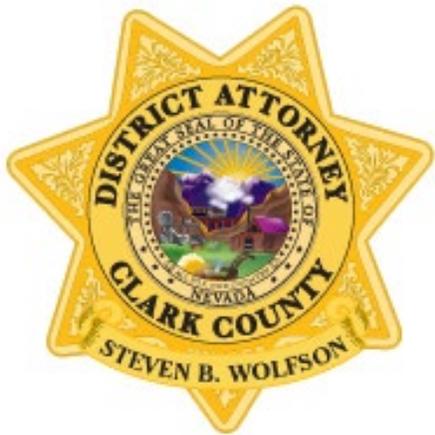


REPORT ON USE OF FORCE



Legal Analysis Surrounding the Death of Nathaniel Sironen on December 8, 2020

INTRODUCTION

On December 8, 2020, at approximately 1:31 a.m., Las Vegas Metropolitan Police Department (hereinafter “LVMPD”) Officers Malik Grego-Smith (hereinafter “Grego-Smith”) and Dustin Xaypanya (hereinafter “Xaypanya”) shot and killed 40-year-old Nathaniel Sironen (hereinafter “Decedent”) while responding to a residential burglary in progress. This report explains why criminal charges will not be forthcoming against Officers Grego-Smith and Xaypanya. It is not intended to recount every detail, answer every question, or resolve every factual conflict regarding this police encounter. It is meant to be considered in conjunction with the Police Fatality Public Fact-Finding Review which was held on July 27, 2021.

This report is intended solely for the purpose of explaining why, based upon the facts known at this time, the conduct of Officers Grego-Smith and Xaypanya were not criminal. This decision, premised upon criminal law standards, is not meant to limit any administrative action by LVMPD or to suggest the existence or non-existence of civil actions by any person, where less stringent laws and burdens of proof apply.

SUMMARY OF RELEVANT FACTS

73-year-old S.M. and his 68-year-old wife, L.M., lived in a four-level home located in the gated Spanish Heights Community on the corner of West Tropicana Avenue and West Durango Drive. On December 8, 2020, at approximately 1:20 a.m., L.M. called 911 to report that their house alarm had been activated and an unknown male with a hammer was inside the residence. LVMPD dispatched officers to the home to investigate the burglary in progress. Officers Grego-Smith, Xaypanya and Adrian Hunt (hereinafter

Hunt”) responded to the home. They parked their vehicles south of the residence and approached on foot.

Through an uncovered window next to the front door entrance, the officers observed S.M., L.M. and Decedent inside the home. Decedent was holding a hammer and removing a picture from the wall. Officer Grego-Smith tried to open the door, but it was locked. He knocked on the door several times while telling S.M. and L.M. to open the door. When the door was unlocked¹, Officer Grego-Smith took a few steps into the residence. Decedent ran towards Officer Grego-Smith with a hammer in his hand. When Decedent was only a few feet away from Officer Grego-Smith, Decedent turned to his left and ran towards S.M. Decedent reached towards S.M. with his right hand and raised the hammer in his left hand over S.M.’s head. Officer Grego-Smith yelled, “No! No! No! Fuck! No! No! No! Stop! Stop! Stop!” as Decedent advanced towards and continued to grab at S.M. with the hammer raised. Officers Grego-Smith and Xaypanya fired multiple times at Decedent who fell to the ground, landed on his right side, and rolled to his left side while still clutching the hammer in his left hand before eventually dropping the hammer. As the shots were fired, S.M. also fell to the ground. Officer Grego-Smith broadcast “shots fired” and requested medical personnel at 1:31 a.m.

BODY WORN CAMERA FOOTAGE

The Axon Flex Body Worn Camera timestamps videos in Zulu Time, also known as Greenwich Mean Time, which is the world time based on a twenty-four (24) hour clock. There is an eight (8) hour negative difference between the event time and Zulu time.

