

Officer Lehner and see if anybody needed assistance with anything. At that point it was Code 4 inside.

Officer **13.43** did not witness the entry made to the front of the address, he did not observe any civilians running down the hallway towards officers and he did not see Officer Lehner use force on anybody in the house.

Officer **13.43** said he did observed McKinney sitting upright in the kitchen with a cut on his face that was bleeding. Officer **13.43** was not sure how it happened but he knew that ambulance was on its way. He said that McKinney sat quiet and did not make any complaints to any of the Officers when he was there.

Officer 13.43

Officer **13.43** and his partner Officer **13.43** responded to the PERGUN call and located Shane Gross **13.82 - Law Enforcement** and another guy in the area of the call. While he was dealing with Gross he heard Officer Lehner stop a group and they had run so he went to assist Officer Lehner.

Officer **13.43** drove to 2109 Chicago Avenue South, he parked one house to the north and got out and watched the rear of 2109 Chicago Avenue South. He said a male came out the back door so he took custody of him and pat frisked him for weapons and ID'd him. Officer **13.43** then went inside where officers were still in the process of searching the residence.

Officer **13.43** did not see anyone running down the hall towards Officer Lehner and he did not witness Officer Lehner use force on anyone.

Officer **13.43** did see a male that was bleeding in a hallway that leads to the living room. He did not recall if that male was handcuffed and the male did not speak to him. Officer **13.43** said he knew medical was on the way and it arrived shortly after he saw the male that was bleeding.

Officer **13.43** added that he had made several arrests for guns in the area of Chicago and Franklin **13.82 - Law Enforcement**. He said it is a hot spot for gun and drug activity and that Shane Gross is one of the people in charge. He also said they get calls that people have guns but they pass the guns off so quickly they don't recover the guns. Officer **13.43** did not see **13.43** at the scene.

Officer **13.43**

Officer **13.43** responded to the PERGUN call, he said he was out in the street checking Peavey Park when he heard Officers air they were inside 2109 Chicago Avenue South. He then reversed his squad and went to the address and parked out front and went in the house.

When Officer **13.43** entered the address he thought there may have been six or eight juveniles or young males on the floor. He said the ones by the front door were handcuffed. He did not see anyone come running towards him and he did not see Officer Lehner use force on anyone. Officer **13.43** did not see **13.43** at the scene.

Officer **13.43** said that an unidentified black male in the living room was asking for Officer Lehner's badge and knew Officer Lehner by name. Officer **13.43** does not recall if that male was injured.

Officer **13.43** said he did see a person on the floor with some blood on his head and he was near a doorway between the kitchen/dining area and living room.

13.43

13.43 arrived on the scene and observed McKinney sitting in the back seat of a squad car. He said he spoke with Officer Lehner and was told the following, "That he had chased this party into...2109 Chicago, uhh, believed he'd handed off a gun into that residence during the course of his call. Uhh...That he'd run inside the apartment after him and uhh, when he was confronted by that party, I think the party threw a bag of narcotics at him and Officer Lehner kicked him once and then knocked him down and then kicked at him again and struck him in the mouth"

13.43 said he believes that Officer Lehner told him he had forced entry into the house. **13.43** did not take photos of the person's injuries and he did not see **13.43** at the call.

13.43

13.43 said he was permanently assigned as an **13.43 - Personnel Data** **13.43 - Personnel Data**. He said his works hours were generally 7:00 to 3:00 but on that day he attended In-Service training from 0800-1600 at the Special Operations Center at 4119 Dupont Avenue South. **13.43** verified his signatures on the copies of the sign in logs I presented to him.

13.43 said when in-service ended he did not go and assist Officer Lehner at 2109 Chicago Avenue South and was nowhere in the vicinity of that address that afternoon.

SUMMARY OF ALLEGATIONS

Allegation # 1 It is alleged that Officer Lehner forced entry into 2109 Chicago Avenue South without a search warrant. If this were found to be true it would violate the following:

13.43 - Personnel Data

9-200 Search and Seizure

Minneapolis Police Department employees shall be responsible for understanding and performing assigned duties in accordance with the MPD's Search and Seizure Policy and the guidelines set forth in the Minneapolis Police Department Search and Seizure Guide and Training Manual, and it is hereby incorporated by reference.

The following is taken from the May 2011 Minneapolis Police Department Search and Seizure Guide and Training Manual page 27.

Without a search warrant, officers may legally search a dwelling or building in the following circumstances:

1. HOT PURSUIT

Officer may pursue a suspect into a dwelling when the following circumstances are present.

