

# REPORT ON USE OF FORCE



## Legal Analysis Surrounding the Death of Cody O’Bryan on September 25, 2017

### **INTRODUCTION**

On September 25, 2017, 37-year-old Cody O’Bryan (hereinafter “Decedent”) was shot and killed by Las Vegas Metropolitan Police Department (hereinafter “LVMPD”) Officer Thomas Rybacki. The incident took place at approximately 4:11 a.m. on September 25, 2017, at University Medical Center located at 1800 West Charleston in Las Vegas, Nevada. Officer Rybacki fired one round at Decedent, striking him in the head.

This report explains why criminal charges will not be forthcoming against Officer Rybacki. It is not intended to recount every detail, answer every question, or resolve every factual conflict regarding this police encounter. It is meant to be considered in conjunction with the Police Fatality Public Fact-Finding Review which was held on April 24, 2018.

This report is intended solely for the purpose of explaining why, based upon the facts known at this time, the conduct of Officer Rybacki was not criminal. This decision, premised upon criminal-law standards, is not meant to limit any administrative action by the Las Vegas Metropolitan Police Department or to suggest the existence or non-existence of civil actions by any person, where less stringent laws and burdens of proof apply.

### **OVERVIEW OF SURROUNDING FACTS**

On September 24, 2017, at approximately 10:40 p.m., LVMPD officers, including Officer Rybacki, responded to a call on Charleston Ave. and Palmhurst Dr. Decedent had called LVMPD Dispatch and stated, “Metro is going to shoot me or take me to jail.” Additionally, Decedent reported he was armed with a pistol and nine rounds.

Officers responded and found Decedent lying on the ground. Initially, officers were going to have him transported by ambulance for a “Legal 2000” – a mental examination that Decedent

had been subjected to 15 times since 2013. Officers then discovered Decedent had a warrant for violating the terms of his probation. Decedent was convicted in 2017 of an attempt battery that may result in substantial bodily harm. Officer Rybacki placed Decedent under arrest for the warrant and transported him to the Clark County Detention Center (CCDC).

The medical staff at CCDC told Officer Rybacki that Decedent was extremely intoxicated and would not be accepted into the facility. At approximately 12:05 a.m., Officer Rybacki transported Decedent to the emergency room at the University Medical Center (UMC) for medical evaluation where he was placed in Medical Surgery room #3.



Officer Rybacki requested a patrol officer to stay with Decedent while he went back to CCDC to complete the paperwork for an absentia booking – booking Decedent into the custody of CCDC while Decedent had yet to arrive due to being at UMC. After completing the booking at CCDC, Officer Rybacki returned to UMC to guard Decedent until he could be relieved by a corrections officer.

At 3:26 a.m., Corrections Officer Devery responded to the room at UMC to drop off a tactical bag containing a Taser, log book, radio, gloves, belly chains and leg restraints. At the time, Decedent was restrained with a handcuff to his left wrist attached to the bed. Officer Devery attached a leg restraint to Decedent's left ankle and affixed it to the bed. The tactical bag was then placed under the sink at the foot of the gurney a few feet away. Both Officer Rybacki and Corrections Officer Devery had a brief conversation in the room before Corrections Officer Devery returned to CCDC.

During the night, Decedent urinated on himself, soaking his clothing and the hospital gurney. Officer Rybacki released Decedent from his restraints, assisted Decedent to the restroom and then helped Decedent change into a hospital gown. Decedent sat on the gurney as Officer Rybacki placed a chain on Decedent's right ankle and affixed the opposite end to the hospital gurney.

Officer Rybacki left the room for a short time. During that time, Decedent got off the bed and laid down on the ground with his head next to the tactical bag under the nearby sink. At

approximately 4:04 a.m., Decedent, while still seated on the floor, removed the Taser from the bag and placed it on his left side on the floor. The placement of the Taser on the floor was not visible from the doorway of the room due to the placement of the gurney. At approximately 4:05 a.m., Officer Rybacki entered the room, noticed how close the bag was to Decedent, and moved the bag into the hallway.



