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OPINION REGARDING 11/25/21 SHOOTING DEATH OF XAVIER DESHAWN WEST
BCPD COMPLAINT 21-9278

This office received a warrant request regarding Adam Michael Yancer involving the alleged shooting death of Xavier Deshawn West, B/M, DOB 8/2/92 in Battle Creek, Calhoun County, Michigan, occurring November 25, 2021 at approximately 12:05 AM in Battle Creek Police Department (BCPD) complaint number 21-9278. Mr. Yancer claims he shot Mr. West in self-defense, stating he was in fear for his life after being attacked by at least four men, including Mr. West.

Summary of Reports and Related Materials

I have reviewed all submitted reports, spoken to officers, witnesses and examined evidence collected including numerous videos of the incident and reviewed the law regarding a claim of self-defense.

Approximately 27 police officers were involved in some way in this investigation. Of the claimed 22 security guards working that night, approximately 20 were interviewed. One refused to speak to officers. The other was Yancer. About 13 employees were interviewed and approximately 12 or more witnesses were interviewed. The final report submitted by BCPD is 81 pages long and summarized as follows:

At approximately 12:05 AM, on November 25, 2021, Battle Creek Police Officers responded to a 911 call at 36 West Michigan Ave., within the City of Battle Creek, Calhoun County, Michigan. This address is better known as the "Cricket Club", which is a two-story bar. Xavier West was found sitting on a couch which was against the wall between the front door and a staircase to the second floor of the bar. It appeared he had been shot twice. He was unresponsive. He was taken out of the bar, worked on by officers and first

responders outside, then taken by ambulance to Bronson Hospital in Battle Creek where he was pronounced dead soon after.

At the time of the shooting, Yancer had a valid Michigan concealed pistol license (CPL). The bar owner stated Yancer worked for him at a local gun store he owned and was hired to assist in security on the evening of November 24 into the morning of November 25, 2021. The 24th was the night before Thanksgiving and is one of the busiest bar nights of the year. [REDACTED] one of the owners, claimed Yancer was one of a few people working that had permission to conceal-carry a firearm that night. He was working at the front door (Michigan Avenue) checking i.d.s and searching people entering through the front. There were 22 bouncer/security guards working, as well as Battle Creek police officers doing walk throughs throughout the night.

Responding officers were advised the shooter was an employee and that the firearm used was in a walk-in fridge area. The gun was found by officers unloaded, with a magazine lying next to it along with one loose round of ammunition. One witness who spoke to Yancer told Yancer to go to that cooler; Yancer explained he was not feeling well due to the beating he had received and told him that he was on the bottom of the pile, that he was being torn up and had to do something.

Yancer was detained in handcuffs and transported to the Battle Creek Police Department for questioning. Officers noted he had blood on his face that appeared fresh and complained of a possible concussion. Injuries were noted to his forehead and left temple area. Photographs were taken of his injuries and Lifecare Ambulance was called to check him out. After being advised of his rights pursuant to the *Miranda* decision, Yancer stated that he had been involved in an altercation in which *he was in fear for his life*, and he did not wish to make any statements.

Officers attempted to question witnesses at the scene, canvassed Bronson Hospital and its parking lot for witnesses after Xavier West was taken to the hospital, and later searched for more witnesses to investigate the shooting.

[REDACTED] was located wearing a gray sweater, black pants and gray shoes. He had a red bruise above his right eye. He said he was with Xavier West, [REDACTED] along with others at The Cricket Club. He stated while walking down the steps from the second floor an altercation occurred with security guards. A security guard involved in the fight fired 4 shots at the group of people. He stated while Xavier West may have thrown a punch, it was not a deadly force situation. He said someone had thrown a drink across the bar while they were upstairs, so he had gathered his family and tried to get downstairs. While walking through the crowd, someone took a swing at him and he was knocked to the ground. While on the ground he tried to grab his cousin and saw Yancer pull his gun, point at the group and fire it. One bouncer accused [REDACTED] of punching him in the face.

██████████ was interviewed, stating a fight broke out upstairs. He followed Xavier West downstairs as did security. Another fight broke out downstairs and at some point he was holding Xavier West back telling him to chill, stating he was "bear hugging" Xavier West when he heard two shots and backed off, stating he heard someone yell "nigger" but didn't know who.

