

REPORT ON USE OF FORCE



Legal Analysis Surrounding the Death of Figueroa- Meza on January 11, 2015

INTRODUCTION

On January 11, 2015, North Las Vegas Police Department (hereinafter “NLVPD”) Officers Rene McGee and Lauren Cooley were in their patrol vehicle conducting surveillance of the Dotty’s parking lot at Eastern and Owens, an area frequently used to conduct low-level drug transactions. Just after 2000 hours, a white sedan pulled into the lot. Moments later, a maroon SUV pulled in, next to the sedan. The occupants briefly interacted and left the parking lot.

The officers followed the vehicles onto Eastern Avenue. As the white sedan exited the lot, the driver committed a traffic infraction which resulted in Officers McGee and Cooley initiating a traffic stop. The sedan pulled over in front of a Circle K convenience store located at 1301 N. Eastern, North Las Vegas, Nevada. Officers immediately noticed the same maroon SUV from the Dotty’s parking lot was now parked at the gas pumps of the Circle K. Officer Cooley approached the driver of the sedan, who he identified as Karina Zaragoza, and learned that she and the driver of the SUV, Salvador Figueroa-Meza (hereinafter “Decedent”), had smoked methamphetamine together earlier that evening.

As Officer Cooley was speaking with Zaragoza, Decedent entered the Circle K. He eventually came back outside. Officer Cooley approached him and asked if he could

search his person and vehicle. Decedent agreed and began acting nervous and erratic. As Officer Cooley was searching the SUV, Decedent ran across the street to an O'Reilly's Auto Parts store. Officers McGee and Cooley chased after Decedent. Once across the street, Decedent swung around a light pole to catapult himself back toward his SUV. Officer Cooley followed Decedent and eventually deployed his Taser in an attempt to stop him. Decedent was undeterred; he ran directly to the driver's side of his vehicle, opened the door, and launched himself inside. Officer Cooley caught up to Decedent and a struggle ensued. While Officer Cooley was attempting to contain the situation, Decedent obtained a silver semi-automatic handgun. Once Officer Cooley realized Decedent had armed himself, he shot Decedent, thereby ending the threat to his life.

NLVPD Detectives Jessie Prieto and Dave Smith were assigned to conduct the investigation of the incident with the assistance of other members of the detective bureau and NLVPD personnel.

The District Attorney's Office has completed its review of the January 11, 2015, death of Decedent. It was determined that, based upon the evidence currently available and subject to the discovery of any new or additional evidence, the actions of Officer Cooley were not criminal in nature.

This report explains why criminal charges will not be forthcoming against the officer involved. It is not intended to recount every detail, answer every question or resolve every factual conflict regarding this citizen-law enforcement encounter. The report is meant to be considered in conjunction with the Police Fatality Public Fact-Finding Review conducted on December 4, 2015. This report is intended solely for the purpose of explaining why, based upon the facts known at this time, the conduct of Officer Cooley was not criminal.

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

THE EVENTS AT 1301 NORTH EASTERN, NORTH LAS VEGAS, NEVADA, ON JANUARY 11, 2015

POLICE OFFICERS

Officer Rene McGee

On January 12, 2015, Officer McGee gave a recorded statement to NLVPD Detectives Jessie Prieto and Dave Smith regarding the circumstances which led to the death of Decedent. The following is a synopsis of Officer McGee's statement:

On January 11, 2015, Officer McGee and Officer Cooley were in their patrol vehicle conducting surveillance of the Dotty's parking lot at Eastern and Owens. While watching the area, the officers noticed a white sedan pull into the lot. Shortly thereafter, a maroon SUV pulled up next to the sedan. Neither driver exited their vehicle. Approximately two minutes later, the SUV drove south on Eastern and the sedan followed. Knowing that the area was frequently used to conduct drug transactions, the officers followed the vehicles.

Upon exiting the parking lot, the white sedan failed to turn into the #1 traffic lane; instead, it turned into the #3 traffic lane. Based upon that infraction, Officers McGee and Cooley initiated a traffic stop on the sedan. The stop occurred in front of the Circle K convenience store located at 1301 North Eastern, North Las Vegas, Nevada. Once stopped, officers saw that the maroon SUV was parked at the Circle K gas pumps, located approximately 10-15 feet from the white sedan.



