

REPORT ON USE OF FORCE



Legal Analysis Surrounding the Death of D'Andre Berghardt on February 14, 2014

INTRODUCTION

On February 14, 2014, at approximately 1112 hours, two Bureau of Land Management (BLM) Officers designated as BLM Agent and BLM Ranger, along with Nevada Highway Patrol (NHP) Trooper Schwarzrock, were involved in a fatal officer involved shooting which occurred inside of the Red Rock National Park area. The officers initially responded to a call concerning an unknown male who was harassing bicyclists on State Route 159. The male, after being contacted by two BLM officers, was uncooperative and became combative. Officers then became involved in a physical fight with the male. During the altercation, the officers deployed various less-than-lethal force tools including: a Taser; OC pepper spray; and a baton. As the altercation continued, NHP Trooper Schwarzrock subsequently arrived to assist. The male, however, was able to gain entry into the Trooper's parked patrol vehicle, which was running at the time. The male also attempted to retrieve an AR-15 rifle (Smith and Wesson M&P .223 caliber) from within the vehicle.

Both BLM Agent and BLM Ranger engaged the male with gunfire ultimately killing him inside the vehicle. NHP Trooper Schwarzrock did not fire his weapon. D'Andre Berghardt, hereinafter "Decedent," was pronounced dead at the scene at 1830 hours. On February 15, 2014, at approximately 0755 hours, an autopsy was performed on the body of Decedent at the Office of the Clark County Coroner.

The District Attorney's Office has completed its review of the February 14, 2014, death of Decedent. It was 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 was based on all the evidence currently available, including evidence adduced at the Police Fatality Public Fact-Finding Review held on March 2, 2015.

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 law enforcement encounter. 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 BLM and/or the NHP or to suggest the existence or non-existence of civil actions by any person where less stringent laws and burdens of proof apply.

I. INCIDENT DETAILS:

On February 14, 2014, at approximately 1200 hours, BLM dispatch contacted the Las Vegas Metropolitan Police Department (LVMPD) dispatch and requested assistance for an officer who had a subject at gunpoint on State Route (SR) 159/Moenkopi Road. BLM dispatch called LVMPD dispatch again, at approximately 1201 hours, and stated that shots had been fired and this call had turned into an officer involved shooting. The BLM dispatcher requested that medical personnel respond to the scene. LVMPD officers responded to the scene and learned that on February 14, 2014, at approximately 1112 hours, Citizen #1 contacted the BLM visitor center at Red Rock Canyon and informed personnel there that a black male had attempted to assault her while she was riding her bicycle on SR159 towards Red Rock. BLM created an event for a possible assault and dispatched BLM Ranger along with BLM Agent, who were riding together, to SR159 and Red Rock.

Upon arrival, BLM Ranger and BLM Agent observed a black male adult sitting with several bags on the north side of SR159/Moenkopi Road. When the officers approached Decedent, he refused to identify himself and attempted to leave the area. BLM Ranger informed Decedent they were there to investigate a possible crime and informed Decedent he was not free to leave. Decedent then pulled a flat head screwdriver from his pants pocket and resisted the officer's attempts to detain him. Decedent then walked into the active travel lanes of SR159. BLM Ranger deployed his Taser in an attempt to disarm Decedent who was holding the screwdriver in a threatening manner. After being tased by BLM Ranger, Decedent initially dropped the screwdriver, but then moved toward the screwdriver while he was on the ground. BLM Agent moved in to handcuff Decedent, but was

unsuccessful because Decedent moved away from BLM Agent. Decedent then walked westbound, in the travel lanes of SR159, toward occupied vehicles which were stopped on the highway.

BLM Ranger and BLM Agent both utilized their pepper spray on Decedent in an attempt to gain control over him. The pepper spray, however, did not appear to have any effect on Decedent. Decedent then made contact with, and attempted to gain entry into, two occupied vehicles located nearby. BLM Ranger then deployed his straight baton (ASP) in the closed position striking Decedent in the head. Officers performed this action in an attempt to gain control of Decedent who continued to resist the officers' attempts to handcuff him. Decedent also punched the officers as he continued to try to enter the occupied vehicles.

NHP Trooper Schwarzrock then arrived on scene parking in the eastbound lane of SR159. Trooper Schwarzrock also attempted to restrain Decedent who was still actively resisting the officers' attempts to restrain him. Decedent also continued to punch the officers as they attempted to control him. Trooper Schwarzrock utilized his Taser in another attempt to gain control of Decedent. Decedent was able to get up after being tased, and stated, "No more Taser, No more Taser, I'll take your fucking gun." Decedent then ran to the NHP vehicle and entered the driver's side door. After gaining entry into the vehicle, which was running at the time, Decedent attempted to remove the AR15 rifle from its locked rack. BLM Ranger and BLM Agent then discharged their weapons, striking Decedent several times. Medical personnel responded to the scene and determined that Decedent was dead. The LVMPD Force Investigation Team (FIT) responded to conduct the force investigation.

II. DESCRIPTION OF SCENE AND VISIBLE EVIDENCE:

The primary scene was located in the area of SR159 approximately 0.4 miles east of Moenkopi Road. The scene extended approximately 340 feet from east to west. Numerous small and large orange cones were placed on the scene by the first responding officers to mark and protect items of evidence.

In the east-central and southeast end of the scene, a Taser wire and Taser cartridge were located and recovered on the eastbound bike lane. Another Taser wire was located on the east-center roadway. Taser probes and a black baseball hat were located and recovered from the east roadway between the eastbound bike lanes and the southeast corner of the BLM Ranger vehicle.

A BLM Ranger vehicle was located on the westbound shoulder at the east end of the scene. The BLM Ranger vehicle's right side tires were on the rocky dirt median with the left side tires on the westbound bike lane. The front end was facing westbound with the engine running. The emergency light bar lights were activated. There was a yellow and black "Work Force" flat-head screwdriver on the dirt median approximately 35 feet east of, and behind, the BLM Ranger vehicle. A Taser wire was on the eastbound bike lane and a black and white right "Adidas" slide-on sandal was located and recovered from the middle of the eastbound lane across from the BLM Ranger vehicle.



Scene facing westbound on State Route 159.



Location of BLM Ranger and BLM Agent's initial contact with Decedent.



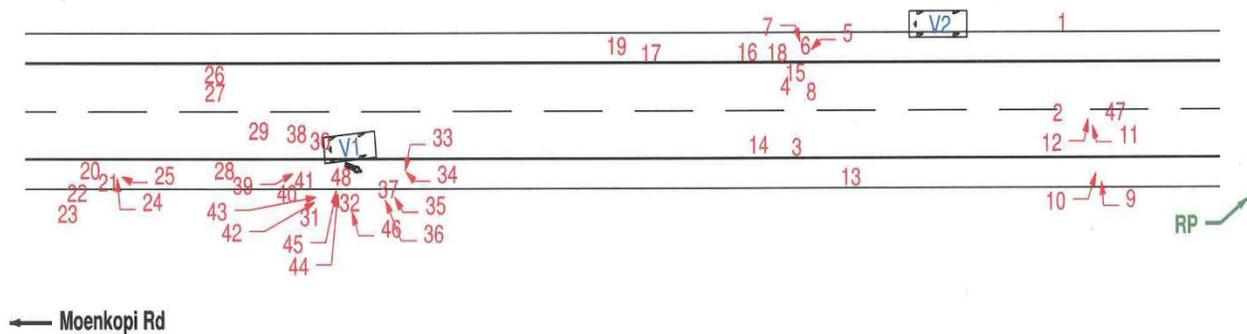
Luggage Decedent had with him at the time of the incident.



Screwdriver Decedent threatened BLM Ranger and BLM Agent with, which was located in the gravel on the north side of State Route 159 just east of BLM Ranger's vehicle.

Numerous items of evidence were on the roadway west and southwest of the BLM Ranger vehicle's front end. A purple pull handle suitcase, a stuffed blue pillowcase and a multi-colored backpack were lying in the westbound bicycle lane in front of the BLM Ranger vehicle's front end. The following items were recovered from the roadway south and southeast of the suitcase: an "Aquafina" water bottle; a green Taser cartridge blast door; a second green Taser cartridge blast door along with blast door pieces; numerous Anti-felon Identification (AFID) tags from the Tasers; and a black and white left "Adidas" slide-on sandal.

- | | | | |
|------------------------|-------------------------------|---------------------------------|---------------------------------|
| 1: Screwdriver | 13: Taser wire | 25: Swab of apparent blood | 37: Cartridge case "WIN 40 S&W" |
| 2: Baseball hat | 14: Taser blast door | 26: Swab of apparent blood | 38: Cartridge case "WIN 40 S&W" |
| 3: Sandal (right foot) | 15: Taser blast door & pieces | 27: Swab of apparent blood | 39: Cartridge case "WIN 40 S&W" |
| 4: Sandal (left foot) | 16: Taser AFID tag | 28: Sweatshirt | 40: Cartridge case "WIN 40 S&W" |
| 5: Suitcase | 17: Taser AFID tag | 29: Taser AFID tags | 41: Cartridge case "WIN 40 S&W" |
| 6: Pillow case | 18: Taser AFID tags | 30: Taser blast door & pieces | 42: Cartridge case "WIN 40 S&W" |
| 7: Backpack | 19: Taser AFID tag | 31: Taser blast door | 43: Cartridge case "WIN 40 S&W" |
| 8: Water bottle | 20: Taser AFID tags | 32: Taser cartridge | 44: Cartridge case "WIN 40 S&W" |
| 9: Taser cartridge | 21: Taser blast door & pieces | 33: Cartridge case "WIN 40 S&W" | 45: Bullet |
| 10: Taser wire | 22: Collapsible baton | 34: Cartridge case "WIN 40 S&W" | 46: Pair of handcuffs |
| 11: Taser probe | 23: Pepper spray can | 35: Cartridge case "WIN 40 S&W" | 47: Taser wire |
| 12: Taser probe | 24: Pair of sunglasses | 36: Cartridge case "WIN 40 S&W" | 48: Taser weapon |

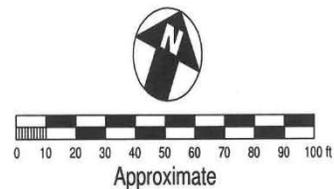


V1: NHP Vehicle
2007 Ford Expedition
NV- Highway Patrol 378
1FMFU16597LA62685

V2: BLM Vehicle
2011 Ford F150
US Government - I427669
1FTFW1EF0BKD49906

RP: South edge of the roadway, directly across the street from the road sign on the north side of the road, approximately 2,530 feet east of Moenkopi Rd. (not visible on map)

Type: OIS
Agencies: BLM & NHP
Location: SR 159, Approximately 0.4 miles east of Moenkopi Rd.
Event: 140214-1782
Date: 02/14/2014
Prepared By: J. Scott #9618 (LVMPD)



A Nevada Highway Patrol vehicle was located approximately 200 feet southwest of the BLM Ranger vehicle's front end with the emergency lights activated. The Nevada Highway Patrol vehicle's windshield had sustained seven apparent gunshots through the driver's side front windshield. There was a camera mounted to the upper interior windshield on the passenger side. There was a large quantity of equipment inside the vehicle including a Smith and Wesson M&P .223 caliber rifle between the two front seats in a locking rifle rack. Apparent blood was observed on the steering wheel, the central seat, equipment stored in the center of the seat and on the rifle. There was a bullet embedded inside a defect/hole on the interior driver's door on the "B" pillar of the Nevada Highway Patrol vehicle.

