

# PROSECUTING ATTORNEY

## CRIMINAL DIVISION

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## FACTS

On Friday, March 30, 2018, Wyoming Police were dispatched to Resurrection Cemetery at 4100 Clyde Park Ave SW regarding an individual who had a gun and was threatening to commit suicide. Charles Morgan, Kellie Vanwieren, and Joyce Reed were at the cemetery visiting a gravesite of an individual they all knew. Just after they arrived, Joel Peloquin approached them. It was approximately 5PM. None of them knew Joel Peloquin. Kellie had noticed him earlier around another grave which he appeared to be maintaining, and Charles had seen him kissing the feet of the Jesus statue in the cemetery, but none of the three had any prior contact with him.

As Mr. Peloquin approached, he asked if they could donate money to St. Jude for him. He attempted to give \$19 to Kellie and told her he would not need it anymore. She inquired as to what he meant by that and he informed her that he was going to hell since he had done bad things. Mr. Peloquin then informed all of them that he had come to the cemetery to shoot himself by the grave of his grandparents. He informed the three that if they called the police he would shoot himself. The three tried to dissuade Mr. Peloquin from killing himself for approximately 30 to 45 minutes. He repeatedly told them he was, "done with it all" and he was, "not getting into heaven and had done bad things." Mr. Peloquin told them that he had a gun in his pocket, but he never showed it to any of them. He also indicated that he had been drinking and had been on some sort of drug.

Since Mr. Peloquin threatened to kill himself if any of the three called the police, Kellie instead texted her mother to do so. Dispatchers from 911 then texted Kellie directly about the situation. Wyoming Police were dispatched at approximately 5:40PM. Three officers arrived on scene at virtually the same time; Officers Dwain Holmberg, Officer Lee Atkinson, and Sgt. Ross Eagan. The officers were able to come into the cemetery undetected by Mr. Peloquin since he had his back turned to the location they came in. The officers were able to get out of their patrol vehicles and approach on foot, at one point signaling the three witnesses to move away as they approached. Charles indicated in his statement to the Kent County Sheriff's Department that he was trying to get the officers to "bum rush" Mr. Peloquin to get him under control so he would not be able to kill himself. Unfortunately, their approach was then detected by Mr. Peloquin. He turned, noticed the officers, and attempted to run away.

Charles made an attempt to stop Mr. Peloquin by trying to tackle him. He was unsuccessful. Mr. Peloquin ran for a short period with the officers following him. Two officers noticed he had a gun as he fled. However, instead of continuing to run, Mr. Peloquin suddenly turned to face the officers with a firearm in his hand.

Sgt. Eagan indicated in his report that:

*"After chasing him a short distance (approximately 30 yards) Joel quickly stopped and immediately turned toward me with the gun still in his hand. At this moment he was also moving the gun up from the side. This action caused me to believe he was going to fire his gun at me, the officers, and/or the bystanders. Based on the fear that we were in imminent life-threatening danger, I pointed my service weapon at him and began firing my weapon."*

Officer Atkinson wrote:

*"Joel began to slow and he eventually came to a stop. Joel then turned his body back towards my direction. At this point I was probably 20-30 feet away from Joel almost directly west of his position. Joel removed his right hand from his front right pocket of his jacket. I immediately noticed that he had a silver pistol in his right hand. I yelled, "Gun!" and drew my department issued firearm from its holster. I was not only in fear of my own life, but also for my partners, Sgt. Eagan, and Officer Holmberg. There were also three bystanders that were in close proximity to the incident who needed to be protected. I aimed my pistol at Joel and fired multiple times."*

Officer Holmberg indicated in his report that:

*"I gave chase on foot for a short distance with my department issued handgun at the low ready. Peloquin then abruptly turned around and faced the direction of Sgt. Eagan. As he did this, Peloquin simultaneously placed the handgun to the side of his head. I began to raise my handgun towards Peloquin and I immediately heard several shots being fired."*

