

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



DANA NESSEL
ATTORNEY GENERAL

MEMORANDUM

Warrant Denial Memorandum

January 21, 2026

TO: Danielle Hagaman-Clark
Bureau Chief
Criminal Justice Bureau

Robyn Liddell
Division Chief
Criminal Trials Division

CC: Danielle Russo Bennetts
First Assistant
Criminal Trials Division

FROM: Shawn M. Ryan *sm*
Assistant Attorney General
Criminal Trials Division

RE: **Request for Authority to Deny Criminal Charges**
AG Case Name: Ingham County OIS
AG Case No: 2025-0428437-A

Due Date for Response: no particular date

Recommendation:

Upon a thorough review of the Mason Police Department and Taser reports, Ingham County Sheriff's Office reports, Michigan State Police Lansing Post reports, Michigan State Police Canine Unit report, Michigan State Police Audio/Video Analysis Unit report, Michigan State Police Traffic Crash Reconstruction Unit reports, Michigan State Police Special Investigation Sections reports, 911 calls, CAD reports and audio tapes, Officers' statements, numerous video and audio footage



APPROVED: *Danielle Hagaman-Clark* 2/25/2026
Danielle Hagaman-Clark Date
Bureau Chief

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

APPROVED: *Robyn Liddell* 1-26-26
Robyn Liddell Date
Division Chief

from patrol cars and body worn cameras, audit logs associated with each video, citizen video, scene photographs, evidence collected at the scene, Mobile Medical Response reports, autopsy and toxicology report, and other evidence; as well as a review of Mason Police Department and Ingham County Sheriff's Office policies, including use of force policies, and applicable law, I recommend and request authority to deny any criminal charges against Ingham County Sheriff Deputy Nicholas Wagner resulting in the fatal shooting of Cameron Cothorn.

Facts:

On Sunday, April 6, 2025, at approximately 4:04 pm, [REDACTED] called 911 and reported a male subject walking southbound on the shoulder of northbound US-127. The male was in his late 20's, early 30's with short dark hair, small goatee, wearing jeans and a sweatshirt with a red backpack. 911 caller [REDACTED] stated he saw a white male subject walking southbound near Barnes Road in the northbound lanes of travel. He further described the male as about 5'6" wearing a red and black hooded sweatshirt with a "scrubby" appearance based upon his hair and facial hair.

When interviewed later, 911 caller [REDACTED] told officers he and his wife were traveling north on US-127 S of Barnes Road and saw a male walking southbound in the northbound lanes against traffic. [REDACTED] advised he knew this was dangerous and illegal in addition, he saw no vehicle that the person would have come from, so he called 911 to have him checked out as he felt something was wrong.

Ingham County Deputy Nicholas Wagner was dispatched at approximately 4:06 pm to a welfare check at US-127 N/B at the 61-mile marker, Barnes Road, in Ingham County, Michigan. He arrived at approximately 4:17 pm. At approximately 4:23 pm, Deputy Wagner requested priority backup, reporting that the subject was armed with a knife. Mason Officer Sue Putman responded to the scene.

For approximately 13 minutes, both the Deputy Wagner and Officer Putman attempted to de-escalate the situation. The Deputy Wagner utilized the public address system of his patrol vehicle to communicate with the subject, continuously offering assistance and to put the knife down. Both officers also moved their patrol vehicles backward (southbound in the northbound lane of US-127) to create distance, despite the inherent danger posed by the armed subject and oncoming traffic.

As traffic began to build, Officer Putman, unable to continue backing up, exited her vehicle but did not immediately engage the subject. In a continued effort to de-escalate, she chose to deploy less-lethal force, attempting to

incapacitate the subject with her taser. Officer Putman deployed her taser twice at approximately 4:34 pm as the subject was running northbound in the southbound lanes of US-127, moving toward oncoming traffic with knives. She announced the taser deployment, consistent with her training. One taser probe struck the guardrail, while the other either struck or narrowly missed the subject in the upper back.

Immediately after the taser deployment, the subject changed direction, turning toward Officer Putman and jumping over the guardrail to advance on her with two knives. During this movement, he tripped on the guardrail and dropped one knife, but continued to run after Officer Putman, closing the distance to within a few feet. The subject was seen grabbing at or toward Officer Putman's gun while simultaneously moving a knife toward her as she attempted to run away from him and toward Deputy Wagner. As she ran, she fell on the ground near Deputy Wagner.

At this point, also at approximately 4:34 pm, Deputy Wagner discharged his duty weapon three times from a close range, stopping the imminent threat of serious bodily injury or death to Officer Putman and himself. Emergency aid was immediately rendered to the subject.

Deputy Andrew Braska, who had arrived on the scene, checked for a pulse, and although he found none, he began CPR and assisted with life saving measures by providing several rounds of chest compressions until relieved by another officer. An AED was applied during this time as well. Rescue breaths via a bag-valve mask device were also being performed by officers. Deputies and MSP Troopers on the scene continued lifesaving attempts until EMS arrived.

Upon arrival at 4:53 pm, EMS found Cothorn in the median of the highway with a gunshot wound to the upper right side of the chest and another to the lower right side of the abdomen. They continued CPR but were unable to revive him, and the time of death was declared at 5:08 pm.

Deputy Medical Examiner Christopher Hauch, M.D. University of Michigan Health-Sparrow Forensic Pathology in Lansing conducted an autopsy of Cothorn on April 7, 2025. His report states Cothorn's body had four gunshot wounds: the upper right side of the chest, right side of the mid chest, posterior-lateral right arm, and anterior proximal-medial left thigh. He indicated given the proximity and wound characteristics, gunshot wound two may represent a re-entrance wound related to gunshot wound three. He removed two bullets, one from Cothorn's lateral left trunk and one from his mid posterior-lateral left thigh. The toxicology report was positive

for metabolites of marijuana, caffeine, and cotinine. Dr. Haugh determined the cause of death to be as a result of gunshot wounds and manner of death was homicide.

