

OFFICE OF THE STATE ATTORNEY
TWENTIETH JUDICIAL CIRCUIT

Charlotte County
350 E. Marion Avenue
Punta Gorda, FL 33950
(941) 637-2104

Collier County
3315 E. Tamiami Trail, Suite 602
Naples, FL 34112
(239) 252-8470

Glades County
500 Avenue J SW
Moore Haven, FL 33471
(863) 946-0077



AMIRA D. FOX
STATE ATTORNEY

Proudly Serving the Citizens of Southwest Florida

Hendry County
1045 Pratt Boulevard
LaBelle, FL 33935
(863) 612-4920

Lee County
2000 Main Street, 6th Floor
Fort Myers, FL 33901
(239) 533-1000

Mailing Address
PO Box 399
Fort Myers, FL 33902

May 4, 2020

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

Re: Officer Involved Shooting
FDLE #FM-27-0026
Belay Berhanu W Mariam

Dear Chief Diggs:

My office has completed the review of the investigation into the officer involved shooting of Belay Berhanu W Mariam by Fort Myers Police Department Officer Beau Reed in an incident that occurred on December 20, 2019.

Based upon the investigative reports provided, and the applicable law, I am convinced that the actions of the officer involved in this incident were a legally justifiable use of deadly force, in the defense of himself 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. Michael Ortiz, 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: March 30, 2020

RE: Fort Myers Police Department's Officer Involved Shooting Investigated by the Florida Department of Law Enforcement FDLE # FM-27-0026; SAO Investigation # 2019-00189

INTRODUCTION

This is a legal review of an officer-involved shooting incident that occurred on the evening of December 20, 2019, at the Bay Park Villas apartment complex, located at 2315 Central Avenue, Fort Myers, Lee County, Florida. The incident involved an individual identified as Belay Berhanu W Mariam. Fort Myers Police Officer Beau Reed used deadly force against Mr. W Mariam by firing his duty firearm at him. When Officer Reed discharged his firearm, Mr. W Mariam was lunging toward the officer and others with a knife. Mr. W Mariam received two (2) gunshot wounds and survived his injuries.

The investigation was conducted by an independent agency. Special Agent Michael Ortiz with the Florida Department of Law Enforcement (FDLE) was assigned the case. Special Agent Ortiz provided this office with his report and supplemental documentation. Officer Reed gave a statement.

FACTUAL SUMMARY

The shooting of W Mariam at approximately 8:43 p.m. was the culmination of a series of events that took place on December 20, 2019. The facts are set forth in Special Agent Ortiz' 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 officer committed a violation of the criminal laws of Florida by his use of deadly force against Mr. W Mariam. No policy, procedural, or civil issues outside of the jurisdiction of the SAO 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 Officer Beau Reed was justified in the use of deadly force.

On December 20, 2019, around 6:00 p.m., the United States Marshal's Fugitive Task Force (Task Force) comprised of members from the United States Marshal's Service (USMS), Cape Coral Police Department (CCPD), Fort Myers Police Department (FMPD) and the Lee County Sheriff's Office (LCSO), were looking for a fugitive with an active felony warrant in the Bay Park Villas apartment complex. Members of the Task Force were dressed in various attire, but each had on a protective vest with insignia identifying them as law enforcement officers. Mr. W Mariam was not the person the Task Force was looking for.

The Task Force initially received information that the fugitive was located in apartment #5. The Task Force made contact with the resident(s) of apartment #5 and the apartment was searched. The fugitive was not located. Additional information was received by the Task Force that the fugitive may be in apartment #12.

Apartments #11 and #12 are located on the second (top) floor of an apartment building. The apartments are across from each other. Each of these apartments has a balcony that overlooks a courtyard. Each of these apartments share a set of stairs leading up to their respective doors. As the Task Force members were crossing the courtyard, heading toward the stairs, to apartment #12, a male, later identified as Mr. W Mariam, was on his balcony. He yelled down at the group and flicked a cigarette at them. Members of the Task Force could not discern what was said.

