



REPORT ON USE OF FORCE

Legal Analysis Surrounding the Death of Jamarri Tarver on January 2, 2020

INTRODUCTION

On January 2, 2020, at approximately 0034 hours, Officer Steven Toms conducted a records check on a red 2014 Toyota Corolla bearing Minnesota license plate 877XLZ. The vehicle returned as an active stolen vehicle out of the Las Vegas Metropolitan Police Department (“LVMPD”) jurisdiction under LVMPD Event #191200125285. Officer Toms attempted to stop the stolen vehicle; however, the driver - - later identified as Jamarri Tarver (hereinafter “Decedent”) - - refused to stop. A vehicle pursuit ensued. During the pursuit, it was broadcast over the radio that the vehicle was stolen during a carjacking during which the suspect simulated a firearm.

At approximately 0058 hours, the pursuit ended when the vehicle entered the parking lot of CVS located at 3655 W. Craig Road. Decedent’s vehicle rammed two patrol vehicles at the CVS. The first vehicle rammed was that of Officers Brian Krieger and Brian Wheeler, who were riding as two-man unit in a marked patrol vehicle. The Corolla reversed direction and rammed into the right front of their patrol vehicle upon entering the parking lot of the CVS.

The second ramming occurred a short distance later when the Corolla was put in reverse. It rammed the right front corner and right front passenger door of Officer Patty and Schmidt’s marked patrol unit. The impact caused the car door to forcibly swing back into Officer Schmidt, who was standing in between the open door and the patrol car. As the car drove at the officers, Officers Aaron Patty and Officer Phillip Schmidt discharged their firearms at the driver of the Toyota Corolla, resulting in his death.

The Clark County District Attorney’s Office has completed its review of the January 2, 2020, death of Decedent. It has been determined that, based on the evidence currently

available and subject to the discovery of any new or additional evidence, the actions of Officer Aaron Patty and Officer Phillip Schmidt were not criminal in nature. This review is based upon all the evidence currently available.

This report explains why criminal charges will not be forthcoming against Officer Aaron Patty and Officer Phillip Schmidt. 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 October 19, 2020.

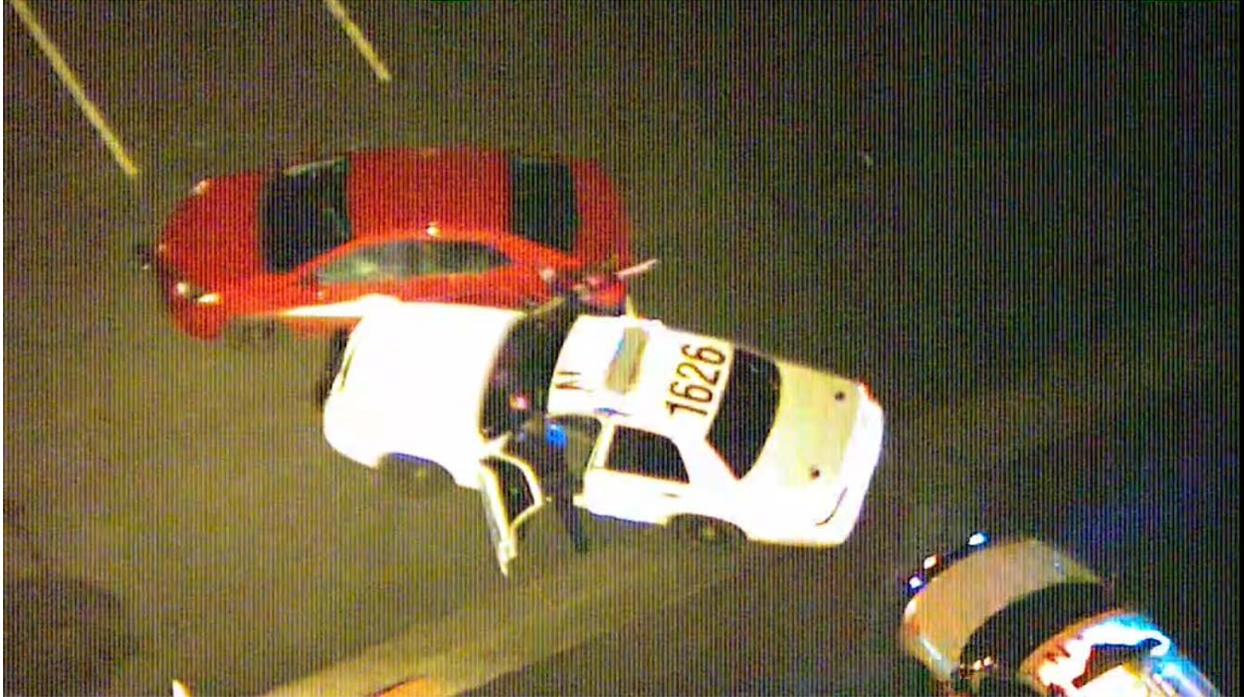
This report is intended solely for the purpose of explaining why, based upon the facts known at this time, the conduct of the officers was not criminal. This decision, premised upon criminal-law standards, is not meant to limit any administrative action by the North Las Vegas Police Department or to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

I. AIR UNIT VIDEO AND BODY WORN CAMERA VIDEO

North Las Vegas investigators obtained video from the Las Vegas Metropolitan Police Department Air Unit that was involved with the pursuit of Decedent's vehicle. The video showed the Corolla driving westbound on Craig Road in the eastbound lanes. The car then made a left turn into the CVS parking lot but was unable to negotiate the turn and it stopped at the curb. Officers Krieger and Wheeler pulled up behind the Corolla. The Corolla then reversed and slammed into the front end of their patrol vehicle and drove away.