██████████ did not want to make a statement.

██████████ stated he had drank a lot and does not remember much, but at least eight or nine people were fighting.

Another witness said she was speaking to a male upstairs, identified as ██████████. She knew him as the father of a shooting victim she had recently dealt with. At one point, he thought someone had thrown a drink on him; he became angry and threw his drink across the room. A fight broke out and she got out of the way. She believed she heard two shots occur upstairs. As she was leaving, she saw fists flying upstairs.

One witness videotaped a part of the altercation from upstairs. She observed the fighting, labeling the video "late night vibes" and "gunshots SMH, SMH". The police report described three attackers who were punching and kicking Yancer as he was hunched over on the floor, claiming two additional security guards were trying to pull attackers off Yancer, but were also being assaulted themselves by other attackers. The report also describes the video showing the gun being pulled out and fired.

Bartenders and bouncers described what was happening around the second-floor bar before the group with Xavier West was escorted downstairs. The bar was packed with people shoulder to shoulder. Several fights started and a number of bouncers responded. Bartenders were being assaulted. People were jumping over the bar trying to steal bottles of alcohol. There was a DJ working upstairs who was ordered to stop playing music in an attempt to regain order. The lights were turned on. One bartender described some of the conduct as a 'riot', with people throwing bottles prior to the shooting. Another believed it to be a gang fight, claiming people in different groups were displaying gang signs. There were several groups fighting, bottles and glasses being thrown. One bartender described seeing a woman about to hit a female bartender with a bottle and that owner ██████████ was punched in the face twice. Another guard stated during the fighting upstairs he dealt with a woman stealing alcohol from the bar. There were chairs and bottles being thrown.

Some of the security guards working the second floor talked about small pockets of people upstairs causing problems and were escorting them downstairs when Yancer was assaulted. One bouncer saw Yancer being attacked and pulled one person off him.

One witness claimed the fighting upstairs was because of security, claiming an unknown female was spit on by a female bartender, the female threw her drink in the bartender's face, and after security punched her in the face, Xavier West, ██████████ and

others came to her aid and confronted security then security began taking people downstairs.

When asked about Yancer's attitude and demeanor prior to the shooting, employees described him as chipper, in a good mood, acting normal, and after the shots were fired, one described him as pretty badly beaten. Another stated Yancer was getting 'the crap beat out of him', his face was bloody and he possibly had a broken nose, a large mark on his neck where it looked like he was getting his neck wrung. Yancer stated he felt there was nothing he could do because he was on his back being beat His head was throbbing.

Witnesses claimed Xavier West was involved in the disturbance upstairs, being observed punching bar owner ██████████ in the face. ██████████ who oversaw security, confirmed being punched by Xavier West in the back of his head as he was trying to get through the crowd upstairs.

One security guard stated he was following the group being escorted out of the building from upstairs. When they got downstairs, he believes Yancer grabbed an older gentleman by the shirt, which is when he was attacked by the younger men. Other witnesses stated there were several people arguing with security downstairs before the fighting occurred. One stated she saw one of the guards fall during the fighting [presumably Yancer], and it appear he was being trampled before the gunshots.

The bar was very crowded at the time of the fights upstairs and the shooting downstairs. *Det. Stephanie Estree and Fire Inspector Jones reviewed the exit/entry videos immediately following the shooting, noting 804 people exited the back door while 98 exited the front door from a bar with a believed State capacity of 300.*

██████████ is identified as wearing a dark colored track suit with white stripes and a red baseball cap. Xavier West is identified as wearing a black Ski-type mask covering his mouth. ██████████ is also seen on the staircase being pushed forward toward and down the stairs.

██████████ was interviewed. He stated he was "drunk as hell". He was upstairs when a fight broke out and he and his family just tried to leave. As they were walking down the stairs they were being pushed around by everyone. Someone pushed ██████████ which started the fight. In close proximity to him was Xavier West, ██████████, ██████████ identified himself as wearing the black jacket with stripes down the sleeves. After first sounding like he and his family were just trying to get out of the building, he later admitted to punching at Yancer while Yancer was on the floor.