- Probable cause exists to believe the person being pursued has committed a crime for which a custodial arrest is appropriate; AND*
- The pursuit must be immediate and continuous.*

Investigative Facts

- Officer Lehner has patrolled this area for almost 13 years and has an extensive working knowledge of **13.82** violent felons in the area **13.82 - Law Enforcement**
13.82
- Officer Lehner responded to a PERGUN call in the area of Chicago/Franklin on 9/13/2011
- Officers **13.43 - Personnel Data** were first on scene stopped the party that was supposed to have the gun according to the 911 callers original description and they aired that individuals in plaid that were walking down Chicago at 21st were also involved with the suspect in the PERGUN call
- Officer Lehner stated in his interview that he arrived in the area and observed **[REDACTED]** who was wearing plaid walk from the sidewalk to the front of 2109 Chicago Ave South (Lehner Statement pg. 6, lines 17-20)
- Officer Lehner stated in his interview that Percy Lacey was “up on the front porch” when he pulled up to **[REDACTED]**. (Lehner Statement pg. 6, lines 33-38)
- Officer Lehner reiterated in his interview, “When I pull up onto the sidewalk and you can see plain as day, Percy standing on that front porch at the front door of 2109 Chicago, handing a black object which I knew immediately was a handgun.” (Lehner Statement pg. 7, lines 1-2)
- Officer Lehner stated in his interview that when he saw Percy handing the gun off, “Now I have two options here. I’m standing up on...or I drove up onto the

sidewalk/grass area. I can either shoot him or I can get out of my squad and see what happens.” (Lehner Statement pg. 7, lines 5-7)

- Officer Lehner documented the following in his CAPRS supplement, “I exited my squad and I observed OT/4 Lacey handing a large black object that I believed was a semiautomatic handgun, to a male inside 2109 Chicago Avenue South. Lacey then turned towards me and he was told to get onto the ground, which he did. The male inside the address then slammed the front door shut and locked it so officers could not enter the address when I told him to leave the door open. I then called out to dispatch that I was at the address and we were going to force open the front door of 2109 Chicago Avenue South due to fresh pursuit.”
- On the radio/dispatch recordings you can hear Officer Lehner air prior to him even attempting to force entry into 2109 Chicago, “8310, I got some running in the back of the address here, ah 2109 Chicago, they ran through the front and ran out the back,” Dispatch then asked Officer Lehner if there is a description of this person and he said “no, when we get enough people here were gonna force entry to the front here of 2109 Chicago.”
- In Officer Lehner’s interview when I questioned him, he said the person that Lacey handed the gun to in the front porch and the person who he aired ran in and out of the house are one in the same person. (Lehner Interview pg. 2, lines 38-41)
- Officer Lehner said in his interview that he waited for several officers to get there (2109 Chicago) and when several officers arrived to assist, Officer Lehner told **13.43** that the door had to be kicked open, he told me he didn’t do it

himself because he was the one in control of the situation. He was in charge.

(Lehner Statement pg. 7, lines 37-42)

- Officer Lehner stated that “with the fresh pursuit, getting that gun was my goal.”
(Lehner Statement pg. 7, lines 26-27)
- I asked Officer Lehner if he was going into the address after the gun and he said, “correct” (Lehner Statement pg. 8, lines 19-21)
- I asked Officer Lehner if it is correct that “hot pursuit” or fresh pursuit as he calls it, allows an Officer to go after a person that has committed a crime and not evidence and he said, “absolutely” (Lehner Statement pg. 8, lines 23-25)
- I asked Officer Lehner who was the person he was going after and what was the crime they committed. He said Percy Lacey (the individual who he detained on the front steps) was committing a gross misdemeanor for being in public with a gun and when he hands it off (hot pursuit) is then for evidence collection as well.
(Lehner Statement pg. 8, lines 27-33)
- I asked Officer Lehner if Percy was on the front doorsteps, the threshold of a home couldn't he possess the gun. Officer Lehner said he had no idea. (Lehner Statement pg. 9, lines 9-12)
- I asked Lehner if he considered the front door to the home a public space and Officer Lehner said in his statement that Percy wasn't just on the steps but “he had moved from the sidewalk where **13.43** had stated.” (Lehner Statement pg. 9, lines 24-25)
- What Officer **13.43** aired was that they (he and Officer **13.43**) were code 4 with the person dispatch described as having had the gun but “three guys are

heading South on Chicago at 21st wearing plaid, they're with these guys"

"They're up on the SE side of 21st and Chicago."

