



To: A/Chief Robert Bage

Date: May 4, 2017

From: Sergeant Diana Román *DR*
Office of Professional Compliance

Subject: Disposition Panel
Internal Affairs #16-06

Please be advised you have been selected to chair the Disposition Panel for Internal Affairs Case #16-06. The other panel members are Majors Franzia Brea and Donald Blanchard. Please contact your panel members to coordinate the review of this case and submit your findings within ten (10) days.

cc: Major Franzia Brea
Major Donald Blanchard



To: Gary Eugene
Chief of Police

Date: May 24, 2017

From: Disposition Panel

Subject: Internal Affairs Investigation

Distribution:

Case No. 16-06

A Disposition Panel comprised of the members listed below, met for the purpose of reviewing the facts surrounding the above-listed case. The panel only examined the actions of Commander Hollant and a separate administrative investigation will be done to review the shooting incident (AR-16-04). The following represents the panel's findings:

I. SUMMARY

A) Incident Allegation

On July 18, 2016, a police contact shooting occurred at NE 127th Street and 14th Avenue, in the City of North Miami, documented under NMPD Case #16-22884. Following the arrival of NMPD investigators and staff members at the scene, Chief Gary Eugene asked Commander Emile Hollant whether he was a witness to the shooting incident. Commander Hollant advised he was not. Evidence later collected during the police shooting investigation appeared to contradict Commander Hollant's statement to Chief Eugene, as it revealed Commander Hollant appears to have been present prior, during, and after the shooting incident. Given the belief that Commander Hollant was not a witness to the incident, based on his statement, he was neither interviewed by the Investigative Section, nor separated as other witness officers were at the scene.

B) Disposition

The following determinations were based on the preponderance of the evidence in this case:

- 1) The allegation of Obstruction of a Law Enforcement Investigation by way of False Statements: **Sustained**

There was sufficient cause to indicate that Commander Hollant violated the following Standard Operating Procedures and General Rules and Regulations:

General Rules and Regulations, Section 7, Members withholding information or furnishing unauthorized and/or confidential information with a view to personal gain or for any other reason shall be subject to disciplinary action.

General Rules and Regulations, Section 22, Members are required to speak the truth at all times and under all circumstances, whether under oath or otherwise, except in cases where they are not allowed by the rules of the service to divulge facts within their knowledge, in which case they remain silent.

Standard Operating Procedure, 300.19 V. E, Identify and locate all witnesses and police officers at the scene. Keep all witnesses, including involved officer (s) and witness officer (s) separated. Prevent any officers or others from interviewing the involved officer(s) prior to the arrival of the Shooting Team.

General Rules and Regulations, Section 44, Members of the Police Department shall not make false official reports, or knowingly enter or cause to be entered in any Police Department books or records any inaccurate, or false information.

Black's Law Dictionary definition of a witness, n. In general, one who, being present, personally sees or perceives a thing; a beholder, spectator, or eyewitness. One who is called to testify before a court. *People v. Ruiz*, 100 Misc.2d 562, 419 N.Y.S.2d 864, 866. **One who testifies to what he has seen, heard, or other-wise observed.** *Wigginton v. Order of United Commercial Travelers of America*, C.C.A.Ind., 126 F.2d 659, 666.

Commander Hollant arrived on the scene, which would become an officer involved shooting sometime prior to 1705 hours, on July 18, 2016. He made the following radio transmissions, "North Miami 400, QSL. And he's, uh- he looks like he's loading up his gun..." and "It looks like he's loading up his, uh, weapon" (Radio Transmission Transcripts Line 99-103) at 1705 hours. Commander Hollant does not make any other radio transmissions until approximately 1707 hours when he says, "400, shots fired. (Radio Transmission Transcripts Line 152)" He then makes a series of radio transmissions at approximately 1711 hours asking for rescue and other resources.

