



REPORT ON USE OF FORCE

Legal Analysis Surrounding the Death of Axell Vivas on January 26, 2018

INTRODUCTION

Just after midnight on January 26, 2018, Las Vegas Metropolitan Police Department ("LVMPD") Dispatch received a frantic 911 call from sixteen year-old V.V. who told the operator that his mother, C.V., had been shot several times inside their residence by her husband and V.V.'s step-father, Axell Vivas ("Decedent"). V.V. also told the 911 operator that Decedent was suicidal, armed with a firearm, and waiting for officers outside the residence located at 11729 Giles Street.

LVMPD officers quickly arrived to the residence and due to the circumstances had V.V. exit the house with his three young siblings. Officers found C.V. in the upstairs bedroom suffering from multiple gunshot wounds and unresponsive. Medical personnel at the scene pronounced C.V. deceased.

Officers at the scene quickly determined that Decedent had fled the area before the police arrived in a white, 2005 Chrysler Sebring, bearing Tennessee plates that had a damaged windshield. This information was broadcasted to LVMPD officers as well as other law enforcement agencies.

At 2:40 AM, Patrol Detective Joseph Harris broadcasted over the radio that he had possibly located Decedent's vehicle at Elcadore and Fern Tree, a location which was less than half a mile from the original homicide scene. Detective Harris requested marked patrol units respond to the area. Approximately five minutes later, officers at the Elcadore location broadcasted that Decedent had exited the vehicle and was pointing a gun toward officers. Decedent was using his vehicle as cover and would duck down behind the vehicle after pointing the firearm at officers' locations. Several officers responded to the location including Officers Anthony Raymond and Celina Cruz.

At approximately 2:47 AM, Officers Anthony Raymond and Celina Cruz both fired at Decedent after Decedent pointed his firearm toward them and other officers. Decedent was struck by the officers' gunfire but kept holding his firearm, preventing officers from providing immediate medical assistance. After it was determined that Decedent was not moving, an arrest team was formed and carefully approached Decedent who was deceased.

The Clark County District Attorney's Office has completed its review of the January 26, 2018, death of Decedent. It has been determined that, based on the evidence currently available and subject to the discovery of any new or additional evidence, the actions of Officers Cruz and Raymond were not criminal in nature. This review is based upon all the evidence currently available.

This report explains why criminal charges will not be forthcoming against Officers Cruz and Raymond. 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 October 19, 2018.

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

INCIDENT DETAIL

On January 26, 2018, at approximately 12:08 AM, LVMPD Dispatch received a frantic 911 call from 16 year-old V.V., who reported that his mother, C.V., was shot multiple times in the stomach and chest by her husband, Decedent, with a revolver at their residence located at 11729 Giles street ("Residence"). V.V. told Dispatch that Decedent reloaded the revolver and was waiting for the police outside. V.V. also told Dispatch that Decedent was "suicidal" and would shoot anyone who tried to stop him. Dispatch advised responding officers that Decedent was armed and possibly looking to commit suicide by police officer.

At approximately 12:11 AM, patrol officers arrived to the Residence, established a perimeter and requested V.V. to exit the Residence with his three younger siblings. After the children exited the Residence, officers made entry and found C.V. in the master

bedroom suffering from numerous gunshot wounds. Clark County Fire Department responded and pronounced C.V. deceased. Officers at the scene were informed by V.V. that Decedent had fled the Residence in a white 2005 Chrysler Sebring bearing Tennessee license plate, Y0488A that had damage to its windshield.

Homicide detectives responded to the Residence and interviewed V.V. as part of a murder investigation. V.V. told homicide detectives that he was in his bedroom when he heard multiple gunshots coming from the master bedroom. He entered the master bedroom, saw Decedent holding a firearm and C.V. on the bedroom floor suffering from several gunshot wounds. Decedent reloaded the firearm, told V.V. to take care of the children and exited the residence. V.V. also told homicide detectives that Decedent told him to call the police and that he would have the police kill him.

Patrol detectives and officers searched the area for Decedent and the white Chrysler Sebring. It was broadcasted over LVMPD's radio that Decedent was a murder suspect who was armed and suicidal. Other nearby law enforcement agencies were also informed of Decedent and his vehicle.