MSP D/Sgt. Christopher Clark arrived on the scene at 6:34 pm and began his investigation. He observed taser wire/probe under the driver's side of the Sheriff's vehicle. Several feet south of the vehicle, he saw Cothorn lying with a sheet over him, and two knives lying several feet to the east of Cothorn. Three fired 9mm casings were collected near the deceased, along with a fired bullet/bullet fragment. The taser/wire/probes were also located/collected. Two knives, green/orange were also taken. A round count of Deputy Wagner's duty Glock handgun and two magazines was conducted. The pistol had one round in the chamber and thirteen rounds in the magazine of the gun. The two additional magazines each had seventeen rounds in them which is capacity for the magazine. All these items were photographed, seized and sent to the MSP lab. Forensic Scientist Sherise Thacker (MSP Lab report LS25-682) confirmed the fired metal jacketed bullet and all fired cartridge cases were identified as having been fired from Deputy Wagner's Glock.

MSP D/Sgt. Andrew Adamczyk spoke to eyewitness [REDACTED] who advised he, his wife and children were driving northbound on US-127. When they were south of Mason, he observed several patrol cars traveling southbound on US-127 with emergency lights activated. As he approached the scene, traffic had slowed/stopped. He observed a male, wearing a red shirt, with his arms out wide holding a long pointed shiny object in his hand. He knew the object was a large knife by appearance. The man initially held his arms out wide but then put both hands behind his back, as if he were trying to hide what was in his hand. While still holding the knife, he began to walk towards a deputy on the SB side of the freeway. The man stayed facing the deputy, jumped over the guardrail and ran at the deputy. (in reality, this was Mason Officer Putnam). [REDACTED] lost sight of the man and heard two "pops" which he believed to be gunshots. He could not see anything further.

D/Sgt. Issac Mills went to and spoke with Officer Putnam at the hospital where she was being treated for minor injuries due to her fall. She advised she was the first back up on scene. D/Sgt. Mills photographed Ofc. Putnam in the uniform she was wearing during the incident and conducted an ammunition count of her service pistol. He also took photos of her pistol and accompanying magazine and ammunition. Investigators later obtained Ofc. Putnam's taser, battery and two expended taser cartridges along with printouts of deployment.

Citizen interviewed and citizen video: ([REDACTED])

[REDACTED] contacted law enforcement to provide video he and his wife had of this incident. Upon being interviewed, he stated he and his wife were traveling north on US-127 when they were stopped by traffic at the scene. The saw a male with knives in his hands taunting a police officer to get out of his car. The saw an officer with a shotgun order the male to “get down” and the male did not comply. [REDACTED] saw the male had a smile on is face while this was going on.

The video [REDACTED] provided was taken from a vehicle in the northbound lane of US-127. The initial view is to the west centered on the male in a maroon hooded sweatshirt. The individual is facing south with his hands crossed behind his back and he is smiling. He turns briefly and you can see what appears to be the blade of a knife in his hands

Officers alert each other to crossfire and the male runs to the north past a patrol car with his hands behind his back. He then takes his hands out from behind his back jumps over the median guardrail. You can see a long blade being held downward in his right hand. The video pans over and you can see two officers running around the front of another patrol car that is facing south. One officer has his firearm out and pointed at the male the other officer has a taser in his hand. The officer with his firearm, discharges his pistol three times at the male with the maroon hooded sweatshirt as he lunges at the other officer with the knife. An orange object can be seen in the left hand of the male. The male falls to the ground and other officers arrive and take him into custody. At this point 23 seconds have passed in the video.

Patrol and Body Worn Camera

Mason Police patrol video and body worn cameras:

At approximately 8:25 (16:31:35 timestamp) into the in-car camera video the vehicle arrives on scene and the suspect can be seen next to an Ingham County Sheriff’s vehicle with two knives in his hands. The Ingham County Sheriff’s vehicle backs away from the suspect and he chases after the vehicle.

At approximately 9:00 into the in-car camera video the suspect approaches this vehicle and can be seen yelling. Only the words “fuck you” and “come on bitch” can be made out or heard. During this the patrol car is in reverse backing away from the suspect.

At approximately 9:09 into the in-car camera video the suspect leaves the view of the camera to the left. The patrol car is still backing up.

At approximately 9:33 into the in-car camera video the suspect can be seen standing in front of a patrol car yelling.

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At approximately 9:35 into the in-car camera video a black patrol car arrives in the view of the video. Shortly after this, the radio can be heard and someone advises that a contact team is being planned and to lock your car doors because the suspect is approaching the doors of patrol cars.

At approximately 10:09 into the in-car camera video the suspect runs out of view to the left. At approximately 10:30 into the in-car camera video the officer exits the vehicle. At this time the body worn camera ("BWC") shows better information. Prior to this the BWC showed a view of the steering wheel of the patrol car.

At approximately 10:30 (16:33:41 timestamp) into the BWC camera video the officer exits her patrol car. (Officer Putnam)

At approximately 10:55 into the BWC camera video the suspect can be seen in the roadway on the opposite side of the guardrail running in the general direction of the officer with knives in his hands.

At approximately 10:56 into the BWC camera video the officer says "taser" and discharges her taser at the suspect which has no effect on him.

At approximately 10:59 into the BWC camera video the suspect jumps over the guardrail toward the officer. The officer moves to the far side of a patrol car on scene.

At approximately 11:02 into the BWC camera video the officer begins to fall to the ground and an Ingham County Sheriff Deputy can be seen with his gun pointed to the right of the view. Three shots can be heard in the video as the Mason Officer falls to the ground. The officer stands up and her taser can be observed lying on the ground. Additionally, you can see officers securing the suspect.

