



REPORT ON USE OF FORCE

Legal Analysis Surrounding the Death of Fred Brown on April 23, 2020

INTRODUCTION

On April 23, 2020, 34-year-old Fred Brown (hereinafter "Decedent") was shot and killed during an altercation with North Las Vegas Police Department (hereinafter "NLVPD") Officer Alexander Cuevas. The incident took place around 7:17 am at the La Ensenada Villas apartment complex located at the intersection of East Carey and North 5th Street in North Las Vegas, Nevada. The shooting occurred directly after a physical altercation between Officer Cuevas and Decedent, wherein Decedent strangled Officer Cuevas for an extended period of time. After breaking free from Decedent, Officer Cuevas fired his duty weapon three times, fatally wounding Decedent, who died from gunshot wounds at University Medical Center.

Synopsis

At 6:05 am, on April 23, 2020, NLVPD Dispatch received a call for service from the La Ensenada Villas apartment complex, located at 711 East Nelson Avenue. The caller was a concerned neighbor, M.E., who saw Decedent and his wife, R.M., in a physical altercation. M.E. told the dispatcher she saw Decedent punch R.M. Shortly thereafter, R.M. called NLVPD Dispatch from a nearby convenience store and told the dispatcher that Decedent physically attacked her.

NLVPD Officers Alexander Cuevas and Chasity Smith were dispatched at 6:07 am to meet with R.M. at the above-mentioned convenience store. Upon arrival, Officer Cuevas and Smith were unable to locate R.M. at the convenience store. NLVPD Dispatch contacted M.E., who told the operator that she was with R.M. in the parking lot of the La Ensenada Villas apartments. Both officers were dispatched to that area and contacted R.M.

While Officer Smith talked with R.M., Officer Cuevas handled an unrelated incident in the same apartment complex. R.M. told Officer Smith that she and her husband, Decedent, were arguing in their apartment, and the argument turned physical. She explained that Decedent chased her through the parking lot, punched her in the face and took a shoe and cellular phone from her.

After Officer Cuevas returned from investigating the unrelated incident, he met with Officer Smith and discussed the case. The officers believed they had probable cause to arrest Decedent for battery constituting domestic violence. Officers attempted to contact Decedent at his apartment (Apartment 1028), but no one answered the door. At that point, officers planned on submitting the case to the North Las Vegas City Attorney's office for prosecution since R.M. was out of the apartment and no longer in danger.

However, R.M. refused to leave the area and told officers that she needed to get into her apartment for her shoe and cellular phone before going to work. With officers present, R.M. went to her apartment and had one of her children open the door. Officers Cuevas and Smith followed R.M. into the apartment.

Officers contacted Decedent in his bedroom where he was sleeping. After being woken up by officers, Decedent was immediately aggressive with them. Decedent yelled at officers and told them he was not going to speak with them. Officers exited the bedroom and Decedent followed them out to the front room while repeatedly telling officers, "Don't touch me."

Decedent continued to yell at officers in the front room of the apartment. Decedent walked toward Officer Cuevas, and Officer Cuevas attempted to grab Decedent in an attempt to take him into custody. A physical struggle ensued. During the struggle, Decedent, a much larger individual than either officer¹, was able to put Officer Cuevas in a rear chokehold, wherein Decedent was behind Officer Cuevas and tightly wrapped an arm around the officer's neck, strangling him. At one point, Decedent was able to lift Officer Cuevas off the ground while his arm was around the officer's neck.

Officer Smith attempted to pull Decedent off Officer Cuevas but was ineffective due to the considerable size and strength difference between them. The altercation spilled outside of Decedent's apartment. Officer Cuevas was able to get out of Decedent's stranglehold and immediately fired three shots at Decedent, striking him in the torso area.

¹ The Clark County Coroner's Office documents showed that Decedent was 75 inches tall and weighed 291 pounds. NLVPD documents listed Officer Smith as 66 inches tall and weighing 137 pounds. The same documents listed Officer Cuevas as 65 inches tall and weighing 170 pounds.

Afterwards, Officer Smith placed Decedent in handcuffs, and both officers performed CPR on him while medical was called to the scene. Decedent was transported to University Medical Center where he succumbed to his injuries. The NLVPD homicide team was called out to the scene and assumed responsibility for the investigation.

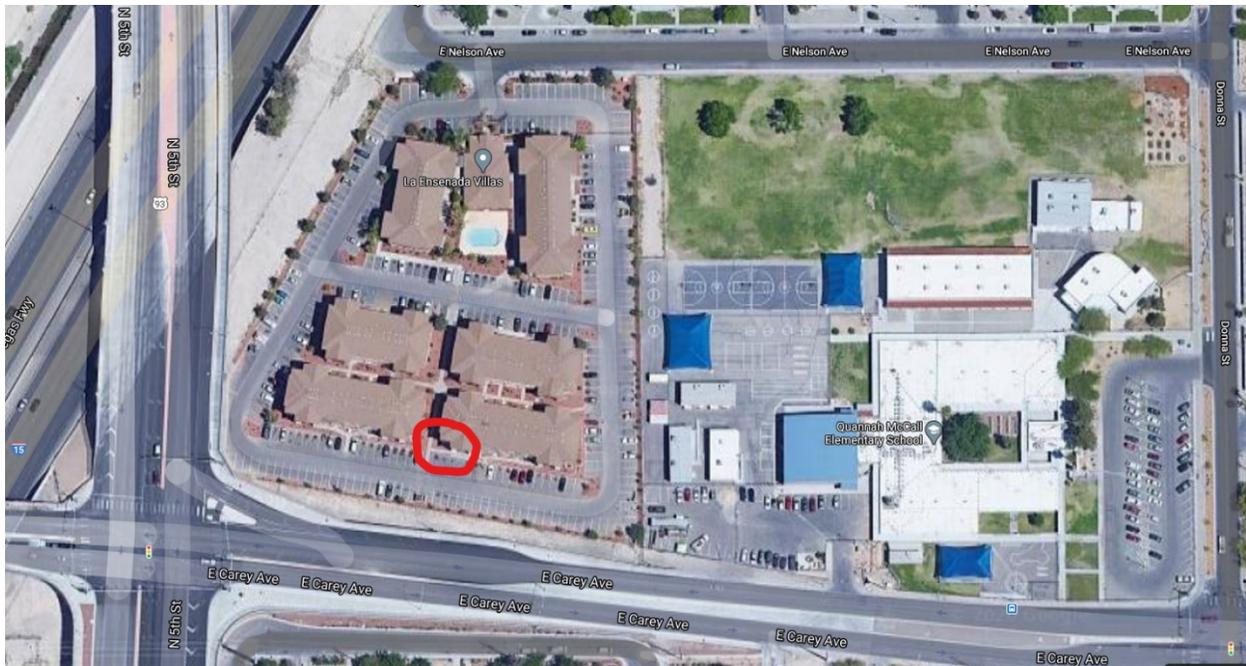
The Clark County District Attorney's Office has completed its review of the April 23, 2020, death of Decedent Fred Brown. It has been determined that, based on the evidence currently available and subject to the discovery of any new or additional evidence, the actions of Officer Cuevas were not criminal in nature. This review is based upon all the evidence currently available.