At 2:40 AM, Detectives Harris and Adams located a white Chrysler Sebring parked in the same residential subdivision as the Residence, in a small auxiliary parking lot located by Elcadore and Fern Tree. Detectives parked their vehicle on Elcadore about thirty yards away from the white Chrysler Sebring. Detectives could not determine if Decedent was inside the vehicle and requested marked patrol units to respond to the area. Shortly thereafter, Lieutenant Kisfalvi arrived in his marked patrol unit and parked his vehicle just east of Detectives Harris' and Adams' vehicle which was parked in the middle of the street on Elcadore. Lieutenant Kisfalvi pointed his vehicle's side spotlight at the Chrysler Sebring. Decedent exited the vehicle and used it as cover as he pointed a firearm in the direction of officers. At 2:44 AM, Lieutenant Kisfalvi broadcasted over the radio that Decedent had exited the vehicle with a firearm in his hand. An air unit, AIR2, arrived at scene and provided officers on the ground with information about Decedent's position.

Detective Harris attempted to talk with Decedent and de-escalate the situation. Detective Harris told Decedent to drop his firearm several times. Decedent refused to drop his firearm, made suicidal statements referencing the murder of C.V. and continued to point his firearm at officers. Officers Cruz and Raymond both arrived at the scene separately and took up positions of cover. Sergeant Downing had Officer Raymond, take a position of cover next to the front, right part of Lieutenant Kisfalvi's patrol vehicle. This provided Officer Raymond with a clear line of fire toward Decedent's vehicle. Officer Cruz positioned herself with a shotgun behind the detectives' unmarked vehicle.

At 2:47 AM, Decedent pointed his firearm at officers again. In response, both Officers Cruz and Raymond discharged their respective firearms at him. Decedent ducked behind his vehicle for cover. Decedent again rose from his position behind his vehicle and pointed his firearm at officers. Officers Cruz and Raymond again fired at Decedent. Decedent was struck by officers' gunfire and fell behind his vehicle. AIR2 told officers on the ground that Decedent was on the ground bleeding but was still holding his firearm in his right hand. An arrest team was formed and took Decedent into custody at 2:51 AM. Decedent was placed into handcuffs and medical personal responded to the scene. Decedent was declared dead. The LVMPD Force Investigation Team was called to the scene and conducted an investigation into the shooting.

INVESTIGATION

Information from Witnesses

Lieutenant Peter Kisfalvi

Lieutenant Kisfalvi told investigators that he responded to the original homicide call at the Residence and was looking for the suspect's vehicle in the surrounding area with his marked patrol vehicle. As he was driving through the nearby M Resort parking lot, he heard detectives broadcast over the radio that they possibly found the suspect on Elcadore Street, near the original homicide scene. Lieutenant Kisfalvi responded to the detectives' location and found Detectives Adams and Harris outside their vehicle with their handguns drawn but not pointed at anyone. They advised Lieutenant Kisfalvi that the vehicle parked twenty-five to thirty yards northwest of them belonged to Decedent, the homicide suspect.

Lieutenant Kisfalvi parked his patrol vehicle to the right (east) of the detectives' vehicle. He turned on his side spotlight and pointed it toward the suspect vehicle. He noticed movement in the vehicle but was unable to see inside the vehicle due to fog on the windows. Shortly thereafter, Decedent exited the vehicle with a firearm in his right hand.

When Decedent exited the vehicle he held up the firearm and pointed it toward the sky. Lieutenant Kisfalvi heard Detective Harris give Decedent commands to drop the firearm, which were refused. A couple of times during the incident Decedent ducked behind his vehicle and Lieutenant Kisfalvi would lose sight of him. Decedent would pop back up from behind the vehicle and yell at officers but it was unclear to Lieutenant Kisfalvi what was being said except Lieutenant Kisfalvi recalled that Decedent yelled, "I'm not going

to jail.” The second time Decedent popped up from behind his vehicle, he pointed the firearm at officers. This occurred three or four times. At another point, Decedent yelled at officers that they would have to kill him. Less than a minute after that statement, Lieutenant Kisfalvi saw Officer Raymond take position by the hood of his vehicle with a rifle. Lieutenant Kisfalvi also noticed Officer Cruz had taken a position of cover with a shotgun by the left taillight of the detectives’ vehicle. As Decedent continued to point his firearm at officers, Lieutenant Kisfalvi saw Officer Raymond fire at Decedent three or four times with his rifle. He also saw Officer Cruz fire her shotgun toward Decedent. Decedent ducked behind his vehicle again but then popped back up and pointed his firearm at officers. Officers Raymond and Cruz fired their respective weapons again toward Decedent and Lieutenant Kisfalvi observed Decedent fall to the ground. He noticed blood running down the parking lot from Decedent’s position. AIR2 broadcasted that Decedent was laying on his stomach and holding the firearm in his right hand. Officers along with Sergeant Downing went forward with a ballistic shield and took Decedent into custody.

