

IN AND FOR BROWARD COUNTY, FLORIDA
INTERIM REPORT OF GRAND JURY, SPRING TERM 2012

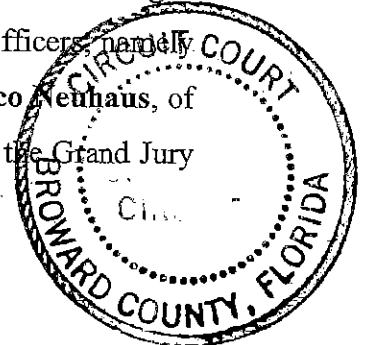
TO: THE HONORABLE JUDGES OF THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA

RE: GRAND JURY INVESTIGATION INTO THE POLICE SHOOTING DEATHS OF HERSON HILAIRE AND HEDSON HILAIRE

On September 5, 2012, your Grand Jury received and considered sworn testimony and other evidence pertaining to the police shooting deaths of **Herson Hilaire** and **Hedson Hilaire**, which occurred on February 1, 2011. Upon considering all of the evidence, your Grand Jury has concluded that the deaths of **Herson Hilaire** and **Hedson Hilaire** resulted from the justifiable use of deadly force under Florida law by **Officer Marc Moretti**, **Officer Damaso Espiritusanto**, **Officer Bosco Neuhaus** and **Officer Michael Bolduc**, all of the City of Miramar Police Department. Therefore, criminal charges against any involved police officer are not warranted. Your Grand Jury accordingly presents this Interim Report detailing its findings.

Your Grand Jury examined the facts surrounding the deaths of **Herson Hilaire** and **Hedson Hilaire**, as testified to under oath by witnesses to events before, during and after the incident, and as further shown by the physical evidence. A total of fourteen (14) witnesses testified under oath before your Grand Jury. Your Grand Jury also received and examined numerous physical exhibits, including diagrams and photographs of the scene and autopsy.

The witnesses who appeared before your Grand Jury included law enforcement officers and civilians, as well as experts in forensic pathology and firearms examination. Among those who testified were three (3) of the four (4) police officers who discharged their firearms at **Herson Hilaire** and **Hedson Hilaire**. These three (3) officers, namely **Officer Marc Moretti**, **Officer Damaso Espiritusanto** and **Officer Bosco Neuhaus**, of the City of Miramar Police Department, each voluntarily appeared before the Grand Jury



after being advised of his constitutional rights and executing a written waiver of any claim to immunity from criminal responsibility.

In reaching the conclusion that the deaths of **Herson Hilaire** and **Hedson Hilaire** resulted from the justifiable use of deadly force under Florida law, your Grand Jury has made findings of fact which are set forth in the ensuing paragraphs:

Your Grand Jury finds that **Officer Marc Moretti**, **Officer Damaso Espiritusanto**, **Officer Bosco Neuhaus** and **Officer Michael Bolduc** were all duly authorized law enforcement officers for the City of Miramar Police Department, who were engaged in the lawful performance of their legal police duties at the time of these police shootings.

Your Grand Jury finds that the use of deadly force by the involved officers commenced when **Herson Hilaire** drove a vehicle off the roadway and at **Officer Marc Moretti**, striking **Officer Moretti** and catapulting him over the vehicle's hood to the ground. **Herson Hilaire's** brother, **Hedson Hilaire**, was riding in the same vehicle in the front passenger's seat. The incident occurred on Tuesday, February 1, 2011 at approximately 9:00 p.m. within the Tuscany Apartments complex located at SW 29th Street and SW 83rd Avenue in the City of Miramar, Broward County, Florida.

Miramar police officers **Michael Bolduc** and **Damasco Espiritusanto** were on foot patrol earlier that evening in the Tuscany Apartments neighborhood as members of the Miramar Police Safe Streets Unit. From a common area outside a window they observed two individuals through some open blinds, later identified as brothers **Herson Hilaire** and **Hedson Hilaire**, engaged in what appeared to be the cutting and packaging of crack cocaine, an activity which they recognized from their police training and experience, and to be handling a racquetball-sized chunk of that substance by the kitchen sink. The officers notified their sergeant, and other members of the Safe Streets Unit as well as the Narcotics Unit, including fellow Miramar police officers **Marc Moretti** and **Bosco Neuhaus**, responded.

