

Gordon P. Coldagelli – Attorney at Law

Review and Report of Officer Involved Use of Deadly Force

Date of Incident: May 4, 2019

**Officers Involved: Deputy Jason Kuhnly, St. Louis County Sheriff's Department
Deputy Troy Fralich, St. Louis County Sheriff's Department**

REVIEWER BACKGROUND

I have been licensed to practice law in the State of Minnesota since 1981. During the final 28 ½ years of my career I was a prosecutor with the St. Louis County Attorney's Office. During my service as a prosecutor I reviewed and evaluated a number of use of force incidents. I also served as an adjunct instructor with the Arrowhead Regional Law Enforcement Training Program. In that capacity I instructed law enforcement officers in the use of force continuum.

In reviewing the incident of May 4, 2019, I would indicate that I am not personally or professionally acquainted with any of the involved law enforcement officers or other witnesses. I was able to review the evidence objectively, with no pre-formed opinions or 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 the use of deadly force by law enforcement officers.

SYNOPSIS

On May 4, 2019, an officer, with the Hermantown Police Department, attempted to conduct a traffic stop of a motorcycle being operated by the suspect/decendent, Timothy Russell Majchrzak, date of birth: 5/19/1981. Majchrzak failed to stop for officers and pursuit ensued. Majchrzak reached speeds in

excess of 100 miles per hour during the course of the pursuit. Due to the excessive speeds being reached, and in the interests of public safety, law enforcement officials terminated the pursuit.

St. Louis County Deputies Kuhnly, Fralich, and Sobczak monitored the call and responded to the general area of the pursuit. The suspect, Majchrzak, was located near the area of the Lakes 10 Theatre, in Hermantown, Minnesota. Majchrzak had abandoned his motorcycle behind a garage in that area. Majchrzak fled on foot as he was being pursued by Deputy Kuhnly who was initially in his squad. When he was no longer able to pursue Majchrzak in his squad, Deputy Kuhnly exited his vehicle to pursue Majchrzak on foot. During the pursuit, Deputy Kuhnly observed Majchrzak had a handgun in his hand. Deputy Kuhnly gave repeated orders to Majchrzak to drop his weapon. Majchrzak responded by placing the muzzle of his handgun to his temple. Deputy Kuhnly continued giving orders to Majchrzak to put down his weapon. Majchrzak pulled the weapon away from his head and fired a shot at Deputy Kuhnly. Deputy Kuhnly and Majchrzak then engaged in what could be described as a running gun battle. Deputy Fralich responded to Deputy Kuhnly's location in his squad. Majchrzak was then struck by Deputy Fralich's squad, essentially ending the confrontation. Majchrzak died at the scene.

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 reasonable 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 reasonable 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 reports of the Minnesota Bureau of Criminal Apprehension
- Recorded interview and transcript of same: Hermantown Police Department Officer John Enright
- Recorded interview and transcript of same: Hermantown Police Department Jeffrey Dwyer
- Recorded interview and transcript of same: St. Louis County Deputy Jason Kuhnly
- Recorded interview and transcript of same: St. Louis County Deputy Troy Fralich
- Recorded interview and transcript of same: St. Louis County Deputy Matthew Sobczak
- Transcript of interview: Rebecca Miller
- Transcript of interview: Aiden Erickson (AAE) Juvenile
- Transcript of interview: Veronica Jean Willoughby
- Transcript of interview: Gage Michael Hanson (GMH) Juvenile
- Transcript of interview: Julie Nason
- Transcript of interview: Alvin Nason
- Deputy Jason Kuhnly squad video
- Autopsy report of Dr. Rebecca Asch-Kendrick
- All reports of the Minnesota Bureau of Criminal Apprehension Laboratory

NARRATIVE

The following is a narrative of the use of deadly force incident that occurred in the City of Hermantown, Minnesota, on May 4, 2019. That use of force resulted in the death of Timothy Russell Majchrzak, date of birth: 05/19/1981. 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.