Sergeant Matthew Downing

Sergeant Downing told investigators that he had just left the homicide scene at the Residence when he heard the broadcast that Decedent’s vehicle was located by patrol detectives near the Residence. Sergeant Downing knew Decedent was believed to have a firearm and was suicidal. He returned to the area and arrived after Lieutenant Kisfalvi. When he arrived at the scene, Sergeant Downing heard officers giving Decedent verbal commands to drop the firearm which were ignored. Sergeant Downing requested a rifle officer to the scene and Officer Raymond responded. Sergeant Downing placed Officer Raymond by Lieutenant Kisfalvi’s vehicle where he had a clear line of fire if necessary.

Sergeant Downing was attempting to set up containment positions when he heard one or two shots fired. He moved to a position where he could observe Decedent, heard more gunfire and observed Decedent duck behind his vehicle. Sergeant Downing observed something in Decedent’s hand but could not make out what it was.

Several additional shots were fired and Decedent fell to the ground. Sergeant Downing observed blood running from Decedent position towards the gutter. AIR2 broadcasted that Decedent was down but still had his firearm in his right hand. Eventually, officers

formed an arrest team and took Decedent into custody. Decedent's firearm was placed in the back of his vehicle.

Detective Keith Adams

Detective Adams told investigators that he was a patrol detective who was helping canvass the area around the Residence with Detective Harris at the request of homicide detectives. Detective Adams and Harris were looking for Decedent's vehicle and knew Decedent was armed. Detective Adams spotted a white, 2005 Chrysler Sebring with a damaged windshield in a parking lot on Elcadore. Detective Adams was unable to see inside the vehicle but believed it was Decedent's vehicle. He called over the radio for marked patrol units to assist since both he and Detective Harris were in plain clothes.

Lieutenant Kisfalvi showed up in a marked patrol unit and put his spotlight on the vehicle. Detective Adams noticed a head move in the vehicle. Decedent exited the vehicle from the driver side door with a firearm in his hand. Detective Harris tried to talk to Decedent and told him to put his gun down. Decedent responded with, "I'm not putting the gun down, you're gonna have to kill me." Decedent also told detectives that his wife was cheating on him and that he was, "done." Detective Harris continued to talk with Decedent in an attempt to de-escalate the situation.

Patrol officers responded to the area. Detective Adams noticed that Officer Cruz had a shotgun and Officer Raymond had a rifle. Detective Adams started to walk toward a marked patrol vehicle when he heard several gunshots. Officer Adams began to head back toward his vehicle and heard several additional gunshots. During this time, he heard a radio broadcast that Decedent was pointing a firearm at officers.

After shots were fired, Detective Adams took control of Officer Cruz's shotgun so she could be part of the arrest team. After Decedent was in custody and his firearm was secured, Detective Adams placed Officer Cruz's shotgun in his unmarked vehicle.

Detective Joe Harris

Detective Harris told investigators that he was a patrol detective that originally went out to the homicide scene and helped canvass the neighboring residences for witnesses. During the investigation, Detective Harris was informed that Decedent, the murder suspect, had fled the scene in a white Chrysler Sebring with a damaged windshield and Tennessee plates. Detective Harris, along with his partner, Detective Adams, decided to

search the surrounding area for Decedent's vehicle. The search led them to a small auxiliary parking lot on Elcadore where he saw a white Chrysler Sebring with a damaged windshield. The detectives broadcasted that they may have found Decedent's vehicle and called for marked patrols unit. Lieutenant Kisfalvi was the first to respond to the location.

Lieutenant Kisfalvi pulled his vehicle closer to Decedent's vehicle and used his side spotlight to illuminate Decedent's vehicle. Decedent exited the vehicle waiving a firearm in the air. Detective Harris told Decedent, "Lemme see your hands" and "put the gun down". Decedent told Detective Harris that he was not going to put the gun down. Detective Harris continued to try to engage Decedent in conversation to de-escalate the situation. Detective Harris believed he told Decedent between ten to fifteen times to put down the firearm but Decedent refused to do so and continued to act agitated. At one point, he told Detective Harris that his wife had cheated on him referencing the murder at the Residence. Around this time, patrol units had responded and officers were taking positions of cover around Detective Harris.

