

STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL



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## Request for Approval to Close File

February 11, 2021

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

APPROVED: Fadwa Hammoud 3.9.2021  
Solicitor General Date

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

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

APPROVED: Danielle Hagaman-Clark 2/19/21  
Division Chief Date

RE: *Kanwarbir Malhi*  
*AG# 2020-0296107-A*

### Facts

Kanwarbir Singh Malhi was a 25-year-old male who suffered from mental issues. Kanwarbir began showing signs of mental illness around age 15 years old and these symptoms became more severe as he grew older. According to his brother, Karanjit Malhi, Kanwarbir suffered from severe mood swings and was diagnosed with bi-polar disorder "six months to a year" before the incident that ended his life. After the incident Karanjit also told police that Kanwarbir had a drug problem and had recently been taking Suboxone to wean himself off opioids. Karanjit stated that Kanwarbir had been admitted to Havenwyck Hospital and Ascension Brighton Center for Recovery for his opioid addiction. In his post incident interview Karanjit denied that his brother used other illicit drugs. However, on several previous occasions, where police were called to the family residence, due to problems with Kanwarbir, his mother, Gurraj Malhi, had told police that he was addicted to heroin.

On November 1, 2018, Shelby Township officers were dispatched to 45935 Spring Lane in Shelby Township on a mental health call. Kanwarbir's mother, Gurraj Malhi originally called the police about her son possibly being missing.

Before the police arrived, she had found him in in the basement of the residence in an agitated state. When the police arrived at the residence Gurraj Malhi told them that she had received a text message from her nephew telling her that Kanwarbir had sent him a message about “going far away.” Gurraj explained that in her culture this meant that he wanted to harm himself.

Gurraj Malhi let the three officers into the apartment and stated that her son refused to come out of his bedroom for her. From the doorway of the bedroom officers attempted to make contact with Kanwarbir who was under the covers and not responding to them calling out his name. At one point Officer Boehm indicated that Kanwarbir was wiggling his toes at which time Kanwarbir picked up his head and told officers “to get the fuck out” and made a comment about needing a warrant. Officer Boehm attempted to explain why officers were there, but Kanwarbir continued to become more agitated. Officer Nicley requested that Kanwarbir show them his hands for the officer’s safety. Kanwarbir refused to comply and continued to swear at the officers and tell them “get the fuck out, I’m fine.” He then lifted his hand from beneath the sheet telling officers he was going to take a video.

At that point Sgt. Bunch stepped into the bedroom and observed Kanwarbir holding his cell phone towards the other two officers. He also explained why officers were there and asked Kanwarbir if he wanted to hurt himself. Kanwarbir stated “no get the fuck out.” Sgt. Bunch also asked if he wanted to harm anyone else or needed medical attention. Kanwarbir stated no and told officers that he was putting his headphones on. The officers subsequently left the bedroom and explained to Gurraj Malhi that they could not take her son to the hospital against his will and that he had not made any statements that would justify officers forcing him to go.

Later that same evening Kanwarbir got into a verbal dispute with his mother over the use of a 2005 Honda family vehicle. Kanwarbir’s license was expired and his mother refused him permission to take the vehicle. According to Kanwarbir’s sister, Krisham Malhi, during the verbal altercation with his mother Kanwarbir stated “if you call the police, they will never take me alive.” He also mentioned “suicide by police.” Despite being denied permission Kanwarbir left the apartment in the Honda. The next day, on November 2, 2018, Gurraj Malhi filed a Stolen Vehicle complaint with the Shelby Township Police Department.

On November 3, 2018 at approximately 01:00 am, Officer Joseph Wojcik of the Shelby Township Police Department was on routine patrol in the area of the Spring Lane Apartments. He drove through the complex because of the earlier stolen

vehicle report. While traveling through the complex he observed a 2005 Honda traveling through the complex. At 12:59 AM Officer Wojcik conducted a license check of the 2005 Honda and dispatch confirmed the vehicle as stolen. At 1:01 AM Officer Wojcik confirmed his location and dispatch called for backup units.

Officer Wojcik watched as the Honda was parked in a defined parking space near 45935 Spring Lane. Kanwarbir Malhi was the driver of the vehicle. At 1:01 AM Officer Wojcik approached the driver's side of the vehicle and began giving loud verbal commands while waiting for backup units. Officer Wojcik told Malhi to "put his hands out of the window" and "show his hands" multiple times in a loud tone. Malhi initially complied but then pulled his hands back inside the vehicle and failed to comply with further verbal commands. Over the next eight minutes loud verbal commands for Malhi to show his hands were continuously issued by Officer Wojcik and other officers that began arriving on the scene as back up.

