

PROSECUTING ATTORNEY

CRIMINAL DIVISION
82 Ionia Ave N.W.
Suite 450
Grand Rapids, MI 49503-3022
Telephone: (616) 632-6710
Fax: (616) 632-6714



CHRISTOPHER BECKER
Prosecutor

MONICA M. JANISKEE
Chief Assistant Prosecutor

FACTS

In the early morning hours of September 3, 2017, the Kent County Sheriff's Department Tactical Apprehension and Confrontation Team (TACT) assisted the Drug Enforcement Agency (DEA) in executing multiple search warrants in the Grand Rapids area. In addition to search warrant assistance, TACT would also assist in the apprehension of at least two individuals believed to be engaged in trafficking illegal narcotics. The two individuals were Yusef Phillips and Ray Lee. Mr. Phillips was shot when TACT members went to apprehend him during this incident.

Members of TACT were briefed by the DEA prior to engaging in the operation. It was believed that the two individuals would be meeting a semi-truck in the area of 28th Street to obtain a large amount of narcotics. The suspects would then take those narcotics to a "stash house", in this instance an apartment located at 3841 Whispering Way Drive SE. At the briefing TACT members were informed by the DEA that both suspects were known to employ counter-surveillance techniques and have cameras around their property so great care was needed so as not to be seen. In addition, DEA had information that both men were thought to be armed, both had extensive criminal histories, and may have a large amount of cash on them. Much of this information later proved true; when a search warrant was executed at the apartment located at 3841 Whispering Way Drive police recovered 30 kilograms of heroin and cocaine, multiple pounds of marijuana, almost \$1 million dollars, three handguns, an assault rifle and body armor.

TACT members were split into two teams for the apprehension. TACT 1 was assigned to cover the east side of the apartment and prevent the suspects from running. TACT 2 was assigned to apprehend the suspects after they left the building. There were 8 officers assigned to TACT 2 for the operation. The plan had them positioned on the south side of the building while the two suspects were inside the apartment. When the two came outside, TACT 2 would arrest them after they had left the building, but before they were able to make it into their vehicles.

Both teams staged away from the Whispering Way apartment, but were provided information by another officer who was following Mr. Phillips and Mr. Lee. At approximately 3:45 in the morning the two individuals arrived at the Whispering Way apartment and went inside. Both teams assumed their planned positions. TACT 2 was on the south side of the building, two of the members were solely focused on the rear of the building while the other 6 members waited for Phillips and Lee to exit. There was another officer, separate from either

TACT, who was positioned to observe the door and inform both teams when the two suspects had left. There was also a video operation, run by the DEA as part of their on-going investigation, which was recording the apartment entrance, which captured the incident.

Just before 4AM Mr. Phillips and Mr. Lee exited the apartment building. The officer assigned to observe the entrance communicated to each TACT when they had left, and more importantly that the entrance door had shut behind the two subjects. The door was a common entry door, it would lock behind them, and it would make it extremely difficult for the two subjects to flee back into the building when confronted by TACT. Once the door was shut, the plan had TACT 2 move in to apprehend both subjects.

The vast majority of information on what occurred comes from what can be seen on the video. However, the video is not a clear video, does not have sound, is taken from a distance, and at best the images are blurry. An attempt was made to enhance the quality by sending it to the Michigan State Police, but there was nothing that could be done to improve the quality. Most of officers on scene did not see what happened, and none of the TACT members on either team wore a body camera. TACT 1 was further away, and had just started to move when the shot was fired. All the members of that team heard a single shot, none of them saw what happened. The same is true for many of the members of TACT 2. As stated earlier, two were positioned to observe the rear of the building and they never moved to the front of the building to assist in the apprehension. Of the six remaining officers on the team, only four of them were around the corner of the building and able to observe the suspects. The deputy who fired the round was Andrew Hinds. He was the "point" person and the first team member to approach the suspects. Just behind him and slightly to his left was Deputy Anthony Ysquierdo. Deputy DeBoode followed him, Deputy Brunner was next, followed by Deputy Abram. These were the only individuals to make it around the corner and able to witness anything that occurred in front of the apartment building.

Moving from the back, Deputy Abram writes in his report that he is essentially rounding the corner of the building when he hears a single shot. Before he got to the corner he heard someone yelling, "Police" but was unable to see anything until after he came around the corner. As he came around the corner and heard the shot, he witnessed Mr. Lee go between two cars and he followed Mr. Lee to make contact with him. He never saw where the shot came from or who fired. Just in front of Deputy Abram, Deputy Brunner got around the corner and he too sees both suspects walking down the sidewalk. He indicated he was perhaps four steps past the corner when he hears a shot. He had no idea where it came from or who fired. He then went towards the vehicles to assist in arresting Mr. Lee. Deputy DeBoode was the team leader and was the third individual in line. He stated that he heard from the officer watching the door that the two suspects were out of the apartment. Just after he heard this information he notices that the point person, Deputy Hinds, moves out of cover and begins to approach the sidewalk. Deputy Ysquierdo followed Deputy Hinds, he then followed behind these two to approach the suspects. Deputy DeBoode immediately recognized Mr. Phillips wearing a white tank top. Mr. Phillips was just behind Mr. Lee who was in a dark blue hooded sweatshirt and the two of them were walking away from where the deputies were coming around the corner.

