

TRAINING MEMORANDUM 08-033

DATE: February 25, 2008
TO: Chief Linda Stump
FROM: Lieutenant Alton D. McDilda
CC: Ltc. Norred, Major Dunn, Office of Professional Standards, file
SUBJECT: Annual Analysis of Use of Force for 2007

A total of fourteen (14) incidents were reviewed during the year of January 1, 2007 and December 31, 2007. There were a total of six (6) incidents in which officers drew their firearms, eight (8) incidents in which officers discharged their Tasers, one (1) incident in which an officer discharged his firearm and one (1) incident in which an officer used hard hand strikes. Officers used two different force techniques to control a subject in two separate incidents that were reviewed. In one incident a firearm was displayed and a Taser was discharged. In another incident a hard hand strikes were used and a Taser was discharged.

On further analysis of the information, it was found that of the fourteen (14) use of force incidents, four (4) involved University of Florida students, six (6) were initiated after calls for assistance and eight (8) were as a result of officers being proactive. Four (4) incidents involved drugs or alcohol. Four (4) incidents were disturbances or fights. Four (4) incidents occurred on traffic stops. Three (3) incidents involved the report of or actual weapons. One (1) incident involved an officer discharging a firearm to euthanize an alive but mortally injured animal. One (1) incident was during a possible burglary investigation.

Overall, there was a decrease in the uses of force from 2006 (18) to 2007 (14). The predominant force options are firearms display and Taser discharge. That remains consistent with the trends of 2006. In 2007 there was no use of an expandable baton or oleoresin capsicum spray and only one use of hard hand strikes. It appears that the Taser has been established as a very valuable tool for the University of Florida Police in the performance of their duties. The only concern is that the officers may be becoming too dependent on the Taser in stopping violent or potentially violent confrontations and may neglect to keep their other less lethal and defensive tactics skills up.

Of the fourteen incidents that were reviewed, it appears that the officers were well prepared and made proper decisions to dispense the appropriate level force for each of the incidents. The incidents were articulated and documented properly. One Taser incident was reviewed by the Florida Department of Law Enforcement as a result of its high profile nature and release in the media. The officers involved were found to be in compliance with the Florida State Statutes and later found to be within policy.

All 2007 Use of Force Reviews are attached.

Incident One:

Use of Force Review Involving Officer Henri Belleville, CR #07-0104 on 1/14/07

On Sunday, January 14, 2007, at approximately 0226 hours, Officer David Taylor observed a disturbance between a female and a male, later identified as Michael Buss. Mr. Buss was observed chasing the female south in the plaza next to Emerson Hall and then grabbing her in an effort to detain her. Officer Taylor contacted both parties in order to investigate the disturbance. Officer Henri Belleville responded to the location as a back-up officer.

Officer Taylor tried to ask the female questions to determine what had happened. The female was upset and crying while she spoke with Officer Taylor. Mr. Buss became agitated as Officer Taylor continued interviewing the female and began interrupting and was being disruptive. Officer Taylor tried to calm down Mr. Buss, but Mr. Buss refused Officer Taylor's direction and his agitation was escalating. Mr. Buss was yelling at the officers and the female, clinched his fists, and assumed an aggressive stance toward the officers. Officer Taylor withdrew his OC spray and advised Mr. Buss that if he didn't calm down he would be sprayed. Officer Belleville drew his Taser, turned it on, and advised Mr. Buss that he would be shot with the Taser if he did not calm down. Mr. Buss removed his shirt and challenged the officers to engage him while raising his fists and assuming a fighting stance. Officer Belleville deployed his Taser. Only one probe stuck to Mr. Buss's lower abdomen. As a result, the Taser was not effective. Mr. Buss removed the single probe from his abdomen and turned and tried to run from the officers. Mr. Buss was apprehended by the officers. Mr. Buss struck Officer Belleville in the groin with a closed fist during the struggle to secure him. Officer Belleville then initiated a drive stun to Mr. Buss's back with his Taser in an effort to get Mr. Buss to comply with the officers' commands. Officer Belleville activated his Taser three times in Mr. Buss's back and upper right shoulder area within 13 seconds before the officers could gain control of Mr. Buss and secure him in handcuffs.

Officer Belleville and Officer Taylor both claimed that the Taser cartridge malfunctioned in their written reports. During the investigation it was determined that it was more likely that one of the probes simply missed or was deflected by the suspect's arm movements when the Taser was fired. Officer Taylor recovered the cartridge after the suspect was secured and stated that both wires had been extended and he saw that the probe that stuck in the suspect's abdomen had the lead attached initially, but must have broken when the suspect pulled the probe out. Mr. Buss later stated to Officer Taylor that he felt one of the probes strike his hand as it flew by. One of the probes was missing its barb, but it wasn't determined if it deployed without the barb or if the barb broke off while the officers and suspect were struggling in the vicinity.

Taking into account the totality of the situation and the facts available, we find that Officer Henri Belleville's actions were within the guidelines set forth by the department and did not violate any State of Florida statute. Therefore, we recommend that no further action be taken regarding this incident.

