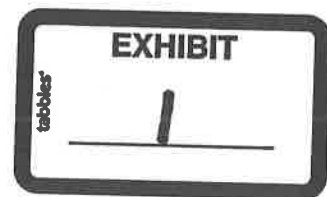


THAO BODY CAMERA VIDEO
(on flash drive)



THAO INTERVIEW
(on flash drive)



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1-100 Written Directives System

1-101 MPD POLICY AND PROCEDURE MANUAL ESTABLISHED (Completely revised 12/5/01)

(A-C)

This manual, referred to as the MPD Policy and Procedure Manual, is general in scope and is meant to inform and guide all employees on matters of department-wide concern. Any division that maintains rules to govern its internal operations shall keep such rules current. Such rules shall not conflict with this manual. All employees of the MPD shall comply with the policies, procedures and rules contained herein. All previous manuals and orders that are in conflict with the contents of this policy and procedure manual are rescinded.

If any section, subsection, item, clause or phrase contained in the Policy and Procedure Manual is found to be illegal, such finding shall not affect the validity of the remaining sections, subsections, items, clauses or phrases of the Policy and Procedure Manual.

1-102 NUMBERING SYSTEM USED IN THE POLICY AND PROCEDURE MANUAL AND REVISIONS (12/05/01)

A decimal system is used to number each volume, chapter, section, and subsection of the Policy and Procedure Manual in order to provide reference to all material.

A typical reference under this system would be "3-249.06."

- The "3" indicates the material is contained in the third volume (3-249.06).
- The "2" indicates the material is contained in Chapter 2 (3-249.06);
- The "49" indicates the material is contained in Section 49 (3-249.06);
- The ".06" indicates the material is contained in Subsection .06 (3-249.06).

Revisions in the manual shall be indicated in the following manner:

- When revisions are made within a paragraph, the revision date will follow the paragraph.
- For any new sections added, or when a section is completely revised, the revision date will follow the title line.
- When a section has been added, removed, or renumbered, subsequent sections shall be renumbered as necessary.

The revision date shall be the date when a Special Order becomes effective.

1-102.01 DISCIPLINARY SYSTEM USED IN THE POLICY AND PROCEDURE MANUAL (12/05/01)

A disciplinary system was implemented to provide a comprehensive, uniform discipline process to assist the Chief of Police in administering a final disposition of employee misconduct in an appropriate and timely manner.

Disciplinary categories or ranges are designated beneath the section numbers throughout the Policy and Procedure Manual. These disciplinary ranges denote the level or range of discipline for violation of the policy or procedure.

EXHIBIT

3

While the MPD Policy & Procedure Manual denotes the discipline category or range for a specific policy violation, disciplinary categories may be enhanced based upon previous sustained violations within the specified reckoning period (see Complaint Process Manual).

Disciplinary categories are listed below for violations of MPD policy and procedure:

Category "A": Training, counseling, documented oral correction.

Category "B": Written reprimand, documented oral reprimand, up to 40 hours suspension.

Category "C": Documented oral reprimand, written reprimand, up to 80 hours suspension, demotion.

Category "D": Up to 720 hours suspension, demotion, termination.

An *example* of the disciplinary range notation in the Policy and Procedure Manual is as follows:

1-101 POLICY AND PROCEDURE MANUAL ESTABLISHED

(A-C)

1-103 HOW TO ACCESS THE POLICY AND PROCEDURE MANUAL: EMPLOYEE RESPONSIBILITY (12/05/01)

All MPD employees shall be provided instructions on how to access the online Policy and Procedure Manual. Employees shall be held accountable for knowing how and where to access the manual and for knowing the contents of the manual. Employees shall sign a receipt, acknowledging responsibility for knowing the contents of the manual and that they have received instructions on how and where to access the manual. Receipts shall be filed in the employee's Personnel File. Manual revisions are prepared by the Operations Development Unit

1-103.01 REQUESTS FOR AMENDMENTS (12/05/01)

Requests for revisions, additions, or deletions to the MPD Policy and Procedure Manual shall be forwarded to the Operations Development Unit supervisor. A final decision regarding any policy changes will be made by the Chief or his/her designee.

1-104 KNOWLEDGE OF ORDERS (12/05/01)

(A-C)

Employees shall be held accountable for knowing the contents of all orders and Administrative Announcements issued, including those that have been disseminated during their absence from work. The written and online publications shall be made available to all MPD employees for reference purposes.

1-105 PERSONNEL ORDERS (12/05/01)

Personnel Orders are issued only by the Chief of Police or a designated Bureau Head. They may be distributed to all or just specific precincts, units or divisions. Personnel Orders are issued to announce the following:

- The appointment of new employees
- The assignment or transfer of employees from one unit to another
- The promotion or demotion of employees from one rank to another
- Special Duty assignments
- Training assignments

- Career development
- Details
- Dismissal or reinstatement of an employee
- Resignation, retirement or death of an employee

The Commander of the Administrative Services Division or his/her designee may exercise limited authority to approve Special Duty Personnel Orders. This authority is limited to short-term Special Duty assignments that have been budgeted and approved by the employee's Commander. All out-of-town travel must be approved by the appropriate Bureau Head.

All Personnel Orders shall be color coded white and bear a serial number beginning with the letter "P," followed by a two-digit year, a hyphen, and a two-digit number of the order for that year. Example: P01-102 (Personnel Order 102 of 2001). To issue a Personnel Order, a serial number must be obtained from Training Unit staff, who maintains a log of Personnel Orders for tracking purposes. Maintenance of original Personnel Orders is the responsibility of MPD Human Resources. (04/01/93)

1-106 SPECIAL ORDERS (12/05/01)

Special Orders are issued only by Research/Policy Development and are pre-approved by the Chief of Police, Assistant Chief or a designated Bureau Head. Special Orders are issued to announce new, revised, or deleted policies and procedures. (7/19/07)

Special Orders are sent to all precincts, units and divisions and are incorporated into the online Policy & Procedure manual. Special Orders are also sent via e-mail department-wide and employees shall be accountable for knowing the content of Special Orders.

The Commander of the Administrative Services Division or his/her designee may exercise limited authority to approve minor Special Orders when a Bureau Head is not available.

All Special Orders shall be color coded green and bear a serial number beginning with the letter "S," followed by a two-digit year, a hyphen, and a three-digit number of the order for that year.

Example: S01-005 (Special Order 5 of 2001). The Special Order log shall be maintained by the Research/Policy Development Unit. Maintenance of original Special Orders is the responsibility of the Research/Policy Development Unit. (7/19/07)

1-107 DISTRIBUTION AND READING OF ORDERS (12/05/01)

(A)

Orders are issued to all affected precincts, units and divisions. They shall be read at each roll call the appropriate number of times so that all employees are notified and then placed in the precinct, unit or division loose-leaf binder. They shall be maintained for one year. Distribution will be noted on each document as follows:

- Distribution A: All precincts, units and divisions.
- Distribution B: Specified precincts, units and divisions.

1-108 ADMINISTRATIVE ANNOUNCEMENTS (12/05/01)

(A)

Administrative Announcements are issued to announce general information. While not an order or policy change, directives in the Administrative Announcement shall be followed. The Chief of Police, Bureau Heads and precinct, unit or division commanders issue Administrative Announcements. Supervisors may issue an Administrative Announcement with their commander's permission.

To issue an Administrative Announcement, an AA number must be obtained from Police Administration staff, who maintains a log of Administrative Announcements for tracking purposes. Administrative Announcements must contain an AA number and approval signature prior to distribution. Individual units are responsible for distribution.

Administrative Announcements are sent to all precincts, units and divisions. Administrative Announcements shall be read at roll call the appropriate number of times so that all employees are notified and then placed in the precinct/unit or division loose-leaf binder or posted on a bulletin board/clipboard. They shall be maintained for one year or until the retention date has expired.

All Administrative Announcements shall be color coded yellow and bear a serial number beginning with the letter "A", followed by a two-digit year, a hyphen, and a three-digit number of the announcement for that year. Example: A01-012, refers to Administrative Announcement 12 of 2001. The distribution list is located on the MPD intranet website under "MPD Documents."

1-109 JOB ANNOUNCEMENTS (12/05/01)

Administrative Job Announcements shall be forwarded to the Manager of the Administrative Services Division for approval, a Job Announcement (JA) log number and the addition of any required Human Resources language prior to issuance. All Administrative Job Announcements shall be posted on a bulletin board/clipboard until the position closes. The Operations Development Unit maintains a log of all Administrative Job Announcements and is responsible for distribution.

Job Announcements shall be colored coded salmon and bear a serial number beginning with the letters "JA," followed by a two-digit year, a hyphen, and a three-digit number of the job announcement for that year. Example: JA01-014 refers to Job Announcement 14 of 2001.

1-110 TRAINING ANNOUNCEMENTS (12/05/01)

Training Announcements are issued to announce training information and are issued by the Training Unit. Training Announcements shall be read at each roll call the appropriate number of times so that all employees are notified and then placed in the precinct/unit/division loose-leaf binder or posted on a bulletin board/clipboard. They shall be maintained for one year or until the retention date has expired. Training Unit staff shall maintain a log of Training Announcements and are responsible for distribution. Training Announcements are issued to all precincts, units and divisions. All Training Announcements are approved by the Commander of the Training Unit.

All Training Announcements shall be colored coded blue and bear a serial number beginning with the letter "TA," followed by a two-digit year, a hyphen and a three-digit number of the training announcement for that year. Example: TA01-005, refers to Training Announcement 5 of 2001.

1-111 INTEROFFICE COMMUNICATION (12/05/01)

Inter-office communication is an informal way of communicating specific information within an organizational component. It may not change policy or procedure. This can only be done through a Special Order or at the direction of the Chief of Police.

1-112 PROCEDURE MANUALS (12/05/01)

(A)

Supervisors who maintain specialized procedure manuals for their unit shall ensure that their procedure manuals are updated as unit procedures change. Procedure manuals shall be current and a copy shall be provided to the Operations Development Unit, as they may be used for discovery

1-100 Written Directives System - City of Minneapolis

purposes. Each manual shall contain basic operational procedures for the unit. Examples of specific units that maintain such manuals are:

- Property & Evidence Unit
- Chemical Testing Unit
- MECC
- Recruit Academy
- Identification Division (Chemical Health & Hygiene)
- Watch Commanders' Office (Watch Commanders' Manual)
- Internal Affairs (Complaint Process Manual)
- Emergency Response Unit (ERU)

Last updated May 14, 2013

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5-100 Code of Conduct

5-101 CODE OF CONDUCT DEFINED

The code of conduct of the Minneapolis Police Department is promulgated by the Chief of Police by authority of the City Charter, Chapter 6, Section 1, as amended. This code is established to promote efficiency, discipline, and good public relations in setting forth policy governing the conduct of all Department employees.

The conduct of police officers is governed by the MPD Policy and Procedure Manual and applicable State and Federal law. All employees of the Minneapolis Police Department are required to maintain a working knowledge of and to obey the code of conduct, civil service rules, Departmental rules, policies, procedures and orders, ordinances of the City of Minneapolis, the laws of the State of Minnesota and the United States. The failure of an MPD employee to comply with the standards of conduct set forth in the Manual and in law will subject the employee to discipline and/or legal action. All disciplinary actions taken will be in accordance with Civil Service rules and provisions. (10/20/88) (12/01/08)

5-101.01 TRUTHFULNESS (01/26/05) (11/15/13)

The integrity of police service is based on truthfulness. Officers shall not willfully or knowingly make an untruthful statement, verbally or written, or knowingly omit pertinent information pertaining to his/her official duty as a Minneapolis Police Officer.

MPD employees shall not willfully or knowingly make an untruthful statement or knowingly omit pertinent information in the presence of any supervisor, intended for the information of any supervisor, or before any court or hearing. Officers shall not make any false statements to justify a criminal or traffic charge or seek to unlawfully influence the outcome of any investigation. (12/14/07)

These requirements apply to any report, whether verbal or written, concerning official MPD business including, but not limited to, written reports, transmissions to MECC and officers via radio, telephone, pager, e-mail or MDC.

MPD employees are obligated under this policy to respond fully and truthfully to questions about any action taken that relates to the employee's employment or position regardless of whether such information is requested during a formal investigation or during the daily course of business. (12/14/07)

5-101.02 VIOLATIONS OF THE CODE OF CONDUCT (03/13/07) (11/15/13)

Any member of the Department who violates the code of conduct is subject to discipline. Discipline may range from a written reprimand to termination. Discipline shall be imposed following a sustained violation. Refer to Civil Service Rule 11.03 regarding discipline. (11/16/94) (03/08/95) (03/13/07) (11/15/13)

The Chief of Police may relieve a departmental employee with pay pending an investigation of an alleged violation of criminal law, or a violation of the code of conduct. Administrative leave is not discipline. (03/08/95) (03/13/07)

Probationary employees may be dismissed from service for failing to meet minimum performance standards or probationary training standards for violations of the code of conduct or for any other legal reason. There is no right of appeal for probationary employees unless the probationary employee is a veteran as provided by Civil Service Rules 11.06 and 11.07. (03/13/07)

http://www.ci.minneapolis.mn.us/police/policy/mpdpolicy_5-100_5-100

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Employees who no longer meet minimum job qualifications or who are no longer able to perform the essential functions of their job, for a period of 90 days or more due to a criminal conviction, court ordered restriction, driver's license restriction, POST license restriction or other adverse legal action due to criminal behavior are subject to termination from employment. (03/13/07)

5-102 CODE OF ETHICS (08/01/91)

(A-D)

All sworn and civilian members of the department shall conduct themselves in a professional and ethical manner at all times and not engage in any on or off-duty conduct that would tarnish or offend the ethical standards of the department. Employees shall abide by the City's Ethics in Government Policy, Chapter 15. (05/23/07)

5-102.01 MINNESOTA LAW ENFORCEMENT CODE OF ETHICS (08/01/91)

(A-D)

MINNESOTA LAW ENFORCEMENT CODE OF ETHICS:

"As a Minnesota Law Enforcement Officer, my fundamental duty is to serve mankind; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all to liberty, equality and justice.

I will keep my private life unsullied as an example to all; maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both by personal and official life, I will be exemplary in obeying the laws of the land and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I will never act officiously or permit personal feelings, prejudices, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear of favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of the police service. I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession...law enforcement."

5-103 USE OF DISCRETION

(A-D)

The police profession is one that requires officers to use considerable judgment and discretion in the performance of their daily duties. Officers have a large body of knowledge from Department policies and procedures, training, their own professional police experience and the experiences of their fellow officers to guide them in exercising proper judgment and discretion in situations not specifically addressed by Department rules and regulations. In addition, officers must always adhere to the following principles in the course of their employment with the Minneapolis Police Department:

- **POLICE ACTION - LEGALLY JUSTIFIED:** Officers must act within the limits of their authority as defined by law and judicial interpretation, thereby ensuring that the constitutional rights of individuals and the public are protected. All investigative detentions, pedestrian and vehicle

stops, arrests, searches and seizures of property by officers will be based on a standard of reasonable suspicion or probable cause in accordance with the Fourth Amendment of the U.S. Constitution and statutory authority. Officers must be able to articulate specific facts, circumstances and conclusions that support reasonable suspicion or probable cause. (11/17/15)

- **EQUALITY OF ENFORCEMENT:** Officers shall provide fair and impartial law enforcement to all citizens.
- **LOYALTY:** Officers shall be faithful to their oath of office, strive to uphold the principles of professional police service, and advance the mission of the Department.

