

# OFFICE OF THE WASHOE COUNTY DISTRICT ATTORNEY

April 26, 2024



REPORT ON THE AUGUST 22, 2020  
OFFICER INVOLVED SHOOTING OF JUSTUS ACEVES

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# TABLE OF CONTENTS

INTRODUCTION.....	3
I. STATEMENT OF FACTS .....	5
A. <b>Witness Accounts</b> .....	5
1.    Officer Hanna.....	5
2.    Officer Rousseau .....	7
3.    Officer Mercurio .....	8
4.    Albert Smith .....	9
5.    Evianna Maestas .....	9
6.    Michael Spencer .....	10
7.    Vickie Ostermeyer .....	10
8.    Fernanda Flores .....	11
9.    Gabrielle Zamarron.....	11
B. <b>911 calls</b> .....	12
C. <b>Countdown of Officer Hanna’s Firearm</b> .....	12
II. PHYSICAL EVIDENCE.....	13
A. <b>Body Worn Cameras (BWCs)</b> .....	13
1.    Officer Hanna.....	13
2.    Officer Mercurio .....	15
B. <b>Surveillance Video</b> .....	16
1.    Riverwalk Towers .....	17
2.    Plaza Club .....	21
C. <b>Scene Processing</b> .....	22
1.    Ninth Floor Hallway.....	22
2.    West Street Sidewalk.....	25
3.    Suspect Firearm .....	25
III. CRIMINAL PROSECUTION .....	26
IV. LEGAL PRINCIPLES .....	26
V. ANALYSIS.....	28
VI. CONCLUSION .....	28

## **INTRODUCTION<sup>1</sup>**

On Saturday August 22, 2020, Reno Police Department Officers Robert Hanna (hereinafter “Officer Hanna”), Officer Jacob Rousseau (hereinafter “Officer Rousseau”), and Officer Hunter Mercurio (hereinafter “Officer Mercurio”) were assigned to the downtown Reno area as patrol officers. At 2245 hours dispatch began receiving multiple calls of gunshots in the 200 block of West Street. The callers reported that a White or Hispanic male with dirty blonde hair who was wearing a red top or backpack was actively shooting in the area. Witnesses also reported that the suspect, later identified as 20-year-old Justus Aceves, aka Justus Niko Dakota Aceves (hereinafter “Aceves”), had entered the front door of the Plaza Resort Club at 121 West Street. A subsequent investigation revealed that Aceves had fired multiple rounds from a pistol with an extended capacity magazine as he walked down the street.

Officers Hanna, Mercurio, and Rousseau all responded to the area and entered the Plaza Resort Club (hereinafter “Plaza Club”) lobby. A witness who worked at the Plaza Club reported that the suspect was wearing a red top and dark jeans. Other witnesses also reported that Aceves had ridden the elevator to the 9th floor.

Hearing this, all three officers rode the elevator to the 9th floor in pursuit of Aceves. On the way, they formulated a plan to apprehend the suspect, who they believed to be armed and actively firing his weapon. Officer Rousseau was assigned to take Aceves into physical custody while Officer Hanna acted as cover and Officer Mercurio wielded his Taser.

When the elevator door opened, the officers saw Aceves standing at the elevator facing them as if he were about to board it. Seeing no gun at this time, the officers ordered Aceves to show his hands. Aceves responded “What do you mean?” He then turned away from the officers and quickly walked down the hallway. Officer Rousseau, followed by Officer Hanna and Officer Mercurio exited the elevator and continued to order Aceves to show them his hands. Ignoring these commands, Aceves instead walked down the hallway, stopped, and began to turn towards the officers. Officer Rousseau approached Aceves and placed his hand on his shoulder to take him into custody and began to holster his pistol.

Aceves suddenly reached into his waistband, grabbed a pistol, and began to draw it. Officer Hanna yelled “no, don’t reach for it!” Aceves ignored the order, drew the pistol completely from his waistband, and raised it in front of his body. Fearing for his life and the lives of his fellow officers, Officer Hanna fired two rounds at Aceves, striking him in the abdomen.

As Aceves fell to the ground, Aceves’ pistol fell from his grasp and onto a nearby chair. The pistol, a Glock .40 caliber, contained a round in the chamber and two rounds in the pistol’s 31 round extended magazine<sup>2</sup>.

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<sup>1</sup> The Introduction is synopsised from recorded witness interviews, photographs, police reports, video surveillance and forensic reports.

<sup>2</sup> Investigators would later find six .40 fired cartridge casings along West Street where Aceves had been seen firing into the air. These casings collected as evidence from the sidewalk of West Street near Second Street and subjected to forensic

Aceves was transported to the hospital where he was treated for gunshot wounds to the lower abdomen, liver, and groin. None of the wounds proved fatal and Aceves survived.

Consistent with the regionally adopted Officer Involved Shooting (hereinafter "OIS") Protocol, the Washoe County Sheriff's Office (hereinafter "WCSO") led the investigation into the shooting of Aceves. The Sparks Police Department (hereinafter "SPD") provided secondary investigative support, and the Washoe County Forensic Science Division (hereinafter "FSD") provided forensic services. The investigation included surveillance video, witness interviews, collection of physical evidence, photography of the shooting scene and other evidence, forensic evidence testing, review of body camera footage and other video evidence, and interviews of Officers Hanna, Rousseau, and Mercurio.

A criminal case against Aceves was submitted by the WCSO on August 27, 2020, and he ultimately pleaded guilty to one count of Resisting a Public Officer with Use of a Deadly Weapon. To ensure the integrity of the criminal prosecution, and consistent with this office's practice, the OIS review was held pending the outcome of the Aceves' prosecution. All final OIS investigative reports along with FIS forensic reports, photographs, BWC footage and recorded interviews were then submitted to the Washoe County District Attorney's Office in November 2021. In its completed report, the WCSO detectives did not recommend criminal charges against Officer Hanna.

The District Attorney's Office is tasked with determining whether the shooting of Aceves by Officer Hanna was justified within the confines of Nevada law. This determination follows an extensive review of all reports, documents, interviews of police and civilian witnesses, photographs, BWC footage, 911 calls, video surveillance and examination of the scene of the shooting. This report follows.

Based on the available evidence and the applicable legal authorities, it is the opinion of the District Attorney that the shooting of Justus Aceves by RPD Officer Robert Hanna was justified and not a criminal act.

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examination. The examination revealed that the cartridge cases had been fired from Aceves' pistol. Surveillance footage of the area and showed Aceves firing all six shots into the air indiscriminately as he walked down the sidewalk of West Street and into the Plaza Club

# **I. STATEMENT OF FACTS<sup>3</sup>**

## **A. Witness Accounts**

### **1. Officer Hanna**

Officer Hanna was interviewed by WCSO Detective Joseph Aceves<sup>4</sup> (hereinafter “Det. Aceves”) and SPD Detective Eddie Wilson (hereinafter “Det. Wilson”) beginning at 0115 hours of August 25, 2020.

Officer Hanna has been a police officer for two years and is currently assigned as a bicycle officer on the Downton Reno Enforcement Team. He started his shift on August 24th at 1400 hours. He was wearing a bicycle team uniform consisting of a polo shirt with police insignia including an embroidered RPD badge, his last name and badge number, police patches on the sleeves and pants identifying him as a police officer, and a bicycle helmet. He carried his department issued duty weapon, a Sig Sauer P320 9mm pistol with a mounted tactical light, in a belt holster. Officer Hanna wore his department issued body worn camera on his chest and it was activated during this incident.

Officer Hanna first became aware of this incident when he heard what he thought were gunshots at approximately 2235 hours. At the time he was assisting other officers near First Street and Arlington Avenue. He and the other officers briefly discussed whether they had heard gunshots or fireworks. Then he heard radio traffic reporting that citizens were calling in reports of shots being fired on West Street.

Hearing this, Officer Hanna rode his bicycle towards West Street. At the corner of First Street and West Street, he was hailed by a panicked citizen who told him that someone was shooting on West Street. The witness described the suspect as a man wearing a red shirt and a backpack who had just gone into a hotel on West Street. Officer Hanna broadcast the description over the radio. The witness, later identified as Albert Smith, ran alongside Officer Hanna to the front of the Plaza Club.

Officer Hanna met with Officer Rousseau near the Plaza Club entrance and saw a frantic woman on her phone standing near the entrance. She was telling Officer Rousseau that she had seen the suspect shooting in the air, that she believed he had fired four shots, and that she saw him get on the elevator. Both officers then walked into the hotel lobby. Looking towards the elevator, Officer Hanna noticed that the indicator showed an elevator stopped on the 9th floor.

Once inside, an employee of the hotel told Officer Hanna that she saw the suspect come into the lobby, board the elevator, and ride it to the 9th floor. Officer Hanna heard Officer Rousseau broadcast that the suspect was believed to be on the 9th floor and that officers were going to the 9th floor.

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<sup>3</sup> The Statement of Facts is a synopsis of witness statements, body worn cameras, photographs, police reports, and forensic reports.

<sup>4</sup> WCSO Detective Joseph Aceves is not related to Justus Aceves

As Officer Hanna and Rousseau boarded the elevator, they were joined by Officer Mercurio. On the elevator they decided that Officers Hanna and Rousseau would draw their duty weapons and Officer Mercurio would draw his Taser and be prepared to handcuff the suspect once the situation was under control.

The door opened on the 9th floor and Officer Hanna immediately saw the suspect standing at the elevator door facing them. Aceves looked as if he were about to get on the elevator. Officer Hanna immediately recognized the suspect as matching the description given by the witness, including a red backpack.

