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September 19, 2018

Sergio Velazquez, Chief of Police
Hialeah Police Department
5555 E. 8 Avenue
Hialeah, FL 33013

Dear Chief Velazquez:

Enclosed is our final report regarding the investigation into the police-involved shooting of Lester Machado on October 1st, 2017. The Officers involved in this incident were Jose Abel (#04-1868), Felix Elias (04-2007), Daniel Garcia (04-2080), Daniel Gato (04-1860), Esteban Holland (04-1930) and Adrian Vidal (04-2042).

The investigation has determined that the subject had been stopped for a traffic infraction and subsequently fled the scene. With the police in pursuit, Mr. Machado recklessly drove through city streets and was involved in several collisions. At one point, the subject drove his vehicle towards two officers, who had to jump out of the way to avoid serious injury or death.

Taking into account the subject's menacing actions, it is reasonable to believe that the Officers considered it necessary to use deadly force by firing their weapons to stop a fleeing felon and prevent injury to themselves and others. Therefore, no criminal charges will be filed.

If you have any questions, please do not hesitate to contact me.

Sincerely,

KATHERINE FERNANDEZ RUNDLE
State Attorney

KFR:iah

cc: Listed Officer(s)
Hialeah PD – Internal Affairs
Captain Javier Ortiz - FOP
Robert Senior (AUSA)
Troy Walker (FDLE)
Enclosure



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INTEROFFICE MEMORANDUM

TO: KATHERINE FERNANDEZ RUNDLE DATE: SEPTEMBER 18, 2018
State Attorney

FROM: STAFFING/REVIEW TEAM RE: POLICE SHOOTING
CASE #: HPD 2017-030325
DECEASED: LESTER MACHADO

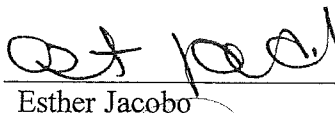
Based on the information obtained and reviewed during the course of the investigation, the conclusion of the staffing/review team is the following: The investigation has determined that a Hialeah Police Officer stopped Mr. Lester Machado reference a traffic infraction. Subsequently, the subject abruptly backed up his vehicle and fled. With numerous police vehicles in pursuit, Mr. Machado drove recklessly and with wanton disregard through the city streets and parking lots of several establishments. At the same time, he had several collisions with police vehicles and incidents where officers had to move out of his way to avoid being struck. There were three separate crime scenes involved in this incident. At one point (at Scene 2) Mr. Machado drove his vehicle at several officers who were standing outside of their police cars. Officer Jose Abel fired several rounds at Mr. Machado. Mr. Machado fled again with more police cars in pursuit. Mr. Machado's car ultimately spun out of control, striking a cement Metrorail support pillar. After striking the pillar (at Scene 3) Mr. Machado attempted to flee again. Several officers discharged their weapons to prevent the subject from fleeing once more.

Taking into account Mr. Machado's actions in driving toward the two officers at Scene 2, it is reasonable to believe that Officer Jose Abel considered it necessary to use deadly force to prevent great bodily injury or death to his fellow officers. Taking into account Mr. Machado's actions in fleeing from numerous police cars utilizing lights and sirens, his ramming and attempting ramming of multiple police vehicles and the numerous felonies he committed during his flight from the pursuing officers; Officers Elia, Garcia, Gato, Holland and Vidal were justified in using force to arrest a felon fleeing from justice.

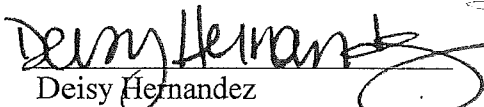
Therefore, we find that Officers Jose Abel (04-1868), Felix Elias (04-2007), Daniel Garcia (04-2080), Daniel Gato (04-1860), Esteban Holland (04-1930) and Adrian Vidal (04-2042) were legally justified in the use of force when they fired their weapons at Mr. Machado.

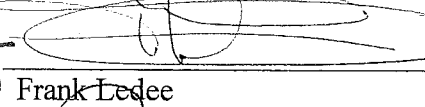
The members of the staffing/review team for this case are:

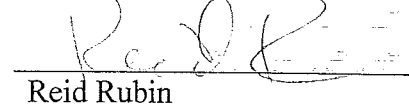

Don L. Horn

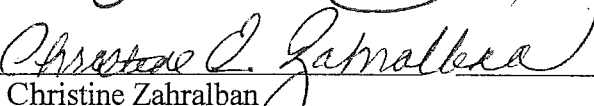

Esther Jacobo


Kathleen Hoague

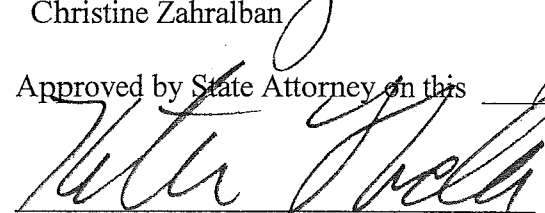

Deisy Hernandez


Frank Ledee


Reid Rubin


Christine Zahralban

Approved by State Attorney on this 19 day of Sept, 2018.


