

REPORT ON USE OF FORCE Legal Analysis Surrounding the Death of Steven Thomas on November 17, 2021

INTRODUCTION

On November 17, 2021, Steven Thomas (hereinafter “Decedent”) carjacked a male driving a 2007 Kia Sorento in the parking lot of a bank at 1775 North Decatur Boulevard. Decedent took the Kia to a Circle K at 5400 Vegas Drive where he attempted to rob the store clerk at gun point. When the cashier was not able to open the safe, Decedent traveled to the Mountain American Credit Union at 7280 West Lake Mead Boulevard and committed a take-over style bank robbery. Bank tellers placed money, along with GPS trackers, in a bag and gave it to Decedent who then left the bank.

Sergeant Donald Graham and Officer Amelia Lukac were in the area attempting to locate Decedent when Officer Lukac observed the stolen Kia Sorento driving northbound on Tenaya Way from Cheyenne Avenue. Decedent passed Sergeant Graham and jumped out of the Kia near the apartment complex at 3300 North Tenaya Way. Sergeant Graham observed Decedent reach for a gun in his waist band, and Sergeant Graham struck him with his patrol vehicle. Decedent was able to get up, and he ran toward Officer Lukac. Officer Lukac exited her patrol vehicle and yelled commands to drop the gun and not to move. Officer Lukac fired multiple times and struck Decedent. Sergeant Graham also exited his patrol vehicle and yelled “hands” several times. He fired one round at Decedent. Officer Lukac advised Decedent was still moving, and the firearm was underneath him.

Eventually, Decedent was secured and medical arrived. Decedent was transported to UMC where he succumbed to his injuries.

This report explains why criminal charges will not be forthcoming against Sergeant Graham or Officer Lukac. 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 December 19, 2022.

This report is intended solely for the purpose of explaining why, based upon the facts known at this time, the conduct of the officers was not criminal. This decision, premised upon criminal-law standards, is not meant to limit any administrative action by the Las Vegas Metropolitan Police Department or to suggest the existence or non-existence of civil actions by any person, where less stringent laws and burdens of proof apply.

I. SYNOPSIS OF INCIDENT AND INVESTIGATION

Scene Overview



Above: Aerial overview of entire incident.

LVMPD Event: 211100070142

Victim #1 reported that he drove his Kia Sorento to the Wells Fargo Bank located at 1775 North Decatur Boulevard at approximately 1125 hours on November 17, 2021. Victim #1 parked his vehicle and observed a black male (Decedent) walking in his direction. As Victim #1 exited his vehicle, Decedent pointed a gun at him and demanded his vehicle. Victim #1 gave Decedent the keys to his car. Decedent took the keys and drove south on Decatur Boulevard.

LVMPD Event: 211100070152

Victim #2 was the assistant manager at the Circle K located at 5400 Vegas Drive on November 17, 2021. At approximately 1127 hours, a black male (Decedent) walked into the business and said, "Open the safe." Victim #2 thought Decedent was joking until Decedent walked around the counter and pointed a gun at him and again told him to open the safe. Victim #2 informed Decedent that he was unable to do so as he was just a cashier. Decedent walked out of the business and left the area.¹

LVMPD Event#: 211100070187

Victim #3 was working as a teller at Mountain America Credit Union located at 7280 West Lake Mead Boulevard on November 17, 2021. At approximately 1130 hours, Victim #3 heard someone yell, "Everyone get on the ground!" Victim #3 initially thought it was a joke until she observed a male (Decedent) jump over the teller counter. Victim #3 dropped to the ground until Decedent told her to empty her cash drawer. Victim #3 noticed Decedent had a gun in his gloved hand pointed in her direction. Victim #3 saw her manager emptying a trash can and removing the bag. Victim #3 brought her case to her manager, including money that contained a GPS tracker, and put it in the bag. Decedent took the bag, along with cash from other tellers, and left the bank.²

Victim #4 was an instructor at Victory Martial Arts located at 7270 West Lake Mead Boulevard on November 17, 2021. While in a meeting, an employee informed Victim #4 that a Kia Sorento had hit his motorcycle. Victim #4 ran outside and observed the Kia Sorento across Tenaya Way on the sidewalk. Victim #4 noticed a black male (Decedent) exit Mountain America Credit Union holding a plastic bag in one hand and a pistol in the other. Decedent ran across Tenaya Way, entered the Kia and drove north on Tenaya Way.

