

**Non-Fatal Officer Involved Shooting of Damion Henninger**

**Los Angeles Police Department**

**Officer Edwin Rocha, #38526**

**Officer Nallely Avila, #41959**

**Detective Jesus Martinez, #34593**

**Detective Jed Levin, #33733**

**Detective Bryce Kirk, #37394**

**J.S.I.D. File #20-0192**



**GEORGE GASCÓN**

**District Attorney**

**Justice System Integrity Division**

**March 29, 2024**

## MEMORANDUM

TO: CAPTAIN OMAR BAZULTO  
Los Angeles Police Department  
Force Investigation Division  
100 West First Street, Suite 431  
Los Angeles, California 90012

FROM: JUSTICE SYSTEM INTEGRITY DIVISION  
Los Angeles County District Attorney's Office

SUBJECT: Non-fatal Officer Involved Shooting of Damion Henninger  
J.S.I.D. File #20-0192  
F.I.D. File #F024-20

DATE: March 29, 2024

The Los Angeles County District Attorney's Office Justice System Integrity Division has completed its review of the June 1, 2020, non-fatal shooting involving Los Angeles Police Department (LAPD) Officers Edwin Rocha and Nallely Avila and Detectives Jesus Martinez, Jed Levin and Bryce Kirk. Civilian Damion Henninger was injured by a gunshot. We have concluded that the shooting was not unlawful.

The District Attorney's Command Center was notified at 10:40 p.m. on June 1, 2020, of the shooting. The District Attorney's Response Team responded and was briefed at the scene by LAPD Lieutenant David Smith.

The following factual analysis is based on surveillance videos, LAPD communications recordings, evidence collected, and the reports submitted on August 9, 2021, by the LAPD Force Investigation Division (FID). There was no body worn camera video or digital in car camera video recorded by the Los Angeles Police Department.

None of the officers agreed to provide statements. Compelled statements were not considered in this evaluation.

### **SUMMARY**

On June 1, 2020, during the COVID-19 curfew hours, an eight person LAPD Narcotics Enforcement Detail was monitoring the Southwest Division area for looting and other criminal activity. Three team members were in a sedan and the remainder were in a passenger van.

At approximately 9:24 p.m. the Detail approached a Hyundai sedan parked at the gas pumps of a Chevron station at 22<sup>nd</sup> Street and South Vermont Avenue. There were three male civilians standing

outside of the Hyundai. Each appeared to be armed with a handgun. When the Detail pulled into the station two of the civilians took cover behind the Hyundai's trunk and started shooting at the Detail. A third fled.

Five members of the Detail shot back at the three males. During this gunfight the civilian who fled was hit by gunfire in his right flank and left thigh. All three civilians surrendered and were arrested.

## **FACTUAL ANALYSIS**

On June 1, 2020, the city of Los Angeles was under a curfew prohibiting persons from being on the streets or in public areas between 6:00 p.m. and 6:00 a.m.<sup>1</sup> The Los Angeles Police Department was on tactical alert. In LAPD's Southwest Division the Narcotics Enforcement Detail was tasked with monitoring the division for looting and other unlawful conduct.

On that night the Southwest Division Detail consisted of seven members using two unmarked vehicles – [REDACTED] and a [REDACTED] sedan.

The [REDACTED] was driven by Detective Jesus Martinez. He was in plain clothes. The front passenger in the van was Detective Jed Levin wearing a tactical vest over plain clothes. In the rear seat of the van were officers Dennis Dilliner and Edwin Rocha, also wearing tactical vests over plainclothes. The rear passengers were not visible through the tint of the [REDACTED]'s rear windows.

The [REDACTED] was driven by Officer Nallely Avila. Officer Johnny Duran was in the front passenger seat and Detective Bryce Kirk was in the left rear passenger seat. All were in plain clothes but had tactical vests available to them in the car. None of the [REDACTED]'s windows were tinted.

Each tactical vest was emblazoned with POLICE in block letters on the back and with embroidered badges and patches bearing "Los Angeles Police" on the front.

There were three civilian witnesses. Two left the scene when they first observed firearms and were not present during the shooting. A third fled when the shooting erupted and could not be identified.

### **The Shooting**

This segment is an analysis of those facts known to the officers at the time of the shooting, as depicted by the available audio and video recordings of the incident.

At about 9:20 p.m. the Detail members in the [REDACTED] observed three civilian males adjacent to a Hyundai parked at the pumps in the Chevron station on the southeast corner of 22<sup>nd</sup> Street and South Vermont Avenue. One of the civilians (identified during the subsequent investigation as [REDACTED]) was dressed in an orange short-sleeved TEE and faded blue denim pants with black and white sneakers. The other two (identified during the subsequent investigation as [REDACTED] and Damien Henninger) were each dressed in white pullover sweatshirts, light shaded

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<sup>1</sup> Order Setting Curfew During Existence of a Local Emergency, City of Los Angeles Mayor Eric Garcetti, May 30, 2020, revised 2:45 p.m. June 1, 2020.

camouflage patterned pants and black and white sneakers. One of these two (later identified as ██████) was wearing a black beanie.

The Detail turned right onto 22nd Street from South Vermont Avenue and entered the gas station from its north driveway. It appeared that each of the males was armed with a firearm.



