

STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERALP.O. Box 30217  
LANSING, MICHIGAN 48909DANA NESSEL  
ATTORNEY GENERAL**Request for Approval to Close File**

April 7th, 2021

TO: Danielle Hagaman-Clark  
Division Chief  
Criminal Trials and Appellate Division

Approved: Fadwa Hammoud 5.6.2021  
Solicitor General/Bureau Chief

FROM: Donna Pendergast  
Assistant Attorney General  
Criminal Trials & Appeals Division

RE: *Jason Gallegos*  
*AG# 20200300860-A*

**Facts**

Jason Gallegos (to be referred to as Gallegos) was a 37-year-old male who lived with his mother Maria Gallegos (to be referred to as Maria) in an upper flat apartment at 934 Walnut Street in the City of Lansing. According to information later provided by his mother in a police interview, Gallegos was taking about 20 pills every day for unknown psychological issues. Maria also later told police that Gallegos drank alcohol every day and that it often caused him to be erratic. Paul Moldonado, Gallegos' brother, stated in a post incident police interview that Gallegos had previously seen a psychiatrist at Sparrow Hospital. He further stated that Gallegos may have been schizophrenic amongst other things.

On May 26, 2020 Gallegos began drinking around 1:00 PM. At some point in the early evening Gallegos grabbed one of his guns and was "messing around with it" when a shot went off into the ceiling. No one was struck by the accidental discharge. Maria's grandson, Antonio Moldonado, who was in the house when the incident occurred ran home and told his father's girlfriend of the weapon discharge. He stated it happened when Gallegos discharged the gun in the direction of Maria who was washing dishes in the kitchen. He indicated that that shot was not

directed towards Maria, but an argument erupted after the discharge. After hearing this information, the police were called from the Moldonado household at 7:35 P.M.

Maria later admitted to police that Gallegos had become increasingly agitated during their interaction after the gun fired. She stated that at one point, he grabbed her wrist and banged it against the door frame of the door to the basement to get her phone out of her hand. She indicated that he got her phone and broke it. Maria felt that Gallegos was trying to push her down the stairs, so she ran out of the house. She went a block over to her son and grandsons house and spoke to them before she returned to the general area of her home. When she arrived back to the area of her home the police were already there.

At 7:48 PM Lansing Police officers Aliya Cutler, Trevor Allman, and Peter Howard responded to the Moldonado's home to speak to Anthony and his stepmother. After receiving information about the incident at the Gallegos household Officers Cutler, Allman, and Howard responded to 934 N. Walnut street at 8:08 PM to conduct a welfare check on Gallegos. When the officers arrived at the residence, they met with Maria Gallegos outside of the residence. Maria indicated that her son Jason Gallegos was inside the residence. Initially Gallegos came to the front door of 934 N. Walnut but then retreated inside closing the door. At this point additional police officers were dispatched to the scene to assist, including Officer Matthew Danko.

At 8:05 Dispatch requested Lansing Police negotiators to respond to 934 N. Walnut Street. Officer Andrew Waldrop responded to the location to assist in negotiations. Upon arrival he was advised by Officer Howard that an alleged domestic assault had taken place inside the residence, and that a firearm "accidentally went off." Officer Howard pointed out Maria to Officer Waldrop.

As he waited for his negotiating partner, Officer John Cosme and Officer Waldrop spoke with Maria in attempt to learn more about Gallegos before he contacted him. Maria told Officer Waldrop that her son was "playing with his guns" when one of the guns went of and a round struck the ceiling. Maria stated that Gallegos had been upset about a divorce that had occurred five years before. She further told Officer Waldrop that her son was taking medication for "many mental illnesses." She stated that when Gallegos consumed alcohol it changed the effect that the medications had on him.

Maria indicated that Gallegos really enjoyed his guns and shooting them. She said that Gallegos did not have a job and had been collecting Social Security funding. Maria indicated that Gallegos did not want to move out of her house, even though he could afford to because “he did not know what he would do with himself if he was alone.”

After speaking with Maria, Officer Waldrop attempted to contact Gallegos on his cell phone at 8:57 PM. Gallegos answered on the second call and identified himself as Jason Gallegos. The phone was placed on speaker phone so that officer Waldrop’s negotiating partner, Officer Cosme could assist in the negotiation efforts, a short conversation was held.

Officer Waldrop advised Gallegos that he was “Andy” from the Lansing Police Department, and he was trying to understand what the situation was. Gallegos told Officer Waldrop that he got a whole bunch of messages from his friends “that he was going to die” and “crazy stuff has been happening.” Officer Waldrop told Gallegos that he did not want him to die, and Gallegos indicated that he did not want to die either. Officer Waldrop asked Gallegos to exit the residence to speak to him outside. Gallegos stated that he “would love to but he did not want anything to happen to him or Officer Waldrop.”

Officer Waldrop continued trying to convince Gallegos to exit the residence. Gallegos responded by stating that earlier he was playing around with his mother and they were cleaning some weapons and one accidentally went off. Gallegos indicated that after the weapon went off everyone wanted to kill him. Gallegos then hung up on the call. This conversation was documented by Officer Waldrop’s body camera footage.

After Gallegos hung up, Officer Waldrop called him back and it went to voicemail. Officer Waldrop left a message that they had gotten disconnected, and that Gallegos was not in trouble, but Officer Waldrop wanted to talk to him. Officer Waldrop tried to call him back again but cancelled the call when he heard officers over the radio announce that Gallegos was exiting the house with a firearm.

After Gallegos exited the house, multiple officers as well as neighbors observed him walk into the middle of N. Walnut carrying a long gun over his shoulder. Multiple officers were yelling verbal commands for Gallegos to drop the gun at this point in time, and a neighbor and friend of Gallegos, Brian Dickson noted that Gallegos also had a handgun sticking out of his pants at this point in

time. Another neighbor, Kathy Wolcott, who lived directly across the street, filmed what was going on.

