



# HARDIN COUNTY

## County Attorney's Office

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March 20, 2021

### Report Re: Incident 21-002112

Incident 21-002112 occurred on March 14, 2021 at approximately 6:07 P.M., at the corner of Washington Street and 15<sup>th</sup> Avenue, Eldora, Iowa.

This report shall serve as a record regarding the charging decision relative to the actions of Troy McDonald and the basis for that decision by the undersigned Hardin County Attorney.

### Charging Decision:

No criminal charges are warranted in this matter.

### Basic Facts:

On Sunday 3/14/21, Troy McDonald was at his place of business working. His business is located on Washington Street, directly east of Eldora City Hall/Police Department. At approximately 6:07 P.M., McDonald witnessed a City of Eldora Police Officer engaged with an unknown person in public, directly across the street of McDonald's location. The unknown person was much larger than the Officer, and was dressed in dark colored clothing and wearing a black mask. McDonald observed that the Police Officer's service weapon (hand gun) was drawn and the Officer was in a defensive posture, repeatedly commanding the unknown person to show his hands. The unknown person was not complying. The Officer called for backup on a body radio. McDonald, who has a conceal/carry permit, produced a rifle from his truck, and without advancing on the unknown person, advised the unknown person to follow the Officer's instructions as he raised the rifle perpendicular to his body briefly, with the muzzle facing the general direction of the unknown person. McDonald then lowered the muzzle to his right side. The unknown person reported that McDonald's rifle was pointed at him and insisted that McDonald be charged with a crime. Moments later a Hardin County Deputy Sheriff arrived to assist the Eldora Officer. McDonald returned his rifle to his truck and cooperated with law enforcement.<sup>1</sup>

### Sources of Facts:

Multiple YouTube videos produced by the complaining party  
Officer narratives, including witness statements  
Eldora Police Department review of officer conduct

### Legal Authority:

#### Iowa Code Section 708.1 Assault defined.

An assault as defined in this section is a general intent crime. A person commits an assault when, **without justification**, the person does any of the following:

1. Any act which is intended to cause pain or injury to, or which is intended to result in physical contact which will be insulting or offensive to another, coupled with the apparent ability to execute the act.

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<sup>1</sup> Though not considered as part of this charging decision regarding McDonald's conduct, further investigation into the matter revealed other important information the public should be aware of. The same individual (name now known but withheld to avoid notoriety) was involved in another similar incident in a nearby county about two hours before coming to Eldora. Officers in the nearby county also drew their duty weapons. The individual has a history of initiating provocative encounters with law enforcement for the purpose of producing and marketing videos for commercial gain. Additionally, the Eldora Police Officer has been cleared by an internal review. I have read the review and concur with its findings and conclusions.



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2. Any act which is intended to place another in fear of immediate physical contact which will be painful, injurious, insulting, or offensive, coupled with the apparent ability to execute the act.
3. Intentionally points any firearm toward another, or displays in a threatening manner any dangerous weapon toward another.

### Iowa Code Section 704.3 Defense of self or another.

A person is justified in the use of reasonable force when the person reasonably believes that such force is necessary to defend oneself or another from any actual or imminent use of unlawful force.

### Iowa Code Section 704.1 Reasonable force.

1. "Reasonable force" means that force and no more which a reasonable person, in like circumstances, would judge to be necessary to prevent an injury or loss and can include deadly force if it is reasonable to believe that such force is necessary to avoid injury or risk to one's life or safety or the life or safety of another, or it is reasonable to believe that such force is necessary to resist a like force or threat.
2. A person may be wrong in the estimation of the danger or the force necessary to repel the danger as long as there is a reasonable basis for the belief of the person and the person acts reasonably in the response to that belief.
3. A person who is not engaged in illegal activity has no duty to retreat from any place where the person is lawfully present before using force as specified in this chapter.

**Iowa Code Section 704.13 Immunity.** A person who is justified in using reasonable force against an aggressor in defense of oneself, another person, or property pursuant to section 704.4 is immune from criminal or civil liability for all damages incurred by the aggressor pursuant to the application of reasonable force.

### Analysis:

Assuming the rifle was briefly pointed at the unknown person, such conduct would be an assault under Section 708.1 only if the conduct was **without justification**. Whether McDonald's conduct was unlawful, therefore, depends on whether his conduct was **justified**.

McDonald's conduct was justified if (1) he was reasonable in his belief that a display of force was necessary, and (2) if the force displayed was reasonable.

Iowa Code Section 704.3 provides that a person is justified "when the person reasonably believes that such force is necessary". Iowa Code Section 704.1(1) imposes a reasonable person standard judged from someone "in like circumstances". Section 704.1(2) allows for a person in like circumstances to be "wrong in the estimations of the danger or the force necessary" so long as there is a "reasonable basis for the [person's] belief".

Considering the totality of the circumstances from the perspective a reasonable person, McDonald was reasonable in believing that force was necessary. McDonald was standing yards away on the downtown streets of Eldora when he witnessed an officer with a drawn firearm at the ready, calling for back up, and confronting an unknown person that was refusing to show his hands. A reasonable citizen in McDonald's position would be justified in adopting the officer's perceived threat and justified in coming to the conclusion the officer was in danger. Moreover, a reasonable citizen would also believe it prudent to come to the officer's aid in like manner by displaying a weapon in response to that threat. Here McDonald displayed a firearm, with its muzzle raised briefly, and told the unknown person to do what



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the officer said. Once another officer arrived, the citizen stood down and cooperated with the investigation.

It is my conclusion that McDonald's conduct was legally justified and legally reasonable. It was not unlawful. The law takes into account that fact that McDonald may have been wrong in his estimation of the threat and the force necessary to confront that threat.

Iowa Code Section 704.13 provides that a person who is justified in using reasonable force is immune from criminal liability. Thus, no charges will be filed against Troy McDonald.

### **Public Safety Considerations:**

This charging decision is specific to this set of facts. Individual scenarios will require an individual analysis, resulting in individualized charging decisions. Having a vigilant citizenry that supports and appropriately aids law enforcement officers in the performance of their duties is not the same as vigilantism or taking the law into your own hands. Law enforcement officers, firefighters and first responders have dangerous jobs. The public expects them to stand in harm's way every day. It should be some comfort to them knowing that citizens, armed or not, will have their backs when needed.

Darrell G. Meyer

cc: Administrator, City of Eldora  
City Attorney, City of Eldora  
Captain/Interim Chief, City of Eldora  
Hardin County Sheriff  
Hardin County Board of Supervisors