

NEWS RELEASE

**Re: April 8, 2016
Kentwood Officer Involved Shooting**

FACTS

On April 8, 2016, at 8:41 PM, Kamri Jones called 911 and reported that "... my Mom [Casey Kempker] texted me to call. She wants me to call you guys because her husband is threatening her....they've had these issues in the past." Ms. Jones also told the 911 operator that her mother lived in a townhouse at 3378 Pheasant Ridge SE, in the City of Kentwood. When asked to describe what, if anything, was taking place at her mother's townhouse, Ms. Jones stated that she was not present at the address but that "when he [her mother's husband, Lamont Gulley] starts acting weird and crazyhe likes to threaten her life."

In response, Kentwood Officers William Mendez and Samuel VanderBent were dispatched to 3378 Pheasant Ridge. Prior to their arrival, the dispatcher had informed them that "we do have a previous history at this address and on that date [prior incident] the male had a steak knife on his person but no threats were reported with it at that time."

Upon arriving at the Pheasant Ridge address, Officer VanderBent knocked on the front door. In response, a male voice inside the townhouse asked, "Who is it?" Although Officer VanderBent immediately identified himself as a police officer and continued to knock on the door, no one said anything further and no one opened the door. Officer Mendez then walked toward the back of the residence "to watch the back door" and attempt to "look through the back window and glass sliding door." Because there were shades on the windows, he was unable to see inside. Before leaving the back of the residence, Officer Mendez noted that there were no footprints in the fresh snow at or near the rear slider.

In Officer Mendez's absence, Officer VanderBent was able to look through the front kitchen window and saw a "large amount of blood on the floor." He also heard what sounded like a "child inside talking and playing." Immediately after Officer Mendez returned to the front of the townhouse, Officer VanderBent told him what he had heard and seen. At 8:58 PM, Officer Mendez notified dispatch that "we've got blood on the floor inside" and indicated that they were going to try to force entry into the townhouse. In response, additional officers were dispatched to the Pheasant Ridge address.

Before forcing entry, Officer VanderBent attempted to open the front door and found it to be locked. Rather than proceed, however, the officers decided to wait for backup. While waiting, Officer Mendez returned to the rear of the residence to “watch” the back door. Upon arrival, he noticed “fresh shoe prints in the snow leading away from the residence” and immediately informed dispatch. After determining that the rear slider was now unlocked, he and Officer VanderBent entered the townhouse.

Upon entry, the officers identified themselves as “Kentwood Police” but received no response. They then observed “a woman [later identified as 41-year-old Casey Kempker] laying on her back in the living room area.” She was “not moving and was covered in blood.” The officers also saw a “male child sitting on the couch in the living room a few feet from the woman.” The child was later identified as Ms. Kempker’s 7-year-old son; he was unharmed.

Shortly after entering the residence, additional officers as well as emergency medical and fire personnel began to arrive. Although she was still alive when the officers entered the townhouse, extensive efforts to save Ms. Kempker’s life were regrettably unsuccessful; she died at the scene at approximately 9:45 PM.

An autopsy was performed by Dr. Stephen Cohle on April 11, 2016. Dr. Cohle determined that Ms. Kempker had died from two stab wounds to her chest, one of which penetrated to a depth of 5 ½ inches. In addition to the fatal wounds, she had suffered 13 additional stab wounds to her left arm, face and left lateral chest. Dr. Cohle also found “multiple incised wounds [cuts] to her neck, face, left hand and wrist” as well as “scattered abrasions and contusions.”

Kentwood Sgt. Ryan Vanderveen was among the officers who responded to 3378 Pheasant Ridge. At approximately 9:09 PM, Sgt. Vanderveen advised dispatch that the footprints leading from the back slider “go east and then towards the north. We’re gonna need somebody probably on Breton north....” He also requested additional units to “set up a perimeter” and for the assistance of a “canine.”

Kentwood Officers Darrin Cline and Ryan Smith, who were assigned to a “two-man” unit, had just cleared the Kent County Jail and were headed back to their patrol area when they began to monitor dispatch and radio traffic in regard to the incident. As a result, the officers were aware that the victim had suffered significant knife wounds and was unresponsive. Further, they were aware that the suspect had fled on foot toward Breton. Because of its proximity to the Pheasant Ridge address, the officers drove to the parking lot of the Alexander Hamilton Early Childhood Center; the school is located on the west side of Breton, east of Pheasant Ridge.

Shortly after arriving, Officer Cline got out of his patrol car and walked to the south side of the school. He then continued west toward Pheasant Ridge. While doing so, he located a solitary set of fresh footprints that led east away from Pheasant Ridge, continued to the property line and stopped at a 6’ chain link fence topped with 3 strands of barbed wire; the footprints then resumed on the east side of the fence.

Because Officer Cline was familiar with the area, he immediately recognized that the prints were in an unusual location, in an area normally devoid of foot traffic. That, coupled with the fact that whoever left the prints had scaled a 6’ fence and 3 strands of barbed wire, led him to believe that this was the “suspect’s route of escape.” At 9:15 PM, Officer Cline informed dispatch that “I’m at the very... east side of the complex and...there’s a set of footprints that run behind the buildings along the...wood line and they....go over a fence to the east, which connects to the apartments there in the 3300 block of...Breton.”

