

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

GRAND JURY, FALL TERM, 2005
FT2005-1

IN RE: Shooting Death of John Francis Hayes by Tallahassee
Police Department Officers on November 26, 2005

FILED
FELONY DIV.
2006 JAN 18 P 6:18
DORR RIZER
CLERK OF CIRCUIT COURT
LEON COUNTY, FLORIDA

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 of the shooting death on November 26, 2005 of John Francis Hayes by Tallahassee Police Department Officers Dan Copelin, Steve Damm, Nick Roberts and Bob Todd to determine if the use of deadly force was reasonably necessary within the authority of Chapter 776, Florida Statutes, regarding justifiable use of deadly force as was the conclusion of the homicide investigation conducted by the Tallahassee Police Department. Having reviewed the evidence including the sworn testimony of officers involved in the shooting, we agree that it was for reasons discussed below.

FACTUAL FINDINGS

Around 11:00 p.m. on Friday evening, November 25, 2005, John Francis Hayes, 17 years of age, traveled from his home in Thomasville, Georgia to Tallahassee as a passenger in a dark blue Chevrolet Caprice automobile owned by Rondell Veney, 22 years old, along with several other older male friends. The purpose of their trip was to visit some female friends in local apartment complexes and to be in the parking lot of Chubby's nightclub at 1833 West Tennessee Street across from High Road at 2:00 a.m. on Saturday morning for the "let out" party. Chubby's is located in the area of a shopping center that was formerly the Varsity theater. Patrons are required to leave when the club closes and socializing continues outside in the busy parking lot. By the time Chubby's was closing the automobile was being driven by Demetrius Ross, 21 years old, with Rondell Veney in the back seat and John Hayes the right front passenger. During a

verbal altercation with another man about talking to a local girl, Rondell Veney displayed his 9mm semiautomatic pistol and fired several shots into the air while in the parking lot and more shots as their vehicle crossed Tennessee Street starting up High Road. Police received 911 calls about shots being fired and officers in the area heard the shots. Officer Stepho Tterlikkis saw the dark colored Chevrolet Caprice moving slowly with a door open on the passenger side and thought it was the front door. Officer Dan Copelin saw a figure enter into the passenger side of the Caprice just after shots were fired along High Road by the Capital City Bank but could not tell if it was the front or the back.

Officers followed the Caprice and about a half mile up High Road they turned into the First Christian Church parking lot, circled the driveway, and came to a stop under a portico with the vehicle facing the exit. The officers surrounding the Caprice had strong probable cause to take the occupants of the car into custody to investigate felony conduct as it is a felony punishable by up to 15 years in prison per Florida Statute 790.15(2) for an occupant of a vehicle to discharge a firearm in the vicinity of other persons. In what officers call a "felony stop" of a vehicle only one occupant at a time is required to exit and be detained for officer safety and to lessen the likelihood of an occupant fleeing on foot.

The driver, Demetrius Ross, complied promptly to officers' commands, threw the car keys out onto the pavement away from the vehicle, exited with his hands up, raised his clothing, turned about, and walked to where officers directed. Ross promptly confirmed that a firearm was still in the vehicle and this information was relayed by shouts and radio to all officers on the scene.

Officers noted some furtive movements by both the right front passenger and the rear passenger reaching downward as officers commanded them to show their hands. Some officers suspected the right front passenger, later identified as John Francis Hayes, was about to "bail" or try to run away based on his actions as he opened his door before being told to do so. The procedure for officer safety was to have him proceed forward to the officers and away from the remaining suspect in the car as well as to distance him from the firearm or other weapons in the vehicle. After Hayes got out of the car and dropped face down on the ground near his open door he continuously failed to comply with officers' repeated commands to crawl forward away from the vehicle while shouting "sir, sir" and screaming other incoherent phrases. Several times he raised partly upwards and reached a hand down towards his pants despite being ordered to keep his hands visible. Rondell Veney in the back seat was holding his hands up to the roof of the car

as directed by officers and Officer Nick Roberts held a rifle trained on Veney while others were trying to get Hayes to comply. A plan was made to approach and subdue Hayes with Officer Scott Cherry presenting his Taser nonlethal weapon, Officer Steve Damm pointing a shotgun at Hayes for lethal cover if necessary, and Officer Dan Copelin to be the "hands on" officer to physically handcuff Hayes. As the team approached Hayes suddenly started to raise up and Officer Cherry fired his Taser striking Hayes' clothing with the probes with no response. As Hayes continued to raise up a second Taser was fired striking his clothing without stopping Hayes motion towards the open door. As Hayes approached the door opening an officer struck him on the back of a leg with a baton again with no apparent effect, after which officers state Hayes dove across the front seats and the console with his hands downward as Officer Dan Copelin fired nine shots from his pistol toward Hayes and practically simultaneously Officer Nick Roberts fired a rifle four times into the back of the front driver seat area, Officer Bob Todd fired one shot with his pistol through the gap between the car frame and open door frame, as Officer Steve Damm fired once with his shotgun. The fifteen shots caused about 23 penetrations from bullets, shotgun pellets, and fragments striking John Hayes causing his immediate death. We heard the testimony of an experienced firearms training officer who conducted tests with similar guns and fired the same number of times as each officer did in less than two seconds.

Most of the officers state they were not aware that others had fired at the same time and did not hear their own gun fire. These are reportedly common experiences in highly stressful and fearful shooting incidents causing a tunnel vision effect and auditory exclusion of not hearing the shots. A citizen witness taking cover behind a tree farther back from the officers confirmed that the front passenger was not complying with commands, that he felt the passenger posed a threat to the officers, and that the shots were all fired close together.

