

REPORT ON USE OF FORCE



Legal Analysis Surrounding the Death of Terrance White, Jr. on June 14, 2018

INTRODUCTION

On June 14, 2018, 18-year-old Terrance White, Jr. was shot and killed after White, a suspect in several recent robberies, ignored officers' commands to exit his vehicle. Instead, he drove his vehicle directly at assembled officers and their marked patrol vehicles. Las Vegas Metropolitan Police Department (hereinafter "LVMPD") Officers Joseph Aguilos, Jordan Anderson, Jeremiah Beason, Anthony Gariano, Craig McIntosh, Frank Rycraft and Robert Stephenson, discharged their firearms striking and killing Terrance White, Jr. (hereinafter "Decedent"). The incident took place at approximately 4:28 a.m. on Radwick Drive in between Owens Avenue and Monroe Avenue.

SYNOPSIS

On June 14, 2018, at approximately 3:52 a.m., Northeast Area Command (NEAC) Patrol Officer Anthony Gariano spotted a newer black Dodge Durango with red dealer paper plates with its lights off on Radwick Drive, south of Owens Avenue. At the time, NEAC officers were looking for a stolen newer black Dodge Durango, which was suspected to have been used in several robberies within NEAC and Southeast Area Command (SEAC) over the previous several days. The suspect driver was believed to be an unknown black male adult armed with a rifle.

Upon locating the Durango, Officer Gariano called out his stop over the radio and approached the vehicle. Officer Gariano observed through the driver's side window a black male adult, later identified as Decedent, asleep in the driver's seat, as well as an AR-15 style rifle on the passenger's seat. Officer Gariano requested for more units to respond and assist. Officer Gariano backed away from Decedent's vehicle and waited by his patrol car for more officers to arrive. After several officers arrived, Sgt. Justin Sowa set up an Immediate Action Team which included Officers Gariano, Joseph Aguilos, Jordan Anderson, Jeremiah Beason,

Craig McIntosh, Frank Rycraft, Robert Stevenson, and Paul Ake. Officers Cody Beal, Erik Brcic, David Brisendine, and Douglas Schwartz were deployed at a park to the east of Decedent's vehicle. A command post was set up by Lt. Daniel Alvarado, Sgt. Abudhabi Lewis and several other units to the south of Decedent's vehicle on Monroe Street.

A plan was devised on how to take Decedent into custody while Decedent slept in his vehicle. An officer also placed a small tire deflation device in front of the rear passenger tire of Decedent's vehicle.

As officers waited for the K-9 officer to arrive, Decedent woke up and started the vehicle, which caused the brake lights to illuminate. At this time, Officer Anderson used a patrol vehicle's public address (P/A) system to issue verbal commands to Decedent. Decedent was ordered to exit his vehicle with his hands up.

Decedent, however, refused to comply. Instead, he drove south on Radwick Drive and made a U-turn which positioned his vehicle to face the officers. Using the P/A system, Officer Anderson continued to provide Decedent verbal commands. He warned Decedent that if he drove toward the officers he would be shot. Decedent reversed the vehicle, drove backwards south on Radwick Drive, and struck a Clark County speed limit street sign. Decedent again stopped and waited as more commands to exit the vehicle were given over the P/A system.

Those commands were ignored, and Decedent drove directly toward the assembled officers and their marked patrol vehicles which were parked in the middle of Radwick Drive. As Decedent approached, Officers Beason, Gariano, Rycraft, Aguilos, Anderson, and Stephenson fired several rounds from their respective weapons at Decedent. Decedent wrecked his vehicle into a marked LVMPD vehicle, which caused the airbags in the patrol vehicle to deploy. After Decedent's vehicle came to a stop, Officers Rycraft and McIntosh fired a second volley of rounds at Decedent's vehicle.

For approximately 30 minutes after the gunfire stopped, officers gave Decedent verbal commands to exit his vehicle and formulated a plan to extract Decedent from the vehicle.

At approximately 5:00 a.m., with the use of a ballistic shield, officers entered the vehicle, removed Decedent from the vehicle and placed him in handcuffs. Medical personnel were immediately summoned and, at approximately 5:04 a.m., he was pronounced deceased. Due to the fact that an officer-involved shooting ("OIS") occurred, the scene was secured and the Force Investigation Team ("FIT") was requested to assume responsibility of the investigation.

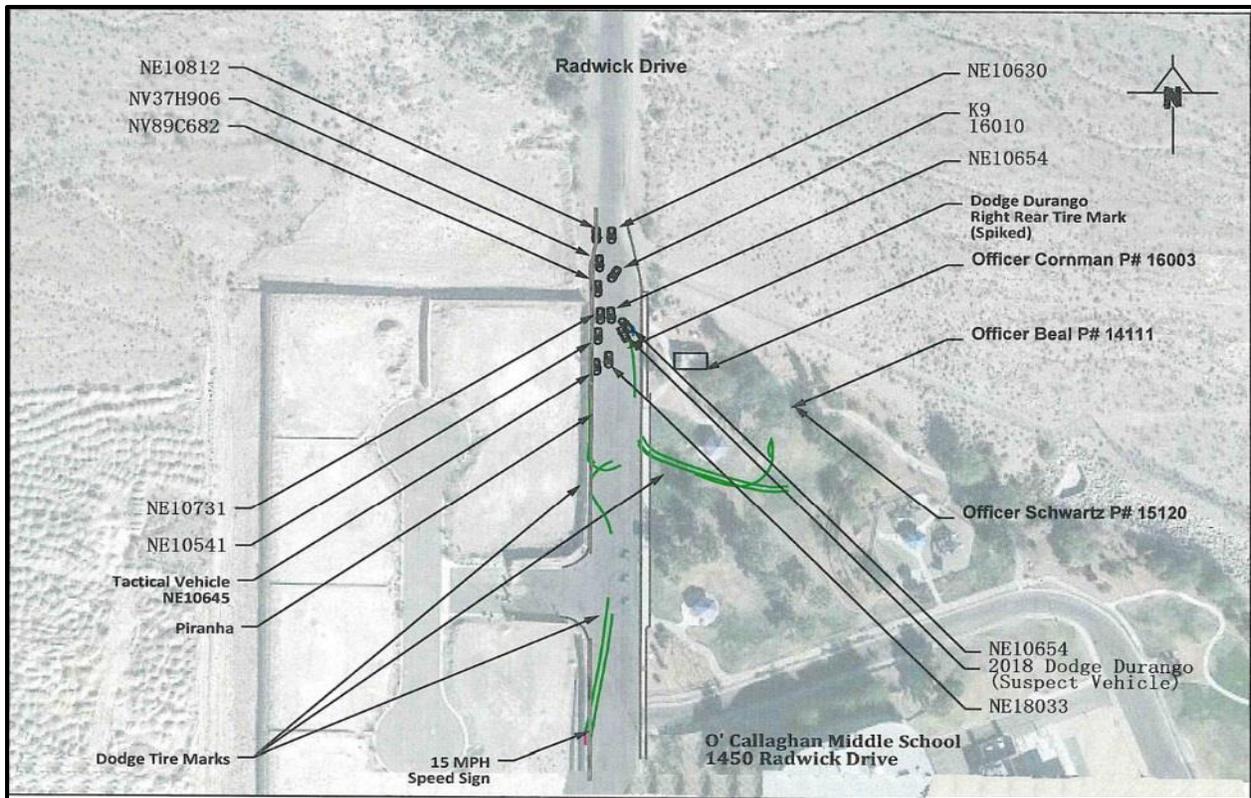
This report explains why criminal charges will not be forthcoming against LVMPD Officers Aguilos, Anderson, Beason, Gariano, McIntosh, Rycraft and Stephenson. It is not intended to recount every detail, answer every question, or resolve every factual conflict regarding this police encounter. It is meant to be considered in conjunction with the Police Fatality Public Fact-Finding Review which was held on May 15, 2019.