¹ Videographic surveillance of this incident was also impounded and reviewed. A customer provided similar information as Victim #2.

² Videographic surveillance of this incident was also impounded and reviewed. Several other witnesses provided similar information to Victim #3.

II. DESCRIPTION OF THE SCENE AND VISIBLE EVIDENCE

On November 17, 2021, CSA Halm, CSA Flores and CSA Courtney responded to 3300 Tenaya Way to photograph and document the scene, and photograph and collect evidence.



Above: Close-up aerial view of OIS location.

The scene was in and around the southwest entry/exit driveway of the 'Bloom Apartment Homes' complex. The entry/exit driveway was oriented east to west and was off the east side of North Tenaya Way (a north-south oriented street). The driveway consisted of two lanes divided by two landscaped medians. The south lane was the entryway (eastbound) and the north lane was the exit (westbound). The center medians were east-west oriented and had rock landscapes with palm trees and shrubbery. A gap was between the two medians. The west median had a centrally located cement sign depicting '3300 Bloom Apartment Homes' and two palm trees to the east of the sign. The east median had a centrally located guard shack with two palm trees to the west of the shack. Rock landscape (with shrubbery and trees) and a partial sidewalk bordered both corners of the entry/exit driveway.

Vehicle #1 (Kia Sorento NV license plate 490J78) was facing northeast in the landscape on the north corner of the entry/exit. The front of Vehicle #1 was in contact with a tree. The left two doors and trunk were open. Vehicle #2 (Chevrolet Police Interceptor NV license plate LVMP0547) was parked facing east (slightly north) in the entryway, south of the west median. There was dust disturbance to the hood and the driver door was open. Tire marks were in the roadway curving southwest from Vehicle #2's rear tires. Vehicle #3 (Ford Explorer Police Interceptor NV license plate LVMP1013) was parked facing north in the (east most) northbound lane of N. Tenaya Way, just south of the entryway. All the doors were closed. One (1) handgun magazine was on the driver's seat.



Above left: Overall picture of the scene.

