

REPORT ON USE OF FORCE



Legal Analysis Surrounding the Death of James Todora on July 10, 2015

INTRODUCTION

In the days leading up to July 10, 2015, James Todora (“Decedent”) was in the midst of a divorce and had been exhibiting erratic behavior. Five days earlier, Decedent had been in a dispute with his wife. Las Vegas Metropolitan Police Department (“LVMPD”) officers had been involved, and Decedent’s wife had given officers a gun she found in Decedent’s vehicle. No arrests were made, but officers did explain to his wife how to get a temporary protection order (those events are described in further detail in the “History” section below). Investigators also learned that on July 10, 2015, Decedent did not have a place to stay and had his belongings packed in his vehicle. When he was stopped by an officer from LVMPD, Decedent’s statements and actions made it apparent the events of the previous few days were still fresh on his mind.

On the morning of July 10, 2015, at approximately 9:40 a.m., LVMPD officer Carlos Luna pulled over a 2000 Jeep Grand Cherokee on the 5600 block of West Sahara Ave., Las Vegas, Nevada. Officer Luna pulled the vehicle over because it had an inoperable tail lamp.

When the vehicle stopped, Decedent immediately stepped out of his vehicle and began to yell at Officer Luna. Officer Luna initially told Decedent to get back in the car; however, after realizing Decedent was so agitated, Officer Luna attempted to stop Decedent from retreating to his vehicle. Officer Luna tried to reason with Decedent for approximately twenty seconds before Decedent went back to his car and reentered. Officer Luna walked over to Decedent’s vehicle and opened the driver’s side door. This initial interaction between Officer Luna and Decedent was captured on Officer Luna’s body-worn camera.

As the officer stood at the opened driver's side door and tried to explain why Decedent had been pulled over, Decedent stated that he thought he was being pulled over because he had gone by his wife's house. Officer Luna explained that he had actually pulled him over because of his tail light, but Decedent continued to be agitated, stating, "You're never gonna fuckin' leave me alone are you?" When Officer Luna asked Decedent if he had any guns in his vehicle, he responded that he had a rifle in the back. (A rifle was later found in the vehicle.) Decedent then told Officer Luna that he was not going to jail and that police had already taken his gun from him "the other day" and put him in handcuffs. Officer Luna attempted to calm Decedent by explaining to him that he was not going to jail and that he just wanted to talk to him without Decedent getting agitated.

While Officer Luna was dealing with Decedent, Officer Kroening was in the area on a vehicle stop just west of where Officer Luna stopped Decedent. Officer Kroening started to walk east on Sahara Avenue toward Officer Luna. At one point, Officer Kroening was next to Officer Luna while Decedent was venting. Officer Hogue was also driving in the area of the stop and approached with his training officer to see if Officer Luna needed assistance.

Decedent continued to speak angrily to Officer Luna about his prior contact with the police. Officer Luna then instructed Decedent to exit the vehicle, explaining he did not feel safe with Decedent's rifle inside the vehicle. Decedent refused to exit, at which point Officer Luna reached toward Decedent to remove him from the vehicle. At that point Decedent stated, "What if I just shoot myself?" Decedent then lifted up a blanket on the passenger seat. As Officer Luna asked him whether he had a gun, Decedent reached for a Ruger P95 9mm on the seat and Officer Luna attempted to stop him. Officer Luna was not able to stop Decedent from grabbing the gun. Decedent pointed the firearm at Officer Luna, and Officer Luna heard a click. Officer Luna quickly retreated from the vehicle.