After contacting dispatch, Officer Cline scaled the fence and followed the prints east through the parking lot of the Holiday Garden Apartments and then northeast through a "lawn area." Ultimately, the prints led to the sidewalk on the west side of Breton and continued south.

After Officer Cline had updated dispatch, Officer Smith immediately drove to 3325 Breton [Holiday Garden Apartments] in order to pick him up. Because it was snowing heavily and the prints were quickly "getting covered," Officer Cline decided to follow the tracks on foot. Officer Smith, however, remained in his patrol car and followed Officer Cline as he tracked the prints south. At 9:23 PM, Officer Cline notified dispatch that he was following the tracks south on the sidewalk and, based on the "stride length," the suspect was "definitely running."

In addition to Officer Smith, Kentwood Officer Anthony Foster also responded to the Holiday Garden Apartments. After arrival, he initially assisted Officer Cline in tracking the footprints. At the point where the tracks turned south, Officer Foster returned to his patrol car. Like Officer Smith, he followed in his vehicle as Officer Cline attempted to locate the suspect on foot.

As the officers were tracking the suspect, dispatch provided them with the following information: the suspect was identified as Lamont Gulley - he was described as a "40ish," "short," "stocky" black male approximately 5'8" and 190 pounds; Mr. Gulley was 43 years old, 5'7" and weighed 194 pounds.

After following the tracks south for approximately 300 yards, Officer Cline observed that the suspect had turned right [west] onto Whispering Brook; Whispering Brook is horseshoe-shaped and ultimately reconnects to Breton further to the south. While following the tracks on Whispering Brook, Officer Cline noted that, on several occasions, the prints left the sidewalk and appeared to approach several condominiums.

Although the accumulating snow was beginning to make it more difficult, Officer Cline continued to follow the tracks around Whispering Brook until he was almost back to Breton. At this point, the prints left the sidewalk and went south between condominiums. Because the suspect had left the sidewalk, Officer Smith could no longer monitor the track from his vehicle. As a result, Officer Cline requested that Officer Smith exit his vehicle and assist him on foot. After Officer Smith left his car to assist, Officer Foster drove east on Whispering Brook to Breton, turned right/south, drove one block and turned right/west onto Edington Drive.

Both Officers Cline and Smith followed the tracks south to a building located at 2361 Edington Drive, an unoccupied community center for the local condominium association. The tracks then led from the north side of the building, around the east side to the front entrance which faces Edington. It appeared to the officers that the suspect had unsuccessfully attempted to enter the building through the front doors and, having failed, backtracked to a door on the east side of the building. The prints continued along the north side of the building and stopped at a trellised, privacy fence that appeared to enclose a patio area that abuts the west side of the building.

As the officers were trying to determine whether the suspect was inside the patio area or perhaps inside the building, Officer Cline saw someone across Edington running between condominiums. At 9:29:22 PM, Officer Cline reported that he was "...in foot pursuit." The person was approximately 150 feet away and was looking back toward Officer Cline as he fled to the south. Officer Cline believed this person to be the suspect, in part, because he fit the general physical description, but, more importantly, because he was the only pedestrian he had seen since starting to follow the footprints. Officer Cline immediately yelled,

"Stop, police," and began to pursue the suspect on foot. Officer Smith joined the foot pursuit but, at the outset, was significantly behind Officer Cline.

As Officer Foster arrived on Edington, he saw Officers Cline and Smith approach 2361 Edington and observed them checking the front doors on the south side of the building. He next saw the officers walk away from the front doors and disappear around the east side of the building. Shortly thereafter, Officer Foster saw the suspect run south across Edington from the west side of the building. As he did so, the suspect ran "right in front" of his vehicle.

Officer Foster immediately exited his patrol car and began chasing the suspect [hereinafter referred to as Mr. Gulley]. While doing so, he repeatedly yelled, "Police, stop." It should be noted that all three officers were in uniform. As Officer Foster closed to within 20'-25' of Mr. Gulley, he turned and began repeatedly yelling, "I have a gun, you better shoot me." Officer Foster immediately took cover behind a dumpster. From his location behind the dumpster, Officer Foster was able to see that Mr. Gulley did not have a gun. Rather, he was "holding a cell phone in his right hand." After concluding that Mr. Gulley did not have a gun, Officer Foster "came out from cover" and began to approach Mr. Gulley with his "firearm pointed at him." Mr. Gulley, however, continued to hold up his cell phone and repeat, "it's a gun...shoot me..." As he approached, Officer Foster now saw Mr. Gulley had a knife in his left hand that he was trying to conceal by sliding it up his sleeve. Officer Foster immediately ordered him to drop the knife. Instead of dropping the knife, Mr. Gulley continually backed away and kept repeating that "it's not a knife...it's a gun...shoot me..."