A "knock and talk" plan was devised in which officers would knock on the front door of the residence and ask for consent to search the home or otherwise obtain details to put in a search warrant affidavit. Before they could carry out this plan, however, the

two suspects exited the residence and entered a blue Honda Civic vehicle parked nearby in a parking space in the apartment complex parking lot. The officers were then instructed by radio contact with their sergeant to "casually approach" the suspects in the vehicle.

Your Grand Jury finds that the four (4) involved Miramar police officers casually approached the vehicle on foot, without guns drawn, as directed by their sergeant. The officers were dressed in tactical uniforms, all black, with "POLICE" in yellow block letters across the front of chest and back. The blue Honda Civic vehicle, whose driver was later identified as **Herson Hilaire**, first backed up at an angle from the parking space, but instead of proceeding on the roadway and driving away, turned and veered toward the closest officer, **Officer Marc Moretti**, as he was stepping off the sidewalk curb. **Officer Moretti** was approaching with one hand held up in the air, palm out, and was saying, "Hey, can we talk to you?" when that blue Honda Civic vehicle suddenly came towards him.

Your Grand Jury finds from the testimonial and physical evidence that **Officer Moretti** had neither the time nor room to maneuver out of the way of the blue Honda Civic vehicle when it suddenly accelerated towards him. As he was about to be struck by the front of this oncoming vehicle, **Officer Moretti** removed his handgun from his holster and began firing it at the driver of the vehicle. During the ensuing sequence of events, the other three (3) officers involved, namely **Officers Michael Bolduc, Bosco Neuhaus and Damaso Espiritusanto**, also discharged their firearms at the driver.

Your Grand Jury finds that **Officer Moretti** was struck and knocked onto the hood of the blue Honda Civic vehicle and then to the ground close by the vehicle. The vehicle proceeded through the spot where **Officer Moretti** had been standing, and hit a small tree with sufficient force to topple it and damage the vehicle's front bumper by indenting and enveloping it around the tree trunk. As **Officer Moretti** was lying dazed on the ground, the vehicle continued revving with audible sounds of acceleration. At this point **Officer Moretti** was no longer visible to **Officers Michael Bolduc, Bosco Neuhaus and Damaso Espiritusanto**. As the vehicle continued revving, **Officer**

Neuhaus yelled to the vehicle's occupants, "Let me see your hands. Stop, let me see your hands!" without response.

Your Grand Jury finds that **Officers Michael Bolduc, Bosco Neuhaus and Damaso Espiritusanto** thereupon began to fire their police handguns at the driver of the vehicle, based upon their respective reasonable fears that not only had **Officer Moretti** sustained serious bodily harm but that **Officer Moretti** remained in danger of more serious bodily harm or death by being run over again by the revving vehicle.

Your Grand Jury further finds that **Officer Moretti**, when he regained consciousness after momentarily blacking out upon being hit by the vehicle, reasonably believed that he remained in imminent danger of death or great bodily harm based on his proximity to the vehicle and the sound of the revving engine, as well as his awareness of what had just happened to him, and therefore fired his handgun again toward the vehicle in order to stop the driver from running over him again.

Your Grand Jury finds that a second phase of shooting occurred seconds later when the driver of that blue Honda Civic vehicle, **Herson Hilaire**, next exited the driver's door of the vehicle and began fleeing on foot. **Officer Espiritusanto** yelled, "Stop running, stop running, stop running," to no avail. **Officers Moretti, Neuhaus and Espiritusanto** then continued to fire their guns at **Herson Hilaire**, who collapsed on the street about twenty (20) feet from his vehicle.

Your Grand Jury finds that the passenger in the vehicle, later identified as **Hedson Hilaire**, did not get out of the vehicle from his location in the front passenger seat, where he had sustained fatal wounds in the crossfire of gunshots directed at the driver, later identified as his brother, **Herson Hilaire**.

