

REPORT ON USE OF FORCE



Legal Analysis Surrounding the Death of Phillip Peinado on March 3, 2023

INTRODUCTION

On March 3, 2023, North Las Vegas Police Department (“NLVPD”) Officers Fernando Herrera and Mike Azcunaga shot and killed Phillip Peinado (“Decedent”). The use of force occurred during a traffic stop wherein Decedent was pulled over for failing to use headlights. During the traffic stop, Decedent, who was the lone occupant of the vehicle, grabbed a firearm from the glovebox of his vehicle and turned toward Officer Herrera with the gun in his hand. Officer Herrera and Officer Azcunaga discharged their firearms, striking and killing Decedent.

The District Attorney’s Office has completed its review of the March 3, 2023, death of Decedent. It has been determined that, based on the evidence currently available and subject to the discovery of any new or additional evidence, the actions of NLVPD Officers Herrera and Azcunaga were not criminal in nature.

This report explains why criminal charges will not be forthcoming against the officers involved. It is not intended to recount every detail, answer every question, or resolve every factual conflict regarding this citizen-law enforcement encounter. The report is meant to be considered in conjunction with the Police Fatality Public Fact-Finding Review conducted on September 19, 2024.

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

SYNOPSIS OF INCIDENT

On March 3, 2023, at approximately 0055 hours, NLVPD Officer Herrera conducted a traffic stop of a 1997 Ford Crown Victoria (a four-door sedan), near the intersection of Washburn Road and Allen Lane in North Las Vegas, Nevada. At the time of the traffic stop, Officer Herrera was operating as a one-man unit. Officer Herrera initiated the traffic stop because the Crown Victoria was operating without its headlights. Prior to the traffic stop, the Crown Victoria was traveling southbound on Allen Lane. Officer Herrera activated his overhead lights at Allen Lane and Washburn Road. The driver of the Crown Victoria (later identified as Decedent) continued to drive southbound for approximately .3 miles before turning west onto La Madre Way. Decedent ultimately stopped his vehicle just west of Allen Lane on La Madre Way. Prior to Decedent stopping his vehicle, Officer Herrera observed Decedent reach into the passenger area of the car on multiple occasions. Decedent stopped his vehicle on the north side of La Madre Way in the dirt adjacent to the pavement. Officer Herrera stopped his vehicle behind Decedent but remained on the pavement.

On the same date and time, Officer Azcunaga and Officer Christian Atkinson were operating as a two-man unit in the same area of town and stopped to assist Officer Herrera after observing the initiation of the traffic stop. Officer Azcunaga was driving the patrol vehicle and Officer Atkinson was riding as the passenger.

Officers Azcunaga and Atkinson stopped their vehicle behind Officer Herrera's patrol vehicle. They arrived on scene at the approximate time Officer Herrera exited his vehicle. Officer Herrera then approached the driver's side of Decedent's vehicle while Officer Azcunaga approached the passenger side of Decedent's vehicle; and Officer Atkinson stood several feet away (approximately 6-10 feet) on the passenger side of Decedent's vehicle. Decedent's driver's side window was down, and the passenger windows were rolled up. Decedent's glovebox was open.

Officer Herrera contacted the driver, later identified as Decedent. After approximately 17 seconds into their interaction, Officer Herrera asked Decedent about a plastic bag containing a white substance, that he observed between Decedent's legs. Decedent told Officer Herrera that he snorted it earlier. As Officer Herrera was speaking, he noticed Decedent was tearing the bag which caused the white powder to fall on the floor. Officer Herrera told Decedent to stop tearing the bag, and Decedent complied. Officer Herrera told Decedent to turn his vehicle off and to give him his driver's license. Decedent turned the car off and immediately reached into the glove box. Decedent retrieved a .38 Special revolver, swung it toward Officer Herrera, and began to open the car door. Officer Herrera moved to the driver's side rear of the Decedent's vehicle where he fired his handgun eight times through the rear driver's side of the vehicle at Decedent.

As Officer Azcunaga stood at the passenger side window, he also saw Decedent rip the plastic bag. He then saw Decedent retrieve a revolver from the glove box and move it toward the direction of Officer Herrera. Officer Azcunaga then stepped back to the passenger side rear window where he fired 10 times through the window at Decedent. Officer Atkinson did not fire his weapon.

Once the shooting ceased, all three officers moved back and stood next to Officer Herrera's patrol vehicle. Officer Herrera yelled to the Decedent who did not respond. Officers Azcunaga and Atkinson then approached the Crown Victoria on the passenger side where they saw Decedent was shot and slumped over to his right. They believed he was deceased. Medical personnel with the North Las Vegas Fire Department arrived on scene and confirmed that Decedent was deceased.

Prior to removing Decedent's body from the vehicle, a firearm was observed on the driver's seat underneath Decedent's body. After Decedent was removed from the vehicle, the firearm was determined to be a .38 Special revolver. It was loaded with six cartridges.

DESCRIPTION OF THE SCENE

Overview



Google image of 5025 Allen Lane.

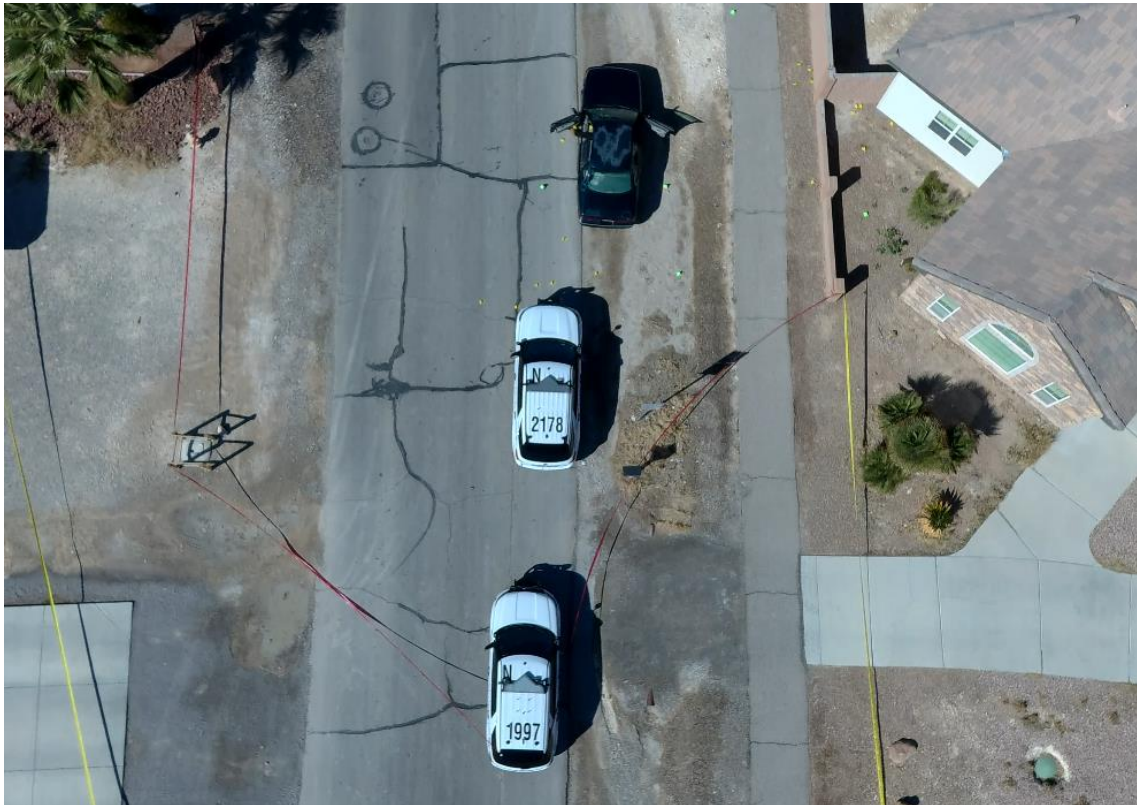
The use of force event occurred on the north side of La Madre Way, west of Allen Lane and just south of 5025 Allen Lane in North Las Vegas, Nevada.