Officer Hanna yelled for Aceves to “show me your hands” multiple times. Aceves turned and walked away from the officers, as if to run away. The officers stepped off the elevator in pursuit of Aceves. Officer Hanna stated that he thought he heard Officer Rousseau say either that the suspect had a gun or that he had a gun on his hip.

Aceves stopped and turned towards the officers. As he did, Officer Hanna saw that Aceves had a black pistol in his waistband. Officer Hanna recalled that he saw the distinct white dots of the pistol’s rear sight. Seeing this, Officer Hanna yelled for Aceves to show his hands, yelling “Show me your hands, show me your hands, show me your hands”.

Aceves did not comply and suddenly reached for the gun. Officer Hanna yelled “don’t” as Aceves grabbed the gun and began to draw it. As Aceves continued drawing the pistol, Officer Hanna fired two times at Aceves, who fell to the ground.

During the interview, Officer Hanna described being aware of the close distance between Aceves and the officers, stating that he knew that Aceves could shoot the officers without having to aim and could shoot directly from the hip.

After the shooting, Officer Hanna approached Aceves yelling “Where is the gun? Where is the gun? Show me your hands.” One of the other officers told Officer Hanna that the gun was on a nearby chair and Officer Rousseau began to administer medical aid to Aceves. Officer Hanna recalls seeing two fired cartridge casings from his pistol on the hallway floor. He took care that they were not disturbed as medical personnel and officers arrived on scene.

Officer Hanna described feeling terrified when Aceves reached for his gun. He stated that he could not believe that “he’s really trying to grab a gun and all I can think was he was going, he was going to shoot us or me and I wasn’t going to see my [family] ever again.”

## **2. Officer Rousseau**

Officer Rousseau was interviewed by WCSO Detective Joseph Digesti (hereinafter "Det. Digesti") and SPD Detective Jose Zendejas (hereinafter "Det. Zendejas") at 0210 hours on August 23, 2020. In summary, he related the following information.

Officer Rousseau was working as a patrol unit in the downtown area on August 22nd. He was driving a marked patrol vehicle. Prior to this incident Officer Rousseau was assisting officers with a DUI investigation at 1st Street and Arlington Avenue.

Officer Rousseau described hearing a radio broadcast for officers to respond to a reported shooting at 121 West Street. Officer Rousseau got into his patrol vehicle and drove to the area. He parked in front of the Plaza Club and walked to the front entrance. At the entrance he was met by Officer Mercurio and Officer Hanna. The officers all entered the lobby together.

Officer Rousseau recalled a man telling him that the suspect was on the 9th floor. A female bystander described the shooter as wearing dark colored jeans, a red hat, and a red backpack.

The officers rode the elevator to the 9th floor. During the ride, Officer Rousseau and Officer Hanna had their pistols drawn. Officer Mercurio was armed with his Taser. When the elevator door opened, Officer Rousseau saw the suspect standing 4 to 5 feet in front of the officers. Officer Rousseau and Officer Hanna both ordered Aceves to "show us your hands" multiple times while placing Aceves at gunpoint.

Aceves did not comply and instead walked away from the officers and down the hallway. Knowing that Officer Hanna had Aceves at gunpoint, Officer Rousseau holstered his pistol and stepped towards Aceves intending to place him in handcuffs. Officer Rousseau recalled that he was standing to the left of Aceves and was therefore unable to see the right side of Aceves' body, including his right hand. Officer Rousseau heard Officer Hanna yelling for Aceves to "show us your hands".

As Officer Rousseau stepped towards Aceves, he suddenly heard gunshots. Aceves then fell to the ground. As Aceves fell, Officer Rousseau saw a black semiautomatic pistol with an extended magazine on a chair a few feet from the suspect. Officer Rousseau stated he did not see the gun fall from Aceves' hand or otherwise know how the gun got on the chair.

Officer Rousseau estimated he was within four feet of Aceves when Officer Hanna fired at Aceves. Aceves was immediately handcuffed by the three officers and Officer Rousseau began rendering medical aid, including applying pressure to an abdominal wound.

### **3. Officer Mercurio**

Officer Mercurio was interviewed by WCSO Detective Stefanie Brady (hereinafter “Det. Brady”) and SPD Detective Scott Valenti (hereinafter “Det. Valenti”) at 0250 hours on August 25, 2020. In summary, he related the following information.

Officer Mercurio was working downtown as part of a two-person patrol unit driving a marked police cruiser. While in the downtown area, Officer Mercurio heard the radio dispatch for a shooting at 121 West Street. Officer Mercurio and his partner, Officer Ryan Noel, drove to the area and parked their vehicle in the street in front of the Plaza Club.

As he exited his vehicle, Officer Mercurio saw bike team officers speaking with a man who looked scared or distraught. Officer Mercurio then met up with Officer Rousseau and Officer Hanna near the Plaza Club. Officer Noel went to the east side of the street.

Officer Rousseau learned that witnesses were reporting that the suspect was on the 9th floor of the Plaza Club. He followed Officer Rousseau and Officer Hanna into the elevator where they formulated a plan in which Officer Rousseau and Officer Hanna would provide lethal cover while Officer Mercurio would take the suspect into custody once the situation was safe. He drew his Taser and stood at the rear of the elevator, behind Officer Rousseau and Officer Hanna.

When the elevator opened, Officer Mercurio immediately saw the suspect. He then saw Officer Rousseau and Officer Hanna place Aceves at gunpoint while yelling at him to “show us your hands, show us your hands!”

Aceves backed away from the officers and started walking down the hallway. Officer Rousseau and Officer Hanna exited the elevator in front of Officer Mercurio. Officer Mercurio saw Aceves “digging” at a black object on the right side of his waistband.

Officer Mercurio heard two shots. He realized that either Officer Hanna or Officer Rousseau had shot Aceves. Officer Mercurio saw Aceves fall to his back. He then placed Aceves in handcuffs and began to assess him for injuries, locating a gunshot wound to his abdomen. Officer Mercurio also noticed a black handgun with an extended magazine laying on a chair within one to three feet of the suspect. Officer Mercurio did not know how the firearm got there and did not touch it.

Once Aceves was in handcuffs, Officer Rousseau took over first aid of Aceves and told Officer Mercurio to wait with Officer Hanna. Officer Mercurio waited with Officer Hanna until backup officers arrived.



#### **4. Albert Smith**

Mr. Albert Smith (hereinafter "Mr. Smith") was interviewed by Det. Brady on August 24th at the WCSO.

Mr. Smith stated that he and his friend Mrs. Evianna Maestas went downtown around 2300 to 2330 hours on August 22nd. He parked his car on Second Street near Arlington Avenue and the couple waited in line to get into the 5 Star Saloon at 132 West Street. Mr. Smith remembered that there seemed to be a lot of people walking around the area.

Later, Mr. Smith's attention was drawn to a white male walking southbound on the opposite side of the street. The male stood out because he was wearing a red backpack. Suddenly the man, later identified as Aceves, started screaming and shooting into the air with a black pistol with an extended magazine. Mr. Smith stated he thought he heard two shots, then two to three additional gunshots. After shooting in the air, Mr. Smith saw Aceves enter the front door of the Plaza Club.

Mr. Smith stated he tried calling 911 but no one picked up his call. He decided to find help and remembered that he had seen some officers near Arlington and First Street, so he ran to the area to report the shooting. On First Street he found Officer Hanna and ran with him to the Plaza Club.

#### **5. Evianna Maestas**

Ms. Evianna Maestas (hereinafter "Ms. Maestas") was interviewed by Det. Aceves at the WCSO on August 24, 2020.

Ms. Maestas reported that she was waiting in line at the 5 Star Saloon when suddenly she heard three gunshots. She looked in the direction of the gunshots and saw a thin man wearing a red or orange baggy shirt who was waving a gun in the air.

Ms. Maestas heard the shooter yell "fuck all you people" then fire the gun four of five more times. This caused people to scramble for cover and drop to the ground.

Ms. Maestas described the gun as a handgun that was "extended on the bottom".

Ms. Maestas then saw the suspect walk down the sidewalk approximately fifty to one hundred feet toward the Plaza Club. As he walked, he continued to wave the gun in the air as he entered the Plaza. Ms. Maestas called 911 and gave the dispatcher a description of the shooter. Ms. Maestas said that throughout the shooting she feared for her life, describing that she could have been killed at any moment.

## **6. Michael Spencer**

Mr. Michael Spencer (hereinafter "Mr. Spencer") was interviewed by Det. Wilson and Det. Aceves on August 23rd at the Reno Police Department beginning at 0220 hours.

Mr. Spencer reported that he was working as a front desk clerk at the Plaza Club on August 22<sup>nd</sup>. Also at the desk was his co-worker, Vickie Ostermeyer (hereinafter "Ms. Ostermeyer"). Mr. Spencer reported that he heard gunfire, consisting of between 2 and 4 gunshots, coming from outside the building on West Street. After hearing the shots, he turned to his co-worker and asked if she had heard gunfire. He then called 911.

Mr. Spencer recalls that after hearing the gunshots, he saw a guest who was later determined to be Ms. Fernanda Flores (hereinafter Ms. "Flores"), frantically trying to get in the door. She was let in by Ms. Ostermeyer, followed a short time later by a man. When Mr. Spencer saw the man trying to come in, he asked Ms. Flores if the man was the shooter. She replied that it was. The man then came into the lobby and walked past Mr. Spencer to the elevator bank. While in the lobby, the suspect did not look towards the front desk, and he did not say anything before taking the elevator to the 9th floor. Police officers arrived soon after and also took the elevator to the 9th floor.

