

Close-out Memorandum of the
Investigation Regarding
Etianna Planellas
August 30, 2021



State Attorney's Office
Eleventh Judicial Circuit
Miami-Dade County
June 21, 2022



INTEROFFICE MEMORANDUM

TO: KATHERINE FERNANDEZ RUNDLE DATE: June 21, 2022
State Attorney

FROM: STAFFING/REVIEW TEAM RE: SAO/Case #: 62/21/08/30/001
Deceased: Etianna Planellas

Based on the information obtained and reviewed during the course of the investigation, the conclusion of the staffing/review team is the following:

On August 30, 2021, at about 4:11 P.M., Miami Shores Police received a 911 call from a woman, requesting police respond to her home, saying "I don't be hurt, I want to hurt somebody." The dispatcher, who recognized the caller from prior incident calls from that location, dispatched over the radio that "the usual complainant" seemed "delirious." Officer Talavera, the first responding officer, encountered Etianna Planellas and advised the dispatcher that she was holding a gun which was pointed at her head. He requested emergency assistance. Detective McKay, also responded, and observed Planellas in the front yard of the residence facing Officer Talavera while holding a firearm aimed at her temple. Officer Talavera is heard on the radio ordering Planellas to drop the weapon. As Detective McKay was exiting her vehicle she heard a shot. She reported "shots fired" and then heard additional shots as she got out of her car. She did not see the shooting. After the shooting she heard Officer Talavera say, "She was aiming at us." Officer Ruiz, who arrived on the scene shortly after the shooting saw the woman lying on the ground and heard Officer Talavera say, "She still has the firearm in her hand." Officer Ruiz approached the woman, and with his foot, moved the gun away from Planellas. Planellas' mother, Reina Arocha, provided a sworn statement indicating her daughter who suffered from mental illness, had been drinking beer before the incident, walked out the front door, and put the pistol to her head. Ms. Arocha also indicated she heard her daughter "threatening the policeman that she would shoot," she saw and heard the officer telling her to lower the weapon several times, and she saw her daughter walking toward the officer with the weapon. It was later determined the weapon was a "Daisy" pellet gun designed to look like a firearm. Pursuant to F.S. 776.012, we find the shooting by Officer Derrick Talavera 11-214 MSPD to be legally justified.

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

Don L. Horn

Deisy Hernandez

Stephen K. Talpins

Christine Zahralban

Kathleen Hoague

J. Scott Dunn

Approved by State Attorney on this 21 day of June, 2022.

KATHERINE FERNANDEZ RUNDLE
State Attorney



INTEROFFICE MEMORANDUM

TO: STAFFING/REVIEW TEAM

DATE: June 14, 2022

FROM: Scott L. Warfman
Assistant State Attorney

RE: POLICE SHOOTING CLOSEOUT MEMO
SAO Case # 62/21/08/30/001

OFFICER(S) INVOLVED:	Officer Derrick Talavera 11-214, Miami Shores Police Department
DECEASED	Etianna Planellas
DATE & TIME:	August 30, 2021, at approximately 4:11p.m.
LOCATION:	68 NW 95 th Street, Miami Shores
WEAPON:	9 mm Sig Sauer, Model P320, s/n 58C265044 - Talavera Daisy" pellet gun - Planellas
LEAD/REPORTS:	Special Agent Alberto Borges, FDLE
CASE #:	FDLE: M1-27-0167 Miami Shores PD 20181274 MDPD 210830274990
SAO CASE #:	62/21/08/30/001

STATEMENT OF FACTS

On August 30, 2021, at approximately 4:11 p.m., Miami Shores Police Department (MSPD) received a 911 call from a female caller requesting that police respond to her residence. The dispatcher inquired whether anyone was injured, and she responded, "I don't be hurt, I want to hurt somebody." The dispatcher advised to MSPD officers over the radio that it was "the usual complainant" who did not explain what she needed and was being delirious. Apparently, the dispatcher was familiar with the caller and/or her residence.¹ Officer Talavera, the first responding officer, arrived at 68 NW 95th Street at about 16:16 hours. At that time, he advised that the resident, later determined to be Etianna Planellas, had a gun in her hand and was pointing it at her head. Officer Talavera requested emergency assistance.

At approximately 4:18 p.m., MSPD Detective N. McKay was nearby driving east on 95th Street. She observed Officer Talavera's marked police car on the south side of 95th Street and saw Officer Talavera on the sidewalk east of 68 NW 95th Street facing west. She then saw Planellas in the front yard of the residence facing Officer Talavera while holding a pistol aimed at her temple. Less than a minute before the shooting, Officer Talavera can be heard on the MDPD communications ordering Planellas to, "Drop the gun." Detective McKay pulled over on the south side of 95th Street, in front of 54 NW 95th Street (the residence east and adjacent to 68 NW 95th Street) and parallel to Officer Talavera. Before the detective exited her vehicle, she heard a gunshot and radioed in "shots fired." As she exited her vehicle, she heard additional shots, but did not see Officer Talavera fire his weapon. As she approached, Detective McKay observed Planellas collapsed on the sidewalk in front of 68 NW 95th Street, about 12-15 feet west of Officer Talavera.

