

STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL



DANA NESSEL  
ATTORNEY GENERAL

MEMORANDUM

Warrant Denial Memorandum

1/3/2025

TO: Danielle Hagaman-Clark  
Bureau Chief  
Criminal Justice Bureau

APPROVED: Danielle Hagaman-Clark 2/7/2025  
Bureau Chief Date

Robyn Liddell  
Division Chief  
Criminal Trials Division

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

CC: Oronde Patterson  
First Assistant

APPROVED: Robyn Liddell 2/7/2025  
Division Chief Date

Danielle Russo Bennetts  
Frist Assistant

FROM: Michael Doby  
Assistant Attorney General  
Criminal Trials Division

RE: **Request for Authority to Deny Criminal Charges**  
**Due Date for Response:** ASAP

People v Minchella, David & Viviano, Robert (OIS)  
AG No. 2024-0417177-A  
Request: 11/27/2024  
Report Received: 11/27/2024

**I. Introduction:**

On November 2, 2024, Troopers David Minchella and Robert Viviano shot and killed Rayvon Shahid in the City of Flint, Michigan. The Michigan State Police conducted an investigation and submitted the results of that to our office on November 27, 2024. Additional investigation was then requested by the assigned Assistant Attorney General. After review of all the evidence submitted no charges are appropriate because we are not able to prove that the Troopers' use of deadly force was not justified under the law.

This document contains confidential attorney-client communications, attorney work product, settlement negotiations, is part of the deliberative and peer review process and is not subject to FOIA requests or discovery.

## II. Recommendation:

No charges can be issued against Troopers Minchella or Viviano from this incident.

## III. Venue City of Flint, Genesee County, Michigan

## IV. Facts

### a. Pre-Stop

Troopers David Minchella and Robert Viviano came on-duty at 5:00pm on November 2, 2024. They were assigned to double in a patrol vehicle and on patrol in the City of Flint. The weather at the time was between 50 and 41 degrees (50 at 5:53pm and 41 at 6:53pm) with no wind or precipitation.

Rayvon Shahid, age 17, [REDACTED]. He was wearing a tether at the time of this incident. There were no warrants or pickup orders for him. Despite later seizing and downloading his cell phone, his movements that day and purpose on the street at the time of this incident are not known. The only recent data that could be recovered from the phone was that he had accessed the map application about 15 minutes before this incident.

Troopers Minchella and Viviano provided signed statements through their attorney on December 6, 2024. According to those statements the Troopers were driving southbound on Martin Luther King Ave. at approximately 6:30pm when they first saw Rayvon Shahid near the corner of Dewey St. There had not been a recent crime reported in the immediate area and there were no BOLOs broadcast regarding him or a person who fit his description. According to Tpr. Minchella, Mr. Shahid was wearing a black ski mask of the thin type known colloquially as a "shiesty". Minchella says he made eye contact with Mr. Shahid and observed him to become "obviously nervous." Minchella saw Mr. Shahid clutch his waistband and saw a "heavy bulge" in that area that he believed to be a gun. Minchella then saw Mr. Shahid hold his hand in that area of his body while walking away and, in Minchella's opinion, attempting to hide behind the buildings east of Martin Luther King Ave. (*Exhibit 1.*)

According to their statements, Tpr. Minchella voiced these observations to Tpr. Viviano, however Viviano did not see Mr. Shahid at that time. Tpr. Minchella circled the block in the patrol car looking for Mr. Shahid. Tpr. Viviano saw Mr. Shahid walking westbound on Dewey Street and saw that his right arm was pinned tight to his body, not in his jacket pocket or swinging normally as he walked. This was indicative of a person concealing a gun based on his experience. The Troopers saw Mr. Shahid turn onto Essex St. from Dewey and pulled the patrol car around to Pasadena so that they could face Mr. Shahid head on as he walked north on Essex.

