IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
IN AND FOR MONROE COUNTY, FLORIDA

FINAL REPORT OF THE MONROE COUNTY GRAND JURY
SPRING TERM 2014

THE INVESTIGATION INTO THE IN-CUSTODY DEATH OF CHARLES EIMERS

MEMBERS OF THE SPRING TERM 2014 GRAND JURY

Michael Cunningham, Foreperson

Ryan Devitt, Vice Foreperson

Susan Sorensen, Clerk

Belinda Cabrera	Chadwick Carey	Jonathan Elwing
Jerry Johnson	Mark Kern	Patrick McCoy
Caldwell Meeks	Robert Mock	Freddy Mosqueda
Ruben Navarro	Gabriele Ostrowicki	Dylan Ricksecker
Frank Rucinski	Margaret Ruley	D. Bryn Schurman
Kieran Sheehan	Judy Starreveld	Craig Wellings

CATHERINE VOGEL
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I. INTRODUCTION

It is the province and duty of the Grand Jury to investigate possible unlawful actions by all persons, private citizens and public officials alike, and to return indictments when warranted; it is also the Grand Jury's lawful and proper function to consider the actions of public bodies and officials in the use of public funds, and to report or present findings and recommendations as to practices, procedures, incompetency, inefficiency, mistakes, and misconduct involving public offices and public monies.[1]

On June 19, 2014, the Florida Department of Law Enforcement (hereafter "FDLE") submitted their investigative findings regarding the in-custody death of Charles Eimers to the Office of the State Attorney. The State Attorney's Office thereafter convened the grand jury to consider the facts and circumstances surrounding the in-custody death of Charles Eimers, including whether any members of the Key West Police Department (hereafter "KWPD") should be prosecuted for criminal wrongdoing in connection with the incident. On July 21, 22, and 23, and again on August 14, 2014, the grand jury heard testimony from a total of thirty-two witnesses, some of whom were previously interviewed by the FDLE and some of whom were not. This report represents the culmination of the Grand Jury's inquiry.

II. THE FACTS

On Thanksgiving Day, November 28, 2013, at approximately 8:25 a.m., Officer Gary Celcer of the KWPD conducted a traffic stop of a motor vehicle driven by Charles Eimers. Mr. Eimers was stopped near the intersection of North Roosevelt Boulevard and Kennedy Drive in Key West, Florida, for a traffic infraction. Officer Celcer made contact with Mr. Eimers and asked him why he made an improper lane change. Mr. Eimers responded that he was "looking out for society," that he was "trying to save lives," and that he was "working for the God Almighty." Officer Celcer then retrieved his driver's license and instructed Mr. Eimers to wait in his car until Officer Celcer returned. Instead of waiting, Mr. Eimers left the traffic stop in his vehicle and headed toward downtown Key West on North Roosevelt Avenue. During his initial flight from Officer Celcer, Mr.

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[1] Kelly v. Sturgis, 453 So. 2d 1179, 1182 (Fla. 5th DCA 1984).

Eimers was observed exceeding the speed limit, passing vehicles in the middle turn lane, and running red lights. Officer Celcer radioed other units regarding Mr. Eimers' flight and other officers thereafter joined in the pursuit of Mr. Eimers.

Mr. Eimers continued inbound on Truman Avenue into the Bahama Village area of Key West where he was again observed traveling at a high rate of speed and disregarding traffic control devices. Officer Henry del Valle of the KWPD followed Mr. Eimers after turning south on Duval Street from Amelia Street. Mr. Eimers continued south on Duval Street past its intersection with South Street, a dead end, and then pulled his vehicle off the street and into the sand adjacent to the Southernmost Beach Café where he stopped. Mr. Eimers then got out of his vehicle.

Officers del Valle and Kathyann Wanciak, the first two officers on scene, began yelling instructions to Mr. Eimers to get on the ground after he exited his vehicle. Mr. Eimers initially complied with the officers' instructions by kneeling on the sand and then laying down on his stomach. Additional KWPD officers began to arrive on scene and attempted to secure Mr. Eimers in handcuffs. Mr. Eimers allowed officers to place handcuffs behind his back on his left wrist, but then began to resist the officers' attempts to place his right wrist into handcuffs. During the struggle, officers restrained Mr. Eimers with their arms and also attempted to place leg restraints on Mr. Eimers. Officer Gary Lovette used his knee to hold Mr. Eimers' left shoulder on the ground during the struggle and was relieved shortly thereafter by Sergeant Frank Zamora who similarly placed his knee on Mr. Eimer's shoulder area. When Mr. Eimers right wrist was finally handcuffed, Officer Gabriel Garrido's finger was briefly caught and then removed from the handcuff. Although Officer Lovette had removed his Taser from his holster and was holding it while restraining Mr. Eimers with his knees and hands, he did not discharge his Taser. The testimony and evidence showed that no KWPD officer discharged a Taser or other weapon during the incident.

