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April 18, 2019

Chief Derrick Diggs
Fort Myers Police Department
2210 Widman Way
Fort Myers, FL 33901

Re: Officer Involved Shooting
FDLE #FM-27-0023
Wisner Desmaret

Dear Chief Diggs:

My office has completed the review of the investigation into the officer involved shooting of Wisner Desmaret by Fort Myers Police Department Lieutenant Peter Tarman and Officer Matthew Zarillo in an incident that occurred on July 21, 2018.

Based upon the investigative reports provided, and the applicable law, I am convinced that the actions of the officers involved in this incident were a legally justifiable use of deadly force, in the defense of themselves or others. Therefore, my office will not be filing any criminal charges in this matter.

Enclosed memoranda by Assistant State Attorney Anthony W. Kunasek and SAO Investigator Sean Hoover summarize the legal and investigative review of this incident.

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

Sincerely,

Amira D. Fox
State Attorney

ADF/so
Enclosures
cc: Spec. Agt. Edward Carmody, FDLE

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

Amira D. Fox, State Attorney

MEMO

TO: Amira D. Fox, State Attorney

FROM: Anthony W. Kunasek, Assistant State Attorney

DATE: February 21, 2019

RE: Fort Myers Police Department Officer Involved Shooting
FMPD # 2018-07717; FDLE # FM-27-0023; SAO Investigation # 2018-0059

INTRODUCTION

This is a legal review of an officer-involved shooting incident that occurred on July 21, 2018, within the city limits of Fort Myers. The incident involved an individual, later identified as, Wisner Desmaret. Fort Myers Police Department (FMPD) Lieutenant Peter Tarman and Fort Myers Police Department Officer Matthew Zarillo used deadly force against Mr. Desmaret by firing their duty firearms at him. Wisner Desmaret received a gunshot wound to the leg and survived his injuries.

The use of force investigation was independently conducted by Special Agent Edward Carmody with the Florida Department of Law Enforcement (FDLE). Special Agent Carmody provided this office with his report and supplemental documentation. Lieutenant Tarman and Officer Zarillo gave statements.

FACTUAL SUMMARY

The shooting of Wisner Desmaret at approximately 7:35 p.m. on July 21, 2018 was the culmination of a series of events. The facts are set forth in Special Agent Carmody's report, as well as State Attorney's Office (SAO) Investigator Sean Hoover's memorandum, some of which are reiterated below.

SCOPE OF REVIEW

This legal review is limited to the issue of whether the officers committed a violation of the criminal laws of Florida by their use of deadly force against Wisner Desmaret. No policy, procedural, or civil issues outside of the jurisdiction of the State Attorney's Office are addressed, and no comment on such matters is intended.

LEGAL DETERMINATION

Florida Statute §776.012 (2015) allows for the justifiable use of deadly force "... if he or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony..." Law enforcement's use of deadly force means "force that is likely to cause death or great bodily harm to include the 'firing of a firearm in the direction of the person to be arrested even though no intent exists to kill or inflict great bodily harm'" *Florida Statute §776.06(1)(a)(2015)*.

The totality of the evidence supports the conclusion that Lieutenant Peter Tarman and Officer Matthew Zarillo were justified in the use of deadly force against Wisner Desmaret. At approximately 7:15 p.m. on July 21, 2018, the Fort Myers Police Department received a 911 call. The caller, Charnetta Mann, reported a disturbance at the Marathon gas station located at 3915 Martin Luther King, Jr. Boulevard involving four (4) individuals. Ms. Mann described one black male, later identified as Wisner Desmaret, fighting with three (3) young black males, later identified as Shyheem Taylor, Ohmar Harris and Roderick Nance, Jr.

FMPD officers Adam Jobbers-Miller, Matthew Zarillo, Brittany Morris and FMPD Lieutenant Peter Tarman responded to the gas station. All FMPD officers were in full uniform. They met with Ms. Mann. She advised them that all of the parties involved in the disturbance had departed. She stated one left on foot (Mr. Desmaret) and the others were in a white car. She gave descriptions of the individuals, the car and the direction of travel. The four (4) FMPD officers left the Marathon gas station and began to look for the individual on foot (Mr. Desmaret) and the car with the other three individuals.

Within minutes, Lieutenant Tarman located Mr. Desmaret walking near 2171 Flint Drive a few hundred yards south from the Marathon gas station. Officer Jobbers-Miller responded to the Flint Drive area as well. While Officer Jobbers-Miller was speaking with Mr. Desmaret, Mr. Desmaret took it upon himself to get down on the ground. While on the ground Mr. Desmaret kept saying "just shoot me, just shoot me." As this was happening, a black Chevrolet Challenger pulled up. Inside the car was Shyheem Taylor, one of the young males involved in the disturbance with Mr. Desmaret at the Marathon gas station, and his brother, Miguel Rodriguez.

