



JEFFREY L. ASHTON
STATE ATTORNEY
NINTH JUDICIAL CIRCUIT
ORANGE AND OSCEOLA COUNTY, FLORIDA

LINDA DRANE BURDICK
CHIEF ASSISTANT STATE ATTORNEY

RICHARD J. WALLSH
CHIEF ASSISTANT/EXECUTIVE DIRECTOR

RECEIVED

February 17, 2015

CPT. M.R.B. FEB 20 2015
OCSU *[Signature]*
Professional Standards Division

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 July 23, 2014, incident wherein Sergeant Kevin Marcum 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 Sergeant Kevin Marcum's use of force was justified and appropriate in this instance.

On November 7, 2014, the State Attorney's Office received a Use of Force case investigation report authored by Special Agent Alphonso Williams of the Florida Department of Law Enforcement (FDLE). A thorough review was conducted of this document and all attachments forwarded by Special Agent Williams. The following observations were noted during this review:

On July 23, 2014, members of the Orange County Sheriff's Office Parcel Interdiction Squad conducted a controlled delivery at 5332 Hawford Circle, Belle Isle, Florida. During the course of the narcotics investigation and related surveillance operations, a black male suspect was observed exiting the residence and taking possession of the package delivered by an undercover agent. Sergeant Kevin Marcum and Agent David Alvarado, while wearing their issued Orange County Sheriff's Office tactical equipment, approached the residence in an attempt to make contact with the suspect, later identified as Harrison Carter. As Agent Alvarado ran towards the rear of the address, Sergeant Marcum made contact with Mr. Carter. The following excerpt is taken from the report authored by Special Agent Williams:

0000041

As Sergeant Marcum approached the threshold of the garage, he observed Carter standing inside the garage, holding a black firearm, and pointed at him. Sergeant Marcum was approximately ten (10) feet from Carter. Sergeant Marcum fired what he believed to be two (2) rounds at Carter because he thought Carter was going to shoot him. Carter then staggered through an opened door that led into the interior of the residence. (Report page number 4)

Mr. Carter was struck by at least one of the rounds fired by Sergeant Marcum. Mr. Carter entered the address and at some point posted “*im dead*” on Facebook.

Members of the Orange County Sheriff’s Office SWAT Team later discovered Mr. Carter was deceased just inside the doorway. The following excerpt is taken from the *Report of Autopsy* authored by Chief Medical Examiner Jan C. Garavaglia:

In consideration of the circumstances surrounding the death, and after examination of the body, it is my opinion that the death of Harrison Carter, a 29-year-old black male, is a result of a gunshot wound to the head. This is a contact wound and is consistent with being self-inflicted wound. ... The manner of death is suicide. (Report page number 4)

Sergeant Marcum provided the Florida Department of Law Enforcement with a voluntary statement. When asked why he utilized deadly force, Sergeant Marcum stated, “*He [Mr. Carter] had the gun pointed at me and I was in fear that he was going to shoot me. ... He [Mr. Carter] definitely would have shot me if I didn’t shoot him first.*” (Report page number 5)

Sergeant Marcum purportedly perceived deadly threats, due to the unforeseen actions taken by Mr. Carter. Due to the totality of the circumstances surrounding these rapidly unfolding dynamic encounters with Mr. Carter, the deadly force response of Sergeant Marcum to the threats appear to have been reasonable and justified.

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).

0000042

There is no evidence in this instance that Sergeant Kevin Marcum 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 Sergeant Kevin Marcum are not warranted, and the Office of the State Attorney's review of this incident is complete.

Sincerely,



Linda Drane Burdick

LDB:amz

CC: Alphonso Williams, Florida Department of Law Enforcement

0000043



JEFFREY L. ASHTON
STATE ATTORNEY
NINTH JUDICIAL CIRCUIT
ORANGE AND OSCEOLA COUNTY, FLORIDA

LINDA DRANE BURDICK
CHIEF ASSISTANT STATE ATTORNEY

RICHARD J. WALLSH
CHIEF ASSISTANT/EXECUTIVE DIRECTOR

February 17, 2015

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

RECEIVED
FEB 20 2015
OCSD
Professional Standards Division
My
J.P.B.

Dear Sheriff Demings:

This letter details my review of the July 23, 2014, incident wherein Deputy David Alvarado 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 David Alvarado's use of force was justified and appropriate in this instance.

On November 7, 2014, the State Attorney's Office received a Use of Force case investigation report authored by Special Agent Alphonso Williams of the Florida Department of Law Enforcement (FDLE). A thorough review was conducted of this document and all attachments forwarded by Special Agent Williams. The following observations were noted during this review:

On July 23, 2014, members of the Orange County Sheriff's Office Parcel Interdiction Squad conducted a controlled delivery at 5332 Hawford Circle, Belle Isle, Florida. During the course of the narcotics investigation and related surveillance operations, a black male suspect was observed exiting the residence and taking possession of the package delivered by an undercover agent. Sergeant Kevin Marcum and Agent David Alvarado, while wearing their issued Orange County Sheriff's Office tactical equipment, approached the residence in an attempt to make contact with the suspect, later identified as Harrison Carter. As Agent Alvarado ran towards the rear of the address, Sergeant Marcum made contact with Mr. Carter. During this contact, Sergeant Marcum observed Mr. Carter inside the garage, pointing a firearm at him. Sergeant Marcum fired two (2) rounds at Mr. Carter.

0000044

Mr. Carter was struck by at least one of the rounds fired by Sergeant Marcum. Mr. Carter entered the address and at some point posted “*im dead*” on Facebook. Agent Alvarado responded back to the area of Sergeant Marcum. Approximately five minutes after the shots were fired by Sergeant Marcum, Mr. Carter exited the doorway and discharged a handgun in the direction of the deputies. The following excerpt is taken from the report authored by Special Agent Williams:

Agent Alvarado observed Carter's arm extend out holding a handgun from the interior door, pointed in the direction of the deputies. Agent Alvarado saw muzzle flash from Carter's handgun. Agent Alvarado fired between one (1) and two (2) rounds at Carter's arm from his agency issued handgun. Agent Alvarado believes that Carter fired another round at the deputies from his location. (Report page number 5)

Members of the Orange County Sheriff's Office SWAT Team later discovered Mr. Carter was deceased just inside the doorway. The following excerpt is taken from the *Report of Autopsy* authored by Chief Medical Examiner Jan C. Garavaglia:

In consideration of the circumstances surrounding the death, and after examination of the body, it is my opinion that the death of Harrison Carter, a 29-year-old black male, is a result of a gunshot wound to the head. This is a contact wound and is consistent with being self-inflicted wound. ... The manner of death is suicide. (Report page number 4)

Agent Alvarado provided the Florida Department of Law Enforcement with a voluntary statement. When asked why he utilized deadly force, Agent Alvarado stated, “*To stop him [Mr. Carter] from pointing a gun at us and shooting us.*”, and “*I wanted to disable his arm.*”, and “*I see him stick his hand out, his arm out the door and I shoot at his arm.*” (Report page number 6)

Sergeant Marcum and Agent Alvarado both purportedly perceived deadly threats, due to the unforeseen actions taken by Mr. Carter. Due to the totality of the circumstances surrounding these rapidly unfolding dynamic encounters with Mr. Carter, both deadly force responses to the threats appear to have been reasonable and justified.

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 Deputy David Alvarado 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 David Alvarado are not warranted, and the Office of the State Attorney's review of this incident is complete.

Sincerely,



Linda Drane Burdick

LDB:amz

CC: Alphonso Williams, Florida Department of Law Enforcement

0000046