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20th Judicial Circuit

Serving Charlotte, Collier, Glades, Hendry and Lee

FOR IMMEDIATE RELEASE

June 27, 2007

The Lee County Grand jury, after reviewing the fatal shooting of Ernest Weston on February 2nd 2007, has issued their decision. The eight page report outlines their findings and is attached to this release.

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IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA
FALL TERM, 2007

IN RE: FATAL SHOOTING OF ERNEST
WESTON ON FEBRUARY 2, 2007

PRESENTMENT

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA

The Grand Jurors of the State of Florida, impaneled and sworn to inquire and true presentment make, in and for the County of Lee, do present the results of our review of the facts and circumstances surrounding the shooting death of Ernest Weston by an officer of the Fort Myers Police Department on February 2, 2007. We issue this report to advise the public of our decision in this matter; to explain our reasons therefore; and to attempt to correct any mistaken beliefs about the nature of the incident and evidence which may be circulating in the news media or in the community.

We have considered the results of the thorough investigation conducted by the Florida Department of Law Enforcement, and have taken sworn testimony from 19 witnesses, including both law enforcement officers, expert witnesses, and civilian eyewitness to the events of Mr. Weston's death. Also, and importantly, we have listened to an audio recording of a 911 call on which the shooting of Mr. Weston can be heard, and reviewed the results of the autopsy, as well as ballistics tests on firearms, projectiles, and cartridge casings which were recovered.

Our mission was to determine whether there is probable cause to believe that a criminal homicide (i.e., murder or manslaughter) was committed, or whether Mr. Weston's death was the result of a homicide that was either excusable or justifiable under the law. To begin, we have endeavored to find the facts, as accurately as possible. We then applied the laws of the State of Florida to reach our conclusion.

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FACTUAL REVIEW

Shortly before 7:30 p.m. on Friday, February 2, 2007, an incident occurred involving Mr. Weston and a number of other people on C Street, between Delaware and Starnes avenues in the City of Fort Myers. The exact nature and sequence of events is in dispute, based on the various and conflicting testimony of witnesses. We are unable to resolve some of these conflicts, nor is it necessary for us to do so in order for us to accomplish our mission, as these events happened prior to any law enforcement presence on the scene. It is sufficient to report that that following is clear:

- Mr. Weston was at the scene, acting and speaking in an unusual or bizarre manner, being aggressive and fighting with other persons
- Multiple gunshots were fired by one or more persons
- These gunshots were heard at least several blocks away
- A woman was injured by what appeared to be a projectile or fragment
- In a 911 call the woman said she had been shot, provided her location, and indicated that the person involved was still in the area

Officers of the Fort Myers Police Department, Joseph Martinez and Glen Eppler, were in a nearby area, and heard the gunshots. In furtherance of their duty, and in the interest of public safety, they immediately began driving towards the area from where they heard the shots. While en route, they were also advised of the 911 call that had been received.

Other members of the Fort Myers Police Department also responded to the call, but Martinez and Eppler arrived among the first, and stopped their car closest to the area where the initial incident had occurred. Upon getting out of their vehicle, Officer Martinez immediately saw Weston near their car, and heard people yelling “that’s him”, “he shot her”, “he’s got a gun”, and similar statements, referring to Weston . Yelling of this nature can be heard on the recorded 911 call, and was heard by numerous other witnesses at the scene.

Officer Martinez, based on what he was seeing and hearing, ordered Mr. Weston to “stop” or “freeze”, and to show his hands and drop his weapon. Instead of complying, Weston began running away from the officers, west on C Street, towards Delaware Avenue. Martinez and other officers, believing, based on what they saw and heard, that Weston was a suspect in a shooting incident, and might be dangerous to the community, chased after him on foot. This time of night was after-dark in early February, and the area was not well lighted.

Officer Martinez continued to call for Mr. Weston to stop, and show his hands. Martinez was concerned that he could not see Weston’s hands, believing, based on what he had seen, heard, and been told, that Weston was in possession of a firearm. Near the intersection of C Street and Delaware Avenue, Mr. Weston suddenly stopped and turned towards the officers in a threatening manner. He lunged at the officers and, despite being repeatedly told not to do so, reached his hands to his waistband as if grabbing for a weapon.

Officer Martinez, who has never before shot at someone in his career, believed that his life and/or the lives of other officers were under immediate threat. Officer Martinez then quickly fired four shots within approximately three seconds, at Weston. These shots, and how rapidly they occurred, can be heard on the audio recording of the 911 call.

Three of the shots struck Mr. Weston, and the fourth went astray. One shot struck Weston in the front, going through his forearm and then entering his abdomen. A second shot struck Weston in the front side of his chest. A third shot struck Weston in the back. Weston died as a result of those wounds.

The one shot to the back of Weston initially raised some concern. A full review of the evidence, however, provides appropriate context. Especially important to this review is the audio recording of the 911 call, which demonstrates how quickly the entire incident occurred. After the first 3 shots, Weston had gone partially to the ground, but was still reaching under himself as if to obtain a weapon, and Officer Martinez was still in fear for

his safety and the safety of others when he fired the last shot, which entered Mr. Weston's back.

The investigation ultimately revealed that Mr. Weston was not armed with a firearm or any other weapon. The reasons for his actions towards persons before the police arrived, or for his actions towards the police after they got there, are unknown to us. While it may be likely that his history of mental illness contributed to this situation, we cannot know for sure why he followed this course of behavior on February 2, 2007.

MISCONCEPTIONS

We are concerned that, due to conflicting statements, partial knowledge of the facts, and perceptions of persons that are contradicted by the physical evidence, there may be mistaken beliefs or impressions about the evidence or the nature of this incident. To avoid having these misconceptions linger in the community, we feel it is in the public interest to address some of them.