Officer Wojcik's dash camera footage shows that at the 1:02 AM Malhi appears to briefly open and close the driver's side door. From 1:02 through 1:04 AM Officer Wojcik continues to issue loud verbal commands for Malhi to comply by putting his hands out the window or putting his hands up. During this same time frame Officer Dan Messing arrives on the scene at 1:03 AM. He took a position to the rear of the Honda while holding his weapon trained on the vehicle and he also began yelling repeated loud verbal commands for Malhi to put his hands out the window.

At 1:04 AM Officer Wojcik advises Dispatch that Malhi is not listening to commands and Dispatch verbally acknowledges his broadcast. At 1:05 AM the K-9 dog was let out but officer Wojcik states that the K-9 cannot be deployed due to the window being up at that point in time. Shortly thereafter, at 1:05 AM Officer Wojcik can be seen asking Malhi "you got a gun?" and then yelling over to Officer Dan Messing "backup let them know Dan (Officer Dan Messing) said he has a gun." Officers broadcast that Malhi said he had a gun and is not complying. At 1:06 AM Dispatch acknowledges the transmission that Malhi is armed. The verbal commands to comply and for Malhi to "put his hands out the window" and "put his hands up where they could see them" continued.

At the 1:08 point on the dash camera Officer Wojcik observes Malhi making furtive movements in the towards the backseat of the vehicle and yells "he's moving something." Officer Wojcik continues to loudly yell the verbal command "put your hands out the window" and "let me see your hands" repeatedly. Other officers on the scene also saw the movements towards the rear seat of the car. Other officers were also loudly and continuously yelling the same commands at this time.

Officer Jason Zuk arrives at the scene at 1:08 AM in the middle of the standoff. He exited his vehicle armed with his department issued shotgun. He asked which vehicle the suspect was occupying and took position to the far side and rear of the vehicle parked directly left (east) of the Honda. The loud verbal commands for Malhi to put his hands out the window and put his hands up were continuing at this point in time. At 1:09 Officer Wojcik advises that he will put away the K-9 if Malhi complies.

At 1:09 Malhi exits the vehicle while multiple officers continue to yell repeated commands for him to put his hands up. Malhi does not comply with those commands. The dash camera footage of Malhi is partially obscured by the adjacent truck. This makes it difficult to see what Malhi he does with his hands but in the footage, it appears that as the officers are yelling commands for him to “put his hands up” he makes a sudden movement towards the front area of his body. Almost immediately after that movement Officer Zuk fired a single shot from his department issued shotgun at 1:09:26 AM.

This shot hit Malhi in the upper chest neck area and he fell to the ground. After he fell to the ground Malhi briefly sat up and made a gesture with his hands towards the officers then went down again. Dispatch was immediately notified that shots had been fired and a call for EMS was made. At 1:09 AM Dispatch acknowledges shots fired and advises that the Shelby Township Fire Department is on the way.

Officers at the scene immediately rendered medical aid to Malhi with a defibrillator and also doing manual chest compressions. As the officers surround Malhi and attempt to render assistance, in the audio from Officer Wojcik’s dash camera the words “no gun” can be heard. It is unclear from the footage who utters those words. Malhi was transported to Troy Beaumont Hospital where he was pronounced dead at 1:44 AM.

### Autopsy

Kanwarbir Malhi’s autopsy was conducted by Oakland County Medical Examiner Dr. Kanu Virani on November 3, 2018. Dr. Virani determined the cause of Malhi’s death to be “shotgun wound of the neck and chest.” Kanwarbir had eight separate pellet entrance wounds on his body. Six deformed pellets were recovered from the upper right side of the back. Those pellets were taken into evidence by Macomb County Sheriff Department investigators. Two pellet exit wounds were

present on the right side of the upper back. The wounds showed perforation of the skin, upper part of the sternum, trachea, arch of the aorta, right common carotid artery, right lung, posterior portion of the right chest wall and perforating the 6<sup>th</sup>, 7<sup>th</sup>, and 8<sup>th</sup> ribs. The wound trajectory was front to back, downwards and towards the right side of the body. No soot or stippling was visible.

The toxicology report showed that Cocaine, Morphine, Benzoyllecgonine, Buprenorphine, and Norbuprenorphine were found in Kanwarbir Malhi's blood screen. Benzoyllecgonine is an inactive metabolite and chemical break down product of cocaine. Buprenorphine is a Schedule III controlled synthetic opioid. Clinically it is used for pain treatment and as a pharmacotherapy for opioid dependence. Norbuprenorphine is a Buprenorphine metabolite.

Dr. Virani determined the manner of death for Malhi 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.

