



INTEROFFICE MEMORANDUM

TO: File

DATE: 01/19/2017

FROM: Laura Adams
Assistant State Attorney

RE: Investigation into the death of
Elord Revolte, 17 years of age

INTRODUCTION

On August 28, 2015, 17 year old Elord Revolte ("E.R.") was booked into the Juvenile Detention Center ("JDC") located at 3300 N.W. 27th Avenue in Miami, Florida by the Miami Beach Police Department for the charge of Armed Robbery. According to police reports, E.R. was involved in a robbery on August 27, 2015 at approximately 10:45 p.m. in which E.R. and another individual approached the victim and took the victim's cell phone at gunpoint. A "BOLO" (be on the lookout) was issued for these offenders, and E.R. was located shortly thereafter, "sweating profusely and out of breath," according to the arrest affidavit. The victim in that case positively identified E.R. as one of the persons who had robbed him and had thrown him (the victim) to the ground. The Miami Beach Police Department arrested him for the robbery, and determined that there was a pick-up order for E.R. for a dependency case, and notified his foster mother of the arrest.

Approximately two (2) days after he had been in custody at the JDC, E.R. was the victim of a beating by other juveniles, and he ultimately died. The beating incident occurred at approximately 5:30 p.m. on August 30, 2015, when E.R. and the other juveniles in his Module had returned from the dining hall for dinner. Video footage shows that E.R. was first hit by only 1 juvenile (T.R.), but that almost immediately afterward, many other juveniles in the room jumped into the fray and attacked him as well. At the time of the attack, there were 2 officers assigned to monitor the Module where the juveniles were housed. Although initially E.R. did not seem to be seriously injured, his condition worsened the next day, and he was transported to Holtz Children's Hospital. Despite medical intervention at the hospital, E.R. continued to deteriorate and he was pronounced deceased on August 31, 2015 at approximately 11:17 p.m.

The Miami-Dade Police Department Homicide Bureau was contacted, and began an investigation into the death of E.R. In addition, the Federal Bureau of Investigations was called in to review any civil rights violations which may have occurred at the JDC. The Inspector General's Office of the Department of Juvenile Justice also was to conduct an internal review of the circumstances of E.R.'s death. Finally, the State Attorney's Office assigned prosecutors from both the Public Corruption Unit ("PCU") and the Sexual Battery/Child Abuse Unit ("SBU") to review the matter. The PCU investigation was to determine whether there were any systemic violations of the law at the JDC by the staff who worked there. This writer, as the Division Chief of the SBU, was requested to determine whether criminal charges could be filed against any of the juvenile detainees or JDC staff members for the death of E.R.

THE JUVENILE DETENTION CENTER ("JDC")

The JDC houses juveniles who are awaiting court proceedings, usually for violent felonies. The JDC is a secured facility, and designed to hold up to 126 detainees. Each day, a roster of all the juveniles who are housed at the JDC is printed in what is called the alphabetical, or "alpha" list. Within the JDC there are a number of separate units, called modules. The juveniles at the facility are separated into modules based upon their age, their alleged offenses, and background. Each day, a computerized roster of the juveniles assigned to a given module, or "mod," is printed in a document called the "census list."

The activities of the JDC staff and detainees are hand-written in various log books maintained by the central office and the officers assigned to specific modules. Some of the entries are more difficult to read than others, due to the legibility (or illegibility) of the handwriting of the person making the notes. Additionally, occasionally the logs have inaccurate information due to cross-outs, and/or omissions from the log entries. The log books, once filled, are housed in an administrative office at the JDC.

Much of the JDC is under video surveillance. The surveillance footage does not include audio recordings. The surveillance equipment is outdated, and only records images at a rate of 7 frames per second. According to Certified Video Forensic Examiner Detective J.J. Ruano, in order to have "real time" recordings, the video would have to be filmed at a rate of 30 frames per second. Consequently, even when video footage is examined frame by frame, it is extremely difficult to see each movement made by a person, because of the "gaps" in the footage. It is also difficult to enlarge the images on the video footage (which are very small when viewed as recorded) because the images lose resolution as they are enlarged. Finally, Det. Ruano indicated that it is also not possible to use "facial recognition" software with this type of video footage.

