

**Office of the Prosecuting Attorney
Washtenaw County**

PRESS RELEASE-FOR IMMEDIATE RELEASE

Date: February 6, 2007

The Washtenaw County Prosecuting Attorney's Office has determined that the actions of two police officers assigned to the Livingston and Washtenaw Narcotics Enforcement Team (LAWNET) which resulted in the fatal shooting of a man fleeing felony arrest and the slight wounding of his companion, were justifiable under Michigan criminal law. No criminal charges will be filed against either officer involved.

The incident occurred on January 23, 2007 in the area of 534 N. Huron Street in the City of Ypsilanti. A team of undercover police officers, and a uniformed Washtenaw County Deputy Sheriff were staked out for a planned undercover purchase of a large amount crack cocaine. When the transaction was commenced the officers moved in to arrest the two suspects, who were in a vehicle that one of the suspects had drove to the scene. As the first officer, who was wearing a sweatshirt with the word "POLICE" written in large letters across the chest, approached the suspect vehicle he pointed his service weapon at the car, loudly identified himself as a police officer and commanded the men to stop. The driver of the vehicle accelerated the car toward the first officer. As the officer jumped out of the way of the suspects' car, he fired three shots from his service weapon. Two of those shots penetrated the vehicle, and one of those two appears to have grazed the driver, but did not cause serious injury. As he tried to flee on foot, the driver of the suspect car was struck by an undercover LAWNET vehicle that had arrived to block the suspect car. He was arrested.

The passenger of the vehicle, who was identified as the primary drug dealer, fled southbound on Huron Street, and then turned up west onto Arcade Street. Three LAWNET officers gave chase. Two of the pursuing officers yelled to the fleeing passenger-suspect "Stop! Don't make me shoot you." The passenger-suspect continued to run flee from the officers. One of the pursuing LAWNET officers shot the fleeing passenger-suspect, who was later identified as 29 year old David Eugene Ware of Taylor, Michigan. David Ware was transported to St. Joseph Mercy Hospital by Huron Valley Ambulance.

The Washtenaw County Medical Examiner determined that David Ware was shot 3 times, and one of those shots was fatal.

Michigan criminal law allows police officers to use deadly force to protect themselves or others from an immediate threat of death or great bodily harm. Michigan criminal law allows a police officer to use deadly force when it is necessary to stop the flight of a felon. *People v Couch*, 436 Mich 414 (1990). In *Couch* the Michigan Supreme Court examined the earlier United States Supreme Court case of *Tennessee v Garner*, 471 US 1 (1985). *Garner* was a civil case alleging a federal civil rights violation by police officers

who had killed a fleeing felon without making a determination of the fleeing felon's dangerousness. The US Supreme Court held that killing a fleeing felon without determining that the felon was dangerous was an unlawful seizure under the United States Constitution, exposing the officers to civil liability under federal civil rights statutes.

In *Couch* the Michigan Supreme Court examined the case of a civilian who had shot and killed a man who had been caught breaking into the civilian's car. The Michigan Supreme Court specifically addressed *Tennessee v Garner* in deciding *Couch*, and determined that the *Garner* decision did not change the long established tenet of Michigan criminal law that killing a fleeing felon when it is necessary to prevent escape is justifiable homicide. Michigan criminal law has never, and does not now require an officer to gauge the dangerousness of the felon when making the decision to use deadly force.

Based on the evidence presented the Washtenaw County Prosecuting Attorney's Office the actions of both officers who discharged their weapons during this incident were justified under the applicable Michigan criminal law.

The first officer discharged his weapon at a car that had been driven at him when he tried to effect an arrest of the occupants, whom he knew to have just engaged in a felony narcotics transaction. The first officer's actions were both lawful self-defense and a justified effort to stop fleeing felons from making good their escape.

The second officer shot and killed David Ware in an effort to prevent the escape of a fleeing felon. It is noteworthy that the decedent was known to have just fled the scene of a felony drug transaction where a fellow officer had been attacked with the car from which Ware had fled. Furthermore, all of the LAWNET officers had positive information that Ware had possessed firearms in the past.

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