



INTEROFFICE MEMORANDUM

TO: Katherine Fernandez Rundle
State Attorney

DATE: March 13, 2014

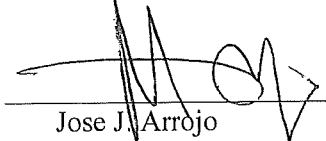
FROM: Staffing/Review Team

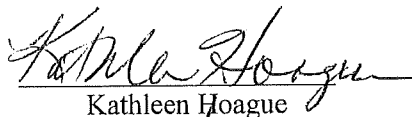
RE: Police Involved Shooting
Case No.: 62/11/06/30/003
Deceased: A. Andrew, R. Garcia,
J. Lemus and R. Valdez

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

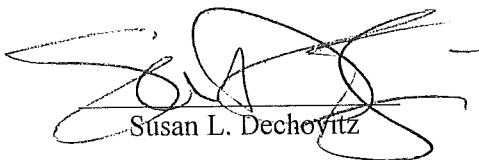
Sgt. Jose Gonzalez was legally justified in his use of force in the shooting of Jorge Lemus and no criminal charges will be filed. As to the ten remaining officers, we have one officer statement for each of the other three shootings. However, due to a number of unusual, counter-intuitive, suspicious, and/or disturbing factors present in the other three shootings, we cannot state definitively that those shootings were legally justified. Nevertheless, because we do not have evidence beyond a reasonable doubt to disprove the version of events given by the three officers *and are thus compelled to accept their testimony as truthful*, it is the opinion of the undersigned that there is insufficient evidence to prove an unlawful killing of Rosendo Betancourt Garcia, Antonio Andrew, or Roger Gonzalez Valdez, Sr. by any of the other ten shooting officers involved in the events of June 30, 2011.

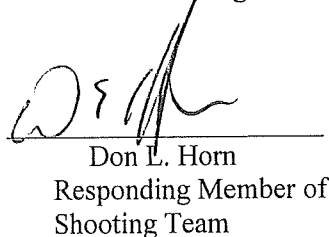
The members of the staffing/review team for this case are:


Jose J. Arrojo

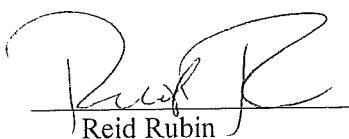

Kathleen Hoague

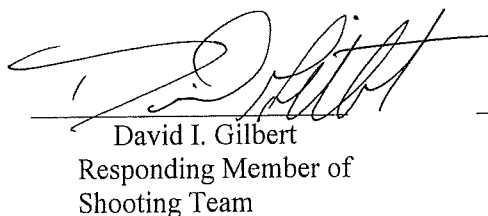

Legal Division


Susan L. Dechovitz


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Responding Member of
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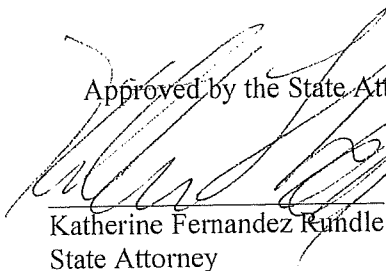

Richard Scruggs


Reid Rubin


David I. Gilbert
Responding Member of
Shooting Team

Additional ASA

Approved by the State Attorney on this 13th day of March, 2014,


Katherine Fernandez Rundle
State Attorney



INTEROFFICE MEMORANDUM

TO: STAFFING/REVIEW TEAM

DATE: March 13, 2014

FROM: DON L. HORN and DAVID I. GILBERT
ASSISTANT STATE ATTORNEYS

RE: POLICE SHOOTING CLOSEOUT MEMO
Case # 62/11/06//30/009

OFFICER(S)
INVOLVED:

All Shooting Officers are with MDPD.

SRT SGT. JOSE GONZALEZ #3048

SRT SGT. MANUEL MALGOR #2718

SRT SGT. HUMBERTO PEREZ #1098

SRT OFF. FERNANDO VILLA #7866

SRT OFF. GERMAN ALECH #2496

SRT OFF. ALAIN CRUZ #5337

SRT OFF. MICHAEL MADRUGA #4499

SRT OFF. MARIO FERGUSON #5544

SRT OFF. PHILLIP FRAZIN #3326

SRT OFF. ARMANDO CALZADILLA #5303

SRT OFF. STANLEY DOR #5423

DECEASED	<p>JORGE LEMUS W/M DOB:4/4/1972</p> <p>ROGER GONZALEZ VALDEZ W/M DOB:10/25/1958</p> <p>ROSENDO BETANCOURT GARCIA W/M DOB:12/1/1971</p> <p>ANTONIO LEE ANDREW B/M DOB:9/18/1978</p>
DATE & TIME:	JUNE 30, 2011 AT APPROX. 8:20 PM
LOCATION:	18930 SW 216 TH STREET, MIAMI-DADE COUNTY, FL
WEAPON:	<p>5.56X45MM COLT CARBINE, M4 COMMANDO (10)</p> <p>9MM GLOCK MODEL 34 SEMI-AUTOMATIC (1) (SGT. MALGOR)</p>
LEAD:	DET. JUAN SEGOVIA, MDPD # 4684
CASE #:	PD110630263609
SAO CASE #:	62/11/06/30/009

INTRODUCTION

As with all of our police shooting closeout memoranda, our role as prosecutors is to investigate, review and comment on the criminal culpability of all shooting officers involved in each shooting event. We recognize that persons who read this memorandum may have questions regarding the police planning for this operation or the carrying out of that operational plan. Others may conclude that during the operation itself, procedures went seriously awry. However, those areas of police operations are not within the purview of our analysis of any possible criminal culpability. Accordingly, as to those issues, we defer to those entities that have authority over the police department, its officers and its policies and procedures.

OVERVIEW

On June 30, 2011, the Miami-Dade Police Department executed a sting operation designed to capture several violent home invasion robbers who had been operating in various parts of Miami-Dade County. The plan was to be effectuated by a joint task force composed of members of the Stop Terror Offender Program (STOP) Unit, Special Response Team (SRT), Robbery Intervention Detail (RID), Aviation, K-9, hostage negotiators, Homeland Security Bureau, Miami Police Department, U.S. Customs, and the Border Patrol Air Wing.

The STOP Unit had developed a "source," a Confidential Informant (CI)¹ who gave them information about a group of home invasion robbers who had committed several extremely violent home invasion robberies. The group started with victims who were drug dealers, but eventually expanded into robberies of innocent citizens. The violence of their crimes escalated into torture of some of their victims. The violence included the cutting of a scrotum, hammering of fingers, cutting off of fingers, the threatened cutting of children's fingers in order to get parents to reveal hidden valuables, and a number of savage beatings.

The CI, Rosendo Betancourt Garcia, was supposed to convince the home invasion robbers that he knew of a drug dealer's house in deep South Miami-Dade, where drugs and cash were kept. In fact the home, located at 18930 SW 216th Street, was a home in foreclosure, in the possession of Miami-Dade County. The CI was given a Cadillac Escalade (UC Vehicle) for the operation. The vehicle was wired to record and transmit audio and video from the Escalade.

An operation plan was developed by the STOP and RID Units under Lt. Danny Villanueva and the SRT Units under Lt. Calvin James. There were several briefings which included a PowerPoint presentation complete with photographs of the property, photographs of the subjects, a photograph of the CI, and details of officer placement, movement and responsibilities.

According to the Operation Plan, there were two options for apprehending the subjects. Under Arrest Plan A, the CI would meet with the subjects at a predetermined location along Krome Avenue.²

¹ The informant is also referred to by law enforcement and in reports as a Confidential Source or CS.

² The authors of this memo conducted a sworn interview with several members of the STOP Unit, including Lt. Villanueva. In that interview, it was learned that the Unit had worked with the CI for twenty (20) days prior to this operation. During that time they had used the CI to discourage and prevent the commission (by the subjects) of a couple of planned crimes. They were also able to learn from the CI, the *modus operandi* of the subjects and how they conducted their preparations. One pattern they followed was to meet just before the planned criminal activity at Krome Avenue. They would arrive in separate cars, all get into one car, and then drive to the planned target location in that one car. Therefore, STOP expected they would operate in the same manner on the date of this criminal episode. Hence, if they could, STOP planned to arrest them before they got to the target location. On the date of this shooting, the subjects did not meet at Krome Avenue, but

Based upon intelligence obtained from the CI and observations of law enforcement, the lead investigators would determine if the necessary elements of the case had been met. If so, RID units, assisted by STOP and SRT personnel would affect the arrest of all subjects involved at that location.

Under Arrest Plan B, if the lead investigators were not able to determine if the necessary elements of the conspiracy had been met, the subjects would be afforded the opportunity to forcibly enter the target location. Once that happened, SRT would affect the arrest of the subjects at that location. STOP and RID personnel would be utilized as needed to assist SRT. Contingencies for both arrest plans were announced at the briefings.

Based on information shared at the briefing, if Plan B was utilized, the expectation was that the CI would drive the UC Vehicle to the premises, but would not enter the property. The CI was supposed to stay with the vehicle while the subjects entered. 18930 SW 216th Street is a multi-acre property with a single family residence built on it. The property is entirely enclosed by a fence. (See photograph attached.) The home faces north. The plan was to allow the subjects to enter the fenced area of the property and then enter into the home. Once they entered the home, SRT Units would emerge from concealed positions and surround the fenced property on all sides. The units would be equipped with mobile lighting that would allow them to 'light up' the house after the subjects had gained entry into the home. Negotiators could then be brought in to get them to surrender.

The CI was given instructions on several primary (audible) and a secondary (visual) signals that he would use whenever the arrest plan was initiated. These signals would allow the police to identify him as the CI. The primary audible signal during an arrest would be "I am going to Disney World." The (visual) signal would be the CI would raise his hands in the air. In the event of trouble the CI's secondary audible signal was simply to say, "Help." The CI was also supposed to wear particular clothing that had been described to all police officers involved in the operation.³

At approximately 8:35 p.m., the UC Vehicle entered the general area and drove around to, it appeared, conduct counter-surveillance. Eventually, at approximately 9:00 p.m., the UC Vehicle stopped on southwest 216 Street along the side of the road at a spot due west of the northwest corner of the property. Four persons exited the UC Vehicle, approached the west fence line of the property and entered the fenced property through a hole they cut in the fence on the west side of the property near the northwest corner. They proceeded in a southeasterly direction, initially unseen under the cover of some trees, until they made their way to the southwest corner of the house. There they proceeded eastward to the southeast corner of the home where they turned north. The four subjects finally gathered at the northeast corner of the home.

They stayed there for several moments until one of the subjects began moving slowly toward the front door of the residence. After that subject arrived in the vicinity of the front door, one of the SRT snipers issued a transmission over the POL TAC 4 radio frequency that one of the subjects at the corner of the house had a long rifle. Shortly thereafter three of the subjects started running. Based upon where their bodies were found, and the availability of aerial surveillance, police were able to determine the routes each subject took when they fled from the front of the house.

went to a previously unknown home. Police had not scouted the area and were not in a position to make an arrest as envisioned under Plan A. As a result, the subjects were allowed to proceed to the target location.

³ At the time the police were determining whether they would use the CI for the sting operation, the CI told the police that he was only a "fence" for the robbers. He specifically stated that he had not participated directly in any of the prior robberies. However, investigation subsequent to these shootings revealed that the CI lied about this point. Several persons who were robbed positively identified the CI as one of the persons who entered their home and, in some situations, committed acts of violence against them during robberies committed by the subjects of this sting operation.

Subject Jorge Lemus, with a firearm in his hand, ran westbound across the front of the home. Before he reached the northwest corner of the house he stopped ever so briefly and crouched behind a Mercedes Benz. The car had been parked in the driveway by MDPD to add authenticity to the scene. At or about the same time SRT officers were swarming onto the property from numerous locations. Sgt. Jose Gonzalez observed Lemus running in front of the house with a pistol in his hand. He ordered Lemus to drop the weapon at which time Lemus ducked down behind the front of the Mercedes Benz. When Lemus emerged from behind the car with the weapon still in his hand he was shot and killed by Sgt. Gonzalez.⁴

Instead of running, subject Rosendo Betancourt Garcia, the CI, remained at the northeast corner of the house. Infra-red video from the aerial surveillance showed him raising his hands, as if to surrender, and then lying face down on the ground with his hands stretched out on the ground above his head. As officers were approaching his location, and before he could be taken into custody, the video camera operator in the aircraft repositioned the camera in an effort to assist the officers on the ground in locating the fleeing subjects. At some point after the camera was repositioned, the CI was shot and killed by four (4) officers. His body was found approximately 25 feet away (towards the south southeast) from the location where he was last seen on the video. Sgt. Manuel Malgor was one of three officers involved in the shooting of the CI. Sgt. Malgor stated that he gave commands to the CI to raise his arms, get down on the ground and crawl on his stomach toward him and the other officers. The CI complied. As the CI reached the officers, Sgt. Malgor ordered the CI to turn over on his back. According to Sgt. Malgor, the CI turned over and then, with his left hand raised his shirt, and with his right hand reached toward his waistband where Sgt. Malgor observed the butt of a gun. Fearing for his life, Sgt. Malgor, from about five (5) feet away, fired his weapon, as did the other two officers.⁵ A firearm was found in the waistband of the CI.

Antonio Andrew, like Lemus, also ran westbound along the front of the house. He ran out of the view of the aerial cameras when he reached the cover of the trees located on the west side of the property. Andrew appeared to be heading toward the hole in the fence through which the four persons had entered. Andrew was shot and killed inside the property by three (3) officers (two on the inside and one on the outside of the west fence). Sgt. Humberto Perez was one of three officers involved in the shooting of Andrew. Sgt. Perez stated that he and other officers gave commands to Andrew when they found him near the west fence line. According to Sgt. Perez, he gave several commands to Andrew which included, "don't move your hands" and "show me your hands." When Sgt. Perez got within five feet of Andrew, Andrew reached toward his waistband, causing Sgt. Perez to feel threatened. Sgt. Perez fired his weapon at that time.⁶ A firearm was found in Andrew's waistband.

Roger Gonzalez Valdez, Sr. initially ran west along the front of the house and then southwest towards the corner of the property. He jumped the fence and headed southbound into a grove where he found a brief sanctuary under a tree. It was later discovered that Valdez, Sr. lost possession of his firearm, a pair of binoculars and other items in the process of jumping over the fence. Approximately ten (10) minutes after the subjects started running, SRT Officers (with the help of the infra-red cameras in the aircraft) found Valdez curled up in a fetal position hiding under a small tree. He was shot and killed by four (4) officers. Off. Stanley Dor was one of three officers involved in the shooting of Valdez, Sr. Off. Dor stated that he heard other officers giving commands to Valdez, Sr. to show his

⁴For more details of this shooting see synopsis of the statement of Sgt. Jose Gonzalez, pgs. 15-16. herein.

