

REPRESENTING:

CHARLOTTE

COLLIER

GLADES

HENDRY

LEE



OFFICE OF THE STATE ATTORNEY

Twentieth Judicial Circuit of Florida

P.O. Box 399

Fort Myers, FL 33902-0399

Telephone (239) 533-1000

FAX (239) 533-1150

Website: www.sao.cjis20.org

Stephen B. Russell

State Attorney

July 2, 2009

Marshal Bob Pastula
Assistant U.S. Marshal
U.S. Courthouse
2110 First Street, Room #1-116
Fort Myers, FL 33901

Sheriff Mike Scott
Lee County Sheriff's Office
14750 Six-Mile Cypress Parkway
Fort Myers, FL 33912

Chief Doug Baker
Fort Myers Police Department
2210 Widman Way
Fort Myers, FL 33901

Re: Officer Involved Shooting Incident of
Arthur Coleman, FDLE #FM-27-0008

Dear Marshal Pastula, Sheriff Scott and Chief Baker:

My office has completed the review of the Florida Department of Law Enforcement's report into the shooting incident death of Arthur Coleman on January 26, 2009, and the collateral incident involving a shooting at or into a vehicle driven by Kevondra Marion.

Based upon the evidence submitted, and the applicable law, I am convinced that the actions of U.S. Deputy Marshal Scott Ley, Lee County Sheriff's Office Deputy Tim Galloway, and Fort Myers Police Officers Robert Kerbs and Tim McCormack were in self-defense, and a legally justifiable use of deadly force. Therefore, my office will not be filing any criminal charges in this matter.

Sheriff Scott
Chief Baker
July 2, 2009
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A memorandum by Assistant State Attorney Dean R. Plattner which summarizes the legal review of this incident, and Chief Investigator Kevin Smith's memorandum summarizing the investigative review, are enclosed.

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

Sincerely,



Stephen B. Russell
State Attorney

SBR/dlt
Enclosures

**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: June 29, 2009

RE: Officer Involved Shooting Incident, FDLE # FM-27-0008
SAO Inv. # 2009-006

Chief Investigator Kevin Smith and I have completed our review of the officer-involved shooting incident which resulted in the death of Arthur Coleman on January 26, 2009. We have also reviewed the related contemporaneous incident involving an officer shooting at or into a vehicle being driven by Kevondra Marion, in which no one was hurt.

The case was investigated by the Florida Department of Law Enforcement, which provided us with their initial report on or about April 3, 2009. Additional follow-up was being done until earlier this month. The FDLE report provides detail of the incidents, and the closing report of Chief Investigator Smith well summarizes the facts.

This legal review is limited to the matters within the jurisdiction of this office, being whether or not the evidence proves that anyone involved committed a criminal offense. Other potential issues relating to policy or procedure are not addressed here, consistent with our normal handling of these reviews.

Although the incidents involve several officers and two different vehicles, the legal review of this matter is relatively straightforward. Officers with a U.S. Marshal's Fugitive Task Force, which included Lee County Sheriff's Deputies and Fort Myers Police Officers, were attempting to apprehend Coleman. Coleman was a known felon, and had active felony warrants for his arrest. As the officers were approaching a home on Gibson Street, where they believed Coleman was located, they observed a green Dodge backing out of the driveway and a white Acura backing out of the garage. This was approximately 4:50 a.m.

Most of the officers went towards the Acura, and Coleman was identified as the driver. The Acura backed out of the driveway, then drove forward again, directly towards LCSO Deputy Tim Galloway and US Deputy Marshal Scott Ley. In fear of their lives, Galloway fired his .223 rifle several times, and Ley fired his shotgun. Both officers were actually struck by the vehicle, but fortunately did not receive serious injury. Coleman was killed by the gunfire. He was found with a loaded handgun.

At around the same time, the green Dodge, after backing out of the driveway, began driving on Gibson Street towards other officers. FMPD Officers Robert Kerbs and Tim McCormack gave verbal commands for the vehicle to stop. Instead the vehicle accelerated towards Officer Kerbs. In fear of his life, Kerbs fired one round at the vehicle. Fortunately, neither the driver, Kevondra Marion, nor either of her two small children who were in the vehicle with her were injured, nor were the officers. There is no indication that the officers knew children were in the vehicle prior to the shooting.