MODULE 9 POPULATION AND ACTIVITIES ON AUGUST 30, 2015

According to the census list for August 30, 2015, there were 21 juveniles assigned to Module 9, including juvenile E.R. The Module 9 officers' log confirms that at 8:44 a.m. and at 9:09 a.m., there were 21 youths there, with 2 officers supervising them. According to information provided to the Miami-Dade Police Department's Homicide Bureau, there are only supposed to be 20 juveniles in a module at any given time. As will be explained in this memorandum, knowing exactly which juveniles were in Module 9 at the time of the incident involving E.R. is extremely important, but difficult to discern based upon JDC records.

Module 9 is comprised of a central recreation area, with enclosed sleeping quarters or cells located around the perimeter of the central area. There is a television with chairs in the central area, next to a small office for the detention officers to use. There are several surveillance cameras in Module 9, including cameras located at each corner of the recreational area.

According to a JDC incident report, at approximately 10:35 that morning, there was an altercation in the recreation area of Module 9 in which juvenile P.W. struck juvenile T.R. (It should be noted that juvenile T.R. is the individual who first hit the victim E.R. later in the day, setting off an attack by other juveniles in that module.) Several of the other juveniles became involved in that morning skirmish, as well. Juvenile T.R. and another detainee were taken to the clinic after this incident, but no one was seriously hurt. There is no indication that E.R. was involved in that incident. According to the Central Command log, there was a "Code Blue" (i.e., a fight) in Module 9 at 10:25 a.m., which was cleared. The Module 9 officer's log entry regarding this matter was documented at 10:51 a.m.

Throughout the course of the day, JDC officers are supposed to keep track of the number of juveniles assigned to a Module in the log book. However, in examining the log entries for August 30, 2015, the exact number of detainees present throughout the day becomes a bit difficult to discern. As noted above, the log book for Module 9's "A shift" officers reflects that at 8:44 a.m., and 9:09 a.m., there were 21 youths there. This is also the number of juveniles who were listed in the Module 9 census for that day. At 10:54, the log book indicates that T.R. and K.I. were brought to the clinic (due to the skirmish with P.W.), which would have reduced the number of juveniles to 19. At 12:02 p.m., there is an entry indicating that 19 juveniles were in the Module (presumably because T.R. and K.I. were brought to the clinic); however, the entry at 12:14 p.m. indicates that 18 juveniles were brought to the dining hall for lunch. There is no entry to indicate why the population of the Module went from 19 to 18, or which juvenile left the Module.

The entry for 12:33 p.m. indicates that the Module 9 population returned from the dining hall. It appears that originally 22 juveniles were listed as having returned, but the number "18" is written over the number "22," which would seem to indicate that the same 18 juveniles who went to the dining hall for lunch at

12:14 returned by 12:33. There are several additional entries made over the course of the hour or so which indicate that some of the juveniles left the Module for visitation. At 2:05 p.m., there is an entry indicating that there were only 16 youths in the Module. There was a "Code White" noted at 3:15 p.m., which means that one of the juveniles had a medical issue which needed immediate attention (it was not E.R. or any other juveniles involved in the altercation with E.R.).

When the "B" shift officers came to take over supervision of Module 9, there is an entry at 3:40 p.m. to document the number of juveniles present; however, the number "22" appears to be marked over by the number "21." Thus apparently at that time, there were 21 detainees; the logs do not specify which juveniles came into the Module or why the count went from 16 youths at 2:05 p.m., and why about an hour and half later, there were 21. Approximately 20 minutes after the first "B" shift entry, at 4:00 p.m., there is an indication that there were 22 juveniles in the Module, but no indication why an additional detainee may have been brought into the unit. At 4:08 p.m., the count was 21 juveniles, because the juvenile who had been involved in the "Code White" earlier in the day was removed from the Module. At 4:23 p.m., there were 20 juveniles in the Module, because juvenile P.W. (who had been involved in the fight at around 10:30 that morning) was removed from the Module, but by 4:39 p.m., P.W. had returned to the Module, resulting in a new count of 21 juveniles being present.

The next log entry is for 5:01 p.m., which indicates that 20 detainees were brought to the dining hall. There is no indication in the log book for why 21 juveniles were in the Module at 4:39, but only 20 were brought to the dining hall for dinner at 5:01. In other words, it appears no entry was made when one of the juveniles was removed from the Module, or why. At 5:11 p.m., the log indicates there were 20 juveniles in the dining hall, and at 5:25 p.m., there is an entry stating that 20 were brought back from the dining hall. That is the last entry in the Module 9 log book before the incident which led to E.R.'s death, which would seem to indicate that at the time of that incident, there were a total of 20 juveniles assigned to Module 9.