As the situation continued, an air unit (AIR2) arrived and placed a spotlight on Decedent. Per Detective Harris, this just made Decedent agitated. Decedent waived his firearm around, pointed it at officers several times, and at one point pointed the firearm at himself. Detective Harris also noticed that Decedent kept glancing to the north and was worried that Decedent might try to escape that way or run into one of the houses in that area.

After about five minutes of trying to get Decedent to drop the firearm, Detective Harris heard seven to ten gunshots. He believed all the gunshots came from the officer with a rifle positioned by Lieutenant Kisfalvi's vehicle (Officer Raymond).

Detective Harris was part of the arrest team. When he approached Decedent, Decedent was laying on his stomach with his hands underneath his body, Detective Harris noticed an obvious head wound and that Decedent appeared to be deceased. When Decedent hands were placed in handcuffs, Detective Harris noticed a small, black revolver

underneath Decedent which was kicked away by another officer. Decedent was pronounced dead and his weapon was placed on the trunk of the Chrysler Sebring.

Officer James Burt

Officer Burt told investigators that he and Officer Raymond were on a call in the Town Square area when he heard the detectives' broadcast for marked units to challenge a vehicle associated with a murder suspect. Officers Burt and Raymond left the Town Square area and drove to Elcadore in separate vehicles. When they arrived, Officer Burt saw Officer Raymond take his rifle out of his vehicle's trunk. Officer Burt walked to the area where officers were engaged with Decedent. When he arrived to that area, he saw Decedent was out of the vehicle. Officer Burt originally took position by the front, right side of Lieutenant Kisfalvi's vehicle but gave up the position to Officer Raymond since he had the rifle. Officer Burt took a position of cover behind Officer Raymond.

Officer Burt saw Decedent looking over the top of his vehicle and point a firearm toward police officers. Shortly thereafter, Officer Burt heard Officer Raymond discharge his rifle five to six times. Officer Burt saw Decedent duck down behind his vehicle but stood back up with his firearm. Officer Burt saw Officer Raymond discharged his rifle again and Decedent fell to the ground.

After AIR2 broadcasted that Decedent was not moving, an arrest team formed and took Decedent into custody. Officer Burt told investigators that while Decedent was pointing his firearm toward him and Officer Raymond's position he was in fear of being shot and killed.

Officer Nicholas Sarafin

Officer Sarafin told investigators that he heard the broadcast by detectives that needed a marked unit in response to finding a vehicle associated with a homicide. Officer Sarafin responded to the broadcast and arrived within a few minutes. He parked his patrol vehicle just south of the detectives' vehicle and observed plainclothes detectives and a few uniformed officers.

Officer Sarafin observed a white Chrysler Sebring in the parking lot and Decedent outside the vehicle holding a firearm in his right hand. Decedent was waving the firearm in the air and pointed it toward officers. Officer Sarafin could not hear exactly what Decedent was saying, but knew from his actions that Decedent was not complying with officers'

commands. Officer Sarafin took a position of cover south of Detective Harris. He observed Officer Cruz with a shotgun and Officer Raymond with a rifle. Officer Sarafin then heard shots being fired, but was unable to identify who fired first. Officer Sarafin saw Officer Raymond discharging rounds from his rifle in Decedent's direction.

After the gunfire stopped, Officer Sarafin heard the air unit announce Decedent was down. An arrest team was formed with the use of a ballistic shield. Officer Sarafin put on latex gloves and approached Decedent with the arrest team. He and another officer rolled Decedent on to his side, took the firearm from Decedent's right hand and then placed him in handcuffs. Medical personnel arrived and stated Decedent was deceased. Officer Sarafin placed Decedent's weapon on the trunk of the Chrysler Sebring and watched over it until relieved.

A.R. (civilian witness)

A.R. told investigators that he was asleep inside of his bedroom located on the second floor of his residence which overlooked the parking lot on Elcadore. He woke up to a loud argument taking place outside his residence. A.R. got out of his bed, looked outside his bedroom window and saw Decedent standing next to a silver vehicle, holding a firearm. Decedent was yelling, "Shoot me! Please shoot me! Put me out of my misery!"

