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## Fort Lauderdale man who killed deputy may escape death penalty

By Vanessa Blum and Paula McMahan  
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Murder suspect Kenneth Wilk doesn't deny firing the shot that killed Broward Sheriff's Deputy Todd Fatta on Aug. 19, 2004.

But what once seemed like an open and shut murder case has hit some unexpected hurdles.

Among them: a toxicology report showing anabolic steroids in Fatta's system after his death and a legal technicality that could stop prosecutors from seeking Wilk's execution.

Federal law requires prosecutors to alert defendants that they intend to seek the death penalty within "a reasonable time before trial." In Wilk's case, that notice came in February 2005, 58 days before his scheduled trial date.

On March 30, the U.S. Court of Appeals for the 11th Circuit in Atlanta will consider whether government lawyers lived up to their legal requirement. The appeal is unusual because it comes in the middle of a criminal case instead of at its conclusion. If defense lawyers prevail, Wilk's life may be spared.

The reference to possible steroid use by Fatta turns up in a footnote buried in a legal brief to the appellate court. Wilk's defense lawyers also state that Fatta's name appeared on a list of illegal steroid purchasers.

The list identifies Fatta as a customer of PowerMedica, an Internet firm authorities believe sold steroids without valid medical prescriptions. A raid on PowerMedica's Deerfield Beach offices last year sparked investigations into at least eight Broward sheriff's deputies whose names were found in the company's records. All of the officers have been cleared of wrongdoing in internal investigations.

Rafael Rodriguez and William Matthewman, Wilk's defense lawyers, declined to discuss evidence that Fatta was taking steroids. However, criminal defense lawyers not involved in the case said the revelation could be a key piece of evidence because the drug can make users more aggressive and impulsive.

Miami attorney Barry Wax, who co-chairs the death penalty committee of the Florida Association of Criminal Defense Lawyers, said if Fatta were abusing steroids it could support a claim of self-defense. "It goes directly to the manner in which the police officer executed the warrant and gained access to the premises in the first place," Wax said. "If a police officer is acting aggressively and going into someone's house with guns drawn that could lead to the defendant's reasonable apprehension that he's going to be harmed."

Steroids, often used by athletes and weightlifters to build muscle mass, are illegal in the United States unless prescribed by a doctor. Valid medical uses include promoting weight gain after surgery and treating anemia.

Elliot Cohen, a Sheriff's Office spokesman, declined to comment on Fatta's alleged steroid use. "Nothing will change the fact that Deputy Todd Fatta was gunned down and murdered in the line of duty by a child pornography suspect

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who armed himself with a hunting rifle and opened fire as deputies entered his home," Cohen said in a statement.

Police say Wilk, who had a history of threatening law enforcement, lay in wait for officers who came to his Fort Lauderdale house with a search warrant in a child pornography investigation. Wilk killed Fatta and injured Sheriff's Deputy Sgt. Angelo "Angie" Cedeño after the officers forcibly entered the house. Fatta, who was 33, died shortly after arriving at the hospital.

At his memorial service, Sheriff Ken Jenne described Fatta as a "shining example of what a deputy should be: competent and courageous, tenacious and tough, brave and dedicated, yet understanding and compassionate to those who needed a helping hand."

Andrew Yaffa, the attorney representing Fatta's family in a wrongful death lawsuit against the Sheriff's Office, called the revelation of possible steroid use "irrelevant."

"Todd was a great person and a fantastic officer and nothing the defense does in an effort to create a defense is going to take away from his reputation," Yaffa said.

He added: "Wilk did exactly what he said he was going to do: Kill a cop."

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