

REPORT ON USE OF FORCE



Legal Analysis Surrounding the Death of Jose Oyuela-Palma on September 21, 2021

INTRODUCTION

On September 21, 2021, Jose Oyuela-Palma (hereinafter “Decedent”) was shot and killed during an altercation with Las Vegas Metropolitan Police Department (hereinafter “LVMPD”) and Henderson Police Department (hereinafter “HPD”) officers. The incident took place between approximately 2:09 p.m. and 4:29 p.m. in an apartment complex on East Charleston near Interstate 95, within Las Vegas, Nevada. HPD Special Weapons and Tactics (hereinafter “SWAT”) Officers Mark Street and Logan Tillmon discharged their duty-weapons and Decedent, who was brandishing a firearm, died on scene from multiple gunshot wounds.

SYNOPSIS

At 2:09 p.m. on September 21, 2021, LVMPD Dispatch received a call for service and generated LVMPD event number LLV210900090204. The caller was a Pep Boys employee, J.B., who reported that a man was pointing a firearm at him and other civilians from a second-story apartment balcony behind the Pep Boys building. J.B. further reported that the suspect appeared to be talking to himself and was possibly under the influence.

LVMPD officers were dispatched to the Santa Fe Apartments located at 3955 E. Charleston Blvd., just south of the Pep Boys. LVMPD officers arrived in the area a short time later and began to set up a containment perimeter. As they were doing so, the officers learned that Decedent was still on the balcony with the firearm and that two additional victims, J.F. and G.C., hiding behind a truck in the Pep Boys parking lot.

LVMPD officers saturated the area and enlisted the assistance of the LVMPD Air Unit and LVMPD Crisis Negotiation Team (hereinafter “CNT”). The Air Unit and patrol officers on the ground observed Decedent walking back and forth from inside his apartment to the balcony with a firearm in his hand. Decedent was acting erratically, talking to himself, yelling at officers, changing his clothes, drinking a bottle of alcohol, waving a handgun, and pointing

the handgun at his own head. Officers used a patrol vehicle as cover and were able to rescue J.F. and G.C. from their hiding spot behind the vehicle in the parking lot.

The officers on scene initially attempted to communicate with Decedent over a loudspeaker. A short time later, they were able to identify Decedent and obtain a phone number for him. LVMPD Patrol Officer Julio Corral called Decedent and spoke to him over the phone. Officer Corral attempted to get him to exit the apartment peacefully. Decedent refused. Decedent sounded intoxicated and told Officer Corral that he was being monitored by the CIA and FBI.

LVMPD CNT Member Detective Eduardo Pazos arrived on scene and took over the conversation with Decedent. Around that same time, HPD SWAT Snipers Logan Tillmon and Mark Street arrived on scene to assist, as LVMPD SWAT was already occupied on another call. SWAT Officer Street set up on the northwest corner of Pep Boys, and SWAT Officer Tillmon set up on the southeast corner. Both were able to observe Decedent's actions on the patio, and both noted he had the hammer of his pistol cocked back as he waved it around.

Decedent continued to act recklessly with the firearm as he spoke with Detective Pazos over the phone for an extended period of time. Decedent made several bizarre political and delusional statements. Decedent also made several suicidal statements and told Detective Pazos that he knew how things would end and he knew what would happen if he pointed his gun at police. Decedent became more agitated as time went on and he drank more alcohol.

At approximately 4:29 p.m., Decedent abruptly raised the firearm, placed both hands on it in a firing position, and pointed it toward the numerous officers positioned near the northwest corner of the Pep Boys building. Almost simultaneously, SWAT Officers Street and Tillmon each fired one round from their respective weapons, striking Decedent. HPD SWAT personnel approached the apartment to take Decedent into custody and render medical assistance to him. Medical personnel were summoned; however, Decedent succumbed to his injuries and died on scene.

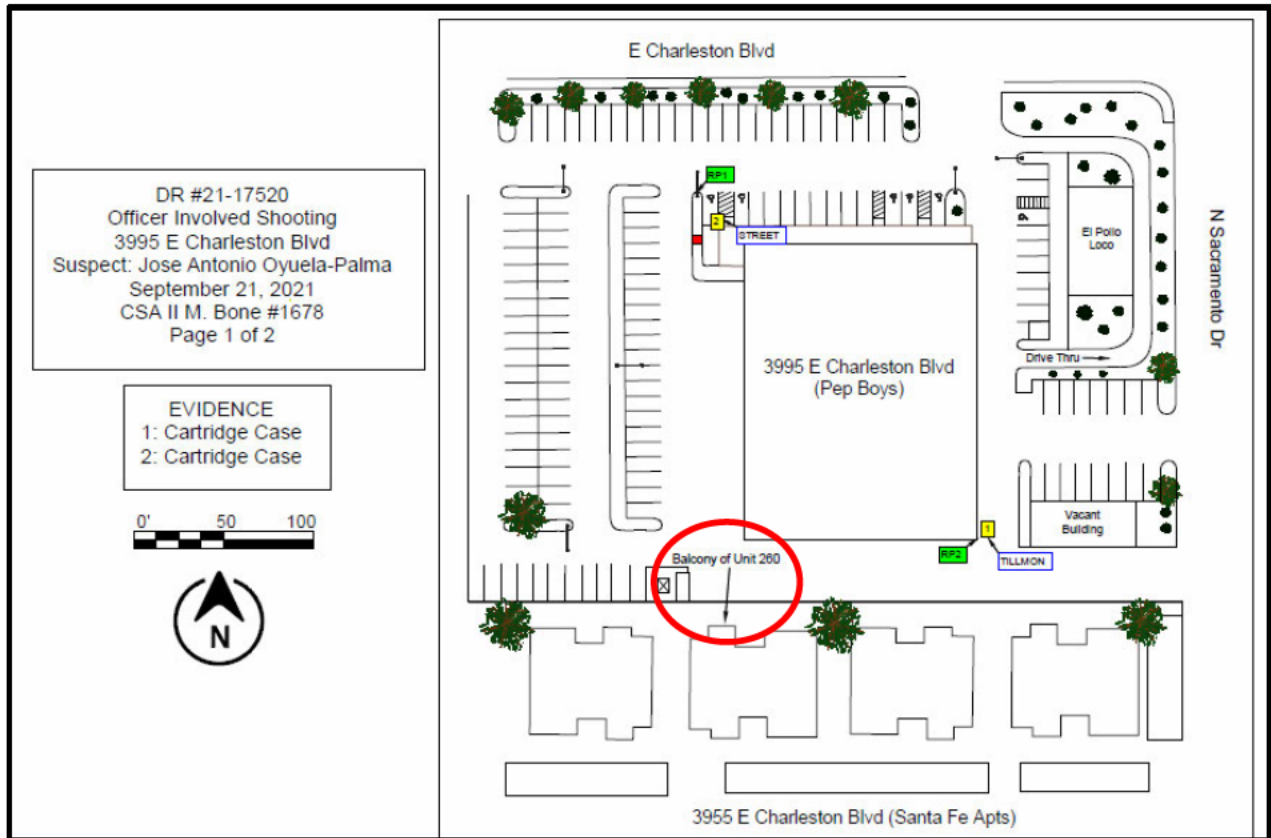
Due to the fact that an officer-involved shooting (hereinafter "OIS") occurred involving HPD SWAT personnel, the on-scene incident commander requested HPD Detectives Dennis Ozawa and Kevin LaPeer respond to assume responsibility of the investigation. Detectives Ozawa and LaPeer arrived thereafter and assumed control of the investigation.

