



**ATTORNEY GENERAL'S REPORT REGARDING THE
OFFICER-INVOLVED SHOOTING DEATH OF EMANTIC ("E.J.")
BRADFORD, JR. AT THE RIVERCHASE GALLERIA ON NOVEMBER 22, 2018**

February 5, 2019

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INTRODUCTION

Two shooting incidents occurred inside the Riverchase Galleria mall in Hoover (“the Galleria”) on November 22, 2018. The first incident occurred at approximately 9:51 p.m. when Erron Brown shot 18-year-old Brian Wilson, twice. The second incident occurred approximately five seconds later when, in response to the initial two gunshots, Officer ██████████ (“Officer 1”) shot and killed Emantic (“E.J.”) Bradford, Jr., a 21-year-old male who was running toward the initial shooter and victim with a firearm visibly in hand. This report focuses solely on the second incident, specifically, whether Officer 1 should be criminally charged for shooting E.J. Bradford. (A separate investigation and prosecution of the first shooting continues.)

After an extensive investigation and review, the Attorney General has determined that Officer 1 did not commit a crime under Alabama law when he shot and killed E.J. Bradford and thus the Alabama Rules of Professional Conduct preclude presentation of this case to a grand jury. This report details how and why the Attorney General reached this conclusion. Part I briefly explains the Attorney General’s decision. Part II details the State’s investigation and the evidence collected. Finally, Part III provides a detailed application of Alabama law to the evidence presented in Part II and explains why the facts do not warrant criminal charges against Officer 1.

I. SUMMARY OF CONCLUSIONS

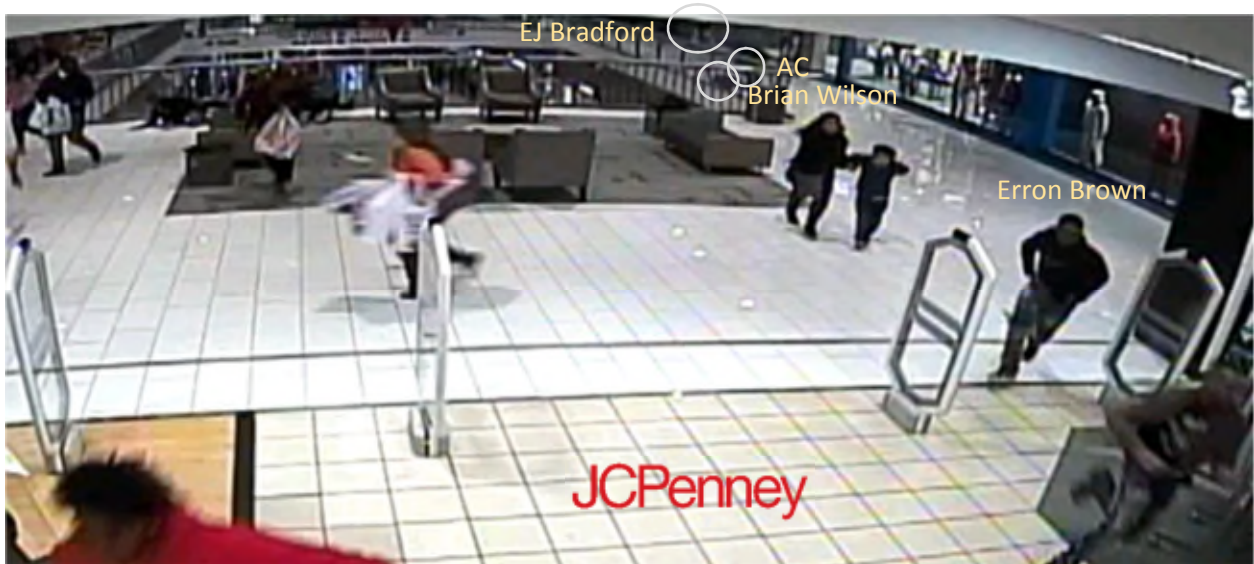
Rule 3.8(1)(a) of the Alabama Rules for Professional Conduct dictates that “the prosecutor in a criminal case shall refrain from prosecuting a charge that the prosecutor knows is not supportable by probable cause.” Section 13A-3-22 of the Code of Alabama (1975) dictates that “conduct which would otherwise constitute an offense *is justifiable and not criminal* when it ... is performed by a public servant in the reasonable exercise of his official powers, duties, or functions.” (emphasis added). Thus, a threshold question exists: Did Officer 1 reasonably exercise his official powers, duties, or functions when he shot E.J. Bradford? If the answer to that question is “yes,” then Alabama law declares the shooting “not criminal” and thus the Rules of Professional Conduct dictate the prosecutor “shall refrain” from seeking criminal charges. If the answer is “no,” then the prosecutor may seek criminal charges under the appropriate criminal statute(s), if any.

The facts of this case demonstrate that Officer 1 reasonably exercised his official powers, duties, or functions when he shot E.J. Bradford. Officer 1 and his partner ██████████ (“Officer 2”) were on duty in the Galleria when they heard two gunshots approximately 75 feet away.

Officers 1 and 2 immediately moved toward the gunshots. Within three seconds, they encountered E.J. Bradford, who held a firearm in a ready position, then charged forward:



Several persons were in Bradford’s path. Immediately before him, Brian Wilson lay on the ground, bleeding from his gunshot wounds, and 18-year-old ██████████ (“AC”) stood over Wilson. Beyond them, Erron Brown (the initial shooter) and his companions were running into JC Penney, while several innocent bystanders were scrambling for cover:



Officer 1 identified E.J. Bradford as an immediate deadly threat to innocent civilians and thus shot Bradford to eliminate the threat.