A.R. did not see who Decedent was yelling at but he believed it was the police. He also saw bright lights shining on Decedent from the air unit. A.R. heard officers yell, "Drop your gun! Don't make us do this!" Decedent replied, "No, you drop your gun." This exchange lasted for a couple of minutes.

A.R. observed Decedent point his firearm at the officers and believed Decedent fired twice in the officers' direction. Afterwards, A.R. heard several loud gunshots which he believed came from the officers. After the gunshots stopped, A.R. observed Decedent fall to the ground and believed Decedent was deceased.

A.R. told investigators that the officers gave Decedent more than enough time and chances to drop his firearm, but Decedent refused to comply with their commands.

SCENE WALK-THROUGH AND PUBLIC SAFETY STATEMENTS

Officer Anthony Raymond

Officer Raymond provided a walk-through of the scene with investigators. During the walk-through, he told investigators that he parked his vehicle by the neighborhood entrance, grabbed his rifle and ran to the parking lot area. Officer Raymond saw Officer Burt standing by the front passenger side of the Lieutenant's vehicle. He told Officer Burt to move and took the front position.

Once he was in position, Officer Raymond stated that he saw Decedent on the right side of the white Chrysler Sebring crouched down behind the wheel well and the driver's side door. Decedent pointed his firearm toward Officer Raymond's position as well as the position of other officers. Officer Raymond told investigators that he was in fear for his life and the lives of other officers at the scene. Officer Raymond fired at Decedent. Officer Raymond told investigators that he was aware of the surrounding residences and aimed low. Officer Raymond told investigators that Decedent ducked behind his car after his first shots. However, Decedent stood back up and aimed his firearm at officers again. Officer Raymond said he fired again and once again Decedent ducked down out of sight. Decedent rose a third time and aimed his firearm at officers. Officer Raymond fired his rifle again and this time hit Decedent, who he saw fall to the ground. At that point, Officer Raymond believed Decedent was no longer a threat.

Officer Raymond also provided a public safety statement to LVMPD Lieutenant Kurt McKenzie. In the statement, Officer Raymond stated that it was his belief that he had fired seven to ten rounds from his rifle and that he was not sure if the Decedent had fired his weapon at him.

Officer Celina Cruz

Officer Cruz also provided a walk-through of the scene with investigators. During the walk-through, Officer Cruz told investigators that she took a position of cover by the detectives' vehicle and observed Decedent on the driver's side of his vehicle. Officer Cruz's representative told investigators that Officer Cruz saw a firearm in Decedent's hand. Moreover, through her representative, Officer Cruz stated she was aware that Decedent had pointed his firearm toward officers and that she fired her weapon at Decedent when she felt herself and other officers were in danger of being shot. Officer Cruz stated she was in fear of her life and the lives of other officers when she fired her shotgun.

Officer Cruz also provided a public safety statement to LVMPD Lieutenant Kurt McKenzie. In the statement, Officer Cruz stated that she fired three shots from her shotgun and she believed it was possible that Decedent had shot his firearm toward officers.

OFFICER WEAPON COUNTDOWNS

On January 26, 2018, Officers Cruz and Raymond had their weapons counted down at LVMPD headquarters.

At the completion of the countdown it was determined that Officer Cruz had four rounds of ammunition in her shotgun and had fired the weapon three times during the incident. It was also determined Officer Raymond had twenty-eight rounds of ammunition in his rifle's magazine and that he had fired his weapon eleven times during the incident.

DESCRIPTION AND EVIDENCE FROM THE SCENE



Overhead photograph of the scene with position of witnesses, Decedent and involved officers during the incident.

The scene for this incident was located in a parking lot west of the residence at 11636 Elcadore Street. Elcadore is a north-south street. The parking lot was bordered on the north by Joy Ridge Court and on the south by Fern Tree Court. Civilian witness A.R.'s residence bordered the west side of the parking lot.

The parking lot is only accessible from Elcadore and consists of six parking spaces. Three vehicles were parked in the parking spaces including Decedent's vehicle which was parked facing east (backed into the parking space) in the fourth parking space from south to north. The other two vehicles were not occupied during the incident. Decedent's vehicle had numerous apparent bullet impacts in the front windshield area.

In the roadway, Lieutenant Kisfalvi's marked patrol unit (a Ford Explorer) was parked by the east curb of Elcadore and Fern Tree, facing north. Detective Harris' and Adams' unmarked vehicle was parked just west of Lieutenant Kisfalvi's vehicle on Elcadore also facing north.

