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July 8, 2019

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LETTER DECLINING PROSECUTION AFTER INVESTIGATION

RE: Officer-Involved Shooting on June 7, 2018, by Austin Police Department Officer Thomas Brown (Badge # 8106) causing death to Leslie Yolanda Salazar (DOB 11/07/1997)

Dear Chief Manley:

The Office of the Travis County District Attorney has reviewed the Austin Police Department Special Investigation Unit (“APD SIU”) investigation of the above-referenced matter and concluded our independent review of the officer-involved shooting in which Austin Police Department Officer Thomas Brown fired shots from his pistol that resulted in the death of Leslie Yolanda Salazar. This letter is to inform you of my decision to decline prosecution of criminal charges against Officer Brown. My decision does not limit or address administrative action by the Austin Police Department, or other civil actions, where non-criminal issues may be reviewed and where different rules and lower levels of proof apply.

The District Attorney’s Office (“DA”) has reviewed the investigation of the Austin Police Department (“APD”) into this incident, and a copy of this letter will be posted on the District Attorney’s website.¹

Based upon the evidence available and the applicable Texas law,² I am convinced that a jury following the law would not convict Officer Thomas Brown, because the evidence establishes that the use of force was justified under Texas law. The following sets forth the facts determined

¹ <https://www.traviscountytexas.gov/district-attorney/office-divisions/civil-rights/cru>

² 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 9.32, 9.33 and 9.51 of the Texas Penal Code, the case authority construing those provisions, and the United States Supreme Court case authority governing law enforcement use of force. (*See* applicable Texas Statutes in Appendix.)

during our review, identifies the applicable legal rules, and presents the analysis underlying my opinion.

I. FACTS AND CIRCUMSTANCES LEADING TO AND SURROUNDING MS. SALAZAR'S DEATH

Critical to our analysis is the determination of the facts and circumstances leading to and surrounding a shooting incident. In determining these facts and circumstances, we rely on the entire investigative file compiled by APD's Special Investigations Unit³ (SIU) whose primary responsibility is the independent investigation of all shooting incidents in which an APD officer is involved. In determining the credible facts and circumstances leading to and surrounding the shooting incident resulting in Ms. Salazar's death, we reviewed the entirety of SIU's investigative file to arrive at what we believe is a credible and comprehensive understanding of those facts and circumstances.⁴

Our narration of the facts and circumstances of Ms. Salazar's death is based on our review of supplements and the written and audio statements made by the officer directly involved in this incident—Officer Thomas Brown—as well as other officers and civilians who were witnesses. Our narration of these facts and circumstances is also based on a review of the statements of those witnesses, audio and video recordings, audio- and text-recorded 911 calls, APD radio traffic recordings, evidence recovered and developed at the scene, and forensic analyses conducted on recovered evidentiary items. Below, we set forth the facts and circumstances surrounding Ms. Salazar's death based on our review of the credible evidence and information developed in the SIU investigation, including the results of forensic examination, testing, and analyses.

A. The Initial Emergency 911 Call and Dispatch of Officers

On June 7, 2018, at 2:23:14 a.m. and 2:26:41 a.m., two telephone calls were made to 911 in quick succession. On the first, the caller complained of a suspect named “Leslie” attempting to break into 7328 South Glenn Street in Austin. On the second, the caller, Sidney Joy, said the suspect Leslie was her cousin and was threatening people in the house with a knife.

Officer Elias Robles #7231 (Unit H703) self-assigned to the call, and Officer Thomas Brown #8106 (Unit H707) was assigned as his back-up. Time-stamped, computer-generated records indicate that Officer Robles arrived at 2:30:21 a.m., and Officer Brown arrived about three minutes later.⁵

³ 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>.

⁴ This letter will refer to various items, reports, and information gathered in the SIU investigation, and these items will be released in redacted form in a press release available simultaneously with the public dissemination of this declination letter.

⁵ These records are referred to as “CAD” reports. Emergency 9-1-1 call takers are able to enter information relating to the call in a comment section on a CAD report. This information is referred to as “call texts” and is accessible to officers responding to a call.

Date	Time	User	Type	Conf.	Comments
6/7/2018	02:23:14	AP8703	Response		susp attempting to break in
6/7/2018	02:23:20	AP6277	Response		CCC
6/7/2018	02:23:26	H790	Response		clr
6/7/2018	02:23:36	AP8703	Response		comp stating susp has made entry
6/7/2018	02:23:40	AP7934	Response		Backed up H703 with H707
6/7/2018	02:23:41	AP8703	Response		susp named Leslie
6/7/2018	02:23:44	AP8703	Response		comp hu
6/7/2018	02:23:57	H780	Response		clr
6/7/2018	02:24:01	LT533	Response		Clear
6/7/2018	02:24:07	AP8703	Response		nod noi
6/7/2018	02:26:41	AP8177	Response		Duplicate call appended to incident at 02:26:41
6/7/2018	02:27:05	AP8177	Response		comp adv she knows the susp. . it is her cousin
6/7/2018	02:27:14	AP8177	Response		the susp has a knife and is chasing them down the st
6/7/2018	02:27:32	AP8177	Response		sts they are now hiding because the susp will stab them
6/7/2018	02:27:39	H707	Response		the suspect is chasing the caller???
6/7/2018	02:27:47	AP8177	Response		susp leslie salazar dob 07/02/1999
6/7/2018	02:28:07	AP8177	Response		unkn exact location of the susp. . can hear her chasing them

Figure 1— Screenshot of CAD call showing call duration.

Officer Robles said in a sworn statement: “I self-assigned myself to a ‘proowler hot-shot’ call. The original call came in as a prowler, but further updates indicated it may have involved more of a disturbance with a known person. Further updates said ‘she has a knife and is chasing the complainant around.’”⁶

Officer Brown was getting coffee when he was assigned the call, and at the time he wasn’t sure what the nature of it was. “I was dispatched to something to backup HENRY 703 which is Robles. I went at my car and got in the car and started driving that way. While I was driving that way, I started - I didn’t run code initially because I wasn’t sure what I was going to and I don’t - I don’t - I’m a single officer so I don’t have someone to read the call list to me. So I don’t run a code while I’m trying to read call notes so I - I read the call notes and then maybe thirty seconds into it I - when I finished the call notes I ran code over there. And then arrived to the scene where Officer Robles is already - I think he beat me there by a couple of seconds.”⁷

C. Initial Contact with witnesses

Officer Robles was the first on scene, and he went straight to the subject address, 7328 South Glenn Street, where he saw a knife lying in the driveway in front of the house.⁸ He knocked on the front door of the house, but got no response and was soon redirected to the intersection, but not before he collected the knife as it was possible evidence, and secured it in his vehicle.⁹ There, he met with Lauren Chips and Sidney Joy, at about the same time Officer Brown arrived at that location, and he observed scratches on the girls and was told that “Leslie” had assaulted them. At that time, the three men who were friends of the two women ran up to the officers.¹⁰ Figure 2, below, shows where, according to Ms. Joy, the various parties ran to and then met with police.

⁶ See Statement of Elias Robles (“Robles Statement”), June 7, 2018.

⁷ See Statement of Thomas Brown (“Brown Statement”), June 15, 2018.

⁸ See Robles Statement, at p.1.