Surveillance video was obtained from Holy Trinity Missionary Baptist Church which is south of Dewey St. on Martin Luther King Ave. (*Exhibit 2.*)

There are two cameras, the timestamps are synced to each other and the DVR time was accurate to local time when the videos were collected. Mr. Shahid is visible walking north on Martin Luther King. He is wearing the ski mask and appears to be talking on the phone with his left hand and holding his right hand close to the front of his body. (*Exhibit 3.*) The surveillance video also shows the Troopers' car driving South. (*Exhibit 4.*) The Trooper's first observation of Mr. Shahid would have happened here. Mr. Shahid altered his course from the sidewalk into the alley/parking lot, possibly because he saw the patrol car. He is looking in that direction and veers to his right. A couple seconds later Minchella, as the driver, would have had a good view of Mr. Shahid while he was walking between Holy Trinity and the next building. (*Exhibit 5 and 6.*) A person consistent with Mr. Shahid can then be seen in the distance walking east on Dewey St about 45 seconds later at 18:33:21. (*Exhibit 7.*)

Patrol car video (PCV) and body-worn cameras (BWC) were not recording during this time. Recording is triggered when an event like turning on the lights or sirens occurs.

**b. Stop**

The Troopers had made a loop around and then drove south on Essex. Mr. Shahid was walking north on Essex. The Troopers turned on the overhead lights. The patrol car video has a "look-back" function where the previous 30 seconds of video is preserved before the lights are turned on. Audio on the patrol car video and the Troopers' body-worn cameras video and audio begin recording when the lights are turned on. This was at 18:34:41 according to the timestamp. This is approximately 2 minutes and 19 seconds after Tpr. Minchella could have first seen Mr. Shahid. As the patrol car pulled onto Essex St. Mr. Shahid was walking with his left hand up towards his face holding his phone and appeared to be talking on speakerphone. His right hand was swinging free at his side. (*Exhibit 8.*) When the lights were activated Mr. Shahid raised his right hand to shoulder height, palm out. Tpr. Minchella can be heard saying "He's got something in [indecipherable]." Mr. Shahid walked towards the passenger side where Tpr. Viviano had exited the car. (*Exhibit 9.*) As the Troopers exited their car, Tpr. Viviano said, "hey, what's up man?" Mr. Shahid said "why are ya'll stopping me? What are you doing?" Tpr. Viviano began to reply, saying, "Because it was just weird..." At this point Mr. Shahid had started to back away from the Troopers. Tpr. Viviano continued saying "it was weird - just relax" but Mr. Shahid then reached with his right hand under his jacket to his waistband and Tpr. Viviano said "Hey, what are you reaching for". (*Exhibit 10.*) At that point Tpr. Minchella had pulled his pistol and held it in the "low ready" position. (*Exhibit 11.*) As Mr. Shahid continued to reach under his jacket Tpr. Viviano pulled and aimed his pistol and said, "don't reach, do not reach, get on the ground." Mr. Shahid then raised his empty right hand to shoulder height palm out, his left hand was still holding a phone near his face. Mr. Shahid continued to back away from the Troopers a few steps before turning and running south on

Essex. Approximately 18 seconds elapsed from the overhead lights being activated to Mr. Shahid taking off running

**c. Chase**

The following is from viewing the BWC videos and individual frames from those videos. Mr. Shahid took off running south on Essex St. Both Troopers pursued on foot. Three seconds into the chase Tpr. Minchella said, "He's got a gun dude." Trooper Viviano had switched from his pistol to taser and attempted to deploy it as they rounded the corner of Essex St. onto Dewey St. It appears one probe hit Mr. Shahid or his clothing, but it was not successful in delivering a charge. (*Exhibit 13.*) As that was happening, Tpr. Minchella yelled twice for Mr. Shahid to drop the gun.

As Tpr. Viviano saw that the taser was ineffective, he dropped it and pulled his pistol out again. Mr. Shahid turned back north and ran through the side yard of a home at the corner of Essex St. and Dewey St. Tpr. Viviano was directly behind Mr. Shahid with Tpr. Minchella a few yards behind him. Tpr. Viviano yelled "drop the gun or I'm gonna shoot you." Tpr. Minchella updated dispatch on the chase. At this point a gun is not clearly visible on the video. However, during the chase it is possible to see that Mr. Shahid has a cell phone in his left hand and another object in his right. (*Exhibit 14 and 15.*) Based on their statements, and what is said on the video during the incident, both Troopers had now seen that Mr. Shahid had a gun in his hand.