5-104 IMPARTIAL POLICING (06/27/01) (11/17/15)

(A-D)

- A.** The MPD is committed to unbiased policing and to reinforcing procedures that ensure that police service and law enforcement is provided in a fair and equitable manner to all.
- B.** No person shall be singled out or treated differently as a consequence of his/her race, ethnicity, national origin, gender, sexual orientation or religion.
- C.** Except as provided below, officers shall not consider race, ethnicity, national origin, gender, sexual orientation or religion in establishing either reasonable suspicion or probable cause:

Officers may take into account the reported race, ethnicity, gender or national origin of a specific suspect or suspects on credible, reliable, recent, locally-based information that links specific suspected unlawful or suspicious activity to a particular individual or group of individuals of a particular race, ethnicity, gender or nationality. This information may be used in the same way officers use specific information regarding age, height, weight, etc. about specific suspects. (12/24/01)

5-104.01 PROFESSIONAL POLICING (12/24/01) (12/01/08)

Officers shall use the following practices when contacting any citizen, regardless of the reason for the contact: (07/24/15)

- Be courteous, respectful, polite and professional.
- Introduce or identify themselves to the citizen and explain the reason for the contact as soon as practical, unless providing this information will compromise the safety of officers or other persons.
- Ensure that the length of any detention is no longer than necessary to take appropriate action for the known or suspected offense. (07/24/15)
- Attempt to answer any relevant questions that the citizen may have regarding the citizen/officer contact, including relevant referrals to other city or county agencies when appropriate.
- Provide name and badge number when requested, preferably in writing or on a business card.
- Explain and/or apologize if you determine that the reasonable suspicion was unfounded (e.g. after an investigatory stop).
- If asked, provide the procedures for filing a complaint about police services or conduct.

5-105 PROFESSIONAL CODE OF CONDUCT (01/05/16)

(A-D)

A. General

1. Sworn employees shall give their name and badge number to any person upon request. (01/05/16)

Civilian employees shall give their name and employee number to any person upon request. (01/05/16)

2. Employees shall conduct themselves in the buildings and offices of the Department in a manner which would not discredit the Department.
3. Employees shall treat all fellow employees with respect. They shall be courteous and civil at all times with one another. When on duty in the presence of other employees or the public, officers should be referred to by rank.
4. Employees shall use reasonable judgment in carrying out their duties and responsibilities. They need to weigh the consequences of their actions. (04/01/05) (05/03/05) (01/05/16)
5. Employees shall be decorous in their language and conduct. They shall refrain from actions or words that bring discredit to the Department. (04/01/93) (01/05/16)
6. Employees shall not display material that may be considered discriminatory, derogatory, or biased in or on City property. Specifically, discriminatory, derogatory or biased materials regarding race, color, creed, religion, ancestry, national origin, sex, affectional preference, disability, age, marital status, public assistance, or familial housing are prohibited. Such materials include, but are not limited to, calendars, cartoons, and posters. (10/18/92)
7. Employees who are required to drive a department vehicle as part of their official duties shall maintain a valid driver's license that is accepted by the State of Minnesota at all times as a condition of employment, and shall immediately report loss or limitation of driving privileges to their supervisor and to the Internal Affairs Unit. (04/23/10) (01/05/16)
8. Employees shall immediately report any violation of rules, regulations, or laws that come to their attention to the Internal Affairs Unit, regardless of the violator's assignment or rank within the Department.
 - a. Employees must immediately, or as soon as reasonably possible, report any misconduct at the scene of an incident to their supervisor or the supervisor at the scene, as well as to the Internal Affairs Unit. This includes, but is not limited to, unreasonable force. (07/28/16)
9. Any employee charged, arrested, or cited for Driving Under the Influence (DUI) or a non-traffic violation, or notified they are being investigated for a criminal offense, shall immediately notify their chain of command and Internal Affairs or an on-duty supervisor, who will notify the Internal Affairs Unit. Notification shall consist of personal telephone communication (no voicemail messages) or written contact. Required information is the formal charge or allegation, date, time, and jurisdiction of alleged occurrence, and any special or relevant factors. (4/1/05)

Employees will also notify the Internal Affairs Unit of the disposition at the time the charge or case is disposed. (10/28/94) (03/12/99)

10. When an employee is notified that an Order for Protection (OFP), Restraining Order (RA), or a Harassment Order (HA) has been filed against him or her, the employee shall immediately notify Internal Affairs and provide a copy of the OFP, RA, or HA, and the date

scheduled for hearing the allegations made in support of the request for the order. The information is required for department compliance with Federal Law 18 U.S.C. Sec. 922 (g) (8). (01/05/2000)

11. Employees shall not publicly criticize or ridicule the Department, its policies or other employees as to the performance of their duties in a manner which is defamatory, obscene, unlawful, or in any other manner which impairs the effective operation of the Department or in a manner which displays a reckless or knowing disregard for the truth. This regulation shall not be construed so as to impair the exercise of free speech by employees on matters of public concern.
12. Employees shall avoid regular or continuous associations or dealings with persons whom they know, or should know, are under criminal investigation or indictment or who have a reputation in the community or Department for present involvement in criminal behavior, except as necessary in the performance of official duties, or when unavoidable because of family ties to the employee.
13. Employees shall not engage or participate in any form of illegal gambling at any time except in the performance of duty under specific orders of a superior officer.

B. Drugs and Alcohol (01/05/16)

1. Employees shall not bring to or keep any alcohol or non-prescribed controlled substance on departmental premises except for evidentiary purposes.
2. Off-duty employees shall not carry any firearm or ammunition while under the influence of alcohol or any controlled substance. (05/05/89) (04/01/93)
3. Employees shall not consume alcoholic beverages while on duty or in uniform unless it's necessary in the performance of a non-uniformed officer's undercover work. (3/12/99)
4. No employee shall be under the influence of alcohol or any controlled substance while on duty.
 - a. All over-the-counter and prescription drug use shall be in accordance with the Employee Health and Wellness policy (P/P Section 3-500).
 - b. All drug and alcohol testing shall be conducted in accordance with the conditions and procedures in the MPD Drug and Alcohol Testing policy (P/P Section 3-1000).
5. A reading of .02 blood/alcohol concentration is considered under the influence of alcohol.

C. Language (01/05/16)

These provisions apply to all forms of communication, including but not limited to electronic communication and social networking. These provisions are in addition to the conditions in the Computer Use and Electronic Communication policy (P/P 4-220) and the Social Networking policy (P/P 7-119).

1. (A-D) Employees shall not use derogatory, indecent, profane or unnecessarily harsh language in the performance of official duties or while representing the MPD.

2. (C-D) Employees shall not use any discriminatory, derogatory or biased terms regarding race, color, creed, religion, ancestry, national origin, sex, affectional preference, disability, age, marital status, public assistance, or familial housing.

D. Cases and Investigations

1. Employees shall not interfere with any criminal investigation being conducted by this department or any other law enforcement agency.
2. Employees shall not knowingly communicate in any manner, either directly or indirectly, any information that may assist persons suspected or accused of criminal acts to escape arrest or punishment or which may enable them to dispose of evidence.
3. Employees shall not recommend a dismissal, reduction of charges, or other disposition of a pending criminal case which has been previously filed in any criminal court or before a grand jury except by written approval of their division commander. A copy of the approval will be kept in the case file.
4. Employees shall not interfere with the attendance of witnesses or their testimony through coercion, bribery or other means.
5. Employees shall not attempt to have any traffic citation reduced, voided, or stricken from the calendar for personal or monetary consideration. (See Dismissal of Traffic/Parking Charges and Citations)

E. Sworn Employees

1. All officers are required to take appropriate police action toward aiding a fellow officer exposed to danger or in a situation where danger may be impending.
2. On-duty officers shall, at all times, take appropriate action within their jurisdiction, to protect life and property, preserve the peace, prevent crime, detect and arrest violators of the law, and enforce all federal, state and local laws and ordinances. (02/28/93)
3. Uniformed officers shall render a military salute to the National Anthem, United States Flag or ceremonies at appropriate times. Officers in civilian dress shall render proper civilian honors to the United States Flag and National Anthem at appropriate times.

Uniformed officers at parades need salute only the massed national colors at the head of the parade. When the flag is six paces from the officer, the flag shall be faced and a hand salute rendered until the flag is six paces beyond the officer. Other United States Flags may be saluted if the officer's immediate attention to duty is not necessary.

F. Gifts, Money and Property

1. Any money other than that received from unclaimed properties paid or sent to any employee as a result of on-duty police action shall be promptly forwarded to MPD Finance. (03/21/97)
2. All property received as a result of on-duty police action shall be forwarded to the Property and Evidence Unit. The Property and Evidence Unit shall dispose of unclaimed property

according to their policy and procedure manual. The property shall be disposed of by being sent to the City Store or to the Minneapolis Police Relief Association in accordance with state law. (03/21/97)

3. Employees shall not act as an intermediary in the payment of a reward for the return of stolen property without written authorization by the Chief of Police or his/her designee.
4. Employees shall not purchase, or have purchased for them, any auto/property sold at a city auction. Employees are also prohibited from owning any such auto/property purchased at a city auction for one year after the date that the auto/property is sold at the city auction. (01/10/97)
5. Employees shall pay all debts when due and shall not undertake any financial obligations which they know or should know they will be unable to meet. An isolated instance of financial irresponsibility will not be grounds for discipline except in unusually severe cases. However, repeated instances of financial difficulty may be cause for disciplinary action. Filing for a voluntary bankruptcy petition shall not, by itself, be cause for discipline. Financial difficulties stemming from unforeseen medical expenses or personal disaster shall not be cause for discipline provided that a good faith effort to settle all accounts is being undertaken. (10/20/88)
6. Soliciting or accepting personal gifts: (05/23/07)
 - a. Employees shall not solicit or accept any gift from an interested person, lobbyist or principal who has a direct financial interest in a decision that that the employee is authorized to make.
 - b. Exceptions. The prohibitions in this section do not apply if the gift is:
 - i. A campaign contribution as defined in Minnesota Statutes, Section 10A.01, subd 11;
 - ii. A service to assist an official in the performance of official duties, including, but not limited to providing advice, consultation, information and communication in connection with legislation, or services to constituents;
 - iii. A service of insignificant monetary value;
 - iv. A plaque or similar memento recognizing individual services in a field of specialty or to a charitable cause;
 - v. A trinket or memento of insignificant value;
 - vi. Informational material of unexceptional value;
 - vii. Food or a beverage given at a reception, meal or meeting away from the recipient's place of work by an organization before who the recipient appears to make a speech or answer questions as part of the program;
 - viii. Given because of the recipient's membership in a group, and an equivalent gift is given to the other members of the group; or
 - ix. Given by an interested person, lobbyist, or principal who is a related person to the recipient, unless the gift is given on behalf of someone who is not a related person.

- c. An employee who receives any gift prohibited by this section shall return, dispose of, or request that the city council accept the gift on behalf of the city.

5-105.01 PROFESSIONAL CODE OF CONDUCT – DEPARTMENT-SANCTIONED SOCIAL EVENTS (02/22/05)

(A-D)

In an effort to remain professional at all times, including department-sanctioned social events, the following guidelines shall be followed:

- Officers are not allowed to solicit door prizes while on-duty or in the name of the Minneapolis Police Department for an event.
- Attendance at off-duty events is optional.
- Awarding alcoholic beverages as door prizes is prohibited.
- Complimentary alcoholic beverages are prohibited.
- If the event is not held on police department property, advertising at a public establishment connecting the gathering to the MPD is prohibited.
- Officers drinking alcoholic beverages at any department-sanctioned event are prohibited from carrying any firearms.
- Supervisors, while in attendance at said events, are reminded that they are responsible for the actions of officers under their command at an event.
- Inappropriate behavior at an event should immediately be reported to a supervisor.

If security is needed for an event, arrangements should be made by the organizer.

5-106 ON-DUTY CODE OF CONDUCT (06/18/18)

(A-D)

- A. Officers shall respond without delay to calls for police service unless otherwise directed by proper authority.
1. Emergency calls for service shall take precedence. However, all dispatched calls shall be answered as soon as possible consistent with departmental procedures.
 2. If officers need to temporarily go out-of-service on a detail or otherwise be unavailable for calls, they shall notify their immediate supervisor and request permission for such details. (03/25/08)
- B. Employees shall remain alert, observant, and occupied with police business during their tour of duty.
1. When on duty, employees shall devote their entire attention to the business of the Department.
 2. It is a violation of this order for employees to conduct personal or private business while on duty or for officers to engage in policing for private interests while on duty.
- C. Employees shall not make referrals to any attorney or other business from on-duty contacts.
- D. Employees shall not allow anyone not employed by the Department to enter a police facility without permission of a supervisor.
1. Employees shall not permit any person to enter a police facility to sell goods, offer them for sale, or to canvas or solicit for any purpose without authorization from the facility's acting commander.

- E. Officers working uniformed patrol or in a marked squad who wish to go out of service for a meal break shall request OTL status from the MECC dispatcher. The request must include the requested OTL location. The dispatcher may grant or deny OTL status based on call load and staffing levels. (9/7/05)
1. Employees shall not take excessive time for meals and officers working two-officer squads must take OTL at the same time. (9/7/05)
 2. No more than three marked or unmarked squads may be OTL at the same public location unless officers are also participating in a community event. (9/7/05)

5-107 PROCEDURAL CODE OF CONDUCT

(A-D)

1. No officer shall arrest any person or search any premises except with a warrant or where such arrest or search is authorized without warrant under the laws of the United States.
2. No officer shall falsely arrest, or direct any malicious prosecution against any person.
3. No employee shall willfully mistreat or give inhumane treatment to any person held in custody.
4. Officers shall not render aid or assistance in civil cases except to prevent an immediate breach of the peace or to quell an existing disturbance. Officers may inform any citizen of the steps necessary to institute a civil suit or advise citizens on protecting their rights.
5. Employees shall not willfully misrepresent any matter, sign any false statement or report, or commit perjury before any court, grand jury or judicial hearing.
6. Employees shall not knowingly remove or destroy, or cause such action, to any report, document, or record without authorization.
7. Employees shall not give any lawyer, bondsman, agent of either, or any other person unauthorized or confidential information regarding prisoners in confinement, suspects in a case, property held, or records of the Department.
8. Employees shall not make known any information concerning the progress or future actions to be taken on an open investigation to any person not authorized to receive such information by the case investigator or the commanding officer of the investigating unit.

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5-300 Use of Force

5-301 PURPOSE (10/16/02) (08/17/07) (07/28/16)

- A. Sanctity of life and the protection of the public shall be the cornerstones of the MPD's use of force policy.
- B. The purpose of this chapter is to provide all sworn MPD employees with clear and consistent policies and procedures regarding the use of force while engaged in the discharge of their official duties. (Note: MPD Training Unit Lesson Plans – Use of Force, are used as a reference throughout this chapter.)

5-301.01 POLICY (10/16/02) (08/17/07)

Based on the Fourth Amendment's "reasonableness" standard, sworn MPD employees shall only use the amount of force that is objectively reasonable in light of the facts and circumstances known to that employee at the time force is used. The force used shall be consistent with current MPD training.

5-301.02 STATE REQUIREMENTS (10/11/02)

The MPD shall comply with Minn. Stat. §626.8452 to establish and enforce a written policy governing the use of force, including deadly force and state-mandated pre-service and in-service training in the use of force for all sworn MPD employees.(08/17/07)

5-302 USE OF FORCE DEFINITIONS (10/16/02) (10/01/10)

Active Aggression: Behavior initiated by a subject that may or may not be in response to police efforts to bring the person into custody or control. A subject engages in active aggression when presenting behaviors that constitute an assault or the circumstances reasonably indicate that an assault or injury to any person is likely to occur at any moment. (10/01/10) (04/16/12)

Active Resistance: A response to police efforts to bring a person into custody or control for detainment or arrest. A subject engages in active resistance when engaging in physical actions (or verbal behavior reflecting an intention) to make it more difficult for officers to achieve actual physical control. (10/01/10) (04/16/12)

Deadly Force: Minn. Stat. §609.066 states that: "Force which the actor uses with the purpose of causing, or which the actor should reasonably know creates a substantial risk of causing death or great bodily harm. The intentional discharge of a firearm other than a firearm loaded with less-lethal munitions and used by a peace officer within the scope of official duties, in the direction of another person, or at a vehicle in which another person is believed to be, constitutes deadly force." (10/01/10)

Flight: Is an effort by the subject to avoid arrest or capture by fleeing without the aid of a motor vehicle. (10/01/10)

Great Bodily Harm: Bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ, or other serious bodily harm.

