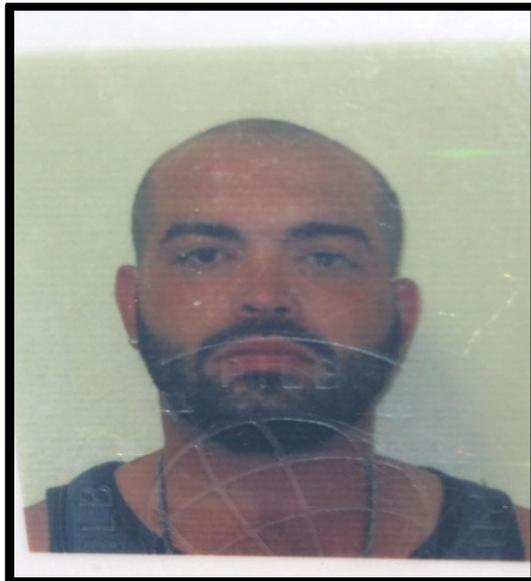


REPORT ON USE OF FORCE



Legal Analysis Surrounding the Death of Jeremias Cruz on May 19, 2016



INTRODUCTION

On May 19, 2016, North Las Vegas Police Department (hereinafter "NLVPD") Officers Marcus Cook and Lauren Cooley were dispatched to the Silver Nugget Casino, located at 2140 Las Vegas Boulevard, North Las Vegas, Nevada, reference a possible murder. Several 911 calls were placed from the Silver Nugget, reporting that one security guard was beating and/or killing another security guard. Upon arrival, Officers Cook and Cooley learned that Security Guard Jeremias Cruz (hereinafter "Decedent") had dragged

another employee, Edgardo Velasquez, downstairs and was currently beating him to death. Another security guard, who stood at 6'3 and weighed over 300 pounds, told the officers that he had unsuccessfully tried to intervene and broke his hand in the process. All of the Silver Nugget employees were congregated by the bar as they were terrified of Decedent.



Silver Nugget Casino, 2140 Las Vegas Boulevard, North Las Vegas

Officers Cook and Cooley immediately went to the basement of the Silver Nugget. Once in the basement, officers were led to the storage warehouse where Decedent was hiding. The warehouse was a dimly lit, unfinished room with concrete floors and multiple aisles made from stacked pallets. Once inside, officers yelled, "Hello? Police!" Decedent then appeared from one of the aisles. He was covered in dirt and dust and had a crazed and vacant look on his face. Officer Cooley aimed his weapon and Surefire grip-activated tac light at Decedent. He yelled, "Show me your hands! Show me your hands!" Decedent did not respond to Officer Cooley's commands; however, he could see that Decedent was holding a two-way radio in his right hand. Officer Cooley then yelled, "Get on the ground." Decedent again ignored the commands and instead walked through the aisles away from Officer Cooley.

Once Decedent was out of sight, Officer Cooley feared Decedent may be arming himself, and drew his Taser in his left hand while holding his firearm in his right. He then followed Decedent down the aisle. At the same time, Officer Cook began running down the adjacent aisle in order to cut Decedent off at the other end.

As Officer Cooley entered the aisle, Decedent suddenly turned around, faced Officer Cooley, and started walking in his direction. Officer Cooley yelled, "Get back!" Instead of stopping, Decedent continued to advance on Officer Cooley, while he flexed both of his arms and growled loudly. At that point, Officer Cooley discharged his Taser. The Taser had no effect on Decedent, who continued toward Officer Cooley. Officer Cooley then heard a single gunshot and saw Officer Delara - who had arrived to assist Officers Cook and Cooley - standing to his right, firing at Decedent. The initial shot had no effect on Decedent, who continued to pursue Officer Cooley. Officer Delara continued to fire on Decedent, who ultimately succumbed, thereby ending the threat to Officer Cooley's life.

After officers secured Decedent, they searched the premises for Decedent's victim. From inside the basement, officers tried to open the door to the outside loading dock area. It was there that they found the body of a small Asian male adult, swollen, covered in blood, and beaten to death.



Edgardo Velasquez

NLVPD Detectives Sayoko Wilson and Ben Owens were assigned to conduct the investigation of the incident with the assistance of other members of the detective bureau and NLVPD personnel.

The District Attorney's Office has completed its review of the May 19, 2016, death of Decedent. It was determined that, based upon the evidence currently available and subject to the discovery of any new or additional evidence, the actions of Officer Delara were not criminal in nature.

