



## Office of the District Attorney

Fifth Prosecutorial District

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### **Press Release** **February 6, 2023**

On Thursday, November 24, 2022, Sunshine Marie Foy, date of birth October 1, 1980, of Gloucester in Carteret County, North Carolina was shot and killed by a deputy with the Onslow County Sheriff's Office (OCSO). This incident occurred on Thanksgiving Day at the residence of 210 Willow Street in Hubert, North Carolina. After reviewing the investigation of the North Carolina State Bureau of Investigation (SBI), I have determined that Foy's death, while tragic due to loss of life, was justified because Foy's actions caused a deputy with the Onslow County Sheriff's Office to reasonably believe it necessary to use deadly force to protect his life and the lives of others at the scene. The evidence shows that only one deputy fired his weapon.

The investigation includes a detailed report of the incident and crime scene as prepared by the North Carolina State Bureau of Investigation.

The investigation shows that on November 24, 2022, at approximately 11:34 a.m. a deputy with the OCSO initiated a traffic stop on a truck for expired registration. The truck was a 1987 Chevrolet V-10 registered to an individual in Hubert, NC. The deputy activated his blue lights on his marked patrol vehicle and the truck continued traveling on Hwy. 172 turning right onto Willow Street in Hubert, North Carolina. The truck stopped. The passenger, later identified as Sunshine Marie Foy, exited the truck, and ran down Willow Street. Two males remained inside the truck. The deputy observed Foy opening a black book bag and looking for something as she was running. Approximately two minutes later, other deputies arrived with a K-9 and began tracking Foy. A deputy remained at the truck with the two males. The driver of the truck was cited for expired registration and driving while license revoked. As the deputy cited the driver of the truck, he then heard four shots fired. This was approximately 11:55 a.m. when shots were fired.

The evidence shows that a female neighbor advised a deputy that the decedent later identified as Foy went into a single-wide trailer and residence located at 210 Willow Street. Foy knocked on the door of 210 Willow Street and the resident let Foy in. The resident did not know Foy. Foy told the resident that she was running from the OCSO. She asked where she could go, and the resident pointed to the front bedroom. Foy entered the bedroom. The bedroom was located to the right of the living room as one enters the trailer.

The deputies were wearing their Onslow County Sheriff's Office tan shirts, olive drab green pants, and duty belts. The tan shirts had OCSO patches on the sleeves. The deputies had OCSO badges on their left chest and name tags on their right chest. The deputies identified themselves as law enforcement several times.

On November 30, 2022, the deputy who fired his weapon made a statement to Assistant Special Agent-in-Charge Raynor at the SBI. The deputy was represented by counsel and his counsel was present. The deputy was read, and he waived his Miranda rights at 10:08 a.m. on November 30, 2022. The deputy's statement to the SBI is as follows.

The deputy who subsequently fired the shots stated he knocked on the front door of the trailer and led one other deputy into the trailer. The deputy who fired the shots announced that he was with the Sheriff's Office. Two deputies entered the trailer by the front door. One of the deputies who entered the residence had his K-9 with him. One other deputy was by the backdoor of the trailer.

The deputy who fired his weapon stated he entered the front bedroom. This bedroom is to the right of the living room. The room was dark or "low light conditions." This deputy used his flashlight to search for Foy. The deputy observed Foy hiding behind some clothes hanging from a shelf. He could see the outline of a person and told her to come out. The deputy, using his hand, moved the clothes away from Foy. Foy pulled a silver handgun and pointed it at him. The deputy was approximately one foot from Foy. She had the gun in her right hand and pointed the gun at his face. She pulled the trigger, but the gun did not go off. He heard the other deputy in the room yell "gun."

After she pulled her gun, the deputy stated he stepped back and tried to get cover behind a piece of furniture. He told her to drop the gun as he was drawing his weapon in his right hand. He did not draw his firearm until he saw the gun pointed at his face. At that time, the deputy's gun had one in the chamber and seventeen rounds in the magazine. She pulled her weapon back a second time and attempted to fire her gun again. The deputy attempted to fire his gun but either jammed or had a misfire. The deputy threw down his flashlight and used his left hand to rack the slide back to clear the malfunction. Foy raised her gun up to the deputy's face a third time and the deputy stated he fired five to six rounds at Foy.

