

**Huntsville Police Department**  
City of Huntsville  
P. O. Box 2085  
Huntsville, AL 35804

COMMISSION ON ACCREDITATION  
FOR LAW ENFORCEMENT AGENCIES



Honorable Attorney General Steve Marshall,

As you know, one of my Huntsville Police officers, William Darby, was convicted of murder by a jury in the Madison County Circuit Criminal Court last Friday. The incident involving officer Darby responding to a call of an armed individual threatening suicide is what led to the case in which Officer Darby was ultimately convicted.

An Incident Review Board determined that Officer Darby acted within Huntsville Police Department policy and training. All of our officers received the same training as Officer Darby. Therefore, I am writing on behalf of the Huntsville Police Department to seek guidance on the laws pertaining to Alabama Police Officers who are confronted with armed subjects.

The Huntsville Police Academy provides training approved by the Alabama Police Officer Standards and Training Commission (APOSTC) and additional officer survival training provided by the Federal Bureau of Investigation (FBI) regarding "action versus reaction." Prior to my officer's murder conviction, we understood and believed that our training was consistent with, among other legal authorities, the Code of Alabama Title 13A Criminal Code, Tennessee v. Garner, 471 U.S. 1 (1985), Graham v. Connor, 490 U.S. 386 (1989), Penley v. Eslinger, 605 F.3d 843 (11th Cir. 2010), and Garczynski v. Bradshaw, 573 F.3d 1158 (11th Cir. 2009).

In your [February 2019 Attorney General's Report](#) regarding the officer-involved shooting death of Emantic ("E.J.") Bradford, Jr. you stated:

*Justifiable Use of Force:* Section 13A-3-22 of the Alabama Code (1975) specifically addresses actions taken by law enforcement officials in the line of duty: 'Unless inconsistent with other provisions of this article, or with some other provision of law, conduct which would otherwise constitute an offense is justifiable and not criminal when it is required or authorized by law or by a judicial decree or is performed by a public servant in the reasonable exercise of his official powers, duties or functions.' By its plain language, this statute declares that a police officer's action is 'not criminal' if it is 'performed ... in the reasonable exercise of his official powers, duties, or functions.'  
(Page 18)





In your report you also wrote the following about use of force:

Alabama law's focus on the reasonableness of an officer's actions is not unique. The United States Supreme Court has held that police officers may use deadly force, even if a suspect is fleeing, if the use of force was reasonable under the circumstances: Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. Tennessee v. Garner, 471 U.S. 1, 11 (1985)...The Association of Prosecuting Attorneys similarly posited a reasonableness-based question when crafting guiding principles for cases involving officer-involved shootings: The end result should include a comprehensive analysis of whether the officer reasonably believed that he or she faced a threat that warranted the resultant use of force. (Pages 18-19)

As the United Supreme Court has stated, "[t]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." Graham v. Connor, 490 U.S. 386, 396-97 (1989). Officer 1 was faced with such a "tense, uncertain, and rapidly evolving" situation when he saw E.J. Bradford running with a gun towards unarmed persons, and his response to that split-second situation was reasonable and based on an appropriate level of care for innocent lives. (Page 20)

A more recent and relevant case on this topic used in our training curriculum is Garczynski v. Bradshaw, 573 F.3d 1158 (11th Cir. 2009). Addressing the specific issue of whether a police officer's use of deadly force against a suicidal, armed man was reasonable under the Fourth Amendment to the United States Constitution, the Eleventh Circuit held:

Furthermore, the escalation into deadly force was justified by Garczynski's refusal to comply with the officers' commands. After identifying themselves, the officers repeatedly ordered Garczynski to show his hands. They also repeatedly commanded him to drop the phone and then, after he raised a gun to his head, to drop his gun. Instead of obeying these commands, Garczynski swung the gun from his head in the direction of the officers, at which point they fired. The officers reasonably reacted to what they perceived as an immediate threat of serious harm to themselves. This is exactly the type of 'tense, uncertain and rapidly evolving' crisis envisioned by the Supreme Court in Graham, 490 U.S. at 397, 109 S. Ct. at 1872. Judged from the perspective of a reasonable officer on the scene, the officers' use of deadly force was objectively reasonable under the circumstances. Garczynski, 573 F.3 at 1168.

*A Future on the Horizon*

# Huntsville

Tommy Battle, Mayor



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Significantly, the Eleventh Circuit did not stop there, but went on to further hold as follows: “Even if we assumed that Garczynski did not point his gun in the officers' direction, the fact that Garczynski did not comply with the officers' repeated commands to drop his gun justified the use of deadly force under these particular circumstances.” Garczyski, 573 F.3d at 1169. Similarly, in Penley v. Eslinger, 605 F. 3d 843 (11th Cir. 2010), the Eleventh Circuit likewise upheld the constitutionality of the use of deadly force against an armed subject who refused to disarm. There, a 15-year-old student brought a toy gun to school and repeatedly failed to obey officer commands to drop the weapon. Citing Garczyski, the Eleventh Circuit expressly held that “n[on]compliance of this sort supports the conclusion that use of deadly force was reasonable.” Penley, 605 F.3d at 851. Notably, in so holding, the Eleventh Circuit also rejected evidence that another officer on the scene “did not feel threatened” by the armed boy. Penley, 605 F.3d at 852 (finding that “Sergeant Brubaker’s subjective lack of fear sheds little light on whether Lieutenant Weippert’s conduct was objectively reasonable”).

On behalf of the Huntsville Police Department, I respectfully ask you to address whether a law enforcement officer’s repeated commands to drop a weapon is enough to justify the use of deadly force in Alabama to a noncompliant individual, as set forth in Garczyski and Penley. Does an Alabama law enforcement officer have to wait until an individual points a gun at him before he can use deadly force? Additionally, is the FBI officer survival class training, including the concept of “action versus reaction,” consistent with Alabama law? In sum, it cannot be the law of Alabama that a law enforcement officer is constitutionally authorized under the Fourth Amendment to the United States Constitution to use deadly force and thus is free of civil liability under settled case law yet the same conduct by the same law enforcement officer constitutes the criminal act of murder subject to a lengthy term of imprisonment. There is an obvious legal incongruity here that demands clarification and resolution for the benefit of all law enforcement officers across the state, especially Officer Darby.

If I can provide you with any additional information, including but not limited to our training or policy, please let me know. Otherwise, I sincerely thank you in advance for your time and thoughtful consideration.

Sincerely,

  
Mark McMurray

