

REPRESENTING:

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Stephen B. Russell
State Attorney

July 25, 2008

Major Doug Baker
Interim Chief of Police
Fort Myers Police Department
2210 Peck Street
Fort Myers, FL 33901

Re: Officer Involved Shooting

Dear Major Baker:

My office has completed the legal review of the use of deadly force by Officers Alain Gagnon, Michael Perry, Wolfgang Daniel, and Bradley Ades, in a shooting incident on July 18, 2008.

Based upon the preliminary case report submitted to us by your Department, and the applicable law, I am convinced that the actions of the officers were in self defense and in defense of others, and a legally justifiable use of deadly force.

While we will, of course, review the full case report and additional evidence when it is submitted, I felt it was important to clear these officers as soon as we were able to make this legal determination.

A memorandum by Assistant State Attorney Dean R. Plattner, which summarizes the legal review of this incident, is enclosed.

Thank you for your cooperation with the investigation and review of this case.

Sincerely,

A handwritten signature in blue ink that reads "Stephen B. Russell".

Stephen B. Russell
State Attorney

SBR/dlt

**OFFICE OF THE STATE ATTORNEY
20TH JUDICIAL CIRCUIT
P.O. BOX 399
FORT MYERS, FLORIDA 33902**

Stephen B. Russell, State Attorney

MEMO

TO: Stephen B. Russell, State Attorney

FROM: Dean R. Plattner, Assistant State Attorney

DATE: July 25, 2008

RE: FMPD Officers Use of Deadly Force
Widman – Arango Incident on July 18, 2008

Chief Investigator Kevin Smith and I have reviewed a preliminary case report submitted by the Fort Myers Police Department on July 25, 2008, relating to the shooting incident that occurred on July 18, 2008. While the lab analysis of all the evidence, transcriptions of witness statements, and medical examiner reports have not yet been completed, sufficient material has been provided to us to review the legal issues relating to the use of deadly force by members of the Fort Myers Police Department. Our review, at this time, is therefore limited to those issues.

This matter was investigated by the Fort Myers Police Department, with assistance from the Florida Department of Law Enforcement and the Lee County Sheriff's Office. Based on the investigation, it has been determined that Fort Myers Police Officer Andrew Widman was murdered by Abel Arango at approximately 2:03 am, outside a business located at 2213 Main Street. Officer Widman was shot once, in the face, at point blank range, as he was approaching Arango. Arango appears to have fired a second shot that did not strike anyone.

Officer Alain Gagnon, who was also approaching Arango, took cover after the initial shooting. Other officers were patrolling the area, as is normal for closing time for the bars and restaurants in the area. They heard shots fired. Arango, who had fled from the initial shooting, was observed moments later by Officers Michael Perry and Wolfgang Daniel on Broadway, moving south, away from Main Street. Arango was still armed and fired a shot at the officers. Officers Perry and Daniel each returned fire, one round by Perry and two by Daniel. No one was struck during this exchange. Officers Perry and Daniel then chased Arango south on Broadway until they lost sight of him near the intersection of Broadway and Second Street.

A short time later, Officer Bradley Ades arrived near the intersection of Broadway and Second in his patrol car. Officer Ades was responding to the "shots fired" call, and soon observed a black male, who turned out to be Arango, emerging from somewhere near the County building at that intersection. Initially unaware that this person was the shooter, Officer Ades advised him to stay out of the area for his own safety. Arango then pulled his gun and fired two shots at Officer Ades. Officer Ades fired four shots from a shotgun and two pistol shots at Arango. Neither Officer Ades, nor Arango, was struck.

Arango then moved back north on Broadway, to the intersection with Main Street, about a half-block from the initial shooting. He was observed at that location, still armed and firing his weapon, by Officer Gagnon and several other officers. Officer Gagnon fired several times at Arango, but apparently did not strike him immediately. Officer Gagnon lost sight of Arango momentarily, when Arango moved out of the intersection. Arango then returned to Officer Gagnon's sight, still armed and threatening. Officer Gagnon then fired twice, with one shot hitting and killing Arango.

The entire events described above spanned a total of 5-6 minutes. Arango's 9mm pistol was recovered from underneath his body at the scene. All of the officers were shooting .40 caliber pistols. While most of the ballistics testing has not been completed by the FDLE lab, they specially expedited the comparison of the bullet recovered from Arango's body to Officer Gagnon's firearm. It has thus been confirmed that this shot came from Officer Gagnon's firearm. There is no evidence that any other shot struck Arango.

It is clear from the evidence and preliminary report that the four officers who fired at Arango during the various parts of this incident were reasonably in fear for their own safety as well as the safety of other officers and citizens in the area. Arango had just murdered an officer, and thereafter had fired his weapon at several other officers, in several locations.

Although they did not actually strike or kill Arango, Officers Perry, Daniel, and Ades engaged in a justifiable use of deadly force. They shot at Arango after he shot at them, and had every reason to defend themselves and others from Arango's actions. Officer Gagnon's action in shooting at, and ultimately killing Arango was also fully justified under the law, in defense of himself and others from Arango's ongoing threats and actions.

While we will, of course, review the complete case report and additional evidence when it is submitted, it is unlikely to have any effect on the particular legal issue addressed here. I therefore see no basis for delaying this decision on the lawfulness of the actions of the officers.

Cc: Randall B. McGruther, Chief Assistant State Attorney
Kevin Smith, Chief Investigator