KATHERINE FERNANDEZ RUNDLE
State Attorney





INTEROFFICE MEMORANDUM

TO: STAFFING/REVIEW TEAM

DATE: SEPTEMBER 18, 2018

FROM: DAVID I. GILBERT
ALEJANDRA LOPEZ
ASSISTANT STATE ATTORNEYS

RE: POLICE SHOOTING CLOSEOUT MEMO
Case # SAO #62/17/10/01/001

OFFICER(S) INVOLVED:	OFF. JOSE ABEL 04-1868 OFF. FELIX ELIAS 04-2007 OFF. DANIEL GARCIA 04-2080 OFF. DANIEL GATO 04-1860 OFF. ESTEBAN HOLLAND 04-1930 OFF. ADRIAN VIDAL 04-2042
DECEASED:	LESTER MACHADO DOB:07/04/1993 (24 YOA)
INJURIES:	GUNSHOT WOUNDS TO HEAD, NECK, CHEST, TORSO
DATE & TIME:	OCTOBER 1, 2017 AT 4:25 AM
LOCATION:	INTERSECTION OF NW 37 TH AVENUE AND 79 TH STREET, HIALEAH, FL
WEAPON(s):	GLOCK 17 GEN 4, SER. #BBBM597 (OFF. ABEL) GLOCK 17 GEN 4, SER. #BBBM577 (OFF. ELIAS) GLOCK 17 GEN 4, SER. #BBBM772 (OFF. GARCIA) GLOCK 17 GEN 4, SER. #BBBM683 (OFF. GATO) GLOCK 17 GEN 4, SER. #BBBM806 (OFF. HOLLAND) GLOCK 17 GEN 4, SER. #BBBM604 (OFF. VIDAL)
LEAD:	DETECTIVE CARLOS GARCIA 04-1381
CASE #:	HPD # 2017030325
SAO CASE #:	SAO #62/17/10/01/001



SUMMARY

While on routine patrol, Off. T. Hernandez, Hialeah Police Department (HPD) observed a white Honda Accord traveling southbound on east 8th Avenue. The driver of the Honda committed a traffic infraction. Off. Hernandez conducted a traffic stop on eastbound 22nd Street near 9th Avenue. After stopping, the driver of the Honda, later identified as Lester Machado, abruptly backed up towards the police vehicle, but it did not make contact. The Honda fled eastbound on 22nd Street with police in pursuit. After several turns, the Honda approached a gas station located on the corner of E. 4th Avenue and 25th Street. Mr. Machado turned into the gas station and had a minor collision with a police vehicle when it exited onto 4th Avenue. Mr. Machado continued to flee. During the pursuit, the Honda was followed by numerous police vehicles. All police vehicles involved had their emergency lights and sirens activated. Near the 700 block of 25th Street, the Honda struck the police car of Off. Benitez who had stopped her car facing westbound in the eastbound lanes. The car came to a stop.

Offs. Maria Benitez and T. Hernandez approached the Honda. Mr. Machado backed up and collided with a marked police vehicle occupied by Offs. Lorenzo Rodriguez and James Burke. He then drove towards Offs. Benitez and Hernandez. Both officers jumped out of the way to avoid being struck. The Honda proceeded forward and gunshots were fired by Off. Jose Abel as the vehicle fled eastbound on 25th Street which becomes 79th Street. Mr. Machado was pursued by Lt. Antonio Luis and several other marked police vehicles with their emergency equipment activated. During the pursuit, Mr. Machado repeatedly attempted to strike Lt. Luis's police vehicle with his Honda. As a result of one of those impacts, or as the result of an effort to make a sudden U-turn, Mr. Machado's Honda went out of control and spun out causing the rear of the vehicle to strike a cement Metrorail support pillar. Multiple officers discharged their weapons before the vehicle was able to flee further.

For ease of reference, the three main scenes will be denoted below as follows:

- Scene 1 – the Mobil gas station located on the corner of E 4th Avenue and 25th Street.
- Scene 2 – E. 25th Street, eastbound in the 700 block across from Hialeah Hospital
- Scene 3 – N.W. 79th Street (a continuation of E. 25th Street) and 37th Avenue.

WITNESSES

OFFICER TEANNIE HERNANDEZ – Officer Teannie Hernandez is a patrol officer for the Hialeah Police Department. She gave a voluntary sworn statement to investigators on October 1, 2017 and did a sworn video reenactment at Scene 2 on October 5, 2017.

In her sworn statement, Officer Teannie Hernandez testified she was on routine patrol when she got behind a vehicle southbound on East 8th Avenue approaching 25th Street. The vehicle, a white Honda had its tag light out and the driver was swerving in and out of his lane of travel. She asked the dispatcher to check the license tag, but had not activated her emergency equipment. The Honda turned east onto 22nd Street. Off. Hernandez asked for backup so she could initiate the traffic stop. When backup arrived, she activated her emergency lights in an effort to get the Honda to stop. However, the Honda did not stop and went south on East 10th until he turned east on 21st Street. At 8th Avenue he ran a red light. The driver continued to make turns and they wound up at East 9th Avenue and 22nd Street. The driver of the

Honda stopped, put the car in reverse and backed up quickly in the direction of Off. Hernandez's vehicle. Just before impact, he stopped the car, went back into forward gear and took off. Another police vehicle immediately got behind the Honda and the pursuit continued. When Off. Hernandez got to east 4th Avenue and 25th Street, the Honda drove into the parking lot of the Mobil gas station (Scene 1) where she heard an impact (a collision with another police vehicle). She lost him again when he pulled out of the gas station and went north on East 4th Avenue. She heard officers calling out his route. At one point, while she was northbound on East 8th Avenue, she heard he was northbound on East 7th Avenue heading to 25th Street. Off. Hernandez went to East 25th Street and turned westbound into the eastbound lanes. [Although not specifically asked, it appears that Off. Hernandez was aware that East 7th Avenue ends at 25th street – a "T" intersection – and, because of a large raised median dividing traffic, she was aware the Honda driver would likely turn eastbound when he arrived at 25th Street.] She saw the Honda turn eastbound on East 25th Street from 7th Avenue. She saw the Honda appear to get stuck after hitting something, so she stopped – facing him – and got out of her car. Off. Maria Benitez was also there and their cars were parked parallel to each other. As she and Off. Benitez start to approach the Honda she heard the car shift into gear and saw the subject try to move forward, but the car appeared to be stuck. Eventually the driver was able to free the vehicle and it started driving directly towards her and Off. Benitez. Off. Hernandez jumped out of the way to avoid being hit because she was in fear for her life. As she did so, she heard gunshots. Off. Hernandez was not able to identify the shooting officer. It took Off. Hernandez some time to get back into her car and to maneuver back to an eastbound direction. She saw numerous officers in pursuit of the Honda. By the time she caught up with them, she heard the lieutenant calling for a cease fire. Although she heard shooting she could not identify any of the officers who fired their weapons.

