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LEON COUNTY, FLORIDA

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

GRAND JURY, SPRING TERM 2018

IN RE: Officer Involved Shooting of Deshone Donald in the area of Village Trace Apartments on or about November 30, 2017.

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

NO TRUE BILL PRESENTMENT

THIS MATTER came before the Grand Jury on January 12, 2018, to review the facts and circumstances of the officer involved shooting of Deshone Donald in the area of Village Trace Apartments in Tallahassee, Florida. This Grand Jury inquiry is to determine if the use of deadly force by the Tallahassee Police Department (TPD), specifically by Officers: Andrew Mixon and Robert Wyche, was a justifiable use of deadly force and thus lawful under the provisions of Florida Statutes Sections 316, 843, and 776. The Grand Jury heard testimony from: an expert on law enforcements use of force training and protocols; the investigator of this shooting incident; viewed both helicopter surveillance video and in car camera video of the incident and prior chase, listened to the dispatch recordings of the shooting, and heard from law enforcement witnesses who observed these shooting incidents. We heard testimony about the actions of Deshone Donald prior to and during these shootings. We also learned about the physical evidence collected from the scenes in this case.

FACTUAL SUMMARY

On Thursday, November 30, 2017, at approximately 8:03 P.M., Tallahassee Police Department Officer Shawn Wright ("Officer Wright") attempted to stop a white 2013 Chevrolet Malibu on West Tennessee Street, near North Woodward Avenue; the vehicle was bearing a State of Florida vehicle registration plate of "HITC91," and was occupied by only a driver, a black male. After observing the driver proceeding at twice the rate of normal traffic and rapidly changing lanes,

Officer Wright initiated a traffic stop. The vehicle fled at high speed.

On the same date, at approximately 9:55 P.M., Tallahassee Police Department Officers Chad Davis ("Officer Davis") and Wesley Burch ("Officer Burch") saw the same Chevrolet Malibu on Osceola Street. They followed the vehicle to Iamonia Street, where they tried to stop it after it pulled off onto the side of the roadway. Once again, the vehicle fled.

The Leon County Sheriff's Office's Aviation Unit was operating a helicopter, "Air One," and came to the area to assist. Air One found the Chevrolet Malibu, and began aerial surveillance. At 9:59 P.M., as Officers Davis and Burch entered into a roundabout at Rankin Avenue and Roberts Avenue, the Chevrolet Malibu began to circle around behind them. After the approximate third time around the roundabout, Officers Davis and Burch tried to stop the vehicle by activating their emergency lights and getting out of their car; the Chevrolet Malibu fled for a third time.

Air One monitored the Chevrolet Malibu as it continued driving, and directed responding officers to the parking lot of Wal-Mart, 4400 West Tennessee Street. At 10:09 P.M., the Chevrolet Malibu fled from the officers there. The Chevrolet Malibu eventually entered into the Village Trace apartment complex, located in the 3200 block of North Mission Road (10:17 P.M.). Air One directed responding officers to this location, informing them that the vehicle was backed into a parking spot in the complex, and that they had an opportunity to block it in and prevent further flight.

Tallahassee Police Department Officer Michael Malafronte ("Officer Malafronte"), who was driving an unmarked police vehicle, a Chevrolet Impala, entered the complex. He saw the Chevrolet Malibu, still backed into a parking space, and activated his vehicle's emergency lights, identifying it and himself. He tried to pin the Chevrolet Malibu to prevent it from moving by blocking it with his car. The Chevrolet Malibu pulled out of the space and attempted to flee once again. However, other marked law enforcement vehicles were now entering the complex, including those driven by Officers Mixon and Wyche. Officer Mixon angled his vehicle to prevent the Chevrolet Malibu from going around him and escaping from the parking lot. He had activated his car's overhead emergency lights and had gotten out. At the time, the Chevrolet Malibu was facing towards his car, with Officer Malafronte's unmarked vehicle behind the Chevrolet Malibu, obstructing its path that way.

The Chevrolet Malibu reversed and accelerated into Officer Malafronte's

car, causing front-end damage to his Impala. The action, captured by Air One, was deliberate. The Chevrolet Malibu's rear-end was forced up and onto Officer Malafronte's hood, and he stated in his report that he "was in fear of my safety and had to brace for impact for the crash."