Following this, Mr. Spencer took Ms. Ostermeyer and Ms. Flores to a safe location in the parking garage. On the way he heard more gunfire. Once the two women were safe, Mr. Spencer returned to the lobby and offered assistance to responding officers.

Mr. Spender explained that during night hours the lobby door is accessible only by customer keycard or by an employee-controlled button at the front desk. Mr. Spencer stated that he believed the suspect was able to get into the lobby using a keycard. He added that after the shooting he looked at the registrations for the 9th floor and believed that the suspect was a guest of Ms. Gabrielle Zamarron (hereinafter Ms. Zamarron") who was registered in room 908.

## **7. Vickie Ostermeyer**

Ms. Ostermeyer was interviewed at 0115 hours on August 23, 2020, at the Reno Police Department by Det. Digesti and Det. Valenti.

Ms. Ostermeyer stated that she works at the Plaza Club and began her shift at approximately 1600 hours. At around 2300 hours she was behind the desk facing West Street when she heard several gunshots outside. She looked towards the front of the building where she saw a heavysset female walk into the lobby. This woman told Ms. Ostermeyer that there was a man shooting outside.

Seconds later a man came to the lobby door and tried to come into the lobby. After several attempts, the door opened, and the man entered the lobby. Because the door is activated by a room keycard, Ms. Ostermeyer believed that the man had a room key. Afraid that he was the shooter, she avoided making eye contact with the man. Consequently, Ms. Ostermeyer was able to give a limited description of the suspect;

recalling only that he was wearing a red shirt and black pants. She also believed he was a white man and state that during this brief encounter the suspect made no statements. After the suspect boarded the elevator, Ms. Ostermeyer watched the indicator and saw that the elevator travelled to the 9th floor. Officers arrived in short order, and she told them that the suspect was on the 9th floor. The officers called an elevator and rode it to the 9th floor. Soon after, she heard 3 or 4 gunshots.

## **8. Fernanda Flores**

Ms. Flores was interviewed by telephone on August 23rd by Det. Brady, as she had returned to her home in San Jose, California after the shooting.

Ms. Flores reported that she was a guest at the Plaza Resort Club on August 22nd. At about 2245 hours she rode the elevator to the lobby and exited the building. As she stepped onto the sidewalk, she heard gunfire and turned to see a light skinned man, either white or Hispanic who was approximately 5'7" tall wearing a red baseball cap. The man was walking towards her holding a gun in the air and firing three gunshots in the air.

After the third shot, Ms. Flores stated she saw the man point the gun at people across the street. The man then continued walking towards her and pointed his gun directly at her, causing her to fear for her life. She retreated into the Plaza Club and told the clerks at the counter that someone was shooting outside and that he was coming towards the hotel. She took cover inside the lobby by kneeling behind a counter. She immediately grabbed her phone and contacted her family to warn them of the active shooter.

Next, Ms. Flores saw the suspect pulling on the front door of the lobby. He opened the door, entered the lobby, and walked to the elevator. When the elevator arrived, the shooter got on the elevator and rode it to the 9th floor. Three officers arrived a short time later. She then gave a brief description of the shooters and informed the officers that the suspect had ridden the elevator upstairs.

## **9. Gabrielle Zamarron**

Ms. Zamarron was interviewed by Det. Aceves and Det. Wilson at the Reno Police Department on August 23rd beginning at 0600 hours.

Ms. Zamarron is Justus Aceves' sister. Ms. Zamarron stated that Aceves lives with her in Yuba City, California and came with Ms. Zamarron and a large group of extended family members to Reno for a family vacation. Ms. Zamarron's aunt, uncle, and their son were staying in a room on the 8th floor. Aceves and his mother were staying in room 906, and Ms. Zamarron, her child, and her boyfriend were staying in room 908. The family arrived in Reno on Friday August 21st.

On Saturday August 22nd the family spent the day shopping and visiting various casinos. Ms. Zamarron last saw her brother at the Circus Circus, sometime after 2100 hours. Ms. Zamarron did not think that Aceves was drinking because he is under 21 years old, having only turned twenty earlier in August. She never saw him drinking on August 22nd.

Ms. Zamarron was asked if she knew whether her brother carried a gun. She said that she did not know if he did. She expressed concern that he would have a gun given the presence of her small child on the trip. She was unable to provide information on a possible motive for Aceves' actions or detailed information on his activities while in Reno.

## **B. 911 calls**

Reno Police Emergency Communication Dispatch received six calls for service about this incident. Mr. Spencer from the Plaza Club called at 22:44 hours to report that there was a "man on West Street in front of the building firing a gun". As the call continued, Mr. Spencer reported that the shooter is "in the building, please hurry" and that the shooter got into an elevator. Mr. Spencer is then heard handing the phone to Ms. Flores who describes the shooter as a white male with red hat armed with a gun, about 5 foot 7 inches, and possibly in his late 20s. She further described him as "he's like a gangster, he's wearing all red, he's wearing [Nike] Jordans".

The dispatcher then learns that the suspect took the elevator to the 9th floor. The following is a summarized timeline of the 911 calls.

- At two and half minutes into the call, Ms. Ostermeyer tells the dispatcher that the officers have arrived on scene.
- Another call was received at 2244 hours from a resident at the Westland Apartments at West and First Street. The caller reports that she heard "eight gunshots" outside the building and possibly to the north. She also heard shouting outside the building.
- A third call was received at 2244 hours from a pedestrian at West and Second Street. The caller reported that she heard six or seven gunshots. She also heard a lady yelling.
- A frantic caller at 2246 hours reported that the shooter shot five times with a "really big gun" at West and Second Street. The caller further reported that the man was shooting into the air. She described the suspect as approximately 130 pounds, "really skinny", "dirty blonde with a beard", and wearing a "really baggy" red shirt.
- A caller at 2247 hours reported shots in the area and that officers had arrived on scene.
- A frantic caller at 2248 hours reported that a man was firing a gun and that the police were already on scene.
- At 2308 hours a fourteen-year-old girl called to report that she heard 8 to 10 gunshots about five minutes prior to the call. She told the dispatcher that police were already on scene, but the shots had scared the "living s\*\* out of [her]."

## **C. Countdown of Officer Hanna's Firearm**

On August 23rd at 0124 hours Detective Brady along with FSD Investigator Elvira Koeder and FSD Supervisor Steven Gresko (hereinafter "Sup. Gresko") documented the equipment worn and used by Officers Hanna, Rousseau, and Mercurio. They took photographs depicting the officers in full uniform and documenting their duty belts, body worn cameras (hereinafter "BWC") and other equipment.

Officer Hanna's duty weapon is a Sig Sauer model 9320 9mm semiautomatic pistol mounted with a Streamlight TLR-1 flashlight. Officer Hanna carries three 17 round magazines loaded with Speer 9mm +P rounds. Officer Hanna loads his duty pistol in a 17 plus one configuration, i.e. one bullet in the chamber plus a magazine loaded with 17 rounds.

Officer Hanna was found to have discharged two rounds. His pistol contained one round in the chamber and 15 in the magazine. Officer Hanna's spare magazines each contained 17 rounds.

## **II. PHYSICAL EVIDENCE**

### **A. Body Worn Cameras (BWCs)**

Officer Hanna, Officer Rousseau, and Officer Mercurio were each wearing a department issued BWC. A summary of the BWC footage of Officer Hanna and Officer Mercurio follows.

#### **1. Officer Hanna**

Officer Hanna's BWC begins at 22:46:56 hours and depicts Officer Hanna cycling at the corner of First and West Street. He is cycling behind Mr. Smith, who is running. At the corner, Mr. Smith is seen gesturing towards the Plaza Club. Officer Hanna then rides in the street to the entrance of the Plaza Club.

At the doorway, Officer Hanna meets with Officer Rousseau who is speaking to Ms. Flores. Ms. Flores describes the suspect as a white male wearing a red hat and a backpack. She says that he was shooting in the street.

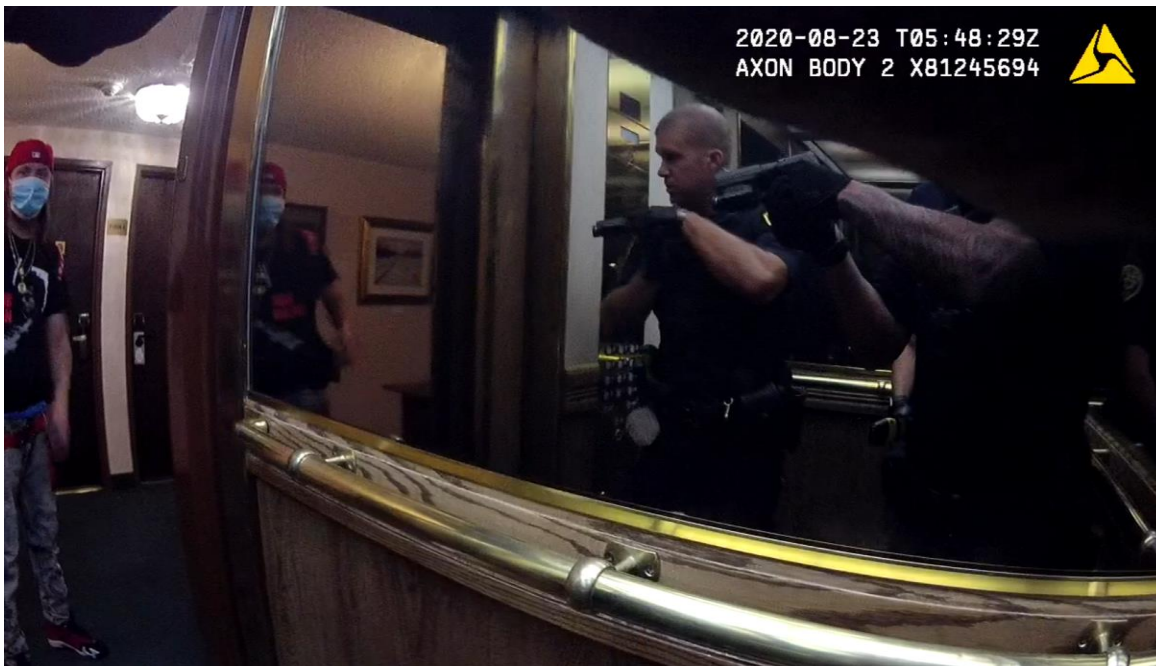
Officer Hanna and Officer Rousseau walk together to the elevator. At the elevator bank Ms. Ostermeyer approaches the officers, points at the elevator, and says, "He stopped on the 9th floor." Officer Rousseau speaks into his radio, stating that the suspect is wearing red and should be on the 9th floor.

