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FOR IMMEDIATE RELEASE

From: Eric M. Hoffman, Prosecuting Attorney
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***Prosecutor Finds July 5, 2020
Muncie Police Action Shooting Legally Justified***

Muncie Indiana - The Indiana State Police (ISP) has concluded its investigation into the events and circumstances surrounding the July 5, 2020 police action shooting involving four (4) Muncie Police Officers. All four (4) officers completely cooperated with the investigation as did the entire Muncie Police Department and its administration from the Chief of Police down. 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 three (3) officers who discharged their firearms, ultimately killing Tylor C. Warner (age 30) did so in self-defense and defense of others. 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 # 1, Officer # 2, 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 July 5, 2020 at approximately 2:09 a.m., a female called 911 to report that she and Tylor Warner had "a domestic situation." The caller seemed to be intoxicated. She reported that Warner was depressed and suicidal. You can also hear the caller and Warner discussing drugs. The information that the caller provided to dispatch was inconsistent and contradictory. At one point, the caller reported that Warner had a knife. The caller then reported that Warner left the house and that he had a loaded gun with him. She reported that she actually "watched him load it." However she also reported that she took the bullets and the

magazine and put the gun in the trunk and that Warner only had the gun. She then reported that she had the gun and Warner did not. The 911 dispatcher relayed this information to the responding officers prior to their arrival on the scene.

At least four (4) uniformed Muncie Police officers responded to the call. All four officers were equipped with department issued body worn video cameras that were on, recording, and functioning during all relevant times. All of the officers were wearing proper MPD uniforms including a badge, MPD patches on each shoulder, and the word "POLICE" clearly and plainly displayed on their chests and backs.

Upon arrival, Officer # 4 and Officer # 1 met up with Officer # 2 and Officer # 3. Officer # 2 stated that neighbors reported to him that a guy just ran between two houses, one of which was 2114 S. High Street. The residence of 2114 S. High Street is depicted below. The residence has a carport which is indicated by a red circle.



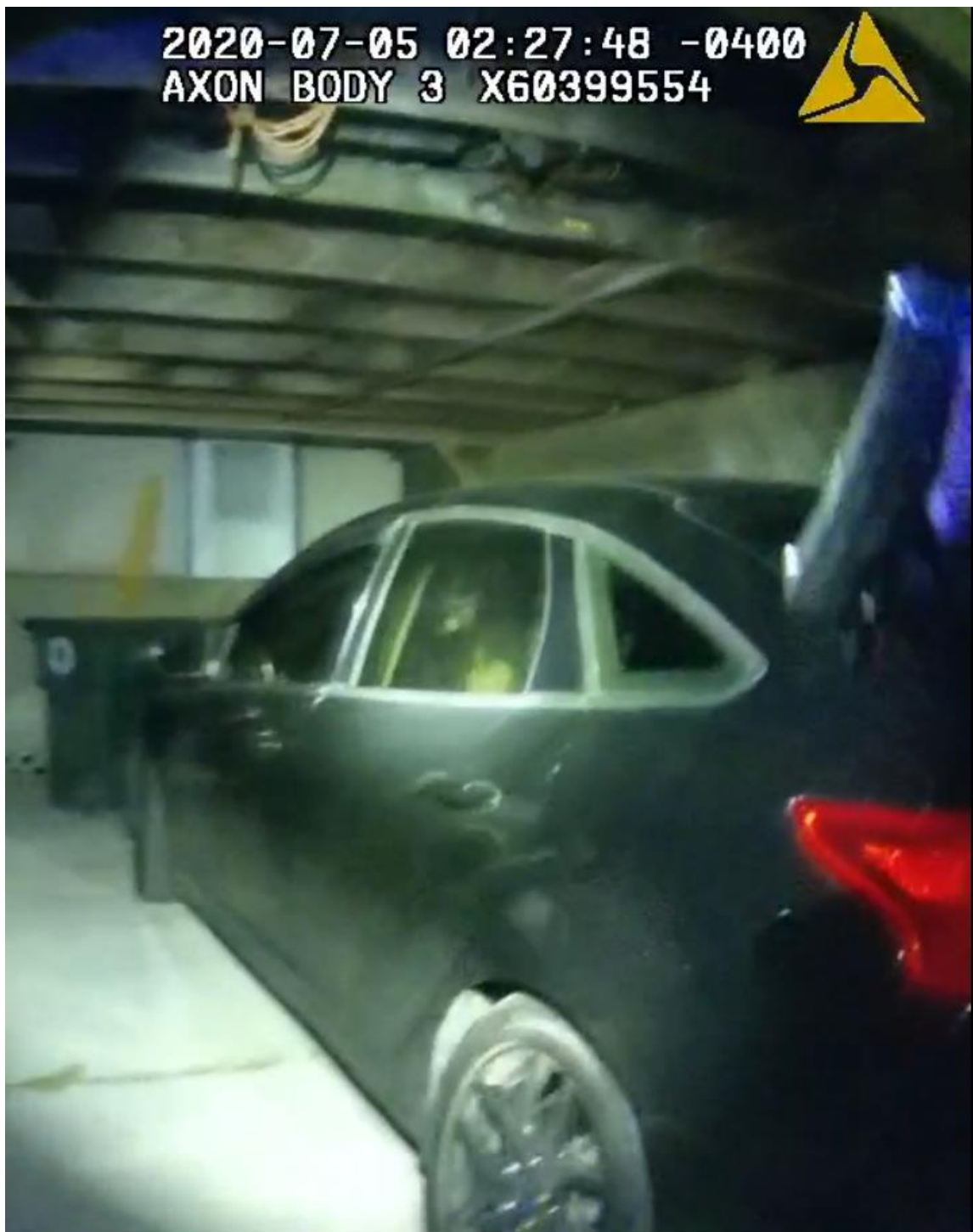
The four (4) officers approached 2114 S. High Street. Officer # 4 and Officer # 1 went around the south side of 2114 S. High Street and Officer # 3 and Officer # 2 went around the north side of the house. As Officer # 4 and Officer # 1 approached the rear of house they observed a black Ford Focus parked under the carport. The car was dark and had tinted windows.