At approximately 12:17 into the BWC camera video you can hear other officers on scene stated that there is no pulse and to start CPR. It is evident in the remainder of the video that medical attention is being given to the suspect.

At approximately 18:38 into the BWC camera video, the Mason officer is requested to block southbound traffic from Kipp Rd onto US-127. While the officer travels to this location she makes phone calls and advises someone that she discharged her taser.

Patrol Car Video from Deputy Nicholas Wagner's vehicle: (times indicated are not the times of day, but to the play point minutes in the video)

00:00-11:00 The video begins with Deputy Wagner responding to the scene.

-Deputy Wagner arrives on scene and a white male subject with dark hair and a beard wearing a burgundy Nike sweatshirt, grey sweatpants with a red backpack is observed walking on the shoulder of the freeway.

-Deputy Wagner approaches the subject and the man reaches into his bag and retrieves two knives placing one in each hand after dropping his backpack on the shoulder of the roadway. The subject then begins walking toward the patrol car.

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- The subject then appears to start yelling toward the patrol car raising the knife in his right hand as he moves his arms while he talks.
- Deputy Wagner begins backing up and the subject stops walking toward the patrol car.
- The subject starts walking away from the patrol car before turning around and running at the patrol car making noises holding a knife in each hand.
- The subject continues to run after the patrol car as Deputy Wagner backs up, and he put both knives into one hand before throwing a dark color object onto the shoulder from his left pocket with his left hand.
- The subject then places a knife in each hand again while he continues to run after the patrol car.
- After chasing after the patrol car, the subject stops and crouches down in front of the patrol car with a knife in each hand.
- Deputy Wagner continues to advise the subject he is there to help and requests that he drops the knife.
- Deputy Wagner opens the door to his patrol car and the subject stands up and begins walking toward the patrol car as Deputy Wagner continues to make contact offering his assistance.
- As the subject continues to walk toward the patrol car, Deputy Wagner starts to travel in reverse and the subject stops walking towards the car.
- The subject proceeds to retrieve an item from his right front pants pocket and puts the item to his mouth multiple times as he paces on the shoulder in front of the patrol car.
- The subject slowly walks toward the patrol car as Deputy Wagner continues to back up.
- Deputy Wagner opens his door and attempts to get the subject's name and offers to get the subject help.
- The subject starts to again walk toward the patrol car with the knives and Deputy Wagner secures himself in his patrol car and starts backing up.

11:03 Subject begins sprinting toward the patrol car holding a knife in each hand as Deputy Wagner continues to back up positioning his patrol car in the freeway lanes of travel as the freeway was now closed.

12:02 A second patrol car is observed on the shoulder of the freeway also backing away as the subject continues to walk toward the cars.

12:07 A third patrol car is observed parking in the middle of the freeway as Deputy Wagner backs toward the median of the freeway.

12:43 The subject runs between the patrol cars to the rear of Deputy Wagner's patrol car.

12:58 Deputy Wagner does a U-turn with his patrol car and positions his car facing toward the subject who is now on the opposite side of the freeway standing at the rear of a different patrol car facing three police officers.

13:27 The subject walks toward the police officers before turning around and running toward Deputy Wagner's patrol car on the opposite side of the freeway metal barrier.

13:29 The subject goes off camera toward the rear of the patrol car.

13:33 Deputy Wagner is observed outside his patrol car backup up toward the hood of his

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car with his pistol drawn directed toward the rear of the patrol car.

13:35 A female officer is observed running toward the hood of Deputy Wagner's patrol car followed by the subject running after her. Deputy Wagner fires his pistol at the subject as the subject is lunging toward the female officer with his right hand armed with a knife. Both the female officer and subject fall to the ground in front of the patrol car.

Body Worn Camera Footage of Deputy Nicholas Wagner: (times indicated are not the times of day, but to the play point minutes in the video)

01:00 Deputy Wagner arrives on scene and advises dispatch.

01:16 The subject is observed walking directly toward the front of the patrol car.

01:20 Deputy Wagner notifies dispatch the subject has two knives and request priority backup.

01:28 Deputy Wagner is backing away from the subject in his patrol car as the subject is running after the patrol car and can be heard making loud noises.

01:40 Deputy Wagner utilizes his PA mic from his patrol car and states. "I'm only here to help you, get off to the side of the highway. Get off to the side of the highway so I can assist you."

Deputy Wagner continues to back away from the subject as the subject continues to run after the patrol car.

02:07 Deputy Wagner advises the subject via PA that, "I am only here to assist you, I'm only here to assist you."

02:18 Deputy Wagner advises dispatch that he is still in his patrol car and that the subject is not listening to commands.

02:30 Deputy Wagner advises the subject via PA. "I am only here to assist you, drop the knife so I can help you."

02:51 Deputy Wagner advises the subject via PA. "Drop the knife so I can assist you."

03:07-03:37 Deputy Wagner puts his patrol car in park and opens his patrol car door and addresses the subject making the following statements, "I'm only want to assist you just stop." "What's going on, how can I help you?" "What's going on today?" "I don't want to fight you I want to help you." "I'm only here to help you." During the exchange the subject can be heard responding to Deputy Wagner stating, "shut your fucking mouth, shut the fuck up"

03:37 Deputy Wagner gets into his patrol car and puts the vehicle in reverse as the subject is observed walking toward the front of the patrol car.

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03:38 Deputy Wagner utilizes his PA to address the subject stating, "listen, I only want to assist you, drop the knives"

03:40 The subject is observed standing in front of the patrol car when he puts both hands in the air. An object is observed being held in both hands when they are raised into the air.

03:54 Deputy Wagner advises dispatch that the subject is non-compliant and being given multiple orders. 04:08 Deputy Wagner advises dispatch that the subject threw a red backpack, however, is still armed with two knives.

04:20 Deputy Wagner utilizes the PA advising the subject to "drop the weapons so I can assist you."

04:41 The subject can be observed pacing in front of the patrol car.

