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BREVARD AND SEMINOLE COUNTIES

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Reply to: Seminole County

July 31, 2019

Inspector Troy Cope
Florida Department of Law Enforcement
Office of Executive Investigations
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RE: FDLE EI-27-0005

Dear Inspector Cope:

The Office of the State Attorney for the Eighteenth Judicial Circuit has received your completed, exhaustive investigation into law enforcement's use of force during the January 17, 2017, apprehension and arrest of Markeith Loyd in Orange County, Florida.

Having participated in many of the critical interviews conducted during your investigation, and now having had the opportunity to review your investigation upon its completion, I write to memorialize my findings as they relate to the propriety of law enforcement's actions during Mr. Loyd's apprehension and arrest that night. My review of this matter has focused on three issues: 1.) Did law enforcement use force during their apprehension and arrest of Mr. Loyd; 2.) If so, what level of force did the officers use (deadly force or non-deadly force); and 3.) Were the officers justified in their use of force?

1. Did law enforcement use force during their apprehension and arrest of Mr. Loyd?

Yes. The evidence collected during your investigation clearly demonstrates that four law enforcement officers used force during Mr. Loyd's apprehension and arrest. Those officers are Sgt. James Parker, Sgt. Anthony Mongelluzzo, Officer Cedric Hinkles, and Officer Jonathan Cute, all with the Orlando Police Department. The evidence supporting this finding includes the helicopter video showing the officers converging upon Mr. Loyd as he was lying in the street of Lescott Lane, statements and recorded interviews conducted with law enforcement officers who were at the scene, photographs of Mr. Loyd taken at the Orlando Police Department documenting his injuries, and Mr. Loyd's medical records.

2. If so, what level of force did the officers use (deadly force or non-deadly force)?

Deadly force. Florida Standard Jury Instruction 3.6(f), Justifiable Use of Deadly Force, defines “deadly force” as “force likely to cause death or great bodily harm.” “Great bodily harm” is more than “slight, trivial, minor, or moderate harm, and as such does not include mere bruises as are likely to be inflicted in a simple . . . battery.” Owens v. State, 289 So.2d 472, 474 (Fla. 2d DCA 1974); see also Coronado v. State, 654 So.2d 1267 (Fla. 2d DCA 1995) (finding that there was sufficient, competent evidence to support a finding of “great bodily harm” where the victim had a face fracture that caused him a great deal of pain) and E.A. v. State, 599 So.2d 251 (Fla. 3d DCA 1992) (finding that there was sufficient, competent evidence to support a determination of “great bodily harm” where the victim was repeatedly hit and kicked by multiple defendants, resulting in a swollen eye, a swollen jaw, and a permanent mark on his face).

The evidence collected during your investigation clearly demonstrates that Sgt. Parker kicked Mr. Loyd in the face, delivered two to three muzzle strikes (with his rifle) to Mr. Loyd’s back, and then struck Mr. Loyd on the right side of his face with a closed fist. Sergeant Mongelluzzo delivered one muzzle strike (with his rifle) to Mr. Loyd’s back, and kicked Mr. Loyd twice (once in the lower back and once in the shoulder area). Officer Hinkles kicked Mr. Loyd twice (once on the left side of his face near his ear and once in the left shoulder blade area), delivered one muzzle strike to the left side of Loyd’s face, and struck Loyd in the left shoulder area three times with a closed fist. Officer Cute kicked Loyd one time on the left side of his face.

As a result of these actions, Mr. Loyd received numerous injuries, including for purposes of this analysis, a cut next to his left eye, a cut inside his mouth, a small cut on the lower center portion of his back, a cut on his right ear, and an inferior orbital blowout fracture with a corresponding ruptured globe, requiring surgery and resulting in the loss of Mr. Loyd’s left eye.