Kathy Wolcott's video, later obtained by the police, shows Gallegos exit the home and walk down the steps. Gallegos has a long gun in his right hand and swings the long gun up over his right shoulder. Gallegos then walks into the roadway, turns to the north where a marked unit with emergency lights activated and uniformed officers are staged. He then turns back to the south and continues to walk south on North Walnut. Kathy Wolcott's video shows Gallegos raise his left hand and point forward and then walk out of the video view. Subsequently almost immediately a single gunshot is heard and then several more gunshots are heard, at this point the video ends.

Lansing Police Department Officer Danko was standing in the driveway at 928 N. Walnut when Gallegos walked to the middle of N. Walnut street and out of range of the video filmed by Kathy Wolcott. He as well as other officers and neighbors observed Gallegos level the gun in the direction of Lansing Police officers. Officer Danko pointed his rifle at Gallegos and gave a loud verbal command for him to put the gun down. At that point Gallegos pointed the long gun directly at Officer Danko who in fear for his life tried to take cover behind a police vehicle. As Officer Danko was seeking cover behind the vehicle, Gallegos fired a shot that hit Officer Danko in his lower leg. Officer Danko felt a pain and realized that he had been shot in the lower leg. Later at the hospital it was determined that Officer Danko had 10 holes in his lower leg consistent with a shotgun round. Two buckshot rounds were later removed from Officer Danko's leg during surgery.

After Gallegos fired at Officer Danko, five different officers returned fire and Gallegos went down. The officers that returned fire were Officer John Cosme, Officer Robert "Lance" Leiter, Officer Aliya Cutler, Officer Jake Ellis, and Officer Peter Howard. All officers returning fire were in full uniform except Officer John Cosme. Officer Cosme was wearing khaki pants and a blue t-shirt with a tactical ballistic vest on that has the word "POLICE" across the chest and a badge on the left chest area. Officer Aliya Cutler fired from the intersection of W. Kilborn street and N. Walnut. The remaining four officers fired from their location 2 or 3 houses down from Gallegos' residence. It is unknown whose shots hit Gallegos.

After the shots were fired, Officer Waldrop exited cover and observed Gallegos laying on the west side of the street near the curb. He observed the shotgun laying near Gallegos partially on the curb and partially on the road. Gallegos had what appeared to be a pistol in or near his right hand. Gallegos lay

still for several moments and then began to reach for the handgun. Gallegos started to raise the pistol and point the pistol at Waldrop's partner Officer Cosme.

Officer Waldrop yelled for Officer Cosme to get back behind cover. Officer Waldrop and Officer Cosme went back behind cover to the side of the porch of an adjacent house that offered protection. A few moments later Officer Waldrop looked back around to reassess the threat level. At this point in time, Gallegos was lying flat on his back. He could no longer observe the handgun in Gallegos' hand from his vantage point.

Officer Jake Ellis made it to Officer Waldrop's location at that point. Officer Waldrop asked Officer Ellis to take his vantage position because he had a long gun. Officer Waldrop saw Gallegos on the ground but reaching for the shotgun over his shoulder. He yelled to officer Ellis that Gallegos could not be allowed to get the shotgun back up. Radio dispatch broadcast to all officers that Gallegos was going for a gun at that point in time.

Sgt. Jeffrey Winarski was two and a half blocks away when he heard the dispatch that "shots" had been fired. He immediately responded to the scene and had taken a position from behind a tree approximately 50-75 yards away from Gallegos. He observed Gallegos lying on his back in the street next to the curb. He observed that Gallegos did not move at a period of time, but then Officer Winarski saw him starting to move. From Sgt. Winarski's viewpoint it looked like Gallegos was reaching for something. Officer Winarski heard other people yelling that he was going for a gun and then heard shots. Gallegos quit moving at this point in time. It appears from the body camera footage that Sgt. Kyle Schlagel took two shots as Gallegos was moving for the gun. Gallegos ceased moving after those two shots.

A bearcat armored vehicle had been ordered to the scene. As soon as it arrived, a flash bang device was deployed to ensure that Gallegos was not a threat before officers moved in. After the Bearcat moved in Sgt. Winarski, the senior officer on the scene started to allocate job responsibilities to other officers. Sgt. Winarski made contact with members of the Lansing Fire Department who had been staged nearby responded to attend to Gallegos. Lansing Fire Department personnel later provided Sgt. Winarski with the pronouncing physician and the time of death. Dr. Dicianni from Sparrow Hospital pronounced the time of death as 9:42 PM.

After the scene was secure Lansing Police Officers recovered a pump action shotgun and a handgun from Gallegos. It should be noted that Gallegos' ball cap was found next to his body. The hat had a logo that stated, "one shot, one kill, no remorse, I decide." Prior to his body being removed from the scene, two receipts from Dunham's Sports were found in Gallegos' wallet which was found on his person. The receipts were for the pistol and the shotgun that Gallegos was in possession of during the incident. According to the receipts both of these weapons were purchased on May 16<sup>th</sup>, 2020 ten days before the incident.

The Michigan State Police requested scene assistance from the MSP Crime Scene Response Team (CSRT). They arrived at the scene on May 27 at approximately 12:56 AM to process the scene for evidence. A pre-scene briefing was conducted prior to the officers beginning to process the crime scene.

The neighbor who videotaped the incident, Kathy Wolcott reported an injury that occurred during the gunfire. When she was standing at her screen door filming her glass and doorwall shattered. She received a wound on her shin but was not sure if it was from the shattering glass, or a grazing bullet wound. She received treatment at an Urgent Care facility. The police later found two bullets in her home, one on the entry foyer rug and one underneath the piano bench in her home.