⁵ For more details of this shooting see synopsis of statement of Sgt. Manuel Malgor, one of the three shooting officers, pgs. 17-18, herein.

⁶ For more details of this shooting see synopsis of statement of Sgt. Humberto Perez, one of the three shooting officers, pgs. 20-21, herein.

hands. According to Off. Dor, Valdez, Sr. made a move to his waistband and pulled out something dark. Off. Dor then fired his weapon, "in fear for my life." Valdez, Sr. was not armed when he was shot. A black glove and a Motorola hand held radio were found near his body.⁷

All four deceased men were wearing dark clothing, and all but Roger Gonzalez Valdez, Sr. had ski masks covering their heads and faces. At the time crime scene photos were taken, a handgun and flex ties (similar to those used by the police as handcuffs) were located near the hands of Garcia and Andrew. We are not certain who placed these items in the locations where they were photographed; however it is clear that bodies and evidence were moved prior to the taking of the crime scene photographs of the deceased men on the night of the shootings.

Much of the yard surrounding the house (and inside the fenced-in area) was overgrown. This created a significant problem as it related to locating and recovering physical evidence at the crime scene.

AUDIO SURVEILLANCE, VIDEO SURVEILLANCE, AERIAL SURVEILLANCE AND THE OPERATIONAL PLAN

As part of this sting operation there was a great deal of surveillance, including a combination of video surveillance by aircraft, audio and video surveillance inside the UC Vehicle, audio and video surveillance inside the target house and in the backyard of the target house. Most of the surveillance began hours before the operation went down. In addition, teams of SRT snipers went to the scene and took up positions in secreted areas long before the subjects were expected to show up. The surveillance of the conversations and actions of the CI and other persons in the UC Vehicle began as early as 3:00 p.m. Mid-to late-afternoon aerial units began their surveillance of the UC Vehicle, the subjects, meeting locations of the subjects, counter-surveillance conducted by the subjects, the target residence where the sting operation would take place and other residences visited by the subjects that afternoon. In addition to the 30 or so SRT officers listed below⁸, there were a number of RID officers also involved in the operation. In order to keep all of the officers involved in this operation updated and aware of what was going on, the SRT commander receiving information from the various surveillance operations was giving updates to the units in the field via two (2) police radio frequencies; POL TAC 4 and SRT TAC 1.

In that regard, our investigation of this case included review of the following:

1. 12 CD disks (more than 10 hours) of monitored communications between officers utilizing POL TAC 4⁹ (beginning around 3:00 on the afternoon of June 30, 2011 and continuing until approximately 8:00 a.m. the following morning);
2. 10 CD disks (just under 10 hours) of monitored communications between officers utilizing SRT TAC 1 (beginning around 3:00 on the afternoon of June 30, 2011 and continuing until approximately 2:30 a.m. the following morning);
3. 4 CD disks (approximately 3 ½ hours) of monitored communications between officers utilizing the Aviation Frequency (beginning around 4:30 on the afternoon of June 30, 2011 and intermittently continuing until approximately 9:30 p.m.);
4. 1 CD disk (approximately 1 hour) of monitored communications between officers communicating with dispatchers on the Headquarters' Frequency (beginning around 9:20 p.m. and continuing until approximately 10:30 p.m.);

⁷ For more details of this shooting see synopsis of statement of Off. Stanley Dor, one of the four shooting officers, pg. 22, herein.

⁸ See section entitled, The Shootings, pg. 14, herein.

⁹ POL TAC 4 was the primary frequency for this operation.

5. 1 CD disk of monitored communications between officers communicating on the K-9 Frequency);
6. 1 CD disk of 911 calls made to the Complaint Desk on the evening of June 30, 2011;
7. 2 CD disks from the conversations that were captured on the audio recorder in the Under Cover Vehicle (1648 hours to 2000 hours and 2021 hours to 2113 hours);
8. 1 DVD of audio and images that were captured from the front-view video recorder in the Under Cover Vehicle;
9. 1 DVD of audio and images that were captured from the rear-view video recorder in the Under Cover Vehicle;
10. 1 DVD of images captured from the MDPD Helicopter;
11. 1 DVD of images captured from the Marine Helicopter; and
12. 1 DVD of images captured from the MDPD Airplane.

In addition to the above, the CI was given a piece of equipment capable of recording conversation for about two hours. Although the recording equipment in the vehicle was capable of transmitting to a monitoring police officer, this piece of equipment was not. The CI was killed by police during the operation and the piece of recording equipment was not found on his person. It was not found in subsequent searches of the UC Vehicle or the homes or vehicles used by the subjects.¹⁰

As part of the operational plan, snipers were hidden in several locations to the north of the property to observe the roadway and the front of the target property. Additionally, there was aerial surveillance by two helicopters and one fixed-wing aircraft. All aircraft were equipped with infra-red receivers that allowed them to observe visual images of anything giving off a heat signature on the ground. This enabled them to monitor the movements of the subjects and police, even though this operation was taking place at night. The video images were transmitted live to a video screen being operated by an Aviation Officer in the Command Post.

The Command Post was set up in a vehicle near the target residence. The person running the Command Post was Lt. Calvin James. The SRT and STOP officers were communicating with each other on two tactical channels (POL TAC and SRT TAC) while the aviation personnel were communicating with each other on a separate tactical channel. Lt. James was monitoring all of the incoming information from the various sources. When deemed appropriate, Lt. James would transmit information from the air units to the SRT officers, and vice versa. Lt. James was responsible for making sure that all units were aware of essential information as it developed.

There was also concern over whether the subjects would figure out that Garcia was a CI or that they would figure out this was a sting before sufficient evidence for a prosecution was gathered. One of the subjects, Roger Valdez, Sr., had been ensnared in a sting operation in the past where the police had used a confidential informant. Specifically, Valdez, Sr. had been arrested by police in a warehouse sting operation and charged with conspiracy to commit armed robbery and conspiracy to traffic fifty kilograms of cocaine. Valdez, Sr. served 14 years in prison as a result of that arrest. Therefore, the police were concerned that he might have a greater awareness of surveillance and law enforcement techniques utilized for this sting operation. Obviously, they could not use a warehouse type of meeting area for the arrest.

¹⁰ There is speculation amongst STOP personnel that the recording equipment may have picked up a conversation between the CI and the subjects in which it became apparent that the CI had lied to the police *vis-a-vis* the degree of his involvement in the group's crimes. If correct, this would give the CI a motive to dispose of the equipment in order to avoid the detection of his lie, and the potential for criminal prosecution.

Although Plan B envisioned the CI driving the subjects to the residence and remaining in the vehicle, the live audio captured from the UC vehicle and the live radio transmissions amongst the officers monitoring POL TAC and SRT TAC revealed early on that the original Plan B could **not** be utilized. Technicians monitoring the conversations inside the UC Vehicle were able to hear the bragging by Roger Valdez, Sr. a/k/a "Puma" informing the CI about other home invasion type robberies he had participated in previously.¹¹ It also became very clear in the exchanges that Puma expected and wanted the CI to participate in this operation with them. Puma even asked the CI if he knew "how to handle a .45." The CI said yeah and if he "gotta shoot [he'll] shoot." However, the CI made it clear he "didn't want to shoot nobody". (Disk 1 of 2, UC Vehicle Audio Recorder, 17:09)¹² In an apparent effort to not blow his cover he tells Puma, "I don't know the other people. I'll follow you. I trust you better than them. You are the one I have known for a long time and I will be following right behind you." (Id. 17:24)

That afternoon, on several occasions, the CI made phone calls to a member of the STOP unit when he was alone in the UC Vehicle. He made it clear to those monitoring the audio and to the officer he called on the phone while he was in the car that there was a problem.

"You heard everything, right? The problem is he wants me to go with him. . . Yeah, with him. He's getting me a ski-mask, he's getting me everything . . ." (Id. 17:27:20)

"No, he wants me to go in with them. That's what he was telling me . . . Yeah, he just wants me to go inside with them too." (Id. 17:33:16)

The CI further advises that Puma is going to be using his son (Valdez, Jr.), his neighbor (Lemus) and the Black guy (Andrew) and that the plan is to "hit it around 7". After informing the technicians monitoring the audio that they are waiting for the son, the neighbor and the Black guy, the CI reiterates that Puma "wants me to go in with them". He later states that he would be wearing a black shirt with long sleeves and his pants with the holes. He states, yet again, "So, he wants me to go in with him." (Id. at 19:03:26)

These communications were forwarded to SRT commanders and it is clear that these communications were received and understood. Transmissions issued and recorded on SRT TAC 1 Disk 3 include the following:

"They want to hit this at 1900 hours..."

*So far in the conversation they want the source to participate. They are talking about giving him a .45 so that everybody has a gun... But they [the STOP Officers] are encouraging the source not to go along with that, other than to drive them here to this location. I'll keep you updated."*¹³ (SRT TAC1 Disk 3 36:12)

¹¹ The police interview of Roger Valdez, Jr. (son of Valdez, Sr.) after his arrest revealed that the group had done over one hundred (100) home invasion robberies. This type of activity was their sole source of income. Roger Valdez, Sr. was so confident of his operation that he wrote a letter to his son from prison, prior to his release, which stated they would be "unstoppable" when he got out.

¹² The audio disk from the UC Vehicle plays back on a program called VLC Media Player. There is a time-stamp on the readout that indicates the exact time (hour/min/second) that the audio was being recorded.

¹³ SRT TAC 1, Disk 3 begins at 17:00:30 hrs. (or 30 seconds after 5:00 p.m.). Quotes herein from the various police transmissions will be identified to the specific disk and followed by a "time-stamp." The time-stamp represents the approximate location on the disk where the statement is heard or the observation made. The reference is only approximate

"Hey guys, while we have a break in the action with these guys, let me feed you a couple of things. One, it sounds like they are talking with the source. They want the source to participate. But the source is trying to get out of that. If anything the source will be the driver and if that is the case he is probably going to park in our area of responsibility." (Id. at 52:35)

*"SRT 1 to all SRT, Heads Up. Listen to this. **STOP** just advised that these guys are adamant about the source participating in this thing." (Id. 1:01:19)*

"They are trying to stick to that 1900 timeframe which is a good thing for us because it still won't be dark..." (Id. at 1:02:00)

When the aerial surveillance visually spotted the UC Vehicle on the way to the site the following communications occurred and are recorded on SRT TAC 1 Disk 6:¹⁴

*They loaded up in the Escalade and are southbound on 2-0-7 Ave. (Id. at 29:37)
It's moving northbound and they verified they have guns.
Vehicle is eastbound on 216. Appears to be five subjects inside.
Is one of the subjects the source?
Yes, the source is in the vehicle and he is the driver.¹⁵ (Id. at 32:25)*

Once the UC Vehicle arrived in the vicinity of the target residence it appeared to engage in counter surveillance. The slowness of the travel and the driving back and forth in and around the area was noted and announced via radio transmissions by the snipers, other officers and the aircraft personnel conducting the aerial surveillance. The location and route of travel of the UC Vehicle was being transmitted to all of the officers monitoring the radio frequencies. All of this activity is visible on the aerial surveillance DVDs. The counter surveillance lasted approximately twenty minutes.

At some point after driving around in the area, the UC Vehicle stopped under a group of trees west of the target house (at approximately 190th Avenue) on Southwest 216th Street. The aviation spotters lost sight of the vehicle under the trees, however, shortly thereafter the video camera picked up four (4) images on foot outside of the vehicle and moving in the direction toward the fence that was on the west side of the house. The movement of all of the subjects were being captured by the aerial surveillance and fed live to the video monitor in the Command Post for real-time viewing by Lt. James. Lt. James was communicating information from the Command Post via the police radio on SRT TAC 1. After the four subjects were observed outside the vehicle the following communications occurred on SRT TAC 1, Disk 6 (54:29-54:48):

*Looks like four subjects dismounted from the vehicle - eastbound along the brush.
We need to verify the CI is alone in the vehicle, if we can.*

because the timers will vary based on the equipment used to play back the disk. Adding the timestamp to the time the Disk started will give an approximate time of day the transmission occurred.

¹⁴ SRT TAC 1, Disk 6 begins at 20:05:08 (or 5 minutes and 8 seconds after 8:00 p.m.).

¹⁵ This information was actually not correct. A close listen to the recording from the UC Vehicle reveals that the CI got into the back of the UC vehicle as they took off headed to the target house. The audio tends to indicate that Puma's son, Roger Valdez Jr. was driving. The CI's comment as he moved to the back of the vehicle was, "After this, I am heading to Disney World." Making such a statement would be in accordance with his instructions of what he should do if there was a problem. Since this was a code phrase, his apparent call for help went unheeded.

Additionally, the following communications took place and were recorded on POL TAC 4 Disk 5:¹⁶

There is no conversation in the UC vehicle.

*No one is talking in the UC vehicle.*¹⁷

We have to treat the UC Vehicle like it is a bad guy.

We believe there were 5 subjects in the vehicle and 4 out on foot. That leaves the CI as the driver of the vehicle.

Lieutenant [James] we cannot confirm that the CI is driving that vehicle.

We are attempting to do that, but right now we have to treat him like he might be in that field. (POL TAC 4, Disk 5 16:00-17:13)

We are aware that one of the attempts made to confirm that the CI was the person in the vehicle involved trying to reach him on his cell phone. However, the CI did not answer the calls from the STOP officers.¹⁸ Lt. James continued to transmit to all SRT Officers updates on the locations and actions of the 4 subjects as they moved within the property. However, he did not stress to the officers on SRT TAC that the CI "might be in that field."

Upon exiting the UC vehicle the four subjects proceeded to the fence on the west side of the house. It appeared on the video that they actually cut a hole in the fence. Several minutes later they are seen inside the perimeter of the property. On the video they move very cautiously, as if they are casing the house and trying not to make any noise. Eventually, they arrived at the rear of the house as a group. Once there, they slowly walked northbound along the eastern wall of the house and came to the northeastern corner of the residence. It took them approximately twelve (12) minutes from the time they entered the fence to get to this location on the property. Throughout this time Lt. James was monitoring their movement on the video link and transmitting that information to the officers. In addition to monitoring the video feed Lt. James was also monitoring the Aviation, SRT TAC 1 and POL TAC 4 radio frequencies.¹⁹

While all four subjects were gathered at the northeast (or 1-2) corner²⁰ one of them left the group and slowly started creeping westbound along the north side of the house toward the front door. It is believed that this subject was Roger Gonzalez Valdez, Sr. Shortly thereafter, Jorge Lemus followed Valdez, Sr. in the same direction. At that point Lt. James gave a command for the perimeter to "start getting closer."²¹

The officers on the perimeter began coming out of their hidden locations to move in. However, before they could complete this, everyone was put on standby because of four vehicles that were observed traveling on 216th Street and about to enter the area directly in front of the house.