Tpr. Viviano continued to yell for Mr. Shahid to drop the gun as the chase approached Pasadena Ave. He ordered Mr. Shahid to "drop the gun" a total of seven times during the approximately 25 seconds between Mr. Shahid taking off running and Tpr. Viviano's first shot. When Mr. Shahid reached Pasadena Ave., he turned west towards the intersection of Martin Luther King Ave. and Pasadena Ave. In Tpr. Viviano's video, the object in Mr. Shahid's right hand can be seen again. In the opinion of the investigating detective, it appears that it is a firearm. (*Exhibit 15.*) Tpr. Viviano described the chase as follows:

SHAHID ran in front of 129 E Dewey St. and cut back north through a grassy field to the west of 129 E Dewey St. As SHAHID turned north, I could clearly see the tan pistol in his right hand as his arms were pumping up and down in a running fashion. Due to SHAHID'S willingness and attempt to draw his pistol upon initial contact while Troopers were standing no more than fifteen feet from him, his refusal to drop the pistol while running, and the amount of times he turned to check our position during the foot chase, I feared SHAHID was planning on using the pistol to shoot and kill us. Because of the above observations, I pointed my department issued pistol at SHAHID while running. I gave SHAHID two more loud verbal commands to "DROP THE GUN!" (verbal direction), each command becoming increasingly more panicked as I

issued it. SHAHID ignored my pleas and ran north through the grassy field, now approaching Pasadena Ave. where he made a slight westward turn towards the intersection of Pasadena and MLK. I issued SHAHID three more loud verbal commands to "DROP THE GUN!" which he ignored (Verbal direction/ Active resistance) I again observed SHAHID look over his shoulder at me. At this time, I was no more than 10-15 feet behind SHAHID who was now running west. SHAHID was heading in the direction of a gas station where innocent bystanders were present.

**d. Shooting**

Mr. Shahid had nearly reached the sidewalk on Pasadena Ave. and Tpr. Viviano was midway through his eighth command for Mr. Shahid to drop the gun when he fired his first shot. Mr. Shahid still has an object in his right-hand. (*Exhibit 17.*) Tpr. Viviano continued to fire as Mr. Shahid began to fall to the ground after being struck by the gunfire. As he went to the ground the object in Mr. Shahid's right hand fell. At this point it is clear from the video that the object was a pistol. (*Exhibits 18 and 19.*) Tpr. Minchella caught up and also fired at Mr. Shahid. A round count conducted shortly after the incident was consistent with Tpr. Viviano firing eight rounds and Tpr. Minchella firing four.

Tpr. Viviano described the moments just before and during the shooting as follows:

I gave SHAHID one last verbal command to "DROP THE GUN!" (verbal direction) which he ignored (Active resistance). I then observed SHAHID slow to a jog and look over his right shoulder at me. As he did this, I observed his right shoulder roll backwards and his arm come up and to his side at a 45-degree angle with the pistol in his hand. At this moment I feared SHAHID was reaching backwards to shoot me. (Deadly force assault) Fearing for my life, Tpr. Minchella's life, and the lives of the innocent public, I pointed my department issued pistol at SHAHID and fired two rounds. (Deadly force assault) I observed SHAHID begin to stumble forward with the pistol still in his hand, his arm/ hand still moving backwards. I fired approximately 6-7 more times at SHAHID, following the deadly threat down to the ground. (Deadly force assault) I observed SHAHID drop the pistol from his right hand, landing on the cement and sliding away from him. I immediately ceased fire when I observed SHAHID drop the pistol.

Tpr. Minchella described the shooting from his perspective as follows:

