

Probe found Jose Fernandez caused fatal boat crash. His lawyer insists pitcher 'was framed'

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With no survivors, the horrific boat wreck that killed Miami Marlins pitcher Jose Fernandez and two other men never produced criminal charges. The resulting lawsuit against his estate has been settled, terms undisclosed.

Five years after the stunning tragedy, all the legal questions surrounding the high-speed crash off South Beach have been resolved — at least formally.

But not for the baseball star's mother and her attorney. They insist the charismatic 24-year-old sensation has been wrongly convicted in the court of public opinion by a state investigation that put him behind the wheel, drunk and high on cocaine. His 32-foot boat slammed at 65.7 mph directly into a jagged rock jetty that dark morning, an impact that killed him and his passengers, Emilio Jesus Macias, 27, and Eduardo Rivero, 25.

Despite the forensic and DNA evidence compiled by Florida Fish and Wildlife Conservation Commission investigators, Fernandez's attorney continues to say the probe was botched from the get-go. He contends FWC officers misinterpreted injuries that he believes suggest Fernandez was not piloting his own boat, conducted a sloppy and biased probe and never investigated the possibility that someone might have slipped drugs in the baseball star's drink before the crash.

"He was framed, in the public eye," said Ralph Fernandez, the family's attorney, who is not related but was a father figure to the baseball star. "I want to salvage the memory of someone I so loved."

The FWC, which handled the probe because it has jurisdiction over boating accidents off the waters of Miami, declined to discuss specifics or address the family's questions but stands by its findings.

"FWC investigators completed a thorough and comprehensive investigation of this tragic incident," the department said in a statement. "Our hearts continue to be with the friends and families of the victims."

Had he survived, Fernandez could have been charged with a slew of violations, the FWC said in its 2017 report, including boating under the influence manslaughter, vessel homicide and reckless operation of a vessel.

An attorney for the Macias and Rivero fam-



Miami Herald file

American Social Bar & Kitchen, the Miami River establishment that Marlins All-Star pitcher Jose Fernandez and two others visited in the hours before they died in 2016.

ilies defended the agency, saying it investigated the "allision" — a maritime law term for a vessel striking a stationary object — "thoroughly and competently and the forensic evidence supported their findings."

"My firm has represented other maritime clients where the FWC investigated and we have the utmost respect for their knowledge, thoroughness and ethics," said Chris Royer, of the Krupnick Campbell law firm in Fort Lauderdale. "The public may not always like to hear the outcome of these investigations, but the forensic evidence speaks for itself."

DIFFICULT CASES

With countless miles of coastline and waterways, fatal boat crashes are relatively common in South Florida. Reconstructing them can be challenging under the best of circumstances — let alone when a crash happens in the dark, during shifting tides and with no surviving witnesses.

So, like with many marine crashes, it can be difficult to say *exactly* what happened.

The negligence case was settled in August 2018. The terms of the civil settlement between the Fernandez estate and the Macias and Rivero estates remain confidential and, despite the findings from the FWC investigation, the suit did not produce any statement placing blame on Fernandez.

Still, even as Fernandez's family disputes who was behind the wheel, boat operators often shoulder much of the responsibility in negligence cases, maritime law experts say.

"When you're a captain, it's your responsibility to operate your vessel in a prudent, seaman-like manner. It doesn't absolve you of responsibility if you let someone else drive. It's different than a car in that way," said Tuuli Messer-Bookman, a maritime expert and consultant from Washington who was not in-

involved in the case. "It doesn't matter if he was driving or not. He was in charge."

THAT FATEFUL MORNING

The crash happened on Sept. 25, 2016, hours after the Marlins played in a game Fernandez did not pitch in. Aboard his 32-foot boat, dubbed Kaught Looking, he departed from the Coplum Yacht Club. He picked up his friend, Rivero, along Biscayne Bay at Museum Park in downtown Miami.

The two docked the boat at American Social, a hip bar-restaurant on the Miami River, just before 1 a.m. Macias, who was a friend of Rivero's and lived in the adjacent condo building, came down to meet the baseball star. Macias was longtime friends with Rivero, but did not know Fernandez and was meeting him for the first time.

FWC's investigative report later said that Fernandez's girlfriend briefly hung out with the group, and told investigators the star didn't seem to be "behaving unusually and he did not seem impaired." But the report also noted that she had text messaged Rivero to say the two had gotten into an argument recently and "he's not in the best state of mind," according to FWC's report.

Investigators concluded that Fernandez purchased two bottles of Don Julio tequila, plus three other well drinks. Later, Fernandez, Rivero and Macias went for an impromptu ride on the boat, heading through Government Cut, past the South Pointe Pier and into the Atlantic Ocean headed northeast.

The boat's GPS showed that about half a mile offshore it turned around and headed back toward Government Cut. It plowed into the north jetty at 3:02 a.m., causing the boat to completely roll over and come to rest on top of the rocks.

