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Friday, November 16, 2018

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LETTER DECLINING PROSECUTION AFTER INVESTIGATION

Re: *Officer-Involved Shooting on May 07, 2017, by Austin Police Department Sgt. Richard Egal and Cpl. Max Johnson causing fatal injury to Landon D. Nobles (d.o.b.:02/19/1993)*

Dear Chief Manley:

The Office of the Travis County District Attorney (“DA”) has reviewed the Austin Police Department Special Investigation Unit (“APD SIU”) investigation of the above-referenced matter and concluded our independent review of the May 07, 2017, officer-involved shooting in which Austin Police Department (“APD”) Sergeant Richard Egal (APD # 3936) and Corporal Max Johnson (APD # 6775), during the discharge of their official duties, fired shots from their duty pistols that resulted in the death of Landon D. Nobles. This letter is to inform you of my decision to decline prosecution of criminal charges against Sgt. Egal and Cpl. Johnson. My decision does not limit or address administrative action that may be pursued by the Austin Police Department, or other civil actions, where non-criminal issues (violations of agency policy, *etc.*) may be reviewed and where different rules and lower levels of proof apply. The DA’s Office has reviewed the APD investigation of this incident pursuant to its officer-involved shooting investigation and prosecution protocol which is posted on the DA official website.¹ A copy of this letter will also be posted on the DA official website.²

Based upon the evidence available and the applicable Texas law,³ I am convinced that a jury following the law would not convict Sgt. Richard Egal (APD # 3936), hereinafter “Sgt. Egal,” or Corporal Max Johnson (APD # 6775), hereinafter Cpl. Johnson, because the evidence credibly

¹ <https://www.traviscountytexas.gov/district-attorney/cru>.

² <https://www.traviscountytexas.gov/district-attorney/cru>.

³ In arriving at this conclusion, I have relied upon the legal guidelines governing the use of force/deadly force in Texas as set forth in sections 9.31, 9.32, 9.33 and 9.51 of the Texas Penal Code, the case authority construing that provision, and the United States Supreme Court case authority governing law enforcement use of deadly force.

establishes that their use of force was justified under Texas law as (1) a lawful exercise of their authority to effect a legitimate law enforcement purpose (detention, search and seizure, arrest), and, based on their reasonably formed belief in the immediate need for it, the use of deadly force in (2) self-defense and (3) defense of a third person. The following discussion sets forth the investigative facts determined during my review of the APD investigation of this incident, identifies the applicable legal rules governing my decision, and presents the analysis underlying my opinion.⁴

I. FACTS AND CIRCUMSTANCES LEADING TO AND SURROUNDING MR. NOBLE'S DEATH

Critical to my decision that the prosecution of APD Sgt. Egal and Cpl. Johnson is not warranted in this shooting incident is my determination of the credible facts and circumstances leading to and surrounding Mr. Nobles's death. In making my determination, I rely on the entire investigative file compiled by APD's Special Investigations Unit⁵ (SIU) whose primary responsibility is the independent investigation of all shooting incidents in which an APD officer is involved. The investigative file includes officers' initial and supplemental reports, officer and civilian witness sworn and unsworn statements and transcriptions of interviews, audio and video recorded witness interviews and statements, dispatch and communications recordings, transcripts thereof, and corresponding computer-generated records related to calls for service and dispatches of officers, public and private surveillance footage, forensic and medical reports, and evidence developed at the shooting scene and during the course of the post-shooting investigation. I set forth the facts and circumstances supported by the credible evidence surrounding Mr. Nobles's death below.⁶

⁴ The facts and circumstances surrounding any officer-involved shooting are of great interest to the public. One of the primary reasons I publish my decision for declining prosecution in such cases is because I believe the public interest is justified, not only in knowing the facts but also in understanding the legal basis for my decision. I also believe publication is critical to furthering institutional transparency and greater community trust in law enforcement. In the instant case, there were two allegations made by witnesses present at the shooting that, (1) Mr. Nobles was not the person responsible for threatening the use of deadly violence (by discharging a firearm) immediately prior to his contact with Sgt. Egal and Cpl. Johnson, and, (2) that Mr. Nobles was unarmed at the time that he was shot. I am confident the credible investigative facts, presented in this letter after a thorough independent review by my Office, were established beyond reasonable disagreement.

⁵ APD's Special Investigations Unit (SIU) has the primary responsibility for conducting all "criminal investigations involving all sworn peace officers alleged to have committed a criminal offense within the jurisdiction of the Austin Police Department." See <http://www.austintexas.gov/department/special-investigations>.

⁶ In reviewing the witness statements of the facts and circumstances surrounding Mr. Nobles's shooting, I have identified two areas of discrepancy in both officer and civilian accounts—(1) whether Mr. Nobles fell as a result of his collision with a bicycle while running from pursuing officers, and (2) whether Mr. Nobles fired a handgun at pursuing officers. In this case, whether Mr. Nobles fell does not alter my legal conclusion. Likewise, because of the circumstances existing at the time of Mr. Nobles's shooting and under the legal doctrine of "reasonable apprehension of danger," whether Mr. Nobles actually fired at officers pursuing him does not alter my legal conclusion. However, I believe the public interest in being provided a full and comprehensive understanding of the facts and circumstances of any officer-involved shooting warrant that I address each. I will identify any such disagreement in this letter during the narration of the facts and circumstances and indicate the means by which I resolved any such disagreement as it relates to my task of evaluating the officers' use of force for reasonableness.

A. Initial “Shots-Fired” Disturbance Call and Austin Police Department Response

On May 07, 2017, during Austin’s annual Pecan Street Festival, at approximately 2:39 a.m., APD Officer Brian Huckaby (APD # 5159) was stationed near the intersection of Trinity and 6th Streets when he heard what he believed to be the report of a gunshot coming from just east of his location. Officer Huckaby radioed “shots-fired” over APD’s general broadcast channel. He, along with several other officers (identified later in this letter) hearing the call, began to walk east on 6th street towards the 400 block of E. 6th Street, the area from which he believed the sound of the gunshot came. Because the annual Pecan Street Festival was then in progress, there were many civilians, non-commissioned private security personnel, and law enforcement officers in the immediate area of the disturbance.

The initial disturbance occurred in front of a nightclub—the Moose Knuckle Pub—located in the 400 block of E. 6th Street. The disturbance involved two groups of young men: one group stood on the sidewalk opposing a second group who stood on the street with only feet separating the two groups. *See Fig. 1, below.*

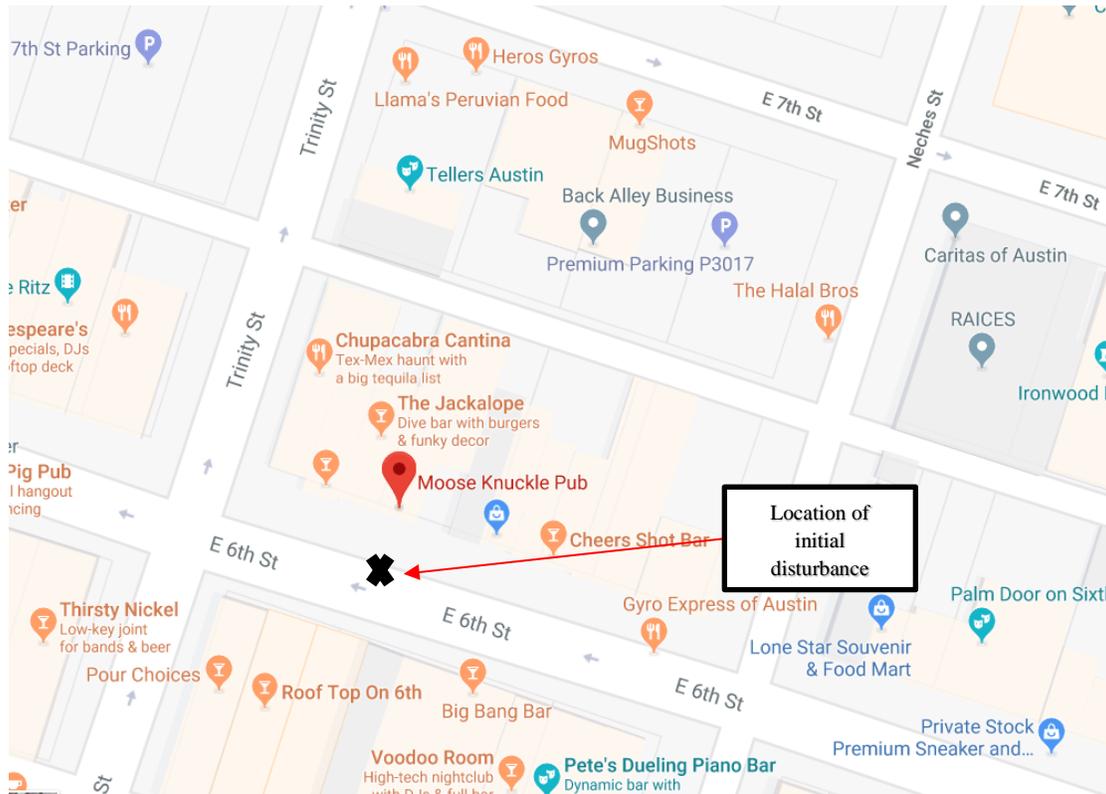


Figure 1—Location of initial disturbance involving two groups of young men, one of which included Mr. Nobles.

Mr. Nobles has been credibly identified as being a member of the second group standing on the street facing the group on the sidewalk.

As Officer Huckaby walked east towards the nightclub, he observed a person crouching as if taking cover which led him to believe that he had, in fact, heard a gunshot although he did not see a mass dispersion of people from the immediate area. Still unsure of whether he had heard a gunshot, Officer Huckaby continued east on E. 6th Street and encountered a woman leaving the area walking

westward on E. 6th Street past him. The woman informed Officer Huckaby that a man had just fired a gun “in the air” and suggested that officers look for him, stating something to the effect, “If you all want to do something, go get the guy that was shooting in the air.”⁷ The woman provided Officer Huckaby with a description of the person she saw shooting the gun as a black male, wearing a white shirt and blue shorts. The woman told Officer Huckaby that the shooter had left the scene of the disturbance and was walking east on 6th street. Now, confident that what he had heard earlier was in fact a gunshot, Officer Huckaby then broadcast the woman’s description of the suspect. Officer Huckaby’s description was the first to be broadcast of the suspect involved in the shooting. As Officer Huckaby continued east on 6th Street, he encountered a man who was working security outside of the nightclub where the disturbance had occurred. This man gave the same information that the woman had just provided: the suspect was a black male, wearing blue shorts and a white shirt, and had fired a shot in the air. The man added that the shooting suspect’s shirt had a “Jordan” logo on its front, referring to the well-recognized Michael Jordan athletic apparel logo.⁸ The second witness also stated that the shooter had left the area traveling east. Officer Huckaby and several other officers continued westbound nearly as far as Red River. Meanwhile, several other officers who were in the immediate area later reported hearing Officer Huckaby initial “shots fired” report as well as the description of the suspected shooter Officer Huckaby had broadcasted moments earlier.

With Officer Huckaby’s reported location of the disturbance and description of the suspected shooter, APD was able to search its video footage recorded by video surveillance cameras which are installed at various locations throughout the downtown area to determine whether the reported incident had been captured on video footage.

Throughout the downtown entertainment district, APD has deployed surveillance video cameras at different locations for the purpose of permitting patrol officers to more effectively respond to incidents and better investigate possible crimes committed in the area. *See* Fig. 2, below.

⁷ *See* Statement of Officer Brian Huckaby (APD # 5159). Matters referred to in this declination letter will be included in the press release accompanying the issuance of this declination letter. Matters relating to the privacy of any individual will be redacted, along with the identities, identifying information, and addresses of civilian witnesses.

⁸ During the post-shooting investigation, APD’s SIU located and interviewed civilians who observed the initial disturbance. These witness descriptions are consistent with the person depicted in the HALO POD 114’s video footage. One of these, an employee of the Moose Knuckle Pub, described the incident and the suspect as “an African American male with short hair, white T shirt and blue shorts” who held his “left hand up with a small black pistol and fire[d] a single shot. After the shot was fired people scattered.” *See* Statement of Civilian Witness # 1. Another civilian witness reported seeing “[a] black male wearing a white t-shirt, blue shorts with white stripes down the side and blue and white shoes, pull[...] out a gun and [shoot] it once into the air. People began to scatter and the guy that fired the gun walked off between the tents that were set up for the Pecan Street festival.” *See* Statement of Civilian Witness # 2. That people “scattered” following the shot can be seen in video footage. Civilian witnesses present at the scene of the initial shooting incident also captured video footage of the incident on their cellular telephones.



Figure 2—HALO video camera locations.

Operators determined that two of its surveillance cameras—HALO surveillance cameras operated by APD and individually identified as “PODS”⁹—are located such that they might have captured the initial disturbance—POD 126 and POD 114. See Fig. 3, below.

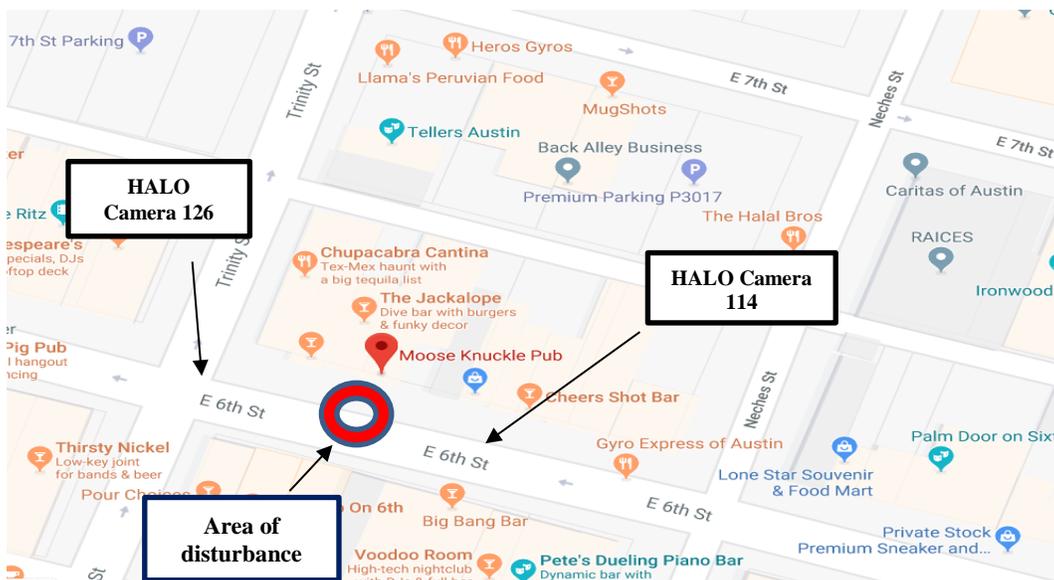


Figure 3—Area of initial disturbance involving report of shots fired and approximate locations of nearby HALO camera locations.

