

EXHIBIT 6



W I D U P
C O N S U L T I N G

February 17, 2014

Mr. Joseph P. Musacchio, Esquire
Kreindler & Kreindler, LLP
277 Dartmouth Street
Boston, MA 02116

Re: Kim R. Widup Report

Dear Attorney Musacchio:

All of the opinions and conclusions in this report are based upon my objective review of the depositions of Officers Paul Duncan, Sean Riley, Christopher Langmeyer, Michael Sheehan, and James Sebastian, Sergeant Vincent Stuart, Lieutenant Robert Downing, Deputy Chief Craig Davis, Chief Steven Carl, and Mr. Simoneau, assistant to Chief Carl; the deposition exhibits; documents produced by the defendants, Paul Duncan and the Town of Framingham; the interviews of the Framingham Police Department (FPD) officers conducted on January 6-7, 2011; police training procedures and records of FPD; the report of Steven Ijames; the report of the Middlesex County District Attorney; the Internal Affairs Review Report of the FPD; and the written procedures and protocols of the FPD.

All of the opinions and conclusions in this report are made to a reasonable degree of probability and certainty. I base my opinion on over 31 years of federal law enforcement experience, my seven-year experience managing the U.S. Marshals Service Special Response Team (SWAT Team) as the United States Marshal for the Northern Judicial District of Illinois, and my review of several hundred shootings while serving as the National Chairman of the United States Marshals Service Shooting Review Board for over six years. In addition, my opinions are formulated based on my knowledge and training as a certified Firearms Instructor from the Federal Law Enforcement Training Center in Glynco, GA, for over 20 years, and my experience described in my resume attached hereto.

FACTUAL INFORMATION

1. The Shooting and Killing of Eurie Stamps, Sr.

During the evening of January 4, 2011, between 9:30 and 10:00 p.m., Officer Paul Duncan and approximately 10 other members of the FPD SWAT team were called to the Framingham police station for the purpose of assisting other officers in the execution of a search warrant at the first floor apartment at 26 Fountain Street, Framingham, MA. Eurie Stamps, Sr. (age 68), his wife, Norma Bushfan-Stamps, and his stepson, Joseph Bushfan resided in the apartment. The

targets of the search warrant were Joseph Bushfan and Dwayne Barrett based on probable cause to believe that they were distributing crack cocaine out of the apartment.

Officer Duncan and the other members of the SWAT Team (the Team) received a briefing by Lt. Downing and others regarding the layout of the apartment, the criminal history of Joseph Bushfan, Dwayne Barrett, and Eurie Stamps, Sr. (Mr. Stamps), and the residents of the apartment that included Mr. Stamps and his wife. The Team was told Mr. Stamps would likely be present in the apartment during the execution of the warrant. The FPD After Action Report indicates the Team was told Mr. Stamps' had no criminal record except for "minor motor vehicle arrests/charges." Before and during the execution of the search warrant, Officer Duncan and the other Team members had no information or reason to believe that Mr. Stamps was armed, dangerous, posed a threat to the police or the community, had a criminal record, or was involved in any criminal activity.

Officer Duncan and the other SWAT team members made entry into the apartment shortly after midnight on January 5, 2011. Officer Duncan's responsibility was to breach a door on the right side of a common hallway that led into a makeshift bedroom. After an order to execute the warrant was given and a "flash bang" diversionary device was deployed, Officer Duncan breached the door to the bedroom with a battering ram. He entered the right side bedroom followed by Officer Sebastian and Sgt. Stuart. After Officer Duncan threw the battering ram aside, he moved the selector switch on his M-4 rifle from "safe" to "semi-automatic." He scanned the bedroom and found no threats or persons. At the same time that Officers Duncan, Officer Sebastian, and Sgt. Stuart entered the right side bedroom, a second group of officers consisting of Officer O'Toole, Officer Sheehan, and Lt. Downing, entered through a doorway at the end of the common hallway and into the kitchen.

