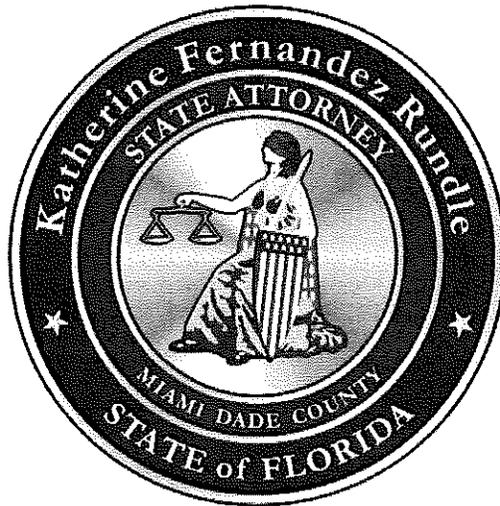


Close-out Memorandum of the
Investigation Regarding
Hector Miguel Portuondo
March 31, 2022



State Attorney's Office
Eleventh Judicial Circuit
Miami-Dade County
June 3, 2023



INTEROFFICE MEMORANDUM

TO: KATHERINE FERNANDEZ RUNDLE DATE: May 31, 2023
State Attorney

FROM: STAFFING/REVIEW TEAM RE: SAO/Case #: 62/22/03/31/004
Deceased: Hector Miguel Portuondo

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

On March 31, 2022, at about 4:00 am, Miami Dade Police Department officers, special agents of Homeland Security Investigations and United States Deputy Marshals conducted an operation to arrest Hector Miguel Portuondo at his home on a warrant from Lee County for Conspiracy to Traffic Cocaine (400 grams – 150 kilograms). The law enforcement agents entered the residence, secured Portuondo by handcuffing him behind his back, and sat him on a couch in the front room the home. Portuondo remained secured in the home for several hours while a search warrant was executed, and he was questioned. During this time, the handcuffs were removed, as Portuondo was cooperating in the investigation. At about 11:18 am, Portuondo complained of physical discomfort and indicated he needed medication for his prompting law enforcement personnel to request assistance of Miami-Dade Fire Rescue personnel. Portuondo was moved to a small room off the kitchen and allowed to lay down.

Detectives Alberto Diaz and Andrew Bonilla of the MDPD were present in the room while four MDRF personnel attempted to treat Portuondo, who refused treatment. Portuondo became increasingly agitated and combative and he began yelling in Spanish: “You are the guy that is f*cking me over!” While MDRF attempted to render treatment, Portuondo continued yelling he did not want to be touched and yelled: “I have a firearm.” Portuondo then produced a silver .380 caliber handgun that had been concealed in the couch and pointed the firearm towards Det. Bonilla, who drew his Glock and shot Portuondo. MDRF personnel attempted to treat Portuondo following the shooting, however, he was pronounced deceased. An investigation of the facts, including a review of the evidence and witness statements substantiates a conclusion that pursuant to Fla. Stat. §§ 776.012(2) and 776.05, the use of deadly force by MDPD Detective Andrew Bonilla 30-9300 is legally justified.

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

<u>/s/ Deisy Hernandez</u> Deisy Hernandez	<u></u> Nilo Cuervo	<u></u> Kathleen Hoague
<u></u> Howard Rosen	<u></u> Stephen K. Talpins	<u>/s/ Marie Jo Toussaint</u> Marie Jo Toussaint
<u>/s/ Christine Zahralban</u> Christine Zahralban		

Approved by State Attorney on this 3 day of June, 2023.

