



# OFFICE OF THE STATE ATTORNEY

FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY

DAVID ARONBERG  
STATE ATTORNEY



May 3, 2023

Dear Chief Adderley:

I have had the opportunity to review the reports of Florida Department of Law Enforcement, West Palm Beach Police Department, statements from both school employees & students, surveillance footage, body worn camera video, and the overviews prepared by State Attorney Deputy Chief Investigator Mark Anderson and State Attorney Investigator William Hoover regarding the fatal shooting of Romen E. Phelps (DOB: 02/15/1989), which occurred on Friday May 13, 2022.

## Summary of Findings

The facts surrounding the officer involved shooting are not in dispute. There are numerous police reports, civilian statements, surveillance videos, body worn cameras, items of physical evidence and forensic test results that establish the facts leading up to the officer's use of force.

On Friday May 13, 2022, at approximately 11:59 AM, the City of West Palm Beach Police dispatch received a call from Palm Beach County School Board Police reporting a "vehicle crash" at the Dreyfoos School of the Arts (DSOA). The DSOA is located just north of Okeechobee Boulevard on the east side of Tamarind Avenue in the City of West Palm Beach. The investigation showed the crash occurred when a white van accelerated through the security gate on the west side of the DSOA campus. Witnesses on scene reported hearing the van's engine roar as it crashed through the gate at a high rate of speed and into a 40-foot royal palm tree outside of the student services building. The van impacted the tree with such force that it knocked the tree down, totaled the van and caused the airbags to deploy. A school campus aide was present during the crash and witnessed it firsthand. The aide watched as the driver, identified as Mr. Romen Phelps, exited the vehicle and entered the DSOA campus. The aide contacted the school police via his two-way radio.

Just prior to the vehicle crashing through the school gate, [REDACTED] observed the same white van driving in a reckless manner through downtown West Palm Beach. [REDACTED] observed the

van speeding, driving in the wrong direction of travel and creating an overall dangerous situation for surrounding drivers and pedestrians. Based on her observations, training and experience, [REDACTED] reported the vehicle as possibly stolen to her colleague, [REDACTED]

After crashing through the gate, Phelps entered the DSOA through the Student Services building. [REDACTED] heard the initial crash and observed many students running away from the direction of the vehicle crash. [REDACTED] initially responded to the area of the crash to investigate. Finding no driver, she proceeded into the Student Services building where she encountered Phelps. [REDACTED] attempted to prevent Phelps from entering the school grounds by blocking his path without success.

After dismissing [REDACTED] Phelps proceeded down the student services hallway towards the school main campus. Upon exiting the rear of the Student Services building, Phelps encountered the [REDACTED] who also attempted to divert him from the main campus. Phelps pushed his way past that employee as well and onto the campus.

At the time Phelps entered the main campus, there were a large number of students eating lunch on the walkways and outside seating areas. [REDACTED] described Phelps "skipping" down the campus walkway while beginning to take off his shirt. [REDACTED] stated that Phelps seemed "irate" and began yelling indiscernible speech as he proceeded. Based on their observations, both [REDACTED] and [REDACTED] called out a "code red" lock down over the radio, whereupon school employees began to evacuate students out of the courtyard for safety purposes. Students who observed Phelps behavior described him as "high," "out of it," "manic," and "defiant." Teachers observed frightened students running away from Phelps. Surveillance videos from the DSOA corroborated these accounts, showing students running into buildings in what appeared to be a panic. Believing that Phelps was mentally ill and possibly dangerous, [REDACTED] unsuccessfully attempted to handcuff him. [REDACTED] stated that Phelps resisted the attempts to handcuff him with sudden bursts of strength pulling his arm away "so hard that he nearly threw himself to the ground." After pulling away from [REDACTED] Phelps ran through the campus down to the locked doors of the theatre. Phelps proceeded to rip the locked doors open and run down the hallway towards the theater stage. Surveillance cameras in that hallway captured Phelps galloping down the hallway punching lockers, with [REDACTED] and the [REDACTED] in chase behind him. The surveillance videos showed Phelps appearing extremely agitated and running behind students down the hallway before disappearing off screen, along with [REDACTED] and the [REDACTED] Soon after Phelps, [REDACTED] and the [REDACTED]

█████ disappeared off camera, █████ appeared running down the same hallway following in the same direction. █████ caught up with everyone on stage and instructed █████ to leave.

