

CURTIS A. GOLDEN
STATE ATTORNEY



OFFICE OF
STATE ATTORNEY
FIRST JUDICIAL CIRCUIT OF FLORIDA

P.O. Box 12726
Pensacola, FL 32591
Telephone: (904) 598-4200
Website: <http://sao1.co.escambia.fl.us>

November 12, 2004

Special Agent Velma Springs
Florida Department of Law Enforcement
1301 N. Palafox Street
Pensacola, FL 32501

RE: Demetrius Tillman Nelson
PE-27-0025

Dear Special Agent Springs:

Pursuant to the agreement between the Okaloosa County Sheriff's Office ("OCSO") and the Florida Department of Law Enforcement, the Office of the State Attorney has reviewed the investigation by the FDLE detailing the events relating to the in custody death of Demetrius Tillman Nelson on July 3, 2004. The purpose of the review was to determine if any further legal action is warranted due to the in custody death of Demetrius Tillman Nelson and the use of force by the Okaloosa County Sheriff's Office.

The purpose of a Coroner's Inquest is to provide a procedure whereby a public inquest may be made into a death for which an autopsy is required, when there is question of the occurrence of a criminal act, criminal negligence, or foul play associated with the death. Section 936.001, Florida Statutes. Typically, such inquest involve issues regarding the use of force (usually deadly force) by law enforcement and such force resulted in another's death.

Turning to the instant matter, after discussing the case with you, Associate Medical Examiner Karen L. Kelly, M.D., and Dr. Bruce A. Goldberger, Director of Toxicology at the University of Florida Diagnostic Referral Laboratories, and reviewing all statements of the witnesses, I concur with the findings of facts in the FDLE report and furthermore, find as follows:

1. Mr. Nelson, after arriving to his Pensacola home from work around 4:30 pm, traveled to Panama City on July 2, 2004 with his live-in girl friend, Roni Jo Fisk, as well as with three minor children. One purpose of the trip was for Roni Jo Fisk to visit her friend, JoAnn, who reportedly had some health problems. It was unknown if JoAnn would be present at her house upon arrival. Mr. Nelson and Ms. Fisk were not able to contact JoAnn.
2. Mr. Nelson wanted to then visit a friend of his located in Panama City. After arriving at the second house, Mr. Nelson exited the vehicle, met with an unknown person, and went inside the residence for approximately 3 or 4 minutes. Ms. Fisk as well as the three minor children remained in the vehicle for the duration of Mr. Nelson's visit.
3. Ms. Fisk did not know the individual Mr. Nelson had contacted and she did not ask Mr. Nelson any questions about the contact.
4. After Mr. Nelson returned to the vehicle, they traveled west heading back to Pensacola. Ms. Fisk noticed the vehicle's thermostat indicated an overheat was in progress. She parked the vehicle in the Destin Common's parking lot, in Okaloosa County.
5. Mr. Nelson exited the vehicle to investigate the problem, opened the hood, and at some point, the radiator cap was lost. Mr. Nelson became agitated and an intense argument between Mr. Nelson and Ms. Fisk ensued.
6. Around 11:15 pm, Security guard John Sams noticed the parked vehicle as well as an escalating argument between Mr. Nelson and Ms. Fisk. Backup security, including OCSO Deputy Frank Hawley, arrived around 11:30 pm.
7. Mr. Nelson was not wearing a shirt and was acting erratically. Deputy Hawley attempted to restrain Mr. Nelson and struggle ensued. During the struggle, Deputy Hawley struck Mr. Nelson while attempting to handcuff Mr. Nelson. Mr. Nelson, measuring 68 inches and weighing 172 pounds, exhibited above average strength.
8. OCSO Sargent John Peacock arrived on the scene and observed a struggle. Sgt. Peacock deployed his taser in a demonstration mode only and informed Mr. Nelson that if he did not comply, he would be tased. Sgt. Peacock touch tased Mr. Nelson on the shoulder area briefly one time. Mr. Nelson still attempted to evade and/or failed to comply and Sgt. Peacock deployed the taser probes into Mr. Nelson.