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.

DESCRIPTION OF THE SCENE AND VISIBLE EVIDENCE

The scene was located outdoors on Radwick Drive, a street which runs north and south. Owens Avenue is an east/west running street located to the north of the scene. Monroe Avenue is an east/west running street located to the south of the scene.





Above: Diagram completed by LVMPD Fatal Section

Vehicle Locations

There were eleven LVMPD vehicles at the scene.

#10645, a 2015 Ford Explorer, was parked facing south at the south end of the scene along the west edge of Radwick Drive.

#10833, a 2017 Ford Explorer, was parked facing south, just east of #10645, in the middle of Radwick Drive.¹

#10541, a 2014 Ford Explorer, was parked facing south, just north of #10645 along the west edge of Radwick Drive.

Multiple cartridge cases and shotshells were found around vehicles #10645, #10833 and #10541. Additionally, the "Piranha" stop stick was located in the dirt shoulder on the west side of Radwick Drive to the south of #10645.

#10731, a 2015 Ford Explorer, was parked facing south, just north of #10541 along the west edge of Radwick Drive.

¹ Vehicle #10833 is denoted in the scene diagram as #18033

#10654, a 2015 Ford Explorer, was parked facing south, just north of #10731 in the middle of Radwick Drive.

NV/89C6582, a 2016 Chevy Impala was parked facing south, just north of #10731 along the west edge of Radwick Drive.

NV/37H906, a 2017 Ford Taurus, was parked facing south, just north of NV/89C6582 along the west edge of Radwick Drive.

#16010, a 2016 Ford Expedition, was parked facing southwest, just east of NV/89C6582 and NV/37H906 in the middle of Radwick Drive.

#10812, a 2016 Ford Explorer, was parked facing south, just north of NV/37H906 along the west edge of Radwick Drive.

#10630, a 2015 Ford Explorer, was parked facing south, just east of #10812 in the middle of Radwick Drive.

#10534, a 2017 Ford Explorer, was parked facing northwest near the east side of Radwick Drive. #10534 had extensive damage to the left side of the vehicle and hood due to Decedent's vehicle colliding with it. Cartridge cases, bullets and bullet fragments were located in the area around this vehicle.²



Above: Collision between Decedent's vehicle and LVMPD patrol vehicle #10534

Decedent's vehicle was a 2018 Dodge Durango with red "Dodge Towbin" paper plates. It was parked facing northwest and was on the left side of #10534. Decedent's vehicle had

² In the above referenced scene diagram, #10654 is referenced twice on the diagram. The reference to #10654 which is found in the upper right hand corner of the diagram is the correct reference to that vehicle. The second reference to #10654 which is located in the bottom right hand corner of the diagram is the actual location of #10534, the vehicle which Decedent's vehicle collided into.

extensive damage to the front end and right front corner of the vehicle. Both front doors were open. The right rear tire was deflated with two hollow metal spikes protruding from the tire treads. Vehicle debris and fluid were in the roadway surrounding Decedent's Durango and #10534.



Above: Deflated tire from Decedent's vehicle and the speed limit Decedent struck prior to the OIS

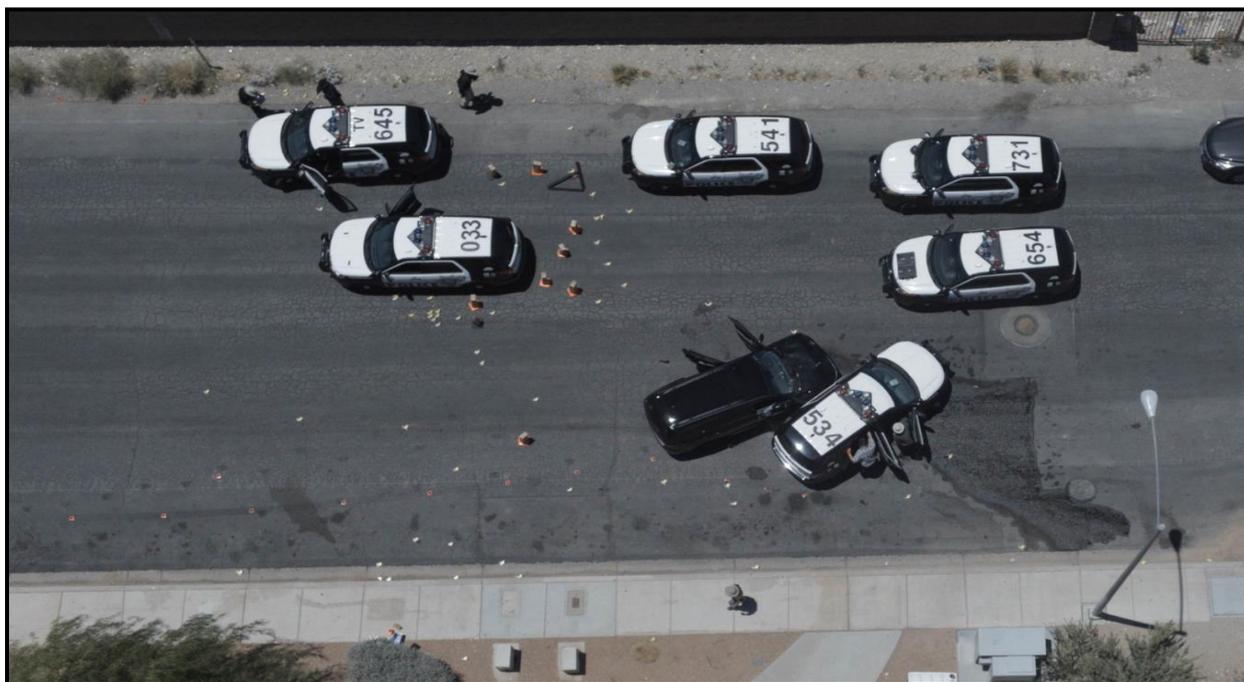
Multiple cartridge cases, bullets, bullets fragments and jacket fragments were located around Decedent's Durango. Additionally, Decedent's Bushmaster semi-automatic rifle was located in the front passenger seat of the vehicle. The rifle had a magazine with six cartridges inside. Decedent's Durango also had multiple bullet holes visible from the exterior.