Mr. Eimers was finally secured in handcuffs. As officers were assisting Mr. Eimers to stand up, they observed that Mr. Eimers was unconscious and unresponsive. Officers immediately removed the handcuffs, turned Mr. Eimers over on his back, and began administering cardiopulmonary resuscitation (hereafter "CPR"). An ambulance was requested on scene and officers continued with life-saving efforts until a rescue unit

arrived. Mr. Eimers was then transported to the Lower Keys Medical Center (hereafter "LKMC") where he remained unconscious, but alive.

KWPD assigned (then) Detective Todd Stevens to respond to LKMC to determine Mr. Eimers' condition. Detective Stevens was advised that Mr. Eimers had pre-existing non-ishemic cardiomyopathy and was unlikely to live. Officer Gary Celcer initially remained at the hospital with Mr. Eimers on November 28, but the KWPD did not have an officer present with Mr. Eimers during the remainder of his stay at the hospital. Prior to leaving the hospital that day, Detective Stevens requested hospital personnel contact him in the event Mr. Eimers died.

Mr. Eimers' family was contacted about the incident and his condition. Mr. Eimers's son, Treavor, came to LKMC to see his father and thereafter consulted with other family members about his condition. On December 4, 2013, the Eimers family instructed LKMC to take Mr. Eimers off life support and he died shortly thereafter. LKMC staff did not believe Mr. Eimers was in police custody and, therefore, did not notify Detective Stevens or anyone at the KWPD of his death. Instead, arrangements were made through the family to transport him to a local funeral home.

On December 11, 2013, Detective Stevens learned that Mr. Eimers had died and contacted the FDLE. Special Agent Kathy Smith of the FDLE thereafter made arrangements with the Monroe County Medical Examiner's Office to transport Mr. Eimers' body from the funeral home to the Medical Examiner's Office for an autopsy. We heard no evidence that Detective Stevens intentionally failed to report Mr. Eimers' death to the Medical Examiner because, as stated earlier, he had asked hospital personnel to contact him in the event of his death, but they did not. An autopsy was performed on December 12, 2013, and the Medical Examiner determined that Mr. Eimers manner of death was an "accident."

We heard from thirteen KWPD officers who were at the scene on November 28. The testimony of the officers was consistent that none of them discharged a weapon during the apprehension of Mr. Eimers. This testimony was confirmed by data downloaded from the Tasers of each officer that was on scene that day and the Medical Examiner's testimony. The officers also testified that none of them struck Mr. Eimers in the head during the struggle to place handcuffs on Mr. Eimers. This testimony was confirmed by the Medical Examiner in that he found no evidence of recent contusions to the head area.

The officers also testified that no one held Mr. Eimers' face in the sand that morning, although there was testimony that Mr. Eimers was turning his head back and forth during the struggle. We did see a photograph of Mr. Eimers taken at the hospital which showed sand on his face and in his nasal passages and ears, but the Medical Examiner testified that no sand was found in Mr. Eimers' internal airways. We also had the benefit of viewing a video from an unknown tourist which captured a portion of the incident. The officers testimony was consistent with what we observed on the video.

We heard from eight civilian witnesses who witnessed either some or all of the incident. Five of the witnesses worked either at the Southernmost Beach Café or nearby businesses. Three of the witnesses were tourists from out of state and none of these witnesses had previously been interviewed by the FDLE. While each of the eight civilian witnesses gave slightly varying accounts of the incident, none of the witnesses saw any of the officers strike Mr. Eimers on the head. Only one of the witnesses testified that she was not sure whether police held Mr. Eimers face into the sand while all the other civilian witnesses testified that they did not see any KWPD officer hold Mr. Eimers' face directly into the sand.

We heard from the lead paramedic at the scene and the nurse who was present when Mr. Eimers was admitted into the Intensive Care Unit at LKMC. The nurse was also present when life support was removed from Mr. Eimers and when he died.

We heard from three witnesses about statements made by and the conduct of one of the officers after the incident. These witnesses testified that a KWPD officer made derogatory statements about Mr. Eimers and further gave erroneous accounts of the incident. This officer testified and he was questioned about the reasons he made the statements, including other statements which were recorded shortly after the incident and captured on audio and video when he apparently inadvertently turned on his Taser.

