

DISPOSITIONAL REPORT REGARDING THE

AUGUST 12, 2023

CITY OF CADILLAC POLICE DEPARTMENT

OFFICER INVOLVED SHOOTING

Dated: October 31, 2023

Release Date: November 12, 2023

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SUMMARY OF FACTS

On August 12, 2023 at 21:29:50, a call is received by Wexford County Central Dispatch advising that somebody was trying to gain entry to an occupied dwelling by pushing a window air conditioning unit out of the window. It was also reported that the suspect, later determined to be [redacted] had a machete in his possession. The occupant of the dwelling was able to scare the suspect off by firing several rounds from a cap gun. Two City of Cadillac Police Officers[1] were dispatched to the residence at 21:30:46.

According to Officer A's bodycam video, he arrives on scene at 21:34:37 and radios dispatch of the same. At 21:35:03 he makes contact with the 911 caller. Caller advises Officer A that there was a man who was trying to push in his air conditioner and that he had a machete. Officer A and Caller begin walking toward the neighbor's house at 21:35:17. This area is a residential neighborhood located in the City of Cadillac, and, as such, the houses are very close together. During this time Caller also advises Officer A that he has no idea who the man is. Upon reaching the neighbor's driveway, Officer A shines a flashlight in a car in the driveway and observes a female in the driver's seat. The female advises Officer A that "he is in there", she further identifies the suspect as [redacted] and that he was inside of the house.[2]

Officer A has some discussion with the female about what was going on. She advised that she really didn't know. When she got home from work Mr. [redacted] told her that she had to leave the house and that he loved her. At 21:36:04 Officer A radios for a name search on Mr. [redacted] and

[1] The names of the officers involved are not being released due to the conclusion drawn in this report.

[2] Wexford County Dispatch CAD Notes indicate that Officer B initiated radio traffic regarding the female subject, however bodycam indicates that it was Officer A (Officer B had not arrived on scene at that point).

the female again advises that he was in the house. Officer A enters the open garage door and knocks on what is believed to be the entry door to the attached residence. While knocking on the door Officer A calls out Mr. [redacted] first name, "[redacted] then leaves and checks the area between the two residences. Officer A returns to the garage at 21:37:09, and tries to open another door that is located in close proximity to the door he was originally knocking on. The female gives Officer A instructions on how to open the door. At 21:37:16, Officer A, in full uniform, opens the door and Mr. [redacted] is seen in the backyard of the home holding a dog with the machete raised. The only lighting in the back yard appears to be from Officer A's flashlight which he was holding in his left hand. Officer A attempts to make contact with Mr. [redacted] by saying "Hey, Bud", to which Mr. [redacted] responds "[redacted] you man, [redacted] you." At 21:37:22 Officer A is heard telling [redacted] "ah, ah, ah…don't do that" as it appears from the footage that [redacted] was going to harm the dog with the machete. Officer A repeats himself and radios at 21:37:28 that he has the subject at gunpoint and the suspect has a machete. At 21:37:32 Officer A gives commands to stop and at 21:37:33 Mr. [redacted] turns toward Officer A, raises the machete and charges at the officer, it is during this time that Officer A fires two rounds. Officer A is located in the garage at this time. While unclear due to the angle of the bodycam and the lighting, it is believed that Mr. [redacted] falls to the ground as a result of the shots.[3]

Mr. [redacted] then continues to gain entry into the garage while Officer A radios that shots were fired at 21:37:38. As he is radioing, Officer A steps back out of doorway, and at 21:37:40, Mr. [redacted] yells "[redacted] you", officer A, yells back to him to "get back" and then fires a single

[3] This belief is based on what appears to be Mr. [redacted] knees coming forward as if dropping to his knees, and the approximate six second delay from the second shot to the third shot. During the delay Officer A is radioing that shots were fired and Officer A advances forward toward the door.

shot.[4] Officer A radios "shot fired, three shots fired, one subject down, I am going to need EMS to this location, please." This radio message was sent at 21:37:46. Officer A radios that he is going to need as many units as possible and at 21:39:06 he advises that he is starting CPR. Officer A begins CPR and continues until assistance arrives. At 21:41:48 he stops CPR and exits the garage and goes to his patrol car. Officer B, according to the CAD notes, arrives on scene at 21:39:11. Officers A and B begin having a discussion while Officer A is administering CPR about where the wounds are located. Upon arrival of EMS, Officer A leaves the garage and goes to his fully marked patrol vehicle, with Officer B following shortly thereafter. At the car the two have a brief conversation, during which Officer B advises Officer A not to say anything. During this conversation, Officer A shuts off his bodycam at 21:42:51. Per Officer B's bodycam no relevant statement is made by Officer A during their interaction. Mr. [redacted] was pronounced deceased by EMS at 21:42.