This report explains why criminal charges will not be forthcoming against HPD Officers Street and Tillmon. 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 6, 2023.

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 HPD 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

HPD Crime Scene Analysts (hereinafter "CSA's") were summoned and documented the scene under HPD event number 21-17520. The scene was located within a mixed-use residential and commercial area near I-95 and E. Charleston Blvd. The Santa Fe Apartment Complex was located at 3955 E. Charleston, which was just south of the Pep Boys building located at 3995 E. Charleston. Pep Boys was a free-standing commercial building. There was a cinderblock wall between Pep Boys and the Santa Fe Apartment Complex.



Apartment #260 was a second-floor apartment with a patio that faced north toward Pep Boys.



Within the scene, there was a green HPD Bearcat parked near the southwest corner of Pep Boys, facing east.



EVIDENCE

Northwest corner of Pep Boys building



On the northwest corner of the building there was a tan Accuracy International AX .308 caliber sniper rifle bearing serial number 16AX23878 on the sidewalk pointed slightly southwest toward Apartment #260. There was a gear bag next to the rifle. From this position, the distance to the balcony of apartment #260 was approximately two hundred twenty-eight (228) feet. There was one cartridge case bearing headstamp FC 308 WIN on the sidewalk west of the rifle, which is highlighted in red above. This cartridge case was marked as item #2 and impounded by HPD CSA Self as item #1370-002-002.

Southeast corner of Pep Boys building



On the southeast corner of the Pep Boys building, there was a tan Accuracy International AX .308 caliber sniper rifle bearing serial number 15AX21968. There was a tripod and gear bag next to the rifle. From this position, the distance to the balcony of apartment #260 was approximately one hundred fifty-seven (157) feet. There was one cartridge case bearing headstamp FC 308 WIN on the sidewalk east of the rifle, which is highlighted in red above. This cartridge case was marked as item #1 and impounded by HPD CSA Joy Self as item #1370-001-001.

Apartment #260

The residence was a second-floor apartment with an east-facing front door which led to a living room. There was a kitchen to the southeast, a bathroom and closet to the south, and two bedrooms to the west. There was a sliding glass door to the north which led to a balcony. The balcony overlooked the west parking lot area of Pep Boys. The sliding glass

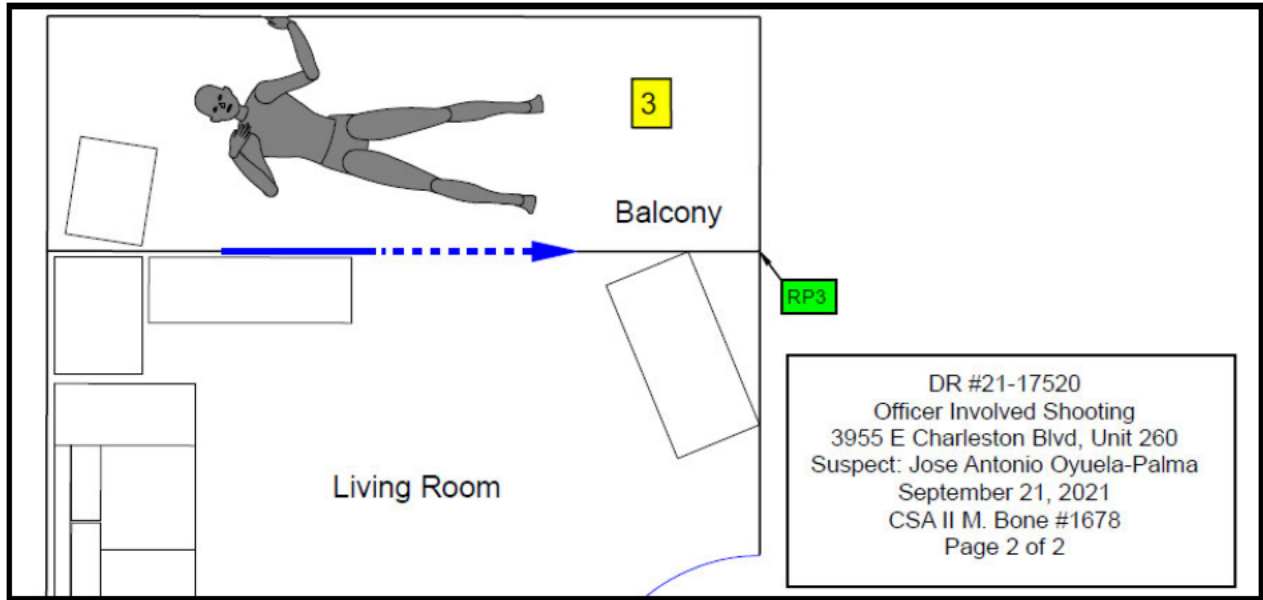
door and screen were open. The sliding glass door was shattered and there were defects in the screen and stationary portion of the door. There were corresponding defects in the living room from apparent bullet fragments. There were two apparent bullet strikes in the south side of the living room ceiling south of the open sliding glass door, and corresponding impacts in the living room wall.

