

REPORT ON USE OF FORCE



Legal Analysis Surrounding the Death of Francisco Suarez-Maldonado on June 1, 2017

INTRODUCTION

On June 1, 2017, 27-year-old Francisco Suarez-Maldonado was shot and killed during an altercation with Las Vegas Metropolitan Police Department (hereinafter “LVMPD”) Officers Peter Herasimtschuk, Scott Hinckley, Travis Puana, Frank Rycraft, and Joseph Harris. The incident took place at approximately 11:16 p.m. on a residential street in front of 1703 Eddingham Court, Las Vegas, Nevada 89156. Officers Herasimtschuk, Hinckley, Puana, and Rycraft discharged their firearms and Francisco Suarez-Maldonado was struck multiple times.

SYNOPSIS

On June 1, 2017, at approximately 10:51 p.m., LVMPD Officers Herasimtschuk and Puana responded to the 1700 block of Eddingham Court to investigate a report of gunshots having been fired in the residential neighborhood. Upon the officers’ arrivals, they made contact with C.A. in front of her residence at 1703 Eddingham Court. C.A. stated she was involved in a domestic disturbance with her boyfriend, Francisco Suarez-Maldonado (hereinafter “Decedent”). Officers were advised Decedent fired gunshots into the air before he drove away from the area in a Chevrolet Silverado truck. C.A. also advised officers Decedent was suicidal and threatened to “shoot it out with police” if the opportunity presented itself. LVMPD Officers Hinckley, Rycraft, and Harris arrived on scene shortly thereafter.

While officers were speaking to C.A. in front of the residence, Decedent drove up and stopped his truck in front of 1703 Eddingham Court. Officers issued numerous verbal commands to Decedent to exit the vehicle, but Decedent did not comply.

Decedent then brandished a handgun, pointed it at Officers Puana and Herasimtschuk, and fired at them 2-3 times. Officers Herasimtschuk, Hinckley, Puana, and Rycraft

returned fire, striking Decedent multiple times. Officer Harris brandished his rifle but did not fire any rounds at Decedent. After several minutes, K-9 officers approached Decedent's truck with medical personnel and determined he was deceased.

This report explains why criminal charges will not be forthcoming against LVMPD Officers Herasimtschuk, Hinckley, Puana, and Rycraft. 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 November 27, 2017.

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

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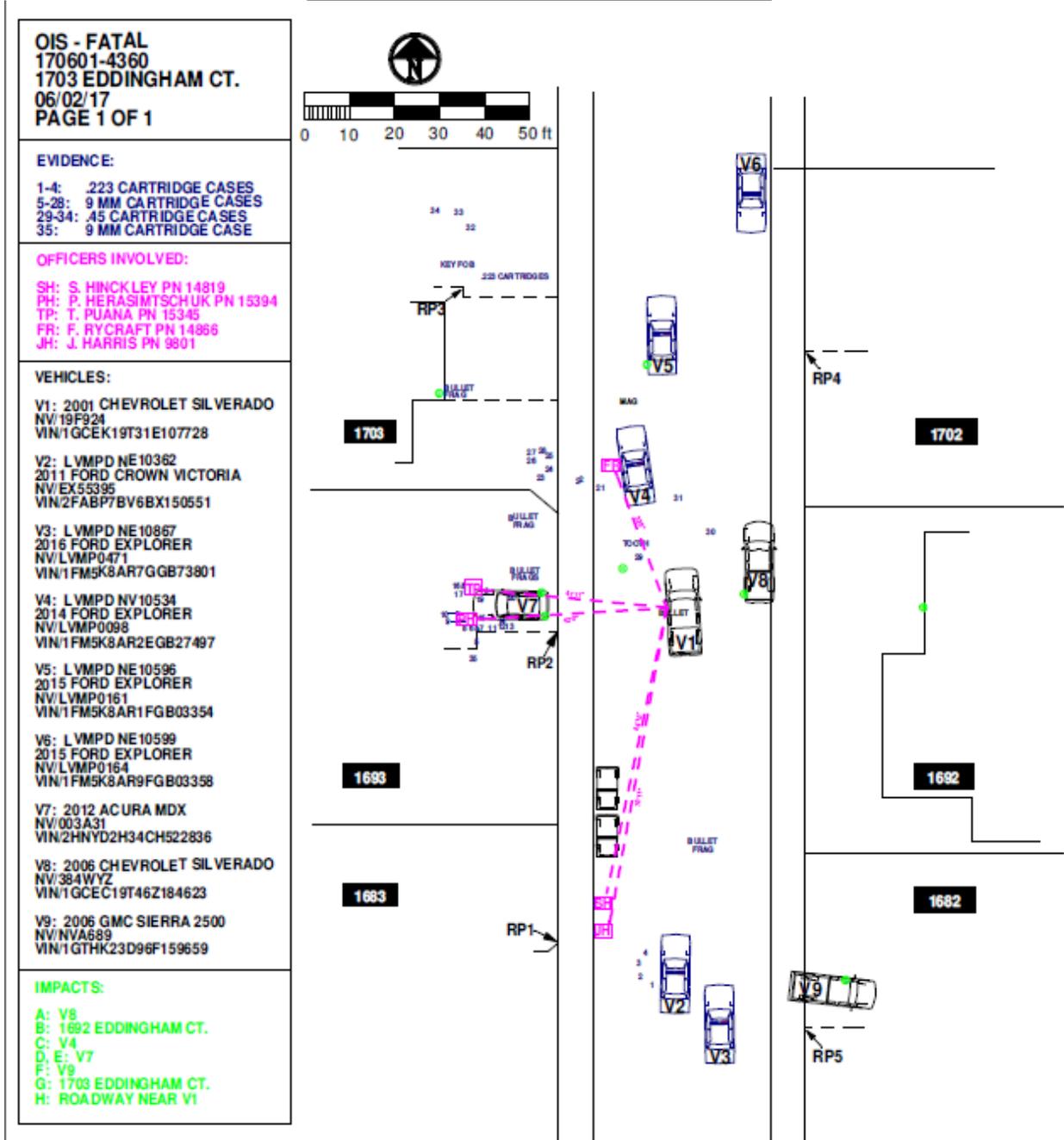
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DESCRIPTION OF THE SCENE



