



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

LINDA DRANE BURDICK
 CHIEF ASSISTANT STATE ATTORNEY

RICHARD I. WALLSH
 CHIEF ASSISTANT/EXECUTIVE DIRECTOR

July 31, 2014

Chief John Mina
 Orlando Police Department
 Post Office Box 913
 100 South Hughey Ave.
 Orlando, Florida 32802-0913

RECEIVED
 AUG 21 2014
 CHIEF'S OFFICE

Dear Chief Mina:

This letter details my review of the February 24, 2014, incident wherein Officer Alexander Kipp 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 Officer Alexander Kipp's use of force was justified and appropriate in this instance.

On April 3, 2014, the State Attorney's Office received a Use of Force case investigation report from the Orlando Police Department. A thorough review was conducted and the following observations were noted during this review:

On February 24, 2014, members of the Orlando Police Department received a 911 call from Christal Mobley and "According to Christal Mobley, [Derrick Raewesley] Lattimore appeared at her residence, located at 343 Victor Avenue, Orlando, at approximately 0058 hours. Lattimore was at her door with a firearm, knocking on her door. Lattimore threatened to 'kill' Christal Mobley and her male friend, Nicholas Hood." (OPD report page 9) Marked patrol units were dispatched and responded to the domestic dispute related incident. During the course of the initial investigation, probable cause was established for the arrest of suspect Derrick Raewesley Lattimore.

Information gleaned during the initial investigation led officers to search for Mr. Lattimore in the parking garage of the City View Apartments located at 595 West Church Street. Orlando Police Department Homicide Detective Mike Fields report indicates, "When officers [Alexander Kipp and Anthony Watts] made contact with Lattimore, he failed to stop and attempted to run over an officer [Anthony Watts], which caused the officers to use deadly force." (OPD report page 9)

During a sworn recorded statement collected from Officer Alexander Kipp, he reported, "I saw a vehicle matching the description with the tag backed in ... It was just me and Watts upstairs. ... I tried to make contact with him [Mr. Lattimore] ... told him to show me ... me his hands ... he shut the door and just started peeling out. ... he was approaching Officer Watts, I started firing at him. ... Cause I thought he was gonna run him over. ... Um, saw the vehicle approach Officer Watts and I started firing at him." Officer Kipp was asked to clarify why he fired his weapon at Mr. Lattimore and he replied, "Uh, fear of Officer Watt's life. He [Mr. Lattimore] already approached me. Um, I had to step outta the way and then

saw him coming at Officer Watts, so I thought he was gonna run him over. Fear of his [Officer Watt's] life." (Transcription pages 2 through 14)

During a sworn recorded statement collected from Officer Anthony Watts, he reported, "I was parked probably about two to three feet behind Kipp. ... And so all of a sudden, the guy [Mr. Lattimore] just, like, hit the gas and the tires squealed out, and at this point, I'm standing to the, like -- midway between the driver's side bumper and the passenger's side bumper on the front of Kipp's vehicle, and this guy just starts coming towards me. ... the vehicle comes over towards my direction and I'm looking over my shoulder at that point while still trying to run and my goal is to get to the rear of Kipp's bumper ... I'm running and a soon as I start to clear ... he's already made the turn and started swerving over towards me. ... I lunged myself forward, and at that point, I turned and started firing, for fear -- for my safety." Officer Watts also expressed, "Um, so another concern was me being shot in the back because he's driving past me or driving towards me and potentially has a gun in his possession." (Transcription page 7)

As Mr. Lattimore was delivered to the Central Booking Office he reportedly advised Detective Fields, "I know I messed up on the upper floor when I almost ran those officers over ... I know it looks like I tried to run them over, but all I was trying to do was get away. I wasn't trying to kill any officers." (OPD report page 13) The spontaneous statement made by Mr. Lattimore supports the aforementioned excerpts which outline the officer's perceived threat at the time they both consciously chose to utilize deadly force.

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 the 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 Officer Antonio Watts 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 Michael Fields, Orlando Police Department



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Sincerely,


Linda Drane Burdick

LDB:amz

CC: Detective Michael Fields, Orlando Police Department



CITY OF ORLANDO

POLICE DEPARTMENT



May 1, 2015

MEMORANDUM

TO: Officer David Johnston #19120
North Patrol Division

FROM: Deputy Chief Robert M. Anzueto *RA*
Patrol Services Bureau

SUBJECT: Termination Meeting -- IR 14-17

On February 24, 2014, an inquiry was initiated against you for violation of RM 200-8(A), Obedience to Laws and Department Procedures and RM 200-8(B) Obedience to Policies and Procedures and Other Written Directives, specifically Policy 1128.12, Response to Resistance and Apprehension Techniques and RM 800-5 Deadly Force. Internal Affairs conducted a thorough investigation and identified the facts surrounding the allegations. At the conclusion of the investigation, it was clear that a SUSTAINED finding be levied for the violations.

