



# **REPORT ON USE OF FORCE**

## **Legal Analysis Surrounding the Death of Steve Garcia on March 19, 2019.**

### **INTRODUCTION**

On the afternoon of March 19, 2019, the Las Vegas Metropolitan Police Department (“LVMPD”) received a 9-1-1 call from A.S. who stated her brother, Steve Garcia (“Decedent”), was threatening their father’s life with a firearm. LVMPD officers were quickly dispatched to A.S.’s residence. As officers arrived at the residence, Decedent exited the residence and pointed his firearm at the responding officers. Decedent ignored numerous commands by officers to drop the gun. After Decedent pointed his firearm at officers again, two sergeants (Jason Harries and Kenneth Nogle) and two patrol officers (Gregory Ludwig and Zachary Solomon) discharged their firearms, striking Decedent once in the head. Decedent fell to the ground and was taken into custody by officers. Medical personnel were immediately requested and responded to the scene. Decedent was transported to University Medical Center (UMC) Trauma Center to receive immediate medical attention. He was pronounced deceased the following day.

The Clark County District Attorney’s Office has completed its review of the March 19, 2019, 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 Sergeant Harries, Sergeant Nogle, Officer Ludwig and Officer Solomon 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 Sergeant Harries, Sergeant Nogle, Officer Ludwig and Officer Solomon. 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 December 13, 2019.

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 LVMPD or to suggest the existence or non-existence of civil actions by any person, where less stringent laws and burdens of proof apply.

## **INCIDENT DETAIL**

A few days before this incident, Decedent was released from an Arizona jail and was picked up by his father (F.G.). Decedent returned to Las Vegas with F.G. and was staying at F.G.'s residence located at 532 North 9th Street. Decedent's sister, A.S., also lived at the residence. The residence is located across the street from LVMPD Downtown Area Command ("DTAC").

On March 19, 2019, F.G. took his dogs for a walk. When he returned to his residence, Decedent had a firearm and was acting "crazy." Decedent recently ingested methamphetamine and was waving around a firearm he recently bought in the "neighborhood." Other witnesses also reported that Decedent had been consuming methamphetamine for several days prior. One neighbor witness saw Decedent racing up and down the street in his vehicle, driving recklessly and spinning his vehicle in the front yard area of his residence. The same witness later told police that Decedent appeared agitated when he got out of the vehicle.

At 2:42 PM, a frantic A.S. called 9-1-1 and told the LVMPD dispatch operator that her brother was outside her residence, holding a .22 revolver with bullets and threatening to kill their dad. She also told the 9-1-1 operator that her brother was on methamphetamine and had threatened to shoot her as well. At one point during the phone call, A.S. started fearfully whispering to the 9-1-1 operator because Decedent walked back into the residence. A.S. stayed on the phone during the entire incident.

Officers quickly arrived to F.G.'s residence. As they arrived, Decedent exited the residence and pointed his firearm at officers who were positioned just south of the residence. F.G. was still in the front yard with Decedent. Officers gave several verbal commands to Decedent to drop the firearm, which were ignored. Eventually, as Decedent continued to point his firearm at officers, Sgt. Jason Harries, Sgt. Kenneth Nogle, Officer Gregory Ludwig and Officer Zachary Solomon discharged their firearms at Decedent. Decedent was struck once in the head. He was transported to UMC trauma and was pronounced dead on March 20, 2019.

## **INVESTIGATION**

### **Information from Involved Law Enforcement Officers**

#### **Sergeant Kenneth Nogle**

Sergeant Nogle completed a written voluntary statement in reference to this incident. In the statement, Sergeant Nogle stated that he was on duty and responded to a call for service at 532 N. 9<sup>th</sup> Street in reference to a person threatening his father with a firearm.

Upon arrival, Sergeant Nogle saw Decedent standing in the front yard, and he pointed a firearm at Sergeant Nogle. Decedent also pointed his firearm at other officers who had arrived at the scene. Sergeant Nogle wrote that he fired his handgun at Decedent due to being in fear for his own life and the lives of other officers.

#### **Sergeant Jason Harries**

Sergeant Harries completed a written voluntary statement in reference to this incident. In the statement, Sergeant Harries wrote that he was in the DTAC parking lot when he heard a call for service over the radio regarding domestic violence involving a firearm.

