

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



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M E M O R A N D U M

In the Matter of Theoddeus Gray
AG#2019-0244215 A

In 2019 the family of Theoddeus Gray Jr. approached the Michigan Department of the Attorney General seeking review into the fatal shooting of Theoddeus Gray Jr. by officers of the St. Clair Shores Police Department on November 4, 2018 at the Lakeland Manor Banquet Hall in St. Clair Shores. The Michigan Attorney General agreed to conduct an independent review of the evidence surrounding the fatal shooting to determine whether any officer involved may be subject to criminal proceedings for their actions.

The Michigan Department of the Attorney General has concluded its review of the evidence and has determined that the officers involved in the fatal shooting did not commit any crimes and thus should not face any criminal charges. Below is a detailed report discussing the evidence reviewed, background information related to the fatal shooting, and a discussion of the evidence. Included within the body of this report are references to still shots from surveillance video obtained and photos of the scene and evidence recovered from the Evidence Technicians. Electronically attached are also audio and video excerpts. These are all marked as exhibits and referenced accordingly.

Items Reviewed

During the course of the review of the police shooting occurring on November 4, 2018 at the Lakeland Manor Banquet hall, the following hard copy (or paper) items were reviewed:

- the Investigator's Report;
- all Macomb County Sheriff's (hereafter "MCSO") reports created as a result of the fatal shooting on November 4, 2018;
- weather reports for November 4, 2018 for the time period in question;
- St. Clair Shores Police (hereafter "SCSP") reports created as a result of the fatal shooting on November 4, 2018;

- hard copy scene photos of a black handgun found at the scene in the Harper Auto Electric parking lot (hereafter “Auto parking lot”);
- St. Clair Shores Fire Department Reports created as a result of the fatal shooting on November 4, 2018;
- the Complaint and Answer for the civil proceedings arising as a result of the fatal shooting on November 4, 2018;
- MCSO Tek Reports (evidence technician reports);
- Department of Justice Firearms Trace Summary for the FN 5-7 handgun (serial number 386311613);
- Department of Justice Firearms Trace Summary for the AK-47 firearm (serial number M92PV002900);
- all witness statements provided;
- CAD notes;
- transcript of the 911 call bringing the SCSP to the scene;
- transcripts of radio transmissions from SCSP Officers present at the scene during the time of the incident;
- any search warrants obtained;
- the Medical Examiner report on Decedent Gray;
- the Necropsy Report on K9 Axe;
- the FBI report on background information that led to the discovery of the AK-47 at the scene;
- the police reports on the arrest of Decedent Gray in North Dakota on October 29, 2018 (just 5 days prior to this incident); and
- the Investigative Subpoena transcripts of Officers Ziemiecki, Smith, Kaufman, Head and Price.

The following pieces of electronic evidence submitted were also reviewed:

- the 911 calls;
- dispatch radio calls during the time period in question;

- squad car videos from scout cars 63 (Ziemiecki), 604 (Kaufman), 68 (Head), 611 (Price), 69 (Smith), 61 (Eidt), 606 (Hammell) and 603 (McLeod);
- Spero Car Wash surveillance video for the time period in question;
- “MSP Camera #1 Project;”
- “MSP Camera #2 Project;”
- “MSP Camera #3 Project;”
- Video clips from the BP Gas Station surveillance;
- Video Clips from Lakeland Manor surveillance;
- 3D scene photos; cellbrite report on the LG cell phone recovered at the scene and believed to belong to Decedent Gray;
- SCSP photos;
- MCSO Tek photos;
- all videos obtained by MCSO;
- MCSO video of marked scene;
- MCSO photos of Decedent Gray’s personal affects;
- all photos taken by MCSO;
- the Medical Examiner’s photos; and
- the x-rays taken of K9 Axe.

The additional investigation by Special Agent David Dwyre, with the Michigan Department of Attorney General was also reviewed. His investigation also included the following:

- the review of the evidence submitted and listed above;
- Special Agent Dwyre’s reports;
- the re-interviews of John Montgomery and Patrick Lapensee; and
- the witness interviews requested by the family of Decedent Gray, hereafter the “Gray Family”, which included the statements of Antonio McCurdy,

Jennine Spencer, Michael Jenkins, Oliver Gantt, Michelle Jenkins and Tequila Hobson (It is noteworthy to mention that Ms. Jennine Spencer indicated she video recorded some of the scene and provide that recording to the Gray Family. This video was not provided to the police or to the Michigan Department of Attorney General.)

The body-worn cameras of the SCSP Officers were requested from the Officer in Charge (hereafter "OIC"), Lt. Melissa Stevens with the Macomb Sheriff's Department. Lt. Stevens indicated the Officers did not have body-worn cameras on the date of the fatal shooting. The LG phone recovered by D/Sgt. Lepage at the scene did not appear to belong to Decedent Gray. After reviewing the Cellbrite report (which included photos and messages) it appears as though the cellphone belonged to a Ms. Renee Davis.

Background Information

The police shooting was initially investigated by the Macomb County Sheriff's Office and they determined there was no evidence to substantiate any wrongdoing by the St. Clair Shores Police Officers. The Macomb Prosecutor's Office would not review the case, as the Sheriff's Office declined to submit a warrant request.

The Michigan Department of the Attorney General review of this case was requested by the family of Decedent Gray (his mother Ms. Tracy Jenkins Gray and his father Mr. Theo Gray Sr.). The Gray Family has filed a civil lawsuit in Federal Court against the City of St. Clair Shores and the SCSP Officers individually (case 2:19-cv-10383) and are claiming the use of excessive force, as well as other constitutional violations. The Complaint further alleges that Decedent Gray was unarmed at the time of the police shooting. The Gray Family is seeking \$10,000,000 in damages.

After reviewing all available information, it appears as though the escalation of conflict began as a result of a conflict between Decedent Gray and one of his business associates, known as "Bud". Another associate, "Odums", instigated the conflict by informing "Bud" of Decedent Gray's location at the baby shower being held at the Lakeland Manor Banquet Hall. Five days prior to this incident, Decedent Gray was arrested in North Dakota by the Metro Area Narcotics Task Force and the U.S. Department of Justice for trafficking prescription pills. The trafficking of prescription pills was allegedly a business enterprise Decedent Gray shared with Bud and Odums.

While the fatal police shooting was being processed by MCSO, FBI Agent LaCarter called to inform MCSO that he had been informed by a reliable source that an AK-47 had been stashed at the scene, prior to the shooting, and that the weapon was at the rear of the Lakeland Manor Banquet Hall (hereafter the "Hall"). In Agent LaCarter's report it is stated Decedent Gray, Odums and Bud (a known member of the gang "Hustle Boys") were all involved with the trafficking of pills. Bud and Decedent Gray

(known as “Theo or Teo”) very recently had a falling out over money allegedly owed to Bud by Decedent Gray. Odums alerted Bud that Decedent Gray would be at the Hall for a baby shower and Bud arrived with three other associates, and the AK-47. Bud called Odums when Bud was approaching the location, then Odums gave the phone to Decedent Gray. After this conversation, Decedent Gray became upset and went out to his car to get his firearm. Bud attempted to gain entrance to the Hall through a side door but was thwarted. Decedent Gray then went outside with his firearm to find Bud. The police arrived and the confrontation between the police and Decedent Gray began. According to the source, it was during this confrontation when Bud and his associates hid the AK-47. The source also stated Bud left someone behind to wait until after the police left in order to retrieve the weapon. (It is important to note that the police did find two individuals in a car waiting at the scene. They indicated they were just watching, and the police released them after running their names and plates.) The information obtained from Agent LaCarter’s source led to the recovery of the AK-47, discovered in the location provided by the source.

During Lt. Stevens’ investigation she attempted to contact Mr. Theo Gray Sr. and Brittany Howard (Decedent Gray’s significant other, and the individual for whom the baby shower was celebrating). Neither individual was willing to speak with Lt. Stevens, nor would their attorney. St. Clair Shores Police reports also indicate that friends of Decedent Gray were approaching the police station and “hanging” around the personal cars of officers, several wearing shirts with a picture of K9 Axe with “Fuck that Dog” written underneath the photo.

Neither of the above pieces of information have any bearing on the factual issue of the fatal shooting on November 4, 2018 but they do shed light on motives, reactions of the parties, and tensions surrounding this incident. The SCSP Officers did not have any knowledge of Decedent Gray’s business endeavors or of the rising conflict that was threatening to come to the Hall that evening. However, this background information puts into perspective what is being observed on the surveillance videos, why Decedent Gray was so agitated at the baby shower and potentially provides an explanation as to why he brought a gun into the baby shower, alarming the owner of the Hall and prompting her to call 911. It also sheds some light on Decedent Gray’s thought processes and behaviors with the SCSP that night. These situations do not occur within a vacuum and it is important to take note of outside forces that may affect or impact the situation.

