

Close-out Memorandum of the
Investigation Regarding
Christian Merchan-Garcia
June 17, 2023



State Attorney's Office
Eleventh Judicial Circuit
Miami-Dade County
August 21, 2024



INTEROFFICE MEMORANDUM

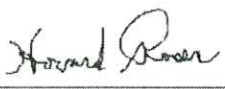

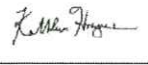
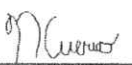

TO: KATHERINE FERNANDEZ RUNDLE DATE: July 30, 2024
State Attorney

FROM: STAFFING/REVIEW TEAM RE: SAO Case #: 62/23/06/17/001
Deceased: Cristian Merchan-Garcia

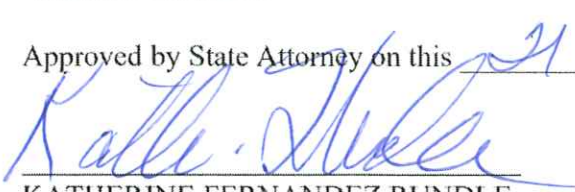
Based on the information obtained and reviewed during the course of the investigation, the conclusion of the staffing/review team is the following:

On June 17, 2023, Cristian Merchan-Garcia forcibly entered an occupied apartment behaving erratically and accosting the residents. When he left the apartment, the residents called police. Merchan-Garcia returned to the apartment a short time later, ignoring commands to stop from police officers on the scene. Merchan-Garcia pushed open the broken apartment door and reentered. Officer Hernandez followed immediately after him and observed Merchan-Garcia go onto the balcony and then reentered the apartment. Officer Hernandez shouted, "show me your hands." Merchan-Garcia responded by charging at Officer Hernandez who was backing up with his firearm drawn. Officer Hernandez fired his weapon four times. Miami Dade Fire Rescue responded and pronounced Merchan-Garcia deceased on scene. The incident is captured on body worn camera footage. Pursuant to F.S. 776.05(1) and 776.012(2), the use of deadly force by Officer Hernandez is legally justified, and therefore no criminal charges can be filed.

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

 _____ Howard Rosen	<i>/s/ Deisy Hernandez</i> _____ Deisy Hernandez	 _____ Stephen K. Talpins
 _____ Kathleen Hoague	 _____ Nilo Cuervo	 _____ Jose Arrojo
<i>/s/ Marie Jo Toussaint</i> _____ Marie Jo Toussaint		

Approved by State Attorney on this 31 day of August, 2024.



KATHERINE FERNANDEZ RUNDLE
State Attorney



INTEROFFICE MEMORANDUM

TO: STAFFING/REVIEW TEAM

DATE: July 30, 2024

FROM: Stewart Hedrick
Assistant State Attorney

RE: POLICE SHOOTING CLOSEOUT MEMO
SAO Case # 62/23/06/17/001

Santiago Aroca
Assistant State Attorney

OFFICER(S) INVOLVED:	Jonathan Hernandez, ID # 097-0468 City of Doral Police Department
DECEASED/ INJURED:	Cristian A. Merchan-Garcia
DATE & TIME:	June 17, 2023 at about 4:30A.M.
LOCATION:	11461 NW 41 St., Doral, FL. 33178 (The apartment number has been intentionally omitted).
WEAPON:	Glock 17 Gen 5,9 mm., semi-automatic, Serial #BUWU996 (Off. J. Hernandez)
LEAD/REPORTS:	Special Agent Joseph Romero, FDLE/Report received May 29, 2024
CASE #:	FDLE Case #MI-27-0225
SAO CASE #:	# 62/23/06/17/001

On May 16, 2024, the Florida Department of Law Enforcement (FDLE) closed its investigation into the June 17, 2023 fatal shooting of Mr. Cristian A. Merchan-Garcia. We have reviewed FDLE's findings. We find that FDLE did a thorough investigation of the facts and circumstances surrounding the incident, and we incorporate their investigation and factual findings in this memorandum.

The evidence shows that in the early hours of June 17, 2023, a male, later identified as Cristian Merchan-Garcia, forcibly entered an occupied apartment¹ at 11461 NW 41 St, Doral, FL 33178. After entering, he behaved erratically and attacked the residents of the apartment. He exited the apartment, leaving property behind, and the residents contacted law enforcement. Merchan-Garcia returned a short time later and re-entered the apartment, ignoring commands to stop from police officers present immediately outside. While inside, Merchan-Garcia confronted one of the officers who discharged his firearm striking Merchan-Garcia.

The evidence shows that Merchan-Garcia was acting violently and erratically leading up to and during both his first entry and second entry into the apartment. A toxicology report prepared by the Medical Examiner's Office revealed that Merchan-Garcia had substantial amounts of multiple narcotics in his organs and blood. A more detailed explanation of the evidence, facts, and circumstances follows. For the reasons stated below and legal authorities mentioned, we conclude that the shooting of Merchan-Garcia was legally justified and therefore no prosecution should be initiated.