⁹ See *id.*

¹⁰ See *id.*, at p.2

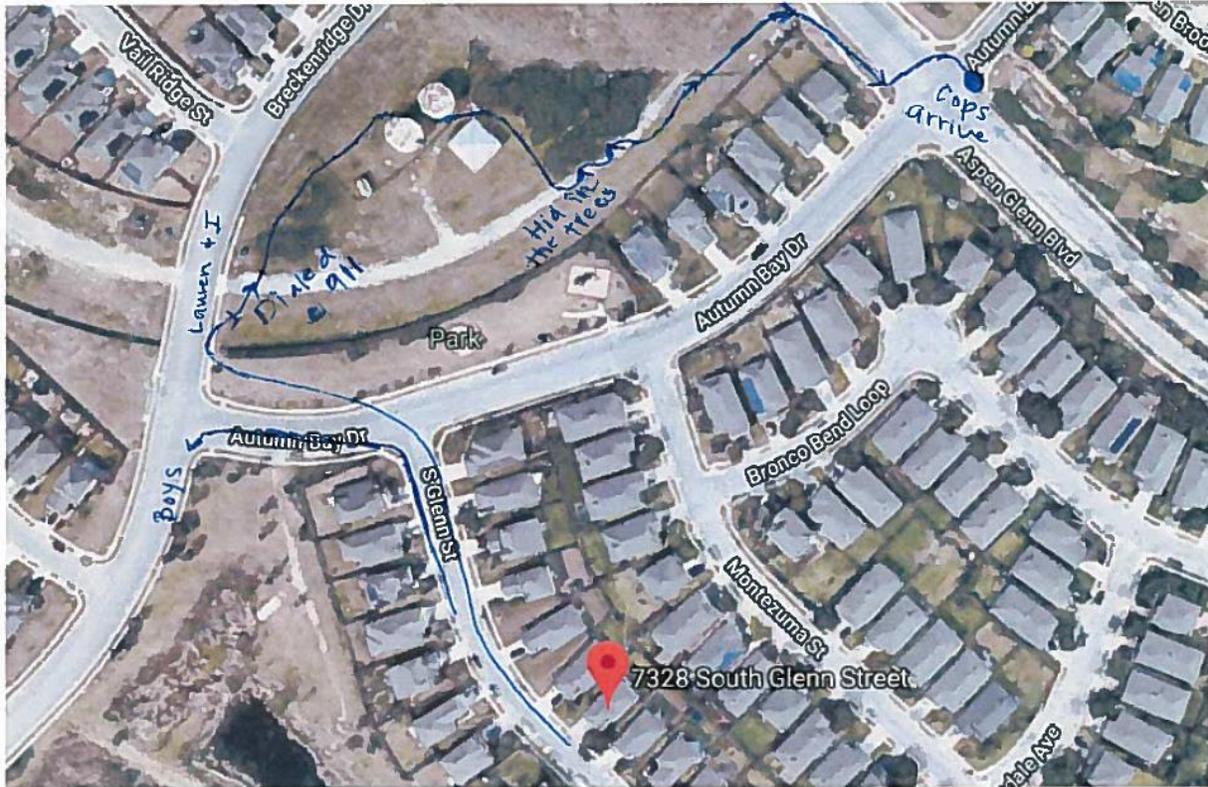


Figure 2—Map annotated by Sydney Joy to show routes taken by housemates and witnesses after exiting 7328 South Glenn St.

It was at that time that officers learned that another woman, Valerie Kernes, a roommate of Ms. Chips and Ms. Joy, was still in the house at 7328 South Glenn Street. Ms. Kernes later told police she had seen the earlier altercation, including Ms. Salazar shouting “Kill me! Kill me!”, and had helped break up the physical fight between Ms. Salazar and Ms. Chips.¹¹ After that, soon after 2a.m., Ms. Kernes had returned to her room and tried to go back to sleep, but then Ms. Kernes said:¹²

Lauren called 10 minutes later. Lauren said in a calm voice, “hey come outside.” Lauren was very specific, saying to come down the stairs and come out the front door. I put on a robe and went outside.

I saw police cars on the street. Sydney and Lauren were in the front yard. Sydney and Lauren were talking to the Officers. Sydney came over and hugged me. Sydney said that Leslie had been chasing Lauren and her with a knife.

Even though Ms. Kernes had come out unhurt, the two officers were unsure whether anyone else might be in the house with Ms. Salazar due to the fact that all of the witnesses appeared to be intoxicated and therefore unclear on who’d been in the house and who might still be inside.¹³

¹¹ See Sworn Statement of Valerie Kernes (“Kernes Statement”), June 7, 2018.

¹² See Kernes Statement, at p.3.

¹³ See Brown Statement, at p.15; See also Robles Statement, at p.2.

C. Officer Brown and Robles enter 7328 South Glenn Street

As soon as Officers Brown and Robles entered the house they announced themselves as police officers, with Brown in the lead and Robles directly behind him.¹⁴ Officer Robles described the lay-out as they went in: “We entered through the front door. I believe that Brown announced our entry at this time. As we entered there is a hallway with a set of stairs to the left. As you go forward the hallway opens into a living area. To the left is a large dining room table with a narrow pathway along a wall that leads to the kitchen area behind the living room.”¹⁵

Robles initially led the way in, but as they got close to the wall he references, Officer Brown moved in front.