¹⁶ POL TAC 4, Disk 5 begins at 20:49:53 (or 8:49 p.m.).

¹⁷ This observation is significant, in that on several occasions earlier in the day when the CI was alone in the vehicle he would speak loudly to give updates and other information to the persons monitoring the audio recordings from the UC Vehicle.

¹⁸ It was later discovered that the CI's cell phone had been left in the UC Vehicle. On at least one of the calls from a STOP officer someone answered the CI's cell phone and immediately hung up. Subsequent calls from the STOP officers were not answered. Due to the insistence by the subjects that the CI participate in the home invasion robbery, prior to the subjects' departure from the staging house, STOP officers had instructed the CI to abort the operation.

¹⁹ According to the OPS Plan Lt. James was to be in radio contact with SRT and STOP to initiate the take down.

²⁰ The SRT Officers used numerical references for the four sides of the house. The numbers 1, 2, 3 and 4 were used to refer to the north, east, south and west sides of the house respectively.

²¹ According to the OPS plan there were three commands that were to be given: 1) Prepare to set perimeter; 2) Set Perimeter; followed by 3) A command from an SRT Lt. to enter the property.

While this was going on, the other two subjects, Andrew and CI Garcia remained at the 1-2 corner. While there, one of them knelt and pointed with his arm extended in the direction toward Valdez, Sr. and Lemus near the front door. This action was observed by one of the snipers across the street using his night vision goggles. When he saw this, he transmitted over the radio, "Subject at 1-2 corner has a long rifle, a long rifle." This information was then communicated over the other radio frequencies.²² Shortly thereafter, several officers stated they heard a single gunshot.²³

Moments later the "set perimeter" command was given by Lt. James. Prior to moving into position on the north side of the house, SRT Team 200 had the responsibility to secure the UC Vehicle and the occupant inside it. SRT Officers approached the vehicle and the audio recorder in the UC vehicle captured the "take down" of the person seated in the driver's seat. It was not the CI but instead, Roger Valdez, Jr., the son of Roger Gonzalez Valdez, Sr. SRT Sgt. Jose Gonzalez, with Team 200, assisted in the removal of Valdez, Jr. from the vehicle. Sgt. Gonzalez also directed other officers to "clear" the vehicle to ensure that the CI was not tied up or otherwise secured elsewhere in the UC vehicle. After the shootings had all occurred, and a roll call had been taken of all of the SRT Officers, POL TAC 4 Disk 5 captured the following transmissions:

All of the SRTs are accounted for, but it sounds like we are still looking for the source.

Everybody appears to be in custody.

Danny, it sounds like we are still looking for your source, alright.

Gonzo²⁴ to Mitch.

Mitch, go ahead.

When I took that truck initially it didn't look like your "C" for Charlie. (41:45-43:17)

The earlier transmission on POL TAC 1 Disk 4 raised a concern and definite uncertainty as to whether the CI was in the UC vehicle. The clear implication from the above transmission is that Sgt. Gonazalez (Gonzo) **knew** when he removed the occupant from the driver's seat of the UC vehicle that it was not the CI. He never communicated that fact to anyone until after the shootings.

Upon leaving the UC vehicle and relinquishing custody of Valdez, Jr. to another SRT Officer, Sgt. Gonzalez jumped back in the SRT van and proceeded to his assigned location. He had a remote control clicker which controlled the electronic slide gate on the front of the house. As the van was pulling into position Sgt. Gonzalez activated the clicker and the gate started sliding open. Visible on the video surveillance, subject Jorge Lemus is seen running westbound directly in front of the house. A close view of the video reveals an object in his hand (that later turned out to be a handgun). As he is running, the video captures the shooting of Lemus by Sgt. Gonzalez. The Sgt. is not visible in the video at the time of the shooting but the video reveals Lemus falling and there is clear evidence of the bullets striking the wall directly behind Lemus. Several Officers are heard announcing over the air, "shots fired." Sgt. Gonzalez announces "one subject down."

During the course of our investigation, the undersigned discovered that the audio of all of the shootings that occurred that night were captured by the audio recorder in the UC Vehicle. At 21:15:17 the sound of 3 shots breaks the silence. A few moments later two additional shots are heard. These shots are consistent with the five (5) shots fired by Sgt. Gonzalez at Jorge Lemus.

²² Although each of the subjects was armed, none of the subjects was ever in possession of a long rifle that night.

²³ None of the subjects fired a weapon during the incident. However, several officers testified that later that night after the shootings and for some time thereafter, officers involved in the operation were talking about the possibility/probability that an officer had an accidental discharge. No such announcement was ever made over the police channel that night nor did any officer ever make an official report of an Accidental Discharge.

²⁴ Gonzo is the nickname for SRT Sgt. Jose Gonzalez.

While the shooting of Lemus was taking place, video surveillance reveals that the lone subject who had not fled the scene, CI Garcia, was still standing at the 1-2 (northeast) corner of the residence. It is clear on the video that he raises his arms up in the air (as in surrender mode) and immediately one of the aviation officers announces over the air that the subject at the 1-2 corner is surrendering. The person with the raised arms (who later turns out to be the CI) is seen getting down on his knees whereupon he lies down on the ground on his stomach. Moments later the operator of the video camera swings the camera away from that scene in an effort to try to locate the other subjects who have fled from the area in front of the house. At 21:16:27 multiple gunshots are heard on the UC vehicle recorder. These shots represent the killing of the Confidential Informant, Rosendo Betancourt Garcia.

Prior to the focus of the CI on the northeast corner, the video surveillance reveals two (2) subjects running westbound who have passed the westernmost section of the front of the house. One of the subjects, who later turned out to be Antonio Andrew, ran in the direction of the fence where the four subjects initially made entry onto the property. As a result of entering under the tree canopy that borders the western fence of the property, the video camera was unable to track the heat signature created by his body.

Approximately four (4) minutes after the CI is killed, at 21:20:48 multiple gunshots are heard, fired in rapid succession and captured on the UC Vehicle recorder. These nine gunshots represent the shooting of Antonio Andrew. At 21:21:06, approximately 18 seconds **after** the first volley of nine shots, the recorder captures two additional shots fired. We believe these two rounds are also related to the shooting of Antonio Andrew; however, we have no idea who fired neither them nor why they were fired. The two additional shots are unexplainable. Moreover, the two shots are **not** explained by the only statement given by one of the officers involved in the Andrew shooting.²⁵

While the search for Andrew was being conducted and before that shooting actually took place, the video surveillance captured the attempted flight of first subject who took off from the front of the house. He is Roger Gonzalez Valdez, Sr. The camera caught Valdez, Sr. as he approached the point where the fence on the south side of the property meets at an angle with the western fence. The video clearly reveals the subject trying to jump over the fence.

Valdez, Sr. failed with his first attempt. While doing so he also dropped some items. [It was later discovered that included in the items he dropped (or discarded) within the property was a firearm, a glove and a pair of binoculars.] Valdez, Sr. was successful with his second attempt and he cleared the fence. Upon doing so, he ran several feet due south into a grove of trees and hunkered down in the fetal position under a tree. By jumping the fence, he was able to break the inner perimeter that was supposed to be set up by SRT. Although there was no lighting in the area where he was laying, and although he was fairly well concealed under the tree, his heat signature was clearly visible to the aviators operating the video camera.

The aviators, who were on a different frequency, were transmitting the location of the subject to the other aviation officer who was with Lt. James in the Command Post vehicle. As the aviation officer was trying to direct officers to the location of the last living subject, SRT officers were still moving into place to conduct the search to find him. The video reveals a line of officers who space themselves along the southern fence line outside of the inner perimeter. The westernmost officer in that line of officers is later revealed to be SRT Officer Stanley Dor. At one point on the video, Officer

²⁵ For more details of this shooting, see the synopsis of the statement given by Sgt. Humberto Perez, one of the three shooting officers of Antonio Andrew, see pgs. 20-21, herein.

Dor is standing, with his back turned, several yards away from Valdez, Sr. who was still lying still under the tree. Lt. James, who can see the live video image, can also see his officer and that officer's proximity to the subject. Lt. James can also hear the transmissions from the aviation officers who are frantically trying to get Officer Dor (not knowing who the officer was) to realize that the person he is looking for is "directly behind him."

Based on the instructions and directions given, Officer Dor was finally made aware of the location of the final subject, Valdez, Sr. At the same time, another group of three (3) officers were approaching from north to south walking in a southerly direction along the western portion of the grove. Once they spotted the subject under the tree, those three officers approached from northwest to southeast while Dor approached from northeast to southwest. Dor remained north and east of the subject and north and east of the tree that the subject was under. The other three officers were west of the subject and the tree. In the video the subject appeared to be laying on his left side with his back to the tree (east) and the front part of his body facing the three (3) approaching SRT officers (west).

Just like the Lemus shooting, the shooting of Valdez, Sr. was the second shooting that was captured on the aerial video surveillance. However, unlike the Lemus shooting which was completed quickly by one officer, the Valdez, Sr. shooting was not. At 21:24:59 multiple gunshots are heard in rapid succession and captured on the UC Vehicle recorder. The actual shooting lasts for approximately ten (10) seconds. The video shows four shooting officers with casings arcing away from their weapons as they fire more than fifty rounds at the subject laying under the tree a few feet in front of them. During the shooting, at one point on the video Officer Dor appears to be holding his weapon over his head, unsupported, without target acquisition, and firing in a downward direction toward the general area where the subject was laying. After the shooting, the video captured the SRT Officers moving Valdez, Sr.'s body. Valdez, Sr. was turned on his back and pulled away from his position under the tree. Moments later one of the three SRT shooting Officers approached one of the other SRT officers involved in the shooting and gave him, what appeared to be, several fist bumps on the chest. To the undersigned, and to civilians who may view this video, it is difficult to comprehend why four officers, over a time span of approximately 10 seconds, fired in excess of fifty (50) rounds, at someone laying just a few feet in front of them.

After the shooting of his father, Valdez, Jr., unaware of what has taken place, was still in custody, secured outside the UC Vehicle. The recorder in the UC Vehicle was still running and captured several conversations that took place. The conversations near the vehicle indicate that someone came over to where Valdez, Jr. was being detained. The officer detaining him asked the new arrival whether this was the one. The simple response is "No, that's not mine." The reply to that is "Holy s - -!" Efforts are then made to determine whether Valdez, Jr. had any wallet or identification on his person to help figure out exactly who he was. Although he didn't have any such items with him, the officer with him was giving information to someone over the radio that the name of the person he had in custody was calling himself Roger Gonzalez. He was being told that Roger Gonzalez was a subject (his father's name is also Roger Gonzalez). At some point the officer detaining him gives a clothing description (over the radio) to another officer. Thereafter, Sgt. Gonzalez made the radio transmission referenced earlier that when he pulled the driver out of the UC Vehicle the person did not look like the CI. Eventually, the officers discover that the earlier radio transmission was prophetic:

We believe there were 5 subjects in the vehicle and 4 out on foot. That leaves the CI as the driver of the vehicle.

Lieutenant [James] we cannot confirm that the CI is driving that vehicle. We are attempting to do that, but right now we have to treat him like he might be in that field. (POL TAC 4, Disk 5 17:04-17:13)

THE SHOOTINGS

There were four (4) separate shootings involving eleven (11) shooting officers over four (4) separate crime scenes. Sgt. Jose Gonzalez was the only officer involved in the shooting of Jorge Lemus. He gave a sworn statement to law enforcement on July 20, 2011. There were multiple shooting officers on the other three shootings: three (3) for the shooting of the CI, Rosendo Betancourt Garcia; three (3) for Antonio Andrew; and four (4) for the shooting of Roger Gonzalez Valdez, Sr. For ease of explanation we have segregated each of the shootings. Included within the section for each shooting will be the statement of the only shooting officer who made a statement for each respective shooting, the crime scene information, ballistics report and the autopsy findings. We have listed the shootings in the order in which they occurred.

The main SRT personnel who were responsible for setting the inside perimeters around the target residence are listed below. The names of all the shooting officers are bolded and italicized. The number of the shooting the officer was involved in (i.e., Shooting #1, Shooting #2, etc.) is in parentheses next to that officer's name:

SRT Snipers:

Sgt. Thomas Salerno
Off. Roberto Perez
Off. Jorge Caceres

Off. Jose Jimenez
Off. Gustavo Hernandez
Off. Marcos Milian

Off. L Aleman

SRT Team 100:

Sgt. Troy Lee
Sgt. Luis Sierra
Off. A Prieto

Off. Yunier Alfonso
Off. Armando Calzadilla (4)
Off. Raymond Robertson

Off. Stanley Dor (4)
Off. Juan Suarez – Medic

SRT Team 200:

Sgt. Jose Gonzalez (1)
Off. Carlos Roman
Off. Michael O'Connor

Off. Diego Castro
Off. Melvin Gonzalez
Off. Mario Ferguson(4)

Off. Fernando Villa (3)
Off. Alain Cruz (4)
Off. Kenneth Acevedo

SRT Team 300:

Sgt. Humberto Perez (3)
Sgt. Manuel Malgor (2)
Off. Michael Madruga (2)
Off. Jose Garcia

Off. Mario Villacian
Off. Robert Melley
Off. German Alech (3)
Off. Phillip Frazin (2)

Off. Manuel Quintero
Off. Jose Hernandez
Off. Chadd Rodmore – Medic

With few exceptions noted below, all SRT officers had similar equipment; night vision goggles, helmet, and vest. In addition most were armed with an M4 Colt Commando Carbine (M4) and a 9mm Glock (some models differed).

SHOOTING #1

SRT SGT. JOSE GONZALEZ (Team 200) - Sole shooting officer of deceased JORGE LEMUS - Sergeant Jose Gonzalez has been with the Miami-Dade Police Department for eighteen (18) years and with the SRT Unit for two (2) years. He was the team leader for Team 200 which was responsible for securing the western and northern perimeter fence. In addition, his team was to take control of the vehicle used by the subjects if it parked on SW 216th Street. Sgt. Gonzalez was armed with an M4 and a 9 mm Glock. He gave a voluntary sworn statement to investigators on July 20, 2011.

During the briefings, Sgt. Gonzalez learned that this was a STOP operation designed to arrest a group of home invasion robbers. STOP would be using a house in the south end of the county for a reverse sting where the subjects would think they were robbing a drug house. He also learned that the subjects were violent and that they tortured their victims. The officers involved in the operation were shown photographs of the subjects. Sgt. Gonzalez was made aware that there was a CI involved. Sgt. Gonzalez gave conflicting testimony about his familiarity with the CI. At one point in his statement he said that he saw the CI live, but at another point he said he did not see the CI live, but he did see a photo of the CI that was texted to him while at the staging area.

