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STATE ATTORNEY REVIEW JUSTIFIABLE HOMICIDE & JUSTIFIABLE USE OF DEADLY FORCE BY A CITIZEN

Florida Statute 782.02 and Florida Statute 776

Date of shooting: June 26, 2014

S.A. Number: 2014CF058940

In re investigation of the death of or injury to:

Name: Zachariah J. Tipton

D.O. B.: 09/05/1973

SUMMARY OF THE FACTS:

On the early evening of June 26, 2014, Kristopher Stone shot and killed Zachariah Tipton as Mr. Tipton and a fellow motorcycle club member were attacking Mr. Stone. The shooting occurred in the parking lot of the Nippers restaurant in Jacksonville Beach, FL. For the reasons outlined below, the State of Florida has concluded that Kristopher Stone's use of deadly force against Mr. Tipton was legally justified.

- Kristopher Stone is approximately 5 foot 11 inches tall and 209 pounds. He is an Army Combat Medic. He has no prior record. He is a prospect, also known as a recruit, in the Iron Order motorcycle club. He has a State of Florida concealed weapons permit. Mr. Stone has no connection to law enforcement.
- Zachariah Tipton is approximately 6 foot tall and 242 pounds. He has one prior withhold of adjudication on a Felony Possession of More Than Twenty Grams of Marijuana and eight prior misdemeanors involving Battery, Possession of Marijuana, DUI, Reckless driving, and No Valid Driver's License. He is a member of the Black Pistons motorcycle club.
- Beach Marine is a local marina in Jacksonville Beach located between two restaurants, Nippers and Billy's Boathouse, located under the Intracoastal Waterway bridge on Beach Blvd. Beach

Marine has video cameras directed towards the parking lot and the front of Nippers and toward Billy's Boathouse, east and west. Video was obtained from Beach Marine by the Jacksonville Beach Police Department (JBPD) within hours of the shooting at Nippers.

- On June 26th, 2014, at approximately 8:00 pm, the video depicts Kristopher Stone (shooter) in the parking lot, just outside the front of Nippers just west of the valet stand. At approximately 8:08 pm Zachariah Tipton and six other members of the Black Pistons motorcycle club can be seen riding past Kristopher Stone from east to west in the Nippers parking lot, parking several hundred feet west in front of Billy's Boathouse. At approximately 8:14 pm, Zachariah Tipton and two other members of the Black Pistons motorcycle club are seen walking east in the parking lot toward Kristopher Stone and the front entrance of Nippers. Zachariah Tipton is still wearing his motorcycle helmet and riding gloves.
- The video depicts the two Black Piston members and Zachariah Tipton going from walking in front of the cars, where the sidewalk is, to walking behind the cars in the parking lot. This is approximately the length of seven parking spaces before the area where Kristopher Stone is standing in the parking lot. Kristopher Stone is standing in the parking lot by several motorcycles which belong to him and his motorcycle club, the Iron Order. Zachariah Tipton continues to walk in front of the cars east towards the entrance of Nippers, where Kristopher Stone is located. Tim White, another prospect in the Iron Order, is standing in front with Kristopher Stone, near where their motorcycles were parked. As the two Black Pistons who were with Zachariah Tipton approach Tim White, they walk around him and straight to Kristopher Stone. As they approach Kristopher Stone from the front, Zachariah Tipton approaches Kristopher Stone from behind, still wearing his riding helmet and gloves. From the video it appears this is a planned confrontation with members from the Black Pistons coming at Kristopher Stone from the front and back.
- The video shows Zachariah Tipton punching Kristopher Stone in the back of the head from behind as Kristopher Stone talks to another Black Piston member face to face. Kristopher Stone never turns around or makes any movements, and in the video it appears he did not see the punch coming. After Zachariah Tipton hits Kristopher Stone in the back of the head, one of the other two Black Pistons joins the attack and Kristopher Stone is taken to the ground as Zachariah Tipton and the other Black Piston continue to punch and kick him on the ground. The attack continues with Kristopher Stone on the ground for approximately ten seconds while Zachariah Tipton and the other Black Piston are punching and kicking him before Zachariah Tipton can be seen falling over and the attack ends. From witness testimony the moment Zachariah Tipton falls over is the moment he is hit by a gunshot from Kristopher Stone's gun. The fight from first punch till Zachariah Tipton falls down takes approximately ten seconds. During this time three other members of the Black Pistons are approaching the area of the fight in the same manner as Zachariah Tipton and the other two Black Piston members.
- The video depicts the members of the Black Pistons fleeing the scene after the fight. No

member of the Black Pistons can be seen giving aid to Zachariah Tipton. Members of the Black Pistons can be seen taking out what looks like mouth guards and removing things from their hands, although the video is not clear enough to see if these are brass knuckles, rings, or something else. One member of the Black Pistons can be seen going over to Zachariah Tipton's body and then later handing off a "cut" or vest with patches signifying membership in the Black Pistons club, with what looks like something rolled up inside. A member of the Black Pistons is handed the vest and leaves the scene on his motorcycle. It is unknown if something was rolled up in the vest.

