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PRESS RELEASE M-37 SHOOTING

FACTS

On May 22 at approximately 3:30AM, Kent County Sheriff's deputies were dispatched to M-37 across from the Sparta Chevrolet dealership. The report was that two people had been shot and were in the road on southbound M-37. When deputies arrived on the scene, they found two males lying on the ground outside the driver's door of a blue pick-up truck parked on the shoulder of M-37. One of the males, Benjamin Dudley, was conscious and talking. The other person was his brother, Donald Dudley, who was positioned over Benjamin's legs and was not moving or talking. Donald was pronounced dead at the scene; Benjamin was taken to the hospital by ambulance.

Two separate 911 calls came in at virtually the same time regarding this incident. One call came in from Aja Cruz who was driving the vehicle the Dudley brothers were in as this incident developed. Her statement in the 911 call, and her subsequent statements to police remained consistent. Aja stated she was driving Donald to work at the time of the incident. She had been with both brothers at their home on Bailey Road the previous day, and Donald needed to get to work at the Shell gas station on 44th Street in Wyoming. They initially had planned to go around 11PM, but then decided to go later. Donald was too tired to drive when they left in his car at approximately 2:30AM so she drove. Donald was in the back seat lying down, while his younger brother Benjamin was in the front passenger seat as they traveled down M-37 towards Wyoming.

They made a brief stop at the Speedway gas station in Kent City, which was confirmed by video from the Speedway. As they turned on to M-37 again after stopping at the Speedway, a pick-up truck came up in close proximity behind Aja. She estimated her speed to be about 60 miles an hour at the time, and stated the headlights of the pick-up truck were in her rear-view mirror "blinding her." Benjamin, who was in the passenger seat, motioned out the window for the truck to pass. Aja then slowed down to approximately 40 miles an hour to allow the truck to pass. At this time the driver of the truck honked the horn, flashed the bright headlights, and eventually passed her.

After the truck passed, Aja indicated that the truck braked in front of her, going down to almost 30 miles per hour on M-37, so she tried to pass the truck. The truck then sped up and would not allow her to pass. The truck then sped up even further, creating separation between the two vehicles. Aja indicated this driving made Donald and Benjamin angry. They told her to speed up and catch the truck, so she increased her speed to at least 80 miles an hour, perhaps even faster, but the truck continued to pull away. The truck eventually slowed for a flashing yellow light, which allowed her to catch up to the truck. Aja described Benjamin and Donald as "pissed" and "mad" about what was happening. They were calling the driver of the truck a "dick" and a "bitch", and Benjamin wanted to throw a plastic water bottle at the truck if they got close enough, but she was not sure if he threw anything at the truck.

As truck slowed down further; Aja then passed the truck, going approximately 65 miles an hour at this time. After this, the truck then passed her again, but then suddenly pulled to the shoulder of the road and stopped. Donald and Benjamin told her to pull in behind the truck. According to Aja, she did not even finish putting her car in park when Donald and Benjamin had the door open and were getting out of the car to approach the driver of the truck. In her statement, Aja indicated they were "ready to go," when they exited the vehicle. She also stated to deputies that she stayed inside the car when the other two went to the truck.

Benjamin Dudley, the surviving brother, was able to make a statement as well about what occurred. His statement essentially mirrors what Aja told sheriff's deputies regarding what led them to stop behind the truck. He describes the multiple passes, honking and flashing lights during the driving. He admitted he tried to get the truck to pass them by waving his arms out the window. In addition, he admitted to throwing a water bottle at the truck as it passed on one occasion. Benjamin confirmed he was angry due to the fact the truck had been flashing bright lights making it difficult to see. He also stated that he and his brother got out of the vehicle to confront the driver of the truck while Aja stayed in the car.

The driver of the pick-up truck was Robert Chipman. Surprisingly, his statement does not vary much from what the two in the other vehicle indicate occurred, other than who was to blame for the driving. Robert stated he was traveling to work down M-37 and, as he got near Kent City, a car pulled out in front of him. It was not dangerous, there was enough room, but he described the car as "all over the road" swerving in the lane as it got up to 50-55 miles an hour. At the time he was unable to pass the car since it was a no-passing portion of M-37. He could tell the occupants of the car were agitated because he saw someone motion out of the passenger window to pass. He decided not to pass because it was not safe. The car then slowed to 30 miles an hour, it appeared the occupants expected him to go around them. He admitted he flicked his bright lights at them to "acknowledge" that they were trying to get him to pass, and when he got to the passing lane, he sped up and passed. He then honked his horn as he passed, "to let them know" he was passing them.