A person is legally justified in using force likely to cause death or great bodily harm if the person using the deadly force reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or another. In deciding whether the person using the deadly force was justified, that person must be judged by the circumstances by which he was surrounded at the time the force was used.

In this case, the officers who fired at the 2 vehicles, respectively, were clearly in a situation where, according to the evidence, they were reasonably in fear of imminent death or great bodily harm. Therefore, their use of deadly force in shooting at the vehicles was a justifiable use of deadly force.

Despite the fact that Officer Kerbs was justified in shooting at the green Dodge, based on the circumstances he was in, we nevertheless have insufficient evidence to prosecute Kevondra Marion for the aggravated assault charge on which she was arrested. The evidence developed in the investigation does not prove beyond a reasonable doubt that Marion had the specific intent to do violence to the officers, as required by the statute. See *Swift v. State*, 973 So.2d 1196 (Fla. 2nd DCA 2008). She made no admissions regarding this legal element, and under the totality of the circumstances we cannot prove that she was intentionally driving at the officers.

I therefore recommend that this case be closed without further action by this office.

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

CASE REPORT/CLOSING

CASE NO: 2009-006

DATE: June 22, 2009

INVESTIGATOR: Chief Investigator Kevin Smith

SUBJECT: Officer Involved Shooting, U.S. Marshal's Service
U.S. Marshal Scott Ley, L.C.S.O. Detective Tim Galloway
F.M.P.D. Officer Robert Kerbs
Arthur Lee Coleman, Deceased
Kevondra Marion, Subject

On Monday, January 26th, 2009 at about 4:50 a.m., the United States Marshals' Fugitive Taskforce used deadly force upon B/M Arthur Lee Coleman and B/F Kevondra Marion in separate but related events. The incident occurred at 116 Gibson Street, Fort Myers, Lee County, Florida. Coleman was killed. Marion was not injured.

The Florida Department of Law Enforcement investigated the use of force shooting pursuant to a standing agreement with the United States Marshals' Service. Special Agent Ronnie Austin acted as case agent and has submitted his report number FM-27-0008 regarding the use of force by U.S. Deputy Marshal Scott Ley, L.C.S.O. Detective Tim Galloway, and F.M.P.D. Officer Robert Kerbs in the incident referenced above. This report was received by the undersigned on April 3rd, 2009, with additional required information having been provided through June 10th, 2009. This report combined with actions taken by this office provide sufficient information for our purpose of a legal review.

In summary, the investigation revealed that on January 26th, 2009, the United States Marshal's Fugitive Task Force acting on intelligence information attempted to capture and arrest fugitive Arthur Lee Coleman for pending felony warrants. Taskforce members from the Lee County Sheriff's Office, Florida Department of Law Enforcement, Hillsborough County Sheriff's Office, and uniformed officers from the Fort Myers Police Department met and were briefed by the US Marshals regarding the suspected location of Arthur Coleman at 112 Gibson Street, Ft. Myers.

At about 4:50 a.m., members approached 112 Gibson St. and made contact with the occupant Mary Marion at the front door. Mary Marion advised that Arthur Coleman was not in her home and offered to allow them to look inside. Marion pointed next door and said that her daughter lives there and began nodding her head in affirmation and repeated the statement. As Marion said this, the garage door to 116 Gibson began to raise and members noticed a green Dodge and then a white Acura sedan backing from the garage. Officers, knowing Coleman to drive a white Acura, quickly diverted their attention to the vehicles leaving.

The officers separated and simultaneously approached each of the two vehicles giving verbal commands, "stop police". Each of the officers were wearing either clear markings of their law enforcement status or wearing actual police/deputy patrol uniforms. A single streetlight was in operation across the street from the residence illuminating the area.

Fort Myers Police Officer Robert Kerbs and his field training officer, Tim McCormack directed their attention to the green Dodge that had backed across the street onto Connecticut Avenue facing in a westward direction. (Connecticut Avenue intersects Gibson Street directly across from the driveway of 116 Gibson.) Officer Kerbs positioned himself on the northwest corner of Connecticut and Gibson in front of, but slightly to the right of, the Dodge giving verbal commands to stop as the vehicle began forward motion. Both Kerbs and McCormack were wearing police uniforms.

