

OFFICE OF THE STATE ATTORNEY
ELEVENTH JUDICIAL CIRCUIT

KATHERINE FERNANDEZ RUNDLE
STATE ATTORNEY



INTEROFFICE MEMORANDUM

To: Katherine Fernandez Rundle
State Attorney

Date: May 11, 2021

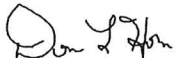
From: Staffing/Review Team


Re: Police Shooting SAO # 62/20/01/11/005
Deceased: Ryan O'Neil Simms


Based on the information obtained and reviewed during the course of the investigation, the conclusion of the staffing/review team is as follows: The use of deadly force on January 11, 2020 by Miami Beach Police Department Officers Kevin Perez (Perez) and Yamil Acevedo against Ryan O'Neil Simms was legally justified. The officers responded to a request for assistance involving an altercation between Simms and employees of the Mango's Tropical Restaurant in which Simms publicly displayed a meat cleaver. Officers Perez and Acevedo located Simms sitting on a wall in front of the Miami Beach Information Center. In response to commands to put his hands up, Simms instead raised his right arm to display the meat cleaver. Officers ordered Simms to put the knife down, but he refused. Officer Timiraos came up from behind Simms and discharged his taser at Simms which caused Simms to fall to the ground. Officer Castillo then ran up to Simms to handcuff him, but Simms resisted. Clutching the meat cleaver with his right hand, Simms slashed Officer Castillo's arm with enough force to cut an artery and a nerve. Officers Acevedo and Perez then fired their weapons at Simms.

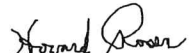
The officers also accidentally shot Officer Castillo in the knee causing him to fall to the ground. As a result, Officer Castillo's lower half of his body was in close proximity to Simms. As Officer Castillo is attempting to crawl away, and Officer Acevedo is attempting to drag him back, Simms begins to move his legs in what appears to be an effort to get up. Officer Castillo in a sworn statement stated it appeared as if Simms was attempting to collect himself and was moving his right arm with the meat cleaver in what he feared was another possible attack. In addition, body cam video shows Simms raising his right arm with what appears to be the meat cleaver in his right hand. Officer Acevedo and Officer Perez fired additional shots at Simms. Simms died as a result of gunshot wounds sustained during this use of deadly force. There is evidence sufficient to conclude that Officers Acevedo and Perez reasonably used deadly force to protect Officer Castillo from further great bodily harm.

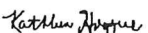
The members of the staffing/review team for this case are:



Don L. Horn


Deisy Hernandez


Stephen K. Talpins


Howard R. Rosen


Kathleen Hoague


J. Scott Dunn


Christine Zahralban

Approved by State Attorney on this 11 day of May, 2021.


KATHERINE FERNANDEZ RUNDLE
State Attorney



INTEROFFICE MEMORANDUM

TO: STAFFING/REVIEW TEAM

DATE: May 11, 2021

FROM: Brenda Mezick
Josh Weintraub
Assistant State Attorneys

RE: POLICE SHOOTING CLOSEOUT MEMO
Case # 62/20/01/11/005

OFFICERS INVOLVED:	KEVIN PEREZ, MBPD # 002-01161 YAMIL ACEVEDO, MBPD # 002-01156
DECEASED:	RYAN O'NEIL SIMMS
INJURIES:	RYAN SIMMS: MULTIPLE GUNSHOT WOUNDS OFFICER RICARDO CASTILLO: STAB WOUND TO LEFT FOREARM, GUNSHOT WOUND TO LEFT ELBOW, GUNSHOT WOUND TO KNEECAP
DATE & TIME:	JANUARY 11, 2020 AT APPROX. 9:33 P.M.
LOCATION:	1001 OCEAN DRIVE, MIAMI BEACH, FL 33139
WEAPON:	SMITH & WESSON M & P 40, SER. # HKT8899 (PEREZ) SMITH & WESSON M & P 40, SER. # HKT8897 (ACEVEDO) CLEAVER KNIFE (RYAN SIMMS)
LEAD:	FDLE AGENT PAUL GARCIA
CASE #:	MI-27-0124
SAO CASE #:	62/20/01/11/005