They were going towards the parking lot. Deputy DeBoode remembers yelling, "Police!" and states Mr. Phillips "redirects" his attention towards him when he yells. Almost instantly after that Deputy DeBoode hears a single gunshot. He did not know until later who fired the shot, but does notice that Mr. Phillips has been shot and approaches him to handcuff him for safety before applying aid.

Deputy Ysquierdo is the second deputy in the stack and closest to Deputy Hinds who fired the round. He is the only witness to the fact that Deputy Hinds fires the round that struck Mr. Phillips. When he left the cover of the building, Deputy Ysquierdo indicated he could see both subjects walking down the sidewalk of the apartment building. He made the decision to go towards the back of them, nearest to the door so they would not attempt to run back into the building. The two subjects are walking away from them, and he along with others begin to yell, "Police. Stop, get on the ground!" There was a considerable amount of yelling. He stated he saw Mr. Phillips turn and he had something in his hand. He did not know what it was. Mr. Phillips hands also went towards his waistband as he turned. Mr. Phillips raised his hands and at this time Deputy Ysquierdo heard a single gunshot, and Deputy Ysquierdo saw him drop whatever was in his hand. Mr. Phillips hands then went towards his chest and grabbed his chest, Deputy Ysquierdo saw blood on the front of the shirt of Mr. Phillips. Mr. Phillips then went to the ground where he was handcuffed and searched, then the deputies began to render aid.

Deputy Ysquierdo states he saw something in the hand of Mr. Phillips at the moment when Mr. Phillips initially turned around. "It looked like he was carrying something. I didn't know if it was gonna be a bag, or keys or phone or wallet or whatever. I see something there I don't know what it is." Deputy Ysquierdo did not know what Mr. Phillips was going to do at this point. He felt Mr. Phillips may run, ignoring the commands to get to the ground and was pulling his pants up to do that, or Mr. Phillips may have been reaching for something else in his pants. He told detectives from GRPD the actions of Mr. Phillips, "...suggested to me he was taking action other than what we asked him to do." The shot occurred only a "couple seconds", by his estimation, after they had started yelling at the two suspects. When asked by detectives why he did not fire when he saw Mr. Phillips act the way he did, he answered it was, "just uncertainty. Like I didn't know what I saw. So I didn't feel comfortable taking action." He did state that Deputy Hinds had a different angle from him and could not speak to what he may have seen during this incident.

Deputy Hinds, the deputy who fired the shot, was the first person in the stack and the first person to confront both suspects. He indicated he moved towards the two of them in order to get as close as possible to prevent them from fleeing. He indicated he yelled as he approached, "POLICE, get on the ground!" When he did this Mr. Lee began to go towards the ground, but Mr. Phillips did not. He observed Mr. Phillips turn towards him, looking directly at him and did not obey his command. Mr. Phillips then reached with his right hand into the front part of his waistband area, "Yusef then turned quickly with his right arm coming in an upward motion. Through my aim point I could now see Yusef was quickly turning and moving his body in a swift movement around towards myself and my teammates. I believed he posed an

immediate threat. Fearing for the safety of myself and my teammates I squeezed off one round.” Deputy Hinds gun was taken from him after the incident, it was verified only one round was fired from his rifle.

The Grand Rapids Police Department was the investigative agency on this incident. They attempted to interview Yusef Phillips, only focusing on what happened outside when he was shot. He declined three different times to be interviewed. This is not surprising given the fact he is facing federal narcotics charges, I would not expect him to make a statement at all given that fact. Ray Lee did agree to speak with GRPD, only pertaining to what happened when Mr. Phillips was shot. He told police when the two of them came out of the apartment they did hear someone yell, “Freeze!”; they both turned to look and a shot rang out just after they turned to look where the yelling came from. After the shot he immediately went to the ground.

The video of what happened was sent to Chris Lawrence of Elgin Security Consultants. He was referred to the Prosecutor’s Office by the Force Science Institute which was contacted by our office to assist in the analysis of the video of this incident. Mr. Lawrence is the President of Elgin Security Consultants and his credentials and full report can be found attached at the back of this opinion. In his report Mr. Lawrence found that from the time the door opened with the suspects exiting the apartment building, and the shot being fired, was approximately 16.42 seconds. TACT 2 waited almost 10 seconds to move after the suspects opened the door; from the time the door opened, and the start of movement by TACT 2 around the corner of the building, 9.94 seconds elapsed. Since there is no audio, either Mr. Phillips recognizes movement coming from his right, or hears the commands of the deputies, since from the video that he turns his head towards the deputies’ 0.91 seconds after they move from their cover at the corner of the building. Mr. Lawrence could see Mr. Phillips crouch in the video; this occurred approximately 0.53 seconds after his head moved to look at the police officers approaching. From the report of Mr. Lawrence, it appears that the first discernable movement by Mr. Phillips when he turns his head towards TACT 2, until the shot was fired occurred in 1.91 seconds.