*Image Capture 1-* ██████, Mr. Henninger and ██████, each with what appears to be a handgun (these image captures are not contemporaneous with one another but were all captured while the ██████ was at the Chevron station).

As the ██████ drove southward between the gasoline pumps, ██████ retrieved a laser-sighted pistol from the trunk and approached the ██████. Officer Avila continued to drive south through the Chevron station to its southernmost driveway on South Vermont Avenue. When the ██████ exited the driveway, ██████ pointed his pistol at the ██████.



Image Capture 2 – [REDACTED] pointing handgun at [REDACTED] visible in upper-right of photo.

Officer Avila continued north on South Vermont Avenue. Both of the males in white sweatshirts took cover. The one with the laser-sighted pistol continued to point his pistol at the [REDACTED].



Image Capture 3 – [REDACTED] pointing handgun at [REDACTED] as it traveled north on South Vermont Avenue.

As [REDACTED] took aim at the [REDACTED], [REDACTED] removed a pistol from his pocket and watched closely as the [REDACTED] drove north. Mr. Henninger walked to the Hyundai's open rear passenger door. [REDACTED], with the laser-sighted pistol, continued to walk north in the Chevron station lot as he followed the progress of the [REDACTED].



Image Capture 4- [REDACTED], holding laser-sighted pistol, following departing [REDACTED].

When Officer Avila reached the freeway (approximately 200 feet north of the Chevron) she made a u-turn and took up an observation position on the west side of South Vermont Avenue. At 9:22:35 p.m. Officer Duran broadcast to the [REDACTED] to head toward the Chevron station while Officer Kirk broadcast over the LAPD's radio frequency "Three Nora Thirty, we need a backup and an airship. Four fifteen group with a gun. Chevron gas station. Vermont and the 10-freeway."

The [REDACTED] was south of the station on South Vermont Avenue approaching the Chevron station at the time of these broadcasts. As the van approached a civilian in a Toyota drove northward into the Chevron station between the second pump island and the sidewalk of South Vermont Avenue. When the Toyota stopped at the pumps the [REDACTED] passed northward on the street and entered the Chevron station through the Chevron's northern most driveway. [REDACTED], [REDACTED] and Mr. Henninger watched as the [REDACTED] approached the driveway.



Image Capture 5 – ██████████, Mr. Henninger and ██████████ watch as ██████████ approaches Chevron station on South Vermont Avenue.

The ██████████ arrived at the Chevron station within twelve seconds of the broadcast. Upon its arrival the following radio traffic was recorded (times shown are the LAPD radio-stamp times at the start of the transmission).

21:22:47	Unidentified voice	I see a guy with a gun.
21:22:48	Unidentified voice 1	White shirt.
21:22:48	Unidentified voice 2	White shirt.
21:22:50	[Audible]	Gunshot (possibly two), muffled.
21:22:50	Unidentified voice 3	Shots fired.
21:21:50	Unidentified voice 4	Shots fired [Transmission stops]
21:23:11	Unidentified voice	All suspects in custody.

Table 1 – LAPD communications recording of events at the time of the shooting.

The shooting was captured on video. As the ██████████ slowed to a stop, just northwest of the Hyundai, Detective Levin opened the front passenger door.



Image Capture 6 - [REDACTED] comes to stop as Detective Levin opens door.

The first shot appears to have been fired by one of the three civilians, based on the audio recording of the radio traffic. From within the [REDACTED], Officer Roca shot back through the [REDACTED]'s window.

