



INTEROFFICE MEMORANDUM

TO: Police Use of Deadly Force
Review Committee

DATE: April 26, 2011

FROM: Frank Ledee
Assistant State Attorney

RE: Police Shooting Closeout Memorandum
Case # MPD 100705-200859

Jose J. Arrojo
Assistant State Attorney

OFFICER(S) INVOLVED:	OFFICER JOSEPH MARIN - 01-40039
DECEASED/ INJURED:	DeCARLOS MOORE, B/M, DOB: 12/22/1973
INJURIES:	EXPIRED DUE TO A SINGLE GUNSHOT WOUND TO THE HEAD
DATE & TIME:	JULY 5, 2010 at 11:33 am
LOCATION:	ROADWAY LOCATED NORTH OF THE INTERSECTION OF NW 3 AVENUE & 16 STREET, MIAMI, MIAMI-DADE COUNTY, FLORIDA
WEAPON:	40 CALIBER GLOCK MODEL 22, SERIAL No.: MIA 1170
LEAD:	SGT. CONFESSOR GONZALEZ
CASE #:	MPD 100705-200859
SAO CASE #:	62-10-7-5-002

Summary

At approximately 11:30 AM on July 5, 2010, Officers Joseph Marin¹ and Vionna Browne-Williams were patrolling in the area of Northwest 1st Place and 15th Street when they observed a white, two door, Honda Accord bearing Florida Tag 775-XFM, travelling north.² A record check of the vehicle's tag revealed that the vehicle may have been stolen. DeCarlos Moore was the driver and sole occupant of the car. The officers observed the driver turn west on Northwest 16th Street, turn north on Northwest 3rd Avenue, and then stop on the eastside of the roadway north of 16th Terrace. The officers stopped their marked police car approximately two car lengths behind the Honda. Both officers were in uniform and readily identifiable as police officers as they stepped out of their police car.

During the encounter, Mr. Moore exited his car and walked back towards the police car at Officer Marin's direction. He walked approximately halfway between the two cars and then abruptly turned around and moved quickly back to the Honda. When he reached the Honda, some witnesses described Mr. Moore as leaning or reaching into the car through the open driver's side window and then turning towards Officer Marin. Thereupon, Officer Marin fired one shot, striking Mr. Moore in the head, causing his death. It was later determined that Mr. Moore was unarmed.

Crime Scene

The crime scene is Northwest 3rd Avenue just north of 16th Terrace in the City of Miami's Overtown neighborhood. Northwest 3rd Avenue at this location is an asphalt paved commercial thoroughfare, bordered on the east side to the north and south by small markets and an empty lot. The avenue is bordered on the west side by a tree-lined park area. The avenue is paved and accommodates both north bound and south bound traffic.

The white Honda that Mr. Moore was driving on that date was parked facing northbound up against the curb, just north of 16th Terrace on the east side of Northwest 3rd Avenue. The car was just south of a small market referred to in the neighborhood as Cotton's Store or the 3rd Avenue Restaurant and Market. The driver's side window of the Honda was open.

Mr. Moore fell instantly after being shot. He landed with his head facing north and his legs and feet facing south in close proximity to the front driver's side of the Honda. A blood spatter pattern was observed on the exterior of the Honda, beginning just over the front driver side wheel and continuing along the driver side door. There did not appear to be any blood spatter in the interior of the car. A significant amount of blood was found on the ground at or about the location where Mr. Moore's head came to rest after he was shot. This blood accumulation is also in close proximity to the driver side front wheel of the Honda.

Several items were recovered by crime scene technicians in close proximity to where Mr. Moore's body fell. On the ground at his left side, approximately a foot away from his body, investigators recovered twenty-three rocks of crack cocaine, each independently packaged in glassine

¹ At the time of the shooting, Officer Joseph Marin was a recently hired probationary employee who had been sworn in as a police officer on March 8, 2010. He had recently returned from a combat tour of active military service abroad.

² Ofelyah Jackson was Mr. Moore's girlfriend and the registered owner of the 2002 white Honda Accord, vehicle identification number 1HGC32002A026748, bearing Florida tag number 775XFM.

baggies with a "Batman" emblem, encased in crushed aluminum foil approximately the size of a balled up fist. To his right a white plastic bag was found closer to his head. At his feet were located a pair of "flip-flop" style sandals and one pair of sunglasses with metal trim. Inside the Honda, 27.6 grams of marijuana were recovered from inside the driver's side door panel.

The police officer's car was moved from its original location at the time of the shooting prior to the arrival of crime scene investigators.³ However, one spent .40 caliber casing was located by investigators south of the Honda, close to the east side curb of Northwest 3rd Avenue.

No weapon was found on or about Mr. Moore nor was a weapon found in the Honda.

Laboratory Analysis

Gunshot residue swabs were collected from Officer Marin, Officer Browne-Williams and the deceased. The swabs were submitted for laboratory analysis. The results were negative for the deceased and Officer Browne-Williams but were positive for Officer Marin.

The suspected marijuana and crack cocaine that was recovered from the scene was confirmed by laboratory analysis to be marijuana and cocaine.

DNA analysis was conducted in an attempt to ascertain whether the crushed aluminum foil wrapping containing the crack cocaine was in the deceased's possession prior to or at the time of the shooting. However, the swabs from the aluminum foil wrapping subjected to DNA extraction procedures yielded a sample that was too small for DNA comparison.

