



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

LINDA DRANE BURDICK
CHIEF ASSISTANT STATE ATTORNEY
RICHARD I. WALSH
CHIEF ASSISTANT/EXECUTIVE DIRECTOR

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Orlando Police Department
Attn: Chief Mina
P.O. Box 913
100 South Hughey Ave.
Orlando, FL 32802-0913

This letter details my review of the August 19, 2014 incident wherein Officer Eduardo Sanguino 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 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 Eduardo Sanguino use of force was justified and appropriate in this instance.

On August 19, 2014, at approximately 0043 hours, Orlando Police Department Officer Eduardo Sanguino, Officer Jeffery Angel, Lt. Frank Nunez and other assisting officers responded to reports of a man with a gun near the Vixen Bar, located at 118 South Orange Avenue in downtown Orlando, Florida. Officers Sanguino and Angel were the first officers to arrive on scene followed shortly thereafter by Lt. Frank Nunez and other officers. Witnesses Robert Williams, Brenton Lee and Jon Grimstad pointed out the armed suspect, later identified as Mr. Kody Roach, to these officers and informed them that Mr. Roach had a gun in his waistband. The Officers drew their department issued service weapons and began to give Mr. Roach verbal commands to get on the ground and show them his hands.

Mr. Roach refused to comply with the officers lawful commands. Mr. Roach backed into the alcove of Vixen Bar's front door which was shut and secured. Officer Angel deployed his department issued Taser in an effort to subdue Mr. Roach with less than lethal means, while Officer Sanguino continued to provide cover with his department issued firearm. The Taser, although making sufficient contact, seemed to have no effect on Mr. Roach. Mr. Roach then reached into his waistband causing Officer Sanguino to fear for his life and for the life of his fellow officers. Officer Sanguino then discharged his department issued firearm nine times.

During the course of this case review, it was noted that Mr. Roach was struck by seven of the nine shots fired by Officer Sanguino. It was also learned that one of the projectiles fired from Officer Sanguino's service weapon traveled through the front closed door of Vixen Bar and fatally struck a bystander, later identified as Ms. Maria Godinez, who was located inside the establishment. The investigation also showed that another one of the projectiles ricocheted and struck Lt. Frank Nunez in the leg during what appears to have been a quickly evolving deadly force encounter.

Video evidence was obtained by FDLE during their investigation. These videos showed the progression of events as they occurred both inside and outside of Vixen Bar. The video was consistent with the testimony received from all but two witnesses. These two witnesses reported that they heard and/or observed Mr. Roach fire his weapon into the Vixen Bar prior to officers arriving on scene. This information was delivered to Officers via police radio as they responded.

It was noted that 911 emergency calls in reference to Mr. Roach recklessly displaying (waving) a firearm were received from several callers. One of these callers was an employee of Vixen Bar. The video and later testimony revealed that the bar staff became aware of Mr. Roach possession a firearm and he was removed from the bar. During his removal, arguments ensued and Roach attempted to resist staff members. After being forcibly removed from the bar, Mr. Roach pulled his firearm from his waistband, causing the bar staff to shut and lock their front door to prevent Mr. Roach from re-entering the establishment. Mr. Roach began to pound on the front door of Vixen Bar with the gun, prompting the 911 call from the bar staff. It was noted, via video evidence, that after shutting and securing the front door, the bar staff did not appear to make any attempts to shield or notify their patrons of the danger just outside the front door. Unbeknownst to the patrons, they would find themselves in the backdrop of the aforementioned deadly force encounter.

During his sworn taped interview, Officer Sanguino stated that after the Taser did not have any effect on Mr. Roach, Mr. Roach began to reach for his waistband. He stated that he yelled at Mr. Roach, "Stop. Stop. Stop. Show me your hands." He stated that based upon the information previously obtained from the witnesses, he believed Mr. Roach was reaching for his gun therefore, he fired his service weapon in an effort to prevent Mr. Roach from accessing his gun. He stated, he fired his weapon until Mr. Roach "hit the ground." He stated, as Mr. Roach hit the ground he observed Mr. Roach's gun fall from his hand to ground. When questioned about firing his weapon towards the business' front door, Officer Sanguino stated that in his experience of working the downtown bar district if a bar's door is shut it usually means the bar is closed. It was noted that the front door is all wood (no glass) and the front window was boarded over preventing passerby's from looking into the establishment. These factors prevented Officer Sanguino from being able to tell if anyone was on the other side of the front door of this establishment.

All evidence and testimony received by Officer Sanguino, the witnesses, and the witness officers involved in regards to the lawful commands given, Mr. Roach's non-compliance, and the perceived imminent threat towards Officers Sanguino and Angel were consistent.

The information collected during the investigation by FDLE was thoroughly reviewed by the State Attorney's Office. Based upon this comparison and review the following was determined: It was learned that prior to the use of deadly force incident information was distributed via Police radio and confirmed by witnesses on the scene that Mr. Roach possessed and had possibly fired a firearm committing an Aggravated Assault as defined in Florida State Statutes under 784.021. Furthermore, Mr. Roach continued to actively resist the officers' verbal commands and instructions. Mr. Roach was unaffected by the use of less than lethal means (Taser) to subdue him; and Mr. Roach placed the officers involved in fear of imminent death and/or great bodily harm when he reached for his waistband, where officers were told he was concealing his firearm.

Although there is no evidence in this instance indicating the use of poor judgment by any of the officers, 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 any 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. Based upon these findings it is believed the use of force used by Officer Sanguino was a direct result of the aggressive behaviors of Mr. Roach. Therefore, a complete review of the investigation leads me to conclude that criminal charges against Officer Eduardo Sanguino are not warranted, and the Office of the State Attorney's review of this incident is complete.

Sincerely,


Jeffrey L. Ashton
State Attorney

Cc: Danny Banks, Special Agent in Charge, Florida Department of Law Enforcement, Orlando