### **Garrity Statements**

It should be noted that it is my opinion only the one officer that fired the shot, Jason Zuk, has the right to have his statement classified as a Garrity statement. Nonetheless, the law firm representing the officers have treated the statements of all officers involved in the standoff with Malhi as limited disclosure Garrity statements. How the statements are classified is not germane to this analysis other than to note that the statements are consistent in terms of what Malhi was doing with his hands just before the fatal shot was discharged. The Garrity statements of the officers present read as follows:

#### **Officer Messing Statement given 11/04/18 8:23 PM**

Officer Messing stated that on the above date and time he heard Officer Wojcik call out from Spring Lane apartments near building 17. He heard Officer Wojcik run a check on a vehicle license plate and be advised by dispatch that the

vehicle was stolen out of the township. He also heard Officer Wojcik advise dispatch that the vehicle was occupied.

Officer Messing was already in route to his location when dispatch advised him to make the location. Officer Messing arrived on the scene and observed a white male sitting in the front seat of a silver passenger auto. Officer Messing approached Officer Wojcik's patrol vehicle and stood at the right passenger door with his department issued firearm deployed. Officer Wojcik was giving several verbal commands to the subject inside (later identified as Kanwarbir Malhi) to show his hands and Malhi refused to comply with commands.

Officer Messing stated that he moved from the passenger door of Officer Wojcik's patrol vehicle to approximately 10 feet behind the subject's vehicle. Officer Messing could see the profile of the subject who was looking in the direction of Officer Wojcik. Officer Messing yelled to the subject to "show his hands" and "do it now" several times. Malhi refused to show his hands. Officer Messing could see the subject turn slightly in his seat and his hands were moving in the rear seat of the vehicle.

According to Officer Messing's statement, Malhi was again advised by Officer Wojcik and himself to show his hands and he refused to comply. Officer Wojcik advised Officer Messing that he was going to deploy the canine when the other officers arrived on the scene. Officer Messing had a clear profile view of the subject but still could not see his hands. Officer Wojcik advised Officer Messing that the subject stated he had a gun. Officer Messing immediately broadcast the information out to other responding units that the subject was stating he was armed.

Officer Wojcik advised Officer Messing that the subject stated that if the dog was put away, he would surrender. Officer Messing continued to provide coverage for Officer Wojcik as he put the canine back in the patrol vehicle. Officer Messing observed the subject open the door and exit the vehicle quickly with his hands inside his coat. The subject was given several commands to show his hands and refused. Officer Messing observed as the subject appeared to take a step towards officer Wojcik and Officer Zuk with his hands inside his coat. Officer Messing stated that he was in fear that subject was reaching for a weapon and began to pull the trigger on his own weapon to stop the threat to officers on the scene when he heard a single gunshot.

Officer Messing stated that he observed the subject fall to the ground. He then observed the subject attempt to stand up with his hands still inside his coat and fall back to the ground. The subject removed his hands from his coat put his palms together and pointed his finger like he was aiming a gun. The subject then fell to the ground and Officer Messing covered officers approaching Malhi as they checked for weapons.

Per Officer Messing's statement Officers on the scene immediately rendered aid to the subject. Officer Messing approached the vehicle and cleared it to make sure no one else was in the vehicle. He then went and retrieved an AED device and removed the pads which were placed on the subject by Officer Wathen. Officer Messing hit the button on the AED to analyze the patient and was advised no shock should be given. Officers continued to perform CPR on the subject until the Shelby Township EMS arrived. Officer Messing then roped off the area with crime scene tape and awaited the arrival of the Macomb County Sheriff's Department.

**Officer Veprauskas** Statement given 11/04/2018 8:10 PM

Officer Veprauskas stated that on Saturday, November 3, 2018, at approximately 1:02 AM he heard Officer Wojcik call with a plate for dispatch to run over the radio. Dispatch stated the plate came back stolen out of Shelby Township. When Officer Veprauskas heard that information he started heading towards Officer Wojcik's location at Spring Lane apartment complex. As Officer Veprauskas was pulling into the complex he heard Officer Messing state they had a subject inside the car at gunpoint.

Officer Veprauskas pulled around both Officer Wojcik's and Officer Messing's patrol cars and faced his patrol car southeast pointing at the suspect's car. Officer Veprauskas could see a male sitting inside the driver seat of the reported stolen car. Officer Veprauskas turned on the spotlight and pointed at the suspects face. Officer Veprauskas then exited his patrol car and stood behind the driver side open door.