The deputy said he thought he shot six times but one of those could have been a misfire. The deputy observed gunshot wounds on Foy, and he called for Emergency Medical Service (EMS) over his radio. Foy never fired her gun. There was no body camera video to review.

The other deputy inside the trailer made a statement to the SBI on November 24, 2022, approximately two hours after the shooting. He said the deputy who fired his weapon, entered the bedroom and that deputy yelled "Drop the gun. Drop the gun." He saw Foy aim her gun at the other deputy. The other deputy fired his weapon at Foy. The deputy near the entry of the bedroom drew his weapon but never fired his weapon due to his proximity to the other deputy. He estimated that he was about ten feet from the other deputy. The deputy heard four to five shots and the shots were consecutive. The deputy stated that the distance between Foy and the deputy who fired his weapon was approximately one to two feet.

The deputy who was involved in the stop of the truck immediately got on the radio and stated shots fired. This deputy proceeded to the scene of the fired shots with his first aid kit.

The deputy with the first aid kit met the deputy who fired his weapon at Foy and the deputy told him that she put a gun in his face and almost shot him. Deputies attempted life saving measures on Foy until EMS arrived. A total of four deputies were at the scene with Foy at this time including the deputy who shot Foy.

EMS was notified at 11:55 a.m. and EMS dispatched to the scene at approximately 11:57 a.m. EMS arrived on scene at approximately 12:00 p.m. At approximately 12:31 p.m., EMS began transport of Foy to Camp Lejeune Naval Hospital, a trauma center. EMS arrived at the emergency room of Camp Lejeune Naval Hospital at 12:42 p.m. EMS determined that Foy was unresponsive, not breathing, and had no pulse. Foy was pronounced dead at Camp Lejeune Naval Hospital.

The firearm of the deputy who shot Foy was recovered at the scene by a lieutenant with the OCSO and turned over to the SBI on November 24, 2022. The firearm was identified as a OCSO issued Glock Model 45 9mm handgun. The deputy indicated to the SBI that the firearm earlier that day had one round in the chamber and seventeen rounds in the magazine.

At the trailer inside the bedroom, the SBI located a flashlight and a black in color backpack on the floor matching the description of the backpack Foy had in her possession as she fled the OCSO. Inside the backpack was a brass in color Luger 9mm bullet and other personal belongings of Foy. The SBI recovered a silver in color 9mm Jimenez Arms Inc. handgun with an identifiable serial number. This handgun was photographed on the top of pile of clothes in the corner of the

bedroom. The handgun was loaded with three rounds in the magazine and one round in the chamber. The SBI noted suspected blood and human tissue on the handgun. There is no evidence that Foy fired her weapon.

Inside the bedroom of the trailer, the SBI recovered three Winchester (WIN) 9mm Luger shell casings and two live rounds on the floor. A fired projectile was recovered in the backyard of the trailer. Two fired projectiles were recovered on the floor of the bedroom. A total of three fired projectiles were recovered. On November 25, 2022, the operator of the truck returned to the residence where the shooting occurred, and he located a shell casing that he turned over to the SBI on November 30, 2022. A total of four WIN 9mm Luger shell casings were located at the trailer from the bedroom. The evidence shows that the deputy's firearm had a total of eighteen rounds prior to the shooting which included seventeen rounds in the magazine and one in the chamber. After the shooting the deputy's firearm had a total of twelve rounds which included eleven in the magazine and one in the chamber. This is consistent with four shell casings and two live rounds found at the scene that were ejected from the deputy's firearm when the deputy racked the slide back to clear a malfunction.

The driver of the truck that was stopped by law enforcement on November 24, 2022, was interviewed by the SBI on November 30, 2022, at the driver's residence. The driver of the truck said on November 24, 2022, he was with Foy at his residence. He and Foy left together in his truck and picked up another male. They drove to the Scotchman Store on Hwy. 172 in Hubert. The driver of the truck saw a deputy enter the Scotchman Store. He did not interact with the deputy. The driver observed the deputy leave the Scotchman and park his marked patrol vehicle across the street. The three left the store in his truck. The driver of the truck observed that the deputy was behind him with his blue lights activated. After the truck stopped, the driver of the truck observed Foy jump across the passenger and exit the truck. Foy was wearing a black backpack. The driver of the truck heard a deputy yell to Foy to stop running. The driver of the truck and the male passenger were detained by the OCSO. The driver of the truck was cited for driving while license revoked and expired registration. The driver of the truck heard four to five rapid gunshots. The of the truck and the male passenger left the scene. The driver of the truck later returned to the scene on November 24, 2022, and observed law enforcement and emergency personnel.