The Task Force climbed the stairs and made contact with the resident of apartment #12. The apartment was searched and the fugitive was not located. Members of the Task Force turned around and proceeded to knock on the door of apartment #11, which was directly across a short, very small, shared landing area from apartment #12. Apartment #11's door opened and Mr. W Mariam was standing at the threshold holding a large knife.

CCPD Officer Matthew Fordham and FMPD Officer Beau Reed were on the landing, closest to Mr. W Mariam. As CCPD Officer Fordham gave several loud commands to drop the knife, Mr. W Mariam moved toward him and FMPD Officer Reed with the knife held up in the air. FMPD Officer Reed fired two rounds from his department issued handgun, striking Mr. W Mariam in the chest and left arm.

FMPD Officer Reed gave a statement. Officer Reed stated he was an active member of the Task Force on December 20, 2019. Officer Reed stated he was wearing a protective vest with insignia identifying him as law enforcement. Officer Reed stated that the Task Force was called in around 6:00 p.m. because information had been received about the whereabouts of a dangerous fugitive wanted out of Orlando. Officer Reed stated he was one of five (5) other Task Force members called in for this duty. Officer Reed stated there were three (3) or four (4) FMPD officers also present as support for the Task Force.

FMPD Officer Reed stated he observed Mr. W Mariam on the balcony prior to the Task Force going up the stairs. Officer Reed stated they first made contact with the resident of the apartment on the right (#12) and cleared that apartment. Officer Reed stated they then moved to the other apartment (#11). Officer Reed stated the order of the Task Force members when they got to apartment #11. Officer Reed stated CCPD Officer Fordham was in front or the first in line (closest to apartment #11's door) holding a shield. Officer Reed stated he was right behind Officer Fordham. Officer Reed stated FMPD Officer James Moschella was behind him and FMPD Officer Chad Barnett was behind Officer Moschella. Officer Reed stated the area was "tiny, five (5) – six (6) feet."

FMPD Officer Reed stated CCPD Officer Fordham knocked on the door and announced their presence, identifying them as law enforcement. Officer Reed stated that he had his duty issued handgun out, in the ready position.

FMPD Officer Reed stated that moments after the knock and announcement, the "door just flung open" and he saw a man, later identified as Mr. W Mariam (the same guy on the balcony minutes earlier), in the doorway holding "a large knife, slinging it in the air; waving it in the air towards us" in a stabbing motion. Officer Reed stated he heard CCPD Officer Fordham give commands to "drop the knife, drop the knife."

FMPD Officer Reed stated he observed Mr. W Mariam pause for a split second, then lunge forward toward him and Officer Fordham with the knife. Officer Reed stated he feared for his life and safety and the lives and safety of the other officers and fired two (2) rounds at Mr. W Mariam to stop the threat. Officer Reed stated that Mr. W Mariam dropped to the ground. Officer Reed stated that after the shots were fired, he stayed with Mr. W Mariam while other Task Force members cleared apartment #11. No one else was inside the apartment.

CCPD Officer Matthew Fordham gave two statements. Officer Fordham stated he was an active member of the Task Force on December 20, 2019. Officer Fordham stated that he observed someone on the balcony of apartment #11, and that the person said something directed at the Task Force as they were approaching the stairs to apartments # 11 and #12. Officer Fordham also stated he observed this person flick a cigarette down toward the Task Force members.

Officer Fordham stated they made contact with the resident of apartment #12 and cleared that apartment. Officer Fordham stated that he was holding a shield and Officer Reed was next to him as they approached apartment #11. Officer Fordham stated that the landing area was small and tight and the rest of Task Force members were stacked down the stairs.

CCPD Officer Fordham stated he knocked on the door and announced their presence. Officer Fordham stated the door opened and he observed Mr. W Mariam standing there holding a knife. Officer Fordham stated he began to order Mr. W Mariam to drop the knife. Officer Fordham stated that Mr. W Mariam did not drop the knife and instead approached forward and then two (2) shots rang out. Officer Fordham stated after the shots were fired, he moved the knife away from Mr. W Mariam. CCPD Officer Fordham stated the apartment (#11) was cleared and Mr. W Mariam began to receive medical assistance.

Statements were obtained from the other Task Force members as well as the FMPD support officers. Their statements were consistent with both FMPD Officer Reed and CCPD Officer Fordham's statements.

