

Grand Jury Clears Agents in Shooting

Two U.S. Border Patrol agents were unanimously cleared Thursday by a Franklin County grand jury in the May 5 shooting of a suspected drug smuggler.

The 19-member jury ruled that Dennis J. Rascoe and Daniel S. Taylor were justified in shooting Timothy J. Fleury, 25, of Constable, in what authorities are calling a drug-related incident.

The investigation lasted only four days. It was postponed several times because the grand jury was waiting to hear testimony from Mr. Fleury, who was hospitalized with his injuries.

He was not ready to testify in front of the grand jury until two weeks ago and continues to receive medical care.

"From the very beginning, it was clear they had done nothing wrong," said the agents' attorney, Thomas J. Carr of the Tully Rinckey law firm in Albany. "It was a textbook case."

Mr. Fleury nearly hit the two officers with his all-terrain vehicle, the agents said. They had chased him and another man into the woods on an ATV trail off Route 122 in Constable, leaving the officers with very little room to get away from Mr. Fleury when he floored his four-wheeler toward them.

The ATVs had driven into the woods, forcing Mr. Rascoe and Mr. Taylor to leave their car and follow on foot. One of the alleged smugglers abandoned his vehicle and disappeared. It was then that Mr. Fleury gunned his four-wheeler toward the officers, they said.

He swerved to the left, just avoiding the officers, who fired at him believing he was headed straight for them. One shot hit him on the right side of his lower back as he shifted his weight to turn.

The second man, who has been identified but whose name has not been released, abandoned his ATV and fled the scene. Both men will be charged by the grand jury within the next two weeks, according to Franklin County District Attorney Derek P. Champagne.

"If you're law enforcement, you don't have a duty to retreat if your life is in danger," Mr. Champagne said. The officers were within their rights to fire at Mr. Fleury and "showed great restraint" by firing at him only 11 times, rather than the several dozen times their guns were capable of.