

REPORT ON USE OF FORCE



Legal Analysis Surrounding the Death of Junior Lopez on April 6, 2018

INTRODUCTION

On April 6, 2018, at approximately 4:47 a.m., Las Vegas Metropolitan Police Department (hereinafter "LVMPD") Officers Padilla Mills and Francisco Rivera shot and killed 22-year-old Junior Lopez (hereinafter "Decedent") during a vehicle stop at 258 Madge Lane. Officers Mills and Rivera fired two (2) rounds each, striking Decedent.

This report explains why criminal charges will not be forthcoming against Officers Mills and Rivera. 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 February 28, 2019.

This report is intended solely for the purpose of explaining why, based upon the facts known at this time, the conduct of Officers Padilla Mills and Francisco Rivera were 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 6, 2018, at approximately 4:44 a.m., LVMPD Officers Padilla Mills and Francisco Rivera, operating as a marked patrol unit, stopped a dark blue Chrysler 300 at 258 Madge Lane. The driver, later identified as Decedent, was driving recklessly and traveling approximately sixty-five miles per hour in a twenty-five mile per hour zone. The officers were *en route* to an unrelated suspicious vehicle incident when they conducted the vehicle stop.

Moments after the officers exited their patrol vehicle, Decedent exited his vehicle, without being asked to do so by the officers.



As he exited his vehicle, Decedent dropped a small black handgun on the pavement, which landed a few feet away from where he knelt down and the front of the patrol vehicle. The officers immediately and repeatedly ordered Decedent to stay in his car, to not move and to not reach for the gun, but he ignored their commands.



Decedent yelled, "Shoot me!" twice as he moved forward and reached for the gun.



Decedent picked up the gun and pointed it towards the officers.



Officer Rivera fired two (2) rounds at Decedent while Officer Mills fired one (1) round. Decedent dropped, face first, to the ground and then rolled over on his back. Officer Mills requested medical and both officers continued to tell Decedent to not reach for the gun, which was approximately a foot away from his left hand.



Decedent then rolled to the left, towards the gun. Officer Mills fired once more at Decedent.



Decedent continued to move around despite being shot. In response, both officers continued to tell him not to move and not to reach for the gun. Officer Mills yelled, "Stay still! Don't fuckin reach for that gun! Don't do it! We don't want to shoot you!"



Shortly thereafter, Decedent stopped moving; however, because the firearm was still near his head and there were additional occupants in the vehicle, the officers did not approach

Decedent or the vehicle until additional units arrived. Two (2) females, AB and KG, were ultimately removed from Decedent's vehicle. Once the firearm was secured, Decedent was handcuffed and transported to Sunrise Hospital where he was later pronounced dead.

AUTOPSY

On April 7, 2018, Dr. Jennifer Corneal performed an autopsy which revealed multiple gunshot wounds of the torso and upper and lower extremities. The autopsy also revealed injury to Decedent's right lung, liver and diaphragm. The toxicology report showed a blood alcohol content (BAC) of 0.170, which is twice the legal limit in Nevada.

Dr. Corneal determined the cause of death was multiple gunshot wounds and the manner of death was homicide.

DECEDENT'S WEAPON



The firearm recovered near Decedent's body was a black Smith and Wesson .380 Bodyguard. The firearm was loaded with one (1) cartridge in the chamber and five (5) cartridges in the magazine. This weapon was not fired during the incident.

INVOLVED OFFICERS

Officer Padilla Mills

Body Worn Camera: Officer Mills activated his body worn camera at the time of the incident.

Scene Walk-Through: On April 6, 2018, at approximately 8:15 a.m., Officer Mills provided a walk-through of the scene. During the walk-through, Officer Mills relayed the following information:

The probable cause for the vehicle stop was the Chrysler 300 traveling sixty-five miles per hour in a twenty-five mile per hour zone. Officer Mills stated that Decedent exited the driver's side door as soon as the car stopped. Decedent dropped a black semi-automatic handgun on the ground. Decedent then reached for and picked up the handgun. Officer Mills discharged one (1) round. Officer Mills then took two (2) steps backward and fired a second round when Lopez reached for the handgun a second time. Officer Mills stated that Decedent said, "There's a gun, shoot me!"

Weapon Countdown: Officer Mills was dressed in a standard LVMPD short sleeve patrol uniform. He carried a Glock 17 Gen4 9mm with serial number BCHM277. The

weapon had seventeen (17) cartridges in the magazine and one (1) cartridge in the chamber. After the countdown, it was determined that Officer Mills discharged his firearm twice.

Officer Francisco Rivera

Body Worn Camera: Officer Rivera activated his body worn camera at the time of the incident.