The video also showed Officers Patty and Schmidt drive around Officers Krieger and Wheeler as they became the lead vehicle behind the Corolla. The Corolla drove west through the CVS parking lot and turned left to go south but stopped in front of a parking lot island. Officers Patty and Schmidt pulled up behind the Corolla and exited their patrol vehicle.

The video then showed the Corolla move in reverse and strike the right front corner of Officer Patty and Officer Krieger's patrol vehicle and the front passenger door. This caused the front passenger door to slam backwards into Officer Schmidt.



Still frame from the Air Unit Video.

Both officers then discharged their firearms. The video continues and records the events as already described until Decedent is taken into custody.

North Las Vegas investigators also obtained Body Worn Camera (“BWC”) video from Officers Aaron Patty, Phillip Schmidt, Brian Krieger, Brian Wheeler, Spencer Kinney, Case Kepner and Steven Toms. The footage from the officers was limited, primarily to when they are seated in the patrol vehicles because of the time of night and the angle of the cameras. From Officer Patty’s BWC video, the Corolla came into view as he exited the patrol vehicle. The Corolla was then seen going in reverse and ramming the front right corner of the patrol vehicle. When that occurred, Officer Patty discharged his firearm, and Officer Schmidt came into view on the right and was seen discharging his firearm.

The view from Officer Schmidt’s BWC video showed that he exited the patrol car and was between the open door and the patrol vehicle. The Corolla was seen in front of the patrol vehicle and, within seconds, the Corolla reversed, slammed into the front right and the front passenger door of the patrol vehicle. The patrol vehicle door slammed into Officer Schmidt and a gasp was heard from Officer Schmidt. Officer Schmidt immediately discharged his firearm. He was also seen doing a tactical reload of his firearm.



Still frame from Officer Schmidt's Body Worn Camera Video.

The views from the other officers' BWC footage did not capture the ramming of Officer Patty and Officer Schmidt's patrol vehicle or them discharging their firearms. It did reveal Officer Patty and Officer Schmidt giving commands to Decedent who was still in the vehicle. It appeared from slight movements that he was still alive, but he would not comply with commands given to show his hands.

K-9 Officer Kepner deployed his dog to go inside the Corolla to get a reaction from Decedent. After the dog was deployed, Officers Krieger, Wheeler, Kinney, Kepner, Patty and Schmidt approached the Corolla. Officer Wheeler went around to the front passenger door of the Corolla, broke out the front passenger window and Decedent was extracted from the vehicle. Officer Wheeler was seen checking Decedent's neck and wrist for a pulse.

II. PUBLIC SAFETY STATEMENTS

In his public safety statement, Officer Schmidt explained that he suffered injuries to his chest, neck, upper back and shoulder as a result of the patrol vehicle door slamming him

across the chest. Officer Schmidt stated he discharged his firearm and believed he fired about 10-12 rounds in a westbound direction. Officer Schmidt was aware of Officer Patty firing his weapon. There were no outstanding suspects. The suspect did not fire a weapon at Officer Schmidt and, at the time of the public safety statement, it was unknown if there were weapons in the suspect vehicle.

In his public safety statement, Officer Patty explained that he suffered injuries to his lower back as a result of his patrol vehicle being rammed. The suspect was deceased as a result of his injuries. There were no outstanding suspects. Based on the information of a simulated firearm used in the robbery of the suspect vehicle, it was believed the suspect was in possession of a firearm. Officer Patty did discharge his firearm and believed he fired about five rounds in a westbound direction.

III. OFFICER WEAPON COUNTDOWNS

During the interviews with the officers, Crime Scene Investigator (CSI) Rene Harder, with the assistance of CSI Carina Neiman, completed Officers Patty and Schmidt's countdowns of their firearms. CSI Harder handled the firearms and magazines and counted them down while CSI Neiman completed all photographs.