To give context as to what these times mean, Mr. Lawrence includes response time studies in his report. In one study, a subject had to raise a pistol from the side of their leg to fire at an officer in front of a subject, that shot was accomplished on average in 0.36 seconds. In another study police officers were asked to fire a pistol pointing at a target in response to a single light coming on in staggered times, reaction times averaged 0.25 seconds. When stimuli were more complex,(officers needed to react to a cluster of three lights where one or two lights in the cluster needed to be ignored), the reaction time doubled to 0.56 seconds. He also found a non-peer reviewed study which showed an untrained subject can remove a pistol from a waistband and discharge it towards a person standing in front of him in about 0.25 seconds. In his conclusion he found, “Given the context of the investigation, the information provided to the TACT members, and the potential for armed confrontation, waiting to determine if shots are being fired takes longer than is required to shoot at police.”

The only thing that could have been in the hands of Mr. Phillips when he was shot was a set of car keys. A cell phone was pulled out of his back pocket when he was searched, no gun or any other weapon was found on him. A set of car keys was found in the grass near where Mr. Phillips fell.

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).

In 2006 by the Michigan Legislature codified the law regarding self-defense when it passed the Self-Defense Act (SDA), MCL 780.971, *et seq* which sets forth the circumstances in which a person may use deadly force in self-defense.

- 1) An individual who has not or is not engaged in the commission of a crime at the time he or she uses deadly force may use deadly force ... if either of the following applies:
 - a. The individual honestly and reasonably believes that the use of force is necessary to prevent the imminent death of or imminent great bodily harm to himself or to another individual.
 - b. The individual honestly and reasonably believes that the use of deadly force is necessary to prevent the imminent sexual assault of himself or of another individual. *MCL 780.972*

It is not enough that the actor's belief be honest; that belief must also be reasonable. *People v Heflin*, 434 Mich 482, 503(1990). Very importantly, in relation to this specific case, it must be emphasized that the issue is not whether, from the advantage of hindsight, the use of such force was actually necessary. It is looking at the actor, and examining the information that person had at the time of the incident and all of the circumstances surrounding him at that moment "[a]ctual necessity is not the test for self-defense; where circumstances present a person with reasonable cause to believe he is in danger he may respond, even if his belief is later shown to have been a mistaken one." *People v Shelton*, 64 Mich App 154, 156 (1975). The reason for granting a person leeway in making a sudden decision to use deadly force that may in fact be in error was explained by the Michigan Supreme Court long ago in 1860: "Human life is not to be lightly disregarded and the law will not permit it to be destroyed unless upon urgent occasion. But the rules which make it excusable or justifiable to destroy it under some circumstances are really meant to insure its general protection. ... And such rules, in order to be of any value, must be in some reasonable degree accommodated to human character and necessity" *Pond v People*, 8 Mich 150, 173 (1860).

These legal principals are further expressed in the standard jury instructions pertaining to self-defense;

“First, at the time [he / she] acted, the defendant must have honestly and reasonably believed that [he / she] was in danger of being [killed / seriously injured / sexually assaulted]. If the defendant’s belief was honest and reasonable, [he / she] could act immediately to defend [himself / herself] even if it turned out later that [he / she] was wrong about how much danger [he / she] was in. 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;

Second, a person may not kill or seriously injure another person just to protect [himself / herself] against what seems like a threat of only minor injury. The defendant must have been afraid of [death / serious physical injury / sexual assault]. 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 the other person’s attack or threat / whether the defendant knew about any previous violent acts or threats made by the other person].”

CJ12nd 7.15

OPINION

“The defendant does not have to prove that he/she acted in self-defense. Instead, the prosecutor must prove beyond a reasonable doubt that the defendant ***did not*** act in self-defense.” (emphasis added) *CJ12nd 7.20*. Given the facts presented in this case it is impossible to prove beyond a reasonable doubt that Deputy Hinds did not act in self-defense. He clearly wrong in believing that Mr. Phillips movements indicated a threat to him and other members of his team. Mr. Phillips had nothing more than a set of car keys in his hand. It is extremely fortunate that this mistake did not cost Mr. Phillips his life. However, it is not for us with the benefit of hindsight to state what could have been done, or what errors were made. In determining if criminal charges are appropriate in this case I am required by law to examine the actions of Deputy Hinds ***considering all the circumstances known to him at the time*** he made the decision to fire this shot.

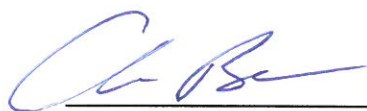
Every member of both teams involved in planning and executing this arrest and search warrant were interviewed regarding this incident. To a person they described this search warrant and plan to arrest these two subjects as something more than an average deployment. Each team had been on call for three weeks prior to the night this happened, the DEA did not know exactly when it would occur, but team members knew it would be a major operation getting ready to execute multiple high-risk search warrants on the same night. The DEA briefing conveyed to each one of them they would be dealing with high level individuals involved in the illegal narcotics trade. These two individuals had extensive criminal histories, and were both known to travel with guns and large amount of narcotics. Much of the information the DEA gave before the event proved later to be true; this was one of the largest interceptions of narcotics in the history of Kent County as a large amount of narcotics, cash, and weapons were found in the apartment the two suspects had just left. This information regarding guns, narcotics and past violence was known to Deputy Hinds as he approached the two subjects. He had no reason to know at that time the guns had been left inside the apartment. From his perspective, he was approaching two dangerous individuals who most likely were armed since they were moving a large amount of drugs. One of those individuals moved toward his waistband, a common area for

carrying a handgun, and made a movement with that hand towards him and his team after having his hand by his waistband. Deputy Ysquierdo supports what Deputy Hinds says he saw, he goes further and indicates he saw something in the hand of Mr. Phillips during this time. The video shows Mr. Phillips crouching and turning towards the members of TACT 2 although his hands cannot be seen.