Officer 1’s actions were reasonable under the circumstances and were consistent with his training and nationally-accepted standards for “active shooter” scenarios. Accordingly, Officer 1’s actions do not constitute a crime under Alabama law, *see* Ala. Code § 13A-3-22, and therefore should not be presented to a grand jury for potential criminal prosecution. *See* Rule 3.8(a), Alabama Rules for Professional Conduct.

II. THE EVIDENCE

A. THE INVESTIGATION & PROSECUTORIAL REVIEW

1. *The Investigation*: Officer 1 is employed by the Hoover Police Department (“HPD”) and was on-duty, in uniform when he shot E.J. Bradford on the evening of November 22, 2018. That night, at the request of the Hoover Chief of Police, crime scene technicians from the Jefferson County’s Sheriff’s Office (“JCSO”) processed the scene of the shooting.

The next day (November 23), Sheriff-elect Mark Pettway discovered that he had a potential conflict of interest regarding a witness to the incident. The Sheriff-elect conveyed this potential conflict to then-Jefferson County District Attorney Mike Anderton, who requested the State Bureau of Investigation (“SBI”) assume the investigation.

SBI met with representatives of JCSO and HPD on November 25, 2018, to request the production of all reports and documents related to the incident. For the next seven weeks, SBI investigated the incident. Upon completion, SBI turned over its investigative file on the shooting of E.J. Bradford to the Attorney General. Relevant here, that file includes:

- The Uniform Incident/Offense Report for November 22, 2018;
- The JCSO Crime Scene Report Narrative;
- HPD Incident Scene Photographs;
- SBI Interviews with 48 individuals;
- Statements previously taken by HPD and JCSO;
- Body Camera Videos from Officers 1-4;
- Surveillance video from JC Penney, FootAction, and Galleria security;
- Firearms Analysis Report from the Alabama Department of Forensic Sciences; and,
- Biological Analysis Report from the Alabama Department of Forensic Sciences.

(SBI continues its investigation regarding the shooting of Brian Wilson.)

2. *Prosecutorial Review*: This matter initially fell under the jurisdiction of the Jefferson County District Attorney’s Office. On December 11, 2018, District Attorney Danny Carr (who assumed office on November 27, 2018) informed Attorney General Steve Marshall by letter that “a fair-minded, objective observer *could* conclude that a conflict exists” with his office based on two factors: (1) that Officer 1 was the charging officer and/or a witness in approximately 20 cases pending with the District Attorney’s office and (2) District Attorney Carr’s personal relationship with persons protesting the shooting of E.J. Bradford. Two days later, the Attorney General

informed District Attorney Carr that he would assume jurisdiction over both shootings based on District Attorney Carr's admission that the public could perceive a conflict of interest. *See* Section 1-3.3(d), National District Attorneys Association, National Prosecution Standards ("The prosecutor should excuse himself or herself from any investigation, prosecution, or other matter where personal interests of the prosecutor would cause a fair-minded, objective observer to conclude that the prosecutor's neutrality, judgment, or ability to administer the law in an objective manner may be compromised."); Principle II, 21st Century Principles of Prosecution, Peace Officer Use of Force Project ("Prosecutors must ensure that all prosecutorial charging decisions are made independent of any bias or influence.").

Once the Attorney General assumed jurisdiction, he and/or members of his office met with members of HPD and SBI regarding the evidence in this matter. The Attorney General also met with the Alabama State Bar, the Jefferson County District Attorney (Bessemer Cutoff), the Federal Bureau of Investigation, and the United States Attorney for the Northern District of Alabama. The Attorney General and members of his office also discussed the Attorney General's responsibilities with prosecutors who have handled officer-involved shootings nationwide.

Upon reviewing SBI's investigative file and consulting with the Special Agent in charge of ALEA's active shooter training program, the Attorney General has concluded that Officer 1's actions were reasonable and not criminal. Furthermore, it is the Attorney General's understanding that the FBI has found no evidence to initiate a case for civil rights violation(s).

B. LIMITS ON THE DISCLOSURE OF EVIDENCE

A goal of this report is to provide maximum transparency, particularly public disclosure of evidence gathered by SBI. Full disclosure, however, is not possible due to the pending charge of attempted murder against Erron Brown for shooting Brian Wilson approximately five seconds before Officer 1 shot E.J. Bradford.

Principle III of the 21st Century Principles of Prosecution, Peace Officer Use of Force Project ("Use of Force Project"), states that "[p]rosecutors must always find that elusive balance between keeping the public informed and not jeopardizing a case or compromising ethical obligations."¹ To comply with this principle, one must first identify the Attorney General's ethical obligations toward Erron Brown, whose attorneys have asserted in court proceedings that Brown

¹ The national Association of Prosecuting Attorneys ("APA") produced the Use of Force Project Principles to establish standards for prosecutors when dealing with officer-involved shooting investigations/prosecutions.

shot Brian Wilson in self-defense. Rule 3.6(a) of the Alabama Rules of Professional Conduct forbids the Attorney General from disseminating any information that “will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.” Rule 3.8(f) of the Model Rules of Professional Conduct similarly forbids a prosecutor from “making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused,” “except for statements that are necessary to inform the public of the nature and extent of the prosecutor’s action and that serve a legitimate law enforcement purpose.” Applying those rules to this case means that the Attorney General can disclose any information that he considered when determining whether to seek criminal charges against Officer 1, unless that information could either (a) prejudice Erron Brown’s case or (b) heighten the public’s condemnation of Erron Brown.

