

# REPORT ON USE OF FORCE



## Legal Analysis Surrounding the Death of Ronald Wayne Tate on March 16, 2014

### INTRODUCTION

On March 16, 2014, at approximately 0900 hours, Citizen #1 contacted the LVMPD emergency dispatch in reference to a male with a gun. Citizen #1 explained that he was an employee of Vegas Extreme Skydiving. That morning, he attempted to contact the occupant of a motorhome that was parked in the parachute landing zone located near the Primm airport. Citizen #1 further reported that when he, along with Citizen #2 and Citizen #3, attempted to talk with the occupant (ultimately identified as Ronald Tate), Tate opened the door to his motorhome and pointed a handgun at the three men. Citizen #1 also told dispatchers that Tate told Citizen #1 there may be a bomb in the motorhome.

Patrol Officers responded to the scene and made efforts to communicate with Tate over their PA system. Tate did not respond to the attempts to communicate with him. Officers observed Tate, outside the motorhome, holding a long gun which appeared to be an SKS type design. "SKS" refers to a particular design shape of a semi-automatic rifle – usually associated with a high powered ammunition. This type of weapon could have been fatal to the responding officers, as well as, the numerous citizens traveling on Interstate 15. Patrol officers contacted the Special Weapons and Tactics (SWAT) team for assistance.



SWAT team members arrived at the location and were briefed by patrol officers regarding the situation. SWAT Sniper Charles Moser was deployed in an observation position and observed Tate exit the motorhome with a long gun. Officer Mosher believed the weapon was an SKS type weapon. He observed Tate operating the bolt action to the firearm. Officer Moser, fearing for the safety of the other patrol and SWAT officers in the area, as well as citizens driving on the nearby freeway, discharged his weapon one time striking Tate.

SWAT team members along with medical personnel moved to the area of the motorhome and attempted to render aid to Tate. Medical personnel determined Tate was beyond resuscitation.

On March 17, 2014, Medical Examiner Dr. Timothy Dutra conducted an autopsy on the body of Ronald Wayne Tate (hereinafter "Tate"). At the completion of the autopsy, Dr. Dutra opined Ronald Wayne Tate's cause of death was from a single gunshot wound to the head and chest.

The District Attorney's Office has completed its review of the events surrounding the March 16, 2014, death of Tate. This review was based on all the evidence currently available, including the benefit of a public police fatality review. It was determined that, based on the evidence currently available and subject to the discovery of any new or additional evidence, the actions of the officer 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 law enforcement encounter. 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 Las Vegas Metropolitan Police Department or to suggest the existence or non-existence of civil actions by any person where less stringent laws and burdens of proof apply.

## **I. INCIDENT DETAILS:**

At approximately 9:00 a.m. on March 16, 2014, Citizen #1 was scouting the landing site used by skydivers in the Primm area. Located in the landing zone was a motorhome. CITIZEN #1<sup>1</sup> and two other skydivers approached the motorhome and knocked, asking the occupant if he would move the motorhome as some skydivers were going to be landing there shortly. The sole occupant of the motorhome, ultimately identified as Ronald Tate, answered the door holding a semi-automatic handgun and told the men that they needed to

---

<sup>1</sup> CITIZEN #1 was with two other skydivers E.C. and M.I.

get off the “gun range.” Additionally, Tate made comments that there was a bomb present and that the motorhome could explode. Tate waived the handgun in the general direction of the three men. Based upon Tate’s conduct and statements, the men feared for their safety and ran back to their van. The men drove west towards I-15 and called 9-1-1.



Metro communications broadcast the general details of the encounter and Officer John Turney was first to respond. Officer Turney, dressed in standard Metro uniform, parked his marked Metro Ford pick-up to the east of Tate and contacted the three men. After being advised of what had just occurred, Officer Turney parked approximately 100 yards to the west of Tate’s RV. Using his patrol vehicle for cover, Officer Turney made numerous attempts to communicate with Tate personally and also via his vehicle’s PA system.

Tate was mostly unresponsive. However, Tate did state: “I don’t want to talk to the government. You represent the government and I have no reason to talk to you.” Tate was observed to display what appeared to be a long gun, possibly a SKS type weapon. Throughout this time, Tate was observed to go back and forth from inside the RV to outside the vehicle.

