



INTEROFFICE MEMORANDUM

TO: STAFFING/REVIEW TEAM

DATE: May 25, 2004

FROM: BRONWYN C. MILLER  
Assistant State Attorney  
Training Division

RE: POLICE SHOOTING CLOSEOUT MEMO  
Case # 62-03-03-10-002

SUBJECT:	Officer Daniel Bolaños, Hialeah Police Department
VICTIM(S):	Worine Terrell Sams
INJURIES:	Gunshot Wound to Right Side of Head (Fatal)
DATE & TIME:	March 10, 2003 at approximately 3:13 p.m.
LOCATION:	917 West 77 Street, Hialeah, Florida
WEAPON:	40 caliber Glock pistol, Model 22
LEAD:	Detective Ralph Nazario, Hialeah Police Department
CASE #:	HPD Case Number: 03-9816; MDPD Case Number: 121440-B
SAO CASE #:	62-03-03-10-002



## OVERVIEW OF FACTS

On March 10, 2003, at approximately 3:11 p.m., the Hialeah Police Department received four 911 calls requesting police to respond to an emergency at 917 West 77 Street, Hialeah, Florida. The first two calls were from individuals identifying themselves as neighbors of the residents of 917 West 77 Street.

The first neighbor, Michael Collantes, reported he was at 913 West 77 Street and his neighbor was screaming for the police. Mr. Collantes further indicated a black male was refusing to leave the neighbor's home.

The second neighbor, O.B. (a minor), indicated she could hear her neighbor screaming for help. She further indicated the neighbor was saying there was a man inside of her house and that he refused to leave.

Upon receipt of these two calls, Officer Daniel Bolaños was dispatched as a "234," or a level two emergency reference a dispute/female screaming for help, male refusing to leave. Officer Nancy Munera was dispatched as a back-up unit. Officer Bolaños came on the radio and confirmed the dispatched address.

At nearly the same time, a third emergency call was received by the Hialeah Police Department. At 3:13 p.m., an occupant of the home located at 913 West 77 Street told the 911 operator that a black male had pushed his way inside the home, demanding money, and refusing to leave. She was crying and stating that she was scared.

As a result, the call was escalated to a "326," or a level three emergency reference a burglary. Officer Bolaños responded with a request for level three back-up.

Upon his arrival to the dispatched location, Officer Bolaños parked his marked police vehicle in the driveway located at the front of the house at 917 West 77 Street. Officer Bolaños spoke briefly to Barbara Nova, the owner of the home. Ms. Nova was hysterical and indicated a black male had pushed his way into her home demanding money and assaulted her and her daughter, Rosemary Nova. The decedent, a 6'2" black male, weighing 162 pounds, wearing a multi-colored plaid shirt and baggy, black pants, appeared in the front yard of the home. Officer Bolaños attempted to handcuff the decedent, the decedent resisted, and a struggle ensued. At least one witness observed the decedent attempting to obtain possession of Officer Bolaños's firearm. A witness saw the decedent with his hand on the firearm. Officer Bolaños and the decedent rolled to the ground and a single shot was fired. Officer Bolaños stood up and re-holstered his firearm.

The decedent, who was airlifted to Jackson Memorial Hospital, was pronounced dead at 4:33 p.m., and was positively identified as twenty-seven year old Worine Terrell Sams.

Detective Ralph Nazario was assigned as the lead homicide investigator.

**WITNESS STATEMENTS**

**911 CALLERS**

The first emergency call was received by the Hialeah Police Department at 3:11 p.m. on March 10, 2003. The contents of the 911 recording are as follows:

**KEY:**

**Q: 911 OPERATORS**

**A: VARIOUS CALLERS**

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**STARTING DATE MARCH 10, 2003, AT 3 HOURS, 11 MINUTES, AND 25 SECONDS P.M.**

Q: 911 what is your emergency.

A: Yeah, it's ah ... I'm at 913 West 77 Street, in Hialeah.

Q: (Inaudible.)

A: And I hear my neighbor, I hear her calling for the police. Some black guy that seems to not wanna leave her house, and she's calling for the police; and I'm just calling for her. I don't know what ...

Q: Okay, she's calling for the police right?

A: She's screaming ah ... you know, screaming for the next.

Q: She's screaming, what, what does she say when she's screaming?

A: "Get out of my house, get out of my house."

Q: "Get out of my house."

A: I think he might have left now, I'm not sure. No, I see the car there.

Q: And what's the address?

A: Ah ... well, I'm right next door, 913 West 77 Street. It's right around the corner from (inaudible).

Q: Her house is 913?

A: No, my house is 913; I don't know what her number is.

Q: It's the house right next to yours?

A: Yeah.

Q: Okay, what's your name?  
A: Michael.  
Q: And the phone number you're calling from Michael?  
A: 305-297-0024.  
Q: 297-00?  
A: 24.  
Q: What's your last name?  
A: Collantes, C-O-L-L-A-N-T-E-S.  
Q: Do you see anybody out there arguing with her, yelling at her or something?  
A: Yeah, I see a black man, I don't see him now. He just went near the house; she's trying to get him out of there.  
Q: Okay, I'll send an officer out.  
A: I think she's on the phone now; she's probably calling you guys now.  
Q: Okay, I'll send an officer out there.  
A: All right, all right bye.  
Q: All right, bye.

End of call.

**ENDING DATE MONDAY, MARCH 10, 2003 AT 3 HOURS, 12 MINUTES AND 38 SECONDS P.M.**

**STARTING DATE MONDAY, MARCH 10, 2003 AT 3 HOURS, 12 MINUTES AND 24 SECONDS P.M.**

Q: 911 what is your emergency?  
A: Yes, um ... in ah ... in, in (inaudible) 77, West 77 Street, Hialeah, Florida: There's a man that, there's a woman asking for help, there's a man in her house.  
Q: Okay, what is the actual address ma'am, do you know?  
A: It's 9, it's 917 West.  
Q: Oh 917?  
A: Yes.  
Q: What's going on, what's going on?  
A: Ah ... she's just screaming for help, it's one of my neighbors.

Q: She's screaming for help?

A: Yes, she's screaming for help there's a man inside her house.

Q: But do you know who the man is ma'am?

A: No, I'm just a neighbor and I hear her screaming for help. She says there's a man inside her house, and it's 917 West 77 Street, Hialeah, Florida:

Q: Stay with me on the line. Hold on. What is your name ma'am?

A: It's O. (a minor).

Q: O. what's your last name?

A: B.

Q: What is it?

A: B.

Q: B?

A: Yes.

Q: And you don't know what's going on?

A: No, it's just it's two women and there's a man inside, and they're screaming for help ...

Q: Oh two women?

A: Yes, and, and the man will not leave. I'm really not sure what's going on, but they're really asking for help.

Q: Did you see the guy or anything ma'am?

A: No, I'm just, well I was just passing by and they were screaming for help and there was a man inside there with two women and he won't leave.

Q: And he, and you didn't see him, you don't know what kind of car he's in nothing?

A: No, I don't know, no.

Q: Nothing?

A: No.

Q: Okay, ma'am thank you very much.

A: Thank you, bye-bye.

Q: Bye-bye.

**ENDING DATE MONDAY, MARCH 10, 2003 AT 3 HOURS, 13 MINUTES, AND 58 SECONDS P.M.**

**STARTING DATE MONDAY, MARCH 10, 2003 AT 3 HOURS, 12 MINUTES, AND 2 SECONDS P.M.**

Q: Hialeah Police, do you have an emergency?

A: (Inaudible) right now, I got a black man in my house, and he say, "I need money." He saying that he needs money, he just walked in my house right now. He's (inaudible) the trunk of his car. You better not look at me like that.

Q: Okay, what did he want?

A: He, don't you ever.

Q: Hello, just talk to me, don't talk to him. What, what does he want?

A: Will you please send the cops over here (inaudible)?

Q: We're sending an officer out there. What's going on?

A: Go, (inaudible) stupid why you keep opening the (inaudible)?

**SPEAKING SPANISH.**

Q: Hello.

A: Huh.

Q: You know, the police are going out there as soon as possible, but if you don't tell me what's going on, I don't know what's going on.

A: Okay, um ... the tag is TB8BR.

Q: PBA?

A: TB8BR.

Q: TB8BR, what did this guy do, what did he do?

A: He just came in my house and he wanted money.

Q: He came inside your house and wanted money, and you don't, you do not know him right?

A: No, we don't know him he was trespassing.

Q: Okay, did he push his way inside the house?

A: Yeah, he did push his way in, inside the house.

Q: The door was locked and he pushed his way inside the house?

A: Yes, he pushed his, can you just come on over here please.

Q: We're going out there, I need to find out what's going on, we're going out there lady as soon as possible. Listen to me okay.

A: Okay.

Q: What kind of car was he driving?

A: Um ... he's coming back you guys just need to hurry up.

Q: Fantastic, leave him alone and we're gonna, we'll try and catch him okay.

A: Okay.

Q: What kind of car is he driving?

A: Um ... bye.

Q: No, no bye, what kind of car is he driving?

A: He's back.

Q: Okay, is he a black guy?

A: Yeah.

Q: What color clothing is he wearing?

A: There's nothing in here leave it out. There's, there's nothing in there. Don't you understand we have a cop on the phone? Get out!

Q: What's he doing now?

A: He's inside my house.

Q: Okay, don't confront him, let him, let him stay there. Stay inside the house. You guys lock the door.

A: No, I'm not gonna stay in there.

Q: You're not gonna stay inside the house?

A: No, I let him inside. He's just in there by himself.

Q: Oh he's inside the house now?

A: Yes.

Q: Stay on the line, okay. Stay outside until the police get there.

A: Hurry up! I'm scared.

Q: We're going out there as soon as possible. Don't confront him okay. Don't confront him the police are going out there. Do you hear the police ma'am?

A: Yes, (inaudible).

Q: Great when you see the police, tell them where it's at okay, stay with me on the line.