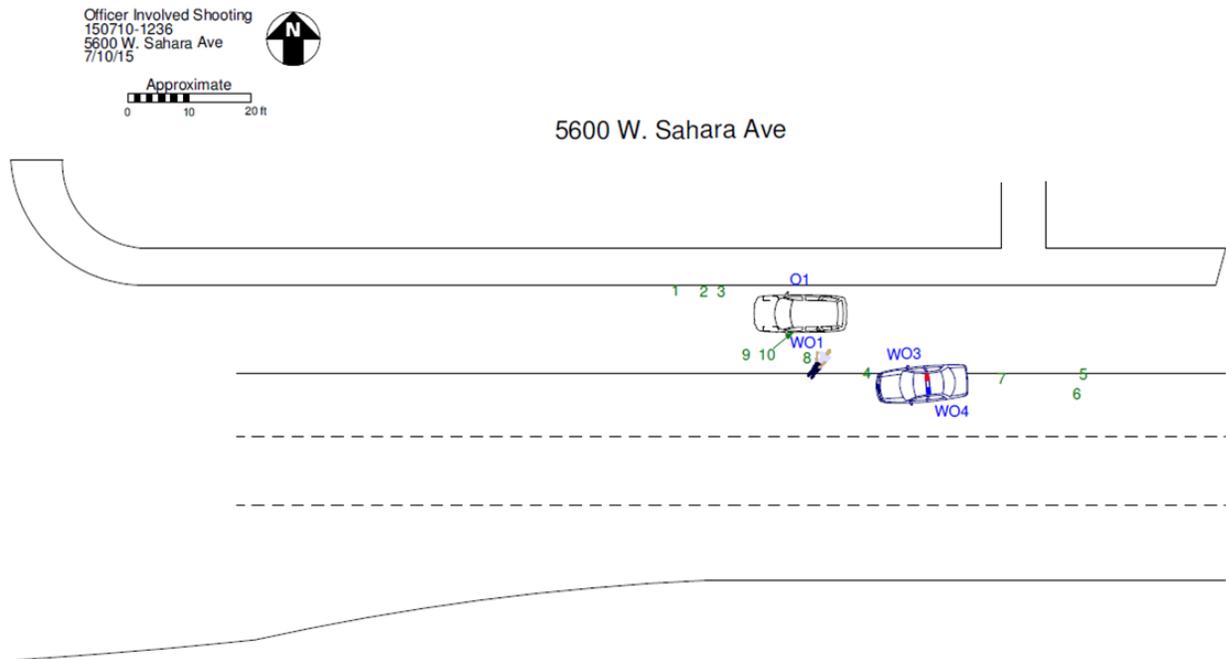
Almost immediately, Decedent fired one shot toward the officers who were standing behind the driver's side area of Decedent's car. The bullet struck the B-pillar of Decedent's car, went through the rear passenger window, and struck the windshield of a patrol vehicle. A bullet fragment then hit Officer Evan Hogue, who had just exited his vehicle, on the right side of his neck.

Officer Kroening noticed Decedent and Officer Luna struggling inside Decedent's vehicle. Officer Kroening went around to the passenger side of Decedent's vehicle¹ and fired his weapon at Decedent three times. No other officer fired his weapon. Decedent died at the scene.

Officer Hogue, who was hit by Decedent's shot, was taken to University Medical Center where he was treated for a grazing neck wound.

¹ See Illustration #1 for location of officers during event

I. DESCRIPTION OF THE SCENE AND VISIBLE EVIDENCE



(Illustration #1) Depicts where *Decedent* was moved and the locations of the first arriving officers.

Description of Scene

There was a gold-colored 2000 Jeep Grand Cherokee located along the curb in the westbound emergency lane of West Sahara Avenue. The front end of the Jeep was facing west. The driver's side door and the left rear passenger door were open. The left passenger side window was shattered. A handwritten note was on the ground below the driver's side door.

A wallet and a plastic coffee container containing numerous bottles of prescription medication were located on the ground below the passenger rear door. The medication was in the name of James Michael Todora. The wallet contained a Utah driver's license in the name of James Michael Todora. The cargo area was completely full of property.



The front passenger seat was covered by a white comforter blanket. A 9mm model P95 Ruger semiautomatic handgun was recovered from the driver's side floor. The handgun's safety was off and in the fire position. The slide was partially locked back at the time it was recovered. A 9mm cartridge case was inside the chamber of the barrel. The top cartridge in the magazine had shifted forward and was in contact with the cartridge case. The gun was found in a position where it appeared to have jammed.

The magazine inside the handgun contained thirteen additional 9mm cartridges. An apparent bullet impact was located inside the Jeep on the B-pillar.

Three additional cartridge cases were located and recovered from the gutter in front of the Jeep.

A LVMPD patrol vehicle was located approximately ten feet behind, and slightly south of, the Jeep in the westbound #3 travel lane of West Sahara Avenue. A bullet fragment was recovered from the street near the right front bumper of the patrol car, and two bullet fragments were recovered from the street behind, and east of, the patrol vehicle. Apparent blood was found on the pavement near the bullet fragments.

A small grayish-white ricochet mark was located on the exterior of the driver's side windshield of the patrol vehicle.

II. SCENE WALKTHROUGHS AND OFFICER INTERVIEWS

Officer Carlos Luna

In an interview, Officer Luna explained that he was driving south on Edmond Street approaching Sahara Avenue en route to check on another officer who had conducted a vehicle stop on Sahara Avenue. Officer Luna spotted Decedent's vehicle in front of him with an inoperable right brake lamp. Officer Luna was unable to see inside the vehicle and decided to conduct a vehicle stop.

Decedent stopped at the stop sign located at Edmond Street at Sahara Avenue. Prior to Decedent turning west on Sahara Avenue, Officer Luna broadcasted his intention to conduct a vehicle stop on Decedent. Officer Luna turned on his emergency lights in order to get Decedent's attention. Decedent kept driving at a slow pace which prompted Officer Luna to activate his air horn. Officer Luna saw Decedent wave his hands as if waving him off.