After clearing the makeshift bedroom, Officer Duncan and Sgt. Stewart entered a den through an open entrance. Officer Duncan scanned the room with his rifle "off safe" and in a semi-automatic setting and found no persons or threats. Officer Duncan heard officers in the kitchen telling someone to "get down." Sergeant Stuart ordered Officer Duncan to go into the kitchen and assist these officers as a trailer.

Officer Duncan entered the kitchen and observed Mr. Stamps lying on his stomach in a hallway that separated the kitchen from the bathroom and a rear bedroom. The kitchen was lit. Officer Duncan observed Mr. Stamps through an open doorway between the kitchen and the hallway. Officers O'Toole and Sheehan had moments earlier encountered Mr. Stamps and ordered him to "get down." Mr. Stamps complied with their order by lying on his stomach with his hands up near his head. Officers O'Toole and Sheehan observed another person moving in the hallway. They stepped over Mr. Stamps' body and made entry to the bathroom.

When Officer Duncan entered the kitchen his rifle was "off safe" and on the "semi-automatic" setting. When Officer Duncan first observed Mr. Stamps, he was laying on his stomach with his head near the threshold between the hallway and the kitchen with his feet near the rear of the hallway. Mr. Stamps' elbows were on the floor and his hands were up near his head. His eyes were facing toward the kitchen with his head up looking forward. Officer Duncan made "eye contact" with Mr. Stamps. Mr. Stamps did not move.

Officer Duncan approached Mr. Stamps, stopping in the kitchen near the threshold into the hallway. He pointed his rifle at Mr. Stamps' head with the safety selector set on "semi-automatic" for the purpose of preventing him from moving. Officer Duncan said nothing to Mr. Stamps.

According to Officer Duncan, he was concerned that Mr. Stamps might reach for a weapon. He decided to physically make contact with Mr. Stamps by entering the hallway, kneeling on Mr. Stamps' back, and placing his hands behind his back. Before entering the hallway, Officer Duncan saw that the hallway was dark with only some ambient light from the rear bedroom and kitchen. He saw that the area on both sides of Mr. Stamps was cluttered with bins and debris. The hallway was narrow and there was limited or no room to step past Mr. Stamps. Earlier, Officers O'Toole, Sheehan, and Langmeyer had to step over or on Mr. Stamps' prone form to make entry into the back bedroom and the bathroom.

When Officer Duncan encountered Mr. Stamps and decided to go "hands on" with him, three other officers were in the kitchen (Officers Riley, Sebastian, and Lt. Downing) guarding a door leading to the basement.

According to Officer Duncan, with his rifle "off safe" and on a semi-automatic setting, he stepped to his right into the cluttered hallway. He claims he lost his balance and fell to his left at or near Mr. Stamps' head. Officer Duncan claims that between when he began to fall back and when his back hit the wall to his left, his rifle discharged and the bullet entered Mr. Stamps' left check. Officer Duncan was wearing gloves. Officer Duncan stated in his deposition that his finger slipped inside the trigger guard and he unintentionally pulled the trigger.¹

2. Training Provided by the Framingham Police Department.

Prior to the January 5, 2011 shooting, Officer Duncan was trained in the technique of contact/cover at the Police Academy, during his police officer training by the FPD, and in turn through his SWAT training by the FPD. The contact/cover procedure that Officer Duncan was trained to perform is described in the FPD's "Firearm's In-Service Training Lesson Plan" adopted after the Stamps shooting. It states the following:

Contact/Cover- When Officer confronts a subject(s) that pose a potential threat, and Officer needs to secure that subject, the Officer will use the "Contact/Cover" technique. If Officer is alone at the time of confrontation with subject, the Officer will maintain cover position, and call for a "trailer" or additional Officer to assist him/her. The initial Officer will use verbal commands in an effort to maintain compliance and control of subject until "Trailer"/additional Officer arrives to assist. The Contact/Cover technique requires at least two Officers. The Cover Officer provides lethal cover for the Contact

¹The plaintiffs' experts, Dr. Barbara Wolf and James M. Gannalo, opine that Officer Duncan discharged his rifle while he stood in the kitchen in front of Mr. Stamps. I will evaluate the objective reasonableness of Officer's Duncan's conduct under his explanation of what occurred and the conclusions reached by Dr. Wolf and Mr. Gannalo.