██████████ was interviewed. He stated he was wearing a burgundy sweatshirt and was with Xavier West, ██████████. While they were upstairs, someone threw a bottle hitting ██████████. Their group then got physical with another group. Security guards approached and told them it was time to go and escorted them to the stairway. As they got to the bottom step a white male in an orange

shirt walked up and started pushing on them. He did not recognize him as security because his shirt was not green. He thought the guy just wanted to fight so they started fighting him and punching him. The guy [Yancer] fell to the floor and [redacted] himself fell on the floor. He saw the guy go for his waist, so he rolled away, hearing [redacted] say, 'he's got a gun'.

The Cricket Club has security cameras on both floors. Detective Marshall reported reviewing Camera 16 from near the Michigan Avenue door where Yancer was working. In his report, Marshall describes the video showing a commotion getting Yancer's attention at 00:04:34 on November 25, 2021 [military time, 12:04 and 34 seconds a.m.] being pointed out by a patron and he approached the group; about 3 seconds later, he makes contact with the group and directs a person with dark clothing toward the door. At 00:04:45 a subject is seen with their right hand in a downward motion toward Yancer and the crowd appears to collapse on itself. He describes the fight moving off camera, and sees individuals fall to the floor at 00:04:54 coming back into view. Once on the ground, Marshall states an individual [Xavier West] is punching down at the person [Yancer] on the floor, and a subject wearing dark pants with a stripe [redacted] kicking at Yancer on the floor. He describes Yancer being pulled by one person [Xavier West] while another person is trying to restrain Xavier West [redacted] at 00:05:04. [redacted] continues trying to restrain Xavier West while Xavier West is delivering more punches to Yancer who is still on the floor.

Marshall describes social media videos he also reviewed. In one, security guards [redacted] and [redacted] can be seen trying to break up the group attacking Yancer. Yancer is seen on his knees being punched by Xavier West and [redacted] while a male wearing a white shirt and dreadlocks [redacted] is holding Xavier West. [redacted] is seen delivering three punches before being pulled off by [redacted] is pushed away by an unidentified person. Yancer can be seen on both knees and curled over with his right hand under his body. While [redacted] is trying to restrain Xavier West, Xavier West is pulling on the left part of Yancer's shirt, delivering a strike to the left side of Yancer's head. As the strike connected to Yancer, Yancer pulls his pistol with his right hand. Marshall states the camera began to pan away with Yancer out of view, but he could still see [redacted] trying to restrain Xavier West while Xavier West is seen punching down at Yancer at the time two shots are heard.

He describes another video showing Yancer after the shooting, standing with his gun at the "low ready" position.

Yancer is described as 5'-7" tall weighing 150 lbs. Xavier West is described as 5'-10" and 207 lbs. Two bullet wounds were located on Xavier West during autopsy with two bullets being removed from his body, with no other significant injuries reported, and his BAC was .122. Photos were taken of Yancer after he was taken into custody at the police department and also a few days later. In reviewing those photos, Yancer is seen with apparent blood on his t-shirt over his right shoulder and right sleeve, the skin below his

eyes appeared darkened and puffy, possibly an abrasion, with marks, blood, and/or abrasions on his left forehead, over his right eye brow, middle front hairline, left and right sides of his face, scrapes/bleeding on his nose, a longer mark/abrasion/bruising on the left side of his neck taking up almost the entire left side collar area, injury to the inside left upper lip, marks/abrasions on the back of his right and left hands, long bruising/abrasions inside and outside his right arm, bruising on the left arm near the shoulder, abrasions and bruising on right and left shins and knees, an abrasion on the right side of his belly button [possibly caused by his holster, not involved with this incident], bruising behind and on the back of his right ear.

The various statements made during interviews were compared to what is seen on the videos received by BCPD by consent/search warrants from the Cricket Club. There were 27 videos from the Cricket Club broken down by camera number. According to the camera numbers, there are supposed to be 32 cameras, with numbers 21, 22, 23, 26 and 31 missing. These videos begin at 8:00 p.m. [in military time with hour, minute and second] and continue long past the needs of this investigation. They appear to be in sync as to time but it is not known how close the time stamps are to the actual time. They do not have audio. There were also two cell phone videos reviewed that do have audio