Vehicle Positions at Time of OIS

At the time of the use of force, all vehicles involved were on the north side of La Madre Way to the west of Allen Lane. All vehicles were facing west and were directly south of the house at 5025 Allen Lane. Decedent's vehicle (a Crown Victoria) was positioned in front of the two patrol vehicles in a typical traffic stop formation. Officer Herrera's patrol vehicle was positioned behind the Decedent's vehicle and slightly to the south of Decedent's vehicle. Officer Azcunaga's patrol vehicle was parked behind Officer Herrera's patrol vehicle. Both patrol vehicles had their emergency lights activated.

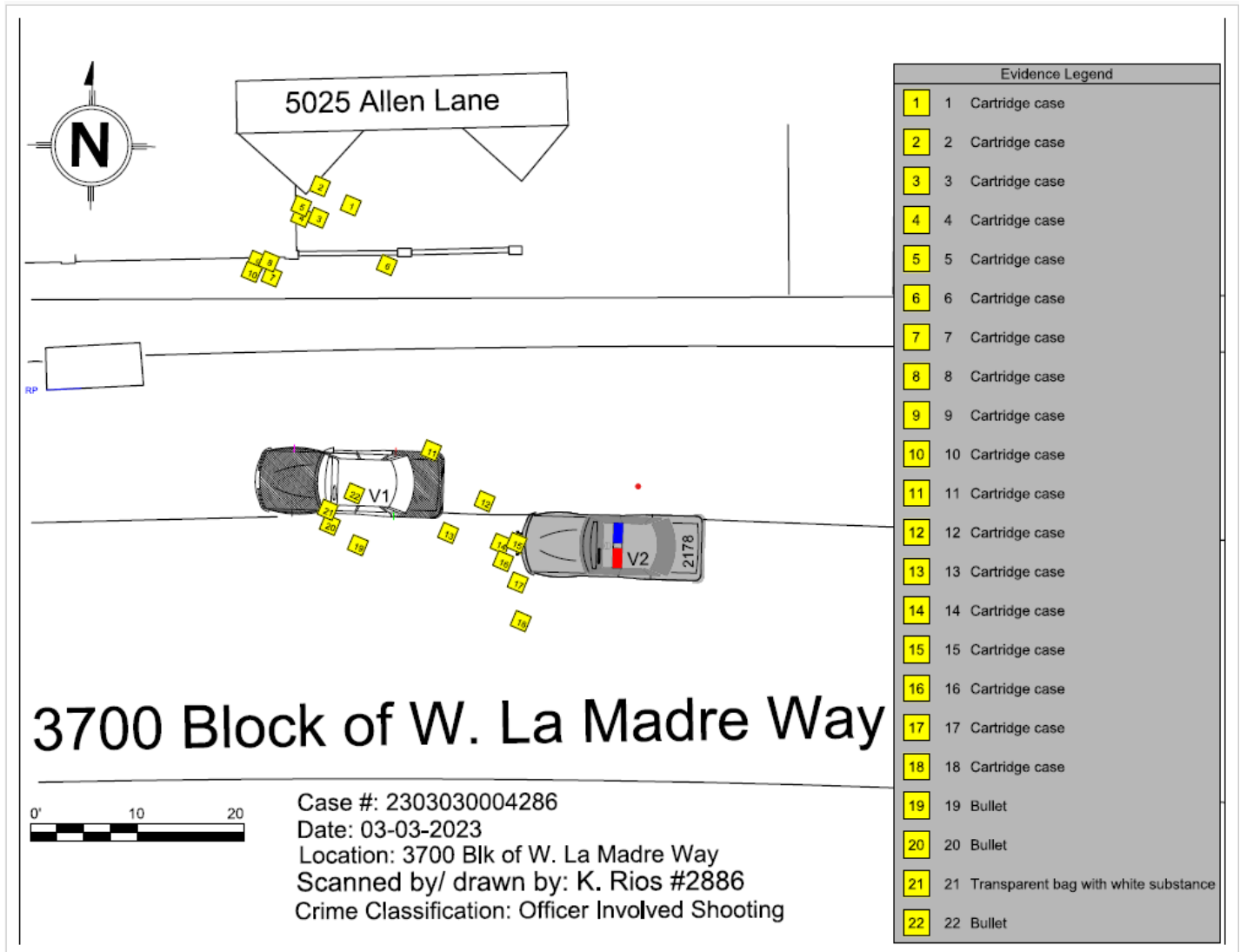


Position of vehicles at the time of traffic stop and use of force.



Position of vehicles at the time of traffic stop and use of force.

Visible Evidence



V1 = Decedent's vehicle; V2 = Officer Herrera's vehicle

A total of 18 9mm cartridge casings were located on scene (See diagram above). Ten cartridge casings were located on the ground in landscaping rocks north of Decedent's vehicle (Items 1-10). These cartridge casings were located just south of 5025 Allen Lane. Forensic testing later determined that these ten cartridge casings were fired from Officer Azcunaga's weapon.