EVIDENCE COLLECTED

The Michigan State Police Crime Scene Response Team (CRT) was called to the scene to assist with the investigation. According to CRT reports, they were requested to go to the scene on August 12, 2023, at 11:02 p.m. and arrived on August 13, 2023, at 2:15 a.m.[5]

The following relevant evidence was recovered from the scene:

1. 9 mm pistol
2. 9 mm pistol
3. Black hatchet located between the two residences
4. 3 fired 9mm shell casings all located in the garage
5. Machete located in the backyard near the house
6. 1 fired bullet located in the ground of the back yard

[4] This shot makes it the third shot that Officer A fired.

[5] It should be noted that the CRT is not located locally. The original request was for assistance from the Grayling team. Graying was not able to respond, and, as such, the Grand Rapids team responded.

According to the CRT report, the decedent was located on the garage floor, with his left arm against the door leading to the backyard.

In addition to the above evidence, radio traffic and Officer A and B bodycam footage was obtained and reviewed.

AUTOPSY/TOXICOLOGY

A Forensic Postmortem Examination (Autopsy) was performed on Mr. [redacted] on August 14, 2023 at the Western Michigan University School of Medicine. Along with the Autopsy, a toxicology analysis was performed. The Toxicology Report indicates that there were no controlled substances found in his system.

The Autopsy Report indicates that two gunshot wounds were located.

Gunshot wound #1 (right side of chest)

Entrance: There is a 3/8 x ¼ inch elliptical defect, with a less than 1/16 inch marginal abrasion, on the right chest, located 16 inches below the top of the head and 4 ½ inches right of the anterior midline. No soot, gunpowder, stippling, or muzzle imprint is noted on the skin surrounding the entrance wound.
Path: The wound path proceeds from the entrance wound through the soft tissues of the chest, anterior aspect of the right fourth rib, all lobes of the right lung, posterior aspect of the 11th rib, and terminates in the soft tissues of the right back, at a point approximately 20 inches below the top of the head and 2 ½ inches right of the posterior midline.
Projectile: A deformed gray and copper-colored metallic projectile is recovered from the terminus of the wound track.
Direction: The wound track is from front to back, right to left, and downward when the body is viewed in the anatomical position.
Associated Findings: Interstitial hemorrhage is present throughout the wound track. Approximately 1400 milliliters of blood are in the right pleural space.

Gunshot wound #2 (left chest)

Entrance: There is a ¼ x ¼ inch circular defect, with a 1/16 inch eccentric marginal abrasion, on the left chest, located 16 inches below the top of the head and 2 ½ inches left of the anterior midline. No soot, gunpowder, stippling, or muzzle imprint is noted on the skin surrounding the entrance wound.

Path: The wound path proceeds from the entrance wound through the soft issues of the chest, the anterior aspect of the left fourth rib, upper lobe of the left lung, pericardium, apex of the heart, left hemidiaphragm, stomach, pancreas, left kidney, retroperitoneal soft tissues, and terminates in the soft tissues of the left back, at a point approximately 22 inches below the top of the head and 2 ½ inches left of the posterior midline.
Projectile: A deformed gray and copper-colored metallic projectile is recovered from the terminus of the wound track.
Direction: The wound track is from front to back and downward without appreciable left or right deviation when the body is viewed in the anatomical position.
Associated Findings: interstitial hemorrhage is present throughout the wound track. Approximately 100 milliliters of blood are in the left pleural space. Gastric contents are spilled into the peritoneal cavity

The cause of death was determined by the forensic pathologist to be multiple gunshot wounds, and the manner of death is homicide.

