

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

GRAND JURY, SPRING TERM 2006

IN RE: Shooting Death of Diaquiri Ball by Tallahassee Police
Department Officer Doug Kutchera on July 14, 2006

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

NO TRUE BILL PRESENTMENT

THIS MATTER came before the Grand Jury to review the facts and circumstances into the shooting death of Diaquiri Ball, 28 years of age, on July 14, 2006 at about 10:15 p.m. by Officer Doug Kutchera, of the Tallahassee Police Department, to determine if the use of deadly force was justifiable and therefore lawful as authorized by Chapter 776, Florida Statutes, and consistent with the conclusion of the investigation conducted by the Tallahassee Police Department. Our investigation included hearing statements from citizens who were on scene that night and the police officers who were on the scene during the shooting. We have also examined photographs and diagrams showing the layout of the scene and items of evidence.

FACTUAL SUMMARY

On the evening of July 14, 2006 Sheri McGriff was at her brother's home, Tallahassee Police Officer Cleveland Allen, Jr., which is located at Springwood Apartments off of Old Bainbridge Road just north of I-10. Ms. McGriff received a

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telephone call from her boyfriend Diaquiri Ball. Mr. Ball indicated to Ms. McGriff that he was on his way to pick her up and take her home. Mr. Ball arrived at Mr. Allen's residence, spoke with various family members who were present and then left in his vehicle along with Ms. McGriff. Ms. McGriff testified that Mr. Ball seemed to be upset after they left, and Mr. Ball stopped the vehicle around the dumpster area of the complex near the office where he began to tell her that he had "seen something he shouldn't have" and he was "tired of it all". Mr. Ball was very upset and crying at the time. Mr. Ball advised he couldn't drive, and Ms. McGriff got into the driver's seat, and Mr. Ball got into the passenger seat. Mr. Ball then opened the passenger door and fell down onto his knees outside of the car. Ms. McGriff came around to Mr. Ball and he continued to cry and pray stating he was "tired of all this." The two were there for some time when Mr. Ball told Ms. McGriff that he's OK and Mr. Ball goes around to the driver's seat. Ms. McGriff gets into the passenger seat of the car.

Once the two are in the car Mr. Ball stated "I hope we make it". Mr. Ball floors the gas pedal of the vehicle and the car traveled up the driveway of the complex and onto Old Bainbridge Road. When Mr. Ball's vehicle entered Old Bainbridge Road it struck a vehicle being operated by Devvion Johnson which was northbound on Old Bainbridge Road. Both vehicles careened off the road and down the embankment with both vehicles coming to rest along the tree line.

There were several cars traveling behind Ms. Johnson's vehicle heading north on Old Bainbridge Road. The vehicle directly behind Ms. Johnson's was occupied

by Tanya Beck and Robert Ross. Ms. Beck pulled over and both got out of the car. Ms. Beck stayed by her car and Mr. Ross went to see if he could help the victims. Mr. Ross first saw Ms. Johnson coming out of her vehicle and she was bleeding badly from her face and crying. Mr. Ross then went to the second vehicle and a black female was already out of the car and crying. Mr. Ross then saw a black male get out of the second vehicle. The black male was screaming and punching himself in the head. Mr. Ross then called 911 and reported that there was a car crash, and the victim was acting crazy.

Behind Ms. Beck's vehicle was Ms. Boatright whose husband Allen Boatright was in a vehicle a minute or so behind his wife. When Mr. Boatright arrived at the scene of the crash he got out a high powered flashlight and a first aid kit to assist with the crash scene. It was very dark in the area. Mr. Boatright first encountered Ms. Johnson who was extremely upset and crying. She was being attended to so he gave her a compress for her head. Mr. Boatright then saw a black female (Sheri McGriff) sitting next to the light pole holding her shoulder. Sheri McGriff indicated that she was in the crash but did not appear to be hurt or bleeding. Mr. Boatright then went to approach Mr. Ball who was crouched over near the side of the road with something in his hand. At that point Ms. McGriff told him, "Don't go over there, he's crazy". Mr. Boatright then illuminated Mr. Ball with the flashlight he had brought from his vehicle. Mr. Boatright called out to Mr. Ball "Are you OK?" but got no answer, only screaming. Mr. Boatright also saw that Mr. Ball was ripping and slashing at his

clothes and his groin area. While Mr. Boatright watched, Mr. Ball picked up a drink can, shredded it with his teeth and then throw it down to the ground and began slashing and tearing at himself again. Mr. Boatright could tell Mr. Ball had something in his hand and it appeared to be a knife. When Officer Kutchera arrived on scene, Mr. Boatright continued to illuminate Mr. Ball and yelled to Officer Kutchera "Don't get any closer, he's acting crazy and has something in his hand".

TPD Officer Cleveland Allen, Jr. was off duty and leaving his home at Springwood Apartments when he noticed his sister, Sheri McGriff, standing by the road. He got out of his vehicle and approached his sister to find out what happened. Ms. McGriff told Officer Allen that Mr. Ball had tried to kill them both. Officer Allen noticed Mr. Ball several feet away bent over at the waist making a slicing and pulling motion. Officer Allen thought Mr. Ball had a knife and was cutting himself.