The jury instructions and law require us to look at the situation as it appeared to Deputy Hinds at that moment when Mr. Phillips is turning towards him. Given the research done by Mr. Lawrence the evidence is that it can take less than a second for a person to pull a gun and fire. 1.91 seconds is an extremely quick moment in time; and from the video the shot looks extremely fast. But as his report indicates this short amount of time is almost three times longer than the longest reaction time in some simulated shooting studies. Deputy Hinds had to decide on what to do in less than two seconds, he made the decision to shoot. Although this decision was completely wrong, it does not mean it was criminal. Under Michigan law if his belief was honest, and, "where circumstances present a person with reasonable cause to believe he is in danger he may respond, even if his belief is later shown to have been a mistaken one." *Shelton, Id.*

To find criminal misconduct on the part of Deputy Hinds, I would have to prove beyond a reasonable doubt that he was *NOT* in fear for his own safety or the safety of others when he shot Mr. Phillips. Stated another way, I would have to prove beyond a reasonable doubt that Officer Hinds ultimately shot Mr. Phillips for a reason unrelated to the safety of himself. There is no evidence presented here that would support any conclusion other than Deputy Hinds fired because he feared for his safety. It was incorrect, but that does not change the analysis. Due to the speed at which Deputy Hinds fired in response to the movement by Mr. Phillips, I did review the applicable law regarding reckless use of a firearm and other related charges. However, under the law, given the fact that Officer Hinds admits he intentionally fired the shot, it is impossible to charge under the reckless use statute. (See *People v Cummings* 229 Mich App 151(1998); reversed by *People v Cummings* 458 Mich 877 (1998))

The prosecution has the burden of showing Deputy Hinds did not act in lawful self-defense beyond a reasonable doubt when he fired that shot. This we cannot do when examining the law and appropriate jury instructions that would be used in this case. Criminal charges will not be filed against Deputy Hinds in this matter.



Christopher Becker
Kent County Prosecuting Attorney

12-6-17

Date

November 15, 2017

Christopher Becker
Kent County Prosecuting Attorney

Re: Officer Involved Shooting of Mr. Yusef Phillips
3841 Whispering Way Drive, SE
Grand Rapids Michigan

Kent County Sheriff's Department Occurrence Number 17-243662
September 3, 2017

Mr. Becker:

1. At your request, I have reviewed the material provided in respect to this matter. Based upon our conversations, I understand that you are asking for a review of the video involving the shooting of Mr. Phillips and a perspective in relation to the force used in the incident following the examination.
2. The information provided with respect to police training is based upon my experience being trained as a police officer, including attending classes, courses, seminars and symposiums throughout North America as well as my experience as a trainer engaged in similar processes throughout Canada and the United States since 1983. My operational experience was collected over 16 years within two different police services including one of Canada's largest while my instructional experience consists of 34 years in both physical skills and academic environments including over 20 years instructing at one of North America's largest police training facilities. Additionally I have been involved in the following activities:
 - Provided training, consultation, comment, and presentations regarding police use of force throughout North America, Europe, and Australia.
 - Permitted to offer expert opinion evidence on police procedures, police training and use of force related issues to courts within Ontario, Alberta, British Columbia, Newfoundland, and Quebec as well as in State court in Utah and Colorado and Federal court in Alabama.
 - Provided testimony before the House of Commons Standing Committee on Public Safety and National Security.
 - Deposed as a police procedures expert in civil suits in the states of Alabama, Arizona, Florida, Illinois, Kansas, Nevada, and Wyoming.
 - Completed a Master of Arts degree in Leadership and Training (MALT), specializing in Justice and Public Safety Leadership from Royal Roads University, Victoria, British Columbia.
 - Consulted on police use of force, operational, and training issues throughout Canada at the local, state/provincial and federal level as well as on U.S. local, state and federal matters.
 - Authored and co-authored police related articles, including peer-reviewed papers.