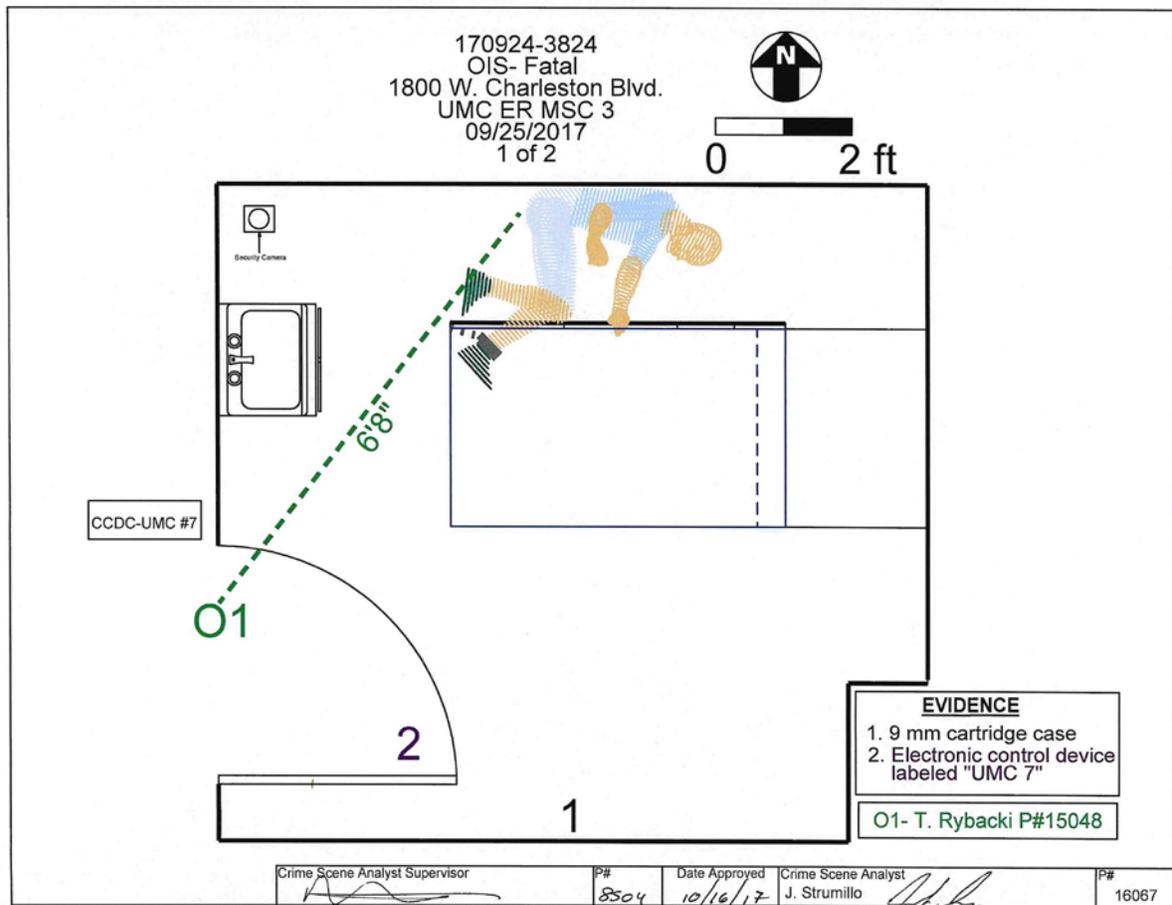
At approximately 4:10 a.m., UMC nurse, T.T., and UMC security officer, M.A., entered the room in an attempt to get Decedent back on the hospital gurney from his seated position on the floor. Decedent grabbed the Taser and pointed it at Security Officer M.A.



Officer Rybacki entered and Decedent pointed the Taser in his direction. Officer Rybacki stepped out of the room and then partially reentered the room where he fired one shot which struck Decedent in the head. Decedent was pronounced deceased shortly thereafter.



## DESCRIPTION OF THE SCENE



## **VIDEO EVIDENCE**

### **Body Worn Camera (BWC) - Officer Thomas Rybacki**

Officer Rybacki was wearing a body worn camera at the time of the incident, and the camera was activated. The camera was collected by Sgt. MacDonald and secured.

Officer Rybacki's camera footage depicted Decedent sitting on the floor with his back against the wall. The nurse and security guard entered the room. Decedent picked up the Taser from his left side and pointed it in the direction of Officer Rybacki and the security guard. Officer Rybacki briefly moved out of the room, partially reentered and fired one shot at Decedent.