**UNKNOWN:** Fucking idiot.

A: **CRYING.**

Q: Yeah, it sounds like a 26. He's in the house, a 26 in progress. I think it's a 26 in progress.

A: He's in the house.

Q: Just stay with me on the line okay.

A: Excuse me?

Q: Just stay with me on the line, let him, keep him in the house, okay.

A: Okay, I, I ...

Q: Just don't, don't confront him, don't talk to him. The police are going out there, you hear the police?

A: Yeah, he's here, he's here.

Q: The police is there?

A: Yeah.

Q: Great! Tell them what's happening okay.

A: Okay.

Q: You're welcome.

A: Thank you.

End of call.

Q: 911, what is your emergency?

A: Ah ... yes, I got a black man in my house, my daughter is on the phone, and he just came back and he went inside the house.

Q: Okay, I have two officers on the way there ma'am. He broke into your house or what?

A: He's in the house right now.

Q: He's in the house right now?

A: Yes, he came back and he went in the house. He's in the house.

Q: Okay, stay with me on the line; do not hang up ma'am, okay. Ma'am do not hang up on me.

A: That's my daughter, she let him in. Oh there, that's him.

Q: Ma'am is the officer there already? Ma'am, ma'am listen to me, is the officer there? Hello. Hello, hello. Hello ma'am. Hello.

**ENDING DATE, MONDAY, MARCH 10, 2003 AT 3 HOURS, 16 MINUTES, AND 18 SECONDS P.M.**

## THE FIRST 911 CALLER

### Miguel Collantes

Miguel Collantes lives at 913 West 77 Street, Hialeah, Florida. Collantes's villa is located directly adjacent to the home where the shooting occurred. The apartment building and the home are separated by a chain-link fence and an alley.

At approximately 3:11 p.m., Mr. Collantes had just arrived home from work. He went into his house to change his clothes and then went out on his patio to have a cigarette. When he went outside, Mr. Collantes heard a commotion. He heard a lady yelling "get out of my house." He then heard her yelling "somebody call the police, call the police." Mr. Collantes called the police and when he looked out the window, he saw a police officer and a black male. He saw the officer walk calmly up to the decedent and try to place decedent's hands behind his back. Mr. Collantes didn't see anything in either the officer or the decedent's hands [but, he was not sure he could see both sets of hands]. He then saw the two begin struggling. Mr. Collantes saw the two move toward the house. He heard a single shot and immediately went into his bathroom. Mr. Collantes stated he had consumed a couple of beers at the time of the incident, but his perception was not impaired.

## THE SECOND 911 CALLER

### O.B. (a minor)

O.B. (a minor) is a seventeen-year old female. She lives at 520 West 66<sup>th</sup> Street, Hialeah, Florida. She recounted that she was walking home from school, on the day of the shooting, with her grandmother. She went into her house and dropped off her book bag. When she went back outside, she heard her grandmother telling her to call 911. She also saw her neighbor and heard her yelling. She went back inside the house and called 911. She told the 911 operator that a man was trying to force his way into her neighbor's house.

O.B. then saw an officer arrive at the home. She saw the neighbor speaking to the officer. A few moments later, she heard a single gunshot. O.B. *did not* purport to see any interaction between the decedent and the officer preceding the shooting.

## THE DISPATCH TAPE

The dispatch tape reveals that Officer Bolaños was dispatched to a burglary in progress at 3:13 p.m. on March 10, 2003. The contents of the dispatch tape are as follows:

**Q: HIALEAH POLICE DISPATCHER**

**A: VARIOUS HIALEAH POLICE OFFICERS**

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**STARTING DATE, MONDAY, MARCH 10, 2003, AT 3 HOURS 13 MINUTES AND 16 SECONDS P.M.**

Q: 2148, show you delayed 1513.

A: 48.

Q: Show you delayed 1514.

A: (Inaudible)

Q: 2146, show you delayed, 1514.

**Emergency buzzer goes off.**

Q: 2140, attention, 2146, 234, 917 West 77 Street, third party (inaudible) advising female screaming for help, advising 2 women inside the QTH and 1 male refusing to live, leave, will advise on further, 1513.

A: (Inaudible)

A: 46, is that for me?

Q: QSL, on a 15.

A: (Inaudible)

A: 2205 Alpha:

Q: 2205 Alpha?

A: 05, QSY.

Q: 2205?

A: QSK?

Q: QSY for 05 Alpha:

A: QSL.

A: (Inaudible) 09.

Q: 6 and 11, 09, 1514.

A: 2136.

Q: 2136?

A: 09.

Q: 2136, 09, 1514, 2157?

A: 2157.

Q: (Inaudible) to records.

A: QSL.

A: (Inaudible) 48.

Q: 2148?

A: 917 or 977?  
Q: 917 West 77 Street.  
A: Arrival.  
Q: QSL, arrival, 1515, and all units QRX for a 234, 917 West 77 Street.

**Emergency buzzer goes off.**

Q: 2146, step it up, 326, 917 West 77 Street, 2148?  
A: (Inaudible) I'm on a 3.  
Q: 2104?  
A: K?  
Q: QSL, be advised 326, 917 West 77 Street.  
A: Check with 48, he sounds like he's chasing somebody.  
Q: 2148?  
A: Shots fired, I need a supervisor.  
Q: 104?  
A: (Inaudible)  
Q: (Inaudible) 2148 QRU?  
A: I don't know if I'm hearing shots fired, send Rescue, subject's down.  
Q: 2148 QRU?  
A: QSL, just send Rescue and a supervisor on a 3.  
Q: QSL, Rescue's in route, 2104?  
A: QSL.  
A: QSM the (inaudible)  
Q: 917 West 77 Street, 2140 confirming you're at that QTH?  
Q: 2136, 315, 917 West 77 Street.  
A: (Inaudible)  
A: 2242.  
Q: 2242?  
A: 852, (inaudible) arrival, 917 West 77 Street.

Q: 817, your arrival?  
A: Arrival.  
A: 2241.  
Q: 2241?  
A: (Inaudible) 5, 09, 09 and show me arrival.  
Q: 09 on arrival, 917 West 77 Street, 1517.  
A: (Inaudible)  
A: (Inaudible) arrive on (inaudible)  
Q: On arrival, 1518.  
A: 48, 46, slow and clear any other units en route.

**Emergency buzzer.**

Q: Any other unit en route to the 315, 917 West 77 Street can slow the routine, 1518.  
A: 2105, do we have an officer down?  
A: 2104, negative, I need 200 to respond to the scene ASAP.  
A: 2200 advise I'm en route on a 3 now.  
Q: 2200 QSL, 917 West 77 Street.  
A: 20, advise of they want to slow down or (inaudible)  
A: QSL, send somebody up (inaudible) QSL close down 77.  
A: QSL 20, I'm there (inaudible) and 77.  
A: (Inaudible) have 04 advise of she needs crime scene.  
Q: 2104?  
A: We need what?  
Q: Crime scene?  
A: QSL we also gone need um, have um, 3104 QSY.  
Q: 3104?  
A: 3100.  
Q: 3100 QSY.  
A: 2124.

Q: 2124?  
A: Show me en route um, reference crime scene (inaudible)  
Q: QSL en route, 917 West 77 Street, 1519.  
A: 2247.  
Q: 2247?  
A: 13 (inaudible) I'll be 09, en route 15.  
Q: 1391, attention 09, 1519, 917 West 77 Street. Unit at 77 Street, blocking off?  
A: It'll be 20.  
Q: QSL, 2120.

### **THE OCCUPANTS OF 917 WEST 77 STREET**

#### **Barbara Nova:**

Barbara Nova lives at 917 West 77 Street, Hialeah, Florida with her daughter, Rosemary Nova, and her elderly mother, Iris Balbuena. There is no indication that she had ever met the decedent prior to the date of the shooting.

On the date of the shooting, she was home with her daughter washing dishes when she heard a knock at the front door. Ms. Nova asked her daughter, Rosemary, to open the door. Ms. Nova believed her mother was at the door.

Ms. Nova heard a noise, moments later, and looked up to see the decedent in her home. The decedent grabbed her by the throat and said, "you know who I am. I need money. Where are the men?" The decedent then placed his hand on Ms. Nova's left breast.

Ms. Nova ran outside and yelled for the neighbors to call 911. Ms. Nova stated the decedent got into his car and drove away. Moments later, the decedent returned to the Nova home. He again entered the home without consent and began to argue with Ms. Nova's daughter, Rosemary. The decedent continued demanding money and began ransacking the home.

Rosemary came outside and Ms. Nova told her to lock the door of the house. Rosemary managed to lock the door. Moments later, a uniform police officer, Officer Daniel Bolaños, arrived at the home. Ms. Nova began to tell Officer Bolaños what had happened. She saw the decedent outside of the house on the roof.<sup>1</sup> The decedent jumped off the roof and at Officer Bolaños. Ms. Nova told Officer Bolaños, "this is the man." The decedent said something to Officer Bolaños, and the two started struggling. They then fell to the ground. She saw the decedent and the officer "grabbing each other by the arms, by the shoulders, and then they fell." Ms. Nova did not see either man holding a weapon at that time.

During the struggle, Ms. Nova saw Officer Bolaños try to reach for his firearm. Ms. Nova heard a pop. She saw Officer Bolaños stand up and appear shaken. *Note: Ms. Nova states that she did not see the actual shooting, but was standing in direct proximity.*

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<sup>1</sup> See Report of Detective O. Rodriguez.

## Rosemary Nova

This eighteen-year old eyewitness lives with her mother, Barbara, and her grandmother, Iris. There is no indication that she had ever met the decedent prior to the date of the shooting.