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V1: NHP Vehicle
2007 Ford Expedition
NV- Highway Patrol 378
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Distances from Officers to
driver's seat of Vehicle 1

A: L. Schwarzrock (3' 6")
B: (5' 6")
C: (18' 0")



The letters in the diagram designate where the officers placed themselves at the time of the shooting. (B = BLM Ranger and C = BLM Agent)

Three emergency rescue vehicles were parked on scene near the Nevada Highway Patrol vehicle. A Clark County Fire Department engine truck front end was oriented westbound and was located northeast of the Nevada Highway Patrol vehicle. The fire truck was on the roadway next to the westbound bicycle lane. The American Medical Response ambulance was oriented towards the west and was east of and behind the Nevada Highway Patrol vehicle in the eastbound lane. The Clark County Fire Department rescue ambulance was oriented with the front end towards the southwest and was located in front of the right front corner of the Nevada Highway Patrol vehicle. After initial documentation, the three emergency rescue vehicles were moved out of the scene.

There were five .40 cartridge cases bearing the head stamp "WIN 40 S&W" recovered from the ground southeast of the Nevada Highway Patrol vehicle. The evidence recovered on the rocky embankment south of the Nevada Highway Patrol vehicle included: a Taser cartridge; three .40 cartridge cases bearing the head stamp "WIN 40 S&W;" a bullet; a pair of handcuffs; and a green Taser cartridge blast door. There were several items of evidence on the roadway in front of the Nevada Highway Patrol vehicle. These items included: a green Taser blast door and door pieces, AFID tags; a black sweat shirt; and four .40 cartridge cases bearing the head stamp "WIN 40 S&W." There were two areas of apparent blood located on the road adjacent to the westbound bicycle lanes northwest of the Nevada Highway Patrol vehicle.

A cluster of several more items of evidence were located approximately 70-80 feet southwest of the Nevada Highway Patrol vehicle's front end. A collapsible straight baton (ASP) and a can of "First Defense" pepper spray were recovered on the south dirt embankment adjacent to the westbound bicycle lane. The baton fully extended measured 1'8" long and had apparent blood on it. There were also AFID tags, a green Taser cartridge blast door and door pieces, a pair of sunglasses and apparent blood located and recovered on the westbound bicycle lanes.

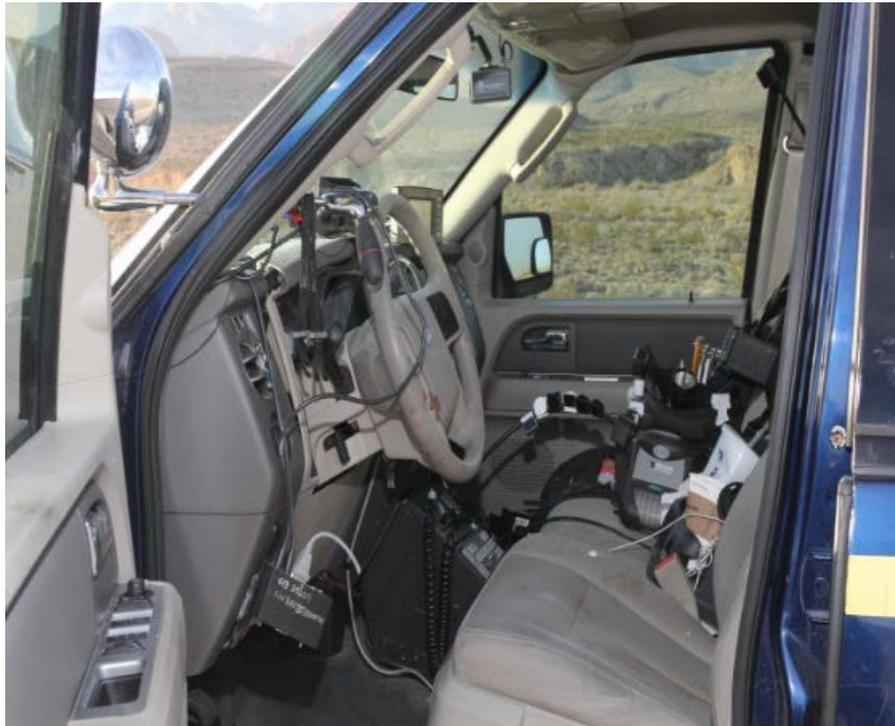
The Nevada Highway Patrol vehicle was towed from the scene to the Criminalistics Bureau for further examination. While at the Criminalistics Bureau, the seven apparent bullet holes through the windshield in the lower left quadrant were documented showing direction of bullet paths and further evidence was recovered. The bullet noted in the driver's side "B" pillar was cut from the vehicle and recovered. Evidence inside the vehicle included: a gray colored metal projectile located on the front left seat; a copper colored bullet fragment located on the center portion of the front seat; a copper and gray colored bullet located on the floor in front of the front right seat; and a copper and gray colored bullet located on the floor on the raised center section in front of the seat.



A frontal view of Trooper Schwartzrock's NHP vehicle after the shooting incident.



Bullet paths delineated from the front of the NHP vehicle.



View from the driver's side doorway of Trooper Schwartzrock's NHP vehicle.



A view of the AR-15 in its carriage within Trooper Schwartzrock's NHP Vehicle immediately following the shooting incident

There were also multiple areas of apparent blood transfer stains on the vehicle:

1. Apparent blood transfer on the exterior handle of the front left door of the vehicle;
2. Heavy apparent blood transfer on the rear left door below the bottom front corner of the window. There was a palm print in blood in this area which was photographed;
3. Heavy apparent blood transfer on the seat cushion of the front left driver's seat that appeared to be a hand print;
4. Apparent blood transfer on the steering wheel;
5. Apparent blood transfer on the head of the flex light mounted to the right side of the radio box and with the head of the light located above the center portion of the front seat;
6. Apparent blood transfer located on the mobile printer;

7. Apparent blood transfer located on the head of the black colored flashlight, inside the canvas bag on the front right seat of the vehicle;
8. Apparent blood transfer located on the butt of the rifle magazine extending forward from the rifle mounted locked to the metal Plexiglas divider that separated the front seat from the rear seat of the vehicle;
9. Apparent blood transfer located on the forward stock of the rifle;
10. Apparent blood transfer located on the locking mechanism that secured the rifle to the mounting bracket; and
11. Apparent blood transfer located on the barrel of the rifle.

The Smith and Wesson M&P .223 caliber rifle mounted to the metal and Plexiglas partition between the front and rear seats of the Nevada Highway Patrol vehicle was recovered and impounded as evidence. A 12 gauge shotgun mounted above the back two front seats was also impounded.



A view of the AR-15 from the passenger side doorway of Trooper Schwartzrock's NHP vehicle.

In addition to the NHP vehicle at the scene, a white Chrysler 300, which had been driven by Citizen #2 and which was involved in the scene altercation, was taken to the Northwest Area Command located on 9850 W. Cheyenne Ave. and examined. Apparent blood spatter stains were located on the right side of the Chrysler's hood and extended from the front to the rear side of the hood and from the center of the hood to the front right fender. A single drop of apparent blood was on the exterior side of the rear right door and an additional drop of apparent blood was on the rear right side of the trunk lid. Multiple drops of apparent blood spatter were also located on the roof, near the center of the rear edge, and a single drop of apparent blood spatter was noted on the left "C" pillar. There were additional drops of apparent blood on the rear windshield that appeared to be related to the drops on the roof of the vehicle.

III. LOCATION AND DESCRIPTION OF THE BODY

The body of Decedent was lying supine on the asphalt pavement covered by a white sheet just south of the Nevada Highway Patrol vehicle's open driver's side front door. Decedent was noted to have his head facing southeast and his feet facing northwest.

After removing the sheet, Decedent was noted to have his hands handcuffed in front of him. Decedent had been wearing a black shirt, which was cut off by medical personnel. In addition, Decedent was wearing black shorts, blue underwear and black socks. Taser probe wire was noted on Decedent's abdomen and was wrapped around his left ankle. This wire contained four Taser probes which were hanging from the wire.

An external examination of Decedent revealed apparent gunshot wounds to the left outer arm, left torso, left chest and left hip. A Taser gun along with a Taser cartridge were located on the ground near Decedent's left foot.

IV. AUTOPSY:

On February 15, 2014, at approximately 0755 hours, an autopsy was performed by Dr. Lisa Gavin on the body of Decedent at the Clark County Coroner's Office. Bullets were recovered from the following locations:

- i. Bullet recovered from right arm;
- ii. Bullet recovered from left mid back;
- iii. Bullet recovered from right armpit;
- iv. Bullet recovered from stomach;
- v. Bullet recovered from left shoulder;
- vi. Bullet recovered from left armpit; and

vii. Bullet recovered from spine.

Toxicology analysis performed on Decedent revealed the presence of Delta-9 THC – 7.1 ng/ml and Delta-9 Carboxy THC – 45 ng/ml (inactive metabolite). Delta-9 THC is a schedule I hallucinogen and it has depressant and reality distorting effects. “Delta-9 THC rapidly leaves the blood, even during smoking, falling to below detectable levels within several hours. THC concentrations in blood are usually about one-half that of serum/plasma concentrations. Reported usual peak THC concentrations in serum after smoking 1.75% or 3.55% THC marijuana cigarettes are 60-270 ng/ml after beginning smoking, decreasing to less than 5 ng/ml by 2hr.” Clark County Coroner Autopsy Report.

The original toxicological analysis included such items as bath salts, stimulants and designer drugs. Because the results of that analysis had revealed the presence of Delta-9 THC and Delta-9 Carboxy THC, the District Attorney’s Office requested an expanded toxicological analysis be performed to include synthetic cannabinoids. The results of this expanded analysis, however, only revealed the additional presence of Nicotine and Nicotine metabolites in Decedent’s urine and blood and no presence of any synthetic cannabinoids. It should be noted, however, that there are a number of synthetic cannabinoids which are undetectable using currently available testing methods.

After a complete autopsy, the medical examiner opined the cause of death was multiple gunshot wounds and the manner of death was homicide.

V. INVESTIGATION:

Citizen #1

On February 14, 2014, at approximately 1325 hours, Detectives contacted and conducted a taped interview with Citizen #1 at the scene. Citizen #1 stated at approximately 1145 hours, she was bike riding with her husband on State Route 159 toward Red Rock Conservation Center/Visitor Center. Citizen #1 was following behind her husband’s bicycle westbound on the north shoulder of the roadway in the marked bike lane. She looked ahead and saw a black male adult wearing dark clothing pulling a suitcase. The male appeared to be hitchhiking while standing in the same bike lane. She became nervous and sensed something seemed wrong. Citizen #1 thought she could identify the male if she saw him again.

Citizen #1’s husband rode around the male and continued riding his bike westbound. As Citizen #1 got closer to the male it was apparent he was blocking her path. Citizen #1 crossed over the white line and rode her bicycle into the travel lane in order to pass the male. The male then reached out with his right hand and

tried to grab her. The male had a “creepy smile” and said, “Don’t get hit.” After she passed him, the driver of a white truck honked his horn and pulled over, asking Citizen #1 if the male pushed her. Citizen #1 replied “no,” and the driver of the white truck then drove off westbound. Citizen #1 caught up to her husband and they rode to the entrance of the Red Rock loop, where they notified a worker who in turn called 3-1-1 to report the incident.

