



INTEROFFICE MEMORANDUM

To: Katherine Fernandez Rundle  
State Attorney

Date: May 6, 2021

From: Staffing/Review Team


Re: SAO # 62-20-11-17-002  
Deceased: Kesner Liberal


Based on the information obtained and reviewed during the course of the investigation, the conclusion of the staffing/review team is as follows: On Thursday, November 17, 2020 at approximately 9:45 P.M., Florida Department of Law Enforcement (FDLE) arrived at 55 N.W. 171 Street to investigate a use of deadly force incident involving members of the Miami Dade Police Department, specifically Special Response Team (SRT) Officer Anthony Jimenez.


Kesner Liberal's mother, Benita Wilson, called 911 earlier that afternoon to report that Kesner had a firearm and threatened to shoot his younger brother Whitney Liberal. Miami Dade Police responded to the home, evacuated the mother and brother and tried without success to coax Kesner Liberal to leave his gun and come out of the house. At some point an officer entered the house and made her way to the bedroom where she spoke with Kesner through the opened bedroom door. Kesner calmly told that officer that he did have a gun, but he did not intend to shoot his brother. The officer exited the house. Over the next several hours Miami Dade SRT arrived and with other officers, attempted to negotiate over the loudspeaker before deploying noxious gas into the home to force Liberal out. Liberal did not respond. A drone camera was sent in through a broken window where images showed Liberal on a bedroom floor, unresponsive. More gas was deployed and Liberal remained in the same position, unmoving. A team of six SRT Officers went into the house in single file into the bedroom. Officer Jimenez was the first in the line. He was heard to shout "gun, gun, drop it" among other commands before firing four shots, all striking Liberal in the head and neck. A loaded firearm, registered in Liberal's name, was removed from the floor under Liberal's hand.


Officer Jimenez was the only witness in a position to observe Liberal. Officer Jimenez has not provided a statement about his observations, therefore we do not have sufficient evidence or information to determine whether his actions were proper or improper or whether the shooting was legally justified, in self-defense or in the defense of others.


The members of the staffing/review team for this case are:


  
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Don L. Horn

  
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Stephen K. Talpins


  
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Christine Zahralban

Approved by State Attorney on this 12 day of May, 2021.

  
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KATHERINE FERNANDEZ RUNDLE  
State Attorney

OFFICE OF THE STATE ATTORNEY  
ELEVENTH JUDICIAL CIRCUIT

KATHERINE FERNANDEZ RUNDLE  
STATE ATTORNEY



INTEROFFICE MEMORANDUM

TO: STAFFING/REVIEW TEAM

DATE: May 4, 2021

FROM: David A. Maer  
Assistant State Attorney

RE: POLICE SHOOTING CLOSEOUT MEMO  
Case # 62/20/11/17/002

OFFICER(S) INVOLVED:	Officer Anthony Jimenez MDPD 30-07384
DECEASED:	Kesner Liberal
INJURIES:	Multiple Gunshot Wounds
DATE & TIME:	November 17, 2020, approximately 7:40 P.M.
LOCATION:	55 N.W. 171 Street, bedroom
WEAPON:	Glock model 17, 9mm semi-automatic pistol (serial #REF831)
LEAD:	Alberto Borges, Special Agent, FDLE
CASE #:	MI-27-0146
SAO CASE #:	62/20/11/17/002

## SUMMARY OF FACTS

On Tuesday, November 17, 2020 at approximately 1:55 P.M., Ms. Benita Wilson called 911 to report a fight between her two adult sons in her home. She stated "Kesner has a gun". Miami Dade Police Department (MDPD) officers arrived a short time later and met the mother, Wilson, and one son, Whitney Liberal. They told police that Kesner Liberal, age 39, was in his bedroom with a firearm. Brother Whitney Liberal, age 29, went on to describe details of the argument and stated that he was angry about the way his brother Kesner was treating their mother.

MDPD officers ushered Wilson and Whitney out of the home and into the front yard. Officer Liriam Flores entered the home and walked down the hallway to the bedroom where Liberal was located. Her body worn camera footage records a discussion with him where he opens the door and speaks calmly with her from behind it. Officer Flores repeatedly asked Liberal to come out, but he refused. Kesner Liberal stated that his brother, Whitney, struck him several times while following him to his bedroom and that he, Kesner, told Whitney he could legally shoot him. Kesner tells Officer Flores that his brother Whitney replied, "go ahead, shoot me". Liberal also tells Officer Flores that he does have a gun but did not intend to shoot his brother.