3. My service as a police officer includes experience with calls of a nature similar to this case, as a Tactical and Rescue Team (SWAT) member.
4. As of August 2017, I have effectively retired from my career as a police use-of-force instructor. I am the president of Elgin Security Consultants Inc., a corporation providing services in respect to expertise to clients based on my training and experience as a police officer and police trainer over a 38 year career. My time and comments associated to this review effort and testimony, if required, is independent of any previous employment as well as any current or past affiliations.
5. I remain a Technical Advisor to the Force Science Institute as well as a facilitator and instructor on the Force Science Institute Certification Course, with experience facilitating classes relating to the investigation of police use of force in England, the U.S., and Canada. In particular, I have trained police officers in respect to human performance issues (e.g., reaction and response times) and limitations of human perception during rapidly unfolding, tense, uncertain events and the impact these factors might have on an investigation.
6. The issues mentioned above include aspects of police training I have been providing to police investigators, legal counsel, civilian oversight investigators and other interested parties (e.g., law school faculty, psychologists) during courses taught in Canada, England, and the United States in which I participated as a facilitator and instructor over the past several years.
7. Ultimately, someone else will determine precisely what occurred during this incident. The comments provided within this report are to assist the reader of this report in understanding the information upon which I formulated my comments.
8. Comments within this report are supported with empirical evidence where available and remain dependent upon the information provided. Upon the disclosure of additional information these comments and opinions are subject to revision.

Material Provided

9. The following is the list of materials reviewed in respect to this matter:
 - a) SPR-ATTORNE17101908360.pdf
 - b) SPR-ATTORNE17101908370.pdf
 - c) SPR-ATTORNE17101908371.pdf
 - d) SPR-SUPPORT17101908070.pdf
 - e) SPR-SUPPORT17101908080.pdf
 - f) SPR-SUPPORT17101908240.pdf
 - g) EXH_09-03-17_04-00-20.ts
 - h) IP_09-03-17_04-00-00.avi

Synopses of Event

10. Late in the day, Saturday September 2, 2017 members of the Kent County Sheriff's Department Tactical Apprehension and Confrontation Team (TACT) attended a briefing in respect to an

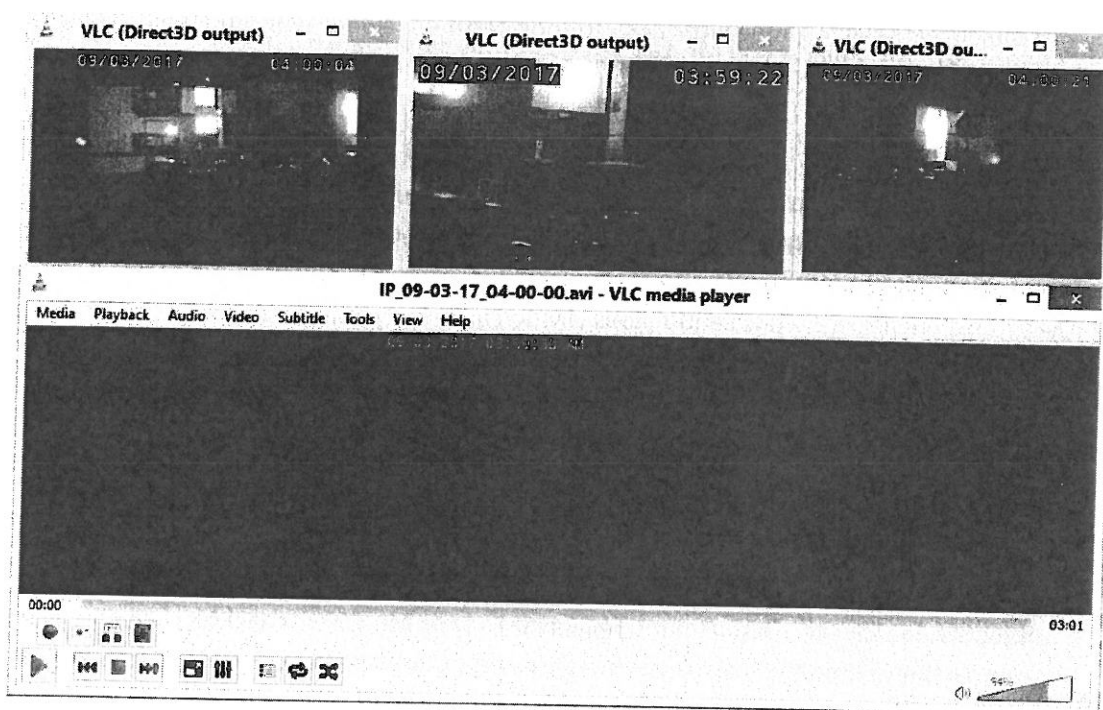
execution of multiple search warrants following a large-scale drug investigation involving multiple agencies, including the Drug Enforcement Agency (DEA). This investigation had evolved over several weeks and involved electronic surveillance. The officers involved in this event had collected information that caused them to believe:

