

**IN THE CIRCUIT COURT OF THE SECOND
JUDICIAL CIRCUIT IN AND FOR
LEON COUNTY, FLORIDA
GRAND JURY, FALL TERM, 1997**

Case FT97-7

DAVE LAMON
CLERK CIRCUIT COURT
LEON COUNTY, FLORIDA
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FILED

**IN RE: Tallahassee Police Department Shooting
Death of Amos Roberts on April 28, 1998**

PRESENTMENT

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

THIS CAUSE came before the grand jury to review the facts and circumstances regarding the death of Amos Roberts from two shots fired by City of Tallahassee Police Department Officer Bryan Harvey while on duty responding to an armed assault at the residence of Gene and Trina Anderson at 2814 Southwood Drive on April 28, 1998.

We have reviewed a diagram of the scene inside the house, various photographs, police reports, the knife used by Amos Roberts, taken sworn testimony from witnesses Gene Anderson, Trina Anderson, Leon County Deputy Sheriff Roger Nemeth, Tallahassee Police Officers Tom Maltese, James Fairfield, M. A. Williams, Todd McCurdy, John Creamer, and Bryan Harvey, and listened to the 911 call which was recorded during the entire incident.

FACTUAL FINDINGS

At about 1:45 P.M. on Tuesday, April 28, 1998, Officer Bryan Harvey of the Tallahassee Police Department responded to 2814 Southwood Drive due to 911 calls for assistance from Trina Anderson regarding her uncle Amos Roberts causing a disturbance and threatening her with a knife. As Officer Harvey arrived on Southwood he saw Roberts holding a knife running across the street and into the Anderson's house. When Officer Harvey entered Trina Anderson was screaming loudly in fear and Amos Roberts had her

trapped against the rear wall gripping her wrist with his left hand while holding the knife in his right hand. He had already cut her arm, "poked" her in her side with his knife, and choked on her. As Officer Harvey began giving loud commands to Roberts to drop his knife, Mrs. Anderson was able to break away from her uncle and at one time yelled for the officer to shoot him in the leg. Her husband Gene Anderson was inside, moved around behind Officer Harvey, and can be heard on the 911 tape urging Amos Roberts at least three times to drop the knife so he wouldn't get shot. Officer Harvey ordered Roberts to drop the knife about fifteen times, warning him he would shoot if he did not put it down. As Roberts continued to move forward with the knife in his hand, Officer Harvey took several steps backward, bumped into some furniture, and fired a shot striking Roberts in the chest. Officer Harvey stated that from the first shot Amos Roberts sort of drooped and turned but still held the knife leaning towards him, so he stepped to the side and promptly fired a second shot as Roberts dropped the knife and fell to the floor. Officer George Creamer had now arrived and officers began medical treatment on Amos Roberts pending arrival of other emergency medical staff from the Tallahassee Fire Department and paramedics from Tallahassee Memorial Hospital Emergency Services.

Minutes later while out by the street, Trina Anderson told Officer M. A. Williams that the officer did all he could to keep from shooting her uncle. She confirmed a statement made to Investigator Karen Brown when at the hospital later that same day for treatment of her injuries in which she said the officer told her uncle "like ten or twenty times to put the knife down," but he turned around, looked at the officer, and started walking towards the officer with the knife in his hand as the officer continued the verbal warnings. She also said the officer shot him in the chest although she told the officer to shoot him in the leg.

While still at 2814 Southwood Drive, Gene Anderson told Officer Taroub Natale that Amos Roberts was intoxicated, came into their residence with the knife, and that he refused to drop the knife when the officer told him to do so. In a follow up recorded statement that same day with Investigator Bill Bierbaum, he confirmed that Amos Roberts had cut or sliced his wife Trina on her arm, that the officer repeatedly told him to drop the knife, that he would not drop it, that he came towards the officer looking at him while still

holding the knife, that the police officer fired two shots into his chest, and Amos Roberts fell. Mr. Anderson said Roberts was maybe five feet in front of the officer and that he (Mr. Anderson) had moved behind the officer as he was nervous and scared.

Officer Harvey as well as Mr. and Mrs. Anderson perceived that both shots entered the chest of Amos Roberts. The autopsy report from the Office Of The Medical Examiner describes a blood alcohol level of .21%, a gunshot entrance wound to the left anterior chest with the path being left to right, front to back and downward, and another gunshot entrance wound to the right back with the path being back to front, slightly left to right with no significant upward or downward deviation. This would be consistent with an intoxicated Amos Roberts falling forward and spinning to his right as the trigger was being squeezed on the second shot.

The two shots are very audible on the 911 recording and are less than one ½ seconds apart. Law enforcement officers are trained to fire as many shots as necessary into the center of mass, or the largest part of the body, until they can assess that an aggressor is stopped. Firing warning shots or attempting to shoot a leg is not proper law enforcement procedure. Even the most skilled marksman cannot hit a leg or an arm in these stressful situations, even if accurate such shots are not effective in stopping an aggressor, and other persons in the vicinity are endangered by subsequent violent actions of the offender or by the bullets. Twenty-one feet or less from an aggressor with a knife is considered the danger range. Florida Department of Law Enforcement laboratory tests show the chest entry shot was three feet from the gun muzzle and the other shot was two feet six inches, close enough for Officer Harvey to have been stabbed.

APPLICABLE FLORIDA STATUTES

Section 776.012, Florida Statutes, 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 or to prevent the imminent commission of a forcible felony. Section 776.08 defines "forcible felony" as including aggravated battery or aggravated assault, which is injuring or threatening another with a deadly weapon such as a knife. Section 776.05, Florida Statutes, 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. He 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.

CONCLUSION

Violent forcible felonies of aggravated battery upon Trina Anderson followed by aggravated assault upon Officer Bryan Harvey were being committed by an intoxicated Amos Roberts. Due to actions Amos Roberts created, advancing while armed with a deadly weapon, and ignoring loud repeated warnings from Gene Anderson and Officer Bryan Harvey, the officer reasonably believed deadly force was necessary to defend himself and others from bodily harm, gave more than ample warnings, and demonstrated restraint far beyond the requirements of police training standards and state statutes.

THEREFORE having reached this decision following an independent and thorough review of the evidence presented before us, we find this incident was a justifiable use of deadly force as authorized by Florida Statutes.

RESPECTFULLY SUBMITTED this 14th of May, 1998.



Foreperson

Attest: *CW Goodwin*
Assistant State Attorney