Non-Deadly Force: Force that does not have the reasonable likelihood of causing or creating a substantial risk of death or great bodily harm. This includes, but is not limited to, physically subduing, controlling,

capturing, restraining or physically managing any person. It also includes the actual use of any less-lethal and non-lethal weapons. (08/17/07)

Objectively Reasonable Force: The amount and type of force that would be considered rational and logical to an "objective" officer on the scene, supported by facts and circumstances known to an officer at the time force was used. (08/17/07)

Passive Resistance: A response to police efforts to bring a person into custody or control for detainment or arrest. This is behavior initiated by a subject, when the subject does not comply with verbal or physical control efforts, yet the subject does not attempt to defeat an officer's control efforts. (10/01/10) (04/16/12)

Use of Force: Any intentional police contact involving:(08/17/07) (10/01/10)

- The use of any weapon, substance, vehicle, equipment, tool, device or animal that inflicts pain or produces injury to another; or
- Any physical strike to any part of the body of another;
- Any physical contact with a person that inflicts pain or produces injury to another; or
- Any restraint of the physical movement of another that is applied in a manner or under circumstances likely to produce injury.

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 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.

5-303.01 DUTY TO INTERVENE (07/28/16)

(A-D)

- A. Sworn employees have an obligation to protect the public and other employees.
- B. It shall be the duty of every sworn employee present at any scene where physical force is being applied to either stop or attempt to stop another sworn employee when force is being inappropriately applied or is no longer required.

**5-304 THREATENING THE USE OF FORCE AND DE-ESCALATION (10/16/02) (06/01/12)
(07/28/16)**

(A-D)

A. Threatening the Use of Force

As an alternative and/or the precursor to the actual use of force, MPD officers shall consider verbally announcing their intent to use force, including displaying an authorized weapon as a threat of force, when reasonable under the circumstances. The threatened use of force shall only occur in situations that an officer reasonably believes may result in the authorized use of force. This policy shall not be construed to authorize unnecessarily harsh language. (08/17/07) (07/28/16)

B. De-escalation

Whenever reasonable according to MPD policies and training, officers shall use de-escalation tactics to gain voluntary compliance and seek to avoid or minimize use of physical force. (06/01/12) (07/28/16)

1. When safe and feasible, officers shall:
 - a. Attempt to slow down or stabilize the situation so that more time, options and resources are available.
 - i. Mitigating the immediacy of threat gives officers more time to call additional officers or specialty units and to use other resources.
 - ii. The number of officers on scene may make more force options available and may help reduce overall force used.
 - b. Consider whether a subject's lack of compliance is a deliberate attempt to resist or an inability to comply based on factors including, but not limited to:
 - Medical conditions
 - Mental impairment
 - Developmental disability
 - Physical limitation
 - Language barrier
 - Influence of drug or alcohol use
 - Behavioral crisis

Such consideration, when time and circumstances reasonably permit, shall then be balanced against incident facts when deciding which tactical options are the most appropriate to resolve the situation safely.

2. De-escalation tactics include, but are not limited to:

- Placing barriers between an uncooperative subject and an officer.
- Containing a threat.
- Moving from a position that exposes officers to potential threats to a safer position.
- Reducing exposure to a potential threat using distance, cover or concealment.
- Communication from a safe position intended to gain the subject's compliance, using verbal persuasion, advisements or warnings.
- Avoidance of physical confrontation, unless immediately necessary (e.g. to protect someone or stop dangerous behavior).
- Using verbal techniques to calm an agitated subject and promote rational decision making.
- Calling additional resources to assist, including more officers, CIT officers and officers equipped with less-lethal tools.

5-305 AUTHORIZED USE OF DEADLY FORCE (08/17/07) (08/18/17)

A. Statutory Authorization

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.”

B. United States Supreme Court: *Tennessee v. Garner*

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

The *Tennessee v. 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*.”

C. Sworn MPD employees shall recognize that:

- 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.

D. For the safety of the public, warning shots shall not be fired.

E. Moving/Fleeing Motor Vehicles

1. Officers are strongly discouraged from discharging firearms at or from a moving motor vehicle.
2. Officers should consider their positioning and avoid placing themselves in the path of a vehicle when possible. If officers find themselves positioned in the path of a vehicle they should, when possible, tactically consider moving out of the path of the vehicle instead of discharging a firearm at it or any of its occupants.

F. Officers' Actions that Unnecessarily Place Themselves, Suspects, or the Public at Risk

1. Officers shall use reasonableness, sound tactics and available options during encounters to maximize the likelihood that they can safely resolve the situation.
2. A lack of reasonable or sound tactics can limit options available to officers, and unnecessarily place officers and the public at risk.

5-306 USE OF FORCE – REPORTING AND POST INCIDENT REQUIREMENTS (08/17/07)

Any sworn MPD employee who uses force shall comply with the following requirements:

Medical Assistance: As soon as reasonably practical, determine if anyone was injured and render medical aid consistent with training and request Emergency Medical Service (EMS) if necessary.

Supervisor Notification and CAPRS Reporting Requirements**No CAPRS Report Required**

Unless an injury or alleged injury has occurred, the below listed force does not require a CAPRS report or supervisor notification.

- Escort Holds
- Joint Manipulations
- Nerve Pressure Points (Touch Pressure)
- Handcuffing
- Gun drawing or pointing

CAPRS Report Required – No Supervisor Notification required

The following listed force requires a CAPRS report, but does not require supervisor notification.

- Takedown Techniques
- Chemical Agent Exposures

CAPRS Report Required - Supervisor Notification Required

All other force, injuries or alleged injury incidents require both a CAPRS report and supervisor notification. The sworn employee shall remain on scene and immediately notify a supervisor by phone or radio of the force that was used.

Supervisors shall not conduct a force review on their own use of force. Any other supervisor of any rank shall conduct the force review. (04/16/12)

A CAPRS report entitled "FORCE" shall be completed as soon as practical, but no later than the end of that shift. A supplement describing the use of force incident in detail shall be completed and entered directly into the CAPRS reporting system (no handwritten force reports). Employees shall ensure that all applicable force portions of the CAPRS report are completed in full.

Sworn employees shall complete a CAPRS report entitled "PRIORI" for all incidents in which a person has a prior injury, or prior alleged injury, and there is actual physical contact or transportation by the police.

Transfer of Custody

Prior to transferring custody of a subject that force was used upon, sworn MPD employees shall verbally notify the receiving agency or employee of:

- The type of force used,
- Any injuries sustained (real or alleged) and
- Any medical aid / EMS rendered

5-307 SUPERVISOR FORCE REVIEW (08/17/07) (12/15/09)

On-duty Supervisor Responsibilities

The supervisor who is notified of a Use of Force incident by any sworn MPD employee shall:

1. Determine if the incident meets the criteria for a Critical Incident. If so, follow Critical Incident Policy (P/P 7-810). (09/23/15)
2. Instruct the involved employees to have the subject of the use of force remain on-scene until the supervisor arrives, if it is reasonable to do so.
 - If the subject of the use of force does not remain on-scene, the supervisor shall go to the subject's location, if necessary, to complete the investigation.
3. Respond to the incident scene and conduct a preliminary investigation of the Use of Force incident. (09/23/15)
 - a. Debrief the employee(s) who engaged in the use of force.
 - b. Note any reported injury (actual or alleged) to any individual involved.
 - c. Photograph: (09/23/15)

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- the force subject, including any visible injuries
 - the immediate area of the force event
 - injuries to any other individual involved in the force event
 - damage to equipment or uniforms caused by the force event
- d. Note any medical aid/EMS rendered to any individual involved.
- e. Locate and review any evidence related to the force incident (e.g. MVR, security video, private cameras, etc.). (12/15/09)
- f. Ensure any on-scene evidence is preserved and collected.
- g. Locate and identify witnesses to the use of force incident. (12/15/09)
- h. Obtain statements from witnesses to the use of force incident.
- i. Contact the Internal Affairs Unit Commander immediately by phone if the force used appears to be unreasonable or appears to constitute possible misconduct. (04/16/12)
4. Complete and submit the Supervisor Use of Force Review and Summary in CAPRS as soon as practical, but prior to the end of that shift.
- a. Ensure that all actions taken in the preliminary investigation process and the information obtained from these actions are included in the Summary and that all other relevant information is entered in the appropriate sections of the report. (12/15/09)
- b. If, based upon the totality of the information available at the time of the report, the supervisor feels that the use of force may have been unreasonable or not within policy, the supervisor will: (04/16/12)
- State in the supervisor force review that they believe the use of force requires further review; and
 - Notify the commander of Internal Affairs of their findings that the force requires further review.
5. Review all sworn employees' CAPRS reports and supplements related to the use of force incident for completeness and accuracy.

5-308 NOTIFICATION OF FIREARM DISCHARGES (10/16/02) (04/30/15)**A. Employee Responsibility**

Any employee who discharges a firearm, whether on or off duty, shall make direct contact with their immediate supervisor or the on-duty Watch Commander and the local jurisdiction as soon as possible **except**: (08/17/07) (04/30/15) (04/05/16)

- While at an established target range;
- While conducting authorized ballistics tests;
- When engaged in legally recognized activities while off-duty.

B. Supervisor Responsibility

1. The supervisor shall respond to any scene in which an employee has discharged a firearm while on-duty or in the course of duty. (04/30/15) (04/05/16)
2. The supervisor is responsible for notifying the Watch Commander and when appropriate, the employee's Deputy Chief and the on-duty Homicide investigator. This does not include the discharge of a firearm with the intention of dispatching an animal, unless it results in injury to a person. (04/30/15) (04/05/16)
3. Notifications to the Internal Affairs Unit shall be made in accordance with the Internal Affairs Call-Out Notification Policy (P/P 2-101). (04/05/16)
4. The advised supervisor shall ensure that drug and alcohol testing is conducted in accordance with the conditions and procedures in the MPD Drug & Alcohol Testing Policy (P/P Section 3-1000). (04/30/15)
5. At any officer-involved shooting incident in which a person is shot, the Critical Incident Policy (P/P Section 7-800) shall be followed. (04/30/15)

C. Reporting Firearms Discharges to the State (10/16/02) (04/30/15)

Minn. Stat. §626.553 requires the Chief of Police to report to the State Commissioner of Public Safety whenever a peace officer discharges a firearm in the course of duty, other than for training purposes or when killing an animal that is sick, injured or dangerous. Written notification of the incident must be filed within 30 days of the incident. The notification shall include information concerning the reason for and circumstances surrounding discharge of the firearm. The Internal Affairs Unit supervisor shall be responsible for filing the required form(s) with the State Bureau of Criminal Apprehension. (04/05/16)

5-309 WRITTEN REPORT ON DISCHARGE OF FIREARMS (10/16/02)

All employee firearm discharges that require notification, other than Critical Incidents, shall be reported in CAPRS, including a supplement, by the employee involved and the supervisor who was notified. The report shall be titled, "DISWEAP." The supervisor shall then complete a Supervisor Force Review. (08/17/07)

If the involved employee is unable to make a CAPRS report, the supervisor shall initiate the CAPRS report.

The Watch Commander shall include all case numbers on the Watch Commander log.

5-310 USE OF UNAUTHORIZED WEAPONS (10/16/02) (08/17/07)

Sworn MPD employees shall only carry and use MPD approved weapons for which they are currently trained and authorized to use through the MPD Training Unit. If an exigent circumstance exists that poses an imminent threat to the safety of the employee or the public requiring the immediate use an improvised weapon of opportunity, the employee may use the weapon. (08/17/07)

5-311 USE OF NECK RESTRAINTS AND CHOKE HOLDS (10/16/02) (08/17/07) (10/01/10) (04/16/12)**DEFINITIONS I.**

Choke Hold: Deadly force option. Defined as applying direct pressure on a person's trachea or airway (front of the neck), blocking or obstructing the airway (04/16/12)

Neck Restraint: Non-deadly force option. Defined as compressing one or both sides of a person's neck with an arm or leg, without applying direct pressure to the trachea or airway (front of the neck). Only sworn employees who have received training from the MPD Training Unit are authorized to use neck restraints. The MPD authorizes two types of neck restraints: Conscious Neck Restraint and Unconscious Neck Restraint. (04/16/12)

Conscious Neck Restraint: The subject is placed in a neck restraint with intent to control, and not to render the subject unconscious, by only applying light to moderate pressure. (04/16/12)

Unconscious Neck Restraint: The subject is placed in a neck restraint with the intention of rendering the person unconscious by applying adequate pressure. (04/16/12)

PROCEDURES/REGULATIONS II.

- A. The Conscious Neck Restraint may be used against a subject who is actively resisting. (04/16/12)
- B. The Unconscious Neck Restraint shall only be applied in the following circumstances: (04/16/12)
 1. On a subject who is exhibiting active aggression, or;
 2. For life saving purposes, or;
 3. On a subject who is exhibiting active resistance in order to gain control of the subject; and if lesser attempts at control have been or would likely be ineffective.
- C. Neck restraints shall not be used against subjects who are passively resisting as defined by policy. (04/16/12)
- D. After Care Guidelines (04/16/12)
 1. After a neck restraint or choke hold has been used on a subject, sworn MPD employees shall keep them under close observation until they are released to medical or other law enforcement personnel.
 2. An officer who has used a neck restraint or choke hold shall inform individuals accepting custody of the subject, that the technique was used on the subject.

5-312 CIVIL DISTURBANCES (08/17/07)

Civil disturbances are unique situations that often require special planning and tactics to best bring an unlawful situation under effective control. The on-scene incident commander shall evaluate the overall situation and determine if it would be a reasonable force option to use less-lethal or non-lethal weapons to best accomplish that objective.

Unless there is an immediate need to protect oneself or another from apparent physical harm, sworn MPD employees shall refrain from deploying any less-lethal or non-lethal weapons upon any individuals involved in a civil disturbance until it has been authorized by the on-scene incident commander.

The riot baton is a less-lethal weapon that shall only be deployed for carry or use during, or in anticipation to, a civil disturbance.

5-313 USE OF CHEMICAL AGENTS – POLICY (10/16/02) (08/17/07) (10/01/10) (09/04/12)

The MPD approved chemical agent is considered a non-lethal use of force. The use of chemical agents shall be consistent with current MPD training and MPD policies governing the use of force (Policy and Procedure Manual, Sections 5-300 Use of Force).

Chemical agents, regardless of canister size, shall only be used against subjects under the following circumstances: (06/10/13)

- On subjects who are exhibiting Active Aggression, or;
- For life saving purposes, or;
- On subjects who are exhibiting active resistance in order to gain control of a subject and if lesser attempts at control have been or would likely be ineffective, or; (06/10/13)
- During crowd control situations if authorized by a supervisor. (See 5-312 Civil Disturbances) (09/04/12) (06/10/13)

Chemical agents shall not be used against persons who are only displaying Passive Resistance as defined by policy. (09/04/12) (06/10/13)

Sworn MPD employees shall exercise due care to ensure that only intended persons are exposed to the chemical agents.

5-313.01 USE OF CHEMICAL AGENTS – POST EXPOSURE TREATMENT/MEDICAL AID (10/01/10)

Post exposure treatment (Medical Aid) for a person that has been exposed to the chemical agent shall include one or more of the following:

- Removing the affected person from the area of exposure.
- Exposing the affected person to fresh air.
- Rinsing the eyes/skin of the affected person with cool water (if available).
- Render medical aid consistent with training and request EMS response for evaluation at anytime if necessary

Sworn employees shall keep a person exposed to the chemical agent under close observation until they are released to medical or other law enforcement personnel. An officer who has used a chemical agent shall inform individuals accepting custody that it was used on the person.

Use of chemical agents to prevent the swallowing of narcotics is prohibited.