As Lieutenant Tarman and Officer Jobbers-Miller attempted to gather information from all the parties, Mr. Desmaret got up from the ground and after a few seconds began to run away. He ran north toward Martin Luther King, Jr. Blvd. Officer Jobbers-Miller gave chase yelling for Mr. Desmaret to stop and to get on the ground. Mr. Desmaret refused to comply. As Officer

Jobbers-Miller closed the gap, Mr. Desmaret turned and faced Officer Jobbers-Miller. Mr. Desmaret took a fighting stance.

Mr. Desmaret then lunged toward Officer Jobbers-Miller, throwing a punch with his right hand. The force of the punch knocked Officer Jobbers-Miller to the ground, on his back. Within seconds, Mr. Desmaret grabbed Officer Jobbers-Miller's firearm from the holster and shot him in the head.

After shooting Officer Jobbers-Miller, Mr. Desmaret pointed the firearm at Lieutenant Tarman and fired at him. Lieutenant Tarman returned fire, using his department issued firearm. Lieutenant Tarman fired four (4) times at Mr. Desmaret, missing his target. Mr. Desmaret continued running toward Martin Luther King, Jr. Blvd. with Officer Jobbers-Miller's firearm in his hand. Lieutenant Tarman radioed "shots fired, officer down, he has a gun, he shot an officer." Lieutenant Tarman also radioed the description of Mr. Desmaret and the direction of travel.

Officer Matthew Zarillo, one of the original officers to respond to the initial complaint at the Marathon gas station heard the radio transmission called out by Lieutenant Tarman and immediately headed back toward that area. As Officer Zarillo drove eastbound on Martin Luther King, Jr. Blvd. he saw a male matching the description given by Lieutenant Tarman, holding a gun. As Officer Zarillo passed by, he heard Lieutenant Tarman yell over the radio, "you passed him."

Officer Zarillo turned his vehicle around and saw Mr. Desmaret, still holding a gun, attempting to get into a vehicle that was stopped on Martin Luther King, Jr. Blvd. Officer Zarillo stated he then saw Mr. Desmaret run toward the Marathon gas station, with the gun. Officer Zarillo stated he observed Mr. Desmaret smash out one of the windows of the gas station.

At this point, Officer Zarillo was outside of his vehicle using the front engine area as cover. He stated he discharged his department issued pistol at Mr. Desmaret as he walked outside of the Marathon gas station building. Officer Zarillo stated he fired eight (8) to ten (10) rounds at Mr. Desmaret. Officer Zarillo's pistol then jammed. Officer Zarillo stated he then observed Mr. Desmaret enter the Marathon gas station store.

While Mr. Desmaret was inside the store, Officer Zarillo transitioned from his pistol to his department issued AR-15 rifle, which was in the back of his patrol vehicle. Officer Zarillo then returned to the front area of his vehicle, still using it as cover. Officer Zarillo then yelled for Mr. Desmaret to come out with his hands up two (2) times. Officer Zarillo stated he then observed Mr. Desmaret come out of the store, still holding the gun. Officer Zarillo stated Mr. Desmaret lifted the gun. Officer Zarillo stated he then fired four (4) times at Mr. Desmaret. Mr. Desmaret fell to the ground dropping the gun.

Officer Zarillo and several other officers then approached Mr. Desmaret. The firearm on the ground near him was secured and collected. Emergency Medical Services (EMS) responded and treated Mr. Desmaret's one (1) through-and-through gunshot wound to his right thigh. He was then transported to Lee Memorial Hospital.

FDLE crime scene unit responded and processed the crime scenes at the Marathon gas station and Flint Drive. At the Flint Drive scene, they photographed the area and collected evidence. Five (5) Speer S&W .40 caliber cartridge casings were collected. Three (3) cartridge casings were located in the area where Lieutenant Tarman stated he fired at Mr. Desmaret. Two (2) cartridge casings were located in the area where Mr. Desmaret shot Officer Jobbers-Miller and shot at Lieutenant Tarman. One (1) projectile was found in the grass in the vicinity of where Lieutenant Tarman was. Officer Jobbers-Miller's body camera was located in the grass area near where Office Jobbers-Miller was shot.