Through the camera system it is determined that Adam Yancer was working the door at Michigan Avenue from about 8:00 p.m. until the time of the shooting as reflected on camera 16. He is wearing a bright orange t-shirt and a camouflage baseball cap. For that 4 hours, he never leaves that area for more than 1 or 2 minutes at a time. Xavier West is identified as entering the front door on camera 14 at 22:42. Yancer is carding people and searching them. A male wearing a yellow and black coat comes from the bar area and appears to meet Xavier West and people who appear to be with Xavier West. Xavier West is identified wearing a blue/black ski-type mask covering his head and face as well as what appears to be sunglasses. He is wearing a multi-colored coat with black, red and yellow. He and at least one other person walks past Yancer. Yancer does not acknowledge them nor seem to see them walk past as his attention is on another person. At the time, this area was very crowded. While a male wearing a white hoodie may have paid his cover charge, Xavier West was neither carded nor searched. Camera 24 shows Xavier West walking to the middle area of the lower bar where he mingles with a number of people still wearing the mask and glasses. Most people in the bar are not wearing masks, although they are standing very close together, despite COVID recommendations. Camera 18 shows Xavier West and about three others walking toward the front stairs. Camera 7 shows him and people with him entering the second floor from the front staircase. Other cameras show him walking around a crowded second floor, apparently mingling and talking to people. At one point he is lost on the videos. The back [east] side of the bar has no camera video that was provided.

At 23:50 Xavier West is on camera 10, which video tapes the dance floor on the second floor. Xavier West comes from the west side of the bar and meets on the dance floor with a male wearing a white hoodie, a male wearing burgundy and a male wearing a dark coat

and backwards dark baseball cap. He is still wearing the mask. Other people he had been with earlier join him. A male wearing what appears to be a dark blue coat with white stripes on the sleeves and a red baseball cap with a "C" on the front [identified as ██████████] arrives on the dance floor with a female wearing a brown plaid-type longer coat. They all appear to know each other. At 23:54:12 Xavier West's attention is directed to the west side of the bar out of view. He walks to the railing and begins making hand gestures to the west side of the bar out of view described by some as 'gang' signs. He turns back to his friends for a time, apparently socializing. At 23:56:15 he returns to the railing, leaning over it a bit, again making hand gestures that appear to be 'gang' signs toward the west side of the bar out of view, at one point pointing his right hand to the west back side of the bar. He exits the dance floor on the west side out of view at 23:56:54. Security guards wearing bright green and orange t-shirts can be seen walking around. ██████████ and the female leave the dance floor at 23:59:37. The bar area is crowded, with people basically shoulder to shoulder. At 00:00:48 on camera 10, two security guards in green quickly move to the west side of the bar from the east, moving out of sight. The lights come on at 00:01:09. Most everyone is looking to the west side of the bar out of view. People start moving away from the west side watching, while some males walk toward it. A male wearing a black coat and knit cap appears walking east with others, violently pulling away from one individual, looking back toward the west. He appeared to be angry. ██████████ approaches him with three security guards in green following. The female with ██████████ is there. One of the males Xavier West entered the bar with is with them. There is some type of struggling or commotion off camera to the east at 00:01:17. Four security guards are speaking to them with their palms raised while speaking to them, with one shining a flashlight toward them [I am told these lights are used to identify problems]. Camera 4 picks up the struggle. At 00:01:46 a group including Xavier West is being ushered out. Xavier West is still wearing his mask, pushing against a male wearing a black coat, while ██████████ is also pushing against another male. Security is not hands on. The male wearing the yellow and black coat is also present.

Eventually there are seven green shirted security guards and one orange shirted security. While the west side of the bar is not shown, Camera 13 shows the DJ booth. At 00:02:44, a female is seen hiding in the booth. There is a lot of aggressive pushing in the crowd, but security does not appear to be aggressors. Camera 7 shows the group still arguing at the top of the stairs. Xavier West starts downstairs at 00:04:20 with the others. Three green shirted security follow them down. A male wearing a white coat with braids [identified as ██████████] follows them.

The attack on Yancer captured on video is accurately described by Det. Marshall in his report. At 00:04:20, Camera 16 shows Yancer at the front door, looking at the upper area but also checking people at the door. At 00:04:31, a flashlight is shone at an area near the stairs. At 00:04:34, a female patron at the front door points toward the stairs and Yancer starts walking toward the stairs. A flashlight used by security is shining down on some people, one of which appears to be the male wearing the yellow and black coat.