This report explains why criminal charges will not be forthcoming against Officer Cuevas. It is not intended to recount every detail, answer every question, or resolve every factual conflict regarding this police encounter. It is meant to be considered in conjunction with the Police Fatality Public Fact-Finding Review which was held on June 24, 2021.

This report is intended solely for the purpose of explaining why, based upon the facts known at this time, the conduct of the officer was not criminal. This decision, premised upon criminal-law standards, is not meant to limit any administrative action by the NLVPD or to suggest the existence or non-existence of civil actions by any person, where less stringent laws and burdens of proof apply.

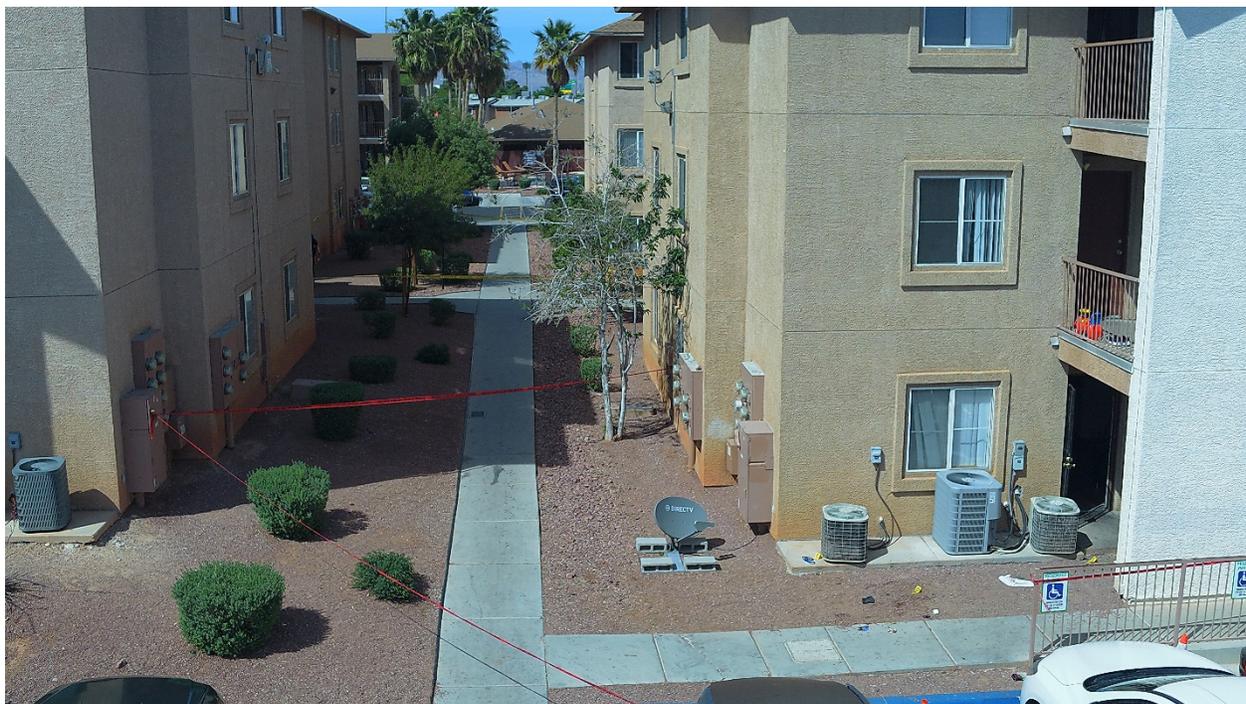
DESCRIPTION OF THE SCENE

The La Ensenada Villas Apartment complex is located at 711 East Nelson Avenue in North Las Vegas. It is a three story, high-density, apartment complex that borders Quannah McCall Elementary School on the east, Carey Avenue on the south, and Interstate 15 on the west.



