

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

GRAND JURY, SPRING TERM, 2002

IN RE: Shooting of Robert Edward Baker by Tallahassee Police
Officers John Pretti, John Newman and Vincent Capece
on September 5, 2002

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BUD HAZEN
CLERK CIRCUIT COURT
LEON COUNTY, FLORIDA

FILED
FELONY DIV.

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 of Robert Edward Baker on September 5, 2002 by officers of the Tallahassee Police Department to determine if the use of deadly force was reasonably necessary within the authority of Chapter 776, Florida Statutes, as was the conclusion of the investigation conducted by the Tallahassee Police Department.

Our investigation into this shooting by police officers included our hearing the sworn testimony of eleven of the many citizen witnesses who cooperated with the police investigation and took the time to write out a sworn statement promptly after the shooting or to provide a recorded interview shortly thereafter. We also heard sworn testimony from numerous police officers including the three officers who fired shots. We agree with the police investigation conclusion that this was a justifiable use of deadly force for reasons discussed below.

APPLICABLE FLORIDA STATUTES

Florida Statute 901.151, the "Florida Stop and Frisk Law," states that when a law enforcement officer encounters a person under circumstances which reasonably indicate that he

has committed, is committing, or is about to commit a violation of the criminal laws, the officer may temporarily detain him for the purpose of ascertaining his identity and the circumstances surrounding his presence which led the officer to believe that he had committed, was committing, or was about to commit a criminal offense.

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 776.051(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 or to prevent the imminent commission of a forcible felony.

Florida Statute 776.08 states "forcible felony" includes aggravated assault, aggravated battery, and any other felony which involves the use or threat of physical force or violence against any individual.

CONCLUSION

The original 911 call by a woman reporting that Robert Baker ran up and kicked her van and expressing her concerns that police should respond to check on him as she felt he was displaying mental problems and did not want him to hurt anyone, supplemented by the personal observations of responding officers to his language and behavior in a physician's waiting room alarming the staff and patients, created reasonably suspicious circumstances for officers to attempt to temporarily detain him to ascertain his identity and determine what was going on as authorized by section 901.151, the "Florida Stop and Frisk Law." Robert Baker escalated his behavior up to acts of violence by beating on police officers as confirmed by the second 911 call

from medical office staff creating the probable cause for him to be arrested for felonies and he continued to forcibly resist as prohibited by section 776.051(1). His charging at Officer Capece, striking him with a police metal baton, and raising it to strike again was a "forcible felony" as specified in section 776.08 resulting in Officers John Pretti, John Newland, and Vincent Capece reasonably believing that immediate use of deadly force was necessary to prevent imminent death or great bodily harm to Officer Capece or others and their shooting of Robert Edward Baker was justifiable per sections 776.05 and 776.012 of Florida Statutes.

THEREFORE having reached this decision based on a thorough review of the evidence, we say nothing further in these premises.

RESPECTFULLY SUBMITTED this 22nd 1st of October, 2002.


Foreperson

Attest:  

Grand Jury Clerk