Officer Grego-Smith

Officer Grego-Smith activated his Body Worn Camera (hereinafter “BWC”) at the onset of this call for service. The BWC footage depicted the following:

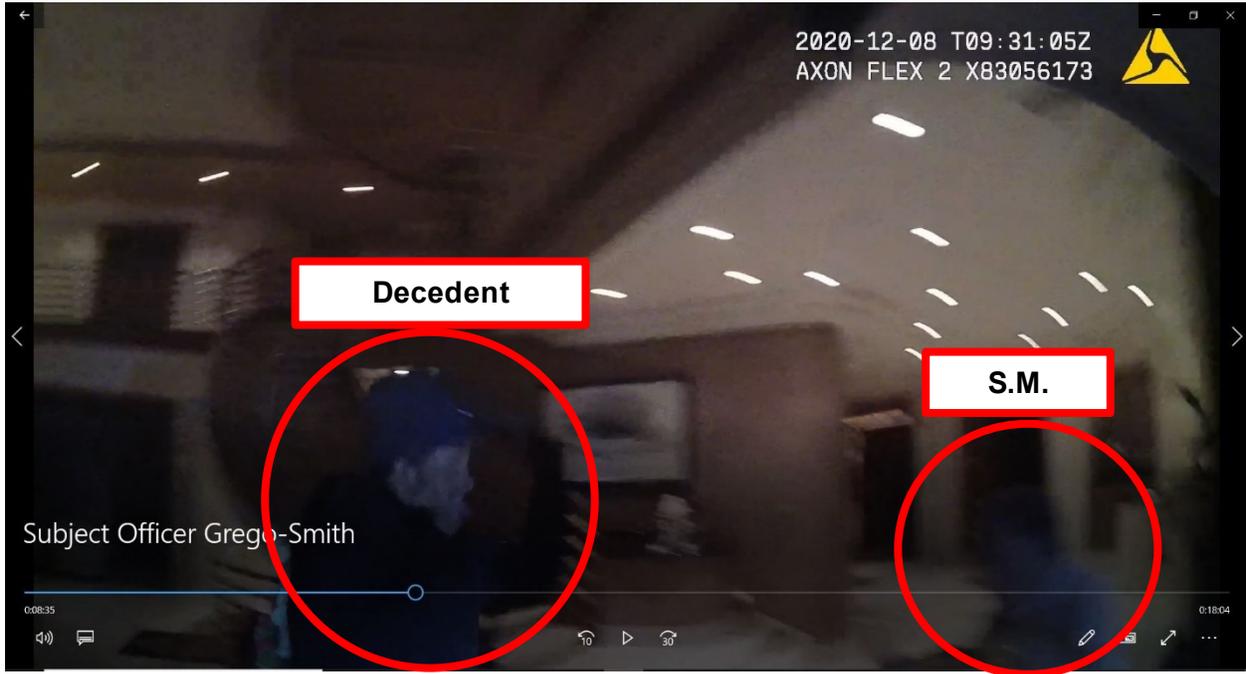
At time stamp 9:30:46, Officer Grego-Smith approached S.M.’s residence with Officers Xaypanya and Hunt. He observed Decedent in the home and advised Dispatch that the suspect is still inside the home. He requested a Code Red to limit radio traffic on the channel.

At time stamp 9:30:57, Officer Grego-Smith knocked on the door. He told the homeowners, “Open the door. Hurry Up. Open the door.”

At time stamp 9:31:04, S.M. and L.M. opened the door and Officer Grego-Smith entered the residence. Officer Grego-Smith backed up and said, ““No! No! No! Fuck! No! No! No! Stop! Stop! Stop!” as Decedent rushed towards him with a hammer in his hand.

¹ There are conflicting accounts as to which victim actually unlocked and/or opened the door for the officers. However, the body worn camera footage shows both victims come to the door after Officer Grego-Smith knocked on the door.

At time stamp 9:31:05, Decedent turned towards S.M. and grabbed and struggled with S.M. while raising the hammer over S.M.'s head.





At time stamp 9:31:08, Officer Grego-Smith approached and fired shots at Decedent who fell to the ground with the hammer still in his hand.



Officer Xaypanya also fired shots at Decedent.



Per the BWC footage, four (4) seconds elapsed between entry into the residence and shots being fired.

Officer Xaypanya

Officer Xaypanya activated his BWC at the onset of this call for service. The BWC footage depicted the following:

At time stamp 9:30:58, Officer Grego-Smith knocked on the front door and told the homeowners, “Open the door. Hurry up. Open the door.”

At time stamp 9:31:04, S.M. and L.M. came to the front door and it opened. Officer Grego-Smith entered only to immediately back up while drawing his firearm and saying, “No! No! No!” Officer Grego-Smith then advanced towards Decedent, who is visibly grabbing S.M. with one hand while holding a hammer over S.M.’s head with the other hand.