Citizen #2

On February 14, 2014, at approximately 1520 hours, Detectives, along with a special agent from the Federal Bureau of Investigation (FBI), conducted a taped interview with Citizen #2 at the scene. Citizen #2 appeared upset, but consented to an interview. Citizen #2 stated that at approximately 1130 hours, she was driving alone in her 2012 Chrysler 300 sedan eastbound on State Route 159 toward Las Vegas. Citizen #2 said that she came upon several vehicles which were stopped in traffic. Citizen #2 said that she saw a “lump of something” (possibly the suspect’s property) she assumed was a pedestrian hit by traffic. Citizen #2 pulled off the side of the road several feet behind a white truck which had also stopped.

Citizen #2 saw a Park Service vehicle facing her direction and two males attempting to subdue a black male. Citizen #2 associated the two males with authority figures and said that she saw the taller of the two males spray the black male with a liquid, as the shorter one struggled with the black male. The three men continued to struggle as they crossed the street and headed in her direction. She stayed in her vehicle with the windows rolled up which prevented her from hearing what the group of men were saying. The men ended up on the passenger side of her vehicle where the struggle continued. Citizen #2 stated the black male had a muscular build and he appeared to be strong. Citizen #2 said that the black male was throwing punches at the two other males and was hitting them. Citizen #2 described the black male’s conduct as “handling them.” Citizen #2 said that the two males were attempting to bring the black male under control by taking him to the ground, but they were not successful.

Citizen #2 said the three men eventually left the area of her vehicle and continued to struggle together while headed eastbound from where the altercation started. Citizen #2 said that a dark blue Nevada Highway Patrol vehicle then pulled up and a trooper exited it by the driver’s door. The black male later was able to get behind the wheel which caused Citizen #2 to become concerned for her safety. She saw the shorter male stand in front of the vehicle and fire his weapon through the front windshield of the trooper’s vehicle. Citizen #2 said she then drove off and went to a bank where she notified an employee what transpired. Citizen #2 obtained directions to a nearby police substation where she reported the incident. Blood was discovered on the hood and passenger side of Citizen #2’s vehicle.

Citizen #3

On February 14, 2014, at approximately 1322 hours, Detectives interviewed Citizen #3. He and his wife, Citizen #1, were riding their bikes westbound on State Route 159 towards Red Rock Canyon. Citizen #3 said that he saw a black adult male carrying luggage on the north side of the road and walking westbound. Citizen #3 rode past the subject and looked back to check on his wife who was riding behind him. His wife attempted to ride past the subject and the male reached toward her as if the male was trying to grab her. He saw his wife veer toward the middle of the westbound travel lane to avoid the male. Citizen #3 said he also observed a white truck stop to assist his wife. Citizen #3 and Citizen #1 continued riding to Red Rock and stopped at the East entrance gate and reported what had occurred to a female ranger. Citizen #3 stated the ranger called Metro to report the subject on the side of the road attempting to grab a cyclist. After reporting the information to the ranger, Citizen #3 and Citizen #1 continued riding in Red Rock. When they were riding home they were contacted by BLM Rangers and asked if they could speak with the investigating detective as they were the original 911 callers. Citizen #3 stated neither he nor his wife witnessed the shooting incident.

Citizen #4

Detectives conducted a recorded interview over the telephone with Citizen #4 at approximately 2011 hours on Friday, February 14, 2014. Citizen #4 stated that he was retired and worked as a volunteer at the Red Rock Canyon Visitor Center. Citizen #4 said that he was traveling eastbound toward Las Vegas on State Route 159 at approximately noon when he encountered stopped traffic. He initially believed the traffic was the result of a vehicle accident. He saw a black male adult run around the passenger side of a vehicle with three people chasing him. He recognized the blue uniform of one of the people as belonging to the Nevada Highway Patrol. One of the other two persons was dressed in a brown uniform which Citizen #4 initially mistook for an officer with the Las Vegas Metropolitan Police Department. The third person was dressed in civilian clothing. The three officers had the man against a vehicle and were attempting to handcuff him. He saw one of the officers strike the man in the arm with a baton. The man was able to break away from the officers and ran east toward Las Vegas and Citizen #4 said that he lost sight of them. He heard several shots "a little bit later" and saw two of the officers backing away from something. Citizen #4 turned his vehicle around and went back to the Visitor Center to advise them the road would be closed due to a shooting.

Citizen #5

Detectives conducted an unrecorded interview with Citizen #5 via telephone at approximately 1825 hours on Friday, February 14, 2014. Citizen #5 stated that he was riding his bicycle in the Red Rock Canyon area earlier that day. He was traveling westbound (on SR159) toward the visitor center and saw a white unknown make or model truck stopped on the shoulder facing eastbound on the opposite side of the roadway. A white male adult driver and a black male adult passenger exited the vehicle and were removing luggage from the rear of the truck as he rode by. He looked back as he crested the hill to the west and saw the black male pulling his luggage across to the north side of the roadway as if he was going to hitchhike westbound. Citizen #5 was riding east toward the city approximately 30 minutes later and saw a different white truck stopped on the north side of the road facing west. Two white male adults wearing tan clothing exited the truck and approached the black male. The men ordered the black male off of the road to the graveled shoulder area. The black male did not cooperate and reached into one of his bags instead. Citizen #5 said that he was not able to tell that the truck was an official law enforcement vehicle until he got even with the door and saw the emblem on the door because the lights were not visible from the front. It was not until he looked back as he crested the hill from the east that he saw the red and blue lights of the truck flashing to the rear. He heard what sounded like gunfire a short time later, but thought the shots might have come from the gun range (Desert Sportsman) which he was in front of at the time.

Citizen #6

Detectives spoke with Citizen #6 via telephone at approximately 0837 hours on Saturday, February 15, 2014. This call was not recorded. Citizen #6 stated she and her 23 year old daughter were driving westbound toward Red Rock Canyon shortly before noon the previous day when they saw a black male adult sitting on luggage on the side of the road. There was no one around him at the time. Citizen #6 said she could provide no further information.

Citizen #7

Detectives spoke with Citizen #7 via telephone at approximately 0840 hours on Thursday, February 20, 2014. This call was not recorded. Citizen #7 stated he was riding bicycles with his friend, Citizen #8, on the morning of Friday, February 14, 2014, in the Red Rock Canyon area. They were riding east toward town on the south side of the road (SR159) when he saw a black male adult walking west on the north side of the road between the cattle guard and the turnoff to the campground. The black male was carrying suitcases. Citizen #7 said that the male stopped, raised his arm to point at them and yelled something unintelligible as Citizen #7 passed by

the male. Citizen #7 estimated the time was between 1100 and 1130 hours. He did not see anyone else in the area and had no further information.

Citizen #8

Detectives spoke with Citizen #8 via telephone at approximately 1550 hours on Thursday, February 20, 2014. This call was not recorded. Citizen #8 stated he was riding his bicycle in the Red Rock Canyon area with Citizen #7 on the morning of Friday, February 14, 2014. He was in the lead when they were riding east, returning to the city when he saw a black male adult with luggage on the opposite side of the road (SR159). Citizen #8 waved and the black male waved back. He estimated the time between 1130 and 1200 hours. He thought it was odd to see someone dressed in what he described as street clothes carrying luggage in that area. Citizen #8 said he did not see anyone else around the black male and had no further information.

Citizen #9

Detectives conducted a recorded interview with Citizen #9 via telephone at approximately 1605 hours on Thursday, February 20, 2014. Citizen #9 was driving from the Red Rock Canyon area toward Las Vegas with his girlfriend in his green Chevrolet truck with Colorado license plates at approximately 1145 hours on Friday, February 14, 2014.

According to Citizen #9, he saw two officers with weapons drawn attempting to subdue a black male subject in the middle of the road (SR159) and stopped approximately 200 feet to the west. He said that he saw one of the officers use his pepper spray on the male, but it did not have any effect. The officers and the male started moving toward the truck. Citizen #9 said he rolled the windows on the truck down and heard the officers tell the male several times to get out of the road and put his hands up. The male did not comply. It took several minutes for the officers and the male to travel the distance to Citizen #9's truck. The officer sprayed pepper spray again when they neared the truck; however, the male removed his shirt and used it to block the spray. Citizen #9 said that the spray appeared to have no effect.

Citizen #9 said that he and his girlfriend rolled their windows up. The male attempted to open the driver's door of Citizen #9's truck, but it was locked. The mail jerked on the handle hard enough that Citizen #9 was surprised he did not break off the handle. The officers attempted to grab the male, but the male eluded them and ran around to the passenger side of the truck where he again attempted to open the locked door, again, jerking the handle just as hard. The male then ran to a white car stopped directly behind Citizen #9 and attempted to jerk open their door. The

male was not able to open that door either and the two officers were able to grab him.

The NHP trooper then drove up and stopped his marked patrol vehicle in the roadway in front of Citizen #9. The trooper exited his vehicle quickly and ran to the vehicle behind Citizen #9 where all three officers attempted to subdue the subject. The male was able to throw off all three officers and punch one of them. One of the officers drew his baton and hit the male in the head several times, but this did not seem to have any effect either. The male then broke away from the officers and ran out into the middle of the road. The NHP Trooper drew his Taser and shot it at the male who collapsed in the street then started to get back up almost immediately. The male then ran back across the street in front of Citizen #9 and the Trooper fired his Taser a second time, but it did not appear that the probes stuck and the male ripped the wires off.

The male then ran to the NHP vehicle, opened the driver's door and got into the driver's seat. Citizen #9 could see the male moving around inside but could not see what he was doing. The three officers approached the vehicle; one of them opened the door and all three started yelling orders. The officer standing in front of the patrol vehicle, between Citizen #9's truck and the patrol vehicle, raised his pistol and fired several shots. Citizen #9 could not see whether any of the other officers fired because they were blocked from his view by the open door of the patrol vehicle.

Citizen #9 said he estimated that the time from the point when the male got into the vehicle until the shots were fired was only a few seconds. Citizen #9 stated he believed the black male was a danger to everyone in the area due to the fact he had attempted to gain entry into citizens' vehicles prior to getting into the patrol vehicle which contained weapons. He left when traffic began to move before giving his name to anyone. Citizen #9 also stated the video, which one of the news stations had put online, did not show the full story and he called in to correct it.

Citizen #10

On February 19, 2014, at approximately 1539 hours, Detectives conducted an audio-recorded interview with Citizen #10. Citizen #10 was an employee at Opportunity Village and had just left the job site in the Red Rock Conservation area en route to lunch. He was driving a pickup truck and had two passengers in the vehicle. Citizen #10 was driving eastbound on state route 159 when he stopped for other stopped traffic. Approximately three vehicles ahead of his were two BLM rangers in the in the middle of the roadway. The rangers were trying to apprehend a black male. Citizen #10 said the male was barefoot and wearing basketball shorts and a black tee shirt.

Citizen #10 said the male removed his shirt and held it in front of his face to avoid being pepper sprayed by the rangers. The rangers chased the male to the passenger side of a white vehicle, which was stopped just ahead of Citizen #10. The rangers got into a fight with the male as they tried to take him into custody. A NHP trooper subsequently arrived and assisted the rangers. During the fight, the rangers struck the male with a night stick approximately 3-4 times. Citizen #10 said the male hit one of the rangers and pushed the other ranger off the roadway. The male got away from the officers and ran into the westbound traffic lane where one of the officers tased him. Citizen #10 said he was not sure if the rangers or the trooper fired the Taser.

Citizen #10 said the male fell to the ground after being tased and the incident appeared to be ending. The male then got up from the ground and walked in the direction of the NHP vehicle, which was parked in the eastbound lane facing west. As the male got closer to the NHP vehicle, he sped up. The male opened the driver's door and entered the NHP vehicle. Officers chased the male to the NHP vehicle and actually tried to close the door on him before trying to remove him from the vehicle. The officers subsequently shot the male nine times.

