

Report of Investigation
Officer Involved Shooting

Decedent: Yovani Amaya Gomez ¹

Date: August 15, 2016

Location: INOVA Fairfax Hospital

Green Parking Garage Bus Stop

3300 Gallows Road, Falls Church, Virginia

Raymond F. Morrogh
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¹ Aka Yovani Amaya Giovanni, Jose Martinez, Jovany Martinez, Yabani Martinez

Purpose and Methodology

The purpose of this investigation was to determine whether any person bears criminal responsibility for the death of Mr. Yovani Amaya Gomez. This matter was investigated by Detectives from the Criminal Investigation Bureau and Crime Scene Section of the Fairfax County Police Department. These Detectives collected evidence, took witness statements and wrote reports documenting their findings. Security cameras captured a large portion of the events described in this report and surveillance footage was recovered by Detectives. All of these items were submitted to the Office of the Fairfax Commonwealth's Attorney on November 15, 2016 for review and further investigative inquiry as necessary.

Facts

Monday, August 15, 2016 was an extremely hot day in Fairfax County with temperatures soaring to above 100 degrees. That afternoon, at approximately 2:00 p.m., Mr. Amaya Gomez approached Fairfax County Police Officer K. Woodward as the officer sat in his cruiser in front of 7100 Little River Turnpike in Annandale. Officer Woodward asked Mr. Gomez if he needed anything. It became clear to the officer that Mr. Gomez did not speak English proficiently. Mr. Gomez identified himself as Giovanni Martinez with a DOB of 4/5/1987. Officer Woodward heard Mr. Gomez say the word "loco" which prompted him to inquire further as to whether Mr. Gomez needed help.

Officer Woodward observed that Mr. Gomez was sweating heavily and the skin under his eyes was twitchy. Given the oppressive heat, Officer Woodward became concerned that Mr. Gomez may have been dehydrated and asked if he had drank enough water. Mr. Gomez indicated that he had only had one bottle of water that day. Officer Woodward, unsure whether Mr. Gomez was suffering from a mental condition or a medical issue, summoned rescue to come and check on Mr. Gomez' welfare. Officer Woodward reports that Mr. Gomez was very calm and did not display any odd or aggressive behavior during the entire interaction.² At one point, a clerk from a nearby store approached Officer Woodward and told him that he had earlier refused to sell alcohol to Mr. Gomez as he suspected Mr. Gomez was intoxicated.³

Rescue arrived and took Mr. Gomez' vital signs which were within normal ranges. Officer Woodward used his cell phone and an App called "Google Translator" to ask Mr. Gomez if he wanted to hurt himself. Gomez seemed to indicate that he did want to hurt himself by answering "Si." At that point

² Report Officer K. Woodward p. 2

³ Id.

the officer asked rescue personnel to take Mr. Gomez to Fairfax Hospital. The medics transported Mr. Gomez to the Emergency Room at Fairfax Hospital. They described Mr. Gomez' behavior on the trip as staring off and not communicating. Mr. Gomez also pointed to his head and said, "Voices."⁴ The medics heard Mr. Gomez mumbling during the transport but they do not speak Spanish and could not be sure whether Mr. Gomez had said anything directly to them. They described him as non-combative.⁵ At the hospital, medics explained the situation to a nurse and indicated that Mr. Gomez was there for a mental status exam.

Officer Woodward drove behind rescue to the hospital in order to follow up with the assistance of a translator. He described Mr. Gomez' demeanor at the hospital as calm and quiet. Due to the language barrier, Officer Woodward was not certain whether Mr. Gomez' difficulties were the result of medical or psychological issues. He asked the Emergency Room medical staff to conduct a psychological inquiry and to specifically ask Mr. Gomez if he wanted to hurt himself. From Officer Woodward's perspective, if Mr. Gomez was determined to be suffering from a mental health issue, it would be incumbent upon him to transport Mr. Gomez to the Merrifield Center for mental health treatment.