As Officer # 2 and Officer # 3 came around the other side of the rear of the residence, they too observed the car. Below are still photos from Officer # 2's body camera.



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AXON BODY 3 X60399554



As Officer # 2 approached, he saw a male inside the vehicle. Officer # 2 advised other officers that there was a male inside the car. Officer # 2 shined a flashlight on the subject while backing up towards the alleyway to create space between him and the car. Officer # 2 gave loud verbal commands for the subject to get out of the car and show his hands. Officer # 2 then observed the driver door open and the subject exited the vehicle quickly. Below is a still photo from Officer # 2's body camera.



As soon as the subject exited the car, he immediately raised a handgun and pointed it toward Officer # 1 and Officer # 4. Below are a still photos from Officer # 2's body camera.

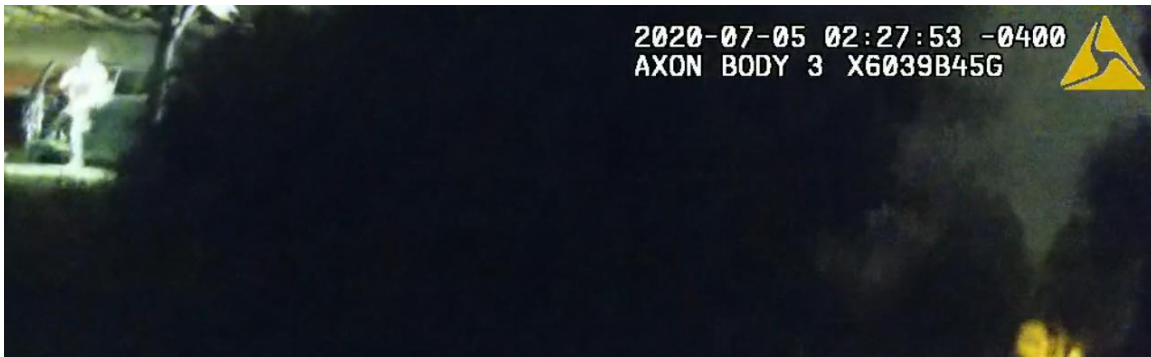


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The subject then turned the weapon and his body towards Officer # 2 and Officer # 3. Officer # 2 reported that he was then in fear for his life. Officer # 2 saw the subject's firearm and heard a gunshot. Officer # 2 then fired his duty weapon at the subject. The subject fell to the ground. Officer # 3 ran up to the subject and kicked the firearm away from him because his arm was moving towards the gun. Officer # 2 advised dispatch that shots were fired and that EMS was needed.

Officer # 4 could see an individual inside the car with the aid of a flashlight. Officer # 2 announced that someone was in the car and gave loud verbal commands to get out of the car. The car door opened and in response, Officer # 4 yelled "show me your hands." The subject very quickly stepped out of the car. Below is a still photo from Officer # 4's body camera.



Officer # 4 saw that the subject had a black gun in his right hand and was at a distance of about six to ten feet from him. Officer # 4 observed that the subject quickly brought his gun up and then he saw muzzle flashes from Officer # 1 and Officer # 2. Officer # 4 did not discharge his duty weapon as he did not have a clear line of sight to the subject. Officer # 4 heard Officer # 2 yell to the subject "don't touch the gun."

As Officer # 1 approached the rear of the residence, he heard, Officer # 2 yell that someone was inside of a car parked behind the house. Below is a still photo from Officer # 1's body camera.

