

REPORT ON USE OF FORCE



Legal Analysis Surrounding the Death of Bryan Keith Day on July 25, 2015

INTRODUCTION

On the evening of July 25, 2015, several officers and detectives of the Las Vegas Metropolitan Police Department, hereinafter “LVMPD,” responded to investigate an unrelated incident at 3040 East Charleston, Las Vegas, Nevada, Apartment #2067. At approximately 6:49 p.m., Bryan Keith Day, hereafter “Decedent,” exited his apartment with a concealed Black Ops Wolverine 6mm Airsoft Pistol. When confronted by officers who believed he was in possession of a firearm, Decedent drew his weapon and fired a round into the face of Officer Keith McIntyre. Officers Keith McIntyre, Christopher Gowens and John Squeo returned fire. After the initial volley of shots by the officers, Decedent maintained possession of his weapon and pointed it in the direction of Officer McIntyre, who was retreating to cover. A second volley of shots from the officers ended the threat. Officers requested medical assistance for Decedent; however, he expired at the scene.

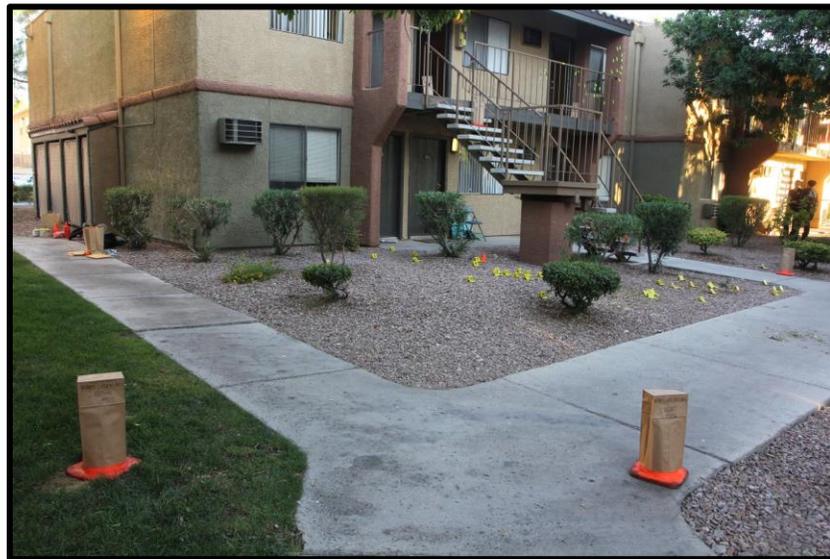
INCIDENT DETAILS

On July 25, 2015, LVMPD officers and detectives responded to a report of an attack upon an individual in his residence located as 3040 East Charleston Boulevard, Apartment #2067. According to witnesses, two individuals entered the apartment and attacked the resident with a police-style expandable straight baton and a part of a pool cue. Thereafter, the two individuals left the residence, and a neighbor contacted police.

Officers and detectives made contact with the resident victim in apartment #2067, who indicated that he had been beaten. The victim was transported to the hospital as detectives began the investigation. The apartment was on the second floor and shared a balcony with

apartments #2066 to the south and #2068 to the north. As officers maintained security of the crime scene, witnesses were being interviewed by detectives.

Detective Kory Pierce was inside apartment #1067 interviewing the occupant while Detective Allyn Goodrich interviewed the person who had reported the battery call in his department vehicle. Detective John Hoffman was on the ground floor outside of building H awaiting the arrival of crime scene investigators to process apartment #2067. Officers McIntyre, Gowens and Squeo were all on the ground floor outside of building H for crime scene security. Sergeant Christopher Valdez was standing with Detective Hoffman and Officers McIntyre, Gowens and Squeo.



During this time period, Decedent exited his apartment, #2068, walked forward and leaned on the railing directly in front of his apartment. Officers Gowens and McIntyre attempted to engage Decedent verbally as they began to approach building H. Decedent was informed that the apartment next door was a crime scene. He was further told that he could either go back inside his apartment until the police investigation was done, or he could leave his apartment; however, he would not be able to return until the scene was released at the end of the investigation. Decedent was advised that in either situation, he could not remain on the balcony as that encompassed the crime scene. As officers were giving these instructions, Officer McIntyre climbed the stairs and posted up outside of apartment #2067. Officer Gowens talked to Decedent from a position on the ground to the east of where Decedent was standing. Decedent did not respond to the officers and stared at Officer Gowens. Eventually, Decedent turned around and went back into apartment #2068.