In the rock landscape east of Lieutenant Kisfalvi's vehicle, a crime scene analyst ("CSA") recovered and impounded eleven .223 cartridge cases with the head stamped "SPEER 223 REM 16". In the roadway under Detective Harris' and Adam's vehicle, a CSA recovered and impounded three shotgun cartridge cases with "FEDERAL PREMIUM HV TACTICAL 9- 00 BUCK 2 ¾ 70MM" on the side.

Decedent's vehicle had apparent bullet holes, defects and ricochets to the windshield, hood, right front quarter panel, right front passenger door, right rear passenger window, right rear passenger door and roof above the door, and the driver and left rear passenger windows.



Photograph of Decedent's vehicle after the incident.

A CSA recovered and impounded a black Taurus Model 85 .38 five shot revolver containing five live .38 cartridges from the trunk of Decedent's vehicle. It was determined that Decedent did not fire his revolver during this incident.



Photograph of the .38 revolver recovered from Decedent

The CSA also measured and determined viewpoints for both Officer Cruz and Officer Raymond. Both officers were within thirty yards of Decedent's position.



Officer Raymond's perspective during the incident



Officer Cruz's perspective during the incident

FIREARM EXAMINATION

On April 11, 2018, Forensic Scientist Roy Wilcox issued a Firearms & Tool Marks Report for this incident with his findings. Wilcox found the revolver associated with Decedent to be operational with no noted malfunctions. Wilcox identified that a bullet recovered from the autopsy of murder victim, C.V., as having been fired from Decedent's revolver. Wilcox also identified one of the .223 cartridge cases with the head stamped "SPEER 223 REM 16" recovered from the Elcadore scene as having been fired from the rifle associated with Officer Raymond. Moreover, Wilcox identified one of the shotshells with "FEDERAL PREMIUM HV TACTICAL 9- 00 BUCK 2 ¾ 70MM" on the side as having been fired from the shotgun associated with Officer Cruz.

BODY WORN CAMERA EVIDENCE

Both Officer Raymond and Officer Cruz were wearing body worn cameras ("BWC") that were activated during this incident.¹

Officer Cruz's BWC video started with her driving in her patrol vehicle to the scene at 2:40 AM. At 2:44 AM, Officer Cruz arrived at the scene of the incident and radio traffic can be

¹ BWC times were adjusted for both officers' body cameras to reflect actual time of the incident. The BWC time stamp appeared eight hours off for both officers. For example, the BWC time stamp for Officer Cruz when it was activated was "T10:40:40" and adjusted to "2:40 AM" for this report.

heard in the background warning officers that Decedent had a gun in his hand. At 2:45 AM, Officer Cruz moved into position behind Detective Harris' vehicle and aimed her shotgun at Decedent's location. Decedent can be seen moving around behind his vehicle. At 2:46 AM, Officer Cruz fired her first and second shots. Rifle shots can also be heard in the background. After firing her weapon, Officer Cruz yelled, "Put it down! Put it down!" At 2:47 AM, Officer Cruz fired her third shot. At 2:48 AM, Officer Cruz handed her shotgun to another officer and moved with the arrest team toward Decedent's location. At 2:50 AM, police officer arrived to Decedent's location and Officer Sarafin tossed Decedent's firearm toward the rear of Decedent's vehicle. A short time later, Decedent is placed in handcuffs. At 2:51 AM, Officer Cruz turned off the BWC.

Officer Raymond's BWC was activated while he is driving his patrol vehicle to the scene. At 2:44 AM, radio traffic can be heard advising officers that Decedent has a gun in his hand. At 2:45 AM, Officer Raymond arrived at the scene of the incident and retrieved his rifle from his trunk. At 2:46 AM, Officer Raymond moved into position on the right side of Lieutenant Kisfalvi's vehicle, which placed Officer Burt behind him. A few seconds later, Decedent can be seen standing behind his vehicle. Decedent can also be seen ducking down behind his vehicle and then stands up near his vehicle's windshield. A few seconds later, Officer Raymond fired nine shots at Decedent's location in a thirteen second timeframe (2:46:35 AM to 2:46:48 AM). After the ninth shot, the air unit can be heard broadcasting that Decedent is crouched down and still has a gun in his hand. From 2:46:55 AM to 2:47:00 AM, Officer Raymond fired two more shots from his rifle. Afterwards, Officer Raymond lowered his rifle as the arrest team proceeded toward Decedent. Officer Raymond turned off his body camera at 2:52:02 AM.