After consulting with the Alabama State Bar, the Attorney General has determined that the following guideline strikes the proper balance between full disclosure and compliance with the ethical obligations regarding the Erron Brown matter: Everything that occurred from the moment Erron Brown shot Brian Wilson can be disclosed; everything that led up to that moment cannot. For example, this report contains photographic evidence that Erron Brown shot Brian Wilson but does not disclose details of any relationship between the two men.²

Establishing the shooting of Brian Wilson as the line of demarcation is appropriate for two reasons. First, it fulfills the Attorney General’s ethical obligations toward Erron Brown and his pending charge for attempted murder. By asserting a claim of self-defense, Erron Brown has necessarily informed the public that he shot Brian Wilson. Thus, disclosing that Erron Brown shot Brian Wilson can neither prejudice his defense (contrary to Alabama Rule 3.6(a)) nor enhance the public’s condemnation of Erron Brown (contrary to Model Rule 3.8(f)), and withholding all information that led up to the shooting mitigates any potential prejudice to Brown’s case. Second, Officer 1 was not aware of the events that led Erron Brown to shoot Brian Wilson; thus, information regarding why Erron Brown shot Brian Wilson is not germane to the question of whether Officer 1 acted reasonably when he shot E.J. Bradford.

² To ensure compliance, this report redacts certain names and details related to the Erron Brown matter.

C. SURVEILLANCE VIDEO

The Galleria opened on Thanksgiving night, November 22, 2018, for early Black Friday shopping. The events relevant to this report all occurred on this second-floor walkway in front of JC Penney and Foot Action:



SBI recovered surveillance video footage from both JC Penney and FootAction. While recorded from a distance, the JC Penney video captures both the shooting of Brian Wilson and the shooting of E.J. Bradford. While closer to the action, the FootAction video only depicts the shooting of E.J. Bradford. The shooting of Brian Wilson and the events leading up to that shooting occur just off screen to the left (toward JC Penney).

Synchronizing these videos suggests the following chain of events, which spans approximately five seconds. Erron Brown shoots Brian Wilson, then along with his companions, runs into JC Penney. E.J. Bradford initially runs in the opposite direction (away from JC Penney), creating a gap between himself and the gunshots. As he creates this gap, Bradford draws his weapon and chambers a round. Bradford then charges back toward JC Penney, gun drawn. Officer 1 shoots Bradford as Bradford is running toward Brian Wilson (the gunshot victim), AC (who is assisting Wilson), Erron Brown (the initial shooter), and several innocent bystanders.

The next two pages include images that track the movements of Erron Brown, E.J. Bradford, and Officer 1; first from the JC Penney surveillance video, then the FootAction video.

JC PENNEY VIDEO | ERRON BROWN

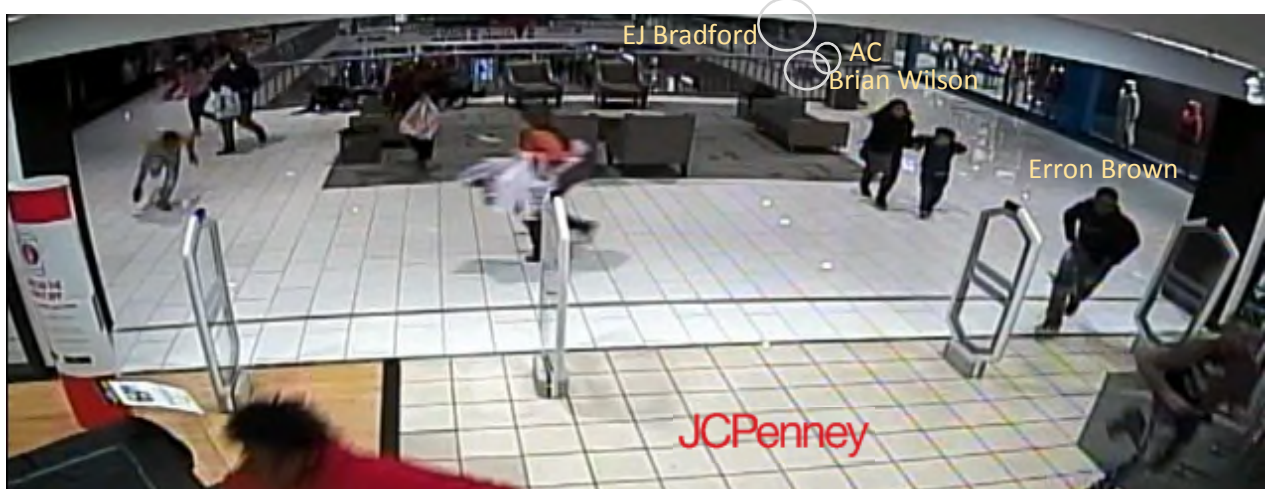
The following series of images begins with Erron Brown shooting Brian Wilson and shows Erron Brown running into JC Penney with his companions [REDACTED] and [REDACTED]. This series of images spans approximately 4 seconds.



(Erron Brown Shoots Brian Wilson)



(Erron Brown and companions running toward JC Penney; Wilson on floor)



(E.J. Bradford, gun drawn, as he begins running towards JC Penney)

FOOTACTION VIDEO | E.J. BRADFORD & OFFICER 1

The following series of images from the FootAction video begins one second after Erron Brown shot Brian Wilson. The first series depicts E.J. Bradford drawing a black handgun as he creates a gap between himself and the initial shooting site:



The next series of images begins approximately three seconds after the initial gunshots. These images depict E.J. Bradford taking a bladed shooting stance, while seemingly chambering a round (circled below), then sprinting back toward JC Penney:



Officers 1 and 2 are seen behind Bradford's right shoulder, three seconds after the first shooting. The officers engage Bradford, who stands holding a gun and then, unlike others at the scene, runs toward the gunshots. Within the next 1-2 seconds, depicted below, Officer 1 shoots Bradford, who falls to the ground and slides forward, having been killed by a catastrophic wound to the head:



D. THE SUPPORTING EVIDENCE

Investigators collected numerous items of evidence that enhance the narrative provided by the JC Penney and FootAction surveillance videos.

