

REPORT ON USE OF FORCE



Legal Analysis Surrounding the Death of Jeffery Hubbard on August 16, 2020

INTRODUCTION

On August 16, 2020, 67-year-old Jeffery Hubbard (hereinafter “Decedent”) was shot and killed during an altercation with Las Vegas Metropolitan Police Department (hereinafter “LVMPD”) officers. The incident took place at approximately 6:02 p.m. in a residential neighborhood southeast of the intersection of Sahara Avenue and Durango Drive, within Las Vegas, Nevada. Officers John Fieweger and Isaiah Garcia discharged their firearms, and Decedent, who was brandishing a firearm, died from multiple gunshot wounds at the scene.

SYNOPSIS

At 4:21 p.m. on August 16, 2020, LVMPD Dispatch received a call for service from Decedent’s wife, L.H., who reported that Decedent was having a mental episode and had discharged his firearm into their bedroom wall. Because their home was within a duplex, the bedroom wall was shared with the neighboring residence. Approximately 2 minutes later, LVMPD Dispatch received a second call for service - - this time from Decedent’s next-door neighbor (A.S.) - - who reported a bullet hole in her master bedroom wall.

LVMPD officers arrived at 2868 Cygnus Street a short time later and set up a containment perimeter around Decedent’s residence. Officers made contact with Decedent’s wife, L.H., at the scene. L.H. had left the residence after Decedent discharged his firearm because she feared for her safety. L.H. further reported that Decedent was still inside their home and was armed with at least one firearm.

Sergeant John Wiggins assumed command of the scene and developed a tactical plan. Officers evacuated the neighboring residences and lethal and less-lethal equipped officers were positioned around the residence. Officer Fieweger deployed his rifle and set up to the west of Decedent’s residence. Officer Garcia deployed his handgun and set up to the north of the residence.

After the officers took their positions, Sergeant Wiggins attempted to make contact with Decedent. Initially, Sergeant Wiggins made attempts to contact Decedent over the telephone. When Decedent did not answer the phone, Sergeant Wiggins utilized the public address ("PA") function of his patrol vehicle to call Decedent out of the residence. Approximately two minutes later, Decedent exited the front door of the residence.

Decedent exited the front door, took a few steps, and stopped in the entryway. Decedent's right hand was visible and empty; his left hand was concealed behind his back. Officers ordered Decedent to show them his hands. Decedent did not comply. Decedent then abruptly revealed his left hand. Officers observed a firearm in Decedent's left hand and immediately ordered him to drop the weapon. Decedent then raised the firearm toward the officers to his north. Officers John Fieweger and Isaiah Garcia each fired two rounds from their respective firearms, striking Decedent.

Decedent fell to the ground but continued to move. Officers could not tell whether Decedent still had the firearm in his hand, so a K-9 was deployed. The K-9 bit Decedent, and officers moved in and took Decedent into custody. Medical personnel were summoned; however, Decedent succumbed to his injuries and died on scene.

Due to the fact that an officer-involved shooting ("OIS") occurred, the on-scene incident commander requested the Force Investigation Team ("FIT") respond to assume responsibility of the investigation. FIT personnel arrived thereafter and assumed control of the scene and the investigation.

This report explains why criminal charges will not be forthcoming against LVMPD Officers Fieweger and Garcia. 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 April 29, 2021.

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

DESCRIPTION OF THE SCENE

The scene was located at 2868 Cygnus Street, within a gated residential neighborhood southeast of Sahara Avenue and Durango Drive. The neighborhood consisted of multiple duplexes, and there was a single entry/exit gate on the south end of the neighborhood.

