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Report of the Independent Investigator:

Arrest of Alfred Delano Flowers, Jr. on July 25-26, 2014

Submitted to the Mayor and the Chief of Police of the City of Minneapolis

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EXECUTIVE SUMMARY

Shortly before midnight on Friday, July 25, 2014, two Minneapolis Police Department ("MPD") officers arrived at the south Minneapolis home of Alfred Delano Flowers, Jr. to arrest [redacted] Hennepin County Community Corrections had issued a warrant against [redacted] When the MPD officers encountered [redacted] at the threshold and announced their intent to arrest [redacted] Flowers protested and—according to the officers—physically resisted their efforts to take [redacted] into custody. Flowers' own arrest followed and a struggle with the officers ensued. Flowers was injured as the officers forcibly took him to the floor and handcuffed him. He was then transported by squad to HCMC.

The City of Minneapolis and the MPD retained the Nilan Johnson Lewis law firm ("Investigator") to "provide an independent, neutral investigation and provide written factual findings regarding the [MPD] officers' use of force" during the July 25-26 incident at the Flowers home. The Investigator interviewed Flowers, [redacted] and two other [redacted]; reviewed HCMC records of Flowers' treatment after the incident; twice inspected the scene of the arrest; and reviewed documents related to [redacted] The Investigator also took statements from the two MPD officers who first responded to the call and used force to arrest Flowers, as well as two other officers and the supervising sergeant who assisted at the scene. The Investigator also contacted responsible personnel with information regarding MPD communications and training. In addition to the incident reports and supplements submitted by officers shortly after the incident, the Investigator collected and reviewed numerous MPD internal policies and training materials related to use of force.

The Investigator concluded that the officers had sufficient justification to arrest Flowers for obstructing legal process in violation of Minn. Stat. § 605.50 as he intentionally prevented the two MPD officers from taking [redacted] into custody. Accounts of the incident vary dramatically: the officers stated that Flowers blocked their access to [redacted] and refused to allow them to take [redacted] while Flowers denied that he interfered with the officers and described them as the aggressors. The Investigator was persuaded that Flowers verbally protested and physically resisted the arrest of [redacted] Key factors in discounting Flowers' version are a very brief radio transmission during the encounter of Flowers' voice raised in anger; similar resistance by Flowers during prior encounters with MPD officers; and contemporaneous, detailed incident reports and credible statements by the officers that are consistent in material respects.

The Investigator acknowledged that Flowers had cause to be upset: the first responding MPD officers would not produce a copy of the [redacted] warrant to arrest [redacted] The officers could have exercised their discretion to deescalate the confrontation before the critical moment when one of them attempted to grasp [redacted] to apprehend [redacted] However, the Investigator concluded that the officers did not abuse their discretion by deciding instead to quickly accomplish the purpose of their call, especially given the circumstances of a difficult nighttime encounter in a confined and potentially dangerous space.

The Investigator also found that the use of force against Flowers was justified and not excessive, particularly when viewed from the perspective of a "reasonable officer at the scene." Flowers actively resisted the officers by—at a minimum—standing his ground and tensing his body so as to make his arrest more difficult. The officers deployed force techniques against Flowers that were commensurate with his resistance and consistent with their MPD "continuum of force" training (including strikes to the face with open hands and thrusts by knees to the torso). In describing the force used against him, Flowers' account did not differ significantly from the officers' reports. The officers' response appeared to be limited: they used no weapons or tools and, as they took Flowers to the living room floor, did so without major damage to the surroundings. Flowers' injuries were consistent with a measured use of force.

Finally, the Investigator found no evidence that Flowers' arrest and the accompanying use of force against him was motivated by his race or his local profile as an advocate against police misconduct. There is no reason to believe that the responding officers knew Flowers or were aware of his community activities.

Accordingly, the Investigator found no violation of law or MPD policy arising from the officers' conduct during the Incident.

I. INTRODUCTION

This report includes the findings and conclusions of the independent investigation into the arrest of Alfred Delano Flowers Jr. at his south Minneapolis home during the night of July 25-26, 2014 ("Incident").

A. The Investigator's Scope of Work.

The City of Minneapolis and the Minneapolis Police Department ("MPD") retained the law firm of Nilan Johnson Lewis PA ("Investigator") to conduct the independent investigation, which was publicly announced by Mayor Betsy Hodges on August 8, 2014. The Investigator was tasked with working independently and reporting back to the Mayor and the Chief of Police with its factual findings and conclusions.

The purpose of the inquiry, as set forth in the City's contract for services, was to:

> provide written factual findings regarding the Minneapolis Police Department officers' use of force on July 25-26, 2014, in the arrest of Alfred Delano Flowers Jr. and to include investigation and factual findings regarding any additional allegations of MPD Policy and Procedure Manual violations arising from the July 25-26 incident that may be revealed during the investigation.

More specifically, the Investigator examined three allegations that Flowers asserted in public comments after the Incident and later included in his complaint filed on September 5 with the Office of Police Conduct Review ("OPCR"). First, Flowers alleged that MPD officers arrested him without cause when he questioned their authority to arrest [redacted] Second, he alleged that the officers used excessive force against him during the Incident by improperly and unnecessarily restraining and striking him physically. Finally, Flowers alleged that his arrest and the use of excessive force was because of his race (African American) and because of his community activities and advocacy on behalf of African Americans who have been subjected to arrest and use of excessive force by police officers.

The scope of the Investigator's charge did not include any fact-finding, advice or recommendations related to (a) any discipline or other personnel actions against MPD officers; (b) any potential civil liability of the City; (c) any criminal prosecution of Flowers or [redacted] or (d) any changes to MPD or [redacted] policies, procedures or protocols. Nor did the Investigator undertake to examine any allegation of a systemic pattern or practice of discriminatory policing by the MPD.

B. The Investigator's Work Plan

Donald Lewis and Jen Cornell were the principal Nilan Johnson Lewis attorneys who conducted the investigation. They undertook the following tasks:

1. Interviews

The Investigator interviewed[1] the following individuals:

Flowers [redacted]:

- Alfred Flowers, Jr.
- [redacted]
- [redacted] who was a witness to the Incident.
- Alisa Clemons, Flowers' sister and a former MPD sergeant.