04:41 Deputy Wagner utilizes the PA to address the subject stating, "Sir, drop the knife so that I can assist you, I can get you the help you need if you put the knives down so that I can speak with you"

05:10 Deputy Wagner advises the subject via PA "Listen, I'm only here to help you I don't want to hurt you, drop the knife so that I can assist".

05:56 The subject is observed pacing in front of the patrol car.

06:02 Deputy Wagner advises the subject via PA "drop the knife so that we can assist you." "Nobody wants to hurt you."

06:14 Deputy Wagner advises dispatch that the subject is still not complying and is stopped in front of his car on the side of the highway.

06:32 Deputy Wagner is asked by dispatch for a better description of the subject to which he describes him as white male, black hair, burgundy Nike sweatshirt, black tennis shoes, two knives one with a green handle the other with an orange handle.

07:16 Deputy Wagner advises the subject via PA "Drop the knife so that we can assist you, we are only here to help you."

07:45 Deputy Wagner advises the subject via PA "drop the knives, we can get you someone to speak with you but in order for me to help you I need you to drop the weapon, drop the knives."

08:23 Deputy Wagner advises the subject via PA. "drop the knives."

08:55 Deputy Wagner advises the subject via PA "we only want to help you, just drop the knives, can you tell me what your name is?"

09:07 Deputy Wagner puts his vehicle in park and opens the door to his patrol car and asks the subject his name. Deputy Wagner makes the following statements to the subject. "I don't know who you are, what's going on today?" "What's going on today?"

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“I only want to help you ok.”

09:45 Deputy Wagner advises dispatch that the subject sounds like he’s trying for suicide by cop. It should be noted that due to wind and traffic noise, you cannot hear statements being made by the subject. The subject is observed standing in front of the patrol car.

10:34 Deputy Wagner advises the subject via PA “drop the knife so that I can assist you.”

10:47 Deputy Wagner advises the subject via PA “drop the knife”

11:06 Deputy Wagner begins backing away from the subject in his patrol car.

11:30 Deputy Wagner utilizes his PA to advise the subject to drop the knife.

11:41 Deputy Wagner utilizes his PA to advise the subject to drop the knife.

11:57 Deputy Wagner utilizes his PA to advise the subject to drop the knife.

12:07 Deputy Wagner utilizes the PA to advises the subject “Sir drop the knife so that we can assist you.”

12:55 Deputy Wagner puts his patrol car in drive and repositions his patrol car in the opposite direction.

13:12 Deputy Wagner puts his patrol car in park and exits his vehicle.

13:27 Deputy Wagner is standing near his driver’s side door when he directs traffic away from the area. The noise of what appears to be a weapon being drawn from a holster is noted at this time.”

13:28 A male voice is heard saying “Wagner get back”

13:30 A noise consistent with the discharge of a taser is heard as deputy Wagner turns around now facing the rear of his patrol car where a female officer is observed backing toward the roadway then around toward the front of the patrol car. She has a taser in her right hand pointed toward the rear of the patrol car.

13:35 The female officer looks back and starts running to the front of the patrol car as the original subject is observed running after her. A knife can be observed on body camera in the subject’s right hand.

13:36 Three shots are fired as the subject continues to pursue the female officer toward the front of the patrol car.

13:38 The female officer is observed falling to the ground along with the subject in front of the patrol car. Other deputies have the subject at gun point on the ground ordering him to not move and put his hands up.

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13:49 Blood is observed on the subject's hands after holding his chest as Deputy Wagner and others on scene roll the subject to his stomach and secure him in handcuffs.

14:17 Personnel on scene coordinate medical treatment for the subject and retrieve first aid kits and an AED.

14:51 CPR is started and Deputy Wagner remains near the subject and assists with medical care.

15:40 Deputy Wagner separates himself from the medical treatment which is taken over by personnel on scene.

20:30 Deputy Wagner retrieves a cell phone from his patrol car before being removed from the scene in a patrol car.

Patrol Car Video from St. Adam Jackson's vehicle: (times indicated are not the times of day, but to the play point minutes in the video)

The video starts with Sgt Jackson responding priority to the scene.

11:36 Sgt Jackson arrives on scene and a white male wearing a burgundy sweatshirt is observed walking between two patrol cars toward the rear of the vehicles.

12:18 Sgt Jackson exits his vehicle with a long gun as the subject armed with two knives begins running toward his patrol car, Sgt Jackson tells the subject to stop multiple times

12:24 Sgt Jackson orders the subject to get on the ground multiple times.

12:27 The subject approaches Sgt Jackson on the opposite side of the guardrail before stepping over the guardrail and walking toward the driver's side of Sgt Jackson's patrol car out of view.

12:45 A white in color patrol car does a U-Turn and parks in front of Sgt Jackson's patrol car on the opposite side of the guardrail. An officer wearing all black behind the white patrol car appears to remove a taser from their belt walking toward the rear of the white patrol car.

12:50 Deputy Wagner is observed exiting the white patrol car and standing near the driver's side door of the vehicle.

12:58 The male subject is observed back in camera view running toward Deputy Wagners patrol car armed with two knives.

13:02 The male subject run towards the officer with a taser and jumps the guardrail running at her before falling, getting back up and running at her again still armed with the knives.

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13:08 The officer with the taser is observed retreating from the pursuing subject armed with two knives toward the front of Deputy Wagner's patrol car. Deputy Wagner has his weapon drawn and is pointing at the subject.

13:08 You hear what appears to be three gunshots as the subject lunges toward the officer with the taser which is followed by both the officer and subject falling to the ground.

13:11 The subject is holding his chest as officers approach him at gunpoint

13:22 The subject is rolled into his stomach and secured.

14:22 CPR is started.

20:48 The scene is secured.

27:00 MMR arrives on scene.

49:36 Medical treatment was discontinued, and the subject was covered in a white sheet.

