



STATE ATTORNEY'S OFFICE
FOURTH JUDICIAL CIRCUIT OF FLORIDA

MELISSA WILLIAMSON NELSON
STATE ATTORNEY

311 WEST MONROE STREET
JACKSONVILLE, FLORIDA 32202
(904) 255-3002
MWNELSON@COJ.NET

April 22, 2019

Sent via Electronic Mail to Daniel.Janson@jaxsheriff.org and Ronald.Lendvay@jaxsheriff.org.

Sergeant Dan Janson
Jacksonville Sheriff's Office
501 E. Bay St.
Jacksonville, FL 32202

Director Ron Lendvay
Jacksonville Sheriff's Office
501 E. Bay St.
Jacksonville, FL 32202

Re: The Officer-Involved Shooting Investigation Regarding B.K Alwin

Dear Sgt. Janson and Dir. Lendvay:

Our office has completed its review of the investigation of Officer Alwin conducted by the Jacksonville Sheriff's Office. It is our legal opinion that the shooting was justified under applicable Florida law. Please find enclosed a copy of our report that outlines and explains the reasons for our opinion.

Should you have any questions please do not hesitate to contact me.

Best Regards,

Melissa W. Nelson

Enclosures

cc: Phillip Vogelsang, Esq., Attorney for Officer Alwin, pvogelsang@fop530.com
Chief Nick Burgos, Nick.Burgos@jaxsheriff.org
Chief T.K. Waters, Thomas.Waters@jaxsheriff.org
Asst. Chief Scott Dingee, Scott.Dingee@jaxsheriff.org
Asst. Chief Brian Kee, Brian.Kee@jaxsheriff.org

The Officer-Involved Shooting Investigation Regarding B.K Alwin, September 1, 2016



**State Attorney's Office
Fourth Judicial Circuit of Florida
Duval County**

April 18, 2019

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EXECUTIVE SUMMARY

This officer-involved shooting took place on September 1, 2016, at approximately 8:28 p.m. Officer B.K. Alwin ("Officer Alwin") was dispatched to the business of AutoZone located at 561 Cassat Avenue for a suspicious person complaint. Upon arrival, Officer Alwin made contact with Joseph Lunsford ("Lunsford") and Caylee Toomey ("Toomey") who were inside a red Jeep Cherokee parked directly in front of the AutoZone store. Lunsford was sitting in the driver's seat of the vehicle, and Toomey was sitting in the front passenger's seat.

Officer Alwin approached the vehicle and observed Lunsford passed out behind the wheel and Toomey looked disoriented with dried blood coming from track marks on her arm. Alwin opened the front passenger door and positioned himself between the open door and the vehicle. Both suspects appeared to be under the influence of narcotics, and Officer Alwin requested assistance from other officers over the radio.

While waiting for other officers to arrive, Toomey shook Lunsford awake, and both occupants began acting erratically inside the vehicle. Concerned for his safety, Officer Alwin ordered the occupants to show their hands, but they did not comply. Lunsford reached for the car keys and ignored Officer Alwin's lawful commands. Officer Alwin deployed his Taser, but it had no effect on Lunsford. Toomey then began to attack Officer Alwin while Lunsford started the Jeep. Lunsford accelerated forward striking the concrete barriers positioned in front of -AutoZone. He then reversed, suddenly trapping Officer Alwin between the passenger door and the moving vehicle. Officer Alwin was struck by the moving vehicle as he moved out from the open door. Lunsford then drove forward towards Officer Alwin. Having nowhere to retreat and fearing for his life, Officer Alwin drew his service handgun and fired two shots towards the driver. The vehicle narrowly missed hitting Officer Alwin and then fled through the parking lot.

The officer's shots did not hit either suspect. Police located the suspect vehicle abandoned at a later time. Both Lunsford and Toomey fled the scene and were later arrested pursuant to arrest warrants.

This Office has rendered the legal opinion that Officer Alwin's actions were lawful and justified as defined in applicable Florida law. We reached this opinion after a thorough review of the evidence. This report outlines the basis for that opinion.

