

MEMORANDUM

TO: File

FROM: Stefanie Newman
Assistant State Attorney in Charge
Domestic Violence Unit

DATE: January 20, 2016

RE: Defendant: Albertin Aroldis Chapman
Book ID: 2235778
Victim: Cristina Barnea
Charge: Battery (Domestic Violence)

On October 30, 2015, police were called to the home of the defendant and victim for a domestic disturbance where a firearm had been discharged. The defendant and victim are engaged to be married and share a child in common. The allegations were that on this date, the defendant hit or pushed the victim, prompting her to call 911. While the victim was on the phone with the police, she informed the dispatcher that she heard shots being fired and believed the defendant was firing a shotgun; however, she was hiding outside and did not know where he was within the house. Members of the Davie Police Department responded to the residence.

At least 19 officers from the Davie Police Department responded to the home on the night of this incident. The undisputed facts which have come to light were that:

- A friend of the defendant's was having a birthday party at the defendant's house.
- There were at least 20 guests at the home when this incident took place.
- At some point in the evening, the victim took the defendant's cell phone from one of his friends, went into the bathroom and started looking at his phone. The victim found a text message from another woman and became angry.
- The defendant found out the victim had his phone and retrieved it from her. The defendant was angry with the victim for going through his phone.
- The incident occurred in the theater room of the residence.
- The only individuals identified by police were the victim (Cristina Barnea), her brother (Dany Barnea) and the defendant's driver (Yensy Fernandez).
- The only other individuals identified by name, were the parents of Cristina Barnea. By all accounts, the mother was caring for the baby, the father was sleeping, and both were in the living room, unable to view any of the incident.
- The remaining guests were patted down for weapons and permitted to leave in their cars. No information was taken to identify any of these individuals, nor were any statements obtained from them as to what they may have seen or heard.

- After the initial argument but before police had responded, the defendant retrieved his firearm, went into his detached garage and fired at least 8 times. When police arrived they ultimately obtained the firearm from Mr. Fernandez, who advised that he found it on the garage floor and secured it in his vehicle “so no one got hurt.” One bullet hole was observed in the window of the garage, 6 projectiles and 8 casings were found inside the garage. Several bullet strikes were identified by police on the wall and concrete floor where the defendant may have shot into, or where the bullets had ricocheted when he fired his weapon inside the garage.

Multiple versions were reported as to what happened, where it happened and how it happened. No arrest was made on the night of the incident. Several days later, Detective Brent contacted ASA Marcie Zaccor at the State Attorney’s Office by phone. Detective Brent advised that the Davie Police Department had already concluded that there was no domestic battery and then he provided some of the facts pertaining to the discharge of the firearm and asked a few questions. Although the police reports indicate that the case would be presented to the State Attorney’s Office, it was not. This office became aware of the incident after receiving several inquiries from various media sources in early December, 2015. The State Attorney’s Office contacted the Davie Police Department and requested that the case be presented for further review. This case was presented to the State Attorney’s Office on Dec. 9, 2015. This ASA received the last of the requested reports from the Davie Police Department in mid-January, 2016. This ASA took sworn statements, gathered additional evidence (911 call) and conducted an independent investigation into these allegations. The State’s findings with respect to this incident are set forth below.

BATTERY CHARGES:

The facts reported were as follows with respect to the battery:

VICTIM’S ACCOUNT:

A 911 call was placed by the victim. This ASA received a copy of the 911 call directly from the Broward Sheriff’s Office. On the 911 call, the victim stated the following regarding this incident:

- “hello, I have an emergency. My husband he got into a fight with me and I’m really scared because I have my daughter and he has a gun.”
- “he’s throwing a shotgun, somebody hurry up, he’s throwing a shotgun, oh my god.”
- “no nobody’s injured, I’m just really, really scared for my family that’s in my house and my baby.”
- “I’m hiding in the back, I just heard the shotgun going off”
- “I’m really scared. He was hitting me in front of everyone and he’s going crazy, there’s a lot of people here.”
- “I just need the cops here to control him, please that’s all I want.”
- “when I called you guys I heard shotguns going off.”
- “I’m hiding in the bushes, the house next door”

- The victim also repeatedly stated to the dispatcher that she doesn't want the defendant to get arrested, she just wants the police to control him because she is really scared.