- Officer **13.43** did not specifically mention Percy or what he was wearing.
- Officer Lehner mentioned in his supplement that he detained a person walking in plaid and put him in the back of his squad. And this was Kashka Shannon.
(Lehner Statement pg. 6, lines 8-12)
- Officer Lehner wrote in his CAPRS report, "Unsure of what was going on and fearing that this male may now have the handgun I pulled up to the male who ran into the front yard of 2109 Chicago Avenue South. Upon doing this I observed this male to be OT/F Johnson. F. Johnson stopped in the front yard of the address and I then observed another male, later known as OT/4 Lacey, in the doorway of 2109 Chicago Avenue South."
- Officer Lehner stated in his interview, "this was a fresh pursuit thing to collect evidence, of a handgun, because he is trying to destroy evidence by giving it to someone else so he is not com... committing a crime anymore, per se." (Lehner Statement pg. 8, lines 35-38)
- I asked Officer Lehner if at any time in the call after it was code 4 if he bothered to check and see if Percy Lacey could lawfully possess a handgun and he said no.
(Lehner Statement pg. 3, lines 36-41)

Allegation # 2 It is alleged that Officer Lehner used unreasonable force on OT/McKinney when he kicked him in the stomach and the face. If this were found to be true it would violate the following:

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

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.

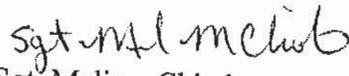
Investigative Facts

- Officer Lehner forced entry into 2109 Chicago Avenue looking for a gun
- Officer Lehner had his weapon in his hand when he entered 2109 Chicago Avenue South
- Officer Lehner was telling people to get on the ground when he observed Mauricio come running at him (Lehner Statement pg. 12, lines 31-34)
- Officer Lehner told Mauricio to “get on the ground” (Lehner Statement pg. 12, line 38)
- Officer Lehner stated that Mauricio did not get on the ground (Lehner Statement pg. 12, line 41)
- Officer Lehner was concerned because he had his gun out and Mauricio was still running at him so he again told Mauricio to “get on the ground and show me your hands” (Lehner Statement pg. 13, lines 1-5)
- According to his CAPRS Statement, Officer Lehner kicked Mauricio one time in the stomach which broke him down and then one time in the face while he was bent over and he moved past him
- Officer Lehner said he could not hit Mauricio with his handgun so his only option was to kick him (Lehner Statement pg. 13, lines 8-9)
- Officer Lehner stated, “And he was kicked one time in the torso, but he still came at me. When I kicked him, it buckled him down, but it also pushed me back. It buckled him down and then I just round kicked him with my left foot right into his head and that’s just the place where it hit and then he went down on the ground and then I went past him.” (Lehner Statement pg. 13, lines 12-16)

- I asked Officer Lehner to describe how Mauricio was actively aggressive after the first kick that made Officer Lehner feel the need to kick him a second time in the face and he said, “Well first of all, when you say I felt the need to kick him in the face – There was no need and no intention to absolutely kick him in the face” (Lehner Statement pg. 13, lines 23-29)
- Officer Lehner said, “If you throw out a kick, unless he goes flying backwards, I’m a very...I’m not that heavy, I’m about 170, 175, that first kick hits him right in the torso area and pushes me back and he still is coming at me. He was coming at me a lot harder than I was coming at him. So when it pushed me back and he’s still coming at me, the only other option that I have is to kick him again. And the next kick was a...with my left leg and it...his head was right there and that’s what got hit. And that’s what put him down to the floor. And then once he was on the floor I went right past him.” (Lehner Statement pg. 13, lines 32-41)
- Officer Lehner said he had no intention of kicking him in the head (Officer Lehner Statement pg. 13, lines 44-45)
- Officer Lehner said he (Mauricio) was bent over and that (his head) was the closest thing to him and that’s what got hit (Lehner Statement pg. 13, lines 45-46)
- Office Lehner believed that was his only and best force option at the time, he said he was not going to put his handgun away, he does not carry a Taser and he did not want to use mace and affect the other officers (Lehner Statement pg. 14, lines 15-21, pg. 15, lines 1-9)
- Officer Lehner said the entire incident was quick and lasted about five seconds

- According to the Court Summons Mauricio states he was attempting to comply with the officer's orders and was going to the ground when he was kicked in the torso and face by Officer Lehner
- Mauricio sustained a laceration to his right cheek from the kicks that required seven stitches to the exterior and three to the interior of his mouth
- Officer Lehner made the choice to force entry into 2109 Chicago Avenue with an unknown number of people inside that he repeatedly describes as **13.82** **13.82** who have fought police, thrown weapons, some are suspects in shootings and will kill people. Officer Lehner insists he clearly saw Percy Lacey hand a gun to someone inside the residence and Officer Lehner made the tactical choice to enter with only one other officer to assist him, Officer **13.43**. I interviewed all of the other officers that Visinet has a record of being on scene, some officers never entered the address and the ones that said they entered the home did so after the entry had been made by Officer Lehner and after the confrontation and force had been used and it was code 4. A few officers said they helped handcuff people that were already lying prone on the ground.
- **It should be noted that the alleged 5-7 kicks to McKinney that are described in the Summons could not be substantiated as there is no further evidence to show anyone else used force.**

Respectfully Submitted,


Sgt. Melissa Chiodo

Internal Affairs Unit