As Officer Foster was chasing Mr. Gulley to the south near 3704 Edington Lane, Officers Cline and Smith ran east along the north side of 3704 in an effort to "cut the suspect off around the other side of the building." As they reached the northeast corner of 3704, they ran south to the front of the building. At this point, Officer Smith observed both Officer Foster and Mr. Gulley. Mr. Gulley was "holding a knife down in his left hand and a cell phone in his right hand" and repeatedly yelling, "Shoot me, shoot me...it's a gun." Officer Smith immediately drew his weapon and ordered him to drop the knife; he refused and continually backed away from the officers.

Similarly, as Officer Cline approached Officer Foster and Mr. Gulley, he could hear Mr. Gulley repeatedly yelling, "Shoot me...shoot me...I have a gun..." As a result, he "drew his sidearm which has a light mounted on it." Because Mr. Gulley's arms were constantly moving, Officer Cline could not initially determine what the object was that he saw in his right hand. At 9:30:01 PM, he reported that "the subject is, the subject looks to be armed." As Mr. Gulley raised his right hand toward the officers, however, Officer Cline could see that he held a knife, not a gun. Although all three officers repeatedly told him to drop the knife, he refused and continually backed away from them. Having determined that Mr. Gulley did not have a gun, Officer Cline holstered his weapon and transitioned to his electronic control device [hereinafter referred to as a taser]. He then began to advance on Mr. Gulley in order to "get into effective range of the taser." While doing so, he attempted to calm Mr. Gulley down by saying something "similar" to "I'm not sure what happened back there at the apartment, but don't do anything to make this worse for yourself." In response, Mr. Gulley kept yelling, "Shoot me." Ultimately, Officer Cline closed to within approximately 20' of Mr. Gulley and warned him to drop the knife or he would "tase" him. Mr. Gulley yelled, "Shoot me" and Officer Cline deployed his taser; although the taser was not equipped with a camera, data recovered from the unit indicates that it was fired at 9:30:26 PM. The taser, however, was ineffective due, in part, to the heavy clothing that Mr. Gulley was wearing. Mr. Gulley took a step back, turned and ran toward Breton. At 9:31:01 PM, Officer Cline reported "...deployed taser, not effective."

Officer Cline immediately holstered his taser, drew his firearm and began to chase Mr. Gulley east and then north into the southbound lanes of Breton. While doing so, he noticed that Kentwood Officer Michael Belk had joined the foot pursuit. He yelled at Officer Belk to “tase” Mr. Gulley and continued to order him to stop and drop the knife. He also heard other officers “yelling commands” at Mr. Gulley and heard a taser deploy. The taser, however, had no affect and Mr. Gulley continued to flee, refusing to stop and refusing to drop the knife.

While pursuing Mr. Gulley, Officer Cline observed numerous civilian vehicles stopped on Breton in the area of the foot chase. He also saw a Grand Rapids cruiser in the southbound curb lane approaching from the north. As the cruiser came to a stop just to the north of Mr. Gulley, Officer Cline moved to the “east of the suspect ... which provided ... a safer backdrop to the west.” At this point, Officer Cline and Kentwood Officer David Unseld were approximately 10’ east of Mr. Gulley with Officer Unseld approximately 5’ to the left [south] of Officer Cline. Multiple officers were continuing to order Mr. Gulley to drop the knife and get on the ground; he refused. At this point, Officer Cline had his weapon aimed at Mr. Gulley and Officer Unseld deployed his taser.

Although it is clear that he fell to the ground because he had been “tased” by Officer Unseld, Officer Cline reported that Mr. Gulley “slipped and fell.” It should be noted that during the foot pursuit, Officer Cline had “slipped several times” because of the conditions and Mr. Gulley had fallen shortly after being confronted by Officer Belk. Whether because of stress, tunnel vision, auditory exclusion, the speed at which the events transpired, weather conditions, the time of night, the fact that each officer was focusing on a different aspect of the scene or the simple fact that no two people remember an incident exactly the same, statements provided by the officers contain a number of inaccuracies and inconsistencies. For example, contrary to the video evidence, one officer reported that Mr. Gulley did not fall to the ground until after he had been shot and that the dog was not released until after the shots were fired.

After Mr. Gulley fell to the ground, Officer Cline saw that a dog had been released and began to engage with him. At this point, Officers Cline, Unseld and Belk began to slowly approach Mr. Gulley. Although he had repeatedly been ordered to drop the knife, Mr. Gulley had refused to do so and now began to “fend off the K-9 with his left arm and stab the dog repeatedly with the knife brandished in his right hand.” Because of the icy conditions and the close proximity of the dog handler to “the suspect who was actively using his knife,” Officer Cline fired two rounds at Mr. Gulley causing him to drop the knife. The knife, however, fell near his right “armpit area” and was therefore still within his reach. As a result, the K-9 handler used the dog to separate Mr. Gulley from the knife. At 9:32:04, Officer Cline notified dispatch “...be advised I do have shots fired.”