On the date of the shooting, she was in her grandmother's bed when she heard a knock at the door. She opened the door, assuming it was her grandmother, did not look at the person at the door, and walked back into the house. She turned around and saw a thin, black male wearing a red shirt. Rosemary had never seen this man before. She said, "May I help you?" The black male pushed her out of the way and said, "I need money." Rosemary said, "This is Hialeah, we're poor. You're robbing the wrong house, you know." The black male said, "No, I need my money. I need my money. Where is that man?"

Rosemary told the man that there were only women in the house. The man began looking around the house. Rosemary's mother asked her if she knew him, and the man responded, "Yeah, I know you. I'm f-ing [expletive] you."<sup>2</sup> The man then began demanding the "book bag" and the money. Rosemary heard him say that he had a gun.

As the man began searching the house, Rosemary told him that Jesus could save him and that he should pray to him. She told him that stealing was wrong. She began to pray. The man pushed her again with both hands.

Rosemary's mother told her to grab the telephone and call 911, so she called 911. The man said "give me the f-ing [expletive] phone," and snatched the phone from her. Rosemary's mother began calling for help and went outside.

The man then went outside and took the phone away from Rosemary's mother. Rosemary tried to prevent the man from going back inside the house and the man pushed her and scratched her. The man drove away and came back, moments later. He again began demanding money and went inside the house. Rosemary went outside and locked the front door of the house from the outside.

A police officer arrived. The police officer parked his car behind the man's car, effectively blocking it in. All of the sudden, the man was in the front yard. Rosemary did not see where he came from. The man walked toward his car and the officer walked toward him. The police officer put his hand on the man's arm, as though to put his arm behind his back, and the man began to wrestle with him.

Rosemary saw the two begin to struggle and then she saw *the black male with a gun in his hand*. She stated:

- A: When I looked like back again I was walking away and I looked and I see the man with the gun pointing downward. Officer over him with both hands on his wrists. And he was trying to like shake the gun off of his hand.
- Q: The man who ended up dead, which hand was he holding the gun in?
- A: Right hand.
- Q: Which hand or hands did the officer have on the man who ended up dead's wrist?
- A: Both.
- Q: Both hands on his wrist?
- A: Right.<sup>3</sup>

The gun was black and she saw it in the black male's right hand. She saw the police officer trying to grab the firearm.

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<sup>2</sup> Excerpt from Ms. Nova's sworn statement provided March 10, 2003.

<sup>3</sup> Excerpt from Ms. Nova's sworn statement provided April 8, 2003.

Rosemary ran to the neighbor's house and heard a single gunshot. She eventually returned to the scene and saw the black male lying on the ground shaking and bleeding.

### **PEOPLE IN THE NEIGHBORHOOD**

#### **B.A. (a minor)**

B.A. was a student at Hialeah Miami-Lakes Senior High School. He stated he was sleeping on the afternoon of the shooting and did not see anything.

#### **Amalia Morales Abad**

Ms. Abad resided at 900 West 77 Street, Hialeah, Florida. She was the grandmother of Ana Oliva. She stated she did not witness the shooting or the events preceding the shooting.

#### **Jorgelina Basque**

Ms. Basque resided at 921 West 77 Street, Hialeah, Florida. On the day of the shooting, she provided her telephone to Rosemary Nova. She stated she did not witness the shooting.

#### **Mirta Campo**

Ms. Campo was walking with O.B. (a minor) toward her house at approximately 3:11 p.m. on March 10, 2003. She stated:

A: . . . I see a tall gentleman, and that the girl was trying to prevent him from going inside. So the lady had told me that he wanted to get into the house to steal, to please call the police.<sup>4</sup>

Ms. Campo told her granddaughter, O.B. (a minor), to call the police. She then saw a uniform police officer arrive. She heard the occupant of the house tell the officer, "he's inside, he's inside." She observed the officer to be calm. Ms. Campo did not see the actual shooting or the events immediately preceding the shooting.

#### **Ivanauchs Careres**

Mr. Careres resided at 965 West 77 Street, Hialeah, Florida. He did not purport to have information about the shooting or the events preceding the shooting.

#### **S.F. (a minor)**

S.F. did not purport to have any information about the shooting or the events preceding the shooting.

#### **Rafael Font**

Mr. Font resided at 879 West 77 Street, Hialeah, Florida. He had met the decedent on one occasion; however, he stated he did not have a conversation with either the decedent or the decedent's girlfriend on the day of the shooting. He said he had heard that the decedent had left a bag of money in the bushes in front of the residence involved in the shooting the day before the shooting. He stated Curtis Smith told him the story.

#### **T.G. (a minor)**

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<sup>4</sup> Excerpt from Ms. Campo's sworn statement to the Hialeah Police Department.

T.G. was at his mother's house, located at 900 West 77 Street, Apartment L, Hialeah, Florida, when he heard what sounded like a gunshot. He exited the house and saw the decedent struggling with a uniformed police officer. T.G. heard a second shot, but he did not see who fired the shot. T.G. went back into his home. *It should be noted that only a single shot was fired. It should further be noted that during an initial interview conducted by Officer Osvaldo Sardina, T.G. indicated that he did not see anything.*

### **Celenia Soraya Gil**

Ms. Gil resided at 60 West 64 Street, Hialeah, Florida. She arrived on the scene after the shooting and did not witness any events at the time of the shooting or preceding the shooting.

### **Yamile Gonzalez**

Mr. Gonzalez stated that he was out of town in Jacksonville, Florida at the time of the shooting, thus he had no relevant information to provide.

### **Victor Hernandez:**

Mr. Hernandez heard women in the adjacent yard yelling. He saw a police officer arrive. He saw a black male and a police officer "unite" as if hugging [this was immediately preceded by an argument]. He didn't know where the black male came from. He saw both the officer and the black male fall to the ground, struggling, and hugging each other. He described it as follows:

- A: I saw a little bit. I just saw them when they got together. I just saw them really hugging each other pretty much and they fell to the ground.  
Q: Okay. At that point do you see any weapons in either one of their hands?  
A: No. No, because all I saw was from here up (*indicating waist level*)  
Q: Okay. So you couldn't see their hands?  
A: No.<sup>5</sup>

Mr. Hernandez said he after a few seconds, he heard a single shot. The officer stood up. Mr. Hernandez did not see anything in his hands. The officer appeared very nervous and cleaned himself off.

### **Abel Loreda:**

Mr. Loreda was on the south side of the street facing northbound. He saw a marked police car arrive at the Nova home with its lights on. He saw a struggle between a police officer and a black male. He described the struggle in his sworn statement:

- A: So as I'm talking to my customer I see what looks like a police officer and another person in a struggle, like they're wrestling in a sense.<sup>6</sup>

Mr. Loreda observed the officer facing north and the black male was facing south. The officer had the black male in a bear hug and he pushed or slammed the decedent to the ground [toward the house]. Mr. Loreda then lost sight of the two. When asked whether or not he observed a firearm, he responded in the following manner:

- Q: Okay. And did you see a gun in his hand ever?  
A: Did I see a gun in his hand?  
Q: Yes.

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<sup>5</sup> Excerpt from Mr. Hernandez's sworn statement to the Hialeah Police Department.

<sup>6</sup> Excerpt from Mr. Loreda's sworn statement to the Hialeah Police Department.

- A: No.  
Q: Okay. And did you ever see a gun in the other guy's hand?  
A: I don't know because his arm was out -- the guy's arms were out like this while he had him -- he was bull rushing him is what it looks like.  
Q: Okay.  
A: So I don't know if he had a gun or not.<sup>7</sup>

### **C.M. (a minor)**

C.M. was a student at Hialeah Miami Lakes Senior High School. He stated he arrived home from school on the day of the shooting and was outside when he heard someone speaking loudly. He saw a woman wearing a tie-dye shirt talking on the telephone. He saw a uniform officer arrive on the scene. He saw the officer point at someone and approach the house. He did not observe a struggle, but did hear what sounded like a tire popping. He heard the woman in the tie-dye shirt say, "Is he dead?" and walk toward the bushes.

### **Lupe Marques**

Ms. Marques resided at 910 West 77 Street, Hialeah, Florida. She was sitting in her living room on the day of the shooting, when she saw what she described as a brown, older Buick with dark tinted windows driving in reverse. It should be noted at this juncture that the decedent's car was a purple Oldsmobile. She stated that she saw the Buick drive forward, then again, in reverse and that she heard arguing. A short time later, she heard a siren. Ms. Marques went outside. She saw a police car parked in front of the Buick across the street from her house. She said she saw a uniformed officer pointing a gun at the bushes and she heard a pop. Ms. Marques described the gun as square and black and she described the tip of the gun as being approximately *one foot* from the bushes. She stated the officer looked at his arm as though he had scraped his arm in the bushes. She said she saw a woman come over to the officer after the pop and ask, "Is it dead." The officer responded affirmatively.

Ms. Marques said she had been Baker acted in 1998. She was taking several medications at the time of the incident.

Forensic results reveal that the barrel of Officer Bolaños's firearm was approximately one and a half inches from the head of the decedent at the time the shot was fired. Thus, the testimony of Ms. Marques is unequivocally refuted by the forensic evidence. Further, the testimony of Ms. Marques is inconsistent with the testimony of the other eyewitnesses to the event.

### **S.M. (a minor)**

S.M. was a student at Hialeah Miami Lakes Senior High School. She stated that she was walking home from school on the date of the shooting when she saw a uniformed officer arrive at 917 West 77 Street. She stated that the uniformed officer got out of his marked car. S.M. said that she saw the officer struggle with the decedent and heard a shot fired, but she did not see who fired the shot.

### **Marco Mendez**

Mr. Mendez is the brother of Hector Mendez. He met with Hiamuri Diaz and Mike Pino while police were still on the shooting scene. Mr. Mendez said that Mr. Diaz and Mr. Pino told him that the decedent had stashed a bag of money in the bushes in front of the shooting scene the day before. When the decedent returned, he discovered the bag of money was missing, and he assumed the occupants of the house had it. According to Diaz and Pino, the decedent's girlfriend, Letizia Canteo, told them she went there first and took the bag of

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<sup>7</sup> Excerpt from Mr. Loredo's sworn statement to the Hialeah Police Department.

money. Mr. Mendez said that he saw Ms. Cantey on the scene, but did not speak with her. Mr. Mendez provided a taped statement.

