

The Daniel Blyler Death Investigation



**State Attorney's Office
Fourth Judicial Circuit of Florida
Duval County**

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EXECUTIVE SUMMARY

This officer-involved shooting took place on August 25, 2017, at approximately 12:20 p.m. Officer Lemmuel Johnson (“Officer Johnson”) shot and killed Daniel Edward Blyler (“Blyler”). Blyler was in the parking lot of Vic’s Sandwich Shop (“Vic’s”) located at 1355 North Edgewood Avenue in Jacksonville. Blyler was armed, inebriated, and refused to comply with the lawful commands of Officer Johnson.

At approximately noon that day, the Jacksonville Sheriff’s Office (“JSO”) received a call for service from Peter Jaghab, the owner of Vic’s, who relayed that Blyler was intoxicated and having trouble standing. Mr. Jaghab was concerned that Blyler was going to drive. Six minutes later, Mr. Jaghab called JSO again to report that Blyler had a gun.

Officer Johnson was the first officer to arrive at the scene. Officer Johnson spoke directly with Mr. Jaghab to confirm Blyler’s whereabouts. Officer Johnson carefully approached Blyler and gave verbal commands to Blyler. The occupants of Vic’s heard Officer Johnson giving commands to Blyler, but they could not hear specifically what was being commanded.

Despite Officer Johnson’s lawful commands, Blyler reached to his hip area. On his hip was a 9mm semi-automatic pistol. Officer Johnson shot and killed Blyler.

Consistent with witnesses’ descriptions, the autopsy toxicology report revealed the following substances in Blyler’s system: alcohol (.014), methadone (an opioid analgesic used to treat opioid addiction), Buprenorphine (a controlled synthetic opioid also used in treatment of opioid addiction), and topiramate (an anticonvulsant with CNS depressant effects).

Officer Johnson shot and killed Blyler while Blyler was highly intoxicated, refusing to comply with Officer Johnson’s commands, and reaching for his gun. Officer Johnson, therefore, justifiably shot and killed Blyler.

I. THE STATE ATTORNEY’S ROLE IN POLICE-INVOLVED SHOOTINGS

Melissa W. Nelson assumed the office of the State Attorney for the Fourth Judicial Circuit (the “Office”) on January 3, 2017. Under the Florida Constitution, she is the chief state law enforcement official in the circuit, which covers Duval, Clay, and Nassau counties. The State Attorney has no administrative authority or control over the personnel of the county sheriffs’ offices or other policing departments within the jurisdiction. But, the State Attorney is a state official and, therefore, does not answer to the municipal or county governments within the judicial Circuit, including the county sheriffs and other policing departments. The authority

and control of our municipal and county policing agencies reside with each municipal or county government, not the State Attorney.

Indeed, the American Bar Association's Criminal Justice Standards specifically note, "The prosecutor generally serves the public and not any particular government agency, law enforcement officer or unit, witness or victim. When investigating or prosecuting a criminal matter, the prosecutor does not represent law enforcement personnel who have worked on the matter and such law enforcement personnel are not the prosecutor's clients." Am. Bar Association Criminal Justice Standards for the Prosecution Function, Std. 3-1.1 (4th Ed. 2017).

This Office strives to maintain that independence.

In fulfilling her mandate, the State Attorney employs investigators who are sworn law enforcement officers. The investigative capacity of the State Attorney's Office, though, is limited. The primary function of the office is the prosecution of criminal offenses within the circuit, and investigative resources within the Office primarily support that function. The Office has no current ability to process crime scenes, conduct forensic analysis on evidence, and rarely, if ever, conducts primary investigations in homicide cases. For officer-involved shooting cases, most law enforcement agencies within the Circuit use the Florida Department of Law Enforcement ("FDLE") to investigate cases that result in death or serious bodily injury from the use of force by their officers. The largest law enforcement agency within the circuit, the Jacksonville Sheriff's Office ("JSO"), does not. Instead, JSO assigns these cases to the JSO Cold Case Squad, a highly trained, independent, and experienced group of death investigators who also handle JSO's unresolved homicide cases as well as all in-custody deaths. While part of JSO, the scope of officer involved shooting investigations conducted by the Cold Case Squad ("OIS Investigators") is broader than what FDLE investigates. Unlike FDLE, JSO investigates all officer-involved shootings ("OIS"), regardless of whether death or great bodily injury results.

