


Memo

To: D/Sgt. Dale Smith – MSP 26
From: Steven Hiller, Deputy Chief Assistant Prosecutor 
CC: B. Mackie; M. Harshberger – PTPD
Date: 2/22/2011
Re: Use of Force Review – MSP 26-289-11

You have requested this office to review your report # 26-289-11 for the purpose of evaluating the use of force by Pittsfield Township Police Officer Tracy Yurkanas against Devin George-Anthony Reddick that occurred on January 15, 2011. This office will review an officer's use of force to determine if the officer may be criminally liable. The review that I have conducted in this case was confined to that question only.

In response to your request I have reviewed all submitted written police reports¹, listened to the call to 911 from Reddick's domestic violence victim, calls made by Reddick from the Washtenaw County Jail following his arrest², watched the available video/audio recordings from the Pittsfield Township police cars at the scene of Reddick's arrest (including the recording taken from Officer Yurkanas' car), reviewed all other materials that were submitted, and the applicable published judicial decisions and statutes. Based on my review, and for the reasons stated below, I have reached the conclusion that Officer Yurkanas acted in lawful self-defense when she shot Devin George-Anthony Reddick, and no criminal charge will be filed against Officer Yurkanas as a result of her actions in this case.

¹ Officer Yurkanas' only formal statement regarding this shooting, which was made pursuant to 2006 PA 563, MCL 15.391, *et seq.*, was not read or considered in reviewing this case. *See also* Garrity v New Jersey, 385 U.S. 493 (1967).

² Reddick, although given the opportunity, chose to make no formal statement to investigators regarding this matter. *US Const, Am V.*

Facts

At approximately 4:00 PM on Saturday January 15, 2011 Karifa Fleming called Pittsfield Township 911 and reported that she had been the victim of domestic violence at the hands of her husband, Devin George-Anthony Reddick. During her 911 call Fleming told the PTPS dispatch operator Trinkka that:

- her husband had attacked her and thrown a laptop computer at her
- Reddick had left in her car
- Reddick may have been heading to his brother's home, near the PTPD station
- Reddick had a warrant out for his arrest
- She did not think Reddick had any weapons.³

The officers had also received information that Reddick had an Oakland County arrest warrant for failure to comply with a child support order, and that his driver's license was suspended.

PTPD officers Tracy Yurkanas and Shawn Wilmuth were sent to Fleming & Reddick's apartment on Arbor Circle E to investigate. The officers observed injuries to the victim, including blood on her lip.

PTPD officer Marra reported to Sgt. Hamilton and Officer Wilmuth that he had previous contact with Devin Reddick and that Reddick had been combative. Officer Wilmuth noted in his report that this information was also given to Officer Yurkanas.

Officer Yurkanas located Reddick driving his wife's Grand Marquis on Platt Road near Textile Road. She followed him to his brother's apartment complex, where Sgt. Hamilton and Officers Marra and Wilmuth had staged. As Reddick drove through the complex he passed at least two PTPD cars.

Officer Yurkanas's in car video shows Reddick's vehicle drive past the two PTPD cars in what appears to be an evasive maneuver, and then accelerate rapidly. At his point Officer Yurkanas can be heard to state over her radio "He's leaving, he's running." Officer Yurkanas pursued Reddick a short distance and he then turned left into a parking spot. Officer Yurkanas stopped her vehicle roughly perpendicular to

³ Karifa Fleming told Dispatcher Trinkka that Reddick's brother had a handgun, but that she did not think he would let Reddick use it. At the time of this incident PTPD lacked the ability to record dispatcher-to-car and car-to-car radio traffic. There is no clear statement in any of the available reports that Officer Yurkanas received the information about Reddick's brother having a handgun, and so that information was not considered in reaching the conclusion that Officer Yurkanas fired in self-defense. The conclusion is based only on information that was clearly available to Officer Yurkanas, and the circumstances with which she was confronted at the time she fired.

Reddick's car, so that the left front corner of her vehicle was closest to the left rear corner of Reddick's. As a result of the position of the cars, the camera in Officer Yurkanas' car did not capture video of what next transpired. Also because of the position of the vehicles, the distance between Officer Yurkanas and Reddick when they stepped from their cars was quite small—probably no more than 15 feet.

The audio/video recording from Officer Yurkanas's car shows that after Reddick and Yurkanas stopped their cars, Yurkanas exited her patrol car and can be heard saying in a loud voice "Get your hands up! Get your hands up right now!" Immediately following those commands, Officer Yurkanas fired a single shot which struck Reddick. The amount of time that passed from when Officer Yurkanas stopped her car until the shot was fired was approximately six seconds. Shortly after the shooting Officer Yurkanas can be heard to say "He was reaching for something. I'm sorry", and "He stuck his hands up like he was pulling a gun or something." Sgt. Hamilton and another officer can be seen slowly approaching Reddick with their service weapons pointed at him, and officers can be heard repeatedly issuing him commands to get his hands out to his side.

