

# Judge rules former Grand Rapids officer who shot Patrick Lyoya will stand trial for second-degree murder

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Judge Nicholas Ayoub of the 61st District Court ruled on Monday that the prosecution had established probable cause to send former Grand Rapids police Officer Christopher Schurr to trial for second-degree murder in the death of 26-year-old Congolese refugee Patrick Lyoya.

Schurr shot Lyoya in the back of the head during an altercation following a traffic stop on April 4. After being delayed multiple times, the probable cause hearing was finally held on Monday. Ayoub released his decision in an 11-page statement after taking the weekend to review the evidence, in which he concluded that Schurr's case should go to trial.

Ayoub's decision outlines the three means by which the defense hopes to acquit Schurr: "(1) that he used force reasonably necessary in defense of himself or others; (2) that he used appropriate force in response to force used by Lyoya to avoid arrest; and (3) that he used reasonable force to prevent a felon from fleeing to avoid capture."

In response to the first justification, Ayoub cites the common law requirements for self-defense: "The homicide of Patrick Lyoya would be justified under the law of self-defense 'only if the defendant honestly and reasonably believe[d] his life [was] in imminent danger or that there [was] a threat of serious bodily harm and that it [was] necessary to exercise the deadly force to prevent such harm to himself.'"

Based on this standard, Ayoub wrote, "The evidentiary record from the preliminary examination contains enough to allow a person of average intelligence to conclude that [Schurr's] fear was not reasonable or that [Schurr's] shooting of Lyoya in the back of the head was not reasonably necessary."

As for the second element of the defense, the judge points out that it is not materially different from the

common law definition of self-defense. According to Ayoub, Lyoya fighting back only "excuses any obligation to retreat," it does not justify Schurr's decision to use deadly force. This point is therefore fully addressed by Ayoub's arguments in the first part.

The final point of the defense's case refers to the "fleeing felon" principle in common law. Ayoub writes, "the use of deadly force is justified if: (1) evidence shows that a felony actually occurred, (2) the fleeing suspect against whom force was used was the person who committed the felony, and (3) the use of deadly force was 'necessary' to ensure the apprehension of the felon."

The judge notes that the legal question once more comes down to the idea of necessity. Ayoub points out, "As the prosecutor suggests, at the instant that the shot was fired, Lyoya was not in a position of actively escaping or fleeing. A reasonable juror could find a lack of necessity for deadly force strictly for the purpose of preventing escape."

Ayoub concluded, "'necessity to ensure the apprehension of the felon' is a question of fact for the jury to decide."

The Lyoya family's attorneys Ben Crump and Ven Johnson responded to the judge's decision, stating, "The case will now rightfully move to trial, which is the next step in our pursuit for obtaining full and complete justice for the murder of Patrick Lyoya. Our legal team will continue to fight to ensure former Grand Rapids police officer Christopher Schurr and the City of Grand Rapids are held accountable for his actions."

Matt Borgula, one of Schurr's attorneys, expressed certainty that a jury will acquit his client. Referring to the burden of proof in a probable cause hearing, Borgula told WOOD-TV, "It's a low burden, meaning is there enough to charge someone with a crime? And here the judge

thought so and we're not surprised. But at the same time, I think the judge indicated, at least in part, that there are some significant questions here that will make it very difficult for the prosecutor to prove beyond a reasonable doubt that Officer Schurr committed a crime and we feel strongly that he will be acquitted during a jury trial."

Borgula further told WOOD-TV that he plans to appeal Ayoub's decision.

After the hearing last Friday, Borgula told MLive in an interview, "There is absolutely no evidence to suggest, from anyone who is in law enforcement, or who is an expert in the field, that this wasn't justified under the circumstances."

Borgula was here referring to the testimony of Captain Chad McKersie from the Grand Rapids Police Department. According to Ayoub's decision, "He opined that [Schurr] followed policy and procedure in this case, and that the use of deadly force was justified under the totality of the circumstances."

However, as Ayoub stresses, McKersie "also testified that a number of alternative techniques and responses were available to [Schurr]. ... He explained that even in using the firearm, an officer is taught that they may aim at different parts of the body depending on the level of force that is necessary."

Peter Lyoya, the father of Patrick Lyoya, spoke with WOOD-TV after the hearing. "Ayoub showed that he has the heart of a parent, and Becker showed that he has the heart of a parent. My heart is receiving a little bit of relief because I'm seeing people around me who are helping to get me the justice," he explained.

"When I came here on Thursday and Friday, I felt like my heart, me and my family, our hearts were broken. I was surprised, astonished, to see how they are accusing, they try to portray my son like a real criminal. That really hurt my heart. My heart was still bleeding, my wife's heart was bleeding, to see that son, I've already lost him, I buried him, and yet they are still crushing his image, his reputation, his name, just to acquit the officer."



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