After the shooting, Citizen #10 said that he drove away. He could not see what the male was doing inside the NHP vehicle. He filmed portions of the incident on his smart phone. Citizen #10 said that he never heard any communication between law enforcement personnel and the male during the incident because his car radio was on and his vehicle's windows were rolled up. He believed if the rangers had not done what they did, the rangers risked being run over by the NHP vehicle. Citizen #10 said that he came to the Homicide Office on February 19, 2014, to turn over his videos to homicide detectives. The reason why Citizen #10 had four separate videos was because Citizen #10 turned off his video every time he thought the incident was going to end. He was never instructed to turn off the video by anyone.

Citizen #11

Citizen #11 sent an email to the Office of the Sheriff of what he saw on Friday, February 14, 2014. Detectives spoke with Citizen #11 via telephone at approximately 1440 hours on Thursday, February 20, 2014.

Citizen #11 said he was visiting Las Vegas on a motorcycle trip around Nevada and California. On February 14, 2014, he and his friends decided to ride up to the Red Rock Canyon. After turning onto Hwy 159, Citizen #11 said he saw a man walking on the north side of the road. No other people or cars were on the road at the time. Citizen #11 said the male was carrying at least three bags with him. As

Citizen #11 approached the male, he suddenly threw off all his bags, stopped walking and turned to face the road. The male came out onto the road which caused Citizen #11 to have to move over into the oncoming lane so as to avoid hitting the male. Citizen #11 said he was the second bike to pass the male and Citizen #11 was able to get a good look at the male. Citizen #11 said that he remembered thinking, "man that guy is either high on something or is mentally deranged." Citizen #11 said that the male's face was contorted, evil looking and very scary. Citizen #11 said when he later left the park he headed back to Hwy 215 where he was stopped by the police who had blocked the road. Citizen #11 said he later learned that the man he passed was shot.

Citizen #11 said after viewing video of the incident on the news that he felt compelled to provide this information to show that "this man was obviously very dangerous and intent on hurting people - as he almost did us."

Citizen #12

Detectives spoke with Citizen #12 via telephone at approximately 1528 hours on Thursday, February 20, 2014. This call was not recorded. Citizen #12 stated that she drove out to the Red Rock Canyon area to hike at approximately 1140 hours on Friday, February 14, 2014. She saw a black male adult wearing dark clothing carrying a large dark backpack and pulling a rolling suitcase behind him. The male seemed frustrated and sighed heavily enough so she could see his shoulders shrug as she drove past. Citizen #12 said that she did not see anyone near the male and had no further details to provide to detectives.

Citizen #13

Detectives spoke with Citizen #13 via telephone on Thursday, February 20, 2014. This call was not recorded. He was bicycling alone in the Red Rock Canyon area on the morning of Friday, February 14, 2014. Between 1110 and 1115 hours, Citizen #13 said he rode past two black male adults in a dirty, black or dark blue, older model Sport Utility Vehicle (possibly a Dodge Durango) stopped in the bike lane approximately one half mile west of the turnoff to the campground. The driver stayed behind the wheel. The passenger was bigger than the driver and Citizen #13 saw the passenger pulling luggage out of the back seat of the SUV. The male removing the luggage was approximately 6' to 6'01" and weighed between 200 to 240 pounds. The passenger was also wearing a dark sweat shirt or hoodie and possibly jeans. Citizen #13 said that he had no contact with either of the black males and did not see anyone else in the area.

Citizen #14

Detectives spoke with Citizen #14 via telephone at approximately 1535 hours on Thursday, February 20, 2014. This call was not recorded. She drove out to the Red Rock Canyon area the morning of Friday, February 14, 2014. Citizen #14 said that at approximately 0930 hours, she saw a black male adult pulling luggage while walking westbound on the north side of Charleston Boulevard at Pavilion Center in front of the Olive Garden restaurant. Citizen #14 said that at approximately 1045 hours she again saw the same black male adult digging through his luggage on the north side of the road. The male was west of the bridge over the drainage ditch, which was west of the last houses as one drives out of Las Vegas. Her second sighting of the male was approximately 2 miles west of the first location. Citizen #14 said that she never saw the male interact with anyone and she had no further information.

Citizen #15

Detectives spoke with Citizen #15 via telephone at approximately 1602 hours on Thursday, February 20, 2014. This call was not recorded. Citizen #15 stated he was driving into Las Vegas from his home in Blue Diamond via State Route 159 when he saw a black male adult dragging a rolling suitcase walking westbound on the north sidewalk of Charleston Boulevard. Citizen #15 said that the male was approximately 100 yards east of the street bordering the west side of the westernmost houses of Las Vegas as one travels east toward Red Rock Canyon. The male was alone. Citizen #15 had no further information.

Paramedic #1

On February 14, 2014, at approximately 1420 hours, Detectives interviewed Paramedic #1. Paramedic #1 stated he was working as a paramedic for American Medical Response (AMR) when he was dispatched to the area of State Route 159 before the Red Rock Entrance. This request for medical assistance was in reference a subject who had been shot. Upon his arrival, Paramedic #1 observed a black adult male in the front driver's seat of a marked Nevada Highway Patrol vehicle. The subject was handcuffed with hands in front of him and had sustained multiple gunshot wounds. Paramedic #1 said that he observed several gunshot holes through the front windshield of the vehicle.

He removed the subject from the front seat of the vehicle and laid him on the ground. Paramedic #1 said that he cut the front of the male's shirt and also cut along the sleeves of the shirt to better observe the male's injuries. The male was unresponsive and did not have a pulse. Paramedic #1 said that Clark County Fire Department personnel arrived on scene and placed the male on a heart monitor.

There was no recorded heart activity. Paramedic #1 stated that he observed a gunshot wound to the center of the male's chest, two to his left arm and two to his left abdomen. Paramedic #1 stated the subject was deceased. He covered the male's body with a white sheet and remained at the scene until he was interviewed by the investigating detectives.

Paramedic #2

On February 14, 2014, Detectives interviewed Paramedic #2. He was working as a paramedic for the Clark County Fire Department when he was dispatched to the area of the shooting. Paramedic #2 stated that the original call for service was dispatched as a traffic accident. As Paramedic #2 was en route to the call the incident was later upgraded to an officer involved shooting. Upon his arrival, Paramedic #2 observed a black adult male in the front seat of a marked Nevada Highway Patrol vehicle. The male was unresponsive and was handcuffed with hands in front of him. Paramedic #2 observed blood coming from the male's head and observed that the male had sustained approximately five (5) gunshot wounds to the chest, to the upper left arm and to the left side of his abdomen. Paramedic #2 and the AMR Medic, Paramedic #1, removed the male from the front seat and laid him on the ground. Paramedic #2 said that he hooked the male up to a heart monitor and said that the male had no heart activity and that the subject was deceased. Paramedic #1 cut the front of the male's shirt after it was determined that the subject was deceased. Paramedic #1 covered the body with a white sheet.

Paramedic #3

On February 14, 2014, at approximately 1525 hours, Paramedic #3 was interviewed by Detectives. Paramedic #3 was working as a paramedic in Clark County Fire Department Rescue when he was dispatched to the area of State Route 159 near Red Rock Canyon. Upon his arrival, Paramedic #3 said that he observed a black adult male seated in the front seat of a marked Nevada Highway Patrol Vehicle. The male was handcuffed with his hands in front of him and the male appeared deceased. Paramedic #3 said that he observed several gunshot wounds to the front of the male's chest and abdomen. Paramedic #3 said the male was removed from the vehicle and hooked to a heart monitor. The male had no heart activity. Paramedic #3 stated the male was covered with a white sheet.

Officer Michele Casper

On February 14, 2014, at approximately 1650 hours, Detectives contacted and conducted a taped interview with LVMPD Patrol Officer Casper at the scene. Officer Casper stated she was on routine patrol when she heard a radio broadcast of a 443 (officer needs assistance) in the vicinity of the far west end of Charleston

Boulevard. A short time later, there was an update that shots were fired, at which time Officer Casper immediately went to the scene. When she arrived on scene, she parked her patrol vehicle diagonally so as to block traffic behind a Clark County Fire Department Engine. Officer Casper observed some clothes lying on the ground nearby, and a Bureau of Land Management (BLM) truck parked 50 yards behind her.

Officer Casper said that she walked toward a Nevada Highway Patrol vehicle and saw a black male adult lying on the ground. The male had a thin build and appeared to be in his late 20's to early 30's with short cropped hair and a tattoo on his neck. Officer Casper said that the male was handcuffed in the front and he was wearing a black hoodie that was opened in the front. Officer Casper observed paramedics cut his shirt sleeve to help evaluate his injuries and attend to him. She saw an apparent gunshot wound to the left side of the male's chest, but she did not observe any obvious signs of life. The male was pronounced dead at the scene.

Officer Casper said that she looked around and saw several cartridge cases on the roadway. She took orange cones and placed them by the casings to ensure that they weren't disturbed. Officer Casper was joined by Firefighter #1, who assisted her with locating and placing cones by a Taser cartridge, the blast doors, a baton, a small canister of pepper spray, a pair of handcuffs and blood on the paved street. An unknown BLM officer dressed in plain clothes identified a screwdriver that was allegedly in the possession of the male. While Officer Casper was looking for other potential evidence, additional officers from various other agencies arrived on scene.

After approximately 20 to 25 minutes, Officer Casper was approached by an unknown paramedic, who asked her to stand near the body while they counted the number of his gunshot wounds. Officer Casper observed the medical personnel pull back a white sheet that had been used to cover the body. One of the paramedics counted a total of five gunshot wounds: one to the chest; two to the upper left arm; and two on the lower left torso. Officer Casper said that these last two injuries were only visible after the paramedic lifted the black male's handcuffed hands away from his body.

Officer Carl Boehmer

Detectives conducted a recorded interview with Officer Boehmer at the scene on February 14, 2014, at approximately 1538 hours. He worked as a resident officer. Officer Boehmer said that part of his area of responsibility was patrolling the areas of Blue Diamond and Red Rock Canyon. He responded to a call for assistance by another agency where BLM park rangers were out with an uncooperative black male

adult. Officer Boehmer said that he works with the federal park rangers in Red Rock Canyon on a regular basis and knew they usually worked alone.

Officer Boehmer responded to the area with lights and sirens activated from a location near SR160 and Interstate 15. He was traveling west on SR160 to SR159 and approached the scene from the west. Officer Boehmer said that en route to the call he received an update that shots had been fired and the suspect was down. When Officer Boehmer arrived on scene, he saw medical personnel working on a black male. He also saw a Nevada Highway Patrol Expedition with several bullet holes in its windshield. Officer Boehmer said that he spoke with an NHP Sergeant about separating the involved officers. He then retrieved some small orange cones used to mark evidence from his patrol truck. He gave some of the cones to LVMPD Officer Casper. Officer Boehmer said that he and Officer Casper marked evidence as they found it. He spoke with the two BLM officers and confirmed they had both fired their service weapons. Officer Boehmer said that he heard one of the officers ask if someone had found "the screwdriver." Officer Boehmer advised LVMPD Dispatch there were two different agencies involved in the shooting and requested they begin the notification process. He then started a rough incident log/roster.