I. THE STATE ATTORNEY’S ROLE IN OFFICER-INVOLVED SHOOTINGS

By history and custom, law enforcement agencies and departments in this circuit have called upon the State Attorney’s Office to independently review investigations of officer-involved shootings. That review is independent of the actual investigation and is designed to treat officer-involved shootings with the serious, objective, and independent review necessary when any human life is taken, particularly when law enforcement officers are involved.

The procedures for how this office investigates and analyzes OIS matters changed under Melissa Nelson’s administration. The procedures currently employed can be found outlined [here](#).

II. THE NATIONAL CONTEXT OF OFFICER-INVOLVED SHOOTINGS

Current research shows that over the past four years, law enforcement officers use force resulting in death about 1,000 times per year.¹ Police shootings have become increasingly visible on a nationwide scale. Improvements and advancements in technology like smart phones, inexpensive surveillance equipment, mounted-car cameras, and officer-worn body cameras provide real-time depictions of law-enforcement officers using force when apprehending and interacting with suspects. With the echoing effects of social media, images of these events have become all too prevalent, affecting the full spectrum of our nation’s communities, from big, urban cities to small, rural towns. Uses of deadly force in places like Ferguson, MO, North Charleston, SC, Cincinnati, OH, and elsewhere have quickly become national media events, have fostered heightened civil unrest, and have garnered significant civil protest and debate.

Against this backdrop, while police work has become increasingly public, police work also has become increasingly more dangerous. The number of law enforcement officers injured or killed in the line of duty continues to increase. According to the FBI’s National Press Office, 41 law enforcement officers died from injuries incurred in the line of duty during felonious incidents in 2015. In 2016, 66 officers were slain in the line of duty by criminal suspects, a 61 percent increase over 2015. In 2017, 93 law enforcement officers were killed in line-of-duty incidents.² As of April 9, 2019, 12 officers had been fatally shot.³

¹ John Sullivan, *Four years in a row, police nationwide fatally shoot nearly 1,000 people*, Wash. Post, Feb. 12, 2019, https://www.washingtonpost.com/investigations/four-years-in-a-row-police-nationwide-fatally-shoot-nearly-1000-people/2019/02/07/0cb3b098-020f-11e9-9122-82e98f91ee6f_story.html?utm_term=.0b5b30b01a1e

² FBI Announces Changes to Law Enforcement Officers Killed and Assaulted, 2017 and Releases 2017 Statistics on Law Enforcement Officers Killed in the Line of Duty, FBI National Press Office, Wash. D.C., May 10, 2018,

Florida is one of the five most deadly states in the country for law enforcement officers. Jacksonville officers have not been immune from this violence. As of April 10, 2019, the Jacksonville Sheriff's Office reported that, in the history of its agency, 62 officers had died in the line of duty, with 32 of them killed by gunfire. In recent years, a Clay County Sheriff's Deputy was killed while executing a search warrant, a Nassau County deputy lost his life trying to apprehend an alien who entered the country illegally, and a JSO K-9 officer was shot in the face by a fleeing suspect. Other examples exist.

Policing work is dangerous. Our courts have long recognized this reality and are extremely reluctant to substitute hindsight for on-the-spot, split-second decisions made by officers in the line of duty. "[The Constitution] does not require a police officer to wait until a suspect shoots to confirm that a serious threat of harm exists . . . And no court can expect any human being to remain passive in the face of an active threat on his or her life" *Elliott v. Leavitt*, 99 F.3d 640, 643 (4th Cir. 1996). Put differently, "[t]he Constitution simply does not require police to gamble with their lives in the face of a serious threat of harm." *Id.* at 641. The United States Supreme Court has similarly counseled that "[t]he 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Graham v. Connor*, 490 U.S. 386, 396 (1989). Officers need not be absolutely sure, however, of the nature of the threat or the suspect's intent to cause them harm—"the Constitution does not require that certitude precede the act of self-protection." *Elliott*, 99 F.3d at 644.

Thus, when we review officer-involved deaths, this Office must consider all of the evidence and decide whether the split-second judgment and decision of a particular police officer, usually operating under a tense, uncertain, and rapidly evolving situation, was justified or crossed the line into criminal behavior. The role this Office plays has nothing to do with law-making or policy-making. We do not craft the law or oversee police tactics and operations. Instead, this Office is charged with reviewing the facts of each particular case to determine compliance or noncompliance with the laws enacted by the people's representatives in Tallahassee and the provisions of our state and federal Constitutions. We also must weigh facts in light of what the subject officer knew at the time he or she shot—not in light of what months of investigation has revealed.