In the video reenactment at Scene 2, Off. Hernandez took up the story at the point where she was driving her patrol vehicle with emergency lights and siren activated westbound in the eastbound lanes of E. 25th Street. She testified her vehicle was behind the police car driven by Off. Benitez. She saw the Honda make a wide right turn from northbound 7th Avenue onto eastbound 25th Street ending the turn in the inside (left) lane. There were several marked units behind the Honda. She observed the Honda crash into the front of Off. Benitez's vehicle without trying to avoid the contact. The white vehicle backed up and hit the front of a patrol car that had stopped behind it. As this was happening, Off. Hernandez got out of her vehicle and began to approach the Honda that appeared to have a tire stuck on the median. As she got near the vehicle it moved forward forcing her to jump out of the way to avoid contact with her. She heard shots fired and believes they came from a south to north direction (i.e. from the sidewalk towards the median). The Honda stopped again briefly before accelerating eastward. Off. Hernandez ran back to her patrol car. The reenactment ended at that point.

OFFICER MARIA BENITEZ – Officer Maria Benitez is a patrol officer with the Hialeah Police Department. She gave a voluntary sworn statement to investigators on October 1, 2017 and also did a sworn video re-enactment at Scene 2 on October 5, 2017.

In her sworn statement, Off. Maria Benitez testified that she was working an off-duty job at the casino located at East 4th Avenue and 32nd Street. She was in uniform and had her police vehicle. Over her police radio she heard an officer calling for backup on a traffic stop. She got into her vehicle in order to try to assist. When she got to East 4th Avenue and 28th Street she saw the Honda traveling northbound with officers behind it. She got into the pursuit during which she saw him run a red light at East 4th Avenue and 32nd Street. At 32nd Street he made a wide right turn into oncoming traffic putting a citizen

vehicle at risk. There were approximately five (5) patrol vehicles between her and the Honda. One of the officers was calling out their route. She decided to make a U-turn and went over to East 8th Avenue to try to head him off and stop him because he was a threat to citizens.

By radio, Off. Benitez suggested that someone block the subject at one of the intersections and then heard that the subject had tried to ram the officer who had done so. She caught sight of the subject again when she was on East 8th Avenue and either 27th or 28th street. She observed the Honda go over the median into oncoming traffic. He drove back over the median and turned onto eastbound 26th Street. The subject continued to make numerous turns while Off. Benitez stayed southbound on East 8th Avenue. At one point the subject came out of one of the side streets, northbound, and drove directly at Off. Benitez, who had to swerve to avoid a collision.

She caught sight of him next when she was westbound in the eastbound lanes of East 25th Street. The subject, coming from the opposite direction, rammed into the front of her vehicle. At that time, she could see that there was one occupant in the car who was wearing a black hoodie and was trying to hide his face. He screamed, "fuck the police," and put the car in reverse and rammed a police vehicle that was behind him. She got out of her car, believing that he was going to bail out of the car. The subject drove forward almost hitting Off. Benitez as he passed. Off. Benitez heard gunshots but could not say who did the shooting. Off. Benitez got back in her car, turned around, and took up the pursuit. There were approximately five (5) police cars in front of her. She was able to see that some of the officers got close to him. He was braking his vehicle in an attempt to make them hit him in the rear and was swerving all over the road in an apparent effort to force the police cars off the road. The subject crashed his vehicle and she heard officers order him out of the car and then there were gunshots. (Scene 3) Officer Benitez did not fire her weapon and cannot identify the officers who did. Officer Benitez testified that she was in fear for her life when the subject rammed her car and when he drove at her as he drove away. Off. Benitez also testified that during the pursuit all of the officers had their emergency lights and sirens activated and that the subject committed numerous violations including running red lights and stop signs.

In the sworn video reenactment at Scene 2, Off. Maria Benitez testified that she was involved in the pursuit of the deceased Honda driver. As she approached Scene 2, she was driving westbound in the eastbound lanes of E. 25th Street. She had her emergency lights and siren activated. As she approached Hialeah Hospital she observed the Honda make a right turn from northbound E. 7th Avenue onto eastbound 25th Street. Off. Benitez stopped her vehicle east of the intersection and watched as the Honda hit her patrol car head on. Off. Benitez exited her vehicle as the Honda went into reverse and struck a police vehicle that was behind it. The Honda then went forward a little and stopped. She saw a male in the car who was trying to cover his face with something. Off. Benitez stated that she was standing on the white line dividing the two eastbound lanes when the driver of the white car made eye contact with her. She heard the driver yell something to the effect of, "Fuck you, Bitches", and he turned the steering wheel to the right and accelerated towards Off. Benitez. Off. Benitez jumped out of the way as she heard gunfire. She said that she feared for her life before getting out of the way of the car. Someone yelled, "Shots fired!" Off. Benitez does not know which officer fired at the Honda driver. Off. Benitez believes the shots were fired from the median in a northwest to southeast direction. The Honda continued eastbound on 25th Street.

OFFICER LORENZO RODRIGUEZ -- Officer Lorenzo Rodriguez is a patrol officer with the Hialeah Police Department. He gave a voluntary sworn statement to investigators on October 1, 2017 and also did a sworn video reenactment at Scene 2 on October 5, 2017.

In this sworn statement, Off. Lorenzo Rodriguez testified that he was patrolling his sector when he heard a call go out that Off. Teannie Hernandez was trying to stop a vehicle that would not stop. He said that he started heading towards Off. Hernandez's sector because he thought there was a possibility the incident could end in a subject "bail out" and there would be a need for a perimeter. While heading towards that sector he heard that the subject tried to ram an officer's vehicle with his car. At that point an emergency signal went out requesting backup for the officers involved in the pursuit. Off. Rodriguez continued to drive towards his destination as he heard officers calling out all the various streets that the subject was turning onto. At one point, he was headed south on East 4th Street when he saw the subject and the pursuing officers coming north on 4th Street.