Sgt. Gonzalez had two radios; one to monitor the SRT channel and one to monitor the STOP channel. Most of his communications were on the SRT channel with Lt. Calvin James who was giving him the "play-by-play." When Lt. James gave them the order to move into position, they drove from the staging area towards the target property. Sgt. Gonzalez observed the CI's Cadillac Escalade parked on SW 216th Street so the van stopped to allow him and two other officers to get out and take control of the occupant of the UC vehicle. When the occupant was removed, Sgt. Gonzalez found in his possession two radios and a cell phone. In his sworn statement he testified that he did not notice that the person in the car did not look the like the CI that he had seen live, earlier in the day. However, recordings from the SRT TAC 1 channel reveal that after all of the shootings had taken place, transmissions were being made regarding the fact that the CI had not been accounted for. The following transmissions occurred:

41:45 All of the SRTs are accounted for, but it sounds like we are still looking for the source.

42:41 Everybody appears to be in custody. Danny, it sounds like we are still looking for your source, alright.

43:17 Gonzo to Mitch

Mitch: Go ahead.

Gonzo: When I took that truck initially it didn't look like your "C" for Charlie.

Alright.

Although there were concerns raised on prior radio communications about whether the CI was the person left in the UC Vehicle, Sgt. Gonzalez never communicated over the radio that the person he pulled out of the vehicle did not look like the CI.

An officer was left with the subject who was removed from the UC Vehicle and Sgt. Gonzalez returned to the SRT van to proceed to the electronic gate located on the front of the target property. En route he heard a radio transmission that a subject at the northeast corner of the house had a rifle in his possession. Sgt. Gonzalez had a remote control for the front gate which he activated. He got out of the van and observed a subject dressed in all black, including a black ski mask, running westbound across the front of the residence. The subject had a handgun in his hand. Sgt. Gonzalez identified

himself as a police officer and ordered the subject, who had stopped to crouch behind a vehicle, to drop his weapon. The subject did not comply and Sgt. Gonzalez fired two shots. When the subject fell, Sgt. Gonzalez fired two more shots. Sgt. Gonzalez then advised on the radio that he had a subject down on the northwest corner of the house. Sgt. Gonzalez also said that just before he fired his first shot, he heard another single shot,²⁶ but did not know where it came from. After he finished shooting he heard numerous shots coming from the east side of the house.

Sgt. Gonzalez, and the officers with him, approached the body that was slumped in a way that hid his hands. One of the officers pushed the subject onto his back and a gun was observed near his hands. Another officer kicked the gun out of the subject's reach. The subject was later identified as Jorge Lemus.

SCENE AND PHYSICAL EVIDENCE for SHOOTING # 1

18930 SW 216th Street is a single family home of CBS construction that sits in the north central portion of a multi-acre property. On the west side of the property there is a grove of mature fruit trees. On the east side of the property there are numerous small young trees with a few mature trees close to the house. The southern part of the property is mostly empty. A fence surrounds the property completely. On the east side of the property there is a gate that is locked. The opening would be sufficient to allow a vehicle to enter the property. At the north end of the driveway on the north side of the property there is a motorized gate that is controlled by a remote device. The only exterior illumination on the entire property the night of this incident was a light at the north end of the driveway near this gate.

Using the designations in the police crime scene sketches and reports, deceased #1, Jorge Lemus, was found at the northwest corner of the home. He was laying with his head to the southwest and his feet to the northeast. He was wearing black gloves and a black ski mask that had been pulled up to reveal his face. A black Smith & Wesson M&P 9mm semi-automatic was laying four (4) feet away towards the east. The weapon was fully loaded and there was no evidence that it was fired during this incident.

Casings associated with this shooting were found outside the electronic gate, where the driveway exits the fenced area. The casings were in the grass to the west of the driveway. Two (2) casings were next to the fence and one (1) casing was several feet to the north of the fence. A secondary search the following day disclosed two (2) more casings outside the fence.

According to the firearms report, all five (5) casings were fired from the M4 assigned to SRT Sgt. Jose Gonzalez. Sgt. Gonzalez fired his M-4 in a southerly direction at Lemus who was directly in front of the north wall of the house. Slap marks on the wall and the video surveillance confirm Sgt. Gonzalez's account of the shooting.

AUTOPSY FINDINGS for JORGE LEMUS

Dr. Jennifer Park, Associate Medical Examiner, found one gunshot entrance wound on the left forehead, just above the eyebrow, of Jorge Lemus and an exit wound associated with it by the right ear. The path of the wound was downward and left to right. The toxicology report was negative for alcohol or drugs. A projectile fragment was removed from Mr. Lemus's head, but it was too damaged to be of ballistics comparison value.

²⁶ A number of other officers also indicated that they too heard a single shot before the firing of the M4 by Sgt. Gonzalez at Jorge Lemus.

SHOOTING #2

SRT SGT. MANUEL MALGOR (Team 300) – One of three shooting officers²⁷ of deceased ROSENDO BETANCOURT GARCIA - Sergeant Manuel Malgor has been with the Miami-Dade Police Department for eighteen (18) years and a member of the SRT Unit for twelve (12) years. He was armed with a 9mm Glock Model 34 semi-automatic handgun with a light on it. He did not have night vision equipment because he was the driver of the van for his team. He was part of Team 300. Sgt. Malgor gave a voluntary sworn statement to investigators on August 27, 2013, more than two (2) years after the incident occurred. The undersigned were not permitted to be present for the taking of this statement.

During briefings, Sgt. Malgor was told that they would be arresting very violent home invasion robbers. The subjects had committed numerous robberies and they had gotten more violent as time went on. In several of their robberies they had tortured their victims. One of the subjects had been caught in a warehouse sting,²⁸ therefore, that subject had some knowledge of how the police operated. Hence, the operation was moved to a different type of location for this sting. Sgt. Malgor was told that the subjects were very sophisticated, using point-to-point communication and counter surveillance. The officers were told that this was the most dangerous STOP operation they had ever done. According to the CI, the leader of the group had told the group that they were not going to go back to prison.

Sgt. Malgor was aware that there was a CI inside the subject organization. The CI was never brought to any of the briefings.²⁹ Sgt. Malgor's only opportunity to see him was via a picture sent to Sgt. Perez's Blackberry as they were in the staging area on the day of the incident. It was his understanding that the CI would bring the subjects to the target property in a car provided by the police. The car was wired for audio and video. The CI was going to stay with the car. Sgt. Malgor did not know of any back-up plan if the CI had to go onto the property. His only familiarity with the CI was the photograph that was texted to another officer's phone.

The police operational plan was for three (3) teams of SRT personnel to be involved. Two teams would surround the perimeter of the property to prevent any subjects from getting away. The third team would enter the property and stage at the rear of the house. It was expected that the subjects would break into the house, at which time it would be surrounded and negotiators would be brought in to broker their apprehension. According to the plan, Sgt. Malgor testified that if the subjects did not break into the house, they would be allowed to get back in their vehicle and then a vehicle take down would take place.

Sgt. Malgor's team staged behind a house located northwest of the target property. Transmissions prior to the take down command indicated that the subjects were doing a lot of counter surveillance. Eventually the taken down signal was given and Team 300 moved east on SW 216th Street to 189th Avenue. Sgt. Malgor did not recall any transmissions indicating that there was a question as to the CI's whereabouts or the fact that the CI might be on the property with the other subjects. When they turned onto 189th, he heard a transmission that there was a subject with a long rifle and he also heard a single gunshot. Sgt. Humberto Perez, who was in the van with him, also heard the shot because he started to shout, "Shots fired! Shots fired!"

²⁷ The other two SRT officers involved in Shooting #2 are Phillip Frazin and Michael Madruga.

²⁸ This was confirmed in our conversation with the members of the STOP UNIT.

²⁹ According to members of the STOP Unit the CI was displayed to members of SWAT at every briefing that they conducted. Knowledge of, and the ability to recognize, the CI was a priority in their planning.

When the van arrived at the gate on the east side of the target property, Sgt. Malgor saw that the gate was still locked. The key was in the possession of another officer and the lock should have been unlocked prior to the arrival of the van. Nevertheless, it was Sgt. Malgor's team's responsibility to provide security for the rear of the house, so the driver was ordered by Sgt. Perez to ram the gate so they could get to their assigned positions. The van got stuck on the gate and could not proceed forward or backward. Sgt. Malgor believed this to be a dangerous situation because shots had already been fired, there was a subject on the northeast corner with a long rifle, and the van was not bullet proof. He ordered his men out of the van immediately. Sgt. Malgor testified that, as he crouched at the front of the van, this was the most frightening situation he had ever been in. According to him, there was chaos on the radio, shots were fired, the helicopters were flying low and creating noise that interfered with his ability to hear radio communications, and it was too dark to see anything.

The officers in the van split up into three groups. Officers Frazin and Madruga moved towards the north with Sgt. Malgor. He decided to look for the subject on the northeast corner of the house, the one with the rifle, and to use the east side of the house as cover from potential cross fire from other officers. While walking he heard shooting coming from the front of the residence.³⁰ Sgt. Malgor saw a subject at the northeast corner of the house who was in dark clothing and wearing a ski mask. He ordered the subject to raise his hands. All this time there is shouting on the radio, chaos, adrenaline running and darkness. Sgt. Malgor testified that he was "scared s--tless."

Sgt. Malgor ordered the subject to raise his hands, using English and Spanish. The subject appeared to respond to the English commands, so all further instructions were given in English. The subject complied and Sgt. Malgor ordered him to lie on the ground, which he did. There was a tree between the sergeant and the subject that caused the sergeant to be concerned that another subject might be in the tree ready to ambush the officers. Therefore, he ordered the subject to crawl towards him. The subject complied as Sgt. Malgor watched him crawl towards the southeast, angling away from the house. According to Sgt. Malgor the subject did not say a word during this entire process. The officers moved to flank the subject to his northeast.

Eventually, Sgt. Malgor told the subject to stop, and he complied. Then he was ordered to turn over on his back exposing his right side to the officers. As soon as he flipped over on his back, the subject raised his shirt with his left hand, rolled up on his left side, and reached to his waist with his right hand. Sgt. Malgor was able to see the butt of a gun in the subject's waistband, and fearing for his life, fired his weapon from a distance of about four to five (4-5) feet. The other two officers fired simultaneously. After determining that the subject was deceased, the officers moved closer to the east wall to avoid the potential for cross fire injuries because of other shots being fired on the property.

Sgt. Malgor stated that the subject never identified himself in any way and that he did not know that the subject was the CI, and that he heard nothing on the radio that questioned the location of the CI. The subject was not wearing the clothing that the briefings said the CI would be wearing.

Sgt. Malgor testified that according to procedure if an officer has an accidental discharge, they are supposed to immediately advise other officers that it was an accidental discharge and that they are safe. Since nothing like that was broadcast when the first shot went off, he believed it was a real discharge that involved one person (unknown) shooting at another (unknown). After the entire operation was complete, he heard talk that the first discharge was accidental, but he never heard who was supposedly responsible. The subject of the shooting was later identified as Rosendo Betancourt

³⁰ Based upon Sgt. Malgor's version of events, the single shot heard while in the van came well before the shooting by Sgt. Gonzalez, which is the only shooting at the front of the house.

Garcia. When killed, the clothing the CI was supposed to be wearing was underneath the outer garments he was wearing. The black shirt he had on had been provided to him by Puma.

SCENE AND PHYSICAL EVIDENCE for SHOOTING # 2

ROSENDO BETANCOURT GARCIA - Deceased #2, Rosendo Betancourt Garcia, the CI, was found about twenty (20) feet east of the east side of the residence, about thirty (30) feet south of the north lateral line of the house. A silver Smith and Wesson, .38 caliber model 64-4 and two flex ties were found near his body; they are linked together as if in preparation to be used as handcuffs. He was lying on his back with his head to the southeast and his feet to the northwest. He was wearing black gloves. A black ski mask had been pulled up to reveal his face.

Eighteen (18) casings were found approximately fifteen (15) feet northeast of the body. The casings were in a line running northwest to southeast (parallel to the body). Within the grouping was a live 9mm hollow point cartridge labeled WCC+P+. Since the property was not being used as a residence, it had not been mowed for some time. The police did a second search of the property after using a weed whacker. Five (5) additional casings were found on the east side of the residence during this search. Because their original position could have been disturbed, their exact location is not considered to be relevant.

According to the firearms report, five (5) of the casings were fired in the 9mm Glock Model 34 assigned to SRT Sgt. Manuel Malgor; they were labeled WCC+P+. Six (6) casings were fired in the M4 assigned to SRT Off. Phillip Frazin. Ten (10) casings were fired in the M4 assigned to SRT Off. Michael Madruga. The last two casings could not be identified to a specific weapon, however there was sufficient detail for the laboratory to say they were closest to the M-4 assigned to SRT Off. Michael Madruga.

AUTOPSY FINDINGS for ROSENDO BETANCOURT GARCIA

Dr. Emma Lew, Deputy Chief Medical Examiner, found numerous gunshot wounds to the body of Rosendo Betancourt Garcia. There were gunshot wounds to the face and upper chest. Several gunshot wounds were to his right arm, right hand, and his left arm. In addition there were twenty gunshot wounds to his torso. The total number of wounds was greater than the number of casings found, in all likelihood because some of the wounds to the torso were re-entry wounds from projectiles that went through the extremities. The general path of the wounds was from right to left with a variety of angles upward and downward. The toxicology report revealed an extremely low level of alcohol and no drugs. We asked Dr. Lew a hypothetical question, based upon the version of events given by Sgt. Malgor, to see if his version was consistent with the injuries to Mr. Betancourt Garcia. Dr. Lew said the wounds were consistent.

X-rays show a "snowstorm" of projectile fragments within the body. Dr. Lew removed approximately twenty-seven (27) of the largest fragments and projectiles for analysis. The firearms report identifies six (6) projectile or projectile fragments that came from the 9mm Glock Model 34 assigned to SRT Sgt. Manuel Malgor. Five of the projectiles or fragments were identified as coming from the M4 assigned to SRT Off. Phillip Frazin. The remaining fragments were unidentifiable or could only be identified generically to an M4, but there was insufficient detail to determine a particular weapon.

SHOOTING #3

SRT SGT. HUMBERTO PEREZ (Team 300) – One of three shooting officers³¹ of deceased ANTONIO ANDREW - Sergeant Humberto Perez has been a member of the Miami-Dade Police Department for twenty-two (22) years and a member of the SRT Unit for seventeen (17) years. He was the leader of Team 300. He was armed with an M4 and a 9mm Glock semi-automatic. His equipment included night vision capability. Sgt. Perez gave a voluntary sworn statement to investigators on July 11, 2011.

During the briefing Sgt. Perez was informed that the subjects were very dangerous career criminals who had done at least fifteen (15) home invasion robberies. They had cut off the genitals of one of their victims and the fingers of others. He was told that these subjects had nothing to lose and were "not going back to jail." There was a CI involved whom he saw by way of a picture on his Blackberry.