Your Grand Jury finds that **Officers Moretti, Neuhaus and Espiritusanto**, when they continued to fire their guns at **Herson Hilaire** as he was fleeing, each reasonably believed that he remained dangerous based upon his felonious actions they had just witnessed by his running over **Officer Moretti** with a motor vehicle used as a deadly weapon. These actions by **Herson Hilaire** constituted a felony crime, of either Aggravated Battery or Attempted Murder, involving the infliction or threatened infliction of serious physical harm or possible death to **Officer Moretti**.

Your Grand Jury further finds that **Herson Hilaire** ignored repeated commands by the officers to stop, both while operating the vehicle and when he got out and started to run away; that they could not be sure whether he was in actual possession of another deadly weapon such as a firearm; that **Herson Hilaire** was fleeing in a direction where civilians, including children, as well as other officers, had been observed; and that based on his immediate past deadly actions, **Herson Hilaire** presented what the officers reasonably believed to be an imminent threat of serious bodily harm or death to whomever he might next encounter. Your Grand Jury additionally finds that **Herson Hilaire** had a reputation for violence, and that although this was not known to the involved officers at the time of the encounter, it bears on the issue of who was the initial aggressor in this event, which your Grand Jury determines to have been **Herson Hilaire**.

The service weapons used by each of the four (4) involved officers were collected and submitted for expert firearms testing and comparison. Your Grand Jury finds that each of these four (4) weapons, all .40 caliber S&W Glock model 22 pistols, had been fired. Your Grand Jury further finds that all projectiles of comparison value that were recovered from the scene and the autopsies could have been fired in any of the four (4) submitted .40 caliber S&W Glock model 22 pistols belonging respectively to **Officer Marc Moretti**, **Officer Damaso Espiritusanto**, **Officer Bosco Neuhaus** and **Officer Michael Bolduc**.

A total of thirty-seven (37) .40 caliber casings were recovered from the scene, after area searches that night and the following day both visually and with a metal detector. Your Grand Jury has determined that twelve (12) casings were never found due to high grass and other conditions in the area, but nevertheless that the four (4) officers discharged a collective total of forty-nine (49) gunshots, based upon examination of the respective gun magazines, ammunition used or not used, and all of the testimonial as well as physical evidence:

- **Officer Moretti** fired a total of sixteen (16) rounds, of which ten (10) casings were recovered and matched to his gun, and one live round was ejected from his weapon;
- **Officer Espiritusanto** fired a total of seventeen (17) rounds, of which thirteen (13) casings were recovered and matched to his gun;

- **Officer Bolduc** fired a total of eight (8) rounds, of which six (6) casings were recovered and matched to his gun; and
- **Officer Neuhaus** fired a total of eight (8) rounds, of which all eight (8) casings were recovered and matched to his gun.

Your Grand Jury finds that the driver of the Honda Civic motor vehicle which struck **Officer Marc Moretti** was **Herson Hilaire**, who was 28 years old at the time of his death. The cause of **Herson Hilaire's** death was multiple gunshot wounds. The total of seven (7) gunshot wounds that he sustained included: (1) Gunshot wound of right chest; (2) Penetrating gunshot wound of neck; (3) Penetrating gunshot wound of right chest; (4) Penetrating gunshot wound of right lateral chest; (5) Perforating gunshot wound of right back; (6) Perforating gunshot wound of left leg; and (7) Graze wound of left lower leg. There was no evidence of any injury being a contact or close-range gunshot wound, and the order in which each wound was inflicted cannot be determined. Toxicology showed the presence of nicotine, alcohol (0.05 g%), and diphenhydramine (sinus-cold medication), as well as methadone, EDDP (metabolite of methadone) and cannabinoids.