Officer McIntyre remained at his post on the second story balcony, and Officer Gowens remained in his position. Officer Squeo moved to the area south of the building. Sergeant Valdez and Detective Hoffman remained in conversation and did not involve themselves in the situation with Decedent.

Shortly after entering his apartment, the door opened and Decedent was seen standing just inside the doorway tucking a black object into his waistband and dropping his shirt over the item. Officer Gowens believed the object to be a handgun. Officer Gowens instructed Decedent that he needed to go back inside his apartment and began to move up the stairs towards Officer McIntyre's position. As he did so, Officers Gowens and McIntyre gave commands to Decedent to lift his shirt. Decedent lifted his shirt, but not in such a manner for officers to identify the object in his waistband. As Decedent was facing Officer McIntyre, Decedent turned to his right, obscuring his hands, and drew a weapon with his right hand. Officer McIntyre yelled, "Gun!," multiple times.



Decedent raised his weapon and fired at Officer McIntyre, striking him in the right cheek. Officers Gowens and McIntyre fired their weapons multiple times at Decedent. As Officer Squeo saw Decedent draw his weapon and fire, Officer Squeo moved from the south side of the building and took up a position at the base of the stairs.

Decedent slumped to a seated position, still in possession of his weapon. From that position, Decedent raised his weapon and pointed it in the direction of Officers Gowens and McIntyre. Officers Gowens and Squeo fired their weapons. Sergeant Valdez drew his firearm and moved to a position of cover behind the southeast corner of building M. Detective Hoffman took cover behind a tree.

At this point, Sergeant Valdez called for officers to move to a position of cover. Officer Gowens moved down the stairs and walked directly north from the base of the staircase, taking a position on the ground directly east of Decedent to provide cover for Officer

McIntyre. Officer Squeo was in a position just north of the base of the stairs to cover Officer McIntyre.

As Officer McIntyre moved down the staircase to Sergeant Valdez's location, Officer Gowens saw Decedent lift his weapon and track Officer McIntyre's movement. Officer Gowens and Squeo fired from their locations at Decedent.¹ After Officer McIntyre, who was bleeding from an injury to his face, reached Sergeant Valdez, Sergeant Valdez assembled an arrest team. The arrest team moved to the second floor landing, approached and handcuffed Decedent; thereafter, they cleared Decedent's apartment.

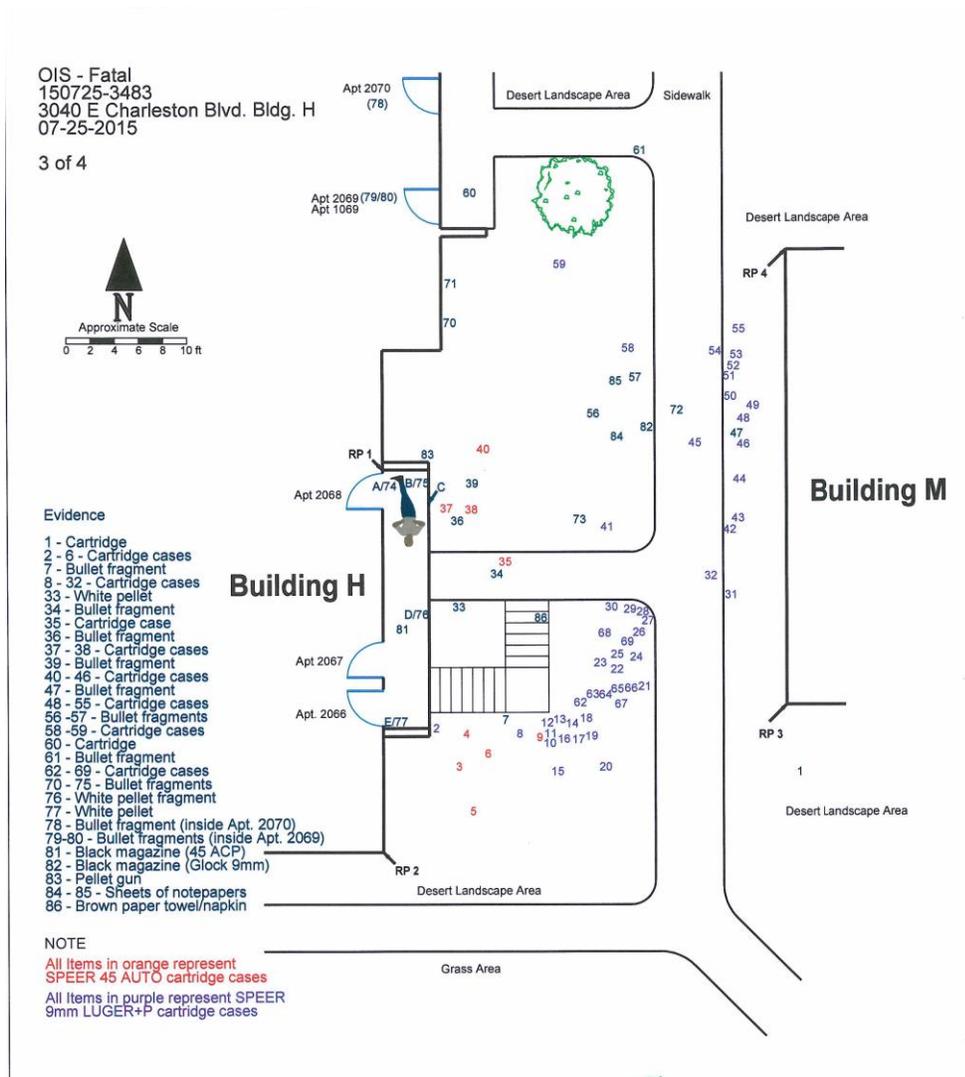
Officer McIntyre was transported to UMC Trauma for his injury, as Sergeant Valdez secured the crime scene and requested notifications be sent out reference the officer-involved shooting. Officers thereafter made contact with the surrounding apartments to make sure no occupants had been injured.