Officer Ruiz arrived on the scene shortly after the shooting, at about 4:19 p.m. He first approached Officer Talavera who was holding his handgun in a "low ready" position and appeared distressed. Officer Ruiz heard Officer Talavera say, "She still has the firearm in her hand." He directed Officer Talavera to holster his weapon. Officer Ruiz observed what he thought was a handgun next to Planellas and moved it away from Planellas with his foot.

Fire Rescue arrived on scene at about 4:27 p.m. Fire Rescue determined that Planellas had passed. From the time that Officer Talavera arrived on scene to the time he shot Planellas, about two to three minutes elapsed. Officer Talavera did not give a statement during the course of the investigation.

Reina Arocha

On August 30, 2021, Reina Arocha, provided a sworn statement to the police. Reina Arocha is the mother of Etianna Planellas. Ms. Arocha described that Planellas was _____ and regularly took medication for her mental health.² She said Planellas was also an alcoholic and

¹ According to police records, there have been many 911 calls from the residence, including calls for domestic disturbances, threats of suicide, and medical assistance. As recently as June 29, 2021, Planellas was Baker Acted because, among other things, she was banging her head against a wall and threatening to commit suicide.

² Anthony Hernandez, Planellas's step-son, and Ms. Arocha's grandson, also confirmed that Planellas suffered from psychological problems and in the past had been Baker Acted.

stated that Planellas had been drinking beer before the shooting. Just prior to the shooting, Ms. Arocha had been inside the house talking with her daughter, Planellas. Ms. Arocha saw Planellas walk out the front door, and looking through her front window, she saw Planellas put the pistol to her head. Ms. Arocha heard Planellas “threatening the policeman that she would shoot.” She saw and heard the officer telling Planellas to “lower the pistol a lot of times.” Ms. Arocha also stated that she ran outside when she saw the officer and was telling him, “...it’s no gun. It’s no gun. It’s not really gun... The gun no shoot. The shoot no real.” At some point during the incident, Ms. Arocha saw her daughter walking toward Officer Talavera with the gun in her hand.

Wilfredo Hernandez

During the course of the investigation, agents spoke to Wilfredo Hernandez. Mr. Hernandez was Planellas’s boyfriend of about 27 years. Wilfredo Hernandez confirmed that Planellas had serious psychological issues and that the MSPD had responded recently when Planellas had threatened to commit suicide and was Baker Acted. He also confirmed that Planellas was an alcoholic who deteriorated when drinking alcohol (in conjunction with prescribed medications).

Daniel Eisenberg

On August 30, 2021, agents took a statement from Daniel Eisenberg. At the time of the shooting, Daniel Eisenberg was nearby driving east on NW 95th Street. He saw two police cars in front of 68 NW 95th Street and saw a female officer next to a police car and a male officer off the roadway. Eisenberg observed the male officer discharging his weapon seven or eight times and felt something strike the right side of his car while he was in the roadway. Eisenberg later discovered the right-side rear passenger door of his vehicle was struck by a bullet. He advised he did not see who or what the officer was shooting at.

Detective N. McKay

On August 30, 2021, Detective McKay provided a sworn statement. Detective McKay arrived at the scene moments before the shooting. As she arrived, she observed Officer Talavera’s marked police car on the south side of 95th Street and saw Officer Talavera on the sidewalk east of 68 NW 95th Street facing west. She saw a woman in the front yard of the residence facing Officer Talavera while holding a pistol aimed at her temple.

Before Detective McKay exited her vehicle, she heard a gunshot and radioed in “shots fired.” As she got out of her vehicle, she heard additional shots, however she could not see Officer Talavera firing his weapon. After Officer Talavera fired the shots, she saw him holding his handgun emanating smoke. As she approached, Detective McKay saw a woman, collapsed on the sidewalk in front of 68 NW 95th Street, about 12-15 feet west of Officer Talavera.

At some point Detective McKay also saw Planellas’ mother outside the residence about six feet from the front door. As the mother was on oxygen, an oxygen tube was limiting her mobility. Planellas’s mother was yelling, however, Detective McKay could not remember whether it was in

English or Spanish.³ Detective McKay also saw Planellas' brother come out of the house after the shooting. At some point after the shooting Detective McKay heard Officer Talavera say, "She was aiming at us."

