



REPORT ON USE OF FORCE

Legal Analysis Surrounding the Death of Jack Ray Harry on June 17, 2020

Introduction

On June 17, 2020, the Pershing County Sheriff's Office (hereinafter referred to as PCSO) received a call from a male, who stated he was at the Humboldt Wildlife Preserve (locally known and hereinafter referred to as the Sink), and he asked for motorist assist. The reporting person detailed that his motorhome's battery died and that he was running out of water. PCSO Deputy Sheriff Phillip Dickerman responded to the Sink and came in contact with the male caller, Decedent Jack Harry (hereinafter referred to as Decedent).

Deputy Dickerman assisted Decedent in getting the motorhome started. As regular practice, Deputy Dickerman conducted a background check on Decedent and learned that the State of New Mexico had issued a fully extraditable warrant for Decedent's arrest. Deputy Dickerman attempted to arrest Decedent.

Instead of obeying Deputy Dickerman's orders, Decedent resisted arrest and fled the scene in his motorhome driving toward the road's dead-end where a boat ramp and bird viewing tower are located. PCSO deputies responded and cornered Decedent. PCSO deputies ordered Decedent to surrender himself peacefully. Decedent refused and drove his motorhome toward the officers. Decedent intentionally rammed PCSO Sheriff Jerry Allen's police car and managed to flee the scene.

Police chased Decedent toward Lovelock, Nevada. PCSO deputies attempted to stop Decedent by conducting a precision immobilization technique.¹ After several attempts, Deputy Dickerman was able to disable Decedent's fleeing motorhome. PCSO deputies and Lovelock Paiute Tribal Police Chief Ruben Ortiz confronted Decedent at the driver's side door. Decedent continued to refuse all lawful orders and behaved in a suicidal manner. While the officers were attempting to

¹ A precision immobilization technique, a tactical driving maneuver which is commonly known as a **PIT Maneuver**. In a successful PIT, the pursuing officer uses the cruiser to push the fleeing vehicle's rear end sideways, sending it into a spin and ending the pursuit.

enter the motorhome, Decedent turned the knife on them and attempted to stab them. Decedent stabbed a PCSO police K9. Deputy Dickerman fired his rifle three times, striking Decedent. Decedent subsequently died of his wounds at a local hospital.

The undersigned Special Deputy Prosecutor for Pershing County has completed his review of the June 17, 2020, death of Decedent Jack Harry.² 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 Deputy Dickerman were not criminal in nature. This review is based upon all the evidence currently available.

This report explains why criminal charges will not be forthcoming against the officer involved. It is not intended to recount every detail, answer every question, or resolve every factual conflict regarding this police encounter.

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

Decedent Jack Harry

Decedent was born on December 22, 1959. He was a white male adult who stood six feet tall and weighted approximately 190 pounds. Decedent was single and was the father of three grown children. Although it appears that he was living in a motorhome on June 2020, Decedent's California driver's license listed a last known address of 4680 Fernando Road, Glendale, California.

On December 2, 2020, the undersigned special prosecutor interviewed Jessica Osborne, daughter of Decedent. Ms. Osborne reported that her father lived mostly in New Mexico, but frequently traveled to Oklahoma, Nevada, and California. Ms. Osborne stated that her father struggled most of his life with the psychiatric illness known as bipolar disorder.³ She had no idea if her father was taking medication for his illness, and she added that she would not be surprised if he was

² The Honorable Pershing County District Attorney R. Bryce Shields appointed undersigned Special Deputy District Attorney on October 23, 2020, to conduct an independent review of whether the PCSO deputy's actions were criminal or justified. This Special Deputy District Attorney is a former Clark County Chief Deputy District Attorney and Assistant United States Attorney, with prior experience in evaluating and analyzing officer-involved-shooting investigations. Currently, this special prosecutor is an attorney with the De Castroverde Law Group.

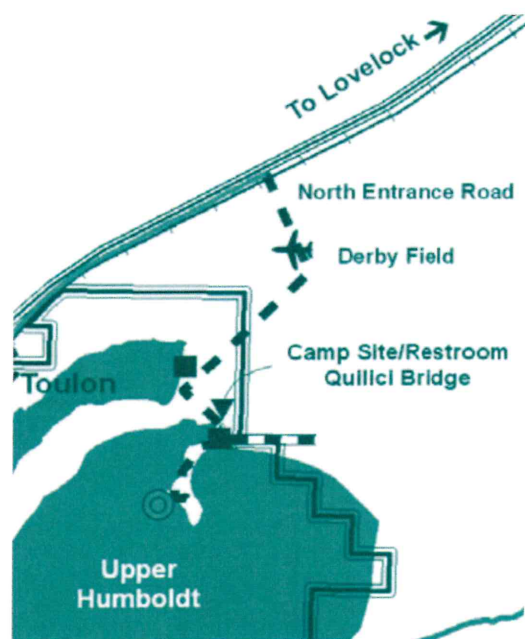
³ According to the Mayo Clinic, bipolar disorder, formerly called manic depression, is a mental health condition that causes extreme mood swings that include emotional highs (mania or hypomania) and lows (depression).

self-medicating. Ms. Osborne confirmed that her father had previously tried to commit suicide by dousing himself with gasoline and setting himself on fire.⁴

Pertinent for this report, the State of New Mexico had issued a fully extraditable warrant for Decedent's arrest. On January 7, 2021, undersigned special prosecutor interviewed Charlene Hahtatley, a New Mexico Probation and Parole Supervisor. She indicated that Decedent had pled guilty to a Third-Degree Felony—Receiving Stolen Property, value between \$2,500 and \$20,000, on November 13, 2017. Ms. Hahtatley stated that the case involved Decedent obtaining stolen commercial tires by fraud. Decedent was granted three years of probation after serving one year at the San Juan County, New Mexico, jail. Decedent was ordered to attend substance abuse counseling at the Salvation Army in Albuquerque, New Mexico, but instead, he absconded. Ms. Hahtatley confirmed that her office requested and obtained an arrest warrant for Decedent on August 7, 2019. Ms. Hahtatley added that P&P Officer Maria Hynes was Decedent's assigned officer.

Overall Scene Description

The scene was located in a vast area known as the Humboldt Wildlife Management Area (HWMA), referred to locally as the Sink. The Sink is located approximately 10 miles southwest of Lovelock, Nevada. It is managed by Nevada Department of Wildlife. The area discussed below covers the North Entrance Road, south of Derby Field (Airpark). The North Entrance road is a gravel road approximately 4.5 miles long that leads into the Sink, ending at the Upper Humboldt. At the road's midway point, the Sink has a designated campsite area (Crime Scene One), and the road continues to a dead end where a boat ramp/bird viewing tower area is located (Crime Scene Two). The main area discussed in this report is at the intersections of North Entrance Road, Derby Field Road, and Westergard Lane (Crime Scene Three).



Northern Portion of the Humboldt Wildlife Management Area. www.ndow.org

⁴ Washoe County's Regional Medical Examiner's Office Investigator Heather McDonald interviewed Decedent's mother, Sue Bucharme, on August 5, 2020. Ms. Bucharme also reported that her son had set himself on fire "several years" ago and that he was treated at the University of New Mexico Hospital. Ms. Bucharme added that Decedent was non-compliant with his medications. On January 22, 2021, undersigned special prosecutor interviewed Ms. Bucharme, and she detailed her son's struggle with bipolar disorder, and his struggle with alcoholism. Ms. Bucharme added that her son was inside a car when he attempted suicide by setting himself on fire.

Crime Scene One

A campsite is located approximately halfway along the North Entrance road. The surface is gravel, and there are no marked campsites. There is a pit-toilet style restroom on the western perimeter of the campsite. The North Entrance Road runs on the northern perimeter of the campsite. There is a trestle bridge named the Quillici Bridge, which is located on the northeastern corner of the campsite, allowing continued access to the end of the road where the bird viewing tower and the boat ramp are located. A canal, known as the Army Drain, runs along the eastern perimeter. Alkali desert shrubs and other desert-type vegetation surround the campsite.