Robert said he then got up to approximately 100 miles an hour to try to get away from the car. However the car sped up as well and was "right on his tail" going down M-37. He indicated he slowed down, and after he slowed down, they passed him at that point there was yelling from the car but he could not make out what was being said. As they passed, something was thrown from the car and hit his truck; the car then slammed on the brakes. He then sped up and passed the car again, and after he got around it, he decided to pull over and call 911 and try and obtain the license plate of the car due to everything that was happening.

Robert explained that he needed to stop because his phone was inside his lunch box on the passenger side of the truck. When he stopped, he noticed the car stopped directly behind him. Robert indicated he saw three people outside the car directly behind his truck. One of them hit his truck again with something and he opened his door to get out. Robert told deputies that as he got out, he was grabbed almost immediately by one of the individuals. At this time, he believed he was being attacked by three males; he described as "kids", but only knew that because one of them said "I'm only 18" after the shooting occurred.

According to Robert he was only able to get out of the truck and put his feet on the ground before he was grabbed. As he was grabbed, he was pushed back into his truck. He described being held by one person as another hit him in the face. Photos taken after the incident show he did have a swollen,

bloody lower lip. Robert said the two were yelling at him although he could not describe what they were saying. Robert said he was never hit either of them; he was simply defending himself as they were grabbing and hitting him. While he was being assaulted by two individuals, Robert told the deputies that he saw the third individual approaching, who he believed had something in their hand. Robert thought that he was going to be struck by some sort of object as this third person approached.

Robert is a valid CPL holder and was armed that morning. He had a 40 caliber Smith & Wesson semi-automatic in the small of his back. He indicated he felt "there was no way out" and "there was nothing he could do" when he saw the third person approach with the object. He told the deputies that he pictured himself lying on the side of the road beat up and he felt trapped. Robert pulled his gun out and fired. He indicated he only fired twice. He believed he shot the person on his right first while the person on his left was still hitting him. He then fired at the person on his left. Sometime during this, one of them yelled, "I'm only 18." The third person then took off in the car. Robert then got to his phone and called 911.

The statements by Aja and Benjamin about what occurred after their car came to a stop are somewhat different. Aja claimed she never got out of the car, but she witnessed the driver of the pick-up get out and approach Benjamin and Donald. They confronted each other between the truck and the car, slightly closer to the truck. There was yelling between all three of them; she cannot state for sure what was being said other than Donald and Benjamin calling the driver of the truck "a bitch" for how he was driving. She stated she saw the driver of the truck swing at Donald, who was in front of Benjamin. Donald then pushed the driver up against the side of his truck. Benjamin then joined and pushed the driver against the truck as well, and this is when she heard a single gun-shot. She described seeing Benjamin "fly" into the road and drop onto the ground on his back. He was not moving and appeared to be unconscious. She then heard two more shots and saw Donald fall immediately after hearing those shots. She described him falling to his left side and holding his face. Aja drove off at that point; as she left she indicated she heard the driver of the truck yelling, "What now bitch?" She proceeded through a Michigan U-turn on M-37 and called 911 when she felt she was a safe distance away.

Benjamin gave two statements; one at the hospital just after the incident occurred and the other a few days later. In his first statement, he indicated Donald got to the driver's side door first as the truck driver exited. There was a brief argument over the lights and then a physical fight began with his brother punching the driver of the truck. As the two of them exchanged punches, he entered into the fight by either pushing or holding the driver. According to Benjamin the driver then broke free, reached into the truck, and got a gun. Benjamin said he was shot first; he recalled waking up on the ground. He then realized his brother had been shot and was on the ground as well.

Benjamin's second statement was slightly different. He once again admitted that he and his brother got out of the car and went to the driver's side door of the truck. In this interview, he stated he knew his brother wanted to fight the driver of the truck. He said his brother told him to, "beat his ass" and that he (Donald) was going to "beat his ass bro." Benjamin claimed he was not looking to fight but just went to the truck with his brother. When they arrived at the door, the driver of the truck exited and Donald and the driver immediately grabbed each other. He stated both of them punched each other in the face one time, though he could not tell who threw the first punch. In this statement Benjamin claimed he did not get involved at all. His brother then pushed the driver back into the truck, the driver suddenly emerged with a gun in his hand and immediately began shooting. This time he said Donald was shot

first, then he was, and he did not know how many shots were fired. He fell down and began to cry, asking the driver for help as Aja drove away. He did not recall the driver saying anything else but noticed the driver of the truck was standing in the area on his phone.