The blood spatter found on the driver's side of the Honda was photographed by crime scene investigators on the day of the incident. These photographs were submitted to the Miami-Dade Crime Laboratory for analysis in an attempt to determine the location of Mr. Moore in relation to the Honda at the time of the shooting. The blood spatter pattern on the driver's door and front fender depicted in the photographs indicates that the Mr. Moore's head was at or below the open driver's side window of the Honda when he was shot. This is further corroborated by the lack of blood spatter inside the car and suggests that the driver's door was closed at the time of the shooting. The direction of the blood spatter pattern is consistent with Mr. Moore's head pivoting counter-clockwise from south to north due to the impact of the bullet. Furthermore, the blood spatter pattern and direction is inconsistent with the blood source coming from the ground up and was therefore, not caused by Mr. Moore spitting up blood as he was lying on the ground.

Firearm and Ballistics Analysis

Investigators impounded Officer Marin's Glock Model 22, Serial Number MIA1700, three magazines, and forty-five live .40 caliber cartridges. These were retrieved from Officer Marin after the shooting. Additionally, during the autopsy, one spent projectile was recovered from the deceased, and one fired .40 caliber casing recovered from the scene and were submitted to the crime lab for analysis.

³ A review of police radio transmission number 1 corroborates the testimony of Officer Browne-Williams and initial responding officers regarding the discharge notification, request for Fire Rescue, and best routing for responding units and perimeter setup. It appears that the shooting officer's car was moved after the shooting in order to secure the perimeter of the crime scene and later to facilitate Fire Rescue's response and access to the deceased. This occurred prior to the arrival of crime scene investigators.

The Model 22 Glock has a magazine capacity of 15 live rounds and can accommodate a 16th round in the chamber. The magazine that was taken out of Officer Marin's firearm had 14 live rounds and one in the chamber. This is consistent with one chambered round being fired from a fully loaded weapon.

The firearm was test fired and found to be in satisfactory condition.

Microscopic examination and comparison of the projectile recovered from the deceased revealed that the projectile was fired from Officer Marin's firearm. Likewise, the casing recovered from the scene was also examined and found to have been expelled from Officer Marin's firearm.

Medical Examiner Findings

Autopsy of the deceased's body was performed by Deputy Chief Medical Examiner Emma O. Lew, M.D. Dr. Lew's autopsy report was reviewed by the undersigned and a follow-up personal consultation with Dr. Lew took place to aid in determining the victim's position at the time he was shot by Officer Marin.

As a preliminary matter, Dr. Lew determined that the cause of Mr. Moore's death was a perforating gunshot wound to the head. More specifically, the projectile perforated the head within the left frontal hairline, two inches from the top of the head and 1 ½ inches to the left of the midline.

The projectile's path is from the front to the back, left to right, and slightly downward. There is no exit wound and the projectile and fragments were recovered from the deceased along the projectile path. These were subsequently submitted for laboratory analysis.

The nature of the wound was that it was instantly incapacitating. The deceased would have dropped to the ground right where he was shot.

Samples of the deceased's body fluids were collected and submitted for toxicology analysis. Toxicology reports reveal that the deceased had amphetamines, cocaine, and cocaine metabolites in his system at the time of death.

In post-autopsy consultation with the undersigned, Dr. Lew addressed and considered various factors including the projectile path as it entered the victim's head, the location where the victim's body fell in relation to the Honda, the approximate location of the shooting officer, and the descriptions of the victim's actions immediately before he was shot. Dr. Lew has opined that at the time Mr. Moore was shot, these factors collectively would be consistent with the victim standing and moving in clockwise motion, turning away from the driver side door of the Honda, facing the shooting officer, and at a slight downward lean, and a slight tilt of the head, at the time he was shot.

Dr. Lew did caution that because of the significant mobility of the head it is difficult to determine the deceased's **exact** position in relation to the officer at the time of the shooting.

Shooting Officer Statement

Officer Joseph Marin, through counsel, declined to make himself available to provide a statement to police or prosecutors regarding his actions in this matter and has instead chosen to rely on his Fifth Amendment right to remain silent.

Nevertheless, Officer Joseph Marin's counsel has provided a proffer detailing Officer Marin's observations and actions on the date of the shooting. The proffer can be summarized as follows:

While on routine patrol in full uniform driving a marked patrol car, Officer Marin and his partner ran a license tag and received a computer message that the vehicle was stolen. As the officers prepared to stop the vehicle, the driver (Mr. DeCarlos Moore) stopped on the side of the road facing north on N.W. 3rd Avenue in the area of N.W. 16th Terrace.

The driver of what Officer Marin characterizes as a suspect stolen vehicle quickly exited the vehicle and started walking back in the direction of the police car that was stopped behind the suspect stolen vehicle. The driver thereafter disobeyed lawful police commands, and then abruptly turned and ran back to the front driver's door of the suspect stolen vehicle. The driver then reached into the pocket area of the front driver's side door and, with a metallic object in his hand, turned towards Officer Marin in a crouched position while the front driver's side door was closed.

Believing that the subject was armed with a firearm, and in fear for his own safety and that of his partner Officer Browne-Williams, Officer Marin fired one shot in self-defense. At the time he fired the one shot, Officer Marin perceived that he was at risk of imminent death or great bodily injury.

Officer Marin reacted to the threat posed by the driver of the suspect stolen vehicle whom he believed to be armed with a firearm. The situation unfolded quickly and Officer Marin had to react in a split second to the perceived threat posed by the driver of the suspect stolen vehicle.

Witness Police Officer Statements

Officer Vionna Browne-Williams:

Officer Vionna Browne-Williams was hired by the City of Miami Police Department on June 12, 1989 and sworn as a police officer on October 12, 1993. Officer Williams is assigned to the Field Operation Division of the City of Miami Police Department and is assigned to the Overtown Net Service Area, Shift A. Officer Browne-Williams was previously assigned as a Field Training Officer, tasked to supervise and train newly hired police officers.