Earlier, while monitoring the foot pursuit over his radio, Officer Belk positioned himself near Whispering Brook and Breton. After hearing that the suspect was headed east toward Breton in the area of Edington, Officer Belk drove south on Breton and parked “his fully marked cruiser perpendicular to the road with overhead lights activated in an attempt to block traffic.” Shortly after he had parked, Mr. Gulley ran “behind” his vehicle heading north in the southbound lanes. Officer Belk immediately got out of his car, drew his weapon and gave chase. As Officer Belk began his pursuit, Mr. Gulley “slipped and fell on the ice.” Officer Belk then pointed his handgun at Mr. Gulley and ordered him to show his hands. Mr. Gulley ultimately complied but did not do so until he had gotten back on his feet. From a distance of approximately 20’, he could see that Mr. Gulley was holding a “large” knife in his right hand with the blade “facing” Officer Belk. Officer Belk repeatedly ordered him to drop the knife. Rather than comply, Mr. Gulley continually yelled, “Shoot me” and began to back away.

As Mr. Gulley was backing away, Officer Cline approached Officer Belk from behind and “told [him] to taser” Mr. Gulley. Upon seeing that Officer Cline had his handgun drawn, Officer Belk holstered his weapon, drew his taser and “deployed” it; data reflects that it was deployed at 9:31:13 PM. Only one of the probes made contact, however, and the deployment was ineffective. After firing, Officer Belk holstered his taser and again drew his handgun. At this point, Officer Belk was approximately 15’ south and west of Mr. Gulley. Shortly after deploying his taser, Officer Belk observed Officer Unseld fire his taser and saw Mr. Gulley “drop” to the ground. A Grand Rapids K-9 Officer then “sent his K-9 in to attempt to gain compliance from the suspect.” Mr. Gulley immediately began “swinging” his knife at the dog as it was biting his leg. “There were several officers within a few feet of the subject at this time and it was evident that the suspect was still posing a threat to both the K-9 and nearby officers.” Within seconds, Officer Cline fired two shots at Mr. Gulley.

Like Officer Belk, Officer Unseld had continually monitored the foot pursuit on his radio and responded to the area. Upon arriving on scene, Officer Unseld saw a knife in Mr. Gulley’s right hand and heard multiple officers ordering him to “get down on the ground” and to “drop the knife;” he refused to comply and repeatedly said, “Just kill me.” As Mr. Gulley approached Officer Unseld from a distance of approximately 10’-12’, he deployed his taser and Mr. Gulley “went down to the ground.” Records show that Officer Unseld fired his taser at 9:31:26 PM, 13 seconds after Officer Belk. Shortly thereafter, Officer Unseld heard two gunshots to his right.

Officer Smith, who was some distance behind Officer Cline as they ran north on Breton in pursuit of Mr. Gulley, soon observed a Grand Rapids cruiser approaching from the north. From a distance, he saw Mr. Gulley fall to the ground and watched as a Grand Rapids K-9 began to bite his leg. He then heard two shots “from the area to the east of where the suspect was laying.” As Officer Smith ran up to the scene, he observed Officer Cline with his “firearm out and pointed at the suspect on the ground.”

Officer Foster also gave chase as Mr. Gulley fled north on Breton. As he approached Mr. Gulley’s position, he saw Officer Belk “deploy his taser” and shortly thereafter saw Officer Unseld fire his taser. After being struck by the prongs from Officer Unseld’s taser, Mr. Gulley fell to the ground. While on the ground, Officer Foster observed a Grand Rapids officer release his dog and saw it begin to bite Mr. Gulley’s leg. In response, Mr. Gulley began “swinging” at the dog. Due to his position, the lighting and the weather conditions, Officer Foster was unable to see what, if anything, Mr. Gulley had in his hand. As the dog was engaged with Mr. Gulley, Officer Foster heard two gunshots which immediately stopped him from “swinging” at the dog. In order to safely secure Mr. Gulley, the dog was ordered to pull him away from the knife.

In addition to Officers Belk and Unseld, Kentwood Officer Timothy Dykgraaf also responded to the area of Breton and Edington. After arriving on scene, Officer Dykgraaf began “searching the wood line on the west side of Breton.” While doing so, he saw Mr. Gulley “followed by several police officers come from the west onto Breton.” Mr. Gulley appeared to be “walking backwards facing the officers to the west.” At this point, Officer Dykgraaf was south of Mr. Gulley and the other officers. As he ran north toward the scene, he could hear officers yelling, “He’s got a weapon,” and ordering Mr. Gulley to “get down.” He could also see an object in Mr. Gulley’s right hand but could not tell what it was. However, because none of the officers were taking cover, he assumed that Mr. Gulley did not have a gun. Shortly after arriving on scene, “an officer deployed their taser” after which he saw “the suspect laying on his back with his feet pointing west.” Officer Dykgraaf then saw a Grand Rapids K-9 bite Mr. Gulley on the “right side of his body.” At that point, Mr. Gulley “started to sit up and wave his arms.” He next heard two shots fired and saw Mr. Gulley “lay back down.”