Officer Ruiz

On August 30, 2021, Officer Ruiz provided a sworn statement. Officer Ruiz arrived on the scene shortly after the shooting. As he approached Officer Talavera he saw he was holding his handgun in a "low ready" position and appeared distressed. Officer Ruiz heard Officer Talavera say, "She still has the firearm in her hand." Officer Ruiz observed a woman lying on the ground and saw what he thought was a handgun next to that woman. Officer Ruiz approached the woman and with his foot, moved the firearm away. Officer Ruiz directed Officer Talavera to holster his weapon.

REVIEW OF FORENSIC EVIDENCE

Crime Scene Reports and Ballistics Analysis

Planellas's "firearm" was impounded at the scene and determined to be a "Daisy" pellet gun. The pellet gun, which looks like a real firearm, is depicted in the picture below.



³ Planellas's mother, Reina Arocha, gave a sworn statement to the police, in Spanish. She speaks very little, broken English.

At the time of the shooting, MSPD officers were not assigned Body Worn Cameras. Investigation revealed that a nearby home surveillance system at 149 NW 97th Street, about two blocks north of the scene, captured audio of the shooting, but not any video of the incident. The audio appears to have recorded about 11 shots having been fired in about three seconds. Investigation also revealed that there was a doorbell camera at 68 NW 95th Street, the home of Reina Arocha, Planella's mother. The data from the doorbell camera was apparently stored in a cloud service only accessible from Planellas's cell phone. A search warrant was issued for the phone, but investigators were unable to access the phone without a password. Planellas's family members were unable to provide the password.

Seven 9 mm Luger casings were recovered in the vicinity of the sidewalk grouped together about 15 feet east of Planellas. Three additional 9 mm Luger casings were recovered about 25-30 feet east of Planellas near a palm tree. All of these casings were submitted for forensic analysis and confirmed to have been fired from Officer Talavera's duty weapon, 9mm Sig Sauer, s/n 58C265044. Further, the weapon was recovered with one round in the chamber and a 17 round capacity magazine was inserted in the weapon which contained five additional rounds. This is consistent with at least 10 shots having been fired by Officer Talavera, as reflected by the number of the casings on the scene.

In addition to Daniel Eisenberg's vehicle, Officer Talavera's vehicle was struck by a bullet during the shooting. The right rear tire was punctured and went flat. When Officer Talavera arrived, he parked in front of the driveway on the west side of the residence, facing east. The car was parked west of where Planellas was when she was shot.

Medical Examiner Report

The Associate Medical Examiner, Dr. Mathis, determined that Planellas died as a result of injuries sustained from multiple gunshot wounds. In addition, toxicology analysis detected ethanol level at .264%. Other drugs detected include benzodiazepines, alprazolam, and cannabinoids.⁴

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 criminal responsibility can be proven beyond a reasonable doubt in a court of law. The State Attorney does not establish agency policy, procedure, 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 Derrick Talavera constitute a criminal act that can be proven beyond and to the exclusion of every reasonable doubt.

I have reviewed the Florida Department of Law Enforcement Investigative Summary into the police use of force in this incident. I have also reviewed sworn statements, crime scene reports,

⁴ Dr. Mathis also found Planellas suffered from

autopsy report, lab reports, and other evidence compiled by FDLE under FDLE Case Number MI-27-0167. I find the summary and attachments to be complete, thorough, and consistent with the statements, crime scene evidence, and with my observations at the scene. I adopt and attach the Summary hereto and offer my conclusion based on the results of my investigation and review.

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 another or to prevent the commission of a forcible felony. Further, Section 776.05, Florida Statutes, permits a law enforcement officer to use any force that he reasonably believes is necessary to defend himself or another from bodily harm while making an arrest.

At the time of this shooting, Planellas, with an extensive history of mental illness, including threats of suicide, was clearly in a mental health crisis appearing to present an imminent danger to herself and any person nearby. Her 911 call threatening to hurt others created a sense of urgency and danger to the community, and, although she was holding and pointing a pellet gun at her head, the picture above clearly shows that it looks like a real handgun.

Just prior to the shooting, Officer Talavera was heard giving several commands to Planellas to drop and/or lower the gun, in order to de-escalate the situation. Officer Talavera's statement to Officer Ruiz after the shooting, "She still has the firearm in her hand", establishes his belief that the firearm was real. The statement of Planellas' mother, that she saw her daughter walking toward Officer Talavera with the gun in her hand, Planellas' refusal to comply with Officer Talavera's commands to drop the gun, and Officer Talavera's statement to Detective McKay, "She was aiming at us.", allows a reasonable belief that Officer Talavera's was in fear of imminent death or great bodily harm to himself at the time he fired the shots at Planellas. Based on Planellas' actions and the aforementioned totality of the circumstances, I find that Officer Talavera's decision to fire was reasonable and based upon these statutory provisions, I find the shooting by Officer Talavera to be legally justified.

Prepared by: *Scott L. Warfman*
/s/ Scott L. Warfman, Assistant State Attorney