Alan Widmark in a very timely matter, his injuries were such that he did not survive.

The postmortem examination of the Mr. Widmark revealed a single gunshot wound to the head that was the cause of death. The examination (and photographs) revealed an abrasion wound at the top of the right index finger, and an impact wound to the right thumb resulting in a large irregular defect and fractures to the 1st and 2nd phalanx of the thumb. The medical examiner concluded that the projectile (bullet) "likely hit the right hand first, fragmented, then continued to enter the right cheek.. and came to rest in the posterior midline base of the skull adjacent to the first vertebra." The path of the bullet traveled from the "decedent's right to left, front to back, and downward."

The importance of these forensic medical findings are that it is demonstrated that there was one shot that came from the right front of Mr. Widmark. Of perhaps more importance the injuries to the right hand indicate conclusively that Mr. Widmark had his right hand raised to head height, and slightly to the right of his face centerline. This would correlate exactly with the statements of Officer Grivna and Deputy Nichols, when they indicated that Widmark held in his right hand a large knife, his hand raised and swinging in a stabbing motion towards CWM.

The autopsy related toxicology examination of Mr. Widmark's blood also revealed the presence of methamphetamine and buprenorphine (a schedule III opioid).

One thing of interest that should be noted on Mr. Keith's home video. At the 2:45 mark he remarks into the microphone "gun shot to the back". When asked about this he explained that he believed he had heard this remark from one of the police officers at the scene while Widmark was being secured. It would seem that Mr. Keith misunderstood what he heard, as none of the officers on the scene recall making such a comment, but more importantly the forensic evidence clearly establish that Mr. Widmark received one gunshot to the front of his head, and absolutely no gunshot to the back portion of his body.

BCA investigators were later able to interview Mr. Widmark's brother. That brother described J. Scot as suffering from a long term addiction to drugs and depression, and that J. Scot had alienated most other family members over the last couple of years. The brother seemed to be about the only member of the family that kept in some contact with J. Scot, and the last contact had been months prior.

In the aftermath of the incident BCA investigators conducted thorough interviews of all

the law enforcement officers on the scene and many civilians that had witnessed or heard parts of the commotion resulting from the incident. These witness statements and investigative reports have been thoroughly reviewed and the statements either confirm the above narrative, or do not significantly add relevant detail to the narrative. Nowhere in any of the evidence collected or obtained is there anything to suggest the incident from start to finish is different from what is reported herein.

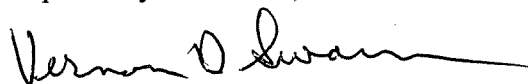
CONCLUSION

The tragic events of November 27th, 2018, were put into motion when J. Scot Alan Widmark forced his way into the county car occupied by June Ebnet, causing her to fear for her safety and flee the car, while having the forethought to remove the car keys and her purse with her when she did. Upon arrival of Lt. Kelly of the Virginia PD, Mr. Widmark was given numerous opportunities to end the situation peaceably without anyone being injured. Instead Mr. Widmark chose to escalate the incident first by producing a large knife and threatening the people at the scene, then by running away, and finally by taking a hostage, using that hostage as a human shield and continuing to threaten the safety and life of that hostage in spite of the best efforts of law enforcement to intervene and end the situation without injury or loss of life to anyone. Mr. Widmark alone rejected all attempts to end the standoff without further violence.

Officer Nicholas Grivna, an experienced and well trained police officer, arrived on the scene to find a grave crisis situation. Widmark was standing in a public street, holding a hostage around the head and neck, and brandishing a large knife towards the hostage. Officer Grivna employed his training and experience to attempt to diffuse the situation as other officers were doing the same. He attempted various verbal techniques to encourage Widmark to drop his knife, release the hostage safely and end the crisis without injury to anyone. It is abundantly clear from the evidence that Officer Nicholas Grivna did not want to employ deadly force against J. Scot Alan Widmark.

Officer Grivna was facing a situation where a private citizen was in grave imminent danger of great bodily harm or death. Officer Grivna, as well as other law enforcement officers on the scene exhibited superb training, courage, restraint and professionalism. The decision by Officer Grivna to use deadly force was well considered, and used as a last resort to protect the life of an innocent civilian. That use of deadly force was fully justified under statutory, and Federal and State case law

Respectfully Submitted,


Vernon D. Swanum