The simultaneous nature of the officer’s actions precludes me from being able to parse out which of Mr. Loyd’s injuries are attributable to each, individual officer’s actions, but that analysis is immaterial for several reasons. First, each of the four officers used individual force that was likely to cause great bodily harm, to wit: a kick to Mr. Loyd’s face and/or a muzzle strike to Mr. Loyd’s body. Second, given the facts of this case, it is clear that all four officers intentionally struck Mr. Loyd, and as is recognized in State v. Tovar, 110 So.3d 33 (Fla. 2d DCA 2013), when two or more people act in concert for such a purpose, each is responsible for the acts of the others (such is the “principal” theory). See also Fla. Stat. s. 777.011. Third, each officer can only distance himself from the severity of injury inflicted upon Mr. Loyd by the group, if he didn’t intend for Mr. Loyd to receive such severe injury, didn’t participate in the events that led to the infliction of the severe injury, and if the resulting injury was outside of, and not a reasonably foreseeable consequence of, the common design or act contemplated by the officer (such is the “independent act” theory). See Fla. Std. Jury Instr. (Crim.) 3.6(1); see also Ray v. State, 755 So.2d 604 (Fla. 2000).

The law, as it applies to the indisputable facts, dictates a finding that Sgt. Parker, Sgt. Mongelluzzo, Officer Hinkles, and Officer Cute each used deadly force during Mr. Loyd’s apprehension and arrest.

3.) *Were the officers justified in their use of force?*

Yes. The propriety of the four officer's use of deadly force must be analyzed under the provisions of Florida law that apply to them in their professional capacity as law enforcement officers, and the provisions that apply to them as average citizens who are permitted to assert immunity under Florida's "Stand Your Ground" law. See State v. Peraza, 259 So.3d 728, 733 (Fla. 2018) ("law enforcement officers are eligible to assert Stand Your Ground immunity, even when the use of force occurred in the course of making a lawful arrest").

Florida's "Stand Your Ground" law, as it applies to a person's use of deadly force to defend himself or herself, specifically provides that "[a] person is justified in using or threatening to use deadly force if he or she reasonably believes that using or threatening to use such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony. A person who uses or threatens to use deadly force in accordance with this subsection does not have a duty to retreat and has the right to stand his or her ground if the person using or threatening to use the deadly force is not engaged in a criminal activity and is in a place where he or she has a right to be." Fla. Stat. s. 776.012(2).

None of the four officers were engaged in any criminal activity at the time of their use of deadly force towards Mr. Loyd, and all four were otherwise in a place in which they each had a right to be. Accordingly, the next step of my analysis turns on whether the circumstances presented to the officers on January 17, 2017, were such that the officers were justified in their use of deadly force against Mr. Loyd. As to this point, the law requires that I "consider the circumstances by which [each officer] was surrounded at the time the force was used. The danger 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, [the officer] must have actually believed that the danger was real." See Fla. Std. Jury Instr. (Crim.) 3.6(f).

This triggers an analysis of the circumstances surrounding Sgt. Parker, Sgt. Mongelluzzo, Officer Hinkles, and Officer Cute at the time they used deadly force towards Mr. Loyd, and a determination as to whether those circumstances justify their actions. To explore these points, I turn to the evidence you gathered regarding what these four law enforcement officers knew about Mr. Loyd and the circumstances surrounding the crimes for which he was being sought, and the specific facts and circumstances of law enforcement's operation at 1157 Lescott Lane on the evening of January 17, 2017. Your investigation has revealed the following:

- Markeith Loyd was wanted for the December 13, 2016, First Degree Murder of his girlfriend, Sade Dixon (a Capital felony); the First Degree Murder of his own Unborn Child that Ms. Dixon was carrying at the time of her murder (a Capital felony); the Attempted First Degree Murder of Ronald Stewart, Ms. Dixon's brother (a Life felony); and two counts of Aggravated Assault with a Firearm (each a third-degree felony). Mr. Loyd was accused of committing all of these offenses with the use of a firearm. Information gathered during the investigation of these crimes revealed that as Mr. Loyd fled from the scene in a vehicle, he fired off multiple gunshots, indiscriminately, in the direction of bystanders.

- In the weeks following December 13, 2016, law enforcement was actively searching for Mr. Loyd in order to execute arrest warrants for the above crimes. Mr. Loyd had proven to be elusive. On January 9, 2017, Orlando Police Department Lt. Debra Clayton encountered Mr. Loyd in a Wal-Mart parking lot.