Above: Rifle inside Decedent's vehicle

Officer Positions at time of the Shooting

Officer Beason was positioned at the left rear corner of #10833.
Officer Gariano was positioned at the right front corner of #10645.
Officer Anderson was positioned at the rear of #10645.
Officer Rycraft was positioned at left front door of #10534.
Officer Stephenson was positioned at left rear corner of #10833.
Officer Aguilos was positioned behind #10833.
Officer McIntosh was positioned behind #10833.
Witness Officer Brcic was positioned behind #10833.
Witness Officer Cornman was positioned on the east side of a brick building along the north side of Cesar Chavez Park.
Witness Officer Brissedine was positioned in the left front seat of #16010.
Witness Officer Ake was positioned behind #10833.
Witness Officer Beal was positioned along the north side of Cesar Chavez Park.
Witness Officer Schwartz was positioned along the north side of Cesar Chavez Park.
Witness Officer Sgt. Sowa was positioned behind #10645.



Above: Overhead view of scene and placement of all evidence placards

Decedent

Decedent was lying in the street next to the driver's side door of his vehicle. The top of his head was pointed southwest. His face was turned to his left and was pointed northwest. His legs were pointed northeast with his left leg straight and his right leg slightly bent at the knee. Both his right and left arms were bent at the elbow and were handcuffed behind his back. He was wearing a pair of jeans with a red belt, blue shoes and black socks.

Coroner Investigator K. Peters arrived and observed injuries to Decedent's lower left side, right side of back and left abdomen. Apparent blood was present around Decedent's nose and mouth. Two cartridge cases were located near his body.



Above: Impact of the two rounds that struck Decedent

BODY-WORN CAMERAS

Several officers who were on the scene were equipped with body-worn cameras (hereinafter “BWC”) which were activated at the time of the incident. This included the seven involved officers as well as seven witness officers. Officer Gariano and Sgt. Sowa’s BWC’s captured the most detailed footage of the overall incident from the initial stop through the officer-involved shooting. Their BWC footage depicts the following:

Officer Gariano parked behind Decedent’s vehicle and activated his spotlight. Officer Gariano asked two people in the park if the vehicle was theirs. After more officers arrived, Officer Gariano looked into the vehicle and discovered Decedent asleep on the driver’s side and another officer informed Officer Gariano that there was an AR rifle on the passenger’s seat. Officer Gariano requested a Code Red³ and more units to the scene. Officer Gariano retrieved a ballistic shield from his vehicle, donned a tactical vest and deployed his shotgun. Officer Gariano told other officers to put on their tactical gear if they had any. Officer Gariano took cover near the front passenger panel of his vehicle and stayed in position until he discharged his shotgun at Decedent’s vehicle.

Sgt. Sowa arrived with the Immediate Action Team Officers and was briefed on the placement of officers as well as the tire deflation device behind the tire of Decedent’s vehicle. Sgt. Sowa gave the Immediate Action Team Officers assignments. Sgt. Sowa informed Dispatch the officers were set and they were preparing to use the P/A to issue commands to Decedent.

³ A “Code Red” is a request by an officer to have exclusive use of a radio channel to relay information about a situation. Any officer who is assigned to that particular event can speak on that radio channel and listen to the information relayed on that channel.

As Sgt. Sowa was instructed to wait for the K-9 officer to arrive prior to giving Decedent verbal commands, officers advised Sgt. Sowa that Decedent's vehicle started and the brake lights were illuminated.

Sgt. Sowa's BWC showing Decedent starting his vehicle illuminating the brake lights



Sgt. Sowa ordered officers to give Decedent verbal commands over the P/A system. As verbal commands were issued, Decedent drove his vehicle forward puncturing his tire. Sgt. Sowa then advised Dispatch that Decedent is turning on his vehicle.

Officer Cornman's BWC showing Decedent turning his vehicle to face the police



Sgt. Sowa told officers to move back behind a patrol vehicle yelling, "Cover! Cover! Cover!" Sgt. Sowa moved behind a patrol vehicle as officers fired rounds at Decedent's vehicle. Sgt. Sowa again told officers to take cover as officers fired a second volley of rounds at Decedent's vehicle. Officers gave Decedent commands to exit his vehicle with his hands up.

Officer Aguilos' BWC showing Decedent's vehicle driving towards police



A plan was made to move officers with a shield north of Decedent's vehicle in an attempt to look inside the vehicle for any movement. An officer stated, "It looks like he's slumped down." Sgt. Sowa and Immediate Action Team officers approached Decedent's vehicle and stated the door to the vehicle was locked and Decedent was not moving. Decedent's vehicle was breached by breaking out a window. Officers believed Decedent was deceased inside the vehicle. Decedent was extracted from the vehicle and handcuffed.

The BWC footage confirmed the officer' position and perspectives at the time shots were fired.

SCENE WALK-THROUGHS

Officer Joseph Aguilos

On June 14, 2018, at approximately 12:18 p.m., Officer Aguilos relayed the following information during a walk-through of the scene:

Officer Aguilos stood near the rear driver's side door of a marked LVMPD vehicle when he observed Decedent drive toward officers. Officer Aguilos fired his handgun at the vehicle when it was 25 to 30 yards away from him because he was concerned for his safety and the safety of his fellow officers.

Officer Anthony Gariano

On June 14, 2018, approximately 11:53 a.m., Officer Gariano relayed the following information during a walk-through of the scene:

Several days prior to the shooting, Officer Gariano investigated an armed robbery that occurred in NEAC involving black male suspects and a stolen newer black Dodge Durango. Officer Gariano also knew of a robbery series that ensued after he investigated the robbery call in which a black male suspect stole the Durango.

Officer Gariano was driving on Radwick Drive near Owens Avenue when he observed a parked black Dodge Durango that matched the description of the stolen Durango. Officer Gariano approached the vehicle and observed a black male asleep in the driver's seat and a rifle on the passenger's seat.

Officer Gariano requested more officers to assist him. When the other officers arrived, they placed a tire deflation device behind the tires of the vehicle, formed a plan, and used the bullhorn from the vehicle. Decedent woke up, started the vehicle, and ultimately, made a U-turn and drove toward the officers located nearby Officer Gariano.

Officer Gariano fired three rounds from his shotgun at Decedent's vehicle. Officer Gariano was concerned for the safety of the other officers and fired his shotgun to protect them.

Officer Jeremiah Beason

On June 14, 2018, at approximately 12:05 p.m., Officer Beason relayed the following information during a walk-through of the scene:

Officer Beason stood near the rear driver's side door of a marked LVMPD vehicle with his rifle. Decedent drove toward him and other officers. Officer Beason became in fear for his safety and the safety of the other officers when Decedent was approximately 20 to 30 yards away from him. Accordingly, Officer Beason fired his rifle to protect himself and the other officers.

