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No charges in Taser death of graffiti artist in Miami Beach

For prosecutors, there was a crucial element in declining to charge a Miami Beach police officer for the August 2013 Taser death of graffiti artist Israel “Reefa” Hernandez-Llach.

The Taser stun gun, under state law and police policies, is considered a “non-lethal” weapon — making the teen’s death an accident, not manslaughter or murder, Miami State Attorney Katherine Fernandez Rundle announced Thursday after nearly two years of investigation.



Israel Hernandez-Llach

Christian Sanchez, a friend of Israel “Reefa” Hernandez-Llach, attends a demonstration on Collins Avenue and 71st Street in Miami Beach on Thursday, July 23, 2015. Friends and supporters of Reefa protested the decision not to charge a Miami Beach police officer in the August 2013 Taser death of the teen.

“After the medical examiner determined that Israel Hernandez-Llach’s death was accidental, it left little legal room to pursue any possible criminal charges,” she said. “Our extensive investigation determined that the sad tragedy of this situation is that no one involved intended or anticipated any serious injury occurring to this young man.”

While relatives of Hernandez-Llach — whose death sparked protests against police tactics and drew worldwide media attention — were unhappy with the decision, they are now turning their attention to changing people’s minds about Taser use.

Family lawyer **Todd Falzone** said he intends to file a lawsuit this week against Taser International Inc., the Arizona company that manufactures the stun gun that led to the death of the 18-year-old graffiti artist.

“We honestly believe this weapon is a lethal weapon,” **Falzone** said. “It should be treated as a lethal weapon, and we’re going to do everything we can to ensure the public is protected from this device.”

Taser will be named as part of an already-filed suit against Miami Beach Police, litigation bound to be watched closely by police-reform advocates and the law enforcement community.

For criminal justice observers, the decision was not unexpected because of the high legal threshold in charging police officers in Florida. Under state law, police officers in Florida are afforded wide leeway to use deadly force to protect themselves and the public, and in this case Officer Jorge Mercado used a weapon intended to avoid killing. No Florida police officer has been charged with an on-duty shooting since 1989.

The state’s decision comes at a time of increased national friction between the public and police over questions of excessive use of force. The Miami Beach police department must now finish an internal affairs review to see if Mercado broke any department policies in deploying his Taser that day.

Prosecutors deemed Mercado was “legally justified” in using the Taser.

“We cannot in good faith proceed with criminal charges against Officer Mercado,” according to a final report released Thursday by the State Attorney’s Office.

Meanwhile, friends of Hernandez-Llach gathered Thursday evening around 71st Street and Collins Avenue in Miami Beach, near where the shooting took place. They spoke of their friend’s gentle soul, took issue with the police’s actions and placed flowers on the wall of the City National Bank building on 71st Street.

“There was no justification to use tasers - he was surrounded by seven police officers,” said Jack Lieberman, wearing a white T-shirt



Christian Sanchez, a friend of Israel “Reefa” Hernandez-Llach, attends a demonstration on Collins Avenue and 71st Street in Miami Beach on Thursday, July 23, 2015. Friends and supporters of Reefa protested the decision not to charge a Miami Beach police

Last year, in a first of its kind ruling in Florida, the Miami-Dade Medical Examiner's Office ruled that Hernandez-Llach died accidentally of heart failure due to "energy device discharge." The state's ruling Thursday comes after a nearly two-year investigation that included extensive medical testing, a computer-animated re-creation of the incident and even sending the Taser itself for an outside examination.

The 36-page report, written by prosecutor Howard Rosen, offers a detailed look at what led up to the fatal Taser death of the graffiti artist.

In the early morning hours of Aug. 6, 2013, a parks worker drove past Hernandez-Llach and two friends who were spray-painting at the shuttered McDonald's on Collins Avenue and 71st Street. The worker stopped and told Mercado and his partner, Cormilus Lattimore, who were parked three blocks away. When they pulled up to the McDonald's, Hernandez-Llach bolted, with both officers giving chase on foot.