MPD:

- Officers Jon Schliesing and Christopher Reiter, the first arriving officers.
- Officers Chad Fuchs and Chad Meyer, the second arriving MPD officers on the scene.
- Sergeant Mark Klukow, the supervising officer on the night of the arrest who also responded to the scene and interacted with Flowers.
- Christine McPherson, Assistant Director of the Minneapolis Emergency Communications Center ("MECC"), responsible for oversight of the dispatchers who worked the night of Flowers' arrest.
- Commander Jason Case, responsible for oversight of the MPD Training Division including all training on communication skills, use of discretion, and use of force.

[1] The interviews of the active duty MPD officers were conducted in accordance with department policy and the governing collective bargaining agreement. The protocol included the Tennessen and Garrity advisories; representation of the officers by representatives of the Minneapolis Police Federation; recording and transcription of the officers' statements; and review and correction by the officers of their transcribed statements. Additionally, Flowers and [redacted] who were interviewed consented to the recording of their statements.

[2] Flowers and [redacted] fully cooperated during the inquiry. They were represented [redacted].

[redacted]

- [redacted]

2. Documents, communications and other information.

The Investigator began by compiling and reviewing the case reports of the July 25-26 arrest, including all responding officers' supplements and the incident detail log showing various officers' response times to the Incident. MPD provided all video and audio recordings relevant to the Incident. MPD also provided all photographic evidence, including photos taken at the crime lab. MPD allowed the Investigator to inspect the type of squad car in which Flowers was transported away from his home, including a demonstration of the capabilities of the computer in the vehicle. MECC provided all recordings from the dispatch center relating to the Incident and a tour of the MECC operations center to understand how warrants and calls are sent to the MPD.

The Investigator was provided numerous MPD internal policies, trainings, and curricula relevant to communication skills, use of discretion, and use of force in the making of an arrest. Personnel records for the two first arriving MPD officers, including those related to any prior discipline, were also reviewed.

[redacted]

Flowers provided medical records regarding treatment of his injuries stemming from the Incident. [redacted]. Clemons provided photographs she took on the night of the Incident of the interior of the Flowers house, and photographs of Flowers' injuries on the Sunday following. Both Flowers and Clemons allowed the Investigator access to their cell phones to retrieve any stored information; however, due to the nature of their separate cell phone plans, the Investigator was unable to recover any relevant call history or text messages.

Finally, the Investigator compiled and reviewed background information regarding Flowers, his community activities, and his prior encounters with MPD officers. This material included MPD incident reports and supplements, social media research, and a criminal background check. Media reports and commentary regarding the Incident, some including recorded statements by Flowers, were also reviewed.

3. Site visits.

The Investigator inspected the site of the Incident—the first floor of the duplex at 3106 Chicago Avenue where Flowers resided—on two occasions, both times during evening hours.

II. FACTUAL BACKGROUND

A. Alfred Delano Flowers, Jr.

During the time period relevant to this investigation, Alfred Delano Flowers, Jr., age 55, was an African American [redacted] who resided at the house he rented at 3106 Chicago Avenue in south Minneapolis. [redacted] Flowers was a self-employed consultant who recently co-founded the Community Standards Initiative, a contractor retained by the Minneapolis Public Schools to promote development of values and standards for improved student behavior and achievement. He had previously operated a daycare for several years at Sabathani Community Center.

Flowers was a member of the Unity Community Mediation Team that negotiated an agreement with the MPD in December 2003 following mediation through the U.S. Department of Justice Community Relations Service. (Among the MPD representatives during the mediation was then Officer Mark Klukow.) Flowers was a candidate for mayor of Minneapolis in 2009, but was defeated in the primary election.

Flowers has sued the city and the MPD several times for racial discrimination and harassment. His sister, Alisa Clemons, is a former MPD officer who won six-figure settlements in two federal court lawsuits alleging discrimination and reprisal against the MPD [redacted]

Over the years, Flowers has had several confrontations with MPD officers, but only three resulted in arrests. Before the incident which is the subject of this investigation, Flowers was last arrested on September 27, 2003, after he allegedly disrupted a meeting of the local NAACP branch at the Minneapolis Urban League offices. The arresting MPD officer reported that Flowers refused to obey his instruction to step to the squad and pushed the officer's arm away. After the officer used a leg sweep to force Flowers to the ground, Flowers refused to cooperate and struggled until other officers arrived to handcuff him. Clemons was also arrested during the incident for interfering with MPD officers. Both Flowers and Clemons were charged with obstructing legal process but were acquitted after trial a year later. In the ten years prior to this summer's Incident, Flowers had been arrested for and convicted of one crime: a fourth-degree DWI, a misdemeanor.

B. Arrest Warrant for [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted] The [redacted] warrant—[redacted]—was issued at some time after 5:45 p.m. on July 25, 2014.

C. MPD officers encounter [redacted]

On July 25, MPD Officer Jon Schliesing (#6356 in squad 320) worked the "middle watch," beginning with roll call at 4 p.m. Schliesing, age 37 and Caucasian, became a MPD police recruit in April 2013 and an officer in July 2013, and had previously served four years as an Anoka County patrol deputy. Schliesing also served several years in the Air and Army National Guards. He graduated from Eagan High School and earned his bachelor's degree in law enforcement at Metropolitan State University.

Also on July 25, at 8:30 p.m., MPD Officer Christopher Reiter (#5938 in squad 313) reported to roll call for "dog watch." Reiter, age 34 and Caucasian, graduated from the police academy in December 2009 but was laid off shortly thereafter. He resumed employment as a MPD officer in January 2012. He was previously self-employed as a flooring contractor. Later, after receiving his GED diploma, Reiter attended North Hennepin Community College and earned a two-year degree in law enforcement. While in school, Reiter also worked as a MPD community service officer.

At some point in the evening, a Keep Our Police Safe ("KOPS") alert was issued for [redacted] This alert was transmitted to MECC, who first sent the alert to all officers on their mobile computers, and then created an "attempt pickup" call in the queue of lower priority, pending calls for officers.[5] The city-wide alert stated:

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[4] As noted above, the Investigator was unable to capture data from Flowers' cell phone to confirm or refute the incoming and outgoing calls, or voicemails. Flowers denied receiving a voicemail from EHM but he also stated that he rarely answered the phone if he did not recognize the phone number.

[5] A KOPS alert is sent to all officers in their squads via the mobile computer. It appears on their computers as a flashing message to read and review. Here, [redacted] MECC also generated a call for officers on the basis of the alert. Calls for officers can be either urgent, such as a crime in progress, or placed in the "pending" section of calls, for officers to handle when they do not have more urgent calls to address.