Incident Two:

Use of Force involving Ofc. Michael Metz and Ofc. James Raven, CR# UFPD07OFF000367 on February 11, 2007

On February 11, 2007, at 1023 hours, Officer Michael Metz and Officer James Raven responded to the Institute of Black Culture (IBC) to investigate a general alarm coming from the building. On arrival, Ofc. Raven found an unsecured door on the north east corner of the building. The

door lead into a stairwell to the second floor of the IBC. Ofc. Raven notified dispatch that they would be continuing inside to investigate the unsecured condition. Once inside, the officers noticed that there was an attic door open with the ladder half way extended. The officers cleared the second floor and the first floor. Ofc. Metz watched the attic to ensure no one came out. Once the first two floors were cleared, the officers cleared the attic. The officers were exiting the attic after clearing it and they heard a commotion down on the first floor. Both officers proceeded downstairs to investigate the noise. While on the stairs, they observed movement in the dark on the first floor. Both officers drew their issued firearms and approached a subject on the first floor. Ofc. Raven was in front and made initial contact with the subject in the building with his gun drawn at a high point ready position. Ofc. Metz was behind Ofc. Raven and kept his gun at a low ready position. The subject complied with orders directed at him by Ofc. Raven. The subject was identified as an employee at the IBC and it was determined that he keyed entry into the building after the officers had cleared the first floor and were in the process of clearing the attic. The officers explained their presence in the building and their actions toward the subject to his satisfaction. No one else was located in the building and there was no sign of any illegal activity at the IBC.

The officers responded appropriately to the alarm at the building at a time that the building would normally be unoccupied. Upon finding an unsecured door, possible attic access, clearing the building, then finding a person in the unlit building in an area they believed to be unoccupied, they responded with the appropriate level of force to ensure their protection.

Taking into account the totality of the situation and the facts available, we find that Officer Michael Metz's and Officer James Raven's actions were within the guidelines set forth by the department and did not violate any State of Florida statute. Therefore, we recommend that no further action be taken regarding this incident.

Incident Three:

Use of Force Involving Officer Chris Pearce, CR# 07-0609 on 3/8/07

On March 8, 2007 at 2319 hours, Ofc. Pearce responded to the Corry Village area in reference to an injured animal. Once on scene, Ofc. Pearce located a gravely injured opossum that was bleeding from its ears, nose, and mouth and was displaying symptoms of a serious head injury. Calls were made to UF Vet/Med, UF Pest Control, Alachua County Animal Control, and Florida Wildlife Care in an effort to solicit help for the injured animal. None of the listed services were willing or able to provide the necessary medical care for the animal under the circumstances and the consensus was that the animal should be put down in order to end its suffering.

Ofc. Pearce notified Sgt. Bonner of the situation and got approval to destroy the animal with a gunshot from his duty weapon. The animal was noosed around the neck and moved out of the road and into a wooded area. Ofc. Pearce fired one round at a nearly perpendicular angle to the ground into the opossum's head, killing the animal. The fired round passed through the animal and lodged into the soil below. Case report 07-0609 was completed in reference to this incident.

Taking into account the totality of the situation and the facts available, we find that Officer Chris Pearce's actions were within the guidelines set forth by the department and did not violate any State of Florida statute. Therefore, we recommend that no further action be taken regarding this incident.

Incident Four:

Use of Force Review Involving Officer James Pearce, Case # UFPD070FF001256

On Tuesday, May 22, 2007 at approximately 1000 hours, Officer James Pearce parked his patrol car in the southeast corner of Newell Drive and Inner Road. He was responding to an armed subject call at the architecture building. Upon his arrival, Sergeant Konopka authorized him to deploy with his rifle. This option was available whereas Officer Pearce is a member of CIRT. Officer Pearce removed his rifle from his CIRT bag and slung it over his shoulder. He had walked about twenty yards towards the architecture building when Lieutenant Richard advised that he had identified the armed subject as UPD Officer John Savona. At this point, Officer Pearce returned to his car and put his rifle away.

Given the totality of the circumstances, we find that the actions of Officer Pearce were reasonable and not in violation of any state statute or department policy. He was responding to an armed subject call and was authorized to deploy with his rifle by Sergeant Konopka. Therefore, we recommend that no further action be taken regarding this incident.

Incident Five:

Use of Force Review Involving Lt. Alton McDilda, Case # UFPD070FF001351

On Monday, June 4, 2007 at approximately 1700 hours, Officer Hubert Pierre and Officer James Pearce made contact with two theft suspects at the Student Welcome Center. Officer Ellis also arrived on scene within minutes of Officer Pierre and Officer Pearce's arrival. The two suspects were identified as Mr. Jabaric A. Bell and Mr. Jerry J. Jackson. During further investigation, Officer Pearce ran a Florida ID card check on both suspects. After Officer Pierre had patted down both suspects, UFPD dispatch advised him that Mr. Bell had a warrant out of the Alachua County Sheriff's Office for a probation violation in reference to armed robbery without a weapon.

While Officer Pierre was interviewing the suspects, Lt. Stacy Ettl advised him via radio that he was viewing surveillance footage from the Student Welcome Center that was recorded on 05/29/07. Lt. Ettl further advised Officer Pierre that one of the suspects in the surveillance footage matched the description of one of the suspects that he was currently talking to. Lt. Ettl had observed both suspects earlier upon his arrival at the Student Welcome Center. At this time, Officer Pierre requested that both suspects place their hands behind their back so that they could be handcuffed. Mr. Jackson complied and was put into handcuffs, but Mr. Bell ran away from Officer Pierre. Lt. Ettl ordered that a perimeter be set up around the Reitz Union area in an attempt to apprehend Mr. Bell.