The entry regarding the incident which apparently led to E.R.'s death is noted as a "Code Blue" at 5:35 p.m. Because there is no indication that any juveniles were transferred out of Module 9 after the 5:25 log entry which stated there were 20 juveniles present, the JDC records indicate that there were 20 juveniles in Module 9 when the Code Blue began. The 5:35 p.m. log entry indicates that E.R. was escorted from the Module after the Code Blue, and that the new count was 19 juveniles, which further supports a finding that at the time of the Code Blue incident, there were 20 juveniles in Module 9. However, the Miami-Dade Police Department Homicide Bureau was only provided with information as to 19 juveniles who were assigned to the module at that time. Thus, it is difficult to state with certainty exactly which juveniles were present in the module at the time that victim E.R. was attacked.

JUVENILES ASSIGNED TO MODULE 9 ON AUGUST 30, 2015

AND THEIR INVOLVEMENT IN THIS INCIDENT

The JDC identified a number of juveniles who were in Module 9 on August 30, 2015 to the Miami-Dade Police Department's Homicide Bureau. In order to help identify exactly which juveniles were in Module 9 at the time of the Code Blue against E.R., and what involvement they may have had in this investigation, the following chart was prepared. It also documents which juveniles were interviewed by the police, and which may have invoked their right to remain silent about this matter.

(See next page):

Juvenile	Notes
1 D A	Invoked right to be silent
2 S A	Gave statement
3 L B	Gave statement
4 M C	Gave statement
5 B D	Witness
6 M E	Witness
7 A G	Code White. removed from Mod
8 G G	Gave statement
9 K H	Gave statement
10 V J	Removed from Mod prior to fight?
11 T J	Invoked right to be silent
12 K L	Admitted to hitting E.R.
13 K L	Invoked right to be silent
14 L M	Removed from Mod prior to fight?
15 D M	Invoked right to be silent
16 D P	Gave statement
17 Elord Revolte	Victim
18 T R	Admitted to hitting E.R. first
19 D S	Gave statement
20 D V	Witness
21 G W	Gave statement
22 P W	Witness; not listed in Census, got into fight with T.R. morning of incident

VIDEO SURVEILLANCE FOOTAGE IN MODULE 9

It would seem that in a secure facility such as the JDC, which has multiple video cameras on the campus, that it should be relatively easy to identify which offenders were actually involved in the attack on E.R. However, as noted previously in this Memorandum, the video surveillance equipment utilized at the JDC is significantly outdated. Certified video forensic analyst Detective Ruano was the investigator tasked with the responsibility of obtaining the video footage from the JDC as well as analyzing it to try to isolate/identify the juveniles who were involved in the fight against E.R. Detective Ruano explained that one problem with the video footage is that the actual images are quite small on a computer screen; when the images are enlarged so that they can be more easily viewed, the quality of the video deteriorates. Thus, when the video image is enlarged to a point where the face of a juvenile might be visible, the image becomes so pixelated that no meaningful identification can be made from the image. Detective Ruano indicated that facial recognition software is useless in situations like this because the original video images are of such a poor quality.

Further compounding the difficulty of utilizing the video footage to identify which juveniles made contact with E.R.'s body during the fight is the fact that the videos are shot at a rate of 7 frames per second. In order to have an accurate, "real time" recording of the actions of the juveniles in Module 9, the video would have to be created at a rate of 30 frames per second. The result of this slower picture speed is that when the video is analyzed in slow motion or frame-by-frame, there are gaps in which the juveniles are moving, but their actions cannot be seen because no image was taken.

In addition, the location of the cameras in Module 9 results in several areas which are not well-covered by the videos. In this case, the fight amongst the juveniles began when they returned from the dining hall from dinner. Shortly after they returned, T.R. hit E.R. as they stood near a wall. Once they were separated, the other juveniles jumped into the fray. As the mass of juveniles attacked E.R., the images move out of the field of view from the first camera, into the second. The location of the fight is such that it is between the field of views of the cameras best suited to film the action. Thus, not only is the video of poor quality, the images do not fully capture the entire event. In addition, during the melee, the juveniles were so closely grouped around E.R.'s body, it is very difficult to see their faces or what part of E.R.'s body was struck by any one individual. Consequently, just as the JDC log books fail to give wholly accurate information as to which juveniles were in Module 9 at the time E.R. was attacked, the JDC video cameras also fail to give a reliable account as to exactly which juveniles hit E.R.

