

Grand jury: Miramar police justified in brothers' shooting deaths, but one's death 'inadvertent'



Herson Hilaire, left, and his brother Hedson were shot to death by Miramar police two years ago. (Broward Bulldog /February 5, 2013)

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10:37 a.m. EST, February 5, 2013

Two years ago, [Miramar](#) police shot to death two brothers in a residential parking lot during a nighttime drug investigation.

Now it turns out that one of the men — hit six times — was killed by mistake, according to a **Broward County** Grand Jury report.

Still, no criminal charges will be filed against the four officers who together fired 49 shots at Herson and Hedson Hilaire after Herson allegedly tried to run down an officer at the Tuscany Apartments complex about 9 p.m. Feb. 1, 2011.

According to the grand jury, both men's deaths at the hands of police were justified.

"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," says the 10-page report that publicly identifies those officers for the first time.

Neither of the Hilaire brothers is described in the report as having been armed.

Hedson Hilaire, 33, died in the passenger seat of the blue, 2003 Honda Civic his brother was driving. Herson Hilaire, 28, piled out of the car after the shooting started and ran, only to be gunned down on the street about 20 feet away, the report says.

The grand jury, whose report was made public in October to little notice, wrote that it examined "numerous" physical exhibits and took sworn testimony from 14 witnesses, including civilians. It is unclear from the report whether any of those civilian witnesses observed the shooting.

Officers Moretti, Espiritusanto and Neuhaus appeared voluntarily to testify before the grand jury. Officer Bolduc did not testify. The report does not say why.

Grand jury account

Here's the grand jury's official account of how the Hilaire brothers died:

Police Safe Streets Unit Officers Bolduc and Espiritusanto were on foot patrol that evening in the apartment complex at Southwest 29th Street and 83rd Avenue.

"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 they recognized from their police training and experience," the report says.

That alleged drug packaging included handling a "racquetball-sized chunk" of crack by the kitchen sink.

Officers Bolduc and Espiritusanto notified their sergeant and Moretti and Neuhaus. Initially, they planned what's known in police parlance as a "knock and talk" — knock on the front door and ask for consent to search the home or obtain other information needed to obtain a search warrant.

Before they could do that, however, the Hilaire brothers walked outside and got in the blue Honda parked nearby.

On the police radio, the unidentified sergeant instructed the officers to "casually approach" the suspects.

The four 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 report says.

Herson Hilaire, in the driver's seat, backed out of 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."

The report says Moretti had been approaching the car "with one hand held up in the air, palm out, and saying, 'Hey can we talk to you?' when that blue Honda Civic suddenly came towards him."

As he was about to be struck, Moretti "removed his handgun from his holster and began firing it at the driver." The other three officers did, too.

Officer struck by car

Moretti was struck by the car and knocked onto the hood and off onto the ground. The vehicle went through the spot where Moretti had been standing and "hit a tree with sufficient force to topple it and damage the vehicle's front bumper by indenting and enveloping it around the tree trunk," the report says. Moretti suffered minor injuries.

The car's engine, however, continued to rev "with audible sounds of acceleration."

Moretti was momentarily knocked unconscious on the ground near the car and was not visible to the other officers. Officer Neuhaus yelled, "Let me see your hands. Stop, let me see your hands!" to no response.

Fearing for Moretti's safety, the officers opened fire again at the driver.

Moretti quickly came to, heard the engine revving, and also began firing.

Seconds later, Herson Hilaire exited the car and ran. "Stop running, stop running, stop running," Espiritusanto yelled.

When Herson Hilaire didn't stop Moretti, Neuhaus and Espiritusanto fired again. He collapsed on the street about 20 feet from the Honda.

His brother, Hedson, was dead in the passenger seat after sustaining "fatal wounds in the crossfire of gunshots directed at the driver," the report says.

The four officers each fired the same type of service weapon: .40 Smith and Wesson Glock Model 22 pistols.

Four officers: 49 shots

In all, 49 shots were fired: 17 by Espiritusanto, 16 by Moretti, and eight each by Bolduc and Neuhaus.

The driver, Herson Hilaire, was shot seven times, including chest, neck and back. Toxicology showed the presence of a small amount of alcohol, [methadone](#), sinus-cold medication and cannabinoids — a chemical compound found in marijuana.

The report says Herson Hilaire had a "reputation for violence ... that bears on the issue of who was the initial aggressor in this event." The officers who saw him "fleeing in a direction where civilians, including children, as well as other officers had been observed," would have "reasonably believed" him to be an imminent threat "to whomever he might next encounter."

Hedson Hilaire was shot six times, including the head and back. Only a small measure of alcohol was found in his body. The grand jury said some of his wounds may have been caused by the same bullets.

The brothers lived in Miami. The grand jury reported that the Honda and the Miramar apartment were both in the name of another individual it did not identify and who could not be located. Phone records showed that person was in touch with the brothers shortly before they left the apartment.

"Evidence of cocaine" was found in the apartment by police, but is not detailed in the report.

Instead, the grand jury said it had accepted "circumstantial evidence" provided by the landlord that the unidentified tenant later returned after the lease had expired and removed the racquetball-sized chunk of crack cocaine from the drainpipe under the kitchen sink.

The report is signed by Grand Jury Foreman Christopher Stella.

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