A total of eight cartridge casings (Items 11-18) were located on the ground in the area between Decedent's vehicle and Officer Herrera's vehicle. One casing (item 11) was located on the ground underneath the rear passenger side of Decedent's vehicle. One casing (item 12) was located in the rocks north of the pavement in between Decedent's vehicle and Officer Herrera's vehicle. Five of the casings (Items 13-16) were located on the ground in the roadway between Decedent's vehicle and Officer Herrera's vehicle. The remaining two casings (Items 17-18) were located on

the ground in the roadway near the front driver's side of Officer Herrera's vehicle. Forensic testing later determined that these eight casings were fired from Officer Herrera's weapon.

A total of 15 bullets, bullet fragments, and metal fragments were located in and around Decedent's vehicle. The diagram above reflects the documentation, recovery, and collection of evidence prior to the arrival of the Clark County Coroner's Office. Additional bullets and bullet fragments were documented after Decedent was removed from the vehicle.



Officer Herrera's casings – Items 11-18 (photo shows Officer Herrera's patrol vehicle on the left and Decedent's vehicle on the right)



Officer Herrera's casings – Items 11-18 (photo shows Decedent's vehicle on the left; Officer Herrera's patrol vehicle on the right and 5025 Allen Lane in the background)



Photograph depicting Items 1-2 and 4-10. These are the cartridge casings fired by Officer Azcunaga, with the exception of Item 3, which is hidden by the pony wall.

Crime Scene Investigator (“CSI”), Wendy Radke documented a plastic bag containing small shards of a crystalline substance which tested presumptive positive for methamphetamine on the driver-side front floorboard inside Decedent’s vehicle (See Item 21 on diagram above).

A silver revolver could be seen from the outside the front windshield of the vehicle. The revolver was located on the seat under Decedent’s torso. Upon removing Decedent’s body from the vehicle, the revolver was identified as a F.I.E. Corp Titan Tiger .38 Special revolver with wooden grip bearing serial number, N022483. The revolver had a six round capacity and there were 6 cartridges inside the gun. All cartridges had the headstamp, “AMMO INC 38 SPL”.

Decedent's initial position after the use of force (see below)



From driver's side of vehicle



From passenger side of vehicle



Photo of plastic bag torn and dropped by Decedent during traffic stop



Photo of revolver as Decedent's body was lifted out of the vehicle



Photographs of Decedent's revolver after its removal from the vehicle.

PUBLIC SAFETY STATEMENT

Lieutenant Jason Lawrence ("Lt. Lawrence") issued the following Public Safety Statement based on statements he obtained from Officer Herrera, Officer Azcunaga, and Officer Atkinson.

- The only person injured was the suspect.
- There were no outstanding suspects.
- The vehicle involved was a green Ford Crown Victoria.
- The driver produced a handgun, believed to be a revolver, and pointed it at Officer Herrera.
- Officer Herrera fired from the driver's side of the vehicle at the driver in a westerly direction and he believed he fired his duty weapon two times.
- Officer Azcunaga fired from the passenger's side of the vehicle at the driver in a westerly direction and believed he fired his duty weapon 5 or 6 times.
- Officer Atkinson was on-scene and witnessed the shooting. However, due to his position on the sidewalk, he did not fire his duty weapon.
- Officer Atkinson told Lt. Lawrence that Officer Azcunaga was between him and the suspect, which influenced his decision not to shoot.
- The crime the suspect committed was Assault with use of a Deadly Weapon on a Protected Person.
- There was probable cause to arrest the suspect had he survived.
- Lastly, the weapon used by the suspect was a silver revolver.

OFFICER WEAPON COUNTDOWNS

CSI Kaylee Emry responded to the NLVPD Northwest Area Command to conduct a countdown of the weapons carried by Officers Azcunaga, Herrera, and Atkinson. The countdowns were witnessed by CSI Supervisor Theresa Graziano and Detective Shamar Burnham. The body-worn camera confirmed that only Officers Herrera and Azcunaga fired their duty weapons. A countdown was conducted of Officer Atkinson's firearm due to him being present at the time of the shooting. CSI Emry took photos of each officer, documenting their appearance at the time of the shooting. All officers wore standard patrol uniforms with NLVPD patches on each sleeve, a metal badge, and duty belt. Their attire and equipment (radio and duty belt) clearly identified them as police officers.

Officer Herrera's Countdown



Officer Herrera's handgun was located on his right side in his holster. The firearm was a Glock 17 9mm semi-automatic handgun with serial #BBHF626. Attached to his handgun was a Surefire X300 Ultra tactical light. The firearm was loaded with a total of nine 9mm cartridges, with eight in the magazine and one in the chamber. Officer Herrera stated his normal practice was to load each magazine with 17 cartridges and not top off his magazine after chambering a round.

Total count for the firearm: nine cartridges (eight in the magazine and one in the chamber).

Officer Herrera carried three extra magazines on the front left side of his duty belt. All magazines were loaded with 17 cartridges.

Based on the information that Officer Herrera loaded his handgun with 17 total rounds, and at the time of the countdown his handgun contained eight cartridges in the magazine and one in the chamber (total = 9), it was determined that he fired eight total rounds in this shooting. The LVMPD Lab later confirmed that there were eight cartridge cases at the scene that were fired from Officer Herrera's handgun.

Officer Azcunaga's Countdown



Officer Azcunaga's handgun was located in his holster on his right side. The firearm was a Glock 17 9mm semi-automatic handgun with serial #BTWG724. It had a Streamlight TLR-1 tactical light attached. The firearm was loaded with a total of eight 9mm cartridges. There were seven in the magazine and one in the chamber. Officer Azcunaga stated his normal practice was to load each magazine with 17 cartridges and chamber a round. He stated he does not top off his magazine after chambering a round. He was unsure how his gun was loaded at the time of this shooting.

Total count for the firearm: eight cartridges (seven in the magazine and one in the chamber).

Officer Azcunaga carried two extra magazines on the front left side of his duty belt. These magazines were each loaded with 17 cartridges.

At the time of the countdown Officer Azcunaga's handgun contained seven cartridges in the magazine and one in the chamber (total = eight). Based on the information that he was unsure if his duty weapon contained 17 or 18 cartridges it was determined that he fired 9 or ten total rounds in this shooting. The LVMPD Lab later confirmed that there were ten cartridge cases at the scene that were fired from Officer Azcunaga's handgun. Based on the cartridge cases at the scene it is determined that Officer Azcunaga loaded his magazine with 17 cartridges and topped off his magazine after chambering a round. His duty weapon contained 18 total cartridges.

Officer Atkinson's Countdown



It was determined that Officer Atkinson did not fire any rounds in this shooting.