Scene Walk-Through: On April 6, 2018, at approximately 8:33 a.m., Officer Rivera provided a walk-through of the scene. During the walk-through, Officer Rivera relayed the following information:

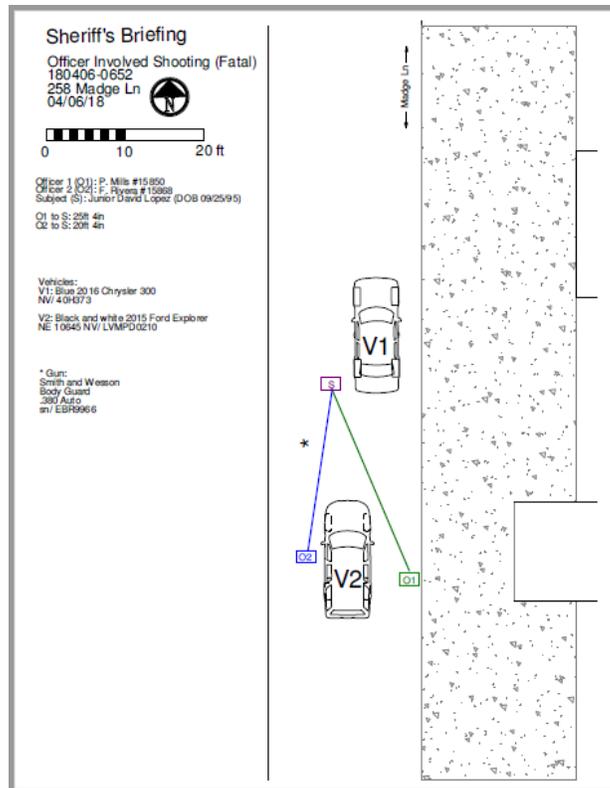
The probable cause for the vehicle stop was reckless driving - the vehicle (Chrysler 300) was traveling over sixty miles per hour in a twenty-five mile per hour zone through a neighborhood. The driver of the car exited quickly in an aggressive manner. Officer Rivera observed a handgun possibly slip out of Decedent's hand and hit the ground. Decedent then moved towards the handgun and picked it up. Officer Rivera thought he fired three (3) rounds towards Decedent. Officer Rivera fired at Decedent because he was in fear for his and his partner's life. Officer Rivera said Decedent was mumbling during the incident and said, "Fuck you!"

Weapon Countdown: Officer Rivera was dressed in a standard LVMPD long sleeve patrol uniform. He carried a Glock 17 Gen4 9mm with serial number BBHU431. The weapon had fifteen (15) cartridges in the magazine and one (1) cartridge in the chamber. After the countdown, it was determined that Officer Rivera discharged his firearm twice.

DESCRIPTION OF THE CRIME SCENE AND RELEVANT EVIDENCE

Two (2) vehicles were located at the scene, between 258 and 257 Madge Lane. Vehicle 1 (hereinafter "V1") was a 4-door 2016 blue Chrysler 300. Vehicle 2 (hereinafter "V2") was a black and white patrol vehicle, a 2015 Ford Explorer. Decedent was located on the street northwest of V2 and to the west of the rear bumper on the driver's side of V1. Officer Mills reported his location as directly southeast of the front passenger's door of V2, approximately 25'4" from Decedent's location. Officer Rivera reported his location as directly west of the driver's door of V2, approximately 20'4" from Decedent's location.

Below is a diagram of the scene:



Crime Scene Analyst H. Ubbens recovered and impounded the following items of evidence:

- Two (2) expended cartridge cases with headstamp “SPEER 9mm Luger + P” (**Items 1-2**) from the ground
- Two (2) expended cartridge cases with headstamp “SPEER 9mm Luger + P” (**Items 3-4**) from the ground southwest of **V2**
- One (1) handgun; Type: Semi-automatic; Make: Smith & Wesson; Model: Body Guard; Caliber: .380; Serial #: EBR9966; Importer: Springfield, MA USA; Barrel Length: Approx. 2 $\frac{3}{4}$; Color: black in color (**Item 5**) with one (1) cartridge bearing headstamp “SPEER 380 AUTO” in the chamber (**Item 5A**), and a firearms magazine (**Item 5B**) loaded with five (5) cartridges bearing headstamp “SPEER 380 AUTO” (**Item 5C**) lying on the ground southwest of Suspect Junior Lopez’s location and southwest of **V1**
- One (1) blue colored “9FIFTY NewEra” baseball hat with red bill an “A” on the front and the word “Amber” embroidered on the left side (**Item 6**) from the street southwest of **V1** and south of Suspect Junior Lopez’s location
- One (1) pair of “Dolce & Gabbana” eyeglasses with apparent blood on the left lens (**Item 7**) on the street, southwest of **V1**, and west of **Item 6**

- One (1) bullet jacket fragment (**Item 8**) from the ground west of the rear driver's side of **V1**, and east of the location of Suspect Junior Lopez's location
- Two (2) swabs of possible DNA (**Items 9-10**) swabbed from **Item 5** (Smith & Wesson handgun SN#EBR9966) and **Item 5B** (firearms magazine)

Chemical Latent Print processing was conducted on Item 5 (semi-automatic Smith & Wesson 380 Bodyguard) and Item 5B (Smith and Wesson magazine) with negative results.