There was a bullet fragment on the living room floor below the ceiling impacts. The fragment was marked as item #4 and impounded by HPD CSA Self as item #1370-004-004.

On the balcony, Decedent was lying supine with his feet to the east and his head to the west. He was shirtless and shoeless, and there was a "Trending Politics" magazine on top of his left arm. There were medical intervention pads adhered to his torso. Just east of his feet, there was a firearm, which is highlighted in red below.



The firearm was a Taurus PT 99 AF 9mm semi-automatic pistol bearing serial number L34659. The hammer was cocked back, and the magazine was seated. It was marked as item #3 and impounded by HPD CSA Self as item #1370-003-003.



There was a cartridge in the Taurus's chamber bearing headstamp CBC 9mm LUGER. This cartridge was impounded by HPD CSA Self as item #1370-005-005. There was a cartridge in the Taurus's magazine bearing headstamp S&B 11 9x19. This cartridge was impounded by HPD CSA Self as item #1370-005-006.



On the railing of the patio, there was a nearly-empty bottle of hard liquor and a black shirt. There were two empty beer bottles on a chair to the west of Decedent. There was a cellular phone on the ground in the landscaping directly beneath the balcony.



SUBJECT OFFICER INTERVIEWS

HPD SWAT Officer Mark Street

On September 23, 2021, Detectives Ozawa and LaPeer conducted a voluntary interview with Officer Street at HPD Headquarters. Officer Street relayed the following:

Officer Street was a member of the HPD SWAT Team and was at the HPD North Substation when he learned that SWAT teams were needed at two separate incidents in LVMPD's jurisdiction. LVMPD SWAT had been deployed to one incident, so HPD SWAT was called in to assist on the incident involving Decedent. HPD SWAT was briefed on the incident and Officers Street and Tillmon, who were both assigned to the Sniper detail, were the first to leave the station and head toward the scene to gather intelligence for the rest of the SWAT team.

Officers Street and Tillmon parked at the El Pollo Loco next to Pep Boys and contacted LVMPD officers, who advised them that they had just driven on Charleston within Decedent's direct line of sight. This information was relayed to the rest of the SWAT team who had not yet arrived so they would take a different route to the scene.

Officer Street observed LVMPD officers grouped at the northwest and southeast corners of the Pep Boys building. Officer Street geared up and moved to the northwest corner, where he observed a LVMPD rifleman in a prone position behind a stack of tires, along with other LVMPD officers positioned behind a patrol vehicle parked west of the building. Officer Street took a prone position next to the LVMPD rifleman and could see straight down the west side of the Pep Boys building to Decedent's balcony approximately seventy-five (75) yards away.

Officer Street deployed and activated his body worn camera and set it on the ground next to him.

Decedent appeared very agitated and was pacing back and forth on the balcony, shirtless, with a firearm in his right hand. The gun's hammer was pulled back in a firing position. Officer Street observed Decedent waving the gun around and pointing it at his own head. At one point Officer Street observed Decedent wave the gun in front of him and point it briefly toward officers but he continued in an upward motion and pointed it toward the sky. Officer Street recalled hearing the LVMPD rifleman say that if Decedent did that motion again, he was going to fire his rifle. Officer Street was concerned with how recklessly Decedent was handling his weapon.

Officer Street continued to watch Decedent pace around and look back and forth from his position to Officer Tillmon's position multiple times. Decedent appeared angry and was displaying aggressive behavior. Officer Street observed him drinking an amber-colored liquid out of a large bottle, which he assumed was alcohol. Officer Street believed Decedent was trying to build up the courage to shoot at officers.

Officer Street watched Decedent as he stood straight up with the handgun pointed down at his side and looked directly in Officer Street's direction. Decedent then brought the handgun up to a two-handed grip and pointed the barrel toward Officer Street and nearby LVMPD officers. Officer Street then fired one round, striking Decedent. Officer Street observed Decedent stumble forward, drop something over the balcony and then stumble backward and fall to the ground. Other SWAT personnel approached Decedent's apartment to take him into custody and render aid. Officer Street waited until the scene was safe, cleared his rifle and set it aside.

When Decedent took a two-handed firing position, Officer Street believed Decedent was going to shoot at him and nearby LVMPD officers. Officer Street knew that due to Decedent's elevated position, he and other LVMPD personnel, along with any bystanders in the area, were vulnerable to Decedent's rounds skipping off the ground.

HPD SWAT Officer Logan Tillmon

On September 23, 2021, Detectives Ozawa and LaPeer conducted a voluntary interview with Officer Tillmon at HPD Headquarters. Officer Tillmon relayed the following:

Officer Tillmon was a member of the HPD SWAT Team and was at the HPD North Substation when he learned that SWAT teams were needed at two separate incidents in LVMPD's jurisdiction. LVMPD SWAT had been deployed to one incident, so HPD SWAT was called in to assist on the incident involving Decedent. HPD SWAT was briefed on the incident and Officers Tillmon and Street, who were both assigned to the Sniper detail, were the first to leave the station and head toward the scene to gather intelligence for the rest of the SWAT team.

Officer Tillmon arrived on scene and contacted LVMPD officers. LVMPD relayed to Officer Tillmon that the street he and Officer Street drove in on was in the direct line of sight of Decedent's balcony. Officer Tillmon relayed that information to the rest of his team and advised them to take a different route to the scene. LVMPD officers provided Officer Tillmon with intelligence related to Decedent, his exact location, and the floorplan of the apartment. Officer Tillmon, in turn, relayed to his incoming team.