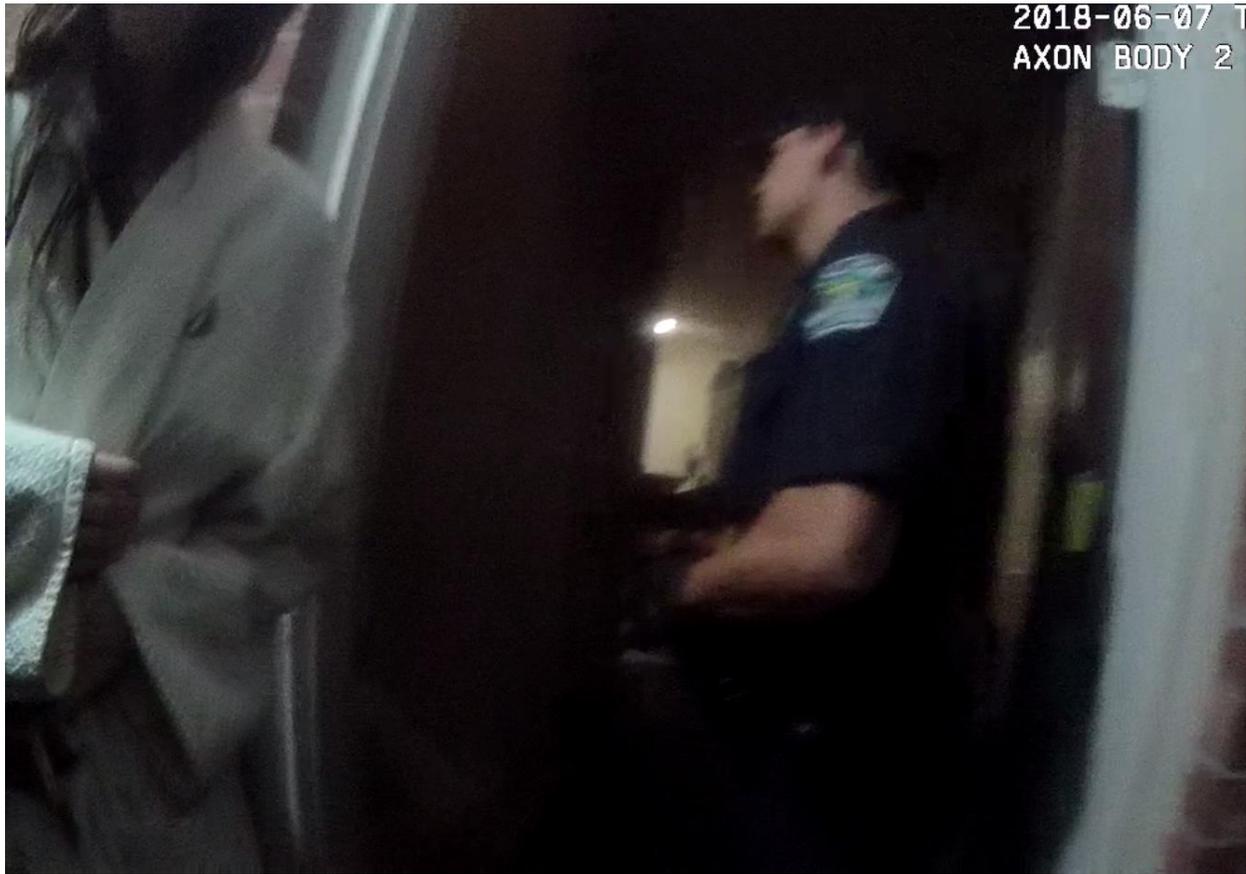


Figure 3—Video still from bodycam of Officer Brown, showing Valerie Kernes (left) exiting the house and Officer Robles (right) leading the way inside.

Officer Brown later described to investigators what he saw: “- It was very messy and there were items all over the floor to my knowledge. So we enter the house. We’re calling her by her name. I remember I couldn’t - I couldn’t remember her name with the situation being as intense and - and unfolding as it was so I asked Officer Robles what her name was so I could call her by her name. He told me her name so I began announcing Austin Police Department - Leslie, this is the

¹⁴ See Brown Statement, at p.19; see also Robles Statement, at p.2.

¹⁵ See Robles Statement, at p.2.

Austin Police Department, um, stuff of that nature. Um, we're clearing house. I see that Officer ... Robles start to, kind of, pie.¹⁶ I can see that there's a kitchen. It looks like maybe a galley kitchen, but there's a wall that separates it from where you can't see in- inside of it basically. Um, he's pieing out, um, as much as he can and then he starts, kind of, pie back. Um, so I'm announcing and I'm trying to clear it as best as I can."¹⁷

At about that moment, Officer Brown moved in front to clear the kitchen area, and within seconds Ms. Salazar appeared very close in front of him. "I see that she has a knife which in my mind looked - looked to be like two or three feet - it looked huge. She had a knife in her right hand and she had it up like this. And I see that - at the same time that I see that I see her face and I just remember her face. I - I don't know the - the word to put it but it looked like, staring off like - like she was on a mission or some -- I don't - I don't know who [sic] to put it. But like - like she was on a mission."¹⁸

Officer Robles also described that moment to investigators: "As we approached the kitchen was when Leslie pops out approximately 8 to 10 feet in front of us. I identified Leslie by the clothing description we had previously been given of wearing a dark gray shirt, and cut-off jeans. Leslie had a knife in her right and holding it in a stabbing type way with the point down. She is holding it in front of her at about her waist to chest height. Leslie had a blank stare on her face of just nothing."¹⁹

Robles said that at this time Brown shouted at Leslie to drop the knife at least twice, and this statement is supported by the audio captured by Officer Brown's bodycam. Immediately thereafter, Officer Brown fired three shots, and Ms. Salazar fell to the ground. Officer Brown's bodycam captures that moment, and shows that Ms. Salazar is still holding the knife in her right hand (see Figures 4 (a) and (b), below).

Officer Brown explained what was going through his mind: "My fear was that I was gonna backpedal over and trip over something and then she was gonna be right on top of me and she was gonna stab me in the neck or in the head and she was gonna kill me. So I - I backpedal a couple of steps and realize she's not dropping the knife and she's continuing at me at a very fast pace. I believe from my initial thought she was coming at me faster than I was able to backpedal, so I feared for my life. I thought she was gonna stab me either in the neck or in the head. Something of that nature or I was either gonna trip and fall and then I was gonna be at even a more vulnerable disadvantage 'cause she was gonna be on top of me with the knife, so I fired my weapon."²⁰

Officer Robles said that he, too, was in fear for Officer Brown's life and described the knife in Ms. Salazar's hand as having "a black handle with a serrated blade and approximately 6-8 inches in length."²¹

¹⁶ This is a term used to describe the way a police officer will divide an unknown area in front of them into "slices," in order to safely clear the space piece by piece.

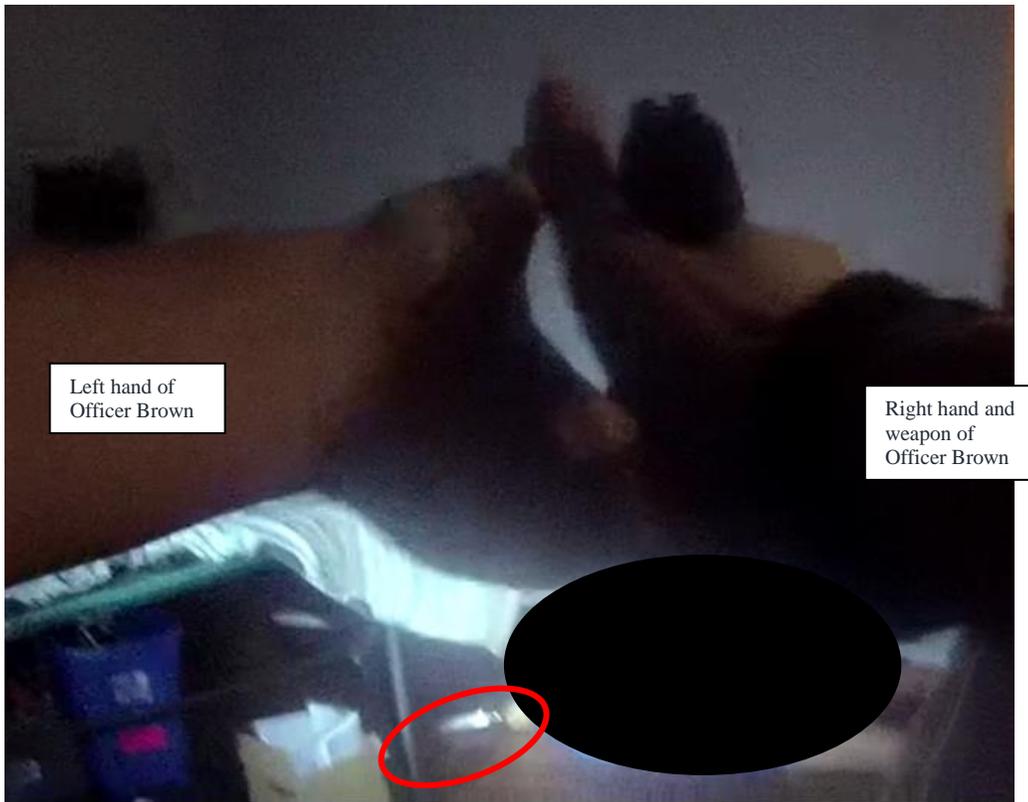
¹⁷ See Brown Statement, at p.19.