The Marathon gas station scene (which included a portion of MLK) was photographed and processed. One (1) Heckler and Koch 40 S&W handgun located near Mr. Desmaret after he was shot was located. Four (4) Speer .223 14 REM, cartridge casings were recovered and collected. Six (6) Speer S&W .40 caliber cartridge casings were recovered and collected. All of these were located in the area of Officer Zarillo's patrol vehicle.

Lieutenant Tarman's Heckler and Koch 40 S&W handgun was collected and photographed. Officer Zarillo's Heckler and Koch 40 S&W handgun was collected and photographed. Officer Zarillo's FNH USA, model FN15, rifle was collected and photographed.

All collected firearms, recovered cartridge casings and recovered projectiles were submitted to FDLE for analysis. FDLE determined that the two (2) Speer S&W .40 caliber cartridge casings recovered from the Flint Drive scene where Officer Jobbers-Miller was shot and Lieutenant Tarman was shot at were fired from the same firearm. It was determined these same two cartridge casings were fired from the firearm located near Mr. Desmaret after he was shot. This firearm was identified by serial number to be Adam Jobbers-Miller's department issued pistol.

FDLE determined that the projectile removed from Adam Jobbers-Miller's head and the projectile recovered in the grass at the Flint Drive scene were in fact fired from the handgun previously identified as Adam Jobbers-Miller's department-issued pistol.

FDLE determined that the three (3) Speer S&W .40 caliber cartridge casings recovered from the Flint Drive scene in the area where Lieutenant Tarman stated he was firing were in fact fired from Lieutenant Tarman's department-issued Heckler and Koch 40 S&W pistol.

FDLE further determined that all of the cartridge casings recovered at the Marathon gas station scene (MLK portion) near Officer Zarillo's patrol vehicle were in fact fired from either Officer Zarillo's department-issued Heckler and Koch 40 S&W pistol or his department-issued FNH USA, model FN15 rifle.

FDLE also analyzed the Hecker and Koch 40 S&W handgun (Adam Jobbers-Miller's) seen in Mr. Desmaret's hand, and found near Mr. Desmaret after he was shot for DNA. The DNA results contained a mixture, which included Mr. Desmaret as a possible contributor.

The FMPD police radio transmissions, body worn camera footage, in-car camera footage, as well as the Marathon gas station video surveillance corroborated, and were consistent with, witness

testimony, specifically including the statements of Lieutenant Peter Tarman and Officer Matthew Zarillo.

At the time of the shootings, it was known to the officers that Wisner Desmaret committed two (2) counts of attempted murder with a firearm on a law enforcement officer – the shooting of Officer Jobbers-Miller followed immediately by the shooting at Lieutenant Tarman; and aggravated assault with a firearm on a law enforcement officer – the pointing of a firearm at Officer Zarillo. Those alleged crimes are forcible felonies as defined by *Florida Statute §776.08*. The actions and alleged crimes committed by Mr. Desmaret presented a significant danger to the community and to the law enforcement officers carrying out their lawful duties, which justified the use of deadly force by Lieutenant Tarman and Officer Zarillo.

Mr. Desmaret has been formally charged by Indictment with one (1) count of First Degree Murder Of A Law Enforcement Officer, one (1) count of Resisting An Officer With Violence, one (1) count of Robbery, one (1) count of Depriving an Officer Of Means Of Protection, one (1) count of Attempted First Degree Murder Of A Law Enforcement Officer, one (1) count of Aggravated Assault On A Law Enforcement Officer, one (1) count of Burglary Of A Conveyance, and one (1) count of Grand Theft. Lee County Clerk of Court case number 18-17498CF. The case is still pending.

CONCLUSION

Lieutenant Peter Tarman and Officer Matthew Zarillo were reasonably justified in using deadly force to protect themselves and others from the serious danger Wisner Desmaret posed during the evening hours on July 21, 2018. For the reasons set forth above, there is no basis for further action by this office. This matter should be closed.

cc: Richard J. Montecalvo, Chief Assistant State Attorney
Sean Hoover, Investigator

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CASE CLOSING

CASE NO: 2018-0059
DATE: January 2, 2019
INVESTIGATOR: Sean Hoover
SUBJECT: Officer Involved Shooting, FMPD
Injured – Wisner Desmaret

On July 21st, 2018, Lieutenant Peter Tarman and Officer Matthew Zarillo with the Fort Myers Police Department (FMPD) used lethal force upon Wisner Desmaret, a black male, born October 10th, 1988. The shooting incident occurred near 2171 Flint Drive and the Marathon Gas Station located at 3915 Dr. Martin Luther King Jr. Boulevard (MLK). These locations are within the City of Fort Myers, Lee County, Florida. During the incident Mr. Desmaret shot Officer Adam Jobbers-Miller, who subsequently died from this gunshot on July 28th, 2018. Mr. Desmaret survived a single gunshot wound to the leg, was treated and later released from Lee Memorial Hospital.