Lt. Alton McDilda had been listening to his radio and was aware of what was taking place. He drove to the area of the Reitz Union to assist in establishing a perimeter. As he was driving, the suspect's physical description was given out over the radio. While on the perimeter (in the UFTR service drive), Lt. McDilda heard Officer Pearce on the radio advising that the suspect (Mr. Bell) was on the north lawn headed back into the Reitz Union. Lieutenant McDilda observed a subject matching Mr. Bell's description heading towards the Reitz Union. Lt. McDilda chased after the suspect and when he got within 30 feet of him, he identified himself as a police officer and ordered Mr. Bell to stop.

Mr. Bell continued running into the Reitz Union. Lt. McDilda then told him to stop or he would be shot with a Taser. Mr. Bell stopped and turned towards Lieutenant McDilda. Lt. McDilda did

not see any other officers in the area. He drew his duty firearm, placed it at high point ready, and ordered Mr. Bell to the ground. Officer Pearce arrived on scene and covered Mr. Bell with his Taser. At this time Lt. McDilda re-holstered his firearm and handcuffed Mr. Bell.

Given the totality of the circumstances, we find that the actions of Lt. McDilda were reasonable and not in violation of any statute or department policy. He responded to the area of the Reitz Union to assist in the apprehension of Mr. Bell. Prior to his arrival at the Reitz Union, Lt. McDilda had been advised that the suspect that ran from Officer Pierre was the one that had a warrant out of the Alachua County Sheriff's Office for Probation Violation, in reference to armed robbery without a weapon. When Lt. McDilda confronted Mr. Bell at the Reitz Union, he was the only officer in the area and he had no way of knowing if Mr. Bell had armed himself. Based on these factors, he pulled his firearm to take Mr. Bell into custody. Therefore, we recommend that no further action be taken regarding this incident.

Incident Six:

Use of Force involving Lt. William Ledger and Sgt. Denise Ellis on June 21, 2007 reference CR# 07-1476

On June 21, 2007 at 0159 hours, Lt. William Ledger, Sgt. Denise Ellis, and Ofc. James Raven were on the University of Florida campus in the vicinity of the 1700 block of West University Avenue. They all observed an altercation in front of the Jimmy John's Sandwich Shop on the north side of West University Avenue. Upon closer inspection they saw that several people appeared to be fighting. All three officers crossed the street and began separating combatants. Most of the people were compliant. Two males continued to fight on the sidewalk. One male was on top of the other and refused verbal commands to stop fighting and was not responsive to physical efforts to pull him off of the other male that he was on top of and striking. Both Lt. Ledger and Sgt. Ellis pulled their issued Tasers and removed the probe cartridges. Lt. Ledger conducted a contact tase to the suspect's left tricep. Sgt. Ellis simultaneously delivered a contact tase to the same suspect's right shoulder blade area. The suspect stopped his attack and complied with officers after the Taser applications. He was then secured in handcuffs without further incident. EMS was contacted, responded, and released the suspect without treatment.

After our review of this incident, we had developed some concerns and/or questions regarding the actions of Lt. Ledger and Sgt. Ellis. We wondered why they seemed to resort to utilizing their tasers so quickly and we wanted to know if Lt. Ledger and/or Sgt. Ellis had warned the two combatants about utilization of their taser if they (the two combatants) did not cease their hostility. Capt. McCray spoke with Lt. Ledger on 06/22/07 regarding these concerns. Lt. Ledger indicated that with Mr. Gilliam continuing to strike Mr. Worth in the head, he and Sgt. Ellis felt that the potential harm to Mr. Worth outweighed the need to provide a use of taser warning to Mr. Gilliam.

Lt. Ledger and Sgt. Ellis' Tasers were down loaded and the recovered data was consistent with their documented accounts of the incident. The printouts of both Tasers is attached to this memorandum.

Taking into account the totality of the situation and the facts available, we find that Lt. Ledger's and Sgt. Ellis' actions were within the guidelines set forth by the department and did not violate any State of Florida statute. Therefore, we recommend that no further action be taken regarding this incident.

Incident Seven:

Use of Force involving Ofc. Bonnie Boland on August 11, 2007 reference CR# 07-1842

On August 11, 2007 at 0004 hours, Ofc. Bonnie Boland responded to Hume Hall East, room 112, in reference to a sick person. On arrival she located a white male, identified as Steven Schur, lying unconscious on the floor. Schur had a strong odor of an alcoholic beverage emitting from him. Ofc. Boland and EMS personnel were unable to wake-up Schur. EMS loaded Schur onto a stretcher for transport to Shands Hospital. As EMS was wheeling Schur out of Hume Hall on the stretcher, he woke up and punched one of the firemen. Schur began kicking, punching, and shouting obscenities. EMS personnel tried to restrain Schur and asked Ofc. Boland for help restraining Schur's hands. Ofc. Boland applied handcuffs to Schur's hands in the front. EMS continued taking Schur toward the ambulance with Ofc. Boland holding his hands down. Schur pulled his arms toward his mouth and bit Ofc. Boland's inside, left arm. Schur broke his legs free and began to sit up on the stretcher. He began trying to kick and punch everyone around him. Ofc. Boland drew her Taser and delivered a contact tase to Schur's lower back. Schur calmed down and was again restrained to the gurney. During transport in the ambulance to Shands Hospital, Schur broke free of his leg restraints and became combative and had to be restrained again.