Officer Craig McIntosh

On June 14, 2018, at approximately 12:11 p.m., Officer McIntosh relayed the following information during a walk-through of the scene:

Officer McIntosh knew Decedent was a possible suspect in an ongoing robbery series and was armed with a rifle. Officer McIntosh heard officers using a bullhorn and saw Decedent crash his vehicle into a police car. When Officer McIntosh saw Decedent moving inside the vehicle, he fired his handgun because he was concerned for the safety of the other officers. Officer McIntosh reloaded his handgun and left the magazine from his handgun on the hood of a marked patrol car.

Officer Frank Rycraft

On June 14, 2018, at approximately 12:24 p.m., Officer Rycraft relayed the following information during a walk-through of the scene:

Officer Rycraft stood near his marked LVMPD vehicle. Officer Rycraft knew Decedent was armed with a rifle. Officer Rycraft observed Decedent driving right at him. Officer Rycraft moved out of the way and fired his handgun as Decedent drove his vehicle into Officer Rycraft's vehicle.

Officer Rycraft conducted a "TAC" reload of his handgun as he moved to the back of Decedent's vehicle. Officer Rycraft observed Decedent moving inside of the vehicle in the direction of the rifle. Officer Rycraft fired his handgun again into Decedent's vehicle.

Officer Robert Stephenson

On June, 14, 2018, at approximately 12:29 p.m., Officer Stephenson relayed the following information during a walk-through of the scene:

Officer Stephenson stood near the rear driver's side door of a marked LVMPD vehicle. Officer Stephenson observed Decedent drive his vehicle at officers so he fired his handgun to protect himself and the other officers.

Officer Jordan Anderson

On June 14, 2018, at approximately 12:33 p.m., Officer Anderson relayed the following information during a walk-through of the scene:

Officer Anderson stood to the rear of a marked LVMPD vehicle. He knew Decedent was armed with a rifle. Decedent drove his vehicle directly at him. Officer Anderson fired his handgun to stop the threat because he was concerned for the safety of himself and the other officers.

PUBLIC SAFETY STATEMENTS

Officers Beason, Gariano, Anderson, Rycraft, Stephenson, Aguilos and McIntosh 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 Beason

1. *"Did you discharge your firearm?"* ***"Yes, sir."***
2. *"If so, in what direction?"* ***"South, then moved east as the vehicle moved east."***
3. *"Approximately where did you...where were you located when you fired?"* ***"Driver's side door of the front vehicle."***
4. *"How many shots do you think you fired?"* ***"Approximately 12."***
5. *"Is anyone injured?"* ***"The suspect."***
6. *"If so, where are they located?"* ***"Next to the Dodge Durango."***
7. *"Are there any outstanding suspects?"* ***"No."***
8. *"Is it possible the suspect fired rounds at you?"* ***"No, not that I know of."***
9. *"Do you know if any other officers discharged their firearms?"* ***"Yes."***
10. *"If so, who are they?"* ***"Officer Gariano and Officer Anderson."***
11. *"Approximately where was [sic] the officers located when they fired?"* ***"Not sure."***
12. *"Is there any weapons/evidence that need to be secured/protected?"* ***"Yes, the vehicle, Dodge Durango."***
13. *"Are there any weapons/evidence that need to be secured or protected?"* ***"The vehicle, a Dodge...which is a Dodge Durango."***
14. *"If so, where are they located?"* ***"There was a rifle in the passenger floorboard of the Dodge Durango."***
15. *"Are you aware of any witnesses?"* ***"Yes."***
16. *"If so, what are their locations?"* ***"Scattered throughout the Cesar Chavez Park."***

Officer Gariano

1. *"Did you discharge your firearm?"* ***"Yes."***
2. *"If so, in what direction?"* ***"Southeast from my position."***
3. *"Approximately where were you located when you fired?"* ***"Right passenger side of my patrol vehicle, which is the TAC vehicle closest to the wall."***
4. *"How many shots do you think you fired?"* ***"Three."***
5. *"Is anyone injured?"* ***"No officers, but the suspect is."***
6. *"If so, where are they located?"* ***"Dead at the scene,"***
7. *"Are there any outstanding suspects?"* ***"No."***
8. *"Is it possible the suspect fired rounds at you?"* ***"I don't know."***
9. *"If so, what directions were the rounds fired from?"* ***"Unknown."***
10. *"How many shots do you think the suspect fired?"* ***"Unknown."***
11. *"Approximately where was the suspect located when they fired?"* ***"Unknown."***
12. *"Do you know if any officers discharged their firearms?"* ***"Yes."***
13. *"If so, who are they?"* ***"Officer Beason and Officer Stephenson."***

14. "Approximately where was [sic] the officers located when they fired?" **"To the left near other patrol cars."**
15. "Are there weapons/evidence that need to be secured/protected?" **"Yes."**
16. "If so, where are they located?" **"The suspect's vehicle."**
17. "Are you aware of any witnesses?" **"No."**

Officer Jordan Anderson

1. "Did you discharge your firearm?" **"Yes."**
2. "If so, in what direction?" **"South."**
3. "Approximately where were you located when you fired?" **"To the north of the suspect vehicle, in between two patrol vehicles."**
4. "How many shots do you think you fired?" **"Six."**
5. "Is anyone is injured?" **"Yes."**
6. "If so, where are they located?" **"On the ground, by the black vehicle,"**
7. "Are there any outstanding suspects?" **"No."**
8. "Is it possible the suspect fired rounds at you?" **"I don't know."**
9. "If so, in what directions were the rounds fired from?" **"Unknown."**
10. "How many shots do you think the suspect fired?" **"I don't know."**
11. "Approximately where was the suspect located when they fired?" **"In the black Durango, driver's seat."**
12. "Do you know if any other officers discharged their firearms?" **"Yes."**
13. "If so, who are they?" **"Officer Beason and Officer Rycraft."**
14. "Approximately where was the officer located...or officers located when they fired?" **"Next to the patrol vehicles."**
15. "Are there any weapons, evidence that need to be secured/protected?" **"Yes, a firearm."**
16. "If so, where are they located?" **"In the black Durango."**
17. "Are you aware of any witnesses?" **"Yes, officers."**
18. "If so, where is their locations?" **"In the park."**

Officer Frank Rycraft

1. "Did you discharge your firearm?" **"Yes, sir."**
2. "If so, in what direction?" **"The initial volley I was facing south towards the driver, and then the second volley I was facing northeast."**
3. "Approximately where were you located when you fired?" **"The driver's side of the patrol vehicle #10534."**
4. "How many shots do you think you fired?" **"Nineteen,"**
5. "Is anyone injured?" **"I am not injured, and no other officers."**
6. "Are there any outstanding suspects?" **"Not that I'm aware of. There was no occupants in the vehicle...no other occupants in the vehicle."**
7. "Is it possible the suspect fired rounds at you?" **"It is possible, but I did not see any muzzle flashes."**
8. "If so, in what direction were the rounds fired from?" **"Unknown."**
9. "How many shots do you think the suspect fired?" **"Unknown."**