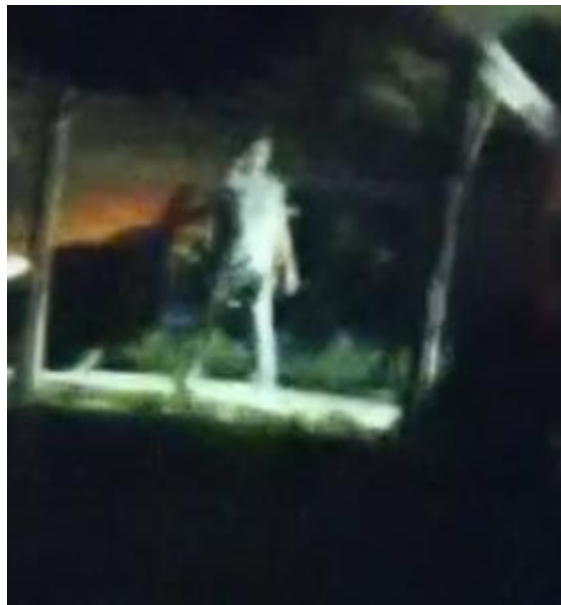


Officer # 1 then shined his flashlight at the car and sees a white male sitting in the driver's seat. Below is a still photo from Officer # 1's body camera.



Officer # 1 observed the male subject quickly exit the vehicle and point a gun directly at him. Officer # 1 moved to his right and yelled that the subject had a gun. Officer # 1 saw the subject turn and point his gun toward Officer # 2 and Officer # 3. Below are still photos from Officer # 1's body camera.







Officers began to discharge their duty weapon at the subject who then dropped to the ground. Officer # 3 ran up to the subject and kicked the gun away from his reach. When he saw the subject with the gun, Officer # 1 believed that the subject would shoot and kill him or the other officers.

As Officer # 3 approached the rear of the house, the officer saw a carport with a car parked under it. Officer # 3 heard Officer # 2 yell that there was a subject in the car. Officer # 3 and the other officers repeatedly yelled to the subject to show his hands. The subject quickly opened the door and exited the vehicle. Officer # 3 saw him immediately point a handgun at Officer # 1 and Officer # 4. Below are still photos from Officer # 3's body camera.

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Officers yelled at the subject to drop the gun. The subject then turned and pointed the gun at Officer # 3 and Officer # 2. Officers then began to fire their duty weapons. After the shots were fired and the subject fell, the subject attempted to reach for his gun which was now located on the ground. Officers gave loud verbal commands to the subject to not to touch the gun. Officer # 3 then approached the subject and kicked the gun out of his reach. Below is a photo of the gun the subject pointed at the police officers.



Officer # 1 approached the subject and observed a hole in his chest. Officer # 1 applied pressure to the wound with one hand and patted the subject down with the other hand for additional weapons. Officer # 1 found a large knife on the subject, which Officer # 1 threw from the reach of the subject.



Officer # 1 immediately began CPR and telling the subject to breathe. Other officers arrived and took over first aid. The subject was later pronounced dead.

The subject was later identified as Tylor Warner, a white male, age 30. It was later determined that Warner did not live at 2114 S. High Street. Warner did not own the Ford Focus nor did he have permission or authorization to be inside of the vehicle. At the request of the Muncie Police Department, the Indiana State Police conducted an independent investigation into the shooting of Tylor Warner.

On July 5, 2020, an autopsy was performed upon Warner by a forensic pathologist. The cause of Warner's death was determined to be multiple gunshot wounds. Warner sustained three (3) gunshot wounds. There was one entrance wound in the left shoulder with corresponding exit wound on the left back. The trajectory was front to back. There was one entrance wound in the left breast. The trajectory was from front to back. A projectile was removed at autopsy. There was no exit wound. This projectile perforated Warner's lung and left ventricle of heart, among other things. There was one entrance wound to Warner's left knee. There was an exit wound on the left thigh. The trajectory was medial to lateral. Toxicology analysis revealed the presence of Benzodiazepines, marijuana, and alcohol in Warner's system.

The investigation revealed that three (3) of the (4) officers discharged their duty weapons multiple times. Forensic ballistic analysis was conducted by the Indiana State Police Crime Lab. All of the shell casings collected at the scene were determined to have been fired by those three (3) officers' duty weapons. The

lab was not able to determine which duty weapon fired the projectile recovered from Warner's chest.

During the investigation it was determined that Warner brandished and pointed a Crosman P10 Phantom C02 NBB Steel BB Pistol at the police officers. Warner's house was searched by detectives from the Indiana State Police and the original factory box for the Crossman pistol was found on a shelf. (see below).



Tyler Warner had two (2) prior felony convictions for which he served time in the Indiana Department of Corrections. In 2013, Tylor Warner was convicted of Theft, a Class D Felony in Madison County Indiana. In 2014, Warner was convicted of Burglary, a Level 4 Felony and Theft, a Class A Misdemeanor in Madison County Indiana.