A neighborhood canvas of the apartment complex was conducted. Three (3) witnesses stated they heard gunshots, but did not hear voices before or after the shooting.

Members of the Task Force do not wear body worn cameras (BWC). There is BWC footage from responding FMPD officers capturing the aftermath of the shooting but not the shooting itself. The apartment complex had video surveillance cameras but none captured the actual shooting.

[REDACTED] Mr. W Mariam was [REDACTED] and was arrested and booked into the Lee County Jail on two counts of aggravated assault on a law enforcement officer.

The Florida Department of Law Enforcement (FDLE) crime scene unit responded and processed the scene. A "Bowie-style" knife, with an approximately six (6) inch blade, was recovered from the top landing area in front of apartment #12. It was photographed and collected. Two (2) Speer 9mm Luger cartridge cases were located on the 2nd floor, top landing area. They were photographed and collected. A knife sheath, consistent with the knife recovered, was located inside apartment #11. It was photographed and collected.

FMPD Officer Beau Reed's department issued Smith & Wesson 9mm caliber semiautomatic pistol, model M&P, serial number NCZ4880 was photographed and collected.

FDLE conducted analysis of Officer Reed's firearm, and the two (2) cartridge casings recovered. FDLE determined that the two (2) cartridge casings recovered from the scene were in fact fired from FMPD Officer Reed's department issued handgun.

Mr. W Mariam has been formally charged by Information with two (2) counts of Aggravated Assault on a Law Enforcement Officer. See case #19-19389CF. The case is still pending.

Belay Berhanu W Mariam committed an aggravated assault on law enforcement officers, which is a forcible felony as defined by *Florida Statute §776.08*, when he deliberately moved toward CCPD Officer Matthew Fordham and FMPD Officer Beau Reed with a knife in his hand. The actions committed by Mr. W Mariam presented a significant danger to the law enforcement officers carrying out their duties, putting them in reasonable fear of imminent death or great bodily harm. FMPD Officer Reed was justified in the use of deadly force to stop the threat.

CONCLUSION

FMPD Officer Beau Reed was reasonably justified in using deadly force to protect himself and others from the danger Belay Berhanu W Mariam posed during the evening hours on December 20, 2019. 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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Charlotte County
350 E. Marion Avenue
Punta Gorda, FL 33950
(941) 637-2104

Collier County
3315 E. Tamiami Trail, Suite 602
Naples, FL 34112
(239) 252-8470

Glades County
500 Avenue J SW
Moore Haven, FL 33471
(863) 946-0077



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STATE ATTORNEY

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Hendry County
1045 Pratt Boulevard
LaBelle, FL 33935
(863) 612-4920

Lee County
2000 Main Street, 6th Floor
Fort Myers, FL 33901
(239) 533-1000

Mailing Address
PO Box 399
Fort Myers, FL 33902

CASE CLOSING

CASE NO: 2019-00189
DATE: March 24, 2020
INVESTIGATOR: Sean Hoover
SUBJECT: Officer Involved Shooting, FMPD
Injured – Belay Berhanu W Mariam

On December 20, 2019, at approximately 8:43 p.m. Officer Beau Reed with the Fort Myers Police Department (FMPD) used lethal force upon Belay Berhanu W Mariam, a black male, born February 19, 1967. The shooting incident occurred at 2275 Central Avenue Apartment #11. This location is within the City of Fort Myers, Lee County, Florida. Mr. W Mariam aggressively charged law enforcement while armed with a large Bowie type knife. Mr. W Mariam survived two gunshot wounds - one to the left side of his chest, and one to his left forearm. The State Attorney's Office was notified of the officer involved shooting at approximately 10:54 p.m.

Mr. W Mariam was transported to Lee Memorial Hospital for medical treatment (the medical records were obtained). Once Mr. W Mariam was released from the hospital on December 29, 2019, he was arrested and charged with two counts of Aggravated Assault on a Law Enforcement Officer. The prosecution of these charges is ongoing and is identified as Lee County Clerk case number 19CF019389.