Officer Rousseau calls an elevator which opens almost immediately. Officer Mercurio joins the group, and they enter the elevator. Officer Mercurio announces, "I've got hands." As the door closes, Officer Hanna tells Officer Mercurio, "Start off with Taser, once it's compliant then go hands". As the elevator approaches the 9th floor, Officer Rousseau says "I'll go first."

Twenty seconds later, the elevator opens on the 9th floor. Aceves is seen standing at the elevator facing the officers. He is wearing a red backpack, a red baseball cap worn backwards, red athletic shoes, a black t-shirt, a red belt, and a blue surgical mask.

Officer Hanna tells Aceves to "show me your hands." Aceves responds, "What do you mean?" and walks to his right, away from the officers.

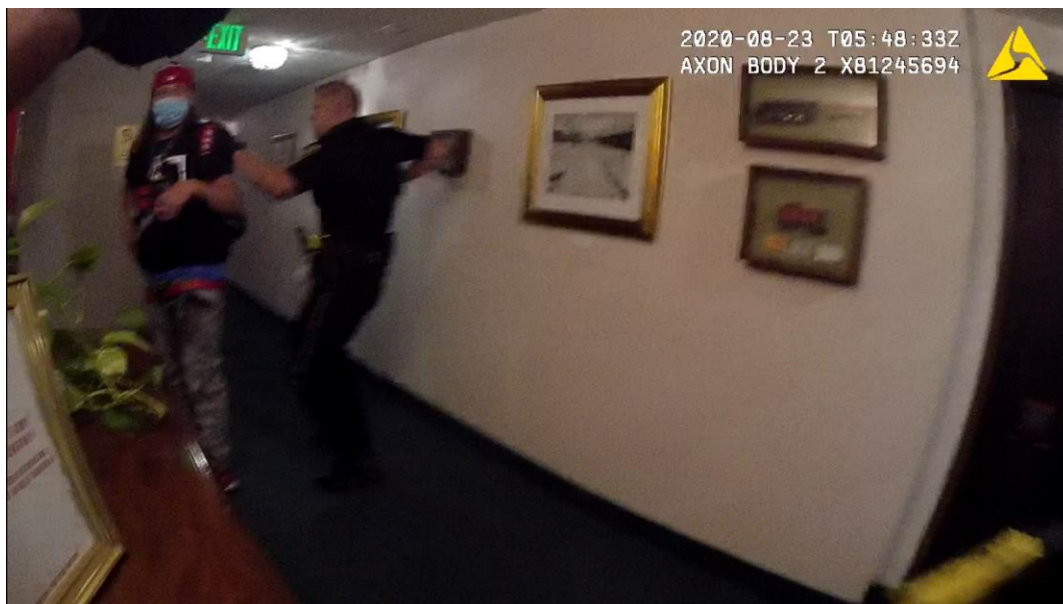
Officer Rousseau exits the elevator and yells for Aceves to show his hands, shouting “Show me your fucking hands right now!” Officer Hanna follows, repeating the order to “Show me your fucking hands!”



**Officers encounter Aceves outside the 9th floor elevator.**

Officer Rousseau is seen placing his left hand on Aceves' shoulder, while simultaneously reaching to holster his pistol at his right side. Aceves then turns away from Officer Rousseau to face Officer Hanna and Officer Rousseau.

Aceves' right hand is then seen reaching for his waist in a drawing motion. Officer Hanna yells, “No, don't reach for it!” but Aceves continues drawing his pistol. Officer Hanna fires two shots at Aceves. Aceves falls to the ground, screaming.



**Aceves draws a pistol moments before Officer Hanna fires. Officer Rousseau, at right, is holstering his pistol.**

The other officers immediately react to the gunshots. Officer Rousseau jumps back and points his pistol at Aceves. Officer Mercurio begins to holster his Taser. Officer Rousseau yells for Aceves to get on the ground. Aceves screams in pain.

Officer Hanna walks to Aceves, places him at gunpoint and yells for him to “Drop the gun.” Officer Mercurio responds, “It’s right here.” Officer Rousseau adds, “[The] gun’s on this chair.” Officer Rousseau then says, “Let’s get him cuffed up.”

As the Officers handcuff Aceves, Officer Rousseau instructs the others to call out that shots have been fired.

Officer Hanna asks his partners, “Where’s the gun?” Officer Mercurio responds, “right here” and gestures to a pistol on a chair. Officer Rousseau simultaneously states that “[It is] on the chair”.

Officer Rousseau asks Aceves where he was shot. The officers remove Aceves’ red backpack, using a knife to cut the straps, then roll him over and begin providing first aid. Officer Hanna begins walking up and down the hallway.

Officer Rousseau asks Aceves for his name, to which he responds “Carlos Diaz.” Rousseau again asks Aceves for his name, and he again responds “Carlos Diaz.” Officer Hanna later removes his bicycle helmet and waits for REMSA and backup officers while Officer Rousseau provides first aid.

## **2. Officer Mercurio**

Officer Mercurio’s BWC starts as he arrives in front of the Plaza Club. After parking his vehicle, he is seen walking into the lobby behind Officer Hanna. He then follows Officer Hanna and Officer Rousseau into the elevator.

As the Officers exit the elevator, Officer Hanna and Officer Rousseau can be heard yelling for Aceves to show them his hands. Officer Rousseau exits the elevator first, followed by Officer Hanna, and then Officer Mercurio.

As Officer Mercurio exits the elevator, he moves to the right of Officer Hanna. Officer Rousseau can be seen placing his left hand on Aceves’ shoulder.

Aceves is seen placing his hand at the front of his waist and drawing a pistol. Officer Hanna is heard yelling “No, don’t reach!” Two gunshots are heard as Officer Hanna fires at Aceves.

In the next frames Aceves’ gun is seen on a chair as Aceves falls to the ground. Officer Mercurio immediately broadcasts “shots fired”, then helps the other officers handcuff, then administer aid to Aceves.



2020-08-22 22:48:29 -0700  
AXON BODY 3 X60314131



Still frame showing Aceves drawing his pistol.



2020-08-22 22:48:29 -0700  
AXON BODY 3 X60314131



Still frame of Aceves drawing his pistol moments before Officer Hanna fires.





