

## NORTH MIAMI POLICE DEPARTMENT MEMORANDUM



To: Police Chief Gary Eugene      Date: June 2, 2017  
Assistant Chief Neal Cuevas  
From:      Subject: IA Investigation  
Case No. 16-06  
Distribution:

I have reviewed the North Miami Police Department Memorandum dated May 24, 2017 to Police Chief Gary Eugene from the Disposition Panel regarding the Internal Affairs Investigation of Commander Emile Hollant, Case No. 16-06.

Paragraph I(B) Disposition, states that the Panel made its decision "based on the preponderance of the evidence in this case."

The Cornell University School of Law, however, defines "**preponderance of evidence**" as: "**A requirement that more than 50% of the evidence points to something.**"

Accordingly, the Disposition Panel did not prove any preponderance of evidence to support its findings. In fact, its findings are replete with misinformation, half-truths and blatant inconsistencies.

As such, the Miami-Dade State Attorney's Office, on two separate occasions, ruled "**that Commander Hollant did not lie, and that there was no intent by Commander Hollant to mislead or obstruct investigators or command staff officers regarding his involvement in the police shooting.**"

Therefore, I cannot go against the State Attorney's ruling, and I cannot endorse the findings of the Disposition Panel.

First and foremost, it must be noted for the record that the Miami-Dade State Attorney's Office initially reviewed a complaint, and a second time "as a courtesy" to unnamed "North Miami police investigators," per an email from Chief Assistant State Attorney Jose J. Arrojo to City Manager Larry Spring and City Attorney Jeff Cazeau.

In both instances, the State Attorney's Office decisively determined "**that Commander Hollant did not lie, and that there was no intent by Commander Hollant to mislead or obstruct investigators or command staff officers regarding his involvement in the police shooting.**"

In his Close-Out Memo dated August 2, 2016, Deputy Assistant State Attorney Arrojo emphatically stated that "**at best, the allegation that he provided inconsistent statements to investigators or command staff officers appears to have been the result of simple miscommunication.**"



Ironically, if the Disposition Panel was concerned about a "preponderance of evidence," they need look no further than the final decision by the State Attorney's Office that Commander Hollant committed no wrongdoing.

It is glaringly obvious that the NMPD Internal Affairs Disposition Panel has inexplicably ignored the findings of the State Attorney's Office in order to back up the erroneous assumptions of those unnamed "North Miami police investigators" who were intent on proving that Commander Hollant was responsible for the shooting and that he lied about his involvement.

That this Panel found the allegations against Commander Hollant sustainable is an unmitigated miscarriage of justice.

For one thing, the Disposition Panel inexplicably chose specific portions of witness statements that fit a predetermined outcome, which was to find fault with Commander Hollant. At the same time, this Disposition Panel omitted, and outright ignored, crucial statements made by witnesses and yourself that coincided with the State Attorney's findings that Commander Hollant committed no wrongdoing.

When interviewed by the Florida Department of Law Enforcement (FDLE), Commander Hollant truthfully stated that he was present on the scene, but **did not witness the actual shooting by Officer Jonathan Aledda.**

The Panel noted that "these statements are contradictory to statements made by other officers on the scene." To back up that theory, the Panel quoted Sergeant Milton Reid, who stated in his interview **"And then I lost track of him because I'm focusing on the targets and I then see Hollant come back with binoculars..."**

By his own admission, Sergeant Reid was well aware that Commander Hollant did not initially have binoculars with him since he subsequently saw him "come back with binoculars."

In the very next paragraph of the Memorandum, however, the Panel quoted Sergeant Reid as stating that Hollant was away from the scene for "less than 30 seconds."

In an apparently vain attempt to corroborate Reid's statement, the Panel then noted that Sergeant Diana Roman "reported that it would have taken approximately 1 minute and 22 seconds at a jogging pace" for Commander Hollant to retrieve his binoculars from his vehicle."

In light of the fact that Sergeant Reid had already admitted that he "lost track" of Commander Hollant while he was "focusing on the targets," unless Sergeant Reid had a stopwatch and timed Commander Hollant's jog to his vehicle and back, it would have been practically impossible for him to determine whether Hollant was out of his presence for 30 seconds or 82 seconds. Accordingly, either Reid was



focused on the victims, as he so stated, or he was keeping his eye on Commander Hollant during the entirety of the incident, but not both.

Another major problem with the Disposition Panel's report is the inclusion of a statement made by Officer Alens Bernadeau, who claimed that Commander Hollant "was there" for the shooting.

According to the evidence provided by the FDLE after its investigation of the shooting, it was determined that Officer Bernadeau and Officer Kevin Crespo were located 20 feet to the south of the shooting victim, while Commander Hollant and Sergeant Reid were located 150 north of the shooting victim. The distance between Commander Hollant and Officer Bernadeau was 170 feet.