At time stamp 9:31:08, Officers Grego-Smith and Xaypanya fired shots at Decedent.



Per the BWC footage, four (4) seconds elapsed between entry into the residence and shots being fired.

Officer Hunt

Officer Hunt activated his BWC at the onset of this call for service. The BWC footage depicted the following:

Officer Hunt walked toward the front door of the residence with Officers Grego-Smith and Xaypanya. As they made their way up the driveway, Officer Grego-Smith walked in front of Officer Hunt and ran to the front door. Officer Grego-Smith knocked on the door several times and said, "Open the door. Hurry up, open the door."

Once the door was unlocked, Officer Grego-Smith entered the residence and stated, "No! No! No! Fuck" and backed up. Officer Grego-Smith drew his firearm and moved forward into the residence followed by Officer Xaypanya. Officer Hunt was behind both officers. As the officers entered the residence, Decedent ran towards S.M. with a hammer in his hand. Officers Grego-Smith and Xaypanya discharged their weapons and Decedent and S.M. fell to the ground. Officer Hunt moved the hammer, which was still within Decedent's reach, away with his foot.





SCENE WALK-THROUGHS

Officer Grego-Smith

On December 8, 2020, at approximately 7:33 a.m., Officer Grego-Smith conducted a walk-through of the scene with FIT Investigators during which he relayed the following information:

Officer Grego-Smith placed an orange traffic cone to represent his location at the time he discharged his firearm.



Officer Grego-Smith responded to a burglary in progress call. The officers entered the residence and Officer Grego-Smith observed Decedent coming towards him with an object in his left hand. Officer Grego-Smith told Decedent to stop. Decedent turned to the south and became involved in a struggle with S.M. Decedent raised the hammer and Officer Grego-Smith believed Decedent was about to strike S.M. with the hammer. Officer Grego-Smith closed the distance between himself and Decedent and fired his weapon.

Officer Xaypanya

On December 8, 2020, at approximately 7:25 a.m., Officer Xaypanya conducted a walk-through with FIT investigators during which he relayed the following information:

Officer Xaypanya placed an orange traffic cone to represent his location at the time he discharged his firearm.



Officer Xaypanya arrived and parked his vehicle on Spanish Heights Drive. He then met with Officers Grego-Smith and Hunt who had started to approach the residence on foot. Upon reaching the driveway, Officer Xaypanya stated, "I can see him in the kitchen." Officer Grego-Smith knocked on the front door several times.

Officer Grego-Smith entered the residence once the door was unlocked. Officer Xaypanya heard Officer Grego-Smith say "no" several times as Decedent approached them. He observed Decedent run to the south and Officer Grego-Smith appeared to pursue him. He heard Officer Grego-Smith yell "no" and "stop" several times. As Officer Xaypanya entered the residence and turned to his right, he saw Decedent grabbing S.M. with his right hand and raising the hammer with his left hand.

Officer Xaypanya and Officer Grego-Smith discharged their firearms and Decedent fell to the ground. The officers then gave Decedent verbal commands to put his hands on the side and requested medical personnel.

STATEMENT OF INVOLVED OFFICER GREGO-SMITH

On December 11, 2020, Officer Grego-Smith participated in a voluntary, tape recorded interview with Force Investigation Team (hereinafter "FIT") Detective Trevor Alsup. He provided the following account of the events which led to him shooting Decedent.

Officer Grego-Smith was on his way to another call when he heard a broadcast of a burglary in progress about a minute away from his location. The details of the call indicated that L.M.'s house alarm had gone off so her husband, S.M., went downstairs to check on it. L.M. advised that she had observed an unknown person in the residence. The call was a "Priority Zero," which meant a felony was in progress or someone was in danger.

Officer Grego-Smith assigned himself to the call and responded to the address. He parked a few houses away from the target residence and waited for additional units to arrive. While he waited, he got on the radio and advised the other responding units to position themselves to the rear and south end of the residence. Two (2) units responded to his location and they started to walk towards the home. At that point, very limited details were available to him and other officers, as L.M. was no longer on the line with 911.