SCENE INVESTIGATION



¹ A review of the audio recording which Detective Goodrich created while talking to the witness in his department vehicle appears to confirm essentially two separate volleys of shots. At the 3:06 mark of the recording, the first gunshot was heard followed by numerous gunshots for approximately five (5) seconds. Approximately seventeen (17) seconds later, five (5) more shots were heard. At the 3:47 mark, an officer can be heard broadcasting radio traffic that shots had been fired, Decedent was down and an officer had been struck.

The scene was within the Oasis Ridge Apartment complex located at 3040 East Charleston Boulevard. The main area of focus was between Buildings H and M and the second floor balcony of Building H. The Decedent's body was lying at the northern most section of the balcony and was handcuffed. On the ground below the balcony, Decedent's weapon was recovered which was a Black Ops Wolverine 6mm Airsoft Pistol. Additionally, crime scene investigators located three pellets capable of being fired from the weapon (2- complete pellets and 1- partial pellet). One (1) .45 caliber and one (1) 9 mm caliber magazines were recovered from the ground east of Building H. Throughout the area, forty-nine (49) 9 mm cartridge cases and nine (9) .45 caliber cartridge cases were recovered, along with two (2) live 9mm rounds and numerous bullets and bullet fragments.



AUTOPSY

On July 26, 2015, Dr. Alane Olson conducted the autopsy upon Decedent. Dr. Olson concluded that the cause of death was the result of multiple gunshot wounds. A toxicology report of the specimens collected at autopsy reflected no positive findings for tested substances in Decedent's system at the time of his death.

HISTORY OF DECEDENT

Decedent's mother was interviewed, both telephonically the morning of the incident and in person on August 5, 2015, concerning her son and his mental history. Decedent's mother indicated that Decedent had been diagnosed as schizophrenic and bipolar. He had been prescribed medications in the past but had not taken them. Decedent's mother was unaware if Decedent was currently taking any medications. Decedent's mother had seen Decedent talking to himself previously. When confronted by who he was talking to, Decedent would not provide an answer. Investigators were able to confirm that Decedent visited the out-patient clinic at Rawson-Neal, a psychiatric hospital, for unknown reasons in 2009.

A review of his criminal history may provide some insight into Decedent's motivations during this incident. In 1998, Decedent was arrested for Robbery. In 2001, Decedent was arrested for Battery on a Police Officer when he resisted arrest. In 2003, Decedent was arrested for Battery Constituting Domestic Violence. In 2007, Decedent was cited for Petit Larceny and Battery. In 2010, Decedent was arrested for Battery on a Police Officer when he resisted arrest again.

INFORMATION FROM WITNESSES

I. LAY WITNESSES

None of the residents of the apartment complex saw the interaction between Decedent and officers. Two residents indicated hearing shots, but none of them were able to provide any more significant information.