Decedent continued driving but, according to Officer Luna, did not accelerate or attempt to evade him. Officer Luna activated his sirens briefly so that Decedent knew Officer Luna wanted him to pull over and stop. Decedent finally stopped at the 5600 block of West Sahara Avenue. Officer Luna exited his vehicle and, at the same time, Decedent also got out of his vehicle. Officer Luna described Decedent as a white male, wearing a white shirt and jeans. Decedent seemed irate and asked Officer Luna, "What the fuck are you pulling me over? "Why are you harassing me?" Officer Luna told Decedent to get back in the car. Decedent's aggressive demeanor made Officer Luna reevaluate his command to get back in the car, so Officer Luna told Decedent to come back toward his patrol vehicle instead.

Decedent said, "Fuck it, I'm going back in my car!" Decedent turned around and entered his car. Officer Luna closed the distance, opened the driver's door, and addressed Decedent. Officer Luna engaged Decedent in conversation in an attempt to calm him down. Decedent kept saying Officer Luna was harassing him, and asked why he had been pulled over.

Decedent told Officer Luna he knew the reason he had been pulled over was because he had driven to his wife's house. Officer Luna had no idea what Decedent was talking about, and told Decedent he had been stopped because of the inoperable tail lamp. Decedent kept arguing and Officer Luna attempted to calm Decedent down. Decedent kept ranting about an issue he had the previous day with his wife. Officer Luna explained that he was just there for the brake light. Decedent said, "Those motherfuckers said they were going to arrest me!" Officer Luna told Decedent he was there for a different reason, and at no time had he mentioned arresting him.

Officer Luna asked Decedent if he had any weapons in the car and Decedent told him he had a rifle in the back. Officer Luna asked Decedent to step out of the car, but Decedent ignored him and kept talking about the incident involving his wife.

Officer Luna let Decedent continue speaking, but told Decedent to step out of his car because of the rifle in the back. Decedent said, “No!” and refused to get out of the car. He turned toward Officer Luna and said, “What if I shoot myself?” Officer Luna was caught off guard by his statement and asked Decedent, “Do you have a gun?” At the same time, Decedent pulled a towel off of the passenger seat. Officer Luna saw a gun, grabbed Decedent’s arm and tried to pull him away from the gun while also trying to grab the gun himself. Decedent grabbed the gun and, while fighting for the gun with Officer Luna, aimed it in the direction of Officer Luna. Officer Luna heard a click as Decedent pulled the trigger. Officer Luna pulled away and watched as Decedent attempted to load another round into the firearm. Officer Luna decided to retreat since he had lost his grip on Decedent. Officer Luna broke his grip and started to run east alongside Decedent’s Jeep. Officer Luna heard a pop, then a boom and saw the driver’s side rear window shatter. When Officer Luna made it to the back of the vehicle, he heard two more pops then Officer Hogue yell, “I’m hit, I’m hit!” Officer Luna ran toward Officer Hogue, who was on the ground holding his neck. Officer Luna told Officer Hogue to keep applying pressure to the wound, and he advised dispatch that shots had been fired and one officer was down. Officer Luna helped Officer Hogue up and put him in the front passenger seat of his vehicle. Officer Luna then drove Officer Hogue to University Medical Center where he was treated for a gunshot wound to the neck.

Officer Evan Hogue



In his interview, Officer Hogue stated he and Officer Dowler were driving west on Sahara Avenue when they heard Officer Luna initiate a traffic stop. Officer Luna updated his location on West Sahara Avenue which was a block away from their location.

As the officers arrived on Officer Luna’s vehicle stop, they observed Officer Luna interacting with Decedent and Officer Kroening at the rear of Officer Luna’s patrol vehicle. Officer Kroening requested they go check on his trainee who was on a separate vehicle stop farther west on Sahara Avenue. While Officer Kroening was still speaking with them, Officer Hogue observed Officer Luna struggling with Decedent inside Decedent’s vehicle.

Officer Hogue pulled the patrol vehicle closer to provide Officer Luna with a source of cover if he disengaged with Decedent. As soon as Officer Hogue stopped the vehicle, Officer Luna disengaged and was yelling, "He's got a gun!"

Officer Hogue exited the vehicle, heard a bang, and then felt a burning sensation on his neck. Officer Hogue went down to the ground and crawled to the rear of his patrol vehicle with his gun drawn. Officer Hogue realized he was bleeding from his neck and applied pressure with his hand to stop the bleeding.

Officer Luna told Officer Hogue to get in his patrol vehicle so he could transport him to UMC. As Officer Hogue entered the passenger seat of Officer Luna's vehicle, he observed Officer Kroening was located on the passenger side of Decedent's vehicle with his gun pointed at Decedent.

Officer Luna transported Officer Hogue to UMC where it was found he had suffered a graze wound to the right side of his neck.

