

CIVIL RIGHTS DIVISION

Notice to Close File

File No. 144-18-3472

Date: FEB 23 2016

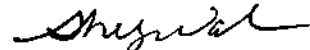
To: Chief, Criminal Section

Re: (b)(7)(C) et al.,
City of Key West Police Department,
Key West, Florida - Subjects;
Charles John Eimers (Deceased) - Victim;
CIVIL RIGHTS

This matter should be closed for the reasons described below:

1. Date of Incident: November 28, 2013
2. Investigative Summary:

On November 28, 2013, Charles Eimers, the 61-year-old victim, became unresponsive following a struggle with several City of Key West Police Department (KWPD) officers, the subjects. He was pronounced dead at a nearby hospital on December 4, 2013, after his family elected to terminate life support measures. An autopsy revealed that the cause of death was a cardiac dysrhythmia due to dilated cardiomyopathy. The manner of death was classified as "accidental."



Shelly Ward
Attorney

To: Records Section
Office of Legal Administration

The above numbered file has been closed as of this date.

2/19/16

Date



Acting Chief, Criminal Section

FORMERLY CVR-3 FORM CL-3

On July 26, 2015, the Key West Citizen Review Board (CRB) wrote a letter to the Federal Bureau of Investigation's (FBI) Miami Field Office requesting a federal investigation into the victim's in-custody death. The FBI obtained the local investigative report prepared by the Florida Department of Law Enforcement (FDLE); witness statements; the autopsy report; physical evidence reports; videos of the incident; and the victim's medical records.

The Office of the State Attorney brought this matter before a grand jury in July and August of 2014. The grand jury concluded that the officers used the proper amount of force to restrain the victim and did not issue a true bill. However, (b)(7)(C) was reprimanded internally by the KWPD for not monitoring the victim's medical condition or promptly notifying the victim's kin following the incident. (b)(7)(C) was reprimanded for engaging in an unauthorized vehicular pursuit and for failing to utilize (b) lights and sirens throughout the pursuit. Finally, (b)(7)(C) was suspended for five days without pay for making lies and exaggerations about the arrest to family members and co-workers in the days after the incident. The victim's family received a \$900,000 settlement following a civil lawsuit against the City of Key West.

According to the law enforcement accounts set forth in the FDLE Investigative Summary, at 8:25 a.m. on the morning of the incident, (b)(7)(C) stopped the victim for committing a traffic infraction by making an erratic turn from a left turn lane into a straight away lane where (b)(7)(C) car was positioned. (b)(7)(C) approached the victim's vehicle and began questioning the victim. The victim was behaving in a bizarre manner and said that he was "working for God" and trying to "save lives." As (b)(7)(C) walked back to (b) patrol car to conduct a license and criminal history check, the victim fled the scene. (b)(7)(C) initiated a vehicular pursuit during which the victim committed numerous additional traffic violations including speeding, disregarding stop signs, and driving in the wrong traffic lanes nearly striking several other vehicles. Multiple police units were dispatched to the area to assist (b)(7)(C) in the pursuit with (b)(7)(C) arriving on the scene first, followed by (b)(7)(C) (b)(7)(C) and (b)(7)(C) (b)(7)(C) was still en route to the area and had no further contact with the victim until after he lost consciousness.

According to dash-mounted cameras in the officers' patrol cars, the pursuit ended at 8:36 a.m. when the victim drove through the parking lot at the Southernmost Beach Café and onto the sand. At this time, two tourists began capturing cell phone videos of the incident. (b)(7)(C) (b)(7)(C) exited (b) patrol car with (b) service pistol drawn and began giving loud verbal commands to the victim to get on the ground.

The videos show the victim walking away from his car, dropping to his knees, and lying down on the sand on his stomach, resting on his forearm/elbow area, with his head facing upward towards the officers who were arriving in the area. (b)(7)(C) and (b)(7)(C) can be heard giving loud verbal commands to the victim to "get down on the ground" and "show me your hands." (b)(7)(C) and (b)(7)(C) then approach the victim and apply a handcuff to his left wrist. The video shows the victim moving his feet and body as the officers are handcuffing his right arm. The victim rolls onto his left side, and later onto his right side. (b)(7)(C) stated that (b) was unable to apply the right handcuff, because the victim began to stiffen his arms, pull and roll. When (b)(7)(C) was finally able to apply the right handcuff, the victim rolled to the side and (b)(7)(C) pinky finger was cut after getting stuck in the handcuff.

The videos show several officers moving closer to the struggle to assist. Their bodies block the camera's view of the victim and make it difficult to determine what movements the victim is making. However, it is clear from the second, more lengthy video that none of the officers ever struck or kicked the victim. The victim appears to be kicking his legs upward, moving his feet apart, and thrusting backward. The struggle between the victim and the officers causes the victim's body to move across the sand.¹ The officers stated that at this point, the victim was still violently kicking his legs, so (b)(7) placed (b) left knee on the victim's back and told the victim that (b) would use the Taser if the victim did not stop resisting. While (b)(7)(C) removed (b)(7)(C) Taser from its holster, and some of the civilian witnesses (b)(7)(C) and (b)(7)(C) stated that the Taser was activated, the officers stated, and the Taser log confirmed, that it was not activated at any point during the incident. (b)(7)(C) explained that (b)(7)(C) finger was still caught in the right handcuff, and (b) was concerned that (b)(7)(C) would be affected by the Taser shock. (b)(7)(C) arrived at the scene and placed (b) knee on the victim's left shoulder. (b)(7)(C) arrived at the scene and held down the victim's feet. (b)(7)(C) later took over (b) position and held down the victim's legs. (b)(7)(C) then retrieved a hobble from (b) patrol car and gave it to (b)(7)(C). Due to the victim's ongoing leg movement, (b)(7)(C) stated that (b) was not able to tighten the hobble around the victim's legs.