There is only one other witness to the events that morning, and this person came upon the truck parked on the shoulder after the incident happened. This individual said he noticed a vehicle on the side of M-37 as he was going southbound to work. He noticed the brake lights then the hazard lights go on so he slowed down. As he passed the vehicle, he noticed a man, later identified as Robert, standing in the door jam of the truck. Two individuals were lying on the ground just in front of the open driver's door so he stopped to help. He asked the man standing if everything was OK and the man yelled to him to "stay back" and that he had just been "jumped" so he shot the two people. The witness indicated that Robert was already on the phone to 911. He stated Robert then unloaded his gun and placed the gun on the hood of his truck as they waited for police to arrive.

The physical evidence supported the fact this incident occurred directly outside the driver's door of Robert's truck. Both Benjamin and Donald were on the ground within the area of the door between the body of the truck and the open door. The evidence shows that Robert actually fired three times; three spent shell casings were found at the scene. Two casings were on the ground directly next to the left leg and foot of Donald; his feet were almost under the truck, clearly inside the fog line of the road. The other casing was found in the pocket inside the driver's door. Benjamin suffered three wounds; one shot went through the left forearm and passed through into his left hip. The other shot went into the left side of his chest and continued on into the right side of his back. Donald was shot in his face. The bullet went into his left cheek and traveled through his brain and lodged in the right occipital region.

THE LAW

The rule of self-defense is well established in Michigan law. As a general rule, the use of deadly force against another person in self-defense by one who is free from fault is justifiable if, under all the circumstances, he honestly and reasonably believes that he is in imminent danger of death or great bodily harm and that it is necessary for him to exercise deadly force. *People v Riddle*, 467 Mich 116, 119 (2002). The use of deadly force in self-defense is justified where the actor (1) is not the aggressor, (2) acts under an honest and reasonable belief that he is in danger of death or great bodily harm, (3) retreats from the scene if possible, and (4) the only recourse lay in repelling the attack by the use of deadly force. *People v Heflin*, 434 Mich 482, 502-503, 509 (1990).

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

Even under the Self-Defense Act, however, self-defense is not justified simply on a belief that deadly force is needed to repel an attack. Rather, the actor's belief must be both honest and reasonable. *Heflin*, *supra*. Reasonableness depends on what an ordinarily prudent and intelligent person would do on the basis of the perceptions of the actor. *People v Orlewicz*, 293 MichApp 96 (2011); citing *People v Doss* 496 Mich 90(1979) The belief does not, however, have to be correct. Self-defense justifies the use of deadly

force in response to an honest and reasonable belief that such force is required to prevent death or great bodily harm, even if that belief is in error. *People v Shelton*, 64 Mich App 154, 156 (1975). In addition the burden is not on the defendant to show he acted in lawful self-defense, the prosecutor has the burden of proving beyond a reasonable doubt that the defendant did NOT act in self-defense. *CJI2nd 7.20*

CONCLUSION

The appropriate use of deadly force in self-defense is a factual question. Each case is different; there is no “checklist” of when a person may use deadly force, or when it is not appropriate. The main question in this case is: Did Robert have an honest and reasonable belief he was in danger of being killed or seriously hurt on the side of M-37 that morning? Put another way, what would an ordinarily prudent and intelligent person do based on the perceptions he had on that morning? Our standard jury instruction on this issue also gives guidance on what to consider when looking at these questions.