This report explains why criminal charges will not be forthcoming against the officer involved. It is not intended to recount every detail, answer every question or resolve every factual conflict regarding this citizen-law enforcement encounter. The report is meant to be considered in conjunction with the Police Fatality Public Fact-Finding Review conducted on January 11, 2017. This report is intended solely for the purpose of

explaining why, based upon the facts known at this time, the conduct of Officer Delara was not criminal.

This decision, premised upon criminal-law standards, is not meant to limit any administrative action or to suggest the existence or non-existence of civil actions by any person where less stringent laws and burdens of proof apply.

THE EVENTS AT 2140 LAS VEGAS BOULEVARD, NORTH LAS VEGAS, NEVADA, ON MAY 19, 2016

POLICE OFFICERS

Officer Rodrigo Delara

On May 20, 2016, Officer Delara gave a recorded statement to NLVPD Detectives Wilson and Owens reference the circumstances which led to the death of Decedent. The following is a synopsis of Officer Delara's statement:

On May 20, 2016, at approximately 5:24 am, Officer Delara was on his lunch break at the South Area Command when he heard over radio dispatch that there was a possible homicide at the Silver Nugget Casino. Officer Delara immediately left his lunch and proceeded to the casino. Once there, he was directed to a dimly lit storage room in the basement where he found Officers Cook and Cooley issuing commands to Decedent. Based upon the information received from dispatch, Officer Delara believed Decedent had just committed a murder. The room was extremely crowded with boxes and pallets, which made rows along the room. Decedent was in the middle row. Decedent was walking away from officers when he suddenly turned to face them. He looked extremely dirty and was hyperventilating. He appeared "really aggressive," had an "evil look," and was grumbling. His body was "really tense" and his hands were clenched in fists.

Once Decedent turned, Officer Delara saw what to him appeared to be a silver knife in Decedent's hand. He started to charge at the officers. This created great fear in Officer Delara, not only for his own safety, but for the safety of Officer Cooley. Officer Delara was on "lethal" – meaning he was on his gun – and Officer Cooley was on Taser. Decedent continued to charge at officers with a "million mile stare." Once he was within two (2) feet of the officers, Officer Delara discharged his weapon 5 (five) to 6 (six) times, until he felt there was "no more threat." Once the threat to the officers was over, the area was searched for the knife. While a knife was not found, a handheld radio was lying approximately 5 (five) feet from Decedent.

Officer Loren Cooley

On May 20, 2016, Officer Cooley responded to the Silver Nugget Casino reference a possible murder. The information Officer Cooley received was that one security guard had killed, or was in the process of killing, another security guard. Upon arriving to the casino, Officer Cooley went to the bar area and was met by numerous hysterical employees, including Security Guard #2. Security Guard #2 told Officer Cooley that Decedent dragged another employee downstairs to the basement and was beating him to death. He said that he followed Decedent downstairs, had tried to help the employee, but was unsuccessful and had broken his own hand in the process.

Officer Cooley, along with Officer Cook, was led to the basement by an employee who told the officers that Decedent was in the storage room. Officers drew their weapons and entered the storage room. According to Officer Cooley, the storage room was a dimly lit, unfinished room, with concrete floors and aisles made from pallets. Once the officers were inside, Decedent emerged from one of the aisles. He was covered in dirt and dust and had a "crazed" look on his face. Officers began issuing commands for Decedent to show his hands. Decedent did not comply with officers' commands. At the time, Officer Cooley could see that he was holding a two-way radio in his right hand and his left hand was empty. Officer Cooley yelled for Decedent to "get on the ground." Decedent did not comply and instead took steps toward Officer Cooley and then turned to walk down the aisle next to Officer Cooley. Worried that Decedent was retrieving a weapon, Officer Cooley kept his firearm in his right hand, drew his Taser with his left hand, and began circling behind Decedent. At the same time, Officer Cook began running down the adjacent aisle in hopes of cutting Decedent off at the other end.

As Officer Cooley started down the aisle, Decedent turned around and started walking toward him. Officer Cooley ordered him to "get back," but Decedent continued to advance. He then flexed both of his arms and began loudly growling. Once Decedent was less than 15 feet away from Officer Cooley, he discharged his Taser. The Taser had no effect on Decedent, who continued pursuing Officer Cooley. Officer Cooley was eventually forced backward until his back was flush against the wall and he could no longer retreat. At that point, Officer Delara fired his handgun three (3) to four (4) times, hitting Decedent. Even after being shot, Decedent continued advancing toward Officer Cooley. Once he was an inch from Officer Cooley, he collapsed to the ground, grazing Officer Cooley along the way.