Tpr. Viviano was just in front of me and offset to the right and I still had a full view of Shahid. I could hear Tpr. Viviano continually yelling to Shahid to drop the gun over and over and

that he was going to shoot him. The foot pursuit continued n/b as we began to approach Pasadena Ave. During this time Shahid continued to peer back at us, and I was in fear that both Tpr. Viviano and I were going to get shot as Shahid never made an attempt to get rid of the gun. I rounded a chain link fence and began to run on a slight n/w angle when I momentarily lost sight of Shahid. I then heard gun shots. I then saw Shahid in my line of sight again and he still had the firearm in his right hand, and he was falling forward. I thought that he was shooting back at Tpr. Viviano as his arm was partially extended. I then yelled to Tpr. Viviano "Watch out" in a panicked voice two times, in fear that he was getting shot at by Shahid. As I shouted warnings to Tpr. Viviano, I raised and aimed my pistol at Shahid's back and shot four rounds as Shahid fell to the ground. At this time, I observed Shahid's pistol fall from his right hand and slide across the cement to the west. As soon as I observed the firearm away from his hand, I stopped shooting. I then observed Tpr. Viviano holding Shahid at gun point, and he appeared to be unharmed at that moment. I radioed into dispatch "49, shots fired - shots fired, Pasadena east of MLK, shots fired, male down, we're secure, start us cars".

**e. After Shooting**

After the shooting, Troopers Minchella and Viviano began to provide first aid to Mr. Shahid. Flint Police and MSP Troopers arrived very shortly thereafter and relieved them. Troopers Minchella and Viviano were assigned "companion Troopers" who accompanied them back to the patrol car to dock their body worn cameras and then transported them to the Flint MSP post where their weapons were seized.

Mr. Shahid was transported to the hospital where he was pronounced dead. The cause of death is Multiple Gunshot Wounds according to the Certificate of Death filed by the Genessee County Medical Examiner's Office. The full medical examiner report was not yet available when this memo was drafted, however, there is no reason to doubt the cause of death based on all the evidence.

Per MSP policy, the investigation of officer involved shootings are conducted by investigators from a different district than where the incident occurred. Here the investigation was conducted by the Second District Investigative Response Team and led by Detective/Lieutenant Edward Price. Their investigation included obtaining the BWC footage of the Troopers involved, the responding troopers and police officers, conducting a neighborhood canvass, obtaining available surveillance video, collecting evidence on the scene, and collecting all the other evidence utilized in this review. The pistol that Mr. Shahid had in his

hand was seized. It had an extended magazine and was loaded with 24 rounds of ammunition. (*Exhibit 20.*)

The ATF traced the pistol's legal purchase history. The pistol was one of two purchased by [REDACTED] on April 20, 2021. Both guns have now been recovered by police, the other pistol was found in a field in Flint by an off-duty MSP Trooper in August of 2022. [REDACTED] has no criminal convictions but has an active warrant for fraud according to the ATF. The pistol had not been reported stolen or sold, we do not know at this time how it came into Mr. Shahid's possession.

Collectively the neighborhood canvass turned up witnesses who heard gunfire and someone yelling "drop the gun" but nothing that added to the investigation or raised additional questions. Video obtained from Holy Trinity Church proved useful, but the other video obtained was not. Mr. Shahid's cell phone data was downloaded. Investigators were not able to determine what he was doing with the phone at the time of the incident. Saved on the phone were multiple photographs of Mr. Shahid holding a variety of firearms, including one that appears similar to the one he was carrying at the time of the shooting. (*Exhibit 21.*) It could not be determined if it was the same pistol.

**f. Relevant Training and Experience of Involved Troopers**

Trooper Minchella described his training and experience as follows:

It should be noted that in May of 2024, I was in a similar foot pursuit with a subject running away from me with a firearm in his hand and I was ultimately shot at with the subject running away from me, narrowly escaping with my life. I have studied many training videos of officer involved shootings where officers have been accurately shot at and even killed by subjects running away with firearms in their possession. I also participated in a training scenario at the MSP Training Academy during RAID Entry Training where I was shot at with sim-munition rounds by a suspect actor who accurately placed shots on me while running and facing away from me.

MSP Incident Report SIS-0000114-24 was reviewed to verify Tpr. Minchella's statement regarding the May 2024 shooting incident. In that incident, Tpr. Minchella was pursuing a suspect who was armed with an AR style pistol. That suspect twisted his upper body around while running away and fired at Tpr. Minchella. Trooper Minchella was attempting to use his taser at the time. He dropped that and returned fire with his duty pistol.