Your Grand Jury finds that the passenger in that same Honda Civic motor vehicle was **Hedson Hilaire**, who was 33 years old at the time of his death. The cause of **Hedson Hilaire's** death was multiple gunshot wounds. The total of six (6) gunshot wounds that he sustained included: (1) Gunshot wound to his head; (2) Graze wound of right shoulder; (3) Penetrating gunshot wound of back; (4) Perforating gunshot wound of right arm; (5) Perforating gunshot wound of right forearm; and (6) Graze gunshot wound of the left leg. Some of the wounds were possibly caused by the same projectiles. There was no evidence of any injury being a contact or close-range gunshot wound, and the order in which each wound was inflicted cannot be determined. Toxicology showed the presence of nicotine and alcohol (0.05 g%) in his body.

Your Grand Jury finds that evidence of cocaine and implements used in the manufacturing process for crack cocaine were later found pursuant to a search warrant executed by police on the apartment in which **Herson Hilaire** and **Hedson Hilaire** had been observed by officers engaged in what the officers recognized as cutting and

packaging of suspected crack cocaine, as well as handling a racquetball-sized chunk of that suspected substance by the kitchen sink.

Your Grand Jury finds that the registered owner of the subject Honda Civic automobile was not present in the vehicle when the shooting occurred, and his whereabouts at that time are to your Grand Jury unknown. Your Grand Jury further finds that this same individual was the lessee of that apartment in which **Herson Hilaire** and **Hedson Hilaire** were observed to be cutting and packaging the crack cocaine at the kitchen sink, and that **Herson Hilaire's** recovered cell phone and related records establish that he was in contact by both text messages and phone calls with that same individual in the time period immediately before **Herson Hilaire** and **Hedson Hilaire** left that apartment and encountered the involved Miramar police officers.

Your Grand Jury has also determined that the drain pipe under the kitchen sink in that apartment was subsequently removed, as reported to the police by the apartment landlord, after the lessee, whose lease had expired, requested to be allowed re-entry on the pretext of removing remaining personal property. Your Grand Jury concludes from this circumstantial evidence that the racquetball-sized chunk of suspected crack cocaine, as observed by officers through the window on the night of the incident, had been hidden in that kitchen sink drain prior to **Herson Hilaire** and **Hedson Hilaire** leaving the apartment that night and likely was retrieved by the lessee when he was allowed re-entry. This lessee was also not only the same person with whom **Herson Hilaire** had exchanged text messages and phone calls immediately prior to leaving the apartment on the night of the shootings, but the person who was the registered owner of the blue Honda Civic vehicle in which **Herson Hilaire** and **Hedson Hilaire** encountered the police and with which **Herson Hilaire** struck **Officer Moretti**.

Your Grand Jury finds that **Officer Marc Moretti**, **Officer Damaso Espiritusanto**, **Officer Bosco Neuhaus** and **Officer Michael Bolduc** were all duly authorized law enforcement officers who were acting within the course and scope of their law enforcement duties in:

- Attempting a lawful encounter to speak with **Herson Hilaire** and **Hedson Hilaire** about suspected illegal drug activity in which they had just been observed to be engaged;

- Trying to prevent **Herson Hilaire** from inflicting bodily harm to **Officer Marc Moretti** with a motor vehicle driven by **Herson Hilaire**;
- Endeavoring to arrest **Herson Hilaire** for the forcible felony of either Aggravated Battery or Attempted Murder of **Officer Marc Moretti**; and
- Stopping **Herson Hilaire** as a fleeing felon whom they reasonably believed had committed, and in fact in their presence did commit, a crime involving the infliction or threatened infliction of serious physical harm to **Officer Marc Moretti**, and who posed a continuing threat of death or serious physical harm to others.

Your Grand Jury further finds that deadly force was necessary to prevent the arrest of **Herson Hilaire** from being defeated by such flight; that warning had been given to **Herson Hilaire**; and that **Herson Hilaire** also posed a threat of death or serious physical harm to others.

Your Grand Jury also finds that the shooting of **Hedson Hilaire** by the involved officers was inadvertent, and occurred when **Officer Marc Moretti**, **Officer Damaso Espiritusanto**, **Officer Bosco Neuhaus** and **Officer Michael Bolduc** were acting in justifiable self-defense or defense of a fellow officer by shooting at **Herson Hilaire** while **Herson Hilaire** was driving the blue Honda Civic vehicle which struck **Officer Moretti** and continued to pose an imminent danger of death or great bodily harm to him.