Decedent had set up in this campsite. Decedent's motorhome was parked near a cleared area that gave access to the Army Drain. There were personal items, mostly comprised of suitcases, two folding camp chairs, and other plastic containers, which were set out next to the motorhome. Of evidentiary value, a large branch was located near these items. Cooperating witness MW stated to Deputy Sheriff Don Poffenroth that Decedent used the branch to avoid being arrested by Deputy Dickerman. Deputies also located a black folding knife.

Crime Scene Two

At the end of North Entrance Road, there is a boat ramp/bird viewing tower area. During wet cycles, water will be present here at the Sink. The bird viewing tower is located on the eastern side of the road. Alkali type desert brush surrounds the dirt road, and the terrain is generally soft dirt. The road itself is built-up or raised from the surrounding topography, allowing year-round access to the area even during wet cycles.

Crime Scene Two is the location where officers had Decedent cornered. Here, Decedent had a stand-off with the officers until he drove the motorhome toward the officers, driving off the road and weaving the motorhome before ramming the motorhome head-on into Sheriff Jerry Allen's police car. Of evidentiary value, tire ruts were evidenced and consistent with bodycam/dashcam images of Decedent driving off the road and striking Sheriff Allen's car. A piece of dark plastic, possibly related to the ramming, was located at this site. Furthermore, officers located a black bag containing paint brushes, a red bag containing sex toys, and a red cooler containing a bag of charcoal and rags, all of which had fallen from the motorhome.

Crime Scene Three

Intersection of Westergard Road and Derby Field Road

Just south of Lovelock, Nevada, but north of the Humboldt Sink, Derby Field Road runs in a northwest/southeast direction from the I-80 service road. Derby Field Road is intersected by North Entrance Road and Westergard Road. North Entrance Road intersection is approximately 750 feet to the south of the Westergard/Derby Field Road intersection.

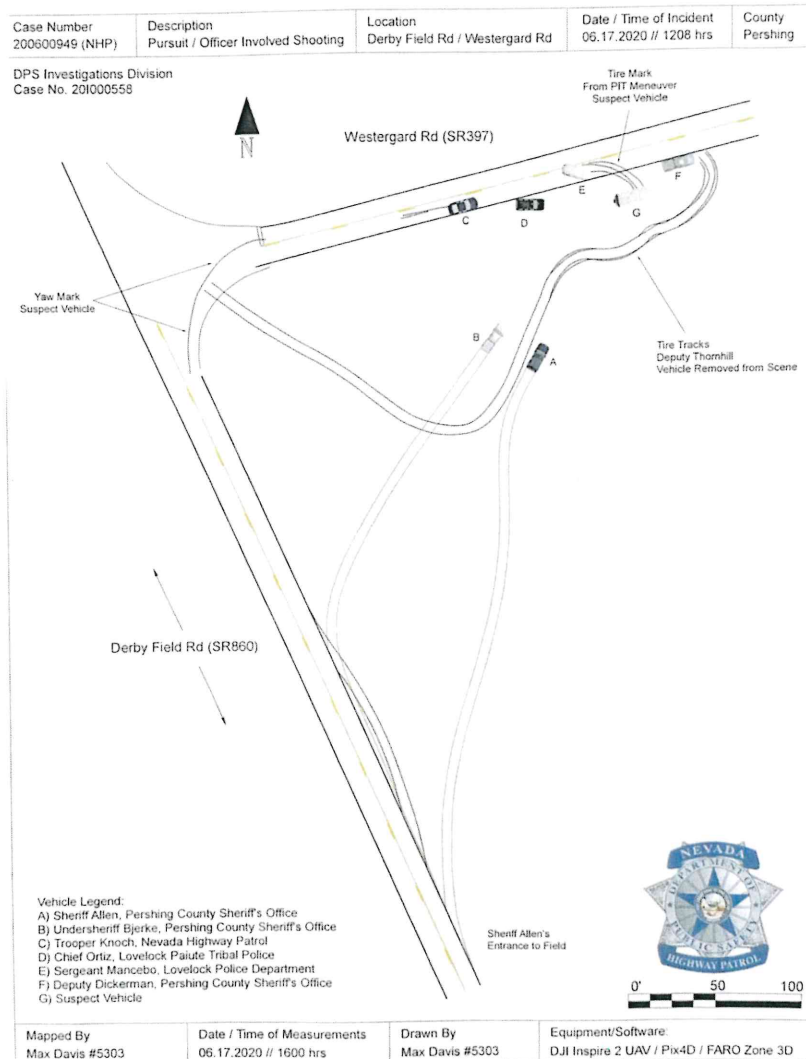
Just east of the intersection of Derby Field Road on Westergard Road, a 1988 Chevy Winnebago motorhome, VIN number 2GBJG34M8J414453, registered to New Mexico license plate

03592RVB, was parked off the roadway facing west against the traffic direction. Multiple police cars surrounded the motorhome. In the desert on the south side of Westergard Road, there were two PCSO police cars parked facing the motorhome. A field of clothing and car debris was situated on and around the intersection of Derby Field Road and continuing onto Westergard Road. The roadway also had significant tire impressions consistent with vehicles having been involved with a PIT maneuver.

Evidence was collected pertinent to this report. On the south side of the motorhome near the driver's door, three fired cartridge cases stamped "LC 13" were located in the dirt. A loaded PMAG 30 magazine with 27 PMC 223 REM cartridges was

collected from the dirt area southeast of the motorhome. Deputy Dickerman identified this magazine as his and reported that he dropped it in the rush to get to the motorhome's driver's side door. On the passenger side of the motorhome, a "Nine Line" hooded sweatshirt, size XL, with red staining, purported to belong to Decedent, was recovered along with a "Roxi" lighter, and a "Winchester Knife" sheath attached to a black belt.

Three knives were collected from the trunk of Lovelock Police Department Sgt. Daryl Mancebo's police car: One red and silver colored "Milwaukee" folding knife in open position, one black and wood "Husky" folding knife in closed position, and one wood handle and silver-colored "Winchester" fixed blade knife. The fixed-blade is approximately 4.5 inches in length, and it had the presence of red stains consistent with blood on the blade. All knives were removed from the motorhome by law enforcement personnel and collected by Sgt. Mancebo.



Crime Scene Diagram

1988 Chevy Winnebago Motorhome Interior



Decedent's Motorhome

A search of the interior of the motorhome was conducted. The interior was in disarray with food, clothing, and other personal items scattered about. Of note, a small black bag in the kitchen area containing a black tin with 1.5 grams of methamphetamine was located. A pink box containing 3.5 grams of methamphetamine along with a glass methamphetamine pipe, straw, and cleaning utensils was also located. Finally, an empty bottle of drinking alcohol was located next to the driver's seat.

Events of June 17, 2020

The Nevada Department of Public Safety, Investigation Division, Major Crimes Unit conducted the investigation. The following synopsis recaps events from interviews, evidence at the scene, and bodycam/dashcam videos which DPS Sergeant Orlando Guerra obtained during his investigation. The witnesses below in this report have been deemed material to this report's legal analysis.

Pershing County Deputy Sheriff Phillip Dickerman

Deputy Dickerman was interviewed on June 23, 2020. He voluntarily provided a statement regarding his involvement in the officer-involved-shooting incident that took place near Lovelock, Nevada, on June 17, 2020.

Deputy Dickerman has worked for PCSO for the past nine years. He was on duty on June 17, 2020, assigned to the patrol section. Deputy Dickerman wore a clearly-marked police uniform and was assigned a marked 2011 Chevrolet 2500 patrol vehicle. At approximately 9:45 a.m., Deputy Dickerman was patrolling in the area of Rye Patch Dam when he received a call from Dispatch regarding a motorist's assist call. Deputy Dickerman learned that the motorist was camped out at the Sink, he ran out of water, and the car battery needed a jump. Deputy Dickerman responded to the call.

Deputy Dickerman arrived to the Sink's designated campsite where he observed an older model motorhome parked in the southeast corner. Deputy Dickerman saw that the motorhome's hood was up and jumper cables were hanging out from the engine compartment. Deputy Dickerman made contact with the male caller, later identified as Decedent. Deputy Dickerman spoke to Decedent and then proceeded to jump start the motorhome.