Flores exits the house and meets with other officers out on the street. Approximately one hour later Officer Flores, via loudspeaker, requests Liberal to come outside and resolve the standoff. Liberal, seemingly in compliance, appears at the front door of the house and requests Flores to come back inside. She did not. Liberal eventually goes back into the house and closes the door refusing to come farther outside.

In her statement to FDLE, Officer Flores recounts her recent familiarity with the scene and the family since she was part of a group of police officers who responded six days earlier on November 11, 2020. On that date Wilson, Liberal's mother, called police to request he be taken into custody and committed to a hospital per an *ex parte* court order she obtained. Ms. Wilson feared that Liberal's paranoid behavior and possession of a firearm(s) created a danger to himself and or others. Liberal, however, was not taken into custody on November 11, because he locked himself in his bedroom, refused to come out and, without probable cause of a specific reported crime, officers would not extract him and cleared the scene and Liberal remained at the family home. It is unclear why officers did not take the same course of action on the date of this incident.

In the ensuing hours on the afternoon of November 17, MDPD Special Response Team (SRT) personnel arrived on the scene and set up with equipment and officers outside the home. A perimeter of MDPD officers was formed around the neighborhood, restricting access. Sgt. Yunier Alfonso, the supervisor of the SRT at the scene. Sgt. Alfonso was later interviewed by FDLE and reported that MDPD negotiators were deployed, unsuccessfully, in an attempt to have Liberal exit the house. Liberal did not respond to their requests.

Following the negotiators entreaties to have Liberal leave the house voluntarily, it was decided that SRT officers would break a window and inject noxious gas into the home to force Liberal out. A robotic camera was also utilized and sent into the home via the broken window in an attempt to determine Liberal's whereabouts within the house. Sgt. Alfonso said a "Recon Scout" robotic drone and pole camera were used to view the interior of the home and Liberal was subsequently located lying on the

floor in the corner of the bedroom behind the bed. From the camera images Sgt. Alfonso said Liberal was motionless and appeared to be possibly unconscious. He said more attempts to communicate with Liberal were made as well as more gas injected but Liberal remained motionless. The images from these cameras are not recorded and there are no camera or video images of Liberal on the floor or of any activity within the house at this time. Liberal's mother, Ms. Wilson installed exterior surveillance cameras but none inside the house.

Sgt. Alfonso believed that Liberal was unconscious and possibly in need of medical assistance. He determined that a team of SRT officers would enter the house and enter the bedroom where the camera footage had shown Liberal on the floor with a small table turned on its side with his legs splayed under it. The group of SRT officers was assembled and they would enter the home as a team of six in the following order:

1. Officer Anthony Jimenez
2. Officer Roberto de la Nuez
3. Officer Jose Hernandez
4. Officer Manuel Quintero
5. Sergeant Raul Cardeso
6. Officer Dexter Fletcher

This group entered the house through the front door and proceeded down a hallway with Officer Jimenez in front carrying a shield. Upon reaching a locked bedroom door officer Hernandez broke it down and the officers followed Jimenez into the room maintaining the same formation. Kesner Liberal was killed after he was shot in the bedroom of his home by Miami Dade Police Officer Anthony Jimenez. Other than Officer Jimenez, none of the SRT officers were in a position to see what happened before the shots were fired.

**Officer Anthony Jimenez**, number 1, the shooting officer, did not provide a statement in this investigation.

### WITNESS STATEMENTS

The following five officers related, in part, this information in their recorded statements to FDLE agents:

**Officer de la Nuez**, number 2, said that Jimenez moved to the right upon entering the room to the side of a large bed and heard Jimenez say "let me see your hands, he's moving, let me see your hands". De la Nuez said he could see Liberal's legs, he was lying on the floor, but the view of the torso was obscured by a small table, on its side. He said that as Jimenez continued moving closer looking over the table, Jimenez repeated the command "let me see your hands" and then "gun" and then heard three gunshots. De la Nuez observed Liberal slumped against the wall and believed he was dead. He picked up a firearm, a semi-automatic firearm with the hammer cocked that was under Liberal's hand and placed it on the windowsill to it would not be stepped on. SRT medics were called in and Liberal was carried from the room.