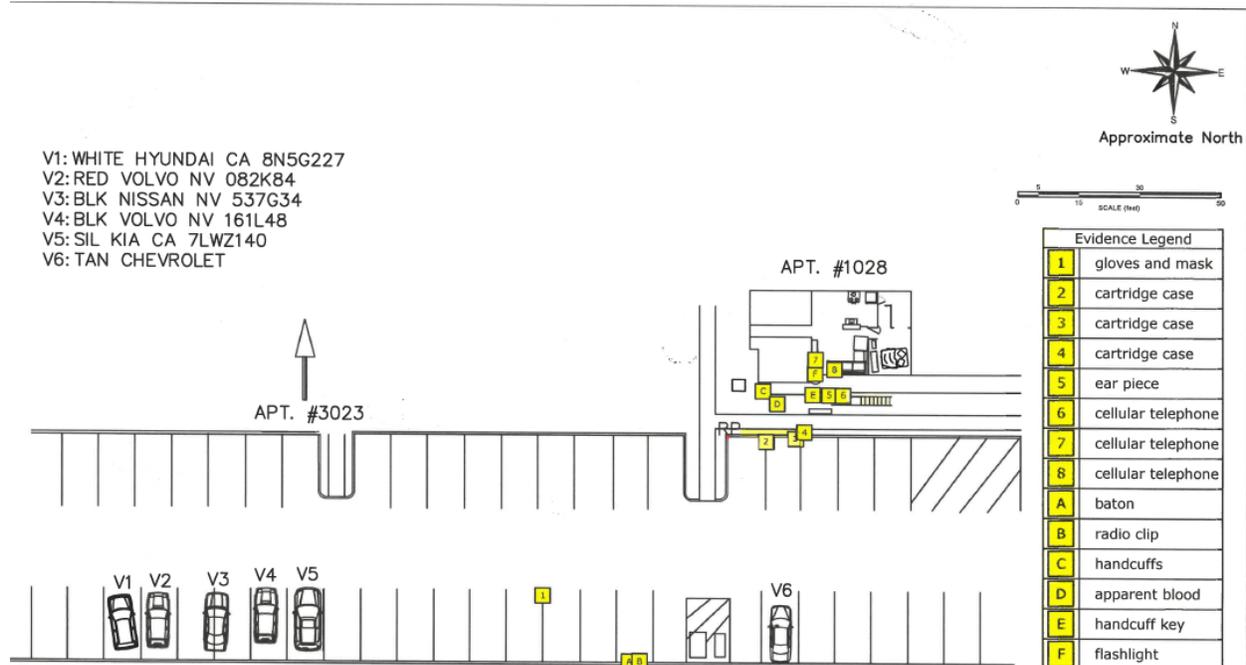
Google map of the location of the incident. Red circle shows the area around Apartment 1028

Apartment 1028, where the incident began, is located on the first floor at the southwest corner of Building D. There is a small landscaping area in front of the apartment which separates the sidewalk bordering the parking lot from the residential area.



Photograph showing Apartment 1028, the first-floor apartment where the incident began. Yellow evidence placards in the rock landscaping mark where some of the evidence was located.

EVIDENCE



NLVPD crime scene analysts processed, documented and photographed the scene. This included documenting several vehicles that may have had some connection with the incident. The vehicle documented as V4 (black Volvo) was determined to be the vehicle that witness M.E. was seated in when she observed Decedent chasing and attacking R.M. in the parking lot earlier in the day.

Three 9mm cartridge cases with the headstamp, “WCC +P+”, a broken police radio piece and Nokia cellular phone² were located around the landscape area and sidewalk in front of Apartment 1028. Medical equipment (scissors and gauzes) as well as police equipment belonging to Officers Cuevas and Smith were also found in that general area.

A search warrant for Apartment 1028 was executed by NLVPD. Investigators found a police flashlight in the front doorway but nothing else of evidentiary value.

² It was discovered during the investigation that cellular phone belonged to a neighbor and had no evidentiary value.

INVESTIGATION

Information from Witnesses

I. Civilian Witnesses

R.M.

On April 23, 2020, at approximately 3:59 pm, NLVPD Homicide Detective David Smith conducted an audio recorded interview with R.M.

R.M. was married to Decedent and had been with him for the last 13 years. They moved to Las Vegas from California about two years before this incident. R.M. told investigators that Decedent was a good father and had never been aggressive to her until May 2019. At that time, Decedent's personality changed, he was acting paranoid and became physically aggressive toward R.M. Decedent would put band-aids or socks on the smoke detectors in the apartment because he believed the smoke detectors' lights were cameras and that someone was watching him. Around July to September 2019, Decedent began to hit R.M. She believed the change of personality had to do with drug use and the death of Decedent's mother. Moreover, Decedent stopped working around March 2020.

The day before the incident, R.M. confronted Decedent about financial issues. Decedent got upset and smoked a "white stick" while sitting in his car. Later that night, Decedent called R.M. names and refused to let her get into their bed, so R.M. slept in another room.

Around 4:50 a.m. on April 23, 2020, Decedent woke R.M. up by yelling at her. He accused R.M. of being unfaithful to him and bringing "voodoo and witchcraft" to the house. Decedent got physical with R.M., kicked her in her "private area" and threw a laundry basket at her. Decedent finally stopped when their oldest daughter told him to stop.

R.M. got dressed for work and prepared breakfast for her children while Decedent continued to verbally berate her. When R.M. left the apartment to go to work, Decedent began to chase her from the apartment into the parking lot. R.M. told investigators that Decedent reached her near a couple of cars in the parking lot, grabbed her and hit her in the lip. Decedent also took R.M.'s phone and a shoe before heading back to the apartment.

R.M. got into her vehicle, and Decedent once again attacked her. Per R.M., Decedent "put his whole body through the window and started hitting me upside my head." When Decedent eventually removed himself from the window, R.M. was able to drive away from the area. She went to a nearby convenience store and called 9-1-1. Afterwards, she

returned to the La Ensenada Villas parking lot to wait for the police. While in the parking lot, she met with M.E. who waited for the police with her.

Officer Smith and Officer Cuevas arrived at the parking lot and contacted R.M. She told the officers all the information stated above, as well as the fact that Decedent just got out of jail a week prior for domestic violence. Officers attempted to contact Decedent at the apartment by knocking on the door, but no one answered.

R.M. told investigators that she needed to get into the apartment to get her phone and shoe, so she went to the apartment with the officers and had one of her children open the door. The officers walked in with R.M. She quickly retrieved her cellular phone and ran out of the door. As she left, she could hear the officers telling Decedent to put his hands behind his back.

The next thing R.M. remembered was Decedent had Officer Cuevas by the neck near the front door. She told investigators, "The guy officer (Officer Cuevas), he couldn't even, he couldn't even move, like, because my husband's a big guy." She believed the female officer (Officer Smith) ordered Decedent to release Officer Cuevas and when he did not, she shot Decedent two or three times. R.M. heard Decedent say something like, "thank you lord," before he fell to the ground. R.M. said Officer Cuevas immediately started doing chest compressions on Decedent despite "still tryin to catch his breath."