Off. Rodriguez placed his vehicle in the intersection of East 4th Avenue and 25th Street. The subject avoided him by pulling into a Mobil gas station on that corner (Scene 1). The subject made some turns in the gas station to avoid officers and pulled back onto the street to continue traveling north on East 4th Avenue. Off. Rodriguez drove north on East 5th Avenue to parallel the subject's route. When he reached East 32nd Street the subject crossed in front of him as the subject turned east onto 32nd. At this point, he took up the pursuit eastbound with the other officers. Off. Rodriguez was now the first car behind the Honda with Lieutenant Antonio Luis behind him. The Honda lead them through many turns. Lt. Luis took over the responsibility for calling out their path because one of the other officers made a directional mistake during one of his transmissions.

Towards the end of the pursuit, they ended up northbound on East 7th Avenue where the Honda made a right turn onto East 25th Street. After making the turn, the subject hit the median and continued eastbound. There were units coming westbound in the eastbound lanes. The subject drove up onto the median. Off. Rodriguez stopped his vehicle and started to get out of the car. The subject backed up and struck the front of Off. Rodriguez's vehicle with the rear of his vehicle. The subject drove forward though a number of police officers who were out of their car and were in his way. Off. Rodriguez heard several shots but could not see who fired nor does he know why they fired. Everyone got back into their cars and continued the pursuit. Off. Rodriguez saw the Honda crash at a Metrorail support pillar and saw numerous officers stop their cars in the area of the collision. (Scene 3) As he got out of his car, he heard many shots fired but could not see who was firing. He did not discharge his weapon because he had a bad angle and he did not know why they were firing, so he stayed behind his car until the shooting stopped.

When officers responding to the shooting arrived, the officers were separated into groups of shooting and non-shooting officers. When Off. Rodriguez informed officers that his car had been struck by the Honda, he was told to return to the area where that had occurred. He followed instructions and roped off the scene (Scene 2) when he arrived. He also located the casings from the shooting at that location and made sure they were preserved.

During the sworn video reenactment at Scene 2, Off. Rodriguez directed the investigators to place the different vehicles in the positions he recalled being in. The vehicle being used for the deceased's Honda was placed on the grass median opposite Hialeah hospital. According to Off. Rodriguez, the vehicle was completely on the grass facing northeast near one of the concrete Metrorail supports. As

Off. Rodriguez got out of his vehicle, the Honda backed up and struck the front of his police vehicle with the rear of the Honda. It happened so quickly, that Off. Rodriguez did not have a chance to issue any verbal commands to the driver of the Honda. The Honda then accelerated away towards the east. Off. Rodriguez was able to see the lights of additional police vehicles facing westbound in the eastbound lanes of 25th Street. He was unable to determine the identities of the officers, but he did see that some of them were in the street approaching his location. At least one of those officers was in the street in the direction in which the Honda was heading. As the vehicle passed the other officers, Off. Rodriguez heard several gunshots but he was not able to determine who did the shooting. Off. Rodriguez got back into his vehicle and pursued the Honda behind several other vehicles.

OFF. JAMES BURKE – Officer James Burke is a patrol officer with the Hialeah Police Department. On the date of the incident, he was a trainee being trained by Off. Lorenzo Rodriguez. He gave a voluntary sworn statement to investigators on the date of the incident, October 1, 2017, and did a sworn video re-enactment at Scene 2 on October 5, 2017.

Officer Burke testified in his sworn statement that he was on routine patrol with his supervising officer, Lorenzo Rodriguez. He was the passenger in their patrol vehicle. He heard the radio transmissions about an attempt to stop a vehicle. During the transmissions about the stop he heard that the vehicle had tried to ram a police car. He was aware that there were several vehicles involved in the attempt to stop the car. Officer Rodriguez decided that he would try to cut off the car by establishing a perimeter. This required them to leave their sector and go to the sector where the police pursuit was taking place. They first became involved at a Mobil gas station on the corner of East 4th Avenue and 25th Street (Scene 1). The car being chased went around them and continued on. Off. Rodriguez got into a position directly behind the Honda and took up the pursuit with the other police vehicles behind them. Their route led them to northbound 7th Avenue where the Honda made a right turn to go eastbound on 25th Street. After the turn, Off. Burke saw a police vehicle heading towards them, putting the subject vehicle in between them (Scene 2).

For a short period of time, the Honda was stopped with their vehicle a few feet behind him. During that period of time, Off. Burke was able to observe one person in the Honda who appeared to be a slightly heavy set Hispanic male. Offs. Burke and Rodriguez started to get out of their vehicle when the driver put his car in reverse and rammed their vehicle. Off. Burke ran south to the sidewalk while Off. Rodriguez got back in their patrol car because the Honda started forward and was leaving the scene. As the Honda left the scene he almost hit a police officer. At that time, Off. Burke heard shots fired. Off. Burke does not know who fired the shots, but he believes the officer fired because the Honda almost hit two police officers. Off. Burke did not see any weapons in the possession of the driver of the Honda driver. Off. Burke got back into his patrol car and they drove eastbound after the subject until they got to the location where the Honda crashed (Scene 3). As soon as Off. Burke got out of his patrol car, he heard officers shooting at the driver of the Honda. He could not see if the driver had a weapon because the deployed airbag blocked his view. He testified that he did not pay attention to which officers fired because he was trying to find cover behind a pillar. Officers from the Miami-Dade Police Department arrived on the scene and instructed Off. Burke to return to the scene of first shooting (Scene 2). He did as he was told and waited at that location until investigators arrived.

The video reenactment took place on 25th Street at the approximate location where the first shots were fired. During the video reenactment, vehicles were placed in approximately the same positions they were in at Scene 2 and Off. Burke testified under oath to the events he witnessed on the night of the shooting, directing investigators to move the vehicles as he deemed appropriate. Off. Burke stated that when he and Off. Rodriguez stopped their vehicle in the left lane of eastbound East 25th Street, they started to exit their vehicle. As they did so, the Honda backed up and the rear of the Honda struck the front of their police vehicle. Off. Burke, who was standing next to his open passenger door, was struck by his car door because of the rearward movement of the police vehicle caused by the Honda's impact. Off. Burke, then ran south from his vehicle to the sidewalk. He drew his service weapon and aimed it at the Honda. The Honda drove eastbound, going around a police vehicle that was stopped facing westbound in the eastbound lanes. Off. Burke saw other officers in the area where the Honda was headed, but he could only identify Off. Benitez who was on the sidewalk east of him. It appeared to Off. Burke that the Honda was headed towards some of the officers who were east of him.