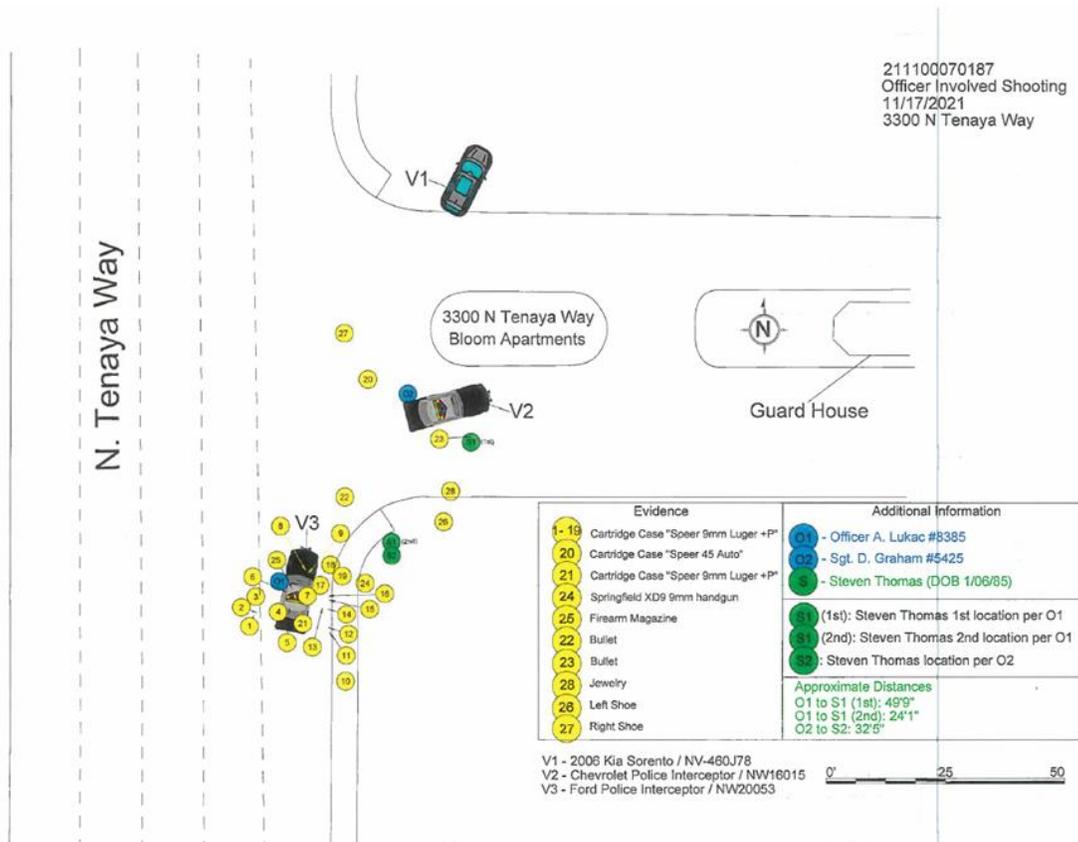


Above right: Location where Decedent was taken into custody.

Twenty (20) 'SPEER 9MM LUGER +P' cartridge cases were scattered on/around Vehicle #3. An apparent ricochet was on the right hood/quarter panel of Vehicle #3. There were defects to the west face of the palm tree trunk, just west of the guard shack. Two (2) bullet holes were in the west facing window of the guard shack. The interior of the guard shack was inaccessible to investigators while on scene. One (1) bullet was in the southeast corner of the entryway and one (1) bullet was in the middle of the entryway, adjacent to the apartment complex sign.

One (1) 9mm semi-automatic Springfield XDE9 handgun bearing serial #HE947598 and apparent blood (chamber empty, no magazine), one (1) white 'Reebok' left shoe, \$20.00 in US Currency, multiple cards (including bank cards and a Nevada Identification Card bearing the name of Decedent), medical intervention debris, and a towel bearing apparent blood were in the rock landscaping east of V3 (south of the entryway).

Multiple pieces of a yellow metal chain and charms were on the ground in the entryway, south of Vehicle #2. One (1) white 'Reebok' right shoe was on the ground, west of Vehicle #2. One (1) 'Palace Station' card was on the ground in front of Vehicle #2.



III. INVESTIGATION OF OFFICER INVOLVED SHOOTING

Law Enforcement Victims/Witnesses

Sergeant Graham

On November 20, 2021, at approximately 1001 hours, Detectives Colon and Mendoza conducted an audio recorded interview with Sergeant Graham at LVMPD Headquarters. Also present for the interview was Sergeant Iacullo and FOP attorney Peter Angulo. Below is a summary of the interview; for complete details refer to the interview transcript.

Sergeant Graham heard LVMPD dispatch broadcast a bank robbery in progress in the area of West Lake Mead Boulevard and Tenaya Way. Officer Lukac was in a separate patrol vehicle when the incident was broadcasted.

Sergeant Graham responded to the area of the robbery to attempt to locate the suspect (Decedent). Sergeant Graham drove north on Tenaya Way from Lake Mead Boulevard. As Sergeant Graham approached Cheyenne Avenue, Officer Lukac advised him over the radio that Decedent just passed him travelling north.

Sergeant Graham followed Decedent who was driving a Kia Sorento. Decedent slowed down and exited his vehicle in front of an apartment complex at 3300 North Tenaya Way. Decedent did not put his vehicle in park so it rolled into a tree in front of the complex.