SUMMARY

On January 11, 2020, at approximately 9:00 pm, Javier Padron (Padron), a security officer assigned to watch the front door of Mango's Tropical Café (Mango's) located at 900 Ocean Drive, Miami Beach, observed a heavy-set black male, later identified as Ryan O'Neil Simms (Simms), standing on the sidewalk in front of Mango's with a large suitcase. Padron in a sworn statement said that Simms appeared to be homeless and was interfering with pedestrian traffic by blocking the sidewalk. Padron told Simms repeatedly to move. Padron stated that Simms replied, "Do you know who I am." Padron stated that Simms looked at him in an aggressive manner and stated, "Who is going to make me move?" Padron stated that he notified his supervisor, Richard Webb (Webb), by radio of the situation. Padron stated that Simms then pulled out a knife from a black holster around Simms' waist. Padron stated that the knife was about 12 inches long and looked like a machete. Padron stated that Simms waved the knife in the air and began to approach him. Padron stated that Webb stepped in front of him and attempted to calm Simms down. Padron stated that Simms left walking north on Ocean Drive and with the knife openly displayed in his hand. Padron stated that Webb called 911 and that he (Padron) followed Simms from a distance. Padron stated he located four Miami Beach Police Department (MBPD) officers and reported the incident. Richard Webb provided a sworn statement consistent with Padron. Webb stated that he is the Security Supervisor for Mango's and was called to an emergency at the front door where Security Officer Padron is stationed. Webb stated that he saw a man, later identified as Simms, standing at the front door holding a knife which he described as a 12-inch butcher knife. Webb stated that Simms was making gestures with the knife and kept twitching with the knife as if he was ready to use it. Webb stated that he held his hands up in front of Simms and asked Simms to calm down and take it easy. Webb stated that Simms kept repeating that he knew the owner and eventually walked away with the knife and suitcase. Webb stated that he called 911.¹ Webb stated that he made contact with officers on four wheelers and gave them Simms direction of travel. Mango's surveillance video is consistent with Padron and Webb's statements regarding Simms' conduct.

MBPD Officer Yamil Acevedo (Officer Acevedo) and Officer Keven Perez (Officer Perez) responded to the complaint. Officer Richard Castillo (Officer Castillo) per his statement sees Officers Acevedo and Perez and another male walking purposefully northbound towards 10th street. Officer Castillo stated that he exited his patrol car to assist. He stated that the man accompanying Officers Acevedo and Perez was a security officer who told him that they were following an individual armed with a knife. He stated that he observed Simms sitting on a ledge holding a meat cleaver. He stated that Simms was non-compliant with verbal commands given by Officers Acevedo and Perez to drop the knife. Officer Castillo stated that he requested additional units over police radio. He stated that Officer Timiraos arrived and that Officer Timiraos announced that he would deploy his Conducted Electrical Weapon (CEW). Officer Castillo stated that a few moments later Officer Timiraos discharged his CEW at Simms which resulted in Simms falling off the ledge to the ground. Officer Castillo stated that he ran up to Simms and attempted to secure him. Officer Castillo stated that Simms was attempting to push him away and struck him with the meat cleaver in the left arm which caused a severe laceration. Officer Castillo stated that he remembers being pulled away and hearing several gunshots. He stated that Simms "kind of gathered himself." Officer Castillo stated that Simms was moving his legs and "doing a hacking motion with the cleaver." Officer Castillo stated that he unholstered and pointed his firearm at Simms but did not fire. Officer Castillo stated that he felt Simms was going to get up or throw the meat cleaver

¹ No record of the 911 call was able to be located. The MBPD CAD did not reflect the 911 call.

at them. Officer Castillo stated that he heard several gunshots, after which he observed that Simms was no longer moving. Officer Castillo stated that he was bleeding profusely from his arm. Officer Castillo pulled out his tourniquet and handed it to Officer Acevedo who applied it to his left arm. Officer Castillo stated that he did not realize he had been shot in the leg. He stated that Officer Augustine Rodriguez applied a tourniquet to his left leg.