As they made their way up the driveway, he noticed the house had large windows and saw the lights were on inside the house and garage. Through the window, he observed a male wearing a beanie and a jacket walking from the kitchen to another area of the house. Half a second later, he saw an older male and female following the unknown individual. He advised Dispatch that the suspect was still inside the house and asked for a Code Red.

When Officer Grego-Smith got to the glass front door, he could see a male and female inside the home. The female appeared to be very nervous. As he looked deeper into the house, he noticed a male with a hammer in his hands, taking pictures off the wall. Officer Grego-Smith knocked on the door to get the homeowners to unlock the door. He got the female homeowner's (L.M.) attention and she ran up to the front door. He told her to unlock the door and as soon as she did, he pushed the door open and observed the suspect, later identified as Decedent, with the hammer running towards him. He initially thought Decedent was going to try and push past him to run out the front door but when Decedent was approximately three (3) to four (4) yards away from him, Officer Grego-Smith saw Decedent's left hand go up. He observed something in Decedent's hand. He was not sure if it was the hammer. He believed it was knife, so he braced himself to get stabbed. However, in a split second, Decedent turned to his left. Officer Grego-Smith had already drawn his firearm, so he tracked Decedent to the dining room table where the male homeowner (S.M.) was standing. He saw Decedent grab and struggle with S.M. Officer Grego-Smith saw Decedent raise his hand "like he was getting ready to hit the male homeowner over the head with the hammer."

Officer Grego-Smith believed Decedent intended to cause harm to S.M., and that Decedent could have killed S.M. if he struck S.M. in the head with the hammer. He determined that he would have to use deadly force to save S.M. from getting hit in the head with the hammer, so he closed the distance between himself and Decedent by a couple of feet and made sure he had a good line of sight with S.M. out of the way before he discharged his firearm. Decedent fell to the ground, dropping the hammer. S.M. also fell to the ground away from Decedent. He broadcast, "Shots fired" and requested medical assistance. Officer Grego-Smith and the other officers took Decedent into custody.

Officer Grego-Smith indicated that he felt Decedent posed an immediate threat to his safety when Decedent ran towards him with his hand raised, holding an unknown object. He feared that Decedent would kill S.M. if he struck the victim in the head with the hammer. He stated that he did not believe he could have used a less lethal tool to prevent Decedent from inflicting serious injury or death to the male homeowner. He believed, "[I]n that millisecond, deadly force was the only option."

STATEMENT OF INVOLVED OFFICER DUSTIN XAYPANYA

On December 8, 2020, Officer Xaypanya declined to provide a voluntary statement to FIT investigators. ²

STATEMENT OF WITNESS OFFICER ADRIAN HUNT

On December 8, 2020, Officer Adrian Hunt was dispatched to a burglary call at a residence on Spanish Heights Drive. The details of the call indicated the unknown suspect, later identified as Decedent, was still inside the home. He arrived at the scene along with several other officers. As he and Officers Grego-Smith and Xaypanya walked to the front of the house, Officer Grego-Smith informed him that he saw Decedent inside the residence. When the officers got to the front door, Officer Grego-Smith tried to open the door until the male homeowner (S.M.) opened it. He was the third officer in line to enter the residence.

Upon entering, he observed Decedent coming at Officer Grego-Smith with a hammer in his hand, which was up in the air in such a way that Decedent appeared to be charging towards Officer Grego-Smith to attack him with the hammer. Officer Grego-Smith drew his firearm as Decedent came at him with the hammer. Decedent then veered off towards S.M. with the hammer still raised, such that Officer Hunt believed S.M. was in danger of being struck with the hammer. Officer Hunt drew his firearm and heard shots being fired. He did not fire his weapon because he had two (2) officers in front of him and, by the time he realized what was happening, shots had already been fired.

² Subject officers may provide a recorded or written statement to FIT investigators. The statement is voluntary so the involved officers may decline to provide a statement.

Officer Hunt gave verbal commands to Decedent and checked on S.M., who had fallen when the shots were fired. He handcuffed Decedent and conducted a pat down search of Decedent. He located a small pocketknife, a Mercedes Benz key, an unknown vehicle key, some cash, two (2) phones and some small wire cutters.

INTERVIEW OF VICTIM S.M.