Nevada Highway Patrol officers Reginald Dixon and David Dudley responded to assist Officer Turney. Dixon and Dudley also observed Tate with the long gun. Trooper

Dudley heard Tate state several times: “No, you come over here, you come over here and I’ll help you. I’ll show you what I got. All you want to do is hurt me. All you want to do is get me. Well, I’ll get you first.”

Officers were concerned with the safety of citizens traveling on I-15 which, at the time, had moderate to heavy vehicular traffic. Officer Turney ultimately concluded that they had a barricaded person armed with a handgun, a long gun and possibly explosives. Officer Turney requested assistance from SWAT units. Officers on scene requested that responding units do so without lights and sirens.

Responding SWAT officers were deployed to take up positions to observe Tate. Two officers from the SWAT unit deployed to the south of Tate’s RV (Officers Charles Moser and Michael Walters) and began communicating details of Tate’s behavior to other SWAT officers at the scene.

Officer Charles Moser, a member of the SWAT unit, took up a position 333 feet from Tate’s motorhome. Officer Walters deployed south of Tat’s RV and was working his way to Officer Moser’s position to act as his spotter. During his move to that location, Officer Moser called out whenever Tate exited the RV. Officer Walters used his scope to observe Tate. Officer Walters observed Tate on approximately 3 occasions exit the RV holding an SKS type long gun. Additionally, he observed Tate toss some personal effects out of the RV onto the ground.

Officers Moser and Walters observed Tate exiting his motorhome with a long gun. Both officers believed the weapon to be an SKS type weapon. They observed Tate operate the bolt mechanism of the weapon, appearing that Tate was preparing to fire the weapon. Based upon the concern of safety of officers/citizens at the scene and individuals on I-15, Officer Moser fired one round, striking Tate in the chest/head area. The wound was instantaneously incapacitating and fatal.

Officers approached Tate and attempted to render medical aid, but Tate had succumbed to his injury. The area was secured in preparation for the ensuing investigation.

The incident scene revealed that Tate had recently fired both his shotgun and 9mm pistol in events unrelated to this event. Further, items of personal property were strewn outside the RV without any obvious explanation or design.





## **II. AUTOPSY:**

On March 17, 2014, Medical Examiner Dr. Dutra conducted an autopsy on Ronald Wayne Tate. At the completion of the autopsy, Dr. Dutra opined Ronald Wayne Tate died from a single gunshot wound to the head and chest.

## **III. OFFICER/SUSPECT WEAPON COUNTDOWNS**

On March 16, 2014, Detectives Moser, Arcalean, and Walters had their rifles and any secondary (back-up) firearms counted down at the scene. The shooting officer, witness officers, and their counted-down firearms were photographed for identification and appearance.

Examination and interviews of the various SWAT officers deployed during this incident reveal that only Officer Moser fired any weapon. It was determined from the actual weapon count down of the ammunition and examination of the various portions of the scene itself, that Officer Moser fired one time from his department issued Accuracy International, model AE, .308 bolt action rifle bearing serial number 7894. The rifle was equipped with a Leupold Optics Mark 8 scope, bi-pod, sling, and a side-saddle.

## **IV. HISTORY OF POLICE CONTACT WITH RONALD TATE LEADING UP**

## **TO MARCH 16, 2014**

March 14, 2014

In the evening hours, a person called 9-1-1 regarding a person (later identified as Ronald Tate) to be trespassed from the "Fills Gas Station" located at 3810 Blue Diamond Road. According to witnesses, Tate was acting generally odd and had mentioned that "Jesus told him to murder someone." The conduct made employees and customers very uncomfortable and police we called.

According to reports, a responding Metro officer made contact with Tate. No weapons were discussed or mentioned during the encounter with Tate. The Metro officer asked numerous questions to determine whether Tate should be taken into custody pursuant to the "Legal 2000" procedure. The officer concluded that Tate represented no apparent danger to himself or others.

Based upon the request of the business owner/manager, Tate was issued a trespass citation. Tate left the premises.