¹⁸ See *id.*, at pp. 23-24.

¹⁹ See Robles Statement, at p.2.

²⁰ See Brown Statement, at p. 24.

²¹ See Robles Statement, at p.3.



Figures 4 (a), above, and (b), below—Video stills taken from the bodycam of Officer Brown, showing his hands (including his weapon) and the knife (circled in red) in the hand of Ms. Salazar (who is obscured).²²

²² The poor quality of these two photos is a result of them being taken as stills from the body worn camera, which was constantly in motion and filming in a dark environment.



Officer Robles described what happened next: “At this time Brown fires at least two shots. I believe the shots struck her in the chest as this was where she was bleeding from. Leslie fell to the ground but still had the knife in her hand and she was still moving.”²³ When she stopped moving, Officer Brown “moved forward and removed the knife from her hand. I don’t think he used his hand but may have stepped on the knife and moved it away from Leslie’s reach.”²⁴

Officer Brown confirmed that he put his foot on the knife and slid it out of the way, and then: “I believe I dragged her [be]cause even if she - where she fell was in a very tight space so I moved her out of that space and then I began [to] apply pressure.”²⁵

The officers also called for EMS, who arrived on scene at 2:55 a.m., and began assessing Ms. Salazar two minutes later. EMT Eric Tiemann pronounced her dead at 3:00 a.m.²⁶

II. POST-INCIDENT INVESTIGATION

A. Witness Interviews

Although the legal analysis as to the legality of Officer Brown’s shooting of Leslie Salazar depends on the fact and circumstances as he knew them at the time of the shooting, it is instructive to show the scene into which he and his partner were arriving, through the eyes of the people who were there.

²³ See *id.*

²⁴ See *id.*

²⁵ See Brown Statement, at p.25.

²⁶ See EMS Patient Care Report, Run # 18158-0036.

Sydney Joy, who was the second 911 caller, was aged nineteen at the time of this incident, and was a first cousin of Ms. Salazar.²⁷ She described Ms. Salazar as a “fun person to be around,” but noted that she drank alcohol frequently and has a history of drug use.²⁸ On Monday, June 4, 2018, Ms. Joy’s aunt had dropped Ms. Salazar at Ms. Joy’s house. Ms. Salazar and Ms. Joy got into an argument at one point that evening, but it fizzled out and Ms. Salazar went to sleep. Ms. Salazar spent the next couple of days with Ms. Joy, but they argued once again on Wednesday evening, a dispute that turned physical.²⁹

Leslie then brought up me sleeping with a guy she loved, once again. Leslie physically came toward me and I grabbed her hair and pulled her to the ground. Leslie got loose and grabbed my hair and pulled me to the ground. I was hunched over on the ground, sitting with my legs crossed and she got on top of my back, kicking me, hitting me, and pulling my hair. I was telling the other people in the living room to get Leslie off of me.

Ms. Joy’s roommate Lauren Chips tried to calm the situation, but ended up being assaulted by Ms. Salazar herself:³⁰

Leslie jumped up, grabbed Lauren’s hair, and pulled Lauren to the ground. Leslie had her legs on Lauren, pulling her hair really hard. I started hitting Leslie really hard, maybe seven times, in the face trying to get her to stop. Leslie was not even phased by me hitting her. She was screaming at Lauren like nothing else was happening. Lauren was yelling for help. I pried Leslie’s hands from Lauren’s hair and Lauren got free. Lauren’s fake fingernails were all broken off.

During this attack, Ms. Joy stated that Ms. Salazar was yelling, “Kill me! Kill me!” Soon after that Ms. Joy went downstairs and left the house, to join three male friends outside. Ms. Chips came out, too, but after going back inside to retrieve her phone she ran outside yelling that Ms. Salazar had a knife:³¹

I went back into the house to get my phone. I went through the garage door and I saw Leslie sitting on the kitchen floor straddling a traffic cone in between her legs. I also noticed she had a knife in her hand. The knife was a black handled and sliver blade kitchen knife. It wasn’t a small steak knife it was one of the larger chopping knives.

Ms. Salazar then proceeded to stab the traffic cone, while screaming words that did not make sense to Ms. Chips.³² After she left the house to join Ms. Joy and the men, Ms. Chips called 911 (the first 911 call) but soon hung up, not wanting to cause more trouble.³³ Ms. Joy then called

²⁷ See Sworn Statement of Sydney Joy (“Joy Statement”), June 7, 2018.

²⁸ See Joy Statement, at p.1.

²⁹ See *id.*, at p.2.

³⁰ See *id.*, at p.3.

³¹ See Sworn Statement of Lauren Chips (“Chips Statement”), June 7, 2018.

³² See Chips Statement, at p.3.

³³ See *id.*, at p.3.

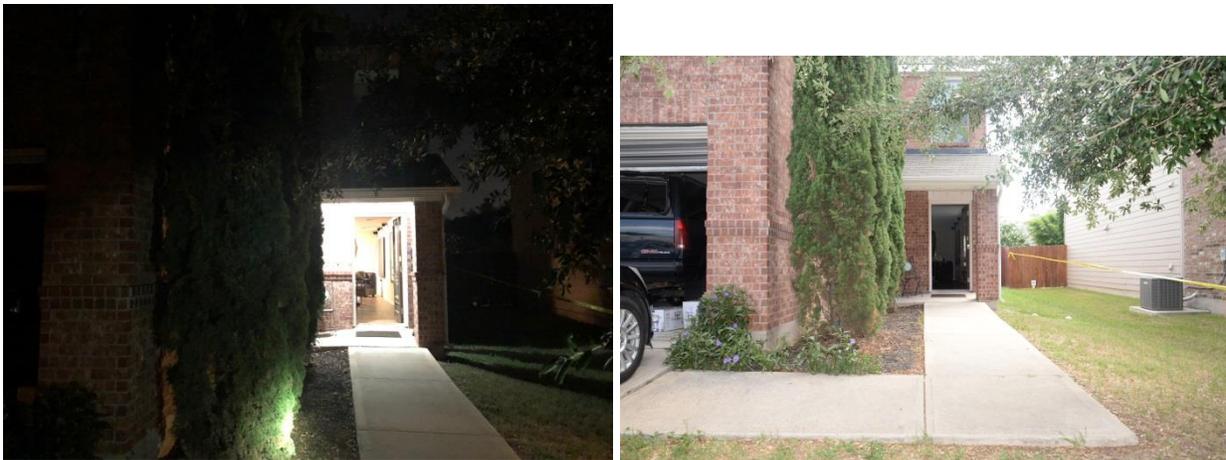
(using Ms. Chips’s phone) and the dispatcher told her to meet police at a street corner, so they went to the corner of Autumn Bay Drive and Montezuma Street.³⁴

Interviews with the three men on scene were consistent with the statements made by Ms. Chips and Ms. Joy.