KATHERINE FERNANDEZ RUNDLE
State Attorney



INTEROFFICE MEMORANDUM

TO: STAFFING/REVIEW TEAM

DATE: MAY 30, 2023

FROM: ADAM C. KORN
Assistant State Attorney

RE: POLICE SHOOTING CLOSEOUT MEMO
SAO CASE #62/22/03/31/004

MARY ERNST
Assistant State Attorney

OFFICER INVOLVED:	Detective Andrew Bonilla, Miami-Dade PD ID #30-9300
DECEASED:	Hector Miguel Portuondo
CAUSE OF DEATH:	Multiple gunshot wounds
DATE & TIME:	March 31, 2022, at 11:30 hours
LOCATION:	12770 SW 19 th Street, Miami-Dade County, FL
WEAPON(S):	Glock Model 26 (Gen4), 9mm semi-automatic pistol bearing serial number BFGM060. (Ofc. Andrew Bonilla) .380 caliber Walther PPK handgun (Miguel Portuondo)
LEAD:	Special Agent Michelle M. Cabrera, FDLE
FDLE CASE #:	MI-27-0186
SAO CASE #:	62/22/03/31/004

FACTUAL OVERVIEW

On Thursday, March 31, 2022, at approximately 4:00 a.m., police officers assigned to the Miami-Dade Police Department's ("MDPD" hereinafter) Midwest District Gang Unit, special agents of Homeland Security Investigations ("HSI" hereinafter), and deputy marshals of the United States Marshals Service ("USMS" hereinafter), conducted an operation to arrest Hector Miguel Portuondo at his residence located at 12770 SW 19th Street in Miami-Dade County, Florida. The assembled law enforcement personnel were operating under the direction of an active state capias issued from Lee County, Florida on March 29, 2022, for Conspiracy to Traffic Cocaine (400 grams – 150 kilograms).

Upon making entry into the residence, at approximately 4:30 a.m., law enforcement officers secured Portuondo by handcuffing him behind his back. While taking Portuondo into custody, the officers observed firearms and cannabis in plain view which prompted the officers to apply for a search warrant of the residence. While the warrant application was being drafted and approved, investigating officers interviewed Portuondo inside the residence; Portuondo's wife Nancy Esther Ricardo was present at the residence during portions of the interview. The interviews lasted about six hours—during this time Portuondo was provided bathroom breaks and food. According to witness interviews, Portuondo was initially handcuffed and seated at a couch in the front room of the residence. At some point Portuondo and his wife began complaining about the positioning of his handcuffs at which time, law enforcement repositioned them to the front of his body. At some point, the handcuffs were removed entirely.

At approximately 11:18 a.m., Portuondo complained of physical discomfort, prompting law enforcement personnel to request assistance of Miami-Dade Fire Rescue (MDFR) personnel.

While waiting for MDFR, Portuondo stated he was _____ and required medication, which he was allowed to retrieve with a law enforcement escort. Portuondo also removed his jacket, which was immediately searched for weapons and placed on a piece of furniture. Portuondo then stated he need to lay down and moved towards the couch in the back of the home, in a small room off of the kitchen. Portuondo began complaining loudly and asking for his jacket back. Det. Bonilla again searched the jacket for weapons and gave it to Portuondo.

MDFR responded less than 12 minutes later and attempted to treat Portuondo, who had continued to remain seated and uncuffed with his jacket over his hands on the couch in the back of the house. Portuondo became increasing erratic and angry. Portuondo had a jacket covering his lap and his hands. At least two (2) police officers, MDPD Det. Alberto Diaz and Det. Andrew Bonilla, were present in the room while four (4) MDFR personnel attempted to treat Portuondo. Portuondo refused treatment, became increasingly agitated during MDFR's attempts to assist, and began yelling at Det. Diaz in Spanish: "You are the guy that is f*cking me over!" while pointing directly at Det. Diaz who previously informed him that law enforcement had a warrant for his arrest for drug trafficking as well as a search warrant for his home.

While MDFR attempted to render treatment, Portuondo continued yelling and being combative and telling rescue personnel not to touch him. During rescue's final attempt to assist him, Portuondo yelled "I have a firearm" in Spanish and produced a small, silver-colored .380 caliber Walther PPK handgun that had been concealed in the couch. Portuondo pointed the firearm towards Det. Bonilla who drew his Glock firearm and shot at Portuondo eleven (11) times, striking him multiple times in the torso and head. MDFR personnel attempted to treat Portuondo following the shooting, however, Portuondo died.