### **UMC Surveillance Video**

UMC surveillance video did not capture any audio. The video footage depicted Decedent in the room throughout the night. At the time of the incident, Decedent was seen sitting on the floor with his back against the wall. Decedent reached into the tactical bag, retrieved the Taser and placed it on the ground to the left of his body. The nurse and security guard entered the room. Decedent picked up the Taser from his left side and pointed it in the direction of Officer Rybacki and the security guard. Officer Rybacki briefly moved out of the room, partially reentered and fired one shot at Decedent.

## **EVIDENCE RECOVERED**

The following items were recovered and impounded into evidence by CSA Paine P#14793:

- 1) One (1) cartridge case bearing headstamp "SPEER 9 mm Luger+P", from the floor of MSC Exam room #3, adjacent to the south wall.
- 2) One (1) black "Taser International" electronic control device (ECD), from the floor of MSC Exam room #3 directly east of the open door.
- 3) Two (2) black and yellow "Taser International" ECD cartridges, inside the cartridge well of item #2.
- 4) One (1) black Glock semi-automatic handgun, model 34, 9mm caliber, with approximately 5" barrel, retrieved from the hands of Officer Rybacki.
- 5) One (1) cartridge bearing headstamp "SPEER 9 mm Luger+P", from the chamber of item #4.
- 6) One (1) clear and black plastic "ESTGROUP.US" magazine containing 20 cartridges bearing headstamp "SPEER 9 mm Luger+P" from the magazine well of item #4.

A search for additional firearms evidence was conducted with negative results.

## **SCENE WALKTHROUGH WITH OFFICER RYBACKI**

The purpose of the scene walk-through was to help investigators develop an understanding of the scene, including identifying officer location at the time deadly force was used, identifying potential physical evidence, and re-creating a timeline of the incident.

On September 25, 2017, at approximately 7:35 a.m., Officer Rybacki provided a walk-through of the scene. The walk-through was not video or audio recorded. Officer Rybacki relayed the following information:

Officer Rybacki indicated his location when he fired one shot at Decedent. Officer Rybacki stated Decedent pointed the Taser at him.

### **OFFICER WEAPON COUNTDOWNS**

On September 25, 2017, Officer Rybacki had his duty weapon counted down at LVMPD Headquarters. Officer Rybacki was photographed by CSI personnel for appearance purposes and his weapon was photographed for identification purposes.

Officer Rybacki was dressed in a standard LVMPD long sleeve uniform. He wore LVMPD patches on each shoulder and an LVMPD badge over his left breast. Officer Rybacki wore a black duty belt with attached tools and equipment as part of his position in Patrol. Officer Rybacki's handgun was carried on the right side of his body and secured in a holster.

Prior to countdown, Officer Rybacki stated he carried 21 cartridges in the magazine loaded in his firearm and one cartridge in the chamber (21+1, 22 total).

<b>Make</b>	Glock
<b>Model</b>	34
<b>Serial Number</b>	YKK971
<b>Caliber</b>	9mm
<b>Weapon Mounted Light</b>	Yes – Streamlight C4-4379040215
<b>Ammunition</b>	Speer
<b>Cartridge in Chamber</b>	1
<b>Magazine from Weapon</b>	Capacity: 22 cartridges
	Countdown: 20 cartridges
<b>Spare Magazine #1</b>	Capacity: 22 cartridges
	Countdown: 21 cartridges
<b>Spare Magazine #2</b>	Capacity: 22 cartridges
	Countdown: 21 cartridges
<b>Spare Magazine #3</b>	Capacity: 22 cartridges
	Countdown: 21 cartridges

At the completion of the countdown, it was determined Officer Rybacki discharged his firearm one time during this incident. When compared to evidence at the scene, detectives concluded

Officer Rybacki discharged his firearm one time. Officer Rybacki's firearm, magazines and cartridges were photographed and impounded by SCSA McIntyre.