Officer Brian Kroening

On the day of the incident, at approximately 2:00 p.m, Officer Kroening provided a walkthrough of the scene. During the walkthrough, Officer Kroening stated he was standing at the front passenger door of Decedent's vehicle when he fired. Officer Kroening walked over to the front passenger door and indicated as if firing in a southbound direction.

Officer Jonathan Lipinski

On the day of the incident, Officer Lipinski provided a walkthrough of the scene and an interview. He explained that earlier that day at approximately 9:15 a.m., he and Officer Kroening were operating as a marked patrol unit when they conducted a vehicle stop in the 5700 block of West Sahara Avenue. While on their vehicle stop, Officer Lipinski heard Officer Luna on the radio call out a vehicle stop of his own in the 5600 block of West Sahara Avenue. Officer Lipinski was sitting inside the passenger seat conducting a records check of his driver when Officer Kroening told him to continue what he was doing and began walking toward Officer Luna's vehicle stop.

Officer Lipinski was walking back to his vehicle after finishing his stop when he heard three to four gunshots. Officer Lipinski ran to his vehicle and heard Officer Kroening broadcast, "Shots fired, shots fired!" Officer Lipinski drove his patrol vehicle east in the westbound lanes of Sahara Avenue coming to a stop approximately thirty yards in front of Decedent's vehicle.

Officer Lipinski exited his vehicle and saw Officer Kroening standing on the sidewalk next to Decedent's passenger side window with his firearm pointed at Decedent. Decedent was seated

in the driver's seat, slumped over into the passenger seat. Officer Lipinski could only see one of Decedent's hands, but could not see if Decedent had the weapon in his other hand. Officers began issuing commands to Decedent, but he was unresponsive.

Officers stood by until K-9 officers arrived with a ballistic shield. Officer Lipinski approached Decedent's vehicle with the arrest team. When Officer Lipinski reached the open car door, he observed a firearm on the driver's side floorboard underneath the gas pedal. Officers Lipinski and Musgrove removed Decedent from the vehicle and placed him in handcuffs. Decedent was non-responsive.

Officer Christopher Dowler

On the day of the incident, Officer Dowler provided a walkthrough of the scene and an interview. Officer Dowler stated that he and his trainee, Officer Hogue, were travelling west on Sahara Avenue where they saw two patrol units approximately fifty yards apart on separate vehicle stops. They approached the first unit, just west of Lindell Road, and saw Officer Luna at the driver's side window. They also observed Officer Kroening, who had walked over from a different vehicle stop to assist Officer Luna.

Officer Dowler instructed Officer Hogue, who was driving, to stop by Officer Luna's vehicle which was parked behind Decedent's vehicle. Officer Kroening approached and requested they go check on his trainee at the vehicle stop west of their location. As Officer Kroening was speaking to them, Officer Dowler observed Officer Luna struggling with Decedent. Officer Dowler pointed toward Officer Luna and, upon realizing Officer Luna needed assistance, Officer Kroening ran toward him. Officer Hogue accelerated and quickly stopped the patrol vehicle, at which time both officers quickly exited the vehicle. As Officer Dowler ran toward Officer Luna, he observed Officer Luna break away from Decedent and quickly move toward the rear of Decedent's vehicle while yelling, "413! 413! 413!"²

Officer Kroening ran to the passenger side of Decedent's vehicle. As Officer Dowler reached the rear of Decedent's vehicle, he heard shots being fired then immediately heard Officer Hogue say, "I'm hit!" Officer Dowler turned around and saw Officer Hogue lying on the ground at the rear of their patrol vehicle.

Officers Luna and Dowler ran to Officer Hogue and Officer Luna attended to him. Officer Dowler went back toward Decedent and observed his legs were hanging out of the car and moving. Officer Kroening, who was on the passenger side, reported he could not see the gun and Decedent was still moving. Officer Kroening remained on the passenger side of Decedent's vehicle and took a position behind cover. The officers remained in their positions and waited for responding units.

² "413" is the code for a firearm

Sergeant Kerns responded with a ballistic shield and, moving as a team, the officers approached Decedent's vehicle. Officer Dowler observed a gun on the floorboard and Decedent's left arm was underneath his body. Officer Dowler reached into the vehicle and grabbed Decedent's left arm and made sure Decedent was not holding a weapon.

III. LAY WITNESSES INTERVIEWS

Witness #1

On the date of the incident, Detective Patton conducted an interview with Witness #1. In the interview, Witness #1 stated that he was traveling west on Sahara Avenue in his white Chevrolet HHR when he observed Officer Luna on a vehicle stop with Decedent. He noticed Decedent was standing next to a Jeep and was yelling and screaming at Officer Luna.

As he continued traveling west, Witness #1 observed Decedent turn away from Officer Luna and run back into his vehicle. Officer Luna quickly ran after Decedent and was reaching into Decedent's vehicle attempting to prevent Decedent from fleeing. Witness #1 noticed Officer Luna was alone at that time, and Witness #1 feared Decedent was attempting to flee in his vehicle as Officer Luna attempted to stop him. Witness #1 wanted to help Officer Luna, so he drove his vehicle in front of Decedent's vehicle to prevent him from leaving.