Decedent's Mother

Officers made contact with Decedent's mother via telephone. This conversation was not recorded. Decedent's mother reported that Decedent came to Las Vegas via bus on February 13, 2014, and was scheduled to arrive at approximately 1800 at the Bally's bus depot. Decedent's brother, who lives in Henderson, was scheduled to pick him up at the bus depot; however, Decedent's brother was not able to find him and left the bus depot without him. Decedent had lived in the Las Vegas valley as a child, but was unfamiliar with the city geographically. Decedent apparently had Decedent's mother's cell phone, but there were no current minutes on the phone so the phone was not a useful communication tool for him. Decedent was sent to live in Las Vegas with his brother in hopes Decedent could attain a construction job. Decedent's mother gave Decedent her debit card, but there was not much money in the account. Decedent's mother said she looked at the card on-line to see if the card had been used since no one had heard from Decedent. Her son had used her debit card to make a purchase in the amount of \$1.34 at an AM/PM located at 6102 W. Flamingo Road during the morning of February 14, 2014. A sales receipt for that amount from that location time stamped at 0313 hours on February 14, 2014, was found in Decedent's luggage.

Detectives responded to the ARCO AM/PM located on the northwest corner of W. Flamingo Road and S. Jones Boulevard on Wednesday, February 19, 2014. Detectives learned that the video security system was not working properly and kept rebooting every few minutes. An employee told detectives the system had been

working properly until the day before and that the system recorded video onto an external hard drive. The hard drive, however, was locked and detectives were unable to view any video from the operating system. Detectives requested a technician from the LVMPD Forensic Video Laboratory respond and recover video showing events before and after 0313 hours on February 14, 2104, in the hopes of obtaining footage of Decedent inside the store. Ultimately it was determined that the surveillance system was not operating at the time Decedent made the purchase so no video was recovered.

Surveillance Operator #1

Decedent's mother reported to police that she had dropped Decedent off at a bus station located at 767 Maple Street in downtown Los Angeles to catch the 1:00 p.m., American Lion bus to Las Vegas on Thursday, February 13, 2014. Decedent was supposed to get off the bus at Bally's Hotel & Casino at 6:45 p.m. and get picked up by his older brother. The brother apparently was looking for a Greyhound bus and did not meet up with Decedent. Detectives contacted Surveillance Operator #1 in the surveillance department of Bally's Hotel & Casino on Thursday, February 20, 2014, via telephone. Surveillance Operator #1 stated he would save the video for February 14, 2014, and review it for Decedent. Detectives emailed Surveillance Operator #1 a description of Decedent, a black and white photo from his CA identification card and a color photo of his luggage. Surveillance Operator #1 said he would call detectives if he located anything on the video. Detectives subsequently followed up with Surveillance Operator #1 and learned that there was no video showing the bus drop off location. Surveillance Operator #1 did say, however, based on the video he reviewed, that Decedent did not enter the casino.

VI. OFFICER INVOLVED STATEMENTS:

BLM AGENT

On February 19, 2014, at approximately 1407 hours, Detectives conducted a recorded interview with BLM Agent. According to BLM Agent, he was working with BLM Ranger and riding in the passenger seat when they were dispatched to the call on February 14, 2014. BLM Agent stated he could not hear the details of the call over the radio. BLM Ranger informed BLM Agent that they were heading to an assault of a female cyclist. As they arrived on scene, BLM Ranger told BLM Agent the black male on the side of the road was the person described in the call. BLM Agent observed the male, later identified as Decedent, standing near several bags on the side of the road. BLM Agent lifted his shirt to expose his firearm and display his Bureau of Land Management badge attached to a chain around his neck. BLM Agent asked Decedent to step away from the bags and also asked for Decedent's identification.

According to BLM Agent, Decedent would not identify himself. Decedent did later state his name was "Isaiah Pee." Decedent would not keep his hands out of his pockets. BLM Agent said he noticed a large bulge in Decedent's right front pants pocket and asked Decedent to keep his hands out of his pockets. BLM Ranger asked Decedent if there was anything they could do for him. Decedent asked for water. BLM Agent stated that BLM Ranger gave Decedent water and, noticing Decedent was standing next to traffic on the fog line, directed him to get out of the road.

BLM Agent then asked Decedent to stand in front of the Ranger vehicle, but Decedent refused saying, "I don't want you behind me." BLM Agent then attempted to talk Decedent out of the roadway. Decedent would not comply and stated, "I don't want to be here, I want to leave." BLM Ranger informed Decedent that he was not free to leave because the officers were there to investigate an assault and they needed to talk to him. Both BLM Agent and BLM Ranger then moved toward Decedent who had walked into the roadway. BLM Agent saw Decedent pull a screwdriver from his pocket. BLM Agent immediately drew his firearm keeping it at the low ready. BLM Agent gave several commands for Decedent to drop the screw driver, which Decedent refused. BLM Agent told Decedent to drop the screwdriver or he would shoot him. Decedent then placed the screwdriver onto the ground. BLM Agent then gave Decedent several commands to get onto the ground. BLM Agent said that Decedent began to get down, but started moving back towards the screwdriver. BLM Agent said that he ran towards the screwdriver and kicked it away into the gravel. Decedent still did not comply with BLM Agent's commands to get down and BLM Agent described this interaction as "like a dance."

During this interaction, BLM Ranger had his Taser displayed. BLM Agent instructed BLM Ranger to tase Decedent. BLM Ranger deployed his Taser towards Decedent. BLM Agent said he believed BLM Ranger had achieved good contact with the Taser probes and Decedent. According to BLM Agent, BLM Ranger deployed his Taser twice on Decedent. This Taser deployment did not appear to have any effect on Decedent.

According to BLM Agent, Decedent stated, "You better be ready to end this here today, just shoot me in the head." After Decedent made that statement, Decedent appeared to be getting down; however, Decedent then said, "Shoot me in the head, don't shoot me in the back when I'm down." At that point Decedent stood back up and BLM Ranger pepper sprayed Decedent. Decedent then removed his shirt and used it to block the pepper spray. BLM Ranger and BLM Agent both continued to use pepper spray on Decedent, but BLM Agent said it had "zero effect" as the group continued to move westbound in the travel lanes of SR159.

BLM Agent said he then saw Decedent heading toward citizen vehicles. BLM Agent began yelling at Decedent, "Dude, you gotta stop. You gotta stop right now." BLM Agent said that Decedent then took off for one of the citizen's vehicles which had stopped in the eastbound lanes of travel and grabbed the door handle. BLM Agent witnessed Decedent attempt to enter two different vehicles by pulling on the door handles. BLM Agent attempted to stop Decedent, but was thrown off. BLM Agent said he "chucked" his pepper spray and struggled with Decedent as he continued to attempt to stop him from entering the vehicles. BLM Agent said that he was worried that Decedent would kill BLM Agent if Decedent was able to get BLM Agent's gun.

According to BLM Agent, he knew the NHP Trooper had arrived on scene, but BLM Agent did not see him pull up. BLM Agent heard Trooper Schwarzrock call for assistance then saw Decedent partially on the ground by the north shoulder of the roadway. BLM Agent ran to that location and saw that Decedent was being tased. BLM Agent grabbed Decedent's right arm and placed it to his head. BLM Agent noticed Decedent's head was soaked in blood. At that point, Decedent broke free and managed to get back onto his feet and run towards the NHP vehicle. BLM Agent thought Trooper Schwarzrock attempted to Taser Decedent again, and BLM Agent heard Decedent say, "I'm going to get your gun and shoot you." BLM Agent said he then saw Decedent get into the driver's seat of the NHP Vehicle, and BLM Agent thought Decedent was about to put the vehicle into drive. BLM Agent saw the rifle next to Decedent. BLM Agent was standing in front of the vehicle approximately 10 feet away. He felt he had to stop Decedent because he could not let Decedent drive off in the NHP vehicle. BLM Agent said that he felt Decedent could hit him or a citizen with the vehicle. He was also concerned that Decedent could gain access to the rifle in the vehicle and shoot them. BLM Agent advised Decedent that BLM Agent was going to shoot. BLM Agent believed that he shot seven times through the front windshield.

BLM RANGER

On February 19, 2014, at approximately 1353 hours, Detectives conducted a recorded interview with BLM Ranger at LVMPD Police Headquarters located on 400 S. Martin L. King Blvd Las Vegas, NV. According to BLM Ranger, he was operating as a two man unit with BLM Agent on February 14, 2014, when they were dispatched to the area of SR159/Moenkopi Road in reference to a female bicyclist who wanted to file a police report for an assault. Dispatch advised the suspect was a black male carrying luggage.

BLM Ranger stated he had seen a male earlier in the day carrying luggage into the conservation area, towards Red Rock, and he was familiar with the description of the male. Due to poor radio reception in the area, however, BLM

Ranger called into dispatch to get additional information and clarification on the call. While driving to the area of the call, BLM Ranger said that he observed a black male adult with luggage on SR159/ Moenkopi Road. BLM Ranger activated his emergency lights to his vehicle, a marked emergency Ranger vehicle equipped with emergency overhead lights and emergency lights in the taillights.

BLM Ranger exited his vehicle wearing his Ranger uniform with a gun belt and approached Decedent. BLM Ranger observed Decedent immediately reach into his luggage. BLM Ranger asked Decedent if he would come over to the side of the road and talk with BLM Ranger. Decedent did not respond initially and continued to reach inside his luggage. BLM Ranger said he continued to talk to Decedent, trying to persuade him over to BLM Ranger's location and away from the busy roadway. Decedent was standing on the fog line with vehicles driving past only inches away.

BLM Ranger said that he asked Decedent what he could do for him and attempted to get Decedent to talk with BLM Ranger. Decedent asked for water, which BLM Ranger provided from his vehicle. BLM Ranger said he asked Decedent to walk to the side of the road. BLM Ranger observed a large bulge in Decedent's pocket and asked Decedent if he had anything that would poke or stick BLM Ranger. Decedent did not respond to his question. BLM Ranger then asked if he could pat Decedent down. Decedent refused a pat down request.

BLM Ranger next asked Decedent for his identification and Decedent began to move towards his luggage. BLM Ranger asked Decedent not to go into his luggage, but just to verbally give BLM Ranger Decedent's information. Decedent gave BLM Ranger the name of "Isiah Pee" which BLM Ranger felt was a false name since Decedent took several seconds thinking about his name when asked. Decedent told BLM Ranger he did not want anything to do with him and he was going to walk on. BLM Ranger informed Decedent he was there to investigate an assault and that Decedent matched the description of the suspect. BLM Ranger told Decedent he would be detained if he attempted to leave. BLM Ranger asked Decedent for his cooperation. BLM Ranger informed Decedent that if he did not cooperate, he would be handcuffed due to the location and his proximity to the roadway with moving vehicles. Because Decedent would not cooperate, BLM Ranger made the determination that he was going to handcuff Decedent due to Decedent being a danger to himself in the roadway, as well as a danger to passing motorists.

When BLM Ranger and BLM Agent moved forward toward Decedent, Decedent took a step back into traffic forcing vehicle traffic to move into the oncoming lane to avoid striking Decedent. BLM Ranger continued to talk with Decedent asking him to move to the side of the road. As BLM Ranger again moved

toward Decedent, in an attempt to place Decedent into handcuffs, Decedent pulled what appeared to be a yellow screwdriver from his pocket.

BLM Ranger drew his Taser and BLM Agent drew his firearm. Both officers pointed their weapons at Decedent. BLM Ranger instructed Decedent to drop the screwdriver and to get down on the ground. BLM Ranger told Decedent that if he did not comply with the agent's commands that BLM Ranger intended to utilize the Taser on Decedent. When Decedent did not comply, BLM Ranger fired his Taser at Decedent.