Officer. The Contact Officer, is the hands on Officer, and must put long gun on safe and sling it securely on his/her back (or) holster handgun BEFORE moving in to secure the subject in question.

Officer Duncan was also trained to keep his weapon "on safe" until he perceived a threat or was actively clearing rooms. The procedure provides as follows:

Low Ready: The "Low Ready" is the standard carry position while the patrol rifle is operational. The "Low Ready" is also the default carry position. The weapon's stock seated in shoulder; muzzle down; weapon ON SAFE; Finger OFF trigger, and along lower receiver; two hands on weapon, if not "on safe."

Off Safe: If Officer perceives a threat - As weapon comes up onto target; Weapon comes off safe; eyes align sights; acquire proper sight picture.

If Officer is actively clearing rooms/ danger area. Remainder of stack "On Safe."

Framingham Police Officers were also trained to "keep their finger outside the trigger guard until ready to engage and fire on a target" (Framingham Police Department Policy on Firearms and Weapons #50-4) (Deposition Exhibit 4).

The FPD training materials, SWAT training materials, and firearm's protocols existing at the time of the Stamps' shooting did not include a written requirement that an officer keep his weapon "on safe" until he was ready to shoot. This requirement is standard for conventional law enforcement training, SWAT training, and military training nation wide.

The written FPD Weapons and Firearm's protocol existing at the time of the Stamps' shooting did not include the contact/cover rule.

ANALYSIS AND OPINIONS

A. Officer Duncan's Shooting and Killing of Mr. Stamps.

At the time of Mr. Stamps' shooting he was and had complied with all police commands. He was lying on the floor with his elbows on the ground and his hands up over his head as ordered by Officer O'Toole and Sheehan. He had not, and the police had no reason to believe, that (1) he committed a crime; (2) was armed; or (3) posed any threat to the police or others. Additionally, because of the deployment of a "flash bang" diversionary device by the Team, Mr. Stamps most likely would have been physically and mentally disoriented during the initial execution of the search warrant.

Officer Duncan and the other SWAT team members were told during their pre-execution briefing that Mr. Stamps resided in the apartment and had no criminal record indicating that he was armed or posed a danger or was engaged in any criminal activity. Mr.

Stamps did not resist the police, attempt to flee, or make any furtive movements. Based on the deposition testimony evidence, he was an innocent bystander to the execution of the search warrant and completely docile and defenseless at all times, including when he was shot. Under accepted and established police protocol and procedures, Officer Duncan and the other SWAT Team members were required to affirmatively protect Mr. Stamps from harm during the execution of the warrant.

When Officer Duncan pointed his weapon at Mr. Stamps' head and body, Mr. Stamps was seized, in that, he was not free to move. Mr. Stamps remained and continued to be seized until he was placed in custody (which he was not prior to his fatal shooting) or was allowed to move freely (which he was not prior to his fatal shooting). Officer Duncan testified in his deposition that he did not intend to discharge his rifle. While Officer Duncan admitted in his deposition that he intended to use his rifle as a show of force to seize Mr. Stamps, when he discharged his rifle he used more force than he intended during the seizure. Officer Duncan's use of deadly force was excessive.