**Officer Jose Hernandez**, number 3, was the designated officer to break the door to the bedroom. He entered behind Jimenez and de la Nuez and as they went to the right side of the bed. He heard Jimenez giving commands for Liberal to show his hands and said that he heard Liberal reply but could not determine what he said. Hernandez said he then heard Jimenez state “gun-gun-gun” and then heard a number of gunshots. Hernandez stepped up on top of the bed, pointing his gun down at Liberal while de la Nuez retrieved the gun from under Liberal’s hand.

**Officer Manuel Quintero**, number 4, heard “hands, hands, gun” after the team entered the bedroom and then heard approximately three gunshots. Quintero said he did not see who fired the shots.

**Sergeant Raul Cardeso**, number 5, stated that once inside the bedroom he heard someone yell “gun, gun, drop it, don’t do it” and then gunshots. He stated he did not know at that time who had fired the gunshots.

**Officer Dexter Fletcher**, number 6, stated that once the door to the bedroom was breached, he saw Officers Jimenez, de la Nuez and Hernandez enter the bedroom and Jimenez “took the shield straight to the subject”. He heard Jimenez say “let me see your hands” twice and then heard Jimenez say “gun, drop the gun” and then approximately three gunshots but did not see who fired the shots. Officer Fletcher further stated that he recalled being part of a SRT team that responded to an incident at this same house approximately one month before the shooting but the matter was resolved without any involvement by SRT.

As SRT officers do not wear body worn cameras, there is no audio or video recording of their actions inside the home and the above-listed six officers are the only witnesses to the shooting that killed Kesner Liberal.

## **AUTOPSY REPORT**

SRT Medics detected a pulse from Liberal and he was placed in a Miami Dade Fire Rescue vehicle and transported to Aventura Hospital where he was pronounced dead at 8:30 PM by John Yoon, M.D. The next day, on November 18, 2020 Miami Dade Associate Medical Examiner Dr. D. Fintan Garavan conducted the autopsy. Dr. Garavan recovered 4 projectiles from Liberal’s body. One projectile from the left shoulder and three from his brain. The cause of death was multiple gunshot wounds.

## **CRIME SCENE and BALLISTICS REPORT**

Physical evidence collected from the bedroom on November 17, by MDPD Crime Scene investigators included a Sig Sauer, 1911 .45 caliber semiautomatic handgun (serial number 54A038151) from the windowsill with a live round in the chamber and a 10-round capacity magazine inserted which contained an additional 10 live rounds. A Florida Concealed Weapons Permit with photo and the name Kesner Liberal was on the bedroom floor near the door. Also found in the room was a receipt for the Sig Sauer purchase in Kesner Liberal’s name dated September 4, 2018. There was blood spatter near the floor and baseboard and on the wall of the northwest corner of the bedroom and a pool of blood on the floor. In the pool of blood were three fired 9mm WCC “+P+” casings.

Processing of Officer Anthony Jimenez and his firearms took place within two hours of the shooting at 10:45PM in the MDPD Mobile Command Unit bus. FDLE Special Agent Luis Alvarez oversaw the collection and processing of Officer Jimenez's firearm and documented the following: the Glock model 17, 9mm semi-automatic pistol, serial number REF831 from the holster worn on the right side of his gun belt with a 17 round magazine contained 13 WCC "+P+" 9mm cartridges. Jimenez had an additional 9mm Glock semi-automatic, obtained from a pouch on his vest. The magazine was fully loaded. Jimenez stated he only discharged the one firearm worn in the holster on the right side of his gun belt. He also stated that he "tops off" his magazines and there was one round in the chamber and thirteen in the magazine. If this firearm's magazine was filled to capacity as Jimenez stated then the round count and inspection supports the assertion that he fired four rounds.

On December 20, 2020, MDPD Criminalist John Mancini finalized a Firearms Laboratory Analysis Report after analyzing the four separate and intact projectiles taken from Liberal's body in the autopsy, the casings from the bedroom floor and test firing the 9mm Glock Officer Jimenez fired. Criminalist Mancini concluded that the three spent casings and the four projectiles had been fired from the submitted 9mm Glock, Model 17, serial number REF831. These three casings were the only casings found at the scene. The round count of Jimenez's firearm and the four projectiles recovered from Liberal's body in the autopsy were consistent with four rounds fired. It was concluded that one casing cannot be located and is missing.