After handcuffing the victim, the officers attempted to lift him onto his feet. (b)(7)(C) stated that (b) then realized that the victim was unconscious, and his face was blue in color. (b)(7)(C) removed the handcuffs and (b)(7)(C) dispatched an ambulance to the scene. (b)(7)(C) and (b)(7)(C) who are also trained paramedics, performed CPR on the victim until paramedics arrived at the scene. Restaurant employees retrieved an Automated External Defibrillator and (b)(7)(C) applied it to the victim's torso.

(b)(7) civilians witnessed the incident and were interviewed by FDLE investigators. In general, the witnesses corroborated the officers' claims that the victim was struggling with the officers, kicking his legs, and being very uncooperative. The witnesses stated that the officers placed their knees on the victim's back, handcuffed him, held down his legs and applied a cord around his legs. After the struggle, the officers rolled the victim onto his side and rendered medical assistance.

3. Medical Evidence:

The victim's autopsy report from the Monroe County Medical Examiner's Office states the cause of death as "anoxic encephalopathy due to cardiac dysrhythmia due to dilated cardiomyopathy." The "stress of struggling with police" was listed as a contributory factor in the victim's death. The manner of death was classified as "accidental." The autopsy report noted that the victim's eyes were free of petechial hemorrhaging thereby ruling out the possibility of an asphyxial death. The only traumatic injuries to the victim's body were "minor blunt-impact wounds-contusions and abrasions of the upper extremities." No puncture wounds consistent with the use of Taser probes were noted, and no sand was found in the victim's lungs.

¹ While a civilian witness (b)(7)(C) stated that the victim's face was in the sand in a "smothering manner," none of the officers corroborated (b) claim. Sand was found around the victim's nose and mouth at the hospital, but the autopsy revealed that none of it was aspirated into the victim's airway or lungs.

In the "Opinion" section of the autopsy report, the medical examiner stated that the victim "was at risk of sudden death any time due either to chaotic cardiac rhythm or worsening of his congestive heart failure." Moreover, "his sudden change from struggling to unresponsiveness is evidence for a dysrhythmia." Due to the resulting cardiac arrest and the resultant hypoxia, the victim suffered irreversible brain damage.

The Monroe County Medical Examiner, Dr. E. Hunt Scheuerman, testified before the grand jury. Dr. Scheuerman stated that the victim had a weakened and enlarged heart, which caused an irregular heartbeat, which caused brain damage due to lack of oxygen. The stress of the struggle with the police was a contributory factor in the victim's death. Dr. Scheuerman stated that the victim's pre-existing heart condition was so serious, and his cardiac function was so poor, that he could have died any time, even in his sleep.

The FBI also obtained an affidavit from Dr. James Heger, M.D., the victim's treating cardiologist. Dr. Heger affied that he had treated the victim in the month prior to his death for congestive heart failure, combined acute chronic cardiomyopathy, and reduced left ventricle ejection fraction. After a five-day hospitalization, the victim was discharged with handwritten prescriptions for medications and instructions to follow a low-sodium diet. Dr. Heger opined that given the victim's condition upon release from the hospital, his risk of sudden death was about 20% depending on his medication regimen and lifestyle decisions. Dr. Heger stated that the victim may have lived another 3-5 years with his condition without the need for major surgery.

4. Conclusion:

This matter does not disclose a prosecutable violation of the federal criminal civil rights statutes. The applicable federal criminal civil rights statute, 18 U.S.C. § 242, requires proof beyond a reasonable doubt that the subject officers willfully deprived the victim of a protected constitutional right, in this case, the Fourth Amendment right to be free from unreasonable searches and seizures. According to the Supreme Court, the Fourth Amendment analysis focuses on "whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them." Graham v. Connor, 490 U.S. 386, 397 (1989). Further, in evaluating the reasonableness of the officers' belief, consideration must be given to "the fact that officers are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving." Id. at 396-97. The government must also prove that the officers acted willfully, that is with the specific intent to deprive the victim of a constitutional right, here the Fourth Amendment right to be free from the use of excessive force. Screws v. United States, 325 U.S. 91 (1945) (discussing willfulness element of 18 U.S.C. § 242). To act willfully means to act with a bad purpose to disobey or disregard the law. This is the highest standard of intent imposed by the law, and it is different and higher than the intent required for proof of state offenses such as manslaughter. Mistake or bad judgment on the part of a law enforcement officer is not sufficient to establish a violation of the relevant federal criminal civil rights statute.

In the present matter, the evidence is insufficient for the government to prove, beyond a reasonable doubt, that any of the subjects willfully used excessive force to subdue the victim. Rather, the videos of the incident, the law enforcement witnesses and many of the civilian witnesses corroborated the subjects' claim that the victim, who was possibly in the midst of a psychotic episode, struggled with the officers over a prolonged period of time requiring some degree of physical force to subdue him and take him into custody. Moreover, the victim's treating physician and the medical examiner who performed the autopsy stated that the victim had serious heart disease which predisposed him to a sudden cardiac event. While the stress of the struggle with the officers was a contributory factor in the victim's death and there were some minor blunt force traumatic injuries noted at autopsy, they are insufficient to form the basis of a criminal civil rights prosecution.

For the reasons stated above, the government could not likely prove, beyond a reasonable doubt, that the subjects willfully deprived the victim of a constitutional right when they restrained him. Accordingly, this matter lacks prosecutive merit and should be closed. AUSA Norman Hemming of the Southern District of Florida concurs in this recommendation.