When the police arrived, the victim advised that the defendant had pushed her up against the wall near the movie theater and she fell to the ground, she later advised that the defendant had "choked" her by placing his hands around her neck, but he did not prevent her from breathing. Police did not observe any injuries or redness on her neck or chest. The police took photos of Cristina Barnea to document that she did not appear to be injured. That night, the victim provided a sworn statement to police. In the statement, she told police:

- She got into an argument with her child's father, Aroldis Chapman, because she found something related to a woman in his phone.
- She went into the bathroom with the suspect's phone and he came to the bathroom and took it away from her.
- She followed Chapman to the bar within their home to confront him, but his friends were there, so they went to the movie theater to talk about it.
- Inside the theater, the suspect was really aggravated and pushed her against the wall. Then her brother came in and separated them.
- She ran out of the house because she was scared for her and her daughter.
- Once outside, the victim heard one gunshot but did not know who it came from.
- The victim also advised that she did not wish to prosecute.

The victim filed a sworn waiver of prosecution which was received by this ASA on December 22, 2015. In that sworn waiver, the victim stated that she was arguing with the defendant in the theater room. The area was narrow and confined. They were facing each other and she entered his personal space. Aroldis used his fingers to move her away from him, out of his personal space. She lost her balance and fell. She was not harmed and she does not want to prosecute.

On January 12, 2016, this ASA took a second sworn statement from the victim. Prior to commencing with the statement, the victim was given the opportunity to review the first statement she gave to police and to listen to her 911 call. The victim was asked why she told the 911 dispatcher that the defendant hit her in front of everyone. She did not recall making that statement and said she didn't know why she said that because the incident took place in the theater and no one was present except her and Aroldis. The victim was also asked about her initial statement to police and why she told them the defendant pushed her against the wall. The victim explained that the way the theater is set up, it is very narrow, there is very little room to move and the movie theater chairs are very close to the door. She advised that she had grabbed the defendant's hand in the bar area and led him to the theater to discuss what she had seen on his phone because she was angry. Ms. Barnea described how she confronted the defendant in the theater, arguing with him, and how she got really close to him, intruding upon his personal space. She explained that the defendant used his open hands to push her away and out of his personal space. When this happened, she stated that there was a chair behind her and it made her fall on the floor. She was mad and screaming, which is when her brother came running in, saw her on the floor and tackled Aroldis. Mr. Fernandez came running behind her brother and separated

them. Ms. Barnea reiterated that no one else was in the theater or near it when this incident occurred. Ms. Barnea advised that the defendant was mad and drunk, as he had been drinking all day, so she went looking for his firearm, which she could not locate, then she ran out of the house. When questioned why she would go looking for his gun, Ms. Barnea stated that the defendant was drunk and she wanted to make sure he didn't do something stupid. She advised once she left the house, she heard a few shots. She never saw Aroldis with the gun, did not know who shot the gun, or where they shot the gun. Ms. Barnea confirmed that the defendant had touched/poked her and she had not given him permission to do so; however, she also repeatedly stated that he only touched her to get her out of his personal space because she was too close to him. The way in which Ms. Barnea described the incident fails to show that the defendant intentionally touched or struck her against her will or intentionally caused bodily harm to her pursuant to F.S. 784.03, as opposed to a reflex reaction to her confrontation.

WITNESS ACCOUNTS:

Witnesses Dany Barnea and Yensy Fernandez both spoke with police on scene, but refused to provide sworn statements. The night of the incident, Mr. Barnea advised police that he heard an argument between his sister and the defendant and he went to defend his sister and stop the argument; however, he never saw any physical altercation between them.

On December 21, 2015, this ASA took a sworn statement from Dany Barnea. He advised the following regarding this incident:

- Aroldis was looking for Cristina and he was helping him look for her. When he saw them, they were talking by the bar and the movie theater.
- He was by the living room, pretty far from the theater.
- He heard a loud noise and went to see what was going on. He saw his sister laying on the floor, overreacted and tackled Aroldis.
- He did not see how his sister ended up on the floor, nor did she tell him anything that had happened.
- He could not see what was going on in the theater from his vantage point before he entered the theater.
- No one else was in the theater with Aroldis and his sister.
- He was the first to enter the theater. Yensy went into the theater after him.
- He did not see any injuries on his sister.
- He left the house with his sister. They separated when he went to get keys to leave.
- He thinks maybe everyone heard the gun going off that night, but he did not recall hearing it.
- He did not see the defendant with a gun that night.
- He reported that he had just gotten there and didn't recall seeing anyone drinking. He stated that the defendant had just come from taking a shower, so he didn't think he had been drinking.
- He talked to Yensy afterward, who advised that he didn't see anything because he wasn't there.