Body Worn Camera Footage of Sgt. Adam Jackson: (times indicated are not the times of day, but to the play point minutes in the video)

The video begins with Sgt Jackson responding priority to the scene.

12:10 Sgt Jackson arrives on scene and exits his vehicle with a long gun and a white male wearing a burgundy sweatshirt is observed walking between two patrol cars on the opposite side of the freeway and guardrail from Sgt Jackson.

12:16 Sgt Jackson can be heard multiple times ordering the subject to stop as he proceeds to jump the guardrail and approach Sgt Jackson.

12:32 The subject continues to approach Sgt Jackson although he is being ordered to get on the ground multiple times. The subject proceeds to walk all the way to Sgt Jackson's driver's side door as Sgt Jackson backs away from the subject who is walking with his hands behind his back.

12:56 Sgt Jackson continues to give the subject commands, however, the subject is non-compliant.

12:57 Sgt Jackson advises concerns of potential crossfire with other officers on scene as the subject turns around and runs away from Sgt Jackson toward Deputy Wagner's patrol car.

13:04 The subject jumps over the guardrail and proceeds to run directly toward an officer near the rear of Deputy Wagner's patrol car.

13:08 Sgt Jackson's arms block the view, however, what appears to be three gunshots are heard followed by him lowering his arms and you observe a police officer and the subject laying on the ground in front of Deputy Wagner's patrol car.

Written Statement of Deputy Nicholas Wagner:

On Sunday, April 6, 2025, at approximately 1604 hours, I responded to a Check Welfare call for service, reference a white male, approximately twenty (20) years of age last seen wearing unknown clothing with a red backpack walking southbound along the shoulder side of US-127 northbound, south of the Barnes Rd. exit. Upon arriving into the area, I located a white male matching the description provided by Dispatch walking southbound on the shoulder side of US- 127 northbound. I continued traveling southbound on US-127 until turning around in the median, in order to make contact with the white male on the northbound shoulder side of US-127 northbound

Upon locating the white male on the shoulder side of US-127 northbound, I activated my overhead emergency lights upon my fully marked Ingham County Sheriff's Office patrol vehicle and pulled over to the shoulder side of US-127 northbound. I observed a white male with black hair and a short beard, wearing a maroon-colored Nike hooded sweatshirt and gray sweatpants with a red backpack upon his back. The subject immediately pulled out and displayed two large knives; one with an orange handle and one with a green handle. The subject appeared to have pulled both knives from the lower front pocket of his hooded sweatshirt.

Upon the subject displaying both knives, the subject began running towards the front of my patrol vehicle. My overhead emergency lights were still fully activated during this time. I radioed for Dispatch to send priority backup, stating the subject was in possession of two knives. At this time, I remained inside of my patrol vehicle and provided several loud verbal commands using the patrol vehicle's PA microphone for the subject to drop the knives. I gave the command to drop the knives multiple times throughout my interaction with the subject. I further advised the subject that I was only there to assist him and seek him help if he needed and that he was not in trouble. Despite several loud direct verbal commands for the subject to drop the knives and comply with my orders, the subject continued to be non-compliant and continued to walk and run at times towards the front of my patrol vehicle as I continued to slowly reverse alongside US- 127 on the northbound shoulder side.

The second backup unit to arrive was Mason Police Officer Putnam. I observed Ofc. Putnam in my rear-view mirror slowly approaching the rear of my patrol vehicle along the shoulder side of US- 127 northbound. I then continued to backup angling my patrol vehicle towards the left lane of US-127

northbound, in order to shut-down northbound traffic completely. I then observed ICSO Deputy Martin arrive, pulling directly in between Ofc. Putnam's patrol vehicle and my patrol vehicle. At this time, I also observed ICSO Sgt. Jackson arriving in the area from southbound US-127. The subject then ran towards the direction of Sgt. Jackson's fully marked ICSO patrol vehicle near the median of US-127 southbound. Sgt. Jackson's patrol vehicle was facing northbound on the southbound side of US-127 parked on the median. I then turned my patrol vehicle around on the median of US-127 northbound. I was now facing southbound on the northbound side of US- 127.

Once turning my patrol vehicle around, I observed Sgt. Jackson outside of his patrol vehicle standing near the right rear corner of his patrol vehicle armed with a shotgun. I also observed Deputy Martin outside of his patrol vehicle standing near the area of Sgt. Jackson with his ICSO issued pistol unholstered. At this time, I exited my patrol vehicle and walked around the front of my patrol vehicle towards the front right corner of the vehicle. I did not have a visual on the subject at this time.

Shortly after, I heard a taser being deployed behind me. This noise appeared to have emanated from the rear area of my patrol vehicle. Almost immediately thereafter, I observed Ofc. Putnam running along side the left side of my patrol vehicle heading towards the front of the vehicle. Immediately following Ofc. Putnam, I observed the subject running directly behind Ofc. Putnam. He appeared to be chasing Ofc. Putnam still armed with both knives. The subject was rapidly closing distance to both Ofc. Putnam and myself. At this point I feared for the life of Ofc. Putnam and my own life. I also feared for the lives of civilians who were on scene in very close proximity to the subject. In order to stop an imminent deadly threat that the subject posed, I then drew my departmental issued pistol and fired three (3) rounds at the subject.

After firing three (3) rounds at the suspect, the subject fell to the ground. Fellow ICSO Deputies who had arrived on scene to assist had approached the subject, handcuffed him and began to render first aid/ life saving measures. I briefly assisted during this time with providing breaths for the subject, using the Bag Valve Mask. A short time later, I was relieved and driven to the ICSO by Deputy Lockett.

Issue:

The issue in this case is whether officers acted in a legal manner with their use of force during their interaction with Cothorn. And more specifically, whether Deputy Wagner was justified in the fatal shooting of Cothorn. It is my legal opinion that they did act in a legal manner, and Deputy Wagner was justified in his use of deadly force.