10. *Approximately where was the suspect located when they fired?* **"The driver's seat, using vehicle as deadly weapon."**
11. *Do you know if any other officers discharged their firearms?* **"Yes, several."**
12. *Approximately where was [sic] the officers located when they fired?* **"Ten to fifteen meters initially, and then during the second volley it was three to five meters, both from the suspect."**
13. *Are there any weapons or evidence that needs...that need to be secured/protected?* **"Yes, an AR-15."**
14. *If so, where are they located?* **"The front passenger seat."**
15. *Are you aware of any witnesses?* **"Yes."**
16. *If so, what is their locations?* **"Multiple officers were witnesses, and they are in the park."**

Officer Robert Stephenson

1. *Did you discharge your firearms [sic]?* **"Yes."**
2. *If so, in what direction?* **"South."**
3. *Approximately where were you located when you fired?* **"Driver's side rear of the patrol vehicle in front with its lights on."**
4. *How many shots do you think you fired?* **"Four or five."**
5. *Is anyone injured?* **"Yes, the suspect."**
6. *If so, where are they located?* **"On the street."**
7. *Is there any outstanding suspects?* **"No."**
8. *Is it possible the suspect fired rounds at you?* **"It's possible."**
9. *And so, what direction were the rounds fired from?* **"Unknown, possibly south to north."**
10. *How many shots do you think the suspect fired?* **"I don't know."**
11. *Approximately where was the suspect located when they fired?* **"In the vehicle, on the street."**
12. *Do you know if any officers discharged their firearm...If any other officers discharged their firearm?* **"Yes."**
13. *If so, who are they?* **"Officer Beason, Officer Gariano, Officer Aguilos, Officer McIntosh, Officer Rycraft, and Officer Anderson."**
14. *Approximately where was [sic] the officers located when they fired?* **"To the rear of the patrol vehicles, and to the west of the patrol vehicles."**
15. *Are there any weapons or evidence that need to be secured/protected?* **"Yes."**
16. *If so, where are they located?* **"In the suspect's vehicle."**
17. *Are you aware of any witnesses?* **"No, just other officers."**

Officer Joseph Aguilos

1. *Did you discharge your firearm?* **"Yes."**
2. *If so, in what direction?* **"Towards the vehicle, south."**
3. *Approximately where were you located when you fired?* **"Next to Officer Stephenson, on the left hand side."**
4. *How many shots do you think you fired?* **"Eight to ten."**

5. "Is anyone injured?" **"The suspect."**
6. "Are there any outstanding suspects?" **"No."**
7. "Is it possible the suspect fired rounds at you?" **"Don't know. He could have. He could of."**
8. "If so, what direction were the rounds fired from?" **"I don't know."**
9. "How many shots do you think the suspect fired?" **"I don't know."**
10. "Approximately where was the suspect located when they fired?" **"Would have been in the driver's seat."**
11. "Do you know if any other officers discharged their firearms?" **"Yes."**
12. "If so, who are they?" **"Officer Beason, Officer Stephenson and Officer Gariano."**
13. "Approximately where was [sic] the officers located when they fired?" **"Stephenson was on the right side of me. I don't know where Gariano was."**
14. "Are there any other weapons or evidence that need to be secured or protected?" **"Yes."**
15. "If so, where are they located?" **"An assault rifle is inside the vehicle"**
16. "Are you aware of any witnesses?" **"Sergeant Sowa, Officer Brcic, and Officer Rycraft, McIntosh, Officer Gariano, Officer Beason, Officer Anderson, and other officers."**
17. "If so, where are there...what is their location?" **"All around the vehicle. Stephenson was right next to me."**

Officer Craig McIntosh

1. "Did you discharge your firearm?" **"Yes."**
2. "If so, in what direction?" **"East."**
3. "Approximately where were you located when you fired?" **"West of the suspect car when it made contact, uh, with the patrol vehicle."**
4. "How many shots do you think you fired?" **"Two shots."**
5. "Is anyone injured?" **"Yes, the suspect. No officers."**
6. "Are there any outstanding suspects?" **"No."**
7. "Is it possible the suspect fired rounds at you?" **"No."**
8. "Do you know if any other officers discharged their firearms?" **"Yes."**
9. "If so, who are they?" **"Officer Beason, Officer Rycraft, Officer Aguilos, Officer Stephenson, and Officer Gariano."**
10. "Approximately where was [sic] the officers located when they fired?" **"I couldn't tell you exactly, but were positioned north and west of the vehicle."**
11. "Is there any weapons/evidence that need to be secured/protected?" **"Yes."**
12. "If so, where are they located?" **"An assault rifle in the passenger seat of the suspect vehicle."**
13. "Are you aware of any witnesses?" **"Other officers. Officer Brcic, Sergeant Sowa, and Officer Ake, and Officer Cornman."**
14. "If so, what is their location?" **"Positioned with other officers who had shot north and west of the vehicle."**

OFFICER WEAPON COUNTDOWNS



Officer Beason (.223 DPMS A15)

Officer Beason conducted a tactical reload and retained his primary magazine. At the completion of the countdown, it was determined Officer Beason discharged his rifle 14 times during this incident.



Officer Gariano (Slug Mossberg 590A)

At the completion of the countdown, it was determined Officer Gariano discharged his shotgun three times during this incident.

Officer Gariano (9mm Glock 17)

At the completion of the countdown, it was determined Officer Gariano did not fire his handgun during the incident.



Officer McIntosh (9mm Glock 17 Gen 4)

At the completion of the countdown, detectives were unable to determine the number of times Officer McIntosh discharged his weapon during this incident due to the fact Officer McIntosh conducted a speed reload after he fired his weapon. After comparing the fired cartridge cases from the scene it was determined Officer McIntosh fired two times during the incident.



Officer Aguilos (9mm Glock 17)

Officer Aguilos conducted a tactical reload and retained his initial magazine. At the completion of the countdown, it was determined Officer Aguilos discharged his firearm nine times during this incident.



Officer Anderson (9mm Glock 17)

At the completion of the countdown, detectives were unable to determine the number of times Officer Anderson discharged his weapon during this incident due to the fact Officer Anderson conducted a speed reload after he fired his weapon. After comparing the fired cartridge cases from the scene to the remaining cartridges left in his magazine, detectives were able to determine Officer Anderson fired six times during the incident.



Officer Stephenson (.40 Sig Sauer P226)

Officer Stephenson conducted a tactical reload and retained his primary magazine. At the completion of the countdown, it was determined Officer Stephenson discharged his firearm five times during this incident.



Officer Rycraft (9mm Sig Sauer P226)

Officer Rycraft conducted a tactical reload and retained his primary magazine. At the completion of the countdown, it was determined Officer Rycraft discharged his firearm 19 times during this incident.

FIREARM EXAMINATIONS

On June 28, 2018, an LVMPD Forensic Laboratory Request was submitted on the seven involved officers' and Decedent's respective firearms for function tests and ballistic comparison evidence.

On September 24, 2018 Forensic Scientist Glenn Davis, P# 17031, submitted the Report of Examination: Firearms & Toolmarks.

