



DANA NESSEL
ATTORNEY GENERAL

MEMORANDUM

Warrant Denial Memorandum

July 12, 2021

TO: Danielle Hagaman-Clark
Division Chief
Criminal Justice Bureau

APPROVED: B. Eric Restuccia 8.24.2021

Deputy Solicitor General Date

FROM: Robert Hayes
Assistant Attorney General
Criminal Trials and Appeals Division

Check here when Practice Group Manager has final approval authority for the request.

RE: **Request to Deny Warrant**
Due Date for Response: No Due Date
MSP Houghton Shooting Review
AG 2021-321777-B

APPROVED: Danielle Hagaman-Clark 7/21/2021

Division Chief

Date

Recommendation:

I recommend denying charges against MSP officers involved in the officer involved shooting of Ashley Novak.

Facts:

Prior to the shooting Ashley Novak had a history of police involvement. In the past year, police were called to her residence three times for Mental Health-Suicide attempts and once for Domestic Violence. At the time of the incident, Novak was out on bond for the DV charge. On April 9, Novak called 911 and requested someone come to her residence before she “fucking kills someone.” When officers arrived, she was arrested for domestic violence against her boyfriend [REDACTED] and three counts of resisting and obstructing.

When she was released from jail on April 12, she posted pictures on Facebook of her holding a gun at her head with a caption saying “if the cops come, it’s them, then me.”

Novak’s boyfriend was contacted and he believed the pictures were taken from inside his residence and that the gun she was holding was his 9mm. He also said she

had been repeatedly contacting him and it appeared she had been drinking. He said he was not at home, but his father, [REDACTED], was at the residence.

[REDACTED] was contacted by police using the house phone. He stated that four shots had been fired. Police were dispatched to the scene. They again contacted [REDACTED] who said he was in his locked room; he had heard four shots and he thought he heard someone leave. He was not sure where Novak was at that time.

When police arrived, they searched the outside of the residence without locating Novak. They then searched the inside of the residence and failed to locate her as well. About twenty minutes later, they noticed movement from inside a truck parked on the property. A female was identified who was non-compliant with officer commands.

Trooper Narhi made contact with Novak in her vehicle. She refused to come out and refused to show her hands. After some conversation with Novak being defiant, Trooper Narhi reported hearing the slide of a gun rack. Having only found a holster in the home, Narhi was aware that Novak may have a firearm. Novak then pointed the gun at Narhi and Trooper Koskela called out "gun" and everyone took cover.

As the officers moved to safer positions, Novak exited her vehicle with the gun. She continued to refuse commands to put the gun down and started moving back towards the front door of the home. Unfortunately, [REDACTED] had been allowed to reenter the home as it had been previously cleared.

Officers repeatedly asked Novak to drop her gun. Instead, she pointed it at her head and kept yelling to shoot her. Officers all wrote that they feared for their life as Novak continued to point the gun in many directions.

After continuing to ignore officer commands, Novak turned and headed towards the front door, flinging the screen door open to the home. As [REDACTED] was inside and Novak had previously fired four shots, officers feared for [REDACTED] life. Three separate officers fired shots at Novak. It is unknown exactly which officers struck Novak, but she was hit in the midsection and collapsed just inside the house.

[REDACTED] was given commands to leave the house. He did so. While exiting, he grabbed the gun and threw it onto the porch where it was recovered by officers. Medics attended to Novak and she was taken to the hospital. She received non-life-threatening injuries.

Discussion:

Following the incident, officers were interviewed and provided written statements. Each officer indicated they initially feared for their life as Novak was waving a gun around and asking officers to shoot her. She appeared unstable.

When Novak turned to go back into the house, each officer indicated that they were no longer in fear for their own life, but that of [REDACTED] who was inside. Officers were aware of the previous reported shots fired and were clearly aware that Novak possessed a firearm. They said they used their training and experience and decided to fire their weapons. Three separate officers discharged their firearms, while two others who had their weapons pointed at Novak, did not.

MSP has a use of deadly force policy as provided here:

7.2 DEADLY FORCE

A. Deadly force is any use of force that creates a substantial risk of causing death or serious bodily harm.

B. Deadly force is authorized to protect enforcement members or others from what is reasonably believed to be a threat of death or serious bodily harm.

C. Deadly force shall be exercised only when all other reasonable efforts to subdue the subject have failed or reasonable efforts cannot succeed without endangering the life of the enforcement member or others.

D. If a verbal warning is feasible under the circumstances and doing so will not increase the risk of injury to the member or any other person, the enforcement member should identify themselves as a law enforcement officer and give a verbal warning of their intent to use deadly force.

E. Deadly force shall not be used to affect an arrest for a misdemeanor charge or when apprehending a person fleeing from such a charge

It is clear that officers were initially in reasonable fear for their own lives and became in reasonable fear for the life of another. They made reasonable efforts to subdue Novak by shouting commands and attempting to get her to put her gun down. They gave verbal warnings and commands which Novak ignored. The use of force was justified in this situation.

There are numerous videos of the incident which confirm the details in the officers' reports. Body cams were worn by some of the officers and there is one bystander video which shows the incident as well. In each video you can see/hear officers yelling commands to Novak. She then comes from around the house by the truck towards the front door and stands in front of the porch. She continually yells at the officers to shoot her while they implore her to put the gun down. She then turns and flings open the screen door to enter the house. At that time, officers discharge their weapons.

As Novak refused commands and possessed a real threat to officers and then the occupant inside the house. I believe the use of deadly force is justified. No further action should be taken against the officers involved.