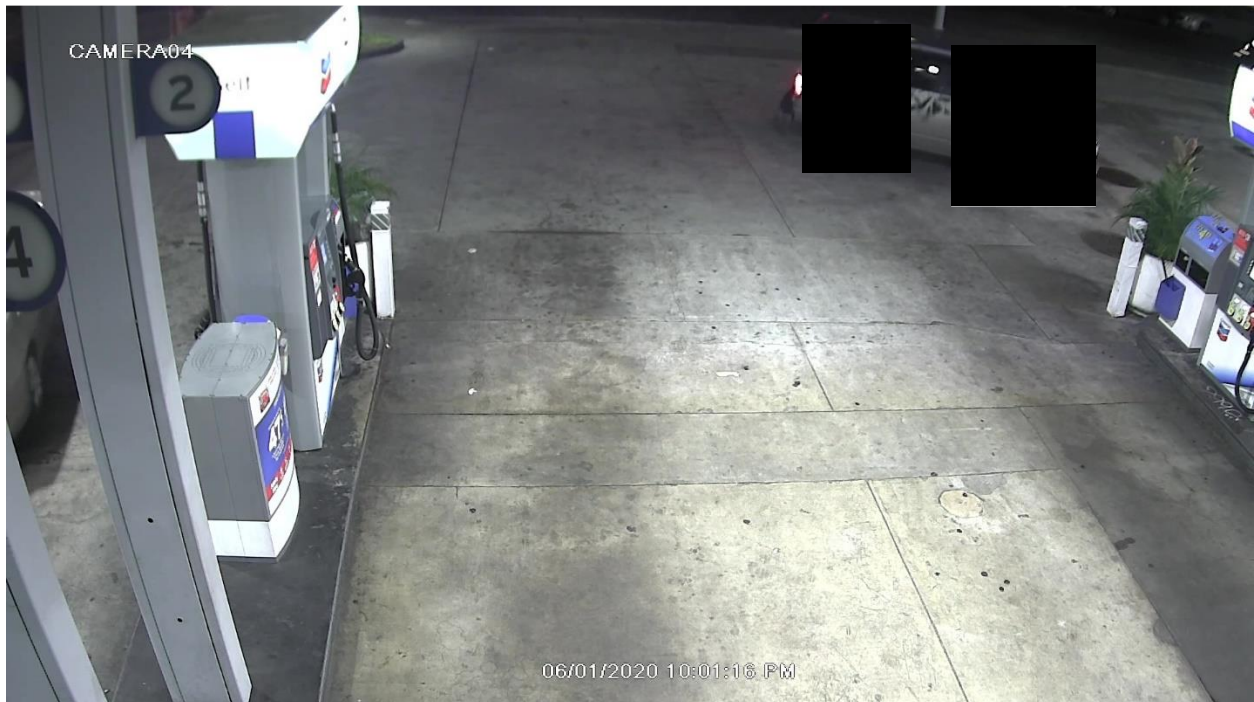


Image Capture 7 - Muzzle fire from Officer Rocha's firearm visible inside of the [REDACTED].

After the first exchange of gunfire, all three civilians ran to the back of the Hyundai.





Image Capture 8 – The three civilians take cover behind the Hyundai.

██████████ and ██████████ remained behind the Hyundai, shooting at the officers.



Image Capture 9 – ██████████ and ██████████ shooting at officers.

Mr. Henninger started running southwest across the Chevron station lot toward South Vermont Avenue.



*Image Capture 10 – Mr. Henninger fleeing southwest across Chevron station lot.*

Detective Levin jumped out of the [REDACTED] front passenger door and, one second after Officer Rocha shot through the window, fired one shot in the direction of the fleeing Mr. Henninger. Detective Martinez and Officer Rocha exited the [REDACTED], guns drawn, and raced southwest to take cover behind the pumps on the second pump island. The driver of the Toyota who had been stopped there fled out of the driveway, traveling north on South Vermont Avenue.



*Image Capture 11- Detective Levin shooting south toward Mr. Henninger as Toyota flees Chevron station.*

As [REDACTED] and [REDACTED] continued to exchange gunfire from behind the Hyundai with Detective Martinez and Officer Rocha, Mr. Henninger turned and ran south on South Vermont Avenue out of the cameras' view. As he did this, LAPD units responding to the broadcast were approaching on South Vermont Avenue from the south. He reversed direction and reappeared in the cameras' view just as the [REDACTED] approached from the north. Mr. Henninger kept his hands to his waist and ran back toward the Chevron station, drawing gunfire from the officers in the [REDACTED]. Officers Avila and Duran and Detective Kirk jumped out of the [REDACTED] in pursuit.



Image Capture 12- Mr. Henningert with right hand at waistband running back toward the Hyundai.

As Mr. Henninger ran, he stumbled, righted himself, and continued to run back toward the Hyundai from which [REDACTED] and [REDACTED] were shooting. As he neared them, [REDACTED] raised his hands in surrender. [REDACTED] fled north and around the corner of the gas station office.



Image Capture 13- [REDACTED] raises hands as Mr. Henninger approaches and [REDACTED] flees.

Mr. Henninger then fell to the ground near the front of the Hyundai and both he and [REDACTED] lied on the ground and raised their hands in surrender. [REDACTED] was stopped by officers at the east boundary of the Chevron station and raised his hands in surrender.



Image Capture 14 – Mr. Henninger and [REDACTED] being taken into custody.



Image Capture 15 – [REDACTED] with hands up near fence, the other side of which was found a gun.

The entire incident, from the first gunshot until the radio broadcast that all suspects were in custody, lasted one minute and twenty-one seconds.

At 9:23:50 p.m., officers requested a rescue ambulance.

### **Investigation**

The scene of the shooting was secured, and an investigation conducted by the Los Angeles Police Department's Force Investigation Division investigators.

### **Identity of Arrestees**

The male wearing the red TEE was identified as [REDACTED], born [REDACTED]

The male wearing the white sweatshirt who fled was identified as Damien Henninger, born [REDACTED].

The other male wearing a white sweatshirt and black beanie was identified as [REDACTED], born [REDACTED].

[REDACTED] Mr. Henninger and [REDACTED] were each interviewed by investigators.

[REDACTED] stated that he saw the men drive up in the van but did not know that they were police.

Mr. Henninger stated he heard gunfire and observed a shot come from the van. He exited the Hyundai and ran in the opposite direction. He did not hear anyone announce "*police*" prior to the shooting or while the shots were being fired. He did observe the tactical vests as he was being handcuffed.

[REDACTED] denied being aware that the occupants of the van were police officers. He stated that the people in the van shot first. He surrendered as soon as he heard them identify themselves as police officers.

Mr. Henninger was shot to death on January 21, 2021, in Palmdale, California.

[REDACTED] and [REDACTED] were each charged with one account of assault with a firearm. Both entered no contest pleas and were convicted on July 21, 2021, in felony case BA487705. Each was sentenced to two years in state prison.