Earlier, Grand Rapids Officer Troy Colegrove had been near the intersection of 28th Street and Lake Eastbrook Boulevard when the Kentwood Police Department broadcast a request for assistance regarding the incident at 3378 Pheasant Ridge. He immediately responded to the area and began to assist in establishing a perimeter, ultimately driving west on Edington Drive. Shortly thereafter, he heard radio traffic indicating that the suspect was heading back toward Breton. As a result, Officer Colegrove drove back to Breton where he saw officers chasing “the suspect...north of his location.” As he exited his cruiser and began to move north, he could hear officers “giving the suspect commands.” From his location, however, he could not see the suspect. As he continued to approach, he heard two gunshots. Shortly after hearing the shots, he arrived on scene and saw “a police K-9 pulling the suspect’s leg” and then observed a Kentwood officer take the suspect into custody; [see the video from Officer Colegrove’s body-camera.]¹

In response to Sgt. Vanderveen’s request for the assistance of a K-9, Grand Rapids Officer/K-9 Handler Tim Hoornstra and his K-9 Aero were dispatched to 3378 Pheasant Ridge. Upon arrival, Officer Hoornstra met with Kentwood Officer Jeffrey Bylsma and was briefed regarding the incident. Soon thereafter, a determination was made that a K-9 track would be attempted and that Officer Bylsma would be assigned as the “cover officer.” After a discussion concerning the responsibilities of the cover officer, the track began near the rear slider of 3378 Pheasant Ridge.

Although it was snowing heavily and the tracks were rapidly being covered by snow, Aero tracked northeast toward Breton and then south. Moments later, Officer Bylsma heard that “perimeter units to the south had located the suspect.” In response, Officers Hoornstra and Bylsma began to run south along Breton. While en route, they were picked up and driven to the scene by Grand Rapids Officer Kathleen Roszkowski. As they approached the scene, Officer Hoornstra saw Mr. Gulley walking north in the southbound lanes with several officers following him. He also observed several police cars in the area with overhead lights activated and several civilian vehicles that “appeared to be caught in the middle of the scene.”

After arriving on scene, Officer Hoornstra exited the back seat with Aero and saw Mr. Gulley “directly in front” of Officer Roszkowski’s cruiser. Although radio updates had indicated Mr. Gulley was still “armed,” he was unable to see a knife “due to the lights from the patrol cars south of his location.” As Officer Hoornstra approached the front of the cruiser, he saw a Kentwood officer “deploy his taser.” Although Mr. Gulley fell to the ground, he did not appear incapacitated because he was still able to move; [see the video from Officer Roszkowski’s in-car camera.]

After he observed Mr. Gulley fall to the ground and noted that the taser appeared to be ineffective, Officer Hoornstra released his K-9 and commanded it to apprehend Mr. Gulley. Although Aero was technically “released,” in actuality, he was on a 15’ leash controlled by Officer Hoornstra. Aero immediately “engaged” Mr. Gulley and began biting his right leg as he lay on his back. As he was being bitten, Mr. Gulley “produced a knife in his right hand and bent down toward his leg and began stabbing Aero several times in the left side of his body and head.” At this point, Officer Hoornstra was within approximately 5’ of Mr. Gulley. Although Officer Hoornstra’s initial reaction was that Aero had been wounded, subsequent

¹ Although all of the Grand Rapids and Kentwood vehicles had in-car cameras, only the Grand Rapids officers were equipped with body-cameras. For a variety of reasons, whether it was distance, lighting or angle, most of the cameras did not record the incident. The exceptions were Officer Roszkowski’s in-car camera and the body-cameras of Officers Colegrove and Hoornstra.

examination of both Aero and the vest he was wearing showed no cuts or injuries. Within 1-2 seconds of Aero engaging the suspect and biting his leg, Officer Hoornstra heard two gunshots after which Mr. Gulley began to "moan." After being shot, he dropped the knife "...near his right bicep/armpit area." At this point, Aero was still biting Mr. Gulley's leg and Officer Hoornstra decided to use him to "pull the suspect away from the knife and secure the scene." After Mr. Gulley had been separated from the knife, Aero was ordered to disengage and other officers moved in to secure Mr. Gulley; [see the video from Officer Hoornstra's body-camera.]

The knife, a composite-handled steak-knife with a 4 ½ inch serrated blade, was collected as evidence and subsequently transported to the Michigan State Police Laboratory. DNA testing revealed the presence of blood on both the blade and the handle. The source of the blood on the blade was determined to be both Mr. Gulley and Ms. Kempker and the source of the blood on the handle was Mr. Gulley.

Officer Bylsma, who also arrived on scene in Officer Roszkowski's cruiser, reported that they parked directly in front of Mr. Gulley, approximately 30' to the north. Upon arrival, Officer Hoornstra and his dog immediately got out of the rear passenger door. Officer Bylsma, who was armed with his "patrol rifle," initially took a position on the front passenger side of Officer Roszkowski's cruiser, pointed his weapon at Mr. Gulley and ordered him to "get down." As he did so, he could hear officers ordering Mr. Gulley to drop his knife and "get on the ground." Because Mr. Gulley's left side was facing Officer Bylsma, he did not see a knife. He then heard a taser deploy and again heard officers ordering Mr. Gulley to drop the knife. At this point, Officer Bylsma realized he was potentially in a "cross-fire to the north" and began to move to the east toward the middle of Breton. He then heard two gunshots.