⁹ In 2010, the City of Austin initiated implementation of its High Activity Location Observation (“HALO”) system which is a “public safety camera system” placed in areas it identifies as areas of high possible criminal activity in Central Austin. A map identifying the then existing HALO locations in the downtown entertainment district is included in the appendix to this letter. The cameras are identified as “PODS.” The video surveillance system is operated by the APD’s Real Time Crime Center (“RTCC”) whose responsibility is to monitor radio traffic and video surveillance 24 hours a day in order to provide informational support to patrol officers. Although the surveillance cameras can capture video footage, they are not equipped to capture audio recordings.

Surveillance camera operators reviewed the HALO video footage and were able to determine that HALO POD # 114, positioned to face north from the south side of the 400 block of E. 6th street and nearly directly in front of the nightclub at which the initial disturbance occurred, captured footage that depicted an individual matching the description of the suspect provided by the two witnesses appearing to be engaged in conduct consistent with the report of him firing a weapon.¹⁰ The person depicted in the footage appeared to be a young black man wearing a white shirt and blue shorts, appearing to have an object in his hand, and raising his arm as if to fire a weapon in the air. In fact, the video captured the entirety of the disturbance preceding the shooting incident. The footage depicted two groups of men opposing one another consistent with their arguing or preparing to fight. One group is on the north 6th Street sidewalk in front of the nightclub and their faces are clearly visible; the second group of young men is standing on 6th Street, facing the group on the sidewalk. Mr. Nobles was a member of the second group. *See Fig. 4, below.*

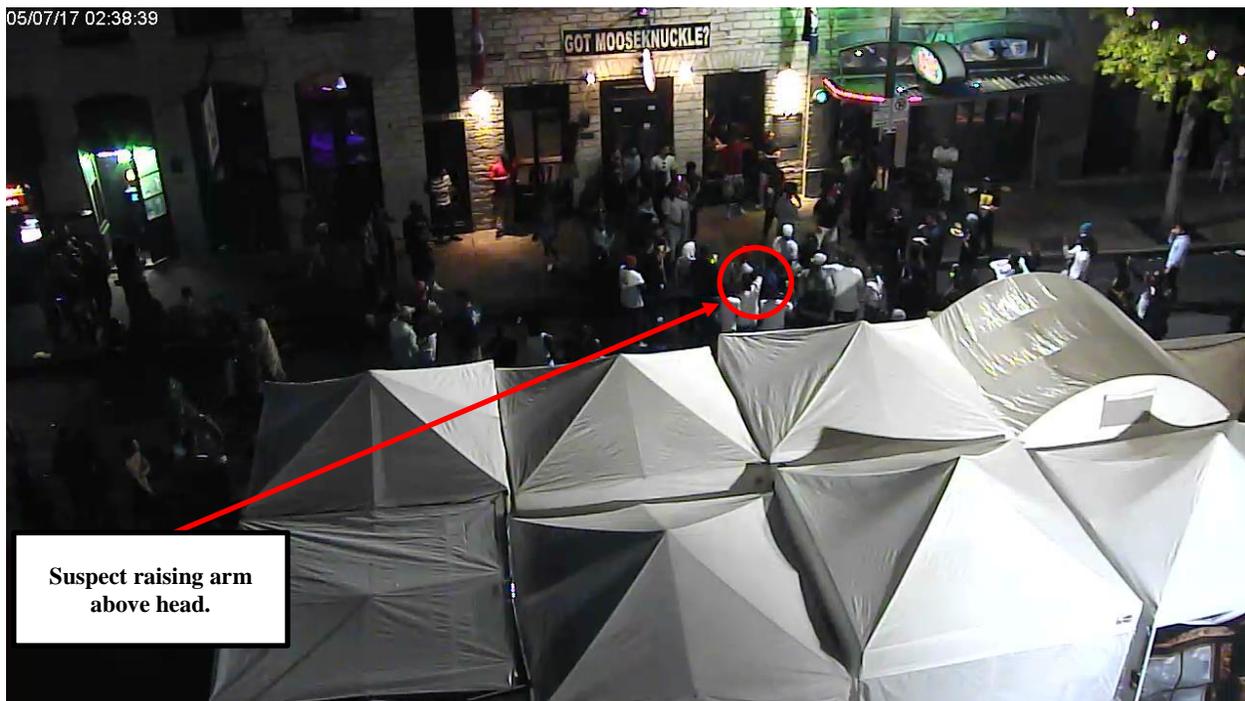


Figure 4—HALO still photograph from POD 114 depicting individual raising his arm above his head shortly before crowd disperses, credibly believed to be Mr. Nobles.

At approximately 2:38:39 a.m. the video footage depicted one of the individuals in the second group—credibly believed to be Mr. Nobles—moving towards the center of his group, raising his right arm in the air, and quickly retracting it. Almost simultaneously, the footage depicted the crowds that had gathered to watch the confrontation between the two groups rapidly dispersing in all directions surrounding the individual seen raising his right arm above his head. In sum, the video footage depicted what is consistent with the report of an individual firing a pistol in the air and was of sufficient quality to permit operators to determine that the suspect was a black male wearing a white shirt and blue shorts, and was accompanied by several young men, one of whom

¹⁰ After a review of the footage captured by HALO cameras in the area of the initial disturbance, RTCC camera operators determined that HALO POD # 114 is the only camera known to have captured the initial disturbance.

was wearing a red hat.¹¹ See Fig. 5, below.



Figure 5—HALO still photograph from POD 114 depicting person in red moments before shots fired during the initial disturbance.

HALO POD 114's video camera also captured the events following the shooting incident which included the dispersal of the crowd and the suspect's gesturing towards and re-approaching of the opposing group in a manner that can be reasonably described as threatening. The footage depicts that immediately following the shooting, the suspect stepped back receding into the group of young men he is with, and towards a row of vendor tents located directly behind the group. See Fig. 6, below.



Figure 6—Suspect immediately following the shooting incident and having receded back into the group of which he was a member.

¹¹ The video surveillance footage obtained from HALO POD 114 depicts two individuals wearing a red hat. One of the young men wearing a red hat appears to be in the group of men of which Mr. Nobles was a member. The other individual wearing red hat is a member of the opposing group of young men. See Fig. 23, below.

Shortly afterwards, he quickly re-emerges and steps forward towards one of the young men whom he had been opposing as if to confront him. *See Fig. 7, below.*



Figure 7—Suspect re-emerges from group to confront man in opposing group.

After rejoining the group, the suspect and the group of young men began to walk east on E. 6th Street. After taking only a few steps, the suspect re-emerges for a second time and quickly turned towards the same young man of the opposing men who has remained on the sidewalk in front of the Moose Knuckle Pub. The suspect advances towards the opposing man at a rapid pace in what can be reasonably described as a threatening manner. *See Fig. 8, below.*



Figure 8—Suspect advances towards opposing group for a second time following the initial shooting incident.

When the suspect returned to his group, he can clearly be seen wearing a white t-shirt with the familiar “Michael Jordan” logo outlined in blue and dark colored shorts. *See Fig. 9, below.*



Figure 9—Suspect returning to group after he advanced towards the opposing group for a second time after the shooting incident.

At 2:39, HALO POD 114’s video footage then depicts the suspect return to the group of young men he is accompanying as they walk east on E. 6th Street. This is the last HALO POD 114 footage to capture the suspect and the group he was with following the initial shooting incident in front of the Moose Knuckle Pub. *See Fig. 10, below.*



Figure 10—Last HALO POD 114 video footage of suspect as he and group walk eastbound on E. 6th Street, immediately following the initial shooting incident at the Moose Knuckle Pub, at approximately 2:39:17 a.m..

HALO POD 114 operators then shifted focus on the sidewalk in front of the Moose Knuckle Pub where onlookers had gathered. The footage captured two Austin Police Department officers speaking with several onlookers. At one point, a man and a woman are seen pointing eastbound in the direction in which the suspect and the group he was with were last seen walking. This footage

corresponds with Officer Huckaby's report of a man and a woman relating to him that the suspect had departed the location walking eastbound on E. 6th Street. Several other officers join the two officers on the sidewalk. Moments later, HALO POD 114 captures the group of police officers traveling eastbound apparently seeking to locate the subject and the group he was with. The officers traveling eastbound did not locate the subject or his group.

At approximately 2:42 a.m., HALO POD 114 captured several festival attendees directing their attention westbound towards the E. 6th Street and Trinity Street intersection. The footage also depicts several attendees who began to run after turning their attention behind them, to the immediate west and towards the intersection of E. 6th and Trinity Streets.

With HALO POD 114's footage, the APD's RTCC operators were able to broadcast a detailed description of the suspect that corresponded with the witnesses' suspect description provided to Officer Huckaby. APD's RTCC operators also broadcast that the suspect was accompanied by a man in a red hat.¹²

B. APD Officers Respond to the Initial Disturbance

Of the officers hearing and responding to the initial dispatch of the initial shooting incident, several APD officers—then assigned to the downtown entertainment district's DTAC unit¹³—were walking westbound in the 200 block of E. 6th Street, towards the location of the disturbance in front of the nightclub. This group of officers included Officers Anthony Allegretti (APD # 7756), Mark Dale (APD # 6633), Steven Pena (APD # 6145), and Uri Tamez (APD #7451). The officers reported that as they were walking westbound on E. 6th Street, they heard Officer Huckaby's initial "shots fired" disturbance radio broadcast. None of these officers reported having heard the initial shot. However, the group of officers heard the HALO description of the suspect obtained from HALO POD 114's footage of a black male wearing a white t-shirt bearing what was believed to be a "Jordan logo," and blue shorts with a white stripe." The officers also heard the broadcast that the suspect was accompanied by a black male wearing a red hat.¹⁴ With the broadcasted HALO description, the group of DATC officers began walking east on E. 6th Street towards the intersection of E. 6th and Trinity Streets in an attempt to locate the individual reportedly firing the pistol in the initial disturbance.

C. Identification of Landon Nobles as Suspect in Initial Shots Fired Disturbance; Landon Nobles Flight and APD Officers' Pursuit

APD officers' identification of Mr. Nobles as the suspect in the Moose Knuckle shooting incident led to their lawful attempt to detain him in order to investigate their suspicions.¹⁵ His flight, and

¹² That broadcast reported the description of the suspect as "possibly a black male, white shirt, blue shorts, last seen headed eastbound on Neches Street, correction northbound on Neches Street, fired a gunshot into the air."

¹³ "DTAC" refers to the Downtown Area Command, one of the five APD patrol districts to which officers are assigned.

¹⁴ As previously noted, HALO POD 114's video footage depicts a male who appears to accompany the suspect and who appears to be wearing a red hat. *See* Fig. 5, above.

¹⁵ State and federal constitutional law governing the seizure of persons permits an officer having reasonable and

their subsequent pursuit of him, was the event that precipitated the facts and circumstances leading to his shooting. The specific facts and circumstances leading to the officers' identification of Mr. Nobles as the person matching the broadcast description of subject believed to having been the person firing the pistol in the initial disturbance are not in dispute. Likewise, APD officers' attempt to detain Mr. Nobles after identifying him as matching the description, his flight from the officers, and the officers' pursuit are not in dispute. In fact, the DATC officers' initial approach of Mr. Nobles, their attempt to contact him, and Mr. Nobles's flight were captured on video surveillance footage, HALO POD #126, located at the northeast corner of the intersection of 6th and Trinity Streets.

HALO POD #126's video footage depicts a group of several young men standing in the eastern portion of the street at the intersection of 6th and Trinity Streets. In the group, one young man—we have credibly identified as Mr. Nobles—fits the description of the person described as having fired the pistol in the initial disturbance: he is a black male, wearing a white shirt and what appear to be blue shorts. The suspect is prominent and clearly visible in the bottom right hand corner of the footage, along with the group of males that appear to be some of those depicted in HALO POD 114's initial disturbance footage. Also, one of the young men in the group is shown wearing a red hat. *See Fig. 11, below.*

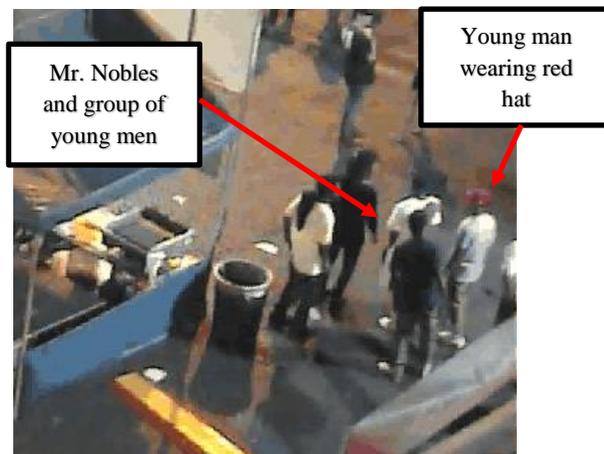


Figure 11—Group of men, including Mr. Nobles, accompanied by individual in a red hat.