On July 5th, 2010, Officers Marin and Browne-Williams were assigned to patrol the Overtown area of the City of Miami from 6:00 AM to 4:00 PM. Both officers were in uniform and riding in a marked police car. During their patrol, the officers observed a white Honda travelling northbound on NW 1st Avenue near 16th Street. The officers conducted a computer records check of the vehicle's tag, and while waiting for the response, they observed the driver pull over facing north on NW 3rd Avenue between 16th Terrace and 17th Street. The driver of the Honda, Mr. Moore, got out of the driver's door almost simultaneously as the officers received an electronic response indicating that the vehicle may be

stolen.⁴ The officers stopped behind and at a slight angle behind the Honda, activated their emergency lights and got out of their police car.

Because they believed the car could be stolen, the officers treated the encounter with Mr. Moore as a felony traffic stop and as a result took defensive positions behind each of their respective doors. As a precaution, Officer Browne-Williams drew her firearm as she got out of the passenger side of the police car and heard Officer Marin instruct Mr. Moore to “stop” and then to “step back behind his car.”

Mr. Moore initially complied but then suddenly turned around and walked quickly towards the open driver’s door of his car. He then leaned into the car, withdrew from the car, stood up and faced the officers. Officer Browne-Williams lost sight of Mr. Moore’s upper torso as he leaned into the passenger compartment of his vehicle.⁵ Officer Browne-Williams saw something in Mr. Moore’s hands as he pulled himself back out of the passenger compartment of his car and turned to face the officers but she could not see exactly what it was. Fearing that Mr. Moore had armed himself, Officer Browne-Williams pointed her firearm at him and was prepared to fire at Mr. Moore when she heard a single gunshot.

Initially, Officer Browne-Williams believed that the driver had fired at the officers but then realized that Officer Marin had discharged his weapon when she saw the driver fall to the ground near the driver’s door of his car. Officer Marin was still standing behind the driver’s door of the police car. Officer Marin was told to reposition the police car for his safety until backup units arrived.

Officer Timothy Marks:

At approximately 11:33 am on the date of the incident, Officer Timothy Marks, assigned to the Field Operation Division of the City of Miami Police Department, was on routine patrol when he heard the radio call regarding the shooting and the request for Fire Rescue assistance. He responded in emergency mode to the intersection of 17 Street and NW 3 Avenue. His primary role as he approached the scene was to facilitate access for Fire Rescue. Upon arrival he observed the victim lying on the ground near the front wheel of the driver’s side of a white Honda. The victim was lying on his back. His head was pointing north and his feet were pointing south. There were two marked police cars blocking the intersection of 16 Terrace and NW 3 Avenue. One of the police cars belonged to Officers Joseph Marin and Vionna Browne-Williams. Officer Marin was sitting in the front passenger seat of that police car which was facing west. The other police car in the intersection belonged to Officer Collins, one of the first officers to respond to the scene.

⁴ In fact, the vehicle was not stolen, however a copy of the computer screen observed by the officers is attached as an exhibit to this memorandum. Further investigation revealed that on September 10, 2006, a “dirt bike” style motorcycle was stolen from a home in Red Wing, Minnesota. Information relating to that theft was entered into a national database. The Vehicle Information Number or VIN for the stolen dirt bike and the Honda that Mr. Moore was driving on the date of the shooting share a number of digits in the same order. It would appear that for this reason, the computer linked the stolen dirt bike to the Honda, thus causing the officers to receive a possible stolen vehicle response from their computer check.

⁵ From Officer Browne-William’s vantage point on the passenger side of the marked police car which was located to the south and east of the white Honda, her view of anyone entering into the driver side of the car would have been partially obstructed by the rear of the deceased’ car.

As Fire Rescue arrived, Officer Marks moved Officer Marin's police car from the intersection of Northwest 3rd Avenue and 16th Terrace to a north facing position on 3rd Avenue facing 17th Street. The different marked police car belonging to Officer Collins, one of the initial responding officers, was also moved to allow Fire Rescue access in and out the scene. Officer Marin did not make any statements to Officer Marks.

Officer Marks drew a rough diagram detailing the positions of vehicles on scene at the time of his arrival and was subsequently assigned to a perimeter position at Northwest 4th Avenue and 17th Street.

Officer John Collins:

On July 5, 2010, Officer John Collins was assigned to the Field Operation Division and was patrolling in Overtown when he heard a radio transmission regarding a firearm discharge and request for assistance. Officer Collins responded to Northwest 3rd Avenue between 16th Terrace and 17th Street. Upon arrival at the crime scene, Officer Collins saw a man lying on the ground bleeding next to the driver's side of a white car. A crowd of what he believed to be family members of the man had begun to gather.

Officer Collins and his trainee thereupon began to secure the crime scene by roping off an area fifty to sixty feet to north and south of the shooting victim effectively cutting off access on Northwest 3rd Avenue.

Fire Rescue arrived and transported the shooting victim to JMH Ryder Trauma Center. As other officers arrived and assumed perimeter positions, Officer Collins escorted Fire Rescue to the hospital.

Civilian Witness Statements

Mr. Leroy Hudson:

On the date of the shooting, Mr. Leroy Hudson was working as a cook at the New Horizon store. The store is located on the east side of Northwest 3rd Avenue at the intersection of the avenue and 16th Terrace.⁶ The store is located south of the location where Mr. Moore was shot.

Mr. Hudson began his work day at the store at approximately 7:00 AM and throughout the day when there was no work to be done, he came outside to smoke cigarettes. On his smoking breaks, Mr. Hudson sat on a milk crate, across the street from the New Horizon store in the grassy park area that borders the west side of Northwest 3rd Avenue. From this southwest vantage point, Mr. Hudson would have had a completely unobstructed view of Officer Marin and Mr. Moore as they interacted.