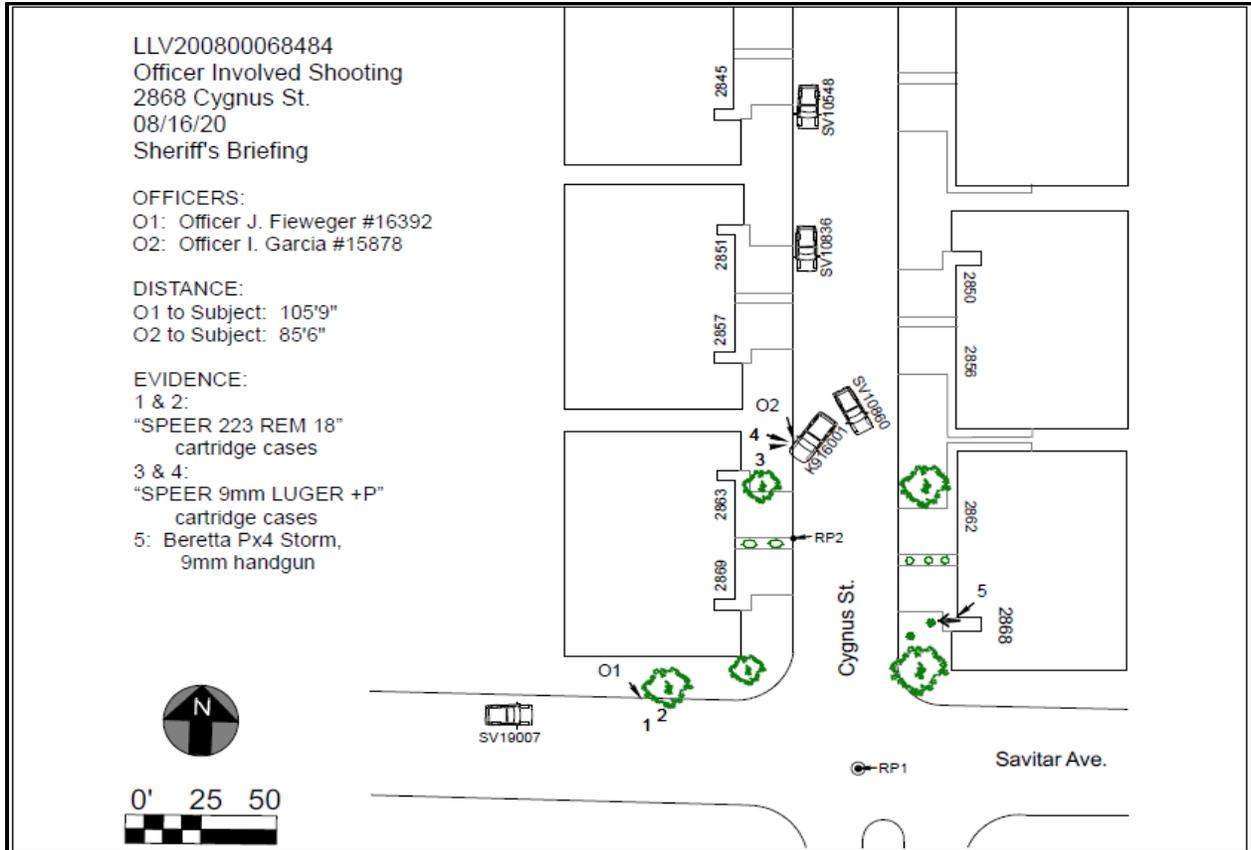


The residence was located on the corner of Cygnus Street just inside the entry/exit gate.

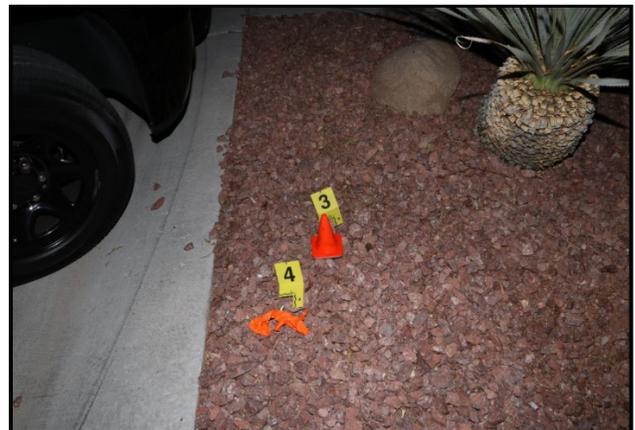


EVIDENCE

Exterior Scene



There were 4 LVMPD patrol vehicles and 1 LVMPD K-9 vehicle parked within the scene. There were 2 SPEER 223 REM 18 rifle cartridge cases (Items 1 and 2) located on the pavement just south of 2869 Cygnus Street (west of Decedent's residence). There were 2 SPEER 9mm LUGER +P cartridge cases (Items 3 and 4) located on the rock landscaping just south of 2857 Cygnus Street (north and slightly west of Decedent's residence).



Decedent was lying on his back on the exterior walkway entrance of 2868 Cygnus Street. Decedent's shirt was medically cut and medical intervention devices were attached to his body. There were injuries observed on Decedent's head, neck, right shoulder, and right forearm. Apparent bullet wounds were observed on Decedent's lower left abdomen, left flank, and left shoulder blade. There was an apparent bullet impact observed on the north-facing stucco wall of the walkway just southeast of Decedent.

A Beretta Px4 Storm 9mm semi-automatic handgun (Item 5) was located on the walkway just northeast of Decedent. There was a PPU 9mm LUGER cartridge in the chamber of the Beretta. The Beretta's seated magazine contained twenty (20) miscellaneous 9mm cartridges.



Interior Scenes

2868 Cygnus Street (Decedent's residence)

The residence consisted of a garage to the northwest, a family room to the south, and a kitchen and dining room to the southeast. There was a bedroom to the southwest and a master bedroom with an adjoining bathroom to the northeast.

Within the southwest bedroom, there was a bullet hole in the north interior wall of the closet. Another bullet hole was located on the north side of the mattress, southeast of the bullet hole in the closet. A bullet fragment was observed on the floor northeast of the mattress. The trajectory indicated this bullet originated from outside, passing through the stucco wall at the entryway to the home.

Within the northeast master bedroom, 2 miscellaneous 9mm cartridge cases (Items 9 and 10) were recovered from the floor. Another 9mm cartridge case (Item 11) was recovered

outside the open bedroom door on the living room floor. 3 bullet holes were observed on the walls – 1 on the edge of an exterior north closet and 2 on the north wall.



A second Beretta Px4 Storm 9mm semi-automatic handgun (Item 12) was recovered in the northeast master bedroom from the top middle drawer of a dresser. There was an FC 9mm LUGER cartridge in the chamber of this Beretta. This Beretta's seated magazine contained seventeen (17) miscellaneous 9mm cartridges. Several gun boxes and magazines containing cartridges were located on a shelf in the closet.

