

At approximately midnight on Saturday, May 23, 2009, Roy Henderson and his girlfriend, Brittany Graham, went to the home of Danny Williams and his girlfriend, Sabrina Drew, to play cards. Williams and Drew reside at 52900 West Highway 31, Perdido, Alabama, near the Escambia/Baldwin county line. At some point later, Henderson and Williams left Williams' residence in a white Nissan Altima that belonged to Sabrina Drew to purchase more beer. Williams, who had reportedly been drinking, was driving and Henderson was in the passenger seat. Williams and Henderson went to a Shell station on Highway 21 in Atmore to buy beer.

After purchasing the beer Williams drove by the Flamingo Club in Atmore and then traveled back down Martin Luther King Boulevard. As they drove out of the area, Henderson reported that he noticed two Atmore police cars behind them with blue lights activated.

Moments earlier, at approximately 1:27 a.m., the Atmore Police Department dispatch center broadcasted a shots fired call in the vicinity of Ashley, Jones, and Bragg Streets in the northeast quadrant of Atmore. Officers Van Hughes, Dale Lisenby, Matt Rabren and Keith Gohagin responded to the area. While in the area Officer Rabren observed a white vehicle, which was later determined to have been driven by Williams, run the four way stop sign at the intersection of Ashley and Jones Streets at a high rate of speed.

Officer Rabren attempted to pull the vehicle over for the traffic violations and to determine if the occupants, Williams and Henderson, were part of the shots fired call. Officer Rabren activated his emergency lights and siren in an attempt to pull the vehicle over but the driver, Williams, failed to stop and began to attempt to elude him. Officer Rabren was able to determine the vehicle was occupied by a white male driver and a black male passenger. At approximately 1:37 a.m. Officer Rabren advised dispatch that he was "10-100" (in pursuit) of the vehicle. Officers Hughes, Chad Johnson, Gohagin, Lisenby and Investigator Walden responded to assist in the pursuit.

While assisting in the pursuit, Investigator Walden informed the officers the occupant of the white vehicle could possibly be Earl Crenshaw who had active felony warrants, was known to be armed, frequented the Jones Street area and was known to ride around in a small white vehicle. Inv. Walden also indicated that Crenshaw had a girlfriend that lived on Juniper Street near Ernest Ward Middle School in Walnut Hill, Florida.

Officer Rabren along with Officers Gohagin, Lisenby, Hughes, Johnson and Inv. Walden continued in pursuit of the vehicle. The vehicle continued toward Florida on Alabama Highway 21/Florida Highway 97 and Officer Rabren requested permission to continue into Florida. Sergeant J.C. Mitchell granted permission to continue the pursuit into Florida but advised the officers to keep a safe distance. The dispatcher informed the Escambia County Sheriff's Office (Florida) of the pursuit and requested assistance.

Williams passed two vehicles when he was coming around the curve at the Grey Goose Lounge heading south on Alabama Highway 21 /Florida Highway 97 near the Alabama/Florida line and kicked up dust when his vehicle hit the white line on the outside of the north bound lane. The officers were reaching speeds of 100 miles per hour and continued to pursue Williams on Highway 97 into Escambia County, Florida. Several miles after entering into Florida, Williams

turned left on Highway 164, left on Green Village Road, and left on Gobbler Road which led back to Highway 97. Williams then took a left on Highway 97 and traveled south.

When Inv. Walden and Officer Hughes heard the suspect vehicle was heading south on Highway 97 they turned around and headed north on Highway 97. Inv. Walden was traveling north to attempt to stop the pursuit at Gobbler Road and observed Williams' vehicle coming out of Gobbler Road heading back south on Highway 97. Inv. Walden was in the right lane traveling north, while Williams was approaching him in the left lane traveling south. Inv. Walden reported that the suspect vehicle moved into the north bound lane, causing him to move his unit to the south bound lane to avoid a collision.

The suspect vehicle then moved back into the south bound lane as if Williams was "playing chicken" and Inv. Walden moved back into the north bound lane. Once again Williams turned his vehicle towards Inv. Walden's vehicle and Inv. Walden slammed on brakes and threw his truck in reverse. Williams' vehicle, while traveling at an estimated speed of 60-65 mph, passed the front passenger side of Inv. Walden's vehicle and left Highway 97 on the east shoulder. Inv. Walden left the road and ended up stuck in the mud on the west side of Highway 97.

Officer Rabren was traveling south on Highway 97 and observed the suspect vehicle run off the road on the east side of Highway 97, spin out and fishtail backward into a wheat field on the east side of Highway 97. Officer Hughes was traveling north on Highway 97 and arrived at the location of the suspect vehicle with Officer Rabren. Officer Rabren parked his cruiser at about a 45 degree angle to the suspect vehicle and with his gun drawn, approached the front of the vehicle, reporting that the vehicle's headlights were shining in his eyes. Officer Hughes parked his vehicle at an angle to the suspect vehicle and with his gun drawn, ran to the front of the suspect vehicle toward the driver's side front quarter panel, in front of the vehicle's headlights.