BLM Ranger stated that he noticed Decedent did not lock up; he only winced for five seconds. Decedent dropped the screwdriver, but would not comply with BLM Ranger's commands to get on the ground. BLM Ranger said that he fired his Taser a second time, but noticed once again that Decedent did not lock up. Instead, Decedent spun while on his feet breaking the leads to the Taser cartridge. After the second tasing, Decedent went down to his knees. BLM Ranger said that he noticed Decedent was again in close proximity to the screwdriver on the ground. BLM Agent kicked the screwdriver away. Decedent again got back onto his feet.

As Decedent began to walk westbound in the lanes of travel, Decedent stated to BLM Ranger, "Are you ready to end it? You're going to have to end it today." BLM Ranger took that to mean Decedent wanted them to kill him or he was going to try and kill one of them. BLM Ranger then deployed his pepper spray while BLM Ranger, BLM Agent and Decedent continued to walk westbound. BLM Ranger said that the pepper spray had no effect on Decedent. As they continued to walk westbound, BLM Agent also deployed his pepper spray towards Decedent. Decedent then took off his shirt and wrapped the shirt around his wrist to block the pepper spray while BLM Ranger and BLM Agent attempted to pepper spray Decedent.

BLM Ranger continued to give Decedent commands as they continued to walk westbound in the travel lanes. BLM Ranger observed several vehicles stopped in the eastbound lanes of travel and saw Decedent walking towards these vehicles. BLM Ranger observed Decedent attempt to get into two occupied stopped vehicles by attempting to open the vehicle doors. BLM Ranger said that he now felt Decedent might attempt to carjack one of the vehicles. BLM Ranger felt he was in a deadly force scenario. BLM Ranger utilized his straight baton striking Decedent in the head in an attempt to stop him from entering the vehicles. While struggling with Decedent, BLM Ranger stated he was struck by Decedent in the face. BLM Ranger then observed NHP Trooper Schwarzrock arrive on scene and told Trooper Schwarzrock to tase Decedent. BLM Ranger said he had already used his Taser cartridge and was out of additional cartridges. After Trooper Schwarzrock deployed

his Taser, BLM Ranger noted the Taser was only effective for a moment. Decedent jumped right back up, leaving them no opportunity to take him under control.

BLM Ranger said that he saw Decedent then run to the NHP vehicle and all three officers struggled with Decedent in an attempt to keep him from entering the driver's side door of the vehicle. Despite their efforts, Decedent was able to get inside the NHP vehicle. At this point, BLM Ranger was standing on the east side of Trooper Schwarzrock's vehicle at the open driver's side front door. BLM Ranger said he observed the AR15 inside the vehicle and saw Decedent attempt to put the vehicle into drive as BLM Agent was standing in front of the vehicle. BLM Ranger was thinking about Decedent being in a two ton vehicle with an AR15 rifle inside the vehicle. BLM Ranger was also concerned about the citizens around the vehicle and BLM Agent standing in front of the NHP vehicle.

Decedent was now in the driver's seat with the vehicle running. BLM Ranger said he felt he needed to stop the threat at that moment before Decedent was able to access the firearm or to run over BLM Agent with a police vehicle. BLM Ranger stated BLM Agent discharged his weapon first, and then he fired five or six times at Decedent through the open door.

After the shooting, BLM Ranger and Trooper Schwarzrock handcuffed Decedent, with his hands in front of him. BLM Ranger and Trooper Schwarzrock broadcast that there had been shots fired, on their respective radio channels, and requested medical assistance. BLM Ranger stated the handcuffs south of the NHP vehicle in the dirt were his handcuffs.

TROOPER SCHWARZROCK

On February 20, 2014, Detectives conducted an interview with Nevada Highway Trooper Lucas Schwarzrock. According to Trooper Schwarzrock, on February 14, 2014, he was working as marked patrol unit 6378 and was dressed in his class-B uniform consisting of blue trouser pants and blue short sleeved uniform shirt with Nevada Highway Patrol patches. He also wore his duty belt, a Nevada Highway Patrol badge and a name tag. Schwarzrock was driving his normal patrol vehicle which was a NHP marked 2007 Ford Expedition. This vehicle had a light bar on the roof of the car, as well as NHP emblems on the both doors and the words "Highway Patrol" on the tailgate. Inside the Trooper's vehicle was a NHP issued AR-15, with 28 rounds in the magazine, and a NHP issued Remington 870 Wingmaster shotgun, with four rounds. Neither the AR-15 nor the shotgun had a round in the chamber. Both the AR-15 and shotgun were locked into their positions when Schwarzrock arrived to assist BLM Ranger and BLM Agent on February 14, 2014.

Trooper Schwarzrock said he was on his lunch break when he received a call from NHP dispatch asking him to respond to a call regarding a pedestrian harassing bicyclists on State Route 159 near mile marker 11. Schwarzrock further stated that dispatch informed him the pedestrian tried to grab a cyclist and the cyclist had to swerve off the road onto the shoulder to avoid the subject.

Trooper Schwarzrock said when he arrived in the area he was heading west on SR159. Trooper Schwarzrock saw a line of cars heading West on 159 and, as he looked further west, he saw objects in the road and a white ranger vehicle with its lights activated. Schwarzrock said that he initially believed there was an accident in the area so he called out a Code 1050, the 10 code for accident, on his radio. Schwarzrock activated his lights to pass on the right shoulder through the traffic in order to assist.

As Trooper Schwarzrock was looking for a location to park his vehicle, however, he observed two BLM officers struggling in a fight with a person in the eastbound lanes of travel near a dark colored SUV. Trooper Schwarzrock said that one of the officers had used his pepper spray discharging it towards the person. Trooper Schwarzrock said that he exited his vehicle, which was still running and unlocked, and ran to the location of the officers. Trooper Schwarzrock observed the suspect, later identified as Decedent, with his arms around one of the BLM officers. Schwarzrock told Decedent several times to let go of the ranger. Decedent did not comply. Schwarzrock said that he heard Decedent saying, "Shoot me, shoot me!" Schwarzrock then observed one of the BLM officers pull his straight baton and strike Decedent in the back of the head several times without effect.

Trooper Schwarzrock said that he then pulled out his Taser, gave a warning of, "Taser, Taser!" and discharged his Taser at Decedent. Schwarzrock observed the Taser to have some effect on Decedent and that he fell to the ground. While attempting to handcuff Decedent under the power of the Taser, Trooper Schwarzrock said he continued to press the trigger of the Taser while instructing the rangers to get Decedent into cuffs. Decedent said, "No more Taser, no more Taser!" Decedent was able to get back onto his feet and Schwarzrock reloaded his Taser discharging it again toward Decedent. This deployment had no effect.

Trooper Schwarzrock saw Decedent run to the driver's side front door of his police vehicle and get into the driver's seat. Trooper Schwarzrock went to the driver's door and attempted to pull Decedent out of the driver's seat. While in this position, Trooper Schwarzrock saw Decedent attempt to grab Trooper Schwarzrock's AR-15 rifle from the gun rack of the vehicle. Trooper Schwarzrock stated Decedent also attempted to punch him. Trooper Schwarzrock pulled back from the cab of the vehicle to avoid the punch and he saw the barrel of one of the

BLM officer's guns to his right. Trooper Schwarzrock backed up and heard several gun shots as the two BLM officers discharged their guns.

Trooper Schwarzrock then holstered his firearm, never firing a shot, and broadcast over his radio that shots had been fired. Trooper Schwarzrock and BLM Ranger then handcuffed the suspect with his hands in front of him. Trooper Schwarzrock said that he did not remove Decedent from the vehicle.

VI. TIMELINE OF INCIDENT:

- 11:06 An employee from the Red Rock Visitor center called the BLM Dispatch to report a disoriented African American Male hitchhiking one mile from the Red Rock entrance station. The employee further advised that the male was apparently stepping out into the roadway and that the male had suitcases with him.
- 11:42 Red Rock Station called BLM Dispatch again to report that the black male had almost assaulted a cyclist. BLM Dispatch contacted Ranger 342 who in turn advised dispatch to contact the Las Vegas Metropolitan Police Department (LVMPD).
- 11:43 BLM Ranger advised he was having radio problems. BLM Officer #2 and BLM Agent were in the water detention basin. BLM Ranger said they would be en route to the call, but he would be calling into dispatch for more information.
- 11:44 BLM Ranger called dispatch and was given the details of the call. BML Dispatch told BLM Ranger that the person reporting wanted to file a police report related to the assault. BLM Ranger again advised they were en route.
- 11:46 Nevada Highway Patrol (NHP) received information reference a black male adult who was on foot heading westbound on SR159/mm 11. The male had apparently tried to grab a female who had swerved into the rocks to avoid him. NHP dispatched Trooper Schwarzrock who was located at 215 and Sunset.
- 11:48 BLM Ranger advised that he and BLM Agent were out with the male at SR159/Moenkopi Road.**
- 11:58 BLM Ranger advised he had the male at gunpoint and requested immediate assistance.

- 12:00 BLM Dispatch contacted the LVMPD. LVMPD initiated a call in reference to the request for assistance. BLM Dispatch further reported that the BLM rangers had a disorderly male who had battered a female at gunpoint.
- 12:04 BLM Ranger advised that shots had been fired.**
- 12:04 Nevada Highway Patrol Trooper advised his dispatch shots had been fired.
- 12:07 Units arrived on scene and advised that the subject was down and they requested that a supervisor and the LVMPD units respond. During the LVMPD and BLM Dispatch communication, LVMPD received the update that an officer involved shooting had occurred and a suspect was down. LVMPD Communications called for medical assistance.

VII. OFFICER/SUSPECT WEAPON COUNTDOWNS

OFFICER: TROOPER LUCAS SCHWARZROCK

FIREARM: SIG SAUER

MODEL: P229

CALIBER: .40

NIGHTSIGHTS

SERIAL #: NHP512

COLOR: BLACK

Condition carried prior to event: (12) in magazine and (1) in chamber.

Condition at time of countdown: (12) in magazine and (1) in chamber.

Two additional magazines: both had (12) rounds.

The Trooper did not carry a backup weapon.

The Trooper's Taser was missing from his duty belt.

OFFICER: BLM Ranger

FIREARM: SIG SAUER

MODEL: P229

CALIBER: .40

NIGHTSIGHTS

SERIAL #: AM19607

COLOR: BLACK
TAZER MODEL: X26
SERIAL #: XOO-451123

Condition carried prior to event: (12) in magazine and (1) in chamber.

Condition at time of countdown: (6) in magazine and (1) in chamber.

Number of rounds missing as a result of the countdown (6).

Two additional magazines: both had (12) rounds.

BLM Ranger did not carry a backup weapon.

BLM Ranger used his X26 Taser which was impounded.

BLM Ranger was missing a straight expandable baton and one pair of handcuffs at the time of his countdown.

OFFICER: BLM Agent

FIREARM: SIG SAUER
MODEL: P239
CALIBER: .40
NIGHTSIGHTS
SERIAL #: SA4-79538
COLOR: BLACK

Condition carried prior to event: (7) in magazine and (1) in chamber.

Condition at time of countdown: (0) in magazine and (1) in chamber.

Number of rounds missing as a result of the countdown (7).

One additional magazine: contained (7) rounds.

BLM Agent did not carry a backup weapon.

