

REPORT ON USE OF FORCE



Legal Analysis Surrounding the Death of Jesus Caballero- Herrera on April 29, 2020

INTRODUCTION

On April 29, 2020, at approximately 8:54 p.m., Las Vegas Metropolitan Police Department (hereinafter “LVMPD”) Sergeant Timothy Stovall shot and killed 38-year-old Jesus Caballero-Herrera (hereinafter “Decedent”) during a vehicle stop at North Las Vegas Boulevard, Mile Marker 59.

This report explains why criminal charges will not be forthcoming against Sergeant Stovall. 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 March 30, 2021.

This report is intended solely for the purpose of explaining why, based upon the facts known at this time, the conduct of Sergeant Stovall 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.

SUMMARY OF RELEVANT FACTS

On April 29, 2020, at approximately 8:42 p.m., LVMPD Sergeant Stovall, who was operating in an undercover, plain clothes capacity and driving an unmarked, blue Dodge Grand Caravan, alerted LVMPD dispatch via radio of an “extreme 410” (reckless driver) travelling north on I-15. Sergeant Stovall advised that the vehicle, a brown Yukon, was travelling in excess of 100 miles per hour and had almost collided with other vehicles as well as the median. Sergeant Stovall requested a Nevada Highway Patrol Trooper (hereinafter “NHP”) and advised Dispatch that the Yukon had almost crashed into a semi-

truck as their respective vehicles approached Lamb Avenue. He told Dispatch that the vehicle needed to be stopped before it caused any accidents. At 8:48:15 p.m., Sergeant Stovall updated Dispatch that they were passing Mile Marker 56 and that the Yukon had almost crashed several times. LVMPD Dispatch requested NHP, Tribal Police and additional units to conduct a vehicle stop. DUI5, a marked NHP unit which included NHP Trooper Jose Campos and LVMPD Officer Brandon Layne, assigned themselves to the call but advised that they were approximately forty (40) miles away from the location. At 8:48:45 p.m., Sergeant Stovall broadcast that the Yukon had exited Apex and was travelling westbound. Sergeant Stovall indicated he had activated his lights and the Yukon was starting to pull over. At 8:49:19 p.m., Sergeant Stovall advised he had the driver at gunpoint. The driver and sole occupant of the vehicle was later identified as Jesus Caballero-Herrera (hereinafter "Decedent").



At 8:50:05 p.m., Sergeant Stovall told Dispatch that Decedent had asked him to shoot him. Sergeant Stovall broadcast, "He's asking me to shoot him. Have everyone step up." At 8:53:35 p.m., Sergeant Stovall updated, "He's still asking me to shoot him, but we have

an open dialogue. He's, uh, he's having family problems right now." Sergeant Stovall then advised, "Subject has a gun in the car! Subject has a gun in the car!" At 8:54:18, Sergeant Stovall told Dispatch to have back up units come up to the left of his van but then very abruptly ended the broadcast saying, "Standby. Standby." At 8:55:05, Sergeant Stovall broadcast, "Shots fired! Shots fired. Suspect down! Need backup right now! Suspect's got a gun!" At 8:55:19 p.m., Sergeant Stovall advised, "Suspect's down! He's still got the gun! He's still conscious! Suspect is down! I need backup!"

NHP and LVMPD units arrived 5-6 minutes after the "shots fired" broadcast. Sergeant Stovall and assisting officers approached Decedent, removed the rifle from his reach and took Decedent into custody. Officers then provided medical attention to Decedent until medical personnel arrived. He was transported to UMC where he was pronounced dead at 9:44 p.m.



The investigation revealed that Sergeant Stovall discharged his Glock 22 .40 caliber handgun nine (9) times, striking Decedent four (4) times – in the arm, torso, abdomen and thigh. Eight (8) cartridge cases bearing headstamp "SPEER 40 S & W" were located near his vehicle.

Decedent did not discharge his black Ruger 10-22 .22 caliber long rifle. The chamber and magazine well were empty, and the safety was off. A black Ruger magazine, loaded with eight (8) cartridges bearing the headstamp "A", was located between the right front seat and the center console of the Yukon. Twenty-nine (29) additional cartridges bearing headstamp "A" and eight (8) cartridges bearing the headstamp "Aguila 25 Auto" were located on the floorboard and the cupholder in the front center console. A Firearms Report of Examination reported the Ruger rifle to be in operating condition though the rifle did have a failure to eject malfunction caused by the absence of a magazine.





DASHCAM AND BODY WORN CAMERA FOOTAGE

Sergeant Stovall was not wearing a body worn camera (hereinafter “BWC”) because he was working in an undercover, plain clothes capacity.