INJURIES TO E.R. AND THE CAUSE OF HIS DEATH

Once the officers were able to separate the other juveniles from the fight, E.R. can be seen on the video footage getting up on his own. He was thereafter taken to the clinic to be evaluated. E.R. did not lose consciousness during this incident, and was able to walk without assistance to the clinic. Once he was brought there, he stayed through the night of August 30, into the following day. The only injury visible to E.R. was a swollen left eye.

According to the JDC clinic notes, when E.R. was medically evaluated by a nurse at 5:40 p.m. on August 30, 2015, E.R. was agitated and uncooperative, but he insisted he was fine. E.R. was given an ice pack for his left eye. He remained in isolation at the clinic, and concussion precautions were initiated, meaning that his vital signs were checked every 2 hours. He was not provided with medication except for some Motrin.

The following morning, at approximately 8:30 a.m. on August 31, 2015, E.R. advised the medical personnel that his chest was sore. E.R. was kept in isolation for the duration of the morning and into the afternoon. By 3:30 p.m., E.R. told the nurse that he had a stabbing pain in his chest and nausea. He was repeatedly spitting. He was then transferred to Holtz Children's Hospital for a further evaluation. He was admitted to the hospital at 4:50 p.m. While there, he was X-rayed and given an ultrasound examination; additionally, blood samples were collected from him. Despite attempts to diagnose E.R.'s medical distress, medical personnel were unable to do so. By 11:20 p.m., E.R. motioned as if he were choking and became unresponsive. Attempts were made to resuscitate E.R., but at 11:19 p.m. on August 31, 2015, he was pronounced deceased.

E.R.'s body was transferred to the Medical Examiner's Office for an autopsy. Dr. Sean Hurst conducted the autopsy under M.E. case number 2015-2488. Dr. Hurst concluded that the cause of E.R.'s death was blunt force injuries of the head, chest and neck. During a meeting with Dr. Hurst, information was provided about the likely mechanism of E.R.'s injury. Dr. Hurst explained that E.R. had internal bleeding which led to his death. Dr. Hurst stated that the source of the bleeding was the subclavian vein, which was located under the left collarbone of E.R. Dr. Hurst stated that the most likely cause of damage to this vein was the force of E.R.'s chest/collarbone being pushed up against the vein. This could have resulted in a small tear in the vein, which allowed blood to slowly leak out of the blood vessel. Dr. Hurst stated that there was dried blood found around the shoulder area of E.R.'s body, and a significant amount of pooled blood in his chest cavity.

Dr. Hurst indicated that most likely, this injury was caused during the attack by the juveniles against E.R. However, he said he could not rule out the possibility that this defect in his vein had been present prior to the attack. He indicated that because the injured vessel was a vein, as opposed to an artery, the blood leakage was fairly slow. He said that this is a highly unusual injury, and is one more associated with a motor vehicle

collision than a fight such as the one which occurred in this case. It should be noted that according to juvenile T.R., he and E.R. got into a struggle prior to the fight on the afternoon of August 30; also, according to the arrest affidavit for E.R.'s armed robbery charge, E.R. was in a physical altercation with the robbery victim, and was located by the police and found to be sweating profusely and out of breath. The Medical Examiner was unable to rule out the possibility that either of these incidents (the alleged prior fight with another juvenile detainee, or the force used to arrest him) could have caused the damage to E.R.'s vein, though he stated it was more likely that the injury came from the attack by the other detainees.

Dr. Hurst indicated that because E.R. was still a young man, it's possible that his clavicle (collarbone) was more "elastic" and capable of impinging on the vein under it, causing the tear to the vein. However, because the video footage makes it impossible to discern specifically which juvenile(s) made contact with that part of E.R.'s body, the State is without evidence to prove beyond a reasonable doubt which juvenile(s) caused E.R.'s death. This writer, lead homicide Detective Andino, and Detective J.J. Ruano poured over the video footage in this matter, watching it multiple times in slow-motion to try to discern who may have inflicted the "fatal blow." However, the poor quality of the video, coupled with the fact that there were so many juveniles clustered around E.R.'s body, made it impossible to see exactly who did what to E.R. Moreover, because Dr. Hurst cannot rule out the possibility that E.R.'s damaged vein could have been from a pre-existing injury, it could not be conclusively determined that the melee was what caused E.R.'s death.