SCENE

The scene was relatively large and encompassed a section of the 1600 and 1700 blocks of Eddingham Court between 1683, 1693, and 1703 Eddingham Court on the west side of the street, and 1682, 1692, and 1702 Eddingham Court on the east side of the street. Vehicles

1, 2, 3, 4, 5, 6, and 8 were stopped or parked on the street and vehicles # 7 and 9 were parked in driveways. Items of evidence were recovered from: vehicles # 1, 7, and 9; the street pavement; the front yard, driveway, and/or sidewalk of 1693 and 1703 Eddingham Court; and inside the residence at 1692 Eddingham Court.

Vehicle #1 (Decedent's Vehicle)

Vehicle #1, a gray 4-door pickup truck, was stopped facing north with its engine running in the middle of the street in front of 1693 Eddingham Court. The body of Decedent was slumped over in the driver's seat. On the right front seat next to Decedent was an "ANDERSON MFG" AM-15 semi-automatic tactical rifle, CAL .223/5.56 mm, serial # 140559556, with a 7.62 x 39 barrel and a "BSA" scope. The rifle had a cartridge with the headstamp "Tulammo 7.62 x 39" loaded into the chamber and a 7.62 x 39 "C PRODUCTS



DEFENSE" magazine with sixteen (16) cartridges, all headstamped "Tulammo 7.62 x 39", in the magazine well. The rifle's safe/fire lever was set to the fire position. There were also three open boxes of Tulammo 7.62 x 39 mm cartridges and extra magazines on the seat next to the rifle. Loose cartridges from the boxes were scattered on the seat and floorboards. One of the loose cartridges found on the driver's side floorboard and four loose cartridges found on the interior running board/edge of the passenger's (right) side front floorboard were recovered at the scene. On the driver's seat, under Decedent's left hand, was a black Springfield Armory U.S.A. XDS-45 ACP, .45 caliber semi-automatic handgun, serial # XS600189 with a "SPRINGFIELD ARMORY XDS-45" magazine loaded into the magazine well. Both the handgun and magazine were empty and the slide of the handgun was locked open. The vehicle had several apparent bullet or bullet fragment impacts and/or holes.



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Street Pavement Adjacent to Vehicle #1

On the street in front (north) of vehicle #1 were three cartridge cases, all bearing the headstamp "45 AUTO" and an unknown symbol/design. There was an apparent bullet impact to the street pavement west of the left front corner of vehicle #1. In the street, below the driver's (left) side of the vehicle, was a bullet.

Vehicle #2

Vehicle #2, a 4-door sedan LVMPD black and white patrol vehicle, was parked facing north in the middle of the street in front of 1683 Eddingham Court.

Street Pavement Adjacent to Vehicle #2

There were four cartridge cases, all bearing the headstamp "SPEER 14 223 REM," on the street pavement on the right (west) side of vehicle #2. On the street pavement in front (north) of vehicle #2 was a bullet fragment.

Vehicle #3

Vehicle #3, a 4-door SUV LVMPD black and white patrol vehicle, was parked facing north on the east side of the street in front of 1682 Eddingham Court.

Vehicle #4

Vehicle #4, a 4-door SUV LVMPD black and white patrol vehicle, was parked facing north on the west side of the street in front of the south end of the property at 1703 Eddingham Court. Vehicle #3 had an apparent bullet impact to its left rear quarter panel and corresponding impact to the back of the left side rear window.

Street Pavement Adjacent to Vehicle #4

On the street pavement on left (west) side of the vehicle #4 was a cartridge case with the headstamp "SPEER 9mm LUGER +P". On the pavement north of vehicle #4 and south of vehicle #5 was a black "SIG SAUER P226 9MM" 20-round capacity magazine loaded with thirteen (13) cartridges, all bearing the headstamp "SPEER 9mm LUGER +P".

Vehicle #5

Vehicle #5, a 4-door SUV LVMPD black and white patrol vehicle, was parked facing north, just west of the center of the street and in front of 1703 Eddingham Court.

Vehicle #6

Vehicle #6, a 4-door SUV LVMPD black and white patrol vehicle, was parked facing south at the east curb of the street in front of north end of the property at 1702 Eddingham Court.