As the Honda fled, Off. Burke heard approximately four (4) shots and saw glass flying from the Honda. Off. Burke could not identify the officer who fired the shots. Several police vehicles gave chase to the Honda. Offs. Burke and Rodriguez got back in their patrol car and followed eastbound. Off. Burke heard, but did not see, the shooting that took place at Scene 3.

OFFICER JOSE PICO – Officer Jose Pico is a one-year patrol officer with the Hialeah Police Department. He gave a recorded sworn statement to investigators on October 1, 2017 and did a sworn video reenactment at Scene 2 on October 5, 2017.

In his initial sworn statement, Officer Pico testified that he heard Off. Teannie Hernandez call for backup for a traffic stop at East 8th Avenue approaching 25th Street. Off. Pico was coming southbound when he saw Off. Hernandez going northbound following a white Honda which sped away as he arrived. He saw the Honda make a left onto westbound 25th Street. Off. Pico tried to parallel the Honda in an effort to head it off while other vehicles continued the pursuit. During this period of time, he heard an officer report that the offender had tried to ram him. Off. Pico could not recount all the streets he went on nor all the turns that were reported to be made by the Honda during the pursuit. However, at one time he was able to get alongside the vehicle. He tried to pull ahead to cut him off, but the subject made a sudden turn and got away. Before the subject turned, Off. Pico saw that he was hiding his face with something. At one point, while Off. Pico was behind several other cars, he saw that other officers had blocked the Honda on Eastbound 25th Street. He saw officers getting out of their cars, when the subject backed up and smashed into one of the cars and started to flee. The subject almost hit Officers Maria Benitez and Jose Abel when Off. Pico heard shots being fired. He did not see who fired their weapon. Off. Pico and other officers took off in pursuit of the Honda until it crashed into a pillar supporting Metrorail (Scene 3). When Off. Pico arrived at the scene of the crash he heard gunshots. He took cover because he did not know if it was the subject or officers firing their weapons. Off. Pico cannot say which officers fired. He heard a cease fire command. When he approached the Honda he saw the driver was laying across the car with the upper part of his body behind the passenger seat.

During the video re-enactment at Scene 2, Officer Pico stated he was on routine patrol when he received a radio call about a traffic violator that was not stopping for other patrol units. Officer Pico was assigned to assist the other officers. During the pursuit, there were about six (6) patrol vehicles

involved. When Off. Pico arrived at eastbound E. 25th Street he stopped behind the patrol vehicle of Offs. Rodriguez and Burke (although he did not recall their identities at the time of his initial statement). Off. Pico got out of his vehicle and stood behind the open driver's door. As he did so, he saw the Honda back up and strike the Hialeah patrol vehicle stopped in front of him. The Honda then accelerated forward towards other Hialeah patrol vehicles that were east of him. Off. Pico saw other police officers in the area where the Honda was headed, but he was unable to state who they were. As the Honda drove towards the officers, Off. Pico heard gunshots but was unable to determine who fired. Officer Pico took cover behind his car door. The Honda accelerated eastbound away from the scene.

LIEUTENANT ANTONIO LUIS -- Lieutenant Antonio Luis is a lieutenant in the patrol division of the Hialeah Police Department. Lt. Luis, as shift commander, was monitoring the radio in his area of supervision when he heard the radio calls about the attempt to stop a vehicle for a traffic violation. Included in the information was the attempt to ram one of the officers. Lt. Luis heard one of the sergeants call off the pursuit. Lt. Luis then asked for confirmation of the attempt to ram. Off. Teannie Hernandez confirmed that the offender had attempted to ram her vehicle. Lt. Luis countermanded the sergeant's decision to call off the pursuit and advised his officers to continue. He drove towards the immediate area of the pursuit while listening to the route of the pursuit as it was transmitted on the radio. Lt. Luis noted that there were a couple of occasions when the direction of the pursuit was called off incorrectly when there was a change in direction. Therefore, when he was close enough to follow the subject, at East 8th Avenue and 30th street, he took over calling out the route of travel to the exclusion of all other officers. He was cut off by traffic at East 25th Street and 8th Avenue so he had another officer call off the route because he lost sight of the vehicle. When Lt. Luis got to East 7th and 25th Street, he saw smoke and heard someone call out, "Shots fired". He saw the Honda starting to flee the area and he was able to get directly behind it as other officers, who were out of their vehicles, got back into their cars. At approximately 9th Avenue on eastbound 25th Street, the driver began to slow down. Lt. Luis thought the driver was going to make a U-turn when he suddenly slammed into Lt. Luis's front left corner with his right rear corner. As the two cars continued eastbound, the driver made repeated attempts to strike the lieutenant's vehicle, some were successful and others were not.

When the two vehicles reached 37th Avenue, the Honda was in the right lane and the lieutenant was in the left lane. At 37th Avenue, it appeared to Lt. Luis that the driver was going to make a left turn to go north and during the maneuver the front of Lt. Luis's car struck the left rear of the Honda. The Honda went out of control, hitting the Metrorail pillar while Lt. Luis's car continued eastbound past the intersection before he could stop. As Lt. Luis got out of his car, he heard gunshots. He called for a cease fire because he felt that he was in a crossfire. Lt. Luis could not identify which officers were firing their weapons because all the car headlights and emergency lights blinded him.

SHOOTING OFFICERS: It was later determined that six (6) officers discharged their firearm during the course of these events. Officer Abel discharged his firearm at Scene 2. Officers Elia, Garcia, Gato, Holland and Vidal discharged their firearms at Scene 3. None of the Shooting officers gave statements or a proffer.