Departmental Policies:

Policies: Mason Police Department Use of Weapons and Restraints

The Mason Police Department Use of Weapons and Restraints in pertinent part reads as follows: **(Mason Police Department Operations Manual, Operations Order #2402)**

V. LESS LETHAL WEAPONS

A. Less Lethal Weapons may be deployed.

1. To affect custody or a lawful arrest of a subject who reacts or threatens to react aggressively and who the officer believes is about to or does actively resist.
2. To defend oneself, another officer, or citizen from attack by a subject or animal....

D. Conducted Electrical Weapons (CEW)

1. Considerations before use: A CEW shall not be used in the following circumstances:
 - a. On any obvious or known pregnant female.
 - b. On any subject who is saturated with or in the presence of flammable or combustible liquids or in a Meth lab.
 - c. On a subject already handcuffed or otherwise restrained unless physical resistance has to be overcome.
 - d. On a subject who is significantly elevated above the normal surface level.
 - e. On a subject who is holding an infant.
 - f. On a subject another officer is using a CEW on.
 - g. On a subject standing in water.
2. Avoid use of an ASR in conjunction with a CEW...
3. Procedures for use.
 - a. As soon as practical, CEW should not be used if the subject who is to be taken under control exhibits bizarre behavior or symptoms of medical distress unless the individual was experiencing a medical emergency that rendered them incapable of making a rational decision under circumstances that posed an immediate threat of serious harm to themselves or others.
 - b. The CEW should not be intentionally aimed at a person's head, neck, or groin area.

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- c. When practical, preferred CEW targeting is to the subject's back or lower center mass (splitting the belt line).
 - d. Targeting of the CEW is an important concern if the subject is exhibiting symptoms of distress because of exhaustion from exertion or from what the officer believes is agitated/excited delirium behavior.
 - e. When practical, prior to the use of the CEW, the officer should give the subject verbal commands. The officer should inform the subject that if they do not comply a CEW may be deployed. Officers should also inform others present of their intent to discharge the CEW...
6. CEW use reporting procedures.
- a. After firing the CEW, the officer shall notify their supervisor (or the on-call supervisor) as soon as practical.
 - b. Data from the CEW shall be downloaded following use and the file shall be considered a part of the use-of-force review.
 - c. Each CEW discharge shall be documented prior to the officer going off duty.

VI. FIREARMS

A. Procedures for Firearms use.

- 1. To protect the officer or another from a subject that the officer reasonably believes is causing an imminent threat of death or serious physical injury....

Policies: Mason Police Department Use of Force

The Mason Police Department Use of Force in pertinent part reads as follows:
(Mason Police Department Operations Manual, Operations Order #2401)

VII. DEFINITIONS

Control: The methods an officer uses to direct the actions of a subject.

Lethal Force: (Deadly Force): Any use of force that creates a substantial risk of causing death or serious bodily injury, consistent with U.S. Supreme Court Precedent.

Force: An attempt to establish control through physical means, in presence of resistance. All force is a means of control; however, control can at times be achieved without the use of physical force.

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Last Resort: Situations where certain, immediate and drastic measures must be undertaken to protect human life. These incidents may necessitate the use of equipment or other objects not authorized as a weapon or equipment of the department. Actions taken will be evaluated in the context of reasonableness and will generally be treated as the use of deadly force.

Objectively Reasonable: The determination that the decision to use force, and the level of force used, is what a reasonable and prudent officer would use under the same or similar situation based upon the officer's evaluation of the situation, experience, training, and the totality of the circumstances known to or believed to exist by the officer at the time the force is used and is consistent with U.S. Supreme Court precedent.

Less Lethal Force: Force used that will not reasonably be expected to or have the likely potential to cause death.

Reactionary Gap: A safety zone between the officer and subject which may afford the officer time to react to aggression.

Resistance: The subject's failure to comply with an officer's attempt to establish control.

VI. TOTALITY OF CIRCUMSTANCES AND SUPREME COURT PRECEDANT

The totality of circumstances must be considered. The question is whether the officer's actions are objectively reasonable in light of the facts and circumstances confronting the officer, at the time the subject control tactic is used. The term objectively reasonable refers to *Graham vs. Connor (1989)* a case heard by the U.S. Supreme Court. **Graham vs. Connor states as follows: "the calculus of reasonableness must embody allowances for the fact that police officers are often forced to make split second judgements – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation"**. The Supreme Court went on to list the factors (listed below) for balancing an individual's rights against the law enforcement officer's. It is important to note that the Supreme Court found that the use of force should be judged from the perspective of a reasonable officer on the scene, not with the 20/20 benefit of hindsight. In most excessive force claims, the question of facts is whether the officer's actions are reasonable in light of all the facts and circumstantial considerations confronting him/her at the time of the incident.

- A. What was severity of the crime?
- B. Did the suspect pose an immediate threat to the safety of the officer(s) or public?
- C. Was the suspect actively resisting arrest or attempting to evade arrest by flight?
- D. Were the officer's actions reasonable for the officers with similar training and experience?

VIII. AUTHORIZATION FOR THE USE OF FORCE

Officers are authorized to use Department-approved control techniques and authorized equipment for the resolution of incidents in cases:

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- A. To stop potentially dangerous and unlawful behavior.
- B. To protect the officer or another from injury or death.
- C. To protect subjects from injuring themselves....