When the take down signal was given, his team drove in their van on SW 216th Street until they reached 189th Avenue and turned south. As they approached the intersection, Sgt. Perez heard a loud gunshot and the radio advised that one of the subjects had a long rifle. They proceeded to the gate which was not open. He instructed the driver to ram the gate. The van got hung up on the gate, so the officers got out and went to their positions on foot. Their staging position was inside the fence on the south side of the house by an interior wooden fence and a pickup truck.

While in that position, Sgt. Perez heard over the radio that two (2) subjects had run to the west. At the same time he heard about twenty (20) gunshots. He heard no verbal commands from any officers before the shots were fired. Sgt. Perez decided to break up the team at this point. He instructed Officers Melley and Quintero to secure the rear door of the home. Officers Hernandez, Garcia, and Villacian were to accompany him to the southwest where there was an item he called a pontoon. Sgt. Perez and Off. Alech went toward the western fence line.

While en route to the fence line, Sgt. Perez heard information that one of the subjects was headed toward the northwest corner of the property. He decided to head in that direction to find that subject. Sgt. Perez and Off. Alech walked back-to-back making very slow progress because they had no idea where the subject was. As they got closer to the fence, he identified himself by a code word to notify the officers he expected to be on the other side of the fence, but which he could not see, that he was a police officer and they should, therefore, hold their fire. Sgt. Perez was wearing his night vision equipment which enabled him to see a subject crouched on the ground beneath a tree. He was able to see a thermal image that did not provide great detail.

As Sgt. Perez approached the tree he began to give verbal commands to the subject. He yelled, "Don't move! Don't move your hands! Let me see your hands underneath your waistband! Let me see your hands underneath your waistband!" He did not recall if Off. Alech was also giving the subject orders. Sgt. Perez continued to close the distance as he spoke. When he got within four or five (4 or 5) feet away he removed his night vision equipment. He turned on the flashlight on his weapon. He saw that the subject was dressed in all black with a black ski mask on his head and face. The subject was on his side with one leg bent upwards, as if getting ready to take off running. Sgt. Perez continued to give him the same orders. The subject made a quick move towards his waistband as he started to get up. Sgt. Perez testified that he felt threatened, so he fired his weapon. He believed that Off. Alech

³¹ The other two SRT officers involved in Shooting #3 are German Alech and Fernando Villa.

fired along with one of the officers who were outside the fence on the perimeter. The undersigned believe that SRT Officer Villa was the officer outside the fence.

When the shooting stopped, the subject was still on his side. Sgt. Perez put his foot on the raised shoulder and pushed the subject onto his back. He was able to see a gun at the subject's waist. The gun was removed. Sgt. Perez also saw some flex cuffs. The subject was later identified as Antonio Andrew.

This account given by Sgt. Perez offers no explanation for the two (2) shots that occurred eighteen (18) seconds after the initial volley of shots were fired at Antonio Andrew.

SCENE AND PHYSICAL EVIDENCE for SHOOTING # 3

ANTONIO ANDREW - Deceased #3, Antonio Andrew was found approximately five (5) feet inside the west fence and fifty-five (55) feet south of the north fence. He was on his back oriented in a due east to west orientation. His head was to the east. Very near his body was a Browning 9mm semi-automatic handgun and four (4) flex ties that had been linked together in pairs as if in preparation to be used as handcuffs.

Several feet to the southeast of his body were six (6) fired casings. The second search of the property produced five (5) additional casings near the west fence line. The firearms report identified nine (9) casings with the M4 assigned to SRT Sgt. Humberto Perez. Two (2) casings were identified to the M4 assigned to SRT Off. German Alech. One (1) casing was identified to the M4 assigned to SRT Off. Fernando Villa.

AUTOPSY FINDINGS for ANTONIO ANDREW

Dr. Jennifer Park, Associate Medical Examiner, discovered fourteen (14) gunshot wounds to the body of Antonio Andrew. The number of wounds is larger than the number of casings because some of the wounds had exit wounds and some of the exits were associated with re-entry into the body. There were three (3) entry wounds to the neck. One had an associated exit wound; the other two went downward into the chest. The path of two of the neck wounds was from right to left. The path of the third neck wound was from left to right. A wound to the right rear of his shoulder had a path from right to left, downward, and back to front. There were three gunshot wounds to the upper right arm that pass through into the chest. Their paths were essentially right to left and downward. There were two (2) wounds to the abdomen; their paths were from right to left. The toxicology report revealed an extremely low level of alcohol and no drugs.

Nine (9) projectiles were recovered from the body. The firearms report links seven (7) projectiles to the M4 assigned to SRT Sgt. Humberto Perez. Two (2) projectiles were fired in the M4 assigned to SRT Off. German Alech.

SHOOTING #4

SRT OFF. STANLEY DOR (Team 100) - One of four shooting officers³² of deceased ROGER GONZALEZ VALDEZ, SR. - Off. Stanley Dor has been with the Miami-Dade Police Department for seven (7) years, and SRT for four (4) months. He gave a voluntary sworn statement to police investigators one week after the incident. He was part of Team 100. His personal responsibilities were to breach the fence in the southeast corner, set up some lights facing the home inside the target property, and then return to a position on the perimeter outside the fence. His position would be along the southern perimeter closer to the western corner.

When Off. Dor took up his position on the perimeter he began to hear radio transmissions that subjects were running and that they were armed. It was too dark for him to see anything, so he found a tree trunk to use as cover. Eventually he saw some lights coming towards him that he recognized as being fellow officers. As these officer approached they identified themselves by a code word indicating that they were police officers. On the radio they are being told that a subject was running to the southwest corner. One of the other officers told him, "He's got a gun, He's got a gun." Off. Dor walked westward towards the other officers who were walking southward along the west fence line.

The Officers he met up with were Alain Cruz, Armando Caldez, and Mario Ferguson. Upon their meeting he testified that he was able to see a subject approximately five (5) feet away. The subject was laying on the ground in a fetal position and appeared to be covering himself with a black piece of clothing. Off. Dor was surprised to find out that someone was right behind him and he had been unaware of his presence. According to Off. Dor one of the officers yelled at the subject, "Let me see your hands! Let me see your hands." The other officers had lights on the end of their weapons which were illuminating the subject. Dor stated the subject made a move to his waistband and pulled out something dark. Off. Dor then fired his weapon, "in fear for my life." Dor remembered firing four or five (4 or 5) times from a distance of about five (5) feet. After the shooting fire rescue was called in to assist and Dor was relieved by another officer. The subject was later identified as Roger Gonzalez Valdez, Sr.

SCENE AND PHYSICAL EVIDENCE for SHOOTING # 4

ROGER GONZALEZ VALDEZ, SR. - The body of deceased #4, Roger Gonzalez Valdez, Sr. was found outside the southwest corner of the property. The body was beneath two large shrubs approximately fifty-five (55) feet south of the property line just east of the west fence line of the property. He was laying on his back with his feet to the north northeast and head to the south southwest. As reflected by the aerial surveillance, his body was moved by SRT officers immediately after the shooting. At the time the crime scene photos are taken, near the body were a black right hand glove, a Motorola hand held radio and a silver flashlight. Approximately fifty (50) feet north of the body, just outside the southwest fence corner were a black ski mask and a pair of binoculars. One hundred (100) feet north of the body, just inside the west fence line were a black left hand glove and a .45 caliber Springfield Armory model 1911 A1 semi-automatic handgun.

Nine (9) casings were found approximately fifteen (15) feet to the northeast of the body; these casings were on the far side of one of the shrubs noted above. Another thirty-five (35) casings were found to the southwest of the body; these casing range from the immediate vicinity of the body to approximately fourteen (14) feet away. The secondary search revealed eight (8) additional casings.

³² The other three SRT Officers involved in Shooting #4 are Alain Cruz, Armando Calzadilla, and Mario Ferguson.

The firearms report links twenty-one (21) first search casings and two (2) secondary search casings were fired by the M4 assigned to SRT Off. Alain Cruz. Three (3) casings were fired in the M4 assigned to SRT Off. Armando Caldez. Eleven (11) first search casings and one (1) secondary search casing were linked to the M4 assigned to SRT Off. Mario Ferguson. the nine (9) casings to the northeast, and four (4) of the secondary search casings to the M4 assigned to SRT Off. Stanley Dor. The last casing could not be identified to a specific weapon, however there was sufficient detail for the laboratory to say it was closest to the M-4 assigned to SRT Off. Michael Madruga.

AUTOPSY FINDINGS for ROGER GONZALEZ VALDEZ, SR.

Dr. Emma Lew, Deputy Chief Medical Examiner, found forty-three (43) gunshot wounds to the body of Roger Gonzalez Valdez, Sr. Some of the wounds represent exits and other re-entries into various portions of the body. The majority of shots to the torso were from left to right and downward. Three (3) entered the left side of the chest and were back to front and upward. There were many more injuries to the right arm and hand, than to the left. Dr. Lew recovered sixteen (16) projectiles or projectile fragments from the body. The firearms report linked eight (8) projectiles to the M4 assigned to SRT Off. Mario Ferguson. One (1) projectile was linked to the M4 assigned to SRT Off. Armando Caldez. The remaining seven (7) projectiles were linked to the M4 assigned to SRT Off. Alain Cruz.

STATEMENTS OF NON-SHOOTING OFFICERS (Alphabetically by Assignment, Team Number and last name) (Years of Service are as of the date of the incident)

AVIATION

OFF. ANDREW COHEN - Officer Andrew Cohen has been a member of the Miami-Dade Police Department for seventeen (17) years and a member of the Aviation Unit for over five (5) years. He was co-pilot of the Cessna 206 aircraft that was conducting surveillance.

The Statement of Andrew Cohen is the same as Off. Carlos Torres detailed below, who was monitoring the cameras recording their surveillance. The only significant addition to Off. Torres's testimony is the fact that Off. Cohen, while monitoring the subject running in a southwesterly direction, mentioned that he saw the subject throw some items over the fence. In all other significant particulars it is the same.

OFF. CARLOS TORRES - Officer Carlos Torres has been a member of the Miami-Dade Police Department for twenty-seven (27) years and a member of the Aviation Unit for a year and a half (1½ years). He was assigned to monitor the surveillance equipment in a Cessna 206 that would be flying above the target property. The camera was capable of recording regular day activities and then able to switch to infrared heat detection for nighttime surveillance.

Off. Torres and his pilot took off from Opa-Locka Airport at approximately 6:00 p.m. Their first assignment was to surveil a residence located at 24036 SW 207th Avenue. From there, they helped officers look for a vehicle and then returned to surveil the same residence. Eventually they were told to follow a vehicle which headed towards the target property. The car stopped underneath some trees which blocked his view. Eventually he picked up images of four (4) subjects who had apparently gotten out of the vehicle.

Off. Torres saw the four (4) gather at the western fence of the target property where they appeared to be cutting a hole in the fence. He watched them enter the property and then disappear beneath some trees. When they exited the trees, the four (4) subjects went eastbound along the back of the house. At the southeast corner they turned north and stopped at the northeast corner of the house. Off. Torres was able to observe them clearly as they followed this path. A tree near the northeast corner of the house blocked his vision while they were at that corner.

The officers in the plane were not transmitting information directly to the SRT officers involved in the operation. The height of their plane made that difficult. However, they were aware that the SRT Lieutenant was monitoring their video feed and was, thus, able to give information to the SRT officers.

Off. Torres was able to see one subject run from the northeast corner of the house. That subject ran to the southwest corner of the property where he jumped a fence. Off. Torres kept the camera on him, thus he was not able to see what the other subjects did. This subject ran south from the fence where he hid beneath a tree. Off. Torres kept his camera on the subject until he saw SRT officers approaching the individual. He was able to see gunfire from the officers.

When Off. Torres received word that all the subjects were in custody, the plane was returned to the airport.

OFF. PATRICK VAN GLIS - Off. Patrick Van Glis has been a member of the Miami-Dade Police Department for twenty-four (24) years, and has been in the Air Unit for the last two years. He gave a voluntary sworn statement to police on the night of the incident. Off. Van Glis was responsible for monitoring the equipment that picked up the video and audio transmissions from the aircraft surveiling the operation. He was stationed in a van that was parked at a home east of the property where the subjects were expected to break in. Lt. Calvin James was in the van with him. On the monitors he was able to see the subjects enter the property and go behind the house, turn north, and then gather at the northeast corner. At this time, Lt. James told the SRT members to "bring in" their perimeter closer to the property. A few minutes later Off. Van Glis heard several volleys of shots.

There was a lot of shouting by officers that Off. Van Glis could not understand because of the use of throat microphones.³³ On the monitor, he saw that one subject broke the perimeter and jumped the fence. The subject ran southbound and ducked under a tree line. He heard Lt. James directing SRT units to the area of that subject.

Once all the shooting stopped he heard calls for fire rescue for the subjects. Lt. James went to talk to SRT supervisors and Off. Van Glis broke down the equipment for transport.

SNIPERS

SRT OFF. GUSTAVO HERNANDEZ - Officer Gustavo Hernandez has been with the Miami-Dade Police Department for eighteen (18) years and in SRT for twelve (12) years. He was assigned as an observation sniper who was to take up a position immediately north of the target property. He was partnered with Off. Jose Jimenez. They were supposed to monitor SW 216th Street in front of the target property, the front of the house, and the wooded field to the west of the target property. They were also supposed to look for counter-surveillance.

³³ A throat microphone is placed against the officer's throat and can be used hands-free, allowing the officer to have both of his hands free.

During the briefings he learned that subjects of the operation were very bad home invasion robbers. There was a CI involved who was not supposed to enter the target property under any circumstances. He saw a picture of the CI before the operation began. Off. Hernandez was aware that the son of one of the subjects had been a CI in the past. This created a concern that the subjects would have greater knowledge of surveillance techniques than other subjects.

Off. Hernandez and the other snipers went to their positions more than three (3) hours before the operation was supposed to begin. There was a thunderstorm while waiting for things to begin and it made their scopes useless because of the humidity. He also found that there was a tarp on the fence and shrubs inside the fence that made observation from his hideout of the front of the house minimal.

While monitoring the radio he heard several times that the subjects were trying to get the CI to participate in the entry.³⁴ He believed the information was given out by Lt. Calvin James. He did not recall whether or not this information was ever verified.

When the take down signal was given he was able to see the police vehicles moving into position. His attention was drawn to a civilian vehicle which, it turned out, was driven by a female who happened to be heading home at that time. Her vehicle was stopped and she was taken into custody and transported to robbery detectives located elsewhere on the scene. While this was going on, Off. Hernandez heard radio transmissions that tried to account for the CI. He heard shooting on one side of the house while he was dealing with the civilian vehicle. He also heard a transmission that one of the subjects had a long rifle, but does not know who said it.