The suspect's hands remained either in his pocket or the waistband of his shorts. The group of DATC officers are depicted approaching the group of men from the west. In the video, Mr. Nobles is depicted standing at an angle, facing northwest and towards the group of approaching officers. *See Fig. 12, below.*

articulable facts rising to the level of reasonable suspicion to temporarily detain an individual long enough to dispel their suspicions. *See Terry v. Ohio*, 392 U.S. 1 (1968); *Baity v. State*, 455 S.W.2d 305, 307-08 (Tex. Crim. App. 1970).

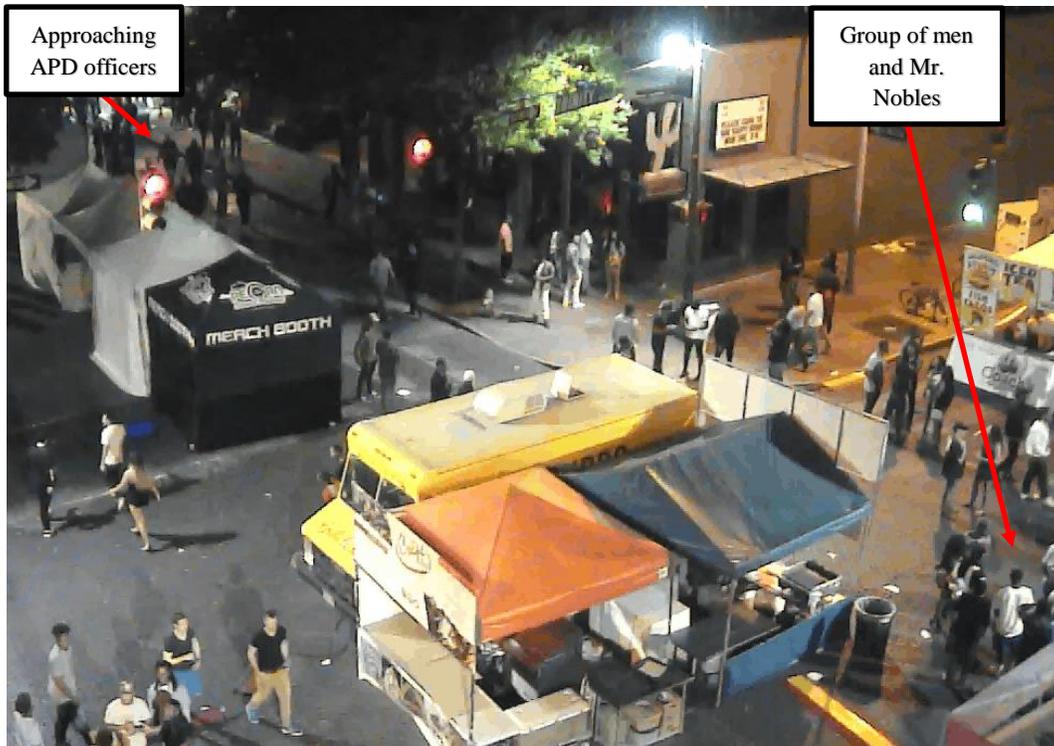


Figure 12—Still shot from video footage from HALO POD #126 depicting group of DTAC officers approaching group of men with whom Mr. Nobles is standing.

Starting at approximately 2:41:13, the footage depicts the group of DATC officers entering the intersection approaching closer to Mr. Nobles’s location, at which time he abruptly turns away from the approaching officers. As they near Mr. Nobles, he momentarily leaves camera view but soon reappears towards the rear of the group, and furthest away from the approaching officers. At approximately 2:41:57, nearly simultaneously with the suspect’s reappearance, the footage shows one of the group of approaching officers—Officer Allegetti—the first to identify Mr. Nobles as matching the description of the suspect and later identified as Officer Allegetti, breaking away from the group and moving towards Mr. Nobles in order to detain him. *See Figs. 13 and 14, below.*

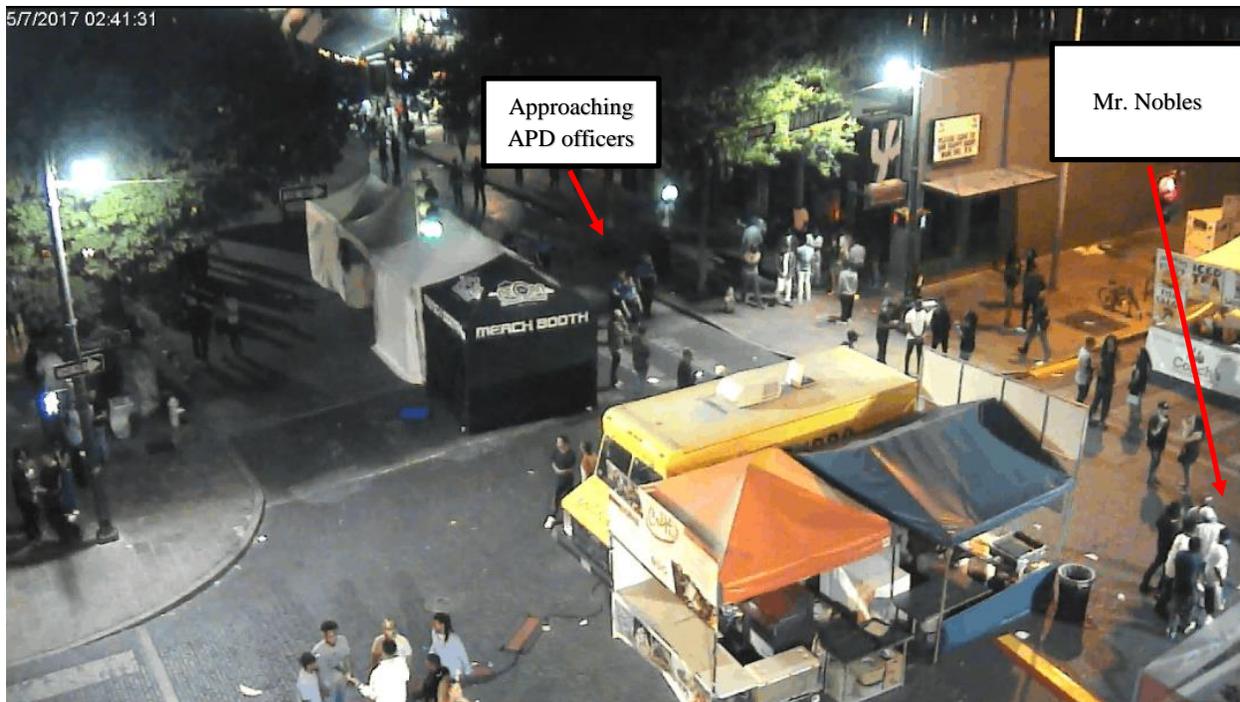


Figure 13—Still shot from video footage from HALO POD #126 depicting approaching the intersection of E. 6th and Trinity Streets towards Mr. Nobles, seen in the lower right-hand corner of the photograph, turning away from officers as they approach his location.

In a post-shooting investigation interview, Officer Allegretti described the events leading to his identification and approach of Mr. Nobles. He reported that he had heard the description of the suspect as a “thin Black male, wearing a white t-shirt with a Jordan logo on it, [and wearing] blue shorts with a white stripe down both sides,” and that the suspect was “walking with a Black male wearing a red hat.” Officer Allegretti recalled—

I located two males that matched the description put out by the HALO officer in the intersection of E 6th St. and Trinity St. I called out the description of the males I located and asked to confirm the description on the radio. The officer confirmed that the description of the males I found is the same they observed on camera.¹⁶

Officer Allegretti reported that he decided to approach Mr. Nobles “intending to physically detain him.”¹⁷ Officer Allegretti recalled that as he “approached within arm’s reach of [Mr. Nobles], he began to run” northbound on Trinity Street. At approximately 2:41:59, HALO POD #126 video footage shows Mr. Nobles leave the camera’s view as Officer Allegretti began approaching him.

¹⁶ See Statement of Officer Anthony Allegretti (APD # 7756).

¹⁷ Other officers also reported that it was Officer Allegretti who first identified Mr. Nobles. Officer Tamez reported that it was Officer Allegretti who “observed the suspect matching the description” but reported that he was then “walking westbound towards us.” See statement of Officer Uri Tamez (APD # 7451). However, video footage does not depict Mr. Nobles walking westbound on E. 6th but rather stationary in the intersection of E. 6th and Trinity Streets. Officer Pena, also one of the approaching DATC officers, reported that it “happened pretty fast but it looked like he tried to rip away and push off at the same time. It was real fast so that at that time I could see a young (20’s) black male in a white shirt.” See statement of Officer Steven Pena (APD # 6145).



Figure 14— Still shot from video footage from HALO POD #126 depicting Officer Allegetti leaving the group of approaching DATC officers to initiate contact with Mr. Nobles and moments before he flees, visible in the lower right hand portion of the shot.

During his post-shooting interview, Cpl. Johnson described his initial attempt to contact Mr. Nobles after identifying him standing in the intersection:

- 1486 Q1: Is this where you first observed the subject?
1487
1488 A: I did. I saw him before he saw my guys.
1489
1490 Q1: Okay.
1491
1492 A: So I had a chance to observe him before he reacted so I could see his
1493 reaction to that.
1494
1495 Q1: And what was his reaction from what you could tell?
1496
1497 A: Ah, I mean pardon my language, but oh shit. You know, kind of a
1498 surprised, you know, he didn't expect to see us I don't think.
1499
1500 Q1: And then you saw him immediate- almost immediately?
1501
1502 A: He reacted as quick as humanly possibly I think.
1503

Each of the approaching DTAC officers—Officers Allegetti, Dale, Pena, and Tamez—reported witnessing Mr. Nobles run northbound on Trinity Street after Officer Allegetti approached him and attempted to detain him. One of the approaching officers, Officer Dale, described the events leading to Mr. Nobles's flight and the officers' pursuit of him. As he approached the group of men

in the intersection, Officer Dale also noticed that Mr. Nobles matched the broadcast description:

Ofc. Allegretti and I were next to each other and everyone else was following us. We get to the intersection, a little bit before the intersection of E 6th St/Trinity. I observed a Black male with blue shorts with a white stripe, white shirt with a Jordan symbol on it. He was around several other black males, one of them had a red hat. They were standing in the middle of Trinity and E 6th street intersection. I looked over at Allegretti and said ‘hey, do you see that black male right there with blue shorts, white stripe, white shirt?’¹⁸

Officer Dale described the events depicted in the HALO POD #126 video footage which indicates that Mr. Nobles saw the approaching officers and attempted to evade their detection. Officer Dale recalled that “[Mr. Nobles] saw Allegretti coming towards him” when Officer Allegretti was “5 to 8 feet away” from him. Officer Dale recalled that he then saw that Mr. Nobles “kind of moved back in [sic] forth slightly, like a juke to figure out which way he was going to go” and then “took off running northbound on Trinity [Street] from E 6th Street.”¹⁹ Similarly, Officer Tamez, also a member of the approaching group of officers, recalled that Mr. Nobles “immediately took off running north bound on Trinity” once “Officer Allegretti walked towards the suspect and attempted to go hands on.”²⁰

Cpl. Johnson recalled the moment Officer Allegretti identified Mr. Nobles as well as Mr. Nobles’s reaction:

590 |So I'm sort of in the back of a pod
591 of guys, you know, walking through the crowd. Um, I see one of my
592 officers sort of break off from the group and I could tell he was tracking
593 something. And about that time I see a person matching that exact
594 description -- white shirt, Jordan logo, blue shorts and black male. Um,
595 I see my officer, ah, I believe it's (Aligretti), um, make eye contact with
596 the suspect or to what I thought was eye contact. Because when the
597 suspect in question saw the officer, he reacted, ah, you know, I could
598 see his face. To me it was obvious he knew the police were trying to
599 contact him, ah, and at that moment, you know, he was off to my right
600 sort of along the lines of the, ah, vendor booths. Ah, he ran, ah, from
601 that officer basically from my perspective from right to left in front of
602 me. So my officers sort of had to go into the crowd, you know, to
603 contact him off to the right. I stayed back. There was a lot less, ah,
604 civilian traffic, pedestrian traffic.

The video footage then depicts Officer Allegretti move abruptly towards Mr. Nobles who remains out of view of the camera; Officers Tamez, Pena, and Dale quickly move out of camera view as well, some of whom are seen running in pursuit of Mr. Nobles who has fled running northbound on Trinity Street towards 7th Street. Cpl. Johnson, and Officers Allegretti, Tamez, Pena, and Dale also began pursuing Mr. Nobles.

¹⁸ See Statement of Officer Mark Dale (APD # 6633).

¹⁹ See Statement of Officer Dale (APD # 6633).

²⁰ See Statement of Officer Tamez (APD # 7451).

D. Facts and Circumstances Leading to the Shooting of Mr. Nobles

Moments after he attempted to contact Mr. Nobles, Cpl. Johnson observed that Mr. Nobles was armed with a handgun. During a post-shooting interview, he recalled his observations:

1504 Q1: And where was he approximately when you first observed him holding
1505 the gun?
1506
1507 A: Ah, I mean he was almost perfectly perpendicular with me.
1508
1509 Q1: Mm-hm.
1510
1511 A: And the only reason I saw it was because of his stride.
1512
1513 Q1: Okay.
1514
1515 A: You know, initially, I don't know when he accessed it because his, you
1516 know the gun hand was obstructed by his body. But when he did make
1517 a motion, that's when I saw the pistol.

As previously mentioned of the facts and circumstances leading to and surrounding the shooting death of Mr. Nobles, two subjects of inquiry emerged during the course of the investigation that were of critical investigative importance due to what we now believe was misinformation or unsupported speculation: whether Mr. Nobles was in possession of a handgun at the time he was shot by the officers, and if so, whether he fired at the pursuing officers.²¹ After a review of the entirety of the investigative file and evidence, I conclude that the credible facts establish beyond all reasonable disagreement that Mr. Nobles was, in fact, in possession of a handgun at the time that he was shot and that he is the person responsible for firing the shot in the initial disturbance.²² Given the importance of both discrepancies to my decision and public interest, I address each in this section.