IX. USE OF FORCE CONSIDERATIONS

- A. Officers will consider the use of force from two perspectives: resistance and control.
- B. Officers should assess the incident to determine the level of control that would be reasonable for the resistance encountered. Officers should attempt to gain control by means of verbal directions or commands if practical
- C. If verbal directions or commands are ineffective, or not practically given the circumstances of the situation, the officer may find it necessary to escalate to control methods that involve the use of physical force. If force is necessary, the officer must decide which techniques(s) or authorized equipment will bring the incident under control.
- D. Variables officers should consider when making a decision to engage a subject and to escalate or de-escalate the level of force used:
 - 1. The type of crime committed or attempted.
 - 2. Nature of the contact.
 - 3. Officer/Subject: size, physical abilities, tactical advantage, level of threat or resistance
 - 4. Number of officers involved/Number of subjects involved.
 - 5. Environmental Conditions: such as close or confined areas, number of subjects in immediate vicinity.
 - 6. Available back-up.
 - 7. Reaction Time/Reactionary Gap.
 - 8. Environmental, Weather, and/or Terrain conditions.
 - 9. Immediacy of danger.
 - 10. Injury and/or exhaustion of officer.
 - 11. Special knowledge about the situation.
 - 12. Exceptional knowledge, skills, abilities by the subject
 - 13. Subject(s) under influence of drugs and/or alcohol.

X. ESCALATION AND DE-ESCALATION

- A. Officer may use the level of force that is reasonable and necessary to accomplish a lawful objective, based on the level of resistance encountered.
- B. Escalation of force may be justified when an officer reasonably believes that the level of force being used is insufficient or unsafe to stop or control subject resistance.
- C. Force used against individual(s) who had failed to comply with lawful commands should terminate, when that subject is fully in the officer's control.
- D. As the subject's resistance is overcome, the officer must de-escalate in a safe and appropriate manner.

- E. Without compromising officer or public safety, officers should consider de-escalation tactics as a technique to try to slow down or stabilize an incident and/or obtain additional resources, reducing the likelihood of the need for force and increasing the potential for gaining voluntary compliance.
- F. De-escalation: Officers shall employ de-escalation techniques throughout the encounter, if able, and provide repeated verbal communications in order to decrease the likelihood of the need to use force and to increase the likelihood of voluntary compliance in situations where they can so safely, without increasing risk to themselves or another person. Officers shall attempt to understand and consider the possible reasons why a subject may be noncompliant or resisting attempts to gain compliance. A subject may not be capable of understanding the situation because of:
 - 1. Environmental factors.
 - 2. Medical condition (i.e. mental, physical or hearing impairment).
 - 3. Language barrier.
 - 4. Influence of alcohol/drugs.
 - 5. Emotional crisis.
 - 6. Those who have no criminal intent.

Note: These situations may not make the subject any less dangerous, but understanding a subject's condition may enable officers to calm the subject and to allow for the use of de-escalation techniques while maintaining the safety of the public and the employee. Officers who act to de-escalate an incident, which may reasonably delay taking a subject into custody, while keeping the public and officers safe, will not be found to have neglected their duty. This act helps fulfill a service priority of the department.

XIII. LETHAL FORCE PROCEDURES

A. Lethal Force is limited to:

- 1. Protect the officer or another from what is reasonably believed to be an imminent threat of death or serious bodily injury....

Policies: Ingham County Sheriff's Office Use of Force

The Ingham County Sheriff's Office Use of Force Policy in pertinent part reads as follows: **(Ingham County Sheriff's Office 206 - Use of Force)**

DEFINITIONS:

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FORCE: Physical control tactics and/or weapons a Member uses to influence the action of a subject or to protect the subject from injuring themselves or others.

DEADLY FORCE: Any force used by a Member that has a reasonable probability to cause death or serious bodily injury.

JUSTIFICATION OF FORCE:

- Justification of force includes but is not limited to the following:
 - To stop potentially dangerous and unlawful behavior.
 - To protect the Member or another from injury or death.
 - To protect subjects from injuring themselves.....

CIRCUMSTANTIAL CONSIDERATIONS:

- Members will assess the incident to determine a reasonable response for the resistance encountered in light of the totality of the circumstances. Factors to consider include but are not limited to:
 - Severity of the crime.
 - Whether the subject is actively resisting arrest or attempting to evade by flight.
 - Whether the subject poses an immediate threat to the safety of the Member(s) or others.
 - Relative size and strength.
 - Multiple subjects/officers.
 - The subject's access or perceived access to weapons.
 - Subject under the influence of alcohol or drugs.
 - Exceptional abilities and skills (e.g., martial arts, stance).
 - Injury to, or exhaustion of the Member.
 - Proximity and reaction time.
 - Special knowledge about subject.
 - Ground position.
 - A Member's training and experience.
- Actions taken in response to resistance will not be punitive or retaliatory in nature or intent.
- Once used, force shall be reasonably deescalated when resistance ceases and/or when the subject is under control....

USE OF DEADLY FORCE:

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- Members, when feasible, shall provide verbal direction in an attempt to deescalate and gain compliance before the application of deadly force.
- Members shall not use deadly force except to protect themselves or another person from imminent death or serious bodily injury.
- Members shall not discharge a firearm to threaten or subdue persons whose actions are destructive to property or injurious to themselves if the person does not represent an imminent threat of death or serious bodily injury to the Members or others.
- Neck restraints, both respiratory and vascular, commonly referred to as "choke holds" are prohibited unless a member believes deadly force is justified.
- Warning Shots: Warning shots are prohibited....

RENDERING AID:

- Members shall render aid and/or medical attention at the earliest possible time without sacrificing the safety of the Member(s) and innocent bystanders when use of force occurs.

TRAINING:

- The Sheriff's Office shall provide its members training in critical skill performance, annually. Training will include, but is not limited to firearms qualification and decision making, empty hand control techniques, less lethal weapons, de-escalation principles, and officer-subject control guidelines.

Relevant Law:

Police officers have the lawful authority to use force to protect the public welfare, but a careful balance of all human interests is required. An officer's decision about the level of force necessary to control an individual will be based on the officer's perception of the threat and the subject's apparent ability to carry out that threat. However, a police officer must be equipped with the confidence and ability to act quickly in an emergency. Accordingly, the law does not severely regulate a police officer's right to draw his or her weapon.