Once on the stage, █████ and █████ observed Phelps exhibiting extremely bizarre and violent behaviors. Phelps oscillated between screaming profanities at █████ and █████ and singing Broadway musicals. █████ described Phelps violently kicking over music stands, kicking the piano and screaming & charging at █████. █████ described the charges by Phelps as “forceful” and believed that Phelps could have injured her. Photographs from the scene show the stage in disarray with chairs and music stands knocked over. Bennett described Phelps’ speech as “very jumbled” throughout the encounter and stated he was sweating profusely and spitting when he spoke.

█████ described Phelps’ behavior as “aggressive” and stated that she felt “very unsafe.” Several times during the encounter █████ held Phelps at gunpoint, stating that she was in fear for her life. █████ told Phelps she would put her firearm away if he remained calm, but stated that she knew she could not fight him. She stated that she knew if she used any other means (other than her firearm) she would be hurt. Further, █████ stated “I could feel when I attempted to put him in handcuffs the power he had over me, and [now] it was just me and █████.”

In the middle of the encounter with Phelps on stage, █████ made his way into the theater and onto the stage. █████ was off-duty at the time of the 911 call but was close in proximity and responded to the scene. █████ was dressed in a City of West Palm Beach Police dry-fit shirt, uniform tactical pants, and was equipped with his off-duty firearm. █████ was clearly identifiable as a police officer, however because he was off duty, he was not equipped with a body worn camera.

As █████ entered the theater, only █████ and Phelps were on the stage. █████ had already retreated from the stage onto the house floor. █████ instructed █████ to go outside and request more units to respond, to which she complied. █████ stepped up onto the stage allowing █████ to exit the stage and move onto the house floor. █████ described Phelps as becoming increasingly agitated and aggressive with █████. Then, █████ watched Phelps charge █████ with closed fists taking him to the ground in a struggle. █████ watched as █████ struggled to defend against Phelps’ attack. █████ stated that she believed that █████ was trying to handcuff Phelps, however, Phelps was “too big” and was able to take a top position on █████. As Phelps gained superior position the struggle,

██████████ stated that ██████████ shot Phelps one time. Officers and emergency medical professional immediately began life saving measures on Phelps, who ultimately succumbed to his injury.

The medical examiner's autopsy showed that Phelps died from a single gunshot wound to the chest. The single shot caused traumatic injury to the decedent's lung, heart and spinal column. The autopsy showed that at the time of his death Phelps stood 5'11" and weighed 207 lbs. Phelps' toxicological exam showed the presence of delta-9-THC (the active substance in marijuana) at extremely high levels. Based on statutes from sister states, the level of delta-9-THC in Phelps' blood was 5 to 12 times the legal limit for impairment in states allowing recreational marijuana use.

The subsequent investigation revealed that [REDACTED]

\_\_\_\_\_ A search of the crashed white van driven by Phelps prior to the shooting also revealed a bag of marijuana.

Investigators learned that at the time of the shooting Phelps was employed with Lane Valente Industries Inc. Lane Valente is a facilities management corporation and owned the van driven by Phelps. On the day of the shooting, Phelps was riding with a co-worker in the area of 4700 Broadway in West Palm Beach. Approximately 90-minutes prior to the shooting, the co-worker called his supervisor and informed him that Phelps had attacked him. The co-worker stated he jumped out of the van to avoid further violence at the hands of Phelps.