A physician and Spanish speaking nurse examined Mr. Gomez. They advised Officer Woodward that Mr. Gomez denied any mental health issues and further said that he did not want to hurt himself. They also told Officer Woodward that Mr. Gomez told them that he had a stomach ache and didn't feel well.⁶ Officer Woodward returned to his patrol duties.

Hospital records show that Mr. Gomez arrived at the Emergency Room at 2:32 p.m. complaining of unspecified pain and nausea. His chief complaint was described as "general body aches."⁷ Doctors ordered numerous laboratory and radio-graphical tests upon Mr. Gomez including blood work and a CT scan. All of these tests were negative including one for blood alcohol content.

Physical examination of Mr. Gomez showed his blood pressure, heart rate, gait, coordination, respiration and temperature were all within normal range. He was alert and oriented to person place and time.⁸ The Emergency Room physician assessed his mental condition as follows; "Psychiatric: He has a normal mood and affect. His behavior is normal. Thought content normal."⁹ He was not in distress other than his initial complaint of abdominal pain and nausea. Doctors diagnosed Mr. Gomez as suffering from general weakness. Sometime between 8:00 p.m. and 9:00 p.m. hospital staff discharged Mr. Gomez with instructions for follow up.¹⁰

Old Dominion Security (ODS) guard Ezra Carter was on duty at INOVA Fairfax Hospital that night. He encountered Mr. Gomez in the lobby as he was leaving the Emergency Room. It appeared to Carter that Mr. Gomez might need some assistance so he approached Mr. Gomez and with the help of an interpreter, determined that Mr. Gomez wanted to go to a homeless shelter (ER personnel had provided

⁴ Tr. Lt. D. Ripley 8/17/2016 pp. 3-4; See also INOVA All Flowsheet Data, EMS PTA NOTE ("Spanish speaking only; hearing many voices")

⁵ Report Det. J. Hinson p. 55 of 11/15/2016 printing

⁶ Report of Officer K. Woodward p. 2

⁷ "Pt states he just 'doesn't feel well' and points to all over his body. Endorses nausea. Seen at IAH x2 in past 2 weeks for intoxication. Denies drinking today. States last drink 3 days ago. Resting comfortably. IVF and labs ordered." INOVA Ed Records Generated 9/16/2016 p. 7

⁸ Id at p. 5

⁹ Id at p. 6

¹⁰ INOVA ED Records Generated 9/16/2016 pp.1-14

him with a list of shelters). Mr. Gomez showed Mr. Carter the list of shelters. Mr. Carter then walked Mr. Gomez to the appropriate bus stop.¹¹

Shortly after 9:00 p.m. a resident from a nearby facility left a meeting in order to smoke a cigarette. He was at the Green Garage bus stop when he saw Mr. Gomez waiving a pole from a “No Smoking” sign and banging it on a trash can. Mr. Gomez then approached him and asked for a cigarette. Not wanting to share his cigarettes, the man showed Mr. Gomez an empty pack of cigarettes and re-located himself. When the man subsequently lit a cigarette, this action caught Mr. Gomez’ attention and he approached the man drawing the “pole” across his upper torso with his right hand so that the tip went over his left shoulder. The man told Mr. Gomez to put the pole down whereupon the man left and reported the incident to security.¹² ODS guard D. Parsons telephoned ODS guard Biabloblocki in an attempt to convey this information. However, due to a slight language barrier, Biabloblocki was not able to fully understand Parsons and so he instructed ODS guard Hashemi to meet Parsons in the South Tower lobby.¹³ It wasn’t until later, when Biabloblocki received a distress call from security officers that he realized a possible weapon was involved.¹⁴