S.M. was in his bedroom when he heard the home security alarm. He went downstairs, deactivated the alarm, and walked down to the second floor to check on the door which triggered the alarm. He found the door wide open, so he closed it. He was not immediately alarmed because they were having work done on the house which has led to numerous false alarms. As S.M. continued to check the other doors, he noticed that the door leading to the garage door was also open and an unknown male, later identified as Decedent, was standing in the area. S.M. asked Decedent, "What are you doing?" several times to which Decedent replied something to the effect of, "I'm here to rob you or here to take some stuff." S.M. told Decedent to, "Just go. Just go." At first Decedent started to walk away, but then he asked, "Are you gonna call the cops?" S.M. said, "No, just go."

Decedent did not leave. Instead, Decedent charged after S.M. with the hammer. Decedent stated he wanted "something valuable" as he waved the hammer at S.M. and pushed S.M., knocking him to the ground. Decedent then demanded money, so they walked up two (2) flights of stairs to S.M.'s fourth floor office where S.M. handed him approximately \$300 in cash. While they were in S.M.'s office, L.M., S.M.'s wife, came up to them. Decedent demanded jewelry from L.M. He marched L.M. and S.M. into her closet where he located the jewelry and loaded it into one of L.M.'s purses. At some point, S.M. broke away and managed to hit the alarm response buttons. Decedent then asked for a car key and led them downstairs. Decedent told them that he was going to take the car and L.M. with him. When L.M. indicated she would not go with Decedent, he indicated he would take S.M.

When they got to the main floor, Decedent separated from S.M. and L.M. just in time for L.M. to see uniformed patrol officers at the front door. He ran over to the door and opened it for them. Decedent "had the hammer and was wavin' it" and Decedent "looked threatening so at some point there, they – I think they shot him." S.M. fell or was knocked to the ground and could not recall how many shots were fired.

S.M. told investigators that Decedent "looked like he was serious about hitting me in the head with the hammer with the claw," when Decedent first charged at him. S.M. also believed there was a good chance he was going to die if he did not comply with Decedent's demands. He indicated that Decedent waved and swung the hammer at him several times during the incident and there were a couple of times where S.M. believed Decedent was going to strike him with the hammer. S.M. was afraid because the hammer had a long claw such that, "if you hit somebody in the head with that, with a good blow, you'd probably kill 'em."

INTERVIEW OF VICTIM L.M.

L.M. and her husband went to bed around 12:30 a.m. At around 1:00 a.m., their home alarm sounded. S.M. turned the alarm off and walked downstairs to check the doors. L.M. heard some yelling and a thump. She called out to S.M. downstairs but he did not respond. She walked out to the top of the stairs where she saw a man dressed all in black holding on to her husband with a hammer. She called out to S.M. and asked if he was okay. When he responded, "No," L.M. ran back to their bedroom, grabbed her phone, went to the bathroom, and called 911.

While she was on the phone with 911, L.M. walked out of the bathroom. She saw S.M. outside his office door. She asked him if he was okay. He just shook his head and said, "No." She told him she was on the phone with 911. At that point, Decedent walked out of the office and said, "Do you want me to hit him?" as he lunged toward her husband with the hammer. Decedent instructed her, "[H]ang up right now" and, "[G]ive me your phone." She complied with both demands. L.M. asked Decedent what was going on to which he replied, "I'm robbing you. I'm here to effing rob you." Decedent then took her to her closet where he filled one of her bags with her jewelry. Next, they all went down to the main floor kitchen so L.M. could give Decedent all the cash from her purse. Once he had the money, Decedent told her that they were going to go for a drive. When L.M. refused to get in a car with him, Decedent again threatened to hit S.M. with the hammer. L.M. stalled by saying she could not go because she was in a nightgown and did not have on any shoes. Decedent made her walk back up the steps to get her slippers and then back down to the kitchen to get her jacket. Decedent held on to S.M. as they walked out of the kitchen to force L.M. to do what he said.

When they got to the foyer, S.M. directed Decedent to a painting on the wall. Decedent walked over to it and took it off the wall. When L.M. turned towards the front door, she saw LVMPD officers at the door. The front door was deadbolted and locked, so she quickly unlocked it. The police officers entered, and Decedent immediately went after S.M. with the hammer. The officers shot Decedent and L.M. was ushered outside of the house.

L.M. told investigators that Decedent "headed towards (S.M.) and that's why they shot him."