According to the Affidavit in Support of Arrest Warrant (beginning on page 10) sworn by FDLE Special Agent Daniel Mosquera, "Officers Bernadeau and Crespo moved tactically; leap frogging behind poles on opposite sides of the street as they moved northbound towards Mr. Soto and Mr. Kinsey."

The Affidavit continues, "Eventually Officers Bernadeau and Crespo positioned themselves behind poles on opposite sides of NE 14<sup>th</sup> Avenue," and "were communicating with each other as they moved from two blocks away toward the two men in the intersection." They eventually "worked their way to about 20 feet...20 feet or so away" from the two men.

In fact, there are two key lines of questioning noted In Officer Bernadeau's interview with Detective Michael Gaudio on the day of the shooting, July 18, 2016.

First:

**Question:** Okay. You see any officers north of you, north of the subject?

**Answer:** Yes. They we – as I'm saying, it wasn't too much of me seeing officers, I seen a bunch of marked police vehicles, I don't – like.

Second:

**Question:** Okay, but you don't know which (unintelligible)?

**Answer:** I'm not – who was who, was ...

**Question:** Okay. Okay. And then what happened?

Bernadeau testified that he was moving from pole to pole to get a better visual. **"And I was trying to do that and I heard two shots."**

In contradiction to his own words, when Officer Bernadeau was interviewed by internal affairs on February 14, 2017, he testified:

**Question:** When you see him there is it prior to the shooting or after the shooting?



**Answer:** No, it – it's – it was – it was prior to and after. After the shooting – he – he was on the scene the whole time – prior to and after he was there.

**Question:** And based on what you saw – based on the position that you were in – the position that Commander Hollant was in and the timing of what you're – you have described do you believe that Commander Hollant witnessed the actual shooting?

**Answer:** I mean I believe he should have from – from his – from his – his – his angle but **I'm not sure** if – if at that time he was looking or not, **but I think he should have.**

Clearly, Officer Bernadeau testified that he saw Commander Hollant "prior to and after" the shooting, but he never claimed he saw Hollant **during** the shooting.

This Disposition Panel relied solely on Officer Bernadeau's response, "Yeah, he was there," when questioned if Commander Hollant was "there for the shooting," yet they deliberately omitted that Bernadeau already testified only July 18, 2016 that he could not identify any officers, and only "a bunch of marked police cars" on the scene up until the moment of the shooting.

Furthermore, Officer Bernadeau's belief that Commander Hollant "should have" witnessed the shooting has absolutely no bearing on whether Hollant did or did not, in fact, **witness the shooting.**

I find it patently ludicrous that this Disposition Panel relied on Officer Bernadeau's claim that Hollant "**should have**" witnessed the shooting as he was leap frogging between, and positioning himself behind, poles a distance of 170 feet from where Hollant was located, and focused on the perceived threat before him.

It is impossible to fathom that Bernadeau had a clear and concise knowledge of what Commander Hollant may or may not have witnessed considering that he was at least 170 feet away from Hollant and allegedly focused solely on the victim, and at the same time, facing a potential threat of being in the line of fire.

The testimonies of Sergeant Reid and Officer Bernadeau, which the Disposition Panel obviously cherry-picked to prove their point, are simply not credible, nor do they rise to the level required for a "preponderance of evidence."

Sergeant Reid already admitted he "**lost track**" of Hollant when he went to get his binoculars, and Bernadeau claimed he saw Hollant before and after the shooting, but not during the actual shooting.

Neither of them could state with any degree of certainty that Hollant witnessed the shooting. And yet, this Panel is basing its decision on their ambiguous testimony.



Other individuals interviewed by internal affairs also claim they saw Commander Hollant before and/or after the shooting, but not one person interviewed was able to state that Hollant witnessed the shooting.

The Panel also noted that when shooting team lead investigator Detective Michael Gaudio arrived at the scene, and asked Commander Hollant if he was a witness, Gaudio stated that Hollant answered, "No, no, Mikey. I just got here."

In fact, in his first IA interview on February 2, 2017, Detective Gaudio stated, "I spoke with Milton, Sergeant Reid, who was on the scene. **I asked him if he saw anything.** He told me what he saw and that he'd seen the shooting."

At no time did Reid tell Gaudio that he saw Commander Hollant witness the shooting.

Interestingly, in his testimony under oath to the FDLE, when Commander Hollant was asked if he ever spoke with Detective Gaudio, he said he did not.

In fact, not one individual interviewed by either the FDLE or the internal affairs investigators would confirm that they witnessed or even **overheard any conversation** between Commander Hollant and Detective Gaudio.

The panel erred in not corroborating Detective Gaudio's statement.

Furthermore, when Commander Angel Rivera was interviewed by IA, he stated that he asked Commander Hollant, "Can you name one person who you told you were a witness or a possible witness?"

Had Commander Rivera referred to his own Crime Scene Entry Sheet, he would have seen that Commander Hollant's name was the 7<sup>th</sup> on the list and that his "time in" was 1712.