1. OFFICER 1'S ACCOUNT

Officer 1 provided two statements concerning his actions; the first within a few minutes of the shooting; the second one week later.

Contemporaneous Statement: Shortly after the shooting, while officers were attending to Brian Wilson and AC, Captain [REDACTED] pulled Officer 1 to the side and asked him to “very quickly, tell me what happened.” Officer 1 responded:

“Me and [Officer 2] were standing over there. We heard two shots. And I turned around; we drew our guns. That guy [E.J. Bradford] was running toward them with a gun in his hand. I shot him.”

To provide context, “there” refers to Spencer’s store, which is depicted by the blue ‘X’ in the snapshot below. Investigators later determined that Officers 1 and 2 were approximately 75 feet away from the site of Erron Brown’s gunshots, depicted below by the red ‘X.’



Written Statement and Questioning: Officer 1 provided a detailed written statement to investigators on November 29, 2018. Relevant to this report, Officer 1 stated:

“At approximately 2100-2130, I was located on the second floor in front of Spencer’s. My partner and I were observing the crowd for any violations of the law and/or disruptions to the orderly conduct of shopping. I heard two gunshots and a female’s scream behind me. I turned toward the noise, drawing my firearm. I was in reasonable fear for the lives of the shoppers, my partner, and myself. I instinctively started moving towards the area where the gunshots were heard while looking for immediate threats. I then observed a crowd of shoppers near FootAction running away from where I heard gunshots.

“I observed two males who were not running away, but, instead, were standing near the railing in front of FootAction. One male appeared to be injured, clutching his stomach, while the other male appeared to be helping him. Next, I observed an armed suspect quickly moving towards the two males standing near the railing. The suspect was advancing on the two males and had a black handgun in his right hand. I fired my duty weapon at the armed suspect to stop him. The suspect fell near the other two males[,] and I observed the suspect’s firearm slide across the floor.

“I ordered the two males by the railing to lay down to determine whether they were a threat to safety. I asked the uninjured male if he was armed, whether he was injured, and if the suspect was the only shooter. I understood an affirmative response to my last question. No additional weapons were found, and ultimately, I did not observe any further threats to the safety of others.”

Upon submitting his written statement to SBI, Officer 1 agreed to answer questions posed by the receiving investigators. Relevant to this report, Officer 1 stated during questioning that:

- Officer 1 believed that E.J. Bradford was going to murder Brian Wilson and AC. In Officer 1’s estimation, E.J. Bradford was only 10 feet away from Wilson and AC as he was running toward them with a firearm.
- Officer 1 believed that E.J. Bradford was holding his gun in a manner that allowed Bradford to shoot Wilson or AC or turn and shoot Officers 1 or 2.
- After shooting E.J. Bradford, Officer 1 did not engage Brian Wilson or AC because neither man appeared armed nor did either man appear to pose an immediate threat.
- Officer 1 was unable to provide verbal commands to E.J. Bradford before firing his weapon due to the quickness of the event and the immediate threat Bradford posed to Brian Wilson and AC.
- Officer 1 explained that, consistent with department policy, his body camera was in standby mode when he heard the initial gunshots. Officer 1 stated that he did not activate his body camera before he engaged and shot E.J. Bradford because there was “no time” due to the quickness and urgency of the event. Officer 1 activated his body camera once he and Officer 2 began attending to Brian Wilson and AC.

2. OTHER WITNESSES' ACCOUNTS

Regarding this investigation,³ SBI interviewed three additional officers and 47 witnesses who were present at the Galleria at the time of the shootings. Six of these additional witnesses provided information relevant to the officer-involved shooting.

Officer 2: Officer 2 stated that he was working with Officer 1 in front of Spencer's when he heard shots fired near the FootAction store and he saw gunpowder smoke. Officer 2 stated he witnessed a large number of people running into the hallway that exited into the parking deck, seen in this photograph directly between Spencer's and FootAction:



Officer 2 stated that he and Officer 1 jumped into the crowd of people to cover and look for a threat. Officer 2 stated that it was obvious there was an “active shooter situation” in front of the FootAction store but did not know where the person who fired the initial shots was because his view was blocked. Officer 2 stated that he drew his weapon while trying to locate the shooter in an effort to save the lives of persons in the mall. Officer 2 stated that as he scanned the area, he observed the silhouette of a person and a weapon. Officer 2 stated that he heard Officer 1 fire approximately three shots. Officer 2 stated that he did not discharge his weapon because he believed that the threat was eliminated when E.J. Bradford fell to the ground.

Once the scene was secure, Officer 2 rendered medical assistance to Brian Wilson, who was bleeding from his gunshot wounds. During this time, Officer 2 believed that he heard AC indicate that E.J. Bradford had shot Brian Wilson. Officer 2 stated that, at the time, he believed E.J. Bradford had shot Brian Wilson.

³ SBI continues its investigation into the shooting of Brian Wilson on matters unrelated to Officer 1's actions on November 22, and thus the total number of witnesses interviewed in that matter will exceed the number of witness interviews considered by this report.

Officer 3: Officer [REDACTED] (“Officer 3”) stated that he and Officer [REDACTED] (“Officer 4”) were working together on the first floor of the Galleria, outside of JC Penney, at the time of the initial shooting. Officer 3 stated that Officer 4 [REDACTED]. As they were moving, Officer 3 heard gunshots and saw a puff of black smoke [REDACTED]. Officer 3 stated that the gunshots came from [REDACTED]. The following photograph approximates Officer 3’s view of site where Erron Brown shot Brian Wilson:



Officer 3 stated that he could see Brian Wilson through the second-floor railing but could not see a weapon or determine who shot Wilson. Officer 3 then observed Officer 1 moving from the left toward a target with his weapon drawn. Officer 3 could not see whom Officer 1 engaged and ultimately shot. Officer 3 stated that, when he arrived at the scene upstairs, Officer 1 was holding cover while Officer 2 attended to Brian Wilson’s gunshot wounds.