Ofc. Boland's Taser was downloaded. The recovered data was corrupted due to a malfunctioning electronic component within the M26 Taser and as a result the data was inconclusive as to the time the Taser was fired and the frequency. The malfunctioning M26 Taser was replaced with a properly functioning Taser. The malfunctioning Taser will be returned to the manufacturer for repair. The printout of the Taser is attached to this memorandum.

Taking into account the totality of the situation and the facts available, we find that Ofc. Boland's actions were within the guidelines set forth by the department and did not violate any State of Florida statute. Therefore, we recommend that no further action be taken regarding this incident.

Incident Eight:

Use of Force involving Ofc. Amanda Spurlin on August 18, 2007, reference CR# 07-1893

On August 18, 2007 at 0802 hours, Ofc. Amanda Spurlin responded to the tenth floor of Shands Teaching Hospital in reference to a disturbance. On arrival, she met with Shands Security Officer Peppers. Peppers was in contact with a 17 year old B/M who identified himself as Romanda Kasey Thompson. Thompson had been observed using the computer in the Ronald McDonald Pediatric Intensive Care Unit waiting area by Peppers. This area is reserved for the family members of patients who are staying in Shands for treatment. Thompson could not identify who he was in the hospital to visit or who let him into the area to use the computer. While Ofc. Spurlin was talking with Thompson, she had dispatch conduct a wants and warrants check on Thompson. Ofc. Spurlin was advised that Thompson had a criminal history including resisting officers without, drug possession, assault, trespassing, alcohol violations, and violation of probation. Shands Security Officer Peppers asked that Thompson be made to leave the hospital. Ofc. Sam Sexton was also on scene as back-up to Ofc. Spurlin. Ofc. Spurlin told Thompson that he needed to leave the hospital. Thompson refused to leave. Ofc. Spurlin told Thompson that if he failed to leave he would be arrested for trespassing after warning. Thompson replied that he was a "third degree crippler", the officers needed to do what they needed to do, and they could not make him leave. Ofc. Spurlin told Thompson that he was under arrest and told him multiple

times to turn around and put his hands behind his back. Thompson refused. Ofc. Spurlin drew her X26 Taser and told Thompson that if he refused to turn around and put his hands behind his back he would be Tasered. Ofc. Spurlin gave more orders to comply. Thompson then backed up, clenched his fists, and bowed out his chest in what was perceived by Ofc. Spurlin and Ofc. Sexton as preparation to fight them. Ofc. Spurlin then discharged her X26 Taser into Thompson's torso for one, 5 second deployment. The Taser was effective in taking Thompson to the ground and gaining compliance to Ofc. Spurlin's orders. No injuries were noted. A Shands Nurse responded to the area and removed the Taser barbs from Thompson.

Ofc. Sexton documented a similar account of the incident in his supplemental report. Shands Security Officers Peppers and Tatro gave similar accounts of the incident with the exception of whether Thompson said he was a "third degree cripp", a "third degree trip", or a "third degree crippler." Shands Security also provided us a video copy (no audio) of the incident showing what took place just before Thompson was shot with the Taser until he was secured in handcuffs. In the video, Ofc. Spurlin and Ofc. Sexton can be seen talking to Thompson in a corridor near some elevators. Thompson stands facing Ofc. Spurlin and never turns away. When Ofc. Spurlin draws her Taser and points it down at her right side and activates the safety switch. Ofc. Spurlin continues to talk to Thompson for 10 seconds with the Taser at her side and then raises it and aims it at Thompson's chest for 15 seconds as she continues talking to Thompson. Thompson hitches up his pants and backs up and then it appears he makes a fist in his right hand. Ofc. Spurlin then deploys her Taser and Thompson falls to the ground and is secured in handcuffs.

Ofc. Spurlin's Taser was downloaded. The recovered data indicates that her Taser was test fired on August 18, 2007 at 0706 hours and fired again the same day at 0822 hours for 5 seconds. The single discharge at 0822 hours would be consistent with Ofc. Spurlin's documented account of the use of her Taser to arrest Thompson. The Shands video disc and the discharged Taser cartridge were collected and submitted as evidence.

University of Florida Police Department Directive 4000 states, "The Taser may be used to control a dangerous or violent subject when deadly physical force does not appear to be justified and/or necessary..." Directive 4000 also puts the Taser at Level 4 – Intermediate Weapons on the Use of Force Matrix. Subject Resistance at Level 4 is Active Physical. Active Physical Resistance is defined as:

The subject makes physically evasive movements to defeat an officer's attempt at control. This may be in the form of bracing or tensing, attempts to push/pull away or not allowing the officer to get close to him/her. However, the subject does not attempt to strike the officer or inflict bodily harm upon the officer.