1693 Eddingham Court

There was a cartridge case with the headstamp "SPEER 9mm LUGER +P" on the ground of the entryway sidewalk to this residence. Another cartridge case with the headstamp "SPEER 9mm LUGER +P" was on the dirt of the front yard on the south side of the entryway sidewalk. There were fifteen (15) additional cartridge cases, all with the headstamp "SPEER 9mm LUGER +P," on the driveway. These fifteen cartridge cases included the aforementioned cartridge case on the hood of vehicle #7 which was parked in the driveway. Bullet fragments were found on the driveway on the north side of vehicle #7.

Rock Landscaping Area and Sidewalk between 1693 and 1703 Eddingham Court

There was a cartridge case, bearing the headstamp "SPEER 9mm LUGER +P," on the west sidewalk between 1693 and 1703 Eddingham Court. In the rock landscaping area between the two properties were six (6) more cartridge cases with the headstamp "SPEER 9mm LUGER +P".

1703 Eddingham Court

There were trash cans at the southwest corner of the driveway at 1703 Eddingham Court. On the driveway adjacent to these trash cans was a bullet fragment. On the exterior east facing wall directly above the trash cans was an outdoor light fixture. There was an apparent bullet impact to the wall on the south side of the light fixture. This impact corresponded with another impact to the light fixture. On the rock landscaping area of the front (east) yard and north of the entryway sidewalk were seventy (70) cartridges, all bearing the headstamp "Tulammo 7.62 x 39." On the front yard, just west of these cartridges, was a Toyota key fob. Also in the front yard, northwest of the cartridges, were three cartridge cases bearing the headstamp "45 AUTO" and an unknown symbol/design.

SEARCH WARRANTS

1709 Eddingham Court (Decedent's Residence)

The following items were photographed and impounded as part of the search warrant executed on 1709 Eddingham Court:

- 1) One (1) empty black "PROMAX" rifle case with model #1511.
- 2) Three (3) bullets.
- 3) One (1) cartridge bearing the headstamp "Tulammo 45 AUTO".
- 4) Two (2) cartridges both bearing the headstamp "HORNADY 45 AUTO".
- 5) One (1) cartridge bearing the headstamp "7.62 x 39 15".
- 6) One (1) empty "TULAMMO" 7.32 x 39 mm ammunition box.
- 7) One (1) "WINCHESTER" 45 auto ammunition box containing thirty-four (34) cartridges bearing different headstamps (20 x "WINCHESTER 45 AUTO", 11 x "HORNADY 45 AUTO", 3 x "Tulammo 45 AUTO").
- 8) One (1) "BROWNING" 45 auto ammunition box containing twelve (12) cartridges with the same headstamp of "45 AUTO" and an unknown symbol/design.
- 9) One (1) unknown brand black leather type holster.
- 10) One (1) brown leather type "Hunter" holster.
- 11) One (1) black "RANGEMAXX" holster.
- 12) One (1) black leather type "DeSantis" holster with # 019Y1.
- 13) One (1) unknown brand black plastic holster.
- 14) One (1) unknown brand black fabric holster.
- 15) One (1) "SPRIGFIELD ARMORY XDS" black 2-magazine holder.

- 16) One (1) "RANGEMAXX" rifle cleaning kit containing cleaning tools.
- 17) One (1) black "SPRINGFIELD ARMORY XDS" gun case containing two empty ammunition magazines and additional accessories to include paperwork and a gun lock, with serial no: XS660189.

Vehicle #1 (Decedent's Vehicle)

The following items were photographed and impounded as part of the search warrant executed on Vehicle #1:

- 1) One (1) jacketed bullet.
- 2) One (1) jacketed bullet with clear plastic material attached.
- 3) One (1) jacketed bullet (apparent rifle bullet).
- 4) One (1) jacketed bullet.
- 5) One (1) small brass colored bullet fragment.
- 6) One (1) jacketed bullet.
- 7) One (1) jacketed bullet.
- 8) Two (2) jacketed bullet fragments.
- 9) One (1) jacketed bullet.
- 10) One (1) jacketed bullet.
- 11) One (1) copper and gray colored bullet fragment.
- 12) One (1) jacketed bullet.
- 13) Two (2) curved rifle magazines stamped "ASC New Britain Ct. CAL 7.62 X 39" (unknown capacity) with 35 cartridges (head stamp TULAMMO 7.62 x 39) inside.
- 14) One (1) partial box (80 of 100) of "TulAmmo" rifle cartridges. Headstamp "TULAMMO 7.62 x 39".
- 15) One (1) partial box (22 OF 100) of "TulAmmo" rifle cartridges. Headstamp "TULAMMO 7.62 x 39".
- 16) Four (4) rifle cartridges, headstamp "TULAMMO 7.62 x 39".
- 17) One (1) rifle cartridge, headstamp "TULAMMO 7.62 x 39".
- 18) Two (2) rifle cartridges, headstamp "TULAMMO 7.62 x 39".
- 19) Three (3) rifle cartridges, headstamp "TULAMMO 7.62 x 39".
- 20) One (1) rifle cartridge, headstamp "TULAMMO 7.62 x 39".
- 21) One (1) partial box (49 of 50) of 45 caliber cartridges; "Tulammo" brand; headstamp "TULAMMO 45 AUTO".
- 22) One (1) broken tooth.
- 23) One (1) black colored wallet with contents including a California driver's license in the name of Suarez-Maldonado, Francisco J. DOB 12-03-89; a Nevada WIC card; two (2) USA employment authorization cards in the name of Suarez-Maldonado, Francisco J; a Nevada driver's license in the name of Suarez-Maldonado, Francisco J; a Social Security card in the name of Francisco Javier Suarez-Maldonado; multiple business cards, and multiple receipts.
- 24) \$147.00 in U.S. currency including (6) \$20.00 bills; (1) \$10.00 bill; (3) \$5.00 bills; and (2) \$1.00 bills; and one (1) copy of the LVMPD Money Accounting Report.