**Aceves' pistol on chair immediately after Officer Hanna fires.**

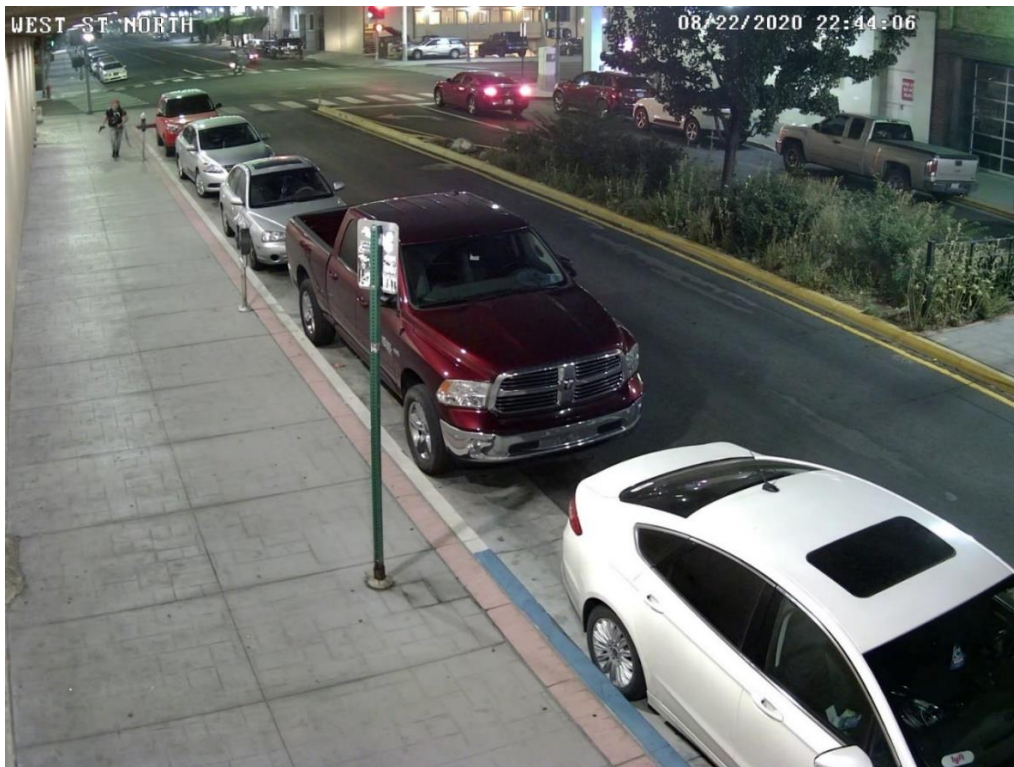
## **B. Surveillance video**

### **1. Riverwalk Towers**

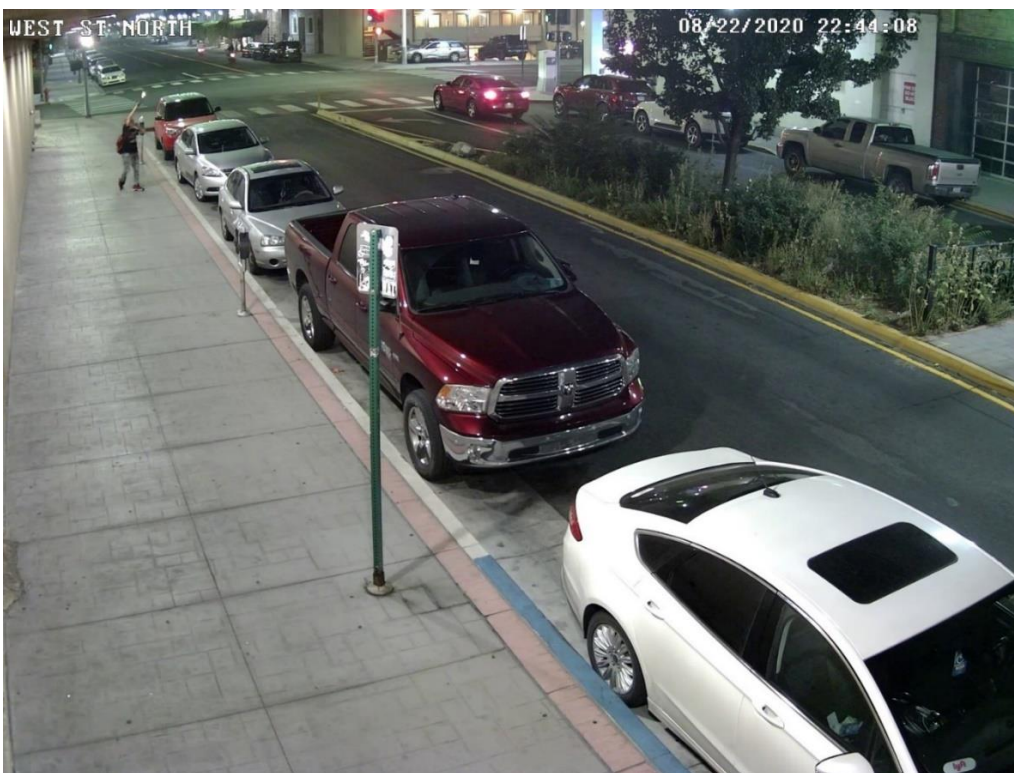
External surveillance video was collected from the River Walk Towers at 200 West Street. Riverwalk Towers is adjacent to the north side of Plaza Resort Club.

At 22:43:51 hours, Aceves is seen crossing Second Street heading south. Once on the 200 block of West Street Aceves is clearly holding a black pistol in his right hand. He is wearing a black t-shirt, red baseball cap worn backwards, dark colored jeans, and athletic shoes.

Aceves runs a few paces, then points his pistol in the air and begins firing. Four distinct muzzle flashes are captured by surveillance.

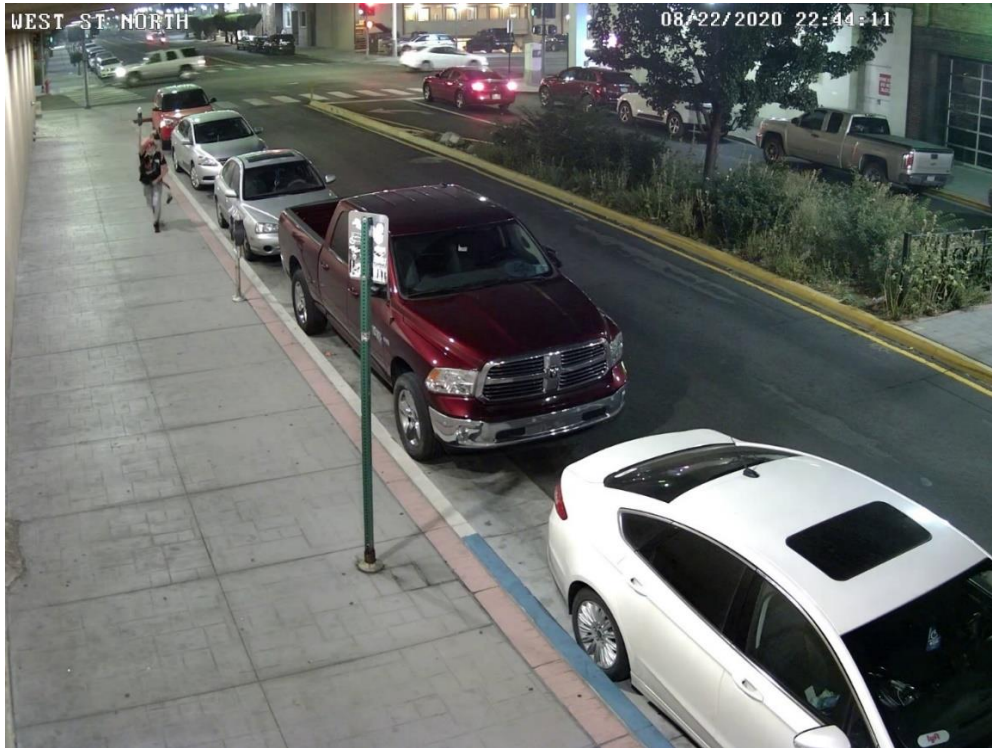


**Aceves at River Walk Towers, West Street near Second Street.**

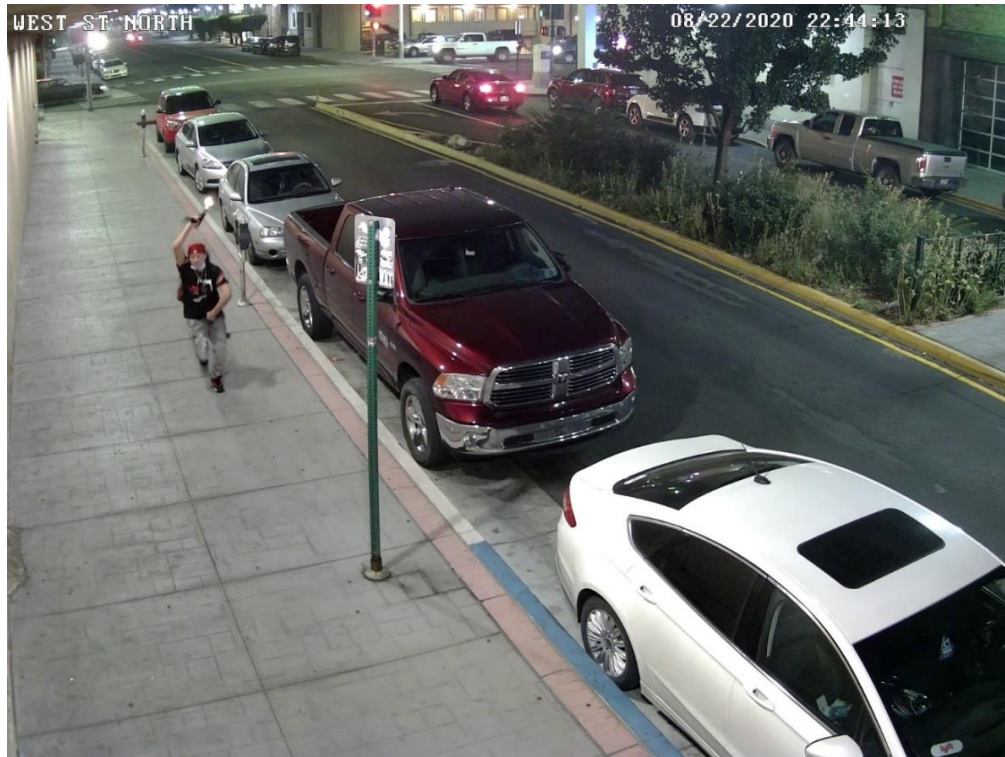


**Muzzle flash as Aceves fires one of four shots at this location.**

Aceves then runs south, firing as he runs. Two additional muzzle flashes are seen as Aceves approaches Plaza Club. It is apparent that Aceves' pistol is loaded with an extended magazine.



