



MOWER COUNTY

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October 24, 2022

Special Agent Phill
Bureau of Criminal Apprehension
Force Investigations Unit
1430 Maryland Ave E.
St. Paul, MN 55106

RE: Rochester Police Department – Officer Involved Shooting of Joshua C. Hippler,
Minnesota BCA Case 2022-708

Dear Special Agent Phill:

The Mower County Attorney's Office has reviewed the above referenced investigation at the request of the Olmsted County Attorney's Office to determine if any charges are appropriate against the officer involved, Michael Bottcher, Jr. Our office was asked to conduct this review to avoid any potential conflicts due to the close working relationship between the Olmsted County Attorney's Office and the Rochester Police Department.

We have reviewed the entire case file submitted to us by the Minnesota Bureau of Criminal Apprehension, including all reports and body worn camera video. Under Minn. Stat. § 609.066, subd. 2, officers are justified in using deadly force when it is necessary to protect the officer or another from apparent death or great bodily harm. The use of force is required to be evaluated from the perspective of a reasonable police officer on the scene and in the same circumstances. After our review we find that there is no evidence to support any criminal charges against Officer Bottcher.

We have based our opinion on the following facts. Officer Bottcher responded to a call on July 29, 2022, at approximately 10:59 p.m., at a Domino's Pizza in Rochester. The report indicated a man with an axe robbed the Dominos and fled in a white van with out of state license plates and a ladder rack. Witnesses described the plates as having a light blue background and mountains. The suspect was described as a white male with panty hose over his face. The axe was reported to have a blue handle.

Statements were obtained from the witnesses and Officer Bottcher finished his investigation at the scene. He cleared and went to write up reports from the incident. Approximately two hours after the robbery Officer Bottcher observed a van matching the description pass by him traveling southbound on Broadway. Officer

Bottcher pulled out to catch up to the van to see if the plates matched the description given at the scene of the robbery. He did not have his lights or sirens activated.

Near the 2800 block of Broadway Avenue South Officer Bottcher was able to see that the plates matched the description of those from the robbery. He did not activate his emergency lights and sirens at that time but did notify dispatch that he was possibly following a robbery suspect. Officer Bottcher did not want to stop the vehicle until another officer was present because of the witness reports that the suspect was armed with an axe. The van began driving on the shoulder of the road. The driver made it appear that he was going onto the Hwy 52 northbound ramp but instead swerved back onto Hwy 63 southbound. The van then veered onto the Hwy 52 southbound ramp. Officer Bottcher confirmed the plate and notified dispatch that the driver knew he was behind him. The van merged onto Hwy 52 southbound and drove below the speed limit for a short distance. The van came to a stop and then made a U turn, so it was going the wrong way on the Hwy 52 southbound ramp. Due to the danger of a head on collision with oncoming traffic, Officer Bottcher activated his emergency lights and sirens. The van stopped in the middle of the road going the wrong way on the southbound ramp from Highway 63 to Highway 52.

Officer Bottcher stopped his vehicle and observed the van door open. The driver of the vehicle, later identified as Joshua C. Hippler, jumped out and began advancing toward Officer Bottcher. Mr. Hippler had an axe in his hand and was swinging it. Officer Bottcher pulled his handgun and repeatedly ordered Mr. Hippler to drop the axe and to get back into the vehicle. Mr. Hippler continued to advance toward Bottcher. Mr. Hippler was yelling that Officer Bottcher should kill him.

Officer Bottcher retreated backwards to get some distance between himself and Mr. Hippler, while repeatedly commanding Mr. Hippler to drop the axe. Mr. Hippler began zig zagging toward Officer Bottcher, swinging the axe and yelling at Officer Bottcher to kill him. Officer Bottcher continued to walk backwards and give commands for Mr. Hippler to drop the axe. Officer Bottcher had retreated away from his squad car and was able to see a civilian vehicle approaching from the South. Officer Bottcher was in fear for his own safety and the safety of the approaching civilians and other officers. He fired one shot at Mr. Hippler. Officer Bottcher paused his fire. It appeared as though the shot hit Mr. Hippler but he continued to advance and refused to drop the axe. He yelled for Officer Bottcher to "finish it."

As Mr. Hippler continued to advance toward him swinging the axe Officer Bottcher fired approximately five additional shots. Mr. Hippler fell to the ground but held on to the axe. Almost immediately other officers were on the scene. They secured the van, cleared the axe from Mr. Hippler and began rendering medical assistance to him. The ambulance arrived and took Mr. Hippler to the Mayo Clinic ER where he died as a result of his gunshot wounds.

The scene was secured, the BCA called in and a full investigation was completed. Body camera video of the shooting and on scene medical aid provided to Mr. Hippler were collected and reviewed. In this case the facts show that Officer Bottcher clearly acted reasonably when using deadly force. He reasonably believed it was necessary to protect his life and the lives of others arriving in the area. Mr. Hippler got out of his van, brandished the axe in a threatening manner, refused to listen to the numerous commands he was given and continued to advance toward Officer Bottcher. Statements made by Mr. Hippler suggested he was not going to stop and Officer Bottcher was going to have shoot to protect himself or others from harm.

Mr. Hippler's actions and statements gave Officer Bottcher no option other than the use of deadly force. Based upon the information available to Officer Bottcher at the time he fired his weapon at Mr. Hippler, a reasonable officer in his position would have concluded that deadly force was necessary to protect the officer and/or other persons from death or great bodily harm. Thus, Officer Bottcher was justified in his use of deadly force and we will take no further action in this matter.

Sincerely,

/s/ Kristen M. Nelsen

Kristen M. Nelsen
Mower County Attorney