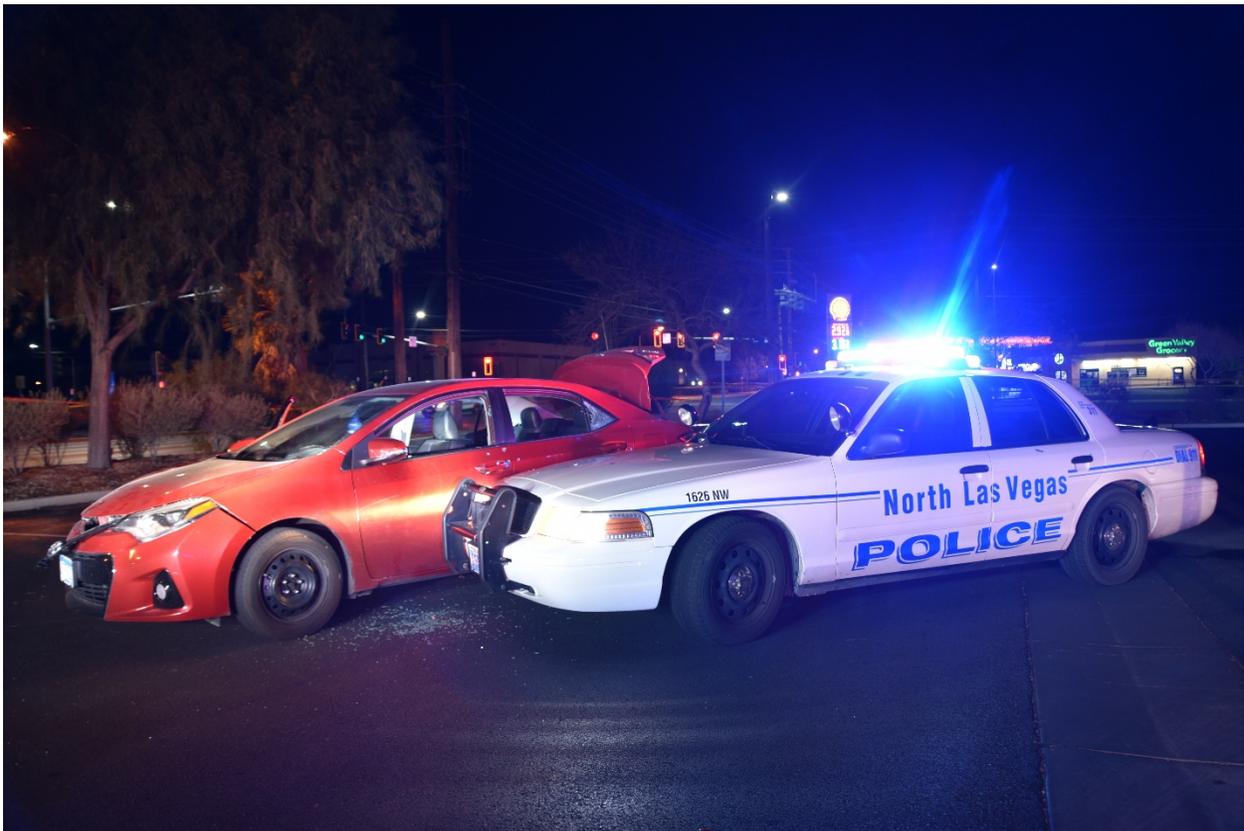
Officer Patty's primary duty firearm was a Glock 17, 9mm. There were four live cartridges in his firearm, one in the chamber, and three inside the magazine. Officer Patty stated his magazines are usually loaded to capacity, 17 in the magazine and one in the chamber, for a total of 18 in his firearm. Officer Patty had three other magazines on his duty belt which were loaded to capacity with 17 live cartridges. It was determined that Officer Patty fired 14 rounds.

Officer Schmidt's primary duty firearm was a Springfield Armory XDM .40 Caliber. There were seventeen live cartridges, one in the chamber, and sixteen inside the magazine. Officer Schmidt stated that his magazines are usually loaded to capacity with 16 in the magazine and one in the chamber, totaling 17 cartridges in his firearm. Officer Schmidt advised CSI Harder that he completed a "tac reload" (i.e., during the incident, he removed the magazine from his firearm from which the rounds were fired, and he replaced it with a full magazine).

Officer Schmidt had three extra magazines on his duty belt. Two of the magazines contained 16 live cartridges. The third magazine contained seven live cartridges. After the countdown was completed, it was determined that Officer Schmidt fired 9 rounds.

IV. DESCRIPTION OF THE SCENE AND VISIBLE EVIDENCE

Crime Scene Investigators Dana Marks and Carina Neiman responded to the scene at the CVS. CSI Neiman was tasked with, among other responsibilities, collecting and photographing evidence. All other scene photographs were taken by CSI Marks. Tire tracks were observed leading up to a small curb on the west side of the entrance of the parking lot. The scene also included a North Las Vegas patrol vehicle in the southwest parking lot facing south. The Corolla was situated up against the patrol vehicle. The front driver side door of the Corolla was up against the right front corner of the patrol vehicle. Decedent was located laying on the asphalt a few feet to the west of the Corolla.



The scene as documented by Crime Scene Investigators.

A marked patrol vehicle driven by Officers Krieger and Wheeler was facing north just to the south of Officers Patty and Schmidt's patrol vehicle and the Corolla. A total of 22 cartridge cases were collected at the scene.

The Corolla was then to be towed to the CSI bay for further processing. However, it was first towed to the North Las Vegas Police Garage because it was believed that another cartridge case might be trapped under the front cowl at the base of the front windshield. While at the garage, the windshield wipers and front cowl were removed and another

cartridge case was found. This brought the total of cartridge cases recovered to 23. This matched the countdown of rounds fired by Officer Patty (14) and Officer Schmidt (9) for a total of 23. CSI Sasha Torres responded to the garage and collected the cartridge case.

The Corolla was later taken to the North Las Vegas CSI Bay to be documented and processed. CSI Graziano took overall photos of the exterior of the Corolla. Photographs were taken of 10 bullet defects to the driver door and two bullet defects to the rear driver door. Overall photographs were taken of the interior showing the continued paths of trajectory. Where possible, trajectory rods were placed in the bullet paths which showed the paths down and to the left when facing the driver door.

CSI Graziano collected and booked into evidence 10 items to include bullets, bullet fragments and jacketing. A broken glass methamphetamine pipe with burnt residue was also found on the backseat floorboard.