II. POLICE OFFICERS

A. SERGEANT VALDEZ

Sergeant Valdez conducted a walkthrough of the scene as well as a recorded interview later that day. From those two statements, the following information was learned:

Sergeant Valdez was standing on the ground near the sidewalk east of building H with Detective Hoffman and Officer Squeo when Sergeant Valdez noticed Decedent on the

balcony leaning on the railing. Sergeant Valdez also tried to verbally engage Decedent with no response. Sergeant Valdez saw officers verbally try to engage Decedent but Decedent did not respond. At some point, Decedent went back into his apartment, and Sergeant Valdez believed that the situation was resolved. After this encounter, Sergeant Valdez saw one officer post up on the balcony while one officer remained at the base of the stairs. Decedent then opened his door and held it open. Decedent came back out again and seemed very fidgety.

Officer Gowens asked Decedent to lift his shirt and reveal his waistband, but Sergeant Valdez was unaware of why Officer Gowens was making this request. Sergeant Valdez may have heard Decedent make a statement to the effect that he did not want any trouble. Decedent briefly lifted his shirt then turned to his right, toward Officer McIntyre, who was now upstairs on the same balcony. Decedent bent at the waist, then quickly turned to face Officer McIntyre. At that time, Officers Gowens, Squeo, and McIntyre began to fire at Decedent. Sergeant Valdez indicated that he was not in a good position to see what Decedent had in his hand, so he did not fire his weapon.² After the shots were fired, Sergeant Valdez told officers to fall back and observed that Officer McIntyre had been struck in the face. Sergeant Valdez waited for backup and then set up an arrest team.

B. OFFICER GOWENS

Officer Gowens provided a public safety statement and a walkthrough of the scene during the investigation. The following was learned from that interview:

Officer Gowens was standing on the sidewalk next to Sergeant Valdez when Officer Gowens heard Sergeant Valdez address Decedent on the steps. Officer Gowens saw Decedent standing in front of apartment #2068. Officer Gowens walked up the stairs talking to Decedent. Decedent did not respond and only stared at Officer Gowens with a “wild” look. Decedent put his hands up and went inside his apartment. Officer Gowens told Decedent he needed to either stay inside his apartment or he could leave. Decedent closed the door without speaking to Officer Gowens. Officer Gowens went back down the stairs and took up a position near the base of the stairs while Officer McIntyre stood in front of apartment #2067.

The door to apartment #2068 opened and Decedent was standing inside the doorway. Officer Gowens saw Decedent tuck a black object, which Officer Gowens believed to be a firearm, into his waistband and drop his shirt over the item. Officer Gowens told Decedent that he needed to go back inside his apartment and began moving up the stairs toward Officer McIntyre’s location. Officer McIntyre began addressing Decedent while Officer Gowens was telling Decedent to lift up his shirt. Decedent turned away from officers in a

² A subsequent countdown of Sergeant Valdez’s firearm confirmed he did not discharge his weapon during this incident.

manner that appeared to Officer Gowens that Decedent was concealing his actions. Officer Gowens heard Officer McIntyre yell, “Gun! Gun!” At this point, Officer Gowens discharged his weapon at Decedent. Decedent slumped down in the corner still firing his weapon. Officer Gowens ejected his magazine and tossed it on the ground before reloading.³

Officer Gowens saw Decedent moving and raising his gun. Officer Gowens fired again from the top of the staircase. Officer Gowens heard Sergeant Valdez yell, “Get to cover,” and he moved down the stairs to the end of the sidewalk. Decedent sat up and pointed the firearm at Officer McIntyre as Officer McIntyre was moving to cover. Officer Gowens fired again from a position north of the base of the stairs. Officer Gowens conducted a tactical reload and ejected a live round from his gun when he moved to a position of cover near a tree north of Decedent’s apartment.⁴

Officer Gowens joined the arrest team, which consisted of Sergeant Valdez, Detective Hanning and Officer Squeo. They moved to the second story balcony, pulled Decedent away from the wall, and placed him in handcuffs. Officer Gowens cleared the apartment before moving back down the stairs.

A subsequent countdown of Officer Gowens’s weapon, the collection of the evidence at the crime scene and a subsequent forensic analysis determined that Officer Gowens discharged his weapon thirty-one (31) times during this incident.

