Incident Review

FDLE CASE #:	**PB-27-0011**
Date June 1, 2012	**August 16, 2012**
CASE AGENTS:	**James O. Born**
SUPERVISOR:	**Michael Driscoll**
INCIDENT DATE:	**May 16, 2012**
SUBJECT PROFILE:	**Seth Adams**
INVOLVED OFFICER:	Palm Beach Sheriff's Office Sergeant Michael Custer Weapon used: Glock Model 22

Overview

On June 1, 2012 Palm Beach County Sheriff (PBSO) Sheriff Ric Bradshaw contacted the Florida Department of Law Enforcement (FDLE) and requested that FDLE conduct an independent review of a Deputy involved shooting that occurred on May 16, 2012 in Loxahatchee, Florida. Resident Agent in Charge (RAC) Michael Driscoll assigned Special Agent (SA) James O. Born as case agent, and both were briefed on June 11, 2012 by PBSO investigators. PBSO provided SA Born with a copy of the entire case file consisting of PBSO statements, witness statements, crimes scene photographs, forensic reports, medical examiner reports, PBSO and Fire Rescue dispatch records, and all other related documents under PBSO case number 12-075875. SA Born then conducted a review completely independent of the PBSO. This review necessitated SA Born to contact certain members of the PBSO in order to clarify certain issues and/or reports. This summary is based on documentation provided by PBSO along with follow-up interviews, and other activity completed by SA Born.

The FDLE efforts were to provide a clear, neutral, and independent review of the facts and circumstances of the shooting of Seth Adams by Sergeant Michael Custer. The PBSO refrained from any participation in this review other than to support FDLE requests for interviews or records. It is noted for the consideration of this review, that the statement provided by Sergeant Custer is the only account of what actually transpired between him and Seth Adams on the night of May 16, 2012. Subsequent forensics and physical evidence were partially predicated on Sergeant Custer's account of the incident.

The FDLE submits this review without recommendations or legal conclusions on whether the use of force was justified.

The Incident Summarized:

On the evening of Wednesday, May 16, 2012 Sergeant Michael Custer of the Palm Beach County Sheriff's Office (PBSO) was performing his assigned duties as the supervisor of a six member (plain clothes) Tactical Unit. The unit was assigned to conduct surveillance activities on a suspected burglary ring in the Loxahatchee area of Palm Beach County. At approximately 2340 hours Sergeant Custer parked his PBSO issued vehicle in front of the One-Stop Garden Shop located at 1950 A Road, on the corner of A Road and Okeechobee Blvd. While parked in the front parking lot of the business, a pickup truck drove up to Sergeant Custer and a white male, later identified as Seth Adams, confronted Custer as to what he was doing there. A physical confrontation between the two men occurred outside of their vehicles and Sergeant Custer discharged his duty weapon four times, striking Adams all four times. At that point, Adams left the scene on foot and collapsed approximately 283 feet away, inside the darkened compound of the garden shop. Sergeant Custer immediately called for assistance and members of the nearby Tactical unit responded within one minute. Meanwhile, Adams was able to place two phone calls to his sister-in-law who lives in a nearby mobile home on the property. Seth Adams, his sister-in-law, Raina and his brother David shared this residence. The Adams family are the owner/operators of the nursery.

Seth Adams' brother, David Adams, went outside to investigate and found his brother collapsed on the ground. David Adams picked up his brother's cell phone and ran out to the front of the garden shop where he was confronted and detained by members of the Palm Beach County Sheriff's Office who had responded to the report of the shooting. David Adams' wife, Raina Adams, also ran to the front of the garden shop and was also detained by members of the Palm Beach County Sheriff's office.

After the Sheriff's deputies established David Adams' and his wife's identities and assessed the safety risks of weapons in the compound, they tactically entered the compound and discovered Seth Adams on the ground. Adams was still conscious and said that he had been shot by a police officer. Palm Beach County Sheriff's personnel at the scene then immediately provided first aid as fire rescue was summoned to the scene.