March 15, 2014

Employees of El Monte Motor Home Sales located at 13001 S. Las Vegas Boulevard contacted 9-1-1 and advised that an adult male was acting in a bizarre and threatening manner on that property. A Metro officer responded and made contact with Ronald Tate. Mr. Tate indicated that he was involved in a minor incident on the property parking lot but no injuries or property damage had occurred.

The reporting parties only wanted to trespass Tate and were not interested in pressing any charges. The responding officer inquired of any potential facts to involuntarily commit Tate, but that inquiry revealed that Tate was not a danger to himself or others. No mention or evidence of weapons existed during this investigation.

Tate was trespassed from the property without incident.

March 15, 2014

Approximately 8 hours later, Ronald Tate was identified as a person who refused to leave the premises of Camping World, a business located further south on Las Vegas Boulevard from El Monte. An employee of Camping World called 9-1-1 asking for assistance in getting Tate to leave the business.

A Metro officer responded and contacted Tate who was cooperative and advised the officer that he had recently won a lawsuit against the business and he was there to "collect" his judgment. In fact, no such judgment existed. While interacting with Tate, the officer

noted that Tate was certified to carry a firearm per an entry to his SCOPE, an electronic database. Based upon this, Tate consented to the search of his RV. The officer discovered a 9 mm handgun and a shotgun. The weapons were unloaded by the officer when he interacted with Tate. Tate was cooperative throughout and did not give any indications to justify an involuntary commitment. After being asked to leave by the officer, Tate voluntarily complied.

## **V. FAMILY HISTORY OF RONALD TATE**

Contact was made with E.T., a relative (half-sister) of Ronald Tate, who provided information to investigating detectives regarding Tate's prior employment and mental state. According to E.T., Tate was previously employed as a correctional officer in Polk County, Florida. Tate left Florida and was employed as a security guard at a casino in Mesquite, Nevada.

Family history revealed that a brother (S.T.) had committed suicide approximately 10 years ago. Tate's mother had recently (within the past year) passed away. Recently, E.T. had received a letter from Tate wherein he wrote the letter on the *outside* of the envelope. Further, her last conversation with Tate indicated suicidal ideation. She specifically mentioned the disposition of his assets and thanked her for her help in his life.

## **V. 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 action of this officer 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). There is also a statute that defines excusable homicide by misadventure (NRS 200.180 – Excusable homicide by misadventure).

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

The authority to kill another in defense of others is contained in NRS 200.120 and NRS 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 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.

There was direct evidence that Tate possessed two weapons – a long gun and a hand gun. Tate had stated that explosives were inside of his RV. Further, Tate had expressly invited uniformed officers to engage him is what certainly was a threat to do harm to officers. Further, the proximity to numerous citizens on Interstate 15 was well within the lethal range of an SKS type weapon. The observed conduct of Tate was consistent with him arming the weapon in preparation to firing it at officers or others. This conduct made the threat of deadly force imminent.

In this case, Officer Moser reasonably believed that both he, other officers, and the citizens in proximity to the altercation were in imminent danger. Furthermore, Officer Moser reasonably believed, based on Tate’s words and actions, that Tate would kill or cause them great bodily harm or injury.

Numerous officers continually attempted to communicate with Tate but his refusal to comply with the officer’s commands and his threatening actions toward the officers created a dangerous situation for both officers and nearby citizens.

Officer Moser had the right under Nevada law to use deadly force against Tate in defense of himself and others.

## **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).

Tate's conduct, statements and use of several weapons, observed by several citizens, as well as, several officers, justified Officer Moser in using deadly force to neutralize that threat.

In light of all the evidence reviewed to date, the State would be unable to prove that the actions of Officer Moser were in fact unjustified "in the discharge of a legal duty."

### CONCLUSION

Based on the review of the available materials and the application of Nevada law to the known facts and circumstances surrounding the officer involved shooting death of Tate, it has been determined that the actions of Officer Moser 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 Officer Moser based on the totality of the circumstances, unless new circumstances come to light which contradict the factual foundation upon which this decision is made, no charges will be forthcoming.

DATED: April 28, 2015

STEVEN B. WOLFSON  
District Attorney

By

DAVID L. STANTON  
Chief Deputy District Attorney