On the afternoon of May 4, 2019, Officer Jonathan Enright, of the Hermantown Police Department, was on routine patrol travelling southbound on Midway Road. At that time, he clocked a motorcycle travelling at a speed of 75 miles per hour in a posted 55 miles per hour speed zone. Officer Enright made a U-turn, activated his emergency lights, and began pursuing the motorcycle. At that time, he was able to observe that the subject motorcycle was passing cars ahead of him and that he was not gaining any ground on the motorcycle. Officer Enright knew that the driver of the subject motorcycle was fleeing from him. Officer Jeffrey Dwyer, of the Hermantown Police Department, had monitored Officer Enright's call out of the pursuit. Officer Dwyer had a civilian ride along so he was unable to engage in the pursuit. He positioned himself at the intersection of Highway 194 and Midway Road. From there, he observed a motorcycle go past him at a high rate of speed travelling east on Highway 194 towards Miller Trunk. Officer Dwyer followed but did not pursue. Monitoring radio traffic, Officer Dwyer learned that the pursuit had then turned back towards his direction but was terminated due to public safety concerns.

Officer Dwyer then monitored radio traffic reporting a foot pursuit and shots fired in the area of Skyline Bowl. Upon responding he observed Deputy Kuhnly's squad parked perpendicular across Stebner Road. He observed two other St. Louis County squads and an individual lying motionless on the ground.

Officer Dwyer approached the individual lying on the ground. At that time he observed a handgun also on the ground. Officer Dwyer searched the individual for other weapons and recovered additional ammunition and a wallet/money clip. He also observed that the individual was wearing a ballistic vest with a trauma plate.

Deputy Jason Kuhnly, of the St. Louis County Sheriff's Office, had been at the Public Safety Building when he monitored radio traffic reporting that the Hermantown Police Department was in pursuit of a motorcycle travelling over 100 miles per hour. Deputy Kuhnly responded to the area of the pursuit. He was travelling northbound on Miller Trunk Highway when he learned that the pursuit was southbound. About the time he arrived at the junction of Miller Trunk Highway and Lavaque Road he learned that the pursuit had been terminated.

Deputy Kuhnly reported that he observed a motorcycle travelling on Miller Trunk Highway at a high rate of speed. He positioned his squad to block traffic at the intersection of Miller Trunk Highway and Lavaque Road. He then received a radio call from Deputy Matthew Sobczak that he had clocked the motorcycle at over 100 miles per hour. Deputy Kuhnly indicated that when the motorcycle went past his location he observed Sgt. Claire Wagner, of the St. Louis County Sheriff's Office, go by. By this time the pursuit had been terminated but Deputy Kuhnly and Deputy Troy Fralich turned and followed the direction of the motorcycle with no lights or sirens.

Deputy Kuhnly observed Deputy Fralich branch off and travel south bound on Stebner Road. At that time, Deputy Fralich radioed that he did not see the subject motorcycle which should have been visible

if still travelling on Stebner Road. Deputy Fralich radioed that he was going to check the area of the Harley Davidson dealership and the Lakes 10 Theatre.

Deputy Kuhnly proceeded south on Ugstad Road near Village Drive. At that time, he observed a male walking alongside a house. He stated that he recognized the jacket the individual was wearing as the same one being worn by the operator of the fleeing motorcycle. Deputy Kuhnly stated that when he and the male made eye contact, the individual walked backwards and back around the house. Deputy Kuhnly stated that he activated his lights and travelled down Village Drive into the driveway of the house where he had first observed the male walking. Deputy Kuhnly stated that he drove around the house and observed the suspect run from the southeast corner across Stebner Road toward the Skyline Bowl parking lot.