Decedent's Bushmaster .223 Remington semiautomatic rifle was examined, test fired and found to be operational with no noted malfunctions. The submitted magazine had a capacity of 30 cartridges.

Officer Beason's .223 DPMS A15 rifle was examined, test fired and found to be operational with no noted malfunctions. The submitted magazine had a capacity of 30 cartridges.

Officer Gariano's Slug Mossberg 590A shotgun was examined, test fired and found to be operational with no noted malfunctions. The shotgun has a capacity of 7 shotshells.

Officer McIntosh's 9mm Glock 17 Gen 4 was examined, test fired and found to be operational with no noted malfunctions. The submitted magazine had a capacity of 15 cartridges.

Officer Aguilos' 9mm Glock 17 was examined, test fired and found to be operational with no noted malfunctions. The submitted magazine had a capacity of 17 cartridges.

Officer Anderson's 9mm Glock 17 was examined, test fired and found to be operational with no noted malfunctions. The submitted magazine had a capacity of 17 cartridges.

Officer Stephenson's .40 Sig Sauer P226 was examined, test fired and found to be operational with no noted malfunctions. The submitted magazine had a capacity of 15 cartridges.

Officer Rycraft's 9mm Sig Sauer P226 was examined, test fired and found to be operational with no noted malfunctions. The submitted magazine had a capacity of 20 cartridges.

Two evidence bullets, which were recovered at the autopsy of Decedent, were examined and microscopically compared to each other and to test fired bullets from the Glock and Sig Sauer Pistols. Based on these comparisons, it was determined that the two bullets were fired from Officer Stephenson's Sig Sauer Pistol.

Fourteen recovered .223 Remington cartridge cases were identified as having been fired from Officer Beason's .223 DPMS A15 rifle.

Three recovered 12 Gauge shotshells were identified as having been fired from Officer Gariano's Slug Mossberg 590A shotgun.

Nine recovered 9mm Luger cartridge cases were identified as having been fired from Officer Aguilos' 9mm Glock 17.

Six recovered 9mm Luger cartridge cases were identified as having been fired from Officer Anderson's 9mm Glock 17.

Three recovered S&W cartridge cases were identified as having been fired from Officer Stephenson's .40 Sig Sauer P226.

Twenty recovered 9mm Luger cartridge cases were identified as having been fired from Officer Rycraft's 9mm Sig Sauer P226

INVESTIGATION

Witness Officers

Sgt. Justin Sowa

On June 14, 2018, at approximately 10:46 a.m., Detectives Colon and Alsup conducted an audio recorded interview with Sgt. Sowa, who relayed the following:

Sgt. Sowa was in his office at Northeast Area Command when he heard Officer Gariano broadcast he encountered a black male (Decedent) sleeping in the driver's seat of an unregistered, black Dodge Durango with a rifle located on the passenger's side floorboard.

Given the recent armed robbery series involving a black Dodge Durango in the same general area, Sgt. Sowa responded to the scene as Lt. Alvarado and Sgt. Lewis responded to set up a command post. Sgt. Sowa had nine officers with him to the rear (north) of Decedent's vehicle. An additional rifle team was posted in the park to the east of the vehicle. At this time, Decedent remained asleep and his vehicle faced south on Radwick Drive.

Sgt. Sowa instructed officers to turn off their emergency lights and sirens and utilize one spotlight to illuminate Decedent's vehicle, because they did not want to wake him as they took positions of cover. Sgt. Sowa designated a rifle officer, an officer to give verbal commands, an officer to deploy a ballistic shield, and an officer equipped with the trauma kit to act as a medic, if needed. An additional officer advised Sgt. Sowa a tire deflation device had been deployed.

Sgt. Sowa advised the incident commander (Lt. Alvarado) that officers were ready to start giving verbal commands. Sgt. Sowa was advised to wait until a K-9 unit arrived. However, before the K-9 unit arrived, the vehicle's brake lights illuminated signaling Decedent may have woken up.

Officers activated their emergency lights and began issuing verbal commands to Decedent to exit his vehicle. Instead, Decedent's vehicle slowly moved forward over the tire deflation device and it appeared the deployment was successful. Decedent drove south on Radwick Drive, made a U-turn, and was now facing north on Radwick Drive. Decedent stopped briefly, accelerated in reverse, and then stopped again.

Located north of Decedent's vehicle were three patrol cars. Located behind those three patrol cars were several more patrol vehicles. The front row of patrol vehicles consisted of one vehicle parked facing north on the west side of Radwick Drive, a second vehicle facing north to the east of the first vehicle and a third vehicle parked at an angle (east to west) across Radwick Drive.

Sgt. Sowa had positioned his officers in a "Tactical-V" alignment with rifle officers on both the west side by the first patrol vehicle and the east side in the adjacent park area. Decedent

accelerated toward the patrol officers and their vehicles. Sgt. Sowa believed Decedent was trying to hit the officers. Several officers fired at Decedent as he drove at them.

Sgt. Sowa did not fire because he was behind the officers who were shooting. Decedent's vehicle hit the patrol vehicle parked at an angle and stopped. Concerned about crossfire since Decedent drove down the middle of the "Tactical-V," Sgt. Sowa repositioned officers to safer locations.

Sgt. Sowa observed Decedent's vehicle moving, which indicated to him that Decedent was possibly repositioning himself inside the vehicle. Sgt. Sowa asked Lt. Alvarado to notify SWAT. Lt. Alvarado requested officers attempt to gain a visual on Decedent.

The decision was made to utilize a ballistic shield to approach Decedent's vehicle. Officers placed the shield against the driver's side door and broke out the rear window to unlock the vehicle. Officers opened the driver's door, removed Decedent and placed him in handcuffs.

Medical personnel was requested, responded, and determined Decedent was deceased.

Officer David Brisendine

On June 14, 2018, at approximately 10:56 a.m., Detective Hodson conducted an audio recorded interview with Officer David Brisendine who relayed the following:

Officer Brisendine was operating as a marked K-9 unit and was dispatched to a suspicious vehicle call in NEAC. Details of the call stated patrol officers located a Dodge Durango that was occupied and the driver had a rifle on the front passenger's seat.

Upon his arrival, Officer Brisendine observed multiple officers positioned behind Decedent's vehicle. As Officer Brisendine parked, he observed the brake lights illuminate. The vehicle quickly accelerated south on Radwick Drive and then stopped. The vehicle turned around in the street and reversed until it backed over a street sign on the west side of Radwick Drive.

The vehicle quickly accelerated directly at the police vehicles officers were using as cover. Officer Brisendine backed his vehicle farther away to avoid being hit by Decedent. He heard and witnessed officers fire rounds at Decedent as he approached them without slowing down and eventually striking a patrol vehicle.

After the shots were fired, Officer Brisendine retrieved his ballistic shield and joined the other officers as they verbally challenged Decedent in his vehicle. Once it was determined Decedent was not moving, Officer Brisendine used his shield to assist in removing Decedent from the vehicle. He covered the officers as they knocked out the window to unlocked the door. Decedent appeared deceased. Decedent was removed from the vehicle and handcuffed. Medical personnel quickly arrived and pronounced him deceased.