Immediately upon arrival, Decedent pointed a firearm at Sergeant Harries. Sergeant Harries retreated from his vehicle and moved to the rear passenger side of his patrol vehicle. Decedent continued to point his firearm at Sergeant Harries and other officers. Sergeant Harries wrote that he discharged his firearm at Decedent to protect his life and the lives of other officers.

### **Information from Civilian Witnesses.**

#### **F.G.**

F.G. was Decedent's father. F.G. stated he took his dogs for a walk earlier in the day on March 19, 2019, and when he returned home Decedent was acting "crazy." F.G. stated Decedent had used illegal drugs his entire life, and when asked which drug Decedent had recently used, F.G. stated, "Crystal" (a moniker for methamphetamine).

F.G. told detectives that right before the incident, Decedent had threatened A.S. and that he was waving around a gun that he bought from unknown individual. F.G. told A.S. to call the police. When the police arrived, Decedent pointed the gun at officers. F.G. told detectives that he understood why the police shot Decedent.

**J.A.**

J.A. lived across the street from F.G.'s residence. At approximately 2:45 PM on March 19, 2019, J.A. was watching television and eating his lunch when he heard a male and female arguing across the street from his house. J.A. was unable to hear what they were saying. He also saw several police cars parked down the street. J.A. heard several gunshots and dove to the floor. When he got up, he looked outside and saw someone across the street crying, and multiple officers approaching the house.

J.A. did not see who fired the gunshots because he dove to the floor as soon as he heard them. He estimated hearing about three or five gunshots.

**T.K.**

On March 19, 2019, T.K. and her husband were sitting in their living room with the front door open when they saw police officers drive slowly past their residence. T.K. went to the front door to see what was happening and saw Decedent, who lived in the house on the corner, pointing a gun at the officers. Due to T.K.'s residence being in the direction of where Decedent was pointing the firearm, T.K. fled to the back of her residence. T.K. stated she heard the officers instruct Decedent several times to put down the weapon. After T.K. heard the officers yell at Decedent, she heard multiple gunshots. T.K. could not see who fired their weapons from where she was positioned.

**J.K.**

J.K. told detectives that he saw Decedent racing up and down the street in his vehicle earlier in the day on March 19, 2019. T.K. watched Decedent driving recklessly in the neighborhood, and saw Decedent spin his vehicle in the front yard area of F.G.'s residence. Decedent continuously revved the engine for a long period of time. After Decedent parked his vehicle in his yard, he exited, slammed the door, and appeared agitated. Approximately 45 minutes later, J.K. saw police cars driving on his street and went to his front door to investigate.

J.K. saw four to five police vehicles arrive near Decedent's residence. J.K. told detectives that he saw Decedent standing near his vehicle, with a gun pointed at the officers, and the officers had their guns drawn. J.K. heard officers yell at Decedent to drop the gun. J.K. stated he then heard approximately six to eight gunshots. J.K. claimed that he did not see the shooting, only heard the gunfire.

## **A.S.**

On March 19, 2019, A.S. was at her residence located at 532 N 9<sup>th</sup> Street with her father, F.G., and her brother, Decedent, when she observed Decedent acting weird due to having used methamphetamine. Decedent had not been sleeping and was “tweaking” due to his drug usage. A.S. told investigating detectives that Decedent had a gun and was threatening her, saying he was going to kill her. Decedent asked A.S. if she wanted him to shoot her. A.S. believed that Decedent would not follow through with his threat. A.S. said Decedent had fired one round in the air the night before and she knew that was the last bullet Decedent had for the gun.

During another argument, A.S. stated that F.G. instructed her to call the police. A.S. claims that she called 911 and informed the dispatcher that Decedent had a gun, but it did not have any bullets.<sup>1</sup> A.S. could hear Decedent manipulating the gun due to the cylinder “clicking.” A.S. described the handgun as a revolver, which belonged to F.G. A.S. stated while she was on the phone with police, Decedent told her if she called the police, he would shoot at them.

A.S. said as she walked outside, Decedent, who was also outside, put his hands up in the air and officers fired shots at him. Decedent fell to the ground, and A.S. saw blood on his head and stomach area. A.S. was sure Decedent did not fire his gun at the officers prior to being shot. Afterwards, the police escorted her and F.G. away from the scene.

