

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



DANA NESSEL
ATTORNEY GENERAL

MEMORANDUM

Warrant Denial Memorandum

[Rev. 02/11/2020]

March 11, 2024

TO: Robyn Liddell
Division Chief
Criminal Trials and Appeals

APPROVED: _____
Bureau Chief Date

FROM: Michael Doby
Assistant Attorney General
Criminal Trials and Appeals

☐ Check here when Division Chief has final approval
authority for the request.

CC: Oronde Patterson
Section Head
Criminal Trials and Appeals

APPROVED: Robyn Liddell 7/3/2024
Division Chief Date

RE: **Request for Authority to Deny Criminal Charges**
Due Date for Response:
Romero, Stephen Luis (Deceased)
AG # 2024-0396272-A

Recommendation

It is recommended that charges against Officer Donovan Moore and Officer Jeffery Kurtz are denied because the shooting was justified self-defense and/or defense of others.

Introduction

Officers Moore and Kurtz responded to a domestic violence call in the City of Lansing. The information relayed to them at the time was that the suspect Stephen Romero was armed with a gun and had shot his wife. Officers found Mr. Romero in the driveway of his home near a car that the domestic violence victim was sitting in. Officers approached with guns drawn based on the dispatch information. Mr.

Romero went to his knees as ordered but then lifted his shirt to display a pistol. He did not follow orders to lay down on the ground and instead reached for the pistol in his waistband. As Mr. Romero's hand reached the gun Officer Moore fired four shots and Mr. Romero fell to the ground. Mr. Romero, while on the ground, again reached for and grabbed his pistol. Officers Moore and Kurtz fired additional rounds. Medical aid was rendered but Mr. Romero later died at the hospital.

Facts

██████████ and Stephen Romero (33) were married and lived at ██████████ ██████████. in the city of Lansing. At that home were ██████████'s four children, 11, 10, 7 and 2 years old. The youngest child was also Stephen's. On December 1, 2023 ██████████ and Stephen Romero attended a Christmas party at ██████████, where ██████████ worked. Surveillance video showed that they were at the party for just over 3 hours total. During the party Mr. Romero became intoxicated and called a woman there a bitch. He later argued with that woman's father. Late in the evening Mr. Romero pulled out a pistol from his waistband and appeared to have chambered a round. Shortly thereafter he appears to reconcile with the person he was arguing with and the Romeros leave the party without any physical altercation.

According to ██████████ they left the party because Mr. Romero was drunk. ██████████ drove. They argued in the car and about getting McDonalds for the children even though the children had already eaten dinner. ██████████ gave two statements that vary a bit. The following is what is consistent with the 911 call. When they got back to the home again Mr. Romero dropped the food, slammed the car door and then went inside. ██████████ stayed in the car and was crying. Mr. Romero came back outside, unlocked the car doors, and slapped her across the face and went back in. He then came outside again and put his pistol in the car telling ██████████, "call the cops on me bitch." ██████████ then called 911. After the call was ended by the 911 operator she waited in the car as instructed.

Lansing Police were first dispatched at 23:19:12 with the following information:

[2] [2] RP'S HUSBAND, STEVEN ROMERO
09/17/1990....B/M 33YO UNK TOP, BLK JEANS....INTOX
NO 3500. SLAPPED RP, THREW GUN IN THE CAR
(NEVER THREATENED WITH IT, WEAPON WITH RP
IN CAR NOW) RP IN A WHT CHEVY IN THE
DRIVEWAY.... ACC INSIDE THE HOME WITH 4
CHILDREN....

After making that call [REDACTED] remained in the car in the driver's seat as instructed by the dispatcher. Stephen came back out to the car and reached in and retrieved his pistol. Very shortly after, possibly while trying to holster the pistol or to scare [REDACTED], it went off. One shot was fired.

911 calls other than from [REDACTED]

911 call was received from a neighbor at [REDACTED] at 23:24:22. The neighbor would not give her name. Initially the caller said that she heard the man (Stephen Romero) going crazy, one gunshot, and the woman ([REDACTED]) crying. At 1:40 into the call another male voice is heard relaying information to the caller, this person says that the woman is shot. The caller then told the operator "he shot her." The caller says that "she" says she is shot and she's crying. At 23:25:33 dispatch advised officers that this was a confirmed shooting.