KOPS ALERT FROM HENNEPIN COUNTY

[redacted]

The attempt pick-up call, a condensed version of the KOPS alert typed into the dispatch system by an MECC employee, was sent at approximately 11:51 p.m.:

[redacted]

Schliesing and Reiter riding in separate squad cars each self-assigned to respond to the call. Reiter arrived at the scene first, and waited in his squad for the second officer at the corner of 31st Street and Chicago Avenue [redacted] Prior to arriving on the call, both Schliesing and Reiter had each accessed information on the address and displayed an image of [redacted] on his squad computer screen.

The two officers left their vehicles, briefly conferred,[6] walked onto the porch and approached the entrance of the duplex. As Schliesing knocked on the front door, Flowers and Reiter observed each other through the front window as Flowers sat in the living room, and the officer signaled to Flowers that he should come to the door.

Flowers resided in the lower level of an older, multiple story duplex. The front door to Flowers' unit—on the south or left side of the porch—opens into a foyer that is approximately four by five feet, with a light overhead. At the back of this small foyer is another, interior door that leads to a hallway. Only from the hallway can one see into the actual residence, and the hallway opens into the living room and provides a view of the dining room and kitchen door. No part of the interior of the apartment is clearly visible from the foyer, however, due to the interior door and the back wall of the hallway. A diagram of the Flowers entryway is attached as Appendix B to this report.

When Flowers opened the door, Schliesing asked him if [redacted] Flowers responded "yes," and asked the officers "what was this about?" Schliesing responded that they needed to see [redacted] and asked again if [redacted] was in the house. Flowers said "yes," and told the officers that [redacted] Schliesing then informed Flowers that an arrest warrant had been issued for [redacted] and that they needed to speak with [redacted] Flowers asked to see a copy of the warrant, and Schliesing responded that he did not have a paper copy and that officers generally do not produce them during arrests.

[6] In this brief conference, Schliesing and Reiter discussed whether to both approach the front door as opposed to having one approach from the rear of the house in the case [redacted] attempted to flee.

As Schliesing and Flowers spoke, Flowers occasionally looked over his shoulder, and at some point called [redacted] to the door. [redacted] soon appeared behind [redacted] According to the officers, [redacted] was within arms' reach, but Flowers positioned his body in the doorway in a manner that blocked the officers' access to [redacted] In particular, Flowers extended and "tensed up" his right arm across the doorway as a barrier between the officers and [redacted]

At this critical point, the witness accounts vary as to the extent of Flower's resistance—verbal and physical—to the officers' attempt to take [redacted] into custody. According to the officers, Schliesing informed [redacted] that [redacted] was under arrest and reached out to grasp [redacted] Flowers said "no" and moved his body to the right to block Schliesing's arm. Schliesing then attempted to pull Flowers forward and push him to the side, but Flowers again "tensed up" and was difficult to move. At this point, Reiter loudly commanded Flowers to move, and informed him if he did not, he would be under arrest for obstruction.

Reiter recalled that Flowers yelled "fuck off" and "you ain't arresting no one" while he blocked the officers' approach to [redacted] At this point, Reiter made the decision to arrest Flowers for "obstruction of legal process."

Recordings of the audio channels for MPD communications at the time frame include a muffled communication at approximately 12:06 a.m. The only truly audible word is "[redacted]" While the recording is difficult to discern, it does appear to capture Flowers yelling while one of the officers is attempting to contact MECC.[7] The dispatcher incorrectly states that the call at 3106 Chicago was "Code 4," meaning the scene was secure. Another officer, not on the scene, can be heard on the recording saying "I think they are fighting with one." The dispatch then issued the "tones" which alerted all officers to the fact that officers were calling for help at a scene.

Flowers disputed the officers' accounts of the encounter at the threshold. According to Flowers, the officers announced their intention to arrest [redacted] and, when questioned by Flowers about the reason, suggested that it was based upon [redacted] Flowers disputed the information, [redacted] and asked to see the arrest warrant. He also called [redacted] to the front door and began to place a call on his cell phone to Clemons, his sister and a former MPD sergeant. Flowers continued to ask to see a warrant or speak with a supervisor, and told the officers that [redacted] "[T]hat's when they got aggressive" and, according to Flowers, grabbed his throat. Flowers denied that he stretched his arm as a barrier between the officers and [redacted] that he told the officers that they could not take [redacted] that he used obscene language; or that he pushed or otherwise resisted the officers.

[7] The Investigator sought technical advice from the MPD and other sources regarding enhancement of the communication, but was informed that such enhancement was not feasible given the nature and content of the recording.

[redacted] recounted that [redacted] asked the officer for a warrant, and that in response the officers became angry and yelled that "We don't have to show you nothing. We don't have to call nobody." [redacted] also recalled that [redacted] produced documents to the officers, but that they "slapped the documentation out of his hand . . . and bum-rushed him into the house." As [redacted] had instructed, [redacted] had called Clemons—[redacted]—on [redacted] cell phone, and was speaking with Clemons at the time of [redacted] arrest. Clemons recalled hearing Flowers in the background, asking in a "very calm" voice to see an arrest warrant. Then Clemons heard the sound of a crash and the call disconnected.

D. Use of force to arrest Al Flowers

As they encountered Flowers at the threshold of his home, both Schliesing and Reiter told Flowers to step aside so they could take custody of [redacted] When Flowers failed to move and yelled that "you ain't arresting no one," Reiter told him that he was under arrest for obstructing legal process and commanded him to turn around and place his arms behind his back.

Again, at this point, the accounts of the arrest and use of force against Flowers—even between the arresting officers—differ.

According to Schliesing, Flowers continued to extend his right arm and press it against the wall, tensing his body to make it difficult to move. Schliesing attempted to grab Flowers' arm to handcuff him, but Flowers' arm remained tense as he stood his ground. Schliesing reported that he kneed Flowers in his abdomen and thighs "multiple times" and struck him in the face with his palm in his effort to overcome Flowers' resistance. Both officers struggled with Flowers, first in the foyer and hallway, and then into the adjoining living room. The two officers finally wrestled Flowers face down to the living room floor, knocking over some furniture. As other officers arrived to the location to assist, Schliesing continued to knee Flowers to force his hands behind his back for handcuffs. Schliesing did not recall hearing Flowers yell or swear during the encounter, nor did he recall Flowers ever throwing a punch or blow during the encounter.