Officer Veprauskas stated that he saw officer Messing standing directly behind the suspects' car with his pistol aimed at the suspect. He then saw Officer Wojcik standing next to the driver door with his canine and pistol aimed at the suspect. Officer Veprauskas pulled his duty 40 Cal Glock and pointed at the suspect seated in the driver side seat. Officer Messing stated the Malhi told Officer Wojcik he has a gun. At that time Officer Veprauskas placed his pistol in his left hand and reached inside the patrol car to remove the wireless mic from the

charging device and hit the button to turn on the camera. He then placed the mic in his left vest pocket.

Officer Veprauskas stayed behind cover at that point and was watching the suspect inside the car. He noticed that the suspect kept looking back at him and the spotlight moving his arms behind the driver seat. Officer Veprauskas stated that both he and Officer Messing were saying out loud, "he is grabbing something." Officer Veprauskas stated he continued to hear Officer Wojcik give commands, "show me your hands" as the suspect continued to reach behind the seat.

Officer Veprauskas stated that after several minutes of Officer Wojcik giving the suspect commands, Officer Zuk arrived on the scene. Officer Veprauskas saw Officer Zuk approach Officer Wojcik's left side and position himself behind the bed of a truck. Officer Wojcik said he was going to put the dog away to the driver (Malhi). At that time, the driver raised hands to the driver side window.

Officer Veprauskas stated that just after the dog was put away the suspect opened the driver store and stood up. Commands were issued to "show us your hands." As soon as Malhi stood straight up, he reached into his jacket and the waistline of his pants with his two hands and started charging towards Officer Wojcik's patrol vehicle. Officer Veprauskas stated that he was getting ready to fire to stop the threat when he heard a shotgun go off and hit the suspect. Just after the shot, Officer Veprauskas indicated he could hear someone yell "oh my God" from behind him in building 18 area.

According to Officer Veprauskas' statement Kanwarbir Malhi fell down and sat back up and continued to reach into his jacket/waistline area like he was grabbing for a weapon. Officer Veprauskas indicated that he kept his weapon pointed at the suspect. After the suspect stopped moving, Officer Veprauskas stated he covered Officer Messing as he approached the suspect.

Officer Wathen arrived and handed Officer Veprauskas his shotgun and told him to place it his patrol car. Just after Officer Veprauskas secured Officer Wathen's shotgun he took Officer Zuk's shotgun from him and made it safe. Officer Veprauskas then placed Officer Zuk's shotgun in his patrol car in the passenger side front and locked the door. Officer Veprauskas indicated that he then got two traffic cones and placed one over the spent shotgun shell and one over the wadding. Officer Veprauskas then stayed with Officer Zuk until Officer Wathen removed him from the scene and took him back to the station. Officer Veprauskas stayed at the scene until Officer Young arrived around 5 a.m..



**Officer Wojcik** Statement given 11/03/2018 3:22 AM

Officer Wojcik stated that on November 3, 2018, he was on routine patrol in the area of Spring Lane Apartments. He directed his attention to Spring Lane Apartments in reference to an earlier UDDA report that he had taken at the above listed residence. While traveling north through the complex, Officer Wojcik noticed a set of taillights traveling northbound through the complex towards Building 17 around 75 to 100 yards up ahead of him. Officer Wojcik continued to follow the vehicle and observed it turn into the parking lot directly in front Building Number 17.

Officer Wojcik stated that as he got closer to the vehicle, he noticed the vehicle matched the description of the stolen auto. He observed that the vehicle was a gray Honda Civic with a matching plate of CJQ692. In addition, Officer Wojcik noticed that the vehicle was parked directly to the north east of building 17 and the car was running with one occupant sitting in the driver seat of the vehicle. Per his statement Officer Wojcik immediately ran the plate through Shelby Township dispatch and verified that the vehicle was stolen. Officer Wojcik relayed his location to dispatch and advised that the vehicle was occupied by one subject (w/m).

Officer Wojcik indicated that he held the subject at gunpoint and directed him to shut his vehicle off and to put his hands outside the driver side window. The driver (later identified as Kanwarbir Malhi) complied and shut his vehicle off and then put his hand out the window. After a few minutes Malhi started to be non-compliant with commands and pulled his hands back into the car. Officer Wojcik advised Malhi several times to keep his hands out the window where writer could see them, but he refused to comply. Subsequently Officer Wojcik broadcast to dispatch that the subject was refusing to comply with commands.

According to Officer Wojcik's statement, moments later Officer Messing arrived on the scene. Officer Wojcik stated that along with Officer Messing, he gave Malhi several comments to show officers his hands, but he refused to do so. Officer Wojcik indicated that Malhi asked several times "what did I do?" and at one point attempted to exit his vehicle without being directed to do so. As a result, Officer Wojcik deployed canine partner Morpheus at the scene and advised Malhi to stay in his vehicle and show officers his hands by placing them outside the driver side window. Officer Wojcik advised Malhi if he refused to do so that he would deploy his canine. As a result, Malhi stopped attempting to exit his vehicle and remained in the driver seat of the vehicle.