Dr. Hutchins classified the cause of Portuondo's death as "gunshot wounds" and the manner of death homicide. Portuondo sustained three (3) gunshot wounds to the head and neck area; multiple penetrating gunshot wounds on the chest and abdomen with a clear front to back trajectory; and multiple gunshot wounds to the extremities.

The firearm produced by Portuondo from within the couch was later determined by an MDPD firearms criminalist at the MDPD crime lab to be in an "inoperable condition" due to damaged components.

WITNESS INTERVIEWS

Interviews of all relevant law enforcement personnel were conducted by FDLE special agents. Thirty-six (36) law enforcement personnel were present at or around the time of the shooting and provided statements. The warrant executed at 12770 SW 19TH Street, for the arrest of Portuondo, was planned to coincide with multiple other arrest warrants being executed related to this investigation throughout the State of Florida. Five (5) law enforcement officers were inside the residence when it occurred: MDPD Det. Andrew Bonilla, MDPD Det. Alberto Diaz, CBP Agent Javier Hernandez, South Miami Police Department Det. Jose Alvarez, and HSI Special Agent Michael Reinoso. Their interviews can be summarized as follows:

MDPD Det. Andrew Bonilla. Det. Bonilla, the shooting officer, declined to provide a statement upon advice of counsel.

MDPD Det. Alberto Diaz. Immediately preceding the shooting, Det. Diaz observed Miami-Dade Fire Rescue personnel attempting to treat Portuondo, but Portuondo was acting irate and refused to allow treatment. Portuondo was uncuffed and angry. Det. Diaz observed Portuondo sitting on

a couch in the southeast room of the residence. Four (4) MDFR personnel and Det. Bonilla were also present in the room. Portuondo continued to yell at individuals and specifically Det. Diaz in Spanish “tengo un arma” (Spanish for “I have a gun”). Det. Diaz observed Portuondo reaching under the couch cushion with his right hand to retrieve a small firearm and pointed it directly at Det. Bonilla. Det. Diaz then heard numerous gunshots while MDFR personnel ran from the room. Det. Diaz noticed that Portuondo had stopped yelling and saw the firearm fall from his hand. At the time Det. Diaz did not know if Portuondo had fired the weapon. Det. Bonilla secured the firearm and MDFR personnel returned to the room to render aid to Portuondo.

CBP Agent Javier Hernandez. Agent Hernandez observed the four (4) MDFR personnel attempt to treat Portuondo while Portuondo was seated on the couch in the southeast room, but Portuondo was loud and combative. Agent Hernandez said that multiple people were talking over one another, and it was getting very loud when he heard multiple gunshots then observed a firearm in Portuondo’s right hand. Agent Hernandez believed it looked like Portuondo was shooting straight ahead “from the hip.”

South Miami Police Department Det. Jose Alvarez. Det. Alvarez was standing near Nancy Esther Ricardo, Portuondo’s wife, in the front of the residence when he heard gunshots. He pushed Ricardo out of the house when he heard the gunshots.

HSI Special Agent Michael Reinosa. Agent Reinosa was in the foyer area of the home when he heard gunshots and shouting emanating from the southeast room. After the shots had ceased, Agent Reinosa moved to the southeast room and observed Portuondo bleeding, a gun on the floor by Portuondo, and Det. Bonilla standing over him holding a handgun. Agent Reinosa asked

Det. Bonilla “we good, we good?” Det. Bonilla nodded “yes” and stated, “subject is down, subject is down.”

Of the remaining thirty-one (31) law enforcement personnel who were present and interviewed, all narratives are substantially consistent. Throughout the morning, these law enforcement personnel conducted various tasks including organization, transportation, security, and duties associated with obtaining the search warrant. While many of these individuals were in the near vicinity of the home, none were actually inside the residence at the time of the shooting. Therefore, these officers were unable to provide details of the shooting beyond hearing multiple gunshots emanating from the home.