Officer Marcus Cook

On May 19, 2016, Officer Cook was dispatched to the Silver Nugget Casino with regards to an unknown problem. While *en route*, Officer Cook learned that someone had been killed at the property. Once at the casino, Officer Cook met with Officer Cooley and the two (2) entered the property together. Upon entering the casino, the officers were immediately met by Security Guard #2, who told them that the suspect was downstairs and had "even attacked him." Officers went to the basement of the casino, where they

were led to a dimly lit storage room. There, Decedent emerged from behind a pile of stacked items in the room. Decedent appeared to be having “an agitated, chaotic episode” whereby he was flexing the veins in his face and neck. His clothes were dirty and looked as if he had rubbed against something, and he was talking to himself in “gibberish.” He was holding a black portable radio in his right hand.

Officers Cook and Cooley issued numerous verbal commands for Decedent to show his hands. Decedent refused and began pacing forward at a slow pace. While officers were issuing the commands, Officer Delara and Sergeant White arrived to assist. The four (4) officers all continued issuing commands. Decedent ignored the officers and, instead, turned down an aisle and began walking toward the back of the storage room. Officer Cook then ran down the aisle adjacent to the one Decedent was in, in an attempt to cut him off. As he was running, he heard a pop, followed by additional pops. Officer Cook ran back toward his fellow officers, not knowing if one of them had been shot. Once at the front of the storage room, he saw Decedent lying face down on the ground with a Taser by his foot.

Sergeant Carolyn White

On May 19, 2016, Sergeant White was dispatched to the Silver Nugget Casino reference a homicide. She arrived at the same time as Officer Delara. Sergeant White entered the property and saw several casino patrons and employees gathered around the bar. She was immediately directed to the basement of the casino, where she found Officer Cooley and Officer Cook in a dimly lit storage room with several rows of storage shelving units. As she entered the storage room, she heard the officers giving verbal commands to Decedent, who was despondent and ignoring all commands. Sergeant White did not get a clear view of Decedent as he was pacing in a “cat and mouse manner” behind and around the rows of shelving.

Officer Cooley and Officer Delara posted just inside the storage room, while Sergeant White and Officer Cook ran down the first row of shelves in an attempt to cut Decedent off. As Sergeant White rounded the corner of the first row, she heard a Taser deploy. Sergeant White knew that the Taser had no effect on the Decedent as she still heard him advancing. She turned around and saw Officer Cooley and Officer Delara with their weapons drawn. Recognizing a possible cross-fire situation, Sergeant White moved to a safer position. It was then that she heard 3-4 gunshots. She then ran back to Officers Cooley and Delara, where she saw decedent fall to the ground.

Eventually, Sergeant White went outside the south door of the basement, where she saw an Asian male adult - obviously beaten about the head and facial area - lying dead in the loading dock area of the casino.

CIVILIANS

Security Guard #2

On May 19, 2016, Security Guard #2 gave a recorded statement to NLVPD Detective Flory Stucky in reference to the circumstances which led to the death of Decedent. The following is a synopsis of Security Guard #2's statement:

On May 19, 2016, Security Guard #2, who was 6'3" and weighed over 300 pounds, was working the graveyard shift as security shift manager at the Silver Nugget Casino. The shift started at 11:00 pm on May 18, 2016, and was to end at 7:00 am on May 19, 2016. At approximately 5:00 am, Security Guard #2 was by the bar, when he heard other employees say, "He grabbed him, he grabbed him, he grabbed him to the back." He inquired further and found out that Decedent had grabbed another employee and forced him out of the room. Security Guard #2 left the bar area, traveled through the casino kitchen and into the basement, in search of the employees.

