



REPORT ON USE OF FORCE: Legal Analysis Surrounding the Death of Ricardo Antonio Otero on January 6, 2022

I. INTRODUCTION

On January 6, 2022, at 1026 hours, Jose Otero-Marquez called 911 from 6750 Frances Celia Avenue to report that his son, Ricardo Antonio Otero (hereinafter “Decedent”), was armed with a knife and had attempted to break into Otero-Marquez’s residence. Mr. Otero-Marquez reported that his son had vandalized his tires and left, heading eastbound toward Broadbent Boulevard. Otero-Marquez explained that his son had put the knife into his clothing and gave descriptive information regarding his son’s appearance.

Officer Guerra was operating a single-person marked unit and was dispatched to the call along with Officers Belanger and Villanueva, who were operating as a two-person unit. While Officer Guerra was en route, he consulted a local database and learned that Decedent had been the subject of several Crisis Intervention Team contacts, suggesting Decedent had mental health issues. Officers Belanger and Villanueva discussed tactical options as they proceeded to the call.

When officers arrived, they observed Decedent walking northbound on Broadbent Boulevard, south of Cherry Street. They approached Decedent from the south. Officer Guerra positioned from the north upon arrival.

Officers Belanger and Villanueva issued verbal commands to Decedent, which caused Decedent to become agitated. Decedent dropped his backpack and produced a knife from his rear waistband. He then approached Officer Guerra, who was outside the driver’s door of a patrol vehicle. As Decedent closed the distance between himself and Officer Guerra, Officer Guerra moved to the rear of the patrol vehicle and then to the sidewalk along Broadbent Boulevard. Decedent charged at Officer Guerra and Officer Guerra fired four rounds at Decedent, striking him twice. Decedent dropped the knife and fell to the ground. Officers handcuffed him and rendered medical aid until medical personnel arrived and transported him to Sunrise Hospital where he later died.

Measurements at the scene indicated that Decedent moved 41'7" in the direction of Officer Guerra. Officer Guerra retreated at least 76'9" before discharging his firearm. The two rounds which did not strike Decedent hit a brick wall on the east side of Broadbent Boulevard and a wall at 5073 Midnight Oil Drive.

Investigators found a knife with a 6-inch blade next to Decedent as well as a box cutter from his pants pocket.

Decedent's father, Jose Otero-Marquez, refused to provide a statement. Investigation revealed that on November 3, 2021, an Extended Temporary Protection Order had been issued directing Decedent to stay away from 6750 Frances Celia Avenue, Jose Otero-Marquez's residence.

The Clark County District Attorney's Office has completed its review of the January 6, 2022, 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 Officer Guerra 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 Officer Guerra. 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 November 30, 2022.

This report is intended solely for the purpose of explaining why, based upon the facts known at this time, the conduct of the officer 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.

II. INCIDENT TIMELINE

Time (hours)	Description of Event/Action	Source
10:26:04	Jose Otero-Marquez called 911 and reported his son was armed with a knife while trying to break into the residence at 6750 Frances Celia Avenue. While Otero-Marquez was on the phone with dispatch, the son left the residence on foot.	Computer Aided Dispatch (CAD)
10:31:20	Otero-Marquez reported his son vandalized tires on a vehicle and walked eastbound towards Broadbent Boulevard.	CAD
10:32:46	Officer Guerra updated over the radio the suspect was possibly identified and had multiple Crisis Intervention Team (CIT) entries.	Officer Guerra Body Worn Camera (BWC)
10:35:48	Officers Villanueva and Belanger observed a male who matched the suspect description walking northbound along Broadbent Boulevard.	Officer Guerra BWC
10:36:42	Officer Guerra broadcasted over the radio that the officers would be stopping a possible suspect at Broadbent Boulevard and Cherry Lane.	Officer Guerra BWC
10:37:05	Officers Villanueva and Belanger approached from the south of the suspect (Otero) and initiated a pedestrian stop.	Officer Villanueva BWC
10:37:11	Officer Guerra parked his vehicle southbound in the northbound lane of Broadbent Boulevard, north of Otero.	Officer Guerra BWC
10:37:24	Otero dropped his backpack to the sidewalk and produced a knife from his rear waistband. Otero began to advance towards Officer Guerra's position.	Officer Guerra BWC
10:37:31	While he walked backwards, Officer Guerra ordered Otero to drop the knife.	Officer Guerra BWC
10:37:34	Once beyond the rear of the patrol vehicle, Officer Guerra continued to move backwards towards the sidewalk.	Officer Guerra BWC