Deputy Kuhnly stated that the suspect ran through the grass, through the ditch, and onto Stebner Road. Deputy Kuhnly stated that he drove into the ditch following the suspect while trying to give radio updates on the situation. He stated that he came out of the ditch and onto Stebner Road, coming to a stop at the curb due to the fact that the hill on the other side of the ditch was too steep to drive. Deputy Kuhnly exited his squad yelling to the suspect, "Stop, you're under arrest". Deputy Kuhnly stated he was still trying to communicate with the suspect telling him to stop. He stated that the suspect reached down and picked up a black object. He stated the suspect then raised the object in the air and to his head. At that time he was able to recognize the object was a handgun. Deputy Kuhnly stated he drew his weapon, pointed it at the suspect, and gave him commands to drop the weapon. Deputy Kuhnly stated the suspect then pulled the weapon down from his head and pointed it at him, at which time he saw a gray puff come out of the barrel. Deputy Kuhnly stated that he returned fire, shooting an unknown number of rounds. He stated that he was thinking to himself he was not hitting the suspect because he was not going down. Deputy Kuhnly stated that the suspect falls and stumbles but comes right back up and is still able to bring his gun up and fire. Deputy Kuhnly states in his interview that he is scared that he is shooting and nothing is happening and the suspect is shooting at him.

Deputy Kuhnly states that the suspect regains his balance and stumbles up the hill but still does not put the gun down. He states the suspect still has the gun in his hand and is still raising it. Deputy Kuhnly states that he continues to fire as he advances on the suspect. Deputy Kuhnly states that as the suspect gets to the top of the hill, out of nowhere, he gets hit by a Chevy Tahoe. Deputy Kuhnly says he sees the suspect get hit and flip over the top of the Tahoe and onto the ground in front of him. He states that he then stops shooting, runs up the hill, discards his magazine, and inserts a full magazine into his weapon. He then proceeded to where the suspect was lying on the ground.

Upon follow-up questioning, Deputy Kuhnly stated that he fired because the suspect turned his firearm away from his head, and toward him. Deputy Kuhnly reported that he distinctly observed something come out of the muzzle of the suspect's weapon. Deputy Kuhnly stated that he was in fear for his life when he was firing and nothing was happening. The suspect was not going down and not staying down. He stated the suspect kept coming up and the weapon kept coming up. He stated that when the suspect was running and stumbling he could still clearly see that the suspect had a weapon in his hand.

Upon further questioning, Deputy Kuhnly did recall that in the early stages of the foot pursuit the suspect had run up the hill, stopped, and came back down the hill a ways. He then observed him pick something up off the ground which he then brought to his head. Deputy Kuhnly reported that is when he identified the object as a firearm.

Deputy Troy Fralich, of the St. Louis County Sheriff's Office, was at the Public Safety Building when he heard the call of the pursuit at approximately 3:00 p.m. He stated that he, along with Deputy Kuhnly, and Deputy Sobczak, left the Public Safety Building to assist. He stated that while en route to the location of the pursuit, he monitored radio traffic indicating that the motorcycle was south bound on Miller Trunk Highway and turned onto Highway 194. He stated that he then heard, via radio, that the Hermantown Police Department had terminated the pursuit. Deputy Fralich stated that he shut off his emergency lights, but then observed the motorcycle go past him on Miller Trunk Highway. He stated that he turned to follow the motorcycle and observed that it had slowed down but was still weaving in and out of traffic. Deputy Fralich stated that he then observed the motorcycle turn onto Stebner Road. Deputy Fralich stated that he turned onto Stebner Road but was unable to see the motorcycle so he believed it had possibly turned into the Lakes 10 Theatre. Deputy Fralich stated that he turned into the Harley Davidson dealership to look for the motorcycle and then heard that Deputy Kuhnly was in foot pursuit of a suspect east bound toward Skyline Bowl.

Deputy Fralich stated that he responded with both lights and siren. He then heard Deputy Kuhnly radio that shots had been fired. He stated that when he responded to the area, he observed Deputy Kuhnly with his gun out and the suspect on the ground. At that time he believed the suspect was complying with directions from Deputy Kuhnly. Deputy Fralich stated that he drove into the lot, at which time he observed the suspect get up and run east bound. He stated that he then observed the suspect turn, with a gun, toward Deputy Kuhnly. Deputy Fralich stated he believed the suspect was going to kill Deputy Kuhnly so he put the pedal to the floor and drove toward the suspect to protect Deputy Kuhnly. Deputy Fralich stated, at the last second, the suspect turned toward the squad just before impact.