Officer Wojcik indicated that, at that point, Malhi still noncompliant with officers' commands began looking towards Officer Messing who was standing behind Malhi's vehicle. Officer Wojcik observed Malhi reaching for something in the backseat of the car. Officer Wojcik indicated that he ordered him to show him his hands time after time and he refused to do so. Malhi then stated to Officer Wojcik that he had a gun. Officer Wojcik states that he stopped for a moment to process what Malhi had said, and then asked him "did you say you have a gun?" Malhi replied "I have a gun." Officer Wojcik advised Officer Messing who broadcast to dispatch that the subject was possibly armed.

Officer Wojcik stated that while waiting for additional units he continued to order Malhi to show his hands. Malhi refused to do so. However, Malhi told him that if he put his dog up then he would surrender. As a result, Officer Wojcik had Officer Zuk step forward with his department issued shotgun to provide cover for him as canine Morpheus was secured.

Once Officer Wojcik secured canine Morpheus in his patrol vehicle he started forward towards his original position. Officer Wojcik advised Malhi that the canine was secured and that he was to show officers his hands by placing them out his driver side window and if he did not Officer Wojcik would bring back the canine. As Officer Wojcik was moving up, Malhi quickly exited his vehicle and immediately reached into his hoodie front center pocket as if he were trying to grab something. Malhi was advised to show officers his hands several times but continued reaching for something in his front hoodie pocket.

Officer Wojcik stated that he was in fear for his safety and for the safety of the other officers on the scene. Officer Wojcik stated that he was "beginning the process of lethal force" when Officer Zuk who was providing cover discharged his shotgun at the Malhi striking him once in the neck and upper chest. Once Malhi was down Officer Wojcik moved in with cover and patted the subject down for officer safety. Officer Wojcik thnn immediately administered first aid by performing CPR on the subject until Shelby Township fire EMS arrived on the scene took over. The scene was turned over to Sgt Barr and the Detective Bureau.

**Officer Zuk** Given 11/05/2018 3:57 PM

Officer Zuk stated that on November 3, 2018, around 1 AM he was at 24 mile and Shelby Road. He heard Officer Wojcik ask Shelby Township dispatch to run a vehicle license plate for him. Per dispatch it was confirmed that the vehicle was

reported stolen. Officer Wojcik indicated that he was in the Spring Lane apartment complex. He stated the vehicle was occupied by one.

Officers Zuk stated that he heard over the radio that Officers Veprauskas and Messing were on the way for back up. Shortly after Officer Messing arrived at the location it was put out over the air by one of the officers that the suspect was refusing to comply. Just after that, one of the officers stated they had him at gunpoint. Officer Zuk was in route to the location with lights and sirens at this time. While on the way, he indicated that one of the officers reported over the radio that the suspect had told them he was armed.

Per his statement Officer Zuk arrived at the scene in a few minutes and observed Officer Wojcik outside of his driver's door of Malhi's vehicle with his canine Morpheus. Officer Zuk stated that he had unlocked his department issued shotgun and exited his vehicle. Officer Zuk asked Officer Wojcik where the vehicle was and he stated "right in front of his vehicle" that was parked at an angle facing south west. Officer Zuk approached a pickup truck parked just east of the suspect vehicle. Officer Zuk had the shotgun up and ready and took cover behind the rear driver side of the pickup aiming the shotgun over the bed of the truck with a clear view of the suspect. Officer Wojcik stated that Malhi told him prior to Officer Zuk's arrival that if the canine was put away, he would get out of the car. Officer Zuk covered Malhi and the vehicle along with Officer Messing and Officer Veprauskas while Officer Wojcik placed the canine back into his patrol car.

After securing the dog, Officer Wojcik told the suspect to put his hands out the window. Officer Zuk indicated that he observed the suspect open the driver door and reach down between the driver seat in the passenger seat with his right hand. Officer Zuk stated that Malhi looked over at him with a blank stare and quickly exited the vehicle without being ordered out. Other officers were also yelling verbal commands at Malhi and he was not following the commands. Officer Zuk observed Malhi attempt to pull something out of his jacket. He stated he could see that the suspect's hand was still inside the pocket and he was attempting to remove it quickly but could not do so due to what writer believed was a weapon catching inside of the pocket.