- Officers from the JBPD arrived and secured the scene. Zachariah Tipton was found with brass knuckles which had fallen out of his pocket, two full clips of hollow point rounds inside his pants pocket, three pocket knives inside various pants pockets, and a nylon gun holster clipped to the inside of his waist band. A gun was not recovered from Zachariah Tipton, however, this is after the member of the Black Pistons came to the body of Zachariah Tipton and walked away with the rolled up vest. Kristopher Stone remained on scene after the shooting and voluntarily spoke to police. Four shell casings were recovered from the immediate vicinity of the shooting in addition to the firearm used in the shooting which Kristopher Stone had given to a fellow Iron Order member immediately after the shooting. The helmet and hat Zachariah Tipton was wearing was found at the scene with blood and the bullet still inside.
- Jacksonville Beach Fire Rescue arrived and transported Zachariah Tipton from the scene to the hospital where he was pronounced dead.
- Dr. Valerie Rao, the Chief Medical Examiner for Duval County performed the autopsy on Zachariah Tipton's body. The testing of Zachariah Tipton's blood found a blood ethanol level of .04% and his urine to test positive for caffeine and cannabinoids (more commonly known as marijuana). Dr. Rao found the cause of death to be a single gunshot wound to the head. The single gunshot wound entered behind Zachariah Tipton's right ear traveling right to left, in an upward direction, and exiting his skull on the upper left side. Zachariah Tipton had one broken left rib. According to Dr. Rao it was likely from a kick to ribs. He also has one bruise to his abdomen, likely from a punch or kick, which is approximately three inches long. Zachariah Tipton also had injuries to his right ring and middle fingers on the dorsal (back of the hand) side. Dr. Rao stated the injuries are consistent with punching an individual. Zachariah Tipton also has an abrasion (or scratch) to the back. This would be consistent with being moved for medical care or possibly from falling to the ground after the shot. He also has a half an inch abrasion to his left shin.
- Photographs were taken of Kristopher Stone by the police at the scene. Kristopher Stone had a broken nose, several cuts to the bridge of his nose and blood on his face. In addition, the right side of his face was very red and swollen and he had red marks on the left side of his face. His hands did not appear to have any marks consistent with being in a fight. He appeared to have

urinated himself as well. Medical records were obtained from Kristopher Stone which show he was evaluated after leaving the Jacksonville Beach Police Station. At the hospital he was evaluated and presented with minimally displaced nasal bone fractures associated with soft tissue swelling, and minimal nasal septal deviation to the left.

- The Jacksonville Beach Police Department interviewed over two hundred people in connection with this case. Of those two hundred, several of them were eye witnesses to the incident:
 - Tim White is a prospect in the Iron Order motorcycle club and was standing only feet away when Kristopher Stone was attacked. He was outside by the motorcycles when some Black Pistons approached him and told him to leave. He told the Black Piston members he would not leave after which they knocked the water he was drinking out of his hand and he and the Black Piston began to fight. They fight until they hear several cracks and the guy he is fighting lets him go. He sees Kristopher Stone with blood on his face and urine on his pants and Tim White yells for help. He says Kristopher Stone had a blank look on his face and a member of the Black Pistons went up to Zachariah Tipton after he was shot. When the police arrived he went up to the police and told them what happened. Police independently reviewed the video, and found this witness to be consistent with the events depicted therein.
 - Tim Bennett was a patron of Nippers riding his bike with his girlfriend behind him when the shooting happened. He saw two men attacking a third man who was on the ground. One male was "raining down fists" and the other was kicking the person on the ground. He said the male on the bottom (Kristopher Stone) was "getting worked really bad." Mr. Bennett said the guys punching and kicking Mr. Stone had Black Piston cuts on. However, Mr. Bennett was unable to positively identify any Black Piston member.
 - Karen Bell was riding on the back of Tim Bennett's bike. She saw two males fighting the shooter. One was kicking and one was punching the shooter who was on the ground. She heard three gunshots.
 - Darlene Forkel was a patron at Nippers. She was exiting Nippers to get her phone on her motorcycle. She saw men fighting on the ground. One male was on top repeatedly striking the man on the ground (Kristopher Stone). She says the shooter was on the ground and pushed the deceased off him and shot at the same time. She heard four to five shots. Afterwards she heard the shooter say "I shot him" as he had blood on his face.
 - Daniel Camacho is a valet at Nippers. He saw Zachariah Tipton and another man going after Kristopher Stone. He said the two guys were "jumping" the shooter. He heard four or five shots. Daniel Camacho said Zachariah Tipton was the aggressor and

appeared to be stomping the shooter who shot from the ground.