One more 911 call came in at 23:26:49. This was from [REDACTED] [REDACTED] who was inside the house. Comparing CAD notes and bodycam the call was received at the same time Officers Moore and Kurtz were running from their vehicles to the driveway of [REDACTED]. 23 seconds into the call the [REDACTED] told dispatch that her [REDACTED] (Stephen) slapped her [REDACTED] and shot a gun to scare her. This would be approximately 23:27:12. Review of bodycam (detailed below) shows that Officer Moore's first shots had just been fired at that time. The call ends when [REDACTED] comes inside after Stephen was shot by police officers.

Review of Officer Donovan Moore's Bodycam

Body camera video shows that Officer Moore was in his car responding to the domestic violence call when dispatch advised that one shot had been fired. He activated his lights and sirens. Approximately one minute later the dispatch that this was a confirmed shooting can be heard. 50 seconds later Officer Moore asked by radio "Is that white car (referring to the car [REDACTED] was in) supposed to be in the driveway?" He is told that as far as dispatch knows she is supposed to be out front. He then exits his patrol vehicle. Just under two minutes passed between the dispatch that one shot had been fired and Officer Moore's arrival.

Officer Moore parked at the corner, one house down from [REDACTED] [REDACTED]. As he started to run towards [REDACTED] he said that he heard screaming. A voice that sounds like a male can be heard on the bodycam yelling, the words are unintelligible. Officer Moore ran up the driveway of [REDACTED] with his service pistol out. The white SUV can be seen in the driveway with the driver's door open and a male standing next to the vehicle. Officer Moore yelled "Hey, show me your hands." He yells "show me your hands" twice more and then "get on the ground." Stephen has what appears to be cell phones in both his hands. It appeared that Stephen understood that Moore and Kurtz were police officers and began to comply with

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their orders. As Stephen says “bro” and sets down the objects Officer Moore again says “get on the ground” adding “or I will shoot you.”

Stephen dropped to his knees with both hands in the air. Officer Kurtz can be seen arriving to Officer Moore’s right with his rifle pointed at Stephen. Officer Moore continues to yell “get on the ground, face down.” Officer Kurtz says “face down.” Stephen kept his right hand in the air but reached towards his waistband with his left hand. He then lifted up his shirt displaying a silver-colored pistol. The officer continued to command him to get face down on the ground. He drops his shirt with his left hand while quickly reaching towards the pistol with his right. It is not until Stephen’s hand is on his own pistol that Officer Moore fires. Officer Moore fired four shots from his pistol at Stephen. The images are sequential right to left.



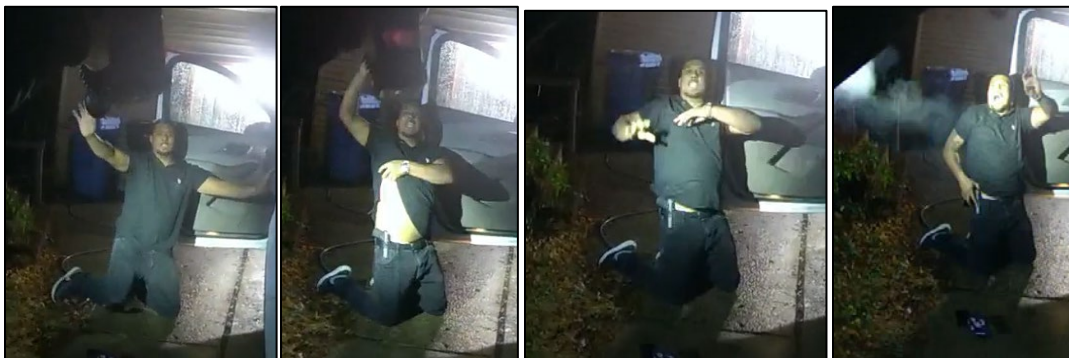
Stephen was struck and then laid down on the ground with his head facing the car but propped himself up on his forearms. Stephen did not fall into this position after being shot, the video shows that he turned his body and lowered himself down. Officers Moore and Kurtz back up a step or two. Stephen then again reached for the pistol and grabs it with his right hand. Stephen pulled the pistol from his waistband and rotated his body away from the officers. Officer Moore yelled “stop” but the pistol was already out and Officers Moore and Kurtz then both fired several shots. Because there are two guns firing simultaneously it cannot be determined from the video how many shots each officer fired. A later round count by MSP showed that Officer Moore was down 9 rounds and Officer Kurtz was down 7 rounds. The following images are sequential from right to left.