Officer Zuk stated that at that point in time Malhi jerked his right hand up words violently several times and after not being able to get it out he extended his right arm with his hand still in the pocket and pointed towards Officer Wojcik who had little cover. When he extended the jacket, Officer Zuk stated he could see what appeared to be a weapon pushed up against the inside of the jacket. Officer Zuk

indicated that he believed the suspect was going to fire a weapon through the jacket.

Officer Zuk stated that fearing for his own life, the life of Officer Wojcik and his fellow officers on the scene, he aimed at the suspects chest and fired one time with shotgun number 10. The suspect stood for a moment and fell to a sitting position. Then he rolled on his back. His right hand had come out of the jacket pocket and his right index finger was pointed straight out with his other fingers in a fist like a gun.

Officer Zuk provided cover while officer Wojcik approached Malhi and attempted to retrieve the weapon. No weapon was found. Officers immediately began rendering first aid to Malhi and an EMS unit was ordered. Officer Zuk was approached by Officer Veprauskas who took custody of shotgun #10 and placed it in his locked vehicle. Officer Wathen then transported Officer Zuk to the station.

### **Warrant Denial**

This matter was presented to the Macomb County Prosecutor for review on the charge of Manslaughter-Death by Weapon Aimed with Intent but Without Malice. The Officer in charge of the case, Macomb County Detective Sergeant Mark Morfino, has indicated that the warrant was presented on those charges because the Sheriff's Department wanted a prosecutor review done of the matter. He indicated that it is the practice of the Macomb County Prosecutors office not to review a case unless there is a request for a warrant. The matter was reviewed by William Cataldo, the Macomb County Prosecutor's office Chief of Homicide. After evaluating the matter, on January 29, 2019, he denied the warrant presented by the Macomb County Sheriff's Department.

### **Materials Reviewed**

I have reviewed all the police reports and other materials submitted to the Attorney General's office by the Macomb County Sheriff's Department. These materials include:

- Hours of dash camera footage that show the totality of the incident
- Dispatch transmissions
- 4 Macomb County Sheriff's Department Reports including the extensive original narrative authored by the officer in charge of the case Det. Sgt. Mark Morfino.

- 4 evidence Tech reports
- The Garrity statement of Officer Zuk
- The statements of other officers on the scene – Officer Wojcik, Officer Messing, Officer Veprauskas
- Interviews with the deceased’s family members – written and audio.
- Numerous witness statements from occupants of the apartments surrounding the parking lot where the incident occurred
- The Shelby Fire Department Report
- The deceased’s medical records
- The deceased’s toxicology screen report
- The autopsy report
- Autopsy photographs
- Crime scene photographs
- Shelby Police Department reports relating to incidents involving the deceased in the two days before the incident that led to his death
- Prior incident reports involving the defendant obtained from the Michigan State Police Department, the Bloomfield Hills Police Department, the Sterling Heights Police Department
- The Shelby Township 17 page Use of Force policy including the MCOLES Use of Force Subject Control Continuum
- Faro 3 D scanner thumb drive with crime scene mapping, photographs, and drone footage

## **Discussion**

The legal issue in this case is whether Shelby Township police officer Jason Zuk acted in a legal manner during his interaction with Kanwarbir Malhi, primarily when he used deadly force by discharging his firearm.

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 v Garner* 471 U.S. 1 (1985) and *Graham v 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 have to 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 in the course of 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.<sup>1</sup>

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>2</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>3</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>4</sup> A police 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>5</sup> *Heflin*, *Riddle* and *Doss* notwithstanding, the Self-Defense Act of 2006 abrogated the duty to retreat under most circumstances MCL 780.972 states:

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<sup>1</sup> Michigan Criminal Jury Instructions 2<sup>nd</sup> 7.15 (1)

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

<sup>3</sup> *People v Heflin*, 434 Mich 482, 502- 503, 509 (1990)

<sup>4</sup> *Riddle*, supra, at 119.

<sup>5</sup> *People v Doss*, 406 Mich 90, 102 (1979)

*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>6</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>7</sup>

### **The Shelby Township Police Department Use of Force Policy**

The Shelby Township Use of Force Policy in pertinent part reads as follows:

#### **VI. DEADLY FORCE A. PARAMETERS AND PROCEDURES FOR USE OF DEADLY FORCE**

*1. A police officer may employ the use of deadly force under the following conditions: a. An officer may use deadly force in the defense of a citizen or an officer to prevent serious bodily harm or death or the threat of serious bodily harm or death. A threat of serious bodily harm or death exists if the following three conditions are met: 1) Ability: In the officer's reasonable belief, the subject has the present apparent ability to cause serious bodily harm or death. 2) Opportunity: In the officer's reasonable belief, the subject has the immediate opportunity to cause serious bodily harm or death; and 3) Jeopardy: In the officer's reasonable belief, the officer or another is in immediate jeopardy of serious bodily harm or death. b. An officer may use deadly force against a person seeking to escape or avoid custody who has committed one or more felony crimes involving the Use of*