### **Al-Malik Moore**

Mr. Moore was the boyfriend of Tanya Gamble. He resided at 734 Northwest 80 Street, Miami, Florida. Mr. Moore indicated that he had spoken with several Latin males regarding the shooting, one of whom had purported to witness the shooting. Mr. Moore was unable to identify the men from a photographic array. He further stated that the man had refused to make a statement to the news media.

### **J.N. (a minor)**

J.N. was a student at Hialeah Miami Lakes Senior High School. She stated that she did not see the shooting, but she heard a shot.

### **Ana Oliva:**

Ms. Oliva saw an officer approach the Nova home and heard a woman telling the officer, "I don't know where he's at." She then stated:

- A: Yeah, I could hear the conversation. And then all of a sudden I just see them looking up and there's a guy on top of the roof.
- Q: Okay. And what does he look like?
- A: He's a black guy, very tall. He has dark pants. A white shirt like with spots, red, brown, different spots.
- Q: Okay.
- A: And then I didn't - - I don't know if he jumped. All I saw was I saw him down. I saw the cop grab his arm trying to handcuff him and right at that moment they struggle and they fall to the floor.<sup>8</sup>

Ms. Oliva then saw the black male get up. She saw a black gun, *but she couldn't tell who had the gun*. It should be noted that at the scene, immediately after the shooting, Ms. Oliva told Detective Conrad she saw the decedent with the firearm. However, in her sworn statement, she stated:

- A: Then all of a sudden, I see the black guy standing up and I see the gun, but I don't know where the officer is. I mean, the guy is so tall that I can't tell where the officer is, but I see the gun but I can't tell who's got the gun in their hand.
- Q: Okay. You can't see the officer.
- A: No. I see the guy.
- Q: Right.
- A: The guy's back is towards me and I'm in my car.
- Q: Okay.
- A: And then, again, they disappear. They fall or something and then the shot goes off.
- Q: All right. But you only see the black guy stand up?
- A: The (sic) see the black - - I can't tell - - I was so nervous I couldn't tell where the cop was because I saw the gun and when I saw the gun - -
- Q: All right. Who had the gun?
- A: I can't tell. I just see a gun. I see something black, you know.
- Q: Okay. But you can't tell who's holding it?
- A: I can't tell whose holding it?

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<sup>8</sup> Excerpt from Ms. Oliva's sworn statement dated March 10, 2003.

Q: So they're still together there and they're both still struggling?

A: The guy is standing up; the black guy's back is towards me.<sup>9</sup>

Ms. Oliva saw the gun pointing toward the Nova house. She couldn't see where the police officer was at this point. She then saw the officer holding his head. She did not see a gun in officer's hands. She heard a single shot and she saw the police officer standing up and the black male lying on the ground.

### **S.O. (a minor)**

S.O. was a student at Hialeah Miami-Lakes Senior High School. He stated he arrived home from school immediately before the shooting. While inside his house, he heard a shot, but he did not witness any events relating to the shooting. S.O. did make a statement to the news media.

### **Michael Pino**

Mr. Pino stated he spoke with the decedent's girlfriend, identified as Letizia Cantey, after the shooting. He said the only thing he remembered was Ms. Cantey saying, "they shot my man." Mr. Pino had heard accounts as to what happened and told law enforcement officers to speak to Rafael Font.

### **J.R. (a minor)**

J.R. indicated that he and his family had moved into the neighborhood right around the time of the shooting. He did not purport to have any information about the shooting or the events preceding the shooting.

### **Javier Real**

Mr. Real resided at 5361 Northwest 167 Street, Hialeah, Florida. He knew the Nova family. He arrived on the scene after the shooting and did not purport to witness either the shooting or any of the events preceding the shooting.

However, he stated that he met up with several of his friends at the shooting scene, including, Marcos and Hector Mendez, Ernesto Ruiz, Manny Gonzalez, and his brothers, Joel and Saturnino. Mr. Real knew of the decedent from the neighborhood, but was not a friend of the decedent. Mr. Real heard several accounts of what happened preceding the shooting. He stated that he was told the decedent had tried to break into the Nova home, that he got into a tussle with a the Police Chief's son, and got shot. He heard another account from Mike Pino and Hiamuri Diaz in which the decedent had placed money in front of the Nova home. When the decedent went to retrieve the money, it was missing, so he knocked at the Nova door. Rosemary Nova answered the door and the decedent entered the home. The police were called and the decedent was subsequently shot. He also stated he was present when Sheyla Martinez gave a statement to the media. Finally, Mr. Real said that several members of the decedent's family arrived on the scene making inquiry. He said Celenia Soraya Gil was among these individuals.

### **Ernesto Ruiz**

Mr. Ruiz stated he was in the neighborhood when the shooting took place, but he did not see the event. He said he was standing in front of his friend's house and may have heard a gunshot. Upon seeing police respond to the area, he walked to the shooting scene. He heard rumors while standing around, but he had no further information.

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<sup>9</sup> Excerpt from Ms. Oliva's Sworn Statement dated March 10, 2003.

**Ferma Scott**

Ms. Scott was T.G.'s legal guardian. She did not have any information regarding the shooting.

**Curtis Smith**

Mr. Smith denied having any information about the shooting.

**Jorgelina Vasquez**

Ms. Vasquez told Officer Elosegui that on the date of the shooting, her white female neighbor, whom she does not know by name, knocked on her door. Upon answering the door, Ms. Vasquez's neighbor asked her to call 911 because there was a man in her house. Ms. Vasquez handed her the telephone and her neighbor went outside with the telephone. Ms. Vasquez stood in her driveway and saw a dark-skinned male jump from her neighbor's roof. Ms. Vasquez stated the police had arrived on the scene and she went inside. She heard a single gunshot while inside her house. Ms. Vasquez provided a sworn, taped statement.

## **THE DECEDENT'S FRIENDS AND FAMILY MEMBERS**

### **Letizia Cantey**

Letizia Cantey was the decedent's girlfriend at the time of the shooting. Ms. Cantey provided a sworn statement on the evening of the shooting and was subsequently interviewed regarding additional areas of investigation.

In her sworn statement, Ms. Cantey stated she did not reside with the decedent. However, the decedent's brother, Willie Sams, stated that the decedent resided with Ms. Cantey. It should be noted that Ms. Cantey resided in Public Housing and the Hialeah Housing Authority had not authorized the decedent as a resident of Public Housing.

On the day of the shooting, Ms. Cantey said she was watching television with the decedent at her home in the early afternoon. She stated the decedent left sometime after 2:25 p.m. and that he did not say where he was going.

Ms. Cantey did not see the decedent after this time. Ms. Cantey stated that she learned of the shooting and proceeded to the scene. She stated that when she inquired of law enforcement officers on the scene, they told her the person who had been shot was a Latin male. She indicated that she was not aware of any book bag or money the decedent had been attempting to locate. She confirmed that the decedent was indeed right handed.

During a further interview, Ms. Cantey denied knowing anything about the decedent leaving a bag of money in front of the residence where the shooting occurred.

### **Evangelina Fowles Wright**

Evangelina Fowles Wright was the mother of the decedent. Ms. Fowles did not observe the shooting or purport to have any information regarding the shooting. Ms. Fowles was not asked to provide a sworn statement.

### **Jamarlin Fowles**

Jamarlin Fowles was the cousin of the decedent. Via his mother, Janine Williams, he declined to speak about the shooting to law enforcement officers.

### **Travis Fowles**

Travis Fowles was the brother of the decedent. He indicated that he had no information regarding the shooting.

### **William Fowles**

William Fowles was the uncle of the decedent. Mr. Fowles was invited to respond to the Hialeah Police Department on the day of the shooting for an update; however, he declined.

### **Sameer Mahammed**

Sameer Mahammed indicated he was a friend of Willie Sams. He accompanied Mr. Sams to the Hialeah Police Department the day after the shooting.

## **Willie Sams**

Willie Sams was the brother of the decedent. Mr. Sams did not observe the shooting. However, he stated that he did go to the scene of the shooting immediately after it occurred. Mr. Sams positively identified the decedent via his driver's license. Mr. Sams stated the decedent was single, had four children, and resided with Letizia Cantey. Mr. Sams stated the decedent did not have any mental or medical problems. He stated that the decedent was a part-time painter and construction worker and that the decedent owned a 1984 Oldsmobile *Cutlass*.

Mr. Sams indicated he had located an additional witness to the shooting who contradicted police witnesses. In a sworn statement provided to Detective Nazario, Mr. Sams identified this eyewitness as Hector Mendez. Mr. Sams stated that Hector told him he saw a police officer shoot the decedent in the back from approximately five feet away while the decedent was trying to get inside his vehicle. It should be noted that this version of events was vehemently denied by Hector Mendez, as is discussed at length on page 25 of this memorandum.

He further stated he had heard a version of events in which the decedent was running from his home to where his car was parked. Finally, Mr. Sams speculated his brother may have been at the Nova residence seeking a Santeria reading. He said there was a possibility that his brother did not like the reading, thus, he insisted on a full refund, and this insistence precipitated the 911 calls. He said he had a conversation with Rosemary Nova wherein Ms. Nova told him she was trying to bring his brother to Jesus, thus this was consistent with his theory. He said he was the only person who knew his brother was practicing Santeria.