CHARGING CONSIDERATIONS

This Assistant State Attorney was requested to investigate and review all available evidence to determine if anyone could be criminally charged for the death of E.R. The following is an analysis of the various charges that were considered in this matter:

A. Manslaughter

First, there is no evidence available to charge any of the medical personnel at the JDC with E.R.'s death. The crime of Aggravated Manslaughter on a Person Less than 18 is defined in F.S. 782.07(3). That provision defines Manslaughter as a person who causes the death of any person under the age of 18 by "culpable negligence." Culpable negligence is defined in Florida jury instructions as follows:

Each of us has a duty to act reasonably toward others. If there is a violation of that duty, without any conscious intention to harm, that violation is negligence. But culpable negligence is more than a failure to use ordinary care toward others. In order for negligence to be culpable, it must be gross and flagrant. Culpable negligence is a course of conduct showing reckless disregard of human life, or of the safety of persons exposed to its dangerous effects, or such an entire want of care as to raise a presumption of a conscious indifference to consequences, or which shows wantonness or recklessness, or a grossly careless disregard for the safety and welfare of the

public, or such an indifference to the rights of others as is equivalent to an intentional violation of such rights. The negligent act or omission must have been committed with an utter disregard for the safety of others. Culpable negligence is consciously doing an act or following a course of conduct that the defendant must have known, or reasonable should have known, was likely to cause death or great bodily injury.

In this case, there is no indication that the nurses or other medical personnel at the JDC willfully ignored E.R.'s medical condition, or that their medical care (or lack of it) caused E.R.'s death. He was conscious and communicative when admitted to the clinic. His vital signs were continuously monitored, and when he complained of chest pains, he was transferred immediately to the hospital. Even once he was at the hospital, medical personnel there were unable to identify E.R.'s injury or save his life. Under that set of circumstances, there is no basis upon which to charge the JDC medical staff with the Manslaughter of E.R.

B. First Degree Premeditated Murder

Second, as to the juveniles who were involved in the attack against E.R., there is no indication that this was a premeditated, or planned, death. Rather, it appears, based upon the video and testimonial evidence gathered in this case, that T.R. got into a brief altercation with E.R., and that a number of the other juveniles in the Module then got into the fray. There were no weapons used, and there was no obviously mortal force (i.e., choking him) used against him. Thus, none of the juveniles could be indicted for First Degree, premeditated murder, because there is no evidence that the juveniles intended to kill E.R.

C. Second Degree Murder

In addition, the moderate level of force used against E.R. mitigates against a charge of Second Degree Murder (F.S. 782.04(2)). In order to prove that offense, the State would have to show that this attack was "imminently dangerous to another, and evincing a depraved mind regardless of human life." Medical Examiner Dr. Hurst indicated that the mostly likely cause of E.R.'s death was a blow to his upper chest, causing damage the subclavian vein. He also classified this as a unique and unexpected consequence from such a hit. A punch, strike or kick to that area of the body would not qualify in and of itself as an indifference to human life. The fact that the juveniles broke off their attack as soon as the other detention officers arrived further indicates that this was a spontaneous fight, but not an act of violence that "a person of ordinary judgment would know is reasonably certain to kill or do serious bodily injury," or "that indicates an indifference to human life." Therefore, there is insufficient evidence to charge any of the juveniles with the crime of Second Degree Murder.

D. Third Degree Murder

Next, the charge of Third Degree Felony Murder (F.S. 782.04(4)) was considered. Third Degree Felony Murder occurs when a person is engaged in a felony which results in the death of a person, even if the death was not intended. In this case, each of the juveniles who hit E.R. committed the crime of Battery on a Detainee under F.S. 784.082. That provision indicates that if a person who is being detained in a facility is charged with committing a battery against another other detainee, the offense is elevated from a first degree misdemeanor to a third degree felony. In addition, the crime of Felony Battery (F.S. 784.041) could serve as a “predicate offense” for the crime of Third Degree Felony Murder. Felony battery is defined as a person who actually and intentionally touches or strikes another person against the victim’s will and causes great bodily harm. Since it is likely that whichever juvenile(s) hit E.R. in the chest caused the injury to E.R.’s vein that led to his death, the charge of Third Degree Murder would appear to be the most likely charge for a juvenile in this case. However, as will be demonstrated, that charge could not be proven beyond a reasonable doubt because the State cannot show who delivered the fatal blow(s) to E.R.