Based upon information known to the four officers at issue, they had reason to believe the following: Lt. Clayton was in uniform, and her marked patrol unit was parked outside the store. It was broad day light, and patrons of the Wal-Mart were coming and going from the parking lot. Lt. Clayton approached Mr. Loyd, and the two engaged in a foot pursuit. While running from Lt. Clayton, Mr. Loyd was able to successfully withdraw a firearm from where he had it concealed on his body, take cover behind a concrete pillar, and then fire multiple gunshots at Lt. Clayton, striking her and causing her to fall to the ground. Injured, but conscious, Lt. Clayton was lying on the ground when Mr. Loyd made the decision to stop running away from her. Mr. Loyd then advanced upon Lt. Clayton, who was incapacitated due to her injuries and in no position to continue to pursue him, and repeatedly fired gunshots at Lt. Clayton while standing over her. Lt. Clayton attempted to defend herself by returning fire, managing to shoot back at Mr. Loyd multiple times. Mr. Loyd continued to advance upon Lt. Clayton, and with his firearm pointed directly at her head fired multiple shots, killing her.

Mr. Loyd fled from the Wal-Mart parking lot in a vehicle whose description was broadcast to law enforcement. Shortly thereafter, a Captain with the Orange County Sheriff's Office saw a vehicle matching that description, and pulled behind it. Mr. Loyd, recognizing that the Captain's undercover vehicle was that of law enforcement, got out of his own car, and fired two gunshots at the Captain's vehicle, striking its front wheel.

Mr. Loyd then fled on foot, and within ten minutes, a bystander called 911 to report that he had been carjacked, at gunpoint, by a man later identified as Mr. Loyd. The carjacking victim reported that Loyd had pointed a handgun with an extended magazine at him, while also holding a second extended magazine in his other hand. Law enforcement converged upon the area, and shortly thereafter, they recovered the carjacked vehicle, and nearby, a shirt that was identified as having been worn by Mr. Loyd during his murder of Lt. Clayton. The shirt had multiple bullet holes in it, but no blood. That fact, coupled with the lack of effect that Lt. Clayton's return fire had upon Mr. Loyd, led law enforcement to the logical conclusion that Mr. Loyd had been wearing a bulletproof vest during the incident.

As the various January 9, 2017, crime scenes were searched and processed, two unfired rounds of different calibers were located in the car Mr. Loyd initially used to flee from the Wal-Mart. This gave law enforcement reason to believe that Mr. Loyd was in possession of at least two different firearms. Law enforcement did not recover the bulletproof vest, or any firearms, as they investigated these crimes, leading them to reasonably believe that Mr. Loyd continued to possess these items as they continued their search for him in the days following January 9, 2017.

- Law enforcement continued to gather intelligence about Mr. Loyd as they sought him. He was believed to be six feet, three inches tall and approximately 230 pounds. He was known to have an athletic build. He had demonstrated his proficiency with firearms, in

that he was able to retrieve his concealed firearm and shoot Lt. Clayton while running away from her, and shoot the front wheel of the Orange County Sheriff's Office's Captain's vehicle in an attempt to disable it.

Law enforcement learned that Mr. Loyd wanted to trigger a "suicide by cop" scenario should he be captured, and that "law enforcement would have to kill him before he went back to prison." Mr. Loyd had also told others that he wanted to make it on a "America's Most Wanted" list. These sentiments provided insight into Mr. Loyd's mentality, and demonstrated that he felt he had nothing to lose by meeting force with force, should he find himself on the verge of capture by law enforcement in their manhunt of him.

Through the course of law enforcement's search for Mr. Loyd, they met with repeated lack of cooperation by those closest to him. One known associate of Mr. Loyd said that he would never turn Mr. Loyd in, and that he would not help law enforcement catch Mr. Loyd. There was a reward offered via CrimeLine, soliciting tips from the community as to Mr. Loyd's whereabouts. The reward of \$60,000 had been increased to \$100,000, and then again to \$125,000, and yet no credible information was forthcoming. As law enforcement was staging on Lescott Lane on January 17, 2017, they learned that Mr. Loyd was on the phone with a person who was trying to convince him not to give himself up, should he encounter law enforcement. This information demonstrated to law enforcement that over the course of the 34 days that Mr. Loyd had evaded capture, he was surrounded by people who were successfully aiding him, and that he had not decided to peacefully surrender to law enforcement.