By history and custom, law enforcement agencies and departments in this Circuit have called upon the State Attorney's Office to independently review investigations of officer-involved shootings. That review is independent of the actual investigation and is designed to treat officer-involved shootings with the serious, objective, and independent review necessary when any human life is taken, particularly when law enforcement officers are involved.

Historically, a single prosecutor in this Office would review the OIS investigation and present his or her findings to the elected State Attorney, who would then issue a letter or memorandum of disposition to the sheriff or chief of the involved agency. As discussed below, those procedures have now changed under State Attorney Nelson's administration.

II. THE NATIONAL CONTEXT OF POLICE-INVOLVED SHOOTINGS

Current research shows that between 2014 and 2017, law enforcement officers used force resulting in death about 1,000 times per year.¹ Police shootings have become increasingly visible on a nationwide scale. Improvements and advancements in technology like “smart” phones, inexpensive surveillance equipment, mounted-car cameras, and officer-worn body cameras provide real-time depictions of law-enforcement officers using force when apprehending and interacting with suspects. With the echoing effects of social media, images of these events have become all too prevalent, affecting the full spectrum of our nation’s communities, from big, urban cities to small, rural towns. Uses of deadly force in places like Ferguson, MO, North Charleston, SC, Cincinnati, OH, and elsewhere have quickly become national media events, have fostered heightened civil unrest, and have garnered significant civil protest and debate.

Against this backdrop, while police work has become increasingly public, police work also has become increasingly more dangerous. The number of law enforcement officers injured or killed in the line of duty continues to increase. According to the FBI’s National Press Office, 41 law enforcement officers died from injuries incurred in the line of duty during felonious incidents in 2015. In 2016, 66 officers were slain in the line of duty by criminal suspects in 2016, a 61 percent increase over 2015.²

Florida is one of the five most deadly states in the country for law enforcement officers. Jacksonville officers have not been immune from this violence. The Jacksonville Sheriff’s Office reported that, in the history of its agency, over 60 officers have died in the line of duty, with 32 of them killed by gunfire. In recent years, a Clay County Sheriff’s Deputy was killed while executing a search warrant, and a Nassau County Sheriff’s Deputy lost his life trying to apprehend an alien who entered the country illegally.

Policing work is dangerous. Our courts have long recognized this reality and are extremely reluctant to substitute hindsight for on-the-spot, split-second decisions made by officers in the line of duty. “[The Constitution] does not require a police officer to wait until a suspect shoots to confirm that a serious threat of harm exists... And no court can expect any human being to remain passive in the face of an active threat on his or her life” *Elliott v. Leavitt*,

¹ John Sullivan, *Number of Fatal Shootings by Police is Nearly Identical to Last Year*, Wash. Post, July 1, 2017, http://www.washingtonpost.com/investigations/number-of-fatal-shootings-by-police-is-nearly-identical-to-last-year/2017/07/01/98726cc6-5b5f-11e7-9fc6-c7ef4bc58d13_story.html?utm_term=.c5050ed48e85

² 2017 *Midyear Officer Fatalities Report*, National Law Enforcement Officers Memorial Fund, <http://www.nleomf.org/assets/pdfs/reports/fatality-reports/2017/2017-Mid-Year-Officer-Fatalities-Report-FINAL.pdf>

99 F.3d 640, 643 (4th Cir. 1996). Put differently, “[t]he Constitution simply does not require police to gamble with their lives in the face of a serious threat of harm.” *Id.* at 641. The United States Supreme Court has similarly counseled that “[t]he ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” *Graham v. Connor*, 490 U.S. 386, 396 (1989). Cases like this one involving a highly intoxicated person reaching for a gun involve little need for additional information.

III. THE PROCESS NOW EMPLOYED BY THE STATE ATTORNEY’S OFFICE

Local prosecutors’ offices around the country have employed a number of localized responses to investigate and review officer-involved death cases. Following much study and review of how other offices around the country respond to these matters, as well as review of current best practices,³ the State Attorney has established a team of experienced prosecutors and investigators to respond to, review, and evaluate every officer-involved death in this Circuit (the “OIS Review Team” or “Team”). The OIS Review Team captures the best talent and insights of many of the most experienced prosecutors and investigators in the Office and the Jacksonville area. In addition to the significant homicide experience each team member possesses, a number of Team members have unique experiences investigating officer-involved shootings and participating in the investigation and prosecution of federal civil rights offenses. Additionally, the Division Chief of the Office’s Human Rights Division is an integral part of the Team.