2862 Cygnus Street (A.S.'s adjoining residence)

The southeast master bedroom was situated north of the northeast master bedroom of 2868 Cygnus Street, sharing a common wall. There were 2 bullet holes on the common wall, and 2 bullet holes in the ceiling.



The trajectories indicated these bullets originated from 2868 Cygnus Street, passed through the common wall, and struck the ceiling.

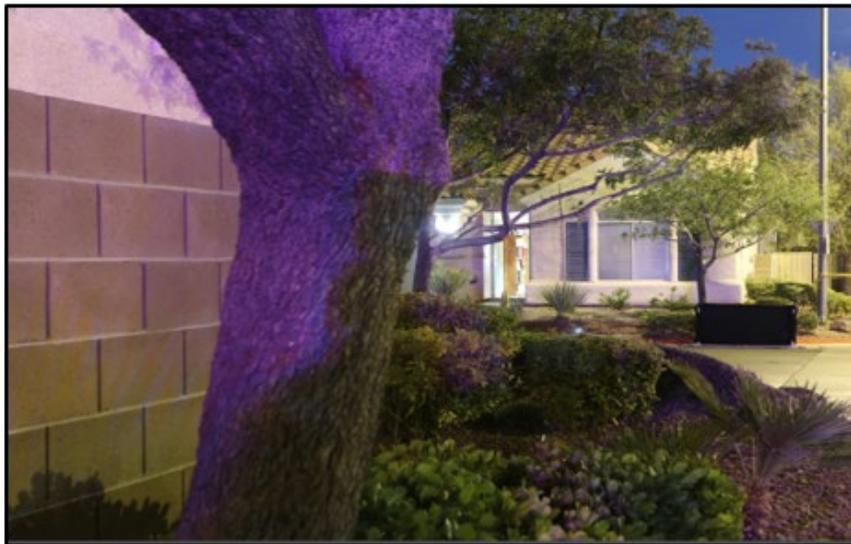
SCENE WALK-THROUGHS

Officer Fieweger

On August 16, 2020, at approximately 9:10 p.m., Officer Fieweger relayed the following information during a walk-through of the scene:

Upon his arrival to the scene, Officer Fieweger was informed that Decedent had fired rounds inside his home. Officer Fieweger deployed his rifle and took his position with a spotter to his right. Officer Fieweger observed Decedent exit the residence and stand in the front doorway with his left hand behind his back. Officer Fieweger observed Decedent raise his left hand and point a gun toward the officers who were positioned to Decedent's north. Officer Fieweger feared for the safety of those officers and fired 2 rounds at Decedent.

Officer Fieweger then identified the location where he perceived he was standing when he fired his weapon.



Above: Officer Fieweger's perspective at the time he fired shots.

Officer Garcia

On August 16, 2020, at approximately 9:30 p.m., Officer Garcia relayed the following information during a walk-through of the scene:

Upon his arrival to the scene, Officer Garcia was made aware that Decedent had fired rounds inside his home. Officer Garcia was positioned north of Decedent's residence when he observed Decedent exit the home with his left hand behind his back. Decedent then turned toward Officer Garcia and pointed a gun at him. Officer Garcia feared for his own safety and the safety of his fellow officers and fired his gun at Decedent to stop the threat.

Officer Garcia then identified the location where he perceived he was standing when he fired his weapon.



Above: Officer Garcia's perspective at the time he fired shots

PUBLIC SAFETY STATEMENTS

Officers Fieweger and Garcia provided Public Safety Statements to Sergeant Eric Hutchason. FIT Detective Andrew Ubbens conducted an audio recorded interview with Sergeant Hutchason. Below is the transcript of the interview. Detective Ubbens is designated "AU" and Sergeant Hutchason is designated "EH."

AU: Operator, this is Detective Ubbens, P# 13119, with the Force Investigation Team, conducting a Public Safety Statement interview in reference to an officer-involved shooting that occurred under event number 200800068484. I'm conducting the interview with Sergeant Hutchason, P# 12955. Also present is PMSA representative Sergeant Krumme, P# 7167. Sergeant Hutchason, did you do a Public Safety Statement today?

EH: I did.

AU: And who'd you give it to?

EH: Uh, the first one from Officer J. Fieweger, P# 16392.

AU: And do you know what time you did that statement?

EH: I don't ___ if I wrote the time down. I'll have to look at the video.

AU: Um, ____. Can you just tell me what questions you asked him and what his responses were?

EH: Um, I asked him the questions verbatim from the Public Safety Statement card, the LVMPD 613.

Uh, #1: "Did you discharge your firearm?" Uh, he said, "Yes."

Uh, 1A is, uh, "In what direction?" "East." His reply was, "East."

Uh, 1B, uh, I asked him, "Approximately where," uh, "were you located when you fired?"

Uh, he was west of...he said he was west of...by the tree on the 1-4 side.

Um, question 1C I asked him, "How many shots do you think you fired?" He stated that he fired two.

Uh, I asked him question 2: "Is anyone injured?" Uh, "If so, where are they located?"

Uh, he stated, uh, "Just the suspect, and they're located..." He believed they're located on the side of the front door of the target residence."