## **Robert Wiggins**

Robert Wiggins was the older brother of the decedent. Mr. Wiggins did not observe the shooting. However, Mr. Wiggins provided a sworn statement. Mr. Wiggins stated he had attempted to contact the decedent early in the day on the date of the shooting via cellular telephone. He stated that he learned of the shooting and proceeded directly to the scene. Mr. Wiggins indicated that while at the scene, he had a conversation with a light-skinned, Latin male named "Hector." He described Hector as being in his early twenties, with dark brown hair, a mustache, wearing a t-shirt, between 5'5" and 5'8" in height and weighing approximately 130 to 155 pounds. He said Hector told him he had witnessed the shooting. According to Mr. Wiggins, Hector told him he was familiar with a prior incident involving the Hialeah Police Department, but he did not witness it. Per Mr. Wiggins, Hector told him he saw the decedent and the police officer facing one another in the driveway. He said the officer was standing some distance from the decedent when he fired his gun. He saw the decedent drop to the ground. He did not describe a struggle or close proximity between the decedent and the officer; rather, he said they were "some feet away" from one another.

As previously noted, Mr. Wiggins's brother, Willie Sams, identified Hector as Hector Mendez. Mr. Sams's summary of Hector's statement at the scene directly contradicts Mr. Wiggins's statement. Further, the rendition of events Mr. Wiggins claimed Hector relayed to him at the scene is directly contradicted by the forensic evidence. Again, the barrel of the firearm was approximately one and a half inches from the head of the decedent when the projectile was expelled. Further, other eyewitness testimony and the positioning of the body of the decedent clearly establish that a struggle took place immediately prior to the shooting.

## **Janine Williams**

Ms. Williams was the decedent's aunt. Ms. Williams told law enforcement officers that no one in the decedent's family had telephone contact with the decedent on the day of the shooting. Ms. Williams speculated the decedent might have gone to the shooting scene to visit a "religious lady who spoke to him about things." Ms. Williams referred investigators to her son, Jamarlin Fowles, for additional background information on the decedent. Detective Nazario left Ms. Williams his card to give to Mr. Fowles. A short time later, Ms. Williams indicated that her son did not wish to speak with law enforcement about the shooting.

## **"THE MARCH FOR JUSTICE"<sup>10</sup> WITNESSES**

### **Nidal Sakr**

Mr. Sakr, of "The March for Justice," contacted the undersigned Assistant State Attorney and indicated that he had located potential witnesses to the police shooting. Specifically, Mr. Sakr indicated that the following individuals might be witnesses:

### **Hiamuri Diaz**

Mr. Sakr described Mr. Diaz as a Latin male residing at 860 West 77 Street in Hialeah, Florida:

Detective R. Conrad and Detective R. Nazario located Mr. Diaz at 840 West 77 Street, Apartment M, Hialeah, Florida. Mr. Diaz stated he arrived home at least an hour after the shooting had occurred and had to produce his identification six times before reaching home. Mr. Diaz stated he did not witness any portion of the incident. He further said the decedent's brother approached him with an attorney and an assistant and asked him if he had seen anything. Mr. Diaz stated that he told them he did not see anything. He provided a taped statement.

Later, Mr. Diaz was asked if he had heard information about the decedent stashing a bag of money in the bushes in front of the shooting scene the day before the shooting. Mr. Diaz stated he had heard this account, but could not remember the source.

### **Tanya Gamble**

Mr. Sakr described Ms. Gamble as a female residing at 880 West 77 Street, Apartment L, Hialeah, Florida:

Detective R. Conrad and Detective R. Nazario located Ms. Gamble in the Women's Annex of the Miami-Dade County Jail where she was being detained on charges burglary, grand theft and criminal mischief.

Ms. Gamble stated that on the day of the shooting, she was speaking with a neighbor approximately one hour prior to the incident, when she observed the decedent get into an argument with three local drug dealers. An altercation began and the decedent ran away. She stated she did not witness the incident, but she believed her son, T.C. (a minor), might have seen it. She said T.C. was in South Carolina and provided his contact information.

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<sup>10</sup> Per its mission statement, "The March For Justice" is "an all-inclusive human and civil rights movement that aims to improve upon human life by furthering the causes of justice."

## **“Hector”**

Mr. Sakr described “Hector” as a Latin male, approximately twenty-nine years of age and approximately 5’9” in height. He said that Hector’s mother resided across the parking lot from Ms. Gamble.

Based on this description and a subsequent with Robert Wiggins, the brother of the decedent, Detective Nazario was able to locate Hector Mendez. Mr. Mendez’s mother resided approximately one block from Ms. Gamble’s residence. Willie Sams, the decedent’s brother, confirmed Mr. Mendez’s identity via a photograph in the course of a sworn statement conducted by Detective Nazario.

Mr. Mendez provided a sworn statement. He denied having witnessed the shooting. Rather, he stated that he arrived on the scene after the shooting had occurred. He did state that he saw the decedent’s family on the scene and said that he may have spoken to them. He said he did hear rumours afterward. He said he was asked if he remembered the “black kid” with the “Monte Carlo” and was told that the decedent was robbing a house and was shot by the police.

## **A Latin Female Residing at 880 West 77 Street, Apartment M, Hialeah, Florida**

Mr. Sakr provided no further details as to this potential witness.

Initial inquiries revealed that the address was either incorrect or non-existent. However, Detective R. Conrad and Detective R. Nazario responded to 900 West 77 Street, Apartment M, Hialeah, Florida and made contact with Amalia Abad. Ms. Abad indicated that her goddaughter, Ana Oliva, had witnessed the incident and provided a sworn statement to law enforcement (the sum of her statement is set forth on pages 19 and 20 of this memorandum).

## **LAW ENFORCEMENT OFFICERS**

### **Crime Scene Technician D. Abreu**

Technician D. Abreu impounded Officer Bolaños’s black web gun belt with a holster containing a 40 caliber Glock 22 pistol, spare ammunition pouches, handcuff case, and radio holder. Further, she photographed and processed the scene.

### **Detective John Allickson**

Detective Allickson contacted the on-call Assistant State Attorneys.

### **Detective Carlos Arango**

Detective Arango was assigned as the lead crime scene investigator (his observations are set forth on pages 32 and 33 of this memorandum).

### **Deputy Chief Ed Beyer**

Deputy Chief Ed Beyer recounted that Officer Bolaños said no one was more surprised than he was when the gun discharged.

### **Sergeant Sue Boucher**

Sergeant Boucher was conducting roll call on the day of the shooting when she heard the original signal go out. She proceeded to the scene after she heard the second alert tone. There were other officers on the scene

prior to her arrival. Sergeant Boucher saw Officer Bolaños on the scene and she and Sergeant Martin approached him. She observed Officer Bolaños to be very shaken. She heard Officer Bolaños make a statement to Sergeant Martin:

Q: And what did he say?

A: He said that the guy was on the roof, he jumped off the roof, [Bolaños] went to take the guy into custody, the guy got his gun and the guy shot himself.<sup>11</sup>

Sergeant Boucher assigned Officer Moloney to stay with Officer Bolaños.

### **Officer F. Carvajal**

Officer F. Carvajal responded to West 10 Avenue and 77 Street (Hialeah-Miami Lakes High School) on the afternoon of the shooting. Dispatch requested he clear the landing zone for a Miami-Dade Fire Rescue helicopter. Officer Carvajal covered the Southeast corner of the field.

### **Detective J. Castro**

Detective J. Castro assisted with the interview of T.G.

### **Officer D. Cole**

Officer D. Cole responded to West 10 Avenue and 77 Street on the afternoon of the shooting. He was assigned to secure the scene and direct traffic.

### **Detective R. Conrad**

Detective R. Conrad arrived on the scene at 3:25 p.m. He made contact with Sergeant Boucher. He saw a purple vehicle backed into the driveway of the Nova home with the engine running. He observed the decedent lying on the ground behind the bushes in the front of the home. Detective Conrad assisted Fire Rescue with the decedent.

Detective Conrad went to 913 West 77 Street and contacted Michael Collantes. Mr. Collantes told him he witnessed a struggle between a police officer and a man in front of the house next door. During the struggle, he heard a shot. Detective Conrad asked Mr. Collantes to provide a formal statement and he agreed (see page nine of this memorandum).

Detective Conrad then went to 909 West 77 Street and contacted Tracy Blount. Mr. Blount stated he did not see anything, but that he heard a noise and saw police arriving.

Detective Conrad then made contact with Rosemary Nova in a police car in front of 909 West 77 Street. Ms. Nova provided him with a brief synopsis of the facts leading up to the shooting. She showed Detective Conrad scratches on her chest that she received when she was pushed by the decedent. She agreed to provide a formal statement (see page 15 and 16 of this memorandum).

Detective Conrad then made contact with Letizia Cantey. Ms. Cantey told him the decedent was visiting her earlier at 860 West 77 Street when he became upset and left. She agreed to provide a formal statement (see page 22 of this memorandum).

Detective Conrad made contact with Ana Oliva: Ms. Oliva stated that she saw a purple car backing down the street. She said she saw the car back into the Nova driveway. She saw a man get out of the car and go inside the house. She said that she saw the police arrive and two women standing in the driveway. She then

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<sup>11</sup> Excerpt from Sergeant Boucher's sworn statement dated March 10, 2003.

saw the man on the roof and the police officer below. She saw the police officer and the man engage in a struggle, and it appeared the “guy had a gun.” She saw the police officer on the ground and a continued struggle. She then heard a shot and saw police arrive. She agreed to provide a formal statement (see page 19 of this memorandum).

Finally, Detective Conrad assisted Detective Nazario with interviewing numerous other witnesses as a result of information provided by “March for Justice.”

#### **Officer R. Costales**

Officer R. Costales was dispatched to a burglary in progress and arrived at West 10<sup>th</sup> Avenue and 77 Street. Upon arrival, Officer Costales closed off eastbound traffic.

#### **Officer F. Delgado**

Officer F. Delgado was dispatched to a police involved shooting. He was assigned to a perimeter point at West 10<sup>th</sup> Avenue and 77 Street. He remained there until he was relieved from his post by Officer C. Garcia.

#### **Officer Z. Diaz**

Officer Z. Diaz responded to the scene and relieved B. Herrera of his traffic post. He remained there until detectives cleared the scene.

