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May 11, 2020

Alfredo Ramirez III, Director
Miami-Dade Police Department
9105 NW 25th Avenue
Miami, FL 33172

Dear Director Ramirez:

Enclosed is our final report regarding the investigation into the police-involved shooting of C.P. (a minor) on November 22, 2018. The police officer involved in this incident was Officer Ronald Neubauer.

Although the investigation concluded that Officer Neubauer's actions were negligent, the evidence demonstrates that he did not intend to use deadly force. Considering all of the facts, the required evidentiary threshold to support a criminal prosecution was not met. Therefore, no criminal charges will be filed against Officer Ronald Neubauer (030-1799).

If you have any questions, please do not hesitate to contact me.

Sincerely,

KATHERINE FERNANDEZ RUNDLE
State Attorney

KFR:iah

cc: Listed Officer(s)
Det. Daniel Aiken, MDPD Homicide
Sgt. Kent Jurney, Jr. – Professional Compliance
Sgt. Steadman Stahl, PBA
Andrew Axelrad, PBA
Robert Senior (AUSA)
Troy Walker (FDLE)

Enclosure

OFFICE OF THE STATE ATTORNEY
ELEVENTH JUDICIAL CIRCUIT

KATHERINE FERNANDEZ RUNDLE
STATE ATTORNEY

INTEROFFICE MEMORANDUM

TO:	KATHERINE FERNANDEZ RUNDLE State Attorney	DATE:	APRIL 21, 2020
FROM:	STAFFING/REVIEW TEAM	RE: CASE # INJURED:	POLICE SHOOTING CLOSEOUT MEMO SAO #62/18/11/22/005 C.P. (a minor)

Based on the information obtained and reviewed during the course of the investigation, the conclusion of the staffing/review team is the following: MDPD Police officers were dispatched to a home reference a domestic dispute between a mother and son. The mother, a foster parent, advised that her 15-year-old son (C.P) had mental problems and had not taken his medication. She further advised that the son was very agitated and had become aggressive with her; threatening to beat her. As a result, Officer Neubauer attempted to take C.P. into custody. C.P. refused to follow police commands to stand and remained seated on the couch. Despite warnings that he would be tased, C.P. remained non-compliant.

Officer Neubauer called for backup officers to respond to the scene. Three additional officers arrived, all fitted with BWC (body-worn cameras). Therefore, the entire incident was captured on multiple cameras. Officer Neubauer and two other officers grabbed C.P. and attempted to take him into custody. C.P. began to struggle and at one point, struck Officer Neubauer in the head. Consequently, Officer Neubauer drew his firearm. As the two officers continued to struggle with C.P., Officer Neubauer yelled "Clear!" multiple times before discharging his firearm and striking C.P. in the lower back. Instantly, Officer Neubauer cursed, holstered his firearm and unholstered his taser for a few seconds and placed it back in its holster. The BWC footage shows Officer Neubauer approaching Lt. Angelo seconds after the shooting and saying something inaudible. In his statement to FDLE, Lt. Angelo described Officer Neubauer as saying something to the effect of 'I didn't mean to draw my gun' or 'I didn't realize I drew my gun.' Officer Neubauer declined to provide a formal statement.

The evidence in this case is that Officer Neubauer did not intend to use deadly force; that he mistakenly drew his firearm instead of his taser. Although Officer Neubauer's actions were clearly negligent, they do not meet the evidentiary threshold required to support a criminal prosecution of culpable negligence or attempted manslaughter. Therefore, no criminal charges will be filed against Officer Ronald Neubauer (030-1799).

The members of the staffing/review team for this case are:

Don L. Horn

Deisy Hernandez

Kathleen Hoague

Stephen K. Talpins

Howard Rosen

J. Scott Dunn

Christine Zahralban

Approved by State Attorney on this 11 day of May, 2020.