The factors and actions of the suspect that come into consideration in this incident are as follows: suspect size, verbal threats (third degree crippler), repeated lack of compliance after being told he was under arrest, positioning his back closer to the door, adjusting his pants, making a fist, and bowing out his chest. Thompson's actions were indicative of a form of physical resistance. Once he added verbal threats and began making preparations for a physical confrontation, it brought his level of resistance up to Level 4 – Active Physical Resistance on the Use of Force Continuum. With Thompson's added verbal threats and non-verbal queues, it was reasonable that the officers considered Thompson to be dangerous toward them.

Taking into account the totality of the situation and the facts available, we find that Ofc. Spurlin's actions were within the guidelines set forth by the department and did not violate any State of Florida statute. Therefore, we recommend that no further action be taken regarding this incident.

Incident Nine:

Use of Force Review Involving Officer Brian Boyd and Officer James Pearce on September 15, 2007, reference CR# 07-2202

On September 15, 2007 at 0015 hours, Officer Brian Boyd was conducting a security check of P.K. Yonge. He made contact with four black males who were sitting on a concrete wall in the front circle area. All four of the subjects advised Officer Boyd that they were there for the football game (which ended around 2300 hours). During identification checks of the subjects, dispatch advised that Jarvis McKay and Elysian Roberts had current trespass warnings based on being suspects involving a theft from the Southwest Recreational Center. Officer Boyd placed both of them in handcuffs and arrested them for trespass after warning.

Officer Boyd asked McKay to stand up so that he could search him. Prior to this time, Officer James Pearce arrived on scene as back-up for Officer Boyd. As Boyd started searching McKay, Officer Pearce watched the other three subjects. As Boyd was searching McKay, he asked McKay if he had anything on him that he needed to know about. McKay told him "yes" and advised that he had a gun in his front right pocket. Officer Boyd immediately pulled his firearm and yelled out "gun", at which time Officer Pearce pulled his firearm also. Both officers pulled their firearms because of the admitted presence of a weapon by McKay and because of the possibility of 1 or more of the other three subjects possibly being armed also. Officer Pearce ordered Roberts and the other two subjects (Steven Long and Alfred Cason), who had not been handcuffed at this point, to lie prone on the ground.

All three subjects complied and Officer Boyd and Officer Pearce remained in a tactical cover position until Officer Keith Smith arrived on scene and placed Long and Cason in handcuffs for officer safety. He also conducted a pat down search of them to make sure they were not carrying weapons. At this point, Officer Boyd and Officer Pearce re-holstered their firearms. Officer Boyd then reached into McKay's front right pocket and pulled out a small silver automatic handgun. Officer Boyd turned the handgun over to Officer Pearce for him to make it safe and secure it. Officer Boyd then continued his search of McKay and found a box cutting knife in his possession as well. Officer Pearce advised Officer Boyd that the handgun taken off of McKay contained 1 round in the chamber and another 6 rounds in the magazine.

At this point, based on the information available, McKay's trespass charge was upgraded to trespassing on school property with weapon or firearm and he was given an additional charge of carrying a concealed weapon (firearm). After completing his search of McKay and placing him in his patrol car, Officer Boyd searched Roberts for weapons, with negative results. He then placed him in the back of another patrol vehicle. Long and Cason were un-cuffed, given trespass warnings and released from the scene. McKay and Roberts were transported to ACDOJ in regards to the aforementioned charges. University of Florida Police Department Directive 4000 states, "Officers shall not draw or display a firearm unless there is a threat or a reasonable suspicion of a threat of death or great bodily harm to an officer or another person." In addition Directive 4000 states, "An officer's decision to draw or exhibit a firearm should be based on the tactical situation and the officer's reasonable suspicion there is a substantial risk that the situation may escalate to the point where lethal force may be justified."

The factors and actions of the suspects that come into consideration in this incident are as follows: Two of the subjects were handcuffed and placed under arrest for trespass after warning. Additionally, one of these two subjects overtly admitted that he had a firearm in his pocket (on

school grounds) which gave him the apparent ability to cause death or great bodily harm to any of the officers on scene. With one of the subjects admitting that he was armed, Officer Boyd and Officer Pearce had reasonable suspicion of another threat of death or great bodily harm to officers on scene from one or more of the other subjects who could have also been armed or who could have gained access to the firearm that was possessed by the other of them. When all of these factors are looked at as a whole, it becomes apparent that the officers' decision to draw their firearm was based on the tactical situation and their reasonable suspicion that there was a substantial risk that the situation may escalate to the point where lethal force may be justified.

Taking into account the totality of the situation and the facts available, we find that the actions of Officer Boyd and Officer Pearce were reasonable and within the guidelines set forth by the department and did not violate any state of Florida statute. Therefore, we recommend that no further action be taken regarding this incident.

Incident Ten:

Use of Force involving Officer Nicole Mallo and Sergeant Eddie King on September 17, 2007, reference CR# 07-2274

This review is in response to the use of a Taser by Officer Nicole Mallo during the arrest of suspect on September 17, 2007 at the University Auditorium.

On October 2, 2007 at 1100 hours, I (Lieutenant Alton McDilda) met with Chief Linda Stump. Chief Stump informed me that the Florida Division of Law Enforcement had informed her that they had concluded the "fact finding" portion of their investigation of the arrest and use of force involving . Chief Stump then instructed me to coordinate with Captain Charles McCray and begin an internal use of force review of the Taser incident involving . Captain McCray and I met on October 3, 2007 and decided it would be best for us to review the completed police investigation prior to beginning our investigation. A copy of the UFPD investigation was forwarded to us on October 18, 2007.