B. Crime Scene Unit

After the shooting, Austin PD’s Crime Scene Unit documented the scene with photographs (see below) and video of all witnesses as well as the interior of the house.³⁵ They also collected physical evidence, including the shell casings, the knife that Officer Robles took from the scene of the shooting, and gun-shot residue tests from Officer Brown.³⁶ The knife was also swabbed for fingerprints, but no latent prints were obtained.³⁷

Figures 5 and 6 show the doorway through which Officer Brown and Robles entered, one taken that night, the other the following morning.



Figures 5 and 6—CSU photos showing front door of 7328 South Glenn Street.

Crime scene specialists also documented the path taken by the officers the previous evening, showing the entrance way and the living room (see Figures 7, 8, and 9 below). Officer Robles had described to investigators the living room as “very cluttered... very messy and there were items all over the floor.”

³⁴ See Joy Statement at p.3.

³⁵ See Laboratory Report, Crime Scene Section Lab # L1804955 LRN: 3 (“Lab Report 3”).

³⁶ *Id.*

³⁷ See Laboratory Report, Crime Scene Section Lab # L1804955 LRN: 5 (“Lab Report 5”).



Figure 7—CSU photo showing entranceway just inside front door of 7328 South Glenn Street.



Figure 8—CSU photo showing main living room of 7328 South Glenn Street.

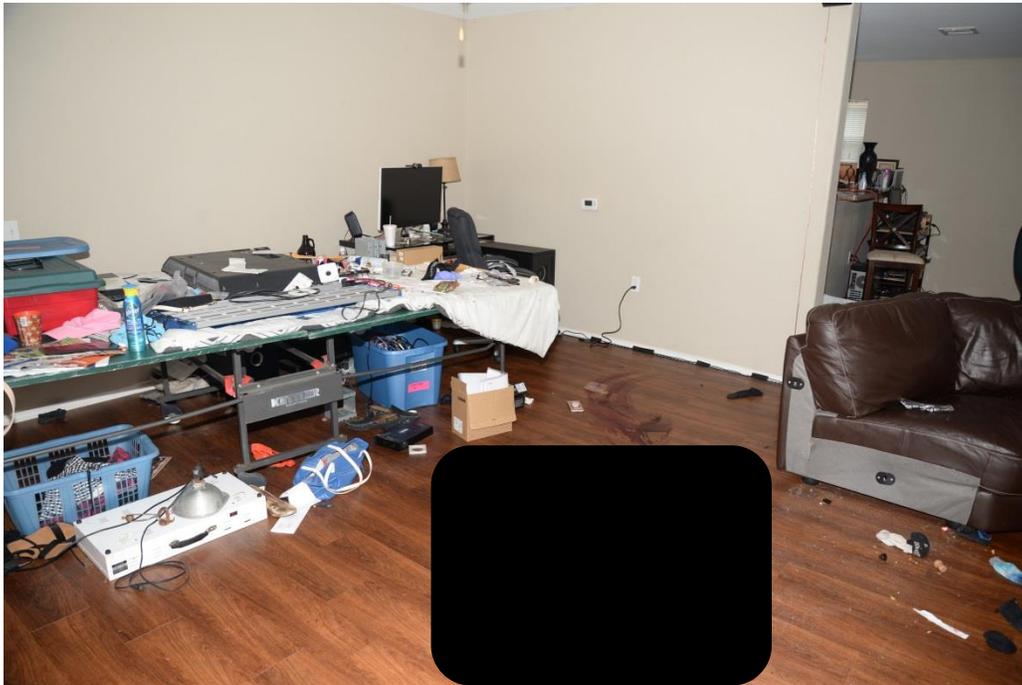
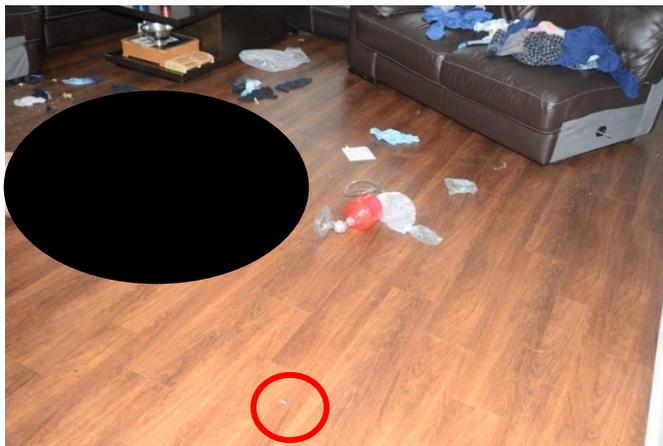


Figure 9—CSU photo showing main living room, and opening into kitchen of 7328 South Glenn Street (and Ms. Salazar, obscured).

One of CSU’s responsibilities was to document the three fired shell casings from Officer Brown’s gun. One was located close to Ms. Salazar’s body, one was beside the living room couch, and one was found on top of some clothing on the same couch (see Figures 10-15, below).



Figures 10 and 11—CSU photos showing location of shell casing ejected from the gun of Officer Brown (circled in red).



Figures 12 and 13—CSU photos showing location of shell casing ejected from the gun of Officer Brown (circled in red).



Figures 14 and 15—CSU photos showing location of shell casing ejected from the gun of Officer Brown (circled in red).

Crime Scene Specialists did not recover any bullet fragments in the living room, but were able to trace one of the shots and its pathway (see Figures 16 through 25, below).



Figure 16—CSU photo showing yellow “tents” (12, 13, and 14) that indicate pathway of one of the shots fired by Officer Brown.



Figure 17—CSU photo showing ricochet point on floor.



Figure 18—CSU photo showing ricochet point on floor (circled).



Figure 19—CSU photo showing bullet pathway.



Figure 20—CSU photo of bullet-strike on table leg (circled).



Figure 21—CSU photo of bullet hole in interior wall.



Figure 22—CSU photo of bullet hole and ballistic rod in interior wall.



Figure 23—CSU photo of bullet hole and ballistic rod (showing path of the bullet's travel) in exterior wall.



Figure 24—CSU photo of tent #1 marking bullet fragment, and bullet hole in exterior wall (circled).



Figure 25—CSU photo of #1 tent marking bullet fragment found outside residence.



Figure 26—CSU photo of #1 tent marking bullet fragment found outside residence.

The crime scene unit also took photographs of the knife (see below), first where it lay after Officer Brown kicked it (immediately after the shooting) (Figure 27), and later after it had been seized as evidence (Figure 28).



Figure 27—CSU photograph of the knife held by Ms. Salazar, at the scene.



Figure 28—CSU photograph of the knife held by Ms. Salazar.

As noted, CSU also collected the knife that Officer Robles initially found lying on the driveway outside the house when he first arrived.