FMPD requested that the Florida Department of Law Enforcement (FDLE) conduct an independent investigation of the incident. I have reviewed the investigative summary completed by FDLE (FM-27-0026) prepared by Special Agent Michael Ortiz regarding the use of force by Officer Beau Reed. This report along with supplemental material received through February 14, 2020; was used in this review. Officer Reed has provided a sworn statement in this investigation. Mr. W Mariam did not provide a statement in the case. The following information was documented through the sworn statements of numerous witnesses, dispatch logs, audio recordings, forensic analysis of evidence, body worn camera footage, and crime scene processing.

Synopsis

The FDLE investigation revealed that on December 20, 2019, at approximately 6:00 p.m., the U.S. Marshal's Fugitive Task Force comprised of members from the U.S. Marshal's Service, Cape Coral Police Department, Fort Myers Police Department and Lee County Sheriff's Office were looking for a fugitive in the apartment complex of 2275 Central Avenue. The fugitive sought was [REDACTED]. He had an active felony warrant for violation of probation.

Initially information was received from a confidential source that the fugitive was in apartment number 5 of the complex. Prior to going to the apartments, the fugitive unit had a briefing with other uniformed members of the FMPD. Law enforcement then traveled to the apartment complex and made contact with the residents at apartment number 5. They were allowed in to search the unit and, at the time, did not locate the fugitive.

Further information was gained by the source that the fugitive was seen that day going to different apartments in the complex. The task force members were then given information that the fugitive may be in apartment number 12.

Apartments 12 and 11 are second story apartments, the balconies of each which face outward towards a courtyard area that is adjacent to the parking lot of the complex. When walking from the parking lot towards apartments 11 and 12 you must traverse the courtyard, apartment 11 is on the left side and apartment 12 is on the right side of the building as you approach the stairwell. Both apartments 11 and 12 share the same stairwell that leads from the first floor to the second-floor entry of each apartment.

Prior to going up the stairs to apartment 12 and as task force members were walking through the courtyard, Mr. W Mariam was on his apartment balcony smoking a cigarette. According to a few members of the task force, Mr. W Mariam was yelling something at them but they could not make out what he was saying. Mr. W Mariam then flicked his cigarette at the task force; however, it did not strike any of them. The task force, although distracted by Mr. W Mariam, continued to apartment 12.

The task force members then went to apartment 12 contacted the resident and were allowed to search the apartment. The fugitive was not located at there. Task Force members then went to apartment 11 to make contact with the resident there. The front door to apartment 11 is directly across from the front door of apartment 12. Once the Task Force members knocked on the door of apartment 11, they were met by Mr. W Mariam who suddenly opened the door and appeared in the threshold armed with a large knife.

Mr. W Mariam advanced on the members of the task force that were standing on the confined second story landing while armed with the knife. Officer Matthew Fordham (CCPD) gave Mr. W Mariam several loud commands to drop the knife. Mr. W Mariam did not comply. Officer Beau Reed (FMPD) then fired two rounds from his department issued handgun, striking Mr. W Mariam once in the chest and once in the left arm. This action stopped the immediate threat as Mr. W Mariam dropped the knife and collapsed to the ground.

The other members on the Task Force gave statements that were all consistent in nature that outlined the events that took place on the second level landing. The apartment complex does have security cameras that record the parking lots. Video was obtained of the parking lot that is adjacent to apartment 11.

A neighborhood canvass was conducted by FDLE Agents, which resulted in three ear witnesses to the event; one of whom did not wish to be identified, none of them wanted to provide a sworn statement. The unidentified witness said that she heard about 3-4 gunshots but did not hear any voices before or after the gunshots. The other two witnesses provided the same account of hearing two to three gunshots.

Statements were also obtained from Officers Chad Barnett, Gregory Reddington, James Butler, Tyler Williams, James Moschella, Ryan Amador, Joseph Moye, Trevor Roberts, and US Marshals Paul Smith and Kellen Goble. The statements obtained were consistent with one another and corroborate the events depicted specifically by Officer Reed and Officer Fordham.