By this time, Officer Wyche had arrived, parked, and gotten out of his car. He was wearing insignia identifying himself as a police officer, and even had on a reflective traffic vest, as he had come directly from a previous call to assist in this one. He began to move towards the passenger side of Officer Mixon's car. As Officer Wyche was between Officer Mixon's car and other parked cars in the lot (this area was full at the time), the Chevrolet Malibu accelerated towards him. Officer Wyche believed that the driver's actions were deliberate and directed towards him. Officer Wyche discharged his firearm at the driver in an attempt to get him to stop his actions, which had placed Officer Wyche in the real and immediate fear that he was to suffer great bodily harm or death from an unprotected impact between him and an accelerating motor vehicle.

Separately, Officer Mixon had seen Officer Wyche out of his peripheral vision, and saw the driver's actions towards Officer Wyche. Officer Mixon described that it was "inevitable" that Officer Wyche was going to get hit by the car, based on its speed, the distance between them, and the driver's actions and decision. Officer Mixon also had a well-founded fear that the Chevrolet Malibu's impact with his law enforcement vehicle would cause it to move and swing, thereby compromising his current position by his driver's door and striking him. The result of said impact could have been Officer Mixon's suffering of bodily injury or death. Given the circumstances presented by the driver's actions, Officer Mixon discharged his firearm at said driver, in an effort to protect both his own life and that of Officer Wyche.

While Officer Wyche had been shooting at the driver of the Chevrolet Malibu, he moved away from Officer Mixon's vehicle and towards cover. In order to do that, he had to pass through the parked vehicles on the east side of the complex. The driver of the Chevrolet Malibu steered the vehicle towards Officer Wyche's new path, an act of which Officer Wyche believed to be of an intentional nature. The Chevrolet Malibu struck Officer Wyche with its front left side as it passed him, causing him injury to his left leg, including his knee.

He continued to discharge his weapon until he moved to a position of relative safety and the Chevrolet Malibu had come to a stop after crashing into several parked vehicles. The sole occupant of the Chevrolet Malibu, Deshone Donald, was in the driver's seat. He was taken into custody and provided medical attention for gunshot wounds.

APPLICABLE FLORIDA STATUTES

Florida Statute 316.1935 states that it is unlawful for the operator of any vehicle, having knowledge that he or she has been ordered to stop such vehicle by a duly authorized law enforcement officer, willfully to refuse or fail to stop the vehicle in compliance with such order or, having stopped in knowing compliance with such order, willfully to flee in an attempt to elude the officer, and a person who violates this subsection commits a felony.

Florida Statute 843 states one may not knowingly and willfully resist, obstruct, or oppose any officer in the lawful execution of any legal duty. 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 reasonably believes to be necessary to defend himself 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 reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or another.

CONCLUSION

We find that the Law Enforcement Officers in this case were attempting to make lawful arrests of Deshone Donald who they had probable cause to believe had committed a felony and had previously fled three times from multiple officers. The arrest was a lawful execution of a legal duty. Further, Donald endangered the lives of other drivers when he fled from the police, and endangered the lives of all of the officers involved in this incident as well as civilians in the area. He resisted lawful efforts to detain him peacefully when he fled from the police and refused to obey lawful commands. The Tallahassee Police Department showed great judgment and restraint in trying to minimize risk by stopping three earlier chases.

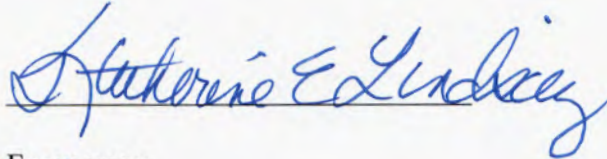
It is obvious that Donald was not going to stop absent being forced. The Officers were correct in waiting until he entered a dead end street where public safety could be protected best and numerous officers could converge. We applaud the coordination between the Tallahassee Police Department and the Leon County Sheriff's Office Aviation Unit in coordinating and resolving a dangerous situation. Officers Andrew Mixon, Robert Wyche, Jeffery Thompson, and

Michael Malafronte who heroically chose to risk their lives to protect others. We thank Robert Wyche for sacrificing his own safety in order to stop this chase and find the actions of the Tallahassee Police Department to be lawful and appropriate.

THEREFORE, with a quorum present and twelve or more in we find that the conduct of law enforcement; and specifically the conduct of Officers Andrew Mixon and Robert Wyche in reference to the shooting of Deshone Donald, 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 11th day of January, 2018.



Foreperson



Grand Jury Clerk