As noted previously, the JDC records are not entirely reliable in identifying the juveniles who were in the Module at the time of this fight. Moreover, the video images of this fight make it exceedingly difficult to identify exactly which juveniles actually hit E.R., much less who may have inflicted the blow(s) that caused E.R. to bleed from his subclavian vein. While it could be argued that every juvenile involved in the fight could be charged with Battery on a Detainee as a principal, this claim would ultimately fail in court. The “principal” theory of prosecution provides that if an offender helps another person or persons commit a crime, that offender must be treated as if he had done all the things the other person or persons did, but *only* if the offender had a conscious intent that the criminal act be done and the offender did an act or said something which was intended to, and which did incite, cause, encourage or assist the other person to commit the crime.

In this case, there is no indication that this fight was the product of a joint effort of the juveniles to harm E.R. Rather, each one seemed to simply jump into the fight of his own accord. The State could not meet its burden of proving that these juveniles acted in concert with one another to punch or kick E.R., therefore, it cannot use the principal theory of “all for one, one for all” in committing this crime. The State would then be left with having to identify not only which juvenile(s) hit E.R., but also with which one(s) struck E.R. to cause the fatal injury to him (assuming that the injury was sustained during that fight, and not during a prior incident).

In summary, the State cannot file homicide charges against any of the JDC staff members, nor against the juveniles involved in the attack against E.R. on the afternoon of August 30, 2015. There is no proof that E.R.’s death was the product of premeditation or of a depraved mind without regard to human life. While it is true that a number of these juveniles were engaged in felonious conduct during the fight (Battery on a Detainee and/or Felony Battery), the State would have to show exactly which juvenile(s) hit E.R. in the chest area, which

is the most likely cause of injury that led to E.R.'s death. The poor quality of record keeping at the Module makes it difficult to state with certainty every detainee who was present at the time of the beating, and the even worse quality of the video footage makes it impossible to discern who hit E.R. and where he was hit. The State could not use the principal theory to charge all the juveniles with E.R.'s death because there is no proof that they were acting with a singular, intentional purpose. Finally, the nature of E.R.'s injury to his subclavian vein yields the possibility that while he died from the defect in his vein, the Medical Examiner cannot state for certain that the defect was caused by the beating; it could have been from an earlier altercation at the JDC, or even when E.R. was taken into custody for the armed robbery charge which landed him in the JDC in the first place.

CONCERNS WITH THE JDC

The investigation conducted by this prosecutor suggests that antiquated systems within the JDC are insufficient to safeguard the detainees and the staff at this facility. The video cameras are outdated and record poor quality images. The system in place for detention officers to track the activities of the detainees in their charge are also inadequate, as they are occasionally illegible and sometimes omit mention of activities which occur at the JDC. Moreover, given that each Module in the JDC is isolated, if the 2 officers who are present run into difficulties, it leaves 1 officer to radio for help, while the other tries to intervene, and for them both to have to wait until other officers make entry into the Module to provide assistance. In those moments, it is plausible to believe that violent acts even worse than what occurred to E.R. could take place. The reasons for these inadequacies are beyond the scope of this Memorandum, but must surely be addressed by a variety of governmental entities.

Separate and apart from those concerns, an additional issue was raised in the aftermath of E.R.'s death. Multiple allegations were made, primarily by attorneys with the Office of the Public Defender for the Eleventh Judicial Circuit, that some of the detention officers at the JDC would reward detainees for instilling "discipline" to others who were deemed unruly or uncooperative with the guards. Multiple allegations were made accusing detention officers of giving special privileges such as snack foods to the juveniles who would punish others that misbehaved. Although the State does not have sufficient proof to sustain this allegation as to E.R.'s case, this concern cannot be ignored. That is why the State Attorney tasked the Public Corruption Unit to conduct a separate investigation into the issue of whether there are systemic violations of the rights of the juveniles housed at the J.D.C.