- a) during the early morning hours Mr. Phillips and Mr. Lee would meet a large commercial truck in the area of 28th Street and Interstate 96 to obtain a large amount of narcotics while carrying a large amount of cash (\$300,000 – \$400,000);
 - b) that Mr. Phillips and Mr. Lee would immediately drive to 3841 Whispering Way Dr. SE Apt. 302 with the narcotics;
 - c) the leasee listed as residing in 3841 Whispering Way Dr. SE Apt. 302 was a deceased female;
 - d) Mr. Phillips and Mr. Lee were not only surveillance conscious but may have counter-surveillance on one of their properties;
 - e) both men had extensive criminal histories and were believed to be armed.
11. Based on the information collected, signed search warrants were obtained for 3841 Whispering Way Drive SE, Apt. 302, Grand Rapids, MI, 49546. Warrants were also obtained for the arrest of Mr. Phillips and Mr. Lee.
 12. The officers had reason to believe that Mr. Phillips and Mr. Lee were likely to arrive at the apartment in separate vehicles and enter the residence a few seconds apart from each other. They were expected to exit the apartment after only a few minutes returning to their vehicles with smaller amounts of narcotics and leave.
 13. The plan involved continued surveillance of Mr. Phillips and Mr. Lee and communicating developments as well as the suspects' location to members of a planned arrest team. The objective for Sheriff's Department TACT was to take Mr. Phillips and Mr. Lee into custody as soon as they exited the apartment building and before they could either escape or mount dangerous resistance.
 14. To that end, multiple photographs of both suspects were given to TACT members at the briefing as well as photographs of the target residence.
 15. Two TACT teams were quietly deployed at opposite ends of the building to await the suspects exit. The deputies were to wait until the front door of the apartment building latched shut behind the two men. This delay would permit the front door to lock and prevent the men from quickly entering the building.
 16. The video recording of the incident shows Mr. Lee exiting the front door followed by Mr. Phillips. Mr. Lee appears to have nothing in his hands while Mr. Phillips is carrying a dark bag with a shoulder strap.

17. Both men walk to the base of the stairs and take a few steps. One of the three cameras recording the event, specifically the one recording the movement of Mr. Lee and Mr. Phillips, is briefly adjusted. The Deputies move from their position at the end of the building and quickly close the distance on the two men. Mr. Phillips turns his head and upper body towards the approaching TACT members, crouches down and is shot in the chest.

Video Analysis

18. Two videos were provided for review. One video¹ opens using either VLC Media Player² or Windows Media Player³. Player notwithstanding, four separate windows open when the file was activated. Each window displays the date as September 3, 2017, however, each window displays a different time.



19. In this recording, one view shows the front door of 3841 Whispering Way Drive SE and the movements of Mr. Lee and Mr. Phillips as they exit the building. This recording displays a start time of 03:59:22 hours. A second view shows the front of the building including the southeast corner. This video displays a start time of 04:00:04 and will show the movement of a team towards Mr. Lee and Mr. Phillips that ultimately results in Mr. Phillips being shot. The third video recording shows the front of the building including the northeast corner. This video displays a start time of 04:00:21 and essentially shows very little of the actual interaction of the team making the approach and Mr. Phillips or Mr. Lee. It does show the second set of TACT

¹ IP_09-03-17_04-00-00.avi

² Version 2.2.1, created by VideoLAN, a non-profit organization and distributed under a General Public License.

³ Version 12 for Windows 8.1.

members making an approach from the northeast corner along the front of the building. The fourth window displays a start time of 03:59:30 and does not provide any recorded images or sound. This window operates the other three windows and plays each recording contemporaneously with the others.

20. Of the two windows showing a broad view of the front of the building, the recording of events at the southeast corner and the recording of the front door where the men exited were used for the analysis.
21. The second video⁴ also opens in either VLC Media Player or Windows Media Player. This video plays all three recordings as well as the fourth operational window in one complex window at the same time.



22. The video is dark and the EXH_09-03-17_04-00-20.ts version displays small versions of the recording. I understand that your inquiry with the Michigan State Police found that they were unable to either enhance the clarity of this version or separate the windows in the IP_09-03-17_04-00-00.avi version of the recording from each other.
23. My ability to examine these video files is limited to the software I can access. If you require a more sophisticated review of the actual digital video recording in respect to the quality of images recorded by the camera used in this investigation, including lost or altered image data,

⁴ EXH_09-03-17_04-00-20.ts

you might consider contacting the Law Enforcement and Emergency Services Video Association⁵ for an expert referral or the Federal Bureau of Investigation.

24. In response to my inquiry concerning the frame rate of the videos, I understand the recording to be at 29.97 frames per second. If that is correct, each second of video is comprised of 30 frames (00-29) where 0.033 seconds separates each frame ($1 \div 29.97 = 0.0334$ seconds).
25. Windows Media Player does not permit a review of a video on a frame-by-frame basis. VLC Media Player will allow a frame-by-frame review; however, it will only do so playing the video forward. While VLC Media Player permits playback in reverse, it does not do so with any precision.
26. Video format conversion is not a flawless process. Codecs, or software programs, encode or decode audio or video from one audio or video format to another. Depending on the codec used, the process may result in lost or altered data. Compression may also occur when video and audio to permit transmission over the Internet.
27. In an effort to review this event in forward and reverse as well as frame-by-frame, I copied each of the videos and then attempted to convert them to a .mov file, which can be played in forward and reverse using QuickTime Player⁶. While the IP_09-03-17_04-00-00.avi recording could not be converted using the software I possess the EXH_09-03-17_04-00-20.ts was successfully converted to the .mov format using the Prism Plus⁷ program.
28. Converting the video to the .mov format also permits the recording to be exported to a series of individual .jpg files that can be numbered sequentially as well as being displayed, enlarged, and analyzed in sequence using Windows Photo Viewer. The exported .jpg files resulted in approximately 7208 individual frames or 240 seconds [7208 frames \div 29.97 frames/second = 240] seconds or 4 minutes of video.⁸
29. Unfortunately, the clarity of the EXH_09-03-17_04-00-20.ts recording was poor and while the movements of the deputies against the contrasting white building are easy to determine, the movements of Mr. Phillips and Mr. Lee are not clear. The IP_09-03-17_04-00-00.avi provided a clearer view of events, however, the precision of either the police movements or the movements of Mr. Phillips and Mr. Lee are lacking. To resolve the problem, I undertook to advance the IP_09-03-17_04-00-00.avi in the fewest frames that I was able⁹. This task was accomplished by forwarding to the section of the movie where Mr. Lee and Mr. Phillips exited

⁵ <https://www.leva.org/index.php/about>.