AUTOPSY

Lester Machado was autopsied by Dr. Benjamin Mathis, Associate Medical Examiner, who determined that death was caused by multiple gunshot wounds. Dr. Mathis found evidence of eleven (11) gunshot wounds to the body of Mr. Machado along with multiple superficial gunshot wounds. Those wounds were as follows:

Gunshot Wound "A" was to the left side of the head. The path of the projectile was from left to right passing through both lobes of the brain. A projectile was recovered from the right side of the skull.

Gunshot Wound "B" was a grazing wound to the top of the head. The path of the wound was left to right and front to back.

Gunshot Wound "C" was a grazing wound to the posterior aspect of the upper neck. The path of the wound was left to right.

Gunshot Wound "D" entered and exited the right side of the chest. The path was right to left and slightly downward.

Gunshot Wound "E" was to the lateral aspect of the left side of the chest. The projectile passed through the left lung, the spleen, and the stomach. The projectile was recovered in the stomach. The path was left to right and slightly downward.

Gunshot Wound "F" entered the left buttock and exited through the lower back. The path was from left to right and upward.

Gunshot Wound "G" entered the lower right side of the back and went through the pelvic region. A projectile was recovered from the pelvic area. The path was from right to left, downward and back to front.

Gunshot Wound "H" was to the posterior aspect of the right shoulder. A projectile was recovered from the shoulder joint. The path was from right to left and back to front.

Gunshot wound "I" was to the medial aspect of the right arm. A projectile was recovered from the right arm. The path was left to right, front to back and downward.

Gunshot Wound "J" was to the ventral aspect of the right forearm. The path of the projectile could not be determined because of the extent of the injuries to this area.

Gunshot Wound "K" is two overlapping entry wounds to the right knee. Both projectiles followed the same path and were recovered by the right femur. The path of both projectiles was right to left, front to back, and upward.

Superficial Gunshot Wounds – Superficial gunshot wounds were located on the left shoulder, left flank, lower right back, left ear lobe, left scapular region, anterior aspect of the right arm (multiple), dorsal aspect of left forearm and dorsum of the left hand (multiple).

Dr. Mathis also documented numerous abrasions that were categorized as blunt force injuries. Those were located on the forehead, right cheek, bridge of the nose, upper lip, upper left-central region of the back, right scapular region (multiple), right upper side of the back, central back, left flank, lower right side of the back, anterior aspect of the right shoulder, radial aspect of the right wrist, proximal and radial aspect of the left forearm, dorsal aspect of the left forearm, and dorsal aspect of the left wrist. Dr. Mathis informed me that these injuries likely occurred during the collision and are not evidence of any mistreatment by police officers.

A total of seven (7) projectiles were removed from the body of Lester Machado.

The white Honda came to rest with the right rear tire on the median dividing eastbound and westbound N.W 79th Street at 37th Avenue. The car was facing west northwest. The rear of the vehicle had massive impact damage. The right rear tire was perpendicular to the road surface, taking the car out of operation. The windows on the driver's side and the rear windshield were blown out. The driver's airbag and the side airbags were deployed. There were glass particles and blood in the car. There were over eighty (80) apparent bullet holes on the driver's side of the car and through the airbags. Additional bullet holes were on the passenger side, but the metal was extruded outwards indicating that they were exit holes. Twenty-eight (28) projectile or projectile fragments were recovered from the inside of the vehicle. These items were not submitted to the Miami-Dade Police Department for comparison.

There are police transmission tapes and several video tapes from businesses along the route of the police chase and the scene of the shooting. The transmissions take place over several minutes.

DISPATCH TAPES

The police transmissions start with Off. Teannie Hernandez making inquiry about a white Honda at approximately 3:47 A.M. She had the dispatcher run the license tag. After an apparent attempt to stop the Honda she radioed that the car was not stopping and she asked for backup. During the transmission, her siren can be heard in the background. Another officer advised that the Honda had tried to ram him. At that point, a sergeant called off the pursuit. (The Hialeah Police Department has a chase policy that prohibits pursuits for traffic offenses that could be dangerous.) Lieutenant Antonio Luis got on the radio and confirmed that the offender had tried to ram a police vehicle. When he confirmed that a ramming was attempted, Lt. Luis allowed the pursuit to proceed. The officers involved in the pursuit began to call out the direction of travel taken by the Honda as Lester Machado tried to evade them. The route called out was:

East on 24th Street towards 6th Avenue
North on 7th Avenue towards 23rd Street
West on 22nd Street toward 6th Avenue
South on 6th Avenue towards 21st Street
West on 21st Street
North on 4th Avenue Approaching 25th Street. (The corner with the Mobil gas station referred to above and below.)
North on 4th Avenue
East on 30th Street

- South on 8th towards 26th Street
- East on 26th Street
- South on 8th Street
- West on 25th Street
- South on 9th Avenue from 25th Street
- West on 24th Street
- North on 8th Avenue
- West on 23rd Street
- North on 7th Avenue

During the next transmission, one can hear shots being fired and an officer reporting, "Shots fired!" A BOLO is issued to the County to alert them that the Honda is headed in their direction. At approximately 3:55 A.M. units are advised that there is a crash. It is reported that shots are fired again and then someone ordered a "cease fire" because they were in a cross fire.

VIDEO TAPES

The first video tape comes from the Mobil gas station located at East 4th Avenue and 25th Street. (Scene 1) There are multiple video views provided, but only one of them shows a significant portion of the activity involving the Honda and the police vehicles. The camera is focused on the corner of the property bounded by East 4th Avenue and 25th Street, with East 4th Street across the top of the screen and 25th Street on the right side of the screen. There is two entrance/exits to the property. One leads to East 4th Avenue and the other to 25th Street. A police vehicle can be seen coming from 4th Avenue entering the exit on 25th Street in an apparent attempt to block the exit. A white Honda can be seen coming from the bottom of the screen towards the other exit while a police vehicle driven by Officer Esteban Holland comes from 4th Avenue in an attempt to block that exit. The police car is a fraction late because the Honda slips past the front of the police car, and continues north on 4th Avenue. The police car rocks side to side as the Honda passes (Which would correspond to Off. Holland's report of being "rammed" by the Honda).

