

Close-out Memorandum of the
Investigation Regarding
Gabriel Rodriguez
April 19, 2021



State Attorney's Office
Eleventh Judicial Circuit
Miami-Dade County

July 5, 2022



INTEROFFICE MEMORANDUM

TO: KATHERINE FERNANDEZ RUNDLE DATE: July 5, 2022
State Attorney

FROM: STAFFING/REVIEW TEAM RE: SAO/Case #: 62/21/04/17/003
Injured: Gabriel Rodriguez

Based on the information obtained and reviewed during the course of the investigation, the conclusion of the staffing/review team is the following:

On April 19, 2021, at 9:37 p.m., Hialeah Police officers were dispatched to a home regarding a fight, however, upon arrival they determined an Armed Robbery was in progress. A police pursuit was initiated with lights and sirens of a vehicle fleeing the scene. Gabriel Rodriguez was a back seat passenger in the fleeing car. Doral Officer Michael Acosta, Badge #421, who was on duty in an unmarked vehicle, became involved in the pursuit. When the chase entered Broward, Hialeah officers disengaged while Miami-Dade officers and the Doral officer continued chasing the fleeing felons. At the conclusion of the pursuit, police discovered Rodriguez had been shot in the ankle and neck. Rodriguez was treated and survived the injuries but refused to give a statement. The other two robbery suspects in the fleeing vehicle stated the shooting occurred in Miami Dade County while they were traveling on the 826 Expressway. Based on ballistic evidence, it was determined the shooting officer was Officer Acosta. Officer Acosta never radioed in that he discharged his firearm. In the fleeing vehicle, police located two separate firearms. Pursuant to F.S. 776.05 and 901.25, we find the actions of Officer Acosta are justified, and no criminal charges will be filed for the discharge.

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

Don L. Horn

Deisy Hernandez

Stephen K. Talpins

Christine Zahralban

Kathleen Hoague

J. Scott Dunn

Approved by State Attorney on this 5 day of July, 2022.

KATHERINE FERNANDEZ RUNDLE
State Attorney



INTEROFFICE MEMORANDUM

TO: STAFFING/REVIEW TEAM

DATE: June 28, 2022

FROM: Johnette Hardiman
Division Chief Assistant State Attorney

RE: POLICE SHOOTING CLOSEOUT MEMO
SAO Case # 62/21/04/17/003

Sandra Miller Batiste
Assistant State Attorney

OFFICER(S) INVOLVED:	Ofc. Michael Acosta, Doral PD 97-0421
INJURED:	Gabriel Rodriguez (gunshot wounds to the ankle and neck)
DATE & TIME:	April 19, 2021, approximately 10:00P.M.
LOCATION:	Palmetto Expressway in North Miami-Dade County
WEAPON:	Glock, model 26, serial number NZR634
LEAD/REPORTS:	Sgt. Jessica Alvarez, MDPD 30-4553
CASE #:	MDPD case number : PD210421125249 Hialeah case number : 2021011706
SAO CASE #:	62/21/04/17/003

SUMMARY OF FACTS

On Monday, April 19, 2021, at 9:37 p.m., Hialeah Police Department (HPD) officers were dispatched to 6650 W 20 Avenue, Hialeah, Florida, in reference to a fight. Upon HPD officers' arrival, it was determined that an Armed Robbery occurred and HPD officers initiated a police pursuit with activated lights and sirens of a 2016 Mercedes CLA250, which fled from the Robbery scene. There were three people in the Mercedes: Titilopemi Olusola (driver), Emmanuel Akinbehinje, and Gabriel Rodriguez. Rodriguez was a passenger in the back seat of the vehicle. The pursuit was announced via police radio and it was clearly stated that the pursuit was of fleeing felons.

Officer Michael Acosta, Badge #421, of the City of Doral Police Department became involved in the pursuit but did not announce his presence on the radio. Acosta was on-duty in an unmarked police car. He did not notify anyone that he was engaging in the pursuit. He did not make a radio transmission that was recorded or heard by any of the other officers involved in the pursuit. His vehicle was seen pulling up alongside the Mercedes while still in Miami-Dade County. Officers in the pursuit did not recognize the unmarked vehicle as being a police car. They were on the Palmetto Expressway (826) and thought it was just another motorist. Hialeah Officers disengaged from the pursuit. Miami-Dade Police Department officers as well as Acosta continued the pursuit into Broward County. No officers from any department recognized Acosta. No officer from any department saw or heard a shot or shots fired.