In the normal course of duty, Deputy Dickerman asked for Decedent's identification to verify his identity and to conduct a warrants check. Dashcam video from Deputy Dickerman's patrol vehicle shows Decedent appearing nervous by pacing in front of the patrol vehicle.⁵ Deputy

⁵ See Dickerman's Dashcam video, File 1, Stream 2, at approximately 10-to-12:45 minutes.

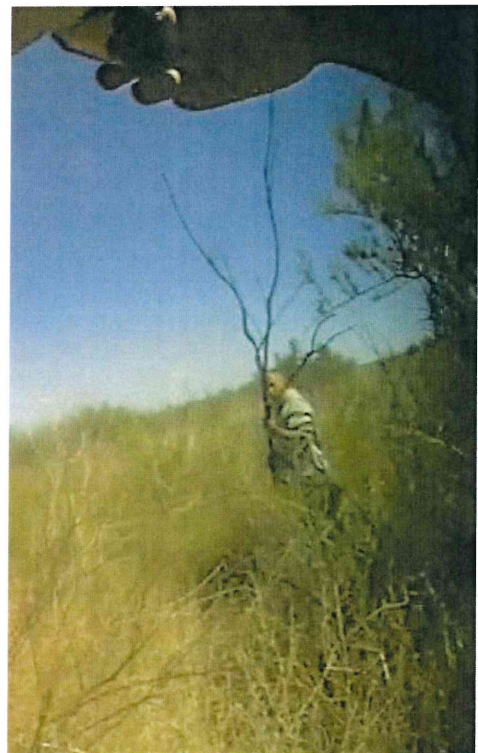
Dickerman learned that the State of New Mexico had issued a fully extraditable warrant for Decedent's arrest for a stolen property case.

Deputy Dickerman wanted to verify Decedent's identity. He obtained Decedent's social security number, which matched the warrant's information. Next, Deputy Dickerman requested additional descriptor information including distinctive tattoos, which all matched Decedent. Concluding that Decedent was a wanted person, Deputy Dickerman advised Decedent that a warrant was out for his arrest.⁶ Deputy Dickerman attempted to handcuff Decedent; however, Decedent took off running toward the back of the motorhome.

Deputy Dickerman reached for his Taser and caught up to Decedent. Deputy Dickerman ordered Decedent to stop and to get on the ground. Decedent initially laid down on the ground, but he got up quickly and took off running to the west. Deputy Dickerman fired his Taser. The prongs hit Decedent but did not seem to affect him. Deputy Dickerman watched Decedent grab and discard the Taser's wiring. Decedent ran toward the bathroom area and darted into the alkali desert brush.

Deputy Dickerman got into his patrol vehicle, turned around, and headed in the direction where Decedent ran. Deputy Dickerman drove to the north, leaving the campsite area. Realizing that Decedent could not have gone too far, he turned around and headed back to the campsite. As he came back to the campsite area, Deputy Dickerman witnessed Decedent coming from the brush nearest the bathroom facility.

Deputy Dickerman got out of his patrol vehicle, drew his firearm, and ordered Decedent not to move or he would have to shoot. Decedent refused to obey the orders and proceeded to grab a branch and walked toward Deputy Dickerman holding the branch yelling multiple times, "shoot me, shoot me." Deputy Dickerman did not shoot; instead, he back pedaled to create distance between them. Decedent turned and defiantly walked fast toward the motorhome. Deputy Dickerman gave chase but stopped when he realized he was in the open area of the campsite and feared that Decedent could have access to weapons in the motorhome. Deputy Dickerman ran back to his patrol vehicle and requested backup.



Bodycam image shows Decedent armed with a large branch and using it to resist arrest by Deputy Dickerman.

⁶ Bodycam video shows Deputy Dickerman trying to reason and de-escalate the situation by telling Decedent he was being cuffed only until he was able to figure out the warrant. See Dickerman's bodycam, File 2, Stream 2, at approximately 11:00 minutes.

Deputy Dickerman positioned his patrol vehicle at the northwestern entrance of the campsite blocking Decedent's ability to leave. Decedent, who now was in his motorhome, drove away from the campsite by turning south and heading farther into the Sink. Deputy Dickerman noticed a female, holding a dog, standing in the area where the motorhome had been parked. Deputy Dickerman contacted the female, later identified as Cooperating Witness MW, and he asked if Decedent had any firearms in the motorhome. MW stated that she was not sure if Decedent had firearms, but she warned that Decedent had knives.

Deputy Dickerman waited at the campsite until backup arrived. PCSO Undersheriff Thomas Bjerke and Lovelock City Police Department (LCPD) Sgt. Darrell Mancebo arrived. All three officers began to proceed deeper into the Sink. On a few occasions, Deputy Dickerman saw the motorhome in the distance driving toward them only to backup farther into the Sink. This standoff continued all the way to the end of the road. By now, PCSO K9 Deputy Shawn Thornhill and Lovelock Paiute Tribal Police Chief Ruben Ortiz arrived to assist.

At the bird viewing tower, Deputy Dickerman deployed his department issued AR-15 rifle and gathered extra magazines. The officers could see Decedent seated in the driver's seat of the motorhome. Deputy Dickerman saw that there was water in the Sink, so the motorhome could not go further than the boat ramp. Deputy Thornhill used a public announcement system to order Decedent to surrender and warned that the K9 would be deployed. Deputy Dickerman also knew that his Sheriff, Jerry Allen, was arriving at the scene.

Suddenly, Deputy Dickerman heard his undersheriff report that the motorhome was coming toward them. He watched the motorhome drive toward the officers. At the last minute, Deputy Dickerman watched the motorhome turn off the road and drive into the soft dirt. Deputy Dickerman then watched the motorhome comeback to the dirt road only to swerve to the opposite side. Deputy Dickerman heard yelling by fellow officers that Decedent just rammed the motorhome head-on into Sheriff Allen's police car. Decedent managed to pass Sheriff Allen and then raced northbound on North Entrance Road.

All officers turned around and gave chase. Deputy Dickerman saw that Sheriff Allen was in the lead. Sheriff Allen attempted the PIT maneuver several times to no avail. Deputy Dickerman also saw Decedent slam on the motorhome's brakes in an attempt to have Sheriff Allen crash into the rear of the motorhome. Eventually, Sheriff Allen had to pull over due to mechanical issues. Sheriff Allen did order his deputies to keep Decedent from getting into Lovelock's city limits.

As Decedent reached the intersection with Derby Field Road, Deputy Dickerman took the lead and attempted to get in front of Decedent's motorhome. He was unable to get in front due to Decedent swerving the motorhome. Deputy Dickerman believed that Decedent was dangerous due to his erratic driving and that he could possibly kill someone. Deputy Dickerman also knew that they were approaching several ranches in the area that were occupied by families.

As Decedent traveled on Derby Field Road toward the intersection with Westergard Road, Deputy Dickerman managed to get to the right rear of Decedent's motorhome. Deputy Dickerman got

enough leverage near the right rear tire of the motorhome, turned his patrol car into the motorhome, and caused the motorhome to spin out of control. The motorhome made a full spin, coming to rest on the east side of Westergard Road's dirt shoulder.

Deputy Dickerman stopped his patrol vehicle facing the right rear of the motorhome. Deputy Dickerman armed himself with his department issued AR-15 and made his way around the rear of the motorhome and approached the driver's side door. Deputy Dickerman saw Chief Ortiz approach the front of the motorhome.

Deputy Dickerman was alarmed seeing Decedent in the driver's seat. Deputy Dickerman witnessed Decedent holding a large knife next to his own throat. Deputy Dickerman yelled multiple times at Decedent to drop the knife and show his hands, which the Decedent did not do. At one point, Decedent grabbed what appeared to be a bottle of alcohol and doused himself with the liquid. Deputy Dickerman worried that Decedent may set himself on fire.

