



**OFFICE OF THE PROSECUTING ATTORNEY
ERIC M. HOFFMAN, PROSECUTOR
46TH JUDICIAL CIRCUIT
DELAWARE COUNTY, INDIANA**

3100 S. TILLOTSON AVE., SUITE 270
MUNCIE, IN 47302-6548

TELEPHONE 765-747-7801
FAX: 765-747-7830

FOR IMMEDIATE RELEASE

From: Eric M. Hoffman, Prosecuting Attorney
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**Prosecutor Finds March 3, 2021
Police Action Shooting Legally Justified**

Muncie Indiana - The Indiana State Police (ISP) has concluded its investigation into the events and circumstances surrounding the March 3, 2021 police action shooting involving two (2) police officers – one from the Delaware County Sheriff's Office and one from the Muncie Police Department. Both officers as well as all other officers completely cooperated with the investigation as did the entire administrations of the Muncie Police Department and Delaware County Sheriff's Office. The investigation was submitted to the Delaware County Prosecutor's Office for review. That review is now complete. This review included statements from civilian witnesses, law enforcement witnesses, the officers involved, police reports, police body camera footage, photos, videos, diagrams, autopsy reports, forensic ballistic analysis, and physical evidence. I would like to thank the Indiana State Police for completing a very thorough and professional investigation. The facts demonstrate conclusively and without a doubt that the two (2) officers who discharged their firearms, one of which ultimately resulted in the death of Jonathan Levi Allen (white male age 28), did so in self-defense and defense of others. Their actions are objectively reasonable. Consequently, their actions are completely and legally justified.

Given the fact that this was a fatal officer involved shooting and in the interest of transparency, I will outline the factual findings, the applicable law, and the ultimate conclusion. The officers involved in the shooting are identified as Officer # 3 and Officer # 4. When criminal charges are not filed against a person, the policy and practice of this Office has been to not publically name the person or persons. Similarly, it is the practice of this Office not to refer to civilian witnesses by name.

FACTUAL FINDINGS

On March 3, 2021, a resident of the Morningside neighborhood in Muncie called the police to report that she observed a red Trailblazer containing two occupants who appeared to be arguing. The caller further reported that she heard approximately three (3) gunshots. At approximately 12:59 p.m. Muncie Police Officers were dispatched to the area of Morningside Park. Muncie Police Officers

1 and # 2 arrived on scene. Officer # 2 arrived at the corner of Yale and Bellaire streets. The Officer observed a red Blazer parked in a yard. The license plate on the Blazer was registered to a 2008 Jeep. Officer # 1 arrived shortly thereafter. The photograph below is a still photo from Officer #2's body worn camera.



Given the nature of the shots fired call, the Officers asked the two (2) occupants of the Blazer to show their hands. Bystanders told the officers that there were no shots fired. Rather, the Blazer had “backfired.” Officer # 2 told all parties that “we need to sort that out.” Officer # 2 asked the male driver, who was later identified as Jonathan Levi Allen “Do you have any guns in the vehicle?” Allen responded “Yes, sir I do.” Allen refused to show the officers his hands despite multiple lawful orders to do so. Allen was yelling and cursing at the officers, made a threat to shoot himself and then took off at a high rate of speed. Officer # 2 got into his police vehicle in an attempt to pull the vehicle over.

Allen fled west in the Blazer on Yale Ave. to Broadway. Allen then fled north on Broadway toward S.R. 67 then onto S.R. 3. Allen was driving “erratically” and “passing cars at a high rate of speed.” While on S.R. 3, Allen continued to drive erratically and crossed over into oncoming traffic. Near County Road 500 N, Officer # 2 observed several school busses turning onto S.R. 3. At that time, Officer #1 advised Officer # 2 over the radio to terminate the pursuit given the presence of school children. From a distance, Officer # 2 observed Allen swerve in and out of the school busses at a high rate of speed as he passed them.

At approximately 1:40 p.m., there was a call to dispatch that a red Blazer was stuck in a field in the area of Smithfield Pike and C.R. 400 E. Multiple police officers in marked police vehicles responded to the scene. Two (2) people were present in the Blazer: a male driver, Allen, and a female passenger.