SCENE WALK-THROUGHS

Officer Herasimtschuk

On June 2, 2017, at approximately 3:30 a.m., Officer Herasimtschuk relayed the following information during a walk-through of the scene:

Officer Herasimtschuk was standing in front of his patrol vehicle when Decedent arrived. Officer Herasimtschuk moved to the southwest side of a vehicle that was parked in the driveway of 1693 Eddingham Court. Decedent fired numerous shots at Officers Puana and Herasimtschuk. Officer Herasimtschuk feared for his life, as well as Officer Puana's life, and returned fire at Decedent.

Officer Puana

On June 2, 2017, at approximately 3:40 a.m., Officer Puana relayed the following information during a walk-through of the scene:

Officer Puana was standing on the sidewalk when Decedent arrived. Officer Puana moved to the northwest side of a vehicle parked in the driveway of 1693 Eddingham Court. Officer Puana told Decedent numerous times to exit the vehicle. Decedent fired numerous shots in the direction of Officers Puana and Herasimtschuk. Officer Puana feared for their lives and fired at Decedent.

Officer Rycraft

On June 2, 2017, at approximately 3:07 a.m., Officer Rycraft relayed the following information during a walk-through of the scene:

Officer Rycraft stated he was the first officer who arrived to the incident as backup to Officers Herasimtschuk and Puana. Officer Rycraft parked his patrol vehicle in the middle of the street. Officer Rycraft observed Decedent fire in a northwest direction at Officers Puana and Herasimtschuk. Officer Rycraft feared the officers' lives were in danger and fired five to ten rounds at Decedent.

Officer Hinckley

On June 2, 2017, at approximately 3:14 a.m., Officer Hinckley relayed the following information during a walk-through of the scene:

Officer Hinckley observed Officers Puana and Herasimtschuk make contact with Decedent. Officer Hinckley retrieved his rifle from his patrol vehicle parked in front of 1693 Eddingham Court. Officer Hinckley observed Decedent point his gun out his vehicle window towards Officers Puana and Herasimtschuk. Officer Hinckley believed Officers Puana and Herasimtschuk's lives were in danger and fired his rifle at Decedent.

PUBLIC SAFETY STATEMENTS

Officers Herasimtschuk, Hinckley, Puana, and Rycraft all provided Public Safety Statements. The questions asked of the officers are reflected in italics, and the officers' responses to those questions are reflected in bold italics.

Officer Rycraft

1. *"Did you discharge your firearm?"* ***"Yes."***
2. *"If so, in what direction?"* ***"I was north of the vehicle and fired south."***
3. *"Approximately where were you located when you fired?"* ***"Midway at my vehicle, 20 feet from the Suburban."***
4. *"How many shots do you think you fired?"* ***"I reloaded, so...at some point I reloaded. Not sure if I jammed or ran out."***
5. *"Is anyone injured?"* ***"Officers, no."***
6. *"If so, where are they lo...located?"* ***"No Officers injured."***
7. *"Are there any outstanding suspects?"* ***"None."***
8. *Uh, "If so, what is their description?"* ***"None."***
9. *"What direction and mode of travel?"* ***"None."***
10. *"How long have they been gone?"* ***"No one."***
11. *"What crimes have they committed?"* ***"None."***
12. *"What type of weapon do they have?"* ***"None," to outstanding suspects.***
13. *"Is it possible the suspect fired rounds at you?"* ***"Yes."***
14. *"If so, what direction were the rounds fired from?"* ***"From the vehicle east of the officer towards the west."***
15. *"How many shots do you think the suspect fired?"* ***"I heard two or three after he presented."***
16. *"Approximately where was the suspect located when they fired?"* ***"Sitting in his vehicle, from driver's seat."***
17. *"Do you know if any other Officers discharged their firearms?"* ***"Yes."***
18. *"If so, who are they?"* ***"I think Officer Hinckley, but I don't know everyone else's name. There were four."***
19. *"Approximately where was the sus..."* excuse me, *"Wh...approximately where was the Officers located when they fired?"* ***"They were set up a car length to the west."***
20. *"Are there any weapons or evidence that needs to be secured/protected?"* ***"Yes."***
21. *"If so, where are they located?"* ***"Suspect had a long gun rifle and a handgun, and rounds in front of victim's house."***
22. *"Are you aware of any witnesses?"* ***"Yes. There are several other females and family members outside of the house."***
23. *"If so, what is their location?"* ***"We sent Officers to the house at...victim's house."***