LVMPD Officer Layne and NHP Trooper Campos arrived at the scene in their marked NHP vehicle at 9:00 p.m. The NHP vehicle’s dashcam captured Sergeant Stovall standing behind the open driver door of his unmarked LVMPD vehicle. He was in plain clothes with a black tactical vest which said “POLICE GANG UNIT” in yellow stickers on his back. He had his gun pointed towards Decedent, who was lying on his back next to the open driver door of his GMC Yukon.



Officer Lane and Trooper Campos activated their BWC when they assigned themselves to the call at approximately 8:43 p.m. BWC captured Sergeant Stovall standing behind the driver door of his vehicle with his weapon pointed at Decedent, who was lying on his back next to the open driver door of his Yukon. Trooper Campos deployed a rifle and took cover in the frame of his vehicle door.

Officer Layne exited the vehicle and approached Sergeant Stovall, who stated:

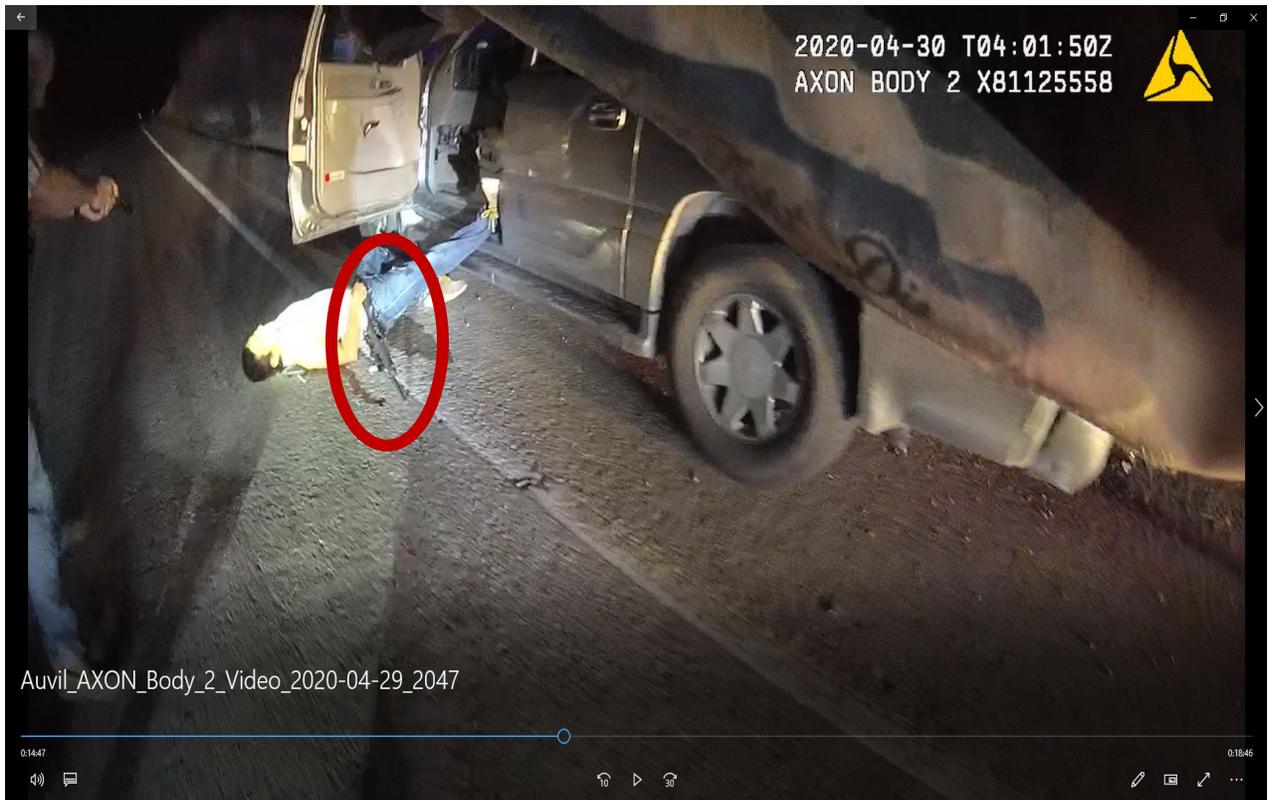
“He came out with the rifle. I had a conversation going with him. (unintelligible, radio beeping loudly) the rifle. He came out of the car. I opened fire. He’s laying down there. He was talking about his family initially when he went down, saying goodbye to his children...”

Sergeant Stovall then formulated a plan to move up to Decedent, render aid and take him into custody.