It should be noted that the day after E.R. died, Miami-Dade Police Department Homicide investigators interviewed a number of the juveniles who were in Module 9 at the time of the attack against E.R. One of the last juveniles to be interviewed, L.B., stated that Detention Officer Johnson told T.R. to hit E.R. (Recall that T.R. hit E.R. first, and then a number of juveniles jumped E.R. afterward). L.B. said that this directive was

given by Officer Johnson because E.R. had been unruly during dinner, and that T.R. was to "punish" E.R. for his misconduct in the cafeteria. L.B.'s allegation that E.R. was disruptive and disobedient during dinner is corroborated by multiple witnesses as well as video footage from the dining hall. (Note that after this incident, Officer Johnson was terminated from employment by the Department of Juvenile Justice, apparently for reasons unrelated to E.R.'s death).

When L.B. made this allegation to Homicide Bureau investigators, T.R. (the first one to hit E.R.) had already been interviewed. In his interview with the police earlier that day, T.R. stated that he hit E.R. because E.R. had allegedly "jumped" him the day before; however, T.R. may not have been truthful in that claim. According to JDC staff, there were no incident reports regarding a fight between T.R. and E.R., not even on the morning of the incident when T.R. got into an altercation with another one of the juveniles in the module. It seems odd, to say the least, that a fight between T.R. and E.R. would have broken out after dinner over some skirmish that happened a day earlier which was so minor, that it did not merit an incident report. If T.R. had in fact been given an order (express or implied) by Officer Johnson to "discipline" E.R. for E.R.'s misconduct during dinner, it is unlikely that T.R. would have said so when he was interviewed, *at the JDC*, the day after E.R. died.

Once T.R. was released from the JDC, investigators sought to re-interview him about what prompted him to hit E.R. However, at that time, T.R. was still being prosecuted for his juvenile case, and he advised that he would provide no further information about this matter. Once T.R.'s juvenile case had closed, the State sought to subpoena T.R. to question him about this matter. However, T.R. could not be served with a subpoena to testify about his fight with E.R., because T.R. was shot once he was released from the JDC, and was hospitalized for his gunshot wound. T.R. has since recovered from the gunshot wound, but by the time he had recovered, any information he could have had would have been stale or of little investigative value. The investigation into this matter revealed that T.R.'s nickname, according to juvenile K.H., was "Honey Smack." The allegations which surfaced during this investigation is that the detention officers would give "honey buns" to juveniles who hit/smacked/instilled discipline against other unruly juveniles. It is unknown if this alias was due to him acting as an "enforcer," or for some other reason.

At this point, regardless of what T.R. might to say about why he hit E.R., there would not be enough evidence to charge Officer Johnson with inciting him, or any other juvenile, to hit E.R. The only evidence against the officer at this time is the statement of 1 juvenile (L.B.) who was present at the time of the fight; however, his statement is contradicted by that of "Honey Smack," aka T.R., who said he hit E.R. due to a prior altercation. Even if T.R. were to change his testimony now and claim that he hit E.R. at the behest of the officer, that would not be sufficiently credible to sustain the State's burden of proving this allegation beyond and to the exclusion of every reasonable doubt.

The State could, in theory, charge T.R. with committing a battery on fellow detainee E.R. on the day of the melee. However, given the fact that T.R. had been shot when he was released from the JDC; that he and E.R. did have some kind of bad blood with each other; and that this offense was de minimus compared to the death of E.R., a determination was made in conjunction with the Division Chief of the State Attorney's Office Juvenile Division not to charge T.R. with hitting E.R.

CONCLUSION

For the reasons set forth in this memorandum, the State will not file criminal charges against the staff or the juveniles that were at the JDC in conjunction with the death of E.R. The Medical Examiner cannot conclusively determine that the beating of E.R. by the other juvenile detainees was in fact the cause of his death; the Medical Examiner indicated that a prior injury (either from another detainee well before the melee, or from being taken into custody on his armed robbery charge) could have resulted in a slow bleed from his subclavian vein which ultimately caused him to die. Additionally, the State cannot prove which juvenile (or juveniles) did strike a fatal blow, assuming that the beating did cause E.R.'s death. Moreover, there is insufficient evidence to establish that the juveniles involved in the fight (to the extent that any of them can be positively identified) were acting as principals with a single purpose, or that anyone acted with an intent to cause death or serious injury to E.R. Additionally, while this investigation indicates that the JDC's facilities must be significantly upgraded to ensure the safety of the staff and detainees there, there is no evidence to indicate that any staff members there provided criminally negligent care to E.R. Finally, there is insufficient evidence to establish that any JDC detention officer directed any of the juveniles in E.R.'s Module to strike E.R. For all these reasons, the State of Florida cannot file criminal charges in conjunction with the untimely death of this young man.