Officer Brisendine did not fire his weapon and did not deploy his canine partner. Officer Brisendine observed an AR style rifle on the front passenger's seat within reach of Decedent.

Officer Paul Ake

On June 14, 2018, at approximately 11:22 a.m., Detective Colon conducted an audio recorded interview with Officer Ake who relayed the following:

Officer Ake responded to assist another officer who stopped an unregistered black Dodge Durango. Decedent was asleep in the vehicle with a rifle on the passenger's seat next to him. Officer Ake was aware of a black Durango being involved in a series of area robberies.

Officer Ake observed other officers in the area and Officer Gariano's vehicle spotlight illuminating the Durango. The officers requested the Air Unit and K-9 Unit as they developed a tactical plan. A tire deflation device in front of the rear passenger's side tire of Decedent's vehicle was deployed.

Officer Ake observed two patrol vehicles parked facing south on the west side of Radwick Drive. A third patrol vehicle parked diagonally, east to west, facing the first two patrol vehicles.

An officer deployed a rifle and posted in the park to the east of Decedent's vehicle. As the K-9 officer arrived, the brake lights of the Durango lit up. Officers yelled commands at Decedent to exit his vehicle. Instead, the Durango moved forward and Officer Ake heard a tire deflate.

Decedent continued moving forward, turned around to face the officers. Decedent backed up, hit a street sign, and stopped momentarily. Decedent then moved forward, stopped and again reversed. Decedent accelerated forward at a high rate of speed toward the officers. Officers fired at the vehicle. Officer Ake did not fire because there was an officer standing in front of him. Decedent's vehicle collided into the diagonally parked patrol vehicle.

Officer Ake believed Decedent was intentionally trying to hit officers because the east northbound lane was not blocked by a patrol vehicle and Decedent could have escaped.

Officers developed a plan utilizing a ballistic shield to approach the vehicle. Officers verbally challenged Decedent to exit the vehicle. Officers approached and placed the shield against the driver's side window as they broke out the rear driver's side window and subsequently the front passenger door to unlock the vehicle. As the driver's door opened, Officer Ake noticed Decedent was not moving. Decedent was removed from the vehicle, handcuffed and placed on the ground.

Officer Cody Beal

On June 14, 2018, at approximately 11:24 a.m., Detective Hodson conducted an audio recorded interview with Officer Cody Beal who relayed the following:

Officers Beal and Schwartz, operated as a two-man unit and were assisting in an Incident Action Plan (IAP) looking for a stolen Dodge Durango that was taken during a robbery and

used to commit a several other robberies in the area. They were also attempting to locate a black male suspect who was armed with an AR style rifle.

Officers Beal and Schwartz heard Officer Gariano announce over the NEAC radio channel that he had located a black Dodge Durango in the area of Radwick Drive and Owens Avenue. A black male adult was asleep inside the vehicle and an AR style rifle was in the front passenger seat.

Officers Beal and Schwartz responded to Officer Gariano's location. They observed other officers who began to form an action team. They also devised a plan on how to take Decedent into custody. Officer Beal deployed his rifle and Officer Schwartz deployed his night vision monacles and acted as Officer Beal's spotter.

They advised Sgt. Sowa they were going to deploy in the grass area of the park, directly east of Decedent's vehicle. Officer Beal was able to line up with the driver's side window of the vehicle but could not see Decedent.

Officer Beal observed the vehicle's brake lights illuminate, the driver's side window roll down, and Decedent in the driver's seat. The vehicle moved forward and Officer Beal heard a tire deflate due to the tire deflation device. Decedent "peeled out" and quickly accelerated south on Radwick Drive. Decedent stopped abruptly and conducted a two point turn in the street. Decedent backed up and ran over a street sign. Decedent again accelerated toward the action team officers their patrol vehicles.

Officers Beal and Schwartz quickly moved behind a block wall structure for better cover in case officers fired at Decedent. As they moved, they heard officers fire their weapons.

Officer Beal heard two volleys of gunfire and then officers communicating to take Decedent into custody. Decedent did not communicate. Decedent was removed from the vehicle and medical personnel pronounced him dead at the scene. Officer Beal neither fired his weapon nor made any contact with Decedent.

Officer Garrett Cornman

On June 14, 2018, at approximately 11:42 a.m., Detective Colon conducted an audio recorded interview with Officer Cornman who relayed the following:

Officer Cornman responded to Radwick Drive to assist officers who were out with a suspicious vehicle. Officer Cornman was advised there was a black male asleep in a black Dodge Durango and there a rifle on the front passenger's seat.

Officer Cornman deployed his shotgun, on the east side of Radwick Drive, in the park, behind a cinder block wall. As Officer Cornman remained in his position, a tire deflation device was placed near a tire of the Decedent's vehicle.

Officer Cornman heard officers verbally command Decedent to exit his vehicle, as Decedent's vehicle moved forward. Decedent turned around and faced the officers in the street. Decedent then backed up and hit a street sign.

Officers warned Decedent he would be shot if he drove at officers. Decedent drove toward the officers striking a patrol vehicle, as officers shot at him. Officer Cornman did not shoot because he did not have a clear view of Decedent.

Officer Douglas Schwartz

On June 14, 2018, at approximately 1156 p.m., Detective Hodson conducted an audio recorded interview with Officer Schwartz who relayed the following:

Officer Schwartz was riding as a two man unit with Officer Beal. They were assigned to an Incident Action Plan (IAP) looking for a newer Dodge Durango vehicle involved in a robbery series. The driver was believed to be a black male adult who was possibly armed with a black AR-15 rifle.

At approximately 3:52 a.m., Officer Schwartz heard a call out regarding a suspicious vehicle located on Radwick Drive. The driver was a black male adult with an AR-15 on the front passenger's seat. Officers Schwartz and Beal responded to the scene.

Upon arriving, Officer Beal deployed his rifle as Officer Schwartz grabbed his tactical gear. Officer Schwartz acted as a spotter for Officer Beal. They took a position east of the vehicle in the park as other officers devised a plan to take Decedent into custody.

Officer Schwartz was lined up with the driver's side window of Decedent's vehicle but was unable to see inside. He observed the other officers stacked up in an action team. Officer Schwartz observed the Decedent's brake lights illuminate. As the vehicle moved forward Officer Schwartz heard one of the tires deflate due to the tire deflation device.

Decedent stopped abruptly and conducted a two point turn in the street. Decedent backed up and ran over a street sign. Decedent again accelerated toward the action team officers their patrol vehicles. Officer Schwartz believed the vehicle was traveling approximately 30 to 35mph and made no attempt to stop. Officers fired rounds at the vehicle.

Officers Schwartz and Beal moved toward a block wall structure for cover. After the gunshots stopped, Officers Schwartz and Beal contacted officers near Decedent's vehicle. Officers tried to establish contact with Decedent and have him exit his vehicle. Ultimately, they approached, removed Decedent from the vehicle and took him into custody. Decedent was provided medical attention very quickly after he was removed from the vehicle.