V. AUTOPSY

On January 03, 2020, the autopsy of Decedent was performed by Doctor AbuBakr Marzouk and Assistant Coroner Brett Harding. CSIs Fischer and Torres were present to take photographs and collect evidence. The autopsy examination determined that Decedent had eight bullets in his body; one bullet was removed from his left knee, his left hand, his left elbow, his middle chest, his upper left chest, two from the top of his right shoulder and one from his neck. Dr. Marzouk determined that the cause of death of Decedent was multiple gunshot wounds, and the manner of death was homicide. The toxicology results on Decedent detected methamphetamine 2500 ng/mL and its active metabolite amphetamine 340 ng/mL, and Marijuana/THC 1.9 ng/mL and its metabolite Carboxy THC 9.8 ng/ML.

VI. INVESTIGATION

Witnesses

On January 06, 2020, North Las Vegas Detectives conducted recorded interviews with Officers Patty and Schmidt.

OFFICER AARON PATTY:

Officer Patty had not reviewed BWC footage prior to the interview. Officer Patty provided the following account:

He has been a police officer with North Las Vegas for about 13 years. He started in patrol for about seven years before being assigned as the Public Information Officer for about five years. He has been back in patrol for about a year. In the course of his employment, he has received annual training such as defensive tactics, firearm training and qualifications and classes in the use of force.

On the night of the incident, he was working the graveyard shift from 2230 hours until 0830 hours. He was working as a two-man unit. He had not worked any overtime and received a full eight hours of sleep prior to the start of his shift. At the start of the shift, they had a couple of loud music calls. They were on a loud music call in the area of Pecos and Washburn when the pursuit started. Officer Toms came over the radio and asked dispatch to verify a stolen vehicle, a red 2014 Toyota Corolla bearing Minnesota license plate "877XLZ." Dispatch confirmed the car was stolen and that it was taken in a carjacking a few days prior where the suspect simulated a firearm. Officer Patty indicated that the details of the prior incident heightened his senses, because he knew it was reported to be a carjacking where a weapon could have been involved.

Officer Patty heard that the Corolla started to take off from Officer Toms, so they were trying to get over to him because of the potential for violence. The chase went all over the city. He did not remember all of the directions, but they were listening to the radio traffic and trying to join in where they could. They were still en route trying to join in the pursuit when the vehicle was lost. However, they kept searching the area to see if they could locate the Corolla. Officer Patty then heard Metro's air unit say, "Unit, right there." He was not sure if the air unit was talking to them, but they went over to where the air unit was hovering. Officer Patty then saw the Corolla, which did not have its lights on. He remembered being close and at times falling back from the Corolla, especially when going through and clearing intersections.

Officer Patty saw the Corolla go through intersections at 90 mph without Decedent even tapping his brakes. Officer Patty was very concerned as he observed Decedent drive in that reckless manner, because he thought Decedent was going to kill somebody. He stated that it felt like Decedent was going to end up crashing into a wall or killing someone else by crashing into them.

As the pursuit continued, Officer Patty observed the Corolla turn into a neighborhood, which was a dead end. The Corolla had to come out the same way it went in. When the Corolla came out of the neighborhood, its lights were not on, but Officer Patty could see it was occupied by one person. The Corolla went back out to the main roads and went against traffic several times as if Decedent was going to hit oncoming traffic. There were vehicles pulling over to the side of the road to avoid a crash.

At one point, Officer Patty does not remember where, he was in front of the Corolla and it came straight toward him. The Corolla came into oncoming traffic, as if the Corolla was going to hit them. He couldn't remember what Officer Schmidt said, but he said something like, "This is it, oh my gosh, he's going to hit us." Officer Patty pulled over and stopped. The Corolla went straight for them and then veered when the Corolla was a couple of car lengths away.

Officer Patty felt the pursuit was long, and he thought it was strange that when the police had lost Decedent during the pursuit, Decedent did not take the opportunity to get out of that vehicle and run. Per Officer Patty, Decedent was driving completely crazy and erratic, against traffic, lights off, and it seemed everything was intentional. It seemed like Decedent had experience and his intentions were clear, that he was determined to get away. Not only did Decedent want to get away, but for some reason he wanted to stay in that vehicle, despite having an opportunity to flee after he lost the police.

Towards the end of the pursuit, the Corolla was west bound in the eastbound lanes on Craig Road when Decedent turned into the CVS. Officer Patty saw that the Corolla was unable to make the turn and crashed. Officer Patty saw Officer Wheeler exit his patrol car and draw his weapon. Officer Patty then saw the Corolla back into Officers Krieger and Wheeler's patrol vehicle. The Corolla then drove around the north side of the CVS. He felt the Corolla drove into the CVS parking lot to use it as an avenue of escape. Officer Patty then drove around Officers Krieger and Wheeler's patrol vehicle and followed the Corolla when it stopped up against a curb.

Officer Patty saw the first patrol vehicle get struck and when he ended up behind Decedent he felt and thought to himself, "We're up. We're the ones behind him now." He was thinking about the carjacking and the gun. He was glad he had a partner. Decedent had been acting so crazy that Officer Patty had no idea what Decedent was going to do.

Officer Patty positioned his patrol vehicle behind the Corolla. He put it in park because he wanted to exit the vehicle right away. He thought the situation was going to turn into some sort of foot chase. However, Decedent did not get out and run. Officer Patty also remembered that a gun was simulated during the prior carjacking, so he did not know if in fact Decedent had a gun, if he was going to come out and shoot at them, or if he was going to ram them like Decedent did the last officers.