Fire rescue personnel arrived and assessed the situation and provided Emergency Medical Care. Adams was then transported by Palm Beach County Fire Rescue to the Loxahatchee Groves Elementary School where Trauma Hawk landed and transported Adams to St. Mary's Hospital located on 45th St. in West Palm Beach. Adams was treated in the emergency room by Doctor Robert Borrego but died from the wounds at approximately 0158 hours on May, 17, 2012.

The Palm Beach County Sheriff's office conducted an investigation into the incident.

Statement of Sergeant Custer

Sergeant Custer declined to make a formal statement on the night of the incident but did give a video recorded, sworn statement to PBSO detective Chris Newman on May 18, 2012. Sergeant Custer's attorney, Rick King, was present during the interview. During that statement, Sergeant Custer provided the following information:

- On the night of the incident, Sergeant Custer was working with the TAC unit on two separate assignments. One was a fugitive hunt and the other was the surveillance of a burglary ring. Towards the end of his assigned shift, after following one of the burglary suspects, Sergeant Custer found a surveillance spot in the Loxahatchee Groves area. He pulled his unmarked 2011 black Ford Explorer into the unpaved parking lot of what he thought was a closed business. Sergeant Custer did not notice if the gate to the business was opened or closed. He never went further than the parking area directly off A Road. There is a gate across the entrance to the compound, which does not include the public parking lot. The gate covers the entrance to the actual compound. The gate is low (approximately hip level) and is about the width of a two car driveway. The gate is anchored by a wooden telephone pole on the north side and secures next to a short cement block wall. This lot is immediately accessible from A Road. He recognized that the business was a nursery. He did not recall seeing any lights on the property or in the area.

- Sergeant Custer was wearing an unmarked gray shirt, which he wore unbuttoned over a T-shirt with a PBSO star logo. He was wearing his PBSO issued firearm with an extra magazine of ammunition and handcuffs and a badge on his belt. Sergeant Custer did not wear a ballistic vest. Sergeant Custer was not wearing any secondary weapon.

- Sergeant Custer advised other people on his team of his location as well as CDO (Chief Duty Officer) of his location and what he and the TAC unit were doing. He parked in the parking lot about 2300 hours and faced west. He left the vehicle running. The lot was dark.

- After Sergeant Custer had been parked for approximately 30 minutes, a vehicle pulled in the lot. In response, Sergeant Custer rolled down the window of his Explorer at which time the white male, later identified as Seth Adams, said, "Who the fuck are you?" Sergeant Custer said that Adams gave no indication he was associated with the property nor did he identify himself.

- In response, and due to the nature of surveillance work, Sergeant Custer used a standard comment that he often used in which Sergeant Custer explained that his name was Sergeant Custer with the Palm Beach County Sheriff's Office. At the same time he held up his official PBSO identification.

- Adams exited his vehicle and advanced towards Sergeant Custer's Explorer. Sergeant Custer said that he did not want to be trapped in his car and was fearful so he exited the Explorer. Sergeant Custer exited his vehicle and bloused his unbuttoned gray shirt so that the PBSO star logo and his gun were clearly visible and he told Adams not to advance any further. At that point, Adams reached over and grabbed Sergeant Custer by the throat. (On the videotaped interview, Detective Neuman, who said he was 6'2" tall, demonstrated this with Sergeant Custer, who is listed as 5'8" tall on his Florida driver's license. It should be noted that on medical examiner records, Seth Adams' height is listed at 6'4", and 204 pounds)

- The aggressive maneuver caught Sergeant Custer by surprise and he utilized a quick technique to free himself from this hold. Sergeant Custer does not recall what he used to break free. After Sergeant Custer disengaged, he drew his service weapon and ordered Adams to step away and identified himself again. Adams did not comply. Sergeant Custer then informed Adams he was under arrest. Sergeant Custer backed to his vehicle, reached through the open driver's door and broadcast on his police radio, (he doesn't recall if it was on a portable radio or the base mounted car radio) expressing that he needed assistance.

- During this time, Sergeant Custer said Adams continued to jockey for position "like a wrestler looking for an angle."

- When Adams moved toward the open door of his (Adams') vehicle, Sergeant Custer said, "Don't go in there. If you go in the car, I'm going to shoot you." Sergeant Custer expressed that he was afraid that Adams was reaching for a weapon inside the vehicle.