Guards Hashemi and Parsons arrived at the Green Garage bus stop and encountered Mr. Gomez. Both Hashemi and Parsons were unarmed.¹⁵ Hashemi greeted Mr. Gomez saying, “Hey.” Before he could say more, Mr. Gomez rushed him. Mr. Gomez struck Hashemi on the back of the neck with the metal bar he was carrying.¹⁶ Hashemi later stated that he attempted to back away from the attack but was blocked by a trash can behind him. He said, “I couldn’t go back anymore, because I feel if I fall down then I am done, I’m under his control.” Hashemi described seeing stars and blackness for a couple of seconds after Mr. Gomez struck him. Hashemi suffered a contusion to the left posterior side of his neck as well as dizziness and swelling of his finger consistent with a defensive wound.¹⁷ After helping to evacuate several people from the area, Hashemi went to the Emergency Room for treatment of his injuries.

Shortly after Mr. Gomez attacked Hashemi, ODS guard Aviyah Chaverim radioed Biabloblocki that a weapon was involved and requested he call 911.¹⁸ Another security guard, whose voice Biabloblocki could not distinguish over the radio, described the weapon as a “bladed weapon.”¹⁹ Biabloblocki called 911 and reported that the subject had a bladed weapon.²⁰ At 9: 59 p.m., a Fairfax County police 911 operator transmitted the following message to officers; “Male with bladed weapon at the bus stop outside of the new Womens and Children Section [*sic*].”²¹

That night Master Deputy Sheriff (MDS) P. McPartlin and a second deputy were on duty in uniform guarding a prisoner at Fairfax Hospital.²² MDS McPartlin overheard radio calls for help from

¹¹ Tr. Ezra Carter 8/16/2016 p. 4

¹² Report R. Bond 8/26/2016

¹³ Tr. Bialoblocki 8/16/2016 p. 3

¹⁴ Tr. Bialoblocki 8/16/2016 p. 4

¹⁵ Tr. Hashemi 8/16/2016 p.2; Hashemi had received Crisis Prevention and Intervention Training(CPI); (Tr. Parsons 8/16/2016 p.2,

¹⁶ Id. at p.3

¹⁷ Id. at pp. 8,16,17; See also photographs taken by FCPD

¹⁸ Tr. Chaverim 8/16/2016 pp. 9, 10; Bialoblocki Tr. 8/16/2016 pp. 5, 6

¹⁹ Tr. Bialoblocki 8/16/2016 p. 6

²⁰ Tr. Bialoblocki 8/16/2016 pp. 2, 6

²¹ Dispatch event information p. 1

²² MDS McPartlin is an 18 year veteran with the Fairfax County Sheriff’s Department who has received Crisis Intervention Training (CIT) as well as a member of the Sheriff’s Emergency Response Team (SERT)

two ODS security officers, one of whom sounded out of breath. Additional officers began responding over the radio that they were en route. When MDS McPartlin heard that a weapon was involved, he decided to respond in case the officers needed backup.²³

He walked to the scene and as he approached the first of three glass enclosed bus stop booths he encountered hospital security officers. One of the security guards near the first booth told MDS McPartlin that the subject had assaulted one of the guards with a weapon.²⁴ ODS guard Aviyah Chaverim was standing near the first glass enclosure when MDS McPartlin arrived at the scene. She told MDS McPartlin that, "he (Mr. Gomez) just hurt one of our officers."²⁵ At that point, MDS McPartlin drew his gun and kept it pointed down on his right side in a tactical position in case he encountered the person with the weapon.²⁶

As he passed the first booth, he saw a number of security guards surrounding Mr. Gomez at the far end of the sidewalk.²⁷ However, his view of Mr. Gomez was somewhat obstructed.²⁸ As he reached the second booth, MDS McPartlin started to move to his left to get a better view of Mr. Gomez.²⁹ Just as MDS McPartlin began to do so, he saw Mr. Gomez charging full speed at him.³⁰ The security guards began running away. It appeared to MDS McPartlin, as he looked through the glass of the second booth, that Mr. Gomez was wielding a sword.³¹ As Mr. Gomez rounded the corner of the second booth, MDS McPartlin fearing that he would be stabbed or struck, began backing up.³² Mr. Gomez continued charging right at MDS McPartlin with the "sword" raised in an aggressive manner. MDS McPartlin began firing his weapon as he continued to back up.³³ MDS McPartlin later explained, "... before I shot I think I was trying to get back but he was too close so I had to shoot."³⁴ Three of the four shots struck Mr. Gomez in the torso. One shot grazed his left arm. Mr. Gomez fell to the pavement, dropped the weapon and rolled several feet across the pavement.