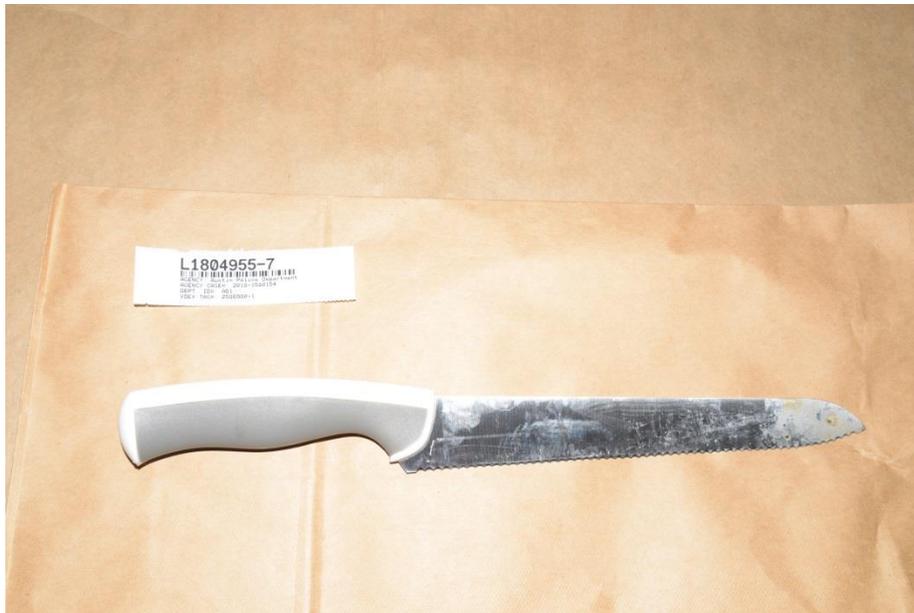


Figure 29—CSU photograph of the knife found by Officer Robles on the driveway outside 7328 South Glenn Street.

C. Timeline of Events

TIME	EVENT
02:22:25	First 911 call comes in. Suspect is inside residence at 7328 South Glenn Street
02:23:31	Elias Robles # 7231 assigned; Thomas Brown 8106 self-assigns as back-up
02:26:41	Second 911 call comes in; suspect has chased caller and friends down the street
02:30:21	Robles arrives on-scene but cannot locate 911 caller
02:33:56	Brown arrives on-scene
02:34:18	911 caller meets Robles near intersection of Autumn Bay and Aspen Glenn
02:37:20	Brown learns that Salazar is back in the residence with Valerie Kernes
02:39:17	Brown and Robles return to residence
02:43:00	Ms. Chips calls Ms. Kernes and instructs her to exit the residence; she does so
02:43:44	Robles and Brown enter residence, announce "Austin Police Department" and then "Leslie, this is the Austin Police Department"
02:44:05	Brown moves towards kitchen, observes suspect in the kitchen, sees she has knife
02:44:07	Brown gives first command to "drop the knife" and begins backpedaling
02:44:08	Brown gives second command "drop it" then fires three rounds
02:44:33	Robles advises Shots Fired over the radio; suspect still has the knife in her right hand, Brown gives additional commands to drop the knife and the knife falls from suspect's hand
02:44:47	Brown and Robles begin life-saving measures
03:00:00	Leslie Salazar pronounced deceased

D. Ballistics, Firearm and Toolmark Evidence

No firearm or toolmark comparisons were conducted. However, because Ms. Salazar was not in possession of a firearm, and because the shooting itself was captured in its entirety on Officer Brown's body-cam, we do not believe the results of any testing (or lack thereof) would affect, impact, or alter our conclusions in this case regarding the central legal issue, which is the reasonableness of Officer Brown's use of force.³⁸

E. Medical Examiner's Findings

On June 8, 2018, the Travis County Medical Examiner conducted a postmortem examination (autopsy) on Ms. Salazar. The examiner ruled homicide as her manner of death and gunshot wounds as her cause of death.³⁹ As required by law, the medical examiner issued a death investigation report.⁴⁰ The medical examiner identified a total of three "gunshot pathways," two to the thoracic area, and a third that had a "superficial path through the subcutaneous tissue only."

The medical examiner noted that Ms. Salazar sustained:

- One penetrating gunshot wound⁴¹ to the left side of the chest; the wound pathway was left to right, front to back, and downwards;
- One penetrating gunshot wound to the right side of the chest; the wound pathway was slightly left to right, front to back, and downwards;
- One perforating gunshot wound⁴² to the left shoulder with corresponding exit wound; the wound pathway was slightly right to left, front to back, and sharply downwards.

During the postmortem examination, two items of evidentiary value related to the shooting incident were recovered, specifically two deformed bullets.

The medical examiner classified the range of fire of all three gunshot wounds as indeterminate, due to the absence of physical characteristics such as soot, stippling, tissue searing, or muzzle imprint that would otherwise suggest a specific range of fire.

In addition to the shooting-related injuries, the examining physician also noted several areas of abrasions (scratches) and contusions (bruises) on the skin. These are consistent with Ms.

³⁸ Due to staff shortages at APD's ballistics-testing laboratory, firearm or toolmark comparisons are not currently being conducted unless such testing is directly relevant and necessary to the investigation.

³⁹ "Cause of death" refers to the condition that produced the victim's death while "manner of death" is an interpretive opinion that explains how the cause of death was caused. "Homicide" is one of several manners of death which include accident, suicide, or natural causes. "Homicide" is not a legal denotation as to whether the act leading to the death is or is not criminal.

⁴⁰ Travis County Office of the Medical Examiner's Office, Medical Examiner Report No. 18-02831.

⁴¹ A "penetrating" gunshot wound is one that enters but does not exit the body.

⁴² A "perforating" gunshot wound is one that enters and exits the body. A single perforating gunshot can have multiple entry and exit points depending upon the trajectory of the bullet and the subject's body position when struck.

Salazar's roommates' statements regarding several physical altercations at the house prior to the police being called. The examining physician also noted evidence of attempted resuscitation.

Finally, the medical examiner's toxicology testing on Ms. Salazar's postmortem blood demonstrated the presence of cannabinoids (compounds found in marijuana) and ethanol (alcohol).

IV. LEGAL ANALYSIS: REASONABLENESS OF OFFICER BROWN'S USE OF DEADLY FORCE

The use of deadly force without legal justification would constitute a criminal offense for which prosecution is warranted. In the case of an officer's use of deadly force, to constitute a prosecutable offense would require us to conclude that there are no legal justifications applicable to the credible investigative facts. Here, whether or not the officer's use of deadly force was reasonable depends on whether the investigative facts support the conclusion that a reasonable juror would determine that his use of such force was justified in self-defense, defense of a third person, and/or to effectuate a legitimate law enforcement purpose. For the reasons outlined below, we conclude that a reasonable juror following the law would find the use of force to be justified.

A. Law Governing Use of Deadly Force

The Fourth Amendment and Texas statutory law govern our analysis of the reasonableness of Officer Brown's use of deadly force in Ms. Salazar's shooting death. Under the Fourth Amendment, a law enforcement officer's shooting of a person constitutes a "seizure" and, as a consequence, is subject to the amendment's requirement that it be reasonable⁴³ as that term has been construed by the United States Supreme Court.⁴⁴ The Supreme Court has directed that the inquiry is essentially one of objective reasonableness: the question is "whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation."⁴⁵

In conducting our analysis, we are to evaluate the officer's use of force based on the facts and circumstances then existing on the scene and determine "judged from the perspective of a reasonable officer on the scene," whether a reasonable officer would have used deadly force based on the facts and circumstances viewed from the perspective of the acting officer at the time the force was used.⁴⁶ This inquiry must make "allowance for the fact that police officers are often forced to make split-second judgments" and should not be based on the benefit of "the 20/20 vision of hindsight."⁴⁷ In the context of the law enforcement use of deadly force, the basic

⁴³ "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated..." U.S. CONST. AMEND. IV.