10:37:35	Otero walked past the driver's side of the patrol vehicle and cleared the rear bumper. Otero continued to advance towards Officer Guerra. Officer Guerra continued to tell Otero to drop the knife.	Officer Guerra BWC
10:37:45	Officer Guerra fired four rounds towards Otero and Otero fell to the ground.	Officer Guerra BWC
10:37:59	Officer Guerra broadcasted, "Shots fired" over the radio.	Officer Guerra BWC
10:40:57	Officers Belanger and Wolden secured Otero in handcuffs.	Officer Guerra BWC
10:41:45	Officer Wolden applied a tourniquet to Otero's upper right leg. Officers continued to provide medical aid.	Officer Guerra BWC
10:50:56	Medical personnel took over medical aid.	Officer Belanger BWC
10:53:56	Medical personnel put Otero into the ambulance for transportation.	Officer Belanger BWC

III. DECEDENT

Decedent was 30 years old on January 6, 2022.

About two months before this incident, on October 30, 2021, officers were dispatched to an address where a woman reported that a man had kicked in the door of her apartment and entered the dwelling. When officers arrived, Decedent stated that he had kicked in the door. He also told officers that he received a message on this cell phone stating that his child had been kidnapped and that he was looking for his missing child. He was arrested.

On October 15, 2021, a LVMPD officer encountered Decedent and reported Decedent stated that he has seen people chasing him and shooting around him. Decedent was armed with a knife and running into a business and screaming that he wanted to kill and that those in the business should kill him. The officer applied to have Decedent admitted to a mental health facility (Legal 2000).

On June 11, 2020, Decedent's father reported that Decedent had stolen his vehicle.

On July 27, 2019, officers responded to the residence of Decedent's girlfriend. There, Decedent's girlfriend stated that she had been in a verbal argument with her boyfriend, Decedent. She got into her vehicle to leave, and Decedent attempted to grab her keys.

Unsuccessful, Decedent then opened the hood of the vehicle and took the car battery out. Decedent was no longer at the scene. When officers attempted to get a voluntary statement from the girlfriend, she refused to cooperate.

On January 9, 2016, Decedent's girlfriend called dispatch to report that her boyfriend, Decedent, had battered her. Decedent was present and denied the allegation. He was arrested. This case was a felony and Decedent pled guilty and was sentenced to probation. On probation, he failed to complete counseling and report to probation. He also tested positive for controlled substances. Probation filed a violation report and he was reinstated on June 7, 2017.

On November 19, 2015, officers responded to Decedent's mother's residence. Decedent told officers that he has been up for days. Family reported that he had broken a chair, was bipolar, and was off his medication. An officer applied to have Decedent admitted to a mental health facility (Legal 2000).

On October 29, 2015, officers responded to a family disturbance where they were told that Decedent was out of control and had a gun. Decedent told officers that he was coming down off methamphetamine and everyone was bothering him. Family members reported that Decedent threatened to kill himself or have police do it. The officer applied to have Decedent admitted to a mental health facility (Legal 2000).

On August 31, 2015, Metro officers responded to the residence of Decedent's girlfriend. She reported that Decedent hit her across the face and punched her. She had visible injuries. Decedent was not present. Decedent pled guilty to Battery Domestic Violence, Second Offense. He was sentenced to concurrent time with a case arising from an incident on June 20, 2014.