9. The taser probes were located in the right lateral chest and right lateral abdominal wall. The taser probes were activated the first time after Mr. Nelson refused to comply. Mr. Nelson then attempted to lunge towards the front of a police vehicle and the probes were activated a second time. Mr. Nelson fell to the ground causing a cut near his eye. Mr. Nelson then attempted to remove his hands and handcuffs from behind his back. Mr. Nelson was given orders to cease. Mr. Nelson did not comply. The taser probes were activated for the third time.
10. After the last activation, Sgt. Peacock requested leg irons. According to radio calls, a request for leg irons was made at 11:42 pm. Emergency medical services ("EMS") was requested 30 seconds later. EMS was dispatched at 11:48 pm and arrived at 11:53 pm.
11. The taser was activated five times. The taser gun contains a memory that can be downloaded to display the date and time the taser was used. The taser has a timer that is factory set to Greenwich Mean Time, six hours ahead of Central Standard Time and five hours ahead of daylight savings Central Time. The taser used in this incident had its clock reset prior to download. The taser memory recorded the taser being used on 7/3/04 at 05:19:01 (demonstration), 7/3/04 at 05:19:24 (touch tase), 7/3/04 at 05:20:30 (first 5 second deployment), 7/3/04 at 05:21:31 (second 5 second deployment), and 7/3/04 at 05:21:58 (third and final 5 second deployment). Compensating for a strict six hour difference, the taser was actually used on 7/2/04 at 23:19:01, 7/2/04 at 23:19:24, 7/2/04 at 23:20:30, 7/2/04 at 23:21:31, and 7/2/04 at 23:21:58.¹
12. Mr. Nelson was restrained with leg irons and placed in the back of a law enforcement vehicle. EMS arrived at 23:53 hours. EMS noted Mr. Nelson was warm, flush, and his skin was moist. EMS noted Mr. Nelson was not acting right and appeared to be on some kind of overdose. Mr. Nelson's pulse, at first was very strong. EMS noted the breathing of Mr. Nelson became more shallow.
13. Mr. Nelson was placed in full immobilization, intubated, and lost his pulse in the back of the EMS unit. Mr. Nelson was transported to the hospital at 12:20 am and arrived at 12:29 am. Mr. Nelson was placed in the care of Sacred Heart Hospital and time of death for Mr. Nelson was pronounced at 12:44 am, July 3, 2004.

¹By all accounts leg irons were requested immediately after the use of the fourth tase, and the radio call records reflect leg irons being requested at 23:42 hours. In addition, several witness accounts indicate the incident commenced around 23:30 hours. Thus, it appears the taser gun may have had its clock set to no less than 5 hours and 40 minutes ahead actual time.

14. Ms. Nelson's temperature's reading are as follows: 104.1 degrees at 12:32am, 103.8 degrees at 1:15am, 104 degrees at 1:30am, 103.4 degrees at 1:45am, and 102.5 degrees at 2:00am.
15. Dr. Karen L. Kelly, Associate Medical Examiner, performed the autopsy upon Mr. Nelson. An internal and external examination revealed superficial wounds.
16. Blood and urine were taken and examined by Dr. Bruce A. Goldberger, Director of Toxicology at the University of Florida Diagnostic Referral Laboratories. A comprehensive drug screen revealed 444ng/mL of cocaine and 2342 ng/mL of Benzoyllecgonine.
17. The findings demonstrate that Mr. Nelson has a recent ingestion of cocaine prior to death. Dr. Karen L. Kelly of the Medical Examiner's office made the following findings:

Cause of Death: Cocaine-associated excited delirium.
Manner of death: Accident.
18. The use of force by law enforcement, by either taser or physical restraint, is not a contributing cause of death.


In the instant matter, there is no physical or scientific evidence to suggest the use of force by law enforcement was the cause or even a contributing cause in Mr. Nelson's death. The clinical history, including Mr. Nelson having warm, moist skin, wearing little clothes prior to the altercation with law enforcement, acting erratically, appearing to have overdosed, and having a high cocaine amount and an even higher breakdown substance in his blood, and a high temperature continuing after the time of death, all indicated Mr. Nelson experienced an adverse reaction to cocaine. It should be noted that the taser probes were not located directed above the heart and that approximately one hour to one hour and twenty minutes expired from the time of the last taser deployment to the time of death.

A coronor's inquest is designed only to investigate questions of the occurrence of a criminal act, criminal negligence, or foul play associated with the death. Under these circumstances, the use of force by law enforcement, whether justified or not, has been ruled out as the cause or even a contributing cause in Mr. Nelson's death. The cause of death is an adverse reaction to cocaine by Mr. Nelson. There is no evidence to suggest otherwise. Therefore, an inquest to determine whether an ingestion of

cocaine by Mr. Nelson resulting in his own death was a criminal act, criminal negligence, or foul play would be futile and contrary to the purpose of such a hearing. It is therefore the decision of the Office of the State Attorney that this matter be closed and no further legal action be taken unless or until any new material facts should arise.


I remain,

Sincerely,



Stephen Pitre
Assistant State Attorney

Approved by:



John C. Spencer
John Spencer
Assistant State Attorney,
Felony supervisor

xc: Curtls A. Golden, State Attorney, First Judicial Circuit
Charles W. Morris, Sheriff, Okaloosa County