Officer Tillmon moved to the west of the Pep Boys building and observed multiple LVMPD officers set up behind patrol vehicles facing south toward Decedent's residence. Officer Tillmon observed Decedent on the balcony, took a photograph of him, and sent it to his team.

Officer Tillmon returned to his vehicle and met with Officer Street, who had just finished crisis-dressing. Officer Tillmon told Officer Street to set up on the west side of the Pep Boys to assist the LVMPD officers who were positioned there. Officer Tillmon then began crisis-dressing and quickly grabbed his ballistic vest and rifle so he could assist Officer Street, as the situation with Decedent appeared to be rapidly evolving. Officer Tillmon did not equip himself with a body-worn camera.

Officer Tillmon moved to the southeast corner of Pep Boys where several LVMPD officers were set up, to include a rifle team. Officer Tillmon looked around the corner and was able to see Decedent on the balcony looking back at him. As Officer Tillmon stood behind the cover of the building, LVMPD officers gave updates every time Decedent waved or raised his gun. Officer Tillmon also noted several citizens standing outside their apartments watching what was going on.

When Decedent looked away from the southeast corner, Officer Tillmon switched positions with the LVMPD rifleman so he could have a direct line of sight southwest to the balcony. Officer Tillmon set up in a prone position and pointed his rifle toward the balcony. Officer Tillmon could see through his optic that Decedent had a firearm in his right hand pointed down toward the ground. Decedent appeared agitated and was speaking, but Officer Tillmon could not hear what he was saying from that distance.

Officer Tillmon maintained his position and observed as Decedent appeared to move his attention from Officer Tillmon to Officer Street's location on the other corner of the building. LVMPD officers continued to provide updated intelligence to Officer Tillmon, to include that Decedent had pointed the firearm at three citizens, that he may have discharged rounds inside the apartment, and that he may have a rifle inside the home. In turn, Officer Tillmon updated his team over the radio as they drove to the scene from Henderson.

Officer Tillmon observed Decedent was very agitated and appeared intoxicated. He had the hammer of his pistol cocked back and continued to raise and wave the gun but did not point it directly at officers. Officer Tillmon continued to observe Decedent act erratically for several minutes, only losing sight of him when he walked behind a structural column of the balcony.

After a few minutes passed by, Officer Tillmon observed Decedent stand straight and raise his handgun. Decedent braced the gun with his other hand and began to push the gun out

with the barrel pointed toward Officer Street and LVMPD officers. Officer Tillmon then fired his rifle, striking Decedent. Officer Tillmon observed Decedent stumble forward on the balcony and then fall backward onto the balcony floor.

Officer Tillmon then heard Officer Street advise over the radio that he had fired a round, and Officer Tillmon advised over the radio that he had fired a round as well. The rest of the HPD SWAT team arrived on scene and moved toward Decedent's apartment to take him into custody and render medical aid. Officer Tillmon continued to watch the balcony through his optic as Decedent was not visible on the balcony. When Officer Tillmon was advised that the scene was safe, he stood up, cleared his rifle, and set it to the side on the ground.

Officer Tillmon advised that before he discharged his weapon, he knew that Officer Street was lying prone with little cover in the direction of the barrel of Decedent's weapon. Additionally, Officer Tillmon knew there were several LVMPD officers in that direction. Officer Tillmon was in fear for Officer Street and LVMPD officers' lives and believed Decedent was going to shoot at them. Officer Tillmon further advised Officer Street's prone position made him vulnerable to ricochet and that due to Decedent's elevated position, any rounds he fired had the potential to skip off the ground and strike Officer Street.

SUMMARY OF RELEVANT WITNESS STATEMENTS

Civilian Witnesses

There were several civilian witnesses interviewed at the scene. All of the interviews were audio recorded. The civilian witnesses were generally consistent with one another and with the officer witnesses. The following summaries were most relevant for purposes of this report.

F.V.

On September 21, 2021, at approximately 7:48 p.m., Detective Joseph Ebert conducted an audio recorded interview with F.V., who relayed the following.

F.V. was in a dating relationship with Decedent for approximately three months. About a month into the relationship, Decedent had three cocaine-induced heart attacks. Decedent underwent open-heart surgery and was released from the hospital eighteen (18) days later. After the surgery, Decedent started to act strange. Decedent would say things to F.V. related to the end of the world and a final war. Decedent frequently talked about immigration and the government and was frustrated with what he believed was happening at the Texas border. Despite the bizarre behavior, F.V. would check on Decedent and communicate with him daily via cellular phone.

Approximately two or three weeks before the OIS, F.V. could not get a hold of Decedent so she went to his apartment. F.V. found Decedent on his patio. He was extremely intoxicated. F.V. told Decedent that he was not supposed to be drinking and was supposed to take his prescribed medication correctly if he wanted to live. On the day of the OIS, F.V. again could

not get a hold of Decedent. She proceeded to his apartment and saw police personnel and crime scene tape.

F.V. did not witness the OIS.

J.B.

On September 21, 2021, at approximately 7:15 p.m., Detective Ebert conducted an audio recorded interview with J.B., who relayed the following.

J.B. was the assistant manager working at the Pep Boys and went out to his vehicle, which was parked in the middle of the Pep Boys parking lot, for a cigarette break. J.B. said hello to the “taco truck guy” (M.Z.) and proceeded to smoke near his vehicle. There were two men trying to change a tire, and J.B. loaned them his tire iron as he smoked. J.B. observed M.Z. walk over and say something to them which caused them to hide behind a truck. M.Z. then said something to J.B. and directed him toward Decedent’s balcony.

J.B. looked up and saw Decedent. He appeared belligerent and was saying something in Spanish. J.B. observed Decedent singing and pacing on his balcony but didn’t pay him much mind. J.B. finished his cigarette and heard Decedent say something in his direction. J.B. looked up again and saw Decedent pointing a black handgun directly at him with both hands. J.B. believed Decedent was going to shoot him. Decedent kept pointing the gun at J.B. and trailed him in his sight as J.B. went back inside Pep Boys and called 9-1-1.