### Autopsy.

Jason Gallegos autopsy was conducted by Dr. David Moon on May 27, 2020. He determined the cause of death to be multiple gunshot wounds. The postmortem examination revealed a perforating gunshot wound to the head, a penetrating gunshot wound to the back and scattered abrasions on the head and both elbows. There was no evidence of close range firing noted on the skin around either entrance wound.

The perforating gunshot wound to the head was an indeterminate range entrance gunshot wound on the left chin, 8-1/2 inches below the top of the head and 1/2 inches left of the anterior midline. The wound track from this injury proceeded through the mandible causing extensive comminuted fracture of the mandible. The wound track then proceeded through the first cervical vertebra, the brain stem, the posterior right occipital skull and ended at an exit wound on the posterior right head, located 6 inches below the top of the head and two inches right of the posterior midline. There was no bullet or part of a bullet recovered from the wound track.

The penetrating gunshot wound to the back was an indeterminate range entrance gunshot wound on the right lower back. This entrance wound was located 25 inches below the top of the head and two inches right of the midline. The wound track proceeded through the soft tissue of the back near the L1/L2 vertebra, the intestines, the soft tissue of the abdomen and into the muscle of the anterior left abdomen where a deformed jacketed bullet was recovered.

There were other injuries noted during the autopsy. These injuries included a 4 x 2 cluster of abrasions on the right side of the face and forehead. The Medical Examiner also noted a 3 x 2-inch cluster of abrasions round the posterior right elbow and a 1-1/4-inch x 1 inch abrasion on the posterior left elbow.

Blood, urine, and vitreous fluid samples were also taken at the autopsy. A later toxicological screen of the blood showed Gallegos blood alcohol level to be .197. The screen of his vitreous fluid (always higher) showed the blood alcohol content to be .211. Gallegos also had the 7-aminoclonazepam in his blood which is a byproduct metabolite of Clonazepam. The benzodiazepine clonazepam is a prescription drug used to treat epilepsy and anxiety. In addition, it is frequently used to treat drug addicts and is itself a popular drug of abuse.

Dr. Moon determined the manner death for Gallegos to be "homicide." Homicide as a "manner of death" is a medical term of art used by medical examiners. It is not the same as the legal term "homicide" used by prosecutors, judges, and criminal jury instructions. Autopsy reports announce a manner of death that falls into one of several limited categories: accident, suicide, homicide, natural or undetermined. Deaths are reported in the medical profession as having been caused by "homicide" when they result from a voluntary act by one person against another that causes physical harm. The medical term does not address the actors' intent to kill, or issues of legal justification or mitigation, all of which are critical in determining criminal culpability.

### **Seizure of Property**

When all officers who discharged a weapon returned to the Lansing Police Department, their weapons were confiscated by Lansing Police Officer Kara Freeman, who turned the weapons over to MSP and eventually to Detective Sergeant Christopher Corriveau. The weapons confiscated were as follows:

***From Officer John Cosme,*** A Glock 21, .45 caliber handgun with one chambered live round and 11 live rounds in the inserted magazine and two Glock magazines each containing 13 live rounds.

***From Officer Aliya Cutler,*** a Colt M4 5.56 rifle with one chambered live round and 13 live rounds in the magazine.

***From Officer Peter Howard,*** A Glock 21 .45 caliber handgun with one chambered live round and 12 live rounds in the inserted magazine. Two Glock magazines, one containing 12 live rounds and one containing 11 live rounds.

***From Officer Jake Ellis,*** a Colt AR-15 A2, .223 caliber rifle empty with 19 live rounds in the inserted magazine.

***From Officer Kyle Schlagel,*** a Colt M4, 5.56 rifle with one chambered live round and 18 live rounds in the inserted magazine. A Glock 21, .45 caliber handgun with one chambered live round and 8 live rounds in the inserted magazine. Two Glock magazines each containing 12 live rounds, and a rifle magazine with 19 rounds assigned to Officer Trevor Allman.

***From Officer Robert Leiter,*** a Glock 21, .45 caliber handgun with one chambered live round and 11 live rounds in the inserted magazine. Two Glock magazines each containing 12 live rounds.

### **Crime Scene Processing Report**

On 05/26/2020 at 11:05 PM Michigan State Police Specialist Michael Lee received a call from MSP Operations, requesting crime scene assistance for the First District Special Investigations Section. The MSP Crime Scene Response Team (CSRT) arrived at the scene at 934 N. Walnut at 12:56 AM on 05/27/2020. Members of that CSRT were Michigan State Police Specialist Sergeant Michael Lee who took notes, did photography and evidence collection. State Police Specialist Sergeant Jeffrey Bedell took pictures, did evidence collection and firearms. Forensic Scientist Joni Johnson did notes and a scene search. State Police Specialist Sergeant Cynthia Edwards was involved in searches and did the scene sketch.

Upon arrival pre-scene briefing was conducted with the Lansing Police Department. The CSRT report recaps the information they were given in the briefing. They were informed “the Lansing Police Department was called to a scene where a shot was fired in a house. The responding officers were posted outside of



the residence. The decedent, Jason Gallegos, exited the house with two weapons. Six officers and the decedent Gallegos had fired upon each other.

The CSRT report describes the crime and weather. It states "The crime scene was located on North Walnut street north of west Oakland Avenue and south of West Kilborn Street including a small area of North Walnut street north of West Kilborn Street. The report indicates that the weather was clear and dark with a temperature around 71 degrees.

The entire crime scene was photographed, and scene measurements were taken by Specialist Trooper Gregory Kamp of the First District Traffic Reconstruction Unit using a department TOTAL station. Areas of the scene were also searched using a metal detector including the lawns in front of the residences at 924 and 922 N. Walnut and the lawn to the west of where Gallegos' body was located.