<https://www.fbi.gov/news/pressrel/press-releases/fbi-announces-changes-to-law-enforcement-officers-killed-and-assaulted-2017-and-releases-2017-statistics-on-law-enforcement-officers-killed-in-the-line-of-duty>

³ *Law Enforcement Officers Killed and Assaulted (LEOKA) Program*, <https://www.fbi.gov/services/cjis/ucr/leoka>

III. THE PROCESS NOW EMPLOYED BY THE STATE ATTORNEY'S OFFICE

The Officer-Involved Shooting Policy and Procedure can be found [here](#).

IV. FLORIDA USE OF FORCE LAW

A number of Florida statutes address the use of force generally and by law enforcement officers acting in the course and scope of their official duties specifically. Some of these are not relevant to the investigation into this matter. Accordingly, these will not be discussed in any detail. However, a white paper, *Authorized Use Of Force By Law Enforcement Officers In Florida*, attached as Exhibit B more fully outlines Florida's Use Of Force laws.

A. Justification Generally

While the use of force to defend oneself is often referred to as "self-defense," the appropriate legal term is "justification." Accordingly, the question this Office must answer in any officer involved shooting is whether the use of deadly force was justified under the law.

Section 782.02, Florida Statutes, states, "The use of deadly force is justifiable when a person is resisting any attempt to murder such person or to commit any felony upon him or her." Fla. Stat. § 782.02 (2017). Similarly, Section 776.012, Florida Statutes, permits the use of deadly force when a person "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."⁴

When considering whether the use of force was justifiable, the law does not require the danger be real, just that the danger appeared so. "Whether [a person] was justified in the use of deadly force, you must consider the circumstances by which he or she 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 circumstances would have believed that the danger could be avoided only through the use of that force. Based upon appearances, [the person] must have actually believed that the danger was real." Fla. Std. Jury Instrs. in Crim. Cases 3.6(f) (2017).

⁴ Forcible felonies are "treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual." Fla. Stat. § 776.08 (2017). In a recent opinion, *State v. Peraza*, --- So.3d --- 2017 WL 3730352 (Fla. 4th DCA 2017), Florida's Fourth District Court of Appeal ruled that law enforcement officers enjoy the same benefit of these general justification laws that ordinary Florida citizens do.

These principles of justification apply to any case. Florida law, however, provides additional justification to law enforcement officers.

B. Justification for Law Enforcement Officers

Law enforcement officers are specifically permitted to use force, including deadly force, in two primary areas, making arrests and preventing escapes. Section 776.05, Florida Statutes, governs the use of force by law enforcement officers when making an arrest. A law enforcement officer need not retreat or desist from making an arrest simply because a person resists or threatens to resist the arrest. Namely, a law enforcement officer is justified in using any force:

- (1) Which he or she reasonably believes to be necessary to defend himself or herself or another from bodily harm while making the arrest;
- (2) When necessarily committed in retaking felons who have escaped; or
- (3) When necessarily committed in arresting felons fleeing from justice.⁵

Fla. Stat. § 776.05 (2017).

Overarching Section 776.05 is the principle that, to be justified, force must be reasonably necessary under the particular circumstances of the case.

V. THE FACTS OF THIS OFFICER-INVOLVED SHOOTING

A. Suspects' Background and History

1) Joseph Lunsford

Joseph Lunsford was charged and convicted of Aggravated Assault on a Law Enforcement Officer for his actions related to this incident and was sentenced to 32 months in Florida State Prison. The Defendant has 10 prior felony convictions, including convictions for Aggravated Fleeing and Attempting to Elude and Battery on a Law Enforcement Officer. He also has 17 prior misdemeanor convictions.

⁵ In *Tennessee v. Garner*, 471 U.S. 1, 11 (1985), the United States Supreme Court addressed the use of deadly force against a fleeing felon. The Court noted that “[w]here the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force.”

2) Caylee Toomey

Caylee Toomey was charged and convicted of Battery on a Law Enforcement Officer for her actions related to this incident and was sentenced to 12 months in the Duval County Jail. She has one prior felony conviction and two prior misdemeanor convictions.