J.B. stayed inside the Pep Boys building from that point on. He could hear officers talking to Decedent on the bullhorn and giving him commands to exit the apartment peacefully without any weapons. He could hear the helicopter and could see the officers, to include SWAT, as they arrived on scene.

J.B. heard the OIS and could tell it was two separate gunshots. He only saw one muzzle flash but could tell that it was both snipers that fired their weapons. He did not see Decedent at the time of the OIS.

G.C.

On September 21, 2021, at approximately 7:30 p.m., Detective Brian Redsull conducted an audio recorded interview with G.C., who relayed the following.

G.C. was in his vehicle on the I-95 freeway when he got a flat tire. G.C. pulled off on Charleston and drove east and parked in the Pep Boys parking lot. G.C. called his brother-in-law (J.F.) to help him fix the flat.

J.F. arrived in his work truck and as they began to change the flat, a man from a taco truck tapped him on the shoulder and told him to “watch out.” G.C. looked up and saw Decedent holding a firearm in both hands and pointing it directly at them.

G.C. and J.F. quickly ducked and took cover behind J.F.'s truck. A Pep Boys employee was also in the parking lot and called 9-1-1. LVMPD personnel arrived on scene. G.C. observed Decedent drinking on the balcony. LVMPD officers drove a patrol vehicle to J.F.'s truck and evacuated them from the area safely.

G.C. did not witness the OIS.

J.F.

On September 21, 2021, at approximately 7:17 p.m., Detective Redsull conducted an audio recorded interview with J.F., who relayed the following.

G.C. called J.F. to help him fix a flat tire. J.F. drove to Pep Boys in his work truck and as they began to change the flat, a man from a taco truck told them there was a man pointing a gun at them. J.F. and G.C. looked up and saw Decedent holding a black handgun in both hands and pointing it directly at them. G.C. and J.F. quickly ducked and took cover behind J.F.'s truck. A Pep Boys manager was also in the parking lot and called 9-1-1.

LVMPD personnel arrived on scene. As they hid behind the truck, J.F. observed Decedent drinking on the balcony. He had music playing and was waving the gun around. LVMPD officers drove a patrol vehicle to J.F.'s truck and evacuated them from the area safely.

J.F. did not witness the OIS.

M.Z.

On September 21, 2021, at approximately 7:27 p.m., Detective Nathan Calvano conducted an audio recorded interview with M.Z., who relayed the following.

M.Z. owns a taco truck business and was parked in his taco truck just west of Pep Boys when he witnessed the incident. M.Z. arrived at approximately 1:30 p.m. and saw Decedent standing on his balcony. Decedent was shirtless. He had a beer in his left hand, a firearm in his right hand, and was playing loud music. About twenty (20) minutes later, M.Z. heard Decedent screaming and looked over to see him pointing his gun at two people who were in the Pep Boys parking lot changing a tire (J.F. and G.C.). LVMPD responded a short time later. M.Z. could hear Decedent stating "fuck this shit" to himself before LVMPD patrol officers evacuated him from the area.

M.Z. did not witness the OIS.

Officer Witnesses

There were numerous officer witnesses interviewed at the scene. The officer witnesses were generally consistent with one another and with the civilian witnesses. The following summaries were most relevant for purposes of this report.

LVMPD Officer Julio Corral

On September 28, 2021, at approximately 12:18 p.m., Detective Ozawa conducted an audio recorded interview with Officer Corral, who relayed the following.

Officer Corral was assigned to LVMPD's Southeast Area Command when a call came out regarding a person with a gun near the Pep Boys building. Officer Corral responded in a marked patrol vehicle and in full uniform. He was waved down by a man wearing a Pep Boys uniform. The man told him there was a man with a handgun standing on the balcony of an apartment just south of Pep Boys. Officer Corral walked along the north side of the building to the northwest corner, where he could see two civilians "hunkered down" behind a vehicle. Officer Corral looked to the south and could see the balcony door was open, but the suspect was not on the balcony. Officer Corral ran back to his patrol vehicle and retrieved his binoculars. When he returned to the northwest corner, Decedent had returned to the balcony. Officer Corral updated arriving officers over the radio.

Decedent was initially not wearing a shirt. Officer Corral did not see Decedent's gun at first, but he could see a cellular phone in his right hand. Decedent was either talking to himself or someone else on the phone, or he was filming himself. A few moments later, Officer Corral observed the handgun in Decedent's left hand. Decedent eventually saw Officer Corral and directed his attention toward him as he paced between the apartment and the balcony. At one point Decedent emerged wearing a t-shirt and sports coat. He appeared intoxicated, his eyes were "droopy," and his movements were uncoordinated.

Officer Corral continued to watch Decedent through his binoculars until a "Rifle Team" arrived and relieved him. A plan was developed to rescue the two civilians hiding behind the vehicle in the parking lot. An LVMPD patrol vehicle was used as a barrier and the two civilians were rescued and driven to a safe location.

Once that was done, a plan was developed to communicate with Decedent. An LVMPD vehicle west moved west of the Pep Boys to set up a barrier so officers could communicate with Decedent over the public-address ("PA") system. Officers issued commands to Decedent to exit the apartment, but he either would not comply or did not understand the commands. While that was happening, other officers were gathering intelligence on the apartment and Decedent. Officers were able to identify Decedent and obtained two phone numbers for him.

Officer Corral used his department-issued cell phone and called Decedent. Decedent walked into the apartment, picked up his phone, answered the call and returned to the balcony. Officer Corral spoke to Decedent in Spanish. Officer Corral tried to get Decedent to exit his apartment but he refused. Officer Corral kept talking to Decedent and asked him what was going on with him. Decedent told Officer Corral that he should already know what is going on because the CIA, FBI, and other law enforcement agencies were monitoring him. Officer Corral told Decedent he was not aware of that and tried to keep a good rapport going with Decedent. Decedent appeared intoxicated as Officer Corral spoke to him for approximately fifteen (15) minutes before CNT officers arrived and took over the conversation.