The CSRT made several observations pertaining to firearms at the scene. A shotgun was observed to the south of Gallegos along the curb on the west side of the street. The shotgun was laying on its left side with the barrel pointing to the south. The shotgun was a Stevens model 320 12-gauge slide action shotgun with a fired shot shell in the chamber and an unfired shotshell in the tube. The safety was off, and there was apparent blood on both sides of the shotgun. A Smith and Wesson semiautomatic pistol was observed to the southeast of Gallegos' feet in the street laying on its left side with the barrel pointing south. There was a magazine loaded into the pistol with one round in the chamber.

The following observations associated with firing of a weapon firing were made by the CSRT:

- Four fired shotshells were observed south of Gallegos' body.
- One fired cartridge case was observed on the porch area west of the front door of 922 North Walnut Street .
- A possible shot wad on the ground on the passenger side of a Lansing Police Department vehicle. There were 6 fired .45 caliber cartridge cases observed to the east of this vehicle in the driveway.
- Five fired .223 caliber casings and one unfired cartridge were observed which were observed to the north of the Lansing Police Department marked patrol vehicle.
- A distraction device (flash bang) was observed to the south of Gallegos' head.

Specialist Sergeant Michael Lee processed the residence located at 931 N. Walnut where Kathy Wolcott resides at approximately 1:51 am. He made the following observations:

- A hole in the porch wall of the residence south of the steps.
- A second hole in the porch's east overhang beam immediately above the porch steps.
- Additional damage to the porch ceiling 's north overhead beam and the porch's north overhead beam.
- Damage to the outer screen door and its glass was shattered onto the porch floor.
- The interior door displayed two areas of damage near the top and near the bottom of the door.

The front door of 931 N. Walnut opened into a living room. One fired bullet was collected from the entryway rug of 931 N. Walnut adjacent to the damaged doors. A second fired bullet was collected from under a piano in the living room west of the entryway door.

One additional area of damage from firing was observed behind the rear passenger C pillar of a Mazda 3 Sedan parked on the street. There were also holes in the rear headrest that corresponded to the hole in the C pillar.

### **Location/ Description of the victim**

The CSRT noted Gallegos lying in the street east of the front lawn of the residence at 931 N. Walnut Street. Gallegos was positioned on his back with his head to the southwest and his feet to the northeast. They noted that Gallegos had on a belt with a holster on the side. Five unfired shot shells and a full Smith and Wesson magazine were noted in Gallegos' left shirt pocket. An apparent wound was observed to the lower left side of his neck with blood extending from the wound towards the back of his head. Gallegos was covered with a sheet upon CSRT arrival. His body was removed from the scene by Mercy Ambulance personnel at 4:15 AM.

## **Garrity Statements**

There are no Garrity statements from the officers that fired shots. It is the policy of the Lansing Police Department not to take statements from officers until a criminal investigation is completed and a charging decision is made.

## **Officer Witness Statements (Officers that did not fire)**

### ***Officer Andrew Waldrop***

Officer Andrew Waldrop stated that he was sent to the scene in the role of police negotiator. He indicated that when he arrived on the scene, he first spoke with Officer Howard who pointed out Gallegos' mother Maria. Officer Waldrop spoke with Maria as he waited for his negotiating partner, Officer John Cosme to arrive. Officer Waldrop's statement indicates that he was attempting to obtain background information about Gallegos' mental state and background mental history. Officer Waldrop also stated that he was trying to obtain as much information about Gallegos as possible to better assist in his negotiation efforts. Officer Waldrop indicated when he spoke to Maria, stating she was afraid that Gallegos was going to shoot himself.

Officer Waldrop stated that after his negotiating partner, Officer John Cosme arrived at the scene at 8:57 PM they attempted to contact Gallegos via his cell phone. Gallegos answered on the second call and identified himself as Jason Gallegos. Gallegos was advised by Officer Waldrop that he was "Andy" from the Lansing Police Department, and he was trying to understand what the situation was. The phone was placed on speaker phone so that Officer Cosme could assist in the negotiation efforts.

According to Officer Waldrop's statement, Gallegos told the officers that he got a whole bunch of messages from his friends "that he was going to die" and that "crazy stuff has been happening." Officer Waldrop told Gallegos that he did not want him to die, and he indicated that he did not want to die either. Officer Waldrop asked Gallegos to exit the residence to speak to him outside. Gallegos stated that he "would love to but he did not want anything to happen to him or Officer Waldrop".

Gallegos stated that earlier he was playing around with his mother and they were cleaning some weapons and one accidentally went off. Gallegos indicated that after the weapon went off everyone wanted to kill him. Gallegos then hung up on

the call. After Gallegos hung up on the call, Officer Waldrop indicated that he tried to call him back and it went to voicemail. Officer Waldrop left a message that they had gotten disconnected, and that Gallegos was not in trouble, but Officer Waldrop wanted to talk to him. Officer Waldrop stated that he tried to call him back again but cancelled the call when he heard officers announce that Gallegos was exiting the house with a firearm.

According to his statement, when Officer Waldrop heard that Gallegos was exiting the residence with a firearm, he attempted to do verbal negotiations from the porch of the adjacent residence where he was still located along with Gallegos' mother Maria. Officer Waldrop watched Gallegos walking away from his residence towards N. Walnut street. Gallegos had a shotgun in his hands. Gallegos had the butt of the shotgun in his hand with the barrel of the gun pointing over his shoulder. Officer Waldrop gave Gallegos a loud verbal command to drop the gun. Officer Waldrop again shouted out his identity to Gallegos. He indicated that he was "ANDY", and he was the one that talked to him on the phone.

Officer Waldrop stated that he then observed Gallegos focus his attention on his direction. At that point in time Gallegos moved the shotgun from the carrying position to a shooting position. Officer Waldrop stated that he was concerned that Gallegos was going to shoot him because he was the one who had communicated with him and he was now the focus of attention. Officer Waldrop indicated that he did not have his long gun with him because his primary role at the scene was that of negotiator.