1301 N. Eastern, Las Vegas, Nevada

Officer McGee called the traffic stop out to dispatch while Officer Cooley approached the female driver. Officer McGee noticed the driver of the maroon SUV, later identified as Decedent, was watching the sedan and the officers from his rear view mirror. Officer McGee then approached the sedan to provide backup to Officer Cooley and to ensure Decedent did not approach the officers. Decedent ultimately exited his vehicle and entered the Circle K. He maintained eye contact with the officers as he entered.

Officer Cooley conducted a records check of the female driver, identified as Karina Zaragoza, and found that she was driving with a suspended license. She was also in possession of a pipe used to smoke methamphetamine and a small clear plastic baggie which contained small glass-like shards of what appeared to be methamphetamine.¹ Zaragoza told Officer Cooley that she and Decedent went to the Circle K together to fill her car with gas.



Decedent's Escalade parked at the Circle K gas pumps.

At that point in time, Decedent exited the Circle K and went to the passenger side of his vehicle. He retrieved an unknown item from his car and went back inside the store. He came back outside and started pumping gas into his vehicle. Officer Cooley approached Decedent and asked if he could conduct a pat down of his person. Decedent agreed and began speaking to Zaragoza in Spanish. Officer McGee noticed Decedent became fidgety and appeared nervous. Decedent then turned from the officers and started to walk away from the scene. Officer McGee yelled to him, but he ignored her and continued walking. Officer McGee saw Decedent go to the driver's side of his car and

¹ A records check on Zaragoza revealed prior arrests for the following: Traffic Offenses, Possession of a Controlled Substance, Carrying a Concealed Weapon, Grand Larceny Auto, Possession of Stolen Property, Possession of Stolen Vehicle, Possession of Narcotic Paraphernalia, and Burglary. Zaragoza was ultimately arrested on January 11, 2015 for Possession of a Schedule 1 Drug (methamphetamine) and for Possession of Narcotic Paraphernalia.

attempt to open it. The door handle pulled out two times, but the door did not open. Decedent then ran across East Searles to the O'Reilly Auto Parts parking lot. Both Officer McGee and Officer Cooley were in pursuit. Just as they were about to physically reach Decedent, he used a light pole to swing himself around and run back toward his vehicle. Both officers followed.



1301 N. Eastern, Las Vegas, Nevada

Once Decedent got back to his SUV, he opened the driver's side door. At that point, Officer Cooley deployed and activated his Taser. As the Taser made contact, Decedent's body seized up and he fell forward into the SUV. Officer McGee approached the vehicle, intending to grab Decedent's legs and pull him out of the driver's side door. When Officer McGee was approximately five feet from the car, she saw a small metal object in Decedent's hand. She saw him motion as if he was racking a gun, heard the sound of a gun racking and yelled, "That's a gun, I heard it rack!" Officer Cooley began struggling on top of Decedent. As Officer Cooley was struggling with Decedent, Officer McGee heard a shot fired and saw that Decedent had been struck in the head.

Officer Loren Cooley

On February 3, 2015, Officer Cooley gave a recorded statement to NLVPD Detectives Jessie Prieto and Dave Smith regarding the circumstances which led to the death of Decedent. The following is a synopsis of Officer Cooley's statement:

On January 11, 2015, Officer Cooley and Officer McGee were in their patrol vehicle conducting surveillance of the Dotty's parking lot at Eastern and Owens. They saw what

they believed was suspicious activity between the driver of a white sedan and the driver of a maroon SUV. They followed the cars out of Dotty's lot and onto Eastern. The maroon SUV was the first vehicle to leave the lot, followed by the white car. The officers trailed the white car and noticed it went across the lanes of travel to the #3 lane instead of to the #1 lane. Based upon this traffic infraction, officers initiated a traffic stop on the white sedan.