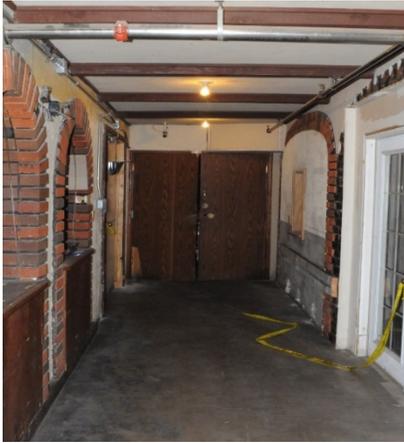
Once downstairs, Security Guard #2 looked around the basement but didn't see Decedent. He then opened the doors which led to the outdoor loading dock area. There, he found Decedent "pummeling" the other employee. The employee's face was bloody and he was "already laid out." Upon seeing what Decedent had done, Security Guard #2 felt as though he was "walkin' through a portal of hell, seein' somethin' like that." Security Guard #2 told Decedent to stop, at which point Decedent turned on Security Guard #2 and said, "Come here. Oh, you gonna snitch on me? You're gonna get it too, mother fucker." Decedent then attacked Security Guard #2, hitting him and grabbing his hair. While Security Guard #2 hit Decedent back multiple times, Decedent was unaffected by the blows. Instead of retreating, he clung to Security Guard #2 and continued to attack him. According to Security Guard #2, Decedent "had demon in him." Security Guard #2 continued to fight Decedent off, eventually breaking his own hand in the process. Security Guard #2 felt that Decedent was going to kill him and ultimately had to run to get away from the threat.

Once upstairs, Security Guard #2 told other casino employees that Decedent was trying to kill him. He also relayed what he witnessed between Decedent and the employee. Based upon the information, another casino employee called 911.

Other Casino Personnel

Members of law enforcement interviewed a number of other casino personnel, who were all in the bar area when Decedent first grabbed the employee. They all corroborated Security Guard #2, were all consistent in their rendition of how Decedent behaved, and were also consistent in the sequence of events that unfolded that morning. None of the personnel – other than Security Guard #2 – saw what occurred in the basement.