MDS McPartlin did not recall saying anything to Mr. Gomez prior to firing his weapon.³⁵ However, ODS guard Mahmut Demir heard MDS McPartlin give commands to "stop" and "put it down" prior to the shooting.³⁶ A second guard who was present at the scene, Dcosta Parsons, stated that he heard MDS McPartlin telling Mr. Gomez to calm down when Gomez began running towards MDS McPartlin.³⁷ ODS guard J. Hester stated that he heard MDS McPartlin telling Mr. Gomez to stop before he shot

²³ Tr. McPartlin 8/18/2016 p. 21

²⁴ Id. at pp. 16, 22

²⁵ Tr. Aviyah Chaverim 9/6/2016 p. 12

²⁶ Id. at pp. 17, 22, 40

²⁷ Id.

²⁸ Id. at pp. 23, 24

²⁹ Id. at pp. 17, 23, 24-25

³⁰ Id. at pp. 17, 23-24, 25

³¹ Id. at pp. 17, 23-24

³² Id. at p. 24, 25, 26

³³ Id. at pp. 17, 24, 25; Upon review of the video and measurements taken at the scene it is estimated by crime scene detectives that at the time of the initial shot the distance between MDS McPartlin and Mr. Gomez was somewhere between 9 feet and 14 feet, 2 inches.

³⁴ Id. at p. 35

³⁵ Tr. McPartlin 8/18/2016 p. 17, 25, 35

³⁶ Report Detective Hinson p. 43 (generated on 11/15/2016)

³⁷ Tr. Dcosta Parsons 8/16/2016 pp.18-19; Report of Investigation Detective Jeremy Hinson 11/15/2016 p. 43

him.³⁸ ODS guard L. Miller also reported that MDS McPartlin twice told Mr. Gomez to stop before he fired.³⁹

After MDS McPartlin fired his weapon he radioed, "Shots fired."⁴⁰ Fairfax County Police and rescue personnel arrived and transported Mr. Gomez to the Emergency Room where he underwent emergency surgery. Unfortunately, Mr. Gomez later died from his wounds.⁴¹

On August 16, 2016 Assistant Chief Medical Examiner Dr. Meghan Kessler performed an autopsy upon the body of Yovani Amaya Gomez in order to determine the cause and manner of death in this case. She prepared a Report of Investigation as well as a Report of Autopsy reflecting her findings. Dr. Kessler opined that the cause of death was "MULTIPLE GUNSHOT WOUNDS TO THE TORSO" and the manner of death was "HOMICIDE."⁴² She described and documented three gunshot wounds and one gunshot graze wound. All three of the gunshot wounds were to Mr. Gomez' torso. There was no evidence of soot, searing or gun powder stippling on the surrounding skin of any of the wounds. The order in which these wounds were sustained is unknown. One entrance wound was to the right chest. Another was to the left upper abdomen and the third was to the left lower abdomen. There was also a gunshot graze wound to the left posterior forearm. Three bullets were recovered from the body and transmitted to the Department of Forensic Science.⁴³

Fairfax County Crime Scene Detectives arrived and examined the scene. They recovered four 40 cal. S & W cartridge cases and projectile fragments from the pavement. These cartridge cases were consistent with the cartridges remaining in the Deputy's issued service weapon; a Glock model 22 Generation 4, .40 Cal. Semi-automatic pistol.⁴⁴ Prior to the incident, the pistol was fully loaded with 15 cartridges in the magazine and 1 in the chamber.⁴⁵ After the shooting there were 11 cartridges in the magazine and 1 in the chamber.⁴⁶ All ballistics and related materials were submitted to the Department of Forensic Science for analysis in August of 2016.⁴⁷