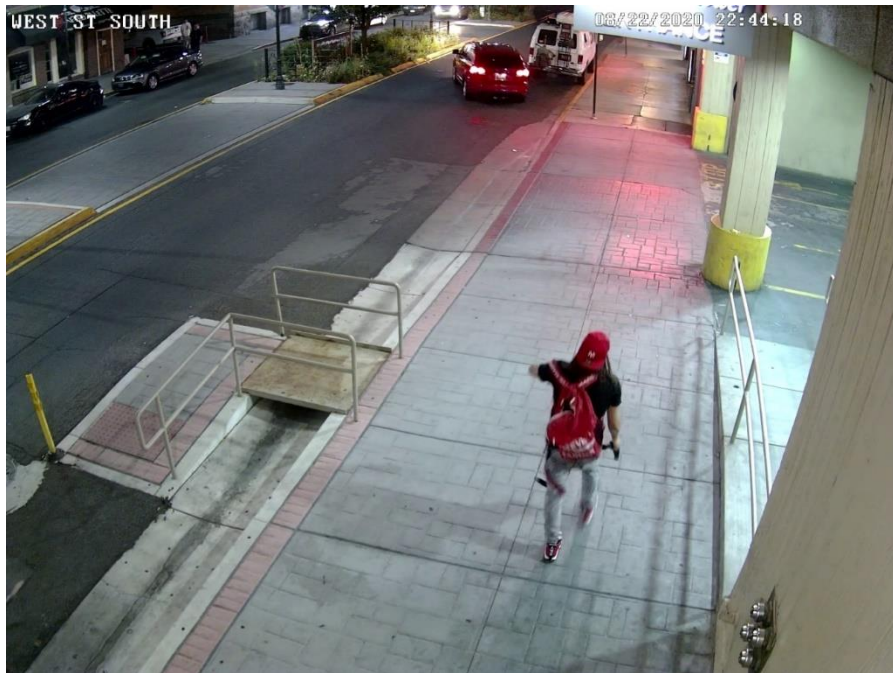
**Muzzle flash as Aceves fires fifth shot.**



**Muzzle flash from Aceves' sixth shot.**

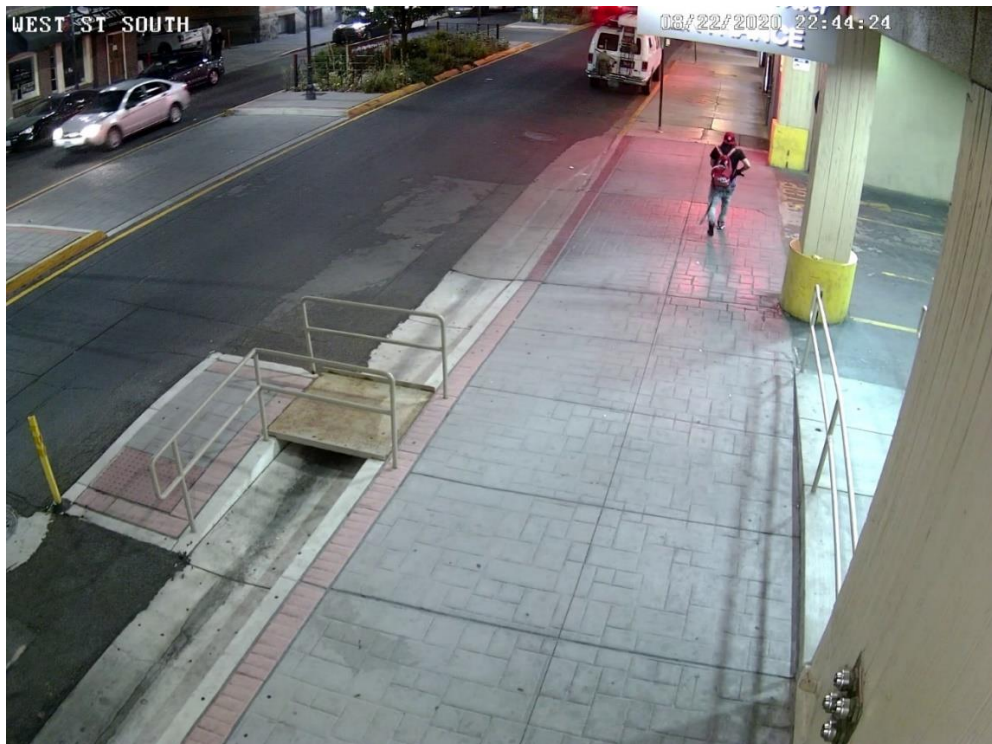
**A second angle depicts Aceves' actions as he approaches the Plaza Club door.**

Aceves is seen walking on the sidewalk on the west side of the street. He holds his pistol at his side. A long section of his belt swings at his left side.



**Aceves approaching Plaza Club entrance with pistol visible in right hand.**

As he approaches the Plaza Club, Aceves places the pistol in his waistband. He enters the Plaza Club doorway at 22:44:39 hours.



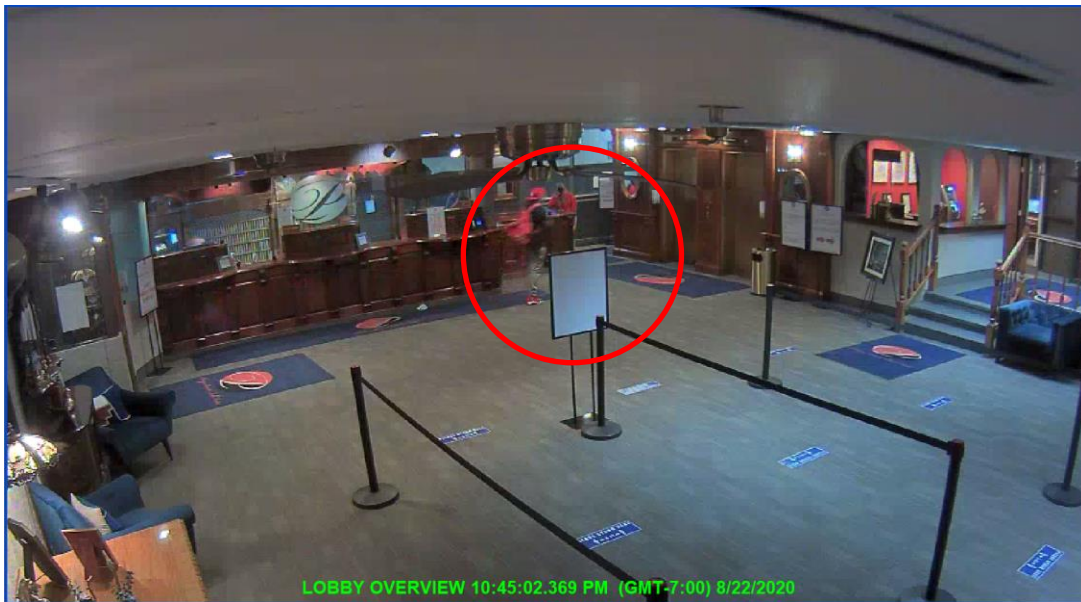
**Aceves places his pistol in his waistband near the Plaza Club entrance.  
The first police cars are shown arriving on scene at 22:47:00 hours.**

## 2. Plaza Club

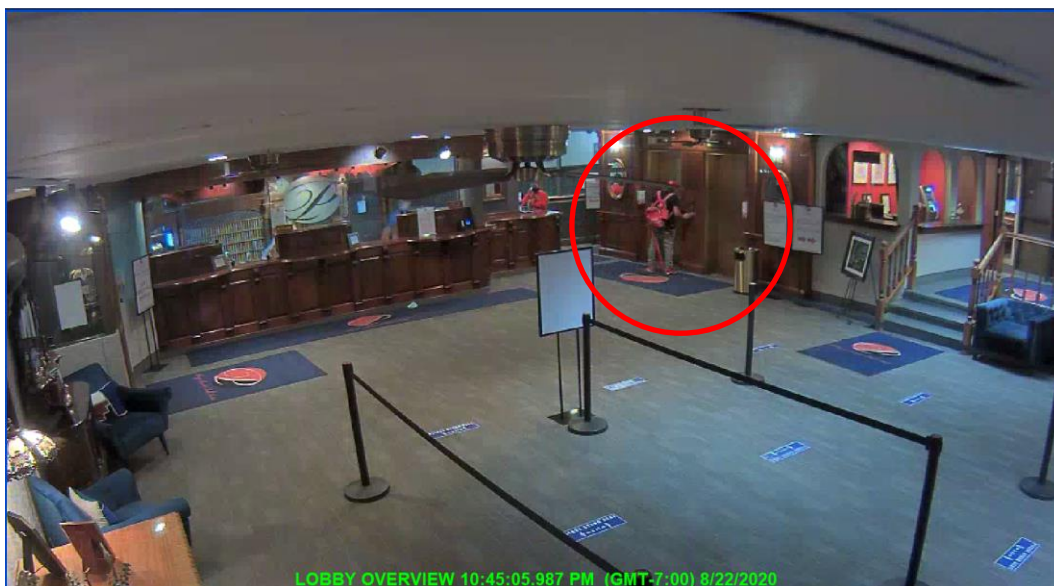
Interior surveillance footage was recovered from Plaza Club. The surveillance footage contains both audio and video tracks.

At 10:44:09 p.m. six gunshots are heard off camera. Ms. Flores is seen returning to the lobby from the street. Ms. Ostermeyer exclaims “What the hell was that?” Mr. Spencer asks, “Where is he?” Ms. Flores replies “right there!” Ms. Ostermeyer then exclaims “He’s right there, he’s right there.”

Aceves tries to get in the front door. Mr. Spencer then calls 911. Aceves opens the door, enters the lobby, and walks directly to the elevator. Mr. Spencer, Ms. Ostermeyer, and Ms. Flores all take cover.



**Aceves in Plaza Club lobby.**



**Aceves at elevator.**

Aceves is seen entering the elevator. Meanwhile, Mr. Spencer's call to 911 is heard in its entirety. Ms. Ostermeyer announces that Aceves took the elevator to the 9th floor. Ms. Flores then takes the phone from Mr. Spencer and gives the operator a description of Aceves.