When Officer Hughes approached the suspect vehicle its engine was at a high rev and he noticed that Officer Rabren was in front of it. Officer Hughes gave verbal commands to Williams and Henderson, "get your hands up," and at one point was so close to the suspect vehicle that his thigh brushed the front quarter panel. The passenger, Henderson, was being compliant by putting his hands up on the roof of the vehicle, however, the driver, Williams, was not complying and was looking Officer Hughes in the eyes. Officer Hughes started to make his way down the driver side of the vehicle with the intention of snatching open the driver door to remove Williams.

The suspect vehicle started fishtailing, gaining traction and began to move forward. Williams had his left hand on the steering wheel and his right hand down toward the console area possibly on the gearshift. Williams turned the wheel sharply to the left in Officer Hughes' direction, accelerated hard and went toward Officer Hughes. Officer Hughes stated that he feared for his life and fell over to his right out of the vehicle's path. The vehicle never struck Officer Hughes, but it did brush against him as he was falling out of the way. As the vehicle moved forward Officer Rabren observed Officer Hughes fall backward to the ground and saw his right leg go up in the air. When Officer Hughes fell to the ground, Officer Rabren thought the suspect vehicle had struck or run over him.

Officer Rabren then realized the suspect vehicle was traveling directly toward his position and fearing for his life, he fired two rounds at the driver's side of the windshield, before stepping to his right, away from the vehicle's path. Officer Hughes, while on the ground, heard two gunshots after the suspect vehicle passed him. Officer Rabren continued to fire at the suspect vehicle as it passed him and thought he fired three more rounds at the driver's side window area as the vehicle passed parallel to him. Officer Hughes came up to a kneeling position, saw Officer Rabren's muzzle flash to his left, and began firing at the suspect vehicle as it was moving away from him and going toward Officer Rabren.

Officer Rabren then noticed muzzle flashes over his right shoulder and realized Officer Hughes was firing at the suspect vehicle and was not injured. Officer Rabren and Officer Hughes continued firing at the suspect vehicle and stopped firing when other officers were approaching and were in the suspect vehicle's path as well as in the line of fire. Officer Hughes remembered glass shattering on the suspect vehicle while it was still in the grassy area before it entered Highway 97. Officer Rabren observed the suspect vehicle return to Highway 97 and called out over the radio that shots had been fired.

Officer Gohagin was parked near Officer Rabren and Hughes' vehicles and observed the aforementioned events. After shots were fired he observed the suspect vehicle get on Highway 97, go straight, at first, then hook to the left. When the vehicle got on the road Henderson, the passenger, picked his head up and looked at Officer Gohagin.

Just before the above shots were fired Inv. Walden exited his truck on the driver's side to check his front tires to see where they were stuck. While approaching the rear of the driver's side of his truck he heard gunfire followed by one of the officers hollering "shots fired." Inv. Walden then realized the suspect vehicle was back on the roadway. It traveled north approximately 10 yards in the south bound lane, left the roadway approximately 15 to 20 yards from his truck and came towards him. The suspect vehicle bounced a little bit to the inside back towards Highway 97 but then went in a straight line past his truck.

Inv. Walden stated that prior to the vehicle passing his truck he heard a "pop" and saw a red/orange flash to his left. He was able to see that the passenger had his arm out the passenger front window in an upward motion. Based on the pop sound and flash he thought someone in the vehicle was shooting at him. He responded by shooting twice at the vehicle's right rear tire to slow its movement. Once he fired his weapon he noticed the passenger now had both arms extended outside the window. The suspect vehicle then bogged down in the field and came to a stop.

Officer Lisenby observed Inv. Walden's vehicle in the ditch on the west side of Highway 97 with the headlights on and blue lights activated. Officer Lisenby then observed the suspect vehicle driving through the plowed field on the west side of Highway 97 and saw a muzzle flash in the ditch area towards Inv. Walden. Officer Lisenby drove his patrol car into the plowed field in close proximity to the suspect vehicle which was bogged down in the field. He could see a white male in the driver's seat trying to raise his head up and a black male on the passenger side trying to exit the vehicle via the passenger window. Officer Lisenby exited his patrol vehicle and got behind the door with his weapon drawn.

Officer Rabren, now on the west side of highway 97, exited his vehicle and ran to the passenger side of the suspect vehicle in the plowed field where Officers Johnson and Lisenby were pulling Henderson from the vehicle. Officer Rabren noticed Williams convulsing and slumped over to his right with a visible injury to the right back part of his head. Once Henderson had been removed from the vehicle Officer Rabren noticed Henderson had blood on the left side of his shirt and learned it was from the driver's injury. Williams was transported to the hospital in Atmore, then to the University of South Alabama Medical Center in Mobile, Alabama, where he later died. Henderson was handcuffed and placed in an Atmore Police vehicle.

