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THIRD ATLANTA POLICE OFFICER PLEADS GUILTY TO CIVIL RIGHTS CONSPIRACY RESULTING IN THE DEATH OF 92-YEAR OLD WOMAN

FBI Announces Completion of Its Investigation into the Killing of Kathryn Johnston and Other Atlanta Police Misconduct; Will Deliver Report to Police Chief

ATLANTA, GA - David E. Nahmias, United States Attorney for the Northern District of Georgia; Grace Chung Becker, Acting Assistant Attorney General, Civil Rights Division, U.S. Department Justice; and Gregory Jones, Special Agent in Charge, Federal Bureau of Investigation, Atlanta Field Division announced that former Atlanta Police Department (APD) Officer ARTHUR BRUCE TESLER, 42, of Acworth, Georgia, pleaded guilty today in federal district court to conspiracy to violate civil rights resulting in death, in connection with the fatal police shooting of Kathryn Johnston, a 92-year old woman, at her home in Atlanta during the execution of an illegal search warrant on November 21, 2006.

“The killing of Kathryn Johnston by Atlanta police officers was a terrible and unnecessary tragedy,” said United States Attorney Nahmias. “The great majority of police officers are brave and honorable public servants who follow and enforce the law. Officers Tesler, Smith, and Junnier, however, repeatedly ignored the requirements of our Constitution and violated the civil rights of the citizens they were sworn to protect, and it was inevitable that one day their illegal ‘shortcuts’ would lead to tragedy. We are glad that today’s guilty plea brings another measure of justice to Ms. Johnston, her family, and our community, and that the cooperation of Junnier and Smith and the dedicated investigation by the FBI have brought other police misconduct to light. We are also hopeful that this tragedy and the conviction of the officers responsible for it will deter similar police misconduct in the future and indeed have led to reforms that provide the City and its citizens with an improved police department.”

On April 26, 2007, two of TESLER’s associates in the APD Narcotics Unit, GREGG JUNNIER and JASON R. SMITH, pleaded guilty to the civil rights conspiracy charge in federal court and to voluntary manslaughter and related charges in state court. They also agreed to cooperate in a broader investigation of APD officer misconduct. TESLER declined to plead guilty at that time and was indicted in state court on charges of

violation of oath of office, false statements, and false imprisonment. He went to trial on those state charges in April 2008 and was convicted of the false statement charge but acquitted on the other charges; he was sentenced to serve 4 ½ years in state prison. Following the state trial, federal authorities re-evaluated TESLER's case, conducted further investigation, and determined that federal prosecution of TESLER was appropriate. Negotiations with TESLER and his counsel then led to today's guilty plea.

The FBI also announced today that it has completed its investigation of the Kathryn Johnston shooting and other misconduct by APD officers. The United States Attorney's Office has advised that it does not expect to pursue federal criminal charges against other APD officers as a result of the investigation. The FBI will therefore soon be providing a report on the investigation to APD Chief Richard Pennington for consideration of potential administrative discipline or state charges against other APD officers.

FBI Atlanta Special Agent in Charge Greg Jones said, "The guilty plea today of former Atlanta Police officer Arthur Tesler in federal court concludes a dark chapter in Atlanta law enforcement that was exposed on the night of November 21, 2006 and resulted in the tragic shooting death of Ms. Kathryn Johnston. This has been an extensive and exhaustive effort to gather the true facts of the case and to hold those involved completely accountable. The FBI applauds Atlanta Police Chief Richard Pennington in providing the FBI the unprecedented access needed in conducting this type of investigation. We will be presenting Chief Pennington with a report of findings in this matter that we feel will help ensure that this tragedy is not repeated."

According to United States Attorney Nahmias and the information presented in court: On November 21, 2006, APD officers JUNNIER, SMITH, and TESLER participated along with other Narcotics Unit officers in the execution of a search warrant at 933 Neal Street. During the execution of the warrant, the 92-year old owner of the home, Kathryn Johnston, who apparently believed her home was being invaded by criminals, fired her revolver once at those entering her home as the front door was being breached. Her shot did not hit anyone. Six officers, including JUNNIER and SMITH, returned fire. Ms. Johnston was hit by multiple shots and killed. JUNNIER and two other officers were injured by police fire and shrapnel.