- On January 17, 2017, reliable information led law enforcement to believe that Mr. Loyd was hiding in a home located at 1157 Lescott Lane in Orlando. Officers arrived on scene at approximately 6:30 p.m., and set up at various points around the perimeter of the home. It was becoming dark, and as the events unfolded that night, the lighting conditions were very poor.

Shortly after their arrival, officers stationed at the back of the residence reported seeing an individual, later determined to be Mr. Loyd, open the back door to the home, look outside at the surrounding area, and upon law enforcement illuminating him with a flashlight and yelling commands at him, immediately retreated back inside the home. While at the back door, Mr. Loyd never uttered any words, or engaged in any behavior, that indicated to law enforcement his intent to surrender.

Within seconds, Mr. Loyd then went to the carport door of the residence, where he opened the door, looked out at the surrounding area, and upon being illuminated by law enforcement's flashlights, immediately retreated back inside. While at the carport door, Mr. Loyd never uttered any words, or engaged in any behavior, that indicated to law enforcement his intent to surrender.

Moments later, Mr. Loyd then went to the front door. He opened the door, threw out a dark piece of clothing, and immediately shut the door. Seconds passed and Mr. Loyd opened the front door a second time, threw out what the officers believed was a handgun (based upon its size, shape, and the heavy, metallic sound it made when it struck the

ground), and immediately shut the door. Even more seconds passed, and Mr. Loyd opened the front door a third time, threw out what officers believed was another handgun, and immediately shut the door. Throughout this time at the front door, Mr. Loyd never uttered any words indicating his intent to surrender, and he never threw the ballistic vest out of the house.

Mr. Loyd then opened the front door to the home a final time. Law enforcement gave him commands to get down on the ground and crawl towards their position in front of the house, near the street. As Mr. Loyd slowly crawled from the house, officers immediately realized that he had on a ballistic, bulletproof vest, and called that fact out to one another on scene. This fact was understandably concerning, because had Mr. Loyd intended to truly surrender to law enforcement, he would have taken off the vest and thrown it outside the home, as well. His decision to wear the vest out of the house indicated that he anticipated needing to protect himself during his interaction with law enforcement. This understandably caused the officers to immediately question why Mr. Loyd would feel the need to protect himself in such a way, and created within them a reasonable concern that Mr. Loyd intended to engage in behavior that he expected would result in law enforcement's use of force upon him such that he needed to wear a bulletproof vest.

Mr. Loyd crawled from the home in a very slow and deliberate manner, dragging his legs behind him. Officers at the front of the home immediately realized that as he crawled from the front door, Mr. Loyd was near the very same area where he had thrown the two handguns. The officers were justifiably concerned that Mr. Loyd might attempt to reacquire one, or both, of the guns. As time passed, it was clear that Mr. Loyd had crawled past the handguns, and that he had not tried to reacquire them. This fact was understandably alarming in itself, because it gave the officers pause to consider that if Mr. Loyd had not elected to retrieve one of the guns, perhaps that was because he was still armed and had not divested himself of all of his weapons. This concern was further heightened by the time-consuming and measured nature of Mr. Loyd's crawl, and that as he pulled himself along, he continually positioned his hands and arms close to both his waistband and the bulletproof vest he wore on his body, either one of which could have easily concealed a firearm from the officers' view.

As Mr. Loyd crawled through the front yard, he constantly looked around him, observing both the number of officers on scene, and their various positions. This is typical of a suspect engaging in counter-surveillance of law enforcement, and evidences a suspect's intent to gain a tactical advantage over officers. Such was the concern of the officers on Lescott Lane, especially given Mr. Loyd's history and the fact that he never once, throughout this incident, uttered to the officers his intention to surrender.

Seeing Mr. Loyd crawl closer to the curb, Sgt. Parker led a group of officers closer to Mr. Loyd's position and gave Mr. Loyd clear, repeated commands to look away from the group of approaching officers and to place his hands behind his back. That group of officers consisted of Sgt. Mongelluzzo, Officer Hinkles, and Officer Cote. Neither Sgt. Parker, nor any of the other officers on his approach team, was armed with a taser, chemical agent, or asp baton, such that they had any other means by which they could gain Mr. Loyd's compliance during the apprehension.