¹ The apartment number has been omitted for the purpose of the occupant's privacy.

I. FACTUAL SUMMARY

FIRST ENTRY

Around 4:19 AM on June 17, 2023, two calls were received by the 911 emergency service of the Doral Police Department (Doral PD). In the calls, a male who identified himself as Jesus Lovo, a resident of 11461 NW 41 St, Doral, Fl. 33178, reported that an unknown white male had broken into his apartment and beat his wife and son. Mr. Lovo reported that the intruder left the apartment stating that “he would return”. Mr. Lovo explained that he was in fear for his life and requested police assistance. Mr. Lovo described the assailant as a “male, wearing a red shirt and had a backpack.” He also said that no one in the apartment had ever seen the intruder before; the assailant was a total stranger to them.

Doral PD dispatched several units to the area. Some of the responding officers conducted a perimeter search of the building and complex² for the assailant. Other responding officers entered the building where the apartment is located and some of them went into the apartment of Mr. Lovo. At that time the officers did not find the assailant. As a result of the assailants forced entry, the entry door to the apartment was broken.

SECOND ENTRY AND SHOOTING

Ofc. Hernandez and Ofc Mon were assigned to remain in the apartment of Mr. Lovo. They were in the hallway when at about 5:24 AM, Merchan-Garcia, the earlier assailant, reappeared. The officers’ Body Worn Camera videos show that Merchan-Garcia appeared near the stairs at the end of the hallway. The video shows that Merchan-Garcia was wearing only white underwear, sneakers and a backpack. His body was very wet. He was walking very fast. The videos shows that the officers ordered Merchan-Garcia to stop and show his hands repeatedly, but he ignored the

² The apartment is located within AMLI Doral, which is a multi-building, multi-unit complex with limited entrances and exits.

commands and proceeded towards the entry door to the apartment. Officer Hernandez had a Taser in his left hand at this point.

Merchan-Garcia continued to the entrance, pushed open the broken door, and entered. Officer Hernandez followed immediately after him. Officer Mon can be heard in the video yelling, “tase him, tase him!” Now inside the apartment, the video shows that Officer Hernandez pushed Merchan-Garcia who staggered into a television set but recovered his balance and continued walking. At this point, the video shows that Officer Hernandez transitioned from his taser to his firearm. Merchan-Garcia opened a door and went through it onto a balcony.

Merchan-Garcia reentered the apartment interior seconds later through the same door. Officer Hernandez shouted again, “show me your hands”. Merchan-Garcia responded by charging with his hands extended at Officer Hernandez who was backing up still with his firearm drawn. Merchan-Garcia charged at and shoved Officer Hernandez who fired his weapon four (4) times. Merchan-Garcia continued rushing towards and past Officer Hernandez and reached the apartment’s entrance. Merchan-Garcia walked several feet into the hallway where he collapsed.

Officers Hernandez and Mon used their radios to inform about the incident, and a neighbor called 911. Miami Dade Fire Rescue responded and pronounced Merchan-Garcia deceased on scene.

OTHER EVIDENCE CONSIDERED

Two video clips from the security cameras of the apartment complex are relevant in this investigation. “Video Clip 1” showed Merchan-Garcia entering the apartment complex on foot, wearing clothing and a backpack consistent with the description provided by Jesus Lovo to 911. Merchan-Garcia approached the pedestrian entrance gate and slammed it open with noticeable force. He, then walked toward the building containing apartment where the incident happened.

About four minutes later, Merchan-Garcia was captured exiting the complex the same way. He reached the gate and appeared to struggle opening it, eventually wrenching it open again with noticeable force. "Video Clip 2" showed Merchan-Garcia re-entering the complex through the same door again, about an hour after his exit and shortly before his encounter with Officer Hernandez and Officer Mon.

FDLE took several statements. Officer Hernandez declined to give a statement citing advice of counsel.

Officer Mon was interviewed, and her statement was consistent with the BWC video. She described the encounter with Merchan-Garcia adding that she believes that he looked like he was "going to do something bad." Ofc. Mon advised that she and Officer Hernandez had responded to the apartment as part of the call-out after the first entry.

She stated that she noticed the door to the apartment appeared to have damage. As soon as she arrived, she interviewed the residents of the apartment, Jesus Lovo (911 caller), Maria Lovo (Jesus's wife), and Christian Lovo (son of Jesus and Maria). She observed that Christian Lovo was bleeding from his mouth and nose. Officer Mon stated that Maria Lovo described the attack, saying the (then) unknown subject broke into their apartment, beat up Christian Lovo and headbutted her causing a black eye. She gave a description which was consistent with that reported by Jesus Lovo and said she had never seen the subject before. Officer Mons then spoke to Christian Lovo who reported that the subject appeared to be on high drugs.