Reiter's account of his use of force portrayed Flowers as considerably more aggressive. Reiter stated that Flowers yelled "fuck you" in response to the officers' directions that he move aside. After Reiter announced that Flowers was under arrest and reached for his left arm, Flowers pulled it away and pushed the officer's chest with it. Reiter responded by punching Flowers in his face, pushing him back toward the wall of the hallway. Reiter stated that Flowers then kneed him in the groin. At that point, Reiter transmitted his call for assistance. The officer then punched Flowers repeatedly in the face while trying to use his body weight to pin Flowers to the wall, commanding Flowers to stop his resistance. Flowers again hit Reiter in the face with his left forearm, and the officer responded by again striking Flowers twice in the face. Once the two officers pulled Flowers to the floor, he attempted to reach for Reiter's duty belt and Reiter responded by punching Flowers several times on the side of his head. As Reiter supported himself with his right hand near Flowers head, Reiter claims that Flowers bit his hand. As other officers arrived, Reiter pulled Flowers hands behind his back. Reiter stated that Flowers screamed obscenities throughout the struggle.

Officers Chad Fuchs and Chad Meyer were on routine patrol during the night of July 25-26, paired in a squad driven by Fuchs. (Fuchs has been a MPD officer since 1996; Meyer joined the MPD as an officer in 2008 after five years as a patrol deputy with the Chisago County Sheriff's Department.) As they drove westbound along 31st Street at Chicago Avenue, they noticed that Reiter and Schliesing had responded to the attempt pickup call and were waiting at the front entry of the Flowers home. As they drove, and only a couple blocks later, Fuchs and Meyer heard the "officer needs help tone" and promptly returned to the location. The incident report shows that Meyer and Fuchs arrived in less than 30 seconds from the moment they self-dispatched to assist.

As Fuchs and Meyer rushed into the Flowers residence, they observed Flowers on the floor face down in the living room, both his arms underneath him. Both officers described Flowers as struggling with the officers, kicking while he was on the floor and attempting to get up with his hands. In their judgment, Flowers was clearly resisting arrest, and Reiter and Schliesing needed assistance in securing him. Fuchs recalled that Reiter yelled to Flowers "stop resisting!" and that Flowers was yelling. Fuchs knelt on Flowers shoulder, grabbed one of his arms and pulled it from beneath him. Flowers left arm was beneath his head; Meyer grabbed it and pulled it back for handcuffing. Meyer, who had positioned himself at Flowers head, recalled seeing Flowers "mouthing like he was trying to bite" the hand of Reiter, which was on the floor by Flowers' head. Meyer did not see Flowers actually bite Reiter's hand.

Flowers described Reiter and Schliesing as the aggressors during the encounter. He stated that, without provocation, one of the officers grabbed his throat, pushed him backward into the hallway wall, and threw him onto the floor of the adjoining living room. Flowers felt the officers "stomping on his head . . . punching in his head and his ribs and his back." He recounted multiple hits on each side of his head, and stomps and kicks to his torso with both knees and feet. Flowers denied that he resisted the officers in any fashion, that he screamed or yelled profanities, or that he bit Reiter.

[redacted] similarly recalled that the officers "threw [Flowers] into the wall . . . put handcuffs on him . . . and threw him to the ground." Likewise, [redacted]—who came into the living room when she heard the commotion—watched as the officers pinned Flowers to the wall and punched him in the face. When additional officers arrived to the house, they pushed Flowers to the floor, hitting and kicking him in his face. [redacted] and [redacted] stated that Flowers did not scream or speak as the officers beat him.

Once secured with handcuffs, Flowers was lifted to his feet, and escorted from his home by Reiter and another officer to Reiter's squad. Reiter described Flowers as yelling and resisting as he was walked to the squad. Reiter noted that Flowers said "I ain't getting in there" as he refused to sit in the squad and attempted to kick the door after he was seated in the back of the vehicle.

By this time, the supervising Third Precinct sergeant, Sgt. Mark Klukow, arrived at the scene. Klukow stated that Flowers was not resisting the officers when officers placed him in the squad. Klukow also noted that he did not see any unusual force on the part of officers placing Flowers in the back of the squad car. As Klukow approached the vehicle, he recognized Flowers

from their work together years before on North Side community relations projects. Klukow spoke with Flowers and tried to calm him as he sat in the back of Reiter's squad, but the two men talked over each other. The sergeant attempted to explain his role in reviewing the arrest; told Flowers why the officers did not produce a copy of the arrest warrant for [redacted] and took photographs of Flowers head injuries.

Flowers disputed that he resisted during the escort. He stated that the officers slammed his head onto the squad and "threw me into the back seat of the squad like a ragdoll." Flowers recalled that Klukow was at the scene, but stated that Klukow avoided contact with him.

E. [redacted]

F. Aftermath: medical treatment and case reports.

Reiter transported Flowers to HCMC for treatment; the two did not speak in route to the hospital. Klukow also went to the hospital and ordered different officers to sit with Flowers and transport him to the Hennepin County Jail after he was discharged. Klukow again attempted to speak with Flowers but the two men continued to just talk over one another. Klukow also

[8] [redacted]

attempted to take photographs of Flowers injuries; Flowers resisted, insisting instead that HCMC personnel take the photographs. HCMC staff noted that Flowers smelled of alcohol, but he refused a breathalyzer.

The HCMC medical records reported that Flowers was treated for facial and scalp lacerations.[9] Flowers' head laceration measured approximately three and one half inches in length and required six stiches. Flowers also complained of pain to his rear ribcage but denied any trouble breathing. HCMC medical personnel determined that a fracture of Flower's ribcage was unlikely; however, when Flowers returned to HCMC on August 6 to have his stitches removed, he was still having tenderness on his right ribcage. An X-ray revealed a non-displaced rib fracture on his right side.

Reiter stated that he refused treatment at HCMC for his hand since he did not want to be pulled from active duty. Klukow took photographs of injuries to the officer's hand. The one photo, not well lit, showed only Reiter's knuckles. Three days later, on July 28, Reiter reported to the MPD crime lab to have his injuries photographed in better light. The crime lab photos focus on Reiter's right wrist. In his case report, however, Reiter stated that Flowers bit him on the top of his right hand, the area photographed by Klukow. The two wounds in the crime lab photos are two inches apart, are less than one inch long, show redness and scabbing indicating they were relatively new wounds. The Investigator was unable to determine if the wounds were consistent with bite marks.