Officer Wilmuth reported that he saw Reddick outside of his car before the shot was fired, but he could not see if Reddick had anything in his hands, because his vision was partially obscured. After Officer Yurkanas shot Reddick, Officer Wilmuth saw something in one of Reddick's hands, and soon discovered that it was a dark colored cell phone. The phone was later recovered from the scene. No weapon was located on or near Reddick.

A civilian witness, who had a clear view from a nearby apartment, observed the incident. The witness told State Police investigators that he observed the officer jump from her patrol car and heard her yelling to Reddick to "show me your hands". He believed he heard her say this 3 to 4 times. According to D/Sgt/ Dale Smith's report the witness also told him "I thought he had a gun the way he was acting, I thought for sure he was going to shoot that police officer. It looked like he was reaching for a gun and it looked like he pulled out what I thought was a gun." The witness said the Reddick was not listening to the officer. The witness also said Reddick's actions "[w]ere not right, nobody gets out of their car that fast and moves at an officer like that. It was stupid of him. It was as if the guy was trying to make the officer shoot him!"⁴

Law

A peace officer may arrest a person without an arrest warrant if that person has committed a misdemeanor in the officer's presence. MCL 764.15 (1)(a). A peace officer may also arrest a person when he or she has authoritative positive information that a court holds a warrant for the person's arrest. MCL 7.4.15 (1)(e). A peace

⁴ Michigan State Police Report 026-0000289-11(DB), dated January 15, 2011 and authored by D/Sgt. Dale Smith, at page 3.

officer may arrest a person without a warrant when the officer has reasonable cause to believe that misdemeanor Domestic Violence has occurred, even though not in the officer's presence. MCL 764.15a.

"The police have the right to use that force reasonable under the circumstances to effect such an arrest. The police also may take what action is reasonable to protect themselves in the course of an arrest or an attempted arrest. So much is clear." Delude v. Raasakka, 391 Mich. 296, 303, 215 N.W.2d 685, 689, (1974).⁵

A person, including a peace officer, may use deadly force in self defense or defense of others under the following circumstances:

1. The person must honestly and reasonably believe that there is a danger she or another will be killed or seriously injured.
2. The person must honestly and reasonably believe that the use of deadly force is immediately necessary.

See MCL 780.971, *et seq.*; Michigan Criminal Jury Instructions 2d, 7.15. If the person's belief that deadly force was immediately necessary is honest and reasonable at the time, it does not matter the person is later shown to be wrong about the level of danger. CJI 2d, 7.15 (3).⁶ The reasonableness of a person's belief must be judged based on how the circumstances appeared to her at the time she acted. See Alexander v Riccinto, 192 Mich App 65, 481 NW 2d 6 (1992); CJI 2d 715(2). A person who is not committing a crime and is in a place the person has a right to be does not have a duty to retreat before using deadly force in self defense. MCL 780.972.⁷

⁵ Although the Michigan Attorney General has opined that a peace officer may not use deadly force to make a misdemeanor arrest, there is nothing in that opinion that extends the misdemeanor/felony distinction to an officer's right to self defense. OAG, 1976, No 5068, p 591 (September 3, 1976).

⁶ It is noteworthy that in a criminal prosecution when self defense is raised, it is the prosecution's burden to disprove self defense beyond a reasonable doubt. See, e.g. People v. Dupree, 486 Mich. 693, 788 N.W.2d 399.

⁷ Prior to the 2006 enactment of MCL 780.972, there was a duty to retreat, if it was safe to do so, when a private citizen was confronted with a deadly force situation outside the home. However, because of the special duties and responsibilities of peace officers, they were under no duty to retreat.

Opinion

Officer Yurkanas had the authority to arrest Devin Anthony-George Reddick. She had reasonable cause to believe that Reddick had committed Domestic Violence, she had information that he was the subject of an Oakland County arrest warrant, and she had seen him driving a car while his driver's license was suspended.

Officer Yurkanas knew that Reddick had assaulted his wife shortly before, and she had been told that Reddick had previously been combative with Officer Marra. The recording from Officer Yurkanas' patrol car reveals that once he had stopped his car he got out of it very quickly. He and Officer Yurkanas were very close together at that point. According to the civilian witness Reddick moved toward Officer Yurkanas. She twice commanded Reddick to get his hands up. Based on the patrol car audio, Reddick reached for something, and Officer Yurkanas was fearful that he was reaching for a gun. This is corroborated by the civilian witness, who thought that Reddick was pulling a gun and was going to shoot Officer Yurkanas. Confronted with a man who had been violent with his wife a short time before, and who had a history of combativeness with the police, who was closing on her from a very short distance, who refused to comply with orders and who was reaching for something that the officer feared was a gun, she fired.

The available evidence supports a conclusion that Officer Yurkanas honestly and reasonably believed that she was threatened with death or great bodily harm by Devin Reddick, and that she honestly and reasonably believed that the use of deadly force was immediately necessary to protect herself and her fellow officers. There is no credible evidence to support the contrary view. In short, the available evidence compels the conclusion that Officer Yurkanas acted in lawful self defense.