After Decedent was pronounced deceased, Officer Schwartz looked inside the vehicle and observed a black AR-15 rifle on the front passenger's side floor board. Officer Schwartz reiterated he felt the officers were in danger due to Decedent's actions and they had no other choice but to fire when Decedent drove at them and rammed a patrol vehicle.

Officer Erik Brcic

On June 14, 2018, at approximately 12:00 p.m., Detectives Colon and Mendoza conducted an audio recorded interview with Officer Brcic who relayed the following:

Officer Brcic and Officer Stephenson were operating as a two-man unit and responded to assist other officers on a suspicious vehicle call. They were advised that a black male was asleep at the wheel with a rifle on the passenger's seat.

Officer Brcic parked behind two patrol vehicles that were parked behind Decedent's vehicle. A tire deflation device was deployed near one of Decedent's vehicle tires. K-9 and the Air Unit were requested as officers took positions. Officer Brcic deployed a ballistic shield to cover officers before taking a position behind a patrol vehicle.

The vehicle accelerated forward and made a U-turn. The vehicle was now facing the officers. The vehicle backed up, hit a street sign, and then proceeded forward. Decedent drove toward the officers at approximately 30mph. Officer Brcic felt his life was in danger, as well as the lives of the other officers in the area.

Officers fired at Decedent as he rammed a parked patrol vehicle. Officer Brcic did not fire because there were officers in front of him. Officer Brcic issued commands to Decedent to exit his vehicle. Decedent did not respond and officers formulated a plan to approach the vehicle.

Officer Brcic utilized a ballistic shield and approached Decedent's vehicle. Officer Brcic placed the shield against the driver's side door and observed Decedent in the vehicle. Officer Brcic believed Decedent was deceased and observed a rifle on the passenger's seat.

Decedent was removed from the vehicle, handcuffed and placed on the ground.

AUTOPSY

Medical Examiner Dr. Jennifer Corneal of the Clark County Coroner's Office conducted an autopsy on Decedent. M.E. Corneal concluded Decedent's cause of death was multiple gunshot wounds.

The toxicology results indicated Decedent had Carboxy THC in his system at a concentration of 18 ng/mL and THC in his system at a concentration of 3.9 ng/mL.

LEGAL ANALYSIS

The District Attorney's Office is tasked with assessing the conduct of officers involved in any lethal 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.

A. The Use of Deadly Force in Defense of Self or Defense of Another

The authority to kill another in self-defense or 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 ... another person, against one who manifestly intends or endeavors to commit a crime of violence ...” against the person or other person.⁴ 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).

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 himself [or the other person] or cause himself [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(s) 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

⁴ 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.

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

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

The known facts and circumstances surrounding this incident indicate that Decedent posed an imminent danger to Officers Aguilos, Anderson, Beason, Gariano, McIntosh, Rycraft and Stephenson. Officers were drawn to the scene initially because Decedent, his vehicle and the semi-automatic rifle he had in his possession all matched the description of the suspect in a series of armed robberies in the area.

Upon the officers' arrival, Decedent woke up and started his vehicle. Despite repeated commands to exit the vehicle as well as warnings that should he drive towards officers he would be shot, Decedent ignored the police. Instead, Decedent made a U-turn in order to face the officers who were taking cover by their parked vehicles.

Officers continued to issue commands for Decedent to stop his vehicle and exit, but again Decedent ignored these warnings. Contrary to those commands, Decedent drove straight at the officers and made no effort to avoid them or slow down. According to officers on the scene, Decedent's SUV was travelling anywhere from 25-30 mph directly at officers.

Given the speed and direction of Decedent's travel, Officers Aguilos, Anderson, Beason, Gariano, McIntosh, Rycraft and Stephenson all believed that Decedent posed a threat to their safety as well as the safety of their fellow officers. Accordingly, Officers Aguilos, Anderson, Beason, Gariano, McIntosh, Rycraft and Stephenson all indicated they fired their weapons

in an effort to stop the threat posed by Decedent and to ensure the safety of themselves and their fellow officers.

As to the second volley of shots, Officers Rycraft and McIntosh observed Decedent moving in the vehicle after it had come to rest. Officers Rycraft and McIntosh were aware that Decedent was armed with an assault rifle, and was unwilling to be taken into custody. Based upon Decedent's movements, the assault rifle within reaching distance of his right hand, coupled with Decedent's attempt to kill and/or maim officers by driving into them, Officers Rycraft and McIntosh discharged their firearms a second time to ensure the safety of themselves and their fellow officers.

Thus, the totality of the evidence, to include BWC footage and several corroborating statements, illustrates that Officers Aguilos, Anderson, Beason, Gariano, McIntosh, Rycraft and Stephenson were reasonable in believing that Decedent would cause great bodily harm or death to themselves or others. Officers Aguilos, Anderson, Beason, Gariano, McIntosh, Rycraft and Stephenson were confronted with the appearance of imminent danger and they each had an honest belief and fear that they themselves, along with their fellow officers, were about to be killed or suffer great bodily injury at the hands of the Decedent. The evidence further illustrates that Officers Aguilos, Anderson, Beason, Gariano, McIntosh, Rycraft and Stephenson acted reasonably in reaction to the apparent and actual danger posed by the situation and the Decedent. Here, Officers Aguilos, Anderson, Beason, Gariano, McIntosh, Rycraft and Stephenson 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 Aguilos, Anderson, Beason, Gariano, McIntosh, Rycraft and Stephenson had probable cause to believe that Decedent posed a threat of serious physical harm to themselves and their fellow officers. Prior to firing their weapons, Officers Aguilos, Anderson, Beason, Gariano, McIntosh, Rycraft and Stephenson were all aware that Decedent was a possible suspect in series of armed robberies, and that he was in possession of an AR-15 rifle. Furthermore, Decedent's actions behind the wheel of his vehicle demonstrated that he was unwilling to comply with any of the officers' repeated commands to exit the vehicle peacefully.

As to the second volley of shots, Officers Rycraft and McIntosh observed Decedent moving in the vehicle after it had come to rest. Officers Rycraft and McIntosh were aware that Decedent was armed with an assault rifle and was unwilling to be taken into custody.

Based upon Decedent's movements, the assault rifle within reaching distance of his right hand, coupled with Decedent's attempt to kill and/or maim officers by driving into them, Officers Rycraft and McIntosh discharged their firearms a second time.

Given the rate of speed and the fact that Decedent decided to drive his vehicle directly at the officers without any efforts to slow down or avoid the officers on foot, Officers Aguilos, Anderson, Beason, Gariano, McIntosh, Rycraft and Stephenson each had a reasonable belief that Decedent could cause serious physical harm to themselves or their fellow officers. Thus, the use of deadly force by Officers Aguilos, Anderson, Beason, Gariano, McIntosh, Rycraft and Stephenson 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 Aguilos, Anderson, Beason, Gariano, McIntosh, Rycraft and Stephenson 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 Aguilos, Anderson, Beason, Gariano, McIntosh, Rycraft and Stephenson.