LEGAL SUMMARY

In Michigan, there are five ways in which the manner of death can be listed: 1) pending; 2) natural; 3) accidental; 4) suicide; or 5) homicide. Important to note is the distinction between the manner of death and a legal conclusion. As such, just because the manner of death is determined to be a homicide, the pathologist is not drawing a legal conclusion as to whether it is a justifiable use of deadly force.

The State of Michigan recognizes two types of self-defenses or defense of others: 1) Statutory Self Defense and 2) Common Law Self Defense. For purposes of this case, there is no practical difference between statutory and common law self-defense.

Statutory Self Defense or Defense of Another: MCL 780.972 states that:

> An individual who has not or is not engaged in the commission of a crime at the time he or she uses deadly force may use deadly force against another individual anywhere he or she has the legal right to be with no duty to retreat if the individual honestly and reasonably believes that the use of deadly force is necessary to prevent the imminent death of or imminent great bodily harm to himself or herself or to another individual.

Michigan Criminal Jury Instruction 7.21 also provides guidance on what constitutes defense of others. The relevant parts to this case include:

> A. The officer must have honestly and reasonably believed that the other person being threatened was in danger of being killed or seriously injured. If the officer's belief was honest and reasonable, he could act at once to defend the person in danger, even if it turns out later that the officer was wrong about how much danger the other person was in.
> B. When deciding whether the officer honestly and reasonably believed that the other person was in danger of serious injury the jury must consider whether the attacker was armed with a dangerous weapon or had other means of injuring another person.
> C. When deciding whether the force used appeared to be necessary the jury may consider how the excitement of the moment affected the choice the officer made.

There is no duty to retreat by an officer.

Both the Federal Constitution and the Michigan Constitution protect against warrantless searches. However, there are certain limited exceptions to the protection. One of those exceptions is for exigent circumstances. In *Warden, MD Penitentiary v Hayden*; 387 US 294 (1967), the United States Supreme Court held that it was proper for law enforcement to enter a house that they were informed that a robbery suspect entered. In *People v Beachman*, 98 Mich App 544 (1980), the Michigan Court of Appeals held it proper for law enforcement to enter a locked lobby of a residential hotel upon receiving information that a particularly clothed drug dealer had entered the building approximately 10 minutes before their arrival.

Officers are justified in using deadly force in making an arrest when met with force or when it is necessary to prevent the person from fleeing. *People v Crosby*, 436 Mich 414 (1990), *People v Fielder*, 194 Mich App 682 (1992). In addition, the officer must reasonably believe a felony has occurred and the fleeing person was the one who committed the offense. *People v Hampton*, 194 Mich App 593 (1992).

In Michigan, Home Invasion First Degree is a 20-year felony. To be guilty of the offense, the person must have entered a dwelling without permission and while entering, while in, or while leaving was armed with a dangerous weapon. MCL 750.110(a)(2). For guidance on what is a dangerous weapon it helps to look to Michigan Criminal Jury Instruction 11.19, which states:

> (1) A dangerous weapon is any object that is used in a way that is likely to cause serious physical injury or death.
>
> (2) Some objects, such as guns or bombs, are dangerous because they are specifically designed to be dangerous. Other objects are designed for peaceful purposes but may be used as dangerous weapons. The way an object is used or intended to be used in an assault determines whether or not it is a dangerous weapon. If an object is used in a way that is likely to cause serious physical injury or death, it is a dangerous weapon.

ANALYSIS

The question in this case is not whether Officer A was the cause of Mr. [redacted] death, instead the question is whether Officer A was justified in doing so? In order to determine that question we must put ourselves in the place of a reasonable person at the time that the incident occurred.[6]

Officer A was called to an active Home Invasion First Degree complaint, a 20-year felony. Important to note, is the fact that CPD vehicles do not have real time access to the CAD notes from Wexford County Dispatch. As such, anything that Officer A knew about the situation prior to his arrival is what was relayed to him over the radio by dispatch. Officer A can be heard on the radio asking if the suspect was inside with the machete and it was confirmed that he was outside. Officer A at a subsequent point asks if Caller still had eyes on the subject, and was

[6] Officer A did not provide any statements regarding the incident, which is his right. As such, the analysis is based what can be observed by bodycam of the officer and the recorded radio traffic.

informed that the suspect was trying to get into the neighbor's shed. Officer A arrives within seconds of that last radio transmission.