Officer Patty felt that his life had never been in more peril than in that moment. He had never faced a situation more dangerous or been more afraid than in that moment. He felt

like instinct took over and made him react the way he did. Officer Patty felt that it had to end. Decedent had plenty of avenues of escape or surrender; however, rather than take advantage of those opportunities, he chose to place the police officers in danger, the public in danger, and himself in danger. It seemed to Officer Patty that Decedent was determined to stay in the vehicle and do as much damage as he needed to get away.

As Officer Patty stood up out of his vehicle, the Corolla started backing into their vehicle. Not only did Decedent strike them, but he continued to back into them. Officer Patty had never been intentionally struck before. He remembered feeling that he might end up under the patrol vehicle at that point. When he saw Decedent continuing backward, he felt that his partner was going to get run over. At that point in the interview, Officer Patty became emotional thinking about the threat to his partner.

Officer Patty remembered that he could hear the revving of the engine and the crunching of the Corolla against the patrol car as the Corolla was coming back at Officer Schmidt. Officer Patty felt that Decedent was determined to get away and kill one of them in the process. He felt Decedent had nothing to lose and was willing to kill one of the officers or one of the members of the public in order to get away. Decedent had plenty of opportunity to flee on foot to make it less dangerous or give up. Officer Patty knew if Decedent got away, there was still going to be the potential of more violence and a danger to the public. It was split second, but the danger was too great, so he discharged his firearm.

Officer Patty felt that, if he would not have discharged his firearm, Decedent would have run over his partner. He remembered Officer Schmidt being on that side of the patrol vehicle, and the Corolla was going straight for Officer Schmidt. Officer Patty thought he discharged his firearm five times, but he kept firing until he felt the threat was neutralized. Officer Patty did not see Decedent holding a weapon and does not remember what, if any, commands were given to Decedent. Officer Patty had the lights and siren on his patrol vehicle going the whole time they were in pursuit and, only when the patrol vehicle pulled in behind the Corolla and was placed in park, did the siren turn off.

Officer Patty explained that, after the shooting, there were many other officers present who gave multiple commands. Officer Patty could see slight movement from Decedent. Officer Patty did not know if Decedent was dead, or if he was playing possum. Officer Patty felt there was still the potential of Decedent coming out with a gun.

Officer Patty stayed fixed on Decedent with his firearm after what had just occurred. A plan was made for K-9 to be deployed to check Decedent to see if there was any movement or resistance. After the K-9 dog did his check, Officer Patty remained at the

driver side of his patrol vehicle and acted as cover as other officers approached the vehicle and extracted Decedent from the Corolla and placed him in custody.

OFFICER PHILLIP SCHMIDT:

Officer Schmidt had not reviewed his BWC footage prior to the interview. Officer Schmidt reported the following during his interview:

He has been a police officer with the North Las Vegas Police Department for about 12 years. He has worked exclusively as a patrol officer since his completion of the police academy and field training. Officer Schmidt is a firearms range master and has regular range master certifications. He also has completed the department required firearms qualifications, use of force classes, and defensive tactics.

On the day of the incident, Officer Schmidt was working as a two-man unit with Officer Patty. He has worked with Officer Patty for about a year. Officer Schmidt said he got about six to eight hours of sleep prior to his shift. The last time he worked overtime was about two or three weeks prior. At the start of the shift, they were sent on a reckless driver call and a call about a suspicious vehicle in an apartment complex, which turned out to be the security guard. They were also sent to a loud party call, but there was no loud party. However, they did smell what they thought might be a gas leak, so they were still in the area looking for that when the stolen vehicle call came out.

Officer Schmidt heard Officer Toms advise dispatch he thought he was behind a stolen vehicle, and he asked dispatch to confirm that it was stolen. They received information that Metro advised the vehicle was taken in a carjacking where a weapon was involved. It was confirmed that a firearm was not actually seen but simulated. They started to head toward Officer Toms' location, when Officer Toms advised the vehicle fled when he tried to initiate a traffic stop. Officers Patty and Schmidt turned on their lights and sirens, as they listened to Officer Toms' radio traffic and tried to get ahead of the pursuit. Officer Schmidt heard the air unit come up to assist, and it was shortly thereafter the Corolla was lost. They began to search the area when they heard the air unit announce the vehicle was in the area of Bravita Drive and Alexander Road. They headed that way and could see the vehicle with its lights out.

Officer Patty pulled over to the far side of the street. Officer Patty told Officer Schmidt to get the spike strips so they could try to stop Decedent, but there was not enough time. The Corolla drove towards them and swerved at them, looking as if it was going to ram into them. Officer Schmidt explained he was glad he was not trying to get the spike strips out at the time as Decedent might have run him over. At that point, Officer Schmidt

thought they should ram Decedent in order to stop him. His concern was that, if police tried to lay the spike strip on the road in front of the Corolla, Decedent might run the officer over. As he drove by the officers, Decedent swerved at the last minute. Officer Schmidt could see Decedent looking at them as he drove past.

The Corolla then went into a neighborhood and had to come out the same way as there was no other exit. When the Corolla came out of the neighborhood, the lights were still off and it almost hit their patrol vehicle again. As Decedent drove off, he drove through intersections without even stopping. Officer Schmidt worried Decedent was going to kill somebody.

