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September 9, 2015

REFERENCE:

Investigation type: Use of Deadly Force Case Review

SAO Use of Force Case number: **2015-UF-000006**

SAO Investigation number: **2015-IN-0035**

OCSO applicable report numbers: **14-108142 & 14-108159**

FDLE Investigation number: **OR-27-0204**

(Report by Special Agent Lloyd Randolph)

Orange County Sheriff's Office Deputy Involved:

Sergeant Robert McCarthy

Suspect: **Cedric Lamont Bartee**

REPORTER:

Chief Investigator Wm. Eric Edwards

Office of the State Attorney, Ninth Judicial Circuit of Florida

RECOMMENDATION: Forward to State Attorney Jeffrey Ashton for his review.

On May 21, 2015, the State Attorney's Office received a Use of Force case investigation report authored by Special Agent Lloyd Randolph of the Florida Department of Law Enforcement (FDLE). State Attorney's Office Investigator Patrick Schneider assisted this writer by conducting a thorough review of the sworn witness statements, which were collected by FDLE. The supplemental report authored by Investigator Schneider is provided as an attachment. The following excerpts are taken from the FDLE report authored by Lloyd Randolph:

“... D/S [Deputy Sheriff] Paul Bennett located the stolen Honda Accord at the Timbersound Apartment Complex, located 4807 Raleigh Street, Orlando, FL. D/S Bennett advised Sgt. [Sergeant Robert McCarthy] McCarthy of his discovery and requested assistance. Sgt. McCarthy and D/S Bennett maintained surveillance on the unoccupied Honda for a short period of time, when they observed Cedric Bartee and Henry Chaney enter the Honda. The Honda started traveling north through the parking lot. Sgt. McCarthy and D/S Bennett then conducted a 'tactical park' on the vehicle. Sgt.

McCarthy exited his vehicle and began ordering the occupants to show him their hands. The passenger [Henry Chaney] raised his hands and the driver [Cedric Bartee] began digging into his waistband area. Bartee then began reaching toward the center console; he then reached underneath the front of the driver's seat. (Emphasis added)

Sgt. McCarthy fired three gunshots into the driver's side of the windshield, striking Bartee in the upper right chest. A baggie of suspected cannabis was recovered on the driver's side floorboard. ... ”

The following photograph displays the final location of the three (3) vehicles involved in the aforementioned *tactical park*. According to the OCSO *Report of Crime Scene Investigation* document, authored by CSI Gerardo Bloise and reviewed by CSI Supervisor Murdock, it was established the location in which Sergeant McCarthy was purportedly standing was somewhere in between eleven (11) and/or fourteen (14) feet away from and in front of the suspect vehicle. Sergeant McCarthy reportedly fired his issued firearm while he was standing near the driver side door of his unmarked police vehicle.



Note: Crime scene photograph taken December 8, 2014.



Note: Crime scene photograph taken December 8, 2014.

During the course of the forensics crime scene investigation and evidence collection process, which was conducted by Orange County Sheriff's Office (OCSO) Crime Scene Investigation (CSI) Supervisor Ronald Murdock, cannabis and cocaine were recovered from areas near the front seat of the suspect vehicle. (See the OCSO Property Form marked Tag # P-62736)

Deputy Paul Bennett provided information to the FDLE Investigators during three (3) sworn and recorded statements. He explained how he verified the aforementioned vehicle was stolen prior to assisting Sergeant Robert McCarthy in conducting the "tactical park." Deputy Bennett was positioned behind the suspect vehicle as Sergeant McCarthy was positioned in front of the suspect vehicle. During sworn recorded interviews, Deputy Bennett explained, "... *I was able to see the passenger's hands, up clearly, there's not tint in the vehicle. ... I was able to see both of his hands clearly. And while giving the verbal commands and hearing Sergeant McCarthy giving verbal commands as well, of 'let me see your hands,' um, the driver was still making aggressive movements underneath the driver's seat. And you could see his body, torso; turn to the right going aggressively between the seats, driver's seat and center console.*" Deputy Bennett recalled, "Sergeant McCarthy told me to clear, meaning like cross fire, so we wouldn't have, you know, any cross fire. ... Once I sidestepped to the left of my vehicle ... is when Sergeant McCarthy engaged the vehicle with his issued firearm." Deputy Bennett later explained, "... He [Mr. Cedric Lamont Bartee] was either trying to going [sic] for a weapon ... My fear was he [Mr. Bartee] was reaching for a weapon." The following crime scene photographs depict Deputy Bennett's vantage point(s) at the time of the incident.



Note: Crime scene photograph taken December 8, 2014.



Note: Crime scene photograph taken December 8, 2014.