Equipped with only his handgun, with Gallegos now transitioning to a shooting position with a long gun, Officer Waldrop stated that he was concerned that he would not be able to defend himself. He took cover behind the side of the residence at 922 N Walnut relying on his cover officers to ensure that he would not get shot. He did do a quick head check from behind cover to see where Gallegos was and what he was doing.

Officer Waldrop stated that he observed Gallegos pointing the shotgun straight ahead of him in a direction where officers were located. He observed Gallegos fire a round out of the gun. Officer Waldrop indicated that he heard the gunshot and saw the muzzle flash come out of the barrel of the shotgun. Officer Waldrop attempted to lean out to return fire to protect officers from getting shot. When he leaned around, Officer Cosme, positioned off the porch behind officer Waldrop yelled for Officer Waldrop to get back. Officer Waldrop heard gunshots.

After the gunshots he observed Officer Cosme exit from cover and heard over the radio that an officer sustained a gunshot wound.

When Officer Waldrop exited cover, he indicated that he observed Gallegos laying on the west side of the street near the curb. He observed the shotgun laying near Gallegos partially on the curb and partially on the road. Gallegos had what appeared to be a pistol near or in his right hand. Gallegos started to raise the pistol and point the pistol at Officer Cosme. Officer Waldrop stated that he yelled for Officer Cosme to get back behind cover. Officer Waldrop and Officer Cosme went back behind cover to the side of the porch that offered protection. Officer Waldrop looked back around to reassess the threat level. At this point in time, Gallegos was lying flat on his back. He could no longer observe the handgun in Gallegos' hand from his vantage point.

Officer Waldrop's statement indicated that Officer Jake Ellis then arrived at his location. Officer Waldrop told Officer Ellis to take his vantage point on the porch because he had a long gun that shoots more accurately at greater distances. Officer Waldrop was now standing behind Officer Ellis. Officer Waldrop stated that he had a clear view of Gallegos this point in time. He observed Gallegos attempting to gain control of the shotgun. Officer Waldrop indicated that he was concerned, that Gallegos was going to continue to shoot at the police and told Officer Ellis that Gallegos could not be allowed to get the shotgun back up. Unknown officers began to yell that Gallegos was going for the gun. Immediately two more shots were fired, and Gallegos quit moving.

### ***Officer Lawrence Ryan***

Officer Ryan stated that he went to 934 N. Walnut to assist Officers Howard, Allman, and Cutler with an investigation. He indicated that the dispatch information provided was that a male named Jason Gallegos got into an argument with his mother, Maria Gallegos, and fired a handgun. Dispatch also advised that Gallegos was intoxicated and possibly had mental health issues. Once on the scene Officer Ryan was further advised that Gallegos was involved in a domestic violence incident and had tried to tamper with his mother's ability to call 911. Officer Ryan was also informed that Gallegos was inside the upstairs apartment at 934 N. Walnut and had a shotgun, a rifle, and a handgun in the apartment.

After learning preliminary information, Officer Ryan indicated that he joined a contact team of officers located on the south side of 928 N. Walnut. This is one residence south of 934 N. Walnut. Officer Ryan stated that several officers were

congregated in this area including Officer Allman, Officer Howard, Officer Danko, Officer Leiter and Sgt. Kyle Schlagel. Officer Ryan had his patrol rifle with him with one round chambered. Officer Ryan stated that Officer Leiter placed his Lansing marked S.T.A.R.T. vehicle in the driveway to 928 N. Walnut.

Officer Ryan indicated that he observed Gallegos come out of the apartment carrying a long gun in his right hand with the rest of the gun slung over his right shoulder. Officer Ryan noted that Gallegos had a look on his face that he characterized as a "1000-yard stare" as he was walking southbound on N. Walnut towards police officers stationed in that area. Officer Ryan heard an officer (unknown) give loud commands for Gallegos to put his gun down.

Concerned about Gallegos' approach officers moved to the east of the S.T.A.R.T. vehicle to provide more cover and more distance from Gallegos. At this point in time Officer Ryan indicated that he was 4<sup>th</sup> in a stack of officers behind officers Leiter, Danko and Sgt. Schlagel. Officer Ryan stated that at this point he lost visual contact with Gallegos because of his position behind the vehicle and the officers but he was able to see officers Danko and Leiter moving slightly south behind the S.T.A.R.T. vehicle. Officer Ryan then heard a loud gunshot coming from Gallegos' area. He heard debris coming off the ground and patrol vehicle and observed Officer Danko fall down in front of him in visible pain.

Officer Ryan then heard Gallegos' gun several more times followed by the sounds of several officers' guns going off around him. The shooting from Gallegos' temporarily location stopped, and Officer Danko announced that he had been struck by gunfire. It was then announced over the radio that Gallegos was laying in the street on his back still near a firearm. It was also announced that he had a second firearm.

At this point in time Officer Ryan indicated that he and Sgt. Schlagel moved their position to the north side of 928N. Walnut between the house and the garage. From this vantage point he could see Gallegos from the waist down and Officer Ryan trained his rifle sights on him. While in this position of cover Officer Ryan heard someone say, "What is he doing?" followed by a loud bang coming from the west. Officer Ryan indicated that it then sounded like Sgt. Schlagel fired. An officer on the radio then announced that Gallegos was no longer moving.

Officer Ryan stated that after several more minutes of cover he and officers Leiter and Howard moved to the north side of 934 N. Walnut to cover Gallegos. He then moved to Officer Cutler's patrol vehicle at the intersection of Kilborn and N.