THE INCIDENT SCENE

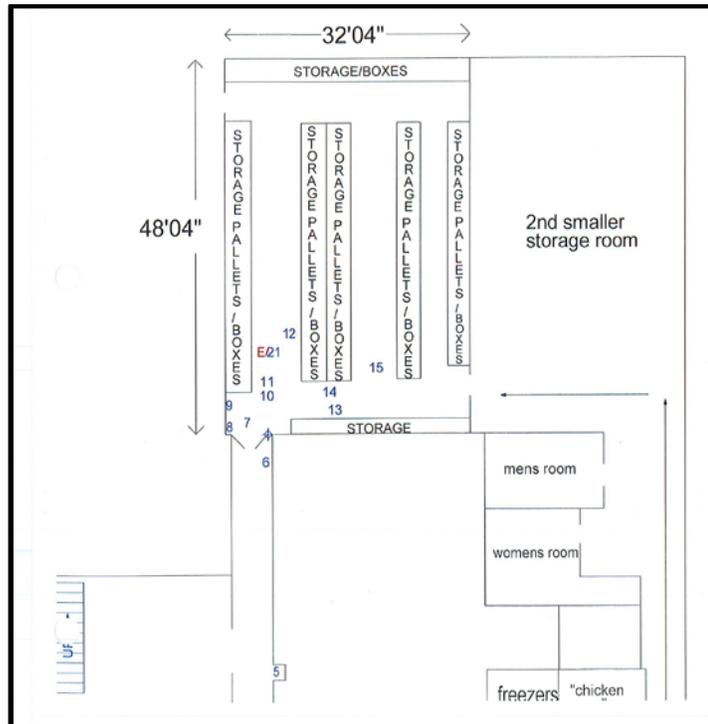


Hallway to storage room

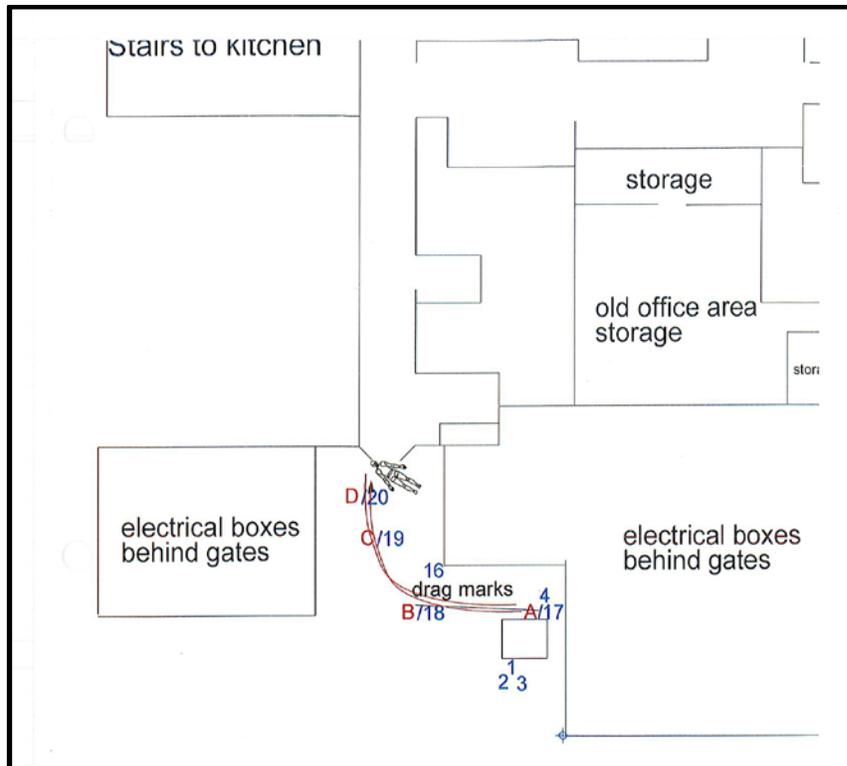


View into storage room

The incident scene was located in a storage room in the basement of the Silver Nugget Casino located at 2140 North Las Vegas Boulevard, North Las Vegas, Nevada. The storage room had double wooden swinging doors at the entrance. Inside, the room had low ceilings and was dimly lit. There were pallets and boxes stacked almost to the ceiling, creating narrow aisles throughout the room. Upon processing the scene, a total of five (5) "9mm WCC +P+" spent cartridge cases were found on the ground of the storage room area, with four (4) being found inside the room and one (1) being found just outside the room. Additionally, one (1) Taser cartridge soiled with apparent blood was located on a shelf in the basement hallway.



The body of Edgardo Velasquez was located just outside of the southeast facing basement hallway employee entrance/exit. Velasquez was lying on the ground in his work uniform, with his head and face beaten in and covered in blood. Velasquez was deceased at the scene. From the body, there was a drag mark in apparent blood that led to a stack of wooden pallets. On top of the pallets was a silver utility razor blade covered in apparent blood. Upon autopsy of the body, the medical examiner found that Velasquez's neck had in fact been sliced by an instrument consistent with a razor blade.



VIDEO SURVEILLANCE

Silver Nugget Casino had a number of video surveillance cameras positioned throughout the property. The following is a description of events as they occurred on video. The events are listed in chronological order and reference which casino camera they were captured on. The time referred to is the time stamp from each video.

“Blackjack Table 5” camera: This camera showed the bar area, which included table top gambling machines.

- 5:26:54 am – Decedent, wearing a Security shirt, entered the screen and proceeded to do routine work around the bar.

- 5:27:15 – Edgardo Velasquez, wearing a red shirt, entered the screen and proceeded to do routine work around the bar.
- 5:28:53 am – Without any interaction between the two, Decedent grabbed Velasquez by the back of the neck and by his left arm and forced him out of the camera’s view.

“Bingo Non-Smoking” camera: This camera showed the same bar area from another angle.

- 5:28:40 am – Decedent can be seen forcing Velasquez through a door which leads to the kitchen.

“Kitchen Prep Table 2” camera: This camera shows the kitchen area.

- 5:29:15 am – Decedent forced Velasquez into and through the kitchen.

“Kitchen Prep Table” camera: This camera shows the kitchen area.

- 5:29:15 am – Decedent forced Velasquez into and through the kitchen.

“Back Expo Doors” camera: This camera shows the bottom of the stairwell and a portion of the lower level.

- 5:29:32 am – Decedent had his left hand on Velasquez’s neck and his right hand on his upper arm while he forced him down the stairs and toward the stairway hallway.

“W Hill Kiosk” camera: This camera shows a basement hallway that leads through a set of double doors which lead to the outside.

- 5:29:39 am – Decedent forced Velasquez down the hallway and out the double doors to the outside.
- 5:34:39 am – Security Guard #2 came downstairs and went out the double doors to the outside.
- 5:35:00 am – Security Guard #2 and Decedent both come back inside and begin to fight. They fight all the way back to the stairs that lead to the kitchen.

“Back Expo Doors” camera:

- 5:35:45 am – Decedent is grabbing Security Guard #2 around the waist and attacking him. Security Guard #2 is trying to fight him off. Security Guard #2 eventually flees back up the stairs.

“W Hill Kiosk” camera:

- 5:36:17 am – Decedent goes back outside and continues attacking Edgardo Velasquez.

“North Main Bar” camera: This camera shows a small caged storage area and hallways.

- 5:41:12 am – Decedent appears to be running through the hallways of the casino, either searching for someone or hiding from someone.