At the conclusion of the police pursuit, which ended in Broward County, the police learned that Rodriguez had been shot twice at some point during the pursuit. Gabriel Rodriguez was struck by two projectiles, once in the ankle and once in the neck as he sat in the back seat of the Mercedes. The other two robbery suspects gave statements to the police and stated that the shooting occurred in Miami Dade County while they were traveling on the 826 Expressway. Rodriguez was transported to Memorial Regional Hospital for treatment and did not give a statement.

None of the Hialeah officers, MDPD officers or the Broward County officers ever fired weapons. Upon reviewing the chase, Acosta's vehicle was identified. (Through a separate investigation it

was learned by HPD, that Acosta's unmarked vehicle is the only one like it in Miami-Dade County.) Additionally, a review of the body worn camera footage showed an officer in plain clothes with what appeared to be a Doral Police Department badge on his belt. Contact was made with the DPD and Acosta's identity was ascertained. It was also learned that when the chase had gone through their jurisdiction, DPD notified all of its units to cancel pursuit and not engage. At no time did Acosta advise his department of his participation in the pursuit, the apprehension of the subjects, or the firing of his weapon. DPD relieved Acosta of duty and took possession of his firearm. That firearm was given to MDPD for testing.

During the initial investigation by HPD¹, two projectiles were recovered, one from inside the subjects' vehicle and one from Rodriguez at the hospital, and impounded at the Miami-Dade Police Department's Crime Lab. Both projectiles were processed and forensically matched to Acosta's firearm. Additionally, a firearm fell out of the Mercedes as Rodriguez exited the vehicle at the conclusion of the chase. A second firearm was recovered by HPD under the passenger seat during a subsequent search of the Mercedes.

Acosta did not report the incident, or the fact that he discharged his firearm, to Doral PD, nor did he write any report. He did not provide a voluntary statement in this investigation.

LEGAL ANALYSIS

This legal analysis is limited to whether Officer Acosta was legally justified in shooting Gabriel Rodriguez or whether Officer Acosta's shooting of Gabriel Rodriguez was not justified and therefore Officer Acosta should be subject to criminal charges.

Florida Statute 776.05 provides in pertinent part:

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 The initial investigation was led by HPD because they were the lead on the armed robbery case. The police shooting investigation was handled by MDPD.

- (1) Which he or she reasonably believes to be necessary to defend himself or herself or another from bodily harm while making the arrest;
- (2) When necessarily committed in retaking felons who have escaped; or
- (3) When necessarily committed in arresting felons fleeing from justice...

In this case Rodriguez and the other two robbery subjects were involved in an armed robbery and fled the scene. A police chase ensued, and Officer Acosta joined the pursuit. An advisory went out over police radios advising that the subjects had committed an armed robbery and were armed. Officer Acosta had access to this advisory through his police radio. At some point while on the 826 Expressway, Officer Acosta fired at least two shots at the fleeing vehicle. Considering that Officer Acosta was participating in the pursuit of the fleeing vehicle, it's fair to assume that he was aware of the robbery and that the subjects were armed felons. It is also fair to assume that Officer Acosta was aware that Rodriguez and other robbery subjects were fleeing from justice. Florida law specifically states that a law enforcement officer need not retreat from efforts to make a lawful arrest and the officer is justified in the use of any force when necessarily committed in arresting felons fleeing from justice. Consequently, Officer Acosta was legally justified in using deadly force to make a lawful arrest of the robbery suspects given the fact that they were fleeing the scene of an armed robbery they had just committed.

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 Officer Michael

Acosta constitute a criminal act that can be proven beyond and to the exclusion of every reasonable doubt.

Section 776.05, Florida Statutes, provides that a law enforcement officer is justified in the use of any force when necessarily committed in arresting felons fleeing from justice. Although Officer Acosta did not radio that he had joined the pursuit, or notify anyone that he had fired, it is clear that he was in fresh pursuit of reported armed and dangerous fleeing felons under Florida Statute 901.25. A police officer is justified in using deadly force to arrest a fleeing felon. The actions of Officer Acosta do not constitute a criminal act that can be proven beyond and to the exclusion of every reasonable doubt. Therefore, the shooting is legally justified, no criminal charges will be filed, and this investigation is closed.

Prepared by:

s/ Jehnette L. Hardiman

Assistant State Attorney

/s/ Sandra Miller-Batiste

Assistant State Attorney