An officer on scene saw Allen point an object out the window. Multiple officers repeatedly ordered Allen to stop and turn the Blazer off. Officers heard Allen say "I'm gonna kill her," referring to the female passenger. Officers ordered the driver to let the female go immediately.

There was a white car parked in a nearby driveway. Officers made contact with the vehicle and spoke to a female occupant of the vehicle. The female reported that she and the female in the Blazer had been friends for only a few months. The female in the Blazer called her and said she was "stuck" and needed the female in the white car to come pick her up. The female arrived at the field and noted Allen would not allow the female in the Blazer to get out of the vehicle. Allen grabbed her arm and said she was not getting out of the vehicle. The female in the white vehicle reported that the driver of the Blazer refused to let the female passenger out of the vehicle and that he had a gun. As the police were speaking to the female in the white car, the female occupant had the female in the Blazer on her cell phone. An officer asked that the conversation be placed on speaker phone. The officer asked Allen to stop the Blazer and let the female passenger out. Allen told officers that he "was not stopping because he did not want to go to jail." Allen told the officers that they "were going to have to kill him or he would kill himself." The officers heard Allen say "I'll fucking kill her," meaning the female passenger in the Blazer.

The Blazer was able to break free of the mud and took off through the field.



Allen traveled south on Whitney Road, west on Inlow Springs, C.R. 900 E that turns into Stanley Road, C.R. 700 to S.R. 32. When Allen was on C.R. 700, he pointed a handgun out the window and fired shots at a police officer. Many police officers pursued the Blazer with their lights and sirens on. Officers noted that at various times Allen drove the Blazer “recklessly head first into oncoming traffic.”

Allen turned from S.R. 32 and then onto Jackson Street in Selma. Officer # 6 was driving a fully marked Sheriff’s Office police vehicle. Officer # 6 pulled his patrol vehicle in front the Blazer.



The Blazer slowed down and Allen pointed gun out of driver's side window and shot twice at a Deputy Sheriff.



Officer # 6's patrol vehicle sustained at least two gunshots that were fired by Allen as he drove the Blazer.





ISP detectives searched this area and found and collected five (5) spent shell casings on Jackson Street.



These five (5) spent shell casings were later submitted to the Indiana State Police Crime Laboratory. A firearms examiner determined that these five (5) spent shell casings were fired by a 9mm Kel-Tec handgun found on the driver's side floor board of the Blazer where Allen was sitting.

Allen drove from Jackson to Pittenger Street to Railroad Street. Allen then leaned out of the driver's side window of the Blazer and opened fire at Officer # 3. At least one round came through Officer # 3's driver's side window. The window cracked in a "spider web pattern"



Allen then drove north on Albany Street near Jackson Street. Officer # 3 returned fire through the front windshield of his police vehicle. Allen drove north on Albany street where Allen pointed a small handgun out of the driver's side window and opened fire at two (2) civilians on the sidewalk by the American Legion. Allen drove on Jackson Street. In that area, Officer # 3, returned fire for a second time through the front windshield of his police vehicle. Neither of Officer # 3's shots struck Allen.

Below is a photograph of the windshield of Officer # 3's police vehicle.



Allen then drove westbound on S.R. 32 toward Muncie. On multiple occasions, Allen drove head first into oncoming traffic putting the lives and safety of numerous innocent bystanders in jeopardy.



In an attempt to safely bring the Blazer to a stop, officers attempted to utilize tire deflation devices several times. However, their efforts were unsuccessful. As Allen arrived in Muncie at the Jackson/Main street split, Allen chose to drive on Jackson head first into oncoming traffic putting lives of multiple civilians in danger.



Allen turned on Mulberry Street, then Columbus Street and then north on Walnut Street. As Allen drove north on Walnut and passed Muncie Central High School, officers observed him firing more shots out of the Blazer. As Allen drove north on the Walnut Street bridge, Allen fired a shotgun at Officers # 4 and # 5 who were pursuing Allen in a fully marked police patrol vehicle.



Indiana State Police Detectives subsequently searched the area and found a shot shell wadding.