The standoff continued to be an extremely tense situation. K9 Deputy Thornhill joined with his police K9 Vino. Deputy Dickerman asked Deputy Thornhill to release the dog if Decedent got out of the motorhome. Chief Ortiz approached the driver's side door and broke the window with his baton. Deputy Dickerman witnessed Decedent make a slashing motion with the knife toward Chief Ortiz. Decedent yelled, "Come on. Come on. I am not going to jail for something I did not do. I would rather die."



Image taken from Chief Ortiz' bodycam showing Decedent holding a knife with an outstretched arm after stabbing K9 Vino.

Next, K9 Deputy Thornhill approached the motorhome's broken window with his K9 Vino. The K9 jumped toward the window opening, but could not get in. Deputy Dickerman witnessed

Decedent attempt to stab Vino. K9 Deputy Thornhill briefly retreated with Vino. Deputy Dickerman then watched K9 Deputy Thornhill lean toward the driver's door and open it. Deputy Dickerman saw Vino being released into the motorhome. He became alarmed when he witnessed Decedent stab Vino. K9 Deputy Thornhill pulled Vino away from Decedent. It should be noted that Deputy Dickerman and his fellow PCSO deputies view Vino as a fellow officer.

After Decedent stabbed Vino, Deputy Dickerman feared for his life and the lives of his fellow officers.⁷ Deputy Dickerman pulled his AR-15's trigger, but the weapon did not fire since the safety was on. Deputy Dickerman adjusted his safety and trained his weapon back on Decedent. He warned Decedent again "I am going to shoot you." Decedent, according to Deputy Dickerman, made "a motion and outstretched his hand with the knife" and made "a movement of coming out." At this point, Deputy Dickerman fired his weapon three times striking Decedent.

After the shooting, Deputy Dickerman maintained his weapon trained on the inside of the motorhome. Other officers entered and removed Decedent from the motorhome. Deputy Dickerman surrendered his rifle to Undersheriff Bjerke. Deputy Dickerman reported that his rifle had a magazine loaded with 27 cartridges. Deputy Dickerman also reported that he had training on how to deal with a suspect armed with an edged weapon, who was within 30 feet from an officer. Deputy Dickerman estimated that he was positioned less than 20 feet from Decedent.⁸

Recorded Statements Captured on Deputy Dickerman's Bodycam During Final Confrontation

The following statements were captured on the bodycam camera from Deputy Dickerman, who was closest to Decedent. The italics entries assist in putting the recorded statements made into context.

12:08:17	Deputy Dickerman orders Decedent to turn off vehicle and to show his hands.
12:08:24	Deputy Dickerman continues to yell at Decedent to show his hands.
12:08:40	Deputy Dickerman, "He's got a knife" and orders Decedent to put the knife down.
12:09:13	Deputy Thornhill yells "He's got a knife to his throat."

⁷ During his voluntary interview with Sgt. Guerra on June 23, 2020, Deputy Dickerman stated "I was feeling like he was going to kill one of us. He was going to kill me. He was going to kill Thornhill. He's (Decedent) got a knife and demonstrated that he was willing to use it. I gotta stop the threat." See Dickerman voluntary interview at page 131, DPS Investigation Division case 20100375.

⁸ Police officers have been trained in the United States on "the 21-foot rule," which is the principle that an average person can sprint 21 feet in roughly 1.5 seconds; the same amount of time it takes an officer to draw and fire his weapon. The internationally recognized behavioral science and human dynamics institute, Force Science, cautions that a "simple" reaction distance principle (like the 21-foot "rule") requires the consideration of such factors as pre-attack indicators, emotional arousal indicators, attention and perception influences, speed of assaults, firearms accuracy, action and reaction times, start and stop times, sprint speeds, the effect of uniform weight on performance, and decision-making processes. Not to mention, the effect of heightened emotional and physical stress on all of these factors must be taken into consideration. (For further details, See "The 21-Foot Rule is back in the News!" By Von Kliem, JD, Force Science News. September 12, 2019).

12:09:19 Deputy Dickerman to Thornhill, "You send that fuckin dog, if he gets out."

12:09:30 Chief Ortiz, "get out of the car and to put your hands up."

12:09:40 Chief Ortiz, "bash the window?" *Chief Ortiz prepares to break window*

12:09:45 Deputy Thornhill, "Is that water?" Deputy Dickerman, "Yes," *referring to Decedent dousing himself with a liquid.*

12:09:49 Deputy Dickerman, "It's alcohol, he may try to set himself on fire."
Breaking glass can be heard as Chief Ortiz bashes the driver's side window with his baton.

12:09:56 Deputy Dickerman, "He just tried to stab an officer."
Decedent, "Come on...come on...I am not going to jail for something I did not do. I would rather die."

12:10:03 Chief Ortiz, "Send him in," *referring to K9 Vino*

12:10:09 Deputy Thornhill, "He's got a fucking knife, he's not going to stab my dog."

12:10:10 Chief Ortiz, "You're going to get shot."

12:10:10 Decedent, "I don't care." Decedent continues to reference he's not going to jail.
Deputy Thornhill at this point moves toward the opened door with K9 Vino.

12:10:21 Deputy Thornhill, "He stabbed my dog."
Deputy Dickerman attempts to fire his rifle, but the safety was still on. He disengaged the safety.

12:10:26 Deputy Dickerman, "I am going to shoot you."

12:10:28 Gunshots can be heard.

Pershing County Undersheriff Thomas Bjerke

On the morning of June 17, 2020, Undersheriff Bjerke was on duty. At around 9:30 a.m., he was aware that one of his deputies, Deputy Dickerman, had responded to a motor assist call at the Sink. He heard Deputy Dickerman call for assistance. Undersheriff Bjerke responded to the Sink along with LCPD Sgt. Mancebo. Undersheriff Bjerke arrived at the campsite and contacted Deputy Dickerman and Cooperating Witness MW.

Realizing that he was dealing with a seize or standoff situation, he and the other officers proceeded slowly into the Sink. Undersheriff Bjerke was concerned when he learned that Decedent was armed with knives. He acknowledged that the tension was high.

The three officers proceeded into the Sink. As they moved slowly toward the end where the bird viewing tower is located, the officers observed Decedent continue to back-up the motorhome. The officers had Decedent blocked and stopped near the bird viewing tower, where they observed the motorhome stopped near the boat ramp. By now, PCSO K9 Deputy Thornhill arrived and began to issue warnings and orders to Decedent over a PA system.

All of a sudden, Undersheriff Bjerke observed the motorhome come toward him and the officers. At the last moment, Decedent veered the motorhome into the side soft dirt around the patrol cars. Undersheriff Bjerke watched Decedent come back up onto the roadway and ram the motorhome head-on into Sheriff Allen's patrol car, who was just arriving at the scene.

Undersheriff Bjerke was the last of the officers to follow Decedent, and he did not participate in the chase. He did hear Sheriff Allen order his deputies not to let Decedent enter the Lovelock City Limits and to contain Decedent to the immediate area.

Undersheriff Bjerke learned that Decedent had been forcefully stopped near the intersection of Derby Field Road and Westergard Road. He drove his patrol car into the desert and stopped southwest from the motorhome, next to Sheriff Allen's police car. He watched Deputy Dickerman take a close-cover position, holding an AR-15 rifle pointed at the motorhome's driver's side door. He and Sheriff Allen acted as long-cover. Undersheriff Bjerke watched Chief Ortiz break out the driver's side window, while K9 Deputy Thornhill stood ready with Vino.

As the window was bashed open, Undersheriff Bjerke could see a "flurry of commotion" inside the motorhome. He witnessed Decedent holding a knife and making several lunges at Chief Ortiz. When the door was opened, he again witnessed what appeared to be Decedent stabbing Vino. Undersheriff Bjerke watched K9 Deputy Thornhill pull Vino back. He then saw Decedent move toward the door, but he was uncertain if Decedent was exiting. Undersheriff noted that there was a slight delay and then he heard three gunshots being fired.