The three civilian witnesses give somewhat different statements. Joyce Reed confirms that she saw Mr. Peloquin run and Charles try to tackle him, and Mr. Peloquin pushed Charles aside. She then writes she, "does not see what happened next---gunshots...Joel laid face up on ground." Charles saw what happened from the ground; he had fallen after he had tried to tackle Mr. Peloquin. Charles indicates that he saw Mr. Peloquin, "take his pistol out and put it to his head. He dropped immediately either from his own shot or the several shots fired from the police." Kellie put in her statement that as Mr. Peloquin started to run, Charles tried to tackle him and after that, "Joel was facing the officers and had the gun pointed at this head and I heard 6 shots go off and saw him fall backwards onto the ground. I am not sure if the shots came from him or the police."

The officers fired multiple shots; only three struck Mr. Peloquin. None of these three shots would have been fatal. The fatal shot was a gunshot to the head; the medical examiners report states that it was a "contact" wound, meaning the gun was in contact with the head when the shot was fired. The bullet entered the right temporal scalp and exited the left parietal scalp. This was a shot to the head inflicted by Mr. Peloquin himself. Of the shots fired by the officers, one struck him in the right chest which did penetrate his lung. The path was front to back, i.e the bullet entered at the front of the body and went towards the back. This was the most serious injury, yet survivable according to the medical examiner. Another shot struck him in the right

thigh/buttock; this shot too is front to back. Finally, there is a wound of the upper arm/shoulder of Mr. Peloquin. This wound is "slightly back to front". The medical examiner explained that this wound would be consistent with the arm of Mr. Peloquin bent at the elbow; consistent with someone who would be pointing a gun at this head, arm bent at the elbow with the hand towards the head. This explains why the shot direction was slightly back to front. Toxicology showed that Mr. Peloquin had a blood alcohol level of a .16. No other drugs were detected in his system. Sheriff Detectives also discovered a possible motive wanting to commit suicide: the Allegan County Sheriff's Department had been to the home of Mr. Peloquin two days earlier and had seized his computer equipment. Mr. Peloquin was under investigation for possessing child sexually abusive material.

#### THE LAW

The rule of self-defense is well established in Michigan law. "As a general rule, the killing of another person in self-defense by one who is free from fault is justifiable homicide 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 exercise 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 (1990). 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..." 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. *People v 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 (1975).

#### OPINION

It is uncontroverted that Mr. Peloquin tried to run away from the police when he saw them approach that day. It is also uncontroverted that, after a short chase, he stopped and suddenly turned to face the officers who were behind him. All three officers put this fact in their report and the physical evidence supports their statements; two shots struck Mr. Peloquin in the front of his body according to the medical examiner, in addition, one civilian witness clearly describes him facing the officers as he puts the gun to his head.

The officers were faced with an armed man running away from them, who suddenly turns toward them with a gun. There is some discrepancy between when the gun came out. Two officers see the gun out as Mr. Peloquin flees, the other noticed the gun come out as Mr. Peloquin turned to face the officers. The civilians are unclear as to exactly when they see the gun come out. In any event, the police have a man who is running away from them; that man suddenly turns to face them with a gun. He then clearly makes a move with that gun. We now know that the movement Mr. Peloquin made was to put the gun to his head to take his own life. The officers do not have the luxury to wait and see exactly what he is going to do with that gun as he turns to face them. There is a reasonable fear that he may turn to fire at them, that he may fire at the three people he was just speaking with, they must make a split-second decision as to what to do. They chose to fire. Mr. Peloquin was able to get the gun to his head and shoot himself at virtually the same moment, ending his life. The officers were justified in taking the action they did that day. They had an honest and reasonable belief at that moment Mr. Peloquin was going to shoot at them as he turned suddenly to face them. As Sgt. Eagan put it, *"This action caused me to believe he was going to fire his gun at me, the officers, and/or the bystanders"* There is no requirement under the law, and it would be an impossible standard, to require police to wait for shots to be fired at them before returning fire. None of the officers will face criminal charges in this matter.



Christopher Becker  
Kent County Prosecutor

4-23-18

Date