## **A.C.**

A.C. told detectives that prior to the incident he was sitting inside his vehicle, a gold Nissan Pathfinder, which was parked adjacent to his house. Marked patrol units arrived in the area and approached his location and contacted him. The officers quickly turned their attention away from A.C. and re-entered their vehicle. Officers repositioned the patrol vehicle to face north, but still adjacent to A.C.’s house, then exited the vehicle and took positions of cover.

A.C. told detectives that he observed his neighbor (Decedent) in the front yard of 532 N. 9<sup>th</sup> Street. A.C. had lived in the same house for several years and recognized Decedent. Additionally, he said Decedent was wearing a red shirt and was armed with a black gun. A.C. stated he heard officers issue verbal orders to Decedent to drop the gun, however, Decedent did not comply with these commands. Right before the incident, A.C. claimed he saw Decedent pull the trigger of the gun multiple times while yelling, “Pow!” A.C. yelled out to

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<sup>1</sup> A.S. claimed that she told the 9-1-1 operator that the gun had no bullets. However, after reviewing the audio of the 9-1-1 call, A.S. can clearly be heard telling the 9-1-1 operator that Decedent had a gun “with bullets” and she was afraid Decedent would shoot her father.

officers that the gun was unloaded but he was not sure if the officers heard him. A.C. affirmed he did not have prior knowledge that Decedent's gun was unloaded.

After the incident, A.C. provided officers with his personal information and left the area in his vehicle.

### **Information from Law Enforcement Witnesses**

#### **Sergeant N.J.**

Sergeant N.J. was in the parking lot of DTAC talking with Sergeant Harries when he heard a radio broadcast of a domestic disturbance in which one of the people involved was armed with handgun. N.J. believed the person who called the police was related to the male armed with the handgun. Sergeant Harries advised N.J. the address (532 N. 9th Street) of the call was next to the station. N.J. followed Sergeant Harries to the address. Sergeant Harries proceeded to cross Bonanza Road while N.J. had to wait for traffic to clear before crossing the street.

On the way to the residence, N.J. observed Sergeant Nogle and a patrol unit arriving at the scene. As N.J. drove south on 9<sup>th</sup> Street, he looked to his left and saw Decedent wearing a red shirt. Per N.J., Decedent did not seem agitated, and N.J. did not notice anything in Decedent's hands. N.J. continued south to where the other officers had parked their vehicles because he was not sure if officers had already contacted Decedent.

N.J. parked near Sergeants Harries and Nogle. N.J. briefly lost sight of one of Decedent's hands. A short time later, N.J. noticed that Decedent was holding a firearm. Decedent pointed the gun towards N.J. and other responding officers. N.J. heard Decedent yell at the officers. While N.J. attempted to find cover behind his vehicle, he also attempted to give updates over the radio for other responding officers. Decedent continued to point the gun at officers.

Sergeant Harries took a position at the rear passenger side of his patrol vehicle. N.J. fell in behind Sergeant Harries. Because he was behind the vehicle, N.J. lost sight of Decedent. N.J. heard someone in the area yell, "It's not loaded! It's not loaded!" He made his way to the driver's side of the vehicle in order to regain sight of Decedent and a better backdrop. As N.J. got to the driver's side of the vehicle, he heard gunfire and saw Decedent fall to the ground.

As officers approached Decedent at the residence, N.J. saw a black revolver on the ground by the Decedent's legs. There was an older male (F.G.) sitting down and a female (A.S.) standing nearby. Decedent was detained and medical personnel responded to the scene.

N.J. told investigating detectives that he was in fear for his life and felt Decedent's intention was to kill him. Moreover, N.J. stated that although he heard someone yell the gun was not loaded, there was no time to confirm if the gun was or was not loaded because the situation unfolded rapidly.

#### **Officer M.S.**

Officer M.S. and his trainee, Officer Ludwig, were finishing on a call in the 300 block of 9<sup>th</sup> Street when they heard the broadcast of a person with a gun call at 532 N. 9<sup>th</sup> Street. M.S. assigned himself to the call for service at 532 N. 9<sup>th</sup> Street. Upon arriving in the area, the officers drove slowly while trying to locate the correct address.