Officer 3 stated that, based on his perspective from the first floor, the person whom Officer 1 shot (E.J. Bradford) was not the initial shooter. However, Officer 3 stated that determining the location of the initial shooter would not have been possible from Officer 1’s position on the second floor. Officer 3 stated that he believed Officer 1 perceived that E.J. Bradford posed a threat and took enforcement action, as every law enforcement officer would have done in that situation.

Officer 4: Officer 4 stated that he was working alongside Officer 3 on the first floor of the Galleria in front of JC Penney when he observed [REDACTED]. Officer 4 stated that [REDACTED]. Officer 4 informed Officer 3 that [REDACTED] and then heard multiple gunshots. Shortly thereafter, Officer 4 heard another round of gunshots but did not see who fired them and did not know it was an officer. Officer 4 stated that after hearing the second round of gunshots, he and Officer 3 took a nearby staircase and began to clear the area.

Eyewitness 1: [REDACTED] (“Eyewitness 1”) was working inside the Claire’s store on the second floor of the Galleria on November 22nd. Eyewitness 1 stated that she was working at the front of the store when she heard gunshots. Eyewitness 1 stated that she immediately rushed employees and customers to the back of the store and pulled the front door shut due to the presence of an active shooter. While at the front door, Eyewitness 1 stated that she observed a black male on the ground by the railing in front of FootAction who appeared to be injured. Eyewitness 1 also saw a black male standing to the side of the injured male, holding a gun. Eyewitness 1 stated that this male (E.J. Bradford) appeared to be the shooter because he was the only man with a gun.

Eyewitness 1 then saw two officers approaching E.J. Bradford. Eyewitness 1 stated that the officers were in a low crouching position with both hands on their guns, pointing at Bradford. Eyewitness 1 stated that E.J. Bradford was not moving. Eyewitness 1 stated that she heard an officer say, “Drop your weapon, drop your weapon Sir, put your weapon on the ground” and also say, “He is still not doing anything.” Eyewitness 1 stated that she then witnessed Officer 1 shoot E.J. Bradford. Eyewitness 1 then went to the back of the store and informed employees that the police had shot the initial shooter and now were in control.

The photograph below approximates Eyewitness 1’s view from the front door of Claire’s:



Eyewitness 1 stated that she believed E.J. Bradford was the initial shooter and that he would continue shooting other persons, and thus she feared for her life, the officers' lives, and the lives of persons on the ground. Eyewitness 1 stated that she feared that E.J. Bradford was going to shoot the officers and run because of how fast the officers arrived and because Bradford refused to put down his gun.

Eyewitness 2: [REDACTED] ("Eyewitness 2") was working inside the Claire's store on the night of November 22nd when she heard two gunshots. Eyewitness 2 stated that she met Eyewitness 1 at the front of the store to help close the front doors. Eyewitness 2 stated that she saw an injured black male lying on the ground (Brian Wilson), a black male in civilian clothes (E.J. Bradford) and a police officer standing outside of FootAction. Eyewitness 2 stated that she did not see E.J. Bradford's weapon, but she saw Bradford taking an "aggressive stance" and heard the police officer ask Bradford, "literally three times," to drop his weapon. Eyewitness 2 stated that Bradford did not comply. Eyewitness 2 stated that she then saw Officer 1 shoot E.J. Bradford. Eyewitness 2 stated that she believed E.J. Bradford shot Brian Wilson and that she was afraid that Bradford would shoot the officer and/or Eyewitnesses 1 and 2 if he turned and saw them.

Eyewitness 3: [REDACTED] ("Eyewitness 3") was working inside JC Penney on the night of November 22nd. Eyewitness 3 stated that people began running due to a fight on the first (sic) floor. Eyewitness 3 stated that she saw a police officer shoot E.J. Bradford three times. Eyewitness 3 stated that she did not see E.J. Bradford holding a gun, but she did see a gun come out from his right side as he fell to the floor.

3. VIDEO EVIDENCE

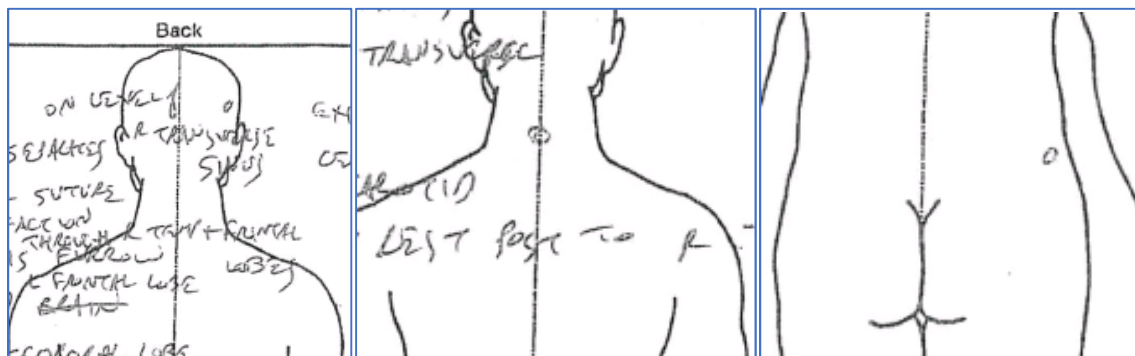
As discussed on pages 6-8, investigators secured surveillance video from JC Penney and FootAction that depicted the shooting of E.J. Bradford. Investigators secured other surveillance videos from the Galleria, but only the FootAction and JC Penney videos depict the shooting of E.J. Bradford. Review of additional surveillance video regarding the Erron Brown matter continues.