Officer Allegretti recalled that as he began pursuing Mr. Nobles he un-holstered his Taser in order to stop him. Cpl. Johnson also gave chase to Mr. Nobles as he ran in an east to westerly direction

²¹ During the course of the post-shooting investigation, individuals who were with Mr. Nobles at the time of the initial disturbance on E. 6th Street during and at the time he was shot told investigators that Mr. Nobles was not in possession of a handgun on the evening he was shot. To those unfamiliar with the investigative facts, complicating the issue was a disinterested civilian witness report that he did not see a weapon in Mr. Nobles's hand at the time he was shot. However, the credible investigative facts convince me beyond all reasonable disagreement that the handgun recovered from the location at which Mr. Nobles fell after being shot was in his immediate possession at the time of the shooting, that it discharged at the time of Mr. Nobles's collision with Sgt. Egal's bicycle, *see* § 1 below, at p. 14, and that Mr. Nobles had discharged it during the initial disturbance on 6th street.

²² I do not believe that the facts clearly establish that Mr. Nobles intentionally fired the handgun at the pursuing officers as some officers reported during the post-shooting investigation. Rather, I believe the facts do establish beyond reasonable disagreement that Mr. Nobles's handgun discharged shortly before he was shot as a result of the bicycle collision, that he was in possession of the handgun as he continued to flee, and that, while fleeing, he turned at least the upper portion of his torso towards the officers while the handgun was in his hands. I believe that the facts clearly establish beyond reasonable disagreement that the handgun was in Mr. Nobles's hands at the time it discharged, and that the discharge was not caused by the handgun's striking the ground.

446 A: When I was up in that parking lot is when I heard - I didn't hear the
 447 shots but I heard the call on the radio that shots had been fired. Um,
 448 my experience downtown is that I've been in situations where gunshots
 449 are fired and depending on the acoustics in the building, sometimes
 450 you hear them, sometimes you don't. I didn't hear the shot. Um, I
 451 heard on the radio that there was a shots-fired call. I don't remember
 452 specifically the block number it had been in, but I was still in my area
 453 looking for the bicycle. Uh, a short time later I heard (HALO) say that
 454 they had video of a subject they described as a black male wearing
 455 blue shorts with white stripes who had fired a pistol I believe they said
 456 into the air. I continued to check the area - again I wasn't sure exactly
 457 where it had happened or what was going on. I was still looking for
 458 Officer (Collins') bicycle. I rode from the parking lot between San Jac
 459 and Trinity south on Trinity, um, it's when I saw a black male subject
 460 running northbound, um, toward Trinity from East Sixth Street and I
 461 saw officers chasing him. I realized they were coming straight for me
 462 and I believed that I could use my bicycle to stop him and we'd be able
 463 to take him into custody. So as he approached where I was, I pushed
 464 my bicycle straight out in front of me, directly in front of his path.

Cpl. Johnson, then pursuing Mr. Nobles, saw Sgt. Egal orchestrate the bicycle collision:

619 Um, ah, at
 620 that time I'm not sure, ah, I guess Sergeant Egal's, ah, Avenue of how
 621 to - how he got to where he was, I don't - I don't know if he took the
 622 alley or if he came from the top of Seventh and Trinity. But I saw him,
 623 ah, basically come down, um, and, you know, get off his bicycle pretty
 624 quick.

Sgt. Egal reported that the collision caused Mr. Nobles to fall “down to the ground.”²⁶ Not all of the pursuing APD officers reported having seen the collision;²⁷ however, Officers Allegretti and Tamez did report witnessing the bicycle collision, and we believe its occurrence is firmly established.²⁸ Officers Allegretti and Tamez each corroborate Sgt. Egal's report that the collision caused Mr. Nobles to fall or at least stumble to the ground.²⁹ The officers reported that they saw Mr. Nobles continue to run northbound on Trinity Street following the collision.

way for me to stop the foot pursuit without me getting hurt.” See Statement of Sgt. Egal (APD #3936).

²⁶ See Statement of Sgt. Egal (APD #3936).

²⁷ Officers Pena and Dale did not report witnessing the bicycle collision.

²⁸ APD Officer Tamez reported that he “observed [Sgt. Egal] on a patrol bicycle collide into or trip the suspect with the bicycle “and that “[t]he suspect fell down but quickly got back up and attempted to continue running northbound on Trinity.” See Statement of Officer Tamez (APD# 7451). Similarly, Officer Allegretti reported that he saw Sgt. Egal approach “with his bicycle and roll*** it in front of the suspect in an attempt to trip him up. The suspect tripped and began to stumble while continuing northbound on Trinity ST, still in the 600 BLK of Trinity ST.” See Statement of Officer Allegretti (APD# 7756). Compare Cpl. Johnson's report that saw Sgt. Egal “getting off of his bicycle quickly” but did not believe that Mr. Nobles ever collided with the bicycle. See Statement of Cpl. Johnson (APD# 6775). Cpl. Johnson also reported that he did not see Mr. Nobles fall.

²⁹ Officer Tamez reported that he saw Mr. Nobles trip and begin to stumble while continuing to run.

Sgt. Egal reported that he associated the “clatter” he heard with the gun he saw on the ground:

- 724 Q1: Okay. Makes, uh, that makes perfect sense. Um, when was the first
725 time that you actually saw the gun, the suspect’s gun?
726
- 727 A: The first time I perceived seeing the suspect’s gun was after he hit my
728 bicycle and fell down to the ground.
729
- 730 Q1: Okay. Um, did you ever hear a shot fired?
731
- 732 A: No.
733
- 734 Q1: Prior.
735
- 736 A: I never - I never registered a shot being fired. Um, when the gun hit the
737 ground I remember - again the best I can recollect is a clattering kind
738 of sound.
739
- 740 Q1: Okay.
741
- 742 A: That was - it was just odd. It - it seemed to register in my brain. I mean,
743 he hit the bicycle. He crashed to the ground. That made noise, but it
744 was a different sound and I remember when that sound like a clatter
745 sound went off, I looked down and saw the gun.
746
- 747 Q1: Knowing what you know now, what do you believe that clattering
748 sound to be? And it’s - in your perception it’s - what do you think that
749 was?
750
- 751 A: I don’t - I think it was the gun hitting the ground.

However, Sgt. Egal reported that he never saw Mr. Nobles fire the weapon, but noticed it only after the “clatter” which followed the collision.³⁰ According to Sgt. Egal, he then saw Mr. Nobles get up and “either continuing to run or simply moving away.”³¹ At this time, Sgt. Egal believed that he observed Mr. Nobles holding “a gun in his right hand,” as he continued to run from the pursuing officers.³²

As noted earlier, Cpl. Johnson, one of the officers initially pursuing Mr. Nobles, reported that he had witnessed Mr. Nobles holding a pistol when he initially began chasing him. Cpl. Johnson reported that he initially intended to deploy his Taser to stop Mr. Nobles but that while he “was

³⁰ See Statement of Sgt. Egal (APD # 3936). Sgt. Egal also reported that he did not hear either his own or Corporal Johnson’s shots when they discharged their weapons striking Mr. Nobles.

³¹ See Statement of Cpl. Johnson (APD # 6775).

³² During the course of the post-shooting investigation, individuals who were with Mr. Nobles at the time of the initial disturbance on E. 6th Street during and at the time he was shot told investigators that Mr. Nobles was not in possession of a handgun on the evening he was shot. To those unfamiliar with the investigative facts, complicating the issue was a disinterested civilian witness report that he did not see a weapon in Mr. Nobles’s hand at the time he was shot. However, the credible investigative facts convince me beyond all reasonable disagreement that the handgun recovered from the location at which Mr. Nobles fell after being shot was in his immediate possession at the time of the shooting, that it discharged at the time of Mr. Nobles’s collision with Sgt. Egal’s bicycle, *see* § 1 below, at p. 14, and that Mr. Nobles had discharged it during the initial disturbance on 6th street.

working on defeating the safety latch,” as previously noted, he saw Mr. Nobles “display” a firearm while continuing to run from pursuing officers.³³

Of the remaining four officers still pursuing Mr. Nobles, Officers Tamez and Pena³⁴ each reported having seen Mr. Nobles armed with a handgun during the pursuit. Of the other remaining pursuing officers, Officers Dale and Allegretti reported that they did not see a weapon during the pursuit but heard the sound of shot being fired from Mr. Nobles’s location.³⁵

In sum, each of the pursuing officers report either having seen Mr. Nobles with a handgun during the pursuit, or heard the discharge of a weapon prior to hearing any APD officers discharge their weapons. I believe that the officers’ reports of Mr. Nobles’s possession of a handgun at the time of his flight and immediately preceding his shooting death to be credibly established by the evidence developed during the course of the investigation. Specifically, the recovery of a handgun from Mr. Nobles, forensic tool mark analyses conclusively indicating that both of the two recovered fired shell casings were fired from the recovered handgun,³⁶ along with civilian and law enforcement surveillance footage clearly showing that Mr. Nobles was responsible for discharging the firearm in the initial disturbance, establish beyond all reasonable dispute Mr. Nobles’s possession of a handgun. These forensic findings corroborate the officers’ reports that Mr. Nobles was in possession of a handgun and that it discharged during their pursuit of him, and specifically, following the bicycle collision.

3. APD Sgt. Egal and Cpl. Johnson discharge their weapons striking Mr. Nobles

As previously noted, I believe the credible investigative facts establish beyond any reasonable dispute that Mr. Nobles’s handgun discharged immediately following, likely simultaneously with, his collision with Sgt. Egal’s bicycle. Sgt. Egal reported the moments following the collision and returned to his recognition of Mr. Nobles as the suspect in the earlier shots-fired disturbance call:

³³ As Cpl. Johnson “was working on defeating the – the safety latch, the button [on the Taser] when I see him basically run and he displays a handgun.” *See* Statement of Cpl. Johnson (APD #6775).

³⁴ Officer Tamez reported that he after the bicycle collision, he saw Mr. Nobles “quickly” get up and attempt to continue running from pursuing officers, and that at that time, he “observed [Mr. Nobles] with a handgun” but did not remember which hand he had seen the gun in. *See* Statement APD Tamez (APD # 7451). Officer Pena reported that “[a]s the foot pursuit unfolds, I observed the black male had a handgun in his right hand, I believe.” *See* Statement APD Pena (APD # 6145). Officer Dale reported that he did not see a weapon until Mr. Nobles fell after being shot: “When the suspect fell, I saw the gun come out. I don’t know which hand it fell out of.” *See* Statement of Officer Dale (APD # 6638).

³⁵ Officer Allegretti reported that he “never saw the suspect holding or aiming the gun” but that he “[knew] he heard a gunshot come from his direction...” *See* Statement of Officer Allegretti (APD # 7756). Officer Dale reported that he heard a shot but did not “know where it came from.” *See* Statement of APD Officer Dale (APD # 6638).

³⁶ *See* §§ II and III, below at pp. 23, 28.

479 A: Um, he had the gun in his hand. He was still kind of moving away from
480 us. I was processing all of this information and that's when I finally - I
481 believe I put it altogether from the time - when he hit the ground and I
482 saw the gun, I realized he was wearing blue shorts with a white stripe
483 and he was probably the guy from the earlier call and that's why they
484 were chasing him. I didn't know at the time why they were chasing him.
485 Um, but when I put that altogether and I saw him moving with the gun,
486 um, I could see he was moving northbound on Trinity away from us. I
487 could see there were people up the street near the southeast corner
488 where there's some food trailers. Usually people go there after bar
489 closing. A lot of people congregate in that area. Um, at - at that point in
490 time, when I put it altogether I realized that I knew from my training and
491 experience as a police officer that he could shoot me or anyone around
492 me or any of those people before we could react to him. I know that
493 action is faster than reaction. I knew that he was most likely the person
494 that had involved in the earlier shots fired call.

Sgt. Egal reported that he observed Mr. Nobles holding the pistol in his right hand as he ran from the officers.³⁷ Sgt. Egal drew his weapon. As noted earlier, Cpl. Johnson had also noticed that Mr. Nobles, still running, was armed with a handgun. Consequently, Cpl. Johnson likewise drew his pistol. Pursuing Officers Tamez and Pena also reported seeing Mr. Nobles in possession of a handgun as he ran from the pursuing officers,³⁸ although Officer Allegretti reported that he “never saw the suspect holding or aiming the gun.”³⁹

The pursuing officers then described the moments immediately preceding Sgt. Egal's and Cpl. Johnson's decision to fire the weapons at Mr. Nobles. In short, the officers describe an armed Mr. Nobles begin to turn his upper torso towards the pursuing officers as he continued to run. During his post-shooting interview, Sgt. Egal recalled—

³⁷ See Statement of Sgt. Egal (APD # 3936).

³⁸ Officer Tamez recalls seeing Mr. Nobles in possession of a handgun as he ran but did not remember which hand the handgun was in. See Statement of Officer Tamez (APD# 7451). Officer Pena, however, recalled seeing that Mr. Nobles held the gun in his right hand. See Statement of Officer Pena (APD# 6145). Although Officer Allegretti did not report seeing Mr. Nobles in possession of a handgun (“I never saw the suspect holding or aiming the gun”), he added that “I know I heard a gunshot come from his direction and other officers returned fire...” See Statement of Officer Anthony Allegretti (APD# 7756). Officer Allegretti added that “I know they were separate shots because I was between, but slight to the side (east) of the male suspect and other officers...” Officer Dale, who also did not report seeing a weapon, indicated that “[w]hen the suspect fell, I saw the gun come out. I don't know which hand it fell out of. Based on where the gun fell which a by his hands he had to be holding it in one of this hands. The gun fell into front of his hands.” See Statement of Officer Dale (APD # 6638).

³⁹ See Statement of Officer Anthony Allegretti (APD #7756). Officer Allegretti reported that although he did not see Mr. Nobles with a weapon, he “heard a gunshot from his direction” and that there had been “separate [groups of] shots because I was between, but slightly to the side (east) of the male suspect and the other officers, and the sounds of the shots came from different directions.”