R.M. told investigators that she wished officers used a taser on Decedent instead of shooting him, but she understood their actions because the male officer's "life was in jeopardy."

M.E.

On April 23, 2020, at approximately 12:23 pm, NLVPD Homicide Detective David Smith conducted an audio recorded interview with M.E.

M.E. lived at the La Ensenada Villas apartment complex and just got back from work in the morning hours of April 23, 2020. She backed her vehicle into a parking spot, so it faced toward the residential units. M.E. saw Decedent, who was only wearing underwear and socks, chasing R.M. throughout the parking lot. They ended up between two cars parked three spots west of M.E.'s vehicle.³ M.E. observed Decedent punch R.M. in the face and reach for something. She then heard R.M. scream, "Give me back my phone." Afterwards, R.M. headed back toward her apartment.

³ Per M.E.'s description, Decedent and R.M. were between vehicles marked as V1 and V2 in the diagram published on page 5 of this report.

M.E. got out of her vehicle and headed to her apartment, which was on the third floor of the apartment complex. When M.E. reached her apartment, she heard screaming coming from the same parking lot. When she looked down toward the parking lot, she saw Decedent entire upper body inside a silver Kia's⁴ window punching R.M. who was inside the vehicle. She also heard a child scream, "(d)addy, no." At that time, M.E. called 9-1-1 to report the attack. While on the phone with NLVPD, M.E. saw the silver Kia drive off toward the entrance/exit of the apartment complex.

About ten minutes later, M.E. was walking her dogs with her husband when she saw the silver Kia return to the apartment complex. M.E. told R.M. that she had called the police. R.M. told M.E. that she had also called the police from a nearby convenience store. M.E. told R.M. to park by her black Volvo and waited with her until the police arrived.

M.E. told investigators that the female officer arrived first (Officer Smith) followed by the "little, short" officer (Officer Cuevas). M.E. provided the officers with a statement and went back to her third-floor apartment. While inside the apartment, she heard somebody yell, "stop" and "get down" followed by three gunshots. M.E. only heard and did not observe the actual shooting.

V.N.

On April 23, 2020, at approximately 12:58 pm, NLVPD Homicide Detective David Smith conducted an audio recorded interview with V.N.

V.N. lived in the apartment above Decedent and R.N. for about a year. Around 6:40 am, V.N. and her daughter, L.N., went for a morning walk and noticed police vehicles in the parking lot. About fifteen minutes later, V.N. returned from her walk and saw R.M. knocking on her own apartment door (apartment 1028). Someone opened the door and V.N. saw R.M. walk inside followed by two uniformed officers.

V.N. and L.N. got into their van parked in front of Apartment 1028 while they waited for V.N.'s husband to come down from their apartment. While in the van, V.N. heard noises coming from the apartment that she described as "stuff falling, maybe breaking, maybe hitting the wall." V.N. saw Decedent and Officer Cuevas exit the apartment.

V.N. told investigators that Decedent was behind Officer Cuevas with his arm around the officer's neck. She further observed that Officer Cuevas' feet were off the ground while he was being choked by Decedent. V.N. saw Officer Smith trying to pry Decedent's arm off of Officer Cuevas' neck while giving Decedent commands to release him. V.N. told

⁴ Per M.E.'s description and a later statement by R.M., R.M. was in the vehicle marked as V5 in the diagram published on page 5 of this report.

investigators that she thought the Decedent “was going to like, choke him (Officer Cuevas) to death.”

During the struggle, Officer Cuevas and Decedent fell to the ground which allowed Officer Cuevas to get out of Decedent’s chokehold. She said Officer Cuevas quickly got off the ground, drew his gun and fired at Decedent. Afterwards, she observed Officer Cuevas immediately begin CPR on Decedent.

During the struggle, V.N. noticed R.M. and her young daughter were outside. She said R.M. was yelling at Decedent to calm down.

L.N.

On April 23, 2020, at approximately 1:23 pm, NLVPD Homicide Detective David Smith conducted an audio recorded interview with L.N. with her mother, V.N., present.

L.N. told investigators that when she returned from her morning walk with her mother, she got into her family’s van. She believed the van was about 15 to 20 feet from Apartment 1028’s front door. From inside the van, she saw two uniformed police officers enter Apartment 1028. L.N. heard Decedent yell from inside the apartment, “get off me” or “don’t touch me.” She then saw Decedent and two officers exit the apartment. Decedent had Officer Cuevas in what L.N. she called a “head lock,” which she described as Decedent having both his arms around the officer’s neck while choking him.

L.N. told investigators that Decedent’s grip on Officer Cuevas neck was broken when both men fell to the ground. When he got free, Officer Cuevas drew his weapon and fired three times. Following the shooting, she observed Officer Cuevas begin life-saving measures on Decedent.

B.B.

On April 23, 2020, NLVPD Detective Robinson conducted an audio recorded interview with B.B.

B.B. is the 11-year-old daughter of R.M. and Decedent. She awoke on April 23, 2020 to Decedent yelling at R.M. She saw Decedent chase R.M. around the parking lot and hit her while they were outside. Later, R.M. came back to the apartment with the police.

B.B. told investigators that the police officer tried to get Decedent to put his hands behind his back, but Decedent did not want to go to jail. A struggle occurred and Decedent “strangled” the male police officer. B.B. said the female officer tried to stop Decedent from choking the male officer but she “couldn’t, like, do nothing.” She went on to say

Decedent was choking the male officer, “real real bad” and the female officer shot Decedent.

B.B. told the investigator that she did not look out the window of the apartment until she heard shots, so she did not see the actual shooting just parts of the physical altercation before the shooting.

II. Law Enforcement Statements

Officer Chasity Smith

On April 27, 2020, at approximately 9:15 am, NLVPD Homicide Detective David Smith conducted an audio recorded interview with Officer Chasity Smith.