## **SUMMARY OF RELEVANT WITNESS STATEMENTS**

### **Corrections Officer Shaun Devery**

On September 25, 2017, at approximately 7:05 a.m., Detectives Jex and Howell conducted an audio recorded interview with Officer Devery at the Clark County Detention Center (CCDC). In the interview, Officer Devery stated he received a text message from his sergeant to deliver a duty bag for an absentia booking to UMC. Officer Devery stated he made contact with the control room on the twelfth floor of CCDC and obtained a UMC bag of tactical equipment from the locked room. After receiving the bag, Officer Devery opened it to check the contents and observed a Taser, log book, radio, gloves, belly chains and ankle shackles. Officer Devery also obtained the locator card that contained the suspect information. Officer Devery then responded to UMC.

Officer Devery stated once at UMC, he went to the nurse's station and was directed to the room where he met with Officer Rybacki. Officer Devery stated he entered the room and put the bag at the foot of the bed near the chair that was inside the room. Officer Devery stated he did not discuss the contents or anything about the UMC bag with Officer Rybacki. Decedent was laying on the bed and was handcuffed to it. Officer Devery placed a leg shackle on one leg of Decedent and attached the other end to the gurney.

Officer Devery stated Officer Rybacki asked Decedent if he was going to be okay to take the handcuffs off and Decedent stated he would be okay. Officer Rybacki took the handcuffs off and Decedent stated he was going to get some rest. Officer Devery stated he stayed in the room for a moment as Decedent talked about suicide and his charges. Officer Devery stated he asked Officer Rybacki if he was good and Officer Rybacki stated he was okay. Officer Devery stated he then left UMC. Officer Devery provided a small sketch of the room and the position where he put the bag.

### **M.A.**

On September 25, 2017, at approximately 6:49 a.m., Detective Patton conducted an audio recorded interview with Security Officer M.A. In the interview, M.A. stated he was on duty as UMC Security when he was dispatched to Med. Surg. room #3 to assist Officer Rybacki and Nurse T.T. with a patient. Upon his arrival, M.A. was informed by Nurse T.T. that Officer Rybacki was going to remove Decedent's restraints, they were going to place Decedent on the gurney, and then attach soft restraints on Decedent.

M.A. followed T.T. into Decedent's room. Decedent was sitting on the ground next to the bed with his hands underneath the blanket. T.T. handed Decedent a medical bracelet and told him to put it on and move to the head side of the bed. Decedent placed the bracelet on his wrist. M.A. heard T.T. yell, "What the fuck is that?" M.A. looked up at Decedent and observed

Decedent pointing a black object at him. M.A. then heard Officer Rybacki yell at M.A. to get out of the room.

M.A. realized the object being pointed at him by Decedent was a Taser. M.A. was scared he was going to get tased because he saw Decedent pull the trigger on the Taser. M.A. ran out of the room, and as soon as he was out of the room he heard one gunshot. M.A. turned around and observed Officer Rybacki standing in the doorway of the room with his gun drawn.

#### **M.W.**

On September 25, 2017, at approximately 6:50 a.m., Detective Leavitt conducted an audio recorded interview with M.W. at UMC.

In the interview, M.W. stated he worked as a patient attendant in the Medical Surgery portion of the Emergency Room of UMC. That section was primarily used to monitor people who were extremely intoxicated or in for a Legal 2000 hold. There were seven rooms video monitored in that section. M.W. observed Decedent when he was brought to UMC by officers. Decedent had to be lifted and placed on a bed due to being too intoxicated to do it himself.

During the night, a corrections officer arrived and dropped off a [tactical] bag for the officer who had been with Decedent. As the night went on, Decedent became more coherent and told staff and Officer Rybacki he needed to stay in the hospital and not go to jail. Decedent stated he was suicidal. At one point, Decedent urinated while on the bed, soaking his clothing as well as the bed. Decedent was brought a change of clothing and was taken out of restraints while he changed. After his clothing was changed, Decedent had ankle restraints placed on his leg and hooked to the bed. Decedent eventually climbed off the bed. When Nurse T.T. and Officer Rybacki informed Decedent he needed to get back up onto the bed, Nurse T.T. called for the public safety officer to come assist. As the public safety officer arrived and entered the room, M.W. heard T.T. say something like, "Oh shit, what's that?" or "Oh shit, is that a Taser?" The officer then said, "Get out! Get out! Put it down!" as he drew his weapon and fired one shot.

#### **T.T.**

On September 25, 2017, at approximately 6:51 a.m., Detective Penny conducted an audio recorded interview with T.T. at 1800 W. Charleston Boulevard.