In terms of day-to-day functioning, the prosecutors and investigators on the Team take part in a rotating schedule and are available to respond to any officer-involved death in the circuit. Minimally, when an officer-involved death takes place, a prosecutor on the team is contacted by the investigating law enforcement agency (either FDLE or JSO). That prosecutor becomes the primary prosecutor in charge of ensuring the integrity of the investigation and is charged with making initial contact with investigators on the scene, reviewing the scene, ensuring all appropriate evidence is collected and processed, and conducting whatever interviews and taking whatever witness statements are necessary. That prosecutor can request additional investigative assistance from one or more investigators on the team, if needed.

Although the State Attorney’s investigative resources do not permit the State Attorney to conduct full-blown scene investigations, Florida law provides the State Attorney with

³ See Ass’n of Prosecuting Attorneys, *21st Century Principles of Prosecution: Peace Officer Use of Force Project*, APAINC.ORG, (Mar. 9, 2017) <http://APAINC.org/peace-officer-use-of-force/>.

extremely broad investigative subpoena powers. Section 27.04, Florida Statutes, grants the State Attorney all of the mandatory process of the Courts of this circuit to command persons throughout the state to appear and provide testimony in these matters. Florida courts “have repeatedly held that the state attorney acts as a one-person grand jury in carrying out investigations into noncapital criminal conduct, and the state attorney must be granted reasonable latitude in that role.” *See, e.g., State v. Investigation*, 802 So.2d 1141, 1144 (Fla. 2d DCA 2001); *see also Doe v. State*, 634 So.2d 613, 615 (Fla.1994); *Imparato v. Spicola*, 238 So.2d 503, 506 (Fla. 2d DCA 1970); *State v. Nat’l Research Sys., Inc.*, 459 So.2d 1134, 1135 (Fla. 3d DCA 1984); Op. Att’y Gen. Fla. 94-86 (1994).

Thus, while the function of the State Attorney is not to conduct the primary investigation into officer-involved shootings, the State Attorney is an independent Constitutional officer who functions separate and apart from law enforcement agencies conducting these investigations. Unlike the law enforcement agencies, the State Attorney has subpoena powers and can subpoena testimony and records that the investigating agencies cannot.

Once the investigating agency completes its investigation, the assigned prosecutor and investigator receive final reports from the investigating agency and then present the case to the entire OIS Review Team for review. The Team-review serves as one additional check and balance to ensure that the investigation is thorough, and the conclusions reached are sound in light of the facts and the applicable law. The entire OIS Review Team then makes a non-binding recommendation to the State Attorney, who has ultimate authority to issue our Office’s opinion on the matter.

Once a report like this is issued, the investigating agency has reviewed the matter, an experienced prosecutor and investigator have reviewed the matter, a full team of experienced prosecutors and investigators have reviewed the matter, and the elected State Attorney has reviewed the matter. These multiple levels of review highlight the importance this Office attaches to making sure the opinions we render in these cases are thorough, correct, sound, and reliable.

IV. POTENTIAL OPINIONS

This report is a summary of the legal framework for our decision, the findings of our independent review, and the factual and legal basis for our opinion. Our legal opinion is just that—an opinion based upon our collective legal knowledge, education, training, and experience, taking into account all the facts that we currently know.

Our opinion necessarily is limited to the application of Florida criminal laws to the facts. We offer no opinion on matters such as internal administration, officer staffing, officer tactics, officer training, policing procedures, compliance with sheriff's or chief's directives and office policies, or similar issues. Those matters are beyond our expertise and the scope of this review.

When rendering an opinion on matters like this, our opinion will take one of three forms. First, our opinion may be that a particular shooting by an officer was justified. When we render this opinion, we believe that the known facts and circumstances of the case leave little or no doubt that the officer's actions, taken in light of all the available evidence, and when considering the totality of the circumstances known to the officer at the time, were "justified" within the meaning of Florida law.

Second, our opinion may be that no reasonable probability of conviction exists. When we render this opinion, we are unable to affirmatively say whether, in our opinion, the officer's actions were justified or not justified, but the evidence, lack of evidence, or conflicts in the evidence establish reasonable doubt about whether the shooting was justified or not. When reasonable doubt exists about whether a shooting was justified or not, a reasonable probability of conviction necessarily does not exist. When we render this opinion, we believe that the likely outcome of any criminal trial would be an acquittal.