⁴⁴ U.S. CONST. AMEND. IV.; *Tennessee v. Garner*, 471 U.S. 1, 7 (1985).

⁴⁵ *Graham v. Connor*, 490 U.S. 386, 396 (1989).

⁴⁶ *Id.* at 396-97.

⁴⁷ Our inquiry must consider whether a reasonable officer in the circumstances that Officer Brown encountered would have reasonably concluded he was in imminent danger from the knife that Ms. Salazar was wielding.

requirement is that the use of deadly force be limited to situations in which it was immediately necessary.⁴⁸

Texas law incorporates the Fourth Amendment's reasonableness standard in several statutes applicable to the facts and circumstances of Ms. Salazar's shooting. Those statutes allow the use of deadly force in self-defense, in defense of third persons, and in order to effectuate a legitimate law enforcement purpose.⁴⁹

B. Texas Law Governing the Use of Deadly Force: Chapter 9 and the Reasonableness Standard

Chapter 9 of the Texas Penal Code provides three basic circumstances under which a law enforcement officer's use of deadly force is justified: in self-defense, in defense of a third person, or to effectuate a legitimate law enforcement purpose such as an arrest or search.

1. Use of Deadly Force in Self-Defense: Texas Penal Code § 9.32

Section 9.32 of the Texas Penal Code describes the circumstances under which deadly force may be used in self-defense by any person, law enforcement or not. It states:

- (a) A person is justified in using deadly force against another:
 - (1) if the actor would be justified in using force against the other...; and
 - (2) when and to the degree the actor reasonably believes the deadly force is immediately necessary:
 - 1. to protect the actor against the other's use or attempted use of unlawful deadly force; or
 - 2. to prevent the other's imminent commission of aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery.

Section 9.32 expressly predicates the authority to use deadly force on the condition that the actor first have been authorized to use non-deadly force under Section 9.31, which governs the use of non-deadly force. That section, which sets forth the basic reasonableness standard discussed earlier, provides that:

- (a) ... [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.

Only if the actor first satisfies Section 9.31's requirements controlling the use of force can he or she be justified in the use of deadly force.

⁴⁸ *Tennessee v. Garner*, 471 U.S. 1, 11-12 (1985).

⁴⁹ TEX. PEN. CODE §§ 9.32, 9.33, and 9.51 (c).

2. Use of Deadly Force in Defense of a Third Person: Texas Penal Code § 9.33

The use of deadly force to protect a third person calls for what might be best described as a surrogate analysis: the use of deadly force in defense of a third person is authorized only if the actor is justified in the use of deadly force to defend him or herself. As with Section 9.32, this justification is applicable to all persons, whether law enforcement or not. That section provides:

- (a) A person is justified in using force or deadly force against another to protect a third person if:
 - (1) under the circumstances as the actor reasonably believes them to be, the actor would be justified under Section 9.31 or 9.32 in using force or deadly force to protect himself against the unlawful force or unlawful deadly force he reasonably believes to be threatening the third person he seeks to protect.

3. Use of Deadly Force to Effectuate a Legitimate Law Enforcement Purpose: Texas Penal Code § 9.51

The final justification applicable to the facts established here is found in Section 9.51, which governs all uses of force by a law enforcement officer while in the discharge of his or her duties. It is applicable only to law enforcement officers' use of force. Section 9.51 provides:

- (a) A peace officer...is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to make or assist in making an arrest..., if:
 - (1) the actor reasonably believes the arrest or search is lawful...; and
 - (2) before using force, the actor manifests his purpose to arrest or search and identifies himself as a peace officer or as one acting at a peace officer's direction, unless he reasonably believes his purpose and identity are already known or cannot be reasonably made known to the person to be arrested.

C. Analysis: The Facts and Circumstances of Officer Brown's Use of Deadly Force

Officer Brown's conduct in discharging his weapon⁵⁰ must be evaluated in terms of its reasonableness under the above-cited statutes. We have concluded that on the credible facts

⁵⁰ Even if the officer's shots had not struck Ms. Salazar, the discharge of his weapon in her direction alone constitutes a use of deadly force and is otherwise a criminal offense if not statutorily justified. "The threat of force is justified when the use of force is justified. For purposes of this section, a threat to cause death or serious bodily injury by the production of a weapon or otherwise, as long as the actor's purpose is limited to creating an apprehension that he will use deadly force if necessary, does not constitute the use of deadly force. TEX. PEN. CODE § 9.04. Here, it is evident that Officer Brown discharged his weapon and as such there was an actual use of force. *See e.g.*, TEX. PEN. CODE § 22.02 Aggravated Assault (use of a deadly weapon during the course of an assault). An "assault" occurs whenever a person "intentionally or knowingly threatens another with imminent bodily injury..." TEX. PEN. CODE § 22.01. As a use of deadly force, the discharge of a weapon is a threat to use deadly force which is

established here that Officer Brown's use of deadly force in Ms. Salazar's shooting was not unreasonable under the applicable statutes.

1. Officer Brown's Use of Deadly Force in Self-Defense

The facts and circumstances known to Officer Brown at the time he initially discharged his duty weapon must be considered.

The investigation established that Officer Brown was one of two officers who went into a relatively dark house to look for other possible victims, and Ms. Salazar herself. And, at the time of his encounter with Ms. Salazar, Officer Brown was aware that:

- The initial 911 call involved someone actively threatening people in the house with a knife;
- A knife had, in fact, been found in the driveway, corroborating the allegation that Ms. Salazar had been wielding a knife;
- There had already been at least one physical altercation with Ms. Salazar, in which she had physically injured a person in the house;
- The person he was looking for, Ms. Salazar, had been drinking.

The best evidence comes from Officer Brown's body worn camera, which shows the speed with which Ms. Salazar approached him, and documents his commands to drop the knife. This footage corroborates both his statement, and that of Officer Robles, that Ms. Salazar came at him very quickly and was within seconds of being able to stab Officer Brown. It was only after Ms. Salazar took these actions, and ignored Officer Brown's commands to drop the knife that he discharged his weapon.

The investigation further indicates that Ms. Salazar was within 6-10 feet of Officer Brown when he discharged his weapon. We conclude that under these circumstances, Officer Brown was justified in using deadly force in discharging his duty weapon at Ms. Salazar. We believe Officer Brown was justified in doing so on the grounds of: (1) defense of self under § 9.32; (2) defense of third persons under § 9.33; and (3) in order to effect an arrest for an offense under § 9.51.⁵¹

2. Officer Brown's Use of Deadly Force in Self-Defense—Tex. Pen. Code § 9.32

We conclude that the investigative facts establish that the facts and circumstances of which Officer Brown was aware of when he discharged his weapon are sufficient to satisfy the provisions of Section 9.31, thus allowing him to use non-deadly force to defend himself as a prerequisite to his use of deadly force.⁵² Officer Brown was faced with circumstances in which

justified only if reasonableness requirements as contemplated by the various justifications for use of deadly force contained chapter 9 of the Penal Code.

⁵¹ In this case, charges of aggravated assault with a deadly weapon, for the threatening of the roommates and Officer Brown himself.