Sergeant Robert McCarthy provided the FDLE Investigators with a sworn and recorded statement on December 12, 2014. Sergeant McCarthy explained his involvement, regarding the contact with the stolen vehicle, and his actions as they attempted to detain the vehicle's occupants/suspects by informing investigators, “... We had a clear view. It was parked right under a light. ... I opened the driver's door and I took cover from right behind it. ... I immediately started giving them commands ... The passenger [Mr. Henry Chaney] complied immediately. He put his hands up, he made direct eye contact with me. Um, the driver initially put his hands up, and put them right down and started digging through his waist band. ... With my headlights lighting up the cab, it was pretty visible. ... I was clearly identifiable as a cop [law enforcement officer]. (Emphasis added)

Sergeant McCarthy described the actions of Mr. Bartee by stating, “He put them right to his waist and he started digging around in his pockets ... I could still see his face ... after he found whatever he was looking for, he did full forward and was doing, either getting something or pulling something out from deep under the driver's seat. Like along where the center console would be.” Sergeant McCarthy was asked at what point during the incident did he discharge his weapon and he reported, “During the lunge.” He recalled firing three (3) rounds, one directly after the other, at the time. When asked what he *felt* Mr. Bartee was doing as he was reaching Sergeant McCarthy explained, “I've been involved in probably a thousand of these tactical parks and this is first time I was scared enough to pull trigger. ... I know [Deputy] Bennett had moved out, closer towards the car. ... I was scared that either he [Mr. Bartee] was gonna pull out and hit him or turn around and shoot him ... I was just scared he [Mr. Bartee] was gonna hurt me, him [Deputy Bennett] or somebody else ...” Later in the interview Sergeant McCarthy explained, “He [Mr. Bartee] kept reaching over, down and to the right. ... I was scared. ... I gave him three different opportunities ... Like I said, 'I've done a thousand of these [tactical parks] and this is the first time were I've been frightened enough were I've had to fire a shot.' (Emphasis added)

Sergeant McCarthy explained his level of knowledge and experience regarding the “tactical park” by informing, “... *I teach it for the narcotics unit. ... He [Deputy Bennett] hasn't gone to that same training that I have. So he stepped off to the side ... that's why I believe his position kinda put him in a little bit of danger cause he was out in the open. He didn't have the cover of the car or something.*” Towards the end of the interview Sergeant McCarthy stated, “*Once he [Mr. Bartee] did that last movement, and with the car moving, I was scared that one of us could get hurt. I think we had waited long enough. ... I didn't feel safe letting it go any further than it did.*”

The following crime scene photograph and re-enactment photograph depict what are believed to have been Sergeant McCarthy’s vantage point(s) at the time of the incident.



Note: Crime scene photograph taken December 8, 2014.



Note: Re-enactment crime scene photograph taken December 9, 2014.



Note: Re-enactment crime scene photograph taken December 9, 2014.

Mr. Bartee provided the FDLE Investigators with a sworn and recorded statement on December 9, 2014, at approximately 11:43 hours. He was asked questions regarding this event. Mr. Bartee explained he did not know the vehicle he was driving was a stolen car. During the course of the interview, it was established Mr. Bartee clearly identified he was being stopped by police officers and he clearly heard verbal commands instructing him to put his hands up. Mr. Bartee claimed, "*I had to put the car in park ... I put my hands up. ... I never, not one time put my hands down.*" Mr. Bartee explained he recalled Sergeant McCarthy's handgun was already drawn when he went to put the car into the park position. He reported, "... *I put the car in park. We put our hands up. We put um, up. We kept them up the whole time.*" Mr. Bartee informed he did not reach towards the floor board; however, he did state, "*The only thing I probably did was leaned over and my homeboy told me like, 'Man bro, keep your hands up. Bro you already know how it is. Keep your hands up.' ... After that, man you know, that's when I heard shots.*"

Henry Chaney, the front seat passenger, was interviewed by FDLE Investigators on December 8, 2014, at approximately 03:34 hours. During the course of the interview, it was established Mr. Chaney clearly identified they were being stopped by police officers and he clearly heard verbal commands instructing him to put his hands up. Mr. Chaney did not believe Mr. Bartee had time to put the car in park prior to the shots being fired. He stated, "*He [Sergeant McCarthy] jumped out the car with the gun in his hand. He said, he said, 'Put your hands up.' So we put our hands up. I don't know what happened between that and then he shot in the car three times.*"

It appears Sergeant McCarthy utilized deadly force as a direct result of what he perceived as being life threatening aggressive actions made by Mr. Bartee. Sergeant McCarthy and Deputy Bennett were in close proximity to the suspects at the time of this contact and appear to have had vantage points providing each of them a clear line of sight.

The statements of witnesses, excluding Mr. Chaney, have been thoroughly reviewed by Investigator Schneider and his findings are memorialized in the attached supplemental report.

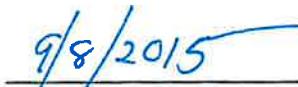
The statements provided by Mr. Bartee and Mr. Chaney contradict the statements made by Sergeant McCarthy and Deputy Bennett. Mr. Bartee and Mr. Chaney claim their hands were up prior to shots being fired into the vehicle by Sergeant McCarthy.

During his sworn statement, Sergeant McCarthy expressed the actions of Mr. Bartee created concern for his safety as well as that of Deputy Bennett. Given the totality of the circumstances and the information gleaned during the investigation and applicable review process, it is the opinion of this writer that the actions taken by Sergeant McCarthy were reasonable. The findings of this review will be forwarded to State Attorney Jeffrey Ashton for the Ninth Judicial Circuit, for final review and his consideration.

I swear that the above statements are true and correct:



Wm. Eric Edwards, Chief Investigator
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Date reviewed/signed