Officer Corral continued to watch Decedent through binoculars from the northwest corner as the CNT officer spoke to him. Decedent repeatedly waved his gun around, pointed it in the air, and pointed it at himself. Officer Corral observed an HPD SWAT officer set up near him with a rifle. Officer Corral moved behind cover periodically because it was difficult to hold the binoculars up for an extended period of time.

After readjusting his binoculars, Officer Corral was moving from behind cover when he saw Decedent looking at him and pointing the muzzle of his gun in his direction. Officer Corral then heard a gunshot and ducked behind cover believing that Decedent had fired at him. Officer Corral quickly realized that the gunshot came from an officer, so he looked out toward Decedent with his binoculars again. Officer Corral saw Decedent lean forward over the balcony wall, drop his cellphone, and then fall backward onto the balcony floor. HPD SWAT officers then approached the apartment and contained the scene.

Officer Corral expressed that when he saw Decedent pointing the weapon in his direction, he believed Decedent intended to do harm and that he and his fellow officers' lives were in danger.

LVMPD Officer Daniel Monahan

On September 28, 2021, at approximately 1:37 p.m., Detective Karl Lippisch conducted an audio recorded interview with Officer Monahan, who relayed the following.

Officer Monahan was assigned to LVMPD's Southeast Area Command when a call came out regarding a person with a gun near the Pep Boys building. Officer Monahan self-dispatched to the call and responded in his marked patrol vehicle wearing full LVMPD uniform. On his way to the scene, Officer Monahan learned the suspect had already pointed the firearm at several people and committed multiple counts of Assault with a Deadly Weapon.

As Officer Monahan arrived a Command Post was being established. Officer Monahan initially assisted in evacuating subjects from within the inner perimeter. After that was done, Officer Monahan proceeded to the southeast corner of Pep Boys and joined several other officers there.

From his vantage point on the southeast corner, Officer Monahan could see Decedent on the balcony. Decedent had a handgun and was drinking out of a bottle of alcohol. He was waving the gun around and pointing it at himself and into the air. Officer Monahan could hear commands being given to Decedent over the PA and learned that an officer was talking to him over the phone. Decedent continued to refuse to obey the commands given to him and kept drinking alcohol. He would walk in and out of the apartment, put the gun down, pick it back up, and wave it around. Decedent also screamed and disrobed.

An HPD SWAT Sniper arrived and set up in a prone position near him on the southeast corner of Pep Boys. Officer Monahan maintained his position as a spotter and covered the SWAT officer. Officer Monahan continued to observe Decedent through binoculars from the

southeast corner of the building. Officer Monahan observed the liquid in the alcohol bottle diminishing and Decedent becoming more agitated as time went on. Officer Monahan knew that not all of the apartments near Decedent could be safely evacuated and that some of his neighbors were sheltering in place. Officer Monahan also knew there were citizens hunkered down and hiding inside the Pep Boys building.

Just prior to the OIS, Officer Monahan observed Decedent point his gun in the direction of the Pep Boys parking lot to the northwest. Officer Monahan then immediately heard a single shot fired by the HPD SWAT officer next to him. Officer Monahan also heard a second shot fired from a different location. He observed Decedent fall to the floor of the balcony behind the stucco pony wall. HPD SWAT then approached the apartment.

Officer Monahan expressed that it did not appear as though Decedent was going to surrender. Rather, he appeared to be working himself up and gathering the courage to carry out an action.

LVMPD Detective Eduardo Pazos

On September 28, 2021, at approximately 12:50 p.m., Detective Ozawa conducted an audio recorded interview with Detective Pazos, who relayed the following.

Detective Pazos was called out to the incident as a Spanish-speaking Crisis Negotiator. When he arrived on scene, Detective Pazos was briefed and proceeded to Officer Corral's location to take over the telephone conversation with Decedent. Detective Pazos listened in on the call and eventually transitioned into the conversation. Decedent's temperament was erratic, and he made paranoid and delusional statements as he spoke to Detective Pazos.

Detective Pazos relocated to a vehicle in a quieter location outside the inner perimeter and continued to speak to Decedent, asking questions and attempting to gather intelligence. Detective Pazos asked Decedent to exit his apartment unarmed, and Decedent refused. Decedent told Detective Pazos that he knew what was going to happen if he pointed his gun at police and how things were going to end. Detective Pazos attempted to reassure Decedent that everything was going to be ok.

Decedent continued to speak erratically and began making suicidal statements. He told Detective Pazos that he wanted to shoot himself, and Detective Pazos told him not to. Decedent then began to ramble and use vulgar language. He rambled about former President Donald Trump, Jesus, and "judgment day." He asked for the officers to shoot him, and Detective Pazos told him that they did not want to do that.

Decedent again deviated and made statements related to him being an "agent." Detective Pazos asked questions about what agency he worked for, and Decedent did not answer or clarify. Detective Pazos believed he spoke with Decedent for approximately forty-five (45) minutes before it sounded to him like Decedent dropped the phone. Detective Pazos called out Decedent's name several times but received no response. It was at that point Detective Pazos learned that SWAT officers had fired.