#### **Sergeant Ronald Duke**

Sergeant Ronald Duke responded to the scene. Upon arrival, he made contact with a woman standing next to Sergeant Boucher. He asked her if she was a witness. She replied “yes,” so he took her to Officer M. Hernandez. He requested that Officer Hernandez place her in a police car and not allow her to speak to anyone. He observed Officer Bolaños seated in the front of a patrol car. Sergeant Duke asked Officer Bolaños if he was okay and Bolaños replied that he was injured and requested Fire Rescue. Sergeant Duke requested Fire Rescue and assisted with crowd control until he cleared the scene.

#### **Officer J. Elosegui**

On the afternoon of the shooting, Officer Elosegui went to Jackson Memorial Hospital to meet Air Rescue.

On March 23, 2003, Officer Elosegui interviewed witness Jorgelina Vasquez at 921 West 77 Street. Ms. Vasquez told Officer Elosegui that on the date of the shooting, her white female neighbor, whom she does not know by name, knocked on her door. Upon answering the door, Ms. Vasquez’s neighbor asked her to call 911 because there was a man in her house. Ms. Vasquez handed her the telephone and her neighbor went outside with the telephone. Ms. Vasquez stood in her driveway and saw a dark-skinned male jump from her neighbor’s roof. Ms. Vasquez stated that the police had arrived on the scene and she went inside. She heard a single gunshot while inside her house (see page 21 of this memorandum).

#### **Officer O. Estrada**

Officer Estrada was assigned to stay with Officer Bolaños for a brief period of time at the scene.

#### **Detective J. Fernandez**

Detective J. Fernandez attempted to locate juvenile witnesses at Hialeah Miami Lakes Senior High School. She interviewed Sheyla Martinez. She assisted in interviewing Michael Pino, Letizia Cantey, S.O. and Rafael Font. Further, Detective J. Fernandez assisted with examining Officer Bolaños’s vehicle.

### **Officer O. Gonzalez**

Officer O. Gonzalez, along with Officer F. Verdera, located witness Lupe Marques and transported her to the Hialeah Police Department.

### **Lieutenant R. Gracia**

Lieutenant Gracia assumed scene security and ensured witnesses were separated. Further, he conducted pre-interviews of numerous witnesses.

### **Officer M. Hernandez**

Officer M. Hernandez responded to the scene and blocked off traffic going Westbound on 77 Street from 8<sup>th</sup> Avenue. He stayed until he was relieved from his post by Officer C. Garcia. At that point, Officer Boucher requested that he secure a witness. He secured the witness, but had no conversation with the witness.

### **Officer R. Hernandez**

Officer R. Hernandez was dispatched to a police involved shooting. He was assigned to a perimeter point at West 10 Avenue and 76 Street. He remained there until he was instructed to clear the scene.

### **Officer B. Herrera**

Officer B. Herrera responded to the helicopter landing zone and held it until the helicopter departed.

### **Detective L. Lahera**

On the afternoon of the shooting, Detective L. Lahera went to Jackson Memorial Hospital to meet Air Rescue.

### **Officer C. Lattimore**

Officer C. Lattimore was dispatched to a police involved shooting. He was assigned to a perimeter point at West 9 Avenue and 77 Street. He remained there until he was instructed to clear the scene.

### **Officer R. Lester**

Officer R. Lester responded to the scene to assist with traffic control and crowd control. Officer Lester put up crime scene tape and went to Hialeah-Miami Lakes High School to assist with airlifting the decedent.

### **Officer H. Lopez**

Officer Lopez was the second or third unit to arrive on the scene. When he arrived, he saw Officer Bolaños walking away from the scene where the incident occurred and toward the street. He observed Officer Bolaños's weapon was in his holster. He observed a male standing southeast of Officer Bolaños's car. The male was Abel Loredó.

Officer Lopez took Mr. Loredó to a secure location, and Mr. Loredó told him he saw Officer Bolaños attempt to take the decedent into custody. Mr. Loredó said Officer Bolaños had his hands under the decedent and the decedent had his hands over Officer Bolaños's hands. He said the decedent was trying to resist and hit Officer Bolaños. He said he thought he saw something black in the decedent's hand. Then, he said he was certain it was a weapon; it looked like a black gun.

Officer Lopez also secured Victor Hernandez. Mr. Hernandez said Officer Bolaños had his arms under the decedent around his waist. He said the decedent had his arms over him, there was a struggle, Officer Bolaños threw the decedent to the ground, and then he lost sight. Mr. Hernandez said he heard a single shot.

### **Officer Kevin Lyman**

Officer Kevin Lyman was dispatched to relieve Officer Stokes and to maintain crowd control. He performed this function for approximately twenty minutes.

### **Crime Scene Technician R. Marcial**

Technician R. Marcial obtained gunshot residue samples from both of Officer Bolaños's hands. The gunshot residue kit was subsequently impounded. Technician Marcial also obtained DNA samples from Officer Bolaños and impounded them.

### **Sergeant Richard Martin**

Sergeant Martin arrived on the scene moments after the shooting. He was the third or fourth unit to arrive. He observed Officer Bolaños standing near the body of the decedent. He approached Officer Bolaños and the following occurred:

Q: And what's the first thing you said?

A: I don't know if I said anything to Danny. He started talking to me.

Q: What did he say to you?

A: He just said, Serg, the guy was up on the roof, he jumped down, we started struggling, he took my gun, I pushed him in the bushes and I heard a shot.<sup>12</sup>

Sergeant Martin confirmed Officer Moloney was isolating Officer Bolaños. Additionally, he located several witnesses, and raised Fire Rescue on the radio.

### **Officer Mike Moloney**

Officer Moloney was at roll call when he was dispatched to the shooting scene. He was the first officer to arrive after the shooting. He saw Officer Bolaños walking toward him. Officer Moloney asked Officer Bolaños if he was okay, and received an affirmative response. He noted Officer Bolaños appeared distraught and out of breath.

Officer Moloney assisted with securing the scene and was instructed to take Officer Bolaños into his vehicle and to remain with him. Officer Bolaños made no further statements in his presence.

### **Officer Nancy Munera**

Officer Nancy Munera was dispatched as a backup officer to Officer Bolaños. On her way to the scene, Officer Bolaños "came on [the radio] and advised there were shots fired." Officer Munera arrived on the scene two minutes later. There were several officers who arrived on the scene prior to her arrival. Officer Munera was told by a Sergeant Boucher to start putting up crime scene tape. She did not see Officer Bolaños's car at that time and she did not see Officer Bolaños. Officer Munera stood with Barbara Nova for a few moments, waiting for a detective. However, Ms. Nova did not make any statements to her. She also placed a male witness inside her car for a few moments, but did not have any conversation with him.

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<sup>12</sup> Excerpt from sworn statement of Sergeant Martin dated March 10, 2003.

### **Crime Scene Technician Padron**

Technician Padron photographed Officer Bolaños's vehicle.

### **Officer Isidro Reyes**

Officer Isidro Reyes responded to the shooting scene and secured the scene with crime scene tape. He observed the body of the decedent to be in the bushes. Officer Reyes observed Fire Rescue working on the decedent and eventually traveled with the body via Air Rescue to Jackson Memorial Hospital.

### **Officer Jenny Quevedo**

Officer Quevedo transported Officer Isidro Reyes to the scene. She made contact with the crime scene units because he needed a bio-hazardous suit for another scene.

### **Detective O. Rodriguez**

Officer Rodriguez interviewed Barbara Nova at the scene of the shooting. Additionally, he assisted Detective Nazario in interviewing Ernesto Ruiz.

### **Officer Osvaldo Sardina**

Officer Sardina interviewed T.G. (a minor) after the shooting wherein T.G. indicated that he did not see anything leading up to the shooting.

### **Officer Brian Stokes**

Officer B. Stokes responded as a back-up unit to the location of the shooting. When he arrived, he noted the decedent's car was blocked by Officer Bolaños's car. He saw Officer Bolaños pacing back and forth and Bolaños appeared distraught. Officer Stokes asked Bolaños if he was "all right," and Bolaños said "yes." Officer Stokes observed the decedent lying face down, apparently lifeless. Officer Bolaños asked him for a cigarette and Officer Stokes provided one to him. Officer Stokes placed Officer Bolaños in a patrol car until Fire Rescue arrived. Officer Stokes secured the scene with crime scene tape and moved Officer Bolaños's vehicle to the other side of the street.

### **Officer R. Tillman**

Officer R. Tillman responded to an officer involved shooting. He was requested to move a motorcycle out of the roadway. He did so and then responded to Hialeah-Miami Lakes Senior High School to assist with airlift of the decedent. He then returned to his sector.

### **Officer F. Verdera**

Officer F. Verdera, along with Officer O. Gonzalez, located witness Lupe Marques and transported her to the Hialeah Police Department.

### **Sergeant Kimberly Warren**

Sergeant Warren responded to the scene in emergency mode. Upon arrival, she met with Sergeant Boucher and Lieutenant White. She was assigned to secure the inner perimeter, which she did until the scene was cleared.

**Lieutenant Kay White**

Lieutenant Kay White responded to the scene. She observed the subject lying in the bushes. Lieutenant White verified Fire Rescue was en route. She told Officer Moloney to keep Officer Bolaños inside a patrol car and observed the decedent’s car backed into the driveway, running.

**Sergeant C. Zayas**

Sergeant Zayas assigned responding support detectives to conduct area canvasses.

**FIRE RESCUE PERSONNEL**

The following Hialeah Fire Rescue personnel responded to the scene:

**Brian Allen**

Coordinated rescue efforts for the decedent at the scene.

**Nelson Bradley**

Tended to Officer Bolaños at the scene. Officer Bolaños complained of knee, back, and wrist pain. He appeared nervous and inquired as to the decedent’s chances of surviving. He also stated, “I never had this happen before.”