Investigators also secured body camera videos from the officers on the scene, but none of the videos depict the shooting of E.J. Bradford. Body cameras possess limited battery life and digital storage. Accordingly, HPD policy dictated that the on-duty officers' cameras be in standby mode while working their detail inside the Galleria on Thanksgiving night. As previously mentioned, Officer 1 told investigators that he did not have time to turn his body camera on before responding to the active shooting site due to the imminent nature of the threat. Accordingly, his

body camera video, and those of his fellow officers, begin after the shooting. Collectively, these videos depict three relevant pieces of information: (a) Both officers believed and told their fellow officers that E.J. Bradford shot Brian Wilson; (b) Officer 1 secured AC, ensuring that he was not armed; and, (c) Officer 2 attended to Wilson by placing his hands into Wilson’s gunshot wounds.

4. AUTOPSY FINDINGS

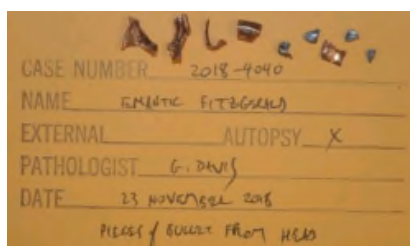
The Jefferson County Coroner Medical Examiner’s Office (“JCCMEO”) performed an autopsy on E.J. Bradford on November 23, 2018. JCCMEO determined that Bradford had been shot three times: (1) head, back right; (2) neck, middle; and (3) back, just above the right buttock.



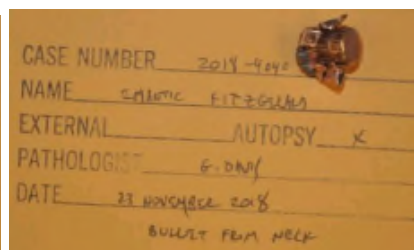
JCCMEO determined that E.J. Bradford died from an injury to the brain caused by the bullet that struck Bradford on the back right side of his head.

5. BALLISTICS EVIDENCE: OFFICER 1

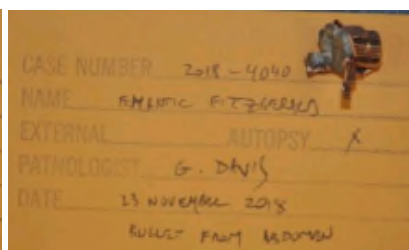
Officer 1 fired his Glock 19X, 9mm, four times. As proved by the aforementioned autopsy, three of the four shots struck E.J. Bradford. Each of these rounds was recovered, in part or in whole, by the Medical Examiner during Bradford’s autopsy. As depicted in these photographs, the bullets that entered Bradford’s neck and lower back were recovered whole, while the bullet that entered his head was recovered as fragments along its track:



(Bullet fragments from Head)



(Bullet from Neck)



(Bullet from Abdomen)

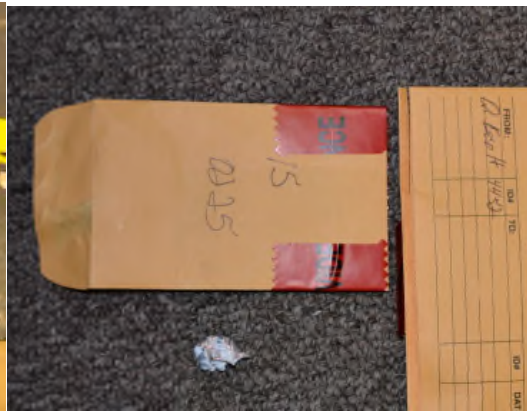
The remaining bullet fired by Officer 1 (*i.e.* the bullet that did not strike E.J. Bradford), or at least a large fragment of that bullet, struck a pillar to the right of the entrance of FootAction:



(Location: pillar outside FootAction entrance)



(Removal)



(Recovered from pillar)

Recovery of this fragment in a pillar outside of FootAction indicates that Officer 1 did not hit 12-year-old bystander ██████ in her back with the bullet that missed E.J. Bradford. The FootAction surveillance video shows that ██████ had already entered FootAction before Officer 1 fired any shots. Furthermore, ██████ was already holding her back before Officer 1 fired any shots:



Additional ballistics review regarding the charges against Erron Brown continues.

6. BALLISTICS EVIDENCE: E.J. BRADFORD

The Jefferson County Sheriff's Department collected E.J. Bradford's firearm, a Glock 19 Gen4, 9mm, from the incident scene. At the time of recovery, there were 14 live rounds in the 15-round magazine and one live round in the chamber (circled below).



There is no evidence that Bradford's Glock 19 Gen4 was fired at the incident scene. As depicted on page 8, it instead appears that Bradford chambered a bullet before being shot by Officer 1.

III. LEGAL ANALYSIS

As outlined below, the decision whether to seek criminal charges against Officer 1 is controlled by the following question: Did Officer 1 reasonably exercise his official duties, powers, or functions when he shot E.J. Bradford? If the answer to that question is "yes," then Officer 1 did not commit a state-law crime and thus criminal charges should not be sought.

A. LEGAL STANDARD

1. *Ethical Obligation*: A prosecutor's discretion whether to present a case to a grand jury for potential criminal charges is limited by Rule 3.8(1)(a) of the Alabama Rules for Professional Conduct, which provides that "the prosecutor in a criminal case shall refrain from prosecuting a charge that the prosecutor knows is not supportable by probable cause." Put another way, if a prosecutor knows that the conduct in question is not a crime, or that he does not possess sufficient evidence to prove a crime at trial, ethical rules prohibit the prosecutor from seeking criminal charges. Accordingly, before proceeding to a grand jury, the Attorney General must determine whether Officer 1's actions constitute a crime under Alabama law.