Officer Acevedo's body worn camera (BWC) records him at 2:07:15 being directed by a male in black clothing towards Simms who is sitting on a wall outside the Miami Beach Information Center located at 1001 Ocean Drive. Officer Perez' BWC at 2:07:40 records Officer Perez telling civilian bystanders to move away. Officer Perez withdraws his firearm and instructs Simms to put his hands up. At 2:07:49 Officer Acevedo's BWC records Officers Acevedo and Perez draw their firearms and point them towards Simms. Officer Castillo's BWC records him at 2:07:49 advising that he and Unit 1161 (Officer Perez) and Unit 1154 (Officer Acevedo) have a male at gunpoint at 10th Street and Ocean Drive. Officer Acevedo's BWC at 2:08:05 records Simms retrieving the meat cleaver from the left side of his jacket and waving it at the officers with his right hand. Officers Perez and Acevedo command Simms to put the knife down. Officer Perez' BWC records him at 2:08:05 ordering Simms to get on the ground. Simms does not comply with any of the officers' commands. Officer Castillo's BWC records Officer Castillo saying "hey they're getting a taser, low ready, low ready."

The body cam video of Officer Vincent Timiraos (Timiraos) records him at 2:08:40 in position behind a large clock/thermometer and approaching Simms from behind. At 2:08:46 Officer Timiraos aims his CEW and discharges it at Simms.² Simms falls off the wall and onto the adjacent walkway. Other officers approach Simms and Officer Castillo is heard screaming "put the knife down" and gunshots are fired. Officer Timiraos takes cover behind the wall. At 2:09:03 six more gunshots are fired.

Officer Castillo's BWC at 2:08:48 records Officer Castillo running towards Simms. At 2:08:53 Officer Castillo BWC records him standing over Simms. Officer Castillo attempts to handcuff Simms. A frantic "[p]ut the knife down" is heard. Simms, holding the knife in his right hand, slashes Officer Castillo with the knife. Shots are fired. Officer Castillo is crawling away from Simms. Officer Castillo's BWC at 2:09:00 records Officer Acevedo firing several shots in Simm's direction.

Officer Perez' BWC at 2:08:53 records Officer Castillo frantically yelling, "hey, put the knife down." Immediately after shots are fired, Officer Perez' BWC at 2:08:54 shows Castillo fall to the ground. Officer Perez is backing away. Officer Castillo is being dragged back. Officer Castillo crawls next to the ledge but his feet and those of Simms are still in close proximity. Simms can be seen moving his legs in a manner which could be construed as consistent with trying to get up. Simms begins to move his right arm with what appears to be the meat cleaver in his right hand. Officer Acevedo and Officer Perez' firearms enter the camera frame as gunshots are fired. Officer Perez' BWC at 2:09:01 records the sound of six more gunshots and Officer Perez performs a magazine exchange. Immediately after Castillo is yelling "help me up, help me up" and "put the tourniquet on."

² The CEW report showed that at 21:07:22 the CEW's trigger was deployed and a 5 second shock was administered. This CEW internal clock is inconsistent with the officer body cam video recordings by over a minute.

Officer Acevedo's BWC at 2:08:53 records Simms swing the meat cleaver at Officer Castillo and stab Officer Castillo in the left forearm. A commotion of Officer Castillo being dragged back and crawling away from Simms can be seen. Simms can be seen lifting his legs. Officer Castillo withdraws his weapon and points it at Simms but does not fire. Simms continues to lift his legs and moves his right arm. At 2:08:59 Officer Acevedo's BWC records six more gunshots being fired.

Officer Acevedo's BWC at 2:09:05 shows Officers Acevedo conducting a magazine exchange then applying a tourniquet to Officer Castillo's arm. Officer Castillo's arm is seen bleeding profusely. Officer Castillo is telling his fellow officers that his leg has been shot. Officer Perez' BWC at 2:09:26 records Officer Perez begin to approach Simms who was lying face down. Simms' body is slightly jerking. Officer Reynaldo Quintero (Officer Quintero) handcuffs Simms who appears to be breathing. Officer Quintero assesses Simms's injuries. Officer Kevin Lantigua's BWC records him at 2:10:38 approaching Simms and assessing Simms' injuries and attempting to provide medical aid to Simms. Officer Timiraos BWC shows that he moved from the wall to behind the clock. Seeing that an officer was injured, Officer Timiraos goes to his car to retrieve a first aid kit. He returns and applies a dressing to Officer Castillo's wounded arm.