In the interview, T.T. stated she was a registered nurse and was working her shift at UMC. Decedent was in police custody and at UMC due to being intoxicated. Decedent was awake and talking, and Officer Rybacki asked T.T. to get the doctor to check Decedent. Officer Rybacki helped Decedent to the bathroom and back to the room where Decedent changed out of his urine-soaked clothing.

While in the room Decedent was using foul language while talking with Officer Rybacki and was being rude. T.T. heard Officer Rybacki ask Decedent why he was sitting on the floor. T.T. looked and saw Decedent sitting on the floor with his leg still cuffed to the gurney. T.T.

called for UMC security to respond to assist with putting Decedent back onto the gurney. When Security Officer M.A. arrived, a plan was made to enter the room and get Decedent off the floor and onto the gurney.

T.T. entered the room and went to the head of the gurney. Security Officer M.A. was inside the room and Officer Rybacki was near the door. T.T. observed Decedent make an unusual movement and looked over and observed Decedent aiming a Taser toward the door. T.T. observed Decedent smiling as he aimed the Taser, which she thought was unusual. Officer Rybacki yelled at Security Officer M.A. to get out of the way. Security Officer M.A. exited the room. Officer Rybacki drew his firearm and ordered Decedent to put down the Taser.

T.T. was at the head of the gurney and unable to leave the room, so she ducked down for cover. T.T. heard a gunshot. She then observed Decedent slumped over and blood coming from his head. T.T. exited the room and requested a doctor to the scene.

T.T. did not see the actual shooting. T.T. saw Decedent aim the Taser towards Officer Rybacki prior to hearing the gunshot.

### **J.J.**

On September 25, 2017, at approximately 7:08 a.m., Detective Patton conducted an audio recorded interview with J.J.

In the interview, J.J. stated he had arrived at the Med. Surg. area of the UMC Emergency Room to deliver a patient, and was speaking with one of the nurses when he heard Decedent yell, "Fuck you!" to Officer Rybacki. Officer Rybacki tried to calm Decedent down as he explained to Decedent there were other ways of getting help other than getting into a shootout with the cops. Officer Rybacki told Decedent he could get help from the police department or other medical avenues.

Decedent continued being verbally abusive toward Officer Rybacki, and a decision was made to place Decedent back onto the gurney and put him in soft restraints. Officer Rybacki removed a black patrol bag from Decedent's room and waited for UMC Security Officer M.A. to arrive. When Security Officer M.A. arrived, Nurse T.T. entered Decedent's room, followed by Security Officer M.A. and Officer Rybacki. J.J. heard more yelling and "Get down." Immediately after, J.J. heard one gunshot.

J.J. observed Officer Rybacki standing in the doorway of Decedent's room with his gun drawn. J.J. asked Officer Rybacki if he was okay and Officer Rybacki stated, "Yes." J.J. looked into the room and observed Decedent lying on his left side and a Taser on the floor inside the room. J.J. did not touch Decedent's body.

### **C.C.**

On September 25, 2017, at approximately 7:19 a.m., Detective Leavitt conducted an audio recorded interview with C.C. at UMC. In the interview, C.C. stated that he worked as a patient

attendant in the Med Surg area of the UMC Emergency Room. C.C. observed Decedent when Decedent was brought in to UMC by an LVMPD officer. Decedent was in a wheelchair due to being too intoxicated to walk under his own power. As the night progressed, Decedent sobered up and became very vocal. Decedent stated he was suicidal and needed to be admitted to the hospital rather than go to jail.

Decedent urinated all over himself and had to have his clothing changed. He was unrestrained, and allowed to use the restroom and change into a hospital gown. Decedent was left in the room alone after changing his clothing. C.C. was seated across from room #3 but was not paying attention to what was going on in the room. He heard the public safety officer exclaim, "Oh shit!" and looked up and saw the public safety officer run out of the room as the nurse hid behind the gurney. The officer drew his weapon and pointed it into the room as he yelled, "Put it down!" at least twice before he fired one time.

### **R.S.**

On September 25, 2017, at approximately 7:27 a.m., Detective Penny conducted an audio recorded interview with R.S. at UMC.