Brief Overview of the Fatal Shooting Scene

Upon review of the evidence, the incident began at Lakeland Manor Banquet Hall (26211 Harper Avenue, St. Clair Shores) on November 4, 2018 at around 6:26 pm during a baby shower. The SCSP involvement was initiated by a 911 call from the owner of the Hall (Nicole Nahra) who observed Decedent Gray enter the Hall with a handgun (which she described as a “long gun” or a “beretta” or a “glock”). Ms. Nahra

called 911 frantically and informed the police that there was “a man with a gun in [her] hall and she described Decedent Gray (“black male wearing a white shirt, it’s got red trim around the collar”, and after reviewing all surveillance video, Decedent Gray is the only individual matching that description). Ms. Nahra stated Decedent Gray was outside “throwing a fit with a gun.”

Based upon the surveillance video, scout car videos and investigative subpoenas, Officer Ziemiecki was the first to arrive at the scene and went to the front of the Hall to see if he could find the suspect. Officer Ziemiecki can be observed looking around in the surveillance videos, you can also observe he did not have any weapon out. Officer Kaufman then arrived, followed by Officer Price with K9 Axe, Officer Head and Officer Smith. Officer Hammel, Officer McLeod and Sgt. Eidt arrived after the shooting.

Upon review of surveillance video, Decedent Gray walked past Officer Ziemiecki, who identified Decedent Gray as the suspect. Officer Ziemiecki made several commands for Decedent Gray to stop so that Officer Ziemiecki could speak with him. (At this point no one had any weapons out.) Decedent Gray failed to stop and continued walking. He attempted to get back into the Hall but was unsuccessful. Officers Price and Kaufman were now also telling Decedent Gray to stop. Decedent Gray then took off running and Officers Ziemiecki, Price, Kaufman and Head were all following, as was K9 Axe. All Officers were commanding Decedent Gray to stop but Decedent Gray continued running. Upon review of the surveillance video, at this point no Officer had any weapon out.

On surveillance video Decedent Gray can be observed reaching into his waistband and retrieving a black handgun. Upon review of additional surveillance footage, Decedent Gray then fired one shot. The Officers then took out their weapons and began to return fire. K9 Axe was hit by a bullet (based upon review of all surveillance video, observed in conjunction with one another, the evidence demonstrates Decedent Gray was likely the one who shot Axe, but the determination of who shot Axe is not pertinent to this review). After Axe was shot, he turned around and ran back. It appeared only Officer Ziemiecki noticed Axe had been shot and he informed the other Officers. Officer Price went to find Axe several seconds later. (K9 Axe was pronounced dead at the emergency veterinary clinic. Axe sustained a bullet wound to his left shoulder, in photographs and x-rays it appears to be in his center chest area.) All these actions and reactions can be observed on the surveillance videos.

Based upon a review of the scout car videos, police reports, witness statements and investigative subpoenas, the Officers continued to shout commands at Decedent Gray to drop his weapon and stop. Decedent Gray continued running. The Officers broke away and Officer Kaufman and Officer Head went through the alley and jumped a fence, ending up in the back of the Auto parking lot behind where the garbage was fenced off. Officer Ziemiecki was on Harper and cut into the Auto parking lot, later

joined by Officer Smith. Decedent Gray was in the middle of the parking lot and was advancing with his weapon drawn, pointed towards where Officers Kaufman and Head were positioned. Per Officer Kaufman's investigative subpoena testimony, Officer Kaufman had just tripped and fallen and no longer had his weapon out, as he had holstered it while jumping a fence to try and cut off Decedent Gray. Officer Kaufman observed Decedent Gray advancing towards him, with his weapon drawn and pointed towards Officer Kaufman. Officer Kaufman then got to his feet and withdrew his weapon again. During this time, all Officers were continuing to order Decedent Gray to drop his weapon, orders which Decedent Gray refused to comply with. Officers then fired their weapons and Decedent Gray fell to the ground.

Upon review of the scout car videos, police reports, investigative subpoenas and witness testimony, Officers approached Decedent Gray, who was unresponsive. Officer Head kicked away Decedent Gray's weapon and the Officers began to apply a tourniquet and perform CPR. Decedent Gray was taken to St. John's Hospital where he was pronounced dead. He died as a result of his injuries he sustained, 5 or 6 gunshot wounds.

Officers Involved and Weapons Information

The Officers involved in this case are from the St. Clair Shores Police Department. The first to arrive was Officer Ziemiecki, followed by Officer Kaufman and Officer Price with K9 Axe. Officer Head and Smith also responded to the scene before the shooting ceased. Officers Hammel, McLeod and Sgt. Eidt all arrived after the shooting commenced. Based upon the evidence Officer Ziemiecki fired approximately 21 rounds, Officer Kaufman fired approximately one round, Officer Price fired approximately 9 rounds, Officer Head fired approximately 6 rounds and Officer Smith fired approximately 7 rounds. All Officers involved were firing weapons loaded with .40 caliber bullets. There was a total of 42 .40 caliber casings found at the scene.

Based upon the review of evidence, Decedent Gray had a FN Five-Seven Pistol, serial number 386311613. This weapon was located on the body of Decedent Gray and was kicked out of range of Decedent Gray by Officer Head. When it was photographed the magazine was out of the weapon and the magazine was loaded with 15 FN 5.7 bullets. Right by the magazine was a spent 5.7 casing. Near the magazine there were also 2 FN 5.7 bullets on the ground. Decedent Gray was not the registered owner of the gun. The gun was owned by a Paul Stokes of Ohio who indicated the gun was stolen, though he was less than forthcoming about the theft of the weapon. Photographs of Decedent Gray's weapon may be viewed in **Exhibit 1**.

Also located at the scene was the assault rifle that police were directed to by FBI Agent LaCarter. The assault rifle was a Zastava Century International Arms AK-47 Rifle, serial number M92PV002900, as depicted in **Exhibit 2**. This rifle was located on the west side of the Hall. Police reports indicate that surveillance video shows a

black male, later identified as Dietrick Odums, dropping off the assault rifle behind the partial wall near the service entry door. The assault rifle was loaded with a magazine and one round in the chamber. This weapon is registered to Clark Robert Scott from Detroit and was purchased in 2012. It was not listed as stolen.

The Michigan State Forensic Laboratories (hereafter “MSP Labs”) performed various tests on the FN Five-Seven and the AK-47. Possible DNA suitable for testing was located on the FN Five-Seven and the unspent bullets. However, there was no test results from the MSP Labs indicating any additional tests were completed. It should also be noted that the latent prints recovered on the FN Five-Seven came back inconclusive as to Decedent Gray but there was a fingerprint of comparison value whose source was unidentified. The final MSP Labs report provided to the Michigan Department of the Attorney General indicated that both the FN Five-Seven and the AK-47 functioned, meaning they both fired test shots.

Scene – Police Arrival

The St. Clair Shores Police were brought to the Hall via a 911 call. The owner of the Hall, Nicole Nahra, called 911 when she observed Decedent Gray with a handgun coming into the Hall. Her call, provided in **Exhibit 3**, demonstrates her fear at that moment and her concern over the situation. Ms. Nahra stated she “had a gunman in her hall” and needed “police here now.” She provided the following description of the gunman: “he is a black male, wearing a white shirt, it’s got red trim around the collar.” She also informed police he was carrying “a long gun, it looks like either a glock or beretta” and that he was upset and yelling. She informed dispatch that she had 70 people inside her hall. Based upon her tone and statements this was a very intense scene, even before the police arrived. Further evidence of Decedent Gray with a handgun at this time is available in **Exhibit 4**, which is a photograph of Decedent Gray with a handgun inside the Hall and outside the front doors of the Hall.

Based upon the dispatch radio transmissions, we know that the police responding to the scene knew the following information: (1) there was a black male (2) wearing a white shirt with red trim on collar (3) armed with a gun (4) who was upset and yelling (5) at a hall with about 70 people inside.