A CAPRS report shall be completed when chemical agents are used.

5-314 USE OF CONDUCTED ENERGY DEVICES (CED) – DEFINITIONS (08/17/07) (10/01/10)

Drive Stun: When a CED with no cartridge or a spent cartridge is placed in direct contact with the body with no documented effort to attempt three point contact.

Probe Mode: When a CED is used to fire darts at a person for the purpose of incapacitation.

Exigent Circumstances: Circumstances that would cause a reasonable person to believe that immediate action is necessary to prevent physical harm from occurring to anyone.

Red Dotting: Un-holstering and pointing a CED at a person and activating the laser aiming device. In some cases, this may be effective at gaining compliance without having to actually discharge a CED. Also known as "painting" the target.

Arcing: Un-holstering the CED and removing the cartridge and activating the CED for purposes of threatening its use prior to actual deployment. In some cases, this may be effective at gaining compliance without having to actually discharge a CED at a subject.

5-314.01 USE OF CONDUCTED ENERGY DEVICES (CED) – POLICY (10/01/10) (07/16/12)

The MPD approved Conducted Energy Device (CED) (Policy and Procedure Manual, Section 3-200 Equipment) is considered a less-lethal weapon. The use of CED's shall be consistent with current MPD training and MPD policies governing the use of force (Policy and Procedure Manual, Section 5-300 Use of Force). (07/16/12)

MPD officers are only authorized to carry CEDs that are issued by the department. Personally owned Tasers, or those issued by another agency, are not authorized to be carried or utilized while an MPD officer is acting in their official MPD capacity. (10/07/13)

The use of CED's shall only be permitted against subjects under the following circumstances:

1. On subjects who are exhibiting active aggression, or;
2. For life saving purposes, or;
3. On subjects who are exhibiting active resistance in order to gain control of a subject and if lesser attempts at control have been or would likely be ineffective.

CED's shall not be used against subjects who are demonstrating passive resistance as defined by policy. (07/16/12)

The preferred method for use of CED's is in the probe mode. Use of CED's in the drive stun mode shall be limited to defensive applications and/or to gain control of a subject who is exhibiting active aggression or exhibiting active resistance if lesser attempts at control have been ineffective.

When using a CED, personnel should use it for one standard cycle (a standard cycle is five seconds) and pause to evaluate the situation to determine if subsequent cycles are necessary. If subsequent cycles are necessary, officers should restrict the number and duration to only the minimum amount necessary to control and/or place the subject in custody under the existing circumstances. Personnel should constantly reassess the need for further activations after each CED cycle and should consider that exposure to multiple applications of the CED for longer than 15 second may increase the risk of serious injury or death.

Note: Officers should be aware that a lack of change in a subject's behavior often indicates that the electrical circuit has not been completed or is intermittent. When this is the case officers should immediately reload and fire another cartridge rather than administering continued ineffective cycles.

Unless exigent circumstances exist as defined by policy, no more than one officer should intentionally activate a CED against a subject at one time.

Officers shall, unless it is not feasible to do so, give verbal warnings and/or announce their intention to use a CED prior to actual discharge. Use of the CED's laser pointer (red dotting) or arcing of the CED may be effective at diffusing a situation prior to actual discharge of the CED.

The CED shall be holstered on the sworn MPD employee's weak (support) side to avoid the accidental drawing or firing of their firearm. (SWAT members in tactical gear are exempt from this holstering requirement.)

Lost, damaged or inoperative CED's shall be reported to the CED Coordinator immediately upon the discovery of the loss, damage or inoperative condition. (07/16/12)

Officers who use their MPD issued CED device during the scope of off-duty employment within the City shall follow MPD policy and procedure for reporting the use of force and downloading their device. (07/16/12)

If officers carry their MPD issued CED during the scope of off-duty employment outside of the City (e.g. working for another law enforcement agency) that agency shall sign a waiver (Letter of Agreement for Off Duty Employment) which indicates that certification through the Minneapolis Police Department is sufficient for use while working for that agency. (07/16/12)

5-314.02 USE OF CONDUCTED ENERGY DEVICES (CED) – SUBJECT FACTORS (10/01/10)

Officers must consider the possible heightened risk of injury and adverse societal reaction to the use of CED's upon certain individuals. Officers must be able to articulate a correspondingly heightened justification when using a CED upon:

- Persons with known heart conditions, including pacemakers or those known to be in medical crisis;
- Elderly persons or young children;
- Frail persons or persons with very thin statures (i.e., may have thin chest walls);
- Women known to be pregnant;

Prior to using a CED on a subject in flight the following should be considered:

- The severity of the crime at issue;
- Whether the suspect poses an immediate threat to the safety of the officer or others, and;
- The officer has a reasonable belief that use of the CED would not cause significant harm to the subject fleeing unless use of deadly force would otherwise be permitted.

5-314.03 USE OF CONDUCTED ENERGY DEVICES (CED) – SITUATIONAL FACTORS (10/01/10)

In the following situations, CED's should not be used unless the use of deadly force would otherwise be permitted:

- On persons in elevated positions, who might be at a risk of a dangerous fall;
- On persons operating vehicles or machinery;

- On persons who are already restrained in handcuffs unless necessary to prevent them causing serious bodily injury to themselves or others and if lesser attempts of control have been ineffective.
- On persons who might be in danger of drowning;
- In environments in which combustible vapors and liquids or other flammable substances are present;
- In similar situations involving heightened risk of serious injury or death to the subject.

5-314.04 USE OF CONDUCTED ENERGY DEVICES (CED) – DOWNLOADING/REPORTING (10/01/10) (07/16/12)

Officers are required to report all actual use of their CED consistent with the downloading and reporting guidelines outlined below. (07/16/12)

CED Downloading guidelines:

- The CED (and camera if equipped) shall be downloaded, when used in probe mode or drive stun mode, prior to the end of the officer's shift.
- The CED (and camera if equipped) shall be downloaded for any incident that is recorded that the officer believes might have evidentiary value.
- If a CED was used during a critical incident, the CED will be property inventoried by the Crime Lab for processing video and firing data evidence.

CED Reporting guidelines:

- When a CED is deployed and discharged on a subject, the officer shall report its use in CAPRS (including a Use of Force Report and in the supplement) as well as on the officer's CED log. Officers shall document de-escalation attempts in the Use of Force Report and in their supplement. (07/16/12)
- When a CED is only threatened by means of displaying, red dotting, and/or arcing in situations which normally would require a CAPRS report, the threatened use shall be reported in CAPRS in the supplement of the report as well as on the officer's CED log. (07/16/12)
- When a CED is only threatened by means of displaying, red dotting, and/or arcing without actually being deployed on a subject and there is no arrest or CAPRS report otherwise required, the officer may record this threatened use on their CED log and add such comments into the call. (07/16/12)
- When a CED is used during the scope of off-duty employment outside of the City (e.g. another law enforcement agency) officers shall obtain a Minneapolis CCN from MECC and complete a CAPRS report titled AOA and refer to their employer's incident report in the supplement. Officers shall then download the device and store the information under the Minneapolis CCN. (07/16/12)

5-314.05 USE OF CONDUCTED ENERGY DEVICES (CED) – POST EXPOSURE TREATMENT/MEDICAL AID (10/01/10)

Post exposure treatment (Medical Aid) for a person that has been exposed to the electricity from the CED shall include the following:

1. Determine if the subject is injured or requires EMS.
2. Render medical aid consistent with training and request EMS response for evaluation at anytime if necessary

3. Request EMS response for probe removal if probes are located in sensitive areas (face, neck, groin or breast areas).
4. Wear protective gloves and remove probes from the person's non-sensitive body areas.
5. Secure the probes (biohazard "sharps") point down into the expended cartridge and seal with a safety cover.
6. When appropriate, visually inspect probe entry sites and/or drive stun locations for signs of injury.
7. When appropriate, photograph probe entry sites and/or drive stun locations.

Sworn employees shall routinely monitor the medical condition of a person who has been exposed to the electricity from a CED until they are released to medical or other law enforcement personnel and inform individuals accepting custody that a CED was used on the person. (10/01/10)

5-315 USE OF IMPACT WEAPONS - POLICY (08/17/07) (10/01/10)

The MPD approved impact weapons (Policy and Procedure Manual, Section 3-200 Equipment) are considered less-lethal weapons. The use of impact weapons shall be consistent with current MPD Training and MPD policies governing the use of force (Policy and Procedure Manual, Section 5-300).

Strikes from impact weapons shall only be administered under the following circumstances:

- On subjects who are exhibiting active aggression, or;
- For life saving purposes, or;
- On subjects who are exhibiting active resistance in order to gain control of a subject and if lesser attempts at control have been or would likely be ineffective.

Strikes from impact weapons shall not be administered to persons who are non-compliant as defined by policy.

5-315.01 USE OF IMPACT WEAPONS – TREATMENT/MEDICAL AID (10/01/10)

Treatment (Medical Aid) for a person that has been struck with an impact weapon shall include the following:

- Determine if the person is injured or requires EMS
- When appropriate, visual inspect the areas struck for signs of injury
- Render medical aid consistent with training and request EMS response for evaluation at anytime if necessary

Sworn employees shall routinely monitor the medical condition of a person that has been struck with an impact weapon until they are released to medical or other law enforcement personnel. An officer who has used an impact weapon shall inform individuals accepting custody that it was used on the person. (10/01/10)

5-316 MAXIMAL RESTRAINT TECHNIQUE (05/29/02) (06/13/14) (07/13/17) (04/02/18)

(B-C)

I. PURPOSE

To establish a policy on the use of “hobble restraint devices” and the method of transporting prisoners who have been handcuffed with a hobble restraint applied.

II. POLICY

The hobble restraint device may be used to carry out the Maximal Restraint Technique, consistent with training offered by the Minneapolis Police Department on the use of the Maximal Restraint Technique and the Use of Force Policy.

III. DEFINITIONS

Hobble Restraint Device: A device that limits the motion of a person by tethering both legs together. Ripp Hobble™ is the only authorized brand to be used.

Maximal Restraint Technique (MRT): Technique used to secure a subject’s feet to their waist in order to prevent the movement of legs and limit the possibility of property damage or injury to him/her or others.

Prone Position: For purposes of this policy, the term Prone Position means to lay a restrained subject face down on their chest.

Side Recovery Position: Placing a restrained subject on their side in order to reduce pressure on his/her chest and facilitate breathing.

IV. RULES/REGULATIONS

A. Maximal Restraint Technique – Use (06/13/14)

1. The Maximal Restraint Technique shall only be used in situations where handcuffed subjects are combative and still pose a threat to themselves, officers or others, or could cause significant damage to property if not properly restrained.
2. Using the hobble restraint device, the MRT is accomplished in the following manner:
 - a. One hobble restraint device is placed around the subject’s waist.
 - b. A second hobble restraint device is placed around the subject’s feet.
 - c. Connect the hobble restraint device around the feet to the hobble restraint device around the waist in front of the subject.
 - d. **Do not** tie the feet of the subject directly to their hands behind their back. This is also known as a hogtie.
3. A supervisor shall be called to the scene where a subject has been restrained using the MRT to evaluate the manner in which the MRT was applied and to evaluate the method of transport.

B. Maximal Restraint Technique – Safety (06/13/14)

1. As soon as reasonably possible, any person restrained using the MRT who is in the prone position shall be placed in the following positions based on the type of restraint used:
 - a. If the hobble restraint device is used, the person shall be placed in the side recovery position.
2. When using the MRT, an EMS response should be considered.
3. Under no circumstances, shall a subject restrained using the MRT be transported in the prone position.
4. Officers shall monitor the restrained subject until the arrival of medical personnel, if necessary, or transfer to another agency occurs.
5. In the event any suspected medical conditions arise prior to transport, officers will notify paramedics and request a medical evaluation of the subject or transport the subject immediately to a hospital.
6. A prisoner under Maximal Restraint should be transported by a two-officer squad, when feasible. The restrained subject shall be seated upright, unless it is necessary to transport them on their side. The MVR should be activated during transport, when available.
7. Officers shall also inform the person who takes custody of the subject that the MRT was applied.

C. Maximal Restraint Technique – Reporting (06/13/14)

1. Anytime the hobble restraint device is used, officers' Use of Force reporting shall document the circumstances requiring the use of the restraint and the technique applied, regardless of whether an injury was incurred.
2. Supervisors shall complete a Supervisor's Force Review.
3. When the Maximal Restraint Technique is used, officers' report shall document the following:
 - How the MRT was applied, listing the hobble restraint device as the implement used.
 - The approximate amount of time the subject was restrained.
 - How the subject was transported and the position of the subject.
 - Observations of the subject's physical and physiological actions (examples include: significant changes in behavior, consciousness or medical issues).

5-317 LESS-LETHAL 40MM LAUNCHER AND IMPACT PROJECTILES (07/16/19)

I. PURPOSE

A. The MPD recognizes that combative, non-compliant, armed and or otherwise violent subjects cause handling and control problems that require special training and equipment. The MPD has adopted the less-lethal force philosophy to assist with the de-escalation of these potentially violent confrontations.

B. This policy addresses the use of the less-lethal 40mm launcher and the 40mm less-lethal round. The deployment of the 40mm launcher is not meant to take the place of deadly force options.

II. DEFINITIONS

40mm Less-Lethal round: Direct fire round used in situations where maximum deliverable energy is desired for the incapacitation of an aggressive, non-compliant subject.

III. POLICY

A. This policy applies to officers who are not working in a certified SWAT capacity.

B. The 40mm launcher with the 40mm less-lethal round should not be used in deadly force situations without firearm backup.

1. The use of the 40mm less-lethal round should be considered a level slightly higher than the use of an impact weapon and less than deadly force when deployed to areas of the suspect's body that are considered unlikely to cause death or serious physical injury.
2. Prior to using less-lethal options, officers need to consider any risks to the public or themselves.
3. When using the 40mm less-lethal round, consideration shall be given as to whether the subject could be controlled by any other reasonable means without unnecessary risk to the subject, officers, or to the public, in accordance with knowledge and training in use of force and MPD policies governing the use of deadly and non-deadly force.

C. Only officers trained in the use of the 40mm launcher and 40mm less-lethal round are authorized to carry and use them.

D. Officers shall not deploy 40mm launchers for crowd management purposes.

IV. PROCEDURES/REGULATIONS

A. Standard projectiles

1. Officers shall only carry MPD-approved 40mm rounds. Ammunition specifications are available from the Range Master.
2. The MPD Range shall issue 40mm rounds with each launcher depending on the needs of the 40mm Operator Program. The MPD Range shall replace any rounds used or damaged as needed.

B. Target areas

1. The primary target areas for the 40mm less-lethal round should be the large muscle groups in the lower extremities including the buttocks, thigh, knees. Alternative target areas include the ribcage area to the waist, and the larger muscle areas of the shoulder areas. Areas to avoid when using the 40mm less-lethal round are the head, neck, spinal cord, groin and kidneys.
2. Officers shall be aware that the delivery of the 40mm impact projectiles to certain parts of the human body can cause grievous injury that can lead to a permanent physical or mental incapacity or possible death. Areas susceptible to death or possible severe injury are the head, neck, throat and chest (in vicinity of the heart). Unless deadly force is justified, officers should avoid the delivery of 40mm impact projectiles to any of the above-described areas.

C. Deployment

1. The 40mm launchers can be used when the incapacitation of a violent or potentially violent subject is desired. The 40mm launcher can be a psychological deterrent and physiological distraction serving as a pain compliance device.
2. If a supervisor or responding officers believe that there is a call or incident that may require the use of less-lethal capability, they may request via radio or other means that an on-duty MPD-trained operator with a 40mm launcher respond to the scene.
3. Officers shall announce over the radio that a 40mm launcher will be used, when time and tactics permit.
 - a. It is important that whenever possible, all officers involved and possible responding officers know that a 40mm less-lethal projectile is being deployed so they do not mistake the sight and noise from the deployment as a live ammunition discharge.
 - b. 40mm launchers have an orange barrel indicating they are the less-lethal platform.
4. When appropriate given the situation, officers firing a 40mm less-lethal projectile should yell "Code Orange!" prior to and during firing.

