

REPRESENTING:

CHARLOTTE

COLLIER

GLADES

HENDRY

LEE



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Stephen B. Russell

State Attorney

February 6, 2013

Douglas E. Baker, Chief
Fort Myers Police Department
2210 Widman Way
Fort Myers, FL 33901

Dear Chief Baker:

I have read your January 29, 2013 letter and generally reviewed the accompanying Office of Justice Programs (OJP) "Diagnostic Analysis of Factors Contributing to Homicides in the City of Fort Myers." Your letter states that you sent me a copy of the report "because your (the State Attorney's) office is identified as a contributing factor in the number of violent crimes and homicides in the City of Fort Myers." I found no support whatsoever for that conclusion in the OJP analysis and report.

There is an indirect reference to my office in a finding that: *'There is a perception among some stakeholders that county prosecutors will only authorize arrest warrants for those cases that have been proven beyond a reasonable doubt, versus the lesser standard of probable cause.'* Based on comments made by you and a few other FMPD officers over the past year regarding various homicide case issues, I can only surmise that "some stakeholders" refers to you and a few of your officers.

I may be able to shed some light on that perception. It has become apparent to me that you either choose to dismiss cavalierly substantial proof problems in homicide cases or you have significant misunderstanding and misperception of some basic legal principles, as well as the legal and ethical duties and standards which must guide a public prosecutor.

For example, in the case of the tragic murder of the young man delivering food from a local Chinese restaurant last year, your investigating officer made two arrests without prior prosecutorial or judicial review. The arrests were based on a statement of one juvenile suspect who admittedly lied under oath several times, never actually inculpated himself in the crime, and was the only witness pointing to the other young man arrested who gave no statement. The arrest affidavits reviewed by the judge at first appearance contained a significant and material misstatement in summarizing the juvenile's statement to the investigator.

This juvenile's statement totally laid the crime on the second young man. He never admitted any of the elements of being a "principal" to the crime as required by law, such as intending the crime to be committed and doing some act intended to assist or encourage the commission of the murder. In fact, he was never asked about his intent.

The Grand Jury considered the case and returned a presentment explaining their reasons for finding insufficient evidence to indict the two juveniles arrested (see 7-20-2012 Grand Jury Presentment). Your public comment in the news media regarding the Grand Jury's decision was, in part, "I think that's

ridiculous." Statements such as this would certainly feed a negative perception, such as referred to in the report, not only of this office, but the criminal justice system in general. You further indicated your opinion that the juvenile's statement was sufficient to make the case. The fact is the admittedly perjuring juvenile's statement was inadmissible hearsay against the other arrested suspect and he could not be compelled to testify against himself or anyone else, without giving him immunity, once he too had been arrested. Was there probable cause for the arrest? Legally, the statement of one co-defendant can supply probable cause against the other. But since it is legally inadmissible, it is of no value in a prosecution. And although the judge found probable cause for the first juvenile based on the arrest report's summation of his statement, as pointed out earlier, this summation contained a significant misstatement regarding the content of his statement.

We certainly would not approve an arrest warrant, nor encourage arrest without a warrant, on bare probable cause, when the available evidence at that point is clearly insufficient to prove the case beyond a reasonable doubt. Such an arrest would trigger speedy trial and result in forever barring prosecution, which is exactly what has happened in the case of the delivery man. Our goal is to have a prosecutable case; that is, one where there is a reasonable likelihood of successful prosecution. Shouldn't that be the mutual goal of the arresting law enforcement agency and the prosecutor's office?

My office has always encouraged your homicide investigators to work hand in hand with our office. I have instituted a Homicide Unit, staffed with experienced prosecutors and investigators, for the express purposes of facilitating assistance to law enforcement and securing successful prosecutions in these cases. We will always stand ready to assist your department in developing viable cases for arrest and prosecution. We will also take the time to explain and discuss the issues and problems in a particular case to you and your officers. Just today, Sgt Brian O'Reilly met with the supervisor of the Homicide Unit and other members of the unit to discuss how to better improve cooperation between our agencies. I am greatly encouraged and appreciative of his efforts, and hope that this is the beginning of a new phase in our relationship, and look forward to it continuing.

Why the authors of the study did not contact my office, while listing it as a key stakeholder, raises concerns about the validity of some parts of the report. It appears some other key stakeholders may not have had input either. However, many of the findings and recommendations seem to be common sense and logical. I agree that the ultimate solutions to the high violent crime rate in the Dunbar Community must address the root causes and thus require a comprehensive plan, as suggested by the report.

I certainly concur that additional training of homicide and cold case investigators is appropriate. There are also many retired homicide investigators in our area, who I believe would volunteer to assist, if that is something you would consider. I recognize that the Fort Myers Police Department has lost a great deal of experience due to the steps taken in recent years to reduce budgets.