- When Adams reached into the vehicle, Sergeant Custer pushed the door shut with his foot, attempting to keep Adams from obtaining a weapon from the vehicle.

- Sergeant Custer said that Adams screamed, "fuck you," and twisted toward him. At that point, Sergeant Custer was convinced Adams had obtained a weapon and disengaged from his close contact. Sergeant Custer recalled he discharged his firearm three or four times (he could not be certain) as he backed away from Adams.

- At that point, Adams ran into the nursery. Sergeant Custer still didn't know for sure if Adams had a weapon. Sergeant Custer broadcast over the radio for emergency assistance. Sergeant Custer couldn't recall if he used the radio again after that. Sergeant Custer did not know Adams' condition or why he retreated into the nursery. Sergeant Custer also does not know if Adams had to unlock the gate and push it open to enter the compound.

- At this point Sergeant Custer told the arriving TAC agents to maintain focus on the entrance until more units arrived.

- During the end of the interview, Sergeant Custer reiterated that he thought Adams had a weapon. Sergeant Custer said that he had seen many training videos about suspects getting weapons from their vehicles and he was afraid Adams was going to kill him.

Statement of TAC Team members

Members of the TAC unit arrived at the front gate of the One-Stop Garden Shop within a minute of the shooting and were quickly briefed by Sergeant Custer. The team then set up tactically with rifles at the entrance to the compound. Before they could enter the premises and conduct a thorough and tactical search for Adams, the TAC agents were confronted by a white male and white female, later identified as Seth Adams' brother David Adams and his sister-in-law, Raina Adams. David Adams said that his brother had been shot. The TAC agents inquired about other people or weapons on the property, David Adams said that they were the only people there and there were no weapons.

At that point, some of the TAC members entered the premises and found Seth Adams lying on the ground approximately 283 feet from the site of the shooting. Agent Schumm of the PBSO TAC unit immediately began to render first aid, utilizing his own tee shirt to provide direct pressure to the wounds. Adams was

conscious and said that he had been shot by a police officer. The agents continued to provide first aid until Palm Beach County fire rescue personnel took over the first aid efforts.

TAC Agent Kevin Drummond recalls driving past Sergeant Custer on Okeechobee Blvd just before Sergeant Custer's call of "shots fired". Agent Drummond saw Sergeant Custer just getting out of his vehicle, and, from Agent Drummond's vantage point, it looked like Sergeant Custer was talking with Adams. Agent Drummond saw no indication of an emergency. Agent Drummond attributed this to the fact that he is often asked why he is parked in a driveway during surveillance. Agent Drummond assumed it was an encounter like that. Agent Drummond said after he travelled one block east on Okeechobee Blvd, he heard Sergeant Custer's emergency call of "shots fired." Agent Drummond recalls reversing onto Okeechobee Blvd, then accelerating so hard it made his tires squeal on the pavement.

Agent Drummond said that he and Agent Schumm were the first to arrive and provided first aid even though they did not have gloves for protection. The use of gloves is a standard and safe PBSO practice. Agent Drummond estimates they continued to give care for five to ten minutes while they waited for fire rescue to arrive.

Subsequent interviews with fire rescue personnel by PBSO and reviewed by FDLE determined the following:

- Palm Beach County fire rescue personnel entered the scene with a gurney and found PBSO personnel providing first aid to Adams. The Trauma Hawk was summoned and landed west of the property following fire rescue protocols in place to assess the situation before the helicopter is called out. Adams was treated at the scene, loaded onto a gurney and moved to a vehicle which drove him a short distance to the waiting Trauma Hawk helicopter. Trauma Hawk transported Adams directly to the St. Mary's medical facility.