Officer Beau Reed Statement

On January 10, 2020, Officer Beau Reed provided a sworn statement with the presence of his attorney to Special Agent Michael Ortiz. Officer Reed did not review any video or audio prior to the interview. During his statement, Officer Reed identified that he was an active law enforcement officer with the City of Fort Myers Police Department, assigned as a Task Force Officer with the U.S. Marshal's Office. Officer Reed described his attire that evening as being in plain clothing, but that he had an agency issued protective outer vest that was clearly marked with identification indicating that he was a law enforcement officer with the U.S. Marshal's Office.

Officer Reed explained that the Task Force was off duty that day, but were called in for this case specifically, around 6 p.m. Information was obtained that a wanted fugitive out of the Orlando area was alleged to be in Fort Myers. The fugitive was wanted for a Violation of Probation for Federal charges and was considered "armed and dangerous". There were five Task Force members and three to four FMPD support officers assigned to the search for the fugitive.

After searching a couple of apartments Officer Reed said that the Task Force then went to apartment 11, on the second floor. Officer Reed described the order of the members as they attempted to make contact with the resident of apartment 11. Officer Reed said that Officer Fordham (CCPD) was in front with the shield, Officer Reed was second in line, Officer Moschella (FMPD) was behind him, and Officer Barnett (FMPD) was last in line.

Officer Reed then said that Officer Fordham knocked on the door of Apartment 11 and announced the presence of the Task Force, identifying themselves as law enforcement. Officer Reed said that he did have his handgun drawn; however, he had it tucked in the ready position in front of his chest.

Officer Reed said that not long after Officer Fordham knocked on the door it "flung open" and Mr. W Mariam appeared in the doorway armed with a knife in his right hand. Officer Reed said that Mr. W Mariam came out of the apartment in an aggressive manner while moving the knife in a stabbing motion. Officer Reed described the knife as a large Bowie type knife.

Officer Reed said he heard Officer Fordham say "knife" in a loud voice and then Officer Fordham began giving loud, commands to Mr. W Mariam to "drop the knife"; which he says was repeated over and over again. At this time, Officer Reed had to step to the left of Officer Fordham as Officer Fordham had stepped backwards. Officer Reed said that he did not give any verbal commands as Officer Fordham was already giving commands and Officer Reed did not want to create any confusion.

Officer Reed said that Mr. W Mariam paused for a second then lunged forward towards the officers, still armed with the knife. Fearing for his safety and the safety of the other law enforcement officers present, Officer Reed raised his handgun and fired two rounds at Mr. W Mariam. Officer Reed said that once he fired his weapon, Mr. W Mariam dropped to the ground. Officer Reed said he maintained coverage on Mr. W Mariam while the rest of the Task Force entered the apartment and cleared it with a safety sweep.

Once the Task Force cleared the apartment and returned to the front door, they secured Mr. W Mariam and began rendering first aid. Not long after, Officer Reed said he was escorted from the scene to the headquarters of FMPD by a supervisor.

Officer Reed provided information that at the time of the incident he was equipped with his department issued handgun, which had a full magazine containing 17 rounds and one round in the chamber of the firearm. Officer Reed said he also had two other magazines on his vest for his handgun, each containing 17 rounds. Officer Reed did not have a body worn camera.

Officer Reed provided consistent information that has been provided by other members of law enforcement that were present for the incident relating to the search of a wanted fugitive in the apartment complex and the fact that the Marshall's Task Force had gone to several apartments in the complex searching for the wanted fugitive.

Officer Matthew Fordham Statement

Officer Matthew Fordham provided a sworn statement and identified himself as a law enforcement officer employed with the City of Cape Coral Police Department, assigned as a Task Force Officer to the U.S. Marshall's Office. Officer Fordham also provided a consistent account of the events that took place and the reason the Task Force was in the complex looking for a wanted fugitive as the rest of the members.

Officer Fordham said that they went to apartment 11 on the second floor in an attempt to make contact with the resident there. Officer Fordham did say that as they were about to ascend the stairway to go to apartment 12 (directly across from apartment 11) Mr. W Mariam was on the balcony that he was saying something to the task force members and then Mr. W Mariam flicked a cigarette at them. Officer Fordham said he did not know what Mr. W Mariam said and the cigarette that was flicked at them did not strike any of the members.