Trooper Viviano described his training and experience as follows:

I have been a Michigan State Trooper in the City of Flint for six (6) years and worked as a Police Officer in Genesee County

for a total of eleven (11) years. I was assigned to the Flint Area Narcotics Group for three (3) years, operating in an undercover capacity where I gained extensive experience identifying armed subjects and the indicators associated with someone carrying an illegal firearm. I have been involved in numerous state and federal investigations pertaining specifically to gang activity, the sale of illegal firearms, and the sale of illegal narcotics. I have personally bought illegal firearms off subjects while operating in an undercover capacity. Based on my training and above experience, I know individuals involved in gang activity routinely wear “shiesty” ski masks to conceal their identity from opposing gangs and law enforcement. The area of MLK and Pasadena Ave. is a known high crime/ violent area where Tpr. Minchella and I have made numerous arrests for illegal weapons, drugs, armed car jackings, and persons with warrants. I whole heartedly believed SHAHID was not discarding his firearm because he was waiting for the right opportunity to use it and shoot and or kill Tpr. Minchella and I. I believe SHAHID was prepared to use his firearm against us at the onset of this incident when he attempted to draw it from his waistband while standing approximately fifteen feet away from Tpr. Minchella and I.

Based on my training and experience, subjects who illegally carrying firearms and run from the police typically discard the firearm prior to or immediately upon police contact in hopes of distancing themselves from the incriminating evidence. SHAHID made no attempts to discard the firearm and continued to look backwards. I feared SHAHID was checking our location to see how close we were to him and planned to use the firearm to shoot Tpr. Minchella and I.

It should be noted that in March of 2021 I was involved in a similar incident where an armed subject was fleeing on foot and was able to shoot at me with his back turned. The Michigan State Police Training Academy teaches recruits that an armed subject running away from you is still a deadly threat and has recruits participate in force-on-force scenarios with this exact scenario.

MSP Incident Report 035-0001577-21 was reviewed to verify Tpr. Viviano’s statement regarding the March 2021 incident. Trooper Viviano was shot at after a traffic stop in the City of Flint, approximately one mile west of the location of the present shooting. In that incident, Tpr. Viviano and a partner initiated a traffic stop. The suspect fled on foot with a pistol in his right hand. The suspect, while running away from the troopers, lifted his right hand, and fired a shot at the troopers pursuing him. Tpr. Viviano returned fire but did not hit the suspect. The suspect dropped his gun, jumping a fence and was located by another officer and arrested.



The content of the training referred to by both Troopers was verified by the investigating detective. The status of the location as a high crime area was also verified by the investigating detective. The Troopers training records were obtained and reviewed to verify their statements.

**g. Materials Reviewed**

- Michigan State Police Reports 35-6087-24, CAN-5279-24, SIS 248-24
- Signed statements of Troopers Robert Viviano and David Minchella
- Patrol Car Video and Body-Worn Camera video from Viviano and Minchella
- Frame-by-frame image extractions from Body Worn Cameras by MSP AVU.
- Genessee County Medical Examiner Investigator's Report and Photos
- Genessee County Death Certificate for Rayvon Shahid
- Surveillance Videos: Holy Trinity Church, Max Pro Wireless, 167 Pasadena side yard.
- Training Records for Minchella and Viviano
- MSP Use of Force policies 05-01, 05-02, 05-03
- CAD and Radio Traffic
- Crime scene photographs
- eDaily reports for Minchella and Viviano
- Cell phone forensic exam and report
- Google maps and streetview

**V. Discussion**

**a. Introduction**

The Trooper's action was analyzed step-by-step. Ultimately, I determined that they were justified in stopping and detaining Mr. Shahid. They had a reasonable suspicion that he was committing a weapons offense, namely Carrying a Concealed Weapon. They would have been justified in conducting at least a pat-down search at the initial encounter. Their orders to get on the ground were legal and by fleeing, Mr. Shahid committed the crime of Resisting and Obstructing a Police Officer. Their pursuit was justified based on their suspicion that he was armed, Mr. Shahid's actions in reaching under his jacket, and that he was presently committing at least one felony. While fleeing, Mr. Shahid held his gun in his right hand, remaining a danger to the Troopers and others. Given the totality of the circumstances and the law regarding the use of deadly force, the shooting of Mr. Shahid was legal under the law of self-defense and fleeing felon. No charges can be issued against Troopers Minchella and Viviano.