Allen then turned west on Centennial. By this point, Allen had threatened to kill the female passenger of the Blazer. He had placed the lives of multiple police officers and innocent civilians in danger. He had shown a blatant disregard for the safety of children on school busses. Allen had opened fire on two (2) different officers as well as multiple civilians walking down the street in Selma, drove on the wrong side of the road on multiple occasions, and fired a shotgun at pursuing officers. Allen presented an immediate, clear and present danger to the general public as well as law enforcement. As Allen drove the Blazer westbound on Centennial, he was headed towards Ball State University and its densely populated surrounding neighborhoods. Hundreds of students walk this area daily as they go to and from class.

As Allen approached the 800 block of west Centennial, Officer # 5 followed in a fully marked police vehicle. Allen had yet to indicate in any way that he intended to stop, pull over, or otherwise comply with officers' lawful authority. Rather, Allen had stated "he was not going to jail." Officer # 4 is a highly trained veteran police officer who is a member of the SWAT Team. Officer # 4 was riding in the passenger seat of Officer # 5's patrol vehicle. Officer # 4 fired his duty rifle one (1) time, striking Allen in the head. The Blazer promptly came to rest in the 800 block of W. Centennial. Officers approached the Blazer and removed Allen. Allen immediately started physically resisting the police officers. The officers noticed he was bleeding and started medical treatment. A short time later, EMS arrived and took Allen to I.U. Health Ball Memorial Hospital.

Indiana State Police detectives and evidence technicians found a sawed-off shotgun lying in the grass near the driver's door of the Blazer. It was a single shot, breach-action 20 gauge sawed-off shotgun.



Upon further examination of the shotgun, it was determined that it was loaded with a live cartridge, ready to fire.



A Kel-Tec P11 9mm pistol found on the floorboard of the Blazer. The pistol had its slide locked to the rear indicating that the pistol had discharged all loaded rounds in its magazine. As noted above, the five (5) spent shell casings recovered on Jackson Street in Selma were determined by an ISP firearms analyst to have been fired by this Kel-Tec.



Indiana State Police Detectives searched the interior of the Blazer. They located the following:

- Two (2) spent shot gun shells in the driver's door panel.



- One (1) spent shot gun shell and one live 9mm round on driver's seat.



- Two (2) spent shot gun shells on driver's floorboard.



In the top right inside pocket of a Columbia Jacket found in the driver's seat contained a digital scale with white residue and a glass smoking device with residue.



A smith and Wesson magazine was located in the top left outside pocket of the Columbia jacket which was loaded with six (6) live cartridges.



The driver of the Blazer, Jonathan Levi Allen, was later pronounced dead at I.U. Health Ball Memorial Hospital. Upon arrival at the hospital, several medical tests were performed, including a toxicology screen. Allen tested positive for Methamphetamine and Amphetamine. Jonathan Levi Allen was a white male, 28 years of age. The Indiana State Police conducted an independent investigation into the shooting.

On March 11, 2021, an autopsy was performed upon Allen by a forensic pathologist. The cause of Allen's death was determined to be a single gunshot wound to the head. There was one entrance wound and one exit wound.

Jonathan Allen had a lengthy criminal record in Kansas and Indiana including: Criminal Use of a Weapon, Possession of Marijuana, Possession of a Stimulant, Possession of Stolen Property, Criminal Possession of a Firearm by a Felon, Resisting Law Enforcement, Burglary, Carrying a Handgun Without a License, Distribution of an Opiate, Narcotic or Stimulant, Identity Theft, Driving While Suspended, and Possession of an Opiate or Narcotic Drug.



On March 3, 2021, there were two (2) outstanding warrants for Jonathan Levi Allen's arrest. First, there was an active fugitive from justice arrest warrant issued in the State of Kansas. Second, there was an active arrest warrant issued out of the Muncie City Court for Allen's failure to appear on a charge of carrying a handgun without a license.

LEGAL ANALYSIS

A review of U.S. Supreme Court precedent regarding reasonable vs. excessive force is the most appropriate way to begin evaluating any police use of force scenario.

The right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it. Because the test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application, its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.