Police Reports indicate that the defendant's driver, Yensy Fernandez, told them that he observed a verbal altercation between the defendant and the victim while he was standing at the entrance to the theater room. He told police that Cristina ran out of the theater with the defendant's phone, then returned, charging at Chapman and tackled him. He reported that Dany Barnea saw his sister and the defendant on the floor, with Chapman pushing Cristina off of him and he jumped in to defend his sister. Mr. Fernandez separated everyone. Mr. Fernandez also turned over the firearm to police and advised that he had removed and secured it to prevent anyone from hurting themselves.

On December 18, 2015, Mr. Fernandez gave a sworn statement to this ASA. Before going on record, Mr. Fernandez advised this ASA that the police report was inaccurate as to what he told the police and had seen. Mr. Fernandez testified:

- He did not see an argument between Mr. Chapman and Ms. Barnea.
- He was in the living room and the Defendant was looking for Ms. Barnea.
- When Aroldis got his phone, Cristina was leaving, then she went back to him and pulled him into the theater.
- He saw Dany running towards the theater and ran after him.
- Dany was closer to the theater than he was, but neither of them were in a position to physically see what was going on inside the theater due to the layout of the house.
- Afterward, Dany told Mr. Fernandez that he saw Aroldis standing and Cristina on the floor so he tackled him, but Mr. Fernandez did not see that. When Mr. Fernandez got to the room, Dany was on top of Aroldis and he took him out of the way.
- Aroldis was mad that Dany tackled him.
- He cannot recall seeing the defendant with a gun that night.
- Someone told him the defendant fired the gun, but he could not recall who told him.
- He heard a loud noise, but it did not sound like a gunshot to him.
- He went to the garage, saw the firearm on the floor, picked it up and put it in his vehicle in the glove compartment so no one would get hurt.
- He could not tell if the firearm had been fired.
- He did not discuss what happened with anyone because "nothing happened."

Neither witness was able to provide the names of any of the other individuals in the house at the time of this incident.

DEFENDANT'S ACCOUNT:

The police made contact with the defendant on scene. The defendant was not advised of his rights and did not speak English. Through the translation of a Spanish speaking officer, the defendant told police that his girlfriend started fighting with him over his cell phone and he used his index and middle finger and poked her on the left shoulder and told her not to talk to him like that. He advised that his girlfriend fell to the floor and started yelling, at which point her brother came in and pushed him to the ground. The defendant also admitted to police that he was angry,

punched the car window injuring his hand, retrieved his pistol, locked himself inside the garage and fired his weapon several times. The defendant refused to provide a sworn statement to police. Because these statements were made to police while they were conducting a criminal investigation prior to any rights being read, it is doubtful whether these statements would be admissible in a court of law, except for the purposes of impeachment.

FIREARM CHARGES:

A firearm was discharged at least 8 times on the night of this incident. The scene photos reveal that the firearm was discharged inside a detached garage, which was not attached to the main residence, but merely connected by a covered walkway. No other individuals were inside the garage other than the defendant at the time he discharged the weapon. The only property inside the garage at the time belonged to the defendant. This ASA reviewed Florida Statutes, Chapter 790 dealing with weapons and firearms to determine if any statutes had been violated by the defendant. The following statutes were reviewed:

Florida Statutes, §790.053-Open carrying of weapons

- The defendant used the firearm inside the garage of his home on private property.
- None of the witnesses reported seeing the defendant with the firearm.
- Since the defendant was not seen openly carrying the firearm, this element of the statute is not satisfied. (Note: The State must establish evidence of the *corpus* of the crime before the State is legally entitled to introduce the defendant's admission [that he retrieved the firearm and discharged it within his locked garage]).

Florida Statutes, §790.10-Improper exhibition of dangerous weapons or firearms

- None of the witnesses reported seeing the defendant with the firearm.
- This statute requires the defendant to carry the firearm in the presence of one or more persons, and to exhibit the weapon in a rude, careless, angry or threatening manner. The State cannot establish any of those elements to prove a violation of this statute.

Florida Statutes, §790.15-Discharging firearm in public or on residential property

- The defendant did not discharge the firearm in public.
- Although the defendant did discharge a firearm on a residential property, this statute prohibits doing so outdoors on any property used primarily as the site of a dwelling. The defendant in this case discharged the firearm inside of his detached garage; therefore, this statute was not violated.