SCENE DESCRIPTION AND EVIDENCE SUMMARY

S.M. and L.M.'s home is a four (4) story home located within a guard-gated residential neighborhood, equipped with surveillance cameras. The main / ground level is located on the third floor. The attached garage and a basement are located on the second level. There is another basement on the first floor. The fourth floor consists of a master bedroom and an office with an attached bathroom.



The shooting occurred in the foyer. The black-handled, claw-type hammer held by Decedent at the time of the shooting was located on the floor of the entryway, northeast of the front entry. A blue leather type purse containing two (2) iPads and various jewelry was on the floor, east of the front entry doors.





The items recovered by Officer Hunt from Decedent's pockets during the pat down search were located and photographed by a Crime Scene Analyst. Three (3) cell phones, cash, two (2) key fobs and a white piece of paper were on found on the foyer first floor at the base of the stairs. A white box cutter and a pair of black pliers were on the first step of the stairs.



A total of six (6) Speer 9MM Luger +P cartridge cases were located on the foyer and dining room floor.

HOME SURVEILLANCE CAMERA FOOTAGE

Recorded video surveillance footage was recovered from multiple cameras at the residence.

From a camera labeled "South Walk Facing W," Decedent was observed in a neighboring yard on Spanish Heights Drive. After several minutes, Decedent jumped the wall that separated that home and S.M. and L.M.'s home. He walked east causing the motion activated lights to illuminate. Decedent was observed carrying a shovel as he went down the stairs on the south side of the residence to the basement level.

From a camera labeled "Work Bench Garage", Decedent was observed entering the garage carrying a shovel. Decedent walked around the garage and appeared to set down the shovel

and picked up an object consistent with the size and shape of a hammer. He then walked north through the garage.

From camera labeled "NE Corner Garage", Decedent was observed entering a door into a small room which housed computer and surveillance equipment. A short time later, Decedent exited the room and walked through the garage. He then opened a door which led to the interior of the residence. He stayed at the open door for over two minutes before turning around and walking away. As Decedent walked away, L.M. was observed opening the door. It appeared that L.M. and Decedent engaged in a conversation before Decedent charged after L.M. who attempted to run and close the door. Decedent opened the door and chased L.M. into the residence.



WEAPONS COUNTDOWN

On December 8, 2020, Officers Grego-Smith and Xaypanya's duty weapons were counted down and photographed. At the completion of the countdown, it was determined that a total of six (6) shots were fired. Officer Grego-Smith discharged his Glock 17 9MM firearm three (3) times and Officer Xaypanya discharged his Glock 45 9MM firearm three (3) times during the incident.

AUTOPSY

Clark County Medical Examiner Lisa Gavin performed the autopsy on Decedent's body. Dr. Gavin located four (4) gunshot wounds on Decedent's shoulder, back and right upper arm. The toxicology test reported the presence of three hundred and sixty (360) nanograms of methamphetamine and ninety-four (94) nanograms of amphetamine in Decedent's system, such that Dr. Gavin listed methamphetamine toxicity in her pathologic

findings. She opined that Decedent died as a result of multiple gunshot wounds and the manner of death was homicide.

LEGAL ANALYSIS

The District Attorney's Office is tasked with assessing the conduct of officers involved in any lethal use of force which occurred during the course of their duties. That assessment includes determining whether any criminality on the part of the officers existed at the time of the incident.

In Nevada, there are a variety of statutes that define the various types of justifiable homicide (NRS §200.120 – Justifiable homicide defined; NRS §200.140 – Justifiable homicide by a public officer; NRS §200.160 – Additional cases of justifiable homicide). The shooting of Decedent could be justifiable under one or both of two theories related to the concept of self-defense: (1) the killing of a human being in self-defense or defense of others; and (2) justifiable homicide by a public officer. Both theories will be discussed below.

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

The authority to kill another in self-defense or defense of others is contained in NRS 200.120 and 200.160. "Justifiable homicide is the killing of a human being in necessary self-defense, or in defense of ... another person, against one who manifestly intends or endeavors to commit a crime of violence ..." against the person or other person.³ NRS 200.120(1). Homicide is also lawful when committed:

[i]n the lawful defense of the slayer, ... or of any other person in his or her presence or company, when there is reasonable ground to apprehend a design on the part of the person slain to commit a felony or to do some great personal injury to the slayer or to any such person, and there is imminent danger of such design being accomplished

NRS 200.160(1).