B. Officer Alwin's Background and History

Officer B.K. Alwin has been with the Jacksonville Sheriff's Office since June 2, 2008. This incident was the first time he discharged his weapon in the line of duty.

C. Overall Summary

On September 1, 2016, between 6:00pm and 7:00pm, Joseph Lunsford and Caylee Toomey entered the AutoZone at 561 Cassat Avenue, Jacksonville Florida. Multiple employees within the business observed the couple and believed them to be under the influence of drugs. They purchased some items from the business and then returned to a red Jeep Cherokee parked directly in front of the business. The two remained in the vehicle for over an hour with no apparent lawful purpose. Concerned by Lunsford and Toomey's actions, the manager, Daniel Massey, called police to report the suspicious behavior.

A short time later, Officer B.K. Alwin responded to the AutoZone parking lot. Officer Alwin arrived in his marked JSO patrol car with the lights activated. He was dressed in a standard issued uniform. Officer Alwin approached the suspect vehicle where Lunsford and Toomey were located while employees of the AutoZone looked on.

Upon making contact with Toomey and Lunsford, Officer Alwin immediately recognized the couple was under the influence. Lunsford appeared passed out in the driver's seat while Toomey was awake but disoriented in the front passenger's seat. Officer Alwin opened the front passenger door of the Jeep and engaged in conversation with Toomey. He observed track marks on Toomey's arm with dried blood. Due to the suspects' condition, Officer Alwin requested assistance from additional police officers.

While waiting on other police units to arrive, Toomey woke up Lunsford, who then began to erratically move about inside the Jeep. Officer Alwin gave multiple verbal commands for the occupants to show their hands which were ignored by Lunsford and Toomey. Fearing for his safety, Officer Alwin deployed his Taser as Lunsford attempted to start the vehicle. The Taser had no effect on Lunsford, and when Officer Alwin tried to grab the driver to gain control of him, he was physically attacked by Toomey as he stood between the open passenger door and the body of the Jeep. Lunsford started the Jeep and abruptly drove forward, striking the

concrete barriers in front of the store while continuing to accelerate. Lunsford then put the car in reverse and drove backwards, striking Officer Alwin as he stood inside the open door of the Jeep.

Officer Alwin escaped from the door area and stood in the parking lot between his patrol vehicle and the Jeep. Lunsford then recklessly drove towards the officer. Fearing for his life, Officer Alwin drew his issued service weapon and fired two shots at the driver. Lunsford accelerated through the parking lot and fled the scene, driving over the curb and through the landscape. Officer Alwin remained at the scene and did not pursue the suspect vehicle. He waited at the AutoZone for other officers to arrive. The suspect vehicle was found abandoned behind a business at 1188 South Edgewood Avenue. The windows were damaged due to gunfire, but no occupants could be located. There were no signs that either occupant was struck by gunfire.

Investigation positively identified Joseph Lunsford as the driver of the red Jeep and Caylee Toomey as the passenger. Based upon witness accounts, warrants were issued for their arrest.

D. Statement of B.K. Alwin

The following is the verbatim statement Officer Alwin provided to investigators regarding the incident:

Officer Alwin advised he was working on the evening of the incident, wearing his issued police uniform. He was driving his issued, marked patrol car which is equipped with emergency lights. The car was clearly marked with the word "Police" and displayed the Jacksonville Sheriff's Office badge on the doors.

Officer Alwin advised he was dispatched to a report of suspicious activity at the business of the AutoZone located at 561 Cassat Avenue. The additional information included the description of the white male and white female subjects who had been loitering in a red Jeep in the parking lot of the business for the past several hours. The caller advised the subjects may be involved in drug activity.

Officer Alwin responded to the business, which is located on the east side of Cassat Avenue. He observed a red Jeep Grand Cherokee in the parking lot in the front of the business. Officer Alwin drove into the parking lot of the business and parked his patrol car at an angle with his vehicle headlights and spotlight illuminating the passenger side of the Jeep. Officer Alwin exited his car and approached the passenger side of the Jeep on foot. At this time, Officer Alwin observed the window of the door was closed. Officer Alwin observed a white female

subject seated in the front passenger seat of the Jeep and a white male subject in the driver seat. Officer Alwin made contact with the female passenger, opening the Jeep door as he did so. At this time, he observed the white male driver appeared to be passed out. Office Alwin asked the female if they were alright. The female responded stating they were okay. From his position, Officer Alwin observed dried blood and what appeared to be "track marks" on the inside of the female's left forearm. Additionally, he observed the female's pupils were constricted, furthering his belief that the two subjects may be under the influence of some sort of drug or narcotic. Officer Alwin advised at this point, he utilized his portable radio to request another officer respond to assist him at the scene with the two impaired individuals.