Officer Schmidt remembered losing ground on the Corolla. He saw the Corolla turn eastbound on Gowan Street, still with its lights out. Then, at one point, the Corolla was eastbound in the westbound lanes. Officer Schmidt remembered that a vehicle had to swerve to avoid being hit by the Corolla. Officer Schmidt thought they needed to ram the Corolla and that Decedent needed to be stopped.

During the pursuit, another patrol vehicle took over the lead position. Officers Patty and Schmidt had fallen behind and were in the number two position. Officer Schmidt remembered hearing radio traffic from Officer Krieger that the Corolla had crashed at the CVS and that they were rammed. Officers Patty and Schmidt had caught up to Officer Krieger's position and went around the front of Officer Krieger's patrol vehicle.

The Corolla took off through the CVS parking lot. Officer Schmidt remembered the Corolla stopped, and it did not look like the Corolla had crashed. It appeared as if the Corolla had just stopped. Officer Schmidt was expecting Decedent to get out and start shooting at them. Officer Schmidt opened his car door as Officer Patty was still stopping the patrol vehicle because Officer Schmidt's car door flung open. Officer Patty stopped the patrol vehicle as Officer Schmidt was exiting and trying to get his firearm out of his holster, but it was hung up on his holster. Once Officer Schmidt was out, he looked down and pulled his firearm out of the holster. When he looked up, the Corolla was coming back at him.

During the interview, Officer Schmidt paused because he became emotional. Officer Schmidt thought he was going to die. He could hear the sheet metal crunching and the door slamming on him. When Officer Schmidt was struck by the door of the patrol vehicle, he had the wind knocked out of him, and he felt like his back popped. He remembered being in between the patrol vehicle and the door as he shot at Decedent. He could see Decedent bouncing and turning around in the seat. Officer Schmidt thought he had not struck Decedent, and he was afraid Decedent might back up more while he was still pinned in the door.

Officer Schmidt saw Decedent turn towards the passenger door and bend over. Officer Schmidt thought Decedent may have reached for something, which could be a gun. Officer Schmidt realized Decedent had gone limp, so he stopped shooting. Officer Schmidt replaced the magazine from his firearm with a fresh magazine. Officer Schmidt remembered the K-9 dog was deployed to check for a reaction from Decedent. Officers then approached the vehicle and extracted Decedent from the vehicle and took him into custody. After the situation was secured, Officer Schmidt felt pain across his chest, back and shoulders. He was checked by medical and was cleared. He was not transported to the hospital.

During the pursuit, Officer Schmidt was concerned Decedent was going to kill someone. This was based on the speeds he was driving, going the wrong way in traffic, driving without his lights on, and speeding through intersections without slowing down. Additionally, during the pursuit, Decedent came at them driving the wrong way against traffic. Officer Schmidt thought he was going to hit them. At the moment when Officer Schmidt discharged his firearm, he thought Decedent was trying to kill him. Officer Schmidt believed that Decedent knew he was there when he backed up the car. Officer Schmidt was scared for his life. He believed he did not have any option other than deadly force because Decedent was in a vehicle ramming them. Officer Schmidt believed he fired 10 rounds, but he actually fired 9 rounds. If Officer Schmidt had not discharged his firearm, he feared Decedent would have continued to back into him or ram over another officer.

OFFICER BRIAN WHEELER:

Officer Wheeler was in the passenger seat and Officer Krieger drove their patrol vehicle. They heard Officer Toms call out that he was possibly behind an occupied stolen vehicle. They drove with their lights and sirens on toward Officer Toms' location to assist with the pursuit. At one point, the Corolla was lost and units were in the area looking for it. Las Vegas Metro's air unit arrived on scene to assist with the pursuit. The air unit saw the Corolla with its lights out. The pursuit was initiated once again, and Officers Krieger and Wheeler became the lead vehicle in the pursuit at one point.

Towards the end of the pursuit, the Corolla went westbound on Craig Road and moved from the westbound lanes to the eastbound lanes. The Corolla drove westbound in the eastbound lanes and turned south into the northeast exit of the CVS parking lot at 3655 W. Craig Road. Decedent appeared to have crashed the Corolla into a sign at the exit. Officer Krieger drove up to the rear of the Corolla. Officer Wheeler thought the driver was going to jump out of the car and run. About the same time Officer Wheeler exited the

patrol car, he saw the reverse lights on the Corolla come on and it backed into the front of their patrol vehicle. By the time Officer Wheeler moved around the door of the patrol vehicle, the Corolla drove forward into the CVS parking lot in a southwest direction.

Officer Wheeler jumped back into the patrol vehicle and another patrol vehicle pulled around them taking the lead. Officers Krieger and Wheeler attempted to cut the Corolla off by circling around the back side of the CVS to try and head it off. As they came around to the west side of the CVS, Officer Wheeler heard gunshots and then heard radio traffic that shots had been fired. Officer Wheeler got out of their patrol vehicle and pulled out his gun. Decedent was not moving much and it looked like he was still breathing.

A plan was made to deploy the K-9 dog to check Decedent for any reaction. After the K-9 was deployed, the plan was to extract the suspect from the front passenger door, as the front driver side door was pinned against a patrol vehicle. The K-9 was deployed and it did not appear that Decedent was moving. Officer Wheeler and other officers moved around to the front passenger door. Officer Wheeler checked the handle which was locked. Officer Wheeler pulled out his expandable baton, broke out the window and proceeded to pull the suspect out of the car. The suspect was placed in handcuffs just outside of the Corolla. The Corolla was still running and in reverse gear. He had to put the car in park. Officer Wheeler checked Decedent for injuries. He checked his neck and his right wrist for a pulse but could not feel one. Medical personnel were contacted and arrived on the scene.