And, uh, I asked him question 3: "Are there any outstanding suspects?" He stated, "No."

And the remainder, A, B, C, D, and E were not applicable after that.

And then ss...I, uh...right after that I spoke with Officer I. Garcia, P# 15878. And I read him verbatim the same questions off the same card.

Question 1: "Did you discharge your firearm?" He stated, "Yes."

Uh, 1A: Uh, "If so, in what direction?" He stated, "In a southeast direction."

Uh, "Approximately where were you located when you fired?" He stated he was in the street behind a patrol car, uh, on the 1-2 side, just north of.

Um, "How many shots do you think you fired?" He stated he thought he fired two.

Um, #2: "Is anyone injured?" He stated, "Yes." Uh, just the, uh, suspect that he knew of.

"If so," uh, "where are they located?" He stated he believed they were located just outside the front door of the target residence.

And question 3: "Are there any outstanding suspects?" He replied, "No," which made A, B, C, D, and E not applicable.

And I read them right after.

AU. Okay. Time is 1947.

SUMMARY OF RELEVANT WITNESS STATEMENTS

Civilian Witnesses

There were 7 civilian witnesses interviewed at the scene. All of the interviews were audio recorded. The civilian witnesses were generally consistent with one another and with the officer witnesses. The following summaries were most relevant for purposes of this report.

L.H.

On August 16, 2020, at approximately 8:04 p.m., FIT Detective Jason Leavitt conducted an audio recorded interview with L.H.

L.H.'s husband, Decedent, had been diagnosed with multiple sclerosis ("MS") and had been unable to work for the last 15 years. During that time, he had undergone multiple surgeries to include knee replacements, hip replacement, and back fusion. As a result, Decedent had become dependent on prescription pain medication.

Approximately 12 years ago, Decedent experienced a mental episode where he was hallucinating and talking incoherently. The condition lasted several days, and, according to L.H., Decedent was placed on a legal hold by police for observation. Doctors provided a theory the incident may have been related to Decedent's MS, but no actual diagnosis was made.

In June 2020, Decedent again experienced the same type of mental episode which lasted approximately a week. During that time, he was detained by security at the Suncoast Hotel & Casino and removed from the property after assaulting a housekeeper. L.H. and her sister both contacted LVMPD for separate incidents related to Decedent's behavior. L.H. stated that the episode abruptly ended, and Decedent had returned to "normal" overnight.

Approximately 3 weeks prior to the OIS, Decedent's mental episodes began again. Decedent was talking to himself, going for days without showering or changing clothes, and walking around the house carrying a gun and erratically waving around his hands. Decedent was delusional and told his wife he was God, a warlord, and had declared WWIII. He stated that all the Chinese, Mexican, and Black people needed to be killed.

The day prior to the OIS, Decedent sat in his recliner for 3 hours having a conversation with himself. On the day of the OIS, Decedent told L.H. the world was coming to an end. He threatened to go to the store and shoot all the employees if they messed up his food order. Decedent was irate, screaming, and could only focus on the "war" which he oversaw. Decedent demanded that L.H. go to the neighbor's residence and instruct them to leave their home. He demanded that they be removed because they were at war, and if they did not leave, he would shoot her (the neighbor). Decedent then fired 3 bullets into his bedroom wall which adjoined the neighbor's home. L.H., fearing for her safety, left the residence and contacted LVMPD.

A.S.

On August 16, 2020, at approximately 7:47 p.m., Detective Ubbens conducted an audio recorded interview with A.S.

A.S. was in the living room of her residence at 2862 Cygnus Street when she heard a loud noise from the bedroom. She went to see what caused the sound and saw a bullet hole in the wall. A.S. called 9-1-1 to report the bullet hole and left her residence to wait by the pool for officers. She heard the responding officers issue commands to the male inside 2868 Cygnus Street (Decedent), and then heard gunshots. A.S. did not directly witness the shooting.

Prior to when A.S. heard a gunshot and located a bullet hole in her wall, she did not hear any arguing or screaming coming from the neighbors' residence. About 10 minutes prior, the female from next door (L.H.) had gone to A.S.'s door to obtain a signature of approval to install security screens. A.S. never had much interaction with her neighbors and recalled the neighbors were usually quiet. She remembered an incident from June 2020 when Decedent had threatened to kill L.H. The police responded and attempted to call Decedent out of the house. A.S. was unsure what resulted from that incident.

R.M.

On August 16, 2020, at approximately 7:40 p.m., FIT Detective Trever Alsup conducted an audio recorded interview with R.M.

R.M. and her husband had arrived at the community pool around 3:00 p.m. While at the pool R.M. met L.H. L.H. was walking through the neighborhood obtaining signatures for an architectural change to her residence. L.H. returned home after the conversation.

A short time later, R.M. heard two faint "popping" noises, and then observed L.H. pull out of her garage at a high rate of speed and leave the complex. R.M. then received a phone call from a friend (A.S.) who rented the duplex next to L.H. A.S. told her 2 bullets had been fired into her residence.

R.M. then heard an officer utilizing a bullhorn in an attempt to get a male to come out of L.H.'s residence. After several minutes, R.M. heard an officer yell several times, "Drop the gun!" followed by 3 gunshots.

M.M.