During one of his breaks, Mr. Hudson noticed a white Honda parked across the street behind a pickup truck facing north. The Honda was parked in front of Cotton's store. The doors of the Honda were closed but the driver's window was down. Mr. Hudson also saw a marked police car driven by a female officer roll up slowly and park behind the Honda.

⁶ The store has changed hands since the date of the shooting and is now called the "TT" market. There is no cooked food sold at the store as of the date of this memorandum.

At the same time he noticed a black male that he recognized from the neighborhood come out of Cotton's Store holding a plastic bag in his right hand. The Black male walked between the rear of the pickup truck and the front of the Honda and got to the driver's door of the Honda when the Black male was confronted by a male police officer.

He saw the male officer raise his gun and heard him tell the black male to "*get out. No, get in the car.*" The Black male walked towards the officer, approximately half way between the Honda and the police car. Then he turned away from the officer, leaned into the open driver's window, leaned back out, and looked back at the officer. His hands were down and he was still holding the plastic bag in right hand. The male officer shot the black male once in the front of the head.

Mr. Hudson stated that he was close enough to see the victim fall to the floor and twitch as he made gurgling sounds.

Mr. Hudson stated that the shooting officer's police car was moved twice after the shooting. It was first moved by the female officer across Northwest 3rd Avenue and as more officers arrived, it was moved again to the west side of the avenue closer to the New Horizon store.

Mr. Charles Conley:

On the date of the shooting, Mr. Charles Conley was also seated in the grassy park area on the west side of 3rd Avenue. More specifically, he was seated along the fence line in close proximity to a fire hydrant located on the west sidewalk on Northwest 3rd Avenue, directly across the street from the parked Honda.⁷ From this slightly southwest vantage point, Mr. Conley would have also had an unobstructed view of the interaction between Officer Marin and Mr. Moore.

Mr. Conley saw a white, two door car stop approximately twenty feet north of the intersection of Northwest 3rd Avenue and 16th Terrace. The car was facing north along the avenue and was parked on the east side, just south of Cotton's Store. About five seconds later, a marked police car driven by a male officer stopped behind the white car. The police car's lights and siren were not activated. There was a female officer in the passenger seat. Thereupon, both officers got out of the police car and stood behind their respective doors.

The police car was stopped approximately two to three car lengths behind and slightly to the left of the white car. The male officer motioned with his left hand and instructed the driver of the white car to walk back towards the police car and place his hands on the hood of the police car. The officer's right hand was on his firearm which was holstered.

The driver was wearing sunglasses but did not have anything in his hands as he walked toward the police car. The driver proceeded approximately halfway between his car and the police car then he suddenly turned around and ran back to his car.

⁷ On March 8, 2011, Mr. Conley pinpointed his location after his interview with police during an on-scene interview by investigators and prosecutors.

Mr. Conley stated that as the driver got to the rear of his car, the officer fired one shot striking the victim at the back of the head. Mr. Conley specified that the driver was at the back of his car when he was shot.⁸

Immediately after the shooting, Mr. Conley heard a bystander ask the shooting officer "why you shot the man? He ain't had no gun" and the officer replied "I didn't know what he was going to his car to get."

Mr. Julius Brown:

Mr. Julius Brown witnessed the incident from the middle of the roadway at the intersection of Northwest 3rd Avenue and 16th Terrace, southwest of Officer Marin and the deceased.⁹ He saw two police officers in a police car pull up behind another car. Both officers got out of the police car and the male officer who was driving ordered the driver to stay in his car. The driver got out of his car and began walking towards the officers.

The driver then turned around, quickly walked back to his car, opened the driver's door and reached into the car. Mr. Brown described the driver's walk as a "*fast – slow*" walk and initially believed that the driver "*looked like he might have been trying to get back in his car to try to get away from him.*" Mr. Brown then corrected himself and explained that from his point of view "it seemed like the driver put something in the car, or tried to bring something out of the car." The driver then turned around and was shot once by the male officer. Mr. Brown did notice that the driver had a pair of sunglasses but could not tell whether he had them in his hands or on his head from his vantage point across the street.

The female officer remained standing outside next to the front passenger door of the police car at the time of the shooting. She did not say anything prior to or during the incident. Mr. Brown specified that he saw the male officer fire a single gunshot after the driver had leaned back out of the passenger compartment of his car and turned to look at the officers. Mr. Brown had never met or seen the driver previously and could not see if he had anything in his hands when the officer shot him. Mr. Brown did not hear the driver say anything to the officers during the encounter.

Mr. Johnny Milton:

On the day of the incident, Mr. Johnny Milton was with several friends on the east side of Northwest 3rd Avenue at about 16th Terrace, southeast of the deceased's vehicle. Mr. Milton observed a white car driven by a black male known to him as "Cocky" stop in front of a store along the east side of the avenue between 16th Terrace and 17th Street. The white car was being followed by two police officers in a marked police car. The Officers stopped on Northwest 3rd Avenue between 16th Terrace and 16th Street. The driver of the white car was getting out of his car when the officers pulled up behind him. The officers activated their siren. Mr. Milton described the officer driving the police car as a Caucasian male and his passenger as being a black female police officer.

⁸ Both of these statements are inconsistent with the position of the deceased's body when it fell to the ground, as well as the location of the gunshot which was to the front of the victim's head. On March 8, 2011, when subsequently interviewed during scene examination by investigators and prosecutors, Mr. Conley repeated his observations regarding the location of the victim and the placement of the gunshot.