While waiting for assistance, Officer Alwin continued to speak with the female passenger during which time the female began to shake the male driver, successfully waking him up. After awakening the driver, the behavior of both the male and female became more erratic. They began to reach around the interior passenger compartment of the Jeep, twisting and turning toward the backseat, at which time Officer Alwin lost sight of their hands. Officer Alwin began giving verbal commands to the subjects to keep their hands where he could see them. The male driver ignored Officer Alwin and reached to the area of his right leg before bringing his hand up.

Officer Alwin observed the car keys in the male's hand as he removed his issued Taser from his holster. The driver continued to ignore commands being given by Officer Alwin prompting his to deploy his Taser one time at the driver. The Taser was not effective in gaining the driver's compliance. Officer Alwin attempted to physically knock the keys out of the driver's hand as he leaned across the female passenger.

At this time, the female pushed the officer off her, causing him to lose his balance. The driver was able to start the Jeep, and it began to move. The driver placed the Jeep in reverse and began to back out of the parking space as Officer Alwin was still standing between the open door and the body of the Jeep, effectively trapping him in that position and dragging him backward. The door struck Officer Alwin as the Jeep continued to move backward. The impact physically displaced Officer's Alwin glasses and caused a small abrasion to his arm after which Officer Alwin was able to move out of the door opening. The driver then stopped the Jeep, placed it in drive, and began to move forward.

Officer Alwin was now in the parking lot between his parked patrol car and the oncoming Jeep and had nowhere to retreat. Officer Alwin drew his issued Glock handgun from his holster and fired two shots at the driver. After the shots were fired, the driver of the Jeep changed course, narrowly missing Officer Alwin, and fled from the scene.

Officer Alwin then broadcast over his radio that shots were fired. He gave a description of the suspect vehicle and direction of travel.

E. Statements of Key Witnesses

1) David Thompson

David Thompson ("Thompson") was employed at the AutoZone store located at 561 Cassat Avenue in Jacksonville, Florida. He advised that on September 1, 2016, between 6:00pm and 7:00pm, a white male and a white female entered the AutoZone. Both individuals appeared to be on drugs and seemed "out of it." The couple left the store but sat in a red Jeep Cherokee that they arrived in parked directly in front of the AutoZone. The couple remained in the parking lot for hours. The female was seated in the passenger seat and appeared very "fidgety." The male was seated in the driver's seat and appeared to be asleep. Given the fact that the couple remained in the parking lot with no apparent purpose, Thompson decided to call the police.

Thompson stated a uniformed police officer arrived shortly thereafter and approached the suspect vehicle. He stated the police officer spoke to the couple for a while as they remained seated in the Jeep Cherokee. The female then became "irate" and began yelling at the police officer. At that time, the front passenger door of the vehicle was open and the female was in the front passenger seat. The police officer was standing next to the female between the door and the vehicle. The female began violently swinging at the police officer and the police officer drew his Taser. The white male then started the vehicle and abruptly drove forward, striking the concrete pillars in front of the store. The white male reversed the Jeep, then put the car in drive, and drove towards the police officer. The police officer drew his gun and fired two shots at the vehicle. The Jeep Cherokee recklessly drove through the parking lot, driving over the landscape and jumping the curb to flee the scene.

2) Jarvis Bolton

Jarvis Bolton ("Bolton") was an employee at AutoZone on Cassat Avenue. On September 1, 2016, a white male and a white female entered the store to buy an auto part. He stated the white male appeared to be "high." The couple stayed in the store for a short time and bought an auto part and a candy bar. The couple then returned to a red Jeep Cherokee parked in front of the store and remained seated in the car for over an hour. He stated both doors to the vehicle remained open while the couple sat in the parking lot.