Finally, our opinion may be that a particular shooting was not justified, and we can prove the shooting was not justified beyond a reasonable doubt. When this happens, we will present the facts of the case to a grand jury and seek an indictment for the appropriate criminal violation.

V. FLORIDA USE OF FORCE LAW

A number of Florida statutes address the use of force generally and by law enforcement officers acting in the course and scope of their official duties specifically. Some of these are not relevant to the investigation into this matter. Accordingly, these will not be discussed in any detail. However, this office has prepared a white paper titled *Authorized Use Of Force By Law Enforcement Officers In Florida* that more fully outlines Florida's Use Of Force laws. That paper is available upon request.

A. Justification Generally

While the use of force to defend oneself is often referred to as "self-defense," the appropriate legal term is "justification." Accordingly, the question this Office must answer in any officer involved shooting is whether the use of deadly force was justified under the law.

Section 782.02, Florida Statutes, states, “The use of deadly force is justifiable when a person is resisting any attempt to murder such person or to commit any felony upon him or her.” Fla. Stat. § 782.02 (2017). Similarly, Section 776.012, Florida Statutes, permits the use of deadly force when a person “reasonably believes that using or threatening to use such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony.”⁴

When considering whether the use of force was justifiable, the law does not require the danger be real, just that the danger appeared so. “Whether [a person] was justified in the use of deadly force, you must consider the circumstances by which he or she was surrounded at the time the force was used. The danger need not have been actual; however, to justify the use of deadly force, the appearance of danger must have been so real that a reasonably cautious and prudent person under the circumstances would have believed that the danger could be avoided only through the use of that force. Based upon appearances, [the person] must have actually believed that the danger was real.” Fla. Std. Jury Instrs. in Crim. Cases 3.6(f) (2017).

These principles of justification apply to any case. Florida law, however, provides additional justification to law enforcement officers.

B. Justification for Law Enforcement Officers

Law enforcement officers are specifically permitted to use force, including deadly force, in two officer-involved situations: making arrests and preventing escapes. Section 776.05, Florida Statutes, governs the use of force by law enforcement officers when making an arrest. A law enforcement officer need not retreat or desist from making an arrest simply because a person resists or threatens to resist the arrest. Namely, a law enforcement officer is justified in using any force:

- (1) Which he or she reasonably believes to be necessary to defend himself or herself or another from bodily harm while making the arrest;
- (2) When necessarily committed in retaking felons who have escaped; or

⁴ Forcible felonies are “treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.” Fla. Stat. § 776.08 (2017). In a recent opinion, *State v. Peraza*, 266 So.3d 937 2017 WL 3730352 (Fla. 4th DCA 2017), Florida’s Fourth District Court of Appeal ruled that law enforcement officers enjoy the same benefit of these general justification laws that ordinary Florida citizens do.

- (3) When necessarily committed in arresting felons fleeing from justice.⁵

Fla. Stat. § 776.05 (2017). Overarching this statutory provision is the principle that, to be justified, force must be reasonably necessary under the particular circumstances of the case.

VI. THE FACTS OF DANIEL BLYLER'S DEATH INVESTIGATION

A. General Overview

This officer-involved shooting took place on August 25, 2017, at approximately 12:20 p.m. Blyler—armed, refusing to comply with law enforcement commands, and inebriated—was shot in the parking lot of Vic's Sandwich Shop ("Vic's) located at 1355 North Edgewood Avenue. At approximately noon, JSO received a call for service from Peter Jaghab, the owner of Vic's, indicating that Blyler was intoxicated and was having trouble standing. Mr. Jaghab was concerned that Blyler was going to drive. Six minutes later, Mr. Jaghab called JSO again and relayed that Blyler was armed with a pistol. Multiple patrons of Vic's corroborated Mr. Jaghab's description of Blyler's condition. Officer Johnson was the first officer to arrive at the scene and called Mr. Jaghab directly to confirm Blyler's whereabouts. At that time, Officer Johnson knew two things: that Blyler was armed and that Blyler was intoxicated.

Officer Johnson carefully approached Blyler and began giving verbal commands to Blyler. The occupants of Vic's heard Officer Johnson giving those commands, but they could not hear specifically what was being said. After Officer Johnson's commands, Blyler reached to his hip area, where he was carrying a 9mm semi-automatic pistol. Officer Johnson provided a voluntary statement through his counsel that Officer Johnson yelled twice, "JSO, put your hands where I can see them." Officer Johnson also said that Blyler ignored those commands and placed his right hand on his gun. At this point, Officer Johnson shot Blyler.