On September 17, 2007, Senator John Kerry came to the University of Florida's University Auditorium to hold an ACCENT sponsored town meeting style discussion that was a ticketed event, open to the public. Several officers had been assigned to work security for the event, including Sergeant Eddie King, the event's Officer in Charge, and Officer Nicole Mallo. Several ACCENT organizational officers were also present at the event.

A review of case report 07-2274, attached witness statements, participant statements, and all videos available identify behavior as being characterized as disruptive, loud, agitated, and aggressive.

As a result of escalation of resistance to the officers' efforts to remove him from the venue, it was necessary and reasonable for Sgt. King to escalate his response to active resistance by attempting to use his Taser to drive stun . Sgt. King's Taser would not discharge so it became necessary for Sgt. King to instruct Ofc. Mallo to use her Taser to drive stun . Ofc. Mallo did as instructed and initiated a single five second drive stun Taser discharge on back, left shoulder.

776.051 Use of force in resisting or making an arrest; prohibition.--

- (1) A person is not justified in the use of force to resist an arrest by a law enforcement officer who is known, or reasonably appears, to be a law enforcement officer.
- (2) A law enforcement officer, or any person whom the officer has summoned or directed to assist him or her, is not justified in the use of force if the arrest is unlawful and known by him or her to be unlawful.

Based on the review of case report 07-2274, attached witness statements, participant statements, and all videos available, Captain McCray and I conclude that probable cause existed to arrest for the following charges FSS 877.13 (Educational Institutions or School Board's Penalty for Disruption) and FSS 843.01 (Resisting Officer with Violence to His or Her Person).

Ofc. Mallo's Taser was downloaded. The recovered data indicates that her Taser was test fired on September 16, 2007 at 1834 hours. Ofc. Mallo's Taser was not fired again until September 17, 2007 at 1339 hours. The single five second discharge at 1339 hours would be consistent with Ofc. Mallo's documented account of the use of her Taser to arrest .

Sgt. King's Taser was downloaded. The recovered data indicates that his Taser was test fired on September 14, 2007 at 0919 hours. Sgt. King's Taser was not fired again until September 17, 2007 at 1408 hours, nearly 30 minutes after the arrest of . The discharge at 1408 hours would be consistent with Sgt. King's documented account that he was not able to fire his Taser during the arrest of and only test fired it after was arrested. Sgt. King test fired his Taser again at 1450 hours and at 1502 hours. He brought his Taser to me to download and I test fired his Taser at 1532 hour the same date. No malfunction could be detected. Both Sgt. King and Ofc. Mallo's Tasers were collected and submitted to Lt. Darren Baxley to forward to FDLE for testing.

Florida State Statute 943.1717 addresses the use of Dart Firing Stun Guns by Law Enforcement Officers.

943.1717 Use of Dart-Firing Stun Guns:

- (1) A decision by a law enforcement officer, correctional officer, or correctional probation officer to use a dart-firing stun gun must involve an arrest or a custodial situation during which the person who is the subject of the arrest or custody escalates resistance to the officer from passive physical resistance to active physical resistance and the person:
 - (a) Has the apparent ability to physically threaten the officer or others; or
 - (b) Is preparing or attempting to flee or escape.

University of Florida Police Department Directive 4000 states, "The Taser may be used to control a dangerous or violent subject when deadly physical force does not appear to be justified and/or necessary..." Directive 4000 also places the Taser at Level 4 – Intermediate Weapons on the Use of Force Matrix. Subject Resistance at Level 4 is Active Physical. Active Physical Resistance is defined as:

The subject makes physically evasive movements to defeat an officer's attempt at control. This may be in the form of bracing or tensing, attempts to push/pull away or not allowing the officer to get close to him/her. However, the subject does not attempt to strike the officer or inflict bodily harm upon the officer.

The factors and actions of the suspect that come into consideration in this incident are as follows: suspect size, athletic ability, demonstrated active resistance in the form of violent pushing and pulling away from uniformed police officers, crashing into two officers and dragging them to the ground, thrashing and kicking on the ground, verbal resistance to all instructions and commands, pushing away from the ground, using fixed objects for leverage to push off of the ground, and continued pushing, pulling, and twisting of arms to escape officers' grasp and efforts to control. actions were indicative of active physical resistance with violence and were becoming more and more dangerous for the officers and

Taking into account the totality of the situation and having reviewed all available reports, statements, and video accounts, we find that Ofc. Mallo's and Sgt. King's actions were within the guidelines set forth by the department's policies, procedures and directives and did not violate any State of Florida statute. Therefore, we recommend that no further action be taken regarding this incident.

Incident Eleven:

Use of Force involving Sergeant Bill Ledger and Officer Tim Peck on October 21, 2007, reference CR# 07-2619

This review is in response to the use of a Taser by Sergeant Bill Ledger and the display of a firearm by Officer Tim Peck during the arrest of suspect Sean M. Stanney on October 21, 2007 during a traffic stop.

During this review, we looked at case report 07-2619, witness statements, participant statements, and video recordings from UF2, UF9, and UF11.