Off. Hernandez did not hear a single discharge. He did not hear talk, after the operation, of an accidental discharge.

SRT OFF. JOSE JIMENEZ - Officer Jimenez has been a member of Miami-Dade Police Department for sixteen (16) years and in SRT for ten (10) years. He was one of the snipers assigned to monitor the target property from a position north of the property. He was paired with Off. Gustavo Hernandez.

During the briefing Off. Jimenez was informed that they would be arresting very violent home invaders who were believed to be heavily armed. He was told that there was a CI involved but the CI was not supposed to go onto the property. He did not recall seeing the CI before the operation began, nor did he recall any contingency plan if the CI entered the property.

When Off. Jimenez got to his position, he had minimal visibility onto the property. He began using the special optics but fogging reduced him to using the naked eye. He heard the Lieutenant give the command to start the operation and saw police vehicles moving into position. A civilian vehicle came onto the street; the driver was stopped and taken into custody. Off. Jimenez heard a transmission about a subject possibly with a long gun. He heard a shooting take place on the north side of the house. Off. Jimenez did not see any of the shootings or any of the deceased victims.

Off. Jimenez did not hear a single discharge of a weapon while the police were moving into position. Some days after the operation, he heard discussion of an accidental discharge while he was on the practice range.

³⁴ These radio transmissions are confirmed on the audio CDs as outlined above. These communications conflict with the testimony of several officers who say they heard nothing about the possibility that the CI was participating as more than a driver.

SRT OFF. MARCOS MILIAN - Officer Marcos Milian has been with the Miami-Dade Police Department for sixteen (16) years and in SRT for ten (10) years. He was part of the sniper detachment. He had night vision equipment but did not use it because of fogging. Occasionally he would use binoculars. He was armed with an M4 and a .308 Glock sniper rifle which he did not fire

During the briefing he learned that they were going to take down some very bad guys who were violent and tortured their victims. He was told that the subjects were not going to go down easy and that was one reason snipers were involved. He was made aware that there was a CI who was supposed to lead the subjects to the target property.

Off. Milian arrived very early and took up a position in a grove north of the property towards the eastern side. His position was about one hundred fifty (150) feet from the roadway. While awaiting the operation to begin he did not hear any transmissions concerning the whereabouts of the CI. He was able to see the roadway clearly, but the target property was pitch-black. When the take down signal was given he tried to establish a position on a roof top so that he could see over the fence line. While up there Off. Milian could see two or three (2 or 3) people on the east side of the building. One of the individuals raised what he thought was a rifle. Off. Milian transmitted to his fellow officers that one of the subjects had a rifle. He believed that he also saw two of the people breaking out windows on the residence.

At one point all but one of the subjects scattered. The one remained at the northeast corner of the house. Officer Milian was able to see the police officers on the perimeter. He believed that he was useless on the roof so he decided to get down and reinforce the perimeter. While doing so, he heard a couple of gunshots to the south of him. He did not witness the shooting but learned later that it was someone on Sgt. Gonzalez's team.

While on the perimeter, Off. Milian heard more shots on the east side of the house, then on the west side, and then further south. He was still on SW 216th street so he could not see who did the shooting. After the shooting ended he assisted in looking for any objects the subjects may have discarded. He found a pair of binoculars on the western fence line.

SRT OFF. ROBERTO PEREZ - Officer Roberto Perez has been with the Miami-Dade Police Department for twenty-four (24) years and SRT for eighteen (18) years. He was one of the snipers and was paired with Off. Jorge Caceres. His responsibility was to look for counter-surveillance and generally observe from his position and give feedback to other officers. He was armed with an International 308 sniper rifle. He had night vision equipment which he used without difficulty.

Off. Perez took up a position about five (5) hours prior to the operation in the mango grove across the street towards the eastern side. He was unable to see into the property because of screening on the fence and hedges. He heard shots fired, but was unable to see who did the shooting. He was unaware of a possible accidental discharge. He heard talk of one but thought it was a joke because they said it happened on the front of the house. He thought he would have heard it if it had happened. He did not hear any such thing.

SRT SGT. THOMAS SALERNO - Sergeant Thomas Salerno was a member of the Miami-Dade Police Department for thirty-two (32) years and in SRT for twenty-seven (27) years. He retired from the department in February of 2012. He now serves as a Reserve Officer. Sgt. Salerno was the supervisor of the snipers. He was responsible for setting the positions of the six (6) snipers on his team.

During the briefing he was advised that there were four (4) subjects coming to rip off the supposed occupants of the target home. There was a CI involved who would drive the subjects to the property. He never saw the CI live, but he was sent a picture on his Blackberry by Lt. Calvin James. It was his understanding that the CI would have no participation with the operation on the target property.

Sgt. Salerno set up his men on the property north of the target property. They went to their positions very early so that their positions would not be compromised and they could do counter surveillance. They were supposed to stay in their positions for the entire operation.

Sgt. Salerno was not in a position to see any of the shootings. He was able to hear that the first shooting took place in front of the house. The second shooting was on the east side, and the third was on the west side. He did not hear an accidental discharge before the other shootings took place, nor did he hear any conversation about an accidental discharge.

TEAM 100

SRT OFF. YUNIER ALFONSO - Officer Yunier Alfonso has been a member of the Miami-Dade Police Department for eight (8) years, the last three in SRT. He was part of Team 100 on the night of the incident. His team members were responsible for the eastern and southern perimeter of the target property. They were to remain outside the fence and make sure that no one left the perimeter. Lt. Calvin James would be giving the officers their commands during the operation.

Off. Alfonso attended a briefing before the operation began. His understanding was as follows: The purpose of the operation was to arrest some very seriously violent home invasion robbers. There was a CI involved, but the CI was not supposed to enter the target property. The CI was brought to his staging area, which was a van parked southeast of the property. The purpose of bringing the CI there was to show him to the officers and have them get a look at the CI's face. His whole team saw the CI. The members of his team that he could remember were Sgt. Lee, Off. Prieto, and Off. Dor.

Off. Alfonso was armed with a 9mm Glock, which he did not fire. He had night vision equipment but did not use it because the night was very humid and they fogged up. When the order to move in came, he and his team drove to a deployment position on the eastern side of the property. He ran to a position at the northeast corner of the fence. He could not see inside of the property because of darkness, trees, shrubs and other things blocking the view.

The first thing that indicated things were going awry was when he heard three (3) gunshots from someplace close by. Off. Alfonso did not hear an accidental discharge, nor did he hear any discussion of such after the operation was concluded. He then heard a second set of shots coming from somewhere closer, but he could not determine where. At the time of that shooting he did not hear any officers shouting commands at anyone.

Two more sets of shots followed after some separation of time. During this period of time he remembered that aviation advised that a subject was running. Because aviation used different terms than SRT, it was confusing as to where the subject was running.

After things calmed down he entered the property and guarded the body on the east side of the house. He got no closer than ten (10) feet and did not inspect the body for position or clothing.

SRT OFF. ANTHONY PRIETO - Officer Anthony Prieto has been a member of the Miami-Dade Police Department for sixteen (16) years and is a member of the SRT team. He was a member of Team 100. He was one of the officers responsible for the eastern perimeter.

During the briefing he was told that they were taking down some violent home invasion robbery subjects who were always armed. There was a CI involved but he did not recall the CI's role. Off. Prieto saw the CI while at the staging area when he was driven there by another officer.

When the order to move in was given, his van went to the gate on the eastern side of the property. As he was exiting the van he heard a group of shots. Off. Prieto did not hear a single discharge prior to that. He took up a perimeter position, but could not see anything on the property. There was a hedge and a fence with a tarp on it that prevented him from seeing inside the property. He did not see any of the shootings, subjects or muzzle flashes.

SRT OFF. RAYMOND ROBERTSON - Officer Raymond Robertson has been a member of the Miami-Dade Police Department for twenty-one (21) years and a member of SRT for eight (8) years. He was assigned to Team 100. He was assigned to carry a large light called a Maxi-Beam to the southeast corner of the property, set it up, and turn it on when ordered. He was armed with an M4 and a 9mm Glock model 17.

During the briefings he learned that this was a STOP operation designed to arrest a group of home invasion robbers. The subjects had committed numerous home invasions, some of which involved torturing of the victims. There was a CI involved whose sole responsibility was to drive the subject to the target property. He saw the CI by way of photograph during the preparations for the operation.

When the takedown signal was given his group drove to a drop off point where he got out and went to his position. He did not hear any shots fired until his lights were set up. He first heard shots to the northwest, then near the center of the house, then the rear of the property. After that he was told to turn his light on, which he did. Off. Roberson did not see any of the shootings, subjects, or muzzle flashes.

SRT SGT. LUIS SIERRA - Sergeant Luis Sierra has been a member of the Miami-Dade Police Department for eighteen (18) years and in SRT for two (2) years. He was a member of Team 100 that was responsible for the eastern and southern perimeters. He had night vision equipment which he did not use because it hindered depth perception. He was armed with an M4 and a 9mm Glock model 34, neither of which he fired.

During the briefing he learned that this was a multi-unit operation designed to arrest some very violent people who terrorized and maimed their victims. There was a CI involved who was supposed to drive the subjects to the robbery scene, but was not supposed to be directly involved. He saw the CI in a car prior to the operation beginning.

Sgt. Sierra's personal position was at the southeastern most portion of the fence surrounding the target property. He got out of the van on SW 189th Avenue and ran to his position. By the time he got there he heard shots from the north side of the property. Prior to that he did not hear a single shot, but he did hear conversation afterwards about an accidental discharge. Sgt. Sierra had very limited visibility into the property because of trees and darkness.

Sgt. Sierra heard a transmission some time during the proceedings that someone had a long rifle. The second set of shots was on the east side of the house, then the west side. The last set of shots was from the southwest; however he did not know they were outside the property when he heard them. Sgt. Sierra did not see any live subjects, nor did he see any of the shootings. He did not hear any commands coming from officers on the property.

Sgt. Sierra indicated there was no special plan if the CI became involved nor was there a code word.

OFF. JUAN SUAREZ - Officer Juan Suarez has been a member of Miami-Dade Fire/Rescue for fifteen (15) years. He was assigned to Team 100 as a medic. As a medic he carries the same equipment as the other SRT officers but has a medical bag in addition.

During the briefing he learned that this was a sting designed to arrest some very violent home invasion robbers. He was aware that there was a CI giving information and helping with the operation. Off. Suarez knew that the CI was supposed to drive the subjects there but he did not know if the CI was supposed to participate beyond that. He saw the CI when he was brought to their staging location.

Off. Suarez's understood that his team would enter the target property from a gate on the east side where they would "stage." They would then proceed to the south side of the property. Lt. Calvin James was giving them their information and a helicopter was reporting the movement of the subjects. Off. Suarez said they lost communication with the CI, but did not remember why. When his team arrived at the gate, he was asked to stay with the van. He heard numerous gunshots. He could only locate one group of shots to the front of the house. Other than that he could not tell.

Off. Suarez did not hear an accidental discharge nor did he hear discussion of same. He had very poor vision from his vantage point. He did not see any of the subjects until all of the shooting was finished.

TEAM 200

SRT OFF. DIEGO CASTRO - Officer Diego Castro has been a member of the Miami-Dade Police Department for thirteen (13), with the last seven (7) in SRT. He and his Team 200 members were assigned to the western perimeter of the target property, with his personal position being towards the north end of the fence. They were to keep anyone from leaving the property. He was armed with an M4 and a 9mm Glock. He fired neither weapon. He also had night vision equipment which he did not use because of the humidity.

Prior to the operation he attended the briefing where he learned the following: The operation was designed to arrest home invaders who had been led to believe there were drugs in the target property. The CI was supposed to lead the subjects to the house but was not supposed to go into the property. He observed the CI prior to the operation because the CI was driven to Off. Castro's teams position by a detective. He saw only the CI's face because the CI was in a car. Off. Castro remembers that Officers Wit and Villa were outside of the team van at this time and he cannot say whether any of the other members of the team, who were inside the van, actually observed him. The remaining members of his team were Sgt. Gonzalez and Officers O'Connor, Cruz, Ferguson, and Roman.

Off. Castro took up his position after his team was advised by Lt. Calvin James to do so. Once in position it was too dark to see individuals, however he did see shadows running on the property. One of the shadows was running towards the southwest corner of the property. He remained outside

the fence until all the shooting was finished. While in position he did not hear any transmissions indicating that the CI might be on the property. He heard gunfire, but could not say where the gunfire was coming from. He heard a total of four (4) shootings. One time he saw muzzle flashes coming from the north side of the property. Another time he saw muzzle flashes at the northwest corner of the fence. He does not know who did any of the shootings from his personal observation.

Off. Castro did not hear a single discharge prior to the other shootings, nor did he hear talk of an accidental discharge after the operation was over. At one point during the incident he heard that a subject was running with a long rifle.

SRT OFF. MELVIN GONZALEZ – Officer Melvin Gonzalez has been a member of the Miami-Dade Police Department for seventeen (17) years and a member of SRT for six (6) years. He was assigned to Team 200. He was to be part of the team responsible for the takedown of the vehicle used by the subjects to get to the target property.

During the briefing he learned that this was a STOP operation designed to arrest home invasion subjects. He was told that they were extremely violent, were armed, and tortured their victims. He was aware that a CI was involved, but did not remember his purported role. He did not see the CI prior to the operation.

When the order to move into position was given, he and his team took the driver of the subject's vehicle into custody. He handcuffed the subject and stayed with him when the remainder of the team went on to their position on the north perimeter of the property. Off. Gonzalez was able to hear shooting from the property but could not see who was shooting or why. The subject he took into custody was the only subject he saw that night.

SRT OFF. MICHAEL O'CONNOR - Officer Michael O'Connor has been with the Miami-Dade Police Department for eighteen (18) years and SRT for eleven (11) years. Before becoming a police officer he was with the Department of Corrections. He was part of Team 200. His assignment was to hold the perimeter on SW 216th Street between the driveway and the western fence.

During the briefing he learned that they were taking down some home invasion robbers/torturers. He found out that a CI would lead the subject to the property but that he was not supposed to go onto the property under any circumstances. His radio was not functioning properly so he did not hear any transmissions during the operation that questioned the CI's whereabouts or said that he was on the target property. Someone brought the CI by the position where his team was staged before the operation began. He didn't see the CI as he was in the back of the van at the time.

When the take down signal was given his team drove east on SW 216th Street. Along the way they observed an UC Vehicle parked on the street. They stopped and took the subject in the vehicle into custody. He did not see this take place because while this was going on, a civilian vehicle approached them. He held the point on that vehicle while other officers investigated the driver. It was a female who was taken into custody. Once these two people were in control, they proceeded to the driveway of the target property.