On August 16, 2020, at approximately 7:45 p.m., FIT Detective Scott Mendoza conducted an audio recorded interview with M.M.

M.M. and D.C. were in their residence and heard police use a bullhorn to instruct someone to go outside. M.M. went to her bedroom window and saw marked police vehicles surrounding her neighborhood. Police continued to call for her neighbor (Decedent) to go

outside. M.M. said the officers used the bullhorn for approximately 3 to 4 minutes. M.M. saw Decedent exit his residence with his left arm behind his back. Decedent was waving his right arm, apparently motioning people to get down.

Approximately 1 minute later, Decedent pulled his left arm from behind his back and pointed a gun at the officers. M.M. was not sure, but believed Decedent fired his gun at the officers. M.M. heard more gunshots and saw Decedent fall to the ground.

M.M. said it appeared that Decedent was trying to reach for the gun while he was on the ground. A police K-9 dog was released toward Decedent and bit him on the face. The officers approached Decedent and removed the K-9 from him. The officers rolled Decedent over so they could handcuff him. Once he was handcuffed, officers checked Decedent for a pulse. An ambulance arrived on the scene and the medical personnel began C.P.R. on Decedent. After a while, the medical staff stopped giving medical aid to Decedent. M.M. stated that in her opinion nothing she saw the police do was wrong.

Officer Witnesses

Sergeant Eric Hutchason

On August 16, 2020, at approximately 8:37 p.m., Detective Ubbens conducted an audio recorded interview with Sergeant Hutchason.

K-9 Sergeant Hutchason heard a radio broadcast of a shooting call within Spring Valley Area Command ("SVAC") boundaries. The details stated a male who was in mental crisis had fired a gun in his house and a round went into a neighbor's house. Sergeant Hutchason communicated with the area command sergeant (Sergeant Wiggins) and formulated a plan to respond to the call. Due to a separate dynamic incident that was occurring simultaneously, there were few resources available to handle the shooting call.

Part of the plan involved utilizing a PA system to engage in verbal communication with Decedent, who was believed to still be inside the residence. There were officers assigned to lethal and low lethality coverage. While the area command sergeant was giving commands over the PA system, Decedent exited the residence. As Decedent exited the residence, Sergeant Hutchason could see Decedent's right hand was empty and his left hand was behind his back. Decedent pointed his visible hand at the sergeant using the PA system, then pointed down and said, "Stand down."

Decedent pulled a black semiautomatic firearm from his back area and pointed it at the officers. Sergeant Hutchason heard several gunshots and saw Decedent fall to the ground. While Decedent was on the ground, he rolled and reached for the gun which had also fallen to the ground. Sergeant Hutchason deployed his dog who bit Decedent on the face. Due to the location of the bite, Sergeant Hutchason called the dog back to him.

Sergeant Hutchason expressed that he believed Decedent was going to try to kill him or other officers on scene. Sergeant Hutchason knew Decedent had the ability to use the gun based on the information that Decedent had previously discharged a gun inside his residence.

Officer Edward Giron

On August 16, 2020, at approximately 8:53 p.m., Detective Mendoza conducted an audio recorded interview with Officer Giron.

Officers Giron and Fieweger responded together to the area of 2868 Cygnus Street reference a person with a gun. The details Officer Giron received was a man with a gun was inside his residence and had fired bullets through the walls, and that citizens had run out of the house. Officers Giron and Fieweger arrived at the location and were met by a sergeant who had arrived on the scene. Officer Fieweger deployed his rifle and Officer Giron was assigned as the rifle spotter. Together they set up to the west of the target residence. Officer Giron heard assisting officers who were located to the north of the residence using a bullhorn to address Decedent inside of the residence. Officer Giron was met by a citizen who lived next to the target residence, and she stated that she came home from work and saw bullet holes in her wall.

As the officers continued to utilize the bullhorn to contact Decedent, Decedent exited the front door of his residence with his left arm behind his back. Officer Giron stated he could not see if Decedent was holding anything. Decedent made a motion with his right hand. Officer Giron gave Decedent commands several times to put his hands in the air. Decedent produced a handgun which he was holding in his left hand and pointed it toward the officers. Officer Giron heard 2 to 3 gunshots but did not know if Decedent was firing or if it was the officers. Decedent fell to the ground and continued to move his left hand. Officer Giron instructed Decedent to show his hands and to place them on the top of his head. Officer Giron saw a K-9 dog be released toward Decedent. While the dog was detaining Decedent, the officers approached Decedent and took him into custody.

Officer Giron was tasked with clearing the residence with other officers. As Officer Giron entered the residence to make sure no one else was inside, he observed a cartridge case on the living room floor. Once the residence was secured, Officer Giron guarded the front entrance while medical personnel treated Decedent. Officer Giron did not fire his weapon and did not know if Decedent fired his weapon at the officers.

Sergeant John Wiggins

On August 16, 2020, at approximately 9:12 p.m., Detective Alsup conducted an audio recorded interview with Sergeant Wiggins.

Sergeant Wiggins was the only supervisor working within SVAC boundaries and was driving to a call for service in the 7000 block of S. Rainbow Boulevard when he heard a radio broadcast of an assault with a deadly weapon call at 2868 Cygnus Street. The person reporting stated her husband had fired two bullets inside their residence, and he was

delusional. Sergeant Wiggins coordinated with a supervisor from another area command to take the call on Rainbow Boulevard and diverted himself to the call on Cygnus Street.