The MPD officers involved in the Incident subsequently entered reports in the MPD Computer Assisted Police Records System ("CAPRS"). The "reporting officer" was responsible for entering basic demographic information about the call, such as the address and names of individuals involved, although as further investigation related to a call occurred, those details could be amended. Each officer then prepared a supplement that included a narrative of his/her involvement in the Incident. Some officers at the scene did not enter narratives, although this appeared to be due to their lack of significant involvement in the Incident.

All officers who were physically engaged in the arrest of Flowers entered narratives in CAPRS, and the "reporting officer" for the Incident was Reiter. The time stamp on each narrative indicated when the officer submitted his or her report; however, CAPRS did not record the amount of time spent drafting the narrative or interruptions such as other calls that delayed an officer in finalizing his or her narrative. Schliesing drafted his supplement as soon as he returned to the station just after the call, and the time stamp on his report was 2:42 a.m. Reiter reported that, after he was discharged from HCMC, he remained downtown to inventory some evidence and then returned to the Third Precinct to enter his report. The time stamp on his report was 5:24 a.m. Klukow entered a narrative supplement and also a "force supervisor review," a report required whenever any officer uses force during an arrest. The force review is a narrative of the investigation Klukow must complete, describing information gathered at the scene to assist in a later investigation as to whether the officers' use of force was justified.

[9] Reiter's case report supplement contained the entry "yes" in the section demographic section for "prior injuries" to the subject of the arrest. Reiter told the Investigator that he typed "yes" in the report to indicate that Flowers was injured in the arrest, not that he observed injuries on the subject beforehand.

III. FACTUAL AND LEGAL ANALYSIS

A. Whether the arrest of Flowers was justified and consistent with MPD policy.

The legality of an officer's arrest of a citizen without a warrant is evaluated in light of the guarantee to be free from "unreasonable searches and seizures" articulated in the Fourth Amendment, applicable to officers of a state or municipality. *See, e.g.*, *United States v. Watson*, 423 U.S. 411, 420 (1976) (describing the acts of Congress and judicial decisions applying the Fourth Amendment to officers of the state). As a result, courts evaluate the reasonableness of a warrantless arrest "by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests." *Wyoming v. Houghton*, 526 U.S. 295, 300 (1999). The U.S. Supreme Court has held "when an officer has probable cause to believe a person committed even a minor crime in his presence, the balancing of private and public interests is not in doubt. The arrest is constitutionally reasonable." *Virginia v. Moore*, 553 U.S. 164, 171 (2008). Minnesota has adopted the same standard under state law. *See* Minn. Stat. § 629.34.

For MPD officers, the decision to arrest is also governed by numerous internal policies. *See* MPD Policy and Procedure Manual. The "use of discretion" policy states that "[o]fficers 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." *Id.* § 5-103. As such, "[n]o 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." *Id.* § 5-107. Moreover, "[o]fficers must be able to articulate specific facts, circumstances and conclusions that support reasonable suspicion or probable cause for a[n] . . . arrest . . . ." *Id.* § 5-104. In sum, MPD policy requires that MPD officers comply with the constitutional standards governing warrantless arrests, and additionally that they be able to articulate "specific facts, circumstances and conclusions" for an arrest.

While Schliesing and Reiter arrived at the Flowers' home with knowledge of a facially valid warrant to arrest [redacted],[10] the arrest of Flowers must be evaluated under the warrantless

[10] Underlying the confrontation between Flowers and the officers during the Incident is the suggestion that the arrest warrant issued for [redacted] was *itself* invalid. [redacted] Regardless of whether there was error on the part of the county in the issuance of the warrant, it is reasonable for an officer to rely on a warrant issued by the state to effectuate an arrest. *See United States v. Leon*, 468 U.S. 897, 921 (1984) ("[A]n officer cannot be expected to question the . . . probable-cause determination or [the] judgment that the form of the warrant is technically sufficient. Once the warrant issues, there is literally nothing more the police [officer] can do in seeking to comply with the law." (internal quotations and alterations omitted)).

arrest standard. Schliesing and Reiter arrested Flowers for obstructing the legal process, a violation of Minnesota Statute § 609.50. That statute makes it a misdemeanor "to obstruct[], hinder[], or prevent[] the lawful execution of any legal process, civil or criminal, or apprehension of another on a charge or conviction of a criminal offense . . . ." The Minnesota Supreme Court has generally required that an individual "physically obstruct[] or interfere[e] with a police officer [such that it] substantially frustrate[es] or hinder[s] the officer in the performance of his duties" in order to violate the statute. *State v. Krawsky*, 426 N.W.2d 875, 877 (1988).

The task of the Investigator was to determine what occurred in the foyer of the Flowers' home in the few minutes between the moments when Flowers opened the door and when the officers first struggled with Flowers. All interviewed agreed that Schliesing and Reiter did not attempt to cross the threshold until they saw [redacted] At a minimum, Flowers did not step aside when [redacted] came to the door and the officers attempted to arrest [redacted] Whether the officers reasonably assumed Flowers' failure to move was an attempt by him to "substantially frustrate" the arrest of [redacted] is a close call [redacted] Flowers had opened the door and had called for [redacted]

Because of the significant variances between the accounts of Flowers and the MPD officers as to whether Flowers actively resisted [redacted] arrest, the Investigator faced a credibility judgment. The Investigator resolved the conflict in favor of the MPD officers and concluded that Flowers refused to step aside, verbally expressed his intent to resist the officers, and otherwise "substantially frustrated" the officers in their attempt to arrest [redacted] In making this determination, the Investigator necessarily discounted Flowers' description of the lack of his own resistance. In making this credibility assessment, the Investigator gave weight to the following:

- the audio recording of Flowers' raised voice in apparent protest of the officers' attempt to arrest [redacted]
- the common sense reasonableness of an angry response by Flowers to [redacted] arrest at his home;
- the consistency and detail of the case report accounts of the responding MPD officers prepared shortly after the Incident;
- the Investigator's assessment of credibility during its face-to-face interviews, particularly with respect to the comparative level of detail in describing the conduct of the participants and explaining the bases for that conduct; and
- case reports describing Flowers' resistance in prior encounters with MPD officers.