The factors and actions of the suspect that come into consideration in this incident are as follows: In regards to Officer Peck pulling his duty weapon, when Sergeant Ledger said Signal 0 (gun present) and nodded towards the passenger compartment of the suspect's vehicle, Officer Peck pulled his duty weapon and cleared the SUV. When he found no gun or other suspects in the vehicle, Officer Peck thought that Stanney had the gun on him and covered Stanney while Sergeant Ledger had him up against the side of the vehicle. Officer Peck re-holstered his duty weapon after Sergeant Ledger told him the gun was inside the suspect's vehicle. Given the circumstances, Officer Peck initially had a reasonable suspicion of the threat of death or great bodily harm to officers on scene from armed suspects he perceived to be in the SUV and then from Stanney who he perceived to be armed. When all of these factors are looked at as a whole, it becomes apparent that Officer Peck's decision to draw his firearm was based on the tactical situation and his reasonable suspicion that there was a substantial risk that the situation may escalate to the point where lethal force may be justified.

In regards to Sergeant Ledger tasing Stanney, during the encounter Stanney continuously actively resisted being handcuffed by Sergeant Ledger, Officer Peck, and Officer Oresky. He attempted to pull away from the officers involved. Stanney kept attempting to move back towards the driver's door where the gun was. Despite verbal commands from officers to "stop resisting" and "put your hands behind your back", Stanney resisted officer attempts to bring his

arms and hands from underneath his body. Twice, Officer Oresky attempted to use a temporal mandibular jaw pressure point technique on Stanney by using his right thumb, but these attempts failed to gain compliance from Stanney. Stanney's overall actions constitute a level of resistance of up through Level 4 – Active Physical Resistance on the Use of Force Continuum.

University of Florida Police Department Directive 4000 states, "The Taser may be used to control a dangerous or violent subject when deadly physical force does not appear to be justified and/or necessary..." Directive 4000 also places the Taser at Level 4 – Intermediate Weapons on the Use of Force Matrix. Subject Resistance at Level 4 is Active Physical. Active Physical Resistance is defined as:

The subject makes physically evasive movements to defeat an officer's attempt at control. This may be in the form of bracing or tensing, attempts to push/pull away or not allowing the officer to get close to him/her. However, the subject does not attempt to strike the officer or inflict bodily harm upon the officer.

University of Florida Police Department Directive 4000 also states, "Officers shall not draw or display a firearm unless there is a threat or a reasonable suspicion of a threat of death or great bodily harm to an officer or another person." In addition Directive 4000 states, "An officer's decision to draw or exhibit a firearm should be based on the tactical situation and the officer's reasonable suspicion there is a substantial risk that the situation may escalate to the point where lethal force may be justified."

Sgt. Ledger's Taser was downloaded. The recovered data indicated that the Taser was tested on October 15, 2007. On October 21, 2007, Sgt. Ledger's Taser discharged was three times. It was discharged at 08:23:11, at 08:23:17, and at 08:23:27. Each discharge was for five seconds. The downloaded information was consistent with Sergeant Ledger's, Officer Oresky's, and Officer Peck's documented reports.

Taking into account the totality of the situation and the facts available, review of all officer reports, and in-car video we find that Sergeant Ledger and Officer Peck's actions were within the guidelines set forth by the department's policies, procedures, and directives and did not violate any state of Florida Statute. Therefore, we recommend that no further action be taken regarding this incident.

Incident Twelve:

Use of Force involving Officers Brian Boyd, Keith Smith, Jeff Lamb and Darren Sanders on November 2, 2007, reference CR# 07-2703

This review is in response to the display of firearms by Officer Brian Boyd, Officer Keith Smith, Officer Jeff Lamb, and Officer Darren Sanders during the arrest of suspect Ms. Brenda Chappel and the detention of Mr. Termaine Brown on November 2, 2007 during a traffic stop on a suspected stolen vehicle.

During this review, we looked at case report 07-2703 and video recordings from UF2, UF10, and UF12.

The factors and actions of the suspect that come into consideration in this incident are as follows:

In regards to Officer Boyd displaying his duty weapon, he received a stolen hit on his computer for the tag number of the vehicle that he ran. The vehicle then stopped unexpectedly at a gas station as the information was coming into Officer Boyd. Officer Boyd had no back-up and had concluded that the vehicle was possibly stolen. Once the vehicle stopped, Officer Boyd activated his emergency lights and called in the location. Both occupants of the vehicle exited the car and initially were noncompliant with Officer Boyd's orders to put their hands up. Officer Boyd responded to the situation by conducting a high risk stop which would be consistent with his tactical training on stolen vehicle takedowns.

In regards to Officer Smith, Officer Lamb, and Officer Sanders displaying their duty weapons, all three officers were responding to what they believed was a stolen vehicle stopped by another officer. Their response of drawing and displaying their firearms was consistent with their tactical training for a high risk takedown on a stolen vehicle.

University of Florida Police Department Directive 4000 states, "An officer's decision to draw or exhibit a firearm should be based on the tactical situation and the officer's reasonable suspicion there is a substantial risk that the situation may escalate to the point where lethal force may be justified."

