

Omaha World-Herald

Florida deputy mistakes falling acorn for gunshot, fires into patrol car with suspect inside

February 15, 2024

FORT WALTON BEACH, Fla. — A Florida sheriff's deputy mistook the sound of an acorn hitting his patrol vehicle for a gunshot and fired multiple times at the SUV where a handcuffed Black man was sitting in the backseat, officials said.

The man, who was being questioned about stealing his girlfriend's car, was not injured during the Nov. 12 shooting. He was taken into custody but released without being charged. The officer who initiated the shooting resigned.

The Okaloosa County Sheriff's office released the body camera video and an internal affairs report this week, addressing the acorn for the first time.

Investigators viewing the video from Deputy Jesse Hernandez's body camera saw an acorn falling just before shots were fired, an internal affairs report by the Okaloosa County Sheriff's Office concluded. The acorn bounced off the patrol vehicle's roof.

That morning, Hernandez, a sergeant and another deputy responded to a call from a woman who said her boyfriend stole her car and sent her threatening messages. The woman told deputies that the man had a weapon, the report said.

Police detained the boyfriend and searched his car after handcuffing him and placing him the back of Hernandez's patrol car.

That's where he was when the acorn hit the vehicle.

As Hernandez approached the passenger side door of his patrol car, he heard a popping sound which he later told investigators he perceived to be a gunshot. He said he believed he had been hit.

"He began yelling "shots fired" multiple times, falling to the ground and rolling," the sheriff's report said. "He fired into the patrol car."

Sgt. Beth Roberts heard the gunfire and Hernandez's screams, and began firing into the car as well, the report said.

While the county's state attorney's office found no probable cause for criminal charges, the sheriff's internal affairs investigation determined Hernandez's use of force was "not objectively reasonable." Hernandez resigned Dec. 4, the sheriff's office said.

Roberts' use of deadly force was found to be reasonable, and she was exonerated, the report found.

Sheriff Eric Aden said he realizes the situation was "traumatic" for the suspect, and his office incorporated the shooting into training for other deputies.

He also said he does not believe that Hernandez acted with malice.

"Though his actions were ultimately not warranted, we do believe he felt his life was in immediate peril and his response was based off the totality of circumstances surrounding this fear," Aden said.

Reviews of the case by the sheriff's criminal investigations division and the county's state attorney's office found no probable cause for criminal charges for Hernandez, who started with the agency in January 2022.

When police kill and use victims' rights laws to stay anonymous

In late August, a pregnant Black woman was fatally shot by an Ohio police officer.

As 21-year-old Ta'Kiya Young sat in her car in a supermarket parking lot, officers approached and accused her of shoplifting. Young refused police orders to get out as an officer stood in front of Young's car. When the car began slowly moving toward the officer, he fired one shot through the windshield. Young and her unborn daughter both died.

As far as the justice system is concerned, there are two crime victims in the case, but perhaps not the two you might expect.

The Marshall Project investigates how the shooting of a pregnant woman in Ohio is the latest case of police using Marsy's Law to shield officers.

Neither Young nor her baby are considered victims of a crime at present, since a grand jury has yet to hear the case to decide whether the shooting warrants criminal charges. The union representing the officers says an investigation will determine if their actions were justified. The officer who fired, and another who was nearby, are being treated as the victims of an automotive assault, however, and have had their names shielded from the public under the victims' rights statute known as Marsy's Law.

This way of using victims' laws to shield the identity of officers after a use-of-force incident — especially fatal shootings — has been growing in popularity in a number of states, including Florida, South Dakota and Wisconsin. In Ohio, a new law this summer requires police to automatically withhold the names of violent crime victims, including on-duty police officers. Ohio officials cite the law in explaining the limited release of information in recent police shootings.

Marsy's Law statutes began popping up in 2008 — first in California. The push has largely been propelled by a single billionaire activist, Henry Nicholas III, who named the law after his murdered sister — as the Marshall Project's Beth Schwartzapfel reported in 2018. Proponents

argue the laws protect the rights of crime victims, just as the justice system, at least in theory, offers some protections to criminal defendants.

Protections under victims' laws often include a right to be notified of court hearings involving the defendant, and the right not to be publicly identified in ways that could attract harassment or retaliation. One in three Americans now live in states with some variation of Marsy's Law on the books, according to the national advocacy campaign promoting its spread.

Civil liberties advocates like the ACLU and the Cato Institute have long been skeptical of these laws on constitutional grounds, but in the late 2010s, some critics also began ringing alarms that police were using the protections to evade identification after officers used force. That dramatically limits the public's ability to evaluate police behavior, including determining whether an officer's actions fit into a longer or broader pattern of violence.

As then-Cato Institute researcher Jonathan Blanks put it in 2019, this "novel interpretation" was turning Marsy's Law "on its head." The police officer "is acting as an agent of the state," Blanks argued. "He's not a victim, and the idea that he gets anonymity for something he did in our name is absurd," he said, alluding to police acting on the public's behalf.

Several police unions have pushed back on that view, as have lawyers for individual officers. "A victim is a person," a lawyer for a Florida officer told the Tallahassee Democrat last year. "My client is a person. Make the jump for me. How is my client not a victim?"

A 2020 investigation by ProPublica and USA Today looking at the use of Marsy's Law by police in Florida found that in at least half of cases, the officers were not injured. "Even minor movements that officers perceived as threatening, such as walking aggressively or reaching into a pocket, qualified as batteries on officers — triggering the law's protection," the news organizations found. A legal battle over the law's use for officers is pending in the Florida Supreme Court.

Young's killing in Ohio also underscores how police continue to shoot into moving vehicles — even though the U.S. Department of Justice and multiple professional law enforcement standards groups have advised against it for years.

Vehicles are sometimes used as weapons against officers by people trying to flee, but experts widely agree that for officers, getting out of the way is almost always a safer decision than firing on drivers. Shooting at the driver of a moving vehicle is a low-percentage shot, and even if the driver is struck, there's no guarantee the car will stop or even slow down. Striking the driver can actually increase the risk, by turning the car into "a totally unguided threat," one expert told me nearly a decade ago. In Young's case, after the officer fired at her, the vehicle kept moving slowly until bumping to rest against a nearby building. The department's use of force guidelines state that "when feasible, officers should take reasonable steps to move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants," reported the Washington Post.

Young was a mother of two young boys and an aspiring social worker, who was excited about moving to a new apartment she'd recently secured. On Thursday, friends mourned her as a "smart girl" who was "beautiful inside and out."