Yancer approaches some of the people and at about 00:04:38 it appears Yancer extends his arms as if separating people as a group of people walk up; they could be talking, but Yancer has his hands extended. At 00:04:45, it appears someone wearing a dark coat and white shirt swings at Yancer and Yancer goes out of camera 16 view coming back at 00:04:52. But this part of the fighting can be seen on Camera 18 [view from over the lower bar east toward the stairs], where it appears possibly 2 people swung on Yancer at the same time at 00:04:45 with a group of people collapsing on him. The male in the yellow and black coat and a male in a black/white/red coat were behind Yancer. After Yancer goes down, [REDACTED] and the male in the dark coat [possibly [REDACTED]] can be seen swinging at Yancer. Yancer is on the floor being struck by numerous people, including the male in the blue jacket with white stripe and red baseball cap [REDACTED], a male wearing burgundy clothing [possibly [REDACTED]] and the male in the dark coat. The aggression is specifically targeted at Yancer. Yancer appears to try to get back up but the crowd pushes him back down while hitting him

A male wearing a black/white/red coat is seen kicking at a waiter after the waiter picked up a bar stool. The waiter then forced this male out the Michigan Avenue door. Prior to this, the waiter tried to assist Yancer, but was pushed out of the way by a male wearing a dark coat prior to that male going after Yancer.

The clearest but shortest [about 9 seconds] video appears to be a cell phone video from upstairs or on the staircase. There is a cellphone audio/video named LATE NIGHT VIBES with "Gun shots smh smh" collected from a witness. While there is no time stamp, in comparing it to videos, it appears to pick up at approximately 00:05:02. It shows two security guards trying to assist Yancer while a third appears to be dealing with someone else. About two seconds into the video, a male voice is heard to yell, "oh, shit". As one guard is trying to get the dark coat individual [REDACTED] off Yancer, the male in the yellow and black coat pushes the guard away and interferes. [REDACTED] can be seen punching Yancer, who is on his knees curled forward with his head also to the floor. Xavier West is seen kicking Yancer and punching Yancer with his right hand in the left side of Yancer's head, holding Yancer's orange shirt with his left hand exposing Yancer's black t-shirt underneath [Yancer said his holster was in the front area of his waistband]. A male with a burgundy coat [possibly [REDACTED]] is also punching Yancer, eventually falling on the floor with Yancer. [REDACTED] and the male wearing the black/white/red coat try to pull Xavier West away from Yancer, but Xavier West does not let go of the shirt. The video pans in closer, Yancer pulls a handgun with his right hand apparently from the front of his black t-shirt. He planted his right foot in an apparent attempt to stand while Xavier West is punching him. Xavier West breaks free of [REDACTED] falling or diving on top of Yancer's back. At the same time, Yancer falls forward and appears to turn about 90 degrees, still on his knees and bent over. His left arm comes out straight and two shots are heard. On Camera 16, this occurs at about 00:05:10. It is unknown from the camera angle if Xavier West was still on top of Yancer at the time the shots are fired, but his orange t-shirt is still being pulled. The unidentified female who came to the club with [REDACTED] is standing

at the door a few feet away watching. She is described as having longer straight dark hair wearing a black top, blue jeans and a longer brown [possible plaid] coat

A cell phone audio/video from [REDACTED] appears to have been taken near the couch behind [REDACTED]. It shows Xavier West break the grip of [REDACTED]. At the time of the first shot, [REDACTED] was beginning to pull Xavier West off Yancer. After apparently being shot, Xavier West stands up, walks to the couch and sits down. Yancer stands up with the gun at the ready, and states 'get back' twice. He appears disheveled.

Statutory Self Defense in Michigan

Michigan has a "stand-your-ground" self-defense law, which provides an affirmative defense to those using deadly [and non-deadly] force when faced with threats of great bodily harm, death, or unlawful force from another. The statutes state, in pertinent part:

MCL 780.972. Right to use of force in defense of self or another individual

Sec. 2. (1) An individual who has not or is not engaged in the commission of a crime at the time he or she uses deadly force may use deadly force against another individual anywhere he or she has the legal right to be with no duty to retreat if either of the following applies:

(a) 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 herself or to another individual.