Walnut while keeping the sights of his rifle trained on Gallegos. He observed several S.T.A.R.T. officers secure Gallegos. Officer Ryan remained at that location until he was instructed to drive Officer Cutler to the Lansing Police Department.

### ***Officer Trevor Allman***

Officer Allman stated that on 05/26/2020 he was dispatched to 934 N. Walnut at 7:39 PM, reference to a welfare check. He first went to the Maldonado residence located at 109 W. Cesar Chavez Drive to obtain more information prior to going to 934 N Walnut. When he arrived at the Maldonado residence Officer Howard was already obtaining statements from Maria and her grandson Antonio who had also been in the home during the altercation. Officer Allman overheard that Gallegos was very intoxicated and that there were multiple weapons in the home.

When Officer Allman went to 934 N. Walnut, he parked his vehicle a couple of houses to the south of Gallegos' residence. He later moved further south to create more distance between himself and the Gallegos residence in case Gallegos exited the house. While standing behind a tree watching the residence, he observed Gallegos come to west entry door to 934 N. Walnut. Officer Allman stated that Gallegos appeared to lean out the door and look around. At this point in time Officer Allman stated that he got on the radio and advise Officer Howard that Gallegos was exiting. Officer Allman yelled "Hey Jason" and then Gallegos went back inside and closed the door. Officer Allman stated that at that point Officer Ryan took his position behind the tree so that he could go to his vehicle and retrieve his department issued rifle.

After obtaining his firearm Officer Allman was positioned behind a few officers on the contact team. The contact team was positioned one structure south of 934 N. Walnut. Officer Allman heard someone on the contact team say that Gallegos had exited the house and was holding what appeared to be a rifle. A moment later Officer Allman observed Gallegos in the road with what appeared to be a rifle on his shoulder. Officer Allman heard someone on the contact team yell "Put the gun down."

A few seconds late Officer Allman heard a gunshot and observed what appeared to be debris breaking on the patrol vehicle that he was behind. Officer Allman stated he kept hearing gunshots and things breaking on the patrol vehicle and that his heart was pounding, and he was in fear for his life. At that point Officer Allman heard Officer Danko yell that he had been shot. Officer indicated

that he grabbed ahold of Officer Danko and got him behind the house located at 934 N. Walnut.

Once behind the house Officer Allman indicated that he assessed Officer Danko's injuries and noted blood in the ankle lower leg area. Officer Danko told him he had been shot in the ankle. Officer Allman stated that he advised other officers that Officer Danko had been shot and he gave his magazine to Sgt. Schlagel per his request. Officer Allman then advised Dispatch that an officer had been hit.

Officer Allman indicated that he was going to apply a tourniquet to Officer Danko's injuries, but he began doing it himself. Officer Allman then pulled Officer Danko behind a minivan that he had noticed behind the house. Officer Allman pulled out his duty issued handgun because he had given his magazine to Sgt. Schlagel. Officer Allman watched the driveway for Gallegos as Officer Danko continued to put on his tourniquet.

Once Officer Danko informed him that the tourniquet was placed Officer Allman began dragging him through the backyard because Officer Danko was unable to walk. Officer Allman stated that there was an open car port in the backyard filled with random objects. Believing that this was the best route to take while still having some cover he threw multiple things out of the way in order to drag Officer Danko through it. At this point in time Officer Allman's body worn camera fell off.

Officer Allman continued dragging Officer Danko east bound, as Officer Danko was still conscious. Officer Allman felt it was taking a long time for an ambulance to arrive, so he ran out to the street at one point where he saw multiple police officers and a couple of ambulances and screamed to them for assistance. Multiple officers responded and they were able to carry Officer Danko to an ambulance. Officer Allman went with Officer Danko to Sparrow hospital in the ambulance. He stayed in the hospital room to watch officer Danko's gear before being relieved by another officer.

### ***Officer Matthew Danko***

Officer Matthew Danko stated that he was dispatched to 934 N. Walnut to assist officers with a welfare check. Upon arrival he contacted Sgt. Schlagel who briefed him on the call. Officer Danko indicated that after being briefed he took a position with other officers in the driveway of 928 N. Walnut on the south side of the residence.



Officer Danko indicated that while standing in the driveway of 928 N. Walnut he observed Gallegos exit the door of 934 N. Walnut. Officer Danko watched Gallegos walk into the middle of N. Walnut and then begin to walk south down the middle of the street. He observed that Gallegos had a long gun over his shoulder and Officer Danko saw Gallegos stop near the end of the driveway at 928 N. Walnut. At this point Gallegos had the long gun pointed towards the ground in a “low ready” position.

Officer Danko indicated that he positioned himself near the back passenger side of the fully marked police vehicle that was backed into the driveway of 928 N. Walnut. At this point he pointed his department issued rifle at Gallegos and issued loud verbal commands for Gallegos to put the gun down. Gallegos responded by pointing the gun directly at Officer Danko. Officer Danko stated that at that point he was in fear for his life and thought he was going to be shot. He further indicated he tried to get cover behind the police vehicle.

Officer Danko stated that as he got behind the police vehicle, he heard a loud bang that he knew to be a gunshot and felt intense pressure and pain in his lower left foot and leg. Officer Danko indicated that the pain was so intense that he could not put any body weight on his left foot. He also observed a bleeding bullet hole in his lower leg. At that point, Officer Danko indicated that he passed his department issued rifle off to Sgt. Schlagel and Officer Allman helped him get to the backyard. Officer Danko stated that later after he applied a tourniquet, Officer Allman helped him through the through the backyards to the east to get to a waiting ambulance on Seymour Street. Officer Danko was transported to Sparrow Hospital.

Officer Danko concluded his statement by stating that he suffered multiple bullet holes to his lower leg and foot. He added that his body camera was activated during the incident.