Four (4) Miami-Dade Fire Rescue personnel were present during the shooting and were interviewed by FDLE investigators. Their interviews are summarized as follows:

MDFR Captain Jason Rozo. Cpt. Rozo was tasked with treating Portuondo who had complained of “chest pain.” When Cpt. Rozo first observed Portuondo, he was seated on a couch, under a blanket in the southeast room of the residence at 12770 SW 19th Street. Portuondo refused treatment and just wanted to speak with “the detective whose fault this is.” Portuondo would occasionally remove his hands from under the blanket but would place them again beneath the blanket, obscuring them from view. Portuondo then exclaimed in Spanish, “I have a weapon. I have a weapon.” Portuondo pulled out a handgun from underneath the blanket and pointed the weapon “straight out.” Cpt. Rozo heard gunshots ring out and the four (4) MDFR members ran out of the residence. A “couple” minutes later, Cpt. Rozo was summoned back into the residence to treat Portuondo. After evaluation, Cpt. Rozo determined that Portuondo was deceased.

MDFR Firefighter Andy Fernandez. Fernandez stated that his primary responsibilities were Driver/Operator, so he allowed the other three (3) MDFR personnel to attempt to treat Portuondo. Fernandez believed Portuondo was unrestrained and had a jacket over his hands. Fernandez heard Portuondo screaming in Spanish that he had a weapon but was unable to see Portuondo or his right side due to their relative positioning. Fernandez heard gunfire erupt from the room and he and the other MDFR personnel exited the residence. A short time later the MDFR personnel were summoned to return to the residence to treat Portuondo.

MDFR Firefighter Frank Martinez. Martinez stated that Portuondo was uncooperative and repeatedly stated not to touch him. Portuondo had a sheet-type material covering his hands and Martinez did not believe he was restrained. Portuondo then screamed "I have a firearm" in Spanish and Martinez could see Portuondo brandishing a small, semi-automatic handgun, silver in color. Gunshots erupted almost immediately, and he and the other MDFR personnel ran out of the residence. He was later summoned back inside the residence to render aid.

MDFR Firefighter Judell Acosta. Acosta stated that Portuondo appeared to be anxious and angry when Acosta attempted to treat him. Portuondo repeatedly took his hands out from underneath a jacket that was covering him but always placed them back underneath. Portuondo then exclaimed "I have a firearm" in Spanish and pulled out a semi-automatic pistol, silver in color, with his right hand. Portuondo lifted the weapon, and it was pointed toward the ceiling when Acosta began running out of the residence. As he was running out, he heard gunfire erupt. A short time later, Acosta and the other firefighters were summoned to return to the residence to render aid, but Portuondo was already deceased.

Nancy Esther Ricardo - Civilian. FDLE Special Agent Michelle Cabrera interviewed Portuondo's wife, Nancy Ricardo, at 3:33 p.m. on March 31, 2022. Ricardo stated that immediately preceding the shooting, multiple individuals were in the back room with Portuondo. Ricardo was with a detective in the kitchen area of the home when she heard Portuondo screaming and crying about whether fire rescue was called. Ricardo then heard police say the word "gun" and heard about four (4) gun shots. Ricardo observed individuals run from the room but could not see what happened inside the room due to her positioning.

VIDEO EVIDENCE

Body-Worn Camera (BWC) footage was recovered from MDPD officers Javier Ayala, Jon Moya, Sean Pino, and Miguel Pais. These four (4) officers assisted in executing the arrest warrant. All footage recovered depicts events in the early morning when law enforcement personnel initially made entry into the residence and secured Portuondo and his wife. None of the recovered footage covered the time periods during, after, or immediately preceding the shooting. The undersigned are aware that the primary purpose of BWCs are to record encounters with individuals, subjects or civilians, and to document calls for service. The undersigned are also aware that not all law enforcement officers, specifically detectives assigned to certain investigative bureaus, are required to wear BWCs. In the instant case, after assisting in the initial encounter with Portuondo, each officer turned their BWC off after their assistance in doing so ended.

