



BRAD KING, STATE ATTORNEY
Fifth Judicial Circuit of Florida
Serving Marion, Lake, Citrus, Sumter, Hernando Counties

September 25, 2012

Gary Borders
Sheriff of Lake County
360 W. Ruby Street
Tavares, FL 32778

RE: DEATH OF ANDREW LEE SCOTT

Dear Sheriff Borders:

My office has completed our review of the Florida Department of Law Enforcement investigation into the shooting death of Andrew Lee Scott. A memorandum of that review is enclosed. After considering the matter, I agree with the conclusions and recommendation contained therein. Accordingly, my office will take no further action in the matter. Please feel free to contact me if I can be of further assistance in the matter.

Sincerely,

A handwritten signature in cursive script that reads "Brad King".

Brad King
State Attorney

xc: Special Agent Lloyd Randolph
Florida Department of Law Enforcement

MEMORANDUM

TO: Brad King, State Attorney *BK*
FROM: Richard Ridgway, Assistant State Attorney *RR*
RE: Death of Andrew Lee Scott
DATE: September, 25, 2012

On July 15, 2012 Andrew Lee Scott was shot to death by Lake County Deputy Sheriff Richard Sylvester during an encounter at Mr. Scott's apartment at 33306 Ryan Drive, Leesburg. The Florida Department of Law Enforcement was asked to investigate the incident. They have completed that investigation and submitted their final report to this office to determine if any violation of Florida criminal statutes occurred in the incident. The investigation was thorough and the report complete. Except as noted below, the statements and physical evidence are consistent in all significant aspects.

In the very early hours of July 15, Leesburg Police Department (LPD) responded to a 911 call in the city. The caller reported that "kids are beating the crap out of each other" in front of her house. She described two vehicles, a Chevy truck and a motorcycle as being involved. LPD dispatched officers to the scene. As officers were arriving, the truck and the motorcycle fled the scene. The truck was stopped by an LPD officer, the driver arrested and a loaded handgun was seized from the truck. Another LPD officer attempted to stop the motorcycle, but it turned into the southbound lane of Highway 441 and rapidly accelerated. The LPD officer was unable to keep up with the motorcycle and broke off the pursuit. As the LPD officer did so, he saw a Lake County Sheriff's Department (LCSO) unit pull behind the motorcycle and activate the emergency lights.

Deputy Sylvester was coincidentally traveling in the northbound lane of Highway 441 and was in the left hand turn lane when he saw the motorcycle approaching at a high rate of speed. (He was able to see the emergency vehicles on the scene of the Leesburg incident ahead of him, but was unaware the motorcycle was involved.) Deputy Sylvester's radar indicated the motorcycle was traveling at 90 MPH when it passed him, going in the opposite direction. He turned around, activated his emergency lights and siren and began to pursue the motorcycle. The motorcycle made a left turn onto CR 44, and Deputy Sylvester followed, but lost sight of the motorcycle and abandoned the pursuit.

A second LCSO deputy was farther down CR 44 and knew the motorcycle had not passed her. Based on this, it was assumed the motorcycle had turned off CR 44 between the second deputy and Deputy Sylvester. LCSO deputies began checking side roads and parking areas off CR 44 looking for the motorcycle. During this search the deputies were informed that the motorcycle had been involved in the incident in Leesburg and that the driver of the motorcycle might be armed with a handgun.

Shortly after Deputy Sylvester discontinued the pursuit, LCSO Corporal David McDaniel located a motorcycle at the Ryan Drive address. It appeared to have recently been driven through the sand, and the engine was still hot. He contacted Deputy Sylvester and determined that it matched the description of the one that had fled. Deputy Sylvester went to the Ryan Drive address and

identified the motorcycle as being like the one that fled. In addition to the engine still being hot, the headlights were warm.

Corporal McDaniel had done a computer check on the motorcycle and discovered it was registered to Jonathan Jack Brown, with an address in Mt. Dora. Corporal McDaniel also discovered that a white SUV parked in the parking spot next to the motorcycle was also registered to Mr. Brown. The sidewalk directly in front of the SUV led to apartment 114. It was noted that the lights were on in that apartment, although the drapes were drawn.

The apartment building contained 8 apartments, 4 on each side. The building is oriented North-South, and apartment 114 is on the West side. Facing this side of the building, apartment 114 is the second from the left. Apartment 115 is on the North end of the building, next to apartment 114. For ease of understanding, directions will be given as left (North) right (South) as they would appear facing the building, from the parking lot. There was a second building to the left of the building containing apartment 114.