Officer Fordham said that after they were finished with apartment 12, they then went to apartment 11 to make contact with the resident there. Officer Fordham said that the landing of the second floor was small and tight for their task force members. Officer Fordham said that he had the shield and Officer Reed was next to him. The rest of the Task Force members were stacked down the stairs, however, he does not recall the order they were in.

Officer Fordham said he knocked on the door and announced their presence. Officer Fordham said that as soon as the door opened Mr. W Mariam appeared in the threshold armed with a knife. Officer Fordham said that as soon as he saw the male was armed, he began giving commands for him to drop the knife. Officer Fordham said that he continued to give commands to Mr. W Mariam to drop the knife; however, Mr. W Mariam came out of the apartment towards them in a quick manner. At this time, Officer Fordham said someone shot Mr. W Mariam. Officer Fordham said he did not know who

fired the rounds at that point, but when Mr. W Mariam dropped to the ground, he quickly moved the knife away from Mr. W Mariam using his foot.

Officer Fordham said that they then performed a safety sweep of the apartment to make sure nobody else was inside. Once the sweep concluded, Officer Fordham said he returned to the front doorway area and saw that medical intervention was being given to Mr. W Mariam.

Body Worn Camera Footage

Although it is the policy of anyone working on the US Marshal's Fugitive Task Force to not wear body worn camera's, there was body worn camera (BWC) footage from responding uniformed support personnel. In reviewing the BWC of several officers who responded to assist with the scene after the shooting incident took place, it is evident that the scene is just as described by the members of the Task Force.

You can clearly see Task Force members providing first aid to Mr. W Mariam and speaking to him explaining what is going on and what they are doing to help him. You can also hear what sounds like Mr. W Mariam speaking to the Task Force members, confirming that he is conscious and coherent at the time. There is also BWC footage of Mr. W Mariam documenting his injuries and the medical treatment he received. All of the BWC footage reflects accurately the same information that was relayed by the Task Force members as it relates to the sequence of actions after the shooting incident.

Crime Scene and Evidence Processing Results

The FDLE Crime Scene Section responded to, and documented, the crime scene. Several items of evidence were collected in this incident. Several areas of apparent bloodstains were marked, documented and swabbed from the bottom of the stairs leading up to and including at the landing on the second floor. At the top of the stairs on the landing in front of the door to apartment 12 was the knife that Mr. W Mariam was armed with; there was also one flip-flop type shoe and a spent cartridge casing.

In the middle of the landing was located a cigarette lighter, latex gloves and a second spent cartridge casing. Towards the front door of apartment 11 was a pillow, another flip-flop type shoe, trauma shears and other medical intervention equipment.

A search warrant was obtained for the search of Mr. W Mariam's apartment. Just inside the doorway of apartment 11, there were other medical intervention debris that had been used on Mr. W Mariam. Just inside the left side of the doorway to the apartment was what appeared to be the sheath to the knife that Mr. W Mariam had in his possession.

Ofc. Reed's department issued handgun and extra handgun magazines were retained for evidentiary purposes. These items were submitted to the FDLE crime lab for various examinations. Upon inspection of the firearm and the live cartridge count of all rounds in the handgun and the extra magazines, the round count supports the fact that Ofc. Reed did in fact fire two rounds from his handgun. There is no indication whether or not the firearms of the other task force members were inspected, however, the testing results of the cartridge casings from the scene did match Officer Reed's firearm.

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. The lab

results for Officer Reed's firearm and spent cartridges reflect that the two rounds fired were in fact fired from his firearm. There were no projectiles recovered from the scene nor from Mr. W Mariam.

Findings

Based on the review of the investigative report, witness statements, other documentation, evidence collected and processed, and without further evidence to the contrary, it is believed that Officer Beau Reed fired his weapon believing that his life and the lives of his fellow law enforcement officers were in immediate jeopardy and used deadly force to stop the threat. Officer Reed stated and fully believed that his life and the lives of others 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 Officer Reed's use of deadly force in this case is justified.

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

/s/ Sean Hoover

/s/ J S. Purdy

Sworn Law Enforcement Officer / Investigator

Approved: Chief Investigator