TIMELINE

Time (Hours)	Description of Event/Action	Source
14:09:36	Victim ██████ calls 9-1-1 and advises that a male is pointing a handgun at him and he is located behind the Pep Boys business.	CAD
14:09:59	█████ describes the male pointing the handgun as a HMA 40-50's, 5'8", medium build, Gray hair and no shirt	CAD
14:10:13	█████ advises the handgun is black	CAD
14:10:46	█████ advises that the suspect is on his balcony and pointing the handgun at the public	CAD
14:15:06	LVMPD Dispatch is no longer landline with Jonathan	CAD
14:30:21	LVMPD Officers on scene advising that suspect has a cell phone in his right hand and the handgun in his left	CAD
14:33:22	LVMPD Officers on scene advising that there are two subjects ducking behind a truck, and the suspect put the handgun to his head.	CAD
14:39:39	LVMPD Officers advising that US 95 needs to be shutdown at Charleston.	CAD
14:44:43	LVMPD Officers advising that suspect is yelling at Officers	CAD
14:45:39	Medical Units arriving and staging at Command Post	CAD
14:48:11	Update given that suspect has nothing in his hands, wants a team in place to call him out with a bullhorn, Rifle and spotter are in place	CAD
14:54:19	A plan is in place to put the two subjects stuck behind a truck in a Patrol vehicle to remove them from harms way	CAD
14:55:19	Subjects stuck behind truck have been taken to safety	CAD
14:56:27	Suspect is out on patio holding a magazine	CAD

15:03:00	Suspect now holding handgun in right hand	CAD
15:06:47	LVMPD Officers are using bullhorn to communicate with suspect	CAD
15:13:31	Suspect is waving at Officers to come to him, walking back inside his apartment and now has a bottle of alcohol, Suspect is not listening to commands	CAD
15:15:28	Update given that suspect dropped something, commands given to suspect to have clear hands and to put handgun down	CAD
15:19:53	Suspect still drinking an alcohol bottle	CAD
15:22:07	Suspect identified as Jose Antonio Oyuela-Palma	CAD
15:22:44	Phone numbers located for Jose Oyuela-Palma	CAD
15:24:38	Jose Oyuela-Palma is contacted via cell phone and it is advised he is Spanish speaking	CAD
15:26:39	It is advised that Jose Oyuela-Palma is by himself in the apartment	CAD
15:32:08	LVMPD CNT negotiator is speaking with Jose Oyuela-Palma via cell phone	CAD
15:32:28	Jose Oyuela-Palma making unusual statements that the FBI and CIA are following him around	CAD
15:38:37	It is advised that LVMPD Officers have been speaking with Jose Oyuela-Palma for approximately 25-30 minutes	CAD
15:45:30	An Evacuation Team is setting up	CAD
15:47:51	LVMPD Negotiator is still talking with Jose Oyuela-Palma and is standing on the ledge	CAD
15:58:33	It is advised that Jose Oyuela-Palma has taken his jacket and shirt off	CAD
16:01:54	It is advised that Henderson Police SWAT is enroute to the scene	CAD
16:05:43	Updates are given on buildings that were evacuated and what apartments have sheltered in place	CAD

16:06:55	It is advised that the bottle of alcohol that Jose Oyuela-Palma was drinking is now a quarter full and when he started it was three quarters full, so he might be intoxicated	CAD
16:09:20	Jose Oyuela-Palma is still out without his shirt and waving hands around	CAD
16:12:36	Update given that Jose Oyuela-Palma keeps looking around and towards surrounding units, he had the handgun in his hand and is pointing it around and to his head	CAD
16:12:41	Jose Oyuela-Palma has handgun down to his side	CAD
16:13:29	Jose Oyuela-Palma has handgun pointed at his head	CAD
16:14:23	Jose Oyuela-Palma is pointing handgun up in air	CAD
16:15:28	Jose Oyuela-Palma pointing handgun to the west	CAD
16:28:07	Jose Oyuela-Palma still waving handgun in all directions and to his head	CAD
16:28:25	Jose Oyuela-Palma waving handgun to the front	CAD
16:29:50	Update given that shots have been fired by Henderson SWAT team Sniper	CAD
16:32:57	Update given that no movement is observed on balcony	CAD
16:35:59	Still no movement seen	CAD
16:37:04	Distract deployed	CAD
16:39:04	Henderson SWAT Team moving up to suspect's apartment and made entry	CAD
16:40:33	It is advised over radio to have Medics go up to apartment	CAD
16:46:33	It is advised that Jose Oyuela-Palma is deceased	CAD

VIDEO FOOTAGE

HPD Body-Worn Camera Footage

SWAT Officer Street deployed his body-worn camera (hereinafter “BWC”) and it was activated at the time of the incident. Due to the angle of the camera, Decedent was not captured on video. The audio was consistent with Officer Street’s voluntary statement as well as witness officers’ statements.

SWAT Officer Tillmon did not deploy his BWC.

The SWAT Officers who breached Decedent’s apartment were equipped with BWC’s which were activated. The footage depicts the SWAT team tactically approach the apartment and deploy flash-bangs before breaching the door and advancing to the balcony. Decedent can be seen lying supine on the balcony floor with a gun at his feet, consistent with the crime scene photographs.

LVMPD Body-Worn Camera Footage

Over a dozen LVMPD officers were equipped with BWC’s which were activated during the incident. Due to the distance and camera angles, none of the LVMPD BWC footage clearly depicts Decedent in the moments before the OIS.



LVMPD BWC footage depicting the distance and view of the balcony from the northwest corner of the Pep Boys building.



LVMPD BWC footage depicting the distance and view of the balcony from the southeast corner of the Pep Boys building.

The LVMPD BWC audio and video is generally consistent with the civilians' and officers' statements. It is date-stamped in Zulu time. In totality, the LVMPD BWC depicts the following:

Officers can be seen and heard gathering intelligence and narrating what they were seeing and hearing in real time. Then, officers can be seen and heard setting up a perimeter, rescuing and evacuating civilians, interviewing witnesses, and taking up positions around the apartment complex and Pep Boys building. Various BWC's from the northwest and southeast corners of Pep Boys depict HPD SWAT Officers Street and Tillmon arriving on scene and taking their prone positions. Several different officers are depicted observing Decedent through binoculars and updating their fellow officers as he waved the gun, pointed it in the air, and pointed it at himself. Several officers indicated that Decedent appeared agitated, was yelling "bring it on" at officers, drinking alcohol from a bottle, setting down a firearm and picking it back up, and pacing in and out of the apartment and balcony. Officers can be heard issuing commands to Decedent over the PA, and Officer Corral can be heard speaking to Decedent on the phone. Numerous officers narrated Decedent's reckless movements with the firearm, to include pointing it at himself and into the air and waving it past officers. Approximately 40 seconds before the rounds are fired, officers on the northwest corner advise that Decedent pointed his firearm at them briefly. Officers indicated that if he did that again, they would fire. Officers on the northwest corner can be seen ducking and hiding as Officer Street fires. It appears they believed Decedent had fired at them. Officers maintain visual surveillance on the balcony and communicate about Decedent's position behind the pony wall of the balcony. It appears they cannot see the firearm or his hands. The footage depicts HPD SWAT officers approaching the apartment and securing the scene.