The engine raced as the Dodge turned and accelerated towards Officer Kerbs as he backed onto the grassy shoulder. Fearing that the driver intended to run him over, Officer Kerbs fired one round at the driver striking the hood of the car with his duty pistol. The Dodge stopped momentarily before moving again while officers continued to give verbal commands to the driver. According to Officer Kerbs, the driver attempted to then turn the car to drive around him. At this point the driver, Kevondra Marion, was removed from the car.

Officer McCormack, who was to the right of Officer Kerbs, observed the Dodge drive directly at Officer Kerbs and Kerbs fire his weapon. At this point, McCormack states that the vehicle backed up, turned and drove in his direction. Officer McCormack pointed his shotgun and attached tactical light at the driver, then extinguished the light so the driver could see his uniform and shotgun. Once the light was turned off, the driver stopped the car and put her hands up.

The driver of the Dodge was found to be Kevondra Marion of 116 Gibson Street who had her two children with her; Rhianna Collington, age 1, and Robert Collington, age 3 months. Kevondra lifted one of the children from the front floorboard and placed the child in the back as officers were giving her commands to exit the car.

Kevondra Marion was immediately arrested for Aggravated Assault on a Police Officer. During a post Miranda interview, Marion minimized her involvement with Coleman and did not admit to seeing the officers in front of her car until shots were fired. The interview conducted by law enforcement focused primarily on Coleman and failed to illicit any admissions regarding her personal actions towards law enforcement.

Simultaneously to these events occurring with the Dodge, the majority of the officers converged on the white Acura. US Deputy Marshal Scott Ley and Lee County Sheriff's Detective Tim Galloway took positions on the front driver side of the Acura. Detective Galloway provided a non-sworn recorded statement as to his involvement. Deputy Ley provided a statement that was neither sworn or recorded.

Several officers identified Coleman as the driver and verbalized their observations to other taskforce members as they approached the Acura. Coleman pulled the Acura out of the driveway across the street onto the northeast corner of Connecticut and Gibson with the nose of the Acura facing westward on Gibson. Detective Galloway used the light on his AR15 rifle to illuminate Coleman's face and observed Coleman look directly at him. Coleman turned the steering wheel towards Galloway accelerating rapidly towards Galloway and Ley.

Being in fear of their lives, Deputy Ley and Detective Galloway each began firing at Coleman. After Marshal Ley fired the first round from his shotgun he was struck by the car and rolled up onto the windshield. Ley then fell to the ground where he fired a second time. Detective Galloway fired 4 to 5 .223 rounds. The vehicle came to rest in the ditch of 116 Gibson, making contact with Galloway's leg. Detective Galloway went to the driver's side and opened the door. As he did so, he felt the concussion of a gunshot behind him (suspected to be Deputy Marshal Ley's second shot from his shotgun).

Coleman was seen leaning back outside the door with his hand near or touching a handgun, moving slightly with his head towards the rear opening of the door. Officers pulled Coleman from the vehicle and removed the handgun from his reach. Medical attention was immediately provided for his injuries and Emergency Medical Services responded and transported Coleman to Lee Memorial Hospital where he was pronounced dead at 5:46 a.m. Deputy Ley was taken to Health Park Hospital and treated for minor injuries sustained from being struck by Coleman's car.

An autopsy was performed at 11:00 a.m. by Wendolyn Sneed, M.D., who determined the cause of death to be "gunshot wound to head". In total, Coleman was found to have five gunshot wounds to his head, arm, and chest. A toxicology report indicated Coleman had recently ingested marijuana.

A thorough crime scene investigation was conducted to include ballistic analysis and blood pattern analysis. Based on the condition of the projectiles recovered, positive identification could not be made to determine the weapon or weapons causing Coleman's wounds. Based on the known evidence it is believed that Detective Galloway's rifle was the cause of the fatal bullet wound to Coleman's head.

The investigative report prepared by F.D.L.E. and all issues presented were thoroughly reviewed. Based upon this review of this incident it is my opinion that U.S. Deputy Marshal Scott Ley, L.C.S.O. Detective Tim Galloway, and F.M.P.D. Officer Robert Kerbs used deadly force as justified by law in order to defend their own lives.

This case is closed and will be sent to ASA Dean Plattner for legal review.

Kevin L. Smith
Chief Investigator