Officer A learns from Caller that there was a man who tried to enter his house by pushing out the air conditioner unit and that he had a machete. Caller at this point does not know who the suspect is. At this point, all Officer A knows is that there is a person who tried to break into a house, he was armed with a machete, and was at large. Subsequently, he learns from the female neighbor that the suspect is Mr. [redacted] and that it was thought he was inside of his house.

Officer A attempts to make contact with Mr. [redacted] by knocking on the entry door to the house from the garage, but there is no answer. For unknown reasons, Officer A leaves the garage and goes to the area between the two houses, and then comes back and attempts to open the door that leads to the backyard. It is unknown if he heard something or saw Mr. [redacted] in the back yard. However, I believe Officer A was justified being in the garage and subsequently attempting to gain access to the back yard. Based on the knowledge that Officer A had at the time, he had reason to believe that a felony had occurred, that Mr. [redacted] was the person who committed the felony and there was an ongoing threat due to him not being apprehended and being armed with a dangerous weapon.[7] As such, he did not need a warrant and had a lawful reason to be where he was.

Turning to the question of whether Officer A acted in the defense of himself or others, it has been established that Officer A had a legal reason to be where he was in the garage. Also, the officer had no legal duty to retreat as he was acting within his lawful authority. The question therefore is did Officer A honestly and reasonably believe that the use of deadly force was necessary to prevent the imminent death or imminent great bodily harm to himself or to another

[7] Even if Mr. [redacted] did not gain access to the neighbor's residence he attempted to do so, which is still a felony.

individual? For an unknown reason, CRT did not take distance measurements, so I rely strictly on my own observations from the bodycam. From those observations, it is clear that Mr. [redacted] was charging Officer A with the machete in his hand. Playing the recording at normal speed it is hard to decipher if the machete is in his hand when he is charging Officer A. However, upon slowing the recording down, it is clear that he is still holding it at the time the first shot is fired, and is slightly over a sidewalk width from the door that Officer A is standing in. After the second shot is fired, Mr. [redacted] is still attempting to enter the garage despite Officer A telling him to get back. At this time, Officer A is backing up from the doorway further into the garage and fires his third shot.[8] At some point after the first shot is fired, Mr. [redacted] loses the machete and it is found by CRT near a lawn chair, that based on photographs appears to be about 10-15 feet from the door that Officer A was standing in at the time of shooting. The exact moment in time the machete is lost is unknown.

Additionally, it appears this was Officer A's first experience with Mr. [redacted][9] and as such it is reasonable for Officer A to not know what Mr. [redacted] was capable of, nor does it provide for any malice toward Mr. [redacted][10] Given that Mr. [redacted] is charging at him with the machete and not following commands to get back, I believe that Officer A had a reasonable belief that either himself or others were in danger of either death or serious injury. One must remember that there were two civilian people on scene at this time, not just the officer. It is unknown if Officer A

[8] Ballistic reports indicate that the spent shell casings located on scene were fired by Officer A's gun.

[9] A search of local departmental records does not show any interaction between Mr. [redacted] and Officer A.

[10] After this incident, Mr. [redacted] probation officer reported that Mr. [redacted] stated that during a prior arrest he was hoping he would have been shot, and that was why he acted as he did during that arrest. This knowledge was not known to Officer A at the time, and accordingly it not considered in the outcome of this case. However, it may go to help explain the events of August 12, 2023.

knew where Caller and the female were, but is reasonable to believe that he was acting for their protection as well.

To officer A's detriment, he never announced himself as a police officer to Mr. [redacted] nor did he arrive to the scene with his emergency lights activated. It is not unreasonable to believe the lights were not activated so as not to tip off the suspect that police were called and were in the area. Officer A was in full uniform, however. Giving Mr. [redacted] the benefit of the doubt, it is unknown if he was able to identify Officer A as a police officer. However, I don't believe this changes the conclusion, as Officer A had a legally protected reason to be where he was and had a legal right to use deadly force to protect himself and/or others.

CONCLUSION

While the death of Mr. [redacted] is tragic for his family, the witnesses and the officer involved, it is my opinion that use of deadly force by Officer A was justified under the circumstances. Accordingly, criminal charges will not be authorized for the August 12, 2023 death of Mr. [redacted] [redacted]

Respectfully Submitted:

Corey J. Wiggins
Wexford County Prosecuting Attorney