Officer Herasimtschuk

1. "Did you discharge your firearm?" **"Yes."**
2. "If so, in what direction?" **"East."**
3. "Approximately where were you located when you fired?" **"In front of white vehicle to the west, and I was in front of that vehicle driver's side door."**
4. "How many shots do you think you fired?" **"Ten."**
5. "Is anyone injured?" **"Yes."**
6. "If so, where are they located?" **"In the Chevy Silverado."**
7. "Are there any outstanding suspects?" **"No."**
8. "If so, what is their description?" **"No."**
9. Uh, "What direction and mode of travel?" **"None."**
10. "How long have they been gone?" **"Not applicable."**
11. "What crimes have they committed?" **"None."**
12. "What type of weapon do they have?" **"No outstanding suspects."**
13. "Is it possible the suspect fired rounds at you?" **"Yes."**
14. "If so, what direction were the rounds fired from?" **"From east to west."**
15. "How many shots do you think the suspect fired?" **"Five or six."**
16. "Approximately where was the suspect loaded...located when they fired?" **"He was in the driver's seat of the vehicle, which is in front of where I was."**
17. "Do you know if any other Officers discharged their firearms?" **"Yes."**
18. "If so, who are they?" **"Officer Rycraft, Puana, and Hinckley."**
19. "Approximately where were the Officers located when they fired?" **"Puana was five feet to my north, Rycraft was in front of the suspect vehicle, Hinckley slightly to south."**
20. "Are there any weapons or evidence that needs to be secured/protected?" **"Yes; he had a handgun and rifle."**
21. "If so, where are they located?" **"Inside of his vehicle."**
22. "Are you aware of any witnesses?" **"No."**
23. "If so, what is their location?" **"His family was one house over."**

Officer Puana

1. Uh, "Did you discharge your firearm?" **"I did."**
2. "If so, in what direction?" **"I fired directly at the suspect."**
3. "Approximately where were you located when you fired?" **"I was barricaded behind a white SUV, approximately 15 yards away."**
4. "How many shots do you think you fired?" **"Three."**
5. "Is anyone injured?" **"No injuries to Officers, but he was killed."**
6. "If so, where are the...they located?" **"Suspect loaded...located in driver's seat of his silver pickup."**
7. "Are there any outstanding suspects?" **"No, sir."**
8. "If so, what is their description?" **"There were no outstanding suspects."**
9. "What direction and mode of travel?" **"No other suspects. This is the boyfriend of the victim. He was the only suspect."**

10. "How long have they been gone?" **"Suspect was gone from residence for approximately 20 minutes."**
11. "What crimes have they committed?" **"This gentleman threatened his girlfriend with his rifle, and her friend, and fired outside the structure of the home."**
12. "What type of weapon do they have?" **"He had a AR-15 rifle and handgun. The handgun he fired at us."**
13. "Is it possible the suspect fired rounds at you?" **"Yes, sir, absolutely. I felt the concussion."**
14. "If so, what direction were the rounds fired from?" **"He fired from inside his vehicle, and he fired directly at me and Officer Houshenschuk [Herasimtschuk]."**
15. "How many shots do you think the suspect fired?" **"Three or four."**
16. "Approximately where was the suspect located when they fired?" **"He was in the driver's seat of his pickup truck."**
17. "Do you know if any other Officers discharged their firearms?" **"There were three other Officers. I only know of two."**
18. "If so, who are they?" **"Hershunchuck [Herasimtschuk]; I don't know his name, but he's on grave, George squad."**
19. "Approximately where was this officer located when they fired?" **"Hershunchuck on opposite of SUV next to me, the George unit was off to my left, behind of a patrol vehicle positioned in front of suspect vehicle."**
20. "Are there any weapons or evidence that needs to be secured and protected?" **"He has all the weapons, and an open AR rifle case inside bedroom in residence."**
21. "If so, where are they located?" **"All weapons on him."**
22. "Are you aware of any witnesses?" **"Yes."**
23. "If so, what is their location?" **"The friends, all females."**

Officer Hinckley

1. "Did you discharge your firearm?" **"Yes."**
2. "If so, in what direction?" **"Northbound."**
3. "Approximately where were you located when you fired?" **"It was to the west of my patrol vehicle, and I was taking cover behind a parked vehicle."**
4. "How many shots do you think you fired?" **"Three or four."**
5. "Is anyone injured?" **"Yes."**
6. "If so, where are they located?" **"Inside of...inside the suspect truck."**
7. "Are there any outstanding suspects?" **"None that I know of."**
8. "If so, what is their direction?" **"Unknown."**
9. "What direction and mode of travel?" **"Unknown."**
10. "How long have they been gone?" **"Unknown."**
11. "What crime have they committed?" **"AWDW and AWDW on a PO."**
12. "What type of weapon do they have?" **"Handgun."**

13. *"Is it possible the suspect fired rounds at you?" "No. At other Officers, but not me."*
14. *"If so, what direction were the rounds fired from?" "From north of me towards west."*
15. *"How many shots do you think the suspect fired?" "Five to ten."*
16. *"Approximately where was the suspect located when they fired?" "In the driver's seat of the truck."*
17. *"Do you know of any other Officers discharged their firearms?" "Yes."*
18. *"If so, who are they?" "Frank Rycraft, Hiramuschity [Herasimtschuk] or something, and another unknown officer to me."*
19. *"Approximately where was the Officers located when they fired?" "Two were west of the suspect and one was northwest of the suspect."*
20. *"Are there any weapons or evidence that needs to be secured/protected?" "No."*
21. *"If so, where is it located?" "Not applicable."*
22. *"Are you aware of any witnesses?" "Yes."*
23. *"If so, what is their location?" "Unknown."*

SUMMARY OF RELEVANT WITNESS STATEMENTS

C.A.