KATHERINE FERNANDEZ RUNDLE
State Attorney

OFFICE OF THE STATE ATTORNEY
ELEVENTH JUDICIAL CIRCUIT

KATHERINE FERNANDEZ RUNDLE
STATE ATTORNEY

INTEROFFICE MEMORANDUM

TO: STAFFING/REVIEW TEAM

DATE: APRIL 21, 2020

FROM: J. SCOTT DUNN
ASSISTANT STATE ATTORNEY

RE: POLICE SHOOTING CLOSEOUT MEMO
SAO: #62/18/11/22/005

OFFICER(S) INVOLVED:	Officer Ronald Neubauer #030-1799, MDPD
INJURED:	C.P. (a minor)
INJURIES:	Perforating gunshot wound (non-fatal)
DATE & TIME:	November 22, 2018 @ 11:42 a.m.
LOCATION:	30120 SW 146 Avenue, Miami, FL
WEAPONS:	Glock pistol, Generation 4, Model 17, Serial #RED804
LEAD:	FDLE Agent Alberto Borges
POLICE CASE #:	MDPD PD181122-424973
FDLE #:	MI-27-0095
SAO CASE #:	62/18/11/22/005

STATEMENT OF FACTS

On Thursday, November 22, 2018 at approximately 11:30 a.m., uniform officers from the Miami-Dade Police Department (MDPD) South District were dispatched to 30120 SW 146 Avenue, Miami, Florida in reference to a domestic dispute between a mother and son. Upon their arrival, contact was made with Krystal Bradshaw, who advised that she was the foster parent of the victim, identified as 15-year-old C.P. (a minor). Ms. Bradshaw advised that C.P. had mental problems and had not taken his medication. She further advised that he became aggressive toward her. Uniform officers attempted to take C.P. into custody and a struggle ensued. At some point during the altercation, Officer Ronald Neubauer, ID #1799, discharged his county-issued firearm, striking C.P. in the lower back. Miami-Dade Fire Rescue (MDFR) personnel responded and transported C.P. to Kendall Regional Medical Center. He eventually recovered from his injuries.

The entire incident was captured on multiple body worn cameras (BWC) and all events occurred within the living room of the residence. Investigation and review of the BWCs revealed that Officer Neubauer and Lieutenant Paul D. Angelo XXVII, ID #5501, were riding as a two-person unit and responded to the domestic dispute between Ms. Bradshaw and C.P. Upon their arrival, Ms. Bradshaw advised that C.P. "charged at me...threatening to beat me and hurt me." She further stated that she had received C.P. about a week prior "from Baker Act", that he was "very aggressive...very agitated" and had not taken his medication.

After being advised of the above information, Officer Neubauer attempted to take C.P. into custody, but he remained seated on the couch and refused to comply with commands to stand up. Officer Neubauer repeated his verbal commands to C.P., even drawing his taser at one point and stating, "I'm not gonna fight with you. I'm just gonna tase you." C.P. continued to be non-compliant. Officer Neubauer requested that additional uniform officers respond to the location as backup. Ms. Bradshaw pleaded with C.P. to comply with the officers, but he continued to refuse. She also stated to the officers that C.P. was "diagnosed [redacted] and other mental illness."

About 4 ½ minutes after the call for backup, Officers Michelle Gonzalez, ID #8598, Orlando Gonzalez, ID #6321, and Oliver Morris, ID #6993, arrived at the location.[1] Every officer on scene was fitted with a BWC except for Lt. Angelo, and all the cameras were recording.[2]

Officers Neubauer, O. Gonzalez, and Morris move in simultaneously to grab C.P. and attempt to take him into custody, at which point he begins to struggle with them. None of the officers were holding any weapons initially. However, right at the beginning of the struggle, C.P. punches or strikes Officer Neubauer twice in the head. At that point, Officer Neubauer draws his firearm with his right hand while Officers O. Gonzalez and Morris continue their physical struggle with C.P. Officer Neubauer yells

[1] Officer Morris had been at the residence about an hour earlier (along with Officer Daniel Ramos-Avile, ID# 7358) when Ms. Bradshaw called 911 to report that C.P. left home without permission. C.P. had returned by the time the officers arrived. Ms. Bradshaw advised them of C.P.'s mental health history. However, C.P. was behaving normally and the officers ultimately determined that there was no cause to arrest or detain him at that time. They cleared the scene after about 20 minutes. This first call-out was captured on both officers' BWCs.

[2] Officer Michelle Gonzalez's BWC provides the best overall view of the incident and is the one primarily relied upon in describing the following events.

"Clear!" multiple times. After the seventh time yelling "Clear!", Officer Neubauer discharges his firearm once, striking C.P. in the lower back.

Immediately after discharging his firearm, Officer Neubauer loudly exclaims, "Oh fuck!" Officer Neubauer then immediately holsters his firearm (located on his right hip) and momentarily unholsters his taser (located on his front). He holds onto the taser with his right hand for about two seconds, then places it back into its holster.