The teen ran west on 71st Street, then doubled around and went back toward Collins, ducking into an alleyway next to a defunct hotel, then coming back around sprinting west.

In all, prosecutors said, the teen ran a total of a third of a mile while being chased by officers.

The huffing-and-puffing cops lost him. But officers on a nearby burglary detail saw Hernandez-Llach sprint across Harding Avenue at 69th Street, running into the courtyard of an apartment building before bursting into a small corridor hemmed in by an iron fence.

As calls went out on the radio, Hernandez-Llach jumped the fence, landing on top of a Ford Mustang parked in a public lot on Harding Avenue. It was then that Mercado, running south, encountered Hernandez-Llach — who was running north toward him.

According to the report, the teen refused commands to stop. At the moment, as the two ran toward each other, Mercado fired the X26 Taser stun gun once, from a range of about seven feet.

Hernandez-Llach crumpled to the ground. Because he appearing not to be breathing, officers summoned paramedics, who rushed him to Mount Sinai Medical Center, where he was pronounced dead less than an hour later.

Over the years, the Miami-Dade Medical Examiner's Office has most often ruled that people shot by Tasers have died from "excited delirium," a brain disorder — exacerbated by drugs or mental illness — that makes people grow extremely agitated and raises body temperatures to feverish levels.

However, critics are skeptical, saying that excited delirium is an unproven ailment, a way to explain away heavy-handed police tactics.

Although Hernandez-Llach had an elevated body temperature — it was a hot night and he had been running — the teen never exhibited the bizarre and rampaging behavior seen in delirium deaths.

Hernandez-Llach had smoked marijuana hours earlier, but there was no evidence he was under the influence of any other drugs that morning. The presence of a synthetic hallucinogen known as “N-Bomb” was also found in his brain tissue, but the medical examiner ruled that neither drug “contributed to the cause of the death.”

In a first-of-its-kind ruling, Associate Medical Examiner Dr. Mark Shuman ruled that the cause of death was heart failure caused by “conducted energy device.” The key to the finding: Shuman noted that the bottom prong shot from the Taser hit the slender teen exactly at the spot in his chest where “there is the least skin-to-heart distance.”

And Shuman ruled that the death was accidental because there “was no reasonable expectation that the use of the device would result in death,” according to the memo.

Miami-Dade prosecutors considered charges ranging from murder to manslaughter, but a host of factors led them to determine no jury would convict Mercado beyond a reasonable doubt, according to their final report.

For manslaughter, the most likely of possible charges, prosecutors would have had to prove Mercado acted with “gross and flagrant negligence.”

But under police department procedures — and state law — a stun gun is considered a less-than-lethal weapon. In fact, two Miami-Dade grand juries, in 2004 and 2005, had recommended the use of the weapon to help cut down on lethal police shootings involving firearms.

And Mercado did just that, using the stun gun instead of drawing his firearm.

The Taser company itself has touted the weapon as a safe way to restrain combative people, although it has issued cautions against shooting a suspect in the chest for fear of disrupting the heart.

A spokesman for Taser would only say Thursday: “Our hearts go out to all parties involved to this tragic accidental death.”

Prosecutors pointed out that the foot chase was a “fluid situation” that involved both men running toward each other.

“It was not a static situation where Hernandez-Llach was standing still and Officer Mercado was also standing still and carefully taking aim,” according to the report.

Also, prosecutors said, Mercado had probable cause to arrest him for criminal mischief, at least a misdemeanor, and probably a felony because the damage to the building likely exceeded \$1,000, prosecutors said.

By law, Mercado is allowed to use “reasonable force” to make an arrest, even if a misdemeanor. And as for a felony, “he was justified in the use of any force in apprehending any felon fleeing from justice,” the report said.

“There is no legal distinction between whether the felony the subject committed was a violent felony or a property crime.”

Were Mercado to face a judge or a jury, he could have also claimed self-defense because the teen was running toward him, the report said. “It would be reasonable for Officer Mercado to believe that Hernandez-Llach would have knocked him down onto the ground to get away, which could have caused great bodily harm.”