- Mr. Weston was not shot while running away, with his back turned to the officers. Any claim otherwise is conclusively disproved by the autopsy. The first two shots entered the front of his body, which could not have occurred had he been running away, but which are consistent with Mr. Weston having turned towards the officer.
- Mr. Weston's arms were not raised in surrender when he was shot. Any claim that they were would be conclusively disproved by the autopsy. A bullet went through his left forearm and then entered his abdomen, near the waistline. This shows that the arm was down near his waist, as observed by the officer, and could not have been raised in surrender.
- Officer Martinez, who was closest to the threat, was the only officer who fired at and struck Mr. Weston. The investigation shows that no other officers fired their weapons, and the ballistics testing supports this. All of the cartridge casings recovered from the scene, and all of the projectiles

recovered from Mr. Weston's body were fired from the same gun, which was Officer Martinez's.

- The totality of the evidence does not support that any shots were actually fired at the officers after they got to the scene. While one officer (not Martinez) believed that this occurred, no such shots were seen or heard by other witnesses, nor are they audible on the 911 recording. While this cannot be reconciled by us, it does not affect our findings as to the actions of Officer Martinez.
- There is no evidence that Weston was shot after he was handcuffed. Rather, the evidence shows that his arms were pulled behind him and cuffed after the shooting was over, as the officers were still concerned that Weston might reach for the weapon they believed he had.
- There is no evidence that Officer Martinez or any other officer involved in this incident knew Ernest Weston, or knew anything about his personality or mental health issues at the time of this incident. In fact, few, if any, of the other witnesses at the scene knew him, either.

LEGAL REVIEW

Based upon our findings of fact, as described above, it is our duty to apply the appropriate laws of this State, to determine the outcome of this matter. We have been advised of the laws relating to the various degrees of criminal homicide, as well as the laws relating to excusable and justifiable homicide. We have also been advised on the laws relating to the justifiable use of deadly force.

It is clear from the evidence that Ernest Weston was killed by Officer Martinez. The law indicates, however, that a killing that is excusable or was committed by the use of justifiable deadly force is lawful. The law further provides that a person is 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. This is commonly referred to as “self defense” or “defense of others”.

We are mindful and aware that Ernest Weston was not, in fact, armed at the time he was killed. Therefore, we have carefully considered the following requirement of Florida law:

In deciding whether the person using the deadly force was justified in the use of force likely to cause death or great bodily harm, he must be judged by the circumstances by which he was surrounded at the time the force was used. The danger facing the person using the deadly force need not have been actual; however, to justify the use of force likely to cause death or great bodily harm, the appearance of danger must have been so real that a reasonably cautious and prudent person under the same circumstances would have believed that the danger could be avoided only through the use of that force. Based upon appearances, the person using the deadly force must have actually believed that the danger was real. *Florida Standard Jury Instruction in Criminal Cases 3.6(f), issued by the Supreme Court of Florida.*

In this case, Officer Martinez and his partner heard gunshots and, even before being called, began heading towards the shots in an effort to protect the residents of the community. He then became aware of the 911 call, that a woman had been shot on C Street. Upon arrival, he immediately saw Mr. Weston, and heard a group of people indicating to him that Weston had shot the woman, and had a gun. Mr. Weston then failed to comply with the lawful commands of the officer, and acted in a manner that was consistent with possessing a weapon and being a threat. Officer Martinez and other officers acted appropriately, under these circumstances, in attempting to stop Mr. Weston and take him into custody.

After this entire chain of events, Mr. Weston then reached into his pants, as if for a weapon, and engaged in a threatening stance to the officers. Under all of these circumstances, we find that a reasonable person would believe that there was actual and immediate danger of death or great bodily harm. Officer Martinez did believe this, and acted reasonably and justifiably in response to the apparent threat.

CONCLUSION

The death of Ernest Weston on February 2, 2007 was indeed tragic. We have the utmost sympathy for his family and friends, especially as it appears that mental illness may have, unknown to those at the scene, contributed to some of Mr. Weston's actions on that night.

We also have concern for Officer Martinez, and all police officers who may, at a moment's notice be sent into dangerous or violent situations, with potentially deadly consequences, in order to help protect our communities. They do not have the luxury to flee or hide; they have instead the duty to face the danger, and often make split-second decisions involving life or death.

No one is happy about the situation and circumstances that led to Mr. Weston's death. Unfortunately, the actions of Mr. Weston, and the information made known to the officers combined to create a setting where any reasonable person would have felt they were about to be seriously hurt or killed, and felt the need to protect themselves.

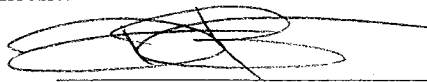
We find that Officer Martinez's actions were justifiable and lawful, and therefore issue NO TRUE BILL in this matter.

Dated this 26th day of June, 2007

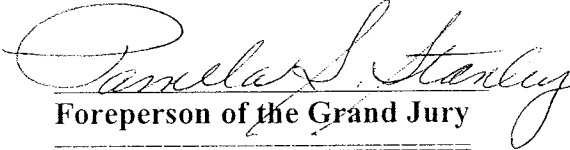
We, Stephen B. Russell, State Attorney
and Dean R. Plattner, Assistant State Attorney
as authorized and required by law, have advised the
Grand Jury returning this presentment.



Stephen B. Russell
State Attorney



Dean R. Plattner
Assistant State Attorney

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Foreperson of the Grand Jury
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Presented in the Circuit Court by
The Grand Jury and filed:

_____, 2007

By:

Charlie Green
Clerk of Circuit Court