499 Um, at that point, I recall him glancing or turning back I
 500 believe it was to his left and I felt that I immediately had to take action
 501 or he was going to seriously injure or kill me or the officers around me.
 502 Um, I remember I - telling myself that I had to draw my weapon. I
 503 hadn't drawn my weapon yet.

1363 A: Okay. He turned his head more first and then as - as I saw the head
 1364 begin to turn, um, it was before then. I mean, it - as I saw the
 1365 movement of him beginning to turn, when I perceived right there, that's
 1366 when I started drawing my weapon and focusing on my front site tip
 1367 and firing rounds. Um, I - we were both moving. We were both in
 1368 motion.
 1369
 1370 Q: Okay.
 1371
 1372 A: And as I - again like I said, as - once I perceived that lethal threat and
 1373 was in fear for my life I just was trying to get my gun out as fast as I
 1374 could and put that site on him.
 1375
 1376 Q1: So he turns his head and looks back?
 1377
 1378 A: Yes, sir.
 1379
 1380 Q1: Before he turns his body, correct?
 1381
 1382 A: Um, as soon as he started - as soon as I perceived the head turn,
 1383 that's when I came out with my weapon and I believe I was still moving
 1384 to what would have been to my right, uh, as he was doing that. Um,
 1385 kind of forward and to my right, but I'm not positive.
 1386
 1387 Q: And why would you move to your right if he is turning back towards you
 1388 like this?
 1389
 1390 A: Um, um, I - initially I was going toward him to take him into custody.
 1391 When I saw the gun was in his hand, um, and I perceived that lethal
 1392 threat and my life was in danger, it was the same time when I
 1393 perceived him start to turn or his head come back...

Cpl. Johnson also recalled Mr. Nobles turning towards the pursuing officers:

625 Ah, so I have my pistol out. I'm trying to track him with it but everything
 626 happened so fast. Ah, I see him kind of quarter towards me

Officers Dale, Tamez, and Pena also observed Mr. Nobles turn towards the pursuing officers: Officer Tamez reported that he observed Mr. Nobles "do a half-turn with his upper body back towards the Officers" while Officer Pena reported that he observed Mr. Nobles "point at us or

attempting to point at us.”⁴⁰ Officers Allegretti, Pena, and Tamez—whether because they saw the handgun and heard the gunshot, or believe they observed Mr. Nobles shoot at them—each believed Mr. Nobles had shot at them. In either case, Cpl. Johnson and Sgt. Egal—the two officers who used deadly force against Mr. Nobles—observed him armed with a weapon, believed Mr. Nobles was involved in a separate shooting minutes earlier, and observed him turning his upper torso towards the one or more of the pursuing officers while armed with a handgun. Cpl. Johnson reported that he believed that Mr. Nobles had actually fired upon the pursuing officers.⁴¹

Although it is unclear whether Cpl. Johnson or Sgt. Egal first fired their weapon, both officers decided to discharge their weapons at Mr. Nobles at the moment they saw him begin to turn at least his upper torso towards his rear. Sgt. Egal reported:

502 Um, I remember I - telling myself that I had to draw my weapon. I
503 hadn't drawn my weapon yet. I remember telling myself I had to draw
504 my weapon and fire as quickly as I could to stop this lethal threat. Um,
505 so I drew my pistol and I focused on my - my front site and tried to put
506 it on the largest part of his torso and I fired until the threat was no
507 longer a threat. Um, my perception is that I - I tracked him down to the
508 ground. When he was down on the ground, I stopped firing. Um, I
509 covered him with my gun. I saw that the gun that he had been holding
510 was on the ground by his feet. Um, I continued to cover him. Now,
511 there were a lot of officers around me. I directed, uh, officers to go
512 ahead and secure him while I still maintained lethal cover. Um, he was
513 - his -- excuse me for a second.

⁴⁰ See Statement of Officer Tamez (APD #7451).

⁴¹ Although Cpl. Johnson also noticed Mr. Nobles turning towards him as he pursued, Cpl. Johnson reported that Mr. Nobles “[took] at least one shot in [his direction] as he felt “the percussion or concussion” he associated with the firing of a round. Officer Tamez also believed that Mr. Nobles had fired his weapon at pursuing officers stating “I observed the suspect with a handgun. Through my training and experience, I was able to identify this as a handgun. I then observed the muzzle flash and sound of a gunshot from the suspect’s gun. I then realized that the suspect was shooting at us. At this time, I don’t remember which way the suspect turned or which hand the handgun was in. I believe based on the suspect’s movements that he was trying to shoot at Officer’s [sic]. I was about 10-15 feet from the suspect when he shot at Officer’s [sic].” See Statement of Off. Tamez (APD # 7451).

Sgt. Egal subsequently described Mr. Nobles's actions in greater detail:

766
767 Q: Okay. As he was running angled right to left away from you?
768
769 A: Yes.
770
771 Q: Okay. Um, you stated that he started to turn back, was that to the right
772 or to the left, if you recall.
773
774 A: My perception is that it was over his left shoulder and his left shoulder
775 was coming back this direction.
776
777 Q: Okay.
778
779 A: But I also think I was moving kind of across way so if he was moving
780 away from me, he was turning over his left shoulder but I was also
781 moving more toward his right side.

And, later in the same interview, Sgt. Egal further describes Mr. Nobles turning towards the officers:

868 Um, he appeared to turn and look back or begin to turn. I - as
869 soon as I registered that he was turning back toward us is when I felt
870 like I had my life on the line. The officers were in eminent danger and I
871 had to do something right now. So I believe I was still moving and he
872 was moving as I unholstered and fired and I believe he - he ended up
873 on the ground over here. I think up in this area right here.
874
875 Q: Okay.
876
877 A: Um, I stopped, I don't know if it was here or somewhere along here,
878 but as soon as he was down I closed the distance on him and then
879 maintained cover on him and I could definitely see up the - the street to
880 the corner up there where there were a lot of people and then my
881 concern became the people that had been in that area.

906 A: And I, um, again after he made the movement to turn and I was
907 focused on drawing and I was focused on my - my weapon at that
908 point and just covering his torso.

As mentioned previously, Cpl. Johnson believed that Mr. Nobles had intentionally fired upon the pursuing officers; he reported that was when he "returned fire."⁴²

Between the two officers, Sgt. Egal and Cpl. Johnson fired a total of five shots at Mr. Nobles, striking him three times. All of Mr. Nobles's wounds were to his back: one wound to the upper right back, another wound just to the right midline near his lower spine, and a third wound to the right buttock. All of the wounds were penetrating and there were no exit wounds.

⁴² See Statement of Cpl. Johnson (APD # 6775).

Forensic tool mark examination of Sgt. Egal's duty weapon and fired shell casings recovered from the scene indicated that Sgt. Egal fired a total of three (3) shots⁴³ striking Mr. Nobles once. Forensic tool mark examination of Cpl. Johnson's duty weapon and fired shell casings recovered from the scene indicated that Cpl. Johnson fired a total of two shots⁴⁴ striking Mr. Nobles twice. I discuss these findings in greater detail in a separate section of this letter.⁴⁵ Medical examination of Mr. Nobles's wounds indicated all three exhibited a wound path of back to front, left to right, and upward in orientation.

Both officers reported that after firing at him, Mr. Nobles fell to the ground. Both officers approached the location at which Mr. Nobles fell and each observed a handgun on the ground near Mr. Nobles.⁴⁶ Officers secured the weapon and began administering first aid to Mr. Nobles.

Tent Marker 10, visible as the northernmost marker, identified Mr. Nobles's clothing, which were removed during EMS lifesaving procedures performed at the scene following the shooting incident. *See Fig. 15, below.*

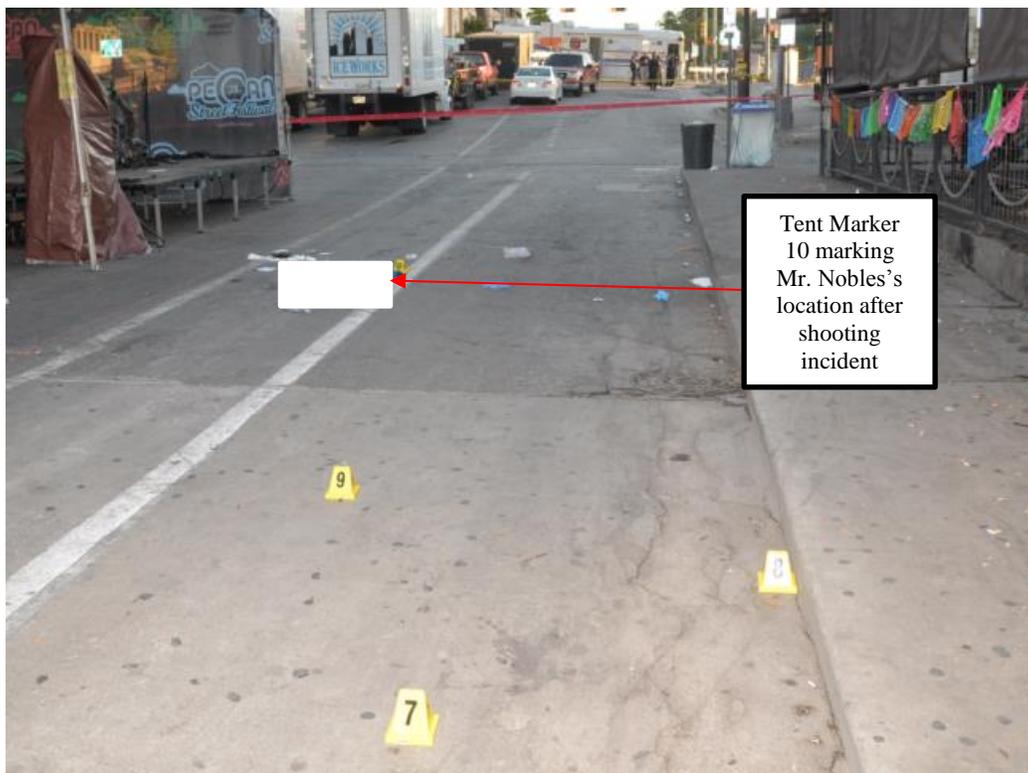


Figure 15—Photograph depicting the approximate location at which Mr. Nobles fell in relation to fired shell casings associated with APD officers' handguns.

⁴³ See APD Laboratory Report, Firearm and Toolmark Section.

⁴⁴ See APD Laboratory Report, Firearm and Toolmark Section.

⁴⁵ See § III, below at p. 28.

⁴⁶ See Statement of Cpl. Johnson (APD # 6775) (reporting that he observed a handgun near Mr. Nobles's feet); see Statement of Sgt. Richard Egal (APD # 3936).

CAD records indicate that Austin-Travis County EMS was contacted at 2:43:17. In all, the entire incident, both the earlier disturbance call and the shooting incident took place within five minutes of the initial shot fired at approximately 2:38:39. The shooting occurred at approximately 2:42:40 when the officers broadcast their report was made that the Mr. Nobles had been shot.

II. APD’s Processing of the Shooting Scene; Recovery of Evidence; Post-shooting SIU Investigation: Civilian Witnesses and Social Media

A. Processing of Shooting Scene and Recovery of Evidence

Pursuant to policy, APD’s Crime Scene Processing Section⁴⁷ and Special Investigations Unit (“SIU”) processed the shooting scene by securing and documenting it, interviewing both law enforcement and civilian witnesses, and collecting evidence. SIU investigators documented, photographed, and recovered a total of seven (7) fired shell casings relevant to this investigation: two were determined to have been fired from the .32 semi-automatic pistol recovered from the location where Mr. Nobles fell after being shot; the remaining five 9 mm shell casings were determined to have been fired from Sgt. Egal and Cpl. Johnson’s weapons.

The first .32 shell fired shell casing was recovered from the scene of the earlier E. 6th Street disturbance which led to the initial shots fired call. It was found on the street in front of the nightclub at which the initial disturbance occurred. *See* Fig. 16, below.



Figure 16—.32 fired cartridge found on 6th Street in front of Mooseknuckle Bar

⁴⁷ The Austin Police Department’s Crime Scene Section (“CSS”) employs Crime Scene Specialists who are dispatched to the any scene involving, among other things, a homicide. The CSS regularly works with SIU investigators in the processing of a shooting scene as in the instant case. The CSS is accredited through the American Society of Crime Laboratory Directors-Laboratory Accreditation Board (“ASCLD-LAB”), a non-profit society of crime laboratory directors which, among other things, publishes laboratory accreditation standards. CSS Crime Scene Specialists identify, document and recover items that may have evidentiary value to the matter being investigated.

A second .32 fired shell casing was recovered around the corner in the 400 block of Trinity Street, near the east curb line and underneath the rear tire of Sgt. Egal's bicycle, where it had landed after the collision. *See Fig. 17, below.*



Figure 17—fired .32 cartridge casing located on Trinity Street

The remaining five 9 mm fired shell casings were also recovered on Trinity Street at the scene of the later shooting incident in which Mr. Nobles was killed. Three of the 9 mm fired shell casings were located just north of the location at which the bicycle collision occurred and where Sgt. Egal's bicycle fell. Each of these three 9 mm fired shell casing were later determined to have been fired from Sgt. Egal's weapon. APD investigators placed identifying cones over the located shell casings as depicted below in Figure 18, below.



Figure 18—of Sgt. Egal's fired casings recovered on northbound Trinity Street as indicated by cones (as viewed northward on Trinity Street towards 7th Street)

Starting from the bottom to the top of the tents depicted in the Figure 10 photograph, the cones correspond to the fired shell casings depicted in evidence tent numbers 8-10. Each of the fired shell casings depicted in Figures 11-13 were determined to have been fired from Sgt. Egal's weapon. *See Figs. 19-21, below.*



Figure 19—9 mm fired shell casing under cone # 1, fired from Sgt. Egal's handgun.



Figure 20—9 mm fired shell casing under cone # 2, fired from Sgt. Egal's handgun.