LVMPD BWC footage depicting HPD SWAT Officer Street lying prone next to an LVMPD rifleman as Officer Street fired 1 round from his position on the northwest corner of the Pep Boys building.



LVMPD BWC footage depicting HPD SWAT Officer Tillmon immediately after he fired 1 round from his position on the southeast corner of the Pep Boys building.

LVMPD Air Unit Video Footage

The LVMPD Air Unit responded to the scene and maintained visual and video surveillance of Decedent until ground units were set up and the scene was contained. The video footage depicts Decedent pacing on the balcony, displaying a magazine cover, brandishing a firearm, drinking liquor from a bottle, and talking on a cellular phone. After approximately thirty-four (34) minutes on scene, the LVMPD Air Unit cleared the call and left the area.



LVMPD Air Unit video depicting Decedent wearing a sports coat concealing his right hand and displaying a magazine cover with a picture of former President Donald Trump in his left hand.



LVMPD Air Unit video depicting Decedent with a magazine in his left hand and a firearm in his right hand.



LVMPD Air Unit video depicting Decedent with a bottle of liquor in his left hand and a firearm in his right hand.

The LVMPD Air Unit was called back to the scene after the OIS to provide visual and video surveillance of Decedent. The video footage depicts Decedent lying supine on the ground of the balcony. An Air Unit officer can be heard attempting to angle their camera to find the gun as SWAT personnel approached the apartment and deployed flash bangs. An Air Unit officer can be heard updating SWAT officers over the radio that Decedent's right arm was still moving and that they could not see his left hand. Once SWAT officers made entry into the apartment and onto the balcony, the LVMPD Air Unit cleared the call and left the scene.

AUTOPSY

Medical Examiner Dr. Timothy Dutra of the Clark County Coroner's Office conducted an autopsy on Decedent. Dr. Dutra observed 2 gunshot entry wounds to Decedent's chest and corresponding exit wounds on his back. Dr. Dutra concluded Decedent's cause of death was multiple gunshot wounds.

The toxicology results indicated Decedent had 126 ng/dL Ethanol, 540 ng/mL Benzoylcgonine, and 140 ng/mL Cocaine in his system at the time of his death.

OFFICER WEAPON COUNTDOWNS

SWAT Officer Street's Accuracy International AX .308 Rifle bearing S/N 16AX23878



Officer Street carried ten (10) cartridges in the magazine of his rifle. At the completion of the countdown, nine (9) rounds were in the magazine. After the countdown and a review of the evidence on scene, it was determined Officer Street discharged his firearm one time during this incident.

SWAT Officer Tillmon's Accuracy International AX .308 Rifle bearing S/N 15AX21968



Officer Tillmon carried ten (10) cartridges in the magazine of his rifle. At the completion of the countdown, nine (9) rounds were in the magazine. After the countdown and a review of the evidence on scene, it was determined Officer Tillmon discharged his firearm one time during this incident.

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 the 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.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 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

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.

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 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 SWAT Officer Street, as well as the multiple other officers and civilians in the immediate area. Officers Street and Tillmon were aware that Decedent pointed the firearm at several civilians prior to their arrival, and both were aware that he was acting erratically. Officers Street and Tillmon both observed that the firearm in Decedent's hand was cocked and ready to fire. Officers ordered Decedent to drop the weapon and exit the apartment peacefully, but he refused. Officers Street and Tillmon observed Decedent drinking hard liquor, becoming increasingly agitated, and acting negligently and recklessly with his weapon. Officers Street and Tillmon were aware that Decedent briefly pointed the gun at officers on the west side of the building before pointing it to the sky, but they both refrained from firing at that time. Officers Street and Tillmon were aware that Decedent had the tactical advantage of the high ground, and that they were vulnerable to Decedent's direct fire or his rounds skipping off the ground.

Just prior to discharging their respective weapons, Officers Street and Tillmon observed Decedent take a two-handed firing stance and raise his weapon toward officers on the west

side of the building. It was not until Decedent raised his weapon and pointed it at officers that Officer Street and Officer Tillmon discharged their weapons, ending the threat to the officers and civilians in the area. Thus, the totality of the evidence, to include BWC video footage and witness statements, illustrates that Officers Street and Tillmon were reasonable in believing that Decedent would cause great bodily harm or death to themselves or others. This is further demonstrated by the fact that Officers Street and Tillmon fired at Decedent almost simultaneously from entirely different positions. Officers Street and Tillmon were confronted with the appearance of imminent danger and had an honest belief and fear that Officer Street and other officers and civilians in the area were about to be killed or suffer great bodily injury at the hands of Decedent. The evidence further illustrates that Officers Street and Tillmon both acted reasonably in reaction to the apparent and actual danger posed by the situation and the Decedent. Here, Officers Street and Tillmon reasonably acted in self-defense and/or 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 Street and Tillmon had probable cause to believe that Decedent posed a threat of serious physical harm to Officer Street, their fellow officers, and to the civilians in the area around and behind them. Both Officers were aware that Decedent had already pointed a firearm at civilians, that he had the firearm’s hammer cocked back, and that he was acting erratically. Decedent refused to comply with officers’ commands and with crisis negotiators’ requests. When Decedent raised his firearm toward officers in a two-handed firing stance, they had every reason to believe that he would pull the trigger. At that point, Officers Street and Tillmon each had a reasonable belief that Decedent could cause serious physical harm to Officer Street, their fellow officers, or any civilians in the surrounding area. Thus, the use of deadly force by Officers Street and Tillmon 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 Officers Street and Tillmon 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 HPD Officer Mark Street or HPD Officer Logan Tillmon.