⁹Mr. Brown, like Messrs. Hudson and Conley would have had an unobstructed view of the interaction between Officer Marin and the deceased.

The male police officer got out first, walked towards the back of the white car, and first instructed the driver to remain in his car, then told him to get out of the car. The female officer remained standing behind the front passenger door of the police car and never drew her firearm. The driver of the white car initially complied and began walking towards the male officer, then turned around and ran back to his car. Mr. Milton noticed that the driver could not run to fast because he was wearing slippers and seemed to be intoxicated. Mr. Milton did not understand why the driver turned around and ran back to his car.

Thereupon, Mr. Milton saw the male officer “unbuckle” his gun. The driver’s door of the white car was open. Mr. Milton, who was standing near the rear passenger side of the white car at the time of the incident, saw the driver lean into the driver’s side of his car. From his vantage point, he could not see the driver’s hands nor what he was doing as leaned into the car.¹⁰ The driver stood up partially and turned his face towards the male officer. Mr. Milton then heard a single gunshot but could not tell where the driver had been shot. Mr. Milton specified that the driver was shot as he turned to face the officer and that he was partially out of the car when he was shot.

Mr. Maurice Surles:

Mr. Maurice Surles was also on the east side of Northwest 3rd Avenue in the same general area as Mr. Milton. Mr. Surles was waiting for a ride home when he saw a car pull up driven by someone he recognized. A police car occupied by two police officers pulled up behind the car. The officers did not activate any emergency equipment as they approached the car. The officers got out of the police car and told the driver to “get out of the car.” As the driver began walking towards the police car, the officer told him to get back in his car. The driver turned around, walked towards the back of his car, and was shot once by the officer.

Mr. Surles testified that he saw the officer shoot and specified that the officer held the gun with both hands directly in front of him at the time of the shooting. Mr. Surles did not hear the shooting officer give the driver any other commands and noted that the black female officer remained in the police car working the radio until after the shooting.

Mr. Surles could not describe what the driver was wearing nor did he notice whether he had anything in his hands at anytime during the incident.

Ms. Monya Marie Knight:

Ms. Monya Knight witnessed the incident from approximately a block south of the crime scene on the east side of Northwest 3rd Avenue.¹¹ She had just left the Metro PCS store located northeast of the crime scene and was heading towards a woman’s shelter. Ms. Knight had walked southbound past Cotton’s store was south of the New Horizon store, when she noticed a little two door white car pull up

¹⁰ Like Officer Browne-Williams, from this vantage point to the south and east of the white Honda, his view of anyone entering into the driver side of the car would have been partially obstructed.

¹¹ Ms. Knight and Ms. Cigar were the most distant of all of the civilian eyewitnesses and were also on the east side of Northwest 3rd Avenue and thus would have had a partially obstructed view of the interaction between Mr. Moore and Officer Marin.

behind a large white truck parked on the east side of Northwest 3rd Avenue, just south of Cotton's Store.

Shortly thereafter, a marked police car pulled up behind the white car. Her north view of the white car was partially obstructed by the police car. It seemed like a routine traffic stop. The driver of the white car got out of his car. Both police officers got out of their car. The bald headed male officer who was driving the police car initially told the driver to stay in his car but then motioned the driver to come to him. The driver initially turned and started walking towards the officer, but then suddenly turned around and ran in the opposite direction. That's when she heard a single gunshot and saw the driver fall to the ground.

Ms. Knight was not sure whether the driver was running back to his car or trying to get away. From her vantage point, she believes that the driver and the bald headed officer closed to within a little more than an arm's length of each other before the driver turned around and ran away. Ms. Knight specified that because her view was partially obstructed by the police car, she could only see the upper torso of the driver and the officers and could not see their hands. She added that as the driver approached the police car, the female officer walked up slowly behind the male officer. As she heard the gunshot, Ms. Knight took cover behind a parked truck and then crossed into the street to take photographs of the scene with her cellular telephone. She volunteered to provide the photographs that she had taken to the homicide investigators during her statement. However, the camera on her cellular telephone had malfunctioned during the incident and she was unable to retrieve the photographs.

Ms. Knight does not reside in the Overtown area and did not know the driver of the white car nor had she ever met him before. Ms. Knight repeatedly questioned why the driver of the white car turned around and ran from the officer and why the officer then shot the driver. In answering her own question, she highlighted the fact that she had seen a pair of sunglasses on the scene and suggested that the driver may have had a pair of sunglasses in his hands prior to the shooting.

Ms. Chate Tashika Cigar:

Ms. Chate Tashika Cigar witnessed the incident from approximately one block south of the crime scene. Ms. Cigar was in close proximity to Ms. Knight and both were just south of the New Horizon store. Ms. Cigar was sitting near the sidewalk on the east side of Northwest 3rd Avenue, when she saw a white, four-door car driven by a black male she knows as "Cocky" pull up and stop on the eastside of the avenue approximately fifty feet north of the stop sign posted on the northeast corner of the intersection of 16th Terrace and Northwest 3rd Avenue. The driver was wearing red and black clothes, a hat and sunglasses. Her line of sight north along the sidewalk was partially obstructed by the New Horizon store building because it juts out slightly west towards the sidewalk.

Shortly thereafter a marked police car pulled up and stopped approximately fifty feet behind and slightly to the left of the white car. The police car was partially blocking the northbound lane of Northwest 3rd Avenue and the eastbound lane of 16th Terrace. Neither the lights or siren of the police car were activated.