Sergeant Graham prepared to initiate a foot pursuit but then observed Decedent reach into his waistband for a gun. Sergeant Graham believed he had two options; either exit his patrol vehicle and possibly get shot or use his patrol vehicle as a weapon and strike Decedent to prevent him from shooting.

Sergeant Graham struck Decedent with his patrol vehicle, and Decedent rolled off the hood. Sergeant Graham stopped his vehicle and exited; however, he was not able to see Decedent who was on the passenger side. Sergeant Graham then heard gunshots and moved to the rear of his vehicle.

Sergeant Graham and Officer Lukac formed a tactical L position where Officer Lukac was west of Decedent and Sergeant Graham was north of him. Sergeant Graham heard Officer Lukac firing and assessing. Decedent would get up and Officer Lukac would shoot.

Sergeant Graham noticed Officer Lukac had stopped firing and believed she ran out of ammunition. Sergeant Graham observed Decedent reaching for a gun. Sergeant Graham

believed Decedent was going to shoot Officer Lukac. Sergeant Graham fired one shot at Decedent.

Decedent stopped moving after Sergeant Graham had fired. Additional officers responded, and Sergeant Graham formed an arrest team and had them put handcuffs on Decedent until medical personnel arrived.

Officer Lukac

On November 20, 2021, at approximately 1210 hours, Detective Colon conducted an audio recorded interview with Officer Lukac at LVMPD Headquarters. Also present for the interview was Sergeant Iacullo, FOP attorney Adam Levine and retired LVMPD Lieutenant Ron Fox. Below is a summary of the interview; for complete details refer to the interview transcript.

Officer Lukac was dispatched to a bank robbery in progress. Officer Lukac followed Sergeant Graham to the area of the call and attempted to locate the suspect (Decedent). While driving north on Tenaya Way, Officer Lukac observed Decedent pass Sergeant Graham's vehicle at Cheyenne Avenue.

Officer Lukac observed Decedent exit his vehicle in front of 3300 North Tenaya Way. Decedent walked toward Sergeant Graham's vehicle. Officer Lukac observed Sergeant Graham strike Decedent with his vehicle. Decedent rolled off the hood of Sergeant Graham's vehicle. Decedent then stood up and turned toward Officer Lukac who had stopped in front of 3300 North Tenaya Way.

Officer Lukac gave Decedent verbal commands to show his hands. Decedent reached into his waistband and walked toward Officer Lukac. Officer Lukac fired her gun at Decedent who was still ignoring her commands.

Decedent fell to the ground but continued reaching for something in his waistband while attempting to get up. Officer Lukac yelled for Decedent to show his hands which he ignored. Officer Lukac fired her gun several more times as Decedent continued to close the distance between himself and Officer Lukac.

Officer Lukac observed a gun under Decedent and notified Sergeant Graham. Decedent grabbed the gun and Officer Lukac fired her gun again. Decedent finally stopped reaching for the gun, and Officer Lukac advised Sergeant Graham to form an arrest team with arriving officers. Sergeant Graham formed an arrest team, and Decedent was placed in handcuffs. Officers applied first aid as medical personnel responded.

Officer Lukac believed Decedent intended on shooting her as well as Sergeant Graham.

Detective Orth

On November 18, 2021, at approximately 1433 hours, Detectives Ubbens and Beal conducted an audio recorded interview with Detective Orth at Cheyenne Avenue and Tenaya Way. Below is a summary of the interview; for complete details refer to the interview transcript.

Detective Orth was driving southbound on US95 when he heard a radio broadcast of a bank robbery near Lake Mead Boulevard and Tenaya Way. He heard an update the suspect vehicle was in the area of Cheyenne Avenue and Tenaya Way. As Detective Orth exited US95 onto Cheyenne Boulevard, he heard an update of shots fired.