Blyler's possession of the weapon was lawful under Florida law, since Blyler had a concealed weapons permit.⁶ In addition to the multiple reports by witnesses who observed Blyler's intoxication, the autopsy toxicology report revealed alcohol (.014), methadone (an opioid analgesic used to treat opioid addiction), Buprenorphine (a controlled synthetic opioid

⁵ In *Tennessee v. Garner*, 471 U.S. 1, 11 (1985), the United States Supreme Court addressed the use of deadly force against a fleeing felon. The Court noted that "[w]here the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force."

⁶ Blyler's possession of the firearm may, however, have violated applicable federal law due to Blyler's potential opioid addiction. See 18 U.S.C. § 922(g)(3).

also used in treatment of opioid addiction), and topiramate (an anticonvulsant with CNS depressant effects). In this highly intoxicated state, Blyler refused Officer Johnson's lawful commands, reached for his firearm, prompting Officer Johnson's justifiable actions..

B. Blyler's Background and History

At the time of the shooting, Blyler was a 44-year-old, white male with no criminal history. He held a concealed weapons permit and suffered from a serious opioid addiction.

C. Officer Johnson's Background and History

Officer Johnson has been employed by JSO since 2001. Officer Johnson holds a bachelor's degree. This was his second officer-involved shooting. A prior shooting took place in 2008 and was deemed Justified.

D. The Shooting

Officer Johnson shot Blyler after responding to a call for service involving an armed, intoxicated person. After Blyler failed to comply with Officer Johnson's lawful commands, Blyler reached for his gun. Officer Johnson shot Blyler 13 times. Officer Johnson's firearm had the capacity to shoot 17 times without reloading.

E. JSO Scene Investigation and Physical Evidence

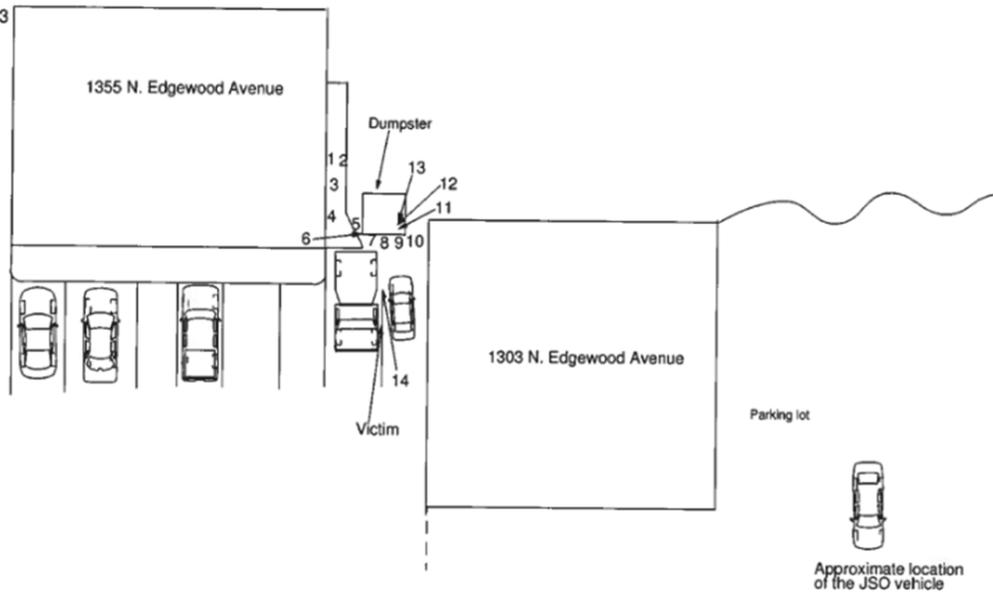
Crime scene detectives, led by Detective D.E. Anderson (#7906), collected evidence, and took measurements and photographs of the scene. They collected 13 spent shell casings, documented bullet strikes, and collected Blyler's 9mm firearm. They documented that Officer Johnson was dressed in his standard JSO patrol police uniform. The diagram below provides context for the locations described in this report.