D. Carrying and storage

1. 40mm launchers shall be assigned to each precinct, City Hall and specialty units as needed.
 - a. Each 40mm launcher shall be kept its own case and in a secured gun locker.
 - b. Only commanders or their designee and MPD-trained operators will have keys to the 40mm armory lockers.
2. MPD-trained operators shall carry the 40mm launchers during their assigned shift, when available.

E. Maintenance of 40mm launchers

Only MPD certified Range personnel shall perform maintenance and repairs to the 40mm launcher.

F. Subjects injured by 40mm less-lethal projectiles

1. Medical assistance shall be rendered as necessary in accordance with P&P 5-306 and the Emergency Medical Response policy (P&P 7-350).
2. If possible, photographs should be taken of any injuries to the suspect.

G. Use of Force reporting

1. Officers that deploy a 40mm less-lethal round shall report the force in accordance with P&P 5-306, and shall complete a report entitled "FORCE."
2. Officers who deploy a less-lethal round shall immediately notify dispatch, who will notify a supervisor.

3. A supervisor shall respond to the scene any time a 40mm less-lethal round is used. The responding supervisor shall review the incident and complete a use of force review in accordance with P&P 5-307.
4. Supervisors shall ensure that all spent 40mm less-lethal rounds are collected and property inventoried if possible.

5-318 REMOTE RESTRAINT DEVICE (10/18/19)

I. PURPOSE

- A. The MPD recognizes that combative, non-compliant, armed or otherwise violent subjects cause handling and control problems that require special training and equipment.
- B. The purpose of a remote restraint device is to facilitate a safe and effective response by immobilizing and controlling resistive or non-compliant persons and persons with known or suspected mental health issues, and minimizing injury to suspects, subjects, and officers.

II. DEFINITIONS

Remote Restraint Device: The BolaWrap™ is the only currently authorized remote restraint device. It is a hand-held device that discharges an eight-foot bola style Kevlar tether to entangle an individual at a range of 10-25 feet.

III. POLICY

- A. The remote restraint device has limitations and restrictions requiring consideration before its use. The device shall only be used when its operator can safely approach the subject within the operational range of the device. Although the device is generally effective in controlling most individuals, officers should be aware that the device may not achieve the intended results and be prepared with other options.
- B. The remote restraint device should not be used in potentially deadly force situations without firearm backup.
 1. When used according to the specifications and training, the device should be considered a low-level use of force.
 2. Prior to using the device, officers need to consider any risks to the public or themselves.
- C. Only officers trained in the use of the remote restraint devices are authorized to carry and use them.
- D. Officers are only authorized to carry department remote restraint devices while on-duty in a patrol response function. Officers shall ensure that remote restraint devices are secured at all times.

IV. PROCEDURES/REGULATIONS

A. Standard devices

Officers shall only carry MPD-approved remote restraint devices, cartridges and cutters. No personally owned remote restraint devices shall be carried or used.

B. Target areas

1. Reasonable efforts should be made to target lower extremities or lower arms.
2. The head, neck, chest and groin shall be avoided.
3. If the dynamics of a situation or officer safety do not permit the officer to limit the application of the remote restraint device to a precise target area, officers should monitor the condition of the subject if it strikes the head, neck, chest or groin until the subject is examined by paramedics or other medical personnel.

C. Deployment

1. The remote restraint device may be used in any of the following circumstances, when the circumstances perceived by the officer at the time indicate that such application is reasonably necessary to control a person:
 - a. The subject is violent or is physically resisting.
 - b. The subject has demonstrated, by words or action, an intention to be violent or to physically resist, and reasonably appears to present the potential to harm officers, themselves or others.
 2. Remote restraint devices should not be used on individuals who are merely fleeing on foot, without other known and articulable facts or circumstances. Prior to using the device on a subject in flight the following should be considered:
 - a. The severity of the crime at issue;
 - b. Whether both of the following apply:
 - The subject poses an immediate threat to the safety of the officer or others, and;
 - The officer has a reasonable belief that using the device would not cause significant harm to the subject fleeing unless use of deadly force would otherwise be permitted.
 3. The aiming laser shall never be intentionally directed into the eyes of anyone as it may permanently impair their vision.
 4. For tactical reasons, the deploying officer should attempt to avoid being the contact officer.
- D. Other deployment considerations**
1. Certain individuals

The use of the remote restraint device on certain individuals should generally be avoided unless the totality of the circumstances indicates that other available options reasonably appear ineffective or would present a greater danger to the officer, the subject or others, and the officer reasonably believes that the need to control the individual outweighs the risk of using the device. This includes:

 - Individuals who are known to be pregnant.
 - Elderly individuals.
 - Children (known to be or who appear to be under the age of 12).
 - Individuals who are handcuffed or otherwise restrained.
 - Individuals detained in a police vehicle.
 - Individuals in danger of falling or becoming entangled in machinery or heavy equipment, which could result in death or serious bodily injury.
 - Individuals near any body of water that may present a drowning risk.
 - Individuals whose position or activity may result in collateral injury (e.g., falls from height, operating vehicles).
 2. Repeated applications of the device

If the first application of the remote restraint device appears to be ineffective in gaining control of an individual, officers should consider certain factors before additional applications of the device, including:

 - Whether the Kevlar cord or barbs are making proper contact.
 - Whether the individual has the ability and has been given a reasonable opportunity to comply.
 - Whether verbal commands, other options or tactics may be more effective.
 3. Dangerous animals

The remote restraint device should not be deployed against an animal as part of a plan to deal with a potentially dangerous animal, such as a dog, etc. This device was not intended for use against animals. However, if the animal reasonably appears to pose an imminent threat to human safety and alternative methods are not reasonably available or would likely be ineffective the

remote restraint device may be deployed to protect against harm to suspects, subjects and officers.

4. Verbal warnings
 - a. When feasible, officers should air a notification on the radio when arriving at a scene with the intention of using a remote restraint device.
 - b. When appropriate given the situation, officers discharging a remote restraint device should yell "Bola, Bola, Bola!" prior to and during discharge.
 - c. Officers shall air a notification on the radio as soon as feasible after discharging a remote restraint device to alert dispatch and other officers that the sound was a device being discharged.
 - d. The fact that a verbal or other warning was given or the reasons it was not given shall be documented by the officer deploying the remote restraint device in the related report.

E. Carrying and storage

1. Officers shall only use department-approved remote restraint devices that have been issued by the Department.
2. Only officers who have successfully completed department-approved training may be authorized to carry and deploy the remote restraint device.
3. All remote restraint devices are clearly and distinctly marked to differentiate them from the duty weapon and any other device.
4. Uniformed and plainclothes officers who have been authorized to carry the remote restraint device shall wear the device in an approved holster on their person or keep the device safely and properly stored in their City vehicle.
5. Officers shall ensure that their remote restraint device is properly maintained and in good working order. Officers shall notify the Training Division of any issues, as the Training Division is in charge of inventory and maintenance of the devices.
6. Officers should not hold both a firearm and the remote restraint device at the same time.

F. Medical treatment

1. Medical assistance shall be rendered as necessary in accordance with P&P 5-306 and the Emergency Medical Response policy (P&P 7-350).
 - a. Additionally, any such individual who falls under any of the following categories should, as soon as practicable, be examined by paramedics or other qualified medical personnel:
 - The person is suspected of being under the influence of controlled substances or alcohol.
 - The person may be pregnant.
 - The remote restraint device pellets are lodged in a sensitive area (e.g., groin, female breast, head, face, neck).
2. Officers on scene shall determine whether transporting the person to a medical facility is necessary to remove the pellets or barbs.
3. If officers determine that cutting the tether is reasonable and appropriate, officers may cut the tether at the scene using medical scissors.

G. Use of Force reporting

1. Officers that deploy a remote restraint device shall report the force in accordance with P&P 5-306, and shall complete a report entitled "FORCE."
2. If a supervisor was not notified prior to deployment, officers who deploy the remote restraint device shall notify a supervisor to respond to the scene.
3. Officers shall document any injuries or points of contact, with photographs whenever possible.
4. A supervisor shall respond to the scene any time a remote restraint device is used. The responding supervisor shall review the incident and complete a use of force review in accordance with P&P 5-307.
5. Supervisors shall ensure that all expended cartridges, pellets, barbs and cord are collected and properly inventoried if possible.

H. Transport of subjects

If an officer transports the subject, the transporting officer shall inform any person providing medical care or receiving custody that the individual has been subjected to the application of the remote restraint device.

I. BolaWrap™ pilot device form

1. In addition to incident and force reporting, deployment of the remote restraint device shall be documented by each discharging officer using the BolaWrap™ Test and Evaluation form. The following information is required on the form:
 - Device and cartridge serial numbers.
 - Date, time and location of the incident.
 - Whether any display or laser deterred a subject and gained compliance.
 - Number of device activations and the duration between activations.
 - Range at which the device was used (as best as can be determined).
 - Locations of impact from any deployments.
 - Whether medical care was provided to the subject.
 - Whether the subject sustained any injuries.
 - Whether any officers sustained any injuries.
2. The Training Division will periodically analyze the report forms to identify trends, including deterrence and effectiveness.

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9-100 Adult Arrests

9-101 FELONY ARRESTS – ADULTS (05/29/02)

(A-B)

All probable cause adult felony arrests must be authorized at the scene of arrest whenever possible. In the event the supervisor is unable to respond to the scene of the arrest, authorization may be given by radio, telephone or MDT/MDC. The probable cause felony arrest may be authorized by:

- The arresting officer's supervisor, or
- An investigator from the concerned investigative unit/division, or
- Any other supervisor

Supervisors will add their remarks via MDT/MDC to indicate their approval of probable cause and also whether they made the approval at the scene or via radio/telephone or MDT/MDC. Arrests made on the basis of warrants or PC pickups do not require supervisor's approval. Prior to transporting arrestees to Hennepin County Adult Detention Center (HCADC), officers should consider a debriefing session. Arrestees shall be taken to HCADC for processing unless requested to be transported to the concerned investigative unit.

The Authority to Detain form (HC 6377) shall be completed. The approving supervisor's name and badge number must be listed in the remarks section of the Authority To Detain form. The name of the supervisor approving the arrest and continued detention of the suspect must be included in the narrative section of the CAPRS report.

The original will be left at the HCADC and the carbon copy shall be given to the Police Typist to accompany the CAPRS report. The 36-Hour Expiration Advisory (HC 6400) shall be completed. In order to comply with the Supreme Court imposed 48-Hour Rule, officers shall note the exact time of arrest. The time of arrest is not when the suspect was booked or when the reports were made. The original 36-Hour Expiration Advisory shall be left at HCADC and the carbon copy will be forwarded with the case to the appropriate investigative unit.

Arrests for criminal sexual conduct (CSC), including PC Pick-ups, require an officer to complete a Criminal Sexual Assault Victim Notification form (HC 6170).

9-101.01 FELONY AND GROSS MISDEMEANOR ARREST REPORT REQUIREMENTS PUBLIC INFORMATION – JUDICIAL PROBABLE CAUSE (05/29/02)

(A-B)

For felony and gross misdemeanor arrests, the following guidelines apply:

In Supplement Zero (0) of the CAPRS data entry screen, a pre-written prompt entitled "Public Information" appears. Following this prompt, officers are to briefly detail an incident/arrest. No names, addresses or any other information that would identify a victim or witness shall be entered in this section of the report.

The next prompt is the Judicial Probable Cause Oath statement. Following this prompt, officers shall write approximately one to two paragraphs detailing the probable cause for the arrest.

Supplement One (1) of the CAPRS report shall describe the entire incident in detail.

In cases of an arrest based on a PC arrest bulletin (PC Pick-up), officers shall attach a PC Pick-up to the CAPRS report. Copies of the PC Pick-up may be obtained from the Transcription Unit's file or MPD Net.

After administering a written or oral oath, peace officers can sign a written report of another officer for the purpose of providing probable cause for the underlying arrest.

Officers shall swear to and sign their Judicial Probable Cause statement in front of an MPD notary. Peace Officers can sign a Probable Cause statement written by another officer for the purpose of providing probable cause for arrest.

MPD notaries shall witness the swearing and signing, and after such fact, shall sign the statement with their signature, license number, and the date their license expires.

The senior officer making the arrest is responsible for making sure all Probable Cause statements are notarized.

Transcription Unit staff shall distribute the signed and sworn statements to the Criminal History Unit during weekend and holiday hours and to the investigative units during normal work hours. Criminal History staff shall fill out the court form and attach it to the arrest report.

This policy also applies to felony arrests of juveniles and to gross misdemeanor arrests.

9â€‘102 **GROSS MISDEMEANOR ARRESTS – ADULTS** (05/29/02)

(A-B)

Supervisor approval is not needed for gross misdemeanor arrests. All other felony arrest procedures apply to gross misdemeanor arrests.

9â€‘103 **MISDEMEANOR ARRESTS – ADULTS (05/29/02) (09/16/04)** (09/14/18)

(A-B)

A. Non-Payable Offenses

1. Adult misdemeanor violators shall be issued citations in lieu of arrest *unless* the officer believes that one of the following circumstances exists:
 - a. To prevent bodily harm to the accused or another.
 - b. To prevent further criminal conduct.
 - c. There is a substantial likelihood that the accused will fail to respond to a citation.
 - d. The officer has found that the accused has an outstanding warrant (not including Sign and Release warrants).
2. Officers making an arrest under one of the circumstances listed above must be able to articulate to the court and shall document in their report the reason(s) why it was necessary to arrest a person rather than issuing a citation.

B. Payable Offenses

When the only misdemeanor charge is a payable offense, officers shall either issue a citation or refer the case for a complaint.

C. Proper Identification

1. Proper identification includes, but is not limited to:

- Minnesota DVS database
 - State-issued identification card or Driver's License
 - Consular ID or matricula consular
 - U.S. or foreign passport
2. In cases where a citation would be issued in lieu of arrest, and
 - The officer cannot establish proper identification of the accused person, *and*
 - The officer has a specific articulable reason to believe the identification information provided is false;
 - a. The officer may transport the accused person to the Hennepin County Jail and the jail will use IBIS to identify them.
 - b. Once the process is finished the officer shall issue the citation or forward for charging by complaint, *and*:
 - i. Transport the person back to the original location; *or*
 - ii. If requested, transport the person to another mutually agreed-upon location in Minneapolis in the general vicinity of the original location; *or*
 - iii. If requested, release the person outside the Hennepin County Jail.
 - c. If the person was not identified through IBIS, the officer shall still release the person after issuing the citation or forwarding for charging by complaint.
 3. Officers shall document the attempts made to identify the individual, the reasons for any transport, and any requests for release or transport outside of the original location.

9-104 ARRESTS FOR DRIVING WHILE INTOXICATED (DWI) (05/29/02)

(A-B)

When suspects are arrested for DWI, they shall be taken to the Chemical Testing office, Room 19, for testing and video taping procedures. Suspects may be released after testing and issued a citation if they meet the conditions for issuing a citation in lieu of arrest.

9-104.01 ARRESTS FOR CRIMES OF VIOLENCE (05/29/02)

(A)

Minn. Stat. §629.72 requires that victims of crimes of violence be notified of an arrested person's release. Domestic assault victims must also be notified of other relevant case information. In order to comply with these laws, officers shall complete a Crime of Violence/Attempt Crime of Violence Information Form (HC 6194). This form shall be left at HCADC when the suspect is booked.

When a juvenile is booked at the Juvenile Detention Center for a crime of violence, a Victim Information Form must be completed. The forms are available at the Juvenile Detention Center.

9â€‘105 ARREST REPORTS/ADULT DETENTION CENTER (05/29/02)

(A)

MPD is required to provide HCADC with a copy of the arrest report. Arrest reports are automatically routed to HCADC via the CAPRS system.