2. *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." When combined with Rule 3.8(1)(a) of the Professional Rules of Conduct, this means that a prosecutor "shall refrain from prosecuting a charge" against a police officer if the evidence demonstrates that the officer's actions "were a reasonable exercise of his official powers, duties, or functions" and thus, by definition, "not criminal."

The commentary to § 13A-3-22 supports this reading. In it, the Legislature notes that "there are other situations which, while involving the use of force or even death, do not warrant criminal prosecutions. The Criminal Code's view is that protection should be expressly codified rather than afforded administratively by nonprosecution." In other words, the Legislature has expressly said that if the evidence shows that a police officer acted reasonably within the line of duty—even if that action caused death—no criminal charges are warranted.

Accordingly, the deciding factor here is whether Officer 1 reasonably exercised his official powers, duties, or functions when he shot E.J. Bradford. If the answer to that question is "yes," then Alabama ethics rules dictate that the Attorney General "shall refrain" from seeking charges.

3. Other jurisdictions: 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). Citing *Garner* and other cases, the United States Department of Justice determined that the following question governed its decision whether to seek criminal charges for the officer-involved shooting of Michael Brown:

We must therefore determine whether, each time he fired his weapon, the available evidence could prove that [Officer] Wilson acted reasonably or unreasonably in light of the facts available to him at the time.

Memorandum, Department of Justice Report Regarding the Criminal Investigation into the Shooting Death of Michael Brown by Ferguson, by Missouri Police Officer Darren Wilson, p. 80.

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. This belief must be legally reasonable and meet the legal standard in the involved jurisdiction.

Principle II(2), Use of Force Project.

B. REASONABLENESS OF OFFICER 1’S ACTIONS

As explained above, the following question determines whether the Attorney General should seek charges in this matter: Did Officer 1 reasonably exercise his official powers, duties, or functions when he shot E.J. Bradford? The Attorney General has determined that he did, for two reasons: (1) Officer 1 acted as a reasonable officer would have under the circumstances, and (2) Officer 1 acted in accordance with nationally-accepted standards for “active shooter” scenarios.

1. Officer 1 acted reasonably under the circumstances.

Again, Section 13A-2-22 of the Alabama Code provides the reasonableness inquiry at issue here. The Alabama Supreme Court has addressed this defense for “public servants” once, when it affirmed the Court of Criminal Appeals’ finding that a Sheriff’s Deputy who ran a red light at a high rate of speed, killing two persons, was not entitled to a judgment of acquittal for manslaughter because he failed to act “with due regard for the safety of all persons” and thus his conduct “constituted a gross deviation from the standard of care that a reasonable person would observe in the situation.” *Ex parte Poole*, 497 So. 2d 537, 539 (Ala. 1986) (affirming in part, and reversing in part, *Poole v. State*, 497 So. 2d 530 (Ala. Crim. App. 1985)). Officer 1’s actions are decidedly different in both respects: (1) Officer 1 acted out of “due regard for the safety of all persons,” and (2) Officer 1 acted as a reasonable person would have acted in the same situation.

Officer 1 responded to an active shooting scene inside a crowded shopping mall. Just three seconds after hearing two gunshots, Officer 1 encountered an armed individual (E.J. Bradford) who—unlike every other person at the scene—was running *toward* the shooting site, rather than fleeing from it. In front of the armed individual, Officer 1 saw one man suffering from gunshot wounds (Brian Wilson) and another unarmed man (AC), trying to help him. Beyond those two men, other unarmed shoppers were scrambling in fear. According to Officer 1, in that moment,

he shot E.J. Bradford because he believed that Bradford was about to murder both Wilson and AC, and that Bradford posed a threat to others in the area.

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.

2. Officer 1’s actions comported with accepted standards and personal training.

While there may be instances in which an officer acts contrary to accepted standards or department policies, but nonetheless acts “reasonably,” the finding that Officer 1 acted reasonably under the circumstances of this case is bolstered by the fact that Officer 1 acted consistently with nationally-accepted standards for responding to active shooter scenarios.

Modern standards: The April 1999 shootings at Columbine High School shaped modern law enforcement strategies for responding to active shooter scenarios. *See* Ray Sanchez, *How Columbine changed the way police respond to mass shootings*, (Feb. 15, 2018), <https://www.cnn.com/2018/02/15/us/florida-school-shooting-columbine-lessons/index.html>. Before Columbine, officers were trained to “slowly and methodically” clear an area, room by room, before addressing the active shooter. *Id.* That method proved ineffective at Columbine, where SWAT teams entered the school 47 minutes after the initial gunshots and 13 people died in the meantime. *Id.*

After Columbine, the United States Department of Justice (“USDOJ”) and other agencies created an active shooter program known as Advanced Law Enforcement Rapid Response Training, or “ALERRT.” *Id.* Under ALERRT, law enforcement officials are now trained to “rush straight to the gunfire” and “end the threat.” *Id.*

Specifically, a multi-day training program entitled “ALERRT Active Shooter Response Level 1” is used to train law enforcement officials nationwide on how to respond to active shooter scenarios. Adopting USDOJ’s definition, ALERRT defines “active shooter” as “an individual actively engaged in killing or attempting to kill people in a confined and populated area” like a school or shopping mall. Under the ALERRT system, an officer’s primary responsibility is to neutralize threats to stop the killing. *See* ALERRT Active Shooter Response Level 1, Training

Manual (“ALERRT Manual”) at 7-8 (“Citizens now not only expect but also *demand* that our first responders take immediate tactical action in specific threat situations where a delay in response would cause the continued loss of innocent life.”). Thus—unlike the pre-Columbine era—law enforcement officials are taught to immediately move toward gunfire and address any threats.

Two principles of ALERRT training are particularly relevant here. First, officers are given a “Priority of Life Scale” that governs their decision making at an active shooting scene:

1. Innocent civilians;
2. First Responders;
3. Actors / suspects; and,
4. Property.

ALERRT Manual at 4. Using this priority scale, officers are trained to “recognize that innocent life must be defended” above all. *Id.* Accordingly, officers are instructed to eliminate any threat posed by actors or suspects toward innocent civilians.