A review of the body worn cameras from multiple West Palm Beach Police officers on scene showed that [REDACTED] stated to multiple officers that Phelps tried to take his firearm from him during the struggle. Because [REDACTED] was off-duty he was not equipped with a standard three point locking holster but rather a standard Kydex holster. A firearm can be released from the Kydex holster worn by [REDACTED] at the time of the struggle with a firm tug. Further, based on the information from the body worn cameras, [REDACTED] firearm and clothing were swabbed for the presence of DNA. The results from the DNA analysis on the swabs from [REDACTED] firearm showed Phelps' DNA on the slide and base of the firearm. The results from the swabs from

shirt also showed the presence of Phelps' DNA. The forensic results were consistent with the account of the attack provided by

### **Statement of the Law and Analysis**

The United States Supreme Court has on multiple occasions recognized an officer's need and right to use force, including deadly force. "While it is not always clear just when minimal police interference becomes a seizure, there can be no question that apprehension by the use of deadly force is a seizure subject to the reasonableness requirement of the Fourth Amendment." Tennessee v. Garner, 471 U.S. 1, 7 (1985).

Any law enforcement officer's use of force—whether deadly or not—during a seizure of an individual must be analyzed under the Fourth Amendment's "reasonableness" standard. Garczynski v. Bradshaw, 573 F.3d 1158, 1166 (11<sup>th</sup> Cir. 2009) (citing Graham v. Connor, 490 U.S. 386, 395, (1989)). Determining whether the force used is reasonable "requires balancing of the individual's Fourth Amendment interests against the relevant government interests." Cty. of Los Angeles v. Mendez, 137 S.Ct. 1539, 1546, (2017) (citing Graham, at 396). "The operative question in excessive force cases is whether the totality of the circumstances justifie[s] a particular sort of search or seizure." Id. (quoting Garner, at 8-9). As the United States Supreme Court recently summarized, "the reasonableness of the use of force is evaluated under an objective inquiry that pays careful attention to the facts and circumstances of each particular case. The '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. We thus allow for the fact that police officers are often forced to make split second judgments—in circumstances that are tense, uncertain and rapidly evolving . . . Graham, at 396-97. Excessive force claims . . . are evaluated for objective reasonableness based upon the information the officers had when the conduct occurred. That inquiry is dispositive: When an officer carries out a seizure that is reasonable, taking into account all relevant circumstances, there is no valid excessive force claim." Id. at 1546.

When an officer reasonably believes an assailant's actions place him, his partner, or those in the immediate vicinity in imminent danger of death or serious bodily injury, the officer can reasonably exercise deadly force. Horton v. Pobjecky, 883 F. 3d 941, 949 (7<sup>th</sup> Cir. 2018). An officer does not violate the Fourth Amendment by firing at a suspect when the officer reasonably believed that the suspect had committed a felony involving the threat of deadly force, was armed with



a deadly weapon, and was likely to pose a danger of serious harm to others if not immediately apprehended. *Id.* Under some circumstances, a police officer may therefore use deadly force as reasonable means to prevent a suspect's escape. *Id.*

"As to deadly force, a police officer may use such force to dispel a threat of serious physical harm to either the officer or others, or to prevent the escape of a suspect who threatens this harm." *Singletary v. Vargas*, 804 F.3d 1174, 1181 (11<sup>th</sup> Cir. 2015). "We have held that it is reasonable, and therefore constitutionally permissible, for an officer to use deadly force when he has 'probable cause to believe that his own life is in peril.'" (quoting *Robinson v. Arrugueta*, 415 F.3d 1252, 1256 (11<sup>th</sup> Cir. 2005)); see also *Morton v. Kirkwood*, 707 F.3d 1276, 1281 (11<sup>th</sup> Cir. 2013) ("In the deadly force context, we have observed that a police officer may constitutionally use deadly force when the officer . . . has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others . . .").

Further, a law enforcement officer need not retreat nor desist from making an arrest because a person resists or threatens to resist an arrest. Fla. Stat. s. 776.05. Pursuant to Florida Law, a law enforcement officer is justified in the use of any force which he or she believes is reasonably necessary to defend himself or herself from bodily harm while making the arrest. *Id.* Moreover, an officer is a "person" under Florida's Justifiable Use of Deadly Force statute and is therefore able to act pursuant to that law in the reasonable defense of his own life or another. Fla. Stat. s. 776.012(1); *State v. Peraza*, 226 So. 3d 937, 947 (Fla. 4<sup>th</sup> DCA 2017).