Detective Orth pulled over and put on his tactical vest prior to proceeding towards the scene. Detective Orth initially parked his department truck to block traffic south of the scene. Because Detective Orth was a certified EMT, he proceeded to Decedent to assist with providing medical treatment. As Detective Orth approached Decedent, he saw officers had already started CPR. Detective Orth also noticed a black semi-automatic pistol on the ground near Decedent. Detective Orth checked Decedent for a pulse with negative results. Medical personnel arrived shortly after and transported Decedent from the scene.

Lay Victims/Witnesses

Witness #1

On November 17, 2021, at approximately 1218 hours, Detective Parra conducted an audio recorded interview with Witness #1 at 1775 North Decatur Boulevard. Below is a summary of the interview; for complete details refer to the interview transcript.

Witness #1 had been in a dating relationship with Decedent for about a year. Witness #1 stated that Decedent had a mental breakdown in May of 2021. Decedent experienced an episode where he left home and was missing for a few days.

Decedent was transported to the hospital with severe burns after putting chemicals on himself. Witness #1 believed Decedent suffered from mental illness because he did not remember burning himself. Decedent spent several months at the burn unit treating his injuries which caused permanent damage. Decedent did not receive mental health

treatment because Witness #1 believed he would know what to say to the doctors so they would clear him.

Decedent would complain about the voices in his head to Witness #1. He expressed that he could not take it anymore which caused Witness #1 deep concern about his safety. Decedent made several suicidal ideations over the past months. Witness #1 did not want Decedent to hurt himself so she hid the magazine and bullets from his firearm.

On the morning of November 17, 2021, Decedent had a doctor's appointment where he learned that his hand may be amputated. Decedent became depressed and expressed to Witness #1 that he was in constant pain and wanted it to be over. Decedent stated he wanted to get a cop to shoot him by possibly walking into a bank with a gun. Witness #1 tried to comfort him and make him feel better.

They returned home and Decedent retrieved his gun but could not find the magazines. Witness #1 would not tell Decedent where they were located, so he left on foot with his unloaded firearm. Witness #1 followed him but could not convince him to get in the car, and Decedent eventually evaded Witness #1. Witness #1 observed a police officer and pulled over to inform him about the situation.

Witness #2

On November 20, 2021, at approximately 1158 hours, Detective Mendoza conducted an audio recorded interview with Witness #2 at 5313 W. Cheyenne Ave. Also present for the interview was Detective A. Ubbens, P# 13119. Below is a summary of the interview; for complete details refer to the interview transcript.

Witness #2 stated she was driving southbound on Tenaya Avenue when she saw two police vehicles stopped on the road. Witness #2 stated she had to stop her vehicle due to other cars that were stopped in front of her. Witness #2 saw a male subject in the parking lot area of an apartment complex. Witness #2 described the subject as a 35 to 40-year-old white male wearing a gray shirt, blue jeans, and white tennis shoes. The male was standing outside of a vehicle as the two police vehicles were parked behind it. The subject then ran from his vehicle. Witness #2 said she did not see a gun in the subject's hands as he fled. Witness #2 stated, "If the man had a gun, he must have dropped it before he came in my view."

After witnessing the subject running, Witness #2 heard approximately 12-13 gunshots from both officers and the subject fell to the ground. Witness #2 stated the officers continued to fire at the subject while he was on the ground. After the shooting, numerous police officers arrived on the scene and began directing traffic from the area.

IV. VIDEO EVIDENCE

OFFICER BODY WORN CAMERAS

The Axon Flex body-worn camera (BWC) time stamps videos in Zulu Time, also known as Greenwich Mean Time (GMT), which is the world time based on a 24-hour clock. The time is based on the Prime Meridian, which is zero degrees longitude and passes through Greenwich, England.

Officers activated their BWCs at different times during the incident. There is a seven-hour negative difference between the event time and displayed Zulu Time. Axon BWCs also have a “time drift” (the camera’s internal clock drifts from actual time based on when the cameras are synced when the camera is docked). Each BWC can display a different time based on a time drift.