Once Mr. Desmaret was released from the hospital on July 29th, 2018 he was arrested and charged with Homicide, Attempted Homicide, Burglary, Grand Theft, Robbery, Aggravated Assault, Depriving a Law Enforcement Officer of Means of Protection, Aggravated Assault, and Resisting Arrest with Violence. The prosecution of these charges is ongoing and is identified as Clerk case number 18CF017498.

The Fort Myers Police Department used an independent investigating agency, that being the Florida Department of Law Enforcement (FDLE). I have reviewed the investigative summary completed by FDLE (FM-27-0023) prepared by Special Agent Edward Carmody regarding the use of force by Lieutenant Tarman and Officer Zarillo. This report along with supplemental material received through November 30th, 2018, was used in this review. Lieutenant Tarman and Officer Zarillo have provided sworn statements in this investigation. Mr. Desmaret did not provide a statement in the case.

The following information was documented through the sworn statements of numerous witnesses, dispatch logs, audio recordings, the 9-1-1 call, body worn camera videos, in car police video, commercial business videos, forensic analysis of evidence, and crime scene processing.

Synopsis

The FDLE investigation revealed that on July 21st, 2018, at 7:16 p.m., the Fort Myers Police Department received a 9-1-1 call for service in regards to a disturbance in the parking lot of the Marathon Gas Station located at 3915 Dr. Martin Luther King Jr. Boulevard. The 9-1-1 caller, Charnetta Mann, reported that a black male was involved in a physical fight with three other black males in the parking lot of the gas station. It was later learned that the male that Ms. Mann was referring to as fighting with three other males was Mr. Desmaret. The three males that were involved in the altercation with Mr. Desmaret were later identified as Ohmar Harris, Roderick Nance, and Shyheem Taylor.

Initial responding officers to the scene of the altercation at the gas station were Officers Adam Jobbers-Miller, Matthew Zarillo, Brittany Morris, and Lieutenant Peter Tarman. Mrs. Mann explained to the officers what she observed and further said that all parties involved had left the gas station parking lot. After getting the initial information from Mrs. Mann all officers cleared the scene and went out looking for Mr. Desmaret and the vehicle with Mr. Harris, Mr. Nance, and Mr. Taylor.

Lieutenant Tarman later located Mr. Desmaret near 2171 Flint Drive and made contact with him. Officer Jobbers-Miller also responded to Lt. Tarman's location and began speaking with Mr. Desmaret as well. Shortly after the officers made contact with Mr. Desmaret a vehicle pulled up on scene that had Mr. Rodriguez, and Mr. Taylor inside.

During the course of the contact Mr. Desmaret took off running towards Dr. Martin Luther King Jr. Blvd. with Officer Jobbers-Miller giving chase. Officer Jobbers-Miller at some point went hands on with Mr. Desmaret, at which point Mr. Desmaret was able to gain control of Officer Jobbers-Millers' duty firearm from his gun belt. Once Mr. Desmaret had possession of Officer Jobbers-Millers' firearm he shot Officer Jobbers-Miller immediately incapacitating him and then shot at Lt. Tarman before fleeing on foot again.

Lt. Tarman returned fire at Desmaret and then provided information on what took place over his portable police radio. Lt. Tarman saw that Mr. Desmaret was fleeing back towards the Marathon Gas Station and provided this information to responding units. Further responding officers immediately went to the area and set up a perimeter around the Marathon Gas Station where Mr. Desmaret was located.

While on the perimeter of the gas station Mr. Desmaret was seen holding a firearm in his hand several times. Officer Zarillo used his duty handgun and rifle to shoot Mr. Desmaret, thus stopping the threat at the time. Mr. Desmaret was subsequently taken into custody, and transported to Lee Memorial Hospital for medical treatment.

9-1-1 Call and Charnetta Mann Statement

A review of the 9-1-1 call placed by Charnetta Mann revealed that On July 21st, 2018, at 7:16 p.m. she called 9-1-1 from her cell phone to report a disturbance between several males in the parking lot of the Marathon Gas Station on Dr. Martin Luther King Jr. Boulevard. Ms. Mann reported that a black male (later identified as Wisner Desmaret) in all dark clothing was fighting with three other males in the gas station parking lot and that Mr. Desmaret had taken one of their cell phones from inside their car.

