

Spaziani Lists Basis for Clearing Policemen

The District Attorney's Office was requested to conduct an investigation surrounding the shooting of Robert Victor Strickland in the City of Easton on September 23, 1974.

As District Attorney, I requested assistance from the Pennsylvania State Police who provided investigators to work with my staff in this matter.

The investigation reveals that on Sept. 23, 1974, the Easton Police received information that Robert Victor Strickland was at the Kennedy Garden Apartments. The police investigated and made a determination that the person was in fact Robert Victor Strickland and then proceeded to Kennedy Garden Apartments to apprehend the victim.

The Easton Police were armed with valid warrants for the arrest of Robert Strickland. The warrants were issued from Lehigh County charging him with burglary and receiving stolen property, possession with intent to deliver a controlled substance (marijuana), violation for carrying a concealed deadly weapon and criminal conspiracy.

In addition to the warrants, the subject was identified as a participant in armed holdups in the city of Easton and the police had a bulletin issued to their department for the apprehension of Robert Victor Strickland.

The investigation revealed that the police were familiar with the subject and had knowledge of his previous criminal record and conduct including the shooting of an individual in the past and that the subject was believed to be armed and dangerous.

The detail of police sent to Kennedy Gardens included Sgt. John Daws, Ptlm. Anthony Cappellano, Ptlm. John Harman and William Crouse. Sgt. Daws and Officer Cappellano went to the apartment where Robert Strickland was purportedly occupying and upon knocking at the door heard a male voice respond and the door locked.

The subject then fled from the apart-

ment and was spotted by Officer Crouse. Officer Crouse saw Strickland run from the apartment towards Canal Street and yelled for the suspect to stop. The suspect continued to run and Officer Crouse fired the first shot toward the subject who then went over a wall dividing Canal Street from the railroad tracks of the Lehigh Valley Railroad Company.

The Officer observed the subject running towards two parked railroad cars and again yelled for him to halt; when Robert Victor Strickland turned, reaching with his right hand toward his waist around the belt line, Officer Crouse fired the second shot toward the subject. After Strickland was shot, the officers approached the area and when they saw the extent of injury to the subject called for the Emergency Squad immediately. There were two shots fired and both were fired by Officer William Crouse.

After the shooting incident, Officer Harman met with Officer Crouse and Officer Harman volunteered to fire his shot gun and report that he had also fired at the victim, when in fact he did not. Officer Harman went to the Hugh Moore Parkway and fired his weapon and the incident was reported to the Easton Police Department in that manner.

The following day, Officer Harman notified his superiors of his discrepancies in the report, at which time the two officers were suspended for the discrepancies in the reporting.

My investigation reveals that Officer Harman was motivated by his concern for a junior officer and attempted to take some of the tension and pressure away from Officer Crouse by reporting that he also fired when in fact he did not.

It was the fact that Robert Victor Strickland turned toward Officer Crouse and made a gesture toward his belt line, giving the impression that he was going

for a weapon, which precipitated the second shot by Officer Crouse. This fact was substantiated by other witnesses.

In the course of the investigation, the 20 members of the investigating team interviewed everyone believed to have any information surrounding the shooting incident. The investigation included aerial photographs of the scene with extensive photography and documentation of records together with the autopsy reports.

In the autopsy performed by Dr. I. Mihalakis, it was learned that there were 11 wounds in the body of Strickland; nine appearing to be entry wounds with two of the pellets going through one portion of the flesh into another. That accounted for the 11 wounds, which included exit shots.

The victim was shot on the front left side and the pellets penetrated in a lateral manner. The victim was shot by the use of a pump shot gun using 00 Buck shots with nine pellets in one shell. It cannot be determined by the ballistics expert as to whether the victim was struck by the first shot with any pellets or whether the second shot with the nine pellets struck the victim.

It is conceivable that one or more pellets of the first shot struck the victim while going over the wall and he continued to run and that all of the pellets of the second shot did not strike the victim.

The testing of the weapon and the ammunition used would substantiate the fact that the distance from where the shot was fired to the victim was approximately 63 feet and testing of the weapon indicates that at that range the pattern of the pellets would be from 12 to 18 inches in a scatter pattern.