Ms. Cigar explained that as the white car stopped, the driver got out, walked in front of his car towards Cotton's Store, and came right back. Ms. Cigar could not see whether the driver actually went into the store from where she was sitting. As the driver walked back to his car and opened the driver's door, he was surprised by two police officers. The officers got out of their car as the driver approached

the driver's door of his car. Ms. Cigar noted that the male officer was driving and as he got out of the police car, his left elbow was pulled back and his left hand was on his holster.

The male officer instructed the driver to come to him, and as the driver started walking towards the police car, to place his hands on the hood of the police car. The driver walked halfway between his car and the police car and as soon as the officer told him to place his hands on the hood of the police car, he suddenly turned around and ran. The male officer drew his firearm with his left hand and fired a single gunshot striking the victim. Ms. Cigar stated that she did not see anything in the driver's hands when he was shot. The victim fell next to the driver's door of his car.

It seemed to Ms. Cigar as if the victim was trying to run around the open driver's door of his car when he got shot. Ms. Cigar described the shooting officer as Caucasian or Hispanic and his passenger as a black female.

When questioned about the female officer, Ms. Cigar stated that as the driver approached the police car, the female officer was walking towards him. Both hands were at her side and she never drew her firearm. The female officer seemed shocked when she heard the gunshot. Her facial expression changed, she covered her mouth with both hands and was holding her head. Ms. Cigar stated that the female officer went up to the victim after the shooting and tried to revive him. Ms. Cigar specified that as the victim fell, she saw his sunglasses hit the ground by his feet followed by his hat.

Factual Analysis

For purposes of our factual analysis we have evaluated the testimony of seven civilian witnesses and one police witness, Officer Browne-Williams. While there are inconsistencies in the testimony provided by some of these witnesses, there is general agreement on a core set of salient facts. We set out those facts below.

On July 5, 2010, DeCarlos Moore drove and parked a white, two-door Honda Accord on the east side of Northwest 3rd Avenue, just north of 16th Terrace. The car door windows were left open. The stationary rear side windows and rear window are tinted. Mr. Moore then walked around the front of his car towards Cotton's Store. Thereafter he walked back to the driver side of the Honda whereupon he was surprised by Officers Marin and Browne-Williams who had stopped their marked police car behind his vehicle.

The officers had been patrolling in their marked police cruiser; Officer Marin was the driver and Officer Browne-Williams was in the front passenger seat. They had begun to follow Mr. Moore prior to his stop on Northwest 3rd Avenue. Moments before their encounter with Mr. Moore, they had run a computerized records check of the vehicle tag affixed to the Honda and they received information that the tag was assigned to a motorcycle that was stolen along with two motorcycle helmets. Acting upon this information, the officers stopped their car, exited, and took defensive positions behind their respective car doors.

Officer Marin motioned and issued verbal commands to Mr. Moore. Mr. Moore responded by walking back towards the police car that was stopped approximately two car lengths behind the Honda. As he approached the approximate midpoint between the two cars, Mr. Moore suddenly turned and

returned to the driver side of his car.¹² He then leaned into the passenger compartment whereby his head, upper torso and hands were obscured. He appeared to be either placing something into or retrieving something from the passenger compartment of his car. He then pulled out of the car, turned to his right and faced the officers. At that point, Officer Marin shot Mr. Moore once in the head.¹³ The subsequent investigation revealed that Mr. Moore was unarmed.

There are additional facts provided by some of the witnesses, that while inconsistent with other witnesses' testimony, they are nevertheless corroborated by the physical evidence recovered on the crime scene, laboratory analysis results, and the medical examiner's findings. These facts include the following:

Messrs. Hudson, Conley, Milton and Officer Browne-Williams all observed Mr. Moore upon returning to this car, lean into or enter the passenger compartment of the Honda from the driver's side. Thereupon, Mr. Moore pulled himself out of the car, turned and stood up at least partially, and looked or faced Officer Marin at which point he was shot.

Mr. Hudson, who had a clear unobstructed view from a vantage point southwest of the Honda specified that Mr. Moore was holding a white plastic bag in his right hand from the time he walked back to the car from Cotton's Market up to the time he was shot. A white plastic bag was photographed where it was found next to Mr. Moore's right side where he fell after being shot.

Officer Browne-Williams likewise testified that she saw something in Mr. Moore's hands as he leaned out of the passenger compartment of the car but from her vantage point, west and south of the Honda, she could not tell what was in his hands. Several items including the cocaine wrapped in aluminum foil, a plastic bag, a pair of sunglasses and a pair of flip-flop sandals were photographed and recovered by crime scene investigators in close proximity to the pool of blood indicating where Mr. Moore fell after having been shot.

These witnesses' observations regarding Mr. Moore's final physical movements prior to death are corroborated by the medical examiner's autopsy findings and opinion and blood spatter analysis. Dr. Lew described the cause of Mr. Moore's death as a perforating gunshot wound to the head. More specifically, the projectile perforated the head within the left frontal hairline, two inches from the top of the head and 1 ½ inches to the left of the midline. The projectile's path was from the front to the back, left to right, and slightly downward. Therefore, Mr. Moore was facing Officer Marin when he was shot.

Coupled with the position of Mr. Moore's body next to the driver side of the Honda, Dr. Lew has opined that these factors collectively would be consistent with the victim standing and moving in clockwise motion, turning away from the driver side door of the Honda, facing the shooting officer, at a slight downward lean, with a slight tilt of the head, at the time he was shot.

¹² Two witnesses, Messrs. Hudson and Surles heard Officer Marin instruct Mr. Moore to get out of the car and then directed him to get back into the car.

¹³ It is uncontested that Officer Marin shot Mr. Moore once. This is corroborated by the recovery of a projectile from Mr. Moore's head during autopsy and the recovery of a single casing from the crime scene that have both been matched to Officer Marin's firearm.