All three of the Lovos stated that they had never seen Merchan-Garcia before and had no idea why he came to their apartment. Their accounts of the incident were consistent with the report to 911 and video recordings. Christian Lovo described Merchan-Garcia as looking like "a strong guy."

After FDLE agents established the assailant's identity as Merchan-Garcia, they located and interviewed Luz Munoz, who was Merchan-Garcia's roommate at the time of this incident. She advised that they resided together at the AMLI Apartments at 8850 NW 36th ST.³ She reported that the two of them had a mutual friend who resided in the same building as the incident location, exactly one floor above the apartment where the incident took place. Luz Munoz said that on the night of the incident Merchan-Garcia was consuming alcohol and drugs, in a combination she referred to as "Tusi"⁴. She observed Merchan-Garcia acting restless and then leaving their residence. She indicated that when he left, he was wearing clothing matching the descriptions provided by Lovo to 911.

Crime Scene recovered four (4) casings at the apartment and the Medical Examiner removed four projectiles from the body of Merchan-Garcia. MDPD ballistics expert Arelis P. Daccarett issued a report on April 22, 2024 indicating that the casings and bullets were fired by Officer Hernandez's service Glock.

The toxicology report was signed by Doctor Diane Moore on July 3, 2023 and noted numerous substances present in Merchan-Garcia's body. Amongst them a high concentration of Amphetamines and Clonazepam, Ketamine, Norketamine, Methylenedioxy/methamphetamine (MDMA), Methylenedioxyamphetamine (MDA), Dimethylpentylone, and Pentylone.

³ This AMLI complex is located approximately 2.5 miles from the AMLI complex where the incident occurred.

⁴ "Tusi" is a phonetic translation of "2C," a series of psychedelic phenethylamines. The concoction is also sometimes referred to as "pink cocaine" as it typically comes in the form of pink powder. Multiple drug checking studies have found that the majority of "tusi" samples contain ketamine, often combined with 3,4-methylenedioxymethamphetamine (MDMA), methamphetamine, cocaine, opioids, and/or new psychoactive substances. See National Library of Medicine. <https://pubmed.ncbi.nlm.nih.gov/37162319/> Accessed on 6/27/2024.

II. 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 Hernandez constitute a criminal act and if so, whether it can be proven beyond and to the exclusion of every reasonable doubt.

Florida law provides the use of deadly force 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.” [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”.

§ 776.012 (2)

Also applicable is Fla. Stat. § 776.05(1), which states:

Law enforcement officers; use of force in 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;

There is substantial credible evidence that Merchan-Garcia committed a burglary with assault or battery in the initial actions in the apartment and that he advised the victims that he would return to do so again. The events leading up to the shooting were captured on video which shows that Merchan-Garcia entered the apartment a second time, ignoring commands by uniformed officers to stop. There is substantial credible evidence that this second entry was also with the intent to commit assault or battery. Merchan-Garcia's actions while inside the apartment⁵ would have placed a reasonable person in the position of Officer Hernandez in fear of death or serious injury to himself or the other occupants of the apartment. Merchan-Garcia was also resisting Officer Hernandez's and Officer Mon's reasonable efforts to detain him.

Fla Stat. § 776.05, provides that a law enforcement officer need not retreat or desist in his efforts to make a lawful arrest and justifies the use of any force that the law enforcement officer reasonably believes to be necessary to defend himself from bodily harm while making the arrest. In this case, Merchan-Garcia ignored commands from Officer Hernandez and Officer Mon to stop and surrender.

There is substantial credible evidence that Merchan-Garcia committed multiple forcible felonies pursuant to Fla. Stat. § 776.08. Similarly, he posed a substantial threat to the occupants of the apartment in the first incident as evidenced by the injuries he inflicted to them. During Merchan-Garcia's second entry the threat was equally apparent and aggravated by his initiation of contact with Officer Hernandez. Merchan-Garcia had already fled once after the first criminal action, and resisted arrest during the second episode. Additionally, pursuant to § 776.012 Officer Hernandez had no duty to retreat when Merchan-Garcia posed a real and imminent threat to his safety and the safety of other people who had the right to be at the apartment.

⁵ Including barging through the door and shoving Officer Hernandez while Officer Hernandez had his firearm drawn

Pursuant to Fla. Stats. §§ 776.012(2) and 776.05(1) Ofc. Hernandez was authorized to make an arrest for a forcible felony, and he was also authorized to use deadly force in self-defense or in defense of others. Therefore, Ofc. Hernandez was legally justified in using deadly force by discharging his weapon.

Prepared by:

/s/ Santiago Aroca

Assistant State Attorney

/s/ Stewart Hedrick

Assistant State Attorney