After considering the OJP Report in more detail, I may wish to discuss it with you further.

Sincerely,



Stephen B. Russell
State Attorney

Enclosure: Grand Jury Presentment

cc: Mr. William P. Mitchell, City Manager

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

FALL TERM, 2012

In the interest of:

EDDIE C. LEONARD

Case numbers: 12CJ5203, 12CJ5204

and

DEJERION J. STEWART,

Juveniles

PRESENTMENT

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

The Grand Jurors of Lee County, impaneled and sworn to inquire and true presentment make in and for the County of Lee, Fall Term, 2012, of the Circuit Court of the Twentieth Judicial Circuit of Florida, have inquired into the evidence and circumstances available in this matter. After due consideration of the testimony of witnesses and the presentation of other evidence, and mindful of our sworn duty to determine whether there exists sufficient evidence to justify the finding of an indictment, the Grand Jury finds the following:

That two juveniles, Eddie C. Leonard and Dejerion J. Stewart, were arrested by the Fort Myers Police Department on July 1, 2012, on charges of Felony Murder. The arrests related to the June 28, 2012 death of Zhi Wei Huang.

That the police department has not produced any eyewitnesses to the crime.

That as of the time of the grand jury session, there was no forensic evidence, such as DNA, fingerprints, etc., available. Other potential evidence has yet to be examined or analyzed. The weapon has not been recovered.

That Eddie Leonard provided a statement to a Ft Myers Police Department detective. After approximately an hour of questioning, during which he denied knowledge of Huang's shooting, he changed his story and stated that it was Stewart that planned to rob the delivery man, and it was Stewart who shot him. Leonard admitted that he lied several times during his statement as he kept changing his story.

FILED
07/28/2012

That Leonard was arrested on the theory that he was a principal to the murder of Huang. To be a principal to a crime, and to thus be treated as if he had done all of the things the other person (Stewart) had done, Florida law requires that there be evidence that: (1) Leonard had a conscious intent that the crime be done, and (2) that Leonard did some act or said some word which was intended to and which in fact did incite, cause, encourage, assist or advise the other person to actually commit the crime. Leonard's statement is self-serving, and whether he admits to doing anything to assist or encourage Stewart, or to having any intent that the crime be committed, is unclear. Knowledge of another's intent to commit a crime alone is not enough to prove that one acted as a principal. As we have stated, there is no evidence independent of his statement to the contrary.

That Dejerion Stewart was arrested solely based on the statement of Eddie Leonard. There currently exists no other evidence to link him to the crime or the crime scene other than the statement of Eddie Leonard.

That there was evidence presented that if believed would provide an alibi for Stewart's whereabouts at the time of the shooting. Further evidence must be obtained to either support or disprove this alibi.

Leonard's statement to the Fort Myers Police detective implicating Stewart would be inadmissible hearsay and not admissible in court against Stewart. Leonard would have to testify personally in court to his knowledge of Stewart's actions. Leonard could not be compelled to testify without granting him immunity for his actions, whatever those may be.

Because we find that it is impossible to ascertain the veracity of Eddie Leonard's statement to police without some corroborating testimony or physical evidence, we do not know what his participation, if any, was. The statement alone is insufficient to prove the involvement, or lack of involvement, of either of these two juveniles. What we may feel probably happened is not in any sense of the word evidence on which to base a criminal prosecution.

Because of this lack of evidence, our oath and duty requires us to return a **NO TRUE BILL**.

The death of Zhi Wei Huang was a tragic and senseless crime. We urge the Fort Myers Police Department to continue their investigation in order to bring to justice all those that are responsible, through the discovery of relevant and substantial corroborating evidence in this matter. We further point out that time is of the essence. Since arrests of two individuals have been made, Florida's speedy trial rule has been triggered as to them. Speedy trial for a juvenile is 90 days. The speedy trial period for an adult or a juvenile charged as an adult is 175 days from the arrest. This grand jury stands ready to hear additional evidence in this cause when and if it is available.

NO TRUE BILL

Karen Poling
Karen Poling, Foreperson of the Grand Jury

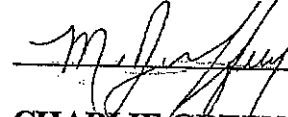
FILED 07/20/2012

I, Chief Assistant State Attorney Randall B. McGruther as authorized and required by law, have advised the Grand Jury returning the presentment.



Randall B. McGruther
Chief Assistant State Attorney

Presented in Open Court by the
The Grand Jury and filed

 , 2012

CHARLIE GREEN
Clerk of the Circuit Court

I CERTIFY THIS DOCUMENT TO BE A
TRUE AND CORRECT COPY OF THE
ORIGINAL ON FILE IN MY OFFICE,
CHARLIE GREEN CLERK COUNTY COURT
LEE COUNTY, FLORIDA.
DATED: 7-20-12

BY: 
Deputy Clerk