Officers Hanna, Rousseau, and Mercurio enter the lobby at 10:47:41 p.m. and board an elevator together.

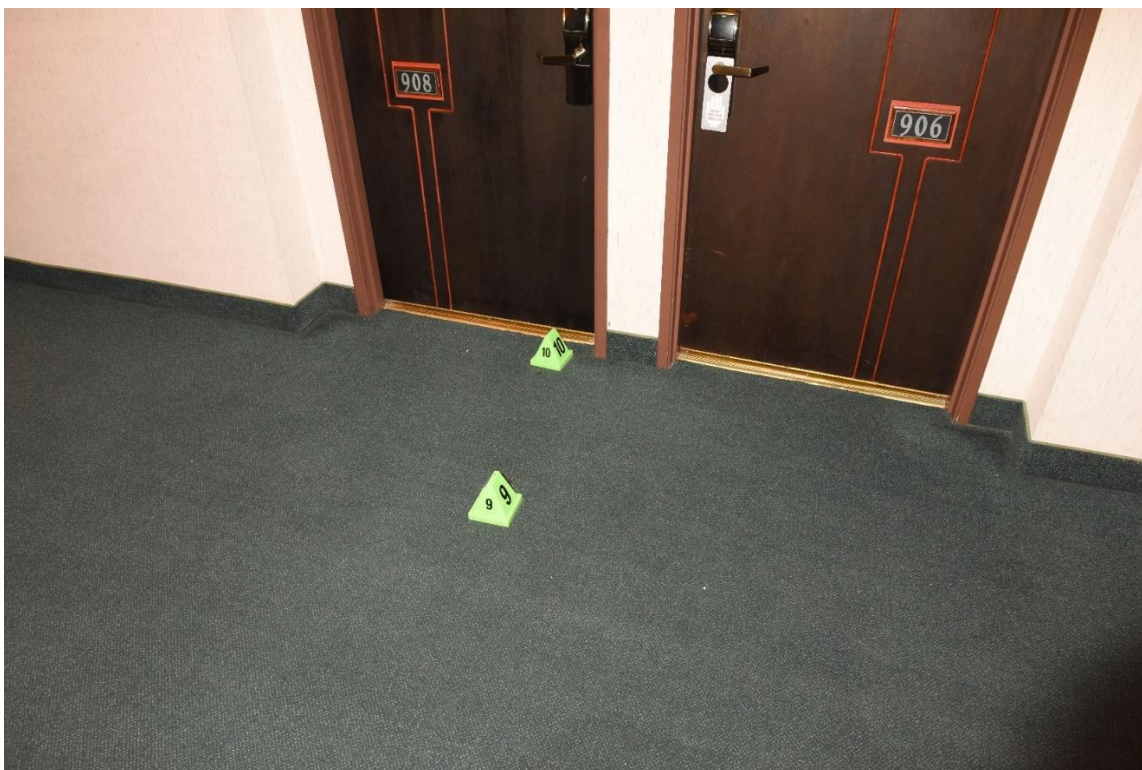
At 10:48:35 p.m. two gunshots are heard off camera. Ms. Ostermeyer exclaims, "s---, s---", then runs out of the lobby with Mr. Spencer and Ms. Flores.

### **C. Scene Processing**

Two scenes were identified and processed by FSD Criminalist Shaun Braly with the assistance of Supervising Criminalist Steve Gresko, and detectives with the WCSO and SPD. The outside shooting scene consisted of the walkway on the west side of West Street near Second Street. The second scene was in the 9th floor hallway.

#### **1. Ninth Floor Hallway**

Near the elevator doors investigators found two fired cartridge cases marked with a "Speer 9mm Luger +P" headstamp. They were identified as placards 9 and 10. These cartridge cases are the same make of ammunition carried by Officer Hanna and were expended when he fired at Aceves.



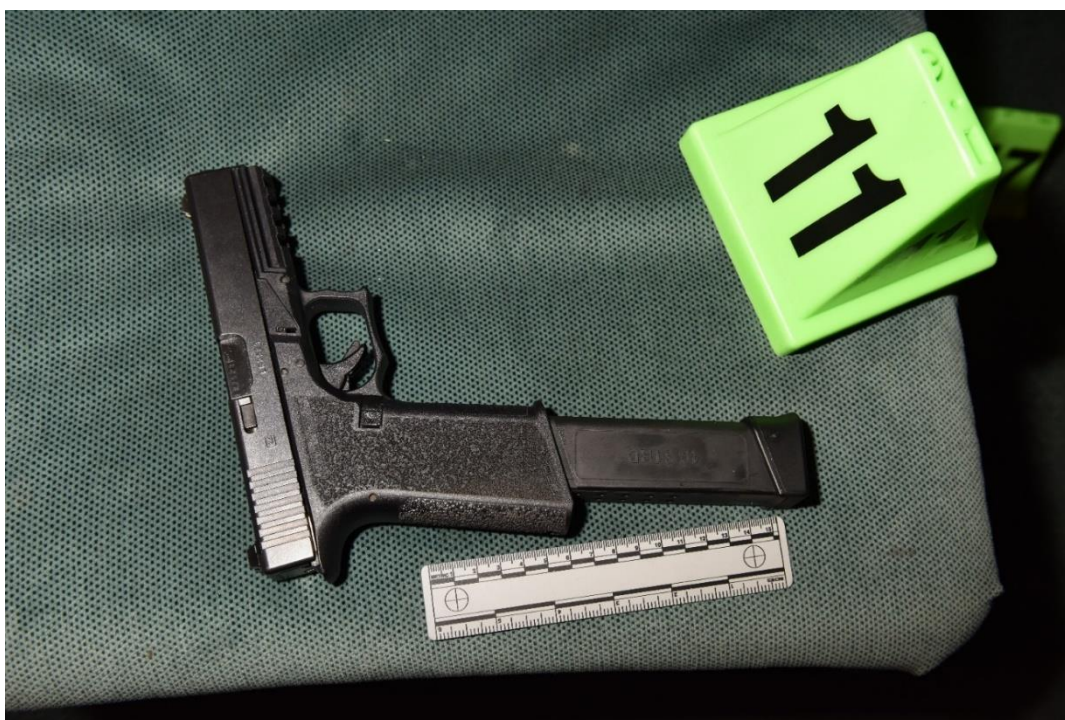
**Placards 9 and 10 depicting fired cartridges from Officer Hanna's duty pistol.**

To the north of the shell casings investigators located a cluster of evidence marked as placards 11 through 19.



**Placards 11-16, 18, 19.**

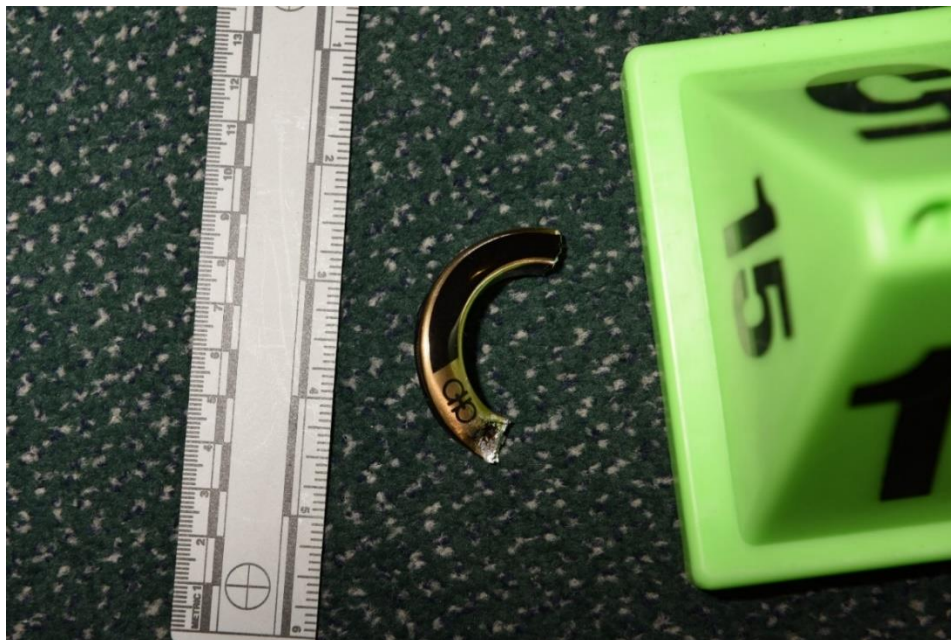
A semiautomatic pistol with an extended magazine was located on a chair and was identified as placard 11. The pistol was identified as a Polymer80, Inc. model PF940V2 fitted with a Glock 22 .40 S&W caliber slide. A round in the chamber bore a “Federal 40 S&W” headstamp.



