

REPORT ON USE OF FORCE



Legal Analysis Surrounding the Officer Involved Shooting of Herbert Earl Green on April 29, 2014

Introduction

On April 29, 2014, Las Vegas Metropolitan Police Department Dispatch received a call from Herbert Green (hereinafter "Decedent") wherein he told the call taker that he was about to be shot. Decedent gave an address of 5435 Palm Street, Las Vegas, Clark County Nevada and disconnected the call.

Officers responded to the address and set up a perimeter. Family members of Decedent informed officers that there were firearms in the residence. After family members exited the residence, officers made numerous attempts to persuade Decedent to exit the residence and surrender. Ultimately, Decedent came out of the residence with a gun and shot at officers. Officers returned fire and Decedent died from these injuries.

The Clark County District Attorney's Office has completed its review of the April 29, 2014, death of Decedent Herbert Green. 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 the officers 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 the officers involved. 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 August 21, 2015.

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 LVMPD or to suggest the existence or non-existence of civil actions by any person where less stringent laws and burdens of proof apply.



5435 Palm Street

The Events at 5435 Palm Street on April 29, 2014

Sergeant Christopher Holmes and patrol officers responded to Decedent's 911 call. While en route, Sergeant Holmes had the dispatcher replay the 911 call to better understand the situation. When the sergeant and officers arrived, Sergeant Holmes directed the officers not to approach the residence and, instead, set up a perimeter. Sergeant Holmes made telephonic contact with Decedent. Decedent told Sergeant Holmes that he believed his family was stealing money from him. Sergeant Holmes also spoke with Decedent's mother and, from that conversation, learned there were other family members inside the residence as well as two handguns.

Sergeant Holmes advised Decedent's mother to exit the residence with the two other family members. Once these individuals exited, they informed officers that Decedent was a paranoid schizophrenic who was also on drugs.

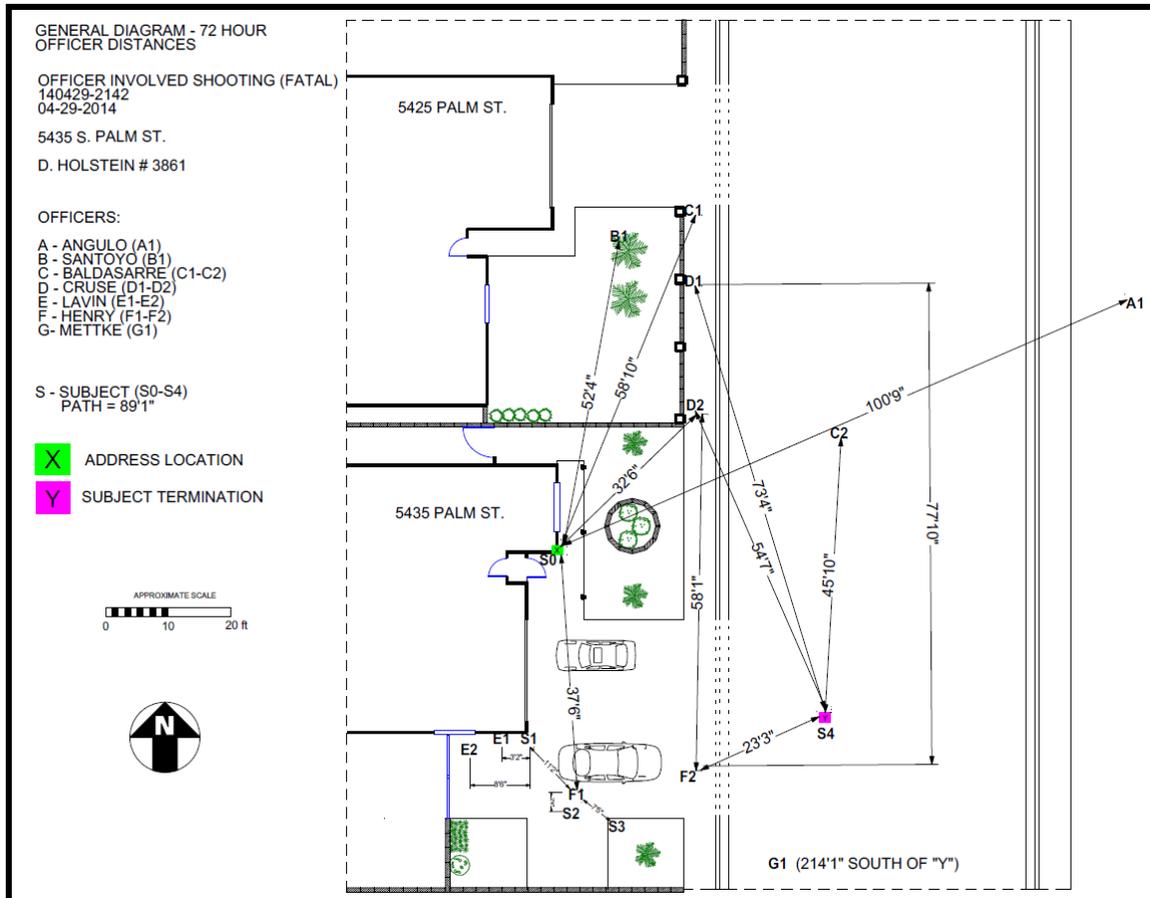
The family members explained that Decedent had argued with a family member over a pair of shoes, an imaginary lottery winning, and Decedent's false accusations that the family was stealing from him.