In the event that the CAPRS system is down, arrest reports shall be entered off-line and printed. Officers shall deliver a photocopy of the arrest report to HCADC.

9â€‘106 CITATIONS IN LIEU OF ARREST AND ARREST REPORTS (05/29/02) (03/17/03)

(A)

A CAPRS report must be completed when a citation is issued for the following:

- A nonâ€‘traffic offense;
- A traffic offense charged in connection with an accident;
- Any citizen's arrest;
- Driving after Revocation (DAR);
- Driving after Suspension (DAS);
- Driving after Cancellation (DAC);
- On charges of DWI, Careless Driving, Reckless Driving or any violation of the Open Bottle law.

NOTE: See Volume 8 for procedures for handling Juvenile traffic, criminal and status offenses.

9â€‘107 CITIZEN'S ARRESTS (05/29/02)

(A-B)

Citizen arrests for misdemeanor crimes can only be made when the crime was committed in the complainant's presence.

Citizens making arrests must complete a Citizen's Arrest Form (MP-3406). Security personnel from businesses that make arrests on a regular basis may be allowed to use the standard CAPRS offense report instead of the Citizen's Arrest form.

Officers shall determine whether the circumstances justify taking the accused into custody. If officers feel that the arrest is illegal, the officer shall refer the complainant to the City Attorney's Office.

If the accused is to be taken into custody, officers shall verify the identity of the complainant and assist in completing the Citizen's Arrest Report. Complainants should be advised that the City Attorney will notify them if a formal complaint is needed.

Note: See Manual Section for Citizen's Arrest - Traffic Violation.

9-108 ARREST OR DETENTION OF INJURED ADULTS (05/29/02) (05/19/08) (06/13/14)

(A-B)

- A. Adult arrestees, who are in need of medical attention and are not cleared for booking by EMS or jail staff shall be transported to Hennepin County Medical Center (HCMC) or to a local hospital for medical evaluation and treatment.
- B. Arrested subjects who have a high probability of requiring hospitalization, including those with known or suspected drug ingestion, shall be brought to HCMC whenever possible. Note: HCSO's contract is with HCMC and they prefer to take custody of arrestees at HCMC.
- C. Officers are responsible for the custody of their arrestees while receiving medical attention.
- D. If an injured arrestee is delayed at the hospital longer than the arresting officers are able to wait, officers shall contact a supervisor. Hospital personnel or hospital security will not hold or guard an arrestee.
- E. Officers shall retain custody of arrested felons needing medical attention until the arrestee can be transported to HCJ.
- F. In the case of felony arrestees admitted to the hospital, the arresting officers shall notify their on-duty supervisor, who shall then contact the on-duty jail supervisor to arrange for relief.
- G. Officers assigned to the precinct where the arrest was made shall have custodial responsibility until properly relieved by the Hennepin County Sheriff's Office (HCSO).

9-109 HANDCUFFING ARRESTEES/DETAINEES (05/29/02)

(A-B)

All detainees/arrestees shall be handcuffed behind the back, unless a physical condition or other circumstances including sickness, injury or disability, does not allow for it. Handcuffs should also be double locked as soon as possible. Prisoners being transported to HCADC shall be handcuffed. Prisoners shall be handcuffed whenever taken outside the confines of the jail, except when handcuffing would deter the completion of an investigation. Plastic handcuffs may be used to supplement standard handcuffs in emergency situations. They may also be used in mass arrest situations and are available in all sergeants' vehicles. Plastic handcuffs should not be used in felony arrests or for restraining mentally ill individuals.

9-110 PRISONER CONTROL, SAFETY AND TRANSPORTATION (05/29/02) (07/19/18)

(A-B)

- A. When feasible, a two-officer squad shall be used to transport a felony prisoner.

- B.** One-officer squads may transport misdemeanor prisoners.
- C.** When feasible, a two-officer squad shall transport an arrestee of the opposite sex.
1. Officers transporting an arrestee of the opposite sex shall give MECC their destination and odometer reading.
 - a. Officers shall immediately notify MECC of any delay.
 - b. Upon arrival at their destination, officers shall notify MECC.
- D.** All prisoners shall remain within sight of the transporting officers at all times until the custody of the prisoner is transferred to a responsible authority, except in emergency situations.
- E.** Transporting officers are responsible for ensuring the safety of their prisoners.
1. Prisoners shall be secured with fastened seatbelts during transport in any vehicle equipped with seat belts.
 - a. If the vehicle is not equipped with seat belts in the transportation area, officers shall document in their report the lack of seat belts and the reason(s) that particular vehicle was used for the transport.
 - b. If circumstances prevent officers from safely securing the prisoner, the prisoner will be transported unsecured. The officers must document the specific reason(s) for the unsecured transport in their report.
 2. Transporting officers shall not stop or interrupt prisoner transport responsibilities unless exigent circumstances exist and the risk to the prisoner is minimal.
 3. Under no circumstances shall a prisoner be transported in the prone position. (06/13/14)
- F.** When transporting prisoners to a detention facility, officers shall comply with MPD rules, regulations and requirements until the prisoner is secure within the destination facility. Officers will then comply with the rules, regulations and procedures of the receiving facility. (06/13/14)
- G.** Once the subject is secured, an officer shall watch for any of the following signs: (06/13/14)
- Significant change in behavior or level consciousness;
 - Shortness of breath or irregular breathing;
 - Seizures or convulsions;
 - Complaints of serious pain or injury; and/or
 - Any other serious medical problem.
- H.** If officers observe any serious medical issue, they shall immediately contact EMS or transport directly to a local hospital. Officers shall also notify a supervisor. (06/13/14)
- I.** In the event of a prisoner escape during transport, the transporting officers shall immediately do the following:
1. Notify the dispatcher of the event and location.
 2. Attempt pursuit if possible.
 3. Notify a supervisor or proper jurisdictional authority of the escape.
 4. Complete the original arrest report, noting the escape from custody.

(A)

Officers shall observe legislators' privilege from arrest as set forth in the State of Minnesota Constitution, Article IV, Section 10:

"The members of each house shall in all cases, except treason, felony, and breach of the peace be privileged from arrest during the session of their respective houses, and in going to or returning from the same."

9â€‘112 DIPLOMATIC AND CONSULAR IMMUNITY

(05/29/02)

(A)

Under international and federal law, diplomatic and consular officials are granted varying degrees of immunity and personal inviolability (i.e. freedom from arrest, detention, search etc.) depending on the position they hold. However, the privilege of personal inviolability must be balanced with the responsibility of the United States and its government bodies to protect the safety of its citizens. Police authorities may intervene to the extent necessary to halt activity that poses imminent danger to the safety of the public or when it is apparent that a serious crime may otherwise be committed.

1. Diplomatic agents, family members recognized as part of their household, and members of their administrative and technical staff and their households enjoy full immunity from arrest, detention, criminal prosecution, and search of their person, property or residence.

Members of their service staff have no privileges or immunities except for immunity from prosecution for acts related to performance of their official duties. Family members of the service staff have no privileges or immunity.

Family members of diplomatic agents who are also U.S. citizens have no privileges or immunities. Staff members or their families who are U.S. citizens or permanent residents of the U.S. have no privileges or immunities.

2. Consular officials, their families and staffs have no privileges or immunity related to arrest, detention, or search and seizure. The only exception is that career consular officers enjoy immunity from arrest unless the arrest is pursuant to a felony warrant.

The only authoritative document that can reliably identify a diplomatic or consular official is the identity card issued by the Department of State, Protocol Office. Other documents such as foreign diplomatic passports, U.S. diplomatic visas, tax exemption cards, or vehicle registration issued by the State Department do not conclusively indicate the diplomatic status of an individual. Officers presented with this type of identification should assume that the suspect might have some degree of immunity and attempt to verify further the diplomatic status of the suspect.

The onâ€‘duty Watch Commander must be notified of any incidents involving diplomats or consular officials. These incidents must still be fully documented on the CAPRS reports. The federal government, acting through the State Department may be able to take corrective action against foreign diplomats who violate U.S. criminal law.

9â€‘113 ARREST AND/OR DETENTION OF FOREIGN

NATIONALS (05/29/02)

(A)

It is the obligation of the United States, including local municipalities, to notify foreign authorities when foreign nationals are arrested or otherwise detained.

If a foreign national is arrested or detained, the following must be done:

1. Immediately inform the foreign national of his/her right to have his/her government notified concerning the arrest or detention.
2. If the foreign national asks that such notification be made, do so without delay by informing the consulate or embassy.
3. In the case of certain countries, such notification must be made without delay regardless of whether the arrestee/detainee so wishes. The Operations Development Unit and MECC have a copy of the Foreign Consular Offices in the United States that contains all pertinent phone numbers for Consular/Embassy offices. These are:

- Algeria
- Antigua and Barbuda
- Armenia
- Azerbaijan
- Bahamas
- Barbados
- Belarus
- Belize
- Brunei
- Bulgaria
- China
- Cost Rica
- Cyprus
- Czech Republic
- Dominica
- Fiji
- Gambia
- George
- Ghana
- Grenada
- Guyana
- Hong Kong
- Hungary
- Jamaica
- Kazakhstan
- Kiribati
- Kuwait
- Kyrgyzstan
- Malaysia
- Malta

- Mauritius
- Moldova
- Mongolia
- Nigeria
- Philippines
- Poland (only non-permanent residents)
- Romania
- Russian Federation
- St. Kitts/Nevis
- St. Lucia
- St. Vincent/Grenadines
- Seychelles
- Sierra Leone
- Singapore
- Slovakia
- Tajikistan
- Tanzania
- Tonga
- Trinidad/Tobago
- Tunisia
- Turkmenistan
- Tuvalu
- Ukraine
- United Kingdom
- Uzbekistan
- Zambia
- Zimbabwe

Foreign consular officials have the right to visit their arrested/detained nationals unless the arrestee/detainee objects to such visits.

9-114 POLICE AUTHORITY IN IMMIGRATION MATTERS (05/29/02) (04/02/18)

- A. The United States Code, 8 U.S.C. §1101, empowers the U.S. Citizenship and Immigration Services (USCIS) and Immigration and Customs Enforcement (ICE), Department of Homeland Security, as the sole authority in immigration matters.
- B. The MPD works cooperatively with all federal agencies, but the MPD does not operate its programs for the purpose of enforcing federal immigration laws. In addition, City of Minneapolis Ordinance §19.30 prohibits undertaking “any law enforcement action for the purpose of detecting the presence of undocumented persons, or to verify immigrations status,” except for a narrow exception for enforcing criminal laws such as relating to human trafficking and smuggling where immigration status is an element of the crime.
- C. Officers shall not undertake any law enforcement action for the purpose of detecting the presence of undocumented persons, or to verify immigration status, including but not limited to questioning any person about their immigration status.

1. The **only exception** to this prohibition is when immigration status is an element of a crime. This is a very limited exception and applies only to the types of federal crimes prohibited under 8 U.S.C. §1324, that relate to the crimes of human trafficking and smuggling.
 2. When questioning, arresting, or detaining any person under this exception, the officer must articulate and document the reason the officer believes the exception applies.
- D. Officers will take reports for missing, lost or stolen identification cards for foreign nationals in accordance with P&P 4-600 Specific Report Policies and Procedures.

9-115 **FEDERAL PRISONERS - INCLUDING AWOLS**

(05/29/02)

(A)

For the purposes of this section, AWOL is Absent Without Leave from Military Service. If an officer has a prisoner that they believe has a federal warrant, the officer shall confirm the warrant with Channel 7. The prisoner shall be transported to the Hennepin County Adult Detention Center where the prisoner will be received into custody per Minn. Stat. §641.03.

Last updated Sep 14, 2018



**HENNEPIN COUNTY
MEDICAL EXAMINER'S OFFICE
AUTOPSY REPORT**



ME NO.: 20-3700

CASE TITLE: CARDIOPULMONARY ARREST COMPLICATING LAW ENFORCEMENT
SUBDUAL, RESTRAINT, AND NECK COMPRESSION

DECEASED: George Floyd aka Floyd Perry **SEX:** M **AGE:** 46

DATE AND HOUR OF DEATH: 5-25-20; 9:25 p.m.

DATE AND HOUR OF AUTOPSY: 5-26-20; 9:25 a.m.

PATHOLOGIST: Andrew M. Baker, M.D.

FINAL DIAGNOSES:

46-year-old man who became unresponsive while being restrained by law enforcement officers; he received emergency medical care in the field and subsequently in the Hennepin HealthCare (HHC) Emergency Department, but could not be resuscitated.

I. Blunt force injuries

- A. Cutaneous blunt force injuries of the forehead, face, and upper lip
- B. Mucosal injuries of the lips
- C. Cutaneous blunt force injuries of the shoulders, hands, elbows, and legs
- D. Patterned contusions (in some areas abraded) of the wrists, consistent with restraints (handcuffs)

II. Natural diseases

- A. Arteriosclerotic heart disease, multifocal, severe
- B. Hypertensive heart disease
 1. Cardiomegaly (540 g) with mild biventricular dilatation
 2. Clinical history of hypertension
- C. Left pelvic tumor (incidental, see microscopic description)



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George Floyd

20-3700

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- III. No life-threatening injuries identified
- A. No facial, oral mucosal, or conjunctival petechiae
 - B. No injuries of anterior muscles of neck or laryngeal structures
 - C. No scalp soft tissue, skull, or brain injuries
 - D. No chest wall soft tissue injuries, rib fractures (other than a single rib fracture from CPR), vertebral column injuries, or visceral injuries
 - E. Incision and subcutaneous dissection of posterior and lateral neck, shoulders, back, flanks, and buttocks negative for occult trauma
- IV. Viral testing (Minnesota Department of Health, postmortem nasal swab collected 5/26/2020): positive for 2019-nCoV RNA by PCR (see 'Comments,' below)
- V. Hemoglobin S quantitation (postmortem femoral blood, HHC Laboratory): 38% (see 'Comments,' below)
- VI. Toxicology (see attached report for full details; testing performed on antemortem blood specimens collected 5/25/20 at 9:00 p.m. at HHC and on postmortem urine)
- A. Blood drug and novel psychoactive substances screens:
 - 1. Fentanyl 11 ng/mL
 - 2. Norfentanyl 5.6 ng/mL
 - 3. 4-ANPP 0.65 ng/mL
 - 4. Methamphetamine 19 ng/mL
 - 5. 11-Hydroxy Delta-9 THC 1.2 ng/mL;
Delta-9 Carboxy THC 42 ng/mL; Delta-9 THC 2.9 ng/mL
 - 6. Cotinine positive
 - 7. Caffeine positive
 - B. Blood volatiles: negative for ethanol, methanol, isopropanol, or acetone
 - C. Urine drug screen: presumptive positive for cannabinoids, amphetamines, and fentanyl/metabolite
 - D. Urine drug screen confirmation: morphine (free) 86 ng/mL

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George Floyd
20-3700
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Comments: The finding of sickled-appearing cells in many of the autopsy tissue sections prompted the Hemoglobin S quantitation reported above. This quantitative result is indicative of sickle cell trait. Red blood cells in individuals with sickle cell trait are known to sickle as a postmortem artifact. The decedent's antemortem peripheral blood smear (made from a complete blood count collected 5/25/20 at 9:00 p.m.) was reviewed by an expert HHC hematopathologist at the Medical Examiner's request. This review found no evidence of antemortem sickling.

The decedent was known to be positive for 2019-nCoV RNA on 4/3/2020. Since PCR positivity for 2019-nCoV RNA can persist for weeks after the onset and resolution of clinical disease, the autopsy result most likely reflects asymptomatic but persistent PCR positivity from previous infection.

6/1/2020

X 

Andrew M. Baker, M.D.

Chief Medical Examiner

Signed by: Andrew M. Baker MD

In accordance with HCME policy, this report was reviewed by another board-certified forensic pathologist prior to release.