⁶ Quick Time Player, Version 7.7.7 (1680.95.51). Copyright 2010-2015, Apple Inc. All Rights Reserved.

⁷ Prism Plus v. 2.51, distributed by NCH Software (www.nchsoftware.com/prism).

⁸ Frames EXH_09-03-17_04-00-20 - Copy 7198.jpg to EXH_09-03-17_04-00-20 - Copy 7209.jpg are blank, representing 12 frames or 0.4 seconds of video at the very end of the recording.

⁹ A test of 20 rapid mouse clicks using the same equipment found a mean, median and mode movement times were all 0.12 secs. The standard deviation for the test was 0.012 secs. (min. 0.10 secs., max. 0.14 secs.) At 29.97 frames per second, 0.12 secs would equal an average of 3.63 frames per mouse click.

the building and then advancing the video by rapidly clicking a computer mouse and capturing a screen shot, which was saved as an individual .jpg file.¹⁰

30. Once these screen shots had been collected, an effort was made to match the screen shot to a sequentially numbered.jpg file exported using the QuickTime software. In doing so I arranged the .jpg files to be the same size as the screen shots by measuring objects on the video monitor so that items like the caps on top of the walls on either sides of the stairs or the distance from the ends of the buildings to a balcony were consistent. The comparison of sizes was accomplished using a Staedtler Mars compass¹¹.

31. The result of the comparison of the two videos is the chart below:

File Name	Frame #	Time
Exit door cracks open	0137	4.57
01 - Lee exiting door with bag carried by Phillips behind Lee.jpg	0173	5.77
02 - Both men exiting building with Phillips behind Lee.jpg	0198	6.61
03 - Both men exiting building with Phillips behind Lee.jpg	0203	6.77
04 - Both men exiting building with Phillips behind Lee and bag partly visible.jpg	0244	8.14
Door closes to extent light is not visible	0288	9.61
05 - Both men exiting building with door shut behind them.jpg	0293	9.78
Barrel of officer's rifle at corner of building on left side of screen	0435	14.51
06 - Both men on walkway as camera adjusts while officers approach from building corner.jpg	0439	14.65
Second officer at corner of building on left side of screen	0443	14.78
07 - officers approach both men on walkway while they are unaware.jpg	0446	14.88
08 - officers approach both men on walkway while they are unaware.jpg	0448	14.95
09 - officers approach both men on walkway while they are unaware.jpg	0454	15.15
10 - officers approach both men on walkway while they are unaware.jpg	0460	15.35
11 - officers approach both men on walkway as Phillips begins to turn his head toward officers.jpg	0462	15.42
Third officer just turning light on at corner of building on left side of screen	0466	15.55
12 - officers approach both men on walkway as Phillips has head turned toward officers.jpg	0468	15.62
13 - officers approach both men on walkway as Phillips has head and upper body turning toward officers.jpg	0472	15.75
14 - officers approach both men on walkway as Phillips begins to crouch.jpg	0478	15.95
15 - officers approach both men on walkway as Phillips crouching.jpg	0483	16.12

¹⁰ The rapid screen capture sequences began after the camera adjustment at 03:59:55 hours.

¹¹ 550 42 A61.

16 - officers approach both men on walkway as Phillips crouching.jpg	0488	16.28
Fourth officer just turning light on at corner of building on left side of screen, object held up in front of Phillips	0489	16.32
17 - officers approach both men on walkway as flashlight is turned on and something is in front of Phillips.jpg	0490	16.35
Shot fired – Phillips moves suddenly	0492	16.42
18 - after shot Phillips begins to fall.jpg	0492- 0494- 0495	16.42- 16.48- 16.52

32. When reviewing the videos and the images, one should be mindful that these recordings and images do not present the view the Deputies had of the two men nor do they capture the view the two men had of the Deputies.
33. From the time the door begins to open as Mr. Lee and Mr. Phillips start exiting the building [4.57 secs.] until movement of the police can be discerned at the southeast corner of the building [14.51 secs.] is about 9.94 seconds.
34. Mr. Phillips begins moving his head [15.42 secs.] 0.91 seconds after the police movement at the southeast corner of the building [14.51 secs.].
35. From the time Mr. Phillips' head begins to move [15.42 secs.] until he begins to crouch [15.95 secs.] 0.53 seconds has elapsed.
36. At about frame 0489, there appears to be a fourth officer who has rounded the southeast corner of the building and is turning on a light source.
37. At frames 0489 to 0490, the light source seems to be fully illuminating Mr. Phillips' upper body and it appears that Mr. Phillips has turned his upper body towards the approaching Deputies and is in a crouched position. The video images are unclear. A bright white flash appears to the front of Mr. Phillips. Whether or not he is holding an object in front of his chest is unclear.
38. At about frame 0492, Mr. Phillips begins moving quickly consistent with beginning to fall the ground.
39. From the time the Deputies move forward to engage Mr. Phillips [14.51 secs.] until his sudden movement consistent with beginning to fall to the ground [16.42 secs.] 1.91 seconds has elapsed.