On July 22nd, 2018, Ms. Mann provided a sworn statement to law enforcement at the Fort Myers Police Department. During her statement to law enforcement Ms. Mann reiterated all of the information that

she provided to the 9-1-1 call taker and the responding officers that made initial contact with her at the Marathon Gas Station.

Ms. Mann said that at the pumps across from her was a white, what she described as a long car that she thought may have been a Mercury. Ms. Mann said that Mr. Desmaret was at the gas pump where this white car was and was arguing with the person pumping gas. Ms. Mann then said that the argument turned physical and that Mr. Desmaret and the guy pumping gas began to physically fight.

Ms. Mann said that at one point the guy pumping gas fell and Mr. Desmaret went around to the other side of the car, dove in and began punching the passenger seated in the car. Ms. Mann could overhear Mr. Desmaret saying over and over, where is the "fi", which she explained is slang for gun. She could see Mr. Desmaret searching around for something in the car while he was inside.

Eventually the third male from the car also became involved in the physical altercation, and at one point Ms. Mann said that Mr. Desmaret body slammed one of the guys on the ground. She also described Mr. Desmaret as the aggressor and that he was "handling" the three guys by himself.

Ms. Mann went on to say that Mr. Desmaret eventually went across the road to the median of Dr. Martin Luther King Jr. Blvd. and was pacing back and forth and yelled at the guys, something about having their phone. Ms. Mann then asked the guys if they were okay and they responded that they were and that they did not know Mr. Desmaret. At the conclusion of her statement Ms. Mann wanted to reiterate that she felt Mr. Desmaret was the aggressor in the situation and that the three boys were minding their own business and were just defending themselves.

Statements of Ohmar Harris, Roderick Nance, and Shyeem Taylor

Ohmar Harris, Roderick Nance, and Shyeem Taylor were the three individuals in the white Mercury vehicle at the Marathon Gas Station and were the people who were initially attacked by Mr. Desmaret. All three later gave statements at the Fort Myers Police Station with regards to the incident. Mr. Harris was driving the vehicle, Mr. Taylor was the front seat passenger, and Mr. Nance was the back seat passenger (seated behind Mr. Taylor). These statements were corroborated by the store surveillance videos at the Marathon Gas Station. During their statements all three men gave consistent explanations about the details of what took place at the gas pumps while they were at the Marathon Gas Station.

All three in the Mercury left the area and went to a nearby residence where Miguel Rodriguez was at; Shyeem Taylor and Miguel Rodriguez, who are brothers, then got into a black Camaro and went to look for Mr. Desmaret in an attempt to recover Mr. Taylor's cell phone. Mr. Taylor was present at the scene on Flint Drive and was an eye witness to the confrontation between law enforcement and Mr. Desmaret. Mr. Taylor gave details about the interaction between law enforcement and Mr. Desmaret that was also corroborated by the body worn video and in car video footage from Officer Jobbers-Miller.

Mr. Taylor said that after Mr. Desmaret got up off the ground and tried to get into their car he took off running and Officer Jobbers-Miller ran after him. Mr. Taylor said that he saw Officer Jobbers-Miller holding his gun while he was running and unsnapped the holster, he did not see Officer Jobbers-Miller pull the gun out at any time.

Mr. Taylor said that he saw Mr. Desmaret turn around and then he saw Officer Jobbers-Miller fall, it appeared to Mr. Taylor that there was a struggle occurring. Mr. Taylor said that he did not have a

complete and unobstructed view the whole time. Mr. Taylor said he then saw Mr. Desmaret grab Officer Jobbers-Miller's gun from the holster and while the officer was on the ground Mr. Desmaret shot the officer. At this point Mr. Taylor said that he immediately ran behind the Camaro and took cover. Mr. Taylor said that his brother, Mr. Rodriguez, told him to get in the car and then they left in the Camaro.

Miguel Rodriguez Statement

Miguel Rodriguez is the driver of the black Camaro that pulled up when Lt. Tarman and Officer Jobbers-Miller were speaking with Mr. Desmaret on Flint Drive. Mr. Rodriguez's statement corroborated the actions of Mr. Desmaret and the statements of the others who were at the scene on Flint Drive.

Mr. Rodriguez further provided information about the altercation between Officer Jobbers-Miller and Mr. Desmaret and the subsequent shooting that occurred between Officer Jobbers-Miller, Lt. Tarman, and Mr. Desmaret. Mr. Rodriguez's statement was also corroborated by the body worn video and in car video footage from Officer Jobbers-Miller.