Officer Ziemiecki was the first to arrive at the Hall. After reviewing surveillance video, Officer Ziemiecki can be seen walking around and standing looking into the crowd (there were about 20 people outside the front doors of the Hall). He did not have his weapon drawn and did not appear to be agitated or aggressive, see **Exhibit 5**. Based upon a review of the evidence, Officer Ziemiecki noticed Decedent Gray, who matched the description provided in the 911 call (see **Exhibit 6**). Officer Ziemiecki called out to Decedent Gray who ignored Officer Ziemiecki. Decedent Gray attempted to re-enter the Hall but was denied access by Ms. Nahra. Officer Ziemiecki continued to call to Decedent Gray. Officer Kaufman arrived on scene and began calling to

Decedent Gray as well. At this point Officer Price and K9 Axe arrived and were getting out of their car.

Scene – Foot Pursuit and Initial Shooting

Based upon the evidence, the three Officers continued to give commands to Decedent Gray and Decedent Gray refused to comply with the commands given by the Officers. Surveillance video shows that Decedent Gray left the front entrance of the Hall and immediately began running as he rounded the corner of the Hall. The Officers pursued Decedent Gray, who continued to ignore all orders to stop running. Officer Price released K9 Axe, who immediately pursued Decedent Gray. Surveillance video shows the Officers pursuing Decedent Gray and verifies that they did not have their weapons drawn (see **Exhibit 7**).

Surveillance video shows that as Decedent Gray was fleeing from the Officers, he reached into his waistband and retrieved a gun (see **Exhibit 8**). Upon review of the dispatch audio, body-worn microphones and all surveillance video, it is evident that Decedent Gray fired his weapon towards the Officers (see **Exhibit 9** and **Exhibit 10**). One Officers, who are heard on the body microphones, yelled that Decedent Gray had a weapon. Then the Officers withdrew their weapons and returned fire (see **Exhibit 11** and **Exhibit 12**), and K9 Axe retreated (see **Exhibit 13**).

The Officers continued to pursue Decedent Gray, who continued to flee. Officer Ziemiecki hollered to Officer Price that Axe had retreated. Officer Price doubled back several seconds later to find Axe, while Officer Ziemiecki went north in the same direction as Decedent Gray. Officers Kaufman and Head went west to cut off Decedent Gray. The Officers were continuing to command Decedent Gray to drop his weapon and stop running; however, all commands were refused. Decedent Gray continued to run north and then turned west around the Harper Auto Electric building and into the Auto parking lot. By this time Officer Price had left the scene with K9 Axe.

Scene – Final Shooting

A review of the Officers' scout car video demonstrates that Officer Smith arrived on scene and joined Officer Ziemiecki. They engaged Decedent Gray from cover taken by a vehicle parked in the Auto parking lot. They continued to shout commands to Decedent Gray to drop his weapon and stop, commands were again refused.

Officer Kaufman and Head were behind the Harper Auto Electric building. Officer Kaufman had tripped and fallen (and had also injured his hand while jumping a fence). Decedent Gray looked in the direction of Officer Kaufman (and Officer Head, although after review of the investigative subpoenas Officer Kaufman was not aware that Officer Head was near him at that moment) and walked towards their location

with his weapon raised towards the Officers (see **Exhibit 14** and **Exhibit 15**). Officers then fired their weapons at Decedent Gray, who fell to the ground and stopped moving.

Officers Head and Kaufman approached Decedent Gray and Officer Head kicked the handgun away (see **Exhibit 16** and **Exhibit 17**). The Officers called for paramedics, performed CPR and applied pressure to Decedent Gray's wounds, see **Exhibit 18**. On the body mics the Officers can be heard talking to Decedent Gray, telling him to "stay with them" etc. (see **Exhibit 19**). The paramedics arrived and took over for the Officers and Decedent Gray was taken to St. John's hospital where he was later pronounced dead.

Additional St. Clair Shores officers arrived and performed crowd control and preserved the scene. They were informed shortly thereafter that the Macomb County Sheriff's Department would be taking over the investigation. Once MCSO arrived, the scene was turned over and further processed, evidence was then collected, and witnesses were located and interviewed.

Review of Evidence – Surveillance Video

After watching all available surveillance video from the Hall, the BP Gas Station and Spero's car wash, it is important to note that there is not one individual video that provides a clear image of Decedent Gray retrieving a weapon, turning and pointing that weapon and then discharging the weapon. However, when viewing all the videos together, along with listening to the Officers body-worn microphones (through the scout car videos), and reviewing witness testimony, the evidence shows that on November 4, 2018, Decedent Gray retrieved a weapon from his waistband, fired that weapon at officers and then again pointed the weapon at officers, all while refusing commands to put the weapon down.

This can best be observed in watching the Hall surveillance video, **Exhibit 20**, listening to the audio in from the scout car videos around the times of 18:29:46 and then viewing the video in **Exhibit 9**. This evidence demonstrates that Decedent Gray fled from uniformed police Officers, who did not have any weapons drawn at the time. Decedent Gray then reached into his waistband and retrieved a black handgun. The audio demonstrates that there was one gunshot and longer pause and followed by returning gunfire. **Exhibit 9** shows that Decedent Gray did in fact fire his weapon. It was Decedent Gray's muzzle flash shown in **Exhibit 10**, right in the direction of K9 Axe. This is clear upon review of **Exhibit 20**, which demonstrates the location of all parties. The lineup was Decedent Gray, K9 Axe, and then the St. Clair Shores Officers.

Based upon the surveillance video it is evident that Decedent Gray was the focus of the pursuit and was in front. K9 Axe was gaining ground on Decedent Gray and the

Officers were behind Axe. With the scout car audio at 18:29:46 there is an audible singular gunshot followed by a longer pause. The pause can be attributed to the fact that the Officers were not prepared to fire their weapons and did not have weapons drawn during the pursuit. (See also **Exhibits 7 and 11.**)

Review of Evidence – Scout Car Video

The St. Clair Shores Police Officer's scout car dashcam videos also provide important pieces of evidence. The scout car video provides important video of the final shooting scene and the Officers' body-worn microphones also can be heard on these videos.

Through these videos the commotion of the scene, the shouting and statements of the crowd and the Officer's reactions to the scene as it developed can be heard. The videos and audio demonstrate that the situation escalated extremely quickly. The audio and video files in their entirety are consistent with the Officer's statements and the original witness statements. The audio and video files do not disclose the Officers saying anything in an overly aggressive manner or anything particularly hostile to Decedent Gray at any time. The Officers, however, did provide numerous commands to Decedent Gray to stop and drop his weapon, all of which were refused. At the conclusion of the shooting, while they were attending to Decedent Gray, Officers can be heard on their body-worn microphones urging Decedent Gray to "stay with them" and "hang on". Further, no officer said anything negative or overly aggressive to the crowd that they were trying to control and prevent from trampling any evidence.

Officer Hammel's scout car (car 606) video provides a good view of the final shooting scene. Officer Hammel arrived at 6:30:30 and as he approached Officer Ziemiecki, Ziemiecki was advancing towards Decedent Gray with his weapon drawn. Decedent Gray was advancing towards the location of Officers Kaufman and Head. In looking at the positioning of Decedent Gray's body and arms, Decedent Gray had something in his hands and was raising it up about chest level. Decedent Gray was not surrendering and did not drop his firearm. In this video Officer Head can be observed kicking the gun away from Decedent Gray, something he acknowledged later in the video (see **Exhibit 21** and **Exhibit 22**).

In all the scout car video/body-worn microphone audio the Officers were consistent in the recitation of the events that occurred. The Officers who were involved in the shooting can be heard relaying the events to several officers who arrived at the scene after the shooting concluded. There were no remarkable inconsistencies nor evidence demonstrating any of the theories put forth by the Gray Family.

Review of Evidence – Officer Investigative Subpoenas

The Michigan Department of the Attorney General interviewed, individually, Officers Kaufman, Ziemiecki, Smith, Head and Price via the use of an Investigative Subpoena.

The Officer's statements were consistent throughout their interviews and with each other. Their testimony did not change in the recounting of events nor were there any relevant inconsistencies amongst the Officers. Below is a summary of each Officers testimony.

Officer James Ziemiecki Jr.

Officer Ziemiecki stated he was the first to arrive on scene and was responding to a dispatch call regarding a man outside the Hall with a "long gun" and wearing a white shirt with a red collar. When he arrived he immediately began looking for the suspect. He saw Decedent Gray, matching the description, walk by. Officer Ziemiecki hollered to Decedent Gray that he needed to talk with him, but Decedent Gray kept walking. Officer Ziemiecki then made verbal commands for him to stop but Decedent Gray continued walking. At this point Officer Kaufman had arrived.

