

MICHIGAN

Ex-cop's attorney argues 'fleeing felon' rule justified deadly force against Patrick Lyoya



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The Detroit News

Published 11:46 a.m. ET Sept. 6, 2023 | Updated 4:22 p.m. ET Sept. 6, 2023

A panel of Michigan Court of Appeals judges heard oral arguments Wednesday from prosecutors and an attorney for former Grand Rapids police officer Christopher Schurr on whether Schurr should go to trial on a second-degree murder charge for shooting Patrick Lyoya to death in April 2022.

During the traffic stop, Schurr's attorney Matt Borgula argued Wednesday that Lyoya had committed several felonies, including resisting and obstructing an officer, disarming a police officer and larceny, when Schurr pulled out his gun to shoot Lyoya. He said the fleeing felon rule allows police to use deadly force if someone they believed committed a felony and is fleeing.

Kent County District Court Judge Nicholas Ayoub ruled in October that there was enough evidence to send the case against Schurr to circuit court to stand trial.

But Borgula said the court "went to another level" and tried to place additional burdens on Schurr to show he had other options than to shoot Lyoya in the back of the head.

During the traffic stop, Lyoya ran away from the car he was driving and Schurr caught up with him a few houses away in Grand Rapids. Video shows Schurr wrestling with 26-year-old Lyoya before firing his weapon into the back of Lyoya's head. The video appears to show Lyoya trying to gain control of the officer's stun gun, with Schurr shouting "Let go of the Taser" before firing the fatal shot.

Kent County Assistant Prosecutor Katie Wendt expressed concern with Borgula's characterization of the fleeing felon rule and said there needed to be parameters put on it,

otherwise officers could use deadly force against anyone who used force against them. In this case, Wendt said, that would have meant Schurr could have shot Lyoya as soon as he started running away.

"I can't imagine any court would say an officer can shoot someone just for disobeying a command," Wendt said. "There have to be parameters to safeguard human life here."

She also argued this case had many questions of fact that needed to be resolved by a jury. She said it's hard to tell if Lyoya was trying to break free from Schurr or if he was trying to grab his Taser to use.

"Eyewitnesses said Schurr was in control of the fight the entire time. Lyoya was never on the offensive," Wendt said.

The judges will release their decision at a later unspecified time.

Questions from judges

Michigan Court of Appeals judges Brock Swartzle, Colleen O'Brien and Kathleen Feeney expressed concerns about whether the Taser counted as a dangerous weapon, whether the case has questions of fact that should be submitted to a jury and if police have a different standard for shooting someone in self-defense than private citizens.

Farmington Hills-based defense attorney Art Weiss said it is difficult to tell what judges are thinking just based on the questions they're asking during oral arguments. It is obvious, however, that they had some concern about how the lower courts handled the case, Weiss said.

"There is obviously some concern on behalf of at least a couple of the judges in the way case was handled in both district and circuit courts," Weiss said. "(The court) usually denies the application for leave to appeal and has the case go to trial."

Borgula said Schurr used "incredible restraint" with Lyoya in a several-minute hand-to-hand fight.

"The officer tried everything he could from his training and experience to arrest Mr. Lyoya without using deadly force," Borgula said. "Only after a minute and a half he took out his Taser. ... At some point the officer lost control of the weapon. It was only after two and a half minutes of hand-to-hand contact with Lyoya that he decided he was going to use deadly force and take out his weapon."

Swartzle asked whether it would be a different question if Lyoya and Schurr had been fighting over a gun, not a Taser. Wendt said it would still be a question that the jury needed to answer, especially to determine if Lyoya intended to use the weapon and if Schurr had an honest and reasonable belief that Lyoya was going to use it against him.

Weiss said it appeared the prosecutors believed every case like this should go to trial for a jury to decide on the questions of fact without any filtering process, such as a preliminary examination to determine if there is probable cause.

A matter of circumstances

Schurr killed Lyoya in April 2022 after Schurr stopped Lyoya because he said his license plate did not match the vehicle. Cell phone video showed Schurr, 31, shooting Lyoya, 26, in the back of the head after Lyoya fled after Schurr asked him for his driver's license.

Kent County Prosecutor Chris Becker has said Schurr's use of deadly force was not immediately necessary. He said when Schurr fired the fatal shot, Lyoya was lying face down on the ground.

"This is a direct shot to the head," Becker said. "It's a contact wound to the back of the head."

Schurr was fired by the Grand Rapids Police Department after the shooting and has been free on a \$100,000 bond.

Ayoub said in October that there was no dispute about whether Schurr killed Lyoya and had acted with malice. The only real dispute, Ayoub said, was if Schurr's actions were justified under the law.

"Generally questions concerning the existence or lack of necessity and resorting to deadly force in self-defense are for the jury to decide after considering all of the circumstances," Ayoub said.

Trying officers is 'Wild West'

It's complicated to try to apply criminal law concepts to a police officer defendant, said Lansing-based defense attorney Patrick O'Keefe, because the defenses that would work for a civilian wouldn't apply for a police officer. There's no doubt what Schurr did was a homicide, he said. But the question is whether was a murder or a justified shooting.

"Courts are having to craft their own affirmative offense," O'Keefe said. "The jury needs some instruction that Schurr is entitled to use reasonable force, even deadly force, in a case where there is a fleeing felon committing multiple felonies and who allegedly gets his hands on Schurr's Taser. ... We don't have a standard jury instruction that covers this situation."

In a police brutality case he tried last month in Ingham County — one where a Michigan State Police officer was charged with felonious assault for allowing his K9 partner to bite and assault an immobile man for several minutes — O'Keefe said he and the prosecutor had to craft a special jury instruction that allowed some leeway for the officer. The officer, Trooper Parker Surbrook, was acquitted.

"You've got to have an affirmative defense for police officers and it's not self-defense," O'Keefe said. "You can argue it's self defense, but it's really more of a reasonableness question."

The solution would be for legislators to pass laws that would provide an affirmative defense, O'Keefe said. Without this, trying police officers is the "Wild West," he said.

"There's a reason we have standardized criminal jury instructions," O'Keefe said. "So the law is applied equally across the state, so the juries are being given the same sets of instructions. ... There needs to be a law that sets some outlines on reasonable uses of force for police officers."

A law like that could help attorneys craft jury instructions to help everyone decide if an officer's actions crossed the line, he said.

"It's a very emotionally charged situation that requires emotion to be, not drained out of it, but you really need to sap a lot of the emotion out of the situation," O'Keefe said. "(Schurr) has got every right to get home safely, just as Mr. Lyoya does."

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