Taking into account the totality of the situation and the facts available, review of all officer reports, and in-car video we find that Officer Boyd's, Officer Smith's, Officer Lamb's, and Officer Sanders' actions were within the guidelines set forth by the department's policies, procedures, and directives and did not violate any state of Florida Statute. Therefore, we recommend that no further action be taken regarding this incident.

Incident Thirteen:

Use of Force involving Officers Brian Boyd and Keith Smith on November 23, 2007, reference CR# 07-2919

This review is in response to the discharging of Taser probes by Officer Keith Smith and the use of hard empty hand strikes by Officer Brian Boyd on suspect, Mr. Daniel Omondi Ouko, on November 23, 2007 during a traffic stop and drug possession arrest.

During this review, we looked at case report 07-2919 and the video recording from UF5.

The factors and actions of the suspect that come into consideration in this incident are as follows:

In regards to Officer Smith discharging Taser probes into the suspect, Ouko was described as 6'2" and 200lbs., he was larger than both officers on scene, Ouko lunged at the contraband that Officer Boyd found in his possession, Ouko displayed aggressive physical resistance by grabbing both officers upper torso and pushing them toward the roadway, once Officer Smith disengaged from the suspect, Ouko wrapped both arms around Officer Boyd and continued to wrestle with him. Officer Smith then discharged Taser probes into Ouko's back and brought him under control. Officer Smith's Taser was discharged 3 times in the effort to get Ouko under control and in custody.

In regards to Officer Boyd striking the suspect with his fist two times in the midsection, the suspect was displaying aggressive physical resistance toward Officer Boyd inclusive of the factors listed above.

University of Florida Police Department Directive 4000 defines aggressive physical resistance as, “overt, aggressive, hostile, attacking movements which may cause injury to the officer but are not likely to cause death or great bodily harm to the officer or others.” Aggressive physical resistance is placed at level 5 on the Response to Resistance continuum. Level 5 officer response states, “Techniques that are intended to temporarily incapacitate the subject, delivered with or without intermediate weapons, such as a strike to a major nerve area.” Also addressed in Directive 4000 is use of the Taser by an officer. The directive states, “The Taser may be used to control a dangerous or violent subject when deadly physical force does not appear to be justified and/or necessary and to prevent a subject from harming himself or herself, or to prevent the immediate destruction of evidence or property when other means are impractical or unsafe.”

Officer Smith’s M26 Taser was downloaded. The Taser’s time was ahead of the actual time by 50 minutes due to the recent time change. The Taser record was consistent with Officer Smith’s case report which noted that Officer Smith discharged his Taser 3 times during the struggle.

Taking into account the totality of the situation and the facts available, review of all officer reports, and in-car video we find that Officer Smith’s and Officer Boyd’s actions were within the guidelines set forth by the department’s policies, procedures, and directives and did not violate any state of Florida Statute. Therefore, we recommend that no further action be taken regarding this incident.

Incident Fourteen:

Use of Force involving Officer Michael Metz on December 11, 2007, reference CR# 07-3119

This review is in response to the discharging of Taser probes and the use of a firearm to control two subjects by Officer Michael Metz on December 11, 2007 during a traffic stop.

During this review, we looked at case report 07-3119, spoke with Officer Metz, examined the printout of Officer Metz’s Taser activity, and reviewed the video recording from UF7.

The factors and actions of the suspect that come into consideration in this incident are as follows:

In regards to Officer Metz discharging Taser probes at the suspect, Brian Keith Johnson, Johnson was 27 years old, 5’10” tall, 215 lbs., and had a large, athletic build. Johnson fled on foot from Officer Metz before Johnson identified himself. Officer Metz caught up to Johnson as Johnson tried to scale a chain link fence. Officer Metz tried to physically restrain Johnson by grabbing his legs which were even with Officer Metz’s head. Johnson shook his legs and kicked his feet enough to cause Officer Metz to lose his grip on Johnson’s legs. Officer Metz said that he decided not to put his head and face in close proximity to Johnson’s legs and feet because of the kicking. Officer Metz then opted to use his M26 Taser to apprehend Johnson, but was unsuccessful.

In regards to Officer Metz drawing and displaying his firearm to the vehicle passenger, Betty Jean Jackson, the driver had fled the traffic stop on foot for an unknown reason and the passenger was bent over, out of sight from Officer Metz when he returned to the vehicle. Officer Metz was isolated with the passenger due to the other responding officers setting up a perimeter for the driver who fled.

University of Florida Police Department Directive 4000 states, “The Taser may be used to control a dangerous or violent subject when deadly physical force does not appear to be justified and/or necessary and to prevent a subject from harming himself or herself, or to prevent the immediate destruction of evidence or property when other means are impractical or unsafe.” It also addresses display of a firearm by officers by stating, “An officer's decision to draw or exhibit a firearm should be based on the tactical situation and the officer's reasonable suspicion there is a substantial risk that the situation may escalate to the point where lethal force may be justified.”

Officer Metz’s M26 Taser was downloaded. The Taser record was consistent with Officer Metz’s case report which noted that Officer Metz discharged his Taser one time during the incident.

Taking into account the totality of the situation and the facts available, review of all officer reports, review of Taser data files, and in-car video, we find that Officer Metz’s actions were within the guidelines set forth by the department’s current directive 4000, which is in the process of being revised, and did not violate any state of Florida Statute. Therefore, we recommend that no further action be taken regarding this incident.