There is testimony by some of the witnesses that is inconsistent with not only the testimony of other witnesses but is also inconsistent with the physical evidence and the medical examiner's findings. For these reasons, we characterize this evidence as unreliable.

For example, in spite of the fact that Mr. Conley would have had an unobstructed view of Officer Marin and Mr. Moore, his statement that Mr. Moore was shot in the back of the head while at the rear of the Honda is inconsistent with the location of where Mr. Moore's body fell as well as the medical examiner's findings. Likewise, Mr. Surles' observation that Mr. Moore was shot as he turned and headed to the back of the Honda is contrary to the location where the deceased fell upon being shot. These statements are further refuted by the presence of the blood spatter evidence along the front driver side of the Honda.

Ms. Knight and Ms. Cigar who were the farthest from Officer Marin and Mr. Moore also provided observations that were similarly inconsistent with the physical evidence. Ms. Knight appears to believe that Mr. Moore was shot at the rear of the Honda. Ms. Cigar, as did Officer Browne-Williams, stated that the driver's door of the Honda was open at the time of the shooting; an equally unsupported observation given the uninterrupted consistent blood spatter pattern running along the outside of the car from the front driver side wheel to the driver side door.

Legal Analysis

As a general matter, we note that our role as prosecutors is to enforce the criminal laws of the State of Florida and to prosecute those who violate those laws. In reviewing police use of deadly force, we determine whether the police action was legally justified under the criminal laws of our state. We do not determine whether a shooting was necessary.

We do not engage, nor would it be appropriate for us to engage, in an examination of police procedures, protocols, or patterns and practices. This latter analysis does not fall within the scope of our role as state prosecutors. Civil or administrative remedies for suspected violations of police procedures, protocols, or patterns and practices exist in other forums outside of the state criminal justice system.

We begin our legal analysis by first addressing what potential crimes, if any, might arise out of Officer Marin's actions. Because this is obviously a matter dealing with the death of a human being, we will consider violations of Chapter 782, Florida Statutes, relating to homicide.

The fact pattern presented in this case does not support consideration of the crime of First Degree Premeditated Murder, Section 782.04(1)(a), Florida Statutes. We do not even reach the issue of whether Officer Marin engaged in premeditation as defined by law. More basic to our analysis is the fact that premeditated First Degree Murder, except for Felony Murder, requires proof that the killing was the product of a specific intent with malice aforethought. There is no evidence in this case that Officer Marin acted with malice aforethought at the time that he shot Mr. Moore. Rather, the evidence in this case suggests that Officer Marin fired upon Mr. Moore in response to the deceased's physical movements, specifically: the deceased's sudden movement away from the officer, leaning into the passenger compartment of the car, and turning out of the car to face the officer.

Neither does the fact pattern warrant consideration of Second Degree Murder, in violation of Section 782.04(2), Florida Statutes. In order to prove the crime of Second Degree Murder, the

prosecution would have the burden of proving that Officer Marin's actions evinced a depraved mind. More specifically, we would have to prove that Officer Marin acted with ill will, hatred, spite, or evil intent when he fired upon and killed Mr. Moore. There is absolutely no evidence in this case to suggest, even circumstantially, that the officer knew the deceased before that day or that he acted with any ill will, hatred, spite or evil intent.

We also conclude that the fact pattern presented in this case does not support consideration of any degree of Felony Murder, in violation of Sections 782.04(1)(a), 782.04(3), or 782.04(4), Florida Statutes. The fact pattern in this case is devoid of any evidence whatsoever that would suggest that the death of DeCarlos Moore occurred during the commission of any applicable felony perpetrated by Officer Marin.

Finally, we also reject as inapplicable to these facts the crime of Unnecessary Killing to Prevent Unlawful Act, Section 782.11, Florida Statutes. This statute provides that whoever unnecessarily kills another, while resisting an attempt by the other person to commit any felony, or to do any other unlawful act, shall be guilty of Manslaughter. The statute has been held to require proof by the prosecution of the commission of a crime by the deceased, independent of the acts directed at the defendant. In this case, we would have to prove that Mr. Moore was committing or attempting to commit a felony or other unlawful act, independent of the acts directed at Officer Marin. Aside from the evidence that the tag affixed to the Honda belonged to a motorcycle that was reported stolen, there is was no evidence known to Officer Marin at the time of the shooting, to suggest that Mr. Moore had committed a felony or other unlawful act.

The crime of Manslaughter, Section 782.07(1), Florida Statutes, is a potential charge and we discuss the viability of a manslaughter prosecution against Officer Marin in the conclusion section of this memorandum. The gravamen of this charge requires the prosecution to establish that the defendant caused the death of another by culpable negligence.¹⁴ In this case, the prosecution would have to establish that Officer Marin engaged in a course of conduct that was criminally reckless.

As part of our legal analysis we must of necessity consider various sections of Florida Statutes that provide defenses to Officer Marin should he be criminally charged. First, Section 776.05, Florida Statutes, Law Enforcement Officers; Use of Force in Making an Arrest is inapplicable to this case. We reject as unsupported by the facts that Officer Marin was engaged in the arrest of DeCarlos Moore or that Mr. Moore was a fleeing felon at the time of the traffic stop and shooting. As previously stated, Officer Marin had reasonable suspicion for stopping and engaging Mr. Moore as a computer records check revealed a nexus between the Honda and a motorcycle that was reported stolen. The evidence however, did not rise to a level of probable cause for any offense much less a felony offense.