Deputy Fralich stated that due to some mechanical issues with his usual squad car he was using a spare squad that was not equipped with a camera.

Also interviewed during the course of the investigation was Veronica Jean Willoughby. Ms. Willoughby stated that she was travelling north bound on Stebner Road on her way to the Skyline Bowl for a birthday party. She stated that she observed a male run from a yard on the west side of the road directly in front of her vehicle. She stated that she had to slam on her breaks to avoid striking the individual. She stated that she then observed a squad driving through the yard following the individual. She stated that the individual was wearing a motorcycle style vest, a red sweatshirt, and jeans. She stated that she observed the individual moving his hands near his waistline. She stated that she saw the suspect drop a black handgun. She stated that she then backed up to try to move to a position of safety. She stopped backing when she saw another squad turn onto Stebner Road from Arrowhead Road. Ms. Willoughby stated that when she looked back she saw the suspect who was shooting at the Deputy. She stated that she observed the Deputy returning fire and that it appeared the suspect was being struck by bullets as he was walking because she could see his body jerk.

Ms. Willoughby stated that the Deputy who had come from behind her vehicle then drove around her as did another squad. She stated that the two then drove through the Skyline Bowl parking lot and that one of the squads struck the suspect. Willoughby stated that she saw the suspect go up in the air and hit the ground.

Aiden Erickson stated that he was a passenger in the vehicle being driven by Veronica Willoughby. He stated that they were travelling from Proctor to the Skyline Bowl for a birthday party. He stated that they were travelling north on Stebner Road when he saw a male with a black "biker vest" running through a yard out onto the road in front of them. He stated that he observed a Sheriff's Office SUV chasing the male through the yard.

Erickson stated that he observed the male run down through the ditch on the east side of the road. He stated that he dropped something black in the ditch and then picked it up. He stated that it turned out to be a gun and that the individual started shooting at the Deputy chasing him. Erickson stated he thought he heard two or three shots fired by the male and then the Deputy shot back. Erickson stated the male was stepping backwards shooting towards the officer. He stated he saw the male fall down, get up, and begin running. He then stated that the male was struck by a different officer driving a marked squad.

Rebecca Miller stated that she had just gotten out of a movie when she heard shots. She looked and observed an individual running and crawling up a hill. She stated that an officer was yelling at the male and pointing what she thought was a taser. Ms. Miller stated she could not hear what was being yelled but noted the suspect was running and looked like he was stumbling up the hill. She could not see the suspect's hands or if he was pointing anything at the officer. She stated that she saw the suspect running and then turned toward the officer. She stated that she heard more shots but could not recall how many. She stated the shots sounded like they came from two different areas and believed they were from both the suspect and the officer.

Miller stated that she saw the male as he got to the top of the hill in the parking area. At that time she saw two more tan vehicles with lights on come flying in and go up the drive. She stated that her phone went off so she looked down. When she looked up again she observed that the squads were parked and the suspect was lying on the ground. Ms. Miller stated she did not see the squads strike the suspect because she had looked down at her phone.

Gage Michael Hanson stated that he was on his way to a birthday party at Skyline Bowl and seated in the front seat of a vehicle being driven by his mother, Rebecca Willoughby. Hanson stated that he observed a male run in front of their car and a cop car coming from the same backyard. He stated that he observed the individual run into the ditch, drop a gun, pick up the gun, and begin shooting at the cop. He stated that the cop shot back. He stated that the guy then got up and ran before getting hit by a police car.

Hansen stated that the guy came back for the gun, turning around and taking two or three steps after he had dropped it. He stated that he picked the gun up and fired at the cop, who then returned fire. He

stated that they guy hit the ground, got back up, and started running again before getting hit by the cop car which was an SUV.

Perhaps the most critical piece of evidence to the review of this incident was the video obtained from Deputy Kuhnly's squad camera. I have attempted to assign time stamps to the following narrative:

00:37 Suspect crosses Stebner Road in front of the van being driven by Veronica Willoughby.

00:38-00:42 Suspect runs through ditch stumbling up hill. Approaching the top of the hill suspect appears to be reaching for his waistband area.