The FBI investigation revealed that shortly after TESLER transferred to the Narcotics Unit in January 2006, he joined an ongoing conspiracy between JUNNIER and SMITH to violate the civil rights of Atlanta citizens by obtaining search warrants based upon false information. Among other things, on numerous occasions the conspirators, including TESLER, falsely stated in affidavits for search warrants presented to state magistrate judges: (1) that the conspirator officer had personal knowledge of the information presented, when in fact the warrant was "traded" or "handed off" and used information gathered, or purportedly gathered, by other Narcotics Unit officers; (2) that

the conspirator officer was accompanied by a second APD officer while the conspirator directed a confidential reliable informant (CRI) to purchase illegal drugs; and (3) that the conspirator officer had followed proper procedures to corroborate that the CRI had purchased illegal drugs at the particular location to be searched, including falsely swearing that the officer had searched the CRI before and after the CRI purchased illegal drugs and that he personally observed the CRI make the purchase; and (4) that the conspirator officer had conducted surveillance at a location and had personally confirmed (or re-confirmed) drug-dealing activity. In addition, on more than one occasion, as defendant TESLER was aware from his participation in the conspiracy, co-conspirators made false statements in search-warrant affidavits claiming that CRIs had purchased illegal drugs at the location to be searched, when, in fact, the co-conspirator knew that no such purchase had been made.

JUNNIER, SMITH, TESLER, and other officers would execute the search warrants, and if drugs or other contraband were found, the occupants would be arrested and charged. The conspirators would falsify other APD documents to be consistent with the false statements used to obtain the unlawful search warrants. The conspirators were well-aware of the danger posed to innocent citizens during the execution of search warrants, because on September 20, 2006, their narcotics team had executed a search warrant (obtained by an officer who was not a co-conspirator) during which an officer on the team almost shot a 79-year old woman who was holding a lifelike toy gun.

In what they called “extra jobs,” JUNNIER, SMITH, and TESLER also provided numerous businesses in Atlanta with “security” or “consulting” services in exchange for weekly cash payments. The services consisted primarily of providing more police presence and response by on-duty APD officers than was received by citizens who did not make such payments. The conspirators, normally while on-duty, regularly drove by or parked at the paying businesses, often in a marked patrol car and in police clothing; responded to address alleged criminal activity or to drive away unwanted persons from the paying businesses; or arranged for other officers to do so. This arrangement sometimes included providing the businesses with the cell-phone number of a conspirator, which could be called to obtain a police response faster than calling 911 or for matters that otherwise would not receive prompt police attention. The conspirators would split the cash received, which generally amounted to several hundred dollars a week. The conspirators spent significant time performing these services and collecting payment while on-duty, detracting from time available to perform the work needed to follow the Constitution, laws, and proper police procedures to gather and truthfully present the evidence needed for lawful search warrants.

On the afternoon of November 21, 2006, SMITH, JUNNIER, and TESLER arrested an individual for drug possession. That individual, who was not a confidential and reliable informant, told the officers that he had purchased crack cocaine from a man named “Sam” at a house that he later identified as 933 Neal Street and claimed that he

had seen a kilogram of cocaine in that house earlier that day. JUNNIER contacted a CRI to have the CRI attempt to make a purchase from 933 Neal Street, but the CRI did not have transportation. The officers did nothing else to corroborate or verify the information provided by the drug-dealer they had arrested.

SMITH, JUNNIER, and TESLER then obtained a search warrant for 933 Neal Street after SMITH submitted a sworn affidavit to a magistrate judge falsely stating, among other things, that SMITH and TESLER had directed a CRI make a purchase of cocaine from 933 Neal Street; that the CRI was searched before the purchase; that the CRI purchased \$50 of crack cocaine from a man named "Sam"; and that a no knock warrant should be issued because the CRI stated that "Sam" had electronic surveillance equipment in the house, which "Sam" carefully monitored. With JUNNIER and TESLER present, SMITH then briefed the other members of their narcotics team about the substance of the falsified affidavit, including falsely claiming that a controlled buy of drugs had been made at the residence.

