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NINTH JUDICIAL CIRCUIT
ORANGE AND OSCEOLA COUNTY, FLORIDA

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Professional Standards Division

July 31, 2014

Sheriff Jerry L. Demings
Orange County Sheriff's Office
2500 West Colonial Drive
Orlando, Florida 32804

Dear Sheriff Demings:

This letter details my review of the February 22, 2014, incident wherein Deputy Bryant Singletary engaged in a use of force that included the discharge of his agency firearm. This review is undertaken to determine whether or not criminal charges are an appropriate response to the use of force in this instance. This state's highest court has—in at least one instance—affirmed the criminal conviction of a law enforcement officer for what was deemed an unlawful use of force. *See State v. Cobb*, 376 So.2d 230, 232 (Fla. 1979). However, the appellate court directly governing the Ninth Judicial Circuit has questioned whether criminal charges are ever appropriate against a law enforcement officer who exercises his or her judgment in difficult and dangerous circumstances. *See State v. Kadet*, 455 So.2d 389, 390–91 (Fla. 5th DCA 1984). The issue in these instances is whether the law enforcement officer's use of deadly force was justified because he or she reasonably believed that force was necessary to prevent imminent death or great bodily harm to himself or another. Fla. Stat. § 776.012(1)(2012). A comprehensive look at the facts of this incident results in the conclusion that Deputy Bryant Singletary's use of force was justified and appropriate in this instance.

On June 26, 2014, the State Attorney's Office received a Use of Force case investigation report authored by Detective Kevin Wilson of the Orange County Sheriff's Office (hereinafter referred to as the OCSO). A thorough review was conducted of this document and all attachments forwarded by Detective Wilson. The following observations were noted during this review:

On February 22, 2014 at approximately 0815 hours, Deputy Sheriff Bryant Singletary and Deputy First Class (DFC) Karl Stephanz were part of a robbery prevention detail and assigned to conduct surveillance on the CVS Pharmacy located at 7665 West Colonial Drive. While conducting this surveillance a person matching the description of the serial armed robber entered the listed business in what DFC Stephanz described as a suspicious nature. The Deputies had both supplied sworn testimony that prior to their detail they had been provided an intelligence bulletin which had provided a description and the modus operandi of the suspect who had previously committed several armed robberies in the area. Note: A review of this intelligence bulletin showed that the description of the suspect in the previous crimes did match the description of the person the deputies observed entering the business while they were conducting their surveillance.

Approximately one minute after entering the store the suspicious person exited the business carrying a bag in one hand and his other hand appeared to be holding an unknown object inside his jacket pocket. The suspect appeared to be hurrying away from the business. At that time DFC Stephanz observed an employee of the business approached and locked the front doors of the business. DFC Stephanz knew this

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action by the employee to be an indication that a crime occurred inside the business. All of these factors gave DFC Stephanz reasonable suspicion that the unknown suspect had just committed a crime.

Both deputies testified that they broadcasted their observations to each other as well as to other deputies working the detail at other various locations via their police radios. The radio traffic obtained from the OCSO confirmed the deputies broadcasted the suspect's description, actions and appearance as the events were unfolding. Based upon their combined observations both deputies believed that a crime had just been committed by this suspect within the business. Both deputies at that time attempted to stop the suspect, but the suspect began to flee by running away.

Testimony was received that DFC Stephanz followed the suspect in his unmarked police vehicle and that he had his emergency (red and blue) lights visibly displayed during the pursuit and attempt to stop the suspect. At a certain point in the pursuit, DFC Stephanz exited his vehicle while wearing clothing that clearly displayed that he was a law enforcement officer. DFC Stephanz verbally identified himself as a police officer and ordered the suspect to stop. The suspect refused to comply and continued to run away from the deputies. DFC Stephanz continued his pursuit on foot, while Deputy Singletary continued to follow in his unmarked police vehicle. Deputy Singletary stated that while the suspect was running he observed the suspect drop the bag he had been carrying. Note: this bag would later be recovered and found to contain cash/money, approximately \$5,764.00, which was stolen from the business during the armed robbery.

Deputy Singletary testified that as the suspect was running he would continuously look back at him. (Note: Although Deputy Singletary was driving an unmarked car without emergency lights, photographs taken of Deputy Singletary during the initial investigation by OCSO CSI Jenny Welch showed that Deputy Singletary was dressed in clothing that clearly identified himself as a law enforcement officer.) Deputy Singletary observed at one point the suspect removed his hand from his pocket and appeared to have what Deputy Singletary believed to be a "gun" (firearm) in his hand. As the suspect approached a brick wall separating the shopping center parking lot from an apartment complex, the suspect again turned and looked at Deputy Singletary. Deputy Singletary stated "**I thought he [the unidentified suspect] was gonna shoot, so I got out the car, and I yelled stop**" Deputy Singletary stated at that time he fired two shots at the suspect, but did not believe he hit the suspect. The suspect then turned towards the wall, threw the gun over the wall, and then climbed up and over the wall himself.