NHP Trooper Michael Auvil joined Officer Layne and Sergeant Stovall. As they advanced towards Decedent, Trooper Auvil’s BWC¹ captured a black rifle lying on Decedent’s body.

¹ The Axon Flex Body Worn Camera (BWC) time stamps videos in Zulu Time, also known as Greenwich Mean Time (GMT), which is the world time based on a 24-hour clock. The time is based on the Prime Meridian, which is zero

The rifle was perpendicular to Decedent's body with the stock of the weapon on his waist area and the barrel pointed towards the officers' vehicles. When they reached Decedent, Trooper Auvil removed the rifle and placed it on the ground near the rear of the Yukon.



degrees longitude and passes through Greenwich, England. There was a seven-hour negative difference between the event time and displayed Zulu Time.

LVMPD Officer Michael McGinnis deployed his patrol rifle and joined the other officers who advanced towards Decedent to take him into custody and render aid. His BWC captured Decedent initially lying on his back, perpendicular to his vehicle, from an open driver side door. Decedent's legs appeared to be elevated in the open-door area while his upper body was on the roadway. His BWC also showed Officer Layne and Trooper Auvil grab Decedent by the arms, move him away from the vehicle and place him into custody. Officer McGinnis checked the vehicle and found no additional threats or occupants.

SERGEANT TIMOTHY STOVALL

On April 30, 2020, at approximately 12:04 a.m., Sergeant Stovall provided a walk-through of the scene. During the walk-through, Sergeant Stovall dropped a cone where he believed he was standing as well as where Decedent was located when he discharged his firearm at Decedent.



On April 30, 2020, at approximately 2:00 a.m., Sergeant Stovall provided a voluntary handwritten statement.

DETAILS:

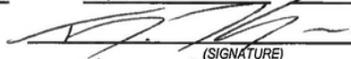
ON APRIL 29, 2020 I WAS LEAVING HEADQUARTERS HEADING NORTH ON I-15 WHEN A CAR ALMOST SIDESWIPE ME. THE CAR ALMOST HIT SEVERAL OTHER CARS TOO. I FOLLOWED THE CAR. IT GOT OFF AT THE APEX EXIT AND HEADED DOWN A DARK ROAD. I CONDUCTED A CAR STOP. THE SUSPECT SAID HE WANTED ME TO SHOOT HIM. I TOLD HIM I DID NOT WANT TO SHOOT HIM. SHORTLY AFTER, THE SUSPECT EXITED HIS CAR AND BEGAN POINTING A RIFLE AT ME. I SHOT THE SUSPECT TO PREVENT HIM FROM SHOOTING ME.

I HAVE READ THIS STATEMENT AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT

WAS COMPLETED AT (LOCATION) 400 S. MARTIN LUTHER KING BLVD.

ON THE 30 DAY OF APRIL, 2020 AT 2:00 A.M. P.M.

Witness/Officer:


(SIGNATURE)

Witness/Officer:

Troyce Kammie
(PRINTED)

P#

SIGN IN FRONT OF LVMPD WITNESS



SIGNATURE OF PERSON GIVING STATEMENT

LVMPD 85 (Rev. 1/20)

PUBLIC SAFETY STATEMENT

On April 30, 2020, at approximately 12:11 a.m., Detective Andrew Ubbens interviewed Lieutenant Shawn Romprey in reference to the Public Safety Statement (PSS) he obtained from Sergeant Stovall. Below is the transcript of the interview.

Note: Detective Ubbens is designated by (AU) and Lieutenant Romprey is designated by (SR).

AU: Operator, this is Detective A. Ubbens, P# 13119, with the Force Investigation Team conducting a Public Safety Statement interview under event number 200400143535. Today is April 30, 2020, at midnight 11 hours. Currently in LVMPD vehicle 4869. Conducting the interview with Lieutenant Romprey, P# 7062. Lieutenant, did you conduct a Public Safety Statement tonight?

SR: Yes, I did.

AU: And who did you obtain that statement from?

SR: Sergeant Timothy Stovall.

AU: Can you tell me what time you did that statement, what you asked Sergeant Stovall, and what he answered?

SR: *Yes. I obtained the Public Safety Statement at 2135 hours. I read the questions off my LVMPD 613 Public Statement, uh, card that I carry with me in my left breast pocket. First question I asked him was #1: "Did you discharge your firearm?" His answer was, "Yes, I did."*

Next was, "If so, in what direction?" His response was, "West."

Next question was, "Approximately where were you located when you fired?" He stated, "Behind driver's side door."

Next question was, "How many shots do you think you fired?" He stated, "Five to six."

Question #2 was, "Is anyone injured?" His statement was, "Yes."