### **Video Recordings**

Recordings from three video systems were recovered: one system from the Autopro Collision Center business on the north side of West 22nd Street and two systems from the Chevron station. Both Chevron station systems had multiple cameras. System One had five cameras which captured relevant images – cameras 1-01, 1-03, 1-04, 1-05 and 1-08. System Two had four cameras which captured relevant images – cameras 2-05, 2-12, 2-13, and 2-14. None of the systems recorded audio.

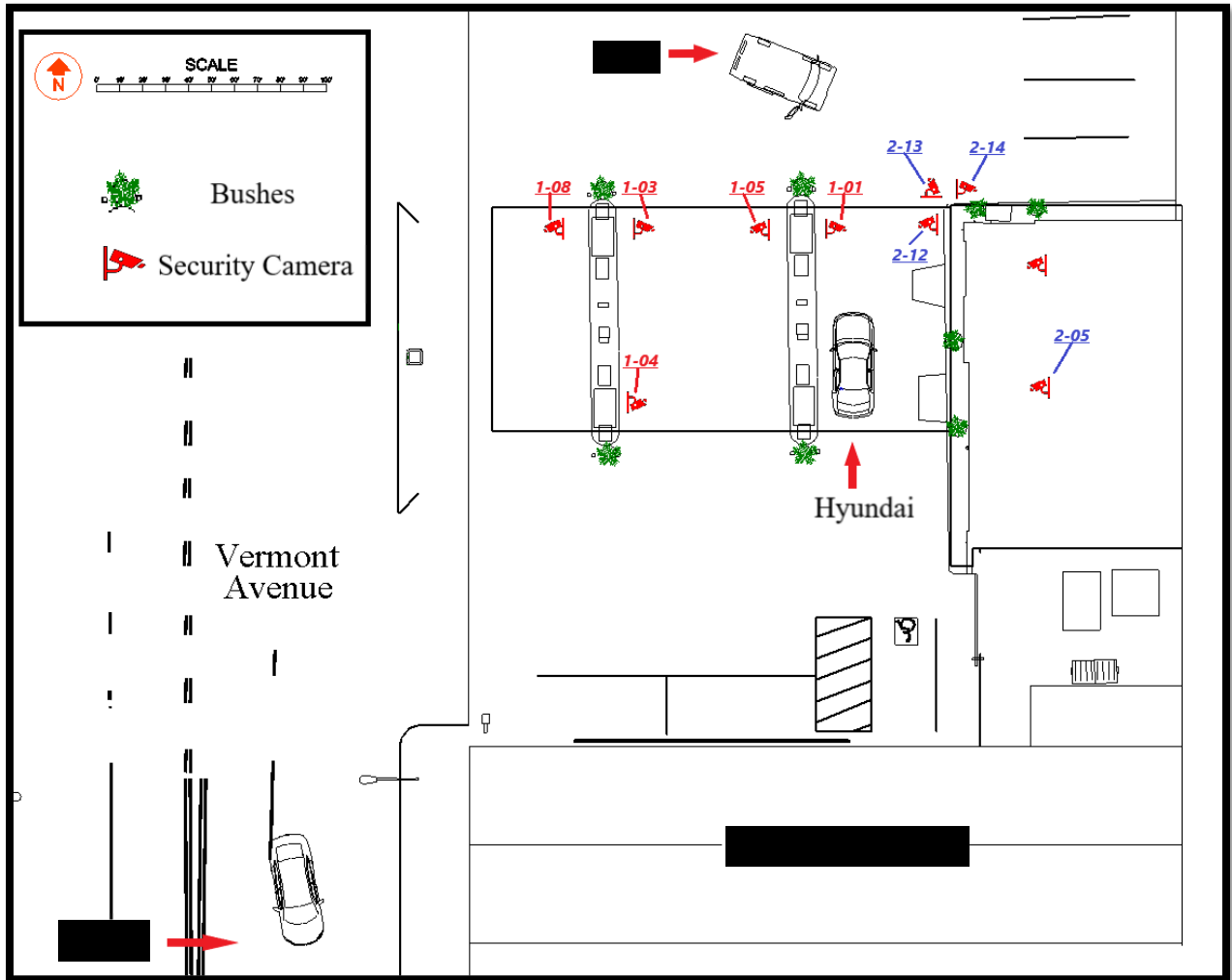


Figure 1 - Position of Chevron station security cameras.

The time of day on both of the Chevron station systems was incorrect and neither agreed with one another. Each differed from the other by 1:46:58. Time measurements in this memorandum were measured from elapsed time on each video. Time of day from these videos was not used. Instead, the time stamp on the recordings of LAPD radio transmissions was used.

### Weapons

Only two firearms were recovered at the scene.

A .45 caliber, Kimber Ultra Carry II, semiautomatic handgun with a blue steel slide, stainless steel frame, wood grips and 3.25-inch barrel was recovered near the right rear portion of the Hyundai. It was equipped with an integrated laser sight that, when activated, projected a red beam from the right side of the handle. When recovered there was one live round in the chamber and three live rounds in the magazine. This appears to be the weapon fired by [REDACTED].

FID investigators did not report how many shell casings discharged from this handgun were recovered at the scene nor the capacity of the magazine.