After he stopped his vehicle, Witness #1 observed a second LVMPD police vehicle on a vehicle stop several yards west of him on the same side of the street. Witness #1 witnessed Officer Kroening walk east on the sidewalk to assist Officer Luna. As Officer Kroening arrived with Officer Luna, Witness #1 drove away from the front of Decedent's vehicle and made a U-turn onto eastbound Sahara Avenue.

Witness #1 did not hear any gunshots, nor did he see anyone shoot; however, he observed Officer Hogue exit the driver's side of his patrol vehicle and immediately fall to the ground. Officer Hogue rolled side to side as if he had been shot. Witness #1 observed Officer Luna and another officer run over to Officer Hogue and help him.

Witness #2

On the date of the incident, Detective Kowalski conducted an interview with Witness #2. In the interview, Witness #2 stated that at 9:30 a.m. he was sitting at his desk in the front office area at 5600 West Sahara Avenue. The desk of Witness #2 faced south and looked out to Sahara Avenue. He noticed flashing lights and observed Decedent's vehicle being pulled over by Officer Luna. Witness #2 saw Officer Luna exit his vehicle and walk toward Decedent's vehicle. He did not watch the interaction between Officer Luna and Decedent. He returned his focus to his computer screen. Witness #2 heard two to three gunshots and looked up from his computer. He saw a number of police officers near Decedent's vehicle but did not see who had fired. Witness #2 watched the police for a short time before returning to his work.

Witness #3

On July 11, 2015, Detective Kowalski conducted an interview Witness #3. He stated that on the previous day, at approximately 9:30 a.m., Witness #3 was returning to the area after taking a customer on a test ride. Witness #3 saw Officer Luna pulling over Decedent's vehicle. Before Officer Luna exited his vehicle, Decedent jumped out of the driver's seat and began waving his arms and yelling at the officer. Witness #3's window was up and he could not hear what words were exchanged between Decedent and Officer Luna. He could hear Decedent yelling. Officer Luna said something to Decedent and appeared to be trying to calm him down. Decedent sat back down in his vehicle and slammed the door. Officer Luna opened the door and started talking to Decedent at the vehicle. Witness #3 estimated he was approximately thirty to fifty yards from the exchange.

Witness #3 also saw Officers Kroening and Lipinski's vehicle stop farther east on Sahara Avenue. He observed Officer Kroening walking toward Decedent's vehicle. The customer made the U-turn and proceeded to drive Witness #3 back to the service garage. Witness #3 got out of the car and saw co-workers running toward Sahara Avenue. Co-workers told him there had been gunshots and an officer had been hit.

IV. BODY WORN CAMERA

Officer Carlos Luna

Detective Kowalski met up with Officer Luna at UMC where Officer Luna had taken Officer Hogue. Detective Kowalski took custody of and secured Officer Luna's body camera.

The body camera contained footage of the initial stop with Decedent, Decedent exiting his vehicle, Decedent reentering his vehicle, the conversation between Decedent and Officer Luna, the struggle for Decedent's firearm, Officer Luna retreating from the vehicle, Officer Luna approaching Officer Hogue after he was hit and Officer Luna taking Officer Hogue to UMC. The audio of the video began where Officer Luna approached the vehicle, opened the door and was beginning to speak with Decedent.³

V. WEAPONS COUNTDOWN

On the day of the incident Officers Kroening, Dowler, and Lipinski had their duty weapons counted down at LVMPD Headquarters.

³ The body-worn camera system is designed to record when the officer activates the system, and it captures the prior 30 seconds. For this reason, the audio does not begin until 30 seconds into the interaction.

Prior to countdown, Officer Kroening stated he carried nineteen cartridges in the magazine loaded in his firearm and one cartridge in the chamber. Officer Kroening also carried four spare magazines, each containing nineteen rounds. At the completion of the countdown, it was determined Officer Kroening discharged his firearm three times during this incident. The other officers were found to have not discharged their weapons.

VI. FIREARMS FORENSICS

Forensic Scientist Anya Lester submitted the Firearms & Tool Marks Report with the following results:

Decedent's Firearm Examination

The Ruger pistol was examined, test fired and found to be operational with no noted malfunctions.

Officer's Firearm Examination

Officer Kroening's Springfield Armory pistol was examined, test fired and found to be operational with no noted malfunctions.

Comparisons

The evidence and test fired cartridge cases and bullets were examined and microscopically inter-compared with the following results:

The cartridge case found in Decedent's vehicle was identified as having been fired by the submitted Ruger pistol. The three cartridge cases found outside Decedent's vehicle and the three bullets shared similar general characteristics with the test fired items from the Springfield Armory pistol; however, they lack sufficient microscopic detail for a conclusive identification to this pistol. None of these items were fired by the Ruger pistol.