The sedan pulled over in front of a Circle K convenience store located at 1301 North Eastern, North Las Vegas, Nevada. Officer Cooley immediately noticed that the maroon SUV was parked at the gas pump in the Circle K parking lot. Officer Cooley made contact with the driver of the white car, who he identified as Karina Zaragoza. Officer Cooley asked Zaragoza about her contact with the driver of the maroon SUV, later identified as Decedent. Zaragoza gave a number of different stories to Officer Cooley, but she ultimately admitted she and Decedent used methamphetamine together that evening and went to the Circle K together to put gasoline in her car. She also admitted she was in possession of methamphetamine and a methamphetamine pipe.

While Officer Cooley was speaking to Zaragoza, Decedent went inside the Circle K store. On two different occasions, Officer Cooley saw Decedent peek outside the store to see what Zaragoza and the officers were doing. Decedent eventually came outside and began pumping gas into his SUV. Officer Cooley approached him and asked if he had anything illegal on him. Decedent said he did not and gave Officer Cooley permission to search him and his belongings. Officer Cooley conducted a pat down of Decedent's body and then searched a zippered bank bag found on the passenger seat of the SUV. When Officer Cooley looked inside of the bag, he found a scale and two small zip-lock baggies of the same size in which Zaragoza's methamphetamine was contained.

As Officer Cooley was searching the SUV, Officer McGee yelled out his name. He looked up and saw that Decedent was running from the scene. Both Officer Cooley and Officer McGee gave chase, following Decedent across East Searles to an O'Reilly Auto Parts parking lot. Once across the street, Decedent used a pole to catapult himself back toward the Circle K. This move created a bit of distance between Decedent and the officers, who ultimately gave chase again. At this point, Officer Cooley issued commands for Decedent to stop running. Decedent did not comply and instead ran back to the driver's side of his SUV. Officer Cooley pulled and deployed his Taser. The Taser did not deter Decedent, who dove headfirst in to the driver's side floorboard of the SUV. Officer Cooley assumed Decedent was reaching for a weapon.

As Officer Cooley got to the SUV, Decedent rolled over such that his shoulders were on the floorboard of the vehicle. He then brought his right hand out from under the seat to reveal a silver semi-automatic handgun. At that point, Officer Cooley feared for his life, as well as the safety of Officer McGee and any pedestrians in the area. He drew his duty weapon and fired at Decedent until Decedent dropped his gun and no longer posed a threat.

CIVILIANS

Karina Zaragoza

On January 12, 2015, Karina Zaragoza gave a recorded statement to NLVPD Detective Jessie Prieto regarding the circumstances which led to the death of Decedent. The following is a synopsis of Karina Zaragoza's statement:

On January 11, 2015, Zaragoza drove her white Mercury Sable to meet Decedent at his home. Once there, she and Decedent decided to leave to put gas in Zaragoza's vehicle. Zaragoza drove her car, and Decedent followed in his red SUV. According to Zaragoza, she got separated from Decedent and pulled into the Dotty's parking lot on Owens, where she called Decedent. Decedent then met Zaragoza at Dotty's. From Dotty's, she followed Decedent to the Circle K located on Eastern Avenue.

Once at the Circle K, Decedent pulled his SUV up to the gas pump. As Zaragoza arrived, she was pulled over by law enforcement. The officer approached her vehicle, told her she had failed to use her turn signal, and then asked her about Decedent. The officer indicated he had seen the two at Dotty's and was suspicious as to what they were doing. According to Zaragoza, the officer asked her various questions regarding whether or not she and Decedent were meeting for sexual purposes and/or for drug related purposes. Zaragoza admitted to the officer that she and Decedent had done drugs together at his home, but she did not know whether Decedent was a drug dealer. Zaragoza admitted to the officer that she had methamphetamine on her person.

At that point in time, the officer called Decedent – who was still in his SUV – over to the Mercury Sable. Decedent complied with the officer's commands. According to Zaragoza, Decedent told the officer he was trying to put gas in her (Zaragoza's) car. He then said he did not have anything in the SUV. The officer then indicated he was going to look in the SUV. This made Decedent visibly nervous, and he started to move around as a result. A female officer told Decedent to stop moving, but he refused to comply. He watched the officer looking in the SUV and suddenly walked towards him. The female officer followed Decedent. The officers then attempted to detain Decedent. He was able to get away from the officers and ran across the street towards an O'Reilly store. Decedent then turned around and started coming back toward his SUV. He opened the door to his SUV and was facedown looking for something. According to Zaragoza, the

officer then ran to the SUV and a struggle ensued between the officer and Decedent. Zaragoza said that during the struggle, the officer shot Decedent.