### ***Officer Matthew Meaton***

Officer Meaton stated that he was dispatched to 934 N. Walnut to a priority call for an officer shot in the ankle. Officer Meaton arrived at the scene and parked his vehicle. He stated that he had unholstered his duty issued Glock 21 .45 caliber handgun and made his way towards other officers. Officer Meaton indicated that over the air he heard officers advise the Gallegos was reaching for that gun. Officer Meaton stated that as he was assessing the situation officer Cosme yelled to him to get out of the street stating that Gallegos had a gun in his hand. Officer Meaton

heard other officers yell at Gallegos to drop the gun. In fear for his safety and feeling in danger Officer Meaton made his way to the house behind the east side of North Walnut together with other officers. As he was running east across Walnut Street to gain cover, he heard gunshots. Once he reached a place of safety, he observed Officer Ellis with a rifle pointed at Gallegos and he was able to observe several shotgun shells in the area near where Gallegos was lying in the street.

### ***Sergeant Jeffrey Winarski***

Lansing Police Officer Jeffrey Winarski stated that he was two and a half blocks away when he heard the dispatch that “shots” had been fired.’ He immediately responded to the scene and took a position from behind a tree approximately 50-75 yards away from Gallegos. He observed Gallegos lying on his back in the street next to the curb. Gallegos did not move for a period but then from Officer Winarski’ s’ viewpoint it looked like Gallegos was reaching for something. Officer Winarski heard other people yelling and then heard a shot. Gallegos quit moving at this point in time.

Officer Winarski stated that a bearcat armored vehicle had been ordered to the scene. As soon as it arrived, and Gallegos was secured, Officer Winarski started to allocate job responsibilities to other officers.

### ***Officer Kara Freeman***

Officer Freeman stated that she reported to work on 05/26/2020 at around 10:00 PM due to a “code red” overtime request that was sent out. She learned that Officer Danko had been shot and that an Officer Involved Shooting (OIS) had also occurred. When Officer Freeman arrived at work, she met with Sgt. Schlagel who requested that she take all firearms, body cameras and magazine evidence from the involved officers. She set up in Lt. Churchill’s office to collect requested items. She obtained the requested materials from the involved officers as follows:

At 10:09 PM she obtained Officer Lawrence’s body camera directly from Officer Lawrence. She tagged this item with a piece of paper marking it with his name and badge number.

At 10:11 PM Officer Cosme directly handed her his duty issued handgun still loaded with one magazine from his holster, 2 extra magazines from his magazine pouch and his body camera off his tac vest. She tagged these items with a piece of paper marking it with his name and badge number.

At 10:16 PM Officer Cutler directly handed her duty issued rifle still loaded with one magazine. She tagged this item with a piece of paper marking it with her name and badge number.

At 10:17 PM Officer Howard directly handed her his duty issued handgun still loaded with one magazine. She tagged this item with a piece of paper marking it with his name and badge number.

At 10:18 Officer Ellis directly handed her his duty issued rifle still loaded with one magazine. She tagged this item with a piece of paper marking it with his name and badge number.

At 10:19 PM Sgt. Schlagel directly handed her Officer Danko's duty issued rifle that Sgt. Schlagel had used still loaded with one magazine. Due to Sgt. Schlagel having injured his thumb, Officer Freeman took his duty issued handgun off his person and she tagged these items with a piece of paper marking it with his name and badge number, and both magazines from his magazine pouch

At 10:22 PM Officer Leiter handed her two magazines from his magazine pouch directly handed her his duty issued handgun still loaded with one magazine from his holster, and two extra magazines from his magazine pouch. She tagged this item with a piece of paper marking it with his name and badge number.

At 11:03 Lt. Ryan Wilcox handed her the body cameras for Officers Cutler, Howard, Ellis, Campbell, and Leiter's body cameras. These cameras are already tagged with the identification tag of whom they belonged, so these were placed on the table with other items being tagged.

At 11:26 Sgt. Schlagel handed her Ofc. Allman's rifle magazine. She tagged this item with a piece of paper marking it with his name and badge number

On 05/27/2020 Officer Brian Rendon handed her Officer Matthew Meaton's body camera. She tagged this item with a piece of paper marking it with his name and badge number.

Officer Freeman's report indicated that after obtaining the aforementioned items from officers, she remained with the evidence in Lt. Churchill's office and did not leave it unattended at any time. She tagged this item with a piece of paper marking it with his name and badge number. When Detective Hunt arrived, she

turned all items over to her and assisted her with boxes for the firearms. The body cameras were turned over to Lt. Christopher Baldwin and Sgt. Shawn McNamara.

### ***Officer Benjamin Fielder***

Officer Fielder was dispatched to 924 N. Walnut for priority back up for shots fired upon officers. When he arrived at the scene, he interviewed a neighbor witness Kamiah Ross. Officer Fielder stated that Ross told him that she and other family members were just arriving home when she heard someone yell “He’s outside!” She stated that she then heard multiple people yell “put the gun down” repeatedly.

Kamiah advised Officer Fielder she heard multiple gunshots. She next heard someone yell “he’s still moving” and more gunfire. At that point in time Ms. Ross indicated that she was advised by police to move from her vehicle parked in the street to the driveway for her safety. Officer Fielder stated that he transported Kamiah Ross to the Lansing Police Department to be interviewed by Michigan State Police in relation to the incident.