Eventually 4 LCSO deputies arrived on the scene. Each deputy drove a marked vehicle and they were parked in front of the building, where they would have been visible from apartment 114. The orientation of the vehicles would have prevented any in-car cameras from recording the events surrounding the shooting. The apartment complex has 4 fixed surveillance cameras, but it was determined none of them faced the building and therefore recorded nothing of what happened.

Deputies noticed what appeared to be a fresh shoetrack in the sand pointed in the general direction of apartment 114. Based upon this and the fact it was the nearest apartment to the two vehicles registered to Mr. Brown, the deputies decided to speak to the occupants of apartment 114.

Deputy Sylvester went to the front door and stood to the left of the door, next to the wall with his handgun in his hand, held down behind his leg. Deputy Sylvester chose to stand at this position so he would not have been hit if shots had been fired through the door. The door of the apartment opened inward and was hinged on the left side, thus Deputy Sylvester would have a direct view inside the apartment when the door was opened. The door did not have a window or peephole. Corporal McDaniel went to the right side of the window, which was to the right of the door and stood next to the wall. Deputies Joseph Brocato and Lisa Dorrier stood in front of apartment 115. A privacy fence and hedges separated apartments 114 and 115. Deputy Sylvester then knocked on the door of apartment 114, but did not announce that he was a deputy or say anything else. Because Deputy Sylvester is a K-9 officer, he was not wearing a standard uniform, but was wearing a vest that had "SHERIFF" in large yellow letters across the front, and a shirt that had "sheriff" in yellow letters down each sleeve.

Before a law enforcement officer may forcibly enter a dwelling to execute a search warrant, he must announce his presence, his authority and purpose. Sec. 933.09 Fla. Stat. (2012) Since there was no intent to forcibly enter the apartment, this provision did not apply. In fact, the courts have repeatedly held that unless the officer intends to make a forcible entry there is no such requirement. *See eg. State v. Navarro*, 19 So.3d 370 (Fla. 2d DCA 2009) and cases cited therein. "...officers are allowed to knock on a residence's door or otherwise approach the residence seeking to speak to the inhabitants just a[s] any private citizen may." *id* at 373 citing *United States v. Taylor*, 459 F.3d 1201, 1204 (11th Cir. 2006). Thus, Deputy Sylvester's knocking on the door, without announcing his identity, was lawful.

The occupant of apartment 115 heard the knock on the door of apartment 114, and thought it was at his door. He opened the door, and Deputy Dorrier spoke to him and asked if he knew who owned the motorcycle. He stated "the guy that lives in that apartment over there" and pointed to the

North (left) toward the other building. Deputy Sylvester heard the statement, but because his attention was focused on the door of apartment 114, he was unable to see the gesture and erroneously (as it turned out) thought he was referring to apartment 114. Deputy Sylvester stated that hearing this statement increased his concern that the occupant of apartment 114 was the person who fled from him and who might be armed with a handgun. Deputy Sylvester knocked on the door of apartment 114 a second time, whereupon the door was opened by Mr. Scott.

Deputy Sylvester stated that when Mr. Scott opened the door, he did so by “flinging” it open. Mr. Scott had a handgun and pointed it directly at Deputy Sylvester’s face, whereupon Deputy Sylvester yelled “gun” and lifted his gun and fired in fear that he was about to be shot.

Mr. Scott’s girlfriend, Miranda Mauck, was in the apartment. She gave a statement immediately after the shooting and said she and Mr. Scott were sitting on the couch watching television when Deputy Sylvester knocked on the door. Because they were not properly dressed, she and Mr. Scott went into the bedroom where she began getting dressed and Mr. Scott retrieved a loaded 9 millimeter handgun and went to answer the door. Ms Mauck stated that Mr. Scott would answer the door with the gun in his hand when someone came to the door unexpectedly.

Ms Mauck stated that she was still getting dressed when Mr. Scott walked out of the bedroom and “that was like...that’s the part where I don’t exactly know everything that happened.” She said she walked out of the bedroom, not completely dressed, “as soon as I started hearing the commotion.”

Immediately after the shooting Ms Mauck was led from the apartment by Deputy Dorrier, who asked her if she had seen anything, and she replied that she had not.

On August 1, two weeks after the shooting, Ms Mauck was interviewed again, this time in the presence of her attorney. During this interview she stated that she had followed Mr. Scott from the bedroom, “in stride” with him, into the hallway, even though she was not completely dressed. She stated from the hallway she saw Mr. Scott open the door at a “medium” speed, with the gun held down by his side in his left hand, although he was right handed, and that he had been immediately shot. No reason for the discrepancy between this statement and the one she made on the night of the incident was offered.