The primary sources of information for this review, as detailed above, were the Troopers statements, the body-worn camera, and patrol car video. The videos are an excellent resource; however, they have limitations compared to the human eye as well as in their field of view and recording capabilities. The Troopers

statements are the only source for the Troopers' thoughts and their observations not captured by video. As such, the statements were scrutinized skeptically as if a cross-examination was being prepared. This included comparing the statements to the BWC and PCV videos, the church video, the Troopers' training records, the content of the trainings, and the prior incidents they referenced. I did not find inconsistencies that would call into question the veracity of the Troopers' statements. A "Use of Force Expert Review" was submitted by the Troopers' attorney but was not relied on in making this recommendation. Without questioning that author's training, experience, or integrity, it was prepared in defense of the Troopers actions and naturally did not subject their statements to the same scrutiny that I do.

**b. Stop**

Troopers Minchella and Viviano were justified in stopping Mr. Shahid. They would have been justified in conducting a pat-down search for weapons. If Mr. Shahid had complied rather than run, and the pistol was discovered, it would have been admissible against him at trial. By pulling up in front of Mr. Shahid and turning on their overhead lights, the Troopers were, for the purposes of the Fourth Amendment, making a seizure of Mr. Shahid. "A police officer may, in appropriate circumstances and in an appropriate manner, approach a person for purposes of investigating possible criminal behavior even though there is no probable cause to make an arrest" *Terry v Ohio*, 392 US 1, 22; 88 S Ct 1868; 20 L Ed 2d 889 (1968). In his initial view of Mr. Shahid, Tpr. Minchella saw that he was wearing a ski mask outdoors when it was not appropriate based on the weather conditions, he was holding an object at his waistband, he was in a high crime area, and he quickly ducked behind a building to avoid Troopers. Such conduct justifies a seizure and a brief over the clothes search for weapons, known as a *Terry* stop.

Where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot, and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him. *Terry v Ohio*, 392 US 1, 30; 88 S Ct 1868; 20 L Ed 2d 889 (1968)

Standing alone, Mr. Shahid's presence in a high crime area would not justify a *Terry* stop, however it is one of the relevant contextual considerations in a *Terry* analysis. *Adams v. Williams*, 407 U.S. 143, 144, 147-148, 92 S.Ct. 1921, 32 L.Ed.2d 612 (1972). "[N]ervous, evasive behavior" is another relevant factor in determining reasonable suspicion. *Illinois v Wardlow*, 528 US 119, 124; 120 S Ct

673; 145 L Ed 2d 570 (2000). Taking all of the observations and relevant factors together, the Troopers were justified in stopping Mr. Shahid and would have been justified in a pat-down search. Such a search would have led to the discovery of the pistol with extended magazine. There would then have been probable cause to arrest and charge Mr. Shahid with firearm offenses.

**c. Chase**

Immediately following the stop, Mr. Shahid began reaching under his jacket to his waistband. He made no statement that he was armed, that he was retrieving a weapon, or anything related to that nature. The officers reasonably believed, based on their prior observations of Mr. Shahid and their training and experience, that he was reaching for a gun and meant them harm. They ordered him to stop reaching, which he did, and to get on the ground, which he did not. These were legal orders. By instead running away from the officers he was committing the crime of Resisting and Obstructing a Police Officer, a felony. The Troopers were justified in pursuing Mr. Shahid to arrest for the Resisting and Obstructing and investigate the possible firearms offense.

**d. Shooting**

The Trooper's decision to use deadly force against Mr. Shahid by shooting him was justified under the circumstances as self-defense and defense of others.

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

The Michigan Model Criminal Jury Instructions state in M Crim JI 7.15 (Use of Deadly Force in Self-Defense) that if an individual acted in lawful self-defense, their actions would be justified, and thus, they would not be guilty of crime. In making this determination one "should consider all the evidence" and should consider the following three rules, judging the individual's actions according to how the circumstances appeared to that individual at the time they acted. The first rule provides that the individual must "have honestly and reasonably

believed that [they were] in danger of being [killed/seriously injured/sexually assaulted].” *Id.* The individual need not be correct in their evaluation of the danger presented, so long as their belief was honest and reasonable. Second, the threat against the individual must have been in fear of death, seriously physical injury or a sexual assault. In making this evaluation, one should consider all the circumstances surrounding the action and consider how they appeared to the individual at the time they reacted. *Id.* Third, the individual must have believed the threat was immediate and they used the amount of force necessary at the time to protect themselves. *Id.* See also, *People v. Goree*, 296 Mich. App. 293 (2012) and *People v. Conyer*, 281 Mich. App. 526 (2008).