006785



Hennepin County
Medical Examiner

530 Chicago Avenue
Minneapolis, MN 55415



Press Release Report

Floyd, George Perry

Case No: 2020-3700

Press Release

Decedent: Floyd, George Perry, also known as Perry, Floyd
Age: 46 years
Race: Black
Sex: Male
Address: 3502 Glenhurst Ave
City: St Louis Park State: MN Zip: 55416
Date & Time of Injury: 05/25/2020
Location of Injury: 3759 Chicago Ave
 In front of Cup Foods
 Minneapolis, MN 55407
Date of Death: 05/25/2020
Time of Death: 9:25PM
Location of Death: Hennepin Healthcare - ER
 701 Park Avenue (Hennepin Healthcare - ER)
 Minneapolis, MN 55415

Cause of death: Cardiopulmonary arrest complicating law enforcement subdual, restraint, and neck compression

Manner of death: Homicide

How injury occurred: Decedent experienced a cardiopulmonary arrest while being restrained by law enforcement officer(s)

Other significant conditions: Arteriosclerotic and hypertensive heart disease; fentanyl intoxication; recent methamphetamine use

Please direct any media inquiries to Carolyn Marinan, Hennepin County Communications at carolyn.marinan@hennepin.us.

Comments:

Manner of death classification is a statutory function of the medical examiner, as part of death certification for purposes of vital statistics and public health. Manner of death is not a legal determination of culpability or intent, and should not be used to usurp the judicial process. Such decisions are outside the scope of the Medical Examiner's role or authority.

Under Minnesota state law, the Medical Examiner is a neutral and independent office and is separate and distinct from any prosecutorial authority or law enforcement agency.



026734



Armed Forces Medical
Examiner System

**DEFENSE HEALTH AGENCY
115 PURPLE HEART DRIVE
DOVER AIR FORCE BASE, DELAWARE 19902**

CASE CONSULT

DATE: 10 June 2020

**ACCESSION NUMBER: C0022-20
NAME: George Perry Floyd**

ME CASE NUMBER: ME20-3700 (Hennepin County Medical Examiner's Office)

CONTRIBUTOR: US Department of Justice

CAUSE OF DEATH: Cardiopulmonary arrest complicating law enforcement subdual, restraint, and neck compression

MANNER OF DEATH: Homicide

MATERIALS REVIEWED: Case file including autopsy photographs; Minnesota Police Department General Offense Hardcopy (incident date 5/25/2020); Hennepin County Autopsy report (Dr. Andrew Baker); Video footage from police body cameras and surveillance cameras; emergency medical services and emergency department medical records; interview documents from Federal Bureau of Investigations.

SYNOPSIS:

George Perry Floyd was a 46 year old African-American male who died while in police custody on 25 May 2020 in Minneapolis, MN. Per report, Mr. Floyd was detained under suspicion of forgery. Upon review of the police body camera footage, he was handcuffed and became extremely agitated when officers attempted to place him into a police vehicle. In the subsequent struggle, he was taken to the ground in the prone position with his hands cuffed behind his back, one officer placing a knee on the back of Mr. Floyd's neck, and a second officer placing a knee on his buttocks/upper thigh region. While he was held in this position for over 9 minutes, Mr. Floyd gradually became devoid of purposeful speech and motion before becoming unresponsive. Upon arrival by emergency medical services, resuscitation efforts were initiated and were ultimately unsuccessful.

The initial autopsy was performed by Dr. Andrew Baker, Chief Medical Examiner of the Hennepin County Medical Examiner's Office. Significant findings included, but were not limited to, multiple abrasions and contusions consistent with the subdual and restraint, and hypertensive atherosclerotic cardiovascular disease with severe coronary artery atherosclerosis. Of note, no petechial hemorrhages were identified in the conjunctivae and oral mucosa, the layered neck

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008131

CONSULT REPORT: C0022-20
Floyd, George Perry

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dissection and the posterior neck were absent of hemorrhage, and there were no fractures of the hyoid bone or thyroid cartilage. Toxicologic examination was positive for methamphetamine, fentanyl, and metabolites of tetrahydrocannabinol (THC) in hospital blood samples. Swab testing for COVID-19 was positive, however there were no gross or histologic findings consistent with an active COVID-19 infection. Mr. Floyd was noted to have a previously positive COVID-19 test on 4/3/2020. Ancillary testing was positive for sickle cell trait and examination of an antemortem peripheral blood smear (drawn 5/25/20 at 2100) demonstrated no evidence of antemortem sickling.

The United States Department of Justice requested an independent evaluation of the Hennepin County Autopsy Report and its conclusions by the Office of the Armed Forces Medical Examiner. A private second autopsy was performed by Dr. Michael Baden at request of the family. Dr. Baden's report is unavailable at the time of this consultation.

OPINION:

The Office of the Armed Forces Medical Examiner agrees with the autopsy findings and the cause of death certification of George Floyd as determined by the Hennepin County Medical Examiner's Office. His death was caused by the police subdual and restraint in the setting of severe hypertensive atherosclerotic cardiovascular disease, and methamphetamine and fentanyl intoxication. The subdual and restraint had elements of positional and mechanical asphyxiation. The presence of sickle cell trait is a significant finding in this context.

We concur with the reported manner of death of homicide.

This case was reviewed in a staff consultation review conference. All are in concurrence with the synopsis and opinion of this report.

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Paul S. Uribe M.D.
LTC MC USA
Director, Office of the Armed Forces Medical Examiner

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COL MC USA
Armed Forces Medical Examiner

State v. Trevino, Not Reported in N.W.2d (2015)

2015 WL 1401464

2015 WL 1401464

Only the Westlaw citation is currently available.

NOTICE: THIS OPINION IS DESIGNATED AS
UNPUBLISHED AND MAY NOT BE CITED EXCEPT
AS PROVIDED BY MINN. ST. SEC. 480A.08(3).

Court of Appeals of Minnesota.

STATE of Minnesota, Respondent,

v.

Jeffery Dale TREVINO, Appellant.

No. A14-0252.

March 30, 2015.

Review Denied June 30, 2015.

Ramsey County District Court, File No. 62-CR-13-1455.

Attorneys and Law Firms

Lori Swanson, Attorney General, St. Paul, MN, and John J. Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, MN, for respondent.

John C. Conard, Hellmuth & Johnson PLLC, Woodbury, MN, for appellant.

Considered and decided by BJORKMAN, Presiding Judge; JOHNSON, Judge; and REYES, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge.

*1 Appellant challenges his felony-murder conviction and sentence, arguing that (1) the district court abused its discretion in instructing the jury on circumstantial evidence, (2) the evidence is insufficient to sustain his conviction, (3) third-degree assault cannot serve as the predicate felony for his conviction, and (4) the district court erred as a matter of law by imposing an aggravated sentence based solely on concealment of a body. We affirm.

FACTS

In early 2013, appellant Jeffery Trevino and his wife Kira Steger were experiencing marital difficulties and were discussing separation or divorce. Steger also was spending a significant amount of time away from home and had begun an intimate relationship with another man, R.W.

On Thursday, February 21, Trevino and Steger met for dinner and bowling at the Mall of America, where Steger managed a clothing store. Steger exchanged text messages with R.W. throughout the evening. Afterward, Trevino and Steger returned to the house they rented on East Iowa Avenue in St. Paul. They began watching a movie around 10:00 p.m. At one point, their downstairs roommate, M.R., walked in and saw Trevino and Steger watching the movie, and then went to bed. Steger texted R.W. one last time at 11:44 p.m.

Throughout the night, a neighbor's security camera recorded activity in and around Trevino and Steger's home. Around 12:45 a.m., a light came on in the portion of the home that Trevino and Steger inhabited. Roughly a half hour later, the inside light was off and the light over the driveway came on. Within five minutes, the driveway light turned back off and the inside light came on again, remained on for more than 15 minutes, then went off. Around 2:00 a.m., Trevino drove Steger's white Chevy Cobalt to a nearby gas station, where a security camera recorded him filling the gas tank. He turned out of the gas station in the direction of I-35E, rather than driving directly home. The neighbor's security camera did not record Trevino's return, but the light inside the house went on again briefly around 4:15 a.m. No further activity was recorded until after sunrise.

Shortly after 8:00 a.m. on Friday, February 22, Trevino drove his own vehicle to the same gas station, where he purchased gas and withdrew cash from the ATM. Security footage showed Trevino wearing a dark hooded sweatshirt with a white design on the front and that he left the station in the direction of his home.

Around 9:15 a.m., Steger's car left the home and proceeded down Iowa Avenue; roughly a half hour later, a white car indistinguishable from Steger's entered the West parking ramp at the Mall of America. Shortly before 10:00 a.m., a taxi at the mall picked up a thin man in a hooded sweatshirt who asked to be taken to 424 East Iowa Avenue—an address that does not exist. The driver transported the man to Iowa Avenue and let him off just east of Trevino and Steger's residence at around 10:40 a.m. The passenger paid the \$35 fare in cash. Moments later, a thin person in a dark hooded sweatshirt with a white

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design on the front walked westward down Iowa Avenue and up the driveway to Trevino and Steger's residence.

*2 On Saturday, February 23, Steger was scheduled to work at 2:00 p.m. She did not report for her shift or call in, and her cell phone was off when a coworker tried to reach her; both were unusual for Steger. Trevino spoke with Steger's friends about her absence, including asking a police officer friend of hers if he should report her missing, but he did not ask Steger's family about her whereabouts. The following morning, after Steger again failed to report for work, Trevino contacted the police. He then called Steger's mother and told her that he had filed a missing-person report.

Police interviewed Trevino at home on Sunday, February 24. He stated that Steger had slept at home Thursday night, she left around 9:00 a.m. the next morning to go to the gym, and he had not heard from her since. Police subsequently learned that Steger had not been to the gym or used her cell phone since February 21.

On Monday, February 25, Steger's car was discovered in the West parking ramp at the Mall of America. It had been ticketed by mall security at 3:56 a.m. on Saturday, February 23. Police found Steger's blood in the trunk and on a trunk liner discovered on an embankment near the car. In the passenger compartment, police found a self-help divorce form and many of Steger's personal effects, but no cell phone, driver's license, credit cards, or checkbook.

That same day, police searched Trevino and Steger's home. In the master bedroom, they noticed signs that furniture had been moved and numerous apparent blood stains; subsequent testing revealed little confirmed blood but definitively matched several areas of confirmed blood to Steger's DNA profile. Police also collected the Arkansas Razorbacks sweatshirt that Trevino wore to dinner on February 21, which had been washed and air dried, and a black hooded Ecko Unltd. sweatshirt with a white design on the front; subsequent testing did not reveal blood on either item.

Police arrested Trevino on February 26. Trevino was charged with second-degree intentional murder and second-degree felony murder. He remained in custody as police continued to investigate and Steger's family searched for her body.

On March 16, Steger's grandfather found a plastic bag containing several bloody clothing items and a bloody pillow in a brushy area near Keller Lake in Maplewood; subsequent

testing matched the blood on the pillow to Steger's DNA profile. Two weeks later, Steger's driver's license was found within a few miles of Trevino and Steger's home. And on May 8, Steger's body was discovered in the Mississippi River near the St. Paul dock.

Ramsey County Chief Medical Examiner Michael McGee, M.D., performed an autopsy. Dr. McGee noted that the body was in an advanced state of decomposition and had been in the water for a long time. He used dental records to identify the body as Steger's. Dr. McGee identified three traumatic injuries that preceded and led to Steger's death, though he could not determine the order in which they were sustained. First, Steger had an incision wound on the left side of her forehead, one centimeter deep and four centimeters long, which Dr. McGee opined was caused by a sharp-edged instrument. A living person with such a wound would bleed profusely, though the bleeding would stop once the person was close to death. Second, Steger suffered a broken left index finger, which likely occurred as the finger was hyperextended "during the give-and-take of an assault." Third, Steger had a v-shaped laceration between her nose and lip and corresponding internal injuries to both lips. The injuries could have been caused by someone punching Steger while wearing a ring, but "it wouldn't have been very hard because the teeth were not loosened." Dr. McGee believed it more likely that these injuries were caused by smothering with a hand or pillow. Dr. McGee concluded that Steger died "as a result of an assault on her causing the injuries that are present."

*3 To determine time of death, Dr. McGee collected and examined the contents of Steger's stomach and obtained information about the timing and contents of Steger's last known meal—her dinner with Trevino on February 21, which ended around 7:30 p.m. Dr. McGee found the fish, nut, and vegetable elements of that meal in Steger's stomach, but the meat and rice elements were no longer present. Dr. McGee did not see any of the meal in the lower portions of Steger's gastrointestinal tract. And while digestion rates vary significantly from person to person and depend on the amount and type of food consumed, scientific literature indicates that an adult generally digests a meal completely, emptying the stomach, in as little as one to two hours or up to "11 hours and some minutes."

After a nine-day trial, a jury acquitted Trevino of second-degree intentional murder but found him guilty of second-degree felony murder. He moved for acquittal, arguing

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that, as presented in this case, third-degree assault is not a proper predicate offense for a charge of second-degree felony murder. The district court denied the motion and entered judgment of conviction.

The state sought an upward departure from the presumptive sentencing range of 128–180 months' imprisonment based on particular cruelty, arguing that Trevino concealed Steger's body to avoid detection, which caused her family anguish. Trevino waived his right to a sentencing jury and stipulated that if he concealed or attempted to conceal Steger's body, it would cause anguish to her family. He further agreed that those facts would justify an aggravated sentence, but argued that concealment alone does not provide a sufficient legal basis to depart. The district court found that Trevino treated Steger with particular cruelty "in that he concealed her body in an attempt to evade detection further causing extreme anguish for the victim's family." Based on that determination, the district court sentenced Trevino to 330 months' imprisonment. Trevino appeals.

DECISION**I. The district court did not abuse its discretion in instructing the jury on circumstantial evidence.**

A district court has broad discretion in determining how to instruct a jury. *Gulbertson v. State*, 843 N.W.2d 240, 247 (Minn.2014). We will not reverse when jury instructions, viewed as a whole, fairly and accurately state the law in a manner that the jury can understand. *State v. Scruggs*, 822 N.W.2d 631, 642 (Minn.2012). Instructional error warrants reversal "only if it cannot be said beyond a reasonable doubt that the error had no significant impact on the verdict." *State v. Koppi*, 798 N.W.2d 358, 364 (Minn.2011) (quotation omitted).

Trevino argues that the district court abused its discretion by denying his request for the following instruction on circumstantial evidence:

A fact may be proven by either direct or circumstantial evidence, or by both. The law does not prefer one form of evidence over the other. *However, if you believe that the evidence in this case is solely circumstantial, the circumstances proved and the*

reasonable inferences from such evidence must be consistent only with the defendant's guilt and inconsistent with any rational hypothesis except that of his guilt.

*4 (Emphasis added.) The district court instead read only the first two sentences to the jury, consistent with the pattern jury instruction, 10 *Minnesota Practice*, CRIMJIG 3.05 (5th ed.2014). Trevino argues that the additional rational-hypothesis instruction is necessary to explain circumstantial evidence fairly and accurately. *See, e.g., State v. Andersen*, 784 N.W.2d 320, 337 (Minn.2010) (Meyer, J., concurring). We are not persuaded.

Our supreme court has repeatedly approved the CRIMJIG 3.05 instruction as an accurate statement of the law on circumstantial evidence and held that a district court is not required to give an additional rational-hypothesis instruction, particularly when, as here, the defendant does not object to the reasonable-doubt instruction. *See State v. Gassler*, 505 N.W.2d 62, 68 (Minn.1993) (citing *State v. Turnipseed*, 297 N.W.2d 308 (Minn.1980)). The *Gassler* court explained that jury instructions and standards for reviewing the sufficiency of the evidence supporting a jury's verdict are conceptually different. *Id.* And it echoed the reasoning of the United States Supreme Court that "the better rule is that where the jury is properly instructed on the standards for reasonable doubt, such an additional instruction on circumstantial evidence is confusing and incorrect." *Id.* (quoting *Holland v. United States*, 348 U.S. 121, 139–40, 75 S.Ct. 127, 137, 99 L.Ed. 150 (1954)).