The following are summaries of BWC footage from the subject and witness officers who were on scene at the time of the OIS.

Sergeant Graham

Sergeant Graham was wearing a BWC at the time of the incident and the camera was activated. The camera was collected by FIT detectives and secured. Sergeant Graham’s camera footage depicted the following:

Sergeant Graham was driving north on Tenaya Way and appeared to slow down at Cheyenne Avenue to clear the intersection. As Sergeant Graham crossed the intersection, Decedent’s vehicle passed Sergeant Graham.

Decedent’s vehicle appeared on the left side of the screen and moved in front of Sergeant Graham. Decedent’s driver door was open as the vehicle travelled north in front of Sergeant Graham. Sergeant Graham was unable to get through on the radio due to ongoing radio traffic by Officer Lukac.

Decedent exited his vehicle in front of 3300 North Tenaya Way and the vehicle kept moving forward. Decedent faced Sergeant Graham’s vehicle with his hands near his waistband. Decedent walked toward Sergeant Graham while reaching into his waistband. Sergeant Graham’s steering wheel blocked the camera’s view of Decedent’s hands as Decedent approached.

Sergeant Graham accelerated and struck Decedent who then rolled onto the hood of the patrol vehicle. Sergeant Graham turned right into the entry way of 3300 North Tenaya Way with Decedent on his hood. An unknown object was visible in Decedent's right hand. Decedent fell onto the ground on the driver's side of the vehicle.

Sergeant Graham stopped and exited his vehicle. Sergeant Graham was facing toward the front of his vehicle and said, "Give me your hands! Show me your hands!" The camera faced toward the ground as Sergeant Graham moved to the rear of his vehicle. Several gunshots were heard.

Sergeant Graham stood at the rear of his vehicle and ordered Decedent to show his hands several times. The camera was still pointed toward the ground. Officer Lukac's voice was heard yelling commands as well as several more gunshots.

It appeared Sergeant Graham fired one shot as Officer Lukac continued yelling commands. Sergeant Graham utilized his radio and requested additional units for an arrest team.

Sergeant Graham put on latex gloves as he told Decedent to put his hands behind his back and, "We are going to get medical for you." Sergeant Graham's camera remained pointed toward the ground as he instructed arriving officers to form an arrest team.

Other officers can be seen walking toward Decedent with Sergeant Graham. Decedent was face down on the ground as officers placed handcuffs on him. One of the other officers appeared to kick a black handgun away from Decedent.

Officers are seen providing first aid to Decedent as Sergeant Graham requested medical personnel. Sergeant Graham advised units to close the surrounding streets.



Decedent approaching Sergeant Graham and on hood of vehicle.

Officer Lukac

Officer Lukac was wearing a BWC at the time of the incident, and the camera was activated. The camera was collected by FIT detectives and secured. Officer Lukac's camera footage depicted the following:

Officer Lukac drove north on Tenaya Way. Officer Lukac made a U-turn to go south on Tenaya Way then immediately turned back northbound and advised Sergeant Graham that Decedent was behind him.

Officer Lukac broadcasted Decedent was driving northbound toward Cheyenne Avenue into oncoming traffic. Officer Lukac updated Decedent was northbound on Tenaya Way from Cheyenne Avenue and Sergeant Graham was going to be the primary vehicle.

Officer Lukac broadcasted Decedent stopped at 3250 North Tenaya Way. Decedent was observed out of his vehicle and approaching Sergeant Graham. Sergeant Graham's vehicle moved forward, struck Decedent and turned right into the entryway of 3300 North Tenaya Way. Officer Lukac stopped her vehicle on Tenaya Way in front of the complex.

Officer Lukac exited her vehicle, drew her firearm and screamed, "Get down!" Officer Lukac yelled several commands to show his hands and get down. Decedent was observed looking toward Sergeant Graham and Decedent pointed a gun at him.