Graham v. Connor. 490 U.S. 386, 395 (1989). Citing *Tennessee v. Garner*, the *Graham* Court said “the question is whether the totality of the circumstances justifies a particular sort of seizure.” *Id.* “The reasonableness of a particular use of force must be judged from the perspective a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” *Id.*

The *Graham* court noted that:

not every push or shove, even if it may later seem unnecessary in the peace of a judge’s chambers violates the Fourth Amendment. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.

Id. at 396-97. The ultimate question is “whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them.” *Id.* at 397.

In the case at hand, Allen’s crime spree was quite severe and violent. He had opened fire multiple times on law enforcement officers as well as innocent civilian bystanders who were simply walking down the street. Allen clearly posed a tremendous threat to the safety of the officers and the public at large. At the time of the police use of force, Allen was actively and aggressively resisting arrest and attempting to evade arrest by flight. The facts and circumstances surrounding Allen’s violent crime spree and the police use of force was clearly tense, uncertain, and rapidly evolving. When judging the reasonableness of the officers’ actions from the perspective of a reasonable officer on the scene, it is crystal clear that the officers’ actions were objectively reasonable in light of the facts and circumstances confronting them.

Use of force during arrest

Indiana Code § 35-41-3-3(b) provides in pertinent part that:

a law enforcement officer is justified in using reasonable force if the officer reasonably believes that the force is necessary to effect a lawful arrest. An officer is justified in using deadly force¹ only if the officer:

- (1) has probable cause to believe that that deadly force is necessary:
 - (A) to prevent the commission of a forcible felony²; or
 - (B) to effect an arrest of a person who the officer has probable cause to believe poses a threat of serious bodily injury³ to the officer or a third person; and
- (2) has given a warning, if feasible, to the person against whom the deadly force is to be used.

It is indisputable that the officers reasonably believed that the force used was necessary to prevent the commission of a forcible felony. Jonathan Levi Allen chose to illegally arm himself with two (2) firearms, threaten to kill his passenger, refused to stop the Blazer at the lawful commands of the police, opened fire on two (2) police officers, opened fire on innocent civilians, opened fire on two (2) more police officers, displayed reckless disregard for the safety of school children on school buses, and intentionally drove head first into oncoming traffic on multiple occasions. Consequently, the force used by the officers was reasonable, lawful and justifiable.

Self Defense

Separate and distinct from the right of an officer to use force to effectuate an arrest, Indiana law “recognizes the right of every citizen to reasonably defend himself against unwarranted attack.” *Banks v. State*, 536, 276 N.E.2d 155, 158 (1971). Indiana Code § 35-41-3-2(c) provides that:

¹ “Deadly force” means force that creates a substantial risk of serious bodily injury. I.C. § 35-31.5-2-85.

² “Forcible felony” means a felony that involves the use or threat of force against a human being, or in which there is imminent danger of bodily injury to a human being. I.C § 35-31.5-2-138.

³ “Serious bodily injury” means bodily injury that creates a substantial risk of death or that causes serious permanent disfigurement, unconsciousness, extreme pain, permanent or protracted loss or impairment of the function of a bodily member or organ, or loss of a fetus. I.C. § 35-31.5-2-291.

A person is justified in using reasonable force against any other person to protect the person or a third person from what the person reasonably believes to be the imminent use of unlawful force.

However, a person:

- (1) is justified in using deadly force; and
- (2) does not have a duty to retreat;

if the person reasonably believes that that force is necessary to prevent serious bodily injury⁴ to the person, or a third person, or the commission of a forcible felony.

No person in this state shall be placed in legal jeopardy of any kind whatsoever for protecting the person or a third person by reasonable means necessary.

Indiana Court of Appeals has recently said:

Self-defense is a legal justification for what would otherwise be a criminal act. A person is justified in using “reasonable force” against another to protect himself from what he reasonably believes to be the imminent use of unlawful force. To prevail on a claim of self-defense, the defendant must present evidence that he: (1) was in a place he had a right to be, (2) did not provoke, instigate, or participate willingly in the violence, and (3) had a reasonable fear of death or great bodily harm.