00:43 Suspect pivots and turns to his left back toward the direction of Stebner Road moving back down the embankment.

00:45 Suspect can be seen with right knee and right hand on the ground.

It is approximately during this time period that Deputy Kuhnly can be heard yelling to the suspect that he is under arrest.

00:45-00:46 Suspect gets back to his feet with an object in his right hand. Deputy Kuhnly can be seen with his service weapon drawn and pointed in the direction of the suspect. Deputy Kuhnly's finger is clearly NOT on the trigger.

00:46-00:48 Suspect is walking backwards up the hill. Deputy Kuhnly is moving towards him with his service weapon trained on the suspect. The suspect then raises a handgun and points it at the side of his head.

During this period it is difficult to hear, but it sounds like Deputy Kuhnly is directing the suspect to put the gun down. While this cannot be clearly heard on the video, it would be consistent with Deputy Kuhnly's statement.

00:48-00:50 Deputy Kuhnly takes his left hand off his weapon and appears to reach for his radio microphone. The suspect then takes the gun from his head and comes into a two handed stance, firing a shot at Deputy Kuhnly. Deputy Kuhnly returns fire. The suspect goes to the ground but fires additional shots as Deputy Kuhnly advances.

00:50-01:07 Deputy Kuhnly continues to engage the suspect who stumbles and goes down but continues to get to his feet with the gun still in his hand.

01:05 Deputy Fralich's squad comes into view from Deputy Kuhnly's left. At this point the suspect is quartering towards Deputy Kuhnly with the gun still in his hand.

01:05-01:06 Deputy Kuhnly continues firing at the suspect who still has the gun in his hand and continues to turn in the direction of Deputy Kuhnly. During the same time period Deputy Fralich continues driving toward the suspect.

01:06 Suspect is bringing his gun up into what appears to be a firing position.

01:07 Deputy Kuhnly fires his last shot at the suspect who clearly still has the weapon in his hand. Immediately thereafter, the suspect is struck by Deputy Fralich's squad.

At no time during the course of the incident does Majchrzak indicate or signal an intent to surrender or otherwise discontinue the gunfight with Deputy Kuhnly.

Other law enforcement officers responding to the scene, including Sgt. Claire Wagner, of the St. Louis County Sheriff's Office, and begin administering first aid to the suspect. Emergency medical personnel are requested to respond. The suspect, identified as Timothy Russell Majchrzak, date of birth: 05/19/1981, is pronounced dead at the scene. The Minnesota Bureau of Criminal Apprehension is contacted and requested to respond to investigate.

Recovered at the scene and near the body of Majchrzak is a Hi-point 9 mm handgun and a magazine. It was also determined that Majchrzak was wearing a ballistic (bulletproof) vest while engaged in the gunfight with Deputy Kuhnly.

An autopsy conducted by Dr. Rebecca Asch-Kendrick determined that Majchrzak died as a result of a gunshot wound to his arm and chest. Toxicology reports also indicated the presence of amphetamine and methamphetamine in Majchrzak's blood.

CONCLUSION

The events of May 4, 2019, which culminated in the death of Timothy Russell Majchrzak were put into motion when Majchrzak refused orders by Deputy Jason Kuhnly, of the St. Louis County Sheriff's Office, to drop a handgun he was brandishing. Rather than complying with Deputy Kuhnly's directives, Majchrzak chose instead to fire on Deputy Kuhnly, clearly placing him in danger of great bodily harm or death. In response, Deputy Kuhnly returned fire, with one of his shots causing a fatal wound to Majchrzak. Deputy Fralich, upon hearing the call from Deputy Kuhnly reporting shots fired, responded to assist his fellow law enforcement office. He observed Deputy Kuhnly engaged in a gun battle with Majchrzak and employed the only means available to him at the time, his squad, to protect Deputy Kuhnly from great bodily harm or death at the hands of Majchrzak. The use of deadly force by both Deputy Kuhnly and Deputy Fralich were justified under statutory, federal, and state case law.

Respectfully submitted,

BY: 

Gordon P. Coldagelli