M.S. observed other officers in the area walking towards a residence. M.S. and Ludwig exited their patrol vehicle and approached the residence on foot. M.S. observed Decedent standing in the front yard of the residence holding a firearm in his hand, his arm was extended, and he was pointing the firearm at officers. M.S. stated Decedent was moving his arm side to side and pointing the firearm at the officers, including him, on the scene. M.S. heard another officer tell Decedent to put down the gun.

M.S. decided to go back to his patrol vehicle and retrieve his rifle. As M.S. ran to his vehicle, he heard several gunshots. M.S. continued to his patrol vehicle and retrieved his rifle. Afterwards, M.S. returned to the location of the other officers and joined the group of officers moving towards the residence. M.S. noticed Decedent was lying in the yard and bleeding. Decedent was placed in handcuffs, and officers entered the residence to clear it. After the residence was cleared, M.S. returned outside.

#### **Officer S.B.**

Officer S.B. was at DTAC when he heard the radio broadcast reference a domestic disturbance where a male had a gun and was threatening family members. S.B. exited the parking lot of the area command and heard officers broadcast over the radio that the male was pointing his gun at officers. S.B. approached the intersection in front of the area command and saw Decedent standing in the front yard of 532 N. 9<sup>th</sup> Street. Decedent appeared to be taking cover behind a tree while looking toward officers who were to his south.

S.B. heard gunshots but did not know who had fired. He exited his vehicle, but realized he was too far to effectively engage Decedent. S.B. returned to his vehicle, crossed Bonanza Road, and parked adjacent to 532 N. 9<sup>th</sup> Street.

S.B. observed Decedent on the ground in the front yard of 532 N. 9<sup>th</sup> Street. He also observed two other individuals in the front yard, an older man (F.G.) and a female (A.S.). Officers ordered F.G. and A.S. out of the yard to keep them safe. S.B. joined an arrest team, entered the front yard, and provided cover as officers placed Decedent in custody.

Sergeant Harries told S.B. to clear the residence with a team of officers. After clearing the residence, S.B. observed medical personnel transporting Decedent from the scene.

## **SCENE WALK-THROUGH AND PUBLIC SAFETY STATEMENTS**

### **Officer Zachary Solomon**

Officer Solomon provided a walk-through of the scene with investigators. During the walk-through, he told investigators that he was located behind LVMPD patrol vehicle 18071 ("071") during the incident. He further stated that from his location he observed Decedent between two trees outside the residence. Further, Officer Solomon told investigators that he clearly saw Decedent raise a firearm and point it toward himself and Sergeant Harries. Officer Solomon told investigators that he fired because he believed Decedent was going to kill him and Sergeant Harries.

Officer Solomon also provided a public safety statement to LVMPD Sergeant N.J. In the statement, Officer Solomon stated that it was his belief that he had fired two shots from his firearm and that he was not sure if the Decedent had fired his weapon at him.

### **Officer Gregory Ludwig**

Officer Ludwig also provided a walk-through of the scene with investigators. During the walk-through, Officer Ludwig told investigators that he was located behind the rear passenger side of a parked gold Nissan Pathfinder during the incident. Officer Ludwig further stated that he saw Decedent in the front yard of 532 N. 9<sup>th</sup> Street and close to a tree. Moreover, he saw Decedent point his firearm at officers to the left of him including Officer Solomon. Officer Ludwig heard three gunshots and Decedent appeared to be struck. However, Decedent raised his firearm again toward officers. Officer Ludwig stated he fired at that point to protect himself and other officers.

Officer Ludwig also provided a public safety statement to LVMPD Sergeant R.H. In the statement, Officer Ludwig stated that he fired three shots from his firearm and that "it did not appear" that Decedent fired his weapon at him.

### **Sergeant Kenneth Nogle**

Sergeant Nogle also provided a walk-through of the scene with investigators. During the walk-through, Sergeant Nogle told investigators that he was located near the rear driver's side door of the parked gold Nissan Pathfinder during the incident. He did not provide a verbal statement to investigators due to agreeing to provide a written voluntary statement.

Sergeant Nogle also provided a public safety statement to LVMPD Sergeant B.S. In the statement, Sergeant Nogle stated that he fired his weapon "four or five times" and that he did not know if the Decedent fired his weapon.

### **Sergeant Jason Harries**

Sergeant Harries also provided a walk-through of the scene with investigators. During the walk-through, Sergeant Harries told investigators that he was located behind LVMPD patrol vehicle 18098 ("098") rear passenger side at the time of the incident. He did not make any verbal statements due to agreeing to provide a written voluntary statement.