FDLE crime scene personnel processed both shooting scenes and recovered a total of 11 cartridge casings. Nine 40 caliber Smith and Wesson (S&W) cartridge casings, federal brand, were located at the first shooting scene on the east side of Highway 97 and two 40 caliber Smith and Wesson (S&W) cartridge casings, federal brand, were located at the second shooting scene on the west side of Highway 97. A projectile was also recovered from the rear driver's side rear pillar of the suspect vehicle (Nissan Altima) and a piece of copper jacket was recovered from between the right side of the driver seat and the left side of the center console of the Nissan Altima. These exhibits, along with the .40 caliber pistols collected from Inv. Walden.

Officer Rabren, and Officer Hughes, were submitted to the FDLE Tallahassee Regional Crime Laboratory's Firearms Section for examination. This examination determined that two of the federal 40 S&W cartridge casings recovered from the west side of Highway 97 had been fired from Inv. Walden's pistol. Three of the nine cartridge casings recovered from the east side of Highway 97 were fired from Officer Rabren's pistol and six were fired from Officer Hughes' pistol. This examination also determined that the above mentioned projectiles, as well as the copper jacket recovered from the Nissan Allima and the lead removed from Williams' head at the autopsy, were of no value for firearms identification purposes. No weapon was found in the suspect vehicle and Henderson denied that he or Williams ever possessed or fired a weapon during the pursuit.

John Krolikowski, M.D., performed the autopsy at the Department of Forensic Sciences in Mobile, Alabama. The autopsy revealed that Williams received one gunshot entrance wound at the right lower posterior section of his skull. Dr. Krolikowski advised there was beveling on the inside of the skull and the projectile was recovered from between the frontal lobes. Dr. Krolikowski described the direction of travel as being from back to front, right to left, from the bottom right of the skull to the left, midline, between the frontal lobes.

Dr. Krolikowski described Williams' condition immediately after being shot as "alive, but not really." Dr. Krolikoski stated that due to where Williams was shot and the amount of trauma to the brain, Williams could not have recovered from his wound and basically died instantly. Dr. Krolikowski advised that the drug screen taken on Williams at the USA Hospital in Mobile was negative. The ethanol level taken from Williams at the Atmore hospital was 228 mg/dl, which would be almost three times higher than the legal limit.

The pursuit of Danny Williams by the Atmore Police Department began at 1:37 a.m. when Officer Rabren saw him run the stop sign. It ended 7 minutes later in a muddy field on Highway 97 in Walnut Hill, Florida, approximately 4.8 miles south of the Alabama state line. Mr. Williams

was 33 years old. He had a criminal record that consisted of three DUI arrests (1997, 2003, 2006); five arrests for driving with a suspended license (twice in 1998, once in 199, 2002, 2003); attempting to elude a police officer (1998); possession of dangerous drugs (2002); and theft of property (2004). His girlfriend, Sabrina Drew, said she has known Mr. Williams to drink 96 Busch beers in 24 hours. She said alcohol was his drug of choice and he liked to drive fast.

Roy Henderson, the passenger in Mr. Williams' car, told investigators that Mr. Williams attempted to elude the police after running the stop sign because he was drunk and said he "couldn't get any more DUrs." (FDLE report of Jane Dunn Schachle, serial #35, dated 6-25-09.) Contrary to the statements of the Atmore police officers, Mr. Henderson said a truck was coming at them on Highway 97 that was swerving and had no blue lights. He said Mr. Williams lost control of his car when he swerved to avoid the truck and began fishtailing. He said an officer was never directly in front of their vehicle after they came to a stop in the field and he did not see a police officer fall to the ground. He said Mr. Williams did not turn the wheel towards any officer nor did he see any officers jump back when Mr. Williams was pulling away from the field.

THE ISSUE

Were the Atmore, Alabama police officers justified in using deadly force against Danny Williams?

THE LAW

Section 941.31. Fla. Stat. (2009) provides, in pertinent part, as follows:

"Any duly authorized...municipal arresting officer of another state of the United States who enters this state in fresh pursuit of a person in order to arrest him or her on the ground that the person is believed to have committed a felony in such other state, shall have the same authority to arrest and hold such person in custody, as has any authorized arresting officer, state, county, or municipal, of this state, to arrest and hold in custody a person on the ground that the person is believed to have committed a felony in this state."