Mr. Loyd repeatedly ignored the commands given to him, and by all accounts, he continued to watch the officers as they approached. Concerned that Mr. Loyd was both armed and preparing to ambush them, and given Mr. Loyd's refusal to comply with his commands despite being given ample opportunity to do so, Sgt. Parker delivered one, swift kick to the left side of Mr. Loyd's face. Virtually simultaneously, Officer Hinkles, sharing these same concerns, kicked Mr. Loyd on the left side of his face, and then brought his foot down upon Mr. Loyd's left upper back and shoulder. Despite law enforcement delivering these distractive strikes, Mr. Loyd continued to refuse to comply with the officers' commands, and went so far as to move his hands and hips in such a way that the officers feared he was trying to actively retrieve a concealed firearm from either his waistband or the bullet proof vest.

In response, Officer Cote kicked Mr. Loyd in the right side of his face, and Sgt. Parker and Sgt. Mongelluzzo delivered a total of three to four muzzle strikes to Mr. Loyd's back, which were ineffective because Mr. Loyd was wearing the bulletproof vest. Mr. Loyd continued to defy the officers' commands, refusing to put his hands behind his back or look away from the officers, which resulted in Sgt. Parker delivering one closed-fist strike to the right side of Mr. Loyd's face, and Sgt. Mongelluzzo kicking Mr. Loyd in the lower back and lower left shoulder area. Officers describe Mr. Loyd's hands being alarmingly close to both the legs of the apprehension team officers, and their rifles, such that there was a concern Mr. Loyd may attempt to grab the barrel of an officer's rifle, drag the officer down towards him, and try to gain control of the firearm. Seeing this, and knowing Mr. Loyd was defying the commands being given to him, Officer Hinkles delivered one muzzle strike to the left side of Loyd's face, and three closed-fist strikes to Mr. Loyd's left shoulder. Additional officers, witnessing the continued difficulty the apprehension team was having in physically controlling and handcuffing Mr. Loyd, moved in to secure Mr. Loyd's legs and to gain control of his arms.

It is important to note that the helicopter video of Mr. Loyd's apprehension, along with the photographs of him at the Orlando Police Department immediately after his arrest, are consistent with the accounts provided by law enforcement regarding how and why the injuries were inflicted. The helicopter video shows that Mr. Loyd remained on his stomach, in the roadway of Lescott Lane, throughout his apprehension. While there are moments when the video pans away from the area, the time in which it does is so short that I find no basis to believe that Mr. Loyd ever rolled from his stomach and onto his back, during the apprehension. Indeed, that would be inconsistent with law enforcement's attempts to handcuff his wrists behind his back, and would render it virtually impossible for them to do so.

The injuries to Mr. Loyd's head are all localized to his face. This is important because it demonstrates that at the time he received those injuries, Mr. Loyd's face was both up and facing the direction of the officers. I recognize that Mr. Loyd was surrounded at the time of his apprehension, and an argument could be made that anywhere he looked, he would inevitably be looking in the direction of an officer, but this argument fails to take into consideration the one place Mr. Loyd could have looked: down at the ground. Doing so would have complied with the officers' commands, and it would have put his face in a position that it would have been protected from a kick or strike by the officers. The fact that Mr. Loyd's injuries are all localized on his face is consistent with the officers'

accounts that at the time they used the deadly force at issue, Mr. Loyd was on his stomach, unrestrained, and looking at them.

It took no less than six law enforcement officers, and a total of 42 seconds, to secure Mr. Loyd in handcuffs in the roadway of Lescott Lane, at which time the apprehension team moved him behind a line of vehicles so that they all were out of the line of fire from the open door of the home, which had not yet been cleared. While at that secondary location, a group of officers attempted to remove Mr. Loyd's bulletproof vest and to exchange the original handcuffs that had been used to secure his wrists with those of Lt. Debra Clayton. Multiple officers at this secondary location described Mr. Loyd as being uncooperative and rolling from side to side in contravention of law enforcement's efforts. There is no evidence that Mr. Loyd was struck at this secondary location, nor is there any evidence that once he was originally handcuffed, there was any force used against him.