17-578181
Police Involved Shooting
1355 N. Edgewood Avenue
08-25/17
Drawn by: J.N. Amponin 64623
Not to scale



Legend

Ev 1-13- 9mm casings
Ev 14-cell phone



F. Medical Examiner's Findings

On August 26, 2017, Chief Medical Examiner Dr. Valerie Rao conducted an autopsy on Blyler. She issued her final report on September 19, 2017, and the complete results of her examination are set forth in that report.

Dr. Rao determined that the manner of Blyler's death was homicide, and the cause of Blyler's death was multiple penetrating gunshot wounds. Rao also documented the results of a toxicological examination of Blyler, evincing high levels of methadone and the substances described in detail below. Rao detailed 14 different gunshot wounds and gunshot grazes. None of the associated wounds had stippling or soot that would indicate a close-range shooting. Additionally, all gunshot wounds, even those in the back of Blyler, are consistent with the witness' rendition of facts.

Blyler's toxicology results showed the following:

Positive Findings:

Compound	Result	Units	Matrix Source
Ethanol	14	mg/dL	001 - Iliac Blood
Blood Alcohol Concentration (BAC)	0.014	g/100 mL	001 - Iliac Blood
Caffeine	Positive	mcg/mL	002 - Iliac Blood
Methadone	590	ng/mL	002 - Iliac Blood
EDDP	590	ng/mL	002 - Iliac Blood
Topiramate	11000	ng/mL	002 - Iliac Blood
Buprenorphine - Free	1.2	ng/mL	002 - Iliac Blood
Norbuprenorphine - Free	1.8	ng/mL	002 - Iliac Blood
Methadone / Metabolite	Presump Pos	ng/mL	003 - Urine

G. Statements of Key Witnesses

1. Ryan Van Sickle

Mr. Van Sickle stated that when he got to Vic's, Blyler was outside near his truck. Peter (the owner of Vic's) told Van Sickle that Peter had already called the police about Blyler. Mr. Van Sickle stated that Blyler appeared intoxicated and armed. Mr. Van Sickle stated that when the officer arrived, he had his firearm drawn and began giving Blyler commands. Blyler then began grabbing at his side where his weapon was and only then did the Officer open fire.

2. Kyle Van Sickle

Kyle Van Sickle was inside Vic's with his brother, Ryan Van Sickle. Kyle Van Sickle stated that the owner of Vic's (Peter) was telling him that Blyler was acting crazy. Kyle Van Sickle also noticed that Blyler was acting strange and appeared to be in an altered state of mind. Kyle Van Sickle heard the officer yelling at Blyler, but could not tell what was being yelled. Kyle Van Sickle then saw Blyler reach his right arm toward his waist-band and lift his shirt. Kyle Van Sickle never saw Blyler with a gun, but after Blyler reached to his hip, the officer opened fire on Blyler.

3. Linda Jaghab

Ms. Jaghab indicated that she first noticed Blyler inside Vic's, and he appeared highly intoxicated. Ms. Jaghab has known Blyler for approximately ten (10) years and confirmed the bizarre behavior Blyler was exhibiting in the store that day. Ms. Jaghab did not see the shooting.

4. Victoria Brightwell

Ms. Brightwell did not witness the shooting, but she did see Blyler "dry-heaving" in the parking lot and his "eyes were in the back of his head." Ms. Brightwell also saw the gun on

Blyler's hip. Ms. Brightwell has seen Blyler on prior occasions in the store, and his behavior on this day was unusual.

5. Andre Brown

Mr. Brown saw Blyler in Vic's before the shooting, and it looked as if Blyler was about to "pass out." Mr. Brown also saw Blyler's gun on his hip, but he left before the shooting occurred.

6. Tawana Hunter

Ms. Hunter was in Vic's when she saw Blyler. Ms. Hunter indicated that Blyler looked like he was about to "pass out" and looked "strung out on something." Ms. Hunter did not see the shooting but heard multiple shots.

7. Melissa Davis

Ms. Davis is an employee of Vic's who took Blyler's order before the shooting. Ms. Davis stated that Blyler appeared to be under the influence of something. Ms. Davis has seen Blyler before as a customer and his behavior was significantly altered on this occasion. Ms. Davis did not see the shooting.

8. Mary Beth Ballard

Ms. Ballard is an employee of Vic's. Ms. Ballard stated that Blyler appeared to be "high on something" when he ordered food. Ms. Ballard stated that Blyler was a regular customer and appeared to be behaving abnormally.