While an individual may only use the deadly force where it is necessary to do so, they do not have a duty to retreat. M Crim JI 7.16. An individual does not have to retreat from attack if they “reasonably believe that an attacker is about to use a deadly weapon, nor if the [individual] is subject to a sudden, fierce, and violent attack.” *Id.* An individual also does not have to retreat if they were not engaged in the commission of a crime, had a legal right to be where they were and had an honest and reasonable belief that the use of deadly force was necessary to prevent imminent death, great bodily harm or sexual assault. *Id.* See also, *People v. Riddle*, 467 Mich. 116 (2002) and *People v. Conyer*, 281 Mich. App. 526 (2008).

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

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

The Troopers were presented with a person acting suspiciously and believed to be armed based on their observations, training and experience. As such, they approached him with caution. Reaching for his waistband served to confirm those suspicions that he was armed and - more importantly - that he was

prepared to pull his pistol and shoot the Troopers. Almost immediately after the chase began Tpr. Minchella called out that Mr. Shahid had a gun. Despite this, Trooper Viviano first attempted to subdue Mr. Shahid with his taser. Trooper Viviano then repeatedly yelled for Mr. Shahid to drop the gun. While there may be innocent explanations for why he did not, the Troopers' experience is that guns and other contraband are purposefully dropped or thrown during a foot pursuit. That Mr. Shahid refused and held the pistol in his hand until he was shot, reasonably factored into Trooper Viviano's decision regarding the danger posed to himself and others. Both Troopers experiences of being shot at by a suspect running away from them reasonably factored into their belief that Mr. Shahid continued to present an imminent threat of death or great bodily harm. Mr. Shahid was armed with a pistol, refused to stop for police, refused to drop the gun, and was running towards an area where more bystanders would be located. It was only after attempting all available non-deadly means to stop Mr. Shahid, and as the danger to the Troopers and public continued to escalate, that deadly force was employed.

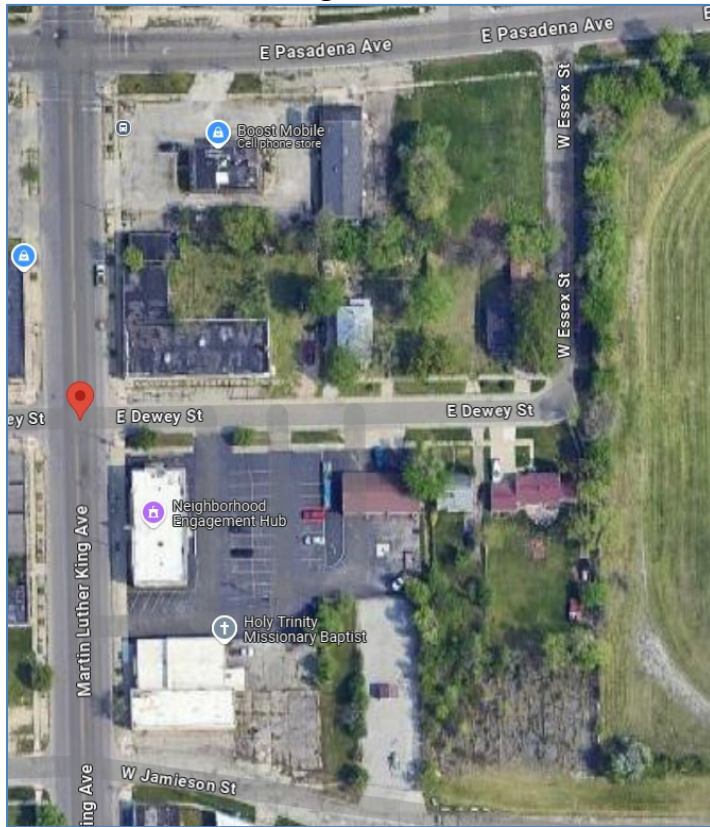
Based on all the available evidence, the Troopers belief that deadly force was necessary was both honest and reasonable under the law. MCL 780.961 prohibits our office from issuing criminal charges in this case where we cannot prove that the use of deadly force was unjustified. Charges against Troopers Minchella and Viviano must be denied.