[the second situation does not apply to these facts, but applies to rape cases]

(2) An individual who has not or is not engaged in the commission of a crime at the time he or she uses force other than deadly force may use force other than deadly force against another individual anywhere he or she has the legal right to be with no duty to retreat if he or she honestly and reasonably believes that the use of that force is necessary to defend himself or herself or another individual from the imminent unlawful use of force by another individual.

MCL 780.961. Use of deadly or lesser force in compliance with § 780.972 not deemed criminal conduct; prosecution for use of deadly or lesser force unjustified under § 780.972

Sec. 1. (1) An individual who uses deadly force or force other than deadly force in compliance with section 2 of the self-defense act and who has not or is not engaged in the commission of a crime at the time he or she uses that deadly force or force other than deadly force commits no crime in using that deadly force or force other than deadly force.

(2) If a prosecutor believes that an individual used deadly force or force other than deadly force that is unjustified under section 2 of the self-defense act, the prosecutor may charge the individual with a crime arising from that use of deadly force or force other than deadly force and shall present evidence to the judge or magistrate at the time of warrant issuance, at the time of any preliminary examination, and at the time of any trial establishing that the individual's actions were not justified under section 2 of the self-defense act
[footnote omitted]

Michigan Rules of Professional Conduct [MRPC] impose special responsibilities on prosecutors, including refraining “from prosecuting a charge that the prosecutor knows is not supported by probable cause” Self Defense statutes add further requirements. To issue charges, under MCL 780.961 the prosecutor must be able to show the use of deadly or non-deadly force was not justified under MCL 780.972 at the time it was used. In making this determination, the facts and evidence must show Mr. Yancer’s conduct was in violation of that statute. Further, once evidence of self-defense is introduced, the prosecutor bears the burden of disproving it beyond a reasonable doubt *People v Forston*, 202 Mich App 13, 20, 507 NW2d 763 (1993) The reasonableness of an accused’s belief that he was in inescapable danger, for purposes of a claim of self-defense, depends on what an ordinarily prudent and intelligent person would do on the basis of the perceptions of the actor *People v Orlewicz*, 293 Mich App 96, 809 NW2d 194 (2012). The common meaning of “great bodily harm” is an unusual or considerable degree of injury to the body See, *People v Long*, 2009 WL 5194477 (Mich App 2009).

There are three basic requirements [or prongs] that must be met for deadly force [and non-deadly force when non-deadly force is at issue] to qualify conduct as self-defense:

First Prong:

The individual has not or is not engaged in the commission of a crime at the time he or she uses deadly force

It does not appear Adam Yancer was engaged in the commission of some other crime at the time he used the force alleged and had a right to be where he was. He was employed by the owners of *The Cricket Club*, was a licensed CPL holder and had permission from his employer to possess a firearm during the course of this employment

MCL 750.227(2) states in pertinent part:

A person shall not carry a pistol concealed on or about his or her person ... except in his or her dwelling house, place of business, or on other land possessed by the person, without a license to carry the pistol as provided by law and if licensed,

shall not carry the pistol in a place or manner inconsistent with any restrictions upon such license.

While MCL 28.425o prohibits a concealed license holder from carrying a concealed pistol in a bar or tavern, section 1(d) specifically exempts the owner or employee of the business.

Comparing the video with and considering the statements contained in the police reports Yancer does not appear to have been the aggressor, nor does it appear he committed an assault or battery prior to discharging the firearm.

Therefore, the first prong is satisfied.

Second Prong:

At the time he acted, Mr. Yancer must have honestly and reasonably believed that he and/or someone else was in danger of being killed or seriously injured. As long as that belief is honest and reasonable, he could act immediately even if it turned out later he was wrong about how much danger was posed. Mr. Yancer would not have a right to kill or seriously injure another person merely to protect against what seems like a threat of only minor injury to himself or another [paraphrasing standard jury instruction SJI2d 7.15 relating to self-defense].

We must weigh the surrounding circumstances in determining what someone “honestly and reasonably believed” and do not need to take statements at face value. They can be taken in concert with other information. MCL 780.972 provides protection in two basic situations. First, **deadly force** may be used in any situation where one honestly and reasonably believes they or another are facing imminent death, rape or great bodily harm. There are many definitions of “great bodily harm”, and they all agree it is something more than mere minor injury but rather “serious injury” Great bodily harm means any physical injury that could seriously harm the health or function of the body. Michigan Criminal Jury Instructions, Second Edition [CJI2d] 17.7. Second, **non-deadly force** is allowed in situations where one honestly and reasonably believes the use of that force is necessary to protect them or another from some other imminent unlawful use of force. There is no duty to retreat in either situation.