- Angus Dunlop Jr. was taking pictures for an unrelated event at Nippers that night. He saw the fight and said two guys were "punching the crap out" of a male on the ground. He heard three to four shots and hid, therefore he was unable to take photos of the actual attack. He did take photos of Kristopher Stone's injuries after the attack.
- Dominique Bagnell is a waitress on the outside patio at Nippers. She heard a commotion and saw five people fighting. She heard shots and saw Zachariah Tipton fall to the ground. As Zachariah Tipton fell to the ground she saw brass knuckles fall out of Zachariah Tipton's pocket.
- Jill Depauw is an acquaintance of Zachariah Tipton. She saw a Zachariah Tipton involved in a fight. She walked past and heard three shots and saw one of the people involved flee the scene.
- Chris Mulligan is a valet at Nippers. He was parking a car and saw guys pushing each other. He heard shots and ducked. Soon thereafter he saw seven or eight Black Piston members running past him down the service road.
- Gerald Dunne is a valet at Nippers. He was getting into a car to valet it. He saw two males fighting on the ground but could barely see because his view was obstructed by the car. He heard shots and ducked.
- McKenzie Ogburn is a waitress at Nippers. She heard males arguing and saw Zachariah Tipton swing at Kristopher Stone. She then sees Kristopher Stone get on his motorcycle and he (Stone) tries to run down Zachariah Tipton, knocking Zachariah Tipton over. Kristopher Stone then gets off his motorcycle, pulls his gun and shoots Zachariah Tipton. Her testimony is not consistent with any of the other eye witnesses and is impossible based on the video which does not show anything close to what she says she saw.
- Jacksonville Beach Police Department detectives interviewed Kristopher Stone the night of the incident. He stated that he got off work at 5 pm and went to Nippers to meet up with fellow Iron Order members. He ordered a glass of water because as a prospect he is not allowed to drink alcohol. He went outside to look at motorcycles with Tim White when several members of the Black Pistons walked up and told them to leave. Before he could do anything someone punched him from behind and he (Stone) fell to the ground. He says he felt someone kicking and punching him in the face. He stated that he is a combat medic and knows someone can die from

being kicked in the face. He said he pulled out his gun and he thinks he fired his entire clip because he was in fear for his life. He said he was so scared he urinated on himself during the shooting.

LEGAL ANALYSIS:

"A person is justified in using or threatening to use deadly force if he or she reasonably believes that using or threatening to use such force is necessary to prevent imminent death or great bodily harm to himself or another or to prevent the imminent commission of a forcible felony." Fla. Stat. § 776.012. Great bodily harm has been defined as not slight, trivial, or mere bruising but lacks a further definition in jury instructions or Florida Statutes. However, several cases have found a victim's orbital fracture, swelling, and bruising were sufficient evidence of great bodily harm. See Heck v. State, 774 So. 2d 844, 845-46 (Fla. 4th DCA 2000); Cooley v. State, 686 So.2d 732 (Fla. 2d DCA 1997) (fractured leg requiring surgery constituted great bodily harm); Coronado v. State, 654 So.2d 1267, 1270 (Fla. 2d DCA 1995) (facial fracture, numbness, and pain around the eye constitutes great bodily harm); Owens v. State, 289 So.2d 472, 474 (Fla. 2d DCA 1974) (victim incurred great bodily harm where, as a result of a battery, victim received a lump on her mouth, scar on her face, and a bruise).

Kristopher Stone's broken nose was verified from the pictures, witness accounts, and medical records, swelling and bruising to the face and blood loss after being hit and punched after being taken to the ground. Similar to Heck, where the victim had an orbital fracture with swelling and bruising, or Coronado, where the victim had facial fractures, numbness, and pain around the eye and it was deemed enough for great bodily harm, Kristopher Stone's injuries would constitute great bodily harm under the law. Heck, 774 So. 2d at 845-46; Coronado, 654 So.2d at 1270.