TASER DOWNLOADS:

On February 25, 2014, at approximately 1526 hours, Trooper Schwarzrock's Taser model #X26P, serial # X12000709 was downloaded at Police Headquarters located on 400 S. Martin L. King Blvd LVN. Trooper

Schwarzrock's Taser showed the following operations for February 14, 2014:

- 14 Feb 2014 11:50:36, armed.
- 14 Feb 2014 11:50:37, trigger activated, duration: 12 seconds.
- 14 Feb 2014 11:50:54, trigger activated, duration: 5 seconds.
- 14 Feb 2014 11:50:59, trigger activated, duration: 7 seconds.
- 14 Feb 2014 11:51:14, trigger activated, duration: 3 seconds.
- 14 Feb 2014 11:51:16, safe, duration: 40 seconds.
- 14 Feb 2014 12:20:38, power safe mode.

On February 25, 2014, at approximately 1537 hours, BLM Officer #2's Taser, model X26, serial #X00-451123 was downloaded at Police Headquarters located on 400 S. Martin L. King Blvd LVN. BLM Officer #2's Taser showed the following operations for February 14, 2014:

- 14 Feb 2014 11:57:42, trigger activated, duration: 5 seconds.
- 14 Feb 2014 11:57:45, trigger activated, duration: 3 seconds.

NOTE: The times recorded from the Taser downloads came from the devices themselves. Discrepancies in these times compared with the arrival and call times of the officers are likely due to the fact that the Tasers were not synchronized with each other and were not calibrated to the actual time of day.

VIII. FIREARM EXAMINATION

On March 17, 2014, an LVMPD Forensic Laboratory Examination Request was submitted on the officer's firearms for a function test, and a comparison with the firearms to the related ballistic evidence.

On June 16, 2014, an LVMPD Firearms & Tool marks Report reported the following results:

A. CARTRIDGE CASE EXAMINATION

<u>LAB ITEM #</u>	<u>IMPOUND ITEM #</u>	<u>DESCRIPTION</u>
5	33	"WIN" .40 S&W cartridge case
6	34	"WIN" .40 S&W cartridge case
7	35	"WIN" .40 S&W cartridge case
8	36	"WIN" .40 S&W cartridge case
9	37	"WIN" .40 S&W cartridge case

10	38	“WIN” .40 S&W cartridge case
11	39	“WIN” .40 S&W cartridge case
12	40	“WIN” .40 S&W cartridge case
13	41	“WIN” .40 S&W cartridge case
14	42	“WIN” .40 S&W cartridge case
15	43	“WIN” .40 S&W cartridge case
16	44	“WIN” .40 S&W cartridge case

B. BULLET COMPARISON

<u>LAB ITEM #</u>	<u>IMPOUND ITEM #</u>	<u>DESCRIPTION</u>
17	45	Bullet – In the shoulder, south of the roadway, approximately 355’8” west of and 6” south of the south edge of the road, directly across from a road sign in the north shoulder, approximately 2,530’ east of Monenkopi Rd.
18	13	Metal fragment - On the seat cushion of the front/left seat
19	15	Bullet - On the floor in front of the front/right seat
20	16	Bullet - Embedded into the “B” pillar on the left side
21	17	Bullet- On the raised center portion of the floor in front of the seat
22	60	Bullet – Decedent’s right arm
23	61	Bullet – Decedent’s left mid back
24	62	Bullet – Decedent’s left armpit
25	63	Bullet – Decedent’s stomach
26	64	Bullet – Decedent’s left shoulder
27	65	Bullet – Decedent’s left armpit

28	66	Bullet – Decedent’s spine
29	14	Metal fragment – On the center portion of the front seat

FIREARMS:

The Sig Sauer Model 229, BLM Ranger’s pistol, was examined, test fired and found to be operational. BLM Ranger’s pistol had a barrel length of approximately 3 7/8 inches, an overall length of approximately 7 1/8 inches and trigger pulls of 4 ¼ - 4 ¾ pounds single action and 8 ¾ - 9 pounds double action. The submitted magazine had a capacity of twelve cartridges.

The Sig Sauer Model 239, BLM Agent’s pistol, was examined, test fired and found to be operational with no noted malfunctions. This pistol had a barrel length of approximately 3 5/8 inches, an overall length of approximately 6 ¾ inches and trigger pulls of 4 ½ - 4 ¾ pounds single action and 8 ¾ - 9 pounds double action. The submitted magazine had a capacity of seven cartridges.

BULLET, CARTRIDGE CASES AND FRAGMENTS:

The evidence cartridge cases and bullets were examined and microscopically compared to the test fired cartridge cases and bullets with the following results.

- The five cartridge cases (Lab Items 5, 6, 7, 8, & 9) were identified as having been fired by the submitted Sig Sauer Model P229 pistol belonging to BLM Ranger. These items were located just behind and to the south of the NHP vehicle in and near the east bound bike lane.
- The remaining seven cartridge cases (Lab Items 10-16) shared a similar general overall appearance and some limited corresponding microscopic information with the test fired cartridge cases from the submitted Sig Sauer Model P239 pistol belonging to BLM Agent. These items were located just in front of and to the south of the NHP vehicle in and near the east bound bike lane.
- The bullet (Lab Item 17) was identified as having been fired from the Sig Sauer Model 239 pistol belonging to BLM Agent. This item, as specifically described above, was located just south of the NHP vehicle’s driver’s side door at the boarder of the east bound bike lane and the desert.

- The remaining bullets (Lab Items 18-29) displayed no markings of value for microscopic comparisons. These items were recovered from either the NHP vehicle or the body of Decedent as described above in Section VIII-B labeled “Bullet Comparison.”

IX. SUMMARY:

On February 14, 2014, at approximately 1112 hours, BLM Agent and BLM Ranger, along with NHP Trooper Schwarzrock, were involved in a fatal officer involved shooting which occurred inside of the Red Rock National Park area. The officers had responded to a call concerning a black male adult who was harassing bicyclists on the roadway of SR159 and who had attempted to grab a female bicyclist.

When contacted by the BLM officers, Decedent became uncooperative and resisted officers using a screwdriver Decedent had produced from his pants pocket. BLM Ranger then deployed a Taser as BLM Ranger and BLM Agent attempted to restrain Decedent. After the Taser failed to gain Decedent’s compliance, BLM Ranger and BLM Agent deployed their pepper spray while continuing to attempt to restrain Decedent. After being sprayed, Decedent fled from officers and ran toward vehicles occupied by citizens who had stopped their vehicles in the roadway.

Decedent attempted to gain access to two citizen vehicles while being pursued by BLM Ranger and BLM Agent and yelled, “Are you ready to end it here today?” BLM Ranger and BLM Agent once again attempted to take Decedent into custody and prevent him from entering the occupied vehicles. At this point, NHP Trooper Schwarzrock arrived and tried to assist BLM Ranger and BLM Agent in the physical altercation with Decedent. While struggling with Decedent, Trooper Schwarzrock heard Decedent telling officers to shoot him. BLM Ranger then deployed his expandable straight baton and began striking Decedent. Decedent appeared to be unaffected by the baton strikes, so Trooper Schwarzrock again attempted to tase Decedent, but he did not appear to be effected by the tasing.

After being tased, however, Decedent ran to Trooper Schwarzrock’s patrol vehicle and stated, “I’m going to get your gun!” Decedent entered the driver’s seat of the NHP patrol vehicle and attempted to remove an AR-15 rifle from within the vehicle. Both BLM Agent and BLM Ranger discharged their handguns striking Decedent in part because they feared that Decedent would either run over BLM Agent, who was standing in front of the NHP vehicle, or would endanger citizens in the immediate area. In addition, because of Decedent’s proximity to firearms inside of the NHP vehicle and because of Decedent’s attempts to access those weapons, the officers reasonably believed that deadly force was required to neutralize the threat posed by Decedent.



Immediately following the last physical interaction with the officers where Decedent was on the ground, he was able to get up and run from the officers. Decedent then turns and takes a few steps back toward the officers.



Decedent says, "No more Taser, no more Taser, I'll take your fucking gun."



Decedent then turns and immediately runs toward the NHP vehicle.



Decedent runs toward the driver's side door of the NHP vehicle.



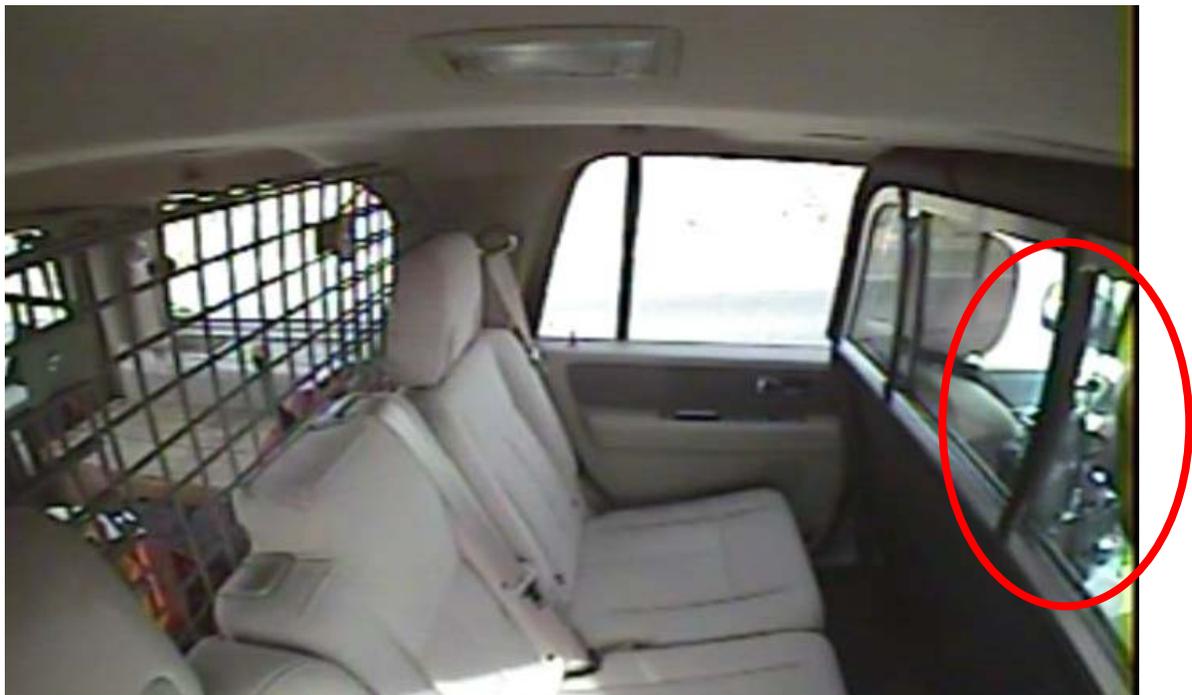
Trooper Schwarzrock pursues Decedent. (Schwarzrock's Taser is in his right hand)



BLM Agent follows Decedent and Trooper Schwartzrock in pursuit of Decedent. BLM Agent sees Decedent getting into the NHP vehicle and begins to draw his firearm.



BLM Agent, with his weapon drawn, but not pointed at Decedent, observes Decedent get in the driver's seat of the NHP vehicle and Trooper Schwartzrock attempt to remove Decedent from the vehicle.



Inside the NHP vehicle (view from the rear driver's side), the red circle depicts the location of the AR-15 rifle in its carriage as Decedent enters the vehicle. (Note: the photos from this perspective are reversed mirror images)



The red arrow depicts the orientation of the AR-15 rifle as Decedent enters the NHP vehicle. (Barrel end in the direction of the arrow)



The red arrow points to the locking carriage of the AR-15 as Decedent enters the NHP vehicle.