Paramedic Lieutenant David Anderson (Lt. Anderson) stated that he was in charge of MBFD Rescue #11. Lt. Anderson stated that at the request of another rescue unit, he and his team responded to the scene. Lt. Anderson stated that he made contact on the scene with a patient (Simms) who had multiple gunshot wounds and attempted to speak to him. He stated that Simms audibly mumbled and then went unconscious. He stated that he and his crew placed Simms on a stretcher and put him into the fire rescue vehicle. Lt. Anderson stated that his crew performed CPR and other life-saving protocols. He stated that Simms never regained consciousness and that they transported Simms to Jackson Memorial Hospital, Ryder Trauma Center, where he was pronounced dead. Firefighter Ryan Escobar of MBFD Unit #11 stated that when he first arrived on the scene, he saw a blade handle on the walkway near the sidewalk.

Officer Castillo was transported to Jackson Memorial Hospital, Ryder Trauma Center, by MBFD Rescue #1. Officer Richard Castillo suffered a laceration to his left arm which severed an artery and a nerve. He suffered a shattered left kneecap as a result of a gunshot wound. Officer Castillo also sustained a gunshot wound to the rear of his left elbow from which a fragment was found.

An autopsy of Simms was performed by Associate Medical Examiner Dr. Kenneth Hutchins. Dr. Hutchins classified the cause of death as gunshot wounds. The autopsy findings documented the following:

1. One penetrating gunshot wound to the left chin.
2. One penetrating gunshot wound to the right chest.
3. One penetrating gunshot wound to the left chest.
4. One penetrating gunshot wound to the left abdomen.
5. One penetrating gunshot wound to the right shoulder.
6. Two penetrating gunshot wounds to the lower right abdomen.
7. One perforating gunshot wound to the lower right abdomen.

8. One graze wound to the abdomen.
9. One penetrating gunshot wound to the right forearm.
10. One penetrating gunshot wound to upper right arm.
11. Two perforating gunshot wounds to the left arm.
12. One perforating gunshot wound to the left wrist.
13. One perforating gunshot wound to the left arm.
14. One graze wound to the left arm.
15. Five penetrating gunshot wounds to the right thigh.
16. One perforating gunshot wound to the left thigh.
17. Seven perforating gunshot wounds to the right leg.
18. Two perforating gunshot wounds to the left thigh.
19. Five gunshot wounds to the left leg above the knee.

The toxicology results found that Simms tested positive for Cannabinoids, Tetrahydrocannabinol, 11-Hydroxy-Tetrahydrocannabinol and 9 Carboxy-Tetrahydrocannabinol. Per Dr. Hutchins the cannabinoid levels were low and consistent with the leafy material located in a tin can found amongst Mr. Simms belongings on the scene.

As part of the State Attorney's Office review, Dr. Hutchins was shown the BCW videos from Officers Acevedo, Perez, Castillo, and Timiraos. Dr. Hutchins opined that the gunshot wounds to Simms' right shoulder and abdomen mostly likely were sustained during the first interval of gunshots and the gunshot wounds to Simms' arms were mostly likely sustained during the second interval of gunshots.

The MDPD FSB firearms laboratory analysis findings were as follows. Eleven projectiles were recovered from the scene and eighteen projectiles were recovered during the autopsy and submitted for comparison. No casings recovered were ejected from the .40 caliber Smith & Wesson pistol, model M&P 40, serial number HKT8893, belonging to Officer Castillo. Fifteen recovered casings were ejected from the .40 caliber Smith & Wesson pistol, model M&P 40, serial number HKT8897, belonging to Officer Acevedo. Fourteen recovered casings were ejected from the .40 caliber Smith & Wesson pistol, model M&P 40, serial number HKT8899, belonging to Officer Perez. The fragment recovered from Officer Castillo's elbow was unable to be matched to a particular firearm.

The meat cleaver wielded by Simms and used to stab Officer Castillo was hit during the gunfire causing the blade and handle to separate. Both the blade and handle were recovered at the scene in damaged condition. The handle was submitted to the Miami-Dade Police Department Forensic Services Bureau (FSB) and swabbed for DNA. A mixture of DNA profiles was found consistent with two male contributors. The major male DNA profile was a match to the DNA oral standard taken from Officer Castillo.

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 Vincent Timiraos, Kevin Perez, and Yamil Acevedo constitute a criminal act that can be proven beyond and to the exclusion of every reasonable doubt.