Sergeant Harries also provided a public safety statement to LVMPD Lieutenant B.C. In the statement, Sergeant Harries said it was possible Decedent fired his weapon toward him, but he did not know for sure.

### **OFFICER WEAPON COUNTDOWNS**

On March 19, 2019, Sergeants Harries and Nogle and Officers Ludwig and Solomon had their duty weapons counted down at DTAC to determine the number of rounds fired by each officer.

At the completion of the countdown, it was determined that Officer Solomon had sixteen rounds of ammunition left in his firearm and had fired the weapon two times during the incident. Officer Ludwig had ten rounds of ammunition left in his firearm and had fired his weapon six times during the incident. Sergeant Harries had seventeen rounds of ammunition left in his firearm and had fired his weapon six times. Sergeant Nogle had nineteen rounds of ammunition left in his firearm and fired his weapon four times.

## DESCRIPTION AND EVIDENCE FROM THE SCENE



Overhead photograph of the scene with position of witnesses and involved officers marked by the orange cones. 532 N. 9<sup>th</sup> Street is the residence by the stop sign.



Drone photograph of the front yard of 532 N. 9<sup>th</sup> Street.

The scene for this incident was located in the west front yard of a single-story residence located 532 N. 9th Street. The residence is located at the southeast corner of Bonanza and 9th Street and has a chain link perimeter fence surrounding the property. A west facing gate leads to a driveway. A second west facing gate leads into a front yard. A concrete walkway leads up to the west front door. The walkway divides the front yard into a north and south side. Each side consists of dirt covered ground with some vegetation and a tree. The front patio area had a table, two chairs, a grill and several other household items.

Crime Scene Analysts located a High Standard Sentinel .22 caliber nine shot revolver with an empty cylinder and apparent blood on it near the north side of the walkway in a dirt and grass area. There was no ammunition in the revolver. A dark firearm holster was located near the firearm. The tree on the south area of the front yard had several apparent bullet holes. There were also two bullet impacts to the residence on the northwest corner. The plastic slatted front yard fence of 524 N. 9th Street had bullet damage as well.



*Firearm and holster recovered from the front yard of 532 N. 9th Street*

LVMPD vehicles 098 and 071 were parked on the roadway facing north in front of 524 N. 9th Street, two houses south of 532 N. 9th Street. Eighteen total cartridge cases were found around the vehicles and 524 N. 9th Street. The front of LVMPD vehicle 098 is about seventy feet from the walkway of 532 N. 9th Street.

**OFFICER INVOLVED SHOOTING**  
 190300091291  
 532 N. 9TH ST.  
 03/19/19  
 pg. 1 of 2

E. BONANZA RD.

**PREPARED BY:**  
 T. OLSON #16552  
 M. SPOOR #3856

**SUSPECT**

S - STEVE GARCIA (12-08-81)

**OFFICERS**

O1 - J. HARRIES # 10021  
 O2 - Z. SOLOMON # 17302  
 O3 - K. NOGLE # 8051  
 O4 - G. LUDWIG # 17461

**WITNESS OFFICERS**

W1 - N. JONES # 9043  
 W2 - M. SMITH # 13507

**EVIDENCE**

- 1 - CARTRIDGE CASE
- 2 - CARTRIDGE CASE
- 3 - CARTRIDGE CASE
- 4 - CARTRIDGE CASE
- 5 - CARTRIDGE CASE
- 6 - CARTRIDGE CASE
- 7 - CARTRIDGE CASE
- 8 - CARTRIDGE CASE
- 9 - CARTRIDGE CASE
- 10 - CARTRIDGE CASE
- 11 - CARTRIDGE CASE
- 12 - CARTRIDGE CASE
- 13 - CARTRIDGE CASE
- 14 - CARTRIDGE CASE
- 15 - CARTRIDGE CASE
- 16 - CARTRIDGE CASE
- 17 - CARTRIDGE CASE
- 18 - CARTRIDGE CASE
- 19 - BULLET FRAGMENT
- 20 - BULLET FRAGMENT
- 23 - HOLSTER
- 24 - FIREARM