Although I would not characterize the contact as a ramming, there are black stripes on the side of the Honda that are consistent with a sideswiping of the police vehicle. Off. Holland's vehicle comes to a stop blocking the exit. (It should be noted that no statement was taken from Off. Holland concerning this portion of the incident because he is one of the shooting officers who declined to make a statement. Lead Detective Carlos Garcia also advised me that Off. Holland is one of the officers who reported on the radio an additional attempted ramming during the pursuit.) A third police vehicle is following the white car, but it is unable to proceed onto East 4th Avenue because Off. Holland's vehicle blocks that police vehicle from proceeding.

The second video tape comes from a business on the corner of East 4th Avenue and 32nd Street. The camera is focused on a parking lot with the intersection in the background. The traffic light is red for traffic on East 4th Avenue. The White Honda comes from the right side of the screen toward the red traffic light where another vehicle has been stopped for some time. The white Honda runs the red light moments before the light turns green with six police vehicles in pursuit. The Honda is traveling at a high rate of speed and appears to go into oncoming traffic while completing the right turn onto East 32nd Street.

The third video is a hand-held cell phone video taken by a civilian standing on east 25th Street at the corner of 10th Avenue. The video takes place over several minutes. In the beginning of the video, police cars can be seen travelling at high speed with their emergency lights and sirens activated. They travel in both directions on 25th Street and some turn off of 10th Avenue. At one point the cell phone is pointed east, as that is the direction towards which most of the police vehicles are traveling. After several seconds four gunshots can be heard coming from the area where the police are gathered several blocks away. Shortly thereafter, a white vehicle speeds westbound with several police vehicles in pursuit. All the vehicles speed off into the distance westbound. Additional police vehicles follow the same path as time goes by.

The fourth video comes from a business on E. 25th Street on the 800 block. It is very grainy, but shows a parking lot in the foreground with several people around a car stopped in the right eastbound lane. Several police cars come into the picture. All the police cars have their emergency lights activated. Two of the police cars are traveling westbound in the eastbound left lane. The others are traveling west bound in the westbound lanes. The police cars appear to stop about a block away and several seconds later the men in the foreground scatter and appear to be looking for cover. After that, a white car speeds past the camera going eastbound in the left eastbound lane. The car is pursued by police cars, some are late comers who drive over the grass median to go from westbound to eastbound. A total of twelve (12) police cars head eastbound, some of them in the westbound lanes.

The fifth video is from a church located directly across the street from the area where the Honda crashed against the Metrorail pillar (Scene 3). In the video, the Honda can be seen coming from the right side of the screen trailed by several police cars with emergency lights activated. The glare of headlights prevents the viewer from seeing the reason why, but the Honda skids out of control and the right rear of the car hits the support pillar for Metrorail. One of the patrol cars continues past the collision for a short distance (Lt. Luis). The other police vehicles stop. Distance and the glare of lights prevents the viewer from seeing individual officers when they get out of their vehicles. The first indication of weapons being fired is when there is a puff of smoke indicating a projectile impact with the church upon which the camera is mounted; this occurs two (2) seconds after the collision. Six (6) seconds after the collision the Honda can be seen trying to move forward. It gets a very short distance. Nineteen (19) seconds after the first puff of smoke there is a second puff of smoke indicating a second projectile impact with the church. Approximately eleven (11) seconds after the last puff of smoke, the rear passenger-side door of the Honda opens. The driver can be seen trying to exit that door, but he does not get completely out of the car before he stops moving.

PHYSICAL EVIDENCE

Four fired casings were found in the street on East 25th Street near 7th Avenue (Scene 2). There were apparent fresh tire marks on the curb of the median. The vehicle assigned to Off. Lorenzo Rodriguez had apparent damage to the front end, including a collapsed push bar and cracked front bumper.

The Scene of the shooting at N.W. 79th Street and 37th Avenue (Scene 3) is extremely complex. The attached crime scene report by Crime Scene Technicians La Nyene Miranda and Jesus Padron contains all the details. Hereafter is a summary of that scene:

There were several marked Hialeah police cars facing eastbound on N.W. 79th Street. Surrounding those police cars were approximately one hundred (100) fired casings. Of particular note, were thirty-seven (37) casings found inside Hialeah Police unit 1382, assigned to Officer Felix Elias. There were approximately twenty-one projectile holes in the front windshield of the vehicle. Although the crime scene report labels these as "outside" holes, the complete absence of projectiles or projectile holes within the vehicle, and the number of casings found within the car, leads to the inescapable conclusion that the shots were fired from the inside to the outside.

Crime Scene technicians documented the equipment carried by Officers Abel, Elias, Garcia, Gato, Holland, and Vidal. The pistol magazines referred to can hold up to seventeen (17) cartridges.

Off. Abel had one 9MM Glock firearm and three (3) spare magazine holders. The firearm had one cartridge in the chamber and thirteen (13) cartridges in the magazine. All three spare magazines were in the holders and all the magazines had seventeen cartridges. (Consistent with firing 4 shots).

Off. Elias had one 9MM Glock firearm and two (2) spare magazine holders. The firearm had one cartridge in the chamber and six (6) cartridges in the magazine. Both spare magazine holders were empty. (Consistent with firing 45 shots).

Off. Garcia had one 9MM Glock firearm with two (2) spare magazine holders. The firearm had one cartridge in the chamber and three (3) cartridges in the magazine. Both spare magazines were in the holders and each had seventeen cartridges. (Consistent with firing 14 shots).

Off. Gato had one 9MM Glock firearm with two (2) magazine holders. The firearm had one cartridge in the chamber and seventeen (17) cartridges in the magazine. There were two spare magazines in the holders; one had seventeen (17) cartridges and one contained four (4) cartridges. (Consistent with firing 14 shots).

Off Holland had one 9MM Glock firearm with two (2) spare magazine holders. The firearm had one cartridge in the chamber and two (2) cartridges in the magazine. Both spare magazine holders were empty. (Consistent with firing 49 shots).