Bolton stated he was at the front register when the police officer arrived. The police car's emergency lights were on when he entered the lot. The uniformed police officer approached the

open front passenger door. At first, everything seemed okay, but then the white female began lashing out at the police officer for no reason. It appeared the female was fighting the police officer. The Jeep then pulled forward against the concrete pillars in front of the store and the engine raced for 10-15 seconds. Bolton thought the Jeep was going to drive through the front window of the store. The Jeep backed up and drove abruptly past the police car. Bolton believed the Jeep was going to hit the police officer. He then heard gunshots, and the Jeep recklessly drove through the parking lot and fled the scene.

3) Daniel Massey

Daniel Massey ("Massey") was an employee at the AutoZone on Cassat Avenue. On September 1, 2016, he was working at the store when a white male and white female entered the AutoZone. The couple stayed in the store for approximately 15 minutes and then returned to their Jeep parked directly in front of the store. They remained in the parking lot for approximately an hour and a half with no apparent purpose. Massey became concerned about the couple's actions and called the police requesting an officer to respond.

Approximately 10-15 minutes later, a police officer arrived in a marked patrol vehicle. Massey said the police officer approached the passenger side of the Jeep where the female was seated and spoke to the couple for a few minutes without incident, so he and his other employees returned to work. A short time later, Massey heard the Jeep start up and rev its engine loudly. He went to the front door to see what was happening. As Massey exited the store, he saw the Jeep back up abruptly and then drive forward, recklessly fleeing the scene. He observed the police officer draw his gun and shoot two times, striking a window of the Jeep.

4) Tracy Lowry

Tracy Lowry ("Lowry") was an employee at the AutoZone store on Cassat Avenue on September 1st, 2016. She stated a white male and white female entered the store and shopped for about 15 minutes. The couple appeared to be on drugs. They left the store but sat in a red Jeep Cherokee for over an hour.

When police arrived, the patrol car pulled up with its emergency lights activated. After a few minutes, she heard a fellow employee yell "they are fighting." Lowry then saw the police officer fighting with someone on the passenger side of the Jeep. She heard the Jeep's engine "rev" up so she ran around the counter of the store. Lowry said she heard gunshots, but did not see the shooting.

F. Statements of Joseph Lunsford and Caylee Toomey

1) Joseph Lunsford

Lunsford was arrested on September 16, 2016, pursuant to an arrest warrant for Aggravated Assault on a Law Enforcement Officer. He was advised of his constitutional rights and stated he had no memory of the incident due to his extensive drug use at the time.

2) Caylee Toomey

Toomey was arrested on March 21, 2017, pursuant to an arrest warrant issued for Battery on a Law Enforcement Officer. She was advised of her constitutional rights and agreed to speak with Detectives. When questioned about the incident on September 1, 2016, she advised she had no memory of the incident due to her drug use. She stated she was using cocaine and heroin. When Detectives questioned her further about her drug use, she invoked her right to an attorney.

VI. LEGAL ANALYSIS

Section 776.05, Florida Statutes, governs the use of force by law enforcement officers when making an arrest. Specifically, a law enforcement officer is justified in using any force:

- (1) Which he or she reasonably believes to be necessary to defend himself or herself or another from bodily harm while making the arrest;
- (2) When necessarily committed in retaking felons who have escaped; or
- (3) When necessarily committed in arresting felons fleeing from justice.

At the time Officer Alwin discharged his firearm, Joseph Lunsford was committing the forcible felony of Aggravated Assault upon a police officer. Officer Alwin had attempted to use less lethal efforts to restrain Lunsford but was unsuccessful. Given Officer Alwin's location between the vehicle and the open passenger door when Lunsford abruptly accelerated the Jeep, he was in imminent danger of death or great bodily harm. Additionally, Joseph Lunsford drove the Jeep directly towards Officer Alwin as he attempted to flee the scene and avoid arrest. The manner in which the vehicle was operated placed Officer Alwin in reasonable fear of death or great bodily harm.

VII. CONCLUSION

Our role is to evaluate, review, and pursue criminal charges when the use of deadly force is unjustified.

Based on the available facts we have reviewed and our review of applicable Florida law, it is our legal opinion that the actions of Officer Alwin on September 1, 2016, were justified, as defined by Florida law. We will, therefore, take no further action in this matter.