Off. O'Connor heard Sgt. Gonzales say, "Police, drop the weapon," then he heard gunfire. Thereafter he heard more shooting on the east side of the property. There was more shooting elsewhere on the property. He saw snipers moving in from their positions and trying to get over the fence. Off. O'Connor did not witness any of the shootings.

Off. O'Connor did not hear an accidental discharge, nor did he hear any talk about one after the fact.

SRT OFF. CARLOS ROMAN - Officer Carlos Roman has been a member of the Miami-Dade Police Department for fourteen (14) years. He had six (6) years with SRT and was with K-9 for the last eighteen (18) months. He was assigned to drive the van for Team 200. Off. Roman had night vision equipment but did not use it because depth perception was "horrible;" he felt more comfortable with the naked eye even though it was very dark.

During the briefing he learned that this was a STOP operation designed to arrest four (4) subjects who were planning a home invasion robbery. There was a CI involved who was setting them up and would drive them to the location. The CI was driven to Off. Roman's staging location so that the officers were able to observe him.

When the take down order was given he drove west on SW 216th Street until they came to the UC Vehicle that had been driven by the subjects. Officers got out of the van and took control of the driver of the UC Vehicle. Off. Roman then drove to the front gate. Sgt. Gonzalez activated a clicker that opened the front gate. Roman then heard shots and realized that Sgt. Gonzalez had fired. The gate started closing and Off. Roman was ordered to get the clicker. He then went up the driveway and kicked a handgun away from the subject laying at the front of the car parked in the driveway. While this was going on he heard more shots from other areas of the property. He did not see any of the shootings.

Off. Roman did not recall hearing anything in the radio transmissions that indicated that the CI was possibly on the property. He did not hear any shots fired before Sgt. Gonzalez fired. He never heard others talk about a possible accidental discharge.

TEAM 300

SRT OFF. JOSE GARCIA - Officer Jose Garcia has been a member of the Miami-Dade Police Department for seventeen (17) years and a member of SRT for eight (8) years.

Off. Garcia remembered from the briefing that the people they were targeting had done very violent crimes. He was aware that there was a CI involved, but the CI was supposed to be the driver and was not supposed to enter the target property. He did not recall whether there was a contingency plan if the CI did enter the property. Garcia was part of Team 300 that was supposed to be the take-down and entry team. His team was staged west of the target property. Their assignment had them driving east on SW 216th Street (directly in front of the property) to 189th Avenue, making a right and driving to a gate positioned approximately halfway down the east side fence line. Other officers were supposed to open the gate for them before their arrival. Team 300 would then move in after the subjects entered the home. STOP and SRT were transmitting on different channels, so he carried two radios so that he could monitor both channels. Off. Garcia said that once the operation got started and the helicopters were overhead, it became difficult to hear the chatter.

When Lt. Calvin James gave them instructions to move in, they left the staging area. As they were approaching the entry gate he heard a single shot. He did not know who fired it or why. On the radio he heard that there was a subject coming to the east side with a rifle.³⁵ The gate was not open, so an order was given to ram the gate with the van. The van got stuck, so all the officers jumped out of

³⁵ As previously indicated, this information was erroneous.

the van and proceeded on foot. Off. Garcia went to the southwest corner of the house while other officers went toward the southeast corner.

Several Officers, who were ahead of him, made a wide circle around the east side of the house. He heard one of the officers giving commands but could not say who, or what was said. There was a subject on the east side of the house. Off. Garcia was facing southwest when he heard about ten (10) shots. He later walked in the direction of the shooting and saw a subject laying on the ground wearing gloves and a hooded sweatshirt.

SRT OFF. JOSE HERNANDEZ - Officer Jose Hernandez has been a member of the Miami-Dade Police Department for six (6) years and in SRT for five (5) years. He was part of team 300. His responsibility was "breacher," to break down doors with a heavy hammer, if necessary. He was equipped with an M4 and a 9mm Glock which he did not fire. He was also equipped with a helmet with night vision capability. He used the night vision "somewhat" but it kept fogging up and affected depth perception.

During the briefing he learned that the operation was to take down very violent criminals. He was told that the criminals were extremely violent, torturing their victims and arming themselves. He was aware that there was a CI involved but did not remember his role. He did not see the CI live or by photograph before the operation began. He was unaware of any code phrase or action to be used by the CI should the CI become involved in the robbery.

When the take down order was given his group went east on SW 216th Street and turned south on 189th Avenue. As they were traveling he heard a single gunshot. He also heard a transmission that there was a subject with a rifle at the northeast corner of the house. When his van got to the gate, it was not open as it was supposed to be. The van rammed the gate to breach it. Off. Hernandez ran to his assigned position at the rear of the house where there was a patio. It was extremely dark outside and hard to see. While there, he heard shots going off. He could not see and did not know who was doing the shooting. A radio transmission informed him that there was a subject running from the southwest corner. He was told by Sgt. Humberto Perez to move south and get into a line formation with other officers. He went south until he came to an object that turned out to be a pontoon. He met other officers and they identified themselves to each other by using a code word. Off. Hernandez searched the area but found nothing. He was taking the night vision equipment on and off because it was frustrating. He eventually reached the fence line and returned to the southwest corner of the house when the shooting stopped.

Off. Jose Hernandez did not remember hearing anything on the radio that indicated that the CI might be on the target property.

SRT OFF. ROBERT MELLEY - Officer Robert Melley has been with the Miami-Dade Police Department for twenty-three (23) years and in SRT for ten (10) years. He was part of Team 300 that was responsible for the take down of the subjects. He had night vision equipment, but did not use it. He was armed with an M4 and a 9mm Glock which he did not fire.

In the briefings he learned that the subjects had done numerous home invasion robberies. The subjects had tortured some of their victims and they were armed. He was advised that one of the robbers had cooperated with police and become a CI. He did not remember the CI's part in the operation other than to lead the other subjects onto the property. He believed that if the CI was on the property he would be treated just like all the other subjects.

Off. Melley remembered that when they got on the property it was very dark. He does not remember any lights in the area or on the house. He went to the rear of the house and checked the back patio door for any breach, he found none. While there he started to hear gunshots. There were four separate groups of gunshots at different intervals. He did not see any of the shooting, nor any of the subjects before the shooting stopped. He does not know from his own knowledge who did the shooting, but he did hear after the fact that Officers Malgor, Frazin, and Madruga were involved with the shooting on the east side of the house.

SRT OFF. MANUEL QUINTERO - Officer Manuel Quintero has been a member of the Miami-Dade Police Department for twenty-three (23) years and in SRT for sixteen (16) years. He was a member of Team 300 and his personal responsibility was to be one of the first to the door. He was wearing an armored vest and a helmet with an infrared beacon that was visible to officers in the helicopters. He was armed with an M4 and a 9mm Glock which he did not fire. He had a throat microphone for communication but it did not work well and he could not hear communications clearly. Off. Quintero had night vision equipment. He used it until he heard shots fired, when he took it off because it limited peripheral vision and hindered depth perception.

During the briefing he learned that this was a STOP operation designed to arrest some home invasion robbers who believed they were getting drugs from this robbery. The subjects were violent, armed, very organized, and had tortured some of their victims. There was a CI involved whose role was driver who was not supposed to leave the vehicle. The subjects' vehicle was wired. He did not see the CI by photograph or live before the operation.

When Lt. Calvin James gave the take down order, his team proceeded west on SW 216th Street and then south on 189th Avenue. While en route he heard a single gunshot. Next he heard that one of the subjects was running with a long rifle. Before getting to the entry gate on the east side of the property he heard multiple shots fired. Upon arrival at the gate it was observed that the gate was not open as it was supposed to be. The van rammed the gate and got stuck at an angle throwing people off their seats in the van.

Off. Quintero was the last person out of the van. He heard that someone was running eastbound. He stayed on the street for some time because he thought the person might jump the fence. Eventually Off. Quintero entered the gate when he heard more shots. He headed for the east wall of the house because he thought that was the safest place to be. Off. Garcia was at the wall with him, but he did not keep track of where he went. While at the wall he saw a subject, who was already down, near the wall. Off. Quintero proceeded to the front of the house where he saw a subject on the ground. That subject had a ski mask on.

At this point Off. Quintero believed that the CI was in the car where he was supposed to be. He heard nothing on the radio that questioned the CI's position. He ran into other officers at various times, but he cannot say who they were or where they went.

At the end of his statement to investigators, Off. Manuel Quintero wanted to add something of his own. He told us that this operation was the most frightening he had ever been on. He said the level of fear was generated by the fact that he could not tell who was firing or from where.

SRT OFF CHADD RODMORE - Officer Chadd Rodmore was a police officer first in 1993. He joined the Miami-Dade Fire Department in 2004 and was detached to SRT in 2010. He was the medic for Team 300. His team was going to perform the take down of the subjects if the subjects obtained

entry into the house on the target property. In addition to his medical equipment he had an M4 which he did not fire. He had night vision equipment but he did not use it because it was too difficult to get it to operate properly. His radio had an earpiece that was broken. He was able to hear communications clearly until the helicopters came in low after the shooting started.

During the briefing Off. Rodmore learned that this was a STOP operation designed to arrest home invasion robbers who tortured their victims. There was a CI who was supposed to drive the car. The CI was not supposed to be on the property.

When the take down signal was given by Lt. Calvin James his team went west on SW 216th Street and turned south onto 189th Avenue. When they got to an entry gate they found that it had not been opened. The gate was rammed by their van and they got out of the van. As they were getting out he heard that one of the subjects had a long gun. Shortly thereafter there were gunshots. Off. Rodmore ran to the north and made a wide circle around the house. He believes that he was the first one to go around to the front. As he went around the northeast corner of the house he saw a subject doing a "military crawl." He heard voices on his "7 o'clock" but he did not look to see who was talking because his attention was trained on the subject who was crawling and he had his weapon trained on him. While this was going on he heard shots coming from the west side of the house.

Off. Rodmore proceeded along the front of the house where he saw another subject down. He checked to make sure the officers in the area did not need medical attention. At this point he heard shots behind him, but he did not see who was shooting or why. After checking on the officers he went back to the east side of the house and saw that the subject had "injuries incompatible with life." The subject had a mask on his head. He did not know this was the CI and during the mission he heard no transmissions indicating that the CI might be on the target property.

SRT OFF. MARIO VILLACIAN - Officer Mario Villacian has been a member of the Miami Dade Police Department for sixteen (16) years, and a member of the SRT Unit for ten (10) years. He was part of Team 300 and his assignment was to secure the back of the house.

During the briefings he was told that the subjects were very violent and had done numerous home invasions. There was a CI involved who was setting up the subjects. He was monitoring the SRT channel and did not recall any information being transmitted that mentioned that the CI might be directly involved or be on the target property.

Off. Villacian told investigating officers that he was in the back of the van when it got stuck on the fence. He exited the van and immediately went to the rear of the house with Off. Robert Melley. Off. Melley checked the back door of the residence and found it locked. The two of them remained at their positions during all the shooting. Off. Villacian was able to hear shooting on both sides of the house, saw neither who did the shooting nor any of the subjects.

UNIT COMMANDER

SRT LT. CALVIN JAMES – Lieutenant Calvin James has been a member of the Miami-Dade Police Department for twenty-nine (29) years and a member of the SRT Unit for five (5) years. At the time of this operation he was the Unit Commander. It was his responsibility to manage the tactical site. He monitored the SRT frequency and the STOP frequency, he monitored the aircraft images along with a pilot, and he posted people to their locations. Lt. James said that there was no problem with communications the night of the operation.

The operational plan was designed to arrest a group of very violent home invasion robbers. The subjects had tortured some of their victims. The plan was approved by Major Greg Turk and was briefed all the way up to Director James Loftus. The plan included the use of a CI whom Lt. James never met. He saw a photograph of the CI via text message which was sent out to all officers assigned to the investigation. Team leaders were supposed to show the photograph to all members of their teams.

Once the subjects entered the target property, he was supposed to order his units to execute three steps: get ready to set the perimeter, set the perimeter, and take down the subjects. There were two operational plans. The first plan involved allowing the subjects to enter the home and continue the operation as 'barricaded' subjects. If the subjects did not enter the house, the second option was to confront them, order them to the ground, and then, take them into custody. The third order was never issued because shooting started before the order could be given.

Lt. James remembered hearing a single shot first. There was no communication about it being an accidental discharge. There was a pause after the first shot and then a group of shots. Lt. James did not recall being told that the subject may be on the target property. He did not find out until after the shooting was over. After the subjects got out of the UC vehicle, there was some talk on the police radio that they did not know where the CI was, and that the person in the UC Vehicle was not the CI. Lt. James said that that information was transmitted to all the officers in the operation.

Lt. James did not see any of the shootings from his command position. After the shooting stopped he walked to all of the locations where the subjects lay. He checked to make sure all of the officers were okay.

CONCLUSION

It is the opinion of the undersigned that there is insufficient evidence to prove an unlawful killing of Jorge Lemus, Rosendo Betancourt Garcia, Antonio Andrew, or Roger Gonzalez Valdez, Sr. by any of the eleven (11) shooting officers involved in the events of June 30, 2011. That being said, there are a number of unusual, counter-intuitive, suspicious, and/or disturbing factors that make these some of the most unsettling and troublesome decisions we have ever made in a police involved shooting. Our concerns were so great that this case was discussed in a 'staffing' with all of the available veteran attorneys of the State Attorney's Office. There is sworn testimony from one officer for each of the four (4) separate shootings. Under the current procedure, neither the undersigned (nor any other ASAs) were permitted to be present for the taking of those statements. It was the opinion of the assembled attorneys that, unless we can prove beyond a reasonable doubt that events unfolded differently than as described by the four officers involved in the four (4) separate shootings, we cannot prosecute any of the officers.

As previously indicated, based upon the testimony of all of the officers it is clear that the first person shot and killed was Jorge Lemus; the second person shot was the CI, Rosendo Betancourt Garcia; the third person shot was Antonio Andrew, and Roger Gonzalez Valdez, Sr. was the last to be shot and killed. Each shooting was committed by a separate and distinct officer or group of officers. The combined testimony of all of the officers tends to demonstrate that there were some severe deficiencies in the plan itself and the execution of the plan. For instance, Sgt. Malgor expressed serious concerns about the plan and stated "there were concerns among the guys, specifically the Sergeants, the team leaders about the plan.... But that was the plan and we follow directions." During the operation "there was chaos on the radio, shots were fired, the helicopters were flying low and creating noise that interfered with his ability to hear radio communications, and it was too dark to see

anything. Additionally, as previously stated, SRT Officer Quintero testified that this operation was the most frightening he had ever been on. He said the level of fear was generated by the fact that he could not tell who was firing or from where. Finally, many of the officers testified that there was no contingency plan in place for the CI going into the field of operation.