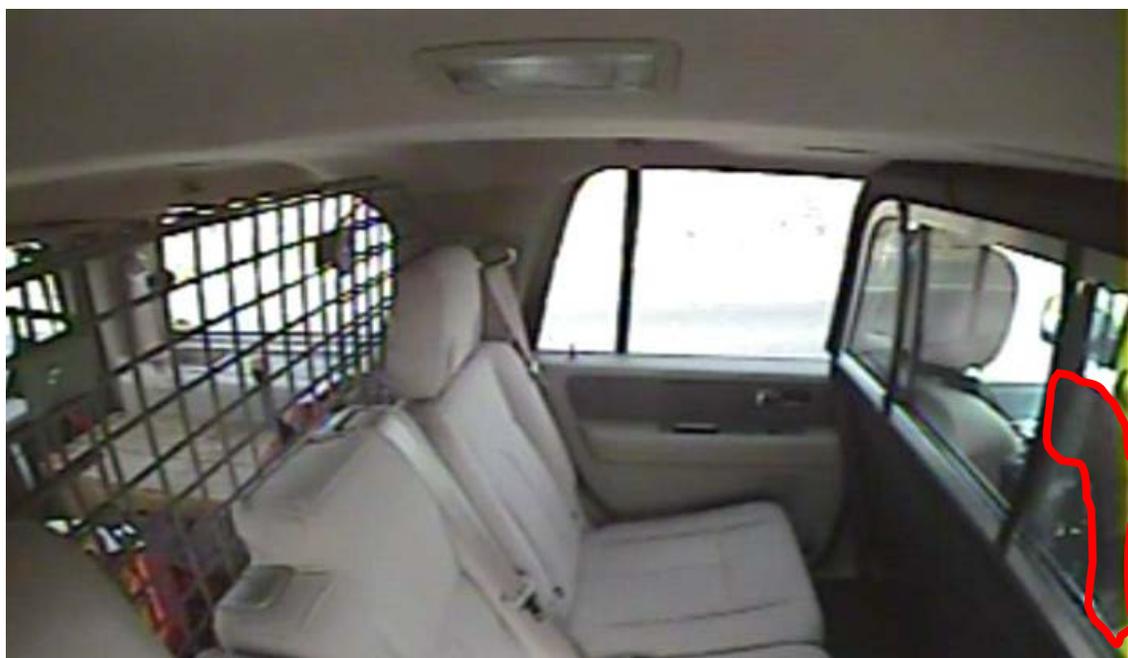
The red circle depicts Decedent's hand reaching for the AR-15. BLM Agent is in front of the vehicle with his weapon drawn, but not pointed at Decedent. BLM Ranger and Trooper Schwartzrock are at the driver's side door of the vehicle at this moment.



The top red arrow shows Decedent grabbing the barrel of the AR-15 and attempting to pull it out of its carriage. The bottom arrow shows the position of the AR-15's locking carriage.



The bottom red arrow show the AR-15's locking carriage move forward slightly as Decedent attempts to pull the AR-15 forward. The top red arrow shows Decedent's left hand around the barrel of the AR-15.



The red outline shows Decedent's left arm with his hand attempting to pull the AR-15 forward. **The time between this movement by Deceased and the shots fired by BLM Ranger and BLM Agent was less than three seconds.**

After being shot, Decedent succumbed to his injuries on scene and was pronounced deceased by responding medical personnel. During the investigation, detectives discovered that officers used verbal commands, open hand restraint techniques, pepper spray, an expandable straight baton and a Taser multiple times prior to the use of deadly force in an attempt to restrain Decedent and place him into custody.

Despite BLM Agent, BLM Ranger and Trooper Schwarzrock's repeated attempts to subdue Decedent, the officers' efforts were unsuccessful. When Decedent verbalized his intentions to retrieve a firearm, went to Trooper Schwarzrock's vehicle, and then gained access to that vehicle, the officers used deadly force to protect themselves and the nearby citizens.

X. FOLLOW-UP INVESTIGATION AFTER MEETING WITH A REPRESENTATIVE OF THE FAMILY

A meeting between the attorney representative for Decedent's family and the Clark County District Attorney's Office took place on October 22, 2014. At that meeting, the family, through the attorney representative, requested further follow-up investigation regarding a number of areas. At the conclusion of that meeting, the district attorney's office contacted the investigators from LVMPD and requested that they further investigate the following areas per the representative's request: (1) the local school/discipline records of Decedent; (2) Decedent's phone records surrounding the incident day; (3) contact with or interview of an individual who was supposedly with Decedent when he got on the bus in California headed for Las Vegas; and (4) review of and follow-up regarding the autopsy/medical information pertaining to Decedent concerning possible evidence of any traumatic head injury which might have preceded the incident with the officers.

The results of the school/discipline records did not provide any useful information for consideration in the use of force analysis, nor were they consistent with the picture of Decedent portrayed by the family through their representative. The further investigation of the phone records also did not provide any additional information because Decedent's phone was not on or not working and Decedent had not made any communications with the phone because he did not have any remaining usage minutes. With regard to the individual who supposedly was present when Decedent got on the bus in California, investigators tried repeatedly to communicate with that individual using the contact information provided by the family. Unfortunately, investigators were never able to make contact with that individual and he never returned calls or messages. With regard to the autopsy/medical review, there was no evidence whatsoever which indicated that

Decedent had been involved in any traumatic event or suffered any head injury prior to the incident with the officers.

XI. CLARIFICATION OF DECEDENT’S INJURIES FOLLOWING THE PUBLIC FACT-FINDING REVIEW ON MARCH 2, 2015

Immediately following the public fact-finding review on March 2, 2015, there were erroneous reports of various skeletal fracture type injuries to Decedent supposedly caused by blunt force trauma. The reports indicated that Decedent had sustained a “shattered pelvis,” multiple broken ribs and a broken arm during his encounter with officers prior to the actual shooting.

While it is true that Decedent did suffer skeletal injuries during his encounter with the officers, those injuries were **exclusively** associated with the **penetrating gunshot wounds and not from any blunt force event such as a beating. In fact, Decedent suffered no skeletal injury from blunt force trauma at all prior to actually being shot by the officers.**

The various gunshot wounds and the associated skeletal injuries are detailed as follows:

- (1) A penetrating gunshot wound to the left upper chest which resulted in bony injuries to the left second anterior rib and the left second posterior rib;
- (2) A penetrating gunshot wound to the left lateral chest which resulted in bony injuries to the left lateral eighth rib and the left posterior seventh rib;
- (3) A penetrating gunshot wound to the left hip which resulted in a bony injury to the left iliac crest (the top left portion of the pelvis); and
- (4) A penetrating gunshot wound to the left upper arm which resulted in a bony injury to the left humerus (left upper arm bone).

Decedent did not have any of these skeletal injuries prior to him entering the NHP vehicle and sustained them only after being shot as a result of the bullets penetrating his tissues. Clearly none of these injuries were caused by the physical altercation with officers prior to the shooting.

XI. 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). There is also a statute that defines excusable homicide by misadventure (NRS 200.180 – Excusable homicide by misadventure).

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 NRS 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 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, BLM Ranger and BLM Agent reasonably believed that both they and the citizens in proximity to the altercation were in imminent danger. Furthermore, BLM Ranger and BLM Agent reasonably believed, based on Decedent's words and actions, that Decedent would kill or cause them great bodily harm or injury.

The confrontation from beginning to end lasted approximately 16 minutes. During this time, BLM Ranger and BLM Agent continually implemented the use of non-lethal measures to gain control over Decedent. Decedent's continual resistance, refusal to comply with the officers' commands and his threatening actions toward the officers created a dangerous situation for both the officers and the nearby citizens.

The efforts by BLM Ranger and BLM Agent to gain control of Decedent were appropriate and demonstrated a stepwise, systematic progression in the implementation of non-lethal measures (i.e., Taser, Pepper Spray, Physical Force and Baton Strikes). These non-lethal methods, however, were not effective and Decedent continued to resist the officers' efforts. BLM Ranger and BLM Agent utilized non-lethal methods repeatedly and in combination without success before moving to lethal force as a last resort. In addition, BLM Ranger and BLM Agent only utilized lethal force after all other control measures had failed. Decedent was in a position where failing to gain control over Decedent would likely have resulted in injury or death to the officers or citizens in the area.

Decedent's acts of attempting to enter citizen vehicles, and of actually gaining access to the driver's position of the NHP vehicle while it was running, clearly posed an immediate threat to all involved. This fact, coupled with Decedent's verbal statements to the officers and his attempts to grab the AR-15 rifle within Trooper Schwarzrock's vehicle, further heightened the danger and threat to the officers and the citizens to such a degree that the use of lethal force to stop that threat was justified.

In short, BLM Ranger and BLM Agent had the right under Nevada law to use deadly force against Decedent in defense of themselves and others.

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).

Upon seeing Decedent enter the driver’s position NHP vehicle while it was running with BLM Agent directly in front of the NHP vehicle, there was a clear threat of serious physical harm to both BLM Agent and others. In addition, the fact that BLM Ranger observed Decedent attempt to gain access to the AR-15 rifle within the NHP vehicle further heightened the threat such that, under the circumstances, BLM Agent and BLM Ranger were unequivocally justified in using deadly force to neutralize that threat.

In light of all the evidence reviewed to date, the State would be unable to prove that the actions of BLM Agent and BLM Ranger were in fact unjustified “in the discharge of a legal duty.”

C. Use of Deadly Force by an Officer to Prevent Escape

The law in Nevada with regard to when an officer may use deadly force to effect an arrest and to prevent the escape of a fleeing felon is defined in NRS 171.1455.

NRS 171.1455 states that:

If necessary to prevent escape, and officer may, after giving a warning, if feasible, use deadly force to effect the arrest of a person only if there is probable cause to believe that the person:

1. Has committed a felony which involves the infliction of threat or serious bodily harm or the use of deadly force; or
2. Poses a threat of serious bodily harm to the officer or to others.

The use of deadly force by an officer in such circumstances was also

addressed in the case of Weddell v. State, 118 Nev. 206, 43 P.3d 987 (2002). In Weddell, the Court held “that deadly force is, as a matter of law, unreasonable, unless the deadly force is used in defense of self or others against a threat of serious bodily injury.” Id. at 209, 43 P.3d at 988. The Court, however, went on to discuss the legislative intent behind NRS 171.1455. The Court stated that after reviewing the legislative history concerning the enactment of NRS 171.1455, the Court recognized that the legislature intended to adopt the United States Supreme Court’s holding in the case of Tennessee v. Garner, 471 U.S. 1, 105 S.Ct. 1694, 85 L.Ed.2d 1 (1985). Id. at 212, 43 P.3d at 990, in relation to when an officer may lawfully use deadly force to apprehend a felon.

In Garner, the United States Supreme Court in considering this issue held that:

Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given. Id. at 12, 150 S.Ct. at 1701.

In the instant case, both BLM Agent and BLM Ranger were faced with a very dangerous and unique situation. Not only were BLM Agent and BLM Ranger’s lives directly placed in jeopardy by Decedent’s actions, but there were also other persons in the immediate vicinity that day who were equally threatened. As such, therefore, under both subsections one and two of NRS 171.1455, BLM Agent and BLM Ranger were justified in using deadly force to stop Decedent from escaping.

CONCLUSION

Based on the review of the available materials and the application of Nevada law to the known facts and circumstances surrounding the officer involved shooting death of Decedent, it has been determined that the actions of BLM Agent and BLM Ranger 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 BLM Agent and/or BLM Ranger based on the totality of the circumstances, unless new circumstances come to light which contradict the factual foundation upon which this decision is made, no charges will be forthcoming.

DATED: April 6, 2015

STEVEN B. WOLFSON
District Attorney

By

MICHAEL V. STAUDAHER
Chief Deputy District Attorney