### CONCLUSION

The role of the State Attorney in this investigation and in conducting this review is limited to determining whether a criminal violation of Florida law has occurred, whether any person may be held criminally responsible, and whether such criminal responsibility can be proven beyond a reasonable doubt in a court of law. The State Attorney does not establish agency policy, procedures, and training requirements. Nor does the State Attorney have any responsibility for determining disciplinary action or pursuing civil litigation in these matters. In other words, given the applicable law, the State Attorney's role is to determine whether the actions of Officer(s) Officer Anthony Jimenez MDPD 30-07384 constitute a criminal act that can be proven beyond and to the exclusion of every reasonable doubt.

I have reviewed the FDLE Investigative Summary into the Police Use of Force in this incident. The summary is complete, thorough and consistent with what I personally observed at the scene where I spent several hours after FDLE notification on the night of November 17, 2020. The summary is also consistent with the statements, audio and video recordings and medical, crime scene and firearms reports I reviewed.

The statements of SRT Sgt. Yunior Alfonso and the five SRT officers who entered Kesner Liberal's bedroom are consistent with the reported actions taken to have him exit the house after his brother Whitney Liberal reported that Kesner had threatened to shoot him. Whitney told police his brother Kesner said he could "legally shoot" Whitney. Kesner Liberal did not leave the home after hours of verbal requests, even after the use of noxious gas. The SRT officers stated that the drone camera showed an image of a man lying on the floor of the bedroom, motionless, with a small table tipped on its side over his leg.

Without knowing Liberal's physical or medical condition, a decision was made to enter the house. What has been reported is that SRT officers heard Officer Jimenez, the first in the line of six, yell "show your hands" and "gun, gun". Specifically, the evidence is that Officer de la Nuez stated he heard

Officer Jimenez “let me see your hands, he’s moving, let me see your hands”. Officer Fletcher stated he heard Officer Jimenez say, “let me see your hands” twice and then heard Jimenez: “gun, drop the gun”. Sgt. Cardeso said he heard “gun, gun, drop it, don’t do it” and then gunshots. None of these officers saw what, if anything was happening, and they testified as to various statements they recalled hearing from Officer Jimenez.

While there is no statement from Officer Jimenez, who fired the lethal shots, his actions, must be reviewed in conjunction with Florida law. Specifically, section 776.012, Florida Statutes, permits the use of deadly force when a person reasonably believes such force is necessary to prevent imminent death or great bodily harm to himself or prevent the commission of a forcible felony. Florida Statute section 776.05 permits a law enforcement officer to use any force that he believes is necessary to defend himself or another from bodily harm while making an arrest. There is no evidence that officers were seeking to make an arrest of Kesner Liberal at that point.

After officers cleared his mother and brother from the house initially, Officer Flores entered the house, walked down the hallway to the bedroom and asked Liberal to come out. Kesner Liberal refused to come out but he did open the bedroom door and speak calmly to Officer Flores from behind the door. He told Officer Flores that he did have a gun, but he did not intend to shoot his brother. This conversation was captured on Officer Flores’ body worn camera. Officer Flores exited the house thereafter.

Despite hours-long efforts requesting Liberal to come out of the house, and for reasons known only to him, he remained. Officers entered his room to address what has been stated as a legitimate concern for his wellbeing. Evidence obtained in this investigation shows that immediately after the shooting a semi-automatic firearm with the hammer cocked was located under Liberal’s hand. We do not know where that gun was in the moments before the shooting.

SRT Officer Jose Hernandez, number 3 in the line of 6, stated that after the shooting, while he was standing on the bed looking down at Liberal on the floor, he observed Officer de la Nuez reach down and remove the firearm from under Liberal’s hand and place it up on the windowsill. When analyzing all the evidence gathered in this investigation and considering the totality of the circumstances, there is no evidence of what occurred in the bedroom that caused Officer Jimenez to fire. Minutes before the SRT officers entered the house, camera images revealed that Liberal was motionless and appeared to be possibly unconscious. More attempts to communicate with Liberal were made after he was observed in this state, but he did not reply. Thereafter, more gas was released into the house and Liberal remained motionless. As Officer Jimenez was the only witness in a position to observe Liberal and as he chose to not give a statement, thereby depriving us of the benefit of his observations, we do not have sufficient evidence or information to determine whether the shooting was legally justified or whether his actions were criminal or not, or in self-defense or in the defense of others.

Prepared by:

/s/ David A. Maer

Assistant State Attorney