Mr. Rodriguez stated that Mr. Desmaret took off running on foot and that Officer Jobbers-Miller ran after him. Mr. Rodriguez said that he thought that he may have seen Officer Jobbers-Miller unsnap his holster while running, however, he did not see Officer Jobbers-Miller pull his gun out. Mr. Desmaret stopped running, turned around and took a crouching position, Mr. Rodriguez said he saw Mr. Desmaret with his hands up and say, "Don't shoot me, don't shoot me."

Mr. Rodriguez said he then saw Mr. Desmaret and Officer Jobbers-Miller engage in an altercation. Mr. Rodriguez said that he thought maybe Mr. Desmaret punched or pushed Officer Jobbers-Miller causing the officer to be knocked back to the ground. Mr. Rodriguez said that while Officer Jobbers-Miller was on the ground Mr. Desmaret grabbed the officer's gun and shot him in the head. Mr. Rodriguez said that he heard four shots total, he only saw the first shot and then took cover and hid, but heard three subsequent shots from the same area where Officer Jobbers-Miller was.

Art Seaman Statement

Art Seaman is a witness and provided a sworn statement at the Fort Myers Police Department. Mr. Seaman states that he turned onto Flint Drive from MLK, travelling south on Flint Drive. Mr. Seaman stated that as soon as he turned onto Flint Drive he saw a black male wearing all black with dreads in his hair, and had a black semi-auto handgun in his hand. Mr. Seaman said that he slowed his vehicle down as Mr. Desmaret was in the roadway and he didn't want to hit him and actually had to swerve to avoid hitting Mr. Desmaret.

Mr. Seaman further said that he heard Mr. Desmaret yell something, although he couldn't make it out, and then Desmaret hit the window of his door with the butt of the gun. The window did not break, Mr. Seaman said that he ducked down and continued to drive to get away from Mr. Desmaret. Mr. Seaman then continued down the road where he saw two officers in uniform, one was hurt and the other was giving aid to the downed officer. Mr. Seaman said that he also assisted both officers; while doing this he heard gunshots come from the MLK area.

Marisol Morales-Acevedo and Thomas Chilzer Statements

Marisol Morales-Acevedo is the owner/operator of the Marathon Gas Station and was working at the time of the incident. Thomas Chilzer is a frequent customer of the Marathon Gas Station and friend of Mrs. Morales-Acevedo, he also was in the store with her at the time of the incident. Both later provided sworn statements at the Fort Myers Police Department.

Both Ms. Morales-Acevedo and Mr. Chilzer provided consistent statements with regards to the incident and the actions of Mr. Desmaret. Their statements are also corroborated by the video surveillance system that was in place at the time of the incident and were reviewed.

Lieutenant Peter Tarman Statement

On July 25th, 2018, Lieutenant Peter Tarman provided a statement, with his attorney present, to Agent Edward Carmody of FDLE and Detective Emily Destefanis of the FMPD. Prior to giving his statement Lieutenant Tarman was able to preview the video footage of the incident. In his statement, Lt. Tarman, who was working in a uniformed capacity, says that he responded as a backup unit to the initial call at the Marathon Gas Station with Officers Jobbers-Miller, Zarillo, and Morris. Lt. Tarman was not equipped with a body worn video camera, nor was his vehicle equipped with a video camera.

During contact with Ms. Mann, Lt. Tarman heard her mention something about someone during the altercation talking about a gun. Lt. Tarman also heard Ms. Mann describe the incident that took place, and the description of Mr. Desmaret and the item that he took from the vehicle.

Lt. Tarman said that he later located Mr. Desmaret, who matched the description given by Ms. Mann, coming out of the parking lot of the cabinet shop at 2171 Flint Drive. Lt. Tarman said that he turned on his emergency lights in his car (an unmarked police vehicle that was equipped with emergency lighting equipment), and checked out with the individual, who was also in possession of a cellular telephone in his right hand.

Lt. Tarman said that Mr. Desmaret immediately put his hands in the air even though he never asked him to do this. When Lt. Tarman stepped out of his vehicle, Mr. Desmaret immediately put the cell phone he was holding on the ground and then laid down on the street in a "prone" position. The actions of Desmaret at this time were voluntary and Lt. Tarman states that he did not direct Mr. Desmaret to lay on the ground.

Lt. Tarman said that as Mr. Desmaret was laying on the ground he kept repeating over and over, "Just shoot me". Lt. Tarman said that less than a minute later Officer Jobbers-Miller arrived with him as Mr. Desmaret was "proned out" on the ground.