The Nevada Supreme Court has refined the analysis of self-defense and, by implication, defense of others, in Runion v. State, 116 Nev. 1041 (2000). The relevant jury instructions as articulated in Runion and modified for defense of others are as follows:

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

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

³ NRS 200.120(3)(a) defines a crime of violence:

"Crime of violence" means any felony for which there is a substantial risk that force or violence may be used against the person or property of another in the commission of the felony.

the other person, for the purpose of avoiding death or great bodily injury to [himself or the person(s) being defended].

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

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

1. He is confronted by the appearance of imminent danger which arouses in his mind an honest belief and fear that he [or the other person] is about to be killed or suffer great bodily injury; and
2. He acts solely upon these appearances and his fear and actual beliefs; and,
3. A reasonable person in a similar situation would believe himself [or the other person] 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 exists that a killing was in defense of self [or defense of another], the State must prove beyond a reasonable doubt that the slayer did not act in self-defense [or defense of another]. *Id.* at 1051-52.

Therefore, under Nevada law, if there is evidence that the killing was committed in self-defense or defense of another, the State, at trial, must prove beyond a reasonable doubt that the slayer was not acting in self-defense or defense of another.

The known facts and circumstances surrounding this incident indicate that Decedent posed an imminent danger to the homeowner, S.M., and it was absolutely necessary for Officers Grego-Smith and Xaypanya to shoot Decedent to avoid death or great bodily injury to S.M. Here, Decedent rushed at Officer Grego-Smith with the hammer in his hand as soon as the front door opened. In the four (4) seconds between the officers' entry and the shots being fired, Decedent had threatened Officer Grego-Smith with the hammer before he turned his attention on the elderly and defenseless homeowner. Officer Grego-Smith issued commands to Decedent to stop, but he ignored them. The moment before the shots were fired, Decedent was holding S.M.'s shoulder and/or arm with his right hand, and Decedent was poised to strike S.M. with the hammer in his other hand. Thus, Officers Grego-Smith and Xaypanya had a reasonable belief that Decedent would cause great bodily harm or death to S.M. if he struck S.M. in the head with the hammer. The totality of the evidence, to include BWC video and witness statements, illustrates that Officers Grego-Smith and Xaypanya reasonably acted in defense of S.M. Consequently, the shooting of Decedent is justifiable under this legal theory.

Justifiable Homicide by a Public Officer

“Homicide is justifiable when committed by a public officer ... [w]hen necessary to overcome actual resistance to the execution of the legal process, mandate or order of a court or officer, or in the discharge of a legal duty.” NRS 200.140(2). This statutory provision has been interpreted as limiting a police officer’s use of deadly force to situations when the officer has probable cause to believe that the suspect poses a threat of serious physical harm to either the officer or another. See 1985 Nev. Op. Att’y Gen. 47 (1985).

In this case, the evidence shows that Officers Grego-Smith and Xaypanya had probable cause to believe that Decedent posed a threat of serious physical harm to S.M. Immediately preceding the shooting, Decedent refused to comply with Officer Grego-Smith’s lawful orders to stop; instead, he continued to charge towards Officer Grego-Smith and then S.M. with the hammer raised in the striking position. At the point the officers fired their weapons at Decedent, Decedent was holding S.M.’s shoulder and/or arm with his right hand, and Decedent was poised to strike S.M. with the hammer in his other hand. Here, Officers Grego-Smith and Xaypanya had a reasonable belief that Decedent could cause serious physical harm to S.M. Thus, the use of deadly force by Officers Grego Smith and Xaypanya was legally justified and appropriate under NRS 200.140(2).

CONCLUSION

Based on the review of the available materials and application of Nevada law to the known facts and circumstances, we conclude that the actions of Officers Grego-Smith and Xaypanya were reasonable and/or legally justified. The law in Nevada clearly states that homicides which are justifiable or excusable are not punishable. See NRS 200.190. A homicide which is determined to be justifiable shall be “fully acquitted and discharged.” NRS 200.190.

As there is no factual or legal basis upon which to charge, unless new circumstances come to light which contradict the factual foundation upon which this decision is made, no charges will be forthcoming against Officers Grego-Smith and Xaypanya.