Officer Smith told investigators that on April 23, 2020, she and Officer Cuevas were dispatched to meet a victim of an alleged domestic battery incident at La Ensenada Villas apartments located at 711 East Nelson. Originally, officers were dispatched to a nearby convenience store but the victim, R.M., had gone back to the La Ensenada Villas apartments before police arrived.

Officer Smith contacted R.M. and M.E. at the apartment complex. R.M. told Officer Smith that she and Decedent had been arguing, Decedent chased her throughout the parking lot, punched her in the face and took her shoe and cellular phone. M.E. also told Officer Smith that she observed Decedent hitting R.M. Officer Smith took photographs of R.M.’s injuries.

While Officer Smith talked with R.M. and M.E., Officer Cuevas responded to an unrelated incident at the same apartment complex. After he cleared that call, Officer Smith discussed the domestic battery incident involving the Decedent with Officer Cuevas. Officer Smith told investigators that they believed they had enough probable cause to arrest Decedent for a battery constituting domestic violence. The officers attempted to contact Decedent at Apartment 1028, but no one answered the door.

Officer Smith told investigators that they planned on submitting the case to the North Las Vegas City Attorney’s office but R.M. insisted that she needed to get into the apartment to get her shoe and cellular phone before going to work. R.M. walked to Apartment 1028 and had one of her children open the door. Officer Smith and Officer Cuevas followed her into the apartment.

While inside the apartment, Officer Smith said one of the children pointed to the bedroom where Decedent was sleeping. Officer Smith entered the bedroom and helped

wake up Decedent, who was “aggressive right away.” He stood up on the mattress and yelled at the officers. Officer Smith said she called over the radio for backup officers at that time. Eventually, Decedent followed the officers out of the bedroom into the front room. Decedent yelled, “Don’t touch me. I don’t have nothing to say to y’all.” Officer Smith transitioned from holding her handgun to her taser at this point.

Per Officer Smith, Decedent walked toward the officers. Officer Cuevas tried to grab Decedent from the right side, while Officer Smith attempted to grab Decedent from the left side to take him into custody. This attempt failed and Officer Smith dropped her taser during the initial physical struggle. Decedent was able to grab Officer Cuevas and put him in a “headlock.” Officer Smith described the “headlock” as Decedent having both arms around Officer Cuevas’s neck while squeezing.

Officer Smith tried to pull Decedent’s arms off Officer Cuevas’s neck, but she was unable to move them. She said her focus was on trying to get Officer Cuevas free because it appeared to her that Decedent was using “deadly force” and trying to kill Officer Cuevas. She further described the struggle as, “life or death.” She told investigators that she did not shoot Decedent at that time because she believed she would also hit Officer Cuevas.

Decedent carried Officer Cuevas outside the apartment by his neck. While outside, Officer Smith transitioned to her firearm. Officer Cuevas was able to somehow get free from Decedent, turned around and immediately fired at Decedent. Officer Smith did not know how Officer Cuevas was able to get free. After Decedent fell, Officer Smith put handcuffs on him, and the officers attempted to take life-saving measures with Decedent.

Officer Smith told investigators that, if she had a clear shot at Decedent, she could have taken without endangering Officer Cuevas, she would have done so based on her fear for Officer Cuevas’s life.

Officer Alexander Cuevas

On April 27, 2020, at approximately 10:12 am, NLVPD Homicide Detective David Smith conducted an audio recorded interview with Officer Alexander Cuevas.

Officer Cuevas told investigators that right before the incident, he was dispatched to a 7-11 store located on Las Vegas Boulevard and Civic Center for a domestic dispute call. The person reporting was not present when he arrived. Later, he responded with Officer Smith to La Ensenada Villas apartments located at 711 East Nelson Avenue.

When Officer Cuevas arrived, Officer Smith was already talking with the person reporting (R.M.) and a witness (M.E.). Shortly after his arrival, Officer Cuevas heard a gunshot, which

led him to respond and take a report for an accidental discharge incident which was not related to the original domestic disturbance call.

After finishing with the accidental discharge, Officer Cuevas went with Officer Smith to contact Decedent at his apartment. The officers knocked several times, but no one answered the door. The officers explained to R.M. that they would file a report. However, R.M. wanted to go to the apartment to get her cellular phone and shoe. When R.M. began to walk to the apartment, Officer Smith told Officer Cuevas, “(w)e can’t just let her go in alone,” so both officers went to the apartment with R.M.

R.M. knocked on the door and one her children opened the door. R.M. entered the apartment first, followed by the two officers. R.M. told Officer Smith that Decedent was in the bedroom. Both officers went into the bedroom and found Decedent sleeping. Officers woke Decedent up and gave him commands to come out of the bedroom.

Officer Cuevas told investigators that Decedent appeared, “confused, angry” when he woke up. He immediately yelled at officers. Officer Cuevas believed Officer Smith told Decedent that he was going to be under arrest. When Decedent stood up, Officer Cuevas realized he was a large man, believing him to be 6’5’ with a muscular build. While Decedent started to walk toward the officers, Officer Cuevas originally had his taser out but holstered it based on how close Decedent got to him. He believed the taser would have been ineffective at that distance.

Officer Cuevas told investigators that Decedent continued to advance toward him while disobeying commands to turn around, so he went “hands on” with Decedent, by trying to grab his right arm at the same time Officer Smith grabbed for Decedent’s left side. Decedent punched Officer Cuevas in the face, while saying, “you stupid motherfucker.” The punch dazed Officer Cuevas and Decedent pushed the officer toward the ground.

At some point the physical struggle got close to the front door. Officer Cuevas said Decedent was able to get his right arm around his shoulder/face area and began “squeezing really tight.” Eventually, Decedent moved his arm around Officer Cuevas neck and squeezed even tighter. Officer Cuevas told investigators that he was seeing stars, losing consciousness and was afraid he was going to die since Decedent continued to squeeze his neck with force. He tried to tell Officer Smith to shoot Decedent at this point. Officer Cuevas said he recognized that he was about to lose consciousness because of the “light (coming) in from the sides of my vision” and that he was seeing “dots.”