In the interview, R.S. stated that on Sept. 25, 2017, at approximately 3:30 a.m., he was assigned to work the Med Surg Unit at UMC as a registered nurse. During the course of his duties, he was advised of an intoxicated patient, Decedent, in room #3. R.S. learned the attending doctor wanted Decedent to make an attempt to get out of bed in order to further assess his condition. Decedent got out of bed and stumbled towards the restroom, where he relieved himself before stumbling back to his bed. While walking to and from his bed, R.S. overheard Decedent make comments to include, "I know I'm going to jail" and "I'm going to kill myself." Officer Rybacki, along with Nurse T.T., assisted Decedent in changing his soiled clothing in preparation for his release. During that time Decedent was disrespectful towards Officer Rybacki which was addressed by Nurse T.T.

With Officer Rybacki and Nurse T.T. attending to Decedent, R.S. exited the room and went to the nurse's station where he started on paperwork. While at the nurse's station R.S. observed Decedent via surveillance cameras sitting on the edge of the bed. R.S. continued to complete paperwork and was not paying attention to what was occurring inside Decedent's room.

R.S. heard a loud bang come from room #3 and got up to investigate. R.S. observed the security officer outside of the room and Nurse T.T. exit as Officer Rybacki stood at the doorway. R.S. smelled gunpowder and looked into the room where he saw Decedent lying on the floor near the bed and observed a Taser also on the floor. R.S. then called the attending physician, Doctor S. to respond to assess and render aid to Decedent.

R.S. did not witness the officer-involved shooting.

## AUTOPSY

On September 26, 2017, at approximately 7:25 a.m., an autopsy was performed on the body of Decedent at the Clark County Office of the Coroner/Medical Examiner by Doctor Corneal.

Upon the completion of toxicology testing, the following results were noted:

Decedent had a blood alcohol concentration of 0.337 g/100 mL (more than four times the legal limit for a DUI). Decedent also tested positive for nordiazepam (21 ng/mL), chlordiazepoxide (380 ng/mL), and lorazepam (6.5 ng/mL) which are used to treat anxiety.

After a complete autopsy, Doctor Corneal opined Decedent died as a result of a gunshot wound to the head.

## FORENSICS RESULTS

### Firearm Examination

On October 3, 2017, an LVMPD Forensic Laboratory Request was submitted on Officer Rybacki's firearm for a function test and ballistic comparison evidence.

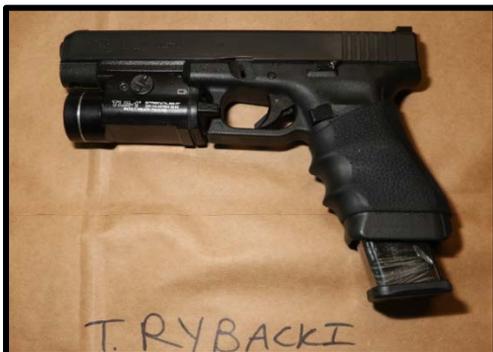
On October 17, 2017, Forensic Scientist Anya Lester, P# 13771, submitted the Report of Examination: Firearms and Toolmarks.

Lab Item #	Impound Pkg #	Impound Item #	Description
1	013207-1	1	One Glock model 34 Gen 4 9x19 (9mm Luger) caliber semiautomatic pistol, serial number: YKK971 with an attached Streamlight TLR-1 light
2	013207-2	3	One magazine Twenty "SPEER" 9mm Luger +P cartridges
3	014793-1	1	One "SPEER" 9mm Luger +P cartridge case

### **Results and Conclusions:**

#### **Firearms and Magazines**

The Glock pistol was examined, test fired and found to be operational with no noted malfunctions. This pistol has a barrel length of approximately  $5 \frac{5}{16}$  inches, an overall length of approximately  $8 \frac{13}{16}$  inches and a trigger pull of 7 –  $7 \frac{1}{2}$  pounds. The submitted magazine fits and functions in this pistol and has a capacity of twenty-one cartridges.



## Cartridge Case

The evidence cartridge case was examined and microscopically compared to the test fired cartridge cases. Based on these microscopic examinations, the evidence cartridge case was identified as having been fired by the submitted Glock pistol.

## Electronic Control Device (ECD) or “Taser” Examination

On September 26, 2017, at approximately 1:06 p.m., LVMPD ECD coordinator Officer Nicola Rinella, P# 9214, conducted an examination of the ECD.