Both officers repeatedly asked Mr. Desmaret to get up off the ground so that they could speak with him further, but he would not comply. Lt. Tarman said that shortly after making contact with Mr. Desmaret a black Camaro pulled up alongside them travelling north on Flint Drive.

The occupants of the vehicle, Mr. Rodriguez and Mr. Taylor, got out and began speaking with the officers. At one point Mr. Desmaret got up and started going towards the Camaro, and his actions were stopped when Mr. Rodriguez and Officer Jobbers-Miller lunged at him. It was at this time that Mr. Desmaret took off running and Officer Jobbers-Miller gave chase. Lt. Tarman said that he saw Officer Jobbers-Miller chase Mr. Desmaret to a point just past the driveway entrance to 2171 Flint Drive.

Lt. Tarman then said that he saw Officer Jobbers-Miller and Mr. Desmaret involved in a tussle in the grass and started going that way. Lt. Tarman said he did not see what happened to cause Officer Jobbers-Miller to go to the ground but did say that Officer Jobbers-Miller was on the ground and Mr. Desmaret was behind him. Lt. Tarman said that he then heard a gunshot but did not see who fired the shot, he continued to run towards the two. It was at this point that Lt. Tarman says that Mr. Desmaret lifted up a gun, pointed it at him and fired a round at him. Lt. Tarman said that the round struck the ground to his right, he moved to the left, drew his firearm and fired one round. Lt. Tarman said that when Mr. Desmaret shot at him he had never been so scared than at that moment.

Lt. Tarman said that Officer Jobbers-Miller was lying on the ground and he went to Officer Jobbers-Miller to provide assistance when he saw Mr. Desmaret stop running, turn around and point the gun at him. Lt. Tarman said that he fired one round at Mr. Desmaret, causing Mr. Desmaret to turn and run again. Once again, Mr. Desmaret stopped running, turned and pointed the firearm at Lt. Tarman, who in turn fired one round at Mr. Desmaret; Mr. Desmaret again turned and began running away. Once again, after running a short distance, Mr. Desmaret stopped and turned around, pointing the gun at Lt. Tarman, who in turn fired one round at Mr. Desmaret. Mr. Desmaret again turned and ran north on Flint Drive towards MLK.

Lt. Tarman reiterated that he thought Mr. Desmaret was trying to kill him because instead of just running away, Mr. Desmaret kept turning back at him, and what Lt. Tarman thought at the time, shooting at him. It was later determined that the magazine of Officer Jobbers-Miller's handgun had become dislodged from the firearm after Mr. Desmaret fired two rounds, however, Lt. Tarman believed that each time Mr. Desmaret pointed the weapon at him, it was being fired. Lt. Tarman did not know that the handgun's magazine was no longer in the weapon.

Officer Matthew Zarillo Statement

On July 25th, 2018 Officer Matthew Zarillo provided a statement, with his attorney present, to Agent Edward Carmody of FDLE and Detective Emily Destefanis of FMPD. Prior to giving his statement Officer Zarillo was able to preview the video footage of the incident. In his statement, Officer Zarillo said that he was working in a uniformed capacity in a marked police vehicle on July 21st, 2018. Officer Zarillo was equipped with a body worn camera as well as an in car video camera.

Officer Zarillo further said that he responded to the initial call for service of the disturbance at the Marathon Gas Station when contact was made with Ms. Mann, and subsequently left the gas station looking for the Mercury vehicle that was involved. Moments later Officer Zarillo said that he heard Lt. Tarman on the radio say foot chase, and then subsequently say shots fired, officer down. Officer Zarillo turned around and responded back to the area, and while driving east on MLK had passed Mr. Desmaret who was on his right hand side of MLK.

After realizing he passed Mr. Desmaret, Officer Zarillo made a U-turn and was now traveling in the west bound lanes of MLK going towards the Marathon Gas Station. Officer Zarillo said that as he was approaching the front of the gas station he saw Mr. Desmaret armed with the firearm in the roadway of MLK trying to get into a vehicle, stating he was trying to open the passenger door of the car. Officer Zarillo said that Mr. Desmaret saw him coming and then ran towards the gas station, still armed with a firearm. Officer Zarillo then says that Mr. Desmaret went to the front door of the gas station and broke out the window with the firearm.

At this point Officer Zarillo said that based on the fact that there were shots fired and an officer down as well as the actions of Mr. Desmaret trying to get into a car in the road and then breaking the window of the gas station, he began firing his duty firearm at Mr. Desmaret to stop any further violence. Officer Zarillo said that he fired about eight to ten rounds at Mr. Desmaret from his handgun. Officer Zarillo said that he knew without a doubt that Mr. Desmaret was still a threat to everyone.