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<sup>6</sup> *Helflin, supra*

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

*Force Page 8 use or threatened use of deadly force against another person, PROVIDED THAT: 1) The officer has witnessed or knows with a reasonable certainty that the person to be apprehended has committed a felony crime involving the use or threatened use of deadly force against another person. 2) Other reasonable means of apprehension either do not exist or have been exhausted. 3) The risk of further serious bodily harm or death to others if a subject is not apprehended exceeds the risk inherent in the use of firearms. 4) Reasonable shooting background in line of sight exists to avoid injury or death to others. 5) If feasible, some warning has been given.*

## **Analysis**

Officer Zuk arrived on the scene at 1:08 AM during the course of an extremely tense and volatile standoff situation where Kanwarbir Malhi, who had been lawfully stopped on a felony stolen vehicle report, was actively resisting and obstructing a police officer. MCL 750.81d( 1) states:

*An individual who assaults, batters, wounds, resists, obstructs, opposes, or endangers a person who the individual knows or has reason to know is performing his or her duties is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than 2000.00, or both.”*

MCL 750.81d (7) defines “Obstruct” as including the use or threatened use of physical interference or force or ***a knowing failure to comply with a lawful command.***

Malhi’s resistance or obstruction included physical acts to resist a lawful act (refusal to put his hands out the window or show his hands per verbal commands and reaching towards the back seat despite the verbal demands to “show his hands” and “keep his hands where they could be seen”). For over eight minutes, Officer Wojcik and other officers who arrived as back up were yelling loud commands for Malhi to comply. These commands were ongoing and continuing at the time Officer Zuk arrived on the scene. The footage shows in excess of 70 loud verbal commands for Malhi to comply from the time of his initial encounter with Officer Wojcik until the time he ultimately exited the vehicle. Malhi’s resistance also had a verbal component with him telling Officer Wojcik he had a gun, an assertion that was



relayed to dispatch by Officer Messing and confirmed back over the air by dispatch. That assertion by Malhi was later found to be untrue.

As Officer Zuk was in route to the scene Dispatch was confirming Malhi's noncompliance with police commands in their broadcast transmissions which were going out over the main dispatch channel. Officer Zuk arrived on the scene after also hearing dispatch confirm Officer Messing's transmission that Malhi claimed that he had a gun. Accordingly, Officer Zuk had a reasonable belief that Malhi was armed when he arrived on the scene. Although Officer Zuk was not on the scene during most of the standoff, he was also aware via dispatch of Malhi's continued refusal to comply with police commands.

The dash camera footage shows the explosive nature of the situation when Officer Zuk arrived at the scene. The footage shows multiple officers with their weapons drawn surrounding Malhi's vehicle loudly yelling commands for Malhi to comply. Kanwarbir Malhi continues to ignore those commands and contrary to those orders overtly engages in physical actions such as reaching towards the back seat adding to the volatility and the danger of the situation. In the middle of this chaos, with immediate safety concerns being paramount, Officer Zuk exited his vehicle and positioned himself adjacent to Malhi's vehicle to give coverage to Officer Wojcik who was in the process of securing his canine. Like the other officers already on the scene Officer Zuk had his department issued weapon drawn for the protection of himself, the other officers on the scene and the general public.

From the time Officer Zuk arrived at the scene and positioned himself with his weapon trained on the Honda until the time he fired a shot he had a reasonable belief that he was dealing with an armed person. Shortly after Officer Zuk positioned himself, Malhi exited the vehicle. I have watched the footage over and over again. After Malhi exits the vehicle, as multiple officers were loudly yelling for him to "put his hands up" or "put his hands where the officers could see them," rather than comply, Malhi makes a quick movement towards the center area of his body.

As previously indicated, the adjacent vehicle, in part, blocks a clear view of what Malhi is doing with his hands. However, he clearly does not comply with the demands to put his hands up or in the air and the movement towards his center body can be seen on the footage. This all happens very quickly and a split second after this movement Officer Zuk fires a shot to deter the perceived threat.

The Garrity statements of the other three witness officers present at the scene all note the movement Malhi made towards his midline front of his body or hoodie front jacket pocket after exiting the vehicle. Officer Messing observed subject appeared to take a step towards officer Wojcik and Officer Zuk with his hands inside his coat. Officer Messing stated that he was in fear that subject was reaching for a weapon and began to pull the trigger on his own weapon to stop the threat to officers on the scene when he heard a single gunshot. Officer Veprauskas stated that as soon as the suspect stood straight up, he reached out to his jacket and the waistline of his pants with his two hands and started charging towards Officer Wojcik's patrol vehicle. As Officer Veprauskas was getting ready to fire to stop the threat he heard a shotgun go off and hit the suspect.