Sergeant Wiggins developed a tactical plan, assigned officers to lethal and low lethality options, and set up containment around the residence. He was also able to obtain a cellular phone number for Decedent. Once his officers were in place and knew their roles, Sergeant Wiggins called the phone number for Decedent. Two calls were placed, and both went to voicemail.

Sergeant Wiggins then utilized the PA system in a patrol vehicle in an attempt to make contact with Decedent. After several minutes, Sergeant Wiggins observed Decedent exit the residence, however because of his angle to the residence and another vehicle in front of his, Sergeant Wiggins did not have a good view of Decedent. Sergeant Wiggins heard another officer say that Decedent was outside, and shortly after heard three gunshots. According to Sergeant Wiggins, the first gunshot was a different caliber than the next two. Sergeant Wiggins then heard an officer state, "He's firing," and assumed Decedent had discharged his firearm.

Sergeant Wiggins exited his vehicle and could see Decedent lying in front of the house. Decedent was moving and Sergeant Wiggins believed he was reaching for his gun. Sergeant Wiggins instructed a K-9 officer to deploy his dog. The K-9 dog engaged Decedent as an immediate action team advanced toward Decedent. The officers took Decedent into custody and provided medical care while waiting for paramedics.

Officer Steven Lehmann

On August 16, 2020, at approximately 9:50 p.m., Detective Leavitt conducted an audio recorded interview with Officer Lehmann.

Officer Lehmann was assigned to SVAC as a uniformed patrol officer when he heard a radio broadcast of a person with a gun call. The incident details had been updated with information that a male had fired bullets inside of his residence. Upon Officer Lehmann's arrival he met with sergeants and other officers that were outside of the complex and they formulated a plan to respond. Officer Lehmann was given the responsibility of low lethality officer.

Officers set up around the residence with assigned roles and responsibilities. Officer Lehmann positioned himself next to Sergeant Wiggins and behind a patrol vehicle door. Sergeant Wiggins was using a vehicle PA system to call Decedent out of the residence. Officer Lehmann was armed with the low lethality bean bag shotgun and received direction from Sergeant Wiggins to wait for his order to discharge it.

Officer Lehmann observed Decedent exit the residence from the front door; however, he could not see Decedent's left hand. Officer Lehmann told Sergeant Wiggins he could not see Decedent's left hand. Officer Lehmann then observed Decedent's left hand come forward armed with a gun. He told Sergeant Wiggins that Decedent had a gun. Decedent then pointed

the gun toward Officer Lehmann and Sergeant Wiggins. Officer Lehmann ducked as he heard a gunshot. He believed Decedent had fired at them.

Officer Lehmann then observed Decedent on the ground and directions were given for officers to move up and take Decedent into custody.

BODY-WORN CAMERAS

Officers Fieweger, Garcia, Giron, and Lehmann and Sergeants Wiggins and Hutchason were all equipped with body-worn cameras (“BWC”) which were activated at the time of the incident. The BWC footage was generally consistent with their respective statements and recollections. The relevant BWC footage depicts the following:

Officer Fieweger

Officers Fieweger and Giron were standing west of Decedent’s residence. Officer Fieweger had his rifle deployed and gave Officer Giron instructions on taking cover and giving verbal commands if Decedent were to exit the residence.

An officer’s voice was heard broadcasting over a PA system asking Decedent to exit the residence. Decedent was asked several times to exit the residence. A voice was heard saying, “He’s coming out,” and Officers Fieweger and Giron visibly reacted.

Officer Fieweger aims his rifle in the direction of Decedent’s residence and Officer Giron gave commands for Decedent to put his hands in the air. Officer Fieweger requested a Code Red on the radio from Dispatch.

Officer Giron was heard yelling, “Drop, drop, drop!” right before Officer Fieweger fired two shots from his rifle. Officer Fieweger instructed Officer Giron to broadcast over the radio shots fired.

Officers Fieweger and Giron moved toward Decedent’s residence where other officers were taking him into custody.

Officer Garcia

Officer Garcia exited his vehicle and made contact with Sergeant Hutchason who was parked north of Decedent’s residence. Officer Garcia utilized the front of Sergeant Hutchason’s vehicle for cover and provided lethal coverage for officers as they evacuated neighbors and took positions on the perimeter.

Officer Garcia remained in that location as officers attempted to make contact with Decedent over a PA system. After several requests to exit the residence, Decedent was observed exiting his residence. Decedent had his left hand behind his back then turned toward Officer Garcia and raised a gun toward him with his left hand. Officer Garcia fired two shots at Decedent and Decedent fell to the ground.

Sergeant Hutchason told officers to approach Decedent after he released his K-9. Officer Garcia joined officers and utilized a ballistic shield to approach Decedent, who was on the ground but still moving. As Officer Garcia and other officers got closer to Decedent, the K-9 was called back by Sergeant Hutchason. Officer Garcia placed handcuffs on Decedent as other officers provided cover.

Sergeant Hutchason

Sergeant Hutchason's BWC depicts him arriving at the scene and being briefed by Sergeant Wiggins. Sergeant Wiggins advised he was placing officers around Decedent's residence and he planned on contacting him by phone and PA system. An immediate action team would be in place to take Decedent into custody if he were to exit the residence. Sergeant Wiggins requested Sergeant Hutchason and his dog join the immediate action team.