**Carlos Diaz**

Began Advanced Life Support procedures on the decedent at the scene.

**Mike Disbrow**

Worked with Detective Conrad to pull the decedent out of the bushes and began Advanced Life Support procedures on the decedent.

**Rene Gonzalez**

Attempted to intubate the decedent and turned him over to Air Rescue.

**Stephen Hill**

Assisted with coordinating efforts at the scene.

**Rick Mancinelli**

Assisted with coordinating efforts at the scene.

**Jamie Mercado**

Turned off the decedent’s vehicle due to exhaust and noise. Assisted in transporting the decedent to the landing zone and transferring him to Air Rescue.

**Crisanto Villa**

Assisted with Advanced Life Support and transport of the decedent to Air Rescue.

*\*All Hialeah Fire Rescue Personnel stated upon their arrival the decedent was non-responsive.*

*\*\*Crime scene photographs taken immediately prior to the arrival of Fire Rescue portray the positioning of the decedent's body.*

### **Paramedic/Firefighter Nelson Bradley**

Officer Bolaños made inquiry to Paramedic/Firefighter Nelson Bradley regarding the condition of the decedent. Officer Bolaños further stated that this had never happened to him before.

## **CRIME SCENE**

### **The Exterior Scene (Front of the Residence)**

The scene was at 917 West 77 Street, Hialeah, Florida. The residence was a single-story, cream-colored townhouse facing south on West 77 Street. The residence was located between 913 West 77 Street on the east and 921 West 77 Street on the west. The main scene was located directly in front of the residence.

The residence had a paved front yard that is used as a driveway. A purple 1984 Oldsmobile Cutlass belonging to the decedent was backed into the driveway. The engine was running. The vehicle had a Florida tag of TB8BR. A teal 1997 Nissan Altima belonging to Iris Munoz Balbuena, a resident of 917 West 77 Street, was also parked in the driveway.

A flowerbed extended east to west along the front façade of the residence. The flowerbed was approximately 5'7" wide (north to south). Hedge plants were growing in the flowerbed area to a height of 38". There was a 24" space between the hedges and the wall of the townhouse. Visibly trampled hedges were present near the west edge of the residence behind the decedent's vehicle.

A walkway leading to the front porch of the residence was located on the east side of the residence facing West 77 Street. The walkway led from the parking area into a small courtyard area and ended at a gated porch. The first door was located on the west side of the porch, faced east, and opened outward from left to right. The door was locked. The second door was located on the northwest corner of the porch, faced south, and opened outward from left to right. It, too, was locked.

The body of deceased was located to the rear of the vehicle, behind the bushes located directly in front of the home. His head was pointed to the west and his feet were pointed to the south. The decedent appeared to have a large amount of blood on the right side of his head and was unresponsive.

Blood on the ground, trampled plants, blood on the driveway, the 1984 Oldsmobile, the 1997 Nissan, a single .40 caliber casing, and smudges on the wall of the residence were all photographed. Potential evidentiary samples were collected as appropriate and the decedent's vehicle was impounded.

### **The Interior Scene**

The front doors to the residence were locked. Ms. Iris Balbuena provided a key. A security chain secured the door from the inside.

The residence was a three bedroom, two bath townhouse. The entrance was located on the south side of the home, facing West 77 Street. The air conditioner was on. The kitchen light was the only light on inside the residence. The front door opened into the living room. Directly north of the living room is a bedroom located on the northeast corner of the residence. This bedroom had a sliding glass door that led to the back yard of the residence. The back yard bordered a large lake and was located on the north side of the residence. The sliding

glass door of this bedroom was unlocked but closed. It had wrought iron bars on the outside, rendering it impossible for one to exit to the backyard without first unlocking the iron bars. A second bedroom was located on the south side of the residence adjacent to the front parking area and a third bedroom was located on the west side of the residence. Both bedrooms had sliding glass doors leading to a covered rear patio area. The patio area was enclosed with a wrought iron gate. However, the gate was unlocked and open.

The interior of the residence was photographed; the security chain and the handle of the sliding glass doors were processed.

### **The Interior Scene (Back of the Residence)**

The backyard of the residence bordered on a lake. The backyard is only directly accessible via the residence. An air conditioner compressor unit was located in the backyard adjacent to the north wall of the residence directly east of the enclosed patio area. An apparent shoe impression was photographed on the north wall of the residence above the air conditioner compressor.

## **FORENSIC RESULTS**

### **Latents**

Neither the burglary scene nor the firearm yielded any latent fingerprints of value.

### **DNA Analysis**

A DNA analysis of the firearm recovered in this case performed by Criminalist Lisbeth Colon revealed the following: (1) a mixture of the DNA of two or more individuals on the *trigger* of the firearm. Neither Officer Bolaños nor the decedent can be eliminated as contributing to this mixture. The *source* or bodily fluid that gave rise to the DNA cannot be determined. (2) a mixture of DNA on the *handle* of the firearm. Neither Officer Bolaños nor the decedent can be eliminated as contributing to this mixture. The *source* or bodily fluid that gave rise to the DNA cannot be determined. (3) a partial profile of the *decedent's* DNA on the *slide* of the firearm. The *source* or bodily fluid that gave rise to the DNA cannot be determined.

A DNA analysis of the clothing of Officer Bolaños revealed no detectable DNA.

### **Gunshot Residue Analysis**

Gunshot residue testing performed by Criminalist Alan Klein was positive on the right web [back] of the hands of Officer Bolaños. Gunshot residue testing was negative on the hands of the decedent. However, the decedent had some supporting primer particles on the palms and backs of his hands.

These results were consistent with Officer Bolaños firing the weapon; however, they do not eliminate the possibility that the decedent fired the weapon.

### **Firearms Analysis**

Firearms examination performed by Firearms Examiner George Hertel revealed the single casing recovered from the scene was indeed fired from the 40 caliber Glock pistol, Model 22 firearm belonging to Officer Bolaños (Serial Number CLR412US). The projectile fragment recovered from the head of the decedent was too fragmented for comparison.

Firearms examination further revealed Officer Bolaños had two spare magazines and one magazine in his weapon. However, there is no indication his firearm was fired more than once.

Firearms testing revealed the stippling pattern on the decedent was consistent with the firearm fired *while inverted* at an approximate forty-five degree angle and a range of approximately 1.5 inches from the point of impact on the skull.

### **Holster Examination**

An examination performed by Officer Victor Espinosa of Officer Bolaños's holster revealed it to be a level-three retention holster. The holster was determined to be functional. Simulation of an attempt to grab the weapon and disarm the officer by a subject was conducted from three directions: front attack, side attack, and rear attack. In all attacks, the subject was able to disarm the officer after a brief struggle.

### **Shoe Print Analysis**

A comparison of shoe prints discovered on the back of the Nova residence and the roof of the Nova residence revealed the pattern to be *consistent with* the shoes worn by the decedent, but there was insufficient conclusive detail to eliminate all other shoes.

### **SCENE RE-ENACTMENT**

The weather on the day of the shooting was extremely rainy. Notwithstanding the adverse conditions, Lupe Marques was transported back to the scene to illustrate her positioning at the time of the shooting. Detective Nabut supervised this re-enactment.

### **STATEMENTS OF OFFICER BOLAÑOS**

Officer Bolaños made a spontaneous statement at the scene to Sergeant Martin (his supervisor). Sergeant Boucher was present for the statement. Sergeant Martin recalled Officer Bolaños said, "The guy was up on the roof. He jumped down, we started struggling, he took my gun, I pushed him in the bushes and I heard a shot." Sergeant Boucher recalled Officer Bolaños said, "The guy was on the roof, he jumped off the roof, [I] went to take the guy into custody, the guy got his gun, and the guy shot himself." Deputy Chief Ed Beyer recounted that Officer Bolaños said no one was more surprised than he was when the gun discharged. Officer Bolaños declined through his attorney, Anthony Livoti, to provide a formal statement to either the Hialeah Police Department or the Office of the State Attorney.

### **CELLULAR TELEPHONE RECORDS OF THE DECEDENT**

The decedent's cellular telephone records were obtained and reviewed. Individuals who had contact with the decedent on the afternoon of his death were contacted and interviewed by law enforcement officers. None of these individuals purported to have information about the decedent's intents and purposes in going to the Nova residence.

### **CELLULAR TELEPHONE RECORDS OF OFFICER BOLAÑOS**

Officer Bolaños's cellular telephone records were obtained and reviewed. The officer called his fiancée, immediately following the shooting. His fiancée stated that she did not have a substantive conversation with him; rather, she said that the officer asked her to contact his family and apprise them that he had been involved in a shooting.

## MEDICAL EXAMINER

Associate Medical Examiner Reinhard Motte determined the decedent, Worine Sams, was 6'2" in height and weighed 161 pounds. The cause of death was a gunshot wound to the right side of the head. The entrance gunshot wound was on the right side of the head located 1 ¼ inches from the top of the head and 3 inches right of the anterior midline. The projectile perforated the scalp, right parietal bone creating an inward bevel, the right parietal lobe, across the midline through the left parietal lobe, and the left parietal bone. The projectile exited the left side of the head. The exit wound was near the top of the left side of the head, located ¾ inches from the top of the head and 1 ¾ inches left of the anterior midline (see attachment).

When the head is in an anatomic position, the direction of the projectile is from right to left, upward, and slightly back to front.

The skin surface of the wound was free of soot or muzzle imprint. However, there was an approximately one inch by one inch area of stippling on the scalp. The stippling is anatomically below the entry point, which means that the direction of the shot was upward. The wound was a near contact wound.

Dr. Motte classified the death as a homicide based on the positioning of the firearm at the time of discharge.

The decedent had abrasions on his lower back. Additionally, there were white scuffmarks on his lower back and right elbow area.

Toxicology testing on the decedent revealed a positive metabolite of cocaine, indicating usage in prior days, and marijuana in the body.