Officer Cuevas did not know how, but he was able to break free from Decedent. After breaking free, Officer Cuevas believed he shot four times at Decedent.⁵ He heard Decedent say, “(t)hank God” and fall to the ground. Investigators asked why he stopped firing after four rounds; Officer Cuevas told investigators he shot Decedent to “stop the threat,” and he stopped shooting because “he (Decedent) stopped.” Afterwards, Officer Cuevas called for medical and started performing CPR on Decedent.

SANE EXAMINATION

On April 23, 2020, Officer Cuevas was transported to University Medical Center for a strangulation exam performed by SANE⁶ Nurse Jeri Dermanelian. Officer Cuevas told Nurse Dermanelian that Decedent’s forearm covered his nostrils and mouth which prevented him from breathing. He also told Nurse Dermanelian that later in the fight, Decedent used his arm to squeeze Officer Cuevas’s anterior and lateral part of the neck, preventing him from breathing. Following the shooting, Officer Cuevas had several symptoms related to strangulation including coughing, raspy voice, headaches, nausea and difficulty swallowing.

Nurse Dermanelian noted that Officer Cuevas had a “red contusion” to the left side of his neck at his hairline, a “red erythemic contusion” behind his left ear, a contusion to his right cheek, a contusion to his uvula, a contusion to his left posterior pillar, a contusion to his lower lip and red contusions to his tracheal region and neck. She also noted that Officer Cuevas had dried blood in his left nostril as well as abrasions on both knees.

Officer Cuevas tested negative for any alcohol or drugs in his system. Based on her examination, Nurse Dermanelian believed there was evidence to show that Officer Cuevas was suffocated and strangled.

BODY-WORN CAMERAS

Officer Cuevas and Smith were equipped with body-worn cameras (“BWC”) which were activated at the time of the incident. The BWC footage was generally consistent with their respective statements and recollections. The relevant BWC footage depicts the following:

Officer Smith

Officer Smith’s BWC began recording while she was at La Ensenada Villas talking with R.M. On the BWC, R.M. recounted Decedent’s actions during the morning including kicking her in the bedroom, chasing her through the parking lot, physically attacking her in the parking lot,

⁵ A later weapon countdown determined that Officer Cuevas actually fired three times.

⁶ SANE stands for Sexual Assault Nurse Examiner. SANE nurses are forensic nurses who have received specialized training to conduct sexual assault and strangulation evidentiary exams on victims of rape and/or strangulation.

punching her in the face and the taking of her property. She also showed Officer Smith the injury to her lip.

Officer Cuevas arrived at the scene. He was wearing a standard NLVPD uniform with several clear police officer identifiers. Shortly afterwards, he headed toward the apartment building to handle an accidental firearm discharge that occurred at the same location. Meanwhile, Officer Smith talked with witness M.E. M.E. statement is identical to the version of events that she later told Detective Smith.

Officer Smith explained to R.M. that officers would attempt to contact Decedent but that she would not force entry into the apartment. Before knocking on the door, Officer Smith asked R.M. if Decedent would fight with officers. R.M. answered in the negative. Officer Smith knocked on Apartment 1028 front window but there was no answer.

Officer Smith returned to where R.M. was and requested that she not go back to the apartment right away. R.M. did not want to leave because her house keys, shoe and cellular phone were in her apartment. After a conversation with Officer Smith, R.M. headed to her apartment and both officers followed her to the door. Officer Smith can be heard on BWC telling Officer Cuevas, "we're going to have to go with her."

R.M. knocked on the door and one of her children opened it. R.M. entered the apartment followed by the two officers. Officer Smith immediately started calling Decedent's name and asked dispatch to clear the radio channel for emergency traffic. Both officers drew their firearm while checking the rooms in the apartment.

Officer Cuevas can be seen entering the east bedroom where Decedent was located while Officer Smith stood by the bedroom doorway. Officer Cuevas contacted Decedent, who was in bed, by saying, "Hello sir, how are you doing, come on over here (to the front room)." Decedent wakes up and asked, "What ya'll doing (here)?" and Officer Smith answered, "We got called here for you and your girlfriend." Officer Cuevas holstered his firearm at this time and transitioned to his taser.

As Decedent got up from his bed and started walking toward the front room. He appeared agitated and yelled at the officers, "Don't touch me," several times. It did not appear on the BWC that either officer attempted to make physical contact with Decedent at this point. Officer Smith holstered her firearm at this time and transitioned to her taser.

While Decedent is in the doorway between the bedroom and the front door, Officer Cuevas told him to "turn around now." Officer Smith also told Decedent to turn around. Decedent responded to these commands by saying, "I'm not doing nothing," and did not turn around.

Decedent stepped onto a stack of cardboard boxes that were in the front room. Officer Cuevas again ordered Decedent to turn around without success. Officer Cuevas reached toward Decedent and Decedent turned toward Officer Cuevas and yelled, "Don't touch me." Officers radioed that they needed backup officers to their location. Both officers gave Decedent commands to get down from the cardboard stack. Decedent raised his hands above his head and walked or fell directly into Officer Cuevas who attempted to grab Decedent and take him into custody.

A struggle ensued between Officer Cuevas and Decedent. During the first part of the struggle, Decedent can be heard yelling "motherfucker" and, "Why you fucking touching me?" as he grappled with Officer Cuevas. During the struggle, Officer Cuevas fell to the ground and Decedent can be seen on top of him. Officer Smith yelled, "stop," but her physical actions were not visible because her camera was too close to Decedent. At one point, Officer Smith's BWC showed Decedent's arm around Officer Cuevas throat and face.



Still from Officer Smith's BWC showing Decedent arm around Officer Cuevas neck



Still from Officer Smith's BWC showing Decedent arm around Officer Cuevas neck.