On June 2, 2017, at approximately 3:00 a.m., Detective Craig Jex conducted an audio-recorded interview with C.A.

C.A. stated Decedent and several guests were at the residence to have a pool party and barbeque. Decedent started drinking shots of alcohol and beer, and she told him not to drink too much. Decedent, who was swimming with one of the guests, got out of the pool and tried to throw C.A. into the pool but she did not want to swim because the water was cold. At that point, Decedent started to try and get another guest into the pool and C.A. stated she got upset with Decedent and went back into the house and sat at the table.

Decedent came in and C.A. did not want to be with him and decided to go upstairs, but Decedent stopped her. C.A. ran to the downstairs bathroom and locked the door. Decedent banged on the door. C.A. opened the door to stop him from banging on it because she did not want him to wake the children. They argued again and Decedent head-butted her. In response, C.A. got very upset and punched Decedent in the mouth.

She then attempted to leave the bathroom area, but Decedent stopped her. The argument continued until Decedent left the bathroom area and went upstairs. C.A. followed him. She stated Decedent told her to stay downstairs. C.A. stated Decedent started to load his handgun and rifle. Decedent told C.A. to go downstairs or he was going to shoot her. Decedent also stated he was going to take the children with him.

C.A. stated she felt Decedent was suicidal and attempted to talk him out of leaving. She stated Decedent finally came out of the bedroom and pointed the rifle at her. Decedent told her he was not going to take the children when he left and not to follow him.

S.H., a friend of C.A., attempted to talk to Decedent, who came out of the bedroom and pointed the rifle at S.H. and told her to get out of the way. C.A. stated she told all the guests to leave the residence.

Then, Decedent went downstairs and attempted to leave the residence. C.A. tried to talk him out of leaving and he pointed the rifle at her again and told her he would shoot her. Decedent walked outside and C.A. stated she was trying to hold him from leaving. Decedent pushed C.A. to the ground. She got up and again tried to hold him back from getting into his pickup truck. C.A. stated Decedent fired the handgun in the air as he got into the pickup truck and pulled away.

C.A. stated LVMPD officers arrived shortly after and she told them Decedent was suicidal. She told officers Decedent advised her that the only way he was going to be stopped was by the police and he was going to shoot it out with them. While C.A. was talking with officers, Decedent pulled down the street and stopped in front of the residence.

C.A. stated she went back inside as officers talked to Decedent. She stated she was watching from the window of the residence and saw Decedent sitting in the pickup truck and observed officers fire at Decedent. C.A. stated she stayed inside the residence until officers made contact with her.

S.H.

On 06-02-17, at approximately 3:27 a.m., Det. Mendoza conducted an audio-recorded interview with S.H.

S.H. stated she arrived at 1703 Eddingham Court and attended a pool party. C.A. became angry due to Decedent wanting to push her in the pool. Decedent and C.A. went inside the residence. C.A. returned to the pool area and was crying and told everyone they had to leave her house. As everyone prepared to leave, C.A. informed S.H. that Decedent had an AR rifle. S.H. saw Decedent at the top of the staircase and he was holding a rifle. S.H. stated Decedent pointed the rifle at everyone and yelled at everyone to get out of the house. Decedent exited the residence and placed the rifle in his vehicle. S.H. said she saw Decedent fire several rounds in the air from a handgun. Decedent fled the area in his truck. A few minutes later, the police arrived and spoke with C.A.

As C.A. continued to speak with the officers, S.H. saw Decedent return to the residence in his truck. S.H. stated Decedent refused to comply with officers' instructions to exit the truck. S.H. entered the residence and continued to watch the events through a bedroom window. Decedent pointed the handgun out of the driver's side window towards the direction of officers. S.H. said she saw Decedent fire shots at the officers first and they returned fire. S.H. heard multiple gunshots and saw Decedent's body leaning against the steering wheel.

C.O.

On June 2, 2017, at approximately 1:35 a.m., Det. Jex conducted an audio-recorded interview with C.O.

C.O. stated he and his wife were asleep and heard three (3) or four (4) gunshots outside their residence. They both went outside and he observed Decedent's vehicle leaving the area. C.O. described Decedent's vehicle as a gray pickup truck.

C.O. stated Decedent lived next door to him. C.O. observed C.A. and several people outside. He stated C.A. was crying and yelling. Approximately five (5) minutes later, police arrived and made contact with C.A.. C.O. stated shortly after the police arrived Decedent drove up the street and stopped in front of his [C.O.'s] residence. Officers immediately gave commands to Decedent to exit the vehicle and show his hands. Decedent did not comply with the officers' commands.

C.O. stated he heard Decedent state, "It's over... This is the end... Tell my mom I love her." C.O. also observed Decedent bleeding from his mouth. C.O. stated he and his wife went back inside to move their children whose bedroom faced the street. While in the bedroom with his children, C.O. stated he watched Decedent pull out a handgun and shoot at the officers, and the officers returned fire.