On June 20, 2014, Officers responded to the residence of Decedent's girlfriend. When contacted by officers, Decedent stated, "I am a man and not a coward. I pushed her." When asked what he was talking about, Decedent stated, "I am the one that called because I am afraid I might hurt her more, I can't control myself. I pushed my girlfriend who is 7 months pregnant." Decedent's girlfriend, refused to answer any questions. Officers arrested Decedent. Decedent pled guilty to Battery Domestic Violence, First Offense. He never completed the requirements and was ultimately sentenced to jail time.

In 2011, Decedent was charged with Conspiracy to Commit Burglary, Burglary While in Possession of a Deadly Weapon, Robbery with Use of a Deadly Weapon and Conspiracy to Commit Robbery. He ultimately pled guilty to Conspiracy to Commit Assault and Conspiracy to Commit Petit Larceny, two gross misdemeanors and was sentenced to probation. Decedent did not complete the requirements of probation and was revoked.

IV. INVESTIGATION

A. SUMMARY OF INTERVIEWS WITH INVOLVED OFFICERS

Officer Belanger

Officer Belanger reported that he and his partner, Officer Villanueva, were dispatched to a burglary in progress. The person reported his son was armed with a knife and was attempting to break into the residence. While the officers were responding, the call was updated to state that the suspect left on foot.

The officers observed an individual who fit the suspect description walking on Broadbent Boulevard and conducted a pedestrian stop. When Officers Belanger and Villanueva contacted the subject, he was not compliant with verbal commands. Officer Guerra arrived. The suspect moved toward Officer Guerra. Officer Belanger believed the suspect was going to use the knife against Officer Guerra. Officer Guerra retreated and issued commands for the suspect to drop the knife. Instead of complying, the suspect increased his speed and moved toward Officer Guerra. Officer Belanger believed Officer Guerra's life was in imminent danger. Officer Belanger changed positions because he was concerned about crossfire. Officer Guerra fired at the suspect and he collapsed.

Officer Villanueva

Officer Villanueva also stated that suspect refused to comply with verbal commands. He explained that Officer Guerra arrived from the opposite direction. The suspect threw his backpack on the ground and produced a knife and moved toward Officer Guerra.

Officer Villanueva went to his vehicle to retrieve a low lethal shotgun. As he did so, he lost sight of the suspect and Officer Guerra. He heard gunshots and observed the suspect on the sidewalk.

B. SUMMARY OF INTERVIEWS WITH CIVILIAN WITNESSES

D.H.

Civilian witness D.H. was on her patio when she heard sirens. She looked over her wall and saw two police cars with a male standing between them. The officers attempted to talk to the male. She stopped watching and then heard yelling. The officers told the male several times to get down and the male approached an officer. The officer backed up as the male continued to advance. She heard a pop and ducked down.

R. S.

Civilian witness R.S. was driving on Broadbent Boulevard. He saw two marked police cars and a suspect standing between the cars. The suspect appeared to be arguing with the officers who were trying to calm him down. The suspect threw his backpack on the ground and started to go after the officer who was retreating. The suspect lunged at the officer and the officer shot. R.S. recorded the incident on his phone and gave it to detectives.

LOCATION	PERSON CONTACTED	INFORMATION OBTAINED
6742 Frances Avenue Celia	No contact made	Card left at door – No response
6750 Frances Avenue Celia	Jose Otero-Marquez	Refused to provide statement
5059 Midnight Avene Oil	[REDACTED]	Audio recorded statement
5073 Midnight Avenue Oil	[REDACTED]	Refused to allow collection of evidence (impacts to residence)
5069 Midnight Avenue Oil	[REDACTED]	Video
Broadbent Boulevard and Cherry Street	[REDACTED]	Audio recorded statement and video

C. PUBLIC SAFETY STATEMENT

Officer Guerra provided a Public Safety Statement to Sergeant Millard Walt who subsequently provided a statement to Force Investigation Team Detective Marc Colon.