During the time Commander Hollant was not on the radio from approximately 1705 hours to 1711 hours, he stated in his Florida Department of Law Enforcement (FDLE) interview "And then somebody else on the radio said it's a toy. When Kinsey said it's a toy, I said to my self toy guns or real guns can ma- can be made to look like toy guns. But when somebody said it's a toy, that's when I decided, all right, there's two people saying that. Let me run to my vehicle and let me get my binoculars" (Hollant FDLE Line 631-634). Commander Hollant then stated in his FDLE interview "When the shots was fired I was removing my binoculars. They were full of corrosion from the back – from the battery in the back of my vehicle and I was cleaning it up, removing and running back. And when I heard the shots fired that's when I realized maybe it was not a toy" (Hollant FDLE Line 950-953).

These statements are contradictory to statements made by other officers on the scene. Sergeant Milton Reid stated in his internal affairs interview “And then I lost track of him because I’m focusing on the targets and I then see Hollant come back with binoculars so I’m, like, great, now we can finally see what the hell is going on and shortly after that is when I heard the shots” (Reid IA statement Line 179-181). Sergeant Reid also stated: “The last I remember he was looking through the binoculars so I’m waiting for him to tell us what’s going on and that’s when I hear the shots” (Reid IA statement Line 252-253). Sergeant Reid was asked how long he saw Commander Hollant looking through the binoculars and he answered “I- I would say five or ten seconds. That’s how much time I spent focused on that. I don’t know what he did before that” (Reid IA statement Line 262-263).

When Sergeant Reid was asked how long Commander Hollant was away from the scene, he stated: “Less than 30 seconds” (Reid IA statement Line 226). The time that Sergeant Reid provided is slightly less than the results Sergeant Diana Roman got when she conducted a time test during a recreation of the scene from statements and diagrams provided by FDLE. She reported that it would have taken approximately 1 minute and 22 seconds at a jogging pace to go from the approximant area of where Command Hollant was making his observations to his vehicle and back. It should be noted in Commander Hollant’s statement to FDLE he indicated in Line 419 he ran to his vehicle and in Line 1348 that he ran back. The approximant time between Commander Hollant advising he’s loading up his gun and Commander Hollant advising shots fired was 2 minutes. In addition, Officer Alens Bernadeau stated in his internal affairs interview when asked if Commander Hollant was there for the shooting, “Yeah, he was there” (Bernadeau IA statement Line 239). Officer Bernadeau also stated: “Commander Hollant came running from the north side to assist and it was Officer Aledda and Officer Warren. Sergeant Reid was there as well” (Bernadeau IA statement Line 307-311) indicating that all the officers where together just after the shooting.

Chief Gary Eugene was one of the first executive command staff members to arrive on the scene after the shooting. Chief Eugene met with Commander Hollant for an initial briefing and stated: “Commander Hollant was either a key witness or again, like I mentioned, was a witness from information he has gathered prior of my arrival” (Eugene IA statement Line123-124). Once the shooting team and other command staff personnel arrived on the scene another briefing was conducted. Chief Eugene stated, just prior to the briefing to Commander Hollant, “Please Commander, you cannot be here, because you are a witness. He replied to me – that’s what I will leave it open – either no, I wasn’t on scene or I didn’t witness the shooting, one of the two” (Eugene IA statement 144-147). This statement was also heard by Assistant Chief Laurence Juriga who stated Commander Hollant said, “I’m not a witness, I wasn’t here” (Juriga IA statement Line 232). In addition, Major Annmarie Cardona asked, Commander Hollant “Are you involved in this? He said, No” (Cardona IA statement

Line 174). Commander Hollant remained at the briefing and was not considered a witness. 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.

Detective Michael Gaudio was designated as the shooting team lead investigator. Upon arriving on the scene, he started to locate witnesses and asked Commander Hollant if he was a witness. Detective Gaudio stated that Commander Hollant answered, "No, no, Mikey. I just got here" (Gaudio IA statement Line 203).