The Investigator's credibility assessment was not clear cut as there were doubts regarding some aspects of Reiter's case report supplement, which conflicted with the narratives provided by other MPD officers and appeared to exaggerate Flowers' statements and actions toward Schliesing and Reiter.[11]

The location of the interaction is also important in the analysis of whether the officers reasonably believed Flowers to be obstructing them in the performance of their duties. Officers cannot legally cross the threshold without permission or, as applicable here, they have reason to believe the subject of the arrest warrant is in the home. As a result, they are often interacting with individuals at the entryway to a home. Since officers cannot see what is happening behind the door, interactions in this particular location pose a large safety risk for officers.[12] They are trained to move interactions out onto the porch, or to make entry as soon as legally possible so as to minimize the chances that whatever is happening in the home develops into a threat to their safety.

Here, both officers noted in their case reports and during their interviews that they could not see what was happening behind Flowers as he stood in the doorway. Furthermore, both noted that Flowers kept looking over his shoulder, a gesture which made each of them nervous as to what was happening behind him. Klukow noted that Flowers' "stance and efficacy as someone who could effectively maintain that position" could constitute obstruction, justifying his arrest.

A visit to the Flowers' home confirmed that the foyer, which is comprised of an outer door to the front porch and an inner door to a hallway, would pose challenges to an officer at the door being able to view what was occurring inside the house. The foyer inside which the interaction between Flowers and the officers began is a four by five foot room with no windows. This limited visibility would be even more pronounced with Flowers—by everyone's estimation a tall and imposing man—standing in the doorway.

The Investigator considered whether, in the moments before Schliesing reached for [redacted] the officers could have taken alternate actions to calm the tense situation. For example, Flowers repeatedly asked for a copy of the arrest warrant for [redacted] However, there was no legal or policy requirement that the officers produce a hard copy of an arrest warrant, it was not apparent that the officers could print one from their squad's computer or display more than what

[11] For example, while Reiter reported that Flowers actively resisted being placed in the squad, no other officer stated that Flowers struggled after being handcuffed and Klukow reported seeing no signs of struggling from Flowers as he was being escorted to the squad. Further, Reiter's report attributed several profane comments to Flowers, yet no one else at the scene reported that Flowers used obscenities. Finally, Reiter's report stated that Flowers bit his right *hand*, which Klukow photographed that evening. Photographs taken days later at the crime lab focused on Reiter's right *wrist*, not his hand. The Investigator could not conclude that Flowers bit Reiter, in large part because Flowers is missing most of his upper teeth and does not wear dentures, rendering him arguably impaired to bite effectively.

[12] Commander Jason Case, a commander in the Leadership and Organizational Development Division of the MPD, referred to the entryway of a home as the "fatal funnel" for police officers.

appeared on the KOPS alert.[13] Even if the officers *could* have printed this minimal amount of information, it may not have satisfied Flowers sufficiently for him to allow the officers to arrest [redacted] without incident.

Likewise, the officers might have urged that Flowers and [redacted] step onto the porch to discuss the basis for the warrant, and might have allowed Flowers to speak with a MPD supervisor as (in his account) he requested.[14] However, according to the MPD officers and supervisors interviewed by the Investigator, any reasonable officer would have required that [redacted] be under their control before offering Flowers such options. It is impossible to know whether negotiating with Flowers would have changed the outcome of the evening since it is clear the officers did not spend much time addressing Flowers' concerns. As Fuchs and Meyer only drove a few blocks between observing Schliesing and Reiter at Flowers' closed door and hearing the help call, it appeared that the confrontation unfolded very rapidly. While it was clear that the officers did not do all that they were trained to do to deescalate the conflict, the Investigator was unable to conclude that their failure to do so was an abuse of the discretion accorded to officers facing dynamic and unpredictable circumstances. Here, various factors influenced the officers' decision-making: the time of night, the confined space inside a home, the size and demeanor of the subject, and the officers' relative experience in dealing with such encounters.

Regardless of other options the officers had to deescalate the situation, the moment Schliesing reached for [redacted] and Flowers did not move to allow him to effectuate the arrest, the officers had a constitutionally valid, and clearly articulable, reason for arresting Flowers. [redacted] While Flowers' failure to move was "minor" given the officers' training and experience, it was reasonable for them to determine his failure to move supported the decision to arrest.

B. Whether the use of force against Flowers was justified and consistent with MPD policy.

The use of force against a citizen is evaluated by the factors articulated by the U.S. Supreme Court in *Graham v. Connor*, 490 U.S. 386 (1989). These factors include "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." *Id.* at 396. This analysis is to be made from the perspective of a "reasonable officer at the scene, rather than with the 20/20 vision of hindsight." *Id.* at 395. The Minnesota Supreme Court has

[13] Clemons suggested during her interview that the squads have printers and that the officers could have printed a copy of the warrant. While the other officers confirmed that many squads have printers, most officers stated that the printers are not reliable; are primarily used to print citations, not screen shots; and that the only proof of the warrant that could have been printed was the shortened version of the KOPS alert that was typed into the call queue. This alert simply noted that [redacted] should be picked up for [redacted]—the precise information the officers were telling Flowers that he was disputing. It did not contain the level of detail that Flowers wanted to know (such as [redacted]).

[14] In his interview, Klukow indicated that he routinely travels to incident scenes within the Third Precinct to respond to complaints by subjects and other citizens.

adopted the same standard under state law. *See Johnson v. Morris*, 453 N.W.2d 31, 36 (Minn. 1990); *see also* Minn. Stat. § 609.06.

MPD officers are trained on the *Graham* standard in both the onboard training they receive when they are hired[15] and yearly throughout their career. Officers are taught to determine what is the "minimum reaction on the part of an officer to effectuate an arrest." MPD officers are trained with a "continuum of force" concept, such that varying levels of response depend on the behavior of the citizen. MPD characterizes a citizen's resistance behavior from passive resistance to active aggression.

- Passive resistance is defined as: "A response to police efforts to bring a person into custody . . . 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."

- Active resistance is defined as: "A response to police efforts to bring a person into custody . . . when [the subject] engag[es] in physical actions (or verbal behavior reflecting an intention) to make it more difficult for officers to achieve actual physical control."

- Active aggression is defined as: "Behavior initiated by a subject . . . when [a subject] present[s] 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.