MW: Yes Sir, uhh, question 1, did you discharge your firearm? Uhhm Officer Guerra stated, yes. Uhh, sub section A, I asked, if so, in what direction? He stated he was on the sidewalk. And fired uhh in a south east direction towards the wall. Umm, question B, approximately where were you located when you fired? He answered again, sidewalk, on the west side of Broadbent. C, was how many shots do you think you fired? Officer Garrett answered, 3 or 4, he believes, he's not sure. Question 2, is anyone injured? He said yes, the suspect. Subsection a, uhh, if so, where are they located? At the time, still on scene on the sidewalk. Question 3, are there any outstanding suspects? He answered no, so uhh, I moved on to question number 4 because a, b, c, d and e of uhh, question 3 did not apply.

MC: Mmm-hmmm.

MW: So on question 4, I asked, is it possible the suspect fired rounds at you? He said no. So que—subsection a, b and c did not apply, so I moved on to question 5. Do you know if any other officers discharged their firearms? I asked Officer Guerra, and he answered no. So uhh, subsection a and b did not apply as well, so I moved on to question 6. Question 6 I asked are there any weapons or evidence that need to be secured or protected? He answered, uhhh, yes, the knife next to the suspect. And then I asked him, if so, where are they located? And he said, right there on the street. For uh, subsection 6A. I moved on to question 7, are you aware of any witnesses? Officer Guerra answered, yes, uhh, under subsection uhh, a, and if so, what is their location?

Umm, he said that the witnesses were Officer Villanueva Officer Belanger and Officer Wolden. Officer Villanueva and Belanger's unit 2-John-13. And they were riding together, and Officer Wolden was 2-John-34 TAC vehicle. And their location was uhh, right on the street, on Broadbent. And that was the, all the questions that I asked him.

MC: Okay.

MW: For the public Safety Statement.

MC: All right, thank you. Operator that concludes the public safety statement. Time is 1247 hours.

D. BODY WORN CAMERA AND OTHER VIDEO

Officer Guerra activated his Body Worn Camera during the incident. While en route to the call, he looked through pages of data on the MDT. A radio broadcast indicated that the suspect had a knife. Officer Guerra advised dispatch that he located a record for a male with 9 CIT entries. After seeing the suspect, he radioed that he and other officers were going to conduct a stop on a possible suspect. Officer Guerra instructed Decedent to drop the knife. Decedent continued to approach with a knife in his right hand. Decedent ran toward Officer Guerra and Officer Guerra fired four times.



Officer Belanger activated his Body Worn Camera as well.



Civilian R.S. provided his cell phone video of the incident which was consistent with the BWC depiction; however, it is at a further distance and the images are not as clear. The recording has been impounded.