Officer Wheeler did not see the ramming of Officer Patty and Schmidt's patrol car, nor did he see when shots were fired. But, during the pursuit, Wheeler said Decedent drove at extremely excessive speeds to the point patrol vehicles had trouble keeping up. Officer Wheeler explained that if it was not for Metro's air unit, they would not have been able to keep up with the Corolla. Officer Wheeler remembered the Corolla caught air going through one intersection, causing sparks to fly when it hit the ground. The driver of the Corolla would sometimes use his turn signals when making a turn, and would tap his brakes going through an intersection, but not enough to slow down. During the pursuit, Officer Wheeler heard over the radio traffic that the Corolla was taken in a carjacking with a simulated handgun in Metro's area.

OFFICER BRIAN KRIEGER:

Officers Krieger and Wheeler were on a traffic stop at Red Coach Avenue and Clayton Street. Officer Krieger heard Officer Toms' radio traffic about an occupied stolen vehicle headed their way. Officers Krieger and Wheeler also heard from dispatch that the stolen vehicle, a Toyota Corolla, was tied to a carjacking where a gun was simulated. The officers

attempted to get ahead of the vehicle to deploy stop sticks but they were unable to do so.

The Corolla was lost at one point until Metro's air unit spotted it with its lights out. Officers Krieger and Wheeler drove northbound on Bravita Drive towards the Corolla. The Corolla came towards their patrol vehicle from the other direction. Officer Krieger did not block him in and gave the vehicle a little room so the vehicle could go around.

As the pursuit continued, Officer Krieger became the lead vehicle. The Corolla traveled westbound on Craig Road when it switched over to the eastbound lanes continuing to drive westbound. The Corolla then turned into the CVS parking lot and he thought it crashed or stopped at a curb. Officer Krieger told Officer Wheeler that Decedent was going to jump out of the car and to get behind him. As Officer Krieger pulled in behind the Corolla, it backed into their patrol car.

At that point, Officer Krieger was not sure if Officer Wheeler was out of the patrol car or had just gotten out. Officer Krieger saw another patrol vehicle go around them. Officer Krieger tried to go around the CVS to cut the Corolla off. When Officer Krieger drove around the southwest corner of the CVS, he heard gunshots and the radio traffic that shots had been fired.

Officer Krieger saw Officers Patty and Schmidt with their guns drawn and the driver of the Corolla slumped over. Officer Krieger and other officers kept the driver at gunpoint because they could not see his hands. Officers gave commands to the driver to show his hands. Officer Krieger thought Decedent was armed because of the carjacking information he had received.

A K-9 dog was deployed to check the driver for a reaction. After K-9 was deployed, Officer Wheeler checked the front passenger door of the Corolla and it was locked. Officer Wheeler broke out the front passenger window and Officer Krieger assisted Officer Wheeler with taking Decedent out of the vehicle and placing him in handcuffs. Medical was then requested.

OFFICER SPENCER KINNEY:

Officer Kinney was on a call at North Vista Hospital at 1409 E. Lake Mead. He heard a code red on the north channel reference a unit behind a stolen vehicle. Officer Toms was attempting to stop the stolen vehicle. Dispatch indicated the vehicle, a Toyota Corolla, had been taken in a carjacking where a firearm was simulated. Officer Kinney cleared from the North Vista Hospital and headed towards the pursuit. The Corolla traveled

westbound in the eastbound lanes when it turned into the CVS parking lot. Another patrol unit, Officers Krieger and Wheeler, took the number one position behind the Corolla.

Officer Kinney described the Corolla during the pursuit as driving as fast as it possibly could, trying to get away, and then, at times, it drove slower as if the driver was going to stop and run away. The more the pursuit continued, the more aggressive the suspect became. At one point the suspect blacked out his lights. The suspect drove left of center the wrong way and looked as if he was trying to hit an oncoming car. Officer Kinney thought the suspect was no longer trying to get away but had the intent to hurt someone.

At a certain point in the pursuit, Officer Kinney heard someone call out a traffic collision over the radio. Officers Krieger and Wheeler exited their patrol unit because the Corolla was stopped. The Corolla then backed up and drove forward into the parking lot of the CVS. Officer Kinney did not see the Corolla back into Officers Krieger and Wheeler's patrol unit. Officers Patty and Schmidt went around Officers Krieger and Wheeler's patrol unit in pursuit of the Corolla. Officer Kinney was behind Officers Patty and Schmidt. The Corolla nosed into a parking lot island and came to a stop. Officers Patty and Schmidt exited their patrol unit as if to do a felony stop.

Officer Kinney ran up to Officers Patty and Schmidt. Officer Krieger could see the driver trying to jam the car into reverse, so he ran back over to his patrol car thinking the Corolla was going to take off. Officer Kinney heard screeching wheels, so he turned back around when the shooting started. Officer Kinney could see the patrol vehicle being pushed by the Corolla, trying to ram it out of the way. Officer Kinney saw Officer Schmidt jumping out of the way, because the way the vehicle hit the patrol car, it slammed the passenger door. Officer Kinney ran back up to Officer Patty and Schmidt's patrol vehicle when the shooting stopped. The suspect collapsed over the center console.