Officer Lukac fired her gun at Decedent several times while yelling commands to get down. Decedent was observed on the ground and moving toward Officer Lukac. Sergeant Graham was observed standing at the rear of his patrol vehicle with his gun drawn and pointed toward Decedent.

Decedent can be observed moving toward Officer Lukac as she yelled, "He's going for a gun." Officer Lukac fired several shots at Decedent. Officer Lukac continued to fire her gun, and the slide locked back indicating her magazine was empty. Officer Lukac again yelled, "He's going for a gun!" as she reloaded her gun. Officer Lukac fired four more shots after reloading.

Officer Lukac advised Sergeant Graham to issue verbal commands. Officer Lukac advised arriving units that Decedent had a gun and was still conscious. Officer Lukac remained by her vehicle and provided cover for the arrest team.³

³ There was no third-party video which captured the shooting.



Above left: Decedent observed pointing his gun toward Sergeant Graham.
Above right: Close up view of Decedent pointing his gun.

V. OFFICER WEAPON COUNTDOWNS

On November 17, 2021, Sergeant Graham and Officer Lukac had their duty weapons counted down at 3300 North Tenaya Way to determine the number of rounds each officer fired during the incident. Subject and witness officers were photographed by CSI personnel for appearance purposes and their weapons were photographed for identification purposes.

Sergeant Graham was dressed in a standard LVMPD long sleeve uniform. He wore LVMPD patches on each shoulder and an LVMPD badge over his left breast. Sergeant Graham wore a black duty belt with attached tools and equipment as part of his position in patrol. Sergeant Graham's handgun was carried on the right side of his body and secured in a holster.

Prior to countdown Sergeant Graham stated he carried 13 cartridges in the magazine loaded in his firearm and one cartridge in the chamber (13+1, 14 total). At the completion of the countdown, it was determined Sergeant Graham discharged his firearm one time during this incident. When compared to evidence at the scene, detectives concluded Sergeant Graham discharged his firearm once. Sergeant Graham's firearm, magazines used during the OIS, and cartridges were photographed and impounded by CSA Felabom.

Officer Lukac was dressed in a standard LVMPD long sleeve uniform. She wore LVMPD patches on each shoulder and an LVMPD badge over her left breast. Officer Lukac wore a black duty belt with attached tools and equipment as part of her position in patrol. Officer Lukac's handgun was carried on the right side of her body and secured in a holster.

Prior to countdown Officer Lukac stated she carried 15 cartridges in the magazine loaded in her firearm and one cartridge in the chamber (15+1, 16 total). During the incident

Officer Lukac conducted a speed reload, replacing the magazine from the magazine well of the firearm with a full capacity magazine, and allowed the original magazine to drop from the firearm and be left on scene.

At the completion of the countdown, it was determined Officer Lukac discharged her firearm 20 times during this incident. When compared to evidence at the scene, detectives concluded Officer Lukac discharged her firearm 20 times. Officer Lukac's firearm, magazines used during the OIS, and cartridges were photographed and impounded by CSA Felabom.

VI. AUTOPSY

On November 18, 2021, at approximately 0730 hours, under CCOCME case 21-07458, an autopsy was performed on the body of Decedent at the CCOCME by Doctor Dutra.

The following wounds/injuries were noted on Decedent:

- 1) Gunshot wound of the head.
- 2) Gunshot wound of the neck (grazing injury).
- 3) Gunshot wound of the neck.
- 4) Gunshot wound of the chest.
- 5) Gunshot wound of the left upper extremity.
- 6) Gunshot wound of the right upper extremity.
- 7) Gunshot wound of the chest.
- 8) Gunshot wound of the chest.
- 9) Gunshot wound of the chest.
- 10) Gunshot wound of the back.
- 11) Gunshot wound of the abdomen.
- 12) Gunshot wound of the right upper extremity (grazing wound).
- 13) Gunshot wound of the left upper extremity.
- 14) Gunshot wound of the right upper extremity (grazing wound).