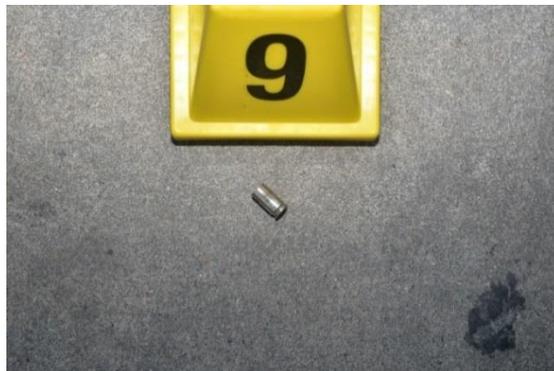


Figure 21—9 mm fired shell casing under cone # 3, fired from Sgt. Egal's handgun.

The remaining two 9 mm fired shell casings, depicted in Figure 14-16, below, marked as evidentiary tent numbers 5 and 6 were later determined to have been fired from Cpl. Johnson's weapon. See Figs. 22-24, below.



Figure 22—Locations of 9 mm fired shell casings, tent numbers 5 and 6, from Cpl. Johnson's weapon.



Figure 23—9 mm fired shell casing at Tent # 5, fired from Cpl. Johnson's weapon.

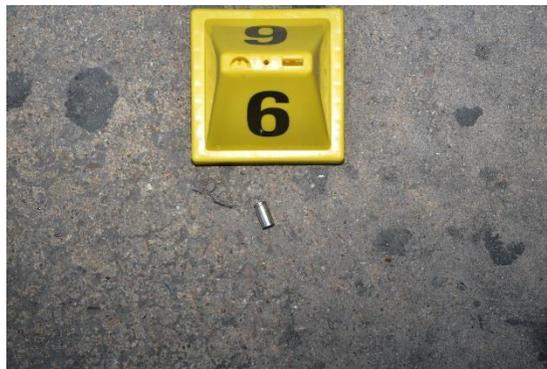


Figure 24—9 mm fired shell casing under Tent # 6, fired from Cpl. Johnson's weapon.

Cpl. Johnson's and Sgt. Egal's recovered fired shell casings were grouped together in the same general areas as indicated below, Fig. 25.⁴⁸

⁴⁸ Austin Police Department's Vehicular Homicide Unit (VHU) documented recovered evidence and took measurements marking relative distance between various items. Using tent markers as reference points, VHU determined the distances between recovered shell casings and Mr. Nobles clothing:

- (3) fired 9mm cartridges from Sgt. Egal's gun –17.75' – 23.50'
- (2) fired 9mm cartridges from Sgt. Egal's gun –30.00' – 39.24'
- (1) fired 32mm cartridges from Mr. Nobles gun – 41.46'

For exact distances, see [Appendix](#) "Key to Items Depicted in Fig. 28.



Figure 25—General areas from which fired shell casings were recovered.

APD investigators seized the 9 mm semi-automatic pistols Sgt. Egal and Cpl. Johnson used in the incident for ballistics and tool mark analysis. APD crime scene processors recovered a small, black .32 semi-automatic handgun that was located immediately next to and recovered from the location at which Mr. Nobles fell.⁴⁹ See Figs. 27 and 28, below. Also recovered with the weapon was a holster, depicted below in Figures 26.



Figure 26—Handgun retrieved near location at which Mr. Nobles fell after being shot.



⁴⁹Swabs were taken from this handgun for DNA analysis. The results obtained show it to be “a mixture of at least two individual with at least one male contributor.” However the results were found to be insufficient for comparison. See Report of Examination to be included in the Press Release Packet.

Figure 27—Magazine retrieved from handgun found near location of where Mr. Nobles fell after being shot.



Figure 28—Holster recovered from location where Mr. Nobles fell after being shot.

Based on measurements taken by APD's crime scene processing unit, I requested APD's Vehicular Homicide Unit to prepare a diagram outlining the relative positions of the shell casings and key evidentiary items that were identified and recovered in the immediate area at which Mr. Nobles was shot. The locations of the items seized are indicated below. In the Appendix, I have attached a key to the below diagram identifying the location of specific items that were recovered. *See Fig. 29, below; see also Appendix Item "A"—Key to Items Depicted in Fig. 29.*



Figure 29—Evidentiary items recovered from shooting scene. Key to diagram is included in the Appendix.

The .32 recovered from Mr. Nobles was taken into custody and maintained for ballistics and tool mark analyses, discussed in section III, below.

B. Post-Shooting Investigation: Civilian Witness Video Footage, Nature of Initial Disturbance and Identity of Person Involved

In addition to the processing of the shooting scene and interviewing officers, SIU investigators identified and interviewed civilian witnesses to both the initial disturbance and the officer-involved shooting incident. Reviewing and evaluating the interviews with civilian witnesses was an important factor in reaching my conclusions.

As shown in the HALO video footage, there were numerous civilians in the immediate area at which the initial disturbance took place, many of whom had gathered around the two groups in anticipation of a fight. Some of these individuals captured various portions of the incident on cell phone cameras. During the post-shooting investigation, SIU obtained video stills and recordings either directly from witnesses or by conducting internet searches. The videos provide critical details of the initial disturbance, corroborating that it involved a shooting incident and that Mr. Nobles did the shooting. The publicly voiced concern whether Mr. Nobles was, in fact, the person involved in the initial disturbance warrants my discussing of information developed by APD after the incident.⁵⁰

⁵⁰ Also underlying my decision to discuss the footage obtained from civilian witnesses even though unknown to officers at the time of their encounter with Mr. Nobles, is the impression that Mr. Nobles was unarmed at the time of

One of the cell phone videos obtained during the investigation depicts a group of young men arguing with another group of men in the street. During the argument, a “pop” can be heard immediately prior to the crowd’s dispersal; there is no footage of the person raising his arm in the air at the time the “pop” is heard. Subsequently, the footage captures a young black male wearing blue shorts, with a white stripe running down their sides, moving forward towards the other group with his hands at his waist. This footage is consistent with the HALO footage depicting the same individual emerge from his group and move forward to the opposing group who then appear to be moving westward away from the area of the initial disturbance.⁵¹

Of particular importance are still photographs taken from a cell phone video recording that captures the clearest depictions of the persons involved in the initial disturbance. The three stills show the two groups of men opposing one another and a person identifiable as Mr. Nobles with his right hand at his waist. Notably, one of the stills clearly depicts the individual’s shirt to be tucked behind an object that is itself tucked into the waist of his shorts. *See Figs. 30 and 31, below.*⁵²

his shooting; one piece of cell phone footage depicting Mr. Nobles lying on the ground after he has been shot captures a person shouting in the background that Mr. Nobles “did not have no [sic] gun.” The suggestion of an officer involved shooting of an unarmed individual is of such a rightful significance to any member of our community that it deserves my attention and, where credible investigative evidence contradicts such an assertion, that suggestion should be dispelled. Another consideration is the suggestion that Mr. Nobles was not the person involved in the earlier disturbance and responsible for the firing of the handgun. This, too, is of paramount significance and should be resolved if it can be credibly done.

⁵¹ The cell phone footage also depicts the individual re-approach the group in a deliberate fashion, with both of his hands in his pockets, his right hand not completely in the pocket and appearing to have an object in it. The man is the only individual depicted in the group with his hands at his waist or in his pockets. The footage indicates that the civilian recording the incident then specifically trained his cell phone on the young man with the blue shorts, and white shirt; the Michael Jordan logo is clearly visible, with his hands still tucked in his waist or pockets.

⁵² We have obscured the faces of the other men depicted in the photographs for purposes of privacy.

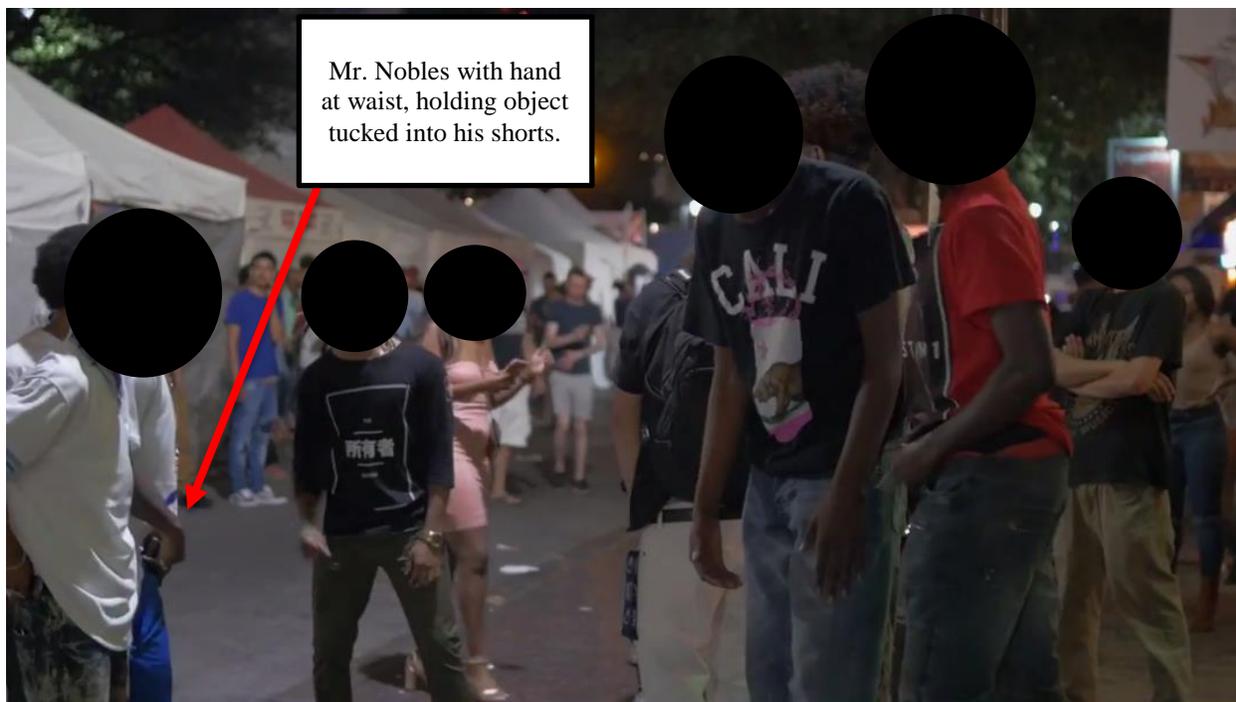


Figure 30—Still from civilian cell phone video footage depicting Mr. Nobles and group opposing another group of young men at the time of the initial disturbance.

More revealing is another still depicting the individual reasonably identified as Mr. Nobles immediately following what is reasonably believed to be the initial shot fired. In the still, the individual can be clearly identified as Mr. Nobles holding an object tucked in his waistband during an apparent confrontation between the two groups:



Figure 31—Still taken from civilian cell phone video footage depicting Mr. Nobles at the time of the initial disturbance.

Another cell phone video provides the clearest depiction of the individual identified as Mr. Nobles approaching the group of men with whom he and his group are arguing; in it Mr. Nobles is seen approaching the group with his right hand unmistakably holding an object tucked into his waist. See Fig. 32, below.

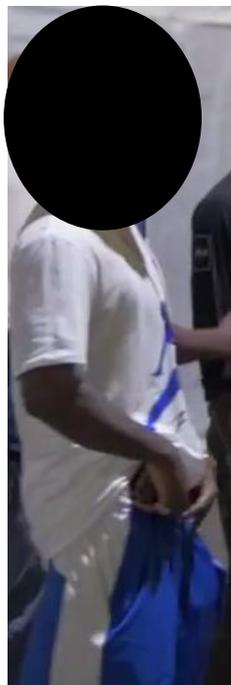


Figure 32—Still from civilian cell phone footage.

A final cell phone video captures what appears to be the approximate moment before the weapon is discharged:



Figure 33—Still photo of Mr. Nobles with his right arm raised at time of initial shooting disturbance on E. 6th Street.

Civilians who observed the initial disturbance also described the person depicted in the HALO POD 114 video footage. One of these, an employee of the Moose Knuckle Pub, described the incident and the responsible person as “an African American male with short hair, white T shirt and blue shorts” who held his “left hand up with a small black pistol and fire a single shot.” This

witness confirmed that the “people scattered” following the shot as can be seen in the video footage.⁵³ The civilian confirmed that the object in the person’s hand was in fact a gun.⁵⁴

III. FORENSIC TOOL MARK IDENTIFICATION AND BALLISTICS ANALYSES ON FIRED SHELL CASINGS AND WEAPONS

In addition to the weapon recovered near the location at which Mr. Nobles fell, SIU investigators also took custody of both Sgt. Egal and Cpl. Johnson’s 9 mm pistols for ballistics and tool mark processing and examination. APD’s Forensic Science Services Division performed firearms, ballistics⁵⁵ and tool mark examination of the three weapons for operability, identification of the source of the fired casings, and trajectory. I summarize these results.

A. Handguns

1. .32 Semi-automatic handgun recovered near Mr. Nobles

Examination determined that the .32 semi-automatic pistol recovered near the location at which Mr. Nobles fell (Fig. 16, *above*) was operational and capable of discharging live rounds of ammunition. Comparing known class characteristics of .32 shell casings fired from the .32 pistol, analysts determined that the fired .32 shell casing recovered on 6th Street associated with the initial disturbance (Fig. 10, *above*) was fired from the recovered .32 pistol. Analysts determined that the fired .32 shell casing found underneath Sgt. Egal’s rear bicycle tire (Fig. 11, *above*) was also fired from the .32 pistol recovered from Mr. Nobles.

2. Sgt. Egal’s 9 mm handgun/duty weapon

Sgt. Egal’s 9 mm pistol was test fired and determined operational and capable of discharging live rounds of ammunition. Firearms examiners test fired the 9 mm pistol and identified discernible class characteristics on known fired shells and after comparing them with the shell casings recovered at the scene, determined that the three fired 9 mm shell casings recovered from near Trinity Street’s eastern curb line (Figs. 9-12, *above*) were all fired from Sgt. Egal’s 9 mm handgun.