- SA Born reviewed a timeline taken directly from PBSO and Palm Beach County fire rescue computer aided dispatch (CAD) information. With assistance from PBSO and Palm Beach County fire rescue personnel to interpret the CADs SA Born determined that the first call for assistance from fire/rescue occurred at 23:43:38 and fire/ rescue responded, without obstruction, to the scene arriving at 23:49:40. Trauma Hawk was dispatched to the scene at 23:53:05. First aid was administered by PBSO personnel until Palm Beach fire rescue was able to transport Adams to the Trauma Hawk. Trauma Hawk was enroute to the hospital, at 00:20:02 on May 17, 2012. Trauma Hawk arrived at St. Mary's hospital at 00:27:52.

- Adams was treated by emergency room Doctor Robert Borrego, who pronounced Adams dead at approximately 0158 hours, May 17, 2012.

Interview of Witnesses

The names of other witnesses that may have had insight into Seth Adams activities on the night of the incident were provided by PBSO and the Palm Beach County States Attorney's office.

Dylan Johnson had been a friend of Seth Adams for approximately the last six months but had not seen Adams in the last three months. His recollection of Adams was of a pleasant young man who was interested in plants and fitness and had a hobby of playing Texas hold 'em poker. Johnson was not with Adams on the night of the shooting and could not provide insight as to what he was doing.

Boonies Employees

John Duemig was the manager of Boonies on the night Seth Adams was shot. He recalled Adams leaving the establishment between 2320 and 2330 hours. He did not notice any outward signs of Adams being drunk and Duemig had never had any problems with Adams at the restaurant/bar. He had always found Adams to be respectful and easy to deal with.

Lynsey Baggs was at Boonie's on the night of the incident. She recalled arriving around 2030 hours and Adams was already at the bar. She recalls that he played beer pong that night and she believes he drank about a pitcher of beer and did not order any food. She did not recall him being upset and that they often spoke for long stretches. Baggs does not recall Adams acting intoxicated and recalls leaving the bar with him at approximately 2330 hours.

Adams Relatives

An interview with David Adams, brother to Seth Adams, was conducted by Special Agent James O. Born on July 18, 2012. Adams said that on the night of the shooting he thought he had heard a large truck blowing a tire and as he stepped outside his residence to investigate, his wife, Raina, received a phone call from Seth Adams saying that he had been shot. David Adams investigated further and observed blue emergency lights on the far side of the property he located his brother lying on the ground by the glow of Seth's cell phone. David Adams immediately raced to his brother then, after seeing activity at the front of the property, ran in that direction to seek help for his brother. When he reached the entrance to the property he was met by Palm Beach County Sheriff's deputies with rifles who ordered him onto the ground and questioned him about his identity, who was on the property and if there were weapons present. Adams' wife, Raina, followed him out to the front of the property and had the same encounter with PBSO deputies.

After their initial detention, David and Raina Adams were moved behind a police vehicle and David Adams was concerned about the number of vehicles in the road clogging the way for fire rescue. David Adams did not see anyone enter the premises until fire rescue arrived on scene. At that point, he saw some Sheriff's deputies enter with the fire rescue personnel. David Adams said that he was told by PBSO personnel that no one went into the property until fire rescue arrived. David Adams said PBSO denied his request to assist his brother.

David Adams said one of the fire engines continued west from the property and didn't come to the scene.

Raina Adams, Seth Adams sister-in-law, received two phone calls from Seth Adams saying he had been shot. She exited her residence then ran to the front of the property and never saw Seth Adams on the ground. She was also confronted by PBSO deputies with rifles and questioned about who was on the property and if there were weapons on the property. She was detained with her husband, David Adams, at the front of the entrance to the nursery.

Raina Adams recalls that Seth Adams left after work on May 16, 2012 to go to Boonies. She could only estimate the time after 1900 hours. She knew he was not on the property at that time when she had to call him to ask if he had their dogs with him. Raina Adams had no more contact with Seth Adams that night.

Lydia Adams, Seth and David Adams' mother, expressed that the communication between the PBSO and her family was not good and she felt they had not been treated fairly.

Medical Examiner Findings

Palm Beach medical examiner, Dr. Gertrude Juste said that Adams died as a result of the four gunshot wounds which caused a massive loss of blood. The one wound that was on exposed skin (on Adams' forearm) had evidence of Stippling, indicating that the weapon was fired from less than eighteen inches. The other three wounds passed through clothing and therefore showed no signs of Stippling. One wound was a grazing shot that did not enter his skin. Two of the bullets traveled from Adams' upper chest to lower back, striking several organs and perforating a lung.