They also recovered a black metal sign post. They described it as follows: "Black Metal Sign Post (Near Trashcan) Glossy Black Painted Metal, Rust and Screws present – "T" shaped Post; approximately

³⁸ Report Detective Hinson p. 22 (generated on 11/15/2016)

³⁹ Id. at p. 22

⁴⁰ Report Detective Hinson p. 34 (generated 11/15/2016); Tr. McPartlin 8/18/2016 p. 1

⁴¹ Report of Autopsy 11/4/2016

⁴² **Cause of Death** is defined as: [T]he disease, injury, or poison that results in a physiological derangement or biochemical disturbance that is incompatible with life. The result of post-mortem examination, including autopsy and toxicological findings, combined with information about the medical history of the decedent, serves to establish the *cause of death*. **Manner of Death** is defined as: [T]he general category of the circumstances of the event which causes the death. The categories are *accident, homicide, natural, suicide, and undetermined*. **Homicide** is defined as: [T]he *manner of death* in which death results from the intentional harm of one person by another. See Office of the Chief Medical Examiner's Annual Report, 2014

⁴³ Report of Autopsy 10/28/2016

⁴⁴ Supplement Detective O'Brien 9/9/2016

⁴⁵ Report Detective Hinson p. 40 (generated on 11/15/2016)

⁴⁶ Supplement Detective O'Brien 9/9/2016

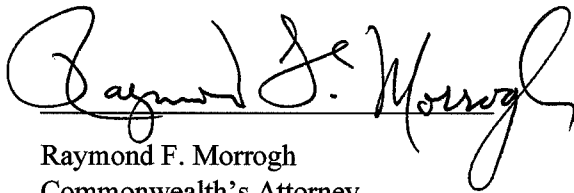
⁴⁷ Supplement Detective O'Brien 9/9/2016; (Due to backlogs at the Department of Forensic Science these results are expected to be returned within 6 to 8 months from submission i.e., Spring of 2017) Given the totality of the evidence in this case, including the video of the incident, ballistics evidence is unlikely to lend any further clarity as to the circumstances of this shooting.

3' in Length, 8" Handle with a "by" Post."⁴⁸ Officer Woodward was one of the first officers to arrive at the scene after the shooting. He observed this large black metal object lying on the pavement. Officer Woodward stated it "looks like a sword but I couldn't tell you exactly what it was."⁴⁹

Conclusion

Justifiable homicide is defined under Virginia law as "a homicide in self-defense where one who is without fault in provoking the difficulty kills in reasonable fear of death or great bodily harm."⁵⁰ Moreover, a person may always act upon reasonable appearance of danger, and whether the danger is reasonably apparent is always to be determined from the viewpoint of the person at the time he acted.⁵¹

On the night in question, MDS McPartlin was on duty and responded to a call for help. He was informed via radio that the subject had a weapon. When he got to the scene, a security guard told him the subject had hurt one of the security guards. Within seconds Mr. Gomez sprinted towards MDS McPartlin with what appeared to be a sword. As Mr. Gomez turned the corner of the second booth he raised the "sword" and continued advancing towards MDS McPartlin. Reasonably perceiving himself to be in imminent danger of death or great bodily harm, MDS McPartlin, while retreating, discharged his weapon until the threat was abated. In my legal opinion, this is a case of justifiable homicide and no individual is criminally responsible for the death of Yovani A. Gomez.



Raymond F. Morrogh
Commonwealth's Attorney

12/16/16
Date

⁴⁸ Id.

⁴⁹ Tr. Officer Woodward 8/16/2016 p. 5

⁵⁰ *Bailey v. Commonwealth*, 200 Va. 92 (1958)

⁵¹ *McGhee v. Commonwealth*, 219 Va. 560 (1978)