9. Peter Jaghab

Mr. Jaghab is the manager/owner of Vic's. Mr. Jaghab knows Blyler as a regular customer. Mr. Jaghab said that Blyler appeared to be more intoxicated than usual, so much so, that Mr. Jaghab called the police to alert them to a potential intoxicated driver. Mr. Jaghab detailed Blyler's behaviors that indicated to him that Blyler was severely intoxicated. After calling the police, another customer alerted Mr. Jaghab that Blyler was carrying a pistol on his waist. Mr. Jaghab knew that Blyler carried a pistol and called the police again to report that Blyler was armed. Mr. Jaghab then received a call from Officer Johnson to confirm his dispatched information. Mr. Jaghab saw Officer Johnson carefully approach Blyler with his handgun drawn in the low, ready position. Mr. Jaghab heard Officer Johnson give commands to Blyler but could not hear their substance. Mr. Jaghab then saw Blyler reach for the right side of his waist area. Then, Mr. Jaghab saw and heard Officer Johnson shoot and kill Blyler.

VII. LEGAL ANALYSIS

No one disputes that Officer Johnson shot and killed Blyler. The question, though, is whether the shooting was “justified” as the term is defined and explained above. To answer the question, we must consider “the circumstances by which [Johnson] was surrounded at the time the force was used. The danger need not have been actual; however, to justify the use of deadly force, the appearance of danger must have been so real that a reasonably cautious and prudent person under the circumstances would have believed that the danger could be avoided only through the use of that force.” Fla. Std. Jury Instrs. in Crim. Cases 3.6(f) (2017).

Officer Johnson was responding to a citizen complaint of an intoxicated man with a pistol on his hip. Officer Johnson was dressed in his issued police uniform and was obviously acting as a police officer. Officer Johnson gave loud, verbal commands to Blyler.. What we do know is, in response to these commands, Blyler decided to reach for the area of his body that was carrying his concealed firearm. Based on the available information, Officer Johnson did not have to guess whether Blyler was armed. Dispatched information and a witness told him Blyler was. Officer Johnson did not have to wait for Blyler to raise his gun and began to fire before resorting deadly force.

In the State’s opinion, given the totality of the circumstances, Officer Johnson reasonably feared that his life and the lives of his fellow citizens who called for his help were in imminent danger. Officer Johnson was called out to deal with a severely intoxicated and armed man. Not one independent witness who saw the shooting indicated they believed Officer Johnson acted inappropriately. In fact, they all stated that Officer Johnson began shooting only after Blyler ignored Officer Johnson’s commands and then reached towards his firearm. Blyler had a concealed weapons permit, but he was arguably committing a federal offense by being a drug addict in possession of a firearm, *see* 18 U.S.C. § 922(g)(3) and was about to commit a misdemeanor by using a firearm while intoxicated, *see* § 790.151, Fla. Stat. (2017).

In *Graham v. Connor*, 490 U.S. 386, 396 (1989), the Supreme Court counseled that the “calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.” *Id.* at 396-97. Even if subsequent investigation shows that officers were wrong about some fact, the officer’s use of force may nonetheless be justified. The law does not require omniscience or perfection from police officers. Instead, before employing deadly force, police “must have sound reason to believe that the suspect poses a serious threat to their safety or the safety of others. Officers need not be absolutely sure, however, of the nature of the threat or the suspect’s intent to cause

them harm—the Constitution does not require that certitude precede the act of self-protection.” *Elliott v. Leavitt*, 99 F.3d at 644.

Given that Blyler was intoxicated, armed, non-compliant, and then affirmatively reached towards his own firearm, Officer Johnson acted in accordance with the law when Officer Johnson shot and killed Blyler and had no reasonable choice other than to shoot and kill him.

VIII. CONCLUSION

Our role is to evaluate, review, and pursue criminal charges when the taking of life is unjustified. That evaluation requires full consideration of what someone knew or reasonably believed at the time they acted.

Officer Johnson had a split-second to decide whether an inebriated, armed man who was reaching for a firearm was about to hurt or kill him. The uncertainty Officer Johnson faced and had to deal with was created solely by Blyler’s decision to arm himself while under the influence of judgment-altering substances.

Based on the available facts we have reviewed and our review of applicable Florida law, it is our legal opinion that the actions of Officer Johnson on August 25, 2017, were justified, as defined by Florida law. We will, therefore, take no further action in this matter.