Officers Moore and Kurtz backed up down the driveway. When a third officer arrived they pulled Mr. Romero back a few feet so they could assess [REDACTED]. Officer Moore began CPR on Mr. Romero which he continued until relieved by another officer. Lansing Fire Department paramedics arrived approximately 4 and ½ minutes after the last shot was fired and took over first aid. Neighbors had begun to gather and yell at the officers. Officers Moore and Kurtz are instructed to leave the scene and go to the station. Officer Moore retrieved personal items from his patrol vehicle and then handed the keys over to a Sergeant on scene. He then got into the backseat of another patrol vehicle and his bodycam recording is ended.

Review of Officer Jeffrey Kurtz's Bodycam

After the dispatch that the call was a confirmed shooting Officer Kurtz unlocked and prepared his rifle in the car while driving to [REDACTED]. He parked his patrol vehicle behind Officer Moore's and followed Officer Moore up the driveway of [REDACTED]. The sequence of events observed from the bodycam video is the same as that of Officer Moore. The angle is slightly different as Officer Kurtz was to Moore's right. The following images are sequential from right to left. In the fourth image a smoky haze can be seen. This appears to be from the muzzle blast from Officer Moore's first shot. The video shows similar smoky haze on subsequent shots from the officers. Stephen hand can be seen on his pistol at the same time.



Like Officer Moore, Officer Kurtz took a couple steps back following the first shots. Stephen laid down and then reached for the pistol again. Stephen had his pistol in his right hand when Officers Moore and Kurtz fired.



After moving Stephen down the driveway Officer Kurtz approached the car and spoke to [REDACTED]. [REDACTED] told Officer Kurtz that she was not shot and that Stephen had “shot outside.” [REDACTED] was then escorted into her home by another officer. Officer Kurtz was instructed to go to a police station. He turned over his rifle to the Sergeant on scene. He then retrieved personal items from his patrol vehicle and then turned those keys over to another officer. He got into another patrol vehicle to be transported to the station and turned off the bodycam shortly thereafter.

Investigation by Michigan State Police

Michigan State Police were called in to investigate the shooting very shortly after it happened. D/Sgt. Waite went to the Lansing Police Department station where Officers Moore and Kurtz has been transported. There he seized their firearms and conducted a round count. He found that Officer Moore’s pistol was down 9 rounds from a full load and Officer Kurtz’s rifle was down 7 rounds from a full load. He also photographed the officers and allowed them to change out of their uniforms.

[REDACTED] was interviewed by D/Sgt. Nathaniel Kraus and D/Sgt. Daniel Bowman. Her recount of the events prior to the shooting differed slightly from the interview she gave to the Lansing Police Officers and from the 911 call. Regarding the shooting, [REDACTED] said that she was saw Mr. Romero pull his shirt up and she believed he was trying to show the officers that he was armed. [REDACTED] said she then heard a lot of gunshots and saw him fall to the ground. She said she did not understand why Mr. Romero was shot. She was observed to have a red mark on her cheek, which would be consistent with her being slapped by Mr. Romero.

D/Sgt. Adamczyk responded to the scene. Rainfall was washing away the blood but he observed fired cartridge casings, food from McDonalds, and other debris around the Chevy Traverse. LPD officers had maintained watch over, but had not seized, a black and silver handgun found between the driveway and house. It is a SCCY Industries model CPX-1 chambered in 9mm. It is a sub-compact semiautomatic with a 10+1 capacity. An ATF trace showed that the pistol had been purchased by Mr. Romero in December of 2022 at a gun shop in Lansing.

A canvass of the neighborhood did not produce any useful information. Neighbors who did speak to the police said they were sleeping or only heard the gunshots and saw the lights from the police cars. One neighbor claimed that the shooting was an execution and that the police were mad at the deceased because he had run from them recently. It was quickly learned that she that she had not actually seen what had happened and wrongly believed that the shooting happened at 1600 Massachusetts and that the deceased was a person name [REDACTED].

S/Sergeant Schuett responded to Sparrow Hospital, where Mr. Romero had been transported by Lansing Fire Department ambulance. He had arrived at 23:43 on 12/1/23 and was pronounced dead 14 minutes later at 0007 on 12/2/23. The information at that time was that Mr. Romero had 12-13 gunshot wounds.

