



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

December 20, 2016

RECEIVED

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

DEC 21 2016
OCSD
Professional Standards Division

Dear Sheriff Demings:

This letter details my review of the May 27, 2016, incident wherein Deputy Andrew Chouinard 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, §776.05, and §776.06 (2016). A comprehensive look at the facts of this incident results in the conclusion that Deputy Andrew Chouinard's use of force was legally justified in this instance.

On September 30, 2016, the Office of the State Attorney for the Ninth Judicial Circuit received a Use of Force investigative package, for purpose of review, from the Florida Department of Law Enforcement (FDLE). State Attorney's Office Investigator Emmett Browning conducted a thorough preliminary review of all applicable reports and attachments provided by FDLE. A thorough review of all case/charging documents submitted by Orange County Sheriff's Office, regarding the criminal complaint filed against Mr. Manuel Feliciano was also conducted. State Attorney's Office Chief Investigator Wm. Eric Edwards conducted a secondary review. The following was noted and excerpted from the FDLE report authored by Special Agent Danielle Gill:

On May 27, 2016, the Orange County Sheriff's Office (OCSD) requested the Florida Department of Law Enforcement (FDLE) conduct an investigation into the use of force by Deputy Andrew Chouinard and Deputy Brian Mallard, which did not result in injuries to Manuel Feliciano. The incident occurred at 2619 Annandale Avenue in Orlando, Florida. (OCSD case number: 16-48382)

The investigation revealed that on May 27, 2016, Manuel Feliciano allegedly murdered Mary Barreda and shot his neighbor, Otis Mitchell. At approximately 1931 hours, OCSD Deputies to include Andrew Chouinard and Brian Mallard attempted to make contact with Feliciano at 2619 Annandale Avenue in Orlando.

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The deputies surrounded the residence, made announcements, and attempted to have Feliciano exit the residence when Feliciano fired a gun inside his house. Feliciano eventually pointed a firearm [a handgun] at the deputies when Deputy Chouinard and Deputy Mallard fired [issued duty weapons] at Feliciano. Feliciano stayed inside the residence and the OCSO SWAT team responded. SWAT team members fired multiple rounds of gas into the residence, made entry, and located Feliciano. Feliciano did not have any gunshot wounds, but was unresponsive and transported to the Orlando Regional Medical Center. (Emphasis added)

On May 27, 2016, uniformed members of the Orange County Sheriff's Office responded to 2619 Annandale Avenue after receiving a 911 telephone call from a female, later identified as being *Elisa Torres Ramirez*, inside the address. During the event, deputies determined homicide suspect *Manuel Feliciano* was armed inside the residence. After hearing gunfire emanating from inside the address, Deputies Andrew Chouinard and Brian Mallard took positions of cover in close proximity to the front of the house.

On June 3, 2016, Deputy Mallard provided a sworn recorded statement to FDLE investigators. The following excerpt is taken from the report authored by Special Agent Danielle Gill:

The announcements continued and Deputy Mallard observed a right hand holding a revolver come out of the sheet. Deputy Mallard explained that the sheet was moved to the side, and he could only see from the elbow on down, and could not see a body. The revolver was pointed at the deputies who were making the announcements near the dead end on Annandale. Deputy Mallard heard a click from the revolver two times as if Feliciano pulled the trigger, but it did not go off. Deputy Mallard explained that he understands how a revolver operates, and that Feliciano might have an empty cylinder, or bullets that have already been fired and said, "It could be any second before he gets to a real bullet, and now he's shooting at my friends." At that time, Deputy Mallard was thinking about keeping him [Feliciano] from hurting his deputies. A second later, Feliciano started "assessing for a target" and slowly sweeping the revolver toward Deputy Chouinard and Deputy Mallard. Feliciano "clicks it [revolver] again," which is when Deputy Mallard fired toward Feliciano's arm. The revolver was directed at where Deputy Chouinard would have been when Deputy Mallard fired. Deputy Mallard fired at Feliciano to "keep him [Feliciano] from killing me, my friends." Feliciano retreated back into the residence and Deputy Mallard heard three or four gunshots that sounded like a .22 inside the house, but he was not sure where Feliciano was firing. (sic, Emphasis added)

On June 3, 2016, Deputy Chouinard provided a sworn recorded statement to FDLE investigators. The following excerpt is taken from the report authored by Special Agent Danielle Gill:

Deputy Stone continued announcements then Deputy Chouinard heard a gunshot come from inside the house toward the front. Deputy Chouinard thought that Feliciano was trying to, "get an angle to shoot at us or he shot himself." The front door had a white sheet hanging down that covered half of the door. At one point, the sheet moved and Deputy Chouinard initially thought that the dog was moving it. While the sheet was moved at an odd angle, Deputy Chouinard heard "snapping" two times, which was the sound of the hammer falling on the gun. The sheet came back down, and Deputy Chouinard could see the outline of what looked like a left hand extended out. The hand was holding a gun pointed at Deputies Stone and Santos, and Deputy Chouinard could see that the trigger

was being pulled and the hammer was falling on the gun. Deputy Chouinard thought that Feliciano was trying to kill Deputies Santos and Stone. At that point, Deputy Chouinard fired once or twice toward Feliciano's hand because, "He [Feliciano] was trying to shoot Deputy Stone." Deputy Chouinard explained that he shot at Feliciano, "Because he was aiming a gun at my partners, and I thought he was trying to kill them." Once Feliciano retreated into the house, Deputy Chouinard no longer had a sight picture and he stopped firing. When Deputy Chouinard fired, he heard Deputy Mallard firing at the same time. (sic, Emphasis added)

Based on the information available, Deputies Andrew Chouinard and Brian Mallard, at the time of their encounter with Mr. Feliciano, had knowledge of his use of a firearm during a homicide on the same date as this incident. As members of the Orange County Sheriff's Office attempted to call Mr. Feliciano out of a residence, he brandished a handgun and attempted to discharge rounds towards uniformed deputies.

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.

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

Sincerely,


Linda Drane Burdick
LDB:amz

CC: Danielle Gill, Florida Department of Law Enforcement

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407-836-2400

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

Sincerely,


Linda Drane Burdick
LDB:amz

CC: Danielle Gill, Florida Department of Law Enforcement

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