THE "ACCIDENTAL DISCHARGE"

A single discharge was reported by numerous officers. Although the timing is different from account to account, virtually all of them place this single shot before the shooting that took place on the north side of the house (by Sgt. Gonzalez). There were at least six (6) officers who testified under oath that they heard a single gunshot as they were setting the perimeter and moving into position.³⁶ There were at least two (2) officers who testified under oath that days after the incident they heard other SRT Officers discussing the possibility that one of the officers might have had an Accidental Discharge (AD).³⁷ Contrary to this testimony was Sniper Roberto Perez who testified that the information he heard was that the AD supposedly happened in front of the house. He said if it happened he would have heard it - - and he didn't hear any such shot.

Based upon the sequence testified to by the officers who heard the AD, the volley of shots heard after the AD would have to have been the shots fired by Sgt. Jose Gonzalez. All of them describe that volley of shots as coming from the north side of the house. Accordingly, this AD would have occurred just moments (or seconds) before Sgt. Gonzalez shot Jorge Lemus as he was running westbound in front of the house.

We were told that when there is an AD, the officer who discharged his/her weapon is supposed to radio immediately that it was an AD. Our review of the communication CDs revealed that there was no such transmission of an AD reported by any of the officers. There were neither live transmissions during the incident from any of the officers advising they were involved in an AD, nor was there an AD officially reported after the incident. We searched all of the evidence very carefully to try to establish the accuracy of its existence. According to the testimony, this AD became a reason for all of the SRT Officers to be on an even more heightened alert. The timing of this alleged AD was right around the time that one of snipers announced (erroneously) over the SRT TAC channel that one of the subjects on the "1-2 corner" had a long rifle.

The sound of all of the shootings was captured on the recorder in the UC Vehicle. That recording has been reviewed repeatedly. There is absolutely nothing on the audio that sounds like a single shot fired in the moments before, or after, the shooting of Jorge Lemus. In addition, there is no loud sound that, in the heat of the moment, could have been misinterpreted by trained officers as a gunshot. Therefore, we conclude, definitively, that there was no Accidental Discharge.

³⁶ Lt. Calvin James, and SRT Team 300 Officers: Jose Garcia, Jose Hernandez, Sgt. Manuel Malgor, Sgt. Humberto Perez, and Manuel Quintero.

³⁷ Sgt. Luis Sierra (Team 100), Jose Jiminez (Team 300) and Roberto Perez (Sniper).

CRIMES COMMITTED BY THE SUBJECTS

The recordings monitored by the STOP Unit demonstrated that all of the subjects involved had committed a Conspiracy to Commit an Armed Home Invasion Robbery with a Firearm, violations of sections 777.04 and 812.135(2)(a), Florida Statutes.³⁸ In addition, the video tapes from the aerial support clearly demonstrated an Armed Burglary with the intent to commit an Armed Home Invasion Robbery, a violation of section 810.02(2)(b), Florida Statutes, had been committed once the first subject entered the fenced curtilage surrounding the residence.

SHOOTING #1

SRT SGT. JOSE GONZALEZ (Team 200) - Sole shooting officer of deceased JORGE LEMUS

Sgt. Jose Gonzalez testified that he was the officer who shot and killed **Jorge Lemus**. The ballistics report confirms that it was the M4 assigned to Sgt. Gonzalez that fired all of the casings found at the location of that shooting. There is an infrared video of the shooting that confirms, in general the circumstances of that shooting. Jorge Lemus can be seen running west across the front of the house to the area of the Mercedes automobile parked in the driveway. There is no soundtrack to the video (other than aviation officers communicating to the command center), so the evidence does not refute Sgt. Gonzalez's statement that he identified himself to Mr. Lemus and ordered him to drop his weapon. The video confirms that Mr. Lemus was continuing his effort to leave when he was shot. Section 776.05(3)(a), Florida Statutes provides that an officer is justified in using deadly force during the arrest of a felon if the officer reasonably believes that the felon presents a threat of serious bodily harm or death to the officer or others. Subsection (b) states that the officer is justified in using deadly force if the fleeing felon has committed a crime involving the infliction of, or threatened infliction of, harm to another.³⁹ We outlined above some of the violence that these subjects had committed in past home invasions. Suffice it to say, it was significant and it was reasonable to anticipate that they were more than prepared to commit violence against the victims whose home they believed they were invading. As an armed fleeing felon, Jorge Lemus represented a danger to Sgt. Gonzalez and other officers. Therefore, Sgt. Gonzalez's action in shooting Mr. Lemus was legally justifiable under Florida law as set forth above.

SHOOTING #2

**SRT SGT. MANUEL MALGOR (Team 300), PHILLIP FRAZIN AND MICHAEL MADRUGA
three shooting officers of deceased ROSENDO BETANCOURT GARCIA**

The death of **Rosendo Betancourt Garcia**, the confidential informant, is greatly disturbing. There is a short section of infrared video that shows Mr. Betancourt Garcia raising his hands as if in surrender. This is immediately followed by his getting on the ground with his hands outstretched right next to the northeast corner of the house. Officers can be seen advancing from the southeast as the helicopter changes position and we lose sight of Garcia and the officers. Again, there is no sound track so there is no way to determine if Garcia was speaking while performing these actions. His body is found some thirty to forty (30-40) feet away from the corner of the house, to the south southeast, some distance away from where he was first observed raising his arms above his head. He was no longer next to the house, but about fifteen (15) feet away from the east wall of the house. The bullets that

³⁸ In other words there was sufficient evidence to effectuate Plan A and arrest the subjects before they entered the property.

³⁹ We learned from the interviews with STOP that twenty (20) days passed from the time the CI came forward until this operation took place. During that period of time, they had the CI give false information to the subjects about other potential victims in order to stop them from committing other home invasions prior to this operation.

killed him entered on the right side of his body when the location of the casings would indicate that they should have entered from the left as he lay on his stomach.

Sgt. Manuel Malgor provided the only direct evidence of what happened between the apparent surrender on the video and the time the shots were fired. Sgt. Malgor testified that he ordered Mr. Betancourt Garcia, who was dressed at the time in dark clothing and a ski mask, to raise his hands and get down on the ground. He further ordered him to crawl towards them, which explained the change in location. Sgt. Malgor, after ordering Mr. Betancourt Garcia to stop, ordered him to roll over onto his back. According to Sgt. Malgor, at this point Mr. Betancourt Garcia followed this instruction but then turned to his left side and reached for his waistband where Malgor could see a gun was located. Sgt. Malgor stated that fearing for his life, he fired his weapon. According to Sgt. Malgor, Mr. Betancourt Garcia was silent during this entire sequence of events, i.e. he was **not** repeating the code phrase, "I'm going to Disney World."

Section 776.012, Florida Statutes, permits the use of deadly force when a person reasonably believes such force is necessary to prevent imminent death or great bodily harm to himself or another or to prevent the commission of a forcible felony. If Sgt. Malgor's rendition of the facts is not inherently incredible, then they must be accepted as true when the State cannot refute them. Under those facts, Sgt. Malgor's actions would be considered to be justifiable.

We were also concerned about Sgt. Malgor's choice to have the CI turn over when he was already on his stomach and could easily have been handcuffed behind his back while other officers held him at gunpoint. However, in the final analysis, it is irrelevant. Even if his actions were unorthodox or in violation of his training and procedures, such evidence is not admissible in a criminal trial to prove the officer's guilt. Lozano v. State, 584 So. 2d 19 (Fla. 3rd DCA 1991); Gensler v. State, 868 So. 2d 557, (Fla. 3rd DCA 2004). This also means that if charged, the State could not pursue this line of inquiry.

If we were to charge Sgt. Malgor and the other officers who fired on Rosendo Betancourt Garcia, we could expect that there would be direct testimony from Sgt. Malgor and possibly other officers that these facts actually took place. Our case of guilt would be based upon the inference that these facts do not make sense, and that they seem illogical in that a person in the CI's position should and would have complied with their commands. When the State's case is based upon inference, and there are contrary facts in evidence, it is well established law that the State's burden is to prove beyond a reasonable doubt that the contrary facts are wrong. Underwood v. State, 862 So. 2d 800 (Fla. 4th DCA 2003). Inference alone is insufficient. F.M. v. State, 393 So. 2d 1174 (Fla. 3rd DCA 1981). This is especially true when a defendant takes the stand and testifies to his hypothesis of innocence. Davis v. State, 485 So. 2d 490 (Fla. 3rd DCA 1986). Further discussion of the State's burden can be found in, State v. Law, 559 So. 2d 187 (Fla. 1989), Schultz v. State, 109 So. 3d 320 (Fla. 2nd DCA 2013), Celeste v. State, 79 So. 3d 898 (Fla. 5th DCA 2012), and Morejon v. State, 633 So. 2d 1094 (Fla. 3rd DCA 1994). Simply stated, the State has no evidence to rebut Sgt. Malgor's version of events at the moment of the shooting.

Since the State does not have evidence beyond a reasonable doubt to disprove the version of events given by Sgt. Manuel Malgor, he cannot be charged with an unlawful killing of Rosendo Betancourt Garcia. If those facts set forth in Sgt. Malgor's sworn statement are true, then the shooting was justified under sections 776.012 and/or 776.05, Florida Statutes. Officers Phillip Frazin and Michael Madruga did not give statements; therefore we do not know what they saw. However, we expect that Sgt. Malgor would testify at their trial, if they were charged with an offense. Therefore, they cannot be charged as well.

SHOOTING #3

SRT SGT. HUMBERTO PEREZ (Team 300), GERMAN ALECH AND FERNANDO VILLA – three shooting officers of deceased ANTONIO ANDREW

Sgt. Humberto Perez testified that he was one of the officers involved in the shooting of **Antonio Andrew**. The other officers identified, by ballistics, as being involved were German Alech and Fernando Villa. There is no video from any of the aircraft that shows any portion of this shooting. According to Sgt. Perez, when he first encountered Mr. Andrew he was laying on his side in a crouched position with one leg bent as if getting ready to run. He gave Mr. Andrew a series of commands. Mr. Andrew responded by going to his waistband, as if trying to reach for a gun. Sgt. Perez and the other officers responded to this move by firing at Mr. Andrew.

As previously stated, there is an initial volley of nine (9) shots fired followed by two (2) shots fired an appreciable amount of time later. The sworn statement given by Sgt. Perez offers no explanation for the two shots that occurred eighteen (18) seconds after the initial volley of shots were fired at Antonio Andrew. We do not know whether these two (2) additional rounds fired by a single officer or whether there were two officers who fired an additional round each. To the undersigned, the sound of the spacing of those two shots on the audio recording leads us to conclude it is probably one officer. Although it is unclear where the shots were fired or why they were fired, these two shots are very troubling to the undersigned as they appear to be unnecessary and gratuitous shots. Had they been necessary, Sgt. Perez would have described some movement or other reason that they were needed and would have provided the name of the officer who fired them.

We are cognizant of the fact that Sgt. Perez gave contradictory instructions to Mr. Andrew, to wit: “Don’t move your hands!” and “Let me see your hands underneath your waistband.” This was followed by a contradictory statement that Mr. Andrew made a quick movement towards his waistband. Without any other rendition of facts, we are left with a quick motion either towards or away from his waistband. Any quick movement by a suspected armed violent felon in this case could create a well-founded fear in an officer who would, under Florida law, be justified in responding with deadly force under sections 776.012 and/or 776.05, Florida Statutes. If the version of events described by Sgt. Perez are believable, he and his fellow officers could have been justified in their belief that an ‘armed’ violent felon presented a threat to their lives and could have been justified in believing that Antonio Andrew represented a threat to their lives. Thus, the shooting would have been justified under sections 776.012 and/or 776.05, Florida Statutes. Since the State does not have evidence beyond a reasonable doubt to disprove the version of events given by Sgt. Humberto Perez, he cannot be charged with an unlawful killing of Antonio Andrew. For the reasons stated above in the analysis of the shooting of the CI, the other officers cannot be charged.

SHOOTING #4

SRT OFF. STANLEY DOR (Team 100) ALAIN CRUZ, ARMANDO CALDAZILLA, AND MARIO FERGUSON - shooting officers of deceased ROGER GONZALEZ VALDEZ, SR.

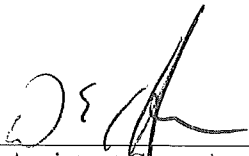
Off. Stanley Dor testified that he was one of the officers involved in the Shooting of **Roger Gonzalez Valdez, Sr.** The other officers, according to ballistics, were Armando Caldezila, Alain Cruz, and Mario Ferguson. This shooting can be seen in three (3) different infrared videos from three different aircraft. *It is the most disturbing of all the videos.* We know from the scene search that Valdez, Sr. was unarmed at the time that he was shot, as his gun was found many feet away near the

fence. However, the shooting officers were unaware of this fact. At the time that he is shot, Mr. Valdez, Sr. appears as a green form that does not appear to be moving.

Off. Dor testified that the other officers had illuminated Mr. Valdez, Sr. with the flashlights affixed to their weapons. This would not be discernible on the infrared video because insufficient heat is produced. He gave Mr. Valdez, Sr. instructions to show his hands. According to Off. Dor, Mr. Valdez, Sr. responded by going to his waistband and removing something dark which caused Off. Dor to fear for his life and fire his weapon. Unfortunately such a movement, if made, would not be reflected in the infrared video. Our repeated reviews of the video cause us to question whether Off. Dor was even in a position to see what he says he saw. None of Mr. Valdez Sr.'s limbs are distinguishable in the video because one heat source overlapping another heat source cannot be distinguished at the distance at which these videos were recorded. Therefore, any motion near the waistband would be masked by Mr. Valdez Sr.'s arm being next to his body. A black hand-held radio was found near Mr. Valdez Sr.'s body. We do not know how it got there. We know the officers moved his body after the shooting because those actions were captured on the video.

The analysis of this shooting is very similar to that of the shooting of the CI. It is not likely that Mr. Valdez, Sr. would reach for a radio in response to the commands from Off. Dor. However, we do not know whether any of the other officers were giving Mr. Valdez, Sr. contrary instructions that Off. Dor did not hear. Regardless, an unlikely scenario is not the same as evidence that would rebut the events as described by Off. Dor. As stated in our conclusion about the death of Rosendo Betancourt Garcia, the State has the burden of proving beyond a reasonable doubt that the events unfolded differently than Off. Dor said they did. No such evidence exists. Although we know that he was not armed, they did not. If the version of events described by Off. Dor are believable, he and his fellow officers could have been justified in their belief that an 'armed' violent felon presented a threat to their lives and could have been justified in believing that Roger Gonzalez Valdez, Sr. represented a threat to their lives. Thus, the shooting would have been justified under sections 776.012 and/or 776.05, Florida Statutes.

Prepared by:



Assistant State Attorney



Assistant State Attorney