



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

LINDA DRANE BURDICK
CHIEF ASSISTANT STATE ATTORNEY
RICHARD L. WALLSH
CHIEF ASSISTANT/EXECUTIVE DIRECTOR

RECEIVED

March 4, 2015

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

CPT. J. P. B. MAR 05 2015 *by*
OCSD
Professional Standards Division

Dear Sheriff Demings:

This letter details my review of the December 28, 2014, incident wherein Deputy Pablo Santiago 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 Pablo Santiago's use of force was justified and appropriate in this instance.

On January 23, 2015, the State Attorney's Office received a Use of Force case investigation report authored by Corporal Jason McMullen of the Orange County Sheriff's Office. A thorough review was conducted of this document and all attachments forwarded by Corporal McMullen. The following observations were noted during this review.

On December 28, 2014, at approximately 2216 hours, Orange County Sheriff's Deputy Pablo Santiago, along with Deputy Quintern Brown were flagged down by a citizen about an armed robbery in progress at the Shell gas station located at 7530 Forest City Road, Orlando, Florida 32810. Deputies Santiago and Brown entered the parking lot of the Shell gas station in their marked Orange County Sheriff's Office patrol vehicles. Deputies Santiago and Brown exited their vehicles, wearing their issued sheriff's office uniforms, and approached the store. As Deputy Santiago neared the store an unknown black male subject exited the store, armed with a handgun, and fled the scene on foot. Deputy Santiago continued toward the store when he observed a second black male subject (later identified as Brandon Long) attempt to exit the store, also armed with a handgun. Brandon Long began to raise his handgun in the direction of Deputy Santiago, who then fired two rounds at Brandon Long. The rounds fired by Deputy Santiago missed Brandon Long and struck items within the store. Immediately after Deputy Santiago

0000023

fired his weapon, Brandon Long threw his handgun onto the ground outside the store and fell to the ground inside the store. Brandon Long then removed his disguise and surrendered to Deputy Santiago and Deputy Brown, who entered the store and secured Brandon Long. No one was injured in this incident and no other suspects were apprehended.

The Shell gas station is equipped with audio/video recording devices which captured this incident. A review of these recordings shows two black male subjects, armed with handguns, enter the store and immediately take control of the clerk, Sharonda McDonald. The subjects point their weapons at Sharonda McDonald and demand money. When Sharonda McDonald does not comply as quickly as the subjects had hoped, one subject is heard telling the second subject to "kill" Sharonda McDonald. One subject then appears to observe the deputies outside the store and flees the scene on foot. The second subject, Brandon Long, is then observed attempting to leave the store, still armed with a handgun. The shots fired by Deputy Santiago are heard, and Brandon Long is seen falling to the ground and removing his disguise. Brandon Long is then heard verbally surrendering to the deputies.

Sharonda McDonald provided a sworn audio recorded interview and her account matches the incident as observed on the video.

The original complainant of the armed robbery, Gary Barnes, also provided an audio recorded sworn statement. In his statement, Gary Barnes stated that he went to the Shell gas station to check on his wife, Sharonda McDonald. As he neared the business Gary Barnes observed the robbery in progress. Gary Barnes stated that he then observed Deputies Santiago and Deputy Brown stopped at the intersection of Forest City Road and Riverside Park Drive. Gary Barnes gained the attention of the deputies who then entered the parking lot of the Shell gas station to investigate. The statement given by Gary Barnes matches the statements provided by Deputies Santiago and Brown.

Deputy Santiago provided a sworn audio recorded statement detailing this incident. In his statement Deputy Santiago recalled observing the first armed subject exit the store and flee. Deputy Santiago then observed Brandon Long attempt to exit the store, armed with a handgun. Deputy Santiago states that he gave verbal commands to Brandon Long to drop his weapon, which he ignored. Deputy Santiago states that he observed Brandon Long raise his weapon towards him, causing him to fear for his safety. Deputy Santiago states that he then fired two shots at Brandon Long causing him to fall to the ground. The account given by Deputy Santiago is consistent with the incident as captured on the store video system.

The information collected during the investigation by Orange County Sheriff's Office was thoroughly reviewed by the State Attorney's Office and the following was determined: Brandon Long and an unknown armed black male accomplice were committing an armed robbery at the Shell gas station when Gary Barnes observed them. Gary Barnes flagged down Deputies Santiago and Brown, who then observed the unknown armed subject flee and Brandon Long attempt to flee. Deputy Santiago observed Brandon Long raise his firearm towards him, creating a fear that he was in imminent danger for his life. Deputy Santiago fired two shots at Brandon Long, who was then taken into custody. The firearm possessed by Brandon Long was in fact a functional, loaded firearm and had been reported stolen. These facts were given verbally by the involved parties as well as observed on video. Based upon these findings it is believed force used by Deputy Santiago was a direct result of the aggressive behaviors of Brandon Long.

0000024

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 Pedro Santiago 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 Pedro Santiago are not warranted, and the Office of the State Attorney's review of this incident is complete.

Sincerely,



Linda Drane Burdick
LDB:amz

CC: Cpl. Jason McMullen, Orange County Sheriff's Office

0000025