Approximately 25 seconds after discharging his firearm, while other officers are attending to C.P. and calling fire rescue, Officer Neubauer approaches Lt. Angelo and says something. Officer Neubauer's statement to Lt. Angelo is not audible on any of the BWCs.[3] However, in his sworn statement to Florida Department of Law Enforcement (FDLE) Agent Albert Borges, Lt. Angelo described the interaction as follows:

> He said something like, and I'm paraphrasing, mind you, something along the lines of: 'L.T., I'm really sorry. I didn't mean to draw my gun,' or, 'I didn't realize I drew my gun.'

The FDLE Critical Incident Team responded and assumed the operational direction of the investigation. FDLE Agent Borges was designated as the lead investigator.

Professional Law Enforcement Association Attorney Teri Guttman Valdes responded to represent Officer Neubauer, who declined to provide a statement.

ANALYSIS

The role of the State Attorney in this investigation and in conducting this review is limited to determining whether a criminal violation of Florida law has occurred, whether any person may be held criminally responsible, and whether such criminal responsibility can be proven beyond a reasonable doubt in a court of law. The State Attorney does not establish agency policy, procedures, and training requirements. Nor does the State Attorney have any responsibility for determining disciplinary action or pursuing civil litigation in these matters. In other words, given the applicable law, the State Attorney's role is to determine whether the actions of Officer Ronald Neubauer constitute a criminal act that can be proven beyond and to the exclusion of every reasonable doubt.

The undersigned attorneys have reviewed the entire FDLE file regarding the Police Use of Force in this incident. We have also reviewed the sworn statements, crime scene reports, lab reports, 911 calls, BWCs, and other evidence compiled by FDLE under case number MI-27-0095. We find the FDLE summary and report to be complete and thorough. We adopt and attach the FDLE report into this memorandum and offer our conclusion based upon the results of our independent review of the evidence.

[3] Officer Neubauer's BWC did not capture the statement because it deactivated at the very beginning of the struggle. From review of Officer M. Gonzalez's BWC, this appears to be the result of C.P. striking the camera as he was swinging at Officer Neubauer.

Police had probable cause to arrest C.P. for domestic misdemeanor assault in violation of section 784.011, Florida Statutes, based on Ms. Bradshaw's statement that he "charged at me...threatening to beat me and hurt me." Alternatively, based on Ms. Bradshaw's statements regarding his mental health history, police arguably had the legal authority under Florida's Baker Act (Chapter 394) to take C.P. into custody for a 72-hour involuntary mental health commitment. Officers were therefore engaged in the lawful execution of a legal duty in detaining or attempting to detain C.P.

C.P. was without question putting up violent resistance as the officers attempted to take him into custody. By striking Officer Neubauer twice in the head and physically struggling with the officers, he committed at least two separate felonies: battery on a law enforcement officer (Fla. Stat. 784.07) and resisting an officer with violence (Fla. Stat. 843.01). Notably, resisting an officer with violence is considered a forcible felony under Florida law. See *Walker v. State*, 965 So.2d 1281 (Fla. 2nd DCA 2007).[4]

Section 776.012, Florida Statutes, permits the use of deadly force when a person reasonably believes such force is necessary to prevent imminent death or great bodily harm to himself or another, or prevent the commission of a forcible felony. Further, section 776.05, Florida Statutes, permits a law enforcement officer to use any force that he reasonably believes is necessary to defend himself or another from bodily harm while making an arrest. Were he to be charged in this shooting, Officer Neubauer could potentially claim that his use of deadly force was legally justified because C.P. was indeed putting up a fight.

However, statutes 776.012 and 776.05 both stipulate that deadly force is permissible only when a person "reasonably believes" that such force is necessary - and therein lies the problem. At bottom, this incident involved an unarmed 15-year-old boy versus five adults, all of whom were professionally trained and state certified Miami-Dade County law enforcement officers. Simply put, it would not have been remotely reasonable for Officer Neubauer to believe that deadly force was necessary in these circumstances, when he and his fellow officers had this adolescent contained in a small room and outnumbered 5 to 1. Granted, C.P. was being violent and unruly, and we in no way condone his behavior. But this child posed no real threat of bodily harm to these five police officers, and surely could have been safely subdued without being shot. We conclude that Officer Neubauer was <u>not</u> legally justified in the use of deadly force against C.P. under statutes 776.012 and 776.05.