When Decedent Gray got to the front door of the Hall he ran around the corner of the Hall and went northbound. Officers then began to pursue him on foot. Officer Ziemiecki notified dispatch of the pursuit and ordered Decedent Gray to stop. Decedent Gray refused that order. Officer Ziemiecki noticed that Axe had run past him on his left-hand side. He then saw Decedent Gray turn to his left and brandished a gun. Decedent Gray then fired a round in the direction of the Officers. Officer Ziemiecki then ran to the side and onto the easement and screamed to the other Officers that Decedent Gray had a gun. Officer Ziemiecki then drew his firearm and fired at Decedent Gray. The other Officers were firing their weapons as well at this point. Officer Ziemiecki indicated that almost immediately upon Decedent Gray firing at the Officers he noticed Axe had turned around and was running back southbound. Officer Ziemiecki yelled to Price about Axe's situation. Officer Price then left to locate K9 Axe.

Officer Ziemiecki then continued northbound on Harper while Officers Kaufman and Head ran up the alley on the north side of the auto store building. Officer Ziemiecki observed Decedent Gray in the back of the Auto parking lot and ordered him to stop and drop his gun. Decedent Gray then turned and looked at Officer Ziemiecki and "made advancements" of his hands so Officer Ziemiecki fired in his direction. Decedent Gray was holding a gun in his hands and refused to obey Officer Ziemiecki's commands to drop the gun. At this point Officer Ziemiecki's gun ran out of ammunition, he reloaded and continued to give commands to drop the gun. Decedent Gray then walked towards the area where Officer Head and Officer Kaufman were located, and Decedent Gray raised his gun again. Officer Smith had arrived and was now with Officer Ziemiecki and they were both ordering Decedent Gray to drop the gun. Decedent Gray continued to advance with his gun towards Officers Head and Kaufman so Officers Ziemiecki and Smith opened fire and Decedent Gray fell.

Once Decedent Gray was on the ground, the Officers approached. Officer Ziemiecki observed Officer Head kick the gun away from Decedent Gray. Officer Ziemiecki indicated the gun was underneath Decedent Gray near his shoulder area. Officer Ziemiecki called the ambulance and began to assist in rendering aid to Decedent Gray. At this point a large crowd had gathered so Officers Ziemiecki and Smith joined some arriving officers to try and keep the crowd away from the scene.

Officer Travis Kaufman

Officer Kaufman indicated he was responding to a dispatch call to the Hall for a man with a gun outside of the Hall trying to get back in. He was the second Officer to arrive, as Officer Ziemiecki was already on scene when he got there. There was a large crowd outside of the Hall when he arrived and he could see Officer Ziemiecki walking around, looking for the suspect. When Officer Kaufman exited his vehicle, he could hear Officer Ziemiecki giving Decedent Gray verbal commands to stop. He did not see any gun at this time. By the time Officer Kaufman reached Officer Ziemiecki, Decedent Gray had taken off running north along the sidewalk of the Hall. All the Officers on scene at the time (I believe Officers Ziemiecki, Head, Price and Kaufman, including K9 Axe, followed in a foot pursuit. The Officers were giving verbal commands for Decedent Gray to stop. Officer Kaufman then saw a black handgun taken into Decedent Gray's right hand. Decedent Gray turned and shot one round in the direction of the Officers. Officer Kaufman then hollered "shots, shots" to alert other Officers. Officer Kaufman believed Decedent Gray was shooting at the Officers, not K9 Axe. Officer Kaufman indicated his weapon was still holstered when he hollered "shots, shots" and then he unholstered his weapon. Officer Kaufman did not realize Axe had been shot and only learned of that fact after the shooting had concluded.

Officer Kaufman lost sight of Decedent Gray and so he re-holstered his weapon and ran through the alley between the Hall and the auto shop. Officer Kaufman then jumped the fence, hoping to cut off Decedent Gray. While jumping the fence Officer Kaufman injured his hand and required stitches. When Officer Kaufman got over the fence, he ran to the northeast corner of the auto shop building, Decedent Gray was standing in the Auto parking lot about 10 yards from where Officer Kaufman stopped. Officer Kaufman gave him verbal commands to drop the gun (Kaufman could still see the gun in Decedent Gray's right hand), but Decedent Gray instead raised the gun and pointed it in Officer Kaufman's direction. Officer Kaufman indicated it was a black handgun. Officer Kaufman attempted to retreat, as his weapon was not drawn at the time, into the garbage area but he fell. He quickly "scurried for cover" and once under cover, he got back onto his feet and drew his weapon. Officer Kaufman then heard more gunshots and thought it was Decedent Gray shooting at him. Officer Kaufman was then joined by Officer Head. When the Officers came out from cover,

they saw Decedent Gray on the ground. They approached Decedent Gray and Officer Hammell was approaching as well. The Officers began providing first aid.

Officer Kaufman did not check Decedent Gray for weapons but believed Officer Head must have checked for weapons. He did see the weapon on the ground a few yards away from Decedent Gray. Officer Kaufman also indicated that no one kicked Decedent Gray and that Decedent Gray at no time attempted to surrender to the police.

Officer Trevor Head

Officer Head arrived at the Hall and saw a group of people at the front entrance. He observed Officer Ziemiecki walking east and observed the suspect walking away from him with some haste. Officer Head yelled for Decedent Gray to stop as Decedent Gray was right by the Hall door. Decedent Gray then rounded the corner of the building and started running. At this point Officer Head did not observe a weapon.

The Officers pursued Decedent Gray on foot going north. As they were running Officer Head observed Decedent Gray turn and then he heard a “bang” and saw a “flash”. The Officers were about 10-15 feet away from Decedent Gray when Officer Head heard the bang and observed the flash. Officer Head then drew his weapon and returned fire. Axe was running in the same direction as Decedent Gray and was to Decedent Gray’s left when Decedent Gray fired his weapon. After the weapon was fired Axe turned and ran south.

After Decedent Gray fired his weapon, he continued running west. Officer Head went south of Decedent Gray to the alley between the Hall and auto store building. Officer Head went on the radio and alerted everyone that shots had been fired. Officer Kaufman was to his left and they both continued west. Officer Kaufman jumped a fence. Officer Head could hear Officers screaming to Decedent Gray to drop the gun and then he heard more gunshots. Officer Head’s view was obstructed by the wall he had taken cover behind and when he “pied out” he saw Decedent Gray on the ground.

Officer Head approached Decedent Gray and kicked the gun away. The gun was lying with Decedent Gray and may have been touching Decedent Gray, but he is uncertain. After Officer Head kicked the gun away, he checked on the safety of the other Officers. He immediately returned to Decedent Gray, put on gloves and began to perform CPR.

Officer Thomas Price

Officer Price was the handler for K9 Axe and had been with Axe for about two years. He responded to a dispatch run for a man at the Hall upset and brandishing a long gun. When he pulled up he observed Officer Ziemiecki walking after Decedent Gray and could hear Officer Ziemiecki ordering Decedent Gray to stop. As Officer Price and

Axe began walking towards Decedent Gray, Decedent Gray turned the corner and began to run. Officer Price warned Decedent Gray that if he didn't stop, he was going to release Axe. Decedent Gray ignored Officer Price's warning and continued to run. Axe was released and sprinted after Decedent Gray.

As Decedent Gray was running, he started fiddling with his waistband and then turned towards the Officers. Officer Price observed the barrel of a gun and heard someone yell "gun". Decedent Gray kept turning towards the Officers and then Officer Price heard a "bang". At that point Axe flinched hard and turned around and was limping along. Officer Price could tell Axe was hurt but he had to continue to pursue Decedent Gray. He drew his weapon and continued forward after Decedent Gray. He continued to pursue Decedent Gray until he lost sight of him, at that point he turned to look for Axe. When Officer Price located Axe he was huddled in the little doorway to the kitchen and was gasping. Axe didn't make any noise when Price picked him up. Officer Price then left the scene to take Axe to the emergency vet and he did not return.

Officer Jessie Smith

By the time Officer Smith arrived, the shooting had already begun, and Decedent Gray was already to the Auto parking lot. Officer Smith arrived behind Sgt. Eidt (who had pulled off and he did not see her after that until the shooting had ceased). Officer Smith immediately observed Officer Ziemiecki directly in front of him, pointing his firearm towards the other side of the auto shop building. He did not observe any other Officers. Officer Smith ran up to Officer Ziemiecki and drew his firearm. Officer Smith indicated he had heard the suspect information over the dispatch radio prior to arriving at the scene and he could see a man matching suspect's description in the other side of the Auto parking lot. Officers Smith and Ziemiecki pressed forward and Officer Smith observed a firearm in Decedent Gray's hand. Officer Smith gave verbal commands to Decedent Gray to drop the gun. Officer Smith could also hear other Officers on the other side of the auto shop building shouting commands to drop the gun. Decedent Gray was facing towards those Officers on the other side, was ignoring commands, continued to move in the direction of the other Officers and was raising his arms in that direction, so Officer Smith fired his weapon at Decedent Gray.