Where an accused is attacked by two or more persons, or is attacked by one person and others are acting with the assailant or are present and aiding and encouraging him, the accused has a right to act in self-defense against all and, in a proper case, to kill one or all; the accused is not justified in killing one of those persons where he does not entertain a belief that he is in danger of serious bodily injury or loss of life at the hands of that person. *People v Johnson*, 112 Mich App 483, 316 NW2d 247 (1982).

It is noted that our law does not look at the intent of the alleged attacker or other attackers; it looks only at the honest and reasonable belief of the person asserting the defense based on the perceived threat through that person's eyes. That perception may be completely different from the true facts and flat wrong regarding as to the attacker's intent, but as long as the belief was honest and reasonable under the circumstances, the conduct is justified.

In this case, Yancer was subjected to a continuous attack which did not appear to abate from up to four or more apparently unknown individuals. There does not appear to be a reason for the attack, other than one person involved stating they believed Yancer wanted to fight them, which itself does not appear to be reasonable. Yancer's statements that he was being "torn apart" and felt he was in fear for his life appear consistent to what is seen in the video. A reasonable person, in the same situation, would be justified in believing either their life was in danger or they were in danger of receiving serious bodily injury, i.e., great bodily harm.

Therefore, the second prong is satisfied.

Third Prong:

At the time Mr. Yancer acted, he must have honestly and reasonably believed what he did was immediately necessary. Under the law, a person may use only as much force as they think is necessary at the time to protect themselves or others, considering what he knew at the time, and also considering how the excitement of the moment may have affected the choices he made [paraphrasing standard jury instruction SJ12d 7.15].

Put another way, is the force used excessive under the circumstances? Although retreat is not required, could he have reasonably retreated? When looking at "the excitement of the moment", courts have held that when deciding the reasonableness of a **police officer's** actions, allowance must be made "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." *Graham v Connor*, 490 US 386, 396-397; 109 SCt 1865 (1989). We cannot hold a citizen to a higher standard when placed in the same situation. Police officers at least receive some self-defense training, and the fact the decedent is not armed does not mean deadly force is excessive.

The fear of the moment or "excitement of the moment" as quoted from the jury instruction does not typically just "turn off". Even if it did, studies have found that after deciding to fire a gun it takes about 1.3 seconds to change that decision. For use of either deadly or non-deadly force, if justified, Mr. Yancer had no duty to retreat and, in fact, could not as he was knocked down on the floor. Xavier was holding his shirt while he and others battered Yancer.

There was certainly the appearance of 'an imminent use of illegal force' to justify some self-defense. At any given time, Yancer was being attacked by at least two to three people with at least four seen attacking him during this 25 second attack. It appeared to be an intense and unprovoked beating, without any apparent reason or cause by persons who do not appear to have known Yancer, nor had dealings with him that night. Under these circumstances, a reasonable person would reasonably believe their life was in danger, or that they were in the process of receiving much more than minor injuries and immediate action was necessary.

Therefore, the third prong is satisfied.

Conclusion

Based on the information and evidence currently available, self-defense cannot be disproven beyond a reasonable doubt and a criminal conviction is unlikely under our self-defense laws. The Battle Creek Police Department made public requests for witnesses and other information regarding this matter prior to filing their report with this office for the second time. Of the over 900 patrons at this bar at the time of the shooting, approximately 12 gave statements. In reviewing the videos obtained, it appears a number of people may have videotaped parts of this event, and two were brought forward. Further review for criminal prosecution may be had in the event further information is developed contrary to the information currently available.

Other Issues

There has been quite a bit of misinformation on social media that will be addressed.