**BULLET STRIKES**

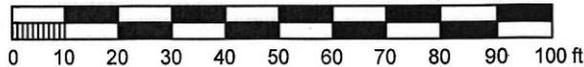
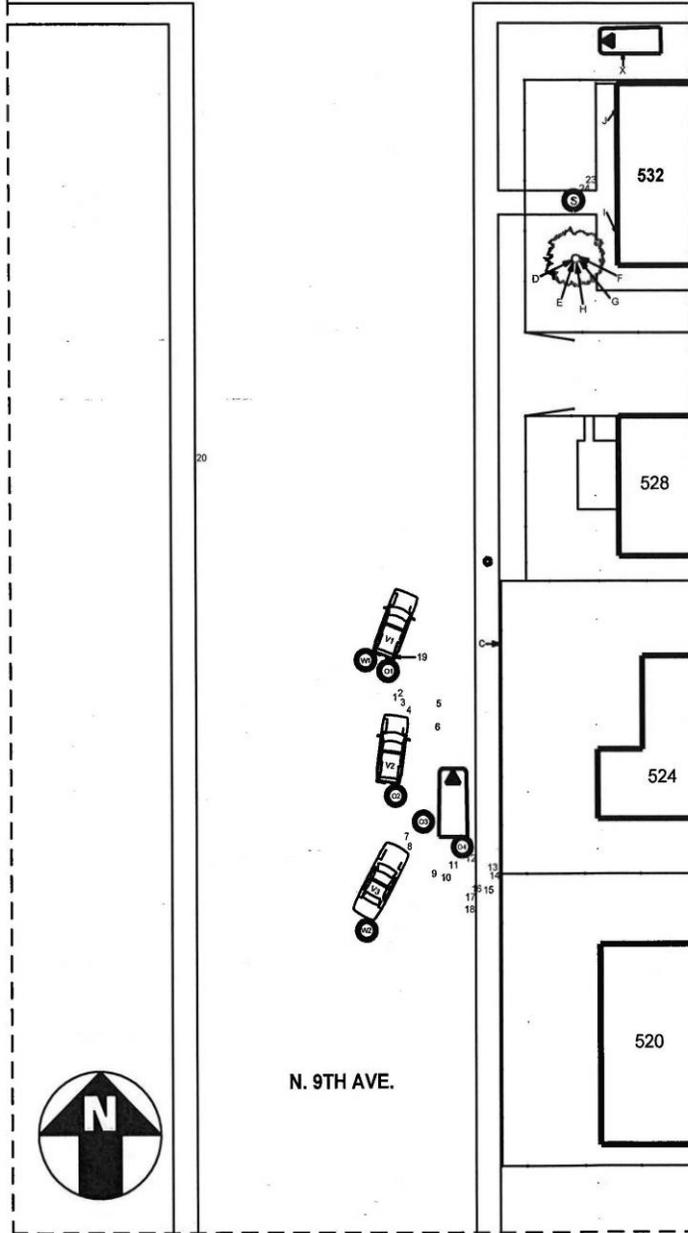
- C - BULLET STRIKE
- D - BULLET STRIKE
- E - BULLET STRIKE
- F - BULLET STRIKE
- G - BULLET STRIKE
- H - BULLET STRIKE
- I - BULLET STRIKE
- J - BULLET STRIKE

**UNKNOWN DAMAGE**

MARKED - X

**VEHICLES**

- V1 - DT18098
- V2 - DT18071
- V3 - DT10431



Crime Scene Analyst Supervisor <i>[Signature]</i>	P# 5541	Date Approved 4-1-19	Crime Scene Analyst T. OLSON	P# 16552
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Crime Scene Diagram prepared by CSA Olson showing where evidence was collected from the scene

## **FIREARM EXAMINATION**

On July 12, 2019, Forensic Scientist Glenn Davis issued a Firearms & Tool Marks Report for this incident with his findings. Wilcox found the revolver associated with Decedent to be operational with no noted malfunctions.

## **BODY WORN CAMERA EVIDENCE**

Sergeant Harries, Officer Ludwig and Officer Solomon were all wearing body worn cameras (“BWC”) which were activated at the time.<sup>2</sup> Sergeant Nogle was not wearing a BWC and is not required to because of his assignment at the time. Law enforcement witnesses N.J. and M.S. were also wearing BWC that were activated during the incident. Law enforcement witness S.B. did not activate his BWC until after the incident.