Device (X2)

Seq #	Local Time [DD:MM:YYYY hh:mm:ss]	Event [Event Type]	Cartridge Info [Bay: length in feet/ status]	Duration [Seconds]	Temp [Degrees Celsius]	Batt Remaining [%]
1035	20 Sep 2017 13:18:38	Configuration				
1036	20 Sep 2017 13:19:10	Configuration Exit				
1037	26 Sep 2017 12:01:31	USB Connected				
1038	26 Sep 2017 12:02:43	Time Sync	26 Sep 2017 12:02:53 to 26 Sep 2017 12:02:43			
1039	26 Sep 2017 12:33:56	Time Sync	26 Sep 2017 12:33:56 to 26 Sep 2017 12:33:56			
1040	26 Sep 2017 12:48:41	Time Sync	26 Sep 2017 12:48:40 to 26 Sep 2017 12:48:41			
1041	26 Sep 2017 13:01:57	Time Sync	26 Sep 2017 13:01:57 to 26 Sep 2017 13:01:57			

Device serial# X290049W8

The device was loaded with two 15' SMART cartridges and configured to fire in semi-automatic mode. The device had an automatic shutdown power performance magazine (APPM) installed (serial number E18550333). With the APPM installed, the device can be fired for five second cycles.

The TASER X2 has date and time stamps in the event logs that reflect the start time of the named event.

Line 1035 of the event log shows a time stamp with a configuration menu access taking place on September 20, 2017 at approximately 13:18:38 hours. The configuration change involves changing the LASER or flashlight settings only.

Line 1036 shows a time stamp with an exit of the configuration menu taking place on September 20, 2017 at approximately 13:19:10 hours.

Line 1037 shows the device being connected vis UBS to the computer in preparation for download.

Line 1038-1041 are time syncs performed when connecting the device to the SYNC program for download.

Line 1038 shows the device's time syncs took place changing the device's date and time from September 26, 2017 at 12:02:53 hours to September 26, 2017 at 12:02:43 hours.

This device was not deployed or armed during the critical incident on September 25, 2017.

## TIMELINE

The below timeline is a reconstruction of events which transpired on Sunday, September 24, 2017, and Monday, September 25, 2017, in relation to the fatal officer-involved shooting that occurred at 1800 W. Charleston Boulevard.

Time (hours)	Description of Event/Action	Source
<b>Sunday, 09-24-17</b>		
2240	Decedent called 911 and stated officers would shoot him or take him to jail. He advised he was armed with a pistol and asked if he should blast it at officers.	Computer Aided Dispatch (CAD)
2241	Decedent advised the call taker he did not have a firearm but wished he did.	CAD
2253	Sergeant Roybal advised he was out with Decedent at Charleston Boulevard and Palmhurst Drive.	CAD
2258	Patrol requested medical respond for a Legal 2000.	CAD
2302	Patrol disregarded the medical unit request due to Decedent's priority 5 DONS hit (Parole/Probation warrant).	CAD
2339	Officer Rybacki arrived at CCDC with Decedent.	CAD
<b>Monday, 09-25-17</b>		
0003	CCDC refused Decedent due to his intoxication level.	CAD
0017	Officer Rybacki and Decedent arrived at UMC.	CAD
0155	Officer Rybacki went to CCDC to complete absentia booking paperwork.	CAD

<b>Time (hours)</b>	<b>Description of Event/Action</b>	<b>Source</b>
0233	Officer Rybacki arrived back at UMC.	CAD
0326	Corrections Officer Devery dropped UMC bag at UMC.	CAD, Officer Devery's interview
0400	Decedent took the Taser from UMC bag.	UMC surveillance video
0411	Officer Rybacki broadcasted shots fired.	CAD

## **LEGAL ANALYSIS**

The District Attorney's Office is tasked with assessing the conduct of officers involved in any use of force which occurred during the course of their duties. That assessment includes determining whether any criminality on the part of the officers existed at the time of the incident.

In Nevada, there are a variety of statutes that define the various types of justifiable homicide (NRS §200.120 – Justifiable homicide defined; NRS §200.140 – Justifiable homicide by a public officer; NRS §200.160 – Additional cases of justifiable homicide). The shooting of Decedent could be justifiable under one or both of two theories related to the concept of self-defense: (1) the killing of a human being in self-defense/defense of others; and (2) justifiable homicide by a public officer. Both theories will be discussed below.