Commander Angel Rivera is the Investigative Section Commander and was in charge of overseeing the investigation. Commander Rivera stated that he confronted Commander Hollant several days after the shooting when it was determined that Commander Hollant had made radio transmissions from the shooting scene, just prior to the shooting and just after the shooting, making him a witness. Commander Rivera asked Commander Hollant, "Can you name one person who you told you were a witness or a possible witness?" (Rivera IA statement Line 431-432). Commander Hollant told him, "Detective Tovar" (Rivera IA statement Line 433). Detective Michel Tovar was asked if he had spoken with Commander Hollant about being a witness and he stated: "absolutely not" (Tovar IA statement Line 191). It appears from other IA statements made by other officers that Commander Hollant only spoke to Chief Eugene, Assistant Chief Efrain Cuevas, and Commander Rafael Estrugo in regards to his involvement on the shooting scene. Several command staff members and investigators were asked during their IA interviews if Commander Hollant would be considered a witness after learning he was on the scene prior to and after the shooting and they stated yes. The investigators stated he should have been separated and interviewed like all other witnesses.

There were at least five civilian witnesses that came forward and provided statements to investigators. The civilian witnesses only heard the shots and had information about the pre or post shooting scene. Commander Hollant expressed regret to Chief Eugene in a conversation in the chief's vehicle for not providing a statement initially to North Miami investigators, "...he was more concerned about his failure of giving DB or the investigator in charge of the shooting in that sense, Detective Gaudio his official statement" (Eugene IA statement Line 297). Chief Eugene also stated that Commander Hollant apologized to him (Eugene IA statement 295-296).

Detective Gaudio, Commander Rivera, Major Cardona and retired Major Trevor Shinn all stated in their IA interviews that the North Miami report for the shooting was missing relevant information since Commander Hollant did not identify himself as a witness, did not provide a statement or write a supplementary report. Commander Hollant had spent two years as a detective (2011-2013) and was a lead investigator or

was assigned as a secondary investigator in at least 359 cases (Record Management System Print Out 4/17/2017). In addition, he had attended specialized training in Interviews and Interrogations, Case Preparation and Court Presentation, and Line Supervision. Each of these courses would have discussed the importance of identifying witnesses and taking their statements. When Detective Gaudio was asked in his IA interview if Commander Hollant caused inaccurate information to be entered into the investigative record, he stated "yes" (Gaudio IA statement Line 295).

Chief Eugene stated during his IA interview, "That he lied to me. The commander completely lied to me", referring to Commander Hollant (Eugene IA statement Line 1198). The sworn statements made by Commander Hollant on August 2, 2016, at the State Attorney's Office, and on August 11, 2016, at FDLE, are in conflict with statements made during IA 16-06 by Sergeant Reid and Officer Bernadeau. Both officers stated during their IA interviews that Commander Hollant was present during the actual shooting by Officer Aledda. Commander Hollant stated in his two sworn statements that he was not present during the shooting. In addition, several other officers stated during their IA interviews that they observed Commander Hollant on the scene just prior to and just after the shooting. Chief Eugene, Assistant Chief Juriga, Major Cardona and Detective Gaudio all stated during their IA interviews that Commander Hollant stated he was not a witness when asked on the scene of the shooting. Commander Rivera also stated during his IA interview that he asked Commander Hollant several days after the shooting, when it was learned Commander Hollant made radio transmissions from the scene, thus making him a witness, who he told he was a witness. Commander Hollant stated to Commander Rivera, Detective Tovar. Detective Tovar stated in his IA statement that Commander Hollant never told him, he was a witness.

II OTHER FINDINGS

It was the determination of the panel, based on the preponderance of the evidence, that Commander Hollant also violated the following policies: General Rules and Regulations, Section 6 and 9, and Standard Operation Procedure 300.19 V.K.

General Rules and Regulations Sect. 6. Members of the Police Department shall be held responsible for the proper performance of their assigned duties.