⁵³ See Statement of Civilian # 1.

⁵⁴ “I then observed an African American male with short hair, white T shirt and blue shorts old his left hand up with a small black pistol and fire a single shot. See Statement of Civilian # 1.

⁵⁵ Analysts identified three (3) apparent bullet defects on a cargo trailer parked on Trinity Street adjacent to the location at which Mr. Nobles was shot. It was determined that two of these deformities related to the entry and exit of a single projectile which “originated form the south and travel[ed] north;” a trajectory laser indicated that the projectile likely originated in an area “just north of 6th street on Trinity, west of the Police Bicycle that was laying on the east side walk.” The second deformity to the cargo trailer was determined to be a ricochet and also bore a path of south to northward travel. A “trajectory laser at this defect indicated originating around an area just north of 6th street on Trinity, west of the Police Bicycle that was laying on the side walk.” No projectiles were located with respect to either of the cargo deformities. Further analysis indicated that it was not possible to determine whether either defect was caused by .32 caliber or 9 mm projectiles.

3. Cpl. Johnson's 9 mm handgun/duty weapon

Cpl. Johnson's 9 mm pistol was also test fired and determined operational and capable of discharging live rounds of ammunition. Firearms examiners test fired the 9 mm pistol and identified discernible class characteristics on known fired shells and after comparing them with the shell casings recovered at the scene, determined that the three fired 9 mm shell casings recovered from near Trinity Street's eastern curb line (Figs. 13-16, *above*) were all fired from Sgt. Egal's 9 mm handgun.

Both Sgt. Egal and Cpl. Johnson's pistols were outfitted with 17-round magazines. Post-shooting analysis indicated that Sgt. Egal's pistol contained thirteen live rounds: a single live round in the pistol's chamber and 12 live rounds were contained in the magazine. A post-shooting analysis of Cpl. Johnson's pistol indicated that it contained a total of sixteen (16) live rounds: a single round in the pistol's chamber and fifteen (15) live rounds in the magazine.

All of the fired shell casings recovered at the scene were accounted for. Of the five rounds fired at Mr. Nobles, three were recovered from Mr. Nobles's body during the post-mortem examination. It was determined that of the three shots striking Mr. Nobles, Sgt. Egal was responsible for striking him once, in the lower buttocks. This bullet was recovered during the post-mortem examination. The remaining 2 bullets striking Mr. Nobles were fired from Cpl. Johnson's weapon: one struck the middle back area and the other struck him in the upper back. Both of these bullets were recovered during the post-mortem examination. The remaining shots fired but not striking Mr. Nobles were not recovered.⁵⁶

IV. LEGAL ANALYSIS

On the investigative facts presented, I must determine whether Sgt. Egal and Cpl. Johnson's use of deadly force leading to Mr. Nobles's death is justified as a legitimate use of deadly force (1) in self-defense, (2) defense of a third person, or (3) to effectuate an arrest. Because both Sgt. Egal and Cpl. Johnson fired shots striking Mr. Nobles, each officer's use of deadly force must be analyzed separately and justified independent of the other's use of deadly force.

A. The Law Governing the Use of Deadly Force

1. Use of Force in Defense of Self and Others

Texas Penal Code §§ 9.32 and 9.33 authorize the use of deadly force in defense of one's self and third persons under certain circumstances. These provisions applies to both civilians and law enforcement officers alike. However, in order to use deadly force, the actor must first be justified in using non-deadly force which is governed by § 9.31. In part, that section provides that—

a person is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to protect the actor against the other's use or attempted use of unlawful force.

⁵⁶ Crime scene processors recovered two lead bullet fragments near the location at which Sgt. Egal's bicycle after the collision. However, analysis indicated that both were unsuitable for comparison purposes.

“Reasonable belief” is defined as a belief that would lead an ordinary and prudent man in the same circumstances as the actor to conclude that the use of force is immediately necessary.⁵⁷ If the facts and circumstances warranted the use of non-deadly force under § 9.31, I then proceed to determine whether the use of deadly force is justified under § 9.32. In the present context, this second part of the analysis requires that I assess the investigation facts from the perspective of a reasonable police officer in Sgt. Egal and Cpl. Johnson’s shoes paying “careful attention to the facts and circumstances” as they existed on the scene at the moment they each used deadly force to shoot Mr. Nobles.⁵⁸

2. Use of Deadly Force to Effectuate a Legitimate Law Enforcement Purpose

Texas Penal Code § 9.51 justifies the use of deadly force in order to effectuate a search, arrest, or to prevent an escape under certain circumstances. In pertinent part, subsection (c) provides that—

A peace officer is justified in using deadly force against another when and to the degree the peace officer reasonably believes the deadly force is immediately necessary to make an arrest, or to prevent escape after arrest, if the use of force would have been justified under Subsection (a) [authorizing the use of non-deadly force] and:

- (1) the actor reasonably believes the conduct for which arrest is authorized included the use or attempted use of deadly force; or
- (2) the actor reasonably believes there is a substantial risk that the person to be arrested will cause death or serious bodily injury to the actor or another if the arrest is delayed.

The “reasonable belief” standards that govern the use of deadly force in self-defense or defense of others are also applicable to § 9.51’s provisions.

3. Immediate Need to Use of Deadly Force: “Apparent Danger” Standard

The touchstone for the use of force in self-defense in any situation is whether the actor reasonably believed that its use was “immediately necessary” to protect himself or herself from another’s use or attempted use of unlawful force.⁵⁹ The inquiry expressly contemplates the actual use or attempt to use force. However, because the standard is grounded in the reasonableness of the actor’s *belief*, the law contemplates a third variant and under some circumstances permits the use of deadly force when there exists a reasonable *apprehension* of the use or threatened use of force, even if in hindsight the circumstances indicate that there was no actual or attempted use of force against the actor. Under the third standard, there need not be an actual attack or threat but, rather, only the

⁵⁷ TEX. PEN. CODE § 1.07 (42). This standard is consistent with the Supreme Court’s reasonableness standard which specifies that “the question is whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them” and that these facts and circumstances “must be judged from the perspective of a reasonable officer on the scene...” *Graham v. Connor*, 490 U.S. 386, 396-97; *see also Werner v. State*, 680 S.W.2d 858 (Tex. Crim. App. 1984).

⁵⁸ *Graham v. Connor*, 490 U.S. at 397.

⁵⁹ TEX. PENAL CODE § 9.31. *Lambert v. State*, 625 S.W.2d 31 (Tex. App.—San Antonio 1981, *no pet.*).

reasonable apprehension of such an attack.⁶⁰ This final variant is known as the doctrine of “apparent danger” doctrine and is applicable on the investigation facts disclosed here.⁶¹ On the investigation facts disclosed here, for reasons I will discuss below, I will evaluate both Sgt. Egal and Cpl. Johnson’s use of deadly force applying the apparent danger standard.

B. Analysis: Sgt. Egal and Cpl. Johnson’s Use of Force and Deadly Force is Justified under Texas Penal Code § 9.31 or § 9.51

Because Sgt. Egal was the first officer to use any force against Mr. Nobles, I will address his use of force first and then Cpl. Johnson’s. I will conclude with a comment on whether legal provisions giving civilians a limited right of self-defense from law enforcement conduct under certain circumstances are applicable on the investigation facts presented.

1. Sgt. Egal’s Use of Deadly and Non-Deadly Force

Sgt. Egal used force against Mr. Nobles twice—one involved the use of non-deadly force (causing the bicycle collision) while the second involved the use of deadly force (shooting with a firearm); each instance must be justified independently on the investigation facts as perceived by Sgt. Egal at the time of each instance of use of force. Each instance of use of force is addressed separately.

a. Non-Deadly Use of Force: The Bicycle Collision

Sgt. Egal’s causing of the collision with Mr. Nobles and his bicycle, prior to his shooting of Mr. Nobles, itself constitutes the use of non-deadly force and must be justified independent of his subsequent shooting of Mr. Nobles. At the point of the collision, Sgt. Egal had not seen Mr. Nobles with a weapon and there is no evidence to indicate that Mr. Nobles at that time was an imminent threat of danger to him. Consequently, Sgt. Egal’s use of force at this time would have to be justified under his authority to use force to effect an arrest under § 9.51 of the Penal Code. That section provides that “a person is justified in using force when and to the degree the actor reasonably believes the use of force is immediately necessary to make or assist in making an arrest...”⁶²

I conclude that Sgt. Egal was legally justified in arresting Mr. Nobles at the time that he caused the bicycle collision: he was aware of the earlier disturbance call involving Mr. Nobles’s having possibly committed the felony offense of Aggravated Assault,⁶³ he was aware that Mr. Nobles might have been armed, he was aware of the description matching Mr. Nobles, he was aware that the shooting incident had occurred only moments prior to him encountering Mr. Nobles, and he saw officers pursuing him. I conclude that Sgt. Egal would have been justified in arresting Mr. Nobles for Evading Arrest or Detention and at least detaining Mr. Nobles for an investigatory detention for the Aggravated Assault forming the basis for the earlier disturbance call.⁶⁴

⁶⁰ See *Burke v. State*, 652 S.W.2d 788 (Tex. Crim. App. 1983).

⁶¹ *Dyson v. State*, 672 S.W.2d 460 (Tex. Crim. App. 1984); *Valentine v. State*, 587 S.W.2d 399 (Tex. Crim. App. 1979).

⁶² TEX. PENAL CODE § 9.51. Section 9.51 also provides for the authority to use force in order to prevent an escape but that provision applicable only if the person has escaped or attempted to escape “after arrest.” Here, Mr. Nobles’s flight from pursuing officers preclude applicability of this provision.

⁶³ TEX. PEN. CODE § 22.02 [Aggravated Assault].

⁶⁴ TEX. PEN. CODE § 38.04. While an officer’s authority to use force to effect an arrest is not predicated on the legality

Because he would have been justified in arresting and detaining Mr. Nobles, I conclude that Sgt. Egal would have been justified also in arresting him for Evading Arrest or Detention. I further conclude that Sgt. Egal was permitted to use reasonable force in order to detain Mr. Nobles and that the use of the bicycle to cause a collision in order to detain Mr. Nobles was a reasonable use of force under § 9.51. For this purpose, I conclude that Sgt. Egal's use of the bicycle to cause the collision was justified as a legitimate use of non-deadly force.

b. Use of Deadly Force: Discharge of Firearm and Shooting of Mr. Nobles

Having concluded that Sgt. Egal was permitted to use non-deadly force to either arrest or detain Mr. Nobles, it is necessary to determine whether the second instance of use of force in which deadly force was used is justified. Texas Penal Code Section 9.32 governs the use of deadly force in Texas and provides that in addition to satisfying the requirement for the use of non-deadly force discussed above, deadly force is justified only—

when and to the degree the actor reasonably believes the deadly force is immediately necessary:

(A) to protect the actor against the other's use or attempted use of unlawful deadly force; or

(B) to prevent the other's imminent commission of aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery.

Having reviewed the entirety of the investigative file, I conclude that on the facts and circumstances then known and perceived by Sgt. Egal at the time he shot Mr. Nobles, he reasonably believed that the use of deadly force was immediately necessary to protect himself or a third person, including his fellow officers or civilians, many of whom were in the immediate area at the time of the shooting.

At the time he discharged his firearm, the investigation facts indicate that Sgt. Egal was aware of the following facts and circumstances: that the person later identified as Mr. Nobles fit the description of the individual suspected of having fired shots in a disturbance reported moments earlier and was possibly armed; that officers were attempting to detain or arrest Mr. Nobles who was then fleeing; that upon causing the bicycle collision with Mr. Nobles, Sgt. Egal heard what he

of the arrest, whether an officer has authority to conduct a full-blown custodial arrest or a simple investigatory detention determines the means available to the officer to conduct the arrest or detention. *See* TEX. PENAL CODE § 9.51. Here, I have concluded that a full custodial arrest was warranted on the investigation facts. However, I also conclude that Sgt. Egal would have had authority to detain Mr. Nobles for an investigatory detention on the facts of which he was aware at the time he caused the bicycle collision. Unlike an arrest, a non-arrest investigatory detention need only be supported by reasonable suspicion. *Terry v. Ohio*, 392 U.S. 1 (1968). On the investigation facts here, Mr. Nobles was subject to arrest for Evading Arrest or Detention: his flight alone is indicative of his awareness that he was being pursued by law enforcement officers; the statements of Officer Allegretti, whose confrontation with Mr. Nobles caused the initial pursuit, and other officers confirm this. Similarly, the video recording from POD 114 also corroborates Mr. Nobles's awareness of pursuing officers. On these facts, the officers would have been justified in using force to arrest Mr. Nobles. However, the degree of force used to effect an arrest, if excessive and under certain circumstances, may give rise to one's authority to resist an arrest. TEX. PENAL CODE § 9.31 (c). I conclude that on the investigative facts presented here, whether Mr. Nobles had the authority to use force to defend himself from either Sgt. Egal or Cpl. Johnson's use of force is an issue that must be resolved. I address this below in section "3."

described as a “clatter,” the sound of which he nearly immediately associated with a small, black handgun he saw lying on the ground near the bicycle; that he saw Mr. Nobles pick up the gun and continue running away from the officers holding the gun in his right hand. Sgt. Egal described his perception of the facts and circumstances up this point:

484 I didn't know at the time why they were chasing him.
485 Um, but when I put that altogether and I saw him moving with the gun,
486 um, I could see he was moving northbound on Trinity away from us. I
487 could see there were people up the street near the southeast corner
488 where there's some food trailers. Usually people go there after bar
489 closing. A lot of people congregate in that area. Um, at - at that point in
490 time, when I put it altogether I realized that I knew from my training and
491 experience as a police officer that he could shoot me or anyone around
492 me or any of those people before we could react to him. I know that
493 action is faster than reaction. I knew that he was most likely the person
494 that had involved in the earlier shots fired call.