The two bullet jacket fragments located outside of the vehicle bear similar general characteristics with both submitted pistols; however, due to damage and/or a lack of microscopic detail, a conclusive identification to either pistol could not be determined. The remaining bullet jacket fragments and metal fragments bear no markings of value for microscopic comparisons.

VII. AUTOPSY

On July 11, 2015, Dr. Timothy Dutra conducted the autopsy upon Decedent. Dr. Dutra concluded that the cause of death was the result of multiple gunshot wounds.

Decedent's toxicology report had positive findings for THC and Oxycodone-Free. Decedent's blood was at a level of 2.7 ng/mL of THC.⁴ The active ingredient for THC is marijuana. Pharmacologically, it has depressant and reality distorting effects. Decedent's blood was also at a level of 87 ng/mL of Oxycodone-Free. Oxycodone-Free is a semi-synthetic narcotic analgesic used to control pain.

VIII. HISTORY OF DECEDENT

The following persons were contacted in reference to their knowledge of the facts and circumstances related to Decedent's history: his wife K.T., his daughter, his friends A.M. and C.F., and Officers Oris and Walford. The following summary is a synthesis of the accounts given by these people.

K.T. married Decedent in January 1991 and they had a daughter together. At one point, K.T. and Decedent divorced, but they reconciled and remarried in 2000. Through the years, Decedent struggled on and off with use of controlled substances.

In 2011, Decedent had a heart attack and had bypass surgery. Around this time, Decedent began to use synthetic marijuana, also known as spice, which he would purchase at a smoke shop. He also was taking pain pills, at first recreationally and then with a prescription. Decedent started to fall asleep in the middle of the day, something he never did before. When Decedent would wake from the naps he would act very differently depending on his mood, going from one extreme emotion to the other.

In October 2014, K.T. left Decedent and moved back to Las Vegas from Utah. Decedent followed a few months later. Decedent tried to get back together with K.T., but she declined. After Decedent began dating again, K.T., who had been afraid to push for a divorce because Decedent had been so unstable, decided to start the divorce process.

In the summer of 2015, Decedent moved in with a friend, A.M., who lived in Pahrump. On July 3, 2015, Decedent drove to Utah in order to pick up some prescriptions. When Decedent returned from Utah, he told A.M. he was going out to gamble. A.M. told Decedent as long as he stayed with him he would not allow him to gamble. Decedent got upset and left A.M.'s house.

On July 4, 2015, Decedent called K.T. and asked to borrow her truck to move his things from A.M.'s home. K.T. assisted Decedent in loading his things and bringing them back to Las Vegas. Back in Vegas, K.T. allowed Decedent to stay one night at her apartment since he had nowhere else to stay, insisting he sleep on the couch. Decedent left on his motorcycle sometime during the night.

⁴ Under Nevada law, it is unlawful to operate a vehicle with a blood content level of marijuana greater than 2 ng/mL

On July 5, 2015, K.T. got a call from her sister-in-law, P.T., informing her Decedent needed to be picked up at a 7-Eleven near Blue Diamond Road and Durango Drive. According to P.T., Decedent had ridden his motorcycle out into the desert and got it stuck. K.T. drove out there looking for Decedent and saw him walking on Rainbow Avenue north of Blue Diamond Road. K.T. pulled over to give him a ride and, when he got in the vehicle, he started acting belligerent. K.T. had him exit the vehicle. K.T. felt bad for Decedent and decided to go back for him.

K.T. stopped her truck next to him and told him to get in. Decedent opened the passenger side door of the truck, but didn't get inside. Decedent stood next to the truck and reached into the back seat searching for something. K.T. asked Decedent what he was looking for and he said, "My gun." Upon hearing that, K.T. took her foot off the brake and the truck lurched forward. When the truck lurched forward the back portion of the door frame struck Decedent, knocking him to the ground. K.T. stopped the truck and asked Decedent if he was all right. Decedent stood up and kicked K.T.'s truck and shouted at K.T., so she left.

When K.T. was driving off, she saw Decedent in her rearview mirror walking down the road with a limp. K.T. turned around for the third time. Decedent was standing on the sidewalk in front of an AutoZone store. K.T. stopped her truck in the parking lot of the AutoZone, exited her vehicle, and left the driver's side door open. Decedent laid down on the ground and acted like he was dying. As K.T. walked over to Decedent, he jumped up and started shouting, "You are in so much trouble! You just ran me over!" Decedent started walking toward K.T., so she got into her truck and left. As K.T. drove away, Decedent motioned his finger across his throat in a "slit your throat" motion. When K.T. drove off, she saw he had flagged down a patrol vehicle and was talking to police officers.