Officer Harris

On June 2, 2017, at approximately 1:43 a.m., Detective Joseph Patton conducted an audio-recorded interview with Officer Harris, who relayed the following:

Officer Harris was on duty and driving within LVMPD Northeast Area Command boundaries when he heard patrol units on an illegal shooting call request a code red over the radio. Officer Harris self-dispatched to the call and upon arriving he deployed his rifle. As Officer Harris ran toward the other officers, he realized he did not have a magazine inserted into his rifle. Officer Harris returned to his vehicle, grabbed a magazine and loaded his rifle.

As Officer Harris ran back toward the other officers, he observed Decedent point a firearm out of the driver's side of a truck and fire three (3) to four (4) rounds at officers. Several officers immediately returned fire. Officer Harris was unable to fire his weapon due to being in a possible crossfire situation where he was unsure if other officers were in his backdrop.

BODY-WORN CAMERAS

Officers Herasimtschuk, Hinckley, Puana, and Rycraft were equipped with body-worn cameras (hereinafter "BWC") at the time of the incident, all of which were activated. All BWC's were collected, secured, and reviewed.

The BWC footage captured Officer Herasimtschuk and Officer Puana making contact with subjects at 1703 Eddingham Court, where they obtained information about a domestic altercation involving C.A. and Decedent. It further depicts C.A. advising the officers that Decedent was armed with a handgun and/or rifle and had fired gunshots into the air before he left the area. The BWC footage also captured lay witnesses, who advised they observed C.A. being pushed to the ground by Decedent prior to leaving the area in his truck. The BWC footage also shows Decedent returning to the scene in his truck and stopping the vehicle in the street in front of 1703 Eddingham Court.

Officer Herasimtschuk's perspective of Decedent



Officer Puana's perspective (front driver-side tire of Decedent's vehicle depicted)



Officer Rycraft's perspective of Decedent



Officer Rycraft's perspective of Officer Puana and Officer Herasimtschuk



Officer Hinckley's and Officer Harris' perspective (taken from Officer Harris's BWC due to Officer Hinckley's BWC being obstructed after donning his body armor)



The BWC footage depicts Officer Herasimtschuk and Officer Puana issuing numerous commands to Decedent to exit the vehicle. It also captured Decedent yelling at the officers and ignoring their commands. Specifically, the BWC depicts Decedent telling officers “this is the end of the line for me” and “tell my mother I love her.” The BWC depicts officers responding to Decedent with commands to exit the vehicle, as well as efforts to de-escalate such as “no it’s not the end of the line,” “you haven’t hurt anybody,” and “come on man, nobody wants to hurt you.” As officers continued their efforts to reason with Decedent, the BWC footage depicts the exchange of gunfire between Decedent and the officers. It should be noted that, due to the angles of the BWC footage, the moment Decedent brandished his firearm and fired at Officer Herasimtschuk and Officer Puana is not clearly depicted. The BWC footage confirmed the officers’ positions and perspectives at the time shots were fired, and confirmed that Officer Harris did not fire his weapon.

The entire incident (from Decedent’s arrival on the scene to shots being fired) lasted just over five (5) minutes.

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THIRD PARTY SURVEILLANCE FOOTAGE

Ring™ Video Doorbell Surveillance Camera

Force Investigation Team (“FIT”) detectives located a Ring™ Video Doorbell surveillance camera (“hereinafter “Ring Camera”) at 1703 Eddingham Court. FIT detectives submitted an administrative subpoena to Ring to obtain any video surveillance footage that may have been captured and stored in the company’s cloud memory storage. Ring Camera footage captured Decedent arguing with C.A. outside of the residence in front of Decedent’s truck, which was parked on the front lawn. Ring Camera footage also depicts Decedent fire gunshots from a handgun into the air prior to driving away from the area. Additionally, the footage shows the officers’ arrival, as well as conversations between officers and residents, but does not depict the area of the officer-involved shooting.



AUTOPSY

Medical Examiner Dr. Lisa Gavin of the Clark County Coroner’s Office conducted an autopsy on Decedent and opined that Decedent died as a result of multiple gunshot wounds.

The toxicology results indicated Decedent had a Blood Alcohol Concentration of 0.142.

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OFFICER WEAPON COUNTDOWNS

Officer Herasimtschuk



At the completion of the countdown, it was determined Officer Herasimtschuk was missing 14 cartridges from the magazine in his firearm. When compared to the evidence at the scene, detectives concluded he discharged his firearm 14 times during this incident.

Officer Rycraft



At the completion of the countdown, it was determined Officer Rycraft was not missing any cartridges from the magazine in his firearm; however, he conducted a speed reload while on scene. The expended magazine on scene was counted down and was missing eight cartridges. Detectives concluded he discharged his firearm eight times during this

incident.

Officer Puana



At the completion of the countdown, it was determined Officer Puana was missing three cartridges from the magazine in his firearm. When compared to the evidence at the scene, detectives concluded Officer Puana discharged his firearm three times during this incident.

Officer Hinckley



At the completion of the countdown, it was determined Officer Hinckley was missing four cartridges from the magazine in his rifle. When compared to the evidence at the scene, detectives concluded he discharged his rifle four times during this incident.