FORENSIC TESTING

Firearms Examinations

LVMPD Forensic Scientist Stephanie Fletcher examined Officer Herrera's firearm and Officer Azcunaga's firearm. Per her report, dated May 26, 2023, both officer's firearms were test fired, and found to be operational with no noted malfunctions.

Forensic Scientist Fletcher also examined, and test fired Decedent's Titan model Tiger, 38 special revolver and determined it to be capable of firing.

Ms. Fletcher microscopically compared the 18 cartridge casings located on scene to one another and to the test-fired cartridge casings from Officer Herrera's firearm and Officer Azcunaga's firearm. Ms. Fletcher determined that eight cartridge cases at the scene were fired from Officer Herrera's handgun and ten cartridge cases at the scene were fired from Officer Azcunaga's handgun.

Six bullets, including two bullets recovered from Decedent's body, were identified as having been fired from Officer Azcunaga's handgun. One bullet from Decedent's body was identified as having been fired from Officer Herrera's handgun. Additionally, one bullet from Decedent's body and one bullet collected on scene had similar general rifling characteristics as those of the test fired bullets from Officer Azcunaga's handgun but could not be conclusively identified or eliminated as having been fired from his pistol due to limited marks and damage. However, these bullets were eliminated as having been fired Officer Herrera's pistol due to differences in class characteristics.

One bullet collected from Decedent's body and four fragments could not be conclusively identified or eliminated as having been fired from Officer Herrera's handgun or from a single firearm, due to limited marks and damage. However, this bullet and these fragments were eliminated as having been fired from Officer Azcunaga's pistol.

Controlled Substance Analysis

On March 21, 2023, the white substance in the plastic bag that Decedent tore during the traffic stop was sent to Lab Express for chemistry analysis. The results indicated the substance weighed 0.016 net grams and tested positive for Methamphetamine.

SUMMARY OF RELEVANT WITNESS STATEMENTS

Subject Officers

Officer Fernando Herrera Interview

On March 6, 2023, at about 1456 hours, NLVPD Detective Paul Cherrier and Detective Bryan Booker, conducted an audio recorded interview with Officer Herrera. Officer Herrera gave the following account:

He has been employed by NLVPD for approximately six years. Prior to working for NLVPD, he was a trooper with the Nevada Highway Patrol for five years. Prior to that, he was employed by Nevada Parole and Probation for five years.

At the time of this shooting, Officer Herrera was working as a graveyard patrol officer in the Northwest Area Command (NWAC). The night of the shooting he was riding alone. At the time of the use of force, Officer Herrera was wearing a standard NLVPD uniform with a duty belt and typical gear – a badge, shoulder patches, and a vest carrier. He was carrying a Glock 17 handgun with an attached tac light and a total of four 17 round magazines. Officer Herrera said he does not top off his magazine after chambering a round; therefore, his duty weapon had a total of 17 rounds in it. He was not carrying a backup handgun.

Officer Herrera stated he had not watched his body-worn camera footage of the shooting prior to the interview. Prior to this incident he was driving to NWAC to use the restroom. He turned west on Washburn from northbound Simmons. After he made the turn, he saw a vehicle turn west on Washburn ahead of him. He noticed the vehicle did not have its headlights on. Officer Herrera has extensive training and experience in conducting DUI investigations and he is a Field Sobriety Test instructor. Officer Herrera stated based on his training and experience, he is aware that when a vehicle drives with no lights on, it is often because the driver is intoxicated. Officer Herrera caught up to the vehicle on Washburn at Allen. The vehicle turned south on Allen from Washburn. Immediately after making the turn, the driver turned on his lights.

Based on the circumstances, Officer Herrera decided to conduct a traffic stop. He activated his overhead lights just after the NWAC's east exit gate. The driver immediately slowed down but did not stop. As Officer Herrera followed, he could see clearly through the vehicle's rear window. He saw the driver reach across the vehicle to the passenger glovebox area three times. He also watched the driver take a drink out of an unknown beverage can. He thought the driver may have been drinking an alcoholic beverage. The driver turned west onto La Madre and stopped a short

distance later. Due to the length of time it took the driver to stop, Officer Herrera believed the driver was stalling in order to hide or destroy evidence.

As Officer Herrera stopped his vehicle, he noticed Officer Azcunaga and Officer Atkinson (a two-officer unit) stop behind him to assist with the traffic stop. Officer Herrera he felt relieved to see the backup officers because the driver's behavior caused him to be concerned for his safety. Officer Herrera said he approached the suspect's vehicle on the driver's side and Officer Azcunaga approached on the passenger side. When he looked inside the vehicle, he saw a blue Pepsi can. He believed that was the can the suspect drank from while driving. He also saw some torn up clear plastic with white residue between the driver's legs. He asked the driver what the plastic was. The driver reached down and picked it up. He then began to tear the plastic with both hands. As the suspect tore the plastic, Officer Herrera saw white powder fall from it onto the floor. Officer Herrera asked the suspect what was in the plastic. At first the suspect told him it was salt. He then told Officer Herrera he was not going to lie and that he snorted something before he started driving. At that time Officer Herrera was convinced the driver was under the influence of methamphetamine.

Officer Herrera planned to conduct a DUI investigation. He said the driver acted twitchy, very alert, and was talkative, which are typical behaviors he recognized from methamphetamine use. Officer Herrera told the driver to step out of the vehicle. When he said that, the driver reached for the glovebox. Before Officer Herrera could tell him to stop, the driver took something out of the glovebox. At first Officer Herrera didn't realize that Decedent grabbed a firearm from the glovebox but as the Decedent turned toward him, he clearly saw a revolver in the Decedent's right hand. When he first saw the gun, Officer Herrera stated, "[T]hat's when my heart just dropped. Um, that's when I got really scared and everything slowed down. I got into that, you know, fight or flight syndrome[.]" The suspect swung his right arm toward Officer Herrera with the firearm in hand and Officer Herrera could see the muzzle of the firearm coming toward him. Officer Herrera was not sure who opened the car door, but the door was open when the suspect swung his arm toward Officer Herrera.

As the suspect turned toward him with the gun in hand, Officer Herrera backed away to the rear of the vehicle. He expressed that he found it difficult to use verbal commands. When he saw the firearm, he "got so scared for [his] life that [he] just retreated back to the back of the car." He believed that had he not moved from where he was, the driver would have shot him as that is where the Decedent was pointing the firearm. Officer Herrera did not remember pulling his weapon or how many shots he fired. On the night of the shooting, he believed he had fired three or four times, but based on his firearm countdown after the fact, he knew he had fired eight times. Officer Herrera was unsure whether he or Officer Azcunaga fired first, but he thought Officer Azcunaga did.