Under Officer Duncan's explanation of how his gun discharged, it is my opinion that his conduct was objectively unreasonable, reckless, in violation of his training, and constituted an excessive use of force. Specifically:

1. Officer Duncan deviated from his training and FPD protocol by having his finger on the trigger when he approached Mr. Stamps. Officer Duncan should have had his finger outside the trigger guard until he was ready to fire his rifle.
2. Officer Duncan deviated from his training and standard and reasonable police procedure by failing to utilize the contact/cover procedure. Officer Duncan was required to hold cover on Mr. Stamps with his rifle and request or wait for another officer to assist by acting as the contact officer. Officer Riley, Officer Sebastian, and Lt. Downing each stated in their deposition that they were in the kitchen within feet from where Officer Duncan stood and that Duncan never asked for assistance. Mr. Stamps was not resisting the police, attempting to flee, or making any furtive movements. Therefore, Officer Duncan was required under his training and reasonable police practices to ask or wait for assistance to employ the contact/cover technique before entering the hallway and before making physical contact with Mr. Stamps.
3. By acting alone as the contact officer, Officer Duncan was required and should have placed his M-4 rifle on safe and slung the rifle over his shoulder before he approached Mr. Stamps and before he stepped into the hallway. Failing to do this, Officer Duncan certainly should not have had his finger on the trigger or inside the trigger guard. The purpose of this procedure is to avoid an officer discharging his weapon by some unexpected event, such as tripping, falling, slipping, or losing balance caused by an encounter with an object or the suspect. The deposition testimony states that the hallway was dark, cluttered with bins and debris, was narrow, and that Mr. Stamps' body took up a large portion of the hallway. Officers O'Toole, Sheehan, and Langmayer testified that they had to step over or on Stamps to enter the rooms off the hallway. In these circumstances, Officer Duncan deviated from reasonable police practices and training

and acted negligently and recklessly by entering the hallway and encountering Mr. Stamps with his rifle “off safe” and on a semi-automatic setting.

4. It is highly unlikely and improbable that Officer Duncan’s finger was outside the trigger guard and unintentionally slipped inside the trigger guard and onto the trigger when he lost his balance, fell backwards, and struck the wall. It is probable that his finger was inside the trigger guard and/or on the trigger when he lost his balance. Officer Duncan deviated from reasonable police practices and training and acted negligently and recklessly by entering the hallway and encountering Mr. Stamps with his finger inside the trigger guard and/or on the trigger.
5. The application of the contact/cover technique is supported by the depositions of Lt. Downing and Sgt. Stuart who are the primary training officers for the FPD SWAT team. Their position is that if Officer Duncan perceived Mr. Stamps as a threat, he should have maintained his cover position until another officer was available to physically make contact with Mr. Stamps. This was documented via a memo to the file documenting a meeting that occurred on September 21, 2011, and is marked as deposition Exhibit 11. This memo and Officer Duncan’s failure to employ the contact/cover procedure was also attested to by Deputy Chief Carl in his deposition, who had overall command of the SWAT team. The team was trained to use this technique and it is common and standard police procedure.
6. Officer Duncan deviated from his training by having his weapon “off safe” at all times when he encountered Mr. Stamps. The training provided to Officer Duncan by the FPD required that his weapon be “on safe” unless he perceived Mr. Stamps as a threat or was actively clearing a room. It is my opinion that Officer Duncan had no basis to conclude that Mr. Stamps was a threat for the reasons discussed above: he complied with all commands, was laying on his stomach with his hands up, he had not committed or was suspected of committing a crime; he made no furtive movements; he posed no danger to the police or the public; and he was not resisting or fleeing.

Officer Duncan was not actively clearing a room when he encountered Mr. Stamps. When he entered the kitchen, Officer Duncan was in the role of a “trailer.” As a “trailer” Officer Duncan was following two other SWAT officers into the area where Mr. Stamps was located when the shooting occurred and was not in the position of being the first to address the threat (Stamps). Had his weapon been on safe or his finger outside of the trigger it is reasonable to conclude the shooting would not have occurred.

These opinions are supported by the depositions of Lt. Downing and Sgt. Stuart who concluded during their September 21, 2011, meeting that there was no perceived threat and Officer Duncan was not actively clearing a room.