### **A. The Use of Deadly Force in Defense of Another**

The authority to kill another in defense of others is contained in NRS 200.120 and 200.160. "Justifiable homicide is the killing of a human being in necessary self-defense, or in defense of ... person, against one who manifestly intends or endeavors to commit a crime of violence ..." against the other person.<sup>1</sup> NRS 200.120(1). Homicide is also lawful when committed:

[i]n the lawful defense of the slayer, ... or of any other person in his or her presence or company, when there is reasonable ground to apprehend a design on the part of the person slain to commit a felony or to do some great personal injury to the slayer or to any such person, and there is imminent danger of such design being accomplished ....

NRS 200.160(1).

The Nevada Supreme Court has refined the analysis of self-defense and, by implication, defense of others, in Runion v. State, 116 Nev. 1041 (2000). The relevant jury instructions as articulated in Runion and modified for defense of others are as follows:

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<sup>1</sup> NRS 200.120(3)(a) defines a crime of violence:  
"Crime of violence" means any felony for which there is a substantial risk that force or violence may be used against the person or property of another in the commission of the felony.

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 Decedent did not act in [defense of another]. *Id.* at 1051-52.

Therefore, under Nevada law, if there is evidence that the killing was committed in self-defense, the State at trial must prove beyond a reasonable doubt that the slayer was not acting in self-defense.

The known facts and circumstances surrounding this incident indicate that Decedent posed an imminent danger to Officer Rybacki, M.A., T.T., and the others in the area of Medical Surgery Exam room #3 at UMC that morning. Prior to the incident, Decedent had been acting erratically, belligerently and had expressed multiple times that he was suicidal. If Decedent would have successfully been able to deploy the Taser and incapacitate M.A. or T.T., he would have been able to do additional bodily harm to them by virtue of his proximity to them.

What's more, if Decedent would have been able to hit Officer Rybacki with the Taser, it is possible he would have been able to access Officer Rybacki's firearm and other items on Officer Rybacki's body. This could have proved very dangerous, if not fatal, for the other people in that area of the hospital. Officer Rybacki commanded Decedent to put down the weapon multiple times, but Decedent did not comply.

Thus, the totality of the evidence, to include body worn camera footage, surveillance footage, and witness statements, illustrate that Officer Rybacki was reasonable in believing that Decedent was in the position and had the mindset to cause great bodily harm or death to those in the room and the surrounding area. Consequently, the shooting of Decedent is justifiable under this legal theory.

### **B. Justifiable Homicide by a Public Officer**

“Homicide is justifiable when committed by a public officer ... [w]hen necessary to overcome actual resistance to the execution of the legal process, mandate or order of a court or officer, or in the discharge of a legal duty.” NRS 200.140(2). This statutory provision has been interpreted as limiting a police officer’s use of deadly force to situations when the officer has probable cause to believe that the suspect poses a threat of serious physical harm to either the officer or another. See 1985 Nev. Op. Att’y Gen. 47 (1985).

In this case, the known evidence illustrates that Officer Rybacki had probable cause to believe Decedent posed a threat of serious physical harm to the officer himself as well as to M.A., T.T. and the others in the immediate area.

Here, Decedent hid a Taser he found in the CCDC bag in the room and kept the Taser hidden out of view for a number of minutes. When M.A., T.T. and Officer Rybacki entered the room, Decedent used that moment with everyone in the room to raise the Taser in a threatening manner and attempt to discharge the Taser at those in the room. At that point, Officer Rybacki had a reasonable belief that Decedent could cause serious physical harm to him, M.A., T.T. and the others in the immediate area. Officer Rybacki called for Decedent to put down the weapon, but Decedent would not comply. Thus, Officer Rybacki’s use of deadly force was legally justified and appropriate under NRS 200.140(2).

## **CONCLUSION**

Based on the review of the available materials and application of Nevada law to the known facts and circumstances, the State concludes that the actions of Officer Rybacki were reasonable and/or legally justified. The law in Nevada clearly states that homicides which are justifiable or excusable are not punishable. (NRS 200.190). A homicide which is determined to be justifiable shall be “fully acquitted and discharged.” (NRS 200.190).

As there is no factual or legal basis upon which to charge, unless new circumstances come to light which contradict the factual foundation upon which this decision is made, no charges will be forthcoming.