A .38 caliber, Amadeo Rossi blue steel .22 revolver with wood grips and a capacity of five rounds of ammunition was recovered from a bed of ivy on the east side of the chain-link fence where [REDACTED] was taken into custody. When recovered the cylinder contained three live cartridges and two discharged shell casings. This most likely is the gun fired by [REDACTED].

A third gun was not found. The object visible in Mr. Henninger's right hand in Video Capture 1 was either discarded by Mr. Henninger without detection or was not a handgun. Mr. Henninger is almost constantly in view on the security camera videos, except for very briefly being out of view on South Vermont Avenue. The report is silent as to whether a search for a handgun was conducted in that area. A cellphone was recovered from the hand-pouch of his sweatshirt.

Detective Martinez, the driver of the [REDACTED], was armed with a Glock, Model 17, 9mm semiautomatic pistol. FID investigators determined that it had been fired five times.

Detective Levin, the front passenger of the [REDACTED], was armed with a Glock, Model 21, .45 caliber, semiautomatic pistol. FID investigators determined that it had been fired once.

Officer Rocha, a rear passenger in the [REDACTED] van, was armed with a Glock, Model 17, 9mm semiautomatic pistol. FID investigators determined that it had been fired 18 times.

Officer Avila, the driver of the [REDACTED], was armed with a Smith & Wesson, M&P 9, 9mm semiautomatic pistol. FID investigators determined that it had been fired six times.

Detective Kirk, the rear passenger in the [REDACTED] was armed with a Smith & Wesson, M&P 9 Pro, 9mm semiautomatic pistol. FID investigators determined that it had been fired three times.

### **Bullet Trajectories**

One of the bullets fired by one of the civilians struck the [REDACTED]. This bullet went through the front door, grazed Detective Levin's leg and went through the rear sliding door (Photo 1). This bullet was recovered. The report by the FID does not identify from which weapon this bullet was fired.





*Photograph 1* - Bullet impact and path on [REDACTED].

Another bullet fired by one of the civilians struck the door pillar of the front passenger door, entered the [REDACTED] just above the top hinge of the front passenger door and went into the dashboard.



*Photograph 2 - Bullet impact and path into interior of front passenger compartment.*

Bullets fired by Officer Avila and Detective Kirk were directed at Mr. Henninger as he turned with his hands at his waist and ran back toward the Hyundai. The impacts of these bullets were to the window and interior of the business located at [REDACTED]