General Rules and Regulations, Section 9, Any member who displays reluctance to properly perform their assigned tasks or acts in a manner tending to bring discredit upon themselves or the Department, or fails to assume responsibility to exercise diligence, intelligence, and interest in their duties, or whose performance is below acceptable departmental standards, shall be deemed incompetent and/or inefficient and subject to disciplinary action.

Standard Operating Procedure, 300.19 V. K, Ensure that an offense report is completed by an officer who is not directly involved in the shooting incident. The officer should not have had to take any actions towards the subject or one that is considered a witness to the shooting. The report should detail the known facts that initiated the incident. All other officers on the scene, but not involved in the shooting, will complete a supplemental report under the same case number. Any discrepancies should be discussed with the Shooting Team supervisor who will make final determination based on known facts. All reports will be forwarded to the Shooting Team supervisor for coordination and accountability.

Commander Hollant was derelict in performing his duties and tasks at the scene of the shooting. He failed to assume responsibility and exercise due diligence. In the job description for the rank of Commander, it states "Must be thoroughly capable of commanding the respect of subordinate officers and directing the work under both ordinary and emergency conditions." Commander Hollant made two radio transmissions about a gun possibly being loaded and then did not make any other radio transmissions until the shots were fired. He stated to FDLE that he was thinking of what he had to do but he did not provide any direction or commands to his subordinate officers on the scene. Commander Hollant's statement to FDLE "And then somebody else on the radio said it's a toy. When Kinsey said it's a toy, I said to my self toy guns or real guns can ma- can be made to look like toy guns. But when somebody said it's a toy, that's when I decided, all right, there's two people saying that. Let me run to my vehicle and let me get my binoculars" (Hollant FDLE Line 631-634). Commander Hollant was the highest ranking officer on the scene and should have taken command of the scene. Sergeant Reid who was the next senior officer (Sergeant Ernesto Reyes was also on a perimeter point but further away) on the scene and was a few feet away from Commander Hollant stated when asked in his IA interview if Commander Hollant said anything to him prior to leaving the scene, "No" (Reid IA statement Line 495). Sergeant Reid was also asked if he had observed Commander Hollant prior to the shooting and he stated: "The last I remember he was looking through the binoculars so I'm waiting for him to tell us what's going on and that's when I hear the shots" (Reid IA statement Line 252-253). Commander Hollant did not provide any instructions or direction to Sergeant Reid or to any other officer prior to the shooting after his initial observations and radio transmissions that the subject looks like he is loading a gun.

When Commander Hollant left to get his binoculars, he failed to monitor the radio and provide any direction to his subordinate officers. Officer Bernadeau was providing updated information that it appeared to be a toy and not a gun. Approximately 31 seconds later, Officer Johnathan Aledda stated on the radio he has a clear shot, this transmission was repeated by another officer. Approximately 26 seconds later, Officer Bernadeau stated again it does not appear to be a firearm and have units standby. Approximately another 28 seconds go by and Commander Hollant then stated shots fired. Commander Hollant was

not on the radio for approximately 2 minutes while conflicting information was being

provided. From listening to the dispatch tapes you cannot determine who was in charge on the scene and some statements made by officers were not acknowledged by the dispatcher or a supervisor.

Several command staff members were asked during their IA interview if they would have left the scene to get binoculars and they stated no, including Chief Eugene (Eugene IA statement Line 1274). Assistant Chief Cuevas stated in his IA interview that Commander Hollant would have received training in Incident Command and all officers understand that you must take control of a scene until a higher ranking or more qualified officer arrives (Cuevas IA statement Line 402-438). In addition, Chief Eugene questioned Commander Hollant's leadership on the scene "I was being very critical of the commander on the scene, Commander Hollant, because in my opinion, in that tape, the leadership that I expect from the higher rank on the scene..." (Eugene IA statement Line 892-894).