7. Under proper, reasonable, established, and accepted police practices and procedures, an officer's weapon is placed "off safe" only when the officer is ready to shoot. Officer Duncan deviated from this practice by placing his rifle "off-safe" when he was not "ready to shoot."
8. It is my opinion that Officer Duncan had no reason to apply any physical force to Mr. Stamps beyond holding him in place by verbal commands. The use of force by law enforcement can be considered reasonable if certain factors are present such as the citizen posing an immediate danger of death or bodily harm to the involved law enforcement officer(s) or an innocent citizen; the ongoing commission of a crime by the subject, usually a crime of violence; past commission of crimes by the subject; the subjects attempts to flee; and the subjects resistance of law enforcement commands and/or actions. All known evidence indicates that Mr. Stamps was compliant with all law enforcement commands and direction. He made no attempt to flee the scene or otherwise resist law enforcement. He had no criminal record, was not engaged in the commission of a crime, and was not a threat to the safety of the law enforcement officers or anyone else. He was not in possession of any weapon nor was he believed to be in possession of any weapon. In the alternative, when Officer Duncan went "hands on," his training provided for him to place his weapon on safe, sling it on his back before his approach and to certainly have his finger outside the trigger guard and off of the trigger.

Had Officer Duncan followed FPD training and protocols and reasonable police practices and procedures customary used by law enforcement nationwide, his gun would not have discharged and Mr. Stamps would not have been shot and killed. Therefore, Officer Duncan's misconduct caused the death of Mr. Stamps.

Based upon the opinions of Dr. Wolf and Mr. Gannalo, Officer Duncan discharged his M-4 rifle and shot Mr. Stamps while he (Duncan) was standing in the kitchen facing Mr. Stamps as he lay on the hallway floor. It is my opinion that Officer Duncan had his finger inside the trigger guard in a circumstance where he had no reason to engage and fire on a target in direct violation of FPD protocol, his training, and reasonable and customary police weapons practices and procedure (Framingham Police Department Policy on Firearms and Weapons #50-4) (Deposition Exhibit 4). Mr. Stamps was lying on the floor with his hands above his head, had complied with all police demands, was not resisting the police, was not attempting to flee, and posed no immediate or apparent threat to Officer Duncan or anyone else. Therefore, Officer Duncan had no reason to place his finger inside the trigger guard, on the trigger, and to pull the trigger. His actions in doing so were objectively unreasonable, deviated from reasonable police conduct and procedure, were reckless, and caused the death of Mr. Stamps.

In direct violation of FPD protocol, his training, and reasonable and customary police weapons practices and procedure, Officer Duncan failed to point his rifle's muzzle in a safe direction when he stood in the kitchen and encountered Mr. Stamps (Framingham Police Department Policy on Firearms and Weapons #50-4) (Deposition Exhibit 4). His actions in doing so were objectively unreasonable, deviated from reasonable police conduct and procedure, and were reckless, and caused the death of Mr. Stamps.

The shooting death of Mr. Stamps would not have occurred if Officer Duncan followed his training and standard police techniques and protocols customarily used by SWAT teams and police officers nationwide.

B. Police Training.

The police training provided by the FPD to Officer Duncan was negligent and reckless in the following respects:

1. The reasonable, customary, and established law enforcement training, SWAT training and U.S. military training nationwide teach that it is not appropriate for an officer to have their finger on the trigger until they are ready to fire. Additionally, it is customarily taught that weapons are to remain "on safe" until ready to fire. The FPD police and SWAT training and policies existing at the time of the Stamps shooting failed to include this normal and accepted protocol in the law enforcement community.
2. During police training, the FPD failed to provide to Officer Duncan and other law enforcement officers an articulable, uniform, and practical policy and procedure on when an officer's weapon should come "off safe." The FPD "Policy on Firearms and Weapons #50-4 (Deposition Exhibit 4) in effect on and prior to January 5, 2011, is silent on when an officer may place his weapon "off safe." According to Officer Duncan's training provided to him by FPD, he was permitted to place his weapon "off safe" if he "perceived a threat" or was actively clearing a room. The "perceived threat" standard is vague and subjective and permits the individual officer to make a judgment call every time he confronts a person. After the subject shooting, the FPD amended its Policy on Firearms and Weapons #50-4 (Deposition Exhibit 5) to conclude the accepted practice of training officers to keep their weapons "on safe" until they were ready to fire. Officer Duncan was not adequately trained to determine the existence of a threat and the training he received resulted in him removing his weapon from "on safe" in the absence of a defined threat.
3. The FPD failed to provide to its officers written guidelines and protocols to determine what constitutes a perceived threat that would warrant an officer to place his weapon "off safe."
4. The FPD's Policy on Firearms and Weapons #50-4 (Deposition Exhibit 4) in effect at the time of the Stamps shooting did not include the contact/cover procedure. After the subject shooting, the FPD amended its Policy on Firearms and Weapons #50-4 (Deposition Exhibit 5) to include the established and accepted contact/cover technique.
5. The FPD's Policy on Firearms and Weapons #50-4 (Deposition Exhibit 4) in effect at the time of the Stamps shooting did not include the requirement that an officer's weapon remain "on safe" unless he perceives a threat or is actively clearing a room or