This does not end the inquiry, however. The facts of this case do not support the intentional use of deadly force by Officer Neubauer. Rather, the evidence indicates that Officer Neubauer intended to use non-deadly force (i.e., his taser), but drew his firearm by mistake. Therefore, in any potential criminal prosecution, Officer Neubauer could defend himself on the alternative ground that he did not intend to use deadly force and that the discharge of his firearm was accidental. Given this evidence, the case must also be examined as a potential accidental firearm discharge prosecution. In Florida, accidental firearm discharge cases are analyzed under the legal theory known as culpable negligence.

The criminal offense of culpable negligence is codified in section 784.05, Florida Statutes. Subsection (2) provides: "Whoever, through culpable negligence, inflicts actual personal injury on another commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083." The term culpable negligence is defined in the Florida Standard Jury Instructions in Criminal Cases as follows:

[4] We would note, however, that C.P. was not arrested or charged for these offenses following the shooting.

> Every person has a duty to act reasonably toward others. If there is a violation of that duty, without any conscious intention to harm, that violation is negligence. But culpable negligence is more than a failure to use ordinary care toward others. In order for negligence to be culpable, it must be gross and flagrant. Culpable negligence is a course of conduct showing reckless disregard of human life, or of the safety of persons exposed to its dangerous effects, or such an entire want of care as to raise a presumption of a conscious indifference to consequences, or which shows wantonness or recklessness, or a grossly careless disregard for the safety and welfare of the public, or such an indifference to the rights of others as is equivalent to an intentional violation of such rights. The negligent act or omission must have been committed with an utter disregard for the safety of others. Culpable negligence is consciously doing an act or following a course of conduct that the defendant must have known, or reasonably should have known, was likely to cause death or great bodily injury.

Fla. Std. Jury Instr. (Crim.) 7.7; *see also Getsie v. State,* 193 So.2d 679, 681-82 (Fla. 4th DCA 1967).

Per this instruction, culpable negligence looks at both a defendant's actions and his state of mind (common law concepts known as *actus rea* and *mens rea*, respectively) The *actus rea* relates to the reckless behavior itself while the *mens rea* requires that the defendant be consciously aware that he is engaging in such reckless behavior. The state must satisfy each to prove a defendant guilty of culpable negligence. The evidence in this matter presents challenges on both fronts.

Looking first at the behavioral aspect of the offense, Florida case law holds that an accidental firearm discharge may be the product of simple or gross negligence by the accused, but cannot always rise to the level of culpable negligence so as to constitute a crime. For a defendant to be found guilty of culpable negligence, the evidence must show that the behavior was of "such a gross and flagrant character that it evidenced a reckless disregard for human life or safety equivalent to an intentional violation of the rights of others." *A.T. v. State*, 658 So.2d 662 (Fla. 3d DCA 1995) (quoting *Dominique v. State*, 435 So.2d 974, 974 (Fla. 3d DCA 1983)). Each case of culpable negligence is determined upon facts and circumstances peculiar to it. *Scarborough v. State,* 188 So.2d 877 (Fla. 2d DCA 1966).

In *Espinoza v. State*, 706 So.2d 111 (Fla. 3d DCA 1998), the Third District Court of Appeal (DCA) reversed a manslaughter conviction in which the defendant killed his friend when he accidentally touched the trigger of his pistol while cleaning it. The court stated that without additional aggravating circumstances, the evidence was insufficient to justify the conviction. In *A.T.,* the court reversed a conviction for culpable negligence where the evidence only supported the juvenile being careless or having an accident, stating that the prosecution had not met its burden of showing a reckless disregard for human life. *A.T.*, 658 So.2d at 662. The Third DCA also reversed a conviction of manslaughter by culpable negligence in *J.A. v. State*, 593 So.2d 572 (Fla. 3d DCA 1992), where a juvenile defendant shot and killed his friend while handling a loaded rifle. The facts in *J.A.* indicated that the defendant accidentally hit the trigger, there was no animosity between the victim and defendant, and there was no proof that the defendant was under the influence of drugs or alcohol.