Florida Statutes, §790.151-Using firearm while under the influence of alcoholic beverages, chemical substances, or controlled substances

- The victim provided a sworn statement advising that on the night of this incident, the defendant was drunk, as he had been drinking all day. She further testified that he had even taken a shower to try and sober up shortly before this incident occurred.
- The victim's brother testified that he did not believe the defendant had been drinking because he had just come out of the shower.
- When asked about his observations of the defendant that night, Mr. Fernandez merely testified that the defendant was mad.
- At least 19 officers from the Davie Police Department responded to this home on the night of the incident and not one of them indicated in their police reports that the defendant appeared to be intoxicated or under the influence of alcohol.
- There is no reasonable likelihood of establishing beyond and to the exclusion of every reasonable doubt that the defendant was under the influence of alcoholic beverages on the night of this incident.

Florida Statutes, §790.19-Shooting into or throwing deadly missiles into dwellings, public or private buildings, occupied or not occupied

- The defendant shot a firearm, which is likely to produce death or great bodily harm, within a private building (his garage), which was unoccupied at the time (he was the sole occupant).
- The physical evidence shows that the defendant fired one shot from within the garage, out the southwest window.
- There was no evidence to establish that the defendant was firing at anyone when he fired the shot out the window.
- By the victim's account to police, she ran outside to the south side of the residence, to the north of the incident location and hid behind or in the bushes in the house next door. She also did not see where the defendant had gone, nor did she see him at any time with the firearm.
- In Washington v. State, 912 So.2d 344 (Fla. 3rd DCA 2005), the appellate court upheld the defendant's conviction for shooting or throwing a deadly missile in a building when he fired a weapon from inside a building at the victim who was outside the building. Unlike that case, here the State cannot establish that the defendant was shooting at anyone when he fired out the window.
- In Mead v. State, 214 So.2d 514 (Fla. 3rd DCA 1968), the appellate court held that deliberately firing two shots through a plate glass window into a bar occupied by several people was sufficient to sustain a finding that the defendant's shooting into a building was done wantonly and maliciously. In this case, there is an open field (private property &/or part of the defendant's property) depicted in the scene photos adjacent to the garage window. The State is unable to establish any evidence that the defendant deliberately fired the shot out the window at anyone to satisfy the element that he acted wantonly and

maliciously. To the contrary, the defendant told police that he locked himself in the garage alone before firing any shots.

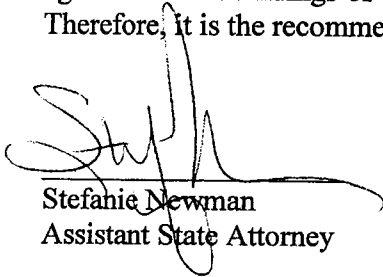
Additionally, a records check by police revealed that the firearm had not been stolen, lost or found.

CONCLUSIONS:

With respect to the battery allegation, there were conflicting accounts as to how the altercation occurred. The victim portrayed the defendant's actions as more of a reflex reaction to her confrontation with him, as opposed to an actual, intentional touching within the meaning contemplated by the statute. The defendant's driver portrayed the victim as the aggressor in the initial account to police. The victim did not sustain any injuries and did not wish to prosecute. Additionally, no other witnesses were identified. Although the police reports and witnesses spoken to all indicated that at the time of this incident, there were approximately 20 people at the home, the three witnesses did not know full names, addresses or identifiable information for any of the individuals, other than to refer to them as friends of Aroldis or nicknames. Police patted down all of the individuals for weapons; however, they neglected to take any names or information from the partygoers before allowing them to leave. Therefore, this ASA is precluded from obtaining any additional accounts of the incident other than those specified above.

The State can show circumstantially through witness statements and physical evidence, that the defendant discharged a firearm. That evidence may be sufficient corpus to render the defendant's statements to police pertaining to the discharge of the firearm admissible. However, those facts are still insufficient to file any of the above violations involving the discharge of the firearm as set forth above. With no applicable gun charges, the facts regarding the discharge of the firearm are more prejudicial than probative and not likely to be admissible in a battery trial if charges were filed.

In light of the above-stated facts, there is no reasonable likelihood of conviction and this ASA agrees with the findings of the Davie Police Department that no criminal charges are warranted. Therefore, it is the recommendation of this ASA that all charges should be declined.


Stefanie Newman
Assistant State Attorney