We need not decide whether a district court *may* give a rational-hypothesis instruction, as Trevino urges, because the jury instructions the district court gave fairly and accurately explain circumstantial evidence. On this record, we conclude the district court did not abuse its discretion by denying Trevino's request for an additional rational-hypothesis instruction.

II. The evidence is sufficient to sustain Trevino's conviction .

When reviewing a sufficiency-of-the-evidence challenge, we carefully examine the record evidence to determine whether the fact-finder could reasonably find the defendant guilty of the charged offense. *State v. Pratt*, 813 N.W.2d

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868, 874 (Minn.2012). When a conviction is based on circumstantial evidence, we use a two-step process. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn.2013). We first identify the circumstances proved—the evidence supporting the jury's guilty verdict. *Id.* We then independently examine the reasonableness of the inferences the jury could draw from those circumstances. *Id.* at 599. “Circumstantial evidence must form a complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt.” *State v. Taylor*, 650 N.W.2d 190, 206 (Minn.2002).

The evidence that Trevino committed the crime is wholly circumstantial, and there are multiple ways to interpret almost all of that evidence. But it is not this court's role to weigh the evidence, even in circumstantial-evidence cases. *State v. Stein*, 776 N.W.2d 709, 714 (Minn.2010). “[T]he jury is in the best position to evaluate the credibility of the evidence,” and it has already done so. *See State v. Moore*, 846 N.W.2d 83, 88 (Minn.2014). Accordingly, when determining the circumstances proved, we “assume that the jury resolved any factual disputes in a manner that is consistent with the jury's verdict.” *Id.* “There may well be testimony on behalf of the defendant as to inconsistent facts and circumstances, not conclusively proved, and which the jury may have a right to and do reject as not proved.” *State v. Tschou*, 758 N.W.2d 849, 858 (Minn.2008) (quotation omitted). But we consider “only those circumstances that are consistent with the verdict.” *Silvernail*, 831 N.W.2d at 599.

*5 Viewed in the light most favorable to the verdict, the evidence adduced at trial establishes the following circumstances. Steger ate her last meal before 7:30 p.m. on Thursday, February 21. She was alive until at least 11:44 p.m. that night, during which time she digested, and perhaps eliminated, a portion of her meal. But at some point before she finished digesting, likely well before 6:30 a.m. the following morning, Steger was assaulted and killed, and her body was dumped in the Mississippi River. Trevino was the only person with Steger during this time frame.

The circumstances proved include conduct by Trevino that is consistent with disposing of Steger's body and her car. Around 2:00 a.m., Trevino took Steger's car to the gas station. Instead of returning directly home, he turned in the direction of the freeway, and there was no sign of anyone in the residence until around 4:15 a.m. Less than four hours later, Trevino returned to the same gas station in his own car, now wearing his black

Ecko Unltd. hooded sweatshirt, and withdrew cash. This time, he drove directly home. Around 9:15 a.m., someone drove Steger's white Chevy Cobalt down Iowa Avenue. Within the next half hour, someone drove a white Chevy Cobalt into the West parking garage at the Mall of America where Steger's car—that contained her blood—was found. A man matching Trevino's general description hailed a taxi from the mall and gave a fake address on Iowa Avenue. The passenger paid in cash, and moments later, someone wearing a sweatshirt indistinguishable from Trevino's Ecko Unltd. sweatshirt walked down Iowa Avenue directly to Trevino and Steger's home.

And the circumstances proved include Trevino's conduct between February 22 and his arrest on February 26 that points toward guilt. He forged a check from Steger's account and mailed it to their landlord on February 22, roughly one week ahead of when Trevino and Steger typically paid rent. On February 23, he contacted their landlord, gave notice that they would be moving out April 1, and immediately began cleaning the house but not packing. After Steger missed a scheduled shift at work and was uncharacteristically unavailable by phone, Trevino spoke with several of her friends about her whereabouts but did not contact her family. He contacted her mother only after filing a missing-person report. During a February 24 telephone call with Steger's sister, he referred to Steger in the past tense. And Trevino wrote down R.W.'s address and put it in his vehicle, though the two men had never met. Viewed as a whole, these circumstances not only indicate that Trevino knew Steger was dead but also suggest that jealousy over her affair with R.W. was his motive for the assault that led to her death.

We next consider whether the reasonable inferences that can be drawn from the circumstances proved are only consistent with guilt. *State v. Al-Naseer*, 788 N.W.2d 469, 474 (Minn.2010). If, as here, the reasonable inferences are consistent with guilt, we consider whether they are also consistent with other hypotheses. *Id.* But competing hypotheses must be based on more than mere “conjecture” or “possibilities of innocence.” *State v. Asfeld*, 662 N.W.2d 534, 544 (Minn.2003) (quotations omitted). It is the defendant's burden to point to evidence in the record that is consistent with a rational theory other than guilt. *Taylor*, 650 N.W.2d at 206. Reversal is not warranted if the evidence, taken as a whole, makes the defendant's theories seem unreasonable. *Id.*

*6 Trevino argues that some evidence adduced at trial—the lack of certain evidence—supports a reasonable inference

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that Steger “was killed outside the home by someone else.” He argues that if he killed Steger in their bedroom the night of February 21, it stands to reason that someone would have heard her scream and police would have discovered more of Steger’s blood in the bedroom and on the clothes Trevino wore to dinner that night. Trevino also contends that Dr. McGee’s testimony that he saw no evidence of Steger’s last meal in her lower gastrointestinal tract is inconsistent with the state’s theory that Steger’s death interrupted her digestion. And Trevino cites evidence that Steger’s cell phone was activated and sold overseas in March, while he was incarcerated. Certain aspects of this evidence—such as the cell-phone activation—do not support the jury’s verdict and are thus not part of the circumstances proved from which we draw inferences. But more importantly, Trevino presents us with no more than isolated facts to support his alternative-perpetrator theory. See *Silvernail*, 831 N.W.2d at 599 (requiring review of circumstantial evidence “not as isolated facts, but as a whole”).

Viewed in light of all of the circumstances proved, Trevino’s theory requires a host of improbable factual circumstances: Trevino drove Steger’s car to the gas station at 2:00 a.m. Friday morning simply because he knew she needed gas. She left for the gym around 9:00 a.m. that morning without eating or once using her phone. But before she could get to the gym, some unknown person assaulted and killed her in broad daylight, placed her bloody body in the trunk of her car, and at some point deposited her body in the Mississippi River. The killer also abandoned Steger’s driver’s license and various bloody personal effects within one or two miles of her residence but drove her car to the public parking garage of her workplace, roughly a half hour’s drive away, and left it in time for it to be ticketed by mall security at 3:56 a.m. on Saturday. And even if *all* of these circumstances came to pass, they do not explain the numerous examples of suspicious conduct that Trevino exhibited in the days before his arrest.

Our thorough consideration of the record as a whole leads us to only one reasonable conclusion: late February 21 or early February 22, Trevino assaulted his wife, inflicting multiple sharp-and blunt-force injuries that ultimately caused her death. Accordingly, Trevino’s challenge to the sufficiency of the evidence fails.

III. The district court properly convicted Trevino of second-degree felony murder based on the predicate offense of third-degree assault.

Trevino argues that his felony-murder conviction cannot be predicated on third-degree assault because (1) the state did not properly plead it as the predicate offense for the felony-murder charge and (2) third-degree assault does not pose a special danger to human life. We address each argument in turn.

***7 Pleading**

Due process requires that “an accused ... be adequately apprised of the charge made against him in order that he may prepare his defense.” *State v. Pratt*, 277 Minn. 363, 366, 152 N.W.2d 510, 513 (1967). To satisfy this requirement, a complaint need only present the essential facts establishing probable cause to believe that an offense has been committed and that the defendant committed it. Minn. R.Crim. P. 2.01, subd. 1. A complaint “alleging a statutory offense is sufficient if the language used spells out all essential elements in a manner which has substantially the same meaning as the statutory definition.” *Pratt*, 277 Minn. at 365, 152 N.W.2d at 512. “[I]t is unnecessary to identify each specific element of the crime.” *State v. Dunson*, 770 N.W.2d 546, 551 (Minn.App.2009), *review denied* (Minn. Oct. 20, 2009). When a defendant objects to the sufficiency of the complaint for the first time after conviction, we will not reverse unless close examination of the entire record reveals that the defect was so substantial that it “misled the defendant as to the nature of the offense charged to the prejudice of his substantial rights.” *Pratt*, 277 Minn. at 366, 152 N.W.2d at 513.

The amended complaint filed after Steger’s body was recovered states a charge (unchanged from the original) of second-degree felony murder and the following factual allegations bearing on the underlying felony: Police found Steger’s blood in the home, in the trunk of her car, and on a pillow discovered near the home. The autopsy revealed that Steger suffered a laceration just above her left eye, an injury to her upper lip, and a broken index finger.

Trevino did not challenge the sufficiency of the amended complaint. Nor did he object to the jury instructions expressly identifying third-degree assault as the predicate felony. And the state’s case against Trevino, from Dr. McGee’s testimony and autopsy photographs to the prosecutor’s opening statement and closing argument, consistently described the murder as a violent, multi-faceted assault that led to Steger’s death. Trevino thoroughly cross-examined Dr. McGee about the nature and likely cause of Steger’s injuries. Because nothing in this record indicates that Trevino was misled about

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the nature of the offense with which he was charged, we reject Trevino's due-process argument.

Special danger to human life

A person is guilty of second-degree felony murder when he “causes the death of a human being, without intent to effect the death of any person, while committing or attempting to commit a felony offense.” Minn.Stat. § 609.19, subd. 2(1) (2012). To serve as a predicate-felony offense, the offense must involve a “special danger to human life.” *State v. Smoot*, 737 N.W.2d 849, 851 (Minn.App.2007), *review denied* (Minn. Nov. 21, 2007). The elements of the predicate felony need not refer to death or bodily harm so long as they demonstrate that the offense is “inherently dangerous and poses a significant danger to human life.” *Id.* We consider “both the elements of the predicate felony in the abstract and the totality of the circumstances in determining whether the predicate felony involves a special danger to human life.” *State v. Anderson*, 666 N.W.2d 696, 700 (Minn.2003). Whether a particular offense is a proper predicate for felony murder is a question of law, which we review de novo. *Id.* at 698.

*8 A person is guilty of third-degree assault if they assault another person, inflicting “substantial bodily harm.” Minn.Stat. § 609.223, subd. 1 (2012). Both our supreme court and this court have concluded that crimes against persons usually present special danger to human life in the abstract. *See State v. Cole*, 542 N.W.2d 43, 53 (Minn.1996) (holding that second-degree assault “forms a proper predicate felony to a felony murder conviction” because “assault is not a property crime, but a crime against the person”); *Smoot*, 737 N.W.2d at 853 (holding that felony DWI poses a special danger to human life in the abstract); *State v. Mitchell*, 693 N.W.2d 891, 895 (Minn.App.2005) (holding that felony child neglect or endangerment poses a special danger to human life in the abstract), *review denied* (Minn. June 28, 2005). The level of violence present in a third-degree assault—resulting in substantial bodily harm—easily meets the danger-to-human-life threshold in the abstract.

Trevino urges us to disregard the level of harm involved, arguing that third-degree assault poses no greater danger to human life than misdemeanor assault because the two offenses require only the same general intent. *See State v. Fleck*, 810 N.W.2d 303, 309–10 (Minn.2012) (holding that assault-harm is a general-intent crime). We are not persuaded. When determining whether an offense involves

a special danger to human life, our focus is on the actor's conduct, not his intent. *See Smoot*, 737 N.W.2d at 854 (holding that predicate offense need not include a specific mens rea element). The conduct of causing another person substantial bodily harm presents a special danger to human life, regardless of whether the actor intends to cause that level of harm. Accordingly, we conclude that third-degree assault involves a special danger to human life in the abstract.

Likewise, we are persuaded that the particular third-degree assault committed here posed a special danger to human life. Trevino seeks to minimize the nature of the assault by focusing solely on Steger's broken finger. But the evidence amply establishes that Trevino also cut Steger's forehead to the bone, likely causing profuse bleeding, and either punched her in the mouth or smothered her with his hand or a pillow. Any of these acts poses an unmistakable danger to human life.

On this record, we conclude the district court did not err by convicting Trevino of second-degree felony murder based on the predicate offense of third-degree assault.

IV. The district court did not abuse its discretion by imposing an aggravated sentence based on Trevino's concealment of Steger's body.

The decision to depart from a presumptive sentence is within the district court's discretion. *State v. Stanke*, 764 N.W.2d 824, 827 (Minn.2009). A district court must impose the presumptive sentence unless there are “identifiable, substantial, and compelling circumstances” to warrant an upward departure. Minn. Sent. Guidelines 2.D.1 (2012). “Substantial and compelling circumstances are those showing that the defendant's conduct was significantly more or less serious than that typically involved in the commission of the offense in question.” *State v. Edwards*, 774 N.W.2d 596, 601 (Minn.2009) (quotation omitted). This court will reverse only if the district court's reasons for departure are improper or there is insufficient evidence on which to base a departure. *State v. Vance*, 765 N.W.2d 390, 395 (Minn.2009).

*9 Treatment of a victim with particular cruelty is a recognized basis for departure. Minn. Sent. Guidelines 2.D.3.b(2). “[P]articular cruelty involves the gratuitous infliction of pain and cruelty of a kind not usually associated with the commission of the offense in question.” *Tucker v. State*, 799 N.W.2d 583, 586 (Minn.2011) (quotations omitted). A defendant's concealment of the victim's body has been considered particularly cruel, especially when the defendant affirmatively uses the concealment to his advantage

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or the concealment results in disfigurement of the victim's body or further anguish to the victim's family. *State v. Shine*, 326 N.W.2d 648, 654–55 (Minn.1982); *State v. Murr*, 443 N.W.2d 833, 837 (Minn.App.1989), *review denied* (Minn. Sept. 27, 1989).

Trevino argues that concealment of a body does not constitute particular cruelty in the absence of an attempt to bargain with authorities. Trevino also asserts that concealment cannot be a basis for departure because it constitutes the separate uncharged offense of interference with a body. We rejected identical arguments in *State v. Hicks*, 837 N.W.2d 51, 62–64 (Minn.App.2013), *review granted* (Minn. Nov. 12, 2013), concluding that a murderer's concealment of his victim's body may constitute the aggravating factor of particular cruelty and does not constitute an uncharged lesser-included offense of second-degree felony murder. *Hicks* is consistent with the legislature's recognition that a murder victim's family members are also victims of that crime. See Minn.Stat. § 611A.01 (2012) (“The term ‘victim’ includes the family members, guardian, or custodian of a ... deceased person.”). While Trevino disagrees with that decision, it is the controlling law unless and until our supreme court holds otherwise. See *State v. Peter*, 825 N.W.2d 126, 129 (Minn.App.2012), *review denied* (Minn. Feb. 27, 2013).

Moreover, we observe that the district court's particular-cruelty determination was not, as Trevino asserts, based solely

on the concept of concealing a body. Rather, the district court expressly found that Trevino's actions were particularly cruel in light of the following facts. Trevino sought to evade detection by concealing Steger's body in the Mississippi River and staging her death as a kidnapping. To accomplish this, Trevino transported her body in the trunk of her car and used her friends to look for her. Her body remained in the river, and her whereabouts were unknown, for more than two months. During that time, Steger's family and friends experienced the anguish of searching unsuccessfully for her body and discovering evidence containing Steger's blood. By the time Steger's body was discovered, it was deteriorated to the point of being unidentifiable without forensic testing and dental-record comparison. Steger's family experienced further distress at observing her body in this state. These unchallenged factual findings support the district court's assessment that Trevino acted with particular cruelty for which he should be held responsible. Accordingly, we conclude that the district court did not abuse its discretion in imposing an aggravated sentence.

***10 Affirmed.**

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