Dr. Juste said that Adams would have been able to run with these wounds and, in her opinion, would have been able to travel the distance between the scene of the shooting and the site where Adams was found after the shooting, approximately 283 feet away.

The drug screen conducted by the medical Examiner found no illegal narcotics in Adams' system.

Adams, blood alcohol level (BAL) was listed as .131 after the shooting measured by blood taken at the hospital.

Forensic Evidence

It is noted for the consideration of this review, that the statement provided by Sergeant Custer is the only account of what actually transpired between him and Adams. Subsequent forensics and physical evidence were partially predicated on Sergeant Custer's account of the incident.

Blood Spatter

SA James O. Born met with independent forensic expert Stuart James, who was previously hired by PBSO to evaluate photographs of the crime scene. Mr. James determined that blood spatter on Sergeant Custer's pants leg indicates that he was standing 6 to 9 inches away from Adams when blood drops from Adams' wounds fell onto the ground then bounced onto Sergeant Custer's leg. Mister James believes that Adams was standing upright at this point.

In addition, the trail of blood left by Adams from the scene of the shooting to the location where his body was discovered indicates that he was up right during the track from the scene to where he collapsed. Mister James felt, in his experience, that a person who had been shot four times would be able to travel on foot the distance (approximately 283 feet) between where the shooting occurred and Adams collapsed.

DNA

The DNA evidence obtained by the Palm Beach County Sheriff's crime lab indicates that Seth Adams' DNA was found on Sergeant Custer's neck, arm and pant leg. This forensic evidence supports Sergeant Custer's assertion that Adams grabbed him by the throat.

DNA evidence also supports the statement of TAC team members regarding first aid provided prior to the arrival of fire/rescue. The tee shirt that belonged to Agent Schumm, the TAC Team member who initially provided first aid, was covered in blood that matched Seth Adams' DNA. This is consistent with Agent Schumm's statement that he tried to stop the bleeding with his shirt.

BAL

Adams blood alcohol level was listed as .131, above the legal driving limit of .08. This could have been a factor in judgment. Witnesses from Boonies said that Adams did not appear intoxicated on the night of May 16, 2012.

Drug Screen

Found no evidence of unlawful narcotics in Adams' system.

Video of the parking area

Signs on the property indicate that video cameras record activity in the area. The video surveillance equipment that is set up on a pole in the parking lot did not provide any footage. The computers which capture the signal from cameras mounted on poles at the front of the business had only video of the inside of the business' office, which appeared to be motion-sensor operated. When SA Born asked David Adams directly if the outside video cameras were hooked up, Adam's attorney, Brian LaBovick, informed SA Born that they would not answer that question.

Background of Subjects

Training

Sergeant Custer's training record was evaluated by FDLE and found up to date. Sergeant Custer's police certification is also up to date. He had no training issues.

Independent Opinion

Special Agent Born sought an outside, expert opinion on the actions taken by Sergeant Custer. Special Agent Born asked Delray Beach police officer Christine Braswell, a certified law enforcement trainer who works at two different police academies as well as in the training unit for the Delray Beach Police Department for her opinion on the actions taken by Sergeant Custer on the night of May 16, 2012.

Officer Braswell said that based on the information provided by SA Born (which came from Sergeant Custer's statement and the available forensic information) that she believed after a subject grabbed a police officer's throat, it would be considered a deadly force situation. She further said that failing to comply with commands then reaching into an open vehicle would lead the police officer to logically assume the subject was reaching for a weapon and would be justified in using deadly force.

In addition, after an encounter like that, it would be prudent and practical not to follow a suspect who may or may not be armed, into a dark area that is unknown to the police officer until backup arrived on the scene.

History of Subjects

Neither of the individuals have a documented history of violence. Friends and family of Seth Adams describe him as quiet and not aggressive. He does not have any arrest for violent activity.

Sergeant Custer has no accusations of brutality or violence in his personnel file of more than fifteen years with the Palm Beach County Sherriff's Office.

