



Florida Department of  
Law Enforcement

Gerald M. Bailey  
Commissioner


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January 16, 2014

**MEMORANDUM**

To: Bruce A. Hyma, M.D.  
Chairman, Medical Examiners Commission

From: Russell S. Vega, M.D.   
Member, Medical Examiners Commission

Subject: Marlon Brown Complaint against District 7 Medical Examiner Marie Herrmann, M.D.

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At your request, I reviewed the complaint in question to assist Medical Examiners Commission staff in determining if the complaint is legally sufficient, if a violation of Statute, Rule or Guideline seems likely to have occurred, and thus, if the convening of a Probable Cause Panel is warranted. As you are aware, because the complaint involved the documentation and interpretation of anatomic and medical findings, and opinions generated from those findings, staff felt that the expertise of a forensic pathologist was required to adequately evaluate the complaint. Mr. Culberson provided me with fairly extensive materials for review, including the written complaint; a complete copy of the Medical Examiner case file, including digital photographs; a Florida Highway Patrol case report with diagram; digital photographs from the Florida Highway Patrol and the Deland Police Department; and a digital copy of the Eagle-Eye Dashboard video from the involved vehicle that captured the event.

In essence, the complaint alleges two specific violations: 1) that Dr. Hermann violated s. 406.075(1)(g), F.S., by materially misrepresenting data upon which an opinion was formed, **and** 2) that Dr. Hermann violated s. 406.075(1)(i), F.S., by not utilizing the care or skill that a reasonably prudent medical examiner would use under similar circumstances.

After reviewing the case file, it is clear that the entire course of the investigation by the Volusia County Medical Examiner's Office is thoroughly documented, and that the investigation was meticulous and complete. The autopsy report is well written and documents an appropriate and thorough examination. Diagrams and photographs are appropriate and clear. Communications with outside parties are well documented. Reviews of outside documents, including the dashboard video, photos from other agencies, and reports from other agencies, are well documented. Opinions are enumerated in detail and distinct from objective findings. It is thus my opinion that Dr. Hermann exercised an appropriate level of care and skill in investigating this death.

Specifically, one opinion based on the video review appears to be a major focus of the complaint. The complainant states that "As the video clearly depicts the police car striking and running over Mr. Brown, Dr. Hermann's conclusions that the car somehow came to a stop on

*top of him and that there is no evidence that the vehicle struck him, are material misrepresentations.*” After reviewing the video, Dr. Hermann summarized the event by stating “... He appeared to be having difficulty running through the uneven dirt and vegetation. He slipped and fell and then the police car came to a stop on top of him.” After viewing the video, it appears to me that Mr. Brown did slip and fall but was not entirely recumbent at the time of impact with the vehicle, and that the vehicle could have struck his head or torso with the front bumper prior to coming to rest on top of him. However, Dr. Hermann’s statement does not preclude this and is thus, in my opinion, reasonable.

Later, when listing her various opinions in writing, Dr. Hermann states “4. *Was Marlon Brown struck and flung from the front of the police car?*” and then answers with “*There is no evidence that he was struck by the vehicle. There were no skull fractures and no fractures of the pelvis or lower extremities.*” The context of her comment that the decedent was not “struck by the vehicle” suggests that she was referring to a scenario in which the decedent was struck and flung from the front of the vehicle and subsequently killed by those impact injuries rather than by mechanical asphyxia. The photographs support Dr. Hermann’s contention that Mr. Brown suffered no skull fractures and no fractures of the pelvis or lower extremities. In fact, my review of all of the photographs and documents identified no life threatening injuries, with the exception of those associated with the compression and angulation of the head, neck and torso. The autopsy report clearly identifies the trauma to the neck, thus, again, I do not believe there was any material misrepresentation here by Dr. Hermann.

To be clear, in my opinion, Dr. Hermann is not implying that there was no contact between the vehicle and the decedent. Rather she was trying to distinguish what she observed in this case from a scenario in which the decedent was struck while upright, thrown to the ground, suffered significant blunt impact injuries, and was *then* run over and compressed by the vehicle. I find her interpretation of the video and the opinions she formulated subsequently (based on the video, her autopsy findings, etc.) to be reasonable. From this perspective, I see no evidence that Dr. Hermann materially misrepresented any data that informed her opinions.

One other issue raised in the complaint is the fact that Dr. Bao and Dr. Hermann had a disagreement regarding the appropriate manner of death determination. As you know, a difference of opinion amongst competent medical examiners is not unusual and, of itself, does not indicate any lack of competence, care, or diligence. I find Dr. Herrmann’s opinion regarding the manner of death to be reasonable, again with the caveat that other reasonably prudent medical examiners might come to a different opinion. Other than the correspondence from Mr. Crump’s office, which is not supported by any other records provided to the Commission, there is nothing in the record that suggests the manner of death was changed. As you are aware, the Medical Examiners Commission lacks the authority to compel a medical examiner to change a cause or manner of death. The only recourse to amend a death certificate if Dr. Herrmann is not willing to voluntarily do so, is to seek redress in a competent court of law, as only a judge has the authority demand such action.

In conclusion, I see no evidence that Dr. Hermann violated any section of Chapter 406, F.S., Rule Chapter 11G, F.A.C., or the Practice Guidelines for Florida Medical Examiners in her investigation of this death. Therefore this complaint is *not legally sufficient*.

Please do not hesitate to contact me if you have any questions or would like to discuss this case further.