In deciding if the defendant’s belief was honest and reasonable, you should consider all the circumstances as they appeared to the defendant at the time. A person may not kill or seriously injure a person just to protect himself from what seems like a threat of only minor injury. The defendant must have been afraid of death or serious physical injury. When you decide if the defendant was afraid of one or more of these you should consider all the circumstances: (the condition of the people involved, including their relative strength/whether the other person was armed with a dangerous weapon or had some other means of injuring the defendant/the nature of other person’s attack or threat/whether the defendant knew about any previous violent acts or threats made by the other person. (*CJI2nd 7.15*)

What were the circumstances as they appeared to Robert? He pulled over to the side of the road to call 911 and try and get the license plate number of the car. Aja and the two brothers were not forced to stop behind him; they made that decision to do so. Robert had a strange car behind him on a deserted, dark stretch of road in the middle of the night. There had been an extended period of reckless driving between the two vehicles. Robert knew something had been thrown at his truck; at that point he has no idea it was just a water bottle. Both Benjamin and Donald immediately approached him with hostile intent. The evidence of hostile intent did not come from Robert; it came from the statements of Aja and Benjamin. Both of them describe the agitation in the car before the stop. Aja indicated the brothers were using the term “bitch” and “dick” when talking about the driver of the truck. Benjamin admitted throwing a water bottle at the truck. Aja stated the brothers exited her vehicle before she could even put it into park and that the two of them were “ready to go.” Benjamin stated his brother told him to “kick his (the driver’s) ass” and Donald indicated he wanted to do the same. It is obvious they did not approach the truck in a calm, peaceful manner simply looking to talk.

Robert described being assaulted immediately upon getting out of his truck. Benjamin supported this statement. In Benjamin’s first statement, he said his brother threw the first punch; in his second statement he indicated he and his brother made it to the door before Robert was even able to get out, and when he does get out his brother and Robert start grabbing each other immediately. Right away, this was a two-on-one situation, Robert was in between his open door and the body of his truck being confronted by two angry individuals. Even if Benjamin did not make physical contact, he was right there with his brother who was assaulting Robert. Robert had nowhere to go, he could not retreat, he was engaged in a physical confrontation and Robert then describes a third person approaching. Robert believes this third person was going to join in the assault armed with some sort of object. Clearly there is

a difference in the versions here; Benjamin said Aja never got out of the car, and Aja states that as well. It is impossible to determine who is telling the truth here, or if someone is simply mistaken, since there are only three people who can tell what occurred. Robert believed there was a third person, he believed he had no other options at this time, and by his own statement felt, "there was no way out." In that moment he decided to use his firearm.

The prosecution has the burden of proving beyond a reasonable doubt that Robert did not act in self-defense. Based on all of the facts and evidence we have at this time, we cannot meet this burden. The facts clearly show Robert was not the aggressor, the two brothers were. In this case, the altercation was at least two-on-one, with the possibility of it being three-on-one. Robert indicated he felt trapped with no possibility of retreat. He felt a third person may assault him with an object. The evidence shows that he had been struck in his face at least one time. He was in a situation where there was no other person on the road, an extremely slight possibility anyone else would come down the road at that hour to assist, so the options Robert had were limited. The law does not require him to be beaten to the point of death or unconsciousness **BEFORE** he can resort to the use of deadly force. It only requires that the person honest and reasonably **BELIEVE** it is needed at the time he acted, given all of the circumstances. Given the facts presented here; it is impossible to prove beyond a reasonable doubt that the actions of Robert were not done lawful self-defense. Therefore, charges will not be filed.

This is the second "road rage" incident this office has dealt with in the last year. In September of 2016 William McFarland was beaten to death by Christian Hillman near Kalamazoo and 52nd Street. That trial has just concluded in 17th Circuit Court with Mr. Hillman being found guilty of second degree murder. Similar to this case, that case started over an argument regarding driving. Just like this case the driving escalated to a point where both parties pulled over to the shoulder of the road. Mr. McFarland was driving a truck, got out of his truck, and there was a fight between him and Mr. Hillman. As Mr. Hillman put it in his statement to police, there was a "thorough ass beating." Mr. McFarland died as a result of getting beaten to death; nothing more than a one-on-one fight between two individuals at the side of the road, nothing more than fists and feet being used to kill William McFarland. Robert indicated in his statement with deputies in this case that he was worried about "being found on the side of the road beaten up." When examining what happened with Mr. McFarland, Robert's fear was not a far-fetched thought.

Both cases show the risks inherent with confronting other individuals over their driving. Two people have died over such arguments, another may be paralyzed. To what ends? No good can come from pulling over to the side of the road and confronting another driver about what they did/did not/or should have done with their driving. Find a public place to pull over; go inside a gas station, a store, anywhere there are other people who may assist or be witnesses and call the police. Let police handle the situation, do not deal with individuals in another vehicle alone on the side of the road. Nothing beneficial will occur by confronting another driver.



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Date