Officer Smith continued to fire his weapon until Decedent Gray fell to the ground. He then observed Officer Head come from around the corner of the alley and kick the handgun away from Decedent Gray. Officer Smith and Officer Ziemiecki then went to stop the crowd that had gathered.

Review of Evidence – Witness Statements

The Macomb County Sheriff's Office canvassed the area after the shooting to locate any potential witnesses. They spoke with Rowdy Arnold, Donna Teller, Bryan

Baetens, Nicole Nahra, Patrick Lapensee, and John Montgomery. Donna Teller and Bryan Baetens did not provide much information apart from hearing gunshots and seeing police lights. Rowdy Arnold was at the nearby BP gas station at the time of the shooting. He was across Harper and east of the Hall. He heard yelling and saw a black male running away from police. The male was wearing a white shirt. He observed a dog being released after the male and heard someone say, "he's got a gun" and heard shots fired. He then ran into the gas station for safety.

Nicole Nahra was the individual who called 911 and was at the Hall at the time of the shooting. She indicated that the Hall was hosting a baby shower and at about 6:25pm she observed a black male wearing white button-down shirt walking towards foyer fountain with a gun in his right hand. The gun looked like a semi-automatic handgun. She immediately called 911. Shortly after she called 911 the male walked out the front doors screaming into his phone and walking fast with the gun in his hand pacing back and forth. She observed Decedent Gray flee from the police and then heard multiple gunshots. She then secured her staff and self in the office. She also turned over all surveillance cameras for police to obtain the videos.

Patrick Lapensee resides on the north side of Bon Brae Street and had an unobstructed view of the Auto parking lot. He was sitting on his couch at the time when he heard gunshots. He looked out his window and saw a man pointing a gun. He then heard more gunshots and witnessed the man who was pointing the gun fall to the ground.

John Montgomery also resides on the north side of Bon Brae Street and had an unobstructed view of the Auto parking lot. On this particular night he was in his living room with his mother and he thought he heard fireworks, so he opened the door and saw a man holding a gun. This man was not an Officers. Mr. Montgomery opened then shut the door and took cover. He heard multiple sirens and shouting. He then looked outside again and saw the same man with the gun raise the weapon and then he fell to the ground. He could hear Officers shouting for the man to drop the gun.

Apart from the civilian witness statements, statements were also obtained from responding officers who did not fire their weapons. Sgt. Eidt and Officer Hammell, from the St. Clair Shores Police Department, both provided statements of what they observed when they arrived on scene. Sgt. Eidt indicated she arrived and observed Decedent Gray walking towards the west end of the Auto parking lot. She pulled her scout car into the Auto parking lot, saw Decedent Gray standing, facing east towards Officers and observed him lift his arm with what appeared to be a handgun in his hand. She heard Officers giving verbal commands to Decedent Gray and then heard gunshots and saw Decedent Gray collapse to the ground. She then observed Officers rush over to Decedent Gray and begin performing life saving measures. She also observed a handgun laying on pavement near Decedent Gray's body.

Officer Hammell indicated that he arrived on scene and observed a black male wearing a white shirt in the Auto parking lot. He observed Decedent Gray walk towards southwest portion of the Auto parking lot and then heard several shots fired and observed Decedent Gray fall to the ground. Officer Hammell approached Decedent Gray and observed Officer Head kick a handgun away from Decedent Gray and then Officer Head performed CPR. Officer Hammell administered first aid to Decedent Gray and placed a tourniquet on his left leg.

Review of Evidence – Decedent Gray’s injuries

Decedent Gray died within six minutes of arriving at St. John’s Hospital. An autopsy was performed by the Wayne County Medical Examiner’s Office. They discovered Decedent Gray sustained five or six gunshot wounds, hereafter “GSW”. GSW 1 was a tangential gunshot wound to the top of the head. This wound passed through the scalp and struck the frontal bone, resulting in a keyhole shaped defect in the skull with subarachnoid bleeding and lacerations on the underlying brain. GSW 2 was a through and through on the left back. The bullet entered the left lateral chest and exited at the left chest with bruising on the left lung. GSW 3 was a through and through of medial left forearm and exited at the back of the forearm. GSW 4 was a through and through of the posterior left thigh. The bullet passed through the left femoral artery and exited on the medial left thigh. This same bullet may have caused GSW 5 as well. GSW 5 was located at the medial right thigh. GSW 6 was found at the sole of the right foot.

The Medical Examiner’s Office noted the cause of death as multiple gunshot wounds and the manner of death a homicide. Homicide is ruled as the manner of death when the action of one person directly causes the death of another. Accident is used when there is little or no evidence that the injury occurred with intent to harm or cause death (CDC.gov).

Review of Evidence – Gray Family Witnesses

When the Gray Family approached the Attorney General, they requested the Office interview the following witnesses: Antonio McCurdy, Jennine Spencer, Michael Jenkins, Oliver Gantt, Michelle Jenkins and Tequila Hobson. Special Agent David Dwyer completed those interviews and they are summarized below. After reviewing their statements and looking at the physical evidence, it appears that many of the statements are not consistent with the physical evidence, such as the surveillance videos, other witness statements, the 911 call or scout car videos. It should be noted that these additional interviews occurred after a significant amount of time had passed and people may recall things differently after having discussed the issues with family and friends.

Antonio McCurdy

Mr. McCurdy has been friends with Decedent Gray for over ten years and attended the baby shower on November 4, 2018. Mr. McCurdy would not acknowledge that Decedent Gray had a weapon on him, which is undisputable based upon the surveillance video. Mr. McCurdy stated that he and Decedent Gray were attempting to get back into the Hall and were denied entry by an employee of the Hall (from her statement it is witness Ms. Nahra). Mr. McCurdy heard officers tell Decedent Gray to come over to them, but Decedent Gray fled. The officers then released a K9. Mr. McCurdy indicated that there was an officer in the grass who immediately began shooting. (This is factually inaccurate based upon the surveillance video, and as depicted in **Exhibits 7, 8, 9, 10 and 11.**) Mr. McCurdy stated that he was chasing the police officers while they were chasing Decedent Gray. (There is a civilian that appears on the video following a few seconds behind the Officers after they had already begun their chase and after shots had been fired.) Mr. McCurdy also stated he heard multiple gunshots, but he did not see Decedent Gray get shot.

Jennine Spencer

Ms. Spencer is the godmother of Decedent Gray and attended the baby shower that evening. She stated that she went outside of the Hall when she noticed police lights. She then heard gunshots and observed blood by the door (based upon review of the evidence it is the blood of Axe). She also heard someone say, “they shot Theo” and she observed a bloody boot on the ground. Then she heard more gunshots. Ms. Spencer stated she observed Decedent Gray on the ground and no officer was providing life support. She asked an officer if she could do it and they responded she could not and that the paramedics were coming and then threatened to arrest her. She said EMS came 5-10 minutes later and she had recorded the event on her cell phone and provided that to the Gray Family. A review of the evidence demonstrates that these statements are not factually accurate. **Exhibit 18** demonstrates the life saving measures taken by officers. The life- saving measures are also supported by the Investigative Subpoenas and the scout car video audio. It took several seconds for officers to begin performing CPR, however Officer Head indicated that was due to checking to verify if any fellow officers were shot. As to the video she provided to the Gray Family, that evidence was never turned over to the police or the Michigan Department of the Attorney General by the Gray Family.

Michael Jenkins

Mr. Jenkins is the brother of Tracy Jenkins (Tracy Jenkins is Decedent’s Gray’s mother). Mr. Jenkins indicated that Ms. Jenkins, came into the Hall and said that the party was over. Then the police came to the Hall and he heard gunshots. He stated that he thought the police were in a gunfight with the people who were supposed to be coming to the Hall in a dispute with Decedent Gray. He saw the police shooting but was unaware that they were shooting at Decedent Gray. He eventually went to where Decedent Gray was on the ground and stated the officers were pushing

everyone back and arguing with the witnesses. He did not see anyone providing CPR. He further stated that the police showed up to the Hall angry and overly aggressive. A review of the evidence in this case proves many of these statements are inaccurate. As to the Officers showing up angry and overly aggressive, upon review of the evidence, and listening to the tones of their voices, the Officers did not seem angry or aggressive to dispatch prior to arriving. The surveillance video of Officer Ziemiecki looking for Decedent Gray does not show any anger or aggression. The reactions on the surveillance video and body microphones of the other officers likewise do not show any anger or aggression.