### **Materials Reviewed**

I have reviewed all the police reports and other materials submitted to the Attorney General’s office by the Michigan State Police. These materials include:

- Nearly 33 hours of dash and body camera footage from 19 officers, including Officers Brooks, Allman, Cosme, Cutler, Danko, Ellis, Bricker, Fielder, Foote, Hackenberg Howard, Leiter, Linderman, Schlagel, Slobin, Waldrop, Wilson, Winarski and Johnson
- 911 Dispatch transmissions
- Dispatch incident reports
- Dispatch calls for Welfare check at 934 N. Walnut
- Patrol radio traffic communications during the incident
- The Michigan State Police reports including the Original Incident report (12 pages)
- 6 supplemental Michigan State Police Reports
- The Michigan State Police Forensic Science Division Crime Scene Response Team Report (8 pages)
- Audio Interview with neighbor witness Brian Dickson
- Audio interview with Kamiyah Ross

- Audio interview with Maria Puente
- Audio interview Taylor Altendorf
- Audio interviews (2) with neighbors Kathy and Caralyn Wolcott
- Statements from Lansing Police Department Officers Lt. Baldwin, CSI Lam, Ofc Allman, Ofc Danko, Ofc Fielder, Ofc Freeman, Ofc Lawrence, Ofc Meaton, Ofc Waldrop, Sgt. Colby, Sgt. Winarski
- The deceased's toxicology screen report
- The autopsy report
- Crime scene photographs
- The Lansing Police Department page Use of Force policy

### **The Lansing Police Department Use of Force Policy**

The Lansing Police Department Use of Force Policy in pertinent part reads as follows:

#### **Use of Deadly Force**

*Where reasonable, officers will identify themselves and provide a warning before deadly force is applied. The use of deadly force applies to the following situations: To protect any officer from what is reasonably believed to be an imminent threat of death or serious physical injury; To prevent the escape of a subject who is fleeing from a violent felony crime, and the officer has probable cause to believe that the subject poses a threat of death or serious physical injury to the officer or others. Officers will make all reasonable effort to move out of the path of an approaching vehicle to avoid a deadly force encounter. Firearms will not be discharged at a moving or fleeing vehicle unless one of the following circumstances exist: Deadly force, or the threat of deadly force, is being used against a police officer or another person by means other than the moving vehicle; The driver has used or is attempting to use the vehicle as a means to cause injury or death to the officer or another person; warning shots are prohibited.*

#### **Law**

The legal issue in this case is whether Lansing Officers Cosme, Leiter, Cutler, Ellis, Howard, and Sgt. Schlagel acted in a legal manner during their interaction with Jason Gallegos primarily when they used deadly force by discharging their respective firearms.

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 policeman's right to draw his weapon.

The standards for use of deadly force by police come from U.S. Supreme Court decisions: *Tennessee vs Garner* 471 U.S. 1 (1985) and *Graham vs Connor* 490 U.S. 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 make split-second decisions.

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 themselves 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.

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 is in danger of being killed or seriously injured. If that person's belief were honest and reasonable, he can act immediately to defend himself, even if it turned out later that he was wrong about the level of danger.<sup>1</sup> 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. <sup>2</sup>

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." <sup>3</sup> A police

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<sup>1</sup> Michigan Criminal Jury Instruction 2<sup>nd</sup> 7. 15 (3). *People v Riddle*, 467 Mich 116, 119 (2002)

<sup>2</sup> *People v Heflin*, 434 Mich 482, 502- 503, 509 (1990)

<sup>3</sup> *Riddle*, supra, at 119.

officer, because of his duty and responsibility to protect the public, is not required to retreat in the face of a display of force.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

## **Analysis**

Based on a review of the reports, body and dash camera footage and the law the use of deadly force by Lansing Police Officer John Cosme, Officer Robert "Lance" Leiter, Officer Aliya Cutler, Sgt. Kyle Schlagel, Officer Jake Ellis, and Officer Peter Howard was justified. All had 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 or to prevent the imminent commission of a forcible felony.

All officers that ultimately fired their weapon arrived on the scene having heard radio transmissions that Gallegos was mentally unstable, intoxicated and had already discharged a weapon inside his mothers' residence. They had further

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<sup>4</sup> *People v Doss*, 406 Mich 90, 102 ( 1979)

<sup>5</sup> *Heflin*, supra

<sup>6</sup> CJ12d 7. 20.

knowledge that he had physically assaulted his mother during the earlier altercation. Peaceful negotiations were attempted by Officers Waldrop and Cosme to no avail. After hanging up the phone on those two officers who were trying to bring the situation to a peaceful conclusion, Gallegos then exited his residence with two weapons. The body camera footage is compelling, it shows the tension and volatility of the scene at the time officers responded to the extreme threat posed by Gallegos.

There was no opportunity to use de-escalation techniques. With a shotgun over his shoulder and a handgun at his waist Gallegos posed a danger to all police officers at the scene as well as to the general public from the moment he exited the house. Despite being given multiple verbal commands to drop his weapon, rather than comply, he raised the gun from a “down ready” position, leveled the gun, and fired at clearly identifiable uniformed officers actually striking Officer Danko. The officers had no choice but to fire to eliminate the threat. The fact that six separate officers made the independent decision to fire emphasizes the extreme magnitude of the threat they were facing. In fact, all officers that fired would have been derelict in their duty had they not fired to eliminate the threat and protect fellow officers, and members of the public from the extreme threat of death or great bodily harm.

## Conclusion

Based on a review of the facts and the law, it is clear that Officer John Cosme, Officer Robert “Lance” Leiter, Officer Aliya Cutler, Sgt. Kyle Schlagel, Officer Jake Ellis, and Officer Peter Howard were all a reasonable belief that Gallegos presented an extreme danger. They acted in accordance with the law and with their Department “Use of Force” policy. All officers had to make a “real time” split second decision under conditions of threat and arousal during an extremely violent and dangerous street encounter. All officers rightly acted under an honest and reasonable belief that they and others were in danger of death or great bodily harm at the time they fired the shots which resulted in Gallegos’ death. They took the measures necessary to eliminate an immediate and extreme threat.

I recommend that we close out the file with no charges issued.

Approved: *Danielle Hagaman Clark* 4/20/2021  
Danielle Hagaman Clark  
Division Chief