

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN
AND FOR LEON COUNTY, FLORIDA.

GRAND JURY, FALL TERM 2011-2012

IN RE: **Officer Involved Shooting of Fernando Lazaro in the area of 5742 Pine
Park Circle, Tallahassee, FL, on or about September 22d, 2011**

IN THE NAME OF AND BY THE AUTHORITY OF THE STATE OF FLORIDA

2012 JUN 18 P 2:57
CLERK OF DISTRICT COURT
LEON COUNTY FLORIDA

FILED

NO TRUE BILL PRESENTMENT

THIS MATTER came before the Grand Jury on January 18, 2012 to review the facts and circumstances of the officer involved shooting of Fernando Lazaro which occurred September 22, 2011 at 5742 Pine Park Circle, Tallahassee, Florida. This Grand Jury inquiry is to determine if the use of deadly force by the Leon County Sheriff's Office, specifically that of Deputy Michael Crego, was a justifiable use of deadly force and thus lawful under the provisions of Florida Statutes Sections 843 and 776. The Grand Jury heard testimony from several law enforcement officers as well as civilian witnesses regarding the actions of Fernando Lazaro during and prior to this shooting incident.

FACTUAL SUMMARY

On September 22, 2011, at approximately 5:30pm, Leon County Sheriff's Deputy Michael Crego responded to a hit-and-run crash that occurred on West Tennessee Street. Witnesses advised that a grey truck with an Hispanic driver struck a Pontiac Grand Prix and then fled: first south on Aeon Church Road; and then east on Pine Park Circle. Witnesses advised the driver of the truck appeared to be intoxicated.

Deputy Crego located the suspect truck in the road in front of 5742 Pine Park Circle. Deputy Crego exited his marked patrol vehicle in his Leon County Sheriff issued uniform and ordered the driver to exit the vehicle. Deputy Crego used his vehicle in his initial attempt to stop Lazaro. Deputy Crego stood directly in front of the truck with his hands raised as he ordered Lazaro to turn off the truck and get out. The truck began to ease forward. Several times Deputy Crego backed up and ordered Lazaro out of the vehicle. Lazaro shook his head no as the truck continued to inch forward.

Deputy Crego placed his hands on the hood of the truck and again loudly ordered Lazaro to park and exit the vehicle. Deputy Crego used clear verbal commands and hand gestures for the driver to comply with him and stop and exit the truck. Deputy Crego requested the assistance of additional officers via his portable radio and continued to give orders to Lazaro who continued to ignore these orders and appeared to be talking on his cell phone. At this point Deputy Crego drew his agency issued firearm and continued to give Lazaro orders at gunpoint. Lazaro continued to ignore these orders and continued to slowly advance the truck toward Deputy Crego. As Deputy Crego was backing up, the truck accelerated and the tires began to spin. Deputy Crego then began firing at Lazaro as he jumped out of the way to avoid being struck by the accelerating truck.

Deputy Crego fired several rounds into the truck as it came toward him and as it passed him. Lazaro was struck twice, once in each shoulder.

Lazaro continued to drive down the road at a high rate of speed striking mailboxes, trees, and utility poles until he crashed into a ditch in the area of Aeon Church Road and Dome Level Road. Lazaro then exited the truck and attempted to flee on foot before collapsing in a ditch on Dome Level Road. It was later discovered that the truck belonged to Lazaro's employer and that he was not authorized to drive it at the time these incidents occurred.

Lazaro later admitted that he was in a car accident and then remembered seeing law enforcement, but claimed the next thing he remembered was being in the ambulance. He did admit he saw the Deputy pointing a gun at him, but believed it to be an "electrical gun" that shot him.

At .341, Lazaro's blood alcohol level was almost four times the legal limit for drivers in the State of Florida.

APPLICABLE FLORIDA STATUTES

Florida Statute 843 states one may not knowingly and willfully resist, obstruct, or oppose any officer in the lawful execution of any legal duty. And once probable cause for an arrest occurs, section 776.05 Florida Statutes states that a law enforcement officer need not retreat or desist from efforts to make a lawful arrest because of resistance to the arrest. The officer is justified in the use of any force which he or she reasonably believes to be necessary to defend himself or herself or another from bodily harm while making the arrest. Florida Statute 776.051(1) states a person is not justified in the use of force to resist an arrest by a law enforcement officer who is known, or reasonably appears, to be a law enforcement officer. Florida Statute 776.012 states a person is justified in the

use of deadly force only if he or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or another.

CONCLUSION

We find that Deputy Crego's response to investigate the complaint of a hit-and-run and possible driving under the influence was a lawful execution of a legal duty. Lazaro resisted those efforts when he refused to comply with Deputy Crego's lawful commands and accelerated his vehicle toward the Deputy. Once Lazaro chose to accelerate toward the Deputy, the Deputy was justified in his use of deadly force to protect himself and others. However, we find that Lazaro posed a threat of death or great bodily harm to Deputy Crego as well as other citizens in the area. A driver with a blood alcohol level as high as Lazaro's poses a serious danger to anyone on the roadway. We find that Deputy Crego conducted himself appropriately in accordance with his training when confronted with Lazaro's unlawful and dangerous actions.

We find that it was reasonable for Deputy Crego to believe that he was in imminent danger of death or great bodily harm when Lazaro accelerated towards him. Hence, in light of all the facts and circumstances surrounding this incident, we believe that Deputy Crego's use of force was justifiable pursuant to his training and the laws of the State of Florida.

THEREFORE, with a quorum present and twelve or more in agreement we find that the conduct of Deputy Crego and specifically the shooting of Fernando Lazaro was a lawful and justifiable use of deadly force pursuant to Florida Statutes.

Your Grand Jurors say nothing further in these premises.

RESPECTFULLY SUBMITTED this 18th day of January, 2012.

[REDACTED]

[Handwritten Signature]
[REDACTED]
Grand Jury Clerk