FIREARMS ANALYSIS

Miami-Dade Police Department Criminalist 2 Angela L. Garvin conducted a forensic analysis of Det. Bonilla's Glock 26 handgun and related cartridges, casings, and magazine, as well as Portuondo's Walther PPK handgun with its magazine. Additionally, multiple projectiles and projectile fragments were analyzed. Criminalist Garvin made the following conclusions:

- 1) Det. Bonilla's Glock 26 handgun was in satisfactory operating condition.
- 2) Portuondo's Walther PPK was in an inoperable condition due to the frame and slide being bent.
- 3) Toolmark analysis revealed that the 11 recovered 9mm casings were all fired in and ejected by Det. Bonilla's Glock 26.
- 4) The projectiles and projectile fragments all appear to have been fired by Det. Bonilla's Glock 26, but lack of detail precluded a more conclusive determination.

ANALYSIS AND 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 neither establishes nor opines on agency policy, procedures, or training requirements. The State Attorney is not responsible 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 Detective

Andrew Bonilla constitute a criminal act that can be proven beyond and to the exclusion of every reasonable doubt.

We, Assistant State Attorneys Adam C. Korn and Mary Ernst, responded to the police shooting scene on the day of the incident and were present for interviews of witnesses. In addition, we have reviewed the crime scene photographs, video footage, crime scene reports, lab reports, and Florida Department of Law Enforcement Investigative Summary into the Police Use of Force in this incident. Further, the undersigned have listened to the sworn statements and reviewed transcripts and summaries. We find the Florida Department of Law Enforcement Investigative Summary into the Police Use of Force in this incident to be complete, thorough, and consistent with the witness statements, as well as consistent with our observations at the scene. We adopt and attach the FDLE Investigative Summary hereto and offer this conclusion based on the results of our investigation and review.

Florida law mandates that a homicide or attempted homicide is legally justified if “[a] person... reasonably believes that using or threatening to use [deadly] force is necessary to prevent imminent death or great bodily harm to himself or another or to prevent the imminent commission of a forcible felony.” The Statute mandates that “[a] person who uses or threatens to use deadly force in accordance with this subsection does not have a duty to retreat and has the right to stand his or her ground if the person using or threatening to use the deadly force is not engaged in a criminal activity and is in a place where he or she has a right to be...”. Fla. Stat. § 776.012(2) (2020).

The recommendation of the undersigned is that the actions of Detective Andrew Bonilla in discharging his weapon at and killing Hector Portuondo were justified pursuant to Fla. Stat.

§§ 776.012(2) and 776.05. Portuondo drew a firearm from a concealed location, stated in Spanish “I have a weapon,” and pointed the weapon at or in the direction of Detective Bonilla. In the moments proceeding the brandishing of the weapon, Portuondo had grown increasingly irate, agitated, and uncooperative. Det. Bonilla was in a place where he was legally entitled to be and was attempting to maintain a secure location for Portuondo to be treated by medical personnel. While in the small room, at the time Portuondo pulled the gun and announced that he had a weapon, everyone inside the room (law enforcement and fire rescue personnel included) was in danger of imminent death or great bodily harm. Though Det. Bonilla declined to be interviewed, the objective facts establish that a reasonable person in Det. Bonilla’s position would have believed that using deadly force was necessary to prevent imminent death or great bodily harm to him and/or others as well as to prevent the imminent commission of a forcible felony. Therefore, Det. Bonilla was legally justified in using deadly force, no charges should be filed against him.

Prepared by:

s/Adam C. Korn

Adam C. Korn
Assistant State Attorney

s/Mary Ernst

Mary Ernst
Assistant State Attorney