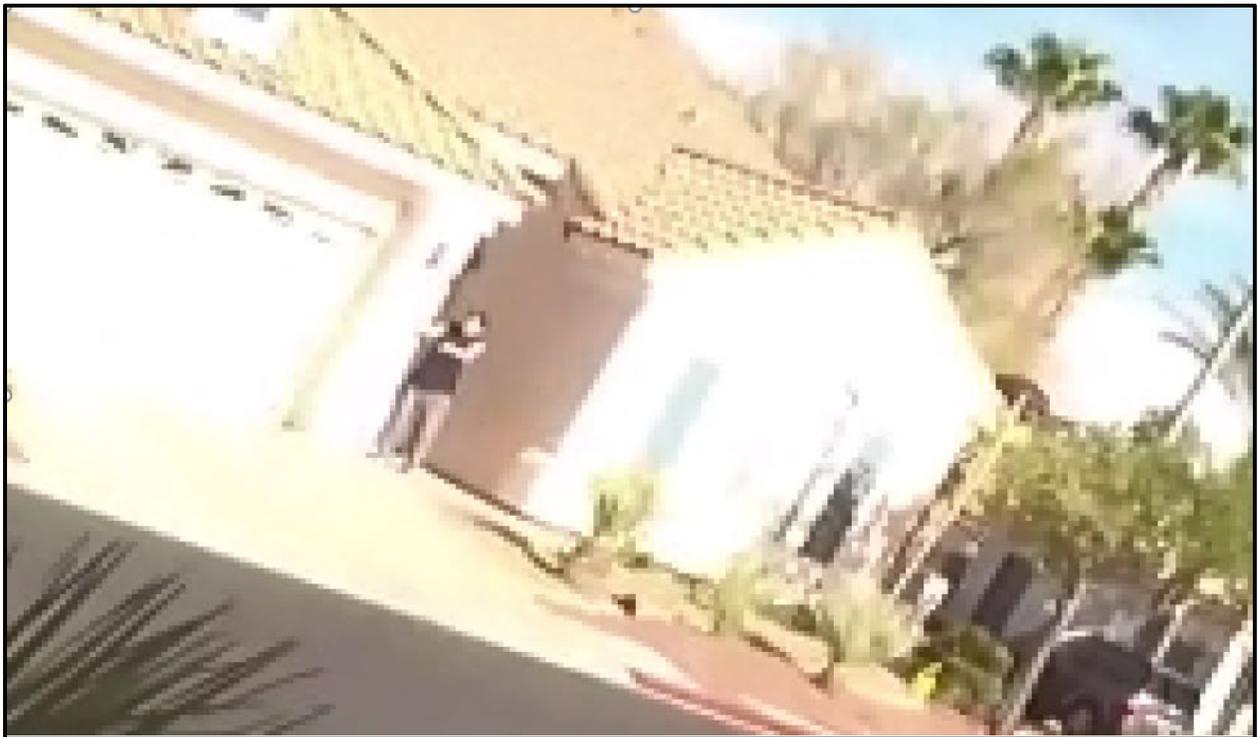
Sergeant Hutchason drove his vehicle and parked it west of Decedent's residence. Sergeant Hutchason spoke with other officers to determine their positions and formed the immediate action team. Sergeant Hutchason posted across the street from Decedent's residence with his dog. Sergeant Wiggins was heard requesting Decedent exit his residence. Sergeant Hutchason's BWC had a clear view of Decedent's front porch. Sergeant Hutchason's BWC captured Decedent standing in front of his doorway with his left hand behind his back. Decedent raised his left hand, which was holding a gun, and pointed it to the north toward officers. Gunshots were heard and Sergeant Hutchason broadcasted, "Shots fired."

Decedent fell to the ground but still moved toward his gun that he dropped. Sergeant Hutchason yelled to him and advised Decedent to stay away from the gun or he would be bitten. Sergeant Hutchason advised the immediate action team, "If he goes for the gun, I'm going to dog him."

Sergeant Hutchason advised Sergeant Wiggins that Decedent was still alive and there appeared to be only one gun. Sergeant Hutchason was going to release his dog and have the immediate action team follow to take Decedent into custody.

Sergeant Hutchason released his dog and followed behind with the immediate action team who utilized a ballistic shield to approach Decedent. Sergeant Hutchason called his dog back as officers took Decedent into custody.

Of all the BWC footage, Officer Hutchason's captured the clearest image of Decedent pulling the gun in his left hand from behind his back and pointing it at the officers to his north before he was shot.



AUTOPSY

Medical Examiner Dr. AbuBakr Marzouk of the Clark County Coroner's Office conducted an autopsy on Decedent. Dr. Marzouk observed gunshot wounds to Decedent's left upper abdomen, left lower abdomen, and left upper back/chest, and superficial lacerations to his face. Dr. Marzouk concluded Decedent's cause of death was multiple gunshot wounds.

The toxicology results indicated Decedent had 16 ng/mL Delta-9 Carboxy THC and 3.9 ng/mL Delta-9 THC in his system at the time of his death.