Sergeant Harries’ BWC was activated at 2:45:11 PM PCT<sup>3</sup> while he exits the rear parking lot of DTAC and turns south on 9th Street. At 2:45:54, Sergeant Harries makes a U-turn and stops his vehicle facing 532 N. 9th Street. Decedent can be seen standing in the front yard. Sergeant Harries verbally reacts to Decedent moving toward the street and raising his arms in a shooting stance. At 2:46:00, Sergeant Harries ducks below the windshield and reverses his vehicle. A few seconds later, Sergeant Harries exits his vehicle, moves to the rear of the vehicle and aims his firearm. Another officer can be heard yelling, “Drop the gun” several times. Sergeant Harries also yells, “drop it!” At 2:46:29, the first gunshot can be heard. Sergeant Harries discharges his firearm about a second later. At 2:46:36 all gunfire stops. At 2:47:17, Sergeant Harries informs dispatch that Decedent is down, and shots have been fired.

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<sup>2</sup> BWC time stamps are in Greenwich Mean Time (GMT) and there is a seven-hour negative difference between the event time and the displayed GMT time. Additionally, BWC also have a “time drift” where the camera’s internal clock drifts from actual time based on when the cameras are synced when the camera is docked. Each BWC can display a different time based on a time drift.

<sup>3</sup> All times in this section are in the PM and Pacific Coast Time.



*Photograph still from Sergeant Harries' BWC showing Decedent taking a shooting stance while facing Sergeant Harries' vehicle*

Officer Ludwig's BWC was activated during an unrelated call for service. At 2:45:08, LVMPD dispatch can be heard over the radio providing details of a call for service at 532 N. 9th Street. Officer Ludwig arrives at the scene at 2:45:55. A few seconds later, another officer can be heard yelling, "drop the gun", three times. At 2:46:30, the first gunshot can be heard off the camera view. Two seconds later, Officer Ludwig discharges his firearm. At 2:46:38 all gunfire stops. Shortly thereafter, Officer Ludwig can be heard asking witness A.C. if he is okay. Around the 2:47:30 mark, Officer Ludwig with other officers approach the residence and clear it. At 2:52:25, another officer asks Officer Ludwig about what happened, Officer Ludwig stated Decedent came out of the residence, pointed the firearm at officers and would not comply with commands.

Officer Solomon's BWC was activated as he exited his patrol vehicle during this incident. His vehicle is parked right behind witness A.C.'s Nissan Pathfinder. At 2:45:59, Officer Solomon draws his firearm and positions himself behind another patrol vehicle. At 2:46:19, Officer Solomon yells, "Drop the gun!" A few seconds later, A.C. can be heard saying the gun is not loaded. At 2:46:27, the first gunshot can be heard. At 2:46:32, Officer Solomon discharges his firearm. At 2:46:36 all gunfire stops. At 2:47:28, Officer Solomon approaches the residence. At 2:47:51, Officer Solomon's BWC shows Sergeant Harries move the revolver away from Decedent with his left foot.

M.S.'s BWC was activated while he's en route to 532 N. 9th street. At 2:45:56, M.S. exits his patrol vehicle. At 2:46:17, Officer Solomon can be heard yelling, "drop the gun" multiple times. At 2:46:23, M.S. broadcast over the radio that Decedent was pointing a gun at officers. At 2:46:28, M.S. tells another officer that he's going to get his rifle. The first gunshot is heard shortly thereafter. At 2:46:36 all gunfire stops. M.S. approaches the residence with other officers and helps clear it. At 2:56:31, M.S. escorts F.G. and A.S. across the street. F.G. tells M.S. that Decedent was on drugs.

N.J.'s BWC was activated at the time of the incident and does not show anything of note.

### **ADDITIONAL VIDEO EVIDENCE**

#### **Ring Video Doorbell Video**

A 38 second Ring video doorbell video was obtained from J.K. who lived at 523 N. 9<sup>th</sup> Street. The Ring video doorbell was mounted to the front of their residence and faced east towards the street. The video depicted the following:

The time stamp on the video shows 2019-03-19 14:46:15 (2:46:15 PM), however, the time stamp does not change as the video plays.

The first four seconds (approximately) displays a white screen. When images appear on screen, several marked patrol cars are visible on the street in front of the residence. Officers are positioned behind the patrol vehicles, and are heard several times yelling, "Drop the gun!"