Second, officers are trained how to scan persons at an active shooting scene to differentiate between innocent civilians, first responders, and actors/suspects:

1. Look at the entire person.
 - Is he “postured and moving like another first responder, victim, or shooter?”
 - Is he wearing a uniform that identifies him as another first responder?
 - “Do you recognize this person as a non-combatant?”
2. Look at the hands.
 - “Is the person that you have observed and identified as an unknown armed?”
3. Assess demeanor or compliance to verbal commands or the situation.

ALERRT Manual at 22-23. The manual states that “scanning the entire person and hands are the most critical.” *Id.*

Using this scanning method, if a law enforcement officer determines that a person poses a threat toward innocent civilians, the officer is trained to eliminate the threat—including the use of deadly force. This national standard is consistent with Hoover’s internal policy that “deadly force may be used by an officer to stop an assault against an officer or other innocent person when that assault is likely to result in death or serious physical injury.” HPD SOP 1009.04(a).

Officer 1’s actions: Officer 1 completed ALERRT training in March 2016.⁴ The evidence demonstrates that he followed that training on the night of November 22, 2018.

⁴ The Alabama Peace Officers Standards and Training Commission (“APOST”) has adopted and requires ALERRT Active Shooter Response Level 1 training for all officers.

Consistent with ALERRT training, Officer 1 immediately responded to the scene of an active shooting inside a public building. Surveillance video and Officer 1’s statements confirm that Officer 1 reasonably determined E.J. Bradford to be an actor/suspect that posed an imminent threat to innocent civilians nearby. Again, officers are trained to first “look at the entire person.” The following series of images demonstrate that Officer 1 positioned himself to the right of E.J. Bradford to assess his risk, then reasonably determined that Bradford was a potential actor/suspect, and not an innocent civilian or responder, by noticing that (a) E.J. Bradford was not wearing law enforcement clothing or identification; and, (b) E.J. Bradford’s readied stance, with weapon in hand, made him a potential combatant.



Using the second step, Officer 1 reasonably determined that Bradford was carrying a firearm by looking at his hands. Finally, Officer 1 reasonably determined that E.J. Bradford’s demeanor—*i.e.* sprinting *toward* the initial shooting site and its victim, while everyone else ran away—made him an immediate threat, rather than an innocent bystander.

This final step also allows the officer to assess a response to verbal commands, if any are given. It is unclear whether Officer 1 gave verbal commands to E.J. Bradford. Neither surveillance video provides sound. Officer 1 stated that he did not give any commands due to the imminent nature of the threat, and the brevity of the event (less than five seconds) lends credibility to his recollection. On the other hand, Eyewitnesses 1 and 2 both stated that they heard such commands, and the credibility of their statements is enhanced by the consistency of their recollection that three commands were given. Regardless of which recollection is correct, the reasonableness of Officer 1’s assessment of risk does not change. That E.J. Bradford sprinted out of a bladed shooting stance, with weapon in hand, toward innocent unarmed persons reasonably allowed Officer 1 to deem Bradford an actor/suspect that posed an immediate threat that required immediate action.

Having reasonably deemed Bradford to be an actor/suspect that posed an immediate threat, Officer 1 followed accepted standards by eliminating the threat Bradford posed. Officer 1 stated that he shot Bradford because he “feared for the lives of the two males [Wilson and AC], the nearby shoppers, my partner, as well as myself.” This decision is consistent with ALERRT’s “Priority of Life Scale,” which prioritizes innocent bystanders and first responders over actor/suspects.

3. Officer 1’s mistaken belief does not render his actions unreasonable.

The fact that Officer 1 mistakenly believed that E.J. Bradford fired the initial two shots that injured Brian Wilson does not render his actions unreasonable for two reasons. First, a reasonable person could have assumed that the only person with a gun who was running toward the victim of a shooting that occurred just three seconds earlier fired the shots. In fact, three other persons with similar second-floor vantage points—Eyewitness 1, Eyewitness 2, and Officer 2—all stated that, in that moment, they believed E.J. Bradford shot Brian Wilson.

Second, as previously explained, Officer 1’s primary duty and training was to eliminate any threat to innocent civilians and first responders. While it is now known that E.J. Bradford did not shoot Brian Wilson, Bradford still posed an immediate deadly threat to persons in the area. Video evidence suggests that Bradford, who was carrying a firearm, was running toward the initial shooter, Erron Brown, who was also carrying a firearm. Multiple shoppers were nearby, including a mother and child directly in between the two armed men:



The following picture was taken from the approximate spot where Bradford began running back toward Erron Brown. It shows Bradford would have had a clear view of Brown (depicted by a red ‘X’) as Brown ran through JC Penney toward the downward escalator (depicted by a blue ‘X’):



When recovered, both Bradford’s firearm and Brown’s firearm were loaded with a live round in the chamber. Thus, it is reasonable to conclude that both men presented an immediate deadly threat to innocent civilians and first responders inside the Galleria.

CONCLUSION

Officer 1 reasonably exercised his official duties, powers, or functions when he shot E.J. Bradford on the night of November 22, 2018. Accordingly, Alabama law declares his action “justified and not criminal.” Ala. Code § 13A-3-22. Because Officer 1 did not commit a crime under Alabama law, Rule 3.8(1)(a) of the Alabama Rules of Professional Conduct dictates that the Attorney General “shall refrain” from seeking criminal charges against Officer 1.⁵

⁵ This report does not affect the ability of E.J. Bradford’s family to seek civil remedies under Alabama law, nor does it comment upon Erron Brown’s civil or criminal liability under Alabama law.