We heard from Special Agent Kathy Smith, the lead investigator for the FDLE. She testified about her efforts to obtain the officers in-car videos from the incident and the data and videos from all the tasers. She also testified about the interviews of KWPD personnel and civilian witnesses. We are particularly concerned about why it took almost six months to complete her investigation. She testified that lawyers from the Police Benevolent Association (hereafter "PBA"), the union for the KWPD officers,

insisted on being present during the officer interviews as authorized by statute.[2] When Special Agent Smith requested interviews of the officers, the PBA representative gave her interview dates well over one month after the date of her request and repeatedly rescheduled officer interviews, thereby delaying an important aspect of her investigation. She also testified that she wanted to be certain that her investigation was thorough in light of the media attention the incident was getting.

We heard from the Monroe County Medical Examiner at the time, Dr. E. Hunt Scheuerman. Dr. Scheuerman testified that the cause of death was "anoxic encephalopathy due to cardiac dysrhythmia due to dilated cardiomyopathy." In other words, Mr. Eimers died because he had a weakened and enlarged heart, which caused an irregular heartbeat, which caused brain damage due to a lack of oxygen. He determined that the manner of death was "accident," and further found that a contributing factor in Mr. Eimers death was the stress of struggling with police. Dr. Scheuerman testified that Mr. Eimers' heart condition pre-existed the incident. He learned from hospital records that Mr. Eimers, age 61, had previously been diagnosed with non-ischemic cardiomyopathy and congestive heart failure. In other words, the volume of blood pumped from Mr. Eimers heart was only a small fraction of the blood pumped by a person with a healthy heart. Most importantly, Dr. Scheuerman testified that Mr. Eimers' preexisting heart condition was so poor that he could have died at any time, even in his sleep.

Dr. Scheuerman also testified that his autopsy did not reveal the use of a Taser. He also eliminated asphyxia (from possibly being smothered in the sand) as a contributing factor in Mr. Eimers' death because no sand was found in Mr. Eimers' internal airways. While Dr. Scheuerman did find some minor blunt impact wounds on Mr. Eimers' hands and arms, he testified that he found no evidence of impact to his head, neck, or torso. Dr. Scheuerman found that Mr. Eimers had fractures to the anterior aspect of his left and right ribs, but these fractures were consistent with the administration of CPR to a person of Mr. Eimers' age. Finally, Dr. Scheuerman testified that, while he would have preferred to have conducted the autopsy as soon as possible after Mr. Eimers' death, he did not believe that the delay of approximately one week affected his findings and conclusions.

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[2] F.S. §112.532.

We heard from Charles Joyner, the founder and president of Survival Sciences, LLC, who is a nationally recognized expert on police use of force. Mr. Joyner's background includes working for the Central Intelligence Agency, as well as serving for twenty-four years as a special agent for the Federal Bureau of Investigation (hereafter "FBI"). While at the FBI, Mr. Joyner served as an FBI master police instructor, a firearms and Taser instructor, a defensive tactics instructor, and an FBI SWAT team commander. Mr. Joyner has previously testified as an expert in police use of force on behalf of prosecutors, law enforcement organizations, and criminal defense attorneys. He has no association with the KWPD or the FDLE.

Mr. Joyner testified about the United States Supreme Court decision in Graham v. Connor, 490 U.S. 386 (1989) (see Section III below) which sets forth the constitutional standard governing whether the force used by police in effecting an arrest is reasonable. He testified that he reviewed the in-car video tapes of the officers involved in the pursuit of Mr. Eimers, the video from the unknown tourist, and the Taser recording of an officer who was present at the time of the arrest. Mr. Joyner's opinion was that KWPD officers did not act unreasonably in the manner in which they took Mr. Eimers into custody. Applying the factors set forth in Graham, Mr. Joyner noted that the severity of Mr. Eimers' initial offense – a minor traffic infraction – was low. However, Mr. Eimers' statements in response to officer questioning indicated bizarre thinking or, perhaps, mental illness. Mr. Joyner also noted it was highly unusual for someone to flee in the middle of a routine traffic stop and that Mr. Eimers' motive for doing so was unknown. Mr. Joyner opined that Mr. Eimers' actions during the subsequent pursuit (speeding and disobeying red lights and stop signs) posed an immediate threat to the safety of the pursuing officers and the public at large.

Mr. Joyner further noted that Mr. Eimers can be observed on the tourist video struggling with officers as they attempt to handcuff his right wrist. It was Mr. Joyner's expert opinion that the KWPD officers did not use excessive force under all the circumstances utilizing the Graham factors. He testified that it was his opinion that KWPD officers could have appropriately used *more* force than they did to subdue Mr. Eimers. For example, he noted it was contrary to standard law enforcement training practices to remove handcuffs from a resisting arrestee unless directed to do so by medical personnel. He observed that KWPD officers immediately removed handcuffs from Mr. Eimers to facilitate their administration of CPR once they noticed he was

unresponsive without waiting for paramedics to so instruct them. Finally, Mr. Joyner testified that, in his opinion, this was not even a close or equivocal case; that is, the force used was clearly justified under the circumstances.