Zaragoza ultimately admitted to Detective Prieto that she had gone to Decedent's home that night to smoke methamphetamine. While there, Decedent said, "Right now I'm running." Zaragoza interpreted that to mean he was running from law enforcement. She also said that, while she did not see Decedent with a gun that night, she previously saw him carry a firearm.

Witness #1

On January 11, 2015, Witness #1 filled out a written voluntary statement reference the circumstances which led to the death of Decedent. The following is a synopsis of Witness #1's statement:

On January 11, 2015, Witness #1 was walking westbound on Searles Avenue in North Las Vegas. As he approached Eastern Avenue, he saw a male and a female police officer running after Decedent. Decedent ran southbound across Searles Avenue and into an O'Reilly Auto Parts parking lot. Decedent then turned and went back across Searles Avenue, to a red SUV parked at a gas pump. Decedent went inside the truck and appeared to be retrieving something. The two officers continued to follow Decedent. Witness #1 then heard three "pops" coming from the SUV.

Witness #2

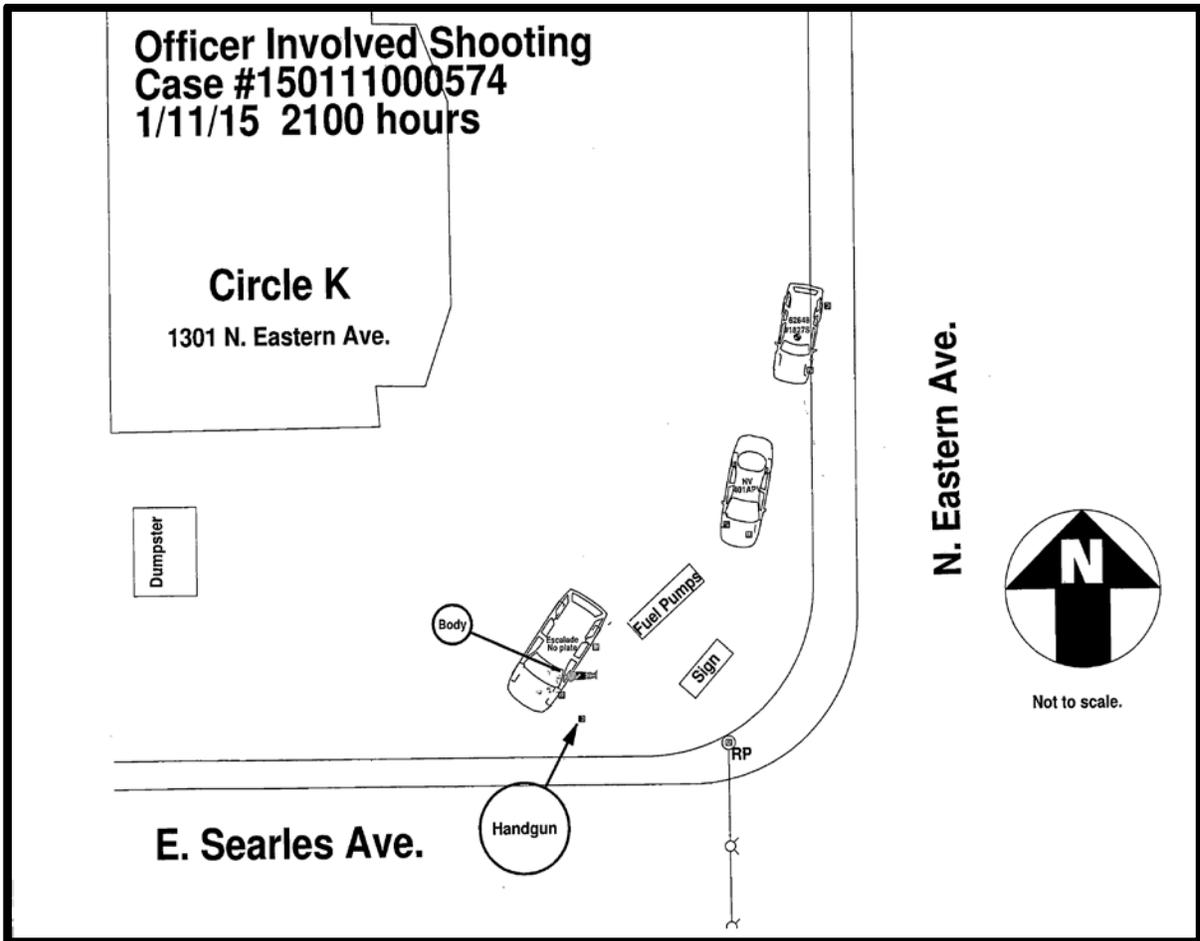
On January 11, 2015, Witness #2 filled out a written voluntary statement reference the circumstances which led to the death of Decedent. The following is a synopsis of Witness #2's statement:

On January 11, 2015, Witness #2 was working as a clerk at the Circle K store, when he observed a traffic stop conducted on a white vehicle in front of the store. At the same time, a Hispanic male adult, later identified as Decedent, entered the store and asked Witness #3 to put \$5.00 on pump #3. Decedent had a \$100.00 bill and was told the store could not change that denomination of a bill. Decedent then sat down at a gaming machine, played for a brief time, and cashed out at 2042 hours. He then gave Witness #2 \$4.00 and asked him to give the money to the girl in the white vehicle in front of the store. Decedent said the girl's name was Kristina, or sounded like Kristina. Decedent then left the store. Within moments, Witness #2 heard approximately four gunshots.

Witness #3

On January 11, 2015, Witness #3 filled out a written voluntary statement reference the circumstances which led to the death of Decedent. The following is a synopsis of Witness #3's statement:

On January 11, 2015, Witness #3 was working as a clerk at the Circle K store, when a Hispanic male, later identified as Decedent, asked her to put \$5.00 on gas pump #3. He wanted to pay with a \$100.00 bill. The store could not accommodate change for the large denomination. Decedent sat down at a gaming machine, played, and ultimately cashed out with Witness #2. He then left the store. Shortly thereafter, Witness #3 heard a noise that she thought was glass breaking. A man in a wheelchair then entered the store and said someone had just been shot.



THE INCIDENT SCENE

The incident scene was located near the gas pumps of the Circle K Convenience Store located at 1301 N. Eastern, North Las Vegas, Nevada. A Ford Explorer was parked

on the sidewalk pointing south from the Circle K. A white Mercury Sable was parked north of the gas pumps, next to a patrol vehicle. A maroon Cadillac Escalade was parked by the gas pumps, with both the driver and passenger doors open. Decedent was sitting on the ground, leaning against, and partially inside, the Escalade's open driver's side door. There were three 9mm spent cartridge cases, one projectile and a baseball cap on the driver's side floorboard.



Spent 9mm cartridge case from Officer's Cooley's weapon found on the floor board of Decedent's Escalade.

Decedent's right hand was positioned up near his right ear, and his left arm was lying by his side. There was a Taser dart and Taser wires on Decedent's lap. Additionally, a 9mm Sturm Ruger semi-automatic handgun was lying just south of Decedent's body. Upon collecting the handgun, NLVPD Crime Scene Analyst Renee Orlando noted nine live rounds, with eight in the magazine and one in the chamber.



Decedent's 9mm Sturm Ruger semi-automatic handgun.

VIDEO SURVEILLANCE

Circle K video surveillance shows Decedent entered the store at 20:27:26 hours. He walked to the counter and interacted with the clerk. He then went to the gaming area and played a machine. After playing, he went back to the register area then exited the store at 20:43:42 hours. At 20:49:38 hours, a man in a wheelchair moved towards the front door along the sidewalk in front of the store.