Rondell Veney, the back seat passenger and owner of the vehicle, followed all commands and was taken into custody without incident. Paramedics on scene confirmed that there were no signs of life in John Hayes. There was a large open bladed knife between the front passenger seat and the console where Hayes had been seated. A 9mm semiautomatic pistol was found under the front edge of the driver's seat close to John Hayes' hands. The slide was locked back indicating that all shots had been fired. A loaded .22 caliber derringer was found later under the back edge of the driver's seat.

In interviews at the Tallahassee Police Department investigators were curious as to why John Hayes did not follow directions while Demetrius Ross and Rondell Veney did exactly as officers directed. Rondell Veney told police that before leaving Thomasville he had shown Demetrius Ross and John Hayes his 9mm semiautomatic pistol and that both of them had held the pistol before he put it back under the front seat. Veney admitted that he was the one who fired the shots while in the parking lot and across Tennessee Street and Ross confirmed seeing Veney reach under the seat for the pistol and fire shots in the air. Veney also said that when they realized that police were stopping them at the church he told Ross and Hayes to just be calm. Veney said Ross followed the police directions but John Hayes was screaming. When asked what was Hayes upset about, Veney said "I don't know what he upset about. I guess he didn't want to go back to jail, because he had basically just got out of jail." He further stated Hayes was talking crazy, hoping he would not get shot, that he would not go back to jail that night, and he just wanted to get out of this situation. Veney said of Hayes "All I know he was drinking some strong Seagrams gin" and a large bottle of gin and some red grapefruit juice was found in the back floorboard area. Demetrius Ross said he was the designated driver as Veney and Hayes were drinking gin mixed with juice.

The hands of John Hayes were swabbed for a gunshot residue test. The Florida Department of Law Enforcement crime laboratory in Daytona Beach submitted a report dated December 22, 2005 stating that gunshot residue was identified by analysis of the kit collected from John Francis Hayes. This does not determine whether or not he has discharged a firearm, but identifies the presence of gunshot residue which may be the result of firing a weapon, being in close proximity to a firearm during discharge, or handling a firearm or spent cartridge whose surface bears gunshot residue.

The toxicology report from the University of Florida Diagnostic Reference Laboratories dated December 30, 2005 on fluid samples submitted from the autopsy of John Hayes revealed positive cannabinoids (marijuana) in his system and a blood/alcohol reading of .25. For purposes of driving a vehicle a person is presumed impaired at a level of .08.

Reports from the Thomas County Sheriff's Department in Thomasville, Georgia show on April 10, 2003 John Francis Hayes committed a home invasion type armed robbery by entering a house wearing a Halloween mask brandishing a pistol firearm. After ordering the victim to the floor and being given some money he demanded all of his money and pressed the gun to the

victim's head. The pistol and the mask were found at a nearby vacant house and investigation identified John Hayes as the robber. When arrested on April 16, 2003 he confessed to the robbery saying he borrowed the pistol so he could commit some armed robberies to get money. Records from the Thomas County Superior Court in criminal case 03-CR-409 on October 27, 2003 show Hayes plead guilty to robbery and was sentenced to confinement for a period of 10 years, but upon service of 2 years the remainder of 8 years may be served on probation. On June 6, 2005 John Hayes was released from the Sumter Youth Detention Center at Americus, Georgia to enter probation with special conditions including do not drink any alcoholic beverages, do not use any dangerous illegal drugs, and a curfew requiring him to be at home each evening from 7:00 p.m. until 6:00 a.m. the next morning. Therefore, the statement by Rondell Veney that he guessed that John Hayes did not want to go back to jail may explain his noncompliant conduct since a violation of probation revocation for being in Tallahassee rather than being at home and his consuming alcohol and marijuana could have resulted in incarceration for the remaining 8 years of his sentence.

RELEVANT FLORIDA LAWS

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. The law on justifiable use of deadly force also states that in deciding whether a person was justified in the use of force likely to cause death or great bodily harm, you must judge him by the circumstances by which he was surrounded at the time the force was used. The danger facing him need not have been actual; however, to justify the use of force likely to cause death or great bodily harm, 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 on appearances, the person must have believed that the danger was real.

Florida Statute 776.05 states 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. 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 776.06 states the term "deadly force" means force that is likely to cause death or great bodily harm and includes, but is not limited to:

- (a) The firing of a firearm in the direction of the person to be arrested, even though no intent exists to kill or inflict great bodily harm; and
- (b) the firing of a firearm at a vehicle in which the person to be arrested is riding.

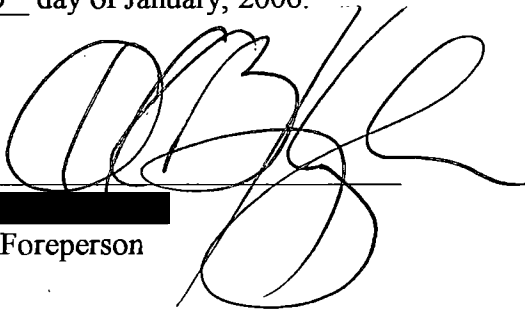
CONCLUSION

John Hayes could not have driven away in the vehicle as the keys were thrown out by the driver Demetrius Ross as ordered by police while Hayes was still in the car, so the officers made a reasonable assumption that he dove into the car to avoid arrest and to obtain a deadly weapon. It was his actions and wrong choices, likely influenced by alcohol and marijuana, in not obeying police commands, not responding to the non-lethal efforts made to take him into custody, and diving into the vehicle in which both he and the police officers knew contained a deadly weapon that created their expressed fear of imminent danger of death or great bodily harm. The police officers responded by firing in unison until the threat was stopped as officers are trained to do.

We find this was a lawful shooting incident within the scope of Florida laws cited above regarding justifiable use of deadly force.

RESPECTFULLY SUBMITTED this 18th day of January, 2006.




Foreperson