Your Grand Jury has determined that at the time **Officer Marc Moretti**, **Officer Damaso Espiritusanto**, **Officer Bosco Neuhaus** and **Officer Michael Bolduc** discharged their respective firearms intentionally at **Herson Hilaire** and inadvertently at **Hedson Hilaire**, each of the officers reasonably believed that such deadly force was necessary to defend either himself or a fellow officer or others from imminent death or great bodily harm.

Your Grand Jury finds that the appearance of danger to **Officer Marc Moretti**, **Officer Damaso Espiritusanto**, **Officer Bosco Neuhaus** and **Officer Michael Bolduc** was so real that it met the legal standard that "a reasonably cautious and prudent person under the same circumstances would have believed that the danger could be avoided only

through the use of that force;" and that based upon appearances, **Officer Marc Moretti, Officer Damaso Espiritusanto, Officer Bosco Neuhaus and Officer Michael Bolduc** each actually believed that the danger was real.

Your Grand Jury further finds that at the times **Officer Marc Moretti, Officer Damaso Espiritusanto, Officer Bosco Neuhaus and Officer Michael Bolduc** discharged their respective firearms, they were all engaged in the lawful execution of a legal duty within their jurisdiction, and had the legal right to be where they were and to stand their ground and meet force with force, including deadly force, as **Officer Marc Moretti, Officer Damaso Espiritusanto, Officer Bosco Neuhaus and Officer Michael Bolduc** each reasonably believed that it was necessary to do so to prevent imminent death or great bodily harm to themselves or another, or to prevent the commission of a forcible felony.

In conclusion, and based upon its careful analysis of all the testimonial and physical evidence, your Grand Jury has made the following findings:

- (1) **Officer Marc Moretti, Officer Damaso Espiritusanto, Officer Bosco Neuhaus and Officer Michael Bolduc** were all duly authorized law enforcement officers for the City of Miramar Police Department, who were engaged in the lawful performance of their legal police duties at the time of this police shooting.
- (2) **Officer Marc Moretti, Officer Damaso Espiritusanto, Officer Bosco Neuhaus and Officer Michael Bolduc** jointly used deadly force against **Herson Hilaire**, causing his death and inadvertently causing the death of **Hedson Hilaire**, by each discharging his service weapon at **Herson Hilaire** based upon their respective reasonable beliefs that **Herson Hilaire** was committing a forcible felony of aggravated battery or attempted murder as well as resisting them with violence in a manner that appeared to them to be presenting an imminent danger of death or great bodily harm to **Officer Marc Moretti**.
- (3) **Officer Marc Moretti, Officer Damaso Espiritusanto, Officer Bosco Neuhaus and Officer Michael Bolduc** unintentionally injured and killed **Hedson Hilaire** while using justifiable deadly force against **Herson Hilaire** in self-defense or defense of others.
- (4) **Officer Marc Moretti, Officer Damaso Espiritusanto, Officer Bosco Neuhaus and Officer Michael Bolduc** were justified in using that deadly force against **Herson Hilaire**, as each of them reasonably believed that such force was necessary to prevent imminent death or great bodily harm to himself or to his fellow officer.

- (5) **Officer Marc Moretti, Officer Damaso Espiritusanto and Officer Bosco Neuhaus** were also justified in using that deadly force against **Herson Hilaire** while endeavoring to arrest him as a fleeing felon, for which deadly force was necessary to prevent the arrest from being defeated by such flight; to whom warning had been given; whom they reasonably believed had committed a crime involving the infliction or threatened infliction of serious physical harm to **Officer Marc Moretti**; and who further posed a threat of death or serious physical harm to others.

ACCORDINGLY, your Grand Jury concludes that the police shooting deaths of **Herson Hilaire** and **Hedson Hilaire** were the result of justifiable use of deadly force under Florida law, and no true bill or criminal charges against any involved police officer should issue.

RESPECTFULLY SUBMITTED this 3 day of October, 2012.



CHRISTOPHER STELLA
FOREPERSON
GRAND JURY, SPRING TERM 2012