danger area. After the subject shooting, the FPD amended its Policy on Firearms and Weapons #50-4 (Deposition Exhibit 5) to include this requirement.

6. The failure of the FPD to provide adequate training to Officer Duncan was a contributing cause of the shooting and killing of Mr. Stamps.

OTHER OPINIONS

The Town of Framingham Police Department has written policy on the utilization of its SWAT team that falls under "Policy on SWAT Team #100-23" dated July 1, 2003 (Deposition Exhibit 40).

The "Policy Statement" for this policy begins: "The presence of a highly skilled and trained police tactical unit has been shown to substantially reduce the risk of injury or death to citizens, police officers and suspects." The policy further states in relevant part:

D. Mission Planning.

1. The SWAT will utilize a written planning process for all operations that are proactive or anticipatory in nature, such as warrant service.
2. The written process will include a format that will document how the operation is to be:
 - a. Conducted
 - b. Commanded
 - c. Controlled
 - d. Communication
 - e. Support Required.
3. The SWAT Commander will cause a log of events to be recorded on all SWAT operations, and will also cause all planning or decision making documents to be recorded.

There is no indication from any of the depositions or the documents furnished that such a written plan was prepared. It is standard practice at near every level of law enforcement that written plans are to be prepared when utilizing a tactical team. Most plans are normally signed off on by a command officer or other supervisor. If a threat matrix is used, as required by the FPD, it should be included with this plan – no written threat matrix was identified from this operation. For example, the National Tactical Officers Association published in September 2011 a document entitled SWAT STANDARD FOR LAW ENFORCEMENT AGENCIES, which was meant to be a guide for the establishment and use of tactical teams. This document states in pertinent part:

"The SWAT team will develop an operational plan in a consistent format for pre- planning purposes. The planning processes shall include target scouting; development of detailed written operations orders, detailed operations order briefings, operation rehearsals and pre-

mission inspections. Final approval for all operational planning documents should rest on the SWAT Commander or their designee.”

The absence of a written pre-plan was a deviation from accepted SWAT Team practices. The absence of a well-planned and thought out search warrant execution was a contributing cause of the shooting of Mr. Stamps.

Regarding the overall plan and operational execution, it is my opinion that the FPD SWAT team did not take into their planning and make adjustments to the operation once the primary target, Joseph Bushfan, was identified and arrested away from the search warrant location before deployment of the FPD SWAT team. An adjustment should have been considered during the pre-planning stages of the warrant execution and the execution could have been modified or aborted once Joseph Bushfan left 26 Fountain Street and was placed in police custody.

STATEMENT OF COMPENSATION

I am being compensated at an hourly rate of 350.00 per hour and I am being reimbursed for all reasonable and necessary out of pocket expenses associated with the forming of my opinion and for travel.

PRIOR TESTIMONY

I have never testified as an expert in a deposition or at trial.

QUALIFICATIONS

My qualifications are explained in the attached resume.

Dated:

2/17/2014



Kim R. Widup