Flowers described his behavior as that of passive resistance. He denied yelling, he stated that the officers "bum rushed" him, and that he was not in any way resisting arrest. Reiter described Flowers as being actively aggressive, including punching Reiter in the face in the doorway and biting his hand on the floor. Schliesing's version of the interaction was somewhere between those presented by Reiter and Flowers: he described Flowers as "tensing up" but did not recall Flowers yelling or striking at the officers during the encounter. Given that a brief recorded communication demonstrated that Flowers was at least yelling in the initial moment of the struggle, it is the conclusion of the Investigator that Schliesing's description of active resistance, bordering on active aggression, is most likely the level of resistance Flowers gave the officers.

This conclusion is also consistent with some of Flowers' prior encounters with MPD officers during which he demonstrated similar behavior in the face of arrest. For example, in August 2001—when officers arrived at Flowers' home in response to a domestic dispute—Flowers yelled and resisted arrest by grasping a fence, tensing up, and refusing to be handcuffed. *See* MPD Incident No. 01-250426, Supp. 3. Similarly, in September 2003—when an officer attempted to arrest Flowers after a meeting at the Minneapolis Urban League—Flowers yelled and "violently pulled" his arm away from an arresting officer which resulted in a struggle on the ground between the two. *See* MPD Incident No. 03-262537, Supp. 1. Flowers also yelled at officers during at least one other incident in March 1999 when he faced arrest. *See* MPD Incident No. 99-062975.

[15] Depending on the type of class of officers being hired, the onboard training, or academy, for the MPD ranges from 12 to 27 weeks.

For a subject engaged in active resistance bordering on active aggression, MPD officers are trained to deploy a range of force techniques from joint manipulation, use of pressure points, escort holds, distraction techniques,[16] controlled take downs, and conscious neck restraints. The reports by Reiter and Schliesing of the blows each delivered to Flowers are consistent with this training. Neither used any weapons or tools, including a Taser (worn by Reiter) or firearm. Further, while the take down would likely not be described as controlled by any involved, it does appear that the officers attempted to bring Flowers to the floor in a clear area of the living room. For example, while Flowers' living room table has a glass top and the struggle between Flowers and the officers occurred just adjacent to the table, the glass was not broken on the table. Further, while a large television was knocked over in the struggle, it also was not broken, supporting the conclusion that the officers were attempting to control their take down of Flowers who, again, was considerably bigger than either officer.

Flowers reported that he was "stomped on" by the officers on the floor. All four officers recalled that the officers used knees, forearms, and hands on Flowers on the floor in an attempt to bring his arms into a position to be handcuffed. Further, Reiter reported that he punched Flowers numerous times while he was prone on the floor, prior to being secured in handcuffs. Schliesing wrote in his report that he kneed Flowers numerous times while he was prone, prior to being secured in handcuffs. Thus, given the officers' own descriptions of their application of force, the injuries Flowers sustained to his ribs can be explained by this use of force, which was reasonable given the resistance in which Flowers was engaged.

Flowers also reported that he was punched and stomped on after he was secured in handcuffs. However, photographs of Flowers hands and wrists taken by his sister, Clemons, on the Sunday after his arrest show no signs of bruising or marking that would support such a contention since all involved agree that Flowers was handcuffed with metal cuffs on the floor with his hands behind him. The Investigator concluded that had officers engaged in significant use of force on Flowers as he describes once he was handcuffed, his wrists would have shown some subsequent bruising or swelling. Likewise, Clemons' photographs also show no bruising or cuts on Flowers knuckles or arms that would support Reiter's account that Flowers struck the officer.

Additionally, Klukow arrived less than three minutes after Fuchs and Meyer arrived. In that time, the officers controlled Flowers on the floor, handcuffed him, brought him to his feet, and escorted him to a squad car. Klukow stated that he saw officers escorting a non-resisting Flowers to a squad. Given this short time frame, and the relative absence of injuries to Flowers that support his contention that he was beaten at great length on the floor and while handcuffed, the Investigator concluded that the officers involved used little to no force on Flowers once he was handcuffed.

[16] The MPD defines distraction techniques as "low energy strike[s] directed to a large muscle mass designed to weaken the subject's motor skills and divert attention allowing time for a follow-up technique."

C. Whether Flowers' race and/or community profile were factors in the arrest or use of force.

Flowers and others have alleged publicly that Flowers' arrest and the accompanying use of force demonstrated racial discrimination, and that the officers' decisions and actions were reprisals for Flowers' community activities and advocacy against police misconduct. The Investigator could not substantiate these claims.

Schliesing and Reiter, not surprisingly, denied that their decisions and conduct at the scene were influenced by the race of the subject. There is no direct evidence of any racial motivation during or immediately following the incident, and Flowers offered no proof beyond conjecture. Additionally, the Investigator reviewed the personnel records for Schliesing and Reiter. Schliesing's file revealed no citizen complaints. Although Reiter had been the subject of four citizen complaints brought by persons of color, only one was sustained and resulted in coaching.[17] The brief disciplinary histories of both officers did not demonstrate any pattern of discriminatory policing.

Each officer also stated that he did not know Flowers' identity until after the arrest, and disclaimed any awareness of his community work or advocacy, or of his prior encounters with the MPD. Given each officer's relatively short tenure with the department (just more than a year for Schliesing and two and a half years for Reiter but with a long period of layoff), it is more likely than not that each was unaware of Flowers' community profile. Only Klukow recognized Flowers when he arrived at the scene, and Klukow's reaction was to attempt to calm Flowers, explain the situation, and direct him to medical treatment.

The Investigator was cognizant that racial profiling in law enforcement is a real and significant issue facing Minneapolis and other American cities. However, the Investigator was unable to conclude—based upon direct or indirect evidence beyond the surmise of Flowers, his family and his supporters—that race was a factor affecting the outcome of the July 25-26 incident. Rather, the evidence suggested that Schliesing and Reiter were reacting to the circumstances before them—an angry [redacted] confronting police officers in a confined space late at night as they attempted to arrest [redacted] While the Investigator appreciated the concern of many in Minneapolis communities of color that the outcome of the Incident might have been different had the subject been Caucasian, the concern was speculative and not supported by any evidence reviewed by the Investigator.

[17] The complaint concerned Reiter's fact-gathering at the scene of an August 2013 traffic accident. The complainant, an African American cab driver, felt that Reiter unfairly discounted his version of the accident which was later determined to be accurate.