Time to Start Firing

40. I am not aware of any research that focused on police officers shooting rifles or carbines. There is, however, a body of research respecting reaction and movement times associated with police officers firing duty pistols. That information is outlined below.
41. Reaction time to all stimuli are not the same. Reaction time to various stimuli are reported in the following ranges:
 - a. Kinesthetic(touch) 0.12-0.14 seconds.

- b. Auditory (sound) 0.14-0.16 seconds, and
- c. Visual (light) 0.18-0.20 seconds (Vickers, 2007).

These times are in response to simple stimuli where the subject is attempting to respond as quickly as possible and the response is also simple, for example, clicking a mouse or pressing a button. The greater the complexity of the response required, the longer the response time may become (Henry & Rogers, 1960; Schmidt & Lee, 2014). Unfastening the security devices from a police pistol holster followed by drawing the pistol upward and then orienting the firearm toward a 'threat' is more complex than pressing a button.

- 42. For example, when police officers were required to simply fire a pistol pointing at a target in response to a single light coming on at staggered times, reaction times averaged 0.25 (\pm 0.06) seconds. I have independently confirmed this timeframe using experienced police officers firing their duty pistols on a range. When the stimulus became more complex – officers were required to react to a cluster of three lights, where one or two lights in the cluster were to be ignored, reaction time doubled to 0.56 (\pm 0.08) seconds¹² (Lewinski, Hudson, & Dysterheft, 2014).
- 43. In a study where a subject had to simply raise a pistol from beside their leg to fire at an officer to the front of the subject, that shot was accomplished, on average, in 0.36 seconds. The officers responded to this movement by firing at the subject with a pistol already aligned with the subject. All the officer had to do was recognize the movement and press the trigger. Essentially, the officer and the subject who moved first fired at almost the same time (Blair et al., 2011).¹³ The periods associated with quickly firing at a perceived threat are consistent with the incident of September 3, 2017.
- 44. Other research, which is not peer-reviewed, has shown that an untrained subject can remove a pistol from a waistband and discharge it towards a person standing in front of him in about 0.25 seconds (Lewinski, 2000).
- 45. Deputies report seeing Mr. Phillips turn towards their direction and Mr. Phillips' hands moving towards his waistband. Believing he was drawing a firearm to be used against them, one Deputy fired a single round, hitting Mr. Phillips in the chest.
- 46. The video for review shows Mr. Phillips turning his head and upper body in the direction of the approaching Deputies. The video shows Mr. Phillips lowering his body, consistent with going into a crouching position. Mr. Phillips was standing in front of a vehicle parked between him and the recording camera blocking any view of Mr. Phillips' lower body. The increasing brightness of the image just before Mr. Phillips was shot makes it unclear in respect to what he did or did not have in his hands or might have been held in front of his body.

¹² Minimum times to react were 0.37 secs. to a maximum of 0.87 secs. Anticipating the need to fire resulted in a mean reaction time of 0.46 (\pm 0.09) secs.

¹³ This study used primarily SWAT officers rather than just front line officers. If the participants were not active police officers, they were military personnel with policing experience. The subjects firing on the officers were college students who had no law enforcement experience.

Conclusion

47. Based on the material provided for review, members of the Kent County Sheriff's Department Tactical Apprehension and Confrontation Team were acting on information resulting from an extensive investigation. They were told that Mr. Phillips and Mr. Lee had an extensive criminal history and may be armed. Individuals involved in large-scale narcotics trafficking will often carry weapons to protect themselves, the contraband they carry, and the money in their possession from rivals.
48. The entire incident from the beginning of Mr. Lee's exit until the shot fired was about 16.42 seconds.
49. Deputies waited for almost 10 seconds after Mr. Lee started to exit the building until their first movements were discernable at the southeast corner of the building.
50. Either the Deputies waited nearly a full second before calling out to the men or Mr. Phillips detected their movement within that one second timeframe. There is no audio with either recording.
51. From the first discernable movement by the team of Deputies until the shot was fired occurred in 1.91 seconds. Mr. Phillips did turn and crouch as he faced the Deputies. What he did with his hands cannot be seen.
52. There is a sudden illumination of Mr. Phillips in his white shirt and it appears there may an object being held to his front. The increasing brightness of the image just before Mr. Phillips was shot makes it unclear in respect to what he did or did not have in his hands or might have been held in front of his body. The shot striking Mr. Phillips follows very quickly.
53. Given the context of the investigation, the information provided to the TACT members, and the potential for an armed confrontation, waiting to determine if shots are being fired takes longer than is required to shoot at police.
54. Should additional questions arise or if clarification is necessary, please let me know and I will do my best to address them.

Chris W. Lawrence



ESCI
President

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