Kentwood Officer Andrew Vigen arrived immediately after Officer Roszkowski and parked behind her vehicle. As he exited his cruiser, he drew his weapon and advanced south along the driver's side of both vehicles. As he approached, he saw Officers Belk, Cline and Unseld approximately 30' south of Officer Roszkowski's vehicle "focused on the ground in front of a cruiser." He could also hear the officers repeatedly ordering Mr. Gulley to "drop the knife" and "show me your hands." As he cleared the front of Officer Roszkowski's cruiser, he saw Mr. Gulley "laying on the ground and the K-9...was engaging the suspect..." Because the dog was between him and Mr. Gulley, he could not see his hands. As a result, he pointed his gun at him and ordered him to "show me your hands." As he started to move to his left, he heard two gunshots and saw a "muzzle flash" to his left. After the gunshots, Mr. Gulley "laid on his back."

After the shots were fired, Officer Vigen observed the dog "pull the suspect" by his leg and heard an officer yelling "he still has the knife." The dog continued to pull Mr. Gulley for approximately 10' until it had "separated him from the knife." Officer Dykgraaf also heard officers ordering Mr. Gulley to "drop the knife." As the dog "pulled" him to the east, Officer Dykgraaf was able to see the knife near the right side of his body. Once the knife was no longer accessible to Mr. Gulley, Officers Vigen and Dykgraaf provided cover while Officer Unseld "moved in with handcuffs." Mr. Gulley was then ordered to "roll onto his stomach and place his hands behind his back." After he had complied with the officers' commands, Officer Unseld secured Mr. Gulley with "handcuffs placed behind his back."

Officers Vigen and Dykgraaf indicated that after "securing" Mr. Gulley, "emergency medical services were immediately called" and they "began efforts to assist the suspect." Officer Dykgraaf indicated that he cut Mr. Gulley's shirt and observed what appeared to be a gunshot wound to the back of his neck and another to his abdomen. As the officers began to apply direct pressure to the wounds, Mr. Gulley asked them to "hold his body in an upright seated position because it was easier for him to breathe." Officer Dykgraaf

also observed an approximate “3-4 inch cut along the suspect’s throat.” The officers continued to assist until medical personnel arrived on scene.

Mr. Gulley was transported to Spectrum Butterworth but, despite efforts to save his life, he was pronounced dead at 10:23 PM. An autopsy was performed by Dr. David A. Start on April 11, 2016. The autopsy revealed that Mr. Gulley had sustained two gunshot wounds. One wound was found to have entered near the midline of his upper back approximately 1 ¼ inch below his shoulders with a track of “back to front, downwards and left to right.” While the other wound was found to be similar in that the track was “downward and left to right,” it entered his anterior [front] upper abdomen approximately ½ inch right of the anterior midline and 12 inches below the top of his shoulders and was “front to back,” not back to front. It was Dr. Start’s opinion that Mr. Gulley died from the wound to his upper back.

In addition to the gunshot wounds, Dr. Start also found “pattern abrasions” on Mr. Gulley’s lower right leg consistent with “dog bites” and one “taser probe attached to subcutaneous soft tissue of the upper left chest.” He also located a “2 inch incised wound to the anterior right side of his neck” extending into the “anterior base of the tongue above the hyoid bone.” Although the wound was extremely deep, it did not penetrate the jugular vein or the right carotid artery. Lateral to this wound, he also found a “1/8 inch superficial incised wound on the right side of his neck.” In addition, Dr. Start noticed two “horizontally-oriented” incised wounds on his left wrist; a 1 ½ inch superficial cut on the anterior surface of the wrist and a separate 2 inch cut that extended into the underlying soft tissue of the wrist. It was Dr. Start’s opinion that these wounds were self-inflicted and suggest that Mr. Gulley had attempted to commit suicide.

Although we will never know with complete certainty where Mr. Gulley attempted to commit suicide, he in all likelihood cut himself while inside the Pheasant Ridge address. Numerous blood samples were collected at the residence, including blood from the upstairs bathroom sink, the dining room floor near the rear slider and the interior handle of the rear slider. Subsequent DNA testing revealed that Mr. Gulley was the source of the blood at all three locations.

Toxicology tests indicated the presence of only caffeine and ibuprofen. There was no evidence that Mr. Gulley was under the influence of either alcohol or drugs.

LAW

Warrantless Arrest

An officer may arrest a person without a warrant if the officer has reasonable cause to believe the person committed a felony. MCL 764.15(1)(d).

Regarding the amount of force that can be used, the Court of Appeals, in *Alexander v Riccinto*, 192 Mich App 65, 69 (1991), stated that an “officer must have a reasonable belief of great danger before responding with the appropriate amount of force to foreclose the threat...We believe that what constitutes a reasonable belief of great danger is to be determined by the jury on the basis of all the facts and circumstances as they appeared to be to the party at the time of the incident.” The Michigan Supreme Court discussed what constitutes “reasonable force” with the following:

The reasonableness of the force used must be judged in the light of the circumstances as they appeared to the officer at the time he acted, and the measure is generally considered to be that

which an ordinarily prudent and intelligent person, with the knowledge and in the situation of the arresting officer, would have deemed necessary under the circumstances. The officer has discretion, within reasonable limits, to determine the amount of force which the circumstances require, and he is not guilty of wrong unless he arbitrarily abuses the power confided in him. [*People v Doss*, 406 Mich 90, 102 (1979), quoting 5 AmJur2d, Arrest, §81.]