Corporal McDaniel’s position prevented him from seeing into the apartment when the door was opened. In his statement to FDLE that night, he said he heard Deputy Sylvester shout “gun” followed immediately by shots. This is consistent with Deputy Sylvester’s statement.

Deputy Dorrier stated that she heard Deputy Sylvester shout “show me your hands” then “gun” before the shots. If Deputy Sylvester stated “show me your hands” this would appear to be inconsistent with his statement that the gun was pointed at him as soon as the door was opened.

Deputy Brocato stated that he heard Deputy Sylvester shout “gun” and was not sure if he heard “show me your hands” first or not, although his written report says he heard “show me your hands” then “gun.”

A citizen standing across the parking lot from the apartment stated he heard something unintelligible, although he didn’t say it was said by Deputy Sylvester, followed by a shout of “gun” and shots.

The occupant of apartment 115 stated that after the shooting, a deputy that he could not identify, was walking in front of his apartment after the shooting, and was heard to say “I told him to show his hands, I told him, I told him.”

Deputy Sylvester fired a total of 6 shots, by all accounts very rapidly. This is consistent with the standard training given to law enforcement officers to fire and keep firing until the threat is

eliminated and is consistent with my experience in reviewing officer involved shootings.

Mr. Scott was hit by four bullets. Two in the body, and once in each arm. It is impossible to determine the order in which the bullets hit Mr. Scott, but the location and direction of travel of the bullets is consistent with, but do not prove, he was standing with his left arm out stretched when first hit, and then spun around clockwise by the force of the bullets.

Three of the bullets went through the door of the apartment. Trajectory analysis shows they struck the door at different angles, indicating the door was moving as the shots were being fired. Again this is consistent with, but does not prove, the door being opened rapidly, hitting the rubber bumper behind it and bouncing back closed as the shots were fired.

As stated, the inconsistencies in the statements of Deputy Sylvester and Ms Mauck cannot be reconciled. However, the unexplained change in the statement of Ms Mauck about what, if anything, she saw does call into question her final version. The physical evidence does not provide proof positive of what happened, and the statements of the witnesses vary as to what was said immediately before the shooting.

In spite of the inability to definitively prove what happened immediately prior to the shots being fired, my conclusion as to the criminal culpability of Deputy Sylvester would not change. Under either circumstance it is my opinion the shooting was legally justified under Florida law.

Section 776.012 Fla. Stat. (2012) provides that anyone is justified in the use of deadly force when “necessary to prevent imminent death or great bodily harm to himself...” In making the determination that the force was necessary, it must be made from the perspective of the person using deadly force, in this case Deputy Sylvester. Deputy Sylvester was looking for the person who had been engaged in a fight in Leesburg and who had fled from him and LPD. He had been informed that the person might be armed with a handgun. Locating the motorcycle that had fled, and another vehicle registered to the same person, provided a reasonable belief the person lived in the apartment complex. (It was later discovered Mr. Brown did live in the building to the left.) The location of the vehicles and the presence of a shoetrack provided a reasonable explanation why the search for this individual would start at apartment 114. Hearing the statement of the occupant of apartment 115 that the owner of the motorcycle “lives in the apartment over there” and believing him to be referring to apartment 114 only heightened the concern Deputy Sylvester had for his safety. It was under these circumstances that Deputy Sylvester suddenly found himself confronted by an armed individual.

In Kadet v. State, 455 So.2d 389 (Fla. 5th DCA 1984) the court questioned whether a police officer could ever be held criminally responsible for the death of someone in the absence of intentional misconduct or some degree of malice, neither of which is present in this case. The court went on to note, “A police officer, under the circumstances here, is ordered into a life threatening situation. The call usually comes without warning. He does not ask for the assignment, but he is bound to protect society against the violent acts of the unlawful or mentally deranged. ... An officer, in such circumstances, should not be burdened with the knowledge that if he overreacts to the real or imagined dangers he may be committing a crime, especially when those who judge his actions do so with the benefit of perfect hindsight and from a position of safety.” *Id* at 390.

Given this standard, it cannot be said that Deputy Sylvester acted unreasonably under the circumstances, and therefore I conclude his actions were justified. I recommend we take no further action in this matter.

I have not reviewed this incident for compliance with department policy nor good police practices. Such review is left to the discretion of the Sheriff.