Sergeant Holmes continued to speak with Decedent. A Crisis Intervention Team (CIT) officer arrived at the scene and spoke with Decedent as well. The CIT officer spoke with Decedent through the front door. At one point, Decedent exited the residence and walked to the driveway, but returned back inside the residence.

Officers moved back and evacuated nearby residents for safety. The CIT officer continued to attempt to communicate with Decedent by phone and a PA system.

Almost two hours after the initial call, Decedent exited the residence holding a gun. He rushed toward Officers Lavin and Henry and began firing at them. Officers Lavin and Henry returned fire. Two other officers, Baldassarre and Cruse, fired at Decedent as well. Decedent ran into the street while continuing to fire. Decedent was struck by gunfire and fell to the ground.¹

¹ Prior to Decedent exiting the residence, officers contacted SWAT to respond. While SWAT was mobilizing, Decedent exited and the incident occurred before SWAT's arrival.



Officer Michael Henry

Officer Henry provided a walkthrough to investigators at the scene. Officer Henry was at the side of a blue vehicle parked in a driveway within the scene. Officer Lavin was at the south side of the garage on the southeast corner. Officer Henry was placing stop sticks under the rear tires of the blue vehicle when he heard Officer Angulo broadcast that Decedent was leaving the residence. Officer Henry took cover behind the rear wheel of the vehicle and saw Decedent run south along the front of the garage and turn the corner to Officer Lavin's location. Decedent fired his gun at Officer Lavin.

Officer Henry drew his weapon and fired two times at Decedent. Decedent turned toward Officer Henry and ran toward him with his gun pointed at the officer. Officer Henry fired several more times as Decedent ran past him, in such close proximity, that he had to push him away. Officer Henry sustained an abrasion on his forearm from the encounter.

Decedent stumbled toward the street and turned with his gun pointed at the officers. Officer Henry moved toward the front of the vehicle and continued to fire at Decedent. Officer Henry heard additional gunshots from his left side. Decedent fell in the street.

Officer Benjamin Baldassarre

Officer Baldassarre also provided a walkthrough of the scene. He was on the sidewalk behind a large fence pillar when he heard Officer Angulo broadcast the suspect had exited the residence. Officer Baldassarre saw Decedent run southbound along the front of the garage of 5435 Palm Street and fire a gun at Officers Henry and Lavin. Officer Baldassarre moved from the sidewalk into the street. Decedent ran between the vehicles in the driveway into the street, turning in a circle, pointing at other officers. Officer Baldassarre fired at the suspect until Decedent fell to the ground.