Officer Herrera stated that the reason he fired was because he was in fear for his life, his partner's life, and the people in the neighborhood around them. After they fired, the suspect slumped over to his right. At that point Officer Herrera believed the immediate threat was over so he did not fire anymore. Officer Herrera moved to the driver's side of his patrol vehicle to reassess the situation. He said he tried to open the door but couldn't because he was shaking so badly from fear. Officer Herrera then asked Officer Azcunaga to check if the suspect was still moving. He also used his radio to call for additional officers and medical assistance but advised medical to stage so the officers could ensure the threat was gone. He did not immediately approach the suspect's vehicle because he knew the suspect had a weapon and may still have been a threat. Once Lt. Lawence arrived, they approached the vehicle to see if the suspect was alive. Lt. Lawence checked the

suspect and stated he was dead. Lt. Lawrence then took Officers Herrera's and Azcunaga's body-worn cameras and asked them the public safety statement questions.

Officer Herrera was then taken to NWAC for a countdown of his weapon.

At the conclusion of the interview, Officer Herrera stated the driver was high on drugs and the driver knew he was caught with drugs and would be arrested. Officer Herrera believed that, if allowed to, the suspect would have gotten out of the car and either shot him or committed suicide by cop. Officer Herrera believed he could not transition to a different weapon or otherwise deescalate the situation and therefore, had no other option than to use deadly force.

Officer Mike Azcunaga Interview

On March 6, 2023, at about 1354 hours, Detectives Cherrier and Booker conducted an audio recorded interview with Officer Azcunaga. Officer Azcunaga gave the following account:

He has been employed by the NLVPD for about a year and a half. At the time of this shooting, he was a patrol officer working the graveyard shift at NWAC. Officer Azcunaga was driving a two-man unit with his partner, Officer Atkinson in the passenger seat. Officer Azcunaga was wearing a standard NLVPD uniform with typical duty belt and gear – a badge, shoulder patches, and a vest carrier. He was carrying a Glock 17 handgun with a tac light. He carried a total of three magazines containing 17 rounds in each magazine. He said he tops off his magazine after chambering a round, therefore his duty weapon had a total of 18 rounds in it. He was not carrying a backup handgun. Officer Azcunaga advised he had not watched his body-worn camera footage of this shooting prior to the interview.

Officer Azcunaga stated that he and Officer Atkinson were driving to NWAC to use the restroom when they heard Officer Herrera call out a nearby traffic stop over the radio. As they got closer, they saw Officer Herrera driving behind the suspect vehicle with his lights activated. Although he did not know why Officer Herrera was stopping the vehicle, he decided to assist with the traffic stop because he knew that area was very dark. The suspect's vehicle eventually stopped on La Madre just west of Allen and was facing west. Officer Azcunaga parked his patrol vehicle behind Officer Herrera and approached Officer Herrera's vehicle on the passenger side. When he was behind the suspect's vehicle, Officer Azcunaga noticed the driver was fidgeting with something on the passenger side of the vehicle. Officer Azcunaga heard Officer Herrera tell the driver to stop and put his hands on the steering wheel. The suspect complied with Officer Herrera's command.

Officer Herrera approached the suspect's vehicle on the driver's side, and Officer Azcunaga approached on the passenger side. When he got to the front passenger window, Officer Azcunaga looked inside the suspect's vehicle. Due to the passenger side window being closed he could only hear what Officer Herrera said and was unable to hear the suspect. Officer Azcunaga noticed the driver appeared to be nervous. He saw a piece of plastic with white powder inside. Officer Azcunaga heard Officer Herrera ask the driver what was in the bag. He could not hear the driver's response. He then heard Officer Herrera say, "Oh- you snorted it." He then saw the driver rip the bag and heard Officer Herrera tell the driver to stop. Shortly after that he saw the driver reach into the glovebox and remove a silver revolver with a wooden grip. After the driver grabbed the revolver from the glovebox, Officer Azcunaga saw the driver bring the gun back toward his body. Officer Azcunaga stated he was very surprised when the driver pulled the gun. He said he froze and was unable to utter any verbal commands. As soon as the driver grabbed the gun out of the glovebox and pulled it toward himself, Officer Azcunaga began to back up. As

he backed up, he lost sight of the gun. Officer Azcunaga explained that he stepped back to create distance from the suspect and so that Officer Herrera would not be in his line of fire. He further explained that he perceived the driver as an active threat to all the officers as well as the people in the nearby houses. As he was standing behind the rear passenger window, he believed he fired four to five times through the window. He stated he noticed the driver slump over the center console area, so he stopped firing. He did not know who fired the first shot. Although he didn't remember seeing Officer Herrera firing, he believed Officer Herrera did fire because he saw damage to the driver's side rear window.

Once the gunfire stopped, they retreated to Officer Herrera's patrol vehicle and confirmed no officers were shot. He and Officer Atkinson then reapproached the vehicle on the passenger side using a short wall for cover to see if the suspect was hit. They saw him slumped over, not moving and blood on the seat. Lt. Lawrence arrived and they all approached the vehicle. Lt. Lawrence tapped the suspect's foot and determined the driver was dead. Medical also arrived a short time later and confirmed he was deceased.

Lt. Lawrence took the body-worn cameras from him and Officer Herrera. He also asked them the public safety statement questions. Sgt. Ferrell arrived and took them to the NWAC for a countdown of their weapons.

Officer Azcunaga finished the interview by stating that he fired his weapon because he believed the suspect was going to use the revolver to shoot them. He believed he had no other force options and could not transition to any other weapons.

Witness Officers

Officer Atkinson Statement

Officer Atkinson was not formally interviewed. However, on March 2, 2023, at approximately 0055 hours, he drafted the following report:

On Friday, 03/03/2023, at about 0055 hours, Officer Azcunaga, P#2815, and I arrived to the area of Allen Lane and La Madre Way to assist Officer Hererra, P#2490, with a traffic stop he had conducted on a vehicle bearing Nevada plate #883WJD.