And "If so, what is their description?" He stated, "HMA, 5'10" to 5'11", white sleeveless shirt, tan pants, bit of a beard."

Next question was #3: "Are there any outstanding suspects?" His answer was, "No."

I did not answer...or ask the other questions because they pertained to ss...the suspect.

AU: *Okay.*

SR: *Or I should say outstanding suspects. Went to question #4: "Is it possible the suspect fired rounds at you?" "No," and then stated, "He had a gun."*

I did not answer...or ask the question...the...subsection A because he stated that no rounds were fired at him.

I went to question #5: "Do you know if any other officers discharged their firearm?"

His statement was, "No, no one did." I did not answer...or ask subsection A because he answered that nobody else fired their weapons.

Number 6 was, "Are any weapons or evidence that need to be secured/protected?"

His answer was, "He had a scoped rifle."

"If so, where are they located?" He stated, "I don't know. On the ground, they moved it away."

Question #7: "Are you aware of any witnesses?" He stated, "No," and then said a tow truck pulled up, he waved him off, and that, uh, uh, that he, uh, wanted to pass.

And that was the end of the questioning.

AU: Okay. Okay, thank you. The time is midnight 15 hours.

WITNESS STATEMENT OF OFFICER BRANDON LAYNE

Officer Layne was working with his NHP partner, Trooper Campos, in the area of Starr Lane and I-15 when they heard a call involving an LVMPD detective following a reckless driver near Craig Road and I-15. Trooper Campos drove their marked NHP vehicle Code 3 (lights and sirens) to the area to assist. While en route, Sergeant Stovall broadcast that he was pulling the vehicle over. Shortly after that, Sergeant Stovall advised that he had the subject at gunpoint, the subject wanted to commit suicide by cop and there was a firearm in the vehicle. Moments later, Sergeant Stovall broadcast "shots fired" over the radio.

When they arrived on scene, Trooper Campos parked their vehicle to the left of Sergeant Stovall's vehicle. Officer Layne exited the vehicle and approached Sergeant Stovall, who advised that Decedent stated he was having family problems and that Decedent had been walking around. Officer Layne saw Decedent laying on the ground with a gun lying near him. He was concerned because the barrel of the gun was pointed towards officers and Decedent was still breathing.

They formulated a plan, approached Decedent and took him into custody. Officers rendered aid until medical personnel arrived. Officer Layne rode in the front of the ambulance while Decedent was being transported to UMC Trauma. Officer Layne did not witness the actual officer involved shooting and did not hear Decedent make any statements.

AUTOPSY

On April 30, 2020, Dr. Satish Chundru performed an autopsy on Decedent. Dr. Chundru noted the following five gunshot wounds:

- 1) a gunshot wound on the right upper arm;
- 2) a re-entry gunshot wound on the right upper arm;
- 3) a gunshot wound on the right side of the mid torso;
- 4) a gunshot wound on the right side of the mid abdomen;
- 5) a gunshot wound of the mid to lower right thigh.

The toxicology test reported Decedent's blood alcohol content (BAC) was 0.159, nearly double the legal limit. After a complete autopsy, Dr. Chundru opined that Decedent died as a result of multiple gunshot wounds and the manner of death was homicide.

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 Self-Defense or 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.² **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 in Runion v. State, 116 Nev. 1041 (2000). The relevant jury instructions as articulated in Runion are as follows:

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

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

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, the circumstances must be sufficient to excite the fears of

² 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.

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. 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 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 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's actions on April 29, 2020, posed an imminent danger to Sergeant Stovall. Here, Decedent asked Sergeant Stovall to shoot him, exited his vehicle and pointed a rifle at Sergeant Stovall. At that point in time, it was absolutely necessary for Sergeant Stovall to shoot Decedent to avoid death or great bodily injury to himself. Thus, the totality of the evidence, particularly the radio traffic broadcasted by Sergeant Stovall, demonstrates that he acted reasonably when he shot Decedent and that he shot Decedent to avoid death or great bodily injury to himself. Consequently, Sergeant Stovall's 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 Sergeant Stovall had probable cause to believe that Decedent posed a threat of serious physical harm to him. Here, Decedent repeatedly asked Sergeant Stovall to shoot him because he was having problems with his family. Sergeant Stovall told Decedent he did not want to shoot him and established an open

dialogue with Decedent. Despite Sergeant Stovall's efforts, Decedent exited his vehicle and pointed a rifle at Sergeant Stovall. Decedent posed a threat of serious physical harm to Sergeant Stovall when Decedent pointed the rifle at him. Thus, Sergeant Stovall's use of deadly force 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, we conclude that the actions of Sergeant Stovall 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 Sergeant Stovall.