Fleeing Felon

In *Tennessee v Garner*, 471 US 1 (1985), the United States Supreme Court held that a police officer's use of deadly force to apprehend a felon fleeing from a *non-violent* crime violated the Fourth Amendment. *Garner*, however, was a civil case and not a criminal prosecution. More significantly, *Garner* did not limit the use of deadly force in the apprehension of a felon fleeing from a *violent* crime. Based in part on these distinctions, the Michigan Supreme Court held that *Garner* did not affect Michigan's substantive law on the use of deadly force, and that the common law rule permitting the use of deadly force against a fleeing felon is still the law in Michigan; see *People v Couch* 436 Mich 414 (1990).

Self-Defense

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 use 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).

In *Riddle, supra*, at 119, the Supreme Court clarified that "a person is never required to retreat from a sudden, fierce and violent attack; nor is he required to retreat from an attacker who he reasonably believes is about to use a deadly weapon." A police officer, because of his duty and responsibility to protect the public, is not required to retreat in the face of a display of force. *Doss, supra*, 406 Mich at 102.

Heflin, Riddle and *Doss* 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*. 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).

Defense of Others

The law of self-defense applies with equal force to the defense of others. *People v Kurr*, 253 Mich App 317, 321 (2002). Traditionally, a person could invoke a claim of the defense of others only where the person had a special relationship to the person they were defending (such as a parent and child). That distinction is no longer important; see *Kurr, supra*. More significantly, a police officer has a duty and responsibility to protect the citizens of his/her community and therefore has the right to use appropriate force in defense of the general public.

To use deadly force in defense of others, a person must honestly and reasonably believe that the other person was in danger of being killed or seriously injured. If the belief was honest and reasonable, a person can act to defend another even if it turns out later that the person was wrong about how much danger the person was in. MI CJI 7.21(4). In deciding whether the person's fear of another person being killed or seriously injured was reasonable, factors to be considered include the conditions of the people involved, whether the other person was armed with a dangerous weapon, the nature of the other person's attack or threat, and whether the shooter knew about any previous violent acts or threats made by the other person. MI CJI 7.21(5). In evaluating the amount of force that was used, one is to consider whether the force used appeared to be necessary, including whether the shooter knew about any other ways of protecting the other person from the attacker, but also considering how the excitement of the moment affected the choices made. MI CJI 7.21(6). **A person who claims self-defense or defense of others does not have to prove that the actions were justified; the prosecutor must prove beyond a reasonable doubt that any such actions were not in defense of another person. MI CJI 7.21(7).**

CONCLUSION

The information available to Officers Cline, Foster and Smith at the time they confronted Mr. Gulley near 3704 Edington Lane was that he had stabbed a woman who was "unconscious" and "unresponsive," had fled the crime scene and was armed with a knife. As such, they clearly had reasonable cause to arrest Mr. Gulley without a warrant.

Upon confronting Mr. Gulley, he initially held up his right hand and told Officer Foster that he had a gun. Rather than shoot Mr. Gulley in self-defense, Officer Foster took cover behind a dumpster. When he realized that Mr. Gulley was holding a cell phone, not a gun, he stepped out from cover and, for the first time, saw that Mr. Gulley had a knife in his left hand. Officer Foster, along with Officers Cline and Smith, then attempted to arrest Mr. Gulley and ordered him to drop his knife. When ordered to drop the knife, however, Mr. Gulley continued to brandish it, repeatedly told the officers that he had a gun, not a knife, and told them to shoot him. Rather than shoot him in self-defense, the officers tried to de-escalate the confrontation by continuing to give him verbal commands to drop the knife. Officer Cline even encouraged him to not "do anything to make this worse for yourself." Rather than comply, Mr. Gulley refused to drop the knife, continued to insist that he had a gun, repeatedly told the officers to shoot him and began to back away. At this point, Officer Cline holstered his weapon, drew his taser and warned Mr. Gulley to drop the knife or he would tase him. Mr. Gulley again refused to comply and Officer Cline deployed his taser. Mr. Gulley immediately took a step back, turned and ran.

Pursuant to both *Garner* and *Couch*, the officers would have been justified in shooting Mr. Gulley as he fled toward Breton. They chose not to do so.

Rather than shoot Mr. Gulley as he continued to flee north in the southbound lanes of Breton, Officer Cline again exercised restraint by ordering Officer Belk to deploy his taser. Although the deployment was unsuccessful, it was nonetheless the second time that Officer Cline had attempted to use non-lethal force to de-escalate the situation and arrest Mr. Gulley.

Contemporaneous with Officer Belk deploying his taser, both Officers Belk and Cline continued to order Mr. Gulley to drop the knife. Rather than comply, he continued to back away from the officers and repeatedly told them to shoot him.