Concealed Pistol License [CPL] and Implied Consent. Some critics claim the police failed to give Yancer a PBT or other alcohol test, somehow protecting him from prosecution, claiming MCL 28.425k required Yancer to submit to a chemical test under the "implied consent" provision of this statute. Contrary to this assertion, that is not what the statute requires. While they quote paragraph (1) of MCL 28.425k and state "Acceptance of a license issued under this act to carry a concealed pistol constitutes implied consent to submit to a chemical analysis", they miss the rest of the sentence which reads, "under this section". Paragraph (4) "under this section" requires a peace officer to have "probable cause" to believe the person carrying is in violation of this section [i.e., being under the influence] before requiring submission to chemical testing. Like drunk driving, paragraph (5) requires implied consent rights to be read allowing for a search warrant for a failure to comply. Both implied consent and a search warrant require probable cause to believe he was under the influence. Investigating officers lacked that probable cause. They were in close proximity with Yancer for about 2 ½ hours and had no belief Yancer was intoxicated or had consumed any intoxicants or controlled substances. The bar had a policy that bouncers were not allowed to drink on duty and no

bar tender claims to have served him. Also, being intoxicated would not strip one of the right to self-defense.

Bartenders, security guards and management were interviewed regarding drinking on duty. All stated it was not allowed. Security were identified by the bright shirts they wore and were not served alcohol. From approximately 8:00 p.m. until the shooting occurs, video shows Yancer is almost constantly at the front door not consuming alcohol.

Deadly Force and Unarmed Persons. One claim is it is not self-defense to shoot an unarmed person, apparently on the belief unarmed persons cannot kill, or being attacked by an unarmed person [or persons] would not put a reasonable person in fear of death or great bodily harm. While most intentional deaths occur with weapons, the United States averages well over 600 homicides every year where personal weapons are used [i.e., hands, fists, feet, etc.].

Warning Shots. Some have stated a warning shot should have been fired before using deadly force. First, if facing imminent death or great bodily harm there typically is not time to fire a warning shot as you are trying to protect yourself. Second, firing a warning shot is dangerous and not advised, particularly in a crowded bar where you are more likely to injure an innocent person.

Taking “the 5th”. Everyone has a right to remain silent during a police investigation. While sometimes in dealing with self-defense it is important to know what the person is thinking to determine whether their fear is reasonable, many times the surrounding circumstances [including the proliferation of video and other social media] provides sufficient information.

Preferential Treatment. Claims have been made if Yancer was black instead of white, he would have been treated differently [arrested and charged]. There have also been claims Mr. West’s race played a role in treatment by law enforcement. I see no preferential treatment by the Battle Creek Police Department; they appear to have acted appropriately under the circumstances. Yancer was handcuffed and taken into custody for questioning and for the taking of photographs of his injuries during their investigation. He was then released, which is proper in this case.

Although they do not garner the same media attention, we have had at least two other apparently valid self-defense claims in Battle Creek in 2021. At about 4.00 a.m. on November 25, 2021 [the same morning as this incident], a woman allegedly shot her boyfriend while he was attacking her. He was not armed. Even though he did not have a weapon, it was determined she acted in lawful self-defense in shooting him. She was taken into custody, questioned, and released. The other occurred earlier in the year and involved an 18-year-old who allegedly stabbing to death his mother’s unarmed boyfriend during an altercation which was also determined to be self-defense. He was handcuffed and taken into custody. He was questioned and released. Both alleged perpetrators were non-white.

Acquiring a Gun with Unlawful Intent. There is a claim that at some point during the night Yancer left the bar to get a gun, purportedly because he wanted to shoot someone or was upset with Xavier West. There is no indication of any prior involvement between these two, no prior conflicts, and no information from video or otherwise suggesting Yancer had left the bar to get a firearm or that he had an unlawful intent in using or possessing it. There is continuous video of each entrance beginning at 8:00 p.m.. Yancer was present when Xavier West entered the bar. Neither appeared to acknowledge the other. Yancer was in lawful possession of the firearm with his employer's knowledge. Before the shooting, video shows Yancer working the front door and was taken away from the door due to the altercation with Xavier West and the others with Xavier West.

Distance When Firing. There was a claim Xavier West was about 6 feet away from Yancer when Yancer fired, with an argument claiming that distance would make using deadly force unjustified. First, there is no distance rule for firing a weapon in self-defense. The standard remains the individual must honestly and reasonably believe that the use of deadly force is necessary to prevent the imminent death of or imminent great bodily harm to himself or herself or to another individual. Second, it appears from the videos Xavier West was either on top of Yancer when Yancer fired, or was very close to Yancer, pulling on Yancer's t-shirt at the time the shots were fired, much closer than six feet.



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