The Panel notes that "the North Miami report for the shooting was missing relevant information since Commander Hollant did not identify himself as a witness."

Established police procedure is such that every single person at the scene of an incident is considered a witness. Since Commander Hollant never denied being present at the scene, he was not required to "identify himself a witness." His physical presence at the scene, combined with his transmissions over the police radio, was proof enough that he was a witness.

Even more crucially, it's apparent that neither Detective Gaudio nor Sergeant Rivera referred to the North Miami Police Department's Crime Scene Entry Sheet, which clearly reflects Commander Hollant as being present on the scene. Had Gaudio and Rivera done their due diligence as experienced investigators, they would have noticed this entry, and known or surmised he was, in fact, present at the scene before and after the shooting and, therefore, a witness.



Nineteen individuals who were interviewed by internal affairs, including myself, all testified that they did not see or **hear** Commander Hollant speak to either yourself or Detective Gaudio. These individuals are: Sergeant Reyes, Sergeant Brooks, Officer Laguerre, Detective Tovar, Detective Perez, Detective Castro, Sergeant Zuniga, Officer Veillard, Major Cardona, Commander Estrugo, Commander Rivera, Commander Fishel, Sergeant Reid, Officer Requejado, Officer Buissereth, Officer Crespo, Officer Llerena, and Officer Joachim.

Sergeant Mesidor saw Detective Gaudio approach Commander Hollant, but did not hear them converse. Mesidor never saw Hollant speak with Eugene. Only Assistant Chief Juriga heard Eugene speaking to Hollant.

More importantly, **none of these individuals testified that they saw Commander Hollant witness the shooting.**

According to the Miami-Dade State Attorney's Office, Commander Hollant's statement that he **did not witness the actual shooting**, is true and correct, and I wholeheartedly agree.

For the purposes of this investigation, Hollant is a "witness" by virtue of the fact that every law enforcement officer present at the scene of a major incident is considered to be a witness.

This Disposition Panel claims that "investigative personnel stated during their IA interviews that if Commander Hollant was identified as a witness, he would have been separated and a statement would have been taken from him."

Interestingly, "investigative personnel" had no problem with the shooter, Jonathan Aledda, being driven home by Sergeant Milton Reid, both of whom were witnesses to the shooting.

Although Commander Hollant was a witness (as defined by Black's Law Dictionary) at the scene of the incident, he has consistently stated from the very beginning that **he was not an eyewitness to the shooting.**

According to Black's Law Dictionary, the accurate definition of "**witness**" is "**a person who has knowledge of an event.**"

An "**eyewitness**," on the other hand, is defined as "**a party that testifies about what they saw.**"

As such, Commander Hollant was a witness at the scene of the shooting, but **he was not an eyewitness.**

The Disposition Panel concluded that there was a preponderance of evidence to sustain the allegations made against Commander Hollant.



However, I see **absolutely no preponderance of evidence** that Hollant was an eyewitness to the shooting. He never once claimed that he had not been present at the scene, but he was adamant that he **did not** witness the actual shooting.

In fact, according to testimony provided by retired Major Trevor Shinn, when he heard Commander Hollant's voice on the audio recording, he and Assistant Chief Juriga questioned you about Hollant's statement to you the previous evening. Major Shinn stated that you asked Hollant if he was a witness, and you claim Hollant responded, "No, I had left – I had left to go to my car, I wasn't a witness."

Everyone present knew that Commander Hollant was at the scene. This is obvious. Statements by alleged witnesses such as "he must have seen" is not the same thing as "I know he saw."

The declaration that there is a "preponderance of evidence" by this Disposition Panel, without irrefutable evidence to back up that declaration, is meaningless, baseless and completely without merit.

Furthermore, there is absolutely no proof given in this report to contradict Commander Hollant's **sworn testimony** given to the Florida Department of Law Enforcement and the Miami-Dade State Attorney's Office affirming that **he did not witness the actual shooting**.

As I initially stated above, based on my thorough review of this file, I cannot endorse the findings of this panel. The allegation of "Obstruction of a Law Enforcement Investigation by way of False Statements" made against Commander Hollant is **unequivocally NOT sustainable**.

I strongly recommend that you rightly direct this Disposition Panel to revisit the evidence provided to it, and reconsider its irrational conclusion.

I respectfully request that my Memorandum to you be made a permanent record to this file.

#### Appendix:

Cornell University of Law Dictionary, "Preponderance of evidence:"  
[https://www.law.cornell.edu/wex/preponderance\\_of\\_the\\_evidence](https://www.law.cornell.edu/wex/preponderance_of_the_evidence)

Black's Law Dictionary, "Witness:" <http://thelawdictionary.org/witness-n/http://thelawdictionary.org/>

Black's Law Dictionary, "Eyewitness:" <http://thelawdictionary.org/eyewitness/>