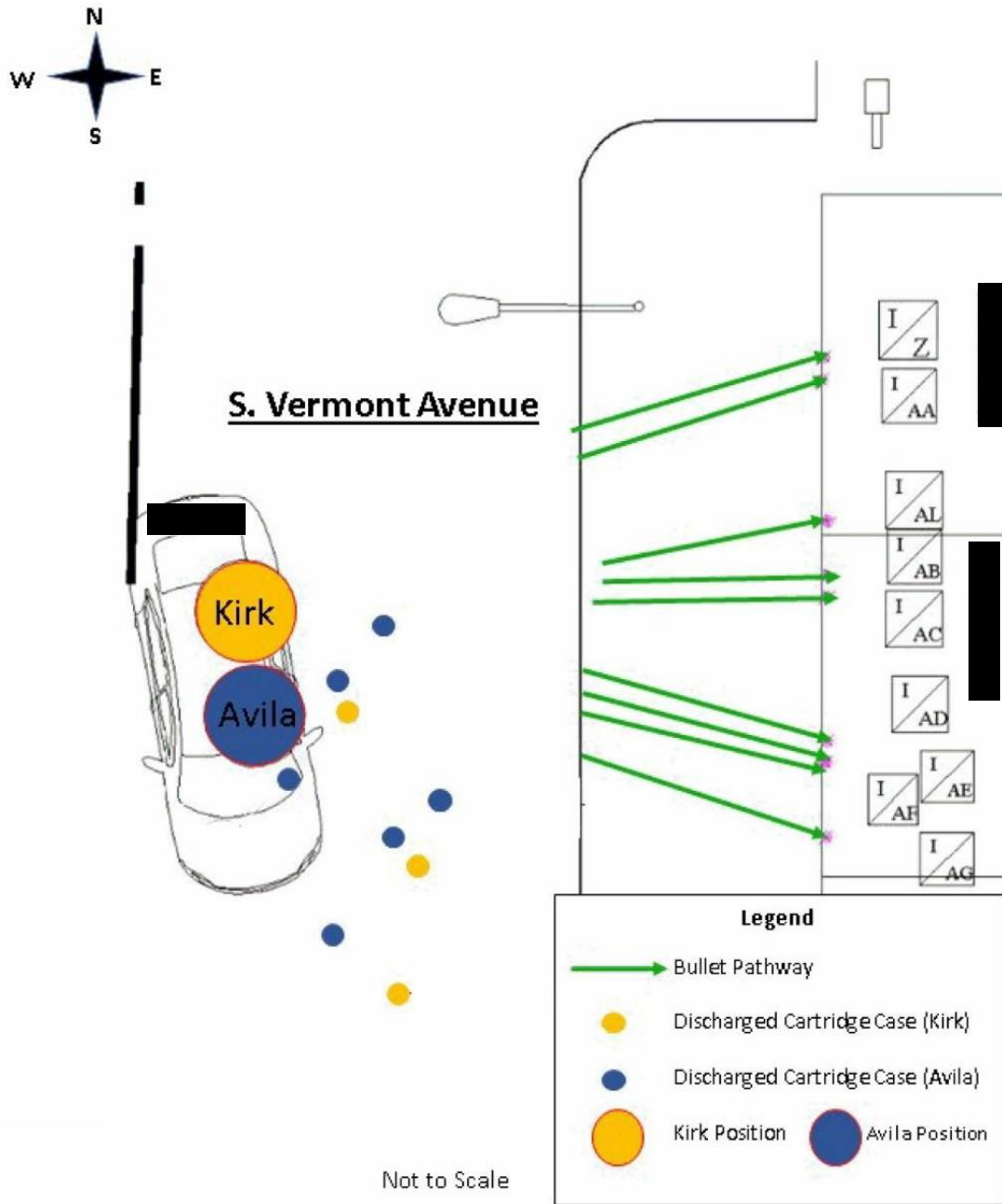


Figure 2 - Bullet trajectories of Officer Avila and Detective Kirk.

Detective Martinez's bullets appear to have been fired at Mr. Henninger as Mr. Henninger ran back toward the Hyundai across the apron of the Chevron station.

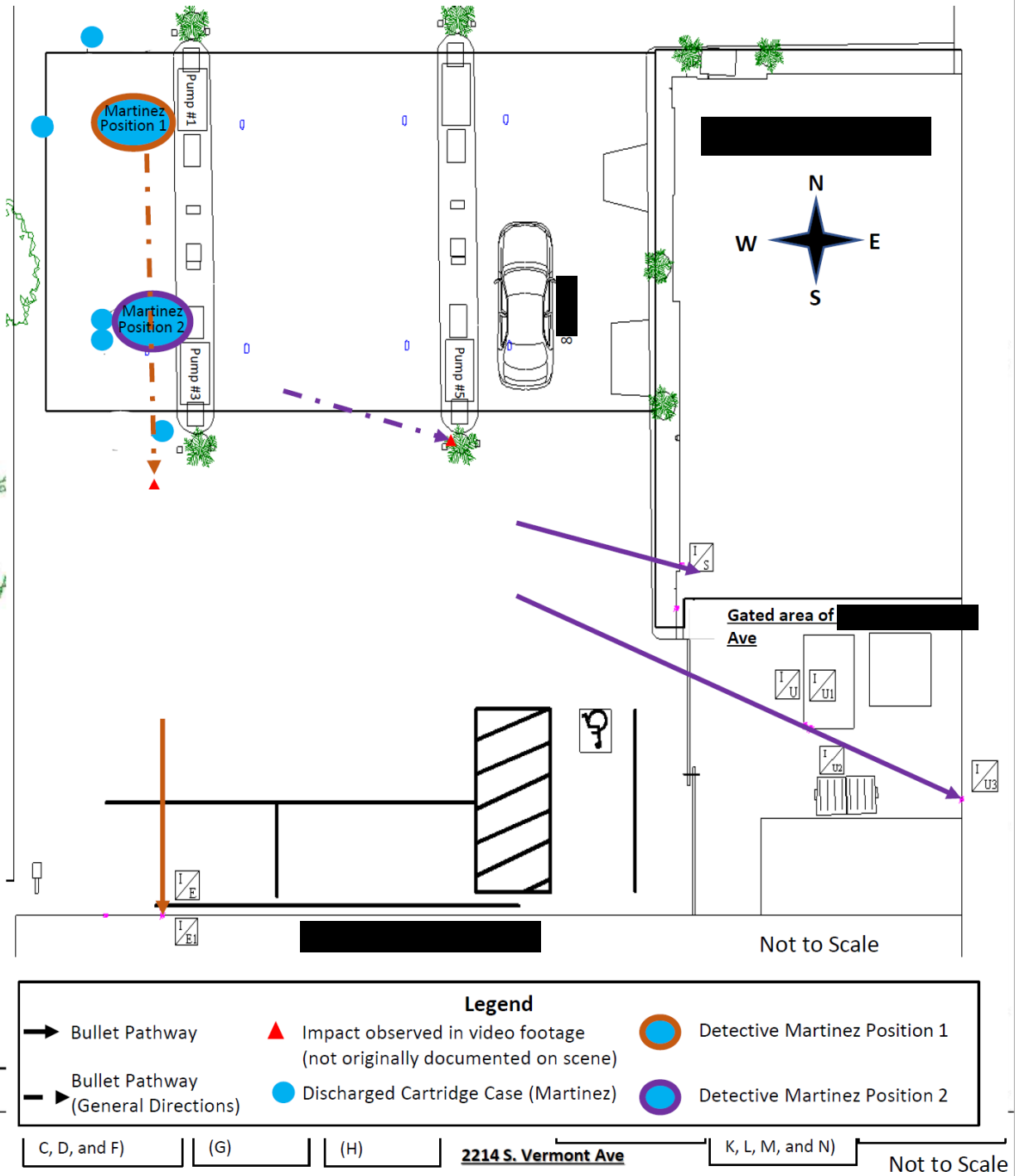


Figure 3 - Bullet trajectories of Detective Martinez.

The bullets fired by Detective Levin and Officer Rocha appear to have been directed variously at all three civilians.