Intelligence Information Used by TAC Team

SA Born spoke with Sergeant Custer's immediate supervisor, PBSO Lieutenant Pete Ebel. Lieutenant Ebel advised that he had discussed the surveillance assignment with Sergeant Custer prior to May 16 and there had been ongoing discussions about the burglary ring, which was being followed. There was concern about violence and the members of the burglary ring were white males in their twenties.

Lieutenant Ebel advised that given the situation and assignment, he felt Sergeant Custer's actions were justified, which included not following the wounded suspect into the dark property.

Lieutenant Ebel said that the nature of surveillance required parking unmarked police vehicles in different locations so as not to be noticed by suspects. This is a common practice used by law enforcement.

Investigative Findings

- The forensic evidence available in this investigation tends to support the statement given by Sergeant Custer. DNA testing of Sergeant Custer's throat shows the presence of Seth Adams DNA. This matches Sergeant Custer's assertion that Adams grasped him by the throat and initiated an attack.
- Blood on the side of the pickup truck matches Sergeant Custer's description of the encounter and the discharging of his firearm while Adams was reaching into the open door of his vehicle.
- Expert blood spatter analysis and an account by a PBSO tactical agent, who saw Adams collapse, indicate that Adams ran from the scene and was upright in the nursery until he collapsed on the ground. In reference to the blood trail from the site of the shooting to the location where Adams was discovered, it appeared that Adams fell in one spot, then got up and walked a short distance away then fell again. Crime scene photographs of the blood trail indicate that the blood dropped from at least ten inches and that Adams was moving during the time the blood hit the ground. This blood spatter pattern is consistent with an individual who is upright and not crawling.
- Radio traffic logs supports Sergeant Custer's statement that he asked for assistance prior to discharging his firearm, then after the discharge of his firearm, he broadcast that shots had been fired. The first call for assistance came at 23:40:41 on the PBSO CAD system. At 23:41.15 hours (34 seconds later), Custer broadcast "shots fired." This is consistent with Sergeant Custer's account of the incident. At 23:42:19 hours, Sergeant Custer came back on the air, giving more information. On the recording of the radio call, Sergeant Custer is clearly out of breath during the broadcast. This is consistent with the stress experienced with a traumatic event as well as consistent with a physical encounter.
- Adams' statement to Agent Schumm that he had been shot by a police officer provides confirmation through a third party that he was aware that Sergeant Custer was a law enforcement officer and not someone who was on the property for criminal purposes.
- The officer/subject factors in this incident, including an eight inch height difference could have influenced the officer's reaction to a threat. In addition, the nature of the surveillance of burglary suspects and description of the burglary suspects as white males in their twenties could have played a role in Sergeant Custer's decision making in dealing with the aggressive action by Adams.

- Sergeant Custer's actions fall within accepted police training parameters. Law enforcement training allows Police Officers to use deadly force on a subject until the threat is neutralized. In this situation, Adams was struck four times but never fell to the ground until he collapsed 283 feet from where he was shot. This fact serves to support Sergeant Custer's statement that he believed Adams may still be armed even after he was shot and ran inside the darkened compound. Sergeant Custer informed responding Deputies of this information and explains why TAC members took precautionary actions concerning Officer Safety.

- This review confirms that Sergeant Custer took these actions while acting in the line of duty and was on a special assignment along with others in his unit at the time of the shooting.

- The Palm Beach County Sheriff's Office took the necessary investigative steps following the shooting. The forensic efforts and interviews covered the vital aspects of this incident.

FDLE Assessment

Sergeant Custer followed standard procedures to respond to a threat that he reasonably perceived as posing the threat of death or serious physical injury.

This review has determined that the PBSO investigation was sufficient, thorough and in conformance with generally acceptable investigative procedures. In addition, officer involved shooting investigations conducted by FDLE require the State Attorney's Office (SAO) to make the final determination on whether or not to file criminal charges against the involved Officer(s). The PBSO will provide their investigative findings to the SAO for a final determination. A copy of this FDLE review will also be provided to the PBSO and the Palm Beach SAO.