I note there is one officer who, when interviewed, shared that he witnessed another officer, who was not known to him, spit upon Mr. Loyd at the secondary location by the officers' vehicles on scene. Through the course of interviews, no other witnesses at the scene describe this behavior, so despite best efforts, the officer who allegedly spit upon Mr. Loyd remains unidentified. Additionally, another officer reported that he believed the apprehension team's use of force in the roadway occurred while Mr. Loyd was handcuffed. My review of your investigation reveals that officer was over 50 feet away from Mr. Loyd at the time of the apprehension team's actions, and that Mr. Loyd was surrounded by a number of people, thus precluding that officer from seeing clearly whether Mr. Loyd was handcuffed at the time of the apprehension team's use of force.

The evidence clearly shows that Mr. Loyd was taken from the arrest location on Lescott Lane to the Orlando Police Department, and that thereafter, he was taken to the hospital and eventually, the Orange County Jail. Mr. Loyd's movements between these various locations is well documented, and there is absolutely no evidence that he was subjected to any treatment or abusive behavior by law enforcement that warrants additional review.

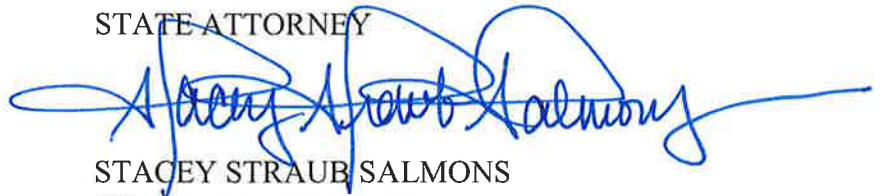
Having set forth the circumstances that surrounded Sgt. Parker, Sgt. Mongelluzzo, Officer Hinkles, and Officer Cute at the time of their use of deadly force against Markeith Loyd, I find, pursuant to Florida's "Stand Your Ground" law, Fla. Stat. s. 776.012(2), that each officer, in their capacity as a "person," reasonably believed that their force was necessary to prevent Mr. Loyd from either killing or inflicting serious bodily injury upon them (or another), or to prevent Mr. Loyd's commission of a forcible felony against them (or another). I further find that the appearance of the danger presented by Mr. Loyd, given all that was known by these men at the time of their interaction with Mr. Loyd that night, was so real that a reasonably cautious and prudent person under these very same circumstances would have believed that the danger could be avoided only through the same use of force. Accordingly, I find that Sgt. Parker, Sgt. Mongelluzzo, Officer Hinkles, and Officer Cute were each justified in their use of deadly force towards Markeith Loyd on January 17, 2017, pursuant to Florida's "Stand Your Ground" law, Fla. Stat. s. 776.012(2), and that as a result, all four are immune from, among other things, criminal prosecution pursuant to s. 776.032(1).

Lastly, I have determined that Sgt. Parker, Sgt. Mongelluzzo, Officer Hinkles, and Officer Cute were also justified in their use of deadly force against Mr. Loyd pursuant to the specific provisions of Chapter 776 that apply to them in their capacity as “law enforcement officers.” On January 17, 2017, all four were law enforcement officers, and all four, having been presented with the circumstances outlined above, reasonably believed that their use of deadly force was necessary to defend themselves (or another) from bodily harm while arresting Mr. Loyd. I find the officers’ arrest of Mr. Loyd, and the execution of their legal duties that evening, were lawful. Accordingly, I find that Sgt. Parker, Sgt. Mongelluzzo, Officer Hinkles, and Officer Cute were each justified in their use of deadly force towards Markeith Loyd on January 17, 2017, pursuant to Fla. Stat. s. 776.05, “Justifiable Use of Force by Law Enforcement Officer.”

I thank you for the tremendous amount of time and effort you and your fellow Inspectors with the Florida Department of Law Enforcement, Office of Executive Investigations, spent in investigating this matter, and I thank you for the opportunity to review your completed investigation.

Sincerely,

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