Officers Moore and Kurtz statements

Both Officer Moore and Officer Kurtz provided written statements to the MSP. Their recitation of the facts are consistent with the bodycam footage. Both said that they fired because they feared that Mr. Romero would shoot and kill themselves or Mrs. Romero, who they believed at the time had already been shot once.

Medical Examiner Report

The medical examiner determined that Mr. Romero died of multiple gunshot wounds. 10 bullets of two different calibers were recovered from Mr. Romero's body. Toxicology detected evidence of ethanol (alcohol) and marijuana/cannabis.

Materials Reviewed

- Michigan State Police Incident Report 010-665-23, original and supplements 1-6
- Autopsy Report
- 911 call from [REDACTED]
- 911 call from neighbor
- 911 call from [REDACTED] daughter
- Dispatch radio recording
- Incident Detail Report (CAD Notes)

- Lansing Police Department Report 2351911965 original and two unnumbered supplements
- Lansing Police Department Report 2351911966
- Lansing Police Department Manual §600.07 “Response to Resistance”
- Officer Kurtz body camera recording
- Officer Moore body camera recording
- Written statement of Officer Kurtz dated 12/15/2023
- Written statement of Officer Moore dated 12/13/2023
- Court One Surveillance video, 9 video/audio clips and 4 screenshots.
- Timeline – Holiday Party prepared by [REDACTED] of [REDACTED].
- Media accounts of the shooting and family’s lawsuit.

Law and Policy

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 probable 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 probable 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.

The Lansing Police Department instructs its officers that Deadly Force can only be used to prevent imminent death or great bodily harm consistent with MCL 760.972. Officers are required to identify themselves and provide a verbal warning before using deadly force whenever possible. The Department further instructs officers that:

Firearms may be drawn or displayed when, based on the totality of the circumstances, an officer feels his or her safety is in peril and such danger could be construed as life threatening; or when the person to be apprehended has committed, or there is probable cause to believe the person to be apprehended has committed, a violent felony offense and/or the possibility of confrontation with deadly force exists. LPD Manual §600.07 at 4.

Analysis

Officers Moore and Kurtz were each justified in using deadly force against Mr. Romero. No charges are appropriate as the officers have legitimate self defense and/or defense of others claims.

Before Officers Moore and Kurtz arrived at [REDACTED] they had been told that there was a domestic violence victim in the car in the driveway, that Mr. Romero had a gun, and that Mr. Romero had shot [REDACTED]. The approach to the house with guns drawn was consistent with Lansing Police Department policy based on that information.

When Mr. Romero was ordered to lay face down on the ground he instead went to his knees and raised his shirt to display his pistol. He was given several commands and warnings, but the officers did not fire at that time. Officer Moore did not fire until he reached down with his other hand and was grasping the pistol. With the information that he had it was reasonable for Officer Moore to believe that Mr. Romero intended to use that pistol against him or against Mrs. Romero. When, after being shot by Officer Moore, Mr. Romero again grabbed his pistol it was reasonable for both officers to believe that he still intended to use it against them or Mrs. Romero.

Given the statement of [REDACTED], an argument could be made that Mr. Romero was attempting to disarm himself and give the pistol to the officers. There is simply no way that the officers could have known that if it was true. Mr. Romero was never told to hand the gun over, instead he was ordered to lay face down. He lifted the shirt with his left hand and then quickly dropped it while reaching for the gun with his right. The most reasonable interpretation of his actions in that split second moment was that he intended to use that gun.

That the officers were given incorrect information regarding whether [REDACTED] had been shot likewise does not negate the officers' legitimate self defense and/or defense of others claim. The officers actions must be judged from the "perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." It was learned only after the shooting that [REDACTED] had not actually been shot. Whether or not [REDACTED] had already been shot does not actually matter. The officers were confronted with a person who displayed a gun and then grabbed that gun twice. The officers' fear that he would use that gun on them or [REDACTED] was honest and reasonable.

Under the facts here, where the officers only fired when Mr. Romero's hand was actually on his pistol, they were justified in using deadly force. No charged should

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issue as the officers actions were consistent with the law of self defense and departmental policy.

Conclusion

No charges should issue against Officers Moore and Kurtz, the shooting was in justified self defense and/or defense of others