¹⁴ The culpable negligence jury instruction provides that: "Each of us has a duty to act responsibly towards others. If there is a violation of that duty, without any conscious intention to harm, that violation is negligence. But culpable negligence is more than a failure to use ordinary care towards others. In order for negligence to be culpable, it must be gross and flagrant. Culpable negligence is a course of conduct showing reckless disregard of human life, or the safety of persons exposed to its dangerous effects, or such an entire want of care as to raise a presumption of a conscious indifference to consequences, or which shows wantonness or recklessness, or a grossly careless disregard for the safety and welfare of the public, or such an indifference to the rights of others as is equivalent to an intentional violation of such rights.

The negligent act or omission must have been committed with an utter disregard for the safety of others. Culpable negligence is consciously doing an act or following a course of conduct that the defendant must have known, or reasonably should have known, was likely to cause death or great bodily injury."

We likewise discount any possible reliance by Officer Marin on Section 776.07, Florida Statutes, Use of Force to Prevent Escape. Mr. Moore was not under arrest at the time of his encounter with Officer Marin nor was there probable cause to support an arrest for any offense. As he was not under arrest, he clearly was not engaged in a legally defined escape.

However, Section 776.012, Florida Statutes, Use of Force in Defense of Person, would be available to Officer Marin in a manslaughter prosecution. Any person, including a law enforcement officer, is justified in the use of deadly force if the person believes that such force is necessary to prevent imminent death or great bodily harm to himself or another. Historically, justifiable use of deadly force was a defense to a criminal prosecution. However, pursuant to Section 776.032, Florida Statutes, Immunity from Criminal Prosecution and Civil Action for Justifiable Use of Force, any person who is permitted to use force under these circumstance is immune from criminal prosecution. Since October 1, 2005, the former trial defense has become a pre-trial bar to prosecution.¹⁵

Conclusion

We devote this section of the memorandum to consideration of whether there is sufficient evidence to initiate a manslaughter prosecution against Officer Marin for his shooting of DeCarlos Moore. The question posited is straightforward: Did Officer Marin engage in criminally reckless behavior when he fired upon DeCarlos Moore and if so does Officer Marin have a viable legal defense to such a charge. Put another way, was Officer Marin legally justified in his use of deadly force?

To restate in a summary fashion the facts that we would be able to rely upon at trial, Officer Marin was an on-duty police officer who engaged in a traffic stop of Mr. Moore's vehicle. He stopped the car at least in part because a computer check linked the car and a stolen motorcycle. He gave commands to Mr. Moore to walk back to the police car. Mr. Moore walked towards the police car and then abruptly turned and moved quickly towards the driver side of the Honda he was driving that day. Thereupon, Mr. Moore leaned through the open driver side window into the passenger compartment of the car. He then withdrew his upper torso from the Honda and turned at a slight lean towards Officer Marin, who fired once, striking Mr. Moore in the head. Mr. Moore died as a result of the gunshot that entered his head, above the left eye, at the hairline, front to back, and at a slight downward angle.

Found on the crime scene was an empty plastic bag to the right of the deceased's body, a crumpled ball of aluminum foil containing crack cocaine rocks at his left, and a pair of sunglasses with metallic trim and sandals at his feet.

Based on these facts, a potential prosecution theory would be that Officer Marin shot an unarmed man whose conduct prior to the shooting consisted of failing to obey a command, abruptly turning and moving away, then concealing his upper torso and hands in the interior compartment of a car before turning to face the officer and being shot. Further, there is no evidence that Officer Marin, or Officer Browne-Williams, instructed Mr. Moore to stop or show his hands as soon as Mr. Moore ran back towards the Honda or leaned into the passenger compartment of the car.

However, as prosecutors, we are required as part of our legal analysis, to consider potential bars to prosecution as well as affirmative defenses available to Officer Marin. Moreover, as part of this consideration, we must also evaluate what credible evidence exists to support anticipated defenses.

¹⁵ This is known as the "Stand Your Ground Law."

Clearly, Officer Marin may defend a manslaughter prosecution by asserting that he was entitled to use deadly force inasmuch as he believed that such force was necessary to prevent imminent death or great bodily harm to himself or others. As noted above, if Officer Marin can establish this pre-trial then he would be immune from prosecution. Based upon his proffer received from Officer Marin's attorney, it is clear that Officer Marin will seek pre-trial immunity from prosecution or assert an affirmative defense, both predicated upon a justified use of deadly force theory.

Officer Browne-Williams noted that when Mr. Moore leaned into his car and his upper torso and hands disappeared from view, she was in fear for her life. She testified that as he exited the car, she saw something in his hands. She believed under these circumstances that he might have been retrieving a weapon from inside the car, and she herself was an instant away from firing upon Mr. Moore. From his proffer, we know that Officer Marin made the same observations and engaged in the same thought process. He adds that he saw a metallic object in Mr. Moore's hand as he turned to face the officers and that he perceived that object to be a threat. We also note that crime scene investigators recovered a crumpled, balled piece of aluminum foil containing crack cocaine rocks to the left of Mr. Moore's body after he was shot; a "metallic object." We cannot forensically link that balled-up foil to Mr. Moore however it is a very reasonable proposition that the balled up foil was the metallic object referred to in Officer Marin's proffer.

Taken collectively, Officer Browne-Williams' testimony and Officer Marin's proffered future testimony establish a basis for a justifiable use of deadly force under Sections 776.012 and 776.032, Florida Statutes. Their testimony is supported by the credible evidence that was developed in the investigation. Accordingly, for the reasons detailed in this memorandum and considering all of the facts and the law regarding justified use of deadly force, we cannot in good faith proceed with criminal charges against Officer Marin and conclude that Officer Marin's actions as they relate to the shooting of Mr. DeCarlos Moore were legally justified.

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