C. OFFICER SQUEO

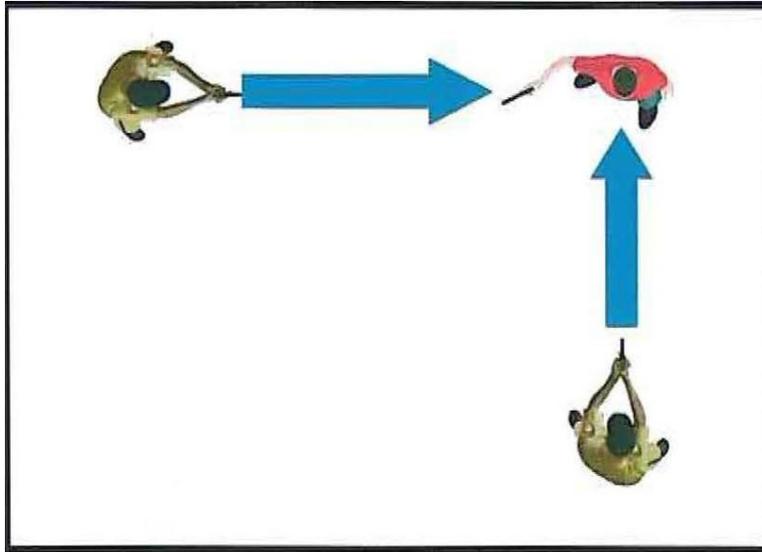
Officer Squeo provided a public safety statement and a walkthrough of the scene during the investigation. The following was learned from that interview:

Officer Squeo, who was standing at the base of the stairs, saw Decedent facing to the east in front of apartment #2068 while Officer McIntyre was attempting to verbally engage him on the second floor balcony. Decedent turned towards the door and lifted his shirt. Officer Squeo saw Decedent put his right hand into his waistband and raise a firearm into a two handed grip. Decedent pointed the firearm at Officer McIntyre. Officer Squeo moved to his right to create a “tactical L” with Officers McIntyre and Gowens before firing his weapon.⁵

³ Officer Gowens’s expended 9mm magazine was recovered from the ground east of building H.

⁴ During the scene investigation, Officer Gowens’s live round was recovered.

⁵ A “tactical L” is a maneuver to avoid cross-fire with other officers.



Officer Gowens moved to the rocks to the north of the staircase. Officer Squeo moved towards Officer Gowens's position. They both discharged their weapons from this location. Officer Squeo moved towards building M and conducted a tactical reload. During his reload, Officer Squeo ejected a live round when he chambered a round in his firearm.⁶

A subsequent countdown of Officer Squeo's weapon, the collection of the evidence at the crime scene and a forensic analysis determined that Officer Squeo discharged his weapon nineteen (19) times during this incident.

D. OFFICER MCINTYRE

As Officer McIntyre was transported to the hospital, he did not get an opportunity to conduct a walkthrough of the scene. At his initial presentation at the hospital, Officer McIntyre was treated for a laceration to his upper right cheek and was released. Several weeks after the incident, Officer McIntyre was experiencing discomfort from his wound. When Officer McIntyre returned to the hospital, it was determined that a pellet from Decedent's gun was lodged in Officer McIntyre's face. That pellet was removed by hospital staff and impounded into evidence.

During a meeting on July 28, 2015, Officer McIntyre did speak to investigating officers and indicated that at the time of the shooting, he was standing in front of apartment #2067. Officer McIntyre remembered going down the stairs and realizing that his gun was empty. Officer McIntyre did not remember ejecting the magazine from his gun but did reload it at the bottom of the stairs.⁷

⁶ This accounts for the second live 9mm round found at the scene.

⁷ Officer McIntyre's expended magazine was located at the crime scene.

A subsequent countdown of Officer McIntyre's weapon, the collection of the evidence at the crime scene and a forensic analysis determined that Officer McIntyre discharged his weapon nine (9) times during this incident.

E. DETECTIVE HOFFMAN

Sergeant Hoffman conducted a walkthrough of the scene as well as a recorded interview later that day. From those two statements, the following information was learned:

Detective Hoffman was standing on the sidewalk to the east of building H with Sergeant Valdez and Officer Squeo. Detective Pierce was inside of apartment #1067 interviewing the occupant. Officer McIntyre moved to the second story walkway and stood in front of apartment #2067. Decedent went back and forth to his apartment one (1) or (2) times. When Decedent exited his apartment the last time, Officer Gowens was on the ground standing north of the staircase giving commands to Decedent to lift his shirt. Officer Squeo was on the ground south of building H moving north to the staircase. Detective Hoffman saw Decedent pull a black firearm with an orange tip out of his waistband and point it at Officer McIntyre using a two handed stance. Detective Hoffman heard shots being fired and fell back to a position of cover behind a tree to the southeast of building H. After the shots were fired, Officer McIntyre stated that he was hit, and Detective Hoffman observed him bleeding from the face.⁸

F. DETECTIVES PIERCE, GOODRICH AND OFFICER HANNING

Detectives Pierce and Goodrich were interviewed; however, because Detective Pierce was inside apartment #1067 and Detective Goodrich was in his department vehicle, no additional substantive information was learned.⁹ Officer Hanning was also interviewed but arrived on scene just as the incident was concluding.