CONCLUSION

Police Officers William Crouse and John Harman, armed with warrants, charging Robert V. Strickland with crimes of felonies and misdemeanor, attempted to lawfully execute these war-

rants on the 23rd day of September, 1974.

Under Pennsylvania Law, these warrants may be issued only upon reasonable and probable cause on oath or affirmation of a prosecuting witness. As required under the terms of the Constitution of this State, the person to be arrested was named in the warrant. Where an arrest is made pursuant to a valid warrant, no problem can arise concerning its legality.

The right of a police officer to make an arrest for a felony includes not only the situations where the felony was actually committed in the presence of such officers, but also in cases where the officer has reason to believe that the person he is arresting committed the felony.

The police officer's reason so to believe may be based on his own personal knowledge or information received from others. The law has even recognized instances where a police officer, when arresting for a felony, is permitted to be wrong in two respects so long as his mistakes are based on reasonable grounds.

Not only may he be mistaken as to the identity of the criminal, but he may also be mistaken as to whether or not a felony was committed at all. This problem does not present itself in the instant case since Officers William Crouse and John Harman were in the process of executing constitutionally valid arrest warrants. The evidence presented to the magistrate was sufficient to pass the "probable cause test" as to the commission of the crime and the identity of the accused.

The police officer, and even in some instances private citizens, making an arrest, otherwise lawful, under the principles set forth above, is privileged in using whatever force is necessary to overcome resistance of the person arrested, including, if it becomes necessary, a force likely to cause serious bodily harm.

This privilege is ancillary to his right of self-defense. In other words, when engaged in making an arrest, the person and police officer are engaged in a public duty by the nature of which they must necessarily be the aggressor.

Therefore, he is never under a duty to retreat, but may meet force with force in retaliation, without regard to how much force he is eventually required to use to protect himself and properly perform his duty.

During an arrest for the perpetration of a felony, it has always been the law that the person seeking the lawful arrest has the privilege of using whatever force is necessary to prevent the flight of the felon.

The Legislature codified the Common Law regarding Justification in the "Crimes Code", effective June 6, 1973. Under Section 508 of that Code, the police officer or any person whom he has summoned to assist him need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he believes to be necessary to effect the arrest and any force which he believes to be necessary to defend himself or another from bodily harm while making the arrest.

However, he is justified in using deadly force when he believes that such force is necessary to prevent death or serious bodily injury to himself or another person, or when he believes:

1. Such force is necessary to prevent the arrest from being defeated by escape.

2. The person to be arrested has committed or attempted a forcible felony or is attempting to escape and possesses a deadly weapon, or otherwise indicates that he will endanger human life or inflict serious bodily injury unless arrested without delay.

It becomes my duty as prosecutor of Northampton County to decide the deli-

cate question as to whether or not to prosecute the police officers involved. Out of necessity, the controlling consideration is the prosecutor's estimate of the sincerity and good faith that the police officer's claim that he shot or killed in an attempt to make an arrest for a felony or to prevent the escape of one who has committed a felony or attempted to do so.

In this regard, the investigation reveals that both Police Officers:

(a) Knew the decedent, his previous criminal record.

(b) Police officers did everything reasonably possible under the circumstances before he fired, to inform the victim that he, a police officer, was placing the latter under arrest.

(c) Police officers aimed to incapacitate rather than to kill.

(d) The police officers had reason to believe that the accused was obviously armed and his attitude was one of resistance, belligerence and flight.

(e) That the event proceeded rapidly and without interruption at a time of the victim's flight and at the time the shot was fired.

(f) That the police officers were in the exercise of a lawful arrest pursuant to a constitutionally valid warrant.

Analysis of all the facts and circumstances surrounding the event compels me to conclude that the actions of Mr. Strickland was such as to put the police officers in imminent fear of serious bodily harm, that his gestures and movements prior to the firing of the second shot were such as to give a reasonable person a reasonable belief that Mr. Strickland was armed and about to use deadly force.

Furthermore, if these elements were absent, the force used by the police officers, under the circumstances, was not excessive, though regretful.

I, therefore, conclude that the killing of Robert Victor Strickland must be ruled justifiable homicide.