Verbal commands were given for the suspect to show his hands. A K-9 dog was deployed to check for a reaction from the suspect. Afterwards, a shield was obtained and the officers approached the vehicle. The suspect was removed from the vehicle and taken into custody. Officer Kinney felt that the officers discharging their firearms and striking the suspect was what stopped the threat and kept anyone else from getting hurt.

Witness # 1

While at the scene at the CVS, Decedent's girlfriend, Witness # 1, arrived. Witness # 1 had been with Decedent for the past year. Decedent recently got out of jail. Witness # 1 said Decedent was not staying with her, but he was there a lot and he would take showers there. Witness # 1 described Decedent as being with her a lot, but he did not stay still.

Witness # 1 said Decedent had the Corolla for about four days. Decedent did not say the car was stolen but Witness # 1 suspected that it was stolen. Witness # 1 explained that Decedent was with her most of the day, but he took off about midnight. Witness # 1 said Decedent left that night because he can never just sit around and do nothing.

Witness # 1 showed police text messages of their conversation the night prior to the pursuit. In one text, Decedent referred to the guy from the auto insurance arriving. Witness # 1 said the text was about the call she made to her auto insurance because Decedent did not have any money to buy gas for the Corolla. Witness # 1 called her auto insurance for roadside assistance, so they could bring Decedent some gas.

In another text, Decedent asked if Witness # 1 could “melt it” for him. Police asked Witness # 1 what Decedent meant by that. Witness # 1 explained Decedent was talking about melting methamphetamine which was left in a pipe so he could smoke it. When asked if she had ever seen Decedent with guns, Witness # 1 said she had never seen him with a gun. Witness # 1 told police that she last saw Decedent just before midnight on the night of January 01, 2020, when she took him a bottle of water outside of her apartment before he left.

VII. FORENSICS REQUESTS/RESULTS

Firearm Examinations

On April 17, 2020, Forensic Scientist Roy Wilcox submitted a Firearms Report of Examination that documented his determination that cartridge cases found at the scene had been fired by Officers Patty and Schmidt’s firearms.

VIII. 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.

I. THE USE OF DEADLY FORCE IN DEFENSE OF ANOTHER

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

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

NRS 200.160(1).

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

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

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

A bare fear of death or great bodily injury is not sufficient to justify a killing. To justify taking the life of another in [defense of another], the circumstances must be sufficient to excite the fears of a reasonable person placed in a similar situation. The person killing must act under the influence of those fears alone and not in revenge.

¹ NRS 200.120(3)(a) defines a crime of violence:

“Crime of violence” means any felony for which there is a substantial risk that force or violence may be used against the person or property of another in the commission of the felony.

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, 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 Patty and Schmidt. As evidenced by the Air Unit video, BWC video, and as explained by Officers Patty and Schmidt, Decedent did not comply with numerous officers' attempts to conduct a vehicle stop of Decedent. He was driving in a stolen vehicle in an extremely dangerous manner which put the officers and citizens of the community at risk of great bodily harm or death. Additionally, when Decedent's Corolla stopped at the CVS store, he rammed the Corolla into one patrol vehicle and fled before he could be taken into custody. After Decedent stopped the second time, Officers Patty and Schmidt pulled in behind Decedent in an effort to take him into custody. However, Decedent did not surrender but rather put the Corolla in reverse and rammed the right front corner and right front passenger door of Officers Patty and Schmidt's marked patrol unit. The striking of the right front passenger door resulted in the door forcibly being swung back into Officer Schmidt, who was standing in between the open door and the patrol car, putting his life at risk. As the car drove at the officers, Officers Patty and Schmidt discharged their firearms at Decedent to prevent serious bodily harm or death to themselves.

Thus, Officers Patty and Schmidt were confronted by the appearance of imminent danger, which created in their minds an honest belief and fear that they were about to be killed

or suffer great bodily injury. Accordingly, Officers Patty and Schmidt were justified in acting upon those appearances, fears and actual beliefs.

II. 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 demonstrate that Officers Patty and Schmidt had probable cause to believe that Decedent posed a threat of serious physical harm to themselves and others. This probable cause became evident after Officers Patty and Schmidt observed Decedent driving a reported stolen vehicle taken in a carjacking in an extremely reckless manner throughout North Las Vegas. Specifically, the officers witnessed Decedent drive his car at high rates of speed with his lights off at times driving in the wrong way of traffic and proceeding through intersections without stopping. When the officers tried to stop the Decedent to ensure the safety of the community, Decedent continued to drive recklessly and even swerved at officers as they attempted to stop him. Later, Decedent rammed his vehicle into another patrol vehicle at the entrance of the CVS parking lot. As such, Officers Patty and Schmidt followed Decedent and attempted to take him into custody. After Decedent came to the second stop, he did not surrender but rather put his car in reverse and rammed the right front corner and right front passenger door of Officers Patty and Schmidt’s marked patrol unit. The striking of the right front passenger door resulted in the door forcibly being swung back into Officer Schmidt, who was standing in between the open door and the patrol car, putting his life at risk. Throughout the officers’ interaction with Decedent, he posed a threat of serious physical harm to Officers Patty and Schmidt. Thus, Officers Patty and Schmidt had a reasonable belief that Decedent was a threat to their lives.

In light of this evidence, the actions of the officers were legally 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 North Las Vegas Police Department Officers Patty and Schmidt 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.