After the shooting, Undersheriff Bjerke moved toward the motorhome. He and Trooper Peter Knoch removed Decedent and placed him in a position of recovery outside the motorhome. He moved Deputy Dickerman's patrol car to gain better access to the motorhome's door. Pursuant to protocol, he took possession of Deputy Dickerman's rifle.

Pershing County Sheriff Jerry Allen

Sheriff Allen serves as the elected Sheriff for Pershing County. On June 17, 2020, Sheriff Allen heard over the radio that his deputies came into contact with a fleeing felon. Initially, Sheriff Allen could not get specific details due to poor cellphone reception. Sheriff Allen drove toward the Sink, and he heard on the radio that the fleeing felon, Decedent, had moved to the bird viewing tower and boat ramp area of the Sink.



Dashcam Image showing Decedent driving the motorhome directly toward Sheriff Allen.

Sheriff Allen arrived at the end of North Entrance Road and saw several police cars lined up in front of him blocking the roadway. Suddenly, Sheriff Allen saw the motorhome move toward the police cars and officers. He observed the motorhome go off the road, then on the road, and off the road again. As the motorhome drove past the second to last police car, Decedent made a sharp turn to the right, forcing the motorhome back onto the roadway and intentionally slammed the motorhome into the front of Sheriff Allen's police car. Decedent managed to push Sheriff Allen's police car backward.

Decedent got past Sheriff Allen and drove away heading northbound. Realizing that his police car was still operable, Sheriff Allen turned around and proceeded to pursue Decedent using his lights and sirens. Speeds ranged from 25 to 30 mph, and Sheriff Allen tried to get in front of Decedent. Decedent suddenly slammed on the brakes, causing Sheriff Allen to hit the rear of the motorhome. Thereafter, Decedent repeatedly slammed on the motorhome's brakes when Sheriff Allen was attempting to get in front of the motorhome.

Pursuant to policy, Pershing County Sheriff's Office does not perform the PIT maneuver; however, Sheriff Allen attempted a PIT maneuver as they approached Derby Road, because he feared Decedent would endanger innocent lives in Lovelock. Sheriff Allen tried to push the motorhome off to the side, but Decedent regained control of it. Sheriff Allen had to leave the chase as mechanical issues began to affect his police car. Sheriff Allen, however, ordered his deputies to not allow Decedent to get into the city limits of Lovelock, and he called for additional police units.

Sheriff Allen's police car limped down the road. When he got to Derby Field Road, he could see a dust cloud at the intersection of Westergard Road. Sheriff Allen could see that the motorhome had been immobilized. Sheriff Allen stayed back a distance, but he could see the activity near the motorhome driver's side door. Sheriff Allen witnessed Chief Ortiz break the driver's side window. He saw Deputy Dickerman acting as cover, and saw K9 Deputy Thornhill briefly deploy Vio when the door to the motorhome was still closed. Next, Sheriff Allen



Damage sustained on Sheriff Allen's police car after intentional ramming by Decedent.

saw the door being opened, and watched Vino enter briefly. Shortly thereafter, Sheriff Allen heard three shots fired.

Pershing County K9 Deputy Shawn Thornhill

PCSO K9 Deputy Thornhill has been employed with the PCSO for the past 9 years. He currently handles PCSO's K9, Vino, a giant schnauzer certified in narcotics and patrol. On June 17, 2020, K9 Deputy Thornhill was off-duty when he was called out to assist Deputy Dickerman in the Sink.

K9 Deputy Thornhill arrived at the Sink's campground, where he came in contact with Chief Ortiz and Cooperating Witness MW. Since Chief Ortiz was talking to MW, K9 Deputy Thornhill proceeded to drive to the end of the road and contacted Deputy Dickerman, Undersheriff Bjerke, and LCPD Sgt. Mancebo. There, K9 Deputy Thornhill learned from Deputy Dickerman the circumstances that lead to the current stand-off, and he determined the situation was ripe for utilizing Vino.

K9 Deputy Thornhill attempted to engage Decedent. He pointed out that Decedent would drive toward them only to retreat farther back into the Sink. At the bird viewing tower, K9 Deputy Thornhill used a patrol car's PA system and challenged Decedent to surrender peacefully or else K9 Vino would be released. Decedent never complied. Instead, Decedent drove the motorhome toward the officers. Undersheriff Bjerke ordered his men not to shoot. Decedent drove past the police cars by driving off the road, and then intentionally rammed Sheriff Allen's police car, as he was just arriving at the scene. K9 Deputy Thornhill watched Decedent drive away.

K9 Deputy Thornhill followed in pursuit. He observed several PIT maneuvers attempts by Sheriff Allen. When Sheriff Allen's police car became immobilized, K9 Deputy Thornhill continued to pursue Decedent and was second in the pursuit behind Deputy Dickerman. He observed Deputy Dickerman attempt several PIT maneuvers, the final one being successful at the intersection of Westergard Road and Derby Field Road.

K9 Deputy Thornhill parked his police car behind the disabled motorhome and immediately deployed K9 Vino. Deputy Dickerman was already standing at the driver's door armed with an AR-15 rifle, aimed on the Decedent, who was seated in the driver's seat. K9 Deputy Thornhill witnessed Decedent holding a knife to his own throat, and shortly thereafter, he witnessed Decedent douse himself with a liquid.

At this point, Chief Ortiz broke the driver's side window with the idea that Vino could then jump into the motorhome. As Chief Ortiz was raking off the broken glass, K9 Deputy Thornhill saw Decedent attempt to stab Chief Ortiz. Once cleared, K9 Deputy Thornhill deployed Vino to the open window, but Vino did not enter due to the window's height. K9 Deputy Thornhill noticed that the door was unlocked, so he reached in with his left hand and opened the door. Although concerned that Decedent was armed with a knife, he released Vino into the motorhome anyway. K9 Deputy Thornhill became alarmed when he saw Decedent stab Vino near the throat area. He

immediately commanded Vino to let go, and he pulled his police dog away from Decedent to safety.



Image taken from PCSO K9 Deputy Thornhill's bodycam shows K9 Vino entering motorhome. In circled area, Decedent seen stabbing Vino.



After stabbing K9 Vino, Decedent seen leaning toward the driver's side door holding a knife highlighted in the circled area..

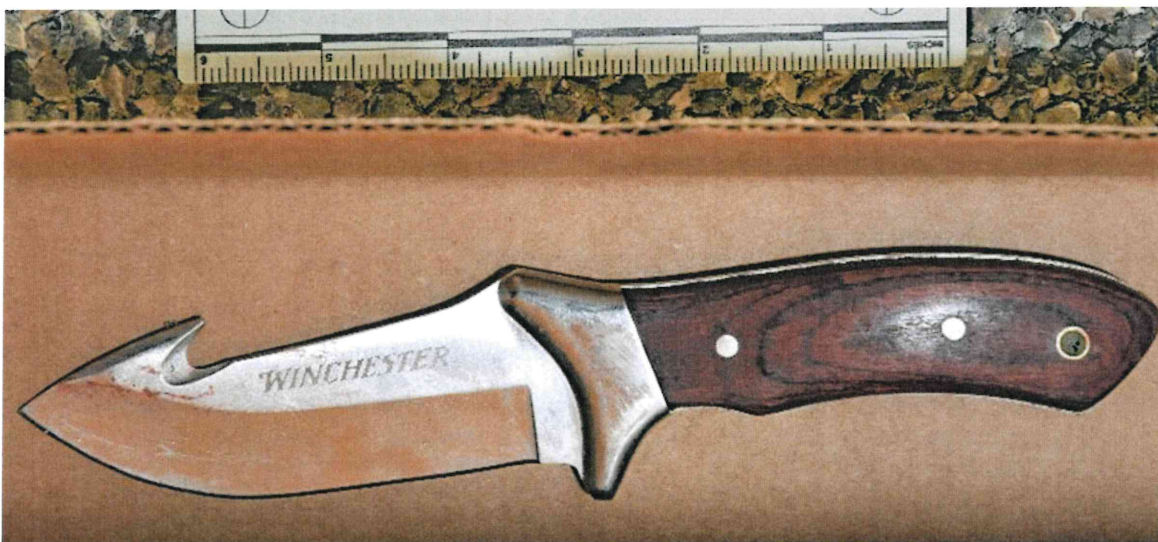
K9 Deputy Thornhill confirmed that Vino had been stabbed. After doing so, he suddenly heard three gunshots. He placed Vino in his police car and unholstered his weapon and rejoined Deputy Dickerman and Chief Ortiz. After assessing the situation, K9 Deputy returned to Vino. He observed blood and a large laceration, approximately 5 inches long, on the right side of Vino's neck. K9 Deputy Thornhill left the scene to seek medical help for Vino.