When Officer Rabren initially attempted to stop Mr. Williams it was because Mr. Williams ran a stop sign at a high rate of speed and may have been involved in the "shots fired" call in the same area. During the pursuit, Investigator Walden informed the officers that the occupant of the white vehicle could possibly be Earl Crenshaw who had active felony warrants, was known to be armed, and frequented the Jones Street area where the "shots fired" call had originated just moments earlier. Furthermore, Crenshaw was known to travel in a small white vehicle and had a girlfriend who lived in Walnut Hill, Florida. Mr. Williams was driving a small white car and was headed in the direction of Walnut Hill. Therefore, based on the totality of the circumstances, it was reasonable for the officers to believe the vehicle contained a wanted felon. As such, the pursuit into Florida was lawful under Fla. Stat. 941.31. Even if the officers were not aware of the information concerning Crenshaw when Mr. Williams finally stopped and did not have reason to

suspect that a felony had been committed in Alabama, the arrest would still have been lawful under Fla. Stat. 941.33 (2009) which says, "Section 941.31 shall not be construed so as to make unlawful any arrest in this state which would otherwise be lawful." The Alabama Court of Criminal Appeals considered a similar case where an Alabama municipal police officer pursued a fleeing vehicle one-quarter mile into Florida before apprehending the driver. The issue on appeal was whether the initial pursuit was for a misdemeanor or a felony. The court relied on Fla. Stat. 941.31 and 941.33 to rule that the arrest was lawful whether or not the officer did not have reason to suspect that a felony had been committed in Alabama. *Crawford v. State*, 479 So. 2d 1349 (Ala. Cr. App. 1985).

After Mr. Williams lost control of his vehicle and ended up in the field next to Highway 97, the officers attempted to detain him. Officer Matthew Rabren stated in his recorded statement that he saw Officer Hughes fall and "I remember seeing his right leg come up and when I saw the car was right there on top of him... I didn't know if he'd been hit by the vehicle ... or what. I just saw him go down. I was in fear for his life... I realized the suspect's coming right at me. I opened fire ...the suspect vehicle was coming straight at me." (p.5). (Emphasis supplied). Officer Rabren also said, "I was scared and I was like well if [I] don't do something he's going to run me over and he going (sic) to hit me and he may have just hit Officer Hughes so I ..I shot." (p.8). Officer Ricky Hughes also provided a recorded statement. According to the transcript of his statement, after Mr. Williams ran off the road and into the field and was ordered to put his hands up, Mr. Williams "looked me in the eyes... right in my eyes...turned the wheel sharp in my direction...and accelerated hard...the car came toward me...I feared for my life at that pain!" (p. 3). (Emphasis supplied). Furthermore, Officer Hughes said he began firing at the vehicle after jumping out of the way and continued to do so after the car crossed over the highway and was "heading toward other officer putting them in harm's way." (Id.). He said he was not struck by the vehicle as it drove from the field back out to Highway 97 but "it brushed me to where I fell." (p. 5). Officer Hughes said he received information over his radio during the initial pursuit from Alabama that a suspect named Earl Crenshaw, for whom felony warrants existed, could be in the vehicle. (p.7).

Fla. Stat. 776.05 (2009) provides, in pertinent part, as follows: "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: (1) which he or she reasonably believes to be necessary to defend himself or herself or another from bodily harm while making the arrest." (Emphasis supplied). Fla. Stat. 776.06 (1)(b) (2009) defines "deadly force" to include "the firing of a firearm at a vehicle in which the person to be arrested is riding." Furthermore, Fla. Stat. 776.012 (2009) provides that a person is justified in the use of deadly force and does not have a duty to retreat 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. "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. Fla. Stat. 776.08 (2009).

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When Danny Williams made the decision to look for more beer while driving an automobile with a SAL of .228, he placed himself and other members of the public in danger of death or great bodily harm because of his impairment. The risk increased significantly when he attempted to elude the Atmore police officers after running through a stop sign and reaching speeds of nearly 100 mph in the middle of the night. Furthermore, the patient care report from the Atmore ambulance service indicates poor weather conditions also existed. An entry in the report says, "air transport unavailable due to weather." When Danny Williams lost control of his car and ended up in the field, he could have chosen to surrender. Instead, he continued his efforts to elude the police and placed then in danger of imminent death or great bodily harm. He could have chosen to obey their commands but, as his passenger said, "he couldn't get any more DUI's." It was a series of poor decisions by Mr. Williams that ultimately resulted in his unfortunate death. Based on the totality of the circumstances, it is the opinion of the Office of the State Attorney that the actions of the officers were reasonable. It was reasonable for the officers to attempt to stop Mr. Williams after he ran the stop sign. It was reasonable for them to pursue him after information suggested his car might contain a wanted felon who may have been involved in the "shots fired" incident that had occurred in the same area only moments before. When Mr. Williams drove at the officers in the field, it was reasonable for them to be in fear of imminent death or great bodily harm not only for themselves but for other officers in the vehicle's path.

Therefore, it is the opinion of the Office of State Attorney that, the Atmore, Alabama police officers were justified in using deadly force against Mr. Danny Williams.