OFFICER WEAPON COUNTDOWNS



Officer Fieweger (S&W MP15 .223 rifle)

Officer Fieweger carried twenty (20) cartridges in the magazine of his rifle, which he deployed from the trunk of his patrol vehicle. At the completion of the countdown, eighteen (18) rounds were in the weapon – seventeen (17) in the magazine and 1 in the chamber. After the countdown and a review of the evidence on scene, it was determined Officer Fieweger discharged his firearm 2 times during this incident.



Officer Garcia (Glock 17 9mm pistol)

Officer Garcia carried eighteen (18) cartridges in his pistol – seventeen (17) in the magazine and 1 in the chamber. At the completion of the countdown, sixteen (16) rounds were in the weapon – fifteen (15) in the magazine and 1 in the chamber. After the countdown and a review of the evidence on scene, it was determined Officer Garcia discharged his firearm 2 times during this incident.

FIREARM EXAMINATIONS

After the countdowns, both Officers' weapons were impounded by Senior Crime Scene Analyst C. King and later submitted to the LVMPD Forensic Laboratory for examination. Crime Scene Analyst T. Olson impounded Decedent's Beretta, the Beretta found in his dresser, and the cartridge cases from inside and outside the residence, all of which were also submitted to the LVMPD Forensic Laboratory for testing.

All 4 firearms were examined, test fired and found to be operational with no noted malfunctions by Forensic Scientist Roy Wilcox.

FS Wilcox microscopically compared the submitted evidence cartridge cases to the test fired cartridge cases from the 4 firearms he examined.

The 2 SPEER .223 cartridge cases were identified as having been fired from Officer Fieweger's rifle. The 2 SPEER 9mm cartridge cases were identified as having been fired from Officer Garcia's pistol. The 2 WIN 9mm cartridge cases and 1 FC 9mm cartridge case recovered from inside Decedent's home were identified as having been fired from a single firearm, but were eliminated as having been fired from any of the 4 firearms submitted for examination.

LEGAL ANALYSIS

The District Attorney's Office is tasked with assessing the conduct of officers involved in any lethal 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 the two theories related to the concept of self-defense: (1) the killing of a human being in self-defense or defense of others; and (2) justifiable homicide by a public officer. Both theories will be discussed below.

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

The authority to kill another in self-defense or 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 ... another person, against one who manifestly intends or endeavors to commit a crime of violence ..." against the person or 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 self-defense [or defense of another] is justified and not unlawful when the person who does the killing actually and reasonably believes:

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.

1. That there is imminent danger that the assailant will either kill himself [or the other person] or cause himself [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(s) 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 exists that a killing was in defense of self [or defense of another], the State must prove beyond a reasonable doubt that Decedent did not act in self-defense [or defense of another]. *Id.* at 1051-52.

Therefore, under Nevada law, if there is evidence that the killing was committed in self-defense or defense of another, the State at trial must prove beyond a reasonable doubt that the slayer was not acting in self-defense or defense of another.

The known facts and circumstances surrounding this incident indicate that Decedent posed an imminent danger to Officers Fieweger and Garcia, as well as the multiple other officers and civilians in the immediate area. Officers Fieweger and Garcia were aware that Decedent had just discharged a firearm in his home, and both were aware that he was acting erratically. When Decedent exited his home, he had his left hand concealed behind his back. When Decedent revealed his left hand, it was holding a firearm. Officers ordered Decedent to drop the weapon, but he instead lifted the weapon and pointed it in the direction of officers and the residential neighborhood behind them. It was not until Decedent raised his weapon and pointed it at officers that Officer Fieweger and Officer Garcia discharged their weapons, ending the threat to the officers and civilians in the area.

Thus, the totality of the evidence, to include BWC video footage and witness statements, illustrates that Officers Fieweger and Garcia were reasonable in believing that Decedent would cause great bodily harm or death to themselves or others. Officers Fieweger and Garcia were confronted with the appearance of imminent danger and had an honest belief and fear that they themselves, along with their fellow officers and any civilians in the area, were about to be killed or suffer great bodily injury at the hands of Decedent. The evidence further illustrates that Officers Fieweger and Garcia both acted reasonably in reaction to the apparent and actual danger posed by the situation and the Decedent. Here, Officers Fieweger and Garcia reasonably acted in self-defense and/or defense of others. Consequently, the shooting of Decedent is justifiable under this legal theory.

B. Justifiable Homicide by a Public Officer

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

In this case, the known evidence illustrates that Officers Fieweger and Garcia had probable cause to believe that Decedent posed a threat of serious physical harm to themselves, their fellow officers, and to the civilians in the residential area around and behind them. Both officers were aware that Decedent had already discharged a firearm into his neighbor’s home, and when he raised his firearm toward officers, they had every reason to believe that he would pull the trigger. At that point, Officers Fieweger and Garcia each had a reasonable belief that Decedent could cause serious physical harm to themselves, their fellow officers, or any number of civilians in the surrounding residential area. Thus, the use of deadly force by Officers Fieweger and Garcia was legally justified and appropriate under NRS 200.140(2).

CONCLUSION

Based on the review of the available materials and application of Nevada law to the known facts and circumstances, we conclude that the actions of Officers Fieweger and Garcia 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.” See 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 against Officer Fieweger or Officer Garcia.