

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

Stephen B. Russell, State Attorney

PHONE: 239-533-1108

FAX: 239-533-1150

MEMO

TO: Stephen B. Russell, State Attorney

FROM: Dean R. Plattner, Assistant State Attorney

DATE: April 30, 2010

RE: Cape Coral Police Department Shooting Incident
CCPD # 09-24490/09-24493
SAO Inv. # 09-181

This legal review is regarding an officer-involved shooting incident that occurred on December 20, 2009. During the course of the incident, seven members of the Cape Coral Police Department were involved in an exchange of gunfire with suspects in a vehicle who were fleeing from a home invasion robbery.

The shooting occurred outside the Steak N Shake on Pine Island Road in Cape Coral. The suspects in the vehicle were Patrick Nelson, 19; Mike Borrell, 27; Jarrett Mundle, 19; and Tyson Richardson, 21. Richardson died from his injuries. Borrell and Mundle were injured, but survived. Nelson was not injured in this incident.

This matter was primarily investigated by the Cape Coral Police Department, which then provided this office with their reports and witness statements. Follow-up investigation and review was conducted by this office. The memo of Chief Investigator Kevin L. Smith provides an overview of the facts and evidence which was available.

The totality of the evidence establishes that the four suspects had just come from a home invasion incident in which at least one gunshot was fired. The CCPD officers were aware of that incident from a radio dispatch. They attempted to stop the suspect vehicle to investigate. The vehicle, with Nelson originally driving, stopped in the Steak N Shake parking lot. Officer approached and attempted to give directions to the suspects. Nelson, the driver, got out of the vehicle, but Richardson climbed into the driver seat from the

rear. Richardson had a firearm and fired one or two shots. At least one officer also observed Richardson pointing the gun at him. Several officers then began firing at the vehicle in response to this situation.

Richardson then drove the vehicle around the Steak N Shake building and came up behind officers and their vehicle, at a dangerous speed, and actually rammed one of the police vehicles. During this incident, officers also fired multiple times at the vehicle. After ramming the police vehicle, Richardson got out of the car, still holding the gun which he appeared to again point at the officers. Officers fired at Richardson again at that point. Richardson died at the scene. Borrell and Mundle were injured. Two other firearms were recovered from the suspect's vehicle.

Under our usual procedure, this legal review is limited to the issue of whether any of the officers committed a violation of criminal law in their use of deadly force. No policy, procedural, or civil issues outside of our jurisdiction are addressed, and no comment on such matters is intended.

An issue that has caused some degree of delay in the review of this matter is the absence of forensic ballistics evidence which might have assisted in clarifying which shots were fired by which officer. It appears in this case that with multiple officers firing the same model firearm, we may not get a conclusive report on this issue. There will apparently be a significant delay before any possible ballistics evidence could be available.

It would generally be preferable to have complete forensic evidence in every case under review. In this case, however, based on the available evidence and witness statements, including statements of the surviving suspects, we are still able to establish at this point that the shots fired by all officers were in response to the direct threat to themselves and their fellow officers.

There has also been some delay caused by the unavailability of formal statements or interviews with the seven officers who fired shots in this incident. These officers declined to provide statements on the advice of counsel, which is their legal right, and from which no negative inference can be taken.

It does appear from the totality of available evidence that each of the CCPD officers was acting in a legally justifiable use of deadly force, in defense of themselves and/or their fellow officers. As such, there is no basis for further action by this office with regard to the officers.

Nelson, Borrell, and Mundle have been charged in relation to the original home-invasion case and felony-murder for the death of Richardson. Those cases are pending.

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