Sergeant Downing, Officer Burt and Officer Sarafin had activated their BWCs during the incident. These BWCs did not capture the actions of Decedent or the actual shooting, but did capture verbal communications and officer actions in close proximity to the shooting. The BWC were consistent with what these officers told investigators after the incident.

AIR UNIT

AIR2, a helicopter air unit, responded to the scene and activated its camera en route. AIR2 also utilized Forward Looking Infrared ("FLIR") view which captured Decedent pointing his firearm at officers several times. The recovered video from AIR2 also has audio and AIR2 can be heard broadcasting over the radio that Decedent is pointing his firearm southbound toward officers. AIR2 is too far away to see anything of note during the first broadcast of shots fired. However, AIR2 was able to view Decedent crouched down by the vehicle and

pointing his firearm toward officers right before he is fatally struck by one of Officer Raymond's last fired shots.



Still from AIR2 camera in FLIR mode showing Decedent pointing his firearm toward officers. Still taken from when the Air Unit first arrived to the scene.



Still from AIR2 FLIR mode camera showing Decedent's position and where his firearm is located right before he is fatally struck in the head by Officer Raymond's rifle shot. The firearm is aimed at officers' location.

AUTOPSY

On January 27, 2018, an autopsy was performed on the body of Decedent by Doctor Lisa Gavin of the Clark County Coroner's Office. Decedent had gunshot wounds to his head/nose area, his head/right parietal scalp and right hand. Doctor Gavin also noted that Decedent had blunt force injuries to his head and knee area. Doctor Gavin opined Decedent died as a result of gunshot wounds of the head.

Per the Toxicology Report, Decedent was found to have Cyclobenzaprine (muscle relaxer) and delta-9 THC (the main psychoactive ingredient in marijuana) in his blood at a non-toxic level.

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 SELF DEFENSE/DEFENSE OF ANOTHER

The authority to kill another in self-defense or in the 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.² 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

² 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.

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 him [or the other person] or cause him [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 the other person, for the purpose of avoiding death or great bodily injury to himself [or 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 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 that a [killing was in self-defense or defense of another exists], the State must prove beyond a reasonable doubt that defendant did not act in self-defense [or defense of another]. *Id.* at 1051-52.

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

In this case, Decedent was reasonably perceived to pose an imminent danger to not only Officers Raymond and Cruz but also their fellow officers and surrounding residents. Both officers responded to the Elcadore location with the knowledge that Decedent was wanted for the murder of his wife that had taken place less than three hours before this incident. They were also aware that Decedent had fled the homicide scene before police arrived. Officers also knew before arriving at the Elcadore location that Decedent was armed and suicidal due to that information being broadcasted over the radio. Moreover, both officers' BWC captured the radio traffic stating that Decedent was out of his vehicle waiving around a firearm. During the stand-off with Decedent, several witness officers told investigators that Decedent had pointed his firearm in officers' direction, which would include both Officer Raymond's and Officer Cruz's position. Decedent was given numerous commands to drop his firearm but refused to do so. Instead, Decedent made suicidal statements and pointed his firearm at police officers. Both Officer Raymond and Officer Cruz told investigators that Decedent had pointed his firearm in their direction and that they were in fear of their life when they fired their weapon. Camera footage from AIR2 captured Decedent pointing his firearm at officers shortly before the first shots were fired. AIR2 camera also showed Decedent pointing his firearm at officers immediately prior to being fatally shot by Officer Raymond.

It is likely that if not for Officer Raymond and Officer Cruz actions, Decedent would have attempted to harm not only officers but would have also put surrounding residents at risk due to close proximity of nearby homes and residents likely being home due to the time of day. Therefore, Officers Raymond's and Cruz's actions were justified under Nevada self-defense law.

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, at the time Officers Raymond and Cruz fired their weapons, the facts demonstrate that they had probable cause to believe that the Decedent posed an immediate threat of death or serious physical harm to them and other officers. Decedent was armed with a .38 caliber revolver and pointed it at officers several times during the incident. Decedent had used the same weapon to kill his wife earlier in the night. The circumstances demonstrate Officers Raymond and Cruz fired their weapon with a reasonable belief that Decedent was a threat to their life and the life of other officers present as well as the surrounding residents. In light of this evidence, Officer Raymond's and Officer Cruz's actions 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 Officer Raymond and Officer Cruz 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.