On November 24, 2022, at 12:39 p.m., I received a text from Senior Assistant District Attorney Kelly Neal that Colonel and Sheriff-Elect Chris Thomas called about an officer involved shooting in Hubert, North Carolina. I was in Watauga County, North Carolina at the time with family for the Thanksgiving holiday when I received the text. Colonel and Sheriff-Elect Chris Thomas requested the SBI investigate the shooting. On Thanksgiving Day, at 2:57 p.m., I was on the phone with Assistant Special Agent in Charge P. Raynor of the SBI and updated on the

investigation. I joined with Colonel and Sheriff-Elect Chris Thomas in requesting the SBI investigate this shooting. On November 28, 2022, I sent a formal request by letter to the SBI requesting the SBI investigate this shooting. On December 2, 2022; December 7, 2022; January 9, 2023; and February 1-2, 2023, I was in contact with ASAC P. Raynor. On February 2, 2023, I was in contact with the SBI crime scene agent, SA L. Bullard.

On January 10, 2023, this office received the initial SBI report on the SBI portal and on January 11, 2023, I received a copy of the SBI report. On January 12, 2022, I assigned Assistant District Attorney Chris Abrams to assist me in this investigation. Assistant District Attorney Chris Abrams and I, either together or separately, reviewed the investigation on January 17-19, 2023, January 21, 2023; January 31, 2023; and February 1-3, 2023. On February 1, 2023, this office requested and received the EMS reports. On February 2, 2023, I received and reviewed the SBI crime scene report and photographs of the scene.

Assistant District Attorney Chris Abrams and I reviewed the SBI investigation which includes the SBI narrative, the SBI crime scene report, the crime scene photographs, and the EMS reports. The SBI interviewed ten individuals and we reviewed the following statements: the statements of four deputies, including the deputy who shot Foy; two EMS personnel; a neighbor in Hubert; the resident of the trailer where the shooting occurred; the operator of the truck that was stopped by the OCSO; and the pathologist, Dr. Joseph Pestaner.

On December 8, 2022, Dr. Pestaner performed an autopsy on Foy at the Brody School of Medicine. On February 1, 2023, Assistant District Attorney Chris Abrams and I spoke by phone with Dr. Pestaner, who is a pathologist with the Brody School of Medicine at East Carolina University in Greenville, North Carolina. The autopsy showed three gunshot wounds and a possible laceration of the fingers on the left hand that is consistent with a gunshot wound. The wound numbers are not reflective to the order in which the shots were fired but are used by the pathologist to distinguish the various wounds. With the numbering beginning with the head of the decedent, gunshot wound #1 was to left side of the face that entered the left jaw and exited her upper neck. This projectile was not recovered from the decedent, but fragments were located in the wound. This gunshot was front to back, left to right, and at an upward angle of approximately ¼ inch. Gunshot wound #2 was to the left side of the chest that entered both lungs and her heart. The projectile exited the right armpit area. This wound was slightly back to front. This projectile was not recovered from the decedent. Gunshot wound #3 entered her right chest, injured a lung, and exited the right side of her back. The projectile was not recovered but a fragment was located in the wound. Gunshot wound #4 was a laceration of her left hand between the ring and little fingers. This wound was in an upward direction. This wound was consistent with a gunshot wound but no projectile nor fragment was recovered in this laceration.

Dr. Pestaner noted no evidence of any soot or stippling. No projectiles were recovered at the autopsy. Dr. Pestaner stated the cause of death was multiple gunshot wounds. Dr. Pestaner noted that the wound to the heart would be fatal.

A criminal record check of Foy showed that she has convictions in North Carolina between 1997 and 2019 including a felonious financial card theft in Onslow County in 1997; simple possession of marijuana in Onslow County in 2005; common law forgery in New Hanover County in 2007; identity theft and obtaining property by false pretenses in Onslow County in 2007; financial card theft in Onslow County in 2016; and financial card theft and felonious speeding to elude to arrest in Onslow County in 2019. At the time of the shooting incident, she had pending drug offenses in Carteret County. There was an order for arrest pending for failure to appear in superior court for possession of heroin that was issued November 17, 2022, in Carteret County.

