

## Frequently Asked Questions

### **Why did Officer Hanneman shoot so quickly? Why didn't he wait and give Mr. Locke a chance to put his gun down?**

Under Minnesota Statute section 609.066, police officers are not required to wait until the other person actually fires a shot or has their finger on a trigger. Instead, under the current law, a police officer may use deadly force when there is a specific, articulable threat of death or great bodily harm that is reasonably likely to occur but for the officer's use of deadly force without unreasonable delay. In such circumstances, an officer is not required to wait before using deadly force unless it would be objectively reasonable to wait and make additional commands.

Here, the officers had entered the apartment announcing their presence and made commands for Mr. Locke to show his hands before the firearm was seen. By the time the firearm was seen, several officers were in the apartment and Officer Hanneman was standing in the direction that the firearm was pointing. A person can put their finger on the trigger and fire within a split-second, which left little room for a delay that would not have resulted in ongoing risk to everyone in the apartment unit.

Because of this, the law recognizes that there was no opportunity for Officer Hanneman to back away or seek protection because if Mr. Locke had shot his firearm, the result could have been death or great bodily harm to an officer or a person in an adjoining room or apartment if a bullet passed through the walls. For these same reasons, there was also no opportunity for Officer Hanneman to seek less lethal measures. Because, based on these facts, the State would not be able to prove that an objectively reasonable officer in Officer Hanneman's position would not have perceived such a threat, the State would be unable to overcome the defense at trial.

### **Amir Locke might have been sleeping and the officers startled him, so he reacted. How can the officers not be criminally liable for shooting him when they are the ones who startled him?**

We recognize that Mr. Locke may have been sleeping and that he, like others in the apartment, may have perceived the officers' entry to be someone breaking into the apartment. We do not dispute this and believe that it is possible that is exactly what happened here.

Under Minnesota Statute section 609.066, the analysis must be evaluated from the perspective of an objectively reasonable officer in a similar situation, not the victim. In other words, the use of force is viewed through the lens of only the officer, without hindsight. Other factors that may be considered in the totality of the circumstances include the severity of the crime being investigated, whether the suspect posed an immediate threat to the safety of the officers or others, and whether he was actively resisting arrest or attempting to evade arrest by flight.

Because, based on current law, we cannot disprove that Officer Hanneman's use of deadly force was objectively unreasonable, no criminal charge can be filed.

**Would the analysis be different if the officers obtained the no-knock warrant in violation of the City of Minneapolis' policy on no-knock warrants?**

In short, no. In determining whether to file criminal charges, our offices review whether there is sufficient admissible evidence to prove that a crime occurred and to disprove any element of an affirmative defense beyond a reasonable doubt.

The State is not required to prove that a local agency policy was violated, nor is there any statutory affirmative defense for following policy. At best, any violation of a policy is circumstantial evidence that factors into an analysis of whether the conduct at issue was reasonable. But, here, Officer Hanneman was the only officer who used deadly force. He did so after the no-knock warrant had already been obtained. Officer Hanneman was not involved in the process of obtaining that warrant. Instead, he was an operator who was asked to conduct a judicially signed search warrant, which is presumed under the law to be valid. Even assuming if the no-knock warrant had been obtained in violation of Minneapolis' policy, that fact alone would not remove Officer Hanneman's statutory authorization to use deadly force under these circumstances.

Additionally, even if the warrant was obtained in violation of policy, we cannot prove a direct causal link between the request for the no-knock warrant and Mr. Locke's death. To do so would require that the State prove that there was no superseding cause. A superseding cause is an act that occurs after the original act and alters the course of events. Here, there were at least two events that we would not be able to prove beyond a reasonable doubt were not superseding causes.

First, Mr. Locke was holding a firearm that was pointed in Officer Hanneman's direction and with several other officers nearby. It was not until the firearm came into view that deadly force was used. While Mr. Locke's holding the firearm may have been a reasonable response to being startled by the officer's entry, we would be unable to prove beyond a reasonable doubt at trial that Mr. Locke's reaction nor that his possession and holding of the firearm was caused by the use of a no-knock warrant.

Second, Officer Hanneman as an individual officer chose to use deadly force when he saw Mr. Locke holding the firearm. Neither Officer Hanneman nor any other officer had shot at Mr. Locke before this, which suggests that the firearm coming into view altered the course of the events. Thus, the State would be unable to prove beyond a reasonable doubt at trial that the decision to use a no-knock warrant was the proximate cause of Mr. Locke's death, even if it violated Minneapolis policy.

**Why not just file charges and let the jury decide? Why are you doing the defense attorney's job for them?**

Prosecutors have an ethical obligation not institute criminal charges not supported by probable cause or in the absence of sufficient admissible evidence to support a conviction. This obligation

is endorsed by the Minnesota Rules of Professional Conduct and the American Bar Association's Criminal Justice Standards for the Prosecution Function. While the defense can raise an affirmative defense to a criminal charge, the State ultimately bears the burden of disproving at least one element of the defense beyond a reasonable doubt to support a conviction. We are required to consider the applicable defenses as part of any charging decision. The requirement that the State disprove of at least one element of the defense essentially becomes an additional element of proving the crime.

Therefore, the State must possess sufficient admissible evidence to prove every element of the crime *and* to disprove at least one element of an applicable affirmative defense before it can file criminal charges. Here, the State does not have sufficient evidence to disprove any element of the affirmative defense beyond a reasonable doubt and, accordingly, cannot file criminal charges.