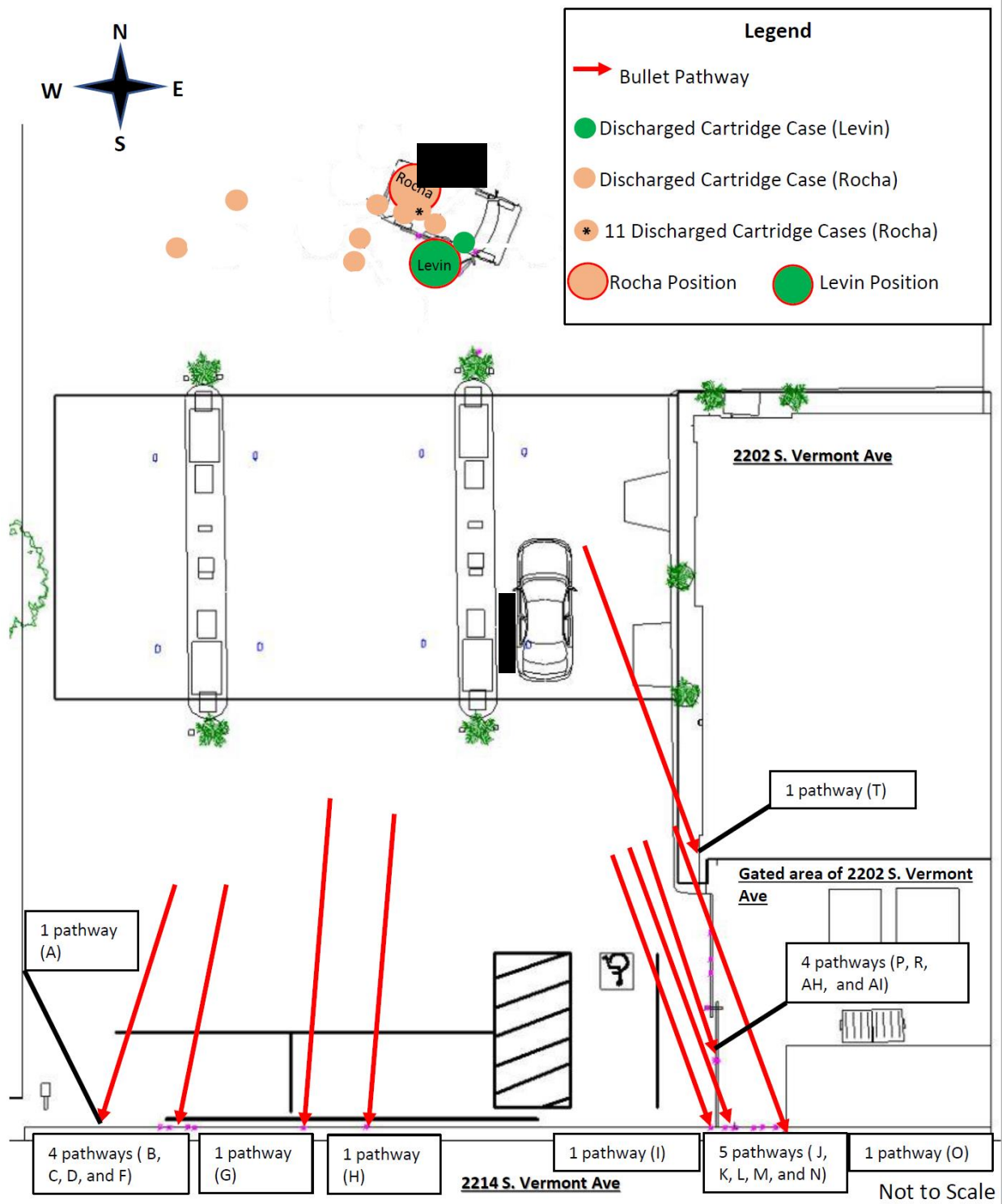


Figure 4- Bullet trajectories of Detective Levin and Officer Rocha.

## Injuries

After capturing Mr. Henninger officers observed that he was bleeding. A rescue ambulance was called, and he was transported to California Hospital Medical Center. There it was determined by medical staff that Mr. Henninger had suffered two through-and-through bullet wounds – one to

his right thigh and the other through his right flank. He was treated and was released at 11:25 p.m. It could not be determined which weapon caused these wounds.

Officer Dilliner, who had remained in the back of the van, suffered a minor graze wound to his right hip. He was treated at Kaiser-Permanente and released.

### **Vehicles**

The [REDACTED] was a passenger van with tinted rear windows. It was brown in color and had no distinguishing features identifying it as a police vehicle.

The [REDACTED] [REDACTED] was a [REDACTED]. None of its windows were tinted. It was grey in color and had no distinguishing features identifying it as a police vehicle.

### **Uniforms**

All of the officers with the exception of Detective Martinez were wearing their LAPD tactical vests at the time of the shooting.



*Photograph 3 - Front and back of tactical vest worn by all officers except for Detective Martinez.*

## **LEGAL ANALYSIS**

### **The Law**

California Penal Code sections 196, 197 and 835(a) provide that the use of deadly force by a peace officer is justified when the officer reasonably believes based on the totality of circumstances that such force is necessary either:

- 1) To defend against an imminent threat of death or serious bodily injury to the officer or another person, or;

- 2) To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless apprehended.