Oliver Gantt

Mr. Gantt identifies as a community activist and a representative of the Gray Family. He was not present at the baby shower and had no first-hand knowledge of any of the events that transpired. Mr. Gantt stated that the surveillance videos were doctored. Mr. Gantt provided no expertise in the field and offered no reasonable explanation for his theories.

Michelle Jenkins

Ms. Michelle Jenkins was at the baby shower and stated that Decedent Gray looked like something was wrong and Decedent Gray had a gun on his person. She heard sirens and told Decedent Gray “they were not doing this”. Then she and Decedent Gray tried to get back inside the Hall. Decedent Gray was unable to reenter the Hall and so started running; and the Officers and a K9 followed. She indicated Decedent Gray did not have anything in his hands at the time he started running but she lost sight of him. She heard gunshots and it was total chaos after that. She also stated the police would not let her go near Decedent Gray while he was on the ground.

Tequila Hobson

Ms. Hobson was at the baby shower when Ms. Tracy Jenkins stated the party was over at 6:15pm. Ms. Hobson walked out of the Hall with Michelle Jenkins and Decedent Gray and saw police everywhere. Ms. Hobson observed Decedent Gray walk past the Officers and turn onto a side street. She never saw Decedent Gray with a handgun that evening and didn’t overhear Michelle Jenkins tell him to put it away. After Decedent Gray was no longer in sight, she saw an officer on the corner begin shooting and saw Michelle fall to the ground saying, “they were killing him.” Ms. Hobson and Michelle Jenkins went back inside the Hall to get away from the gunshots. She stated she never saw Decedent Gray run from the police. Based upon the physical evidence and the statements given by Ms. Michelle Jenkins, whom Hobson says she was with, the statements of tequila Hobson are not reliable.

Discussion of Theories Presented by the Gray Family

The Gray Family presented numerous theories as to what occurred on November 4, 2018 at the Hall and Auto parking lot. Each theory was reviewed and compared to the evidence. After an exhaustive review of all available evidence the claims presented by the Gray Family were unsubstantiated.

Gray Family Theory #1: Decedent Gray tossed gun down before the initial chase began.

One of the theories put forward by the Gray Family was that Decedent Gray did have a handgun at the Hall, but he tossed it to the ground before the police began chasing him. Based upon the surveillance video evidence, scout car videos, eyewitness testimony, Officers testimony and body microphone evidence, that theory cannot be substantiated. The evidence clearly demonstrates that Decedent Gray removed a handgun from his waistband while fleeing from the police and fired a round at the Officers. Decedent Gray continued forward with that weapon and had it pointed at the Officers at least two other times before he was finally brought down. (See **Exhibits 7, 8, 9, 10, 11, 14 and 15.**)

Gray Family Theory #2: The police planted the weapon allegedly used by Decedent Gray at the scene.

Another theory presented by the Gray Family involved the idea that the police planted a gun on Decedent Gray. This theory is completely in opposition to the evidence in this case, including the Gray Family's own witness Michelle Jenkins, which showed that Decedent Gray brought the weapon with him to the baby shower and had it on his person when the police arrived. (See **Exhibits 3, 4, 7, 8, 9, 10, 14, 15 and 20.**)

Gray Family Theory #3: Decedent Gray dropped the gun in the Auto parking lot while he was surrendering.

The Gray Family also suggested that Decedent Gray was surrendering to the police at the time they fired and he collapsed. However, the evidence does not support this assertion. In particular, when you view **Exhibits 14 and 15** you can see that Decedent Gray was moving forward, towards where two of the Officers were, one of which had just fallen down. When observing the sleeves of Decedent Gray's shirt, you can see that he was raising his arms to about chest height and appeared to hold something in his hand and was pointing it towards the direction of the two Officers. At no point did Decedent Gray's hands go up as if to surrender. Also, if you observe the ground where he was, you will see that no item fell from his hands and nothing was on the ground other than the handgun he had been pointing at the officers.

Gray Family Theory #4: Decedent Gray never had a weapon at the baby shower.

The idea that Decedent Gray never had a weapon at the baby shower is without merit. There is very clear evidence of Decedent Gray with a weapon. (See **Exhibits, 3, 4, 8, 9, 10, and 16.**)

Gray Family Theory #5: The police arrived at the scene and immediately fired their weapons.

The Gray Family has also stated that the St. Clair Shores Police arrived at the scene and immediately fired at Decedent Gray. The evidence disproves that claim. Officer Ziemiecki arrives and can be seen in **Exhibit 4** looking around rather casually and calmly. Further, the Officers do not even have their weapons drawn when they begin chasing after Decedent Gray (see **Exhibits 7, 11, 12 and 20.**)

Gray Family Theory #6: An Officer kicked Decedent Gray in the head while he was down on the ground.

A review of the video evidence proves that claim also cannot be substantiated. Viewing the video evidence, along with the statements provided, the kicking motion is in actuality Officer Head kicking the gun away from Decedent Gray. Based upon a review of the evidence, at no point did any Officers maliciously kick Decedent Gray. (See **Exhibits 21 and 22.**)

Gray Family Theory #7: The St. Clair Shores Officers never provided CPR or life saving measures to Decedent Gray.

There are have been numerous claims that the Officers did not provide any care to Decedent Gray. However, there is video and audio evidence to the contrary. Officers rendering aid is seen on the scout can videos and audible on the scout car video and body microphone recordings. There was a delay before the Officers began performing CPR. Based upon their statements they were trying to get their equipment, such as gloves, and were checking to see if anyone else had been shot. (See **Exhibits 18 and 19.**)

Gray Family Theory #8: The police edited all the videos.

The Gray Family has stated that the police edited the surveillance videos and scout car videos. There was no evidence to indicate that any videos were tampered with. The videos all appear to be in the correct sequence, which can be demonstrated by watching the progression of the videos. Absent an expert pointing to a specific instance of tampering, there is no merit to this claim.

Gray Family Theory #9: Why was the spent FN 5-7 casing by the magazine?

After reviewing the evidence, Decedent Gray fired his weapon at the Officers near the Hall. The question is, why then was the casing found by where he collapsed? After

speaking with numerous individuals who are familiar with weapons, two possible explanations were provided. The first explanation is that when the casing was ejected, it became stuck on some item of clothing on Decedent Gray and traveled with him until it became dislodged when he fell. The second explanation is that the casing became jammed in the weapon after the bullet was fired and it became dislodged with the magazine, when Decedent Gray collapsed and the weapon was kicked away from him. Both explanations are plausible. There has been no evidence presented that the weapon, magazine or casing were tampered with, manipulated, or planted by the police.

Legal Analysis

Assaulting, Resisting, or Obstructing a Police Officer

Pursuant to M.C.L. 750.81d, “an individual who assaults, batters, wounds, resists, obstructs, opposes, or endangers a person who the individual knows or has reason to know is performing his or her duties is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.” M.C.L. 750.81d(1). Under this statute the term “obstruct” means “the use or threatened use of physical interference or force or a knowing failure to comply with a lawful command.” M.C.L. 750.81d(7)(a).

The crime of resisting and obstructing a police officer is a general intent crime. *People v. Gleisner*, 115 Mich. App. 196, 200 (1982). In *People v. Little*, the Michigan Supreme Court stated that the language in M.C.L. 750.81d includes all ordinary police functions of keeping the peace, even those “that do not directly involve placing a person under arrest” and therefore, an individual may be guilty of obstructing an officer even if they are not being arrested. *People v. Little*, 434 Mich. 752, 759 (1990). Additionally, in *People v. Corr*, the Michigan Court of Appeals further acknowledged that obstruction can be “a knowing failure to comply with a lawful command.” *People v. Corr*, 287 Mich. App. 499, 503 (2010); *see also People v. Toger*, 2018 Mich. App. LEXIS 293, *4 (Mich. Ct. of App., February 20, 2018).

Based upon the evidence, at the time the Officers were pursuing Decedent Gray, he was actively resisting and obstructing the Officers. The Officers were performing their lawful duties of investigating a suspect who appeared upset and had entered the Hall with a handgun. The Officers made numerous commands to Decedent Gray to stop and speak with them, as he matched the description of the suspect. Decedent Gray failed to comply with their lawful commands. After Decedent Gray took off running, away from the Officers, the Officers again provided numerous commands to stop, all of which Decedent Gray ignored. Then Decedent Gray took out his handgun and fired at the Officers.