Lovelock Police Department Sergeant Darrell Mancebo

On June 17, 2020, LCPD Sgt. Mancebo received a dispatch call from the Pershing County Sheriff's Department requesting that he assist PCSO Deputy Dickerman at the Sink. He responded to the call and met up with Deputy Dickerman at the Sink's campsite where he was briefed. Sgt. Mancebo, along with Deputy Dickerman and Undersheriff Bjerke, proceeded further into the Sink looking for Decedent. They slowly made their way to the end of the road where the bird viewing tower and boat ramp are located.

Sgt. Mancebo saw the motorhome at a distance. Next, he saw the motorhome race toward the responding officers. The motorhome, which was driven by Decedent, managed to bypass all of the officers and their police cars, and then turn to intentionally collide into Sheriff Allen's police car. Sgt. Mancebo got into his police car and followed the chase.

Sgt. Mancebo could hear that several attempts were made to stop Decedent and that the final attempt was successful. He was the second-to-last officer to arrive at the motorhome's resting spot. He parked his police car, which was equipped with a dashcam, directly in front of the motorhome's front and slightly toward the passenger side. He observed the three engaging officers, Chief Ortiz, Deputy Dickerman, and K9 Deputy Thornhill, standing near the driver's side door, issuing commands to Decedent. He noted that Decedent refused to comply. He heard one of the three officers warn that Decedent was armed with a knife.



Decedent's knife with apparent blood. Sgt. Mancebo secured this knife in his patrol car.

Sgt. Mancebo heard orders made by the engaging officers. He witnessed Chief Ortiz break the driver's side window. He watched someone open the door and K9 Deputy Thornhill release his police dog, Vino. Sgt. Mancebo heard someone yell that Vino had been stabbed. He saw K9 Deputy Thornhill step back, and shortly thereafter, he heard shots ring out. Sgt. Mancebo eventually assisted in removing Decedent from the motorhome and placing Decedent's knives in his patrol car.

Valuable evidence was obtained from Sgt. Mancebo's dashcam video and bodycam video. From the dashcam video, Decedent can be seen getting out of the driver's seat and moving to the side of the driver's seat. The videos capture Decedent slashing at Chief Ortiz during the window breaking. (See Mancebo's Stream 1, at 1:14:50 to 1:15:00). During Vino's first approach to the open window, Decedent can be seen making a forward stabbing motion toward the open window just as Vino jumped up. (See Mancebo's Stream 1, at 1:15:09). On Vino's second approach to the window with the door now open, Decedent is seen standing next to and/or behind the driver's seat. Again, Decedent is captured making stabbing motions with his arm toward K9 Deputy Thornhill, who was opening the door, and toward Vino. (See Mancebo's Stream 1, at 1:15:24). As K9 Deputy Thornhill retreats with Vino, Decedent's head and upper body can be seen moving in a rocking or lurching movement when shots are fired. (See Mancebo's Stream 1, at 1:15:26 to 1:15:30). This motion by Decedent is also confirmed by Sgt. Mancebo's bodycam video. (See Mancebo's Bodycam Stream 1, at 1:15:30 to 1:15:37).

Lovelock Paiute Tribe Police Chief Ruben Ortiz

Chief Ortiz serves as Chief of Police for the Lovelock Paiute Tribe. He has been a police officer for 20 years, and has served as the police chief to the Lovelock Paiute Tribe for one-and-a-half years. On June 17, 2020, he was on duty when he heard over the police radio that a deputy sheriff with the Pershing County Sheriff's Department was asking for assistance at the Sink. Chief Ortiz decided to respond, since there were only one or two PCSO units available. Chief Ortiz drove to the Sink's campsite where he came in contact with Cooperating Witness MW.

Chief Ortiz watched MW, while other units proceeded to go farther into the Sink to corner Decedent. After approximately 20 minutes, PCSO deputies asked Chief Ortiz to bring MW to their location. Chief Ortiz complied and transported MW to the road's end. Chief Ortiz arrived to find PCSO deputies armed and in a stand-off with Decedent. Suddenly, Chief Ortiz observed the motorhome drive toward the police cars. Chief Ortiz saw the motorhome go off the road, weave between the police cars, and crash head-on into Sheriff Allen's police car.

Chief Ortiz left MW behind and immediately turned his police car and gave pursuit behind Sheriff Allen. Chief Ortiz followed in the pursuit for approximately 10 minutes. Decedent failed to stop, and Chief Ortiz witnessed several PIT maneuvers attempted by PCSO. The final PIT maneuver attempt was successful, and the motorhome came to a stop on Westergard Road, just east of the intersection with Derby Field Road.

Chief Ortiz stopped his police car almost directly in front of the motorhome. Chief Ortiz got out and joined Deputy Dickerman and K9 Deputy Thornhill in confronting Decedent. Chief Ortiz and Deputy Dickerman ordered Decedent to get out of the motorhome. Chief Ortiz observed that Decedent was armed with a knife and that Decedent had the knife pressed on his own throat. After numerous orders to surrender, Chief Ortiz realized that Decedent would not comply. He went around both PCSO deputies and broke out the driver's side window of the motorhome. Chief Ortiz returned to his original position and watched K9 Deputy Thornhill release K9 Vino. Chief Ortiz stated that it happened so fast when K9 Vino entered and Decedent stabbed K9 Vino. Shortly thereafter, he heard three shots ring out, and Decedent went down between the driver and passenger seats. He eventually entered the motorhome and secured Decedent. Chief Ortiz grabbed Decedent's knives and handed them to Sgt. Mancebo.

In reviewing bodycam videos, Chief Ortiz is seen placing his duty weapon back in his holster after K9 Vino was stabbed by Decedent. On January 5, 2021, undersigned special prosecutor interviewed Chief Ortiz via Facetime. Chief Ortiz watched the bodycam of Deputy Dickerman which showed Chief Ortiz holstering his firearm. (See Dickerman's Stream 2, File 2, between 1:48:30 to 1:49:13). Chief Ortiz confirmed that he returned his weapon to his holster because he felt he needed to reassess the situation. Chief Ortiz, at that moment, did not believe that they had reached a level where deadly force was warranted. Chief Ortiz, however, was not aware that Decedent had tried to stab him when he broke the driver's side window, which he later saw on Sgt. Mancebo's dashcam video. Also, he is seen looking down to his waist when he was re-holstering his firearm, and he then looked toward Deputy Dickerman when the three shots were fired. So, Chief Ortiz' attention had been momentarily taken off Decedent when the shots were fired.

Cooperating Witness MW

MW, who had been living in California, was looking to relocate to her home state of Tennessee.⁹ While in Reno, Nevada, MW met Decedent on June 8, 2020, on a rideshare website. MW gave Decedent some money, and he agreed to drive her home. MW and Decedent left Reno in the motorhome and headed east on June 9, 2020. Without much explanation, MW stated that they arrived at the Sink and camped out there after traveling 100 miles in seven days.

On June 17, 2020, Decedent and MW were set to leave the Sink. However, the motorhome's battery was dead. Decedent called several public agencies seeking motor assistance, and the PCSO answered the call around 9:30 a.m. MW stated that a deputy sheriff, Deputy Dickerman, arrived approximately 25 minutes later. MW stated that she remained in the motorhome, while Decedent contacted Deputy Dickerman.