We have reviewed the Florida Department of Law Enforcement Investigative Summary into the Police Use of Force in this incident. We have also reviewed the body camera footage, 911 calls, Computer Aided Dispatch (CAD) Reports, sworn statements, crime scene reports, autopsy report, lab reports, and other evidence compiled by FDLE under FDLE Case Number MI-27-0124. We find the summary to be complete, thorough and consistent with the witness statements we participated in on the day of the incident as well as consistent with our observations at the scene. We note scrivener's error in summary of Officer Perez BWC footage which refers to Officer Quintero as Officer Quintana. We adopt and attach that Investigative Summary hereto and offer our conclusion based on the results of our investigation and review.

Officers Kevin Perez, Yamil Acevedo, Vincent Timiraos, and Richard Castillo responded to complaints of a male person displaying a meat cleaver in an out-doors public restaurant area. Simms was subsequently located by officers sitting on a ledge in front of the Miami Beach Information Center with a meat cleaver. The officers repeatedly ordered Simms to put his hands up. Simms responded by raising the meat cleaver over his head. A tactical, life-saving attempt was made to subdue Simms without the use of deadly force. Officer Timiraos came up from behind Simms and discharged his CEW device at Simms causing Simms to fall to the ground. Officer Castillo ran up to Simms to handcuff him, but Simms resisted. With the meat cleaver in his right hand, Simms slashed Officer Castillo's arm with enough force to cut an artery and a nerve. Officer Acevedo and Officer Perez then fired their weapons at Simms. Simms was wounded. Officer Castillo was also wounded. Officer Castillo fell and was dragged and crawled backwards. Simms began to move his legs and thrash his right arm with what appears to be the meat cleaver in his right hand. Officer Castillo withdrew his firearm. Either or both Officer Perez and Officer Acevedo fired additional shots at Simms. Officer Castillo did not discharge a weapon. Officer Timiraos discharged his CEW at Simms but did not discharge his firearm.

Deadly force was used by Officer Perez and Officer Acevedo. Although there was an approximately six to seven second interval between the first interval of shots fired and the second interval of shots fired, it was a continuous event. The first use of deadly force came as Simms stabbed Officer Castillo in the arm. Simms is shot while in the act of committing great bodily harm to Officer Castillo. Officer Castillo was accidentally shot as Officers Perez and Acevedo attempted to protect him from Simms. During the intervening six to seven seconds, a profusely bleeding Officer Castillo is being dragged away from Simms. Officer Perez and Officer Acevedo are standing directly behind and to the side of Officer Castillo. Simms began to move his legs in a manner that can reasonably be construed as consistent with an intent to get up. Simms also began to move his right arm with what appears to be the meat cleaver still in his hand. Officer Castillo is on the ground with his legs and feet in close proximity to Simms. Officer Castillo crawled closer to the wall, but there was no cover between Officer Castillo and Simms.

Officer Castillo is a victim witness who provided a sworn statement. In his statement he stated that he was in fear that Simms would stab him again. This is consistent with the body cam video footage recording Castillo while on the ground withdrawing his firearm and pointing it at Simms. Even after the

second interval of shots fired, Officer Castillo is recorded yelling "help me up, help me up" which is again consistent with his statement that he was in fear of another attack by Simms. Officers Perez and Acevedo did not provide statements. Based on actual review of the body cam video footage recorded during the event, there is evidence sufficient to conclude that the officers standing directly behind and to the side of Officer Castillo would reasonably use force to protect Officer Castillo from further great bodily harm. This video footage is incorporated herein by reference: https://sa11-my.sharepoint.com/:p/g/personal/brendamezick_miamisao_com/EZIVCEFLPdCt49Z8lmgSNgBbS3m7I3NsWgL4DfrT2lPuA?e=biuHlb. Section 776.012, Florida Statutes, permits the use of deadly force when a person believes such force is necessary to prevent imminent death or great bodily harm to himself or another or to prevent the commission of a forcible felony. Further, Section 776.05, Florida Statutes, permits a law enforcement officer to use any force that he believes is necessary to defend himself or another from bodily harm while making an arrest. Based on these statutory provisions we find this use of deadly force by Officer Kevin Perez and Officer Yamil Acevedo to be legally justified.

Prepared by:

/s/ Brenda Mezick

Assistant State Attorney
Brenda Mezick

/s/ Joshua Weintraub

Assistant State Attorney
Joshua Weintraub