At about 6:49 p.m., JUNNIER, SMITH, TESLER, and the other narcotics officers executed the illegal search warrant. As officers rammed open the front door of 933 Neal Street, Kathryn Johnson, an elderly woman who was the owner and only resident of the house, fired a single shot from a revolver through the door, which hit no one. JUNNIER, SMITH, and four other officers returned fire, hitting Ms. Johnston with five or six shots, one of which was fatal. Ballistics and other forensic analysis are unable to establish which of the officers fired the fatal shot or the other shots. Three officers, including JUNNIER, were injured by shots fired by other officers, or resulting shrapnel or debris, but all were released from the hospital by the following morning. TESLER covered the back of the house and did not fire his gun during the execution of the warrant.

No other occupants were found at 933 Neal Street. After the shooting, TESLER saw SMITH with several small bags of marijuana, which SMITH had seized elsewhere earlier that day; SMITH proceeded to plant those drugs in the basement of the house to be found later by other officers; no other illegal drugs were found in the house. That night TESLER filed an APD incident report containing numerous false statements about the events that day, including falsely stating that a purchase of crack cocaine had been made at 933 Neal Street. On November 22, 2006, SMITH submitted to APD Property two bags containing crack cocaine that falsely indicated the drugs were bought by an informant at 933 Neal Street, and SMITH and TESLER disposed of the remainder of the marijuana from which SMITH had taken the planted marijuana, by throwing it down a sewer drain. SMITH, JUNNIER and TESLER also met repeatedly to fabricate a story that would explain the events leading to the shooting of Kathryn Johnston, and contacted and paid a CRI to corroborate their false story.

After Atlanta Police Chief Richard Pennington turned the investigation of the Kathryn Johnston case over to the FBI to lead, JUNNIER was interviewed by FBI agents

and admitted the facts about the conspiracy rather than giving the false cover story. SMITH and TESLER continued to cover up the conspiracy by lying in their first interviews with federal agents.

(NOTE: Copies of the Plea Agreement and the 10-page Statement of Facts in support of the guilty plea are available upon request.)

Under TESLER's plea agreement, the parties and the Court agree that the appropriate sentence for TESLER under the advisory federal sentencing guidelines is 121 months (10 years and 1 month), and that is the sentence the Government will request. TESLER may request a lower sentence under the Court's discretionary authority to vary from the guidelines. The federal sentence will run concurrently with TESLER's 4 ½-year state sentence arising from the same criminal conduct. JUNNIER also faces a guidelines sentence of 121 months, and SMITH faces a guidelines sentence of 151 months; those two defendants may, however, receive sentence reductions based on their cooperation with the Government's investigation.

The federal investigation also led to guilty pleas by former APD Sergeant WILBERT STALLINGS, the supervisor of the Narcotics Unit, on a charge of conspiracy to violate civil rights relating to another illegal search, and former APD Officer DANIEL BETTS, on a charge of extortion under color of official right relating to his being paid to work "extra jobs" while on duty.

Sentencing for TESLER is tentatively scheduled for early 2009 before United States District Judge Julie E. Carnes. An exact date has not been set by the court.

This case is being investigated by Special Agents of the FBI.

Assistant United States Attorney Jon-Peter Kelly, United States Attorney David E. Nahmias, and Department of Justice Civil Rights Division Special Litigation Counsel Paige M. Fitzgerald are prosecuting the case.

For further information please contact David E. Nahmias (pronounced NAH-me-us), United States Attorney, or Charysse L. Alexander, Executive Assistant United States Attorney, through Patrick Crosby, Public Affairs Officer, U.S. Attorney's Office, at (404) 581-6016. The Internet address for the HomePage for the U.S. Attorney's Office for the Northern District of Georgia is www.usdoj.gov/usao/gan.