Note: Witness Phillip Forrest, an employee of the CVS, called 911 at approximately 0818 hours and confirmed that an armed robbery had just occurred. Forrest also confirmed that the suspect being chased by the deputies was the suspect who committed this armed robbery. Forrest also stated that the suspect displayed a "**black semi-automatic handgun**" while he demanded the money from the business' safe. Forrest stated that the suspect "**threatened to shoot him**" if he did not hurry and open the safe. Forrest stated he was "**in fear for his life.**"

DFC Stephanz testified in his sworn written report that as he was running after the suspect he observed the suspect approach the brick wall. He observed Deputy Singletary stop his vehicle at that point. DFC Stephanz observed the suspect pull a "**black object**" out of his jacket pocket. He heard Deputy Singletary yell a verbal command, but could not recall the specific command Deputy Singletary gave. DFC Stephanz wrote, "**Next I watched as the suspect threw what I believed to be a black handgun over the brick wall. Simultaneously as the suspect was throwing the suspected handgun I heard DS Singletary fire approximately three gunshots.**" Note: Forensic reports provided by the OCSO showed that there were only two rounds of ammunition missing from Deputy Singletary's issued firearm and magazines and only two spent shell casings were recovered from the scene of the shooting.

The “Graham Factors” were taken into consideration while conducting this review. The “reasonableness” of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the “20/20 vision of hindsight.” *Graham v. Connor*, 490 U.S. 386 (1989). The Court in *Graham* explains that the test of reasonableness is not capable of precise definition or mechanical application, however, its proper application requires careful attention to the facts and circumstances of each particular case, including:

- (1) The severity of the crime at issue,
- (2) Whether the suspect poses an immediate threat to the safety of the officers or others, and
- (3) Whether he is actively resisting arrest or attempting to evade arrest by flight.

The question is whether the “totality of the circumstances” justifies the particular use of force applied in the situation. The most important factor is #2—whether the suspect poses an “immediate threat to the safety of the officer or others.”

The information collected during the initial investigation by the OCSO Shoot Team and reviewed by the SAO was compared to the aforementioned “Graham Factors”. Based upon this comparison and review the following was determined:

- (1) The severity of the crime at issue: It was established by the totality of the evidence provided that an Armed Robbery, a forcible felony as defined by Florida State Statue 812.13(2)(a) and punishable by imprisonment for a term of years not exceeding life imprisonment, had been committed; and, that Deputy Singletary and DFC Stephanz both believed at the time of the use of deadly force that the suspect in question was the person who committed this offense.
- (2) Whether the suspect posed an immediate threat to the safety of the officers and/or others: It was learned that prior to the use of deadly force incident information was distributed via OCSO Intelligence Bulletins that a serial robber had committed multiple armed robberies in the area. In each case the suspect was armed with a deadly weapon (firearm/handgun) and in each case the suspect threatened violence towards the victims. Based upon this information, it is believed the suspect’s prior actions clearly displayed an eminent threat to the community. Furthermore, both Deputy Singletary and DFC Stephanz testified that they observed what they believed to be a black handgun in the suspect’s hand during his attempt to flee and elude arrest. Their description of the suspect’s weapon was consistent with the description of the weapon given by Witness Forrest. This information along with Deputy Singletary’s testimony of the suspect turning towards him with the firearm in his hand caused him to believe that the suspect was about to shoot him; thus, placing him in eminent danger. It was also noted that after the suspect fled over the wall, no other shots were fired by Deputy Singletary.
- (3) Whether the suspect was actively resisting arrest or attempting to evade arrest by flight: Through forensic evidence (photographs) and the testimony of both deputies, it was learned that the suspect knew or should have known it was Law Enforcement who was pursuing and attempting to apprehend him while he was fleeing the scene of an armed robbery. Therefore, by the definitions provided in FSS 843.02, the suspect was actively resisting by attempting to evade arrest by flight on foot as they chased after him while ordering him to stop.

Although there is no evidence in this instance indicating the use of poor judgment by the officer, it is instructive here and in all instances to note the words of our appellate court when reviewing law enforcement uses of force:

As an observation, we question whether a law enforcement officer should ever be, in the absence of intentional misconduct or some degree of malice, criminally responsible for using poor judgment. A police officer, under the circumstances here, is ordered into a life threatening situation. The call usually comes without warning. He does not ask for the assignment, but he is bound to protect society against the violent acts of the unlawful or mentally deranged. Now that same society seeks to punish him for using poor judgment. An officer, in such circumstances, should not be burdened with the knowledge that if he overreacts to the real or imagined dangers he may be committing a crime, especially when those who judge his actions do so with the benefit of perfect hindsight and from a position of safety.

Kadet, 455 So.2d at 390–91 (emphasis in original).

There is no evidence in this instance that any officer committed intentional misconduct or acted with any degree of malice. To the contrary, the evidence suggested he acted in self defense with force he believed reasonably necessary to prevent imminent death or great bodily harm to himself or fellow officers. Therefore, a complete review of the investigation leads me to conclude that criminal charges against Deputy Bryant Singletary are not warranted, and the Office of the State Attorney's review of this incident is complete.

Sincerely,



Linda Drane Burdick

LDB:amz

CC: Detective Kevin Wilson, Orange County Sheriff's Office

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