Upon the completion of toxicology testing, the following results were noted:

Positive Findings:

<u>Compound</u>	<u>Result</u>	<u>Units</u>	<u>Matrix Source</u>
Amphetamine	68	ng/mL	001 - Peripheral Blood
Methamphetamine	400	ng/mL	001 - Peripheral Blood

After a thorough review of facts and circumstances and a complete autopsy, Doctor Dutra opined Decedent died as a result of gunshot wounds to the head and torso. The manner of death was homicide.

VII. Southern Nevada Counter-Terrorism Center Suspicious Activity Report

On May 19, 2021, under LVMPD Event LLV210500085695, the Counter-Terrorism (CT) detail along with ARMOR (All-Hazard regional Multi-Agency Operations and Response) responded to a fire event at the Terrible's Gas station located at 10890 West Charleston Boulevard. Decedent entered the store carrying a clear plastic container filled with what was later determined to be sodium hydroxide powder. Decedent proceeded to the beer cooler after which he intentionally covered various parts of his body with the powder.

A call for service was generated and LVMPD patrol officers detained Decedent. The side effects of the powder caused severe burns on approximately thirty percent of his body. Decedent was transported to the UMC Burn Unit for treatment.

LEGAL ANALYSIS

The District Attorney's Office is tasked with assessing the conduct of officers involved in any 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/defense of others; and (2) justifiable homicide by a public officer. Both of these theories will be discussed below.

I. THE USE OF DEADLY FORCE IN DEFENSE OF SELF OR ANOTHER

The authority to kill another in 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 ... person, against one who manifestly intends or endeavors to commit a crime of violence ..." against the other person.⁴ NRS 200.120(1). Homicide is also lawful when committed:

⁴ 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.

[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 [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 [the other person] or cause [the other person] great bodily injury; and
2. That it is absolutely necessary under the circumstances for him to use in [defense of another] force or means that might cause the death of the other person, for the purpose of avoiding death or great bodily injury to [the person 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 [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 [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 [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 [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 [that a killing was in defense of another exists], the State must prove beyond a reasonable doubt that Decedent did not act in [defense of another]. *Id.* at 1051-52.

Therefore, in Nevada, the law is that if there is evidence of self-defense, in order to prosecute, the State must prove an individual did not act in self-defense beyond a reasonable doubt.

In this case, Decedent posed an imminent apparent danger to both Sergeant Graham and Officer Lukac when he drew his weapon and pointed it at Sergeant Graham. When Officer Lukac saw Decedent raise his firearm and aim it at Sergeant Graham, she reasonably believed she needed to fire to protect the life of Sergeant Graham. After the initial shots were fired, when Decedent continued to appear to be reaching for his weapon, both Sergeant Graham and Officer Lukac were acting under the same state of mind. It is legally irrelevant that Decedent's gun was not loaded, as neither Sergeant Graham nor Officer Lukac would have known that fact. Thus, Sergeant Graham and Officer Lukac were confronted by the appearance of imminent danger, which created in their mind an honest belief and fear that they were about to be killed or suffer great bodily injury. Accordingly, Sergeant Graham and Officer Lukac were justified in acting upon those appearances, fears and actual beliefs.

II. 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 facts demonstrate that both Sergeant Graham and Officer Lukac had probable cause to believe that Decedent posed a threat of serious physical harm to themselves and others. This probable cause became evident after Decedent pointed his weapon at Sergeant Graham and refused to comply with commands to drop the weapon and not reach for it after the initial volley of shots by Officer Lukac. Thus, Sergeant Graham and Officer Lukac had a reasonable belief that Decedent was a threat to their lives or others around them. In light of this evidence, the actions of the officers were legally justified and appropriate "in the discharge of a legal duty."

CONCLUSION

Based on the review of the available materials and application of Nevada law to the known facts and circumstances, the State concludes that the actions of Las Vegas Metropolitan Police Department Sergeant Graham and Officer Lukac were reasonable and/or legally justified. The law in Nevada clearly states that homicides which are

justifiable or excusable are not punishable. (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.