Officer Oris and Officer Walford had stopped to speak with Decedent. The officers had been dispatched to the area of Rainbow Boulevard and Windmill Lane in reference to a male lying in the desert area on the southwest corner. They arrived in the area but could not locate anyone. Officer Walford drove north on Rainbow Boulevard, and he and Officer Oris saw Decedent wearing a white T-shirt and blue jeans matching the description of the subject of their call. They stopped and made contact with him.

Decedent was extremely agitated and yelling. When Officer Walford spoke with him, Decedent stated that his wife had just hit him and stolen his gun. Decedent pointed at the traffic on Rainbow Boulevard, but did not point out which vehicle his wife was driving. Decedent would not answer clarifying questions about what had happened or where. Decedent jumped from topic to topic and did not answer the officers. Because of Decedent's agitated state and his comments about a handgun, the officers placed Decedent in handcuffs which made him very upset.

Officer Oris talked to Decedent and tried to calm him down, but Decedent continued to yell about having been placed in handcuffs. Decedent changed topics and began talking about how he had wrecked his motorcycle the previous night. Decedent had been sitting in a desert area nearby with the motorcycle. Decedent told officers there was a firearm inside the motorcycle.

Officer Oris asked Decedent where the motorcycle was, but Decedent could not provide an accurate location, switching between areas.

Decedent was removed from the handcuffs and visibly calmed down. With no further reason to detain him, Decedent was released and continued to walk north on Rainbow Boulevard. Officers looked for Decedent's motorcycle in the area but were unable to locate it.

Later that day, K.T., their daughter and her boyfriend began to move Decedent's property out of K.T.'s truck and into Decedent's Jeep. As they were packing, Decedent walked up and started arguing with K.T. saying he wanted his gun back. K.T. was scared what Decedent would do if he had the gun, so she hid the gun inside her apartment. K.T. also called the police to have Decedent removed from the complex. Decedent fled from the complex before police arrived. K.T. explained the details of the night to police and they instructed her on the steps needed to apply for a protective order. K.T. surrendered Decedent's gun and the police impounded it for safe keeping. A few hours later, Decedent returned to K.T.'s apartment and K.T. again phoned the police. When police arrived, Decedent was still near the apartment so the responding officers placed handcuffs on Decedent. K.T. did not want to file any charges against Decedent, so he was advised by police he needed to leave the complex.

On July 6, 2015, K.T. applied for a protective order and was advised she would need to return to the courthouse on July 8 after 2:00 p.m. to find out if the restraining order would be granted. On July 7, K.T. rented a storage unit near Decatur Boulevard and Lake Mead Boulevard and moved all of Decedent's property into the storage unit. On July 8, K.T. did not go to the courthouse to follow up on the protective order.

On July 9, K.T. received a call from A.M., who asked K.T. if he could go with Decedent to pick up Decedent's property and move it to Pahrump. K.T., along with their daughter, agreed to meet A.M. and Decedent and helped them load Decedent's things out of the storage unit. Once Decedent's property was loaded from the storage unit, K.T. reminded Decedent of the "do it yourself divorce kit" they started in October. Decedent agreed to file it, and they all went to find a notary to notarize the paperwork.

While looking, A.M. received a phone call requesting he go into work so he could not drive Decedent to get the paperwork notarized. K.T. and their daughter allowed Decedent to ride with them. During the drive, Decedent again started shouting at K.T., claiming the divorce was all her fault. A legal-form business notarized the divorce paperwork and agreed to file it. K.T. dropped Decedent off at a 7-Eleven. The last words Decedent said to their daughter as he was leaving the truck were, "The next time I see your mother I am going to kill her." This statement surprised K.T. because Decedent had never hurt her physically before.

On that day, Decedent told A.M. about his issues with K.T. and his recent incidents with the police. Decedent told A.M. the police took his gun and Decedent tried to get it back but was unsuccessful. Decedent also made statements to A.M. that he was angry at his wife, sister-in-

law, and son-in-law and that he would like them all dead. A.M. told Decedent he was glad the police didn't give him back his gun. Decedent became agitated, grabbed his keys, and walked out of the house. A.M. assumed Decedent would blow it over by gambling but Decedent did not return.

On July 10, 2015, in the early morning hours, C.F. received a voice mail from Decedent stating he was on his way over to her house driving a gold colored Jeep. C.F. was briefly engaged to Decedent in 1988 but they had broken up and lost contact. Only recently had the two reconnected on Facebook. Around 1 a.m., C.F. received a phone call from Decedent asking her to open the gates allowing access into her housing development. Decedent told C.F. he had nowhere to go and wanted to stay at her place. C.F. told Decedent he could not stay with her because she had her grandchildren at her house and she had to work in the morning. Before July 10, C.F. had not communicated with Decedent for a few weeks. C.F. had not seen Decedent in person since their dating relationship ended in 1988.