The pitcher's body was pinned under the boat. Macias was thrown off

the boat, found in a tidal pool next to the jetty. Rivero was discovered underwater on the north side of the jetty, his head and chest under a boulder.

THE FINAL REPORT

FWC took six months to finish its report and publish its conclusion that Fernandez had been drunk and high on cocaine, and was behind the wheel of the boat when it crashed. "Fernandez operated [the boat] with his normal faculties impaired, in a reckless manner, at an extreme high rate of speed, in the darkness of the night, in an area with known navigational hazards such as rock jetties and channel markers," the report said.

Investigators concluded that the physical injuries to Fernandez's body matched the damage on the boat's center console, including linear bruises on his upper thighs that came from hitting the shattered plexiglass on the front of the console. Also, his blood was found next to a compass damaged by the impact with the pitcher's face, and small chips in the compass were caused by his teeth smashing into it, investigators determined.

Upon impact, Fernandez was "thrown to the starboard (right) where he was pinned beneath the T-top [frame] as the [the boat] rolled over," the report said.

Ralph Fernandez, the family's attorney, has long disputed the interpretation of the injuries. His critique of the FWC investigation was outlined in a 167-page document filed in April 2018, which he believes "dramatically impacted" the negligence case and led to a settlement four months later.

According to his filing, Fernandez's facial injuries were caused not by the impact with the console but by an aluminum

bar that came to rest atop the pitcher's face after the boat flipped over. Sea animals also began to eat away at Fernandez's face in the time he was pinned under the boat, according to the filing.

The filing also alleges FWC investigators ignored an account by a Miami-Dade Fire-Rescue diver who saw the bar pressing on Fernandez's face and the sea animals before the vessel's bow lifted up in the air because of a wave or the shifting tide.

Ralph Fernandez says that he believes evidence shows the marks on the compass came not from teeth, but possibly from tools used by divers during recovery efforts. He said the adjacent blood got there because it had pooled in the water and stained the area next to the compass as the bow of the boat raised.

He also believes Fernandez's legs or lower torso would have suffered cuts — of which there were none — from the broken plexiglass. His theory: Fernandez was actually several feet away, at the back of the boat looking at a phone, after having handed off the wheel to one of the passengers.

There are also critiques about the integrity of the probe, with the filing arguing the lead investigator was woefully inexperienced, FWC did not land on the jetty until over eight hours after the crash to properly document the scene, investigators lied during depositions and original notes by the lead investigator were destroyed. "Like a house of cards," Ralph Fernandez alleged in the document, "this whole case is compromised."

The filing doesn't offer a smoking gun that Fernandez was railroaded, or include an analysis from a pathologist or other forensic experts supporting the scenarios. The strategy appears aimed at raising enough questions about the probe to counter the toxicology and genetic testing, which along with other forensic findings, are the foundation of the FWC report.

THE COCAINE ISSUE

Fernandez's attorney does not dispute one thing: that the pitcher was legally drunk — toxicology tests showed he had a blood-alcohol content level of .167, double the legal limit.

But he does challenge the assertion that Fernandez was using cocaine. He insists that there was never any

witness who said Fernandez used cocaine that night, or any evidence he'd ever used the drug.

Instead, according to his court filing, Ralph Fernandez suggested that perhaps someone slipped a drug into the baseball player's drink, in an attempt to steal some \$15,000 in cash he'd had in a backpack. The money, he said, was supposed to be gifts for stadium staff and it was never found.

"From the inception, the case agents decided that Jose Fernandez was the operator and that his blood-alcohol level would support the imaginary charges sufficiently so they intentionally failed to consider any evidence provided to them that Jose Fernandez and Eduardo Rivero were the victims of foul play, the two of them unwitting recipients of a spiked drink or a mickey of sorts," he wrote.

So if Fernandez was not behind the wheel, then who was?

Ralph Fernandez, in his court filing, appears to suggest that Macias was operating the boat, saying he could "only indicate" that Macias' injuries suggest that he "flew out from the console area" after hitting portions of the boat.

FWC's probe concluded that Macias was standing to the right and front of the enclosed center console and was hurled from the boat. Macias had only a small amount of alcohol in his blood, not enough to be considered legally intoxicated, and no illicit drugs were found in his system.

"A match of his DNA was not located anywhere on the console, steering wheel or throttles," the report said. "The location where his body was recovered near the bow of the vessel is consistent with him having been towards the front of the center console at the time of impact."

Meanwhile, Rivero had wounds on his forehead that could only have come from fishing rod holders — which were located behind the skipper's seat. "There was no evidence found to indicate either Emilio Macias or Eduardo Rivero were possible operators" of the boat, the report concluded.

Ralph Fernandez declined to say who he believes was behind the wheel.

"It is not my mission to definitely pin it on someone else," he said.

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Investigators look at the boat that Jose Fernandez was aboard when it crashed into the jetty off South Beach.



WATCH

Scene of tragedy: Pitcher Jose Fernandez dies on the water.