Under the law, Kristopher Stone would have been justified in using deadly force if he reasonably believed that imminent death or great bodily harm was about to befall himself. See Fla. Stat. § 776.012. When viewing the video, Kristopher Stone can be seen getting hit in the back of the head from behind by Zachariah Tipton. After Kristopher Stone falls to the ground, Zachariah Tipton and another Black Piston can be seen hitting and kicking him (Stone) for almost ten seconds while Kristopher Stone is still on the ground. According to witness Tim Bennett, Kristopher Stone was on the ground with two members of the Black Pistons motorcycle club on top of him "raining down fists," and Kristopher Stone was "getting worked really bad." Multiple other witnesses describe the attack as someone getting "jumped" with two individuals attacking one person on the ground. Kristopher Stone suffered a broken nose, swelling, bruises, and bleeding, as a result of the attack by the members of the Black Piston motorcycle club. Great bodily harm was not only imminent when Kristopher Stone pulled his gun and fired, great bodily harm had already occurred and was continuing to occur when he pulled his gun and shot. Kristopher Stone would have already suffered great bodily harm and the threat was continuing, as Zachariah Tipton and the other Black Piston member did not stop hitting him (Stone) until Kristopher Stone shot his gun.

In addition, Kristopher Stone's statement to the police the night of the incident is very telling of what was going through his mind as he was being beaten by Zachariah Tipton and the other member of the Black Pistons. Kristopher Stone told police that he is a combat medic and knows someone can die from being kicked in the face. Stone also said he pulled out his gun and he thinks he fired his entire clip

because he was in fear for his life, so much fear he urinated himself. His statement that he urinated himself is corroborated by the evidence technician photos which were taken and show a large dark area on his blue jeans and testimony from the officers as to the smell of his clothing. Kristopher Stone had already suffered great bodily harm and he believed death was imminent if he did not use deadly force to stop the attack on himself.

Under the law, Kristopher Stone had no duty to retreat. A person who uses or threatens to use deadly force in accordance with this subsection does not have a duty to retreat and has the right to stand his or her ground if the person using or threatening to use the deadly force is not engaged in a criminal activity and is in a place where he or she has a right to be. Fla. Stat. § 776.012 and § 776.013. Kristopher Stone was in the public parking lot of Nippers, a place he had a right to be. He was armed with a concealed firearm, which he had a right to carry as he had a concealed weapons permit. Under Florida Statute 790.06 (12)12, a person who has a concealed weapons permit cannot carry a concealed weapon on "[a]ny portion of an establishment licensed to dispense alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to such purpose." The shooting occurs in parking lot and not inside of Nippers. The parking lot does not fall under any of the prohibited areas under Florida Statute 790.06(12) and it is not a part of the establishment, Nippers, which is primarily devoted to the purpose of dispensing alcohol for consumption on the premises. Because Kristopher Stone was in a public parking lot, where he had a right to be, and was validly carrying concealed in a location that does not fall under one of the statutory exceptions under Florida Statute 790.06(12), he had no duty to retreat when he was attacked.

The jury instructions on "Justifiable Use of Deadly Force" gives guidance in determining if Kristopher Stone was justified. Instruction 3.6 states:

In deciding whether defendant was justified in the use of deadly force, you must judge [him] [her] by the circumstances by which [he] [she] was surrounded at the time the force was used. The danger facing the defendant need not have been actual; however, to justify the use of deadly force, the appearance of danger must have been so real that a reasonably cautious and prudent person under the same circumstances would have believed that the danger could be avoided only through the use of that force. Based upon appearances, the defendant must have actually believed that the danger was real.

FL ST CR JURY INST 3.6(f). In analyzing if Kristopher Stone was justified in using deadly force one has to look at the circumstances he (Stone) was faced with at the time of the attack. The video provides the most objective view of what happened to Kristopher Stone and what he saw before and during the attack. Just prior to being hit in the back of the head by Zachariah Tipton, Kristopher Stone sees two members of a rival motorcycle club approach him and Tim White. As he is being confronted by a member of the rival motorcycle gang, he is struck unexpectedly in the back of the head by another unknown individual. He is then on the ground with two grown men on top of him, kicking and punching him in the face. One of them, Zachariah Tipton, still has his motorcycle helmet and riding gloves on as Kristopher Stone's nose is broken and he is repeatedly hit in the face. It is unknown if Kristopher Stone knew of the three other members of the Black Pistons motorcycle club who were on their way to the same area and if he thought they would join in. However, when looking at the circumstances which Kristopher Stone faced, the danger he faced was real and in the process of happening to him as he pulled out his firearm. Kristopher