**Placard 11 depicting Aceves Polymer80 pistol with extended magazine.**

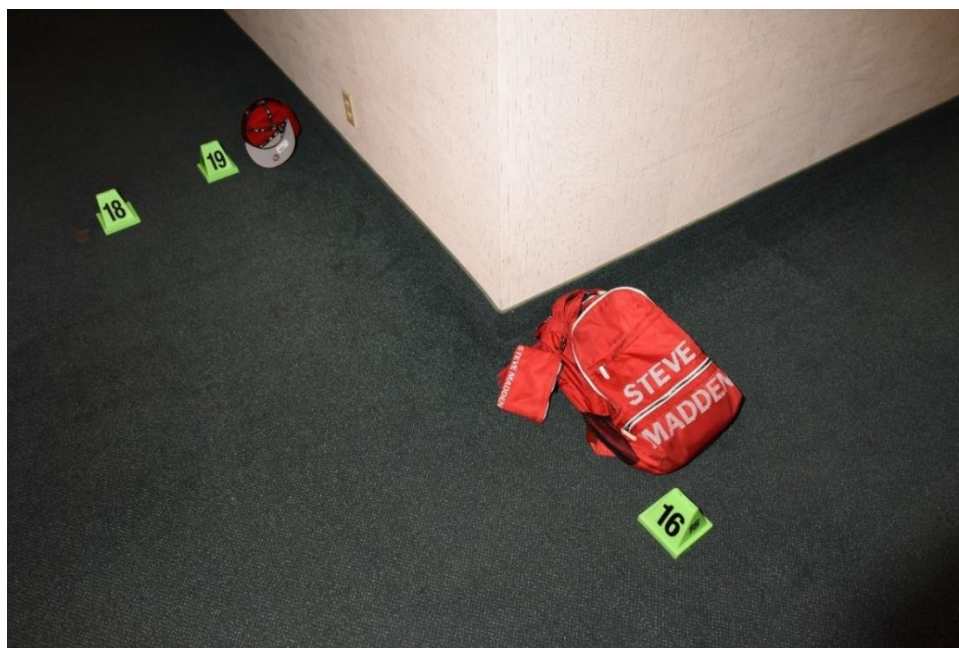
A 31-round extended magazine containing two live .40 S&W rounds was inserted in the pistol. One round bore a Federal headstamp and the other a Winchester.

Metal fragments were located at placards 12 and 15. They were later observed to be consistent with Aceves' belt buckle. The evidence suggests that a bullet struck Aceves' buckle and fragmented, resulting in fragments of both buckle and bullets on scene and the injury to Aceves' groin.



**Broken buckle piece at placard 15.**

Placards 13, 14 and 17 identified three small bullet fragments. A black piece of foam consistent with the strap of Aceves' backpack was located at placard 18. Aceves red Steve Madden backpack was located at placard 16. His red New York Yankees ballcap was located at placard 19.



**Placards 18 (black foam), 19 (red "NY" cap), 16 (red backpack).**



## 2. West Street Sidewalk

Along the sidewalk to the north of Plaza Club and adjacent to Riverwalk Towers investigators located 6 fired .40 caliber cartridge casings. From north to south, they were marked as placards 1 through 6. The cartridge cases at placards 1 and 2 bore “Federal .40 S&W” headstamp. Placards 3 and 5 were marked “Win .40 S&W.” Placard 4 bore the headstamp “F.C. 40 S&W” and placard 6 was marked “S&B 40 S&W.”



West Street sidewalk looking south, showing .40 caliber cartridge cases at placards 1-5.



West Street sidewalk showing .40 caliber cartridge cases at placards 5 and 6.

### **3. Suspect Firearm**

Aceves' firearm was identified as a .40 S&W caliber pistol consisting of a Polymer80, Inc. PF940V2 frame fitted with Glock 22 slide. The firearm was examined by FSD Criminalist Kulvir Sarai and found to be in normal operating condition with no noted malfunctions. The six cartridge cases located on the West Street sidewalk were subjected to microscopic examination and comparison to test fired cartridge cases from the Polymer80. The forensic examination showed that five of the six .40 caliber cartridge cases were identified as having been fired from Aceves' firearm. The sixth cartridge case shared some class characteristics with the test fired cases and some corresponding striae, but the comparison was ultimately inconclusive.

### **III. CRIMINAL PROSECUTION**

For his actions on August 22nd, Justus Aceves was charged with the felony offense of Resisting a Public Officer with Use of a Firearm. He pleaded guilty to the offense and was sentencing to the maximum prison sentence, 24 to 60 months on February 8, 2021. In his plea he admitted that he resisted the officers by running or walking away, ignoring their commands, and reaching for and drawing his pistol.

### **IV. LEGAL PRINCIPLES**

The Washoe County District Attorney's Office is tasked with assessing the conduct of the officer involved and determining whether any criminality on their part existed at the time of the shooting. Although Aceves survived this officer involved shooting, in order to conduct the appropriate assessment, the District Attorney's review is controlled by the relevant legal authority pertaining to justifiable homicides. This is because the analysis rests upon the decision to use deadly force, not the result.

In Nevada, there are a variety of statutes that define justifiable homicide (see NRS 200.120, 200.140, and 200.160). There is also a statute that defines excusable homicide and one that provides for the use of deadly force to effect arrest (see NRS 200.180 and NRS 171.1455). Moreover, there is case law authority interpreting justifiable self-defense and defense of others. All of the aforementioned authority is intertwined and requires further in-depth explanation:

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

NRS 200.120 provides in relevant part that "Justifiable homicide is the killing of a human being in necessary self-defense, or in defense of...person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony..." against the other person. NRS 200.160 further provides in relevant part that "Homicide is also justifiable when committed...in the lawful defense of the slayer...or any other person in his or her presence or company, when there is reasonable ground to apprehend a design on the part of the person slain to commit a felony or to do some great personal injury to the slayer or to any such person, and there is imminent danger of such design being accomplished".

The Nevada Supreme Court has refined the analysis of self-defense and, by implication defense of others, in Runion v. State, 116 Nev. 1041 (2000). In Runion, the Court set forth sample legal instructions for consideration in reviewing self-defense cases as follows:

The killing of another person in self-defense is justified and not unlawful when the person who does the killing actually and reasonably believes:

1. That there is imminent danger that the assailant will either kill him or cause him great bodily injury; and
2. That it is absolutely necessary under the circumstances for him to use in self-defense force or means that might cause the death of the other person, for the purpose of avoiding death or great bodily injury to himself.

A bare fear of death or great bodily injury is not sufficient to justify a killing. To justify taking the life of another in self-defense, the circumstances must be sufficient to excite the fears of a reasonable person placed in a similar situation. The person killing must act under the influence of those fears alone and not in revenge.

Actual danger is not necessary to justify a killing in self-defense. A person has a right to defend from apparent danger to the same extent as he would from actual danger. The person killing is justified if:

1. He is confronted by the appearance of imminent danger which arouses in his mind an honest belief and fear that he is about to be killed or suffer great bodily injury; and
2. He acts solely upon these appearances and his fear and actual beliefs; and
3. A reasonable person in a similar situation would believe himself to be in like danger.

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

If evidence of self-defense is present, the State must prove beyond a reasonable doubt that the defendant did not act in self-defense. If you find that the State has failed to prove beyond a reasonable doubt that the defendant did not act in self-defense, you must find the defendant not guilty.

Id. 1051-52.

#### **B. Justifiable Homicide by Public Officer**

NRS 200.140 provides in relevant part that “Homicide is justifiable when committed by a public officer...when necessary to overcome actual resistance to the execution of the legal process, mandate or order of a court or officer, or in the discharge of a legal duty” and “[w]hen necessary...in attempting, by lawful ways or means, to apprehend or arrest a person” and/or “in protecting against an imminent threat to the life of a person.”<sup>5</sup>

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<sup>5</sup> A 1985 Nevada Attorney General Opinion limited the interpretation of NRS 200.140 to situations where the officer has probable cause to believe that the suspect poses a threat of serious physical harm either to the officer or to others.

### **C. Use of Deadly Force to Effect Arrest**

NRS 171.1455 provides in relevant part “If necessary to prevent escape, an officer may, after giving a warning, if feasible, use deadly force to effect the arrest of a person only if there is probable cause to believe that the person...poses a threat of serious bodily harm to the officer or to others.

## **V. ANALYSIS**

On August 22, 2020, Justus Aceves recklessly and with no apparent motive fired a pistol in the air multiple times on a busy downtown street on a Saturday night. Bystanders thought that Aceves was going to shoot them. His erratic and dangerous behavior gives a glimpse into the mindset of Aceves that evening when he was encountered by RPD officers at the Plaza Club.

Upon encountering Aceves, Officers Rousseau and Hanna directly and repeatedly ordered him to surrender to them, to show them his hands, and to get on the ground. Aceves did not respond to any of the commands and acted contrary to every command given by moving away from the officers. Aceves’ immediate reaction was to flee from the officers. His actions were deliberately and directly contrary to the officers’ repeated commands to show them his hands. Then he turned and drew a pistol from his waist.

Officer Hanna commanded Aceves “No, don’t reach for it!” Instead Aceves continued to draw the pistol, bringing it in front of his body, placing Officer Hanna in reasonable fear of death or great bodily injury. These actions also caused Officer Hanna to reasonably fear that Officer Mercurio and Officer Rousseau were at imminent risk of death or great bodily injury. In recounting this experience, Officer Hanna stated, “he's really trying to grab a gun and all I can think was he was going, he was going to shoot us or me and I wasn't going to see my [family] ever again.”

Under the circumstances it was reasonable and necessary for Officer Hanna to use deadly force in response to the threat posed by the actions of Justus Aceves. The totality of the circumstances known to Officer Hanna was sufficient to excite the fears of a reasonable person placed in a similar situation. Under Nevada law the actions of Officer Hanna were justified.

## **VI. CONCLUSION**

Based upon a review of the entire investigation presented and the application of Nevada law to the known facts and circumstances surrounding August 22, 2020, officer involved shooting of Justus Aceves, the actions of Officer Hanna are warranted under Nevada law. Unless new circumstances come to light which contradict the factual foundations upon which this decision is made, the District Attorney’s review of this case is officially closed.