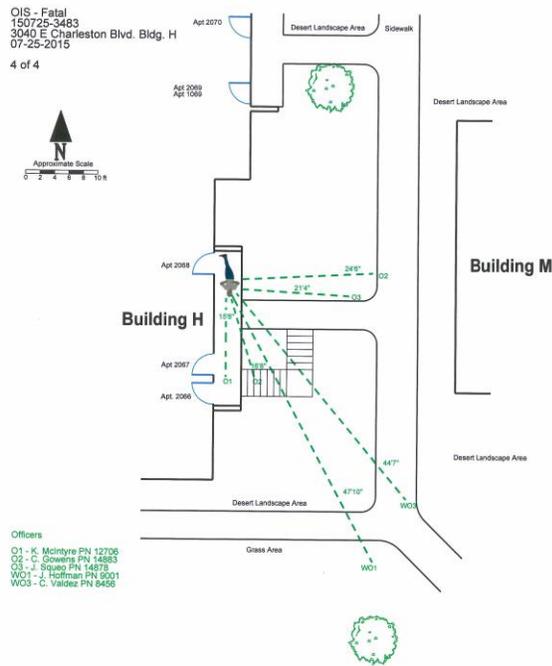
⁸ A subsequent countdown of Detective Hoffman's firearm indicated that he did not discharge his weapon during the incident.

⁹ Detective Goodrich was actually recording a statement from which the timing of the shots was determined from the audio.

III. DISTANCE OF OFFICERS AT THE SCENE

From all the physical evidence, forensic analysis and interviews, investigators were able to determine the approximate distances from the involved officers to Decedent at the scene:

Officer McIntyre.....	15'6"
Officer Gowens (1 st position).....	24'6"
Officer Gowens (2 nd position).....	16'8"
Officer Squeo.....	21'4"
Detective Hoffman.....	47'10"
Sergeant Valdez.....	44'7"



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.

A. The Use of Deadly Force in Defense of 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.¹⁰ 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 [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.

¹⁰ 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.

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 the 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.

Nevada law also provides that a pellet gun is a per se deadly weapon. *See* NRS 193.165 and 202.265.

In this case, Decedent posed an apparent imminent danger to Officers McIntyre, Gowens, Squeo and Sergeant Valdez. He also committed a crime of violence, Battery With a Deadly Weapon, by pointing his weapon at Officer McIntyre and firing it. *See* NRS 200.481. Decedent also posed an apparent imminent danger to residents of the Oasis Apartment complex. When confronted with an individual who was displaying an apparent firearm and discharging it at officers, the officers have a duty to respond, and a right to utilize deadly force. The fact that the weapon turned out to be a pellet gun is not legally relevant to the analysis of the facts of this case. Therefore, Officers McIntyre, Gowen, and Squeo acted in reasonable fear of a threat to their lives and the lives of others at the time each fired.

B. 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 illustrate that Officers McIntyre, Gowens, and Squeo were reasonable in their belief that Decedent posed a serious threat to the safety of all officers involved, as well as the surrounding residents. As aforementioned, all officers saw what they perceived to be a weapon pointed in the direction of themselves or fellow officers in response to lawful commands being issued to Decedent. Decedent’s discharge of that weapon confirmed officers’ fears and their discharge of their weapons to end the threat posed to them was lawful.

These circumstances created probable cause in Officers McIntyre, Gowens, and Squeo’s minds that Decedent posed a threat of serious physical harm either to them and/or other officers and civilians in the area. The officers overcame that threat by firing their weapons into Decedent’s body.

In light of all the evidence reviewed to date, the actions of Officers McIntyre, Gowens, and Squeo were 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 the Officers 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 Officers McIntyre, Gowens, or Squeo, and, unless new circumstances come to light which contradict the factual foundation upon which this decision is made, no charges will be forthcoming.