REVIEW OF THE WEAPON

THE COUNTDOWN OF OFFICER COOLEY'S WEAPON

A countdown of Officer Cooley's weapon - a Glock model 34, 9mm handgun - revealed a total of three "9mm WCC" cartridges had been fired from the weapon. This was consistent with the spent cartridge cases found at the scene.

AUTOPSY OF DECEDENT

On January 12, 2015, at approximately 0700 hours, Clark County Medical Examiner Dr. Alane Olson performed an autopsy on the body of Decedent. During the examination, Dr. Olson noted the following injuries on Decedent's body: two bullet wounds on the left side of the face, one bullet wound on the chin area, one bullet wound on the left side of the neck, one Taser prong hole on the left hip area, and one Taser prong hole on the upper left leg.

After a completed autopsy, Dr. Olson determined the cause of death was multiple gunshot wounds. A postmortem toxicological analysis was positive for Methamphetamine and Amphetamine, which is a metabolite of Methamphetamine. Methamphetamine is a stimulant known to cause aggressive behavior and irrational reactions in the user.

LEGAL ANALYSIS

The District Attorney's Office is tasked with assessing the conduct of officers involved in any killing which occurred during the course of their duties. That assessment includes determining whether any criminality on the part of the officers existed at the time of the killing. As this case has been deemed a homicide by the coroner, the actions of these officers will be analyzed under the State's jurisprudence pertaining to homicides.

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

A. The Use of Deadly Force in Self Defense or in Defense of Another

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

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

NRS §200.160(1).

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

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

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

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

....

Actual danger is not necessary to justify a killing in [defense of another]. A person has a right to defend from apparent danger to the same extent as he would from actual danger. The person killing is justified if:

1. He is confronted by the appearance of imminent danger which arouses in his mind an honest belief and fear that [the other person] is about to be killed or suffer great bodily injury; and
2. He acts solely upon these appearances and his fear and actual beliefs; and
3. A reasonable person in a similar situation would believe [the other person] to be in like danger.

The killing is justified even if it develops afterward that the person killing was mistaken about the extent of the danger.

If evidence [that a killing was in defense of another exists], the State must prove beyond a reasonable doubt that the defendant did not act in [defense of another].

Id. at 1051-52.

In this case, Decedent posed an imminent danger to NLVPD police personnel. When intercepted by Officers McGee and Cooley, Decedent evaded, retrieved a firearm, chambered a round, and struggled with Officer Cooley. Officer Cooley first deployed his Taser in an attempt to deescalate the situation. Decedent was not deterred by the use of the Taser and continued to retrieve his firearm. Officer Cooley struggled with Decedent. Officer Cooley was confronted by an actual imminent danger of being killed or suffering great bodily harm, which created in his mind an honest belief and fear that he or Officer McGee were about to be killed or suffer great bodily injury. Based upon those appearances, fears and actual beliefs, Officer Cooley eventually shot Decedent, ending the threat; as such, Officer Cooley's actions were justified.

B. Justifiable Homicide by a Public Officer

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

In this case, Officer Cooley had probable cause to believe Decedent posed a threat of serious physical harm either to himself or other persons. After being ordered to remain, Decedent led officers on a foot pursuit where he refused to comply with their commands, even after he was Tased. Decedent continued to struggle in an attempt to arm himself. Decedent ultimately retrieved a firearm and chambered a live round which caused Officer Cooley to discharge his weapon to end the threat. These circumstances created probable cause to believe in the officer's mind that the Decedent posed a threat of serious physical harm to law enforcement. In light of all the evidence reviewed to date, the State would be unable to prove that the actions of the officers were in fact *unjustified* "in the discharge of a legal duty."

CONCLUSION

Based upon the review of the available materials and application of Nevada law to the known facts and circumstances, it has been determined that the actions of law

enforcement in response to a weapon being drawn by the Decedent were reasonable and legally justified. The law in Nevada clearly states that homicides which are justifiable or excusable are not punishable. NRS §200.190. A homicide which is determined to be justifiable shall be “fully acquitted and discharged.” NRS §200.190. As there is no factual or legal basis upon which to charge the officers, and unless new circumstances come to light which contradict the factual foundation upon which this decision is made, no charges will be forthcoming.

Submitted

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By

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