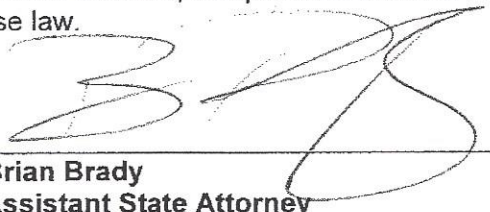
Stone did not fire in anticipation of the danger, or even when the danger was imminent, like the law allows; he fired only when he had already suffered great bodily harm and when he believed greater harm or death were imminent. Analyzing this from the viewpoint of a reasonably cautious and prudent person, as the jury instructions say, when Kristopher Stone was taken to the ground and beaten by two men, the danger to him was so real that he could have avoided further great bodily harm only through the use of deadly force, shooting his gun.

The jury instructions also instructs that "[i]n considering the issue of self-defense, [the jury] may take into account the relative physical abilities and capacities of the defendant and (victim)." FL ST CR JURY INST 3.6(f). Kristopher Stone is 5 foot 11 inches tall and 209 pounds. Zachariah Tipton is 6 foot tall and 242 pounds. In considering the relative capabilities, the capabilities of Zachariah Tipton and the other person should be considered because the attack on Kristopher Stone was two versus one. Even without considering that the fight was two versus one, Zachariah Tipton is one inch taller and more than thirty pounds heavier than Kristopher Stone. Zachariah Tipton also had his motorcycle helmet and riding gloves on during the fight, which Kristopher Stone did not. This is not dispositive one way or the other, however, the fact that the fight is two versus one, helmet and gloves versus no helmet and no gloves, and a heavier person versus a lighter person, gives Kristopher Stone a very good argument that he was at a severe disadvantage, as can be seen from the results of the fight prior to the shooting.

CONCLUSION:

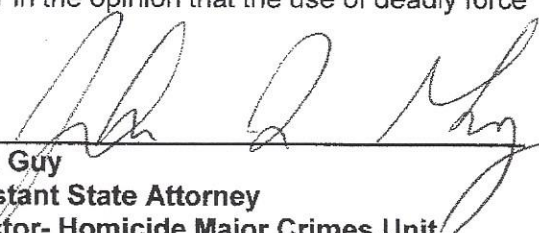
Kristopher Stone had already suffered great bodily harm and was continuing to be punched and kicked by two grown men when he pulled his gun and shot Zachariah Tipton. When viewing the evidence as a reasonably cautious and prudent person under the same circumstances would, Kristopher Stone was in fear of imminent death and certainly great bodily harm when he pulled his lawfully concealed firearm from his side and fired at his attackers. From moments before Kristopher Stone was attacked till the time he was interviewed by detectives, his story was consistent with the physical evidence, witness testimony, and the video. As such all of the evidence demonstrates that this shooting, however tragic, was justified under the law.

THEREFORE, it is the opinion of the undersigned Assistant State Attorney that the use of deadly force in this case was justifiable pursuant to Florida Statutes, Chapters 782.02 and 776, the Florida Standard Jury Instructions, and applicable case law.



Brian Brady
Assistant State Attorney
Homicide Major Crimes Unit

I have reviewed the findings presented and concur in the opinion that the use of deadly force in this case was justifiable.


John Guy
Assistant State Attorney
Director- Homicide Major Crimes Unit

CRIMINAL HISTORY OF:

Kristopher Stone:

- No prior record

Zachariah Tipton:

- 1994 Withhold of Adjudication for Possession of More than Twenty Grams of Marijuana
- 1995 Adjudicated Guilty of Illegal Taking or Possession of Deer or Turkey
- 1998 Adjudicated Guilty of Possession of Marijuana Less than One Ounce.
- 2002 Adjudicated Guilty of Battery
- 2006 Adjudicated Guilty of Driving Under the Influence
- 2009 Adjudicated Guilty of Reckless Driving
- 2010 Withhold of Adjudication for Possession of Less than Twenty Grams of Marijuana
- 2010 Adjudicated Guilty of Possession of Controlled Substance Paraphernalia
- 2011 Withhold of Adjudication for No Valid Driver's License
- 2013 Withhold of Adjudication for No Valid Driver's License

NOTIFICATION OF INVOLVED PARTIES

Citizen Notification:

- Person's Name: Kristopher Stone
- Contact Method: Phone
- Date/Time: 11/07/2014

Investigating Agency Notification:

- Officer Name/ID/Department: Detective Paul Watkins
- Contact Method: In person
- Date/Time: 11/07/2014

Injured Person/Deceased-Next of Kin Notification:

- Person's Name: Glenda Purdy
- Contact Method: In person
- Date/Time: 11/07/2014