Upon my arrival, Officer Hererra made contact on the driver side and Officer Azcunaga approached on the passenger side. I approached the vehicle on the far right side standing about 6-10 feet away from the passenger side to watch Officer Hererra and Officer Azcunaga surroundings. I heard Officer Hererra ask the suspect what he was doing and to stop reaching multiple times. Due to my positioning, I did not see the subject with any firearm. I heard about four gunshots, possibly coming from Officer Hererra. Due to officer Azcunaga's positioning I did not see him fire any shots. Due to Officer Azcunaga being in front of me and not having a clear shot I did not discharge my firearm. All officers fell back to Officer Hererra's vehicle and announcements were made to the driver with no response. Officer Azcunaga and I reapproached the vehicle on the passenger side and I noticed the subject had a gunshot wound to the chest. I noticed the subject was slumped over to his right. I looked through the front windshield and noticed the

subject was leaning on a firearm that appeared to be a silver revolver with a brown stock. I did not enter the vehicle at all during the incident.

Dispatch was notified that shots were fired. Medical was requested to the scene to which North Las Vegas Engine #55 arrived on scene. Lt. Lawrence P# 1399 and Sgt. Ferrell P# 2377 arrived and took control of the scene.

BODY-WORN CAMERAS

Officer Herrera's Body-Worn Camera Footage

Officer Herrera was wearing a body-worn camera (BWC) at the time of the incident. The camera was activated. Relevant audio and video portions of Officer Herrera's BWC footage are described below.

At about 00:54:51 hours Officer Herrera initiated a traffic stop in the area of Allen and Washburn. The patrol car's overhead red and blue lights were activated. Officer Herrera called out, over the radio, that he was conducting a stop at Allen and La Madre with a black four door Ford vehicle bearing Nevada license plate 883WJD (Decedent's vehicle later determined to be a Ford Crown Victoria). He continued following the vehicle with his overhead lights activated. The Ford turned west on La Madre and Officer Hererra announced on his public announcement (PA) speaker, "Stop your vehicle." The vehicle stopped a short distance west of Allen on La Madre, facing west.

After the Ford stopped, Officer Herrera again used the PA and announced, "Put your hands on the steering wheel and turn your vehicle off." Officer Herrera approached the driver's side of the vehicle and stopped at the driver's door pillar. The driver's window was already down, and the glove box was open. The driver, later identified as Decedent, was holding what appeared to be plastic trifold with papers inside. The Decedent put the trifold down as Officer Herrera initiated conversation. The following verbal interaction took place:

Officer Herrera: "How are you doing, sir?"

Phillip: "Good, how are you?"

Officer Herrera: "How come it took you a long time to stop?"

Phillip: "I was (unintelligible) just driving home"

Officer Herrera: "Where were you coming from?"

Phillip: "I was just driving to Walmarts (unintelligible)."

Officer Herrera: "What's wrong with your arms?"

Phillip looked at his arm and then reached to his left shoulder and pulled his shirt back to show Officer Herrera something.

Phillip: "I got that, I got that stuff on my back. I got stung by a spider and went to emergency."

Officer Herrera: "Okay, are you okay?"

Phillip: "Yeah. I'm okay."

Officer Herrera: "What's that little baggy right there? In front of you?"

Phillip: "(unintelligible) I guess it's probably old stuff."

Officer Herrera: "All that white, all that white powder that's falling out of it?"

Phillip: "Yeah"

Officer Herrera: "What was that? What was that?"

Phillip: "Oh, rock salt."

Officer Herrera: "It's all just salt?"

Phillip: "Well you know, I'm not, I know you're not dumb. I'm just saying it's probably something I snorted earlier. So, it was in the car or something."

Officer Herrera: "When did you snort it? Okay. Well, stop tearing it up."

Phillip: "Okay."

Officer Herrera: "Okay. That's now evidence."

Phillip: "Okay."

Officer Herrera: "Shut your vehicle off."

Phillip: "Alright."

Officer Herrera: "Give me your driver's license."

Phillip: (unintelligible)

As Officer Herrera instructed Decedent to shut his vehicle off, Decedent took the keys out of the ignition with his right hand as he leaned toward the glovebox. After removing the keys with his right hand, he transitioned the keys to his left and quickly reached into the glovebox with his right hand. This action was done simultaneously with Officer Herrera's request for Decedent to provide his license. As Decedent was reaching his hand into glovebox, Officer Herrera stated the following:

Officer Herrera: "Stop reaching in the freaking gl - hey - get out - get out - get out - get out - code - gun."

As Officer Herrera attempted to give verbal commands, Decedent rotated his body, head and arms toward Officer Herrera. Due to Officer Herrera's bright flashlight, glare, obstructions, and the movements of the BWC, a handgun could not clearly be seen in the camera footage. As

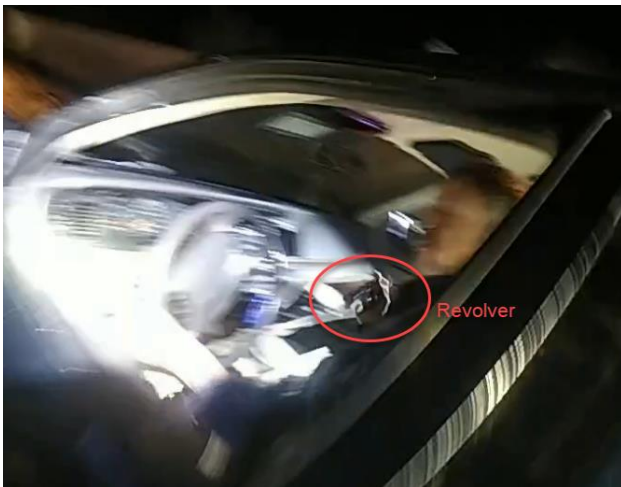
Decedent rotated toward Officer Herrera, Decedent's left hand reached toward the door handle. Decedent began to open his door from the inside. At that point Officer Herrera moved to the driver's side rear of the vehicle and Decedent's left foot exited the vehicle. Officer Herrera fired multiple rounds into the rear left window and side. Due to block walls and multiple officers firing it could not be determined how many shots were fired by either officer from the video.



Decedent at initiation of traffic stop



*Decedent tearing plastic baggie
(From Officer Azcunaga's BWC footage)*



Decedent after grabbing revolver from glove box



Decedent turning toward Officer Herrera with revolver in hand

After the firing stopped Officer Herrera backed away to the driver's side of his patrol vehicle. Decedent's left leg could be seen extended to the ground from the driver's door. One of the officers on the other side of his patrol vehicle asked if Officer Herrera was "481" (okay). Officer Herrera said that he was okay and stated, "He pointed a 413 (gun) at me." Shortly thereafter, he told dispatch that the suspect pointed a revolver at them.

While Officer Herrera was standing at his patrol vehicle, he had his handgun trained on the Crown Victoria. He relayed to the dispatcher that they didn't know if the suspect was injured. At about 0057 hour he asked to have medical personnel enroute and additional officers to block off the streets. As Officer Herrera was by his vehicle, Officers Azcunaga and Atkinson approached Decedent and saw he was shot and was not moving.