⁵² Under the circumstances then existing and with which the officer was confronted, Officer Brown's belief that the use of deadly force was immediately necessary is *presumptively* reasonable under Texas Penal Code § 9.32. Specifically, subsection (b) of section 9.32 provides that "[t]he actor's belief...that the deadly force was immediately necessary...is presumed to be reasonable if the actor...knew or had reason to believe that the person against whom the force was used...was committing or attempting to commit" murder.

the danger to him was evident and imminent: he was in the relative dark of an unfamiliar and cluttered house. His brief interaction with Ms. Salazar reinforced his understanding that his life was in danger: she'd failed to respond to Officer Brown and Officer Robles's announcements they were in the house, she appeared without warning from the kitchen holding a knife, and ignored his commands while advancing on him wielding that knife, a deadly weapon.⁵³

Under these circumstances, we conclude that Officer Brown "reasonably believe[d] [that] the [use of] force [was] immediately necessary to protect [himself] against the other's use or attempted use of unlawful force."⁵⁴ There are no facts or circumstances under which Ms. Salazar's raising up a knife while rapidly approaching Officer Brown would render her actions a lawful threat of use of force. For these same reasons and under these circumstances, the provisions of Section 9.32 authorizing Officer Brown's use of deadly force in discharging his weapon at Ms. Salazar are unquestionably established.⁵⁵

In fact, the investigation supported Officer Brown's statement because the knife was recovered (and is clearly visible on Officer Brown's bodycam), further demonstrating that Officer Brown reasonably concluded that a danger existed. Under these circumstances, we conclude that Officer Brown reasonably believed that his use of deadly force was immediately necessary to protect himself against Ms. Salazar's apparent use or attempted use of unlawful deadly force, or to prevent what he reasonably concluded was the imminent commission of murder if he did not discharge his weapon at her, and that a reasonable jury following the law would agree.

3. Officer Brown's Use of Deadly Force in Defense of a Third Person

For the reasons that justified Officer Brown in his use of deadly force in self-defense, we conclude that he was also justified in using deadly force to protect others. Ms. Salazar had already reportedly put the lives of other residents of the house in danger, and she was armed with a knife and moving toward not just Officer Brown but also Officer Robles. In such a contained, poorly-lit area, it would have been reasonable for Officer Brown to assume that the life of Officer Robles would be in jeopardy given Ms. Salazar's possession of a knife, rapid advance on Officer Brown, and refusal to drop the knife when instructed.

As noted earlier, Texas Penal Code § 9.33 regulates the use of force in defense of a third person. That section provides that "[a] person is justified in using force or deadly force against another to protect a third person if...under the circumstances as the actor reasonably believes them to be, the actor would be justified under Section 9.31 or 9.32 in using force or deadly force to protect himself against the unlawful force or unlawful deadly force he reasonably believes to be

⁵³ See *Youngblood v. State*, 1997 Tex. App. LEXIS 4533 at 10 (Tex. App.--Dallas 1997, no pet.) (upholding jury finding that a knife with a "three to four inch blade" was a deadly weapon).

⁵⁴ TEX. PEN. CODE § 9.31 (a).

⁵⁵ Here, all of the non-exhaustive list of factors the Supreme Court noted in *Tennessee v. Garner*, the leading case on governing the reasonableness inquiry into a law enforcement officer's use of deadly force are present: the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Tennessee v. Garner*, 471 U.S. at 10-12. Ms. Salazar's conduct involved the reasonably apparent danger of her commission of a violent felony while armed after evincing an intent to engage officers violently rather than submitting to an arrest.

threatening the third person he seeks to protect...and...the actor reasonably believes that his intervention is immediately necessary to protect the third person.” Having concluded that Officer Brown was justified in his use of deadly force in self-defense (in order to prevent Ms. Salazar’s apparent use or threatened use of deadly force against him), we further conclude that Officer Brown’s use of deadly force was also justified in order to defend Officer Robles from the same apparent danger that he reasonably believed threatened him, and that a reasonable jury following the law would also so conclude.

4. Officer Brown’s Use of Deadly Force to Effectuate a Legitimate Law Enforcement Purpose

Finally, for the reasons that justified Officer Brown’s use of deadly force to defend himself and others, it is also reasonable for him to have concluded that Ms. Salazar was then engaged in the commission, imminent commission, and attempted commission of violent criminal offenses. Under Texas law, a peace officer is authorized to arrest any person for any offense committed within his or her presence or view without a warrant.⁵⁶

Based on his observations, Officer Brown had probable cause to believe, and was authorized to make Ms. Salazar’s warrantless arrest for offenses committed within his presence or view, or direct knowledge from other officers, including Aggravated Assault with a Deadly Weapon⁵⁷ and Assault on a Public Servant.⁵⁸ The facts and circumstances of which Officer Brown was aware at the time he discharged his weapon would have also satisfied the probable cause standard that would have allowed him to have taken her into custody and placed her under formal arrest: Ms. Salazar was armed with a knife, and had advanced towards the officer’s position with it raised and refused directions to put the weapon down. Specifically, we conclude that Officer Brown formed the reasonable belief that his use of deadly force was “immediately necessary to make or assist in making” Ms. Salazar’s arrest. Under these circumstances, it was reasonable for Officer Brown to believe that his warrantless arrest of Ms. Salazar was lawful.⁵⁹

For the reasons that justified Ms. Salazar’s warrantless arrest, the facts and circumstances then existing also supported Officer Brown’s belief that the use of deadly force to make an arrest was immediately necessary because he also reasonably concluded that Ms. Salazar posed a “substantial risk” that she “would cause death or serious bodily injury” to Officer Brown (and Officer Robles) if he or they attempted to arrest or detain her. Under these circumstances, we conclude that Officer Brown’s use of deadly force to effect Ms. Salazar’s arrest was justified under Texas Penal Code § 9.51 (a).

For these reasons, Officer Brown’s use of deadly force in this shooting was an objectively reasonable use of deadly force under Texas law, and a reasonable jury following the law would so conclude.

⁵⁶ TEX. CODE CRIM. PROC. art. 14.01.

⁵⁷ TEX. PEN. CODE § 22.02.

⁵⁸ TEX. PEN. CODE § 22.01 (b) (1).

⁵⁹ There is no need to consider section 9.51 (a)’s third requirement because Officer Brown’s identity was reasonably known to Ms. Salazar under the circumstances; he was in full uniform and he and Officer Robles had announced their presence in the house, and their identities as police officers.

CONCLUSION

For the reason set forth above, I concluded that the filing of criminal charges against Officer Brown is not supportable under Texas criminal law standards because Officer Brown's use of deadly force in this incident was justified under the circumstances. Consequently, charges will not be filed. We are closing our review and will take no further action in this matter.

We have released a public/press packet that includes videos, witness statements, officer statements, forensic reports, photos and an autopsy report. We have also attached the items and legal citations mentioned in the analysis. This decision will be posted on my Office's website and will be accessible under 'Leslie Salazar' and the date of the incident, June 7, 2018.⁶⁰

Very truly yours,

A handwritten signature in black ink that reads "Margaret Moore". The signature is written in a cursive, flowing style.

Margaret Moore

⁶⁰<https://www.traviscountytexas.gov/district-attorney/office-divisions/civil-rights/cru>