The standards for use of deadly force by police come from U.S. Supreme Court decisions: *Tennessee vs Garner* 471 US 1 (1985) and *Graham vs Connor* 490 US 386 (1989). What has evolved from the Supreme Court cases are "use of force continuums" at police departments to guide police on the job on the various uses of

force. In *Graham*, in considering whether police used excessive force, the Court ruled that whether the suspect posed an immediate threat to the officer or others should be considered, and from the perspective of a “reasonable” officer on the scene in that police often have to make split-second decisions.

“Determining whether the force used to effect a particular seizure is reasonable under the Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake.” *Id.* at 396. “The 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.* “The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.” *Id.* at 396–97. “As in other Fourth Amendment contexts, however, the reasonableness inquiry in an excessive force case is an objective one: the question is whether the officers' actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.” *Id.* at 397.

Michigan law gives a police officer the right to use force or even take a life in the performance of their job. They may use that degree of force that is reasonable under the circumstances to effectuate an arrest and protect while making that arrest. If a person uses force within our state's definition of self-defense, their actions are justified under the law, and they are not guilty of a crime. *See* Michigan Criminal Jury Instructions 2nd 7.15 (1).

Law enforcement officers have the same privilege of self-defense as anyone else. Shooting a gun in self-defense requires an honest and reasonable belief that he or she is in danger of being killed or seriously injured. If that person's belief were honest and reasonable, he or she can act immediately to defend themselves, even if it turned out later that he or she was wrong about the level of danger. *See* MCJI 2nd 7.15(3); *People v Riddle*, 467 Mich 116, 119 (2002). The use of deadly force in self-defense is justified where the actor (1) is not the aggressor, (2) acts under an honest and reasonable belief that he is in danger of death or great bodily harm, (3) retreats from the scene if possible, and (4) the only recourse lay in repelling the attack by the use of deadly force. *People v Heflin*, 434 Mich 482, 502-503, 509 (1990).

The Michigan Supreme Court has clarified that “a person is never required to retreat from a sudden, fierce and violent attack; nor is he required to retreat from an attacker who he reasonably believes is about to use a deadly weapon.” *Riddle, supra*, at 119. A police officer, because of his or her duty and responsibility to protect the public, is not required to retreat in the face of a display of force. *People v Doss*, 406 Mich 90, 102 (1979).

Heflin, Riddle and *Doss* notwithstanding, the Self-Defense Act of 2006 abrogated the duty to retreat under most circumstances. MCL 780.972 states:

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

Even under the Self-Defense Act, however, self-defense is not justified simply on a belief that deadly force is needed to repel an attack. Rather, the actor's belief must be both honest and reasonable. *Heflin*, supra. The belief does not, however, have to be correct. A person does not have to prove their claim of self-defense. Instead, when a person is charged with an assaultive crime and a self-defense claim is raised in the proceedings, the prosecuting attorney has the burden to disprove self-defense by proving beyond a reasonable doubt that the person did not act in lawful self-defense. See MCJI 2nd 7.20

Analysis:

When officers responded to the scene on US-127, they attempted many times over the course of the approximately seventeen-minute encounter (from Wagner's arrival to shots fired) to help and de-escalate the situation with Cothorn. Cothorn was an armed man walking on the highway placing the now stopped civilians at risk and in danger. Deputy Wagner stated numerous times he was there to help Cothorn. ("I'm only here to help you; I only want to assist you, drop the knives; Nobody wants to hurt you"). When it became apparent Cothorn was not listening, Deputy Wagner commanded Cothorn a number of times over his PA system to "Drop the knife." Cothorn failed to comply.

Officer Putnam then attempted to get Cothorn to comply with officer's commands to drop his weapons by using her departmental taser. According to the Mason policy cited above, she acted in compliance with that policy. Unfortunately, her attempts were unsuccessful, and Cothorn then escalated the incident further by jumping over the guardrail that had been separating him and Officer Putnam and chasing after her with his knife. Officer Putnam ran away, but Cothorn was able to close the gap and nearly caught Officer Putnam as he chased her with a knife in his right hand.

At this point, in Deputy Wagner's own words from his written statement, as the subject was rapidly closing the distance to both Officer Putnam and himself, he feared for the life of Officer Putnam and his own life. He also feared for the

lives of civilians who were on scene in very close proximity to the subject. In order to stop an imminent deadly threat Cothorn posed, he drew his departmental issued pistol and fired three rounds at Cothorn. Eye witness accounts, civilian video, patrol and body camera video all support Deputy Wagner belief that Cothorn posed such an imminent threat.

It is clear that Deputy Wagner held a reasonable belief that the use of deadly force was necessary to prevent imminent death or great bodily harm. A person is justified in using or threatening to use deadly force if he or she reasonably believes that using or threatening to use such force is necessary to prevent imminent death or great bodily harm to himself or herself or another.

Under all the facts and circumstances known to Deputy Wagner on this date, he was justified in the use of deadly force in self-defense and in the defense of others, specifically Officer Putnam. He held an honest and reasonable belief that deadly force was necessary due to the threat to both Officer Putnam, his life, along with nearby citizens. He acted in compliance with his departmental policies as well as the law.

Conclusion:

Based on a review of the facts and the law, it is clear Deputy Wagner reasonably believed Cothorn presented an extreme danger. He acted in self-defense and defense of others, including Officer Putnam, in accordance with the law and with his department's "Use of Force" policies. Deputy Wagner had to make a "real time" split second decision under conditions of threat and during a violent and dangerous encounter. Deputy Wagner in shooting Cothorn rightly acted under an honest and reasonable belief that he and others were in danger of death or great bodily harm and took the measures necessary to eliminate the immediate threat. I therefore recommend and request authority to deny criminal charges against Ingham County Sheriff Deputy Nicholas Wagner.

Press Release:

Yes, this incident received media coverage at the time of the incident.