Lt. Lawrence then arrived on scene. Officer Herrera made announcements for the driver to raise his hand if he needed help. There was no response. Lt. Lawrence and Officer Herrera approached the driver's side of the Crown Victoria while Officers Azcunaga and Atkinson approached the passenger side. They saw there was only one occupant in the vehicle, and he was deceased.

Lt. Lawrence then took Officer Herrera and Officer Azcunaga to the side and told them to turn off their BWC.

Officer Azcunaga's Body-Worn Camera Footage

Officer Azcunaga was wearing a BWC at the time of the incident. The camera was activated. Relevant audio and video portions of Officer Azcunaga's BWC footage are described below.

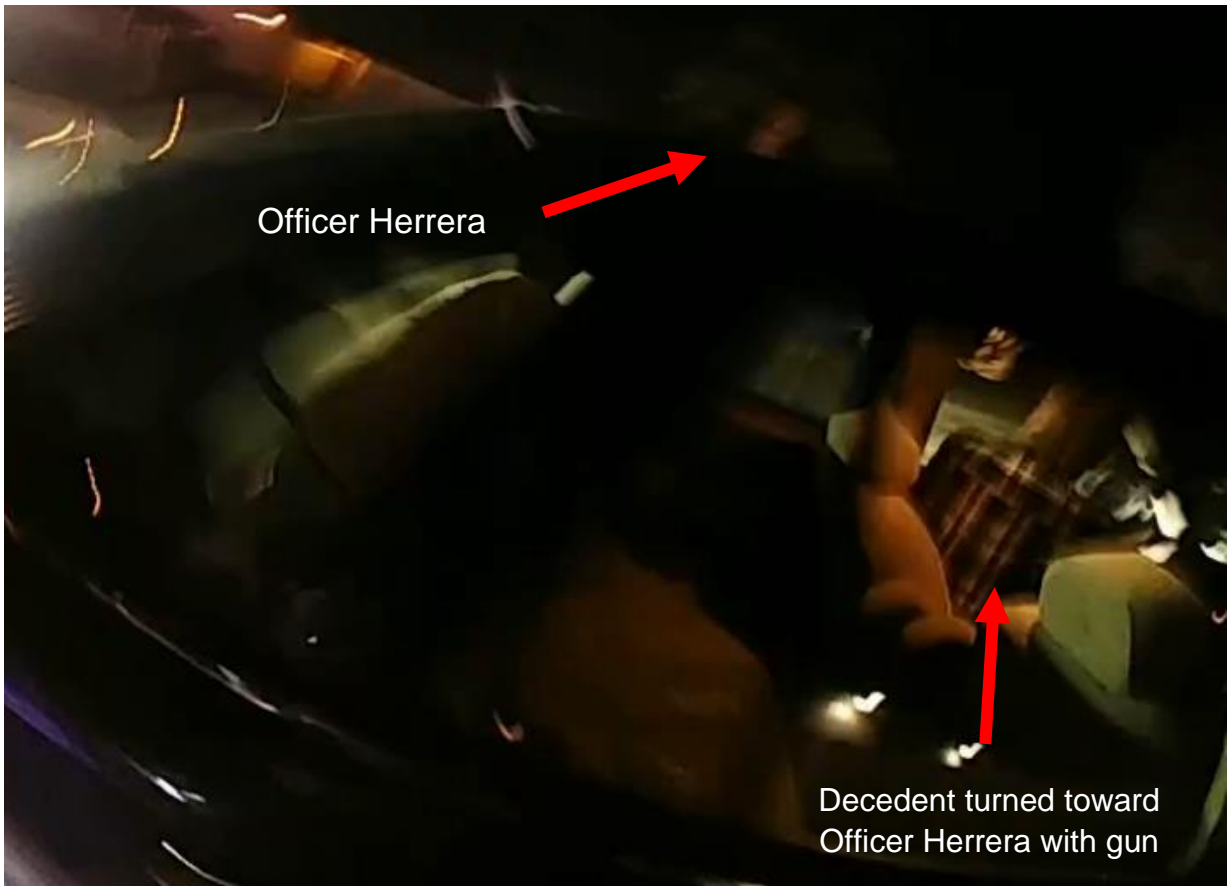
At about 00:55:25 hours Officer Azcunaga and Officer Atkinson pulled behind Officer Herrera's patrol vehicle. Officer Azcunaga approached the passenger side of the Crown Victoria. Both the front and rear windows on the passenger side of the vehicle were closed. Officer Azcunaga's camera recorded the verbal interaction from Officer Herrera, but what Decedent said could not be heard.

Officer Azcunaga's camera showed that the vehicle's glovebox was already open when officers approached. After Officer Herrera told Decedent to shut his vehicle off, Decedent took the keys out of the ignition with his right hand and, with the same hand, immediately reached into the glovebox behind some papers. As Officer Herrera told Decedent to stop reaching, Decedent retrieved an object from the glovebox with his right hand and rotated his body, head and arms toward Officer Herrera. Due to Officer Azcunaga's bright flashlight, glare, obstructions and the shaking of the body-worn camera, the handgun cannot be clearly seen in the footage. As Decedent rotated toward Officer Herrera, Officer Azcunaga backed up several feet. Decedent's back could still be seen through the rear passenger's window as Decedent faced in the direction of Officer Herrera.

Officer Azcunaga drew his handgun and pointed it at Decedent. As Officer Herrera was seen quickly moving from the driver's door, Officer Azcunaga fired multiple rounds at Decedent through the rear passenger window. It appeared his first round broke the rear passenger window at about 00:56:45 hours. As he fired, he moved backward, and Officer Herrera entered the view of his BWC again. According to Officer Azcunaga's BWC, Officer Herrera's first shot broke the rear window of the Crown Victoria at about 00:56:46 hours. Due to block walls and multiple officers firing it could not be determined how many shots were fired by either officer from the video.



Still shot from Officer Azcunaga's body worn camera of Decedent grabbing the revolver (above).



Officer Herrera

Decedent turned toward
Officer Herrera with gun

After Officer Azcunaga finished firing, he moved to the passenger side of Officer Herrera's patrol vehicle. The officers collectively determined that no one was hurt, at which point Officer Azcunaga and Officer Atkinson approached the Crown Victoria and confirmed Decedent was struck and not moving.

When Lt. Lawrence arrived, Officer Azcunaga told him that he fired during the incident. He also said the suspect had a silver revolver.

Once they determined the suspect was deceased, Lt. Lawrence took Officer Azcunaga's BWC.