IV. CONCLUSION

The Investigator concluded that the first responding MPD officers had sufficient cause to arrest Flowers on July 25-26 for obstruction of legal process as he attempted to impede their efforts to lawfully arrest [redacted] While the officers could have reasonably chosen an alternative approach to deescalate the confrontation, their decision to physically remove Flowers as a barrier to their arrest of [redacted] was also reasonable given the circumstances and not an abuse of their discretion. The Investigator also determined that the level of physical force used by the MPD officers to restrain Flowers and take him into custody was not excessive as it was commensurate with his resistance and consistent with MPD policy and training. Finally, the Investigator found insufficient evidence to establish that the MPD officers' conduct toward Flowers was influenced by his race or community activities.

Accordingly, the Investigator found no violation of law or MPD policy arising from the officers' conduct during the Incident.

APPENDIX A: Chronology

July 25, 2014	
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
5:45 p.m.	ACF issues Merkel warrant for [redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
11:47:38 p.m.[18]	MECC receives notice of warrant for [redacted] arrest and sends KOPS alert
11:51:42 p.m.	MECC creates attempt pickup call
11:58:41 p.m.	Officer Schliesing self-assigns to attempt pickup call
July 26, 2014	
12:00:18 a.m.	Officer Reiter self-assigns to attempt pickup call
12:00:50 a.m.	Officer Reiter arrives at 3106 Chicago Ave and waits for Officer Schliesing
12:01:28 a.m.	Officer Schliesing arrives at 3106 Chicago Ave
12:06:49 a.m.	Officer Reiter radios "fighting with one"
12:07:42 a.m.	Officers Fuchs and Meyer arrive at 3106 Chicago Ave
12:10:35 a.m.	Sergeant Klukow arrives at 3106 Chicago Ave
12:44 a.m.	Flowers seen at HCMC

[18] As MECC records officers' actions down to the second, these entries are more detailed than other entries.

APPENDIX B: Diagram of Flowers Duplex Entryway

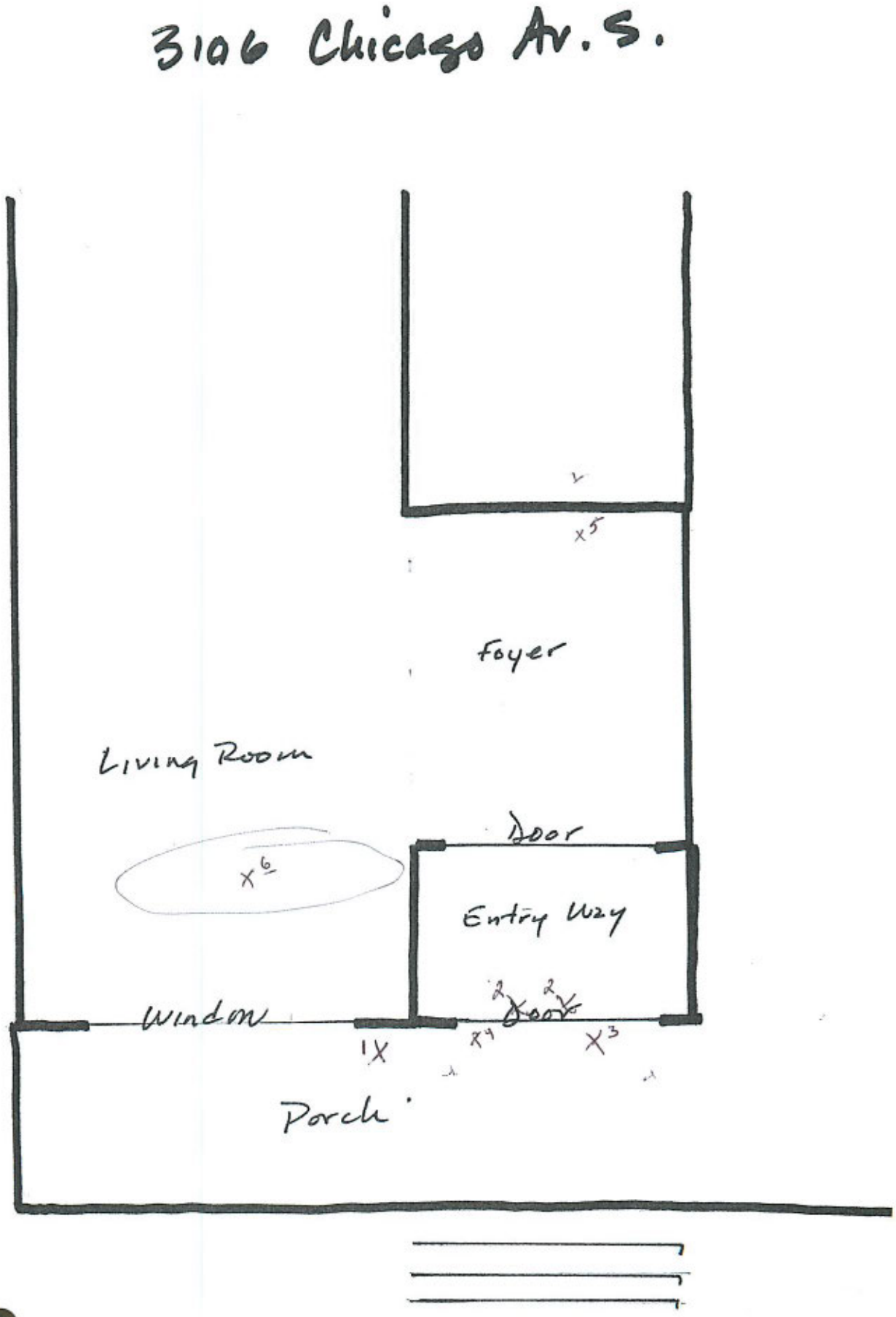

EXHIBIT H

X1 is where Reiter recalled standing when he motioned to Flowers to open the door.
X2 is where Reiter recalled Flowers moving back and forth in the doorway.
X3 is where Reiter recalled standing when talking to Flowers in the doorway.
X4 is where Reiter recalled Schliesing standing when talking to Flowers in the doorway.
X5 is where Reiter recalled the officers attempted to control Flowers against the wall inside the home.
X6 is where Reiter recalled the officers took Flowers to the floor.