The discipline recommended by your chain of command for a SUSTAINED violation of RM 200-8(A) was TERMINATION.

The discipline recommended by your chain of command for a SUSTAINED violation of RM 800-5 was TERMINATION.

The investigation revealed on February 24, 2014, at approximately 0121hrs an emergency call was dispatched for a disturbance involving a boyfriend/girlfriend at 595 W. Church St., City View Apartments. During the course of this emergency call Officer Alexander Kipp and Officer Anthony Watts discharged their respective firearms while they made contact with the suspect (boyfriend) on the fifth floor parking garage of City View Apartments. It was at this time you elected to return to your vehicle and retrieve your department issued AR-15. You then positioned yourself approximately 33 feet west of the far east exit gate (northeast corner of the parking garage) utilizing the center lane gate's guard station as cover. At this point the suspect drove his vehicle towards the east exit lane and subsequently crashed his vehicle into the concrete wall due to being fired upon. Your testimony revealed you fired your weapon once the car crashed and you could no longer see the suspect's hands. Furthermore, you fired a total of 23 rounds from your AR-15 during a time where the suspect did not pose an imminent threat of death or great bodily harm to you or any individual in the immediate area, which is a violation of Florida State Statutes 790.19, and 790.15(1). Considering the fact that the exit gates were completely closed, the vehicle was disabled, and you could not see the suspect, your use of deadly force in this instance was not objectively reasonable.

I have reviewed the investigation, the facts substantiating the sustained findings and the discipline recommendation of termination by your chain of command. I found there was just cause for discipline. The recommendation for TERMINATION for the listed violation of RM 200-8, Obedience to Laws and Department Procedures, (A) Laws was based on the facts outlined

in the investigation in which you violated the law when you fired your weapon 23 times at a suspect within a vehicle that did not pose an imminent threat of death or great bodily harm to you or others. A review of your discipline history revealed this was the first sustained violation of RM 200-8, Obedience to Laws and Department Procedures, (A) Laws, which clearly states, "Employees shall observe and obey federal and state laws; county and municipal ordinances." The facts of this case show your actions exceeded your lawful authority as a law enforcement officer and constituted a violation of law. You were subsequently charged with two offenses; FS 790.15 (1) Discharging firearm in public or on residential property and FS 790.19 Shooting into or throwing deadly missiles into dwellings, public or private buildings, occupied or not occupied; vessels, aircraft, buses, railroad cars, streetcars, or other vehicles. Therefore, based on the clear and convincing evidence that you violated Florida Statutes constituting multiple offenses, the discipline is TERMINATION.


The recommendation for TERMINATION for the listed violation of RM 800-5, Deadly Force was based on the facts outlined in the investigation in which you violated Orlando Police Department policy. RM 800-5, Deadly Force, states, "members of the department shall, at all times, exhaust every other reasonable means of apprehension before resorting to the use of deadly force. The use of deadly force shall be in accordance with department directives." In this incident you failed to follow department directives. Your actions were a violation of department policy 1128.12, as you fired your weapon into a vehicle that did not pose an imminent threat of death or great bodily harm to you or any individual in the immediate area as the exit gate was closed; furthermore, you had a reasonable avenue of escape as you were approximately 33 feet from the exit gate and not in a direct path of travel, of the vehicle, when you fired your weapon. Therefore, based on the severity of your actions the discipline is TERMINATION.

The SUSTAINED violations speaks to the character of an Orlando Police Officer. The conduct outlined in the investigation cannot be tolerated by an employee of the Orlando Police Department and undermines the employee's credibility as a law enforcement officer. As a result of the facts outlined in the investigation, with due consideration of all applicable Douglas Factors, there is just cause for your TERMINATION.

Therefore, as a result of your actions, your employment as a police officer with the City of Orlando is being terminated effective Friday, May 1, 2015.

The foregoing notice was personally served on employee David Johnston, this 1st day of May, 2015.


Signature of Manager/Employee #


Signature of Employee/Employee #


Signature of Witness/Employee #

cc: Randy Thames, FOP
Shawn Dunlap

/ra