Officer Atkinson's Body-Worn Camera Footage

Officer Atkinson was wearing a BWC at the time of the incident. The camera was activated. Relevant audio and video portions of Officer Atkinson's BWC footage are described below.

At about 00:55:25 hours Officer Atkinson and Officer Azcunaga pulled behind Officer Herrera's patrol vehicle. Officer Atkinson approached Decedent's vehicle on the passenger side and stopped about 6-10 feet away from the Crown Victoria. Officer Atkinson stood to the north of Decedent's vehicle. Officer Atkinson's camera recorded very little of the verbal interaction between Officer Herrera and Decedent.

Officer Atkinson appeared to be scanning the area while Officer Herrera and Officer Azcunaga focused on the traffic stop. Just prior to the shooting, Officer Herrera could be heard on Officer Atkinson's BWC telling the suspect to stop reaching. After Officer Herrera yelled, Officer Atkinson quickly moved, and a part of his clothing covered the lens of his BWC. As the camera lens was covered during the shooting, no video was captured during that time - only audio. After the shooting, Officer Atkinson moved to the rear of Officer Herrera's patrol car. Officer Atkinson then conducted radio traffic and stated that shots were fired, and one subject was down. He then proceeded to the north of Decedent's vehicle with Officer Azcunaga while they attempted to assess the Decedent's condition. After stating that the Decedent was not moving, Officer Atkinson asked Officer Azcunaga if he was okay. Officer Azcunaga said he was. Officer Atkinson said, "I didn't get a shot off. I didn't want to hit you." Officer Atkinson and Officer Azcunaga then walked closer to the Crown Victoria. After they looked and saw that Decedent was hit, they backed away. After Lt. Lawrence arrived, Officer Atkinson and Officer Azcunaga approached the Decedent's vehicle again with Officer Herrera and Lt. Lawrence. At that time, Lt. Lawrence confirmed Decedent was deceased.

Several minutes later Officer Atkinson contacted two North Las Vegas Firefighters and escorted them to the Crown Victoria where they confirmed Decedent was deceased. While standing on the passenger side of the Crown Victoria with medical personnel, Officer Atkinson indicated that he observed the revolver inside the vehicle.

The BWC video showed that Officer Herrera called for medical personnel at about 00:57 hours, and they arrived at about 01:03 hours.

THIRD PARTY VIDEO

Video surveillance was obtained from the NLVPD Northwest Area Command. That video showed Officer Herrera's vehicle behind Decedent's vehicle as it passed the area command shortly before the traffic stop. Decedent's vehicle traveled southbound on Allen followed by Officer Herrera. Officer Herrera's patrol vehicle had its overhead lights activated.

Video surveillance was also obtained from the home at 5025 Allen Lane. This address is directly next to (north of) where the shooting occurred. The video showed Officer Herrera's patrol vehicle following Decedent's vehicle at about 0052 hours. Officer Herrera's vehicle had its overhead lights activated. The video showed both vehicles turning west on La Madre Way from Allen Lane. It also showed Officer Azcunaga and Officer Atkinson's vehicle pulling in behind them. The vehicles stopped off camera, therefore, the shooting was not captured on this video.

AUTOPSY

On March 4, 2023, at approximately 12:15 p.m., under Clark County Office of the Coroner/Medical Examiner (CCOCME) Case 23-01337, an autopsy was performed on the body of Decedent at the CCOCME, by Doctor Nathan Shaller.

Dr. Shaller's report noted multiple gunshot wounds to Decedent's body.

Upon the completion of toxicology testing, the following positive findings were noted:

<u>Analyte</u>	<u>Result</u>	<u>Units</u>	<u>Matrix Source</u>
Caffeine	Presump Pos	mcg/mL	001 - Peripheral Blood
Cotinine	Presump Pos	ng/mL	001 - Peripheral Blood
Amphetamine	140	ng/mL	001 - Peripheral Blood
Methamphetamine	3000	ng/mL	001 - Peripheral Blood

After a complete autopsy and examination, Dr. Shaller opined that Decedent's cause of death was multiple gunshot wounds and the manner of his death was homicide.

LEGAL ANALYSIS

The District Attorney's Office is tasked with assessing the conduct of officers involved in any lethal use of force which occurred during the course of their duties. That assessment includes determining whether any criminality on the part of the officers existed at the time of the incident.

In Nevada, there are a variety of statutes that define the various types of justifiable homicide (NRS §200.120 – Justifiable homicide defined; NRS §200.140 – Justifiable homicide by a public officer; NRS §200.160 – Additional cases of justifiable homicide). The shooting of Decedent could be justifiable under one or both of two theories related to the concept of self-defense: (1) the killing of a human being in self-defense or defense of others; and (2) justifiable homicide by a public officer. Both theories will be discussed below.

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

The authority to kill another in self-defense or defense of others is contained in NRS 200.120 and 200.160. "Justifiable homicide is the killing of a human being in necessary self-defense, or in defense of [another] person, against one who manifestly intends or endeavors to commit a crime of violence..." against the person or other person.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 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

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.

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 the slayer 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 that Decedent posed an imminent danger to Officer Herrera as well as the other officers in the immediate area. Officers were conducting a routine traffic stop when the Decedent grabbed a firearm and pointed it at Officer Herrera. Decedent's actions were quick and unanticipated and there was no time for officers to deescalate the situation.

The totality of the evidence, to include BWC footage and officer statements, illustrate that Officer Herrera and Officer Azcunaga had a reasonable belief that Decedent would cause great bodily harm or death to one or more of the officers in the immediate area. The officers were confronted with the appearance of imminent danger and acted out of a reasonable belief that one or more of them was about to be shot by Decedent. The officers reasonably acted in defense of themselves and one another. Consequently, the shooting of Decedent is justifiable under this legal theory.

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 evidence shows that Officer Herrera and Officer Azcunaga had probable cause to believe that Decedent posed a threat of serious physical harm to themselves and/or other

officers in the immediate area. Immediately preceding the shooting, Decedent was instructed to provide his driver's license. Instead, he grabbed a firearm from his glovebox and turned toward Officer Herrera with the firearm in his hand. Officer Herrera was in close proximity to Decedent and could have been killed. Thus, the use of deadly force by Officer Herrera and Officer Azcunaga 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 Officer Herrera and Officer Azcunaga were reasonable and/or legally justified. The law in Nevada clearly states that homicides which are justifiable or excusable are not punishable. See NRS 200.190. A homicide which is determined to be justifiable shall be "fully acquitted and discharged." 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 Officer Herrera or Officer Azcunaga.