Approximately 17 seconds into the video, a gunshot is heard. Approximately two seconds after the first gunshot, several more gunshots are heard. After the gunfire ceases, officers are seen moving positions behind the patrol cars. A female can be heard screaming in the distance. The audio stops at approximately 34 seconds into the video, and the video ends shortly after the end of the audio.

### **AUTOPSY**

On March 21, 2019, an autopsy was performed on the body of Decedent by Doctor Christina Di Loreto of the Clark County Coroner's Office. Decedent had a single gunshot wound to his head. Doctor Di Loreto also noted that Decedent had abrasions to his head and lower extremities. Doctor Di Loreto opined Decedent died as a result of a gunshot wounds of the head.

Per the Toxicology Report, Decedent was found to have amphetamine, methamphetamine and delta-9 THC (the main psychoactive ingredient in marijuana) in his blood at a non-toxic level.

## **LEGAL ANALYSIS**

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

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

### **I. THE USE OF DEADLY FORCE IN SELF DEFENSE/DEFENSE OF ANOTHER**

The authority to kill another in self-defense or in the defense of others is contained in NRS 200.120 and 200.160. "Justifiable homicide is the killing of a human being in necessary self-defense, or in defense of ... person, against one who manifestly intends or endeavors to commit a crime of violence ..." against the other person.<sup>4</sup> NRS 200.120(1). Homicide is also lawful when committed:

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

NRS 200.160(1).

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<sup>4</sup> NRS 200.120(3)(a) defines a crime of violence:

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

The 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 self-defense [or 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 him [or the other person] or cause him [or the other person] great bodily injury; and
2. That it is absolutely necessary under the circumstances for him to use in self-defense [or 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 himself [or 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 self-defense [or 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 self-defense [or 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 he [or 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 himself [or 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 self-defense or defense of another exists], the State must prove beyond a reasonable doubt that defendant did not act in self-defense [or defense of another]. *Id.* at 1051-52.

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

In this case, Decedent was reasonably perceived to pose an imminent danger not only to the involved officers but also their fellow witness officers and the surrounding residents including, F.G. who was in the front yard with Decedent. All involved officers arrived at the location with information that Decedent had a firearm and was threatening his family members with it. As soon as officers arrived, Decedent exited the residence and aimed his firearm at the responding officers. Despite having a firearm pointed at them, officers did not immediately fire at Decedent. Instead, they took cover and issued several commands for Decedent to drop the firearm that were ignored. Specifically, Sergeant Harries and Officer Solomon can both be heard on the BWC yelling at Decedent to drop the firearm before the shooting starts. It was only after these commands were ignored and Decedent continued to aim the firearm at officers, when officers fired upon Decedent. While some of the involved officers *may* have heard witness A.C. say that the firearm was unloaded, the officers had no ability to confirm that statement since the shooting occurred only a few seconds later. Moreover, A.C. was positioned in his vehicle a couple houses away from the residence and there was no way for officers to know where A.C. received his information. In fact, A.C. later told detectives that he was not sure if the firearm was loaded. Finally, the information from the 9-1-1 call, clearly stated that Decedent had a gun and was threatening to shoot his father.

It is clear from the evidence that Decedent purposefully threatened the involved officers with a firearm. His sister told detectives after the incident that Decedent told her that if the police came, he would shoot at them. His actions when officers arrived could not be viewed as anything but a perceived threat to the involved officers. Therefore, Sergeant Harries', Sergeant Nogle's, Officer Ludwig's and Officer Solomon's actions were justified under Nevada self-defense law.

## **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, at the time involved officers fired their weapons, the facts demonstrate that they had probable cause to believe that the Decedent posed an immediate threat of death or serious physical harm to themselves and other officers. Decedent was armed with a revolver and pointed it at officers several times during the incident. He did so as

soon as police arrived and without hesitation. The circumstances demonstrate Sergeant Harries, Sergeant Nogle, Officer Ludwig and Officer Solomon fired their weapons with a reasonable belief that Decedent was a threat to their life and the life of other officers present as well as the surrounding residents. In light of this evidence, Sergeant Harries', Sergeant Nogle's, Officer Ludwig's and Officer Solomon's actions 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 Sergeant Harries, Sergeant Nogle, Officer Ludwig and Officer Solomon 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.