As Mr. Gulley continued to flee, he was quickly surrounded; to the southwest by Officer Belk, to the east by Officers Cline and Unseld and to the north by Officer Bylsma, Officer Hoornstra and his K-9 Aero. At this point, Mr. Gulley continued to waive the knife and refused the officers repeated commands to drop it. As he took a step toward Officers Cline and Unseld, either officer would have been justified in shooting Mr. Gulley in self-defense. Rather than shoot Mr. Gulley, Officer Unseld deployed his taser, causing Mr. Gulley to fall to the ground. Although the taser was effective in that it knocked Mr. Gulley down, it did not incapacitate him. As such, he was still able to move.

At this juncture, Officer Hoornstra released Aero in order to effectuate the arrest of Mr. Gulley in a way that did not put the officers at risk. As Officer Hoornstra closed to within approximately 5' of Mr. Gulley, Mr. Gulley began to swing the knife toward the dog and, by extension, the approaching handler. Given the slippery conditions and the proximity of Officer Hoornstra to Mr. Gulley, Officer Cline made a split-second decision to use deadly force to protect Officer Hoornstra.

In order to use deadly force to protect Officer Hoornstra, Officer Cline must have honestly and reasonably believed that Officer Hoornstra was in danger of being killed or seriously injured. In making such a determination, it is necessary to look at the incident through the eyes of Officer Cline.

While the videos are graphic and many will find them disturbing, they nonetheless provide a unique opportunity to see and hear, to some extent, what Officer Cline saw and heard. Although Officer Roszkowski's in-car video does not capture the 2+ minute foot chase, it does show the culmination of the pursuit as well as the shooting and its aftermath. It does not, however, adequately capture the audio. It also depicts the shooting from an angle and perspective approximately 90° from that of Officer Cline.

On the other hand, while the body-cameras do not capture a visual of the shooting, the audio clearly provides a feel for the excitement, fear and tension experienced by the officers, both before and after the shooting. They also offer insight into why the K-9 was used to drag Mr. Gulley after the shooting. Hopefully the audio will minimize to some extent the impact of what will undoubtedly be a disturbing visual.

In addition to viewing the incident from the perspective of Officer Cline, it is also necessary to consider what, if anything, he knew about Mr. Gulley's actions leading up to the shooting. In that regard, Officer Cline was aware that Mr. Gulley had seriously injured someone with a knife and that he had fled the crime scene.

He was also aware that Mr. Gulley was armed with a knife, a knife that he, in all likelihood, had used to stab someone, and that he was acting irrationally. He had repeatedly refused to follow commands to drop his weapon, had continued to flee from the officers and had continually told the officers that he was armed with a gun [when he was not] and that the officers should shoot him. He was also aware that non-lethal force had been unsuccessfully deployed 3 times in an effort to arrest Mr. Gulley.

What Officer Cline did not know, however, was that Mr. Gulley had attempted to commit suicide by cutting his wrist and his neck. Such acts are clearly indicative of Mr. Gulley's state of mind and may explain, in part, his repeated requests for the officers to shoot him and his refusal to submit to arrest.

To find criminal misconduct on the part of Officer Cline, I would have to prove beyond a reasonable doubt that he was not in fear for the safety of Officer Hoornstra when he shot Mr. Gulley. Stated another way, despite being confronted by an armed, violent, fleeing felon, who had refused repeated commands to drop his knife, who had been tased 3 separate times, who was now swinging the knife at the K-9, thereby putting both the dog and Officer Hoornstra at risk, and despite having repeatedly avoided the use of deadly force, I would have to prove beyond a reasonable doubt that Officer Cline ultimately shot Mr. Gulley for a reason unrelated to the safety and welfare of Officer Hoornstra.

For example, it is possible to argue that Officer Cline's sole focus was the welfare of the K-9. However, even if Mr. Gulley's attack on the dog prompted Officer Cline to shoot over concern for its safety, it does not demonstrate a lack of concern for Officer Hoornstra; the two are not mutually exclusive. In other words, Officer Cline's concern for the dog does not prove beyond a reasonable doubt that he was not also concerned for the safety of Officer Hoornstra.

Even though Mr. Gulley had been tased and was on the ground, Officer Cline was aware that he still posed an extreme risk; i.e., he had committed a serious assault with a knife, he was still armed with a knife, he was acting irrationally and he refused to follow commands.

As the K-9 engaged, Mr. Gulley became actively aggressive and began flailing the knife, putting both the dog and Officer Hoornstra at risk. Because of the weather conditions, it increased the possibility that Officer Hoornstra could slip and fall in

close proximity to Mr. Gulley. Given these facts and circumstances, I cannot prove beyond a reasonable doubt that Officer Cline was focused solely on the welfare of the dog to the exclusion of Officer Hoornstra.

In conclusion, it is important in cases of this nature to reiterate the issue: whether Officer Cline acted within the proper scope of the doctrine of defense of others. It is not a question of whether he could have chosen another course of action. It is not whether, with the full benefit of hindsight, the death of Mr. Gulley could have been avoided. Rather, the question is simpler: was the death the result of an honest and reasonable belief in the need to act in defense of Officer Hoornstra. A review of the facts, and an application of the law to those facts, indicates that the answer to the question is yes. The Kent County Prosecutor's Office will accordingly decline to prosecute Officer Cline for his actions on the night of April 8, 2016.

William A. Forsyth
Kent County Prosecuting Attorney