Officer Harris

At the completion of the countdown, it was determined Officer Harris did not fire his rifle during this incident.

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FIREARM EXAMINATIONS

On June 15, 2017, an LVMPD Forensic Laboratory Request was submitted for function testing and ballistic comparisons.

On July 12, 2017, Forensic Scientist Anya Lester submitted the Report of Examination: Firearms & Toolmarks.

The Springfield pistol was examined, test-fired and found to be operational with no noted malfunctions. The submitted magazine has a capacity of 7 cartridges.

The Anderson Manufacturing rifle was examined, test-fired and found to be operational with no noted malfunctions. The submitted magazine has a capacity of 31 cartridges.

One evidence cartridge case recovered near the driver's side door of Decedent's vehicle was microscopically compared to the test fired cartridge case from Decedent's Springfield pistol. Based on these microscopic comparisons, the evidence cartridge case was identified as having been fired by Decedent's Springfield pistol.

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/defense of others; and (2) justifiable homicide by a public officer. Both theories will be discussed below.

A. The Use of Deadly Force in Defense of Another

The authority to kill another in 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.¹ 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

¹ 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.

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).

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 [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 [the other person] or cause [the other person] great bodily injury; and
2. That it is absolutely necessary under the circumstances for him to use in [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 [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 [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 [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 [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 [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 defense of another exists], the State must prove beyond a reasonable doubt that Decedent did not act in [defense of another]. *Id.* at 1051-52.

Therefore, under Nevada law, if there is evidence that the killing was committed in self-defense, the State at trial, must prove beyond a reasonable doubt that the slayer was not acting in self-defense.

The known facts and circumstances surrounding this incident indicate that Decedent posed an imminent danger to Officers Herasimtschuk, Hinckley, Puana, Rycraft, and Harris, C.A., S.H., C.O., and the other civilians occupying homes in the immediate vicinity. Prior to officers' arrival, Decedent had pointed a rifle at multiple people and threatened to shoot them. He also discharged a handgun into the air in a residential area after battering his girlfriend. Decedent then fled the scene in his vehicle, armed with a rifle and a handgun. Prior to leaving the area, Decedent threatened a shootout with police and C.A. believed he was suicidal. This information was conveyed to officers prior to Decedent returning to the scene in his vehicle. When he returned, Decedent failed to comply with officers' commands and remained in his vehicle after being ordered repeatedly to exit. Decedent also made several statements indicating the confrontation was about to escalate when he stated, "Tell my mother I love her" and, "This is the end." Decedent's hands were not visible from outside the vehicle, and the officers were aware that Decedent was armed. After failing to comply with the officers' commands, Decedent raised his handgun and fired multiple rounds at Officers Puana and Herasimtschuk. It was then that Officers Herasimtschuk, Hinckley, Puana, and Rycraft returned fire at Decedent.

Thus, the totality of the evidence, to include BWC video and witness statements, illustrate that Officers Herasimtschuk, Hinckley, Puana, and Rycraft were reasonable in believing that Decedent would cause great bodily harm or death to themselves or others. Officers Herasimtschuk, Hinckley, Puana, and Rycraft were confronted with the appearance of imminent danger and they each had an honest belief and fear that they, their fellow officers, or civilians were about to be killed or suffer great bodily injury at the hands of Decedent. The evidence further illustrates that Officers Herasimtschuk, Hinckley, Puana, and Rycraft acted reasonably in reaction to the apparent and actual danger posed by the situation and the Decedent. Here, Officers Herasimtschuk, Hinckley, Puana, and Rycraft reasonably acted in self-defense and defense of others. Consequently, the shooting of Decedent is justifiable under this legal theory.

B. 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, the known evidence illustrates that Officers Herasimtschuk, Hinckley, Puana, and Rycraft had probable cause to believe that Decedent posed a threat of serious physical harm to themselves, their fellow officers, and the numerous civilians within the residential area. Officers Herasimtschuk, Hinckley, Puana, and Rycraft were aware that Decedent had threatened multiple civilians with a rifle, discharged a handgun in a residential area, battered his girlfriend, and threatened to engage in a shootout with police. When Decedent returned to the scene in his vehicle, the officers attempted to de-

escalate the situation for several minutes, and issued several commands to Decedent to exit his vehicle and show them his hands. Decedent refused to comply with those lawful orders. Although officers reasonably believed that Decedent was armed, Officers Herasimtschuk, Hinckley, Puana, and Rycraft did not shoot Decedent until Decedent raised his weapon and fired at Officers Puana and Herasimtschuk. At that point, Officers Herasimtschuk, Hinckley, Puana, and Rycraft each had probable cause to believe that Decedent could cause serious physical harm to themselves, their fellow officers, and the citizens in the area. Thus, the use of deadly force by Officers Herasimtschuk, Hinckley, Puana, and Rycraft was legally justified and appropriate under NRS 200.140(2).

CONCLUSION

Based on the review of the available materials and application of Nevada law to the known facts and circumstances, the actions of Officers Herasimtschuk, Hinckley, Puana, and Rycraft 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.” See 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 Officers Herasimtschuk, Hinckley, Puana, or Rycraft.