FORENSIC EXAMINATION RESULTS

On May 18, 2018, Forensic Scientist Geil submitted the Firearms and Toolmarks Report of Examination. The following evidence was examined.

Lab Item #	Impound Pkg #	Impound Item #	Description
1	014792-1	1	One "SPEER" 9mm Luger +P cartridge case
2	014792-1	2	One "SPEER" 9mm Luger +P cartridge case
3	014792-1	3	One "SPEER" 9mm Luger +P cartridge case
4	014792-1	4	One "SPEER" 9mm Luger +P cartridge case
5	014792-2	5	One Smith & Wesson model Bodyguard 380, .380 Auto semiautomatic pistol, serial number EBR9966, with integrated Insight laser
6	014792-2	5B	One magazine (fits and functions in Lab Item 5)
7	009974-1	1	One Glock model 17 Gen4, 9mm Luger semiautomatic pistol, serial number BBHU431, with attached Streamlight TLR-1 HL light, and one magazine
8	009974-2	4	One Glock model 17 Gen4, 9mm Luger semiautomatic pistol, serial number BCHM277, with attached Xiphos NTx Night-Ops light, and one magazine

The results and conclusions were reported as follows:

Firearms and magazines

The Smith & Wesson pistol was examined, test fired and found to be in operating condition with no noted malfunctions. The submitted magazine has a capacity of six cartridges.

The Glock pistol, Lab Item 7, was examined, test fired and found to be operational with no noted malfunctions. The submitted magazine fits and functions in this pistol and has a capacity of seventeen cartridges.

The Glock pistol, Lab Item 8, was examined, test fired and found to be operational with no noted malfunctions. The submitted magazine fits and functions in this pistol and has a capacity of seventeen cartridges.

Cartridge cases

The evidence cartridge cases were examined and microscopically compared to the test fired cartridge cases from the submitted firearms with the following results:

- *Two cartridge cases, Lab Items 1 and 2, were identified as having been fired in the Glock pistol, Lab Item 8, which belonged to Officer Padilla Mills.*
- *Two cartridge cases, Lab Items 3 and 4, were identified as having been fired in the Glock pistol, Lab Item 7, which belonged to Officer Francisco Rivera*

RELEVANT WITNESS STATEMENT

On April 6, 2018, at approximately 7:38 a.m., Detective Alsup conducted an audio recorded interview with witness AB at 216 Madge Lane, wherein she relayed the following information:

AB and Decedent had been dating and living together for eight (8) months prior to the incident. AB stated that Decedent was employed as a Lyft driver. AB stated that Decedent regularly carried a small frame black semiautomatic handgun for protection. AB did not know if Decedent had a carrying concealed weapon (CCW) permit for the firearm. AB did not know when or where Decedent bought the handgun, but told police that he owned it before they met.

On April 6, 2018, Decedent was driving AB's vehicle, a dark blue Chrysler 300, home from the downtown area. According to AB, she and Decedent, along with her friend, KG, had been downtown most of the night of April 5th leading up to the early morning hours of April 6th. They left the Vanguard Lounge and were on their way home when they were pulled over by a police vehicle. AB knew it was a police vehicle due to seeing the lights. Immediately after the vehicle stopped, Decedent opened the door and began to exit the vehicle. AB heard an officer yell, "Drop the gun!" and very shortly after that, AB heard a couple of gunshots. After several minutes, officers approached the vehicle and AB and KG exited the car.

AB stated she did not see the handgun the night of the incident and did not know whether Decedent had it with him. AB did not see anything in Decedent's hands when he exited the vehicle. AB stated that while she, KG, and Decedent all had a few drinks during the night, she did not notice anything wrong with Decedent prior to the incident.

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.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 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,

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.

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's actions on April 6, 2018, posed an imminent danger to Officers Mills and Rivera. Here, Decedent aggressively exited his vehicle, knelt down near the firearm he had dropped, ignored the officers' commands to stay in the vehicle and to not reach for the gun, shouted "Shoot me!" and picked up the gun, pointing it at the officers. At that point in time, it was absolutely necessary for Officers Mills and Rivera to shoot Decedent to avoid death or great bodily injury to themselves. In addition, once shot and on the ground, Decedent ignored the officers' verbal commands, continued to move around and rolled over towards the gun, which lay less than a foot away from Decedent's left hand. At that point, it was absolutely necessary for Officer Mills to fire at Decedent a second time to eliminate the imminent threat. Thus, the totality of the evidence, particularly the body worn camera footage, demonstrates that Officers Mills and Rivera acted reasonably when they shot Decedent and that they shot him to avoid death or great bodily injury to themselves and each other. Consequently, shooting 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 Mills and Rivera had probable cause to believe that Decedent posed a threat of serious physical harm to himself and his partner. Here, Decedent ignored the officers' repeated commands to remain in the vehicle and to stay away from the firearm. Instead, Decedent picked up the firearm and pointed it at the officers and then reached for the gun again as he lay on the ground, after already being shot multiple times. Thus, the officers' use of deadly force was legally justified and appropriate under NRS 200.140(2).