The Fourth DCA likewise found the evidence insufficient to sustain a conviction of manslaughter by culpable negligence in the case of *In re J.C.D.*, 598 So.2d 304 (Fla. 4th DCA 1992). In that case, the

defendant had removed the ammunition magazine, as well as a bullet in the firing chamber, from the gun before the shooting. And, while the defendant did not describe the gun as slipping from his hands, he did state, without contradiction, that he engaged the trigger by accident when standing up to put the gun away. Citing the Third DCA's decision in *J.A.*, the Fourth District held that the defendant's actions may support a finding of some lesser form of negligence, but they did not support a finding of criminally culpable negligence.

Another accidental discharge case out of the Fourth DCA is *Getsie v. State,* 193 So.2d 679 (Fla. 4th DCA 1967). There, the defendant testified that he was releasing the hammer of his gun slowly with his index finger when it was about a foot and a half away from his wife. He knew the gun was loaded. He started to sit on his wife's lap or leg and the gun went off, fatally injuring her. The appellate court emphasized that "criminal responsibility for manslaughter should be determined by consideration of the act which resulted in death in its surroundings at the time of its commission and not consideration of the result alone." *Id.* at 682. The court also noted that a "defendant's version of a homicide cannot be ignored where there is absence of other evidence to contradict his explanation." *Id.* at 684. Accordingly, the court found that the evidence was insufficient to constitute culpable negligence manslaughter and reversed Getsie's conviction.

In *Parker v. State,* 318 So.2d 502 (Fla. 1st DCA 1975), the First DCA reversed a manslaughter conviction where the defendant shot and killed the victim (his cousin and friend) while the two were seated in the cab of a pickup truck. The defendant stated that he waved the pistol by the victim's head when it accidentally discharged. The hammer of the gun was positioned in the "safety notch," and the defendant did not believe that the gun would fire in that position. The state's firearm expert corroborated the defendant's account of the incident, testifying that the gun involved was known to fire randomly even with the hammer in the so-called safety notch position. Thus, despite the handling and waving of a loaded weapon near the victim's head, the appellate court reversed Parker's manslaughter conviction.

On the other hand, there are numerous Florida cases upholding convictions of manslaughter by culpable negligence based on an accidental firearm discharge. In *Sapp v. State*, 913 So.2d 1220 (Fla. 4th DCA 2005), the defendant was under the influence of alcohol, marijuana, Xanax and cocaine at the time of the incident. He admitted to police that he was "very, very messed up" and feeling "antsy." A witness asked Sapp to put the gun away. Instead of complying, the defendant began to wave the gun around, showing off and talking "trash" while repeatedly loading and ejecting bullets from the chamber. During one such loading and ejecting sequence, the gun accidentally discharged and killed the victim. The Fourth DCA held that "the sum total of appellant's actions demonstrated a high degree of recklessness sufficient to meet the standard for manslaughter by culpable negligence." *Id.* at 1225.

The *Sapp* court cited with approval several other Florida cases in which manslaughter by culpable negligence convictions based on an accidental firearm discharge were sustained. *See Dolan v. State,* 85 So.2d 139 (Fla.1956) (affirming manslaughter conviction where defendant fired a shot into a trailer to "show off" during an encounter with his girlfriend's male friend, and while holding pistol in his right hand, shot male friend during struggle for pistol; defendant's actions "set the stage for the tragedy which ultimately and inevitably followed"); *Williams v. State,* 104 So. 782 (Fla. 1925) (affirming manslaughter conviction where shotgun which the defendant was shifting from one arm to the other accidentally discharged, killing an unintended victim); *Marasa v. State,* 394 So.2d 544 (Fla. 5th DCA 1981) (finding

evidence sufficient for conviction of manslaughter where at a drug and alcohol party defendant pointed what he mistakenly believed was an empty gun at victim and pulled the trigger, firing a bullet and killing the victim); *McBride v. State,* 191 So.2d 70 (Fla. 1st DCA 1966) (upholding manslaughter conviction where the defendant needlessly possessed a deadly weapon which he brandished in a careless and reckless manner while intoxicated).

The Third DCA sustained a conviction for manslaughter by culpable negligence based on an accidental discharge in *Cunningham v. State*, 385 So.2d 721 (Fla. 3d DCA 1980). In *Cunningham*, the defendant became upset at a gambling event where he had been drinking. In response to alleged insults, the defendant went home, retrieved a gun, and returned to the event. He then deliberately fired the gun into the air. His actions attracted the attention of the victim, who also became angry and tried to take the weapon from the defendant. As the victim tugged on the gun, it discharged and killed him. In this situation, the court held that "a drunken struggle over a lethal weapon [that] appellant recklessly brought, in anger, to a drunken and angry scene" rose to the level of a reckless disregard for human life or safety. *Id.* at 723.