The struggle tumbled outside to the rock landscaping area in front of the apartment. Officer Cuevas was able to break free from Decedent's grip. Less than three seconds later, Officer Cuevas drew his firearm and fired three shots.

Decedent immediately fell to the ground following the third gunshot. Officer Smith notified dispatch that shots were fired while Officer Cuevas could be heard coughing in the background. Decedent said, "thank you lord" while on the ground. The officers quickly handcuffed Decedent and started life saving measures. They performed about six minutes of CPR before being relieved by other officers.

Officer Cuevas

Officer Cuevas's BWC video began recording when he was getting out of his patrol vehicle at La Ensenada Villas apartments. Officer Cuevas spoke briefly with witness M.E. and Officer Smith. Officer Smith was wearing a standard NLVPD uniform with several clear police officer identifiers. Officer Cuevas asked R.M. if she needed medical attention, which she declined.

While handing R.M a voluntary statement form, a gunshot can be heard coming from the apartment building. An individual appeared on the third floor and took responsibility for accidentally firing his gun. Officer Cuevas left the parking lot to handle that incident, which was also captured on his BWC. Officer Cuevas shut off his BWC after finishing up with that incident.

Officer Cuevas's second BWC video began recording with him walking to Decedent's apartment with Officer Smith. Like in Officer Smith's BWC video, no one answered the door and the officers walked back to R.M. Officer Smith tried to convince R.M. to leave but R.M. decided to go to her apartment. R.M. was able to get one of her children to open the door and entered the apartment with the two officers. While inside the apartment, R.M. told officers that Decedent was in the east bedroom. Officer Cuevas told R.M. and the children to go outside.

Officer Cuevas entered the east bedroom with his handgun drawn and his tactical flashlight turned on. He found Decedent in the bed and tried to talk with him. Decedent stood up in the bed and started to yell at the officers, "don't touch me" repeatedly and walked toward the officers. Officer Cuevas backed out of the bedroom and Decedent followed him out to the front room of the apartment. Once Decedent was in the front room with officers, Decedent eventually walked or fell into Officer Cuevas. Officer Cuevas tried to take Decedent in custody. Decedent yelled at Officer Cuevas, "oh you motherfucker, stupid bitch" and a physical struggle ensued.

The struggle moved from inside the apartment to outside. During the struggle, Officer Cuevas dropped to his knees and his hands can be seen touching the sidewalk right outside the residence. Officer Smith can be heard in the background, yelling "stop" at Decedent. Decedent can also be heard screaming, "Why you fucking touching me?" At this point, Officer Cuevas can be heard with a muffled voice, as if his mouth was partially covered, "shoot him." A short time later, Officer Cuevas was able to get free from Decedent, drew his handgun and shot at him three times. Officer Smith was about two feet away from Decedent and Officer Cuevas appeared to be about five feet away from Decedent when he fired his handgun. It appeared in the video that once Officer Cuevas broke free from Decedent, Decedent stumbled and appeared to direct his attention toward Officer Smith.

After the shooting, Officer Cuevas can be heard coughing on his BWC video and having some difficulty speaking. Officers placed Decedent in handcuffs and attempted life saving measures until they were relieved by other officers.

OFFICER WEAPON COUNTDOWNS

On April 23, 2020, Officers Cuevas and Smith had their duty weapons counted down at the NLVPD South Area Command.

Officer Cuevas's firearm during the incident was a Glock model 17 handgun equipped with a tactical light. His ammunition was standard NLVPD issued Winchester +P 9mm ammunition. At the completion of the countdown, it was determined that Officer Cuevas had fourteen rounds remaining in his magazine and one round in the chamber of his firearm. The magazine holds a total of seventeen rounds. It was determined that Officer Cuevas discharged his firearm three (3) times during this incident.

Officer Smith did not fire her handgun during the incident.

FIREARM EXAMINATION

On April 27, 2020, NLVPD Detective Smith delivered Officer Cuevas's Glock 17 handgun, the three cartridge casings recovered from the scene and the bullets recovered from Decedent's body to LVMPD Forensic Laboratory.

Forensic Scientist Claudia Nolasco test fired the Glock 17 for functionality. She also microscopically compared the submitted evidence cartridge and bullets to the test fired cartridge cases and bullets from the Glock 17.

On May 22, 2020, FS Nolasco released a report on her findings. She found the Glock 17 to function without any malfunctions. Moreover, she conclusively found that all three cartridge cases found at the scene were fired from Officer Cuevas's Glock 17. She also determined that two of the recovered bullets were consistent with .38 caliber bullet including 9mm Luger. The bullets had similar rifling characteristics as the ones that were test fired from the Glock 17, but they could not be conclusively identified or eliminated to that handgun due to lack of repeatable marks. The third bullet had no comparative value.

AUTOPSY

On April 24, 2020, an autopsy was performed on the body of Decedent by Doctor Jennifer Corneal of the Clark County Coroner's Office.

Decedent had gunshot wounds to the left side of his upper abdomen, left flank (about three inches below his left armpit) and right lower back. He also had a gunshot wound to his right hand. Three bullets were recovered from Decedent's body

Per the Toxicology Report, Decedent tested positive for 11-Hydroxy Delta 9 THC (1.3 ng/ml), Delta-9 Carboxy THC (10 ng/ml), amphetamine (6.4 ng/ml) and methamphetamine (85 ng/ml).

Dr. Corneal ruled Decedent's cause of death was due to multiple gunshot wounds.

LEGAL ANALYSIS

The District Attorney's Office is tasked with assessing the conduct of officers involved in any use of force which occurred during the course of their duties. That assessment includes determining whether any criminality on the part of the officers existed at the time of the incident.

In Nevada, there are a variety of statutes that define the various types of justifiable homicide (NRS §200.120 – Justifiable homicide defined; NRS §200.140 – Justifiable homicide by a public officer; NRS §200.160 – Additional cases of justifiable homicide). The shooting of Decedent could be justifiable under one or both of two theories related to the concept of self-defense: (1) the killing of a human being in self-defense or defense of others; and (2) justifiable homicide by a public officer. Both theories will be discussed below.