TPD Officer Doug Kutchera arrived about this time in response to a 911 call of a traffic crash. He stopped his police vehicle approximately 25 feet south of Mr. Ball who was illuminated by Mr. Boatright's flashlight. Officer Kutchera got out and started toward Mr. Ball to render aid since he could see blood around Mr. Ball's waist and leg area. When he started toward Mr. Ball several people yelled that, "He has a knife", "He's cutting himself" and "He's acting crazy". At this time Officer Kutchera backed up beside his vehicle and began shouting to Mr. Ball to "drop it". Mr. Ball did not respond except to scream and moan.

Officer Kutchera then heard "Kutchera, tase him", "Kutchera, tase him".

Officer Kutchera looked over and recognized Officer Allen. Officer Kutchera advised Officer Allen that he did not have a taser. Officer Kutchera then called for an officer with a taser 10-18 (lights and sirens). Five seconds later Officer Kutchera called for an officer with a taser 10-18 again.

Officer Kutchera then saw Officer Allen run toward Springwood Apartments. Mr. Ball stopped what he was doing and ran after Officer Allen. As Mr. Ball was chasing Officer Allen he brought the object in his hand up and began making downward slashing motions toward Officer Allen.

Officer Kutchera then began to run after Mr. Ball yelling "drop the knife or I'll shoot", over and over again. Officer Kutchera was approximately 20 yards behind Mr. Ball and Mr. Ball was approximately 6 yards behind Officer Allen. All three raced down the driveway into Springwood Apartments which is about 100 yards long and minimal lighting.

Officer Kutchera continued to yell "drop it or I'll shoot." As Officer Allen got to the bottom of the drive and was approaching the dumpster he fell. Officer Allen got up immediately, but Mr. Ball had gained ground and continued to bring the object in his hand up and down toward Officer Allen. Officer Kutchera yelled for Officer Allen to loop around so that Officer Allen was not in the back drop behind Mr. Ball.

Officer Allen looped around and came back toward Officer Kutchera. As Officer Allen passed by Officer Kutchera, Mr. Ball directed his attention to Officer Kutchera and charged raising the object in his hand. Officer Kutchera shot once as

he was raising his gun striking Mr. Ball in the leg. Mr. Ball went down for a second then raised back up towards Officer Kutchera. Officer Kutchera shot two more times and Mr. Ball went down.

Officer Courtney Scott had arrived as Officer Allen followed by Mr. Ball followed by Officer Kutchera ran down the driveway and started running after the three. Officer Scott reached them as Officer Kutchera shot Mr. Ball. Officer Scott and Officer Kutchera went immediately to Mr. Ball after the shots to render aid and call for EMS.

Autopsy findings revealed that Mr. Ball had a high level of cocaine as well as cannabis and alcohol in his system at the time of his death. There was also a white powder around the edge of Mr. Ball's nose, that when tested, was cocaine. Mr. Ball was shot in the right leg that exited the rear of his leg, in the left shoulder and at a downward angle into the left neck area. The latter shot came to rest in Mr. Ball's pericardium after traveling through his left lung and the aorta causing his death.

Firing warning shots or attempting to shoot a person in a leg or shoulder is not realistic or practical and poses a danger to the public and increases the likelihood of death or injury to the officer. Officers are trained to resort to deadly force only when it is necessary based on a similar degree of force being directed at them or at other persons. When deadly force is necessary to prevent imminent death or great bodily harm, all law enforcement officers are trained to shoot at the largest target, generally the center mass of the body, until the threat is stopped. The test on the

legal use of force likely to cause death or great bodily harm by any person is whether he or she reasonably believed that such force was necessary to prevent death or great bodily harm.

Florida Statute 776.05 states that a law enforcement officer need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. An officer is justified in the use of any force which he reasonably believes to be necessary to defend himself while making an arrest.

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, herself or another or to prevent the imminent commission of a forcible felony. "Forcible felony" is defined in Florida Statute 776.08 and includes murder, aggravated assault, aggravated battery, and any felony which involves the use or threat of physical force or violence against any individual.

Florida Statute 782.02 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.

Florida Jury Instruction 3.6(f) states that in deciding whether a person was justified in the use of deadly force, he must be judged by the circumstances by which he was surrounded at the time the force was used. The danger he faced 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 same circumstances would have believed that the danger could be avoided only through the use of that force. Based upon appearances, he must have actually believed that the danger was real.

CONCLUSION

The evidence demonstrates that it reasonably appeared to Officer Doug Kutchera that the use of deadly force was necessary to prevent his own death or great bodily harm. Diaquiri Ball, after chasing after Officer Allen while wielding what appeared to be a knife, turned on Officer Kutchera with the weapon poised to strike. Diaquiri Ball promptly attempted a "forcible felony" listed in Section 776.08 of murder, aggravated battery or aggravated assault by charging at the officer with a weapon.

THEREFORE, with a quorum present we find this was a justifiable homicide and say nothing further in these premises.

RESPECTFULLY SUBMITTED this 30th day of August, 2006.


Foreperson

ATTEST:


Grand Jury Clerk