E. OFFICER COUNTDOWN

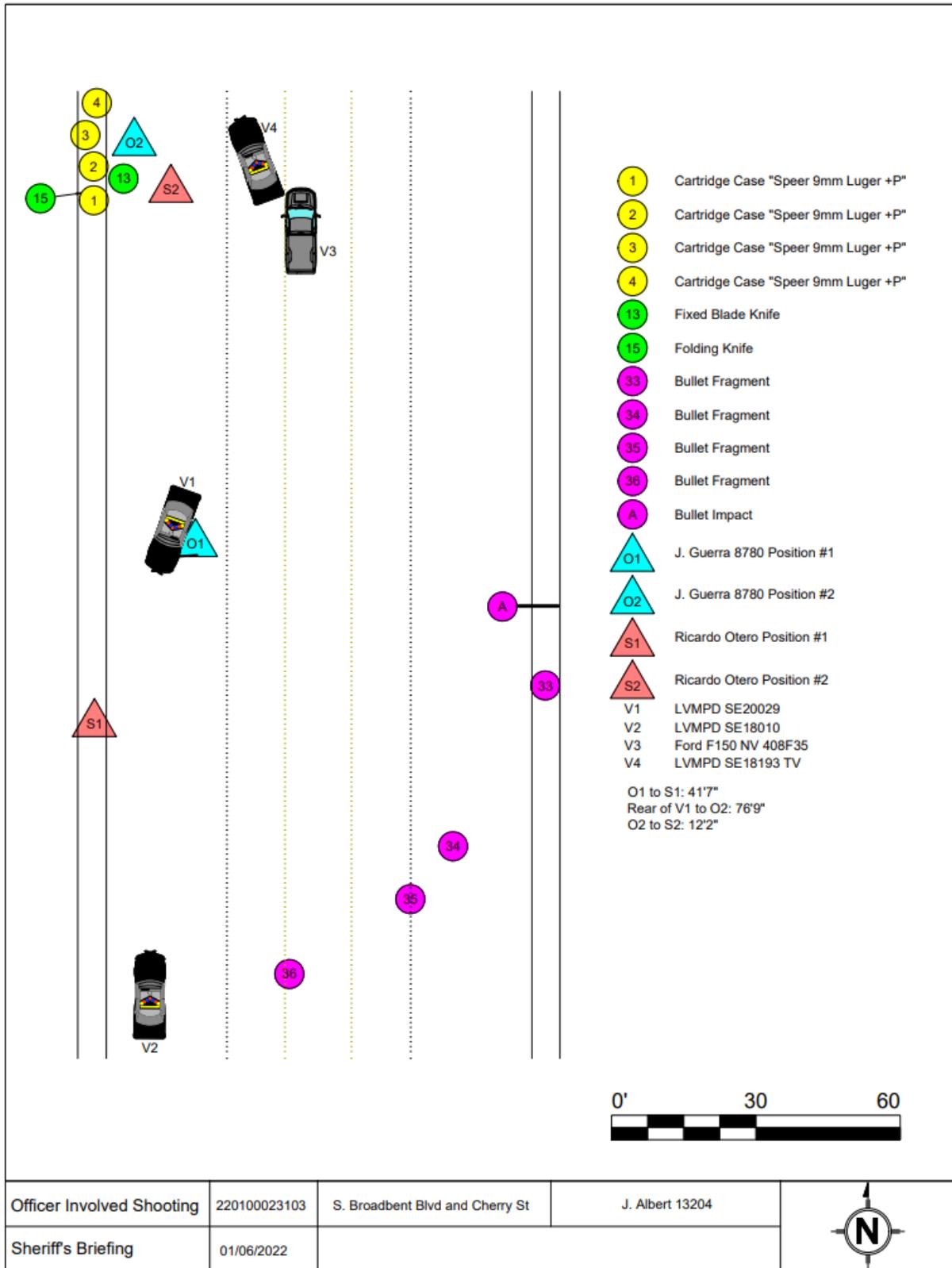
From the countdown, investigators determined Officer Guerra fired his weapon four times.

F. AUTOPSY

Dr. Timothy Dutra determined that Decedent died from a gunshot wound to his abdomen.

Toxicology revealed the presence of amphetamine, methamphetamine, THC, and alcohol.

G. DESCRIPTION OF THE SCENE AND VISIBLE EVIDENCE



At the scene, investigators recovered four cartridge cases, two knives, and four bullet fragments.

V. 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 may have contributed to the cause of death of a person. Clark County Ordinance §2.14.010. 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.¹ 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 in *Runion v. State*, 116 Nev. 1041 (2000). The relevant jury instructions as articulated in *Runion* are as follows:

The killing of [a] person in 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 or cause great bodily injury; and

¹ 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.

2. That it is absolutely necessary under the circumstances for him to use force or means that might cause the death of the other person, for the purpose of avoiding death or great bodily injury.

A bare fear of death or great bodily injury is not sufficient to justify a killing. To justify taking the life of another in 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. 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 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 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 of self-defense exists, the State must prove beyond a reasonable doubt that Decedent did not act in self-defense. *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 beyond a reasonable doubt that an individual did not act in self-defense.

The known facts and circumstances surrounding this incident indicate that Decedent posed an apparent imminent danger to all officers, in particular Officer Guerra. He was armed with a knife, refused to comply with demands, and moved toward Officer Guerra while holding a deadly weapon. Officer Guerra had reason to believe he may be stabbed and killed by Decedent.

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, at the time Officer Guerra fired, he had probable cause to believe that Decedent posed a threat of serious physical harm to himself and other officers in the area. In light of this

evidence, the actions of Officer Guerra were legally justified and appropriate “in the discharge of a legal duty.”

VI. 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 Officer Guerra 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.