I. THE USE OF DEADLY FORCE IN SELF DEFENSE/DEFENSE OF ANOTHER

The authority to kill another in self-defense or in the defense of others is contained in NRS 200.120 and 200.160. "Justifiable homicide is the killing of a human being in necessary self-defense, or in defense of ... person, against one who manifestly intends or endeavors to commit a crime of violence ..." against the other person.⁷ NRS 200.120(1). Homicide is also lawful when committed:

[i]n the lawful defense of the slayer, ... or of any other person in his or her presence or company, when there is reasonable ground to apprehend a design on the part of the person slain to commit a felony or to do some great personal injury to the slayer or to any such person, and there is imminent danger of such design being accomplished

NRS 200.160(1).

⁷ NRS 200.120(3)(a) defines a crime of violence:

"Crime of violence" means any felony for which there is a substantial risk that force, or violence may be used against the person or property of another in the commission of the felony.

The Nevada Supreme Court has refined the analysis of self-defense and, by implication, defense of others, in *Runion v. State*, 116 Nev. 1041 (2000). The relevant jury instructions as articulated in *Runion* and modified for defense of others are as follows:

The killing of [a] person in self-defense [or defense of another] is justified and not unlawful when the person who does the killing actually and reasonably believes:

1. That there is imminent danger that the assailant will either kill him [or the other person] or cause him [or the other person] great bodily injury; and
2. That it is absolutely necessary under the circumstances for him to use in self-defense [or defense of another] force or means that might cause the death of the other person, for the purpose of avoiding death or great bodily injury to himself [or the person being defended].

A bare fear of death or great bodily injury is not sufficient to justify a killing. To justify taking the life of another in self-defense [or defense of another], the circumstances must be sufficient to excite the fears of a reasonable person placed in a similar situation. The person killing must act under the influence of those fears alone and not in revenge.

Actual danger is not necessary to justify a killing in self-defense [or defense of another]. A person has a right to defend from apparent danger to the same extent as he would from actual danger. The person killing is justified if:

1. He is confronted by the appearance of imminent danger which arouses in his mind an honest belief and fear that he [or the other person] is about to be killed or suffer great bodily injury; and
2. He acts solely upon these appearances and his fear and actual beliefs; and,
3. A reasonable person in a similar situation would believe himself [or the other person] to be in like danger.

The killing is justified even if it develops afterward that the person killing was mistaken about the extent of the danger.

If evidence that a [killing was in self-defense or defense of another exists], the State must prove beyond a reasonable doubt that defendant did not act in self-defense [or defense of another]. *Id.* at 1051-52.

Therefore, in Nevada, the law is that if there is evidence of self-defense, in order to convict, the State must prove beyond a reasonable doubt that an individual did not act in self-defense.

The known facts and circumstances surrounding this incident indicate that Decedent posed an imminent danger to Officers Cuevas and Smith. Officers Cuevas and Smith were responding to a domestic disturbance call. Before contacting Decedent, Officer Cuevas was made aware that Decedent had recently physically attacked R.M. and had prior domestic violence incidents with her. Officers were allowed into Decedent's apartment by R.M., who was also a resident of the apartment. Upon contacting Decedent, he immediately became aggressive with officers and refused to obey commands to turn around. Decedent made physical contact with Officer Cuevas and began to physically fight with him. Decedent was approximately a foot taller than Officer Cuevas and outweighed him by approximately 120 pounds. The body worn camera video showed Decedent strangling Officer Cuevas for nearly thirty seconds. At one point, Decedent was able to lift Officer Cuevas off the ground by his neck. Officer Cuevas told investigators that he was losing consciousness while being strangled and believed he might die. A later medical examination revealed several injuries he suffered during the attack. Officer Smith, despite her best efforts, was unable to stop Decedent's attack on Officer Cuevas. Once Officer Cuevas was able to get free from Decedent's grip, Decedent did not appear to surrender and instead seemed to focus his attention to Officer Smith who was within a couple of feet of him.

Based on Decedent's actions during the fight and the totality of the circumstances, it was reasonable for Officer Cuevas to believe that he was facing imminent danger that Decedent would cause great bodily harm or death to himself or Officer Smith. Further, due to Decedent's continued aggression, it was necessary for Officer Cuevas to use deadly force in order to stop the threat Decedent posed to both himself and Officer Smith. Consequently, Officer Cuevas' actions were justified under Nevada self-defense law.

II. JUSTIFIABLE HOMICIDE BY A PUBLIC OFFICER

"Homicide is justifiable when committed by a public officer ... [w]hen necessary to overcome actual resistance to the execution of the legal process, mandate or order of a court or officer, or in the discharge of a legal duty." NRS 200.140(2). This statutory provision has been interpreted as limiting a police officer's use of deadly force to situations when the officer has probable cause to believe that the suspect poses a threat of serious physical harm to either the officer or another. *See* 1985 Nev. Op. Att'y Gen. 47 (1985).

In this case, at the time Officer Cuevas fired his weapon, the facts demonstrate that he had probable cause to believe that Decedent posed an immediate threat of serious physical harm. Decedent had strangled Officer Cuevas nearly to unconsciousness and did not appear to be stopping his attack. The circumstances demonstrate Officer Cuevas fired

his weapon with a reasonable belief that Decedent was a threat to his life as well as Officer Smith's life. Considering this evidence, Officer Cuevas' actions were legally justified and appropriate in the discharge of a legal duty.

CONCLUSION

Based on the review of the available materials and application of Nevada law to the known facts and circumstances, the State concludes that the actions of Officer Cuevas were reasonable and/or legally justified. The law in Nevada clearly states that homicides which are justifiable or excusable are not punishable. (NRS 200.190). A homicide which is determined to be justifiable shall be, "Fully acquitted and discharged." (NRS 200.190).

As there is no factual or legal basis upon which to charge, unless new circumstances come to light which contradict the factual foundation upon which this decision is made, no charges will be forthcoming against Officer Alexander Cuevas.