LEGAL ANALYSIS

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:

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

- (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.

First, it is indisputable that within seconds, Warner jumped out of a car and pointed a black handgun at police officers. Officers repeatedly give loud verbal commands to drop the gun and show his hands. Warner refused. It seemed as though Warner took up a shooting stance. The facts of the case clearly indicate that the Officers reasonably believed that the force used was necessary to prevent the commission of a forcible felony. Warner chose to point the black handgun directly at the police officers and refused to drop it. Consequently, the force used by 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 [in Indiana] 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:

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.

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. IC § 35-31.5-2-291.

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.

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 jury 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 “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.”

First, the officers 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 Warner jumped out of a car and pointed a black handgun at police officers. Officers repeatedly give loud verbal commands to drop the gun and show his hands. Warner refused. It seemed as though Warner took up a shooting stance. Warner chose to point the black handgun directly at the police officers and refused to drop it. Additionally, the amount of force used by the officers was reasonable. 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 demonstrates that each of the three (3) officers was justified in using force to terminate what appeared to be an attempted unlawful shooting of another police officer. When confronted by multiple uniformed police officers, Warner chose to point and aim a black handgun at several police officers and refused loud verbal commands to drop the gun. Each officer was protecting the other from serious bodily injury or the commission of a forcible felony. Consequently, it is clear that Officers each, acted in the defense of others and the force used was reasonable, lawful, and justifiable.

Mistake of fact in self-defense cases

The fact that the handgun Tylor Warner brandished ultimately turned out to be a BB or pellet gun does not alter the outcome of the analysis whatsoever. As the Indiana Supreme Court has so eloquently said:

A man has a right to act upon appearances of actual and immediate danger, if he sincerely believes such apparent danger exists. The danger need not be actual. It need be only apparent to a reasonable person under the circumstances. The law protects persons who feel compelled to act at such times even though in retrospect it is proved they have erred. The law takes into consideration the surrounding circumstances under which the events took place. When one charged with murder defends on the grounds that the killing was done in self-defense, the existence of danger to the defendant, the necessity of defending himself, and the amount of force necessary to employ can only be determined from the standpoint of the defendant at the time and under the existing circumstances, as

shown by the evidence. When his life is in danger, or he is in danger of great bodily harm, or when, from the acts of the assailant, he believes, and has reasonable ground to believe, that he is in danger of losing his life or receiving great bodily harm from his adversary, the right to defend himself from such danger, or apprehended danger, may be exercised by him, and he may use it to any extent which is reasonably necessary.

Banks v. State, 276 N.E.2d 155, 159 (Ind. 1971). For purposes of the self-defense in a homicide, questions of existence of or appearance of danger must be determined from the standpoint of the accused at the time and under the circumstances as shown by the evidence. *Miller v. State*, 720 N.E.2d 696 (Ind. 1999). “It is true that the defendant may act upon appearances that seem to be threatening his life even though he may actually be mistaken.” *Wardlaw v. State*, 286 N.E.2d 649, 650 (Ind. 1972).

It is indisputable that the officers’ collective belief were objectionably reasonable. Warner brandished and pointed a Crosman P10 Phantom C02 NBB Steel BB Pistol at the police officers. Warner’s girlfriend was interviewed by the police and she admitted that she had handled the Crosman in the past. The 911 caller told the police that she believed it to be a real gun. Warner’s Crosman pistol is nearly identical to many actual firearms including the Sig Sauer P320 9mm handgun. (See comparison below.)



Gun brandished by Warner



Sig Sauer P320 9mm handgun

CONCLUSION

Tylor Warner made the choice to arm himself with a gun that looks exactly like a real firearm. Warner also chose to get out of the car, point his gun directly at uniformed police officers and took what appeared to be a shooting stance. Multiple police officers, repeatedly told Tylor Warner to drop his gun and show them his hands. Warner refused to do so. The only person who knows why Tylor Warner did what he did is Tylor Warner. Since he is deceased, the State will not comment on his motive.

The evidence demonstrates that the police officers who shot Tylor Warner unquestionably and without a doubt did so in self-defense. Thus, the shooting was justified under the law. Police officers face clear and present dangers each and every day. They put their life on the line so that we may live in a civilized society. Law enforcement officers have the absolute right to defend their own lives and go home at the end of their shift. As the Indiana's self-defense so clearly states: "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." If a person chooses to point a gun, real or one that looks real, at a police officer, they do so at their own peril. Had Warner survived, he would have faced multiple charges including but not limited to: unauthorized entry into a motor vehicle, intimidation, criminal recklessness, and resisting law enforcement. No charges will be filed in this matter, as the only suspect is deceased. The investigation is now closed.

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