Off. Vidal had one 9MM Glock firearm with two (2) spare magazine holders. The firearm had one cartridge in the chamber and fifteen (15) cartridges in the magazine. Both spare magazines were in the holders and each had seventeen cartridges. (Consistent with firing 2 shots).

Four (4) empty magazines were located at Scene 3. Two were inside of unit 1802, assigned to Felix Elias. Two (2) empty 9MM magazines were found north of Hialeah Police vehicle 2801, assigned to Officer Esteban Holland. The references above to the number of shots fired by each officer assumes that each officer's weapon was loaded with a full magazine and one round in the chamber at the time the shooting started.

FIREARMS ANALYSIS

The projectiles recovered from the victim's body and the scene described below could not be identified to a specific weapon but could have been fired in any of the six officers' weapons submitted.

I spoke to MDPD Criminalist Megan Roberts who explained to me that the Glock used by the officers did not have the "Miami" barrel that leaves distinguishing marks on projectiles expelled by the weapon. I, therefore, deemed it a useless act to request submission of additional projectiles from the Honda and the surrounding area, because Ms. Roberts told me that the results would be the same.

The four casings from E. 25th Street and 7th Avenue (Scene 2) were submitted for examination in order to determine which officer fired at that location. The examination by Criminalist Roberts revealed that officer Jose Abel's weapon fired all four casings. It is apparent from the condition of his weapon and spare magazines, that these are the only four shots he fired and that he did not fire his weapon at N.W. 79th Street and 37th Avenue.

The remaining 100+ casings were not submitted for identification. I decided that I would not request their submission because the condition of the weapons taken from Officers Elias, Garcia, Gato, Holland, and Vidal made it abundantly clear that they all fired multiple times. Specifically identifying any casing to an individual officer would not add nor detract from the overall analysis of this incident.

CONCLUSION

The role of the State Attorney in this investigation and in conducting this review is limited to determining whether a criminal violation of Florida law has occurred, whether any person may be held criminally responsible, and whether such criminal responsibility can be proven beyond a reasonable doubt in a court of law. The State Attorney does not establish agency policy, procedures, and training requirements. Nor does the State Attorney have any responsibility for determining disciplinary action or pursuing civil litigation in these matters. In other words, given the applicable law, the State Attorney's role is to determine whether the actions of Officers Jose Abel (04-1868), Felix Elias (04-2007), Daniel Garcia (04-2080), Daniel Gato (04-1860), Esteban Holland (04-1930) and Adrian Vida (04-2042), constitute a criminal act that can be proven beyond and to the exclusion of every reasonable doubt.

It is my opinion that there are no charges that can be proven beyond a reasonable doubt against any of the officers involved in this incident and that the shooting of Lester Machado was justified. It is clear from the evidence that Lester Machado committed several felonies during the events described above. Those offenses included Fleeing a Police Officer at High Speed [F.S. 316.1935(3)(A)] and several Aggravated Assaults on a Law Enforcement Officer (F.S. 784.021, 784.07). He also committed the misdemeanor of Reckless Driving Causing Damage to Property [F.S. 316.192(3)(C)1]. All the offenses included conduct that put the lives of citizens and police officers in danger of serious injury or death.

The officers had a lawful right to try to stop Lester Machado for his traffic offense and arrest him when he willfully fled and escalated his conduct to that which endangered the lives of the officers and citizens on the road. Pursuant to F.S. 776.05:

A law enforcement officer, . . . need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. The Officer is justified in the use of any force:

(1) Which he or she reasonably believes to be necessary to defend himself or herself or another from bodily harm while making the arrest;

. . . or

(3) When necessarily committed in arresting felons fleeing from justice.

When Officer Jose Abel fired his weapon at Lester Machado at Scene 2, Mr. Machado was in the process of driving his vehicle towards two police officers who had to jump out of the way to avoid serious injury or death. It is reasonable to assume that at the time he fired, Officer Abel was in fear that imminent death or great bodily harm would be inflicted on his fellow officers. For these reasons, I conclude that no charges are warranted against Officer Abel and the discharge of his firearm was legally justified.

After Officer Abel fired his weapon Mr. Machado continued to flee from marked police units who were using lights and sirens to try to stop him. The officers at scene 3 were aware of the radio broadcast advising that Mr. Machado tried to ram a police vehicle with his car prior to the shooting at Scene 2. Those actions alone would raise a reasonable belief that he posed a threat of death or great bodily harm to the officers and citizenry at large and that he had committed an offense that threatened infliction of serious physical harm. The video clearly shows that after crashing into the Metrorail support pillar Mr. Machado tried to drive away from that scene too. Six (6) seconds after the collision the Honda can be seen trying to move forward. If he had been successful in doing so, Mr. Machado would have continued to be a potential threat to officers and civilians in the area. It is reasonable to conclude that Mr. Machado's attempt to move the vehicle forward was accompanied by the sound of the racing car engine. When the officers started firing, they were looking at the driver's side of Mr. Machado's car. He was a fleeing felon who was attempting to flee again. They would not have been able to see the folded right rear tire that prevented Mr. Machado from leaving the scene of the collision with the Metrorail pillar. The number of shots fired does not change the analysis of the legality of the onset of the officers firing their weapons. (The number of shots fired does not affect this because it would be impossible to determine whether the bullets that killed Mr. Machado came from Officer Abel's weapon at Scene 2 or one of the other officers at Scene 3. Nor is it possible to determine if the bullets that killed Mr. Machado came at the beginning or the end of the fusillade.) The officers at Scene 3 (Officers Elia, Garcia, Gato, Holland and Vidal) would have been legally justified in using force to arrest Mr. Machado, a fleeing felon.

For these reasons, I conclude that no charges are warranted against Officer Jose Abel (04-1868), Officer Felix Elias (4-2007), Officer Daniel Garcia (04-2080), Officer Daniel Gato (04-1860), Officer Esteban Holland (04-1930) or Officer Adrian Vidal (04-2042); and that the shooting of Lester Machado was justified.

Prepared by:



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