## DISPUTED FACTS

### *The Santeria Theory*

The brother of the decedent, Willie Sams, stated his brother had begun seeking Santeria readings approximately one month before his death. He opined that on the day of the shooting, the decedent had been at the Nova residence received a Santeria reading, and that he was unhappy with the outcome. He further opined that when his brother requested a refund, the Novas denied the refund, and his brother became upset. He stated his brother did not commit a burglary.

Upon questioning, both Rosemary and Barbara Nova stated they had no familiarity with Santeria. They confirmed they were practicing Christians. An inventory of their home did not reveal any Santeria artifacts. Rosemary Nova stated she was afraid of the decedent so she began to pray aloud in an effort to calm him down on the day of the shooting. She further stated that she began to talk about Jesus and the Bible to the decedent to try to deter him.

Investigation revealed no connection between the Novas and the decedent prior to the day of the shooting.

### *Lupe Marques's Statement*

Ms. Marques provided a sworn statement indicating she had seen Officer Bolaños standing with his firearm pointing at the bushes immediately before the shooting. She further stated he appeared to shoot into the bushes. She said the tip of the officer's firearm was approximately one foot from the bushes.

Ms. Marques's statement is inconsistent with the testimony of other witnesses. All other witnesses were consistent in describing a struggle immediately prior to the shooting with *both* the officer and the decedent in the bushes when the shot was fired.

Further, Ms. Marques's statement is inconsistent with the immutable scientific evidence in the case. The firearm was, at most, two inches from the head of the decedent when it was fired. Thus, Officer Bolaños could not have been standing with the tip of his firearm *one foot* away from the bushes when the decedent was shot.

### **The "Hector" Lead**

Following an intense grid search and neighborhood canvass for "Hector," the individual identified as an eyewitness by The March for Justice and Willie Sams, law enforcement centered efforts on locating Hector Jorge Mendez, of 2601 West 71 Place (D.O.B. 1/26/78). Mr. Mendez was eventually located and provided detectives with a statement that he did not witness the shooting or the events preceding the shooting. Mr. Sams and his brother, Robert Wiggins, both stated that Mr. Mendez had told them he witnessed the event. However, both Mr. Sams and Mr. Wiggins provided vastly different renditions of what they alleged Hector told them.

Based on Hector's denial that he had been an eyewitness, he failed to shed light on the facts at issue in this case.

### **Issue of Who Pulled the Trigger**

Officer Bolaños's statements, as relayed by Sergeant Boucher and Sergeant Martin, express the possibility that either the decedent shot himself or the firearm discharged accidentally. The officer's version of events is inconsistent with the forensic evidence and the eyewitness testimony in the case. However, these inconsistencies are not dispositive of the legal issues presented in this case.

All of the eyewitnesses, with the exception of Lupe Marques (whose testimony conflicts with the forensic evidence in the case), confirmed that the firearm was discharged while both Officer Bolaños and the decedent were *struggling on the ground*.

## **LEGAL ANALYSIS**

This is a criminal investigation. Thus, in assessing whether or not a crime exists, it must be determined whether or not there is sufficient evidence to prove the existence of any crime beyond and to the exclusion of every reasonable doubt.

Based on all of the facts presented in the case, there are three most likely ways in which the firearm was discharged: (1) the decedent fired the weapon during a struggle; (2) the firearm was accidentally discharged during a struggle; or (3) the officer intentionally discharged the firearm during a struggle. The first scenario would clearly qualify as a suicide; thus, it would not present a situation in which the officer could be held criminally liable. The second scenario does not give rise to criminally culpability, as there is no indication that the officer behaved in a reckless or criminally negligent manner. However, the scenario in which the officer intentionally discharged the firearm merits further discussion.

Florida law is clear that in conducting an arrest for a forcible felony, an officer has the unfettered right to use any degree of force necessary if the felon flees from justice.

Florida Statute 776.05 provides:

A law enforcement officer, or any person whom the officer has summoned or directed to assist him or her, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. The officer is justified in the use of *any force*:

*When necessarily committed in arresting felons fleeing from justice...*

(emphasis added)

In the instant case, en route to the Nova residence, Officer Bolaños had already received information that a burglary with an assault had occurred. The law states that a burglary is a forcible felony.

Upon Bolaños's arrival, Barbara Nova appeared distraught in the front yard of her home and confirmed that a burglary had occurred. Moments later, the decedent leapt from the roof of the Nova residence. When Officer Bolaños attempted to take him into custody, the decedent struggled with the officer in an effort to extricate himself from the grip of the officer. The decedent endeavored to gain control of Officer Bolaños's firearm and both men fell to the ground engaged in an ongoing struggle.

It is clear from these facts that Worine Sams had committed a felony and was attempting to flee from justice. Thus, Officer Bolaños was permitted, pursuant to Florida law, to use *any force necessary* to effectuate the arrest. Officer Bolaños was not limited to using non-deadly force; rather, the law allowed him to use *deadly force* once Worine Sams attempted to break free from Officer Bolaños's grip in an effort to leave the scene. Therefore, Officer Bolaños's actions were justified pursuant to Florida Statute 776.05(2).

Another analytic approach to the situation is to examine the shooting in the context of Florida laws governing the justifiable use of deadly force. Florida law clearly dictates that murder or manslaughter charges cannot be filed if an officer is engaged in the justifiable use of deadly force.

Florida Statute 776.05 provides specific protection for law enforcement officers subjected to bodily harm in the course of making an arrest:

A law enforcement officer, or any person whom the officer has summoned or directed to assist him or her, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. The officer is justified in the use of *any force*:

(1) Which he or she reasonably believes to be necessary to *defend himself or herself or another from bodily harm* while making the arrest;

Florida Statute 776.012 is relevant to the extent that it provides that *any* person may use deadly force if it is necessary to protect himself or herself

[A] person is justified in the use of deadly force only if he or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself...

With the exception of Lupe Marques, all eyewitnesses confirmed that Officer Bolaños was involved in a struggle for his life when the firearm was discharged. Mr. Sams had Bolaños's firearm in his hand, at least momentarily. Both men then fell into the bushes, presumably wrestling for control of the firearm. Under these factual circumstances, Officer Bolaños was reasonable in utilizing deadly force to defend himself from bodily harm as well as in effectuating the arrest of Worine Sams, his actions were justified pursuant to both Florida Statutes 776.05(1) and 776.012.

In conducting this investigation, the undersigned Assistant State Attorney was aware of Officer Bolaños's history as police officer during his brief tenure with the Hialeah Police Department. Examination of his personnel file revealed a number of reprimands. These reprimands arose out of numerous incidents, including, but not limited to failure to disengage a vehicle pursuit when ordered to do so, failure to attend court, failure to log arrest forms, failure to turn in a court appearance in a timely manner, and driving a city vehicle during a time period in which his license had expired. Officer Bolaños's Internal Affairs file revealed numerous allegations of police brutality.

Nevertheless, in order to determine whether the State can bring criminal charges against an individual, only relevant, admissible evidence may be considered. Officer Bolaños, as the subject of a criminal investigation, is entitled to the benefit of the same laws and rules that apply to any potential defendant.

Thus, in the context of a criminal investigation, under Florida law, Officer Bolaños's prior history does not assist in resolving any disputed factual issues at issue.

### CONCLUSION

The central issue in this investigation is whether or not it was legally justifiable for Officer Daniel Bolaños to shoot Worine Sams on March 10, 2003.

The legal issue must be decided from the perspective of the shooting officer and examined in the context of the facts immediately preceding the discharge of the firearm. Employing this objective analysis and weighing all of the disputed and undisputed facts, prosecutors cannot prove that Officer Bolaños was unreasonable, beyond a reasonable doubt, in believing that Worine Sams posed an immediate threat of death or serious bodily injury to Officer Bolaños, or was fleeing after the commission of a forcible felony.

It is undisputed that Worine Sams entered the home of Barbara Nova and Rosemary Nova without their consent. Once inside the home, Mr. Sams grabbed Barbara Nova's breast against her will and pushed Rosemary Nova several times against her will. Mr. Sams claimed to be armed with a firearm. Mr. Sams demanded money from both women and deprived them of their telephone. As Officer Bolaños attempted to take Mr. Sams into custody for this burglary with an assault and attempted robbery, Mr. Sams struggled with Officer Bolaños. Mr. Sams attempted to obtain control of Officer Bolaños's firearm and did indeed obtain control of the firearm, at least momentarily. Both Officer Bolaños and Mr. Sams fell to the ground and struggled. The firearm was discharged while both men were involved in a physical struggle for the firearm.

The shooting is undeniably tragic, as in every shooting situation that results in the loss of a life. However, one cannot overlook the fact that the series of events set into motion by the actions of Worine Sams led to a situation in which Officer Bolaños was forced to make a choice; the choice that Officer Bolaños ultimately made was sanctioned by Florida law.

Officer Bolaños acted within the confines of the law in using necessary force in the course of effectuating the lawful arrest of a fleeing felon. It is clear under any construction of the facts that Worine Sams had committed a forcible felony. It is further clear that Worine Sams attempted to prevent his own arrest by struggling with and attempting to free himself from Officer Bolaños. This set of circumstances authorized Officer Bolaños to use *any force* necessary to prevent Mr. Sams from *fleeing from justice*.

It is further reasonable to support the perspective of Officer Bolaños that while engaged in the act of conducting an arrest, he was placed in a position in which he had to utilize the force "necessary to defend himself . . . from *bodily harm* while making the arrest." This, too, is authorized by Florida law. Perhaps Officer Bolaños could have waited to react; however, the legal analysis of his actions must be based upon what he did, not what he could have done. Quite simply, the law did not require Officer Bolaños to wait for Worine Sams to succeed in firing a gun before Bolaños pulled the trigger of the gun.

Accordingly, it is the opinion of the undersigned that the shooting of Worine Sams was legally justified and that no criminal charges should be filed against Officer Daniel Bolaños.

Prepared by:

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