The above-cited cases focus primarily on the actions of the accused, and whether those actions rise to the requisite level of recklessness. However, as previously mentioned, there is also a state of mind component to culpable negligence which must also be satisfied. At common law, all crimes consisted of both an act or omission coupled with a requisite guilty knowledge or *mens rea*. See *State v. Giorgetti*, 868 So.2d 512, 515 (Fla. 2004). Hence, as a general rule, guilty knowledge or *mens rea* was a necessary element in the proof of every crime. *Id.* Moreover, because of the strength of the traditional rule that requires *mens rea*, offenses that require no *mens rea* are generally disfavored. *Id.* As explained by the Florida Supreme Court, this policy "is consistent with the concept that criminal sanctions are ordinarily reserved for acts of intentional misconduct." *Id.* at 516.

Pursuant to the jury instruction on culpable negligence, the state would need to prove that the Officer Neubauer "consciously" did some act that he knew or reasonably should have known was likely to cause death or great bodily injury. See Fla. Std. Jury Instr. (Crim.) 7.7. The evidence in this case is that Officer Neubauer was not consciously aware that he was holding his firearm. His intent was to utilize his taser on C.P., not his firearm. This is corroborated by his loud expletive immediately after the discharge, his spontaneous statement to Lt. Angelo, and his threat to C.P. early in the encounter that, "I'm not gonna fight with you. I'm just gonna tase you." Therefore, if Officer Neubauer mistakenly believed that he was holding a taser and was not consciously aware that he was holding a firearm, the state cannot prove the *mens rea* required for culpable negligence.

This same rational would preclude a prosecution of Officer Neubauer for attempted manslaughter by act pursuant to section 782.07, Florida Statutes. To prove attempted manslaughter, the state must prove that the defendant "intentionally committed an act which would have resulted in the death of the victim except that someone prevented the defendant from killing the victim or he failed to do so." See Fla. Std. Jury Instr. (Crim.) 6.6. The Florida Supreme Court has also stated that "a verdict for attempted manslaughter can be rendered only if there is proof that the defendant had the requisite intent to commit an unlawful act." *Taylor v. State*, 444 So.2d 931 (Fla. 1984). In this case, Officer Neubauer was legally authorized to take C.P. into custody; his actions in this regard were not unlawful. Moreover, based on all available evidence, Officer Neubauer's clear intent was to utilize his taser, not his firearm. It therefore

cannot be said that Officer Neubauer "intentionally committed" the act of discharging his firearm when he genuinely (but mistakenly) believed that he was holding his taser.[5]

CONCLUSION

The above-cited cases demonstrate the high burden that the state must meet to convict a person of culpable negligence based on an accidental firearm discharge. There is no evidence that Officer Neubauer was under the influence of drugs or alcohol, that he was playing with or recklessly handling the firearm or that he had any prior animosity or ill will toward C.P. Those are some of the factors that courts have used in prior cases to analyze a defendant's actions in culpable negligence prosecutions, and none of them are present in this shooting. Moreover, there is no evidence that Officer Neubauer was consciously aware that he was armed with a firearm instead of a taser, which would constitute an additional hurdle to proving the requisite state of mind for either culpable negligence or attempted manslaughter.

Officer Neubauer's actions in this case were clearly negligent. However, simple negligence is not enough to convict a person of a crime in Florida. It is the opinion of the undersigned that the actions of Officer Neubauer in this incident would not meet the evidentiary threshold required to support a criminal prosecution under existing Florida statutes and case law.

Prepared by:

J. SCOTT DUNN
Assistant State Attorney

[5] While a taser is considered non-deadly force, we express no opinion on whether Officer Neubauer's threatened or attempted use of the device on C.P. in these circumstances was appropriate or consistent with MDPD policies, procedures and training. We would simply note that an officer's failure to comply with department policies, procedures and training, although admissible in a civil action, cannot be used as evidence in a criminal prosecution. See *Lozano v. State*, 584 So.2d 19 (Fla. 3d DCA 1991).