Sgt. Egal describes his awareness that there were other officers who were still behind Mr. Nobles in fresh pursuit of him. A critical factor, however, relates to Sgt. Egal's description of what he saw Mr. Nobles do as he continued to run from pursuing officers:

499 I recall him glancing or turning back I
500 believe it was to his left and I felt that I immediately had to take action
501 or he was going to seriously injure or kill me or the officers around me.

Although Sgt. Egal did not recall hearing the gunshot from Mr. Nobles's handgun, Mr. Nobles's actions and the circumstances as they existed support Sgt. Egal's reasonable apprehension of an apparent danger. Specifically, the facts and circumstances establish that Sgt. Egal formed the reasonable belief that Mr. Nobles's threatened the use of deadly force creating an immediate need for his own use of deadly force to defend himself and others, both civilians and other law enforcement personnel.

Texas law permits Sgt. Egal to use deadly force when such the use of such force is “immediately necessary” to protect himself or others from the reasonable apprehension of a threat posed by Mr. Nobles to himself, other officers, or civilians in the immediate area. Because “immediately necessary” is not defined in any Texas statute, it is to be given its plain and ordinary meaning.⁶⁵ Here, “immediacy” is to be construed as that which is “ready to take place, near at hand, impending, hanging threateningly over one's head, menacingly near.”⁶⁶ The standard is expressly applicable to circumstances like this one in which “a split second decision is required.”⁶⁷ Here, Sgt. Egal believed that Mr. Nobles was a suspect in the commission of a felony involving the use of a firearm, was fleeing officers, and was still armed.⁶⁸ Once he saw Mr. Nobles look over his shoulder, Sgt. Egal believed “from [his] training and experience as a police officer that [Mr. Nobles] could shoot me or anyone around me or any of those people before we could react to him. I know that action is faster than reaction.” On the investigation facts presented here, I conclude

⁶⁵ See *Watson v. State*, 369 S.W.3d 865, 870 (Tex. Crim. App. 2011).

⁶⁶ *Henley v. State*, 493 S.W.3d at 89 quoting *Devine v. State*, 786 S.W.2d 268, 270 (Tex. Crim. App. 1989).

⁶⁷ *Id.*

⁶⁸ A prior threat may be considered as a circumstance in determine the existence of real or apparent danger. See *Fielder v. State*, 756 S.W.2d 309 (Tex. Crim. App. 1988).

that Sgt. Egal's perception of the facts and circumstances then confronting him reasonably warranted his belief that he, his fellow officers, or civilian bystanders faced an apparent danger of the use of deadly force against him and, consequently, that he reasonably believed that there then existed an immediate need to use deadly force in defense of himself and others under Texas Penal Code § 9.32 and § 9.33.

Although I conclude that Sgt. Egal reasonably apprehended a danger necessitating the immediate need to use deadly force against Mr. Nobles, the investigation demonstrates facts that indicate that the shot fired from Mr. Nobles's gun was most likely accidental and caused by the bicycle collision Sgt. Egal engineered; however, the fact that Mr. Nobles may not have deliberately shot at either officer does not change the legal analysis because the law directs that me to focus solely on the facts and circumstances as perceived by a reasonable officer in Sgt. Egal's position at the time he discharged his handgun.⁶⁹ As mentioned earlier, the "reasonable belief" standard contemplates use of deadly force not only to situations involving actual danger but those in which there is a "reasonable apprehension" thereof.⁷⁰

2. Cpl. Johnson's Use of Deadly Force

Cpl. Johnson used force against Mr. Nobles once,⁷¹ and that use of force was deadly. Cpl. Johnson's use of force must similarly be justified under § 9.32, if at all. Cpl. Johnson, like Sgt. Egal, heard the earlier broadcast of the shots fired disturbance call along with the subsequently broadcasted suspect description. Minutes after the suspect description broadcast, Cpl. Johnson and several other officers, including Officer Allegretti, saw Mr. Nobles standing in a small group of young men in the intersection of 6th and Trinity Streets, not far from the location of the earlier shots fired call. As they approached the intersection, Cpl. Johnson saw Officer Allegretti leave the group to contact Mr. Nobles and detain him for further investigation of the disturbance call. At this time, Cpl. Johnson saw Mr. Nobles break away from the group of young men and begin to run northward on Trinity Street towards 7th street. Cpl. Johnson stated that he then saw Sgt. Egal get off of his bicycle very quickly although he did not interpret it to have been an intentional act to cause the collision. However, Cpl. Johnson he did see Mr. Nobles with a handgun in his right hand as he continued to run. Next, Cpl. Johnson describes that he saw Mr. Nobles—

⁶⁹ The perspective of a reasonable officer on the scene and not hindsight is the focus of any inquiry. *See Graham v. Connor*, 490 U.S. at 396. The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Id.*

⁷⁰ *Broussard v. State*, 809 SW.2d 506, 559 (Tex. App.—Dallas 1991, *pet. ref'd.*)(a person "has a right to defend from apparent danger to the same extent as he would had the danger been real; provided he acted upon a reasonable apprehension of danger as it appeared to him at the time.").

⁷¹ Because Mr. Nobles fled and did not submit to officers' show of authority when they initially approached him to detain him, Mr. Nobles was not in custody and his pursuit did not constitute a seizure or an attempted use of force to effect a seizure. *See California v. Hodari D.*, 499 U.S. 621 (1991); *Johnson v. State*, 912 S.W.2d 227 (Tex. Crim. App. 1995) (a 4th amendment seizure occurs only when an officer restrains a citizen by either physical force or by a show authority to which the citizen submits)."

624 Ah, honestly I was really focused on the guy, um, and the pistol.
625 Ah, so I have my pistol out. I'm trying to track him with it but everything
626 happened so fast. Ah, I see him kind of quarter towards me and he
627 takes at least one shot in my direction. I saw the muzzle flash. Um, I
628 thought I felt, you know, like a concussion - or the percussion or
629 concussion, like a, you know, like a slap almost when the round went
630 off. Um, about that time is, ah, when I returned fire.

Other officers pursuing Mr. Nobles also see the weapon either in his right hand as he is running or fall from his hand after he is shot.⁷² Office Pena states that he saw Mr. Nobles's "right arm . . . behind him with the gun pointing at us or attempting to point at us. When that happens I hear one gunshot go off. In my mind there is no doubt that this male just shot at us."⁷³

Cpl. Johnson's report is contradicted by credible investigative facts: Sgt. Egal did not see Mr. Nobles fire a weapon although he "track[ed]" Mr. Nobles as he fled. Although other officers at the scene report that they heard the initial shot, none report seeing Mr. Nobles shoot at pursuing officers.⁷⁴ Bystander civilian witnesses also fail to corroborate Cpl. Johnson's report that he saw Mr. Nobles turn and shoot at pursuing officers. A civilian stated that he witnessed Sgt. Egal cause the bicycle collision in an attempt to "trip" him. The civilian reported that "[a]s the suspect fell [he] heard a single shot go off. [And then] [t]he suspect jumped back up and started running." According to the witness, it was only then that the civilian witnessed both Sgt. Egal and Cpl. Johnson begin shooting at Mr. Nobles. What is clear is that there was one shot fired from the .32 recovered from the gun that Mr. Nobles possessed.⁷⁵ The question presented is whether Cpl. Johnson's belief that Mr. Nobles's had shot at him was reasonable, *i.e.*, that he reasonably apprehended that Mr. Nobles had shot at him thereby justifying his use of deadly force.

I conclude that Cpl. Johnson reasonably believed that Mr. Nobles had fired at least one shot towards pursuing police officers and that he formed a reasonable apprehension of danger requiring the immediate use of deadly force. The investigation facts indisputably establish that at least one round was fired from Mr. Nobles's handgun; that this single shot occurred nearly simultaneous with the bicycle collision; that within seconds of the bicycle collision, several onlookers, including Sgt. Egal and Cpl. Johnson, saw Mr. Nobles pick the handgun up from the ground, continue running northbound, and at least begin to turn his head over his left shoulder moments before both Cpl. Johnson and Sgt. Egal discharged their firearms.

In reaching this conclusion, the law requires that I remain observant that these events unfold in seconds, that critical decisions are made in split seconds, and that my assessment should not be made with the benefit of hindsight.⁷⁶ Here, even though mistaken, Cpl. Johnson's apprehension of an actual danger was reasonable on the facts.

⁷² Officer Dale (APD # 6638) states that he saw the gun fall from Mr. Nobles's hands after he been shot and to the front of him. Officer Pena #6145 sees Mr. Nobles with a handgun in his right hand.

⁷³ See Statement of Officer Pena (APD # 6145).

⁷⁴ APD Officer Dale (APD #6638) states that "All of a sudden I hear a 'pow'. I don't know who it came from, where it came from. And then before you know it officers are firing at him. I don't know who it was firing at him but I saw that he got hit in the back several times."

⁷⁵ Officer Dale (APD # 6638) states that he saw the gun fall from Mr. Nobles's hands after he been shot and to the front of him. Similarly, Officer Pena (APD #6145) saw Mr. Nobles with a handgun in his right hand.

⁷⁶ *Graham v. Connor*, 490 U.S. at 396-97 ("The calculus of reasonableness must embody allowance for the fact that

B. Analysis: Mr. Noble's Use of Force to Resist Unlawful Use of Excessive Force

There may remain a question of whether Mr. Nobles was authorized to use force to defend himself from the use of greater force than necessary to arrest. Although he was fleeing officers at the time of the collision, he had not offered resistance to the officers. Under these circumstances, Texas Penal Code § 9.32 (c)'s could arguably be implicated. However, on the investigative facts presented, I conclude that Mr. Nobles was not authorized to use force or deadly force in response to Sgt. Egal's having caused the bicycle collision.

Texas Penal Code § 9.32 (c) provides that:

(c) The use of force to resist an arrest or search is justified:

- (1) if, before the actor offers any resistance, the peace officer (or person acting at his direction) uses or attempts to use greater force than necessary to make the arrest or search; and
- (2) when and to the degree the actor reasonably believes the force is immediately necessary to protect himself against the peace officer's (or other person's) use or attempted use of greater force than necessary.

The investigative facts establish that Officer Allegretti first approached Mr. Nobles and attempted to detain him for investigative purposes because he fit the description of the suspect in the earlier shots fired disturbance call. I have concluded that Officer Allegretti was justified in detaining Mr. Nobles for this purpose. The facts establish that Mr. Nobles fled and was therefore not taken into custody; any force used against Mr. Nobles did not amount to a "seizure." However, the bicycle collision caused by Sgt. Egal arguably constituted a seizure. A comprehensive legal analysis must consider whether, pursuant to section 9.32(c), Mr. Noble had a right to use deadly force because Sgt. Egal used greater force than necessary to effect Mr. Nobles's arrest by causing the bicycle collision. As stated earlier, I conclude that Sgt. Egal was warranted in using non-deadly force to arrest the fleeing Mr. Nobles; I also conclude that this was not exercise of a greater force than necessary to arrest Mr. Nobles. I also conclude that Mr. Nobles could not have formed the reasonable belief that the use of force was immediately necessary to protect himself against Sgt. Egal's use of greater force than necessary. Consequently, I conclude that any use of deadly force by Mr. Nobles in response to the bicycle collision would not have been justified. Although I have concluded that Mr. Nobles's weapon likely was an accidental discharge, I conclude that Section 9.32(c) would not permit Mr. Nobles to have discharged his weapon in self-defense had it been intentional.

V. CONCLUSION

The question before me is a narrow one confined to the legal question of whether there is sufficient evidence to warrant a belief that a jury could find, beyond a reasonable doubt that both Cpl. Johnson and Sgt. Egal acted without lawful authority and were therefore not justified in shooting Mr. Nobles. The justifications for use of deadly force are found in §§ 9.31, 9.32 (deadly force to protect self and others) and § 9.51 of the Texas Penal Code; these justifications are "affirmative

police officers are often forced to make split-second judgments - in circumstances that are tense, uncertain, and rapidly evolving - about the amount of force that is necessary in a particular situation.")

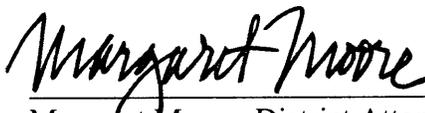
defenses.” An affirmative defense requires the State to prove beyond a reasonable doubt that Cpl. Johnson or Sgt. Egal’s conduct did *not* fall within one of these provisions, or, put another way, was *not* justified. Thus, if raised by the evidence, at trial the District Attorney’s Office would have to establish beyond a reasonable doubt that neither Cpl. Johnson nor Sgt. Egal had a reasonable apprehension that deadly force was immediately necessary.

I conclude that Cpl. Johnson and Sgt. Egal both acted with legal justification at the moment that they fired their weapons at Mr. Nobles given the circumstances that they then perceived. I conclude that both reasonably believed that the use of deadly force was immediately necessary to protect themselves and/or others, both civilians and police officers then in the immediate area, from an apparent danger posed by Mr. Nobles. Consequently, I am declining to present this case to a grand jury to seek either officer’s prosecution.

Representatives of Mr. Nobles’s family were given access to the entirety of my file for their review of all of the facts disclosed in APD’s and our own investigation very early in this process. I am publishing a copy of this letter on our Office’s Civil Rights Unit website which should be accessible immediately. I have also provided a press release package including key evidentiary items disclosed during the investigation.

I am now formally closing the investigation of this file. My office will maintain any of its own records of the investigation. Please contact me should you have any questions or comments. Thank you.

Respectfully,



Margaret Moore, District Attorney
Office of the Travis County District Attorney

APPENDIX

Key to Items Depicted in Fig. 29

ITEMS	DISTANCE IN FEET FROM ITEM 10
Shoe located on Trinity Street	54.37'
Austin Police Department bicycle located on Trinity Street	42.09'
Fired cartridge located underneath the bicycle	41.46'
Fired cartridge located north of the bicycle	39.24'
Fired cartridge located on east sidewalk of Trinity Street	30.00'
Fired cartridge located on Trinity Street	23.50'
Fired cartridge located on Trinity Street	21.54'
Fired cartridge located on Trinity Street	17.75'