Last, we requested testimony from Chief Donald J. Lee, Jr. Chief Lee testified about departmental policies and protocol, in general, and about in-custody death policies, in particular. He testified that it is KWPD policy not to conduct an internal affairs investigation until the FDLE investigation and State Attorney's review is complete. Chief Lee testified that this policy is in place because he does not believe the KWPD should interfere in any way with the independent investigation which the FDLE conducts. He testified that he intends to conduct an internal affairs investigation when the present investigation is complete.

III. OUR ASSESSMENT

First and foremost, we commend those KWPD officers who did follow proper procedures, policies, and protocols during the incident. In particular, we commend those officers who administered life-saving techniques to Mr. Eimers while waiting for medical rescue units to arrive.

We find that the KWPD officers on scene during the incident exercised the proper amount of force to apprehend and restrain Mr. Eimers. In reaching this conclusion, we were guided by the principles set forth in Graham v. Connor, 490 U.S. 386 (1986), wherein the United States Supreme Court held as follows:

> Determining whether the force used to effect a particular seizure is "reasonable" under the Fourth Amendment requires a careful balancing of " 'the nature and quality of the intrusion on the individual's Fourth Amendment interests' " against the countervailing governmental interests at stake. [Citations omitted.] . . . . Our Fourth Amendment jurisprudence has long recognized that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it. [Citation omitted.] Because "[t]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application [citation omitted], however, its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. [Citation omitted.]
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> The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. [Citation omitted.] . . . . With respect to a claim of

> excessive force, the same standard of reasonableness at the moment applies: "Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers," [citation omitted] violates the Fourth Amendment. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.
>
> As in other Fourth Amendment contexts, however, the "reasonableness" inquiry in an excessive force case is an objective one: the question is whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. [Citations omitted.] An officer's evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force; nor will an officer's good intentions make an objectively unreasonable use of force constitutional.

Id at 396-97.

Applying these principles to the case before us, we find that officers used a reasonable amount of force in apprehending and restraining Mr. Eimers. For reasons unknown to us, Mr. Eimers fled police after a routine stop for a traffic infraction. During the subsequent pursuit through commercial and residential areas of Key West, Mr. Eimers was observed speeding, running red lights, and disregarding stop signs, thereby posing a substantial risk of injury to persons and property. In particular, we note that more than half of the pursuit occurred in the narrow, congested streets of Old Town, Key West, with its attendant pedestrian and bicycle traffic. When officers initially arrived on scene, they were unaware whether Mr. Eimers was armed or posed additional threats to the officers' safety and the safety of the public. While Mr. Eimers initially complied with police instructions, we believe he actively resisted officers' attempts to place his right wrist in handcuffs. During this time, officers used appropriate restraint techniques and reasonable force to keep his body and legs from moving so that handcuffs could be placed. The amount of Mr. Eimers' resistance was further apparent from the fact that one of the officers' finger was caught in the handcuffs during the struggle. Considering the totality of all the evidence presented, the amount of force used by KWPD officers was appropriate for the situation, reasonable under the circumstances, and clearly justified.

Even though we find that the amount of force used was reasonable, we recommend that the KWPD conduct an all-inclusive investigation into this incident. We recommend that this investigation include a comprehensive review of the policies, protocol, and procedures employed for situations involving in-custody deaths and in-custody "near deaths."

We also recommend that the KWPD undertake a comprehensive and thorough internal affairs investigation regarding the conduct of certain officers which occurred after the incident. We are extremely concerned about unprofessional conduct and statements that were made after the incident regarding the events of that morning. The internal affairs investigation should result in appropriate recommendations or sanctions for the officers involved regardless of their consequence or severity.

We also express serious concern about the some aspects of the investigation conducted by the KWPD. First, insufficient efforts were made to promptly locate and interview civilian witnesses who may have seen the events that morning. We believe KWPD officers should have started looking for eyewitnesses to the incident immediately after Mr. Eimers had been taken away in an ambulance, rather than waiting until later that morning. Second, the KWPD clearly failed to timely communicate with LKMC about Mr. Eimers' condition and whether or not the KWPD considered Mr. Eimers to be "in custody" while he was at the hospital.

We further recommend that the KWPD offer additional mandatory training on the topics of stress management and sensitivity. The sensitivity training should have a public and social awareness component.

We recommend that the PBA comply with FDLE requests to interview officers within thirty days. Although we respect the rights of officers to be represented by counsel during the interview process, a period of thirty days or less from the date of the request until the date of the interview will expedite future investigations without infringing on officers' rights. We believe this time frame equally serves the interests of officers and the interests of the public.

MICHAEL CUNNINGHAM
FOREPERSON
August 27, 2014