The evidence in this case indisputably shows that Phelps' behavior created an extremely unsettling and dangerous situation at a public school, during school hours. At the time that Phelps crashed his vehicle through the security gate, there were in excess of 1200 civilians inside the school. Phelps was defiant and appeared to be "high," "manic," and "out-of-it." Further, Phelps exhibited violent and forceful behaviors prior to entering the stage area. His behavior was so concerning that it prompted multiple school officials to call a "code red" lockdown of the school. These "code red" lockdowns are the same as used in times of a potential active school shooter. School employees are trained to recognize a potential deadly situation and to take the necessary steps per protocol to protect the children at the school. Phelps' drug induced behavior created just such a situation that was unpredictable and rapidly evolving. Failure of the school employees to follow protocol given the observed behaviors could have been disastrous. This has been the unfortunate result many times throughout the nation.

Once on stage, Phelps' behavior grew increasingly more bizarre and frightening, causing [REDACTED] to hold Phelps at gunpoint out of concern for her safety and the safety of [REDACTED]. It is clear from the evidence that more than one law enforcement officer believed that deadly force was necessary to stop an attack from Phelps. When [REDACTED] entered the theater, Phelps was extremely agitated and continuing to escalate. [REDACTED] clearly described that Phelps charged and attacked the officer, taking him to the ground in a violent struggle. Phelps' attacks on [REDACTED] would be chargeable felony offenses pursuant to Florida Statute Section 843.01, Resisting Officer with Violence, and Section 784.071, Battery on a Law Enforcement Officer. Although [REDACTED] was a seasoned officer, he was unable to handle Phelps' physicality and found himself on the losing end of the fight. [REDACTED] described Phelps' demonstration of extreme strength in her failed attempts to handcuff him earlier. It was clear that Phelps was aggressive, defiant and exhibited enhanced strength possibly brought on by drug use. The THC levels in Phelps' blood were far beyond any legal amount. Phelps had exhibited violent reactions, possibly related to drug use, just 24 hours before the incident at the DSOA. [REDACTED]

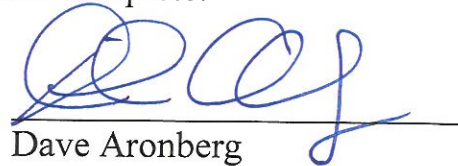
[REDACTED] This could have proven fatal to [REDACTED] other officers, school employees and students.

Given the totality of the circumstances leading up to the encounter, as well as the observations by [REDACTED], it is clear that Phelps attacked [REDACTED] and when [REDACTED] fired the fatal shot he was in a vulnerable position against an assailant who overpowered him and was trying to take his weapon. Further, Phelps was committing multiple forcible felonies. There can be no doubt that [REDACTED] was in fear of great bodily harm or death at that moment that he fired at Phelps. Further, it can be gleaned from the circumstances that [REDACTED] was concerned for the safety of the children at the school.

[REDACTED] reasonably reacted to what he perceived as an immediate threat of serious harm to himself or a person at the school. This is exactly the type of "tense, uncertain and rapidly evolving" crisis envisioned by the Supreme Court in Graham. Judged from the perspective of a reasonable officer on the scene, the officer's use of deadly force was objectively reasonable under the circumstances. Additionally, the officer was attempting to make a lawful arrest, and as such had no duty to retreat. *See* § 776.05, Fla. Stat. (2021).

### Conclusion

Accordingly, the investigation will be closed without further action by this Office. No charges will be filed, nor will the matter be presented to the Grand Jury. We appreciate the FDLE for its thorough and independent investigation and for the cooperation of the Department in this investigation. I especially would like to compliment all the officers who provided a statement as to their observations and actions. It has made this review more informed and complete.



Dave Aronberg