Suddenly, MW heard a loud voice. MW heard Deputy Dickerman yell orders to Decedent to stop. MW looked out a window and watched Deputy Dickerman aiming a Taser at Decedent. MW saw Decedent run to the back of the motorhome, then lay down, and thereafter get up and take off

⁹ Initials are used to protect the identity of cooperating witness.

running toward the bathroom structure. MW saw Deputy Dickerman attempt to tase Decedent, but the Taser failed to connect. MW watched Decedent run into the brush and return holding a large branch to keep a distance between himself and Deputy Dickerman.

MW watched Decedent return to the motorhome. Worried, MW wanted to get out of the motorhome. When she did get out of the motorhome, she tried to grab some of her belongings, including the dog. Decedent yelled at MW to “get the fuck out.” MW complied and watched Decedent race away.

MW stated that she was contacted by the original deputy and several other law enforcement officers thereafter. MW provided vital information to the officers that she did not believe Decedent had firearms, but she warned them that Decedent carried knives. She denied possessing illicit drugs, except marijuana. She added that Decedent had a couple of beers that morning before the deputy arrived to assist them. At the campsite, MW pointed out the branch Decedent used to fend off Deputy Dickerman. Finally, MW was taken to the road’s end where she witnessed Decedent weaving around all police cars and intentionally ramming head-on the last police car.

Firearm Evidence and Countdown

Bushmaster AR-15 .223 Semiautomatic Rifle

Deputy Dickerman was armed with a department-issued Bushmaster AR-15 .223 semiautomatic rifle, serial number L177774. The rifle had a Trijicon Reflex sight mounted to the top rail of the rifle. The rifle does not have front or rear iron sights. One cartridge was ejected from the chamber of the rifle, which was a .223/556 cartridge, stamped LC 13.

The magazine which was inserted in the rifle was a 30-round capacity PMAG magazine. The magazine contained 23 cartridges; all were .223/556 caliber, stamped LC 13. Three cases were found and recovered at Crime Scene Three. Deputy Dickerman reported that he loaded his magazines with 27 cartridges. Therefore, Deputy Dickerman’s rifle was loaded with 27 cartridges on June 17, 2020, and the weapon was fired three times.¹⁰

Taser Model X2

Deputy Dickerman was armed with a Model X2 Taser, serial number X2900059. The Taser had one set of projectiles missing from the cartridge chamber. The wire leads were present, extending from the spent cartridge. In examining the Taser, Sgt. Guerra opined that the Taser had been fired once, which was consistent with the statement provided by Deputy Dickerman.

¹⁰ On November 18, 2020, undersigned special prosecutor and Sgt. Guerra determined that forensic ballistics testing was not necessary to compare the three cases and the two recovered bullets from the body during the autopsy with Dickerman’s AR-15, since it is not disputed that Deputy Dickerman was the only law enforcement officer who fired his weapon.

Autopsy Findings

On June 18, 2020, Doctor Henry McNett, medical examiner for the Washoe Regional Medical Examiner's Office, conducted the autopsy on Decedent. He authored his report under Case No. 20-02495A-PER. Dr. McNett conducted an internal and external examination, and he noted three gunshot wounds in his pathologic findings.

Dr. McNett identifies the first gunshot wound as a penetrating indeterminate-range wound, located in Decedent's mid-anterior chest. The path of the bullet coursed through skin and soft tissue, right anterolateral 4th through 10th ribs, right middle lung lobe, right hemidiaphragm, and rested in the right lower lateral abdominal wall. Dr. McNett recovered a fully jacketed bullet and jacket fragment. The trajectory was front to back, left to right, and downward.

Next, Dr. McNett located a penetrating indeterminate-range gunshot wound to the right mid-abdomen. The bullet coursed through the skin and soft tissue, right hemidiaphragm, inferior/posterior right lobe of the liver, small bowel, and came to rest in the superior/posterior wall of the bladder. Recovered from the bladder wall was an intact, fully jacketed metal bullet. The trajectory was front to back, right to left, and downward.

Dr. McNett identified a third and final perforating indeterminate gunshot wound in the right anterolateral forearm. The bullet coursed through skin and soft tissue of the right anterolateral forearm, the proximal radius and ulna, the distal humerus, and the soft tissue and skin of the right proximal medial forearm/distal arm. The trajectory was front to back, right to left, and upward.

As normal course in the internal examination, Dr. McNett had blood samples collected from Decedent to obtain toxicology results. NMS Labs conducted the analysis. NMS Labs found that Decedent had a level of 3500 ng/ml of methamphetamine in his blood. Methamphetamine is a stimulant drug capable of causing hallucination, aggressive behavior, and irrational reaction. Blood levels of 200-600 ng/ml have been reported in methamphetamine abusers who exhibited violent and irrational behavior. High doses of methamphetamine can also elicit restlessness, confusion, and hallucinations.¹¹ The lab also determined that Decedent had a blood alcohol concentration (BAC) of .052 g/100 ml.¹²

After conducting an external and internal examination, Dr. McNett reached his medical conclusions. Dr. McNett determined that Decedent's cause-of-death was the result of multiple gunshot wounds. He determined that Decedent's manner-of-death was a homicide.¹³

¹¹ See for additional information "Footnote 3" of Decedent's NMS Labs Toxicology Report dated July 6, 2020. According to the toxicology report, Decedent was almost 6 times higher than the top limit of the study's noted methamphetamine abusers.

¹² In Nevada, the legal limit for driving purposes is .08 BAC.

¹³ The Center for Disease Control (CDC) identifies six manners-of-death: Natural, Accidental, Suicide, Pending Investigation, Could-not-be-Determined, and Homicide. In a medical examiner's report, "homicide" just means one

On January 6, 2021, undersigned special prosecutor conducted a telephonic interview with Dr. McNett. Dr. McNett stated that he was unable to determine the sequence of the gunshots. Focusing on the two gunshots to Decedent's torso, he stated that both had similar characteristics and internal bleeding damage, making it impossible to determine which shot was fired first. He added that both likely were fatal gunshot wounds. Dr. McNett, also, opined that the gunshots' two different trajectory courses are consistent with the scenario that the Decedent was moving when the shots were fired and the shooter was stationary.

Legal Analysis

The undersigned special prosecutor has been tasked with assessing the conduct of the deputy involved in the killing, which occurred during the course of his duties. That assessment includes determining whether any criminality on the part of the deputy existed at the time of the killing. As this case has been deemed a homicide by the coroner, the actions of the deputy will be analyzed under the State's jurisprudence pertaining to homicides.

In Nevada, there are a variety of statutes that define the 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 was justifiable under two theories: (1) the killing of a human being in necessary self-defense or defense of others and (2) justifiable homicide by a public officer. Additionally, the actions of Deputy Dickerman can also be justified under NRS §171.1455 – Use of Deadly Force to Effect Arrest. All of these theories will be discussed below.

Justifiable Homicide in Defense of Self or Another

The authority to kill another in self-defense or in defense of others is contained in NRS §§ 200.120 and 200.160. NRS § 200.120 defines "justifiable homicide" as "the killing of a human being in necessary self-defense, or in defense of...a person, against one who manifestly intends or endeavors to commit a crime of violence...." A crime of violence is defined as any felony for which there is a substantial risk of that force or violence that may be used against the person or property of another in the commission of the felony. (NRS § 200.120(3)(a)). Pursuant to NRS § 200.160(1), Homicide is also lawful when committed in:

"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...."

person intentionally did something that led to the death of someone else. It doesn't mean the death was intentional, and it doesn't mean it was a crime. For further information, See The United States' Department of Health and Human Services, Center for Disease Control's *Medical Examiners' and Coroners' Handbook on Death Registration*, 2003 Version.

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 [the other person] or cause [the other person] great bodily injury; and
2. That it is absolutely necessary under the circumstances for him to use in [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 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 [the other person] to be in like danger.

The killing is justified even if it is determined afterward that the person killing was mistaken about the extent of the danger.

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

The known facts and circumstances in this case indicate that Decedent posed an apparent imminent danger to the officers at the scene, especially Deputy Dickerman, K-9 Vino, K9 Deputy Thornhill, and Chief Ortiz. Facts are indisputable that Decedent was a dangerous felon, who was aggressively resisting an arrest, while possessing a knife.