Penal Code section 835a(e)(2) defines a threat as imminent when an officer reasonably believes, based on the totality of circumstances, that a person has the ability, opportunity and apparent intent to immediately cause death or serious bodily injury.

Penal Code section 835a(e)(5) reads “ ‘Totality of circumstances’ means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force.”

The People have the burden of proving beyond a reasonable doubt that the killing was not justified (2020 CALCRIM 1, 507).

### **Analysis**

As members of the Los Angeles Police Department (LAPD) monitoring during the curfew, Officers Edwin Rocha and Nallely Avila and Detectives Jesus Martinez, Jed Levin and Bryce Kirk were each lawfully performing their duties under color of authority, and as such were entitled to use deadly force under those circumstances described in Penal Code sections 196, 197 and 835a.

This legal analysis is based exclusively on the evidence which was available to the officers at the time of the shooting, as viewed on the video recordings and heard on the audio recordings of the incident at the time it occurred.

### **Initial encounter**

The initial encounter at about 9:20 p.m. between the Detail members in the [REDACTED] and the three males was lawful and within the scope of the officers’ duty and authority. There was an emergency order in place prohibiting persons from being in public places between the hours of 6:00 p.m. and 6:00 a.m. with a few limited exceptions. The males did not appear to be employees of the Chevron station, and the police were within their authority to initiate a consensual encounter to determine whether one of the exceptions to the emergency order applied.

While in the Chevron station, the three males presented as though each was armed with a concealable firearm, a violation of Penal Code section 16530. While none of the officers were wearing identifiable clothing or badges, nor were they in an identifiable police vehicle. Without challenge or provocation, at least one of the males brandished at the plainclothes officers what appeared to be a firearm with a laser sighting at the officers, a violation of Penal Code sections 417, 417.25, 417.3 and/or 417.4.

Confronted at the Chevron station by three apparently armed men, all of whom appeared ready to engage civilians with deadly force, the officers in the [REDACTED] tactically deployed to an area north of the Chevron station where they donned their marked police tactical vests and radioed for assistance.

## **Second Encounter**

The second encounter appeared to have been hastened by the arrival of an innocent bystander who merely pulled into the Chevron station at the pumps. As the [REDACTED] passed by the Chevron station on South Vermont Avenue, the civilian vehicle was pulling to the pumps. At least one of the males, as evidenced by the surveillance video and the radio traffic at 9:22:47 p.m., was displaying a gun. At this point, waiting for uniformed officers in marked patrol units no longer appears to be the safest of available actions.

As the [REDACTED] stopped between the civilian vehicle and the Hyundai, at least one of the males shot at the [REDACTED]. Once one (or more) of the males shot their firearms, they all three appeared to pose an imminent threat of death or serious bodily injury to both the civilian and the officers (although the civilian fled almost immediately after the gunfire erupted). Each of the males appeared to have the opportunity, the ability and, with the initiation of gunfire by at least one of them, the apparent intent, to inflict death or serious bodily injury on others.

The use of deadly force under these circumstances was justifiable and therefore not unlawful, pursuant to Penal Code sections 196, 197 and 835a(c)(1)(A) [defense against a threat of imminent death or serious bodily injury].

## **The Shooting of Damion Henninger**

We analyze the shooting of Damion Henninger separately pursuant to Penal Code section 197 and 835a(c)(1)(B) [apprehension of fleeing felon]. Mr. Henninger did not stay at the rear of the Hyundai with [REDACTED] and [REDACTED], but fled, and no gun was recovered from him. He was shot at during his flight, although it cannot be determined when or by whose gunfire he was struck.

From the evidence here it cannot be proved beyond a reasonable doubt that any belief Mr. Henninger was a participant, as either a principal or an aider and abettor, in a felony which threatened death or serious bodily injury was unreasonable at the time of the shooting. He appeared to be armed with a firearm. Nor can it be proved beyond a reasonable doubt that any belief that Mr. Henninger would cause the death or serious bodily injury to another if he was not immediately apprehended was unreasonable at the time of the shooting.

Mr. Henninger was in the company of one person who was armed with a firearm and another who brandished a firearm at the officers in the [REDACTED]. He was in the company of two other persons who did shoot firearms at the officers.

When the [REDACTED] pulled into the Chevron station, one unidentified voice said, "I see a guy with a gun," followed immediately by two voices saying, "White shirt." Mr. Henninger was wearing a white sweatshirt. That is when the first gunshot is heard. After the gunshot, [REDACTED], who is also wearing a white sweatshirt, and [REDACTED] run to the back of the Hyundai.

Mr. Henninger did not surrender, but joined [REDACTED] and [REDACTED] at the rear of the Hyundai before he fled toward South Vermont Avenue and later returned. As he fled his hands were at his waist.



All of the evidence suggested a high probability that he was one of the shooters. He wore a white shirt, and a person in a white shirt had been shooting. His demeanor was consistent with his being a crime partner with the shooters. His behavior and body movements as he fled were consistent with a person armed with a firearm who had just engaged in a shooting.

## **CONCLUSION**

The direct and the circumstantial evidence here and the inferences which can be drawn from that evidence do not support a finding that the use of deadly force by the Detail members was unlawful.