In addition, Commander Hollant not identifying himself as a witness on the scene had a rippling effect on the investigation. When Commander Rivera was asked what he would have done differently in the investigation, he stated: "I eventually spoke to Assistant Chief Cuevas and requested that there be a liaison between the Investigative Section and the Patrol Section. He walked away moments later and instructed me that Commander Hollant was going to be the Patrol liaison..." (Rivera IA statement Line 292-294). Commander Rivera then stated: "... I would have objected to. If Commander Hollant was a witness, there's no way he can serve as a liaison..." (Rivera IA statement Line 296-297). Commander Estrugo was also asked during his IA interview if a witness to a shooting could be the incident commander after the shooting and he stated: "I don't think you would" (Estrugo IA statement Line 747-748). Commander Hollant should not have served as the Patrol Section liaison.

There were 31 North Miami Police Personnel on the scene (from the crime scene log and detailed call for service report) but there were only 23 supplemental reports written. Each officer on a police shooting scene is required to write a supplemental report (SOP 300.19 V. K). Commander Hollant failed to write a supplementary report. Chief Eugene stated in his IA interview, "Yes, because after reading that part from your own SOPs that he should have been fully aware of, he knows that he has to write a supplementary report, yes" (Eugene IA statement Line 1260-1261). Commander Hollant had electronically signed for the shooting policy 300.19 on 12/22/2015, at 3:50:12 PM, in Power DMS.

III POLICY OR PROCEDURAL CHANGES OR IMPLEMENTATION NEEDED

The North Miami Police Department should focus more on scenario based training not just for first responding officers but also supervisors. All members of the North Miami Police Department are required to attend Incident Command System (ICS) training. The Department should build on this training through in-service scenario based training.

Assistant Chief Robert Bage

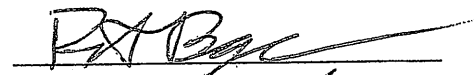
Panel Chairperson

Major Franzia Brea

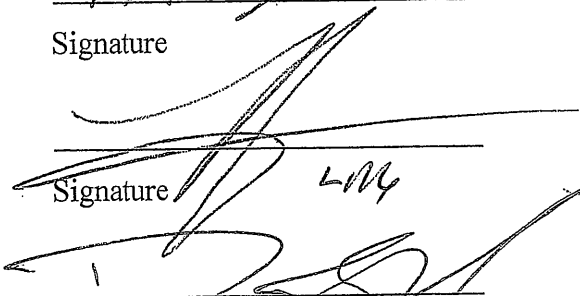
Panel Member

Major Donald Blanchard

Panel Member



Signature



Signature



Signature

NORTH MIAMI POLICE DEPARTMENT
INTERNAL AFFAIRS

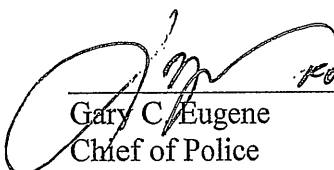
REPORT OF FINDINGS

Date: May 25, 2017

File Number: IA-16-06

1. **The allegation of Obstruction of a Law Enforcement Investigation by way of False Statements** (General Rules and Regulations, Section 7, Section 22, and 44, and SOP 300.19 V.E):

<input type="checkbox"/>	UNFOUNDED	Investigation establishes acts complained of did not occur.
<input type="checkbox"/>	EXONERATED	Investigation establishes that the employee's actions were justified, lawful and proper.
<input type="checkbox"/>	NOT SUSTAINED	Insufficient evidence to prove clearly the allegation made.
<input checked="" type="checkbox"/>	SUSTAINED	Sufficient evidence to prove clearly the allegation made.
<input type="checkbox"/>	INFORMATION ONLY	Complaint has been filed, but cannot proceed. The case can be reopened at a future date, when new or additional information is received.
<input checked="" type="checkbox"/>	OTHER FINDINGS:	Violated General Rules and Regulations, Section 6 and 9, and SOP 300.19.V.K

 FOR G.E.
Gary C. Eugene
Chief of Police

5/26/17
Date