Right to Self Defense

In 2006 the State of Michigan enacted the Self Defense Act, Act 309 of 2006. M.C.L. 780.972 provides that an individual (which would include a police officer) may use deadly force against another, without any duty to retreat, provided they were not engaged in the commission of a crime and either (a) they “honestly and reasonably believe 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” or (b) they “honestly and reasonably believe that the use of deadly force is necessary to prevent the imminent sexual assault of himself or herself or of another.” Further an individual may use deadly force if they “honestly and reasonably believe that the use of that force is necessary to defend oneself or another from the imminent unlawful use of force by another individual.” Pursuant to M.C.L. 780.961 (Deadly Force, Act 310 of 2006), if an individual uses deadly force pursuant to M.C.L. 780.972, they have committed no crime in the exertion of that force. A prosecutor may only charge said individual with a crime if the prosecutor can provide evidence “establishing that the individual’s actions were not justified.” M.C.L. 780.961(1)(2). *See also, People v. Guajardo*, 300 Mich App 26 (2013) (discussing and upholding Michigan’s Self Defense Act and the use of deadly force).

The Michigan Model Criminal Jury Instructions state in M Crim JI 7.15 (Use of Deadly Force in Self-Defense) that if an individual acted in lawful self-defense, their actions would be justified and thus they would not be guilty of crime. In making this determination one “should consider all the evidence” and should consider the following three rules, judging the individual’s actions according to how the circumstances appeared to that individual at the time they acted. The first rule provides that the individual must “have honestly and reasonably believed that [they were] in danger of being [killed/seriously injured/sexually assaulted].” *Id.* The individual need not be correct in their evaluation of the danger presented, so long as their belief was honest and reasonable. Second, the threat against the individual must have been in fear of death, seriously physical injury or a sexual assault. In making this evaluation, one should consider all the circumstances surrounding the action, and consider how they appeared to the individual at the time they reacted. *Id.* Third, the individual must have believed the threat was immediate and they used the amount of force necessary at the time to protect themselves. *Id. See also, People v. Goree*, 296 Mich. App. 293 (2012) and *People v. Conyer*, 281 Mich. App. 526 (2008).

While an individual may only use the deadly force where it is necessary to do so, they do not have a duty to retreat. M Crim JI 7.16. An individual does not have to retreat from attack if they “reasonably believe that an attacker is about to use a deadly weapon, nor if the [individual] is subject to a sudden, fierce, and violent attack.” *Id.* An individual also does not have to retreat if they were not engaged in the commission of a crime, had a legal right to be where they were and had an honest and reasonable

belief that the use of deadly force was necessary to prevent imminent death, great bodily harm or sexual assault. *Id.* See also, *People v. Riddle*, 467 Mich. 116 (2002) and *People v. Conyer*, 281 Mich. App. 526 (2008).

Further, the U.S. Supreme Court has also ruled regarding the right to use deadly force and in particular in the context of police officers. In *Tennessee v. Gardner*, the U.S. Supreme Court stated “[w]here the officer has probably cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens the officer with a weapon or there is probably cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.” *Tenn. v. Garner*, 471 US 1, 11-12 (1985).

The U.S. Supreme Court also analyzed and ruled on the issue of police use of force in *Graham v. Connor*, 490 US 386 (1989). In *Graham v. Connor*, the Court held that claims alleging police officers have used excessive force must be analyzed under the Fourth Amendment “reasonableness standard” and not under a “substantive due process” approach. *Id.* at 395. Additionally, “[t]he ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” *Id.* at 396. In determining whether an officer’s actions were reasonable, there must be “allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving...” *Id.* at 396-97.

Michigan courts have also spoken on the issue of police utilizing deadly force. In *Delude v. Raasakka*, the Michigan Supreme Court found that police can use “force reasonable under the circumstances to effect [sic] an arrest” and “may take what action is reasonable to protect themselves in the course of an arrest or an attempted arrest.” *Delude v. Raasakka*, 391 Mich. 296, 303 (1974). Further, in *People v. Doss*, the Court discussed what constituted reasonable force and in the Court’s reasoning they looked to *American Jurisprudence 2d*, where it is stated:

What amounts to reasonable force on the part of an officer making an arrest usually depends on the facts in the particular case, and hence the question is for the jury. The reasonableness of the force used must be judged in the light of the circumstances as they appeared to the officer at the time he acted, and the measure is generally considered to be that which an ordinarily prudent and intelligent person, with the knowledge and in the situation of the arresting officer, would have deemed necessary under the circumstances. The officer has discretion, within reasonable limits, to determine the amount of force which the

circumstances require, and his is not guilty of wrong unless he arbitrarily abuses the power confided in him. 5 Am Jur 2d, Arrest, § 81, p 768. *Doss*, 406 Mich. 90, 102 (1979).

The court in *Doss* further stated, “police officers making a lawful arrest may use that force which is reasonable under the circumstances... and ... is not required to retreat before a display of force by his adversary.” *Doss*, 406 Mich at 102.

Here, Decedent Gray fired at the Officers, who did not have their weapons drawn at the time. The Officers drew their weapons and returned fire in order to apprehend a fleeing suspect, who was armed and dangerous. The Officers lawfully discharged their weapons at Decedent Gray in order to protect not only themselves, but the public as well as there was a large gathering of individuals present, and the Hall was located next to a neighborhood. The Officers did not use excessive force in attempting to stop Decedent Gray. They provided numerous verbal commands for Decedent Gray to stop and to drop his weapon. Decedent Gray chose to ignore all of those commands and instead continued to flee the Officers, resist arrest and threaten deadly force against the Officers.

Media Relationship

This is a case that has been in the media.

Conclusion

Based upon a thorough review of the evidence it is clear that Decedent Gray was causing a disturbance by brandishing a handgun at the Hall to such an extent that Ms. Nahra called 911 and was extremely upset and scared for the safety of her staff, her patrons and herself. When police arrived at the scene Decedent Gray ignored their requests to talk and ignored their commands to stop. Decedent Gray fled from the police and then withdrew his weapon (FN Five Seven) and fired a round at the Officers. The Officers then withdrew their holstered weapons and returned fire. They continued to command Decedent Gray to stop and to drop his weapon, all commands were refused. K9 Officer Axe was hit by gunfire and retreated, later succumbing to his injuries. Decedent Gray continued fleeing to the Auto parking lot. Decedent Gray then turned and pointed his weapon at Officer Ziemiecki. Officer Ziemiecki fired his weapon after Decedent Gray ignored multiple commands to drop his weapon. Decedent Gray then turned his attention to Officer Kaufman who had fallen and did not have his weapon drawn. Decedent Gray was advancing towards Officer Kaufman and was raising his weapon, ignoring all commands to stop. Officers then fired at Decedent Gray and he collapsed and became incapacitated due to his injuries. Officer Head and Officer Kaufman approached Decedent Gray and Officer Head kicked the weapon away from Decedent Gray. The Officers performed CPR and called for an ambulance. Decedent Gray succumbed to his injuries at St. John’s Hospital.

EXHIBIT 1
Photo of FN Five – Seven and Magazine



EXHIBIT 2
Photo of AK – 47 and Magazine



Theoddeus Gray
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EXHIBIT 3

911 Call – Lakeland Manor Hall November 4, 2018
(See Electronically Attached Exhibits)

EXHIBIT 4

Decedent Gray at Hall with weapon, prior to Police arrival



EXHIBIT 5
Photograph of Officer Ziemiecki Looking for Suspect



EXHIBIT 6

Photograph of Decedent Gray Matching Description on 911 Call



EXHIBIT 7

Photographs of Officers During Initial Foot Pursuit of Decedent Gray



EXHIBIT 8

Photographs of Decedent Gray Grabbing Gun During Initial Pursuit



EXHIBIT 9

***Video of Decedent Gray Firing Weapon During Initial Pursuit
(See attached Electronic Exhibits)
(Note: Flash may be observed around :07)***

EXHIBIT 10

Photographs of Decedent Gray's Gun Being Fired

(Note: In top photo you can see flash from gun. In bottom photo you can see the smoke from the gun by Axe.)