Once Mr. Desmaret had gone into the store, Officer Zarillo said that he retrieved his patrol rifle from the back of his patrol car as his handgun had jammed. Once Officer Zarillo retrieved his patrol rifle he returned to his firing position at the engine block of his patrol car. Officer Zarillo said that eventually Mr. Desmaret came outside of the store and was still armed with the handgun. Officer Zarillo said that Mr. Desmaret pointed the firearm at him and Officer Zarillo fired four rounds at Mr. Desmaret, eventually striking him at which point Mr. Desmaret went down to the ground.

Officer Zarillo then said that he and several other officers approached Mr. Desmaret where he was eventually secured and medical treatment was given. Officer Zarillo reiterated that he was in fear for his life and the safety of others in the area during the incident.

Adam Jobbers-Miller Body-Worn and In-Car Camera

A review of the body-worn camera footage from Officer Jobbers-Miller shows the initial contact he had with Mrs. Mann at the Marathon Gas Station. This video corroborates all the information given throughout the incident by all of the witnesses that were involved. Officer Jobbers-Miller body-worn video footage also provides an account of the initial foot pursuit, and the subsequent attack by Mr. Desmaret on Officer Jobbers-Miller.

It is very apparent that at a point in the foot pursuit Mr. Desmaret does quickly stop, turn around and crouch down and as Officer Jobbers-Miller gets close Mr. Desmaret clenches his left hand into a fist and then lunges at Officer Jobbers-Miller. The two then engage in a physical fight and at some point Officer Jobbers-Miller is knocked to the ground. Mr. Desmaret is then seen coming over Officer Jobbers-Miller and reaches over towards the officer's right hand side. At this point the view is blocked and eventually the body-worn camera is knocked off of Officer Jobbers-Miller's uniform, and then a single gunshot is heard.

After this several more gunshots are heard to be fired coinciding with the accounts given by Lt. Tarman about the exchange between he and Mr. Desmaret. After Officer Jobbers-Miller is shot, Mr. Desmaret can be heard yelling, "Let's shoot it out bitch!"

Crime Scene and Evidence Processing Results

The Florida Department of Law Enforcement's Crime Scene Section responded to, documented, and collected several items of evidence from the various crime scenes involved in this incident. The reports and diagrams provided by FDLE reflect an accurate record of the statements given as the evidence corroborates all of the information that has been provided by the officers involved as well as the civilian witnesses.

Officer Zarillo's department-issued handgun and patrol rifle, Lt. Tarman's department-issued handgun, and Officer Jobbers-Miller department-issued handgun were all retained for evidentiary purposes. These items were submitted to the FDLE crime lab for various examinations.

Results from processing of the items also provided corroboration to the statements provided, including the fact that Mr. Desmaret's DNA was located on Officer Jobbers-Miller's department issued handgun that was located next to Mr. Desmaret when he was taken into custody. It was also confirmed that Mr. Desmaret fired only two rounds during the incident.

The firearm that was recovered from him did not contain any live ammunition or a magazine, the magazine fell out of this firearm and was located on Flint Drive and had a total of twelve live rounds in it. This magazine, when fully loaded, holds thirteen rounds and the firearm was loaded with one live round in the chamber; for a total of fourteen rounds. The spent shell casings located at this scene matches the number of rounds reported by witnesses and Lt. Tarman as being a total of six rounds fired. Two rounds fired by Mr. Desmaret and four rounds fired by Lt. Tarman.

After processing Lt. Tarman's handgun it was determined that, as he said, he fired a total of four rounds, the round count in his handgun and the magazines corroborated his account. After processing Officer Zarillo's handgun and patrol rifle it was learned that he had fired a total of nine rounds from his handgun and four rounds from his patrol rifle, which was corroborated through his statement, video, as well as the round count of the items that were collected as evidence.

Findings

Based on the review of the investigative report, witness statements, other documentation, multiple video recorded evidence, and without further evidence to the contrary, it is believed that Officer Matthew Zarillo and Lieutenant Peter Tarman fired their weapons believing that their lives were in immediate jeopardy and used deadly force to stop the threat. Officer Zarillo stated and fully believed that his life was being threatened and had a well-rounded fear that he needed to use deadly force to stop the threat that was presented to him as well as the safety of others in the area.

It is my opinion that Lt. Tarman's and Officer Zarillo's use of deadly force in this case is justified.

This investigation is closed pending a legal review of the facts.

/s/ Sean Hoover

Sworn Law Enforcement Officer / Investigator

/s/ J S. Purdy

Approved: Chief Investigator