## **VI. Conclusion**

- a. No charges may be issued against Troopers Minchella and Viviano.

Press release: Yes

1. Martin Luther King Ave to Essex St., Pasadena Ave. to Jamieson St.



2. Google Streetview – Holy Trinity Church and parking lot entrance



3. Mr. Shahid looking back while walking north on Martin Luther King Ave.



4. Patrol Car visible in distance, Mr. Shahid still on the sidewalk.



5. and 6. Two cameras showing patrol car on street and Mr. Shahid in the alley at 18:32:34 timestamps.



7. Person matching Mr. Shahid's clothing and last known direction walking east on Dewey





8. Mr. Shahid walking north while patrol car is coming to a stop on Essex St. -PCV



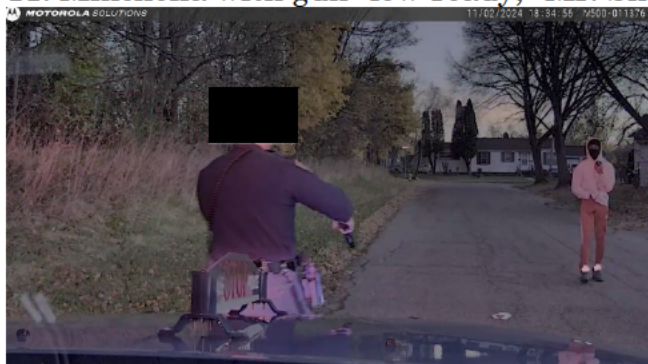
9. Mr. Shahid walking towards passenger side of patrol car – PCV



10. Mr. Shahid backing up and beginning to reach under jacket. – PCV



11. Minchella with gun "low-ready," Mr. Shahid backing up with hand under jacket.



12. Mr. Shahid raising his right hand. – Tpr. Viviano BWC



13. Taser lead from Trooper Viviano's attempt. – Viviano BWC



14. Object in Mr. Shahid's right hand as he rounds a house and turns back north. – Viviano BWC.



15. Cell Phone in Mr. Shahid's left hand approximately one second after image in Exhibit 14. – Viviano BWC.



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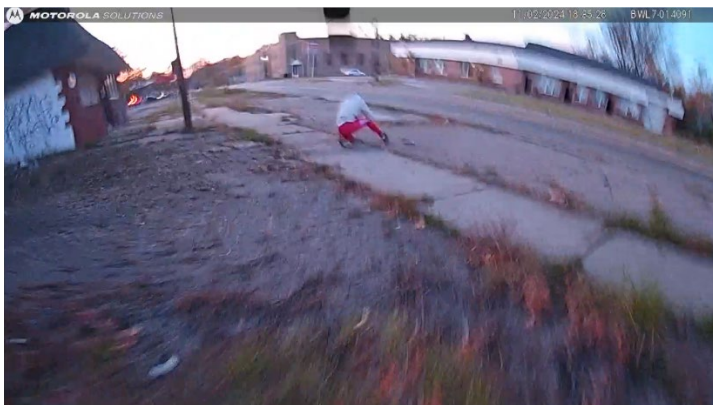
16. Mr. Shahid begins to turn left (west), and an object is visible in his right hand, consistent with a firearm in the opinion of the investigating detective. – Viviano BWC.



17. Mr. Shahid reached the sidewalk, the object in his right hand is still visible. – Viviano BWC.



18. As Mr. Shahid is struck by gunfire the object falls out of his right hand. It is now apparent on video that it is a gun. – Viviano BWC



19. Mr. Shahid and the pistol that fell from his hand and slid towards the road. – Viviano BWC.



20 and 21. Pistol recovered from the scene after ammunition was unloaded. Photograph from Mr. Shahid's cell phone with similar pistol.