EXHIBIT 11

Photograph of Officers Reaction to seeing Decedent Gray Produce a Weapon

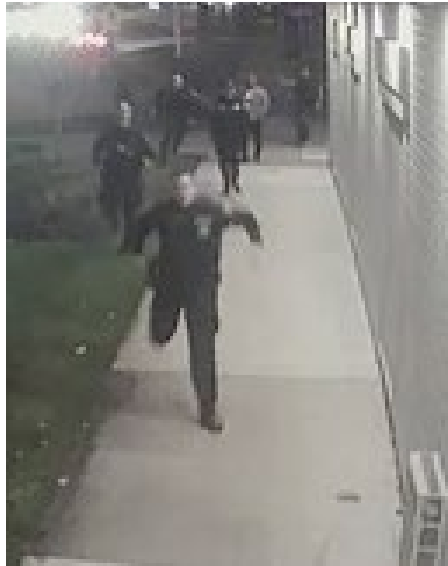


EXHIBIT 12
Photographs of Officers Retrieving Weapons



EXHIBIT 13
Photograph of K9 Axe Retreating

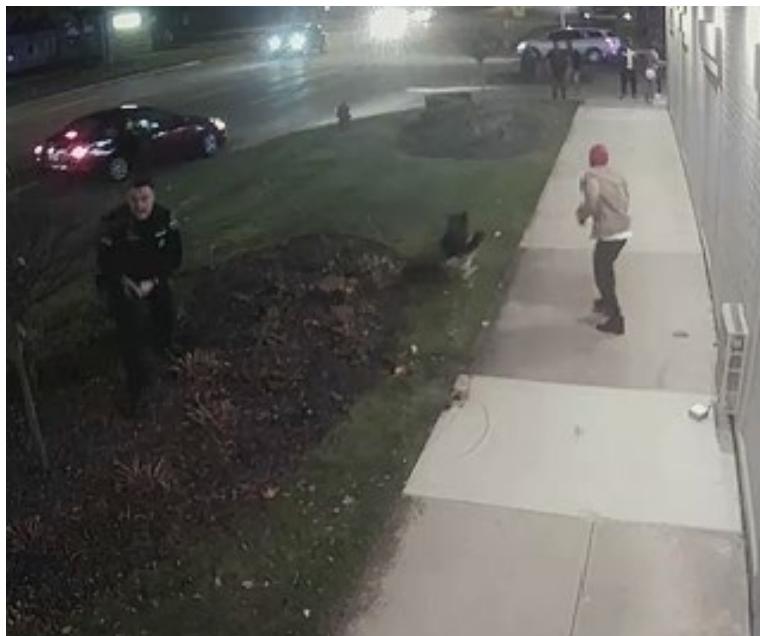


EXHIBIT 14

Scout Car Video

(See attached Electronic Exhibits)

(Note: For this Exhibit please view sections around the time of 1:24 through 1:28.)

EXHIBIT 15

Photographs of Decedent Gray Progressing Forward and Not Surrendering

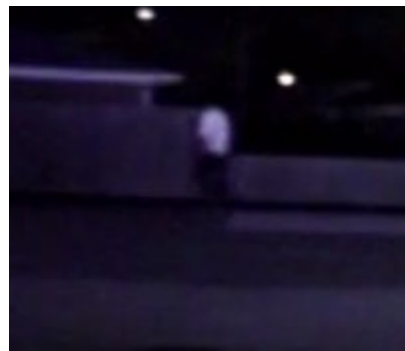
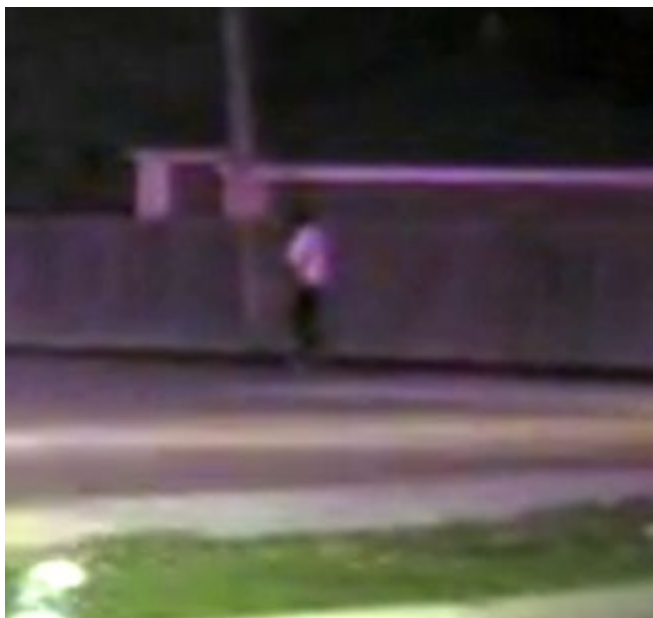
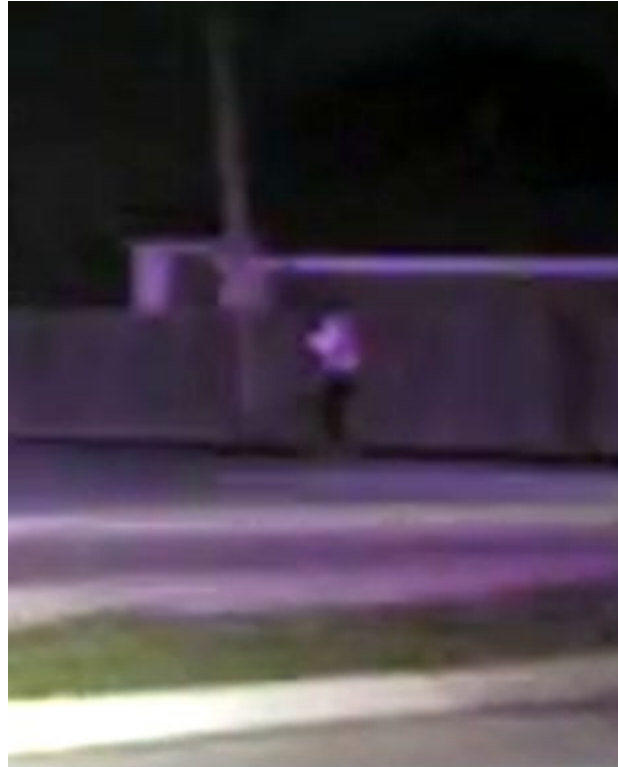
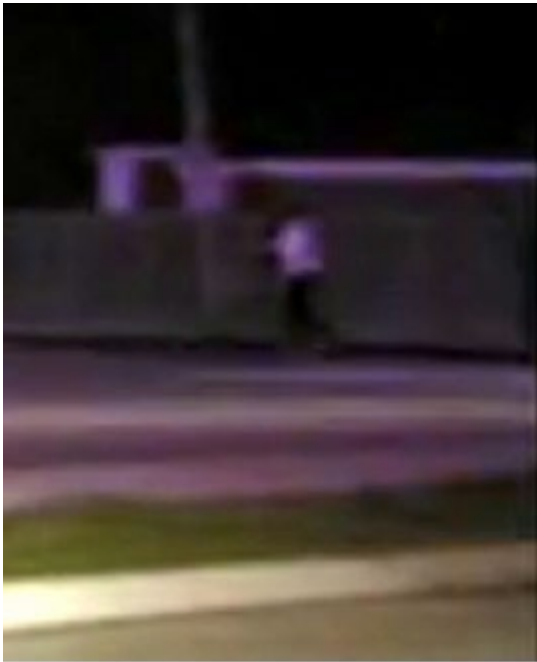


EXHIBIT 16

***Photographs Demonstrating Appearance of FN Five-Seven
(Note: In top pictures there are no objects on the ground, but the weapon
appears at that location after Officer Head kicked it away from Gray, as
depicted in the bottom pictures.)***



EXHIBIT 17
Evidence Tech Photos of FN Five-Seven on Scene



EXHIBIT 18

Photographs of Officers Performing CPR to Decedent Gray



EXHIBIT 19

*Audio of Officers Performing CPR to Decedent Gray
(See attached Electronic Exhibits)*

(Note: Please review the video around the times of 4:11 through 4:36.)

EXHIBIT 20

***Video of Initial Police Pursuit and Decedent Gray Grapping Weapon
(See attached Electronic Exhibits)***

EXHIBIT 21

Photograph of Officer Head Kicking Gun Away from Decedent Gray



EXHIBIT 22

***Audio of Officer Head Acknowledging Kicking Decedent Gray's Weapon
Away***

(See attached Electronic Exhibits)

(Note: Listen to audio at time of 2:45 through 2:48.)