“W Hill Kiosk” camera:

- 5:42:23 am – Officers Cooley and Cook arrived. Followed by Officer Delara and Sergeant White. They all enter the storage room area, which was not equipped with video surveillance.

REVIEW OF THE WEAPONS

THE COUNTDOWN OF OFFICER DELARA'S WEAPON

A countdown of Officer Delara's weapon - a Glock model 19, 9mm handgun - revealed a total of five (5) "9mm WCC +P+" live cartridges had been fired from the weapon. This was consistent with the spent cartridge cases found at the scene.

THE COUNTDOWN OF OFFICER COOLEY'S WEAPON

A countdown of Officer Cooley's X26 Taser revealed a total of one (1) live cartridge had been fired from the weapon. This was consistent with the spent cartridge found at the scene.

AUTOPSY OF JEREMIAS CRUZ

On May 20, 2016, Clark County Medical Examiner Dr. Timothy Dutra performed an autopsy on the body of Decedent. During the examination, Dr. Dutra noted the following injuries on Decedent's body: one bullet wound on the chest, two bullet wounds on the abdomen and two bullet wounds on the torso.

After a completed autopsy, Dr. Dutra determined the cause of death was gunshot wounds of the torso. A postmortem toxicological analysis was positive for Methamphetamine, Amphetamine, THC and Phencyclidine. Phencyclidine, otherwise known as PCP, is a dangerous hallucinogenic drug known to cause aggressive behavior and irrational reactions in the user. Users may experience extreme visual disturbances, agitation, hallucinations, increased heart rate, convulsions and more.

AUTOPSY OF EDGARDO VELASQUEZ

On May 20, 2016, Clark County Medical Examiner Dr. Timothy Dutra performed an autopsy on the body of 64-year-old Edgardo Velasquez. During the examination, Dr. Dutra noted severe blunt force trauma to both the head and the neck. Multiple fractures were found on the face and head and the spine was dislocated at the base of the head. Additionally, the neck was sliced, presumably from a razor blade.

After a completed autopsy, Dr. Dutra determined the cause of death was blunt force head and neck trauma. A postmortem toxicological analysis was conducted and produced negative results for all substances.

DECEDENT INFORMATION

Decedent was a 30 year old Hispanic Male Adult who, at the time of the incident, was employed as a security guard at the Silver Nugget Casino. He had no active warrants

or local criminal history. His national record revealed a 2005 arrest in New Jersey for PCS marijuana and a 2009 conviction in New Jersey, also for PCS marijuana.

LEGAL ANALYSIS

The District Attorney's Office is tasked with assessing the conduct of officers involved in any killing 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 killing. As this case has been deemed a homicide by the coroner, the actions of these officers will be analyzed under the State's jurisprudence pertaining to homicides.

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 was justifiable under two theories: (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 Self Defense or 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.

In this case, Decedent posed an imminent danger to NLVPD police personnel. When intercepted by Officers Cook and Cooley, Decedent failed to comply with any and all orders. Officer Cooley first deployed his Taser in an attempt to deescalate the situation. Decedent was not deterred by the use of the Taser and instead, became more enraged, flexing and growling at Officer Cooley. Decedent continued to advance on Officer Cooley even after he was Tased. Officer Cooley was confronted by an actual imminent danger of being killed or suffering great bodily harm, which created in Officer Delara's mind an honest belief and fear that he, Officer Cooley or Officer Cook, were about to be killed or suffer great bodily injury. Based upon those appearances, fears and actual beliefs – and the fact that he knew Decedent had just committed a murder - Officer Delara eventually shot Decedent, ending the threat; as such, Officer Delara's actions were justified.

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, Officer Delara had probable cause to believe Decedent posed a threat of serious physical harm either to himself or other persons. After being ordered to remain, Decedent pursued Officer Cooley, becoming enraged. Decedent's aggressive actions ultimately caused Officer Delara to discharge his weapon to end the threat. These circumstances, coupled with the fact that Officer Delara knew the Decedent had just murdered a man, created probable cause to believe in the officer's mind that the Decedent posed a threat of serious physical harm to law enforcement. In light of all the evidence reviewed to date, the State would be unable to prove that the actions of the officers were in fact unjustified “in the discharge of a legal duty.”

CONCLUSION

Based upon the review of the available materials and application of Nevada law to the known facts and circumstances, it has been determined that the actions of law enforcement in response to a weapon being drawn by the Decedent were reasonable and 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 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.

Submitted

STEVEN B. WOLFSON
District Attorney

By

MICHELLE N. FLECK
Chief Deputy District Attorney