The deputy who fired the fatal shots indicated that Foy pointed her gun at the deputy's face at close range. The evidence shows that the deputy fired his firearm at Foy at four times. After being shot and incapacitated by the deputy, Foy ceased to be a threat to the deputy. The shooting death of Sunshine Marie Foy is found to be justified to protect the safety and lives of the law enforcement officers from potential harm as perceived by a law enforcement officer at the scene.

The general rules of self-defense and defense of others in North Carolina allow for the use of deadly force when the individual actually, or honestly, believed in the need to defend himself or others from death or great bodily injury and the individual's belief is reasonable considering the circumstances as they appeared to him at the time. Clearly, from the facts and circumstances of this case, the deputy was justified in using deadly force to defend himself and others from death or great bodily injury by Foy pointing a firearm at the deputy. Pursuant to North Carolina General Statute §14-34.5, it is a Class E felony to assault with a firearm a law enforcement officer and pursuant to North Carolina General Statute §14-415.1 it is a Class G felony to possess a firearm by a felon.

A federal judge in North Carolina has ruled that "it is the duty of a law enforcement officer to stand his ground, carry through on the performance of his duties, and meet force with force, so long as he acts in good faith and uses no more force than reasonably appears necessary to effectuate his duties and save himself from harm." Law enforcement officers are required to instantaneously evaluate and employ force against possible criminal suspects to thwart apparent dangers to citizens and themselves. Officers must perceive, evaluate, decide, and then act, often in a matter of seconds. The deputy in this case perceived a threat and immediately returned fire to neutralize the threat.

The perceived danger to the officer must be only apparent, not actual, to justify use of deadly force. Apparent danger is such that it would cause a reasonable person to believe that he or others were in danger of death or great bodily harm. Although there is evidence of actual danger to the officers, under the law there was also apparent danger. From the evidence, it reasonably appeared to the deputy there was sufficient basis for self-defense and defense of others. The facts in this case demonstrate the presence of apparent danger to the officers. A person may exercise such force if he believes it to be necessary and has reasonable grounds for such belief. An officer acting in self-defense is presumed to have acted in good faith. The federal courts have held that “The Constitution simply does not require police to gamble with their lives in the face of serious threat of harm.” The law authorizes an officer to take preemptive action and use deadly force to prevent death or serious injury to himself or herself, provided that the threat assessment is reasonably made. As the United States Supreme Court has observed, the calculus of reasonableness must allow for the fact that law enforcement officers are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving.

In addition, pursuant to North Carolina General Statute § 15A-401(d)(2) a law enforcement officer is justified in using deadly physical force upon another person to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force.

There is evidence that four shots were fired in rapid succession at the scene by one law enforcement officer. Foy was struck three times and a possible abrasion on her left hand caused by a gunshot. There is no evidence that the number of shots fired by the deputy was excessive. Even if there are an excessive number of shots fired, the question is whether the perceived threat has been neutralized for the safety of the law enforcement officer firing his weapon as well as another law enforcement officer in the immediate area.

Based upon my review of the facts of this case, I have determined that the shooting of Foy on November 24, 2022, was justified to protect the safety and lives of the deputies on scene. The deputy who fired the fatal shots perceived an apparent threat, evaluated the situation in seconds, decided, and acted. The deputy’s actions appear reasonable under all the circumstances of this case. The deputy faced apparent danger as perceived by him. As tragic as this incident is with the loss of life, the deputy on scene was nonetheless justified in defending himself and other law enforcement from death or great bodily injury. There is insufficient evidence beyond a reasonable doubt to show that the deputy who fired the fatal shots, acted in a manner that was inconsistent with his perception of an apparent threat. There is no evidence that the deputy acted in anyway contrary to or in violation of North Carolina law.

I appreciate the investigation by ASAC P. Raynor and SA L. Bullard of the North Carolina State Bureau of Investigation. I appreciate the cooperation of Sheriffs Hans Miller, Sheriff Chris Thomas, and the Onslow County Sheriff's Office. I have determined that the shooting death of Sunshine Marie Foy is justified and no criminal charges against the officer involved in this matter are warranted under the law and under the circumstances revealed by the independent SBI investigation.

A handwritten signature in black ink, appearing to read 'Ernie Lee', with a large, sweeping flourish at the end.

Ernie Lee  
District Attorney