Later that morning, K.T. received a phone call from Decedent's sister-in-law, P.T. She informed K.T. earlier that morning P.T. and her husband, Decedent's brother, were out walking their dogs. They saw Decedent in his Jeep parked on the side of the street a short distance from their house. Her husband had severed his ties with Decedent and did not want him in his house, so they hurried home to avoid a confrontation. Her husband had to leave shortly after they got home, so P.T. was home alone. Decedent knocked on the front door of the residence for several minutes, so P.T. called K.T. to ask what to do. K.T. told P.T. to hide in the bedroom and not let Decedent in the house.

A few minutes after Decedent left P.T.'s residence, he started knocking on K.T.'s apartment door. K.T. hid in her bedroom and, after a few minutes of knocking, Decedent left. After Decedent left K.T.'s complex, she phoned A.M. to see if Decedent was staying with him. While K.T. was on the phone with A.M., he told her she needed to turn on the news because there was an incident where the police shot someone in a champagne colored Jeep. The incident occurred near the intersection of Sahara Avenue and Lindell Road, approximately two blocks from her complex. K.T. phoned the police to confirm it was Decedent who was involved.

Decedent's Note

Found in the vehicle with Decedent was a handwritten note. The note is first addressed, "To the 4 Enterprise Cops I flagged down 5 days ago." The note expresses anger at how they handled the situation with his wife. He also states to those same police officers, "If you were here I would do the world some good and take you worthless fucks with me..." The note also speaks directly to some family members in a negative way.

IX. 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 of these theories will be discussed below.

A. The Use of Deadly Force in Defense of Another

The authority to kill another in defense of others is contained in NRS 200.120 and 200.160. “Justifiable homicide is the killing of a human being in necessary self-defense, or in defense of ... person, against one who manifestly intends or endeavors to commit a crime of violence ...” against the other person.⁵ NRS 200.120(1). Homicide is also lawful when committed:

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

NRS 200.160(1). The Nevada Supreme Court has refined the analysis of self-defense and, by implication, defense of others, in *Runion v. State*, 116 Nev. 1041 (2000). The relevant jury instructions as articulated in *Runion* and modified for defense of others are as follows:

The killing of [a] person in [defense of another] is justified and not unlawful when the person who does the killing actually and reasonably believes:

1. That there is imminent danger that the assailant will either kill [the other person] or cause [the other person] great bodily injury; and
2. That it is absolutely necessary under the circumstances for him to use in [defense of another] force or means that might cause the death of the other person, for the purpose of avoiding death or great bodily injury to [the person being defended].

⁵ 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.

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

Therefore, in Nevada, the law is that if there is evidence of self-defense, in order to prosecute, the State must prove an individual did not act in self-defense beyond a reasonable doubt.

In this case, Decedent posed an imminent danger to Officers Luna, Hogue, Kroening and to the civilians in the area. He also committed a crime of violence, Battery With a Deadly Weapon, by pointing his weapon at Officers Luna and Hogue and firing it, striking Officer Hogue. *See* NRS 200.481. Decedent also posed an imminent danger to the people in the businesses in the area, as well as any drivers or pedestrians in and around the street. When confronted with an individual who was displaying a firearm and discharging it at officers, the officer had a duty to respond and a right to utilize deadly force. Therefore, Officer Kroening acted in reasonable fear of a threat to his life and the lives of others at the time he fired.

B. Justifiable Homicide by a Public Officer

“Homicide is justifiable when committed by a public officer ... [w]hen necessary to overcome actual resistance to the execution of the legal process, mandate or order of a court or officer, or in the discharge of a legal duty.” NRS 200.140(2). This statutory provision has been interpreted as limiting a police officer’s use of deadly force to situations when the officer has probable cause

to believe that the suspect poses a threat of serious physical harm to either the officer or another. *See* 1985 Nev. Op. Att’y Gen. 47 (1985).

In this case, the facts illustrate that Officer Kroening was reasonable in his belief that Decedent posed a serious threat to the safety of all officers involved, as well as the surrounding civilians. As aforementioned, Officers Kroening saw Officer Luna struggle for the gun with Decedent and saw Decedent fire toward Officers Luna and Hogue. Decedent’s discharge of that weapon confirmed the officer’s fear and the discharge of his weapon to end the threat posed to them was lawful.

These circumstances created probable cause in Officer Kroening’s mind that Decedent posed a threat of serious physical harm either to him and/or other officers and civilians in the area. The officer overcame that threat by firing his weapon into Decedent’s body.

In light of all the evidence reviewed to date, the actions of Officer Kroening were justified and appropriate “in the discharge of a legal duty.”

CONCLUSION

Based on the review of the available materials and application of Nevada law to the known facts and circumstances, the State concludes that the actions of the Officer 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 Officer Kroening, and, unless new circumstances come to light which contradict the factual foundation upon which this decision is made, no charges will be forthcoming.