During the initial encounter with Deputy Dickerman, Decedent's actions showed he had no intention to surrender. Even after multiple warnings to lay down on the ground, Decedent bolted.

Decedent ran off to a nearby brush area after Deputy Dickerman fired a taser and he then grabbed a sizeable tree branch, putting some distance between the officer and himself. When Deputy Dickerman warned Decedent that he would shoot, Decedent egged him on and repeatedly shouted out, "shoot me." When Decedent got into his motorhome, Deputy Dickerman retreated to his vehicle for safety and soon after, Decedent took off in the motorhome. Around this time, Deputy Dickerman learned that Decedent was armed with knives.

Subsequently, Decedent was engaged in a car-chase with several officers in pursuit. Decedent intentionally rammed his motorhome into Sheriff Allen's police car. Both Sheriff Allen and Deputy Dickerman tried to pit maneuver Decedent's motorhome in an attempt to end the chase, but Decedent evaded these attempts by recklessly driving his motorhome on and off the road. On multiple occasions, Decedent also tried to brake-check Sheriff Allen's and Deputy Dickerman's cars. Decedent intentionally drove his motorhome across the middle lane, trying to block the officers in pursuit. At one time, the footage records Sheriff Allen stating, "I don't want him getting into town."

Once Decedent's motorhome stopped, Deputy Dickerman, K9 Vino, K9 Deputy Thornhill, and Chief Ortiz approached Decedent's motorhome on foot. Deputy Dickerman ordered the Decedent to turn off his motorhome and to show his hands. Officers continue to yell out to Decedent to get out of his motorhome and to put his hands up. Shortly thereafter, Deputy Thornhill witnessed and then yelled out to nearby officers that Decedent had a knife to his own throat. Decedent also poured what appeared to be alcohol over himself, at which time Deputy Dickerman believed Decedent may try to set himself on fire.

As seen from Sgt. Mancebo's dashcam video, when Chief Ortiz went around the motorhome and broke the driver's window, Decedent took a swipe at Chief Ortiz with his knife. Deputy Dickerman witnessed this and stated, "he just tried to stab an officer." Throughout this time, Decedent shouted out that he will not go to jail, he would rather die, and that he does not care [if he gets shot]. When K9 Deputy Thornhill opened the driver side's door and K9 Vino stepped into the motorhome, Decedent stabbed K9 Vino and a few seconds later, then the subject shooting occurred.

Sgt. Mancebo's dashcam video shows that right after K9 Vino was stabbed and then was pulled out of the motorhome, Decedent was swaying or lurching by the open door. Additionally, Chief Ortiz's bodycam video shows that Decedent was holding the knife with an outstretched arm, moving the knife in a downward motion, immediately before the shooting occurred. All three officers were within close proximity to the motorhome's open door.

Looking at the totality of the evidence, Deputy Dickerman was reasonable in believing that Decedent would cause great bodily harm or death to himself or to the officers nearby. Deputy Dickerman's fatal shooting was in defense of himself and in defense of fellow officers in his proximity. Decedent committed not just one but eight felony crimes of violence prior to the shooting: NRS § 199.280 (Resisting a Public Officer); NRS § 200.471 (Assault with use of a Deadly

Weapon/Protected Person—Three Counts); NRS § 200.481 (Battery with use of a Deadly Weapon); NRS § 484B.550 (Stop Required on Signal of an Officer); NRS § 574.105 (Mistreatment of a Police Animal); and NRS 574.100 (Cruelty to Animals). Additionally, Decedent posed a serious danger to the community by Driving under the Influence of Methamphetamines (NRS § 484C.400).

There was an unmistakable appearance of imminent danger. Decedent acted erratically while holding a knife. The driver's side door, which was the only barrier between the officers and decedent with a knife, was open. Decedent was a few steps directly in front of Deputy Dickerman's line of sight. Arguably, because Decedent was in his motorhome, in an elevated position, near the open door, Decedent could jump out and reach Deputy Dickerman at any time. Decedent already manifested great danger to the officers during the reckless car chase, and when he swiped his knife at Chief Ortiz and then stabbed K9 Vino. Decedent also repeatedly shouted out that he would rather die than go to jail.

Furthermore, evidence shows that Decedent was moving immediately before the shooting. According to the autopsy report, the bullet trajectories support that Decedent was not stationary when the shooting occurred. Consistently, Sgt. Mancebo's dashcam video and bodycam video showed Decedent in a swaying-like or lurching motion. Chief Ortiz's bodycam video showed Decedent jerking his knife outward and downward immediately before he was shot. Thus, Deputy Dickerman had an honest belief and fear that Decedent was about to step outside the motorhome with his knife and possibly stab him or nearby officers.

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 where 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. Atty. Gen. 47 (1985).

In this case, Deputy Dickerman had probable cause to believe that Decedent posed a threat of serious physical harm to himself and his fellow officers. Deputy Dickerman already experienced Decedent resisting arrest in a violent, aggressive manner after fleeing from him and going through a car-chase. In the process, Decedent committed a violent felony by ramming the motorhome into the police car driven by Sheriff Allen, and thereafter posed a driving risk to the pursuing officers by brake-checking the motorhome. Decedent also swiped a knife at an officer and stabbed a police K9. Decedent was in movement with the knife in his hand only a few steps directly in front of Deputy Dickerman, where the motorhome door was open, with nothing obstructing his path to Deputy Dickerman. Decedent clearly posed a threat to himself and others. Thus, the use of deadly force by Deputy Dickerman was legally justified and appropriate under NRS 200.140(2).

Law Enforcements' Use of Deadly Force to Effect Arrest

The Nevada Legislature enacted NRS § 171.1455 which allows law enforcement personnel to use deadly force under limited circumstances when effecting an arrest.

“If necessary to prevent escape, an officer may, after giving a warning, if feasible, use deadly force to effect the arrest of a person only if there is probable cause to believe that the person: (1) has committed a felony which involves the infliction or threat of serious bodily harm or the use of deadly force; or (2) poses a threat of serious bodily harm to the officer or to others.”

As stated above, Decedent was actively resisting the arrest when the shooting occurred after committing eight violent felonies on law enforcement officers. Most of these felonies involved the infliction and threat of serious bodily harm and the use of a deadly weapon. Decedent used his motorhome to intentionally ram Sheriff Allen's police car and to brake-check the officers' police cars several times. Decedent assaulted an officer by swiping his knife at Chief Ortiz. Decedent stabbed K9 Vino with a knife, and also threatened serious bodily harm to nearby officers. Although his rifle had the safety engaged, Deputy Dickerman was correct when he attempted to pull the trigger of his rifle after he witnessed K9 Vino's stabbing.

The threat of future harm to the officers did not end. Immediately after stabbing K9 Vino with a knife, Decedent appeared to be lurching his body and moving his knife downward right by the open door of his motorhome. Deputy Dickerman repeatedly yelled at Decedent to stop and to show his hands. Deputy Dickerman also warned Decedent several times that he would shoot, including right before the fatal shooting.

In the totality of these circumstances, Deputy Dickerman was justified to use deadly force to effect arrest. Decedent was a violent fleeing felon. Deputy Dickerman had probable cause to believe that Decedent had committed several felonies, which involved the infliction and threat of serious bodily harm and the use of a deadly weapon, as well as posing a threat of serious bodily harm to himself and other officers.

CONCLUSION

Based upon the review of the available materials and application of Nevada law to the known facts and circumstances, this special prosecutor has determined that the actions of law enforcement officer in response to Decedent's actions were reasonable and 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.” (NRS § 200.190).

As there is no factual or legal basis upon which to charge Deputy Phillip Dickerman, and unless new circumstances come to light which contradict the factual foundation upon which this decision is made, no charges will be forthcoming.

DATED February 1, 2021

By

A handwritten signature in blue ink, appearing to read "Frank Johan Coumou", is written over a horizontal line. The signature is stylized with large, sweeping loops.

Frank Johan Coumou

Special Deputy District Attorney

Pershing County, Nevada

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