Officer Wojcik stated that he was moving up back towards Malhi's vehicle, after securing the canine, when Malhi quickly exited his vehicle and immediately reached into his hoodies front center pocket as if he was trying to grab something. Malhi was advised to show officers his hands several times but continued reaching for something in his front hoodie pocket. Officer Wojcik stated that he was in fear for his safety and for the safety of the other officers on the scene. Officer Wojcik stated that he was "beginning the process of lethal force" when Officer Zuk who was providing cover discharged his shotgun at the Malhi striking him once in the neck and upper chest.

Officer Zuk has stated that he observed the suspect open the driver store and reach down between the driver seat in the passenger seat with his right hand. The suspect looked over at the writer with a blank stare and quickly exited the vehicle without being ordered out. Other officers were also yelling verbal commands at the suspect and he was not following the commands. Officer Zuk indicated that he observed Malhi attempt to pull something out of his jacket. He could see that the suspects hand was still inside the pocket and he was attempting to remove it quickly but could not do so due to what writer believed was a weapon catching inside of the pocket.

According to Officer Zuk's statement at that point in time Malhi jerked his right hand up words violently several times and after not being able to get it out he extended his right arm with his hand still in the pocket and pointed towards officer Wojcik who had little cover. When he extended the jacket, Officer Zuk stated he could see what appeared to be a weapon pushed up against the inside of the jacket. Officer Zuk stated that he believed the suspect was going to fire a weapon through the jacket.

## Conclusion

When Malhi exited the vehicle without complying with demands to show his hands and made a movement that Officer Zuk interpreted as going for a gun his only recourse lay in repelling the attack by the use of deadly force. As previously indicated the dash camera footage is partially obscured by the adjacent trunk that Officer Zuk was using for cover. The footage shows the furtive movement, but the truck blocks a view of Malhi's hands. However, the truck did not block the view from the angles where the three officers were standing, and each officer individually referenced the movements Malhi made towards the mid center of his body.

The *Garrity* statements of all three other officers also indicate that they, themselves were in the process of initiating deadly force to deter the threat when Officer Zuk fired his shot. It is significant to note that Officer Zuk only fired one shot. He did not continue to fire after the perceived threat had ended.

A later search determined that there was no gun located on Kanwarbir Malhi's person nor in his vehicle. It is unclear why Malhi would tell police that he had a gun when he did not have a gun on his person nor in his vehicle. The answer to that question will never be known. What is known and is significant is Kanwarbir Malhi's earlier statements, during the argument with his mother, where he mentioned "suicide by police" and stated that "if his mother called the police, they would never take him alive". These statements take on added significance in light of the events that would later occur.

A reasonable conclusion can be drawn that Malhi wanted police to believe that he had a gun to exacerbate the standoff situation where he was refusing to comply with police commands for an extended period of time. It would also be consistent with the furtive movement he made towards the front of his body which can be seen on the dash camera footage after exiting the vehicle. It is unknown if Malhi wanted police to think that he was going for a gun, but it would be consistent with statements and intentions that he expressed during the earlier argument with his mother over the family vehicle.

Based on a review of the facts and the law, Officer Zuk's perception that Kanwarbir Malhi presented an immediate danger of great bodily harm, or even death, to all officers surrounding the vehicle was a reasonable one. Because of sound public policy, to avoid public confrontations, persons are required to submit to police authority and challenge perceived errors later in court. Malhi's continued and prolonged refusal to comply with police commands, coupled with his statement

to Officer Wojcik indicating he had a weapon formed a reasonable basis for Officer Zuk to believe that Kanwarbir Malhi posed a serious threat of serious bodily harm or death to himself and other officers on the scene. When he exited the vehicle without his hands up despite the repeated ongoing commands and made a sudden movement towards the front of his body it was a fair inference that he may be going for a weapon. Officer Zuk had to make a split second decision.

Officer Zuk acted under an honest and reasonable belief that he and other officers were in danger of death or great bodily harm at the time he fired the one shot. He had to make a “real time” split second decision in an extremely tense and dangerous situation. A police officer is protected if he reasonably believed that the use of deadly force was necessary. The perceived danger need not be real and a person under great stress and excitement is not required to use infallible judgment in the space of a few seconds. However, as in this case, where the person against whom the force is directed is known to carry a weapon or indicates that he is carrying a weapon on his person and makes a move to use it deadly force is permissible.

I recommend that we close out the file.