Officer Chad Cruse

Officer Cruse also provided a walkthrough of the scene. Officer Cruse was on the sidewalk in front of 5425 Palm Street when he heard Officer Angulo broadcast, "Gun!" Officer Cruse saw Decedent exit the residence and run southbound along the garage of 5435 Palm Street. At the corner of the garage, Decedent pointed a handgun toward the west and fired. Officer Cruse knew Officers Henry and Lavin were at the side of the garage. Decedent ran parallel to the south side of the blue vehicle parked in the driveway and into the street. Officer Cruse saw Decedent with a gun and fired at him from the southeast corner of the fence of 5425 Palm Street. Officer Cruse stated that he fired six times.

Officer Michael Santoyo

Officer Santoyo was in the front yard of 5425 Palm Street armed with a shotgun. When Decedent came out of the residence, Officer Santoyo moved behind another palm tree and remained there until after the shooting.

Officer Robert Angulo

Officer Angulo was in the backyard of 4415 Mesa Vista Avenue and could see directly to the target residence of 5435 Palm Street. He was using binoculars when Decedent exited the front door with the gun.

Officer Russell Mettke

Officer Mettke was at the intersection of Palm Street and Selleck Lane at the time of the incident.

Civilian Witnesses

Detectives conducted a witness canvass of the area.

Four residents were not home or did not answer during the canvass.

Nine civilian witnesses heard shots fired, but did not see the incident.

Two civilian witnesses observed the shooting and provided either cell phone photographs and/or video to police. This evidence does not depict Decedent's interaction with officers during the shooting.

Another visually observed the incident. This individual saw Decedent run into the street, shooting at officers. He then saw Decedent fall to the ground.

Description of the Scene

The scene was Palm Street, a residential roadway.

On the roadway, investigators found a black, Ruger revolver containing one cartridge case, four cartridge cases, and handcuffs.



Driveway and street in front of 5435 Palm Street; gun that was in Decedent's possession

5442 Palm Street, another two story residence, had a bullet hole through the garage door. Investigators found a bullet on the garage floor.



Garage of 5442 Palm Street



Bullet strike to garage door of 5442 Palm Street

5428 Palm Street, a two story residence, had two bullet impacts on either side of a bay window. Two other impacts were on a block wall.



Bay window with bullet strikes

At 5425 Palm Street, a two story residence, seven cartridge cases were found in the front yard.



5425 Palm Street, street view and, in second photo, view of yard with cartridge cases



Investigators found numerous pieces of evidence at 5435 Palm Street. These items included four cartridge cases near the backyard gate; seven cartridge cases on the landscaped planter at the southeast corner of the residence; a bullet in the driveway; four cartridge cases on the east edge of the driveway and west gutter; and a metal fragment near the north edge of the garage door.



5435 Palm Street

In addition, investigators found bullets, metal fragments, cartridge cases in the roadway.



Aerial view of scene and roadway with evidence markers

Ballistic Evidence

Investigation revealed that Officer Lavin fired eight times. Officer Baldassarre three times. Officer Cruse fired seven times. Officer Henry fired nine times. Officers Mettke, Santoyo, and Angulo did not fire.

Firearms cartridge case examination revealed that Decedent fired five times. The weapon he had was a .38 Ruger.

Autopsy

Dr. Alane Olson determined that Decedent died from multiple gunshot wounds. His toxicology report indicated the presence of amphetamine and methamphetamine (as his family had reported to police).

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 Robinson 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, by violence or surprise, to commit a felony ..." against the other person. 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.

....

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 defendant 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 disprove an individual did not act in self-defense beyond a reasonable doubt.

In this case, the officers were faced with a suspect who was armed and shooting at them. Thus, Green posed an objectively reasonable imminent danger to all officers and civilians in the area. Therefore, it appears the officers acted in a reasonable fear of a threat to their lives and the lives of others at the time they 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 has probable cause to believe that Green posed a threat of serious physical harm either to all officers and civilians in the area. As outlined above, the officers were faced with a suspect who was armed and shooting at them.

In light of all the evidence reviewed to date, it appears the officers’ actions 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 unjustified. 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 the officers, and unless new circumstances come to light which contradict the factual foundation upon which this decision is made, no charges will be forthcoming.