Tharpe v. State, 955 N.E.2d 836, 844-45 (Ind. Ct. App. 2011). The amount of force which is reasonably necessary to defend oneself is determined from the standpoint of the accused in light of the surrounding circumstances. *Geralds v. State*, 647 N.E.2d 369, 373 (Ind. Ct. App. 1995). The factfinder looks from the accused’s viewpoint when considering facts relevant to self-defense. *Zachary v. State*, 888 N.E.2d 343, 347 (Ind. Ct. App. 2008); *Williams v. State*, 262 Ind. 382, 384, 316 N.E.2d 354, 355 (1974).

When considering cases of self-defense, Indiana law is clear. Indiana Code § 35-35-41-3-2(c) provides in no uncertain terms that “[n]o person in this state shall be placed in legal jeopardy of any kind whatsoever for protecting the person or a third person by reasonable means necessary.”

⁴ Serious bodily injury is defined by statute as bodily injury that creates a substantial risk of death or that causes (1) serious permanent disfigurement; (2) unconsciousness; (3) extreme pain; (4) permanent or protracted loss or impairment of the function of a bodily member or organ; or (5) loss of a fetus. I.C. § 35-31.5-2-292.

First, Officers # 3 and # 4 were in a place where they had the right to be. Second, the officers did not provoke, instigate, or participate willingly in the violence. Finally, the officers had a reasonable fear of death or great bodily harm. This fear was both subjectively and objectively reasonable in light of the totality of the facts and circumstances. The officers opened fire only after Jonathan Levi Allen opened fire on police officers. Additionally, the amount of force used by the officers was reasonable. A total of only three (3) shots were discharged, one of which struck Allen. Consequently, it is clear that officers acted in self-defense and the force used by the officers was reasonable, lawful, and justifiable.

Defense of third parties

Indiana Code § 35-41-3-2(c) provides as follows:

A person is justified in using reasonable force against any other person to protect the person or a third person from what the person reasonably believes to be the imminent use of unlawful force. However, a person:

- (1) is justified in using deadly force; and
- (2) does not have a duty to retreat;

if the person reasonably believes that that force is necessary to prevent serious bodily injury to the person or a third person or the commission of a forcible felony. No person, employer, or estate of a person in this state shall be placed in legal jeopardy of any kind whatsoever for protecting the person or a third person by reasonable means necessary.

The facts of the investigation demonstrate that each of the two (2) officers were justified in using force to terminate an attempted unlawful shooting of another police officer, shooting at innocent civilians walking down the street, and driving recklessly into oncoming traffic. When confronted by multiple uniformed police officers, Jonathan Levi Allen chose to open fire at the police officers and civilians. Each officer was protecting other officers and the general public from serious bodily injury or the commission of a forcible felony. Consequently, it is clear that the officers each acted in the defense of others and the force used was reasonable, lawful, and justifiable.

CONCLUSION

The evidence demonstrates that the police officers who shot at Jonathan Levi Allen unquestionably and without a doubt did so in self-defense and in the defense of others. Thus, the shooting was justified and reasonable under the law. Had Jonathan Levi Allen survived, he would have faced multiple charges including at least four (4) counts of attempted murder on a police officer, possession of a

firearm by a serious violent felon, criminal confinement, intimidation, resisting law enforcement, criminal recklessness, reckless driving, carrying a handgun without a license, among others. Additionally he would have faced extradition back to Kansas on the fugitive from justice warrant. Sometimes, it is difficult to determine a person's motive. Here there is evidence of motive right from Allen's own mouth. He said that "he was not going back to jail." It stands to reason then that Allen knew that he had two (2) active arrest warrants issued from two (2) separate states. It is clear by his own actions that Allen meant what he said – he was going to anything to avoid going to jail. No charges will be filed in this matter, as the only suspect is deceased.

In conclusion, on March 3, 2021, Jonathan Levi Allen was a menace to society and posed a substantial clear and present danger to the police officers as well as the public at large. This case illustrates that police officers face these dangers each and every day. They put their lives on the line so that we may live in a civilized society. Law enforcement officers have the absolute right to defend their own lives, the lives of the citizenry, and go home at the end of their shift. If you choose to pull a deadly weapon on a police officer, you do so at your own peril. But for the bravery of Officer # 4, there is no doubt that innocent civilians and police officers would have been seriously injured if not killed. The only question is how many people would have become the victim of Jonathan Levi Allen.

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